



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ITEM No.:

LL-2.

MEETING DATE	2018-10-16 10:05 - Regular School Board Meeting
AGENDA ITEM	ITEMS
CATEGORY	LL. OFFICE OF PORTFOLIO SERVICES
DEPARTMENT	Facility Planning and Real Estate

Special Order Request	
<input type="radio"/> Yes	<input checked="" type="radio"/> No
Time	
Open Agenda	
<input checked="" type="radio"/> Yes	<input type="radio"/> No

TITLE:
 Recreation License Agreement between The School Board of Broward County, Florida and the City of Fort Lauderdale

REQUESTED ACTION:
 Approve the Recreation License Agreement between The School Board of Broward County, Florida (SBBC) and the City of Fort Lauderdale for various schools located in the City.

SUMMARY EXPLANATION AND BACKGROUND:
 The current Master Lease Agreement between SBBC and the City of Fort Lauderdale for various SBBC owned schools located in the City was entered into on October 26, 1978 and is set to expire on October 25, 2018.

 See Supporting Docs for continuation of Summary Explanation and Background.
 This Agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel and will be signed by the City of Fort Lauderdale after School Board approval.

SCHOOL BOARD GOALS:
 Goal 1: High Quality Instruction Goal 2: Continuous Improvement Goal 3: Effective Communication

FINANCIAL IMPACT:
 There is a positive financial impact of One Dollar (\$1.00) in annual rent payments to SBBC. The District will also benefit from improvements made at the City's cost, including but not limited to a new basketball court and playground area at Bennett Elementary, and fencing at several other schools.

EXHIBITS: (List)
 (1) Continuation of Summary Explanation and Background (2) Executive Summary (3) Recreation License Agreement

BOARD ACTION:
APPROVED
(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:

Name: Chris O. Akagbosu	Phone: 754-321-2162
Name:	Phone:

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
 Senior Leader & Title

Leslie M. Brown - Chief Portfolio Services Officer

Signature
Leslie M. Brown
 10/5/2018, 2:41:01 PM

Approved In Open Board Meeting On: OCT 16 2018
 By:
 School Board Chair

Continuation of Summary Explanation and Background

During the past forty (40) years, the partnership enabled by the Agreement has benefited SBBC and the City, and the required rental payment in the current Agreement is one dollar (\$1.00) per year. Given this past trend, the City has indicated its desire to renew the Recreation License Agreement (RLA), (formerly known as Master Lease Agreement) with SBBC for twenty-five (25) years, and for the same rental payment.

This RLA is specifically written for City's use of outside located recreational facilities (ie, playgrounds, ballfields, handball and basketball courts, tennis courts, tracks, etc) owned by the SBBC. The comparison between the RLA and the Reciprocal Use Agreement (RUA) is that the RLA is for the use of outside located recreational facilities and does not include the use of indoor facilities. Additionally, the RLA delineates on a daily basis the specific start/end times when the recreational facilities will be under the City's control and by default, use of the facilities by residents of the City.

As to requirements of the RUA, anytime the City desires to utilize the indoor located school facilities (ie, classroom, auditorium, cafeteria, gymnasium, media center, etc.) and/or outdoor located recreational facilities (for schools that do not have an executed RLA) owned by the SBBC, the City has to submit an Exhibit C "Notice of Facility Use Form" which outlines the facility, date, and time the City desires to utilize the facility. Thus, under usage of facilities the RUA, is on a case by case basis as compared to the RLA which outlines a scheduled ongoing use of the outside located recreational facilities.

EXECUTIVE SUMMARY

Recreation License Agreement between The School Board of Broward County, Florida and the City of Fort Lauderdale

Recreation License Agreements (RLA) (formerly referred to as Master Lease Agreements (MLA)) are long term agreements that are structured to allow for the long-term continuous use of recreational facilities (ie, playgrounds, ballfields, handball and basketball courts, tennis courts, tracks, etc.) facilities identified in the RLA. The term / length of RLAs vary, but typically range from twenty (20) to fifty (50) years.

The current Lease Agreement between The School Board of Broward County, Florida (SBBC) and the City of Fort Lauderdale (City) for various SBBC owned school recreational areas located in the City was entered into on October 26, 1978 and is set to expire on October 25, 2018. The City desires to renew the RLA for twenty-five (25) years; and as required in the RLA, the uses and purposes is to allow the City use of playgrounds and recreational facilities during non-school hours.

The following is a list of fenced Licensed Premises at School sites (see Exhibit A) the City will be utilizing for recreational purposes:

- Criossant Park Elementary
- Floranada Elementary
- North Fork Elementary
- Riverland Elementary
- Walker Elementary
- Westwood Heights Elementary
- Dillard 6 -12

The following is a list of non or partially fenced Licensed Premises at School sites (see Exhibit B) the City shall install fencing before being able to utilize for recreational purposes:

- Bennett Elementary
- Foster Stephen Elementary
- Thurgood Marshall Elementary
- Rock Island Elementary
- Virginia S. Young Elementary
- Sunrise Middle (Excluding Swimming Pool)
- Sheridan Technical High School
- Arthur Ashe, Jr Center
- Lauderdale Manors Early Learning Center

In addition to the RLA, the City of Fort Lauderdale for years has had partnership agreements with SBBC, and currently has a Reciprocal Use Agreement (RUA) with SBBC for use of school building facilities.

RECREATION LICENSE AGREEMENT

THIS RECREATION LICENSE AGREEMENT is made and entered into as of this 16th day of October, 2018, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

CITY OF FORT LAUDERDALE, FLORIDA
(hereinafter referred to as "City"),
A municipal corporation of the State of Florida
whose principal place of business is
100 North Andrews Avenue, Florida 33301

WHEREAS, SBBC, as the controlling body of the district schools of Broward County, Florida owns, operates and maintains various facilities and sites throughout the county, including elementary, middle and high schools, vocational sites, training facilities and equipment, and lands/sites in the City of Fort Lauderdale (hereafter "Licensed Premises") suitable for use by City in its municipal programs; and

WHEREAS, partnerships instill a sense of civic pride and responsibility in students that will last far beyond their educational experience; and

WHEREAS, municipalities and the SBBC may share resources to support each other's goals and objectives; and

WHEREAS, SBBC and the City believe that such an arrangement will be of mutual benefit to all parties and will fill a great need in that area of the community and that cooperation between the parties hereto will result in great benefit to the residents of the City; and

WHEREAS, it is the purpose and policy of the City to develop, operate and maintain parks and community recreational facilities; and

WHEREAS, SBBC and the City entered into a Master Lease Agreement on October 26, 1978 (the "1978 Agreement") for the purposes of allowing the City to improve and utilize a portion of land on several School sites owned by the SBBC; and

WHEREAS, upon entering into the 1978 Agreement, the City over the years developed the portions of land into playgrounds and other park and recreational facilities for use by its residents and as needed by the SBBC; and

WHEREAS, the 1978 Agreement is set to expire on October 25, 2018, and the SBBC and the City desire to terminate the 1978 Agreement and enter into this new Recreation License Agreement (RLA or "Agreement") for a twenty-five (25) year term; and

WHEREAS, the City is willing to, as necessary, continue to expend funds to equip and improve the recreational facility during the term; and

WHEREAS, the City at the City's cost, will make improvements at Bennett Elementary School, to include construction of a new basketball court, playground area, and necessary fencing to separate the recreational area from the School site, which the School, as well as City residents will be able to utilize after school hours; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on October 26, 2018 and conclude on October 25, 2043.

2.02 **Licensed Premises.** SBBC does hereby license to the City areas referred to herein as "Licensed Premises" and shown on the sketches attached hereto as **Exhibit A** and made a part hereof.

2.03 **Rental.** The rent payable by the City for the Licensed Premises shall be One Dollar (\$1.00) per year payable to SBBC on the yearly anniversary of this Agreement.

2.04 **Uses Permitted.** The uses and purposes to which the City shall put the Licensed Premises shall be for playground and recreational purposes available to the City residents of the area, and as needed by the SBBC. The Licensed Premises are to be used strictly for recreational purposes and the City shall not allow any advertising or food concessions, or the renting of same, unless specifically approved by SBBC in writing.

2.05 **Parking.** The City residents shall use the open access parking lot(s) located on the school site to park vehicles while using Licensed Premises. For the purposes of this Agreement a vehicle shall be defined as a car, pick-up truck, SUV and/or motorcycle.

2.06 **Conflict of Uses.** The use of said Licensed Premises by the City shall be limited and restricted so as not to conflict in any way with the use of the Licensed Premises by SBBC in its public education program, and the use of said Licensed Premises by the City shall at all times be in compliance with the laws of the State of Florida concerning the use of school property.

2.07 Improvements. The location of any and all recreational improvements (hereafter referred to as "Improvements") to be placed on the Licensed Premises, shall first be approved in writing by SBBC, it being intended that SBBC shall have absolute control over the location of any Improvements before they are placed on the Licensed Premises. However, such approval by SBBC shall not be unreasonably withheld. Any Improvements placed on said Licensed Premises without the prior written approval of SBBC as to location shall immediately be removed or relocated within ninety (90) days of written demand by SBBC, unless the parties agree that the Improvements should remain whereby this Agreement will be amended to reflect the use and responsibility of the Improvements. Improvements must include security fence and necessary gates to separate the school campus from the Licensed Premises with key / access code provided to both parties.

(a) The authority to grant this approval regarding the Improvements and the security fencing / gates in this Agreement is hereby delegated by the SBBC to the SBBC's Chief Facilities Officer and Chief Building Official. Subject to the provisions of the foregoing paragraph, the parties further agree that the City will prepare and submit plans to the SBBC's Chief Facilities Officer and Chief Building Official for review and approval. Any plans must meet State of Florida Building Code Requirements, Florida Fire Protection Code, and State Requirements for Educational facilities as applicable, and any other requirements imposed by applicable law. The SBBC's Chief Facilities Officer and Chief Building Official shall have ninety (90) days from the date of receipt to review and comment. All design documents shall be approved by the SBBC's Chief Facilities Officer and Chief Building Official prior to submission to the Department of Education, if applicable. The City agrees to obtain all necessary permits and approvals and to contract with a Contractor for the construction of the Improvements, security fencing, and gates.

(b) The City shall be solely responsible for all contractual obligations to the contractor hired to construct the Improvements.

(c) Before the commencement of the Improvements, the City shall require the engaged contractor to furnish surety payment and performance bonds that guarantee the completion of the Improvements and the performance of the work necessary to complete the Improvements, security fencing, and gates; as well as, full payment of all suppliers, material men, laborers or subcontractors employed to provide services to complete the Improvements, security fencing, and gates. The City shall ensure that the contractor shall be required by contract to deliver a copy of the surety bond to the City. Such bonds shall remain in effect for one (1) year after completion of the Improvements. The City shall ensure that the contractor will cause the correction of any defective or faulty work or materials that appear after the completion of the Improvements, security fencing, and gates within the warranty period of such work performed.

2.08 Maintenance.

(a) It shall be the responsibility of the City to maintain and keep the Licensed Premises clean, sanitary and free from trash and debris, and the Licensed Premises shall be mowed to prevent unsightly accumulation of weeds and other vegetation. Upon failure of the City to comply with the provisions of this section, SBBC shall give written notice to the City of such failure to comply, by Certified Mail, Return Receipt Requested. If after a period of ten (10) days of such mailing, the City has not commenced to complete the cleaning and/or mowing of said Licensed Premises, SBBC shall have the right to enter upon the Licensed Premises, remove trash and debris from the area, or mow the area and charge the City the cost incurred by SBBC for such services. Billing for trash and debris removal or mowing shall be on a per-cleaning or per-mowing basis and shall be due and payable within fifteen (15) days after receipt of said billing by the City.

(b) Notwithstanding any of the provisions of the foregoing subsection, the parties further agree that the City, in addition to the above, will clean up the Licensed Premises after each and every event it sponsors, and SBBC will be responsible to clean after each and every event it sponsors. In the event that SBBC fails to maintain and clean the premises during SBBC's use of the Licensed Premises, then City shall have the right to clean the premises and charge SBBC for all cleanup costs and SBBC shall pay for such costs within fifteen (15) days after receipt of said billing by the City.

(c) The upkeep and maintenance of all Licensed Premises shall be borne by the City, and the City agrees at all times to keep the areas herein licensed and the Improvements placed on said areas properly maintained, except as set forth in (b) above.

(d) Notwithstanding anything else in this Section 2.08 to the contrary, the SBBC and the City agree that each party shall be responsible for any and all maintenance, cleanup, and property damage that may arise during the time the Licensed Premises is under that party's control. Nothing herein is intended to serve as a waiver of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

2.09 **Rental of Licensed Premises.** The City may not rent the Licensed Premises for the use of a third party without obtaining the prior written approval by SBBC.

2.10 **Hours of Operation.** The Licensed Premises will be under the control of the SBBC during the hours school is in session including after school activities and after school child care programs. During off-school hours, when the Licensed Premises are officially open by the City, control and use of Licensed Premises as depicted on the sketch (**Exhibit A**) will be under the control of the City. The City shall be responsible for any and all maintenance, cleanup, and property damage that may arise when under the control of the City's use of said Licensed Premises. The SBBC shall be responsible for any and all maintenance, cleanup, damages and injuries that may arise when under the control of SBBC's use of said Licensed Premises.

2.11 **Ownership of Improvements at License Expiration.** In the event this Agreement is not terminated and/or canceled by SBBC or the City prior to its expiration date, all permanent Improvements shall become the property of SBBC at the expiration of this Agreement. However, the City shall have the right to remove all moveable (non-permanent) Improvements at the expiration, cancellation or termination of this Agreement.

2.12 **Inspection of City's Records by SBBC.** City shall establish and maintain books, records and documents (including electronic storage media) related to this Agreement. All of City's Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC agent or its authorized representative. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to City's Records from the effective date of this Agreement, for the duration of the term of the Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to City pursuant to this Agreement. SBBC's agent or its authorized representative shall provide City with reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction. SBBC's agent or its authorized representative shall have access to the City's facilities and to any and all records related to the Agreement and shall be provided adequate and appropriate work space in

order to exercise the rights permitted under this section. City shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.13 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Director, Facility Planning & Real Estate Department
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To City: City Mayor
City of Fort Lauderdale, Florida
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

With a Copy to: Director, Parks and Leisure Services
City of Fort Lauderdale, Florida
701 S. Andrews Avenue
Fort Lauderdale, FL 33316

2.14 **Background Screening.** The City agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to Licensed Premises when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of the City or its personnel providing any services under the conditions described in the previous sentence. The City shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the City and its personnel. The parties agree that the failure of the City to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. To the extent permitted by law, the City agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from City's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465,

Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or the City of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

2.15 **Public Records.** Any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost to SBBC, all public records in that party's possession upon termination of its Agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

2.16 **Student Records.** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

2.17 **Indemnification.** Each party agrees to be fully responsible for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations. The SBBC agrees to release the City from any liability arising out of any injuries or accidents resulting from the negligence of SBBC in failing to supply proper supervision of the areas herein licensed while so used by the SBBC. The City agrees to release the SBBC from any liability arising out of any injuries or accidents resulting from the negligence of the City in failing to supply proper supervision of the areas herein licensed while so used by the City. Nothing herein is intended to serve as a waiver of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

2.18 **Insurance.** Upon execution of this Recreation License Agreement, each party shall submit to the other, copies of its certificate(s) of insurance or letter of self-insurance evidencing the required coverage.

2.19 Required Insurance Coverages. Each party acknowledges without waiving its right of sovereign immunity as provided by Section 768.28, Florida Statutes, that each party is insured or self-insured for general liability under state law with coverage limits of \$200,000 per person and \$300,000 per occurrence, or such monetary wavier limits that may change and be set forth by the legislature.

2.19.1 Each party shall procure and maintain at its own expense and keep in effect during the full term of the Agreement, a policy or policies of insurance or self-insurance under a Risk Management Program in accordance with Florida Statutes, Section 768.28 for General Liability, Auto Liability, and Workers' Compensation, including Employer's Liability (with benefits in accordance with Chapter 440 Florida Statutes) coverage.

2.19.2 Self-insurance and/or insurance requirements shall not relieve or limit the liability of either party, except to the extent provided by, Section 768.28, Florida Statutes. Both parties reserve the right to require other insurance coverage that both parties deem mutually necessary depending upon the risk of loss and exposure to liability, subject to each party's Commission or Board approval, if necessary.

2.19.3 Violations of the terms of this section and its subparts shall constitute a material breach of the Agreement and the non-breaching party may, at its sole discretion, cancel the Agreement and all rights, title and interest shall thereupon cease and terminate.

2.19.4 No activities under this Agreement shall commence until the required letter of self-insurance and/or certificates of insurance have been received and approved by the Risk Managers of each party.

2.20 Environmentally Hazardous Material. The City hereby acknowledges that SBBC prohibits at any time the storage of Environmentally Hazardous materials on SBBC's property. The City agrees not to store any Environmentally Hazardous materials on SBBC's property and understands that violation of this stipulation will result in SBBC's immediate termination of this Agreement and the City shall restore and return the property to the same condition that it was in on the date hereof, less any improvements.

2.21 Security of Licensed Premises. The City will separate the Licensed Premises from the school campus by locking campus gates before entering the Licensed Premises. The City is solely responsible for any security necessary for any events and/or activities that the City permits upon the Licensed Premises when under the control of the City. If it is determined that any safety issues occurred during the time the Licensed Premises was under the City's control the City will be liable and indemnify the SBBC consistent with Sections 2.17, 2.19, and any other applicable provisions in this Agreement. The City will secure the Licensed Premises when under City control by locking the Licensed Premises after hours of operation as stated herein in Section 2.10. The City at the City's sole expense will install fencing on the Licensed Premises of the school sites that are not completely fenced off from the rest of the school consistent with 2.07 Improvements. The City will not be able to utilize the school's Licensed Premises until the fencing is installed. **Exhibit B** shows the schools that will need fencing installed.

2.22 Equal Opportunity Provision. The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

2.23 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

2.24 **Incorporation by Reference.** Exhibit A and Exhibit B attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

2.25 **Additional Provisions specifically for City use of Licensed Premises at Croissant Park Elementary School ("CPES") (Provisions 2.25 – 2.26):**

(a) **Maintenance for Croissant Park Elementary Licensed Premises.** The City will be responsible for maintenance and repair of fence improvements placed on the Licensed Premises.

(b) It shall be the responsibility of both the City and SBBC to maintain and keep the Licensed Premises clean, sanitary and free from trash and debris. The City will continue to mow the athletic field lawn to prevent unsightly accumulation of weeds and other vegetation. The SBBC will continue to mow the Licensed Premises around the restroom area to prevent unsightly accumulation of weeds and other vegetation.

(1) The SBBC will clean and lock up the Licensed Premises during the hours of operation stated in Section 2.10. SBBC will maintain and keep the Licensed Premises clean, sanitary and free from trash and debris during the hours school is in session as set forth herein in Section 2.10 above. Upon failure of the SBBC to comply with the provisions of this section, City shall give written notice to the CPES Principal of such failure to comply, by email. If within a period of 24 hours of such email, the SBBC has not commenced to complete the cleaning of said Licensed Premises, City shall have the right to enter upon the Licensed Premises, remove trash and debris from the area and charge the SBBC the cost incurred by City for such services (based on SBBC's Policy 1341 fee schedule). Billing for trash and debris removal shall be on a per-cleaning basis and shall be due and payable within fifteen (15) days after receipt of said billing by the SBBC.

(2) The City will clean and lock up the Licensed Premises during the hours of operation stated in Section 2.10. City will maintain and keep the Licensed Premises clean, sanitary and free from trash and debris during City access times. The City will clean restrooms between the hours of 6pm and 6am, after each City event to insure Licensed Premises is clean for School use. Upon failure of the City to comply with the provisions of this section, SBBC shall give written notice to the City's Director of Parks and Recreation, of such failure to comply, by email. If within a period of 24 hours of such email, the City has not commenced to complete the cleaning of said Licensed Premises, SBBC shall have the right to enter upon the Licensed Premises, to clean, remove trash and debris from the area and charge the City the cost incurred by SBBC for such services (based on SBBC's Policy 1341 fee schedule). Billing for trash and debris removal shall be on a per-cleaning basis and shall be due and payable within fifteen (15) days after receipt of said billing by the City.

(c) If the City fails to clean and restock consumables in the restrooms more than three times within a year, SBBC may unilaterally notify the City that it may no longer utilize the CPES restrooms. The authority to terminate this Agreement pursuant to this clause is delegated to the Superintendent of Schools ("Superintendent") or his designee by providing thirty (30) day written notice to the City terminating use of the restroom facilities as provided for in this Agreement.

(d) The upkeep and maintenance of the Licensed Premises shall be borne by both the City and SBBC, and the City and SBBC agree at all times to keep the area herein licensed and the Improvement placed on said area properly maintained pursuant to subsections (b)(1) and (2) provided herein.

(e) Notwithstanding anything else in this Section 2.24 to the contrary, the SBBC and the City agree that each party shall be responsible for any and all maintenance, cleanup, and property damage that may arise during the time the Licensed Premises is under that party's control and/or during the time after the Licensed Premises is under the SBBC or the City's control if either party fails to lock the Licensed Premises during their respective hours of operation. Nothing herein is intended to serve as a waiver of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

2.26 **Consumables for Croissant Park Elementary.** The City will provide consumables (toilet paper, paper towels, and hand soap, etc.) in the restrooms as needed on an ongoing basis and after each and every time it utilizes the restrooms, will restock the consumables.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any Agreement.

3.03 **Independent Contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party nor its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, and contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period; this Agreement may be terminated by the non-defaulting

party upon thirty (30) days written notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination pursuant to Section 3.05.

3.05 Termination.

(a) It is specifically agreed between the parties hereto that at any time SBBC desires to cancel and/or terminate this entire Agreement or any designated portion of the Licensed Premises which SBBC determines is needed exclusively for school building purposes or for any other school purposes, it shall have the unqualified right to do so with or without cause. SBBC's determination to cancel and/or terminate this Agreement or any portion thereof shall be conclusively binding upon all parties. In the event SBBC so elects, the City shall be given ninety (90) days written notice prior thereto and in the event of cancellation, SBBC shall reimburse the City for the then remaining value of the City-installed Improvements amortized for remaining term. In the event the parties hereto cannot mutually agree on said value, same shall be appraised by three (3) appraisers; one selected by SBBC; one selected by the City; and the third appraiser selected by the two appraisers appointed.

(b) In the event of such appraisal of the value, the average of the three (3) appraisers shall be the amount SBBC shall pay. It is further agreed that SBBC shall be obligated to pay the fee of the appraiser selected by SBBC; the City shall be obligated to pay the fee of the appraiser selected by the City; and the City and SBBC shall each pay fifty percent (50%) of the fee of the appraiser selected by the two aforementioned appraisers.

(c) The City shall likewise have the unqualified right of cancellation of this Agreement, in whole or as to any designated portion or area of the Licensed Premises upon ninety (90) days written notice of cancellation to SBBC. If the City shall properly exercise its option to cancel this Agreement, as to the whole or part of the Licensed Premises, the City shall have the right, subject to SBBC's purchase option described below, to remove any and all such Improvements to the property as the City had placed thereupon, except that the City shall not remove sod, landscaping, sand or earth placed upon the Licensed Premises (except as incidental to removal of other fixtures and/or improvements) and the City shall, in the case of removal of Improvements, reestablish the normal grade of the Licensed Premises to the condition which the same was found upon the City's first entering the Licensed Premises hereunder. If, upon cancellation by the City; SBBC wishes to purchase the City-installed Improvements, then the City shall sell the same to SBBC at a mutually agreed price. However, if the City and SBBC cannot mutually agree upon such a price (the value of the fixtures and/or improvements to be purchased) then the appraisal method, above-described in Section 3.05(b) hereof, shall be used to arrive at a binding price.

3.06 Compliance with Laws. Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.07 Place of Performance. All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.08 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

3.09 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.10 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party.

3.12 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.13 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision.

A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.18 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.19 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

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


IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

FOR SBBC



ATTEST:


Robert W. Runcie, Superintendent of Schools

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

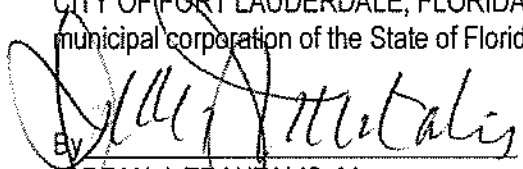
By: 
Nora Rupert, Chair

Approved as to form and legal content:

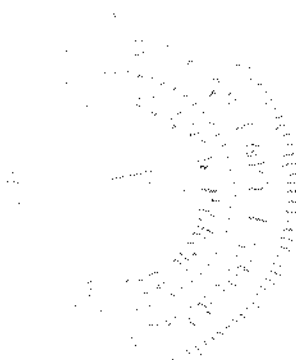

Office of the General Counsel

FOR CITY

CITY OF FORT LAUDERDALE, FLORIDA a
municipal corporation of the State of Florida


By _____
DEAN J. TRANTALIS, Mayor

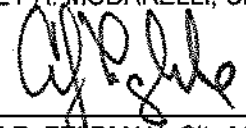
(CORPORATE SEAL)



ATTEST:




JEFFREY A. MODARELLI, City Clerk


By _____
LEE R. FELDMAN, City Manager

For

Approved as to form:
ALAIN E. BOILEAU, City Attorney

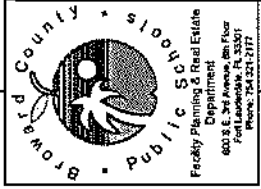


KIMBERLY CUNNINGHAM MOSLEY
Assistant City Attorney

EXHIBIT A

The following is a list and sketch of fenced Licensed Premises at School sites the City will be utilizing for recreational purposes:

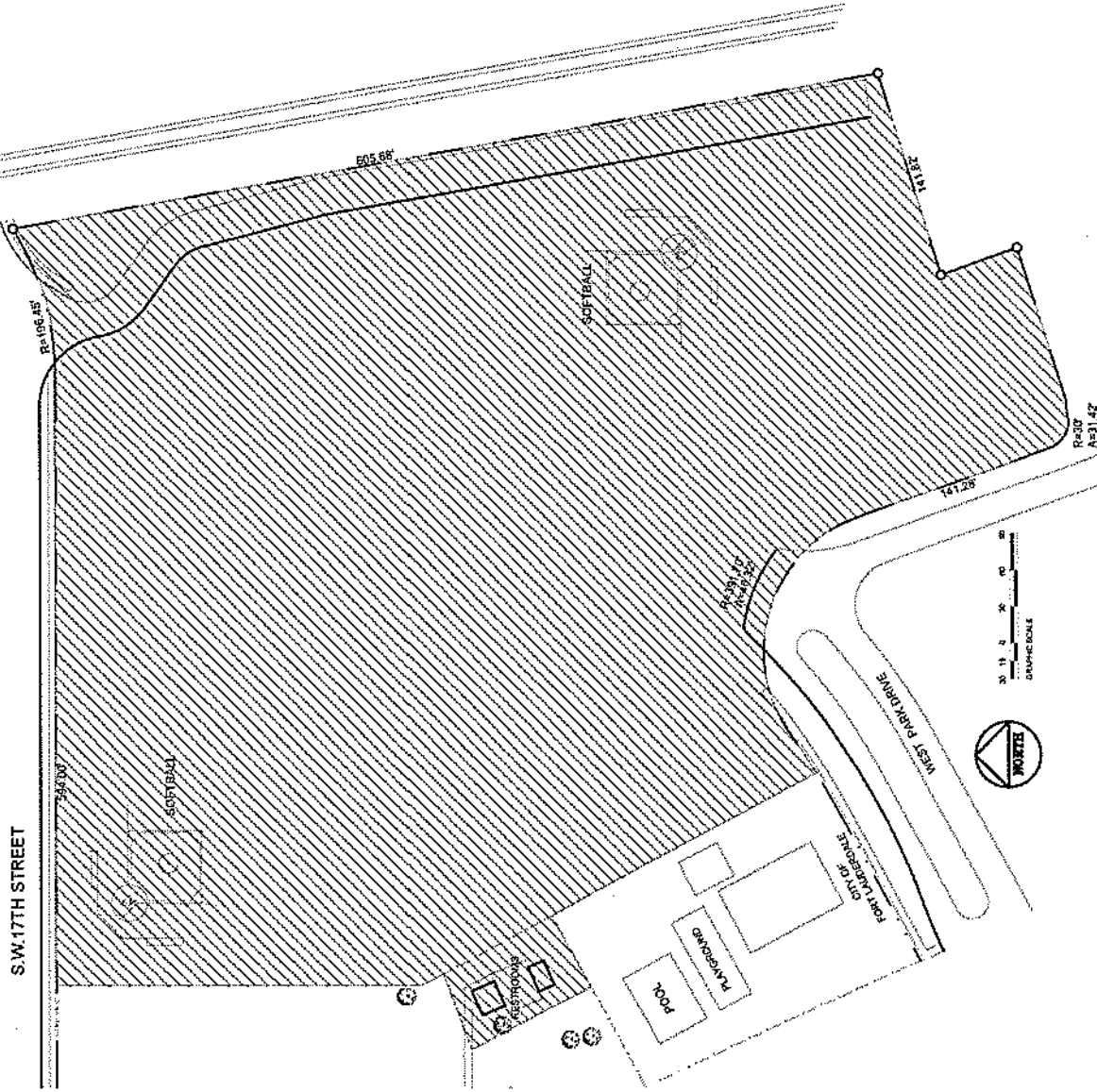
1. Croissant Park Elementary
2. Floranada Elementary
3. North Fork Elementary
4. Riverland Elementary
5. Walker Elementary
6. Westwood Heights Elementary
7. Dillard 6-12



F.I.S.H.

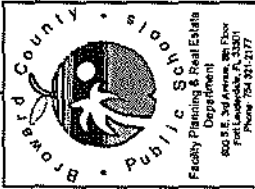
Facility Planning & Real Estate Department
600 S.E. 3rd Avenue, 6th Floor
Fort Lauderdale, FL 33301
Phone: 754.371.2177

CROISSANT PARK ELEMENTARY SCHOOL
1800 S.W. 4TH AVENUE
FT. LAUDERDALE, FL 33319



LEASED PREMISES

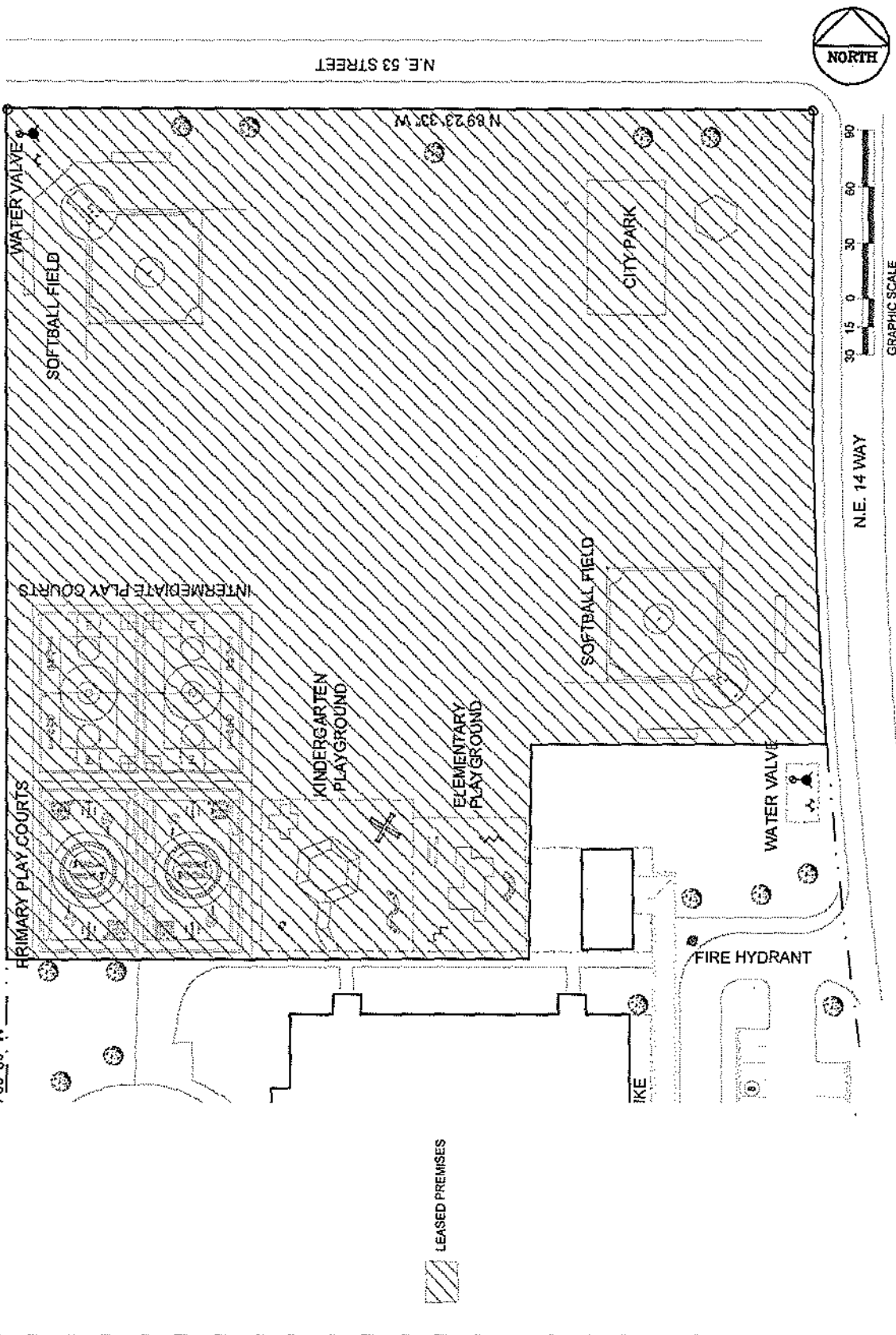
EXHIBIT A



F.I.S.H.

FLORANADA
 ELEMENTARY
 SCHOOL
 5251 N.E. 14th Way
 FORT LAUDERDALE, FL 33304

17 OF 23

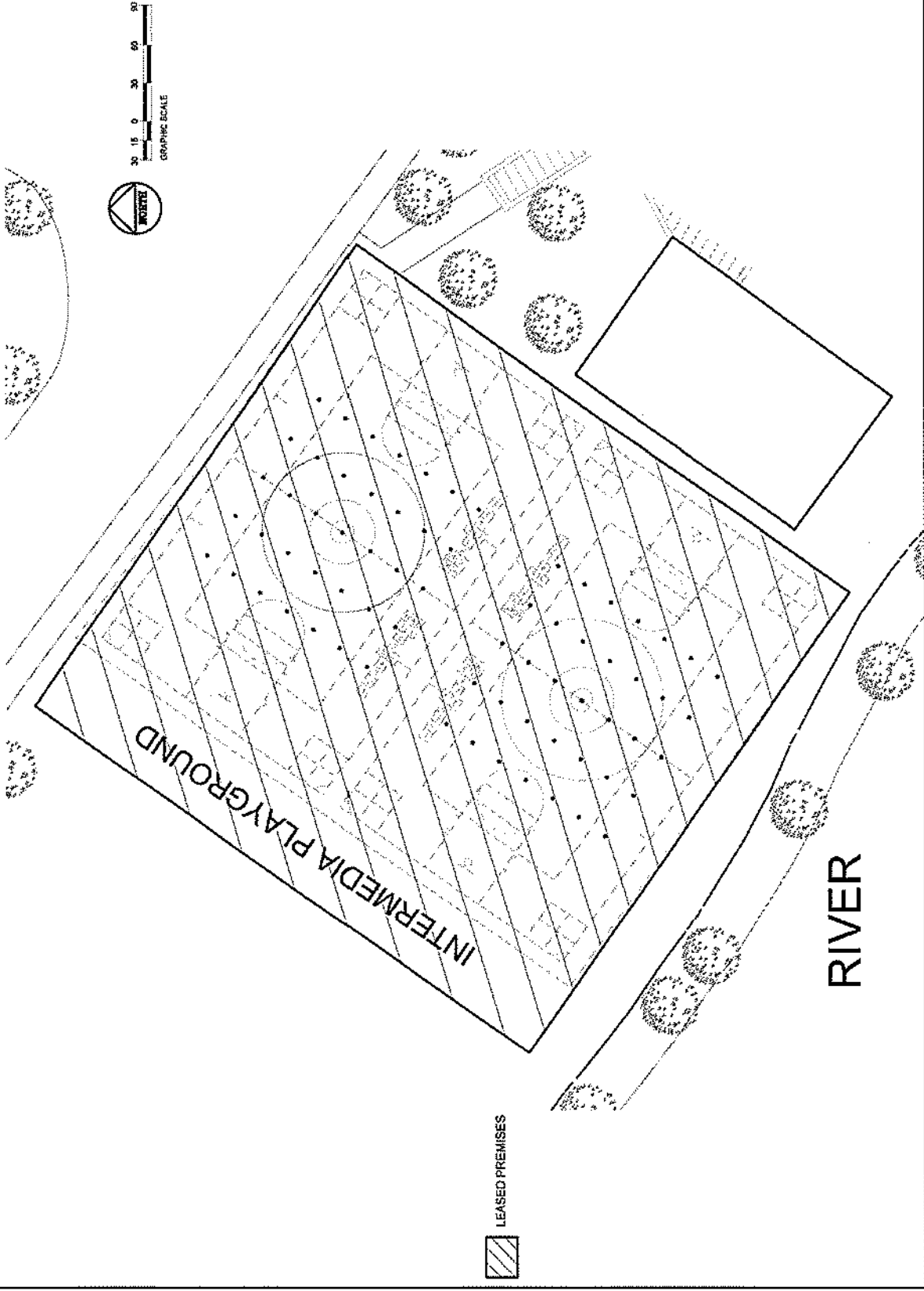





Broward County Public Schools
Facility Planning & Real Estate
Department
600 S.E. 3rd Avenue, 8th Floor
Fort Lauderdale, FL 33301
Phone: 754.371.2177

F.I.S.H.

NORTH FORK
ELEMENTARY
SCHOOL
101 NW 8th Avenue
FORT LAUDERDALE, FL 33311



"EXHIBIT A"

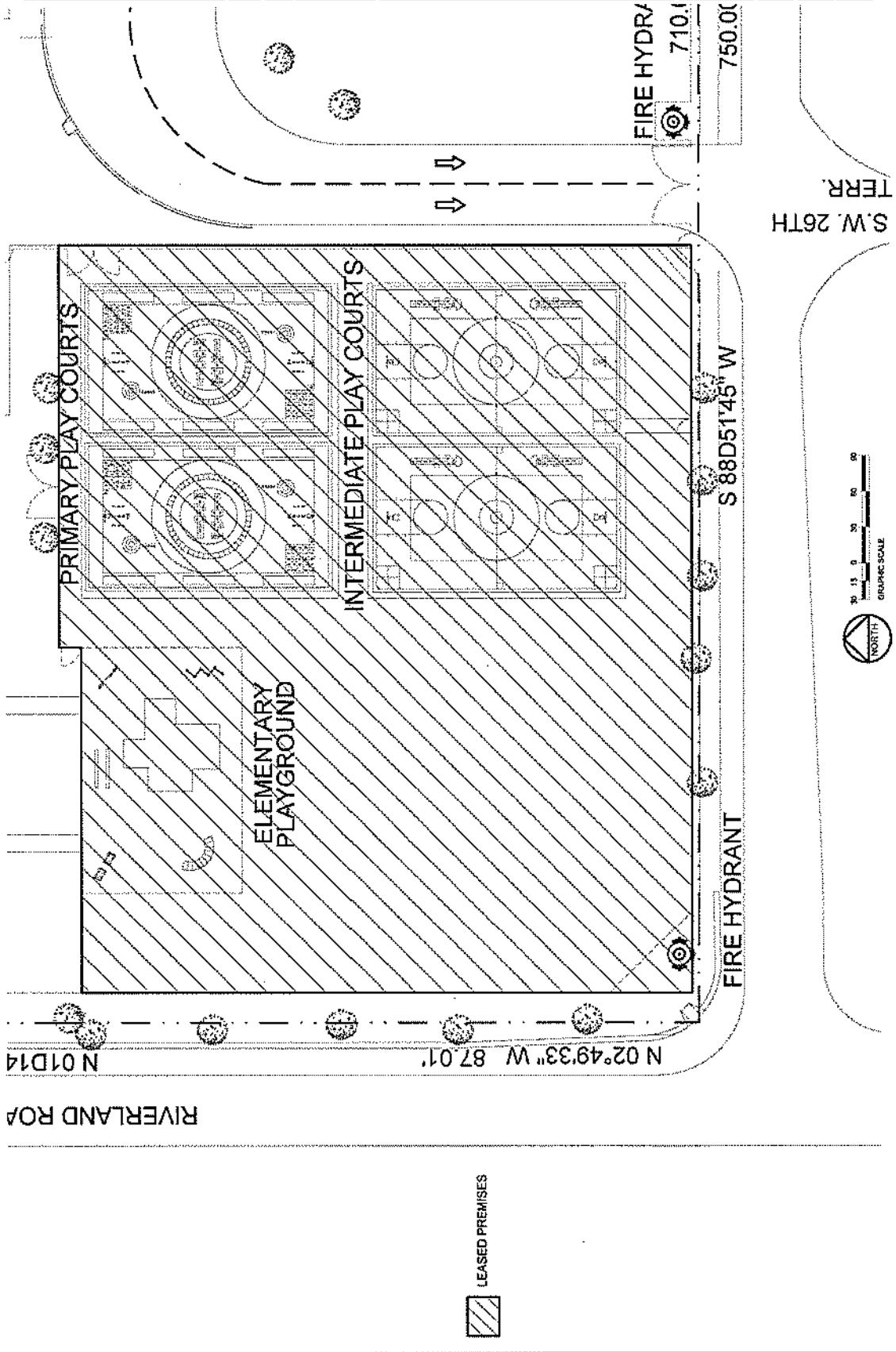


Broward County Public Schools
 Facility Planning & Real Estate
 Department
 600 S. W. 11th Street
 Fort Lauderdale, FL 33312
 Phone: 754-371-3177

F.I.S.H.

RIVERLAND
 ELEMENTARY
 SCHOOL
 2600 S. 11TH COURT
 FORT LAUDERDALE FL 33312

18 OF 23



LEASED PREMISES

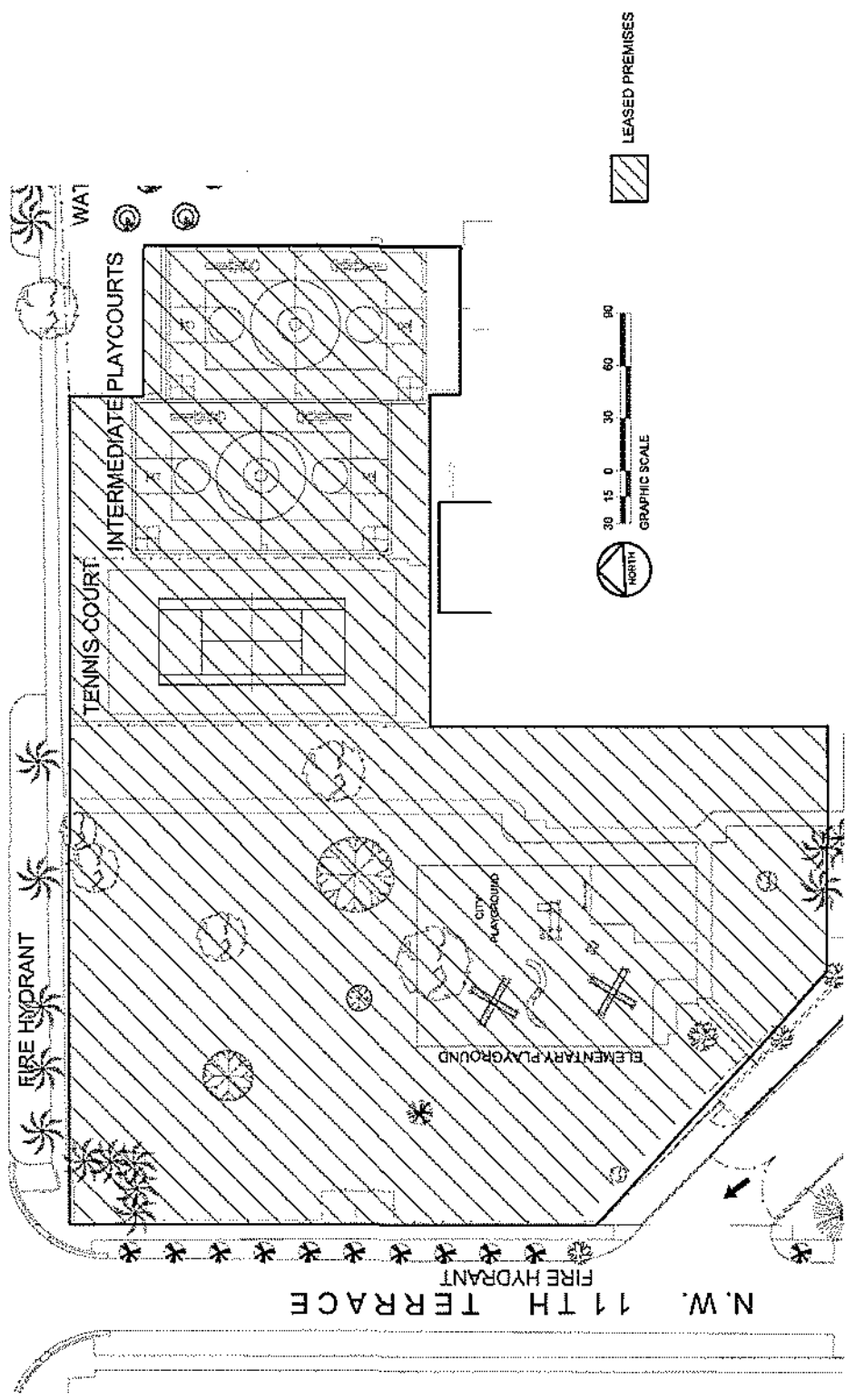
EXHIBIT A




F.I.S.H.

WALKER
 ELEMENTARY SCHOOL
 1001 NW 4 STREET
 FORT LAUDERDALE FL, 33311

20 OF 23





Broward County Public Schools
 Facility Planning & Real Estate
 Department
 600 S.E. 3rd Avenue, 8th Floor
 Fort Lauderdale, FL 33301
 Phone: (754) 372-3177

F.I.S.H.

WESTWOOD HEIGHTS
 ELEMENTARY
 SCHOOL
 2961 SW 8TH STREET
 FT. LAUDERDALE, FL 33312

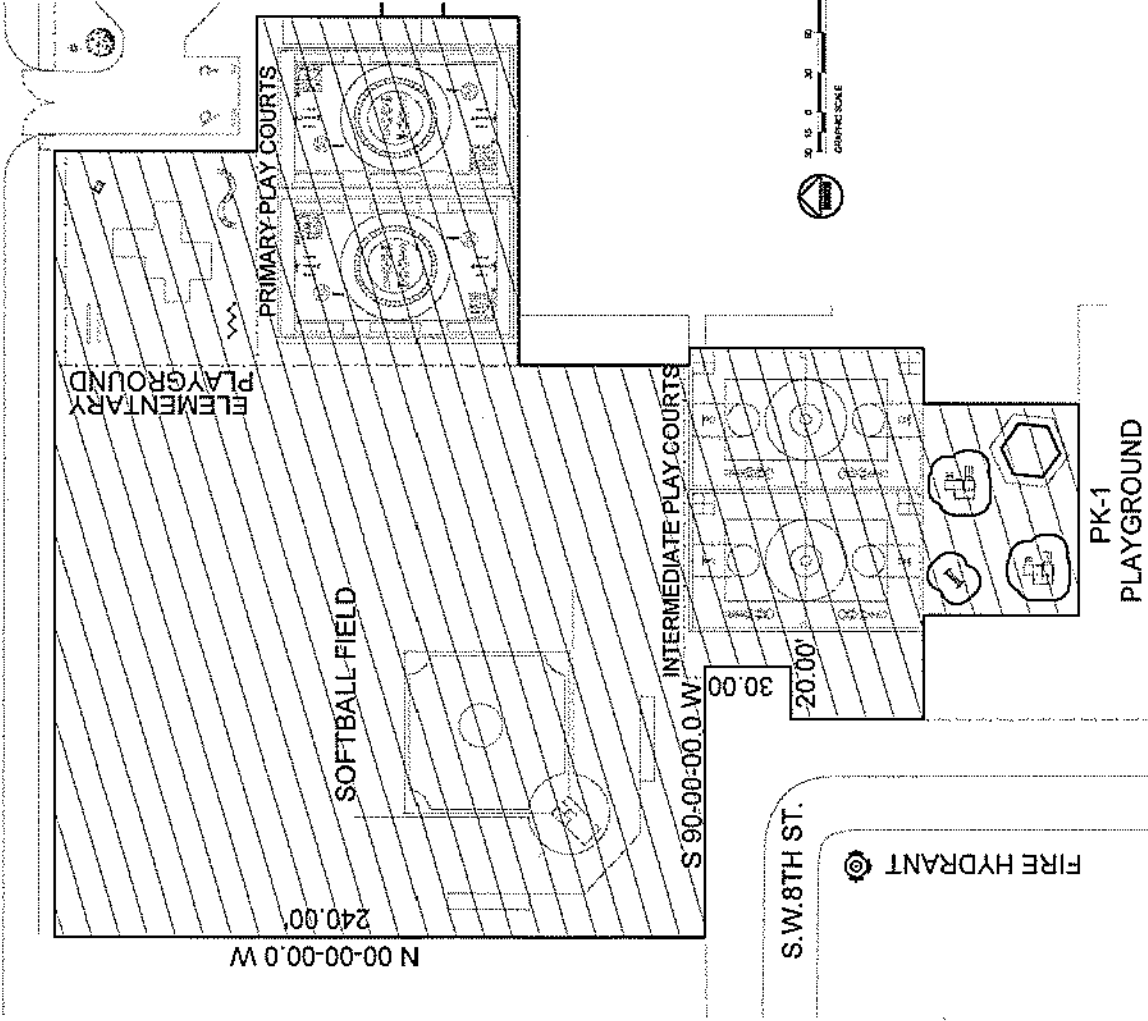



EXHIBIT A



Broward County Public Schools
 Facility Planning & Real Estate
 Department
 800 S. University Ave.
 Fort Lauderdale, FL 33301
 Phone: 754-371-3171

F.I.S.H.

DILLARD
 8-12
 2301 N.W. 11 STREET
 FORT LAUDERDALE, FL 33011

22 OF 23

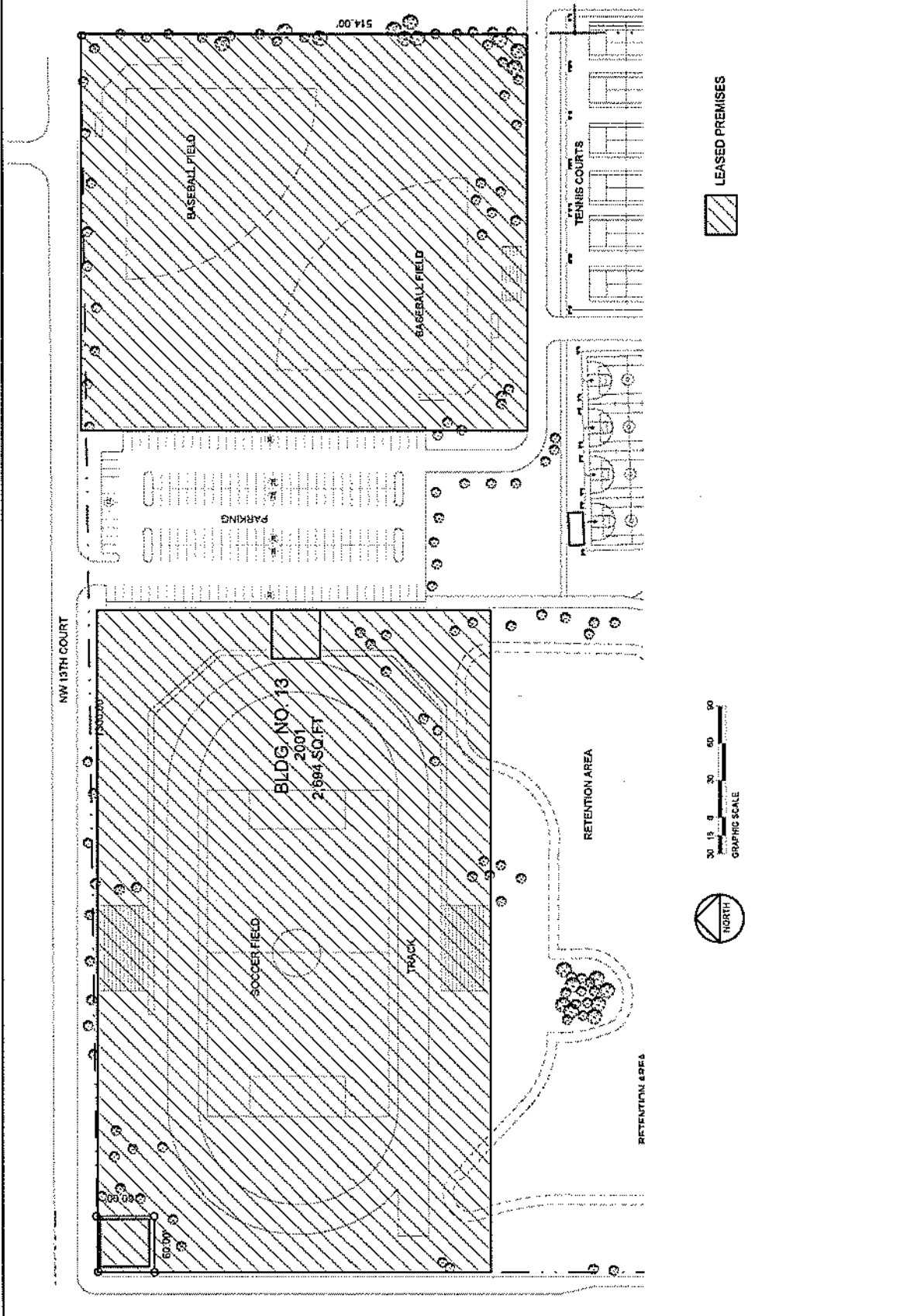


EXHIBIT B

The following is a list of non or partially fenced Licensed Premises at School sites the City agrees to install fencing before being able to utilize for recreational purposes:

1. Bennett Elementary
2. Foster Stephen Elementary
3. Thurgood Marshall Elementary
4. Rock Island Elementary
5. Virginia S. Young Elementary
6. Sunrise Middle (Excluding Swimming Pool)
7. Sheridan Technical High School
8. Arthur Ashe, Jr Center
9. Lauderdale Manors Early Learning Center
10. Fort Lauderdale High School (Excluding Swimming Pool)
11. Stranahan High School (Excluding Swimming Pool)