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RESOLUTION NO. 2012-17

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO PARKS AND RECREATION; AUTHORIZING THE EXTENSION OF THE INTERLOCAL AGREEMENT WITH THE MIAMI-DADE SCHOOL BOARD FOR USE OF THE CORAL REEF PARK, BASEBALL FIELD 3; PROVIDING FOR A THREE YEAR EXTENSION OF THE EXISTING NON-EXCLUSIVE USE INTERLOCAL AGREEMENT FOR PALMETTO SENIOR HIGH SCHOOL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, high school students residing within the Village of Palmetto Bay attend Palmetto Senior High School; and,

WHEREAS, the Palmetto Senior High School Boys Baseball Team does not have an on-campus home field and for several years utilized the Coral Reef Park baseball field 3 as their home field; and,

WHEREAS, the use of Coral Reef Park remains a need of Palmetto High School as a suitable location for a home field for the Boys Baseball Team; and,

WHEREAS, Field 3 at Coral Reef Park is designed and constructed to accommodate high school level baseball; and

WHEREAS, Palmetto Senior High School has, during the initial contract period, complied with all Village requests, and been extremely responsive and respectful of the Village and the residents regarding their use of Field 3; and,

WHEREAS, in 2003, the Miami-Dade School Board and Village executed a contract for the use of Field 3 by the Palmetto Senior High School Boys Baseball Team; and,

WHEREAS, in 2009, the parties (the Miami-Dade County School Board on behalf of the Palmetto Senior High School and the Village) entered into an interlocal agreement for an extension of the field use agreement, expiring on May 30th, 2012; and,

WHEREAS, the parties desire to extend the interlocal agreement for an additional three (3) year period; and,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. The attached interlocal agreement with the Miami Dade County School Board, on behalf of Palmetto Senior High School for the use of Field 3 at Coral Reef Park, is hereby extended for an additional three-year period; commencing on June 1, 2012 and termination on May 31, 2015.

1
2 **Section 2.** This resolution shall take effect immediately upon approval.
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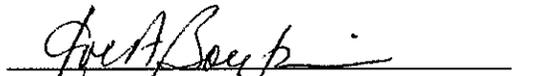
5 PASSED and ADOPTED this 6th day of February, 2012.
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9 Attest:

10 
11 Meighan Alexander
12 Village Clerk

13 
14 Shelley Stanczyk
15 Mayor

16
17 **APPROVED AS TO FORM:**

18 
19 Eve A. Boufsis,
20 FIGUEREDO & BOUTSIS, P.A., as Office
21 of the Village Attorney

22
23 **FINAL VOTE AT ADOPTION:**

24 Council Member Patrick Fiore YES
25
26 Council Member Howard J. Tendrich YES
27
28 Council Member Joan Lindsay YES
29
30 Vice-Mayor Brian W. Pariser YES
31
32 Mayor Shelley Stanczyk. YES
33
34

**FIRST AMENDMENT TO THE NON-EXCLUSIVE USE AGREEMENT
BETWEEN THE MIAMI-PALMETTO SENIOR HIGH SCHOOL AND THE
VILLAGE OF PALMETTO BAY**

This FIRST AMENDMENT TO THE NON-EXCLUSIVE USE AGREEMENT BETWEEN THE MIAMI-PALMETTO SENIOR HIGH SCHOOL AND THE VILLAGE OF PALMETTO BAY ("Amendment"), by and between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic (hereinafter referred to as the "Board"), and THE VILLAGE OF PALMETTO BAY, FLORIDA (hereinafter referred to as the "Village"), is made and entered into this _____ 6 day of FEBRUARY, 2012.

WITNESSETH:

WHEREAS, Village and Board entered into that certain Non-Exclusive Use Agreement dated August 20, 2009 (the "Agreement") for the baseball field at Coral Reef Park; and

WHEREAS, the Village and Board are desirous of amending certain terms and conditions of the Agreement, as more specifically set forth below; and

WHEREAS, the School Board of Miami-Dade County, Florida, has authorized this Amendment in accordance with Board Action No. 115, 382 at its meeting of December 14, 2011; and

WHEREAS, the Village of Palmetto Bay, Florida has authorized this Amendment in accordance with Resolution 2012-17 at it's meeting of February 6, 2012.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Section 3 of the Agreement (Terms of Use) is hereby amended to add the following language:

"Effective June 1, 2012, the term of this Non-exclusive Use Agreement shall be extended for a three (3) year period commencing June 1, 2012 and ending May 31, 2015."

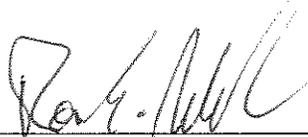
3. Section 8.4 of the Agreement (Maintenance) is hereby amended to add the following language:

"Effective June 1, 2012, the maintenance amount shall be adjusted annually by the percentage increase reflected in the Consumer Price

7. All other terms and conditions of the August 20, 2009 Non-Exclusive Use Agreement as incorporated by reference herein into this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Village and Board have caused this First Amendment to the Non Exclusive Use Agreement between the Miami-Palmetto Senior High School and the Village of Palmetto Bay to be executed by their respective and duly authorized officers the day and year first hereinabove written.

VILLAGE:
VILLAGE OF PALMETTO BAY

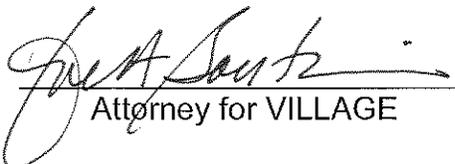
By: 
Village Manager

BOARD:
THE SCHOOL BOARD OF MIAMI-
DADE COUNTY, FLORIDA

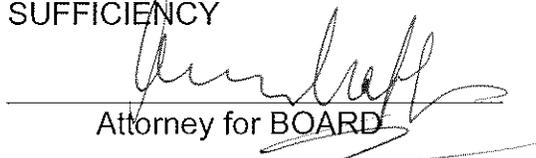
By: 
Alberto M. Carvalho
Superintendent of Schools

ATTEST:
By: 
Village Clerk

APPROVED AS TO FORM:


Attorney for VILLAGE

TO THE BOARD:
APPROVED AS TO FORM AND LEGAL
SUFFICIENCY


Attorney for BOARD



1. Whereas clauses. The above referenced whereas clauses are incorporated by reference into this non-exclusive use agreement and stipulated to be true and accurate.

2. Scope of Use.

2.1 The Village Shall make available Field 3, the Northeast Baseball Field located in Coral Reef Park, Village of Palmetto Bay, Florida, for practice and games for the "Palmetto Senior High School Boys Baseball Team," which is the school's official baseball team during baseball season. Baseball season is defined as and includes the following periods: (1) Regular Season Practice and Games: January 15th – April 30th; and (2) Tournament (Practice Site only, as needed): May 1st – May 30th.

2.2 The School will not charge spectators to attend games at the Park.

2.3 The School shall monitor its players, staff, spectators and visiting team's players, staff and spectators to ensure compliance with all Village, school, and park rules and regulations. The School shall designate one person at each practice or game as the responsible party for ensuring compliance with all applicable rules and regulations. The School is responsible for the conduct of the entire group which includes spectators.

2.4 No alcoholic beverages are permitted in the park.

2.5 The School shall conduct its events in an orderly manner and so as not to annoy, disturb, or be offensive to park patrons or residents in the vicinity of its operation. The School shall control the conduct, demeanor and appearance of its officers, coaches, members, employees, agents and representatives and demeanor and conduct of customers, spectators and patrons. In the event the Village notifies the School of

MUC 10/20/12 Village
_____ Board

observed inappropriate behavior, the School will take immediate steps to correct the behavior.

2.6 All use of Field 3 shall be in accordance with the schedule identified at section 6, infra.

2.7 In no event may Field 3 be used for night practice or night games. The School specifically agrees that it will not seek to use Field 3 for the night practice or games. Nor shall the School seek to have the Village, the County or the School Board add field lights to the Park.

2.8 No voice or sound amplification of public address equipment will be used unless prior approval in writing by the Village.

3. **Term of Use.** This non-exclusive use agreement shall be for the use for a three (3) year period and will expire no later than May 30th, 2012. Prior to the end of the second year under this agreement, the parties shall meet to negotiate any extensions or continued use of Field 3 for the period after the existing contract expires.

4. **Times of Use.** The School will be provided first priority in scheduling and coordinating access to Field 3 during baseball season. Field 3 may be scheduled for use by the school during baseball season for the following time periods:

- Practice Days from 3:00p.m.-6:00p.m.;
- Weekday Game Days from 2:00p.m.-6:30p.m.;
- Saturday Practice and Games from 8:00 a.m.-noon.

5. **Priority of Use and Non-Exclusive Use.** Field 3 may be made available by the Village to any other users, at other times that are not scheduled for use by the School for practice or games, without restrictions. The Village will review the calendar of

 Village
Board

proposed practice and game events provided by the school prior to scheduling any third parties to use Field 3. Subject to the School calendar, the Village may authorize and schedule other events for third persons for Field 3.

6. **Scheduling.**

6.1 At least one month prior to the start of baseball season, the School shall provide the Village with a schedule for the proposed use of Field 3. The School and Village shall agree upon a mutually acceptable schedule for practices and games in compliance with Section 2, above. The School shall provide immediate written notice to the Village of any change in the proposed schedule.

6.2 Any special events or additional facility usage will require written approval from the Village manager.

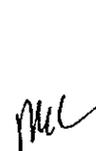
7. **Capital Improvements**

7.1 The Board, subject to the prior written approval by the Village manager, may make capital improvements to Field 3. A list of possible improvements is attached as exhibit 1. Both parties agree that any capital improvements will occur over the three year term of the underlying agreement, as funding becomes available.

7.2 The costs of all capital improvements initiated by the Board are the sole financial responsibility of the Board.

7.3 The Village will retain ownership of any and all permanent improvements to Field 3, such as a new backstop, permanent dugouts, grass infield, etc.

7.4 The Board shall retain ownership of any removable or temporary improvements, such as a removable outfield fence, pitching machines, etc.

 Village
Board

7.5 During the term of this non-exclusive use agreement, the Board shall be responsible for maintaining any capital improvements undertaken at Field 3.

7.6 All equipment, site improvements and signage installed by the School shall be approved by the Village prior to installation. The Board shall not install, remove or replace the equipment or furnishings without notification to, and prior approval by the Village.

7.7 The Board agrees that any temporary fencing installed in the outfield shall be seen through and that netting beyond the outfield shall be installed as needed.

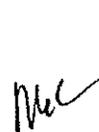
8. **Maintenance**

8.1 The Village shall be responsible for normal maintenance of Field 3, as are performed throughout Coral Reef Park.

8.2 The Board shall be responsible for general cleanup of Field 3 and the parking lots used in conjunction with a practice or game. The Board will clean the entire ball field or facility area including the dugout, fence lines and spectator's area after each day's use and will place all trash in the Village's trash receptacles.

8.3 The Board shall take good care of Field 3, to ensure that upon the expiration of this non-exclusive use agreement, or its termination in any manner, Field 3 is in not worse condition than it was at the commencement of this non-exclusive use agreement.

8.4 The Board shall pay the Village \$300.00 per week for non-normal maintenance specifically including dragging the infield and lining the field (during

 Village
Board

baseball season). After the first year of the three year term the school shall pay an annual four (4) percent cost of living increase (COLA) to the Village.

9. **Parking and Transportation**

9.1 Participants, including staff, players, coaches, visiting teams and spectators, shall be directed to use the northeast parking lot on 77th Avenue.

9.2 Under no circumstances shall anyone park in the residential areas surrounding the park, specifically including the residential area immediately north of the park.

9.3 Visiting Teams shall use school buses to attend games.

9.4 For practice days, the Board agrees to continue the practice of caravanning to the practice site.

9.5 For game days, the Board agrees that, should parking capacity at the northeast lot become a concern, the team will travel to the park in a school bus.

10. **Security**. The Board shall be responsible for providing appropriate levels of security to include the use of administrative and athletic personnel, non-sworn security staff and sworn School Board Officers. The Village reserves the right to require additional security, if needed, as determined by the parties. The expenses of additional security, such as off-duty Police Officers, will be the responsibility of the school.

11. **Termination Due to Breach**

11.1 Either party may terminate this agreement due to a material breach by the other party, which breach has not been cured within 24 hours of the date of receipt of written notice of breach from the party seeking termination.

11.2 Termination shall be effective as of the end of the 24 hour period in the case of any uncured material breach.

11.3 Neither party shall have any liability to the other for any incidental consequential or other damages due to termination for material breach.

11.4 The rights and remedies of the parties provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

12. **Termination for Convenience.** Prior to the start of baseball season, either party may terminate this agreement without cause upon 30 days written notice to the other party. If baseball season has already started, the Village may terminate this agreement without cause upon 30 days written notice, but the termination shall become effective at the end of the baseball season.

13. **Signs.** Any signage, temporary or permanent, shall be pre-approved by the Village.

14. **Indemnification and Sovereign Immunity**

14.1 To the extent permitted by law and as limited by Section 768.28, Florida Statutes, Board shall defend, indemnify and hold harmless the Village and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Village or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this agreement by school, its employees, officers, students and agents. The Village shall promptly notify the Board of each claim, cooperate with the school in

the defense and resolution of each claim and not settle or otherwise dispose of the claim without School's participation.

14.2 To the extent permitted by law and as limited by Section 768.28, Florida Statutes, Village shall defend, indemnify and hold harmless the School and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Board or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this agreement by Village, its employees, officers, students and agents. The Board shall promptly notify Village of each claim, cooperate with Village in the defense and resolution of each claim and not settle or otherwise dispose of the claim without Village's participation.

14.3 The indemnification provisions of this agreement shall survive termination of this agreement for any claim that may be filed after the termination date of the agreement provided the claims are based upon action that occurred during the performance of this agreement.

15. **Insurance.** The Board shall provide Village with a letter of self-insurance providing coverage for the protection and indemnification of the Village and the Board with respect to any and all claims for bodily injury/property damage and automobile liability.

16. **Notices.** Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail, e-mail, private postal service or hand delivery to:

Board: The School Board of Dade County, Florida
c/o Superintendent of Schools
School Board Administration Building
1450 N.E. 2nd Avenue, Suite 912
Miami, Florida 33132

With a copy to: Miami-Dade County Public Schools
Facilities Planning
Attn: Administrative Director
1450 N.E. 2nd Avenue, Room 525
Miami, Florida 33132

The School Board of Miami-Dade County, Florida
c/o School Board Attorney
1450 N.E. 2nd Avenue, Room 400
Miami, Florida 33132

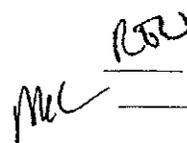
School: Howard I. Weiner, Principal
Miami-Palmetto Senior High School
7460 S.W. 118th Street
Pinecrest, Florida 33156

Village: Ron Williams, Village Manager
Village of Palmetto Bay
8950 S.W. 152nd Street
Palmetto Bay, Florida 33157

17. **Severability.** If a term, provision, covenant, contract or condition of this agreement is held to be void, invalid, or unenforceable, the same shall not affect any other portion of this agreement and the remainder shall be effective as though every term, provisions, covenant, contract or condition had not been contained herein.

18. **Counterparts.** This agreement may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

19. **Choice of Law.** This agreement shall be governed by the laws of the State of Florida. Venue shall lie in Miami-Dade County.

 Village
Board

20. Attorney's Fees. In the event either party to this agreement is required to retain legal counsel to enforce any of its rights under this agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non prevailing party together with court costs incurred in any litigation at any trial and appellate proceedings. However, neither party shall be responsible for or subject to pre judgment interest.

21. Assignment and Amendment. No assignment by either party of this agreement or any part of it, or any monies due or to become due, shall be made. This agreement may only be amended, by the parties, with the same formalities as this agreement.

22. Compliance With Federal, State and Local Laws. The Parties agree that they shall comply with all applicable laws, ordinances and codes of Federal, State and Local Governments, including but not limited to, the Americans with Disabilities Act, as they apply to this Agreement.

23. Authority of Superintendent. The Superintendent of Schools shall be the party designated by the BOARD to grant or deny all approvals required by this Agreement or to cancel this Agreement.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized officers have executed this contract as of the date first above written.

Village of Palmetto Bay
By: [Signature]
Ron Williams
Village Manager

The School Board of Miami-Dade County, FL
By: [Signature]
Alberto M. Carvalho
Superintendent of Schools

ABO Village
Board
[Signature]

Village of Palmetto Bay

The School Board of Miami-Dade County, Fl

ATTEST:

ATTEST:

By: *Meighan J. Rader*
Meighan J. Rader,
Village Clerk

By: _____
School Board Clerk

Approved as to form:

Approved as to form & legal sufficiency:

Eve A. Boutsis
Eve A. Boutsis, Village Attorney

[Signature]
School Board Attorney
8/14/09

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RESOLUTION NO. 2012-17

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO PARKS AND RECREATION; AUTHORIZING THE EXTENSION OF THE INTERLOCAL AGREEMENT WITH THE MIAMI-DADE SCHOOL BOARD FOR USE OF THE CORAL REEF PARK, BASEBALL FIELD 3; PROVIDING FOR A THREE YEAR EXTENSION OF THE EXISTING NON-EXCLUSIVE USE INTERLOCAL AGREEMENT FOR PALMETTO SENIOR HIGH SCHOOL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, high school students residing within the Village of Palmetto Bay attend Palmetto Senior High School; and,

WHEREAS, the Palmetto Senior High School Boys Baseball Team does not have an on-campus home field and for several years utilized the Coral Reef Park baseball field 3 as their home field; and,

WHEREAS, the use of Coral Reef Park remains a need of Palmetto High School as a suitable location for a home field for the Boys Baseball Team; and,

WHEREAS, Field 3 at Coral Reef Park is designed and constructed to accommodate high school level baseball; and

WHEREAS, Palmetto Senior High School has, during the initial contract period, complied with all Village requests, and been extremely responsive and respectful of the Village and the residents regarding their use of Field 3; and,

WHEREAS, in 2003, the Miami-Dade School Board and Village executed a contract for the use of Field 3 by the Palmetto Senior High School Boys Baseball Team; and,

WHEREAS, in 2009, the parties (the Miami-Dade County School Board on behalf of the Palmetto Senior High School and the Village) entered into an interlocal agreement for an extension of the field use agreement, expiring on May 30th, 2012; and,

WHEREAS, the parties desire to extend the interlocal agreement for an additional three (3) year period; and,

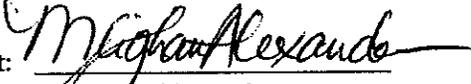
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. The attached interlocal agreement with the Miami Dade County School Board, on behalf of Palmetto Senior High School for the use of Field 3 at Coral Reef Park, is hereby extended for an additional three-year period; commencing on June 1, 2012 and termination on May 31, 2015.

1
2 **Section 2.** This resolution shall take effect immediately upon approval.
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5 PASSED and ADOPTED this 6th day of February, 2012.
6

7
8
9 Attest:

10 
11 Meighan Alexander
12 Village Clerk

13 
14 Shelley Stanczyk
15 Mayor

16
17 **APPROVED AS TO FORM:**

18 
19 Eve A. Boutsis,
20 FIGUEREDO & BOUTSIS, P.A., as Office
21 of the Village Attorney

22
23 **FINAL VOTE AT ADOPTION:**

24 Council Member Patrick Fiore YES
25
26 Council Member Howard J. Tendrich YES
27
28 Council Member Joan Lindsay YES
29
30 Vice-Mayor Brian W. Pariser YES
31
32 Mayor Shelley Stanczyk. YES
33
34

**FIRST AMENDMENT TO THE NON-EXCLUSIVE USE AGREEMENT
BETWEEN THE MIAMI-PALMETTO SENIOR HIGH SCHOOL AND THE
VILLAGE OF PALMETTO BAY**

This FIRST AMENDMENT TO THE NON-EXCLUSIVE USE AGREEMENT BETWEEN THE MIAMI-PALMETTO SENIOR HIGH SCHOOL AND THE VILLAGE OF PALMETTO BAY ("Amendment"), by and between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic (hereinafter referred to as the "Board"), and THE VILLAGE OF PALMETTO BAY, FLORIDA (hereinafter referred to as the "Village"), is made and entered into this _____ day of _____, 2012.

WITNESSETH:

WHEREAS, Village and Board entered into that certain Non-Exclusive Use Agreement dated August 20, 2009 (the "Agreement") for the baseball field at Coral Reef Park; and

WHEREAS, the Village and Board are desirous of amending certain terms and conditions of the Agreement, as more specifically set forth below; and

WHEREAS, the School Board of Miami-Dade County, Florida, has authorized this Amendment in accordance with Board Action No. 115, 382 at its meeting of December 14, 2011.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Section 3 of the Agreement (Terms of Use) is hereby amended to add the following language:

"Effective June 1, 2012, the term of this Non-exclusive Use Agreement shall be extended for a three (3) year period commencing June 1, 2012 and ending May 31, 2015."

3. Section 8.4 of the Agreement (Maintenance) is hereby amended to add the following language:

"Effective June 1, 2012, the maintenance amount shall be adjusted annually by the percentage increase reflected in the Consumer Price Index for all Urban Consumers, for the month of May. In no event however, will this amount increase by more than 4% per year."

4. Section 14.1 of the Agreement (Indemnification and Sovereign Immunity) is hereby amended to read as follows:

"The Board does hereby agree to indemnify and hold harmless the Village to the extent of the limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the Board shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the Board arising out of the same incident or occurrence, exceeds the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise as a result of the negligence of the Board. However, nothing herein shall be deemed to indemnify the Village from any liability or claim arising out of the negligent performance or failure of performance of the Village or as a result of the negligence of any unrelated third party."

5. Section 14.2 of the Agreement (Indemnification and Sovereign Immunity) is hereby amended to read as follows:

"The Village does hereby agree to indemnify and hold harmless the Board, to the extent of the limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the Village shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the Village arising out of the same incident or occurrence, exceeds the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise as a result of the negligence of the Village. However, nothing herein shall be deemed to indemnify the Board from any liability or claim arising out of the negligent performance or failure of performance of the Board or as a result of the negligence of any unrelated third party."

6. Section 20 of the Agreement (Attorney's Fees) is hereby amended to read as follows:

"In the event of any litigation between the parties under this Agreement, each party shall be responsible for its own attorney's fees and court costs through trials and appellate levels. The provisions of this paragraph shall survive the termination of this Agreement."

7. All other terms and conditions of the August 20, 2009 Non-Exclusive Use Agreement as incorporated by reference herein into this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Village and Board have caused this First Amendment to the Non Exclusive Use Agreement between the Miami-Palmetto Senior High School and the Village of Palmetto Bay to be executed by their respective and duly authorized officers the day and year first hereinabove written.

VILLAGE:
VILLAGE OF PALMETTO BAY

BOARD:
THE SCHOOL BOARD OF MIAMI-
DADE COUNTY, FLORIDA

By: _____
Village Manager

By: _____
Alberto M. Carvalho
Superintendent of Schools

ATTEST:
By: _____
Village Clerk

APPROVED AS TO FORM:

TO THE BOARD:
APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

Attorney for VILLAGE

Attorney for BOARD

**NON-EXCLUSIVE USE AGREEMENT BETWEEN THE
MIAMI-PALMETTO SENIOR HIGH SCHOOL AND
THE VILLAGE OF PALMETTO BAY**

This non-exclusive use agreement (the "agreement") is entered into on this 20th day of August, 2009, by and between The School Board of Miami-Dade County, Florida ("Board") on behalf of Miami-Palmetto Senior High School ("School") and the Village of Palmetto Bay ("Village") for the shared use of "Field 3", which is the Northeast Baseball Field located in Coral Reef Park, Village of Palmetto Bay, Florida

WHEREAS, high school students residing within the Village of Palmetto Bay attend Palmetto Senior High School; and

WHEREAS, the Palmetto Senior High School Boys Baseball Team does not have a home field and has not been able to locate one; and

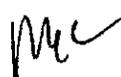
WHEREAS, there is an immediate need for a suitable location for a home field for the Palmetto Senior High School Boys Baseball Team; and

WHEREAS, Field 3 at Coral Reef Park is a suitable location on a temporary basis; and

WHEREAS, the parties agree to jointly work to find a permanent home field for the Palmetto Senior High School Boys Baseball Team at Coral Reef Park, Field 3; and

WHEREAS, the parties desire to extend the existing use agreement for up to three (3) years, through the end of May 30th, 2012. Prior to the end of the second year, the parties shall meet to negotiate any continuance of the use at Field 3; and,

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by all parties, the parties agree as follows:

 Village
Board

1. Whereas clauses. The above referenced whereas clauses are incorporated by reference into this non-exclusive use agreement and stipulated to be true and accurate.

2. Scope of Use.

2.1 The Village Shall make available Field 3, the Northeast Baseball Field located in Coral Reef Park, Village of Palmetto Bay, Florida, for practice and games for the "Palmetto Senior High School Boys Baseball Team," which is the school's official baseball team during baseball season. Baseball season is defined as and includes the following periods: (1) Regular Season Practice and Games: January 15th – April 30th; and (2) Tournament (Practice Site only, as needed): May 1st – May 30th.

2.2 The School will not charge spectators to attend games at the Park.

2.3 The School shall monitor its players, staff, spectators and visiting team's players, staff and spectators to ensure compliance with all Village, school, and park rules and regulations. The School shall designate one person at each practice or game as the responsible party for ensuring compliance with all applicable rules and regulations. The School is responsible for the conduct of the entire group which includes spectators.

2.4 No alcoholic beverages are permitted in the park.

2.5 The School shall conduct its events in an orderly manner and so as not to annoy, disturb, or be offensive to park patrons or residents in the vicinity of its operation. The School shall control the conduct, demeanor and appearance of its officers, coaches, members, employees, agents and representatives and demeanor and conduct of customers, spectators and patrons. In the event the Village notifies the School of

 Village
Board

observed inappropriate behavior, the School will take immediate steps to correct the behavior.

2.6 All use of Field 3 shall be in accordance with the schedule identified at section 6, infra.

2.7 In no event may Field 3 be used for night practice or night games. The School specifically agrees that it will not seek to use Field 3 for the night practice or games. Nor shall the School seek to have the Village, the County or the School Board add field lights to the Park.

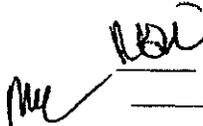
2.8 No voice or sound amplification of public address equipment will be used unless prior approval in writing by the Village.

3. **Term of Use.** This non-exclusive use agreement shall be for the use for a three (3) year period and will expire no later than May 30th, 2012. Prior to the end of the second year under this agreement, the parties shall meet to negotiate any extensions or continued use of Field 3 for the period after the existing contract expires.

4. **Times of Use.** The School will be provided first priority in scheduling and coordinating access to Field 3 during baseball season. Field 3 may be scheduled for use by the school during baseball season for the following time periods:

- Practice Days from 3:00p.m.-6:00p.m.;
- Weekday Game Days from 2:00p.m.-6:30p.m.;
- Saturday Practice and Games from 8:00 a.m.-noon.

5. **Priority of Use and Non-Exclusive Use.** Field 3 may be made available by the Village to any other users, at other times that are not scheduled for use by the School for practice or games, without restrictions. The Village will review the calendar of


Village
Board

proposed practice and game events provided by the school prior to scheduling any third parties to use Field 3. Subject to the School calendar, the Village may authorize and schedule other events for third persons for Field 3.

6. **Scheduling.**

6.1 At least one month prior to the start of baseball season, the School shall provide the Village with a schedule for the proposed use of Field 3. The School and Village shall agree upon a mutually acceptable schedule for practices and games in compliance with Section 2, above. The School shall provide immediate written notice to the Village of any change in the proposed schedule.

6.2 Any special events or additional facility usage will require written approval from the Village manager.

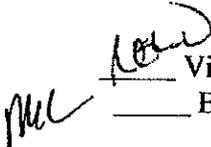
7. **Capital Improvements**

7.1 The Board, subject to the prior written approval by the Village manager, may make capital improvements to Field 3. A list of possible improvements is attached as exhibit 1. Both parties agree that any capital improvements will occur over the three year term of the underlying agreement, as funding becomes available.

7.2 The costs of all capital improvements initiated by the Board are the sole financial responsibility of the Board.

7.3 The Village will retain ownership of any and all permanent improvements to Field 3, such as a new backstop, permanent dugouts, grass infield, etc.

7.4 The Board shall retain ownership of any removable or temporary improvements, such as a removable outfield fence, pitching machines, etc.



Village

Board

7.5 During the term of this non-exclusive use agreement, the Board shall be responsible for maintaining any capital improvements undertaken at Field 3.

7.6 All equipment, site improvements and signage installed by the School shall be approved by the Village prior to installation. The Board shall not install, remove or replace the equipment or furnishings without notification to, and prior approval by the Village.

7.7 The Board agrees that any temporary fencing installed in the outfield shall be seen through and that netting beyond the outfield shall be installed as needed.

8. Maintenance

8.1 The Village shall be responsible for normal maintenance of Field 3, as are performed throughout Coral Reef Park.

8.2 The Board shall be responsible for general cleanup of Field 3 and the parking lots used in conjunction with a practice or game. The Board will clean the entire ball field or facility area including the dugout, fence lines and spectator's area after each day's use and will place all trash in the Village's trash receptacles.

8.3 The Board shall take good care of Field 3, to ensure that upon the expiration of this non-exclusive use agreement, or its termination in any manner, Field 3 is in not worse condition than it was at the commencement of this non-exclusive use agreement.

8.4 The Board shall pay the Village \$300.00 per week for non-normal maintenance specifically including dragging the infield and lining the field (during

 Village
Board

baseball season). After the first year of the three year term the school shall pay an annual four (4) percent cost of living increase (COLA) to the Village.

9. **Parking and Transportation**

9.1 Participants, including staff, players, coaches, visiting teams and spectators, shall be directed to use the northeast parking lot on 77th Avenue.

9.2 Under no circumstances shall anyone park in the residential areas surrounding the park, specifically including the residential area immediately north of the park.

9.3 Visiting Teams shall use school buses to attend games.

9.4 For practice days, the Board agrees to continue the practice of caravanning to the practice site.

9.5 For game days, the Board agrees that, should parking capacity at the northeast lot become a concern, the team will travel to the park in a school bus.

10. **Security**. The Board shall be responsible for providing appropriate levels of security to include the use of administrative and athletic personnel, non-sworn security staff and sworn School Board Officers. The Village reserves the right to require additional security, if needed, as determined by the parties. The expenses of additional security, such as off-duty Police Officers, will be the responsibility of the school.

11. **Termination Due to Breach**

11.1 Either party may terminate this agreement due to a material breach by the other party, which breach has not been cured within 24 hours of the date of receipt of written notice of breach from the party seeking termination.

11.2 Termination shall be effective as of the end of the 24 hour period in the case of any uncured material breach.

11.3 Neither party shall have any liability to the other for any incidental consequential or other damages due to termination for material breach.

11.4 The rights and remedies of the parties provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

12. **Termination for Convenience.** Prior to the start of baseball season, either party may terminate this agreement without cause upon 30 days written notice to the other party. If baseball season has already started, the Village may terminate this agreement without cause upon 30 days written notice, but the termination shall become effective at the end of the baseball season.

13. **Signs.** Any signage, temporary or permanent, shall be pre-approved by the Village.

14. **Indemnification and Sovereign Immunity**

14.1 To the extent permitted by law and as limited by Section 768.28, Florida Statutes, Board shall defend, indemnify and hold harmless the Village and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Village or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this agreement by school, its employees, officers, students and agents. The Village shall promptly notify the Board of each claim, cooperate with the school in

the defense and resolution of each claim and not settle or otherwise dispose of the claim without School's participation.

14.2 To the extent permitted by law and as limited by Section 768.28, Florida Statutes, Village shall defend, indemnify and hold harmless the School and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Board or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this agreement by Village, its employees, officers, students and agents. The Board shall promptly notify Village of each claim, cooperate with Village in the defense and resolution of each claim and not settle or otherwise dispose of the claim without Village's participation.

14.3 The indemnification provisions of this agreement shall survive termination of this agreement for any claim that may be filed after the termination date of the agreement provided the claims are based upon action that occurred during the performance of this agreement.

15. **Insurance.** The Board shall provide Village with a letter of self-insurance providing coverage for the protection and indemnification of the Village and the Board with respect to any and all claims for bodily injury/property damage and automobile liability.

16. **Notices.** Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail, e-mail, private postal service or hand delivery to:

Board: The School Board of Dade County, Florida
c/o Superintendent of Schools
School Board Administration Building
1450 N.E. 2nd Avenue, Suite 912
Miami, Florida 33132

With a copy to: Miami-Dade County Public Schools
Facilities Planning
Attn: Administrative Director
1450 N.E. 2nd Avenue, Room 525
Miami, Florida 33132

The School Board of Miami-Dade County, Florida
c/o School Board Attorney
1450 N.E. 2nd Avenue, Room 400
Miami, Florida 33132

School: Howard I. Weiner, Principal
Miami-Palmetto Senior High School
7460 S.W. 118th Street
Pinecrest, Florida 33156

Village: Ron Williams, Village Manager
Village of Palmetto Bay
8950 S.W. 152nd Street
Palmetto Bay, Florida 33157

17. **Severability.** If a term, provision, covenant, contract or condition of this agreement is held to be void, invalid, or unenforceable, the same shall not affect any other portion of this agreement and the remainder shall be effective as though every term, provisions, covenant, contract or condition had not been contained herein.

18. **Counterparts.** This agreement may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

19. **Choice of Law.** This agreement shall be governed by the laws of the State of Florida. Venue shall lie in Miami-Dade County.

20. Attorney's Fees. In the event either party to this agreement is required to retain legal counsel to enforce any of its rights under this agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non prevailing party together with court costs incurred in any litigation at any trial and appellate proceedings. However, neither party shall be responsible for or subject to pre judgment interest.

21. Assignment and Amendment. No assignment by either party of this agreement or any part of it, or any monies due or to become due, shall be made. This agreement may only be amended, by the parties, with the same formalities as this agreement.

22. Compliance With Federal, State and Local Laws. The Parties agree that they shall comply with all applicable laws, ordinances and codes of Federal, State and Local Governments, including but not limited to, the Americans with Disabilities Act, as they apply to this Agreement.

23. Authority of Superintendent. The Superintendent of Schools shall be the party designated by the BOARD to grant or deny all approvals required by this Agreement or to cancel this Agreement.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized officers have executed this contract as of the date first above written.

Village of Palmetto Bay

By: [Signature]
Ron Williams
Village Manager

The School Board of Miami-Dade County, FL

By: [Signature]
Alberto M. Carvalho
Superintendent of Schools

Village of Palmetto Bay

The School Board of Miami-Dade County, Fl

ATTEST:

ATTEST:

By: *Meighan J. Rader*
Meighan J. Rader,
Village Clerk

By: _____
School Board Clerk

Approved as to form:

Approved as to form & legal sufficiency:

Eve A. Boutsis
Eve A. Boutsis, Village Attorney

[Signature]
School Board Attorney
8/11/09