RESOLUTION NO. R-2013-22

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, APPROVING THE EXECUTION OF A LEASE AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, BETWEEN THE CITY OF NORTH MIAMI, AS LANDLORD AND THE POLICE ATHLETIC LEAGUE OF NORTH MIAMI, INC. (PAL), AS TENANT, FOR PORTIONS OF THE PREMISES KNOWN AS "CAGNI PARK" FOR A NINETY NINE (99) YEAR TERM; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.

WHEREAS, on February 26, 2013, the Mayor and City Council authorized the City Administration to enter into a lease with the Police Athletic League of North Miami, Inc. (PAL) for portions of Cagni Park; and

WHEREAS, under the terms of the lease agreement, the City of North Miami will grant PAL, as lessee, use of the premises to operate North Miami PAL's youth programs and activities for a term of ninety nine (99) years; and

WHEREAS, the Mayor and City Council believe that it is in the best interest of the City and its residents to enter into a lease agreement for this purpose.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. **Authorization to Execute Lease Agreement.** The Mayor and City Council of the City of North Miami, Florida, hereby approve the execution of a Lease Agreement, in substantially the attached form, between the City of North Miami, as landlord and The Police Athletic League of North Miami, Inc. (PAL), as tenant, for portions of the premises known as "Cagni Park".

Section 2. **Authorization of City Manager.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager to do all things necessary to effectuate the terms of the lease agreement.

Section 3. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, this 12 day of March, 2013.

ANDRE D. PIERRE, ESQ.
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Vice Mayor Steril

Seconded by: Councilman Galvin

Vote:

Mayor Andre D. Pierre	X (Yes)	____ (No)
Vice Mayor Marie Erlande Steril	X (Yes)	____ (No)
Councilperson Michael R. Blynn, Esq.	X (Yes)	____ (No)
Councilperson Scott Galvin	X (Yes)	____ (No)
Councilperson Jean R. Marcellus	X (Yes)	____ (No)

CITY OF NORTH MIAMI
LEASE AGREEMENT

THIS LEASE is made and entered into this _____ day of March, 2013 between the ***CITY OF NORTH MIAMI***, a Florida municipal corporation, located at 776 N.E. 125 Street, North Miami, FL 33161 (CITY) and the ***THE POLICE ATHLETIC LEAGUE OF NORTH MIAMI, INC.***, a Florida non-profit corporation, with its principal place of business located at 700 N.E. 124th Street, North Miami, FL 33161, (LESSEE).

WITNESSETH

In consideration of the mutual covenants herein contained and other good and valuable consideration, the parties covenant and agree as follows:

ARTICLE 1. TERM

1.01 CITY leases to the LESSEE certain premises situated in North Miami, Florida, and located at 13498 N.E. 8th Avenue, North Miami, Florida, more commonly referred to as the "Cagni Park" (Premises), for a term not to exceed ninety nine (99) years, commencing on the ____ day of March, 2013 and terminating on the ____ day of March, 2112, renewable by the City, in its sole option.

ARTICLE 2. PREMISES

2.01 The LESSEE shall have exclusive access to the leased premises and general access to the portion of the premises being maintained by the CITY. Premises are described in attached Exhibit "A."

ARTICLE 3. RENTAL

3.01 The LESSEE agrees to pay the CITY a rent of $1.00 per year for the term described in Section 1.01 above. Said rent shall be payable in advance to the City of North Miami.

ARTICLE 4. USE OF PREMISES

4.01 The LESSEE agrees that the leased property shall be used as the primary location for youth advancement in accordance with the mission of the North Miami's Police Athletic League.

4.02 LESSEE further agrees not to use or permit the leased premises to be used for any illegal or improper purposes, nor permit any disturbance, noise or annoyance which is detrimental to persons in the immediate vicinity.

ARTICLE 5. ASSIGNMENT AND SUBLETTING

5.01 LESSEE shall not, in any manner, assign, transfer, mortgage, pledge, encumber or otherwise convey an interest in this Lease, nor sublet the leased premises or any part thereof.

ARTICLE 6. MAINTENANCE OF PREMISES BY LESSEE

6.01 LESSEE accepts the leased premises in an "as is" condition. The CITY will be responsible to maintain the condition of the premises except for ordinary wear and tear excepted.

ARTICLE 7. CLEANLINESS OF PREMISES

7.01 LESSEE shall keep the leased premises free of debris, garbage, refuse and other waste matter and shall remove such debris, garbage, refuse, and waste matter, which may be disposed of by the LESSEE in sealed bags and deposited in the dumpster.

ARTICLE 8. UTILITIES AND TAXES

8.01 The CITY shall pay for all utilities, including but not limited to, electric, water and sewer. LESSEE will be responsible for any modifications to the utilities. The CITY shall be responsible for taxes and fees associated with local and state governmental entities.

ARTICLE 9. ALTERATION OF PREMISES, ERECTION OF SIGNS

9.01 LESSEE shall make no alterations, improvements or additions to the leased premises without the prior written consent of the City. All additions or improvements which may be made by LESSEE and all fixtures which may be installed by LESSEE, except movable furniture, shall become the property of the CITY upon termination and shall remain upon the leased premises once made or installed and be surrendered with the leased premises at the termination of this Lease.

9.02 No signs, posters, or similar devices shall be erected, displayed, or maintained by LESSEE in the view of the general public in, on or about the leased premises without prior written approval of the CITY, and any not so approved shall be removed at the expense of the LESSEE.

9.03 LESSEE shall not injure, mar, nor in any manner deface the leased premises, and LESSEE shall not cause or permit anything to be done whereby the leased premises shall be in any manner injured, marred, wasted or defaced.

ARTICLE 10. LAWS, REGULATIONS AND PERMITS

10.01 The LESSEE shall comply with the ordinances of the CITY, operational orders and all additional laws, regulations and rules of the Federal, State, County and local governments, which may be applicable to LESSEE under this Lease.

10.02 LESSEE shall pay all taxes, if any, and other costs lawfully assessed against its leasehold interests in the leased premises and its operations under this Lease. The LESSEE shall not be deemed to be in default of its obligations for failure to pay such taxes pending the

outcome of any legal proceedings instituted to determine the validity of such taxes or the amount.

10.03 The CITY agrees to procure and maintain the necessary fire extinguishers and smoke detectors as required by law. LESSEE shall at all times be familiar with and comply with the fire regulations and orders of Miami-Dade County Fire Department, and provide access for maintenance and repair of fire extinguishers and smoke detectors.

ARTICLE 11. RESPONSIBLITIES OF CITY WITH REGARD TO PROPERTY:

11.01 The CITY shall be responsible to repair or maintain the Property, any portion thereof, or any facilities situated thereon during the term of the Lease.

11.02 The CITY is not responsible to LESSEE for any claims of compensation for any losses, damages or injury resulting from a condition of the Property or from the failure of any water supply, sewer or drainage facility, or caused by natural conditions, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado, hurricane, act of war, civilian commotion or riot, or any cause beyond the control of the Landlord.

11.03 All personal property placed on or moved onto the leased premises above described shall be at the risk of the LESSEE. CITY shall not be liable for any damage or loss of personal property arising from flooding or from the bursting or leaking of water or sewer pipes.

ARTICLE 12. DESTRUCTION OF PREMISES

12.01 In the event the leased premises or any part shall be destroyed or damaged by fire, water or any other cause, or if any other casualty or unforeseen occurrence shall render the fulfillment of this Lease by CITY impossible, then this Lease shall terminate and the LESSEE shall pay rental for the leased premises only up to the time of such termination, at the rate specified, and the LESSEE waives any claim for damages or compensation should this Lease be so terminated.

ARTICLE 13. INDEMNIFICATION AND HOLD HARMLESS

13.01 LESSEE shall defend, indemnify and hold CITY, it's officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorney's fees, or claim for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omission of LESSEE, it's officers, agents or employees.

To the extent permitted by Florida Statutes, CITY shall defend, indemnify and hold LESSEE, it's officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorney's fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss expense, attorney's fees, or claims for injury or damages are caused by or result from the

negligent or intentional acts or omissions of CITY, it's officers, agents or employees.

Nothing in this Agreement shall be construed to affect in any way the City's rights, privileges, and immunities, and limits the City's liability for any of the above to the sovereign immunity levels as set forth in Florida Statute 768.28.

ARTICLE 14. CITY'S RIGHT OF CANCELLATION

14.01 CITY may cancel this Lease by giving LESSEE thirty (30) days advance written notice, to be served as provided by law, upon the happening of any one of the following events:

(a) The abandonment by LESSEE of the leasehold premises.

(b) Default in the performance of any of the covenants and conditions required (except rental payment) to be kept and performed by LESSEE and such default continues for a period of ten (10) days after receipt of written notice from the CITY of the default. Provided that: (1) if the nature of the default is such that it cannot be cured in a period of ten (10) days from the date of the default, and (2) LESSEE shall commence good faith efforts to cure such default no later than five (5) days after such notice, and (3) such efforts are diligently prosecuted to completion, to CITY's satisfaction, then it shall be deemed that no default shall have occurred under the provisions of this subsection

14.02 If LESSEE fails to pay any rent, charges, or fees due within five (5) days after CITY transmits a written Past Due Statement to the LESSEE, CITY may give LESSEE notice in writing of its intention to terminate this Lease unless LESSEE shall correct such failure to pay within five (5) days, and if such correction has not been made within the time period, the CITY may, at its option, immediately cancel this Lease, enter the premises leased and repossess same from LESSEE, and the Lease shall be considered terminated. It shall not be necessary for CITY to make entry to effectuate termination.

14.03 CITY may cancel this Lease, at any time, upon five (5) days notice, in the event LESSEE ceases to provide youth programming and activities as the Police Athletic League of North Miami, Inc., as specified in paragraph 4 above.

ARTICLE 15. LESSEE'S RIGHT OF CANCELLATION

15.01 LESSEE may cancel this Lease by giving CITY thirty (30) days advance written notice, to be served as provided by law, upon the happening of the following events:

(a) Default in the performance of any of the covenants and conditions required to be kept and performed by CITY and if such default continues for a period of five (5) days after receipt of written notice from the LESSEE of the default. Provided that: (1) if the nature of the default is such that it cannot be cured in a period of five (5) days from the date of the default, and (2) CITY shall commence good faith efforts to cure such default no later than five (5) days after such notice, and (3) such efforts are diligently prosecuted to completion, then it shall be deemed

that no default shall have occurred under the provisions of this subsection; or

(b) LESSEE ceases to provide training, as specified in paragraph 4 above.

ARTICLE 16. NO WAIVER BY CITY

16.01 No waiver of default by CITY of any of the terms, conditions, or covenants of this Lease to be kept and performed by LESSEE shall be construed to be or act as a waiver by CITY of any subsequent default on the part of the LESSEE.

ARTICLE 17. EASEMENTS

17.01 Nothing in this Lease shall impair any existing utility easement nor impair the right of access to any existing or necessary utility lines.

17.02 CITY reserves the right to grant non-exclusive utility easements, licenses and rights-of-way to others over, under, through, across or on the leased premises.

ARTICLE 18. CONSENT AND APPROVAL

18.01 Nothing in this Lease shall be construed to waive or limit CITY's governmental authority as a political subdivision of the State of Florida to regulate LESSEE or its operations. Where approval or consent of CITY is required under this Agreement, such consent or approval shall be deemed to refer to the CITY's consent or approval as landlord and such consent or approval shall be contractual in nature and shall not be in lieu of any required governmental approval of CITY. The City Manager or a designee shall act for CITY in matters relating to contractual approvals and notices.

ARTICLE 19. RIGHTS RESERVED TO THE CITY

19.01 Rights not specifically granted the LESSEE by this Lease are reserved to the CITY.

ARTICLE 20. INVALIDITY OF CLAUSES

20.01 The invalidity of any portion, article, paragraph, provision or clause of this Lease Agreement shall have no affect upon the validity of any other portion.

ARTICLE 21. BINDING EFFECT

21.01 The terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the parties and their successors and assigns.

ARTICLE 22. MODIFICATION

22.01 This Lease constitutes the entire agreement and shall be modified or amended only by written agreement of the parties.

ARTICLE 23. SECURITY

23.01 The LESSEE acknowledges and accepts full responsibility for the security and protection of all persons, equipment, and facilities within its leased area and for prevention of unauthorized access to its facilities.

ARTICLE 24. NOTICE

24.01 Notices to CITY shall be sufficient if sent by certified mail, return receipt requested, postage prepaid, addressed to:

City Manager
City of North Miami
776 N.E. 125th Street
North Miami, FL 33161

With a copy to:

City of North Miami
776 N.E. 125th Street
North Miami, FL 33161
Attention: City Attorney

and notices to LESSEE, if sent by certified mail, return receipt requested, postage prepaid addressed to:

The Police Athletic League of North Miami, Inc.
Registered Agent: Officer James Stuart
700 N.E. 124th Street
North Miami, FL 33161

or such other respective address as the parties may designate to each other in writing from time to time.

ARTICLE 25. SURRENDER OF PREMISES

25.01 The LESSEE shall surrender and deliver the leased premises to the CITY upon termination of this Lease Agreement.

25.02 The LESSEE, within five (5) days following the termination of this Agreement, shall remove all personal property. Any personal property of LESSEE not removed in accordance with this Article may be removed by the CITY for storage at the cost of LESSEE. Failure on the part of LESSEE to reclaim its personal property within five (5) days from the date of termination shall, at CITY's option, constitute a gratuitous transfer of title to the CITY for whatever disposition is deemed to be in the best interests of the CITY.

25.03 Upon termination, LESSEE shall surrender the leased premises in good, clean and neat condition.

ARTICLE 26. INSURANCE

26.01 The LESSEE agrees to procure and maintain liability insurance, in the nature of a Tenant Form of Homeowner Policy, with an insurance company authorized to transact business in the State of Florida, acceptable to CITY's Risk Management Department, with the policy showing "The City of North Miami, Florida, a Florida municipal corporation" as an additional insured, and with limits of not less than $1,000,000.00 per person, $2,000,000.00 per incident for personal injury, including death, and $1,000,000.00 per incident for property damage liability, as evidenced by Certificate of Insurance, a signed copy of which shall be transmitted to the CITY prior to LESSEE taking possession of the leased premises and throughout the term hereof. The insurance shall support LESSEE's agreement of indemnity and shall so state on the Certificate. Further, the Certificate of Insurance shall unequivocally provide the City written notice thirty (30) days prior to any material change or cancellation of coverage. The liability insurance must be acceptable to and approved by CITY Risk Management Department as to form and types of coverage, and shall include an endorsement showing the CITY to have first party coverage.

26.02 Limitation of Liability. The CITY desires to enter into this agreement only if in so doing the CITY can place a limit on the CITY's liability for any cause of action arising out a breach of this agreement, so that its liability will never exceed the agreed sum of $100.00. LESSEE expresses its willingness to enter into this agreement with LESSEE's recovery from the CITY for any action or claim arising from breach of this agreement to be limited to $100.00.

Accordingly, and notwithstanding any other term or condition of this agreement, LESSEE agrees that the CITY shall not be liable to LESSEE for damages in an amount in excess of $100.00, for any action or claim of the LESSEE or any third party arising out of this agreement. Nothing contained in this paragraph or elsewhere in this agreement is in any way intended to be a waiver of the limitation placed upon CITY's liability as set forth in Chapter 768, Florida Statutes. Additionally, the CITY does not waive sovereign immunity, and no claim or award against the CITY shall include attorney's fees, investigative costs or pre-judgment interest.

[*The remainder of this page is intentionally left blank.*]

IN WITNESS WHEREOF, the City of North Miami, Florida, has caused this Lease to be signed by the City Manager and attested by the Clerk pursuant to authority granted by the City Council, and the LESSEE has executed the same, by its authorized representative, the day and year first written above.

ATTEST:

_____
Michael A. Etienne, Esq.
City Clerk

CITY OF NORTH MIAMI

_____
Stephen E. Johnson
City Manager

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

WITNESSES:

_____

Print Name:_____

_____

Print Name:_____

LESSEE:

By:_____
Marc Elias, Jr.
Executive Director

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

_____
Regine M. Monestime
City Attorney

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "A"
LEGAL DESCRIPTION

THAT PORTION OF LOT 5 OF "FRED C. MILLER'S SUBDIVISION", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK B, AT PAGE 21, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA. LYING IN THE NE 1/4 OF SECTION 30, TOWNSHIP 52 SOUTH, RANGE 42 EAST, MIAMI-DADE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE NE 1/4 OF THE NE 1/4 OF SAID SECTION 30; THENCE RUN S02°48'16"E ALONG THE CENTER LINE OF N.E. 8th AVENUE FOR A DISTANCE OF 50.05 FEET TO A POINT; THENCE S87°00'29"W FOR A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE S02°48'16"E ALONG A LINE 30.00 FEET WEST AND PARALLEL TO THE CENTER LINE OF SAID N.E. 8th AVENUE FOR A DISTANCE OF 155.95 FEET TO A POINT; THENCE S87°00'29"W FOR A DISTANCE OF 175.00 FEET TO A POINT; THENCE N02°48'16"W FOR A DISTANCE OF 171.00 FEET TO A POINT LOCATED ON THE SOUTH RIGHT-OF-WAY LINE OF STATE ROAD 916 (N.E. 135th STREET); THENCE N87°00'29"E ALONG SAID SOUTH RIGHT- OF-WAY LINE OF N.E. 135th STREET FOR A DISTANCE OF 159.95 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST, THE CENTER OF WHICH BEARS S02°59'31"E FROM SAID POINT OF INTERSECTION; THENCE RUN SOUTHEASTERLY AND SOUTHERLY, ALONG THE ARC OF SAID CIRCULAR CURVE, HAVING A RADIUS OF 15.00 FEET, THROUGH A CENTRAL ANGLE OF 90°11'15, FOR AN ARC DISTANCE OF 23.61 FEET TO THE POINT OF BEGINNING; CONTAINNING AN AREA OF 0.68 ACRES OR 29,876 sq. ft. MORE OR LESS.

THIS DESCRIPTION IS PART AND LOCATED WITHIN FOLIO No. 06-2230-013-0040