



# AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

<b>MEETING DATE</b>	2019-03-05 10:05 - School Board Operational Meeting
<b>AGENDA ITEM</b>	ITEMS
<b>CATEGORY</b>	LL. OFFICE OF PORTFOLIO SERVICES
<b>DEPARTMENT</b>	Facility Planning and Real Estate

<b>Special Order Request</b>
<input type="radio"/> Yes <input checked="" type="radio"/> No
<b>Time</b>
<b>Open Agenda</b>
<input checked="" type="radio"/> Yes <input type="radio"/> No

**ITEM No.:**  
LL-2.

**TITLE:**  
Lease Agreement between The School Board of Broward County, Florida and BrightStar Credit Union

**REQUESTED ACTION:**  
Approve the Lease Agreement between The School Board of Broward County, Florida and BrightStar Credit Union.

**SUMMARY EXPLANATION AND BACKGROUND:**  
On May 1, 2016, The School Board of Broward County, Florida (SBBC) entered into a three (3) year Lease Agreement with BrightStar Credit Union for a 1,426 square foot space located in the northeaster corner of the Kathleen C. Wright Administration Complex, 600 SE Third Avenue, Ft. Lauderdale, Florida. The current lease Agreement is set to expire on April 30, 2019, and BrightStar has expressed its desire to enter into a new three (3) year lease Agreement with SBBC for the same space.  
See Supporting Docs for continuation of Summary Explanation and Background.  
This agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel.

**SCHOOL BOARD GOALS:**  
 Goal 1: High Quality Instruction  Goal 2: Continuous Improvement  Goal 3: Effective Communication

**FINANCIAL IMPACT:**  
There will be a positive financial impact to the District of approximately \$176,308.61 in rental income and operational expenses over the three (3) year term of the Lease Agreement.

**EXHIBITS: (List)**  
(1) Continuation of Summary Explanation and Background (2) Executive Summary - BrightStar (3) Lease Agreement (4) Lease Analysis Matrix

**BOARD ACTION:**  
**APPROVED**  
(For Official School Board Records Office Only)

**SOURCE OF ADDITIONAL INFORMATION:**

Name: Chris O. Akagbosu	Phone: 754-321-2162
Name:	Phone:

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
Senior Leader & Title  
Leslie M. Brown - Chief Portfolio Services Officer

Approved In Open Board Meeting On: **MAR 05 2019**  
By: *William P. Brinkman*  
School Board Chair

Signature  
Leslie M. Brown  
2/20/2019, 12:25:14 PM

## **Continuation of Summary Explanation and Background**

It should be noted that BrightStar Credit Union has been a tenant at the Kathleen C. Wright Administration Complex since the early 1990's and provides financial services to many of the School District's employees.

If approved by SBBC, the new Lease Agreement would be for three (3) years, commencing on May 1, 2019 and expiring on April 30, 2022. The new Lease Agreement will require BrightStar to pay a base rental amount and its proportionate share of operating expense (electric and water) for use of the 1,426 square foot space. The new Lease Agreement also requires BrightStar Credit Union to pay a three percent (3%) increase in its base rental amount and operation expense each year of the Lease Agreement.

## **EXECUTIVE SUMMARY**

Lease Agreement between The School Board of Broward County, Florida, and BrightStar Credit Union (BrightStar)

For additional background purposes, BrightStar Credit Union (BrightStar) was established in 1941 to primarily provide banking services for Broward County Public Schools Teachers. BrightStar currently has seven (7) branches in Broward County. Today, BrightStar provides many services including financial counseling, home/auto insurance, checking/saving accounts, mortgage loans, home equity loans, life insurance, etc. to both School District employees, and to citizens of Broward County.

BrightStar has been a partner and a good tenant of The School Board of Broward County, Florida (SBBC) dating back to April 23, 1991. It should be noted, even with BrightStar's long standing relationship with the SBBC, BrightStar's base rent have remained consistent with the average market rate for commercial lease space in the Downtown Fort Lauderdale area. BrightStar currently pays the SBBC \$27.46 per square foot in base rent cost, and the current average market rate for commercial lease space in Downtown Fort Lauderdale is estimated at \$25.43 per square foot, see attached Lease Analysis Matrix.

If approved by SBBC, the new Lease Agreement with BrightStar would be for three (3) years and require BrightStar to pay a three percent (3%) increase in its base rent amount and operating expense each May 1<sup>st</sup> for the duration of the Lease Agreement. It should also be noted, that this Lease Agreement takes into considerations BrightStar's garage access during days SBBC is closed for business, and requires BrightStar to pay District staff salary for opening and closing the garage during such days. The Lease Agreement also, allows either party to terminate the Lease Agreement upon a ninety (90) day written notice to the other party.

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** is made and entered into as of this 5<sup>th</sup> day of March, 2019, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
(hereinafter referred to as "SBBC" or "Lessor"),  
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

**BRIGHTSTAR CREDIT UNION**  
(formerly Broward Schools Credit Union and hereinafter referred to as "TENANT"),  
whose principal place of business is  
5901 Del Lago Circle, Sunrise, FL 33313

**WHEREAS**, TENANT, is a Florida state-chartered financial institution, as defined in Section 655.05, Florida Statutes, and is authorized to conduct a business as a credit union in the State of Florida in accordance with the requirements and conditions set forth in the Florida Financial Institutions Codes, Title XXXVIII, Florida Statutes;

**WHEREAS**, the SBBC and TENANT entered into a Lease Agreement (the "Lease Agreement") dated May 1, 2016, for a portion of SBBC owned property located at 600 SE 3<sup>rd</sup> Avenue, Fort. Lauderdale, Florida 33301, which will expire on April 30, 2019; and

**WHEREAS** TENANT has continued to occupy the Leased Property and now desires to extend its occupancy and execute a new Lease Agreement; and

**WHEREAS**, the SBBC desires to execute a new Lease Agreement.

**NOW, THEREFORE**, incorporating the forgoing recitals of fact and for valuable consideration, the receipt and sufficiency of which is acknowledged, the SBBC and TENANT 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 Lease Term.

a. The term of this Lease Agreement shall be for Three (3) years, commencing on May 1, 2019 and terminating on April 30, 2022, unless extended pursuant to the terms hereof by the exercise of the option to renew which Tenant must give SBBC written notice of its intent to renew at least one hundred eighty days (180) prior to expiration of the Lease Agreement or terminated pursuant to section 3.05 of this agreement.

### 2.02 Leased Property.

a. TENANT shall lease the premises located on the ground floor, northeast corner of Building No. 2, in the property known as the Kathleen C. Wright Administration Complex (KCW), located at 600 SE Third Avenue, Fort. Lauderdale, Florida, 33301, which consists of approximately **1,426 square feet** of building office space, (the “Leased Property”). A copy of the floor plan depicting the Leased Property is attached and incorporated as **Exhibit A**. This Lease Agreement also provides for the use of the ATM machine located on the exterior of the Leased Property, the use of the drive-thru area located on the ground floor of the KCW parking garage, the use of two (2) reserved parking spaces on the first level and eight (8) additional non-reserved parking spaces in the KCW parking garage as defined in paragraph 2.12.

b. TENANT shall use the demised Leased Property as a credit union branch office.

### 2.03 Hours of Operation and Access.

a. The TENANT’s hours of operation shall be Monday through Friday 7:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 2:00 p.m.

b. The TENANT may have access to the Leased Property as depicted in **Exhibit “A”** twenty-four (24) hours a day, and seven (7) days a week.

c. The TENANT shall have access to the drive-thru area located on the ground floor of the KCW parking garage only during Hours of Operation, as described in paragraph 2.03a.

d. The TENANT shall have access to parking located in the KCW garage only during days the SBBC is open.

e. The TENANT and TENANT’s customers shall have access to the outside ATM machine located at the main entrance of the building office space twenty-four (24) hours a day and seven (7) days a week.

f. SBBC reserves the right to set reasonable conditions for weekend and non-business hours usage, including reasonable charges therefore; SBBC shall provide TENANT with written notice of any such requirements and charges. TENANT agrees to require its employees, business invitees, agents, or contractees, compliance with the building requirements for such usage.

2.04 **Rental Amount and Operating Expenses.** TENANT shall pay SBBC base rent, and operating expenses in the amounts as described below for the term of this Lease Agreement:

a.	RENTAL		
	<u>Year 1</u>	<u>Monthly Amount</u>	<u>Annual Amount</u>
	May 1, 2019 – April 30, 2020	\$3,263.55	\$39,162.60
	<u>Year 2</u>	<u>Monthly Amount</u>	<u>Annual Amount</u>
	May 1, 2020 – April 30, 2021	\$3,361.46	\$40,337.52
	<u>Year 3</u>	<u>Monthly Amount</u>	<u>Annual Amount</u>
	May 1, 2021 – April 30, 2022	\$3,462.30	\$41,547.60
b.	OPERATING EXPENSES		
	<u>Year 1</u>	<u>Monthly Amount</u>	<u>Annual Amount</u>
	May 1, 2019 – April 30, 2020	\$1,489.88	\$17,878.56
	<u>Year 2</u>	<u>Monthly Amount</u>	<u>Annual Amount</u>
	May 1, 2020 – April 30, 2021	\$1,534.58	\$18,414.92
	<u>Year 3</u>	<u>Monthly Amount</u>	<u>Annual Amount</u>
	May 1, 2021 – April 30, 2022	\$1,580.62	\$18,967.41

c. Monthly base rental and operating expenses shall be payable on the first (1<sup>st</sup>) day of each calendar month by TENANT to the SBBC via the Facility Planning and Real Estate Department at the address noted in Section 2.17 and in the manner designated for the delivery by SBBC, without demand and without setoff or deduction. There will be a grace period of five (5) business days which to pay rent and operating expenses. There will be a penalty of five percent (5%) which will be automatically added to the monthly rent and operating expenses afterwards.

e. If this Lease Agreement should commence on a date other than the first day of the calendar month or terminate on a date other than the last day of the calendar month, the monthly payment will be prorated based on the number of days in the calendar month with no cessation of the monthly payment.

f. TENANT shall provide a copy of its exemption certificate for sales tax on the rental as may be required under the Sales and Use Tax laws of the State of Florida to reflect TENANT'S exemption from billing for sale and use tax on the rental payments or pay all sales tax required.

g. TENANT shall have the right to place and keep a safe, suitable for the financial institution facility in the demised Leased Property. Any costs incurred to maintain, move, modify, or repair said safe shall be borne by TENANT.

2.05 **ADA.** The Lessor hereby represents that the Leased Property, as defined in paragraph 2.02 meets all accessibility requirements of the Federal Americans with Disabilities Act (ADA), Florida Accessibility Code for Building Construction implemented under the Florida Americans with Disabilities Implementation Act, except as modified by State Requirements for Educational Facilities, for the use or occupancy intended by the TENANT.

2.06 **Asbestos.** The SBBC hereby represents that the Leased Property described herein is free from friable asbestos as defined in the Asbestos Hazard Emergency Response Act (AHERA), 40 CRF Part 763, Asbestos Materials in Schools, October 30, 1987, and the current Florida State Requirements for Educational Facilities (SREF), whichever is more stringent.

2.07 **Transfer.** The TENANT shall not assign or sublet the facilities delineated in this lease, or use said facilities or any part thereof, for any purpose other than set out in the Lease Agreement without consent of the Lessor.

2.08 **Condition of Leased Property.**

a. TENANT shall accept the Leased Property as they are at the time of occupancy. Removal or change of location of any appliance or equipment, occasioned by the TENANT's use of said Leased Property, shall be made by the TENANT at the TENANT's expense, but no such removal or change shall be made without prior approval by the SBBC Chief Facilities Officer (which approval shall not unreasonably be withheld). Any appliance or equipment removed or relocated by TENANT shall be replaced as found.

b. TENANT shall have the right to keep an automated teller machine (ATM) on the outside wall of the Leased Property with access for the general public. All costs for any further renovations construction, or alterations shall be borne by the TENANT and plans for same shall be submitted to SBBC Chief Facilities Officer and Chief Building Official for prior approval (which approval shall not be unreasonably withheld). At the termination of the Lease Agreement, TENANT shall remove the ATM and place the wall in the same condition as the surrounding inside and outside wall area at TENANT'S expense. The ATM shall be considered by the parties as personal property and remain the property of TENANT.

c.

d. TENANT shall permit the SBBC to enter the Leased Property at reasonable times and upon reasonable notice for the purpose of inspecting the same. Except as necessary for emergency repairs, minimum reasonable notice shall be at least twenty-four (24) hours. In the event that the SBBC triggers TENANT's alarm system by accessing the Leased Property without reasonable notice, the SBBC shall be liable to TENANT for any and all charges imposed on TENANT by TENANT's alarm company or any law enforcement agency for response to such alarm trigger. TENANT will permit the SBBC to place upon the Leased Property and usual "To Let" or "For Lease" signs, at any time within sixty (60) days prior to the expiration of this Lease Agreement, if TENANT has not provided written notice to the SBBC of TENANT's intent to renew the Lease Agreement as stated herein. TENANT will permit SBBC to arrange for persons desiring to lease the Leased Property to inspect the same during the last sixty (60) days of the lease term.

2.09 **Heating and Air Conditioning.** Heating and air conditioning maintenance services and repairs shall be the responsibility of the SBBC. In the event that the equipment is no longer serviceable, SBBC shall be responsible for the cost of replacement equipment for the demised Leased Property. Heating and air conditioning services shall be provided to the 1,426 square feet building office space during the Hours of Operation indicated in paragraph 2.03a.

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

2.11 **Maintenance Repairs.**

a. The TENANT shall provide for interior maintenance and repairs in accordance with generally accepted good practices.

c. The SBBC shall maintain and keep in good repair the exterior of the demised Leased Property during the term of this lease and shall be responsible for the replacement of all windows, doors and ancillary fixtures broken and damaged at the demised Leased Property, except if such breakage or damage is caused to the exterior of the demised Leased Property by the TENANT, its officers, agents or employees. Any vandalism and repairs to the exterior ATM machine shall be borne by TENANT.

d. No services or maintenance shall be provided except as otherwise stated in this Lease Agreement.

2.12 **Improvements.** The location of any and all Improvements to be placed on the Leased Property, shall first be approved in writing by SBBC, it being intended that SBBC shall have absolute control over the location of any Improvements before they are placed on the Leased Property. However, such approval by SBBC shall not be unreasonably withheld.

a. The authority to grant approval regarding Improvements in this Agreement is hereby delegated by the SBBC to the SBBC's Chief Facilities Officer and Chief Building Official. Subject to the provisions of the foregoing paragraph, the parties further agree that TENANT will prepare and submit plans to the SBBC's Chief Facilities Officer and Chief Building Official for review and approval. Any plans must meet State of Florida Building Code Requirements, Florida Fire Protection Code, and State Requirements for Educational facilities as applicable, and any other requirements imposed by applicable law. The SBBC's Chief Facilities Officer and Chief Building Official shall have ninety (90) days from the date of receipt to review and comment. All design documents shall be approved by the SBBC's Chief Facilities Officer and Chief Building Official prior to submission to the Department of Education, if applicable.

b. TENANT shall be solely responsible for all contractual obligations to the contractor hired to construct the Improvements.



c. Before the commencement of the Improvements, TENANT shall require the engaged contractor to furnish a surety payment and performance bonds that guarantee the completion of the Improvements and the performance of the work necessary to complete the Improvements; as well as, full payment of all suppliers, material men, laborers or subcontractors employed to provide services to complete the Improvements. The contractor shall be required by contract to deliver a copy of the surety bond to TENANT. Such bonds shall remain in effect for one (1) year after completion of the Improvements. The contractor will cause the correction of any defective or faulty work or materials that appear after the completion of the Improvements within the warranty period of such work performed.

d. Any Improvements placed on said Leased Property without the prior written approval of SBBC as to location shall immediately be removed or relocated within ninety (90) days of written demand by SBBC, unless the parties agree that the Improvements should remain whereby this Agreement will be amended, in writing to reflect the use and responsibility of the Improvements.

e. Consistent with provisions in this Agreement, all permitted Improvements made by TENANT, if not removed and space restored to its original condition, shall become the property of SBBC. BC agrees that SBBC shall not compensate TENANT for such Improvements.

2.13 **Parking.** TENANT shall have the exclusive right to two (2) reserved parking spaces on the first level in the KCW parking garage for use by TENANT only during days the SBBC is open. TENANT shall have right to use eight (8) additional non-reserved garage parking spaces in the KCW parking garage for use by TENANT only during days the SBBC is open. However, during days the SBBC is closed, including, but not limited to, SBBC recognized holidays and weekends the TENANT will not have access to any parking located in the KCW parking garage. However, prior to such days when SBBC is closed, and TENANT is open for operations as stated in paragraph 2.03a, the SBBC shall make provision for TENANT to utilize equivalent number of parking spaces cited herein at the surface parking lot located adjacent to the KCW building. Said equivalent number of parking spaces shall be for use only by its employees working out of the KCW building. SBBC reserves the right, at any time, at its discretion, to designate the specific parking spaces in the parking garage for usage by SBBC employees.

2.14 **Utilities.** The TENANT will promptly pay for all gas, water, power and electric light rates or charges which may become payable during the term of this Lease Agreement for the gas, water and electricity used by the TENANT on the Leased Property.

2.15 **Insurance.** TENANT shall maintain in full force and effect during the Term of this Lease Agreement the following minimum insurance requirements:

- a. **General Liability:** Limits not less than \$1,000,000 per occurrence for Bodily Injury/Property Damage; \$2,000,000 General Aggregate. Limits not less than \$1,000,000 for Product Completed Operations.

- b. Worker's Compensation: Florida Statutory limits in accordance with Chapter 440; Employer's Liability limits not less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).
- c. Property Damage: Damage to rented premises in the amount of \$1,000,000 combined single limit per occurrence.
- d. Acceptability of Insurance Carriers: The insurance policies shall be issued by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A-VI by AM Best or Aa3 by Moody's Investor Services.
- e. Verification of Coverage: Proof of the required insurance must be furnished by TENANT to SBBC Risk Management Department by providing a Certificate of Insurance within fifteen (15) days of the date of this Lease Agreement. All certificates (and any required document) must be received and approved by SBBC Risk Management Department within fifteen (15) days of the date of this Lease Agreement. TENANT shall immediately remedy any deficiencies. FAX CERTIFICATE OF INSURANCE TO SBBC RISK MANAGEMENT AT 1-866-897-0424.
- f. Required Conditions: Liability policies must contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance: The School Board of Broward County, Florida, its members, officers, employees and agents as additional insured. The endorsement number shall be provided to the SBBC Risk Management Department. All liability policies are primary of all other valid and collectible coverage maintained by the School Board of Broward County, Florida. (\*\*Please include the Contact # and Title of the Certificate of Insurance.) (Certificate Holder: The School Board of Broward County, Florida 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301.)
- g. Cancellation of Insurance: TENANT is prohibited from providing services under this Lease Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two (2) business days if required insurance is cancelled.

2.16 **Inspection of Tenant's Records by SBBC.** TENANT shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All TENANT's Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by TENANT or any of TENANT's payees pursuant to this Agreement. TENANT's Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs

(including overhead allocations) as they may apply to costs associated with this Agreement. TENANT's Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

- a. For the purposes of this Agreement, the term "TENANT's Records" shall include, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.
- b. Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to TENANT's Records from the date of this Lease Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to TENANT pursuant to this Agreement.
- c. Notice of Inspection. SBBC's agent or its authorized representative shall provide TENANT reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.
- d. Audit Site Conditions. SBBC's agent or its authorized representative shall have access to TENANT's facilities and to any and all records related to this Lease Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.
- e. Failure to Permit Inspection. Failure by TENANT to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any TENANT's claims for payment by SBBC.
- f. Inspector General Audits. TENANT shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.17 **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 and Real Estate Department  
The School Board of Broward County, Florida  
600 Southeast Third Avenue – 8<sup>th</sup> Floor  
Fort Lauderdale, Florida 33301

To TENANT: Michael Tomko, President  
BrightStar Credit Union  
P.O. Box 8966  
Fort Lauderdale, Florida 33310-8966

2.18 **Background Screening:** TENANT agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of TENANT or its personnel providing any services under the conditions described in the previous sentence. TENANT shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to TENANT and its personnel. The parties agree that the failure of TENANT to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. TENANT agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in TENANT's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.19 **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.

a. 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 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.

b. By TENANT: Notwithstanding, any provision in this Lease Agreement, TENANT agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which

SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by TENANT, its agents, servants or employees; the equipment of TENANT, its agents, servants or employees while such equipment is on Leased Property owned or controlled by SBBC; or the negligence of TENANT or the negligence of TENANT's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by TENANT, SBBC or otherwise.

2.20 **Ad Valorem Tax Exemption.** The parties agree that this Lease Agreement shall not be effective until such time as an Ad Valorem Tax Exemption Application and Return submitted by TENANT for use of the Leased Property has been approved by the Broward County Property Appraiser. TENANT shall bear all cost associated with the submittal of the Ad Valorem Tax Exemption Application and Return. If the Leased Property is made subject to ad valorem taxes as a result of TENANT's use of the property, TENANT shall reimburse SBBC for any such levied ad valorem taxes within thirty (30) calendar days of TENANT's receipt of a demand for reimbursement from SBBC. The Broward County Property Appraiser's denial of an Ad Valorem Tax Application and Return for TENANT's use of the Leased Property shall constitute cause for SBBC's immediate termination of this Lease Agreement. In the event of such termination, no damages of any kind, fees, costs, expenses, penalties, lost profits, reimbursements and the like shall accrue to SBBC.

2.21 **Garage Access.** SBBC shall provide personnel on the days the SBBC is officially closed to open and close the KCW garage gate to enable TENANT to gain access to the drive-thru located in the KCW garage. The salary for this personnel shall be \$22.67 per hour, in addition to 17.40% for fringe benefits. This duration of work hours shall be the TENANT's hours of operation as stated in Section 2.03a, to include 30 minutes before TENANT's hours of operation and 30 minutes after TENANT's hours of operation (either thirteen (13) hours total for a weekday or seven (7) hours total for a weekend day, whichever is applicable). SBBC shall invoice TENANT for this expense after the designated personnel completes the duration of work hours stated herein. The duties of said personnel is solely to open and close the KCW garage gate. Said personnel shall remain in the general vicinity of the KCW garage during the Hours of Operation of TENANT and during the times that SBBC is closed. Additionally, said personnel shall not be responsible for providing security services or any other responsibilities that is not specifically stated herein. Moreover, TENANT shall not direct said personnel to perform any other services, than is specifically stated herein. Finally, during the TENANT's hours of operation during which the SBBC is closed, SBBC shall not have any responsibility for providing security and safety or preventing damage for the Leased Property. Within thirty (30) days of the date of the SBBC's invoice, TENANT shall reimburse SBBC the total amount stated in said invoice. SBBC shall notify TENANT each and every time the hourly rate stated herein changes, and TENANT shall pay the stated new rate. If the said invoiced amount due is not paid within the timeframe stated herein, the SBBC reserves the right to terminate this Lease Agreement for cause as allowed by Section 3.05.

### **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 contract.

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, contributions to unemployment compensation funds or insurance for the TENANT or the TENANT'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 ninety (90) days written notice to the other parties of its desire to terminate this Agreement. In the event of such termination, SBBC shall be entitled to a pro-rata refund of any pre-paid amounts for any services scheduled to be delivered after the effective date of such termination. SBBC shall have no liability to TENANT for terminating or canceling the Lease Agreement, with or without cause. SBBC shall have no liability for any property left on SBBC's property by any party to this Lease Agreement after the termination of this Lease Agreement. Any party contracting with SBBC under this Lease Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Lease Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Lease Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate. However, if TENANT terminates the Lease Agreement prior to May 1, 2020, TENANT shall pay SBBC an additional sum of \$28,520.58 (six months' gross rent). It is hereby acknowledged that any such amount required to be paid by

TENANT in connection with such early termination is not a penalty, but aggregate sum of the damage which would be incurred by SBBC as a result of such early termination of this Lease Agreement (which damages are incalculable) and, in that regard, constitutes liquidated damages with respect to such loss. If this Lease Agreement is terminated early by SBBC pursuant to this Section, TENANT shall not be obligated to pay any liquidated damages for early termination.

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, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the TENANT 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

3.09 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. TENANT shall keep and maintain public records required by SBBC to perform services required under this agreement. Upon request from SBBC's custodian of public records, TENANT 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. TENANT shall ensure that 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 TENANT does not transfer the public records to SBBC. Upon completion of the Agreement, TENANT shall transfer, at no cost, to SBBC all public records in possession of TENANT or keep and maintain public records required by SBBC to perform the services required under the Agreement. If TENANT transfer all public records to SBBC upon completion of the Agreement, TENANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If TENANT keeps and

maintains public records upon completion of the Agreement, TENANT 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, in a format that is compatible with SBBC's information technology systems.

**IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATION TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT, 754-321-1900, RECORDREQUESTS@BROWARDSCHOOLS.COM, 600 SE 3<sup>RD</sup> AVENUE FORT LAUDERDALE, FL 33301.**

3.10 **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.

3.11 **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.

3.12 **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.

3.13 **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.

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

3.15 **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.

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



3.17 **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.

3.18 **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.

3.19 **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.

3.20 **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.

3.21 **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.

3.22 **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.

3.23 **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.

3.24 **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.

3.25 **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.



3.26 **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.

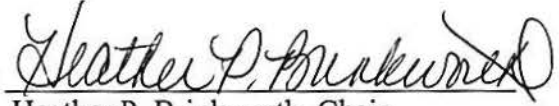
**FOR SBBC**

(Corporate Seal)

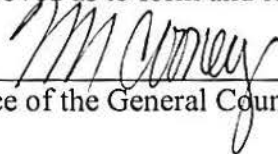
ATTEST:

  
  
Robert W. Runcie, Superintendent of Schools

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

By:   
Heather P. Brinkworth, Chair

Approved as to form and legal content:

  
Office of the General Counsel

**FOR TENANT**

BRIGHTSTAR CREDIT UNION

(Corporate Seal)

ATTEST:

By: *Michael Tomko* 2/19/19  
Michael Tomko, President

\_\_\_\_\_  
Secretary

-or-

*Catherine Garcia* *Catherine Garcia*  
Witness  
*MARCESSA RODRIGUES SOUZA* *MARCESSA*  
Witness

**The Following Notarization is Required for Every Agreement Without Regard to Whether the Lessor 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 19<sup>th</sup> day of February, 20 19 by Michael Tomko of BrightStar Credit Union, on behalf of the corporation/agency.

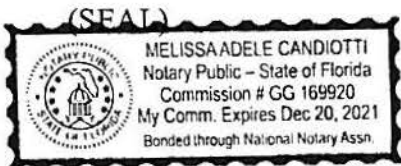
He/She is personally known to me or produced \_\_\_\_\_ as identification and did/did not first take an oath. (Type of Identification)

My Commission Expires: 12/20/21

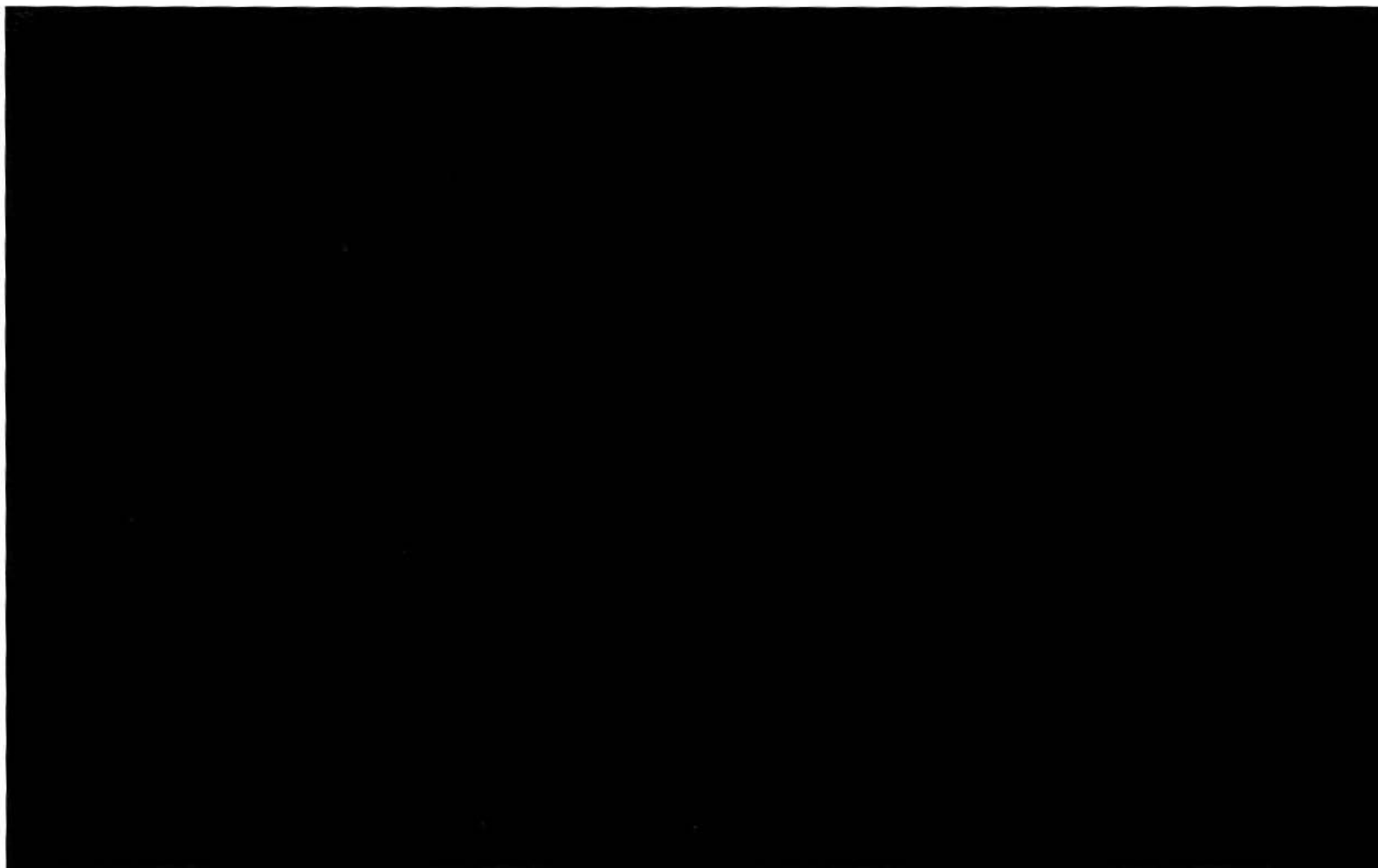
*Melissa Adele Candiotti*  
Signature - Notary Public

Melissa Adele Candiotti  
Printed Name of Notary

EG169920  
Notary's Commission No.



S:/v/allwork-use/contracts/develop/1112year/110919lease



**This Exhibit is confidential and has been has been redacted pursuant to Sections 119.071 and 281.301, Florida Statutes. The unredacted Exhibit will be provided to the parties to this Agreement.**

### Lease Analysis Matrix

#### Lease Agreement between The School Board of Broward County, Florida and BrightStar Credit Union

##### Comparable Rental Sites

##### Staff Recommendations/Comments

Site Location	Building Type/Class	Year Built	Total Rentable Square Foot	Cost Per Square Foot	Monthly Base Rent	Annual Base Rent	Operating Expenses Per Square Foot	Monthly Operating Expense	Annual Operating Expense	Total Annual Lease Cost	Logistics		Key Notes	
											Parking Availability	ADA Compliance Y/N	Rental Terms	Comments
Kathleen C. Wright Administrative Complex (KCW) 600 SE 3rd Avenue Fort Lauderdale, FL 33301 (2016 Number)	Office Building/Office	1991	1,426	\$27.46	\$3,263.55	\$39,162.60	\$12.54	\$1,489.88	\$17,878.56	\$57,041.16	Yes	Yes	36 Months	Annual Increase minimum of 3% or Consumer Price Index(CPI) for both base rent and operational cost
1 2455 E Sunrise Boulevard - 4th Floor Fort Lauderdale, FL 33304	Office Building/Office	1969	1,431	\$23.50	\$2,802.38	\$33,629	N/A	N/A	N/A	\$33,628.50	Yes	N/A	36 Months	Full Service Gross Rent Four (4) Surface Parking Spaces are available.
2 1800 Eller Drive #222 Fort Lauderdale, FL 33316	Office Building/Office	1983	1,556	\$28.20	\$3,656.60	\$43,879	N/A	N/A	N/A	\$43,879.20	Yes	N/A	180 Months	Full Service Gross Rent Parking ratio 4.80/1,000SF
3 600 S. Andrews Avenue, 1st Floor Fort Lauderdale, FL 33301	Office Building/Office	1987	1,792	\$27.00	\$4,032.00	\$50,435.00	\$6.79	\$1,013.97	\$12,167.68	\$62,602.68	Yes	N/A	240 Months	Modified Gross Rent Parking Ratio of 5.00/1,000SF
4 633 S Andrews Avenue, 2nd Floor Fort Lauderdale, FL 33301	Office Building/Office	1983	1,636	\$23.00	\$3,135.67	\$50,435	N/A	N/A	N/A	\$50,435.00	Yes	N/A	60 Months	Modified Gross Rent Parking Ratio 4.90/1,000SF
<b>Average:</b>				<b>\$25.43</b>	<b>\$3,406.66</b>	<b>\$44,594.43</b>								

**Notes:**

Lease Comparable Operating Expenses are estimates derived from prior years expenses (excludes applicable taxes)

Average cost per square foot amounts are derived from comparable site locations No. 1 through 4

Individual calculated amount(s) may vary due to dollar figure rounding to the nearest decimal