

RESOLUTION NO. 2001-24599

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A JOINT USE AGREEMENT BY AND BETWEEN THE CITY OF MIAMI BEACH AND THE SCHOOL BOARD OF MIAMI-DADE COUNTY TO PERMIT THE SCHOOL BOARD TO CONSTRUCT CERTAIN RECREATIONAL IMPROVEMENTS ON THE JOINTLY OWNED PROPERTY ADJACENT TO BISCAYNE ELEMENTARY SCHOOL, SUBJECT TO AND CONDITIONED UPON EXECUTION BY THE SCHOOL BOARD'S AUTHORIZED REPRESENTATIVE OF THE TEMPORARY USE AGREEMENT FOR MIAMI BEACH SENIOR HIGH FURTHER PROVIDED FOR HEREIN; PROVIDING FOR TERMS AND CONDITIONS FOR THE USE OF THE JOINTLY OWNED PROPERTY AND PORTIONS OF PLAYFIELD LOCATED ON THE BISCAYNE ELEMENTARY SCHOOL PROPERTY; AND FURTHER AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A TEMPORARY USE AGREEMENT WITH THE SCHOOL BOARD FOR TEMPORARY USE OF THE SERVICE ROAD AT MIAMI BEACH SENIOR HIGH SCHOOL TO FACILITATE ACCESS TO THE CITY'S PUBLIC WORKS YARD DURING THE CONSTRUCTION PROJECT AT FIRE STATION 2; AND SAID AUTHORIZATIONS BE SUBJECT TO NEGOTIATION AND PREPARATION OF THE FINAL DOCUMENTS BY THE ADMINISTRATION AND CITY ATTORNEY'S OFFICE

WHEREAS, the City of Miami Beach (the City) and the School Board of Miami-Dade County (the Board) jointly own a parcel of real property (the "Land") located adjacent to Biscayne Elementary School (the "School") as evidenced by that certain Warranty Deed dated September 25, 1972, for use of same for park and playground recreational purposes; and

WHEREAS, the City and the Board intend to enter into this Joint Use Agreement ("Agreement") in order to allow the Board to construct certain recreational improvements on the Land, and to memorialize the terms and conditions under which the Land and the School playfield area and recreational facilities will be jointly used; and

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

WHEREAS, in order to properly serve the School's educational needs, it has become

desirable and necessary that certain recreational improvements be partially located on the Land, as well as on the School grounds; and

WHEREAS, the Administration has also been striving to initiate construction of the Fire Station 2 project, and as such requires the use of the service road located on the Miami Beach Senior High School property for temporary access to the City's Public Works Yard during the period of said construction; and

WHEREAS, the Administration and representatives of the School Board have agreed to develop a Temporary Use Agreement for temporary use of the service road at Miami Beach Senior High School to facilitate access to the City's Public Works Yard during the construction project at Fire Station 2; and

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission authorize the Mayor and City Clerk to execute a Joint Use Agreement by and between the City of Miami Beach and the School Board of Miami-Dade County to permit the School Board to construct certain recreational improvements on the jointly owned property adjacent to Biscayne Elementary School, subject to and conditioned upon execution by the School Board's authorized representative of the Temporary Use Agreement for Miami Beach Senior High further provided for herein; providing for terms and conditions for the use of the jointly owned property and portions of playfield located on the Biscayne Elementary School property; and further authorize the City Manager to negotiate and execute a Temporary Use Agreement with the School Board for temporary use of the service road at Miami Beach Senior High School to facilitate access to the City's Public Works Yard during the construction Project at Fire Station 2; and said authorizations be subject to negotiation and preparation of the final documents by the Administration and City Attorney's Office.

PASSED AND ADOPTED this 20th day of September, 2001.

ATTEST:



CITY CLERK



MAYOR

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**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney
- 9-14-01
Date

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
http://ci.miami-beach.fl.us



COMMISSION MEMORANDUM

TO: Mayor Neisen O. Kasdin and
Members of the City Commission

DATE: September 20, 2001

FROM: Jorge M. Gonzalez
City Manager

Handwritten signature of Jorge M. Gonzalez.

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A JOINT USE AGREEMENT BY AND BETWEEN THE CITY OF MIAMI BEACH AND THE SCHOOL BOARD OF MIAMI-DADE COUNTY TO PERMIT THE SCHOOL BOARD TO CONSTRUCT CERTAIN RECREATIONAL IMPROVEMENTS ON THE JOINTLY OWNED PROPERTY ADJACENT TO BISCAYNE ELEMENTARY SCHOOL, SUBJECT TO AND CONDITIONED UPON EXECUTION BY THE SCHOOL BOARD'S AUTHORIZED REPRESENTATIVE OF THE TEMPORARY USE AGREEMENT FOR MIAMI BEACH SENIOR HIGH FURTHER PROVIDED FOR HEREIN; PROVIDING FOR TERMS AND CONDITIONS FOR THE USE OF THE JOINTLY OWNED PROPERTY AND PORTIONS OF PLAYFIELD LOCATED ON THE BISCAYNE ELEMENTARY SCHOOL PROPERTY; AND FURTHER AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A TEMPORARY USE AGREEMENT WITH THE SCHOOL BOARD FOR TEMPORARY USE OF THE SERVICE ROAD AT MIAMI BEACH SENIOR HIGH SCHOOL TO FACILITATE ACCESS TO THE CITY'S PUBLIC WORKS YARD DURING THE CONSTRUCTION PROJECT AT FIRE STATION 2; AND SAID AUTHORIZATIONS BE SUBJECT TO NEGOTIATION AND PREPARATION OF THE FINAL DOCUMENTS BY THE ADMINISTRATION AND CITY ATTORNEY'S OFFICE.

ADMINISTRATION RECOMMENDATION:

Adopt the Resolution.

ANALYSIS:

Biscayne Elementary Joint Use Agreement

Since 1972, the School Board of Miami-Dade County (Board) and the City of Miami Beach (City) have jointly owned a parcel of real property (Land) located adjacent to Biscayne Elementary School (School). The Warranty Deed associated with said Land requires that it be used for park and playground recreational purposes only. In order to serve the School's

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educational needs, it has become necessary for the Board to construct a two-story classroom, multi-purpose courts and a parking facility on the School grounds. Due to the limited amount of available open space on the School site, the Board has requested to locate portions of the multi-purpose courts and parking facility on the Land (see attached location map). The City has negotiated the attached Joint Use Agreement with the Board to allow for it to construct certain recreational improvements on the Land and to memorialize the terms and conditions under which the Premises, which consists of the Land and the School's playfield area, recreational facilities and parking lot, which will be jointly used by the Board and the City.

The salient terms and conditions of the Joint Use Agreement are as follows:

- a five-year term, which is automatically renewed for successive five-year periods, unless canceled or terminated in accordance with the terms of the Agreement;
- either party shall have the right to terminate the agreement at any time by providing the other party with one (1) year prior written notice;
- the Board, at its sole cost and expense, shall construct certain recreational improvements on the Premises, which include multi-purpose courts, parking facility, and playfield area;
- in so creating the recreational playfield, portions of which lie on the jointly owned property and portions of which lie on the School's property, the Board has agreed to remove a certain number of portable classrooms which currently exist on the Schools property. To the extent that there is growth in the school district's population which would require the need for additional classroom space to accommodate school children in the district, the Board retains the right to decrease the playfield, in the event it becomes necessary for the School to place additional portable classrooms on the area within the School property.
- the Board shall have the right to use the Land for temporary school parking and as a temporary staging area while constructing the two-story classroom, multi-purpose courts, parking facility, and playfield area. Upon completion of the construction, the Board shall restore the Land to at least the same condition as existed before construction of the improvements commenced;
- the Board, at its sole option, may construct additional educational and recreational improvements on the Board-owned portion of the Premises. The Board may also construct additional recreational improvements on the Land, subject to prior written approval of the City;
- the Board may use the Premises during regular school hours on regular school days, for special school events and functions, for after-care programs, for summer school, and at all other times except during the City's specific period of use;
- the City may use the Premises after school hours when available, by providing the School administrator with a minimum of seventy-two (72) hours prior written notice;

- the Board shall pay all utility service charges for the Land, including all installation and connection charges. The City and the Board shall each pay one-half of any special assessments or related fees imposed on the Land, subject to Board approval and City Commission Approval;
- the Board shall be responsible for all maintenance and upkeep of the Premises, and the improvements located thereon. The Board shall provide regular scheduled janitorial service, including litter pick-up and removal, at all times except during the City's specific period of use of the Premises. The City shall provide regular scheduled janitorial service, including litter pick-up and removal during its specific period of use of the Premises;
- the City and the Board shall repair any equipment and facilities damaged during their respective period of use of the Premises;
- any and all improvements constructed by either party on the Land shall be jointly owned by the City and the Board, and any and all improvements constructed by either party on the Board-owned portion of the Premises shall be the property of the Board;
- upon the termination or cancellation of the agreement, the remaining party shall either retain ownership of all improvements constructed on the Land, or require the vacating party to remove them;
- the Board and the City shall indemnify and hold each other harmless, to the extent of the limitations included within Florida Statutes, from all liability which may arise as a result of the use of the Premises; and
- the Superintendent shall be the party designated by the Board to grant or deny all approvals required by this Joint Use Agreement, or to cancel this Joint Use Agreement.

Miami Beach Senior High Temporary Access Agreement

In light of the proposed construction project at Fire Station 2, which will limit access to the City's Public Works Yard, the City has requested that the Board provide temporary access through a portion of the Miami Beach Senior High School (High School) property to the Public Works Yard.

In order to allow the City to stage its work in the most efficient manner and expedite its construction schedule, the City is requesting that the Board grant it use of the area immediately east of the High School service road as a means of ingress/egress to its Public Works Yard for work vehicles and approximately 70 City staff vehicles, for a period not to exceed 24 months.

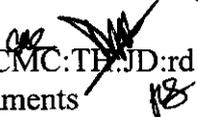
The Temporary Use Agreement will include, substantially, the following terms and conditions:

- the City will have access to only the area immediately east of the High School service road (Demised Area);
- the City, at its sole cost and expense, shall remove a portion of the existing fence located east of the High School service road, and shall erect appropriate fencing alongside the edge of said service road in order to separate the Demised Area from the High School grounds;
- the City, at its sole cost and expense, shall remove the trees located at the entrance of the High School service road on Prairie Avenue, and shall replace the same upon the expiration or cancellation of the temporary use agreement;
- the City will indemnify and hold the Board harmless from all personal injury claims and real and personal property damage claims arising from its use of the Board-owned land and facilities;
- the City's use of the Demised Area will be limited to ingress/egress to its property for work vehicles and approximately 70 City staff vehicles;
- the City shall keep the Demised Area free and clear of any vehicles or equipment, other than during its period of use, and shall immediately remove any refuse or debris from the Demised Area generated as a result of its actions;
- the City will immediately repair any damage to the Demised Area caused as a result of its actions;
- the City, at its sole cost and expense, shall restore the Demised Area to the same or better condition as existed before the City's use thereof;
- use of the Demised Area will be limited to a period not to exceed 24 months; and
- the Superintendent may cancel this agreement if the City defaults under the agreement, and fails to immediately cure the default.

The Administration recommends that the Mayor and City Commission adopt the attached Resolution authorizing the Mayor and City Clerk to execute the attached Joint Use Agreement between the City of Miami Beach and the School Board of Miami-Dade County as it relates to construction on and use of the jointly owned property adjacent to Biscayne Elementary School and the use of portions of the playfield located on the Biscayne Elementary School property. Moreover, the Administration recommends that the Mayor and City Commission authorize the City Manager to negotiate and execute a Temporary Use Agreement with the School Board for Temporary Use of the area immediately east of the service road at Miami Beach Senior High School to facilitate access to the

City's Public Works Yard during the construction project at Fire Station 2, substantially in conformance with the terms and conditions set forth above.

The Administration further recommends that the Mayor and City Commissions approval of both the Joint Use Agreement and Temporary Use Agreement be subject to negotiation and preparation of the final documents by the Administration and City Attorney's Office.

JMG:CMC:TE:JD:rd
Attachments 

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JOINT USE AGREEMENT

THIS JOINT USE AGREEMENT is made and entered into this **20th** day of **September, 2001**, by and between the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida (hereinafter referred to as the "City"), and THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic (hereinafter referred to as the "Board").

WITNESSETH

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

WHEREAS, the City and the Board jointly purchased a parcel of real property (the "Land") located adjacent to Biscayne Elementary School (the "School") as evidenced by that certain Warranty Deed dated September 25, 1972, a copy of which is attached as Exhibit "A" hereto and made a part hereof, for use of same for park and playground recreational purposes; and

WHEREAS, in order to properly serve the School's educational needs, it has become desirable and necessary that certain recreational improvements be partially located on the Land, as well as on the School grounds; and

WHEREAS, the City and the Board intend to enter into this Joint Use Agreement ("Agreement") in order to allow the Board to construct certain recreational improvements on the Land, and to memorialize the terms and conditions under which the Land and the School playfield area and recreational facilities will be jointly used; and

WHEREAS, the City and the Board also intend to enter into a separate agreement to allow the City to use a portion of Miami Beach Senior High School, on a temporary basis, to facilitate access to the City's Public Works yard during the construction of Fire Station #2; and

WHEREAS, the City Commission of the City of Miami Beach by the adoption of **Resolution No. 2001-24599**, at its meeting of **September 20, 2001**, approved this Agreement; and

WHEREAS, the School Board of Miami-Dade County, Florida, has authorized this Agreement and the Miami Beach Senior High School Temporary Use Agreement in accordance with Board Action No. 101,428 at its meeting of September 12, 2001.

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

I.

RECITALS

The foregoing recitals are true and correct and are incorporated herein by reference.

II.

PREMISES TO BE JOINTLY USED

The City and Board agree to jointly use the Land and the School playfield area and recreational facilities, as further described in Articles IV and V of this Agreement, lying and being in the County of Miami-Dade, State of Florida, and more particularly described in Exhibit "B" attached hereto and made a part hereof (the Land and the School playfield area and recreational facilities shall hereinafter be collectively referred to as the "Premises").

III.

TERM

This Agreement shall commence on the later date of School Board approval and City of Miami Beach Commission approval (the "Commencement Date"), and shall be for a term of five (5) years, and shall automatically renew at the end of said five (5) year term for successive five (5) year periods, unless canceled or terminated in accordance with Paragraphs XII and XVI hereinbelow. The City and Board shall confirm the Commencement Date in a separate written instrument which shall become a part of this Agreement by reference.

IV.

USE OF PREMISES

The specific area of use by the City and Board shall be limited to the Premises, as identified in Exhibit "B", and shall be used by the parties for the purpose of constructing recreational improvements thereon, as further defined in Article V of this Agreement, and for the operation of recreational and/or educational programs.

The Board shall have full control, custody, right and use of the Premises during regular school hours on regular school days, for special school events and functions, after-care, summer school, and at all other times except during the City's period of use. The City shall have full control, custody, right and use of the Premises during its specific period

of use, which shall be reserved by the City in writing by providing a minimum of seventy-two (72) hours prior written notice to the school administrator, with such use being limited to after school hours on a space available basis.

Neither party shall commit nor permit any violations of applicable laws, rules and regulations of the BOARD, CITY, COUNTY, STATE, or FEDERAL GOVERNMENT upon the Premises. The City and Board may promulgate and enforce reasonable rules and regulations governing their use of the Premises, and shall provide adequate supervision of the Premises during their period of use.

V.

FUTURE AND EXISTING IMPROVEMENTS

The Board, at its sole cost and expense, shall construct certain improvements on the Premises, substantially in conformance with those improvements set forth on Exhibit "C" attached hereto and made a part hereof (the "Improvements"). The parties agree that the City may, at its option, install signage on the Premises indicating the hours of use or other public use restrictions, provided that such signage is mutually approved by the parties. The Board shall have the right to commence construction of the Improvements as of the Commencement Date.

The Board shall remove and/or relocate a certain number of the portable classrooms located on the School grounds in order to make approximately 130x250 feet of open recreational space available as part of the Premises. In so doing, the Board agrees to relocate, at its sole cost and expense, the electrical transformers, and any other improvements, equipment, or structures in place as of the Commencement Date that would interfere with the development of the aforementioned recreational space, except for the two (2) portable classrooms located on the north end of the Land, and associated tot-lot and parking lot located on the Land. Notwithstanding the foregoing and to the extent that there is growth in the District's population which would require the need for additional classroom space, the parties agree that the size of the open recreational space may be decreased, at the Board's sole discretion, in the event it becomes necessary for the School to place additional portable classrooms on the area within the School grounds otherwise used as part of the open recreational space.

The Board shall have the right to construct additional educational or recreational improvements on the School grounds, in the future, at its sole cost and expense, without the prior written approval of the City. The Board shall also have the right to construct additional recreational improvements on the Land, with the prior written approval of the City.

The City shall have the right to construct additional recreational improvements on the Premises, in the future, at its sole cost and expense, subject to prior written approval

of the Board, or its designee. The parties further agree that any improvements constructed on the Premises by the City shall comply with the Board's construction and safety criteria.

The City and Board agree to assign responsibility for Maintenance, Utilities and Damage or Destruction (under provisions of Articles VII, VIII and XVI) of any additional recreational improvements constructed by either party in the future as part of the approval process set forth above. The parties further agree, subject to the provisions of Article XVIII hereinbelow, that the Improvements, or any additional improvements constructed by either party 1) on the Land shall at all times jointly be the property of the City and the Board; 2) on the School shall at all times be the property of the Board.

VI.

TEMPORARY USE OF LAND BY BOARD

The Board shall have full access to the Land during construction of the Improvements, and shall have the right to use the Land for temporary school parking and as a temporary staging area, to the extent it is permitted by applicable law, while construction of the Improvements is ongoing. Upon completion of the Improvements, the Board agrees to restore the portion of the Land used as temporary parking and staging area to at least the same condition as existed before construction of the Improvements commenced, and as required to comply with all applicable municipal, County, State and Federal laws and regulations.

VII.

MAINTENANCE

The Board shall be responsible for all repair, maintenance and upkeep of the Premises and the recreational improvements located thereon as of the Commencement Date, and shall keep all recreational facilities and equipment in a safe, clean and working condition. Notwithstanding the foregoing or the provisions of Article XVI of this Agreement, responsibility for the maintenance of the Premises shall be as follows:

A. BOARD'S RESPONSIBILITIES

1. Provide regular scheduled janitorial service, including litter pick-up and removal, at all times except during the City's period of use;
2. Repair of equipment or facilities damaged during its period of use;
3. Repair and maintain the irrigation system serving the Premises;
4. Irrigation of Premises according to Miami-Dade County Public Schools routine maintenance schedule;

5. Trim and maintain trees and shrubs;
6. Mowing, edging and trimming of Premises according to Miami-Dade County Public Schools routine turf maintenance schedule; and
7. Repair and maintain perimeter fencing.

B. CITY'S RESPONSIBILITIES

1. Provide regular scheduled janitorial service, including litter pick-up and removal, during its period of use; and
2. Repair of equipment or facilities damaged during its period of use.

Notwithstanding the provisions of Article VII hereinabove, both parties agree, at the request of the other party, to repair any facilities located on the Premises, where one party can clearly substantiate that the facilities were damaged as a result of the actions of the other party.

VIII.

UTILITIES

The Board shall pay all utilities consumed on the Premises including all installation and connection charges associated therewith. The City and Board shall each pay one-half of any special assessments or other related fees imposed on the Land, subject to Board and City approval, respectively, other than those charges voluntarily entered into by one party or the other.

IX.

LIABILITY FOR DAMAGE OR INJURY

The City shall not be liable for any damage or injury which may be sustained by the Board or any persons on the Premises during the Board's period of use, other than damage or injury resulting from the negligence or improper conduct on the part of the City, its agents, representatives or employees, or failure of the City to perform its covenants under this Agreement.

The Board shall not be liable for any damage or injury which may be sustained by the City or any persons on the Premises during the City's period of use, other than damage or injury resulting from the negligence or improper conduct on the part of the Board, its agents, representatives or employees, or failure of the Board to perform its covenants under this Agreement.

X.

INDEMNIFICATION

The Board covenants and agrees that it shall indemnify, hold harmless and defend the City, from and against any and all claims, suits, actions, damages or causes of action arising from or in connection with the Board's use and occupancy of the Premises, for any personal injury, loss of life or damage to property sustained in or about the Premises, to the extent of the limitations included within Section 768.28, Florida Statutes.

The City covenants and agrees that it shall indemnify, hold harmless and defend the Board, from and against any and all claims, suits, actions, damages or causes of actions arising from or in connection with the City's use and occupancy of the Premises, for any personal injury, loss of life or damage to property sustained in or about the Premises, to the extent of the limitations included within the Section 768.28, Florida Statutes.

XI.

ASSIGNMENT

Except as otherwise provided in this Agreement, neither party shall assign, transfer, or otherwise dispose of this Agreement during the term hereof, or sublet the Premises or any part thereof or permit said Premises to be occupied by other persons, firms, corporations, or governmental units without the other party's prior written consent.

XII.

CANCELLATION, CONVEYANCE AND DEFAULT

Other than as provided below, this Agreement may be canceled by either party, without penalty, with one (1) year advance written notice to the other party. Notwithstanding the foregoing, the parties agree that cancellation of this Agreement shall not serve to extinguish either party's right to use the Land and the improvements located thereon for recreational purposes as provided in the Warranty Deed.

The City and Board agree that in the event either party conveys its one-half interest in and to the Land to another party, this Agreement shall automatically terminate without any further action required on the part of the remaining party, effective the date of the conveyance.

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

In the event of the cancellation or termination of this Agreement by either party, the School portion of the Premises and/or the improvements located on the Premises, as the case may be, shall be surrendered in accordance with the provisions of Article XVIII hereinbelow.

XIII.

NO LIABILITY FOR PROPERTY

The City 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 City and Board hereby waive all rights of subrogation against each other under any policy or policies they may carry, or on property placed or moved on the Premises.

XIV.

RIGHT OF ENTRY

The City, or any of its agents, shall have the right to enter the Premises during the Board's period of use to examine the same upon reasonable notice to the school administrator, provided, however, that such entry does not in any way interfere with the Board's use of the Premises.

The Board, or any of its agents, shall have the right to enter the Premises during the City's period of use to examine the same upon reasonable notice to the City's Park and Recreation Department, provided, however, that such entry does not in any way interfere with the City's use of the Premises.

XV.

NOTICE AND 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 date of actual receipt.

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

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

To the City: City Manager
City of Miami Beach, 4th Floor
1700 Convention Center Drive
Miami Beach, Florida 33139

With a copy to: City Attorney
City of Miami Beach, 4th Floor
1700 Convention Center Drive
Miami Beach, Florida 33139

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 as provided for herein.

XVI.

DAMAGE OR DESTRUCTION

In the event the Premises should be destroyed or so damaged by fire, windstorm or other casualty to the extent the facilities are rendered untenable or unfit for the

purposes of the parties, either party shall have the right to cancel this Agreement by providing written notice to the other party within ninety (90) days of such damage and destruction. If neither party has canceled the Agreement within such 90-day period, the Board shall cause the facilities, consisting of all improvements in place which were constructed by the Board, to be repaired and placed in a safe and useable condition within one hundred eighty (180) days from the date of said damage, or other reasonable period of time as mutually agreed to by the parties. Should the facilities not be repaired and rendered tenantable within the aforementioned time period, then the City may, at its sole option, place the Board 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 Premises and the improvements located 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.

SURRENDER OF PREMISES

Subject to the provisions of Article V hereinabove, at the termination or cancellation of this Agreement, the party vacating the Premises (the "Vacating Party") agrees to convey its one-half interest in and to any and all improvements located on the Land, which were constructed by the remaining or non-vacating party (the "Non-Vacating Party") to such party, and also agrees, at the sole option of the Non-Vacating Party, to either (1) quietly and peaceably surrender title to any and all improvements located on the Land, which were constructed by it, to the Non-Vacating Party, in good order and repair, except for normal wear and tear, or decay and damage by the elements or other Acts of God; or (2) remove all such improvements and restore the Premises to the same or better condition as existed on the Commencement Date. In addition to the foregoing, in the event the City is the Vacating Party, the City agrees to quietly and peaceably surrender the School portion of the Premises, in good order and repair, except for normal wear and tear, or decay and damage by the elements or other Acts of God.

XIX.

PEACEFUL POSSESSION

Subject to the terms, conditions, and covenants of this Agreement, the parties agree that the other party shall and may peaceably have, hold and enjoy the Premises, without hindrance or molestation by the other party.

XX.

SUCCESSORS AND ASSIGNS

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

XXI.

COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

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

XXII.

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.

XXIII.

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.

XXIV.

WAIVER

No waiver of any provision hereof shall be deemed to have been made unless such waiver be in writing and signed by the City and/or the 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.

XXV.

WRITTEN AGREEMENT

This Agreement represents the entire agreement between the parties.

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

CITY:
CITY OF MIAMI BEACH, FLORIDA



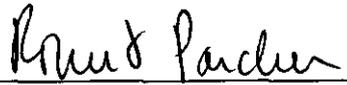
Mayor

BOARD:
THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA



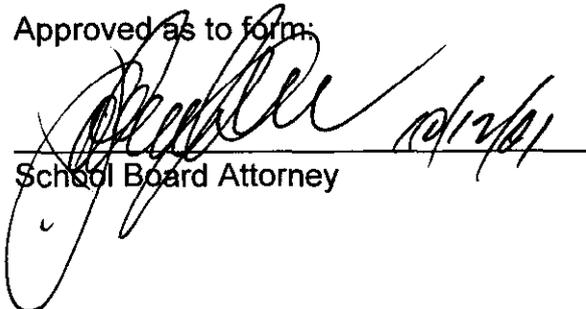
Chief Facilities Officer (Construction)
Facilities Planning and Construction

ATTEST:



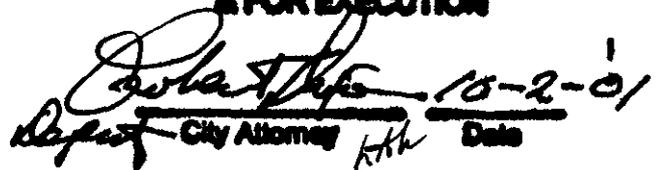
City Clerk

Approved as to form:



School Board Attorney

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



WARRANTY DEED

THIS INDENTURE made this 25th day of September, 1972, between the CITY OF MIAMI BEACH, a Florida municipal corporation, party of the first part, and THE SCHOOL BOARD OF DADE COUNTY, FLORIDA, a body corporate and politic under the laws of the State of Florida, whose post office address is 1410 N.E. Second Avenue, Miami, Florida 33132, party of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of Ten and 00/100 (\$10.00) Dollars and other valuable considerations to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, its successors and assigns forever, the following described land situate, lying and being in the County of Dade, and State of Florida, to-wit:

An undivided one-half interest in and to Lots 1 through 7, inclusive, less the Easterly 50' of Lot 7, Block 2, TATUM WATERWAY SUBDIVISION, according to the Plat thereof recorded in Plat Book 46 at Page 2 of the Public Records of Dade County, Florida.

The parties hereby agree and covenant with each other, for themselves, their successors and assigns, that the above-described lands shall hereafter be used jointly for park and playground recreational purposes only, provided that the party of the second part, the School Board of Dade County, Florida, shall have prior and paramount right to the use of the lands for playground purposes during regular school hours. The parties further agree jointly to use their best efforts to close and vacate that portion of the dedicated street known as Tatum Waterway Drive which adjoins and lies between the above-described lands and the adjacent school site owned by the party of the second part, to the end that the fee simple title to the land now lying within the boundaries of said dedicated street will revert to the parties hereto in accordance with law.

The parties hereto jointly agree to locate, a suitable and appropriate pedestrian right-of-way providing access from the footbridge located at the southern extremity of said property and extending over a suitable portion of the said parcels of land hereby conveyed up to 77th Street; the location, type, and mode of construction to be mutually agreed upon between the parties.

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed in its name by its proper officers, and its corporate seal to be affixed, the day and year above written.

THE CITY OF MIAMI BEACH

BY Chuck Hall
Mayor

Attest:

Ruth B. Rouleau
City Clerk-Finance Director

Signed, sealed and delivered in the presence of us:

Joseph H. Daniels
Zula Patricia Garcia

STATE OF FLORIDA

COUNTY OF DADE

I HEREBY CERTIFY, that on this 15th day of September, 1972, before me personally appeared CHUCK HALL and RUTH B. ROULEAU, Mayor and City Clerk-Finance Director respectively, of the City of Miami Beach, a Florida municipal corporation, to me known to be the persons who signed the foregoing instrument as such officers and severally acknowledged the execution thereof to be their free act and deed as such officers for the uses and purposes therein mentioned and that they affixed thereto the official seal of said corporation and that the said instrument is the act and deed of said corporation.

WITNESS my hand and official seal at Miami Beach, in the County of Dade and State of Florida, the day and year last aforesaid.

Zula Patricia Garcia (SEAL)

NOTARY PUBLIC, STATE OF FLORIDA
MY COMMISSION EXPIRES JULY 9, 1974
BONDED THROUGH FRED W. WERBLING

Exhibit B

LOCATION MAP

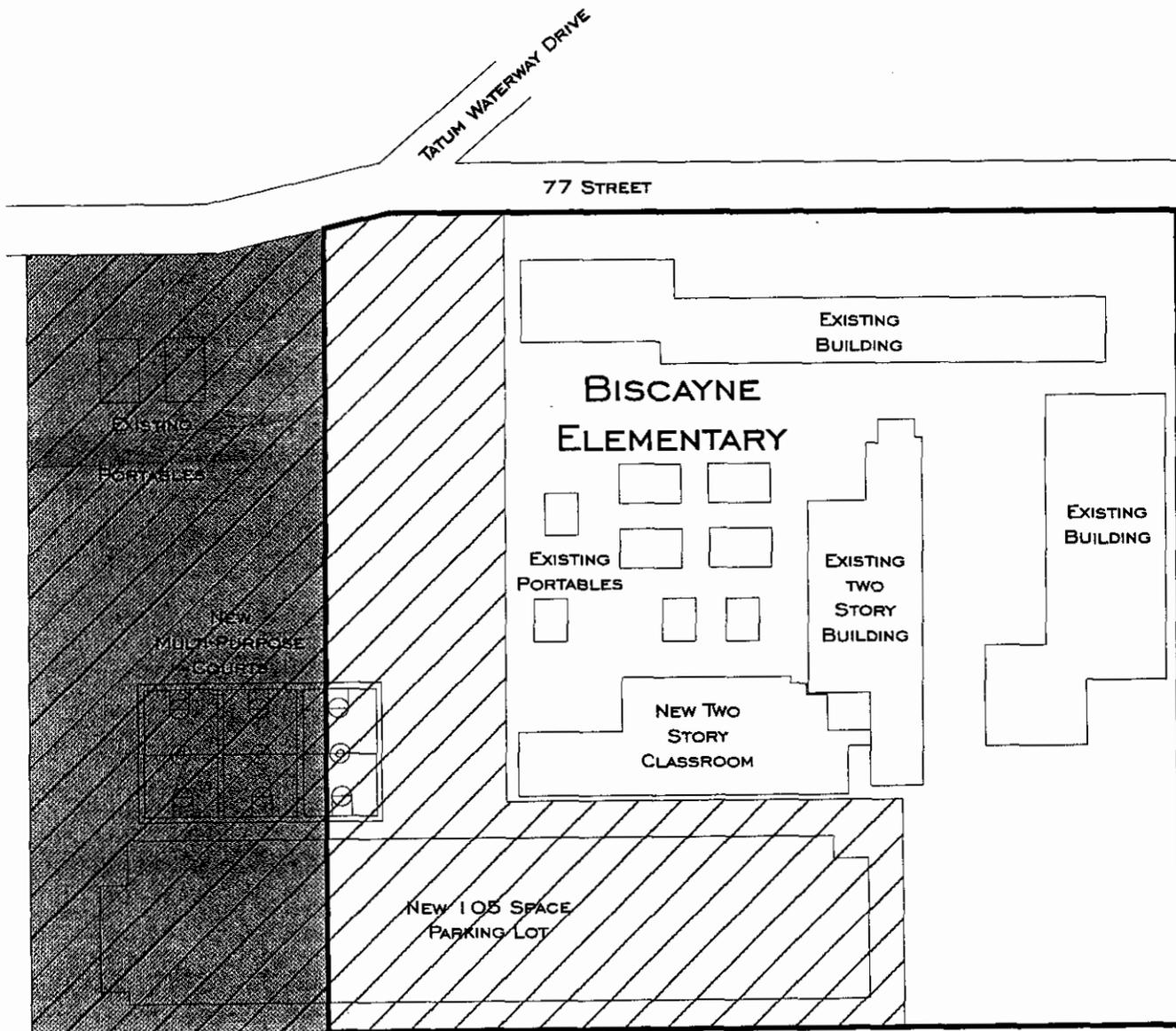


Exhibit "C"

The Board may construct the following Improvements on the Premises:

1. Six (6) multi-purpose hard surface courts, with 9-foot basketball posts;
2. Parking facility, with approximately 105 spaces;
3. Landscaping and irrigation; and
4. All associated work to accomplish the above, including, without limitation, the installation of fencing to mark the boundaries of the Premises.

All of the above improvements shall be made in accordance with all applicable Municipal, County, State and Federal laws, and all applicable permitting requirements associated therewith.