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**RESOLUTION NO. 08-85**

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**A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO EXTENDING THE USE CONTRACT FOR CORAL REEF PARK, BASEBALL FIELD 3; PROVIDING FOR A THREE YEAR EXTENSION OF THE OF THE EXISTING NON-EXCLUSIVE USE INTERLOCAL AGREEMENT FOR PALMETTO SENIOR HIGH SCHOOL; AND PROVIDING AN EFFECTIVE DATE. [Sponsored by Council Person Paul Neidhart].**

**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 remains 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; and,

**WHEREAS**, Palmetto Senior High School has complied with all village requests, and in fact, the school has been extremely responsive and respectful of the village and the residents during their use of Field 3; and,

**WHEREAS**, in 2003 the parties executed a contract for the use of Field 3 by the Palmetto Senior High School Boys Baseball Team; and,

**WHEREAS**, in 2007 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; and,

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

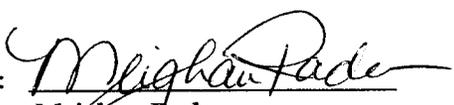
1           **NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE**  
2 **COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**

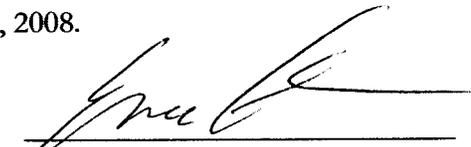
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4           **Section 1.**     The attached interlocal agreement with the Miami-Dade County School  
5                           Board, on behalf of Palmetto Senior High School for the use of Field 3 at  
6                           Coral Reef Park is hereby extended for an additional three-year period.

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8           **Section 2.**     This resolution shall take effect immediately upon approval.

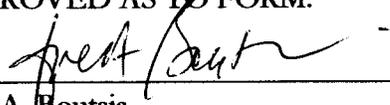
9           **PASSED and ADOPTED** this 6th day of October, 2008.

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11       Attest:

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13           Meighan Kader  
14           Village Clerk

15             
16           Eugene P. Flinn, Jr.  
17           Mayor

18       APPROVED AS TO FORM:

19             
20           Eve A. Boutsis,  
21           Nagin Gallop & Figueredo, P.A.,  
22           Office of Village Attorney

23       FINAL VOTE AT ADOPTION:

24  
25       Council Member Ed Feller                   YES  
26  
27       Council Member Paul Neidhart           YES  
28  
29       Council Member Shelley Stanczyk       YES  
30  
31       Vice-Mayor Linda Robinson           YES  
32  
33       Mayor Eugene P. Flinn Jr.               YES  
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**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 \_\_\_\_ day of \_\_\_\_\_, 2008, 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 2012. Prior to the end of the second year, the parties shall meet to negotiate any continuance of the use of 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:

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 15<sup>th</sup> – April 30<sup>th</sup>; and (2) Tournament (Practice Site only, as needed): May 1<sup>st</sup> – May 30<sup>th</sup>.

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 team 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 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 of 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 Manager.

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 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 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, clinics or additional facility usage will require written approval from the Village manager.

7. **Capital Improvements**

7.1 The School, 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 five year term of the underlying agreement, as funding becomes available.

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

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

7.5 During the term of this non-exclusive use agreement, the school 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 School shall not install, remove or replace the equipment or furnishings without notification to, and prior approval by the Village.

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

8.3 The School 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 school shall pay the Village \$300.00 per week for non-normal maintenance specifically including dragging the infield and lining the field (during baseball season). After the first year of the five year term the school shall pay a 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 77<sup>th</sup> 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 School agrees to continue the practice of caravanning to the practice site.

9.5 For game days, the School 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 School 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 Manager.

14. **Indemnification and Sovereign Immunity**

14.1 To the extent permitted by law and as limited by Section 768.28, Florida Statutes, school 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 School 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 school 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 School 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 School 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, private postal service or hand delivery to:

Board: School Board of Miami-Dade County, Florida  
c/o Superintendent of Schools  
School Board Administration Building

1450 N.E. 2<sup>nd</sup> Avenue, Suite 912  
Miami, Florida 33132

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

With a copy to: The School Board of Miami-Dade County, FL  
c/o School Board Attorney  
1450 NE Second Avenue, Room 400  
Miami, FL 33132

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

Village: Ron E. Williams, Village Manager  
Village of Palmetto Bay  
8950 S.W. 152<sup>nd</sup> 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.

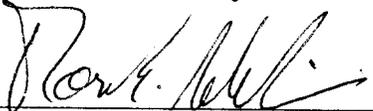
20. Attorney's Fees. In the event either party to this agreement is required to retain legal counsel to enforce any of its rights under this agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non prevailing party together with court costs incurred 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.

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

The School Board of Miami-Dade County, Fl

By:   
Ron Williams  
Village Manager

By: \_\_\_\_\_

ATTEST:

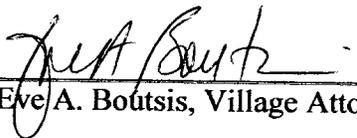
ATTEST:

By:   
Meighan J. Rader,  
Village Clerk

By: \_\_\_\_\_  
School Board Clerk

Approved as to form:

Approved as to form:

  
Eve A. Boutsis, Village Attorney

\_\_\_\_\_  
School Board Attorney