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SECOND AMENDMENT
TO
MODULAR CLASSROOM AGREEMENT

THIS SECOND AMENDMENT TO MODULAR CLASSROOM AGREEMENT ("Second Amendment") made this _____ day of _____, 2016, 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 Second Amendment shall be the date on which the last party to this Second Amendment signs.

WITNESSETH:

WHEREAS, the School Board and the City entered into a Modular Classroom Agreement, with an Effective Date of ("Agreement") March 17, 2014; and

WHEREAS, the Agreement was entered into to enable the construction of eight (8) permanent modular classrooms by the School Board to accommodate for the increase of students anticipated from approved residential development within the City; and

WHEREAS, in response to escalating construction costs and unforeseen delays, the School Board and the City entered into a First Amendment to the Agreement with an Effective date of July 28, 2015 ("First Amendment") which reduced the number of modular classrooms to be constructed by the School Board, from eight (8) to seven (7) modular classrooms and extended the completion date to March 21, 2016; and

WHEREAS, due to the continued escalation of construction costs, the City, at its August 28, 2015 City Commission Meeting, agreed to further reduce the number of permanent modular classrooms to be constructed from seven (7) to six (6) modular classrooms, and extended the completion date to construct the modular classrooms from March 21, 2016 to July 20, 2016; and

WHEREAS, on September 8, 2015, the School Board approved a contract with a Design Builder for the design and construction of the six (6) permanent modular classrooms for a Guaranteed Maximum Price ("GMP") not to exceed One Million Eight Hundred Seventy One Thousand Five Hundred Sixty-One Dollars (\$1,871,561) by July 20, 2016; and

39 **WHEREAS**, on March 2, 2016, the Design Builder notified the School Board that it
40 could not deliver the six (6) modular classrooms for the GMP amount by July 20, 2016, citing a
41 construction cost shortfall exceeding Seven Hundred Ninety-Six Thousand Dollars (\$796,000);
42 and
43

44 **WHEREAS**, on May 3, 2016, as a result of the Design Builders inability to deliver the
45 required number of classrooms by the required date, the School Board terminated its contract
46 with the Design Builder; and
47

48 **WHEREAS**, the School Board and the City have worked collaboratively to identify a
49 means, (as further described below), to still provide additional permanent capacity at one or more
50 public schools which are within the corporate limits of the City; and
51

52 **WHEREAS**, the School Board shall place, maintain and operate six (6) used modular
53 classrooms (“Modular Classrooms”) within the corporate limits of the City as provided in this
54 Second Amendment for at least ten (10) years or until the City and the School Board mutually
55 determine that the Modular Classrooms are no longer needed; and
56

57 **WHEREAS**, each of the subject Modular Classrooms shall provide at least 18 student
58 stations of permanent capacity, defined as the number of student stations in concrete buildings
59 that physically sit on the ground as calculated by the Florida Department of Education; and
60

61 **WHEREAS**, the parties acknowledge that the City has delivered One Million Nine
62 Hundred Five Thousand Dollars (\$1,905,000) to the School Board and that no additional monies
63 are due pursuant to the Agreement, as amended; and
64

65 **WHEREAS**, the proposed Modular Classrooms are intended to supplement any
66 otherwise required public school concurrency or school impact fee requirements and are not and
67 shall not be in lieu of any such requirements; and
68

69 **WHEREAS**, the City is not incurring any independent financial obligations pursuant to
70 this Second Amendment but has agreed to provide to the School Board with only those payments
71 received from developers within the City who earmark said payments for the purposes set forth
72 herein and only on the condition that the monies be used solely to provide Modular Classrooms;
73 and
74

75 **WHEREAS**, the City and School Board desire to further amend the Agreement, as
76 amended, to reflect the changed conditions described above, while implementing and restating
77 the Agreement, as amended, to the fullest extent possible, subject to these changed conditions
78 and terms as set forth herein.
79

80 **NOW THEREFORE**, in consideration of the payments, promises, covenants and
81 undertakings hereinafter set forth, the parties hereto, intending to be legally bound, agree as
82 follows:
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84 Section 1. Recitations. The recitals set forth above are true and correct and are
85 incorporated into this Second Amendment by this reference as if fully set forth herein.
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87 Section 2. Paragraph 2 of the Agreement, as amended, is hereby further amended to
88 read as follows:

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2. Payment and Placement of Modular Classrooms.

- a. Developers' and City's Payment for Modular Classrooms. Pursuant to the terms and conditions contained in separate agreements between the Developers, City, and County (as applicable), the Developers have paid funds to the City in the amount of One Million Nine Hundred and Five Thousand Dollars (\$1,905,000) ("Contribution Payments"). Such Contribution Payments were paid by the City to the School Board and shall be used by the School Board to place, maintain and operate the Modular Classrooms to be located at one or more public schools which are within the corporate limits of the City for at least ten (10) years or until the City and the School Board mutually determine that the Modular Classrooms are no longer needed. The City's payments to the School Board shall provide funding for a total of six (6) Modular Classrooms. Except as noted, the Contribution Payments shall be exclusively for said purpose.

In addition to the School Board's placement of the Modular Classrooms, the School Board utilized the Contribution Payments to remove eight (8) existing portable classrooms from Riverglades Elementary School, which is within the corporate limits of the City ("Portable Classroom Removals"). The School Board utilized Thirty-Three Thousand, Four Hundred and Thirty-Nine Dollars (\$33,439) of the Contribution Payments towards the Portable Classroom Removals and One Hundred Ninety-Six Thousand, Six Hundred Sixty-Six Dollars and Seventy Cents (\$196,666.70) of the Contribution Payments for design services provided by the JWR Construction, Inc., leaving a balance of One Million Six Hundred Seventy-Four Thousand, Eight Hundred Ninety-Four Dollars and Thirty Cents (\$1,674,894.30) to complete the Modular Classrooms.

It is understood and agreed that the Contribution Payments have been made by the City and accepted by the School Board solely for the purpose of providing the Modular Classrooms. Therefore, the School Board shall return the balance, if any, of the unused or unapplied Contribution Payments to the City within one month of the completion date provided that, the School Board shall not be required to refund the One Hundred Ninety-Six Thousand, Six Hundred Sixty-Six Dollars and Seventy Cents (\$196,666.70) expended on design services unless funds are recovered from JWR Construction Inc. as a part of any lawsuit or settlement.

- b. School Board's Placement of Modular Classrooms. In accordance with the Modular Classroom Schedule, the School Board shall place six (6) Modular Classrooms as stated herein. 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 placement, maintenance, and/or operation of the Modular Classrooms or the Portable Classroom Removals, other than those included in this Second 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 at least ten (10) years from the Modular Classroom completion date, or until the City and the School Board

139 mutually determine that the Modular Classrooms are no longer needed. Once placed
140 in the City, the Modular Classrooms shall not be relocated to another school campus
141 without the City's approval and will include covered walkways.
142

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144 d. The School Board's obligation to place the Modular Classrooms and the Portable
145 Classroom Removals pursuant to this Second Amendment, was conditioned upon the
146 receipt of the Contribution Payments by the City to the School Board, of which the
147 School Board acknowledges receipt of the Contribution Payments.
148

149 e. The "Modular Classroom Schedule" is as follows:
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Modular Classroom Schedule

Due Date	Deliverable
August 1, 2016	Issuance of building permit by Broward County Public Schools Building Department
September 16, 2016	Completion of site preparation and building pad
October 9, 2016	Arrival of existing Modular Classrooms onsite
December 9, 2016	Substantial completion date
December 31, 2016	Final completion date

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153 f. Should the School Board fail to provide a deliverable by its associated due date as set
154 forth in the Modular Classroom Schedule, and if after receipt of seven (7) days'
155 written notice and opportunity to cure the School Board fails to correct such delay,
156 the Agreement may be terminated by the City after an additional three (3) days'
157 written notice, and the School Board shall return the balance, if any, of the unused or
158 unapplied payments to the City within one month of the termination date together
159 with an accounting of expenditures. Notwithstanding the foregoing, the School Board
160 may deliver less or more than six (6) Modular Classrooms or extend the completion
161 date specified in the Modular Classroom Schedule, by mutual written
162 acknowledgement (which may be evidenced by email) between both parties,
163 whereupon the Agreement, as amended (and this Second Amendment thereto) shall
164 continue in full force and effect. Any reductions in the number of classrooms, delays
165 in the completion date, or changes to the Modular Classrooms once approved, are
166 subject to the approval of the City Commission.
167

168 Section 3. Further Assurances. The parties shall execute, acknowledge and deliver
169 and cause to be done, executed, acknowledged and delivered all further assurances and shall
170 perform such acts as shall reasonably be requested of them in order to carry out this Second
171 Amendment.
172

173 Section 4. Amendments. No modification, further amendment, or release of the
174 terms or conditions contained herein shall be effective unless executed by the School Board and
175 the City.
176

177 Section 5. Counterparts. This Second Amendment may be executed in counterparts,
178 each of which may be deemed to be an original. It shall be fully executed when each party
179 whose signature is required has signed at least one counterpart even though no one counterpart
180 contains the signatures of all of the parties of this Second Amendment.
181

182 Section 6. Joint Effort. The parties acknowledge that they have sought and
183 obtained whatever competent advice and counsel as was necessary for them to form a full and
184 complete understanding of all rights and obligations herein. The preparation of this Second
185 Amendment has been a joint effort of the parties and the resulting documents shall not, solely as
186 a matter of judicial construction, be construed more severely against one of the parties than the
187 other.
188

189 Section 7. Merger Clause. This Second Amendment, the First Amendment and
190 the Agreement and all the exhibits referenced herein and annexed hereto sets forth the entire
191 agreement among the parties hereto, and it supersedes all prior and contemporaneous
192 negotiations, understandings and agreements, written or oral, among the parties.
193

194 Section 8. Severability. If any provision of this Second Amendment is declared
195 invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable
196 provision will be stricken from the Second Amendment, and the balance of the Second
197 Amendment will remain in full force and effect as long as doing so would not affect the overall
198 purpose or intent of the Second Amendment.
199

200 Section 9. Authority. Each person signing this Second Amendment on behalf of a
201 party individually warrants that he or she has full legal power to execute this Second
202 Amendment on behalf of the party for whom he or she is signing, and to bind and obligate such
203 party with respect to all provisions contained in this Second Amendment.
204

205 Section 10. The parties hereby agree that the Agreement as amended by the First and
206 this Second Amendment remains in full force and effect. To the extent of any inconsistency
207 between the terms of this Second Amendment and the terms of the Agreement, or the First
208 Amendment, the terms of the Second Amendment shall supersede and control to the extent of
209 such inconsistency.
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211 [REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK
212 SIGNATURE PAGES FOLLOW]

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Witnesses:

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

Signature

By: _____
(Signature)

Print Name

Print Name: Dr. Rosalind Osgood

Title: School Board Chair

Signature

Dated: _____

Print Name

ATTEST: _____
Superintendent of Schools

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____,
2016, by Dr. Rosalind Osgood, as School Board Chair of THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA.

He or she is:

[] personally known to me, or
[] produced identification. Type of identification produced _____.

(Seal)

NOTARY PUBLIC:

Print Name: _____

My commission expires:

Approved as to form:  _____
Office of the General Counsel

250 Witnesses:
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252 _____
253 Signature
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255 _____
256 Print Name
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258 _____
259 Signature
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261 _____
262 Print Name
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THE CITY OF PARKLAND

By: _____
(Signature)
Print Name: Michael Udine
Title: Mayor
Dated: _____

265 ATTEST: _____
266 City Clerk

267 STATE OF FLORIDA)
268) SS
269 COUNTY OF BROWARD)

270 The foregoing instrument was acknowledged before me this ____ day of _____,
271 2016, by Michael Udine as Mayor of THE CITY OF PARKLAND.
272 He or she is:
273 [] personally known to me, or
274 [] produced identification. Type of identification produced _____.

275 (Seal)

NOTARY PUBLIC:
Print Name: _____
My commission expires:

279 Approved as to form: _____

280 Andrew S. Maurodis, City Attorney