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1 FIRST AMENDMENT
2 TO
3 MODULAR CLASSROOM AGREEMENT
4

5 THIS FIRST AMENDEMENT TO MODULAR CLASSROOM AGREEMENT
6 ("Amendment") made this 15th day of July, 2015, by THE SCHOOL
7 BOARD OF BROWARD COUNTY, FLORIDA, a body corporate existing under the laws of
8 the State of Florida ("School Board"), with an address of 600 SE Third Avenue, Fort Lauderdale,
9 FL 33301, and the CITY OF PARKLAND, a municipal corporation of the State of Florida
10 ("City"), with an address of 6600 University Drive, Parkland, FL 33067. The "Effective Date" of
11 this Amendment shall be the date on which the last party to this Amendment signs.
12

13 **WITNESSETH:**
14

15 **WHEREAS**, the original Modular Classroom Agreement, dated March 17, 2014
16 ("Agreement") was executed by the City on March 3, 2014 and the School Board on March 17,
17 2014; and
18

19 **WHEREAS**, since the Agreement was approved by the City and the School Board, the
20 School Board has determined that the cost of eight (8) permanent modular classrooms has
21 increased beyond that which was originally anticipated by the School Board; and
22

23 **WHEREAS**, since the Agreement was approved by the City and the School Board, the
24 School Board has determined that time necessary for construction of the eight (8) permanent
25 modular classrooms has increased beyond that which was originally anticipated by the School
26 Board together with the loss of a contract purchaser which reduced the anticipated funds
27 available for the construction of the modular classrooms; and
28

29 **WHEREAS**, in order to accommodate for the projected increase in new additional
30 students into the City, the City and School Board have agreed that in exchange for the City
31 transferring and the School Board's receipt of the funds in the amount of One Million Nine
32 Hundred Five Thousand Dollars (\$1,905,000), the School Board shall construct, maintain and
33 operate seven (7) permanent modular classrooms ("Modular Classrooms") in the corporate limits
34 of the City as provided in this Amendment for at least five (5) years; and
35

36 **WHEREAS**, the parties acknowledge that the City has delivered the One Million Nine
37 Hundred Five Thousand Dollars (\$1,905,000) to the School Board; and
38

39 **WHEREAS**, the proposed Modular Classrooms are intended to supplement any
40 otherwise required school concurrency or school impact fee requirements and are not in lieu of
41 any such requirements; and
42

43 **WHEREAS**, the City is not incurring any independent financial obligations pursuant to
44 this Amendment but has agreed to provide to the School Board with only those payments
45 received from developers within the City who earmark said payments for the purposes set forth
46 herein; and
47

48 **WHEREAS**, the City and School Board desire to amend the Agreement to reflect the
49 changed conditions described above, while implementing and restating the Agreement to the
50 fullest extent possible, subject to these changed conditions and terms as set forth herein; and.
51

52 **NOW THEREFORE**, in consideration of the payments, promises, covenants and
53 undertakings hereinafter set forth, the parties hereto, intending to be legally bound, agree as
54 follows:
55

56 Section 1. Recitations. The recitals set forth above are true and correct and are
57 incorporated into this Amendment by this reference as if fully set forth herein.
58

59 Section 2. Paragraph 2 of the Agreement is hereby amended to read as follows:
60

61 2. Payment and Construction of Modular Classrooms.
62

- 63 a. Developers' and City's Payment for Modular Classrooms. Pursuant to the terms
64 and conditions contained in separate agreements between the Developers, City, and
65 County (as applicable), the Developers have paid funds to the City in the amount of
66 One Million Nine Hundred and Five Thousand Dollars (\$1,905,000) ("Contribution
67 Payments"). Such Contribution Payments were paid by the City to the School Board
68 and shall be used by the School Board to construct, maintain and operate the Modular
69 Classrooms to be located at one or more public schools which are within the
70 corporate limits of the City for at least five (5) years. The City's payments to the
71 School Board are anticipated to provide funding for a total of seven (7) Modular
72 Classrooms.
73

74 In addition to the School Board's construction of the Modular Classrooms, the School
75 Board utilized the Contribution Payments to remove eight (8) existing portable
76 classrooms from Riverglades Elementary School, which is within the corporate limits
77 of the City ("Portable Classroom Removals"). Subsequent to the Portable Classroom
78 Removals, the remaining Contribution Payments balance is One Million Eight
79 Hundred Seventy One Thousand Five Hundred Sixty One Dollars (\$1,871,561).
80

81 The actual number of modular classrooms that will be constructed will be based upon
82 the remaining Contribution Payments balance as received by the City from Developer
83 payments; however, the maximum possible number of modular classrooms will be
84 constructed for the amount of money paid to the School Board by the City. In the
85 event the payments are insufficient to construct a complete modular classroom the
86 City shall not be required to pay the additional payments to the School Board and the
87 School Board shall return the balance, if any, of the unused or unapplied payments to
88 the City within one month of the completion date, or by no later than July 30, 2016.

Any such returned funds may be used by the City for a community project or other municipal purposes as determined in the sole discretion of the City Commission to accommodate and benefit the City.

- b. School Board's Construction of Modular Classrooms. In accordance with the Modular Classroom Schedule, the School Board shall construct (or cause to be constructed) the Modular Classrooms. Except for the payment of the Contribution Payments from the Developers to the City, and from the City to the School Board, the Developers and City shall not be responsible for the costs or expenses associated with the School Board's construction, maintenance, and/or operation of the Modular Classrooms or the Portable Classroom removals, other than those included in this Amendment.
- c. The School Board shall be responsible for maintaining and operating the Modular Classrooms in the same manner as other public schools located within the City's municipal limits, at its sole cost and expense for a period of five years from the completion of construction.
- d. The School Board's construction of the Modular Classrooms shall be done in a good and workmanlike manner, free of material defects, and shall comply with all the State of Florida Requirements for Educational Facilities (SREF) and applicable School Board policies and procedures.
- e. The School Board's obligation to construct the Modular Classrooms and the Portable Classroom Removal pursuant to this Amendment, was conditioned upon the receipt of the Contribution Payments by the City to the School Board, of which the School Board acknowledges receipt of the Contribution Payments.
- f. The "Modular Classroom Schedule" is as follows:

Modular Classroom Schedule

Completion Date of Modular Classrooms by School Board	Anticipated Number of Modular Classrooms to be constructed
March 21, 2016, or as otherwise extended by mutual agreement of the City Manager and Superintendent of Schools.	7

- g. If a contract for the seven (7) Modular Classrooms as provided for herein is not executed by the School Board no later than September 16, 2015, the Agreement (including this Amendment thereto) may be immediately terminated by either party and the sum of \$1,871,561, the remaining balance of the \$1,905,000 (which the City paid to the School Board pursuant to the Agreement together with any addition funds paid by the City of Parkland pursuant to the Agreement (or this Amendment thereto) shall be returned to the City of Parkland within 30 days from the date of cancellation and the Agreement (and this Amendment thereto) shall become void and of no further force and effect upon receipt of said payment to the City and to the School Board.

Notwithstanding the foregoing, the School Board may contract for less than seven (7) Modular Classrooms (by no later than the date specified above), by mutual written acknowledgement (which may be evidenced by email) between both parties, whereupon the Agreement (and this Amendment thereto) shall continue in full force and effect.

Section 3. Further Assurances. The parties shall execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further assurances and shall perform such acts as shall reasonably be requested of them in order to carry out this Amendment.

Section 4. Amendments. No modification, further amendment, or release of the terms or conditions contained herein shall be effective unless executed by the School Board and the City.

Section 5. Counterparts. This Amendment may be executed in counterparts, each of which may be deemed to be an original. It shall be fully executed when each party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all of the parties of this Amendment.

Section 6. Joint Effort. The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein. The preparation of this Amendment has been a joint effort of the parties and the resulting documents shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

Section 7. Merger Clause. This Amendment and the Agreement and all the exhibits referenced herein and annexed hereto sets forth the entire agreement among the parties hereto, and it supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, among the parties.

Section 8. Severability. If any provision of this Amendment is declared invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable provision will be stricken from the Amendment, and the balance of the Amendment will remain in full force and effect as long as doing so would not affect the overall purpose or intent of the Amendment.

Section 9. Authority. Each person signing this Amendment on behalf of a party individually warrants that he or she has full legal power to execute this Amendment on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Amendment.

Section 10. The parties hereby agree that the Agreement as amended by this Amendment remains in full force and effect. To the extent of any inconsistency between the terms of this Amendment and the terms of the Agreement, the terms of the Amendment shall supersede and control to the extent of such inconsistency.

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SIGNATURE PAGES FOLLOW]

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Witnesses:

Signature

Print Name

Signature

Print Name

ATTEST: _____
Superintendent of Schools

**THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA**

By: _____
(Signature)
Print Name: Donna P. Korn
Title: School Board Chair

Dated: _____

198

199 STATE OF FLORIDA)
200) SS
201 COUNTY OF BROWARD)

202 The foregoing instrument was acknowledged before me this ____ day of _____,
203 2015, by Donna P. Korn, as School Board Chair of THE SCHOOL BOARD OF BROWARD
204 COUNTY, FLORIDA.
205 He or she is:
206 [] personally known to me, or
207 [] produced identification. Type of identification produced _____.


208 (Seal)

NOTARY PUBLIC:

Print Name: _____

My commission expires:

211
212
213

Approved as to form:  7/11/15 Cadre Gabriel
Office of the General Counsel
1st Amend. City Parkland Modular E

214 Witnesses:
215
216 Carole S. Morris
217 Signature
218
219 Carole S. Morris
220 Print Name
221
222 Kimberly Skaggs
223 Signature
224
225 Kimberly Skaggs
226 Print Name
227
228

229 ATTEST: [Signature]
230 City Clerk

231 STATE OF FLORIDA)
232) SS
233 COUNTY OF BROWARD)

234 The foregoing instrument was acknowledged before me this 17 day of JULY,
235 2015, by Michael Udine as Mayor of THE CITY OF PARKLAND.
236 He or she is:
237 [☒] personally known to me, or
238 [☐] produced identification. Type of identification produced _____.

239 (Seal)

240  **Jean Panebianco**
COMMISSION # FF053008
EXPIRES: SEP 10, 2017
WWW.AARONNOTARY.COM

241 NOTARY PUBLIC:
242
243 Print Name: JEAN PANEBIANCO
244 My commission expires:

243 Approved as to form: [Signature]
244 Andrew S. Maurodis, City Attorney

THE CITY OF PARKLAND
By: [Signature]
(Signature)
Print Name: Michael Udine
Title: Mayor
Dated: July 17, 2015

