

Office of School Facilities  
Raul F. Perez, Chief Facilities Design & Construction Officer

**SUBJECT: AUTHORIZATION FOR THE SUPERINTENDENT TO EXECUTE A JOINT USE AGREEMENT WITH NORTH BAY VILLAGE (“VILLAGE”), TO ALLOW THE VILLAGE TO MAKE A NUMBER OF RECREATIONAL IMPROVEMENTS AT TREASURE ISLAND ELEMENTARY SCHOOL, FOR JOINT USE BY THE PARTIES**

**COMMITTEE: FACILITIES AND CONSTRUCTION**

**LINK TO STRATEGIC BLUEPRINT: EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES**

Background

North Bay Village (“Village”) recently approached the District with a request to enter into a Joint Use Agreement (“Agreement”) with the School Board to allow the Village to make a number of recreational improvements at Treasure Island Elementary School, located at 7540 East Treasure Drive, North Bay Village, Florida (“School”), for joint use by the parties. The proposed improvements, which include, without limitation, refurbishing the School playfield with synthetic turf, renovating the School hard courts, constructing a splash pad area and a fitness trail, and installing fencing and landscaping (collectively, the “Improvements”), shall be conducted by the Village, at the Village’s sole cost and expense. It should be noted that the Village currently has use of the School basketball courts during non-school hours under an existing Joint Use Agreement between the parties (“Existing JUA”). The Village’s use of the School basketball courts will be included as part of the premises in the new Agreement, and the Existing JUA will be terminated effective with the commencement of the new Agreement. In addition, the parties recently entered into a temporary use agreement with the Village to allow the Village to use the School playfield and parking until the Commencement Date under the new Agreement.

Proposed Joint Use Agreement

The Deputy Superintendent/Chief Operating Officer, School Operations, recommends entering into the new Agreement with the Village to allow the Village to construct the Improvements at the School, for joint use by the parties. Accordingly, it is recommended that the parties enter into the Agreement, under, substantially, the following terms and conditions:

- an initial term of twenty (20) years, with three (3) 5-year extension periods, at the mutual agreement of the parties;

- rent at \$1 per year;
- the parties shall jointly use the School playfield, tennis courts, basketball courts, School parking lot located on the southwest portion of the School, and fitness trail to be constructed by the Village on the perimeter of the School, together with all improvements currently located or to be constructed thereon (collectively, the “Demised Area”) (see Exhibit “A”);
- the Board shall have full control, custody, right and use of the Demised Area during regular school hours on regular school days. In addition, the Board, at its sole option, shall have use of the Demised Area, or portions thereof, after regular school hours as may be required for, but not limited to, practices and home games, intramural sports, summer school, special events and functions, extracurricular activities/athletics and after school programs;
- the Village shall have full control, custody, right and use of the Demised Area on weekdays beginning at 6:00 p.m. and ending at 9:00 p.m., and on weekends and Board Holidays from 8:00 a.m. to 9:00 p.m.;
- the parties, through their respective designees, shall meet prior to the start of each regular school year, or as soon thereafter as possible, to review the schedule for use of the Demised Area for the upcoming school year. Such schedule of use and the exact areas of use may be modified from time to time throughout the school year by mutual agreement of the parties, or their authorized designees;
- in addition to the above, should either party require use of the Demised Area for a special event or function or any other reason during the other party’s period of use, such party shall submit a written request to the other party, with a minimum of ninety-six (96) hours advance notice. Approval of said requests shall not be unreasonably withheld, provided such use does not conflict with the other party’s operations or previous obligations;
- in addition to its own utilization of the Demised Area, the Village shall have the option of contracting with not-for-profit parties to use the Demised Area to provide Village-sponsored recreational services and programs to the general public during the Village’s period of use, subject to approval by the Board or designee. In that event, the Village shall submit a written request to the Board a minimum of 15 calendar days prior to such proposed use, with the name of the not-for-profit party, the proposed programs to be conducted, and the proposed period and areas of use of the Demised Area, for review by the Board or designee. If such request is approved in writing by the Board or designee, the Village shall be responsible for all maintenance, clean-up, risk management, security and supervision of the Demised Area, the same as if the Village were utilizing the Demised Area, and shall require the not-for-profit party to provide liability insurance, naming the Board as an additional insured;

- use of the Demised Area by for-profit parties shall be prohibited, without the express written consent of the Board, which may be withheld or conditioned at the Board's sole discretion, and which will require compliance with all applicable laws, including, without limitation, Board Policy;
- as noted above, the Improvements to be constructed by the Village on the Demised Area shall include, without limitation, refurbishing the School playfield with synthetic turf, renovating the School hard courts, constructing a splash pad area and fitness trail, and installing fencing and landscaping, and shall be completed by the Village in phases;
- all work shall be completed by the Village, at the Village's sole cost and expense, including payment of any costs borne by the Board for jurisdictional plan review, permitting and inspections. The Village shall also prepay to the Board Eight Percent (8%) of the estimated cost of the work for project management related tasks, including serving as the liaison between the Board and the Village for any design and construction activities within the Demised Area;
- as a pre-condition to commencement of the Agreement, the Village shall install new chain link fencing, a minimum of 6 feet in height, within portions of the Demised Area and School as determined by the Board, to assure proper security of the remainder of the School campus. The term of the new Agreement shall not commence until a Certificate of Occupancy or Certificate of Completion is issued by the Board's Building department for the fence work;
- the District's Building Department shall review plans, issue permits and provide final acceptance of all work being constructed within the Demised Area or School;
- the Village shall be responsible for providing all maintenance, repair and upkeep of the Demised Area, at the Village's sole cost and expense, including any improvements now located or to be constructed thereon, with the exception of the School playfield area which shall remain the responsibility of the Board.
- the Village, at the Village's sole cost and expense, shall be responsible for providing all custodial or janitorial services to any improvements now located or to be constructed within the Demised Area, and the Board, at the Board's sole cost and expense, shall be responsible for providing all custodial or janitorial services to any improvements now located or to be constructed within the School playfield area;
- each party shall be responsible for the pick-up and removal of trash and litter from the Demised Area, generated during each party's respective period of use;
- the Village shall be responsible for providing proper supervision and security of the Demised Area at all times during the Village's period of use;

- in the event the Village utilizes or constructs any improvements requiring utility service, as determined by the Board, the Village shall be responsible for installation and payment of any and all such utilities including, but not necessarily limited to electricity, field lighting, parking lot lighting, potable and irrigation water, sewer, storm water, trash and garbage. The Village shall install separate services and/or meters in its name and shall pay for such services at its sole cost and expense;
- the Village shall provide the Board with confirmation of the Village's self-insurance program in a form and substance acceptable to the Board, or, in the alternative, proof of insurance in the types and amounts of coverage required by the Board;
- the Village may not assign or sublet any portion of the Demised Area, without the Board's prior written consent, which may be withheld at the Board's sole discretion;
- the Village and Board shall indemnify and hold the other harmless, to the extent of the limitations included within Florida Statutes, Section 768.28;
- the Board shall have the right to cancel the Agreement, in whole or in part, with one (1) year advance written notice to the Village, if the Board determines that the Demised Area, in whole or in part, is needed for educational or other District purposes, as determined by the Board in its sole discretion, said determination not to be unreasonably enforced. Such cancellation by the Board is subject to a waiver by the Superintendent of the District standard provision prior to execution of the Agreement by the parties;
- the Village shall have the right to cancel the Agreement at any time, without penalty, by giving the Board written notice a minimum of one (1) year prior to the effective date of said cancellation;
- in the event of default by the Board or Village, which default is not cured within the applicable timeframe, the non-defaulting party shall have the right to immediately cancel the Agreement;
- the Village shall surrender the Demised Area to the Board, at the expiration, termination or cancellation of the Agreement in as good condition as existed at the commencement of the Agreement, ordinary wear and tear excepted, including removal of any signage installed by the Village and all personal property and other items belonging to the Village. The Village agrees to remove, at the Board's sole option, any improvements or facilities constructed by the Village within the Demised Area shall be removed and to restore such area the same or better condition as previously existed, at the Village's sole cost and expense;
- in the event of damage or destruction of all or portions of the Demised Area, the

Village may either cancel the Agreement, or repair or replace the damaged facilities, at the Village's expense;

- in the event of any litigation between the parties under the Agreement, each party shall be responsible for its own attorney's fees and court costs through trials and appellate levels;
- the Village shall be responsible for the collection and payment of any taxes, fees, operating permits, licenses, or other assessments, if any, including but not limited to sales tax and ad valorem tax, all licenses, permits or other taxes which may be imposed on the Demised Area or the School, as a result of the leasing, use or occupancy of the Demised Area by the Village;
- if there is a requirement for infrastructure improvements or other regulatory compliance due to the Village's lease, use or occupancy of the Demised Area, the Village shall be responsible for fulfilling the applicable requirements, at its sole cost and expense;
- the Village shall comply with all local, County, State, School Board or Federal orders currently in place or that may be implemented related to the COVID-19 pandemic ("Emergency Order") at all times during its period of use of the Demised Area. In addition, the Village shall be solely legally responsible and fully liable for compliance with all maintenance requirements and mitigating measures, under any Emergency Order or Board Policy relating thereto, during the Village's period of use, at the Village's sole cost and expense;
- 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 the Demised Area by a not-for-profit entity, or any routine operational issues; and
- 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 the Agreement within the authority granted to the Superintendent by the Board in the Agreement, and to grant or deny any approvals required by the Agreement, including without limitation, placing the Village in default, or renewing, extending, canceling or terminating the Agreement.

The proposed Agreement, attached hereto, has been reviewed by the School Board Attorney's Office and the Office of Risk and Benefits Management for legal sufficiency and risk management issues, respectively, and found to be in compliance. The Office of School Facilities recommends approval of the Agreement.

} Revised

**RECOMMENDED:**

That The School Board of Miami-Dade County, Florida, authorize the Superintendent to:

- 1) execute a Joint Use Agreement (“Agreement”) with North Bay Village (“Village”), to allow the Village to make a number of improvements at Treasure Island Elementary School, located at 7540 East Treasure Drive, North Bay Village, Florida, for joint use by the parties, under, substantially, the terms and conditions noted above;
- 2) execute amendments to the Agreement within the authority granted to the Superintendent by the Board in the Agreement; and
- 3) grant or deny all approvals or waivers required under the Agreement, including, without limitation, authorizing construction of improvements within the Demised Area, renewing, extending, canceling or terminating the Agreement, and placing the Village in default, as may be applicable.

MCA:mca

## JOINT USE AGREEMENT

THIS JOINT USE AGREEMENT (“**Agreement**”), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, between **THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA**, a body corporate and politic existing under the laws of the State of Florida (the “**BOARD**”), and **NORTH BAY VILLAGE**, a municipal corporation of the State of Florida (the “**VILLAGE**”). The BOARD and VILLAGE 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 (the “**District**”) and residents of the VILLAGE; and

WHEREAS, the BOARD owns and has under its jurisdiction certain real property known as Treasure Island Elementary School, located at 7540 East Treasure Drive, North Bay Village, FL (“**School**”); and

WHEREAS, the VILLAGE has approached the BOARD with a request to make a number of recreational improvements at the School, at the VILLAGE’s sole cost and expense, and to jointly use certain recreational facilities at the School; and

WHEREAS, the Parties are desirous of entering into this Agreement to allow the VILLAGE to make such recreational improvements at the School and provide for the joint use by the Parties of certain recreational facilities at the School, under the terms and conditions set forth below; and

WHEREAS, the BOARD and VILLAGE entered into that Joint Use Agreement, dated June 16, 2016 (the “**Existing JUA**”), for the joint use of the basketball courts at the School;

WHEREAS, the VILLAGE’s use of the School basketball courts will be included as part of the premises to be jointly used by the Parties under this Agreement, and the Existing JUA between the BOARD and VILLAGE shall terminate effective with the Commencement Date (as hereinafter defined) of this Agreement; and

WHEREAS, The School Board of Miami-Dade County, Florida, at its meeting of \_\_\_\_\_, 20\_\_\_\_, School Board Agenda item \_\_\_\_\_, Board Action # \_\_\_\_\_, approved entering into this Agreement; and

WHEREAS, North Bay Village, by the adoption of Resolution No. \_\_\_\_\_, at its meeting of \_\_\_\_\_, 20\_\_\_\_\_, approved this Agreement.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), restrictions and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the BOARD and VILLAGE agree as follows:

I.

**RECITALS**

The above recitals are true and correct and are incorporated herein by reference.

II.

**PREMISES TO BE JOINTLY USED**

Effective with the Commencement Date of this Agreement (as defined in Article III below), the Parties agree to jointly use the School playfield area, tennis courts, basketball courts, and the parking lot located on the southwest portion of the School, as well as the fitness trail to be constructed by the VILLAGE on the perimeter of the School and other open areas, all as more particularly described in **Exhibit "A"** attached hereto and made a part hereof (collectively the "**DEMISED AREA**"), together with all improvements currently located or to be constructed thereon.

III.

**TERM**

This Agreement shall be effective upon the date on which the last of the Parties initials or executes this Agreement (the "**Effective Date**"). Effective with the Effective Date, the VILLAGE shall have access to the DEMISED AREA, with full right of ingress thereto and egress therefrom, for the specific and limited purpose of constructing the Fence Work (as hereinafter defined), as described in Article VI of this Agreement. The initial term of this Agreement shall be for a period of twenty (20) years, commencing upon the latter date of issuance of a Certificate of Occupancy, Certificate of Completion, or equivalent ("**CO**") by the BOARD'S Building department for the Fence Work, which document shall be attached hereto and made a part hereof as **Exhibit "B"** (hereinafter referred to as the "**Commencement Date**"). The Parties acknowledge and agree that the initial term of the Agreement may be extended for three (3) additional terms of five (5) years each, at the mutual agreement of the Parties, as further outlined in Article XIV of this Agreement.

The Parties agree that the Existing JUA between the BOARD and VILLAGE shall terminate effective with the Commencement Date of this Agreement, by operation of law, and



shall no longer be in force and effect.

#### IV.

#### CONSIDERATION

The VILLAGE shall pay to the BOARD as consideration for use and occupancy of the DEMISED AREA 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.

#### V.

#### USE OF DEMISED AREA

The DEMISED AREA as identified in Exhibit "A" shall be used by the VILLAGE only for the operation of recreational programs sponsored, organized and supervised by the VILLAGE, and by the BOARD for the School's recreational and educational programs, and for no other purposes. The VILLAGE covenants and agrees to accept the DEMISED AREA in its "as-is", "where-is" condition and basis with all faults as of the Effective Date of this Agreement, subject to all easements, covenants or other encumbrances of record. The BOARD makes no representations or warranties of any type or nature whatsoever, either expressed or implied, as to the usefulness, physical condition or appropriateness of the DEMISED AREA for the VILLAGE's operations or any specific use. The VILLAGE, by executing this Agreement, agrees and acknowledges that the BOARD has made no representations whatsoever regarding the DEMISED AREA, including with respect to its environmental condition. The VILLAGE represents that it is relying and will continue to rely solely on its own investigations of the DEMISED AREA in its decision to occupy or use it, and the VILLAGE further acknowledges and agrees that the BOARD shall not indemnify the VILLAGE in any way with respect to the condition of the DEMISED AREA. The provisions of this paragraph shall survive the expiration or the early termination or cancellation of this Agreement.

Effective with the Commencement Date, the BOARD shall have full control, custody, right and use of the DEMISED AREA during regular school hours (as determined by the School Administrator) on regular school days during the BOARD's academic school year. In addition, the BOARD, at its sole option, shall have use of the DEMISED AREA, or portions thereof, after regular school hours as may be required for, but not limited to, practices and home games, intramural sports, summer school, special events and functions, extracurricular activities/athletics and after school programs, during which time the BOARD shall have full control, custody, right and use of the DEMISED AREA (the "**BOARD's Period of Use**"). Effective with the Commencement Date,

the VILLAGE shall have full control, custody, right and use of the DEMISED AREA on weekdays beginning at 6:00 p.m. and ending at 9:00 p.m., and on weekends and BOARD Holidays from 8:00 a.m. to 9:00 p.m. (the “**VILLAGE’s Period of Use**”).

Notwithstanding the above, the School Administrator, or designee, and the VILLAGE’s Park Director, or designee, shall meet prior to the start of each regular school year, as established through the BOARD’S approved school calendar (“**School Calendar**”), or as soon thereafter as possible, to review the schedule for use of the DEMISED AREA by the Parties for the upcoming school year. Such schedule of use and the exact areas of use may be modified from time to time throughout the school year by mutual agreement of the Parties, or their authorized designees.

In addition to the above, should either Party require use of the DEMISED AREA for a special event or function or any other reason during the other Party’s Period of Use, such Party shall request said use, in writing, through the other Party’s designated representative, with a minimum of ninety-six (96) hours advance notice. Approval of said requests shall not be unreasonably withheld, provided such use does not conflict with the other Party’s operations or previous obligations.

The VILLAGE, in addition to its own utilization of the DEMISED AREA, shall have the option of contracting with not-for-profit parties to use the DEMISED AREA or portions thereof to provide VILLAGE-sponsored recreational services and programs to the general public during the VILLAGE’s Period of Use, subject to approval by the BOARD or designee. In that event, the VILLAGE shall submit a written request to the BOARD a minimum of fifteen (15) calendar days prior to such proposed use, with the name of the not-for-profit party, the proposed programs to be conducted by the non-for-profit party, and the proposed period and areas of use of the DEMISED AREA, for review by the North Region Office and School Administrator. In the event such request is approved in writing by the North Region Office and School Administrator, the VILLAGE shall be responsible during such use for all maintenance, clean-up, risk management, security and supervision of the DEMISED AREA and other terms and conditions set forth in this Agreement, the same as if the VILLAGE itself were utilizing the DEMISED AREA. 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 DEMISED AREA. As a precondition to use of the DEMISED AREA by such an entity, the VILLAGE shall obtain a certificate of insurance evidencing same and shall provide a copy thereof to

the BOARD.

Use of the DEMISED AREA by for-profit parties or entities under this Agreement shall be prohibited, without the express written consent of the BOARD, which may be withheld or conditioned at the BOARD's sole discretion, and which will require compliance with all applicable laws, including, without limitation, BOARD Policy.

The use of the DEMISED AREA by the VILLAGE for carnivals, fairs, exhibits, mechanical rides, midways, or the same or similar kinds of activities is expressly prohibited. Neither Party shall commit nor permit any violations of applicable laws, rules and regulations of the BOARD, including BOARD Policies, the VILLAGE, State, or Federal government upon the DEMISED AREA.

The sale or consumption of alcoholic beverages at any time within the DEMISED AREA or School is expressly prohibited at all times. Violation of this provision shall be deemed a material breach of this Agreement, and the BOARD may, in its sole discretion, cancel this Agreement.

The VILLAGE shall be responsible for securing and locking all perimeter and parking lot gates at the completion of the VILLAGE's daily Period of Use. The VILLAGE agrees that the DEMISED AREA shall not be used for storage of construction or maintenance materials, or for the storage or long-term parking of vehicles. In addition, the VILLAGE shall ensure that there are no vehicles remaining on the DEMISED AREA, including the parking lot, at the end of the VILLAGE's daily period of use, and shall remove all such unauthorized vehicles stationed thereon. The VILLAGE shall remove said vehicles using all lawful means, and may post signs to facilitate same, after securing approval from the BOARD or designee.

In addition, the VILLAGE shall comply with all School safety and security criteria, as established by the School Administrator, and provide proper security and supervision in its use of the DEMISED AREA and maintain the DEMISED AREA safe and secure at all times during the VILLAGE's Period of Use. The VILLAGE acknowledges and agrees that the School Administrator shall have overall responsibility for the School site or operational issues impacting the DEMISED AREA and/or School site, including without limitation, building security and safety, and the VILLAGE shall comply with all such requirements and coordinate on an ongoing basis with the School Administrator to assure the safety of students, staff, visitors, invitees and the public at all times. The VILLAGE shall promptly notify the BOARD or its designee of any and all notices or communications received by the VILLAGE from any jurisdictional entity, as well as provide notice to the BOARD of any incidents that occurred, in relation to any safety issues or law enforcement

incidents on the DEMISED AREA or elsewhere on the School site. Thereafter, the VILLAGE shall provide the BOARD with all information reasonably requested by the BOARD, and shall cooperate with the BOARD in implementing any policies or procedures by the VILLAGE required to mitigate any further incidents in this regard. This representation by the VILLAGE shall constitute a material inducement for the BOARD to enter into this Agreement.

The Parties agree that the DEMISED AREA shall be closed from time to time to complete maintenance activities. The Parties agree that the method, scope and scheduling of any such closure shall be determined by the BOARD or designee.

Notwithstanding any other provisions of this Agreement, the VILLAGE acknowledges and agrees that the VILLAGE shall comply with Miami-Dade County Emergency Order 15-20, Miami-Dade County Emergency Order 21-20, as each Order may be subsequently modified or amended, as well as any other local, County, State, School Board or Federal Order currently in place or that may be implemented related to the COVID-19 crisis (“**Emergency Orders**”) at all times during the Village’s Period of Use of the DEMISED AREA. These restrictions may include, but are not limited to, social distancing requirements, site supervision to ensure compliance, requirements for Personal Protective Equipment, closure of facilities or restrictions on maximum capacity, etc., and the VILLAGE shall provide to the BOARD sufficient documentation acceptable to the BOARD certifying compliance, at the VILLAGE’s sole cost and expense, with any and all requirements set forth in the Emergency Orders and any policies or requirements which may be established by the BOARD relating thereto. Enforcement of these procedures is a condition precedent to the VILLAGE’s continued use and occupancy of the DEMISED AREA under any Emergency Order or BOARD Policy related thereto. Non-compliance with the foregoing procedures and requirements shall be deemed a material breach of this Agreement.

## VI.

### **CONSTRUCTION ACCESS AND IMPROVEMENTS TO THE DEMISED AREA**

As set forth in Article III, effective with the Effective Date of this Agreement, the BOARD does hereby grant to the VILLAGE, the right and privilege to access the DEMISED AREA, with full right of ingress thereto and egress therefrom, for the specific and limited purpose of installing new chain link fencing, a minimum of 6 feet in height within the DEMISED AREA, at the VILLAGE’s sole cost and expense, as substantially depicted in **Exhibit “C”** attached hereto and made a part hereof, which work shall be a condition precedent to the VILLAGE’s occupancy and use of the DEMISED AREA (the “**Fence Work**”). Subsequent to completion of construction of the Fence

Work, which is a condition precedent, the VILLAGE shall also have the right to modify existing improvements within the DEMISED AREA and/or construct new improvements within the DEMISED AREA, all at the VILLAGE's sole cost and expense, as substantially depicted in **Exhibit "C-1"** attached hereto and made a part hereof (the "**Improvements**"). The Fence Work and Improvements as depicted in Exhibit "C" and Exhibit "C-1", along with any future recreational improvements to be constructed by the VILLAGE on the DEMISED AREA are collectively referred to herein as the "**Work**"). The VILLAGE acknowledges and agrees that as part of the VILLAGE's improvements to the playfield as set forth in Exhibit "C-1", the BOARD may, at the Board's sole option, require that the VILLAGE include additional markings in the new turf soccer field to allow for multi-purpose use of such field by the Parties.

The VILLAGE acknowledges and agrees that as a precondition to commencing any portion of the Work, the VILLAGE shall be responsible for payment to the BOARD of the cost to be borne by the BOARD for jurisdictional plan review, permitting, and inspections related to the Work. The VILLAGE shall submit payment to the BOARD for the cost of such plan review, permitting and inspection services prior to commencement by the BOARD's consultant of such services. In addition, the VILLAGE further acknowledges and agrees that as a condition precedent to commencing any portion of the Work within the DEMISED AREA, the VILLAGE shall prepay to the BOARD Eight Percent (8%) of the estimated cost of the Work for project management related tasks, including serving as the liaison between the BOARD and VILLAGE for any design and construction activities within the DEMISED AREA. In that capacity, the BOARD shall assist the VILLAGE in preconstruction services, jurisdictional plan review, and other services required to facilitate the Work.

All Work shall be completed by the VILLAGE, at the VILLAGE'S sole cost and expense. Any substantive change to the Work shall be approved by the BOARD. The VILLAGE acknowledges and agrees that the VILLAGE'S occupancy and use of the DEMISED AREA shall not commence until the CO is issued for the Fence Work. The VILLAGE further acknowledges and agrees that the VILLAGE shall not commence use of any of the Improvements to be constructed within the DEMISED AREA until the CO is issued for the Improvements. The VILLAGE agrees that prior to the commencement of construction of any portion of the Work by the VILLAGE or its contractors, including the Fence Work, at the DEMISED AREA, the VILLAGE shall submit plans and specifications, as required by the BOARD, for review and approval in writing by the BOARD, or its designee, which the BOARD may approve or disapprove at its sole authority and discretion. All 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. Any and all warranties between the VILLAGE and its architect/engineer of record shall flow to the BOARD in the event of errors and omissions. The plans shall be prepared in accordance with all applicable laws, rules, regulations, statutes and codes, including without limitation, the District design criteria, specifications and safety codes, the State Requirements for Educational Facilities and the Florida Building Code, in effect at the time the plans are submitted to the BOARD. All Work shall be performed in a good and workmanlike manner by contractors who are licensed, insured and fully bonded, and the VILLAGE shall provide evidence of same to the BOARD prior to commencement of any portion of the Work. If required by the BOARD, at the BOARD'S sole determination, the VILLAGE'S contractors must be pre-qualified by the BOARD, in accordance with District and BOARD Policies before commencing the Work or any construction activities on the DEMISED AREA or any other portion of the School. All Work shall be at the sole cost and expense of the VILLAGE and 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 Requirements for Educational Facilities, and District design criteria and standards, as the same may be amended from time to time.

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. The Work shall commence only after issuance of proper permits, in conformance with the requirements of the BOARD'S 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 Requirements for Educational Facilities, and the District criteria and standards, as the same may be amended from time to time. All permits shall be properly closed by the VILLAGE upon completion of the Work, and evidence of same, satisfactory to the BOARD, shall be provided without demand. All Work shall be limited to those areas designated in the plans, and the VILLAGE shall have no authority to access any other portions of the School not part of the DEMISED AREA, except as otherwise provided for in this Agreement or as authorized in writing by the BOARD, or its designee, in its sole discretion and on an as-needed basis.

The Work shall conform at all times to the safety criteria established with and approved by the BOARD, or its designee, and shall neither unreasonably disrupt or interfere with the BOARD'S operations at the School. The VILLAGE and its contractors shall take all necessary safety

precautions during the Work, secure all construction areas by appropriate construction fencing or barricades, and coordinate on an ongoing basis with the School Administrator and assigned District Project Manager to assure the safety of the BOARD'S students, staff, visitors, invitees and the public at all times. In addition, the VILLAGE and its contractors shall work closely with the School Administrator and assigned District Project Manager to assure the Work does not interfere with or disrupt any of the School's or District's educational activities or operations, including, without limitation, School testing. The VILLAGE shall make every reasonable effort to assure that construction related activities to be performed within the DEMISED AREA are conducted during non-School hours, and the VILLAGE'S activities shall neither unreasonably disrupt nor interfere with the School's daily operations. Subject to compliance with the provisions of the Jessica Lunsford Act, in the event that such activities must be conducted during School hours, or in the event the VILLAGE requires access to the DEMISED AREA for any other reason, the VILLAGE shall first secure the approval of the School Administrator. In addition, the VILLAGE agrees to minimize noise during construction within the DEMISED AREA to the extent possible and shall work collaboratively with the School Administrator in this regard.

Prior to the commencement of the Work, the VILLAGE shall provide the BOARD, or its designee, with a schedule for the commencement and completion of the Work. If the BOARD, or its designee, requests that the VILLAGE cease any work within the DEMISED AREA due to unreasonable interference or violation of any applicable rules and regulations or the BOARD'S criteria, then the VILLAGE shall immediately discontinue its activities at the DEMISED AREA, and shall proceed only after the BOARD, or its designee, has reviewed the scheduling, safety and/or manner of work in question and has authorized the VILLAGE to continue. In addition, the BOARD, or designee may, at its sole option, require the VILLAGE to cease construction activities during periods of School testing, in which event the VILLAGE shall immediately discontinue its activities at the DEMISED AREA, and shall proceed only after the BOARD, or its designee, has authorized the VILLAGE to continue.

The VILLAGE shall cause each and every of its contractors and subcontractors performing any work within the DEMISED AREA to indemnify, defend and hold harmless the BOARD, its employees and representatives from any and all liability, damages and claims. In addition, as a pre-condition to commencing the Work, the VILLAGE shall require the VILLAGE'S contractor(s) to provide the BOARD with insurance certificates evidencing insurance coverage and limits meeting, at a minimum, the following requirements: (1) Commercial General Liability Insurance in an amount not less than \$1 Million combined single limit per occurrence for bodily

injury and property damage, (2) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the operations of the VILLAGE'S contractors and subcontractors, in an amount not less than \$1 million combined single limit per occurrence for bodily injury and property damage, (3) Workers' Compensation Insurance for all employees of the VILLAGE'S contractors and subcontractors, as required by Florida Statutes, and (4) Property Insurance. "The School Board of Miami-Dade County, Florida and its members, officers and employees" shall be an additional insured on all liability coverages except Workers' Compensation Insurance. The VILLAGE'S contractors and subcontractors shall maintain such insurance at all times while conducting construction related activities throughout the term of this Agreement.

The VILLAGE covenants and agrees that it shall indemnify, hold harmless and defend the BOARD from and against any and all claims, liens, suits, actions or causes of action arising out of or in connection with any construction costs and expenses for improvements made by the VILLAGE within the DEMISED AREA or elsewhere on the School campus. In addition, the VILLAGE shall cause each and every of its contractors and subcontractors performing work at the DEMISED AREA (hereinafter collectively referred to as "**VILLAGE'S Contractors**", and individually as the "**VILLAGE'S Contractor**") to further covenant and agree, at the VILLAGE'S Contractors' own expense, and upon written request by the BOARD, to defend any suit, action or demand brought against the BOARD on any claim or demand arising out of, resulting from, or incidental to the VILLAGE'S Contractors performance under any contract by and between the VILLAGE and/or its assigns and any and all contractors and subcontractors. This provision shall survive the expiration, cancellation or early termination of this Agreement. Furthermore, the VILLAGE and/or its assigns shall cause the indemnification provision and the duty to defend provision in its Contract with VILLAGE'S Contractors to survive the cancellation, early termination or expiration of any and all contracts by and between the VILLAGE and/or its assigns and any VILLAGE'S Contractors.

If, as a result of the VILLAGE'S actions in the performance of the Work, or failure to act, portions of the DEMISED AREA or School are damaged, in the sole opinion of the BOARD, then the VILLAGE shall repair and/or restore the damaged area, at its sole cost and expense, to the same or better condition as existed prior to such action. The VILLAGE shall complete the necessary repairs within thirty (30) days of receipt of written notice from the BOARD. In the event that the VILLAGE is unable to complete the repair work within said thirty (30) day period, the VILLAGE shall provide the BOARD with written notification stating the reasons, together



with a mutually agreed to schedule for the completion of the repairs. If the VILLAGE fails to complete the repair work within the prescribed time frame, then the BOARD, at its sole option, shall have the right, but not the obligation, to make the necessary repairs, at the VILLAGE'S sole cost and expense. The VILLAGE covenants and agrees that it shall reimburse the BOARD for this work within thirty (30) days of receipt from the BOARD of an invoice for same, accompanied by such documentation as may be reasonably required by the VILLAGE to substantiate the nature and completeness of the work. In the alternative, the BOARD may instead place the VILLAGE in default under this Agreement.

Notwithstanding the foregoing, in the event of damage to the DEMISED AREA or School site caused by the VILLAGE or its agents, contractors or invitees, resulting in a significant impact to operations or the safety and well-being of the BOARD'S students, staff and visitors, and requiring immediate repair, as determined by the BOARD at the BOARD'S sole discretion, the BOARD may, at the BOARD'S sole discretion, complete the necessary repairs, at the VILLAGE'S sole cost and expense.

If required by the BOARD, at the BOARD'S sole determination, prior to the start of any construction activities at the School, and irrespective of the VILLAGE'S estimate of the cost of construction of the Work, the VILLAGE shall provide to the BOARD a payment and performance bond ("**Bond**") with a surety insurer authorized to do business in the State of Florida as surety, based on the cost of the Work as determined solely by the BOARD. The Bond may be in the form described in Florida Statutes §255.05 or otherwise, so long as all protections and relevant provisions set forth in §255.05 are provided to all persons defined in Florida Statutes §713.01 who furnish labor, services, or materials for the prosecution of the Work provided for in the Agreement.

The VILLAGE shall not permit any liens to be filed or attached to the DEMISED AREA or School for any reason whatsoever, including, but not limited to, as a result of the Work performed by the VILLAGE pursuant to this Agreement. In the event that any such lien is recorded in the official records of Miami-Dade County, Florida, the VILLAGE shall, within twenty (20) calendar days of the date of such filing, cause such lien to be removed of record or properly transferred to a bond under Chapter 713, Florida Statutes. In the event a notice of violation is issued by any jurisdictional agency relating to the Work, said notice of violation shall be the sole responsibility of the VILLAGE, and the VILLAGE shall cure said violation(s) within thirty (30) days of receipt thereof, at the VILLAGE'S sole cost and expense. Should the VILLAGE fail to comply with this requirement, then the BOARD may, by its own effort, cause such lien or other

violations to be removed of record and cured. The VILLAGE shall be liable to the BOARD for all costs of such removal including, without limitation, any and all reasonable attorneys' fees, court costs and any other cost or expense incurred or expended by the BOARD.

It is expressly understood by the Parties that the VILLAGE shall not commence any of the Work or construction activities within the DEMISED AREA or at or about the School site until the BOARD, or its designee, has received all items stipulated in this Agreement and has notified the VILLAGE, in writing, as to the approved date for the start of Fence Work and/or the Improvements. At the completion of any portion of the Work, the VILLAGE shall secure an inspection of the Work from the BOARD'S designee, verifying that the Work on the DEMISED AREA has been satisfactorily and properly completed, and shall not release its contractor from its contractual obligations or make final payment to the contractor until the BOARD'S designee attests to the satisfactory completion of the Work. In addition, the VILLAGE agrees that the VILLAGE or the VILLAGE'S Contractors shall restore the DEMISED AREA to a condition that is safe and usable, including without limitation, the removal and/or disposal of equipment, materials, personal property, debris and/or trash, all at the sole cost and expense of the VILLAGE. The VILLAGE shall provide to the BOARD all as-built drawings, Warranties, test data, and any other documents related to the Work, and will provide proof of closure of any and all permits related to the Work, without demand and at no cost to the BOARD.

Failure of the VILLAGE to complete the Fence Work within ninety (90) days of the Effective Date, or some other period of time as mutually agreed to by the Parties, shall constitute a breach under this Agreement, and may result in the automatic termination of this Agreement for cause, irrespective of Article XVI of this Agreement. In addition, the Parties acknowledge and agree that the Improvements will be completed by the VILLAGE in phases, substantially in conformance with the timeframes set forth on **Exhibit "D"** attached hereto and made a part hereof (the "**Phasing Plan**"). Failure of the VILLAGE to complete the Improvements within the timeframes set forth in the Phasing Plan, or some other period of time as mutually agreed to by the Parties, shall constitute a breach under this Agreement, and may result in the automatic termination of this Agreement for cause, irrespective of Article XVI of this Agreement. In such event, the VILLAGE covenants and agrees to restore the DEMISED AREA, at the VILLAGE'S sole cost and expense, to the same or better condition existing prior to the Commencement Date of this Agreement.

In addition to the Work to be constructed by the VILLAGE as described in Exhibit C and Exhibit C-1, in the event the VILLAGE wishes to make any other improvements within the

DEMISED AREA or elsewhere on the School site during the term of this Agreement (“**Additional Improvements**”), the VILLAGE shall provide the BOARD with a written request, in accordance with Article XXVII hereof, detailing the proposed improvements to be made, which the BOARD or its designee may approve or disapprove at its sole authority. Any such Additional Improvements shall be at the sole cost and expense of the VILLAGE, and all terms of this Agreement, as it may be amended, relating to the construction and operation of the Work, shall govern the construction and operation of said Additional Improvements. Notwithstanding the foregoing, the VILLAGE acknowledges and agrees that any Additional Improvements to any other portions of the DEMISED AREA may not take place without an amendment to this Agreement in full compliance with Section 1013.15(1), F.S., specifically modifying the description and use of the DEMISED AREA.

All improvements or facilities installed, operated and maintained by the VILLAGE within the DEMISED AREA pursuant to this Agreement shall become the property of the BOARD, without compensation due to the VILLAGE, at such time as the BOARD accepts installation of same as being final and in compliance with all appropriate regulations.

The VILLAGE acknowledges and agrees that the BOARD, at its sole option, may construct recreational or educational facilities on the School site, and maintain equipment related to the construction of any such facilities thereon, at such time as the BOARD determines such a need. The BOARD shall notify the VILLAGE of its intent to construct such facilities.

## **VII.**

### **MAINTENANCE AND CUSTODIAL SERVICES**

The VILLAGE shall be responsible for providing all maintenance, repair and upkeep of the DEMISED AREA, at the VILLAGE’s sole cost and expense, including any improvements now located or to be constructed thereon, as is necessary to keep the same in a good, safe and code-compliant condition at all times, with the exception of the School playfield area which shall remain the responsibility of the BOARD. In addition, the VILLAGE, at the VILLAGE’s sole cost and expense, shall be responsible for providing all custodial or janitorial services to any improvements now located or to be constructed within the DEMISED AREA, and the BOARD, at the BOARD’s sole cost and expense, shall be responsible for providing all custodial or janitorial services to any improvements now located or to be constructed within the School playfield area. All such maintenance and custodial/janitorial services provided by the BOARD shall be in accordance with the BOARD’s standards, operating procedures and frequency of service.

Notwithstanding the above or any other provisions of this Agreement, the VILLAGE shall

be solely legally responsible and fully liable for compliance with all maintenance requirements and mitigating measures, under any Emergency Order or BOARD Policy relating thereto, during the Village's Period of Use., at the VILLAGE's sole cost and expense. Enforcement of these procedures is a condition precedent to the VILLAGE's continued use and occupancy of the DEMISED AREA under any Emergency Order or BOARD Policy related thereto. Non-compliance with the foregoing procedures and requirements shall be deemed a material breach of this Agreement.

Notwithstanding the above, the VILLAGE shall be responsible for pick-up and removal of trash and litter within the DEMISED AREA generated during the VILLAGE's Period of Use. In addition, the BOARD shall be responsible for pick-up and removal of trash and litter within the DEMISED AREA generated during the BOARD'S Period of Use.

## **VIII.**

### **INSURANCE**

The VILLAGE shall, on or before the Commencement Date of this Agreement, and all times during the term of this Agreement, provide the BOARD with confirmation of the VILLAGE'S self-insurance program in a form and substance acceptable to the BOARD or its designee, or, in the alternative, proof of insurance evidencing insurance coverage and limits meeting, at a minimum, the following requirements: (1) Commercial General Liability Insurance in an amount not less than \$1 Million combined single limit per occurrence for bodily injury and property damage, (2) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the operations of the VILLAGE, in an amount not less than \$1 million combined single limit per occurrence for bodily injury and property damage, and (3) Workers' Compensation Insurance for all employees of the VILLAGE as required by Florida Statutes. "The School Board of Miami-Dade County, Florida and its members, officers and employees" shall be named as an additional insured on all liability coverages except Workers' Compensation Insurance. Proof of coverage shall be provided to the BOARD on an original certificate of insurance endorsed to reflect a minimum thirty (30) day advanced notice of cancellation. The certificate of insurance shall be delivered to the BOARD on or before the Effective Date of this Agreement, and shall remain in full force and effect during the term of this Agreement, and the VILLAGE shall furnish to the BOARD, without demand, evidence of renewals of such insurance policy no less than thirty (30) days prior to the expiration of the then current policy.

**IX.**

**UTILITIES AND OTHER SERVICES**

In the event the VILLAGE utilizes or constructs any improvements requiring utility service, as determined by the BOARD, the VILLAGE shall be responsible for installation and payment of any and all such utilities including, but not necessarily limited to electricity, field lighting, parking lot lighting, potable and irrigation water, sewer, storm water, trash and garbage. The VILLAGE shall install separate services and/or meters in its name and shall pay for such services at its sole cost and expense.

In addition, the VILLAGE shall secure all necessary jurisdictional approvals, and assume any and all liability related to the maintenance, repair and replacement of water/sewer facilities located within a utility easement on the DEMISED AREA or School Site that may impact the ongoing operation and use of the improvements to be constructed by the VILLAGE under this Agreement, or replacement thereof necessitated by such activities, and the BOARD shall have no liability for the impact on the VILLAGE's use of the DEMISED AREA during any interruption of said use. In the event maintenance, repair or replacement of such water/sewer facilities impacts any portion of the improvements to be constructed by the VILLAGE under this Agreement, the VILLAGE shall be responsible, at the VILLAGE's sole cost and expense, for repair or replacement of said improvements in full compliance with rules, regulations, terms and conditions which may be imposed by the applicable jurisdictional entity.

The VILLAGE shall notify the BOARD in a timely manner of any utility agreements requiring the approval and/or joinder of the BOARD as property owner. The BOARD will cooperate as necessary, subject to review and approval of any such agreements or documents by the BOARD or its designee, in its sole authority and discretion. It is understood and agreed that the BOARD shall not execute any agreements, other than joinders which shall be deemed strictly as evidence of consent of property owner and without any responsibility or liability whatsoever thereunder. The foregoing includes, but it is not limited to WASD Agreements and any off-site improvements which may be required by any jurisdictional agency.

**X.**

**INDEMNIFICATION AND HOLD HARMLESS**

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.

## **XI.**

### **NO LIABILITY FOR PERSONAL PROPERTY**

The Parties 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 DEMISED AREA.

## **XII.**

### **LIABILITY FOR DAMAGE OR INJURY**

The BOARD shall not be liable for any damage or injury which may be sustained by the VILLAGE or any persons on or about the DEMISED AREA, other than damage or injury resulting from the negligent performance or failure of performance on the part of the BOARD, its agents, representatives or employees, and in such event the BOARD'S liability shall be subject

to the limitations of Section 768.28, Florida Statutes. The BOARD shall not be responsible or liable for any loss of business, consequential damages or any other damages arising from acts of God.

The VILLAGE shall not be liable for any damage or injury which may be sustained by the BOARD or any persons on or about the DEMISED AREA, other than damage or injury resulting from the negligent performance or failure of performance on the part of the VILLAGE, its agents, representatives or employees, and in such event the VILLAGE'S liability shall be subject to the limitations of Section 768.28, Florida Statutes. The VILLAGE shall not be responsible or liable for any loss of business, consequential damages or any other damages arising from acts of God.

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

### **XIII.**

#### **ASSIGNMENT AND SUBLETTING**

The VILLAGE shall not, at any time during the term of this Agreement, sublet in part or whole the DEMISED AREA, or assign, transfer, mortgage, pledge, hypothecate or otherwise dispose of its interest in this Agreement or any portion or part thereof, or allow any other individual or entity to operate or manage the DEMISED AREA, or permit the DEMISED AREA to be occupied by other persons, firms, corporations, or governmental units, without the BOARD'S prior written consent, which may be withheld at the BOARD'S sole discretion. Any unauthorized assignment, sublet or otherwise, shall constitute a material breach under this Agreement, and may result in the automatic termination of this Agreement for cause, irrespective of Article XVI of this Agreement.

### **XIV.**

#### **EXTENSION OF AGREEMENT**

If not in default in performance of the obligations set forth in this Agreement, the VILLAGE shall have the right to extend this Agreement, under the same terms and conditions set forth herein, for three (3) additional terms of five (5) years each from the expiration of the original term or any renewal thereof, at the mutual agreement of the Parties, provided the VILLAGE gives written notice to the BOARD, as set forth in Article XXVII, at least ninety (90) days prior to the expiration of the then current term. The BOARD'S approval shall not be unreasonably withheld. 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.

**XV.**

**CANCELLATION**

In addition to the provisions of Article XVI and XXVIII, the BOARD shall have the right to cancel the Agreement, in whole or in part, with one (1) year advance written notice to the VILLAGE, if the BOARD determines that the DEMISED AREA, in whole or in part, is needed for educational or other District purposes, as determined by the BOARD in its sole discretion, said determination not to be unreasonably enforced.

In addition to the provisions of Articles XVI and XXVIII, 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.

The Parties acknowledge and agree that any material breach of this Agreement may result in the immediate cancellation of this Agreement, irrespective of Article XVI of this Agreement.

In the event of cancellation by either Party, the VILLAGE shall surrender and vacate the DEMISED AREA in compliance with Article XX of this Agreement.

**XVI.**

**DEFAULT**

The BOARD shall notify the VILLAGE in writing regarding the 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 all defaults, 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, 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 all defaults, 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, without penalty, upon ten (10) days additional written notice to the BOARD.

In the event of termination due to default by either Party, which default is not cured, the VILLAGE shall surrender and vacate the DEMISED AREA in compliance with Article XX of this Agreement.



**XVII.**

**PEACEFUL POSSESSION**

Subject to the terms, conditions and covenants of this Agreement, the Parties agree that each Party shall and may peaceably have, hold and enjoy the DEMISED AREA, without hindrance or interference by the other Party.

**XVIII.**

**RIGHT OF ENTRY**

Other than in the event of an emergency and subject to the provisions of Article XXXI, after first providing reasonable notice to the VILLAGE, the BOARD, or any of its agents, representatives or employees, shall have the right to enter the DEMISED AREA during the VILLAGE'S Period of Use to examine same or to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort or preservation of the DEMISED AREA, provided such activities do not unreasonably interfere with the VILLAGE'S use of the DEMISED AREA.

**XIX.**

**TAXES AND REGULATORY COMPLIANCE**

The VILLAGE shall be responsible for the collection and payment of any taxes, fees, operating permits, licenses, or other assessments, if any, including but not limited to sales tax and ad valorem tax, all licenses, permits or other taxes, which may be imposed on the DEMISED AREA or the School, as a result of the leasing, use, and occupancy of the DEMISED AREA 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 DEMISED AREA, 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.

Non-compliance with the provisions of this Article XIX shall be deemed a material breach of this Agreement.

**XX.**

**SURRENDER OF PREMISES**

Except as otherwise provided in this Agreement, the VILLAGE agrees, at the expiration, termination or cancellation of this Agreement or any extension thereof, to promptly and peacefully surrender and deliver possession of the DEMISED AREA to the BOARD in good

order and repair and in as good or better 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. The VILLAGE shall promptly remove all of the VILLAGE'S personal property and other items belonging to the VILLAGE from the DEMISED AREA, including any signage installed by the VILLAGE. 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 other facilities constructed by the VILLAGE on the DEMISED AREA, and to restore such area to the same or better condition as existed before the Commencement Date of this Agreement.

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 DEMISED AREA. 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.

**XXI.**

**AMENDMENTS**

In addition to the requirements set forth elsewhere in this Agreement, the BOARD and VILLAGE, by mutual agreement, shall have the right, but not the obligation, to amend this Agreement, which shall be accomplished through the execution by the Parties of an amendment to this Agreement. Such amendments shall be effective only when signed by the BOARD and VILLAGE and shall be incorporated as part of this Agreement in compliance with all applicable laws, including, without limitation, Section 1013.15(1), F.S.

**XXII.**

**NON-DISCRIMINATION**

The Parties agree that there will be no discrimination against any person based upon race, color, sex, religious creed, ancestry, ethnic or national origin, citizenship status, mental or physical handicap, genetic information, age, political beliefs, sexual orientation, gender, gender identification, marital status, social and family background, linguistic preference, pregnancy or as otherwise provided by law, in the use of the DEMISED AREA. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination in the use of the DEMISED AREA by a Party hereto has occurred, such event shall be treated as a Default hereunder.

**XXIII.**

**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.

**XXIV.**

**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.

**XXV.**

**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.

**XXVI.**

**WAIVER**

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

**XXVII.**

**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 Design & Construction Officer  
1450 N.E. Second Avenue, Room 923  
Miami, Florida 33132  
Fax: 305-995-4760  
E-mail: [RPerez6@dadeschools.net](mailto:RPerez6@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, FL 33132  
Attn: School Board Attorney  
Fax: 305-995-1412  
E-mail: [Walter.Harvey@dadeschools.net](mailto:Walter.Harvey@dadeschools.net) and [ACraft@dadeschools.net](mailto: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 the DEMISED AREA by a not-for-profit entity, 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, 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.

#### **XXVIII.**

#### **DAMAGE AND DESTRUCTION**

Other than damage or destruction caused by the VILLAGE or BOARD, in the event the DEMISED AREA, in whole or in part, should be destroyed or so damaged by fire, windstorm or other casualty to the extent the DEMISED AREA is rendered untenable or unfit for the purposes intended, the VILLAGE may, at the VILLAGE's sole option, either cancel this Agreement by giving sixty (60) day written notice to the BOARD, or repair or replace the damaged/destroyed facilities, at the VILLAGE's expense.

If the VILLAGE opts to repair or replace the damaged/destroyed facilities, then the VILLAGE shall cause the damaged/destroyed facilities to be repaired or replaced, and placed in a safe, secure and useable condition 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. Should the damaged/destroyed facilities not be repaired and rendered tenantable within the aforementioned time period, then the BOARD may, at its sole option, place the VILLAGE in default.

Any damage or destruction sustained to all or portions of the DEMISED AREA that can be substantiated as having been caused as a result of the actions of one Party shall be repaired by such Party at such Party's sole cost and expense. In that event, the responsible Party shall cause the damaged/destroyed facilities to be repaired or replaced, and placed in a safe, secure and useable condition 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. Should the damaged/destroyed facilities not be repaired and rendered tenantable within the aforementioned time period, then the other Party may, at its sole option, place the Party responsible for the repairs in default.

The Parties agree that in the event of cancellation of the Agreement due to damage or destruction, the Parties shall surrender the DEMISED AREA in compliance with Article XX of this Agreement.

#### **XXIX.**

#### **SIGNAGE**

The VILLAGE may erect, at its sole cost and expense, identification signage within the DEMISED AREA, subject to the prior written approval of the BOARD, or its designee, and in conformance with all rules and regulations governing public schools.

Upon the termination, expiration or cancellation of this Agreement, the VILLAGE shall remove from the DEMISED AREA, at the VILLAGE'S expense, any signage erected by the VILLAGE, and restore the area to the same or better condition as existed prior to the VILLAGE'S installation of the signage.

#### **XXX.**

#### **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 School or DEMISED AREA, or arising from the VILLAGE's

use or occupancy of the DEMISED AREA, 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 DEMISED AREA. 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 DEMISED AREA, or that arises at any time from use or occupancy of the DEMISED AREA.

The VILLAGE shall not cause or permit to occur: (a) any violation of any Environmental Law in the DEMISED AREA or School, or (b) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under, or about the DEMISED AREA, or the transportation to or from the DEMISED AREA of any Hazardous Substance.

The VILLAGE shall, at the VILLAGE’S expense, comply with all applicable Environmental Laws with respect to the DEMISED AREA and School. The VILLAGE shall, at the VILLAGE’S own 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 DEMISED AREA 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 DEMISED AREA or School, then the VILLAGE shall, at the VILLAGE’S 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 VILLAGE shall promptly notify the BOARD of any notices or communications received from any jurisdictional entity in relation to any environmental issues on the DEMISED AREA or elsewhere on the School site, 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 DEMISED AREA.

The obligations and liability of the Parties under this paragraph shall survive the expiration or termination of this Agreement.

### **XXXI.**

#### **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

The VILLAGE 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.

**XXXII.**

**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 School and the rights of the BOARD under those leases and to all financing that may now or hereafter affect the leases or the School, or any portions thereof, 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 thirty (30) calendar days of request, any certificate that the BOARD may request.

**XXXIII.**

**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 VILLAGE understands the broad nature of these laws and agrees to comply with Florida's Public Records Laws and laws relating to records retention. The VILLAGE shall keep and maintain public records required by the BOARD to perform the service. The VILLAGE shall keep records to show its compliance with this Agreement. The VILLAGE's contractors and subcontractors must make available, upon request of the BOARD, 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 VILLAGE 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 the BOARD's custodian of public records, the VILLAGE shall provide the BOARD 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 VILLAGE 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 VILLAGE does not transfer the records to the BOARD. The VILLAGE, its 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 VILLAGE, upon completion of the Agreement, shall transfer, at no cost to the BOARD, all public records in possession of the VILLAGE or keep and maintain public records required by the BOARD to perform the service. If the VILLAGE transfers all public records to the BOARD upon completion of the Agreement, the VILLAGE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the VILLAGE keeps and maintains public records upon completion of the Agreement, the VILLAGE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the BOARD, upon request from the BOARD'S custodian of public records, in a format that is compatible with the information technology systems of the BOARD.

The VILLAGE shall incorporate this provision into every contract that it enters into relating to the DEMISED AREA.

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

**XXXIV.**

**USE OF FACILITY AS A REVENUE GENERATOR**

The BOARD shall at all times retain the exclusive right to be the sole authorizer and recipient of revenue generators, in compliance with BOARD Policies, relating to the DEMISED AREA, including, without limitation, third party advertising or installation of wireless telecommunications facilities, provided such endeavors do not unreasonably interfere with the VILLAGE's rights to peaceful enjoyment of the DEMISED AREA.

**XXXV.**

**REPRESENTATIONS**

The VILLAGE 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 action 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 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.**

**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, including without limitation, any not-for-profit entity as outlined in Article V of 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 DEMISED AREA.

Additionally, the VILLAGE agrees that each of its employees, representatives, agents, subcontractors or suppliers who are permitted access on the DEMISED AREA 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 DEMISED AREA 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 XXXVI shall constitute a material breach of the Agreement entitling the BOARD, at its sole option, to place the VILLAGE in default.

### **XXXVII.**

#### **MISCELLANEOUS PROVISIONS**

- A. **RECORDATION:** This Agreement may not be recorded by either Party.
- B. **EMINENT DOMAIN:** If all or portions of the DEMISED AREA are 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 the award made to the BOARD.

- 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 DEMISED AREA.
- F. **BROKERS:** The VILLAGE represents 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 ("**Indemnitor**"), and in consideration of the mutual promises contained in this Agreement, Indemnitor shall indemnify, defend and hold harmless the BOARD ("**Indemnitee**"), and Indemnitee's officers, directors, agents and representatives, from and against any and all liabilities, damages, claims, costs, fees and expenses whatsoever 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 program(s) within the DEMISED AREA, the VILLAGE shall not be permitted to use the DEMISED AREA for promotion or advertising of any type or nature whatsoever.
- H. **USE APPROVALS:** The VILLAGE shall be responsible for determining and securing, at its sole cost and expense, all federal, state, county, municipal and/or other permits, licenses, use approvals, occupational licenses, certificates or approvals needed, if any, for the VILLAGE's use and operations at the DEMISED AREA, prior to commencement of the Agreement.
- I. **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.

- J. **TAX-EXEMPT STATUS:** In addition to the provisions of Article XIX of this Agreement, the VILLAGE acknowledges and agrees that in the event the tax-exempt status of the DEMISED AREA is rescinded or is at risk of being rescinded by Miami-Dade County or other appropriate jurisdictional governmental entity as a result of the use, occupancy or lease of same by the VILLAGE or a not-for-profit entity as outlined in Article V of this Agreement, such rescission or potential rescission (as may be evidenced by a Notice of Proposed Property Taxes or any other official notice of any tax imposed by County, State or any other jurisdictional entity) shall constitute a default under this Agreement, and may result, at the BOARD'S sole option, in the automatic termination of this Agreement for cause, irrespective of Article XVI of this Agreement. Payment of any taxes so imposed shall be remitted to the BOARD within ten (10) days of receipt of notice, without demand.
- K. **INTELLECTUAL PROPERTY RIGHTS:** The VILLAGE shall indemnify and hold harmless the BOARD from and against all liability of any nature or kind, including damages, costs and expenses (including reasonable attorney's fees and costs at the trial level and through all appeals) for or on account of any copyrighted, service marked, trademarked, patented or unpatented invention, process, article or work manufactured or used in the performance of this Agreement. If the VILLAGE uses any design, device, materials or works covered by letters, service mark, trademark, patent, copyright or any other intellectual property right, it is mutually agreed and understood without exceptions that the VILLAGE shall be liable for all royalties or costs arising from the use of such design, device or materials in any way involved in the activities contemplated by this Agreement.
- L. **SOVEREIGN IMMUNITY:** No provision contained in this Agreement shall be deemed a waiver of either Parties sovereign immunity.
- M. **SECURITY AND SUPERVISION:** The VILLAGE shall provide proper supervision and security of the DEMISED AREA at all times during the VILLAGE's Period of Use as further outlined in Article V of this Agreement.
- N. **JOINT USE COMMITTEE:** A Joint Use Committee, made up of the BOARD's North Region Superintendent, or designee, and the VILLAGE's Parks Director, or designee, or their respective successors in office, shall be established as of the Commencement Date of this Agreement. The Joint Use Committee shall meet on an annual basis, or at the request of either Party from time to time, to coordinate and resolve any issues pertaining to the

scheduling, use, operation, maintenance, and supervision of the DEMISED AREA.

**XXXVIII.**

**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:**

**BOARD:**

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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

Alberto M. Carvalho  
Superintendent of Schools

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**RECOMMENDED:**

**TO THE BOARD: APPROVED AS TO RISK MANAGEMENT ISSUES:**

Office of Risk and Benefits Management

\_\_\_\_\_  
Jaime G. Torrens  
Chief of Staff

Date: \_\_\_\_\_

\_\_\_\_\_  
Risk and Benefits Officer

Date: \_\_\_\_\_

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

**TO THE BOARD: APPROVED AS TO TREASURY MANAGEMENT ISSUES:**

Office of Treasury Management

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

Date: \_\_\_\_\_

\_\_\_\_\_  
Treasurer

Date: \_\_\_\_\_

**WITNESSES AS TO THE VILLAGE:**

**VILLAGE:**  
NORTH BAY VILLAGE

\_\_\_\_\_  
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"**  
**TO**  
**JOINT USE AGREEMENT**

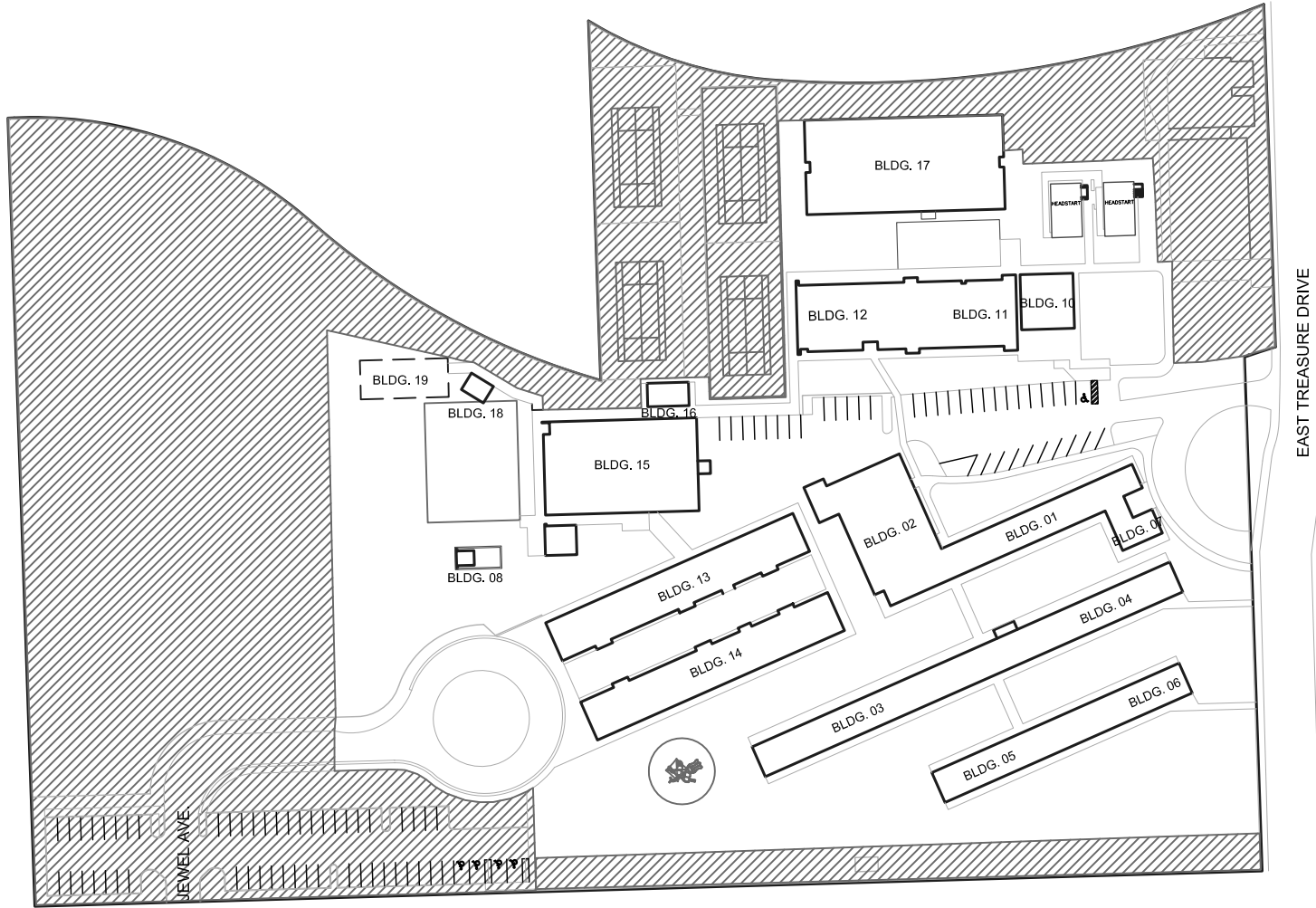
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**DEMISED AREA**


[consisting of 2 pages, including this title page]

# Exhibit "A"


## Treasure Island Elementary School



**Legend**

 Demised Area

N



Not to scale

**EXHIBIT "B"**  
**TO**  
**JOINT USE AGREEMENT**

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**CERTIFICATE OF OCCUPANCY, CERTIFICATE OF COMPLETION OR EQUIVALENT**

[consisting of \_\_\_\_ pages, including this title page]

[to be attached upon completion of the Work and issuance of same by the BOARD]

**EXHIBIT "C"**  
**TO**  
**JOINT USE AGREEMENT**

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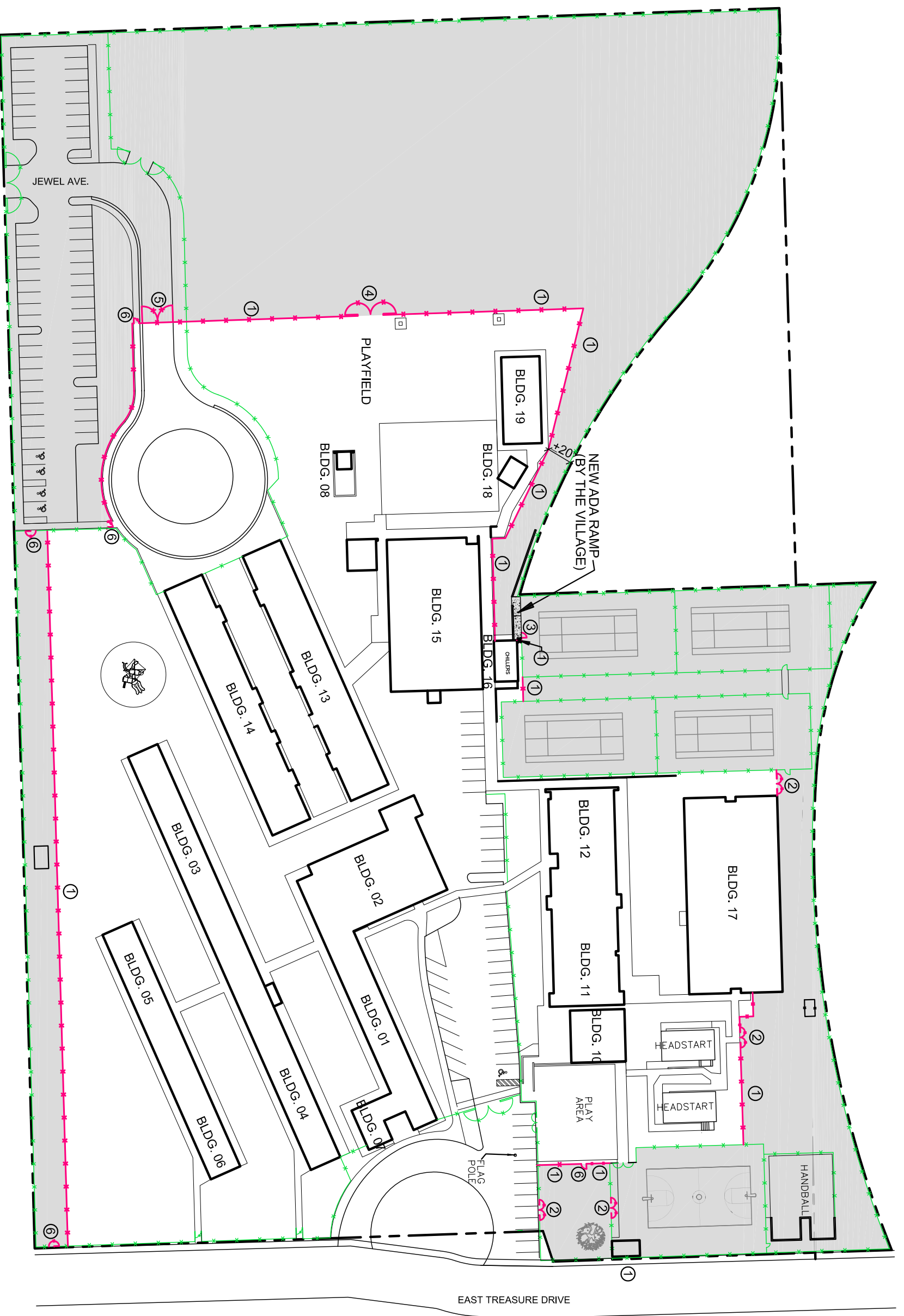
**FENCE WORK**

[consisting of 2 pages, including this title page]

LEGEND	
①	NEW 6' H CHAINLINK FENCE
②	NEW (2) 3' W X 6' H CHAIN LINK GATE
③	NEW 4' W X 10' H CHAIN LINK GATE
④	NEW (2) 10' W X 6' H CHAIN LINK GATE
⑤	NEW (2) 12' W X 6' H CHAIN LINK GATE
⑥	NEW 4' W X 6' H CHAIN LINK GATE
	NEW CHAIN LINK FENCE
	EXISTING CHAIN LINK FENCE

**NOTES**

1. ALL EXISTING SITE CONDITIONS SHALL BE FIELD VERIFIED PRIOR TO COMMENCEMENT OF CONSTRUCTION.
2. ALL WORK SHALL COMPLY BE PERFORMED IN ACCORDANCE WITH ALL APPLICABLE LAWS, RULES, REGULATIONS, STATUTES AND CODES, INCLUDING WITHOUT LIMITATION, THE MDCPS DESIGN CRITERIA AND STANDARDS, SAFETY CODES, SREF AND FBC.



PROPOSED FENCE LAYOUT  
 SCALE: N.T.S.



FOR STUDY PURPOSES ONLY

**EXHIBIT "C-1"**  
**TO**  
**JOINT USE AGREEMENT**

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**IMPROVEMENTS**

[consisting of 2 pages, including this title page]

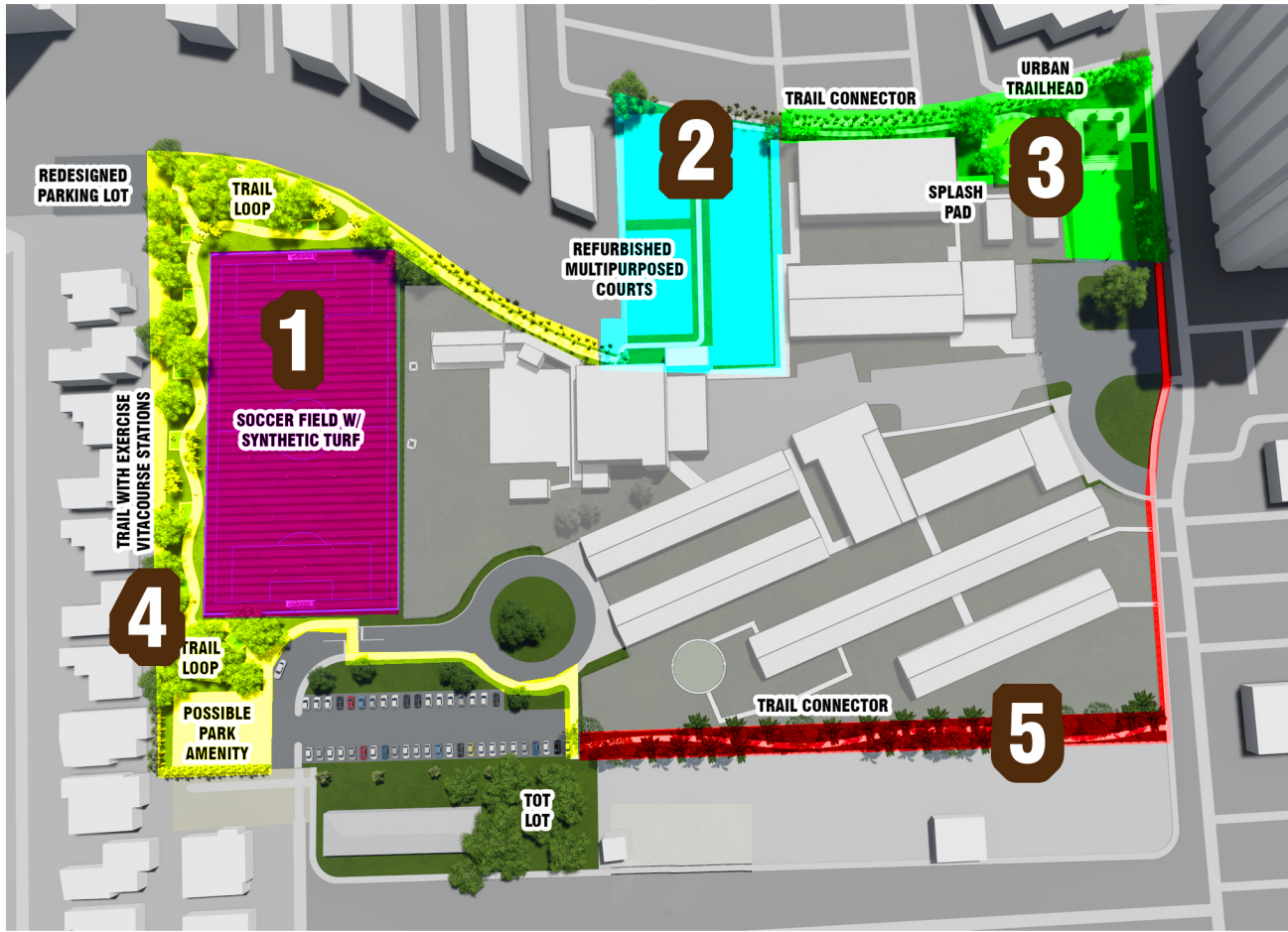
[The Parties acknowledge and agree that prior to commencement of construction of any of the Improvements, the VILLAGE shall provide the BOARD with a site plan depicting the Improvements in conformance with the exhibit renderings attached to this Agreement as Exhibit "C-1", which site plan, as approved by the BOARD, shall thenceforth be attached to this Agreement as Exhibit "C-1".]

**EXHIBIT "D"**  
**TO**  
**JOINT USE AGREEMENT**

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**PHASING PLAN**

[consisting of 2 pages, including this title page]



## RECOMMENDED PROJECT BREAKOUT

- 1 Turf Field (Including drainage)
- 2 Refurbished Courts, pathway and ADA access Ramp
- 3 Splash Pad, Urban Trailhead and Trail Connector
- 4 Exercise Trail with Vita-course Stations
- 5 Trail connector and any needed sidewalk improvements along East Treasure Drive

Project Number	Project Name	Total	Fiscal Year Allocation
1	Turf Field (Including drainage and perimeter fencing)	\$2,578,279.00	Design FY 2021-22 Construction FY 2022-23
4	Exercise trail with Vita-course Stations	\$ 847,256.00	Design FY 2021-22 Construction FY 2022-23
2	Refurbished Courts, pathway and ADA access ramp	\$ 226,478.00	Design & Construction FY 2023-24
3	Splash Pad, Urban Trailhead and Trail Connector	\$ 810,992.00	Design & Construction FY 2023-24
5	Trail Connector and Any Needed sidewalk improvements along East Treasure Drive	\$ 259,220.00	Design & Construction FY 2023-24

### Alternate Sequence

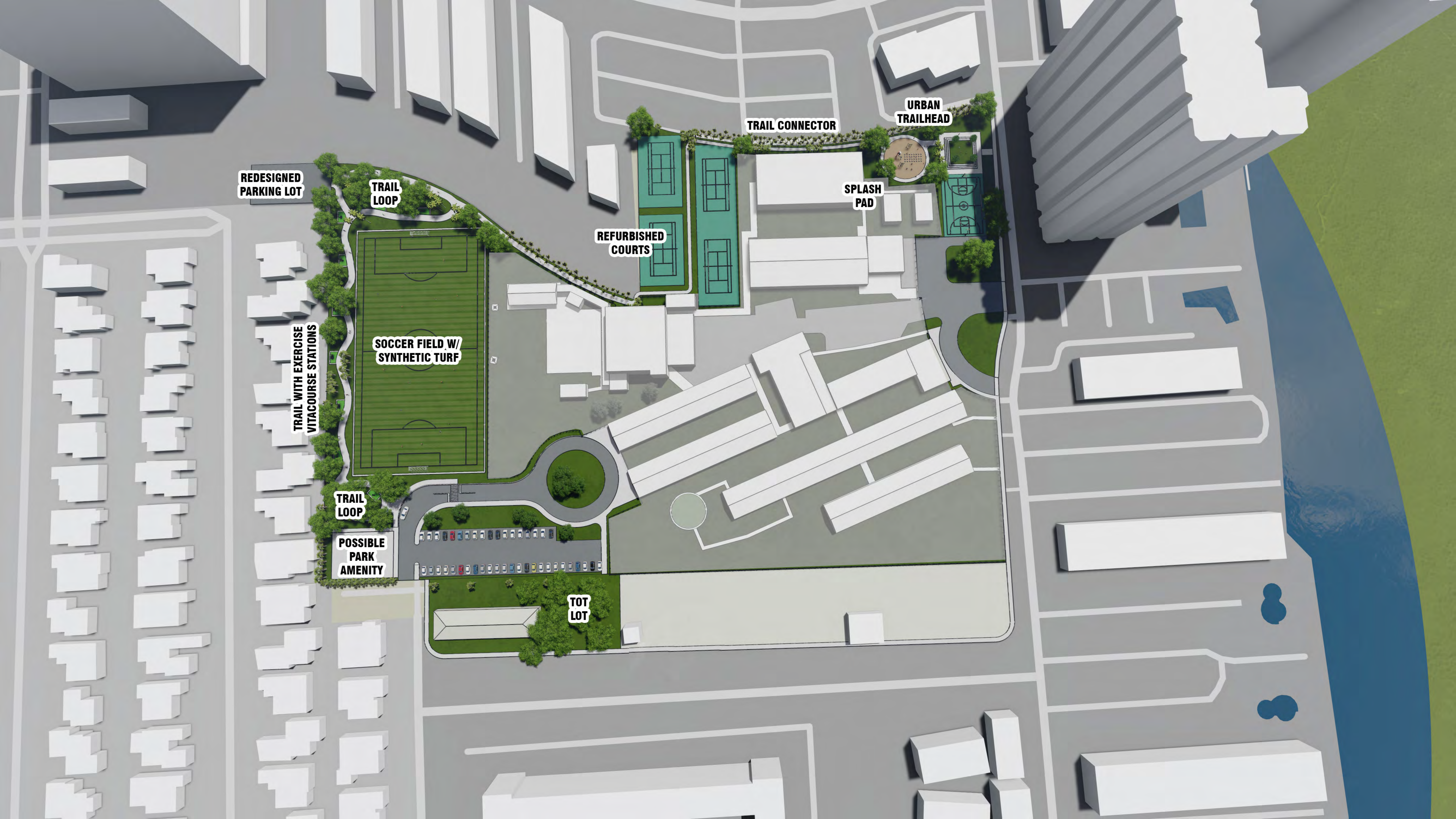
Project	Contract
1	Turf Field (Including drainage and perimeter fencing)
4	Exercise Trail with Vita-course Stations
2	Refurbished Courts, pathway and ADA access Ramp
3	Splash Pad, Urban Trailhead and Trail Connector
5	Trail connector and any needed sidewalk improvements along East Treasure Drive

Overall Time-Frame Needed	Timeframe (Weeks) from Issuance of NTP to Contractor		
	Mobilization	Construction	De-mobilization and Restoration
15 Weeks	2 Weeks	12 Weeks	1 Weeks
8 Weeks	1 Weeks	6 Weeks	1 Weeks
9 Weeks	1 Weeks	7 Weeks	1 Weeks
8 Weeks	1 Weeks	6 Weeks	1 Weeks
8 Weeks	1 Weeks	6 Weeks	1 Weeks

Cost Break-Down and Allocation Distribution						
Construction	General Conditions	GC Overhead and Profit	Contingency	Design Fees	Min. Fiscal Year Allocation	MDPS Required Project Mgmt Cost (8% of Total)
\$ 1,381,664.00	\$ 160,238.56	\$ 185,028.31	\$ 385,475.64	\$ 274,888.41	\$ 2,387,294.92	\$ 190,983.59
\$ 513,115.13	\$ 59,508.56	\$ 68,714.84	\$ 143,155.92		\$ 784,494.45	\$ 62,759.56
\$ 125,272.00	\$ 14,528.43	\$ 16,776.05	\$ 34,950.11	\$ 18,174.06	\$ 209,700.64	\$ 16,776.05
\$ 434,981.25	\$ 50,446.98	\$ 58,251.39	\$ 121,357.06	\$ 85,881.03	\$ 750,917.70	\$ 60,073.42
\$ 156,988.38	\$ 18,206.74	\$ 21,023.41	\$ 43,798.78		\$ 240,017.31	\$ 19,201.38

Sub-totals for each Component	\$ 4,372,425.02	\$ 349,794.00
Total Estimated Project Cost	\$	4,722,219.02





REDESIGNED  
PARKING LOT

TRAIL  
LOOP

TRAIL CONNECTOR

URBAN  
TRAILHEAD

SPLASH  
PAD

REFURBISHED  
COURTS

SOCCER FIELD W/  
SYNTHETIC TURF

TRAIL WITH EXERCISE  
VITACOURSE STATIONS

TRAIL  
LOOP

POSSIBLE  
PARK  
AMENITY

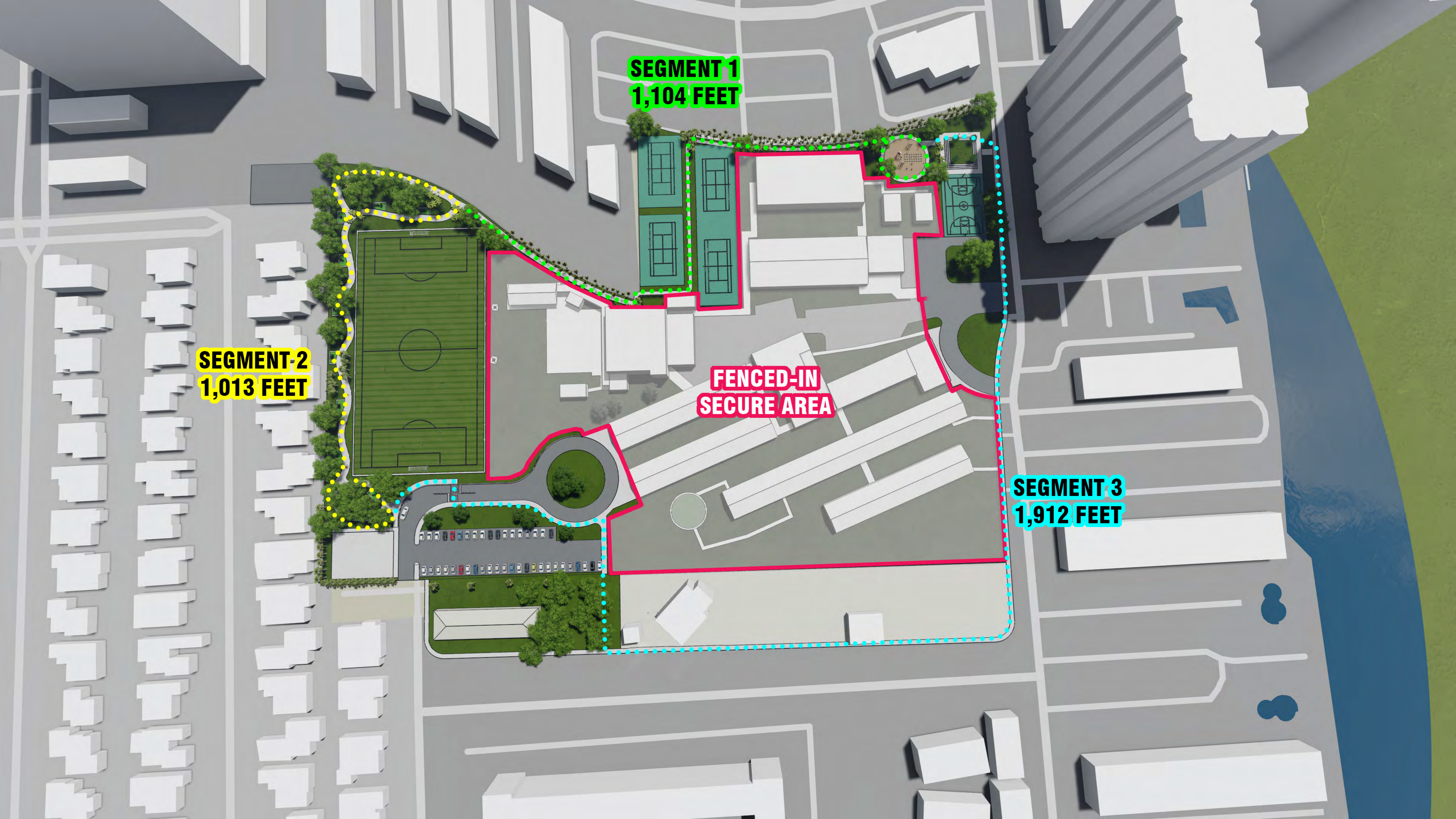
TOT  
LOT

**SEGMENT 1  
1,104 FEET**

**SEGMENT 2  
1,013 FEET**

**FENCED-IN  
SECURE AREA**

**SEGMENT 3  
1,912 FEET**



**SEGMENT 1  
1,104 FEET**

REDESIGNED  
PARKING LOT

TRAIL  
LOOP

TRAIL CONNECTOR

URBAN  
TRAILHEAD

SPLASH  
PAD

REFURBISHED  
COURTS

SOCCER FIELD W/  
SYNTHETIC TURF

**SEGMENT 2  
1,013 FEET**

TRAIL WITH EXERCISE  
VITACOURSE STATIONS

TRAIL  
LOOP

POSSIBLE  
PARK  
AMENITY

TOT  
LOT

**SEGMENT 3  
1,912 FEET**

