

TAB 6

POINT PAPER

CONSIDERATION OF PURCHASE AGREEMENT BETWEEN CITY OF PALMETTO, SCHOOL BOARD OF MANATEE COUNTY, JUST FOR GIRLS, AND BOYS AND GIRLS CLUBS

ISSUE: The School Board of Manatee County (School Board) has expressed an interest in constructing a new Palmetto Elementary School on City of Palmetto Property on 10th Street West. This agreement is one portion of a three phase project involving multiple parties. The other two phases involve the purchase of approximately 164 acres near the existing Palmetto Elementary School and the construction of replacement little league fields near the projected intersection of 10th Avenue West and 23rd Street West. Negotiations related to this Agreement have been ongoing since 2008. Due to statutory requirements and finalization of details related to the other two phases, Agreements related to these two phases will be forthcoming.

BACKGROUND: The proposed Agreement provides for the sale and transfer of approximately 11.93 acres at the intersection of 10th Street West and 17th Avenue. The School Board will purchase approximately 8.61 acres, the Boys and Girls Club to purchase approximately 2.00 acres and Just for Girls to purchase 1.33 acres from the City. The purchase price for each of the purchases to be based on \$87,000.00 per acre, for a total of \$1,037,910.00 for the three purchases. It is anticipated that the School Board and the Boys and Girls Club purchases will occur on or before June 18, 2009. Just for Girls is attempting to close by June 18, 2009, but may be delayed by financing issues. The Agreement provides for the School Board and Boys and Girls Club to purchase a Drainage Easement from the City for \$55,000.00 and \$7,349.00, respectively. A copy of the Drainage Easement to the School Board and the Boys and Girls Club is attached hereto. The City would pay \$7,300.00 to the Boys and Girls Club to terminate its existing lease with the City.

MOTION: I move to:

1. Declare the 11.94 acres of City owned land as identified in the attached Agreement, at the intersection of 10th Street West and 17th Avenue West, as surplus property.
2. Approve and authorize execution of the Agreement of Purchase and Sale Between the City, Boys and Girls Club, Just For Girls and the School Board of Manatee County in a form substantially consistent with the attached Agreement.
3. Authorize the Mayor to execute documents related to, or necessary, pursuant to the terms of this Agreement for purchase and sale.

BUDGET IMPACT: The sale of the property will result in an approximate \$1,038.780.00 increase in the City funds, less costs.

AGREEMENT OF PURCHASE AND SALE
AMONG THE CITY OF PALMETTO,
THE SCHOOL BOARD OF MANATEE COUNTY, AND BOYS AND GIRLS CLUB OF
MANATEE COUNTY, INC. AND MANATEE COUNTY GIRLS CLUB, INC.

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement") is made and entered into as of the Effective Date (as hereinafter defined) by and among The City of Palmetto, a municipal corporation of the State of Florida ("City") The School Board of Manatee County, a public body corporate ("School Board"), Boys and Girls Club of Manatee County, Inc., a Florida not-for-profit corporation ("Boys and Girls Club") and Manatee County Girls Club, Inc., a Florida not-for-profit corporation d/b/a Just for Girls ("Just for Girls").

INTRODUCTION

City owns a parcel of real property on 10th Street West in the City of Palmetto, Manatee County, Florida, which is described on Exhibit A attached hereto (the "City's land") all of which is currently leased, in part to Boys and Girls (approximately 10.8 acres) Club and part of which is currently leased to Just for Girls (approximately 1.3 acres); and

City has determined that the City's land is suitable for transfer to other governmental and not-for-profit organizations; and

City desires to enhance the educational opportunities within the City of Palmetto by conveying land for a School Site (as hereinafter defined); and

Boys and Girls Club and Just for Girls wish to replace the portions of the City's land which they each now lease by purchasing portions of the City's land for their own respective use; and

The City is agreeable to conveying the School Site (hereinafter defined) to School Board and portions of the City's land to the Boys and Girls Club and to Just for Girls.

PROVISIONS

NOW, THEREFORE, in consideration of the agreements herein contained, the parties agree as follows:

1. **Definitions and Reference Terms.** In addition to any other terms defined herein, for convenience of reference, the following terms shall have the following meanings:

(a) "Boys and Girls Club Site" means 2.0 +/- acres of the City's land which Boys and Girls Club will own at the conclusion of the transfers described herein, which is approximately

depicted on the Site Plan attached hereto as Exhibit B as "Boys and Girls Club Site"; provided, however that the dimensions and acreage of the Boys and Girls Club Site as shown on Exhibit B are schematic relative approximations only, with the actual acreage and dimensions to be determined by the survey described herein.

(b) "Business Day". Any day that national banks in Manatee County, Florida, are open for business, excluding Saturdays and Sundays.

(c) "Buyer" means, when appropriate to the context, the buyer or transferee of the property in question.

(d) "Buyer's Contractors" means Buyer, and its authorized agents and representatives.

(e) "City's land" means the parcel of real property currently owned by the City (including some real property as to which Florida Fidelity Corporation, by way of transfer from James Wallace, claims an interest), which is described on Exhibit A attached hereto and hereby made a part of this Agreement.

(f) "City Property" means, collectively, the real property which the City will own at the conclusion of the transfers described herein, improved by tennis courts and related improvements, which property is depicted on the Site Plan attached hereto as Exhibit B as "City Property"; provided, however that the dimensions and acreage of the City Property as shown on Exhibit B are schematic relative approximations only, with the actual acreage and dimensions to be determined by the survey described herein.

(g) "Closing" means the consummation of the transactions contemplated by this Agreement to take place at the time and place prescribed under Section 6 of this Agreement.

(h) "CRA Contract" means the agreement among the School Board and the Palmetto Community Redevelopment Agency described in Section 16 of this Agreement.

(i) "Effective Date" means the last date upon which a copy of this Agreement has been fully executed by the City, Boys and Girls Club, Just for Girls and the School Board.

(j) "Environmental Laws" means all applicable present and future (to the extent such relate back to the Closing date or prior) statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, agreements and similar items, of or with any and all governmental agencies, departments, commissions, boards, bureaus of instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. '9061 et seq; the

Hazardous Materials Transportation Act, as amended, 49 U.S.C. ' 1801, et seq; and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. ' 6901 et seq.

(k) "Hazardous Materials" shall mean (i) any toxic substance or hazardous waste, substance or related material, or any pollutant or contaminant; (ii) radon gas, asbestos in any form which is or could become friable, ureaformaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (iii) any substance, gas, material or chemical which is or may be defined as or included in the definition of "hazardous substances", "toxic substances", "hazardous materials", "hazardous wastes" or words of similar import under any Environmental Law and (iv) any other chemical, material, gas or substance, the exposure to or release of which is or may be prohibited, limited or regulated by any governmental or quasi-governmental entity or authority that asserts or may assert jurisdiction over the real property which is the subject of this Agreement or the operations or activity at the real property, or any chemical, material, gas or substance that does or may pose a hazard to the health and/or safety of the occupants of the real property or the owners and/or occupants of property adjacent to or surrounding the real property.

(l) "Inspection Period" means the period of time ending at 5:00 p.m. EST on the date which is twenty five (25) days after the Effective Date.

(m) "Just for Girls Site" means 1.3 +/- acres of the City's land which Just for Girls will own at the conclusion of the transfers described herein, which is approximately depicted on the Site Plan attached hereto as Exhibit B as "Just for Girls Site"; provided, however that the dimensions and acreage of the Just for Girls Site as shown on Exhibit B are schematic relative approximations only, with the actual acreage and dimensions to be determined by the survey described herein.

(n) "Manatee Fruit Company" means Manatee Fruit Company, a Florida corporation.

(o) "Palmetto CRA" means the Palmetto Community Redevelopment Agency.

(p) "Phase II Contract" means one or more agreements among the City, Manatee County, the School Board and Manatee Fruit Company described in Section 16 of this Agreement.

(q) "Retention Pond" means the water retention pond located near the northwest corner of 12th Street West and 17th Avenue West, as roughly depicted on Exhibit C.

(r) "School Site" means 8.6 +/- acres of the City's lands which the School Board will own at the conclusion of the transfers described herein, which is approximately depicted on the Site Plan attached hereto as Exhibit B as "School Site"; provided, however that the dimensions and acreage of the School Site as shown on Exhibit B are schematic relative approximations only, with the actual acreage and dimensions to be determined by the survey described herein. The School Site

includes lands now included in 15th Avenue Drive West, a public road, which City has agreed to begin the vacation process to be considered following Closing.

(s) "Site Plan" means the draft Architectural Site Plan design as prepared by Lombardo, Foley & Kolarik, Inc., entitled Palmetto Elementary School, dated February 9, 2009, a copy of which is attached hereto as Exhibit B.

2. **Conveyance and Purchase Price.** The parties agree that, at Closing:

- (a) City will transfer the School Site to School Board for \$87,000 per acre;
- (b) City will transfer the Just for Girls Site to Just for Girls for \$87,000 per acre; and
- (c) City will transfer the Boys and Girls Club Site to Boys and Girls Club for \$87,000 per acre.

The Purchase Price for each transfer, less credit for such credits, prorations and adjustments as are provided herein, shall be paid at Closing by wire transfer of immediately available funds to an account designated in writing by City. The exact purchase price shall be determined by the acreage (and shall be pro-rated for partial acres) calculated to be present in the respective Site after completion of the survey prepared pursuant to Section 9 of this Agreement. Possession of the Property shall be delivered as of Closing.

Each transfer shall include (i) all improvements situated on the land, if any (the "Improvements") (the land and any Improvements are sometimes herein called the "Real Property"); (ii) all of City's right, title, and interest, if any, in all items of personal property presently attached to or situated upon the Real Property, if any (the "Personalty"), but specifically excluding any movable items of personal property owned by City or any tenant; (iii) all right, title and interest of the City in and to all rights, privileges, easements, hereditaments and appurtenances to the Real Property, and (iv) the right, title and interest of the City in and to 15th Avenue Drive West, subject to proper application for and completion of procedures for the vacation of the public road thereon, and (v) the right, title and interest of the City, as adjoining landowner, to the land lying in the bed of any street, road, avenue or alley, open or proposed, public or private, in front of or adjoining the land to the center line thereof. The Real Property and the rights described in subparts (iii) through (v) of the preceding sentence are sometimes collectively called the "Real Property Interests." The Real Property Interests and the Personalty are sometimes collectively called the "Property." Notwithstanding the above, the light poles currently located upon the School Site for the little league ball field facility shall not be considered as Personalty subject to transfer under this Agreement.

3. **Additional Consideration, Leases, Agreements and Easements.** In addition to the Purchase Price, in consideration of the various transfers described herein, the parties agree as

follows:

(a) **Boys and Girls Club Building.** At Closing, School Board and Boys and Girls Club will enter into a lease agreement, substantially in form as attached hereto as **Exhibit D**, under which School Board will lease to Boys and Girls Club the building on the School Site currently leased by Boys and Girls Club from the City, pending completion of construction of a new Boys and Girls Club building on the Boys and Girls Club Site, for a term expiring on or before February 28, 2010. The lease agreement will allow access to the building by School Board no later than December 31, 2009 for inspection and other preliminary matters consistent with Boys and Girls Club's continuing programs, in anticipation of Boys and Girls Club vacating the existing building and School Board's demolition of the building no later than March 31, 2010. Boys and Girls Club agrees to expedite its construction schedule for completion of its new building. Boys and Girls Club will be responsible for all expenses and obligations of operation and maintenance of the leased building during the lease term.

(b) **Water Retention Pond and Stormwater Easement.** Following Closing, City, School Board and Boys and Girls Club will share the use of the Retention Pond. The Retention Pond is part of an overall integrated surface water management system, which includes an additional retention area located upon property owned by the Homeowners Association of West Palmetto Oaks, Inc., a Florida corporation ("HOA"). School Board, at its expense, will expand the Retention Pond to accommodate use by the City, School Board and Boys and Girls Club. School Board will be responsible for obtaining the necessary permits and approvals for modifications of the Retention Pond; and the other parties to this Agreement will cooperate in that effort. The Retention Pond shall be of adequate size and capacity for the overall project consisting of an elementary school for approximately 823 students and the future 26,600 square foot Boys and Girls Club building. At Closing the following easements and agreements shall be executed and delivered, substantially in the form attached hereto as **Exhibit E**: (i) City will grant one or more easements to School Board allowing for it to use a portion of the Retention Pond for temporary access to and construction of the stormwater retention modifications and related improvements; (ii) School Board will grant one or more easements to Boys and Girls Club allowing for it to use a portion of the School Site for stormwater drainage from the Boys and Girls Club Site, across the School Site, to the Retention Pond; (iii) City will grant one or more permanent, non-exclusive easements to the School Board and Boys and Girls Club for shared use of the Retention Pond for stormwater drainage from the School Site and the Boys and Girls Club Site; and (iv) the City, School Board and Boys and Girls Club shall enter into an agreement regarding sharing the costs of maintenance of the Retention Pond provided, however, that it is understood that the operation and maintenance costs of School Board and Boys and Girls Club will be paid in the form of stormwater management fees pursuant to Palmetto Code of Ordinances, Chapter 29, Article VII.. The City shall have responsibility for maintenance of the Retention Pond. At Closing, the other parties to this Agreement shall compensate the City for these easement rights by payment of the following amounts:

School Board- \$55,500.00;

Boys and Girls Club - \$7,349.00;
Just for Girls - \$4,443.00.

(c) **School Board/Boys and Girls Club Permanent Easement(s).** At Closing, the School Board shall grant to the Boys and Girls Club Site a permanent easement granting the Boys and Girls Club Site easements for (1) parking of not less than twenty (20) vehicles in the parking field adjacent to the Boys and Girls Club Site as depicted on the Site Plan, which the location and extent of use of these twenty (20) spaces shall be reasonably agreed upon by the School Board and Boys and Girls Club and incorporated into the terms of the Joint Use Agreement as described below in Section 3(e); and (2) vehicular and pedestrian access to the Boys and Girls Club Site over all drive aisles within the parking field adjacent to the Boys and Girls Club Site and the driveway on the School Site providing access to the Boys and Girls Club Site maintenance area as depicted on the Site Plan. The grant of easement shall also include an easement from the Boys and Girls Club to the School Board for the use of the existing well on the Boys and Girls Club Site for irrigation water distribution reasonably appurtenant to said well, and an access easement over the paved area within the Boys and Girls Club Site adjacent to the Boys and Girls Club maintenance facility and the service and delivery area of the School Site. The School Board shall bear all cost associated with placing, operating and maintaining such pump(s) and motor(s) on or in the existing well and related piping as reasonably necessary to provide irrigation to all exterior areas of the School Site and the Boys and Girls Club Site. The Boys and Girls Club shall bear the expense of any irrigation piping, fixtures and controls located within or servicing only, the Boys and Girls Club Site.

(d) **Termination of Boys and Girls Club Lease on School Site.** For and in consideration of the payment (or credit) by the City to the Boys and Girls Club at Closing, of the sum of SEVEN THOUSAND THREE HUNDRED AND NO/100 DOLLARS (\$7,300.00), the Boys and Girls Club shall provide a termination of the existing Boys and Girls Club lease as to all of the School Site.

(e) **School Board and Boys and Girls Club – Construction and Maintenance Agreements.** The School Board shall construct all improvements which are subject to the Permanent Easement referenced in subparagraph (c) above, in accordance with the plans and specifications determined by the School Board and consistent with applicable building codes, if any. Said construction and the demolition of the exiting Boys and Girls Club building shall be at the School Board's sole expense. For so long as the School Board operates the School Site as a school facility, the School Board shall at no cost to the Boys and Girls Club maintain all exterior lawn and landscape areas within the Boys and Girls Club Site, consistent with the standards of lawn and landscape maintenance of the School Board on the School Site. The Boys and Girls Club shall design and install landscaping materials which are reasonably low maintenance and drought tolerant.

(f) **Joint Facility Use Agreement with Boys and Girls Club.** The School Site shall be improved with an elementary school for approximately 823 students. At Closing, School Board and Boys and Girls Club shall enter into a joint facility use and maintenance agreement, substantially in form as attached hereto as Exhibit F, providing for (i) after-hours use of the School Board's

cafetorium (dining area and auditorium portion), play fields and covered play area by Boys and Girls Club; (ii) use of the School Board's parking areas by Boys and Girls Club and (iii) School Board's use during normal school hours, for the benefit of the elementary school students, of the Boys and Girls Club's gymnasium and play fields.

(g) **Joint Facility Use Agreement with Just for Girls.** At Closing, School Board and Just for Girls shall enter into a joint facility use and maintenance agreement providing for (i) after-hours use of the School Board's play fields and covered play area and (ii) use of the School Board's parking areas by Just for Girls.

(h) **Site Plan.** School Board, at its sole expense, shall engage an engineering firm to develop the site plan and plans for the planned improvements on the School Site and the Retention Pond. School Board shall also prepare the lease, easements, joint use agreements and shared maintenance agreements for the shared facilities and improvements described in this **Section 3**. The parties agree to co-locate facilities for their joint use to the maximum extent feasible, and City shall have an opportunity for comment and prior review of the site plan.

(i) **Grant Funding.** The parties agree to cooperate with each other in applying for grant funding and supporting each other's applications for grant funding for any part of the development of the improvements planned on what is now the City's land, including, without limitation, a grant to reimburse the City for the cost of improvements to the intersection of 10th Street West and 14th Avenue.

(j) **Improvements to Intersection of 10th Street West and 14th Avenue.** To the extent determined by the City to be necessary or advisable to accommodate the overall project contemplated on what is now the City's land, City will fund and construct improvements to the intersection of 10th Street West and 14th Avenue as needed. Both the School Board and the City agree to use best efforts to coordinate any and all road improvement efforts associated with the aforementioned intersection as well any other road improvements needed to benefit the School Site.

(k) **Survival.** The agreements and obligations set forth in this **Section 3** shall survive the Closing.

4. **Conditions Precedent To Obligations Of City.** The obligations of City to sell the Property are subject to the satisfaction at or before the end of the Inspection Period of the following conditions precedent (the "Closing Conditions"):

(a) **General Approvals.** City and School Board shall have received approval of their respective governing boards on terms satisfactory to them, in their sole discretion, respectively, of the transactions described in this Agreement to be performed by the respective entity.

If any of the Closing Conditions described in this Section have not been fulfilled, then City may terminate this Agreement by giving written notice (a "Termination Notice") to the other parties on or

before the date of Closing. Upon the timely delivery of that notice, all Buyers and City shall have no further rights or obligations pursuant to this Agreement except for the Inspection Obligations and the obligations created pursuant to Section 18, all of which shall continue until fully performed. If City fails to deliver a Termination Notice on or before the date of Closing, it shall not have any further right to terminate this Agreement pursuant to this Section.

Notwithstanding the above, the parties further acknowledge that the terms as provided in Section 16 herein shall not serve as conditions to close for the City or any other party to this Agreement.

5. **Conditions Precedent To Obligations Of Buyer.** The obligations of Buyer to purchase the Property, unless otherwise waived in writing by Buyer, are subject to the satisfaction at or before the end of the Inspection Period of the following conditions precedent (also, the "Closing Conditions"):

(a) Buyer shall be satisfied, in its sole discretion, before the end of the Inspection Period (or any extension thereof) with the results of its due diligence (not including any environmental audits/studies) conducted at the Property; and Buyer shall be satisfied, in its reasonable discretion, before the end of the Inspection Period (or any extension thereof) with the results of its environmental audits/studies of the Property. If Buyer is not satisfied with the results, Buyer may terminate this Agreement prior to the end of the Inspection Period.

(b) Buyer shall have received approval of its governing board on terms satisfactory to Buyer, in its sole discretion that Buyer shall be permitted to purchase the Property, develop it as intended, and perform its obligations under this Agreement.

(c) The School Board shall have received, before the end of the Inspection Period (and any extension thereof) a determination from the City of the consistency and suitability of the School Site for the construction of an elementary school and other educational and education support facilities.

(d) The Boys and Girls Club shall have received, before the end of the Inspection Period (and any extension thereof), a determination from the City of the consistency and suitability of the Boys and Girls Club Site for a 26,600 square foot building and related spaces.

(e) With respect to Just for Girls as purchaser, its obligations to purchase the Just for Girls Site shall be subject to the following additional conditions precedent, which shall apply only to Just for Girls (also, "Closing Conditions"):

(i) Just for Girls shall have received an appraisal of the Just for Girls Site from an appraiser satisfactory to, selected by and paid for by Just for Girls reflecting a fair market value of the Just for Girls Site at least equal to the purchase price. Just for Girls shall have until the end of the Inspection Period to obtain the appraisal.

(ii) Just for Girls shall have procured a written commitment upon terms and conditions satisfactory to Just for Girls (in Just for Girls' sole discretion) for a mortgage loan from a lending institution in an amount equal to or less than the Just for Girls Site Purchase Price. Just for Girls shall make application for the loan within ten (10) days of the Effective Date.

(f) The School Board shall have received appraisal(s) of the School Site from appraisers satisfactory to and selected by and paid for by School Board reflecting a fair market value of the School Site of at least the purchase price. School Board shall have until the end of the Inspection Period to obtain the appraisals. If the fair market value of the School Site is determined by appraisals to be less than the purchase price, a super majority vote of the members of the School Board must be obtained approving the purchase price. If a super majority vote is necessary, and is not obtained by the end of the Inspection Period, then this Agreement shall terminate, unless City agrees to an adjustment of the purchase price to equal or less than the fair market value as determined by the appraisals.

If any of the Closing Conditions described in this Section have not been fulfilled, then any Buyer may terminate their rights and obligations under this Agreement by giving a Termination Notice to the other parties on or before the end of the Inspection Period (hereinafter defined). Notwithstanding the foregoing, only Just for Girls shall have the right to terminate this Agreement on account of the failure of either of the Closing Conditions set forth in paragraph (d) of this Section 5 and any termination by Just for Girls shall not terminate this Agreement with respect to the remaining parties.

Upon the timely delivery of that notice: (a) Buyer shall deliver the Inspection Documents (as defined in Section 10.(b) herein) to City; and (b) following (a) no Buyer nor City shall have any further rights or obligations pursuant to this Agreement except for the Inspection Obligations and the obligations created pursuant to Section 18, all of which shall continue until fully performed. If any Buyer fails to deliver a Termination Notice on or before the end of the Inspection Period, that Buyer shall not have any further right to terminate this Agreement pursuant to this Section.

Notwithstanding the above, the parties further acknowledge that the terms as provided in Section 16 herein shall not serve as conditions to close for the Buyer or any other party to this Agreement.

6. **Closing; Conveyance Documents.** The Closing shall occur by delivery by City to the respective Buyer of a properly executed general warranty deed (the "Deed") conveying the Real Property to Buyer, (b) bill of sale and assignment or other appropriate conveyance document (the "Bill of Sale") conveying any Personalty to Buyer, and (c) a general assignment (the "General Assignment") of all of City's rights, if any, to the extent assignable without consent, in and to any governmental approvals, permits, site plans and specifications and the Documents (hereinafter defined), applicable to the Property, in consideration of the payment by Buyer to City of the Purchase Price. The Closing shall take place at the office of Kirk-Pinkerton, P.A., counsel for the School Board, in Bradenton, Florida (the "Closing Agent"), at 10:00 a.m., on or before the date that is the earlier of: (i) thirty (30) days following the Effective Date or (ii) June 18, 2009 (the "Closing Date"). The form of the Deed, Bill of Sale and General Assignment shall conform to the requirements of the

Title Company. Subject to the foregoing, the Deed, Bill of Sale and General Assignment shall be the forms prepared by the Closing Agent, reasonably acceptable to Buyer, Buyer's counsel, and Buyer's Title Company and delivered to the Buyer on or before five (5) Business Days prior to the Closing Date. At the Closing, the Property will be in as good condition and repair as at the date of signing of this Agreement. Buyer shall be entitled to conduct a walk-through inspection on the day before Closing to confirm that the Property is in the condition required by this Agreement, and that the warranties and representations of City regarding the condition of the Property are true and correct.

7. **Title.** At Closing, City shall convey title to the Property and Improvements to the respective Buyer, subject only to the following exceptions:

- (a) liens for ad valorem taxes not yet due and payable;
- (b) the standard printed exceptions as set forth in the Title Policy (defined in Section 8), excluding those standard printed exceptions that will be removed upon execution and delivery by City of the Grantor's Affidavit.
- (c) all building, zoning, environmental, and other state, county or federal laws, codes, and regulations (whether existing or proposed), affecting the Real Property, including any and all special exceptions, conditions, site plan approvals, proffers, and other similar matters, if any, related to the zoning of the Real Property.
- (d) recorded restrictions common to the subdivision in which the Property is located, so long as they do not impair or interfere with the Buyer's intended use of the Property; and easements of record, so long as they are on the exterior perimeters of the Property lines and do not interfere with Buyer's intended use of the Property.

Before or at Closing, City shall obtain good and clear title to all portions of the Property including, in particular, those portions as to which Florida Fidelity Corporation (by way of transfer from James Wallace) claims an interest under deed to him from the Trustees of the Internal Improvement Fund of the State of Florida, recorded in Official Records Book 350, Page 36 of the Public Records of Manatee County, Florida; and the existing leases of portions of the Property to Boys and Girls Club (subject to the requirements under Section 3.(e) herein) and to Just for Girls shall be terminated, without the necessity of School Board or any other Buyer raising those issues as Title Objections. Provided, however, if Just for Girls provides a Termination Notice under Section 5, herein, there shall be no requirement hereunder for termination of the Just for Girls lease.

8. **Title Commitment/Title Policy.** Within ten (10) days after the Effective Date, each respective Buyer shall procure, at its own cost and expense (a) a title insurance commitment ("Commitment"), issued by Closing Agent or a title insurance agent selected by the Buyer (the "Title Company"), showing City as the record title owner of the Real Property and the terms by which the Title Company agrees to issue to the Buyer an owner's policy of title insurance (the "Title Policy") issued on the standard ALTA Owner's Policy, 1992 form with Florida modifications, in the

amount of the Purchase Price insuring Buyer's fee simple title to the Real Property subject to the terms of Title Policy and the title exceptions therein described; and (b) a photocopy of all documents (the "Title Documents") constituting all the title exceptions shown on the Commitment. As used herein, the term "Title Objection Period" shall mean a period commencing on the first day following the Buyer's receipt of the latest of the Commitment, the Title Documents or the Survey (but in no event later than fifteen (15) days following the Effective Date) and ending ten (10) days thereafter. The term "Approved Exceptions" means the matters of title listed in subparagraphs (a), (b), (c) and (d) of Section 7 of this Agreement. Each Buyer hereby signifies its approval of the Approved Exceptions. In the event (y) the Commitment or the Survey reflects; and/or (z) at any time after the receipt of the Commitment or the Survey and prior to Closing (each a "Post Commitment Matter"), Buyer receives notice of or otherwise discovers that title to the Real Property that it is purchasing hereunder is subject to, any matter other than the Approved Exceptions, the Buyer may object to said matter ("Title Objection") by delivering written notice ("Title Objection Notice") on or before the expiration of the Title Objection Period (except in the event of a Post-Commitment Matter, then within five (5) days of the date Buyer receives notice of such Post-Commitment Matter), and City shall use reasonable efforts to cure such Title Objection. If City is able, City shall notify Buyer in writing of such fact (said notice hereinafter called "City's Title Notice") on or before five (5) days after the delivery of the Title Objection Notice (said period called "City's Notice Period") and in which case the elimination or curing by City of the Title Objections shall be completed on or before the date of Closing. In the event City does not deliver City's Title Notice to Buyer within City's Notice Period, Buyer is deemed to be notified that City intends to cure the Title Objections on or before the date of Closing. In the event City notifies Buyer that City would be unable to cure any Title Objection, Buyer shall be deemed to have waived the applicable Title Objections unless within five (5) days following the expiration of City's Notice Period, the Buyer delivers to City and the Closing Agent written notice terminating this Agreement. Notwithstanding anything herein to the contrary, in the event that Buyer's right to terminate this Agreement pursuant to any provision of this Section does not expire prior thereto, it shall expire upon expiration of the Inspection Period (except in the event of a Post Commitment Matter). As used in this Agreement, the term "Permitted Exceptions" shall mean (a) the Approved Exceptions and (b) all matters other than the Approved Exceptions listed in the Commitment to which the Buyer does not deliver a Title Objection within the Title Objection Period (or within the applicable five (5) days for a Post Commitment Matter), or, having objected, Buyer waives or is deemed to have waived in accordance with the provisions of this Section. City's compliance with this Section shall be conclusively established by Title Company's commitment to issue the Title Policy within a reasonable period following the Closing, subject to only the Permitted Exceptions. Upon the timely delivery of a termination notice pursuant to this Section, Buyer shall deliver the Inspection Documents (hereinafter defined) to City, neither City nor Buyer shall have any further rights or obligations pursuant to this Agreement except for the Buyer's Inspection Obligations and the obligations created pursuant to Section 18, all of which shall continue until fully performed.

9. **Survey.** Within ten (10) days after the Effective Date, School Board shall: (a) procure a current ALTA survey ("Survey") of the Real Property to be transferred hereunder, from a Florida licensed surveyor, certified to School Board, Boys and Girls Club, Just for Girls, the City, Closing

Agent and the Title Company designated by each Buyer; and (b) provide a copy of the Survey to each party to whom the survey is certified. The Survey will include and identify all of the Real Property, will include legal descriptions of each of the School Site, the Boys and Girls Club Site and the Just for Girls Site. If the Survey shows any matters which would affect the marketability of title to the Real Property (except for the Permitted Exceptions), the affected Buyer shall notify City in writing of the specific defects (the "Survey Defects") as if it were a Title Objection under Section 7. Any Survey Defects shall be treated in the same manner as Title Objections are treated under this Agreement.

10. **Inspection Period.**

(a) **Inspection Period.** During the Inspection Period and at any other time prior to Closing, unless this Agreement is terminated prior thereto, the Buyer's Contractors shall be entitled to enter upon the Real Property at all reasonable times during normal business hours to inspect and conduct tests to determine the suitability and feasibility of the Property for that Buyer's intended use. The respective Buyer shall bear the cost of its own inspections and tests. School Board's inspection rights shall cover the School Site, the Retention Pond and the lands over which it expects to acquire easement rights relative to the Retention Pond. Additionally, School Board's Contractors may enter on the Real Property to prepare the Survey of the Real Property or to update the Survey. Provided, however, any inspections of the exiting Boys and Girls Club building(s) on the School Site, shall be reasonably coordinated with the Boys and Girls Club facility staff and scheduled to the maximum practical extent not to interfere with on-going programs.

(b) **During the Inspection Period.** Within ten (10) days after the Effective Date, City shall, to the extent it possesses or has reasonable access to any of the following, provide Buyer with each of the following: true and correct copies of all licenses, permits, and approvals, with respect to the ownership and operation of the Real Property, including building permits and certificates of occupancy, if any; any surveys, as-built engineering and architectural plans, drawings, specifications, which City or City's agents have relating to the Real Property; true and correct copies of any and all environmental reports, proposals, studies, analyses, and notices of information of any kind relating to or affecting the environmental condition of the Real Property or any portion thereof; notices of assessments (special or otherwise), real property *ad valorem* tax bills, notices, or correspondence from governmental entities; maintenance, property and any other records relating to the Real Property; any building or aerial photographs; governmental approvals for zoning, platting, utility services or other matters; copies of any service contracts; copies of any title insurance policies; and such additional information concerning the Real Property as Buyer may reasonably request. All documents and other materials delivered to or made available to Buyer pursuant to this Section or otherwise and all copies thereof are hereafter called the "Documents." The term "Inspection Documents" means the Documents and all studies, reports or test results obtained by the Buyer in connection with its inspection of the Property. The Buyer shall deliver all of the Inspection Documents to City on the first to occur of (i) such time as Buyer determines that it shall not acquire the Property, or (ii) such time as this Agreement shall have terminated for any reason.

(c) **Inspection Obligations.** Each Buyer's Contractors shall: (a) not unreasonably interfere with the operation and maintenance of the Real Property; (b) not damage any part of the Property; (c) not injure or otherwise cause bodily harm to City or any existing tenant or, their agents, contractors and employees; (d) not permit any liens to attach to the Property by reason of the exercise of its rights hereunder; and (e) restore the surface of the Real Property to substantially the condition in which the same was found before any permitted inspections or tests were undertaken. The obligations of Buyer created pursuant to this Section are called "Buyer's Inspection Obligations," and shall survive the Closing or any termination of this Agreement.

(d) **Environmental Studies.** As additional consideration for the transaction contemplated herein, each Buyer agrees that it will provide to City immediately following the receipt of same by that Buyer copies of any and all reports, tests or studies involving Hazardous Materials on, under or at the Real Property which reports, tests or studies shall be addressed to both City and the Buyer at no cost to City; provided, however, Buyer shall have no obligation to cause any such tests or studies to be performed on the Real Property. In the event that such reports, tests or studies indicate the existence or reasonable potential existence of any Hazardous Materials on, under or at the Real Property, the Buyer may terminate this Agreement by giving written notice to the City prior to the expiration of the Inspection Period; and neither City nor Buyer shall have any further rights or obligations pursuant to this Agreement except for the Buyer's Inspection Obligations and the obligations created pursuant to Section 18, all of which shall continue until fully performed.

11. **Closing Costs and Documentary Stamp Tax Indemnity**

(a) **Closing Costs.** For each transfer, the Buyer shall pay any documentary stamp tax and the cost of the Title Policy; and in each transfer the City shall pay the cost of recording any corrective title instruments. The City or School Board, as applicable, and Buyer shall share equally the costs of recording the deed for each transfer and the costs of recording any easements or agreements described herein benefiting the respective parties. Each party shall be responsible for its own attorneys fees.

(b) **Title and Due Diligence Costs.** The costs of the Survey shall be shared as follows: (i) the three parties shall share equally the cost of the map of the boundary survey depicting all of the Properties together in proportion to their respective parcel acreages; (ii) each Buyer shall pay for the cost of any survey or site plan showing only its Property or Properties; and (iii) the cost of any survey or site plan showing only the Retention Pond shall be paid by the School Board. Each Buyer shall pay all costs of all soil tests, environmental tests, hydrological studies, and other tests associated with its due diligence, zoning and permitting of its Properties.

12. **Proration of Taxes and Assessments.** At Closing, the City shall, in accordance with the statutory requirements set forth in Section 196.295, Florida Statutes, deposit in escrow with the County Tax Collector an amount equal to any real, personal and intangible property taxes for current

year for the Property being transferred, prorated to the Closing date. This amount shall be based upon the current assessment and millage rate. If the actual taxes vary from the figures used to close this transaction, City shall pay appropriate adjustments upon demand, which demand shall be made no later than December 31, 2009. There shall be no proration of any expenses related to the operation of the Property unless specifically and expressly agreed. Certified liens levied by any governmental authority for which the work has been substantially completed shall be paid by City, and City may use all or any portion of the cash to close to pay off or satisfy such liens concurrently with Closing. Pending liens and certified liens for which the work has not been substantially completed shall be assumed by Buyer. The provisions of this Section shall survive the Closing.

13. **Representations, Warranties and Covenants of City and Buyer.**

(a) **Representations and Warranties of City.** As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated herein, City represents and warrants to and covenants with each Buyer with respect to the Property to be transferred by the respective City to the Buyer that the following are true and correct as of the date hereof, and shall be true and correct as of the Closing:

(i) Except with portions of the Property currently leased to Boys and Girls Club and Just for Girls, respectively, which leases shall be terminated at Closing (except as may be provided in Sections 5. And 7., herein), and ongoing consensual use by the Little League program, there is no party in possession of, or that has a right to possess, any portion of the Property as lessee, tenant at sufferance, licensee, or otherwise.

(ii) City has not received any written notice from any governmental agency that the Property is not in full compliance with all applicable laws, statutes, ordinances, regulations, codes, covenants, conditions and restrictions of any kind or nature affecting the Property or any part of it.

(iii) All payments required to be made to contractors, subcontractors, mechanics, materialmen and all other persons in connection with work done or services performed with respect to the Property have been made, and there is no basis for the filing of any lien against the Property.

(iv) City has disclosed in writing to Buyer any material, adverse fact or condition known to City regarding the Property, it being understood that Buyer's inspection of the Property shall not constitute a waiver of or otherwise affect this representation and warranty

(v) Except as disclosed, no public or private assessments have been made against the Property which remain unpaid, including without limitation those for the construction of utility lines and apparatus, streets, sidewalks and curbs.

(vi) City has no knowledge of any subsurface condition which would impair the usability or developability of the Property for Buyer's intended use, which has not already been disclosed to Buyer in writing.

(vii) Except as disclosed, there are no outstanding obligations or assessments for sewer, water, drainage, roadway or other improvements which presently impact upon the Property by reason of any existing improvements on the Property.

(viii) All utilities necessary for the use of the Property as presently being used are available, contiguous and adjacent to the boundary line of the Property, or accessible from adjacent public rights-of-way, and are adequate to fully service the Property, including, without limitation, potable water, electricity, cable communications systems, and telephone services, all existing utilities enter the Property through adjoining public streets or private land in accordance with valid public or private easements that will inure to the benefit of Buyer and its successors and assigns, and all of said utilities are operating, with installation and connection charges paid in full.

(ix) To the best of City's knowledge: (i) prior to City obtaining title to the Property, the activities, operations and business conducted at or on the Property were in compliance with all Environmental Laws; (ii) after City obtained title to the Property, the activities, operations and business conducted at or on the Property have been at all times in compliance with all Environmental Laws; (iii) no further action is required to remedy any environmental condition or violation of, or to be in full compliance with, any Environmental Laws; and (iv) no lien has been imposed on the Property by any federal, state or local governmental or quasi-governmental entity in connection with any environmental condition, the violation or threatened violation of any Environmental Laws or the presence of any Hazardous Materials on the Property.

(x) City is not aware of any pending or threatened litigation or proceedings before any administrative agency in which any person or entity alleges the violation or threatened violation of any Environmental Laws or the presence, release, threat of release or placement on or at the Property of any Hazardous Materials, or of any facts which would give rise to any such action, nor has City (i) received any notice (and City has no actual or constructive knowledge) that any governmental or quasi-governmental authority or any employee or agent thereof, has determined, threatened to determine or required an investigation to determine that there has been a violation of any Environmental Laws at, on or in connection with the Property or that there exists a presence, release, threat of release or placement of any Hazardous Materials on or at the Property, or the use, handling, manufacturing, generation, production, storage, treatment, processing, transportation or disposal of any Hazardous Materials at or on the Property; (ii) received any notice under the citizen suit provision of any Environmental Law in connection with the Property or any facilities, operations or activities conducted thereon, or any business conducted in connection therewith; or (iii) received any request for inspection, request for information, notice, demand, administrative inquiry or any formal or informal complaint or claim with respect to or in connection with the violation or threatened violation of any Environmental Laws or existence of Hazardous

Materials relating to the Property or any facilities, operations or activities conducted thereon or any business conducted in connection therewith.

(xi) The execution and delivery by City of, and City's performance under, this Agreement are within City's powers and have been duly authorized by all requisite parties, and that the person executing this Agreement on behalf of City has the authority to do so.

(xii) This Agreement constitutes the legal, valid and binding obligation of City, enforceable in accordance with its terms.

(xiii) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which City is a party or by which City might be bound.

(xiv) **Radon.** Florida Statutes requires the following notice be given: "RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Public Health Unit."

(b) **Covenants of City.** City covenants to Buyer as follows:

(i) From and after the Effective Date, through and including the Closing Date, City shall not apply for any change whatsoever of the current zoning of any Property or otherwise seek to change in any manner whatsoever the nature of the use of the Property or seek any variance of such zoning of the Property except in conjunction with the other parties to this Agreement.

(ii) From and after the Effective Date, through the Closing Date, City shall not transfer, convey, or encumber (unless City shall remove such encumbrance on or before the Closing Date) in any manner whatsoever any portion of the Property or any rights therein, or enter into any easement, license or agreement (or amend any existing easement, license or agreement) granting to any person or entity any right with respect to the Property or any portion thereof.

(iii) That it shall not direct any person to make, nor shall it consent to any other person making, any material changes to the Property or any portion thereof from the date of this Agreement through the Closing Date without the prior written consent of Buyer.

(c) **Buyer's Representations and Warranties.** Buyer represents and warrants to City, its successors and assigns, which representations and warranties are now and on the Closing Date shall be true and correct, as follows:

(i) The execution and delivery by Buyer of, and Buyer's performance under, this Agreement are within Buyer's powers and have been duly authorized by all requisite parties, and that the person executing this Agreement on behalf of Buyer has the authority to do so.

(ii) This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable in accordance with its terms.

(iii) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Buyer is a party or by which Buyer might be bound.

14. **Casualty Loss/Condemnation.**

(a) **Casualty Loss.** Prior to Closing, risk of loss with regard to any Property shall be borne by the City. If any Property should be damaged or destroyed by an insured or uninsured loss of more than Fifty Thousand Dollars (\$50,000) prior to Closing, then Buyer may elect to terminate this Agreement by written notice to City within ten (10) days of receipt by Buyer of City's written notice to Buyer of damage or destruction to the Property (which notice must include a good faith estimate of the cost to repair and the extent, if any, to which the damage or destruction is insured), and neither Buyer nor City shall have any further obligation to each other hereunder with respect to that Property. Failure of Buyer to give notice of termination shall be deemed a waiver of Buyer's right to terminate, in which event all insurance proceeds shall be paid or assigned to Buyer at Closing, and the Purchase Price and cash due at Closing shall be adjusted downward to the extent the cost of repair or replacement exceeds insurance funds paid or assigned to Buyer.

(b) **Condemnation.** City agrees to give Buyer written notice of any action or proceeding for condemnation of any part of the Property, which may result in the taking of all or part of a Property. Upon such notification, Buyer shall have the right, to be exercised within ten (10) days after receipt of such notice, to terminate this Agreement. If Buyer does not elect to terminate this Agreement, then this Agreement shall remain in full force and effect, Buyer shall have the right to participate in the negotiation of any condemnation awards or other compensation from taking and City will credit to Buyer at Closing the amount of any monies or other compensation received by City to date by reason of such taking, and will assign to Buyer the right to any condemnation awards or proceeds received after such date relating to the Property and City shall convey the portion of the Property, if any, which remains after the taking. In the event Buyer fails to timely deliver written notice of termination pursuant to this Section, Buyer shall be deemed to have waived its right of termination pursuant to this Section.

(c) **Termination Pursuant to Paragraphs (a) or (b).** Upon the timely delivery of a termination notice pursuant to either Paragraph (a) or (b): (i) Buyers shall deliver the Inspection Documents to City; and (ii) following (i), no party shall have any further rights or obligations pursuant to this Agreement except for the Buyer's Inspection Obligations and the obligations created pursuant to Section 18, all of which shall continue until fully performed.

15. **Closing Documents.** At Closing, in addition to any other documents required to be delivered hereunder, the following documents shall be executed and delivered to the Closing Agent to be held in escrow pending completion and funding:

(a) **Authority of City.** City shall deliver to Buyer satisfactory evidence of its due and proper authority and power to perform its obligations hereunder and to execute and deliver all documents required hereby.

(b) **Authority of Buyer.** Buyer shall deliver to City satisfactory evidence of its due and proper authority and power to perform its obligations hereunder and to execute and deliver all documents required hereby.

(c) **Deed.** City shall execute and City shall deliver to Buyer the Deed conveying the Property to Buyer.

(d) **Bill of Sale and General Assignment.** City and Buyer shall execute and City shall deliver to Buyer the Bill of Sale and General Assignment conveying and/or assigning City's right title and interest to the Personalty to Buyer.

(e) **FIRPTA Affidavit.** City shall execute and deliver to Buyer a certificate certifying that City is not a foreign person, corporation or partnership or state within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

(f) **Easements, Shared Maintenance Agreements, Leases, and Joint Use Agreements.** The easements, shared maintenance agreements, leases and joint use agreements described in Section 3 of this Agreement. The parties hereby agree that the easements, shared maintenance agreements, leases and joint use agreements entered into as the date of Closing shall contain the terms and agreements between the parties and shall control over any terms as provided in any attachments or exhibits to this Agreement. All attachments and exhibits to this Agreement, including the Building Lease between the Boys and Girls Club and the School Board and the Joint Use Agreements between the parties shall serve as exhibits only and do not contain the final terms between the parties.

(g) Terminations of the current leases of portions of the Property between City and Boys and Girls Club and Just for Girls, respectively.

(h) **Other Required Documents.** City and Buyer shall execute such other documents as may be required by the law of the jurisdiction in which the Real Property is located. In addition, City will execute and deliver to the Closing Agent the Grantor's Affidavit and such federal income tax reports respecting the sale of the Property as are required by the Internal Revenue Code of 1986, as amended.

16. **Other Transactions Involving the Parties.** The City and the School Board are involved in several other transactions which are described in this Section 16 and which have been in negotiation along with the transactions which are the subject of this Agreement. City and School Board agree to continue to seek agreement on those transactions and to pursue them in good faith to completion. However, it is acknowledged and agreed upon by all parties to this Agreement that the terms in this Section 16 are not considered conditions to Closing, as defined herein.

(a) **Phase II.** The project collectively referred to as "Phase II" is envisioned to include the following, all as approximately depicted on Exhibit G attached to this Agreement, and all of which shall be addressed by one or more binding agreements among Manatee County, Manatee Fruit Company, School Board and City, containing the following agreements and such other customary terms and provisions to which the parties shall agree (the Phase II Contract"):

(i) the acquisition of land by School Board from Manatee County and from Manatee Fruit Company for expansion of Palmetto High School and related educational facilities;

(ii) agreements between the City and Manatee Fruit Company regarding property needed for the realignment of 23rd Street West, pursuant to which : (1) City will seek vacation of existing right of way for 23rd Street West, to allow for the realignment of 23rd Street West to accommodate the projects and facilities described herein; (2) City will seek vacation of existing right of way for 8th Avenue; and (3) Manatee Fruit Company will grant City temporary easement for use of the vacated right of way for 23rd Street West as a road until the realignment of the 23rd Street West roadway has been completed;

(iii) Manatee Fruit Company shall dedicate to City land for road right of way for realigned 23rd Street West and the extension of 10th Avenue West;

(iv) School Board shall transfer land, as depicted on Exhibit G to City for a portion of the 10th Avenue West extension, and shall transfer land to the east of the 10th Street West extension, as depicted on Exhibit G to Manatee Fruit Company;

(v) City will grant School Board a temporary use easement over the 10th Avenue West extension area to 10th Avenue West for educational and agricultural uses until such time as a public roadway has been constructed by City and is in use;

(vi) City shall design and construct the realigned 23rd Street West and the extension of 10th Avenue West, when funding becomes available:

(vii) Manatee County shall agree to grant City temporary construction easements as necessary for construction of the realigned 23rd Street West roadway and park improvements;

(viii) City will acquire two parcels of real property near Blackstone Park, as approximately depicted on Exhibit G from Manatee Fruit Company, for among other things, the

location and operation of little league ball fields to replace those on the Property being transferred under Section 2 of this Agreement;

(ix) City may use the net proceeds of the transfers for the sale of City Land (excluding CRA owned properties) contemplated by this Agreement to design and construct the little league ball field complex on the expanded Blackstone Park property and will relocate the light poles for the little league ball field facility from the School Site to the replacement facility at Blackstone Park; and

(x) Manatee County shall: (1) be responsible for operation and maintenance of the little league ball field facility, however Manatee County may coordinate with the Little League for participation in payment of operation and maintenance costs of the little league ball field facility; and (2) lease the little league ball field facility at expanded Blackstone Park to the Little League under mutually agreeable terms and condition.

(b) **CRA Contract.** On or before the time of Closing of the transactions contemplated by this agreement, Palmetto CRA and School Board shall enter into a separate agreement (the "CRA Contract") under which (i) Palmetto CRA will transfer to School Board 1.64 +/- acres of its land on 8th Street West adjacent to the existing Palmetto Elementary School for \$1,239,547.30; (ii) School Board will reimburse Palmetto CRA for the costs of demolition of the building on the 1.64 +/- acre site, which costs are approximately \$18,000; (iii) Palmetto CRA will cooperate with the School Board's application to the City to consider rezoning the School Board's .9 +/- acre parcel on the northwest corner of 10th Avenue West and 7th Street West to a zoning classification to permit office and/or commercial use in anticipation of the School Board's sale of the property; and (iv) the parties shall cooperate with efforts by the City to vacation of the 8th Street West extension beginning 217.5 feet East of the Eastern right-of-way line for 10th Avenue West to the Eastern right-of-way line of 9th Avenue West and for the vacation of 9th Avenue West from the Southern right-of-way line for 9th Street West to the Southern right-of-way line for 8th Street West, as those roadways divide the campus of Palmetto Elementary School from the 1.64 +/- acre parcel (which may be conditioned upon the grant of an easement from School Board to the City for utilities and emergency access). The CRA Contract shall contain such other customary terms and provisions as the parties to it shall agree upon, and shall provide for closing of the transfer promptly following the vacation of the extension of 8th Street West by the City, or such earlier time as School Board shall determine.

167. **Assignment.** No party may assign any or all of its rights and obligations pursuant to this Agreement (whether by direct or indirect transfer or assignment) without the other parties' prior written consent.

178. **Brokers/Indemnification.** The parties represent and warrant to each other that they have not dealt with any realtor, broker, salesperson, or agent in connection with this Agreement. In the event of any breach of the foregoing representations, the breaching party shall indemnify and hold the others harmless from any cost, expense, or liability (including reasonable attorneys' fees) for any compensation, commissions or charges claimed by any realtor, broker, or agent in connection

with this Agreement or by reason of any act of such breaching party. The representations, warranties, and indemnities contained in this Section shall survive the recession, cancellation, termination or consummation of this Agreement.

189. **Notices.** Any notice or communication shall be in writing and shall be sent by either: (a) personal delivery service with charges therefor billed to shipper; (b) overnight or expedited delivery service with charges therefor billed to shipper; (c) facsimile transmission provided a confirmation copy is mailed pursuant to paragraph (d) below; or (d) United States mail, postage prepaid, registered or certified mail, return receipt requested. Any notice or communication sent as above provided shall be deemed given or delivered: (a) upon receipt if personally delivered (provided that such delivery is confirmed by the courier delivery service); (b) if sent by United States Mail, on the date appearing on the return receipt, or if there is no date on such return receipt, the receipt date shall be presumed to be the postmark appearing on such return receipt; or (c) on the date of actual delivery by any overnight or expedited delivery service or actual receipt if sent by facsimile transmission (provided receipt is confirmed as provided above). All notices, requests or demands which any party is required or may desire to give to any other party under any provision of this Agreement must be delivered to the other parties at the following address:

School Board: Manatee County School Board
215 Manatee Avenue West
Palmetto, Florida 34205
Attn: Tim McGonegal, Superintendent
Fax: 941/708-8686

With copy to: Manatee County School Board
The Matzke Complex
2802-B 27th St. East
Bradenton, FL 34208
Attn: Michael Pendley, School Planner
Fax: (941) 708-8832

With copy to: Mark P. Barnebey
Kirk Pinkerton, P.A.
1301 6th Avenue West, Suite 401
Palmetto, Florida 34205
Fax: 941- 744 -9691 and 941-364-2490

City: City of Palmetto
518 8th Avenue West
Palmetto, Florida 34221
Attn: Shirley Bryant, Mayor
Fax: (941) 722-8557

With a copy to:
City of Palmetto
518 8th Avenue West
Palmetto, Florida 34221
Attn: Jim Freeman, City Clerk
Fax: 941/723-4576

Boys and Girls Club: Boys and Girls Club of Manatee County, Inc.
6220 Manatee Avenue West, Suite 201
Bradenton, Florida 34209
Attn: Carl Weeks, Executive Director
Fax: 941/761-2462

With a copy to: Timothy A. Knowles, Esq.
Porges, Hamlin, Knowles, et al.
1205 Manatee Avenue West
Bradenton, Florida 34205
Fax: 941/746-4160

Just for Girls: Manatee County Girls Club, Inc.
936 14th Street West
Bradenton, Florida 34205
Attn: Becky Canesse, Executive Director
Fax: (941) 747-8261

With a copy to: John Kaklis, Esq.
Weiffenbach & Kaklis
538 12th Street West
Bradenton, Florida 34205
Fax: (941) 746-6527

or to such other address as any party may designate by written notice to the other party.

19. **Remedies.** In the event that any party fails to timely comply with any condition, covenant or obligation it has hereunder, the other parties shall have the right to:

(a) Terminate this Agreement by giving written notice thereof to the other parties, whereupon no party shall have any further rights or obligations hereunder; or

(b) Enforce specific performance of the defaulting party's obligations under this Agreement, and/or seek damages resulting from the defaulting party's default.

201. **Miscellaneous.**

(a) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties. No representation, promise or inducement not set forth herein shall be binding upon any party.

(b) **No Oral Modifications.** This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of all of the parties.

(c) **Binding Effect.** The provisions of this Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors.

(d) **Time of Essence.** TIME IS OF THE ESSENCE OF THIS AGREEMENT.

(e) **Delivery of Possession.** Except as expressly provided herein with respect to the building leased by Boys and Girls Club, possession of the Property shall be granted to Buyer upon completion of Closing and Buyer's performance of its obligations.

(f) **Calculation of Time.** If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended through the close of business on the next Business Day. Unless otherwise expressly stated, time periods shall be calculated in calendar days.

(g) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement.

(h) **Captions.** Captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement nor the intent of any provision hereof.

(i) **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Florida.

(j) **No Recordation.** No party shall have the right to record this Agreement.

(k) **No Waiver.** No failure of any party to exercise any power given such party hereunder or to insist upon strict compliance by any other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of any party's right to demand exact compliance with the terms hereof. Nothing contained herein or in the Introduction to this Agreement shall be construed as a waiver of any party's rights in the event of a condemnation proceeding.

(l) **Construction of Agreement.** The parties acknowledge and agree that they have been represented by counsel and that each of the parties has participated in the drafting of this Agreement. Accordingly, it is the intention and agreement of the parties that the language, terms and conditions of this Agreement are not to be construed in any way against or in favor of any party hereto by reason of the responsibilities in connection with the preparation of this Agreement.

(m) **Public Disclosure Affidavit.** The parties confirm that, before entering into this Agreement, they have complied with Section 286.23(2), *Florida Statutes* to the extent applicable to any transaction described in this Agreement.

(n) **Attorneys' Fees and Costs.** In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees (including appeal and recovery of judgment costs and fees) from the non-prevailing party.

(o) **Delegation of Authority.** After execution of this Agreement by the parties, the duties and responsibilities under this Agreement of the School Board may be performed by the Superintendent of Schools or the Superintendent's designee.

(p) **Effect of Termination of Agreement.** Unless the parties agree otherwise, the termination of this Agreement with respect to one Buyer as to the Property which it has agreed to purchase shall terminate this Agreement entirely as to all Buyers and City, and all Buyers and City shall have no further rights nor obligations pursuant to this Agreement except for the Inspection Obligations and the obligations created pursuant to Section 18, all of which shall continue until fully performed.

IN WITNESS WHEREOF, the parties hereto set their respective hands and affixed their seals on the day and year indicated below.

**Signed, sealed and delivered
in the presence of:**

	SCHOOL BOARD OF MANATEE COUNTY, FLORIDA, a public body corporate
_____ Signature	By: _____
_____ Print Name	_____ Chairman
_____ Signature	ATTEST:
_____ Print Name	_____ Superintendent
Approved to Form and Legal Sufficiency By: _____	Date Executed: _____, 2009

CITY:

CITY OF PALMETTO, a municipal
corporation of the State of Florida

By: _____

Print Name: _____

Its: Mayor _____

Attest:

By: _____
Jim Freeman, City Clerk

Date Executed: _____, 2009

**Signed, sealed and delivered
in the presence of:**

Signature

Print Name

Signature

Print Name

**BOYS AND GIRLS CLUB OF MANATEE
COUNTY, INC., a Florida not-for-profit
corporation**

By: _____

Name: _____

Title: _____

Date Executed: _____, 2009

**Signed, sealed and delivered
in the presence of:**

Signature

Print Name

Signature

Print Name

**MANATEE COUNTY GIRLS CLUB, INC., a
Florida not-for-profit corporation d/b/a Just
for Girls**

By: _____

Name: _____

Title: _____

Date Executed: _____, 2009

List of Exhibits

- A- legal description of Property
- B- site plan of Property
- C- sketch of Retention Pond
- D- form of lease between School Board and Boys and Girls Club
- E- form of Stormwater Drainage and Retention Easement
- F- form of joint use agreement between School Board and Boys and Girls Club
- G- site plan for Phase II

PREPARED BY AND AFTER RECORDING

RETURN TO:

Jerilyn Hattendorf, Esquire
Kirk-Pinkerton, P.A.
1301 6th Avenue West, Suite 401
Bradenton, Florida 34205
(941) 364-2400

_____ [Space Above This Line for Recording Data] _____

**NON-EXCLUSIVE TEMPORARY ACCESS,
CONSTRUCTION & STAGING EASEMENT**

THIS EASEMENT is entered into this _____ day of _____, 2009 by and among **The City of Palmetto**, a Florida municipal corporation ("City" or "Grantor") for the benefit of **The School Board of Manatee County, Florida, a public body corporate** ("School Board" or "Grantee").

WITNESSETH, that the GRANTOR, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable considerations paid, the receipt of which is hereby acknowledged, does hereby grant, and deliver unto the Grantee, its successors and assigns, a NON-EXCLUSIVE TEMPORARY ACCESS, CONSTRUCTION AND STAGING EASEMENT for in over and upon the following described land of the GRANTOR, as depicted on **Exhibit "A"**, attached hereto (the "Easement Property") for use as the purpose of right of a construction staging area for storing a construction trailer, certain construction materials and the right of ingress and egress to the Easement Property.

It is understood and agreed by the parties hereto that the rights granted herein shall terminate after the completion of a new elementary school by Grantee upon property located immediately adjacent to the Easement Property. Upon termination, GRANTEE hereby agrees to restore the land to substantially the same condition that existed immediately prior to the date of said easement.

GRANTOR covenants with the GRANTEE that the GRANTOR is lawfully seized of said land in fee simple; that GRANTOR has good right and lawful authority to grant this easement and shall take no action to interfere with the GRANTEE'S lawful use of said easement; that the GRANTOR hereby fully warrants the easement being granted and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, Grantor has caused this Easement to be executed as of the day and year first above written.

ATTEST: James R. Freeman
City Clerk

CITY OF PALMETTO, FLORIDA
BY AND THROUGH THE CITY
COMMISSION OF THE CITY OF
PALMETTO

By: _____
James Freeman, City Clerk

By: _____
Shirley G. Bryant, Mayor

STATE OF Florida
COUNTY OF Manatee

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by Shirley G. Bryant, Mayor of the City of Palmetto, a municipal corporation of the State of Florida, who is personally known to me or has produced _____ as identification.

NOTARY PUBLIC Signature

(SEAL)

G:\DOCUMENT\MPB\MC School Board\Palmetto property\Temporary Construction Staging Easement\Temporary Construction Staging Easement from City to MCSB v2 with Attachments.DOC

CONSENT OF TENANT

The undersigned being the tenant under that certain Lease dated May 21, 1990 between the City of Palmetto, a Municipal Corporation and Manatee County Girls Club, Inc., a Florida not-for-profit corporation d/b/a Just for Girls ("Just for Girls") (collectively the "Lease"), hereby consents to the Easement to which this Joinder and Consent is attached and notwithstanding any terms in the Lease contrary to the Easement agrees that the Lease is hereby made subject to and subordinate to the operation of the Easement.

**Signed, sealed and delivered
in the presence of:**

MANATEE COUNTY GIRLS CLUB, INC.,
a Florida not-for-profit corporation d/b/a Just
for Girls

Signature

Print Name

By: _____

Name: _____

Title: _____

Signature

Print Name

Date Executed: _____, 2009

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by _____, as _____ of MANATEE COUNTY GIRLS CLUB, INC., a Florida not-for-profit corporation d/b/a Just for Girls, on behalf of the corporation, who is personally known to me or has produced _____ as identification.

*

(*Print Name of Witness)

Notary Public - State of _____

My Commission Expires: _____

My Commission Number: _____

EXHIBIT "A"
EASEMENT PROPERTY

Temporary Construction and Staging Easement locations to be located upon a portion of the following premises (which are more particularly described on the attached sketch):

DESCRIPTION

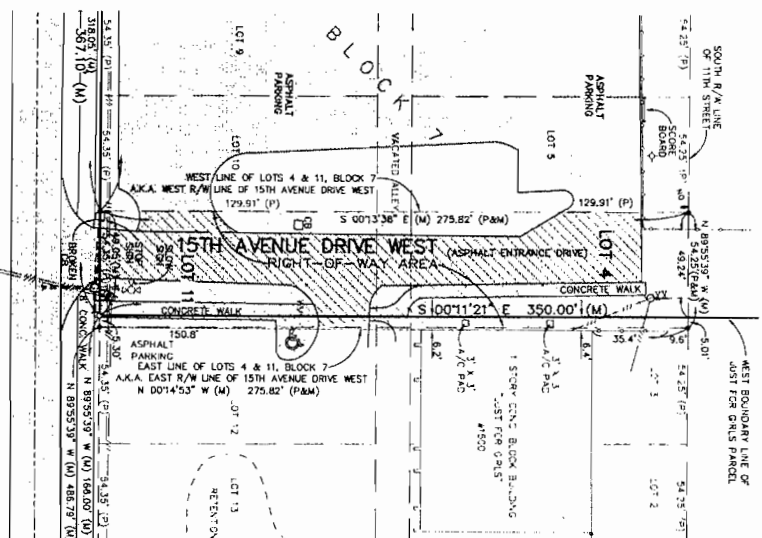
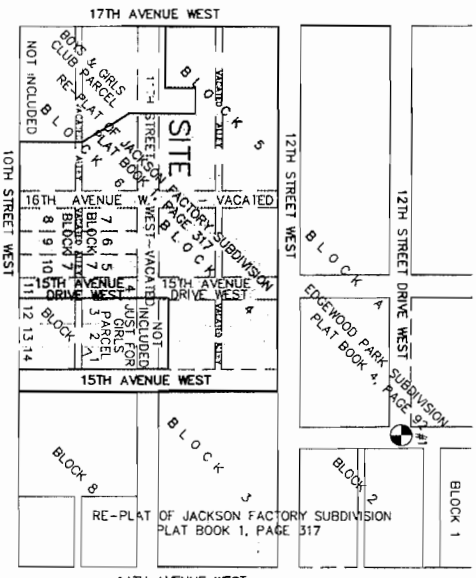
A PORTION OF BLOCK 4 AND BLOCK 7, RE-PLAT OF JACKSON FACTORY SUBDIVISION, AS RECORDED IN PLAT BOOK 1, PAGE 317, PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, TOGETHER WITH THAT PORTION OF THE VACATED ALLEY, VACATED BY RESOLUTION 90-11, RECORDED IN OFFICIAL RECORDS BOOK 1298, PAGE 1977, AND IN OFFICIAL RECORDS BOOK 1569, PAGE 3457, PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, LYING WITHIN THE FOLLOWING DESCRIBED PARCEL BOUNDARY:

COMMENCE AT THE SOUTHWEST CORNER OF LOT 8, BLOCK 6, RE-PLAT OF JACKSON FACTORY SUBDIVISION, AS RECORDED IN PLAT BOOK 1, PAGE 317, PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, SAID POINT BEING THE POINT OF INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF 17TH AVENUE WEST AND THE NORTH RIGHT-OF-WAY LINE OF 10TH STREET WEST; THENCE S89°55'39"E, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 637.10 FEET FOR A POINT OF BEGINNING; THENCE CONTINUE S89°55'39"E, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 166.00 FEET; THENCE N00°11'21"W, 350.00 FEET; THENCE N89°55'39"W, 166.00 FEET; THENCE S00°11'21"E, 350.00 FEET TO THE POINT OF BEGINNING.
THE ABOVE ALL LYING AND BEING IN SECTION 15, TOWNSHIP 34 SOUTH, RANGE 17 EAST, MANATEE COUNTY, FLORIDA.

CONTAINING 58,101 SQUARE FEET OR 1.33 ACRES, MORE OR LESS.

DATE	CONSTRUCTION TRAILER LOCATION
5/20/09	

PALMETTO ELEMENTARY SCHOOL SITE
PREPARED FOR:
THE SCHOOL BOARD OF MANATEE COUNTY



ACREAGE TABULATION FOR 15TH AVENUE DRIVE WEST		
JUST FOR CAR'S CLUB PARCEL:	1.424 SQUARE FEET	0.031 ACRES
SCHOOL BOARD PARCEL:	13,553 SQUARE FEET	0.313 ACRES
TOTAL R/W PARCEL:	14,977 SQUARE FEET	0.344 ACRES

AREA ACCEPTED FOR R/W OF
15TH AVENUE DRIVE WEST

R/W DETAIL FOR 15TH AVENUE DRIVE WEST
SCALE: 1" = 40'

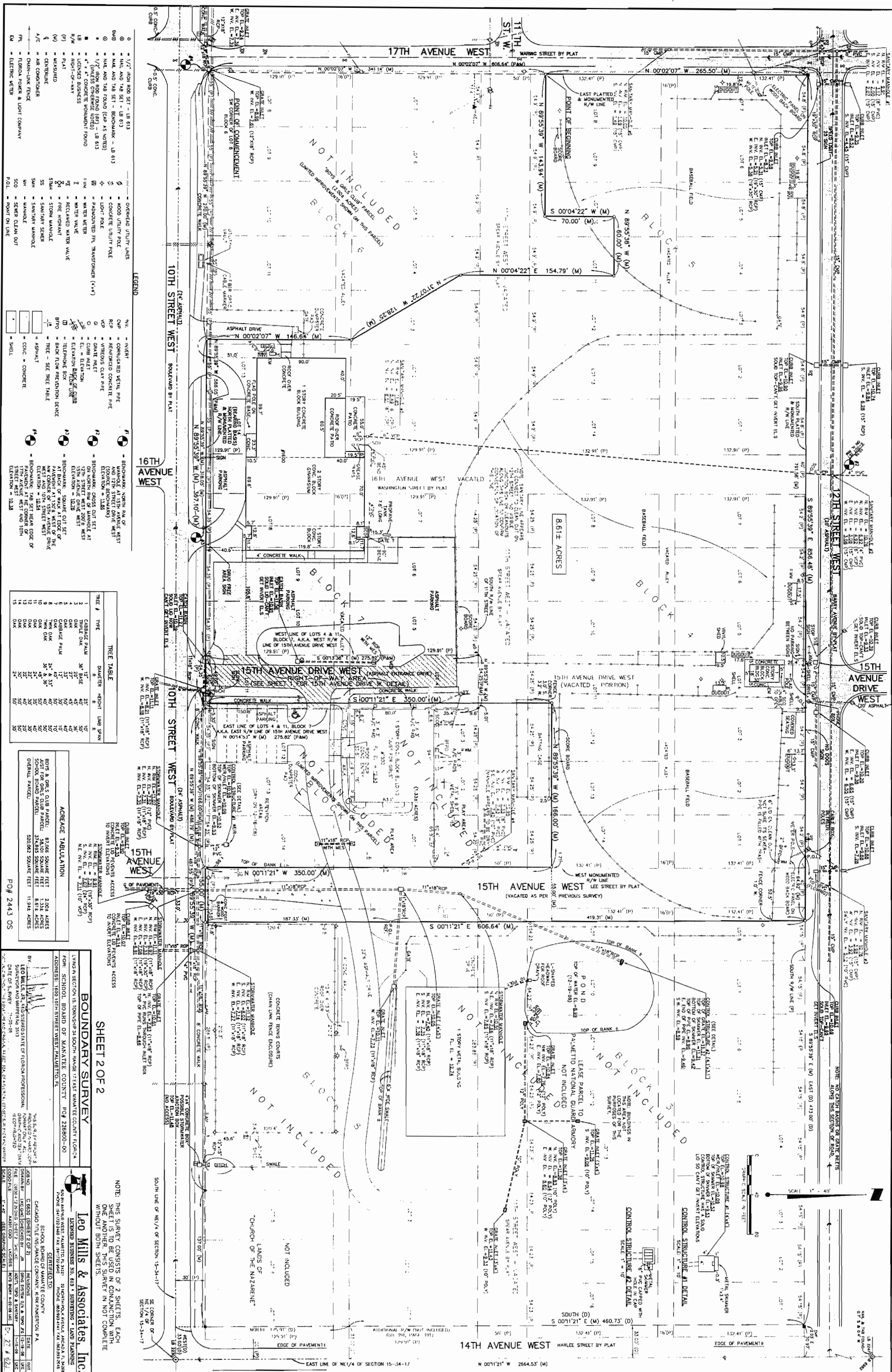
[illegible]

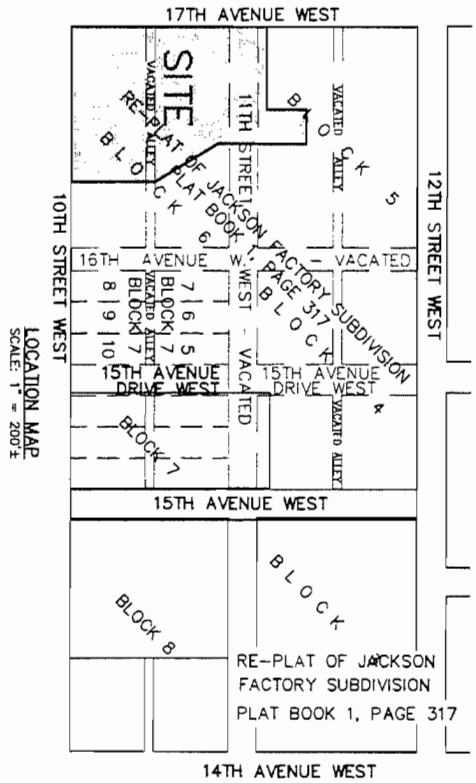
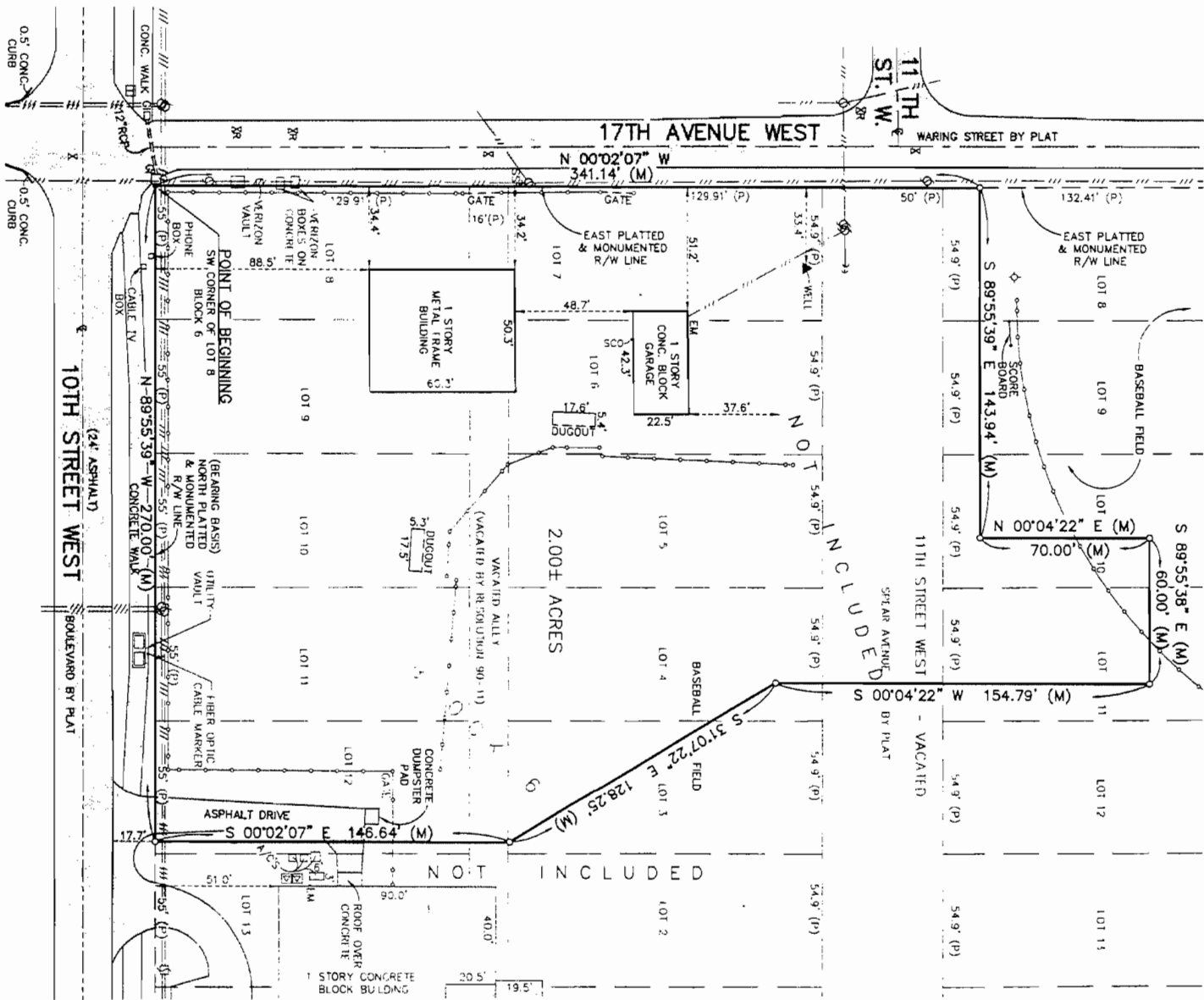
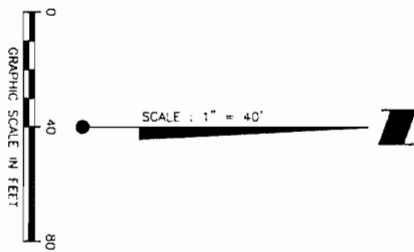
1. BEARINGS SHOWN HEREON REFER TO THE NORTH RIGHT-OF-WAY LINE OF 10TH STREET WEST BEING ASSUED AS N89°55'33"W.
2. UNDERGROUND ENCROACHMENTS OR IMPROVEMENTS OTHER THAN SURVEY SHOWN, IF ANY, NOT LOCATED FOR PURPOSES OF THIS SURVEY.
3. THE SUBJECT LAND LIES IN ZONES "R" AND "C" OF THE FLOOD INSURANCE RATE MAP (FIRM), COMMUNITY-PANFL NUMBER 120150-0003-C (DATED 11-16-83). SUBJECT TO VERIFICATION.
4. THIS SURVEY HAS BEEN PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND THEREFORE MAY NOT NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.
5. USE OF THIS SURVEY BY ANYONE OTHER THAN THOSE CERTIFIED TO WILL BE AT THEIR SOLE RISK WITHOUT LIABILITY TO THE SURVEYOR.
6. SUBJECT TO EASEMENTS, CEDICATIONS AND RESTRICTIONS OF RECORD.
7. THE DESCRIPTION SHOWN HEREON WAS CREATED BY THIS FIRM FOR THE PURPOSE OF A MODEL DIVISIONS AND IS BASED ON THE RECORDS OF THE FIRM. THE SURVEY WAS NOT FIELD CHECKED OR COMPLETED BY THIS FIRM ON 4-30-08, LAST REVISED ON 6-20-08, AND INFORMATION PROVIDED BY THE CLIENT.
8. VACATED RIGHT-OF-WAYS AND ALLEYS SHOWN HEREON WERE VACATED BY RESOLUTION NO. 90-11 AND RECORDED IN OFFICIAL RECORDS BOOK 1298, PAGE 1977, PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.
9. THE SUBJECT LAND AS SURVEYED CONTAINS 392,301 SQUARE FEET OR 9.01 ACRES, MORE OR LESS.
10. TREES LOCATED AND SHOWN ON SHEET 2 ARE ONLY THE PORTION OF THE TREES ON SITE AS REQUESTED BY THE CLIENT.

NOTE: THIS SURVEY CONSISTS OF 2 SHEETS. EACH SHEET IS TO BE USED IN CONJUNCTION WITH ONE ANOTHER. THIS SURVEY IN NOT COMPLETE WITHOUT BOTH SHEETS.

PO# 2443 05

EXHIBIT A PART 1 #2 Palmetto Elementary Site





DESCRIPTION

A PORTION OF BLOCKS 5 AND 6, RE-PLAT OF JACKSON FACTORY SUBDIVISION, AS RECORDED IN PLAT BOOK 1, PAGE 317, PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, ALONG WITH THE 11TH STREET WEST VACATED RIGHT-OF-WAY AND THE VACATED ALLEY, LING WITHIN THE FOLLOWING PARCEL BOUNDARY, VACATED BY RESOLUTION 90-11, AS RECORDED IN OFFICIAL RECORDS BOOK 1298, PAGE 1977, AND IN OFFICIAL RECORDS BOOK 1569, PAGE 3457, PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, ALL LING IN SECTION 15, TOWNSHIP 34 SOUTH, RANGE 17 EAST, MANATEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF LOT 8, BLOCK 6, RE-PLAT OF JACKSON FACTORY SUBDIVISION, AS RECORDED IN PLAT BOOK 1, PAGE 317, PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, SAID POINT BEING THE POINT OF INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF 10TH STREET WEST AND THE EAST RIGHT-OF-WAY LINE OF 17TH AVENUE WEST; THENCE N00°02'07"W, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 314.14 FEET; THENCE S89°55'39"E, 143.94 FEET; THENCE N00°04'22"E, 70.00 FEET; THENCE S89°55'38"E, 60.00 FEET; THENCE S00°04'22"W, 154.79 FEET; THENCE S31°07'22"E, 128.25 FEET; THENCE S00°02'07"E, 146.64 FEET TO A POINT ON THE AFOREMENTIONED NORTH RIGHT-OF-WAY LINE OF 10TH STREET WEST; THENCE N89°55'39"W, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 270.00 FEET TO THE POINT OF BEGINNING, CONTAINING 87,066 SQUARE FEET OR 2.00 ACRES, MORE OR LESS.

NOTES:

1. BEARINGS SHOWN HEREON REFER TO THE NORTH RIGHT-OF-WAY LINE OF 10TH STREET WEST BEING ASSUMED AS N89°55'39"W.
2. UNDERGROUND ENCROACHMENTS OR IMPROVEMENTS OTHER THAN THOSE SHOWN, IF ANY, NOT LOCATED FOR PURPOSES OF THIS SURVEY.
3. THE SUBJECT LAND LIES IN ZONES "B" AND "C" OF THE FLOOD INSURANCE RATE MAP (FIRM), COMMUNITY-PANEL NUMBER 120159-0003-C (DATED 11-16-83). SUBJECT TO VERIFICATION.
4. THIS SURVEY HAS BEEN PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND THEREFORE MAY NOT NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.
5. USE OF THIS SURVEY BY ANYONE OTHER THAN THOSE CERTIFIED TO WILL BE AT THEIR SOLE RISK WITHOUT LIABILITY TO THE SURVEYOR.
6. SUBJECT TO EASEMENTS, DEDICATIONS AND RESTRICTIONS OF RECORD.
7. THE DESCRIPTION SHOWN HEREON WAS CREATED BY THIS FIRM FOR THE PURPOSE OF PARCEL DIVISIONS AND IS BASED ON THE BOUNDARY SURVEY OF THE PARENT PARCEL, JOB #C6830 COMPLETED BY THIS FIRM ON 4-30-08, LAST REVISED ON 6-20-08, AND INFORMATION PROVIDED BY THE CLIENT.
8. VACATED RIGHT-OF-WAYS AND ALLEYS SHOWN HEREON WERE VACATED BY RESOLUTION NO. 90-11 AND RECORDED IN OFFICIAL RECORDS BOOK 1298, PAGE 1977, PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.
9. THE SUBJECT LAND AS SURVEYED CONTAINS 87,066 SQUARE FEET OR 2.00 ACRES, MORE OR LESS.

BOUNDARY SURVEY

LING IN SECTION 15, TOWNSHIP 34 SOUTH, RANGE 17 EAST, MANATEE COUNTY, FLORIDA

FOR: SCHOOL BOARD OF MANATEE COUNTY

ADDRESS: 1600 10TH STREET WEST, PALMETTO, FL

Leo Mills & Associates, Inc.

LICENSED BUSINESS NO. 613 • SURVEYING • LAND PLANNING

620 8th AVENUE WEST, PALMETTO, FL 34221 22 NORTH POKA AVENUE, ARLAND, FL 34066

PHONE: (813) 722-2460 FAX: (813) 722-9640 PHONE: (863) 999-4141 FAX: (863) 993-2846

BY: LEO MILLS, JR., REGISTERED STATE OF FLORIDA PROFESSIONAL SURVEYOR AND MAPPER NO. 3513

DATE OF SURVEY: 4-30-08

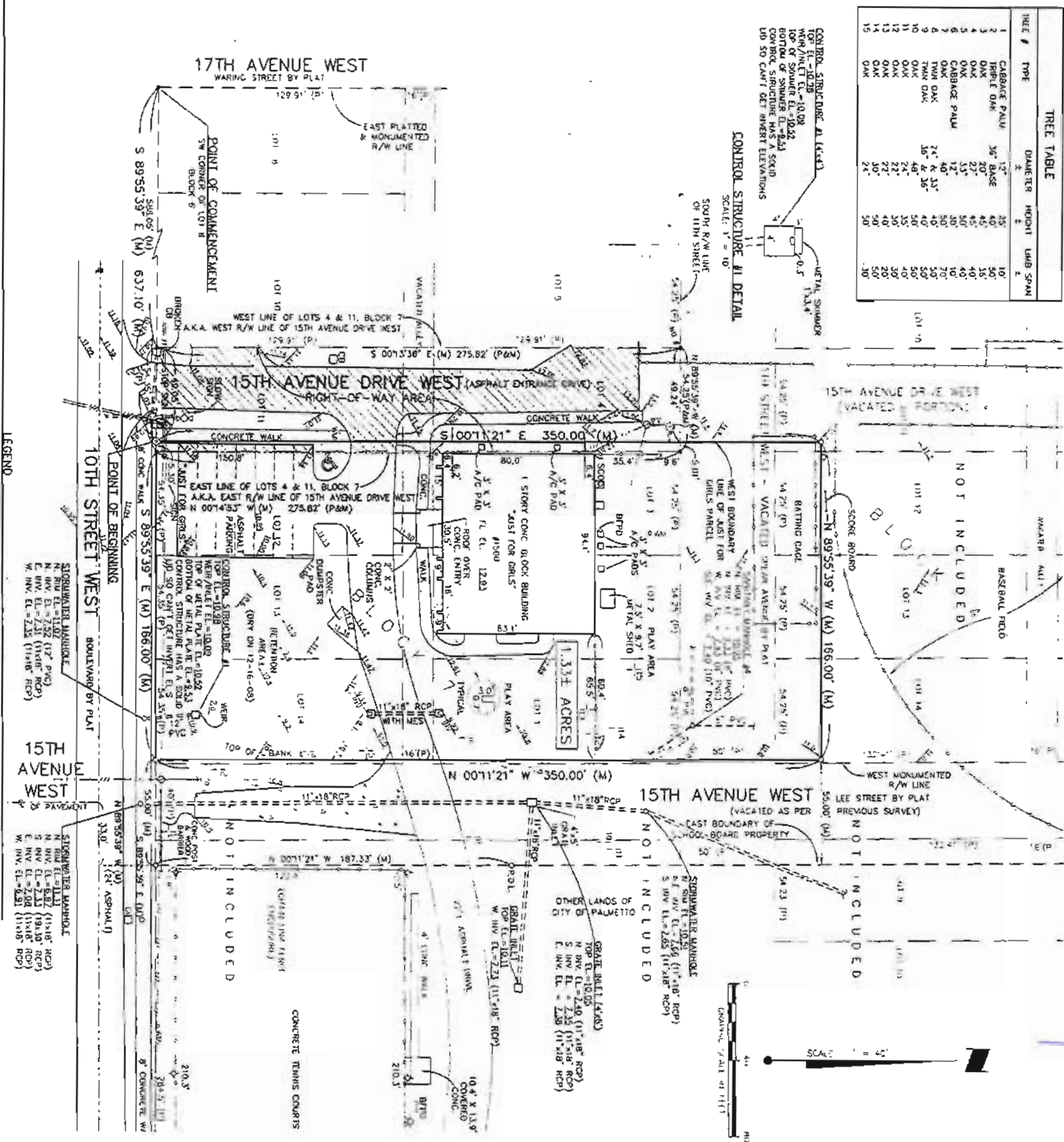
THIS SURVEY REPORT IS A TRUE AND CORRECT COPY OF THE ORIGINAL SURVEYING AND MAPPING RECORDS AND IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

CHICAGO TITLE INSURANCE COMPANY, KIRK PINKERTON, P.A.	CERTIFIED TO:
JOB NO. C 6630	REVISIONS:
DRAWN BY: LK/CGB	CHECKED BY: LM
FILE: C6630-BOYS&GIRLS CLUB 4-02-09 DWG	REVISED BOUNDARY & DESCR: 4-02-09
DATE OF SURVEY: 4-30-08	DATE: 4-02-09
SCALE: 1" = 40' (SEE GRAPHIC SCALE)	INT. LK
	07-30 # 212

- LEGEND
- = 1/2" IRON ROD SET - LB 613
 - ⊙ = NAIL AND TAB SET - LB 613
 - ⊗ = NAIL AND TAB FOUND (CAP AS NOTED)
 - = 1/2" IRON ROD FOUND (RR) - LB 613 (UNLESS OTHERWISE NOTED)
 - = 4" x 4" CONCRETE MONUMENT FOUND
 - LB = LICENSED BUSINESS
 - R/W = RIGHT-OF-WAY
 - (P) = PLAT
 - (M) = MEASURED
 - ⊕ = CENTERLINE
 - A/C = AIR CONDITIONER
 - = CHAIN-LINK FENCE
 - EM = ELECTRIC METER
 - = OVERHEAD UTILITY LINES
 - ⊕ = WOOD UTILITY POLE
 - ⊕ = CONCRETE UTILITY POLE
 - ⊕ = LIGHT POLE
 - ⊕ = PADMOUNTED P/L TRANSFORMER (4-4-4)
 - WM = WATER METER
 - WV = WATER VALVE
 - RZ = RECLAIMED WATER VALVE
 - SH = FIRE HYDRANT
 - SMH = STORM MANHOLE
 - SS = SANITARY SEWER
 - SMH = SANITARY MANHOLE
 - MH = MANHOLE
 - SCO = SEWER CLEAN OUT
 - ROP = REINFORCED CONCRETE PIPE
 - GI = GRATE INLET
 - CI = CURB INLET
 - ⊕ = TELEPHONE BOX
 - ASPHALT
 - CONC. = CONCRETE
 - SHELL

PO# 2443 OS

TREE TABLE				
TREE #	TYPE	DIAMETER	HEIGHT	UMB SPAN
1	CABRAGE PALM	12"	35'	10'
2	IRIPPLE OAK	36" BASE	40'	50'
3	OAK	20"	45'	35'
4	OAK	27"	45'	40'
5	OAK	33"	50'	40'
6	OAK	33"	50'	40'
7	OAK	33"	50'	40'
8	OAK	33"	50'	40'
9	OAK	33"	50'	40'
10	OAK	33"	50'	40'
11	OAK	33"	50'	40'
12	OAK	33"	50'	40'
13	OAK	33"	50'	40'
14	OAK	33"	50'	40'
15	OAK	33"	50'	40'



BOUNDARY SURVEY

BY: LEO MILLS, JR., JR. REGISTERED SURVEYOR NO. 3513
DATE OF SURVEY: 11-25-09

FOR: SCHOOL BOARD OF MANATEE COUNTY, FL
ADDRESS: 1800 10TH STREET WEST, PALMETTO, FL

THIS SURVEY, BEING A RE-PLAT OF JACKSON FACTORY SUBDIVISION, AS RECORDED IN PLAT BOOK 1, PAGE 317, PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, TOGETHER WITH THAT PORTION OF THE VACATED ALLEY, VACATED BY RESOLUTION 90-11, RECORDED IN OFFICIAL RECORDS BOOK 1298, PAGE 1977, AND IN OFFICIAL RECORDS BOOK 1569, PAGE 3457, PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, LYING WITHIN THE FOLLOWING DESCRIBED PARCEL BOUNDARY:

COMMENCE AT THE SOUTHWEST CORNER OF LOT 8, BLOCK 8, RE-PLAT OF JACKSON FACTORY SUBDIVISION, AS RECORDED IN PLAT BOOK 1, PAGE 317, PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, SAID POINT BEING THE POINT OF INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF 17TH AVENUE WEST AND THE NORTH RIGHT-OF-WAY LINE OF 10TH STREET WEST; THENCE S89°55'39"E, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 637.10 FEET FOR A POINT OF BEGINNING; THENCE CONTINUE S89°55'39"E, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 166.00 FEET; THENCE N00°11'21"W, 350.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE AL LYING AND BEING IN SECTION 15, TOWNSHIP 34 SOUTH, RANGE 17 EAST, MANATEE COUNTY, FLORIDA.

CONTAINING 58.101 SQUARE FEET OR 1.33 ACRES, MORE OR LESS.

NOTES:

- BEARINGS SHOWN HEREON REFER TO THE NORTH RIGHT-OF-WAY LINE OF 10TH STREET WEST BEING ASSUMED AS S89°55'39"E
- UNDERGROUND ENCROACHMENTS OR IMPROVEMENTS OTHER THAN THOSE SHOWN, IF ANY, NOT LOCATED FOR PURPOSES OF THIS SURVEY.
- THE SUBJECT LAND LIES IN ZONES "B" AND "C" OF THE FLOOD INSURANCE RATE MAP (FIRM), COMMUNITY-PANEL NUMBER 120159-0003-C (DATED 11-16-83). SUBJECT TO VERIFICATION
- THIS SURVEY HAS BEEN PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND THEREFORE MAY NOT NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.
- USE OF THIS SURVEY BY ANYONE OTHER THAN THOSE CERTIFIED TO WILL BE AT THEIR SOLE RISK WITHOUT LIABILITY TO THE SURVEYOR.
- SUBJECT TO EASEMENTS, DEDICATIONS AND RESTRICTIONS OF RECORD.
- THE DESCRIPTION SHOWN HEREON WAS CREATED BY THIS FIRM FOR THE PURPOSE OF PARCEL DIVISIONS AND IS BASED ON THE BOUNDARY SURVEY OF THE PARENT PARCEL, JOB #06630 COMPLETED BY THIS FIRM ON 4-30-08, LAST REVISED ON 6-20-08, AND INFORMATION PROVIDED BY THE ARCHITECT AND CLIENT.
- VACATED RIGHT-OF-WAYS AND ALLEYS SHOWN HEREON WERE VACATED BY RESOLUTION NO. 90-11 AND RECORDED IN OFFICIAL RECORDS BOOK 1298, PAGE 1977, PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.
- THE SUBJECT LAND AS SURVEYED CONTAINS 58.101 SQUARE FEET OR 1.33 ACRES, MORE OR LESS.
- TREES LOCATED AND SHOWN ON SHEET 2 ARE ONLY THE PORTION OF THE TREES ON SITE AS REQUESTED BY THE CLIENT.

LOCATION MAP

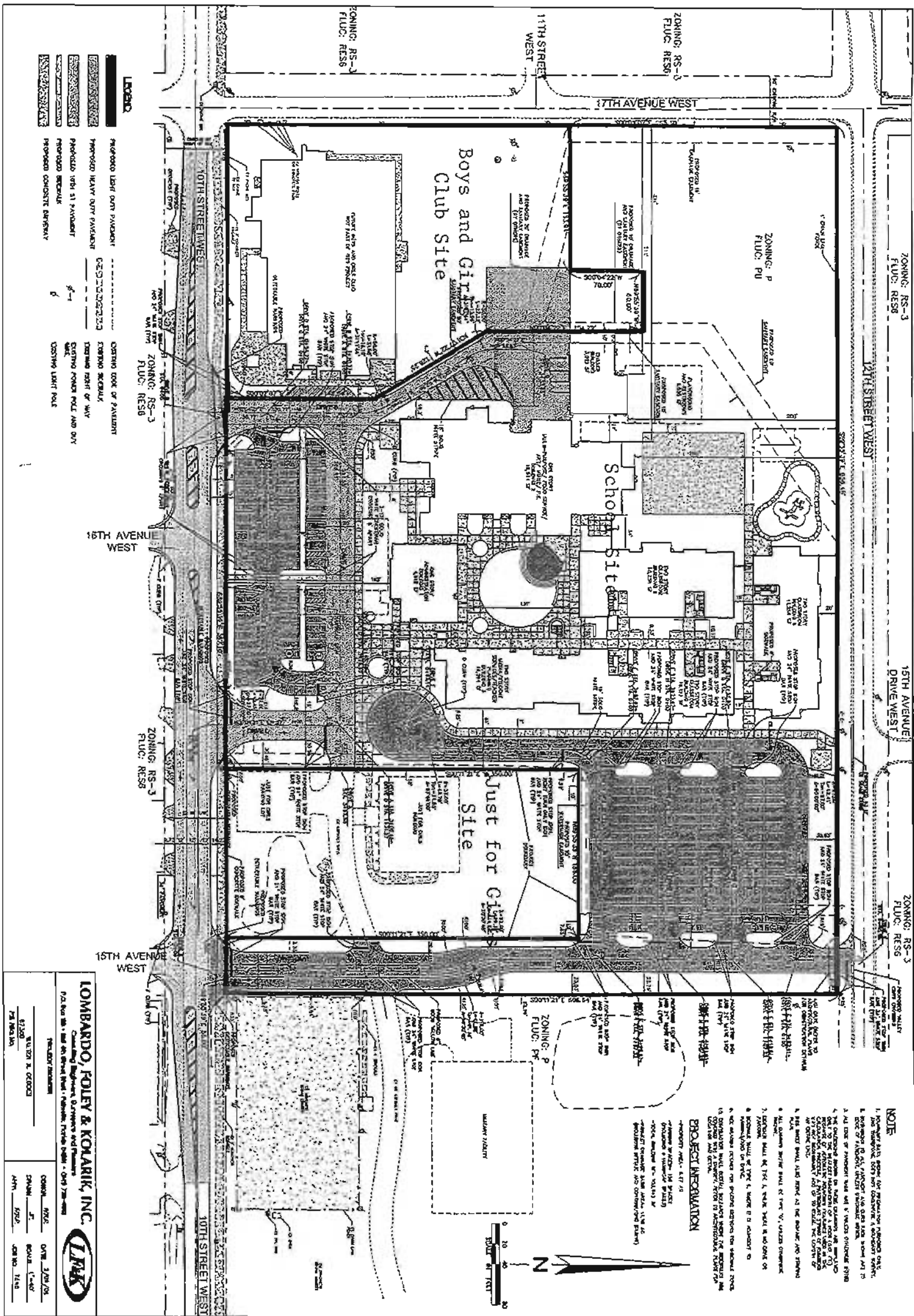
SCALE: 1" = 200'

LEGEND

1/2" IRON ROD SET - LB 513	OVERHEAD UTILITY LINES
NAIL AND TAG SET - LB 613	WOOD UTILITY POLE
NAIL AND TAG FOUND (CAP AS NOTED)	CONCRETE UTILITY POLE
1/2" IRON ROD FOUND (CAP AS NOTED)	LIGHT POLE
(UNLESS OTHERWISE NOTED)	PAVEMENTED PUL TRANSDUCER (4"x4")
4" x 4" CONCRETE MONUMENT FOUND	WATER METER
1/2" IRON ROD SET - LB 513	WATER VALVE
NAIL AND TAG SET - LB 613	FLAT
1/2" IRON ROD FOUND (CAP AS NOTED)	FIRE HYDRANT
(UNLESS OTHERWISE NOTED)	STORM MANHOLE
4" x 4" CONCRETE MONUMENT FOUND	SANITARY SEWER
1/2" IRON ROD SET - LB 513	SANITARY MANHOLE
NAIL AND TAG SET - LB 613	SWER CLEAN OUT
1/2" IRON ROD FOUND (CAP AS NOTED)	
(UNLESS OTHERWISE NOTED)	
4" x 4" CONCRETE MONUMENT FOUND	

1/2" IRON ROD SET - LB 513
NAIL AND TAG SET - LB 613
1/2" IRON ROD FOUND (CAP AS NOTED)
(UNLESS OTHERWISE NOTED)
4" x 4" CONCRETE MONUMENT FOUND

1/2" IRON ROD SET - LB 513
NAIL AND TAG SET - LB 613
1/2" IRON ROD FOUND (CAP AS NOTED)
(UNLESS OTHERWISE NOTED)
4" x 4" CONCRETE MONUMENT FOUND



ZONING: RS-3
FLUC: RES8

15TH AVENUE
DRIVE WEST

ZONING: RS-3
FLUG: RES6

NOTE

1. What is the purpose of the investigation?
The purpose of this investigation is to determine the cause of the fire that occurred on 12/15/2018 at the ABC Company Warehouse, located at 1234 Main Street, City, State, ZIP.
2. What is the scope of the investigation?
The scope of this investigation is limited to the fire incident that occurred on 12/15/2018 at the ABC Company Warehouse. It does not include other incidents or fires that may have occurred at the same location or other locations.
3. What is the background information?
The ABC Company Warehouse is a large industrial building located at 1234 Main Street, City, State, ZIP. It is owned and operated by ABC Company, Inc. The warehouse stores a variety of goods, including raw materials, finished products, and equipment. The fire occurred in the southeast corner of the building, near the loading dock.
4. What is the problem statement?
The problem statement is that the cause of the fire is unknown. The fire caused significant damage to the warehouse, including the destruction of inventory and structural damage to the building. The fire also caused the evacuation of all personnel and the closure of the facility for several days.
5. What is the objective of the investigation?
The objective of this investigation is to determine the cause of the fire and to identify the factors that contributed to the fire. The investigation will also identify any safety hazards that may have been present and recommend corrective actions to prevent a similar fire from occurring in the future.
6. What is the methodology?
The methodology for this investigation will include the following steps:
a. Review of fire incident reports and photographs.
b. Interview of personnel who were present at the time of the fire.
c. Review of fire department records and reports.
d. Review of fire insurance claims and records.
e. Review of fire safety records and training records.
f. Review of fire alarm system records and logs.
g. Review of fire extinguisher records and logs.
h. Review of fire exit records and logs.
i. Review of fire exit drills and records.
j. Review of fire exit signs and records.
k. Review of fire exit maps and records.
l. Review of fire exit plans and records.
m. Review of fire exit permits and records.
n. Review of fire exit permits and records.
o. Review of fire exit permits and records.
p. Review of fire exit permits and records.
q. Review of fire exit permits and records.
r. Review of fire exit permits and records.
s. Review of fire exit permits and records.
t. Review of fire exit permits and records.
u. Review of fire exit permits and records.
v. Review of fire exit permits and records.
w. Review of fire exit permits and records.
x. Review of fire exit permits and records.
y. Review of fire exit permits and records.
z. Review of fire exit permits and records.
7. What is the timeline?
The timeline for this investigation is as follows:
a. 12/15/2018: Fire incident occurs.
b. 12/16/2018: Fire investigation begins.
c. 12/17/2018: Fire investigation continues.
d. 12/18/2018: Fire investigation continues.
e. 12/19/2018: Fire investigation continues.
f. 12/20/2018: Fire investigation continues.
g. 12/21/2018: Fire investigation continues.
h. 12/22/2018: Fire investigation continues.
i. 12/23/2018: Fire investigation continues.
j. 12/24/2018: Fire investigation continues.
k. 12/25/2018: Fire investigation continues.
l. 12/26/2018: Fire investigation continues.
m. 12/27/2018: Fire investigation continues.
n. 12/28/2018: Fire investigation continues.
o. 12/29/2018: Fire investigation continues.
p. 12/30/2018: Fire investigation continues.
q. 12/31/2018: Fire investigation continues.
r. 1/1/2019: Fire investigation continues.
s. 1/2/2019: Fire investigation continues.
t. 1/3/2019: Fire investigation continues.
u. 1/4/2019: Fire investigation continues.
v. 1/5/2019: Fire investigation continues.
w. 1/6/2019: Fire investigation continues.
x. 1/7/2019: Fire investigation continues.
y. 1/8/2019: Fire investigation continues.
z. 1/9/2019: Fire investigation continues.
8. What is the conclusion?
The conclusion of this investigation is that the cause of the fire is unknown. The investigation identified several factors that may have contributed to the fire, including the presence of flammable materials, the use of open flames, and the failure of the fire alarm system. The investigation also identified several safety hazards that may have been present, including the lack of fire extinguishers, the lack of fire exit signs, and the lack of fire exit maps. The investigation recommends corrective actions to prevent a similar fire from occurring in the future, including the installation of fire extinguishers, the installation of fire exit signs, and the installation of fire exit maps.
9. What is the recommendation?
The recommendation of this investigation is that the ABC Company Warehouse should implement the following corrective actions:
a. Install fire extinguishers in all areas of the warehouse.
b. Install fire exit signs in all areas of the warehouse.
c. Install fire exit maps in all areas of the warehouse.
d. Review fire safety records and training records.
e. Review fire alarm system records and logs.
f. Review fire exit records and logs.
g. Review fire exit permits and records.
h. Review fire exit permits and records.
i. Review fire exit permits and records.
j. Review fire exit permits and records.
k. Review fire exit permits and records.
l. Review fire exit permits and records.
m. Review fire exit permits and records.
n. Review fire exit permits and records.
o. Review fire exit permits and records.
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q. Review fire exit permits and records.
r. Review fire exit permits and records.
s. Review fire exit permits and records.
t. Review fire exit permits and records.
u. Review fire exit permits and records.
v. Review fire exit permits and records.
w. Review fire exit permits and records.
x. Review fire exit permits and records.
y. Review fire exit permits and records.
z. Review fire exit permits and records.
10. What is the next step?
The next step in this investigation is to review the fire incident reports and photographs. This will provide additional information about the fire and help to identify the cause of the fire.

PROJECT INFORMATION

[illegible]

PALMETTO ELEMENTARY SCHOOL
PALMETTO, FLORIDA
HAWAII COUNTY SCHOOLS

MAJESTER COUNTY SCHOOLS.

LOMBARDO, FOLEY & KOMARIK, INC.
Consulting Engineers, Architects and Planners
P.O. Box 260 • First St. South • Boulder, Colorado 80501 • (303) 440-2222



<p>PERSONAL INFORMATION</p> <p>WILLIAM H. OGDON</p> <p>8/200</p> <p>751 NADA 304</p>	<p>COMMON 4726</p> <p>DATE 3/28/74</p> <p>SPIN 17</p> <p>BOYD 17-40</p> <p>ATTN 15720</p> <p>JOHN 1740</p>
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[illegible]

EXHIBIT 9

HOFFMAN
ARCHITECTS P.A.

29 WEST ORANGE STREET
FARMINGTON, CT 06030
TEL. 214/948-2105
FAX 214/948-2655
MFC001100 007325001200

PALMETTO ELEMENTARY SCHOOL
PALMETTO, FLORIDA
MANATEE COUNTY SCHOOLS

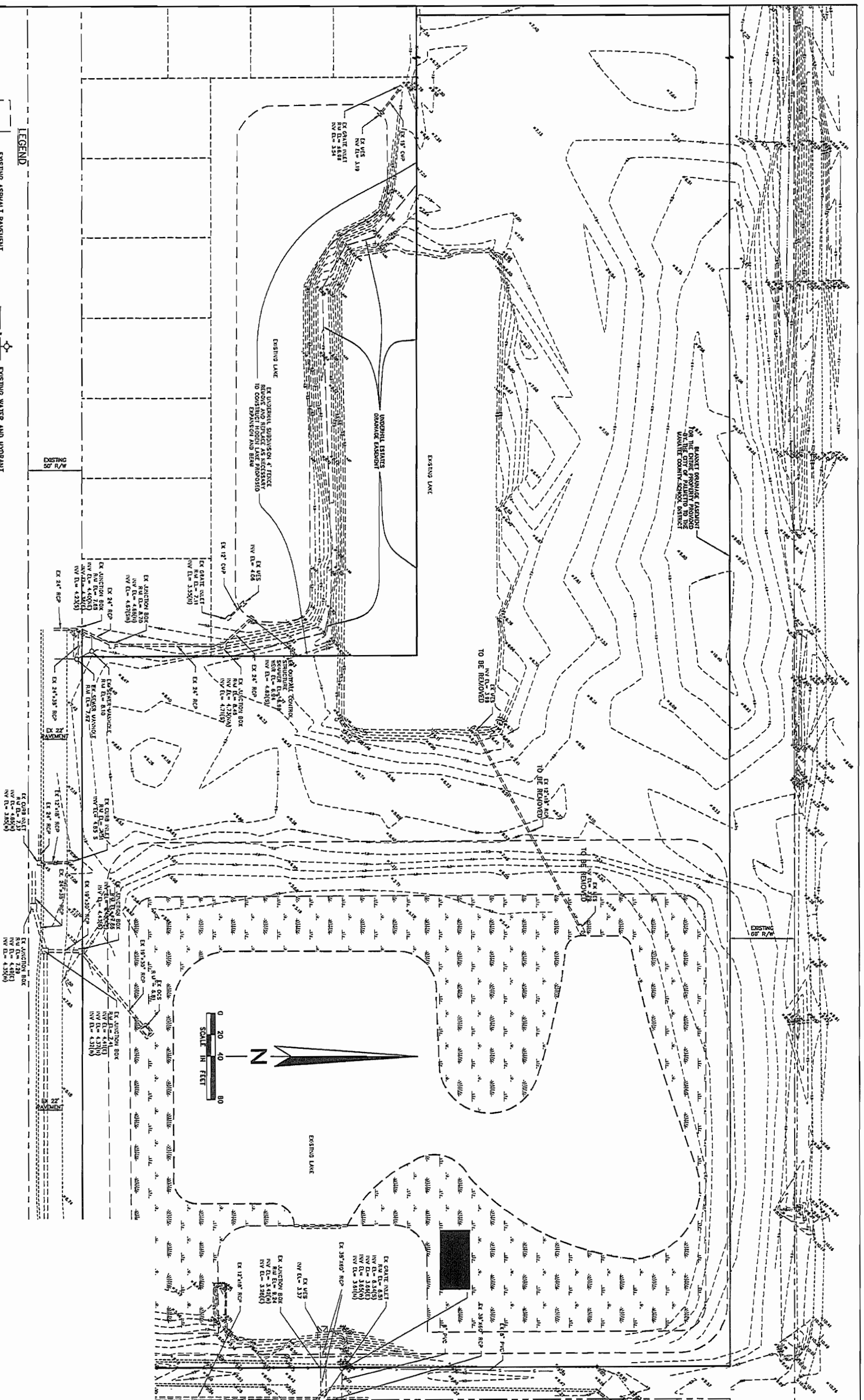
MANATEE COUNTY SCHOOLS


THE DRAWING IS THE PROPERTY OF NORMAN MOFFETT, P.A. UNLESS OTHERWISE PROVIDED FOR BY THE CONTRACT THE CONTENTS OF THIS DRAWING IS CONFIDENTIAL AND SHALL NOT BE TRANSMITTED TO ANY OTHER PARTY WITHOUT AS ORDERED BY NORMAN MOFFETT, P.A. CONTRACT 7207

CONTRACT NO.	0118
DATE	03/23/04
SCULS	AS NOTED
COLLAR IN	"
ORDERED BY	"

EXISTING CONDITIONS/
DEMOLITION PLAN

C.3



LOMBARDO, FOLEY & KOLARIK, INC. Consulting Engineers, Surveyors and Planners P.O. Box 88 • 625 4th Street West • Palmdale, Florida 34501 • (941) 722-4591		
PROJECT ENGINEER		
WALTER R. DEODICES 67280 P.E. REG. NO.		DESIGN <i>W/LD</i> DRAWN <i>JF</i> SCALE 1"=40' APRR <i>W/LD</i> JOB NO. 7648

BUILDING LEASE

THIS LEASE AGREEMENT, made this ____ day of _____, 2009 ("Lease"), is by and between School Board of Manatee County, a public body corporate, whose address is 215 Manatee Avenue West, Bradenton, Florida 34205, hereinafter called the "Landlord," and the Boys & Girls Clubs of Manatee County, Inc., a Florida not-for-profit corporation, whose address is 6220 Manatee Avenue West, Suite 201, Bradenton, Florida 34209, hereinafter called the "Tenant."

RECITALS

WHEREAS, The Landlord, on even date herewith, has acquired from the City of Palmetto, a parcel of real property, including a portion defined herein as the Premises, as described on Exhibit "A" attached to and hereby made a part of this Lease (hereinafter called "Premises" or "Demised Premises"), located in Manatee County, Florida. The Premises was previously subject to a lease between the City of Palmetto and the Tenant, permitting use of the Premises and the related improvements located thereon by Tenant; and

WHEREAS, The Tenant is constructing a new building and related improvements for providing youth services on a parcel of real property located adjacent to the Premises (the "New Club Site") and, until such time as its new building is ready for occupancy and to avoid interruption in delivery of services, has requested permission to remain in possession of the Premises; and

WHEREAS, As an accommodation to Tenant, Landlord has agreed to allow Tenant to continue to occupy the Premises so long as Landlord has access to the Premises to enable it to prepare to move forward with its development project on the Premises and the larger parcel of land of which the Premises is a part (the "School Site").

WITNESSETH:

1. **PREMISES.** The Landlord, for and in consideration of the rents, covenants, agreements, and stipulations hereinafter mentioned, reserved and contained, to be paid, kept, and performed by the Tenant, has leased and rented and by these presents does lease and rent, unto the said Tenant, and said Tenant hereby agrees to lease and take upon the terms and conditions which hereinafter appear, the Premises, including the building located upon the Premises (hereinafter called the "Building"). The Landlord may restrict Tenant's, and all invitees of Tenant's, access to exterior areas north and east of the existing Building as reasonably necessary for staging and construction of the proposed new school facility adjacent to the north and east of the Premises.

2. **TERM.** The term for Tenant's occupancy under this Lease shall be for a period commencing on the date Landlord acquires title to the Premises, which date shall be known as the "Commencement Date," and terminating at 11:59 o'clock p.m. on March 31, 2010, which shall be known as the termination date.

Notwithstanding the defined termination date, upon written notice by Tenant to Landlord of Tenant's completion of its new facility upon the New Club Site, the parties may agree to an early

termination of the lease term to be effective upon written acknowledgment by both parties.

On or before the termination date, Tenant shall remove all of its trade fixtures and personal property; vacate the Premises and leave such Premises in reasonably good broom swept clean condition and deliver the keys to the Premises to Landlord.

3. RENT. Tenant shall pay to Landlord the sum of ONE DOLLAR (\$1.00) for the use of the Building during the lease term.

4. TENANT'S USE; EXPENSES. Tenant shall use the Premises to operate, maintain and use said Building to provide youth services in the community. No use shall be made of the Premises or any portion or portions thereof which would constitute a nuisance, constitute an extra hazardous use, or violate, suspend, or void any policy or policies of any insurance on the Premises. Tenant shall be responsible for all expenses and obligations of operation and maintenance of the Building during the lease term. Tenant shall be responsible for the lawn and landscaping. Landlord shall have no obligation or duty to repair, replace or maintain any of the improvements, fixtures or personal property located on the Premises during the term hereof, nor to maintain the systems located in the building on the Premises.

5. INSURANCE. Tenant shall maintain, at its expense, insurance on the Premises of the following character:

(i) Tenant shall procure and continue in force, standard fire and extended all-risk coverage property insurance covering all buildings and improvements and equipment on the Premises, including Tenant's property located in, on, or about the Premises. Landlord shall be listed as an additional insured on all such policies. Such insurance shall be written in the company or companies authorized to engage in the business of standard fire and hazard insurance in the State of Florida, and such insurance shall not be terminated without thirty (30) days prior written notice to Landlord. Tenant shall provide Landlord a certificate of insurance in accordance herewith within fifteen (15) days after the execution of this Lease.

(ii) Tenant agrees that, at its own cost and expense, it shall procure and continue in force, in the names of the Landlord and Tenant, general liability insurance against any and all claims for injuries to persons or property occurring in, upon or about the Demised Premises, including all damage from signs, glass, awnings, fixtures or other appurtenances, now or hereafter upon the Demised Premises, during the term of this Lease, such insurance at all times to be in an amount not less than \$1,000,000.00 combined single limit. Such insurance shall be written in the company or companies authorized to engage in the business of general liability insurance in the State of Florida, and there shall be delivered to the Landlord customary certificates evidencing such paid-up insurance, which certificates are to be issued by the insurance companies.

6. TENANT'S IMPROVEMENTS; INSTALLATIONS; ALTERATIONS; LIENS. As the Building is planned to be demolished at the end of the lease term, Tenant may do any construction work or alterations, or install any equipment, without first obtaining Landlord's written approval and consent.

Tenant has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of the Landlord in and to the Premises or the land surrounding the Premises and no person shall ever be entitled to any lien directly or indirectly derived through or under Tenant or its agents or servants on account of any act or omission of the Tenant.

If any lien shall be filed against the Premises or the land surrounding the Premises, then the Tenant shall cause the same to be discharged or transferred to a bond at least twice the amount of the lien and in the manner as provided by law within thirty (30) days after the filing of the lien by the lienor upon the public records. Failure to do so shall constitute a breach of this Paragraph and the Tenant shall hold harmless and indemnify the Landlord from any and all expenses, expenditures or otherwise, including but not limited to attorney's fees through and including appellate proceedings, bond premiums and clerk's filing fee for breach of this Section.

7. PARKING. Tenant will comply with reasonable rules and regulations established by Landlord regarding the parking of Tenant and its employees, invitees, and guests. Tenant shall, subject to the terms of the Joint Use Agreement entered by the parties on even date herewith, have parking reasonably sufficient to serve its daily operations on the Premises or upon the School Site.

(a) Indemnification. Tenant hereby covenants and agrees to indemnify and hold Landlord harmless from and against any and all liability, claim, demands, loss or damage for injury to or death of any person or persons or damage to property in any way arising from or in connection with the occupancy or use by Tenant of the parking facilities or any part thereof or occasioned wholly or in part by any act or omission of Tenant, its agents, employees or invitees. Tenant further agrees to indemnify and hold Landlord harmless from all fines, suits, claims, demands and actions in any way arising from or in connection with the occupancy or use by Tenant of the parking facilities or any part thereof or occasioned wholly or in part by any act or omission of Tenant, its agents, employees or invitees.

(b) Waiver. Tenant hereby waives all claims against Landlord for damages to property or injuries to persons arising from or occasioned by use of the parking facilities. Landlord shall not be liable to Tenant for any damages by or from any act or negligence of any co-tenant or other occupant of the Building or by any owner or occupant of adjoining or contiguous property or any act or negligence of any person (other than Landlord and its agents) upon or in such parking facilities.

8. COMPLIANCE WITH LAWS, RULES AND REGULATIONS. Tenant shall, at its own cost and expense, comply with all applicable governmental laws, ordinances, orders and regulations affecting the Premises now in force or which hereafter may be in force, insofar as they pertain to the use and occupancy of the Premises;

9. ASSIGNMENT/SUBLETTING. The Tenant shall not be permitted to assign this Lease or sublet any portion of the Demised Premises without the prior written consent of the Landlord.

10. LIABILITY/INDEMNIFICATION.

(a) Tenant shall indemnify Landlord and save it harmless from suits, actions, damages, liability and expense in connection with loss of life, bodily or personal injury or property damages arising from or out of the use or occupancy of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, invitees, licensees or concessionaires, including the sidewalks and building common areas, common areas, the parking facilities, and facilities within the building, except in the case of gross negligence on the part of Landlord or its respective employees, servants and agents;

(b) Tenant shall store its property in and shall occupy the Premises and all other portions of the Building at its own risk and releases Landlord, to the full extent permitted by law, from all claims of every kind, resulting in loss of life, personal or bodily injury or property damage;

(c) Landlord shall not be responsible or liable at any time for any loss or damage to Tenant's equipment, fixtures, and other personal property of Tenant or to Tenant's business;

(d) Landlord shall not be responsible or liable to Tenant or to those claiming by, through or under Tenant for any loss or damage to either the person or property of Tenant that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining premises;

(e) Except for the gross negligence of Landlord or its respective employees, servants and agents, Landlord shall not be responsible or liable to Tenant for any defect, latent or otherwise, on the Premises or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall it be responsible or liable for any injury, loss or damage to any person or to any property of Tenant or other person caused by or resulting from bursting, breakage, or by or from leakage, steam, running, backing up, seepage or overflow of water or sewerage in any part of the Premises or for any injury or damage caused by or resulting from any defect or act or omission in the occupancy, construction, operation or use of any of the Premises, machinery, apparatus or equipment by any person or by or from the acts of gross negligence of any occupant of the Premises;

(f) Tenant shall give prompt notice to Landlord in case of fire or accidents in the Premises or in the Building of which the Premises are a part, or of defects therein or in any fixtures or equipment; and

(g) Landlord shall indemnify Tenant and save it harmless from suits, actions, damages, liability and expense, including reasonable attorney's fees and costs incurred by Tenant in defending same, arising out of the gross negligence of Landlord or any of Landlord's employees, servants and agents. Notwithstanding the foregoing, the Landlord's obligations pursuant to this provision shall be only to the extent permitted by Florida law and nothing contained herein shall constitute or be construed as a waiver or limitation of sovereign immunity or a waiver of any limitation of liability provided by law beyond such waiver provided in Fla. Stat. 768.28.

11. SURRENDER. The Tenant will deliver up and surrender to the Landlord possession of the Demised Premises upon the expiration of this Lease or its termination in any way.

12. LANDLORD ENTRY. The Landlord may, during the term of this Lease, at all reasonable times, enter to inspect the Premises and to evaluate the Premises in connection with its development plans upon the School Site. It is anticipated that the Landlord will demolish the Building at the expiration of this Lease, so Tenant shall reasonably cooperate with Landlord to provide Landlord access to the Building to conduct inspections of the building materials, structure, etc.

13. DAMAGE OR DESTRUCTION BY FIRE, WAR OR ACTS OF GOD. If the Premises are destroyed or damaged by fire, acts of war, or acts of God (including earthquake), to such an extent that they are rendered untenable in whole or in substantial part, this Lease shall upon written notice from the Tenant to the Landlord, be terminated and cancelled, and neither party shall thereafter have any further obligation with respect to the other.

14. DEFAULT AND REMEDIES.

(a) Events of Default. The following events shall be deemed to be events of default by Tenant under this Lease: (1) Tenant shall fail to comply within a reasonable time (but not longer than ten (10) days) from receiving written notice of such failure with any term, provision, condition or covenant of this Lease; or (2) Tenant shall desert, abandon or vacate the Premises for a consecutive period of sixty (60) days.

(b) Remedies. Upon occurrence of any event of default, Landlord shall have the option to do any one or more of the following without any notice or demand, in addition to and not in limitation of any other remedy permitted by law and without prejudice to Landlord's other rights hereunder:

(1) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, but if Tenant shall fail so to do, Landlord may without notice and without prejudice to any other remedy Landlord may have, enter upon and take possession of the Premises and expel or remove Tenant and its effects without being liable to prosecution or any claim for damages therefor; and Tenant agrees to indemnify Landlord for all loss and damage which Landlord may suffer by reason of such termination.

(2) Landlord may do whatever Tenant is obligated to do by the provisions of this Lease and may enter the Premises without being liable to prosecution or any claim for damages therefor in order to accomplish this purpose. Tenant agrees to reimburse Landlord immediately upon demand for any expenses which Landlord may incur thus effecting compliance with the Lease on behalf of Tenant, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action, whether caused by the gross negligence of Landlord or otherwise.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law.

15. NOTICES. Any notice, demand, request or other instrument which may be or are required to be given under this Lease shall be in writing and delivered in person or sent by United States Certified or Registered Mail, postage prepaid, and shall be addressed to the addresses indicated above. Either party may designate such other address as shall be given by written notice.

16. BINDING ON SUCCESSORS. The respective rights and obligations hereunder shall inure to, and be binding upon, the respective heirs, distributees, devisees, legal and personal representatives, assigns, grantees and successors in interest of the Landlord, and shall inure to, and be binding upon, the permitted assigns and successors in interest of the Tenant.

17. ENTIRE AGREEMENT. This Lease embodies the entire contract of the parties hereto, and shall not be altered, changed or modified in any respect, except by an instrument of equal dignity to this instrument.

18. SUBORDINATION. Tenant agrees that this Lease shall be subordinate to any mortgage or mortgages or the lien resulting from any method of financing or refinancing, now or hereafter in force against the land and building, or against the Tenant's interest under a long-term lease covering the land and buildings, of which the Demised Premises are a part, or upon any building now or hereafter placed upon said land, of which the Demised Premises are a part, and to all advances made or hereafter to be made upon the security hereof. Tenant agrees to execute, upon Landlord's request, such subordination or estoppel certificate requested by Landlord or its lender evidencing such subordination.

19. NO WAIVER. Failure of Landlord or Tenant to insist upon the strict performance of any provision of this Lease or to exercise any option or any rules and regulations herein contained shall not be construed as a waiver for the future of any such provision, rule or option. The receipt by Landlord of rent with knowledge of the breach of any provision of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived unless such waiver is in writing signed by the party seeking to enforce such provision. No waiver by Landlord in respect to one tenant shall constitute a waiver in favor of any other tenant in the Building.

20. GOVERNING LAW; VENUE. This agreement shall be governed in all respects by the laws of the State of Florida, and the parties agree that the appropriate venue for any lawsuit involving issues arising from this agreement shall be Manatee County, Florida.

21. CAPTIONS. Any headings preceding the text of the several paragraphs and subparagraphs hereof, are inserted solely for convenience of reference and shall not constitute a part of this Lease, nor shall they affect its meaning, construction, or effect.

22. RECORDATION. This Lease shall not be recorded.

23. ATTORNMEN. Tenant shall, in the event of the sale or assignment of Landlord's interest in the Demised Premises, or in the event of exercise of the power of sale under any mortgage made by Landlord covering the Demised Premises, attorn to the purchaser and recognize such

Purchaser as Landlord under this Lease upon such purchaser's agreement not to disturb Tenant's quiet enjoyment of the Premises.

24. INVALID PROVISION. If any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

25. QUIET ENJOYMENT. Tenant, upon paying the rents and performing all of the terms on its part to be performed, shall peaceably and quietly enjoy the Premises subject, nevertheless, to the terms of this Lease and to any mortgage, ground lease or agreements to which this Lease is subordinated.

26. RADON GAS. RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. This notice is given pursuant to Florida Statutes Sec. 404.056(8).

27. "AS IS" "WHERE IS". Tenant acknowledges that it is leasing the Premises "AS IS" "WHERE IS" with all faults.

28. LEGAL EXPENSES. Should either party employ an attorney or attorneys to interpret or enforce any of the provisions hereof, or to protect its interest in any matter involving, arising out of, or otherwise relating to this Lease, or to recover damages for the breach of this Lease, the party prevailing shall be entitled to recover from the other party all reasonable fees, costs, charges and expenses, including but not limited to, attorney and legal assistant fees, expended or incurred in connection therewith from the initial request for redress through trial, appeal and collection.

29. WAIVER OF JURY TRIAL. TENANT HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION (INCLUDING BUT NOT LIMITED TO ANY CLAIMS, CROSS-CLAIMS, OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS LEASE, THE PREMISES OR THE TRANSACTIONS CONTEMPLATED HEREIN. TENANT HEREBY CERTIFIES THAT NEITHER LANDLORD, NOR ITS REPRESENTATIVE, AGENT OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LANDLORD WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. TENANT ACKNOWLEDGES THAT LANDLORD HAS BEEN INDUCED TO ENTER INTO THIS LEASE BY THE PROVISION OF THIS PARAGRAPH.

EXHIBIT “A”: PREMISES

[illegible]

Exhibit A

PREPARED BY AND AFTER RECORDING**RETURN TO:**

Jerilyn Hattendorf, Esquire
 Kirk-Pinkerton, P.A.
 1301 6th Avenue West, Suite 401
 Bradenton, Florida 34205
 (941) 364-2400

_____[Space Above This Line for Recording Data]_____

STORMWATER EASEMENT and MAINTENANCE AGREEMENT

THIS EASEMENT is entered into this ____ day of _____, 2009 by and among **The City of Palmetto, a Florida municipal corporation** ("City"), **The School Board of Manatee County, Florida, a public body corporate** ("School Board") and **Boys and Girls Clubs of Manatee County, Inc., a Florida corporation** ("Boys and Girls Club").

INTRODUCTON

A. School Board intends to construct an educational facility upon a parcel of real property on 10th Street West in the City of Palmetto, Manatee County, Florida, which is described on Exhibit A attached hereto (the "School Site"); and

B. Boys and Girls Club intends to construct a new facility upon a parcel of real property on 10th Street West in the City of Palmetto, Manatee County, Florida, which is described on Exhibit B attached hereto (the "Boys and Girls Club Site"); and

C. In order for the School Board and Boys and Girls Club to construct the respective new facilities, the School Board and Boys and Girls Club must first enter into a number of agreements to assist with the development, including agreements to facilitate flowage and drainage of stormwater for the School Site and Boys and Girls Club Site; and

D. School Board and Boys and Girls Club have determined it to be in their best interest and that it will enhance all intended developments and facilities to obtain for the benefit of the School Site and the Boys and Girls Club Site, certain easements and rights over land owned by the City (the "City Land") as depicted on Exhibit C attached hereto (the "**Stormwater Retention Area**") for stormwater retention and drainage as more particularly described hereinafter.

E. School Board and Boys and Girls Club have determined it to be in their best interest and that it will enhance the development of and the facilities of the Boys and Girls Club to obtain for the benefit of the Boys and Girls Club Site, certain easements and rights over the land owned by the School Board, as depicted on Exhibit D attached hereto, for stormwater flowage and drainage (the "**Stormwater Flowage Area**").

PROVISIONS

NOW THEREFORE, for and in consideration of the sum of \$10.00 and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be bound legally hereby, covenants and agrees as follows:

1. **Introduction.** The statements in the foregoing introduction are true and correct and are made a part of this Easement as if fully set forth herein.

2. **Temporary Construction and Access Easement to School Board.** The City hereby grants, establishes, gives and conveys to the School Board, their successors and assigns, a temporary access and construction easement upon the Stormwater Retention Area and upon the portion of the City's property immediately adjacent to the Stormwater Retention Area in order to design, place, construct, and make modifications and improvements, as necessary, to expand the existing lake located within the Stormwater Retention Area and to make all necessary improvements required to provide appropriate drainage needs for the School Site (sufficient to support an elementary school for approximately 823 students) and the Boys and Girls Club Site. Any and all permits required for modifications and improvements made to the Stormwater Retention Area or within the Stormwater Flowage Area by the School Board shall be obtained at the sole cost and expense by School Board, with City and Boys and Girls Club providing support as needed to obtain permits. Prior to approval of any permits, the City shall have the right to obtain a copy of the permit application and review and approve any opposed conditions of such permit application prior to acceptance by School Board.

3. **Stormwater Retention Area Easement to School Board.** The City hereby grants, establishes, gives and conveys to the School Board, their successors and assigns forever, a perpetual non-exclusive easement appurtenant to the School Site for use of the Stormwater Retention Area for retention of stormwater runoff from the School Site.

4. **Stormwater Retention Area Easement to Boys and Girls Club.** The City hereby grants, establishes, gives and conveys to the Boys and Girls Club, their successors and assigns forever, a perpetual non-exclusive easement appurtenant to the Boys and Girls Club Site for use of the Stormwater Retention Area for retention of stormwater runoff from the Boys and Girls Club Site.

5. **Stormwater Flowage Easement to Boys and Girls Club.** The School Board hereby grants, establishes, gives and conveys to the Boys and Girls Club, their successors and assigns forever, a perpetual non-exclusive easement appurtenant to the Boys and Girls Club Site for the use of the Stormwater Flowage Area for flowage of stormwater from the Boys and Girls Club Site, across the School Site, to the Stormwater Retention Area.

6. **Maintenance by City of Stormwater Retention Area.** The Stormwater Retention Area will contain flowage, drainage and retention areas that form a part of the integrated surface water management system facilities for the School Site and the Boys and Girls Club Site, and shall be preserved and maintained for those purposes in accordance with

applicable governmental approvals for the development and ongoing maintenance of all facilities. It is understood by the City that the Stormwater Retention Areas must be adequate to handle stormwater runoff from the School Site and the Boys and Girls Club Site. The City shall not take any action which modifies the Stormwater Retention Area and surface water management system in a manner which changes the flow or drainage of surface water, except to the extent the same is expressly permitted hereby and approved by the requisite governmental or quasi-governmental authorities and also agreed upon in writing by the School Board and the Boys and Girls Club. All parties hereby agree that they will not place any item into their respective integrated surface water management systems which may result in harm to the overall integrated surface water management system, including but not limited to excessive fertilizer or other matters which will negatively impact the operations of the system. The City shall be responsible for the management, maintenance, monitoring and operation of the Stormwater Retention Area and the City shall keep and maintain the Stormwater Retention Area in an ecologically sound condition for water retention, water detention, drainage and all water management purposes in compliance with all governmental requirements. City will maintain the performance standards provided by the Southwest Florida Water Management District ("SWFWMD"), which have been incorporated into the construction and design of the Stormwater Retention Area. The actual cost of maintenance of the Stormwater Retention Area shall be paid by the City. However, all parties hereby agree that the operation and maintenance costs borne by Boys and Girls Club will be paid in the form of stormwater management fees imposed by the City by way of non *ad valorem* assessments.

7. **Maintenance by School Board of Stormwater Flowage Area.** The Stormwater Flowage Area will contain flowage and drainage areas that form a part of the integrated surface water management system facilities for the School Site and the Boys and Girls Club Site, and shall be preserved and maintained for those purposes in accordance with applicable governmental approvals for the development and ongoing maintenance of all facilities. It is understood by the School Board that the Stormwater Flowage Area must be adequate to handle stormwater flowage needs from the School Site and the Boys and Girls Club Site to the Stormwater Retention Area. The School Board shall not take any action which modifies the Stormwater Flowage Area and surface water management system in a manner which changes the flow or drainage of surface water, except to the extent the same is expressly permitted hereby and approved by the requisite governmental or quasi-governmental authorities and also agreed upon in writing by the School Board and the Boys and Girls Club. The School Board shall be responsible for the management, maintenance, monitoring and operation of the Stormwater Flowage Area and the School Board shall keep and maintain the Stormwater Flowage Area in an ecologically sound condition for water drainage and all water management purposes in compliance with all governmental requirements. School Board will maintain the performance standards provided by the Southwest Florida Water Management District ("SWFWMD"), which have been incorporated into the construction and design of the Stormwater Flowage Area. The actual cost of maintenance of the Stormwater Flowage Area shall be paid by the School Board.

8. **Miscellaneous.**

a. **Enforcement; Indemnification.** Without limiting any remedy provided for in this Easement, the School Board and/or the Boys and Girls Club, and their successors and assigns, shall have the right to enforce, by proceedings at law or in equity, all easements and covenants imposed by the provisions of this Easement, or any amendment hereto. In addition, in the event the City does not perform its obligation to maintain, repair or replace any easement or improvement as provided in this Easement, after thirty (30) days written notice with opportunity to cure, the School Board and/or the Boys and Girls Club may take such measures they deem appropriate to remedy such failure, including but not limited to, construction, installation, maintenance, replacement, or removal of any or all of such easement or improvement. The City shall reimburse the curing party any cost of such action to remedy such failure within five (5) days of the City's receipt of an invoice therefore. Despite the foregoing, however, the City shall not be in default if the default is of a nature that a cure takes more than thirty (30) days to complete, so long as the City begins the cure within thirty (30) days and diligently completes the cure, and so long as the School Board and/or the Boys and Girls Club is not prejudiced by the delay.

In the event of any default hereunder, the School Board and/or the Boys and Girls Club shall give notice thereof to the City specifying the alleged default, and the City shall have thirty (30) days after the receipt of the written notice within which to cure such default. If such default has not been cured within such thirty (30) day period, then the curing party shall have any and all rights afforded to it by this Easement, or otherwise at law or in equity, including, without limitation, the right of self-help and the right to seek specific performance. Despite the foregoing, however, the City shall not be in default if the default is of a nature that a cure takes more than thirty (30) days to complete, so long as the City begins the cure within thirty (30) days and diligently completes the cure, and so long as the School Board and/or the Boys and Girls Club are not prejudiced by the delay.

d. **No Waiver.** Failure by the School Board and/or the Boys and Girls Club to enforce any easement, covenant, or restriction herein contained in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other easement, covenant, or restriction.

e. **Cumulative Remedies.** All rights, options, and remedies of the City, the School Board and/or the Boys and Girls Club under this Easement are cumulative, and no one of them shall be exclusive of any other, and the City, the School Board and/or the Boys and Girls Club shall have the right to pursue any one or all of such rights, options, and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Agreement.

f. **Severability.** Invalidation of any one or a portion of the easements, covenants or restrictions contained herein by judgment or court order shall in no way affect any other of the provisions of this Agreement, which shall remain in full force and effect.

g. **Covenants to Run with the Land; Amendment.** The easements granted herein shall run with and bind the City Land, the Boys and Girls Site and the School Site, and the easement areas as described herein, and shall inure to the benefit of and be enforceable by the School Board and/or the Boys and Girls Club, their successors and assigns. This Easement may

be amended only by a writing that is signed and acknowledged by all parties to this Easement, with formalities equal to this instrument and thereafter recorded on the Public Records of Manatee County, Florida with the consent of their respective mortgagees.

h. **Paragraph Headings.** The Paragraph headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

i. **Singular Includes Plural.** Whenever the context of this Easement requires same, the singular shall include the plural and the masculine shall include the feminine and the neuter.

j. **Attorney's Fees.** In the event that an action is instituted to construe, interpret or enforce any of the provisions in this Easement or to declare the rights of a party hereunder or the successor or assignee of a party hereunder, the party prevailing in such action shall be entitled to recover from the other party thereto, as part of the judgment, reasonable attorneys' and paralegal assistants' fees and costs, whether incurred before, during or at trial, on appeal or in federal bankruptcy or reorganization proceedings.

k. **Notices.** Any notice which must or may be given to the School Board, the City, the Boys and Girls Club, or their successors or assigns under the provisions of this Easement shall be in writing, and shall be deemed to have been given on the day personally delivered, or one (1) day after the date deposited in Federal Express or other courier service that guarantees delivery on the following day that is not a legal holiday, or five (5) days after the date deposited in the United States Mail, certified or registered, postage prepaid, addressed as follows:

City: City of Palmetto
518 8th Avenue West
Palmetto, Florida 34221
Attn: Shirley Bryant, Mayor
Fax: (941) 722-8557

With a copy to:
City of Palmetto
518 8th Avenue West
Palmetto, Florida 34221
Attn: Jim Freeman, City Clerk
Fax: 941/723-4576

School Board: Manatee County School Board
215 Manatee Avenue West
Palmetto, Florida 34205
Attn: Tim McGonegal, Superintendent
Fax: 941/708-8686

With copy to: Manatee County School Board

The Matzke Complex
2802-B 27th St. East
Bradenton, FL 34208
Attn: Michael Pendley, School Planner
Fax: (941) 708-8832

With copy to: Mark P. Barnebey
Kirk Pinkerton, P.A.
1301 6th Avenue West, Suite 401
Palmetto, Florida 34205
Fax: 941- 744 -9691 and 941-364-2490

Boys and Girls Club: Boys and Girls Club of Manatee County, Inc.
6220 Manatee Avenue West, Suite 201
Bradenton, Florida 34209
Attn: Carl Weeks, Executive Director
Fax: 941/761-2462

With a copy to: Timothy A. Knowles, Esq.
Porges, Hamlin, Knowles, et al.
1205 Manatee Avenue West
Bradenton, Florida 34205
Fax: 941/746-4160

Any party may change its address from time to time by giving written notice to the other party.

l. **Construction, Notice and Acceptance.** Every person or entity who now or hereafter owns or acquires any right, title, or interest in or to any portion of the City Land or the School Site, or the easement areas described herein, is and shall be conclusively deemed to have consented and agreed to every covenant, restriction and easement contained herein, whether or not any reference to this Easement is contained in the instrument by which such person or entity acquired an interest in any such property.

m. **Governing Law.** This Easement is made in the State of Florida and the validity, construction, and enforceability of this Easement and each of its provisions shall be governed by applicable laws of the State of Florida.

n. **No Public Dedication.** The easement rights created by this Easement shall not constitute a dedication for public use.

o. **Exhibits.** The following exhibits are attached hereto and made a part hereof:

Exhibit "A"	-- School Site
Exhibit "B"	-- Boys and Girls Club Site
Exhibit "C"	-- Stormwater Retention Area
Exhibit "D"	-- Stormwater Flowage Area

IN WITNESS WHEREOF, the City has caused this Easement to be executed as of the day and year first above written.

ATTEST: James R. Freeman
City Clerk

CITY OF PALMETTO, FLORIDA
BY AND THROUGH THE CITY
COMMISSION OF THE CITY OF
PALMETTO

By: _____
James Freeman, City Clerk

By: _____
Shirley G. Bryant, Mayor

STATE OF Florida
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by Shirley G. Bryant, Mayor of the City of Palmetto, a municipal corporation of the State of Florida, who is personally known to me or has produced _____ as identification.

NOTARY PUBLIC Signature

(SEAL)

IN WITNESS WHEREOF, the School Board has caused this Easement to be executed as of the day and year first above written.

**Signed, sealed and delivered
in the presence of:**

_____ Signature	SCHOOL BOARD OF MANATEE COUNTY, FLORIDA, a public body corporate
_____ Print Name	By: _____ Chairman
_____ Signature	ATTEST:
_____ Print Name	_____ Superintendent
Approved to Form and Legal Sufficiency By: _____	Date Executed: _____, 2009

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by _____, as _____ of The School Board of Manatee County, Florida, a public body corporate. He/She is personally known to me or has provided _____ as identification.

Notary Public – State of Florida
My Commission Expires: _____
My Commission Number: _____

Prepared by and Return to:
Timothy A. Knowles, Esq.
Porges, Hamlin, Knowles, Prouty,
Thompson & Najmy, PA
1205 Manatee Avenue West
Bradenton, FL 34205

JOINT USE AGREEMENT

THIS JOINT USE AGREEMENT ("Agreement") is made on this ____ day of _____, 2009, by and between the BOYS AND GIRLS CLUBS OF MANATEE COUNTY, INC., a Florida non-profit corporation ("Club"), and THE SCHOOL BOARD OF MANATEE COUNTY, FLORIDA, a public body corporate ("Board").

WITNESSETH:

WHEREAS, the Club owns certain property described in Exhibit "A" ("Club Property");
and

WHEREAS, the Board owns certain property described in Exhibit "B" ("Board Property"), in which an Elementary School ("School") is or will be located; and

WHEREAS, the Club Property contains or will contain an indoor gymnasium with restroom facilities and outdoor amphitheater, and the Board Property contains or will contain a playfield, covered pavilion, and a "cafetorium" (a combination cafeteria/auditorium), which the parties desire to share use pursuant to the terms and conditions herein.

NOW THEREFORE, for \$10.00 and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **Recitals.** The foregoing recitals are true and constitute the basis for this Agreement.

2. **Club Property.** The Club hereby grants the Board a license to use its gymnasium, restrooms, outdoor amphitheater and playfield (the “Club Facilities”) during non-program hours subject to scheduling limitations as provided herein. For the purposes hereof “program hours” shall mean 2:00 P.M. to 8:00 P.M. on Monday, Tuesday, Thursday and Friday, and 12:30 P.M. to 8:00P.M. on Wednesday, on any such days that Club members are on the Club Property. The Principal of the School shall coordinate with the Director of the Club to schedule such use, which use, if during non-program hours, shall not be unreasonably withheld. In the event that the Board desires to use any of the Club’s other facilities or equipment, the Principal may request such usage from the Club and the Director of the Club, in its sole and absolute discretion, may approve such usage. Any such usage must be pre-approved by the Club prior to the Board’s use. During all times that the Board uses any of the Club Facilities, the Board agrees to provide appropriate supervision of its students.

3. **Board Property.** The Board hereby grants the Club a license to use its playfield and covered pavilion (the “Board Facilities”) during all non-school hours without reservation or notice. For the purposes hereof “school hours” shall mean thirty (30) minutes prior to the scheduled start of school and thirty (30) minutes after the scheduled release of school, on all days students are in attendance at the School. However, during special events held by the School, the Principal of the School shall notify the Director of the Club with at least fifteen (15) days’ notice of the special event scheduled and the Club’s license shall be restricted during the hours of the special event. Further, the Board hereby grants the Club a license to use its cafetorium, provided that the Club provides the Board with at least thirty (30) days’ notice of such usage on a

reservation basis, unless otherwise agreed between the Director of the Club and the Principal of the School. In the event that the Club desires to use any of the Board's other facilities or equipment, the Club may request such usage from the Principal and any such usage must be pre-approved by the Principal of the School. In addition, if the use of the Board's Property requires special accommodations, such as use of the kitchen to prepare food for a special event or security that is to be provided by the Board, the Principal of the School and Director of the Club shall directly negotiate such terms in good faith, including applicable fees, if any. During all times that the Club uses any of the Board Facilities, the Club agrees to provide appropriate supervision of its members.

4. **Parking.** The Board hereby grants to the Club a permanent, exclusive easement for use of ten (10) parking spaces to be located upon the Board Property. The ten (10) parking spaces shall be dedicated for the exclusive use of the Club, its employees, invitees and members at all times. The exact location of the ten (10) spaces shall be determined in good faith by the parties, however the location shall be convenient to the Club. The Club may, at its sole cost and expense, install signs or other markers to designate such exclusive use by the Club, however any such signs or markers shall first be approved by the Superintendant of schools or his designee, which such consent shall not be unreasonably withheld.

Additionally, the Board hereby grants a permanent, non-exclusive easement for ten (10) additional parking spaces, which such spaces shall be not subject to any restricted hours for use. The ten (10) additional non-exclusive spaces may be used by the Club, its employees, invitees and members at all times. As with the ten (10) exclusive spaces, these ten (10) additional non-exclusive spaces shall be in a location convenient to the Club.

In addition, the Board hereby grants a non-exclusive easement over all parking areas located upon the Board Property. However, such additional parking rights shall be restricted for use by the Club, its employees, members and invitees, to the period commencing thirty (30) minutes after all students are released on school days and ending sixty (60) minutes prior to the school start time on school days. Such use shall also be restricted during any Board scheduled events occurring during after-school hours, including but not limited to open-houses, teacher conferences or school sponsored recitals.

5. **Term.** This Agreement shall remain in effect as long as the Club remains a not-for-profit organization that promotes the physical, mental, and moral wellbeing of children in the community and the Board uses the Board Property as a school. The parties, if either so desires, may revisit this Agreement at anytime to modify any of the provisions herein. In the event that one party desires to modify this Agreement pursuant to the terms herein and the other party does not consent to the modification, then the parties shall continue to be bound by the original terms of this Agreement.

6. **Maintenance; Expenses.** Each party shall, at its own cost and expense, maintain its respective properties and be responsible for all of its own expenses, including utilities. After usage, all facilities shall be left in a neat and orderly condition. In the event that one party's usage of the other party's facilities becomes extraordinary and it materially increases the cost of the other party's utilities, maintenance costs and/or custodial costs, the Principal of the School and the Director of the Club shall in good faith determine contributions for the extraordinary utility expenses, maintenance costs and/or custodial costs, which shall be determined by the increase in utility costs, maintenance costs and/or custodial costs as reasonably evidenced by the party claiming the increase in costs. Nothing herein shall prohibit the Board from requiring the

payment of reasonable fees for the use of the cafetorium. Notwithstanding the terms herein, The Board shall bear all costs of maintenance of the improvements within the respective parking easement areas, including without limitation, paving, striping, and the like, except to the extent of damage thereto directly caused by the Club or its employees, clients, guests, invitees, agents or contractors.

7. **Indemnification.** The Club shall indemnify and hold the Board harmless from any claims, demands, suits, actions or causes of action for any damage or injuries sustained to any person or property from any cause whatsoever during the term of this Agreement arising from the Club's use of the Board's Property. The Board agrees to indemnify and hold the Club harmless from any claims, demands, suits, actions or causes of action for any damage or injuries sustained to any person or property from any cause whatsoever during the term of this Agreement arising from the Board's use of the Club's Property. Any costs, including reasonable attorney's fees, for damages, claims, liabilities or judgments incurred at any time by one party as a result of the other party's negligence or intentional wrongdoing, or failure to perform any obligation undertaken or covenant made in this Agreement, shall be paid for, or reimbursed by, the other party. Notwithstanding the foregoing, the Board's obligations pursuant to this provision shall be only to the extent permitted by Florida law and nothing contained herein shall constitute or be construed as a waiver or limitation of sovereign immunity or a waiver of any limitation of liability provided by law beyond such waiver provided in s. 768.28, Florida Statutes.

8. **Insurance.** The Club shall maintain \$1,000,000.00 minimum public liability insurance naming the Board as an additional insured. Both the Club and the Board shall maintain Workers Compensation insurance in amounts as required by Florida law.

9. **Notice.** All notices under this Agreement shall be in writing, and shall either be hand delivered, or delivered by certified mail, return receipt requested, with sufficient postage to reach its destination. Notice shall be given to the Board and the Club at the following addresses:

If to School Board:
The School Board of Manatee
County, Florida
215 Manatee Ave. West
Bradenton, Florida 34205
Attn: Tim McGonegal, Superintendent
Fax: 941/708-8686

With copy to: Manatee County School Board
The Matzke Complex
2802-B 27th St. East
Bradenton, Florida 34208
Attn: Michael Pendley, School Planner
Fax: (941) 708-8832

With copy to:
Mark P. Barnebey
Kirk Pinkerton, P.A.
1301 6th Avenue West, Suite 401
Palmetto, Florida 34205
Fax: 941- 744 -9691 and 941-364-2490

Boys and Girls Clubs of Manatee County, Inc. Bradenton, Florida
Attn: Executive Director
6220 Manatee Avenue West, Suite 201
Bradenton, Florida 34209

The place where notice is given may be changed from time to time by giving notice of such change at least thirty (30) days prior to the effective date of such change.

10. **Remedies.** Either party may terminate the other party's use of any of its respective Club Facilities or Board Facilities for good cause and such party may do so in such a limited fashion without restricting the use of all facilities. However, in the event that use of a particular facility is terminated for good cause, this Agreement shall still be in full force and effect as to any other facilities shared pursuant to this Agreement. Notwithstanding the above,

the Club shall not restrict the Board's use of the Club's gymnasium without first providing the Board with thirty (30) days notice. In the event any required cure of default, act or omission by the Board extends beyond thirty (30) days, the Board shall be permitted such additional time as is reasonably necessary to cure or remedy such default, act, or omission by the Board.

11. **Governing Law.** The terms and conditions of this Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The parties hereby submit themselves to the jurisdiction of the courts of Manatee County, Florida, for the purposes of resolving any disputes hereunder.

12. **Binding Effect.** All of the terms, covenants and conditions herein contained are and shall be binding upon the parties, their heirs, personal representatives, successors and assigns.

13. **Unenforceable Provisions.** In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such provision shall be deemed to have been amended and the parties shall execute all documents necessary to evidence such amendment so as to eliminate or modify any such invalid provision to carry out the intent of this Agreement as far as possible and to render the terms of this Agreement enforceable in all respects as so modified. In any event, such invalidity, illegality and unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision and never been contained herein.

14. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be construed as an original, and all so executed will together constitute one

agreement, binding on all parties hereto, notwithstanding that all the parties may not be signatories to the same counterpart.

15. **Entire Agreement.** This Agreement contains the entire agreement of the parties. This Agreement shall not be changed except by a writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties have caused these presents to be duly executed on this the day and year first above written.

**Signed, sealed and delivered
in the presence of:**

_____ Signature	SCHOOL BOARD OF MANATEE COUNTY, FLORIDA, a public body corporate
_____ Print Name	By: _____ Chairman
_____ Signature	ATTEST:
_____ Print Name	_____ Superintendent
Approved to Form and Legal Sufficiency By: _____	Date Executed: _____, 2009

STATE OF FLORIDA
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by _____, as _____ of The School Board of Manatee County, Florida, a public body corporate. He/She is personally known to me or has provided _____ as identification.

Notary Public – State of Florida
My Commission Expires: _____
My Commission Number: _____

**Signed, sealed and delivered
in the presence of:**

**BOYS AND GIRLS CLUB OF MANATEE
COUNTY, INC.,** a Florida not-for-profit
corporation

Signature

Print Name

By: _____

Name: _____

Title: _____

Signature

Print Name

Date Executed: _____, 2009

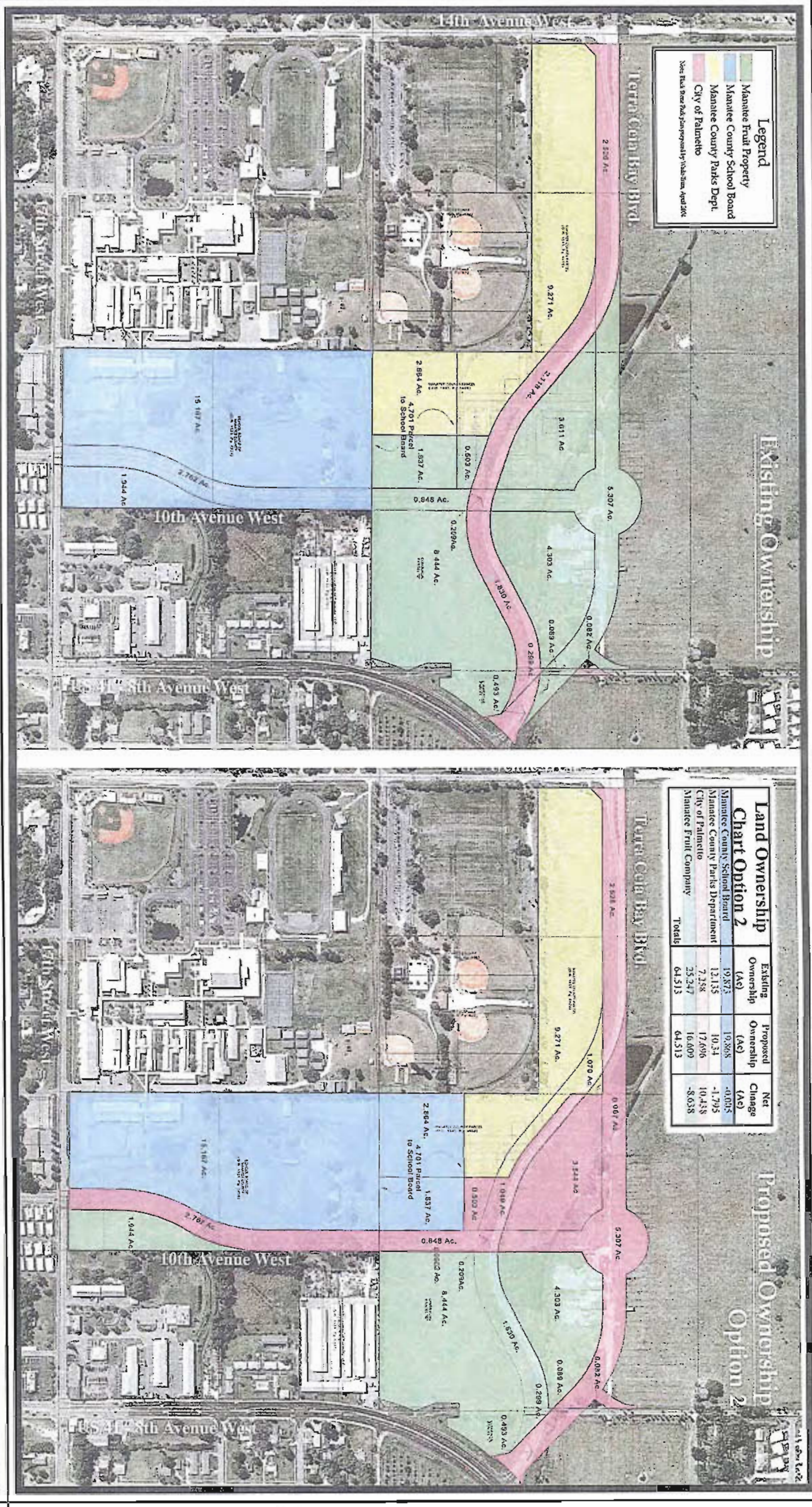
**STATE OF FLORIDA
COUNTY OF MANATEE**

The foregoing instrument was acknowledged before me this ____ day of _____, 2009,
by _____, as _____ of the Boys and Girls Clubs of
Manatee County, Inc., a Florida non-profit corporation, on behalf of the corporation. He/She is
personally known to me or has provided _____ as identification.

Notary Public – State of Florida

My Commission Expires: _____

My Commission Number: _____



The Groves - 90' Tenth Avenue ROW

Manatee Fruit Company

Land Exchange Exhibit

Palmetto, Florida