

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

SUBJECT: AUTHORIZATION FOR THE SUPERINTENDENT TO:

1) EXECUTE AN AMENDED AND RESTATED JOINT USE AGREEMENT WITH NORTH BAY VILLAGE (“VILLAGE”), A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, FOR THE DEVELOPMENT, OPERATION AND USE OF A SOCCER COMPLEX AT TREASURE ISLAND ELEMENTARY SCHOOL;

2) FINALIZE NEGOTIATIONS AND EXECUTE ANY OTHER DOCUMENTS THAT MAY BE REQUIRED TO EFFECTUATE IMPLEMENTATION OF THE AMENDED AND RESTATED JOINT USE AGREEMENT; AND

3) GRANT OR DENY ALL APPROVALS REQUIRED UNDER THE JOINT USE AGREEMENT, INCLUDING RENEWING, EXTENDING, CANCELING OR TERMINATING THE JOINT USE AGREEMENT, AND PLACING THE VILLAGE IN DEFAULT, AS MAY BE APPLICABLE

COMMITTEE: FACILITIES AND CONSTRUCTION

LINK TO STRATEGIC PLAN: EFFECTIVE & SUSTAINABLE OPERATIONAL PRACTICES

Background

On May 11, 2016, the Board approved Agenda Item F-3, authorizing the Superintendent to finalize negotiations and execute a Joint Use Agreement with North Bay Village (“Village”) in the interest of providing recreational programs, activities and facilities for the use and benefit of both students at Treasure Island Elementary School, located at 7540 East Treasure Drive, North Bay Village, Florida, (“TIES”) and residents of the Village, with the Village to fund certain improvements for the Village to operate its recreational activities. Additional improvements were completed by the District, with the Village to reimburse the District for requested work. The initial term was for ten (10) years, for a rental of \$1 per year, with the District having full control of the premises during the school days and during the School-run aftercare program, and the Village having full control

during other hours, with the right to contract with not-for-profit entities to provide Village-sponsored recreational services and programs for the Village's period of use.

On November 16, 2022, the Board approved Agenda Item F-5 authorizing the Superintendent to enter into discussions with the Village to explore a possible collaboration between the Village and the Board for the development and operation of a Soccer/Community Center Complex, to be constructed partly on Village property and on the adjacent campus of TIES, with a report and recommendation to be brought to the Board as details of such a collaboration are developed.

As shared in Agenda Item F-5, the Soccer/Community Center Complex originated from an unsolicited proposal received by the Village on October 11, 2021 from Asociacion De Futbol Argentino, an association formed under the laws of the Republic of Argentina ("AFA"), to develop certain property, and that the Village subsequently issued a Request For Proposals ("RFP") for "Development and Operation of a Sports Complex and Academy, Recreational Facilities, Municipal Offices, and Other Amenities". AFA was the only party to respond to the RFP. Under the proposed project, the Village and AFA have agreed that AFA will pay for and manage the development and construction of a community center to be constructed on Village property, and five (5) soccer fields to be built on the School campus.

Subsequent discussions between the District and the Village have clarified the Village's plan including the improvements and program enhancements proposed which include new amenities and offerings at TIES.

On June 21, 2023, the Board approved Agenda Item F-5, authorizing the Superintendent to finalize due diligence with the Village and negotiations of final agreement(s) formalizing the collaboration between the Village and the Board for the development and operation of a soccer complex at TIES. Since that Board meeting, an appraisal was completed, a community meeting was held by the Village to gather input, and an amended Joint Use Agreement was negotiated.

On October 11, 2023, the Board approved Agenda Item F-4, authorizing the Superintendent to execute an Amended and Restated Joint Use Agreement with North Bay Village, under the terms and conditions set forth in the agreement attached to the agenda item.

Update

Subsequent to the Board action of October 11, 2023, the District attempted to route the document for execution by the Village, but was advised by the Village that certain negotiations were still ongoing between the Village and AFA, and the document could not be finalized until this process was completed. The Village has now advised that it is no longer contracting with AFA, since AFA indicated that it would incur unfavorable tax consequences. As such, the Development and Management Agreements between the Village and AFA were terminated and replaced with the same agreements between the Village and Project Football LLC ("PFL"). The Village represents that the terms and conditions of the Development and Management Agreements between the Village and PFL are exactly the same as the prior agreements between the Village and AFA. In addition, the Office of General Counsel has confirmed that the current version of the proposed Amended and Restated Joint Use Agreement which replaces AFA with PFL, remains unchanged in all other provisions.

The Deputy Superintendent, Office of School Leadership & Performance and the Chief Facilities Design & Construction Officer recommend entering into the attached Amended and Restated Joint Use Agreement with the Village for the joint recreational use of the fields, under substantially the following terms:

- a term of thirty (30) years, unless terminated sooner as provided in the Agreement;

Capital Investments: A \$5.5 million capital investment by the Village will be made in the first year of the Agreement. The Village shall fund the legal costs and also the design of the improvements;

- Village funds repainting of TIES school buildings;
- Village funds one 11 x 11 multipurpose field, four 5x5 multipurpose fields, a perimeter path, new lighting, new irrigation, new drainage systems and new lush landscaping;

Base License Fee: The Village will pay the Board a base license fee of \$50,000-\$75,000 for Year 3, \$75,000-\$80,000 for Years 4-10, and \$80,000-\$90,000 for Years 11-30 of the Agreement. The Village will pay the Board an additional annual payment of \$5,000 for Years 11-26 (based on a deferred payment schedule of \$75,000 for Year 2);

Revenue Share: In addition to the Base License Fee, the Village shall pay the Board a portion of the gross revenue on a biannual basis earned under the Agreement; 9% Gross Revenues + 50% of the Village's negotiated revenues with PFL;

- **Programmatic Considerations:** PFL will enhance the TIES after-school program with soccer programming;
- 25 Village Scholarships will be available annually to North Bay Village youth (age 5 - 18), including TIES students;
- The Board agrees to dedicate 10% of the revenue it receives directly to TIES for ongoing capital improvements or educational programming; 65% of the funds are to go to District-wide athletic programs and services, and the remaining 25% of the funds are to go to District-wide needs as determined by the Superintendent.
- The Board has a right to audit or examine the Village records pertaining to this Agreement;
- The Village has, or intends to, enter into separate agreements with RFL, including a Development and Construction Agreement and a Management Agreement ("PFL Agreements"), in accordance with the terms of this Amended and Restated Joint Use Agreement, for the construction, operation and management of certain recreational improvements at TIES and for PFL's joint use of certain recreational facilities at TIES;
- The Board shall be an express third-party beneficiary of the PFL Agreements, and shall be named as a dual obligee on any bonds delivered by PFL with respect to any work at TIES;
- The Board shall have the right to approve the project engineers, architects and general

contractors used for the project;

- The Village will make such recreational improvements at TIES, to provide for the joint use by the Parties and PFL of certain recreational facilities at TIES, and provide for the sharing of revenue between the Parties as consideration for the use of the recreational facilities by PFL pursuant to the Management Agreement, all under the terms and conditions set forth;
- The Village and PFL have no rights to amend, modify, replace, terminate, pledge, assign or transfer any rights or interest under the PFL agreements without the prior written consent of the Board;
- PFL may subcontract to third parties to carry out its construction, maintenance and programming, subject to Board approval and in compliance with the terms of the Agreement.
- The PFL Agreements shall contain provisions for background screening requirements and compliance with District code requirements;
- The District shall have full control, custody, right and use of the Licensed Area during regular school hours on regular school days, during any school-operated After-Care Program and during summer school, as established annually through the Board's approved Elementary School Calendar, or by the School;
- The Village shall have full control, custody, right and use of the Licensed Area on weekdays beginning at 5:30 p.m. (setup available at 5:00 p.m.) and ending at 11:00 p.m., and on weekends and Board Holidays from 8:00 a.m. (setup available at 7:30 a.m.) to 11:00 p.m. (the "Village's Period of Use"). PFL shall only be permitted to use the Licensed Area during the Village's Period of Use;
- The Village, at the Village's expense, shall be responsible for all maintenance, repair and upkeep of the Licensed Area. The District shall be responsible for mowing the lawns, and picking up any litter that it may have caused during the school day;
- The Village will be responsible for securing police protection during their use of the Licensed Area, the School Board Police Department shall have first right of refusal for these services;
- The Village will indemnify and hold the Board harmless, to the extent of the limitations included within Florida Statutes, Section 768.28, for any liability arising out of taxation or tax liability associated with the Village or PFL's use, operation or maintenance under this Agreement;
- The Village will indemnify and hold the Board harmless, to the extent of the limitations included within Florida Statutes, Section 768.28, for any liability arising out of any claim, lawsuit or action arising out of the authority of the Village to enter into this agreement with the Board, with PFL, or any related entity under this Agreement;
- The Village and the Board shall otherwise indemnify and hold the other harmless, to the extent of the limitations included within Florida Statutes, Section 768.28;

- The Board may cancel the Agreement in the event of default by the Village, which default is not cured within the applicable timeframes, or in the event of damage or destruction caused by the Village; in addition at any time following the date which is seven (7) years following the Effective Date, the BOARD shall have the right to cancel the Agreement with six (6) months advance written notice to the Village, the Village will retain the right to utilize the walking path for a period of at least fifteen (15) years.
- The Board will assign a project manager and will be involved in any design meetings. Final construction plans will be submitted to the Board's project manager;
- The Superintendent of Schools or his/her designee shall be the party designated by the Board to grant or deny all approvals required by the Agreement dealing with construction of the Village Improvements, or changing periods or schedules of use;

The proposed Joint Use Agreement, which is attached hereto in final form, has been reviewed by the Office of the General Counsel for legal sufficiency and the Office of Risk and Benefits Management for risk management issues, respectively, and found to be in compliance.

RECOMMENDED:

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

- 1) execute an Amended and Restated Joint Use Agreement with North Bay Village ("Village"), a political subdivision of the State of Florida, for the development, operation and use of a Soccer Complex at Treasure Island Elementary School, located at 7450 East Treasure Island Drive, North Bay Village, Florida 33141;
- 2) finalize and execute any other documents that may be required to effectuate implementation of the Amended and Restated Joint Use Agreement; and
- 3) grant or deny all approvals required under the Amended and Restated Joint Use Agreement, including reviewing, extending, canceling or terminating the Joint Use Agreement, and placing the Village in default, as may be applicable;

AMENDED AND RESTATED JOINT USE AGREEMENT

THIS AMENDED AND RESTATED JOINT USE AGREEMENT (“**Agreement**”), made and entered into this ____ day of _____, 20__, by and 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 and to jointly use certain recreational facilities at the School; and

WHEREAS, the VILLAGE has entered into that certain Development and Construction Management Agreement (as amended, restated and replaced, in accordance with the terms of this Agreement, the “**Development Agreement**”), and that certain Operations and Management Agreement (as amended, restated and replaced, in accordance with the terms of this Agreement, the “**Management Agreement**”, and together with the Development Agreement, the “**PFL Agreements**”) in each case, at this time, by and between the VILLAGE and Project Football LLC (“**PFL**”), for the construction of certain recreational improvements at the School and for PFL’s joint use of certain recreational facilities at the School;

WHEREAS, the Parties are desirous of entering into this Agreement to allow the VILLAGE to make such recreational improvements at the School, to provide for the joint use by the Parties and PFL of certain recreational facilities at the School, and to provide for the sharing

of revenue between the Parties as consideration for the use of the recreational facilities by PFL pursuant to the Management Agreement, all under the terms and conditions set forth below; and

WHEREAS, the BOARD and VILLAGE entered into that certain Joint Use Agreement, dated July 20, 2020 (the “**Existing JUA**”), with respect to certain recreational improvements at the School and the joint use by the Parties of certain recreational facilities at the School; and

WHEREAS, the Parties desire to amend and restate the Existing JUA in its entirety by this Agreement, as more particularly set forth below; and

WHEREAS, The School Board of Miami-Dade County, Florida, at its meeting of October 11, 2023, School Board Agenda item F-4, approved entering into this Agreement; and

WHEREAS, North Bay Village, by the adoption of Resolution No. 2023-134, at its meeting of October 16, 2023, 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 Existing JUA is amended, restated, superseded and replaced in its entirety 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 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, all as more particularly described in **Exhibit “A”** attached hereto and made a part hereof (collectively the “**LICENSED AREA**”), together with all improvements currently located or to be constructed thereon.

III.

TERM

Subject to Article IV below, this Agreement shall be effective upon the date on which the last of the Parties initials or executes this Agreement and the execution of the aforementioned Management Agreement, whichever comes later (the “**Effective Date**”). Effective with the Effective Date, the VILLAGE shall have access to the LICENSED AREA, with full right of

ingress thereto and egress therefrom, for the specific and limited purpose provided for in this Agreement. The initial term of this Agreement shall be for a period of thirty (30) years (the “Term”), commencing on the Effective Date and expiring on the date which is thirty (30) years following the Effective Date, unless sooner terminated as provided herein, subject to the provisions herein contained.

IV.

PFL AGREEMENTS

A. PFL Agreements. The effectiveness of this Agreement shall be conditioned on the full execution by the VILLAGE and PFL of the PFL Agreements, in form and substance approved by the BOARD, in its sole and absolute discretion, and delivery of a copy of the fully executed PFL Agreements to the BOARD. Additionally, if required by the BOARD, the VILLAGE shall cause PFL to execute a consent and agreement, in form and substance acceptable to the BOARD, to evidence PFL’s consent and agreement to comply with the terms and conditions of this Agreement applicable to PFL. The current drafts of the PFL Agreements are attached hereto as **Exhibit “B”** and, upon the execution of the PFL Agreements, this Agreement shall be amended to replace **Exhibit “B”** with the executed copies of the PFL Agreements. The PFL Agreements shall be executed and delivered to the BOARD by no later than March 1, 2025. In the event the PFL Agreements are not executed and delivered to the BOARD by such date, the BOARD shall have the right to terminate this Agreement upon written notice to the VILLAGE, in which event this Agreement shall terminate and the Existing JUA shall be fully reinstated and in full force and effect.

B. Covenants Regarding the PFL Agreements.

(i) The VILLAGE shall not amend, modify, extend, replace or terminate the PFL Agreements, or assign, pledge or transfer any interest or rights of the VILLAGE (or consent to any assignment, pledge or transfer by PFL of its interest or rights) under the PFL Agreements to any other party, without the prior written consent of the BOARD, which may be granted or withheld in the BOARD’s sole discretion. In the event the PFL Agreements are amended and/or modified in accordance herewith, this Agreement shall be amended to attach such amendments and/or modifications of the PFL Agreements as exhibits to this Agreement.

(ii) At all times during the Term of this Agreement, the VILLAGE will perform as required by the terms of the PFL Agreements, will neither take nor fail to take any action that

causes a default under the PFL Agreements which results in a termination of the PFL Agreements by PFL, will not waive any default in performance by PFL under the PFL Agreements without first obtaining the prior written consent of the BOARD, which may be granted or withheld in the BOARD's sole discretion, and will promptly deliver to the BOARD, in full compliance with Article XXVIII, all written notices received from PFL or delivered by the VILLAGE to PFL. The VILLAGE will not approve any agreements, documentation, schedules and other items under the PFL Agreements, including without limitation, the GMP Contract, the PFL Representative Contract, the Development Schedule and the Logistics Plan (each as defined in the PFL Agreements), without first obtaining the prior written consent of the BOARD, which may be granted or withheld in the BOARD's sole discretion.

(iii) The VILLAGE shall cause PFL to comply with the terms and conditions of this Agreement and any obligations of the VILLAGE as set forth in this Agreement in connection with PFL's construction, development, use and operation of the LICENSED AREA pursuant to the PFL Agreements, including, without limitation, the obligations set forth in Articles VI, VII, VIII, IX, XXI, XXXI, XXXII, XXXIV and XXXVII of this Agreement, whether or not so stated in such articles.

(iv) The VILLAGE shall cause PFL to contribute twenty-five (25) ten (10) month scholarships (without payment of consideration or charge of any kind), for each year of the Term for the soccer academies operated by PFL in the LICENSED AREA, which scholarships shall be made available to youth (children ages 5 to 18) in North Bay Village, including students at the School.

C. Terms and Provisions of the PFL Agreements. The PFL Agreements shall, *inter alia*, provide for the following:

(i) The BOARD shall be an express third-party beneficiary of the PFL Agreements, the GMP Contract and the PFL Representative Contract with respect to the Work, on the same terms and conditions as the VILLAGE as set forth in the PFL Agreements, such that, *inter alia*, the BOARD may bring legal actions under the PFL Agreements, the GMP Contract and/or the PFL Representative Contract in its name as beneficiary without the participation of the VILLAGE or PFL, as applicable, and all warranties with respect to the Work, express and implied, run to the BOARD in addition to PFL and the VILLAGE. The BOARD shall be named as a dual obligee on any bonds delivered by PFL with respect to the Work. The GMP Contract and PFL

Representative Contract shall be subject to the BOARD's review and approval, in its sole and absolute discretion.

(ii) The BOARD shall have the right to approve, in its sole and absolute discretion, the Engineers, Project Architect and General Contractor (as such terms are defined in the Development Agreement) retained by PFL pursuant to the Development Agreement, in accordance with District and BOARD Policies. The BOARD hereby approves the following Project Architect: Plana International (Jaime Plana, License AR 9769). The General Contractor shall be a general contractor on a list of District approved general contractors provided by the BOARD.

(iii) The BOARD shall be included as an indemnified party in any indemnities from PFL in favor of the VILLAGE in the PFL Agreements. The BOARD shall be copied on all notices, in full compliance with Article XXVIII, including, without limitation, any default notices, sent by either the VILLAGE or PFL under the PFL Agreements, and in the event of a default, the BOARD shall be apprised of any efforts by the defaulting party to cure such default.

(iv) Any assignment by PFL of its rights and obligations under the PFL Agreements or subcontractor shall be subject to the BOARD's prior written approval, which shall not be unreasonably withheld, and shall not be deemed approved for failure of the BOARD to respond to any request for assignment. Any such assignment or subcontractor shall require an amendment to this Agreement, approved and executed by the Parties. The BOARD hereby approves RIVER SEA FINANCE ORGANIZATION LLC, a Florida limited liability company, as a subcontractor.

(v) The PFL Agreements shall contain provisions for background screening requirements and compliance with District code requirements as set forth in Article XXXVII of this Agreement, as those requirements may be updated, expanded or otherwise modified from time to time, in conformance with Florida Statute and BOARD Policy.

(vi) In addition to the provisions set forth in Article V(D), any audit rights in favor of the VILLAGE under the PFL Agreements shall also run to the benefit of the BOARD. The VILLAGE shall promptly provide to the BOARD all financial statements and information and books and records of PFL received by the VILLAGE pursuant to the PFL Agreements.

D. Obligations of the VILLAGE. Notwithstanding the existence of the PFL Agreements, the terms and provisions of this Article IV or any other provision in this Agreement

to the contrary, as between the VILLAGE and the BOARD, the VILLAGE is directly and fully responsible to the BOARD for all obligations of the VILLAGE under this Agreement, including, without limitation, the payment of the Minimum Fee and the Revenue Sharing Payment, the construction and completion of the Work and the maintenance of the facilities in the LICENSED AREA in accordance with Article VIII below.

V.

CONSIDERATION

A. Minimum Fee.

(i) Subject to adjustment pursuant to subsection (iii) below, the VILLAGE shall pay to the BOARD as consideration for use and occupancy of the LICENSED AREA throughout the Term of this Agreement, in advance, an annual minimum fee (the “**Minimum Fee**”), beginning on the Effective Date, and on the anniversary of the Effective Date each year thereafter, as follows:

Time Period	Minimum Fee
Year 1	\$0.00
Year 2	\$75,000.00 (subject to subsection (ii) below)
Year 3	\$50,000.00
Year 4 through Year 10	\$75,000.00
Year 11 through Year 30	\$80,000.00

(ii) Notwithstanding anything to the contrary contained in this Agreement, to the extent the VILLAGE is not in default under the terms of this Agreement beyond any applicable notice and/or cure periods set forth herein, the Minimum Fee for the second (2nd) year of the Term (the “**Deferred Payment**”) shall be deferred in its entirety and payable to the BOARD during years 11 through 15 of the Term, in equal annual installments payable at the same time and in the same manner as the Minimum Fee for each such year of the Term. In the event of a default by the VILLAGE beyond any applicable notice and/or cure periods set forth herein at any time during

and following the second (2nd) year of the Term, in addition to any other rights and remedies under this Agreement for such default, including, without limitation as set forth in Article XVII below, the BOARD shall be entitled to demand immediate payment of the entire Deferred Payment by the VILLAGE.

(iii) In the event the VILLAGE and the BOARD agree to allow the VILLAGE to operate daytime camps serving youth in North Bay Village in the LICENSED AREA as further set forth in Article VI below (the “**Daytime Camps**”), notwithstanding subsection (i) above, the Minimum Fee payable for such year of the Term shall be in the amounts as follows:

Time Period	Minimum Fee
Year 1	\$0.00
Year 2	\$75,000.00 (subject to subsection (ii) above)
Year 3	\$75,000.00
Year 4 through Year 10	\$80,000.00
Year 11 through Year 30	\$90,000.00

In the event the BOARD allows use of the LICENSED AREA for Daytime Camps during other School holidays (e.g., Spring Break and Thanksgiving), the Minimum Fee shall be increased prorata for every additional week (or portion thereof) that the LICENSED AREA is made available for such Daytime Camps (i.e., for Year 3, the Minimum Fee shall be increased by \$6,250 for each additional week; for Years 4 through 10, the Minimum Fee shall be increased by \$1,250 for each additional week; and for Years 11 through 30, the Minimum Fee shall be increased by \$2,500 for each additional week, in each case, prorated on a daily basis for any partial weeks).

B. Revenue Sharing Payment. In addition to the Minimum Fee, commencing on the fourth (4th) year of the Term, the VILLAGE shall pay to the BOARD nine percent (9%) of the Gross Revenue (as hereinafter defined) plus fifty (50%) of any revenue paid by PFL to the VILLAGE under the Management Agreement (collectively, the “**Revenue Sharing Payment**”) on a semi-annual basis. The dates on which the payment shall be due are April 1 and October 1,

or the next business day after those dates if they are not business days. The Revenue Sharing Payment shall be paid in one lump sum within thirty (30) days after the end of each period. Revenue Sharing Payments due for any partial calendar term shall be prorated on a per diem basis.

C. Gross Revenue Statements. The VILLAGE shall provide a bi-annual statement within thirty (30) days after each bi-annual reporting period, which shall show all Gross Revenue and any revenue paid by PFL to the VILLAGE under the Management Agreement for the reporting period , and shall be certified to be true, complete and correct by an independent certified public accountant satisfactory to the BOARD. If such bi-annual statement shows that the VILLAGE owes a Revenue Sharing Payment , the VILLAGE shall include payment of such Revenue Sharing Payment with such statement. Such bi-annual statements shall be delivered by the VILLAGE to the BOARD in the manner specified for notices under this Agreement or to such other address which may be specified by the BOARD to the VILLAGE from time to time. If the VILLAGE shall fail to prepare and deliver any statement required hereunder, the BOARD shall have the right, in addition to any other rights and remedies under this Agreement for such failure, including, without limitation as set forth in Article XVII below, to estimate the Gross Revenue and revenue paid by PFL to the VILLAGE under the Management Agreement for any non-reported period, in the BOARD'S reasonable discretion, and bill the VILLAGE for the Revenue Sharing Payment accordingly. The BOARD reserves the right, at its option, to adjust the Revenue Sharing Payment billings when actual statements are received. In addition to the statements required herein, the VILLAGE shall provide the BOARD with any revenue statements received by the VILLAGE from PFL under the Management Agreement.

D. Audits. The BOARD may from time to time, upon at least ten (10) business days' notice to the VILLAGE, and at the BOARD'S sole cost and expense, cause a complete audit or examination to be made of the VILLAGE'S records pertaining to this Agreement and the PFL Agreements and such books and records of PFL, limited to the LICENSED AREA pursuant to this Agreement, for all or any part of the three (3) calendar years immediately preceding such notice for the purpose of checking the accuracy of the Gross Revenue and any revenue paid by PFL to the Village under the Management Agreement. During such audit, the BOARD or its authorized representatives shall have full and free access to such records and the right to require that the VILLAGE, its agents and employees furnish such information or explanation with respect to such items as may be necessary for a proper examination and audit thereof. The VILLAGE shall share

such records electronically (through a database or file share method or other electronic means) if requested by the BOARD to do so. If such audit or examination discloses that any of the VILLAGE'S statements of Gross Revenues understates Gross Revenues made during any calendar year of the Term by three percent (3%) or more, or if the VILLAGE shall have failed to furnish the BOARD any Gross Revenues statements during any calendar year or shall have failed to prepare and maintain the VILLAGE'S records as required herein, then, in addition to any other rights and remedies of the BOARD under this Agreement for each such failure, including, without limitation as set forth in Article XVII below, the VILLAGE shall pay the BOARD the cost of such audit or examination, and any deficiency in the Revenue Sharing Payments. The BOARD'S acceptance of any Revenue Sharing Payments shall be without prejudice to the BOARD'S examination, audit and other rights hereunder.

E. Gross Revenue Defined. "Gross Revenue" shall mean all revenue from all programs, events, rentals, sales and other activities strictly performed at the LICENSED AREA pursuant to this Agreement. If however, the Village subsidizes an event or program for the benefit of the community at a loss, this definition shall not be applicable and no fees shall be owed to the Board, fiscal evidence of the subsidized event or program for the benefit of the community operated at a loss (e.g. budgets or revenue reports) shall be made available to the Board upon request.

F. Payments. The Minimum Fee, Revenue Sharing Payment and any other payments due to the BOARD pursuant to this Agreement shall be paid by check or wire transfer, without notice, demand, deduction or setoff of any kind, when due and payable. Checks are to be paid to the BOARD and mailed to Miami-Dade County Public Schools, Government Affairs & Land Use, 1450 NE 2nd Avenue, Room 525, Miami, FL 33132. Wire transfers are to be sent pursuant to BOARD instructions or by such other method and to such other place and person as the BOARD directs in writing.

G. Delinquent Payment. With respect to any payments required of the VILLAGE hereunder not received within fifteen (15) business days after notice of such nonpayment from the BOARD, the BOARD may charge the VILLAGE a fee equal to five (5%) percent of the delinquent payment to reimburse the BOARD for its cost and inconvenience incurred as a consequence of the

VILLAGE's delinquency; provided, however, that in no event will the BOARD have to provide more than one (1) notice in any twelve (12) month period and the foregoing late fee will be assessed upon its delinquency. In no event, however, shall the charges permitted under this section or elsewhere in this Agreement, to the extent they are considered to be interest under applicable law, exceed the maximum lawful rate of interest.

VI.

USE OF LICENSED AREA

The LICENSED AREA as identified in **Exhibit "A"** shall be used by the VILLAGE only for the operation of recreational and competitive youth programs sponsored, organized and supervised by the VILLAGE, by PFL pursuant to the Management Agreement for the purposes set forth therein, 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 LICENSED 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 LICENSED AREA for the VILLAGE's or PFL'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 LICENSED 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 LICENSED AREA in its decision to occupy or use it, and the VILLAGE further acknowledges and agrees that the BOARD shall not indemnify the VILLAGE or PFL in any way with respect to the condition of the LICENSED 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 LICENSED 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 LICENSED 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 LICENSED AREA (the “**BOARD’s Period of Use**”). In accordance with the licensee rights afforded to the VILLAGE under this Agreement, and in compliance with all other terms and conditions of this Agreement, effective with the Commencement Date, the VILLAGE shall have full control, custody, right and use of the LICENSED AREA on weekdays beginning at 5:30 p.m. (with a set-up period beginning at 5:00 p.m.) and ending at 11:00 p.m., and on weekends from 8:00 a.m. (with a set-up period beginning at 7:30 a.m.) to 11:00 p.m. (the “**VILLAGE’s Period of Use**”). PFL shall only be permitted to use the LICENSED AREA during the VILLAGE’s Period of Use. The VILLAGE shall reimburse the BOARD for the use of any supplies and/or consumable materials belonging to the BOARD and/or the School during the VILLAGE’s Period of Use.

Notwithstanding the above, the School Administrator, or designee, and the VILLAGE’s designee, shall meet prior to the start of each regular school year, as established through the BOARD’S approved Elementary and Secondary School Calendar (“**School Calendar**”), or as soon thereafter as possible, to review the schedule for use of the LICENSED AREA by the Parties for the upcoming school year. Such schedule shall set forth certain dates on which use of the LICENSED AREA by and through the VILLAGE shall be prohibited (e.g., testing days) (collectively, the “**Exclusion Dates**”). Such schedule of use and the exact areas of use may be modified in writing from time to time throughout the school year by mutual agreement of the Parties, or their authorized designees.

In addition to the above, the BOARD, in its sole and absolute discretion, may make the LICENSED AREA available to the VILLAGE for the operation of Daytime Camps during the summer and/or winter holidays, dates for these camps are to be mutually agreed upon. The BOARD may also, in its sole and absolute discretion, allow the VILLAGE to operate the Daytime Camps in the LICENSED AREA. In either such event, the VILLAGE’s designee and the BOARD’s Region Administrator shall meet to establish a schedule for use of the LICENSED AREA for the Daytime Camps. Such schedule may be modified in writing from time to time by mutual agreement of the Parties, or their authorized designees.

In the event the VILLAGE requires use of the LICENSED AREA for a special event or function, as defined in the Management Agreement, during the VILLAGE’s Period of Use or the BOARD’s Period of Use, the VILLAGE shall request said use, in writing with a minimum of fifteen (15) calendar days advance notice. The foregoing provision shall apply to any special events

or functions held by PFL in the LICENSED AREA. Any such events shall be subject to the BOARD's approval, in its sole and absolute discretion. Any request by the VILLAGE or PFL to use the LICENSED PREMISES for a special event or function shall state the proposed date of the event (which may not be an Exclusion Date) and shall set forth whether additional security will be needed for such event. The VILLAGE acknowledges and agrees that neither the VILLAGE nor PFL may use the LICENSED AREA for any revenue-generating events held in the community center or property owned by the VILLAGE unless all such revenue is calculated and included in the Revenue Sharing Payment payable to the BOARD and is otherwise permitted under this Agreement.

The VILLAGE, in addition to its own utilization of the LICENSED AREA, shall have the option of contracting with not-for-profit parties to use the LICENSED 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, and provided such not-for-profit parties are not affiliates of PFL or providing funding to PFL. 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 LICENSED 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 LICENSED AREA and other terms and conditions set forth in this Agreement, the same as if the VILLAGE itself were utilizing the LICENSED 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 LICENSED AREA. As a precondition to use of the LICENSED 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 LICENSED AREA by for-profit parties or entities under this Agreement, except for PFL and (PFL's approved subcontractor) pursuant to the PFL Agreements, as approved by the BOARD, 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. In the event PFL intends to contract with a third-party for programming at the LICENSED AREA, such third party shall be subject to the express written consent of the BOARD, which may be withheld or conditioned at the BOARD's sole discretion and, if approved, the VILLAGE shall cause such third party to comply with all the terms and conditions of this Agreement applicable to PFL.

The use of the LICENSED AREA by the VILLAGE (or any third parties by, through or under the VILLAGE) for carnivals, fairs, exhibits, mechanical rides, midways, or the same or similar kinds of activities is expressly prohibited, without the express written consent of the BOARD, which may be withheld or conditioned at the BOARD's sole discretion. In no event shall fireworks be permitted in the LICENSED AREA. No animals shall be permitted in the LICENSED AREA, except for service animals as required by applicable law. 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 LICENSED AREA.

The sale or consumption of alcoholic beverages by any party, including, without limitation, the VILLAGE or PFL or any of their respective personnel, guests, staff, invitees, affiliates or patrons, within the LICENSED 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 LICENSED AREA shall not be used for temporary or permanent placement and use of portable toilets, 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 LICENSED 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, and in conformance with the requirements of Article XXXVIII(K), 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 LICENSED AREA and maintain the LICENSED 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 LICENSED 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 ensure 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 LICENSED 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 LICENSED 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 with five days' notice of any closure.

Notwithstanding any other provisions of this Agreement, the VILLAGE acknowledges and agrees that the VILLAGE shall comply with Miami-Dade County Emergency Orders, 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 a pandemic crisis ("**Emergency Orders**") at all times during the Village's Period of Use of the LICENSED 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. It is understood and agreed that, by virtue of accepting possession of the LICENSED AREA or continuing use and occupancy of same, the VILLAGE certifies to the BOARD full compliance

therewith, and further represents and certifies to the BOARD that it shall continue to be in full 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, until such time as the VILLAGE notifies the BOARD otherwise in compliance with the provisions of Article XXVIII of this Agreement. Enforcement of these procedures is a condition precedent to the VILLAGE's continued use and occupancy of the LICENSED 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.

The VILLAGE shall implement and make known to the public by way of an easily accessible means (which shall include, without limitation, by posting fliers in the LICENSED AREA), at its sole cost and expense, an online application and phone number for the public to provide any feedback and/or complaints with respect to the VILLAGE's and PFL's use and operations at the LICENSED AREA. Any such feedback and/or complaints shall be communicated by the VILLAGE to the School Administrator in a timely fashion, and the VILLAGE shall retain all responsibility to address and resolve the feedback and/or complaints, and to timely communicate its actions with respect to such feedback and/or complaints to both the individual initiating the feedback and/or complaints and the School Administrator. In addition, the VILLAGE shall provide to the BOARD and the School Administrator a monthly report listing any feedback and/or complaints and the actions taken by the VILLAGE in connection therewith.

The VILLAGE shall cause PFL, and any other third parties who use the LICENSED AREA, by, through or under the VILLAGE, to comply with the terms and provisions of this Article VI.

VII.

CONSTRUCTION ACCESS AND IMPROVEMENTS TO THE LICENSED 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 LICENSED 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 LICENSED AREA, at the VILLAGE's sole cost and expense, as substantially depicted in **Exhibit "D"** attached hereto and made a part hereof, which work shall be a condition precedent to the VILLAGE's occupancy and use of the LICENSED 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 LICENSED AREA and/or construct new improvements within the LICENSED AREA, all at the VILLAGE's sole cost and expense, as substantially depicted in **Exhibit "D-1"** attached hereto and made a part hereof (the "**Improvements**"). The Fence Work and Improvements as depicted in **Exhibit "D"** and **Exhibit "D-1"**, along with any future recreational improvements to be constructed by the VILLAGE on the LICENSED 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 "D-1", the BOARD may, at the Board's sole option, require that the VILLAGE include additional nonpermanent markings in the new turf soccer fields (the "**Soccer Fields**") to allow for multi-purpose use of such field by the Parties.

Construction of the Work shall commence (as evidenced by visible construction work on the LICENSED AREA and not site development work) no later than nine (9) months following the Effective Date (the "**Estimated Commencement Date**"), and the VILLAGE shall diligently and continuously pursue completion of the Work such that the Work shall be completed no later than the date which is twelve (12) months following commencement of the Work (the "**Completion Deadline**"), unless such Completion Deadline is extended by the BOARD; provided, however, that the Fence Work shall be completed within ninety (90) days following the Effective Date of this Agreement, unless otherwise agreed to by the Parties. The VILLAGE and the BOARD hereby approve the construction and phasing schedule attached to this Agreement as **Exhibit "D-2"** and incorporated herein for completion of the Work (the "**Construction and Phasing Schedule**"), which Construction and Phasing Schedule includes any Exclusion Dates during which construction shall not be permitted, any critical path performance dates, and recognizes the School's use of the LICENSED AREA (and/or any portions thereof) for school activities during construction of the Work (including, without limitation, physical education activities). Upon commencement of the Work and the request of either party, the BOARD and the VILLAGE will confirm in writing the date of commencement of the Work. The Work shall be deemed completed upon the date of issuance of a Certificate of Occupancy, Certificate of Completion, or equivalent ("**CO**") by the BOARD'S Building department for the Work, which document shall be attached hereto and made a part hereof as **Exhibit "C"** (such date is referred to herein as, the "**Commencement Date**").

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 LICENSED AREA, the VILLAGE shall prepay to the BOARD 1.15 Percent (1.15%) of the estimated cost of the Work plus a fire safety fee of \$1,197.00, for project management related tasks, including serving as the liaison between the BOARD and VILLAGE for any design and construction activities within the LICENSED 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 LICENSED AREA for purposes of constructing the Work 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 LICENSED 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 LICENSED AREA, the VILLAGE shall submit the site plan and 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. In no event shall the site plan and/or the plans and specifications for the Work be deemed approved by the BOARD due to the BOARD's failure to respond to any requests for approval. 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. 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 LICENSED 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 LICENSED 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 ensure that construction related activities to be performed within the LICENSED 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 LICENSED AREA for any other reason, the VILLAGE shall first secure the approval of the School Administrator. In addition, the VILLAGE agrees to minimize noise, dust and/or odor during construction within the LICENSED AREA to the extent possible and shall work collaboratively with the School Administrator in this regard.

If the BOARD, or its designee, requests that the VILLAGE cease any work within the LICENSED AREA due to unreasonable interference to the School or otherwise or violation of any applicable rules and regulations or the BOARD'S criteria, then the VILLAGE shall immediately discontinue its activities at the LICENSED 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 LICENSED 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 LICENSED 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 and not less than \$2 Million covering such claims in the aggregate, (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) Builder's Risk property insurance upon the entire Work to the full replacement cost value thereof. "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 LICENSED 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 LICENSED 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 LICENSED 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 LICENSED 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 LICENSED 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 LICENSED 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 LICENSED 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 LICENSED 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 either (i) complete the Fence Work within ninety (90) days of the Effective Date, (ii) commence the Work by the Estimated Commencement Date, or (iii) complete the Work by the Completion Date, shall constitute a breach under this Agreement, and in addition to the rights and remedies of the BOARD set forth in Article XVII of this Agreement, at the BOARD's option, may result in the automatic termination of this Agreement for cause, irrespective of Article XVII 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 in the Construction and Phasing Schedule. Failure of the VILLAGE to complete the Improvements within the timeframes set forth in the Construction and Phasing Schedule, or some other period of time as mutually agreed to by the Parties, shall constitute a breach under this Agreement, and in addition to the rights and remedies of the BOARD set forth in Article XVII of this Agreement, at the BOARD'S option, may result in the automatic termination of this Agreement for cause, irrespective of Article XVII of this Agreement. In such

event, the VILLAGE covenants and agrees to restore the LICENSED AREA, at the VILLAGE'S sole cost and expense, to the same or better condition existing prior to the Effective Date of this Agreement.

In addition to the Work to be constructed by the VILLAGE as described in **Exhibit "D"** and **Exhibit "D-1"**, in the event the VILLAGE wishes to make any other improvements within the LICENSED 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 XXVIII 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 LICENSED 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 LICENSED AREA.

All improvements or facilities installed, operated and maintained by the VILLAGE within the LICENSED 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.

VIII.

MAINTENANCE AND CUSTODIAL SERVICES

The VILLAGE shall be responsible, at its sole cost and expense, for providing all maintenance, repair, replacement and upkeep of the LICENSED AREA, including, without limitation, the Soccer Fields, 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 mowing the lawn in the LICENSED AREA which shall remain the responsibility of the BOARD.

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 LICENSED 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.

During the VILLAGE's Period of Use, the VILLAGE shall be responsible for providing all custodial or janitorial services in the LICENSED AREA, including, without limitation, pick-up and removal of trash and litter within the LICENSED AREA generated during the VILLAGE's Period of Use. During the BOARD's Period of Use, the BOARD shall be responsible for providing all custodial or janitorial services to in the LICENSED AREA, including, pick-up and removal of trash and litter within the LICENSED AREA generated during the BOARD'S Period of Use. All such maintenance and custodial/janitorial services, whether provided by, through or under the VILLAGE or the BOARD shall be in accordance with the BOARD's standards, operating procedures and frequency of service.

IX.

INSURANCE

The VILLAGE shall, on or before the Effective 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 and not less than \$2 Million covering such claims in the aggregate, provided, however, that following the completion of the Work, such Commercial General Liability Insurance shall be in an amount not less than \$2 Million combined single limit per occurrence for bodily injury and property damage and not less than \$5 Million covering such claims in the aggregate, (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, (3) Workers' Compensation Insurance for all employees of the VILLAGE as required by Florida Statutes and (4) during construction of the Work, Builder's Risk property insurance upon the entire Work to the full replacement cost value thereof. In addition to the foregoing, following completion of the Work, the VILLAGE shall maintain the following insurance and provide proof thereof to the BOARD: "all-risk" or "special form" property insurance covering all of the Improvements in the LICENSED AREA and the VILLAGE's personal property in, on or at the LICENSED AREA, including, without limitation, any trade fixtures and equipment, at the full replacement cost of the foregoing. Such policy must be written in amounts of coverage that meet any coinsurance requirements, must include vandalism and malicious mischief coverage. "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 held by the VILLAGE, PFL and any other party as required herein except Workers' Compensation Insurance. All insurance policies are to be written by insurance companies qualified to do business in the State of Florida. 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. The VILLAGE shall also cause PFL to carry the insurance policies required to be maintained by this Article IX and provide proof of such insurance to the BOARD. Additionally, during construction of the Work, any contractor and subcontractor performing the Work shall carry, at such contractor or subcontractor's sole cost and expense, the insurance policies required to be maintained by this Article VII. The VILLAGE shall cooperate with the BOARD in connection with the processing of claims and the collection of any insurance proceeds that may be payable in the event of loss or claim under any of the policies of insurance maintained by the VILLAGE, and execute and deliver to the insurers such proofs of loss and other documents as may be required for the recovery of the proceeds of any such insurance.

X.

UTILITIES AND OTHER SERVICES

In the event the VILLAGE utilizes, constructs or causes to construct any improvements requiring utility service, including any existing improvements now located within the LICENSED AREA, 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, known or unknown, located on the LICENSED AREA, including two (2) existing utility easements, or any other utility easements now located or to be located on the LICENSED AREA or School Site, generated or impacted as a result of the Work. The BOARD shall have no liability for the ongoing operation and use of the improvements to be constructed by the VILLAGE under this Agreement, or ongoing operations of the School, or replacement thereof necessitated by such activities, and for the impact on the VILLAGE's use of the LICENSED AREA during any interruption of said use. In the event maintenance, repair or replacement of such water/sewer or other 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 and the BOARD.

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.

XI.

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 and the acts or omissions of PFL. 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 and the acts or omissions of PFL, or as a result of the negligence of any unrelated third party.

The VILLAGE agrees, at its 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 performance under this Agreement, and to cause PFL and each and every of the VILLAGE's Contractors to defend any suit, action or demand brought against the BOARD on any claim or demand arising out of, resulting from or incidental to any construction costs and expenses for improvements made by the VILLAGE, PFL, and/or the VILLAGE's Contractors.

The VILLAGE agrees, at its 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 PFL Agreements, the VILLAGE's dealings with PFL and PFL's use of the LICENSED AREA. The provisions of this Article shall survive the expiration or early termination or cancellation of this Agreement.

XII.

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.

XIII.

LIABILITY FOR DAMAGE OR INJURY

The BOARD shall not be liable for any damage or injury which may be sustained by the VILLAGE, PFL or any persons on or about the LICENSED 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 LICENSED AREA, other than damage or injury resulting from the negligent performance or failure of performance on the part of the VILLAGE or the actions or omissions of PFL, and their respective 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.

XIV.

ASSIGNMENT AND SUBLETTING

Except as otherwise preapproved in this Agreement, the VILLAGE shall not, at any time during the term of this Agreement, sublet in part or whole the LICENSED AREA, or assign,

transfer, mortgage, pledge, hypothecate or otherwise dispose of its interest in this Agreement or any portion or part thereof, or, except for PFL under the PFL Agreements, allow any other individual or entity to operate or manage the LICENSED AREA, or permit the LICENSED 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.

XV.

TERMINATION OF PFL AGREEMENTS

In the event the PFL Agreements are terminated, the VILLAGE shall provide written notice to the BOARD, as set forth in Article XXVIII, within five (5) days of such termination. In such event, the BOARD shall have the right to immediately terminate this Agreement upon written notice to the VILLAGE; the VILLAGE shall remain liable for the construction and completion of the WORK and the VILLAGE's maintenance obligations as set forth in this Agreement, at the VILLAGE's sole cost and expense. The VILLAGE shall have the right to contract with a replacement entity to construct the Work and operate or manage the LICENSED AREA in accordance with this Agreement. Such replacement entity and any agreements for the development and/or management of the LICENSED AREA between the VILLAGE and such replacement entity shall be subject to the BOARD's written approval, in its sole and absolute discretion, and the provisions of this Agreement applicable to PFL shall apply to such replacement entity.

XVI.

CANCELLATION

In addition to the provisions of Article XVII and Article XX, at any time following the date which is seven (7) years following the Effective Date, the BOARD shall have the right to cancel the Agreement, in whole or in part, with six (6) months advance written notice to the VILLAGE, if the BOARD determines that the LICENSED AREA, in whole or in part, is needed for educational or other purposes, as determined by the BOARD in its sole discretion. In the event the BOARD cancels this Agreement as a result of the BOARD determining that the LICENSED AREA is needed for educational or other District purposes pursuant to this Article XVI after the seventh (7th) anniversary of the Effective Date, the Parties agree to utilize best efforts to enter into

a new Joint Use Agreement, which will permit use of an amended Licensed AREA for the remainder of the term provided for in Article III, if possible. At minimum, the Village shall have access to the walking path for at least 15 years.

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

XVII.

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 breaches its obligations to pay the Minimum Fee, the Revenue Sharing Payment and any other sum due to the BOARD under this Agreement and the breach continues for fifteen (15) business days after receiving written notice from the BOARD specifying such breach, then, in addition to any other right or remedy given hereunder, at law or in equity for such breach (all of which shall be cumulative), the BOARD shall have the immediate right to terminate this Agreement, without penalty, by written notice to the VILLAGE. If the VILLAGE is in breach of any non-monetary obligation of the VILLAGE under this Agreement and 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, then, the BOARD shall have the following rights and remedies, all of which shall be cumulative and in addition to any other right or remedy given hereunder or available at law or in equity: (i) terminate this Agreement, without penalty, upon ten (10) days additional written notice to the VILLAGE, (ii) seek the equitable remedy of specific performance; provided, however, that if the equitable remedy of specific performance is impracticable or otherwise unavailable, then the BOARD shall have the right to pursue an action to recover the BOARD's damages against the VILLAGE, or (iii) perform the obligations of the VILLAGE, including, without limitation, completing the Work, whereupon the VILLAGE shall be obligated to reimburse the BOARD for the costs so incurred by the BOARD. In the event the BOARD elects to complete the Work as provided in (iii) above and the PFL Agreements are in effect, the BOARD may elect, but is not required, in its sole and absolute discretion, to allow PFL to continue to complete the Work. The Village and PFL shall require, in their construction

contracts with contractor(s), a provision for liquidated damages since it is not possible to ascertain damages at this time. Any liquidated damages imposed in regard to Board owned property shall be paid to the School Board, liquidated damages imposed in regard to Village property shall be paid 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 LICENSED AREA in compliance with Article XXI of this Agreement.

XVIII.

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 LICENSED AREA, without hindrance or interference by the other Party.

XIX.

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 LICENSED 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 LICENSED AREA, provided such activities do not unreasonably interfere with the VILLAGE'S use of the LICENSED AREA.

XX.

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 LICENSED AREA or the School, as a result of the license, use, and occupancy of the LICENSED AREA by the VILLAGE or any other party by, through or under 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 license, use or occupancy of the LICENSED 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 XX shall be deemed a material breach of this Agreement.

XXI.

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 LICENSED 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 LICENSED AREA, including any signage installed by the VILLAGE (and, in each case, any third-parties using the LICENSED AREA by, through or under 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 LICENSED 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 LICENSED 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.

XXII.

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.

XXIII.

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 LICENSED AREA. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination in the use of the LICENSED AREA by a Party hereto has occurred, such event shall be treated as a Default hereunder.

XXIV.

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.

XXV.

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.

XXVI.

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.

XXVII.

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.

XXVIII.

NOTICE AND GENERAL CONDITIONS

A. As set forth elsewhere in this Agreement, any correspondence between the VILLAGE and PFL dealing with notice(s) of default, are to be timely provided to the BOARD. Additionally, 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

With a copy to:

The School Board of Miami-Dade County, Florida
The Office if the General Counsel
1450 NE Second Avenue, Room 400
Miami, FL 33132
Attn: General Counsel Walter Harvey
Fax: 305-995-1412
E-mail: Walter.Harvey@dadeschools.net and jiafelice@dadeschools.net

In the case of notice or communication to the VILLAGE:

North Bay Village
Office of the Village Manager
1666 Kennedy Causeway, Suite 300
North Bay Village, FL 33141
Attn: Village Manager
E-mail: villagemanager@nbvillage.com

With a copy to:

Weiss Serota Helfman Cole & Bierman, PL
2800 Ponce de Leon Boulevard, Suite 1200
Coral Gables, FL 33134
Attn: Haydee Sera, Esq., Village Attorney
E-mail: hsera@wsh-law.com

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 any consent and/or approval of any documents and/or agreements that require the BOARD's consent and approval pursuant to this Agreement and all approvals or waivers required by the Agreement dealing with construction of improvements, changing periods or schedules of use, authorizing use of the LICENSED 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, and to grant or deny any approvals required by the Agreement, including placing the VILLAGE in default, and canceling or terminating the Agreement, as and to the extent authorized to do so

pursuant to the resolutions and recommendations of the members of the BOARD authorizing this Agreement or any amendment hereto.

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” or “day” as used in this Agreement shall be defined as calendar day, unless otherwise provided. References to “Holidays” and “holidays” in this Agreement shall refer to the holidays and/or breaks as set forth in the School Calendar. 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.

XXIX.

DAMAGE AND DESTRUCTION

Other than damage or destruction caused by the VILLAGE or BOARD, in the event the LICENSED AREA, in whole or in part, should be destroyed or so damaged by fire, windstorm or other casualty to the extent the LICENSED AREA is rendered untenable or unfit for the purposes intended, the VILLAGE shall be obligated to repair or replace the damaged/destroyed facilities to the same condition or better than as previously existed prior to the casualty, at the VILLAGE’s sole cost and expense. 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. Notwithstanding this requirement, the BOARD, at its sole option, may elect to cancel the Agreement, or allow the VILLAGE to cancel the Agreement, provided the VILLAGE places the improvements in a safe and secure condition prior to the effective date of cancelation.

Any damage or destruction sustained to all or portions of the LICENSED 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 to the same condition or better than as previously existed prior to the damage or destruction 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 VILLAGE shall be responsible under this Article XXIX for any damage caused by, through or under PFL. Additionally, the VILLAGE shall repair any vandalism to the LICENSED AREA and/or School during the VILLAGE's Period of Use. The VILLAGE shall also be required to reimburse the BOARD for any required overtime costs for BOARD personnel due to any damage to the LICENSED AREA and/or School during the VILLAGE's Period of Use.

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

XXX.

SIGNAGE

The VILLAGE may erect, at its sole cost and expense, identification signage within the LICENSED 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 LICENSED AREA, at the VILLAGE'S expense, any signage erected by, through or under the VILLAGE, and restore the area to the same or better condition as existed prior to the installation of such signage.

XXXI.

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 LICENSED AREA, or arising from the VILLAGE’s and PFL’s use or occupancy of the LICENSED 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 LICENSED 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 LICENSED AREA, or that arises at any time from use or occupancy of the LICENSED AREA.

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

The VILLAGE shall, at the VILLAGE’S expense, comply with all applicable Environmental Laws with respect to the LICENSED AREA and School, and shall be responsible under this Article XXXI for compliance with Environmental Laws by, through or under PFL. 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 LICENSED 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, through or under the VILLAGE with respect to the LICENSED 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 LICENSED 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 LICENSED AREA.

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

XXXII.

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.

XXXIII.

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 receipt, any certificate that the BOARD may request.

XXXIV.

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

This Agreement shall be subject to Florida's Public Records Laws, Chapter 119, Florida Statutes. The PARTIES understand the broad nature of these laws and agrees to comply with Florida's Public Records Laws and laws relating to records retention. The PARTIES shall keep and maintain public records required to perform the service. The PARTIES shall keep records to show its compliance with this Agreement. The PARTIES' contractors and subcontractors must make available, upon request of a Party, or 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 PARTIES or its assigns, contractors or subcontractors which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Upon request from either PARTY, the PARTIES shall provide copies of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law. The PARTIES shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following the expiration or early termination or cancellation of this Agreement. The PARTIES, their assigns, contractors and sub-contractors shall retain all records for five (5) years after final payment is made or received and all pending matters are completed pursuant to Title 34, Sections 80.36(b)(1). The PARTIES, upon completion of the Agreement, shall maintain public records required by to perform the service. The PARTIES shall meet all applicable requirements for retaining public records.

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

IF THE SCHOOL BOARD HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THEIR DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT ALBA L. CHANG, CMC, 1666 KENNEDY CAUSEWAY, SUITE 300, NORTH BAY VILLAGE, FL 33141, 305-756-7171, VILLAGECLERK@NBVILLAGE.COM.

XXXV.

USE OF FACILITY AS A REVENUE GENERATOR

Except as otherwise expressly permitted by this Agreement, 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 LICENSED AREA, including, without limitation, third party advertising or installation of wireless telecommunications facilities, provided such endeavors do not unreasonably interfere with the VILLAGE's and PFL's rights to peaceful enjoyment of the LICENSED AREA.

XXXVI.

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.

XXXVII.

**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 PFL and all of their respective 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 VI 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 LICENSED AREA.

Additionally, the VILLAGE agrees that each of the VILLAGE's and PFL's employees, representatives, agents, subcontractors or suppliers who are permitted access on the LICENSED 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 LICENSED 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 the VILLAGE's and PFL's 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 or PFL's 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.

XXXVIII.

MISCELLANEOUS PROVISIONS

- A. RECORDATION:** This Agreement may not be recorded by either Party.
- B. EMINENT DOMAIN:** If all or portions of the LICENSED 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. TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this Agreement.
- D. BROKERS:** The VILLAGE and Board both represent that there are no brokers, salesmen or finders involved in the transaction contemplated by this Agreement.
- E. PROMOTION:** Other than activities undertaken to promote program(s) within the LICENSED AREA, the LICENSED AREA shall not be used by either Party for promotion or advertising of any type or nature whatsoever. Additionally, the BOARD retains the right at all times to require promotional initiatives or advertising by either the VILLAGE or PFL to be terminated or significantly modified, if the BOARD, in its sole determination, advises the VILLAGE that such promotional material is not in the BOARD's best interest or violates BOARD Policy in any way.
- F. 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 LICENSED AREA, prior to commencement of the Agreement.

G. 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. Signatures transmitted via electronic means shall be deemed original signatures for all purposes hereunder.

H. TAX-EXEMPT STATUS: In addition to the provisions of Article XX of this Agreement, the VILLAGE acknowledges and agrees that in the event the tax-exempt status of the LICENSED AREA or School is rescinded by Miami-Dade County or other appropriate jurisdictional governmental entity as a result of the use, occupancy or license of same pursuant to this Agreement, payment of any taxes or assessments imposed as a result thereof shall be remitted by the VILLAGE to the BOARD within ten (10) days of receipt of notice, without demand. In the event that the tax-exempt status of the LICENSED AREA or school is rescinded as a result of this Agreement, the Board agrees to provide nonmonetary assistance to the Village in challenging such decision.

I. SOVEREIGN IMMUNITY: No provision contained in this Agreement shall be deemed a waiver of either Parties sovereign immunity.

J. SECURITY AND SUPERVISION: Notwithstanding any other provision of this Agreement, the VILLAGE acknowledges and agrees that it shall work through the District's Police Department to secure the services of one or more off-duty District Police Officers (with the quantity of District Police Officers as established by the BOARD or designee), at the VILLAGE's sole cost and expense, to provide proper supervision and security of the LICENSED AREA at all times during the VILLAGE's Period of Use as further outlined in Article VI of this Agreement and during any other times in which the VILLAGE is permitted to use the LICENSED AREA pursuant to this Agreement. The VILLAGE shall require that PFL employ off-duty District Police Officers for security services under the PFL Agreements. Notwithstanding this requirement, the District's Police Department may elect, from time to time, to allow the VILLAGE to utilize sworn

Police Officers other than District Police Officers to meet the VILLAGE's security and supervision obligations under this Agreement.

In addition to securing the service of one or more off-duty District Police Officers and complying with any and all Emergency Orders, as set forth above, the VILLAGE shall provide proper supervision of the LICENSED AREA using trained and qualified personnel, and keep the LICENSED AREA safe and secure at all times during the VILLAGE's use of the LICENSED AREA. The LICENSED AREA shall be attended at all times during the VILLAGE's and/or PFL's use of the LICENSED AREA, at the VILLAGE's sole cost and expense, by such personnel as are required to comply with the terms of this Agreement, and to maintain the LICENSED AREA safe and secure.

The VILLAGE acknowledges and agrees that the BOARD, at its sole option, may require the VILLAGE or PFL to increase, augment or modify the supervision and security provisions, including those dealing with quantity and placement of security personnel including off-duty District Police Officers, means and methods of vehicle parking, and pedestrian ingress/egress to the LICENSED AREA, and failure to meet these requirements shall be deemed a material breach of the Agreement.

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 related to any health and safety issues or law enforcement incidents that occurred on or near the LICENSED AREA during the VILLAGE's and/or PFL's use of the LICENSED AREA. 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 or PFL required to mitigate any further incidents in this regard.

References to the District Police Officers in this subsection K. shall mean Police Officers who serve on behalf of Miami-Dade County Public Schools.

K. STORMWATER EVALUATION. The BOARD and the VILLAGE shall continue to evaluate potential stormwater improvements within the LICENSED AREA, which would help mitigate flooding within the surrounding area and the School, which stormwater improvements, if agreed to by the Parties, shall be considered part of the Work for all purposes under this Agreement and shall be constructed by the VILLAGE, at its sole cost and expense.

L. FORCE MAJEURE. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") control, including, but not limited to, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) a natural disaster (fires, explosions, earthquakes, hurricane, flooding, storms, explosions, infestations), epidemic, or pandemic; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; and (i) shortage of adequate power or transportation facilities. The Impacted Party shall give Notice within 10 business days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 60 days following Notice given by it, the other Party may thereafter terminate this Agreement upon Notice.

XXXIX.

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: _____

Jose L. Dotres
Superintendent of Schools

Date: _____

Print Name: _____

RECOMMENDED

TO THE BOARD: APPROVED AS TO RISK MANAGEMENT ISSUES:
Office of Risk and Benefits Management

Raul F. Perez
Chief Facilities Design & Construction Officer
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 General Counsel
Date: _____

Treasurer
Date: _____

VILLAGE:
NORTH BAY VILLAGE

By: _____
Name: Frank Rollason
Title: Village Manager
Date: _____

ATTEST:

Alba Chang, Village Clerk
Date: _____

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY FOR NORTH BAY
VILLAGE:**

By: _____
Village Attorney
Weiss Serota Helfman Cole & Bierman, PL
Date: _____

EXHIBIT "A"
TO
JOINT USE AGREEMENT

LICENSED AREA
[consisting of 1 page, including this title page]

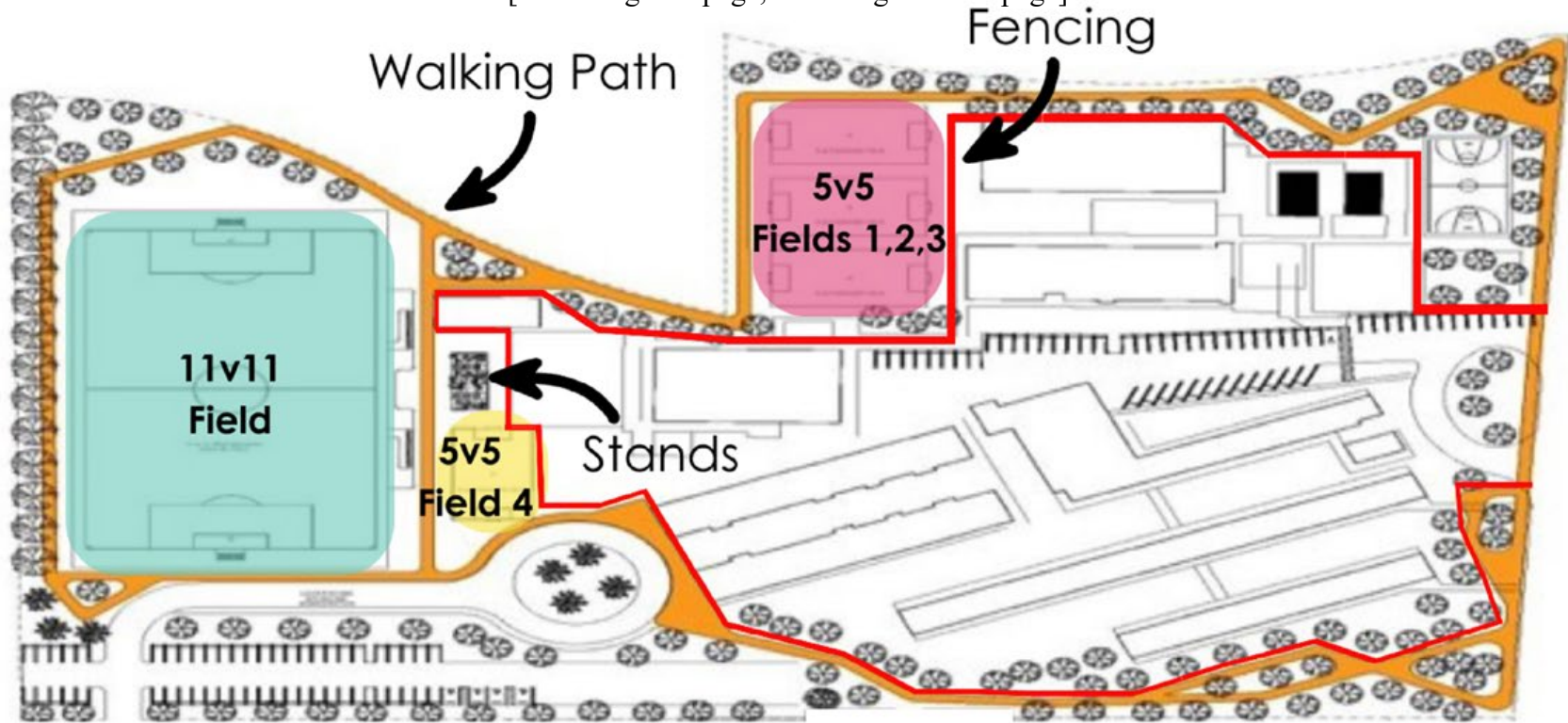


EXHIBIT "B"
TO
JOINT USE AGREEMENT

EXECUTED PFL AGREEMENTS

EXHIBIT "C"
TO
JOINT USE AGREEMENT

**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 "D"
TO
JOINT USE AGREEMENT

FENCE WORK

[consisting of __ pages, including this title page]

EXHIBIT “D-1”
TO
JOINT USE AGREEMENT

IMPROVEMENTS & SITE PLAN

[consisting of __ pages, including this title page]

Capital Investments: A \$5.5 million capital investment by the Village will be made in the first year of the Agreement. The Village shall fund the legal costs and also the design of the improvements;

- Village funds repainting of TIES school buildings;
- Village funds one 11 x 11 multipurpose field, four 5x5 multipurpose fields, a perimeter path, new lighting, new irrigation, new drainage systems and new lush landscaping;

Programmatic Considerations: PFL will enhance the TIES after-school program with soccer programming;

- 25 Village Scholarships will be available annually to North Bay Village youth (age 5 - 18), including TIES students;

[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 “D-1”, which site plan, as approved by the BOARD, shall thenceforth be attached to this Agreement as Exhibit “D-1”.]

EXHIBIT “D-2”
TO
JOINT USE AGREEMENT

CONSTRUCTION AND PHASING SCHEDULE

[consisting of __ pages, including this title page]