

**STANDARD FORM OF AGREEMENT
BETWEEN
OWNER AND CONSULTANT**

**THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES;
CONSULTATION WITH ATTORNEY IS ENCOURAGED
WITH RESPECT TO ITS COMPLETION OR MODIFICATION**

AGREEMENT

made as of the **22nd** of **September** in the year **Two Thousand and Five**.

BETWEEN the Owner: **THE SCHOOL DISTRICT OF PALM BEACH COUNTY**
3300 Forest Hill Boulevard, Suite A-323
West Palm Beach, FL 33406-5869
Telephone: (561) 434-8635
Fax: (561) 434-8655

and the Consultant: **Harvard Jolly, Inc.**
3201 W Commercial Blvd. Ste. 225
Ft. Lauderdale, FL 33309
Phone: (954) 486-7910 Fax (954) 486-7825

For the following Project: **Architectural Continuing Contract**

The Owner and Consultant Agree as set forth below.

The scope of work will be provided as applicable based on Florida Statute (F.S.) 287.055(g) "...whereby the Consultant provides professional services to the Owner for the projects in which construction costs do not exceed \$1,000,000, for study activity when the fee for such professional services does not exceed \$50,000. This Agreement represents a Continuing Contract, for a period of one year from September 22, 2005 through September 21, 2006, subject to two (2) additional one year periods based on favorable annual performance. Renewal notices will be sent each additional year.

TERMS AND CONDITIONS BETWEEN OWNER AND CONSULTANT

ARTICLE 1

CONSULTANT'S RESPONSIBILITIES

1.1 CONSULTANT'S SERVICES

1.1.1 The Consultant's services consist of those services performed by the Consultant, Consultant's employees and Consultant's subconsultants as enumerated in Article 2 of this Agreement and any other services included in Article 10.

1.1.2. The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The Consultant shall submit, for the Owner's approval, a schedule for the performance of the Consultant's services. The schedule shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. The schedule, approved by the Owner, shall not be extended by the Consultant without prior notice and written approval of the Owner.

1.1.3. The Consultant and his subconsultants, subcontractors, agents, employees and officers shall promptly, upon notice or discovery, during any phase of the Project, make necessary revisions or corrections of errors, ambiguities or omissions in their work without additional compensation or expense to the Owner.

1.1.4. The Consultant shall comply with written directives and memoranda issued by the Owner.

1.1.5. It is understood between the parties that, under conditions where the Owner deems it beneficial to the project, the Consultant may be working in coordination and cooperation with other consultants who will be employed independently by the Owner and responsible to the Owner for their work and the performance of their respective agreements with the Owner. The Consultant and his subconsultants shall cooperate with the Owner and other

1.1.6. The Consultant shall prepare all Project Documents (Bidding Documents and Contract Modification Documents) in accordance with the Florida Building Code (FBC) and the Florida Fire Prevention Code [FFPC], in effect at the time of the execution of this Agreement, as well as any changes in the codes during the term of this Agreement, "The Supplemental Conditions and Procedures for Architects and Engineers". The format of the documents shall be according to the Construction Specifications Institute (CSI), master format, 1995 or latest edition, as directed by the School District of Palm Beach County.

1.1.7 The Consultant shall ensure that the work completed complies with the requirements of law and all applicable rules, regulations and codes including, but not limited to, the School Board Policies, District Design Criteria [DDC], and District Master Specifications [DMS], F.A.C., State Board of Education's Regulations.

1.1.8 Professional Architects, registered in the State of Florida and acceptable to the Consultant and the Owner, shall be retained by the Consultant, at their expense, to certify the appropriate discipline involved (ie. structural, material testing, survey data, soils engineering, etc). The Consultant shall require Architect participation in all such phases of the Consultant's services and shall require the Engineers to be professionally responsible for their respective Engineering

services. The Consultant shall specifically require the Engineers to visit the Work under construction as often as necessary, to keep informed as to the progress and quality of the Work and to guard against defects and deficiencies in the construction of the Work for which such Engineer is responsible. Use of Engineers does not in any way alter the Consultant's obligations to the Owner.

1.1.9. In addition to any other duties of inspection or observation, the Owner can require the Consultant, appropriate Engineer or any other subconsultant to visit the job site for purposes consistent with this Agreement.

1.1.10 The Consultant shall attend all meetings of the School Board as required in fulfillment of this document.

ARTICLE 2

SCOPE OF CONSULTANT'S BASIC SERVICES

2.1 The Consultant's Basic Services consist of those described herein and any other services identified in Article 10 as part of Basic Services.

2.2 DELIVERABLE DOCUMENTS

2.2.1 Survey Consultants - Completed survey work shall be provided to the Owner in the following format: 1 Original Mylar with the Surveyor's Seal affixed, 6 Blue-line copies with the Engineer's stamp affixed, one (1) set of completed "Drawings" on Mylar reproducible material in AutoCAD Version 12, 13, or 14 on CD(s) or 100 Meg Iomega Zip Disk(s).

2.2.2 Geotechnical Reports - Completed geotechnical work shall be provided to the Owner in the following format: 6 Original copies with the Engineer's stamp affixed, 6 Original copies of any supporting information and/or conclusions.

2.2.3 Construction Testing Reports - Completed construction testing work shall be provided to the Owner in the following format: 6 Original copies with the Engineer's stamp affixed, 6 Original copies of any supporting information and/or conclusions.

2.2.4 Stage Rigging Reports - Completed stage rigging inspection work shall be provided to the Owner in the following format: 6 Original copies with the Engineer's stamp affixed, 6 Original copies of any supporting information and/or conclusions.

2.3 The duties, responsibilities and limitations of authority of the Consultant shall not be restricted, modified or extended without written agreement of the Owner.

2.4 The Consultant shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

2.5 The Consultant shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for Construction. The Consultant shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Consultant shall not have control over or charge of acts or omissions of the Contractor, subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

2.6 The Consultant shall at all times have access to the Work wherever it is in preparation or progress.

ARTICLE 3

OWNER'S RESPONSIBILITY

3.1 The Owner shall provide full information regarding requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expend ability, special equipment, system and site requirements.

3.2 If requested by the Consultant, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

3.3 The Owner shall designate representative(s) authorized to act on the Owner's behalf with respect to the Project and this Agreement. The Owner or such authorized representatives shall render decisions in a timely manner pertaining to documents submitted by the Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the CONSULTANT'S services.

3.4 The Owner shall furnish survey data describing physical characteristics, legal limitations and utility locations for the site of the Project, and/or a written legal description of the site. The surveys and legal information may include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures, adjacent drainage, rights-of-way, restrictions easements, encroachments, zoning, deed restrictions, boundaries and contours of the site, locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees, and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information, readily available, shall be provided to the Consultant to complete the work.

3.5 The Owner shall furnish All accounting, auditing and insurance counseling services the owner may require for the Project.

3.6 Prompt written notice shall be given by the Owner to the CONSULTANT if the Owner becomes aware of any fault or defect in the Project or nonconformance with the contract Documents.

3.7 The proposed language of certificates or certifications required of the Consultant or it's consultants shall be submitted to the Consultant for review and approval at least five (5) days prior to execution.

3.8 The Owner shall pay filing fees for documents submitted for review and approval.

ARTICLE 4

INDEMNIFICATION

4.1 To the fullest extent permitted by law, the Consultant shall defend, indemnify and hold harmless the Owner, Architect, Architect's Consultants, and their agents and employees of any of them from and against claims, damages, losses and expenses, including but not

limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property including the loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Consultant, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 4.1

4.2 In claim against any person or entity indemnified under this Paragraph 4.1 by an employee of the Consultant, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 4.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Consultant or any Subconsultant under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.3 The obligations of the Consultant under this Paragraph 4.1 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

4.4 The purchase of insurance by the Consultant with respect to the obligations required herein shall in no event be construed as fulfillments or discharge of such obligations.

4.5 None of the foregoing provisions shall deprive the Owner or the Architect of any action, right or remedy otherwise available to them or any of them by common law.

In the event that any party is requested but wrongfully refuses to honor the indemnity obligations hereunder, then the party indemnifying shall, in addition to all other obligations, pay the cost of bringing any such action, including without limitation, attorney's fees.

ARTICLE 5

USE OF THE CONSULTANT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

5.1 The drawings, specifications and other documents prepared by the CONSULTANT for this Project are instruments of the Consultant's service for use solely with respect to this Project and, unless otherwise provided, the Consultant shall be deemed the author of these documents and shall retain All common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Consultant's drawings, specifications and other documents for information and reference in connection with the Owner's use, occupancy and future additions and remodeling. The CONSULTANT's drawings, specifications or other documents may be by the Owner, for additions to this Project of for completion of this Project.

Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the project should not be construed as publication in derogation of the Consultant's reserved rights.

ARTICLE 6

LITIGATION

6.1 ALL claims, disputes and other matters in question arising out of, or relating to, this Agreement, or any breach thereof, shall be decided in a court of law, with exclusive venue of such actions in the state court sitting in Palm Beach County, Florida, except as may otherwise be determined by the Owner. Notwithstanding the foregoing, prior to instituting litigation, the parties may submit the dispute to non-binding mediation in Palm Beach County, Florida.

ARTICLE 7

TERMINATION, SUSPENSION OR ABANDONMENT

7.1 This Agreement may be terminated by either party upon not less than seven (7) days' written notice should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

7.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Consultant shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the CONSULTANT's compensation shall be adjusted by the Owner to provide for reasonable expenses incurred in the interruption and resumption of the CONSULTANT's services.

7.3 This Agreement may be terminated by the Owner upon not less than seven (7) days written notice to the Consultant in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 180 consecutive days, the Consultant may terminate this Agreement by giving written notice.

7.4 This Agreement may be terminated by the Owner for convenience at any time, and the amount due and owing the CONSULTANT shall be fees for services rendered up to the date of termination together with reimburseables. However, the Consultant shall not be entitled to lost profits for uncompleted work.

7.5 The Owner has the right to require the Consultant to remove any Project Team Member from the Owner's project.

ARTICLE 8

MISCELLANEOUS PROVISIONS

8.1 This Agreement shall be governed by the laws of the State of Florida.

8.2 Terms in this Agreement shall be consistent with those provided in the "General Conditions of the CONTRACT for Construction" (00700).

8.3 Owner and CONSULTANT waive All rights against each other and against the contractors, consultants, agents and employees of the other damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the "General Conditions of the Contract for Construction" (00700). The Owner and Consultant each shall require similar waivers from their contractors, subsconsultants and agents.

8.4 Owner and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, success, assigns and legal representatives of such other party with respect to All covenants of this Agreement. The Consultant shall not assign this Agreement without the written consent of the Owner, which consent may not be unreasonably withheld.

8.5 This Agreement represents the entire and integrated agreement between the Owner and Consultant and supersedes All prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and CONSULTANT.

8.6 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Consultant.

8.7 Consultant shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Consultant's promotional and professional materials. The Consultant's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the CONSULTANT in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Consultant on the construction sign and in the promotional materials for the project.

8.8 This Agreement shall comply with the provisions of the "Consultant's Competitive Negotiation's Act", Section 287.055, Florida Statutes, as amended.

If the total paid to the Consultant and its Project Consultants exceeds \$60,000.00, the following provisions shall apply:

a. The Consultant shall execute, and furnish to the Owner, a "Truth-In-Negotiation Certificate" stating that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting.

b. The original Contract Price, and any additions hereto, shall be adjusted to exclude any significant sums when the Owner determines the Contract Price was increased due to inaccurate incomplete, or non-current wage rates and/or other factual costs. Such Contract adjustments shall be made within one (1) year following end of contract.

c. The Consultant warrants not to employ or retain any company or person, other than a bonafide employee working solely for the Consultant, Registered Land surveyor or Professional Engineer, to solicit or secure this Agreement, and that he has not paid, or agreed to pay, any person, company or corporation, individual or firm, other than a bona fide employee working solely for the Consultant, Registered Land Surveyor, Landscape Consultant or Professional Engineer, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from, the award or making of this Agreement.

8.9 The Owner reserves the right to unilaterally set off from any request for payment such amounts for the CONSULTANT's errors and omissions, as determined by the Owner, after meeting with the CONSULTANT. The Consultant shall retain All rights to assert a claim to recover any amount so withheld. The Consultant recognizes that this right of offset, is a material inducement to the Owner entering into this Agreement. Withholding any monies herein shall not be deemed a default by the Owner under this Agreement.

8.10 If any provision of this Agreement is deemed unenforceable by a court of competent

jurisdiction, then said provision shall be deemed stricken from said Agreement as if it never existed; however, All other terms and conditions shall remain enforceable and All other provisions in accordance with this Agreement.

8.11 This Agreement shall not be construed against the party who drafted the same, as both parties have obtained experts of their choosing to review the legal and business adequacy of the same.

8.12 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the "Final Certificate for Payment" for acts or failures to act occurring after Substantial Completion, unless otherwise provided by law.

8.13 The School Board encourages participation by Minority Business Enterprise (MBE) firms. The School Board also encourages All professional associations/firms to provide the maximum practicable opportunity for participation by MBE's in joint ventures for procurement of contractual services with the School Board.

ARTICLE 9

PAYMENTS TO THE CONSULTANT

9.1 FEE SCHEDULE

9.1.1 The Fee Schedule is defined as the maximum rate per hour or task for which services can be billed to the Owner. These listed fees are full compensation for the Consultant's direct personnel expenses, mandatory and customary contribution, overhead costs, project costs and profit. (Attachment "A")

9.2 REIMBURSABLE EXPENSES

9.2.1 Reimbursable Expenses are those expenses in addition to those provided for as Basic or Additional Services outlined in Articles 2 and 10 and include expenses incurred by the CONSULTANT and the Consultant's employees and subconsultants in the interest of the Project, as identified in the following clauses. Those reimbursable expenses, allowed by the Owner, shall be in addition to those required with Basic Services.

9.2.1.1 Expenses in connection with authorized out-of-county travel and long-distance communications. All expenses herein shall be reasonable and subject to the Owner's approval. Local travel shall not be billed as a reimbursable expense.

9.2.1.2 Reasonable expenses for reproductions, postage and handling of drawings, specifications and other documents.

9.2.1.3 Expense of overtime work, if authorized in advance by the Owner in writing.

9.2.1.4 Expense of renderings, models and mock-ups, authorized in advance, by the Owner.

9.2.1.5 Expense of additional insurance coverage or limits, including Professional Liability Insurance, requested by the Owner in excess of that required in Article 11.

9.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

9.3.1 An initial payment as set forth in Paragraph 9.1 is the minimum payment under this Agreement.

9.3.2 Subsequent payments for Basic Services shall be made and mailed monthly.

9.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

9.4.1 Payments on account of the Consultant's Additional Services and of reimbursable Expenses shall be made monthly upon presentation of the Consultant's statement of services rendered or expenses incurred and in accordance with supporting backup documentation.

95 CONSULTANT'S ACCOUNTING RECORDS

9.5.1 Records of reimbursable expenses, beyond those provided for in Basic or Additional Services, shall be submitted to the Owner concurrent with such requests for payment. In addition, the Consultant and its subconsultants shall be required to provide documentation in the form attached as "Attachment " A" herein, or form acceptable to the Owner, and by this reference incorporated herein.

9.5.2 Consultants and subconsultants shall be required to bill on not less than a monthly basis, and in no event shall the Consultant and/or subconsultant bill for services and costs more than ninety (90) days after the expense has occurred, otherwise such cost shall not be considered by the Owner.

ARTICLE 10

BASIS OF COMPENSATION

The Owner shall compensate the Consultant as follows:

10.1 An Initial Payment of ten dollars (\$10.00) shall be made upon execution of this Agreement and credited to the Owner as part of the Lump Sum Fee for Basic Services.

10.2 BASIC COMPENSATION

10.2.1 For Basic Services, as described in Article 2, and any other Conditions or Services included in Article 10 as part of Basic Services, Basic Compensation shall be computed as follows:

Lump Sum Fee for Basic Services: \$ SEE SHORT FORM AGREEMENT

10.2.2 Where compensation is based on a lump sum, progress payments for Basic Services shall be made in accordance with that work which is completed and to the Owner's satisfaction.

10.3 COMPENSATION FOR ADDITIONAL SERVICES

10.3.1 For project representation beyond Basic Services, compensation shall be computed as follows: Compensation shall be in accordance with the School Board approved Fee Schedule and subject to the Owner's desired level of representation.

10.3.2 Services of the CONSULTANT, authorized by the Owner and beyond the Basic and Additional Services outlines herein, shall be compensated in accordance with the hourly rate sheet provided herein.

10.3.3 Services of the Consultant's subconsultants, authorized by the Owner and beyond the Basic and Additional Services outlined herein, shall be compensated in accordance with the hourly rate sheet attached herein for such services plus a multiple of 1.10 items the amounts billed to the CONSULTANT for such services.

10.4 REIMBURSABLE EXPENSES

10.4.1 For reimbursable expenses, the Consultant shall be compensated for such expenses plus a multiple of 1.10 times the amount incurred by the Consultant for such expenses.

ARTICLE 11

INSURANCE REQUIREMENTS

11.1 Additional Services included within Basic Services and included within Basic Compensation are outlined as follows:

11.2 As a part of Basic Services, the Consultant shall, throughout the period covered by this Agreement, carry professional responsibility insurance for their design practice and provide the Owner with a copy of the policy before final execution of the Agreement can occur. The Consultant shall maintain said insurance in an amount not less than those outlined below. Notwithstanding the deductible amount, the Consultant remains liable to the Owner for any damages. The Consultant shall deliver the "Certificate of Insurance" within ten (10) days of the execution of this Agreement, demonstrating that the required coverage is bound by an Insurance Company B+ V or higher rated approved by the Insurance Commission to do business in the State of Florida. Said certificate shall also provide thirty days (30) prior written cancellation notice or any other change to the Owner. The policy shall include a discovery period for reporting claims of not less than 12 months from the completion of services. In the case of projects, with Probable Construction Costs exceeding \$7,500,001, the professional liability insurance shall be project specific and include All members of the design team within the scope of professional liability coverage for the amounts outlined below.

REQUIRED PROFESSIONAL RESPONSIBILITY INSURANCE COVERAGE AMOUNTS

Probable Construction Costs	Coverage Required Per Project	Maximum Deductible
Up to \$500,000	\$ 500,000	\$ 25,000
\$500,001 to 7,500,000	\$ 1,000,000	\$ 50,000
\$7,500,001 to 12,000,000	\$ 2,000,000	\$ 50,000
	(Project Specific)	
\$12,000,001 and UP	\$ 3,000,000	\$ 100,000
	(Project Specific)	

11.3 Also as a Basic Service, the Consultant shall maintain automobile liability insurance with

limits of not less than \$1,000,000 per occurrence for bodily Injury and Property Damage for owned, hired and non-owned vehicles. The Consultant shall also maintain General Liability Insurance in an amount not less than \$1,000,000 and Statutory Workers' compensation and Employer's Liability insurance with limits not less than \$100,000 per accident. The Consultant shall submit certificates of insurance to the Owner upon execution of this Agreement demonstrating that the required coverage is bound.

11.4 The Consultant shall perform no services under this Agreement until the Owner has approved the certificates of insurance, policy or policies, and/or endorsements required under Articles 11.

11.5 The Consultant shall provide the owner with copies of all subcontracts or agreements between the CONSULTANT and its subconsultants. The Consultant shall include in each such subcontract or agreement the following provisions:

- a) Each subconsultant shall provide the insurance coverages specified in Article 11; and
- b) Each subconsulting Engineer agreement shall provide for resolution of disputes between the parties thereto in a manner consistent with this Agreement, and if the subconsultant agreement provides for arbitration of disputes, it will except from the scope of the arbitration agreement any claims, demands, causes of action, or disputes which relate to or arise from, in whole or in part alleged professional malpractice, errors or omissions by such Engineer; and
- c) Each subconsultant agreement shall provide for a waiver of subrogation by the CONSULTANT, unless or until the Owner has been fully compensated for any damages alleged to have been caused or contributed to, in whole or in part, by such subconsultant.

11.6 The Consultant shall provide the Owner with copies of each of the CONSULTANT's subconsultants certificates of insurance, policies and/or endorsements upon the execution of each individual subconsultant agreement.

END OF SECTION


This Agreement entered into as of the day and year first written above.

ATTEST:

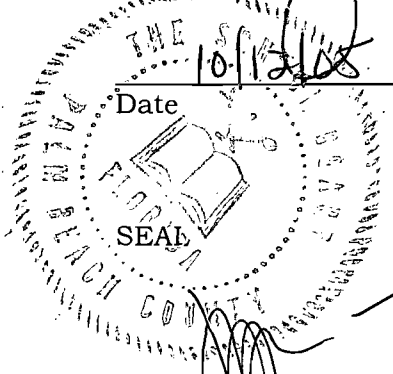
THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FLORIDA




Superintendent



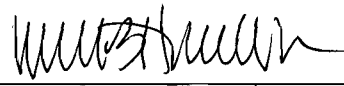
Chairperson


Date 10/12/05

Date 10/12/05



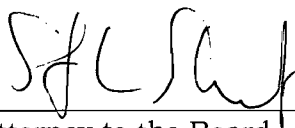
Secretary of Corporation

Harvard Jolly, Inc.
Name of Corporation


Title President

9/28/05
Date

Approved for form and legal sufficiency by:



Attorney to the Board

Date: 9/30/05