



STAFF REPORT

AGENDA TITLE:

Request by the Lycee Français School to extend their hours of exclusive use of the MLK Park Playground.

RECOMMENDED ACTION:

Deny the Request by Lycee Français School to extend their hours of Exclusive Use of the MLK Park Playground

SUMMARY

In May 2012 the City and the Lycee Français La Perouse ("Lycee") entered into a Lease of Premises to provide for the lease of a portion of the MLK site for use as a private Pre-K and Elementary School. In July 2013 the Lycee and the City of Sausalito entered in to the Fourth Amendment to the Lease of Premises in order to provide for Lycee's construction and use of a 12,000 square foot playground on the Property. Regarding the exclusive use of the playground, Section 4C of the 4th Amendment states:

Tenant shall have the right to exclusive use of the Playground Space and the Playground Improvements during regular school hours, currently 8:00 am- 3:30 pm, Monday through Friday, September- June, excluding school holidays. Commencing July 1, 2014 and annually thereafter, not later than July 1st of every year during the Term, Tenant shall submit proposed hours of operation for the Playground Space and Playground Improvements by Tenant for the upcoming school year for consideration by the Landlord's Parks and Recreation Commission at a noticed public meeting. In the event that the hours proposed by Tenant vary significantly from the use by Tenant for the prior school year the Parks and Recreation Commission shall have the right to deny such change in use. At all other times and when school is not in session the Playground Space and the Playground Equipment shall be available for use by the general public.

On April 2, 2015, the City received a request from the Lycee to extend their hours of exclusive use of the playground from 3:30 to 5:30 p.m. to accommodate the implementation of the LYCEE's Playworks program. (Attachment B).

This would cut an additional 2 hours from the public's use of the playground and restrict use to a few short hours beginning at 5:30 p.m. on weekdays.

BACKGROUND

An original Lease of Premises was entered into by and between the City of Sausalito and The Lycee Français La Perouse ("Lycee") on May 1, 2012. In July 2012, the Lease was amended to add additional space that became available in Building 5. In June 2013 the Council approved an amendment to the Lease to add additional space that became available in Building 3.

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On July 23, 2013, the lease was amended to permit the School to construct and maintain a 12,000 square foot outdoor playground at MLK Park, located across from Building 5 and adjacent to the basketball courts (Attachment A).

The Lycee agreed to pay the City \$1 a year for the playground area and pay for all construction and maintenance costs, and that the playground would be open to the general public when school was not in session. At the execution of the lease, the Lycee confirmed that regular school hours are from 8am-3:30pm Monday through Friday, September through June excluding holidays.

Construction of the new playground began almost immediately with the hopes that it would be completed and ready to use during the 2013/2014 school year. Construction continued and despite an extra flurry of activity in the spring, the playground was not ready for opening at the end of the school year due to a few minor modifications required to make the playground accessible .

Construction then stopped for summer and did not resume until shortly before the commencement of the 2014/2015 school year. The work was completed and the playground was opened on the first day of school. It is not clear to staff as to why construction did not continue at the beginning of the summer so the playground could be open to the public during the summer rather than waiting until the beginning of the school year.

On the first day of school when the playground was finally opened many parents who are not part of the school brought their children to the park after school to enjoy the new playground. When they got there they were told by Lycee staff and parents that the playground did not open to the public until 5 when the school was done with their after school program.

Staff received many phone calls from irate residents who had been told the playground would open to the public at 3:30, after school, as was stated in the Lease. Staff immediately went on site and informed the Lycee parents and staff that the Lease that was signed by the Lycee representatives clearly stated that the playground was to be open after school at 3:30. Lycee staff complied and the playground has been open to the public after school at 3:30 since that time.

On April 2, 2015, the City received a request from the Lycee to extend their hours of exclusive use of the playground from 3:30 to 5:30 (Attachment B). The request stated that:

“Shortly after the playground's opening, it became apparent to the LYCEE's administration that during the hours of 3:30 through 5:30p.m., Monday through Friday, a sharp increase in the population of LYCEE children, as well as children from the neighboring community at the PLAYGROUND made it tremendously difficult for the LYCEE administration to safely monitor and supervise LYCEE children. As such, the LYCEE cannot effectively run part of its academic curriculum at the PLAYGROUND, the Playworks curriculum, instituted as a result of the standards of best practices set forth by the Agence pour l'Enseignement du Fran~ais a l'Etranger (AEFE)¹ for the purpose of encouraging the children's social and emotional development by participation in different types of play-Motor Physical, Social, Constructive, Fantasy, and Games w/ Rules. Over 70% of the 250 LYCEE children participate in Playworks curriculum during the hours of 3:30 through 5:30p.m. and loss of the PLAYGROUND considerably hampers the LYCEE's ability to carry out a critical mission of furthering the children's social and emotional development.”

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Currently the Lycee uses the fenced in area of the parking lot in front of Building's 3-5 for their after school program. The Lycee states that the area is *"is insufficient in addressing the underlying implementation of the LYCEE's Playworks program"* and therefore requests the extension of hours for Lycee exclusive use.

ISSUES

Since the Playground open in September 2014 it has become a very popular place for residents and visitors to take their children. It is the newest park in Sausalito and it has some of the latest design features, including accessible features for children and parents to enjoy.

Limiting access to the public to after 5:30 would greatly limit the hours of public availability especially during the darker winter months.

As set forth above, under the Lease the Lycee has exclusive use of the playground during "Regular School Hours" - which at the time the 4th Amendment was approved was from 8:00 am - 3:30 pm. The reason the term "Regular School Hours" was used in the Lease instead of just indicating that the Lycee had exclusive use from 8:00 am to 3:30 pm was to provide some limited flexibility in the event that the Lycee made minor modifications to the start and end times for the regular school day. The Lycee's request cites their Playworks curriculum in which 70% or 175 of their 250 attendees participate in. Lycee's own website (Attachment C) and brochure calls the activities after 3:30 "Extended Day activities" and "Extra-curricular". The Playworks program, is an afterschool program which is held after regular school hours, it does not fall under the terms for the Lycee's exclusive use in the lease agreement. In accordance with the terms of the Lease the Lycee is required to submit its proposed hours of use of the playground to the Parks and Recreation Commission annually and if the hours "vary significantly" the Commission can deny the request.

In addition, staff also researched the Playwork's program and in the introductory video a Playworks staff member clearly states "You don't need to spend \$100,000 on a beautiful play structure. Give us your blacktop that's cracked and not painted and we'll put down some chalk lines. We'll teach your kids to play in their space with what it is". Given that information, the Lycee can continue to run their Extended Day activities/Extra-curricular activities on the fenced in blacktop in front of their leased buildings.

FISCAL IMPACT

None

STAFF RECOMMENDATION

The playground at MLK is very popular with residents. The Lycee Français programs are not part of the regular school day, and a playground structure is not needed for the Playworks program, Staff recommends that the Parks and Recreation Commission deny the request by Lycee Français School to extend their hours of Exclusive Use of the MLK Park Playground.

ATTACHMENTS

- A –Amendment to Lease
- B - Request for Extended Hours

PREPARED and SUBMITTED BY:

Mike Langford
Parks and Recreation Director

REVIEWED BY:

Mary Wagner
City Attorney

FOURTH AMENDMENT TO LEASE OF PREMISES

THIS FOURTH AMENDMENT TO LEASE OF PREMISES (the "Fourth Amendment"), is entered into by and between the **CITY OF SAUSALITO**, a municipal corporation (the "Landlord"), and **LYCEE FRANCAIS LA PEROUSE**, a California nonprofit public benefit corporation (the "Tenant").

RECITALS

The following Recitals are a substantive part of this Agreement:

A. Landlord and Tenant entered into the Lease of Premises dated effective as of May 1, 2012 which was subsequently amended by the First Amendment to Lease of Premises dated effective as of July 6, 2012 and the Second Amendment to Lease dated October 15, 2012 (the "Second Amendment"). The City Council approved the Third Amendment to the Lease of Premises on June 18, 2013, however, the parties are still negotiating the Third Amendment. The Lease of Premises as amended shall be referred to collectively herein as the "Lycee Lease". Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Lycee Lease.

B. The Lycee Lease provides for Landlord's lease to Tenant of a portion of the real property located at 100 Ebbtide, City of Sausalito, County of Marin, State of California for use as a private elementary school.

C. The Tenant desires to lease additional area at the MLK Park for construction and use of a playground.

D. Landlord and Tenant desire to enter into this Fourth Amendment in order to provide for Tenant's lease of space at MLK Park for the construction and use of a playground under the terms and conditions set forth herein.

AGREEMENT

In consideration of the mutual covenants and conditions contained in this Fourth Amendment, Landlord and Tenant hereby agree as follows:

Section 1. Effective Date. This Fourth Amendment is expressly contingent upon Tenant receiving all required approvals, including without limitation the approval of a Design Review Permit by the City of Sausalito for the Playground Improvements (as defined in Section 3a below) and the "Effective Date" of this Fourth Amendment shall be the date that Tenant receives such approvals and any applicable appeal periods have run or the appeal has been heard and the approvals confirmed.

Section 2. Premises. Article 1 of the Lease is hereby amended to provide that commencing upon the Effective Date of this Fourth Amendment, in addition to the Existing Space, Landlord leases to

Tenant and Tenant leases from Landlord approximately Twelve Thousand (12,000) square feet at MLK Park located across from Building 5 and adjacent to the basketball courts as depicted on the map attached hereto as Exhibit No. 1 and incorporated herein by reference (the "Playground Space"). As utilized in the Lycee Lease the term "Premises" shall include the Playground Space.

Section 3. Base Rent. In addition to the rental amounts being paid by Tenant for the use of the Existing Space and in consideration of the improvements to be made by Tenant to the Playground Space as set forth in Section 3 below, Section 3.1 of the Lease is amended to provide that commencing on the Effective Date Tenant agrees to pay Landlord One Dollar and 00/100 (\$1.00) annually for the Playground Space.

Section 4. Playground Improvements.

a. Construction/Installation. Commencing upon the Effective Date, Tenant shall have the right to construct and install at its sole cost and expense on the Playground Space an approximately Twelve Thousand (12,000) square foot playground designed for use by children in grades kindergarten – 5 as depicted on Exhibit No. 2 attached hereto and incorporated herein by reference (the "Playground Improvements"). The Playground Improvements may be constructed in two phases. The first Phase will complete all the site work, improvements necessary for accessibility, temporary surface and minimal playground equipment. The second phase will include permanent surfacing and installation of the remainder of the playground equipment. The Playground Improvements shall comply with all applicable rules, regulations and laws including without limitation the Americans with Disabilities Act and the California Buildings Standards Code -California Code of Regulations, Title 24.

b. Maintenance, Repair and Inspection. Tenant shall be solely responsible for the maintenance and repair of the Playground Improvements and the Playground Space. In addition Tenant shall cause the Playground Improvements to be inspected annually and shall provide Landlord a certified copy of the inspection report.

c. Use. Tenant shall have the right to exclusive use of the Playground Space and the Playground Improvements during regular school hours, currently 8:00 am – 3:30 pm, Monday through Friday, September – June, excluding school holidays. Commencing July 1, 2014 and annually thereafter, not later than July 1st of every year during the Term, Tenant shall submit proposed hours of operation for the Playground Space and Playground Improvements by Tenant for the upcoming school year for consideration by the Landlord's Parks and Recreation Commission at a noticed public meeting. In the event that the hours proposed by Tenant vary significantly from the use by Tenant for the prior school year the Parks and Recreation Commission shall have the right to deny such change in use. At all other times and when school is not in session the Playground Space and the Playground Equipment shall be available for use by the general public.

d. Lease Termination. As set forth in Section 8.4e of the Lease, upon termination of the Lease the Playground Improvements shall become the property of the Landlord. The Playground Improvements shall be delivered to Landlord in good condition, reasonable wear and tear excepted. Tenant shall provide Landlord with proof reasonably acceptable to Landlord that the Playground Improvements were inspected by an independent, licensed inspector not more than thirty (30) days prior

to the end of the Term and that the Playground Improvements passed the inspection based upon then applicable regulations.

Section 4. Insurance. Prior to the Effective Date Tenant shall deliver to Landlord certificates reasonably acceptable to the Landlord's City Manager or his designee evidencing that Tenant has obtained insurance meeting the requirements of Article 9 of the Lease for the Playground Space and Playground Improvements provided, however, that the general liability insurance limit set forth in Section 9.2a shall not be less than Eleven Million Dollars and 00/100 (\$11,000,000.00). Such insurance shall be primary and shall be in effect during all periods, including periods of public use.

Section 5. Effect on Lease. Except as expressly set forth herein, the terms and conditions of the Lycee Lease shall remain in full force and effect. In the event of any inconsistency between the Lycee Lease and this Fourth Amendment, the terms of this Fourth Amendment shall control.

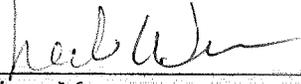
Section 6. Entire Agreement; Conflicts. This Fourth Amendment and the Lycee Lease contain the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified herein, no prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Fourth Amendment and the Lycee Lease shall not be modified or altered except in writing signed by both parties.

Section 7. Execution. This Fourth Amendment may be executed in duplicate original counterparts each of which shall constitute one and the same instrument.

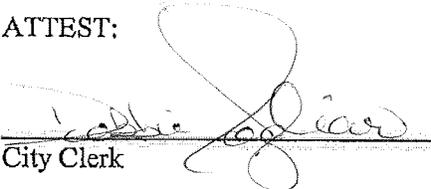
LANDLORD:

CITY OF SAUSALITO, a municipal corporation

Dated: 2-20-14, 2013

By: 
Herb Weiner, Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

TENANT:

TENANT:

LYCEE FRANCAIS LA PEROUSE, a California
nonprofit public benefit corporation

Dated: _____, 2013

By: _____

Printed name: Charles Picasso

APPROVED AS TO FORM:


Raymond Buddie, Esq.

Exhibit No. 1
Map of Playground Area

Exhibit No. 1

Map of Playground Area



Exhibit No. 2
Playground Improvements



**LYCÉE FRANÇAIS
DE SAN FRANCISCO**

March 27, 2015

City of Sausalito
Mark Langford
Park and Recreation Director
420 Litho Street
Sausalito, CA 94965

RE: PROPOSED AMENDMENT TO THE LYCEE FRANCAIS LEASE OF PREMISES

Dear Mr. Langford:

Please accept this letter as the Lycée Français' (LYCEE) formal request to modify the playground hours at the Martin Luther King Playground (PLAYGROUND). As a point of reference for the proposed amendment, the LYCEE funded and constructed the 12,000 square foot PLAYGROUND during the summer of 2014, in time for the community's mutual enjoyment and use beginning with commencement of the LYCEE school year on September 3, 2014.

Shortly after the playground's opening, it became apparent to the LYCEE's administration that during the hours of 3:30 through 5:30 p.m., Monday through Friday, a sharp increase in the population of LYCEE children, as well as children from the neighboring community at the PLAYGROUND made it tremendously difficult for the LYCEE administration to safely monitor and supervise LYCEE children. As such, the LYCEE cannot effectively run part of its academic curriculum at the PLAYGROUND, the Playworks curriculum, instituted as a result of the standards of best practices set forth by the Agence pour l'Enseignement du Français à l'Étranger (AEFE)¹ for the purpose of encouraging the children's social and emotional development by participation in different types of play-Motor Physical, Social, Constructive, Fantasy, and Games w/ Rules. Over 70% of the 250 LYCEE children participate in Playworks curriculum during the hours of 3:30 through 5:30 p.m. and loss of the PLAYGROUND considerably hampers the LYCEE's ability to carry out a critical mission of furthering the children's social and emotional development.

In the interim, the LYCEE administration relocated the Playworks activities to the fenced-in parking area, adjacent to the PLAYGROUND, as a temporary cure for the safety issues presented by a spike in the PLAYGROUND's population. However, this temporary cure is insufficient in addressing the underlying implementation of the LYCEE's Playworks program. Moreover, as a further consequence to the overpopulation of the PLAYGROUND during the specified hours, the LYCEE administration routinely must take preventative measures and prohibit access by the LYCEE children to the PLAYGROUND so as to avoid inadequate levels of supervision.

¹ The LYCEE is accredited by the French Ministry of Education via the AEFE.



Parents of the LYCEE community entrust the care and supervision of their children to the LYCEE administration and their children's safety is our utmost concern. Therefore it is incumbent upon the LYCEE to propose an amendment to the LYCEE's lease of premises, specifically, Section 4. governing playground improvements subsection (c): "Tenant shall have the right to exclusive use of the Playground Space and the Playground Improvements during regular school hours, currently 8:00 am—3:30 pm, Monday through Friday...," to reflect the LYCEE's Playworks program and need for extended hours of operation to ensure the safety of the LYCEE children so that the LYCEE shall have exclusive use from 8:00 am –5:30 pm, Monday through Friday.

The LYCEE hopes that the Parks and Recreation Department will honor the spirit of the generous gift bestowed by the LYCEE to the community of Sausalito and extend the LYCEE's hours of exclusive use as it will preserve the safety and happiness of the LYCEE children.

If you have further questions or concerns, please do not hesitate to contact me,. Thank you for your time and consideration.

Sincerely,

Elizabeth Chaponot, Ph.D.
Chief Administrative Officer
Lycée Français de San Francisco
1201 Ortega Street
San Francisco, CA 94122
Cell: 415 830-7349

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LANDLORD:

CITY OF SAUSALITO, a municipal corporation

Dated: 2-20-14, 2013

By: Herb Weiner
Herb Weiner, Mayor

ATTEST:

[Signature]
City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney

TENANT:

TENANT:

LYCEE FRANCAIS LA PEROUSE, a California
nonprofit public benefit corporation

Dated: _____, 2013

By: 

Printed name: Charles Picasso

APPROVED AS TO FORM:


Raymond Buddie, Esq.

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Map of Playground Area

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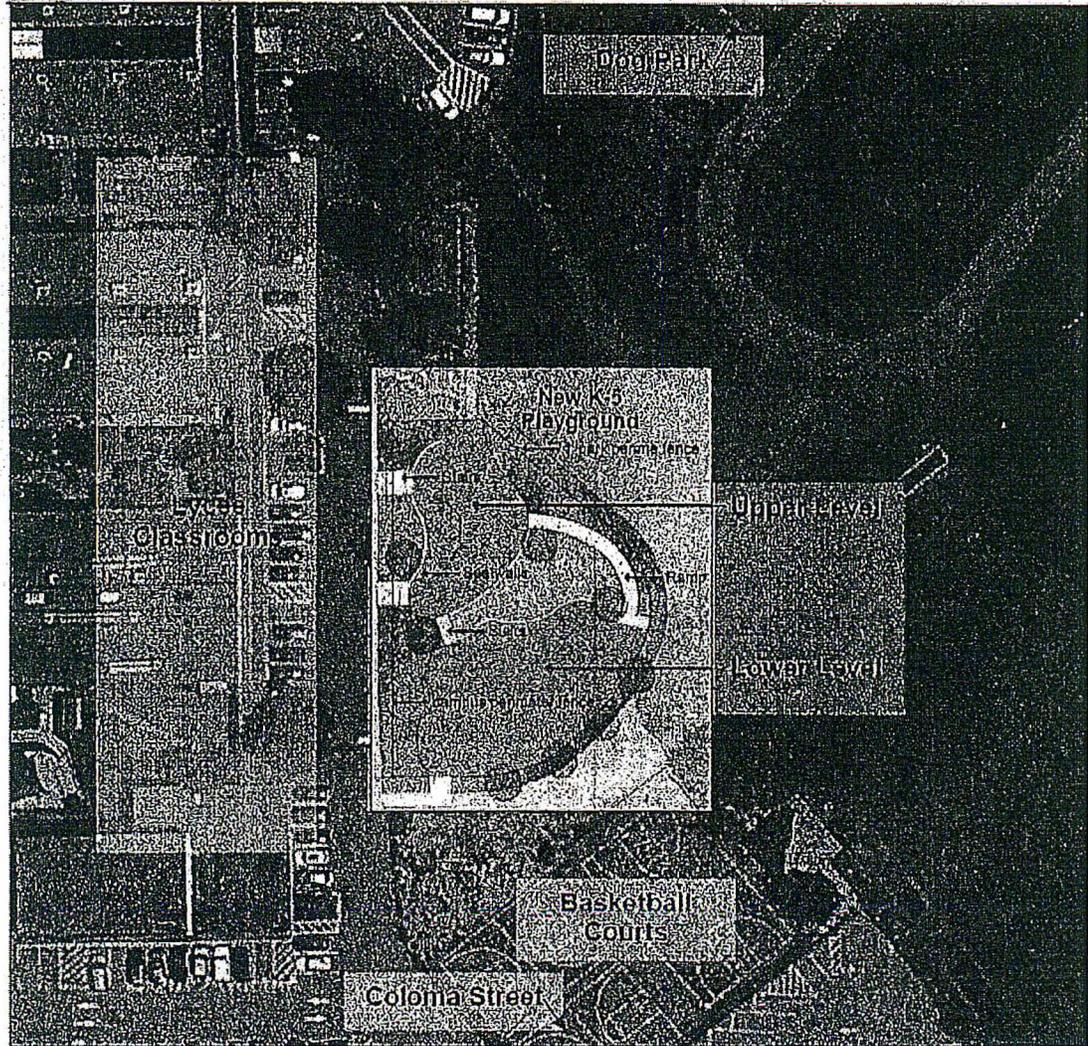
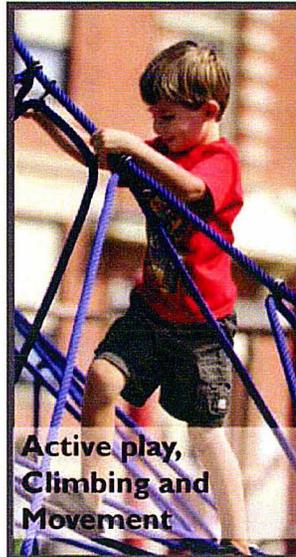
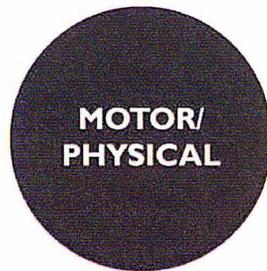


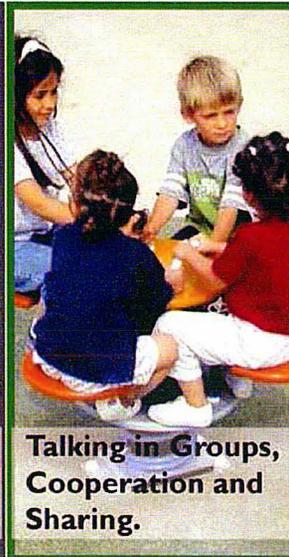
Exhibit No. 2
Playground Improvements

K-5 Playground Sausalito

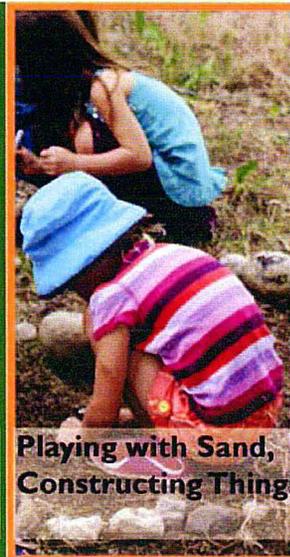
Playworks: a clear component of education



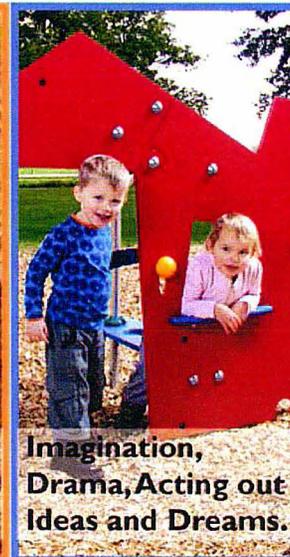
Active play,
Climbing and
Movement



Talking in Groups,
Cooperation and
Sharing.



Playing with Sand,
Constructing Things



Imagination,
Drama, Acting out
Ideas and Dreams.



Organized Games

K-5 Playground Sausalito - Master Plan

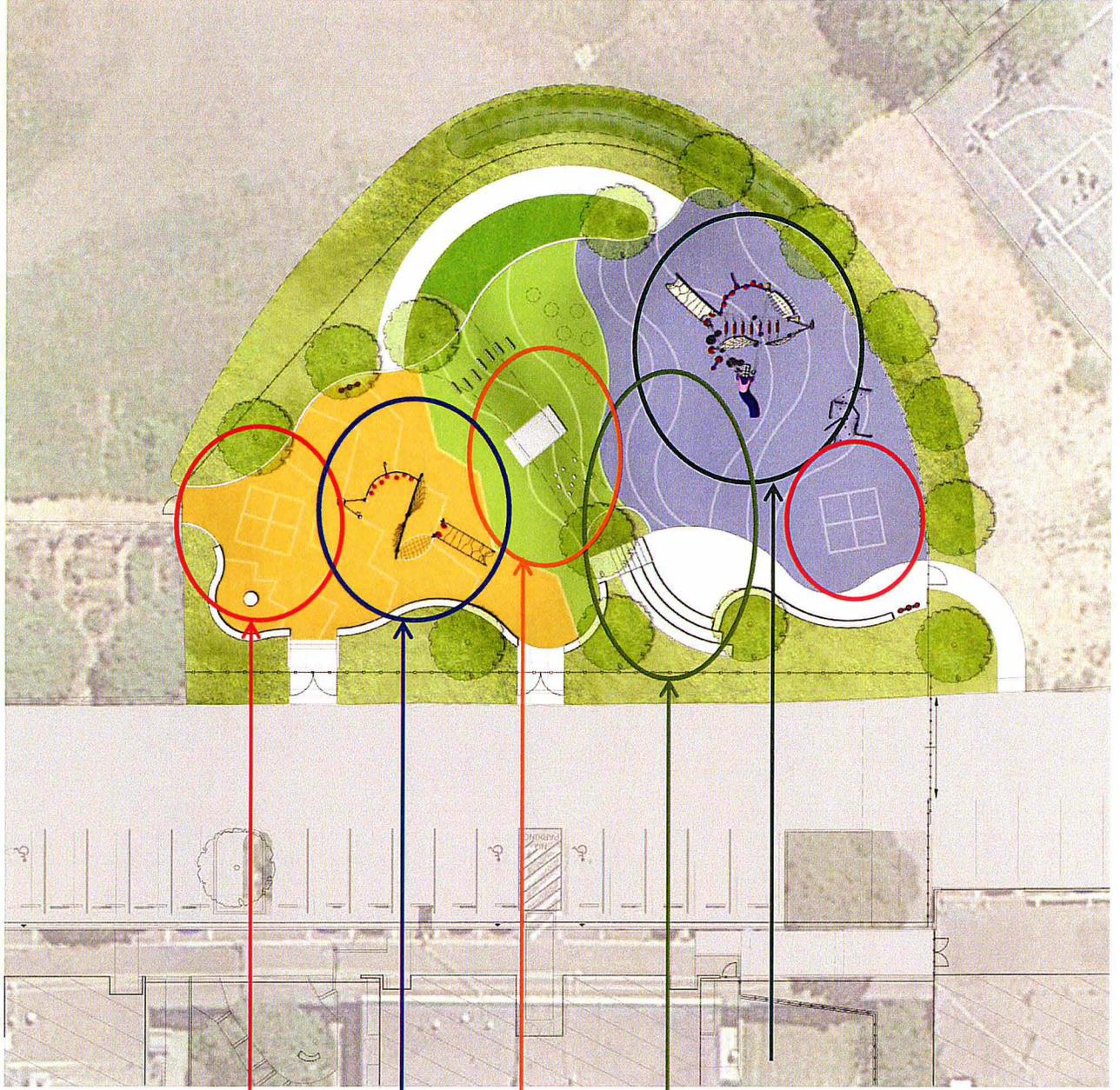
**Organized
Games**

Fantasy

Constructive

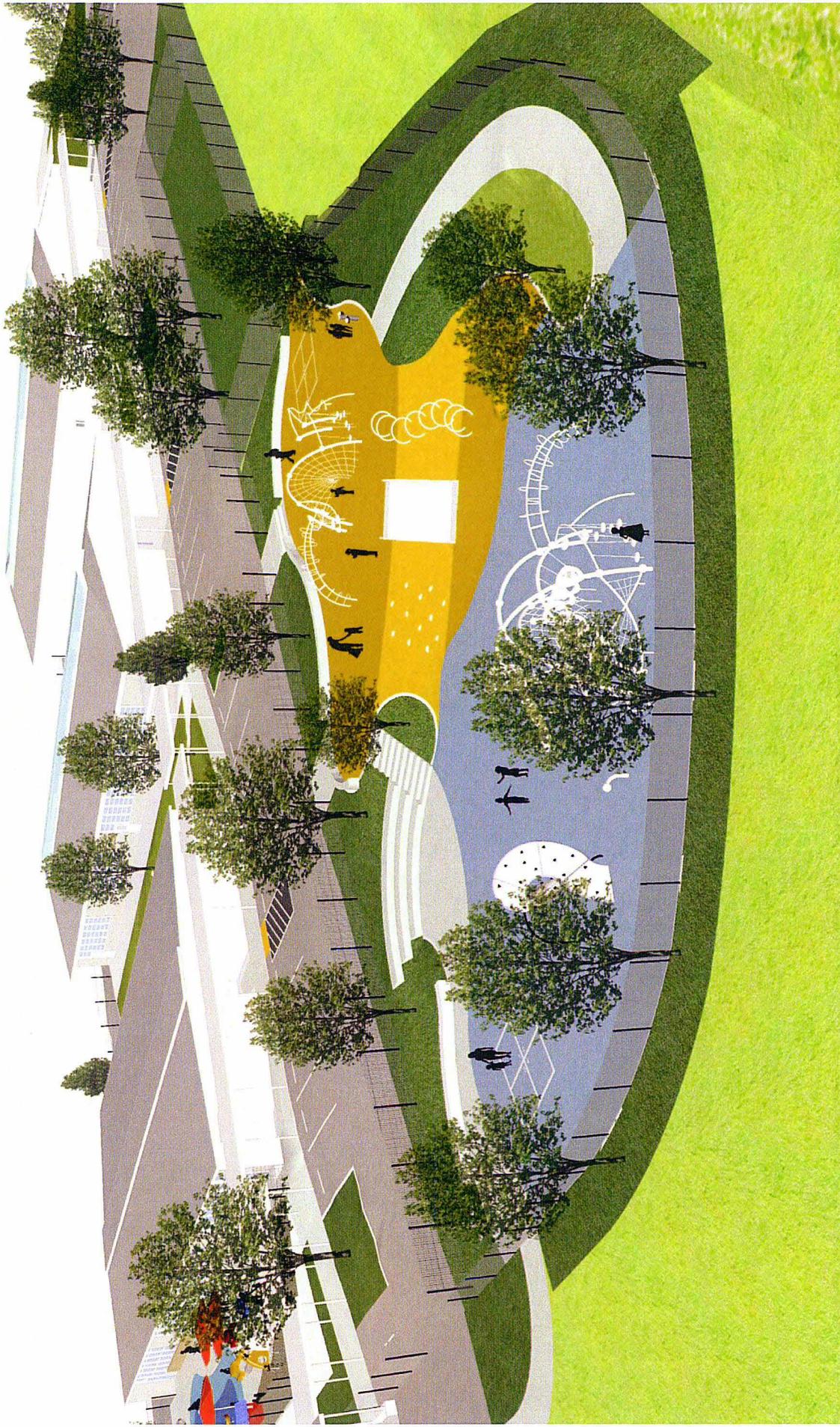
Social

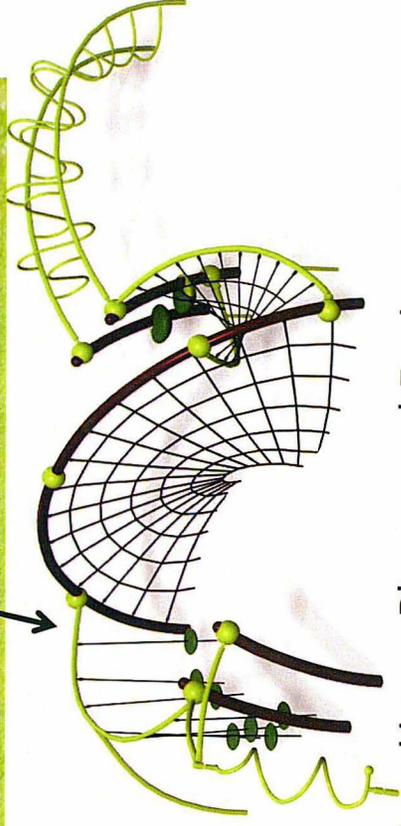
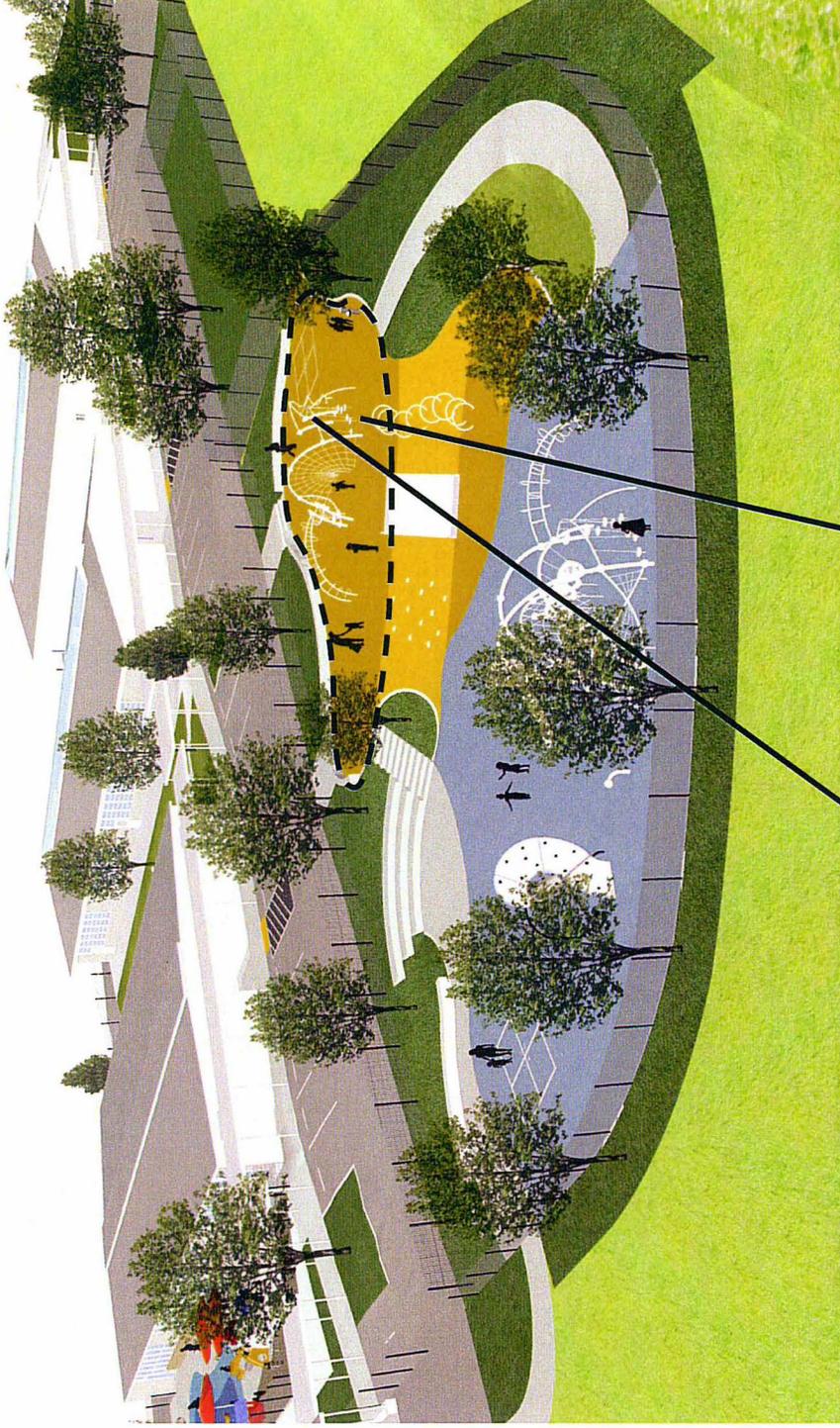
Motor / Physical



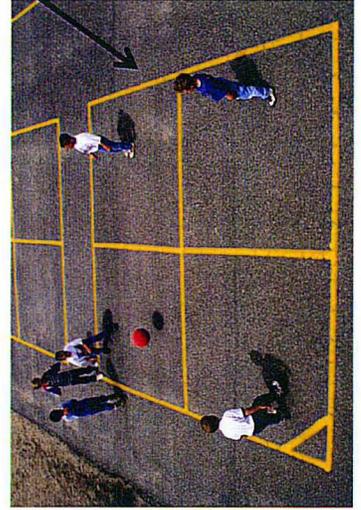


K-5 Playground Sausalito - Master Plan

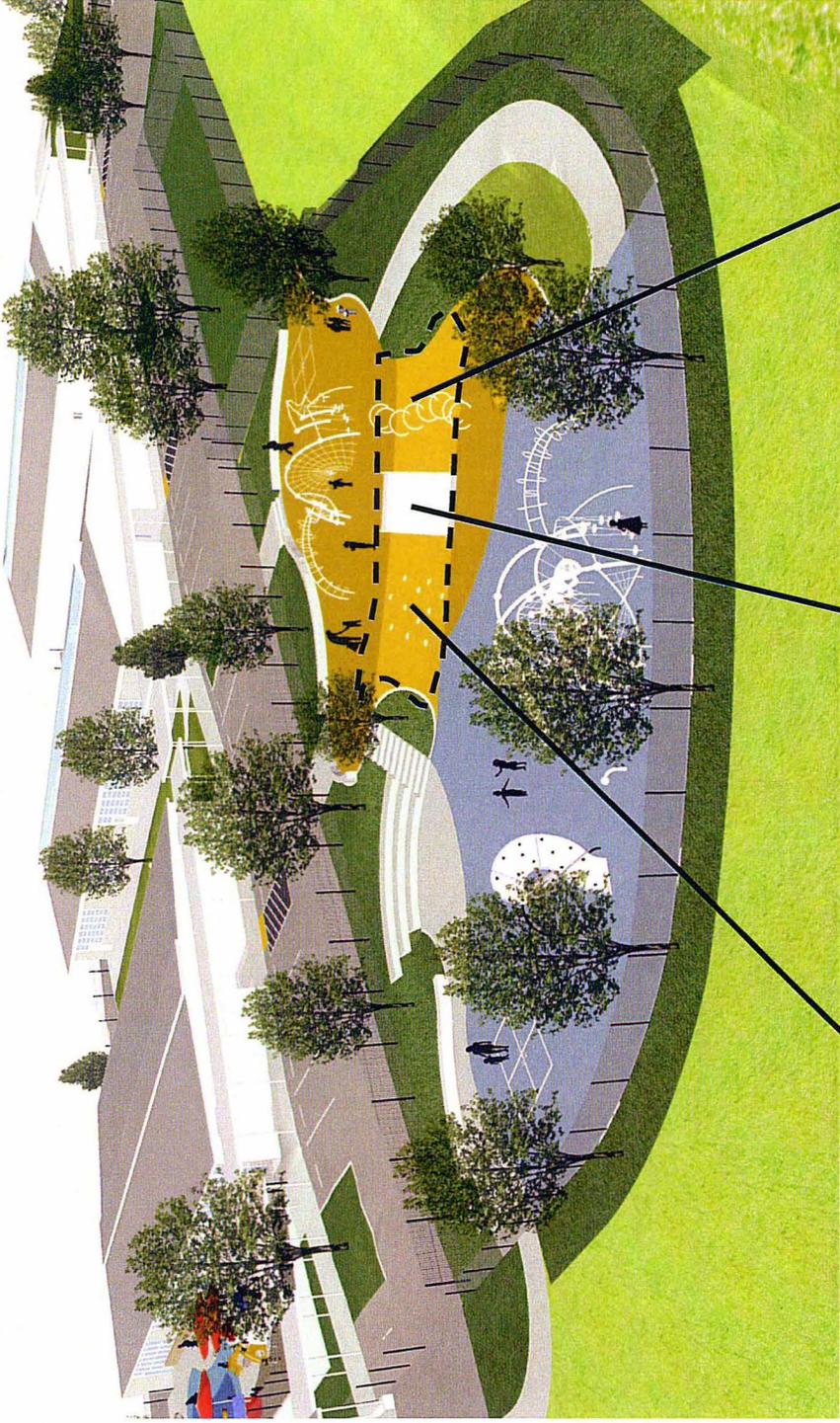




Evos Upper Playground Equipment



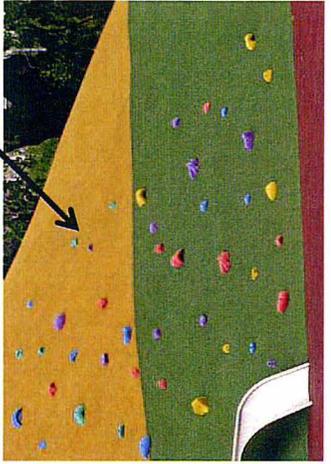
Four Square Court



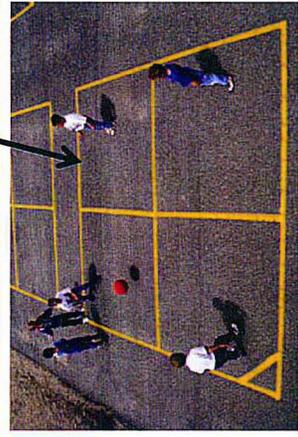
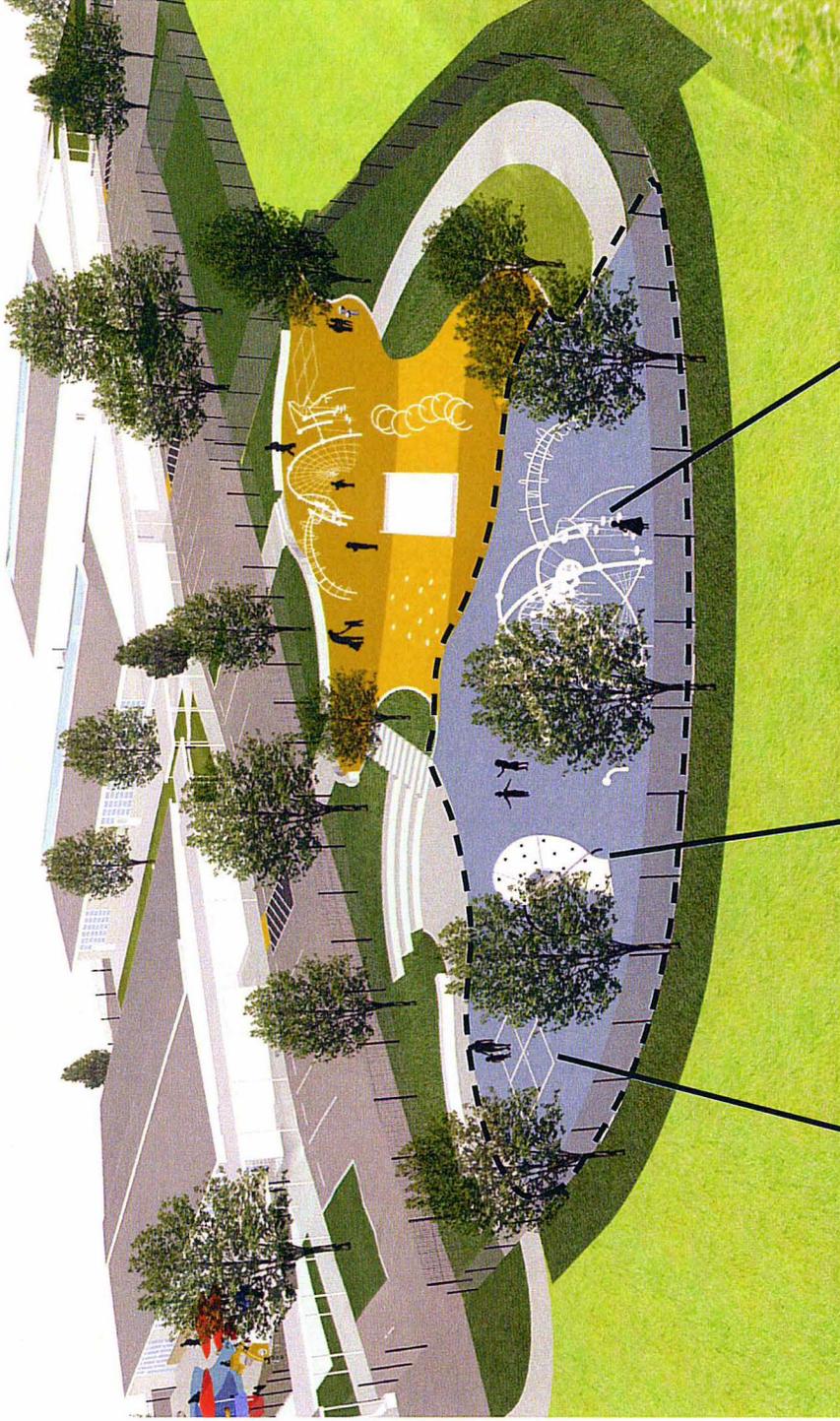
"Spirallo" Rings



Custom Slide



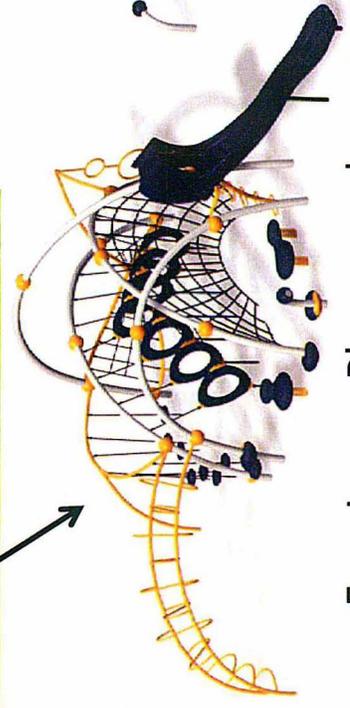
Climbing Holds



Four Square Court



Mobius Climber



Evos Lower Playground Equipment