

1	FINAL VOTE AT ADOPTION:	
2		
3	Council Member Patrick Fiore	<u>YES</u>
4		
5	Council Member David Singer	<u>YES</u>
6		
7	Council Member Marsha Matson	<u>NO</u>
8		
9	Vice-Mayor John DuBois	<u>NO</u>
10		
11	Mayor Karyn Cunningham	<u>YES</u>

MASTER JOINT USE AGREEMENT

THIS MASTER JOINT USE AGREEMENT (“**Agreement**”) is made and entered into this ____ day of _____, 20__, by and between the VILLAGE OF PALMETTO BAY, a political subdivision of the State of Florida (hereinafter referred to as the “**VILLAGE**”), and THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic existing under the laws of the State of Florida (hereinafter referred to as to the “**BOARD**”). The VILLAGE and the BOARD are sometimes referred to in this Agreement individually as “**Party**” and collectively as the “**Parties**”.

WITNESSETH

WHEREAS, the BOARD and VILLAGE are mutually interested in and concerned with providing and making available recreational programs, activities and facilities for the use and benefit of the students of Miami-Dade County Public Schools (“**District**”) and the residents of the Village of Palmetto Bay; and

WHEREAS, the BOARD owns and has under its jurisdiction certain real property which is used by the BOARD for recreational and educational purposes (“**school sites**”), and the VILLAGE owns and has under its jurisdiction certain real property which is used by the VILLAGE for public park purposes (“**park sites**”); and

WHEREAS, the BOARD and VILLAGE are desirous of entering into this Agreement to allow designated park sites and designated school sites located within the Village of Palmetto Bay, to be made available to both Parties for recreational and educational services, under terms and conditions outlined within this Agreement; and

WHEREAS, the Village of Palmetto Bay by the adoption of Resolution No. _____, at its meeting of _____, 20__, approved this Agreement; and

WHEREAS, the School Board of Miami-Dade County, Florida, has authorized this Agreement in accordance with Board Action No. _____, at its meeting of _____, 20__.

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

I.

RECITALS

The Parties agree that the above recitals are true and correct and are incorporated herein by reference.

II.

TERM; CONSIDERATION

The initial term of this Agreement shall be for a period of thirty (30) years, commencing upon the date on which the last of the Parties initials or executes this Agreement (“**Commencement Date**”), which date shall also be defined as the “**Effective Date**” of this Agreement.

The VILLAGE and BOARD shall pay each to the other as consideration for use and occupancy of the school sites and park sites throughout the term of this Agreement, and any renewal thereof, the sum of one dollar (\$1.00) per year in advance, beginning on the Commencement Date, and on the anniversary date of the Commencement Date each year thereafter.

III.

PREMISES TO BE JOINTLY USED; ADDING OR DELETING SITES

The BOARD and VILLAGE agree that, effective with the Commencement Date of this Agreement, the designated areas of the school sites and park sites set forth in **Exhibit “A”**, attached hereto and made a part hereof, shall be included as part of this Agreement (the “**Demised Premises**”). In conformance with Article XXV, the Parties shall have the right to access other portions of the school sites and park sites listed in Exhibit “A” for the specific and limited purpose of gaining ingress to and egress from the Demised Premises.

In addition, Exhibit “A” shall also include specific operational criteria for each school site and park site if such operational criteria delegates responsibility in a manner other than the standard manner set forth elsewhere in this Agreement. Specific operational criteria may include, but is not limited to, responsibility for facility maintenance, hours of use, payment of utilities and damage and destruction.

A. ADDING SITES

Subsequent to the Commencement Date, park sites or school sites, in whole or in

part, may be added to this Agreement. The requesting Party shall submit the request to the property owner in writing in compliance with Article XVI hereof, fully indicating the portion of the subject school site or park site to be used, the proposed hours of use, maintenance responsibilities, proposed improvements to be made, if any, and/or any other relevant information impacting the operation and use of the particular site that the property owner may require to fully vet the request. The Party receiving the request shall timely review same, and shall have the sole authority to grant or deny the request, as set forth below, said approval not to be unreasonably withheld. If approved, Exhibit "A" shall be modified to include the additional site, as set forth below, including specific operational criteria, if any.

B. DELETING SITES

In addition to the provisions of Article XI, subsequent to the Commencement Date, individual park sites and school sites, in whole or in part, may be deleted from this Agreement. The Parties acknowledge and agree that due to the ongoing operation of school and park educational and recreational programs, the requesting Party shall notify the other Party in writing pursuant to Article XVI hereof, no less than ninety (90) days prior to the date it desires the site to be deleted from this Agreement. Unless otherwise agreed to by the Parties, said termination of use of the park site or school site shall be effective at the completion of the school year, as set forth annually in the BOARD'S official Elementary and Secondary School Calendar ("**School Calendar**"), or recreational season then in effect. Concurrent with the effective date of deletion of the park site or school site from this Agreement, Exhibit "A" shall be modified to delete the site, as set forth below.

In the event park sites or school sites are added to or deleted from this Agreement, as described above, the amended Exhibit "A" shall become a part of this Agreement, and shall thenceforth remain in effect until such time as it may be further amended.

C. EFFECTIVE DATE OF ADDED OR DELETED SITE

The Parties acknowledge and agree that the VILLAGE Manager ("**Manager**"), or his/her designee, and the Superintendent of Schools ("**Superintendent**"), are authorized to modify Exhibit "A", as set forth above, for the limited purpose of adding park sites and school sites to the Agreement or deleting park sites and school sites from the Agreement, without further action or approval from the VILLAGE Council and School

Board, respectively. In the event park sites or school sites are added to or deleted from this Agreement, as described above, the amended Exhibit "A" shall become effective concurrent with the later date of execution of the amended Exhibit "A" by the Superintendent and the Manager, or their respective designees, and Exhibit "A" shall thenceforth remain in full force and effect until such time as it may be further amended. The Parties agree that each time the Demised Premises is adjusted to add or delete a park site or school site, in whole or in part, the definition of Demised Premises shall automatically include the revised premises.

IV.

USE OF PREMISES

The individual school sites identified in Exhibit "A" shall be used by the VILLAGE for the operation of recreational programs sponsored, organized and supervised by the VILLAGE, and for no other purpose, and the individual park sites identified in Exhibit "A" shall be used by the BOARD for the operation of recreational and/or educational programs, and for no other purpose. The VILLAGE agrees to accept the school sites, and the BOARD agrees to accept the park sites, in their "as-is", "where-is" condition as of the Effective Date of this Agreement, subject to all easements, covenants and other encumbrances and limitations of record. In the same fashion, the Parties shall accept any additional park sites or school sites throughout the term of this Agreement in the condition they are in at the time of such occupancy.

A. SCHOOL SITES

Other than as specified below or as specifically provided in Exhibit "A", the BOARD shall have full control, custody, right and use of the individual school sites included under this Agreement, including all parking and recreational facilities located thereon, during regular school hours (as determined by each school site Administrator) on regular school days during the academic school year as established each year through the School Calendar. The VILLAGE shall have full control, custody, right and use of the designated portions of the school sites included under this Agreement on weekdays beginning after regular school hours (as determined by each school site Administrator) and ending at the VILLAGE'S designated closing time, and on weekends and BOARD Holidays from 8:00 a.m. until the VILLAGE'S designated closing time, or as otherwise agreed to in writing by

the Parties and set forth in Exhibit "A" of this Agreement ("**Village's Period of Use**"). Notwithstanding the foregoing, the BOARD, at its sole option, may use the school sites, or portions thereof, as may be required for athletic or other practices, home games, pre-scheduled tournaments, as well as special events and functions, intramural sports, extracurricular athletics/activities, after care programs and summer school, during which time it shall have full control, custody, right and use of same. In the event the BOARD requires use of a school site at times and days that would otherwise be within the Village's Period of Use, the school administrator or designee shall so notify the VILLAGE'S Park Director ("**Park Director**") or designee with a minimum of forty-eight (48) hours advance notice.

Notwithstanding the above, the VILLAGE acknowledges that because of the need to assure the safety of District staff, students and faculty, maintain the security and integrity of school building and grounds, and preclude vandalism of same, the School Administrator reserves the unilateral right to limit or alter the means by which the VILLAGE may use a school building or grounds, or may eliminate access to the school building and/or grounds altogether.

Additionally, in the event park patrons create an unsanitary or unsafe condition within a school site (e.g. as a result of park patrons seeking access to bathroom facilities or drinking water), the VILLAGE agrees to take all steps necessary to immediately correct this situation.

The VILLAGE, in addition to its own utilization of a school site, shall have the option of contracting with not-for-profit parties to use the school site to provide VILLAGE-sponsored recreational services and programs to the general public during the Village's Period of Use. In that event, the VILLAGE shall be responsible during such use for all maintenance, clean-up, risk management, security and supervision of the school site and other terms and conditions set forth in this Agreement, the same as if the VILLAGE itself were utilizing the school site. Further, the VILLAGE shall require such entities or groups to provide liability insurance and other required insurance coverage as determined by the BOARD, naming both the VILLAGE and the BOARD as additional insureds, in accordance with the rules and regulations established from time to time by the BOARD for use of the school site. As a precondition to use of a school site by such an entity, the VILLAGE shall

obtain a certificate of insurance evidencing same and shall provide a copy thereof to the BOARD.

B. PARK SITES

Other than as specified below or as specifically agreed to in Exhibit "A", the BOARD shall have full control, custody, right and use of the designated portions of the park sites included under this Agreement during regular school hours on regular school days during the academic school year as established each year through the School Calendar ("**Board's Period of Use**"). The VILLAGE shall have full control, custody, right and use of the individual park sites and all parking and recreational facilities located thereon, at all other times, unless otherwise agreed to in writing by the Parties. The BOARD acknowledges that because of the nature of parks, areas of the park sites not reserved or used by the BOARD will be open and available for use and enjoyment by the general public.

In the event the VILLAGE requires use of a park site for special events and functions at times and days that would otherwise be within the Board's Period of Use, the Park Director or designee shall so notify the School Administrator or designee with a minimum of forty-eight (48) hours advance notice.

Notwithstanding the above, the BOARD acknowledges that because of the need to assure the safety of park patrons and staff, maintain the security and integrity of park building and grounds, and preclude vandalism of same, the park Site Administrator reserves the unilateral right to limit or alter the means by which the BOARD may use a park building or grounds, or may eliminate access to the park building or grounds altogether.

Additionally, in the event District staff, students and faculty create an unsanitary or unsafe condition within a park site (e.g. as a result of District staff, students and faculty seeking access to bathroom facilities or drinking water), the BOARD agrees to take all steps necessary to immediately correct this situation.

The BOARD, in addition to its own utilization of a park site, shall have the option of contracting with not-for-profit parties to use the park site to provide BOARD-sponsored recreational services and programs to the general public during the Board's Period of Use. In that event, the BOARD shall be responsible during such use for all maintenance, clean-up, risk management and supervision of the Park Site and other terms and conditions set forth in this Agreement, the same as if the BOARD itself were utilizing the park site. Further,

the BOARD shall require such entities or groups to provide liability insurance, naming both the VILLAGE and the BOARD as additional insureds, in accordance with the rules and regulations established from time to time by the VILLAGE for use of the park site. As a precondition to use of a park site by such an entity, the BOARD shall obtain a certificate of insurance evidencing same and shall provide a copy thereof to the VILLAGE.

C. USE OF ADDITIONAL FACILITIES AT THE SITE

In the event a Party seeks to use an additional educational or recreational facility or amenity within a school site or park site listed in Exhibit "A", for a one-time event or short-term basis, and the property owner provides written approval, the requesting Party agrees to be bound by all terms and conditions of this Agreement, including supervision and liability in its use of such additional facility or amenity.

D. USE OF PARK SITES AND SCHOOL SITES FOR SPECIAL EVENTS

VILLAGE USE OF SCHOOL SITES: Notwithstanding the foregoing or anything contained herein to the contrary, the BOARD acknowledges that the VILLAGE may seek use of a school site, from time to time, for special VILLAGE sponsored events and functions ("**Village Events**"). In that event, the VILLAGE is to make written application to the BOARD pursuant to Article XVI hereof at least sixty (60) days in advance of the proposed Village Event, indicating the nature of the event, event duration, impact on the school's use of the school site and any other relevant information. The BOARD, acting through its designee, shall respond with all due haste, and approval of such Village Event shall not be unreasonably withheld.

The VILLAGE shall remove all refuse or debris generated by any Village Event and shall repair all damage to the school site occurring during such event, and the school site shall be made safe and usable for the school prior to the BOARD'S next Period of Use. In connection with Village Events, the Village may charge and collect admission and concession fees, provided the fees are utilized, in whole or in part, to offset costs associated with the Village Event. The VILLAGE will make every reasonable effort to confine the use of portable band shells or the installation of tents, portable toilets, equipment or other such facilities to adjacent or nearby park sites or Village-owned lands.

When using the school site for a Village Event, the VILLAGE shall ensure that any

and all vendors, operators or providers of services occupying the school site, shall do so only with the VILLAGE'S approval, and under the VILLAGE'S supervision and control. All such vendors, operators and service providers shall be required to maintain a policy of general liability insurance from an insurance company licensed to do business in Florida and with an A.M. Best's rating of "B+" or better, with a single limit of no less than one million dollars (\$1,000,000), without interruption during the Village Event, or as otherwise required by the BOARD. A Certificate of Insurance shall be provided to the BOARD a minimum of ten (10) days prior to the Village Event, and the Certificate of Insurance shall name "The School Board of Miami-Dade County, Florida, and its members, officers and employees" as an additional insured on all liability coverages except Worker's Compensation Insurance. The VILLAGE shall further insure that adequate supervision and security is provided during the Village Event to address vehicular traffic, parking, security and crowd control issues.

BOARD USE OF PARK SITES: Notwithstanding the foregoing or anything contained herein to the contrary, the VILLAGE acknowledges that the BOARD may seek use of a park site, from time to time, for special BOARD or School sponsored events and functions ("**Board Event**"). In that event, the BOARD is to make written application to the VILLAGE pursuant to Article XVI hereof at least sixty (60) days in advance of the proposed Board Event, indicating the nature of the event, event duration, impact on the park's operations and any other relevant information. The VILLAGE, acting through its designee, shall respond with all due haste in writing, and approval of such Board Event shall not be unreasonably withheld.

The BOARD shall remove all refuse or debris generated by any Board Event and shall repair all damage to the park site occurring during such event, and the park site shall be made safe and usable for the park prior to the VILLAGE'S next Period of Use. In connection with Board Event, the BOARD may charge and collect admission and concession fees, provided the fees are utilized, in whole or in part, to offset costs associated with the Board Event. The BOARD will make every reasonable effort to confine the use of portable band shells or the installation of tents, portable toilets, equipment or other such facilities to adjacent or nearby school sites or BOARD-owned lands.

When using the park site for a Board Event, the BOARD shall insure that any and all vendors, operators or providers of services occupying the park site, shall do so only with the

BOARD 'S approval, and under the BOARD'S supervision and control. All such vendors, operators and service providers shall be required to maintain a policy of general liability insurance from an insurance company licensed to do business in Florida and with an A.M. Best's rating of "B+" or better, with a single limit of no less than one million dollars (\$1,000,000), without interruption during the event, or as otherwise required by the VILLAGE. A Certificate of Insurance shall be provided to the VILLAGE a minimum of ten (10) days prior to the event, and the Certificate of Insurance shall name "Village of Palmetto Bay" as an additional insured on all liability coverages except Workers' Compensation Insurance. The BOARD shall further insure that adequate supervision is provided during the Board Event to address vehicular traffic, parking, security and crowd control issues.

E. ADDITIONAL RULES AND REGULATIONS FOR USE OF SITES

The BOARD and VILLAGE may promulgate and enforce reasonable rules and regulations governing their use of the park sites and school sites during their respective Periods of Use, and shall provide adequate supervision of the school sites and park sites at all times that they conduct or sanction activities thereon. Any such additional rules and regulations will be in compliance with VILLAGE and BOARD Policies, and will be reviewed by the Joint Use Committee (as hereinafter described) for recommendation.

In the event use of school or park facilities by the non-property owner creates a cost to the property owner, beyond that which would normally be borne by that entity (e.g. paper goods, janitorial services, staff time, field lighting, etc.), the user agrees to reimburse the property owner for same.

The non-property owner agrees to secure and lock all perimeter and parking lot gates, as required by the property owner, at the completion of its Period of Use, and shall remove all unauthorized vehicles stationed in the parking lots prior to the other Party's Period of Use. The Parties shall remove said vehicles using all lawful means, and may post signs to facilitate same, after securing approval from the property owner.

The sale or consumption of alcoholic beverages at any time, including Village Events and Board Events, is expressly prohibited on any school site.

Neither party shall commit nor permit any violations of applicable laws, rules and regulations of the BOARD, VILLAGE, County, State, or Federal Government upon the other

Party's property.

The Parties agree that the fields at the school sites and park sites shall be closed from time to time to reduce the impact on the turf. In addition, play equipment, parking lots and buildings may be unavailable during each Party's Period of Use to provide for the completion of maintenance activities. The Parties agree that the method, scope and scheduling of any such closure shall be coordinated in a timely manner between the Parties, and the Parties shall work collaboratively in this regard.

V.

IMPROVEMENTS BY VILLAGE AND BOARD

A. IMPROVEMENTS TO OWN SITES

The BOARD and VILLAGE, at their sole option, may construct additional recreational or educational facilities on their respective sites, and maintain equipment related to the construction of any such facilities on their respective sites, at such time as the property owner determines such a need. The BOARD and VILLAGE agree to notify the other in writing, with as much advance notice as possible, of their intent to construct such facilities. The Parties agree to cooperate in every reasonable way to minimize the disturbance to the peaceful possession and use of the school sites and park sites by the other Party during any such construction activities.

B. IMPROVEMENTS TO THE OTHER PARTY'S SITES

The BOARD and VILLAGE may request written permission pursuant to Article XVI hereof, to construct additional recreational improvements on the other Party's site, subject to prior written approval of the property owner, such approval to be granted at the property owner's sole discretion and authority. All such construction or improvements shall be at the requesting Party's sole cost and expense. Prior to initiating any such project on the other Party's site, the Parties shall first assign responsibility for Maintenance, Utilities and for Damage or Destruction for the proposed improvements, under Articles VI, VII and XV of this Agreement. Once determined and agreed to, Exhibit "A" shall be modified, as necessary, as provided for in Article III hereof, to reflect these responsibilities as well as the newly constructed improvements and use thereof. Each Party shall be responsible for generating construction documents, securing any permits, zoning variances, regulatory or

governmental approvals, license and/or use approvals which may be required for the construction of any improvement on the other Party's property.

If permission is granted by the property owner, the requesting Party acknowledges and agrees that no construction, major repairs, alterations or improvements may be undertaken unless the plans are first submitted to and approved by the property owner, or designee, which the property owner may approve or disapprove at its sole authority and discretion. Plans must be signed and sealed by a duly licensed design professional and be of sufficient detail to secure any and all permits necessary to commence the work. The plans shall be prepared in accordance with all applicable laws, rules, regulations, statutes and codes in effect at the time the plans are submitted, including, without limitation, the Florida Building Code, and the BOARD'S design criteria, specifications and safety codes and the State Requirements for Educational Facilities for work to be constructed on school sites. All work shall be performed in a good and workmanlike manner by contractors who are licensed, insured and fully bonded, and the Party constructing the improvements shall provide evidence of same to the property owner prior to commencement of any work. Unless otherwise agreed to in writing by the Parties, the BOARD'S Building department shall be the entity responsible for reviewing and approving all construction documents, issuing permits for construction and providing final acceptance of the work taking place on school sites. The work shall commence only after issuance of proper permits, in conformance with the requirements of the applicable Building department or other appropriate jurisdictional governmental entity, and shall at all times be in compliance with all applicable laws, rules and regulations, including, without limitation, the Florida Building Code, the Americans with Disabilities Act, the Jessica Lunsford Act, the State Regulations for Educational Facilities, and the BOARD criteria and standards, as the same may be amended from time to time. All permits shall be properly closed by the Party conducting the improvements upon completion of the work, and evidence of same, satisfactory to the property owner, shall be provided. All work shall be limited to those areas designated in the plans. It is expressly understood by the Parties that construction activities may not commence on the other Party's property, until the property owner, or its designee, has received all required items and has notified the other Party, in writing, as to the approved date for the start of the work.

The Party performing the work shall cause any contractors doing work within the property owner's site to indemnify, defend and hold harmless the property owner, its employees and representatives from any and all liability, damages and claims. In addition, the Party performing the work shall require its contractors to provide proof of insurance coverage in the types and amounts of coverage as may be reasonably required by the property owner, including but not limited to Commercial General Liability Insurance, Automobile Liability Insurance, Worker's Compensation Insurance and Property Coverage, or as may be amended from time to time, and naming the property owner as additional insured on the Commercial General Liability Insurance.

The Party conducting the work does hereby agree to indemnify and hold harmless the other Party, to the extent of the monetary limitations included within Florida Statutes, Section 768.28, subject to the provisions in this act whereby the Party conducting the work 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 Party conducting the Work arising out of the same incident or occurrence, exceeds the sum of \$300,000, from and against any claims, liabilities, losses and causes of action arising out of or in connection with any construction costs and expenses for improvements made by the Party constructing the Work on the Demised Premises.

All permanent improvements or facilities installed, operated and maintained within the park sites or school sites pursuant to this Agreement shall become the property of the property owner, without compensation due to the Party which constructed or installed the improvements, at such time as the property owner accepts installation of same as being final and in compliance with all appropriate regulations, unless otherwise agreed to by the Parties.

V.

MAINTENANCE

Unless specified to the contrary in Exhibit "A" or elsewhere in this Agreement or any amendment hereto, the VILLAGE shall keep all recreational facilities and equipment located on the park sites, and the BOARD shall keep all recreational facilities and equipment located on the school sites, in a safe, clean and working condition at all times. Each property owner shall maintain or repair the turf, trees and other landscaping, irrigation

system, field and security lighting, fencing, gates and other access controls, parking lots, play apparatus, P.E. shelters, baseball/softball/soccer fields and other like improvements located on their property. However, each Party shall remove litter and trash generated during their respective Period of Use on both the school sites and park sites, prior to the other Party's next Period of Use, and shall repair those improvements to grounds, buildings, recreational improvements or any other improvements to the others property, where the property owner can clearly substantiate that the improvements were damaged as a result of the actions of the other Party.

The Parties acknowledge that the BOARD shall provide routine maintenance to the school sites and grounds in conformance with the BOARD'S standards, operating procedures and frequency of service. In the event the VILLAGE requires maintenance to recreational facilities and grounds at a school site beyond what is routinely provided by the BOARD, the VILLAGE may provide same at its sole cost and expense, after first securing the approval of the School Administrator in writing. Any such maintenance activities on school sites shall be provided by the VILLAGE during the Village's Period of Use.

The VILLAGE may apply certain herbicides and pesticides to the school sites during the Village's Period of Use, using a certified technician, after submitting specifications and environmental information to the BOARD or its designee, and securing written approval from same to utilize the product. The VILLAGE must coordinate and schedule use of the herbicide or pesticide with the School Administrator prior to its application. The VILLAGE agrees to use its best efforts to schedule all maintenance functions on school sites or park sites so as to limit any impact on school operations.

The Parties acknowledge that the VILLAGE shall provide routine maintenance to the park sites and grounds in conformance with the VILLAGE'S standards, operating procedures and frequency of service. In the event the BOARD requires maintenance to recreational facilities and grounds at a park site beyond what is routinely provided by the VILLAGE, the BOARD may provide same at its sole cost and expense, after first securing the approval of the park site administrator in writing. Any such maintenance activities on park sites shall be provided by the BOARD during the Board's Period of Use.

The BOARD may apply certain herbicides and pesticides to the park sites during the Board's Period of Use, using a certified technician, after submitting specifications and

environmental information to the park site administrator, and securing written approval from same to utilize the product. The BOARD must coordinate and schedule use of the herbicide or pesticide with the park site administrator prior to its application. The BOARD agrees to use its best efforts to schedule all maintenance functions on school sites or park sites so as to limit any impact on school operations.

In compliance with the December 1999 version of the State Requirements for Educational Facilities, or its successor document, the VILLAGE shall conduct annual inspections of any bleachers it has placed on the school sites, to assure they are in a safe condition and free from hazard, and shall secure a certificate from a structural engineer on a biennial basis attesting to same. A copy of the biennial certificate shall be provided to the BOARD without demand.

Notwithstanding the above, both property owners reserve the right to promulgate and enforce reasonable rules and regulations regarding maintenance activities on their own property.

VI.

UTILITIES

Unless specified to the contrary in Exhibit "A" or elsewhere in this Agreement or any amendment hereto, the VILLAGE and the BOARD shall establish utility accounts in their name, and pay for the electricity, water and sewer and other utilities consumed on their respective properties.

VIII.

LIABILITY FOR DAMAGE OR INJURY

Subject to the limitations included within Section 768.28, Florida Statutes, the BOARD shall not be liable for any damage or injury which may be sustained by the VILLAGE or any persons on the school sites, other than damage or injury resulting from the negligent performance on the part of the BOARD, its agents, representatives or employees, or failure of the BOARD to perform its covenants under this Agreement. The BOARD shall not be responsible or liable for any loss of business, consequential damages or any other damages arising from acts of God.

Subject to the limitations included within Section 768.28, Florida Statutes, the VILLAGE shall not be liable for any damage or injury which may be sustained by the

BOARD or any persons on the park sites, other than damage or injury resulting from the negligent performance on the part of the VILLAGE, its agents, representatives or employees, or failure of the VILLAGE to perform its covenants under this Agreement. The VILLAGE shall not be responsible or liable for any loss of business, consequential damages or any other damages arising from acts of God.

IX.

INDEMNIFICATION

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.

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.

The provisions of this Article shall survive the expiration or early termination or cancellation of this Agreement.

X.

ASSIGNMENT AND SUBLETTING

Except as otherwise provided elsewhere in this Agreement, neither Party shall assign, transfer, or otherwise dispose of this Agreement for the term hereof, or underlet the park sites or school sites or any part thereof or permit the park sites or school sites to be occupied by other persons, firms, corporations, or governmental units during the other Party's Period of Use, except with the prior written consent of the other Party.

XI.

CANCELLATION

In addition to the provisions of Articles III (B), XII and XVII, this Agreement may be cancelled by either Party by providing the other Party with a minimum of one (1) year prior written notice, and provided such cancellation shall be effective at the completion of the then current school year, as set forth in the School Calendar, or recreational season then in effect. Other than cancellation for cause, should the Agreement be cancelled, the Party cancelling the Agreement shall reimburse the other Party for any capital improvements constructed by the other Party on the canceling Party's land, as applicable. The capital costs shall be amortized equally over a sixty (60) month period, such amortization period to commence upon the date of final completion of the improvement(s). In the event of cancellation or termination, the school sites and park sites shall be surrendered in accordance with the provisions of Article XXIII.

In a similar fashion, in the event one or more park sites or school sites are deleted from this Agreement, as set forth in Article III(B), without cause, and the balance of the Agreement remains in place, the Party deleting the site shall reimburse the other Party for any capital costs expended on the site to be deleted, as amortized equally over a sixty (60) month period, such amortization period to commence upon the date of final completion of the improvement(s).

XII.

DEFAULT

The BOARD shall notify the VILLAGE in writing regarding VILLAGE'S failure to perform or to comply with the terms and condition of this Agreement. If the VILLAGE fails to

cure the default within thirty (30) days after receiving written notice or does not provide the BOARD with a written response indicating the status of the VILLAGE'S curing of the default and providing a mutually agreeable schedule to cure the default, said approval not to be unreasonably withheld, within thirty (30) days after receiving written notice, the BOARD shall have the right to immediately terminate this Agreement, in part or in whole and without penalty, upon ten (10) days additional written notice to the VILLAGE.

The VILLAGE shall notify the BOARD in writing regarding the BOARD'S failure to perform or to comply with the terms and conditions of this Agreement. If the BOARD fails to cure the default within thirty (30) days after receiving written notice or does not provide the VILLAGE with a written response indicating the status of the BOARD'S curing of the default and providing a mutually agreeable schedule to cure the default, said approval not to be unreasonably withheld, within thirty (30) days after receiving written notice, the VILLAGE shall have the right to immediately terminate this Agreement, in part or in whole and without penalty, upon ten (10) days additional written notice to the BOARD.

XIII.

NO LIABILITY FOR PERSONAL PROPERTY

The VILLAGE and BOARD agree to insure or self insure their interests in personal property to the extent each Party deems necessary or appropriate and hereby waive all rights to recovery for loss or damage of such property by any cause whatsoever. The Parties hereby waive all rights of subrogation under any policy or policies they may carry on property placed or moved on the other Party's sites.

XIV.

INSURANCE REQUIREMENTS

The VILLAGE shall maintain and provide evidence of public liability insurance or an ongoing self-insurance program covering the VILLAGE, its officers and employees for any activities related to this Agreement.

The BOARD shall maintain and provide evidence of public liability insurance or an ongoing self-insurance program covering the BOARD, its officers and employees for any activities related to this Agreement.

XV.

RIGHT OF ENTRY

Other than in the event of emergency, and subject to the provisions of Article XXVII, after first providing a minimum of 24-hours advance notice to the School Administrator or park Site Administrator, the property owner, or any of its authorized agents, representatives or employees, shall have the right to enter its own site during the other Party's Period of Use to examine the same, provided their actions do not unreasonably interfere with the other Party's use of the park sites or school sites.

This right of entry includes, but is not limited to, the right of a Party, or any of its authorized agents, representatives or employees, to enter its own property during the other Party's Period of Use for the purpose of examination related to the design and/or construction of recreational, educational or parking facilities. It is agreed and understood by the Parties that such examinations may include, but are not limited to, test borings and surveys which require entry by personnel on to, or leaving materials and equipment on a site for an extended period of time. The Parties agree to work together to minimize the affect of these examinations on the other Party.

XVI.

NOTICE AND GENERAL CONDITIONS

A. All notices or communications under this Agreement by either Party to the other ("**Notice**"), shall be sufficiently given or delivered if dispatched by (1) certified U.S. mail, postage pre-paid, return receipt requested, (2) hand delivery, (3) Federal Express or other comparable overnight mail service, (4) telephone facsimile transmission with transmission receipt, or (5) electronic mail to the following addresses, or as the same may be changed in writing from time to time:

In the case of notice or communication to BOARD:

The School Board of Miami-Dade County, Florida
c/o Superintendent of Schools
School Board Administration Building
1450 N.E. Second Avenue, Room 912
Miami, Florida 33132
Fax: 305-995-1488

With a copy to:

Miami-Dade County Public Schools

Office of School Facilities
Attention: Chief Facilities Officer
1450 N.E. Second Avenue, Room 923
Miami, Florida 33132
Fax: 305-995-1607
E-mail: JTorrens@dadeschools.net

With a copy to:

The School Board of Miami-Dade County, Florida
School Board Attorney's Office
1450 NE 2nd Avenue, #400
Miami, FL 33132
Attn: School Board Attorney
Fax: 305-995-1412
E-mail: Walter.Harvey@dadeschools.net and ACraft@dadeschools.net

In the case of notice or communication to the VILLAGE:

Attn: _____
Fax: _____
E-mail: _____

With a copy to:

Attn: _____
Fax: _____
E-mail: _____

B. Title and paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the Parties to this Agreement.

C. For purposes of the Agreement, the Superintendent of Schools or his/her designee shall be the party designated by the BOARD to grant or deny all approvals or waivers required by the Agreement dealing with construction of improvements, changing periods or schedules of use, authorizing use of a school site by a not-for-profit entity, allowing the VILLAGE to hold Village Events on a school site, or any other routine operational issues.

D. In addition to the above, for purposes of the Agreement, the Superintendent of Schools shall be the party designated by the BOARD to execute amendments to this Agreement within the authority granted to the Superintendent by the BOARD in this Agreement, authorizing modifications to Exhibit "A" for the purpose of adding school sites or park sites to this Agreement or deleting school sites or park sites from this Agreement, and to grant or deny any approvals required by the Agreement, including placing the VILLAGE in default, or renewing, extending, canceling or terminating the Agreement.

E. Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 PM (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. "Day" as used in this Agreement shall be defined as calendar day, unless otherwise provided. Counsel for the BOARD and Counsel for the VILLAGE may deliver Notice on behalf of the BOARD and the VILLAGE, respectively. Any party or other person to whom Notices are to be sent or copied may notify the other parties of any change in name or address to which Notices shall be sent by providing the same pursuant to this provision.

XVII.

DAMAGE OR DESTRUCTION

In the event one or more park sites or school sites should be destroyed or so damaged by fire, windstorm or other casualty to the extent the facilities are rendered untenable or unfit for the purposes of the Party seeking to use the site under this Agreement, either Party may immediately discontinue such use of the impacted site on a temporary basis, by so notifying the other in writing, or the Parties may delete the site from Exhibit "A," as provided under Article II. Unless set forth to the contrary in Exhibit "A" or otherwise agreed to in writing by the Parties, the property owner shall cause the impacted educational or recreational improvements to be repaired and placed in a safe, secure and useable condition and compatible for school and park recreational use, within one hundred eighty (180) days from the date of said damage or destruction, or other reasonable period of time as mutually agreed to by the Parties, which shall be determined based upon

the scope and nature of the damages, costs of the necessary repairs and available funding for such repairs by the responsible Party. Should the facilities not be repaired and rendered tenantable within the aforementioned time period, then the Party seeking to use the site under this Agreement may, at its sole option, place the property owner in default, as provided in Article XII. In the alternative, and if mutually agreed to by the Parties, the Party seeking use of the site under this Agreement shall repair the damage, and the property owner covenants and agrees that it shall reimburse the other Party for the cost to repair the damaged/destroyed facilities. For avoidance of doubt, unless otherwise set forth in Exhibit "A", the property owner shall at all times be responsible for damage and destruction of improvements on its property.

XVIII.

NONDISCRIMINATION

Both Parties agree that there will be no discrimination against any person based upon race, color, sex, religious creed, ancestry, national origin, mental or physical handicap, in the use of the park sites and school sites and improvements thereon. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination by a Party has occurred, such event shall be treated as a default hereunder.

XIX.

PEACEFUL POSSESSION

Subject to the terms, conditions, and covenants of this Agreement, both Parties agree that the other Party shall and may peaceably have, hold and enjoy the park sites and school sites included under Exhibit "A", without hindrance or interference by the other Party.

XX.

SUCCESSORS AND ASSIGNS

This Agreement shall extend to and be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns, subject to conditions set forth in this Agreement.

XXI.

EXTENSION OF TERM

If not in default in performance of the obligations set forth in this Agreement, the

Parties may extend the term, by mutual agreement, under the same terms and conditions set forth herein for two (2) additional terms of five (5) years each from the expiration of the original term or any renewal hereof, provided one Party gives notice to the other at least ninety (90) days prior to the expiration of the then current term. The Parties acknowledge and agree that any extension of the term shall be accomplished through the execution by the Parties of an amendment to this Agreement.

XXII.

COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

The Parties shall comply with all applicable laws, rules, regulations, ordinances and codes of all governmental authorities, including, without limitation, the Florida Building Code, the Americans with Disabilities Act and the Jessica Lunsford Act, as all may be further amended from time to time and to the extent required by applicable law.

XXIII.

CONSTRUCTION OF AGREEMENT

This Agreement shall be construed and enforced according to the laws of the State of Florida and the venue for any disputes shall be Miami-Dade County, Florida.

XXIV.

SEVERABILITY

In the event any paragraph, clause or sentence of this Agreement or any future amendment thereto is declared invalid by a court of competent jurisdiction, such paragraph, clause or sentence shall be stricken from the subject Agreement and the balance of the Agreement shall not be affected by any deletion, provided to do so would not render interpretation of the Agreement provisions ambiguous or a nullity.

XXV.

WAIVER

No waiver of any provision hereof shall be deemed to have been made unless such waiver be in writing and signed by the VILLAGE or BOARD. The failure of either party to insist upon strict performance of any of the provisions or conditions of this Agreement shall not be construed as waiving or relinquishing in the future any such covenants or conditions, but the same shall continue and remain in full force and effect.

XXVI.

SURRENDER OF PREMISES

Notwithstanding any other provision of this Agreement, upon the cancellation, termination or expiration of this Agreement or any extension thereof, the VILLAGE and BOARD agree to promptly and peacefully surrender and deliver possession of the Demised Premises to the applicable property owner in good order and repair and in as good condition as existed on the Commencement Date of this Agreement, ordinary wear and tear, or damage by fire, windstorm or other Acts of God, excepted. Each Party shall be required to promptly remove all of its personal property and other items from the Demised Premises, including any signage it installed. At the property owners sole option, the other Party shall remove any improvements or facilities constructed by the VILLAGE on the school site or by the BOARD on the park site, and to restore the area to the same or better condition as existed before the Commencement Date of this Agreement, within ninety (90) days of said termination, cancellation or expiration, or other reasonable period of time agreed to by the Parties. In the event the BOARD or VILLAGE elect to retain any or all of the improvements constructed on their property, the other Party agrees to convey title to said improvements, without compensation or remuneration due the other.

XXVII.

**BACKGROUND SCREENING REQUIREMENTS AND
COMPLIANCE WITH SCHOOL CODE**

In accordance with the requirements of Sections, 1012.465, 1012.32, and 1012.467, Florida Statutes, Board Policies 6320 and 8475, as amended from time to time, the VILLAGE agrees that the VILLAGE and all of its employees, agents, contractors, and subcontractors who provide or may provide services under this Agreement will complete criminal history checks, and all background screening requirements, including level 2 screening requirements as outlined in the above-referenced Statutes and Board Policies prior to entering or providing services relating to the school sites.

Additionally, the VILLAGE agrees that each of its employees, representatives, agents, subcontractors or suppliers who are permitted access on the school site when students are present, who have direct contact with students or who have access to or

control of school funds must meet level 2 screening requirements as described in the above-referenced Statutes and BOARD Policies.

Pursuant to the 2007 amendments to the Jessica Lunsford Act enacted by the Florida Legislature, requirements for certain fingerprinting and criminal history checks shall be inapplicable to non-instructional contracted personnel who qualify for exemption from level 2 screening requirements as provided under § 1012.468, Fla. Stat. (2007). In addition, the provisions of § 1012.467, Fla. Stat. (2007) are incorporated herein by reference, and any provisions of this Agreement that may be inconsistent with, contrary to, or determined to be in conflict with § 1012.467, will be superseded by said Statute.

A non-instructional contractor who is exempt from the screening requirements set forth in § 1012.465, § 1012.468 or § 1012.467, Florida Statutes, is subject to a search of his or her name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement under § 943.043 and the national sex offender public registry maintained by the United States Department of Justice. The VILLAGE will not be charged for this search. Further, upon obtaining clearance by the BOARD, if BOARD deems necessary, BOARD will issue a photo identification badge which shall be worn by the individual at all times while on the school site when students are present.

The VILLAGE agrees to bear any and all costs associated with acquiring the required background screening - including any costs associated with fingerprinting and obtaining the required photo identification badge. The VILLAGE agrees to require all its affected employees to sign a statement, as a condition of employment with the VILLAGE in relation to performance under this Agreement, agreeing that the employee will abide by the heretofore described background screening requirements, and also agreeing that the employee will notify the VILLAGE/Employer of any arrest(s) or conviction(s) of any offense enumerated in BOARD Policies 6320 and 8475 within 48 hours of its occurrence. The VILLAGE agrees to provide the BOARD with a list of all of its employees who have completed background screening as required by the above-referenced statutes and who meet the statutory requirements contained therein. The VILLAGE agrees that it has an ongoing duty to maintain and update these lists as new employees are hired and in the event that any previously screened employee fails to meet the statutory standards. The

VILLAGE further agrees to notify the BOARD immediately upon becoming aware that one of its employees who was previously certified as completing the background check and meeting the statutory standards is subsequently arrested or convicted of any disqualifying offense. Failure by the VILLAGE to notify the BOARD of such arrest or conviction within 48 hours of being put on notice and within 5 business days of the occurrence of qualifying arrest or conviction, shall constitute grounds for the BOARD, at its sole option, to place the VILLAGE in default.

The Parties further agree that failure by the VILLAGE to perform any of the duties described in this Article XXIX shall constitute a material breach of the Agreement entitling the BOARD, at its sole option, to place the VILLAGE in default.

XXVIII.

LEGAL FEES AND COURT COSTS

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 expiration or early termination or cancellation of this Agreement.

XXIX.

SUBORDINATION

Notwithstanding any other provisions of this Agreement, this Agreement is and shall be subject and subordinate to any conveyance and ground or underlying leases, and the rights of the BOARD under those leases and to all financing that may now or hereafter affect the leases, and to all renewals, modifications, consolidations, replacements and extensions thereof. This provision shall be self-operative and no further instrument of subordination shall be necessary. However, in confirmation of this subordination, the VILLAGE shall execute, within forty-five (45) calendar days of request, any certificate that the BOARD may request.

XXX.

**FLORIDA PUBLIC RECORDS LAW; AUDITS AND INSPECTIONS &
ACCESS TO RECORDS**

This Agreement shall be subject to Florida's Public Records Laws, Chapter 119, Florida Statutes. The Parties understand the broad nature of these laws and agree to

comply with Florida's Public Records Laws and laws relating to records retention. The Parties shall keep and maintain public records required by the other to perform the service. The Parties shall keep records to show their compliance with this Agreement. The Parties' contractors and subcontractors must make available, upon request of the other Party, a Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, any books, documents, papers, and records of the applicable Party or its assigns, contractors or subcontractors which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Upon request from either Party's custodian of public records, the other Party shall provide the requesting Party with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law. The Parties shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following the expiration or early termination or cancellation of this Agreement if the Parties do not transfer the records to the other Party. The Parties, their assigns, contractors and sub-contractors shall retain all records for five (5) years after final payment is made or received and all pending matters are completed pursuant to Title 34, Sections 80.36(b)(1). The Parties, upon completion of the Agreement, shall transfer, at no cost to the other, all public records in their possession or keep and maintain public records required by the other Party to perform the service. If the one Party transfers all public records to the other Party upon completion of the Agreement, the transferring Party shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If a Party keeps and maintains public records upon completion of the Agreement, the Party shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the other Party, upon request from the requesting Party's custodian of public records, in a format that is compatible with the information technology systems of the requesting Party.

The Parties shall incorporate this provision into every contract that it enters into relating to the Agreement.

IF THE VILLAGE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BOARD'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE BOARD'S CUSTODIAN OF PUBLIC RECORDS AT 305-995-1128, pr@dadeschools.net, and 1450 NE 2 Avenue, Miami, Florida 33132.

IF THE BOARD HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VILLAGE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE VILLAGE'S CUSTODIAN OF PUBLIC RECORDS AT _____, OR EMAIL AT _____, and _____, Florida _____.

XXXI.

SIGNAGE

The Parties shall be permitted to erect identification signage on the other Party's property, subject to the express prior written approval of the property owner, or designee, at the requesting Party's sole cost and expense and in conformance with all applicable rules and regulations governing public schools.

Upon the termination, expiration or cancellation of this Agreement, each Party shall remove, at its expense, any signage erected by it on the property owner's land, and restore the area to the same or better condition as existed prior to installation of the signage.

XXXII.

HAZARDOUS MATERIALS

For purposes of this Agreement, the term "Hazardous Substances" shall include, but not be limited to, flammable substances, explosives, radioactive materials, asbestos, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic by Environmental Law. The term "Environmental Law" shall mean any law, ordinance, rule, order, decree, judgment, regulation and guideline (present and future), of any governmental, quasi-public authority and applicable board of insurance underwriters related to environmental conditions on, under, or about a park site or school site, or arising from

either Party's use or occupancy of a school site or park site, including, but not limited to, soil, air, surface and/or ground water conditions, or governing the use, generation, storage, transportation, or disposal of Hazardous Substances in, on, at, to or from a site. The term "Hazardous Substances Discharge" shall mean any deposit, spill, discharge, or other release of Hazardous Substance that occurs during the term, at or from a site or that arises at any time from the BOARD or VILLAGE'S use or occupancy of a site.

Neither the BOARD nor VILLAGE shall cause or permit to occur: (a) any violation of any Environmental Law in a school site or park site or (b) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under, or about a site, or the transportation to or from a site of any Hazardous Substance.

Both Parties shall comply with all applicable Environmental Laws with respect to park sites and school sites. Both Parties shall make all submissions to, provide all information required by and otherwise fully comply with all requirements of any governmental authority arising under Environmental Laws with respect to a site during the term of this Agreement. Any previously conducted site assessment reports shall be provided by the Parties on all sites if available. Determination of responsibility shall be established by both Parties for all remediation of contaminants prior to the Parties effecting an agreement for site use. If any governmental authority requires any clean-up or clean-up measures because of any Hazardous Substances Discharge demonstrated to have been caused by either Party with respect to a site, then the responsible Party shall, at its own expense, prepare and submit the required plans and all related bonds and other financial assurances and shall carry out all such clean-up plans. The Parties shall promptly notify each other of any notices or communications received from any jurisdictional entity in relation to any environmental findings on a site, and shall promptly provide the other Party with all information reasonably requested by the other Party regarding its use, generation, storage, transportation or disposal of Hazardous Substances in or at a site.

The obligations and liability of the Parties under this paragraph shall survive the expiration or termination of this Agreement. Nothing in this Agreement is intended to operate as a waiver of either Party's sovereign immunity.

XXXIII.

TAXES AND REGULATORY COMPLIANCE

The VILLAGE shall be responsible for the collection and payment of any taxes, fees or other assessments, including but not limited to sales tax and ad valorem tax, all licenses, permits or other taxes, which may be imposed on the school site(s), as a result of the leasing, use, and occupancy of the school site(s) by the VILLAGE. If at any time during the term of this Agreement, there is a requirement by any jurisdictional entity for infrastructure improvements or other regulatory compliance due to the VILLAGE'S lease, use or occupancy of the school site(s), the VILLAGE acknowledges and agrees that it shall be responsible for compliance with all applicable requirements, including any upgrades, modifications or changes, at the VILLAGE'S sole cost and expense.

The BOARD shall be responsible for the collection and payment of any taxes, fees or other assessments, including but not limited to sales tax and ad valorem tax, all licenses, permits or other taxes, which may be imposed on the park site(s), as a result of the leasing, use, and occupancy of the park site(s) by the BOARD. If at any time during the term of this Agreement, there is a requirement by any jurisdictional entity for infrastructure improvements or other regulatory compliance due to the BOARD'S lease, use or occupancy of the park site(s), the BOARD acknowledges and agrees that it shall be responsible for compliance with all applicable requirements, including any upgrades, modifications or changes, at the BOARD'S sole cost and expense.

XXXIV.

USE OF FACILITY AS A REVENUE GENERATOR

The BOARD and VILLAGE shall retain the exclusive right to be the sole authorizer and recipient of revenue generators relating to their property, in compliance with their respective Policies, including, without limitation, third party advertising or installation of wireless telecommunications facilities, provided such endeavors do not unreasonably interfere with the other Party's right to peaceful enjoyment of the applicable park site or school site. Notwithstanding any provision contained in this Agreement, neither Party may allow or engage in any activity which may impact the respective Parties' immunity or exemption from the consequences of any tax whatsoever.

XXXV.

REPRESENTATIONS

The VILLAGE is duly organized, validly existing, and in good standing under the laws of the State of Florida and has full power to execute, deliver, and perform its obligations under this Agreement. The execution and delivery of this Agreement, and the performance by the VILLAGE of its obligations under this Agreement, have been duly authorized by all necessary actions of the VILLAGE, and do not contravene or conflict with any rules, regulations, policies or laws governing the VILLAGE, or any other agreement binding on the VILLAGE. The individual(s) executing this Agreement on behalf of the VILLAGE has/have full authority to do so.

The BOARD is duly organized, validly existing, and in good standing under the laws of the State of Florida has full power to execute, deliver, and perform its obligations under this Agreement. The execution and delivery of this Agreement, and the performance by the BOARD of its obligations under this Agreement, have been duly authorized by all necessary action of the BOARD, and do not contravene or conflict with any rules, regulations, policies or laws governing the BOARD, or any other agreement binding on the BOARD. The individual(s) executing this Agreement on behalf of the BOARD has/have full authority to do so.

XXXVI.

MISCELLANEOUS PROVISIONS

- A. **RECORDATION:** This Agreement may not be recorded by either Party.
- B. **EMINENT DOMAIN:** If any part of BOARD-owned or VILLAGE-owned property is taken in the exercise of the power of eminent domain, this Agreement shall terminate for that specific parcel on the date title vests in the taking authority. The Parties may pursue all available remedies for the taking but will have no interest in the award made to the property owner.
- C. **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

- D. TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this Agreement.
- E. WAIVER OF TRIAL BY JURY:** THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER WITH RESPECT TO ANY MATTER ARISING UNDER THIS AGREEMENT OR THE VILLAGE'S AND BOARD'S USE OR OCCUPATION OF THE SCHOOL SITES OR PARK SITES.
- F. BROKERS:** Subject to the limitations of Section 768.28, F.S., as same may be amended from time to time, the VILLAGE and BOARD represent that there are no brokers, salesmen or finders involved in the transaction contemplated by this Agreement. If any other claim for a brokerage fee or commission in connection with this transaction is made by any broker, salesman or finder claiming to have dealt by, through or on behalf of the VILLAGE or BOARD ("**Indemnitor**"), and in consideration of the mutual promises contained in this Agreement, Indemnitor shall indemnify and hold harmless the other Party ("**Indemnitee**"), and Indemnitee's officers, directors, agents and representatives, from and against any and all liabilities, damages, claims, fees and expenses whatsoever, except attorney's fees, court costs or costs of defense, with respect to said claim for brokerage. The provisions of this Paragraph shall survive the expiration or earlier termination or cancellation of this Agreement.
- G. PROMOTION:** Other than activities undertaken to promote the VILLAGE'S recreational programs at one or more school site, and activities undertaken to promote the BOARD'S recreational programs at one or more park site, the Parties shall not be permitted to use the property owner's site for promotion or advertising of any type or nature whatsoever.
- H. COUNTERPARTS:** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute but one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one Agreement.

- I. SOVEREIGN IMMUNITY:** No provision contained in this Agreement shall be deemed a waiver of either Party's sovereign immunity.
- J. JOINT USE COMMITTEE:** A Joint Use Committee, made up of the BOARD'S South Region Superintendent, or designee, and the VILLAGE'S Parks Director, or designee, shall be established as of the commencement date of this Agreement. The Joint Use Committee shall meet on an annual basis to coordinate and resolve any issues pertaining to the scheduling, use, operation, maintenance, and supervision of the school sites and park sites included under this Agreement.

XXXVII.

ENTIRE AGREEMENT

This Agreement and all Exhibits attached hereto constitute the entire agreement between the Parties and supersede all previous negotiations, and it may be modified only by an agreement in writing signed by the BOARD and the VILLAGE.

[INDIVIDUAL SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the BOARD and VILLAGE have caused this Agreement to be executed by their respective and duly authorized officers the day and year first written above.

WITNESSES AS TO THE BOARD:

Print Name: _____

Print Name: _____

TO THE BOARD: APPROVED AS TO RISK MANAGEMENT ISSUES:

Office of Risk and Benefits Management
Date: _____

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

By: _____

Alberto M. Carvalho
Superintendent of Schools

Date: _____

RECOMMENDED:

Jaime G. Torrens
Chief Facilities Officer
Date: _____

TO THE BOARD: APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

School Board Attorney
Date: _____

TO THE BOARD: APPROVED AS TO TREASURY MANAGEMENT ISSUES:

Office of Treasury Management
Date: _____

WITNESSES AS TO THE VILLAGE:

VILLAGE:
VILLAGE OF PALMETTO BAY

Print Name: _____

By: _____
Name: _____
Title: _____
Date: _____

Print Name: _____

ATTEST:

Village Clerk
Date: _____

**TO THE VILLAGE: APPROVED AS TO
FORM AND LEGAL SUFFICIENCY:**

By: _____
Village Attorney
Date: _____

EXHIBIT "A"

LIST OF SCHOOL SITES AND PARK SITES

Coral Reef Elementary School (7955 S.W. 152nd Street, Palmetto Bay, FL):

- The VILLAGE shall have use of the school hard courts, playfield, and parking lot, together with any improvements currently located or to be constructed thereon, all as more particularly described on Exhibit A-1 attached hereto and made a part hereof ("**Coral Reef Premises**"). The VILLAGE shall have use of the Coral Reef Premises Monday-Friday beginning at 6:00p.m. and ending at the VILLAGE'S designated closing time, and on weekends beginning at 8:00am and ending at the VILLAGE'S designated closing time ("**Village's Period of Use at Coral Reef**"). Further, as provided in Article III (E) of the Agreement, the VILLAGE shall control public access to the Coral Reef Premises during its period of use by opening and closing/locking gates as required, and shall remove all unauthorized vehicles from school parking facilities, resulting from the VILLAGE'S use of the Coral Reef Premises, prior to the BOARD'S next Period of Use.

- As a condition precedent to commencement of the VILLAGE'S use of the Coral Reef Premises, the VILLAGE shall:
 - install new chain link fencing at the school, a minimum of 6 feet in height, as substantially depicted in Exhibit "B-1" attached hereto and made a part hereof ("**Coral Reef Fencing Work**"). Effective with the Effective Date of this Agreement, the BOARD does hereby grant to the VILLAGE, the right and privilege to access the Coral Reef Premises, with full right of ingress thereto and egress therefrom, for the specific and limited purpose of conducting the Coral Reef Fencing Work. The VILLAGE acknowledges and agrees that all costs associated with the Coral Reef Fencing Work shall be borne by the VILLAGE at the VILLAGE'S sole cost and expense, including without limitation, all plan review and inspection fees, and all work shall be performed by the VILLAGE in compliance with the terms and conditions of the Agreement;

 - re-surface and re-stripe the existing school parking lot, at the VILLAGE'S sole cost and expense, and in compliance with all terms and conditions of this Agreement;

 - jointly fund the installation by the BOARD of security cameras on the exterior portions of Buildings 07, 13, 15 and 16 of the school, which face the Coral Reef Premises;

- The VILLAGE acknowledges and agrees that the VILLAGE may not commence its use of the Coral Reef Premises until such time as a Certificate of Occupancy, Certificate of Completion, or equivalent (“**CO**”) is issued by the BOARD’S Building department for the Coral Reef Fencing Work, which document shall be attached hereto and made a part hereof as **Exhibit “C-1”**, and the security camera installation work, as noted above, is completed;
- The VILLAGE shall be responsible for 50% of the cost to re-surface the school hard courts located within the Coral Reef Premises each time such hard courts are re-surfaced by the BOARD throughout the term of this Agreement. The BOARD shall notify the VILLAGE prior to commencing the hard courts re-surfacing work and the VILLAGE agrees to submit 50% of the cost of same to the BOARD within thirty (30) days of the BOARD’S request.
- The VILLAGE shall be permitted to construct a new parking lot on the east portion of the school campus at a location to be mutually determined by the BOARD and VILLAGE. The VILLAGE acknowledges and agrees that all costs associated with the construction of the new parking lot shall be borne by the VILLAGE, at the VILLAGE’S sole cost and expense, including without limitation, all plan review and inspection fees, and all work shall be performed by the VILLAGE in compliance with the terms and conditions of the Agreement. Subsequent to completion of construction, the school shall have use of the new parking lot during the Board’s Period of Use, and the VILLAGE shall have use of the new parking lot during the Village’s Period of Use at Coral Reef.
- Other than as specified above, the VILLAGE’S use of the Coral Reef Premises, maintenance responsibilities and all other terms and conditions shall be as set forth in the Agreement.

Howard Drive Elementary School (7750 SW 136 Street, Palmetto Bay, FL):

- The VILLAGE shall have use of the school basketball courts, playfield, and parking lot, together with any improvements currently located or to be constructed thereon, all as more particularly described on Exhibit A-2 attached hereto and made a part hereof (“**Howard Drive Premises**”). The VILLAGE shall have use of the Howard Drive Premises Monday-Friday beginning at 6:00p.m. and ending at the VILLAGE’S designated closing time, and on weekends beginning at 8:00am and ending at the VILLAGE’S designated closing time (“**Village’s Period of Use at Howard Drive**”). Further, as provided in Article III (E) of the Agreement, the VILLAGE shall control public access to the Howard Drive Premises during its period of use by opening and closing/locking gates as required, and shall remove all unauthorized vehicles from school parking facilities, resulting from the VILLAGE’S use of the Howard Drive Premises, prior to the BOARD’S next Period of Use.
- As a condition precedent to commencement of the VILLAGE’S use of the Howard

Drive Premises, the VILLAGE shall:

- install new chain link fencing at the school, a minimum of 6 feet in height, and a new school building access gate, as substantially depicted in **Exhibit “B-2”** attached hereto and made a part hereof (“**Howard Drive Fencing Work**”). Effective with the Effective Date of this Agreement, the BOARD does hereby grant to the VILLAGE, the right and privilege to access the Howard Drive Premises, with full right of ingress thereto and egress therefrom, for the specific and limited purpose of conducting the Howard Drive Fencing Work. The VILLAGE acknowledges and agrees that all costs associated with the Howard Drive Fencing Work shall be borne by the VILLAGE at the VILLAGE’S sole cost and expense, including without limitation, all plan review and inspection fees, and all work shall be performed by the VILLAGE in compliance with the terms and conditions of the Agreement;
- jointly fund the installation by the BOARD of security cameras on the exterior portions of Buildings 08, 09 and 10 of the school, which face the Howard Drive Premises;
- The VILLAGE acknowledges and agrees that the VILLAGE may not commence its use of the Howard Drive Premises until such time as a Certificate of Occupancy, Certificate of Completion, or equivalent (“**CO**”) is issued by the BOARD’S Building department for the Howard Drive Fencing Work, which document shall be attached hereto and made a part hereof as **Exhibit “C-2”**, and the security camera installation, as noted above, is completed;
- The VILLAGE shall be responsible for 50% of the cost to re-surface the school basketball courts located within the Howard Drive Premises each time such basketball courts are re-surfaced by the BOARD throughout the term of this Agreement. The BOARD shall notify the VILLAGE prior to commencing the basketball re-surfacing work and the VILLAGE agrees to submit 50% of the cost of same to the BOARD within thirty (30) days of the BOARD’S request.
- Other than as specified above, the VILLAGE’S use of the Howard Drive Premises, maintenance responsibilities and all other terms and conditions shall be as set forth in the Agreement.

Initials of authorized
Board Designee:

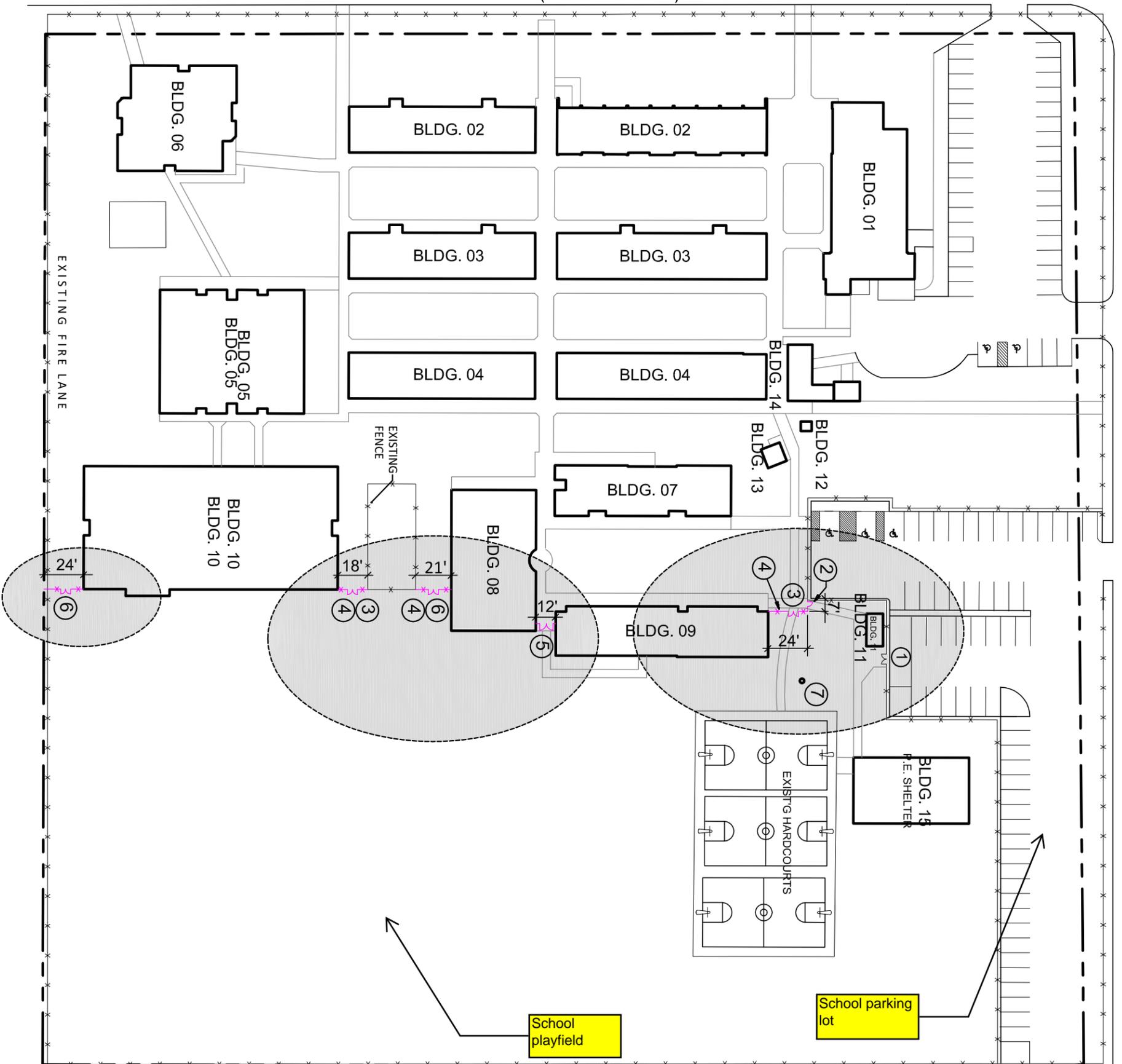
Initials of authorized
Village designee:

Date:

Date:

S.W. 77TH AVENUE (PALMETTO ROAD)

S.W. 136TH STREET (HOWARD DRIVE)



- ① EXIST'G GATE
- ② PROPOSED NEW 3'W GATE
- ③ PROPOSED NEW (2)-3'W GATES
- ④ PROPOSED NEW 6'H CHAIN LINK FENCE (CLF) UNDERSIDE OF FINISH CLG. TO MATCH EXIST'G GATE ON OPPOSITE SIDE AT WEST ENTRANCE (BLDG. 02)
- ⑤ PROPOSED NEW (2)-4'W GATES TO MATCH EXIST'G GATE ON OPPOSITE SIDE AT WEST ENTRANCE (BLDG. 02)
- ⑥ PROPOSED NEW (2)-6'W GATES AND 6'H CLF
- ⑦ EXIST'G FIRE HYDRANT

NOTE:
 1. ALL DIMENSIONS (SHOWN) ARE APPROXIMATE.
 2. EXISTING CONDITIONS SHALL BE FIELD VERIFIED PRIOR TO COMMENCEMENT OF WORK.
 3. ALL WORK SHALL BE IN COMPLIANCE WITH ALL APPLICABLE CODES, MDCPS DESIGN CRITERIA AND STANDARDS.

UPDATES
 Oct 27, 2014
 March 9, 2016
 July 12, 2016

MIAMI-DADE COUNTY PUBLIC SCHOOLS
 1450 N.E. 2ND AVENUE
 MIAMI, FLORIDA 33132

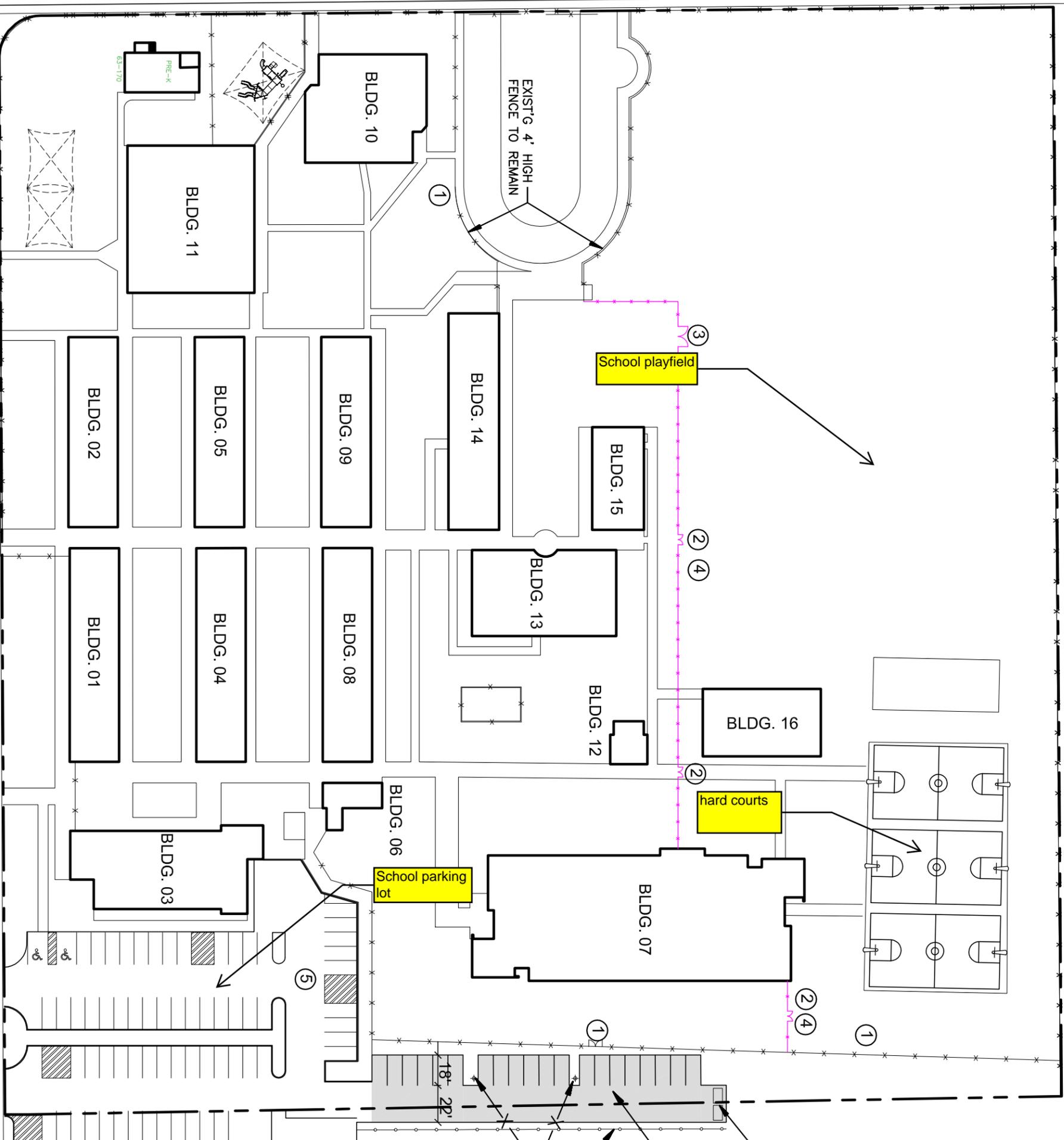
HOWARD DRIVE ELEMENTARY SCHOOL
 7750 S.W. 136TH STREET
 PALMETO BAY, FLORIDA 33156

FOR STUDY PURPOSES ONLY

SITE PLAN
 SCALE: n.t.s.



ADMIN. NO. 2541
 DOE/DEF. NO. 0085
 SHEET NO. 1 of 1



NOTE:

1. ALL DIMENSIONS (SHOWN) ARE APPROXIMATE.
2. EXISTING CONDITIONS SHALL BE FIELD VERIFIED PRIOR TO COMMENCEMENT OF WORK.
3. ALL WORK SHALL BE IN COMPLIANCE WITH ALL APPLICABLE CODES, MDCPS DESIGN CRITERIA AND STANDARDS.

- ① EXIST'G GATE AND FENCE
- ② PROPOSED NEW (2)-3'W GATES
- ③ PROPOSED NEW (2)-6'W GATE
- ④ PROPOSED NEW 6'H CHAIN LINK FENCE (CLF)
- ⑤ EXISTING PARKING LOT TO BE RE-SURFACED AND RE-STRIPED

PROPOSED LOCATION FOR DUMPSTERS

PROPOSED NEW PARKING FOR APPROX. 20 SPACES

EXISTING WOOD FENCE

EXISTING WOOD ELECT. POWER POLES

EXISTING CHAINLINK FENCE

NEW CHAINLINK FENCE (TO MATCH EXIST'G)

FOR STUDY PURPOSES ONLY

SITE PLAN

SCALE: n.t.s.

