Memorandum

MIAMI-DADE COUNTY

Date: March 3, 2009

Agenda Item No. 8(M)(1)(B)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Joint Use Agreement with the School Board of Miami-Dade County for Ron Ehmann Park and Miami Killian Senior High School

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Recommendation
It is recommended that the Board adopt the attached resolution authorizing the execution of a Joint Use Agreement with the School Board of Miami-Dade County (School Board) for the joint use of Ron Ehmann Park and Miami Killian Senior High School.

Scope
Ron Ehmann Park is located at 10995 S.W. 97 Avenue in Commission District 8. Miami Killian Senior High School is adjacent to the park.

Fiscal Impact/Funding Source
There is no fiscal impact to the County as a result of this agreement. The Park and Recreation Department (MDPR) will continue to incur net operational costs of $77,030 per year for the park. Operational costs are budgeted from the General Fund Subsidy (UMSA).

Track Record/Monitor
The MDPR Property Management Section will monitor this Joint Use Agreement.

Background
The School Board and County entered into a certain lease agreement dated June 10, 1975 (Exhibit A) for an approximate 14-acre School Board owned site known as Ron Ehmann Park. That agreement expired on June 9, 2005. The School Board did not agree to renew the lease at that time and the park has since operated on a month to month basis. MDPR sought to obtain the park site by conveyance; however, the School Board does not wish to sell the property.

This agreement provides for joint use of the recreational areas within the park, as well as those recreational amenities that may be constructed in the future. Current recreation amenities include two (2) basketball courts, a softball field, soccer field, six (6) lighted tennis courts, a walking path, recreation building and parking lot. The school will have the right to use all recreational amenities during regular school hours and days. The County will have the right to use the full park site including recreational amenities at all other times. The agreement is for ten (10) years with three (3) successive ten (10) year renewal periods. The annual rental rate is $1.00 payable upon execution of the agreement and the anniversary date each year thereafter. Upon cancellation or expiration of the agreement or any extension thereof, the County agrees to convey title to all improvements located on the park to the School Board without compensation.

Attachment

Alex Muñoz, Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: March 3, 2009

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(M)(1)(B)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Mayor's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(M)(1)(B)
3-3-09

RESOLUTION NO. _____

RESOLUTION APPROVING JOINT USE AGREEMENT WITH THE SCHOOL BOARD OF MIAMI-DADE COUNTY FOR THE USE OF RON EHMANN PARK AND MIAMI KILLIAN SENIOR HIGH SCHOOL AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SUCH

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, the County is seeking to maintain use of Ron Ehmann Park (Exhibit A), as a community park providing the community with a variety of recreational needs; and

WHEREAS, the Miami-Dade Park and Recreation Department ("PARKS") desires to continue to make use of facilities at Miami Killian Senior High School; and

WHEREAS, the Joint-Use Agreement (the "Agreement") will allow PARKS to continue the provision of an after school program, Winter, Spring, and Summer Camps for children aged 6-14 years old, tennis lessons throughout the year, and rentals of the on-site building as well as softball and soccer fields; and

WHEREAS, the Agreement will allow PARKS to coordinate with the School Board of Miami-Dade County (the "School Board") for maintenance functions to be provided by the County during school hours, which may include mowing, chemical and fertilizer applications, minor repairs and site work for park and recreation purposes,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves a Joint Use Agreement with the School Board for Ron Ehmann Park and Miami Killian Senior High School in substantially in the form attached hereto as Exhibit B and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and authorizes the County Mayor or County Mayor's designee to exercise any and all other rights conferred therein

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

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The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of March, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

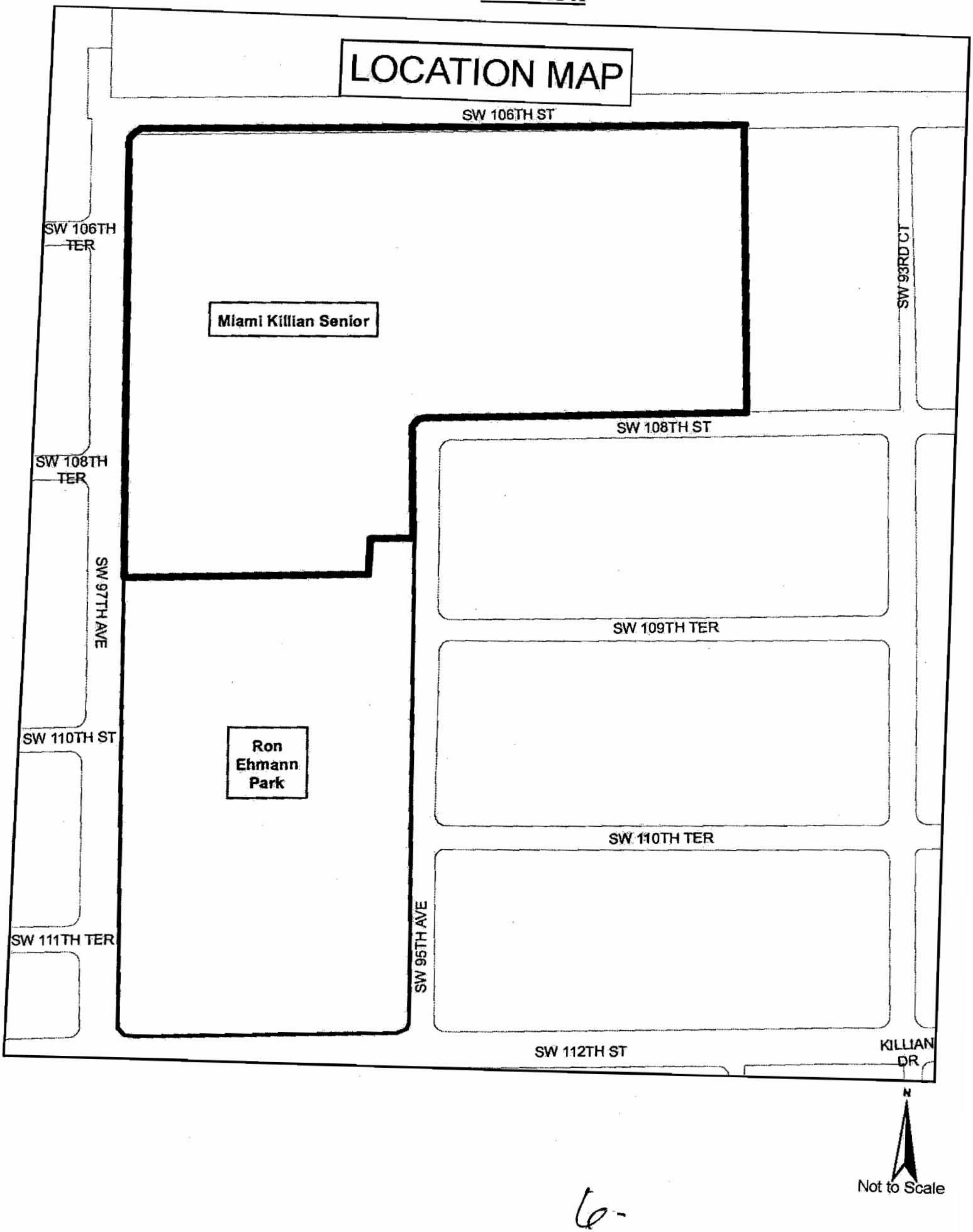
HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. MR

Monica Rizo

EXHIBIT A


LOCATION MAP
SW 106TH ST
SW 106TH TER
Miami Killian Senior
SW 93RD CT
SW 108TH ST
SW 108TH TER
SW 97TH AVE
SW 109TH TER
SW 110TH ST
Ron Ehmann Park
SW 110TH TER
SW 111TH TER
SW 95TH AVE
SW 112TH ST
KILLIAN DR
N
Not to Scale

6-

EXHIBIT B

JOINT USE AGREEMENT
FOR
RON EHMANN PARK
AND
KILLIAN SR HIGH SCHOOL

THIS JOINT USE AGREEMENT (the "Agreement"), made and entered into this _____ day of _____, 2009, by and between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic (the "Board") and MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (the "County"), collectively referred to as the "Parties".

WITNESSETH

WHEREAS, the County and Board entered into that certain lease agreement, dated June 10, 1975 (the "Previous Agreement"), attached hereto as Exhibit "A", for an approximate 14-acre Board-owned site, known as Ron Ehmann Park, located at 10995 SW 97 Avenue; and

WHEREAS, the Previous Agreement expired on June 9, 2005; and

WHEREAS, the County, through its Park and Recreation Department (the "Department"), has expressed a desire to continue to operate and maintain the property to provide recreational programs and services to County residents, and physical education facilities and other educational uses for the benefit of Miami Killian Senior High School; and

WHEREAS, the Parties wish to continue this mutually beneficial relationship by entering into a successor agreement; and

WHEREAS, the Board of County Commissioners of Miami-Dade County, by the adoption of Resolution No. _____, at its meeting of _____, 2009, approved this Agreement; and

WHEREAS, the School Board of Miami-Dade County, Florida, has authorized the Agreement in accordance with Board Item No. F-4, at its meeting of July 15, 2008.

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

I.

PREMISES TO BE JOINTLY USED

The Parties agree to jointly use an approximate 14-acre portion of Board-owned land known as Ron Ehmann Park (the "Park"), located at 10995 SW 97 Avenue, situated in Miami-Dade County, Florida, and portions of Miami Killian Senior High School, as further specified in Article V (the "School"), located at 10655 SW 97 Avenue, situated in Miami-Dade County, Florida (collectively referred to as the "Property"), and as more particularly described in Exhibit "B", attached hereto and made a part hereof.

II.

TERM; OPTION TO RENEW; RENTAL RATE

This Agreement shall commence as of the later date of execution by the County and Board, which date shall be confirmed in writing by the Parties and made a part of this Agreement by reference (the "Commencement Date"), and shall terminate 10 years thereafter. This Agreement may be renewed for three successive 10-year periods, at the mutual option of the Parties; said approval not to be unreasonably withheld.

The annual rental rate shall be One Dollar ($1.00) payable to the Board upon execution of this Agreement, and upon the anniversary date each year thereafter.

III.

PREMISES TO BE JOINTLY USED

The Parties agree to jointly use the recreational areas and any other improvements located within the Park as of the Commencement Date, as well as those that may be constructed in the future (the "Recreational Amenities"). As of the Commencement Date, the Recreational Amenities consist of two basketball courts, one softball field, one soccer field, six lighted tennis courts, a walking path, a recreation building and parking lot.

IV.

USE OF PARK BY THE PARTIES

The School will have the right of use of all Recreational Amenities located on the Park during regular school hours on regular school days. The County will have the right of use of the full Park site, including the Recreational Amenities, at all other times. Such County use may include, but is not necessarily limited to, after school programs, One Day camps, Winter/Spring/Summer camps for children ages 6-14 years old, and provision of tennis lessons

and clinics throughout the year. The School may have additional use of the Park, after normal school hours, by reserving such use with the Park Supervisor. Approval of said request shall not be unreasonably withheld, provided such use does not conflict with operations of the Park or previous County obligations.

The School Administrator and Park Supervisor shall meet prior to the start of each school year, or as soon thereafter as possible, to establish a mutually agreeable and reasonable schedule for use of the Park by each Party. Given the extensive amount of evening and weekend use of the Recreational Amenities by local youth leagues and other not-for-profit sports organizations, the existing agreements between the County and these organizations to provide recreational facilities, coupled with the needs of the School to provide the necessary recreational and educational requirements for its ongoing programs, approval of each Party's request for such use shall not be unreasonably withheld. Such schedule of use and the exact areas of use may be modified from time to time throughout the school year by mutual agreement of the School Administrator and Park Supervisor.

The County shall supervise and control the Park and all facilities and equipment located thereon during those times when not in use by the School, and the Park is open and available to the public.

The Parties agree that they shall secure and lock all perimeter and parking lot gates, as required, including those located on the School site, as provided for in Article V, at the completion of their period of use, and shall remove all vehicles stationed in the parking lots by them prior to the other Parties period of use. The Parties shall remove said vehicles using all lawful means, and may post signs to facilitate same, after securing approval from the Park Supervisor and/or School Administrator, as applicable.

The sale or consumption of alcoholic beverages at any time, is expressly prohibited.

V.

USE OF SCHOOL BY COUNTY

The County shall have the right to use designated parking, recreational and other facilities located at the School, to include the gymnasium, football field and track; in compliance with Board Rule and as available. Such use by the County shall not be unreasonably withheld, provided such use does not conflict with operations of the School or previous School obligations. At all times that the County utilizes the School, it shall be responsible for all use, maintenance, risk management, supervision and other terms and conditions as outlined elsewhere in this Agreement.

VI.

IMPROVEMENTS; PARK MAINTENANCE

Subject to review and approval by the Board, or its designee, the County may make such improvements and construct such facilities upon the Park, at the County's sole cost and expense, as may be necessary for community park purposes, and as long as construction of the improvements does not interfere with the School's use of the Park.

The County, at its sole cost and expense, shall keep and maintain the Park and all facilities and equipment located thereon safe and in a state of good repair at all times. The County will coordinate any maintenance activities that must be conducted during School hours with the School Administrator. The County agrees to use its best efforts to schedule all maintenance functions so as to limit any impact on School operations. The Board will be responsible to repair any damage to the Recreational Amenities determined to be caused exclusively by School use of the Park.

Both Parties will be responsible for removal of trash and litter from the Park generated during their respective periods of use.

The County may apply certain herbicides and pesticides to the Park during its period of use, using a certified technician, after submitting a Material Safety Date Sheet (MSDS) to the Board or its designee, and securing written approval from same to use the product. The County shall conform to all requirements and restrictions noted on the product label, and may only apply the product in conformance with the manufacturer's specifications and recommendations. Once the MSDS for a specific product is so approved, the County will not require additional approval from the Board to apply the same product within the Park. The County must coordinate and schedule use of the herbicide or pesticide with the School Administrator prior to its application.

In compliance with the December 2004 version of the State Requirements for Educational Facilities, or its successor document, the County shall conduct annual inspections of any bleachers it has placed on the Park, 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.

VII.

UTILITIES

All utilities serving the Park shall be separately metered and paid for by the County.

VIII.

INDEMNIFICATION

The County does hereby agree to hold harmless and indemnify the Board to the extent and within the limitations of Section 768.28, Florida Statutes, subject to the provisions of that Statute whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of $100,000, or any claim or judgments or any portion thereof, which, when totaled with all other claims or judgments paid by the County arising out of the same incident or occurrence, exceeds the sum of $200,000, from any and all personal injury or property damage claims, liabilities, losses, and causes of action arising out of or incidental to the negligent performance of this Agreement. However, nothing herein contained 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 any unrelated third party.

The Board does hereby agree to hold harmless and indemnify the County to the extent and within the limitations of Section 768.28, Florida Statutes, subject to the provisions of that Statute 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 $100,000, or any claim or judgments or any portion 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 $200,000, from any and all personal injury or property damage claims, liabilities, losses, and causes of action arising out of or incidental to the negligent performance of this Agreement. However, nothing herein contained shall be deemed to indemnify the County from any liability or claim arising out of the negligent performance or failure of performance of the County or any unrelated third party.

IX.

CANCELLATION

Either Party may cancel this Agreement, in whole or in part, at any time, with one year prior written notice. In that event, the portion of the Park subject to said cancellation shall be freed from the burden of this Agreement, concurrent with the effective date of said cancellation. In addition, the County covenants and agrees that the Board shall not be obligated to reimburse the County for any of the County's improvements or other facilities constructed on the Park, or be subject to any other obligation or penalty. Further, the County shall, at the County's sole cost and expense and at the Board's sole option, said option not to be unreasonably imposed, remove or relocate any and all facilities or improvements made to the Park by the County.

X.

SUBORDINATION

This Agreement shall be deemed subordinate to any existing or future financing of the Property or any part thereof by the Board.

XI.

GOVERNING LAW; COMPLIANCE WITH LAWS; VENUE

This 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. The Parties shall comply with all applicable laws, rules, regulations, ordinances and codes of Federal, State and Local Governments, including, but not limited to, the Americans with Disabilities Act, as they apply to this Agreement.

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 termination of this Agreement.

XII.

NOTICES; GENERAL CONDITIONS

A. All notices or other communications which shall or may be given pursuant to this 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 County:

County Manager
Stephen P. Clark Center
111 N.W. First Street, 29th Floor
Miami, Florida 33128

With a copy to:

Director
Park and Recreation Department
275 NW 2 Street, 5th Floor
Miami, Florida 33128

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 copies to:

Miami-Dade County Public Schools
Administrative Director
Facilities Planning
1450 N.E. Second Avenue, Room 525
Miami, Florida 33132

The School Board of Miami-Dade County, Florida
School Board Attorney's Office
1450 N.E. Second Avenue, Room 400
Miami, Florida 33132

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 this Agreement, the Superintendent of Schools shall be the party designated by the Board to grant or deny all approvals required by this Agreement, or to cancel this Agreement.

XIII.

ASSIGNMENT

Except as otherwise provided, neither party shall assign, transfer, or otherwise dispose of this Agreement for the term hereof, or sublease any part thereof.

XIV.

DEFAULT

The County 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 County 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 County shall have the right to terminate this Agreement, without penalty, upon ten (10) days additional written notice to the Board.

The Board shall provide the County with written notice of any failure to perform or comply with the terms and conditions contained herein to be performed by the County. If the

County 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 City's resolution of the violations and providing for a schedule to correct all deficiencies, the Board shall have the right to terminate this Agreement, without penalty, upon ten (10) days additional written notice to the County.

XV.

NO LIABILITY FOR PERSONAL PROPERTY

The County 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 County 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 or School.

XVI.

DAMAGE OR DESTRUCTION

In the event the Park should be destroyed or so damaged by fire, windstorm or other casualty to the extent the facilities are rendered untenantable or unfit for the purposes of the County, either party may immediately cancel this Agreement, by so notifying the other in writing. However, if neither party shall exercise the foregoing right to cancel within forty-five (45) days after the date of such damage or destruction, the County shall cause all improvements located on the Park to be repaired and placed in a safe, secure and useable condition and compatible for School and community 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, which shall be determined based upon the scope and nature of the damages, cost of the necessary repairs and available funding for such repairs. Should the facilities not be repaired and rendered tenantable within the aforementioned time period, then the Board may, at its sole option, place the County in default.

XVII.

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 Park and School and improvements thereon. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this

Agreement automatically terminates without any further action on the part of the other Party, effective the date of the Court Order.

XVIII.

PEACEFUL POSSESSION

Subject to the terms, conditions, and covenants of this Agreement, both Parties agree that the other Party shall and may peaceably have, hold and enjoy the above described Park and School, without hindrance or molestation by the other Party. Subject to the provisions of Article XXIII, at the expiration of this Agreement, the County shall, without demand, quietly and peaceably deliver up possession of the Park 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.

XIX.

SUCCESSORS AND ASSIGNS

This Agreement shall extend to and be binding upon the Parties herein, their legal representatives, successors and assigns.

XX.

COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

The Parties shall comply with all applicable laws, rules, regulations, ordinances and codes of Federal, State and Local Governments, including, but not limited to, the Americans with Disabilities Act ("ADA"), as they apply to this Agreement, and the County shall retain responsibility for assuring that the Recreational Amenities are in compliance with ADA.

XXI.

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 in Miami-Dade County, Florida. In the event of litigation between the Parties, each Party shall be responsible for its own attorney's fees and court costs through trials and appellate levels. This provision shall survive the termination of this Agreement.

XXII.

SEVERABILITY

In the event any paragraph, clause or sentence of this 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 Agreement and the balance of the Agreement shall

not be affected by the deletion thereof, provided to do so would not render interpretation of the Agreement provisions ambiguous or a nullity.

XXIII.

WAIVER

No waiver of any provision hereof shall be deemed to have been made unless such waiver be in writing and signed by the County or Board. The failure of either Party to insist upon strict performance of any of the provisions or conditions of this 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.

XXIV.

SURRENDER OF PREMISES

Notwithstanding any other provision of this Agreement, upon the cancellation or expiration of this Agreement or any extension thereof, the County agrees to convey title to all improvements located on the Park to the Board, without compensation.

XXV.

WRITTEN AGREEMENT

This Agreement represents the entire agreement between the Parties. All Amendments shall be in writing and approved as required by this Agreement.

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

MIAMI-DADE COUNTY,

By: _____
George Burgess, County Manager

ATTEST:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
County Attorney

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

By: _____
Alberto M. Carvalho, Superintendent

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
Julie Ann Rico, School Board Attorney

EXHIBIT A

LEASE AGREEMENT

THIS LEASE AGREEMENT, entered into this 10 day of June 1975, by and between THE SCHOOL BOARD OF DADE COUNTY, FLORIDA, a body corporate and politic, herein after referred to as the LESSOR, and DADE COUNTY, a political subdivision of the State of Florida, hereinafter called the LESSEE.

W I T N E S S E T H

WHEREAS, in accordance with the provisions of the AGREEMENT FOR JOINT RECREATIONAL PROGRAM, dated May 17, 1961, by and between the parties hereto, which was approved by County Commission Resolution No. 6529, adopted May 2, 1961, and School Board Item 25,038, December 7, 1960, Dade County has requested the School Board to make available 14.57 acres of School Board lands in Section 9, Township 55 South, Range 40 East, Dade County, Florida, south of and adjacent to Miami Killian Senior High School, for community recreational facilities; and

WHEREAS, the School Board has authorized the lease of said lands in accordance with the provisions of the 1961 AGREEMENT by Board Item 52,774 at their meeting on February 19, 1975, and

WHEREAS, the Board of County Commissioners by the adoption of Resolution No. R-583-75 at their meeting on June 4, 1975 approved this Lease Agreement.

NOW, THEREFORE, for and in consideration of the conditions and covenants hereinafter contained, the parties hereto agree as follows:

I.
TERM

The Lessor hereby leases and lets unto the Lessee and the Lessee hereby leases from the Lessor the following described land:

A portion of the West ½ of the SW¼ of the NW¼ of Section 9, Township 55 South, Range 40 East, Dade County, Florida, more particularly described ~~as follows:~~

Begin at the point of intersection of the North line of the South 35.00 feet of the NW¼ of said Section 9 with the East line of the West 40.00 feet of the NW¼ of said Section 9; thence run N 01°57'47" W, along the East line of the West 40.00 feet of NW¼ of said Section 9, for a distance of 1051.88 feet; thence run N 87°51'54" E, for a distance of 603.67 feet; thence run S 01°56'18" E, along the West line of the East 25.00 feet of the West ½ of the SW¼ of the NW¼ of said Section 9, for a distance of 1053.58 feet; thence run S 88°01'35" W along the North line of the South 35.00 feet of the NW¼ of said Section 9, for a distance of 603.21 feet to the Point of Beginning;

LESS

the external area formed by a 25.00 foot radius arc, concave to the Northeast, tangent to the North line of the South 35.00 feet of the NW¼ of said Section 9, and tangent to the East line of the West 40.00 feet of the NW¼ of said Section 9;

AND LESS

the external area formed by a 25.00 foot radius arc, concave to the Northwest, tangent to the North line of the South 35.00 feet of the NW¼ of said Section 9, and tangent to the West line of the East 25.00 feet of the West ½ of the SW¼ of the NW¼ of said Section 9.

TO HAVE AND TO HOLD for a term of thirty(30) years commencing _____ _____,1975, and ending _____,2015, at an annual rental of One ($1.00) Dollar payable on the commencement of this lease and a like amount on ths same date of each year of the term of this lease or any extension thereof.

II.
USE

The area of the demised premises shall be used by the Dade County Park and Recreation Department for the purpose of creating, establishing, equipping and maintaining a public recreation center, playground and park for the benefit and use of the general public.

III.
JOINT USE AGREEMENT

It is understood and agreed by the parties hereto that the May 17, 1961, AGREEMENT FOR JOINT RECREATIONAL PROGRAM, noted above, and all Amendments and Supplemental Agreements thereto which have been or will be entered into between the parties hereto for the joint use of the demised lands, and entitled "Operational Agreements" are made a part of this lease by reference.

It is further agreed that if there is any inconsistency or conflict between the Agreement for Joint Recreational Program and any of the terms of this lease, the lease provisions will prevail.

It is understood and agreed that the Principal and Physical Education Director of Miami Killian Senior High School and the Community Park Director will make such agreements as may be necessary for joint use of the facilities upon completion of the park improvements.

IV.
IMPROVEMENTS BY LESSEE

The Lessee shall make such improvements and construct such facilities upon the demised lands as shall be necessary to utilize said lands for community park purposes. All such improvements shall be at the sole cost and expense of the Lessee. The master plan for such improvements shall be submitted for review and approval of the Park-School Task Force in order to assure development of the

most suitable program for the community in conjunction with the activities of Miami Killian Senior High School. Construction of improvements shall commence within one year from the execution of this lease, unless an extension of time is granted in writing by the Lessor.

V.
MAINTENANCE

The Lessee shall keep and maintain the demised premises and all facilities and equipment located thereon in a state of good repair and clean condition at all times. The Lessee shall supervise and control the demised premises and all facilities and equipment located thereon at all times during which the demised premises are open and available to the public. No recreational facilities or equipment shall be unattended or without supervision during the hours the premises will be open to the public.

The Lessee may promulgate and enforce reasonable rules and regulations governing the use of said park and recreational facilities by the public and establish reasonable hours for public use thereof.

VI.
UTILITIES

The Lessee shall pay for all utilities used by it. The Lessor shall have no obligation to provide utilities to the premises.

VII.
SCHOOL PARKING FACILITIES

The Lessee shall have the right of joint use of the Miami Killian Senior High School parking facilities adjacent to the demised premises as shall be agreed upon between the Principal of said school and the Park Director.

VIII.
RESERVATION FOR ELEMENTARY SCHOOL

The South three hundred feet of the property demised hereunder is hereby reserved by the Lessor as the site for construction of an elementary school, and may be released from the term thereof, whenever required for school purposes, ~~without payment of compensation~~ to the Lessee for any improvements constructed thereon by the Lessee under the provisions of this Lease.

IX
NO LIABILITY FOR PROPERTY

The Lessor and Lessee agree to insure or self insure their respective interests in real and 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 of such property by any cause whatsoever. The Lessor and Lessee hereby waive all rights of subrogation under any policy or policies they may carry, or on property placed or moved on the premises.

X.
INDEMNIFICATION AND INSURANCE

The Lessee agrees to indemnify and hold harmless the Lessor from and against any and all loss and damage and any and all claims, demands, suits, liabilities and payments arising out of the acts or omission of the Lessee's employees or agents which may arise out of the operation of the Lessee's business under this Lease Agreement to the extent that tort immunity has been waived by law.

The Lessee, at its expense, shall maintain the following insurance: Public Liability Insurance, Contractural Liability Insurance covering all liability arising out of the terms of this agreement and Automobile Liability Insurance covering all owned, non owned and hired vehicles. The coverage under the above policies shall be to the extent required by the Tort Claims Act. The Lessee agrees to furnish a certificate that the above coverages are in effect. In the case of joint use the premium shall be prorated.

XI.
ASSIGNMENT

The Lessee shall not assign, sublet, transfer, or otherwise dispose of this lease without the written consent of Lessor first obtained in each case.

XII.
NOTICES

All notices given under this Lease shall be in writing and delivered by either certified or registered mail. Notice shall be effectively served by the Lessee upon the Lessor when addressed to the Lessor and mailed to the School Board of Dade County, 1410 N. E. 2nd Avenue, Miami, Florida. Notice shall be effectively served by the Lessor upon the Lessee when addressed to County Manager and mailed to the Dade County Courthouse, Miami, Florida

XIII
ABANDONMENT AND DEFAULT

If the Lessee shall abandon or vacate the demised premises before the end of the term of this Lease, or if the premises shall be occupied and used by the Lessee for any purpose other than park and recreation purposes or fail to

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comply with any covenant or provisions of this Lease, Lessor may at its option terminate this Agreement after fifteen (15) days notice in writing, unless the default is cured within the notice period.

XIV
CANCELLATION - MARKET VALUE OF IMPROVEMENTS

Either party may cancel this Lease in whole or in part by giving one hundred eighty (180) days notice in writing to the other party. Should the Lessor desire to cancel this lease as to a part of the lands for construction of additional school facilities thereon, then that portion of the demised property shall be freed from the burden of this lease and revert to the Lessor. Should that portion desired by the Lessor have facilities constructed thereon by the Lessee, then the value of the facilities as determined by two competent appraisers shall be paid to the Lessee as liquidated damages. Damages shall not be paid to the Lessee for facilities constructed on the South three hundred feet of the demised property at any time, nor on any part of the demised premises during any extension of the original term of this lease.

XV
RENEWAL

The term of this lease may be extended for an additional term of thirty years, under the same terms and conditions, upon written notice from the Lessee ninety (90) days prior to the expiration of the original term.

XVI
WRITTEN AGREEMENT

This lease contains the entire agreement between the parties hereto and it may be modified only by an agreement in writing signed and sealed by the Lessor and Lessee.

IN WITNESS WHEREOF, the LESSOR and LESSEE have caused this Lease Agreement to be executed by their respective and duly authorized officers the day and year first above written.

(OFFICIAL SEAL)
Attest:

Secretary

THE SCHOOL BOARD OF DADE COUNTY, FLORIDA

Chairman

(OFFICIAL SEAL:
Attest:

Secretary. DEPUTY CLERK

DADE COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

County Manager

Approved by Board Attorney