

CITY OF CORAL GABLES
PLANNING COMMISSION
2011 JAN 31 AM 9:38

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereinafter "Agreement") is made and entered into this 15th day of September 2010, between GULLIVER SCHOOLS, INC., a Florida non-profit corporation (herein "School") and GABLES BY THE SEA HOMEOWNERS ASSOCIATION, INC. (hereinafter "Association"). The School owns the property described in Exhibit "A" (hereinafter the "Property"). Association and School are collectively hereinafter referred to as the "Parties."

RECITALS

WHEREAS, the School has filed for a Planned Area Development (PAD) assignment and site plan review and an amendment to the previously approved Gulliver Academy Master Campus Site Plan (the "Application") from the City of Coral Gables (the "City") pursuant to the plans dated November 15, 2010 attached to this Agreement and made a part hereof as Exhibit "B" (referred to as the "Site Plan"); and

WHEREAS, the Property is located adjacent to the area in which Association members live; and

WHEREAS, the School seeks approval of the Application before the City Planning and Zoning Board and City Commission; and

WHEREAS, the School seeks these approvals as modified herein to provide improved educational opportunities for its students and to reduce any negative interactions with its residential neighbors; and

WHEREAS, the School has stated on the public record that it does not anticipate requesting additional changes in its master plan in the near future; and

WHEREAS, the Association, a legal entity representing property owners in the Gables by the Sea area, has expressed concerns regarding the Application; and

WHEREAS, in order to effect an amicable resolution to the differences between the Association and the School regarding the Application, the Parties desire to reach an agreement so that the School can proceed with its project without objection from the Association; and

WHEREAS, The School seeks to amend the Application pursuant to this Agreement and incorporates herein by reference the Agreement as amended including the conditions imposed by the city commission; and

WHEREAS, The Parties agree that it is their best interests for the School to obtain final approval of the Application as modified by this Agreement as soon as possible; and

WHEREAS, each of the Parties hereto, believing this Agreement to be fair, just and reasonable in all respects, have assented freely and voluntarily to all of its terms.

NOW, THEREFORE, in reliance upon the true and correct recitals stated above, and in consideration of the mutual covenants, conditions, and agreements contained herein and the other conditions and covenants contained herein, each party hereto, on its own behalf, and on behalf of the individuals or entities specifically noted or referred to herein, stipulate and agree both individually or collectively as follows:

1. The above recitals are true and correct and are incorporated herein by reference.
2. This Agreement amends and supersedes any previous Agreement between the Parties related to the Property.
3. If the Application is not approved by the city commission for any reason, this Agreement shall be of no force or effect. If the Application as revised, is approved, as proposed herein or as revised by Gulliver or with City imposed conditions that do not adversely impact the neighborhood, this agreement will remain in full force and effect.
4. Proposed Natatorium.
 - a. The proposed Natatorium shall be located as shown in the plans set forth in Exhibit "B". That is, the Natatorium shall encroach into the Property's southern setback (parallel to Campamento Street) no more than five (5) feet.
 - b. The proposed Natatorium shall be designed compatible with the "residential style" of the current structures on the Property and the adjacent neighborhood as may be approved by the City Board of Architects.
 - c. The maximum height of the proposed Natatorium at the top of the roofline shall be 32 feet 4 inches above finished grade and at its lowest point shall be 29 feet as shown in the plans set forth in Exhibit "B".
 - d. There shall be no fixed or permanent mechanical, electrical or structural equipment, or architectural structures or features of any kind on the roof of the Natatorium.
 - e. The entire south side of the Natatorium shall be fully landscaped (as shown in the plans set forth in Exhibit "B") in an effort to buffer the view of Natatorium from the adjacent neighborhood to the south.
 - f. There shall be no parking constructed on the south side of the Property, along Campamento Street east of the Natatorium.
5. Existing School Access Point on Campamento Street.
 - a. The existing vehicular access point on Campamento Street shall be closed prior to the commencement of the 2011-2012 school year, subject to timely City approvals as follow below. The Parties acknowledge and agree that timely City review and approvals are necessary to allow the School to complete construction of an alternative

access drive to its parking and delivery area on the south side of the Property (the "Alternative Access Drive") prior to the commencement of the 2011-2012 school year:

- i. The School shall present the appropriate application and plans for the Alternative Access Drive as shown in the plans set forth in Exhibit "C" no later than sixty (60) days after the non-appealable approval of the Application.
- ii. The Alternative Access Drive shall extend no further south than the location of the existing fence that parallels Campamento Street as shown in the plans set forth in Exhibit "C".
- iii. The School shall seek all City approvals for the Alternative Access Drive in an expeditious and diligent manner. Subject to timely governmental approval of the required permits and easement, the School shall commence construction of the Alternative Access Drive when the school year 2010-2011 ends in June 2011.
- iv. The School shall landscape the area between the south side of the existing fence (immediately south of the Alternative Access Drive) and Campamento Street with a ficus hedge (that shall be between three (3) and four (4) feet in height at planting and that shall be maintained by the School at no less than twelve (12) feet in height at full growth) to block the view of the Alternative Access Drive and related traffic from the adjacent residential neighborhood as shown in the plans set forth in Exhibit "C".
- v. The Association shall support via a duly-authorized and executed resolution of its board of directors any City-required easement substantially consistent with Exhibit "C" that will implement the construction of the Alternative Access Drive and the landscaping set forth herein.
- vi. The School shall eliminate UPS Ground., Federal Express Air and Ground, and Office Depot trucks' access to the School to and from Campamento Street no later than thirty (30) days after the non-appealable approval of the Application.
- vii. Upon the completion of the Alternative Access Drive as determined by the City, the School shall immediately close the vehicular access point on Campamento Street to all non-emergency vehicles.
 - 1) If the City Fire and Police departments determine that emergency access is not necessary through the existing Campamento gate, the vehicular access point and the existing gate shall be removed permanently. However, the School shall retain one (1) six (6)-foot wide un-paved access point (including a gate) along Campamento Street for its landscape maintenance vehicles and equipment to access the swale areas outside the perimeter fence.
 - 2) If the City Fire and Police departments determine that emergency access is necessary, as set forth in writing (with the School to provide this document to the president of the Association), the vehicular access point shall remain and the School shall replace the existing gate with a gate reflecting the residential character of the south side of

Campamento Street. The School shall seek City approvals to maintain this emergency-access point without paving and as sod-only. The association shall provide its written support of such efforts.

- 3) Regardless of whether the existing gate location remains or the gate is reduced to 6 feet, the School agrees that the gate will be residential in character and maintained in good working condition by the School.
6. Communication Between School and Association. In order to enhance communication among the Parties including issues or concerns related to the Association or to the School in the future, the School shall invite the Association to take part in periodic meetings as needed between School's contact person, who will be on-site at the Property and responsive to Association's reasonable requests to maintain residential quality of life and quiet enjoyment for Association's residents. Additionally, the School shall provide the Association president with notice of major construction events. The School shall provide the Association president the name and direct telephone number of the School's contact person who the Association president can contact in case of Association issues or concerns. This School contact person shall be available via phone, e-mail and/or in person.
7. Public Hearings. In consideration for the development of the Property pursuant to the Application as modified by this Agreement, the Association shall provide written support of the Application through a resolution of the Association at the time of the execution of this Agreement (Resolution attached as Exhibit "D"). In addition, the Association agrees that the President of the Association shall be present at the City Planning and Zoning Board and City Commission meetings on the Application. The Association's attorney shall speak, on behalf of the Association in support of the Project and the Application as modified herein.
8. This Agreement shall be binding upon and inure to the benefit of the School and the Association, as well as their respective successors and assigns.
9. Unless School is in default of this Agreement: (a) the Association shall not file any administrative or judicial actions adverse to the development of the Property and, (b) the Association hereby specifically waives their right to appeal through any judicial process or otherwise challenge, legally or otherwise, the approval of the Application.
10. In the event of a default under this Agreement, such default may be remedied by any relief available at law or in equity. The prevailing party in any proceeding seeking to enforce this Agreement or any portion hereof shall be entitled to receive from the other party its court costs and reasonable attorney's fees, including paraprofessional fees, and attorneys' fees incurred in connection with any appeal or related action.
11. The Parties acknowledge that during the course of the permitting process for the development of the Property pursuant to the Application, one or more governmental bodies or entities may attach non-substantial conditions or requirements to their respective approvals. "Substantial conditions" shall mean any condition that causes any building proposed pursuant to

the Application to be increased in height or square-footage, or changed in its location so as to intrude into city-established setbacks (Except the Natatorium which may only intrude into the south setback by no more than five (5) feet, or the Gymnasium which may intrude into the north setback by no more than sixty (60) feet). In such event, the School may make such city-required modifications to the Plans as may be necessary to comply with such governmental conditions or requirements. The School will notify the Association of any such changes. Changes to the Application made pursuant to this paragraph shall not be a breach of this Agreement by the School, and this Agreement shall remain in full force and effect.

12. Any and all notices, consents, offers, acceptances, or any other communications provided for herein shall be given in writing and shall be effective upon delivery as evidenced by a receipt executed by or for the party to whom such notice, consent, offer, acceptance or any other communication provided for herein is addressed; which delivery shall occur upon facsimile transmission, as evidenced by such facsimile transmission verification report; by registered email as evidenced by receipt or upon delivery by (i) certified or registered mail as evidenced by a return receipt executed by or for the party to whom such mail is addressed, or (ii) courier service, including, without limitation, United parcel Service, FedEx, Airborne Express, DHL, or U.S. Postal Service Express Mail, as evidenced by a receipt executed by or for the party to whom such courier package is addressed. Notices shall be given to the following, except where may be directed otherwise by the same means of notice as provided herein:

As to Association:

ANDREW DICKMAN, AICP, ESQ.
Law Offices of Andrew Dickman, P.A.
P.O. Box 771390
Naples FL 34107-1390

With a copy to Gables By The Sea Home Owners Association, Inc.
Carlos Santeiro, President
P.O. Box 560927
Miami, FL 33156

As to School:

LAURA L. RUSSO, ESQ.
2655 Le Jeune Road
Suite 201
Coral Gables, Florida 33134

With a copy to Gulliver Schools, Inc.
c/o Jeffrey S. Bartel, Chairman and President

1155 San Remo Avenue, Penthouse
Coral Gables, FL 33143

13. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida, without the application of conflicts of law principles. All Parties acknowledge that they have either fully consulted with counsel or have had the opportunity to consult with counsel prior to the execution of this Agreement, and that they fully understand all of the terms of this Agreement, and that they fully understand all of the terms of this Agreement, and are entering into it voluntarily.
14. This Agreement shall inure to the benefit of the Parties hereto, their successors and assigns.
15. This Agreement may be executed by the Parties in counterpart originals (facsimile copies shall be considered as originals), in which event this Agreement will have the same force and effect as if it had been fully and simultaneously executed in a single original document.
16. The Agreement or any part of it shall be modified, changed, amended or released or terminated only by an instrument in writing executed by the Parties.

IN WITNESS WHEREOF, with full knowledge and comprehension the provisions of this Agreement; the Parties hereby execute the Agreement.

[SIGNATURE PAGE TO FOLLOW]

GULLIVER SCHOOLS, INC. (School):



Signature

9/18/10

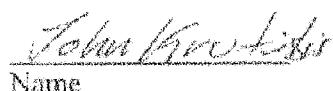
Date

Father S. Hatch or Clerk & Faculty Board of Trustees

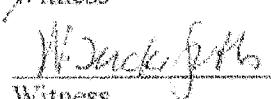
Print Name and Title



Witness



Name



Witness



Name

GABLES BY THE SEA HOMEOWNERS ASSOCIATION, INC. (Association):



Signature

9/15/10

Date

Dennis L. Danner, President

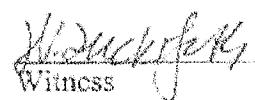
Print Name and Title



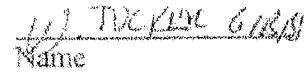
Witness



Name



Witness



Name

EXHIBIT "A"

The Property

Exhibit "A"

LEGAL DESCRIPTION:

PARCEL3

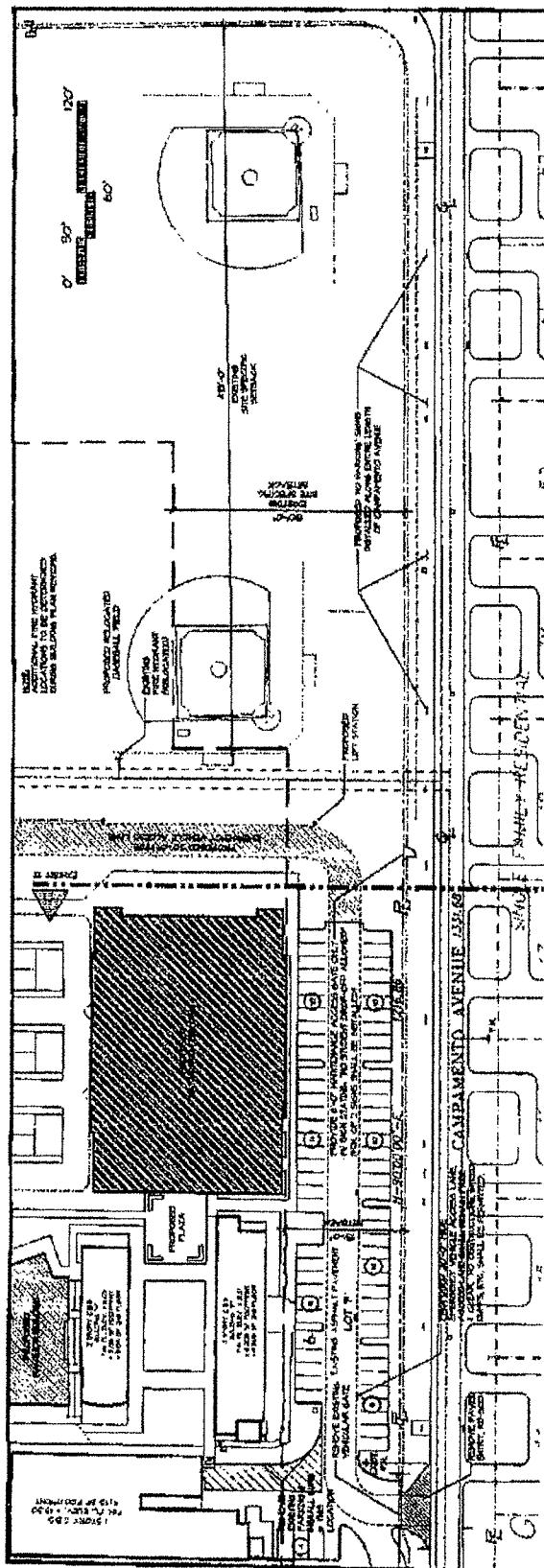
Lot 7, of AVACADO LAND COMPANY SUBDIVISION, located in the Southeast 1/4 of the Northeast 1/4 of Section 18, Township 55 South, Range 41 East, according to the plat thereof, recorded in Plat Book 2, at Page 44, of the Public Records of Miami-Dade County, Florida, less therefrom road right-of-way more particular described as follows:

The West 35 feet; the South 30 feet; the East 30 feet; that remaining portion lying Southwesterly of a circular curve concave Northeasterly having a radius of 25 feet, said circular curve being tangential to a line 35 feet Easterly of, and parallel to, the Westerly line of said Tract 7, and tangential to a line 30 feet Northerly of, and parallel to, the Southerly line of said Tract 7; and that remaining portion lying Southeasterly of a circular curve concave Northwesterly having a radius of 25 feet, said circular curve being tangential to a line 30 feet Westerly of, and parallel to, the Easterly line of said Tract 7, and tangential to a line 30 feet Northerly of, and parallel to, the Southerly line of said Tract 7; lying and being in Coral Gables, Miami-Dade County, Florida.

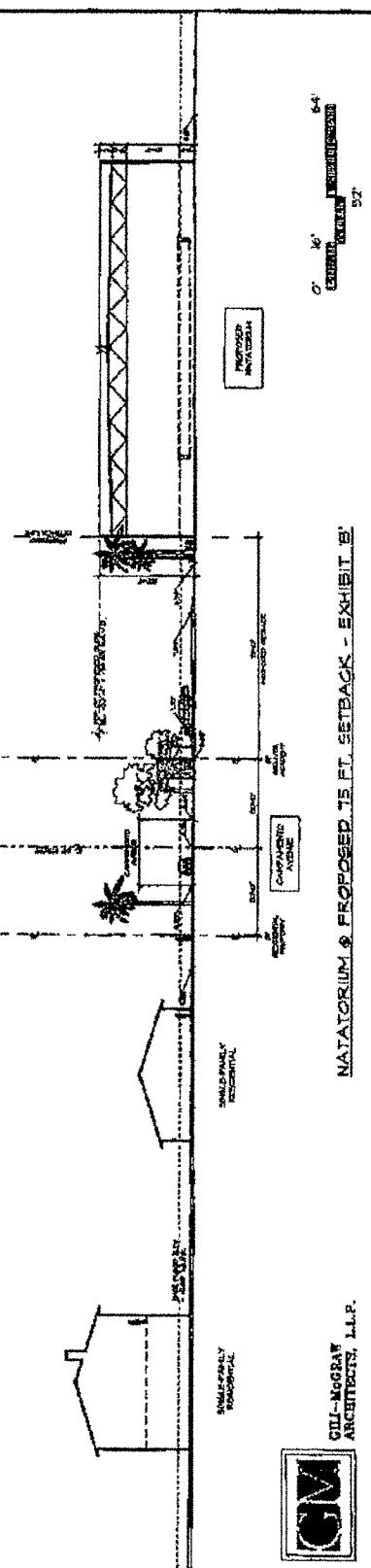
GULLIVER ACADEMY
12595 Red Road
Coral Gables, Florida

EXHIBIT "B"

Site Plan



GULLIVER ACADEMY MASTERPLAN - EXHIBIT 8



NATATORIUM & PROPOSED 75 FT. SETBACK - EXHIBIT 'E'

CLIF-MCGRAW
ARCHITECTS, L.L.P.

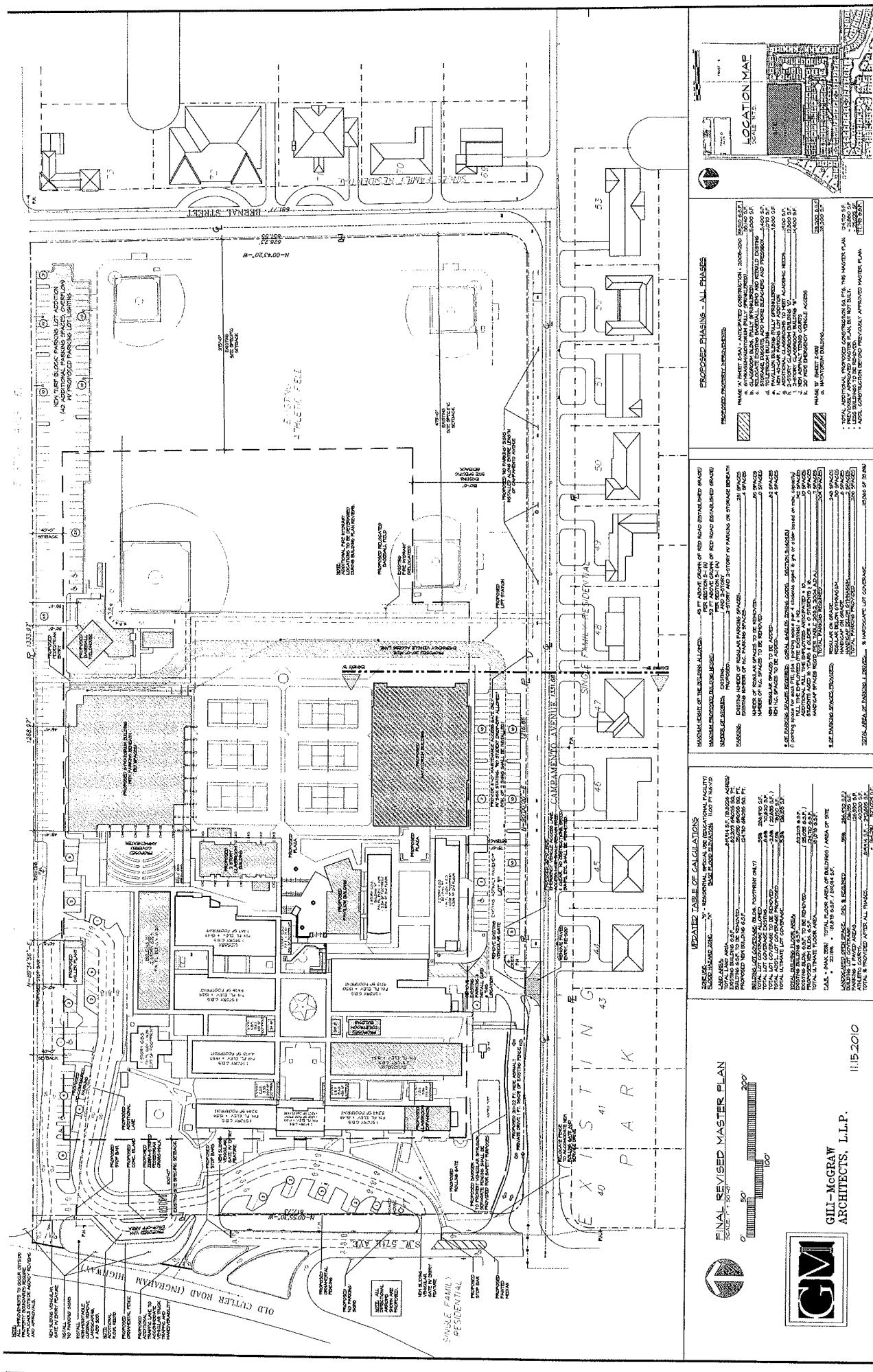


EXHIBIT "C"

Alternative Access Drive Plans

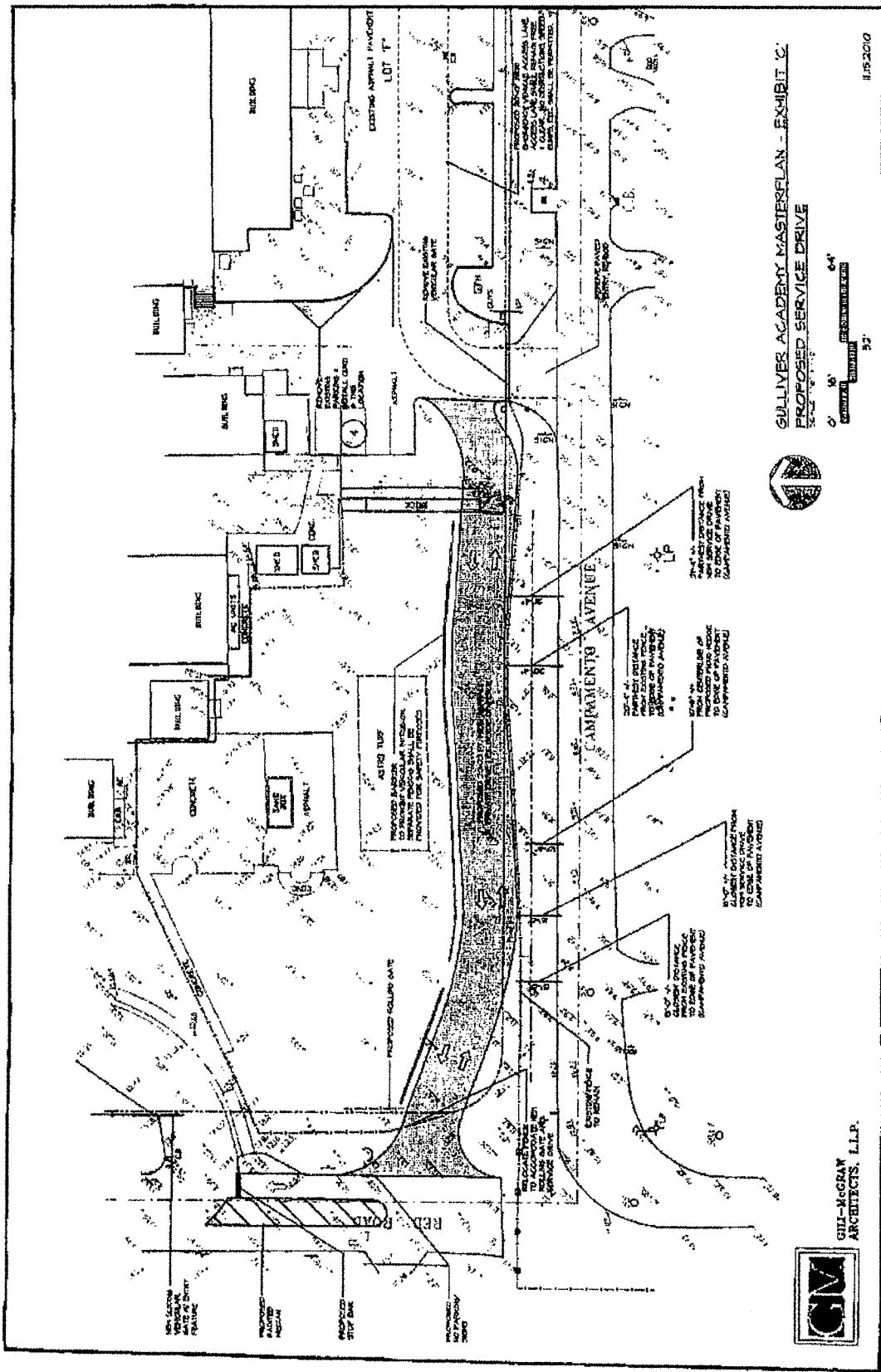


EXHIBIT "D"

Association Resolution

RESOLUTION

A RESOLUTION OF THE GABLES BY THE SEA
HOMEOWNERS ASSOCIATION, INC.
AUTHORIZING THE PRESIDENT TO SIGN THE
SETTLEMENT AGREEMENT WITH GULLIVER
SCHOOLS, INC., ON BEHALF OF THE
ASSOCIATION.

BE IT RESOLVED BY THE THE GABLES BY THE SEA HOMEOWNERS ASSOCIATION, INC. BOARD OF DIRECTORS, AS FOLLOWS:

SECTION 1. That the Board of Directors of **The Gables By The Sea Homeowners Association, Inc.** hereby authorizes its president Carlos Santeiro to sign the settlement agreement with Gulliver Schools, Inc. regarding Application 09-09-092-P dated September 15, 2010.

SECTION 2. That the Board of Directors of **The Gables** By The Sea Homeowners Association, Inc. hereby authorizes its attorney Andrew W. J. Dickman, Esq. to appear before the Planning and Zoning Board and the City Commission to express the Association's support of Application 09-09-092-P as modified by the settlement agreement with Culliver Schools, Inc. dated September 5, 2010.

PASSED AND ADOPTED this 15 day of September 2010.

Carlos Santeiro, President

AUGUST 4

GT: 