

RESOLUTION NO. 13-115

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA AUTHORIZING THE CITY MANAGER TO ENTER INTO A JOINT USE AGREEMENT WITH DIVINE SAVIOR ACADEMY TO MAKE AVAILABLE OUTDOOR AND RECREATIONAL FACILITIES FOR THE USE AND BENEFIT OF THE RESIDENTS OF THE CITY OF DORAL AND THE STUDENTS OF DIVINE SAVIOR ACADEMY FOR A PERIOD OF THREE (3) YEARS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Doral seeks to maximize its recreational space and involvement with the community; and

WHEREAS, the existing Joint Use Agreements with area schools have allowed the City and schools more space and resources while also creating a positive and working relationship; and

WHEREAS, Staff respectfully requests that the City Council authorize the City Manager to enter into a Joint Use Agreement (Exhibit "A") with Divine Savior Academy to make available outdoor and indoor recreational facilities for the use and benefit of the students of Divine Savior Academy and the residents of the City of Doral for a period of three (3) years.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated herein.

Section 2. Authorization. The City Council hereby authorizes the City Manager to enter into a Joint Use Agreement with Divine Savior Academy to make

available outdoor and indoor recreational facilities for the use and benefit of the students of Divine Savior Academy and the residents of the City of Doral for a period of three (3) years.

Section 3. **Effective Date.** This Resolution shall take effect immediately upon adoption.

The foregoing resolution was offered by Councilmember Ruiz who moved its adoption. The motion was seconded by Vice Mayor Rodriguez Aguilera and upon being put to a vote, the vote was as follows:

| | |
|---------------------------------------|-----|
| Mayor Luigi Boria | Yes |
| Vice Mayor Bettina Rodriguez-Aguilera | Yes |
| Councilwoman Ana Maria Rodriguez | Yes |
| Councilwoman Christi Fraga | Yes |
| Councilwoman Sandra Ruiz | Yes |

PASSED and ADOPTED this 15th day of October, 2013.



LUIGI BORIA, MAYOR

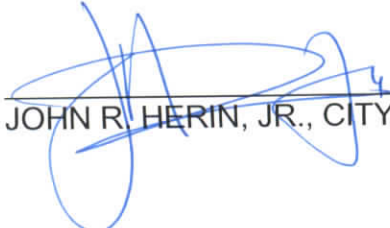
10/16/2013

ATTEST:



BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



JOHN R. HERIN, JR., CITY ATTORNEY

EXHIBIT “A”

JOINT USE AGREEMENT

THIS JOINT USE AGREEMENT ("Agreement") is made and entered into as of this ____ day of _____, 2013, by and between Divine Savior Academy, (hereinafter referred to as the "SCHOOL"), and the City of Doral, a Florida municipal corporation (hereinafter referred to as the "CITY").

WITNESSETH

WHEREAS, the SCHOOL and the CITY are mutually interested in providing and making available outdoor/indoor recreational facilities for the use and benefit of the students of Divine Savior Academy and the residents of the City of Doral; and

WHEREAS, the SCHOOL is situated in the City of Doral and within its campus is the property (hereinafter referred to as the "PROPERTY") presently used by the SCHOOL for some of its recreational and athletic programs and, in accordance with this Agreement, to be used by the CITY for the same purpose(s); and

WHEREAS, the CITY possesses park property (hereinafter referred to as the "PARK") presently used by the CITY for some of its recreational and athletic programs and, in accordance with this Agreement, to be used by the SCHOOL for the same purpose(s); and

WHEREAS, the SCHOOL will retain ownership and possession of the PROPERTY; and

WHEREAS, the CITY will retain ownership and possession of the PARK; and

WHEREAS, the CITY has authorized this Joint Use Agreement in accordance with City Council Resolution No. _____, at its meeting of _____.

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

I. PREMISES TO BE JOINTLY USED

The SCHOOL and CITY agree, as a condition of entering in to this Agreement, that certain school amenities and park sites, as described in Exhibit "A", shall be included as part of the Agreement, effective with the Commencement Date.

Subsequent to the Commencement Date, park sites or school amenities may be added or deleted from this Agreement, in whole or in part, upon execution of an amendment to Exhibit "A" by the City Manager, or designee and the School Administrator, or designee. The amendment to Exhibit "A" shall fully indicate the portion of the school site or park site to be used and any other relevant information impacting operation of the particular site. The Party receiving the request shall review same and shall have sole authority to grant or deny the request, said approval not to be unreasonably withheld.

In the event that park sites or school amenities are added to or deleted from this Agreement, as described above, the amended Exhibit "A" shall become a part of this Agreement, and shall thenceforth remain in effect until such time as it may be further amended.

II. TERM

The term of the Joint Use Agreement shall be three (3) years, beginning on the date of CITY approval.

III. USE OF PREMISES

The SCHOOL site and PARK site identified in Exhibit "A" shall only be used by the parties for the purpose of operating recreational and/or educational programs, events, and activities by the parties hereto.

PARK SITES

Other than scheduled events, activities, or programs conducted by the CITY, the SCHOOL shall have use of the PARK as agreed to in Exhibit "A" at scheduled days and times through prearranged scheduling. The SCHOOL administrator (the "Administrator") shall notify the City Manager (the "Manager") or designee within five (5) business days concerning the scheduling of activities for use of the PARK.

The SCHOOL acknowledges that because of the nature of parks, areas of the park sites not reserved or used by the SCHOOL will be open and available for use and enjoyment by the general public. The CITY shall have full control, custody, right and use of the individual park sites and all parking and recreational facilities located thereon, at all times, unless otherwise agreed to in writing by the parties.

When using the PARK, both parties stipulate that SCHOOL shall remove all refuse or debris generated by use(s) and shall repair all damage to the PARK prior to the SCHOOL's or CITY's next period of use.

SCHOOL SITE

As specifically agreed to in Exhibit "A", the CITY shall have use of the PROPERTY at scheduled days and times through prearranged scheduling. The City Manager (the "Manager") or designee shall notify the SCHOOL administrator (the "Administrator") within five (5) business days concerning the scheduling of its athletic and recreational program(s) and hours of use required of the CITY.

When using the PROPERTY, both parties stipulate that it shall remove all refuse or debris generated by use(s) and shall repair all damage to the PROPERTY prior to the SCHOOL's or CITY's next period of use.

Neither party shall commit nor permit any violations of applicable laws, rules and regulations of the County, State, and/or Federal Government upon the PROPERTY or the PARK. The CITY shall promulgate and enforce reasonable rules and regulations governing its use of the PROPERTY, and shall provide adequate supervision of the PROPERTY at all times that CITY conducts or sanctions activities thereon. The SCHOOL shall comply with all applicable rules and regulations governing its use of the PARK, and shall provide adequate supervision of its staff and students at all times that the SCHOOL conducts or sanctions activities thereon.

V. MAINTENANCE

The SCHOOL and CITY, respectively, shall keep all recreational facilities and equipment located on the PROPERTY and the PARK, respectively, as of the Commencement Date in a safe, clean and working condition at all times.

VI. UTILITIES

CITY and SCHOOL shall each pay their own charges for gas, water, electricity, light, heat, power, telephone, trash and garbage removal (except as provided in Article III) and other utilities and services used, rendered or supplied to, upon or in connection with the PARK and PROPERTY throughout the Term. The proportionate share shall be determined and agreed to by Administrator and Manager based on the SCHOOL's and CITY's schedule of events.

VII. RISK OF LOSS

In no event shall the CITY be liable, or responsible for injury, loss, or damage to the property, improvements, fixtures, and/or equipment belonging to, in the care of, or rented by the SCHOOL, its officers, agents, employees, invitees, or patrons, as a result of theft, destruction, or damage of any kind, or nature whatsoever, including without limitation, any direct, or indirect physical loss, or damage to the premises from any peril whatsoever, and loss of electricity, explosion, release of gas, steam, vapors, water damage, leakage or seepage, from, or into any part of the premises, including breakage, obstruction, or other defects of any kind within the premises, such as pipes, sprinklers, wires, air conditioning, plumbing, appliances, lighting fixtures, and acts of God. In addition, the CITY will not be held liable for any act of negligence by any user of the premises, or any occupants, or any person whomsoever, whether such damage or injury results from conditions arising upon the area, or upon other portions of the area, or from other sources.

VIII. INDEMNIFICATION

SCHOOL shall indemnify, defend and hold harmless the CITY, its elected officials, employees, agents and volunteers (collectively referred as "Indemnitees") against all loss, costs, penalties, fines, damages, claims, expenses, including attorney's fees, or liabilities ("collectively referred to as "liabilities") by reason of any injury to, or death of any person, or damage to, or destruction, or loss of any property arising out of, resulting from, or in connection with the performance, or non-performance of the services contemplated by this Agreement which is, or is alleged to be directly, or indirectly caused, in whole, or in part by any act of omission, default, or negligence of the user, its employees, agents, or sub-contractors.

IX. INSURANCE

The SCHOOL shall maintain and provide the CITY with insurance requirements in accordance to Exhibit B.

X. HAZARDOUS MATERIALS

CITY shall not use, maintain, permit or allow the use, or maintenance of the PROPERTY, any part thereof, or immediately surrounding or through any access easement or path to the PROPERTY to treat, store, dispose of, transfer, convey or recover, or permit or suffer these to be present on, under or about the PROPERTY, any hazardous materials nor shall CITY otherwise, in any manner, possess or allow the possession of any hazardous materials on or about the PROPERTY, unless in compliance with all Environmental Laws (as hereinafter defined). "Hazardous Materials" shall mean any solid, liquid or gaseous waste, substance or emission or any combination thereof which may (x) cause or significantly contribute to an increase in mortality or in serious illness, or (y) pose the risk of a substantial present or potential hazard to human health, to the environment or otherwise to animal or plant life, and shall include without limitation hazardous substances and materials described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the Resource Conservation and Recovery Act, as amended; and any other applicable Laws (collectively "Environmental Laws"). CITY shall immediately notify SCHOOL of the presence or suspected presence of any Hazardous Materials, on or about the PROPERTY and shall deliver to SCHOOL any notice received by CITY relating thereto.

SCHOOL shall not use, maintain, permit or allow the use, or maintenance of the PARK, any part thereof, or immediately surrounding or through any access easement or path to the PARK to treat, store, dispose of, transfer, convey or recover, or permit or suffer these to be present on, under or about the PARK, any hazardous materials nor shall SCHOOL otherwise, in any manner, possess or allow the possession of any hazardous materials on or about the PARK, unless in compliance with all Environmental Laws (as hereinafter defined). "Hazardous Materials" shall mean any solid, liquid or gaseous waste, substance or emission or any combination thereof which may (x) cause or significantly contribute to an increase in mortality or in serious illness, or (y) pose the risk of a substantial present or potential

hazard to human health, to the environment or otherwise to animal or plant life, and shall include without limitation hazardous substances and materials described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the Resource Conservation and Recovery Act, as amended; and any other applicable Laws (collectively "Environmental Laws"). SCHOOL shall immediately notify CITY of the presence or suspected presence of any Hazardous Materials, on or about the PARK and shall deliver to CITY any notice received by SCHOOL relating thereto.

XI. ASSIGNMENT

Except as otherwise provided, neither party shall assign, transfer, or otherwise dispose of this Agreement for the term hereof, or permit the said PARK or PROPERTY to be occupied by other persons, firms, corporations, or governmental units during the other party's period of use.

XII. NO LIABILITY FOR PROPERTY

The SCHOOL and the CITY agree to insure or self-insure their respective interests in personal property to the extent each deems necessary or appropriate and hereby mutually waive all rights to recovery for loss or damage by any means and waive all rights to recovery for loss or damage to such property by any cause whatsoever. The SCHOOL and the CITY hereby waive all rights of subrogation against each other under any policy or policies they may carry, or on property placed or moved on the PARK or PROPERTY.

XIII. OPTION TO RENEW

If not otherwise in default in performance of their respective obligations set forth in this Agreement, and upon sixty (60) days written notice to the other party the CITY and SCHOOL may mutually renew this Agreement under the same terms and conditions set forth herein for ten (10) additional terms of one (1) year each from the expiration of the original term or any renewal thereof.

XIV. TERMINATION

The CITY or SCHOOL may terminate this Agreement without cause upon sixty (60) days written notice.

The CITY or SCHOOL may terminate this Agreement with cause upon the failure of the other party to perform any of its obligations under this Agreement. The non-defaulting party shall give the defaulting party written notice thereof, stating the nature of the default complained of. If the defaulting party does not cure such default within seven (7) days after receipt of such notice (or such longer period agreed to in writing by the parties if the nature of the default is such that it cannot be cured within seven (7) days and the defaulting party has commenced and is diligently proceeding to cure within the original seven (7) day period), the non-defaulting party shall have the right, on forty-eight (48) hours written notice thereof to the defaulting party terminate this Agreement.

XV. ATTORNEYS' FEES AND WAIVER OF JURY TRIAL

In the event of any litigation arising out of this Agreement, each party shall be responsible for their attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels. In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

XVI. NOTICES/AUTHORIZED REPRESENTATIVES

Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City: Joe Carollo, City Manager
 City of Doral, Florida
 8401 NW 53rd Terrace
 Doral, Florida 33166

With a Copy to: John Herin, Jr., Esq
 City Attorney
 GrayRobinson, P.A.
 401 E. Las Olas Blvd., Suite 1850
 Ft. Lauderdale, Florida 33301

For The School: _____

XVII. GOVERNING LAW

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Miami-Dade County, Florida, or the Southern District of Florida.

XVIII. ENTIRE AGREEMENT/MODIFICATION/AMENDMENT

This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document. If any

term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

XX. INDEPENDENT CONTRACTOR

The SCHOOL and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the CITY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

XXI. COMPLIANCE WITH LAWS

The SCHOOL shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to this Agreement.

XXII. WAIVER

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

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

CITY OF DORAL, FLORIDA

DIVINE SAVIOR ACADEMY

Joe Carollo
City Manager

Carlos Leyrer
School Superintendent

Approved as to form and Legal Sufficiency:

John Herin, City Attorney

EXHIBIT A

Divine Savior Academy (10311 NW 58 Street):

- The CITY shall have use of the school's parking lots, shelters, playfields, gymnasium, auditorium, and classrooms and shall have access across non-secured portions of the school site, as a means of ingress/egress to the PROPERTY. The CITY shall control public access to the PROPERTY during its period of use by opening/closing gates or doors as required, and shall remove all unauthorized vehicles from school parking facilities, resulting from the CITY'S use of PROPERTY, prior to the SCHOOL'S next period of use.
- During any period of CITY use, maintenance responsibilities and all other terms and conditions shall be as set forth in the Agreement.

Morgan Levy Park (5300 NW 87th Avenue) / Doral Meadow (11555 NW 58th St) / JC Bermudez Park (3000 NW 87th Avenue)

- The SCHOOL shall have use of park amenities including: playgrounds, fields, courts, community center, and shelters.
- During any period of SCHOOL use, maintenance responsibilities and all other terms and conditions shall be as set forth in the Agreement.

Both Parties shall have use of the PROPERTY at scheduled days and times through prearranged scheduling. Use of premises requested by both Parties shall be made within five (5) business days concerning the scheduling of events, athletic and recreational program(s), and other activities.

Joe Carollo
City Manager

Carlos Leyrer
School Superintendant

Effective Date _____

Effective Date _____

Approved as to form:

John Herin
City Attorney

EXHIBIT B

INSURANCE REQUIREMENTS – DIVINE SAVOR ACADEMY

I. **Commercial General Liability**

A. Limits of Liability

Bodily Injury & Property Damage Liability

Each Occurrence \$1,000,000

Policy Aggregate \$1,000,000

Personal & Adv. Injury Liability \$1,000,000

Products/Completed Operations \$1,000,000

B. Endorsements Required

City of Doral listed as an additional insured

Contingent Liability

Premises and Operations Liability

Participant Liability

II. **Automobile Liability** \$1,000,000

Owned or Scheduled Autos, including

Hired and Non Owned Autos

City of Doral listed as an additional insured

III. **Workers Compensation**

Statutory- State of Florida

Employer's Liability

A. Limits of Liability

\$100,000 for bodily injury caused by an accident, each accident

\$100,000 for bodily injury caused by disease, each employee

\$500,000 for bodily injury caused by disease, policy limit

IV. Accident Medical (Excess) \$100,000

The above policies shall provide the City of Doral with written notice of cancellation or material change from the insurer in accordance to policy provisions.

Companies authorized to do business in the State of Florida with the following qualifications shall issue all insurance policies required above:

The Company must be rated no less than “A-” as to management, and no less than “Class V” as to financial strength, by the latest edition of Best Insurance Guide published by A.M. best Company, or its equivalent. All policies or certificates of insurance are subject to review and verification by Risk Management