

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION**

CC: 15C
Amend No. _____

Date Prepared: December 24, 2007

Meeting Date: January 15, 2008

TO: Terrence L. Ellis, City Manager
FROM: J.P. de la Montaigne, Community Services Director J.P.
PREPARED BY: Kirk Haines, Parks Manager K.H.
SUBJECT: Amendment to Easement Agreement

RECOMMENDATION:

That the Mayor and City Council approve an easement agreement with Nobel Learning Communities and Meritas, LLC to install a four foot high fence at Fletcher Heights Park North.

SUMMARY:

Council is requested to approve an amendment to an existing easement agreement that would allow the Meritas Schools to install a four foot high wrought iron fence around a lawn area of Fletcher Heights Park North, located at 7837 W. Hillcrest Blvd. The intent of the fence is to provide a secure area for children to use a lawn area while still allowing public use and access of all areas in the park.

The previous agreement between the City of Peoria and Noble Learning Communities, dated May of 2000, allowed nonexclusive use of the park area by the school in exchange for all park maintenance costs. This agreement was established because there is no lawn area inside the school boundary. The new lessee, Meritas, took over the lease of the charter school in the summer 2007 and have been maintaining the park exceptionally well over the past six months. This new private school is committed to becoming a long-term partner with the neighborhood and City to assure they establish themselves as a stable entity with the community. This is already underway by their commitment for improved aesthetics of the park and meeting or exceeding our current maintenance standards.

ATTACHMENT: Contract
Site Map with Fence Boundaries

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business

ORD. # _____ RES. # _____
LCON# 05900A LIC. # _____
Action Date: _____

When recorded return to:

David F. Hanley
Meritas, LLC
3000 West Cypress Creek Road
Fort Lauderdale, Florida 33309

AMENDMENT TO EASEMENT AGREEMENT

This AMENDMENT TO EASEMENT AGREEMENT (this "Amendment") is entered into and is effective as of the _____ day of December, 2007, by and among the CITY OF PEORIA, ARIZONA, an Arizona municipal corporation (the "Grantor"), NOBEL LEARNING COMMUNITIES, INC., a Delaware corporation (the "Nobel"), and MERITAS, LLC, a Delaware limited liability company ("Meritas").

RECITALS

A. Grantor and Nobel previously entered into that certain Easement Agreement (the "Agreement") dated May 22, 2000 and recorded on May 23, 2000 as Instrument No. 00-0391512 of the Official Records of Maricopa County, Arizona.

B. Nobel and Meritas previously entered into a Sublease Agreement ("Sublease") whereby Nobel sublet the School Property and the Playground Area to Meritas in accordance with the terms of the Sublease.

C. Grantor, Nobel and Meritas now desire to amend the terms of the Agreement as set forth herein.

AGREEMENTS

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree that the Agreement is hereby amended as follows:

1. Meritas shall construct at its own cost a four (4) foot high fence, with gate(s) for public accessibility, around the Playground Area where marked on the survey attached as **Exhibit "A"**.

2. Except as modified by this Amendment, the Agreement shall remain in full force and effect. In the event of any conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall control.

3. All capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Agreement.

GRANTOR:

CITY OF PEORIA, ARIZONA, an
Arizona municipal corporation

By: _____
Terrence L. Ellis, City Manager

ATTEST:

Mary Jo Kief, City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

STATE OF ARIZONA

COUNTY OF MARICOPA

The foregoing instrument was acknowledged before me this _____ day of December, 2007, by Terrence L. Ellis, the duly appointed City Manager of the City of Peoria, Maricopa County, Arizona, an Arizona municipal corporation.

Notary Public – State of Arizona

[Notary Stamp]

[Signatures Continue On Next Page]

NOBEL:

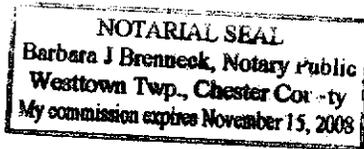
NOBEL LEARNING
COMMUNITIES, INC., a
Delaware corporation

By: [REDACTED]
Its: CFO

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CHESTER

The foregoing instrument was acknowledged before me this 3rd day of December, 2007, by THOMAS FRANK as CFO of Nobel Learning Communities, Inc., a Delaware corporation.



[Notary Stamp]

Barbara J Brenneck
Notary Public
Commonwealth of Pennsylvania

MERITAS:

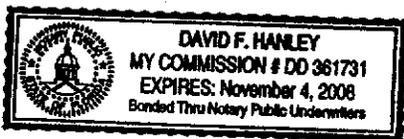
MERITAS, LLC, a Delaware
Limited liability company

By: [REDACTED]
Its: SVP

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 7th day of December, 2007, by Stacy L. Gordon as Senior Vice President of Meritas, LLC, a Delaware limited liability company.

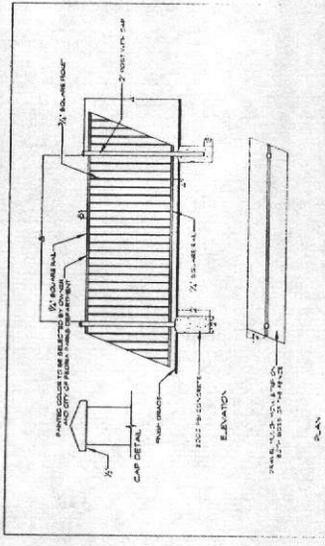
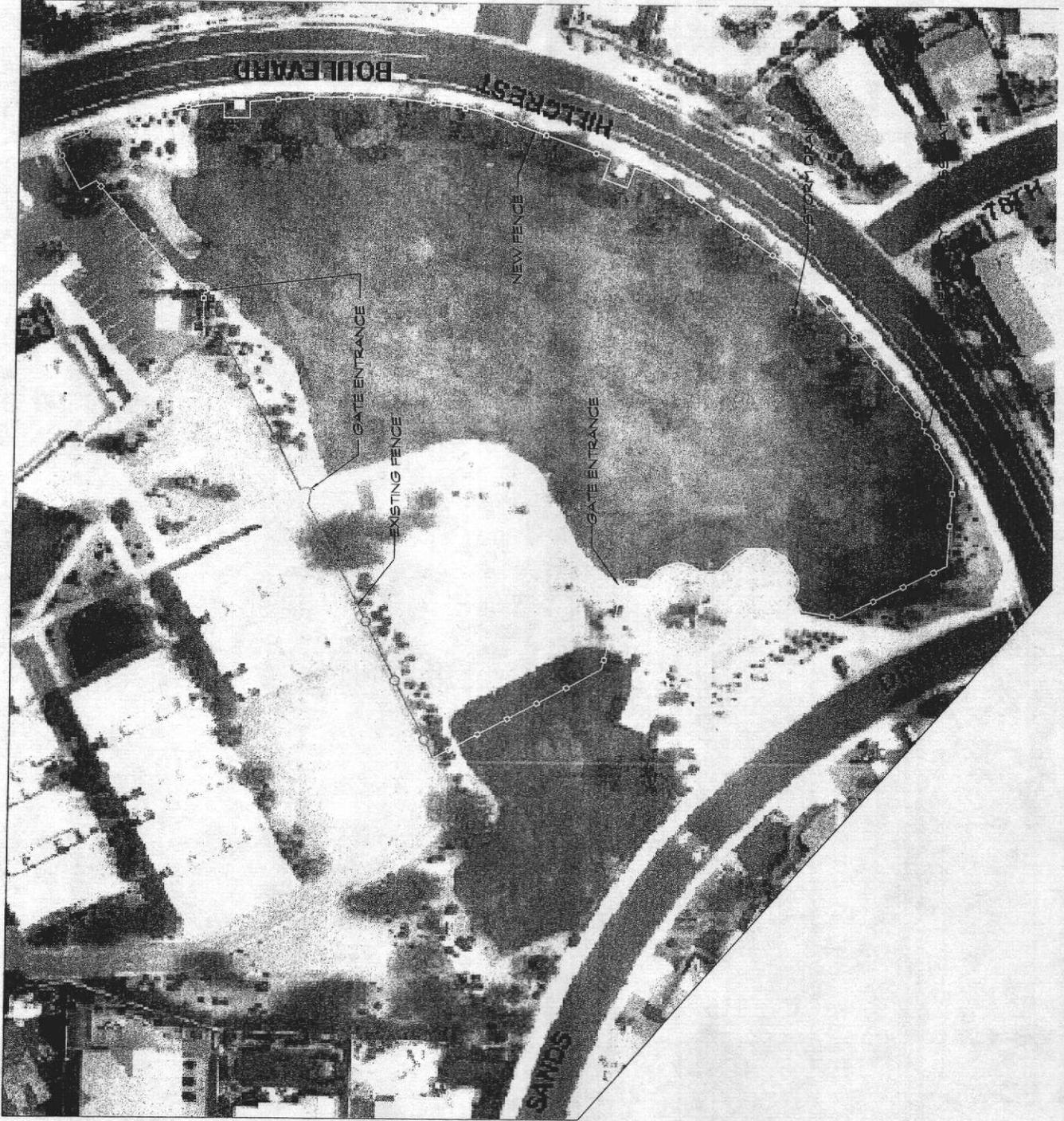


[Notary Stamp]

David F Hanley
Notary Public - State of Florida

Exhibit "A"

Survey Indicating Where Fence To Be Constructed



FENCE DETAILS

KEY LEGEND

NEW FENCE

OLD FENCE

MERITAS SCHOOL
PEORIA, ARIZONA



HILLCREST PARK FENCE PLAN
OCTOBER 23, 2007



SCALE: 1" = 30'-0"
0' 15' 30' 60'