VILLAGE OF KEY BISCAYNE

Office of the Village Manager

MEMORANDUM

*Village Council*
Franklin H. Caplan, *Mayor*
Mayra P. Lindsay, *Vice Mayor*
Michael W. Davey
Theodore J. Holloway
Michael E. Kelly
Ed London
James S. Taintor

*Village Manager*
John C. Gilbert

DATE: September 3, 2013

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

RE: Joint Use Agreement- MAST Academy Fields

## RECOMMENDATION

It is recommended that the Village Council approve the attached Resolution authorizing the Village Manager to execute the Joint Use Agreement in substantially the form attached subject to the approval as to form, content, and legal sufficiency by the Village Attorney.

## BACKGROUND

The Interlocal Agreement of July 3, 2012 between the Village of Key Biscayne and the School Board of Miami-Dade County, established a funding and cost sharing collaboration to build an educational facility and recreational field at MAST Academy.

The construction of the recreational field is completed and is awaiting the certificate of occupancy. The Village Staff and Village Attorney have been working with Representatives from the School Board to draft the Joint Use Agreement as per the Interlocal Agreement. The Village Staff and Village Attorney's final comments have been incorporated into the Joint Use Agreement as attached, as Exhibit "A".

The School Board is reviewing the Joint Use Agreement language with their different divisions to ensure the form and content is acceptable.

The Village of Key Biscayne is scheduled to begin programing at the MAST field on September 4, 2013. Approval of the Agreement by the Village Council will permit the Village to begin use of the MAST fields as soon as the School Board completes its final review and approves the Agreement.

**RESOLUTION NO. 2013-**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING A JOINT USE AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED AS EXHIBIT "A," WITH THE SCHOOL BOARD OF MIAMI-DADE COUNTY FOR THE MARITIME SCIENCE AND TECHNOLOGY ACADEMY (MAST) PROPERTY LOCATED AT 3979 RICKENBACKER CAUSEWAY; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** the Village of Key Biscayne (the "Village") and the School Board of Miami-Dade County (the "School Board") entered into an Interlocal Agreement, dated July 3, 2012, establishing a funding and cost-sharing collaboration to build a grade 6-12 educational facility and recreational fields at the Maritime Science and Technology (MAST) Academy campus located at 3979 Rickenbacker Causeway, and to undertake physical improvements at the Key Biscayne K-8 Center (the "Interlocal Agreement"); and

**WHEREAS**, pursuant to the Interlocal Agreement, the parties agreed to enter into a joint use agreement for the shared use, maintenance and operation of the recreational fields to be constructed by the Board on the MAST Academy campus; and

**WHEREAS**, as such, the Village Council desires to enter into the joint use agreement in substantially the form attached as Exhibit "A" (the "Joint Use Agreement"); and

**WHEREAS,** the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:**

**Section 1.** **Recitals Adopted.** Each of the above stated recitals are hereby adopted, confirmed and incorporated herein.

**Section 2.** **Agreement Approved.** The Village Council hereby approves the Joint Use Agreement with the School Board in substantially the form attached as Exhibit "A."

**Section 3.** **Village Manager Authorized.** The Village Manager is hereby authorized to execute the Joint Use Agreement in substantially the form attached as Exhibit "A" subject to approval as to form, content, and legal sufficiency by the Village Attorney.

**Section 4.** **Implementation.** The Village Manager is hereby authorized to take any and all necessary action to implement the purposes of this Resolution.

**Section 5.** **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this ____ day of ____, 2013.

_____
MAYOR FRANKLIN H. CAPLAN

ATTEST:

_____
CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
VILLAGE ATTORNEY

# JOINT USE AGREEMENT

This Joint Use Agreement ("Agreement") is entered into on _____, 2013 by the **VILLAGE OF KEY BISCAYNE,** a municipal corporation ("**Village**" or "**Key Biscayne**") and THE **SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA**, a body corporate and politic existing under the laws of the State of Florida ("**Board**"). The Village and Board are sometimes referred to in this Agreement individually as "**Party**" and collectively as the "**Parties**."

## RECITALS

The Board is the owner of a parcel of real property located at 3979 Rickenbacker Causeway, Miami-Dade County, Florida with Folio Number 30-4217-000-0100 (the "**Site**") upon which is located the Board-owned Maritime Science and Technology Academy ("**MAST Academy**"), a public high school operated by the Board.

The Board and the Village have entered into an Interlocal Agreement dated July 16, 2012, and a First Amendment to Interlocal Agreement dated July 2, 2013 (collectively, "**Interlocal Agreement**" or "**ILA**"), to establish a funding and cost-sharing collaboration to build a grade 6-12 educational facility (**"Grade 6-12 Educational Facility")** and recreational fields at the MAST Academy campus, and to undertake physical improvements at the Key Biscayne K-8 Center. Sections 3.B and 8 of the ILA provide for the Village and Board to enter into a Joint Use Agreement for the shared use, maintenance and operation of the recreational fields to be constructed by the Board.

The Board and Village are entering into this Agreement as required by the ILA.

## AGREEMENT

In consideration of the mutual covenants and agreements set forth in the ILA and this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. **Defined Terms**.

1.1. **Agreement**. This Agreement, together with all exhibits, amendments and modifications hereto.

1.2. **Applicable Law.** All municipal, state and federal laws, statutes, ordinances, rules, and regulations applicable to a specified use or action, including, without limitation, Board Policies, the Florida Building Code, the Americans with Disabilities Act and the Jessica Lunsford Act, as they all may be amended from time to time..

1.3. **Board**. The School Board of Miami-Dade County, Florida.

1.4. **Board Calendar**. The Miami-Dade County Public Schools calendar for Elementary and Secondary Schools as adopted on an annual basis by the Board.

1.5. **Board Event**. As defined in **Section 7.**

1.6. **Board Representative.** The Principal of MAST Academy or another individual designated by the Board to represent the Board as required by this Agreement.

1.7. **Business Day**. Any day that the administrative offices of the Village are open for business.

1.8. **CO**. A certificate of occupancy or equivalent approval from the responsible governmental agency to allow occupancy and use of the Facilities, or any portion thereof.

1.1. **Commencement Date**. The later of (i) the Effective Date, or (ii) September 1, 2013.

1.2. **Concession Building**. The building to be constructed by the Board on the Site containing a Concession Stand, Storage Room, and bathrooms, as set forth in the ILA.

1.3. **Concession Stand**. The portion of the Concession Building designated for the preparation and sale of refreshments and other items, together with the covered area to be located adjacent to the Concession Stand.

1.4. **Day**. A calendar day, unless otherwise provided.

1.5. **Default**. As defined in **Section 23.**

1.6. **Defaulting Party.** As defined in **Section 23.**

1.7. **Effective Date**. The date that this Agreement is fully executed by all Parties to this Agreement.

1.8. **Environmental Law.** As defined in **Section 20.**

1.9. **Facilities**. Collectively, the Phase 1 and Phase 2 Improvements and the Green Space, if any, surrounding them.

1.10. **Grade 6-12 Educational Facility.** A building to be constructed on the Site to house a school consisting of grades 6 through 12.

1.11. **Green Space**. Any landscaped or grassed areas surrounding the Playing Fields, Concession Building, and Parking Areas which are not designated for athletic use.

1.12. **Hazardous Materials.** As defined in **Section 20.**

1.13. **ILA**. Collectively, the Interlocal Agreement between the Village and the Board dated July 16, 2012; a First Amendment to Interlocal Agreement dated July 2, 2013; and any subsequent amendments adopted by the Parties.

1.14. **Lighting**. The field lights which have been purchased and installed on the Site by the Board for use by the Parties

1.15. **Maintenance**. Collectively, the maintenance, repair and replacement of any of the Facilities on the Site.

1.16. **Non-Defaulting Party.** As defined in **Section 23.**

1.17. **Non-School Day**. Any day that is not a School Day. Non-School Days include Teacher Work Days and days when school is cancelled because of weather or other events.

1.18. **Non-School Hours.** The hours of 5:30 p.m. through 11:00 p.m. on School Days, and the hours of 8:00 a.m. through 11:00 p.m. on Non-School Days.

1.19. **Parties.** Collectively, the parties to this Agreement.

1.20. **Party**. Either party to this Agreement.

1.21. **Permanent Parking Areas**. The parking areas shown on the Site Plan.

1.22. **Phase 1 Improvements**. The Playing Fields, Lighting, Scoreboard, dugout shelter, portable bleachers, benches, outdoor water fountains, fencing, signage, landscaping, and temporary parking facilities.

1.23. **Phase 2 Improvements**. The Concession Building, expansion of the Playing Fields, Permanent Parking Areas, and a lightning detector system.

1.24. **Playing Fields.** All fields now or hereafter developed within the Site and designated for use for soccer, baseball, field hickey, football, lacrosse, or any other field sport.

1.25. **Project**. The construction or installation (as applicable) by the Board of the Improvements, the Grade 6-12 Educational Facility at the MAST Academy Campus, and renovations at the existing Key Biscayne K-8 facility, as contemplated by the ILA.

1.26. **School Day.** Any day that the public schools of Miami-Dade County are in session for attendance by students.

1.27. **School Hours.** The hours of 8:00 a.m. to 5:30 p.m. Monday through Friday.

1.28. **School Buildings**. The classroom buildings existing or to be constructed on the Site for use as Schools.

1.29. **Schools.** Collectively**,** MAST Academy and any other public schools which now or hereafter operate on the Site.

1.30. **Scoreboard.** An electronic scoreboard with two separate remote control devices for use of the Scoreboard.

1.31. **Site**. The real property located at 3979 Rickenbacker Causeway, Miami-Dade County, Florida with Folio Number 30-4217-000-0100.

1.32. **Site Plan.** The Architectural Site Plan for the Site prepared by C3TS, Job Number 00409-053 dated February 21, 2013, together with the Current Project Site Plan and the Future Expansion Site Plant, and all subsequent revisions approved by the Board and the Village. A copy of the Site Plan (3 pages) is attached as **Exhibit A** to this Agreement. **[Board has not confirmed that the Site Plan is final, or that this is the correct Site Plan.]**

1.33. **Storage Room**. The room in the Concession Building containing two separate secured areas designated for storage of equipment and materials.

1.34. **Teacher Work Days.** Days designated as Teacher Work Days on the Board Calendar.

1.35. **Temporary Restrooms.** As defined in **Section 10.**

1.36. **Transitional Toilets.** The existing temporary restroom facilities located within the Board's portable units at the Site bearing FISH Numbers 502 and 504, consisting of one female single unit restroom and one male single unit restroom.

1.37. **Village Event.** As defined in **Section 7.**

1.38. **Village Representative.** The Village Manager or another individual designated by the Village to represent the Village as required by this Agreement.

2. **Term of Agreement**. The initial term of this Agreement will be 30 years, beginning on the Effective Date, and will automatically renew for two additional terms of 10 years each unless the Village elects not to renew by sending written notice to the Board not less than 60 days prior to the end of the initial term or the renewal term then in effect.

2.1. **Cancellation by Board**. Subject to the applicable provisions of this Agreement, the Board may cancel this Agreement at any time during the initial term or any renewal thereof, if and only if the Village is in Default of any of the terms and conditions of this Agreement and the Default is not cured within the applicable time frame, as provided for in **Section 23** of the Agreement.

2.2. **Cancellation by Village.** The Village shall have the right to cancel this Agreement without cause or penalty by giving the Board written notice at least one (1) year prior to the effective date of said cancellation.

3. **Ownership of Site**. The Board will continue to be the owner of the Site at all times during the term of the Agreement. References in the Agreement to the Site will mean the larger parcel of land upon which the Schools and the Improvements are located.

4. **Applicable Law.** The performance by each Party of its duties and obligations under this Agreement, and the construction, use and operation of all Facilities described in this Agreement, shall comply in all respects with Applicable Law.

5. **Construction of Facilities**. Pursuant to the ILA, the Board has agreed to construct the Facilities as part of the Project. The Parties acknowledge and agree that the Facilities shall be completed in two phases, the Phase 1 Improvements and the Phase 2 Improvements. The Phase 1 Improvements have been completed prior to the Effective Date. The Phase 2 Improvements will not be completed until after the Grade 6-12 Educational Facility is completed and ready for occupancy.

5.1. **Village Input on Phase 2 Improvements**. Because the Phase 2 Improvements have not yet been constructed or purchased, the Board agrees to provide the Village with an opportunity to review and comment upon proposed plans, specifications, renderings, purchase orders, and other documentation prior to finalization of the Phase 2 Improvements. The Board agrees to provide to the Village Representative copies of all such documentation on a continuing basis and to include the Village Representative in all decisions and on all selection committees pertaining to the Phase 2 Improvements.

5.2. **Additional Improvements or Alterations**. Subsequent to completion of the Facilities, the Board may make additional improvements or alterations to the portion of the Site jointly used by the Parties, subject to the prior written approval of the Village, which approval shall not be unreasonably withheld. Prior to initiating any additional improvements, the Parties shall first assign responsibility for maintenance, utility charges, damage and destruction, and this Agreement shall be modified, if necessary, to reflect these responsibilities for the proposed additional improvements.

6. **Use of Facilities During Construction.**

6.1. **Completed Facilities**. The Parties acknowledge and agree that the Board will construct the Facilities in two phases over a period of time as more particularly set forth in the ILA and **Section 4** of this Agreement, and that the Parties may use only those Facilities that have been completed and for which a CO has been issued.

6.2. **Use During Construction**. The Village acknowledges that there will be ongoing construction within the Site until all phases of construction at the Site are complete. To the extent that there are ongoing construction activities at the Site after portions of the Facilities are completed and available for use, the Board agrees to implement all necessary safety procedures and precautions and secure all construction areas by appropriate construction fencing to assure the safety of students, staff, visitors, invitees and the public at all times during construction. The Village agrees to maintain all such safety procedures and precautions in place during Non-School Hours, and shall supervise the use of the Facilities, the Transitional Toilets, and the Temporary Restrooms to assure the safety of the community during Non-School Hours.

6.3. **Status of Playing Fields Prior to Completion of Phase 2.** The Parties acknowledge that the Playing Fields existing after the completion of the Phase 1 Improvements will not be regulation size fields for certain high school sports. It is anticipated that upon completion of the Phase 2 Improvements, including the expansion of the Playing Fields, the Playing Fields will meet the requirements for certain high school sports.

7. **Days and Hours of Use.**

7.1. **Use During School Hours**. During School Hours, the Board will have the exclusive right to use the Facilities, in accordance with Board rules and regulations then in effect. If the Village wishes to use the Facilities during School Hours for a Village Event, the Village must request said use through the Board Representative either by telephone, email, or other communication with a minimum of seventy-two (72) hours of advance notice. The Board's approval of such requests shall not be unreasonably withheld, as long as the Village's requested use does not conflict with the Board's operations or previously scheduled activities at the Facilities.

7.2. **Use During Non-School Hours**. During Non-School Hours, the Village will have the exclusive right to use the Facilities and to allow the Facilities to be used by the general public in accordance with Village rules and regulations applicable to Village parks, subject to this Agreement. If the Board wishes to use the Facilities during Non-School Hours for a Board Event, the Board must request said use through the Village Representative either by telephone, email, or other communication with a minimum of seventy-two (72) hours of advance notice. The Village's approval of such requests shall not be unreasonably withheld, as long as the Board's requested use does not conflict with the Village's operations or previously scheduled activities at the Facilities

7.3. **Prompt Access by the Village**. The Board acknowledges that the Village intends to use the Facilities for scheduled athletic events and other activities that must start on time. The Board agrees that the Facilities will be available for use by the Village immediately after School Hours have ended. The Board will be responsible for making sure that Board employees and students have vacated all Facilities promptly at the end of School Hours on all School Days.

7.4. **Prompt Access by the Board**. The Village acknowledges that the Board requires use of the Facilities for students each School Day beginning at 7:00 am. The Village will be responsible for making sure that the Facilities are vacated promptly at the end of Non-School Hours (i.e., 11:00 p.m.) every night, but shall not be responsible for Board access the next School Day.

7.5. **Teacher Workdays.** Teacher Workdays are Non-School Days when teachers and administrators are required to be in school. The Board and Village agree that the Village will be entitled to use the Facilities in accordance with this Agreement on Teacher Workdays, subject to the right of teachers and other Board employees to use the temporary or Permanent Parking Areas during the Teacher Workdays.

8. **Use of Facilities Generally.**

8.1. **Use During School Hours.** During School Hours, the Board will have the right to use the Facilities for all purposes permitted by Applicable Law. The Board will have the right to contract with third parties who wish to use the Facilities during School Hours for school events, private events or for events open to the public with or without payment of an entrance or access fee. Any contracts or use agreements between the Board and third parties will comply with Applicable Law. The Board shall be entitled to all fees which it may charge for use of the Facilities by third parties during School Hours.

8.2. **Use During Non-School Hours.** During Non-School Hours, the Village will have the right to use the Facilities for all purposes permitted by Applicable Law, and to make the Facilities available for use by the general public. The Village shall provide proper supervision of the Facilities and keep the Facilities safe and secure during Non-School Hours.

8.3. **Use by Third Parties During Non-School Hours.** The Village will have the right to contract with third parties who wish to use the Facilities during Non-School Hours for private events or for events open to the public with or without payment of an entrance or access fee. Any contracts or use agreements between the Village and third parties will comply with Applicable Law. If the Village allows the Facilities to be used by third parties during Non-School Hours, the Village will be responsible for all maintenance, clean-up, risk management and supervision of the Facilities as if the Village itself were utilizing the Facilities. The Village shall require any third party user to provide liability insurance, naming both the Village and the Board as additional insureds, in accordance with applicable Board rules and regulations. The Village shall provide the Board with a copy of the third party user's certificate of insurance prior to the third party's use of the Facilities. The Village will be entitled to all fees which it may charge for use of the Facilities by third parties during Non-School Hours. **[The Agreement is subject to review by the Board Treasurer; Board may require a "safe harbor" provision that the use of the Facilities by third parties does not affect the tax-exempt status of the Site.]**

8.4. **Limitations on Use.** Neither the Board nor the Village will permit any activities on the Site that might have the potential to damage or to cause extraordinary wear on any portion of the Facilities. In particular, the parties acknowledge that the field turf to be placed on the Playing Fields has a weight bearing limit, and that any vehicle or equipment exceeding the weight limit may damage the field turf. Therefore, no structures, vehicles (including helicopters), or other equipment will be permitted on the Playing Fields unless such vehicles are approved by the field turf manufacturer for use on the field turf surface.

8.5. **Field Striping**. The Village will have the right to stripe the Playing Fields with non-permanent paint or other materials as necessary.

8.6. **Prohibited Uses**. The following uses are prohibited on the Site during Non-School Hours:

8.6.1. Sale, distribution, or use of alcohol and tobacco products;

8.6.2. Carnivals, fairs, exhibits, mechanical rides, midways, inflatables (such as slides and bounce houses), rock walls, and similar kinds of activities;

8.6.3. Storage of construction or maintenance materials or equipment, except as specifically permitted by this Agreement;

8.6.4. Storage or long-term parking of vehicles, except as specifically permitted by this Agreement.

9. **Parking Areas.**

9.1. **Temporary Parking.** Prior to completion of the Phase 2 Improvements, the Parties shall use the temporary parking spaces shown on the Site Plan (Current Project Site Plan) during their respective periods of use.

9.2. **Permanent Parking Area.** Upon issuance of a CO for the Phase 2 Improvements, the Parties shall use the parking spaces in the Permanent Parking Area shown on the Site Plan (Future Expansion Site Plan) during their respective periods of use.

9.3. **Parking Issues.** Each Party will be responsible for insuring that no cars or other vehicles are parked anywhere other than in designated parking spaces during their respective periods of use.

9.4. **Maintenance of Parking Areas**. The temporary and Permanent Parking Areas shall be maintained by the Village as set forth in the Maintenance section of this Agreement.

10. **Restroom Facilities**

10.1. **Transitional Toilets**. Village and Board acknowledge that it is essential that there be restrooms available for use by the public during Non-School Hours. Restrooms will be included in the Concession Building to be constructed by the Board in accordance with the ILA, but the Concession Building is not scheduled to be constructed until after the Grade 6-12 Educational Facility is available for occupancy. The Parties agree that subsequent to completion of Phase 1 Improvements, and in order to provide the Village with temporary restroom facilities until construction of the Phase 2 Improvements commences, the Village shall have use of the Transitional Toilets. The Board shall leave the Transitional Toilets in good, safe and clean condition at the end of School Hours on School Days. The Village shall be responsible for providing custodial and janitorial services and supplies to the Transitional Toilets during Non-School Hours; for performing all maintenance, repair and upkeep of the Transitional Toilets required during Non-School Hours; and for maintaining the Transitional Toilets in a good, safe, and clean condition during Non-School Hours.

10.2. **Removal of Board Portable Units**. Prior to the commencement of construction of the Phase 2 Improvements, the Board shall remove from the Site all of its portable

units, including the portable unit housing the Transitional Toilets. The Board shall determine the schedule for removal of the portable units in its sole discretion.

10.3. **Village Installation of Temporary Restrooms**. Concurrently with the removal of the Transitional Toilets by the Board, the Village shall, at the Village's sole cost and expense, install Temporary Restrooms sufficient to meet the Village's needs, in a location to be mutually agreed upon by the Parties. The Village shall be responsible for all costs and expenses related to the Temporary Restrooms, including, without limitation, installation, servicing and removal fees. The Village shall be responsible for providing custodial and janitorial services and supplies to the Temporary Restrooms; for performing all maintenance, repair and upkeep of the Temporary Restrooms required during Non-School Hours; and for maintaining the Temporary Restrooms in a good, safe, and clean condition. The Temporary Restrooms shall be solely for the use of the Village during Non-School Hours. The Temporary Restrooms will be kept locked during School Hours, and will only be available for use by the Village during Non-School Hours.

10.4. **Removal of Temporary Restrooms.** The Parties agree that at such time as a CO is issued for the Phase 2 Improvements, including the restrooms located within the Concession Building, the Village shall, at its sole cost and expense, cause the Temporary Restrooms to be removed from the Site, and shall restore the area where the Temporary Restrooms were located to the same or better condition as existed prior to installation of same.

11. **Lighting.** The Board has previously installed Lighting for the Athletic Fields. The Lighting has been installed for the exclusive use of the Village, as it will be daylight during School Hours. The Board will have the right to use the Lighting during Board Events provided that the Board reimburses the Village for the cost of electricity consumed during the Board Events, as set forth below.

11.1. **Meters.** The Parties agree that the Lighting will be separately metered, and that the Village will be responsible for all Lighting utility charges except for those charges incurred by the Board for Board Events.

11.2. **Board Use of Lighting.** If the Board desires to use the Lighting during a Board Event, the Board will be required to reimburse the Village for a portion of the Village's Lighting utility charges, calculated by dividing the utility charge for the month in question by the number of hours the Lighting is in use that month, and multiplying the hourly utility charge by the number of hours of the Board Event. Board agrees to pay its share of any Lighting utility charge to Village within 30 days after receipt from the Village of an invoice and back-up information for the utility charge.

12. **Use of Concession Building.**

12.1. **Concession Stand.** The Concession Stand in the Concession Building will include the following equipment: sink, refrigerator, counter space, and cabinets with locks. Both the Board and the Village will be provided with separate secure space in the Concession Stand that can be secured with a lock and key. Each Party will be required to leave the Concession Stand in clean condition on a daily basis at the end of their hours of use, and to secure all personal property in their respective secured space. The Parties acknowledge and agree that no cooking shall be permitted in the Concession Stand or in the Concession Building which violates any Applicable Law, including the Florida Building Code and the National Fire Prevention Code. The Parties agree, however, that cooking activities using small plug-in

appliances (such as popcorn makers, crockpots, hot dog makers, blenders, and the like) will be permitted as long as such activities do not create a hazardous condition or generate waste that cannot be handled by the existing trash receptacles.

12.2. **Storage Room**. The Storage Room in the Concession Building may be used by the Board and the Village for the storage of athletic equipment, Concession Stand supplies, and other equipment and materials which may be required by the Board or the Village in connection with their respective uses of the Facilities. Each Party will be allocated separate secure space in the Storage Room of the Concession Building that can be secured with a lock and key. Neither Party may store any items in the Storage Room which are flammable, poisonous, or inherently dangerous or which violate any Applicable Law.

12.3. **Storage of Athletic Equipment**. The Parties acknowledge that each of them will have large pieces of athletic equipment, such as goal posts, soccer and lacrosse goals, home plate cages, and the like, which items cannot be stored in the Storage Room. The Parties, through their respective Representatives, will agree on a location at the Site to store and secure their athletic equipment during their respective periods of non-use. The Board shall be responsible for removing its athletic equipment from the Playing Fields and securing such equipment in the agreed-upon location at the end of School Hours each Day, and the Village shall be responsible for removing its athletic equipment from the Playing Fields and securing such equipment in the agreed-upon location at the end of Non-School Hours each Day.

13. **Maintenance of Facilities.**

13.1. **Maintenance in General.** The Village will be responsible for the Maintenance of all Facilities. Village agrees to maintain the Facilities to keep them in good, clean, safe condition, and in compliance with Applicable Law. Maintenance of the Facilities includes Maintenance of the following:

13.1.1. the artificial field turf to be used for the Playing Fields and any permanent inlaid field striping;

13.1.2. all trees, grass and other landscaping located within the Facilities;

13.1.3. the irrigation system installed within the Facilities;

13.1.4. the fences and gates surrounding the perimeter of the Facilities or located within the Facilities;

13.1.5. all other Phase 1 and Phase 2 Improvements.

13.2. **Items Excluded from Village Maintenance Responsibility**. The Village is not responsible for Maintenance of any School Buildings, portable classrooms, or of any items not specifically included in the Village's Maintenance responsibilities.

13.3. **Maintenance Costs to be Shared.** The Board will be responsible for 50% of all Maintenance costs incurred by the Village, other than the cost of Maintenance of the Lighting, which will be paid by the Village alone. The Village will provide to the Board on a quarterly basis an invoice and any supporting documentation reasonably requested by the Board, showing the Village's actual Maintenance costs during the preceding three-month period. The

Board will be required to pay the invoice within 60 days after receipt of the invoice and the back-up information.

13.4. **Scoreboard Maintenance.** If the Board wishes to use the Scoreboard on an occasional basis, the Board will be responsible for a prorated portion of the Scoreboard Maintenance costs, based on the frequency of its usage. If the Board chooses not to use the Scoreboard at all, it shall have no responsibility for any Scoreboard Maintenance costs.

13.5. **Trash Removal and Janitorial Services.** Although the Village will be responsible for the Maintenance of the Facilities as described in the preceding sections, both the Board and the Village will be responsible for the prompt pick-up and removal of trash and litter generated during each Party's respective period of use, and for custodial or janitorial services and supplies to the Concession Building. The Board and the Village acknowledge and agree that each Party must leave the Facilities in clean and functional condition at the end of their respective periods of use on a daily basis.

13.6. **Maintenance Schedule.** The Village may perform the required Maintenance at any time, subject to the provisions of Applicable Law. If Village wishes to perform Maintenance during School Hours, Village will first confirm with the Board Representative that its Maintenance activities will not interfere with any scheduled activities taking place on the Site.

13.7. **Maintenance Workers.** The Village acknowledges and agrees that if the Village desires to perform Maintenance on the Site during School Hours, any personnel employed by the Village or by a third-party contractor retained by the Village to perform the Maintenance must be pre-approved by the Board and must comply with all provisions of Applicable Law, including, without limitation, the Jessica Lunsford Act.

13.8. **Pesticides and Herbicides**. Prior to using any herbicide or pesticide on the Site, the Village will submit to the Board Representative for approval the specifications and environmental information for the specific products to be used.

13.9. **Capital Repairs and Replacements**. On a periodic basis, the Village will provide the Board with a budget for any capital repairs, replacements or upgrades which Village believes are necessary to keep the Facilities in good working order. The Board will review the budget and provide its written approval (or denial with an explanation) within 60 days after its receipt of the budget from Village. In the event the Board concurs with the nature and cost for the proposed work, the Board will reimburse the Village for its agreed upon amount after the work is completed, and upon receipt by the Board of an invoice and all reasonably required back-up information.

13.10. **Storage of Maintenance Equipment.** The Village will be permitted to store certain Maintenance equipment on the Site, as long as the equipment is stored in a safe manner. And in compliance with Applicable Law. In particular, the Parties acknowledge that the Village will be purchasing an "agitator" to maintain the field turf to be installed on the Playing Fields, and that the agitator will need to be kept on Site during the term of this Agreement.

13.11. **Required Inspections for Educational Facilities.** The Board will be responsible for performing and paying for all inspections required by the State of Florida for educational facilities, including, without limitation, a required inspection of the bleachers. All required inspections must be performed during School Hours.

14. **Utilities. [Board is seeking clarification on their end regarding billing of utilities, reading meters, and related issues.]**

14.1. **Water and Sewer.** The cost of water and sewer services used by the Facilities will be shared equally by the Board and the Village. The Concession Building and any other Facilities which use water and sewer will be on a water and sewer meter separate from all other School Buildings and facilities. Water and sewer bills will be sent to the Board for payment, and the Board will send the Village an invoice for 50% of the water and sewer charges with appropriate backup on a quarterly basis. The Village will be required to pay its share of the water and sewer charges within 60 days after receipt of the invoice and the back-up information.

14.2. **Electricity**. The cost of electricity for the Concession Building and any other Facilities requiring electricity will be shared equally by the Board and the Village, except for the cost of electricity for the Lighting and the Scoreboard, which shall be paid entirely by the Village. The party whose name is on the FPL account will be responsible for reading the electric meters for the Facilities and paying all charges for electricity directly to FPL. The Party paying the FPL bill will send an invoice for reimbursement of electricity charges to the other Party on a quarterly basis. The quarterly invoices will include a breakdown of kilowatts used for Lighting, kilowatts used for the Scoreboard, and kilowatts used for other electrical charges to the Facilities. The Party receiving the quarterly invoice will be required to pay its share of the electric charges within 60 days after receipt of the invoice and the back-up information.

14.3. **Board Use of Lighting and Scoreboard.** If the Board elects to use either the Lighting or the Scoreboard during School Hours or for any Board Event, the Board will be required to pay its prorated share of any electricity charges for the Lighting or Scoreboard within 60 days after receipt of an invoice and appropriate back-up information.

14.4. **Trash Pickup.** The Village will be responsible on a daily basis for emptying trash receptacles placed on the Playing Fields, in the Concession Building, and in Parking Areas. Village shall place any collected trash into School dumpsters located on the Site for use by the Schools. Trash collection bills will be sent to the Board for payment, and the Board will send the Village an invoice for 50% of the trash collection charges attributable to trash generated by the Facilities with appropriate backup on a quarterly basis. The Village will be required to pay its share of the trash collection charges within 60 days after receipt of the invoice and the back-up information.

14.5. **Stormwater Fees.** The Board will be responsible for any stormwater fees assessed against the Site.

14.6. **Wireless Service.** The Village will have the right, at its option and at its expense, to place a tower or other equipment on the Site, at a location mutually agreed upon by the Parties and in compliance with Applicable Law, to provide wireless internet service at the Site, as long as the tower or equipment is not placed near the Playing Fields or the Concession Building. If the Board desires to use the wireless service during School Hours, the Board will be required to pay 50% of the cost of the service. Bills for wireless service will be sent to the Village for payment, and if the Board is using the wireless Service, the Village will send the Board an invoice for 50% of the wireless charges with appropriate backup on a quarterly basis. The Board will be required to pay its share of the wireless charges within 60 days after receipt of the invoice and the back-up information.

14.6.1. **Board Wireless**. If the Board chooses not to use the Village's wireless services and instead installs its own wireless system (at a location mutually agreed upon by the Parties and in compliance with Applicable Law), the Village and the Board shall work together to ensure that neither Party's wireless system interferes with the other. Priority shall be given to the Board devices using the Board wireless system during School Hours. To ensure compliance with Applicable Law, additional steps may need to be taken to ensure Board resources do not connect to unfiltered content.

15. **Signage and Naming Rights**

15.1. **Signage.** Neither Party is permitted to place any signage within the Facilities other than school-related signs and directional signs, which will be provided by the Board. No banners or other signs are permitted to be hung on fences or in any other locations within the Facilities unless approved in writing by the Board and Village.

15.2. **Naming Rights.** If the Board desire to name the Facilities or portions thereof, in compliance with Board Policy, the Board shall work collaboratively with the Village in naming the Facilities

16. **Security.**

16.1. **Security During School Hours**. During School Hours, security for the Facilities will be provided by the Board in accordance with standard Board operating procedures, and at Board's expense.

16.2. **Security During Non-School Hours**. During Non-School Hours, security for the Facilities will be provided by Village police at the Village's expense. The Village will not be responsible for any security at the Facilities either before or after Non-School Hours, nor shall the Village be responsible at any time for any security at the Schools.

16.3. **Securing the Site and Facilities.** The Board and the Village will each be responsible for insuring that all Facilities are locked or secured at the end of their respective periods of use.

17. **Insurance**.

17.1. **Property Insurance**. The Board shall maintain adequate property insurance for the Facilities, and shall provide evidence of such insurance to the Village. The Village may, at its option, maintain property insurance for Village personal property located within the Facilities. If Village elects to insure its personal property, it shall provide evidence of such insurance to the Board.

17.2. **Commercial Liability Insurance**. Subject to the provisions and monetary limitations of Section 768.28, Florida Statutes (as may be amended), which limitations shall be applicable regardless of whether such provisions would otherwise apply, and to the extent permitted by law, the Board and the Village shall each maintain either a public liability insurance policy or an ongoing self-insurance program for public liability, automobile liability and worker's compensation insurance, and shall provide reasonably satisfactory evidence of such insurance or ongoing self-insurance program to the other Party. Nothing in this Agreement is intended to operate as a waiver of sovereign immunity by either Party.

18. **Damage or Destruction of Facilities**.

18.1. **Casualty**. In the event the Facilities should be destroyed or so damaged by fire, windstorm or other casualty that the Facilities are rendered untenantable or unfit for the purposes intended, the Board shall repair or replace the damaged or destroyed Facilities. The Board shall cause the damaged or destroyed Facilities to be repaired or replaced, and restored to a safe, secure and useable condition within 180 days from the date of the damage or destruction, or within such other reasonable period of time as the Parties mutually agree upon, based upon the scope and nature of the damages, costs of the necessary repairs, and available funding for such repairs. Should the damaged or destroyed facilities not be repaired and rendered tenantable within the agreed-upon time period, then the Village may, at its sole option, place the Board in default.

18.2. **Damage by Village.** Any damage or destruction sustained by the Facilities as a result of the Village's actions shall be repaired by the Village at the Village's sole cost and expense.

18.3. **Damage by Board.** Any damage or destruction sustained by the Facilities as a result of the Board's actions shall be repaired by the Board at the Board's sole cost and expense.

19. **Eminent Domain**. If any part of the Facilities is taken in the exercise of the power of eminent domain, this Agreement shall terminate on the date title vests in the taking authority. The Village may pursue all available remedies for the taking but will have no interest in any award made to the Board.

20. **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 the Facilities, or arising from the Village's use or occupancy of the Facilities or other portions of the Site, including, but not limited to, soil, air and ground water conditions, or governing the use, generation, storage, transportation, or disposal of Hazardous Substances in, on, at, to or from the Facilities. 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 the Facilities (unless caused solely by the Board), or that arises at any time from the Village's use or occupancy of the Facilities.

20.1. **No Violations by Village**. The Village shall not cause or permit to occur: (a) any violation of any Environmental Law in the Facilities; or (b) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under, or about the Facilities, or the transportation to or from the Facilities across portions of the Site of any Hazardous Substance.

20.2. **Village's Obligations Regarding Environmental Laws.** The Village shall, at the Village's expense, comply with all applicable Environmental Laws with respect to the Facilities. The Village shall, at the Village's expense, 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 the Facilities during the term of this Agreement. If any governmental authority requires any clean-up or clean-up measures because of any Hazardous Substances Discharge demonstrated to have been caused by the Village with respect to the Facilities, then the Village shall, at the Village's 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 Village shall promptly notify the Board of any notices or communications received from any jurisdictional entity in relation to any environmental issues on the Facilities, and shall promptly provide the Board with all information reasonably requested by the Board regarding the Village's use, generation, storage, transportation or disposal of Hazardous Substances in or at the Facilities.

20.3. **Indemnification by Village**. The Village shall indemnify the Board against any Hazardous Substances Discharge demonstrated to have been caused by the Village, subject to the limitations included within Section 768.28, Florida Statutes. The obligations and liability of the Village under this paragraph shall survive the expiration, cancellation or termination of this Agreement.

20.4. **Indemnification by the Board.** The Board shall indemnify the Village against any liability for any Hazardous Substances Discharge demonstrated to have been caused by the Board, subject to the limitations included within Section 768.28, Florida Statutes. The obligations and liability of the Board under this paragraph shall survive the expiration, cancellation or termination of this Agreement.

21. **Liability**

21.1. **Limitation of Village Liability.** Subject to the provisions and monetary limitations of Section 768.28 of the Florida Statutes (as may be amended), which limitations shall be applicable regardless of whether such provisions would otherwise apply, and to the extent permitted by law, the Village shall not be liable for any damage or injury which may be sustained by the Board, or by any person using the Facilities, other than damage or injury resulting from the negligence or improper conduct of the Village, its agents, representatives or employees, or resulting from the Village's failure to perform its obligations under this Agreement.

21.2. **Limitation of Board Liability.** Subject to the provisions and monetary limitations of Section 768.28 of the Florida Statutes (as may be amended), which limitations shall be applicable regardless of whether such provisions would otherwise apply, and to the extent permitted by law, the Board shall not be liable for any damage or injury which may be sustained by the Village, or by any person using the Facilities, other than damage or injury resulting from the negligence or improper conduct of the Board, its agents, representatives or employees, or resulting from the Board's failure to perform its obligations under this Agreement.

22. **Indemnification.**

22.1. **Indemnification by Board**. Subject to the provisions and monetary limitations of Section 768.28(5), Florida Statutes (as may be amended), which limitations shall be applicable regardless of whether such provisions would otherwise apply, and to the extent permitted by law, the Board agrees to indemnify and hold harmless the Village, to the extent of the limitations included within Florida Statutes, Section 768.28, subject to the provisions of

Section 768.28 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 solely as a result of the negligence of the Board. This paragraph is not intended 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.

22.2. **Indemnification by Village.** Subject to the provisions and monetary limitations of Section 768.28(5), Florida Statutes (as may be amended), which limitations shall be applicable regardless of whether such provisions would otherwise apply, and to the extent permitted by law, the Village agrees to indemnify and hold harmless the Board, to the extent of the limitations included within Florida Statutes, Section 768.28, subject to the provisions of Section 768.28 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 $100,000, 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 $200,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise solely as a result of the negligence of the Village. This paragraph is not intended 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.

22.3. **Survival of Indemnification**. The provisions of this **Section 19** shall survive the expiration or early termination or cancellation of this Agreement. Nothing in this Agreement is intended to operate as a waiver of either Party's sovereign immunity

23. **Default**.

23.1. **Notice**. If a Party to this Agreement (the "Defaulting Party") fails to perform under this Agreement or fails to comply with the terms and conditions of this Agreement (a "Default"), the other Party hereto (the "Non-Defaulting Party") must send written notice (the "Default Notice") to the Defaulting Party, according to the notice requirements set forth in this Agreement.

23.2. **Opportunity to Cure.** The Defaulting Party will have a period of 30 days after receipt of the Default Notice to either cure its Default or to provide a written response to the Non-Defaulting Party indicating the status of the Defaulting Party's resolution of the Default and a schedule for the curing of the Default.

23.3. **Remedies.** If, within 30 days after receipt of Default Notice, the Defaulting Party fails to either cure its Default, or to provide a written response to the Non-Defaulting Party indicating the status of the Defaulting Party's resolution of the Default and a schedule for the curing of the Default, then the parties agree that the Village Manager, and the Board's Chief Facilities Officer shall meet and attempt to cure the Default before either Party initiates legal action to enforce this Agreement. If a Default shall occur and shall continue, the Non-Defaulting Party shall be entitled to all remedies available at law or in equity, which may include, but not be limited to, the right to damages and/or specific performance, or cancellation of this Agreement.

24. **Subordination**. This Agreement is and shall be subject and subordinate to (a) any conveyance, lease or ground lease of the Site or the Facilities; (b) the rights of the Board under any leases; (c) the rights of the Board to all financing that may now or hereafter affect the Site or the Facilities, and (d) the rights of the Board with respect to all renewals, modifications, consolidations, replacements and extensions of such leases or financing; **provided, however**, that the holder of any lease, ground lease or financing of the Site or the Facilities will execute a subordination and non-disturbance agreement acknowledging and agreeing to honor the rights of the Village under this Agreement. **[Board needs to ask their treasurer about the granting of a non-disturbance agreement].**

25. **Peaceful Possession**. Subject to the terms, conditions and covenants of this Agreement, the Parties agree that each Party shall and may peaceably use and enjoy the Facilities, without hindrance or interference by the other Party.

26. **Right of Entry.** The Board, or any of its agents, representatives or employees, after first providing reasonable notice to the Village, shall have the right to enter the Facilities during Non-School Hours to examine same or to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort or preservation of the Facilities or balance of the Site, provided such activities do not unreasonably interfere with the Village's use of the Facilities. In cases of emergency, no prior notice will be required prior to entry.

27. **Use of Site as a Revenue Generator**. The Board shall at all times retain the exclusive right to be the sole authorizer of revenue generators and the sole recipient of revenues relating to the Site, in compliance with the Board's rules and regulations, including, without limitation, third party advertising or installation of wireless telecommunications facilities, provided such advertising or installations do not unreasonably interfere with the Village's rights to peaceful enjoyment of the Facilities. This provision shall not prohibit the Village from retaining all fees which the Village may charge for use of the Facilities by third parties during Non-School Hours as set forth in **Section 8.3.**

28. **Taxes and Regulatory Compliance**. The Village shall be responsible for payment of any taxes, fees or other assessments, including but not limited to sales tax, which may be imposed on the Site as a result of the use and occupancy of the Facilities by the Village. The Board shall be responsible for payment of any taxes, fees or other assessments, including but not limited to sales tax, which may be imposed on the Site as a result of the use and occupancy of the Facilities 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 Village's use or occupancy of the Facilities, the Village acknowledges and agrees that it shall be responsible for compliance with all applicable requirements, at the Village's sole cost and expense. 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 use or occupancy of the Facilities, the Board acknowledges and agrees that it shall be responsible for compliance with all applicable requirements, at the Board's sole cost and expense.

29. **Surrender of Premises**. The Village agrees, at the expiration, termination or cancellation of this Agreement or any extension thereof (including cancellation due to damage or destruction of the Facilities), to promptly and peacefully surrender and deliver possession of the Facilities to the Board. The Village shall be required to promptly remove all of the Village's

personal property and other items belonging to the Village from the Facilities. In addition, upon the expiration, cancellation or termination of this Agreement, the Village agrees, at the Board's sole option, to remove any improvements or facilities constructed by the Village on the Site and to restore such area to the same or better condition as existed as of the Commencement Date of this Agreement. In the event the Board elects to retain any improvements constructed by the Village, the Village agrees to convey title to the improvements to the Board, without compensation due to the Village. The Village shall promptly return all keys and other items belonging to the Board and shall coordinate with the Board to ensure a proper and timely surrender of the Facilities. Any of the Village's personal property not removed within ten (10) days after expiration, termination or cancellation of this Agreement shall be considered abandoned.

30. **Non-Discrimination**. The 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, or as otherwise provided by law, in the use of the Facilities. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination in the use of the Facilities by a Party hereto has occurred, such event shall be treated as a Default hereunder.

31. **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.

31.1. **Board's Right to Request Records**. The Village acknowledges and accepts the authority of the Board to request and authorize audits, inspections, and reviews, including, but not limited to, the authority to access the Village's records, its legal representatives' and contractors' records and the obligation of the Village to retain and to make those records available upon request, and in accordance with Applicable Law. The Village shall keep records to show its compliance with this Agreement. In addition, the Village' contractors and subcontractors must make available, upon the Board's request, any books, documents, papers and records which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions. The Village, its contractors and sub-contractors shall (a) retain all records for five (5) years after the completion of construction work, if any, at the Facilities; and (b) the Village shall retain records for five (5) years after the expiration, early termination or cancellation of this Agreement. The Village shall incorporate this provision into every contract that it enters into relating to the Facilities.

31.2. **Village's Right to Request Records**. The Board acknowledges and accepts the authority of the Village to request and authorize audits, inspections, and reviews, including, but not limited to, the authority to access the Board's records, its legal representatives' and contractors' records and the obligation of the Board to retain and to make those records available upon request, and in accordance with Applicable Law. The Board shall keep records to show its compliance with this Agreement. In addition, the Board's contractors and subcontractors must make available, upon request by Village, any books, documents, papers and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. The Board, its contractors and sub-contractors shall (a) retain all records for five (5) years after the completion of construction work, if any, at the

Facilities; and (b) the Board shall retain records for five (5) years after the expiration, early termination or cancellation of this Agreement. The Board shall incorporate this provision into every contract that it enters into relating to the Facilities.

32. **Representations Regarding Authority.**

32.1. **Authority of Village.** The Village is a Florida municipal corporation, with 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.

32.2. **Authority of Board**. The Board is a body corporate and politic existing under the laws of the State of Florida, and the Board 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 actions 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.

32.3. **Authority of Superintendent**. For purposes of this Agreement, the Superintendent of Schools or his or her designee shall be the party to take any actions or grant or deny any and all approvals which may be required from the Board under this Agreement, including, without limitation, approval of changes to periods of use, placing the Village in default, and reviewing and approving all matters relating to the Village's construction of improvements on the Site, if any. The Superintendent of Schools or his or her designee shall also be the Party to grant or deny any Board approvals required by this Agreement for the renewal, cancellation, or termination of this Agreement as provided herein. The Board Representative shall only have authority for the actions specified to be taken by the Board Representative as set forth in this Agreement.

33. **Additional Provisions.**

33.1. **Amendment**. No modification or amendment of this Agreement will be of any force or effect unless in writing and executed by both Parties to this Agreement.

33.2. **Assignment**. This Agreement may not be assigned by any Party to this Agreement, except to a governmental entity which succeeds to the rights of a Party to this Agreement.

33.3. **Attorneys' Fees.** 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 trial and appellate levels. The provisions of this paragraph shall survive the expiration or early termination or cancellation of this Agreement.

33.4. **Construction of Agreement**. All Parties to this Agreement have substantially contributed to the drafting and negotiation of this Agreement, and this Agreement shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other. The Parties hereto acknowledge that they have thoroughly read this

Agreement, including all exhibits and attachments hereto, and have sought and received whatever competent legal advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

33.5. **Counterparts**. This Agreement may be signed in any number of counterparts, each of which constitutes the Agreement of the Parties and each of which will be treated as an original.

33.6. **Entire Agreement**. This Agreement sets forth the entire agreement between the Parties relating exclusively to the joint use of the Facilities. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Parties, dealing with joint use of the Facilities.

33.7. **Gender**. In this Agreement, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular as the context requires.

33.8. **Governing Law; Compliance with Laws**. This Agreement will be interpreted and enforced in accordance with Florida law. The venue for any disputes shall be Miami-Dade County, Florida. The Parties agree that they shall comply with all Applicable Law.

33.9. **Notices**. All notices and other communications which are required to be given under this Agreement must be in writing and must either be (a) hand-delivered, (b) sent by Federal Express or a comparable overnight mail service, (c) mailed by U.S. registered or certified mail, return receipt requested, postage prepaid, or (d) sent by email or facsimile with transmission or delivery receipt, with an original copy of the transmission mailed by regular first-class mail not later than the first Business Day after the email or facsimile is sent. Notices should be sent to Village and the Board at their respective addresses set forth below. Notice is effective upon delivery or refusal of delivery of notice. Any notice delivered after 5:00 p.m. will be deemed to be delivered on the following Business Day. The addressees and addresses for notice may be changed by giving notice. Until written notice of a change in address is delivered, the last addressee and address stated in this Agreement in effect for all purposes.

**If to the Board:**
The School Board of Miami-Dade County, Florida
School Board Administration Building
1450 NE Second Avenue, Room 912
Miami, Florida 33132
Attention: School Superintendent
Facsimile: 305 995 1488
Email:

**With a copy to**:
Miami-Dade County Public Schools
Planning, Design and Sustainability
1450 NE Second Avenue, Room 525
Miami, Florida 33132
Attention: Deputy Chief of Facilities and Eco-Sustainability Officer
Facsimile: 305 995 4760
Email: arijo@dadeschools.net

**With a copy to**:
The School Board of Miami-Dade County, Florida
School Board Attorney's Office

1450 NE Second Avenue, Room 400
Miami, Florida 33132
Attention: School Board Attorney
Facsimile: 305 995 1412
Email: Walter.Harvey@dadeschools.net

**If to the Village:** Village of Key Biscayne, Florida
10 Village Green Way
Key Biscayne, Florida 33147
Attention: Village Manager
Facsimile: 305 365 8900
Email: jgilbert@keybiscayne.fl.gov

**With a copy to**: Weiss Serota Helfman Pastoriza Cole & Boniske, PL
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, Florida 33134
Attention: Stephen Helfman
Facsimile: 305 854 2323
Email: shelfman@wsh-law.com

33.10. **Personal Liability of Parties.** The Parties acknowledge that this Agreement is entered into by two governmental entities. The Parties agree that no individual elected official, employee, or representative of any Party to this Agreement will have any personal liability under this Agreement.

33.11. **Section and Paragraph Headings**. The section and paragraph headings contained in this Agreement are for purposes of identification only and are not to be considered in construing this Agreement.

33.12. **Severability**. If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable provision will be stricken from the Agreement, and the balance of the Agreement will remain in full force and effect as long as to do so would not affect the overall purpose or intent of the Agreement.

33.13. **Successors and Assigns**. This Agreement will inure to the benefit of and be binding upon the Village and the Board and their respective legal representatives, successors, and permitted assigns.

33.14. **Waiver**. No waiver of any provision of this Agreement will be deemed to have been made unless such waiver is in writing and signed by the Party waiving the provision. The failure of any Party to insist upon strict performance of any provision of this Agreement shall not be construed as waiving or relinquishing such provision in the future.

33.15. **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 Parties' use or occupation of the Facilities.

**[SIGNATURE BLOCKS ON FOLLOWING PAGE]**

**VILLAGE OF KEY BISCAYNE, FLORIDA**
a Florida municipal corporation

By:_____
John C. Gilbert, Village Manager

Attest: _____

Date Signed:_____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
Weiss Serota Helfman Pastoriza Cole & Boniske, PA, City Attorney

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

By:_____
Alberto M. Carvalho,
Superintendent of Schools.

Date Signed:_____

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

_____
School Board Attorney