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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: January 22, 2009

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

From: George M. Burgess
County Manager

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

Resolution No. R-42-09

Subject: Joint Use Agreement Between Miami-Dade County and the School Board of Miami-Dade County for Kendall Indian Hammocks Park and State School YYY-1

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 Kendall Indian Hammocks Park and State School YYY-1.

Scope

Kendall Indian Hammocks Park is located at 11395 SW 79 Street in Commission District 10. State School YYY-1, currently under construction, is adjacent to the park. There is also an existing High School on the site, MacArthur South.

Fiscal Impact/Funding Source

There is no fiscal impact to the County as a result of the agreement. The Park and Recreation Department (MDPR) will continue to incur operational costs of $918,000.00 per year for Kendall Indian Hammocks Park. Operational costs are budgeted from General Fund Subsidy (UMSA) and proprietary fees.

Track Record/Monitor

The MDPR Property Management Section will monitor this Joint Use Agreement.

Background

Kendall Indian Hammocks Park has been in use since 1960 as a community park. The School Board desires to enter into an agreement to construct improvements on a portion of the park and provide for the joint use of such facilities and various other recreational amenities on the school and park sites, for recreational and educational purposes, under mutually agreed terms and conditions. The area to be utilized is referred to in Exhibit "A" of the Joint Use Agreement (attached).

The Agreement provides for joint use of three (3) existing softball fields, one (1) proposed baseball field (including existing restroom and other publicly accessible facilities), an adjacent proposed multi-use parking lot, two (2) existing soccer fields, proposed hard courts, a proposed parking lot east of the School ("Park Parking Lot"), a proposed parking lot on the east side of the School ("Ancillary Parking Lot"), the proposed Park Road, and the existing school gymnasium.

Attachment

Alex Muñoz
Assistant County Manager

MEMORANDUM
(Revised)

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

DATE: January 22, 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 Manager'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)
1-22-09

RESOLUTION NO. R-42-09

RESOLUTION AUTHORIZING EXECUTION OF A JOINT USE AGREEMENT WITH THE SCHOOL BOARD OF MIAMI-DADE COUNTY FOR KENDALL INDIAN HAMMOCKS PARK AND STATE SCHOOL YYY-1

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 SCHOOL BOARD and COUNTY are mutually interested in and concerned with providing and making available recreational programs, activities and facilities for the use and benefit of both the students of Miami-Dade County Public Schools and the people of Miami-Dade County; and

WHEREAS, the BOARD owns and has under its jurisdiction certain real property, located at approximately SW 80 Street and theoretical SW 110 Avenue and consisting of approximately 29 acres, upon which State School "YYY-1" is being constructed; and

WHEREAS, the COUNTY owns and has under its jurisdiction certain real property used for public park purposes, known as Kendall Indian Hammocks Park ("Park"), located at 11395 SW 79 Street, adjacent to the School; and

WHEREAS, the BOARD and COUNTY are desirous of entering into this Agreement (Attachment A), to allow the SCHOOL BOARD to construct certain recreational improvements on a portion of the Park (Attachment B) and to provide for the joint use of such facilities and various other recreational amenities on the School and Park sites for recreational and educational purposes under the terms and conditions set forth below; and

WHEREAS, the SCHOOL BOARD and COUNTY previously entered into that certain Lease Agreement, dated May 25, 2001 (Existing Lease, Attachment C), for the COUNTY'S use of portions of the School site for recreational purposes; and

WHEREAS, the parties have agreed to cancel the Existing Lease, concurrent with the commencement date of this Agreement; and

WHEREAS, the agreement will coordinate with the School for maintenance functions to be provided by the County during school hours, which may include mowing, chemical and fertilizer applications, irrigation, minor repairs and site work for park and recreation purposes; and

WHEREAS, the agreement contains a Default and Cancellation policy that will be in effect, and shall become effective should either party deem cancellation an appropriate action,

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes the execution of a Joint Use Agreement with the School Board of Miami-Dade County for Kendall Indian Hammocks Park and State School YYY-1 in substantially the form attached hereto and made a part thereof; authorizes the County Mayor or the County Mayor's designee to execute same for and on behalf of Miami-Dade County after approval by the County Attorney's Office; and authorizes the County Mayor or the County Mayor's designee to exercise any and all other rights conferred therein upon approval by the County Attorney's Office.

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

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of January, 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: Kay Sullivan
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Hugo Benitez and
Martin W. Sybblis

ATTACHMENT A

JOINT USE AGREEMENT
FOR
KENDALL INDIAN HAMMOCKS PARK
AND
STATE SCHOOL "YYY-1"

THIS JOINT USE AGREEMENT ("Agreement"), made and entered into this _____ day of _____, 2009, between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic existing under the laws of the State of Florida (the "BOARD") and MIAMI-DADE COUNTY, a political subdivision of the State of Florida (the "COUNTY").

WITNESSETH

WHEREAS, the BOARD and COUNTY are mutually interested in and concerned with providing and making available recreational programs, activities and facilities for the use and benefit of both the students of Miami-Dade County Public Schools and the people of Miami-Dade County; and

WHEREAS, the BOARD owns and has under its jurisdiction certain real property, located at approximately SW 80 Street and theoretical SW 110 Avenue and consisting of approximately 29 acres, upon which State School "YYY-1" is being constructed ("School"); and

WHEREAS, the COUNTY owns and has under its jurisdiction certain real property used for public park purposes, known as Kendall Indian Hammocks Park ("Park"), located at 11395 SW 79 Street, adjacent to the School; and

WHEREAS, the BOARD and COUNTY are desirous of entering into this Agreement to allow the BOARD to construct certain recreational improvements on a portion of the Park and to provide for the joint use of such facilities and various other recreational amenities on the School and Park sites for recreational and educational purposes, under the terms and conditions set forth below; and

WHEREAS, joint use of the Park and School sites will augment available recreational facilities for the use and benefit of the citizens of Miami-Dade County; and

WHEREAS, The School Board of Miami-Dade County, Florida has authorized this

Agreement in accordance with Board Action No. 114,492, at its meeting of May 21, 2008; and

WHEREAS, the Board of County Commissioners by the adoption of Resolution No. _____ at its meeting of _____, 2008, approved this Agreement; and

WHEREAS, the BOARD and COUNTY previously entered into that certain Lease Agreement, dated May 25, 2001 ("Existing Lease"), for the COUNTY'S use of portions of the School site for recreational purposes; and

WHEREAS, the parties have agreed to cancel the Existing Lease, concurrent with the commencement date of this Agreement.

NOW, THEREFORE, for and in consideration of the sum of $1.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the BOARD and COUNTY agree as follows:

I.

PREMISES TO BE JOINTLY USED

The BOARD and COUNTY do hereby agree to jointly use the following recreational and other facilities: three (3) existing softball fields and one (1) proposed baseball field (including existing restroom and other publicly accessible facilities) and adjacent proposed multi-use parking lot, two (2) existing soccer fields, proposed hard courts, a proposed parking lot east of the School ("Park Parking Lot"), a proposed parking lot on the east side of the School ("Ancillary Parking Lot"), the proposed Park Road (as hereinafter defined) and the existing School gymnasium, all as more specifically depicted on Exhibit "A" attached hereto and made a part hereof (collectively, the "DEMISED AREA").

In addition to the above, the COUNTY does hereby agree to allow the BOARD to use a portion of the Park property as shown on Exhibit "A" attached hereto ("Construction Access Area") during construction of the School, as a temporary means of ingress/egress to the School property for all construction related vehicles and equipment, and a portion for use as a temporary storage area for construction materials. Commencing with the opening of the School, the BOARD shall have use of the portion of the Construction Access Area improved with a road as a permanent means of ingress/egress to the Park Parking Lot, Ancillary Parking Lot and Bus drop-off/pick-up area ("Park Road"). The Park Road will primarily be used by the COUNTY to serve Park patrons and the COUNTY'S Park Department Maintenance Facility. Notwithstanding, the BOARD shall have the uninterrupted right to use the Park Road, which use shall consist primarily, but not exclusively, of bus drop-off and pick up in the morning and afternoon, and ingress and egress to

the Park Parking Lot and Ancillary Parking Lot in the morning and afternoon. The BOARD shall construct the Park Road, Park Parking Lot, Ancillary Parking Lot and Baseball Field at its expense, as further described in Article IV of this Agreement.

II.

TERM OF AGREEMENT

The term of this Agreement shall be for a period of forty (40) years commencing upon execution of the Agreement by all parties (the "Commencement Date"), which date shall also serve as the date of cancellation of the Existing Lease. The BOARD and COUNTY, through their authorized designees, shall confirm the Commencement Date of this Agreement by separate written instrument, and said instrument shall become a part of this Agreement by reference.

III.

USE OF DEMISED AREA

The parties covenant and agree to accept the DEMISED AREA in its current condition, as of the Commencement Date of this Agreement. The DEMISED AREA as identified in Exhibit "A", shall only be used by the parties for the purpose of constructing educational and/or recreational improvements, as further defined in Article IV of this Agreement, and for the operation of recreational and/or educational programs by the parties hereto.

Except as otherwise provided herein, the BOARD shall have the right to exclusively use the DEMISED AREA during regular school hours on regular school days and during summer school (if applicable), as established through the BOARD'S approved annual school calendar ("BOARD'S Period of Use"). Except as otherwise provided herein, the COUNTY shall have the right to exclusively use the DEMISED AREA at all times when not in conflict with the BOARD'S Period of Use ("COUNTY'S Period of Use"). Additionally, the COUNTY shall have use of the Park Road at all times. The Access Road from SW 84 Street to the East side, will be gated when not in use.

The parties agree that they shall secure and lock all perimeter and parking lot gates as applicable, including those located on the School site at the completion of each party's respective Period of Use, and shall remove all vehicles stationed in the parking lots prior to the other party's 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.

Notwithstanding the above, and given the specific intent of the parties to jointly use the

recreational facilities within the DEMISED AREA in an equitable, fair and consistent manner, prior to the start of each school year, or as soon thereafter as possible, the Joint Use Committee (as defined in Article XXVI herein) shall establish a mutually agreeable and reasonable schedule for each party's use of the DEMISED AREA. The parties acknowledge and agree that given the extensive amount of evening and weekend use of the soccer facilities and softball fields by local youth leagues and other not-for-profit sports organizations, and 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 may be modified from time to time throughout the school year by mutual agreement of the Joint Use Committee.

The parties agree that portions of the soccer fields shall be closed from time to time during each party's period of use to reduce the impact on the turf. Given the significance of the availability of the soccer fields to ongoing Park and School operations, the parties agree that the method, scope and scheduling of any such closure shall be as mutually agreed to by the Joint Use Comrnittee, with the parties to work cooperatively in this regard.

Notwithstanding anything to the contrary contained herein, the parties agree that the BOARD shall retain the right to exclusively use the baseball field (including bleachers and dugouts) and multi-use parking lot, during School hours, and after School hours and weekends when needed for practices and home games, as well as pre-scheduled tournaments. The COUNTY shall have the right to exclusively use the baseball field, including bleachers and dugouts, at all other times. In addition, the BOARD shall have the right to exclusively use the School gymnasium during School hours and weekends when needed for practices and home games, as well as pre-scheduled tournaments. The COUNTY shall have the right to exclusively use the School gymnasium at all other times. Unless otherwise agreed to by the Park supervisor, the COUNTY shall have exclusive use and control over the concession stand within the restroom/storage/concession building located adjacent to the baseball and softball fields. Notwithstanding, the BOARD may set up its own temporary concession stand and operate same during School home games or for such other School-sponsored events

Should either party require use of the DEMISED AREA during a time other than its regular period of use, it will request said use through either the School administrator or Park supervisor, as applicable, with a minimum of seventy-two (72) hours advance notice. Approval

of said requests shall not be unreasonably withheld, provided such use does not conflict with the other party's operations or previous obligations.

On a periodic basis, the parties, through their respective designees, may modify the exact areas of use and periods of use of the DEMISED AREA, as mutually agreed to. In the event the areas of use are permanently modified, then Exhibit "A" shall be modified accordingly.

Each party shall maintain and provide evidence of Public Liability Insurance or an ongoing Self-Insurance program covering the BOARD or COUNTY, as the case may be, and their respective officers and employees for any activities related to this Agreement during which time each party had use of the DEMISED AREA.

The COUNTY may, in addition to its own utilization of the DEMISED AREA, designate a not-for-profit entity to utilize the DEMISED AREA during the COUNTY'S Period of Use, without securing additional permission from the BOARD. In this eventuality, the COUNTY shall be responsible for all use, maintenance, risk management and other terms and conditions as outlined in this Agreement as if the DEMISED AREA were being utilized by the COUNTY as outlined in this Agreement. The COUNTY shall require the not-for-profit entity to provide it with liability insurance in an amount acceptable to the BOARD'S Risk Management Department, and the COUNTY shall also require that THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, be named as an additional insured, and that a Certificate of Insurance be provided to the BOARD.

The BOARD and COUNTY may promulgate and enforce reasonable rules and regulations governing their use of the DEMISED AREA. Any such additional rules and regulations will be agreed upon by the Joint Use Committee, and may not be contrary to the BOARD'S rules or policies, or the COUNTY'S rules or policies.

The use of the School for carnivals, fairs, exhibits, mechanical rides, midways, or the same or similar kinds of activities is expressly prohibited. The sale or consumption of alcoholic beverages on the DEMISED AREA is expressly prohibited. Neither party shall commit nor permit any violations of applicable laws, rules and regulations of the SCHOOL BOARD, COUNTY, STATE, or FEDERAL GOVERNMENT upon the DEMISED AREA.

IV.

IMPROVEMENTS BY BOARD

The BOARD shall be permitted to construct, at its sole cost and expense, a number of improvements, wholly or partially on the Park property adjacent to the School. Work shall

include, but may not be limited to, constructing the Park Road (as described above); the Park Parking Lot; a vehicle turnaround for truck deliveries to the Park warehouse, located adjacent to the Park Road; gates as needed to secure the Park warehouse and Park Road; the Ancillary Parking Lot; water/sewer improvements; and a baseball field on the west side of the School (collectively, the "Improvements") (see Exhibit "A"). The BOARD, including its contractor and all applicable subcontractors, material suppliers, agents, legal representatives and employees, shall have use of and access to the Construction Access Area and other portions of the Park for the purpose of constructing the Improvements and all activities incidental thereto. All Improvements shall be jointly used by the BOARD and COUNTY as provided herein.

The parties agree that all plans and work shall be available for review by the COUNTY, but shall be reviewed, permitted and inspected by the BOARD. Construction of the Improvements shall conform to the School District's design criteria and construction standards, and be done in compliance with all applicable laws, rules and regulations. The BOARD and/or its contractor shall secure the work site with appropriate construction fencing, and shall implement appropriate safety measures during the work to protect Park patrons, staff and visitors from unsafe conditions. In addition, the BOARD shall assure continued access to the balance of the Park by Park patrons during construction of the Improvements.

During such time as the BOARD is conducting construction or related activities on the Park property under the auspices of this Agreement, the BOARD agrees to indemnify and hold harmless the COUNTY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the COUNTY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the negligent performance of this Agreement by the BOARD or its officers, employees or agents. The BOARD shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the COUNTY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28, Florida Statutes, subject to the provisions of the 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 judgment, or portions thereof, which when totaled with all

other claims or judgments paid by the BOARD arising out of the same incident or occurrence, exceeds the sum of $200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the BOARD. Nothing contained herein 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 as a result of the negligence of a third party.

The BOARD'S contractor shall be required to (1) show comprehensive general liability insurance and auto liability insurance with minimum limits of $300,000 of coverage per occurrence, bodily and property damage combined; (2) list Miami-Dade County as an additional insured under such contractor's liability insurance; and (3) provide the same indemnification coverage in favor of the COUNTY which the contractor is providing to the BOARD.

The COUNTY may, with the prior written approval of the BOARD, or its designee, said approval not to be unreasonably withheld, construct recreational facilities on the DEMISED AREA at such time as the COUNTY determines it to be in the best interest of the community ("County Additional Improvements"), and provided said improvements do not impair or negatively impact the ability of the School to operate its educational and recreational programs. Such County Additional Improvements are to be at the sole cost and expense of the COUNTY, and shall be done in conformance with Article IV of this Agreement.

The COUNTY agrees that no construction, major repairs, alterations or improvements, may be undertaken by it upon the School property unless the following pre-conditions are satisfied:

1) the plans:

(a) are first submitted to and approved by the BOARD, or its designee; and

(b) are in compliance with all applicable Federal, State, COUNTY, BOARD, Department of Education rules and regulations, and the work is done in compliance with all applicable laws, including, without limitation, the Florida Building Code, Americans with Disabilities Act and the Jessica Lunsford Act.

2) evidence of insurance is provided to the BOARD including, but not limited to, Workers Compensation, Builders Risk, and all other applicable coverage as required by the BOARD.

During such times as the COUNTY is conducting construction or related activities on the School property under the auspices of this Agreement, the COUNTY agrees to indemnify and hold harmless the BOARD and its officers, employees, agents and instrumentalities from any

and all liability, losses or damages, including attorney's fees and costs of defense, which the BOARD or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the negligent performance of this Agreement by the COUNTY or its officers, employees or agents. The COUNTY shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the BOARD, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28, Florida Statutes, subject to the provisions of the 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 judgment, or portions 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 or causes of action which may arise as a result of the negligence of the COUNTY. Nothing contained herein shall be deemed to indemnify the BOARD from any liability or claim arising out of the negligent performance or failure of performance of the BOARD or as a result of the negligence of a third party.

The BOARD may, with the prior written approval of the COUNTY, or its designee, said approval not to be unreasonably withheld, construct additional recreational facilities on the DEMISED AREA at such time as the BOARD determines it to be in the best interest of the School District ("Board Additional Improvements"), and provided said improvements do not impair or negatively impact the ability of the COUNTY to operate its recreational programs. Such Board Additional Improvements are to be at the sole cost and expense of the BOARD, and shall be done in conformance with Article IV of this Agreement.

Prior to initiating construction of any Additional Improvements on the DEMISED AREA as provided under this Article IV, the parties shall amend Articles VI, VII and XXV of this Agreement as necessary to assign responsibility for Maintenance, Utilities and Damage and Destruction for such Additional Improvements.

V.

CONSIDERATION

The COUNTY does covenant and agree to pay the BOARD as consideration for the use

and occupancy of the BOARD-owned portion of the DEMISED AREA throughout the term of this Agreement and any renewal thereof, the sum of one dollar ($1.00) per year in advance, beginning on the Commencement Date hereof, and on the anniversary date of each and every year thereafter.

The BOARD does covenant and agree to pay the COUNTY as consideration for the use and occupancy of the COUNTY-owned portion of the DEMISED AREA throughout the term of this Agreement and any renewal thereof, the sum of one dollar ($1.00) per year in advance, beginning on the Commencement Date hereof, and on the anniversary date of each and every year thereafter.

VI.

MAINTENANCE

The BOARD and COUNTY shall keep and maintain the DEMISED AREA in a safe, clean and working condition during their respective Periods of Use. Responsibility for maintenance of the DEMISED AREA shall be as follows:

A. BOARD'S RESPONSIBILITIES

1. routine maintenance and repair of the baseball field (including turf, fencing, and netting), hard courts (including fencing) and School gymnasium;
2. routine maintenance and repair of the Park Parking Lot and Ancillary Parking Lot, including fencing (as applicable), lighting, irrigation, landscaping and security cameras;
3. routine maintenance and repair of the Park Road;
4. removal of trash and litter from the DEMISED AREA generated by the BOARD during the BOARD'S Period of Use;
5. routine maintenance and repair of any non-designated landscape areas located on the School, including irrigation system, mowing, trimming and edging;
6. routine maintenance and repair of fences and gates along the perimeter of the School, other than as noted.

B. COUNTY'S RESPONSIBILITIES

1. routine maintenance and repair of the softball fields (including turf, fencing, netting and lighting), all publicly accessible parking areas and parking facilities (other than the Park Parking Lot and Ancillary Parking Lot), all publicly

accessible walkways or walking facilities, the restroom/storage/concession building and any non-designated landscape areas located on the Park, including irrigation system, mowing, trimming and edging;

2. removal of trash and litter from the DEMISED AREA generated by the COUNTY during the COUNTY'S Period of Use;
3. routine maintenance and repair of the soccer fields (including soccer goals/equipment, turf, landscaping, irrigation system and lighting). The soccer fields shall be irrigated on a schedule as mutually agreed to by the Joint Use Committee.

Notwithstanding the above, the BOARD shall have the right, but not the obligation, to mow the soccer fields, at its sole cost and expense, as it deems it necessary. In addition, each party shall be responsible for making any required repairs to the DEMISED AREA, at its sole cost, where the other party can clearly substantiate that such improvements were damaged as a result of the actions or negligence of the other party. The COUNTY is to provide its maintenance services during the COUNTY'S Period of Use. However, to the extent necessary, and subject to the provisions of the Jessica Lunsford Act, the COUNTY may access the DEMISED AREA during the BOARD'S Period of Use to provide certain maintenance that could not otherwise be provided during COUNTY'S Period of Use. Such access by the COUNTY shall be scheduled with the School administrator in advance.

Given the nature of shared use of facilities and unknown future conditions, the parties agree that prior to the start of each school year or as soon thereafter as possible, the Joint Use Committee shall review the maintenance history and use of the DEMISED AREA, and shall modify the provisions of Article VI of this Agreement, as necessary, to adjust the maintenance responsibilities and any maintenance costs, if applicable, in an equitable and reasonable manner. In addition, should either party incur unanticipated costs at any time throughout the term of this Agreement that are attributable to the use of the DEMISED AREA by the other party, the Joint Use Committee will review those expenses and allocate costs accordingly.

The COUNTY may apply certain herbicides and pesticides to the DEMISED AREA during the COUNTY'S Period of Use, using a certified technician, after first submitting specifications and environmental information to the BOARD, or its designee, and securing written approval from same to utilize the product. 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 1999 version of the State Requirements for Educational Facilities, or its successor document, the COUNTY shall conduct annual inspections of any bleachers located within the DEMISED AREA, 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 AND OTHER SERVICES

The BOARD shall be responsible for establishing and paying all utility accounts serving the DEMISED AREA, with exception of such utility services required for the softball fields, baseball field, multi-use parking lot, soccer fields and restroom/storage/concession building, which shall be the responsibility of the COUNTY. Each party shall be responsible for payment of all utilities consumed within the DEMISED AREA during their respective Periods of Use, including without limitation, charges for waste collection, electricity, water and sewer, and for all other services, including telecommunications, if any. The Joint Use Committee shall establish a mutually acceptable procedure for collecting payment from the other party for utilities consumed by such party during their Period of Use.

VIII.

INDEMNIFICATION AND HOLD HARMLESS

The COUNTY does hereby agree to indemnify and hold harmless 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 claims 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 and against any and all personal injury or property damage claims, liabilities, losses and causes of action arising out of the COUNTY'S negligence, actions or failure to act under the terms and conditions of this Agreement. However, nothing contained herein shall be deemed to indemnify the BOARD for 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 indemnify and hold harmless 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 claims 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 and against any and all personal injury or property damage claims, liabilities, losses and causes of action arising out of the BOARD'S negligence, actions or failure to act under the terms and conditions of this Agreement. However, nothing contained herein shall be deemed to indemnify the COUNTY for any liability or claim arising out of the negligent performance or failure of performance of the COUNTY or any unrelated third party.

Nothing in this Agreement is intended to operate as a waiver of the sovereign immunity of either the BOARD or COUNTY.

IX.

LIABILITY FOR DAMAGE OR INJURY

The BOARD shall not be liable for any damage or injury which may be sustained by the COUNTY or any persons on the DEMISED AREA, other than damage or injury resulting from the negligence or improper conduct on the part of BOARD, its agents, representatives or employees, or failure of the BOARD to perform its covenants under this Agreement.

The COUNTY shall not be liable for any damage or injury which may be sustained by the BOARD or any persons on the DEMISED AREA, other than damage or injury resulting from the negligence or improper conduct on the part of the COUNTY, its agents, representatives or employees, or failure of the COUNTY to perform its covenants under this Agreement.

X.

LIABILITY FOR PERSONAL PROPERTY

The BOARD and COUNTY 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 of 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 on property placed or moved on the DEMISED AREA.

XI.

OPTION TO RENEW

If not in default in performance of the obligations set forth in this Agreement, either party shall have the right and option to renew this 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 thereof, with the mutual agreement of the other party, and provided such party gives written notice to the other party at least sixty (60) days prior to the expiration of the then current term. Approval of such renewal request shall not be unreasonably withheld.

XII.

CANCELLATION

Other than in the event of damage or destruction, or default by the BOARD or COUNTY, which default is not cured, neither party shall be permitted to cancel this Agreement at any time.

XIII.

DEFAULT

The BOARD shall notify the COUNTY in writing regarding the COUNTY'S failure to perform or to comply with the terms and condition of this Agreement. If the COUNTY fails to cure the default within thirty (30) days after receiving written notice or does not provide the BOARD with a written response (indicating the status of the COUNTY'S curing of the default and providing a mutually agreeable schedule to cure all defaults; said approval not to be unreasonably withheld) within thirty (30) days after receiving written notice, the BOARD shall have the right to terminate this Agreement, without penalty, upon (10) days additional written notice.

The COUNTY shall notify the BOARD in writing regarding the BOARD'S failure to perform or to comply with the terms and conditions of this Agreement. If the BOARD fails to cure the default within thirty (30) days after receiving written notice or does not provide the COUNTY with a written response (indicating the status of the BOARD'S curing of the default and providing a mutually agreeable schedule to cure all defaults; said approval not to be unreasonably withheld) within thirty (30) days after receiving written notice, the COUNTY shall have the right to terminate this Agreement, without penalty, upon (10) days additional written notice.

Notwithstanding the above, the terms of this Agreement shall survive the cancellation and/or termination of the Agreement as they relate to the premises described in Exhibit "B" attached hereto and made a part hereof, to allow for the continued use of such amenities by the parties hereto. Notwithstanding, the BOARD'S continued use of the Park Road, baseball field, Park Parking Lot and Ancillary Parking Lot, as shown on Exhibit "B", shall be subject to approval by the COUNTY Attorney's Office and compliance with Article 7 of the Home Rule Charter of Miami-Dade County, said approval shall not be unreasonably withheld.

XIV.

PEACEFUL POSSESSION

Subject to the terms, conditions and covenants of this Agreement, the BOARD and COUNTY agree that both parties shall and may peaceably have, hold and enjoy the above described DEMISED AREA, without hindrance or molestation by the other party.

XV.

ENVIRONMENTAL WARRANTIES, REPRESENTATIONS AND INDEMNIFICATION

Neither party shall use, handle, generate, manufacture, produce, store, discharge, treat, remove, transport or dispose of Hazardous Substances at, in, upon, under, to or from the other party's property. Hazardous Substances" shall include, but not be limited to, flammable substances, explosives, radioactive materials, asbestos, polychlorinated biphenyls, chemicals known to cause cancer, reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic by Federal, State or Local Environmental Laws. Either party shall immediately deliver to the other party complete copies of all notices, demands, or other communications received by such party from any governmental or quasi-governmental authority or any insurance company or board of fire underwriters or like or similar entities regarding in any way alleged violations or potential violation of any environmental law or otherwise asserting the existence or potential existence of any condition or activity on the other party's property which is or could be dangerous to life, limb, property or the environment. In addition, both parties shall comply with all applicable environmental laws with respect to this Agreement.

If any governmental authority requires any clean-up or clean-up measures because of any Hazardous Substances discharge demonstrated to have been caused by one party with respect to the other party's property, then such party shall, at its own expense, prepare and submit the required plans and all related bonds and other financial assurances and shall carry out all such clean-up plans. Both parties shall promptly provide the other party with all information reasonably requested regarding such party's use, generation, storage, transportation or disposal of Hazardous Substances in or at the DEMISED AREA.

XVI.

RIGHT OF ENTRY

In addition to the provisions of Article III and subject to the provisions of Article XXVI, after first providing reasonable notice to the COUNTY, the BOARD, or any of its agents, representatives or employees, shall have the right to enter the DEMISED AREA during the

COUNTY'S Period of Use to examine the same or to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort or preservation of the DEMISES AREA, provided such activities do not unreasonably interfere with the COUNTY'S use of the DEMISED AREA.

In addition to the provisions of Article III and subject to the provisions of Article XXVI, after first providing reasonable notice to the BOARD, the COUNTY, or any of its agents, representatives or employees, shall have the right to enter the DEMISED AREA during the BOARDS'S Period of Use to examine the same or to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort or preservation of the DEMISES AREA, provided such activities do not unreasonably interfere with the BOARD'S use of the DEMISED AREA, and subject to compliance with the provisions of the Jessica Lunsford Act.

XVII.

SURRENDER OF PREMISES

Except as otherwise provided in Article XIII of this Agreement, the COUNTY agrees, at the expiration, termination or cancellation of this Agreement or any extension thereof, to promptly and peacefully surrender and deliver possession of the BOARD-owned portion of the DEMISED AREA to the BOARD in good order and repair and in as good or better condition as existed on the Commencement Date of this Agreement, ordinary wear and tear, or damage by fire, windstorm or other Acts of God, excepted. Upon the expiration, cancellation or termination of this Agreement, the COUNTY agrees, at the BOARD'S sole option, to remove any improvements or facilities constructed by the COUNTY on the BOARD-owned portion of the DEMISED AREA and to restore such area to the same or better condition as existed before the Commencement Date of this Agreement. In the event the BOARD elects to retain said improvements constructed by the COUNTY, the COUNTY agrees to convey title to the improvements to the BOARD, without compensation due the COUNTY.

Except as otherwise provided in Article XIII of this Agreement, the BOARD agrees, at the expiration, termination or cancellation of this Agreement or any extension thereof, to promptly and peacefully surrender and deliver possession of the COUNTY-owned portion of the DEMISED AREA to the COUNTY in good order and repair and in as good or better condition as existed on the Commencement Date of this Agreement, ordinary wear and tear, or damage by fire, windstorm or other Acts of God, excepted. Upon the expiration, cancellation or termination of this Agreement, the BOARD agrees, at the COUNTY'S sole option, to remove any improvements or facilities constructed by the BOARD on the COUNTY-owned portion of the DEMISED AREA, and to restore such area to the same or better condition as existed before the

Commencement Date of this Agreement. In the event the COUNTY elects to retain said improvements constructed by the BOARD, the BOARD agrees to convey title to the improvements to the COUNTY, without compensation due the BOARD.

XVIII.

AMENDMENTS

The BOARD and COUNTY, by mutual agreement, shall have the right, but not the obligation, to amend this Agreement. Such amendments shall be effective only when signed by the BOARD and COUNTY and shall be incorporated as part of this Agreement.

XIX.

NON-DISCRIMINATION

The BOARD and COUNTY 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 DEMISED AREA. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination in the use of the DEMISED AREA by a party hereto has occurred, such event shall be treated as a Default hereunder.

XX.

LEGAL FEES AND COURT COSTS

In the event of any litigation between the parties under this Agreement, each party shall be responsible for its own attorney's fees and court costs through trials and appellate levels. The provisions of this paragraph shall survive the termination or cancellation of this Agreement

XXI.

CONSTRUCTION OF AGREEMENT

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

XXII.

SEVERABILITY

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

XXIII.

WAIVER

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

XXIV.

NOTICE AND GENERAL CONDITIONS

A. All notices or communications under this Agreement by either party to the other shall be sufficiently given or delivered if dispatched by (1) certified U.S. mail, postage pre-paid, return receipt requested, (2) hand delivery, (3) Federal Express or other comparable overnight mail service, (4) telephone facsimile transmission with transmission receipt, or (5) electronic mail to the following addresses, or as the same may be changed from time to time:

In the case of notice or communication to the BOARD:

The School Board of Miami-Dade County, Florida
c/o Superintendent of Schools
School Board Administration Building
1450 N.E. Second Avenue, Room 912
Miami, Florida 33132
Fax: 305 995-4760
E-mail:

With a copy to:

Miami-Dade County Public Schools
Facilities Planning
Attention: Administrative Director
1450 N.E. Second Avenue, Room 525
Miami, Florida 33132
Fax: 305-995-4760
E-mail: albuernef@dadeschools.net

With a copy to:

The School Board of Miami-Dade County, Florida
School Board Attorney's Office
1450 NE 2nd Avenue, #400
Miami, FL 33132
Attn: Board Attorney
Fax: 305-995-1412
E-mail: ACraft@dadeschools.net

In the case of notice or communication to the COUNTY:

_____
_____
_____
_____

With a copy to:

_____
_____
_____
_____

Notice is effective upon delivery or refusal of delivery of notice. Any notice delivered after 5:00 p.m. will be deemed to be delivered on the following business day. Until written notice of a change in address is delivered, the last addressee and address stated in Article XXIV of this Agreement is in effect for all purposes.

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, and the County Manager shall be the party designated by the COUNTY, to grant or deny all approvals required by this Agreement or to cancel and/or terminate this Agreement as provided herein.

D. Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. "Day" as used in this Agreement shall be defined as calendar day. Counsel for the BOARD and counsel for the COUNTY may deliver Notice on behalf of the COUNTY and BOARD, respectively. Any party or other person to whom Notices are to be sent or copied may notify the other parties of any change in name or address to which Notices shall be sent by providing the same pursuant to this provision.

XXV.

DAMAGE AND DESTRUCTION

In the event the DEMISED AREA should be destroyed or so damaged by fire, windstorm or other casualty to the extent that the DEMISED AREA is rendered untenable or unfit for the purposes intended, either party may cancel this 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 destruction or damage, each party shall cause all improvements constructed by it to be repaired and placed in a safe, secure and useable condition and compatible for School and Park 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, costs of the necessary repairs and available funding for such repairs by the party responsible. 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.

The BOARD and COUNTY agree that in the event of cancellation of the Agreement due to damage or destruction, the terms set forth under Article XIII hereof shall govern, and the DEMISED AREA shall be surrendered in accordance with Article XVII of the Agreement.

XXVI.

JOINT USE COMMITTEE

A Joint Use Committee, made up of the School administrator, or his/her designee, and the Park supervisor, or his/her designee, shall be established as of the Commencement Date of this Agreement, and shall be responsible for establishing, monitoring, and modifying the joint use of the DEMISED AREA in conformance with this Agreement. Except as otherwise provided in this Agreement, the Joint Use Committee shall be responsible for coordinating and resolving any issues pertaining to the scheduling, use, operation, maintenance, including payment of maintenance costs, and supervision of the DEMISED AREA.

In the event the Joint Use Committee cannot reach agreement on a particular issue, the matter will be brought before the COUNTY'S Park Director, or his/her designee, and the BOARD'S Chief Facilities Officer, or his/her designee, who shall jointly review the matter and reach a mutual agreement. If the parties cannot reach agreement, either party shall have the right to place the other party in default,

XXVII.

COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

The BOARD and COUNTY shall comply with all applicable laws, rules, regulations ordinances and codes of Federal, State, BOARD, COUNTY and local governments, including without limitation, the Florida Building Code, the Americans with Disabilities Act and the Jessica

Lunsford Act, as they may be further amended from time to time and to the extent required by applicable law and/or this Agreement.

XXVIII.

ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all previous negotiations, and it may be modified only by an agreement in writing signed by the BOARD and COUNTY.

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

MIAMI-DADE COUNTY

By:_____
Name:_____
Title:_____

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

By:_____
Alberto M. Carvalho.
Superintendent of Schools

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
School Board Attorney

EXHIBIT "A"

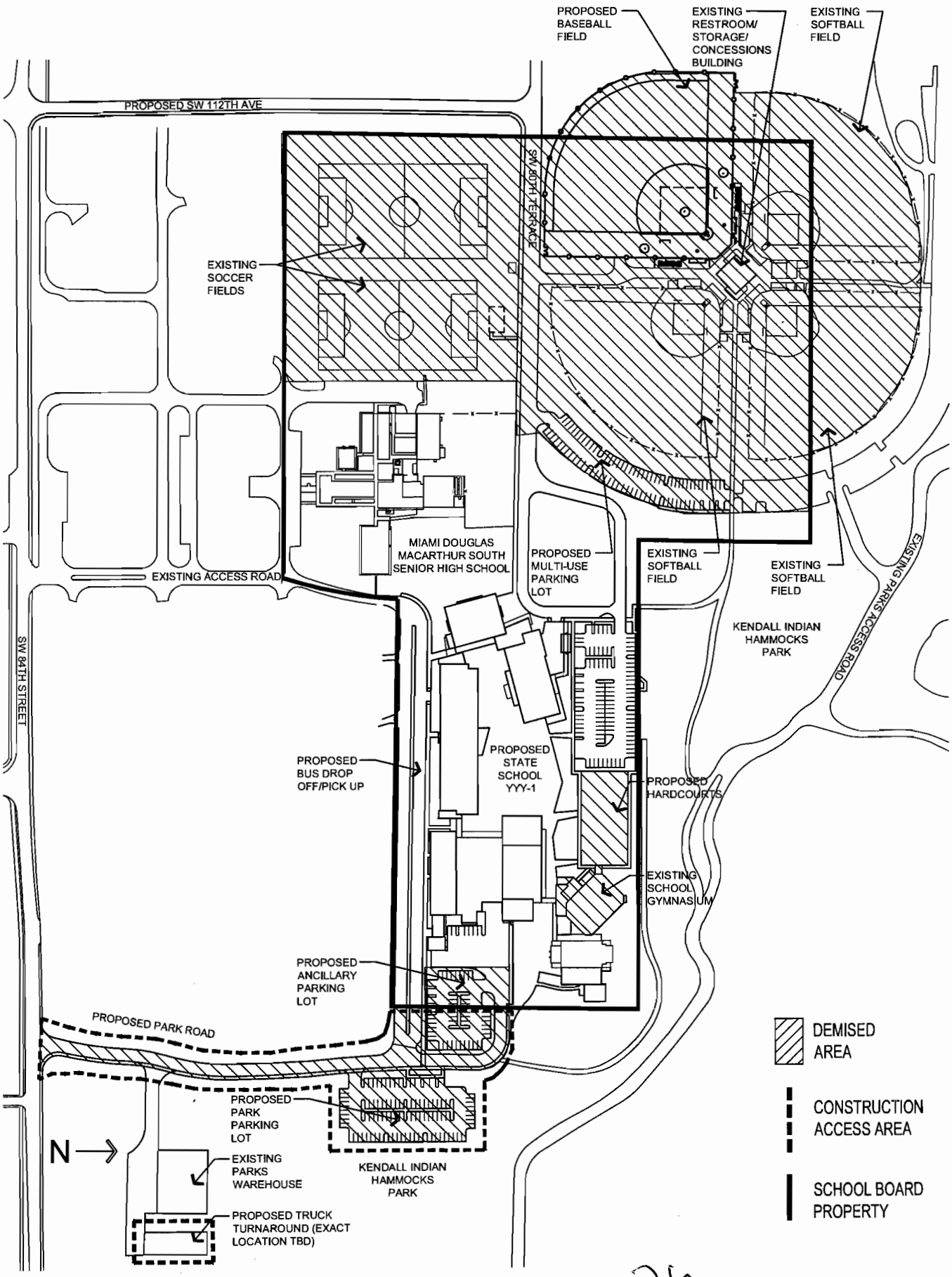
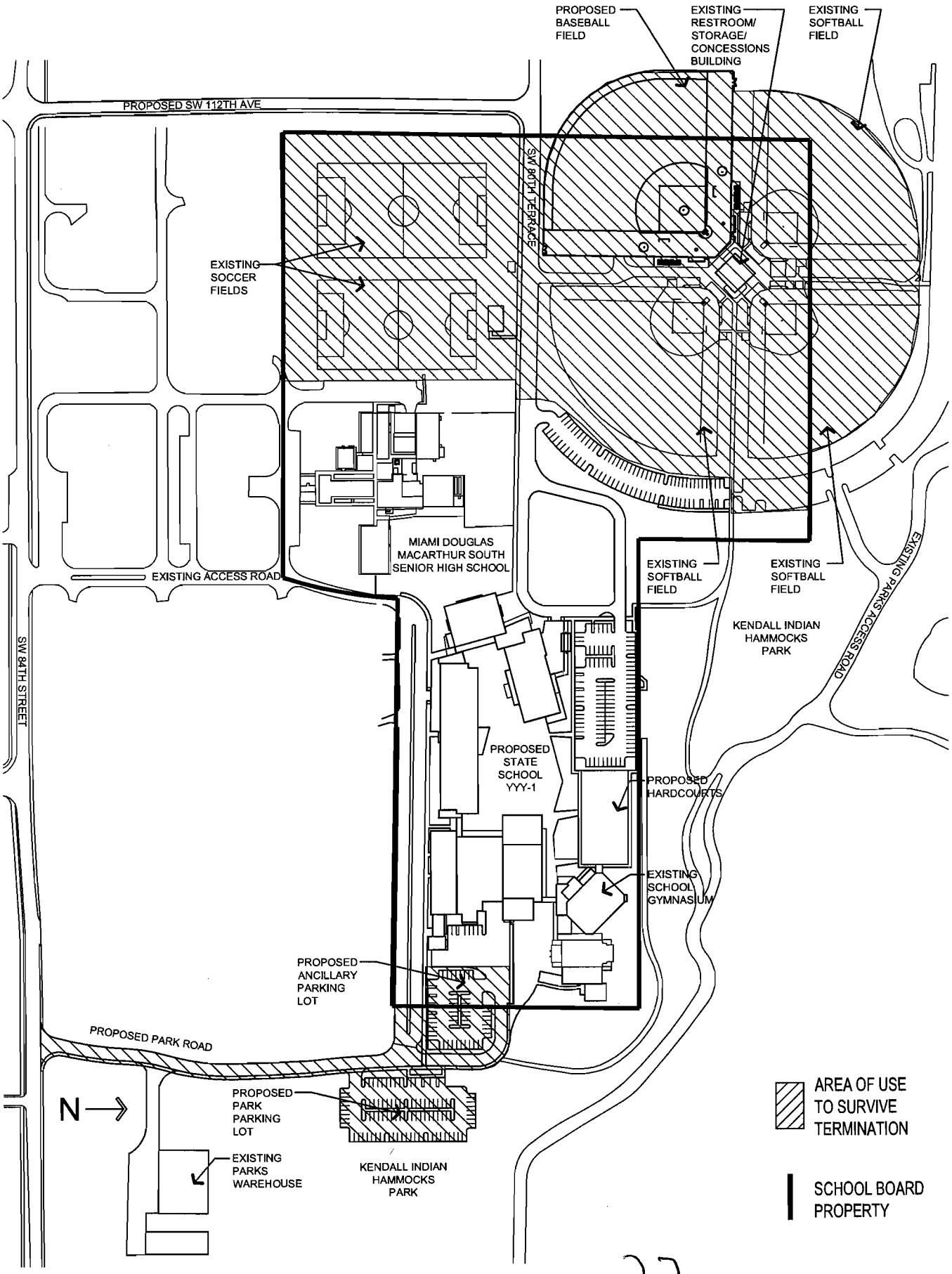
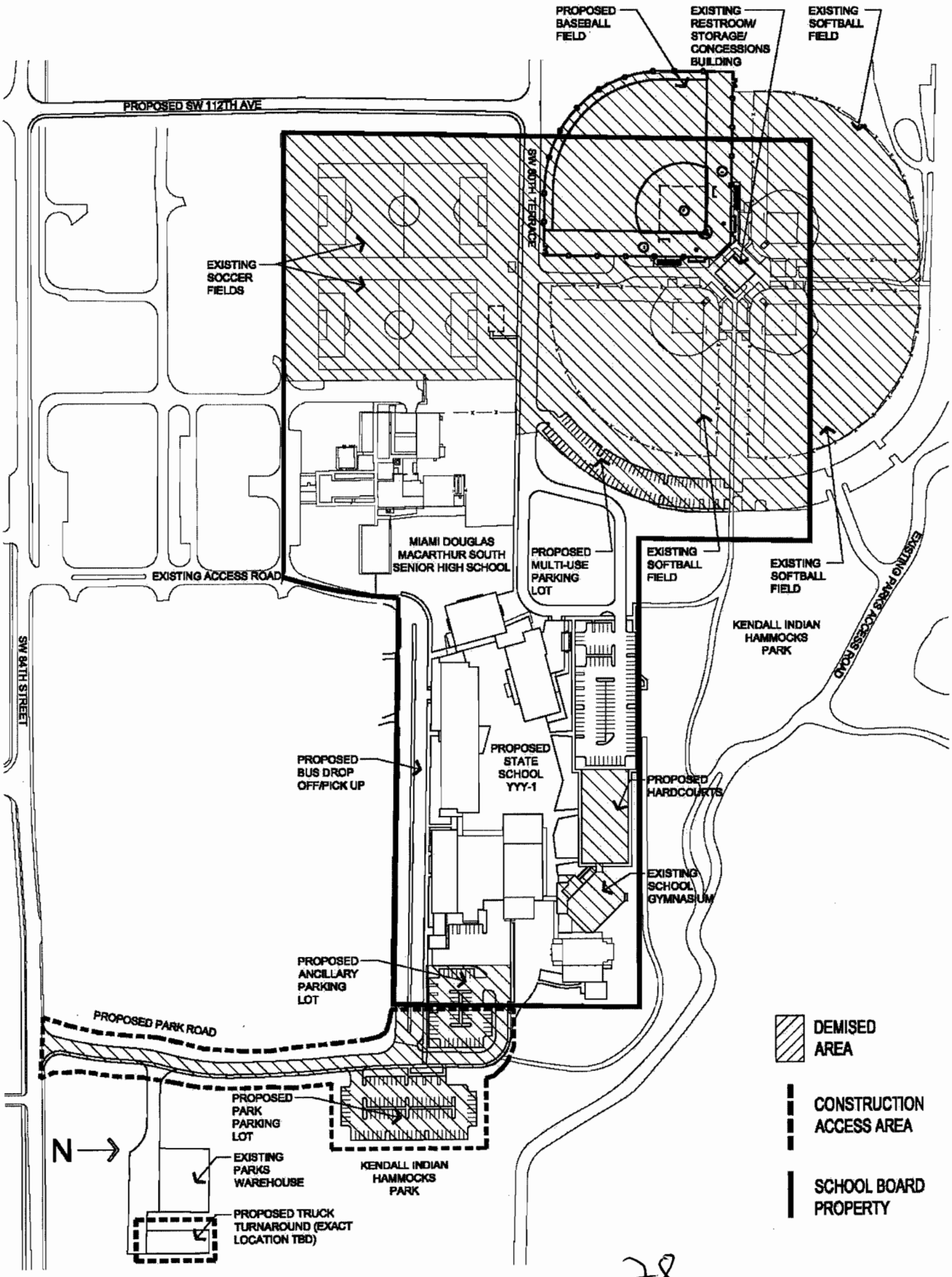

PROPOSED BASEBALL FIELD
EXISTING RESTROOM/ STORAGE/ CONCESSIONS BUILDING
EXISTING SOFTBALL FIELD
PROPOSED SW 112TH AVE
SW 80TH TERRACE
EXISTING SOCCER FIELDS
MIAMI DOUGLAS MACARTHUR SOUTH SENIOR HIGH SCHOOL
PROPOSED MULTI-USE PARKING LOT
EXISTING SOFTBALL FIELD
EXISTING SOFTBALL FIELD
EXISTING ACCESS ROAD
EXISTING PARKS ACCESS ROAD
KENDALL INDIAN HAMMOCKS PARK
SW 84TH STREET
PROPOSED BUS DROP OFF/PICK UP
PROPOSED STATE SCHOOL YYY-1
PROPOSED HARDCOURTS
EXISTING SCHOOL GYMNASIUM
PROPOSED ANCILLARY PARKING LOT
PROPOSED PARK ROAD
PROPOSED PARK PARKING LOT
N
EXISTING PARKS WAREHOUSE
KENDALL INDIAN HAMMOCKS PARK
PROPOSED TRUCK TURNAROUND (EXACT LOCATION TBD)
DEMISED AREA
CONSTRUCTION ACCESS AREA
SCHOOL BOARD PROPERTY

EXHIBIT "B"


PROPOSED BASEBALL FIELD
EXISTING RESTROOM/ STORAGE/ CONCESSIONS BUILDING
EXISTING SOFTBALL FIELD
PROPOSED SW 112TH AVE
SW 80TH TERRACE
EXISTING SOCCER FIELDS
MIAMI DOUGLAS MACARTHUR SOUTH SENIOR HIGH SCHOOL
EXISTING ACCESS ROAD
EXISTING SOFTBALL FIELD
EXISTING SOFTBALL FIELD
EXISTING PARKS ACCESS ROAD
KENDALL INDIAN HAMMOCKS PARK
SW 84TH STREET
PROPOSED STATE SCHOOL YYY-1
PROPOSED HARDCOURTS
EXISTING SCHOOL GYMNASIUM
PROPOSED ANCILLARY PARKING LOT
PROPOSED PARK ROAD
N
PROPOSED PARK PARKING LOT
EXISTING PARKS WAREHOUSE
KENDALL INDIAN HAMMOCKS PARK
AREA OF USE TO SURVIVE TERMINATION
SCHOOL BOARD PROPERTY

ATTACHMENT B



ATTACHMENT C

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this 25th day of May, 2001, by and between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic (hereinafter called the "LESSOR"), and MIAMI-DADE COUNTY, a political subdivision of the State of Florida (hereinafter called the "LESSEE").

WITNESSETH:

WHEREAS, LESSOR and LESSEE entered into that certain AGREEMENT FOR JOINT RECREATIONAL PROGRAM AND USE OF FACILITIES, dated May 17, 1961, by and between the parties hereto, which was approved by Miami-Dade County Commission Resolution No. 6529, adopted May 2, 1961, and School Board Action #25,038, adopted December 7, 1960, and that certain AMENDMENT TO THE AGREEMENT FOR JOINT RECREATIONAL PROGRAM AND USE OF FACILITIES, dated February 13, 1979, by and between the parties hereto, which was approved by Miami-Dade County Commission Resolution No. R-169-79, adopted February 13, 1979, and School Board Action #58,250, adopted August 23, 1978, in order to provide for the joint development and use of public lands for the benefit of the citizens of Miami-Dade County; and

WHEREAS, the LESSOR and LESSEE entered into that certain Lease Agreement, dated May 7, 1985, for the use of 11.93 acres of LESSOR'S land located at S.W. 112 Avenue and S.W. 80 Terrace for community recreational programs; and

WHEREAS, the LESSOR intends to cancel the May 7, 1985 Lease Agreement, concurrent with the commencement date of a new lease agreement ("Lease Agreement"), to be entered into between the parties; and

WHEREAS, the Board of County Commissioners, by the adoption of Resolution No.

R-501-01 at its meeting of May 8, 2001, approved this Lease Agreement; and

WHEREAS, the School Board of Miami-Dade County, Florida, has authorized the lease of said lands in accordance with Board Action No. 100415 at its meeting of March 14, 2001.

NOW, THEREFORE, in consideration of the mutual 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 LEASED

LESSOR does hereby lease to LESSEE and LESSEE does hereby lease from LESSOR the parcel of land described in Exhibit "A", attached hereto and made a part hereof, hereinafter called the "DEMISED PREMISES".

II.

TERM OF LEASE AGREEMENT

The term of this Lease Agreement shall be twenty (20) years, commencing May 25, 2001 ("Commencement Date"), and ending on May 25, 2021. Said term may be extended at the option of the LESSOR for two (2) additional terms of five (5) years each, upon the same terms and conditions and at the same consideration as provided herein, provided LESSEE gives written notice to the LESSOR of such extension no later than one hundred twenty (120) days prior to the expiration of the initial term or any renewal hereof. The May 7, 1985 Lease Agreement shall be canceled coterminous with the Commencement Date.

III.

USE OF DEMISED PREMISES

LESSEE covenants and agrees to accept the DEMISED PREMISES in its current condition, as of the Commencement Date of this Lease Agreement. The DEMISED PREMISES shall be utilized as a playground, athletic and recreation area, as well as for any related public park purposes sanctioned or controlled by Miami-Dade County, and for no other purpose. Other than as specified below, LESSEE shall have full control, custody, right and use of the DEMISED PREMISES at all times.

LESSEE shall not cause or permit the use or storage of any hazardous materials or substances on or about the DEMISED PREMISES that would render the DEMISED PREMISES unusable for public school purposes, or that would violate in any way the applicable federal, state or local laws and regulations concerning such materials or substances.

The sale or consumption of alcoholic beverages or use of the DEMISED PREMISES for carnivals, fairs, exhibits, mechanical rides, midways, or the same or similar kinds of activities is expressly prohibited.

The LESSEE shall neither commit nor permit any violations of the laws, rules and regulations of the SCHOOL BOARD, COUNTY, STATE or FEDERAL GOVERNMENT upon the DEMISED PREMISES. LESSEE may promulgate and enforce reasonable rules and regulations governing its use of the DEMISED PREMISES.

The LESSOR, at its sole option, may use any or all of the DEMISED PREMISES during regular school hours on regular school days for its recreational or other educational programs. In the event LESSOR intends to use a portion of the DEMISED PREMISES for summer school, a before or after school program, or for any other special activity, LESSOR, or its designee, shall notify the

Miami-Dade County Park & Recreation Department Regional Park Manager in writing at least six (6) weeks prior to the initiation of said use, and the effected portion of the DEMISED PREMISES shall be unavailable to LESSEE for the duration of LESSOR'S use.

In the event either party desires use of the DEMISED PREMISES during a time other than its regular period of use, the requesting party shall contact the other party a minimum of seventy-two (72) hours in advance.

IV.

IMPROVEMENTS

LESSOR agrees that, effective with the Commencement Date of this Lease Agreement, LESSEE shall construct certain improvements on the DEMISED PREMISES, at its sole cost and expense, substantially in conformance with those itemized in Exhibit "B", attached hereto and made a part hereof. All work will be completed by LESSEE in conformance with the construction schedule itemized in Exhibit "B", failing which the LESSOR, at its sole option, may place the LESSEE in default as provided for under Article XXII of this Lease Agreement.

LESSEE shall have the right to construct additional recreational or other park related facilities on the DEMISED PREMISES in the future, not itemized in Exhibit "B", subject to the prior written approval of the LESSOR, or its designee, said approval not to be unreasonably withheld. Such additional improvements are to be at the sole cost and expense of LESSEE.

LESSEE agrees that no construction, alterations or improvements may be undertaken by it upon the DEMISED PREMISES unless the plans:

1. be first submitted to and approved by the LESSOR, or its designee,
2. be in compliance with all applicable State, County, School Board, and Department of Education rules and regulations.

Upon the termination, cancellation or expiration of this Lease Agreement or any extension thereof, LESSEE shall surrender the DEMISED PREMISES to LESSOR in compliance with Article XV of this Lease Agreement.

LESSOR shall have the right to construct recreational or educational facilities on the DEMISED PREMISES, and maintain equipment related to the construction of said facilities on the DEMISED PREMISES, at such time as LESSOR determines that it shall be in the best interest of the school district to do so.

V.

CONSIDERATION

LESSEE does hereby covenant and agree to pay LESSOR, as consideration for the use and occupancy of the DEMISED PREMISES throughout the term of this Lease Agreement and any renewal thereafter, the sum of one dollar ($1.00) per year, beginning on the Commencement Date and continuing on the anniversary date of each and every year thereafter.

VI.

LIABILITY FOR PERSONAL PROPERTY

LESSEE and LESSOR agree to insure or self insure their respective interest 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 and damage to such property by any cause whatsoever.

LESSEE and LESSOR hereby waive all rights of subrogation against each other under any policy or policies they may carry on property placed or moved on the DEMISED PREMISES.

VII.

LIABILITY FOR DAMAGE OR INJURY

LESSOR shall not be liable for any damage or injury which may be sustained by LESSEE or any persons on the DEMISED PREMISES, other than damage or injury resulting from the negligence or intentional wrong doing on the part of LESSOR, its agents, representatives or employees.

LESSEE shall not be liable for any damage or injury which may be sustained by LESSOR or any persons on the DEMISED PREMISES, other than damage or injury resulting from the negligence or intentional wrong doing on the part of LESSEE, its agents, representatives or employees.

VIII.

INDEMNIFICATION

LESSEE does hereby agree to indemnify and hold harmless LESSOR to the extent of the limitations included within Section 768.28, Florida Statutes, from any and all personal injury or damage claims, liability, losses and causes of action which may arise solely as a result of LESSEE'S negligence in its use of the DEMISED PREMISES. However, nothing herein shall be deemed to indemnify LESSOR for any liability or claim arising out of the negligence, performance or failure of performance of LESSOR or as a result of the negligence of any unrelated third party.

LESSOR does hereby agree to indemnify and hold harmless LESSEE to the extent of the limitations included within Section 768.28, Florida Statutes, from any and all personal injury or damage claims, liability, losses and causes of action which may arise solely as a result of LESSOR'S negligence in its use of the DEMISED PREMISES. However, nothing herein shall be deemed to indemnify LESSEE for any liability or claim arising out of the negligence, performance or failure

of performance of LESSEE or as a result of the negligence of any unrelated third party.

LESSEE covenants and agrees that, subject to the provisions of Section 768.28, Florida Statutes, it shall indemnify, hold harmless and defend the LESSOR from and against any and all claims, liens, suits, actions, or causes of action arising out of or in connection with the construction of its facilities on the DEMISED PREMISES.

IX.

UTILITIES AND FEES

LESSEE shall, at its own expense, pay all utility connection and service charges arising out of its use of the DEMISED PREMISES including, but not necessarily limited to, waste collection, electricity, water and sewer, storm water, service fees or other fees, and for all other services, including telecommunications. LESSEE shall pay any special assessments assessed against the DEMISED PREMISES during the lease term, or any extensions thereof.

X.

MAINTENANCE OF DEMISED PREMISES

Other than as specified below, LESSEE, at its sole cost and expense, shall be responsible for all maintenance and upkeep of the DEMISED PREMISES and all improvements constructed thereon as of the Commencement Date or to be constructed thereon in the future, including all buildings, parking areas, recreational improvements, grounds, landscaping, fencing, access control and lighting. LESSEE shall keep and maintain the DEMISED PREMISES safe and secure and free of all overgrowth, debris and hazardous conditions.

LESSOR shall retain all maintenance responsibility for the existing Athletic Equipment Storage Building noted in Exhibit "B". In addition, should LESSOR use any or all of the DEMISED PREMISES, as specified in Article III, LESSOR shall be responsible for regular scheduled janitorial

service, including litter pickup and removal, during LESSOR'S period of use.

XI.

DAMAGE OR DESTRUCTION

In the event the DEMISED PREMISES should be destroyed or so damaged by fire, windstorm or other casualty to the extent that the DEMISED PREMISES are rendered untenantable or unfit for the purpose of the LESSEE, LESSEE shall provide LESSOR with written notification within ninety (90) days of such casualty indicating whether or not the LESSEE intends to cancel the Lease Agreement or repair and place the DEMISED PREMISES in tenantable condition. Should the LESSEE elect to repair the DEMISED PREMISES, such notification shall also provide for a period of time to complete the work, not to exceed one hundred twenty (120) days, or other reasonable period of time as agreed to by the LESSOR, or its designee, from the date of notification to the LESSOR. If LESSEE elects not to repair the DEMISED PREMISES, LESSEE shall surrender the DEMISED PREMISES to LESSOR in compliance with Article XV, and this Lease Agreement will automatically be canceled for cause. Should LESSEE fail to repair and render the DEMISED PREMISES tenantable within the aforementioned time period, then LESSOR may, at its sole option, place LESSEE in default.

XII.

ASSIGNMENT AND SUBLETTING OF PREMISES

LESSEE shall not, at any time during the term of this Lease Agreement, sublet in part or whole the DEMISED PREMISES, or assign this Lease Agreement or any portion or part thereof without the prior written permission of LESSOR.

XIII.

CANCELLATION

LESSEE and LESSOR shall each have the right to cancel this Lease Agreement at any time, without penalty, by giving the other party written notice at least ninety (90) days prior to the effective date of said cancellation. In the event that LESSEE is conducting recreational seasonal and/or ongoing sports or community activities, LESSOR will endeavor to provide LESSEE with written notice of its intent to cancel the Lease Agreement in excess of the ninety (90) days so specified.

XIV.

NOTICE AND GENERAL CONDITIONS

A. All notices or other communications which shall or may be given pursuant to this Lease Agreement shall be in writing and shall be delivered by personal service or by 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.

In the case of notice or communication to the LESSOR:

The School Board of Miami-Dade County, Florida
c/o Superintendent of Schools
School Board Administration Building
1450 N.E. Second Avenue, Room 914
Miami, Florida 33132

With copies to:

Miami-Dade County Public Schools
Governmental Affairs and Land Use Policy and Acquisition
Attention: District Director
1450 N.E. Second Avenue, Room 525
Miami, Florida 33132

In the case of notice or communication to the LESSEE:

Miami-Dade County
County Manager
Stephen P. Clark Center
29th Floor
111 N.W. 1st Street
Miami, Florida 33128

With copies to:

Miami-Dade County Park and Recreation
Attention: Director
275 N.W. 2nd Street
Miami, Florida 33128

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

C. For the purposes of this Lease Agreement, the Superintendent of Schools shall be the party designated by LESSOR to grant or deny all approvals required by the Lease Agreement, to modify the construction schedule itemized in Exhibit "B", or to cancel the Lease Agreement as provided for herein.

XV.

SURRENDER OF PREMISES

Upon the termination, cancellation or expiration of this Lease Agreement or any extension thereof, LESSEE agrees, at LESSOR'S sole option, to remove any improvements or facilities constructed by LESSEE and to restore the DEMISED PREMISES to the same or better condition

as existed before the Commencement Date of this Lease Agreement, within ninety (90) days of said termination, cancellation or expiration. In the event LESSOR elects to retain said improvements, LESSEE agrees to convey title to the improvements to LESSOR, without compensation due LESSEE.

XVI.

NON-DISCRIMINATION

LESSEE agrees 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 DEMISED PREMISES and improvements thereof. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Lease Agreement automatically terminates without any further action on the part of LESSOR, effective the date of the Court Order.

XVII.

AMENDMENTS

LESSOR and LESSEE, by mutual agreement, shall have the right, but not the obligation, to amend this Lease Agreement. Such amendments shall be effective only when in writing and signed by both LESSOR and LESSEE and shall be incorporated as part of this Lease Agreement.

XVIII.

CONSTRUCTION OF AGREEMENT

This Lease 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 Lease 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 Lease Agreement and the balance of the Lease Agreement shall not be affected by the deletion thereof, provided to do so would not render interpretation of the lease provisions ambiguous or a nullity.

XX.

COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

Both 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 Lease Agreement.

XXI.

WAIVER

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

XXII.

DEFAULT PROVISION

LESSOR shall provide LESSEE with written notice of any failure to perform or comply with the terms and conditions contained herein to be performed by LESSEE. If LESSEE fails to cure said

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

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

XXIII.

LESSOR'S RIGHT OF ENTRY

The LESSOR, or any of its agents, shall have the right to enter the DEMISED PREMISES during all reasonable working hours to examine the same or to make such repairs, additions or alterations as may be deemed necessary for the safety, comfort, or preservation thereof of said property.

This right of entry includes, but is not limited to, the right of LESSOR, or any of its agents, representatives or employees, to enter the DEMISED PREMISES for the purposes of examination related to the design and/or construction of recreational or educational facilities. It is agreed and understood by the LESSEE that such examinations may include, but are not limited to, test borings and surveys which could require entry by personnel on to, or leaving materials and equipment on,

the DEMISED PREMISES for an extended period of time.

In any exercise of its right of entry, LESSOR shall cooperate with the LESSEE in every reasonable way to minimize the disturbance to the peaceful possession of the DEMISED PREMISES by LESSEE. LESSOR and its contractors shall not unreasonably disturb LESSEE'S recreational or other improvements, and LESSOR shall cooperate with LESSEE such that LESSOR will endeavor, but not be required, to exercise its right of entry during periods between recreational seasons or community events.

XXIV.

PEACEFUL POSSESSION

Subject to Article XXIII and all other terms, conditions and covenants of this Lease Agreement, LESSOR agrees that LESSEE shall and may peaceably have, hold and enjoy the above described DEMISED PREMISES without hindrance or molestation by LESSOR.

XXV.

ENTIRE AGREEMENT

This Lease Agreement represents the total agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have individually, through their proper officials, executed this Lease Agreement the day and year first hereinabove written.

LESSEE:

MIAMI-DADE COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

Jennie T. Hudak
County Manager

LESSOR:

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

Chief Facilities Officer
Facilities Planning and Construction

ATTEST:

By:

APPROVED AS TO FORM:

Attorney for the LESSEE

APPROVED AS TO FORM:

4/23/01

Attorney for the LESSOR

A:Park Lease - McArthur South - slr

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Exhibit "A"

LEGAL DESCRIPTION OF THE SCHOOL LAND PROPERTY LEASED TO COUNTY

A PORTION OF THE EAST 1/2 OF SECTION 31, TOWNSHIP 54 SOUTH, RANGE 40 EAST, MIAMI DADE COUNTY FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS :
Commence at the Center of Section 31, Township 54 South, Range 40 East; thence N 87°38'48" E along the north line of the SE 1/4 of said section 31 a distance of 35' feet to a point on a line wich is 35' feet to the east and parallel with the west line of the SE 1/4 of said section 31 being the Point of Beginning of the hereinafter described parcel of land; thence N 01°27'06" W a distance of 235.56' feet; thence N 87°38'48" E a distance of 790.56' feet; thence S 01°26'46" E a distance of 235.56' feet; thence S 01°26'38" E a distance of 99.52' feet; thence N 87°38'48" E a distance of 334.63' feet; thence S 01°14'40" W a distance of 216.61' feet; thence N 88°42'31" E a distance of 371.60' feet; thence S 01°26'16" E a distance of 21.59' feet; thence S 88°42'31" W a distance of 160.00' feet; thence S 01°26'16" E a distance of 240.47'; thence S 88°31'11" W a distance of 421.05; thence N 01°26'16" W a distance of 246.22' feet; thence S 88°41'00" W a distance of 501.39' feet; thence S 00°54'37" E A distance of 70.13'; thence N 88°58'43" E a distance of 78.85' feet; thence S 02°21'34" E a distance of 407.49' feet; thence S 87°41'41" W a distance of 488.72' feet to a point in a line to the east 35' feet from and parallel with the west line of the SE 1/4 of said section 31; thence N 01°26'56" W along said line parallel 35' feet to the east of said west line of the SE 1/4 of said section 31, a distance of 799.08' feet to the Point of Beginning. having 19.60 Acres ±

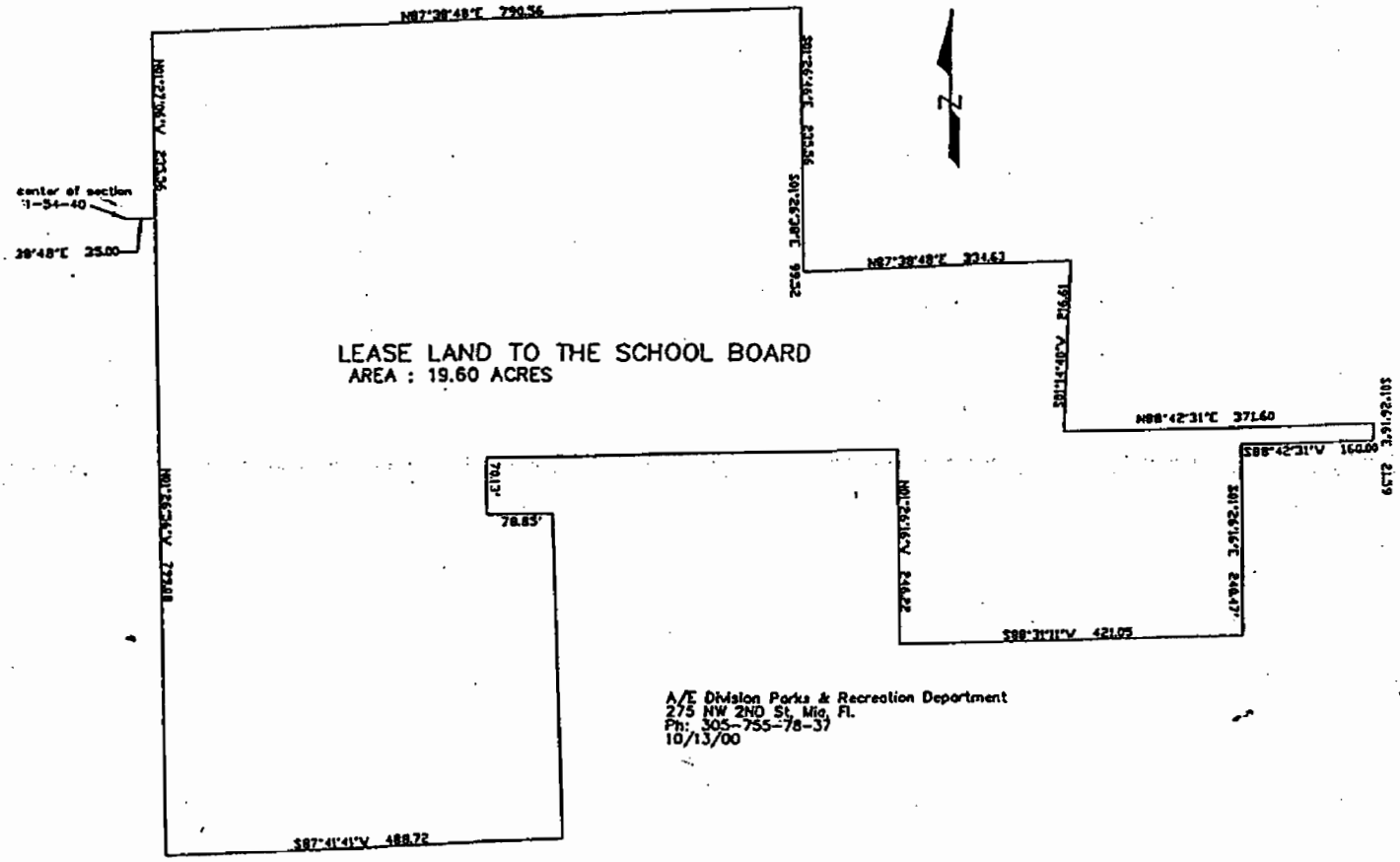
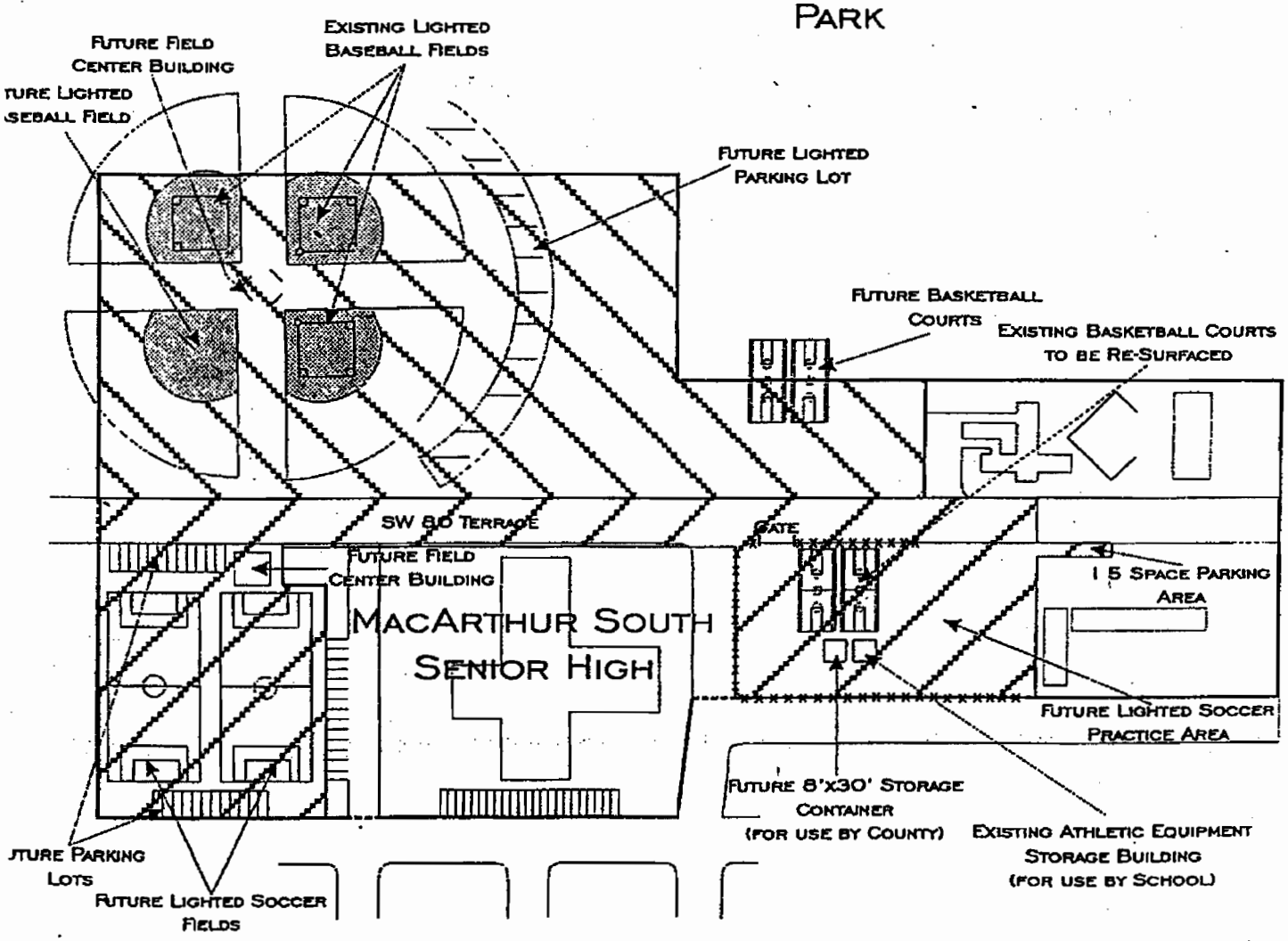


EXHIBIT "B"

KENDALL INDIAN HAMMOCKS PARK



LEGEND

- EXISTING DEMISED AREA
- PROPOSED ADDITIONAL DEMISED AREA
- XXXXXXX EXISTING FENCE TO BE AUGMENTED AND GATE ADDED

N

1L:JM
6

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EXHIBIT "B"

The LESSEE shall construct the following improvements on the DEMISED PREMISES:

PHASE I - Construction to be completed no later than June 2001

NORTH FIELD:	WEST FIELD:	EAST FIELD:
• portion of lighted parking lot • field center building (restroom/concession/storage) • access controls (fencing, gates)	• two soccer fields (including leveling, grading, sodding) • removal of existing light poles • irrigation system modification/repair • remove concrete pathway • clearing or relocation of shrubs and trees • access controls (fencing, gates), including addition of new pedestrian and vehicle gates • installation of portable 8' x 30' storage container and portable toilet facilities prior to construction of field center building	• enhance/repair fence and install gate • installation of portable 8' x 30' storage container • re-surface/re-stripe existing basketball courts • 15 space parking area

PHASE II - Construction to be completed no later than June 2004

NORTH FIELD:	WEST FIELD:	EAST FIELD:
• balance of lighted parking lot	• lighting for two soccer fields • installation of portable bleachers	Not Applicable

PHASE III - Construction to be completed no later than June 2007

NORTH FIELD:	WEST FIELD:	EAST FIELD:
• one lighted baseball field • portions of court complex (basketball, tennis)	• two asphalt parking lots • field center building (restroom/concession/storage)	• field lighting

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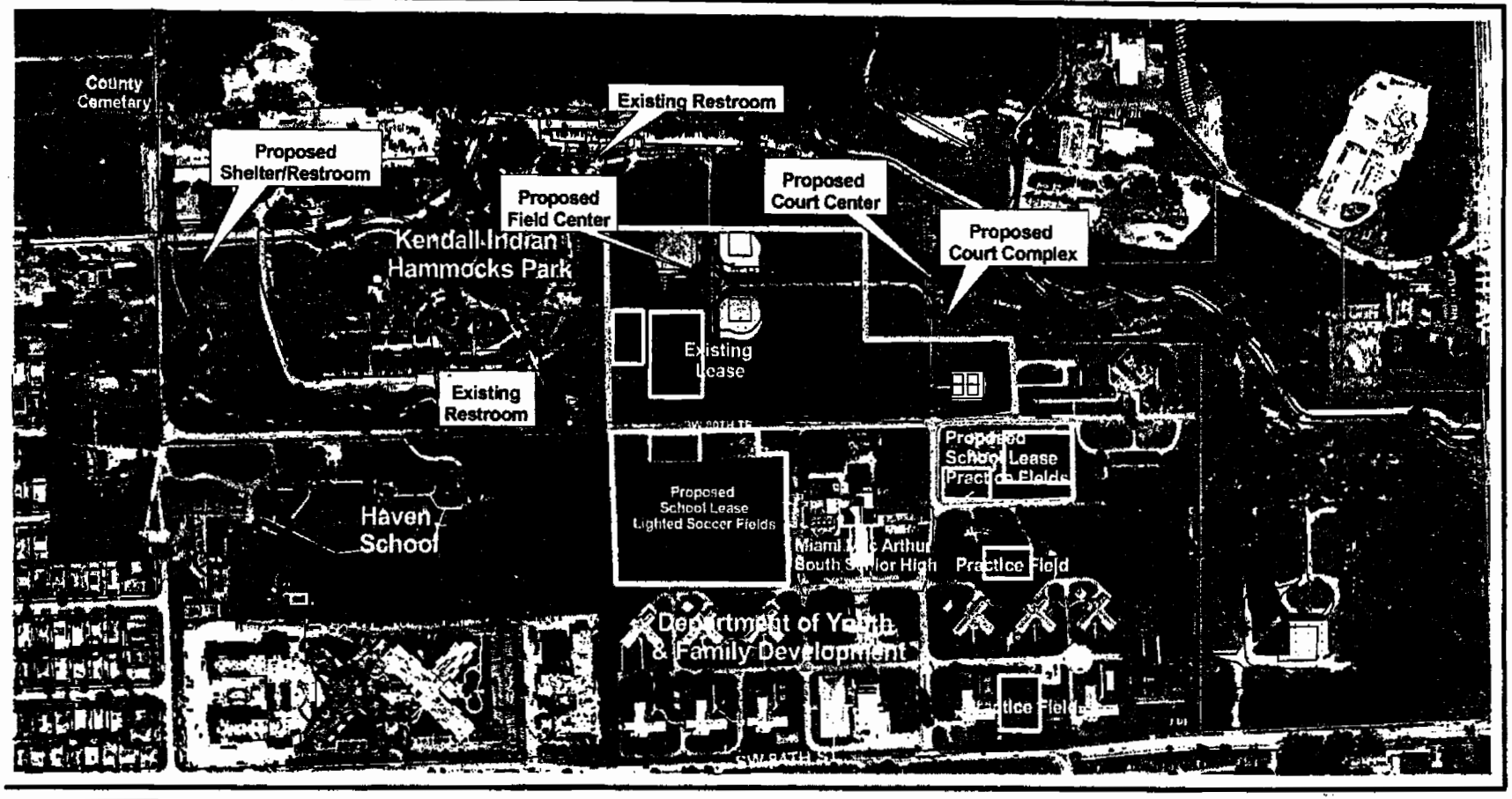
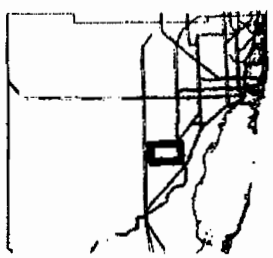
MIAMI-DADE COUNTY
PARK AND RECREATION DEPARTMENT
KENDALL INDIAN HAMMOCKS PARK
EXISTING AND PROPOSED LEASE AREAS AND PROPOSED SOCCER FIELDS





Edge of Pavement
Lease of School Property
Existing Lease
Proposed Lease -Game Field
Proposed Lease - Practice Field
Game Fields
Practice Fields
General Plan
Park
Property In 544031

400 0 400 800 Feet

N W E S

MIAMI-DADE COUNTY
PARK AND RECREATION DEPARTMENT
PLANNING AND RESEARCH DIVISION
G:/DOCUMENT/KENDALL_/GIS/
KENDALL_INDIAN_HAMMOCKS.APR
AUGUST 2000 (305) 755-7800

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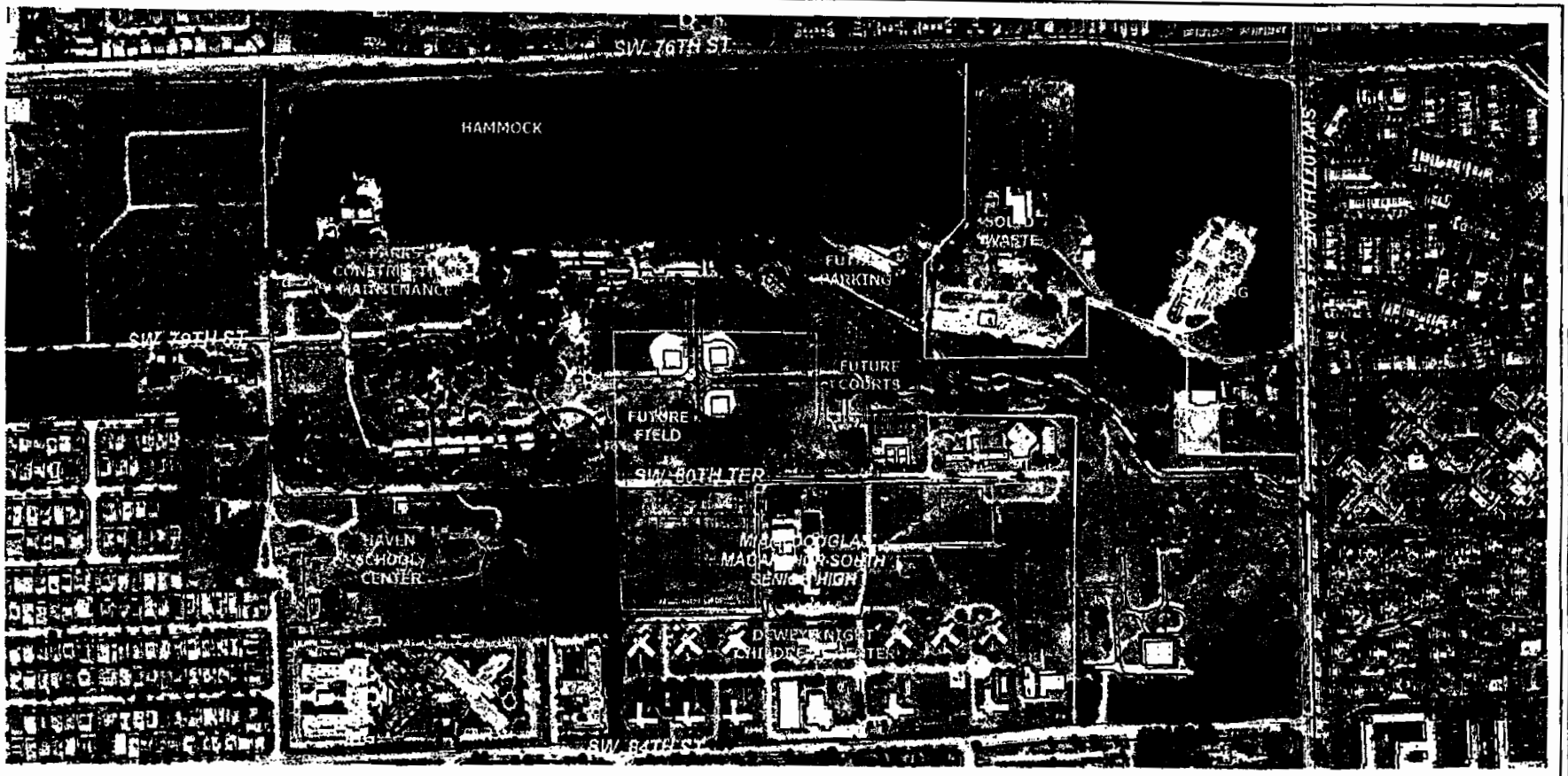
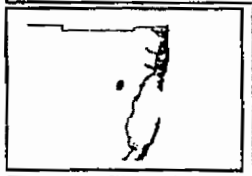
MIAMI-DADE COUNTY
PARK AND RECREATION DEPARTMENT
KENDALL INDIAN HAMMOCKS PARK





Property in: 544031
Parks
School Owned Park Maintained/& or Leased
EOP
Kendall Indian Hammocks General Plan
Buildings
Schools

N

0 500 Feet

MAP CREATED BY:
JORDAN BIRR
MIAMI-DADE COUNTY
PARK AND RECREATION DEPARTMENT
PLANNING AND RESEARCH DIVISION
G:\DOCUMENTS\KENDALL_INDIAN_HAMMOCKS_PARK\KENDALL_INDIAN_HAMMOCKS_PARK.MXD
NOVEMBER 2002 305-755-7937

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MAP DESCRIPTION:
THIS MAP ILLUSTRATES THE SURROUNDING PROPERTIES WITH A SITE PLAN FOR KENDALL INDIAN HAMMOCKS PARK SCHOOL LEASE AREA WITH AN AERIAL PHOTO AS A OVERLAY

THE MAP WAS PREPARED TO LOOK AT THE AVAILABILITY OF ADDITIONAL OPEN SPACE LAND FOR RECREATIONAL PROGRAMS AND FACILITIES

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