

**CONSTRUCTION AGREEMENT BETWEEN  
BROWARD COMMUNITY COLLEGE and  
JUNIOR ACHIEVEMENT OF SOUTH FLORIDA, INC.**

This Construction Agreement is by and between BROWARD COMMUNITY COLLEGE, a publicly supported State of Florida Community College, its successors and assigns, (hereinafter referred to as “BCC” or “LESSOR”) and JUNIOR ACHIEVEMENT OF SOUTH FLORIDA, INC., a Florida not for profit corporation (hereinafter referred to as “JA” or “TENANT”).

WHEREAS the above parties have entered into a land lease agreement dated October 27, 2004; and

WHEREAS the parties have subsequently entered an Amendment to the Lease, Easement and Use Agreements, and

WHEREAS pursuant to the land lease agreement, TENANT was given the opportunity to construct a facility on the land pursuant to the terms and conditions of the land lease agreement; and

WHEREAS the construction of the leasehold improvements were to proceed in a timely manner; and

WHEREAS the parties hereto recognize, acknowledge and herein incorporate all the terms and conditions of the land lease and acknowledge their respective intent; not to waive, alter, delete or limit any of those terms and conditions except as to more clearly define the day-to-day interactions and logistics between the parties; and

WHEREAS the parties now incorporate the terms, conditions and obligations of the Amendment to the Lease, the Easement and the Use agreements herein; it is hereby

AGREED AND UNDERSTOOD as follows:

1. JA will pay for all of the utilities consumed or used during the construction and operation of the above-referenced leasehold improvements.

2. a. JA is to install and maintain all utility lines wherever located and necessary for the proper operation of the facility. The responsibility and cost for installing and maintaining these lines where located is the sole responsibility of JA.

b. Ownership of utilities provided outside of the leased property will be turned over to BCC pursuant to the terms and conditions agreed upon between the parties as detailed in a separate agreement.

c. JA will comply with all applicable codes, statutes, standards and BCC mandates with regard to the installation and maintenance of all utilities.

d. All BCC property disturbed or damaged by JA during any construction project will be replaced to the same standard, quality and degree which existed prior to JA's work.

e. JA will indemnify and hold BCC harmless, from the first dollar, for any claim which results from any JA's construction project or operation of its facilities wherever said damage or claim occurs.

f. JA will submit photographic documentation of the installation of any utility that will be buried or otherwise covered.

g. JA will notify BCC and obtain prior written approval before the installation or maintenance of any utility.

h. If any utility has to be unearthed or otherwise removed for maintenance, JA will provide photographic documentation of the work done and photographic documentation of the completed work prior to recovering or burying the utility.

i. JA will reimburse BCC the actual cost incurred to review and inspect the installation, maintenance or repair of any utility, including the actual wage of any BCC employee.

j. If it is determined that a utility must be relocated, the parties agree to enter into the appropriate agreements and to share the cost of relocating the utility. Each parties' proportionate share of the cost to relocate will be negotiated at that time.

3. JUNIOR ACHIEVEMENT shall furnish to BCC certificates of insurance ~~evidencing adequate and acceptable coverage and~~ for general liability with limits of no less than one million (\$1,000,000.00) dollars per occurrence/two (\$2,000,000.00) million dollars aggregate and BCC shall be listed as an additional insured. JUNIOR ACHIEVEMENT shall furnish evidence of renewals thereof within thirty (30) days prior to the expiration of any then-existing coverage. All certificates and policies shall state that such insurance may not be changed or cancelled without at least thirty (30) days prior written notice to the Board of Trustees for BCC. In the event of any loss or damage to all or any portion of the property (or means of access thereto) due to fire or other casualty, JUNIOR ACHIEVEMENT shall expeditiously restore and rebuild all loss or damaged property (or means of access thereto) resulting from such fire or other casualty.

4. JA will provide ten (10) hard copies of as-built construction documentation of building and all underground services; three (3) complete sets of close-out documents to be provided to BCC upon completion of construction. This is to include: Copy of certificate of occupancy; copies of as-built documentation in digital format, including photographs of trenched utilities; copies of certification of all building and life safety systems; fire suppression system and security system.

5. Any and all changes to the site, building or appurtenances must receive prior written approval from BCC. This includes any aesthetic or structural changes. Failure to maintain the building or other site improvements to an acceptable level, as solely determined by BCC, will result in charge and JA will be obligated to remunerate BCC at 115% of the actual cost incurred by BCC to correct or repair the violation. The determination that a condition violates an acceptable standard is within the sole discretion of BCC. The proposed correction of the violation must be consistent with BCC policies and standards and must receive BCC prior approval. BCC will provide notice for correction prior to undertaking any corrective action to be charged back to JA

6. In the event JA owes payment to BCC, JA shall mail BCC's payment within forty (40) days after receipt of an invoice, or receipt, inspection and acceptance of the goods or services whichever first occurs. Failure to mail the warrant within 40 days shall result in JA paying interest at a rate of one and one-half (1½) percent per month, or the maximum allowed by law, whichever is lowest, on the unpaid balance. The interest penalty shall be mailed within 15 days after BCC has mailed the invoice, and said interest will continue to accrue until all indebtedness, including interest, is paid in full.

7. BCC agrees that bills and invoices for labor, services and materials shall be submitted to the Controller with sufficient detail. Each bill or invoice will clearly identify the services, portion of services and expenses for which compensation is sought.

8. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable.

9. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third party person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of the any contract.

10. The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

11. This Agreement will remain in effect for the term of the land lease and may be modified by BCC upon JA's breach of the land lease or upon the assignment of all or any portion of the land lease as may be permitted by BCC.

12. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in the schedule of documents attached hereto as **Schedule A**. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

13. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

14. The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

15. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement, and therefore, is a material term hereof. BCC's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

16 Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement. Failure to comply is a material breach of this Agreement.

17. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

18. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

19. Neither this Agreement nor any interest herein may be assigned, transferred or encumbered without the expressed prior written consent of BCC. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from any party hereto.

20. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense (Force Majeure). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

21 All obligations of the parties under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

22. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

23. Notice to the other party must be in writing, sent by U. S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of the paragraph. For the present, the parties designate the following as the respective places for giving notice to:

Broward Community College  
Att: Provost North Campus  
1000 Coconut Creek Blvd., 49/208  
Coconut Creek, Florida 33066  
Telefacsimile: 954-201-2389

Junior Achievement  
2335 East Atlantic Boulevard  
Pompano Beach, Florida 33062

24. The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

25. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

In Witness Whereof, the party of the first part has duly executed this Agreement.

Signed, Sealed and Delivered  
In the Presence of:

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

STATE OF FLORIDA                    )  
  ) ss:  
COUNTY OF BROWARD                )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_ of \_\_\_\_\_, a Florida corporation, on behalf of the corporation, who is personally known to me or who has produced \_\_\_\_\_ as identification, and who did (did not) take an oath.

\_\_\_\_\_  
Notary Public, State of Florida  
Commission No. \_\_\_\_\_  
My Commission Expires: