

RESOLUTION NO. 03-87

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO PARKS AND RECREATION, APPROVING AND AUTHORIZING THE VILLAGE MANAGER TO EXECUTE A NON-EXCLUSIVE USE AGREEMENT AT CORAL REEF PARK WITH PALMETTO SENIOR HIGH SCHOOL FOR THE BOYS BASEBALL PROGRAM; PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the Palmetto Senior High School Boys Baseball Team does not have 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.

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

Section 1. The attached Non-Excusive Use Agreement Between the Palmetto Senior High School and the Village of Palmetto Bay is approved.

Section 2. This resolution shall take effect immediately upon enactment.

PASSED and ADOPTED this 7th day of October, 2003.

Attest: Meighan Pier
Meighan Pier
Village Clerk

Eugene P. Flinn, Jr.
Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:

Earl G. Gallop
Earl G. Gallop,
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>Yes</u>
Council Member Paul Neidhart	<u>Yes</u>
Council Member John Breder	<u>Yes</u>
Vice-Mayor Linda Robinson	<u>Yes</u>
Mayor Eugene P. Flinn, Jr.	<u>Yes</u>

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

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This non-exclusive use agreement (the "agreement") is entered into on this ____ day of _____, 2003, by and between the 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.

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 both 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

1 "Palmetto Senior High School Boys Baseball Team," which is the school's official baseball team
2 during baseball season. Baseball season is defined as and includes the following periods: (1)
3 Regular Season Practice and Games: January 15th – April 30th; and (2) Tournament (Practice Site
4 only, as needed): May 1st – May 30th.

5 2.2 The school will not charge spectators to attend games at the Park.

6 2.3 The school shall monitor its players, staff, spectators and visiting team's
7 players, staff and spectators to ensure compliance with all village, school, and park rules and
8 regulations. The school shall designate one person at each practice or game as the responsible
9 party for ensuring compliance with all applicable rules and regulations. The school is responsible
10 for the conduct of the entire group which includes spectators.

11 2.4 No alcoholic beverages are permitted in the park.

12 2.5 The school shall conduct its events in an orderly manner and so as not to
13 annoy, disturb, or be offensive to park patrons or residents in the vicinity of its operations. The
14 school shall control the conduct, demeanor and appearance of its officers, coaches, members,
15 employees, agents and representatives and demeanor and conduct of customers, spectators and
16 patrons, and upon objection of the village, the school shall immediately take all necessary steps to
17 correct the conduct which is the cause of the objection.

18 2.6 All use of Field 3 shall be in accordance with the schedule identified at
19 section 6, infra.

20 2.7 In no event may Field 3 be used for night practice or night games. The
21 school specifically agrees that it will not seek to use Field 3 for night practice of games. Nor shall
22 the school seek to have the village, the county or the School Board add field lights added to the
23 Park.

24 2.8 No voice or sound amplification of public address equipment will be
25 used unless prior approval in writing by the village.

1 3. Term of Use. This non-exclusive use agreement shall be for up to three
2 seasons and will expire not later than May 30, 2006.

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

- 6 • Practice Days from 3:00 pm – 6:00 pm;
- 7 • Weekday Game Days from 2:00 pm – 6:30 pm;
- 8 • Saturday Practice and Games from 8 am – noon;

9 5. Priority of Use and Non-Exclusive Use. Field 3 may be made available
10 by the village to any other users, at other times that are not scheduled for use by the school for
11 practice or games, without restriction. The village will review the calendar of proposed practice
12 and game events provided by the school prior to scheduling any third parties to use Field 3.
13 Subject to the school calendar, the village may authorize and schedule other events for third
14 persons for Field 3.

15 6. Scheduling.

16 6.1 At least one month prior to the start of baseball season the school shall
17 provide the village with a schedule for the proposed use of Field 3. The school and village shall
18 agree upon a mutually acceptable schedule for practices and games in compliance with section 2,
19 above. The school shall provide immediate written notice to the village of any change in the
20 proposed schedule.

21 6.2 Any special events or additional facility usage will require written approval
22 from the park manager.

23 7. Capital improvements.

24 7.1 The school, subject to the prior written approval by the village manager,
25 may make capital improvements to Field 3. A list of possible improvements is attached as exhibit

1 1. Both parties agree that any capital improvements will occur over the three year term of the
2 underlying agreement, as funding becomes available.

3 7.2 The costs of all the capital improvements initiated by the school are the
4 sole financial responsibility of the school.

5 7.3 The village will retain ownership of any and all permanent improvements
6 to Field 3, such as a new backstop, permanent dugouts, grass infield, etc.

7 7.4 The school shall retain ownership of any removable or temporary
8 improvements, such as a removable outfield fence, pitching machines, etc.

9 7.5 During the term of this non-exclusive use agreement, the school shall be
10 responsible for maintaining any capital improvements undertaken at Field 3.

11 7.6 All equipment, site improvements and signage installed by the school
12 shall be approved by the village prior to installation. The school shall not install, remove or
13 replace the equipment or furnishings without notification to, and prior approval by, the village.

14 7.7 The school agrees that any temporary fencing installed in the outfield
15 shall be see through and that netting beyond the outfield shall be installed as needed.

16 8. Maintenance.

17 8.1 The village shall be responsible for normal maintenance of Field 3, as are
18 performed throughout Coral Reef Park.

19 8.2 The school shall be responsible for general cleanup of Field 3 and the
20 parking lots used in conjunction with a practice or game. The school will clean the entire ball
21 field or facility area including the dugout, fence lines and spectator area after each day's use and
22 will place all trash in the village's trash receptacles.

23 8.3 The school shall take good care of Field 3, to ensure that upon the
24 expiration of this non-exclusive use agreement, or its termination in any manner, Field 3 is in not
25 worse condition than it was at the commencement of this non-exclusive use agreement.

1 8.4 The school shall pay the village \$300 per week for non-normal
2 maintenance specifically including dragging the infield and lining the field.

3 9. **Parking and Transportation.**

4 9.1 Participants, including staff, players, coaches, visiting teams and
5 spectators, shall be directed to use the northeast parking lot on 77th Avenue.

6 9.2 Under no circumstances shall anyone park in the residential areas
7 surrounding the park, specifically including the residential area immediately north of the park.

8 9.3 Visiting Teams shall use school buses to attend games.

9 9.4 For practice days, the school agrees to continue the practice of
10 caravanning to the practice site.

11 9.5 For game days, the school agrees that, should parking capacity at the
12 northeast lot become a concern, the team will travel to the park in a school bus.

13 9.6 The Palmetto Bay Police Unit will proactively enforce these provisions.

14 10. **Security.** The school shall be responsible for providing appropriate levels of
15 security to include the use of administrative and athletic personnel, non-sworn security staff and
16 sworn School Board Officers. The village reserves the right to require additional security, if
17 needed. The expense of additional security, such as off-duty Police Officers, will be the
18 responsibility of the school.

19 11. **Miscellaneous.** This non-exclusive use agreement may be terminated
20 immediately, without recourse to their party, should the Miami-Dade County School Board
21 change the attendance boundaries of Palmetto High School which results in the removal of any
22 area consisting of Palmetto Bay residents currently within the attendance boundaries as of August
23 30, 2003.

24 12. **Signs.** Any signage, temporary or permanent, shall be pre-approved by the
25 village.

1 13. Indemnification and Sovereign Immunity. To the extent permitted by law and
2 as limited by section 768.28, Florida Statutes, school shall defend, indemnify and hold harmless
3 the village and its officers, employees, or agents from any and all liability, losses or damages,
4 including attorneys' fees and costs of defense, which the village or its officers, employees, or
5 agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any
6 kind or nature arising out of, relating to, or resulting from the negligent performance of this
7 agreement by school, its employees, officers, students and agents. The village shall promptly
8 notify school of each claim, cooperate with school in the defense and resolution of each claim and
9 not settle or otherwise dispose of the claim without school's participation.

10 13.1 The indemnification provisions of this agreement shall survive
11 termination of this agreement for any claims that may be filed after the termination date of the
12 agreement provided the claims are based upon actions that occurred during the performance of
13 this agreement.

14 14. Insurance. The school shall keep in full force and effect at all times during this
15 agreement provide for the protection and indemnification of the village and school with respect to
16 any and all claims for bodily injury/property damage and automobile liability of \$1,000,000
17 combined single limit. Every insurance policy shall contain a provision whereby every company
18 executing the policy shall obligate itself to notify the village, in writing, at least 30 days prior to
19 the effective date of cancellation of the policy, except for non-payment of premium, which will
20 provide for 10 days prior notice.

21 14.1 Each insurance policy shall be subject to reasonable acceptance and
22 approval of the village attorney. Any primary insurance policy must be issued by an insurance
23 company having a policy holder's surplus at least five times the amount the coverage of the
24 policy, and the insurance company must have a rating of BB or better in A.M. Best Company's
25 Insurance Guide of BB or from another rating agency reasonably acceptable to the school and

1 village attorney. Any excess policy used must be issued by underwriters reasonably acceptable to
2 the village attorney.

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

6 School: Janet Hupp
7 Palmetto Senior High School
8 7460 SW 188th Street
9 Pinecrest, Florida 33156
10

11
12 Village: Charles D. Scurr, Village Manager
13 Village of Palmetto Bay
14 8950 SW 152nd Street
15 Palmetto Bay, FL 33157
16

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

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

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

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

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

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

6 **Signature Page to follow:**

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Village of Palmetto Bay

Palmetto Senior High School

By: _____
Charles D. Scurr,
Village Manager

By: _____
Name: _____
Title: _____

ATTEST:

VILLAGE CLERK

By: _____
Meighan J. Pier

Approved as to form:

By: Earl G. Gallop
Earl G. Gallop, Village Attorney

Attachment A
Potential Capital Improvements

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- Reconfiguration and reconstruction of the infield to include installation of a grass infield
- Reconfiguration of the sprinkler system
- Installation of new home plate, base anchors, and pitching mound
- Installation of one bullpen area
- Installation of new backstop, wing extension backstop reconstruction, dugouts
- Bleacher pads, benches, foul ball posts and netting
- Outfield portable fence panels and netting
- Spectator bleachers