

JOINT VENTURE AGREEMENT

THIS JOINT VENTURE AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2015 ("Effective Date"), by and between the **VILLAGE OF NEWTOWN**, Ohio an Ohio municipal corporation, with a notice mailing address of 3537 Church Street, Cincinnati, Ohio 45244 ("Newtown"), and **MIAMI VALLEY CHRISTIAN ACADEMY**, an Ohio non-profit corporation, with a notice mailing of 6830 School Street, Cincinnati, Ohio 45244 ("MVCA"). MVCA and Newtown hereafter jointly may be referred to as the "Parties".

RECITALS

- A. Newtown is the owner of the real property commonly known as Short Park and located at or near 3711 Debolt Street, Cincinnati, Ohio. The property being approximately 16 acres as more particularly described on the attached **Exhibit A** (the "Park").
- B. The Parties desire MVCA to construct certain improvements and facilities in Zone 1 and Zone 2 of the Park, as more particularly described and designated on the attached **Exhibit B** (collectively the "Facilities") for use by MVCA athletic teams and public uses with the terms hereof as well as potential rental and secondary purposes in accordance with the terms hereof and additional rules, terms and conditions to be set in the future by the Governing Board (hereafter defined).
- C. Further, the parties desire MVCA to relocate or cause to be constructed certain improvements within Zone 3 of the Park as set forth below in Section 4.3 of this Agreement. However, any such improvements in Zone 3 of the Park are not in any manner considered part of the above-defined Facilities.
- D. The Parties desire to establish a joint venture with respect to the development, construction, use, and maintenance of the Facilities, related improvements and the Park for the mutual benefit of MVCA and Newtown. The foregoing may be constructed over time as separate and distinct construction projects (individually a "Venture" and collectively the "Ventures").
- E. The parties desire to designate their respective obligations, interests and responsibilities in connection with the Ventures pursuant to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. INCORPORATION OF RECITALS: All of the introductory recitals, preambles and

definitions are hereby incorporated into and made a part of this Agreement, as though set forth verbatim

2. PURPOSE:

2.1 The Parties hereby form a joint venture pursuant to the laws of the State of Ohio in such manner as further set forth in this Agreement. The general purpose of the Ventures shall be to develop, construct, use, maintain, replace, rent to third parties, and/or otherwise deal with the Facilities and for all such other business and purposes incidental or necessary to the same.

2.2 MVCA is not a division or any part of the body politic that is Newtown. Newtown is a political subdivision and a governmental entity authorized under the statutes of Ohio and is not a division or a part of MVCA. The relationship between the parties was developed and entered into through arms-length negotiations and is based solely on the terms of this Agreement and those of any other agreements that may exist from time to time between the parties. Nothing herein will be construed to make one the agent or fiduciary of the other. Neither Newtown nor MVCA will hold itself out as an agent of the other or otherwise state or imply by advertising or otherwise any relationship between it and the other in any manner contrary to the terms of this Agreement. Neither Newtown nor MVCA has and neither will represent that it has the power to bind or legally obligate the other. No employee of either party will be considered an employee of the other by either party for any purpose whatsoever.

2.3 MVCA will not have any role or relationship with Newtown that, in effect, substantially limits Newtown's ability to exercise its rights, including termination rights, under this Agreement. The Council of the Village of Newtown, Mayor, or any other position of authority in the makeup of Newtown shall not include any director, officer, agent or employee of MVCA. Should any MVCA director, member, officer, shareholder, employee, or agent become an elected or appointed official of Newtown, such person shall not vote on any matter concerning this Agreement or the Facilities.

2.4 MVCA acknowledges and agrees that all documents pertaining to the construction, use, maintenance, and any other actions concerning Zone 1, Zone 2, the Facilities, or the Park shall be a public record under Ohio Revised Code Section 121.22 and MVCA agrees to maintain all records in accordance with Newtown's requirements and records retention policies as adopted by Newtown and as may be amended from time to time. MVCA may meet its obligations under this clause by providing Newtown with copies of all documents that would constitute a public record under this agreement, in which event, Newtown shall maintain the documents as public records.

2.5 No religious activities shall be conducted in or on any property contained within the Park unless such activity would be permitted by any other person or entity using the Park.

2.6 Unless a different time is set forth within this Agreement for the performance of a specific matter, MVCA's responsibility for any of its requirements under this Agreement shall commence upon the execution of this Agreement.

3. TERM:

3.1 The term of the Ventures shall commence as of the date hereof and shall continue for twenty-five (25) years. Further, subject to Newtown's right to terminate at the end of the initial term or any renewal term under Paragraph 3.2 below, provided MVCA, and/or its successor are not in default of their obligations hereunder, the Ventures will then automatically extend for five (5) additional five (5) year periods. The Ventures may be earlier terminated or dissolved upon the written agreement of the Parties.

3.2 Notwithstanding the foregoing, Newtown will have the right, in its sole discretion, to dissolve or terminate the Ventures at any time (a) in the event that MVCA or its successor fails to continue to operate a school containing either (i) grades 1 through 8 or (ii) grades 9 through 12 during the term of the Ventures or any renewal period thereof, on the current MVCA property located at 6830 School Street, Cincinnati, Ohio 45244; or (b) in the event of the occurrence of an Event of Default as defined under Section 13 of this Agreement; or (c) upon the expiration of the initial twenty-five (25) year term or upon the expiration of any five (5) year renewal term, provided that Newtown has given MVCA five (5) years prior notice of its intent to dissolve or terminate the Ventures at the end of the term or any renewal thereof. By way of example only, if the initial term were to end on November 30, 2039 and if Newtown wished to terminate the Ventures on that date, Newtown must give notice of that termination on or before November 30, 2034. Again by way of example only, if the Ventures automatically extended an additional five (5) years to November 30, 2044 and Newtown wished to terminate the Ventures at the end of that additional five (5) year extension, it must give notice of that termination on or before November 30, 2039.

3.3 Upon cancellation, termination or dissolution of the Ventures, Newtown has the right to (a) take sole ownership of all Facilities at no cost to Newtown or (b) require MVCA to remove some or all of the Facilities and return the Park to the condition as it exists on the effective date of this Agreement (with the exception of any Facilities that Newtown decides to be left in place) reasonable wear and tear excepted. Newtown shall provide notice to remove within six (6) months after the date of termination and, if Newtown does not provide that notice within that time period, Newtown will be deemed to have waived such requirement for MVCA to remove the Facilities. In the event MVCA fails to remove those Facilities that Newtown provided timely notice of removal for and to restore such areas in the Park with grass seed and straw as reasonably necessary within six (6) months after receipt of such written notice, then Newtown may proceed with the removal of those Facilities (and restoration of the Park) and MVCA shall be responsible for and shall reimburse Newtown for all reasonable costs and expenses incurred by Newtown for the removal and restoration.

4. DEVELOPMENT / CONSTRUCTION OF FACILITIES:

4.1 MVCA, will begin construction of Facilities in either Zone 1 or Zone 2 of the Park, as determined by MVCA, within twenty-four (24) months after the effective date hereof (the "First Phase"). Such First Phase will be substantially completed within thirty-six (36) months after the effective date hereof.

4.2 All Facilities for Zone 1 and Zone 2, as well as the Zone 3 improvements to be completed under Section 4.3 below, are to be substantially completed by MVCA within thirty-six (36) months of the commencement of construction. Construction of all Facilities shall be completed within sixty (60) months after the Effective Date.

4.3 MVCA, at its sole cost and expense, shall construct the following improvements in Zone 3: (a) blacktop/asphalt paving of the current gravel parking lot located in Zone 3; (b) construction/moving of the basketball court of comparable size as the existing court in a location reasonably decided by Newtown; and (c) at the option of Newtown, relocation of the existing shelter house to a reasonable location in Zone 3. All improvements in Zone 3 will be subject to the location of the walking trail, the bike path and any other applicable rights of usage and easements. Improvements to be constructed in Zone 3 shall be completed no later than the date of completion of the Facilities in the first Zone on which MVCA begins construction.

4.4 Construction of (a) all Facilities in Zone 1 and Zone 2, the applicable improvements in Zone 3 (pursuant to Section 4.3 above), and the relocated walking trail throughout the Park (as approximately shown on the attached **Exhibit B**), will be completed at the sole cost and expense of MVCA. MVCA shall not create or permit to be created or to remain, and, shall promptly discharge or bond at its sole cost and expense, any mechanics or materialmens lien, encumbrance or charge (each or all of which are herein referred to as "Lien") recorded of record as a Lien upon the Park or any personal property of Newtown, or any part thereof that arises from the operation, use, management, repair or replacement of all or any part of the Facilities, or any alteration thereof.

4.5 MVCA, at its sole cost and expense, shall comply with and cause the Facilities or any improvements it installs to comply with (a) all applicable federal, state, county, municipality, village, and other governmental statutes, laws, rules, orders, regulations and ordinances affecting the Facilities or any other improvements it installs, or any part thereof or the use thereof, (b) all rules, orders and regulations of the National Board of Fire Underwriters or other bodies exercising similar functions and responsibilities in connection with the prevention of fire or the correction of hazardous conditions which apply to the Facilities, or any improvements it installs and (c) the requirements of all policies of commercial general liability, fire and other insurance which at any time may be in force with respect to the Facilities or any other improvements it installs (all or any one of the items enumerated in this Section 6.1 are herein referred to as a "Law or Regulation").

4.6 MVCA shall not be permitted to and has no right to mortgage, subject to lien, or otherwise encumber any portion of the Park, the Facilities, or any other improvements it installs.

4.7 MVCA shall construct the Facilities and any other requisite improvements in conformance with the plans and specifications as approved by Newtown (the "Plans"). Such approval shall not be unreasonably withheld. The parties agree to work in close concert throughout the bidding and construction process to ensure compliance with applicable legal requirements.

4.8 The Facilities and any other requisite improvements shall be constructed in accordance with Newtown's requirements for construction of public improvements, including Newtown's requirements for maintaining records for public audit purposes. Such Facilities and improvements shall be constructed after the receipt of competitive bids (with bid bonds, if applicable) solicited in accordance with the Newtown's requirements under the Ohio Revised Code. Newtown will review the bid documents prior to any bidding to insure compliance with Newtown's bidding requirements. Prior to awarding contracts at the conclusion of such bidding process, MVCA shall obtain the reasonable approval of Newtown of the parties to whom it plans to award such contracts.

4.9 The Parties acknowledge that the Facilities and any other requisite improvements may be constructed and installed over time as separate and distinct construction projects and separate and distinct Ventures under this Agreement. Unless otherwise determined by the Parties that the construction of certain Facilities and improvements are not subject to prevailing wage requirements, the Parties agree that construction of the Facilities and improvements will be completed in accordance with such applicable prevailing wage requirements of Ohio Revised Code Chapter 4115. Further, if it is so determined by Newtown, all wages paid to laborers and mechanics employed in the construction of the Facilities and improvements shall be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for to construct the Facilities and improvements, which wages shall be determined in accordance with the requirements of that Chapter 4115. MVCA shall require compliance by all contractors and shall require all contractors to require compliance by all subcontractors constructing the Facilities and improvements, with all applicable requirements of that Chapter 4115. MVCA agrees that upon written request of the Newtown, MVCA shall promptly provide to Newtown written evidence that Newtown and all subcontractors constructing the Facilities and improvements have complied in all respects with this provision.

4.10 This Agreement and construction of any of the improvements shall be subject to all easements, covenants, and restrictions of record, as of the date hereof, on the real property constituting the Park.

5. FACILITIES, SCHEDULING, USE AND REVENUE SHARING:

5.1 With the exception of any portions of the paved walking trail, MVCA will own all of the Facilities that it constructs located within the Zone 1 and the Zone 2 areas of the Park during the term of the Ventures. Upon termination of this Agreement and the Ventures, ownership of the Facilities shall transfer to Newtown, subject to Paragraph 3.3.

5.2 None of the Facilities in Zone 1 or Zone 2 of the Park will be for the exclusive use of MVCA. MVCA will only have first priority scheduling for all Facilities in Zone 1 and Zone 2 for school functions and activities. The Facilities will then be available for public use, rental purposes or other recreational use and purposes, as determined by Newtown, subject to certain rules, regulations and separate agreements from time to time established by and between Newtown and MVCA or the Governing Board.

5.3 With regard to the Facilities over which MVCA has scheduling priority, on or before the 20th day of each month while this Agreement is in effect, MVCA will provide Newtown with a written schedule of dates and times that MVCA will be using the Facilities for the following month. MVCA may not reserve the use of any Facility more than fifty percent (50%) of the time that the Park is open to the public.

5.4 All of the improvements and recreational facilities in Zone 3 of the Park will be controlled exclusively by Newtown.

5.5 Upon entering into this Agreement, Newtown and MVCA shall form a five member board consisting of two (2) members selected by MVCA, two (2) members of Newtown Village Council plus the Mayor of Newtown (the "Governing Board"). In the event the Newtown representatives or MVCA representatives are unable to attend a meeting, the Newtown or MVCA representatives, as the case may be, may have alternates attend in their absence and such alternates shall have the same power and authority to vote and participate in the meeting as the original representative. Either party may change its representatives on the Governing Board at any time by notice in writing to the other party. Decisions of the Governing Board shall be by majority vote. The Governing Board shall be responsible for review and approval of non-MVCA events in or on any of the Facilities, as well as establishment of rental fees, rules and regulations and appropriate usage policies for all of the Facilities. In the event any law, regulation, statute, rule, or order requires that any decision regarding the Park or any of the Facilities requires the approval of Newtown then that decision shall be made solely by Newtown, in its sole discretion.

5.6 MVCA will retain all revenue from MVCA scheduled events (concession, ticket sales, etc.) that take place in or on any of the Facilities. Newtown will retain all revenue from any rental income or other income related to Zone 3 of the Park. For non-MVCA sponsored events (as approved by the Governing Board) occurring in Zone 1 or Zone 2 of the Park, MVCA will pay Newtown Thirty Five Percent (35%) of any Gross Revenue derived from the event (with all such Gross Revenue remittances from MVCA to be paid to Newtown on a

quarterly basis). The Parties agree to jointly review this percentage amount three (3) years after the opening of the Facilities and every five (5) years thereafter. Gross Revenue shall be defined as the gross sales/revenue from the event before deducting any expenses incurred as a result of the event.

5.7 In the event MVCA constructs any lighting in Zone 1 or Zone 2, the use of such lights shall be limited to twelve (12) times per year for MVCA events. Further, any sound amplification or loudspeaker systems used after sunset shall also be limited to twelve (12) times per year for MVCA events. The Governing Board, by four-fifths vote, may vary these restrictions to allow additional usage of the lights or sound system on a case by case basis.

5.8 In no event shall the Governing Board's authority in any manner supersede or preempt any governmental law or regulation.

6. MAINTENANCE:

6.1 MVCA, at all times during the Initial Term and any Renewal Term, at its expense, shall keep the Facilities and grounds in Zone 1 and Zone 2 in good order, condition and repair, ordinary wear and tear excepted, and shall promptly make or cause to be made any and all necessary or appropriate repairs, replacements, or renewals (herein collectively referred to as "Repairs", and as more specifically delineated upon Exhibit C, Maintenance and Repair Responsibilities, attached hereto and incorporated herein by reference) to maintain the ability to use the Zone 1 and Zone 2 Facilities. Newtown shall not be required to make any Repairs in, on, or to the Facilities in Zone 1 or Zone 2, during the Term, or any Renewal Term.

6.2 At any time during the term of this Agreement, MVCA, at its sole expense, may make any alterations to the Zone 1 or Zone 2 Facilities ("Alterations") as deemed necessary by MVCA to provide for the proper maintenance or repair of the such Facilities, provided that any such Alteration does not, by itself, result in a material and adverse impact on the usage of the Park and provided the consent of Newtown is first obtained. In making any such Alteration(s), MVCA shall comply with any applicable Law or Regulation. With the exception of trade fixtures installed by MVCA, all Alterations shall be and be deemed to be a part of the Facilities and shall be dealt with as any other Facility at the termination of the Ventures or any renewal thereof.

6.3 MVCA, at its sole cost and expense, will be responsible for mowing of all fields and grass in the Park in compliance with the standards set forth in the Maintenance and Repair Responsibilities set forth in Exhibit C. MVCA's responsibility for the mowing of the fields and grass in the Park shall begin at the expiration of the Due Diligence Period set forth in Paragraph 19.

6.4 MVCA shall be responsible for routine maintenance, repair, and cleaning of the existing restroom in the Park excepting extraordinary damage that may be caused by or during any non-MVCA events.

6.5 With the exception of grass mowing and maintenance of the paved walking trail both of which shall be performed by MVCA, Newtown, at its sole cost and expense, shall be responsible for the upkeep, maintenance, and repair of Zone 3 of the Park.

7. TAXES, INSURANCE, OPERATING EXPENSES:

7.1 MVCA covenants and agrees to discharge and pay before the same become delinquent, and before any fine, penalty, or interest that may be added for nonpayment, any and all additional real property taxes, assessments, including Special Assessments, license or permit fees, and charges of every nature and classification or charges in lieu thereof (all or any one of which are hereinafter referred to as "Real Estate Tax") that at any time during the Term are levied, assessed, charged or imposed upon the Park as a result of the construction and/or use of the Facilities. Newtown and MVCA shall arrange to have the invoices for any such Real Estate Tax provided directly to MVCA and MVCA shall pay the bills owed by MVCA during the Term of this Agreement to the Treasurer of Hamilton County, Ohio or other appropriate payee.

7.2 MVCA shall pay for and obtain a commercially reasonable Builder's Risk insurance policy at replacement value for the Facilities during construction of the Facilities. Newtown shall be named an additional insured under the policy and the policy shall require the insurer to provide 30 days prior notice to Newtown if any material changes are made to the policy including cancellation or removal of Newtown as an additional insured.

7.3 Upon completion of the construction and issuance of a Certificate of Occupancy of the Facilities, and thereafter, at all times during the term of this Agreement and any renewal hereof, MVCA shall keep the Facilities, and all improvements insured (naming MVCA and Newtown and their successors and assigns as additional insureds) against the risks and hazards set forth below, and with coverage on an occurrence basis in amounts not less than those specified as follows:

- (i) Fire and extended coverage insurance on the Facilities in an amount equal to one hundred percent (100%) of the replacement cost of the Facilities.
- (ii) Commercial general liability and property damage insurance (including, but not limited to, coverage for any construction on or about the Facilities and Zone 1 and Zone 2) covering the legal liability of MVCA and Newtown against all claims for any bodily injury or death of persons and for damages to or destruction of property occurring on, in or about Zone 1 and Zone 2, and the adjoining streets, sidewalks and passageways and arising out of the use or occupation of the Zone 1 or Zone 2, in the minimum amounts (which shall be automatically adjusted for inflation every 5 years based on the Consumer Price Index ("CPI") or such other recognized inflation index if the CPI is no longer available) of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Three Million and 00/100

Dollars (\$3,000,000.00) in the aggregate, provided that MVCA shall also carry a Two Million and 00/100 Dollar (\$2,000,000.00) umbrella general liability and property damage policy for the Zone 1 and Zone 2 site which shall also name Newtown as an additional insured.

- (iii) Workers' Compensation insurance effective within the State of Ohio covering MVCA's employees, agents or contractors performing work in accordance with MVCA's responsibilities under this Agreement.

All coverages shall be primary to MVCA and Newtown and not contributing with any other insurance or similar protection available to Newtown whether other available coverage is primary, contributing or excess.

7.4 Requirements. A copy of each policy of insurance in force, issued to MVCA, shall be delivered to Newtown promptly after a written request therefor by Newtown. MVCA may obtain the insurance required hereunder by endorsement on any blanket insurance policies, provided that said policies fulfill the requirements of this Section 7 and the aggregate limit applies separately to each location, and that Newtown receives satisfactory written proof of coverage. The policy shall require the insurer to provide Newtown thirty (30) days' notice prior to the cancellation or nonrenewal of any insurance policy required by this Section 7.

7.5 MVCA's failure to effect, maintain or renew any insurance provided for in this Agreement or to pay the premiums therefore, or to deliver to Newtown any of the certificates, shall entitle Newtown, at its option, without notice to MVCA, to procure such insurance, pay the premiums therefor or obtain such certificates, and any sums expended by Newtown for such purposes shall be an Additional Fee hereunder and shall be repaid by MVCA to Newtown upon demand by Newtown.

7.6 Newtown, at its sole cost and expense, will be responsible for any and all insurance policies and coverage for Zone 3 and all improvements located therein.

7.7 Except as provided herein including any Exhibits attached hereto, MVCA shall pay all operating expenses, such as personnel, maintenance, utilities, etc., incurred for Zone 1 and Zone 2. Subject to Paragraph 6.3, Newtown shall pay all operating expenses incurred for Zone 3.

8. SIGNAGE:

8.1 All Signage in the Park must have the prior written approval of Newtown. Any approved signage must comply with all appropriate governmental laws, rules, regulations, ordinances, statutes, and, in addition to approval by Newtown, must receive approval from any administrative board, including any administrative board controlled by Newtown, prior to its installation. In addition to any definition of a sign included within the Zoning Code of the Village of Newtown, all symbols, artwork, statues, or any other forms of expression shall be considered to be a sign under this Agreement and must receive the approval of Newtown even

if permitted under the Zoning Code of the Village of Newtown.

9. PARKING: MVCA will provide additional parking on its property and adjacent church parking lot for MVCA events that occur in the Park. Further, additional parking for non-MVCA events occurring in the Park will be provided by MVCA in its designated parking lots located only on its property during reasonable times outside of school hours. The church parking lot adjacent to the MVCA property is not part of the MVCA property and thus is not part of this Agreement.

10. ZONE 3 CONTRIBUTION: MVCA will make a financial contribution to Newtown for construction of improvements in Zone 3 of the Park as follows:

10.1 \$10,000 within 90 days after the effective date hereof; and

10.2 An additional \$40,000 within twenty-four (24) months after the effective date hereof.

Other than set forth above and in Paragraph 4.3, MVCA will have no responsibility, costs or expenses for construction of improvements in Zone 3 of the Park.

11. Indemnification by MVCA:

MVCA covenants and agrees to pay, defend, indemnify and save harmless Newtown, its public officials, officers, employees, and agents from and against any and all liability, loss, damage, cost, expense (including reasonable attorney's fees and expenses of Newtown, its public officials, officers and employees actually incurred), causes of action, suits, claims, demands or judgments of any nature whatsoever (except in the event that any of the aforementioned are a result of the intentional tortious acts of Newtown, its agents, public officials, officers or employees), (i) arising from any injury to or the death of any person or damage to any property occurring on or about Zone 1 or Zone 2, or (ii) in any manner arising out of or connected with the construction, re-construction, demolition, use, non-use, condition, possession, operation, maintenance, management or occupation of Zone 1, Zone 2, the Facilities, surface parking upon Zone 3, the walking path or any part thereof, (iii) any negligence, intentional tortious or reckless acts on the part of the MVCA or its agents, contractors, servants, officers, employees, licensees or invitees, whether occurring on or about the Park, or affecting the Park, or (iv) resulting from the violation by MVCA of any restriction recorded in the land records or governmental regulation affecting the Park, or any part thereof or the ownership, occupancy or use thereof; provided, however that MVCA will not be in any way liable for any of occurrences described in (i) and (ii) if they were caused by fraud, intentional misconduct, or negligence of Newtown. The obligations of MVCA under this Section 11 shall survive any termination of this Agreement and any transfer or assignment by Newtown or MVCA of this Agreement or any interest hereunder.

12. ENVIRONMENTAL:

12.1 From and after the Effective Date, MVCA shall not permit or cause the presence of Hazardous Materials (as hereinafter defined) in, on or under the Park or any other portion of the premises. MVCA shall defend, protect, indemnify and hold Newtown harmless from and against any and all claims, causes of action, liabilities, damages, costs and expenses, including, without limitation, attorney fees, arising because of any alleged personal injury, property damage, death, nuisance, loss of business or otherwise, by Newtown, any employee of Newtown, or from and against any governmental act or enforcement, arising after the Effective Date from or in connection with respect to Hazardous Materials (as hereinafter defined) within the Park. Any remediation required as a result of MVCA activities in the Park shall be at MVCA expense regardless of the time such Hazardous Materials were placed in or on the Park. As used herein the term "Hazardous Materials" shall be defined as any hazardous substance, contaminant, pollutant or hazardous release (as such terms are defined in any federal, state or local law, rule, regulation or ordinance, including without, limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended) and other said wastes. In the event MVCA shall cause or permit the presence of Hazardous Materials in, on or under the Facilities, or cause the presence of Hazardous Materials in, on or under any other portion of the Park, MVCA shall, at MVCA's sole cost and expense, take any and all action necessary (as required by appropriate government authority or otherwise) to return the areas affected thereby to the condition existing prior to the presence of any such Hazardous Materials thereon, subject to Newtown's prior written consent. The foregoing covenants shall survive the termination of this Agreement

12.2 Newtown hereby discloses that at certain times prior to the Effective Date the real property constituting the Park was used as a landfill. Newtown has no actual knowledge that Hazardous Materials were ever deposited into this landfill.

13 NO WARRANTY, GUARANTY, OR REPRESENTATION:

13.1 Newtown makes no warranty or representations as to its ability to enter into this Agreement or the Ventures. Further, except for those representations expressly contained in this Agreement, Newtown makes no representation as to the condition of the Park, the ability of MVCA to construct the Facilities or any other improvement on the Park or any portion thereof, including any WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. All construction and operation of MVCA in, on, over, or under the Park is done at MVCA's own risk and Newtown assumes no responsibility therefor.

13.2 In the event at some future date there is a legal determination that Newtown does not have the ability to enter into this Agreement or the Ventures, then this Agreement and the Ventures shall be void and shall be treated as never having been made. In that case, this Agreement shall terminate and the parties shall proceed at that time as if this Agreement was terminated at its normal termination date with proper notice having been given in that Newtown may keep the Facilities in place or order their removal by MVCA.

14. EVENTS OF DEFAULT

14.1 At the option of Newtown, which option must be exercised by written notice to MVCA, the happening of any one or more of the following events shall be and be deemed to be an "Event of Default" under this Agreement or the Ventures:

- (i) Failure of MVCA to substantially perform any of its covenants or agreements or obligations under this Agreement within thirty (30) days after receipt of written notice from Newtown of such failure, or if it is not reasonably feasible to perform such covenant or agreement fully within said period, if MVCA shall not have commenced to cure said failure within said period or shall not after commencement of such cure diligently prosecute the curing of such failure.
- (ii) MVCA or its successor fails to continue to operate a school containing either (i) grades 1 through 8 or (ii) grades 9 through 12 during the term of the Ventures or any renewal period thereof, on the current MVCA property located at 6830 School Street, Cincinnati, Ohio 45244.
- (iii) The appointment of a receiver or trustee for the whole or any part of the Facilities or MVCA's property located adjacent to the Park.
- (iv) The making by MVCA of a general assignment for the benefit of MVCA's creditors; or the filing by MVCA of a voluntary petition in bankruptcy; or the adjudication of MVCA as a bankrupt or insolvent; or the filing by MVCA of any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief, under any present or future law; or the filing by MVCA of an answer admitting or failing to deny the material allegations of a petition against MVCA for any such relief; or the admission by MVCA in writing of MVCA's inability to pay MVCA's debts as they mature.

14.2 Upon the occurrence of any Event of Default hereunder, which continues beyond any applicable notice and cure period, Newtown shall have the right, at its election and regardless of the availability to Newtown of any other remedy under this Agreement or provided by Law or Regulation, to give MVCA, (then or at any time thereafter while any such default exists or continues) written notice of the termination of this Agreement and the Ventures as of the date specified in such notice of termination, which shall be no earlier than one hundred eighty (180) days after the mailing date of the notice. Subject to the other provisions of this Agreement, on such termination date this Agreement shall expire and terminate, and all rights of MVCA under this Agreement or Ventures shall expire and terminate, unless prior to such termination date MVCA, pays (together with interest thereon at the prime rate in effect from time to time, as quoted by Fifth Third Bank), any and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by or on behalf of Newtown by reason of any Event of Default and MVCA fully cures and corrects any Event of Default then existing hereunder to the reasonable satisfaction of Newtown.

14.3 This Agreement may be terminated prior to the expiration of its term by mutual written agreement signed by both parties.

15. CONDEMNATION

If, during the term of this Agreement or Venture or any renewal thereof, all or any part of the Park is condemned or taken by any legal entity using the power of eminent domain with respect thereto or if the Park is sold in settlement of any action in condemnation or eminent domain, any award of compensation, damages, or sale price paid on account of any taking or sale shall be the property of Newtown and MVCA shall have no interest therein, except for the portion of such compensation, damages, or sale price attributable to the Facilities.

16. NO ASSIGNMENT

MVCA may assign this Agreement to another entity wholly owned and controlled by MVCA. Other than the foregoing, this Agreement and the Ventures may not be assigned by MVCA without the express written consent by Newtown, evidenced by a valid resolution of the Council of the Village of Newtown authorizing such consent. Such consent may be withheld by Newtown for any reason.

17. INSPECTION

Upon reasonable notice to MVCA, Newtown shall have the right to enter the Facilities or the Park at any time to inspect the same; provided such entry does not damage the Facilities. Newtown shall retain the right to enter any other part of the Park without notice to MVCA.

18. JOINT CONTINGENCIES

From the Effective Date and continuing for a period of ninety (90) days thereafter (the "Due Diligence Period"), Newtown shall permit and, to the extent reasonably required by MVCA, Newtown shall, at no cost and expense to Newtown, assist MVCA in the following:

(i) Within five (5) days of the Effective Date, Newton shall deliver to MVCA copies of all existing surveys, title insurance policies, building plans and environmental reports for the Park;

(ii) The obtainment, review and approval of such tests, inspections, audits, engineering, feasibility, regulatory and environmental studies as MVCA in its sole discretion deems desirable;

(iii) The obtainment, review and approval by MVCA of all utilities, access, project feasibility, financing, marketing and, if applicable, approvals of any zoning and development plans from all governmental agencies with authority and jurisdiction over such

matters, and receiving all other certificates, permits and/or approvals from applicable governmental agencies required for the Ventures, including, but not limited to, the Ohio Department of Natural Resources. Nothing contained herein shall require Newtown to approve a zoning, development, or building plan or application in contravention of its zoning ordinance or building code.

If, on or before the expiration of the above-described Due Diligence Period, MVCA or Newtown determines that the conditions precedent have not been satisfied, this Agreement and the Ventures may be terminated by written notice from one of the Parties to the other in which case this Agreement will become null and void and neither party shall have further liabilities or responsibilities to one another except that MVCA shall be responsible for any damage caused to the property as a result of its tests and inspections and MVCA shall also be responsible for any environmental remediation required as a result of its actions in the Park during the tests and inspections.

19. ADDITIONAL PROVISIONS:

19.1 This Agreement constitutes the entire agreement of the parties and may not be altered, unless the same is agreed upon in writing signed and acknowledged by the Parties.

19.2 This Agreement is entered into between the Parties for the exclusive benefit of the Parties, and their successors and permitted assigns. This Agreement is binding upon the successors and permitted assigns of the Parties.

19.3 This Agreement will be interpreted and the rights and obligations of the parties hereto determined in accordance with the laws of the State of Ohio, Hamilton County, without regard to conflicts of law principles. The Parties hereby agree to the exclusive jurisdiction of any state or federal court located within Hamilton County, Ohio; and each of the parties irrevocably consents to such designation, jurisdiction, and venue, and waives any objections or defenses relating to jurisdiction or venue with respect to the same.

19.4 All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered personally, or three (3) business days after delivered to a United States Post Office, first-class, postage prepaid at a each party's notice mailing address set forth above (or to such changed address for which notice shall have been given in such manner). Notwithstanding, the parties agree that the consents, approvals and notifications (other than default notices) required by this Agreement may be provided by email.

19.5 Neither party will be liable for failure to perform or delay in performance of any obligation assumed by it hereunder when the failure or delay is due to fire, flood, strikes, labor troubles, or other industrial disturbances, inevitable accidents, war (declared or

undeclared), embargoes, blockades, legal restrictions, riots, insurrections, or any other cause beyond the control of the Parties. Such performance shall only be relieved during the period of the delay. In order for the foregoing to be effective, the affected party shall give notice to the other party in writing within ten (10) days of the incident that has occurred, nature thereof, the reason therefore, the date and time of occurrence and the expected period it will last.

19.6 In the event any provision of this Agreement shall be deemed to be invalid or void under any applicable law, and such provision or invalidity is not such that it renders this Agreement or the Ventures impossible to perform, the remaining provisions hereof shall not be affected thereby and shall continue in full force and effect.

19.7 The Parties shall take any and all further actions and execute any and all further documents necessary to fully consummate the transactions contemplated herein.

19.8 Failure of Newtown or MVCA to insist upon the strict performance by the other of any term, condition or covenant to be performed pursuant to the terms of this Agreement or the Ventures or to exercise any option, right, power, or remedy of either Newtown or MVCA contained in this Agreement or the Ventures shall not be deemed to be nor be construed as a waiver of such performance or relinquishment of such right now or subsequent hereto. No waiver by Newtown or MVCA of any provision of this Agreement or the Ventures shall be deemed to have been made unless expressed in writing and signed by Newtown or MVCA, as the case may be.

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties hereby execute this Joint Venture Agreement, with the intent to be bound thereby, as of the date first above written.

VILLAGE OF NEWTOWN

MIAMI VALLEY CHRISTIAN ACADEMY

By: _____
Name: _____
Mayor Title: _____

By: _____
Name: _____

By: _____
Name: _____
Fiscal Officer

Approved as to form:

Solicitor

Authorized by Ordinance No. _____

Exhibit A

Legal Description

Situate in the Village of Newtown, Hamilton County, Ohio, and in R. Powell's Military Survey No. 552, and more particularly described as follows:

Beginning at the intersection of the center line of Debolt Avenue with the north line of the Norfolk and Western Railway right of way; thence with the center line of Debolt Avenue, North 28° West, 389.44 feet to a point; thence with said center line of Debolt Avenue, North 34° 20' West, 317 feet to a point; thence North 58° 40' East, 793.76 feet to a point; thence South 32° 44' East, 1,040.64 feet to a point in the northerly line of said Railroad right of way; thence with said right of way South 80° 46' West, 890.60 feet to the place of beginning; containing 16.03 acres, more or less, and excepting therefrom all legal highways.

Subject to an easement across the eastern portion of the real estate above described condemned by the Village of Newtown for drainage ditch or sewer purposes in Case No. 1459, Court of Insolvency, Hamilton County, Ohio, the proceedings having been recorded in Civil Action Record No.7, at Page 164, Hamilton County, Ohio, Clerk's Office.

Subject to conditions, restrictions, and easements of record.

EXHIBIT C

MAINTENANCE AND REPAIR RESPONSIBILITIES

MVCA shall be responsible to maintain and repair the Facilities in accordance with standards of similar recreational facilities. MVCA's maintenance and repair responsibilities include:

1. Routine Maintenance: "Routine Maintenance" shall mean the provision of all labor and materials which are required to (a) keep the Facilities in good order and repair and which are of a routine, regular and predictable nature, and (b) keep the Facilities reasonably clean and free of debris. Routine Maintenance shall include, but not be limited to, the following:

- (a) performing all preventive or routine maintenance that is stipulated in any operating manuals for the components of the Facilities;
- (b) changing of standard, isolated light bulbs, fuses, circuit breakers and lighting fixtures, as they become unusable or burn out;
- (c) cleaning, storing and removal of trash and debris from the Facilities;
- (d) contracting for or providing and contracting for or providing routine care for, any sweepers or other necessary vehicles or equipment;
- (e) patching, repaving, striping and repair of access drives, surface lots, sidewalks and plazas as necessary;
- (f) painting, redecorating, repairing, furnishing, refurbishing and equipping the Facilities; and

(g) trimming, watering, planting, replacing and maintaining landscaping, tree, fences and signs.

2. Landscape Maintenance: Further, MVCA's Repair and Maintenance responsibilities include the following responsibilities for landscaping within Zone 1, Zone 2 and Zone 3:

(a) Grass Mowing. All areas within the Park shall be mowed when the grass is six (6) inches in height or longer or a minimum of eighteen (18) times per growing season;

(b) Litter and Debris. MVCA shall clear litter and debris from Zone 1 and Zone 2 a minimum of once a week and always before mowing (including mowing in Zone 3), plus additional as may be needed to ensure that Zone 1 and Zone 2 are reasonably clean;

(c) Landscaping. MVCA shall perform all landscaping, and replacement and maintenance of landscaping, within Zone 1 and Zone 2. Landscaping and any decorative pavement shall be installed consistent with any approved Landscape Plan. Landscaping shall be weeded, trimmed and mulched regularly, but no less than three times during the growing season. Landscaping shall be regularly watered consistent with subparagraph (e) below. Any decorative pavement and sidewalks shall be maintained in good condition;

(d) Snow Removal. Newtown shall be responsible for snow removal for all paved parking areas located in the Park in a manner determined by Newtown in accordance with any procedures and standards adopted from time to time by Newtown in its sole discretion.

(e) Signage. MVCA shall also be responsible for repair and replacement of all permitted signage, within Zone 1 and Zone 2, including that which, may be for purposes of pedestrian and traffic control. Any signage to be installed within Zone 1 and Zone 2

shall be subject to the prior approval of Newtown with regard to design and placement;
and

(f) Replacement and Relocation. MVCA shall be solely responsible for all replacement and relocation costs of the landscape improvements within the Zone 1 and Zone 2 that may die or otherwise become damaged or worn out, or that may need to be re-located due to future work or other conditions requiring removal or re-location.

3. Preventative Maintenance: MVCA shall be responsible, at its sole cost and expense for developing a Preventive Maintenance Manual and Schedule for the Facilities. This manual shall include a listing and time schedule for all Routine Maintenance. MVCA shall require its employees, or any contractor's employees, to make regular inspections of the Facilities or Zone 1 or Zone 2 to inspect for damage, cleanliness, and appearance thereof. A checklist or other form of a written report shall be utilized to document these inspections. Such records shall be made available to the Newtown upon reasonable request and notice.

4. Capital Repairs: During the term of this Agreement and the Ventures, MVCA shall make, at its sole cost and expense, all capital repairs to the Facilities which are required to keep the Facilities operating and in good order pursuant hereto. In furtherance of the foregoing, during the term of this Agreement, MVCA shall not permit, commit or suffer waste or impairment of the Facilities, Zone 1 or Zone 2 or any part thereof and shall, at its sole cost and expense, operate, maintain, repair and manage the Facilities in a neat and orderly fashion and in a manner consistent with such standards of first class maintenance, cause proper and adequate security for the Facilities and patrons of the Park and the members of the general public and employ a sufficient number of competent personnel for the proper operation of the Facilities in conformity with the above standards.

5. Utility Service: Except as otherwise provided in this Agreement. MVCA shall provide or cause to be provided and pay, at its sole cost and expense, for all utility services to the Facilities; provided, that MVCA shall have no liability to Newtown resulting from an interruption in service by providers. MVCA will have no responsibility for payment of any

utilities or utility services for any improvements located in Zone 3 of the Park. MVCA hereby expressly releases and discharges Newtown and its officers, employees, contractors and agents from any and all demands, claims, actions, and causes of action arising from any and all loss or damage sustained by reason of any defect, deficiency, or impairment of the water supply system drainage [or heating systems, gas mains, electrical apparatus, or wires] furnished to the Facilities by or on behalf of the Newtown which may occur from time to time from any cause, or from any loss resulting from water, tornado, civil commotion, or riot.