

STRATEGIC PLANNING AND INITIATIVES COMMITTEE

Tuesday, February 1, 2022

**SUBJECT: REQUEST FOR APPROVAL OF FACILITIES USE AGREEMENT WITH DAY 1 ACADEMIES
D/B/A BEZOS ACADEMY**

PROPOSED COMMITTEE ACTION

Recommend full Board approval of a Facilities Use Agreement with Day 1 Academies d/b/a Bezos Academy for the operation of a preschool at the Karen A. Slattery Educational Research Center for Child Development (the “Slattery Center”) on the FAU Boca Raton campus.

BACKGROUND INFORMATION

The Slattery Center facility is co-located with the A.D. Henderson University School and Florida Atlantic University High School. The facility consists of 9,896 square feet and resides on the eastern boundary of the Boca Raton campus of Florida Atlantic University.

The Slattery Center formerly served children from birth to five years of age with a primary mission to help young children grow intellectually, socially, and emotionally in a learning environment that nurtured and supported their development. Unfortunately, the Slattery Center closed on March 16, 2020, due to Covid-19. However, even prior to its forced closing, the Slattery Center continually suffered from financial shortfalls that required University intervention.

With the facility closed, the University explored ways to continue serving the needs of the early childhood community while ensuring that it was a financially viable endeavor. This provided the catalyst to explore a unique and inspiring venture to bring the newly established Bezos Academy to our facility.

Day 1 Academies is a Washington based not-for-profit that is establishing a nationwide corps of preschools known as The Bezos Academy. The Bezos Academy is a tuition-free, Montessori-inspired preschool supporting underserved communities for children living in households whose total income is below 400% of the federal poverty level. It aims to nurture the potential in every child to become a creative leader, original thinker, and lifelong learner by increasing access to early childhood education. The Montessori curriculum meets each child where they are and prioritizes all areas of development. Research-based standards are used to track developmental milestones and inform individualized instruction.

The Bezos Academy provides a year-round education that is full-day, five days a week. They provide all instruction, materials, supplies, activities, and operating expenses for the program at no expense to the families they serve. Children also receive multiple nutritious meals and healthy snacks throughout the day, again at no cost to their families.

The Bezos Academy currently has opened eight academies in Washington state, two in Texas and one in Florida. After representatives from the Bezos Academy visited FAU and A. D. Henderson, all parties recognized the potential synergy and benefit to all involved of a partnerships. To that end, FAU and the Bezos have negotiated a unique Facilities Use Agreement that will establish a Bezos Academy preschool at the Slattery Center.

The Bezos Academy will employ all staff at the preschool, who will be licensed by the state and trained in early childhood education. Preschool staff will also receive continuous training and development. The Bezos Academy will fully operate the facility at its expense and will be responsible for all aspects of the operation.

The Bezos Academy will reserve twenty percent (20%) of available slots in each entering class for children whose parents or legal guardians are full-time University students, faculty, or staff and who otherwise meet Bezos Academy income qualifications. The Bezos Academy will also collaborate with University faculty and students on research activities at the preschool. To further the opportunities for continuity in the educational and research experiences, the University will reserve twenty percent (20%) of available slots in each entering kindergarten class at the University's A.D. Henderson University School for children who meet the minimum qualifications and who attend the Bezos Academy. This will create opportunities for longitudinal studies of educational methods and outcomes from pre-k through eighth grade, and potentially beyond.

The Bezos Academy will also provide FAU students and faculty additional unique opportunities to collaborate, including internship and training opportunities at the preschool for students enrolled at University's College of Education, a pre-service teacher training center, and cooperative programs with the University's A.D. Henderson University School and its students

IMPLEMENTATION PLAN/DATE

The Facilities Use Agreement will go into effect April 1, 2022 and run through June 30, 2032, with a five-year renewal option.

FISCAL IMPLICATIONS

Bezos Academy is exclusively responsible for all costs and operations of the school, and for all alterations, utilities, services, and routine maintenance to the premises. The University will bill Bezos Academy for all services provided. The University retains responsibility for maintaining the mechanical and structural elements of the facility, for which Bezos Academy will pay the University a monthly maintenance fee. The University will also provide exclusive parking spaces for and vehicular access to the facility.

The Bezos Academy anticipates expending at least \$1,500,000 in alterations and improvements to the facility, subject to the University's review and approval. All such alterations and improvements will become property of the University. If FAU terminates the Agreement other than for cause or certain conditions during the first five years, it will pay Bezos Academy the full cost of the alterations and improvements, up to \$1,500,000. If FAU terminates other than for cause or certain conditions in any year after the fifth and before the fifteenth, it will pay an annually depreciating amount, down to \$200,000. If FAU terminates in the fifteenth year or thereafter, or if Bezos Academy terminates at any time, FAU will acquire the alterations and improvements at no cost.

Supporting Documentation: Proposed Facilities Use Agreement Between FAU and Day 1 Academies d/b/a Bezos Academy

Presented by:

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Superintendent/Assistant Dean, PK-12 Schools and Educational Programs

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Vice President & General Counsel

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Florida Atlantic University
FACILITIES USE AGREEMENT

FOR

ORGANIZATIONS AND INDIVIDUALS OUTSIDE THE UNIVERSITY

1. The Florida Atlantic University Board of Trustees, a public body corporate of the State of Florida, with an address of 777 Glades Road, Boca Raton, FL 33431 (hereinafter known as the “University”), agrees to make certain facilities on its Boca Raton campus available to DAY 1 ACADEMIES, dba Bezos Academy, a Washington nonprofit corporation (hereinafter known as the “User”), as of the Effective Date (defined below) and in consideration of the mutual covenants and stipulations set forth herein and pursuant to the terms and conditions set forth in this Facilities Use Agreement (“Agreement”).

2. The facilities made available to the User under this Agreement include (i) an area of approximately 9896 square feet of space consisting of the entire building known as the Karen A. Slattery Educational Research Center for Child Development on the University’s Boca Raton campus at 777 Glades Road, Boca Raton, FL 33431, and (ii) approximately 1.5 acres of surrounding outdoor space, all as more particularly described on Exhibit A, located on the land legally described on attached Exhibit D (collectively, the “Facilities”). User shall be allowed use of all space in the Facilities on an exclusive basis seven (7) days per week, twenty-four (24) hours per day, subject to the University’s provision of maintenance, repairs, inspections, and security to the Facilities as provided in this Agreement, and to the collaborative opportunities described in the Parties Memorandum of Understanding attached as Exhibit B. Exhibit D also includes the Facilities’ Certificate of Occupancy and Fire Equipment Inspection Reports, including reports for fire sprinklers and alarm systems. University will ensure that the Facilities’ fire protection equipment is fully functional and passes inspections prior to June 1, 2022.

3. This Agreement is contingent upon User’s approval of the Facilities. User shall have a period of sixty (60) days beginning on the Effective Date (the “Inspection Period”) to inspect the Facilities and determine whether the Facilities are suitable for User’s intended use. If User determines that the Facilities are not satisfactory for any reason, then User shall have the right to terminate this Agreement by giving written notice to University before the end of the Inspection Period, whereupon this Agreement shall terminate, University shall refund any Facilities fees payments made by User, and User shall have no further rights or obligations hereunder as of the date of such notice.

4. Subject to and in accordance with the terms, conditions, and provisions of this Agreement, the Facilities shall be used by User solely to provide high-quality, tuition-free preschool education for children around three (3) to five (5) years of age, and to provide those children free of charge with educational materials and services to set up each student up for success, including but not limited to, educational materials, books, arts and crafts, field

trips, and meals (collectively, the “Permitted Use”). Additionally, the Permitted Use shall include the right for User to offer related educational, social, and charitable services to students and their parents / guardians, and for such other lawful purposes as may be directly related thereto, without Landlord’s prior consent. University agrees that the Permitted Use, as more particularly described in the Parties’ Memorandum of Understanding, serves a compelling public purpose and furthers the University’s mission. User must obtain the prior written approval of the University for any other use of the Facilities, which approval shall not be unreasonably withheld, conditioned, or delayed. User warrants and represents that it is of superior knowledge and expertise related to such performance, and that it will obtain and maintain during the term of this Agreement all applicable permits, licenses, consents, and approvals necessary to perform the Permitted Use, from all governmental entities with jurisdiction over User’s activities. Failure by User to comply with any one or more of the laws that govern and regulate the activities encompassed in the Permitted Use shall be a breach of this Agreement.

5. No dangerous or hazardous substances shall be located in the Facilities (except those used in User’s ordinary course of business, including but not limited to cleaning and sanitation supplies). User shall neither conduct nor allow any activity or condition in the Facilities (i) that is unlawful, (ii) that increases the risk of harm to any person or to the Facilities beyond the minimal risk normally associated with activities similar to the Permitted Use, (iii) that would create a nuisance or trespass, or (iv) that would impair the use or operation of the Facilities or any part of the University campus.

6. User accepts the use of the Facilities and any associated services on an “as is” basis (including all furnishings) and University makes no representations or warranties about their condition or fitness for use for a particular purpose. Notwithstanding the foregoing, University represents that as of the Effective Date it is unaware of any hazardous materials or wastes, toxic or nontoxic pollutants, or contaminants in, on, or at the Facilities. In the event hazardous substances or wastes, toxic and nontoxic pollutants, or contaminants are identified at the Property by User, User may (i) elect to terminate this Lease immediately without any further obligation, or (ii) work with Landlord to develop a mutually agreeable remediation plan. University shall have no responsibility for furnishing or equipping the Facilities for the Permitted Use, but User may use the existing furnishings and equipment. User shall be responsible for providing, at its sole cost and expense, any additional furniture, fixtures, supplies or equipment needed by User.

7. User shall be responsible for performing any work necessary to bring the Facilities into condition satisfactory to User including obtaining all required permits and governmental approvals (“*User’s Work*”). University agrees to review and either approve, conditionally approve, or disapprove the plans and specifications for User’s Work (and provide reasonable, good faith reasons for disapproval). University shall endeavor to provide its approval, conditional approval, or disapproval (and associated comments) of User’s plans and specifications within ten (10)

business days after receipt thereof by University. If changes to User's Work are required by University, User shall revise the plans for User's Work and resubmit them for University's approval within ten (10) business days after receipt of comments. This process shall continue until the plans for User's Work are finally approved or disapproved by University. University shall provide a single point of contact to review and approve User's Work. If User determines that University's approval will not be obtained within the time period necessary to meet User's development timeline, User may terminate this Agreement by notice to University. Aside from User's Work as provided above, User may not make any non-cosmetic improvements or structural alterations (collectively, "*User's Alterations*") to the Facilities, including the changing of any Facilities locks, without the prior written approval of University, which approval shall not be unreasonably withheld, conditioned, or delayed. The approval process regarding User's Work contained in this Section 7 shall also apply to User's Alterations. User's Work and User's Alterations shall be performed at User's expense by licensed contractors in compliance with all applicable laws and University's uniformly applied Regulations, policies, and procedures, in a manner reasonably calculated so as to not unreasonably interfere with any part of the University campus; provided, however, University shall provide User with advance notice of all applicable Regulations, policies, and procedures with its approval to User's Work and User's Alterations. User shall be responsible for complying with all laws applicable to the Facilities as a result of User's particular use, such as modifications required by the Americans With Disabilities Act as a result of User opening the Facilities to the public as a place of public accommodation. University and User agree that, subject to the provisions of this paragraph, User's Work and Alterations could include without limitation installation of an exclusive entrance to the Facilities, installation and plumbing of restrooms, installation of a kitchen and warming pantry, and installation of an age-appropriate playground. Unless expressly agreed in writing, and except for User's personal property, furniture, equipment, and removable trade fixtures, University shall be deemed the owner of all approved User's Work and Alterations and they shall become a part of the facility and the property of the University, free and clear of all liens and encumbrances.

8. Except as otherwise provided herein, User shall, at its sole expense, maintain the Facilities in good condition and promptly make all non-structural repairs and replacements necessary to keep the Facilities safe and in good condition, in accordance with University's uniformly applied Regulations, policies, and procedures. User shall not, however, be responsible for any repairs to the Facilities made necessary by the negligence or willful misconduct of University or its agents, employees, contractors or invitees. User shall promptly report to University all structural and mechanical systems requiring maintenance and repair. Except for maintenance attributable to: (a) User's breach of its obligations under this Agreement; (b) User negligence or wrongful acts or omissions or those of User's employees, agents, or contractors; or (c) improvements made by User, and subject to University's right to provide Alternative Facilities as set forth below, University shall, at its sole expense, maintain in good condition, repair and replace as necessary the structure of the Facilities, HVAC systems, plumbing, foundation, slab, flashings, exterior

walls, roof (including roof membrane, roof decking, roof gutters and drains), all utilities and other systems serving the Facilities, and the common areas (including parking areas located at the Facilities). University shall use reasonable efforts, throughout the Term (defined below), for ensuring that the common areas comply with all applicable laws, including but not limited to the ADA, whether existing as of the Effective Date or as enacted, supplemented or modified from time to time. User shall repair or shall reimburse University for the repair of all damage caused by User and its employees, agents, independent contractors, patrons, students, invitees or guests. User also agrees to pay University \$_____ per month to help maintain the structural and mechanical systems. If User reasonably determines that the Facilities, or a portion of the Facilities necessary for User's Permitted Use, are destroyed or damaged by fire or other casualty, then the Parties may elect to either (a) terminate this Agreement by giving written notice to the other Party, or (b) continue this Lease, in which case the University will, at its expense, restore the roof, foundation, Common Areas and structural soundness of the exterior walls of the Facilities to substantially the same condition that existed before the casualty and User will, at its expense, be responsible for replacing any User improvements, damaged furniture, fixtures, and personal property.

9. The term of this Agreement is for a period of one hundred and twenty (123) full consecutive months, commencing April 1, 2022 (the "Effective Date") and terminating on June 30, 2032. Upon the Effective Date, University shall deliver vacant possession of the Facilities in broom clean condition to User with keys and all utilities in working order ready for User to commence User's Work. Upon reasonable request, University shall provide User access to the Facilities before the Effective Date to coordinate and plan User's Work. If User continues to use the Facilities for the Permitted Use, this Agreement may be extended upon the same terms and conditions for an additional five (5) year term upon User providing University at least six (6) months' notice prior to the expiration of the initial term. The initial term and any potential renewal term shall collectively be known as the "Term." Additionally, User shall have the right to terminate this Agreement before the scheduled termination date (as the same may be extended) by giving at least ninety (90) days' advance written notice to University.

10. User's Permitted Use entails provision of a high quality, tuition-free preschool to children of parents and guardians who meet certain income qualifications. This use complements the University's mission to train future educators and to conduct research on early education and childhood development practices. University agrees that the Permitted Use, as more particularly described in the Parties' Memorandum of Understanding, serves a compelling public purpose and furthers the University's mission.

11. User agrees to pay to University a monthly Facilities Fee in the sum of One Dollar (\$1.00) for each month of the Term, which fee shall include use of all space in the Facilities. Within sixty (60) days of execution of this Agreement, User shall deliver to University the sum of One Hundred and Twenty-Three Dollars (\$123.00) as prepayment of the monthly Facilities Fee due for the initial Term of this Agreement. In addition to the Facilities

Fee, User at its expense will furnish, equip, and make approved improvements to the Facilities and provide the tuition-free education and services at the Facilities. In lieu of paying fair market rent for the Facilities, User agrees to provide the services and perform all obligations described in this Agreement and the Memorandum of Understanding. The Parties acknowledge and agree that User's development and operation of a tuition-free preschool in accordance with the terms of this Agreement and the Memorandum of Understanding are valuable and beneficial services that support the University's programs, services, and mission, with significant costs to User, and that as a result, mutual consideration is adequate. The Parties further acknowledge and agree that all services or utilities provided to the Facilities by University, including but not limited to electricity, heating and air conditioning, water and sewer service, telecommunications (local or long distance telephone service/internet access), environmental health and safety inspections and services (including without limitation fire monitoring and security), janitorial/cleaning/waste removal services, landscape and grounds maintenance, mail or delivery service, routine non-structural repairs, replacement and maintenance, and any unusual, extraordinary or non-routine use of utilities, facilities, resources, or services of University employees (collectively, the "**Shared Services**"), shall be the sole cost and responsibility of User and shall be due and payable thirty (30) days after invoice from the University. University shall use a reasonable method to allocate all such costs to User. To the extent any such services are or may be separately metered, User shall, at University's request, pay directly to the provider, at User's sole expense, the cost of all such services supplied to the Facilities. By or before the Effective Date, the Parties shall enter a subsequent Memorandum of Understanding related to the provision and cost of the Shared Services.

12. User shall pay all fees owed to the University to: Florida Atlantic University, Office of the Controller, 777 Glades Road, Boca Raton, FL 33431. Fees past due after five days of the applicable due date shall be assessed a late payment charge of 1.5% per month. Upon the expiration or termination of this Agreement, University will bill User for any outstanding or additional charges, as applicable. User agrees to pay to University, within forty-five (45) days of receiving any invoice from University, any uncontested sum that may be due to the University.

13. Intentionally omitted.

14. User shall not assign or sublease all or any part of its obligations under this Agreement or its permission to use any portion of the Facilities without the advance written consent of the University, which consent may be withheld in University's sole and absolute discretion, nor shall User permit any use of the Facilities other than the Permitted Use specified in this Agreement. User may not transfer, pledge, surrender or otherwise encumber or dispose of its interest in any portion of the Facilities or this Agreement. Notwithstanding anything to the contrary contained in this Section, User may change its name, branding, and state of incorporation at any time during the Term. User may also assign this Agreement to an affiliate, parent, subsidiary or User related party without obtaining

University's consent, so long (1) the User provides at least 30 days prior written notice, identifying the assignee, and (2) such affiliate, parent, subsidiary or User related party is a non-profit corporation or similar entity primarily operating for educational purposes. User acknowledges that the State of Florida does not permit vendors to retain security interests in state property or liens on state lands, and any provisions in this Agreement or any other agreement that purport, attempt, or are construed to convey any such security interest or lien are null and void.

15. University shall provide User at no cost with the use of 19 adjoining parking stalls in a parking lot located on or adjacent to the property, which parking stalls are not part of the Facilities but are reserved for the exclusive use of User and its employees, agents, contractors, guests and invitees. User may mark the stalls or install placards to indicate that the stalls are reserved, subject to University's reasonable approval. User shall comply with and ensure that its employees, contractors, agents and invitees comply with all uniformly applied University parking rules and regulations, including decal costs for spaces other than the reserved stalls, at User's expense. University shall be solely responsible for maintenance of the parking lot including but not limited to sealing, repaving, and striping.

16. User acknowledges that University's Police Department ("FAUPD") is an accredited, full-service police department comprised of sworn officers that have met the training and continuing education requirements mandated by Florida law for all Florida police officers. FAUPD provides twenty-four hour protection and services to all property controlled by the University, including the Facilities. User may design and operate access control and security systems at the Facilities, which may include without limitation exterior security cameras, provided that User reasonably cooperate with University to provide University and FAUPD access to the Facilities (e.g. by providing University with a key card or similar access mechanism) as required for University to inspect and maintain the Facilities, perform its obligations herein, and provide police response and security services. User may in its sole discretion engage additional security in connection with User's activities at User's sole cost and expense, subject to University's prior review and approval of such additional security, which approval shall not be unreasonably withheld, conditioned, or delayed. Any additional security engaged by User must coordinate its activities with FAUPD and comply with all uniformly applied University rules and regulations. Nothing herein shall be deemed to limit FAUPD's law enforcement jurisdiction over the Facilities.

17. Due to the sensitive nature of early childhood education and security, any entry into the Facilities by University or its agents (excluding FAUPD for bona fide law enforcement activity) must be at a time agreeable to User and University. User shall permit the University, its agents, and its employees, with no less than three (3) days' prior notice, except in the event of an emergency in which case no prior notice shall be required, to enter into and upon the Facilities at all reasonable times for the purposes of inspecting the Facilities, making any necessary repairs or alterations, and ascertaining whether User is in conformance with the requirements of this Agreement. User has the right to have a representative of User accompany University during any entry into the Facilities except in the event of

an emergency or law enforcement activity. University shall make reasonable efforts not to disrupt User's activities in conducting such inspections, repairs or alterations.

18. User shall comply with all applicable federal, state, and local laws, rules, regulations, and procedures, and University's uniformly applied Regulations, policies, and procedures; provided, however, University shall provide User with advance notice of all University Regulations, policies, and procedures.

19. User represents and warrants to University that User does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with User's use of the Facilities on account of race, color, sexual orientation, gender identity, religion, age, handicap, national origin, or marital status. User further covenants that no individual shall, solely by reason of race, color, sexual orientation, gender identity, religion, age, handicap, national origin, or marital status, be subject to discrimination in connection with User's use of the Facilities.

20. Upon termination of this Agreement, User will at once surrender possession of the Facilities to the University in broom clean condition, normal wear and tear excepted, and remove all of User's personal property therefrom, within forty-five (45) days from the date of termination. Any personal property of the User not timely removed by User may be removed by University for disposition or storage at User's expense. Failure on the part of User to remove its personal property within forty-five (45) days from the date of termination shall constitute a gratuitous transfer of title thereto to the University and University may dispose of such property in such manner as it may elect and shall not be accountable for any proceeds of such disposition.

21. User shall not install any signage or advertising around or on the exterior of the Facilities without the written approval of the University, which shall not be unreasonably withheld or delayed. All signage and advertising shall be at User's sole expense. The Parties agree that User shall have the right to install signs on and near the Facilities identifying the location of Facilities and the name of User's preschool as Bezos Academy Boca Raton. However, approval of the exact size, quantity, and location of signage will be within the University's discretion, which shall not be unreasonably withheld, conditioned, or delayed. Attached as Exhibit C is User's sign package, which includes, among other things, proposed sign locations. By entering into this Agreement, University approves of User's sign package as shown in Exhibit C.

22. Nothing herein shall grant to User any interests in or rights to use images of University property other than the Facilities or the University name, logo, or trademarks without the prior written consent of University, which consent may be withheld in University's sole and absolute discretion. Nothing herein shall grant University any interests in or rights to use images of User's property, students, staff, name, logo, or trademarks without the prior written consent of User, which consent may be withheld in User's sole and absolute discretion. Neither Party shall, without the other Party's prior written consent, issue or release any announcement, statement, press release, or other publicity or marketing materials relating to the other Party or any services performed by or for the other

Party, or otherwise use the name, logo, trademarks, service marks, or other trade names of the other Party or any individual associated with the other Party in any public display, publicity releases, promotional material, customer lists, advertising, or other marketing. Without limiting the foregoing, the restrictions in this Section apply to items or posts on a Party's website and social media sites and platforms, including without limitation Facebook, Instagram, YouTube, Twitter, and LinkedIn. This Section shall survive the termination of this Agreement.

23. User agrees to furnish to University prior to User's occupancy of the Facilities a Certificate of Liability Insurance (COI), naming the University as the Certificate Holder and issued in a form reasonably acceptable to the University, evidencing proof of commercial general liability insurance that insures User's activities and those of User's employees, officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors against loss, damage or liability for personal injury or death or loss or damage to property with a combined single limit of not less than \$1,000,000 each occurrence and a general aggregate limit of not less than \$2,000,000. Such insurance shall contain the following language and such language shall be evidenced on the COI: **"The Florida Atlantic University Board of Trustees, the Florida Board of Governors, the State of Florida and their respective trustees, officers, agents, volunteers and employees are listed as Additional Insured under this commercial general liability policy."** All policies shall be with insurance companies authorized to do business in the State of Florida. Timely renewal certificates will be provided to the University as coverage renews. University, as a public body corporate of the State of Florida, warrants and represents that it is self-funded for liability and casualty insurance, both public and property, with said protection being applicable to the Facilities. University and User hereby release each other and their agents or employees, from responsibility for, and waive their claim of recovery for any loss or damage arising from any cause to the extent such loss or damage is covered by insurance required to be carried by each of them. Each Party shall provide notice to the insurance carrier or carriers of this mutual waiver of subrogation, and shall cause its respective insurance carriers to waive all rights of subrogation against the other. The insurance shall have a date of placement by the Effective Date.

24. User hereby agrees to defend, indemnify, and hold harmless the University, the Florida Board of Governors, the State of Florida, and their respective trustees, officers, agents, volunteers, and employees (collectively "University Parties") from and against all any and all claims, demands, liabilities, losses, damages, costs, or expenses, including attorneys' fees, that arise directly from User's breach of any material term or condition of this Agreement or that are attributable to the negligent or wrongful acts or omissions of User's officers, employees, volunteers, agents, participants, invitees, vendors, or contractors in connection with this Agreement. The User's indemnification obligation is limited to the extent that, as provided under Section 768.28 of the Florida Statutes, University hereby assumes any and all risks of personal injury and property damage, deprivation, or infringement (including, but not limited to, intellectual property) that arise directly from University's breach of any

material term or condition of this Agreement or that are attributable to the negligent or wrongful acts or omissions of the University and its officers, employees, servants, and agents while acting within the scope of their employment by University. University, as a public body corporate of the State of Florida, warrants and represents that it is self-funded for liability insurance, both public and property, with said protection being applicable to its officers, employees, servants, and agents while acting within the scope of their employment by University. Nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its officers, employees, servants, agents, agencies, or public bodies corporate to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in section 768.28 of the Florida Statutes.

25. Intentionally Omitted.

26. All notices required or permitted to be given under the terms and provisions of this Agreement by either Party to the other shall be in writing and effective (i) when delivered in person, (ii) the day after being sent via reputable overnight carrier to the addresses set forth below, or (iii) upon confirmed transmission by email to such persons at the email addresses set forth below (or such other addresses as may from time to time be designated by such Parties in writing):

University: Florida Atlantic University
777 Glades Road
Boca Raton, FL 33431
Attn: Joel Herbst

With a copy to: Florida Atlantic University
777 Glades Road, ADM 370
Boca Raton, FL 33431
Attn: Office of the General Counsel

User: Bezos Academy
3040 78th Avenue SE, #1042
Mercer Island, WA 98040
Email: legal@bezosacademy.org

27. User is an independent contractor pursuant to Florida law. It is understood and agreed that nothing contained herein is intended, or should be construed, as creating or establishing the relationship of partners or joint venturers between the Parties, or as constituting User as the agent or representative of University for any purpose in any manner whatsoever. Neither Party is authorized to bind the other Party to any contracts or other obligations. There shall be no third-party beneficiary to this Agreement. No act of the Parties hereto shall be construed as creating or establishing a partnership or joint venture of any type between the Parties, and neither Party shall be authorized to commit or to obligate the other Party in any way without such other Party's prior written consent.

28. The University is subject to Chapter 119, Florida Statutes. User is a private, nonprofit entity that independently operates a private network of preschools for low-income families and underserved communities. User was neither created by a Florida public entity nor provides services to or on behalf of a Florida government agency. User understands and agrees that this Agreement is a public record subject to the provisions of Chapter 119. The Parties shall allow public access to all documents and other materials made or received in conjunction with this Agreement that are subject to the provisions of Chapter 119. In the event that any documents or materials are determined to be subject to Chapter 119, then to the extent allowed under Florida law, all non-public, confidential or proprietary information of User (“Confidential Information”), including, but not limited to, specifications, samples, patterns, designs, sketches, photographs, plans, drawings, documents, data, business and educational operations, and directors, officer, employee, vendor, donor, family and student identities or lists disclosed by User to University, whether disclosed orally, visually, or accessed in written, electronic, or other form or media, in connection with this agreement, is confidential, solely for University’s use, and may not be disclosed or copied unless authorized by User in writing or required to comply with the law. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of University’s breach of this agreement; or (b) is obtained by University on a non-confidential basis from a third-party that was not legally or contractually restricted from disclosing such information. If University receives a subpoena, public records request, or other formal request from a third-party for Confidential Information, then prior to making any disclosure, University shall provide User with notice and if permitted a reasonable opportunity to object. Nothing in this Section limits or alters the provisions of Chapter 119, Florida Statutes.

IF THE USER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE USER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, USER SHOULD CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 561.297.2452, publicrecords@fau.edu, Division of Public Affairs, Florida Atlantic University, 777 Glades Road, ADM, Boca Raton, FL 33431.

29. This Agreement shall be considered to have been executed in the State of Florida and shall be governed, interpreted, and enforced in accordance with the laws of the State of Florida, as such laws may be amended from time to time, notwithstanding that State’s choice of law provisions. Venue for any dispute arising from this Agreement shall be in the state courts located in Palm Beach County, Florida. University, as a public entity of the State of Florida, is entitled to and retains all the benefits of sovereign immunity coextensive therewith, including immunities from taxation.

30. If either Party at any time is in breach or default in the performance of any term, condition, obligation, or provision of this Agreement, the other Party shall deliver written notice of such breach or default. The defaulting / breaching Party shall have a period of thirty (30) calendar days from receipt of such notice within which to correct the

breach or default or if such breach or default is not curable within such thirty (30) calendar day period, an additional reasonable period of time as needed, provided that the defaulting breaching/ Party is diligently pursuing a cure. If the breach or default is not corrected within such time, or within such additional time as may be granted by the non-defaulting/breaching Party upon a showing that the Other Party is proceeding in good faith to correct the breach or default, the non-defaulting/breaching Party may at its option and in its sole and absolute discretion terminate this Agreement without termination penalty. Failure to exercise or delay in exercising any right, power, or remedy accruing to a Party on any breach or default shall not impair any such right, power, or remedy, or be construed as a waiver of any such breach or default or of any similar breach or default occurring; nor shall any waiver of any single breach or default be construed as a waiver of any other breach or default occurring. No waiver by either Party of any of the provisions of this agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving.

31. This Agreement may be terminated without penalty or modified, as appropriate, by reason of a force majeure event. If at any time the Facilities are damaged by, or University is unable to safely give User possession of the Facilities by reason of, a force majeure event, the University shall not be subject to any liability for or arising from the failure to give possession. A force majeure event shall include fire, earthquake, hurricane, flood, pandemics, strikes, work stoppages or other labor disturbances outside the control of University, riots or civil commotions, war or other act of any foreign nation, power of government or governmental agency or authority, or any other cause, substantially similar to any cause above mentioned which is beyond the control or authority of the University or the User.

32. University may terminate this Agreement by providing User with at least two hundred seventy (270) days' prior written notice. Upon early termination of this Agreement by University, University shall provide User with a mutually agreed-upon alternative building or space to operate the under the Permitted Use that is similar or as good as the Facilities (“*Alternative Facilities*”). University will pay all costs related to User’s relocation including but not limited to costs incurred to bring the Alternative Facilities into the same or better condition than the Facilities, all moving costs, and other related costs. If University is unable to provide User with a mutually agreed-upon Alternative Facilities, then University shall pay User, subject to the following provisions:

(i) If University terminates this Agreement during the first five (5) years of the Term, University shall pay User the full cost of all furniture, fixtures, equipment, and approved alterations and improvements that User has made or provided to the Facilities (collectively, the “Installation Costs”), not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00). User will provide written confirmation of all Installation Costs to University.

(ii) If University terminates this Agreement at any time commencing as of the first day of the sixth (6th) year of the Term through and including the last day of the fourteenth (14th) year of the Term, University shall pay User a termination fee according to the following schedule:

- a) Year 6 of the Term: One Million Four Hundred Thousand Dollars (\$1,400,000.00);
- b) Year 7 of the Term: One Million Three Hundred Thousand Dollars (\$1,300,000.00);
- c) Year 8 of the Term: One Million Two Hundred Thousand Dollars (\$1,200,000.00);
- d) Year 9 of the Term: One Million One Hundred Thousand Dollars (\$1,100,000.00);
- e) Year 10 of the Term: One Million Dollars (\$1,000,000.00);
- f) Year 11 of the Term: Eight Hundred Thousand Dollars (\$800,000.00);
- g) Year 12 of the Term: Six Hundred Thousand Dollars (\$600,000.00);
- h) Year 13 of the Term: Four Hundred Thousand Dollars (\$400,000.00);
- i) Year 14 of the Term: Two Hundred Thousand Dollars (\$200,000.00).

The fees described in a) - i) above are based on estimated total Installation Costs to User of at least \$1,500,000.00. In the event the Installation Costs are more or less than \$1,500,000.00, the fees described above will be modified proportionately.

(iii) If University terminates the Agreement at any time commencing as of the first day of the fifteenth (15th) year of the Term or thereafter, there is no termination fee due by University to User.

33. University reserves the right to require evacuation of the Facilities or relocation of User's activities when deemed necessary by University for the safety of the University community or User or its invitees as evidenced by a legitimate and verifiable security threat.

34. The performance of the University's obligations under this Agreement shall be subject to and contingent upon the availability of funds appropriated by the Florida Legislature or otherwise lawfully expendable for the purpose of this Agreement. University shall give notice to User of the non-availability of such funds when University has knowledge. Provided, if the non-availability of funds results in an early termination of this Agreement by the University, then the provisions of Section 32 of this Agreement shall apply. The non-availability of funds will not modify the University's obligations under Section 32 of this Agreement.

35. 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 gas that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the Palm Beach County Public Health Unit.

36. COVID-19 AND COMMUNICABLE DISEASES STATEMENT: The Parties and all of their employees, agents, guests, subcontractors and invitees (collectively, "User Parties") will abide by all applicable laws, rules, regulations, orders, protocols, instructions and/or guidelines. The Parties acknowledge and agree that the Permitted Use may need to be modified based on public health requirements.. User acknowledges that the risk of contact with individuals who have been exposed to and/or have been diagnosed with one or more communicable

diseases including but not limited to COVID-19 or other medical conditions or diseases does exist, and it is impossible to eliminate the risk that an individual could be exposed to and/or become infected through contact with or close proximity with an individual with a communicable disease.

37. This Agreement embodies the entire agreement of the Parties, and there are no other representations, promises, agreements, conditions, or understandings, either oral or written, between University and User other than are set forth. No subsequent alterations, amendment, change or addition to this Agreement shall be binding upon either Party unless reduced to writing, signed, and by direct reference made part hereof.

38. The Parties agree to accept electronic signatures and remotely notarized documents and intend to be bound by them. The Parties represent and warrant that any person signing the Agreement has the authority to do so and that such signature shall be sufficient to bind the Party.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their appropriate officials.

User:

DAY 1 ACADEMIES,
DBA BEZOS ACADEMY

Signature

Name

Title

Date

University:

FLORIDA ATLANTIC UNIVERSITY
BOARD OF TRUSTEES

Signature

Name

Title

Date

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EXHIBIT A
Outline of the Facilities

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EXHIBIT B

Memorandum of Understanding

[enclosed on following pages]

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MEMORANDUM OF UNDERSTANDING
Florida Atlantic University // Bezos Academy School Admissions

This Memorandum of Understanding (“MOU”) regarding school admissions and educational collaboration opportunities at Bezos Academy’s School is entered into by and between The Florida Atlantic University Board of Trustees (“Community Host”) and Day 1 Academies, dba Bezos Academy (“Bezos Academy”) (collectively, the “Parties”).

Background and Recitals

On or around _____, 2022, the Parties entered into a Facilities Use Agreement (the “Agreement”) where Community Host agreed to make space available to Bezos Academy at 777 Glades Road, Boca Raton, FL 33431 (the “Facilities”) and Bezos Academy agreed to establish a tuition-free preschool at the Facilities (the “Preschool”).

Under the terms of the Agreement, Bezos Academy agrees to provide students at the Preschool with educational materials and services to set each student up for success, including but not limited to, educational materials, books, arts and crafts, field trips, and meals (the “Tuition-Free Education and Services”).

The Parties desire for Bezos Academy to provide the Tuition-Free Education and Services to income eligible children in Community Host’s community, including to Community Host’s eligible students and employees. The purpose of this MOU is to document and describe the admissions criteria that Bezos Academy will use at the Preschool and the process the Parties will follow to consider collaborative research and educational opportunities related to the Preschool.

Based on the above Background, the Parties agree to the following:

- 1. Eligibility.** To be eligible to attend the Preschool, students must be three or four years old by the start of the academic school year (on or around August 10, 2022). In addition, eligibility is determined by household income. A household is defined as all people (adult and children) who live in the same housing unit (house, apartment, condo, etc.), whether they are related to each other or not. Household income is the total annual income from anyone in the household. To be eligible for Bezos Academy, the student’s annual household income can be up to 400% of the Federal Poverty Level (FPL). Bezos Academy’s admissions process is designed to reserve half of the seats in each classroom for students of households that are up to 250% of the FPL.
- 2. Random Lottery Drawing.** Bezos Academy admits new students through a random annual lottery drawing.
- 3. Preferences.** Bezos Academy offers preference in the lottery in the following order of priority: 1) children who are homeless or living in foster care; 2) siblings of existing Bezos Academy students; 3) children of income eligible employees of Bezos Academy; 4) children of income eligible employees and students of Community Host, subject to a Community Host preference cap of 20% total students per classroom (“Community Host Preference Cap”); 5) students transferring from another Bezos Academy location. The Community Host Preference Cap will not preclude the enrollment of other children of income eligible employees and students of Community Host for classroom vacancies unfilled by the preferences.

To further opportunities for continuity in educational collaboration and research experiences, Community Host will offer preference for 20% of available slots in each entering kindergarten class at Community Host’s A.D. Henderson University School to children who attend the Preschool.

- 4. Educational Collaboration.** Community Host desires opportunities for its faculty, staff, and students to collaborate with Bezos Academy and Bezos Academy’s educational programming in a manner that is safe, non-disruptive, and mutually beneficial. This collaboration may include, without limitation, internship, research, and training opportunities for qualified faculty, staff, and students at Community Host’s College of Education. The

Parties agree to meet and confer in good faith about these collaborative opportunities. Any agreement as to these opportunities must be entered in a subsequent written document outside this MOU.

5. General. The parties understand and agree that Bezos Academy is solely responsible for its admissions, enrollment, staffing, and educational programming. Bezos Academy reserves the right to make modifications to its admissions eligibility and preferences, enrollment procedures, curriculum, operations, staffing, and educational programming to meet its objective of delivering high-quality early education to underserved communities, provided that any such modifications will continue to provide a Community Host Preference Cap in substantially the same form as set forth herein. Bezos Academy will advise Community Host of any material modifications related to this MOU.

This MOU has been signed by the duly authorized representatives of the Parties.

Day 1 Academies

Florida Atlantic University

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

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EXHIBIT C
USER'S SIGN PACKAGE

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EXHIBIT D

Legal Description, Certificate of Occupancy, and Fire Equipment Inspection Reports

Legal Description of Parcel 06434707000003030 where the Facilities are located:

18-47-43, E 1/2 LYG W OF EL RIO CANAL, N 3/4 OF NW 1/4, E 3/4 OF S 1/2 OF SE 1/4 OF NW 1/4 & E 3/4 OF E 1/2 OF SW 1/4

[Certificate of Occupancy and Fire Equipment Inspection Reports enclosed on following pages]

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