

DONATION AGREEMENT

THIS DONATION AGREEMENT is made and entered into as of this 17 day of March, 2015, 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

TINY TOTS ACADEMY, INC.

(hereinafter referred to as "CHILD CARE CENTER"),
a 501 (c) (3) non-profit corporation
whose principal place of business is
6311 Washington Street, Hollywood, Florida 33023.

WHEREAS, SBBC has declared the Portable Classroom Building (1201VE) identified herein to be surplus property; and

WHEREAS, CHILD CARE CENTER is an independent, non-profit Section 501(c)(3) organization and is eligible to receive donations of surplus property pursuant to Section 274.05, Florida Statutes; and

WHEREAS, CHILD CARE CENTER desires to obtain the (1201VE) surplus Portable Classroom Building from SBBC and has represented to SBBC that it desires to use the (1201VE) surplus portable classroom building as CLASSROOM FOR SPECIAL NEED CHILDREN.

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 **Definitions.** The following definitions shall be used for the purposes of this Agreement:

a) "Donated Goods" shall mean those surplus portable classroom building more fully described and identified in **Exhibit "1"** which is attached hereto and incorporated herein by reference.

b) "Parties" shall mean SBBC and CHILD CARE CENTER.

2.02 **Delivery to CHILD CARE CENTER:** SBBC shall be deemed to have delivered to CHILD CARE CENTER the Donated Goods and all title thereto when the Donated Goods are accepted by CHILD CARE CENTER at the location at which SBBC stores the Donated Goods. CHILD CARE CENTER's acceptance of the Donated Goods will be demonstrated through its delivery to SBBC of a written Acknowledgment of Delivery using the form appended hereto as **Exhibit 2.**

2.03 **Transportation of Donated Goods.** CHILD CARE CENTER agrees to bear all costs and liability for removing and transporting the Donated Goods from their present SBBC site(s) to a destination of CHILD CARE CENTER's choosing. Said costs to be borne by CHILD CARE CENTER shall include, but not be limited to, loading and ground transportation of the Donated Goods from their present SBBC site to any destination chosen by CHILD CARE CENTER. CHILD CARE CENTER agrees to bear all risk and shall hold SBBC harmless for any expenses, property damage, personal injury or any other claim by any person, firm, corporation or domestic governmental agency arising out of the process of removing and transporting the Donated Goods from their present site(s) to their destination(s) selected by CHILD CARE CENTER. CHILD CARE CENTER hereby acknowledges its receipt of and the sufficiency of Ten Dollars and No/00 Cents (\$10.00) and other good and valuable consideration from SBBC in consideration of the obligations set forth in this section of this Agreement. CHILD CARE CENTER hereby acknowledges its receipt of and the sufficiency of Ten Dollars and No/00 Cents (\$10.00) and other good and valuable consideration from SBBC in consideration of the obligations set forth in this section of this Agreement.

2.04 **Condition of Portable Classroom Buildings.** SBBC is not responsible for any expenses that may be necessary to make the Donated Goods suitable for any intended use by CHILD CARE CENTER or any third party.

2.05 **Transfer Documents.** SBBC hereby authorizes its Superintendent of Schools or his/her designee to execute any bills of sale, assignments or other documents necessary to transfer ownership of the Donated Goods to CHILD CARE CENTER. SBBC represents that it has full power and authority to transfer title to the Donated Goods to CHILD CARE CENTER. SBBC hereby authorizes its Superintendent of Schools or his designee to execute any and all documents necessary to implement this Agreement.

2.06 **Disposition of Donated Goods.** CHILD CARE CENTER has complete freedom in determining how to carry out its objectives through use, disposition or transfer of the Donated Goods. SBBC will not in any manner restrict, supervise or limit the manner in which CHILD CARE CENTER conducts its programs or CHILD CARE CENTER's use, disposition or transfer of any Donated Goods subsequent to such property's delivery to CHILD CARE CENTER at the SBBC site at which the Donated Goods are stored.

2.07 **Limitation on Liability.** CHILD CARE CENTER agrees to assume liability with regard to the Donated Goods after their delivery by SBBC. SBBC warrants that it has good title to the Donated Goods and complete authority and the right to make delivery to CHILD CARE CENTER. SBBC makes no representations and extend no warranties of any kind, either

express or implied, regarding the Donated Goods to CHILD CARE CENTER or any other person. CHILD CARE CENTER agrees that the Portable Classroom Building is being transferred on an “as is” basis, without representation, recourse or warranty, express or implied, including, without limitation, any warranty of condition, merchantability, capability, safety, usability, suitability, fitness for any purpose or use, description, or with respect to any defect therein (whether known or unknown or latent or apparent) or that the use of the Donated Goods will not infringe any patent, copyright, trademark, or other proprietary rights. Once the Donated Goods are transferred by SBBC to CHILD CARE CENTER, SBBC shall have no further liability of any kind to CHILD CARE CENTER or any other party for any occurrence involving the Donated Goods subsequent to SBBC’s delivery to CHILD CARE CENTER. CHILD CARE CENTER agrees to indemnify and hold harmless SBBC against any loss, liability, claim, demand or damage asserted by CHILD CARE CENTER or by any third party due to or arising from the Donated Goods after their delivery by SBBC to CHILD CARE CENTER. Nothing herein shall be construed as a waiver of sovereign immunity by SBBC or any other party to this Agreement to whom sovereign immunity is applicable. Nothing herein shall be construed as a waiver of any rights or limits to liability contained in Section 768.28, Florida Statutes. CHILD CARE CENTER hereby acknowledges its receipt of and the sufficiency of Ten Dollars and No/00 Cents (\$10.00) and other good and valuable consideration from SBBC in consideration of the obligations set forth in this section of this Agreement. The indemnity and hold harmless provisions of this section shall survive this Agreement in the event of the termination of this Agreement.

2.08 **Hold Harmless and Indemnification.** CHILD CARE CENTER agrees to indemnify and hold harmless SBBC and all of its Board Members, successors, officers, employees and agents and release them from all liability whatsoever and agrees not to sue them on account of or in connection with any claims, causes of action, injuries, damages, costs or expenses (including reasonable attorney’s fees and costs) arising out of CHILD CARE CENTER’s use, transportation, storage or other disposition of the Donated Goods, or CHILD CARE CENTER ‘s breach of this Agreement. CHILD CARE CENTER hereby acknowledges its receipt of and the sufficiency of Ten Dollars and No/00 Cents (\$10.00) and other good and valuable consideration from SBBC in consideration of the obligations set forth in this section of this Agreement. The indemnity and hold harmless provisions of this section shall survive this Agreement in the event of the termination of this Agreement.

2.09 **Independent Contractor.** For all purposes hereunder, the relationships of the SBBC and CHILD CARE CENTER are solely those of independent contractors and this Agreement does not create a partnership, joint venture or other association between SBBC and CHILD CARE CENTER. SBBC’s employees and agents shall be considered to be under the exclusive management and control of SBBC. CHILD CARE CENTER’s employees and agents shall be considered to be under the exclusive management and control of CHILD CARE CENTER.

2.10 **Termination for Non-Performance.** If CHILD CARE CENTER fails to remove the Donated Goods from SBBC’s property within ninety (90) days of the execution of this Agreement, this Agreement shall terminate and become null and void without the necessity of any notice from or action by SBBC.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** The Parties hereto acknowledge that SBBC is a political subdivision of the State of Florida and enjoys sovereign immunity. Nothing in this Agreement shall be construed to require SBBC to indemnify CHILD CARE CENTER, its employees, directors, trustees, officers, subcontractors, agents or other members of their workforces for its, her, his or their negligence, or to insure them for their negligence, or to assume any liability for their negligence. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or to subject such an agency or political subdivision to liability above the limits of Section 768.28, Florida Statutes.

3.02 **No Third Party Beneficiaries.** Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter 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 **Termination.** This Agreement may be canceled with or without cause by any party during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. On the effective date of such termination, any portable classroom building for which CHILD CARE CENTER has not received delivery shall remain the property of SBBC and SBBC shall have no obligation to donate any further portable classroom building to CHILD CARE CENTER.

3.05 **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.

3.06 **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.

3.07 **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.

3.08 **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.

3.09 **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.

3.10 **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.

3.11 **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida and the United States of America. 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.

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

3.13 **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.

3.14 **Force Majeure.** No 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 any party be deemed Force Majeure.

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: Director Facility Planning & Real Estate Department
The School Board of Broward County, Florida
600 Southeast Third Avenue – 4th Floor
Fort Lauderdale, Florida 33301

To CHILD CARE CENTER: Symmone Bryan
Tiny Tots Academy, Inc.
6311 Washington Street
Hollywood, Florida 33023

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 **Contract Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.19 **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)

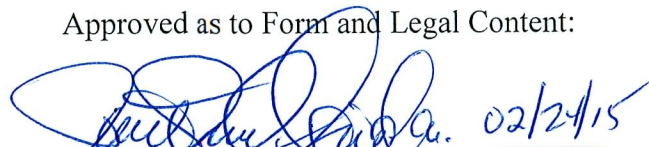
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Donna P. Korn, Chair

Robert W. Runcie, Superintendent of
Schools

Approved as to Form and Legal Content:



Office of the General Counsel

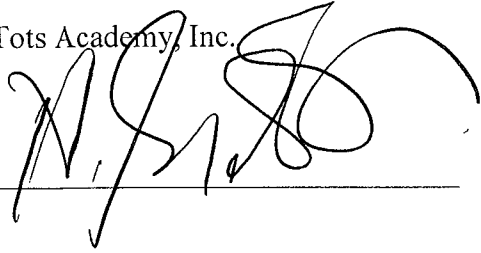
FOR CHILD CARE CENTER

(Corporate Seal)

Tiny Tots Academy, Inc.

ATTEST:

By



-Or-

W. Williams
Witness
Lucas Florio
Witness

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF Florida

COUNTY OF Broward

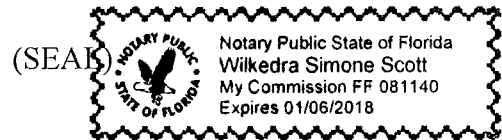
The foregoing instrument was acknowledged before me this 24 day of Feb, 20 15 by Hyacinth Grazzad of Tiny Tots Academy, Inc. on behalf of the corporation. He/She is personally known to me or produced

Driver license as identification and did/did not first take an oath.
Type of Identification

My Commission Expires:

W. Simone Scott
Signature - Notary Public

Wilkeadra Scott
Printed Name of Notary



FF 081140
Notary's Commission No.

EXHIBIT 1
Descriptions and Locations of Portable Classroom Buildings

<u>Portable No.</u>	<u>Size</u>	<u>Location</u>	<u>DCA No.*</u>
1201VE	24X36	Silver Ridge Elementary 9100 S.W. 36 th Street Davie, Florida, 33328	E017886

*DCA number is assigned by the Florida Department of Community Affairs to manufactured structures

EXHIBIT 2
ACKNOWLEDGMENT OF DELIVERY

Tiny Tots Academy, Inc., a 501 (c) (3) not-for-profit corporation and Section 501(c) organization, hereby acknowledges its acceptance of delivery from THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA on the _____ day of _____, _____ of the portable classroom building identified on the attached **Exhibit 1**.

Symmone Bryan

By _____