

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

**AGREEMENT FOR LEASE AND OPTION
TO PURCHASE COMMERCIAL REAL
PROPERTY**

THIS AGREEMENT FOR LEASE AND OPTION TO PURCHASE COMMERCIAL REAL PROPERTY (referred to sometimes herein as the "Agreement"), is made and entered into this ____ day of _____, 2017 by and between **BUNCOMBE COUNTY**, a body politic and corporate of the State of North Carolina (referred to herein sometimes as "COUNTY"), and **ELIADA HOMES, INC.**, a North Carolina non-profit corporation organized and doing business in the State of North Carolina with its principal place of business located in Asheville, North Carolina (referred to herein sometimes as "ELIADA") collectively herein sometimes referred to as the "Parties."

COUNTY is the owner of a certain tract or parcel of land located at 32 Compton Drive, Asheville, North Carolina 28806, and described in the tax records of Buncombe County as PIN: 9629-41-6876, which contains a facility containing approximately 7,834 square feet space in a one story masonry/aluminum sided day care facility situated on a 2.085 acre parcel, including 25 parking spaces, (herein sometimes "Premises" or "Property"), being all of that certain 2.085 acre parcel as shown on plat of Property in the County of Buncombe dated June 9, 2009 by Danny R. Tolar and Associates, P.A. as shown on plat recorded in Plat Book 122, Page 182, Buncombe County, NC Registry, reference to which plat is hereby made for purposes of description.

COUNTY desires to lease said Premises to ELIADA and ELIADA desires to lease said Premises from COUNTY for the term, at the rental, and upon the covenants, conditions, and provisions herein set forth. ELIADA further desires an option to purchase and, should all terms and conditions of this Agreement be complied with, COUNTY shall sell the Premises at the purchase price and upon the covenants, conditions and provisions herein set forth.

NOW THEREFORE, in consideration of the mutual promises herein contained, and other good and valuable consideration, it is agreed:

A. LEASE OF PREMISES. ELIADA shall lease the Premises from COUNTY, subject to the following terms and conditions:

- 1. Term of Lease.** The Term shall commence on April 1, 2017 and shall terminate on March 31, 2027 at 12:59:59 p.m.
- 2. Rent.** ELIADA and COUNTY hereby agree that the rent for the Premises subject to this Agreement shall be \$1.00 per year to be paid by April 1st of each year.
- 3. Rental Payments.** All rental payments, unless otherwise designated in writing, are to be made to COUNTY at 200 College Street, Suite 460, Asheville, NC 28801. ELIADA shall mail rental payment in advance allowing ample time for delivery of each Rental payment to COUNTY, so the Rental payment will be received in hand on or before the day designated in Section A, Paragraph 2 herein.
- 4. Utilities.** ELIADA shall, during the lease term, pay and be responsible for all utilities, including but not limited to, water, sewer, telephone and other communication utilities, electricity, gas, and garbage service. COUNTY shall

not be in any way be responsible for the interruption of utility services.

5. Late Charges. Other remedies for non-payment notwithstanding, any amount due under any provision of the Agreement (including, without limitation, rents, costs, charges, additional rents, or reimbursements) which is not paid by ELIADA within ten (10) days after the due date as herein provided, shall be subject to a late charge equal to the greater of two percent (2%) of the amount due or twenty-five dollars (\$25.00), which shall be deemed additional rent. The late charge is due and payable at the end of the tenth day after the original unpaid amount is due and payable as herein provided. Any amount due under any provision of the Agreement which is not paid within thirty (30) days after the date due, shall accrue interest from the due date at the highest legal rate, not to exceed eighteen percent (18%), until paid in full, which interest shall be deemed additional rent.

6. Surrender of Possession. Upon the expiration or other termination of the Term, ELIADA shall quit and surrender to COUNTY the Premises, broom clean, in good order and condition, ordinary wear excepted, and ELIADA shall remove all of its property except as otherwise provided herein. If ELIADA does not remove its property of every kind and description from the Premises prior to the termination of the Agreement, however ended, and COUNTY shall not have requested the removal of same by ELIADA pursuant to this Agreement, ELIADA at COUNTY's election to be evidenced by written notice to ELIADA within 15 days after the termination of the Term, but not otherwise shall be conclusively presumed to have conveyed the same to COUNTY under this Agreement as a bill of sale without further payment or credit by COUNTY to ELIADA and COUNTY may remove the same and ELIADA shall pay the cost of such removal to COUNTY upon demand. In the event COUNTY does not so elect to compel conveyance of such property, COUNTY may dispose of such property in any manner whatsoever to the fullest extent permitted by law, including, without limitation, the sale, scrapping, and/or destruction thereof without further obligation to ELIADA and ELIADA shall pay to COUNTY, promptly on demand, the reasonable expenses of such disposal. ELIADA's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement.

7. Default.

a. Any one or all of the following events shall constitute a default:

- i. if ELIADA, or any successor or assignee of ELIADA which is in possession, shall file a petition in Bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise, or shall make an assignment for the benefit of creditors;
- ii. if involuntary proceedings under any bankruptcy law or insolvency act or receivership action shall be instituted against ELIADA, or if any receiver or trustee shall be appointed for all, or substantially all, of the property of ELIADA, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within thirty (30) days after the institution or appointment;

- iii. if ELIADA shall fail to pay any sum due from it to COUNTY or any other party in strict accordance with the provisions of this Agreement, and does not make the payment thereof within seven (7) days after the written notice of such failure shall have been sent from COUNTY to ELIADA. For the purpose hereof, all sums due from ELIADA to COUNTY shall constitute Rental whether denominated as Rentals or otherwise elsewhere herein;
- iv. if ELIADA shall fail to fully perform or comply with all of the conditions or covenants of this Agreement, and if the non-performance or failure shall continue for a period of ten (10) days after written notice thereof by COUNTY to ELIADA or, if the performance cannot be reasonably completed within the ten (10) day period, ELIADA shall not in good faith have commenced performance within the ten (10) day period and shall not have diligently proceeded to completion of performance;
- v. if ELIADA shall vacate or abandon the Premises;
- vi. if any interest of ELIADA in this Agreement shall be transferred, levied upon, assigned, or shall pass to or evolve to any other person, firm or corporation, whether voluntarily or involuntarily, except as herein permitted;
- vii. if COUNTY in any three months of any consecutive twelve month period or in any six months during the lease term gives any notice to ELIADA pursuant to subparagraphs (iii) and (iv) above, notwithstanding ELIADA's cure of default within the allowable period or periods.
- viii. if ELIADA shall fail to comply with the provisions of paragraph A. 5. Above, "Use."

b. Remedies. Upon the occurrence of any Event of Default as set forth above, COUNTY shall have the right, at its option, to utilize any one or more of the following remedies:

- i. COUNTY shall have the right to cancel and terminate this Agreement, as well as all of the right, title and interest of the ELIADA hereunder by giving to ELIADA notice of such cancellation at the Premises, whereupon, this Agreement and all right, title and interest of the ELIADA hereunder shall terminate and the ELIADA shall have no further rights under this Agreement; but such cancellation shall not serve to release or discharge ELIADA from any liability to COUNTY; and/or
- ii. COUNTY may elect, but shall not be obligated, to make any payment required of ELIADA herein or to correct any condition required to be corrected by ELIADA, or comply with any agreement, term or condition required hereby to be performed by ELIADA, and COUNTY shall have the right to enter the

Premises for the purpose of correcting or remedying such condition or default and remain on the Premises until the complete correction of such condition, however, no expenditure for any correction by COUNTY on behalf of ELIADA shall be deemed to waive or release ELIADA's breach hereof, COUNTY shall retain all rights to proceed against ELIADA as set forth herein and ELIADA shall be liable for all costs incurred by COUNTY; and/or

iii. COUNTY may reenter the Premises immediately with or without order of Court without being guilty of trespassing and remove the property and personnel of ELIADA and store such property in a public warehouse or at any such other location selected by COUNTY, all at the sole expense of ELIADA. After such reentry, COUNTY shall have the right to terminate this Agreement by giving notice of termination to ELIADA, but without such notice, the reentry by COUNTY shall not terminate this Agreement. Upon termination, COUNTY may recover from ELIADA all damages resulting from ELIADA's breach, including but not limited to the cost of recovery of the Premises and placing them in satisfactory condition, the value of the balance of this Agreement over the reasonable rental value of the Premises for the remainder of the Term, all of which sums shall be immediately due and payable to COUNTY; and/or

iv. All of the rights and remedies provided by law to a lessor with defaulting lessee including all such money damages as lessor shall be entitled pursuant to the law of damages.

c. Time Periods. In the event of any conflict of any of the provisions hereof regarding the amount of time which must elapse after notice before the same constitutes an Event of Default whereby COUNTY may exercise its right pursuant to this Agreement, the provisions establishing the least amount of time after notice shall prevail.

d. Costs and Attorney's Fees. Upon any breach of any of the terms or conditions of this Agreement, including the timely payment of rental or other charges, regardless of whether such breach is, or becomes, an Event of Default, COUNTY shall be reimbursed by ELIADA for any and all costs including clean-up charges, damages and repair charges incurred by COUNTY, plus COUNTY's reasonable attorney's fees, in connection with such breach and including service charges and all real estate commissions on all applicable payments for services charges and all real estate commissions on all applicable payments for services rendered and interest at the rate of one and one-half percent (1.5%) per month from the date any such charge is due until the date paid.

8. Use.

a. General Use. The Premises shall be used by ELIADA solely for the provision of early childhood education programs, including Pre-K and shall

not be used for any other purpose without the written permission of COUNTY. It is understood in the conduct of ELIADA's business no nuisance or disturbances, odors, smells, and/or toxic or inflammable materials will be used or created by them, their agents and/or customers to the detriment of their neighbors, or their neighbors' agents and/or customers.

- b. Safe and Sanitary Conditions.** ELIADA shall not permit, allow or cause any act or deed to be performed upon, in or about the Premises which shall cause or be likely to cause injury to any person or the Premises, particularly to the building or improvements located thereon, or to buildings, improvements, parking areas, sidewalks or pavement, if any, adjoining the Premises. ELIADA shall at all times keep the Premises in a neat and orderly conditions, and shall keep the Premises and the entryways, parking areas, sidewalks and delivery area used solely by it, clean and free from rubbish, dirt, pests, snow, and ice.
- c. Legal Requirements.** ELIADA covenants and agrees to comply with all legal requirements of City, County, State and Federal Governments respecting any operation conducted, or any equipment installations or property placed, in or upon the Premises, and ELIADA further covenants and agrees not to create or permit the creation of any nuisance on the Premises, or to make any other offensive use thereof.
- d. Hazardous Materials and Medical Waste.** ELIADA covenants and agrees that without prior written consent of COUNTY it shall not store, use, dispose of, discharge or release on or about the Premises any hazardous waste, hazardous substances, hazardous materials, toxic substances, hazardous air pollutants, or toxic pollutants (the "Hazardous Materials"), as those terms are used in the Resources Conservation and Recovery Act, The Comprehensive Environmental Response, Compensation and Liability Act, The Hazardous Materials Transportation Act, The Toxic Substance Control Act, The Clean Air Act and the Clean Water Act, and any and all amendments thereto, or any regulation promulgated pursuant thereto, or in any applicable federal, state or local law, regulation, or ordinance; and further ELIADA shall properly dispose of all Hazardous Materials off the Premises consistent with all federal, state, and local laws, regulations, and ordinances. ELIADA further covenants and agrees to indemnify, defend, and hold harmless COUNTY from any and all losses, including all costs, expenses, other claims, including attorney's fees, which COUNTY might incur due to any improper disposal, release, storage, or otherwise dealing with such Hazardous Materials. This indemnity shall survive the termination of this Agreement.
- e. Equipment and Furniture.** COUNTY shall lease to ELIADA, at no additional cost or expense, all of the equipment and furniture listed in Attachment A attached and made a part of this lease. Such leasing of equipment and furniture as-is, with all faults, and subject to the terms of this Agreement. At the expiration or early termination of this Agreement, equipment and furniture shall be returned and surrendered to COUNTY in good condition and repair, reasonable wear and tear

excepted. COUNTY shall have no obligation to repair, maintain or insure any such items.

9. CONDITION, MAINTENANCE, AND ALTERATIONS.

- a. Acceptance of Premises.** ELIADA acknowledges the act of taking possession of the Premises shall constitute conclusive evidence ELIADA has inspected and examined the Premises and utility installations, the same are in good and satisfactory condition, ELIADA accepts the Premises and ELIADA leases the Premises in "as is" condition.
- b. Structural Additions, Alterations or Improvements.** ELIADA shall not be permitted to make structural or other modification(s) or improvement(s) to the Premises without prior approval in writing by COUNTY which shall not be unreasonably withheld. Provided all such improvements are approved by COUNTY and made by ELIADA, they shall become the property of COUNTY at the termination of this Agreement or any renewal(s) thereof, unless otherwise hereinafter agreed upon by the parties in writing. ELIADA agrees to pay and save harmless COUNTY from any and all liens which might be placed against the Premises by persons, firms or corporations making repairs or improvements not expressly contracted for by COUNTY.
- c. Repairs and Maintenance During Lease Term.** During the lease term, ELIADA shall, at its own expense, maintain and make all necessary repairs to the Premises, including, but not limited to floors, doors and windows, interior and exterior walls, ceilings, roof, roof coverings (including flashing and gutters), heating, ventilation, air-conditioning, plumbing, electrical and mechanical equipment and systems, structural components (including foundations, columns, floors, walls, ceilings and roofs), crawl space and attic ventilation systems (if any).
- d. Trade Fixtures.** With the prior written approval of COUNTY, ELIADA shall be permitted to install trade fixtures on the Premises and shall be permitted to remove the same upon the expiration of this Agreement provided ELIADA is not in default and returns the Premises to the same condition in which they existed at the time of original acceptance -- reasonable wear and tear excepted.
- e. Inspection.** COUNTY or its agent shall have the right at all reasonable times to enter and inspect the Premises during normal business hours with 24-hours-notice. Any such inspection or entry by COUNTY shall not interfere with client services undertaken at the Premises and shall not violate the confidentiality of any clients.
- f. Alterations.** ELIADA shall not make any structural alterations in or additions to the Premises (hereinafter in this Section, the "Alterations") without COUNTY's prior written consent in each and every instance, which shall not be unreasonably withheld. If COUNTY consents to such Alterations, ELIADA shall furnish to COUNTY for approval before commencement of the work or delivery of any materials onto the Premises or into the Building, the following:

- i. all plans and specifications;
- ii. names and addresses of all contractors;
- iii. copies of all contracts;
- iv. all necessary permits;
- v. an indemnification in form and amount satisfactory to COUNTY and certificates of insurance from all contractors performing labor or furnishing materials, insuring against any and all claims, costs, damages, liabilities and expenses which may arise in connection with such Alterations.

Whether ELIADA furnishes COUNTY the foregoing or not, ELIADA hereby agrees to hold harmless COUNTY, from any and all liabilities of every kind and description which may arise out of or be connected in any way with said Alterations. Any mechanic's lien filed against the Premises, the Building or the Site, for work or materials claimed to have been furnished to ELIADA shall be discharged of record by ELIADA within ten (10) days thereafter, at ELIADA's expense. Upon completing any Alterations, ELIADA shall furnish COUNTY with contractors' affidavits and full and final waivers of lien and receipted bills covering all labor and materials expended and used. All Alterations shall comply with all insurance requirements and with all ordinances and regulations of any pertinent public authority. All Alterations shall be constructed in a good and workmanlike manner and good grades of materials shall be used. All Alterations, upon the Premises, made by either party, including, without limitation, all paneling, decorations, partitions, railings, floors, carpets, heating, air conditioning, plumbing, electrical machinery and equipment, and the like, shall, unless COUNTY otherwise elects, which election shall be made by giving a notice in writing not less than three (3) days prior to the expiration or other termination of this Agreement, become the property of COUNTY and shall remain upon and be surrendered with said Premises as a part thereof at the end of the term hereof. Furniture and movable trade fixtures, which are installed by ELIADA at its expense, except for those referred to above, shall remain its property and may be removed at any time, prior to the termination of the Term provided ELIADA is not then in default and further provided ELIADA promptly repairs any damage caused by such removal. Any such trade fixtures which ELIADA has the right to remove under the foregoing provisions, or personal property belonging to ELIADA or to any invitee, assignee or subleasee, if not removed prior to such termination, shall be deemed abandoned and if COUNTY so elects become the property of COUNTY without any payment or offset therefor. If COUNTY shall not so elect, COUNTY may remove any fixtures or property from the Premises and store them at ELIADA's sole risk and expense or dispose of them in any manner including the sale, scrapping or destruction thereof and to the extent permitted by law ELIADA waives all claims against COUNTY therefor. ELIADA shall repair and restore, and save COUNTY forever harmless from any and all damage to the Premises caused by such removal, whether by ELIADA or by COUNTY.

10. Property Taxes. ELIADA agrees to pay all applicable real estate taxes, personal property taxes and assessments of every nature assessed against the

Premises and Improvements occupied by ELIADA, as well as be responsible for the payment of any ad valorem or other taxes assessed against any stored goods or any contents placed on the Premises by ELIADA or any of its subtenants or on any machinery, equipment, fixtures, or rolling stock located thereon.

Upon receipt of any such tax or governmental or private assessment statement by COUNTY, COUNTY shall promptly deliver the same to ELIADA. ELIADA shall pay any such tax or assessment on or before the later of the following dates: (a) ten (10) days prior to the date on which such tax or assessment becomes delinquent, or (b) thirty (30) days following his receipt of such statement from COUNTY or directly from the taxing authority. All such taxes and assessments shall be deemed additional rent hereunder.

11. Common Area Maintenance Fees and Dues. Buncombe County agrees that no common area maintenance fees will be charged to ELIADA during the term of this Agreement.

12. Assignments and subletting.

- a. By ELIADA.** ELIADA shall not have the right to assign this Agreement, nor sublet the Premises or any portion thereof without the prior written consent of COUNTY. A transfer of a controlling interest in ELIADA shall be deemed an assignment of this Agreement. No assignment shall relieve ELIADA of any duties or obligations under this Agreement.
- b. Transfer of COUNTY's Interest.** In the event of the sale, assignment or transfer by COUNTY of its interest in the Premises or in the Agreement to a successor in interest who expressly assumes the obligations of COUNTY hereunder, COUNTY shall thereupon be released or discharged from all of his covenants and obligations hereunder, except such obligations as shall have accrued prior to any such sale, assignment or transfer; and ELIADA agrees to look solely to such successor in interest of COUNTY for performance of such obligations. COUNTY's assignment of the Agreement or of any or all of his rights herein shall in no manner affect ELIADA's obligations hereunder. ELIADA shall thereafter attorn and look to such assignee, as COUNTY, provided ELIADA has received written notice of such assignment of COUNTY's interest.
- c. Estoppel Certificate.** Within ten (10) days after request therefor by COUNTY or if upon any sale, assignment or other transfer of the Premises by COUNTY, an estoppel certificate shall be required from ELIADA, ELIADA shall deliver in recordable form a statement to any proposed transferee, or to COUNTY, certifying any facts that are then true with respect to this Agreement, including, without limitation (if such be the case), that this Agreement is in full force and effect, that ELIADA is in possession, that ELIADA had commenced the payment of the Rental, and that there are no defenses or offsets to the Agreement claimed by ELIADA. Further, if ELIADA fails to furnish an executed certificate hereunder within five (5) days of a request to it to do so, said failure being without substantive and reasonable just cause transmitted to COUNTY in writing within said five (5) day period, then ELIADA does

hereby agree the managing agent used by COUNTY for the Premises shall be, and it is hereby authorized, without liability to ELIADA, to execute such certificate as the authorized agent and attorney-in-fact for ELIADA.

13. Insurance.

- a.** If any building or improvement situated on the Premises is damaged by fire or other casualty resulting from any act or negligence of ELIADA or any of ELIADA's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and ELIADA shall be responsible for the costs of repair not covered by insurance, if any, including payment of COUNTY's self-insured retention limits.
- b.** ELIADA shall be responsible, at its own expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in or on the Premises. ELIADA will provide County with a certificate of insurance evidencing this coverage.
- c.** ELIADA shall, at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the Premises and activities on the Premises with a minimum limit of \$1,000,000 and a \$3,000,000 general aggregate. COUNTY shall be listed as an additional insured on this policy. ELIADA will provide County with a certificate of insurance evidencing this coverage.
- d.** ELIADA must maintain Workers' Compensation insurance in compliance with all applicable statutes. The policy shall also provide Employer's Liability coverage with limits of not less than \$500,000 Bodily Injury each accident, \$500,000 Bodily Injury by disease, policy limit, and \$500,000 Bodily Injury by disease, each employee. ELIADA will provide County with a certificate of insurance evidencing this coverage.
- e.** ELIADA shall, upon execution of this Agreement and annually thereafter, provide COUNTY with current Certificates of Insurance evidencing ELIADA's compliance with this section. All insurance shall be procured from reputable insurers authorized to do business in North Carolina. ELIADA shall obtain the agreement of ELIADA's insurers to notify COUNTY that a policy is due to expire at least thirty (30) days prior to such expiration.
- f. Insurance Rate Increase Due to ELIADA Activities.** If, during the lease term, as the result of any act or neglect of ELIADA, its invitees, agents, employees or representatives, or the nature of the business conducted in or on the Premises by ELIADA, the fire insurance rate upon the Premises or the building shall be increased over the rate existing as of the original date of this Agreement, ELIADA on demand shall pay to COUNTY, as additional Rentals, a sum equal to one-twelfth of the annual cost of the increase of such insurance for each month in which this Agreement is in effect after the effective date of such increase.
- g. Untenantability.** If the Premises are made untenable by fire or

other casualty, either party may elect to terminate this Agreement as of the date of the fire or casualty by notice to the other party within sixty (60) days after that date; provided that if the Premises can be rendered habitable within sixty (60) days (or if the delay beyond said sixty (60) days is due to the action, or failure to act by ELIADA) ELIADA may not terminate this Agreement under this provision. In the event that neither party elects to terminate the Agreement, then COUNTY shall proceed with all due diligence to repair, restore or rehabilitate the Building and the Premises at COUNTY's expense, in which event this Agreement shall not terminate.

In the event the Agreement is not terminated pursuant to this provision, rent shall abate on a per diem basis during the period of untenability. In the event of the termination of this Agreement pursuant to this Section, rent shall be apportioned on a per diem basis and paid to the date of the fire or other casualty. In the event that the Premises are partially damaged by fire or other casualty but are not made wholly untenable, then COUNTY shall, except during the last year of the term hereof, proceed with all due diligence to repair and restore the Premises and the rent shall abate in proportion to the untenability of the Premises during the period of restoration. If a portion of the Premises are made untenable as aforesaid during the last year of the term hereof, COUNTY shall have the right to terminate this Agreement as of the date of the fire or other casualty by giving written notice thereof to ELIADA within thirty (30) days after the date of fire or other casualty, in which event the rent shall be apportioned on a per diem basis and paid to the date of such fire or other casualty.

14. Waiver of Claims. To the extent not prohibited by law, ELIADA releases COUNTY, its agents and employees and their successors and assigns from, and waives all claims for, damage or injury to person or property sustained by ELIADA its successors and assigns resulting from the Premises or any equipment or appurtenance becoming out of repair, or resulting from any accident in or about the Premises or resulting directly or indirectly from any act or neglect of any ELIADA or occupant of the Premises, or of any other person, excepting only COUNTY, its agents and employees. This Section shall include but not be limited to, the flooding of basements or other subsurface areas, and to damage caused by refrigerators, sprinkling devices, air-conditioning and/or electrical equipment, water, snow, frost, steam, excessive heat or cold, falling plaster, broken glass, sewage, gas, odors or noise, or the bursting or leaking of pipes or plumbing fixtures, and shall apply equally whether any such damage results from the act or neglect of COUNTY or of other occupants or servants in the Building or of any other person, and whether such damage be caused or result from anything or circumstance above mentioned or referred to, or any other thing or circumstance whether of a like nature or of a wholly different nature. If any such damage, or injury whether to the Premises or any part thereof, or whether to COUNTY or to others in the Building, results from any act or neglect of ELIADA, its employees, agents, invitees and customers, ELIADA shall be liable therefor and COUNTY may, at COUNTY's option, repair such damage and ELIADA shall, upon demand by COUNTY, reimburse COUNTY forthwith for the total cost of such repairs. ELIADA shall not be liable for any damage caused by its act or neglect if COUNTY has recovered the full amount

of the damage from insurance and the insurance company has waived its right of subrogation against ELIADA. The parties hereto agree to use their best efforts to have any and all fire, extended coverage or any and all material damage insurance which may be carried pursuant to Section 14 hereof endorsed with the following subrogation clause: "This insurance shall not be invalidated should the insured waive prior to a loss any or all right of recovery against any party for loss occurring to the property described herein." Each party hereto hereby waives all claims for recovery from the other party for any loss or damage to any of its property insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance.

15. Indemnity. ELIADA shall indemnify, defend, and hold harmless the COUNTY and its subsidiaries, divisions, officers, directors and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, any act or omission of the ELIADA or any employee, agent or assign of the ELIADA. ELIADA shall indemnify the County in all instances except where the COUNTY is primarily negligent through an act or omission. Nothing herein shall be construed as a waiver on the part of the COUNTY to any defense of any claim, including, but not limited to the defense of governmental immunity. The COUNTY's obligations under this paragraph shall be limited to the extent and manner of recovery pursuant to the COUNTY's self-insured claim policies and North Carolina law.

16. Signs. Following COUNTY's written consent, which shall not be unreasonably withheld or delayed, ELIADA shall have the right to place on the Premises, at locations selected by ELIADA, any signs which are permitted by applicable zoning ordinances and private restrictions. COUNTY may refuse consent to any proposed signage that is in COUNTY's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Premises. COUNTY shall cooperate with ELIADA in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for ELIADA to place or construct the foregoing signs. ELIADA shall repair all damage to the Premises resulting from the removal of signs installed by ELIADA.

17. Covenants of COUNTY. COUNTY covenants and warrants that upon performance by ELIADA of its obligations hereunder, COUNTY will keep and maintain ELIADA in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Premises during the term of this Agreement.

B. OPTION TO PURCHASE PREMISES. Provided that ELIADA is and has continuously been in compliance with the provisions of paragraph A. 8. "Use," above, ELIADA shall have the option to purchase from COUNTY and COUNTY shall sell to ELIADA the Premises, AS IS and in its then current condition, subject to the following covenants, terms and conditions:

1. Exercise Option. ELIADA shall have the right to exercise this option to purchase at any time after the execution of this Agreement and before March 31, 2027. Closing shall occur within sixty (60) days after notification to exercise option to purchase.

- 2. Fixtures.** The following items, if any, are included in the purchase of the Premises free of liens: parking areas, roof, signage, outside walls, any built-in appliances, light fixtures, ceiling fans, attached floor coverings, window hardware, window and door screens, storm windows, doors, awnings, antennas, burglar/fire/smoke alarms, energy systems, outdoor plants and trees, storage buildings, mailboxes, and any items attached or affixed to the Premises, including but limited to the attached items set forth in Exhibit "A."
- 3. Purchase Price.** The purchase price for the Premises shall be market rate value, based on independent appraisal current at the time of purchase. The price shall be paid in cash or equivalent at closing. The purchase price will be adjusted by subtracting the costs of improvements performed by ELIADA. Improvements and costs associated with the improvements must be pre-approved in writing by COUNTY and include supporting documentation of all expenses of improvements. In addition, the purchase price will be adjusted to provide credit for contributed value, based on ELIADA increasing availability to childcare with the use of this facility over a ten (10) year period. This adjustment must be approved in writing by the Buncombe County Manager.
- 4. Conditions.**

Pursuant to NCGS §160A-279, the COUNTY shall be required to include and ELIADA shall accept as a restriction on the deed that the property will be put to a public use.

 - a.** Title must be delivered at closing by a NON-WARRANTY DEED.
 - b.** All Deeds of Trust, liens and other charges against the Property must be paid and satisfied by COUNTY prior to or at closing so that cancellation may be promptly obtained following closing. COUNTY shall remain obligated to obtain any such cancellations following closing.
- 5. Closing Expenses.** COUNTY shall pay for preparation of the Deed and all other documents necessary to perform COUNTY's obligations under this Option, and for excise tax (revenue stamps) required by law. ELIADA shall pay for recording the Deed and recording of all instruments required to secure the purchase price unpaid at closing. Each party shall be responsible for all attorney's fees incurred by such party.
- 6. Closing.** The "closing" shall be defined as the date and time of recording of the Deed. All parties agree to execute any and all documents and papers necessary in connection with closing and transfer of title on or before sixty (60) days following the termination of lease terms, at a place and time designated by ELIADA. The Deed is to be made to ELIADA, unless otherwise directed by ELIADA.

C. GENERAL PROVISIONS.

- 1. Holding Over.** In the event ELIADA remains in possession of the Premises after expiration of this Agreement, including all exercised renewal term(s), if any, without mutual written agreement to the contrary, ELIADA shall not

acquire any right, title or interest in or to the Premises, and in such event, ELIADA shall occupy the Premises as a ELIADA from month to month, but shall otherwise be subject to all of the conditions, provisions and obligations of this Agreement insofar as the same shall be applicable

- 2. Separability.** If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 3. Possession.** Possession of the Premises shall be delivered to ELIADA at the commencement of the lease term.
- 4. Condemnation.** If, prior to the closing, any legally, constituted authority condemns the building situated on the Property or such part thereof which shall make the Premises materially unsuitable for ELIADA's use, this Agreement shall terminate when the public authority takes possession, and COUNTY and ELIADA shall account for rental as of that date. ELIADA shall have a pro-rata right in or to any portion of the condemnation award for the Property by the condemning authority.
- 5. Damage or Destruction.** If prior to closing the Premises or any part thereof shall be damaged by fire or other casualty, and ELIADA shall give prompt written notice thereof to COUNTY, then COUNTY may elect:
 - a.** to terminate this Agreement as of the date of the fire or other casualty, by notice to ELIADA within sixty (60) days after the date of such notice; or
 - b.** proceed with reasonable diligence to repair or cause to be repaired the Property so damaged, and if the Property, or any part thereof, shall be rendered untenable by reason of such damage, the Rent, or an amount thereof apportioned according to the area of the Property so rendered untenable, shall be abated for the period from the date of such damage to the date when the damage shall have been repaired as aforesaid; provided, however, that if COUNTY or any mortgagee of the Property shall be unable to collect the insurance proceeds (including lease insurance proceeds) applicable to such damage because of some negligent act or omission on the part of ELIADA, or any employee, licensee or invitee of ELIADA, the cost of repairing such damage shall be paid by ELIADA and there shall be no abatement of Rent so long as COUNTY is using its best efforts to repair the damage. COUNTY shall not be liable for any inconvenience or annoyance to ELIADA or injury to the business of ELIADA resulting in any way from such damage or the repair thereof. In no event shall COUNTY be required to repair any damage to the Building not covered by COUNTY's insurance on the Building.
 - c.** Option to Terminate Agreement: If the Building shall be so damaged by such fire or other casualty that substantial alteration or reconstruction of the Building shall, in COUNTY's sole opinion, be required (whether or not the Premises shall have been damaged by such fire or other casualty), then COUNTY may, at its option, terminate the Agreement

and the term and estate hereby granted, by notifying ELIADA in writing of such termination within sixty (60) days after the date of such damage.

If COUNTY shall give notice of termination pursuant to any event set forth above, the Agreement and the term and estate hereby granted shall expire as of the date of such termination with the same effect as if that were the date hereinafter set for the expiration of the term of this Agreement, and the Tenant shall pay the pro rated amount of the Rent to the date of such termination whereupon all rental obligation of ELIADA shall be deemed paid in full. ELIADA shall be relieved from paying rent and other charges during any portion of the lease term that buildings and improvement situated on the Premises are inoperable or unfit for occupancy, or use, in whole or in part, for ELIADA's purpose.

- 6. Risk.** All personal property placed in the Property shall be at the risk of ELIADA or the owner thereof, and COUNTY shall not be liable for any damage to said personal property, or to ELIADA arising from the bursting of pipes, or leaking of water or steam pipes, or from any act of negligence of ELIADA, or any other occupant of the Property or of any other person whomsoever, nor from the leaking of the roof, nor from the leaking or overflowing of water or sewer pipes, or from heating or plumbing fixtures, or from the handling of electric wires or fixtures, or from any other cause whatsoever, except for causes arising from the negligent acts or omissions of COUNTY. ELIADA understands that COUNTY will not carry insurance of any kind on ELIADA's furniture or furnishings or on any fixture or equipment removable by ELIADA under the provisions of this Agreement, and that COUNTY shall not be obligated to repair any damage thereto or replace the same. ELIADA may, at the expiration or earlier termination of this Agreement, remove all personal property and movable trade fixtures which ELIADA has placed in or on the Property, provided ELIADA repairs all damages to the Premises caused by such removal.

In addition, COUNTY shall not be liable for any property stolen or taken from the Property by any person or persons.

- 7. Notice.** Any notice required or permitted under this Agreement shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to COUNTY to: Health and Human Services Director
 35 Woodfin Street
 Asheville, NC 28801

If to ELIADA to: Eliada Homes, Inc.
 Tim Sinatra
 President/CEO
 2 Compton Drive
 PO Box 16708
 Asheville, NC 28816

COUNTY and ELIADA shall each have the right from time to time to change the

place notice is to be given under this paragraph by written notice thereof to the other party.

- 8. Waiver.** No waiver of any default of COUNTY or ELIADA hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by COUNTY or ELIADA shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.
- 9. Interpretation:** The headings, captions, and table of contents, if any, used in this Agreement are for convenience only and do not in any way limit or amplify the terms or provisions hereof.
- 10. Applicable Law.** This Agreement shall be governed by the laws of the State of North Carolina and should any claim or dispute arise between the Parties that cannot be resolved amicably, then any action to enforce or interpret its terms shall be brought in the General Court of Justice of Buncombe County, North Carolina which shall have venue and jurisdiction over the subject matter and the Parties. All rights and remedies of County under this Agreement shall be cumulative and none shall exclude any other rights or remedies allowed by law or by equity. The Parties hereby agree that this paragraph establishes exclusive and sole venue and jurisdiction for any legal proceeding in Buncombe County, North Carolina.
- 11. Force Majeure.** In the event the COUNTY or ELIADA shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, the act, failure to act or default of the other party, war, fire, water, windstorm, or other reason beyond their control, the performance of such act shall be excused for the period of delay and the period of performance of any act shall be extended for a period equivalent to the period of delay.
- 12. Time.** Time is of the essence in regard to each and every term, covenant and condition of this Agreement.
- 13. No Extension.** No receipt of money by COUNTY from ELIADA after the termination of this Agreement or after the service of any notice or after the commencement of any suit, or after final judgment for possession of the Premises shall reinstate, continue or extend the term of this Agreement or affect any such notice, demand or suit.
- 14. Lender Modification.** Should any mortgage, leasehold or otherwise, require a modification or modifications of this Agreement, which modification or modifications will not bring about any increase cost or expense to ELIADA or in any other way substantially change the rights and obligations of ELIADA hereunder, then and in such event, ELIADA agrees that this Agreement may be so modified.
- 15. Assignment.** The rights and obligations of ELIADA under this Agreement may

not be assigned by ELIADA without the written consent of COUNTY, which may be withheld for any reason.

16. COUNTY's Title. COUNTY's title is and always shall be paramount to the title of ELIADA, and nothing herein contained shall empower ELIADA to do any act which can, shall or may encumber such title.

17. Consent. If any provision of this Agreement requires the consent of either party, such party may withhold or delay its consent with respect to any matter in its sole and absolute discretion, unless otherwise specifically provided herein.

18. Parties. This Agreement shall be binding upon and inure to the benefit of the parties, and their heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

19. Survival. If any provision of this Agreement which by its nature and effect is required to be observed, kept or performed after the closing it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

20. Entire Agreement. This Agreement contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and signed by all parties.

21. Accord and Satisfaction. No payment by ELIADA or receipt by COUNTY of a lesser amount than the entire required rental amount as set forth herein shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and COUNTY may accept such check or payment without prejudice to COUNTY's right to recover the balance of such rent or pursue any other remedy in this Agreement.

22. Construction. The parties agree that this Agreement has been negotiated in an arms' length transaction, and the provisions set forth herein are not to be construed against the party who drafted this Agreement.

23. Execution. This Agreement shall only become a binding contract when signed by both ELIADA and COUNTY. This Agreement may be signed in multiple originals, all of which together shall constitute one and the same instrument, with the signed original being retained by each party. The individual signatories below have the expressed and implied authority on behalf of their respective Boards to execute this Agreement. The Parties may execute this Agreement in separate counterparts and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an email.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and

year set forth below.

{Signatures on Following Pages}

BUNCOMBE COUNTY

By: _____
Wanda Greene, County Manager

ATTEST:

Kathy Hughes, Clerk to the Board

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, _____, Notary Public for said County and State, has personal knowledge of the identity of Kathy Hughes, and hereby certifies that said Kathy Hughes, Clerk to the Board, personally appeared before me this day and acknowledged that she is Clerk to the Board of Commissioners of County of Buncombe and that David Gantt is the Chairman of the Board of Commissioners of Buncombe County, and that by authority duly given and as the act of the County of Buncombe, the foregoing instrument was signed in its name by said Chairman, sealed with its official seal, and voluntarily attested to by herself as its Clerk as the act and deed of the County of Buncombe, all by authority duly given by its governing body.

Witness my hand and notarial seal, this the ____ day of _____, 2017.

Notary Public

My Commission Expires:

This instrument has been pre-audited
in the manner required by the
Local Government Budget and Fiscal Control Act.

Tim Flora, Finance Officer.

ELIADA HOMES, INC.

By: _____

ATTEST:

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged that he is the President of Eliada Homes, Inc., a North Carolina non-profit corporation, and that he, as President, being authorized to do so, voluntarily executed the foregoing instrument on behalf of the corporation, as its act and deed.

Witness my hand and notarial seal, this the ____ day of _____, 2017.

Notary Public

My Commission Expires:

ATTACHMENT A: Equipment and Furniture

Item	Quantity
Baby Carrier/Car Seat	6
Balls	numerous
Bikes	numerous
Books	numerous
Bouncy Chair (for babies)	1
Box Fan	numerous
Built-In Outdoor Play Equipment	2
Bulletin Boards	5
CDs	numerous
Chairs (Kid-Sized)	numerous
Chalk Board Easel	1
Computers	4
Cots	numerous
Couch	3
Couch (Kid-Sized)	1
Cribs	5
Cubbies (Kid-Sized)	numerous
Desk Chairs	2
Dryer	1
Easel (chalk)	1
Easel (dry erase)	1
Easel (paint)	1
Fax+Printer	1
Foam Gym Mats	numerous
Glider	1
Handicapped Chair (wooden)	1
High Chairs	2
Hoops	numerous
Inside SandBox	1
Kids' Computer Desk	1
Ladder	1
Large Dry Erase Boards	3
Laundry Bins	numerous
LoveSeats	2
Magazine Racks (Kid-Sized)	numerous
McCall 1 Door Fridge	1
Metal Desks	3
Metal File Cabinets, 2-door	1
Metal File Cabinets, 4-door	6
Metal Picnic Table (Kid-Sized)	1
Metal Wardrobes (file cabinets with doors)	1

Item	Quantity
Microwaves	2
Mirrors	numerous
Misc. Artwork	1
Nap mats	numerous
Phones	5
Planters	numerous
Plastic Outdoor Storage Bins	2
Plastic/Metal Chairs (Adult-Sized)	numerous
Printer	1
Radio/CD players	6
Refridgerators	2
Rocking Chairs	2
Rugs	numerous
Sheds	2
ShopVac	1
Small Dry Erase Boards	numerous
Strollers	2
Swingset	2
Tables (Kid-Sized)	numerous
Toys	numerous
TVs	2
Upholstered Rocking Chair	1
Washer	1
Wicker Chair	1
Wicker Loveseat	1
Wooden Desk	3
Wooden Magazine Rack	1
Wooden Playground Equipment	1
Wooden Shelving for Storage	numerous