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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 original a~~ Modular Classroom Agreement, ~~with an Effective Date of dated March 17, 2014~~ ("Agreement") ~~was executed by the City on March 3, 2014 and the School Board on March 17, 2014; and~~

~~WHEREAS, the Agreement was entered into; and~~

~~WHEREAS, since the Agreement was approved by the City and the School Board, the School Board has determined that the cost of to enable the construction of eight (8) permanent modular classrooms has increased beyond that which was originally anticipated 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 since a First Amendment to the Agreement with an Effective date of was dated July 15, 2015 and approved by the City on July 17, 2015 and the School Board on July 28, 2015 ("First Amendment") which reduced the number of modular classrooms to be constructed by approved by the City and the School Board, from eight (8) to seven (7) modular classrooms and extended the completion date of the modular classrooms to March 21, 2016 in response to escalating costs and unforeseen delays; and~~

~~design and the School Board has determined that time necessary for construction of the eight (8) permanent modular classrooms has increased beyond that which was originally~~

38 anticipated by the School Board together with the loss of a contract purchaser which reduced the
39 anticipated funds available for the construction of the modular classrooms; and

40
41 WHEREAS, due to the continued escalation of construction costs, at the August 28,
42 2015 City Commission Meeting, the School Board and the City, at its August 28, 2015 City
43 Commission Meeting, mutually agreed to further reduce the number of permanent modular
44 classrooms to be constructed from seven (7) to six (6) modular classrooms, due to the continued
45 escalation of costs and extended the completion date to construct the modular classrooms from
46 March 21, 2016 to July 20, 2016; and

47
48 WHEREAS, on September 8, 2015, the School Board approved a contract with a Design
49 Builder for the design and construction of met the September 16, 2015 deadline and awarded a
50 construction contract to a contractor, but the contractor selected by the School Board was unable
51 to deliver the six (6) permanent modular classrooms for a Guaranteed Maximum Price (“GMP”)
52 not to exceed One Million Eight Hundred Seventy One Thousand Five Hundred Sixty-One
53 Dollars (\$1,871,561) by within the required completion date (July 20, 2016; and

54
55 WHEREAS, on March 2, 2016, the Design Builder) notified the School Board that it
56 could not deliver the six (6) modular classrooms for the GMP amount by July 20, 2016, citing a
57 construction cost and cited an initial budget shortfall of approximately exceeding Seven Hundred
58 Ninety-Six Thousand Dollars (-Eight Hundred Thousand Dollars (\$796800,000)) as the reason
59 for failure to fulfill the contract provisions in order to accommodate for the projected increase in
60 new additional students into the City, the City and School Board have agreed that in exchange
61 for the City transferring and the School Board’s receipt of the funds in the amount of One
62 Million Nine Hundred Five Thousand Dollars (\$1,905,000), the School Board shall construct,
63 maintain and operate seven (7) permanent modular classrooms (“Modular Classrooms”) in the
64 corporate limits of the City as provided in this Amendment for at least five (5) years; and

65
66 WHEREAS, on May 3, 2016, as a result of the Design Builders inability to deliver the
67 required number of classrooms by the required date, the School Board terminated its contract
68 with the Design Builder; and

69
70 WHEREAS, the School Board and the City have worked collaboratively to identify a
71 means, (as further described below), to still provide additional permanent capacity at one or more
72 public schools which are within the corporate limits of the City; and

73
74 WHEREAS, the School Board shall will now place, maintain and operate six (6) used
75 modular classrooms (“Modular Classrooms”) within the corporate limits of the City as provided
76 in this Second Amendment for at least ten (10) years or until the City and the School Board
77 mutually determine that the Modular Classrooms are no longer needed; and

78
79 WHEREAS, each of the subject mModular eClassrooms shall provide at least 18 student
80 stations of permanent capacity, defined as the number of student stations in concrete buildings
81 that physically sit on the ground as calculated by the Florida Department of Education; and

82
83
84 WHEREAS, the parties acknowledge that the City has delivered One Million Nine
85 Hundred Five Thousand Dollars (\$1,905,000) to the School Board and that no additional monies
86 are due pursuant to the Agreement, as amended; and

88 **WHEREAS**, the proposed Modular Classrooms are intended to supplement any
89 otherwise required public school concurrency or school impact fee requirements and are not and
90 shall not be in lieu of any such requirements; and
91

92 **WHEREAS**, the City is not incurring any independent financial obligations pursuant to
93 this Second Amendment but has agreed to provide to the School Board with only those payments
94 received from developers within the City who earmark said payments for the purposes set forth
95 herein and only on the condition that the monies be used solely to provide Modular Classrooms;
96 and
97

98 **WHEREAS**, the City and School Board desire to further amend the Agreement, as
99 amended, to reflect the changed conditions described above, while implementing and restating
100 the Agreement, as amended, to the fullest extent possible, subject to these changed conditions
101 and terms as set forth herein.
102

103 **NOW THEREFORE**, in consideration of the payments, promises, covenants and
104 undertakings hereinafter set forth, the parties hereto, intending to be legally bound, agree as
105 follows:
106

107 Section 1. Recitations. The recitals set forth above are true and correct and are
108 incorporated into this Second Amendment by this reference as if fully set forth herein.
109

110 Section 2. Paragraph 2 of the Agreement, as amended, is hereby further amended to
111 read as follows:
112

113 2. Payment and ~~Location~~ Placement of Modular Classrooms.
114

115 a. Developers’ and City’s Payment for Modular Classrooms. Pursuant to the terms
116 and conditions contained in separate agreements between the Developers, City, and
117 County (as applicable), the Developers have paid funds to the City in the amount of
118 One Million Nine Hundred and Five Thousand Dollars (\$1,905,000) (“Contribution
119 Payments”). Such Contribution Payments were paid by the City to the School Board
120 and shall be used by the School Board to ~~construct~~place, maintain and operate the
121 Modular Classrooms to be located at one or more public schools which are within the
122 corporate limits of the City for at least ~~five-ten (510)~~ years or until the City and the
123 School Board mutually determine that the Modular Classrooms are no longer needed.
124 The City’s payments to the School Board ~~are anticipated to~~shall provide funding for
125 a total of ~~seven (7)-six (6)~~ Modular Classrooms. ~~Except as noted, the Contribution~~
126 Payments shall be exclusively for said purpose.
127

128 In addition to the School Board’s ~~construction~~placement of the Modular Classrooms,
129 the School Board utilized the Contribution Payments to remove eight (8) existing
130 portable classrooms from Riverglades Elementary School, which is within the
131 corporate limits of the City (“Portable Classroom Removals”). ~~Subsequent to the~~
132 ~~Portable Classroom Removals, the remaining Contribution Payments balance is One~~
133 ~~Million Eight Hundred Seventy One Thousand Five Hundred Sixty One Dollars~~
134 ~~(\$1,871,561). The School Board utilized Thirty-Three Thousand, Four Hundred and~~
135 ~~Thirty-Nine Dollars (\$33,439) of the Contribution Payments towards the Portable~~
136 ~~Classroom Removals and One Hundred Ninety-Six Thousand, Six Hundred Sixty-Six~~
137 ~~Dollars and Seventy Cents (\$196,666.70) of the Contribution Payments for design~~

138 services provided by the JWR Construction, Inc., leaving a balance of One Million
139 Six Hundred Seventy-Four Thousand, Eight Hundred Ninety-Four Dollars and Thirty
140 Cents (\$1,674,894.30) to complete the Modular Classrooms.

141
142 It is understood and agreed that the Contribution Payments have been made by the
143 City and accepted by the School Board solely for the purpose of providing the
144 Modular Classrooms.

145 ~~The actual number of modular classrooms that will be constructed will be based upon~~
146 ~~the remaining Contribution Payments balance as received by the City from Developer~~
147 ~~payments; however, the maximum possible number of modular classrooms will be~~
148 ~~constructed for the amount of money paid to the School Board by the City. In the~~
149 ~~event the payments are insufficient to construct a complete modular classroom the~~
150 ~~City shall not be required to pay the additional payments to the School Board and~~
151 ~~therefore, the School Board shall return the balance, if any, of the unused or~~
152 ~~unapplied Contribution Payments to the City within one month of the completion~~
153 ~~date, or by no later than July 30, 2016. Any such returned funds may be used by the~~
154 ~~City for a community project or other municipal purposes as determined in the sole~~
155 ~~discretion of the City Commission to accommodate and benefit the City provided~~
156 ~~that, the School Board shall not be required to refund the One Hundred Ninety-Six~~
157 ~~Thousand, Six Hundred Sixty-Six Dollars and Seventy Cents (\$196,666.70) expended~~
158 ~~on design services unless funds are recovered from JWR Construction Inc. as a part~~
159 ~~of any lawsuit or settlement.~~

- 160
161
162 b. School Board's Construction-Placement of Modular Classrooms. In accordance
163 with the Modular Classroom Schedule, the School Board shall ~~construct~~ place six (6)
164 ~~(or cause to be constructed) the~~ Modular Classrooms as stated herein. Except for the
165 payment of the Contribution Payments from the Developers to the City, and from the
166 City to the School Board, the Developers and City shall not be responsible for the
167 costs or expenses associated with the School Board's ~~construction~~ placement,
168 maintenance, and/or operation of the Modular Classrooms or the Portable Classroom
169 ~~removals~~ Removals, other than those included in this Second Amendment.
170
171 c. The School Board shall be responsible for maintaining and operating the Modular
172 Classrooms in the same manner as other public schools located within the City's
173 municipal limits, at its sole cost and expense for a period of at least ten (10) five-years
174 from the Modular Classroom completion ~~of construction~~ date, or until the City and the
175 School Board mutually determine that the Modular Classrooms are no longer needed.
176 Once placed in the City, the Modular Classrooms shall not be relocated to another
177 school campus without the City's approval and will include covered walkways.
178
179 ~~d. The School Board's construction of the Modular Classrooms shall be done in a good~~
180 ~~and workmanlike manner, free of material defects, and shall comply with all the State~~
181 ~~of Florida Requirements for Educational Facilities (SREF) and applicable School~~
182 ~~Board policies and procedures.~~
183
184 ~~e.d.~~ The School Board's obligation to ~~construct~~ place the Modular Classrooms ~~—~~ and the
185 Portable Classroom Removals pursuant to this Second 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.e. The “Modular Classroom Schedule” is as follows:

Modular Classroom Schedule

Completion—Due Date—of Modular Classrooms—by School Board	DeliverableAnticipated Number—of—Modular Classrooms to be constructed
<u>August 1, 2016</u>	<u>Issuance of building permit by Broward County Public Schools Building Department</u>
<u>September 16, 2016</u>	<u>Completion of site preparation and building pad</u>
<u>October 9, 2016</u>	<u>Arrival of existing Modular Classrooms onsite</u>
<u>December 9, 2016</u>	<u>Substantial completion date</u>
March 21, 2016, or as otherwise extended by mutual agreement of the City Manager and Superintendent of Schools <u>December 31, 2016:</u>	<u>7Final completion date</u>

g.f. ~~If Should a contract for the seven (7)~~ the School Board fail to provide a deliverable by its associated due date as set forth in the Modular Classroom Schedule, and if ~~six (6)~~ Modular Classrooms as provided for herein ~~is are not installed, completed and in operation in accordance with the Modular Classroom Schedule, executed by the School Board no later than September 16, 2015, the Agreement, as amended (including this Second Amendment thereto) may, upon ten (10) days written notice~~ after receipt of seven (7) days’ ~~written~~ notice and opportunity to cure the School Board fails to correct such delay, the Agreement may be ~~immediately~~ terminated by the City after an additional three (3) days’ ~~written~~ notice ~~either party,~~ and the School Board shall return the balance, if any, of the unused or unapplied payments to the City within one month of the termination date together with an accounting of expenditures. ~~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~~ deliver less ~~or more~~ than ~~seven (7)~~ six (6) Modular Classrooms ~~(by no later than the date specified above)~~ or extend the completion date specified in the Modular Classroom Schedule, by mutual written acknowledgement (which may be evidenced by email) between both parties, whereupon the Agreement, as amended (and this Second Amendment thereto) shall continue in full force and effect. Any reductions in the number of classrooms, delays in the completion date, or

217 changes to the Modular Classrooms once approved, are subject to the approval of the
218 City Commission.
219

220 Section 3. Further Assurances. The parties shall execute, acknowledge and deliver
221 and cause to be done, executed, acknowledged and delivered all further assurances and shall
222 perform such acts as shall reasonably be requested of them in order to carry out this Second
223 Amendment.
224

225 Section 4. Amendments. No modification, further amendment, or release of the
226 terms or conditions contained herein shall be effective unless executed by the School Board and
227 the City.
228

229 Section 5. Counterparts. This Second Amendment may be executed in counterparts,
230 each of which may be deemed to be an original. It shall be fully executed when each party
231 whose signature is required has signed at least one counterpart even though no one counterpart
232 contains the signatures of all of the parties of this Second Amendment.
233

234 Section 6. Joint Effort. The parties acknowledge that they have sought and
235 obtained whatever competent advice and counsel as was necessary for them to form a full and
236 complete understanding of all rights and obligations herein. The preparation of this Second
237 Amendment has been a joint effort of the parties and the resulting documents shall not, solely as
238 a matter of judicial construction, be construed more severely against one of the parties than the
239 other.
240

241 Section 7. Merger Clause. This Second Amendment, the First Amendment and
242 the Agreement and all the exhibits referenced herein and annexed hereto sets forth the entire
243 agreement among the parties hereto, and it supersedes all prior and contemporaneous
244 negotiations, understandings and agreements, written or oral, among the parties.
245

246 Section 8. Severability. If any provision of this Second Amendment is declared
247 invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable
248 provision will be stricken from the Second Amendment, and the balance of the Second
249 Amendment will remain in full force and effect as long as doing so would not affect the overall
250 purpose or intent of the Second Amendment.
251

252 Section 9. Authority. Each person signing this Second Amendment on behalf of a
253 party individually warrants that he or she has full legal power to execute this Second
254 Amendment on behalf of the party for whom he or she is signing, and to bind and obligate such
255 party with respect to all provisions contained in this Second Amendment.
256

257 Section 10. The parties hereby agree that the Agreement ~~and the First Amendment,~~ as
258 amended by the First and this Second Amendment remains in full force and effect. To the extent
259 of any inconsistency between the terms of this Second Amendment and the terms of the
260 Agreement, or the First Amendment, the terms of the Second Amendment shall supersede and
261 control to the extent of such inconsistency.
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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 _____, ~~2015~~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

302 Witnesses:

THE CITY OF PARKLAND

303

304 _____

305 Signature

306

307

308 _____

309 Print Name

310

311 _____

312 Signature

313

314 _____

315 Print Name

316

By: _____

(Signature)

Print Name: Michael Udine

Title: Mayor

Dated: _____

317 ATTEST: _____

318 City Clerk

319 STATE OF FLORIDA)

320) SS

321 COUNTY OF BROWARD)

322 The foregoing instrument was acknowledged before me this ____ day of _____,
323 ~~2015~~2016, by Michael Udine as Mayor of THE CITY OF PARKLAND.

324 He or she is:

325 [] personally known to me, or

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

327 (Seal)

NOTARY PUBLIC:

328

Print Name: _____

329

My commission expires:

330

331 Approved as to form: _____

332 Andrew S. Maurodis, City Attorney