

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Bruce Bernard, Manager, Public Works /Capital Projects (954) 797-1240

SUBJECT: Resolution

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING APPROVAL AND EXECUTION OF AN AGREEMENT WITH THE BROWARD COUNTY SCHOOL BOARD TO LEASE RECREATIONAL FACILITIES AT NOVA AND WESTERN HIGH SCHOOLS

PREVIOUS ACTIONS: Not applicable.

CONCURRENCES: N/A

FISCAL IMPACT:

Has request been budgeted? yes
Funding appropriated? yes
Account Name: Bond Issue
Additional Comments: Not applicable

RECOMMENDATION(S): Motion to approve the resolution.

Attachment(s):

Lease Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING APPROVAL AND EXECUTION OF AN AGREEMENT WITH THE BROWARD COUNTY SCHOOL BOARD TO LEASE RECREATIONAL FACILITIES AT NOVA AND WESTERN HIGH SCHOOLS.

WHEREAS, the Town of Davie has a specific need to acquire use of additional recreational facilities to serve the citizens within its boundaries; and

WHEREAS, the School Board of Broward County is the controlling body of public schools in Broward County, Florida and does own certain school sites located throughout the Town of Davie with recreational facilities; and

WHEREAS, it is in the best interest of the Town of Davie to enter into this agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. That the Town Council of the Town of Davie does hereby approve this agreement with the School Board of Broward County which is attached as Exhibit "A" and "B". Further, the Town Council authorizes the Mayor, Town Administrator and appropriate staff to execute said agreement and all necessary documents.

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED ON THIS _____ DAY OF _____, 2001

MAYOR/COUNCIL MEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2001

**AGREEMENT FOR LEASE
OF RECREATIONAL FACILITIES**

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2001, 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

TOWN OF DAVIE

(hereinafter referred to as "TOWN"),
a municipal corporation operating and
existing under the Laws of the State of Florida,
whose principal place of business is
6591 Orange Drive, Davie, Florida 33314

WHEREAS, the SBBC is the controlling body of public schools in Broward County, Florida, and does own certain school sites located throughout the Town of Davie; and

WHEREAS, SBBC has certain school sites within the municipal boundaries of the TOWN that presently lack lighted athletic facilities; and

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

WHEREAS, the TOWN has a specific need to acquire use of additional recreational space to serve the citizens within its boundaries; and

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

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 **Leased Premises.** SBBC does hereby lease to the TOWN 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.

2.02 **Lease Term and Rate.** The term of this Agreement is twenty (20) years from the date of the execution of this Agreement. The TOWN 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 2.12 and 2.13.

2.03 **Use of Leased Premises.** The TOWN may utilize the Leased Premises for recreational purposes, available to the citizens of the area, subject to the limitations contained in this Agreement. The TOWN’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 TOWN’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.

2.04 **Advertising.** The TOWN 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.

2.05 **Concessions.** During TOWN-sponsored events on the Leased Premises, TOWN shall be permitted to operate a concession stand and sell concessions on the Leased Premises. The TOWN shall provide written notice of its intention to sell concessions at a particular Town-sponsored event to the principal of the school upon which the Leased Premises are located. TOWN shall ensure that the use of concession stand, and all food sales emanating from the concession stand, shall operate in conformity with the rules and regulations of the State of Florida, Department of Health, as well as any other County and municipal rules and regulations pertaining to concession and/or food sales. The TOWN shall be responsible for the removal of all refuse associated with the sale and consumption of concessions by the TOWN during any TOWN-sponsored

event on the Leased Premises. It is expressly understood by the parties that nothing in this Agreement shall be construed to permit the TOWN to construct a permanent building on the Leased Premises without the Town having first received the express written consent for such activities from SBBC's Superintendent of Schools, or his/her designee.

2.06 **Rental of Leased Premises.** The TOWN may not rent the Leased Premises for the use of third persons without obtaining the prior written consent of the principal of the school upon which the Leased Premises are located.

2.07 **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 are 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, when the Leased Premises are officially open to the Town, the Leased Premises will be under the jurisdiction of the Town. During the hours that the Leased Premises are under the control of the Town, the Town shall provide regular patrols of the Leased Premises by Town recreational personnel or Town Park Rangers. The Town shall install or cause to be installed an electric meter for lighting of the leased facilities. During the term of this lease, the Town shall fund the electronic consumption resulting from the use of the above referred lights at Nova High, as listed in Exhibit B and the SBBC shall fund the electric consumption for the lights at Western High, as listed in Exhibit B. The SBBC shall bill the Town, based on this meter on an annual basis.

2.08 **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 TOWN will clean up the Leased Premises after each TOWN use and after each TOWN sponsored event. SBBC will be responsible for cleaning of the Leased Premises after each SBBC use and after each SBBC sponsored event. The TOWN may pay SBBC the contractual hourly rate applicable for SBBC custodial service personnel to clean up the Leased Premises after TOWN use or after a TOWN sponsored event.

2.09 **Maintenance.** It shall be SBBC's responsibility to keep the Leased Premises in a clean, safe and sanitary condition. However, the TOWN 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 TOWN is responsible for repairing or replacing any recreational equipment, fixtures, improvements or grounds upon the Leased Premises that are damaged as a result of TOWN use. The regular upkeep and daily maintenance of the Leased Premises shall be SBBC's responsibility. The TOWN will assist SBBC in the cost of moving earth or resodding due to recreational usage to the extent that both parties deem same to be necessary. SBBC and the TOWN shall annually discuss any capital improvements needed upon the Leased Premises. If in the course of its use of the Leased Premises, the TOWN becomes aware of any dangerous or unsafe condition in or upon the Leased Premises, the TOWN shall immediately notify SBBC's Superintendent of Schools or his/her designee of such dangerous or unsafe condition and

cease the TOWN's use of such portions of the Leased Premises deemed to be dangerous or unsafe until such time as SBBC corrects or remedies the condition. SBBC shall have final determination as to what conditions are dangerous or unsafe. If SBBC is not notified by the TOWN of such dangerous or unsafe conditions, SBBC shall not be liable to TOWN, its employees, agents or invitees for loss, personal injury or damage.

2.10 **TOWN Improvements.** During the term of this Agreement, the TOWN shall perform certain improvements (hereinafter referred to as "TOWN Improvements") to the Leased Premises as more fully described on Exhibit B which is attached hereto and incorporated herein by reference. Furthermore, TOWN agrees that the TOWN Improvements shall be implemented at its sole expense and shall be performed in conformance with all applicable building codes. In the performance of the TOWN Improvements, TOWN shall attempt to keep any disruption or hindrance of SBBC's academic and athletic programs to a minimum.

2.11 **Location of TOWN Improvements.** It is the parties' intention that SBBC shall have absolute control over the location of any improvements or recreational equipment to be placed upon the Leased Premises. The location or position of any and all improvements or recreational equipment to be placed on the Leased Premises by the TOWN, other than as described in Exhibit A, shall first be approved in writing by SBBC's Superintendent of Schools (or his/her designee). Any improvements or recreational equipment placed on the Leased Premises by the TOWN without the prior written approval of SBBC's Superintendent of Schools (or his/her designee) shall be immediately removed or relocated by the TOWN at its sole expense within ten (10) days of written demand by the Superintendent of Schools (or his/her designee).

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

2.13 **Termination by TOWN.** The TOWN 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. Subject to SBBC's purchase option described herein, the TOWN may remove any and all TOWN Improvements from the Leased Premises upon termination of the Agreement. However, the TOWN may not remove sod, landscaping, sand or earth placed upon the Leased Premises (except as incidental to removal of other fixtures and/or TOWN Improvements) or reestablish the grade of the Leased Premises to its condition prior to the TOWN's first entry upon same. SBBC may, at its sole election, purchase the TOWN Improvements from the TOWN upon

termination by paying for same in accordance with the valuation measures described in Section 2.14 of this Agreement.

2.14 **Valuation of TOWN Improvements.** In the event that the SBBC's or TOWN's exercise of authority under Sections 2.12 or 2.13 necessitates the valuation of TOWN Improvements, such value shall be based upon straight-line depreciation (the term of depreciation to be in accordance with Exhibit B) and generally accepted accounting principles of depreciation. SBBC shall not be responsible for reimbursement to the TOWN for any TOWN-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 TOWN Improvements, same shall be appraised by three (3) appraisers. One appraiser shall be selected by SBBC, one appraiser shall be selected by the TOWN, and the third appraiser shall be selected by the two appraisers so appointed. SBBC shall pay the fee for the appraiser it appointed and the TOWN shall pay for the appraiser it appointed. SBBC and the TOWN 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 TOWN Improvements. The value of the TOWN Improvements shall then be determined by taking the average of the three appraisals, which SBBC shall pay to the TOWN in the event of termination.

2.15 **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.

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.** 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.

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 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.

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

To TOWN: Town Administrator, Town of Davie
6591 Orange Drive
Davie, Florida 33314

With a Copy to:

Name to be Provided by Town

Address

Address

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

ATTEST:

By _____
Paul D. Eichner, Esq., Chairperson

Franklin L. Till, Jr., Superintendent of
Schools

Approved as to Form:

School Board Attorney

FOR TOWN OF DAVIE

(Municipal Seal)

TOWN OF DAVIE

ATTEST:

By _____
Harry Venis, Mayor, Town of Davie

, Town Clerk

Exhibit A
Leased Premises Description

Nova High School
3600 College Avenue
Davie, FL 33314

Nova High School Athletic Fields

Western High
1200 SW 136th Ave.
Davie, FL 33325

Western High Boys Baseball/Girls Soccer Field

Exhibit B
Schedule of Improvements

Western High

| <u>Improvement</u> | <u>Initial Cost</u> | <u>Useful Life*</u> |
|---|---------------------|---------------------|
| Lighting (Baseball field and girls soccer practice field) | \$85,000 | 20 |

1. Reinstall existing light poles and install new and existing light fixtures on existing baseball field on the eastern property line of Western High School. Install electrical panel and wiring.

Nova High

| <u>Improvement</u> | <u>Initial Cost</u> | <u>Useful Life*</u> |
|--|---------------------|---------------------|
| Lighting and Electrical Service For Existing Football/ Soccer Field | \$150,000 | 20 |
| Multi-purpose Practice Area | \$80,000 | 20 |
| Grass Parking Area | \$15,000 | 20 |

1. Light existing football/soccer field on southwest corner of property. Install six concrete 100 ft. poles and electrical service.
2. Development of multi-purpose practice area on southeast property line. Improvements will include baseball/softball diamond, irrigation, field grading, sprigging and practice lighting. Install three concrete poles with service adjacent to SW 39 Street.
3. Stabilize grass parking on southwest corner of property and creating entrance on SW 39 Street.

* 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.