

PREPARED BY AND
RETURN TO:

STEVEN D. RUBIN, ESQ.
980 North Federal Highway, Suite 434
Boca Raton, Florida 33432

CROSS-EASEMENT AGREEMENT

THIS Cross-Easement Agreement is made this _____ day of _____, 2006, by Auburn Trace, Ltd., a Florida limited partnership, its successors and assigns (hereinafter referred to as "Auburn Trace"), whose mailing address is 1301 S. W. 10th Avenue, Building J, Delray Beach, Florida 33444, and the School Board of Palm Beach County, Florida, its successors and assigns, whose mailing address is 3318 Forest Hill Boulevard, C-214, West Palm Beach, Florida 33406, (hereinafter referred to as "School Board").

WITNESSETH:

For Ten Dollars (\$10.00) and other good and valuable consideration in hand paid by the School Board to Auburn Trace, the adequacy and receipt of which are hereby acknowledged, Auburn Trace hereby grants, bargains and conveys to the School Board a non-exclusive drainage easement, for the purposes described in this Agreement, in, over, across, on, under and through the real property located in Palm Beach County, Florida described in Exhibit "A" attached hereto and incorporated herein by reference and hereinafter referred to as "Easement Parcel One", and for Ten Dollars (\$10.00) and other good and valuable consideration in hand paid by Auburn Trace to the School Board, the adequacy and receipt of which are hereby acknowledged, School Board hereby grants, bargains and conveys to Auburn Trace a non-exclusive drainage easement, for the purposes described in this Agreement, in, over, across, on, under and through the real property located in Palm Beach County, Florida described in Exhibit "B" attached hereto and incorporated herein by reference and hereinafter referred to as "Easement Parcel Two". Auburn Trace and School Board agree as follows:

1. Definitions:
 - a. "School Board" shall mean School Board of Palm Beach County, Florida, and its successors or assigns. School Board presently owns the School Board Property.
 - b. "Auburn Trace" shall mean Auburn Trace, Ltd., a Florida Limited Partnership, and its successors and assigns. Auburn Trace presently owns Tract A, Tract B, Tract C, and Tract D.

- c. “Tract AC Owner” shall mean the record owner of Tract A, Tract C, and Tract D as of the date of the execution of this Easement Agreement and any successor or assign of the owner of Tract A, Tract C, or Tract D as a result of transfer or conveyance of Tract A, Tract C, or Tract D by Auburn Trace, or Auburn Trace’s successors and assigns.
- d. “Tract B Owner” shall mean the record owner of Tract B, as of the date of the execution of this Easement Agreement and any successor or assign of the owner of Tract B as a result of a transfer or conveyance of Tract B by Auburn Trace, or Auburn Trace’s successors and assigns.
- e. “Easement Parcel One” means the real property described in Exhibit “A” which is attached hereto and made a part hereof.
- f. “Easement Parcel Two” means the real property described in Exhibit “B” which is attached hereto and made a part hereof
- g. “School Board Property” means the real property described in Exhibit “C” which is attached hereto and made a part hereof.
- h. “Tract A”, “Tract C”, and “Tract D” means Tract A, Tract C, and Tract D of Auburn Trace, according to the Plat thereof, recorded in Plat Book 64, Page 184-186, of the Public Records of Palm Beach County, Florida.
- i. “Tract B” means Tract B of Auburn Trace, according to the Plat thereof, recorded in Plat Book 64, Page 184-186, of the Public Records of Palm Beach County, Florida, on which Easement Parcel One is located.
- j. “South Florida Water Management District Permit” means the Surface Water Maintenance Permit to be issued by the South Florida Water Management District for the surface water management of the School Board Property, Tract A, Tract B, Tract C, and Tract D. In the event the South Florida Water Management District Permit has not been issued as of the date of the execution of this Agreement, Exhibit “D” shall consist of the SFWMD Permit Application No. 051110-12 which is jointly signed by Tract Owner AC, the School Board, and the City of Delray Beach. When the Permit is issued, it shall be attached as a substitute Exhibit “D” to this Agreement.
- k. “SFWMD” means the South Florida Water Management District.
- l. “Surface Water Management System” is the system for surface water drainage described in the SFWMD Permit.
- m. The word “maintenance” or “maintain”, where the context applies, includes the requirement to allow the proper and efficient flow of surface water through the surface water system within Easement Parcel One and Easement Parcel Two and to perform the necessary maintenance to allow access and proper operation of the surface water management system within said Easement Parcels.
- n. “Easement Agreement” or “Agreement” mean this Cross Easement Agreement.

2. This Easement Agreement is given for the purpose of allowing surface water to drain from the School Board Property, Tract A, Tract B, Tract C, and Tract D into the dry retention area

within Easement Parcel One, for the School Board to construct an underground culvert from the School Board Property into Easement Parcel One that permits the drainage of storm water from the School Board Property to the dry retention area within Easement Parcel One, for the School Board to construct all necessary improvements on Easement Parcel One, Easement Parcel Two, Tract A, Tract B, Tract C, Tract D, and the School Board Property to comply with the conditions and requirements contained in the SFWMD Permit, for Tract AC Owner to drain surface water into Easement Parcel One through existing or replacement underground pipes and conduits, for Tract AC Owner to utilize water in Easement Parcel One existing lined retention pond for irrigation of landscaped areas located on Tract A, Tract C, and Tract D and for Tract AC Owner and Tract B Owner to drain outflow surface water from Easement Parcel One through Easement Parcel Two and ultimately into the City of Delray Beach's surface water drainage system.

3. The term of this Agreement shall be perpetual.

4.a. School Board, at its sole cost and expense, shall construct all of the drainage facilities and improvements required for the issuance of the South Florida Water Management District Permit on the School Board Property, Tract A, Tract B, Tract C, Tract D, Easement Parcel One and Easement Parcel Two as shown in the SFWMD Application, and any other improvements deemed necessary or proper to obtain the South Florida Water Management District Permit. The School Board's construction of the drainage facilities and improvements shall include, without limitation, the reinstallation of any of Auburn Trace's facilities, pipes, wells or equipment which are damaged or removed during construction. The reinstallation of such damaged or removed facilities and equipment shall be with facilities, pipes, wells or equipment of like kind and quality which will enable Auburn Trace to utilize Tract B in the manner described in paragraph (17) of this Agreement. School Board shall also be responsible for providing drainage from and irrigation to Tract A and Tract C during the construction phase of the project if during the period of construction, the drainage and irrigation facilities and equipment presently located in Tract B which serve Tract A and Tract C are damaged the result of which temporarily reduces the drainage and irrigation of Tract A and Tract C to capacities which are less than those which are described in paragraph (17) of this Agreement. School Board shall construct the improvements necessary for the issuance of the South Florida Water Management District Permit in a good and workmanlike manner, and in accordance with all applicable laws, rules, statutes, ordinances, and regulations. School Board warrants that the facilities, equipment and improvements it constructs shall be free from defects or negligent construction in labor, materials and services for a period of one (1) year after all of the construction has been completed. School Board shall repair or replace, at its cost and expense, any defective or negligent labor, services and material, within a reasonable time after written notice is delivered to it by Tract B Owner.

b. As of the date of the execution of this Agreement, it is anticipated that to obtain the issuance of the SFWMD Permit, portions of the existing berm located along the boundary lines of Tract A, Tract B, Tract C, and Tract D (approximately one thousand five hundred linear feet (1,500.00')) must be raised to a height of approximately fifteen and 73/100 feet (15.73', i.e. the twenty-five (25) year three (3) day storm level) School Board, at its sole cost and expense, shall raise the height of the existing berm that is located on said Tracts which will be necessary to obtain the

issuance of the South Water Management District Permit. The School Board shall have the temporary right to enter onto said Tracts for the limited purpose of installing materials to raise the height of the existing the berm. The School Board shall use its best efforts not to disturb the peaceful and quiet enjoyment of said Tracts during installation, and it shall remove all equipment and leave said Tracts in a clean and orderly condition when all work is completed. In the event that there shall be any improvements within the area to be raised to form the berm, the School Board shall restore the improvements to a condition that is reasonably similar to the condition in which they existed before the raising of the berm. Such restoration shall be at the sole cost and expense of the School Board. Notwithstanding anything to the contrary contained in this subparagraph, the berm shall be raised only where the existing berm is located and existing drives and entryways in said Tracts shall not be disturbed. The raised berm shall be sodded by the School Board as part of its installation obligation. School Board shall raise the height of the existing berm necessary for the issuance of the South Florida Water Management District Permit in a good and workmanlike manner, and in accordance with all applicable laws, rules, statutes, ordinances, and regulations. School Board warrants that the improvements it installs shall be free from defects or negligent construction in labor, materials and services for a period of one (1) year after all of the construction has been completed. School Board shall repair or replace, at its cost and expense, any defective or negligent labor, services and material, within a reasonable time after written notice is delivered to it by Tract AC Owner. However, Tract AC Owner shall be solely responsible for watering the sod after it is installed.

c. After the initial construction of the facilities and improvements required by the South Florida Water Management District Permit by the School Board, the City shall construct a landscape buffer on Tract B between the Auburn Trace housing development and Tract B. The City shall have the responsibility to maintain, repair and replace such landscaping at its cost and expense and to obtain such permits as may be necessary. Such construction of the landscape buffer shall be completed within ninety (90) days of the completion of the construction of the facilities and improvements required by the South Florida Water Management District Permit.

5. After initial construction of the facilities and improvements required by the South Florida Water Management District Permit by the School Board, and except as otherwise provided in this Agreement, Tract B Owner hereby shall and does accept responsibility for the operation and maintenance, repair and replacement of the surface water management system described in the South Florida Water Management District Permit to the extent the facilities and improvements are located on Easement Parcel One or Tract B (expressly excluding the irrigation improvements described in paragraph (17) of this Agreement which remain the responsibility of Tract AC Owner). Tract B Owner shall have the responsibility to maintain, repair and replace such facilities and improvements at its cost and expense to comply with the SFWMD Permit and to maintain a free flowing, unobstructed drainage system.

6. After initial construction of the facilities and improvements required by the South Florida Water Management District Permit by the School Board, and except as otherwise provided in this Agreement, School Board hereby shall and does accept responsibility for the operation and maintenance, repair and replacement of the surface water management system described in the

South Florida Water Management District Permit to the extent the facilities and improvements are located on Easement Parcel Two or the School Board Property. School Board shall have the responsibility to maintain, repair and replace such facilities and improvements at its cost and expense to comply with the SFWMD Permit and to maintain a free flowing, unobstructed drainage system.

7. After initial construction of the facilities and improvements required by the South Florida Water Management District Permit by the School Board, and except as otherwise provided in this Agreement, Tract AC Owner hereby shall and does accept responsibility for the operation and maintenance, repair and replacement of the surface water management system described in the South Florida Water Management District Permit to the extent the facilities and improvements are located on Tract A, Tract C, or Tract D. Tract AC Owner shall have the responsibility to maintain, repair and replace such facilities and improvements at its cost and expense to comply with the SFWMD Permit and to maintain a free flowing, unobstructed drainage system.

8. Tract AC Owner, Tract B Owner and School Board shall not modify the surface water management system without first obtaining approval of the South Florida Water Management District.

9. Tract AC Owner, Tract B Owner and School Board shall not violate any of the conditions, terms or covenants described in the South Florida Water Management District Permit.

10. The easements granted in this Agreement are non-exclusive.

11. In the event any material provision contained in the South Florida Water Management District Permit is violated, the South Florida Water Management District shall have the right to take enforcement action, including a civil action for an injunction and penalties, against the party who has violated the Permit provision to compel such party to correct any outstanding violations.

12. Tract AC Owner, Tract B Owner, and School Board shall have reasonable ingress and egress to, from, by, through, under and across Easement Parcel One and Easement Parcel Two to construct and thereafter maintain, repair and replace the drainage facilities and improvements required by the South Florida Water Management District Permit in accordance with their respective responsibilities described in this Agreement.

13. Tract AC Owner, at its sole cost and expense, shall maintain, repair and replace the drainage equipment, improvements, pipes, conduits, and other facilities located on Tract A, Tract C, and Tract D which serve the purpose of draining surface water from Tract A, Tract C, and Tract D into Easement Parcel One.

14.a. Should Tract AC Owner fail to construct, repair or maintain the portion of the surface water management system located on Tract A, Tract C, or Tract D for which it is responsible so that water will not flow in an efficient manner or in a manner in violation of the South Florida Water Management District Permit, the School Board or Tract B Owner, after not less than seven (7) days

written notice to Tract AC Owner to cure the default, (except no notice shall be required in the event of an emergency) may, but it is not obligated to, enter onto Tract A, Tract C, or Tract D to perform all necessary construction, repair, maintenance and operating work and may assess Tract AC Owner for the cost of said work. The assessment shall be lien against all of Tract A, Tract C, and Tract D. The lien shall attach to the property owned by the defaulting party effective upon recording of a notice thereof in the Public Records of Palm Beach County, Florida. The lien rights granted herein will not affect the easements and other rights granted herein to other Owners of any property and such rights shall continue in full force and effect. Such lien may be foreclosed in the same manner as a mortgage and in accordance with law. Such costs shall also be the personal obligation of Tract AC Owner at the time the costs are incurred, and may be collected accordingly.

b. Should School Board fail to construct, repair or maintain the portion of the surface water management system located on School Board Property for which it is responsible so that water will not flow in an efficient manner or in a manner in violation of the South Florida Water Management District Permit, Tract AC Owner or Tract B Owner, after not less than seven (7) days written notice to School Board to cure the default (except no notice shall be required in the event of an emergency), may, but it is not obligated to, enter onto any Easement Parcel to perform all necessary construction, repair, maintenance and operating work and may assess School Board for the cost of said work. If at the time the cost of the work is assessed the Owner of the School Board Property is not a governmental entity, the assessment shall be lien against all of the School Board Property. The lien shall attach to the property owned by the defaulting party effective upon recording of a notice thereof in the Public Records of Palm Beach County, Florida. The lien rights granted herein will not affect the easements and other rights granted herein to other Owners of any property and such rights shall continue in full force and effect. Such lien may be foreclosed in the same manner as a mortgage and in accordance with law. Such costs shall also be the personal obligation of School Board Property Owner at the time the costs are incurred, and may be collected accordingly.

c. Should Tract B Owner fail to construct, repair or maintain the portion of the surface water management system located on Tract B for which it is responsible so that water will not flow in an efficient manner or in a manner in violation of the South Florida Water Management District Permit, the School Board or Tract AC Owner, after not less than seven (7) days written notice to Tract B Owner to cure the default (except no notice shall be required in the event of an emergency), may, but it is not obligated to, enter onto any Easement Parcel to perform all necessary construction, repair, maintenance and operating work and may assess Tract B Owner for the cost of said work. If at the time the cost of the work is assessed the Owner of Tract B is not a governmental entity, the assessment shall be lien against all of Tract B. The lien shall attach to the property owned by the defaulting party effective upon recording of a notice thereof in the Public Records of Palm Beach County, Florida. The lien rights granted herein will not affect the easements and other rights granted herein to other Owners of any property and such rights shall continue in full force and effect. Such lien may be foreclosed in the same manner as mortgage and in accordance with law. Such costs shall also be the personal obligation of Tract B Owner at the time the costs are incurred, and may be collected accordingly.

15. The School Board and Tract AC Owner shall indemnify and save harmless Tract B Owner from any and all suits, actions, claims, judgments, obligations, or liabilities of every nature and description which arise from School Board's or Tract AC Owner's use, respectively, of Easement Parcel One, or with respect to the construction, installation, maintenance, repair or replacement of the surface water management drainage facilities, equipment, and improvements for which School Board or Tract AC Owner are responsible, respectively. The School Board's indemnification obligations shall be limited to the extent and limits provided in Florida Statutes § 768.28, and this indemnification obligation shall not be construed as a waiver of any right or defense that the School Board has under said Statute.

16. Tract AC Owner and Tract B Owner shall indemnify and save harmless the School Board from any and all suits, actions, claims, judgments, obligations, or liabilities of every nature and description which arise from the use by Tract AC Owner or Tract B Owner of Easement Parcel Two, respectively, or with respect to the construction, installation, maintenance, repair or replacement of the surface water management drainage facilities, equipment, and improvements for which Tract AC Owner or Tract B Owner is responsible, respectively. In the event Tract B is owned by the City of Delray Beach, the City of Delray Beach's indemnification obligations shall be limited to the extent and limits provided in Florida Statutes § 768.28, and this indemnification obligation shall not be construed as a waiver of any right or defense that the City of Delray Beach has under said Statute.

17.a. Subject to the limits set forth in this subparagraph, Tract AC Owner shall be entitled to utilize the surface water which drains or is pumped into or otherwise collects in the existing lined concrete retention pond located in Easement Parcel One (and such pond shall not be removed during construction of improvements in Easement Parcel One) for irrigation of the landscaped and sodded areas on Tract A, Tract C, and Tract D (hereinafter referred to as the "pervious areas") The parties acknowledge that Tract D is presently not an irrigated area but is itself a water retention area (but nothing herein requires such area to remain in such a condition). Subject to paragraph (4) of this Agreement and except as otherwise provided therein, Tract AC Owner shall maintain, repair and replace, at its sole cost and expense, the pump station, the irrigation pipes and any other equipment or facilities (including the lined concrete pond) now or hereinafter located in Easement Parcel One which relate to the irrigation of pervious areas on Tract A, Tract C, and Tract D. The parties acknowledge that a precise measurement of the volume of water which is presently needed to irrigate the existing pervious areas on Tract A, Tract C, and Tract D cannot be calculated. However, the parties agree that for purpose of this Agreement, Tract AC Owner shall be limited to utilizing up to a volume amount of water from the existing lined concrete retention pond which does not exceed the volume amount of water presently needed to irrigate the pervious areas located on Tract A and Tract C (and not including Tract D) as shown in the aerial photograph, a copy of which is attached hereto and made a part hereof as Exhibit "E".

Tract AC Owner shall have no right to place any additional pipes, conduit, pumps, facilities, equipment or improvements (collectively the "irrigation improvements") on, over, under or through Easement Parcel One than what is presently located on Easement Parcel One as shown on the

Survey prepared by Avrom & Associates, Inc., Job No. 7893, updated on January 13, 2006, which is attached hereto and made a part hereof as Exhibit "F", except: (1) if the irrigation improvements are replaced as a result of the removal or damage of the irrigation improvements by the School Board in connection with its construction of the drainage facilities as described in paragraph (4) of this Agreement, then those replaced irrigation improvements may be located on Easement Parcel One; or (2) If there are technological advances or changes in the manner in which water from the retention pond located on Easement Parcel One is pumped to Tract A or Tract C, in which event, Tract AC Owner shall have the right to replace the irrigation improvements, or any portion thereof, with such other technologically advanced irrigation improvements, provided the location of such irrigation improvements is within three feet (3') of their location existing as of the date the SFWMD Permit is issued, provided further, that such placement does not violate the terms of the South Florida Water Management District Permit.

b. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Tract AC Owner be impeded, limited, or stopped from being able to drain an amount of surface water into Easement Parcel One which does not exceed the amount surface water Tract AC Owner drained into Tract B as of August 5, 2005. The parties acknowledge and agree that a precise calculation of the volume amount of surface water which drained from Tract A and Tract C into Tract B as of August 5, 2005 cannot be made. However, the parties acknowledge and agree that the SFWMD Permit, when issued, will be based upon three (3) benchmark elevations which take into account all of the surface water which will drain into Easement Parcel One from Tracts A, B, C, and D and the School Board Property with respect to the improvements presently located on Tracts A, C, and D, and the improvements which the County of Palm Beach intends to construct on a portion of Tract B (i.e. the Head Start facility), and the improvements the School Board intends to construct on the School Board Property. The three benchmark elevations are the twenty five (25) year, three (3) day storm for the perimeter berm elevation, the one hundred (100) year storm for the finished floor elevation, and the five (5) year storm for the road grade elevation (hereinafter referred to as the "benchmark elevations"). Accordingly, the improvements, calculations, conditions and other matters set forth in the SFWMD Permit describe conditions that presently approximate such amount of surface water drainage and any change to the SFWMD Permit could result in an impediment, limitation, or stoppage of the water drainage rights granted to any party to this Agreement.

After the SFWMD Permit has been issued, no improvements or modifications may be made to Tracts A, B, C, or D, or the School Board Property unless the party which then owns the property which is to be improved or modified, submits an application to the SFWMD for approval of the proposed improvement or modification. If the proposed modification or improvement does not result in a change in any of the three benchmark elevations, no additional surface water will drain into Easement Parcel One, and the other parties to this Agreement would not be required to make any change to their respective property or improvements (which are subject to this Agreement), then the other parties to this Agreement shall, within twenty (20) business days after delivery of a written request ("written request"), and except as otherwise provided herein, join in the SFWMD application for approval of the proposed modifications or improvements. The written request shall be accompanied by engineering data, surveys, architectural plans and drawings, and such other documents which are reasonably necessary for the other parties to this Agreement to verify that the

proposed modifications or improvements will not result in a change in the three benchmark elevations or additional surface water to drain into Easement Parcel One, or would require a change or improvement to their respective properties which are subject to this Agreement. Notwithstanding anything to the contrary contained in this subparagraph, if the proposed modifications or improvements would result in a change in one or more of the three benchmark elevations, additional surface water to drain into Easement Parcel One, or would require a change or improvement to the other parties' properties or improvements which are subject to this Agreement, then the other parties to this Agreement may, but are not obligated to, join in the SFWMD application. A party who asserts that it is not obligated to join in the SFWMD application shall notify the other parties to this Agreement of such assertion within twenty (20) business days after the delivery of the written notice and accompanying documents. The failure to timely notify the other parties to this Agreement of such assertion shall be deemed a waiver of the right to refuse to join in the SFWMD application.

Nothing contained in this subparagraph shall relieve a party who is proposing the modification or improvement from obtaining any necessary approval or permit from any other governmental agency or political subdivision which has jurisdiction over the property, including if a party to this Agreement is such governmental agency or political subdivision. To the extent such approval or permit is required and the other party to this Agreement is the governmental agency or political subdivision which may grant or deny such approval or permit, nothing contained herein limits the authority of said party to grant or deny such approval or permit in accordance with applicable law, and no party to this Agreement shall have any vested rights.

c. Anything herein to the contrary notwithstanding, nothing herein grants South Florida Water Management District the right to modify, limit, or otherwise change the rights granted to Tract AC Owner in paragraph (17) of this Agreement.

18. All parties shall pay before delinquency all taxes and assessments levied against their respective properties.

19. The School Board shall not charge Tract AC Owner or Tract B Owner for the use of Easement Parcel Two and Tract B Owner shall not charge the School Board or Tract AC Owner for the use of Easement Parcel One. Easement Parcel One is an easement appurtenant to the School Board Property, Tract A, Tract C and Tract D, and is intended to benefit such properties and shall run in favor of the School Board, Tract A, Tract C, and Tract D, and shall be binding upon Tract B Owner's interest in Easement Parcel One and its successors and assigns with Tract B being the serviant estate. Easement Parcel Two is an easement appurtenant to Tract B, Tract A, Tract C, and Tract D, and is intended to benefit such properties and shall run in favor of Tract AC Owner and Tract B Owner, respectively, and their successors and assigns and shall be binding upon the School Board, and its successor and assigns, with the School Board's interest in Easement Parcel Two being the serviant estate.

20. This Easement Agreement is a covenant running with the land and shall be binding upon and shall inure to the benefit of the heirs, legal personal representatives, successors and assigns of the parties hereto, and shall bind all present and subsequent owners of Tract A, Tract B, Tract C,

Tract D and the School Board Property.

21.a. Tract AC Owner shall procure and maintain liability insurance protecting Tract B Owner and School Board with respect to Tract AC Owner's use of Easement Parcel One and Easement Parcel Two, respectively, whereby injury or death is covered to the extent of \$1,000,000.00/\$1,000,000.00, and Tract B Owner and School Board shall be named as additional insureds and loss payees in Tract AC Owner's policy. Tract AC Owner shall pay premiums and shall deliver proof of insurance to Tract B Owner and School Board on an annual basis. School Board shall only use properly licensed Florida contractors who have adequate workers' compensation and liability insurance coverage for purposes of carrying on any of its responsibilities under this Agreement with respect to Easement Parcel One, Tract A, Tract C or Tract D. In the event the City of Delray Beach is the Owner of Tract B, it shall only use properly licensed Florida contractors who have adequate workers' compensation and liability insurance coverage for purposes of carrying on any of its responsibilities under this Agreement with respect to Easement Parcel Two, Tract A, Tract C, or Tract D.

b. Provided the Owner of Tract B is not then a governmental entity, Tract B Owner shall procure and maintain liability insurance protecting Tract AC Owner and School Board with respect to Tract B Owner's use of Easement Parcel Two, whereby injury or death is covered to the extent of \$1,000,000.00/\$1,000,000.00, and Tract AC Owner and School Board shall be named as additional insureds and loss payees in Tract AC Owner's policy. Tract B Owner shall pay premiums and shall deliver proof of insurance to Tract B Owner and School Board on an annual basis.

c. Provided the Owner of the School Board Property is not then a governmental entity, the Owner of the School Board Property shall procure and maintain liability insurance protecting Tract B Owner and Tract AC Owner with respect to the Owner of the School Board Property's use of Easement Parcel One whereby injury or death is covered to the extent of \$1,000,000.00/\$1,000,000.00, and Tract B Owner and Tract AC Owner shall be named as additional insureds and loss payees in the Owner of the School Board Property policy. The Owner of the School Board Property shall pay premiums and shall deliver proof of insurance to Tract B Owner and Tract AC Owner on an annual basis.

22. All work performed in Easement Parcel One shall be performed only by properly licensed Florida or Palm Beach County contractors and in compliance with all applicable building codes and zoning ordinances and the contractor's performing the work shall be reasonably insured and without cost to Tract B Owner, insured for any claim arising out of the work and that Tract B Owner will be indemnified and held harmless for any claims that may arise out of the work.

23. This Agreement only contemplates the drainage of surface water from Tract A, Tract B, Tract C, Tract D, and the School Board Property into Easement Parcel One resulting from natural rainwater and no use of Easement Parcel One shall be made for drainage of sewage, industrial waste, or any hazardous materials.

24. School Board warrants that it is seized of the School Board Property and has the right

to convey Easement Parcel Two, that there are no encumbrances other than the existing Ground Lease and the School Board's Certificates of Participation; and that Tract AC Owner and Tract B Owner shall have quiet enjoyment in Easement Parcel Two.

25. Tract B Owner warrants that it is seized of Tract B and has the right to convey Easement Parcel One, that there are no encumbrances other than mortgages of record; and that the School Board and Tract AC Owner shall have quiet enjoyment in Easement Parcel One. Tract AC Owner warrants that it is seized of Tract AC and has the authority to execute this Agreement without the consent or joinder of any third person or entity.

26. All notices under this Agreement shall be mailed to the parties at the following respective addresses:

To School Board Property Owner:

School Board of Palm Beach County, Florida
Chief of Facilities Management
3318 Forest Hill Boulevard, C-214
West Palm Beach, Florida 33406

To Tract AC Owner:

Auburn Trace, Ltd., a Florida limited partnership
1301 S. W. 10th Avenue, Building J
Delray Beach, Florida 33444

With a copy to:

City of Delray Beach
City Attorney
200 N. W. 1st Avenue
Delray Beach, Florida 33444

All notices, consents or other instruments or communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (a) when actually delivered and received personally, by messenger service, or by fax or telecopy delivery; (b) on the next business day after deposited to delivery in an overnight courier service such as Federal Express; of (c) three (3) business days after deposit in the United States mail, by registered or certified mail with return receipt requested. All

notices or other instruments shall be transmitted with delivery or postage charges prepaid, addressed to the parties at the address above for the party(s) or to such other address as such party(s) may designate by written notice to the other party (s).

27. In connection with any litigation, arbitration, or dispute arising out of this Agreement, each party shall bear its own attorneys' fees and costs.

28. This Agreement shall be construed and interpreted in accordance with Florida law and shall not be more strictly construed against one party than against the other by virtue of the fact that it may have been physically prepared by one party or by its attorneys, all parties (and their respective attorneys, where applicable) having participated in the negotiation of this Agreement.

29. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning, or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

30. The parties agree to execute all future instruments and take all further action that may be reasonably required by any party to fully effectuate the terms and provisions of this Agreement and the transactions contemplated herein.

31. This Agreement supersedes any and all understandings and agreements between the Parties hereto whether oral or written, and this Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof. No representations or inducements made prior hereto which are not included and embodied in this Agreement shall be of any force and effect. This Agreement may be amended, altered or modified only by a written agreement executed by the parties.

32. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court.

33. Any party to this Agreement shall within a reasonable period of time and from time to time, upon not less than ten (10) days prior written request by any other party, execute, acknowledge and deliver to such party a statement in writing certifying that this Agreement is unmodified and in full force and effect, or if there has been any modification thereof that the same is in full force and effect as modified and stating the modification or modifications and that there are no defaults existing, or if there is any claimed default stating the nature and extent thereof; and stating that costs and charges have been paid or if not, the amount claimed due, from whom, and the basis of the claim. It is expressly understood and agreed that any such statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser of the requesting party's property or any lender or prospective lender on the security of the property or the fee estate of any part thereof, and any third person.

34. Provided the record owner of Tract B is not then a governmental entity, Tract B Owner shall indemnify and save harmless Tract AC Owner from any and all suits, actions, claims, judgments, obligations, or liabilities of every nature and description which arise from Tract B Owner's use of Easement Parcel One or Easement Parcel Two, or with respect to the construction, installation, maintenance, repair or replacement of the surface water management drainage facilities, equipment, and improvements for which Tract B Owner is responsible.

35. Provided the record owner of School Board Property is not then a governmental entity, the School Board Property Owner shall indemnify and save harmless Tract AC Owner from any and all suits, actions, claims, judgments, obligations, or liabilities of every nature and description which arise from School Board's Owner's use of Easement Parcel One or Easement Parcel Two, or with respect to the construction, installation, maintenance, repair or replacement of the surface water management drainage facilities, equipment, and improvements for which School Board Owner is responsible.

36. No breach of the provisions of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement or the applicability to it; but such limitation shall not affect, in any manner, any other rights or remedies which any party may have hereunder by reason of any breach of the provisions of this Agreement. No breach of the provisions of this Agreement shall affect or render invalid the lien of any mortgage or deed of trust made in good faith and for value covering any part of any property. Notwithstanding the foregoing provisions, this Agreement shall be binding upon and effective against any party whose title is acquired by foreclosure or trustee's sale or any grantee by deed in lieu of foreclosure or trustee's sale.

37. In the event of a breach, or attempted or threatened breach, of any obligation of this Agreement, the other party(ies) shall be entitled forthwith to obtain an injunction to specifically enforce the performance of such obligation, acknowledging the inadequacy of legal remedies the irreparable harm which would be caused by any such breach being hereby acknowledged and/or to relief by all other available legal and equitable remedies from the consequences of such breach.

38. No delay or omission of any party in the exercise of any right accruing upon any default or violation hereof, or any other party shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default or violation. A waiver by any party of a breach of, or a default in, any of the terms and conditions of this Agreement by any other party shall not be construed to be a waiver of any subsequent breach of this Agreement.

39. Any lien so created by this Agreement shall be effective only upon the recording of such lien and shall be subordinate to any previously recorded mortgage applicable to such property.

40. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto that nothing in this Agreement expressed or implied, shall confer upon any person, except as specifically set forth in the terms and conditions of this Agreement. Rights to a third party beneficiary are neither intended nor granted.

41. Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers or render any of said parties liable for the debts or obligations of the other.

42. Wherever in this Agreement it is provided that an action shall be subject to the consent or approval of the other, such consent or approval shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hand and seals on this _____ day of _____, _____.

Witness

Print name of witness

Witness

Print name of witness

Witness

Print name of witness

Witness

Print name of witness

AUBURN TRACE, LTD., a Florida Limited Partnership
By: Auburn Trace Joint Venture, its General Partner

By: Auburn Management, Inc., a Florida Corporation, its Managing Partner

BY: _____
Thomas Hinnners, President and Chief Executive Officer

THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA
By: _____
Thomas E. Lynch, Chairman
Date: _____

ATTEST:

BY: _____
Arthur C. Johnson, Ph.D. Superintendent

REVIEWED AND APPROVED AS TO LEGAL FORM

Board Approval Date: _____

School Board Attorney

Date: _____

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ___ day of _____ 2006, by Auburn Trace, Ltd., a Florida Limited Partnership, by Auburn Trace Joint Venture, its General Partner, by Thomas Hinnners, President and

Chief Executive Officer of Auburn Management, Inc., a Florida Corporation, its
Managing Partner, who

(please check one)

_____ is (are) personally known to me OR

_____ has (have) produced _____

as

_____ identification and he/she/they

(please check one)

_____ did take an oath

did not take an oath.

My Commission Expires:

Notary Public

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ___ day of _____, 2006
by and Thomas E. Lynch, the Chairman of The School Board of Palm Beach County, Florida, who
(please check one)

_____ are personally known to me OR

_____ have produced _____ as

_____ identification and he/she/they

(please check one)

_____ did take an oath

did not take an oath.

My Commission Expires:

Notary Public

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ___ day of _____, 2006
by Arthur C. Johnson, the Superintendent of The School Board of Palm Beach County, Florida, who
(please check one)

_____ are personally known to me OR

_____ have produced _____ as

_____ identification and he/she/they

(please check one)

_____ did take an oath

did not take an oath.

My Commission Expires:

Notary Public