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City Council Document Tracking Sheet

<b>Meeting Date:</b>	4/18/2012
<b>Sponsor(s):</b>	Emanuel, Rahm (Mayor)
<b>Type:</b>	Ordinance
<b>Title:</b>	Lease agreement with Board of Education of the City of Chicago
<b>Committee(s) Assignment:</b>	Committee on Housing and Real Estate



OFFICE OF THE MAYOR  
CITY OF CHICAGO

RAHM EMANUEL  
MAYOR

April 18, 2012

TO THE HONORABLE, THE CITY COUNCIL  
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Fleet and Facility Management, I transmit herewith ordinances authorizing the execution of lease and license agreements.

Your favorable consideration of these ordinances will be appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Rahm Emanuel".

Mayor

**ORDINANCE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

**SECTION 1:** On behalf of the City of Chicago as Licensee, the Commissioner of the Department of Fleet and Facility Management is authorized to execute a License Agreement with the Board of Education of the City of Chicago governing the use of approximately 20,000 square feet of vacant land located at 13201 South Corliss Avenue for use by the Department of Family and Support Services; such License Agreement to be approved by the Commissioner of the Department of Family and Support Services and approved as to form and legality by the Corporation Counsel in substantially the following form:

**13201 South Corliss Avenue  
Department of Family and Support Services  
Lease No. 14228**

**SECTION 2:** This Ordinance shall be effective from and after the date of its passage

and approval.

**CHILD CARE SITE LICENSE AGREEMENT**  
**CHICAGO DEPARTMENT OF FAMILY AND SUPPORT SERVICES**

This SITE LICENSE AGREEMENT (“Agreement”) is effective as of the last date written below (the “Effective Date”) between the Board of Education of the City of Chicago (the “Board”) and the City of Chicago a municipal corporation and home rule unit of government (the “City”).

**RECITALS**

- A. The Board desires to license approximately 70,000 square feet of vacant land located on the southeast corner of 132<sup>nd</sup> Street and Corliss Avenue, Chicago, Illinois (13201 South Corliss Avenue - “Premises”) to City for the purpose of placing modular classroom units on the Premises to be built out for use as a child care center. Prior to the Effective Date, City operated a child care center available to children of members of the Altgeld Gardens Community (“Community Children”) through a child care facility located at 975 East 132<sup>nd</sup> Street on Chicago Housing Authority owned property (the “CHA Facility”). The CHA Facility offered child care for Community Children up to age twelve (12). The CHA Facility is to be demolished and reconstructed. Accordingly, City desires to license the Premises for the purpose of placing five (5) modular classroom units (“Modulars”) on the Premises, remodeling such Modulars as necessary to build-out a child care center and, after completion of the remodeling and receipt of any City or other required licenses or approvals to use such Modulars for the purpose of offering child care (the “Child Care Facility”). All child care services at the Child Care Facility shall be provided at no cost to the Board.
- B. City, through City’s Department of Family and Support Services (“DFSS”), has represented that it has the expertise, knowledge, skill, experience and other resources necessary to remodel the Modulars, provide child care and to operate the Child Care Facility at the Premises providing services which shall include, but not be limited to, age appropriate educational, social and child development services (the “Services”).
- C. The Board desires that City obtain, place and remodel the Modulars, operate the Child Care Facility on-site at the Premises and provide such Services, and City agrees to do so as more particularly described herein.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, the mutual promises, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals**. The matters recited above are hereby incorporated into and made a part of this Agreement as though set forth in full.
2. **Grant of License**. The Board hereby grants a license to City, at no charge, to use the Premises.
3. **Modulars and Remodeling**. City, through DFSS, shall, at its sole cost and expense: (i) purchase the Modulars; (ii) locate the Modulars on the Premises; and (iii) perform and/or cause to be performed any and all construction work required to complete the remodeling for Child Care Facility (collectively, the “Construction”).
4. **Term of Agreement**. City shall have such use and occupancy of the Premises commencing as of the Effective Date and ending September 30, 2013 (the “Term”), unless sooner terminated in accordance with the terms of this Agreement.

5. **Mutual Right to Terminate.** Upon six (6) months prior written notice , either party may terminate this Agreement for convenience or to accommodate school programs.
6. **Time of Construction and Hours.** The Construction shall occur during such hours as are agreed to between City and either the Board's representative or the principal of the school in closest proximity to the Premises, between the date of this Agreement and October 1, 2012 and at on no other dates and at no other times without the written permission of the Board's representative.
7. **Cooperation.** The parties acknowledge that cooperation is needed to complete the Construction. The parties hereby agree to cooperate to coordinate Construction. The parties shall each designate a representative to serve as a primary point of contact responsible for day-to-day decisions concerning the Construction. The parties agree to meet on an as-needed basis to address Construction issues. The times and places of such meetings shall be determined by subsequent mutual agreement.
8. **Grant of Right of Entry.** Subject to the terms and conditions set forth in this Agreement, the Board hereby grants to City and/or its authorized contractors, subcontractors, agents or employees, a right of entry to the Premises for the purpose of undertaking the Construction City agrees to carefully inspect the Premises or cause its contractors, agents and employees to carefully inspect the Premises, prior to the commencement of the placement and remodeling to ensure that the Construction will in no way damage surrounding property, structures, utility lines or any subsurface lines or cables. The Construction must be performed in a good and workmanlike manner with due care and diligence, and in accordance with all applicable laws and ordinances. City agrees to limit its activities to those reasonably necessary to perform the Construction. The Board reserves the right to have its authorized representative(s) be present at all times during the Construction. City shall not conduct any activity on the Premises which may in any manner be injurious to the health, safety and welfare of the public, diminishes the value of the Premises, or violates any environmental law. City further agrees to cause the Construction to be completed in accordance with the Terms of Construction, a copy of which is attached hereto and made part hereof as Exhibit A.
9. **Condition of Premises.** No agreements or representations have been made to the City regarding the condition of the Premises or its suitability for the Construction. By executing this Agreement, City conclusively waives all claims relating to the condition of the Premises and accepts the Premises as being free from defects and in good, clean and sanitary order, condition and repair. The parties acknowledge that no significant build-out and/or renovations have been made to the Premises by the Board other than those build-out and/or renovations represented in the "as built" plans provided by the Board to City prior to Construction. Environmental reports have been or will be provided by the Board to City prior to the commencement of Construction.
10. **Return of Premises.** Upon termination of this Agreement, City will immediately vacate and surrender the Premises in the condition required by this Agreement, ordinary wear and tear excepted.
11. **Cost of Construction.** All Construction costs and expenses shall be borne by City.
12. **Permits and Authorizations.** It is understood and agreed between the parties that City will secure, in its own name and at its own cost, all necessary permits and authorizations needed in order to undertake the Construction.
13. **Encumbrance.** City shall keep the Premises free from any and all liens and encumbrances arising out of any Construction performed or for material furnished or obligations incurred by or on behalf of City.
14. **Limitations on Use.**
  - A. City shall have the right to utilize the Premises as a Child Care Facility only on Mondays through Fridays between 8:00 a.m. to 6:00 p.m.

- B. City acknowledges that the primary function of the areas around the Premises, owned by or on behalf of the Board, is in connection with the operation of a school and that City license hereunder is and shall at all times remain throughout the Term subordinate to and ancillary to school operations and, in accordance therewith, City hereby agrees that it shall conduct operations in the Premises in a manner that will not interfere with, interrupt, or disturb or disrupt in any manner the operation of the school.

**15. Responsibilities of City.**

City shall:

- A. Ensure the Child Care Facility is certified and maintains certification as required by state and local laws and regulations and that all personnel rendering Services at the Child Care Facility are duly licensed and certified to render such Services, and provide proof of such certifications and licenses to the Board;
- B. Establish and be solely responsible for the overall operation of the Child Care Facility, and bear all operational costs associated therewith;
- C. Be solely responsible and liable for all Services rendered at the Child Care Facility;
- D. Provide all custodial, maintenance and related services for the Child Care Facility in accordance with Board standards;
- E. Be solely responsible for utility costs and any and all custodial, engineering, cleaning, maintenance, repair, inspection, and other reasonable building concerns and other costs as necessary to operate the Child Care Facility;
- F. Provide all decorations, equipment and furnishings for the Child Care Facility including, but not limited to, telephones, computers and related infrastructure and services;
- G. Secure the appropriate written consent form(s), if required by law, prior to providing any Services to a child in the Child Care Facility;
- H. Maintain adequate insurance for the operation of the Child Care Facility and the rendering of the Services;
- I. Ensure that the Child Care Facility is accessible to school students, personnel and Board employees as appropriate;
- J. Subject to all applicable laws which may restrict such access, ensure that the Child Care Facility is accessible to school personnel and Board employees; and
- L. Under the provisions of the Illinois School Code, 105 ILCS 5/10-21.9, DFSS shall conduct a fingerprint-based criminal background investigation and a Statewide Sex Offender Database check of all employees who may have direct, daily contact with the students in the surrounding school(s). City shall not assign anyone to work directly to with students of the school convicted of the offenses listed in the Illinois School Code or those for whom a fingerprint-based criminal background investigation or Statewide Sex Offender Database check has not been initiated. Upon receipt of the record of conviction, City shall immediately remove any person so assigned. From time to time, the Board may require City

to demonstrate its compliance with the provisions of this Section. Also, City shall comply with the requirements of the Illinois Drug-Free Workplace Act, 30 ILCS 580/3.

**16. Responsibilities of the Board.**

The Board shall:

- A. Provide the Premises with no license fee being due from City;
- B. Permit City to place an exterior sign announcing the presence of the Child Care Facility in a location and with such form and content as agreed upon by City and the Board.

17. **Costs and Expenses.** Any and all other costs, expenses or fees arising out of or relating to the granting of this license or the operation by City of the Child Care Facility on the Premises shall be borne by the City, including, without limitation, permit or approval fees and insurance premiums. To the extent the Board is obligated to pay any of the preceding costs, expenses or fees, DFSS shall reimburse the Board within five (5) days after receipt of written notice from the Board regarding the same.

18. **Compliance with Laws.** City shall, at all times during the Term, comply (and shall cause its employees and agents, to comply) with all laws, codes, statutes, ordinances and regulations applicable to this Agreement, the rendering of the Services, and City's operation of the Child Care Facility.

19. **Damage to Child Care Facility.** Except for ordinary wear and tear, City shall repair any damage to the Premises caused by City, or by its employees or agents. Further, City shall maintain and replace, as needed, all equipment and other personal property used in connection with the Child Care Facility. Except for ordinary wear and tear and matters covered by City's insurance, the Board shall repair any damage caused to the Child Care Facility and/or the Premises caused by the Board or its employees or agents.

20. **Alterations and Modifications.** After completion of the Construction, City may make minor decorative and aesthetic alterations to the Premises. Notwithstanding the foregoing, City shall not alter, modify, improve or otherwise change the Premises except as otherwise permitted or required under this Agreement without the prior written approval of the Board. Any such alterations or modifications shall be at City's sole cost and expense, without right of reimbursement from the Board, unless the Board agrees, in writing, to such reimbursement.

21. **Waiver of Claims.** To the fullest extent permitted by law, City hereby releases the Board and its board members, officers, directors, employees, agents, affiliates, and representatives, and all other parties claiming by, through or under any of the preceding from, and waives all claims for damages to person or property sustained by City regardless of the cause thereof.

22. **Construction and/or Renovations to the Premises.** The parties acknowledge that all Construction on the Premises necessary to begin operating the Child Care Facility have been, or will be, made by City, in accordance with plans and specifications approved by the Board.

23. **Return of Property.** Upon the termination of this Agreement, City will immediately vacate and surrender the Premises in the condition required by this Agreement, ordinary wear and tear excepted. DFSS shall remove the Modular Units from the Premises. All fixtures or improvements remaining in place following vacation of the Premises by City shall be and become the property of the Board. In addition, all equipment used in the operation of the Premises shall become the property of the Board



and shall be deemed conveyed by bill of sale to the Board from City upon the termination of this Agreement.

24. **Site Inspections.** At least once annually, or at the reasonable request of either party, representatives from the Board's Department of Operations and Department of Specialized Services and a DFSS representative shall perform a physical inspection of the Child Care Facility to assure that City is providing adequate and necessary custodial, maintenance and utility services, and shall, if the parties determine that the same is necessary, negotiate in good faith to obtain the required services and meet the appropriate standards. The Department of Specialized Services representatives will assess the City's utilization of the Premises as well as school cooperation in Child Care Facility activities.
25. **Dispute Resolution.** If there is a dispute between City and the Board, such matter shall be referred to the Board's Chief Specialized Education and Support Officer for the area (or equivalent) in which the Child Care Facility is located, who shall resolve the issue. If such resolution is not satisfactory to the City or the Board, the matter shall be referred to the Board's Chief Area Officer (or equivalent) for the area in which the Child Care Facility is located for final resolution, which resolution shall be determined within ten (10) school days of such referral and which decision shall be binding on City and the Board.
26. **Insurance.** City shall provide and maintain at all times, at City's own expense, the insurance coverages and requirements specified below. All such insurance shall be in form and substance satisfactory to the Board, and shall be issued by insurers authorized to do business in the State of Illinois and rated "A-VII" or better by A.M. Best & Company. Upon execution of this Agreement, certificates of insurance evidencing such coverages shall be provided to the Board, and such certificates shall state that the insurance coverage thereby provided may not be amended, canceled or not renewed without at least thirty (30) days prior written notice to the Board. The Commercial Liability Insurance policy required hereunder shall name as additional insureds, by specific endorsement, the Board and any other parties which may be designated in writing by the Board. Each such policy shall also contain, whether by endorsement or otherwise, a waiver of subrogation clause in favor of the Board and any other additional insureds, the effect of which shall be to waive the insurers' rights of recovery against the Board or such other additional insureds.
- A. **Workers' Compensation and Employers' Liability Insurance.** Workers Compensation and Employers Liability Insurance affording workers' compensation benefits for all employees as required by law, and Employers Liability Insurance with limits of not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) per occurrence for accident and disease. The workers' compensation policy shall contain a waiver of subrogation clause.
- B. **Commercial General Liability Insurance.** Commercial General Liability Insurance or equivalent with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate for bodily injury, personal injury and property damage liability. Coverage shall include, but not be limited to: all premises and operations, contractual liability, independent contractors, products/completed operations (for a minimum of two (2) years following completion), defense and contractual liability for this insured Agreement (with NO limitation endorsements).
- C. **Automobile Liability Insurance.** Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with this Agreement, with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
- D. **Additional Insured.** DFSS shall have its General and Automobile Liability Insurance

policies endorsed to provide that the Board of Education of the City of Chicago, a body politic and corporate, and its members, employees, officers, officials, agents, and any other entity as may be designated by the Board are named as additional insureds on a primary basis without recourse or right of contribution from the Board.

- E. **Insurance Certificate.** The insurance company, or its representative, shall submit an insurance certificate to the Board evidencing all coverage as required hereunder and indicating the Additional Insured status as required above. The Certificate must provide thirty (30) days prior written notice of material change, cancellation, or non-renewal be given to:

Risk Manager  
Board of Education of the City of Chicago  
125 S. Clark Street, 7<sup>th</sup> Floor  
Chicago, Illinois 60603

- F. **General.** Any failure of the Board to demand or receive proof of insurance coverage shall not constitute a waiver of City's obligation to obtain the required insurance. The receipt of any certificate does not constitute an agreement by the Board that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements.

Any deductibles or self-insured retentions on referenced insurance coverage must be borne by City. Any insurance or self-insurance programs maintained by the Board do not contribute with insurance provided by City.

The coverages and limits furnished by City in no way limit City's liabilities and responsibilities specified in this Agreement or by law. The required insurance is not limited by any limitations expressed in the indemnification language in this Agreement, if any or any limitation placed on any indemnity in this Agreement that might be given as a matter of law.

City agrees that insurers waive their rights of subrogation against the Board.

Upon Board request, City shall promptly provide a certified copy of any applicable policy of insurance. The Board reserves the right to modify, delete, alter or change insurance requirements at any time.

- G. **City's Self-Insurance.** To the extent permitted by law, City may self-insure for the insurance requirements specified above. City will provide the Board with a letter executed by an authorized official indicating that City is self-insured for applicable coverage required in this Section. This letter shall be tendered to Board when this Agreement is executed.

## 27. **Indemnification**

- A. To the fullest extent permitted by law, City shall indemnify, defend and hold harmless the Board and its board members, officers, directors, employees, agents, affiliates, and representatives, and all other parties claiming by, through or under any of the preceding, from and against any and all claims, demands, suits, liabilities, injuries (personal or bodily), property damage, causes of action, losses, expenses, damages or penalties, including, without limitation, court costs and attorneys' fees, arising or resulting from, or occasioned by or in connection with: (i) the possession, occupancy or use of the Child Care Facility by City, or employees, agents, affiliates or other representatives; (ii) any act or omission to act (whether negligent, willful, wrongful or otherwise) by City, or its employees, agents, affiliates or other representatives; (iii) a violation of any laws, statutes, codes, ordinances or regulations by City, or its employees, agents, affiliates or other representatives; and/or (iv) any breach,

default, violation or non-performance by City of any term, covenant, condition, duty or obligation provided in this Agreement.

B. City expressly understands and agrees that the indemnity obligations set forth herein are separate from and not limited by City 's obligation to obtain insurance pursuant to this Agreement.

C. City agrees that no Board member, employee, agent, officer or official shall be personally charged by City with any liability or expense or be held personally liable to Child Care Provider under this Agreement.

D. The indemnities set forth herein shall survive the expiration or termination of this Agreement.

28. **Disclaimer by the Board.** The parties hereto acknowledge and agree that it is their intent that the Board incur no liability as a result of operation of the Child Care Facility or any of the Services provided therein. It is further acknowledged and agreed that nothing in this Agreement shall be construed as imposing any responsibility on the Board other than as provided in Section 7 herein or imposing any liability whatsoever on the Board for the operation of the Child Care Facility or any of the Services provided therein pursuant to this Agreement.
29. **Default.** If City fails to observe or perform any covenant, agreement, obligation, duty or provision of this Agreement, the Board may, after thirty (30) days' prior written notice to the City (except in the case of emergencies in which event the default shall be cured immediately) and without prejudice to any other right or remedy the Board party may have at law and/or in equity, terminate this Agreement.
30. **Assignment and Successors and Assigns.** The interests of City under this Agreement are personal to City and may not be assigned or transferred to any other individual or entity without the Board's prior written consent. The Board will have the right at any time to transfer or assign its interest under this Agreement. This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Board. While this Agreement will likewise be binding upon the successors and permitted assigns of City, it will not inure to the benefit of City's unpermitted assigns.
31. **Subcontracting.** City may not subcontract the Services to any third party without the prior written consent of the Board. In the event the Board consents to a subcontract, all Services, obligations and responsibilities shall be maintained by City to ensure compliance with the terms and conditions of this Agreement and the Board shall look only to City for compliance with this Agreement.
32. **Notices.** All notices required hereunder will be in writing and will be deemed properly served if delivered in person or if sent by registered mail or certified mail, with postage prepaid and return receipt requested, to the addresses set forth below, or to such other addresses as either party may subsequently designate.

The Board: Board of Education of the City of Chicago  
 125 S. Clark Street  
 Department of Facilities and Operations  
 Chicago, IL 60603  
 Attention: COO  
 Phone: (773) 553-2905

with a copy to: Board of Education of the City of Chicago

125 S. Clark Street, Suite 700  
Chicago, IL 60603  
Attention: General Counsel

The City: City of Chicago  
Department of Family and Support Services  
1615 West Chicago Avenue  
Chicago, Illinois 60622  
Attn: Commissioner's Office

with a copy to: City of Chicago  
Department of Fleet and Facility Management  
Office of Real Estate Management  
30 North LaSalle Street, Suite 300  
Chicago, Illinois 60602

All notices required hereunder will be deemed received on the date of delivery, or attempted delivery, if delivered in person, or if mailed, the date which is two (2) days after the date such notice is deposited in the U.S. mail.

33. **105 ILCS 5/34 Provisions.**

- A. This Agreement is not legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3 which restricts the employment of, or the letting of contracts to, former Board Members during the one-year period following expiration or other termination of their terms of office.
- B. Each party to this Agreement hereby acknowledges that, in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Board has the authority to conduct certain investigations and that the Inspector General shall have access to all information and personnel necessary to conduct those investigations.

34. **Board of Education Indebtedness Policy.** City shall comply with the Board's Indebtedness Policy (96-0626-PO3), adopted July 26, 1996, as may be amended from time to time. Such policy is hereby incorporated into and made part of this Agreement as if fully set forth herein.

35. **Ethics.** City shall comply with the Board's Ethics Policy (11-0525-PO2), adopted May 25, 2011, as may be amended from time to time. Such policy is hereby incorporated into and made part of this Agreement as if fully set forth herein.

36. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois.

37. **Entire Agreement.** This Agreement represents the entire agreement between the Board and the City and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may be amended or modified only by a written instrument executed by both the Board and City.

38. **Severability.** In case any provision in this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected.

39. **Contingent Liability.** Any expenditure by the Board beyond its current fiscal year is deemed to be

a contingent liability, subject to appropriation in the subsequent fiscal year budget(s).

40. **No Third Party Beneficiary.** This Agreement is not intended and shall not be construed so as to grant, provide or confer any benefits, rights, privileges, claims, causes of action or remedies to any person or entity as a third party beneficiary under any statutes, laws, codes, ordinances or otherwise.

41. **Amendments.** From time to time, the parties hereto may amend this Agreement with respect to any provisions reasonably related to City's use of the Premises and/or the Board's administration of said Agreement. Provided, however, that such amendment(s) shall not serve to extend the term hereof nor serve to otherwise materially alter the essential provisions contained herein. Such amendment(s) shall be in writing, shall establish the factual background necessitating such alteration, shall set forth the terms and conditions of such modification, and shall be duly executed by both parties. Such amendment(s) shall only take effect upon execution by both parties. and shall become a part of this Agreement. All other provisions of this Agreement shall otherwise remain in full force and effect.

42. **Holding Over.** Any holding over by City shall be construed to be a tenancy from month to month only beginning on October 1, 2013. During such holding over, all other provisions of this Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**BOARD OF EDUCATION OF THE CITY OF CHICAGO**                      **INITIATIVE; DIVISION**

By: \_\_\_\_\_  
Patricia Taylor  
Chief Operating Officer

Approved as to legal form:

\_\_\_\_\_  
Patrick J. Rocks, General Counsel

Date: \_\_\_\_\_

**CITY OF CHICAGO**, a municipal corporation and home rule unit of government

**DEPARTMENT OF FAMILY AND SUPPORT SERVICES**

By: \_\_\_\_\_  
Commissioner

Date: \_\_\_\_\_

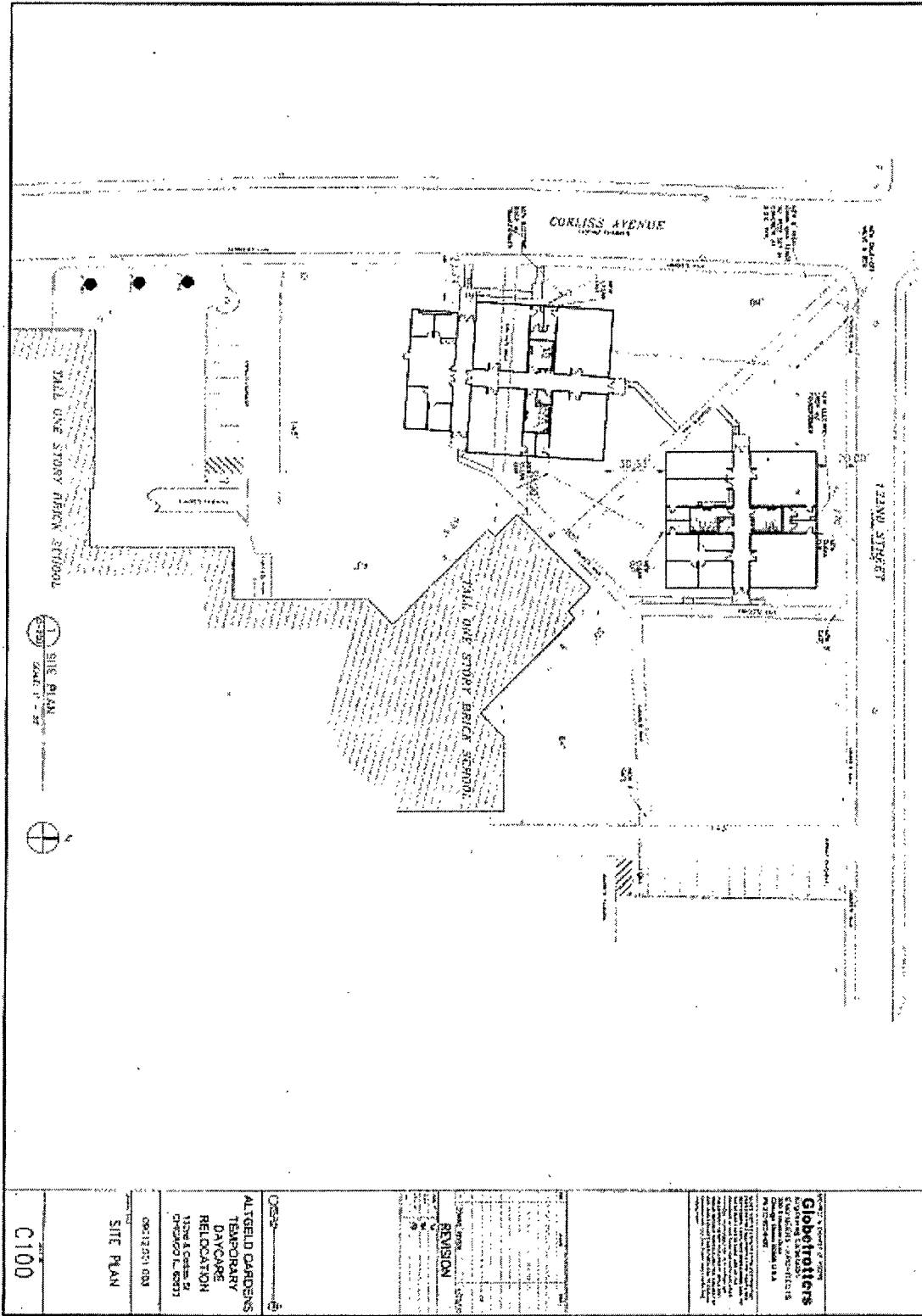
**DEPARTMENT OF FLEET AND FACILITY MANAGEMENT**

By: \_\_\_\_\_  
Commissioner

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:  
BY: DEPARTMENT OF LAW

By: \_\_\_\_\_  
Deputy Corporation Counsel  
Real Estate Division



**EXHIBIT A**