

RESOLUTION NO. 03- 166

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 ROYAL OAKS PARK; AUTHORIZING TOWN OFFICIALS TO TAKE ALL NECESSARY ACTION TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; 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 approximately two (2) acres of land located at Royal Oaks Park (the "Park"), which are utilized for educational purposes (the "Board Property") 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 Property as a recreational area in connection with the Town's recreational objectives; and

WHEREAS, the Board and Town entered into a Memorandum of Understanding on May 15, 2003 regarding the Board Property; and

WHEREAS, the Board has authorized the Town to use the Board Property 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 property at Royal Oaks Park, attached as Exhibit "A," together with such non-material changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, is approved.

Section 3. Authorization of Town Officials. The appropriate Town officials including Town Manager and Town Attorney are authorized to take all action necessary to implement the terms and conditions of the Agreement.

Section 4. Authorization of Fund Expenditure. The Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Agreement.

Section 5. Execution of Agreement. The Mayor is authorized to execute the Agreement on behalf of the Town.

Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 9th day of September 2003.

Motion to adopt by Collins, second by Alonso.

FINAL VOTE AT ADOPTION

Mayor Wayne Slaton	<u>Yes</u>
Vice Mayor Roberto Alonso	<u>Yes</u>
Councilmember Mary Collins	<u>Yes</u>
Councilmember Robert Meador	<u>Yes</u>

Res. 03-166

Councilmember Michael Pizzi
Councilmember Nancy Simon
Councilmember Peter Thomson

Absent
yes
yes

Wayne Slaton
Wayne Slaton
MAYOR

ATTEST:

Beatris M. Arguelles
Beatris M. Arguelles, CMC
TOWN CLERK

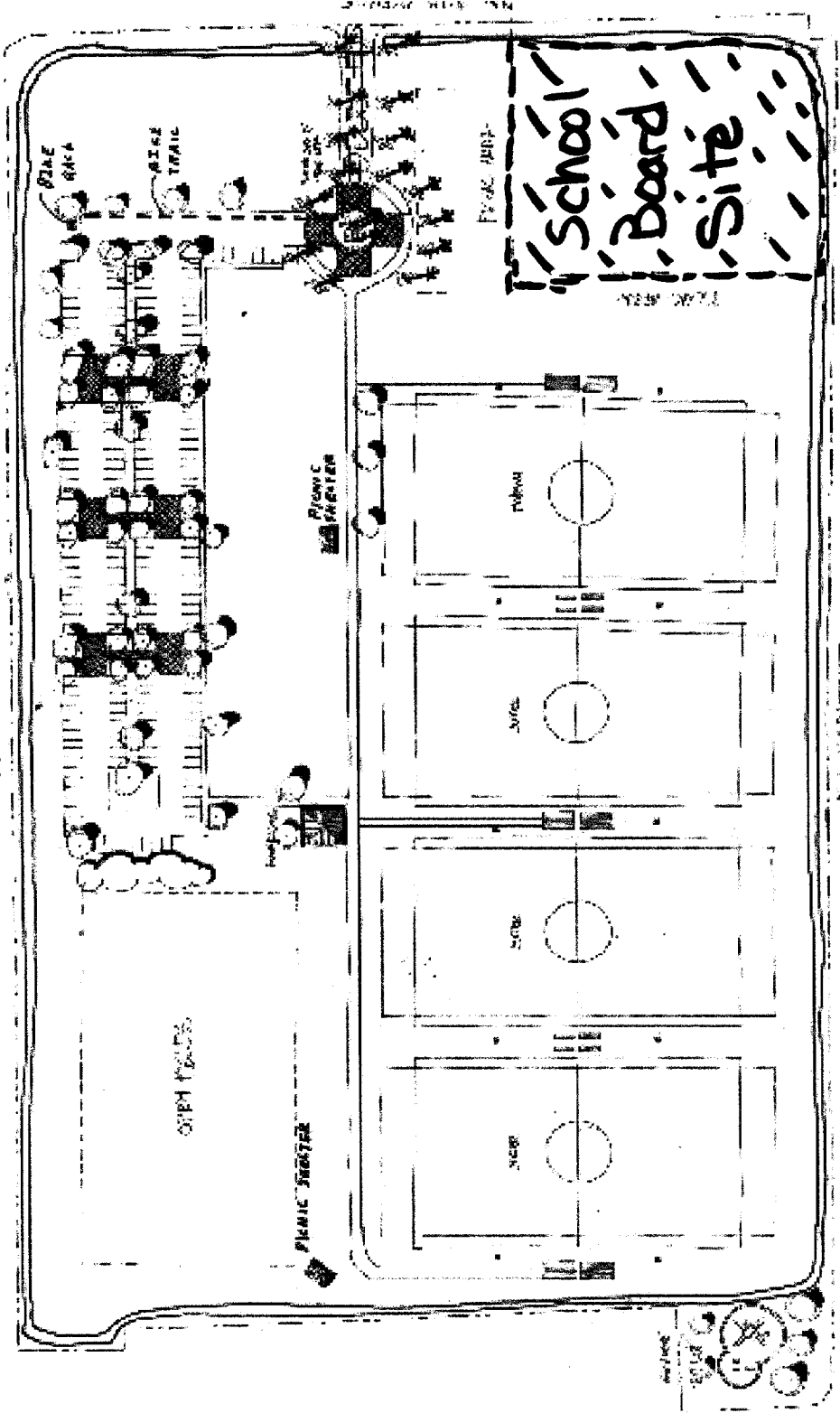
Approved as to form and legality for the use
and benefit of the Town of Miami Lakes only:

W B Q
Weiss, Serota, Helfman, Pastoriza, Guedes
Cole & Boniske, P.A.
TOWN ATTORNEY

EXHIBIT "A"

Town of Miami Lakes
Royal Oaks Park

Draft 8/28/03
Phase I



JOINT USE AGREEMENT

THIS JOINT USE AGREEMENT made and entered into this **9th** day of **September, 2003**, 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 that is adjacent to approximately 17 acres of TOWN-owned land, known as Royal Oaks Park; and

WHEREAS, the TOWN is desirous of utilizing the BOARD'S property to help meet a critical public demand for recreational facilities;

WHEREAS, the BOARD and TOWN entered into a Memorandum of Understanding (the "MOU") on May 15, 2003 regarding the BOARD-owned property; and

WHEREAS, the BOARD and TOWN are desirous of entering into a successor Joint Use Agreement to the MOU under terms, conditions and covenants contained in this Joint Use Agreement; and

WHEREAS, the Town of Miami Lakes by the adoption of Resolution No. **03-166** at its meeting of **September 9**, 2003, 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. 104,748 at its meeting of August 20, 2003.

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 BOARD-owned parcel (hereinafter called "PREMISES") and TOWN-owned Royal Oaks Park (hereinafter called "PARK"), as further described and limited in Articles III and IV, lying and being in the County of Miami-Dade, State of Florida, and more particularly shown and described in Exhibit "A", attached hereto and made a part hereof.

II.

TERM

The term of this Joint Use Agreement shall be twenty (20) years, beginning on the later date of School Board approval and Town of Miami Lakes Councils' approval (the "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. The MOU, entered into on May 15, 2003, shall expire coterminous with the COMMENCEMENT DATE.

III.

USE OF PREMISES

The specific area of use by the TOWN and BOARD shall be limited to the area identified in Exhibit "A". The TOWN shall only use the PREMISES for the purpose of

constructing recreational related improvements, as further defined in Article IV of this Joint Use Agreement, and for the operation of recreational activities, and for no other purpose.

Other than as specified below, the TOWN shall have full control, custody, right and use of the PARK and PREMISES at all times. At such time as the BOARD desires use of the PREMISES, PARK or some portion thereof for recreational purposes, on an as-needed basis, the BOARD , through its designee, shall notify the TOWN Manager a minimum of forty-eight (48) hours in advance. The BOARD agrees that its use shall not interfere with scheduled TOWN events and functions, including preparation by the TOWN for future TOWN activities and events.

The TOWN may, in addition to its own utilization of the PREMISES, designate other not-for-profit parties to provide recreational services and programs on the PREMISES. 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 PREMISES.

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 and PREMISES, and shall provide adequate supervision at all times that they conduct activities thereon. The sale or consumption of alcoholic beverages at any time, including Town events, is expressly prohibited on the PREMISES.

IV.

IMPROVEMENTS BY TOWN

The TOWN agrees to accept the PREMISES in the condition it is in as of the COMMENCEMENT DATE of this Joint Use Agreement and, subject to Article VIII, make

certain improvements to the PREMISES, as specified in Exhibit "B" (the "IMPROVEMENTS"). The TOWN shall have the obligation and all responsibility and cost to secure the necessary approvals, licenses and use approvals, or permits which may be required for the construction of the work. All expenditures related to the completion of the IMPROVEMENTS shall be pre-approved by the Superintendent of Schools (the "SUPERINTENDENT") or his designee. Upon the completion of the IMPROVEMENTS, the TOWN shall submit invoices and other documentation to the BOARD, or its designee, as may reasonably be required to establish and verify the actual cost. The TOWN stipulates that the BOARD may, at any time, inspect the IMPROVEMENTS to assure compliance with the scope of work outlined in Exhibit "B" and conformance to applicable codes and specifications. The TOWN shall be permitted to make additional non-permanent improvements on the PREMISES, subject to the approval of the BOARD, or its designee, consistent with the TOWN'S approved PARK Master Plan. The TOWN shall secure authorization from the SUPERINTENDENT or his designee prior to making any additional improvements to the PREMISES beyond those set forth in Exhibit "B".

V.

INDEMNIFICATION BY TOWN

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

VI.

INDEMNIFICATION BY CONTRACTORS

The TOWN shall cause any contractor performing any work upon the PREMISES

for the TOWN to expressly indemnify, defend and hold the BOARD harmless from and against any and all liabilities, damages, claims, costs or expenses whatsoever (including attorney's fees and costs at both the trial and appellate levels) for loss of life , personal injury, and property damage arising from the exercise of the TOWN'S rights under this Joint Use Agreement. This indemnification by the contractor shall not be limited to the extent and limitations included in Section 768.28, Florida Statutes. Additionally, the TOWN shall cause any contractor performing any work upon the PREMISES on behalf of the TOWN to name the BOARD as an additional insured with respect to any insurance policies provided by the contractor to the TOWN in connection with any construction contract for the work to be performed

VII.

WETLANDS

The TOWN acknowledges that the PREMISES contain jurisdictional wetlands. Accordingly, prior to initiating any activities on the PREMISES that may disturb or impact said wetlands, including performing any of the construction activity contemplated in this Joint Use Agreement, the TOWN shall obtain all necessary permits and pay any related costs, including mitigation, and shall coordinate with the South Florida Water Management District (the "SFWMD"), the Miami-Dade County Department of Environmental Resource Management ("DERM"), and any other jurisdictional entities as may be required. Based upon the information obtained during the TOWN'S consultation with the SFWMD and DERM, and should the TOWN decide to proceed with the IMPROVEMENTS, the TOWN shall submit to the SUPERINTENDENT all documentation required by the BOARD prior to proceeding with the permitting process and shall secure authorization from the SUPERINTENDENT, or his designee, prior to initiating any construction related activities on the PREMISES.

VIII.

SUPERVISION OF CONTRACTORS

During the term of this Joint Use Agreement, the TOWN shall supervise and be

responsible for all contractors performing construction related activity at the PREMISES and shall assume all responsibility for the condition of the PREMISES during such activity.

IX.

ASSIGNMENT

Except as provided in Article III, neither party shall assign, transfer, or otherwise dispose of this Joint Use Agreement for the term hereof, or underlet the PREMISES or any part thereof or permit the said PREMISES 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. If the BOARD terminates this Joint Use Agreement, without cause, during the first five (5) years, the BOARD will reimburse the TOWN for the unamortized portion of those improvements itemized as numbers 1, 2 and 3 in Exhibit "B", which were constructed by the TOWN prior to the date of termination. Such improvements shall be amortized equally over a sixty (60) month period, beginning with the COMMENCEMENT DATE and ending sixty (60) months thereafter. Any expenditures that were not pre-approved by the SUPERINTENDENT or his designee shall not be subject to this reimbursement provision. Further, in the event the TOWN incurs costs related to the permit process and the improvements are not completed for reasons beyond the BOARD'S control, the BOARD shall not be liable to reimburse the TOWN for these costs.

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, but not the obligation, 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, but not the obligation, to terminate this Joint Use Agreement, for cause and without penalty, upon ten (10) days additional written notice to the TOWN.

In the event of cancellation or termination, the PREMISES 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, except as provided in Articles V and VI. 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 PREMISES.

XII.

MAINTENANCE

The TOWN shall keep all recreational facilities and equipment located on the PREMISES in a safe, and clean condition at all times. Notwithstanding the above, responsibility for the maintenance of the PARK and PREMISES shall be as follows:

A. BOARD'S RESPONSIBILITIES:

1. Removal of trash or litter generated by the BOARD during its period of use.

B. TOWN'S RESPONSIBILITIES:

1. Removal of trash or litter generated during its period of use;
2. Maintenance of turf, including periodic mowing, edging and trimming;
3. Trimming and pruning of trees, including removal or replacement as necessary; and
4. Repair and maintenance of irrigation system, lighting and fencing, as applicable.

The TOWN may apply certain herbicides and pesticides to the PREMISES during the TOWN'S period of use, provided a certified technician is used.

In compliance with the Florida Building Code , or its successor document, the TOWN shall conduct annual inspections of any bleachers located on the PREMISES to assure they are in a safe condition and free from hazard, and shall, on a biennial basis, secure a certificate from a structural engineer certified by the State of Florida, attesting to same. A copy of the biennial certificate shall be provided to the BOARD at the request of the BOARD, SUPERINTENDENT or his designee.

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

party.

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 Operations, Maintenance and Planning
Attn: Administrative Director
1450 N.E. Second Avenue, Room 525
Miami, Florida 33132

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

With a Copy to: Nina Boniske, Town Attorney
Weiss, Serota, Helfman, Pastoriza,
Guedes, Cole & Boniske, P.A.
2665 S. Bayshore Drive
Suite 420
Miami, Florida 33133

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 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.

NONDISCRIMINATION

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 PREMISES 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.

XV.

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 PREMISES, 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 PREMISES and all improvements thereon in good order and repair, except for normal wear and tear, or decay and damage by the elements.

XVI.

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.

XVII.

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

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 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 its own expense, and at the BOARD'S sole option, to remove any improvements, equipment or facilities constructed by the TOWN on the PREMISES and to restore the PREMISES 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.
UTILITIES

The TOWN shall pay for all utilities used or consumed on the PREMISES for any purpose whatsoever.

XXIII.
OWNER'S RIGHT OF ENTRY

Other than as allowed under Article IV, after first notifying the TOWN Manager, the BOARD or any of its agents, shall have the right to enter said PREMISES during all reasonable working hours to examine the same, provided the BOARD'S actions do not in any way interfere with the TOWN'S use of the park land.

XXIV.
DAMAGE OR DESTRUCTION

In the event the PREMISES 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 TOWN, the TOWN may cancel this Joint Use Agreement by giving written notice to the BOARD. However, if the TOWN does not exercise the foregoing right of cancellation within forty-five (45) days after the date of such damage or destruction, the

TOWN shall cause all equipment and improvements on the PREMISES 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. Should the facilities not be repaired and rendered tenantable within the aforementioned time period, then the BOARD may, at its sole option, place the TOWN in default.

XXV.

WRITTEN AGREEMENT

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

[Acknowledgments and signatures on following page]

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:

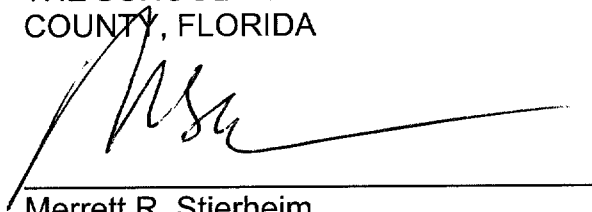
TOWN OF MIAMI LAKES,
a Florida municipal corporation



Alex Rey
Town Manager

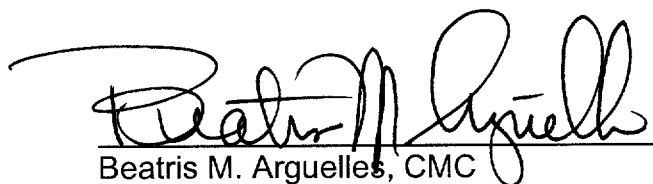
BOARD:

THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA



Merrett R. Stierheim
Superintendent of Schools

ATTEST:



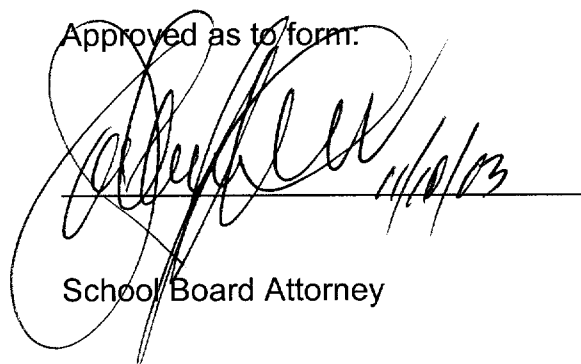
Beatris M. Arguelles, CMC
Town Clerk

Approved as to form and legality
for the use and benefit of the
Town of Miami Lakes only:



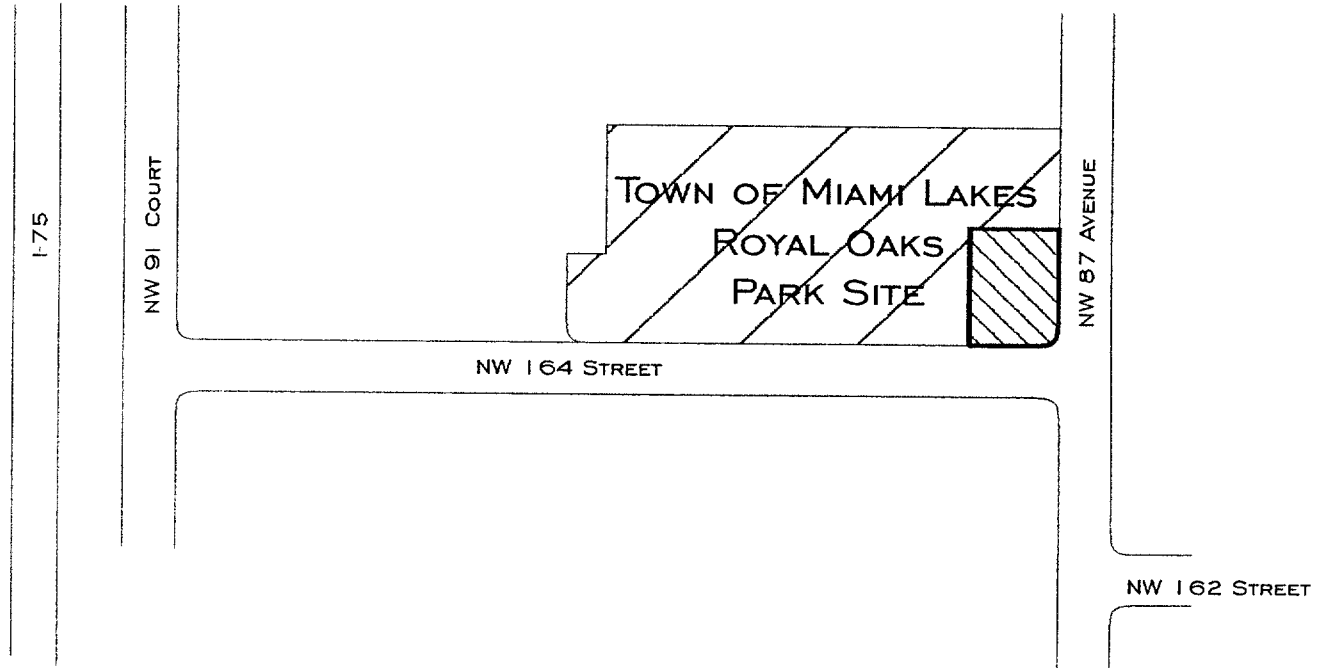
Weiss, Serota, Helfman, Pastoriza,
Guedes, Cole & Boniske, P.A.
Town Attorney

Approved as to form:



School Board Attorney

EXHIBIT "A"



LEGEND

	VACANT BOARD-OWNED LAND
	TOWN-OWNED LAND

EXHIBIT "A"

LEGAL DESCRIPTION OF BOARD-OWNED PREMISES

A portion of the S.E. 1/4, of the N.E. 1/4 of Section 16, Township 52 South, Range 40 East, Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Northeast Corner of the S.E. 1/4, of the N.E. 1/4 of said Section 16, thence S 02deg 35min 34sec E along the East Line of the N.E. 1/4 of said Section 16 for a distance of 361.87 feet to the point of intersection with the South Line of the North 361.63 feet of the S.E. 1/4, of the N.E., 1/4 of said Section 16, said point also being the POINT OF BEGINNING of the parcel of land hereinafter described; thence S89deg 30min 05 sec W along said South Line for a distance of 289.35 feet; thence S 00deg 29min 55sec E for a distance of 291.37 feet to the point of intersection with the South Line of the North 653.00 feet of the S.E. 1/4 of the N.E. 1/4 of said Section 16; thence N 89deg 30min 05sec E along said South Line for a distance of 300.01 feet to the point of intersection with the East Line of the N.E. 1/4, of said Section 16; thence N 02deg 35min 34sec W along said Quarter Section Line for a distance of 291.56 feet to the POINT OF BEGINNING. Containing 1.97 Acres more or less.

EXHIBIT "B"

Scope of Work for Board Property (Premises) located Adjacent to Royal Oaks Park

The Town shall:

- 1. File environmental permit application(s) with DERM, SFWMD and U.S. Corps of Engineers, as may be required, and obtain all required permits, including payment of any required mitigation, prior to impacting Wetlands.**
- 2. Clear, demuck and back-fill (using clean fill) the Premises to a level consistent with the adjacent Royal Oaks Park, in accordance with the requirements of any and all governing Permits, as well as any other applicable requirements or codes.**
- 3. Install sod.**
- 4. Create a berm around the south and east perimeter of the Premises and plant sod and trees on the berm. This work shall be considered a non-reimbursable, non-permanent improvement.**