



Please reply to:
Office of the Village Attorney
18001 Old Cutler Road, Suite 560
Miami, Florida 33157-6416
(305) 235-9344 (telephone)
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VILLAGE OF PALMETTO BAY
9705 East Hibiscus Street
Palmetto Bay, Florida 33157

August 14, 2013

Via U.S. Mail and E-mail

Stanley E. Price
Bilzin Sumberg et al
1450 Brickell Avenue
Suite 2300
Miami, Florida 33131-3456

Re: Palmer Trinity Private School v. Village of Palmetto Bay, et al
11th Judicial Circuit Court Case Number 08-28977 CA 30
11th Judicial Circuit Court Case Number 10-34016 CA 20
CONFIDENTIAL SETTLEMENT PROPOSAL

Dear Stan:

Per our discussions enclosed please find the Village's Counter-Offer of settlement.

The Village's next regular council meeting is scheduled for September 9, 2013. Due to vacation schedules and other factors, I assume that the 9th will be the next available date for the Village Council to meet, although I have not confirmed same.

Thank you.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Eve Boutsis".

Eve. Boutsis,
Village Attorney

Enclosure

c: Jeffrey Hochman, Esq.
Sean Cleary, Esq.

This instrument was prepared by (record and return to):

Name: Eve A. Boutsis, Village Attorney
Address: Office of the Village Attorney
Village of Palmetto Bay
9705 East Hibiscus Street
Palmetto Bay, FL 33157

(Space reserved for Clerk)

EXECUTION COPY

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the Agreement) is made and entered into as of the ___ day of _____ 2013, by and between the Village of Palmetto Bay, a Florida municipal corporation ("Village"), and Palmer Trinity Private School, a Florida nonprofit corporation ("Owner"). The Commencement Date of this Agreement is the date of approval by the Village Council.

Introduction and Background

A. The property that is the subject of this Agreement lies in Palmetto Bay, Miami-Dade County, Florida. This Agreement, among other things, is intended to and shall constitute a development agreement among the parties pursuant to the Florida Local Government Development Agreement Act (the Act).

B. The Owner owns certain real property in the Village of Palmetto Bay, located at 7900 SW 176th Street and 8001 SW 184th Street, Palmetto Bay, Florida, and as more specifically delineated in the legal description attached as **Exhibit "A"** hereto

C. On May 2, 2008, the Village of Palmetto Bay denied the Owner's request to rezone 8001 SW 184th Street from AU (Agricultural) and EU-2 (Estate Single Family 5 Acre District) to EU-M (Estate Modified Single Family). The remainder of Owner's request for variances and Site Plan modification to expand from 79000 SW 176th Street to 8001 SW 184th Street, and to expand student enrollment from 600 to 1150 was not ruled upon due to the denial of the district boundary request.

D. On or about May 22, 2008, Owner filed a petition for certiorari to review the May 2, 2008 action of the Village Council under Eleventh Judicial Circuit Appellate Court Case Number 08-245AP. On that same date Owner filed an original action in the Eleventh Judicial Circuit Court requesting, amongst other things, injunctive and declaratory relief, and damages, under Eleventh Judicial Circuit Court Case Number 08-28977 CA 30 ("2008 Original Action").

E. On or about February 17, 2009, in the appellate matter 08-245 AP, the Eleventh Judicial Circuit, Appellate Panel, in a *per curiam* decision ruled in the Village's favor. On February 25, 2009, the Third District Court of Appeal issued a ruling relating

to reverse spot zoning in *Richard Road Estates, LLC v. Miami Dade County Board of County Commissioners*, 2 So.3d 1117 (Fla. 3d DCA 2009). Owner sought re-hearing based upon this decision, which request was denied by the Appellate Panel on March 18, 2009.

F. Owner then filed a second tiered petition for certiorari to the Third District Court of Appeal under Appellate Case Number 3D-09-1587. Ultimately, March 24, 2010, based in part upon *Richard Road Estates*, the Third District reversed the Eleventh Judicial Circuit, Appellate Division, and remanded the matter back to the Eleventh Judicial Circuit Appellate Panel.

G. On April 28, 2010 and May 4, 2010, the Village held the public hearing necessary to enact the district boundary change request to modify the zoning of 8001 SW 184th Street from AU and EU-2 to E-UM. Thereafter, the Village held the zoning public hearings relating to the Owner's Site Plan modification and student enrollment requests.

H. The Village Council approved the Owner's Site Plan modification and student enrollment request, was approved, with modifications. On or about June 16, 2010, Owner filed a petition for certiorari to the Eleventh Judicial Circuit, Appellate Division, under Case Number 20-1259-AP, challenging two conditions in the zoning resolution authorizing the Site Plan modification and student enrollment expansion - challenging the decision to authorize 900 students and the condition requiring Owner to comply with its 25 year expansion plan, within a 30 year window.

I. On or about July 9, 2010, Owner filed a second original action against the Village, seeking declaratory and injunctive relief based upon the May 4, 2010 resolution enacted by the Village Council under Eleventh Judicial Circuit Court Case Number 10-34016 CA 20 ("2010 Original Action"), which remains pending.

J. On or about August 18, 2010, Owner filed its first amended complaint to the first "2008 Original Action".

K. On February 11, 2011, the Appellate Panel approved the petition and struck the two provisions from the zoning resolution. On July 19, 2011, the Village struck the 30 year provision, as directed by the Appellate Panel. After hearing argument by the representative of Concerned Citizens of Old Cutler Inc., the Village struck the provision relating to 900 students, as directed by the Appellate Panel, and left the student population at 600 - and did nothing else. This action is reflected in Village Resolution 2011-53. Owner challenged Resolution 2011-53, desiring 1150 students, and as a result, renewed its motion to enforce the mandate. On December 22, 2011, the Appellate Panel, in a *per curiam* decision, ruled in favor of the Owner.

L. On or About March 28, 2011, Owner filed its request to amend its "2008 Original Action" a second time.

M. On or about May 13, 2011, Owner filed its request to amend its "2008 Original Action" a third time.

N. On or about July 19, 2010, Owner filed its first amended complaint to its "2010 Original Action."

O. On or about August 16, 2010, Owner filed its second amended complaint to its "2010 Original Action."

P. By September 16, 2011, the Owner filed its 5th Amended Complaint with the Court as to the "2008 Original Action". Every amendment incorporated allegations relating to the appellate history described herein. By the 5th Amended Complaint, Owner sought monetary damages under 42 USC 1983 and attorneys fees under 42 USC 1987, as well as several counts for tort damages, and damages relating to a public records request.

Q. On January 23, 2012, the Village filed a discretionary petition for certiorari to the Third District Court of Appeal under Case Number 3D12-190 arguing that the Village had complied with the mandate. On July 6, 2012, the Third District denied the Village's petition and remanded the matter back to the Eleventh Judicial Circuit Court, Appellate Division.

R. On August 29, 2012, the Village Council, after public hearing, approved the Site Plan modification and expansion of students to 1150, consistent with the direction of the Appellate Courts. The Village's action is reflected in Resolution 2012-64, which amended Resolution 2010-48, as previously amended by Resolution 2011-53.

S. In an effort to resolve all issues, including the litigation under the "2008 Original Action" and the "2010 Original Action", under Eleventh Judicial Circuit Court Case Numbers 08-28977 CA 30 and 10-34016 CA 20, the parties contemplate, for the consideration herein, to resolve all matters through this Agreement.

T. As further consideration for Owner to dismiss its lawsuits and for the Village to determine certain zoning related issues during a quasi-judicial public hearing, the Village and Owner have hereby contemplate certain other terms and conditions, pertaining to the Owner's property as set forth in this Agreement.

U. The Village is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act, Florida Statutes, and the Palmetto Bay Charter and Code. The Village has all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal and governmental functions and render municipal services, including the authority to adopt, implement and enforce (together with any required governmental approvals) comprehensive plans, zoning ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the Village and its residents and visitors.

V. Owner is a Florida not for profit educational facility organized and created pursuant to the Law of the Florida Statutes.

W. Having fully considered this Agreement at two (2) duly noticed public hearings, in compliance with Section 163.3225 of the Act; and having further determined that it is in the Village's and Owner's best interest, as well as the public's interest, to deal with the issues covered by this Agreement in a comprehensive manner, in compliance with all applicable laws, ordinances, plans, rules and regulations of the Village, while allowing Owner to proceed, respectively, with the development of the Site Plan for 7900 SW 176th Street and 8001 SW 184th Street in accordance with existing laws and policies, subject to the terms hereof, the parties have agreed to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitations. The foregoing recitations are true and correct and are incorporated herein by this reference.

2. Authority. This Agreement is entered into pursuant to the authority and procedures provided by the Act.

3. Definitions. All capitalized terms in this Agreement shall have the definitions set forth in this Section unless such terms are defined elsewhere in the body of this Agreement.

3.1 "Act" shall mean the Florida Local Government Development Agreement Act (Section 163.3220, *et. seq.*, Florida Statutes (1997)).

3.2 "Building Permit" means a "Full Building Permit," as such term is defined in the Village's land development regulations, issued by the Village's Building Department, which allows building or structures to be erected, constructed, altered, moved, converted extended, enlarged, or used, for any purpose, in conformity with applicable codes and ordinance.

3.3 "Comprehensive Plan" shall mean the comprehensive plan, which the Village has adopted and implemented for the redevelopment and continuing development of the Village pursuant to Chapter 163 Part II, of the Florida Statutes.

3.4 "Development Approvals" shall mean all Development Permits and all approvals, consents, permits, special use exemptions or variances, as well as other official actions of the federal, state or County governments or other governmental agencies.

3.5 "Development Permits" shall mean any building permit (including, without limitation, a Full Building Permit), zoning permit, subdivision approval, zoning certification, special exceptions, variances issued or granted by the Village or any other official actions of the Village (whether by the Village Council or any Village board, department or agency) having the effect of permitting the development of the Owner's Project.

3.6 "Owner's Project" or "Site Plan" shall mean the design, development, construction, operation, maintenance, repair, renovation, and improvement by Owner of that Site Plan entitled Palmer Trinity Private School Campus Master Plan as prepared by Duany Plater-Zyberk & Co., consisting of 36 sheets, dated stamped received November 1, 2007, as revised by the plans entitled Palmer Trinity Private School Campus Master Plan as prepared by Duany Plater-Zyberk & Co., consisting of 48 sheets, dated stamped received April 19, 2010, as modified by Resolution No. 2012-64 (August 20, 2012), which amended Resolution No. 2010-048, as previously Amended by Resolution 2011-53 (July 19, 2011), and as incorporated by reference and as attached hereto as **Exhibit B**.

3.7 "Owner's Property (or the "Property") shall mean the parcel of real property described in Exhibit "A" hereto.

4. Owner's Project shall be designed, developed, and constructed, at the sole cost and expense of Owner. Provided that Owner obtains all requested Development Approvals to do so, the Project shall be designed and proposed to be constructed substantially in accordance with the proposed Site Plan prepared by Owner's architect as identified above, but subject to and in compliance with the following conditions:

(a) The parties agree and acknowledge that certain modifications may be made to the Site Plan, which will be considered during a quasi-judicial public hearing before the Village Council.

(b) Any technical changes in the Site Plan not governed by subsections of this Agreement, and which are (i) required in order for the Owner's Project to be in compliance with any and all applicable laws, codes, rules and regulations of any governmental or regulatory agencies including, without limitation, the Florida Building Code and the Americans with Disabilities Act (ADA), or (ii) otherwise required or necessary including, without limitation, any changes in connection with ingress and egress and public works, shall be delegated to the appropriate government official of the Village for review and approval of such technical changes.

(c) Owner shall seek a Site Plan modification, at no additional cost to Owner, to modify the following conditions of Resolution No. 2012-64 (August 20, 2012), which amended Resolution No. 2010-048, as previously amended by

Resolution No. 2011-53 (July 19, 2011) (hereinafter collectively "the Resolution"):

(i) Owner shall request modification of Sections 4.12 and 5.10 of the Resolution (relating to removal of portables) to strike the 18-month removal requirement after final zoning approval. Owner desires 180 days from receipt of the first Certificate of Occupancy, exempting out the Certificate of Occupancy for the guard house, as the deadline for Owner to remove the portables. At all times the portables must be legal, permitted structures under the Florida Building Code.

(ii) Owner shall request the striking of Section 6.2 of the Resolution in its entirety. Instead, Owner shall be governed by and shall comply with the Village's special event permit procedures, consistent with Village Code requirements.

(iii) Owner shall request Section 6.3 of the Resolution be modified to reflect Owner's ability to conduct two athletic tournament, jamboree, or division-type plan (where numbers of spectators and opposing team(s) are invited to play on site) shall take place at one time on the property. Owner shall request that the last sentence of section 6.3 of the Resolution be stricken and replaced with the following language: "Any athletic tournament, etc., may take place after normal school operating hours and weekends from 10:00 a.m., in compliance with the Florida High School Athletic Association Requirements. Indoor athletic activities may proceed until 10:00 p.m."

(iv) Owner shall request modification of Sections 7.3 through 7.5 of the Resolution to provide a 65 foot buffer rather than a 75 foot buffer, which 10 foot difference on the interior of the Project can be utilized as the walking path, maintenance path, re-configured drive lanes for internal circulation to accommodate the Miami-Dade County Fire Department and Miami-Dade County Public Works modifications, and possible shifting of parking and ball fields. The Owner shall request elimination of any berm requirement, which represents an estimated \$350,000 savings to Owner. There would be no paths within the 65 foot buffer.

(v) Owner shall request modification of Sections 8.4 and Section 8.6 of the Resolution to eliminate reference to specific mitigative measures and to specifically eliminate reference to a decal program. Owner shall request Section 8.6 be removed, except for the first sentence and last two sentences. Owner's Site Plan must comply with Miami-Dade Fire Department, Miami-Dade County Public Works, and Village of Palmetto Bay Public Works review and conditions.

(vi) Owner shall request modification of Section 8.7 of the Resolution as follows: "The Applicant shall keep the entrance to SW 176th Street closed to vehicular traffic for ~~on weekends, holidays and all days when school is not in regular session~~ special events, including during athletic tournaments, jamborees, etc. Palmer Trinity shall place signs on Old Cutler Road, or as deemed effective to direct participants to the main entrance on SW 184th Street for specials events, during athletic tournaments, etc. The SW 176th Street entrance shall provide access to emergency vehicles."

(vii) Owner shall request deletion of Section 8.16 of the Resolution relating to the installation of sidewalks, which represents a cost savings to Owner of at least \$50,000.

(viii) Owner shall request the striking of Sections 11.3 and 11.4 of the Resolution. The removal of the ADA requirements as to class signage modification, which represents a cost savings to Owner. Owner shall be governed by and shall comply with the Village's Noise Code, Section 30-60.4.

(ix) Owner shall request modification of Section 11.5 of the Resolution relating to public address (P.A.) systems, to reflect, whether the equipment is temporary or permanent, Owner shall comply with the requirements of Section 11.5 of the Resolution, provided, however, the time table shall be modified to allow the use, consistent with decibel requirements of the Village noise code. Owner shall seek modification of the use period between 10:00 a.m. and 6:00 p.m., Monday through Friday, with the P.A. system's use allowable on Saturdays between 10:00 a.m. and 6:00 p.m.

(x) Owner shall request the striking of Section 13.3 of the Resolution relating to the hours of operation relating to the internal use of the structures on the Site Plan.

(xi) Owner shall request deletion of Section 14.1 of the Resolution relating to redesign of Buildings 16 and 18. Owner shall work with Village staff as to landscaping of Buildings 16 and 18.

(xii) Owner shall request the modification of Section 15.2 of the Resolution relating to the fines for violation, to be modified to be consistent with existing Code, reducing the fine from \$500.00 to \$250.00.

(xiii) All other provisions of Resolution No. 2012-64, which amended Resolution No. 2010-048, as was previously amended by Resolution No. 2011-53 shall remain as adopted.

5. Should the Village Council, after the quasi-judicial hearing as to the Site Plan modifications contemplated under Paragraph 4, above, approve the Site Plan as contemplated under Paragraph 4, Owner shall:

(a) immediately thereafter file a Notice of Voluntary Dismissal With Prejudice in the "2008 Original Action" and the "2010 Original Action" identified under Eleventh Judicial Circuit Court Case Numbers 08-28977 CA 30 and 10-34016 CA 20 as to all parties and claims, with each party to bear its own attorneys' fees and costs; and,

(b) issue a general release forever discharging the Village, including the Village's agents, elected officials, officers, employees, representatives, and insurance providers from any and all claims, demands, debts, liabilities, damages, obligations, actions or causes of action, whether known or unknown, foreseen or unforeseen, fixed or accrued or contingent, liquidate or unliquidated, matured or unmatured, direct or derivative or consequential, arising from contract, tort, statute, regulation, ordinance or otherwise, which Owner ever had or may not have against the Village, based of any facts, circumstances, acts or omissions occurring or arising from the beginning of time to the date of this Agreement, including, without limitation, any claims, demands or liabilities in connection with any possible Litigation, or claims as to any vested right, and including but not limited to any claims for negligence violation of federal law, state law or Constitutional challenges. This general release will include, but is not limited to any and all actions, claims, and demands for tort or statutory damages (whether intentional or negligent) and/or personal injury, including all matters raised in or which could have been raised in the "2008 Original Action" and the "2010 Original Action."

(c) Owner's failure to satisfy the obligations in 5 (a) and (b) shall result in a material default of this Agreement, which shall terminate this agreement and revocation of the modified Site Plan identified in paragraph 4. By way of clarification, if the "2008 Original Action" and the "2010 Original Action" are not dismissed with prejudice as to all parties and all Defendants are not generally released from liability then the parties shall return to their relative positions as they existed prior to the execution of this Agreement.

6. The Owner would not be required to pay any filing fee or advertising cost relating to the re-submission contemplated in Paragraph 4, as it relates to the Owner's project and the public hearing relating to approval of Site Plan at a quasi-judicial public hearing required as part of this Development Agreement.

7. Within 15 days of Owner's dismissal of the "2008 Original Action", dismissal of the "2010 Original Action", and issuance of the General Release Contemplated in Paragraph 5, the Village Council shall issue a \$50,000 payment to Owner at the same time. Owner shall also be entitled to a \$500,000 credit from the Village toward Art in Public Places Program (AIPP) for the entire Project, with any

balance as a credit against Village Permitting fees. The AIPP credit must be used completely as an offset, prior to any Enterprise Fund Building Permit credit.

8. Zoning and Other Approvals for Owner's Project.

8.1 Development Permits. Certain provisions of this Agreement will require that the Village and/or its boards, departments, or agencies take certain governmental actions, acting in their governmental capacity, and issue Development Permits in order to accomplish and satisfy the authorization and construction of the Owner's Project.

8.2 Applications for Development Approvals. Promptly following the Commencement Date, the Owner will initiate and diligently pursue all Development Approval applications for the Owner's Project. The Village shall process all Development Permit applications in a timely fashion and the Village shall cooperate with the Owner (at no cost to the Village) in processing all necessary Development Approvals from federal, State, and County agencies, as needed.

8.3 Laws Governing this Agreement. The Village's laws and policies governing the development of the Owner's Project at the time of the execution of this Agreement by the parties hereto shall govern the development of the Project for the duration of this Agreement. The Village may apply subsequently adopted laws and policies to the Owner's Project only as otherwise permitted or required by the Act. Except as required by Chapter 163, Florida Statutes, the Owner's Project may proceed for the life of this Development Agreement and is vested as to the rights provided herein. Additionally, the Owner may modify the Owner's Project based upon future (i.e. subsequent to the Commencement Date) beneficial changes in the Village Code.

8.4 Comprehensive Plan, Zoning and Other Approvals. As provided above, the parties recognize and agree that certain provisions of this Agreement will require the Village and/or its boards, departments, or agencies, acting in their governmental capacity, to consider governmental actions, as set forth in this Agreement. All such considerations and actions shall be undertaken in accordance with established requirements of State statutes and Village ordinances, in the exercise of the Village's jurisdiction under the police power. The parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly, in full accordance with law and with both procedural and substantive due process to be accorded the Owner and any member of the public. Nothing contained in this Agreement shall entitle the Owner to compel the Village to take any such actions, save and except the consents, if applicable, to the filing of such applications for Development Permits or other required Development Approvals, as more fully set forth herein, and to timely process such applications.

8.5 Owner shall be solely responsible for obtaining all Development Approvals and Development Permits for the Project.

8.6 Owner shall, at its sole cost and expense, prosecute construction of the Project with diligence and continuity to completion. Completion of the Project, shall be evidenced by the issuance of a Certificate of Completion (C.C.) or Certificate of Occupancy (C.O.), as applicable.

9. Right of Termination.

(a) Notwithstanding anything to the contrary contained herein, Owner shall have the right to be released from its liability and obligations and to terminate this Agreement by providing written notice to the Village if: the Village Council, after a quasi-judicial hearing, does not agree to the modifications to the Resolution as contemplated in Paragraph 4.

(b) Notwithstanding anything to the contrary herein, Village shall have the right to be released from its liability and obligations and to terminate this Agreement by providing written notice to the Owner if Owner fails to timely comply with the provisions of Paragraph 5. Owner's failure to comply with Paragraph 5 shall result in immediate revocation of the modified Site Plan contemplated in Paragraph 4.

(c) In the even of termination of this Agreement pursuant to this Section, each party shall bear its own costs and expenses incurred in connection with this Agreement, and Owner will be entitled to proceed with the litigation identified in Paragraph 5.

10. No Permit or Waiver of Fees. This Agreement is not and shall not be construed as a Development Permit, Development Approval, or authorization to commence development of the Owner's Project, nor shall it relieve Owner of the obligation to obtain all necessary Development Approvals, Development Permits, or any other approvals and/ or permits that are required under applicable law and under and pursuant to the terms of this Agreement. Except as otherwise expressly provided herein, nothing contained in this Agreement shall be deemed to constitute a waiver of any fee, charge, or cost imposed by the Village in connection with the issuance of any Development Approval, Development Permit or any other approval and/or permit, except as contemplated in Paragraph 7.

11. Good Faith; Further Assurances; No Cost. The parties to this Agreement have negotiated in good faith. It is the intent and agreement of the parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of, and to satisfy their obligations under, this Agreement in order to secure to themselves the mutual benefits created under this Agreement; and, in that regard, the parties shall execute such further documents as may be reasonably necessary to effectuate the provisions of this Agreement; provided, that the foregoing shall in no way be deemed to inhibit, restrict or

require the exercise of the Village's police power or actions of the Village when acting in a quasi-judicial capacity. Wherever in this Agreement a provision requires cooperation, good faith or similar effort to be undertaken at no cost to a party, the concept of no cost shall not be deemed to include any cost of review (whether legal or otherwise), attendance at meetings, hearings or proceedings and comment and/or execution of documents, all such costs to be borne by the party receiving a request to so cooperation, act, in good faith or so forth.

12. Consistency with the Village's Comprehensive Plan. The Village has adopted and implemented the Comprehensive Plan. The Village hereby finds and declares that the provisions of this Agreement dealing with the Owner's Project are, or shall be, consistent with the Village's adopted Comprehensive Plan and land development regulations (subject to all applicable Development Approvals).

13. Recording of Development Agreement. Within fourteen (14) days after the parties execute this Agreement, the Village shall record this Development Agreement with the Clerk of the Circuit Court of Miami-Dade County. The Owner shall submit a copy of the recorded Agreement to the State of Florida's Land Planning Agency within fourteen (14) days after this Agreement is recorded. This Agreement shall become effective only after (i) it has been recorded in the Public Records of Miami-Dade County, and (ii) thirty (30) days have elapsed after the State of Florida Land Planning Agency's receipt of a copy of the recorded Agreement. Owner agrees that it shall be responsible for all recording fees and other related fees and costs related to the recording and delivery of this Agreement. The provisions hereof shall remain in full force and affect during the term hereto, and subject to the conditions of this Agreement, shall be binding upon the undersigned and all successors in interest to the parties to this Agreement. Whenever an extension of any material deadline is permitted or provided for under the terms of this Agreement, at the request of either party, the other party shall join in a short-form recordable Memorandum of Agreement confirming such extension to be recorded in the Public Records of Miami-Dade County.

14. Duration of Development Agreement. The duration of this Agreement shall not exceed thirty (30) years from the Commencement Date; provided, however, that the duration of this Agreement may be extended by mutual agreement of the Village and Owner. During the term of this Agreement, the Village's laws and policies governing the development of land in effect as of the date hereof shall govern development of the Property. The Village may apply subsequently adopted laws and policies to the Owner's Project only if the Village has held a public hearing pursuant to Section 163.3225, Florida Statutes, and determined:

- (a) they are not in conflict with the laws and policies governing this Agreement and do not prevent development of the land uses, intensities, or densities in this Agreement; or
- (b) they are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement; or

- (c) they are specifically anticipated and provided for in this Agreement; or
- (d) the Village demonstrates that substantial changes have occurred in pertinent conditions existing a the time of approval of Agreement; or
- (e) this Agreement is based on substantially inaccurate information supplied by Owner.

15. Required Development Approvals.

(a) Owner shall be solely responsible for obtaining, at its sole cost and expense, any necessary Development Approvals. Notwithstanding the preceding, the Village and Owner agree and acknowledge that the Development Approvals contemplated herein may not constitute a full listing and description of all local development approvals or permits needed to be approved for development of the Owner's Project, and that the omission of discussion of any other approval or permit (required for the development of the Project) shall not relieve Owner of its sole obligation, whether under applicable law or this Agreement, to obtain same.

16. Confirmation of Land Development Regulations. The zoning district classification of the Owner's Property Parcel E-M, Estate Modified, as defined in Village's land development regulations.

17. Omissions. The parties hereto recognize and agree that the failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction notwithstanding any such omission.

18. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the Village at: Village of Palmetto Bay
Village Hall
9705 East Hibiscus Street
Palmetto Bay, Florida 33157
Attn: Village Manager

or

If to Owner at: Palmer Trinity Private School
7900 SW 176th Street
Palmetto Bay, Florida 33157
Attn: Head Master

19. Indemnification of Owner. Owner hereby agrees to hold the Village, its officers, employees, agents, contractors, and representatives harmless from any liability/or damage or claims for damage for personal injury, including wrongful death, and claims for property damage, which may arise from the direct or indirect activities and/or operations of Owner, or these of any officer, employee, agent, contractor, sub-contractor, or other person acting on Owner's behalf, which relate to the design, development, and construction of the Owner's Project. Owner agrees to, and shall afford at its sole cost and expense, the Village and its officers, employees, agents, contractors, and representatives from any and all actions for damages caused, or alleged to have been caused, by reason of Owner's activities in connection with Owner's Project. This indemnification agreement applies to all damages and claims for damages including, without limitation, interest, costs and attorney's fees, outlined or alleged to have been suffered by reason of the activities and/or operations referenced herein. This indemnification shall not apply to the gross negligence or willful misconduct of the Village, or of its officer's employees, agents, contractors, or representatives. The aforesated indemnification, and the provisions of this Section 19, shall survive expiration of this Agreement.

20. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, riot, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, excluding the financial inability of such party to perform and excluding delays resulting from appeals or rehearings commenced by the Owner (any such causes or events to be referred to herein as a "Force Majeure"), shall excuse the performance by such party for a period equal to any such period of prevention, delay or stoppage.

21. Miscellaneous.

(a) Counterparts. To facilitate execution, the parties hereto agree that this Agreement may be executed in counterparts as may be required and it shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single Agreement.

(b) References. All references in the Agreement to the "Agreement" shall hereafter mean and refer to the Development Agreement.

(c) Governing Law and Exclusive Venue.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami Dade County, Florida, if in State court, and the U.S.

District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, VILLAGE AND OWNER EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

(d) Waiver, Modification, etc. No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by Village and Owner. No waiver of any Default or default shall affect or after this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default or default thereof.

(e) Effect of Other Transactions. No document whether executed simultaneously with this Agreement or otherwise, and whether or not consented to by Village, shall be deemed to modify this Agreement in any respect, and in the event of an inconsistency or conflict between this Agreement and any such instrument, this Agreement shall control.

(f) Invalidity of Certain Provisions. If any provision of this Agreement or the application thereof to any Person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(g) Remedies Cumulative. Each right and remedy of either party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement).

(h) Performance at Each Party's Sole Cost and Expense. Unless otherwise expressly provided in this Agreement, when either party exercises any of its rights, or renders or performs any of its obligations hereunder, such party shall do so at its sole cost and expense.

(i) Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Village and Owner, and, except as otherwise provided herein, their respective successors and permitted assigns.

(k) Notice of Defaults. Notwithstanding anything to the contrary set forth in this Agreement, under no circumstances shall any party to this Agreement lose any right or benefit granted under this Agreement or suffer any harm as a result of the occurrence of any Default or default of such party as to which Default or default such party has not received notice thereof from the other party.

(l) Corporate Obligations. It is expressly understood that this Agreement and obligations issued hereunder are solely corporate obligations, and, that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, elected or appointed officials (including, without limitation, the Mayor and Village Council of the Village and the Chairman and Members of the Board of Directors of Owner) or employees, as such, of Village or Owner, or of any successor corporation, or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer, director, elected or appointed officials (including, without limitation, the Mayor and Village Council of the Village and the Chairman and Members of the Owner) or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom, are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(m) Nonliability of Officials and Employees. No member, official or employee of Village shall be personally liable to Owner, or any successor in interest, in the event of any default or breach by Village or for any amount or obligation which may become due to Owner or successor under the terms of this Agreement; and, any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such person, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom, are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(n) No member, official or employee of Owner shall be personally liable to Village, or any successor in interest, in the event of any default or breach by Owner or for any amount or obligation which may become due to Village or successor under the terms of this Agreement; and, any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such person, under or by reason of the obligations, covenants or agreements contained in this Agreement or

implied therefrom, are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(o) Partnership Disclaimer. Owner acknowledges, represents and confirms that it is an independent contractor in the performance of all activities, functions, duties and obligations pursuant to this Agreement. The parties hereby acknowledge that it is not their intention to create between themselves a partnership, joint venture, tenancy in common, joint tenancy, or co ownership for the development by Owner of the Owner's Project, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement, or the other documents executed by the parties with respect to the Owner's Project, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, or co-ownership of any kind or nature whatsoever between the parties hereto. The provisions of this subsection (n) shall survive expiration of this Development Agreement.

(p) No Third Party Rights. Nothing in this Development Agreement, express or implied, shall confer upon any person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

(q) No Conflict of Interest. Owner represents and warrants that, to the best of its actual knowledge, no member, official or employee of the Village has any direct or indirect financial interest in this Agreement nor has participated in any decision relating to this Agreement that is prohibited by law. Owner represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the Village has received any payment or other consideration for the making of this Agreement, directly or indirectly, from Owner. Owner represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys. Owner acknowledges that Owner is relying upon the foregoing representations and warranties in entering into this Agreement and would not enter into this Agreement absent the same.

(r) The Owner and the Village (jointly, the "Parties") fully understand that if any fact with respect to which this Agreement is executed is found hereafter to be mistaken or different from the facts now believed by the Parties to be true, the Parties expressly accept and consent to the risk of such possible difference in fact and agree that this Agreement shall remain effective notwithstanding such mistake or difference in fact(s).

(s) This Agreement does not constitute any admission of error or wrong doing, violation of any law, order, regulation, or enactment of any kind by either

of the Parties, and is entered into by the Parties solely to end a controversy between them.

(t) The Parties acknowledge that they either have, or have the right to consult with their respective attorneys prior to executing this Agreement.

(u) The prevailing party shall be entitled to an award of attorneys' fees and costs incurred in enforcing this Agreement or in defending any claim brought in violation hereof, including, without limitation, costs and fees incurred at the trial court and appellate levels.

(v) The Owner represents and warrants that its has the sole right and exclusive authority to execute this Agreement, and that Owner has not sold, assigned, transferred, conveyed, or otherwise disposed of any claim or demand relating to any matter covered by this Agreement.

(w) This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof, and there are no promises, agreements, conditions, undertaking, warranties, or representations, whether written or oral, and/or express or implied, between the parties other than as set forth herein. This Agreement cannot be amended, supplements, or modified, except by a written instrument signed by the Parties against whom enforcement of such amendment, supplement or modification is sought.

(x) The Agreement may be executed in counterparts, and upon such execution shall be complete, and the terms, provisions, and obligations set forth shall be in full force and effect.

(y) In the even that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect.

22. Entire Agreement. This Agreement, together with the documents referenced herein, constitute the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought and subject to the requirements for the amendment of development agreements in the Act.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

EXECUTED as of the date first above written in several counters, each of which shall be deemed an original, but all constituting only one agreement.

Signed, sealed and delivered
in the presence of:

VILLAGE OF PALMETTO BAY
a Florida municipal corporation

By: _____

Name: _____

Attest: _____

Meighan Alexander, Village Clerk

Signed, sealed and delivered
in the presence of:

OWNER/PALMER TRINITY
PRIVATE SCHOOL, INC.

By: _____

Name: _____

Attest: _____

By: _____

Owner's Attorney
Approved as to Form & Language
& for Execution

Stanley E. Price

Village of Palmetto Bay - Village Attorney
Approved as to Form & Language
& for Execution

Eve A. Boutsis

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by _____ as Contracting Officer of Palmer Trinity Private School, Inc.. He/She is personally known to me and who did (did not) take an oath.

NOTARY PUBLIC

Typed or Printed Name of Notary
My Council expires:
Serial No., if any: _____

OFFICIAL NOTARY SEAL
STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____ as Manager of the Village of Palmetto Bay, a municipal corporation, on behalf of the Village. He/She is personally known to me or has produced as identification and who did (did not) take an oath.

NOTARY PUBLIC

Typed or Printed Name of Notary
My Council expires:
Serial No., if any: _____

OFFICIAL NOTARY SEAL

EXHIBIT "A"
Legal Description

EXHIBIT "B"
**RESOLUTION 2012-64, AMENDING RESOLUTION 2010-48, AS PREVIOUSLY
AMENDED BY RESOLUTION 2011-53**

CONFIDENTIAL