RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATED TO SETTLEMENT OF LITIGATION BETWEEN THE VILLAGE OF PALMETTO BAY AND PALMER TRINITY SCHOOL (11TH JUDICIAL CIRCUIT CASE NOS: 08-28977 CA 30 AND 10-034016 CA 01); AUTHORIZING THE VILLAGE MANAGER TO EXECUTE SAME; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 9, 2015, the Village Council of Palmetto Bay considered the modification of certain conditions of Resolution 2014-67 and modification of a site plan note on Page L1.00 of the approved site plan for Palmer Trinity Private School, Inc. At which time, the Village Council approved said Resolution; and

WHEREAS, the Palmer Trinity School currently has two ongoing cases against the Village of Palmetto Bay in the 11th Judicial Circuit, under Case Nos: 08-28977 CA 30 and 10-034016 CA 01); and,

WHEREAS, in order to amicably resolve the litigation and the possibility of any original action regarding the subject matter herein the parties hereto, in compliance with state law and the Village's Land Development Code, the Village Council desire, after public hearing, to enter into the Settlement Agreement, attached hereto as Exhibit "A".

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

Section 1. The above whereas clauses are incorporated by reference herein.

Section 2. A public hearing was held on September 9, 2015 relating to the settlement agreement.

Section 3. The settlement agreement is approved substantially in the form provided in attached Exhibit "A". The Village Manager is directed to execute same on behalf of the Village.

Section 4. This resolution shall take effect immediately.

PASSED and ADOPTED this ____ day of September, 2015.

Attest: _____

Meighan J. Alexander
Village Clerk

_____

Eugene Flinn
Mayor

Additions shown by underlining and deletions shown by ~~overstriking~~.

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:

_____

Dexter W. Lehtinen
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Karyn Cunningham _____

Council Member Tim Schaffer _____

Council Member Larissa Siegel Lara _____

Vice-Mayor John DuBois _____

Mayor Eugene Flinn _____

MUTUAL SETTLEMENT AND RELEASE AGREEMENT

THIS MUTUAL SETTLEMENT AND RELEASE AGREEMENT ("Settlement Agreement") is made and entered into on this _____ day of _____, 2015 by and between PALMER TRINITY PRIVATE SCHOOL, INC. (hereinafter, "Palmer Trinity") and the Village of Palmetto Bay, Florida (hereinafter, the "Village"). Palmer Trinity and the Village are also referred to herein collectively as the "Parties."

RECITALS

WHEREAS Palmer Trinity instituted litigation against the Village in the Circuit Court for 11th Judicial Circuit in and for Miami-Dade County, Florida with Case No.:08-28977 CA 30 on or about May 22, 2008, and with Case No.: 10-034016 CA 01 on or about June 16, 2010 (collectively hereinafter referred to as the "Litigation").

WHEREAS this Settlement Agreement resolves all of the existing claims between the Parties relating to the Litigation or to any claims that could have been asserted by the Palmer Trinity and/or the Village in the Litigation; and

WHEREAS the Parties otherwise desire to settle their differences.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Parties acknowledge and agree that the recitals are true and correct in every respect, and these recitals are part of and are therefore hereby incorporated by the Parties into this Settlement Agreement for all purposes.

2. This Settlement Agreement resolves all disputes and claims in connection with the Litigation or which could have been asserted in the Litigation, and shall be enforceable as a binding agreement.

3. Aquatic Center (Swimming Pool). If the Village desires to be involved in the development of an aquatic center (swimming pool on the campus) at Palmer Trinity, the Village will participate financially in return for use rights by the Village, which if agreed to in the future by the Parties will be the subject of terms and conditions jointly developed in good faith.

4. Path. Palmer Trinity and the Village shall discuss the possible use by the public of the pedestrian path located within the landscape buffer area of the south campus, which if agreed to in the future by the Parties will be the subject of terms and conditions jointly developed in good faith.

5. Athletic Facilities. Palmer Trinity and the Village shall discuss the possible use of the athletic facilities at Palmer Trinity by the public, which if agreed to in the future by the Parties will be the subject of terms and conditions jointly developed in good faith.

6. Bicycle Lane and Repair Stations. Palmer Trinity shall build a bicycle lane within the public right of way on the north side of S.W. 184 Street running parallel to the southern boundary of the Palmer Trinity property and subject to approval by Miami-Dade County. The bicycle lane shall be constructed by Palmer Trinity at Palmer Trinity's expense but such expense shall not include the cost of any secondary requirements imposed by Miami-Dade County or other regulatory agencies, including but not limited to any requirement that the bicycle lane extend beyond the east and west boundaries of Palmer Trinity's property, or along the south side of S.W. 184 Street, or include the installation of signage or signalization improvements.

(b) Palmer Trinity shall provide to the Village three bicycle repair stations, comparable to the Fixit product manufactured by the Dero Company, to be placed at locations owned by the Village as the Village may choose.

7. Veteran Breakfast. Palmer Trinity shall host an annual Veterans Day breakfast in November at Palmer Trinity for the next ten years for a maximum of two hundred (200) people at Palmer Trinity's expense.

8. Final Approval. For purposes of this Settlement Agreement the term "Final Approval" shall mean thirty (30) days after the latter of (a) rendition of: a written order or resolution of the Village memorializing the approval of this Settlement Agreement by the Village; and (b) execution of this Mutual Settlement and Release Agreement by all Parties.

9. Payments and Credits. (a) The Village shall pay to Palmer Trinity one hundred thousand dollars ($100,000) by no later than thirty days (30 days) of Final Approval. Thereafter, within five (5) days Palmer Trinity shall file a notice for voluntary dismissal with prejudice of the Litigation against the Village.

(b) The Village shall waive one hundred fifty thousand dollars ($150,000) in land use development fees, building permit fees, impact fees and/or any other similar fees or charges applicable to Palmer Trinity at any time in the future in connection with the development of Palmer Trinity's property.

(c) Upon the issuance of the certificate of occupancy for the first new classroom building, Palmer Trinity shall contribute to the Village fifty thousand dollars ($50,000) for traffic calming improvements or landscaping on or along SW 176 Street as the Village determines are appropriate.

10. Governing Law. This Settlement Agreement shall be governed and interpreted in accordance with the laws of the State of Florida.

11. Partial Invalidity. Should any paragraph or clause in this Settlement Agreement be found to be ineffective, invalid, or unenforceable the remainder of this Settlement Agreement shall be valid and enforceable and the Parties shall negotiate in good faith a substitute, valid, and enforceable provision which most nearly states the Parties' intent in entering into this Settlement Agreement.

Initials _____, _____

12. Entire Agreement. This Settlement Agreement constitutes the entire agreement of the Parties as to the subject matter hereof.

13. Voluntary Execution of this Settlement Agreement. This Settlement Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto whose intent is to release the claims as set forth herein. The Parties acknowledge that:

a. They have read this Settlement Agreement, which was jointly prepared by both Parties, which participated in drafting, revising, and finalizing this Agreement;
b. They have been represented in the preparation, negotiation and execution of this Settlement Agreement by legal counsel of their own choice;
c. They understand the terms and consequences of this Settlement Agreement and of the releases and waivers it contains; and
d. They are fully aware of the legal and binding effect of this Settlement Agreement.

14. Attorney's Fees and Costs. a) The Parties shall each bear their own attorneys' fees, costs, and expenses of all kinds whether incurred in connection with the negotiation and drafting of this Settlement Agreement and/or related to the Litigation.

b) In the event of any litigation or other enforcement action pertaining in any way to this Settlement Agreement, the prevailing Party shall be entitled to receive payment for its reasonable attorneys' fees and court costs, including but not limited to taxable costs, incurred at all trial and appellate levels of the litigation or other proceeding, or any enforcement action by the non-prevailing Party.

15. The Parties further acknowledge and represent that they have the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified in it; and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to herein.

16. Venue and Jurisdiction. If any action shall be brought by any of the Parties under the terms of or seeking to enforce this Settlement Agreement, the Parties hereby expressly agree that venue and jurisdiction shall be proper only in the Circuit Court for the 11th Judicial Circuit in and for Miami-Dade County, Florida.

17. Time is of the Essence. Time is of the essence as to this Settlement Agreement and all performances hereunder.

IN WITNESS WHEREOF and as confirmation of the fact that they have each read, agree to, and understand all of the terms of this Settlement Agreement, the Parties have executed this Settlement Agreement.

_____

Palmer Trinity Private School, Inc., Date:_____

STATE OF _____}

Initials _____, _____

} ss:
COUNTY OF _____}

The foregoing instrument was acknowledged before me by _____, who is personally known to me or who has produced _____ as identification and did/did not take an oath.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 2015.

Notary Public_____
My Commission Expires:_____
Commission Number:_____

Notary Seal

_____
Village of Palmetto Bay, Florida, Date:_____

Attest:_____
Village Clerk

STATE OF _____}
} ss:
COUNTY OF _____}

The foregoing instrument was acknowledged before me by _____, who is personally known to me or who has produced _____ as identification and did/did not take an oath.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 2015.

Notary Public_____
My Commission Expires:_____
Commission Number:_____

Notary Seal

Initials _____, _____