

FIRST AMENDMENT
TO
TWENTY-FOUR (24) CLASSROOM AGREEMENT

THIS FIRST AMENDMENT TO TWENTY-FOUR CLASSROOM AGREEMENT ("Amendment") made this _____ day of _____, 2015, by **THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**, a body corporate existing under the laws of the State of Florida ("School Board"), with an address of 600 SE Third Avenue, Fort Lauderdale, FL 33301, and the **CITY OF PARKLAND**, a municipal corporation of the State of Florida ("City"), with an address of 6600 University Drive, Parkland, FL 33067. The "Effective Date" of this Amendment shall be the date on which the last party to this Amendment signs.

WITNESSETH:

WHEREAS, the original Twenty-Four (24) Agreement, dated October 15, 2014 ("Agreement") was executed by the City on October 15, 2014 and the School Board on October 9, 2014; and

WHEREAS, since the Agreement was approved by the City and the School Board, the City has stated its desire to accelerate the construction of the classrooms provided for in this Amendment; and

WHEREAS, in response to the City's desire to accelerate the construction schedule, the School Board has prepared a schedule that provides for completion of the Twenty-Four (24) Classroom addition at Riverglades such that it will be ready for occupancy by the opening of school in the 2017/18; and

WHEREAS, since the Agreement was approved by the City and the School Board, a new project timeline has been established which requires the City provide funds for design and construction of the classrooms in advance of the dates provided in the Agreement; and

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

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

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

Section 2. Paragraph 2 of the Agreement is hereby amended to read as follows¹:

¹ Proposed additions to existing Agreement text are shown by underlining; proposed deletions from existing Agreement text are shown by ~~strikethrough~~.

2. Payment and Construction of Classroom Additions.

- a. Developers' and City's Payment for Classroom Additions. Upon approval of this Amended Agreement, the City shall remit \$750,000 (the "Design Payment") no later than October 16, 2015 so that the School Board may consider and award a design contract at their October 20, 2015 meeting. Should approval of this agreement not occur until after October 20, 2015, the Design Payment shall be received by the School Board no later than October 30, 2015 such that the design contract may be awarded at the November 3, 2015 School Board meeting. In the event that a design contract is not awarded, the School Board shall refund the Design Payment to the City within thirty (30) days from November 3rd.

Pursuant to the terms and conditions contained in a separate agreement between the City and the Developer (the "Annexation Agreement") attached hereto as **Exhibit "B"**, the Developer has agreed to pay funds in a lump sum to the City in the amount of Seven Million Seven Hundred Twenty Four Thousand Dollars \$7,724,000 (the "Initial Payment"). To the extent the Initial Payment is received by the City from the Developer, on or before January 15, 2016, such Initial Payment shall be paid by the City in a lump sum to the School Board, on or before February 15, 2016, for the School Board to construct twenty four (24) classrooms within one or more permanent additions to existing Broward County Public Schools to be located within the corporate limits of the City said additions shall be owned by the School Board and shall be maintained and operated by the School Board for at least five (5) years, following the commencement of the Project; this five (5) year period shall begin upon the issuance of the first building permit for a residence within the Project, other than for model homes. The location of each Classroom Addition constructed pursuant to this Agreement, shall be at the School Board's sole discretion, as long as it is located within the corporate limits of the City.

If the School Board determines that the Initial Payment is insufficient to fund the Classroom Additions, the School Board shall notify the City in writing, and include an itemized report of the additional costs to complete the Classroom Additions (the "Excess Notice"), no later than September 15, 2016. The City shall provide the Excess Notice to the Developer within ten (10) calendar days of the City's receipt of said notice from the School Board, or in any event, no later than September 25, 2016. The City shall request the Developer to pay to the City such additional funds as are necessary to complete the Classroom Additions, in a lump sum on or before November 25, 2016, in an amount not to exceed One Million Two

Hundred Thirty Two Thousand Dollars \$1,232,000 (the "Excess Payment"). To the extent of the City's receipt of the Excess Payment from the Developer, the City shall pay the Excess Payment to the School Board no later than December 31, 2016. The Initial Payment and the Excess Payment are defined together as (the "Classroom Addition Payments"). Together, the Classroom Addition Payments shall not exceed Eight Million Nine Hundred Fifty Six Thousand Dollars \$8,956,000. In the event the twenty four (24) Classroom Additions are not constructed, in whole or in part, by the School Board for any reason, including but not limited to failure to receive funds from the Developer in a timely fashion, or the funds are insufficient to construct the twenty four (24) Classroom Additions, the School Board shall construct the maximum number of classrooms within one or more permanent additions to existing Broward County Public Schools, located within the corporate limits of the City that the available funds received pursuant to this Agreement permit. The School Board shall promptly return all unspent and uncommitted funds (as may be evidenced by a binding construction contract or other actions related to development for Classroom Additions provided herein which legally and financially obligate the School Board to the project) to the City no later than December 31, 2017.

In addition to the School Board's construction of the twenty four (24) Classroom Additions, the Classroom Addition Payments shall also fund the removal of twenty four (24) existing portable classrooms by the School Board from the North School Impact Fee Service Area, as defined in Section 5-182(7)(a) of the Broward County Land Development Code, which includes the corporate limits of the City ("Portable Classroom Removals"). The location of each existing portable classroom that is to be removed shall be at the School Board's sole discretion as long as it is within the North School Impact Fee Service Area.

NOTWITHSTANDING ANY OTHER PROVISIONS CONTAINED HEREIN, the City's obligation to pay the Classroom Addition Payments to the School Board is conditioned upon and subject to the payment of the Classroom Addition Payment by the Developer to the City. The School Board acknowledges in no event shall any payments pursuant to this Agreement be due prior to approval of rezoning for the Project, and the conclusion of the rezoning approval appeal period.

- b. School Board's Construction of Classroom Additions. In accordance with the Classroom Addition Schedule, the School Board shall construct (or cause to be constructed) the Classroom Additions, and proceed diligently to complete (or cause to be completed) the Portable Classroom Removals (as applicable). Except for the payment of the Classroom Addition Payments from the Developer to the City, and from the City to the School Board in accordance with the Classroom Addition Schedule, the City shall not be responsible for the costs or expenses associated with the School

Board's construction, maintenance, and/or operation of the Classroom Additions or the Portable Classroom removals, other than those included in this Agreement.

- c. The School Board shall own the Classroom Additions and shall be responsible for maintaining and operating the Classroom Additions at its sole cost and expense.
- d. The School Board's construction of the Classroom Additions 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 City's obligation to pay the Classroom Addition Payments to the School Board is conditioned upon and subject to the payment of the Classroom Addition Payments by the Developer to the City.
- f. The School Board's obligation to construct the Classroom Additions and the Portable Classroom Removal pursuant to this Agreement, is conditioned upon and subject to the payment of the Classroom Addition Payments, in accordance with the Classroom Addition Schedule, by the Developer to the City and then by the City to the School Board. In the event the twenty four (24) Classroom Additions are not constructed, in whole or in part, by the School Board for any reason, including but not limited to failure to receive funds from the Developer in a timely fashion, or the funds are insufficient to construct the twenty four (24) Classroom Additions, the School Board shall construct the maximum number of classrooms within one or more permanent additions to existing Broward County Public Schools, located within the corporate limits of the City that the available funds received pursuant to this Agreement permit. The School Board shall promptly return all unspent and uncommitted funds (as may be evidenced by a binding construction contract or other actions related to development for Classroom Additions provided herein which legally and financially obligate the School Board to the project) to the City no later than December 31, 2017.
- g. The "Classroom Addition Schedule" is as follows:

Classroom Addition Schedule.

<u>Date of Design Payment by City to School Board</u>	<u>October 16, 2015, or as otherwise provided in paragraph 2.a,</u>
<u>Amount of Design Payment by City to School Board</u>	<u>\$750,000</u>

Date for School Board to Award Design Contract	October 20, 2015, or as otherwise provided in <u>paragraph 2.a.</u>
Date of Payment of Initial Payment by Developer to City	January 15, 2016
Date of Payment of Initial Payment by City to School Board	February 15, 2016
Amount of Initial Payment from the City to School Board	<u>\$6,974,000, or as otherwise provided in paragraph 2.a.</u>
Deadline for Excess Notice from School Board to City	September 15, 2016
Deadline for Excess Notice from City to Developer	September 25, 2016
Deadline for Excess Payment from Developer to City	November 25, 2016
Deadline for Excess Payment from City to School Board	December 31, 2016
Deadline for the School Board to return all unspent and uncommitted funds (as may be evidenced by a binding construction contract or other actions related to development for Classroom Additions provided herein which legally and financially obligate the School Board to the project) to the City	December 31, 2017
Amount of Excess Payment	Not to exceed \$1,232,000 (Together with Initial Payment of \$7,724,000; max total payment of \$8,956,000)
School Board Deadlines for the completion of construction of the Classroom Additions	<u>August 2017- 24 permanent classroom additions shall be constructed and completed by the first day of the 2017/2018 school year.</u>

Anticipated Number of Classroom Additions to be constructed	24
Anticipated Number of Portable Classrooms to be removed	24

3. Defaults. In the event the City or School Board fail to timely perform in accordance with this Agreement following fifteen (15) days written notice from the non-breaching party to the breaching party providing an opportunity to cure such default, the non-defaulting party may serve upon the breaching party a written fifteen (15) day notice of cancellation and termination of this Agreement whereby this Agreement shall be deemed terminated and of no further force and effect. Upon default and subsequent termination, the School Board shall promptly return to the City any unspent and uncommitted funds (as may be evidenced by a binding construction contract or other actions related to development for Classroom Additions provided herein which legally and financially obligate the School Board to the project).

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.

[REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK
SIGNATURE PAGES FOLLOW]

232
233 Witnesses:

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

234
235
236
237 Signature

By: _____

(Signature)

238
239
240 Print Name

Print Name: Donna P. Korn

Title: School Board Chair

241
242
243
244 Signature

Dated: _____

245
246
247 Print Name

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249
250 ATTEST: _____
251 Superintendent of Schools

252

253 STATE OF FLORIDA)
254) SS
255 COUNTY OF BROWARD)

256 The foregoing instrument was acknowledged before me this ____ day of _____, 2015,
257 by Donna P. Korn, as School Board Chair of THE SCHOOL BOARD OF BROWARD COUNTY,
258 FLORIDA.

259 He or she is:

260 [] personally known to me, or

261 [] produced identification. Type of identification produced _____.

262 (Seal)

NOTARY PUBLIC:

263 Print Name: _____

264 My commission expires:

265
266 Approved as to form:

JPG 9/28/15 Cadre Gabriel
Office of the General Counsel ²⁴
15th Amend Classroom K

Witnesses:

Kimberly Silzogs
Signature

Kimberly Silzogs
Print Name

Yaritza Ferrer
Signature

Yaritza Ferrer
Print Name

ATTEST: Maure Johnson
City Clerk



STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 25 day of Sept, 2015,
by Michael Udine as Mayor of THE CITY OF PARKLAND.

He or she is:

☒ personally known to me, or
☐ produced identification. Type of identification produced _____.

(Seal)

NOTARY PUBLIC:

Debra Ann Grosse

Print Name: Debra Ann Grosse

My commission expires:

Approved as to form: _____

Andrew S. Maurodis, City Attorney



Debra Ann Grosse
COMMISSION # FF 005952
EXPIRES: APR. 07, 2017
WWW.AARONNOTARY.com