

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into as of this 5th day of September, 2018, 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

EARLY LEARNING COALITION OF BROWARD COUNTY, INC
(hereinafter referred to as "ELC"),
a Florida non-profit corporation
whose principal place of business is
6301 NW 5th Way, Suite 3400 – Fort Lauderdale, FL 33309

WHEREAS, ELC desires to lease space from SBBC to provide resources and referrals to Voluntary Pre-Kindergarten (VPK) and School Readiness programs; and

WHEREAS, SBBC is a political subdivision of the State of Florida pursuant to Section 1.01, Florida Statutes, and a governmental unit for the purposes of Section 196.199, Florida statutes, and has certain space available in one of its facilities; and

WHEREAS, ELC desires to lease space from SBBC at the Gulfstream Early Learning Center of Excellence, and in exchange for which ELC is willing to pay SBBC for overhead expenses associated with ELC's use of space at said facility; and

WHEREAS, SBBC would otherwise be required to expend public funds to procure the services that ELC proposes to provide in exchange for its use of SBBC's facilities.

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 **Term of Lease Agreement.** Unless terminated earlier or extended pursuant to **Section 3.06** of this Lease Agreement, the term of this Lease Agreement shall commence on September 5, 2018 and conclude on September 4, 2019.

2.02 **Leased Facilities.** SBBC hereby leases to ELC, 224 square feet in Building No. 6 (hereafter referred to as “Leased Facilities”) within the Gulfstream Early Learning Center of Excellence (hereafter referred to as “Early Learning Center”) as shown on **Exhibit “A”** which is attached hereto and incorporated herein by reference.

2.03 **Permitted Use of Leased Facilities and Hours of Operation.** ELC agrees to utilize the Leased Facilities to provide training and quality support to public and private providers, support accreditation throughout Broward County, provide resources and referrals to VPK and School Readiness programs.

2.03.1 The Leased Facilities shall be used by ELC for the purposes described above, and for no other purpose without the prior written consent of SBBC, which consent may be granted or withheld entirely within SBBC’s sole discretion. Except as described herein, the Leased Facilities may be used by ELC from 8:00 a.m. to 5:00 p.m. during such days and hours as the Early Learning Center is open for SBBC’s operations, which hours of operation shall be from 7:30 a.m. to 9:30 p.m. Monday through Friday. ELC will not be entitled to use the Leased Facilities during any periods when the Early Learning Center is closed for reasons including, without limitation, federal holidays, school holidays, and periods when SBBC’s administration is closed due to a four (4) - day work week. If necessary, ELC may request the use of the Leased Facilities at times when SBBC’s administration is closed, but only upon written advance request to and prior approval by SBBC’s site administrator for the Early Learning Center.

2.03.2 ELC shall not do or permit to be done in or about the Leased Facilities, nor bring or keep or permit to be brought or kept therein, anything which is prohibited by or will in any way conflict with any law, statute, School Board Policy, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated; or which is prohibited by any standard form of fire insurance policy or will in any way increase the existing rate of or affect any fire or other insurance upon the building in which the Leased Facilities are situated or any of its contents, or cause a cancellation of any insurance policy covering said building or any part thereof or any of its contents.

2.03.3 ELC shall not do or permit anything to be done in or about the Leased Facilities which will in any way obstruct or interfere with the rights of other occupants of the Early Learning Center in which the Leased Facilities are situated, or injure or annoy them or use or allow the Leased Facilities to be used for any improper, immoral, unlawful or objectionable purpose (as determined by SBBC); nor shall ELC cause, maintain, or permit any nuisance (as determined by SBBC or by law) in or about the Leased Facilities or commit or suffer to be committed any waste in, on, or about the Leased Facilities.

2.03.4 ELC, at ELC's expense, shall comply with all laws, rules, orders, statutes, School Board Policies, ordinances, directions, regulations and requirements of all federal, state, county and municipal authorities pertaining to ELC's use of the Leased Facilities and with the recorded covenants, conditions and restrictions applicable to the building in which the Leased Facilities are situated, regardless of when they become effective or applicable, including, without limitation, all applicable federal, state and local laws, regulations or ordinances pertaining to air and water quality, hazardous materials, waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and the Americans with Disabilities Act of 1990 and Florida Americans With Disabilities Accessibility Implementation Act, as both may be amended from time to time (collectively "ADA") and with any direction of any public officer or officials which shall impose any duty upon SBBC or ELC with respect to the use or occupation of the Premises.

2.04 **Site Plan and Floor Plan:** The site plan of the Leased Facilities is attached hereto and incorporated herein by reference as **Exhibit "A"**. The floor plan of the Leased Facilities is attached hereto and incorporated herein by reference as attached **Exhibit "B"**, and delineates those areas that will exclusively be utilized respectively by the SBBC and ELC. **Exhibit "B"** also delineates the common areas that will be shared by SBBC and ELC. ELC

2.05 **In-Kind Services.** In lieu of the payment of base rental fee for use of the Leased Facilities, ELC agrees to assign ELC personnel to the Leased Facilities to deliver ELC services and programmatic programs as stated in Section 2.03 of this Lease Agreement ("In Kind Services") throughout the term of this Lease Agreement. As the market value of the base rental fee for the Leased Facilities is at least \$466.67 per month, ELC shall expend at least \$466.67 per month to hire and pay ELC personnel who will be housed at the Leased Facilities and be assigned to deliver services as specified in Section 2.03 of this Lease Agreement. Prior to the commencement of this Lease Agreement, ELC shall provide documentation to the SBBC showing the amount that ELC will expend through the term of the Lease Agreement for the provision of services required under this Lease Agreement and such sum must at least be equivalent to \$5,600.00 (the annual market value of the base rental fee for the Leased Facilities). The base rental fee cited herein shall increase annually by three percent (3%). If the amount shown in the document is lower than the base rent due, ELC shall take corrective action to make up the difference prior to commencement of the term of this Lease Agreement. Thereafter, ELC shall annually provide said documentation to the Superintendent or his/her designee (Director, Facility Planning & Real Estate Department) within ninety (90) calendar days after the beginning of each school year for SBBC's district schools. ELC agrees that if the corrective action stated herein is not taken, it shall pay SBBC the difference between the annual amounts expended at the Leased Facilities for In-Kind Services and the annual market value of the base rental fee for the Leased Facilities within thirty (30) calendar days of receipt of SBBC's demand for payment. ELC agrees that this Lease Agreement shall immediately terminate if such payment is not timely made and that ELC will immediately vacate the Leased Facilities no later than fourteen (14) days thereafter.

2.06 **Operating Expenses.** The operational cost paid regarding use of the Leased Facilities shall be based upon the historical operating expense of the Gulfstream Early Learning Center of Excellence. Operational costs in the amount of \$252.71 per year (or \$21.06 per month) will be paid by ELC to SBBC and such operational costs are based upon the prior four (4) years of operational expenses of the Gulfstream Early Learning Center of Excellence. All payments of the operational costs will be made and paid on the first day of each calendar month by ELC to SBBC via the Facility Planning and Real Estate at the address specified in **Section 2.39**. The operational costs will be paid by ELC in twelve (12) equal monthly payments and the payments will be reconciled annually against the actual costs incurred by SBBC for operating the Premises during the past twelve (12) months. Any applicable credits due to the ELC will be applied to the following month(s) operating cost payment(s), and payments made by ELC during the past twelve (12) months to SBBC if below the actual costs incurred by SBBC for operating the Early Learning Center during the past twelve (12) months will be paid to SBBC within thirty (30) calendar days upon receipt of invoicing from SBBC regarding the same. The operational costs cited herein shall increase annually by three percent (3%). Any applicable debits due will be applied to the following month(s) operating cost payment(s). SBBC will make every effort to provide ELC with any forecasts or advance notice of changes to operating costs that could significantly impact the payments required by ELC.

2.07 **Custodial Service Cost.** In addition to any In-Kind Services Expenses (If applicable) and Operating Expenses as expressed in this Agreement, ELC will be required to pay a shared custodial services cost for the Leased Facilities in the amount of \$10,000.00 annually (or \$833.33 monthly). All payments of custodial services cost will be made and paid on the first (1st) day of each calendar month by ELC to SBBC via Early Learning Center.

2.08 **Relocation of Leased Facilities.** If upon expiration of this Lease Agreement ELC elects to renew this Lease Agreement and continue leasing space in an SBBC owned facility, ELC agrees the SBBC at SBBC's sole discretion may relocate ELC to another comparable location within the school district. In such event, ELC shall bear all costs of moving its property from one location to another.

2.09 **Utilities.** During the term of this Lease Agreement as described in **Section 2.01**, SBBC shall provide water, electrical, telephone outlet, general lighting, air conditioning and heating by means of appliances and fixtures installed for ordinary purposes to service the Leased Facilities. SBBC shall not be obligated to furnish or install any appliances or fixtures not installed at the Leased Facilities at the time of execution of this Lease Agreement or to furnish or install any appliances or fixtures contemplated by ELC for any special uses. SBBC shall not be responsible or chargeable for any interruptions, delays or failures in furnishing any such utilities due to causes beyond SBBC's control. ELC will be permitted access to and use of SBBC's internet service only in the event that such access is permitted by SBBC's applicable contract or license for such service. If access is not permitted by SBBC's applicable contract or license, ELC shall be required to obtain such services at ELC's sole expense.

2.10 **Heating, Air Conditioning and Lighting.** 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 premises. Heating and air conditioning services shall be provided for the days and times as indicated in **Section 2.03** herein. SBBC agrees to maintain the light fixtures installed in the Leased Facilities for the use of ELC during the term of this Lease Agreement.

2.11 **Office Equipment and Supplies.** ELC agrees to provide all office equipment, telephones, computers, copiers, facsimile machines and office supplies necessary for ELC personnel to conduct ELC's business at the Center during the term of this Lease Agreement.

2.12 **Office Furniture & Furnishings.** Inclusive of those items described in **Section 2.11**, ELC shall provide office furniture and furnishings for the Leased Facilities during the term of this Lease Agreement.

2.13 **ELC Personnel.** ELC shall hire and pay for all ELC personnel as ELC employees. The parties agree that ELC personnel are not employees of SBBC and that SBBC shall have no obligation to provide salary, wages, benefits or workers compensation for such persons. However, ELC agrees that, as appropriate, all ELC employees shall follow all applicable SBBC policies and procedures.

2.14 **Access to Student Information.** In addition to the requirements under this Section, ELC shall comply with the requirements of **Exhibit C**, Safeguarding the Confidentiality of Student Records and Information, which is attached hereto and incorporated herein by reference. ELC will obtain a properly executed FERPA-compliant consent which (1) specifies the records that may be disclosed, (2) states the purpose of the disclosure, and (3) identifies the party or class of parties to whom the disclosure may be made to release of student information from the student's parent or guardian upon each SBBC student's enrollment in the ELC program. SBBC will provide ELC with information about the performance, attendance and behavior of each such SBBC student from SBBC's database upon presentation of the properly executed consent. This information will be used by ELC to provide accountability data that may lead to increased financial contributions to ELC and thereby increase the number of at risk SBBC students receiving support from ELC.

2.15 **Renewal Option.** ELC may request to renew this Lease Agreement for an additional three (3) year term prior to its expiration, and if ELC does so, the terms and conditions applicable to the renewal term shall be the same as those stated elsewhere in this Lease Agreement. To this end, ELC shall provide SBBC with written notice of its intent to exercise this Renewal Option at least two hundred and seventy (270) calendar days prior to the end of the term of the Lease Agreement and such requested renewal shall be subject to SBBC approval. During the renewal term, ELC shall provide SBBC with the In-Kind Services described in **Section 2.05**, and shall pay SBBC operating expenses in the manner described in **Section 2.06**.

2.16 **Payment of Taxes.** 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 ELC for use of the Leased Facilities has been approved by the Broward County Property Appraiser. ELC shall bear all costs associated with the submittal of the Ad Valorem Tax Exemption Application and Return. If the Leased Facilities are made subject to *ad valorem* taxes or any other type of taxes as a result of ELC's use of the property, ELC shall reimburse SBBC for any such taxes within thirty (30) calendar days of ELC'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 of ELC's use of the Leased Facilities shall constitute cause for the immediate termination of this Lease Agreement and ELC shall immediately vacate the Leased Facilities no later than twenty-four (24) hours thereafter. In addition, ELC shall pay and be liable for all rental, occupancy, sales and use taxes or other similar taxes, if any, levied or imposed by any city, state, county or other governmental body having authority, in connection with this Lease Agreement and/or any payments due by ELC to SBBC pursuant to this Lease Agreement, such payments to be in addition to all other payments required to be paid to SBBC by ELC under the terms of this Lease Agreement. Any such payment shall be paid concurrently with the payment of other sums payable by ELC to SBBC under this Lease Agreement.

2.17 **ADA.** SBBC hereby represents that the property herein 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 ELC.

2.18 **Asbestos and Radon Gas.** SBBC hereby represents that the 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. SBBC notifies ELC as follows: "RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."

2.19 **Subletting.** ELC acknowledges that ELC's obligations and duties under this Lease Agreement are unique and not subject to being adequately performed by any other party. As such, ELC agrees that it shall not assign or sublet the Leased Facilities described in this Lease Agreement, assign its interests or rights existing under this Lease Agreement, or use said Leased Facilities or any part thereof, for any purpose other than set out in the Lease Agreement.

2.20 **Maintenance Repairs.** SBBC shall maintain and keep in good repair the interior and exterior of the Leased Facilities during the term of this Lease Agreement and shall be responsible for the replacement of all windows, doors and ancillary fixtures broken and damaged at the demised premises, except if such breakage or damage is caused to the exterior of the

demised premises by the ELC, its officers, agents of employees. No services or maintenance shall be provided except as otherwise stated in this Lease Agreement. ELC will not damage the Leased Facilities or the Building in which they are situated but will maintain the Leased Facilities in a clean, attractive condition and in good repair. Upon termination of this Lease Agreement, ELC will surrender and deliver the Leased Facilities to SBBC free of ELC's personal property and in broom clean condition, and in the same condition in which it existed prior to ELC's occupancy of the Leased Facilities, excepting only ordinary wear and tear and damage from casualty as set forth in **Section 2.56** hereof or from a governmental taking, as set forth in **Section 2.54** hereof.

2.21 **Special Services.** Except for any services that are expressly to be provided by SBBC under this Lease Agreement, it shall be ELC's responsibility to arrange and pay for any and all services not stated herein required for ELC's intended use of the Leased Facilities.

2.22 **Fire Legal Liability Damage to Rented Premises.** ELC shall maintain Fire Legal Liability damage to rented premises with limits of \$500,000.00 per occurrence/aggregate.

2.23 **Automobile Liability Insurance.** ELC shall maintain Automobile Liability Insurance covering all Owned, Non-Owned and Hired vehicles in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence Combined Single Limit for Bodily Injury and Property Damage.

2.24 **Insurance Requirements.** ELC shall comply with the following insurance requirements throughout the term of this Lease Agreement:

(a) **General Liability.** ELC shall maintain General Liability insurance during the term of this Lease Agreement with limits not less than \$1,000,000 per occurrence for Bodily Injury/Property Damage; \$1,000,000 General Aggregate; and limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) **Workers' Compensation.** ELC shall maintain Workers' Compensation insurance during the term of this Lease Agreement in compliance with the limits specified in Chapter 440, Florida Statutes, and Employer's Liability limits shall not be less than \$100,000/\$100,000/\$500,000 (each accident/disease-employee/disease-policy limit).

(c) **Auto Liability.** ELC shall maintain Owned, Non-Owned and Hired Auto Liability insurance with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.

(d) **Acceptability of Insurance Carriers.** The insurance policies required under this Lease Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(e) **Verification of Coverage.** Proof of the required insurance must be furnished by ELC to SBBC's Risk Management Department by Certificate of Insurance within fifteen (15) days

of the date of this Lease Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC's Risk Management Department before any work commences to permit ELC to remedy any deficiencies. ELC must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(f) Required Conditions. Liability policies must include the following terms on the Certificate of Insurance:

- 1) The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.
- 2) All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida.
- 3) Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P.O. Box 4668-ECM, New York, New York 10163-4668.

(h) Cancellation of Insurance. ELC 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.

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Lease Agreement.

2.25 **SBBC Liability.** SBBC shall not be responsible for any damage, accident, injury or death to ELC or ELC's property or to ELC's agents, servants, employees or invitees or to their property from any cause whatsoever while such persons or property are located upon SBBC's property either prior to, during or subsequent to the period for which ELC has been permitted use of the Leased Facilities.

2.26 **Licenses and Permits.** ELC agrees to obtain at its sole expense any permits, licenses or additional authorizations required by law or ordinance for ELC's use of the Leased Facilities.

2.27 **Condition and Inspection of Leased Facilities.** ELC agrees to accept the Leased Facilities in **AS-IS** condition at the time this Lease Agreement is executed. ELC may not remove or relocate any of SBBC's property, appliances or fixtures located upon the Leased Facilities without the prior written approval of SBBC's site administrator of Early Learning Center. If such approval is granted, ELC shall bear all costs of such removal and location and of restoring such property, appliances or fixtures to its original condition or location as directed by the site

administrator upon the termination of this Lease Agreement. Under no circumstances shall ELC remove SBBC's equipment, furnishings or other property from the Leased Facilities.

2.28 **Improvements.** The location of any and all Improvements to be placed on the Leased Facilities, 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 Facilities. However, such approval by SBBC shall not be unreasonably withheld.

2.28.1 The authority to grant approval regarding Improvements in this Lease Agreement is hereby delegated by SBBC to SBBC's Chief Facilities Officer and Chief Building Official. Subject to the provisions of the foregoing paragraph, the parties further agree that ELC will prepare and submit plans to 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. SBBC's Chief Facilities Officer and Chief Building Official shall have ninety (90) calendar days from the date of receipt to review and comment. All design documents shall be approved by SBBC's Chief Facilities Officer and Chief Building Official prior to submission to the Department of Education, if applicable.

2.28.2 ELC shall be solely responsible for all contractual obligations owed to the contractor engaged to construct the Improvements.

2.28.3 Before the commencement of the Improvements, ELC 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 ELC. 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.

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

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

2.29 **SBBC's Access to the Leased Facilities.** SBBC or its authorized agent or agents shall have the right to enter upon the Leased Facilities at all reasonable times for the purposes of inspecting the same, preventing waste, making such repairs as SBBC may require, or to perform maintenance services.

2.30 **Parking Areas.** SBBC shall keep and maintain the parking areas adjacent to the Leased Facilities in good condition. SBBC reserves the right to control the method, manner and time of parking in the parking areas. ELC personnel, assigned to work in the Leased Facilities shall upon the effective date of this Lease Agreement and/or occupation of the Leased Facilities by ELC, have the right to use the parking area as shown in **Exhibit "A"** to park vehicles. SBBC reserves the right, at any time, at its sole discretion, to designate specific parking spaces in the parking area for usage by SBBC employees. Any ELC staff found to be parking improperly in such designated parking spaces shall have their parking privileges revoked and their vehicles will be subject to towing at the sole expense of the vehicles' owners. For the purposes of this Lease Agreement, a vehicle shall be defined as a (car, pick-up truck, SUV and/or motorcycle). ELC acknowledges that use of the parking area cannot be guaranteed at times other than the operating hours identified in **Section 2.03**.

2.31 **Key to Leased Facilities.** SBBC will provide ELC with a key to access the Leased Facilities upon approval of this Lease Agreement. Upon the termination or expiration of this Lease Agreement and prior to vacating the Leased Facilities within a ten (10) calendar day period, ELC shall return to the site administrator, all keys to the Leased Facilities. ELC admits and agrees that should it fail to return the aforementioned keys to SBBC within the specified time period, ELC shall be responsible to pay to have the lock(s) on the appropriate facility door(s) changed.

2.32 **Deliveries.** ELC agrees to be responsible for the arrangement and payment for any and all deliveries to the Leased Facilities of any equipment, property, scenery, goods or other material necessary for ELC's use of the Leased Facilities.

2.33 **ELC's Property/Improvements.** ELC agrees to remove all of its property/improvements and that of its personnel from the Leased Facilities within twenty-four (24) hours after the conclusion or termination of ELC's permitted use of the Leased Facilities and restore the Leased Facilities to its original state. ELC agrees that any property left by it at the Leased Facilities more than fourteen (14) days beyond the period permitted under this Lease Agreement shall be left at ELC's peril, shall be considered abandoned, and may be disposed of at the sole discretion of SBBC's site administrator without any recourse by ELC. It is agreed that no bailor/bailee relationship shall be construed to exist between SBBC and ELC with regard to any property left by ELC at the Leased Facilities at times other than the period permitted under this Lease Agreement.

2.34 **Hazardous Materials.** ELC shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept or used in or about the Leased Facilities by ELC, its agents, principals, employees, contractors, consultants or invitees without the prior written

consent of the SBBC's site administrator, which consent may be withheld for any reason whatsoever or for no reason at all. If ELC breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material upon the Leased Facilities caused or permitted by ELC (or the aforesaid others) results in (a) any contamination of the Leased Facilities, the surrounding area(s), the soil or surface or ground water or (b) loss or damage to person(s) or property, or if contamination of the Leased Facilities or the surrounding area(s) by Hazardous Material otherwise occurs for which ELC is legally, actually or factually liable or responsible to SBBC (or any party claiming, by through or under SBBC) for damages, losses, costs or expenses resulting therefrom, then ELC shall be solely responsible for all costs, expenses and amounts required to remediate, clean up and correct such matter and ELC shall further fully and completely indemnify, defend and hold harmless SBBC (or any party claiming by, through or under SBBC) from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses [including, without limitation: (i) diminution in the value of the Leased Facilities and/or the land on which the Leased Facilities are located and/or any adjoining area(s) which SBBC owns or in which it holds a property interest; (ii) damages for the loss or restriction on use of rentable or usable space of any amenity of the Leased Facilities or the land on which the Leased Facilities are located; (iii) damages arising from any adverse impact on marketing of space; and (iv) any sums paid in settlement of claims, reasonable attorneys and paralegals' fees, (whether incurred in court, out of court, on appeal or in bankruptcy or administrative proceedings) consultants fees and expert fees which arise during or after the term of this Lease Agreement or any renewal thereof, as a consequence of such contamination. This indemnification of SBBC by ELC includes, without limitation, costs incurred in connection with any investigation or site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Leased Facilities.

2.34.1 Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Leased Facilities or the surrounding area(s) caused or permitted by ELC (or the aforesaid others) results in (a) any contamination of the Leased Facilities, the surrounding area(s), the soil or surface or ground water or (b) loss or damage to person(s) or property, then ELC shall immediately notify SBBC of any contamination, claim of contamination, loss or damage and, after consultation and approval by SBBC, take all actions at ELC's sole expense as are necessary or appropriate to return the Leased Facilities, the surrounding area(s) and the soil or surface or ground water to the condition existing prior to the introduction of any such Hazardous Material thereto, such that the contaminated areas are brought into full compliance with all applicable statutory regulations and standards. The foregoing obligations and responsibilities of ELC shall survive the expiration or earlier termination of this Lease Agreement.

2.34.2 As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law. "Hazardous Material" includes any and

all material or substances which are defined as "hazardous waste", "extremely hazardous waste" or a "hazardous substance" pursuant to local, state or federal governmental law. "Hazardous substance" includes, but is not restricted to, asbestos, polychlorobiphenyls ("PCB's"), petroleum, any and all material or substances which are classified as "biohazardous" or "biological waste" (as such terms are defined by Florida Administrative Code ("F.A.C.") Chapter 17-712, as amended from time to time), and extremely "hazardous waste" or "hazardous substance" pursuant to federal, state or local governmental law.

2.34.3 SBBC and its agents shall have the right, but not the duty, to inspect the Leased Facilities at any time to determine whether ELC is complying with the terms of this Lease Agreement. If ELC is not in compliance with this Lease Agreement, SBBC shall have the right to immediately enter upon the Leased Facilities to remedy at ELC's expense any contamination caused by ELC's failure to comply, notwithstanding any other provision of this Lease Agreement. SBBC shall use its best efforts to minimize interference with ELC's operations, but shall not be liable for any interference caused thereby.

2.34.4 Any non-compliance by ELC with its duties, responsibilities and obligations under this Section shall constitute a default of this Lease Agreement, no notice of any nature from SBBC to ELC being required.

2.35 **Adult Products; Smoking.** ELC shall not bring, keep or possess any adult products, intoxicating beverages, drugs, narcotics or gambling devices upon SBBC property or permit others to do so. In accordance with state law and School Board Policy 1120, smoking will not be permitted upon SBBC property under any circumstances.

2.36 **Removal of Persons.** SBBC reserves the right, through its representatives, to eject any objectionable person or persons from SBBC property including, without limitation, the Leased Facilities, and in the event of the exercise of this authority by SBBC through its representatives, agents or through law enforcement personnel, ELC hereby waives any right and all claims for damages against SBBC or any of its representatives or agents.

2.37 **Background Screening.** ELC agrees to comply with all requirements of Sections 1012.32, 1012.465, 1012.467 and 1012.468, 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 ELC or its personnel providing any services under the conditions described in the previous sentence. ELC 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 ELC and its personnel. The Parties agree that the failure of ELC to perform any of the duties described in this section shall constitute a material breach of this Lease Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Lease Agreement. ELC 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 ELC's failure to comply with the requirements of this Section or with Sections 1012.32, 1012.465, 1012.467 and 1012.468, Florida Statutes.

2.38 Indemnification.

a. By SBBC: SBBC agrees to be responsible 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. Nothing herein shall be deemed to be a waiver by SBBC of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

b. By ELC: ELC 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 ELC, its agents, servants or employees; the equipment of ELC, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of ELC or the negligence of ELC'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 ELC, SBBC or otherwise.

2.39 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
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With a Copy to:	Director, Facility Planning and Real Estate Department The School Board of Broward County, Florida 600 Southeast Third Avenue Fort Lauderdale, Florida 33301
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To ELC: Renee Jaffee, CEO
Early Learning Coalition
6301 NW 5th Way, Suite 3400
Fort Lauderdale, FL 33309

With a Copy to: Irene Ramos, Secretary
Early Learning Coalition
6301 NW 5th Way, Suite 3400
Fort Lauderdale, FL 33309

2.40 Inspection of ELC's Records by SBBC. ELC 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 Lease Agreement. All ELC'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 Lease Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by ELC or any of ELC's payees pursuant to this Lease Agreement. ELC'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 Lease Agreement. ELC'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 Lease Agreement without regard to funding sources.

2.40.1 ELC's Records Defined. For the purposes of this Lease Agreement, the term "ELC'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 Lease Agreement.

2.40.2 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 ELC's Records from the effective date of this Lease Agreement, for the duration of the term of this Lease Agreement, and until the later of five (5) years after the termination of this Lease Agreement or five (5) years after the date of final payment by SBBC to ELC pursuant to this Lease Agreement.

2.40.3 Notice of Inspection. SBBC's agent or its authorized representative shall provide ELC reasonable advance notice [not to exceed two (2) weeks] of any intended audit, inspection, examination, evaluation and or reproduction.

2.40.4 Audit Site Conditions. SBBC's agent or its authorized representative shall have access to ELC'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.

2.40.5 Failure to Permit Inspection. Failure by ELC to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Lease Agreement by SBBC for cause and shall be grounds for the denial of some or all of any ELC's claims for payment by SBBC.

2.40.6 Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by ELC in excess of two percent (2%) of the total billings under this Lease Agreement, the actual cost of SBBC's audit shall be paid by ELC. If the audit discloses billings or charges to which ELC is not contractually entitled, ELC shall pay said sum to SBBC within twenty (20) calendar days of receipt of written demand under otherwise agreed to in writing by both parties.

2.40.7 Inspection of Subcontractor's Records. ELC shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Lease Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by ELC to include such requirements in any subcontract shall constitute grounds for termination of this Lease Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to ELC pursuant to this Lease Agreement and such excluded costs shall become the liability of ELC.

2.40.8 Inspector General Audits. ELC 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.

2.41 Waivers by ELC. ELC shall not interpose any noncompulsory counterclaim of whatever nature or description in any such proceedings, the intent of this provision being that ELC shall not be prohibited from pursuing a claim against SBBC in an independent suit or proceeding. In the event ELC must, because of applicable court rules, interpose any counterclaim or other claim against SBBC in SBBC's proceedings, SBBC and ELC covenant and agree that, in addition to any other lawful remedy of SBBC, upon motion of SBBC, such counterclaim or other claim asserted by ELC shall be severed out of the proceedings instituted by SBBC (and, if necessary, transferred to a court of appropriate jurisdictional limits), and the proceedings instituted by SBBC may proceed to final judgment separately and apart from and without consolidation with or reference to the status of each counterclaim or any other claim asserted by SBBC. In addition, ELC expressly waives all of the following: (a) the requirement under Section 83.12, Florida Statutes, that the plaintiff in his distress for rent action file a bond payable to the tenant in at least double the sum demanded by the plaintiff, it being understood that no bond

shall be required in any such action; and (b) the right of ELC under Section 83.14, Florida Statutes, to replevy distrained property.

2.42 **Waiver of Jury Trial.** The parties hereto shall, and they hereby do, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of, or in any way connected with, this Lease Agreement, the relationship of landlord and tenant, ELC's use or occupancy of the Leased Facilities, and/or claim or injury or damage.

2.43 **Recording.** This Lease Agreement shall not be recorded without SBBC's prior written consent, and any recording hereof, or attempt to do so, by ELC shall constitute a default under this Lease Agreement, no curative notice to ELC from SBBC being required.

2.44 **Limitation of SBBC's Liability upon Transfer.** In the event of transfer and assignment by SBBC of its interest in this Lease Agreement and/or sale of the Leased Facilities, SBBC shall thereby be released from any further obligations hereunder, accruing from and after the date of such transfer, and ELC agrees to look solely to such successor in interest of SBBC for performance of such obligations.

2.45 **SBBC's Default.** SBBC shall in no event be charged with default in the performance of any of its obligations under this Lease Agreement unless and until SBBC shall have failed to perform such obligations within thirty (30) calendar days (or within such additional time as is reasonably required to remedy any such default) after written notice to SBBC by ELC properly specifying and detailing the particulars of wherein and whereby ELC claims SBBC has failed to perform such obligations. No default by SBBC under this Lease Agreement shall give ELC the right to terminate this Lease Agreement or withhold or otherwise abate any sums payable or services deliverable to SBBC by ELC under this Lease Agreement.

2.46 **ELC's Default.**

2.46.1 ELC shall be in default of its obligations hereunder in the event that any of the following occurs:

2.46.1.1 ELC's failure to pay any other sums payable hereunder for a period of three (3) business days after written notice by SBBC;

2.46.1.2 ELC's failure to observe, keep or perform any of the other terms, covenants, agreements or conditions of this Lease Agreement or in applicable School Board Policies for a period of ten (10) calendar days after written notice by SBBC;

2.46.1.3 The bankruptcy of ELC;

2.46.1.4 ELC making an assignment for the benefit of creditors;

2.46.1.5 A receiver or trustee being appointed for ELC or a substantial portion of ELC's assets;

2.46.1.6 Voluntary petitioning by ELC for relief under, or otherwise seeking the benefit of, any bankruptcy, reorganization, arrangement or insolvency law;

2.46.1.7 ELC's deserting, vacating or abandoning any substantial portion of the Leased Facilities or attempting to mortgage or pledge or otherwise encumber in any way its interest hereunder;

2.46.1.8 ELC's interest under this Lease Agreement being sold under execution or other legal process;

2.46.1.9 ELC's interest under this Lease Agreement being modified or altered by an unauthorized assignment or subletting or by operation of law;

2.46.1.10 Any of the goods or chattels of ELC used in, or incident to, the ELC's operations upon the Leased Facilities being seized, sequestered, or impounded by virtue of, or under authority of, any legal proceeding;

2.46.1.11 ELC's failure to pay timely any other sums payable hereunder when due for two (2) consecutive months or for a total of four (4) months in any term or Renewal Term, no notice whatsoever to be due ELC from SBBC; or

2.46.1.12 ELC's failure to operate as continuously during normal operating hours upon the Leased Facilities in a fully staffed, fully equipped manner and/or as contemplated as per Section 2.03 of this Lease Agreement; or

2.46.2 In the event of any of the foregoing happenings, SBBC, at its election, may declare this Lease Agreement to be terminated, ended and null and void, and re-enter upon and take possession of the Leased Facilities whereupon all right, title and interest of ELC in the Early Learning Center shall end and ELC shall immediately vacate the Leased Facilities no later than twenty-four (24) hours thereafter. The exercise by SBBC of this right shall not be deemed to preclude the exercise of any others herein listed or otherwise provided by statute or general law at the same time or in subsequent times or actions:

2.46.3 No re-entry or retaking possession of the Leased Facilities by SBBC shall be construed as an election on its part to terminate this Lease Agreement, unless a written notice of such intention be given to ELC, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any monies due to SBBC hereunder or of any damages accruing to SBBC by reason of the violations of any of the terms, provisions, and covenants herein contained. SBBC's acceptance of any monies following any event of default hereunder shall not be construed as SBBC's waiver of such event of default. No forbearance by SBBC of action upon any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of the terms, provisions, and covenants herein contained. Forbearance by SBBC to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of any other violation or default. Legal actions to recover for loss or damage that SBBC may suffer by reason of termination of this

Lease Agreement or the deficiency from any reletting as provided for above shall include the expense of repossession or reletting and any repairs or remodeling undertaken by SBBC following repossession.

2.47 **Brokerage Commission.** ELC warrants that there are no claims for broker's commissions or finder's fees in connection with its execution of this Lease Agreement and ELC agrees to indemnify and save SBBC harmless from any liability that may arise from the claims of any brokers or real estate agents, including reasonable attorneys' and paralegals' fees (whether incurred in court, out of court, on appeal or in bankruptcy or administrative proceedings).

2.48 **Corporate Tenancy.** Each person executing this Lease Agreement on behalf of ELC hereby warrants and certifies to SBBC that ELC is a corporation in good standing, is authorized to do business in the State of Florida, and has full right and authority to enter into this Lease Agreement. The undersigned officer of ELC hereby further warrants and certifies to SBBC that he or she, as such officer, is authorized and empowered to bind the corporation to the terms of this Lease Agreement by his or her signature thereto. In the event any of such warranties or certifications shall prove to be false at any time hereafter, all persons who execute this Lease Agreement shall be liable, individually, and jointly and severally. If ELC is a corporation, limited liability company, partnership, limited partnership or other artificial entity (other than one whose shares are regularly and publicly traded on a recognized stock exchange), any change in the ownership of and/or power to vote the majority of the outstanding capital stock of or the power to control the actions, policies or business operations of ELC, whether such change of ownership is by sale, assignment, bequest, inheritance, merger, dissolution, operation of law or otherwise, without the prior written consent of SBBC shall constitute a default of this Lease Agreement. ELC shall have an affirmative obligation to notify immediately SBBC of any such change.

2.49 **Absence of Option.** SBBC has delivered a copy of this Lease Agreement to ELC for ELC's review only and the delivery hereof does not constitute an offer to ELC or an option to lease or a reservation of or option for the Leased Facilities, and this Lease Agreement shall become effective only when a copy executed by both SBBC and ELC is delivered to and accepted by SBBC.

2.50 **Operating Expenses a Separate Covenant.** ELC shall not for any reason withhold or reduce ELC's required payments of operating expenses and other charges provided in this Lease Agreement, it being expressly understood and agreed by the parties that such payment is a contractual covenant by ELC that is independent of the other covenants of the parties hereunder.

2.51 **Holding Over.** The failure of ELC to surrender the Leased Facilities on the date provided herein for the expiration of any term of this Lease Agreement (or at the time the Lease Agreement may be terminated otherwise by SBBC), and the subsequent holding over by ELC, with or without the consent of SBBC, shall result in the creation of a tenancy at sufferance and ELC shall, for the duration of such tenancy, pay double the sums payable at the expiration of this Lease Agreement. This provision does not give ELC any right to hold over at the expiration of any term of this Lease Agreement, and SBBC's acceptance of any payments following the expiration

of this Lease Agreement shall not be deemed to be a renewal of the term of the Lease Agreement, either by operation of law or otherwise.

2.52 Construction Liens.

2.52.1 ELC is prohibited from making, and agrees not to make, alterations upon the Leased Facilities, except as permitted by **Section 2.28**, and ELC will not permit any construction lien or liens to be placed upon the Leased Facilities or improvements thereon during the term hereof or any renewal term thereafter, caused by or resulting from any work performed, materials furnished or obligation incurred by or at the request of ELC, and in the case of the filing of any such lien ELC will promptly pay the same. If ELC has not satisfied such lien or transferred it to bond within ten (10) calendar days after written notice from SBBC to ELC, SBBC shall have the right and privilege, solely at SBBC's option, of paying the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including expenses, interest, and reasonable attorneys' and paralegals' fees (whether incurred in court, out of court, on appeal or in bankruptcy or administrative proceedings), shall be considered additional operating expenses hereunder due from ELC to SBBC and shall be repaid to SBBC immediately on rendition of a bill therefor, together with interest per annum at the maximum rate permitted by law until repaid, and if not so paid within ten (10) calendar days of the rendition of such bill shall constitute a default under **Section 2.46** hereof.

2.52.2 SBBC's interest in the Leased Facilities shall not be subject to liens for improvements made by ELC. ELC shall notify every contractor making such improvements of the provision set forth in the preceding sentence. The parties agree, should SBBC so request, to execute, acknowledge and deliver, without charge to the other, a Short Form Lease in recordable form in accordance with Chapter 713, Florida Statutes, containing a confirmation that the interest of SBBC shall not be subject to liens for improvements made by ELC to the Leased Facilities.

2.53 Signs and Advertising. ELC shall not permit the painting or display of any signs, placard, lettering, or advertising material of any kind on or near the exterior of the Leased Facilities. Notwithstanding the foregoing, ELC may, with the prior approval of SBBC's site administrator, display ELC's name on or near the portion of the Early Learning Center utilized by ELC under this Lease Agreement, in a manner prescribed by SBBC's site administrator.

2.54 Eminent Domain. If the whole or a portion of the Leased Facilities shall be taken for any public or quasi-public use under any statute or by right of eminent domain or private purchase in lieu thereof, then at SBBC's option, but not otherwise, the term hereby demised and all rights of ELC hereunder shall immediately cease and terminate and the sums payable by ELC under this Lease Agreement shall be adjusted as of the date of such termination. ELC shall be entitled to no part of the award made for such condemnation (or other taking). Anything to the contrary notwithstanding, if the Leased Facilities are unaffected by such condemnation (or other taking), then at SBBC's sole option this Lease Agreement and each and every one of its provisions shall continue in full force and effect. Nothing in this Section shall be construed as prohibiting

ELC from making an independent claim against the taking authority for ELC's loss, as long as such claim does not in any way decrease, limit or otherwise adversely affect SBBC's claim.

2.55 **School Board Policies.** ELC shall faithfully observe and comply with the School Board Policies in effect during the term of this Lease Agreement or any Renewal Term. SBBC shall have the right to unilaterally enact additional Policies without the consent of ELC, and the same shall be effective from the date ELC receives notice thereof. ELC shall acquire no vested rights as to its use of the Leased Facilities as relates to School Board Policies, and all modifications or additions to or deletions from the School Board Policies shall take effect immediately upon notice of the same by SBBC to ELC, regardless of any past use or practice by ELC upon the Leased Facilities. SBBC shall not be responsible to ELC for the nonperformance of any said School Board Policies by any other occupant or user of the building within which the Leased Facilities are situated. ELC shall and does hereby have an affirmative obligation to notify its agents, employees, principals, assigns, subtenants and invitees of the contents of such School Board Policies and of this Lease Agreement and to assure their compliance therewith, and ELC's indemnification to SBBC under **Section 2.38** hereof includes, without limitation, ELC's indemnity to SBBC for any claims, losses or damages resulting from ELC's breach or the breach by its agents, employees, principals, assigns, subtenants and invitees of the School Board Policies.

2.56 **Damage by Fire or the Elements.**

2.56.1 In the event that the Leased Facilities should be totally destroyed by fire, hurricane, tornado or other casualty, or in the event the Leased Facilities should be so damaged that rebuilding or repairs cannot be completed within two hundred seventy (270) calendar days after the date of such damage, either SBBC or ELC may, at its option, by written notice to the other given not more than thirty (30) calendar days after the date of such fire or other casualty, terminate this Lease Agreement. In such event, the sums payable under this Lease Agreement shall be abated during the unexpired portion of this Lease Agreement effective with the date of such fire or other casualty.

2.56.2 In the event the Leased Facilities should be damaged by fire, hurricane, tornado, or other casualty covered by SBBC's insurance but only to such extent that rebuilding or repairs can be completed within two hundred seventy (270) calendar days after the date of such damage, or if the damage should be more serious but neither SBBC nor ELC elects to terminate this Lease Agreement, then SBBC shall, within thirty (30) calendar days after the date of such damage or such election, commence to rebuild or repair the Leased Facilities and shall proceed with reasonable diligence to restore the Leased Facilities to substantially the same condition in which they were immediately prior to the happening of the casualty, except that SBBC shall not be required to rebuild, repair or replace any part of the furniture, equipment, fixtures and other improvements which may have been placed by ELC within the Leased Facilities. ELC shall, unless such damage is the result of the negligence or willful misconduct of ELC or ELC's employees, agents, principals, contractors, consultants, assigns, subtenants or invitees, allow ELC a fair diminution of any sums payable to SBBC under this Lease Agreement during the time of such rebuilding or repairs. SBBC shall have no obligation to utilize insurance proceeds to rebuild the

Leased Facilities and this Lease Agreement shall terminate upon notice to ELC. Any insurance which may be carried by SBBC or ELC against loss or damage to the Leased Facilities shall be for the sole benefit of the party carrying such insurance and under its sole control.

2.57 ELC Confidentiality of Educational Records.

(a) Notwithstanding any provision to the contrary within this Lease Agreement, ELC shall:

1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;

2) hold any education records in strict confidence and not use or redisclose same except as required by this Lease Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;

3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Lease Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Lease Agreement and shall provide said list of employees to SBBC upon request;

4) safeguard each education record through administrative, physical and technological safety standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;

5) utilize the education records solely for the purposes of providing products and services as contemplated under this Lease Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;

6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at privacy@browardschools.com, and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;

8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;

9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;

10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and

11) securely erase education records from any media once any media equipment is no longer in use or is to be disposed; secure erasure will be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Lease Agreement and claims no ownership or property rights thereto and, upon termination of this Lease Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) ELC shall, 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. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Lease Agreement.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **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 Lease Agreement.

3.02 **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 Lease Agreement and shall be fully binding until such time as any proceeding brought on account of this Lease Agreement is barred by any applicable statute of limitations.

3.03 **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 Lease Agreement. None of the parties intend to directly or substantially benefit a third party by this Lease Agreement. The parties agree that there are no third party beneficiaries to this Lease Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Lease 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.

3.04 **Independent Contractor.** The parties to this Lease 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 Lease Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.05 **Non-Discrimination.**

(a) As a condition of entering into this Lease Agreement, ELC represents and warrants that it will comply with the SBBC's Commercial Nondiscrimination Policy, as described under, Section D.1 of SBBC's Policy No. 3330 – Supplier Diversity Outreach Program.

(b) As part of such compliance, ELC shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall ELC retaliate against any person for reporting instances of such discrimination. ELC shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of excess marketplace discrimination that have occurred or are occurring in the SBBC's relevant marketplace. ELC understands and agrees that a material violation of this clause shall be considered a material breach of this Lease Agreement and may result in termination of this Lease Agreement, disqualification of the company from participating in SBBC Agreements, or other

sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

3.06 **Termination.** This Lease Agreement may be canceled with or without cause by the parties during the term hereof upon thirty (30) calendar days written notice to each other regarding the desire to terminate this Lease Agreement. In the event of such termination, ELC agrees that it is not entitled to any damages of any kind including any damages that may be attributable to the cancellation of any event planned by ELC. SBBC shall have no liability for any property left on SBBC's property by any party to this 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.

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

3.08 **Annual Appropriation.** The performance and obligations of SBBC under this Lease 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 Lease Agreement, this Lease Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party 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.

3.09 **Excess Funds.** Any party receiving funds paid by SBBC under this Lease 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.

3.10 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. ELC shall keep and maintain public records required by SBBC to perform the services required under this Lease Agreement. Upon request from SBBC's custodian of public records, ELC 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. ELC 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 Lease Agreement's term and following completion of the Lease Agreement if ELC does not transfer the public records to SBBC. Upon completion of the Lease Agreement, ELC shall transfer, at no cost, to SBBC all public records in possession of ELC or keep and maintain public records required by SBBC to perform the services required under the Lease Agreement. If ELC transfer all public records to SBBC upon completion of the Lease Agreement, ELC shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If ELC keeps and maintains public records upon completion of the Lease Agreement, ELC 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 LEASE AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE LEASE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-2300, REQUEL.BELL@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SE 3rd Avenue, 11th Floor Ft. Lauderdale, FL 33301.

3.11 **Student Records:** Notwithstanding any provision to the contrary within this Lease Agreement, any party contracting with SBBC under this Lease 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.

3.12 **Entire Lease 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 Lease 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.

3.13 **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 Lease Agreement and executed by each party hereto.

3.14 **Preparation of Lease 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 Lease 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.

3.15 **Waiver**. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Lease Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Lease Agreement shall not be deemed a waiver of such provision or modification of this Lease 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.

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

3.17 **Governing Law and Venue**. This Lease 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 Lease 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 Lease Agreement.

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

3.19 **Assignment**. Neither this Lease 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 Lease Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.20 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Lease 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.

3.21 **Place of Performance.** All obligations of SBBC under the terms of this Lease Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.22 **Severability.** In case any one or more of the provisions contained in this Lease 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 affect any other provision and this Lease Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

3.23 **Captions.** The captions, section numbers, article numbers, title and headings appearing in this Lease 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 Lease Agreement, nor in any way effect this Lease Agreement and shall not be construed to create a conflict with the provisions of this Lease Agreement.

3.24 **Authority.** Each person signing this Lease Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Lease 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 Lease Agreement.

3.25 **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 Lease Agreement.

3.26 **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 Lease Agreement.

3.27 **Counterparts and Multiple Originals.** This Lease 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 Lease Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Lease Agreement on the date first above written.

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FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By Heather P. Brunkworth for
Nora Rupert, Chair

ATTEST:

Robert W. Runcie
Robert W. Runcie, Superintendent of
Schools

Approved as to form and legal content:

Michael J. [Signature] 08/17/2018
Office of the General Counsel

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FOR ELC

(Corporate Seal)

EARLY LEARNING COALITION OF FLORIDA

ATTEST:

By

Renee Jaffee
Renee Jaffee, CEO

, Secretary

-or-

Christina Klumpp

Witness

[Signature]

Witness

The Following Notarization is Required for Every Lease Agreement Without Regard to Whether ELC 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 13 day of

August, 20 18 by Renee Jaffee of
Name of Person

Early Learning Coalition of Broward County, Inc. on behalf of the corporation. He/She is personally known to me or produced

Drivers License as identification and did/did not first take an oath.
Type of Identification

My Commission Expires:

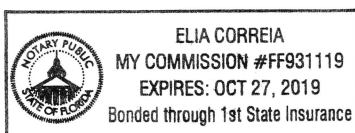
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Signature – Notary Public

Elia Correia

Printed Name of Notary

(SEAL)



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Notary's Commission No.

NTAL



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BLDG. No. 178 DINNING

BLDG. No. 177 KITCHEN

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“EXHIBIT C”

Safeguarding the Confidentiality of Student Records and Information

The parties acknowledge that Sections 1002.022, 1002.221 and 1002.222, Fla. Stat. and the Family Educational Rights and Privacy Act (FERPA, 20 U.S.C. § 1232g) and its implementing regulations (34 C.F.R. Part 99), protect the privacy rights of students and their parents with respect to information and records created and/or maintained by public schools. The student personally identifiable information (PII) may be disclosed only in compliance with FERPA. Pursuant to FERPA, the information provided by SBBC shall be limited to that which is necessary to effectively serve the student.

Each party participating in this Agreement further agrees to:

(1) Hold the student records and information in strict confidence and not use or disclose except as required by this Agreement or as required or permitted by law unless the parent of a student provides prior written consent for their release. All shared student records will be disclosed only to those who have a need to access the information in order to perform their assigned duties in the performance of this Agreement. Absent consent from the parent or eligible student, student records and information will not be disclosed except as allowed by the aforementioned laws.

(2) Safeguard the student records through administrative, physical and technological safety standards to ensure adequate controls are in place to protect the student information in accordance with FERPA's privacy requirements.

(3) Continually monitor its operations and take all actions necessary to assure that the student information and records are safeguarded in accordance with the terms of this Agreement, and

(4) Ensure that all employees, appointees or agents of each party to this Agreement who are granted access to shared student records will have successfully completed (1) the background screening requirements under Section 435.04, Florida Statutes, under Level 2 screening standards and (2) a FERPA training webinar, as it may become available, at the U.S. Department of Education, Privacy Technical Assistance Center website:

<http://www2.ed.gov/policy/gen/guid/ptac/index.html>, <http://ptac.ed.gov/> including, but not limited to, <http://www2.ed.gov/policy/gen/guid/ptac/pdfs/index.pdf>

Each party to this Agreement agrees to notify the other party immediately upon discovery of a breach of confidentiality of student information and to take all necessary notification steps as may be required by federal and Florida law. A breach of the confidentiality requirements shall constitute grounds for immediate termination of this Agreement without advance notice. Any provisions within this Agreement concerning the resolution of disputes shall not be applicable to a breach of the requirements of this Attachment “A.”

This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such student records are returned to The School Board of Broward County, Florida (“SBBC”) or disposed of in compliance with the applicable Florida Retention Schedules and a written acknowledgment of said disposition is provided to SBBC.