

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made and entered into by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(hereinafter referred to as "SBBC" or "Licensee"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

City of Plantation, Florida, a Florida municipal corporation

(hereinafter referred to as "Licensor"),
whose principal place of business is
400 Northwest Seventy-Third Avenue, Plantation, Florida 33317

WHEREAS, SBBC is desirous of utilizing space in property owned by the Licensor for the purpose of providing adult education classes; and

WHEREAS, Licensor is willing to license a portion of its property, at the Jim Ward Community Center, Plantation, Florida 33317, to SBBC for such purposes; and

WHEREAS, providing an adult education service at this location is desired by the Licensor.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals**. The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 - SPECIAL CONDITIONS

2.01 **License Term**. The date of this License Agreement shall be the date it is signed by both Parties. Unless terminated earlier pursuant to Section 3.05 of this License Agreement ("Agreement"), the term of this Agreement is from March 1, 2019 through February 28, 2020 ("Term").

2.02 **Licensed Property.** The SBBC shall utilize one (1) classroom at the following described property: Jim Ward Community Center, 301 Northwest 46th Avenue, Plantation, Florida 33317, (hereafter referred to as “Licensed Property”), for the purposes of providing adult education classes.

2.03 **Hours of Operation.** The Licensed Property may be used by SBBC Monday through Friday 8:00am to 3:00pm, Saturdays 8:00am to 4:30pm. The Licensed Property is closed on Sundays and all City of Plantation Holidays. The Licensed Property is unavailable during summer break for the term of this Agreement, commencing on June 4, 2019 to August 15, 2019.

2.04 **Rental.** There shall be no rental cost.

2.05 **Transfer.** The SBBC shall not assign or sublet the Licensed Property delineated in this Agreement, or use said Licensed Property or any part thereof, for any purpose other than set out in the Agreement without consent of the Licensor.

2.06 **Condition of Licensed Property.** SBBC shall accept the Licensed Property as they are at the time of occupancy. Removal or change of location of any appliance or equipment, occasioned by the SBBC’s use of said Licensed Property, shall be made by the SBBC and at the expense of SBBC, but no such removal or change shall be made without prior approval by the Licensor (which approval shall not unreasonably be withheld). Any appliance or equipment removed or relocated by SBBC shall be replaced as found.

2.07 **Heating and Air Conditioning.** The Licensor agrees to furnish to the SBBC heating and air conditioning for the Licensed Property during the term of the Agreement at the expense of the Licensor. Heating and air conditioning services shall be provided for the days and times as indicated in paragraph 2.03 above.

2.08 **Light Fixtures.** The Licensor agrees to maintain in the Licensed Property light fixtures installed for the use of the SBBC. The Licensor shall be responsible for replacement of all bulbs, lamps, tubes, and starters used in such fixtures for the purpose of furnishing light.

2.09 **Maintenance Repairs.**

2.09.1 The Licensor shall provide for interior maintenance and repairs in the Licensed Property in accordance with generally accepted good practices.

2.09.2 The Licensor shall maintain and keep in good repair the exterior of the Licensed Property during the term of this Agreement and shall be responsible for the replacement of all windows, doors and ancillary fixtures broken and damaged at the Licensed Property, except such breakage or damage caused to the exterior of the Licensed Property by the SBBC, its officers, agents of employees.

2.10 **Utilities.** The Licensor and SBBC agree that SBBC shall not pay any utilities cost regarding use of the Licensed Property.

2.11 **Insurance.** SBBC shall maintain in full force and effect during the term of the Agreement; public liability and property damage insurance with respect to injury, death or damage occurring at the Licensed Property or arising out of SBBC of the Licensed Property or otherwise arising out of any act or occurrence at the Licensed Property. Said insurance shall be in an amount of at least One Million Dollars (\$1,000,000) combined single limit per occurrence. At least one week prior to the first day of the term of the Agreement, SBBC shall furnish a certificate of insurance to the Licensor evidencing that such insurance is in effect.

2.12 **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
Fort Lauderdale, Florida 33301

To Lessee: Horace McHugh, Chief Administrative Officer
City of Plantation
400 Northwest 73rd Avenue
Plantation, Florida 33317

With a Copy to: Donald J. Lunny, Jr., City Attorney
City of Plantation
400 Northwest 73rd Avenue
Plantation, Florida 33317

2.13 **Indemnification.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

2.13.1 By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

2.13.2 By Licensor: Licensor agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, 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.

2.14 **Parking.** SBBC shall have access to parking located adjacent to the Licensed Property for use by SBBC students, faculty, and guest. SBBC shall have access to parking during the Hours of Operation as described in Section 2.03. It shall be the responsibility of the Licensor to keep and maintain the parking areas adjacent to the Licensed Property in good condition.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** 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 of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

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 matter arising out of any agreement.

3.03 **Independent Contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, and contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by either party during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured

within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days' notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement (if any), this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the Licensor at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

3.09 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. The Licensor shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, the Licensor shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. The Licensor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if the Licensor does not transfer the public records to SBBC. Upon completion of the Agreement, the Licensor shall transfer, at no cost, to SBBC all public records in possession of the Licensor or keep and maintain public records required by SBBC to perform the services required under the Agreement. If the Licensor transfers all public records to SBBC upon completion of the Agreement, the Licensor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Licensor keeps and maintains public records upon completion of the Agreement, the Licensor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTRACT THE CUSTODIAN OF PUBLIC RECORDS

AT: 754-321-2300, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SE 3rd Avenue, 11th Floor Ft. Lauderdale, FL 33301.

3.10 **Student Records**: Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

3.11 **Compliance with Laws**. Each party shall comply with all applicable federal, state, and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **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.

3.13 **Governing Law and Venue**. 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 exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

3.14 **Entirety of 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.

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

3.16 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.17 **Incorporation by Reference.** If Exhibits are attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, 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 affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.20 **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.

3.21 **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.

3.22 **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 unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **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.

3.24 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Agreement 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.

3.26 **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.

3.27 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same 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: _____
Heather P. Brinkworth, Chair

Date: _____

Robert W. Runcie, Superintendent of Schools

Approved as to form and legal content:



Office of the General Counsel

FOR LICENSOR

ATTEST:

CITY OF PLANTATION, FLORIDA, a
municipal corporation of the State of Florida

CITY Clerk

Mayor

Date: _____

Approved as to form and legality

Approved by:

City Attorney

Director of Parks and Recreation