

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20030246

1. REQUESTED MOTION:

ACTION REQUESTED: To approve by Resolution, the donation and transfer of 18.98± acres of real property located in Veteran's Park, Lehigh, Lee County, Florida to the Lee County School Board. (See attached Interlocal.) Florida Statute §125.38 allows the Board to convey real property to another governmental entity for nominal consideration, where the conveyance is in the "community interest". To execute the Interlocal and Subordination Agreement between Lee County and the Lee County School Board for the donation of the property and to formalize and effectuate transfer by County Deed.

WHY ACTION IS NECESSARY: To obtain Board of County Commissioners' approval for the donation of real property by Resolution, provided the Board determines that transferring the property to the School Board is in the public interest.

WHAT ACTION ACCOMPLISHES: Transfers ownership of 18.98 acres of real property located in Lehigh Florida to the Lee County School Board so that the property can be used for a public school (subject to a reverter clause).

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #

A11A

3. MEETING DATE:

04-01-2003

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:**
5 min.

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER _____
- B. DEPARTMENT _____
- C. DIVISION Parks & Recreation
- BY: John Yarbrough
[Signature]

7. BACKGROUND: The Lee County School Board ("School Board") desires to create an educational and recreational facility in Lehigh, Florida on a proposed site currently owned by the County (Veteran's Park). Said transfer may be found to serve a public purpose and is in the public's interest and subject to the condition that should the property cease to be used as a school, ownership of the property shall revert to the County (but no earlier than July 31, 2038 per Series 2002A Ground Lease and Subrogation Agreement for financing purposes).

- Continued on next page -

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>[Signature]</i>	N/A	N/A	N/A	<i>[Signature]</i> 2/22/03	OA 3/4/03	OM 3/5/03	RISK 3/5/03	GC 3/5/03	<i>[Signature]</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

RECEIVED BY COUNTY ADMIN. <i>CA</i>
<i>3-4-03</i>
<i>3:00</i>
COUNTY ADMIN. FORWARDED TO: <i>BH</i>
<i>3/5 5:00</i>

Blue Sheet #:

Page No.: 2

Subject: Veteran's Park

On February 4, 2003, the School Board approved the draft Interlocal Agreement (attached) for the donation of the property. Pursuant to the Interlocal Agreement, Lee County will donate 18.98 acres to the School Board for the construction of the Veteran's Park Elementary School and Middle School to include a school gymnasium with a multi-generational community center. The School Board will consult with the County during each stage of the project. The School Board agreed that the County may use any athletic facilities constructed by the School Board. In addition the School Board agrees to allow the County temporary use of the school gymnasium as a hurricane shelter.

The County will donate the real property subject to the condition that if the property ceases to be used as a school, ownership of the property shall revert to the County (but not prior to 2038), pursuant to a Subrogation Agreement with the Suntrust Bank (the land trustee for the school board).

The donation of the real property is in the public's interest as the community can greatly benefit by the creation of an educational and recreational facility at this location.

Exhibits: Interlocal Agreement, Resolution, County Deed, Subordination and Standstill Agreement

LEE COUNTY RESOLUTION NO. _____

**A RESOLUTION OF LEE COUNTY RELATING
TO THE DONATION OF VETERAN'S
PARK/LEHIGH PROPERTY TO THE LEE
COUNTY SCHOOL BOARD; PROVIDING FOR
CERTAIN AUTHORIZATIONS; PROVIDING
FOR AN EFFECTIVE DATE.**

RECITATIONS

WHEREAS, the Board of County Commissioners is the governing body in and for Lee County, a political subdivision of the State of Florida; and,

WHEREAS, the Board of County Commissioners has certain powers and authority relative to the disposition of property belonging to the County; and,

WHEREAS, pursuant to Section 125.38, Florida Statutes, the County has the authority to convey property by private sale to any government, or not-for-profit corporation or organization for nominal consideration if certain findings are made by the Board of County Commissioners; and,

WHEREAS, the Lee County School Board ("School Board") is a public agency which is organized for the purposes of ensuring that plans for the construction and opening of public educational facilities are coordinated with other necessary services;

WHEREAS, the School Board approved an Interlocal Agreement with Lee County for the transfer of 18.98± acres of real property located in Veteran's Park, Lehigh, Lee County, Florida, (Exhibit "A", hereto); and,

WHEREAS, the Board of County Commissioners has carefully reviewed the property and finds that the property is not needed for any County purpose, and further

finds that the use by the School Board serves a public purpose and is in the public's interest; and,

WHEREAS, the Board of County Commissioners also finds that it serves a public purpose to convey the subject property to the School Board for the nominal consideration of Ten Dollars (\$10.00).

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS that:

1. The above recitations are true and accurate and are hereby adopted and incorporated herein as if set out at length, and said property is officially declared surplus.
2. Lee County recognizes and accepts the School Board's request to receive the subject Lee County property.
3. Lee County recognizes and accepts the School Board's proposal to use the County surplus property for a public educational facility.
4. In order that the proposed transaction is more efficiently consummated, the Board specifically authorizes and directs relevant County staff to develop and finalize any necessary documents for the contemplated transaction, and specifically authorizes the Chairman or Vice Chairman of the Board of County Commissioners to execute any and all necessary documents for the said transaction on behalf of the Board of County Commissioners.

5. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was offered by Commissioner _____ who moved its adoption. The motion was seconded by Commissioner _____ and, being put to a vote, the vote was as follows:

RAY JUDAH	_____
DOUGLAS ST. CERNY	_____
ROBERT JANES	_____
ANDREW COY	_____
JOHN ALBION	_____

DULY PASSED AND ADOPTED this _____ day of _____, 2003.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: Michele S. Leismer
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of the County Attorney

This instrument was prepared by and
when recorded should be returned to:

ROBERT C. GANG, ESQ.
Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, Florida 33131

(This space reserved for Clerk of Court)

SUBORDINATION AND STANDSTILL AGREEMENT

THIS SUBORDINATION AND STANDSTILL AGREEMENT (the "**Agreement**") is made as of the ____ day of _____, 2003 by and between Lee County, Florida, a political subdivision and Charter County of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof (the "**County**"), and SunTrust Bank (successor-in-interest to SunTrust Bank, Central Florida, National Association) ("**Trustee**").

WITNESSETH:

WHEREAS, the County and The Lee County School Board, a body corporate and the governing body of the School District of Lee County, Florida (the "**School Board**") have entered into that certain Interlocal Agreement dated _____, 2003 (as heretofore and hereafter amended from time to time, the "**Interlocal Agreement**"), which Interlocal Agreement delineates the responsibilities of the County and School Board with respect to the development and construction of Veteran's Park Elementary School and Veteran's Park Middle School (the "**Schools**") and related facilities, including a gymnasium with a community recreation center, on that certain real property located in Lee County, Florida and more particularly described in Exhibit A attached hereto (the "**Property**");

WHEREAS, pursuant to the Interlocal Agreement, the County has conveyed the Property to the School Board by County Deed of even date herewith (the "**Deed**");

WHEREAS, each of the Interlocal Agreement and the Deed provide for the reversion of ownership of the Property to the County (the "**Reverter**"), in the event that the Property ceases to be used as a school;

WHEREAS, the School Board has subleased the Property to Florida School Boards Association, Inc., a not-for-profit Florida corporation (the "**Corporation**") pursuant to a Series 2002A Ground Lease dated as of October 1, 2002 by and between the School Board and the Corporation (as the same may be amended or supplemented from time to time, the "**Series 2002A Ground Lease**"), notice of which is given in that

certain Memorandum of Amendment No. 1 to Series 2002A Ground Lease recorded in the Public Records of Lee County, Florida (the "**Public Records**") contemporaneously herewith, and the Corporation has subleased back the Property to the School Board pursuant to a Master Lease Purchase Agreement dated as of August 15, 1991 (as the same may be amended or supplemented from time to time, the "**Master Lease**"), as supplemented by a Schedule No. 2002A-1 dated as of October 1, 2002, as amended and restated, by and between the Corporation and the School Board (which Master Lease together with such Schedule constitutes a separate lease, the "**Series 2002A Lease**"), notice of which is given in that certain Memorandum of Amended and Restated Series 2002A-1 Lease recorded in the Public Records contemporaneously herewith;

WHEREAS, the interest of the Corporation in the Series 2002A Ground Lease and the Series 2002A Lease has been assigned to the Trustee pursuant to a Series 2002A Assignment Agreement dated as of October 1, 2002, as security for the issuance of \$84,000,000.00 Certificates of Participation, Series 2002A (the "**Certificates**") pursuant to a Master Trust Agreement dated as of August 15, 1991, as supplemented by a Series 2002A Supplemental Trust Agreement dated as of October 1, 2002 (as the same may be further amended or supplemented from time to time, the "**Trust Agreement**"), which enables the Trustee to act as lessor under the Series 2002A Lease;

WHEREAS, timely payment of principal and interest represented by the Certificates is insured by a financial guaranty or similar insurance policy issued by Financial Security Assurance Inc. (the "**Insurer**");

WHEREAS, the Series 2002A Ground Lease, the Series 2002A Lease, the Series 2002A Assignment Agreement and the Trust Agreement are hereinafter referred to collectively as the School Board's "**Master Lease Program Documents**";

WHEREAS, pursuant to the Series 2002A Lease and the other Master Lease Program Documents, the proceeds of the Certificates will be used by the School Board, among other things, to construct and equip the Schools contemplated by the Interlocal Agreement on the Property; and

WHEREAS, the Trustee and the other parties to the Master Lease Program Documents are unwilling to enter into the Master Lease Program Documents, and the Trustee and Insurer are unwilling to permit the Schools to be financed from the proceeds of the Certificates unless the County agrees to subordinate the Interlocal Agreement and the Reverter to the Master Lease Program Documents.

NOW, THEREFORE, for \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree that the foregoing recitals are true and correct and further agree as follows:

1. **No Prior Assignment.** The County represents and warrants that the County is presently the owner and holder of all right, title and interest of the County under the Interlocal Agreement and has not heretofore sold, assigned or encumbered any right or interest of the County in, to or under the Interlocal Agreement.

2. **Subordination and Standstill.** The County acknowledges and agrees that the Interlocal Agreement and the Reverter are hereby declared to be subject and subordinate to the Master Lease Program Documents until the earlier of July 31, 2038 or termination of the Series 2002A Ground Lease (the "**Subordination Termination Date**"). The County shall not exercise the Reverter under the Interlocal Agreement or the Deed, prior to the subordination termination date, notwithstanding a change in use of the Property, the occurrence of an event of default or the occurrence of any other event triggering the County's right to exercise the Reverter. This subordination and standstill provision shall be self-operative; however, the County shall execute any and all documentation reasonably requested by the Trustee to further effectuate or evidence the same.

3. **Opportunity to Cure.** Notwithstanding any contrary provision in the Interlocal Agreement, no notice by the County to the School Board of any default by the School Board under any obligation of the School Board in the Interlocal Agreement, which default is of such a nature as to give the County a right to terminate the Interlocal Agreement or to exercise other remedies under the Interlocal Agreement, shall be effective unless and until such notice is also given to Trustee and Insurer and unless and until a reasonable period of time shall have elapsed following receipt of such notice by Trustee and Insurer, during which period Trustee and Insurer shall have the right (but not the obligation) to remedy or cure such default. For purposes hereof, notice shall be delivered to Trustee at _____, and to Insurer at _____. The County shall accept performance of any of the School Board's obligations under the Interlocal Agreement by the Trustee or Insurer with the same effect as though same were performed by the School Board.

4. **Certain Remedies Preserved.** The County hereby preserves its remedies against the School Board under Section VI of the Interlocal Agreement (in effect as of the date hereof) if at any time the School Board fails to fulfill its obligations under the Interlocal Agreement, subject to the notice and cure provisions of paragraph 3 hereof.

5. **Authority.** Each of the parties has authority to enter into this Agreement and has taken all actions necessary to authorize its execution by the officers signing it.

6. **Miscellaneous.** This Agreement is governed by, and shall be construed and enforced in accordance with, the laws of the State of Florida. In the event of any litigation (including appellate and bankruptcy proceedings) arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable expenses, including attorney's fees and costs. This Agreement cannot be modified orally, but only by a writing signed by the party against whom enforcement of the change is sought. Whenever used in this Agreement and as the context may require or permit, words in the singular include the plural, words in the plural include the singular, and pronouns of any gender shall include the other genders. Captions and paragraph headings contained in this Agreement are for convenience only and shall not affect its interpretation. This Agreement may be executed in any number of counterparts, each of

which shall be deemed an original, but all of which together shall constitute but one instrument. This Agreement shall be binding upon and inure to the benefit of the parties hereto, the Insurer, the Series 2002A Certificateholders, their respective successors and assigns, but no other parties.

IN WITNESS WHEREOF, the County and the Trustee have executed this Agreement as of the day and year first above written.

ATTEST:

BOARD OF COUNTY
COMMISSIONERS OF LEE COUNTY,
Florida

CHARLIE GREEN
DEPUTY CLERK

By: _____
Name: _____
Title: CHAIRMAN

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

BY: _____
Name: _____
Title: COUNTY ATTORNEY

SUNTRUST BANK

By: _____
M. BRUCE DAIGER
GROUP VICE PRESIDENT

STATE OF FLORIDA)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2003, by _____, as Chairman on behalf of the Board of County Commissioners of Lee County, Florida.

NOTARY PUBLIC
SEAL OF OFFICE:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Notary Public, Print, Stamp or
Type as Commissioned)

Personally known to me, or

Produced identification:

(Type of Identification Produced)

STATE OF FLORIDA)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 2003, by M. Bruce Daiger as Group Vice President of SunTrust Bank, on behalf of the Bank.

NOTARY PUBLIC
SEAL OF OFFICE:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Notary Public
Print, Stamp, Type as Commissioned.)

Personally known to me, or

Produced identification:

(Type of Identification Produced)

EXHIBIT A
LEGAL DESCRIPTION OF
PROPERTY

(Veteran's Park)

EXHIBIT "A"

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 45 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A DRILL HOLE (WITH PK NAIL AND DISK LABELED LB 734) IN A CONCRETE SIDEWALK, SAID POINT BEING AN INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF HOMESTEAD ROAD (80' WIDE) AS RECORDED IN OFFICIAL RECORD BOOK 2347 AT PAGES 195 THROUGH 198 AMONG THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND THE EAST LINE OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 5; THENCE DEPART SAID RIGHT-OF-WAY LINE AND RUN N 01°35'34" W ALONG SAID EAST LINE OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 5, A DISTANCE OF 873.23 FEET TO THE POINT OF BEGINNING, SAID POINT OF BEGINNING BEARING S 01°35'34" E AT A DISTANCE OF 454.11 FEET FROM A 3"x3" CONCRETE MONUMENT LABELED "LB 642"; THENCE DEPART SAID EAST LINE AND RUN N 89°59'55" W A DISTANCE OF 375.68 FEET TO A POINT; THENCE RUN S 34°32'05" W A DISTANCE OF 24.82 FEET TO A POINT RADIAL TO A NON-TANGENT CURVE TO THE LEFT; THENCE RUN ALONG THE ARC OF SAID NON-TANGENT CURVE A DISTANCE OF 194.33 FEET HAVING A RADIUS OF 519.00 FEET, A CENTRAL ANGLE OF 21°27'13" AND A CHORD OF 193.20 FEET TO BEAR N 66°11'32" W TO A POINT OF REVERSE CURVATURE; THENCE RUN ALONG THE ARC OF SAID CURVE TO THE RIGHT A DISTANCE OF 410.70 FEET HAVING A RADIUS OF 305.89 FEET A CENTRAL ANGLE OF 76°55'38" AND A CHORD OF 380.54 FEET TO BEAR N 38°27'20" W TO A POINT OF TANGENCY; THENCE RUN N 00°00'29" E A DISTANCE OF 214.97 FEET TO A POINT; THENCE RUN N 89°59'17" E A DISTANCE OF 126.48 FEET TO A POINT; THENCE RUN N 00°00'16" E A DISTANCE OF 532.05 FEET TO A POINT; THENCE RUN S 89°59'45" E A DISTANCE OF 645.96 FEET TO A POINT ON THE AFOREMENTIONED EAST LINE; THENCE RUN ALONG SAID EAST LINE S 01°35'34" E A DISTANCE OF 648.85 FEET TO THE AFOREMENTIONED 3"x3" CONCRETE MONUMENT, SAID MONUMENT BEING THE SOUTHWEST CORNER OF A PARCEL OF LAND AS DESCRIBED IN OFFICIAL RECORD BOOK 1644 AT PAGES 1978 AMONG SAID PUBLIC RECORDS; THENCE DEPART SAID EAST LINE AND RUN ALONG THE SOUTH LINE OF SAID PARCEL S 89°59'45" E A DISTANCE OF 141.84 FEET TO A POINT; THENCE DEPART SAID SOUTH LINE AND RUN S 00°00'05" W A DISTANCE OF 453.93 FEET TO A POINT; THENCE RUN N 89°59'55" W A DISTANCE OF 129.21 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 18.98 ACRES MORE OR LESS

BEARINGS SHOWN HEREIN ARE BASED UPON THE MONUMENTED EAST LINE OF THE WEST HALF OF THE NORTHEAST 1/4 OF SECTION 5, TOWNSHIP 45 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA TO BEAR N 01°35'34" W.

This Instrument Prepared by:
DIVISION OF COUNTY LANDS
Post Office Box 398
Fort Myers, Florida 33902-0398

Part of STRAP Nos. 05-45-27-00-00003.0010 and
05-45-27-00-00004.0000

**COUNTY DEED
(Statutory)**

THIS DEED, executed this _____ day of _____, 2003, by **LEE COUNTY, FLORIDA, a political subdivision of the State of Florida**, whose address is Post Office Box 398, Fort Myers, Florida 33902-0398, COUNTY, to **THE SCHOOL BOARD OF LEE COUNTY, a public agency of the State of Florida**, whose address is 2055 Central Avenue, Fort Myers, Florida 33901, Grantee.

WITNESSETH: The COUNTY, for and in consideration of the sum of Ten (\$10.00) Dollars to it in hand paid by the Grantee, receipt whereof is hereby acknowledged, has granted, bargained and sold to the Grantee, its heirs and assigns forever, the following described land, lying and being in Lee County, Florida:

The property is described on EXHIBIT "A" attached hereto and made a part hereof.

This conveyance is made subject to existing easements, restrictions, and reservations of record, and by acceptance of this conveyance, Grantee agrees to comply with and take the property subject to the terms, conditions and reverter provision contained in EXHIBIT "B" attached hereto and made a part hereof and the attached Interlocal Agreement EXHIBIT "C".

In accordance with Florida Statutes s. 270.11, the COUNTY hereby reserves an undivided three-fourths interest in, and title in and to an undivided three-fourths interest in, all the phosphate, minerals, and metals that are or may be in, on, or under the subject land and an undivided one-half interest in all the petroleum that is or may be in, on, or under the subject land with the privilege to mine and develop each interest. Provided, however, the right of entry with respect to any interest in phosphate, minerals, metals or petroleum reserved in favor of the County is hereby released if the subject parcel being conveyed is or has always been a contiguous tract of less than 20 acres in the aggregate under the same ownership.

This grant conveys only the interest of the County and its Board of County Commissioners in the property herein described, and does not warrant the title or represent any state of facts concerning the title.

IN WITNESS WHEREOF the COUNTY has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair or Vice Chair of said Board, the day and year above.

(OFFICIAL SEAL)

ATTEST:
CHARLIE GREEN, CLERK

LEE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO LEGAL FORM:

Office of County Attorney

EXHIBIT "B"

1. If the subject property ceases to be used as a school, ownership of the property shall revert to Lee County, provided, however, that until the earlier of July 31, 2038, or termination of the Series 2002A Ground Lease, dated as of October 1, 2002, between the School Board and Florida School Boards Association, Inc., no such reversion shall occur, nor shall the County disturb the rights of any party to the School Board's Master Lease Program Documents for any reason whatsoever prior to such date.

EXHIBIT "A"

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 45 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A DRILL HOLE (WITH PK NAIL AND DISK LABELED LB 734) IN A CONCRETE SIDEWALK, SAID POINT BEING AN INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF HOMESTEAD ROAD (80' WIDE) AS RECORDED IN OFFICIAL RECORD BOOK 2347 AT PAGES 195 THROUGH 198 AMONG THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND THE EAST LINE OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 5; THENCE DEPART SAID RIGHT-OF-WAY LINE AND RUN N 01°35'34" W ALONG SAID EAST LINE OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 5, A DISTANCE OF 873.23 FEET TO THE POINT OF BEGINNING, SAID POINT OF BEGINNING BEARING S 01°35'34" E AT A DISTANCE OF 454.11 FEET FROM A 3"x3" CONCRETE MONUMENT LABELED "LB 642"; THENCE DEPART SAID EAST LINE AND RUN N 89°59'55" W A DISTANCE OF 375.68 FEET TO A POINT; THENCE RUN S 34°32'05" W A DISTANCE OF 24.82 FEET TO A POINT RADIAL TO A NON-TANGENT CURVE TO THE LEFT; THENCE RUN ALONG THE ARC OF SAID NON-TANGENT CURVE A DISTANCE OF 194.33 FEET HAVING A RADIUS OF 519.00 FEET, A CENTRAL ANGLE OF 21°27'13" AND A CHORD OF 193.20 FEET TO BEAR N 66°11'32" W TO A POINT OF REVERSE CURVATURE; THENCE RUN ALONG THE ARC OF SAID CURVE TO THE RIGHT A DISTANCE OF 410.70 FEET HAVING A RADIUS OF 305.89 FEET A CENTRAL ANGLE OF 76°55'38" AND A CHORD OF 380.54 FEET TO BEAR N 38°27'20" W TO A POINT OF TANGENCY; THENCE RUN N 00°00'29" E A DISTANCE OF 214.97 FEET TO A POINT; THENCE RUN N 89°59'17" E A DISTANCE OF 126.48 FEET TO A POINT; THENCE RUN N 00°00'16" E A DISTANCE OF 532.05 FEET TO A POINT; THENCE RUN S 89°59'45" E A DISTANCE OF 645.98 FEET TO A POINT ON THE AFOREMENTIONED EAST LINE; THENCE RUN ALONG SAID EAST LINE S 01°35'34" E A DISTANCE OF 648.85 FEET TO THE AFOREMENTIONED 3"x3" CONCRETE MONUMENT, SAID MONUMENT BEING THE SOUTHWEST CORNER OF A PARCEL OF LAND AS DESCRIBED IN OFFICIAL RECORD BOOK 1844 AT PAGES 1978 AMONG SAID PUBLIC RECORDS; THENCE DEPART SAID EAST LINE AND RUN ALONG THE SOUTH LINE OF SAID PARCEL S 89°59'45" E A DISTANCE OF 141.84 FEET TO A POINT; THENCE DEPART SAID SOUTH LINE AND RUN S 00°00'05" W A DISTANCE OF 453.93 FEET TO A POINT; THENCE RUN N 89°59'55" W A DISTANCE OF 129.21 FEET TO THE POINT OF BEGINNING.

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APPROVED

INTERLOCAL AGREEMENT BETWEEN SCHOOL BOARD AND LEE COUNTY FOR LEHIGH SCHOOL

NOV 14 2003
SCHOOL BOARD OF
LEE COUNTY

This INTERLOCAL AGREEMENT is made and entered into this _____ day of _____, 2003, by and between LEE COUNTY, a political subdivision and Charter County of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof, hereafter referred to as "COUNTY", and the LEE COUNTY SCHOOL BOARD, a public agency of the State of Florida, hereafter referred to as "School Board". **WITNESSETH:**

WHEREAS, the School Board and the Board of County Commissioners both serve the people of Lee County; and

WHEREAS, both the School Board and the County are desirous of creating an educational and recreational facility which would be designed to benefit the Community;

WHEREAS, the School Board has determined the need to construct a public educational facility in Lehigh, Florida on a proposed site owned by the County;

WHEREAS, the County owns the parcel identified in Exhibit "A " (attached hereto and incorporated herein) and finds that 18.98 acres of said parcel is not needed for any County purpose, and further finds that the transfer and use of said acreage by the School Board will serve a public purpose and is in the public's interest. Said transfer and use is subject to the condition that should the property cease to be used as a school, ownership of the property shall revert to the County, provided, however, that until the earlier of July 31, 2038 or termination of the Series 2002A Ground Lease, dated as of October 1, 2002, between the School Board and Florida School Boards Association, Inc., no such reversion shall occur, nor shall the County disturb the rights

of any party to the School Board's Master Lease Program Documents for any reason whatsoever prior to such date; and

WHEREAS, the School Board plans to construct a new educational facility that will contain a school gymnasium including a multi-generational community center, practice fields and soccer fields, and is agreeable to County's use of said facilities by Lee County Parks and Recreation; and .

WHEREAS, both the School Board and the County are duly empowered pursuant to Florida Statutes, in particular Section 163.01, to enter into interlocal agreements for the sharing of certain governmental powers and obligations.

NOW, THEREFORE, in consideration of the foregoing, and of the mutual covenants and conditions hereinafter set forth, the School Board and Lee County, intending to be legally bound, hereby agree as follows:

SECTION I: PURPOSE

A. It is the purpose and intent of this Agreement to define the terms and conditions for the County's conveyance of the certain real property which is described on the attached Exhibit "A" to the School Board for the construction of Veteran's Park Elementary School and Veteran's Park Middle School in Lehigh Acres. All terms and conditions of this Agreement will be interpreted in a manner consistent with and in furtherance of the purpose as set forth in this Section.

B. The Recitals as set forth above are incorporated into the terms of this Agreement as if set out herein at length.

SECTION II: OBLIGATIONS OF THE COUNTY

1. The County owns the parcel identified in Exhibit "A" (attached hereto and

incorporated herein). The County agrees to convey 18.98 acres of such real property, as depicted in Exhibit "A", to the School Board for the construction of a new educational facility to include a school gymnasium including a multi-generational community center with the provision that should the property cease to be used as a school, ownership of the property shall revert to the County, provided, however, that until the earlier of July 31, 2038 or termination of the Series 2002A Ground Lease, dated as of October 1, 2002, between the School Board and Florida School Boards Association, Inc., no such reversion shall occur, nor shall the County disturb the rights of any party to the School Board's Master Lease Program Documents for any reason whatsoever prior to such date

2. The County will review and approve the School Board's plans and specifications for the gymnasium including a multi-generational community center. The School Board agrees that it will design and construct the school gymnasium including a multi-generational community center in accordance with the County's specifications. The School Board shall submit for approval all construction plans to the County prior to commencing construction of the school in accordance with the County's normal development order process.

3. The County agrees that it will reimburse the School Board for a proportionate share of the design and construction of the school gymnasium to include a multi-generational community center. This amount is to be determined during design. The percentages and amounts will be included in an amendment to this Agreement once the scope of the work is determined. Invoices or requests for payment from the County shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof and in

sufficient detail for the County to confirm the extent of work completed and compliance of such work with the terms of this Agreement.

4. The County shall install and maintain the outdoor lighting around the athletic fields as is their regular practice. The County agrees to pay 50% of the electrical costs for using such lighting.

5. The County agrees to be responsible for the maintenance of the soccer fields. The County shall mow all athletic fields and the areas immediately surrounding such fields. The School Board will pay 1/3 the cost of such maintenance within 30 days of receipt of the requests for such payments.

SECTION III: OBLIGATIONS OF THE SCHOOL BOARD

1. The School Board agrees that it will be responsible for hiring a contractor and a reputable architect to design and construct the Veteran's Park Elementary School and Veteran's Park Middle School ("school") and all related facilities. The School Board is responsible for operating and maintaining the schools. The School Board agrees that it shall pay for the total cost of the services for the planning and construction of the school and related facilities unless otherwise stated herein.

2. Apply for and obtain any necessary permits to construct the schools.

3. Consult with the County during each stage of the project, specifically during the design phase.

4. The School Board will pay the monthly electrical costs to air condition the gymnasium and the community center.

5. The School Board and the County will cost share, in equal proportions, the cost for any capital maintenance (repairs to the roof, floor, etc.) for the gymnasium including

a the multi-generational community recreation center. The School Board is responsible for hiring the contractor and performing the needed work or repairs.

6. The School Board agrees that the County may use any athletic facilities constructed by the School Board on the conveyed property, provided scheduling does not otherwise interfere with the primary use of the facility. The primary use of all facilities on the property will be to support the operation of the school. The County anticipates using such facilities during the following days/months and times: multi-generational community center- Monday through Sunday (all day/any time) on a regular basis and athletic facilities- Monday through Sunday after school hours and school functions are completed.

7. The County has an acute hurricane shelter shortage. The School Board agrees to allow the County temporary use of the school gymnasium including the multi-generational community center for its emergency public sheltering and/or staging area for emergency response equipment during emergencies officially declared by the County.

The County shall reimburse the School Board for the extra cost to construct these facilities as a hurricane shelter in keeping with the now-established regular practice, previously agreed upon between the County and the School Board.

SECTION IV: LIABILITY

1. The County agrees to exercise reasonable care in the conduct of its activities involved during the use of the specified facilities as described in this Agreement. The County further agrees to repair, replace or reimburse School Board for any damages to said property caused by the County, its agents, employees or citizens who use the

facility as a result of this agreement.

2. The County shall extend its insurance coverage to the facility when the County uses it for recreational purposes by listing it as an additional insured property on the County's existing policies.

3. a. Subject to the limitations as set out in Florida Statutes § 768.28 and §252.51, the County shall defend, hold harmless and indemnify School Board from and against any and all claims, actions, damages, liability, cost and expense, including those arising from bodily injury , death and/or property damage or any other lawful expense, including but not limited to, attorney's fees and court costs, brought by third parties arising from the act or omission of the County, its agents, employees, contractors or during the County's use of the school's facilities.

b. Subject to the limitations as set forth in Florida Statutes, § 768.28 and § 252.51, School Board shall defend, hold harmless and indemnify the County from and against any and all claims, actions, damages, liability cost expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including, but not limited to, attorney's fees and court costs, brought by third parties arising form the acts or omissions of School Board, its agents, employees, and contractors for the

construction of the facility. The provisions of this paragraph are not intended to abrogate the sovereign immunity of School Board beyond that set forth in Section 768.28, Florida Statutes.

4. This Agreement contains the entire agreement between the County and School Board, any verbal understanding, statements or prior writings or agreements to the contrary notwithstanding.

5. No change or modification to this Agreement shall be effective unless the same is

in writing and signed by both parties.

SECTION V: DEFAULT

If at any time the School Board fails to fulfill its obligations under Section III of this Agreement or if the School Board fails to pay the Florida School Board Association under the Series 2002A Ground Lease Agreement entered into by the School Board for the funds to construct this project, the County is entitled to terminate this Interlocal Agreement in accordance with the provisions set forth in Section VI. Failure of the County to exercise its rights in the event of any breach shall not constitute a waiver of such rights. Neither the County nor the School Board is deemed to have waived any failure to perform by the party unless such waiver is in writing and signed by the waiving party.

SECTION VI: TERMINATION

Either party to the Agreement may terminate this Agreement for cause or breach by giving three (3) months written notice. Should School Board or the County terminate

the agreement for whatever cause, the School Board shall reimburse the County the dollar amount expended from any park impact fees that the County utilized in the construction of the gymnasium including the multi-generational community recreation center plus the fair market value of \$17,500 per acre for each acre given by the County to the School Board (which consists of 18.98 acres more or less) for the school and for the current market value of any capital improvements the County made to the school facilities.

SECTION VII: CONTACT PERSON

1. The Director of Parks and Recreation shall be the County's contact person with the School Board, and the Assistant Superintendent for Facilities and Maintenance shall be the School Board's contact person with the County. If one entity wishes to schedule the other entity's facilities, the requests shall go through the above-mentioned contact person.
2. The Assistant Superintendent for Facilities and Maintenance shall have the responsibility of ensuring cooperation with and coordinating the use with the school principals as to the county scheduling School board facilities or developing additional facilities on School Board property.
3. The School Board will educate new staff members on the content of this agreement and the County's right to use the facilities to ensure that the County is granted proper access to the facilities when needed.

SECTION VIII: DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the

purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement. This remedy is supplemental to any other remedies available at law.

SECTION IX: ASSIGNMENT

No assignment, delegation, transfer, or novation of this Interlocal Agreement or part hereof, shall be made by either Party unless approved by both the School Board and the County.

IN WITNESS WHEREOF, the County and School Board hereto have set their hands and seals on the date and year indicated.

ATTEST:

THE SCHOOL BOARD OF LEE COUNTY,
FLORIDA

By: [Signature]

By: [Signature]
Chairman

APPROVED

FEB 04 2003

ATTEST:-

SCHOOL BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

CHARLIE GREEN, CLERK

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

Approved as to Form:

By: [Signature]
School Board Attorney

By: _____
Office of the County Attorney

EXHIBIT "A"

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 45 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A DRILL HOLE (WITH PK NAIL AND DISK LABELED LB 734) IN A CONCRETE SIDEWALK, SAID POINT BEING AN INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF HOMESTEAD ROAD (80' WIDE) AS RECORDED IN OFFICIAL RECORD BOOK 2347 AT PAGES 195 THROUGH 198 AMONG THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND THE EAST LINE OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 5; THENCE DEPART SAID RIGHT-OF-WAY LINE AND RUN N 01°35'34" W ALONG SAID EAST LINE OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 5, A DISTANCE OF 873.23 FEET TO THE POINT OF BEGINNING, SAID POINT OF BEGINNING BEARING S 01°35'34" E AT A DISTANCE OF 454.11 FEET FROM A 3"x3" CONCRETE MONUMENT LABELED "LB 642"; THENCE DEPART SAID EAST LINE AND RUN N 89°59'55" W A DISTANCE OF 375.68 FEET TO A POINT; THENCE RUN S 34°32'05" W A DISTANCE OF 24.82 FEET TO A POINT RADIAL TO A NON-TANGENT CURVE TO THE LEFT; THENCE RUN ALONG THE ARC OF SAID NON-TANGENT CURVE A DISTANCE OF 194.33 FEET HAVING A RADIUS OF 519.00 FEET, A CENTRAL ANGLE OF 21°27'13" AND A CHORD OF 193.20 FEET TO BEAR N 66°11'32" W TO A POINT OF REVERSE CURVATURE; THENCE RUN ALONG THE ARC OF SAID CURVE TO THE RIGHT A DISTANCE OF 410.70 FEET HAVING A RADIUS OF 305.89 FEET A CENTRAL ANGLE OF 78°55'38" AND A CHORD OF 380.54 FEET TO BEAR N 38°27'20" W TO A POINT OF TANGENCY; THENCE RUN N 00°00'29" E A DISTANCE OF 214.97 FEET TO A POINT; THENCE RUN N 89°59'17" E A DISTANCE OF 126.48 FEET TO A POINT; THENCE RUN N 00°00'16" E A DISTANCE OF 532.05 FEET TO A POINT; THENCE RUN S 89°59'45" E A DISTANCE OF 645.98 FEET TO A POINT ON THE AFOREMENTIONED EAST LINE; THENCE RUN ALONG SAID EAST LINE S 01°35'34" E A DISTANCE OF 648.85 FEET TO THE AFOREMENTIONED 3"x3" CONCRETE MONUMENT, SAID MONUMENT BEING THE SOUTHWEST CORNER OF A PARCEL OF LAND AS DESCRIBED IN OFFICIAL RECORD BOOK 1644 AT PAGES 1978 AMONG SAID PUBLIC RECORDS; THENCE DEPART SAID EAST LINE AND RUN ALONG THE SOUTH LINE OF SAID PARCEL S 89°59'45" E A DISTANCE OF 141.84 FEET TO A POINT; THENCE DEPART SAID SOUTH LINE AND RUN S 00°00'05" W A DISTANCE OF 453.93 FEET TO A POINT; THENCE RUN N 89°59'55" W A DISTANCE OF 129.21 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 18.98 ACRES MORE OR LESS

BEARINGS SHOWN HEREIN ARE BASED UPON THE MONUMENTED EAST LINE OF THE WEST HALF OF THE NORTHEAST 1/4 OF SECTION 5, TOWNSHIP 45 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA TO BEAR N 01°35'34" W.