

RESOLUTION NO. 02-96

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING THE JOINT-USE AGREEMENT BETWEEN THE SCHOOL BOARD OF MIAMI-DADE COUNTY AND THE TOWN OF MIAMI LAKES REGARDING THE USE OF MIAMI LAKES PARK; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the School Board of Miami-Dade County (the "Board") owns and has under its jurisdiction certain facilities located at Miami Lakes Park (the "Park"), which are utilized for educational purposes but which may be utilized for suitable community and recreational activities by the Town of Miami Lakes (the "Town"); and

WHEREAS, it has become desirable and necessary for the Town to utilize the Board's property as a playground, athletic field and recreational area in connection with the Town's recreational objectives; and

WHEREAS, the Board has authorized the Town to use the Park's facilities when not being used by the Board in accordance with the joint-use agreement attached as Exhibit "A" (the "Joint-Use Agreement"); and

WHEREAS, the Town finds that approval of the Joint-Use Agreement between the Town and the Board for use of the facilities at the Park is in the best interest of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

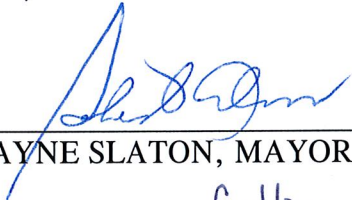
Section 1. Recitals. The foregoing Recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Joint-Use Agreement. The Joint-Use Agreement between the School Board of Miami-Dade County and the Town of Miami Lakes for use of the facilities at Miami Lakes Park, attached as Exhibit " A," is approved and the Town Manager is authorized to execute the Agreement on behalf of the Town.

Section 3. Additional Authorization. The appropriate Town officials including Town Manager and Town Attorney are authorized to execute and deliver any additional documents pertaining to the Agreement, and to take all action necessary to implement the terms and conditions of the Agreement.

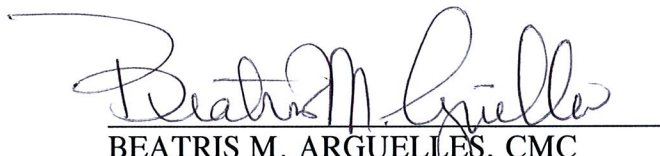
Section 4. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 12th day of November, 2002.



WAYNE SLATON, MAYOR

ATTEST:



BEATRIS M. ARGUELLES, CMC
Town Clerk

APPROVED AS TO LEGAL SUFFICIENCY:



WEISS, SEROTA, HELFMAN, PASTORIZA & GUEDEA, P.A.
Town Attorney

Collins / Slaton

Council voted <u>7-0</u> as follows:	
Mayor Wayne Slaton	<u>ye</u>
Vice Mayor Roberto Alonso	<u>ye</u>
Councilmember Amy Collins	<u>ye</u>
Councilmember Robert Gaudin	<u>ye</u>
Councilmember Frank J. Lozazi	<u>ye</u>
Councilmember Nancy Simon	<u>ye</u>
Councilmember Peter Thomson	<u>ye</u>

JOINT USE AGREEMENT

THIS JOINT USE AGREEMENT made and entered into this 12th day of November, 2002, by and between the TOWN OF MIAMI LAKES, a Florida municipal corporation (hereinafter referred to as the "TOWN"), and THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic (hereinafter referred to as to the "BOARD").

WITNESSETH:

WHEREAS, the BOARD and TOWN 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 and the people of the Town of Miami Lakes; and

WHEREAS, the BOARD owns and has under its jurisdiction certain real property which is used by the BOARD for recreational and parking facilities at Miami Lakes Middle School ("School playfield"), and Miami-Dade County ("County") owns and has under its jurisdiction certain adjoining real property which is used by the County for public park purposes ("park land"), which two parcels are collectively known as "Miami Lakes Park"; and

WHEREAS, the BOARD and County entered into a lease agreement for the joint development and use of Miami Lakes Park on April 13, 1971; and

WHEREAS, the TOWN, as a result of its recent incorporation, will assume ownership of the park land from the County; and

WHEREAS, the BOARD and TOWN are desirous of entering into a successor Joint Use Agreement for the School playfield and park land, to allow continued use of Miami Lakes Park by the school district and community after the TOWN assumes ownership of the park land: and

WHEREAS, the Town of Miami Lakes by the adoption of Resolution No. 02-96 at its meeting of November 12, 2002, approved this Joint Use Agreement; and

WHEREAS, the School Board of Miami-Dade County, Florida, has authorized the Joint Use Agreement in accordance with Board Action No. 103,399 at its meeting of October 23, 2002.

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

I.

PREMISES TO BE JOINTLY USED

The TOWN and BOARD agree to jointly use the park land and School playfield, as further described and limited in Articles III and IV (hereinafter called the "DEMISED PREMISES"), lying and being in the County of Miami-Dade, State of Florida, and more particularly described in Exhibit "A", attached hereto and made a part hereof.

II.

TERM

The term of this Joint Use Agreement shall be forty (40) years, beginning on the

later date of School Board approval, Town of Miami Lakes Councils' approval and conveyance of the park land from the County to the TOWN ("Commencement Date"). The TOWN and BOARD shall confirm the Commencement Date in a separate written instrument, which shall become a part of this Joint Use Agreement by reference.

III.

USE OF PREMISES

The specific area of use by the TOWN and BOARD shall be limited to the area identified in Exhibit "A", and shall be used by the parties for the purpose of constructing educational and/or recreational improvements, as further defined in Article IV of this Joint Use Agreement, and for the operation of recreational and/or educational programs.

Other than as specified below, the BOARD shall have full control, custody, right and use of the DEMISED PREMISES and all parking and recreational facilities located thereon, during regular school hours on regular school days. Regular school hours shall be defined as 8:00 a.m. to 5:00 p.m. on regular school days. In addition, the BOARD, at its sole option, shall use the School playfield, or a portion thereof, as required for special school events and functions, intramural sports, and summer school. In the event the BOARD requires use of the School playfield for special events and functions, the school administrator shall so notify the Town of Miami Lakes Town Manager ("Town Manager"), with a minimum of forty-eight (48) hours advance notice. In the event the BOARD requires use of the School playfield for intramural sports or summer school, the school administrator shall so notify the Town Manager with as much advance notice as possible.

The TOWN shall have full control, custody, right and use of the DEMISED

PREMISES at all other times. In addition, the TOWN shall have use of the tennis courts and batting cages at all times.

The BOARD, through the school administrator, may request use of the Club House, on an as-needed basis, by making such a request to the Town Manager with a minimum of forty-eight (48) hours advance notice. In the event of BOARD use of the Club House, the BOARD agrees to be bound by all terms and conditions of this Joint Use Agreement, including supervision and liability.

Should either party desire use of the DEMISED PREMISES, or a portion thereof, during a time other than its regular period of use, it will reserve said use through the Town Manager and the school administrator, with a minimum of forty-eight (48) hours advance notice.

Notwithstanding the above, the BOARD, at any time, may use a portion of the School playfield located adjacent to the existing portables, as described in Exhibit "A", as a means of ingress/egress for the purpose of relocating portable classrooms to and from the Miami Lakes Middle School campus. The BOARD shall repair any damage to the School playfield caused in this regard, at its sole cost and expense.

The TOWN may, in addition to its own utilization of the DEMISED PREMISES, designate other parties to provide recreational services and programs on the DEMISED PREMISES, and shall notify the BOARD in writing of the parties so designated within thirty (30) days of the designation. In this eventuality, the TOWN shall be responsible for all use, maintenance, risk management, supervision and other terms and conditions as outlined in this Joint Use Agreement, as if the TOWN were utilizing the DEMISED PREMISES.

Notwithstanding the foregoing or anything contained herein to the contrary, the

BOARD acknowledges that the TOWN may use the DEMISED PREMISES from time to time for special TOWN sponsored events and functions ("Town Events"). In that event, the TOWN is to make written application to the BOARD at least 45 days in advance of the proposed Town Event, indicating the nature of the event, event duration, impact on the school's use of the DEMISED PREMISES and any other relevant information. The BOARD, acting through its designee, shall respond with all due haste, and approval of such Town Event shall not be unreasonably withheld. The TOWN stipulates that it shall remove all refuse or debris generated by any Town Event and shall repair all damage to the DEMISED PREMISES, and the DEMISED PREMISES shall be made safe and usable for the school prior to the BOARD'S next period of use. In connection with Town Events, the TOWN may charge and collect admission and concession fees, provided the fees are utilized, in whole or in part, to offset costs associated with the Town Event. The TOWN will make every reasonable effort to confine the use of portable band shells or the installation of tents, equipment or other such facilities to the park land portion of the DEMISED PREMISES.

When using the DEMISED PREMISES for a Town Event, the TOWN shall cause any vendors, operators or providers of services occupying the DEMISED PREMISES, to maintain a policy of General Liability Insurance from an insurance company licensed to do business in Florida and with an A.M. Best's rating of "B+" or better, with a single limit of no less than one million dollars (\$1,000,000), without interruption during the event. A Certificate of Insurance shall be provided to the BOARD a minimum of ten (10) days prior to the event, and the Certificate shall name THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA as an additional insured. The TOWN shall further assure that adequate security is provided during the event to address parking and crowd control issues.

Neither party shall commit nor permit any violations of applicable laws, rules and regulations of the SCHOOL BOARD, TOWN, COUNTY, STATE, or FEDERAL GOVERNMENT upon the other party's property. The BOARD and TOWN may promulgate and enforce reasonable rules and regulations governing their use of the park land and School playfield respectively, and shall provide adequate supervision of the DEMISED PREMISES at all times that they conduct or sanction activities thereon. The sale or consumption of alcoholic beverages at any time, including Town Events, is expressly prohibited.

IV.

IMPROVEMENTS BY TOWN AND BOARD

The BOARD and TOWN agree to accept the DEMISED PREMISES in the condition it is in as of the Commencement Date of this Joint Use Agreement.

The BOARD, at its sole option, may construct additional recreational or educational facilities on the School playfield at such time as the BOARD determines such a need. The TOWN, at its sole option, may construct additional recreational facilities on the park land at such time as the TOWN determines such a need. The BOARD and TOWN agree to notify the other in writing, with as much advance notice as possible, of their intent to construct such facilities. The parties agree to cooperate in every reasonable way to minimize the disturbance to the peaceful possession of the DEMISED PREMISES by the other during any such construction activities.

The BOARD shall have the right to construct additional recreational improvements on the park land, at its sole cost and expense, subject to prior written approval of the

TOWN, or its designee. The TOWN shall have the right to construct additional recreational or other park improvements on the School playfield, at its sole cost and expense, subject to prior written approval of the BOARD, or its designee.

The TOWN and BOARD agree to assign responsibility for Maintenance and for Damage or Destruction of any improvements constructed by either party after the Commencement Date, under Articles V and XIV of this Joint Use Agreement.

V.

MAINTENANCE

The TOWN shall keep all recreational facilities and equipment located on the DEMISED PREMISES as of the Commencement Date in a safe, clean and working condition at all times. Notwithstanding the above and the provisions of Articles IV and XIV, responsibility for the maintenance of the School playfield and park land shall be as follows:

A. BOARD'S RESPONSIBILITIES:

1. Removal of trash or litter from the DEMISED PREMISES generated by the BOARD during its period of use; and
2. Repair and maintenance of school parking lot, except for the wooden perimeter fence.

B. TOWN'S RESPONSIBILITIES:

1. Removal of trash or litter from the DEMISED PREMISES, including the school parking lot, generated during its period of use. This activity is to take place prior to 8:00 a.m. on regular school days;
2. Repair and maintenance of all playfield equipment or facilities in place

as of the Commencement Date of this Joint Use Agreement, including bleachers, tennis courts and batting cages;

3. Repair and maintenance of the irrigation system;
4. Repair, upkeep and maintenance of any nature for baseball fields;
5. Repair and maintenance of all perimeter fence, including the wooden fence around the school parking lot;
6. Maintenance of turf, including periodic mowing, edging and trimming; and
7. Trimming and pruning of trees, including removal or replacement as necessary.

The TOWN may apply certain herbicides and pesticides to the DEMISED PREMISES during the TOWN'S period of use, using a certified technician, after submitting specifications and environmental information to the BOARD or its designee, and securing written approval from same to utilize the product. The TOWN must coordinate and schedule use of the herbicide or pesticide with the school site administrator prior to its application. The TOWN agrees to use its best efforts to schedule all maintenance functions so as to limit any impact on school operations. Further, the BOARD reserves the right to promulgate and enforce reasonable rules and regulations regarding the responsibility for the maintenance of the School playfield.

In compliance with the December 1999 version of the State Requirements for Educational Facilities, or its successor document, the TOWN shall conduct annual inspections of all bleachers located on the DEMISED PREMISES to assure they are in a safe condition and free from hazard, and shall secure a certificate from a structural

engineer on a biennial basis attesting to same. A copy of the biennial certificate shall be provided to the BOARD without demand.

Notwithstanding the above, both parties agree, at the request of the other party, to repair any improvements located on the DEMISED PREMISES, where one party can clearly substantiate that the improvements were damaged as a result of the actions of the other party.

VI.

UTILITIES AND PERMITS

The TOWN shall pay for the electricity used for field lighting and the water and electricity consumed on the DEMISED PREMISES for the purpose of irrigating the grounds, as well as the installation and payment of all other electric or utilities consumed on the DEMISED PREMISES, which accounts shall be separately metered and placed in the name of the TOWN.

The TOWN shall be responsible for securing any permits, zoning variances, regulatory or governmental approvals, license and/or use approvals which may be required for the construction of any improvement of any nature installed by the TOWN on the School playfield.

VII.

LIABILITY FOR DAMAGE OR INJURY

The TOWN shall not be liable for any damage or injury which may be sustained by the BOARD or any persons on the DEMISED PREMISES during the BOARD'S period of use, other than damage or injury resulting from the negligence or improper conduct on the

part of the TOWN, its agents, representatives or employees, or failure of the TOWN to perform its covenants under this Joint Use Agreement.

The BOARD shall not be liable for any damage or injury which may be sustained by the TOWN or any persons on the DEMISED PREMISES during the TOWN'S period of use other than damage or injury resulting from the negligence or improper conduct on the part of the BOARD, its agents, representatives or employees, or failure of the BOARD to perform its covenants under this Joint Use Agreement.

VIII.

INDEMNIFICATION

The BOARD covenants and agrees that it shall indemnify, hold harmless and defend the TOWN, from and against any and all claims, suits, actions, damages or causes of action arising from or in connection with the BOARD'S use and occupancy of the park land during the term of this Joint Use Agreement, for any personal injury, loss of life or damage to property sustained in or about the park land, to the extent of the limitations included within Section 768.28, Florida Statutes.

The TOWN covenants and agrees that it shall indemnify, hold harmless and defend the BOARD, from and against any and all claims, suits, actions, damages or causes of action arising from or in connection with the TOWN'S use and occupancy of the School playfield during the term of this Joint Use Agreement, for any personal injury, loss of life or damage to property sustained in or about the School playfield, to the extent of the limitations included within the Section 768.28, Florida Statutes.

IX.

ASSIGNMENT

Except as otherwise provided, neither party shall assign, transfer, or otherwise dispose of this Joint Use Agreement for the term hereof, or underlet the park land or School playfield or any part thereof or permit the said park land or School playfield to be occupied by other persons, firms, corporations, or governmental units during the other party's period of use.

X.

CANCELLATION AND DEFAULT

Other than as provided below, this Joint Use Agreement may be cancelled by either party, without penalty, with one (1) year advance written notice to the other party.

The TOWN shall provide the BOARD with written notice of any failure to perform or comply with the terms and conditions contained herein to be performed by the BOARD. If the BOARD fails to cure said default within thirty (30) days of receipt of written notice, or does not provide the TOWN with a written response within thirty (30) days after receiving notification, indicating the status of the BOARD'S resolution of the violations and providing for a schedule to correct all deficiencies, the TOWN shall have the right to terminate this Joint Use Agreement, without penalty, upon ten (10) days additional written notice to the BOARD.

The BOARD shall provide the TOWN with written notice of any failure to perform or comply with the terms and conditions contained herein to be performed by the TOWN. If the TOWN fails to cure said default within thirty (30) days of receipt of written notice, or

does not provide the BOARD with a written response within thirty (30) days after receiving notification, indicating the status of the TOWN'S resolution of the violations and providing for a schedule to correct all deficiencies, the BOARD shall have the right to terminate this Joint Use Agreement, without penalty, upon ten (10) days additional written notice to the TOWN.

In the event of cancellation or termination, the School playfield and park land shall be surrendered in accordance with the provisions of Article XXI.

XI.

NO LIABILITY FOR PROPERTY

The TOWN and BOARD agree to insure or self insure their respective interests in personal property to the extent each deems necessary or appropriate and hereby mutually waive all rights to recovery for loss or damage by any means and waive all rights to recovery for loss or damage to such property by any cause whatsoever. The BOARD and TOWN hereby waive all rights of subrogation against each other under any policy or policies they may carry, or on property placed or moved on the park land or School playfield.

XII.

RIGHT OF ENTRY

After first notifying the school administrator or Town Manager, either party, or any of its agents, shall have the right to enter said park land or School playfield during all reasonable working hours to examine the same upon reasonable notice to the other party, provided their actions do not in any way interfere with the other party's use of the park land

or School playfield.

XIII.

NOTICE AND GENERAL CONDITIONS

A. All notices or other communications which shall or may be given pursuant to this Joint Use Agreement shall be in writing and shall be delivered by personal service or certified mail addressed to the parties at their respective addresses indicated below, or as the same may be changed in writing from time to time. Such notice shall be deemed given on the day on which personally served, or if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

To the BOARD: The School Board of Miami-Dade County, Florida
c/o Superintendent of Schools
1450 N.E. Second Avenue, Room 912
Miami, Florida 33132

With a copy to: Miami-Dade County Public Schools
Facilities Planning
Attn: Administrative Director
1450 N.E. Second Avenue, Room 525
Miami, Florida 33132

To the TOWN: Town Manager
Town of Miami Lakes
6853 Main Street
Miami Lakes, Florida 33014

B. Title and Paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this Joint Use Agreement.

C. For purposes of this Joint Use Agreement, the Superintendent of Schools shall be the party designated by the BOARD to grant or deny all approvals required by this

Joint Use Agreement, or to cancel this Joint Use Agreement as provided for herein.

XIV.

DAMAGE OR DESTRUCTION

In the event either the park land or School playfield should be destroyed or so damaged by fire, windstorm or other casualty to the extent the facilities are rendered untenable or unfit for the purposes of the other party, either party may cancel this Joint Use Agreement by giving written notice to the other. However, if neither party shall exercise the foregoing right of cancellation within forty-five (45) days after the date of such damage or destruction, the TOWN shall cause all recreational improvements in place as of the Commencement Date of this Joint Use Agreement, other than the school parking lot, to be repaired and placed in a safe, secure and useable condition and compatible for school and community recreational use, within one hundred eighty (180) days from the date of said damage or destruction, or other reasonable period of time as mutually agreed to by the parties. The BOARD shall retain responsibility for the school parking lot and shall repair the parking lot to 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. Should the facilities not be repaired and rendered tenantable within the aforementioned time period, then one party may, at its sole option, place the other party in default.

XV.

NON-DISCRIMINATION

Both parties agree that there will be no discrimination against any person based

upon race, color, sex, religious creed, ancestry, national origin, mental or physical handicap, in the use of the park land and School playfield and improvements thereof. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Joint Use Agreement automatically terminates without any further action on the part of the other party, effective the date of the Court Order.

XVI.

PEACEFUL POSSESSION

Subject to the terms, conditions, and covenants of this Joint Use Agreement, both parties agree that the other party shall and may peaceably have, hold and enjoy the above described park land and School playfield, without hindrance or molestation by the other party. Subject to the provisions of Article XXI, at the expiration of this Joint Use Agreement, both parties shall, without demand, quietly and peaceably deliver up possession of the park land and School playfield and all improvements thereon in good order and repair, except for normal wear and tear, or decay and damage by the elements, or other Acts of God.

XVII.

SUCCESSORS AND ASSIGNS

This Joint Use Agreement shall extend to and be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

XVIII.

OPTION TO RENEW

If not in default in performance of the obligations set forth in this Joint Use

Agreement, either party shall have the right and option to renew this Joint Use Agreement under the same terms and conditions set forth herein for two (2) additional terms of five (5) years each from the expiration of the original term or any renewal hereof, with the mutual agreement of the other party.

XVII.

COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

All parties hereby agree that they shall comply with all applicable laws, ordinances and codes of Federal, State and Local Governments, including the Americans with Disabilities Act, as they apply to this Joint Use Agreement.

XVIII.

CONSTRUCTION OF AGREEMENT

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

XIX.

SEVERABILITY

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

XX.

WAIVER

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

XXI.

SURRENDER OF DEMISED PREMISES

Notwithstanding any other provision of this Joint Use Agreement, upon the termination, cancellation or expiration of this Joint Use Agreement or any extension thereof, the TOWN agrees, at the BOARD'S sole option, to remove any improvements or facilities constructed by the TOWN on the School playfield and to restore the School playfield to the same or better condition as existed before the Commencement Date of this Joint Use Agreement, within ninety (90) days of said termination, cancellation or expiration. In the event the BOARD elects to retain said improvements, the TOWN agrees to convey title to the improvements to the BOARD, without compensation due the TOWN.

XXII.

WRITTEN AGREEMENT

The Joint Use Agreement represents the entire agreement between the parties.

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

TOWN:


TOWN OF MIAMI LAKES,
a Florida municipal corporation



Town Manager


BOARD:

THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA




Merrett R. Stierheim
Superintendent of Schools

ATTEST:



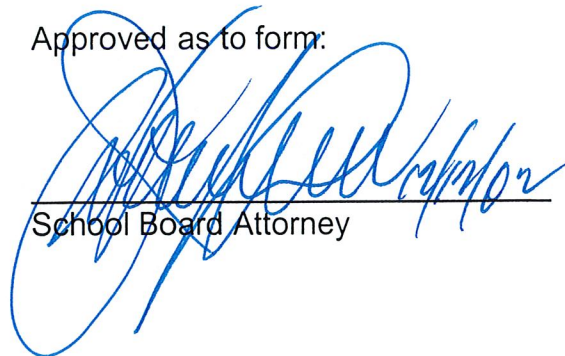
Town Clerk

Approved as to form:



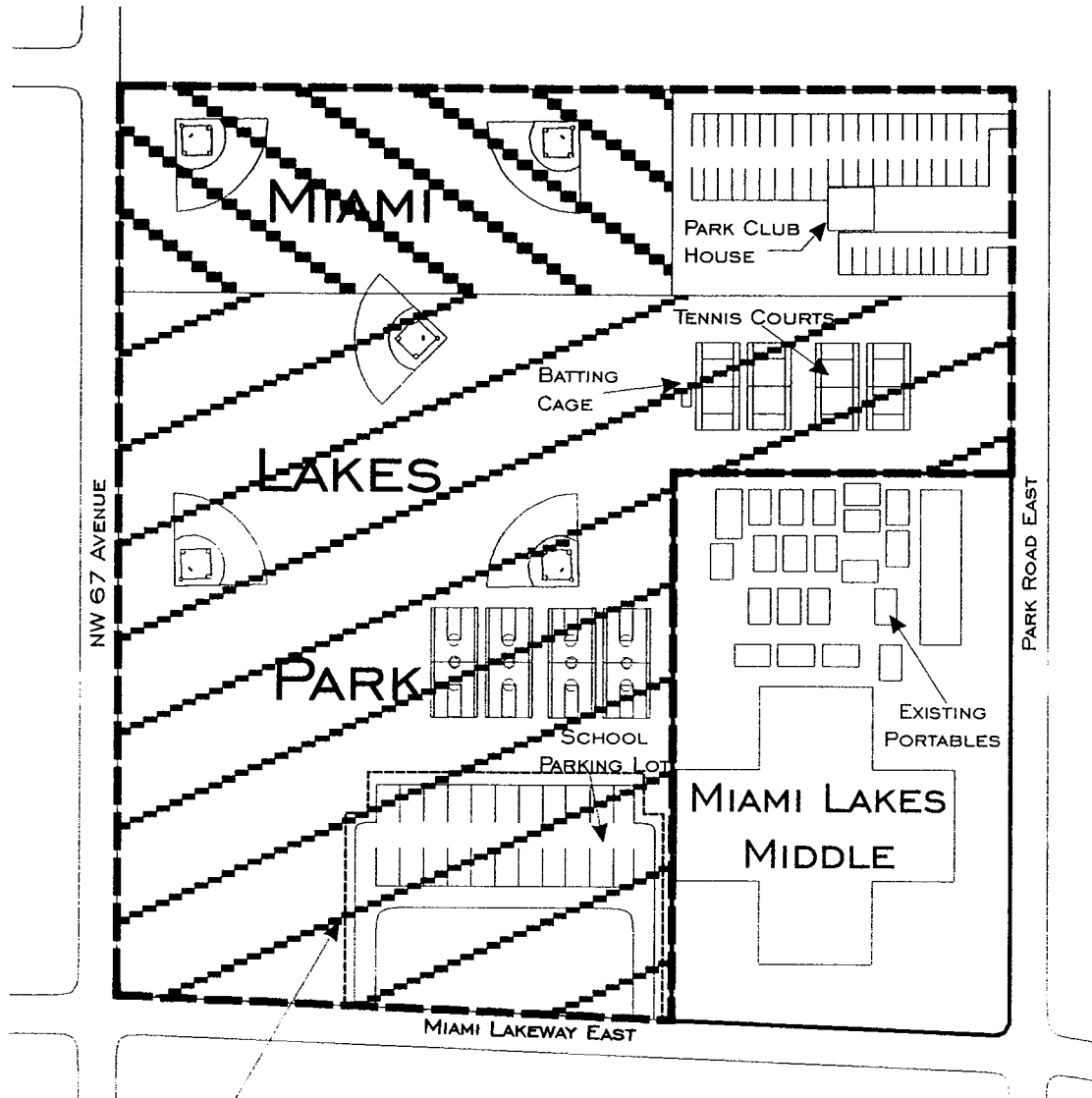
Town Attorney

Approved as to form:

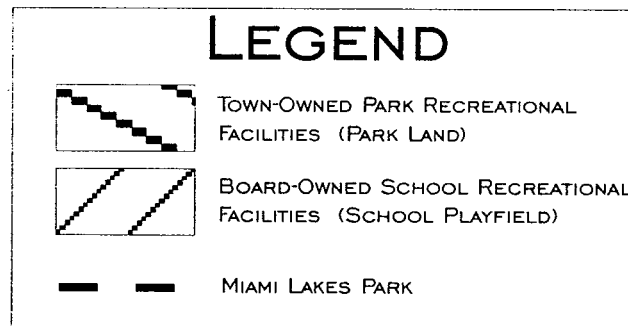


School Board Attorney

EXHIBIT "A"



WOODEN PERIMETER FENCE



(NOT TO SCALE)

