

## SPACE USE AGREEMENT

**FLAGLER COUNTY**, a political subdivision of the State of Florida, (the "County"), by its execution hereof, hereby authorizes First Baptist Church of Palm Coast Christian School, Inc. (the "Tenant"), to occupy space at 201 East Moody Boulevard, Bunnell, Florida, the purpose or purposes and on the terms and conditions hereinafter stated. The County and the Tenant may be collectively referred to as the "Parties," and individually referred to as "Party".

**1. Tenant.** The name, address and telephone number of the Tenant is as follows:

Name: First Baptist Church of Palm Coast Christian School, Inc./dba First Baptist Christian Academy  
Address: 6052 Palm Coast Pkwy. NW  
Palm Coast, FL 32137

Contact: Pastor Kevin Lautar  
Telephone: 386-446-0094 Fax: 386-445-0360  
E-mail: kevin@fbcpc.org

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**Tenant Financial Billing Contact(s):**

Name: Ann Carriger  
Address: 6052 Palm Coast Pkwy  
Palm Coast, Florida 32137  
Telephone: 386-446-0094 Fax: 386-445-0360  
E-mail: acarriger@cfl.rr.com

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**Tenant - 24 Hour Emergency Contacts – minimum of 2 contacts required**

Name: Pastor Kevin Lautar  
Address: 6052 Palm Coast Pkwy  
Palm Coast, Florida 32137  
Telephone: 386-864-1095

Name: Holly Nies  
6052 Palm Coast Pkwy  
Palm Coast, Florida 32137  
Telephone: 386-931-1075

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**2. Assigned Space.**

**A.** For and in consideration of the covenants and obligations specified in this Agreement, the County hereby leases the facility located at 201 East Moody Boulevard, Bunnell, Florida, to the Tenant, and Tenant leases the facility from the County, all subject to the terms, conditions and limitations herein expressed. The lease includes the facility, parking lot, entryways and property, as further depicted on Exhibit "A", attached hereto and incorporated herein by reference (hereinafter the "Assigned Space").

**B.** The Tenant acknowledges that it has examined the condition of the Assigned Space, has determined that the Assigned Space is acceptable for its intended and permitted uses, and waives any and all defects that may exist within the Assigned Space. Further, the County shall not be responsible to the Tenant, its officers, agents, employees, guests or invitees, for any damage or injury caused by or due to the Assigned Space, or any appurtenance thereof being improperly constructed or being out of repair.

**3. Use of Assigned Space.**

**A.** The Tenant shall use the Assigned Space solely for the purposes associated with the operation of a private school and its ancillary uses that support other compatible organizations and programs which may serve to increase outreach and services to the community. The intent of this statement is to allow the ability for community based group use of the facility. Said use and operations shall comply with all rules and regulations of the state and local rules, regulations and ordinances. The Tenant may also use the Assigned Space for any other legal and lawful purpose that is approved, in writing, by the County Administrator and providing such uses are in compliance with all federal, state, and local regulations, including but not limited to permitting and parking.

**B.** The Parties agree that the manner in which the Assigned Space is used, developed, operated and maintained is important to the County by reason of the historical significance of the Assigned Space and its importance to County residents and visitors to the County. The Tenant therefore agrees to develop, operate and maintain the Assigned Space consistent with the standards agreed upon herein.

**C.** In no event shall the Assigned Space be used for any purpose which would constitute a public or private nuisance, including but not limited to, outside storage, storage of salvage or junk, or any use not specifically permitted herein. Further, the Tenant shall not permit any unlawful business or trade to be conducted at the Assigned Space or any use hereof that is contrary to applicable legal and zoning requirements. The County shall have the right to



terminate this Agreement in accordance with the procedures set forth in Paragraph 11(I) should Tenant utilize the Assigned Space in any manner inconsistent with the approved uses set forth herein.

**D.** Notwithstanding anything herein to the contrary, all activities conducted upon the Assigned Space shall be under the exclusive control, management and direction of the Tenant. Such activities shall include, but not be limited to, the operation of a private school and associated activities, providing for security of the Assigned Space and of its property, and the maintenance and upkeep of the Assigned Space in a safe, neat and clean condition. The County will have no involvement or role in the conduct of the Tenant's business or operations in any manner.

#### **4. Rent.**

**A. Rent.** In consideration of the rights granted hereunder by County, the Tenant hereby agrees to pay the County Rent, in the amount of \$3,000.00, plus applicable sales tax, beginning on March 1, 2015. Thereafter, Rent payments shall be paid, in advance, on the first (1st) day of each calendar month. Beginning on August 1, 2015, the Tenant agrees to pay the County Rent, in the amount of \$6,000.00, per month, plus applicable sales tax. Beginning on August 1, 2017, the Tenant agrees to pay the County Rent, in the amount of \$7,000.00, per month, plus applicable sales tax. All Rent payments shall be paid, in advance, on the first (1<sup>st</sup>) day of each calendar month, and are subject to further adjustment, as set forth herein.

**B. Late Payment.** Penalties for late payment shall begin to accrue after the tenth calendar day of each month at the rate of five percent (5%) for each month the Rent payment is late. If by the first day of the month following the delinquency, the Rent remains unpaid, a penalty of ten percent (10%) of the monthly rental amount shall be assessed for each month the rental payment is late until the arrearage is completely paid.

**C. Annual Adjustment.** Fifty percent (50%) of the rental amounts payable herein shall be adjusted annually for the succeeding years of this Agreement, including any extended term of this Agreement, which adjustment shall be effective as of October 1 of each succeeding year, beginning with October 1, 2017. The adjustment shall be applied for any increases in the applicable Consumer Price Index "(CPI)". The CPI adjustment shall be based on the Consumer Price Index for All Urban Consumers, South Region, US City Average (reference base of 1982 – 1984 = 100), published by the US Bureau of Labor Statistics, comparing a 12 month time period ending on May 30. If the Bureau discontinues issuing the CPI, the Parties shall use the official index published by a federal government agency that is most nearly equivalent to the CPI. If no such index is available, then the Parties shall use such index or procedure that reasonably reflects increases in consumer prices in the Flagler County, Florida area. The County shall provide the Tenant with thirty (30) calendar days notice of such adjustment, which shall become effective on the next rental payment date following such thirty (30) calendar day notice.

#### **5. Effective Date/Term/Renewal.**

**A.** This Agreement shall become effective on the date of signature of the last Party to sign this Agreement ("Effective Date").

**B.** The Term of this Agreement will commence on March 1, 2015 and shall remain in full force and effect for a period of ten (10) years and four months thereafter, unless sooner terminated in accordance with the terms and provisions hereof. The Tenant shall be granted possession of the Assigned Space on March 1, 2015.

**C.** So long as the Tenant is not in default of any of the terms herein and has no payment arrearages, this Agreement may be renewed by the Tenant for **two (2) additional five (5) year terms**. The County shall advise the Tenant in writing in the event of a default which results in an extinguishment of the right to automatic renewal of this Agreement. Absent such notice, this Agreement shall automatically renew unless the Tenant gives written notice of an election not to exercise this option at least one hundred and eighty (180) days prior to the expiration of this Agreement. Such option shall thereafter be and become null and void and of no further force and effect.

**6. Amount of Insurance Required.** The following types of insurance are required to be carried by the Tenant, at its own cost and expense, throughout the Term of this Agreement. The amounts of such required coverages are:

Commercial General Liability	\$1,000,000 combined single limits, per occurrence based
Fire Legal Liability	\$100,000
Workers Compensation	As required by the laws of Florida.
Automobile Liability	\$1,000,000
Professional Liability (architects and Engineers errors and omissions liability)	In an amount equal to the value of the Improvements
Property Casualty Insurance	To be provided by the County

Prior to the Effective Date, the Tenant shall cause certificates of insurance to be furnished to the County, evidencing all such coverage and naming the County as an additional insured. In addition, all such certificates shall provide that the policies shall not be cancelled, nor the limits thereunder reduced, without first providing at least thirty (30) calendar days' written notice thereof to the County. The above coverage amounts may be increased, if mandated by changes in state law.

**7. Security Deposit.** A security deposit in the amount of Six Thousand Dollars (\$6,000.00) is due upon execution of this Agreement. The security deposit payment shall be held by the County subject to the provisions of Paragraph 11(O).

**8. Utility and Service Charges.** The Tenant, at its sole cost and expense, shall cause the installation of and promptly pay for all utility, communication and other services furnished to, or consumed within, the Assigned Space, including, but not limited to, electricity,

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cable, water, sewer, heat, telephone, janitorial, grounds maintenance, solid waste handling and removal, including garbage pickup and any use of commercial dumpsters, and all charges related to any of these services, including any tap-in, connection and/or impact fees. For those utility services which are already in place, the Tenant shall cause the associated billing to be transferred to the Tenant's name Tenant prior to March 1, 2015.

**9. Improvements to Assigned Space.**

**A. Improvements to Assigned Space by County.** The County and the Tenant acknowledge that various improvements need to be made to the Assigned Space. Following March 1, 2015, the County agrees to initiate the improvements set forth in Exhibit "B" (hereinafter the "County Improvements"). These County Improvements are desired by the Tenant and will allow the Tenant to better utilize the Assigned Space for its intended use. In order to assist the Tenant and to ensure that the alterations occur in a workmanlike manner, the County agrees to manage, administer and oversee the construction and completion of the County Improvements. The County agrees to use all reasonable efforts to complete the County Improvements on or before July 1, 2105. The construction of the County improvements will occur concurrently, and in conjunction with, the Tenant Improvements (as set forth below). The parties will work together to coordinate contractors.

**B.** The County retains the right to make other improvements to the exterior façade of Assigned Space to include applying for historic grants and historic restorations in the future. However, the County shall coordinate such activities with the Tenant and shall not otherwise interfere with the ability of the Tenant to operate a school including school administration.

**C. Improvements to Assigned Space by Tenant.**

1. The Tenant shall cause the design and shall construct those improvements as are generally described in Exhibit "C", in addition to all other improvements that are necessary for the Tenant to obtain a certificate of occupancy for the school (the "Tenant Improvements"). The Tenant shall complete the Tenant Improvements using its own funds, in compliance with all applicable County ordinances and codes, state and federal statutes, rules and regulations, the City of Bunnell Comprehensive Plan, the building codes, and the City of Bunnell Land Development Code. In the event of a conflict among such regulations, the more restrictive shall apply unless expressly waived by the County Administrator in writing based upon discretion conferred by applicable legal requirements.

2. The Tenant shall select and engage qualified architects, engineers and other necessary professionals, and shall cause the preparation of design and construction documents for the Tenant Improvements. The construction documents shall detail the requirements for the construction of the Tenant Improvements, based on materials and systems selected by the Tenant. Following preparation of the design and construction documents, the Tenant will provide a copy to the County Administrator, for his review and approval, which shall not be unreasonably withheld, conditioned or delayed.

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3. The Tenant shall obtain all necessary permits, approvals, and licenses required for the construction, use and occupancy of the Tenant Improvements.

4. Any construction agreements entered into between the Tenant and a general contractor or other contractor in privity with the Tenant must provide that the County will not be liable for any work performed or to be performed for the Tenant, nor shall the County be liable for any of the financial consideration or other obligations under such agreements.

5. Construction of the Tenant Improvements shall be in accordance with the design and construction documents as determined and approved by the County Administrator.

6. The Tenant agrees to use all reasonable efforts to complete the Tenant Improvements by August 1, 2015. The Tenant Improvements shall be made in a good, workmanlike and lien free manner. Upon completion, the Tenant shall deliver to the General Services Director an "as built" set of plans and specifications for the Tenant Improvements.

7. It is expressly understood and agreed by the Parties that if the Tenant's performance related to the Tenant Improvements is delayed by reason of war, civil commotion, strike or other employment action, act of God, governmental restrictions, regulations or interferences, fire or other casualty, court injunction, or any other act, event or circumstances beyond its reasonable control, then the Tenant's obligation to perform hereunder shall be extended for a period or periods equal to the cumulative duration of the force majeure, provided that the Tenant notifies the County Administrator, in writing, of the occurrence of any such cause which may hamper construction of the Tenant Improvements, and provided the Tenant exerts due diligence to remove such cause. Notwithstanding the foregoing, if commencement and/or completion of the construction of any Tenant Improvements is delayed by a force majeure beyond September 1, 2015, this Agreement may be immediately terminated by the County, upon providing the Tenant with written notice in the manner set forth in Paragraph 11(M).

8. Upon receipt of a written request from the County, the Tenant shall assign in writing to the County all rights which Tenant may then possess against (1) any parties who prepared the construction documents for the Tenant Improvements, and (2) all contractors, subcontractors and material suppliers for the Tenant Improvements, reserving to the Tenant the right to subsequently prosecute any claims against said parties that may arise as a result of any claims, action, loss, damage or expense sustained by the Tenant arising out of any of the construction documents for the Tenant Improvements or the construction of the Tenant Improvements.

9. For the separate consideration of ten dollars and other valuable consideration paid to it by the County, receipt of which is hereby acknowledged, the Tenant agrees to indemnify, defend and hold the County, its officers, employees and agents harmless from and against all liabilities, losses, damages (including theft and loss of use), expenses, actions, demands and claims (including reasonable attorneys' fees) in connection with or arising out of any physical injury or alleged physical injury to persons (including death), or damages or

losses or alleged damages or losses to tangible property or the use or loss of use thereof, sustained or alleged to have been sustained in connection with or to have arisen out of the design or construction of the Tenant Improvements except to the extent caused by the County's willful misconduct or gross negligence.

**D. Additional Improvements.**

1. Upon possession of the Assigned Space, and following completion of the Tenant Improvements, the Tenant, at its sole cost and expense, may make additional improvements, construct any additional buildings, facilities, or make any changes, alterations or improvements that may be necessary for its use, subject to County's landlord lien for Rent. County approval for minor, nonstructural work not requiring permits shall be obtained from the General Services Director, in writing. For all other work, the Tenant must obtain written approval from the County Administrator. The additional improvements shall proceed in accordance with, and be subject to, the requirements set forth in Paragraph 9(C), above.

**10. Interest of County Not Subject to Liens.** It is mutually agreed that neither the fee simple title to the Assigned Space, nor any interest of the County in the Assigned Space may be subject to liens of any nature arising by reason of any act or omission of the Tenant or any person claiming under, by or through the Tenant, including but not limited to, mortgage liens, mechanics' and materialmen's liens. If, because of the Tenant's act or omission, any construction lien, claim of lien or professional lien is filed pursuant to Florida Chapter 713 or any successor law against the County on any portion of the Assigned Space, or in the event any other type of lien is filed against the County on any portion of the Assigned Space, the Tenant shall, at its own expense and cost, cause said liens to be discharged, released or satisfied within ninety (90) days from the date of the County's written notice.

**11. General Terms and Conditions.**

**A. Repairs and Maintenance.**

1. **County Maintenance Obligations.** The County shall be required to perform at its own cost the maintenance, testing, inspection and replacement, if deemed necessary by the County Administrator, of the portions of the Assigned Space identified in Exhibit "D" (the "County Maintenance Obligations") Whenever possible, the County shall provide the Tenant with advance notice of any County Maintenance Obligations, and the Tenant agrees to coordinate with the County regarding the scheduling of Maintenance Obligations and said consent shall not be unreasonably withheld.

2. **Tenant Maintenance Obligations.** The Tenant, at its own cost and expense, shall keep all other buildings, structures, improvements, equipment, fixtures, furnishings and other property installed in good condition and repair, in a clean and attractive condition, and free of impairment from physical deterioration and functional obsolescence. Except as provided in Paragraph 11(A)1, above, the Tenant shall be responsible for maintenance and for making repairs to all portions of the Assigned Space during the term of this Agreement. The Tenant shall use all reasonable precaution to prevent waste, damage or injury to the

Assigned Space. Should the Tenant fail to keep and maintain the Assigned Space in good condition and repair or shall fail to use all reasonable precaution to prevent waste, damage or injury to the Assigned Space, the Tenant shall be deemed to be in default, pursuant to Paragraph 11(I).

3. **Duty to Clean and Ventilate.** The Tenant hereby acknowledges mold and mildew can grow in the Assigned Space if the Assigned Space is not properly maintained and ventilated. Consequently, the Tenant agrees to use all air-conditioning in a reasonable manner, to use heating systems in moderation, and to keep the Assigned Space properly ventilated by allowing air to circulate in the Assigned Space. Tenant further agrees to immediately notify County, in writing, whenever Tenant learns of any condition which could lead to a buildup of moisture in the Assigned Space, including, but not limited to, plumbing leaks, broken window or door seals, accumulation of rainwater or other moisture around windows or doors, broken water lines or sprinklers, inoperable doors or windows and/or any failure or malfunction in the heating, ventilation or air-conditioning system in the Assigned Space. Tenant further agrees to immediately notify County, in writing, regarding visible or suspected mold, discoloration of walls, baseboards, doors, window frames, and/or ceilings, or musty orders. The parties agree to resolve via a mutually acceptable resolution the method in which to address any clean-up/remediation. Should the Tenant fail to comply with the requirements set forth in this Subparagraph (A)(3), the Tenant shall be deemed to be in default, pursuant to Paragraph 11(I) and, further, Tenant shall be responsible for any resulting property damage to the Assigned Space and/or any health problems that may result.

**B. Maintenance By Default.** In the event the Tenant does not cure the breach of its duty to maintain, the County shall have the option in its sole discretion to perform the maintenance and to recover such costs from the Tenant. The Tenant shall promptly pay or reimburse the County for the cost of any and all maintenance, replacement and repair which may be required to restore the Assigned Space and any of its improvements, fixtures, equipment and mechanical systems as a result of the neglect of, or loss or damage caused by, the Tenant or any of its officers, employees, agents, invitees or licensees, or which otherwise results from the Tenant's use or occupancy of the Assigned Space, reasonable use and wear excepted. The Tenant shall have the right, at any time and from time to time, to cause maintenance to be performed and repairs to be made in and to the Assigned Space and the improvements, fixtures, equipment and mechanical systems located therein, and the Term of this Agreement shall not be extended nor shall there be any abatement of the sums payable to the County hereunder by reason thereof. The Tenant shall promptly pay or reimburse the County for the cost to the County of any and all maintenance, replacement and repair which may be required to restore the Assigned Space and any of its improvements, fixtures, equipment and mechanical systems as a result of the neglect of, or loss or damage caused by, the Tenant or any of its officers, employees, agents, invitees or licensees, or which otherwise results from the Tenant's use or occupancy of the Assigned Space. Any sums not paid by the Tenant within thirty (30) days from the date of the County's invoice(s) for its costs incurred under this subparagraph shall be treated as additional Rent owed to the County by the Tenant and shall be treated under the same provisions as are applicable to delinquent Rent payments. Further, the performance of maintenance and repair by the County shall in no event be construed as a waiver of the Tenant's duty to maintain and repair as herein provided.



**C. Tenant's Property.** Any and all furnishings, inventory, and/or personal property belonging to, or brought onto the Assigned Space by the Tenant or any of its officers, employees, agents, invitees or licensees shall be at the sole risk of the Tenant. The Tenant may place and install trade fixtures and other personal property on the Assigned Space for use in connection with its operations hereunder. The Tenant shall, however, be responsible for the cost of repairing any damage to the Assigned Space or any other improvements which are caused by the removal of any such trade fixtures and personal property. For purposes of this Agreement, the phrase "trade fixtures" is defined as any article of personal property annexed or affixed to the Assigned Space by the Tenant as a necessary part of the Tenant's trade or business, and other lawfully present personal property on the Assigned Space.

**D. County's Right to Enter.** The County and its designated agents shall have the right to enter the Assigned Space at any reasonable time upon reasonable notice for inspection, maintenance, repair, attending to emergencies or any other lawful purpose. In emergency situations, where loss or damage to the Assigned Space is occurring or imminent, the County may enter any portion of the Assigned Space for the purpose of controlling the emergency situation.

**E. Taxes and Assessments.** The Tenant shall pay, on or before the due date established therefor, all taxes, assessments (including, without limitation, storm water utility charges) and impact fees which are levied against or in connection with the Assigned Space, the Tenant's interest therein and the property and improvements of the Tenant for the Term hereof or attributable to the Tenant's activities at the Assigned Space. If the Term of this Agreement expires or is earlier terminated prior to the close of the tax year for which any such tax is payable, or if the term of this Agreement commences on a date other than the first day of such tax year, the Tenant shall be responsible for paying a percentage of the tax calculated by dividing the number of days that this Agreement was in effect during such tax year by the total number of days of the applicable tax year. If this Agreement is in effect for a period less than any entire period for which an assessment other than a tax is imposed, the Tenant shall pay a percentage of the assessment calculated by dividing the number of days this Agreement was in effect during that assessment period by the total number of days in the assessment period. The Tenant's obligations under this Paragraph 11(E) shall survive the expiration or earlier termination of this Agreement. Nothing contained herein shall be construed as a release or waiver on the part of the County, as a political subdivision of the State of Florida, of the right to assess, levy or collect any license, personal, tangible, intangible, occupation or other tax, fee or assessment which the County may lawfully impose on the business or property of the Tenant.

**F. Rules and Regulations.** The Tenant covenants and agrees to observe and comply with all laws, rules, and regulations of the County which now exist or may hereafter be promulgated or amended from time to time, governing conduct and the use of its facilities. The Tenant further covenants and agrees to observe and comply with any and all valid and applicable requirements of all duly constituted public authorities and with all federal, state and local statutes, ordinances and regulations applicable to the Tenant, the Assigned Space. The Tenant agrees to pay or reimburse the County for any fines which may be assessed against the County as a result of the violation by the Tenant of any applicable regulation, which payment shall be made by the Tenant within fifteen (15) calendar days from the date of the County's invoice for such amount and documentation showing that payment of such fine is the Tenant's responsibility

hereunder. Any sums not timely paid shall be treated as additional Rent owed to the County by the Tenant and shall be treated under the same provisions as are applicable to delinquent rental payments.

**G. Indemnification.** The Tenant agrees to indemnify, defend and hold harmless the County, and the members (including, without limitation, members of the Flagler County Board of County Commissioners), officers, employees and agents of each, from and against liability (including, without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq., or any other federal, state or local environmental statute, ordinance regulation or rule), losses, suits, claims, demands, judgments, damages, fines, penalties, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, expert fees and reasonable attorneys' fees prior to institution of legal proceedings and at both trial and appellate levels), which may be incurred by, charged to or recovered from any of the foregoing: (i) by reason or on account of damage to or destruction of any property of the County, or any property of, injury to or death of any person resulting from or arising out of the acts or omissions of the Tenant's officers, agents, employees, contractors, subcontractors, invitees or licensees, regardless of where the damage, destruction, injury or death occurred, unless such liability, loss, suit, claim, demand, judgment, damage, fine, penalty, cost or expense was proximately caused primarily by the County's negligence or by the joint negligence of the County and any person other than the Tenant or its officers, agents, employees, contractors, subcontractors, invitees or licensees, or (ii) arising out of the failure of the Agreement to keep, observe or perform any of the covenants or agreements in this Agreement to be kept, observed or performed by the Tenant. The provisions of this subparagraph shall survive the expiration or earlier termination of the Term of this Agreement with respect to any acts or omissions occurring during the Term of this Agreement.

The foregoing provisions of this subparagraph are not intended and shall not be construed to limit in any manner whatsoever the protection or benefits to which the County otherwise would be entitled as an additional insured under any liability insurance maintained or required to be maintained by the Tenant under this Agreement.

**H. Assignment and Subletting.**

This Agreement is personal to the Tenant. Accordingly, the Tenant may not assign this Agreement or sublet any portion of the Assigned Space without the express prior written consent of the County, which may be withheld at its sole discretion. In the event written consent is granted by the County, the Tenant shall provide the County with copies of the sublease(s) and any amendments thereto. Any purported assignment or sublet without the express written consent of the County, and any failure to provide the County with a sublease, if approved, or amendments thereto, shall be considered void from their inception, and shall be grounds for the immediate termination of this Agreement.

## **I. Defaults and Remedies.**

1. Defaults by Tenant. The occurrence of any of the following events and the expiration of the applicable cure period set forth below without such event being cured or remedied will constitute a "Default by Tenant" to the greatest extent allowed by law:

a. Abandonment of Assigned Space, or a discontinuation of the Tenant's operations.

b. Tenant's material misrepresentation of any matter related to this Agreement.

c. Filing of insolvency, reorganization plan, or arrangement of bankruptcy.

d. Adjudication as bankrupt.

e. Making a general assignment for the benefit of creditors.

f. If the Tenant suffers this Agreement to be taken under any writ of execution and/or other process of law or equity.

g. The Tenant's failure to utilize the Assigned Space as required in this Assignment.

h. Any lien is filed against the Assigned Space, or the County's interest therein or any part thereof in violation of this Agreement, or otherwise, and the same remains unreleased for a period of sixty (60) days from the date of filing unless within such period the Tenant is contesting in good faith the validity of such lien and such lien is appropriately bonded.

i. Failure of the Tenant to perform or comply with any covenant or condition made under this Agreement, which failure is not cured within ninety (90) days from the date of the County's written notice stating the noncompliance shall constitute a default (other than those covenants for which a different cure period is provided), whereby the County may, at its option, terminate this Agreement by giving the Tenant thirty (30) days' written notice unless the default is fully cured within that thirty (30) day notice period (or such additional time as is agreed to in writing by the County as being reasonably required to correct such default). However, the occurrence of any of the events set forth above shall constitute a material breach and default by the Tenant, and this Agreement may be immediately terminated by the County except to the extent then prohibited by law.

j. Failure to continuously abide by all the insurance provisions required in Paragraph 6.

2. Remedies of the County.

a. In the event of the occurrence of any of the foregoing defaults, the Tenant shall become immediately a tenant-at-sufferance in accordance with Florida law, and the County, in addition to any other rights and remedies it may have, shall have the immediate right to re-enter and remove all individuals, entities, furnishings, inventory and personal property from the Assigned Space. Any property removed may be stored in a public warehouse or elsewhere at the cost of, and for the account of, the Tenant, all without service of notice or resort to legal process and without being deemed guilty of trespass, or being liable for any loss or damage which may be occasioned thereby. If the Tenant does not cure the defaults in the time frames as set forth above, and the County has removed and stored property, the County shall not be required to store such property for more than thirty (30) days. After such time, such property shall be deemed abandoned and the County shall dispose of such property in any manner it so chooses and shall not be liable to the Tenant for said disposal.

b. The County may sue for direct, actual damages arising out of such default by the Tenant or apply for injunctive relief as may appear necessary or desirable to enforce the performance and observance of any obligation, agreement or covenant of the Tenant under this Agreement or otherwise. For this purpose, the Tenant agrees that the County need not post a surety bond with the court and the right to any bond is hereby waived. The County shall be entitled to reasonable attorneys fees and costs incurred arising out of the Tenant's default under this Agreement.

**J. Surrender at End of Term/Termination.**

1. At the end of the Term or upon the earlier termination of this Agreement, the Tenant agrees to surrender and yield possession of the Assigned Space, improvements constructed thereon and fixtures to the County, peacefully and without notice, free and clear of all debts, mortgages, encumbrances and liens. It shall be lawful for the County to re-enter and to repossess the improvements without further process of law.

2. The improvements and fixtures shall be in good condition and repair in all respects, reasonable use and wear excepted, and the Tenant agrees to reimburse the County for the cost of any alterations, replacement, repairs or cleaning required to restore the same to such condition.

3. The Tenant may remove furnishings, inventory, personal property, trade fixtures, and any improvements not a part of any structure upon the expiration or termination of this Agreement if the removal can be done in a manner that does not injure or damage the Assigned Space. If the Tenant fails to remove such furnishings, inventory, personal property, trade fixtures and improvements within ten (10) days after the effective date of the expiration or termination, or within ten (10) days from the date of the County's written notice, whichever is later, the County may remove and dispose of any furnishings, inventory, personal property, trade fixtures, and improvements not removed by the Tenant. In that case, the Tenant is deemed by this Agreement to have sold, assigned and transferred to the County all of the Tenant's right, title

and interest in the furnishings, inventory, personal property, trade fixtures, and improvements not removed by the Tenant.

4. The Parties agree that, to confirm the automatic vesting of title as provided for herein, each will execute and deliver such further assurances and instruments of assignment and conveyance as may be reasonably required by the other for that purpose.

**K. Holding Over.** It is agreed that if the Tenant, or any assignee or subtenant thereof, shall continue to occupy the Assigned Space after any termination of this Agreement without the prior written consent of the County, then such tenancy shall be a tenancy-at-sufferance, the County shall be entitled to double the monthly Rent specified in Paragraph 4 hereof, and acceptance by the County of any sums after any such termination shall not constitute a renewal of this Agreement or a consent to such occupancy, nor shall it waive the County's right of re-entry or any other right available to it under the laws of Florida or the provisions of this Agreement.

**L. Costs and Attorneys' Fees.** In the event that the County uses the services of an attorney to collect any sums due hereunder from the Tenant, or to pursue any remedies or resolution related to a default hereunder, or in the event the County is the prevailing party in any action to enforce any provision of this Agreement or in any other legal proceeding at law or in equity arising hereunder or in connection herewith, including any bankruptcy or bankruptcy appeals, the Tenant shall reimburse the County for all reasonable costs, attorneys' fees and all other actual expenses incurred by the County, whether the County uses in-house or contracted counsel, in the defense and/or prosecution of such legal proceeding and in any appeals, including, but not limited to, fees and expenses for paralegals, investigators, legal support personnel and expert witnesses.

**M. Notice.** Any notice given by one Party to the other in connection with this Agreement shall be in writing and shall be sent by certified mail, return receipt requested:

If to Tenant, addressed to:

**First Baptist Church of Palm Coast Christian School, Inc.  
6052 Palm Coast Pkwy. NW  
Palm Coast, FL 32137**

If to County, addressed to:

**Flagler County  
Attention: Flagler County Administrator  
1769 E. Moody Boulevard, Building 2  
Bunnell, FL 32110**

**N. Sums Paid by County.** If the County has paid any sum or sums or has incurred any obligation or expense which the Tenant has agreed to pay or reimburse the County for, or if the County is required or elects to pay any sum or sums or incurs any obligation or expense

because of the failure, neglect or refusal of the Tenant to perform or fulfill any of the terms or conditions of this Agreement, then the same shall be deemed additional Rent due hereunder and the Tenant shall reimburse the County therefor promptly upon demand. Any unpaid sums shall be treated under the same provisions as are applicable to delinquent rental payments.

**O. Security Deposit.** The Tenant shall pay the security deposit as required under Paragraph 7, and such sums shall be retained by the County as security for the faithful performance of the Tenant's obligations hereunder. The County shall have the right, but not the obligation, to apply said security deposit to the payment of any sum due to the County which has not been paid, including, but not limited to, reimbursement of any expenses incurred by the County in curing any default of the Tenant, or to the cost of restoring the Assigned Space or its improvements, furnishings, fixtures or equipment to good condition and repair, reasonable use and wear excepted. In the event that all or any portion of the security deposit is so applied, the Tenant shall promptly upon demand by the County remit to the County the amount of cash required to restore the security deposit to its original sum, and the Tenant's failure to do so within ten (10) calendar days from the date of the County's written notice of such demand shall constitute a default under this Agreement. If said deposit shall not have been applied for any of the foregoing purposes, it shall be returned to the Tenant, without interest, within sixty (60) calendar days after the end of the Term of this Agreement. The County will not pay interest on any security deposit.

**P. Brokerage Commissions.** Unless expressly provided otherwise herein, the Tenant warrants that no real estate commission is payable by the County to any person or entity in connection with this Agreement, and the Tenant does hereby agree to indemnify, defend, and hold completely harmless the County from and against any and all liabilities, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, expert fees and reasonable attorneys' fees prior to institution of legal proceedings and at both trial and appellate levels) incurred by the County as a result of any claims therefore.

**Q. County's Reserved Rights.**

The County reserves the right for itself and others to utilize and maintain existing utility easements over, under, across and through the Assigned Space, and to run water, electrical, telephone, gas, drainage and other lines over, under, across and through the Assigned Space and to grant necessary utility easements therefor.

**R. Hazardous Materials.**

1. **Definitions.** As used herein, the following terms shall have the meanings hereinafter set forth:

i. **"Environmental Laws"** shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Materials, whether now in effect or hereafter adopted.

ii. **"Hazardous Materials"** shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to

the environment. "**Hazardous Material**" includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, also commonly known as the "Superfund" law, as amended (42 U.S.C. **Sections** 9601 et seq.) ("**CERCLA**"), or pursuant to Chapters 376 and 403, Florida Statutes; any "hazardous waste" listed pursuant to **Section** 403.72, Florida Statutes, or any waste which conforms to the criteria for hazardous material adopted by the County; any asbestos and asbestos containing materials; lead based paint; petroleum, including crude oil or any fraction thereof; natural gas or natural gas liquids; and any materials listed as a hazardous substance in the County's rules and regulations.

iii. "**Release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or on any property.

2. **Tenant's Agreement.** The Tenant agrees that neither it nor its officers, agents, employees, contractors, subcontractors, subtenants, licensees or invitees shall cause any Hazardous Materials to be brought upon, kept, used, stored, generated or disposed of in the Assigned Space.

3. **Environmental Indemnity.** The Tenant shall indemnify, defend and hold harmless the County from and against any and all loss, damage, cost or expense (including attorneys fees) arising during or after the term of this Agreement as a result of or arising from (i) a breach by the Tenant of its obligations contained in Subparagraph (R)(2) above, or any Release of Hazardous Materials from, in, or about the Assigned Space caused by the act or omission of the Tenant, its officers, agents, employees, contractors, subcontractors, subtenants, licensees or invitees.

4. **Environmental Audit.** Upon reasonable notice to the Tenant, the County may conduct or cause to be conducted through a third party that it selects, an environmental audit or other investigation of the Tenant's operations to determine whether the Tenant has breached its obligations under Subparagraph (R)(2) above. The Tenant shall pay all costs associated with said investigation if such investigation shall disclose any such breach by the Tenant.

#### **S. Miscellaneous.**

1. The paragraph headings contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision hereof.

2. Notwithstanding anything herein contained that may appear to be to the contrary, it is expressly understood and agreed that, except for the Tenant's right to possession of the Assigned Space, the rights granted under this Agreement are non-exclusive.

3. Except as expressly prohibited herein, the provisions of this Agreement shall bind and inure to the benefit of the successors and assigns of the Parties hereto.

4. Time is of the essence to this Agreement.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, except for its conflict of law provisions. It is agreed that if any covenant, condition or provision contained herein is held to be invalid by any State of Florida court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, condition or provision herein contained.

6. No recourse under or upon any obligation, covenant or agreement contained in this Agreement, or any other agreement or document pertaining to the operations of the Tenant hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or under any judgment obtained against the County, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Agreement, shall be had against any member (including, without limitation, members of the Flagler County Board of County Commissioners), officer, employee or agent, as such, past, present and future, of the County, either directly or through the County, or otherwise, for any claim arising out of this Agreement or the operations conducted pursuant to it, or for any sum that may be due and unpaid by the County. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any County member, officer, employee or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of this Agreement or the operations conducted pursuant to it, or for the payment for or to the County, or any receiver therefor or otherwise, or any sum that may remain due and unpaid by the County, is hereby expressly waived and released as a condition of and as consideration for the execution of this Agreement.

7. The Tenant represents and warrants to the County that no member, officer, employee or agent of the County has any material interest, either directly or indirectly, in the business of the Tenant to be conducted hereunder.

8. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof, and any representation or statements heretofore made with respect to such subject matter, whether oral or written, are merged herein. This Agreement may be altered or amended only by written instrument specifically referring to this Agreement and executed by both Parties hereto with the same formalities as the execution of this Agreement.

9. As required by Florida law, the County hereby includes the following notifications as part of this Agreement:

**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.

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**PUBLIC ENTITY CRIMES:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of \$15,000 for a period of 36 months from the date of being placed on the convicted vendor list.

10. The exclusive jurisdiction and venue for any action to interpret and/or enforce the terms of this Agreement shall be in the Seventh Judicial Circuit Court in and for Flagler County, Florida.

11. Nothing in this Agreement shall abrogate or waive the County's Sovereign Immunity or the provisions of § 768.28, *Florida Statutes*.

12. Continued performance by either Party hereto pursuant to any provision of this Agreement after a default of any provision herein shall not be deemed a waiver of any right to cancel this Agreement for any subsequent default, and no waiver of any such default shall be construed or act as a waiver of any subsequent default.

13. Recordation. This Agreement shall be recorded by the County in the Official Records of Flagler County, Florida, within fourteen (14) days after the County enters into this Agreement.

14. Relationship of the Parties. Nothing in this Agreement shall be construed by the Parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties hereto, it being understood and agreed that neither the method of computation of Rent, nor any other provision contained herein, nor any acts of the Parties herein, shall be deemed to create any relationship between the Parties hereto other than the relationship of County and the Tenant.

15. No Third Party Beneficiary. This Agreement is made solely and specifically among and for the benefit of the Parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other person has or will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

16. Discrimination Not Permitted. The Tenant, for itself, its successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (a) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Assigned Space under the provisions of this Agreement; and (b) that in the construction of any improvements on, over or under the Assigned Space and the

furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination. Likewise, the Tenant shall comply with laws of the State of Florida prohibiting discrimination because of race, color, religion, sex, national origin, age, handicap or marital status. The Tenant further agrees that no person on the grounds of religion shall be excluded from the ability to enroll and attend classes and services offered by Tenant, nor shall any person be required to be a member of a church that is in any way affiliated with the Tenant.

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS**

By: [Signature]  
**Frank Meeker, Chairman**

Date Signed: 3-2-15

As Approved by the Board of County Commissioners on February 10, 2015

**ATTEST:**

[Signature]  
Gail Wadsworth, Clerk of the Court and Comptroller

**APPROVED AS TO FORM:**

[Signature]  
Al Hadeed,  
County Attorney

**TENANT**

By: [Signature]  
Signature JAMES J. STANTON  
Print Name  
Title PRESIDENT

[Signature]  
Witness  
Lucie M. Dance  
Print Name  
Charie Shroyer  
Witness  
CHARSTIE L. MAYER  
Print Name

STATE OF FLORIDA )  
COUNTY OF FLAGLER )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of February, 2015, by JAMES J. STANTON, who swore or affirmed that he/she is authorized to enter into this Agreement and to bind [INSERT] Such person(s) (Notary Public must check applicable box):  
FBCA

is/are personally known to me.

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produced a current driver license(s).

produced \_\_\_\_\_ as identification.

(SEAL)



*Christie Mayer*  
Notary Public  
Commission No.: EE056841  
My Commission Expires: 04/08/15

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**Exhibit A**

**Legal Description**

**Historic Courthouse/Annex Parcel**

**A PARCEL OF LAND LYING EAST OF U.S. HIGHWAY NO. 1 (STATE ROAD 5) WITHIN A PORTION OF GOVERNMENT SECTION 15, TOWNSHIP 12 SOUTH RANGE 30 EAST, FLAGLER COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS ALL OF BLOCK 133, OF THE SUBDIVISION PLAT TOWN OF BUNNELL, AS RECORDED IN MAP BOOK 1, PAGE 2 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA.**

**Parking Lot/Open Space/Park Parcel**

**A PARCEL OF LAND LYING EAST OF U.S. HIGHWAY NO. 1 (STATE ROAD 5) WITHIN A PORTION OF GOVERNMENT SECTIONS 14 AND 15, TOWNSHIP 12 SOUTH, RANGE 30 EAST, FLAGLER COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS ALL OF BLOCK 122, OF THE SUBDIVISION PLAT TOWN OF BUNNELL, AS RECORDED IN MAP BOOK 1, PAGE 2 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA.**

CS

**Exhibit "B"**

**Improvements to Assigned Space by County**

The County shall cause the design and shall construct the improvements as generally depict below in compliance with all applicable County ordinances and codes, state and federal statutes, rules and regulations, the City of Bunnell Comprehensive Plan, the building codes, and the City of Bunnell Land Development Code.

<b><u>Improvements</u></b>	<b><u>Rough Est.</u></b>
Tuck-pointing/Sealing Exterior Walls/Facades	\$ 20,000
Fire Panel/Safety System/Security/Emergency Lighting & Exits	\$ 100,000
New Sprinklers in Annex/Maintenance of Historic Courthouse sprinklers \$ 70,000	
Window Replacement for Historic Courthouse as needed (determined by County)	\$ 65,000
Elevator Upgrades	<u>\$ 120,000</u>
<b>Total County Investment, in an amount not to exceed:</b>	<b>\$375,000</b>

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## **Exhibit "C"**

### **Improvements to Assigned Space by Tenant**

At a minimum, the Tenant shall cause the design and shall construct the improvements as depict below in compliance with all applicable County ordinances and codes, state and federal statutes, rules and regulations, the City of Bunnell Comprehensive Plan, the building codes, and the City of Bunnell Land Development Code necessary for tenants occupancy needs outside of those described in Exhibit B.

1. Architect detailed plans showing placement of new walls, electrical outlets, demolition plans, bathroom renovation, life safety plans, new door placement, HVAC vent locations, drawings complete to submit for permitting.
2. Flooring
3. Any new wall partitions and associated electrical outlets
4. Electrical Lighting
5. Any demolition work.
6. Ceilings / finishes / tiles.
7. Kitchen
8. Annex HVAC modifications to include new HVAC runs / controls / vents.
9. Plumbing
10. Painting and wall finishes
11. New fire walls at stairs on both ends
12. Wiring for emergency lighting / exits / security
13. Fire partitions
14. Technology wiring to include telephone, high speed internet, etc.

**Total Tenant Investment, in an amount not less than: \$510,000**

## **Exhibit "D"**

### **County Maintenance Obligations**

The County shall maintain the following items listed below of which a portion of the monthly rent shall offset. Maintenance, Replacement, Testing and Inspections shall include:

1. Exterior Facades
2. HVAC Units(heating, ventilating, and air conditioning)
3. Roofing
4. Property Insurance
5. Fire Alarms/Smoke Detectors/Exit Signage
6. Security System
7. Elevator Phone
8. Fire Sprinklers Testing
9. Elevator Maintenance/Licensing
10. Termite Pest Control
11. Extinguisher Certification



