ORDINANCE NO. 2015-39

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, AMENDING THE LEASE AGREEMENT BETWEEN THE CITY OF HIALEAH, AS LANDLORD, AND CITY OF HIALEAH EDUCATION ACADEMY, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION, AS TENANT, AUTHORIZED PURSUANT TO HIALEAH, FLA., ORDINANCE 2014-16 (MARCH 11, 2014), AND IN PARTICULAR, AMENDING PARAGRAPH 1 OF THE LEASE AGREEMENT ENTITLED "PREMISES", TO INCLUDE THE NEW BUILDING ADDTION CONSISTING OF APPROXIMATELY 8,085 SQUARE FEET OF FLOOR SPACE, AND AMENDING PARAGRAPH 3 OF THE LEASE AGREEMENT ENTITLED "BASE MONTHLY RENT", TO PROVIDE FOR THE PAYMENT OF RENT FOR THE USE AND OCCUPANCY OF THE NEW BUILDING ADDITION; AND AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO EXECUTE THE FIRST AMENDMENT TO PUBLIC CHARTER SCHOOL LEASE AGREEMENT, IN SUBSTANTIAL FORM AS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1"; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Hialeah, Fla., Ordinance 2014-16 (March 11, 2014), the City of Hialeah entered into a Lease Agreement with the City of Hialeah Education Academy, Inc. for a term of four years, for use of the school facility located at Slade Park consisting of 22,870 square feet located at 2590 West 76 Street, Hialeah, Florida 33016; and

WHEREAS, the City built a new addition to accommodate an increase in student enrollment consisting of approximately 8,085 square feet of floor space; and

WHEREAS, the City desires to amend the Lease Agreement to include the new building addition as part of the premises leased by the Tenant and provide for a commensurate amount of rent based on the increased student enrollment; and

WHEREAS, upon execution of the First Amendment, the City will receive $300,000.00 in advance to pay for the costs of construction of the new facility; and

WHEREAS, amending the Lease Agreement to incorporate the new building addition and allow for an increased student enrollment is in the public interest and will protect the health, safety and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this resolution are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The City of Hialeah, Florida hereby amends the Lease Agreement between the City of Hialeah, as Landlord, and City of Hialeah Education Academy, Inc., a Florida not-for-profit corporation, as Tenant, authorized pursuant to Hialeah, Fla., Ordinance 2014-16 (March 11, 2014), and in particular, amending Paragraph 1 of the Lease Agreement entitled "Premises", to include the new building addition consisting of approximately 8,085 square feet of floor space, and amending Paragraph 3 of the Lease Agreement entitled "Base Monthly Rent", to provide for the payment of rent for the use and occupancy of the new building addition.

Section 3: The City Council of the City of Hialeah, Florida hereby authorizes the Mayor, and the City Clerk, as attesting witness, to execute the First Amendment to Public Charter School Lease Agreement, in substantial form as attached hereto and made a part hereof as Exhibit "1".

Section 4: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED AND ADOPTED this 11 day of August, 2015.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 19 day of August, 2015.

Marbelys Fatjo, City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

Lorena E. Bravo, City Attorney

Ordinance was adopted by a (7-0) unanimous vote with Councilmembers, Caragol, Casáls-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

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THE FOREGOING ORDINANCE OF THE CITY OF HIALEAH WAS PUBLISHED IN ACCORDANCE WITH THE PROVISIONS OF FLORIDA STATUTE 166.041 PRIOR TO FINAL READING.

FIRST AMENDMENT TO
PUBLIC CHARTER SCHOOL LEASE

THIS FIRST AMENDMENT, (the "Amendment") to the Lease Agreement effective July 1, 2014 and continuing through June 30, 2018, (the "Lease"), is made and entered into as of the ____ day of July, 2015, by and between, City of Hialeah Education Academy, Inc., a Florida not-for-profit corporation, whose address is: 2590 West 76 Street, Miami, Florida 33016, (the "Tenant") and the City of Hialeah, Florida, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, whose address is: 501 Palm Avenue, Hialeah, Florida, 33010, (the "Landlord").

RECITALS

A. WHEREAS, On July 1, 2014, the Parties entered into Lease Agreement (hereinafter referred to as the "Lease");

B. WHEREAS, the City has constructed a new building addition to accommodate an increased student enrollment at the City of Hialeah Educational Academy Charter School; and

C. the Parties hereby desire to amend the Agreement to provide for the use and occupancy of the additional 8,085 square feet of new floor space for the remaining term of the Lease under the current terms and conditions of the Lease;

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:.

TERMS AND CONDITIONS

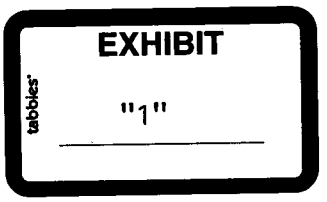
1. **RECITALS.**
The above recitals are true and correct and are incorporated herein as if fully restated.

2. **DEFINED TERMS.**
Except to the extent they are in conflict herewith, the capitalized terms used herein shall have the meanings set forth in the Lease.

3. The Parties agree to amend Paragraph 1 of the Lease entitled **Premises.** by deleting the existing language and in its stead amending Paragraph 1 to read as follows:

Premises.

Landlord leases to Tenant and Tenant leases from Landlord the facility space, (the "Premises") depicted in: (1) Exhibit "A", (the "Original Facility"), which is attached hereto and made a part hereof, consisting of approximately 22,870 square feet of floor space, and (2) Exhibit "B", (the "Additional Facility"), which is attached hereto and made a part hereof, consisting of approximately 8,085 square feet of floor space. The Premises are located within the Hialeah Educational Academy Charter High School facility within Carl Slade Park located at 2590 West 76 Street, Hialeah, Florida 33016. ("Premises"). The use and occupation by Tenant of the Premises shall include the nonexclusive use of the parking areas ("Parking areas"), at all times subject to the terms and conditions of this Lease. The Landlord will also identify an area of the Premises for the nonexclusive use of the Tenant's employee parking.



4. The Parties agree to amend Paragraph 3 of the Lease entitled **Base Monthly Rent** by adding the following paragraph:

3.1. **Pre-Paid Rent.** In consideration of, and upon execution of this Amendment, the Tenant agrees to pay to Landlord the sum of three hundred thousand dollars ($300,000.00), as pre-paid rent. Upon completion of the Additional Facility, Tenant shall be permitted to offset the amount owed as Base Monthly Rent in paragraph 3 by an amount equal to 1/36th of the pre-paid rent sum ($8,333.33) each month until the entire sum of pre-paid rent has been fully credited to the Tenant commencing with the rental payment dueJuly 1, 2015. Upon the early expiration, or in the event of termination of this Lease for any reason, the remaining balance of the pre-paid rent shall be returned to Tenant within thirty (30) days. Nothing in this Section 3.1 shall be interpreted as a waiver of the Base Monthly Rent or any other sum, fee, or charge payable to the Landlord by the Tenant for the Premises under the terms and conditions of the Lease Agreement.

5. This Amendment is incorporated into and made a part of the Lease.

6. This Amendment contains the entire agreement between the parties concerning the subject matter herein and any enforceable modification of this Amendment must be signed by the Parties hereto.

7. It is acknowledged that both Parties have contributed substantially to the content of this Amendment and this Amendment shall not be more strictly construed against either Party by reason of the fact that one Party may have drafted or prepared any or all of its terms and provisions.

8. The persons executing this Amendment below covenant and warrant that they are duly authorized to execute this Amendment on behalf of the respective Party for whom they sign.

9. An electronically transmitted, executed copy of this Amendment shall be binding as to all Parties for all purposes whatsoever, as if it were an original. If this is executed in counterparts, then together each signed counterpart shall constitute one and the same document for all purposes whatsoever.

10. The Parties agree, acknowledge and reaffirm that the Lease is in good standing, that neither the Landlord nor the Tenant is in default of its obligations under the Lease, and that all covenants and obligations of the Lease have been met or satisfied.

11. In all other respects the Lease remains unchanged. All other terms and conditions of the Lease, except as modified herein, shall remain in full force and effect.

12. Landlord and Tenant agree that, except as expressly set forth herein, the Lease is ratified and confirmed as written. Should the terms and conditions of the Lease conflict with the terms and conditions set forth within this Amendment, the terms and conditions of this Amendment shall prevail.

IN WITNESS WHEREOF, the respective parties have hereunto set their hands and seals and/or affixed their corporate seals and caused this First Amendment to the Lease Agreement to be executed by their duly authorized officers and/or authorized representatives as of the date first written above.

WITNESSES:

_____

_____

LANDLORD:

CITY OF HIALEAH

By:_____

CORPORATE SEAL:

WITNESSES:

_____

_____

TENANT:
CITY OF HIALEAH EDUCATIONAL ACADEMY, INC.

By:_____

CORPORATE SEAL: