

EXHIBIT 1

PHASING AGREEMENT

AGREEMENT

Between
BROWARD COUNTY
and
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

PHASING INSTALLATION OF REQUIRED IMPROVEMENTS

Relating to

MANATEE BAY ELEMENTARY (SCHOOL "P")
SCHOOL SITE #383.1

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SCHOOL SITE #383.1

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the state of Florida, hereinafter referred to as "COUNTY,"

AND

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, a body corporate existing under the laws of the State of Florida, its successors and assigns, hereinafter referred to as "BOARD."

WHEREAS, the BOARD'S plat, known as "Elementary School "P"/Weston Park Plat" (Plat No. 068-MP-01) Site No. 383.1, hereinafter known as the PLAT was approved by the Board of County Commissioners of Broward County on January 8, 2002, and is described in the attached Exhibit "A" that is incorporated into this agreement herein; and

WHEREAS the PLAT was approved subject to certain conditions to ensure the protection of the public health and safety, and one of the conditions imposed at the time of PLAT approval was the construction of certain improvements;

WHEREAS, a list of those certain IMPROVEMENTS are more fully described in Exhibit "B" attached hereto and made a part hereof; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, and payments hereinafter set forth, COUNTY and BOARD agree as follows:

1. INSTALLATION OF REQUIRED IMPROVEMENTS

- a) BOARD shall construct/install the improvements described in Exhibit "B" attached hereto, hereinafter referred to as the Improvements. Said Improvements shall be constructed/installed in accordance with the schedule set out in Exhibit "B."
- b) The improvements described in Exhibit "B" shall be installed in accordance with applicable COUNTY, State of Florida Department of Transportation standards and specifications and in accordance with the Development Review Report for the PLAT. The construction plans for the improvements, including pavement marking and sign plans, shall be submitted to COUNTY for review and approval prior to commencement of construction. Construction shall be subject to inspection and approval by COUNTY. Pavement marking and signing shall be provided for all of the Improvements and shall be

subject to review, field inspections and final approval by the Broward County Traffic Engineering Division consistent with the previously approved plans.

- c) BOARD shall assure the COUNTY by resolution that funds are encumbered in the amount of **\$340,960**, the estimated cost to complete permit related ROAD IMPROVEMENTS based upon the list In Exhibit "B."
2. BOARD understands and agrees that it is BOARD'S responsibility to complete the Improvements described in Exhibit "B" and that all costs relating to the installation of the Improvements will be borne by the BOARD.
3. SECURITY AND DEFAULT
- a) BOARD shall provide the COUNTY with a certified BOARD Resolution, identifying and setting aside sufficient funds for the construction of the Improvements, as security for the Improvements, prior to the recordation of the PLAT, which is acceptable to the COUNTY and which guarantees the BOARD'S performance of the construction obligations set forth in this Agreement. The estimated cost of the road improvements is **\$340,960**.
 - b) The BOARD is a governmental agency and is not required to provide security for payment of applicable fees. In the event BOARD conveys, assigns, leases or otherwise grants any interest in the property described in Exhibit "A" to another party prior to the date when payment of fees are due, BOARD shall require such party to enter into an agreement acceptable to COUNTY securing the outstanding balance due in a form acceptable to COUNTY.
 - c) BOARD agrees not to obtain Occupancy Inspection by the Florida Department of Education prior to completion of the applicable Improvements in accordance with the schedule set out in Exhibit "B." BOARD also agrees not to use the property described in Exhibit "A" for a school until the improvements specified in Exhibit "B" are constructed, inspected and accepted by the appropriate governmental agencies.
 - d) BOARD agrees that this agreement shall be recorded in the Official Records of Broward County, Florida, against the property described in Exhibit "A" to put subsequent purchasers, grantees, heirs, successors and assigns of any right, title or interest in such property on notice of the property until fully performed.
4. BOARD agrees that the construction contract(s) for the improvements shall include the following:
- a) Indemnify and save harmless the COUNTY, the Board of County Commissioners of Broward County, and the State of Florida, its agents and employees from or on account of any injuries or damages received or sustained by any person or persons during or on account of any operations connected with the construction of the Improvements; or by or in consequence of any negligence in connection with the same; or by use of any improper materials or by or on account of an act or omission of the said contractor, subcontractor, agents, servants or employees.

- b) Workers' Compensation Insurance to apply for all employees in compliance with the "Worker's Compensation Law" of the State of Florida and all applicable federal laws.
- c) Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) per accident.
- d) Comprehensive General Liability Insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on the form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:
 - Premises and/or Operations
 - Independent Contractors
 - Products and/or completed operations
 - Underground Coverages

COUNTY and the Broward County Board of County Commissioners are to be named as additional insureds with respect to liability arising out of operations performed for COUNTY by or on behalf of contractor or negligent acts or omissions of COUNTY in connection with general supervision of such operation.

- e) Business Automobile Liability Insurance with minimum limits of Three Hundred Thousand (\$300,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include owned vehicles and hired and non-owned vehicles.

Notice of Cancellation and/or Restriction: The policy(ies) must be endorsed to provide COUNTY with thirty (30) days notice of cancellation and/or restriction.

- 5. COUNTY agrees that this Agreement satisfies the requirements of Sections 5-83(d)(2) and 5-200(d)(2), Broward County Code of Ordinances, that developers install all required improvements prior to issuance of a development order or enter into an agreement to provide for installation of the required Improvements within a reasonable period of time as specified in Exhibit "B" as required by the County commission.
- 6. BOARD agrees to execute any and all other instruments or documents as may be required to effectuate the requirements of Chapter 5, Article IX, Broward County Code of Ordinances, and this Agreement.
- 7. NOTICE. Whenever any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving of notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

For the COUNTY:

Director of the Broward County Engineering Division
115 South Andrews Avenue, Room 321
Fort Lauderdale, Florida 33301

For the BOARD:

Facility Management, Planning and Site Acquisition Department
600 Southeast 3rd Avenue, 14th Floor
Fort Lauderdale, Florida 33301

8. RELEASE. When all of the obligations set forth herein are fully paid and performed, COUNTY, at the request of BOARD or its successor and upon payment of any applicable fees, shall cause a release to be recorded in the Official Records of Broward County, Florida, evidencing such performance. To the extent that the obligations set forth herein are divisible and attributable to a specific parcel or portion of the PLAT, COUNTY may grant a partial release of this agreement for a specific parcel or portion of the PLAT for which this obligation has been satisfied.
9. NO WAIVER OF SOVEREIGN IMMUNITY. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.
10. NO THIRD PARTY BENEFICIARIES. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.
11. NON-DISCRIMINATION. The Parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.
12. RECORDS. Each Party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each Party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees of non-compliance with that law.
13. ENTIRE AGREEMENT. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

14. AMENDMENTS. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.
15. PREPARATION OF AGREEMENT. The Parties acknowledge that they have sought and obtained whatever competent advise and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
16. WAIVER. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
17. COMPLIANCE WITH LAWS. Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.
18. GOVERNING LAW. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.
19. FORCE MAJEURE. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.
20. PLACE OF PERFORMANCE. All obligations of BOARD under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.
21. SEVERABILITY. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.
22. CAPTIONS. The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

23. AUTHORITY. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Chair or Vice Chair, authorized to execute same by Board action on the ____ day of _____, 2002, and THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, signing by and through its CHAIRPERSON, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

County Administrator and
Ex-Officio Clerk of the
Board of County Commissioners
of Broward County, Florida

By _____
Chair
____ day of _____, 2002

Approved as to form by
Office of County Attorney
Broward County, Florida
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By _____
County Attorney

THE SCHOOL BOARD OF BROWARD COUNTY,
FLORIDA

By _____
Dr. Robert D. Parks, Chairperson

Attest:

Franklin L. Till, Jr.
Superintendent of Schools

Approved as to form:



Edward J. Marko
School Board Attorney

CORPORATE/PARTNERSHIP

STATE OF FLORIDA)
) SS.
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____,
2002, by _____, as _____ of _____, a
_____ corporation/partnership, on behalf of the corporation/ partnership. He or she is personally
known to me or has produced _____ as identification.

NOTARY PUBLIC:

(Seal)

My commission expires:

Print name:

EXHIBIT A

Legal Description
Manatee Bay Elementary (School "P")
School Site #383.1

DESCRIPTION

A PORTION OF THE SOUTHWEST ONE QUARTER (SW 1/4) OF SECTION 24, TOWNSHIP 50 SOUTH, RANGE 39 EAST; TOGETHER WITH PORTIONS OF TRACTS 15, 16, 17, 18, 19, 20, 21 AND 22 IN SECTION 25, TOWNSHIP 50 SOUTH, RANGE 39 EAST, "FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. 1" ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 17 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; TOGETHER WITH A PORTION OF THE 15 FOOT WIDE RIGHTS OF WAY ADJOINING SAID TRACTS; ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE NORTHWEST ONE QUARTER (NW 1/4) OF SAID SECTION 25; THENCE ALONG THE EAST LINE OF SAID NORTHWEST QUARTER (NW 1/4), ALSO BEING THE WEST BOUNDARY OF ROSEWOOD SHORES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 157, PAGE 28 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, SOUTH 00°43'34" EAST 15.00 FEET TO THE SOUTHWEST CORNER OF LOT 10 OF SAID ROSEWOOD SHORES; THENCE ALONG THE SOUTH BOUNDARY OF SAID LOT 10, SOUTH 89°40'16" EAST 266.16 FEET TO THE SOUTHEAST CORNER OF SAID LOT 10 ON THE WEST BOUNDARY OF TRACT "B" OF "WINDMILL LAKE ESTATES", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 141, PAGE 5 OF SAID PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE ALONG SAID WEST BOUNDARY, SOUTH 28°16'28" WEST 548.90 FEET TO AN ANGLE POINT IN SAID BOUNDARY AND AN INTERSECTION WITH THE WEST LINE OF SAID SECTION 25; THENCE ALONG SAID WEST LINE, AND THE WEST LINE OF TRACTS 33 AND 35 OF SECTORS 8, 9 AND 10 PLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 161, PAGE 3 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, SOUTH 00°43'34" EAST 1276.34 FEET TO THE SOUTHWEST CORNER OF SAID TRACT 35; THENCE ALONG THE WESTERLY PROLONGATION OF THE SOUTH LINE OF SAID TRACT 35, SOUTH 88°50'23" WEST 50.00 FEET TO A LINE PARALLEL WITH AND 50.00 FEET WEST OF THE WEST LINE OF SAID SECTION 25; THENCE ALONG SAID PARALLEL LINE, NORTH 00°43'34" WEST 1377.50 FEET TO A POINT OF CURVATURE OF A 175.00 FOOT RADIUS CURVE CONCAVE TO THE SOUTHWEST; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 46°24'20" AN ARC DISTANCE OF 141.74 FEET TO A POINT OF TANGENCY; THENCE NORTH 47°07'54" WEST 724.50 FEET TO A POINT OF CURVATURE OF A 425.00 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°27'26" AN ARC DISTANCE OF 129.49 FEET TO A POINT OF TANGENCY; THENCE NORTH 29°40'28" WEST 70.06 FEET; THENCE NORTH 74°13'17" WEST 42.09 FEET TO AN INTERSECTION WITH THE SOUTHEAST BOUNDARY OF THAT CERTAIN INGRESS, EGRESS AND UTILITY EASEMENT DESCRIBED IN OFFICIAL RECORDS BOOK 24191, PAGE 432, BROWARD COUNTY RECORDS; THENCE TOWARDS THE RADIUS POINT OF THE NEXT DESCRIBED CURVE NORTH 28°46'05" WEST 94.00 FEET TO THE NORTHWEST BOUNDARY OF SAID INGRESS, EGRESS AND UTILITY EASEMENT AND A POINT ON A 3353.00 FOOT RADIUS CURVE CONCAVE TO THE NORTHWEST; THE NEXT FOUR (4) COURSES FOLLOW THE NORTHWESTERLY BOUNDARY OF SAID INGRESS, EGRESS AND UTILITY EASEMENT; (1) NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°03'01" AN ARC DISTANCE OF 646.67 FEET TO A POINT OF TANGENCY; (2) NORTH 50°10'54" EAST 98.30 FEET; (3) NORTH 41°05'32" EAST 50.64 FEET; (4) NORTH 50°10'54" EAST 240.82 FEET TO AN INTERSECTION WITH A LINE THAT IS THE WESTERLY TERMINUS OF THAT CERTAIN 110 FOOT WIDE RIGHT OF WAY DESCRIBED IN OFFICIAL RECORDS BOOK 9098, PAGE 641, BROWARD COUNTY RECORDS, ALSO BEING THE WEST LINE OF THE SOUTHEAST ONE QUARTER (SE 1/4) OF SAID SECTION 24; THENCE ALONG SAID WEST LINE, SOUTH 00°16'28" EAST 1094.05 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING, AND BEING IN THE CITY OF WESTON, BROWARD COUNTY, FLORIDA AND CONTAINING 746724 SQUARE FEET (17.142 ACRES) MORE OR LESS.

EXHIBIT B

List of Improvements and Schedule
Manatee Bay Elementary (School "P")
School Site #383.1

<u>Improvement</u>	<u>Schedule</u>
1. The installation of school zone flashers on S.W. 36th Street, including pavement marking and signs.	Improvement shall be completed prior to the Occupancy inspection by the Department of Education.
2. Northbound left turn lane on Vista Park Boulevard at Southwest 36 th Street with 200 feet storage and 100 feet of transition.	Improvement shall be completed prior to the Occupancy inspection by the Department of Education.
3. Bond for and construct traffic signals at the intersection of S.W. 36 th Street and Vista Park Boulevard.	When, or if, warranted by traffic counts within two years after the completion of the total development (the school).
4. Pavement Marking and Signing, Plan, including cost estimate.	Improvement shall be completed prior to the Occupancy inspection by the Department of Education.
5. Eastbound right turn lane on Southwest 36 th Street at the 70-foot opening with 200 feet of storage and 100 feet of transition.	Improvement shall be completed prior to the Occupancy inspection by the Department of Education.