

Exhibit 1

Lease and Funding Agreement

**LEASE AND FUNDING
AGREEMENT FOR
RECREATIONAL FACILITIES
AT SOUTH PLANTATION HIGH SCHOOL**

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2005, 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 PLANTATION
(hereinafter referred to as "CITY"),
a municipal corporation operating and
existing under the Laws of the State of Florida,
whose principal place of business is
9151 Northwest Second Street, Plantation, FL 33324

WHEREAS, SBBC is constructing an athletic field stadium for the use of the School District and of the CITY on SBBC's property known as South Plantation High School (the "Stadium Site"); and

WHEREAS, the SBBC and the CITY believe that an arrangement whereby SBBC permits certain uses of its athletic and recreational facilities by the CITY in return for capital improvements will be of mutual benefit to all parties and will serve a public need and benefit the citizens of the CITY and those students served by the school sites to be improved; and

WHEREAS, SBBC and the CITY have enjoyed a mutually beneficial relationship over the past several years and are both interested in and concerned with the development and provision of adequate parks and recreational facilities for physical education programs, leisure, human development and use by both students and the local community; and

WHEREAS, the CITY is desirous of working together with the SBBC to fund and construct said athletic facility; and

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 – CITY FUNDING

2.01 **City Funding.** The CITY, agrees to pay SBBC in an amount not to exceed one hundred and fifty thousand dollars (\$150,000) to fund the purchase and/or installation of a stadium message scoreboard and/or stadium marquee at South Plantation High Stadium.

2.02 **Procedures for Invoicing and Payment.**

(a) Upon completion of the projects installation plans, the SBBC will submit copies to the CITY with a request for the CITY funding in the amount of \$150,000.

(b) Upon receipt of such plans, and upon presentation of paid contractor invoices for the expenses of constructing the message scoreboard or stadium marquee, the CITY shall authorize payment to the SBBC. The payment to SBBC shall be delivered within thirty (30) days of receipt of said plans.

ARTICLE 3 – SPECIAL CONDITIONS

3.01 **Leased Premises.** SBBC does hereby lease to the CITY all of the athletic and recreational facilities (hereinafter referred to as “Leased Premises”) that are more fully described in Exhibit “A” which is appended hereto and incorporated herein by reference.

3.02 **Lease Term and Rate.** The term of this Agreement is twenty (20) years from the date of the execution of this Agreement. The CITY shall pay SBBC an annual rental fee of One Dollar (\$1.00), payable to SBBC on the yearly anniversary of this Agreement. It is specifically understood and agreed by the parties hereto that the term of this Agreement may be shortened or extended, subject to the provisions of Sections 3.10 and 3.11.

3.03 **Use of Leased Premises.** The CITY may utilize the Leased Premises for recreational purposes subject to the limitations contained in this Agreement. The CITY’s use of the Leased Premises shall not conflict in any way with SBBC’s use of its school sites for the delivery of academic and athletic programs. The CITY’s use of the Leased Premises shall at all times be in compliance with the laws of the State of Florida concerning the use of school property.

3.04 **Advertising.** The CITY may not erect advertising on the Leased Premises without obtaining the prior written consent of the principal of the school upon which the Leased Premises are located.

3.05 **Rental of Leased Premises.** The CITY may not rent the Leased Premises for the use of third persons without obtaining the prior written consent of the principal or designee of the school upon which the Leased Premises are located; however, the CITY sports and recreation programs are, in part, conducted by the Plantation Athletic League pursuant to a license agreement with the CITY, and the School Board of Broward County will not require approval prior to the Plantation Athletic League's use of the leased premises pursuant to such CITY license. This use will not include, however, the weight room.

3.06 **Operation and Control.** The Leased Premises are reserved for the sole use and control of the SBBC during the hours that the school, upon which the Leased Premises is located, is in session and during the hours of any interscholastic practices and contests. The Principal or his/her designee shall maintain a schedule of school events and practices conducted on the Leased Premises. During off school hours the Leased Premises shall be officially open to the CITY. During the hours that the Leased Premises is being used by the CITY, the CITY shall provide supervision by recreational personnel or CITY staff. The weight room located on the leased premises shall be open after school hours to employees of the CITY. The weight room shall not be accessible or available for use by the general public. The SBBC shall install or cause to be installed an electric meter for lighting of the leased facilities. During the term of this lease, the CITY shall fund the electric consumption resulting from the use of the above referenced lights at South Plantation High Stadium. The SBBC shall bill the CITY, based on this meter on an annual basis.

3.07 **Clean-up.** It shall be the responsibility of SBBC to keep the Leased Premises clean, sanitary, and free from trash and debris. Notwithstanding any of the provisions of this section, the parties agree that the CITY will clean up the Leased Premises after each CITY use and after each CITY sponsored event. SBBC will be responsible for cleaning of the Leased Premises after each SBBC use and after each SBBC sponsored event. The CITY may pay SBBC the contractual hourly rate applicable for SBBC custodial service personnel to clean up the Leased Premises after CITY use or after a CITY sponsored event.

3.08 **Maintenance.** It shall be the responsibility of SBBC to keep the Leased Premises in a clean, safe and sanitary condition. However, the CITY shall be responsible for ensuring that the Leased Premises are left in the same condition as prior to usage, allowing for normal wear and tear. The CITY is responsible for repairing or replacing any recreational equipment, fixtures, improvements or grounds upon the Leased premises that are damaged as a result of CITY use. The regular upkeep and maintenance of the Leased Premises shall be SBBC's responsibility. The CITY will assist SBBC in the cost of resodding due to recreational usage to the extent that both parties deem same to be necessary.

3.09 **Termination by SBBC.** SBBC may terminate this Agreement or terminate the CITY's right to use any portion of the Leased Premises, without cause and for any reason, upon provision to the CITY of one hundred and eighty (180) days written notice of such termination. In the event of such termination, SBBC shall reimburse the CITY for the then remaining value of the CITY funded Improvements. In the event that SBBC terminates the CITY's right to use any portion of the Leased Premises and CITY Improvements have been implemented on said portion; SBBC shall reimburse the CITY for the then remaining value of the CITY Improvements located upon that portion of the Leased Premises.

3.10 **Termination by CITY.** The CITY may terminate this Agreement, without cause and for any reason, upon provision to SBBC of one hundred eighty (180) days written notice of such termination.

3.12 **Valuation of CITY Improvements.** In the event that the SBBC's or CITY's exercise of authority under Sections 3.10 necessitates the valuation of CITY Improvements, such value shall be determined by using the straight-line depreciation (the term depreciation to be in accordance with Exhibit B) and generally accepted accounting principles of depreciation. SBBC shall not be responsible for reimbursement to the CITY for any CITY installed improvements, fixtures or recreation equipment placed upon the Leased Premises without the express written consent of the Superintendent of Schools (or his/her designee). In the event that SBBC exercises its right of termination and the parties are unable to mutually agree upon the value of the CITY Improvements, same shall be appraised by three (3) appraisers. One appraiser shall be selected by SBBC, one appraiser shall be selected by the CITY, and the third shall be selected by the two appraisers so appointed. SBBC shall pay the fee for the appraiser it appointed and the CITY shall pay for the appraiser it appointed. SBBC and the CITY shall evenly divide the fee charged by the third appraiser appointed by the other two appraisers. Each appraiser shall then perform an independent appraisal of the CITY Improvement. The value of the CITY Improvements shall then be determined by taking the average of the three appraisals, which SBBC shall pay to the CITY in the event of termination.

3.13 **Indemnification.** Each party agrees to be fully responsible for its own 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.

3.14 **Use of Facilities and Parks.** It is understood that presently the CITY of Plantation and South Plantation High School both use the other's recreational facilities for the betterment of the community. South Plantation High School has been using the following CITY facilities for their athletic endeavors.

SPORT

Football

Softball

Soccer

Baseball

Flag Football

PARK

Fig Tree

PAL Park

Pop Travers

Pine Island

PAL Park

Sunset

TBA

The CITY of Plantation with the Plantation Athletic League organization shall be able to use the South Plantation High School gymnasium each February for two (2) days for the Annual Biddy Basketball Tournament. In addition, the CITY shall be able to use the school's gymnasium for practice and games when South Plantation High School is not using the facility for organized Junior Varsity, Varsity sports or maintenance.

ARTICLE 4 – GENERAL CONDITIONS

4.01 **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.

4.02 **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 manner arising out of any contract.

4.03 **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.

4.04 **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 for non-compliance with that law.

4.05 **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.

4.06 **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.

4.07 **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 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.

4.08 **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.

4.09 **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.

4.10 **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.

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

4.12 **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. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

4.13 **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 commotion, 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.

4.14 **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.

4.15 **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.

4.16 **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: Damian Huttenhoff, Director
Student Support
600 Southeast Third Avenue, Third Floor
Fort Lauderdale, Florida 33301

To CITY: City Manager
City of Plantation
9151 NW 2nd Street
Plantation, Florida 33324

4.17 **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.

4.18 **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.

REMAINDER OF PAGE WAS LEFT BLANK INTENTIONALLY

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

LEASE AND FUNDING AGREEMENT FOR RECREATIONAL FACILITIES
AT SOUTH PLANTATION HIGH SCHOOL BETWEEN
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
AND
THE CITY OF PLANTATION, FLORIDA

FOR SBBC

(Corporate Seal)

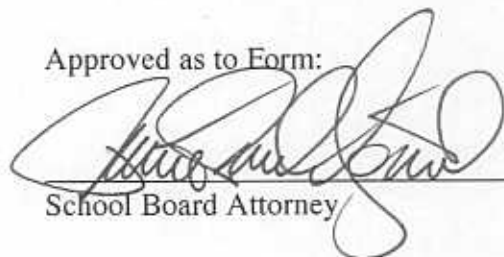
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By _____
Stephanie Arma Kraft, Esq., Chair

ATTEST:

Franklin L. Till, Jr.,
Superintendent of Schools

Approved as to Form:



School Board Attorney

LEASE AND FUNDING AGREEMENT FOR RECREATIONAL FACILITIES
AT SOUTH PLANTATION HIGH SCHOOL BETWEEN
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
AND
THE CITY OF PLANTATION, FLORIDA

FOR CITY OF PLANTATION

CITY OF PLANTATION, through its
City Commission

ATTEST

Susan K. Slattery
City Clerk

By: [Signature]
Mayor
14th day of February, 2005

By: [Signature]
~~City Manager~~ Assistant to Mayor
14th day of February, 2005

Approved as to form and legality by
Office of the City Attorney for the use of
And reliance by the City of Plantation only

By: _____
City Attorney
_____ day of _____, 2005

(CITY SEAL)

EXHIBIT A

PROJECT SITE

South Plantation Athletic Stadium and Weight Room

**South Plantation High School
1300 Paladin Way
Plantation, Florida 33317**

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AT SOUTH PLANTATION HIGH SCHOOL BETWEEN
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
AND
THE CITY OF PLANTATION, FLORIDA

Exhibit B

Schedule of City Funded Improvements

Improvement	Initial Cost	Useful Life
Message Scoreboard and/or Stadium Marquee	\$150,000	20 years

For the purpose of this Lease Agreement, the remaining value of improvements to be reimbursed, if the Lease Agreement is terminated prior to the stated term, shall be calculated using the Straight-Line Depreciation method. The termination of this Lease on any date beyond the anniversary date shall constitute a full-year for the purpose of calculating the depreciation. Under the Straight-Line Depreciation method, the value of the improvements divided by the useful life equals the annual depreciation. The remaining value of improvements shall be the initial cost of the improvements less the annual accrued depreciation.