

AGENDA REQUEST FORM
The School Board of Broward County, Florida

Meeting Date 8/5/2003	Open Agenda <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Time Certain Request <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Agenda Item Number J-9
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TITLE:
 Lease Agreement - City of Lauderdale Lakes/The School Board of Broward County, Florida, for Boyd Anderson High/Lauderdale Lakes Middle/Oriole Elementary Schools Swimming Pool Construction/Operation


REQUESTED ACTION:
 Approve the Lease Agreement between The School Board of Broward County, Florida, and the City of Lauderdale Lakes.

SUMMARY EXPLANATION AND BACKGROUND:
 The City of Lauderdale Lakes has identified the Boyd Anderson High School/Lauderdale Lakes Middle/Oriole Elementary Educational Complex as an appropriate location for a City/County sponsored swimming pool that will implement the Swim Central program. The City has been approved for funding under the County's Swim Central Program and has agreed to select an approved vendor to construct the facility and run the program for the City.
 The pool will physically be located between Oriole Elementary and Lauderdale Lakes Middle School. Boyd Anderson High will be able to use the facility for their swim program.
 The lease is for 40 years and the project consists of a 25 yard by 25 yard swimming pool, bath house and parking area. All construction, maintenance and operational costs will be the responsibility of the City or their designee. The City guarantees completion of the project which includes a pool, bathhouse, and parking .
 The School Board Attorney has approved the agreement as to form. The City has approved the agreement.

MAJOR SYSTEM GOALS:
 Goal One: All students will achieve at their highest potential.
 Goal Two: All schools will have equitable resources.
 Goal Three: All operations of the school system will support and align with student achievement and needs.
 Goal Four: All stake holders work together to build a better school system.

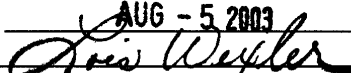
FINANCIAL IMPACT:
 There will be no financial cost to the School Board. The leased land will not be available for general school use but the project will provide an added athletic component to the Educational Complex.

EXHIBITS: (List)
 1. Lease Agreement
 2. Resolution - City of Lauderdale Lakes
 3. Exhibit A - Drawing

BOARD ACTION APPROVED (For Official School Board Records' Office Only)	SOURCE OF ADDITIONAL INFORMATION Name: Marc Brown  Phone: 954-765-7040
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THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

DIVISION OF FACILITIES AND CONSTRUCTION MANAGEMENT
 JAMES F. NOTTER, DEPUTY SUPERINTENDENT, CHIEF OF STAFF

Approved in Open Board Meeting on: AUG - 5 2003
 By:  , School Board Chair

**LEASE AGREEMENT – CITY OF LAUDERDALE LAKES/THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA FOR BOYD ANDERSON HIGH /LAUDERDALE
LAKES MIDDLE /ORIOLE ELEMENTARY SCHOOLS
SWIMMING POOL CONSTRUCTION/OPERATION**

THIS LEASE AGREEMENT is made and entered into as of this 5 day of August 2003 by and between:

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

and

City of Lauderdale Lakes
(hereinafter referred to as "CITY")
a municipal corporation
whose principal place of business is
4300 N.W. 36th Street, Lauderdale Lakes, Florida 33319

WHEREAS, SBBC is the controlling body of the Public Schools of Broward County, Florida, and does own certain school sites and other real estate parcels located in the CITY of Lauderdale Lakes, Broward County, Florida, hereinafter referred to as "School Grounds"; and

WHEREAS, SBBC desires to provide a competition swimming pool for Boyd Anderson High School's use; and

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

WHEREAS, CITY is willing to expend certain funds for the equipping and improving of a portion of the school grounds at Boyd Anderson High /Lauderdale Lakes Middle /Oriole Elementary schools hereinafter referred to as "Project Site" to build a swimming pool and bath house; and

WHEREAS, COUNTY has through Swim Central Program granted funds to build the pool at the Educational Complex for the purpose of teaching children how to swim; and

WHEREAS, CITY will act as the General Contractor for the construction of the pool and bath house; and

WHEREAS, CITY and SBBC 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 citizens of Lauderdale Lakes:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and the sum of Ten Dollars (\$10.00) 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 – CONDITIONS

2.01. Existing Leases Both Parties acknowledge there are existing recreation lease agreements encumbering the Project Site, and nothing herein shall modify or change the terms and conditions of said lease agreements.

2.02 Leased Property SBBC does hereby lease to the CITY an area or areas shown on the Drawings attached hereto as Exhibit "A", and made a part hereof as prepared by The School Board of Broward County, Florida under the terms and conditions hereinafter set forth.

2.03 Lease Term The term of the lease of said premises is forty (40) years from the date of the execution of this lease agreement by both parties.

2.04 Rental The rental shall be One Dollar (\$1.00) per year payable to SBBC on the yearly anniversary of the lease agreement.

2.05 Uses Permitted The uses and purposes to which CITY shall put said premises shall be for a swimming pool and bath house, made available to the citizens of the area and for the swimming programs at Boyd Anderson High School, Lauderdale Lakes Middle, and Oriole Elementary School. The facilities herein leased are to be used strictly for school, recreational and community purposes. Advertising or food concessions in the pool area shall not be permitted unless specifically approved by the Superintendent or Designee and the CITY.

2.06 Schedule The CITY shall be responsible for the scheduling of all events at the pool including the times to be scheduled for school use. The CITY will meet with the Deputy Superintendent of Schools or his/her Designee annually prior to the start of the school year to develop a schedule. Said Schedule may be amended during the year by mutual agreement of the parties. If a schedule cannot be agreed upon, the Superintendent of Schools or his/her Designee, the City of Lauderdale Lakes City Manager or his/her Designee will meet and develop a resolution. The Swim Central Learn To Swim programs will have priority scheduling, however, the SBBC's Boyd Anderson High School swim program will be accommodated and other SBBC programs coordinated within the CITY's operational needs.

2.07 Sub-Lease SBBC agrees and understands that the CITY may sub-lease the herein leased property to a vendor for the construction, operation and maintenance responsibilities of the pool and bath house.

2.08 Conflict of Uses The uses of said premises by CITY shall be limited and restricted so as not to conflict in any way with the adjoining schools and the use of said property by CITY shall at all times be in compliance with the laws of the State of Florida concerning the use of school property.

2.09 Improvements The location of any and all recreational improvements to be placed on the leased premises, including but not limited to the swimming pool, buildings, lights, etc., other than those as shown on Exhibit "A", shall first be approved in writing by the Facilities Department of the School Board, it being intended that SBBC shall have absolute control over the location of any recreational facilities before they are placed on the leased premises. Any facilities placed on said leased premises without the prior written approval of Deputy Superintendent as to location shall immediately be removed or relocated within ten (10) days of written demand by SBBC.

2.10 Project Subject to the provisions of this Agreement, the CITY shall design and develop a project for the construction of a new-shared use swimming pool between Lauderdale Lakes Middle School and Oriole Elementary School (Project). The CITY will contract for the design and construction at a minimum a 25 yard six-lane pool to include filtration/heating systems in a pump room/storage building, pool deck with fencing, and restroom/changing facilities. Project facilities are shown on Exhibit "A" in their approximate locations attached hereto and made a part of this Agreement. Final "as built" site plans are incorporated into this Agreement at the completion of each of the above projects.

2.11 Plans The CITY will prepare and the Deputy Superintendent Division of Facilities and Construction Management, or his Designee, (herein after referred to as the Deputy Superintendent) shall review and approve the construction plans for the Project. Plans for the swimming pool and appurtenances thereto must meet

current Florida Building Code and all other Codes of jurisdiction. The CITY agrees to obtain all necessary permits and approvals from the School Board and others as required and to contract with a contractor for the construction of the Project. CITY will pay all monies due to the Contractor and timely perform all of its obligations under the contract with Contractor. SBBC will provide construction inspection services for the pool project in accordance with Florida Statutes.

2.12 Bond Before the commencement of the Project, the CITY shall require Contractor to furnish surety and performance bonds that guarantee the completion of the Project and the performance of the work necessary to complete the Project as well as full payment of all suppliers, materialmen, labors or subcontractors employed to provide services to complete the Project. CITY agrees to deliver copies of the bonds to the School Board no later than (30) days prior to the commencement of construction. Such bonds shall remain in effect for one (1) year after completion of the Project. CITY will cause the correction of any defective or faulty work or materials that appear after completion of the Project within the warranty period of such work performed.

2.13 Timetable The CITY agrees that it will obtain all of the necessary permits and commence construction of the Project within 18 months from the Effective Date or this agreement is null and void.

2.14 Termination

(a) It is specifically agreed between the parties hereto that at any time SBBC desires to cancel and/or terminate this entire lease or any designated portion of the leased area which SBBC determines is needed exclusively for school building purposes or for any other school purposes, it shall have conclusive right to do so. In the event SBBC so elects, CITY shall be given written notice prior thereto and in the event of cancellation, SBBC shall reimburse CITY for the then remaining value of CITY installed recreational facilities. The City will have the responsibility of repaying any obligation to Broward County for Broward County's Swim Central Grant. The City will have up to one year after said written notice to vacate the leased area. 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 CITY; and the third appraiser selected by the two appraisers.

(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; CITY shall be obligated to pay the fee of the appraiser selected by CITY; CITY and SBBC shall each pay fifty percent (50%) of the fee of the appraiser selected by the two aforementioned appraisers.

(c) CITY shall likewise have the unqualified right to cancel this entire lease, after an initial period of Twenty-five (25) years operation subject hereto upon ninety (90) days' written notice of cancellation to The School Board of Broward County, Florida. Upon cancellation by CITY, the SBBC will purchase CITY installed pool and other related improvements. The CITY shall sell the same to SBBC at a mutually agreed price, which reflects the remaining value of the improvements. However, if CITY and SBBC cannot mutually agree upon such a price (the value of the property to be purchased) then the appraisal method, above described in Section 2.14 (a) hereof, shall be used to arrive at a binding price. The City will have the responsibility of repaying any obligation to Broward County for Broward County's Swim Central Grant

2.15 Maintenance

(a) It shall be the responsibility of CITY to keep the recreational grounds herein leased clean, sanitary and free from trash and debris, and also the recreational grounds shall be mowed to prevent unsightly accumulation of weeds and other vegetation. Upon failure of CITY to comply with the provisions of this section, SBBC shall give written notice to CITY of such failure to comply, by Certified Mail, Return Receipt Requested. If, after a period of ten (10) days of such mailing, CITY has not commenced to complete the cleaning and/or mowing of said recreational area, SBBC shall have the right to enter upon the premises, remove trash and debris from the area, or mow the area and charge CITY the cost to 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 thirty (30) days after receipt of said billing by CITY.

(b) Notwithstanding any of the provisions of the foregoing paragraph, the parties further agree that CITY, in addition to the above, will clean up the premises after each and every event it sponsors, and SBBC will be responsible to clean after each and every event it sponsors.

(c) The upkeep and maintenance of all areas herein leased by SBBC to CITY shall be borne by CITY, and CITY agrees at all times to keep the areas herein leased and the equipment placed on said areas properly maintained.

(d) Major repairs to pool shall be the responsibility of the City.

(e) All utility costs, assessments, and other site specific charges will be the responsibility of the CITY.

(f) SBBC will be responsible for paying a nominal fee for operation/maintenance of the facility in support of SBBC team programs. The initial fee will be \$1,500 per team program. The fee may be increased no more than 3% per year. A team program is defined as one team activity (e.g. swim team) using the facility for regular practice and meets during a season and the associated special events such as invitationals, jamborees or regional tournaments.

2.16 Hours of Operation The pool area will be under the control and supervision of the CITY at all times during the term of this agreement. SBBC shall use the facility in accordance with the agreed upon schedule.

2.17 Ownership of Improvement at Lease Expiration At the expiration of this lease, in the event the same is not canceled by SBBC or CITY prior thereto, all permanent recreational facilities such as the swimming pool, bath house, lighting facilities, etc., shall become the property of SBBC and CITY shall have the right to remove all moveable (non-permanent) recreational facilities.

2.18 Indemnification Each party agrees to be fully responsible for its acts of negligence, or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

2.19 Suitability The City shall have six (6) months from the date of this agreement to determine if the site, as delineated, is suitable for the project. If it is determined that there are circumstances, i.e. area is too small or contains underground utilities, which make it impossible to construct the project, either physically or economically, this agreement will be null and void upon certified notification that such a condition exists and the City does not want to continue. If any work has taken place in the designated area, the affected area will be restored to its original state by the City.

ARTICLE 3 – GENERAL CONDITIONS

3.01 No Waiver of Sovereign Immunity Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

3.02 No Third Party Beneficiaries 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 manner arising out of any contract.

3.03 Non-Discrimination The Parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

3.04 Records 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 of non-compliance with that law.

3.05 Entire 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.

3.06 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.

3.07 Preparation of Agreement The Parties acknowledge that they have sought and obtained whatever competent advise 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 expresses 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.

3.08 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. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

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

3.10 Governing Law 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 to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

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

3.12 Assignment Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party.

3.13 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.

3.14 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.

3.15 Severability In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

3.16 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: Executive Director
Facilities Management Planning & Site Acquisitions
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To City: City Manager
City of Lauderdale Lakes
4300 N.W. 36th Street
Lauderdale Lakes, Florida 33319

With a Copy to: Director
Dept. of Parks, Recreation
City of Lauderdale Lakes
4300 N.W. 36th Street
Lauderdale Lakes, Florida 33319

3.17 Captions The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience 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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.18 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.

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By: Lois Wexler
Lois Wexler, Chair

ATTEST:

Franklin L. Tih, Jr.
Franklin L. Tih, Jr.
Superintendent of Schools

Approved as to Form:
[Signature]
School Board Attorney

FOR CITY

Signed, sealed and delivered:

CITY OF LAUDERDALE LAKES, FLORIDA

Rob Brammell
Sandra L. Brown

BY: Samuel Moore
, Mayor

ATTEST:

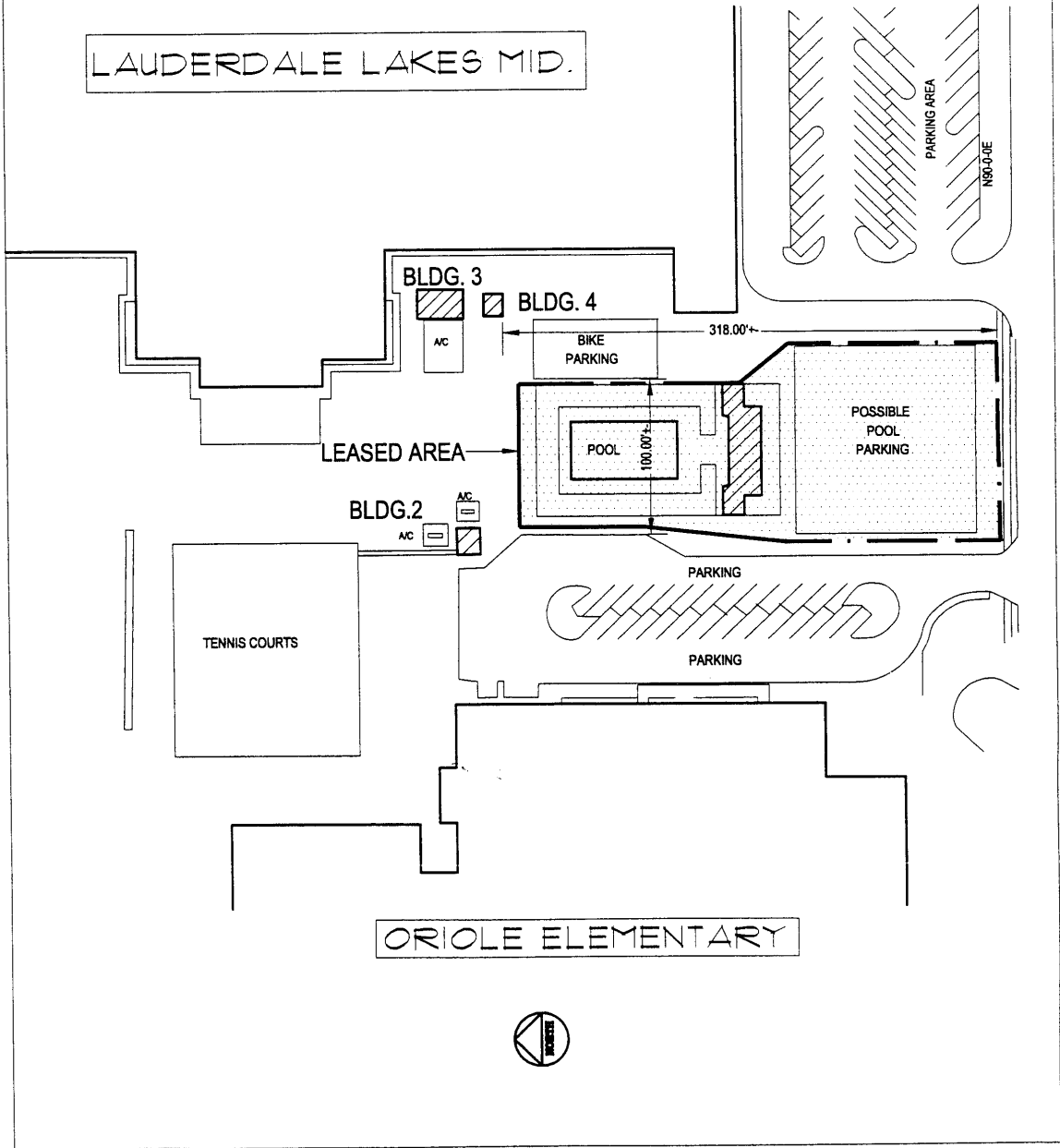
Carole S. Neels
, City Clerk

(SEAL)

Approved as to form:
[Signature]
City Attorney

EXHIBIT A

LAUDERDALE LAKES MID.



LAUDERDALE LAKES MID.

Exhibit A
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