

**DONATION AGREEMENT**

**THIS DONATION AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
(hereinafter referred to as “**SBBC**”),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301.

and

**FIDELIS ANGELS NETWORK, INC.**  
(hereinafter referred to as “**FANI**”),  
a 501 (c) (3) non-profit corporation  
whose principal place of business is  
8441 NW 11 Street, Pembroke Pines, Florida 33024.

**WHEREAS**, SBBC has declared the portable classroom building (1547P) identified herein to be surplus property; and

**WHEREAS**, FANI is an independent, non-profit Section 501(c) (3) organization; and is eligible to receive donations of surplus property pursuant to Section 274.05, Florida Statutes; and

**WHEREAS**, FANI desires to obtain the (1547P) surplus portable classroom building` from SBBC and has represented to SBBC that it desires to use the (1547P) surplus portable classroom building for educational services.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE 1 - RECITALS**

1.01 **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

**ARTICLE 2 – SPECIAL CONDITIONS**

2.01 **Definitions.** The following definitions shall be used for the purposes of this Agreement:

a) “Donated Goods” shall mean those surplus portable classroom building more fully described and identified in **Exhibit “1”** which is attached hereto and incorporated herein by reference.

b) “Parties” shall mean SBBC and FANI.

2.02 **Delivery to FANI:** SBBC shall be deemed to have delivered to FANI the Donated Goods and all title thereto when the Donated Goods are accepted By FANI at the location at which SBBC stores the Donated Goods. FANI’s acceptance of the Donated Goods will be demonstrated through its delivery to SBBC of a written Acknowledgment of Delivery using the form appended hereto as **Exhibit 2**.

2.03 **Transportation of Donated Goods.** FANI shall bear any and all costs and liability for removing and transporting the Donated Goods from their present SBBC site(s) to a destination of FANI’s choosing. Said costs to be borne by FANI shall include, but not be limited to, loading and ground transportation of the Donated Goods from their present SBBC site to any destination chosen by FANI. FANI shall bear any and all risk and shall hold SBBC harmless for any expenses, property damage, personal injury or any other claim by any person, firm, corporation or domestic governmental agency arising out of the process of removing and transporting the Donated Goods from their present site(s) to their destination(s) selected by FANI. FANI hereby acknowledges its receipt of and the sufficiency of Ten Dollars and No/00 Cents (\$10.00) and other good and valuable consideration from SBBC in consideration of the obligations set forth in this section of this Agreement.

2.04 **Condition of Portable Classroom Building.** SBBC is not responsible for any expenses that may be necessary to make the Donated Goods suitable for any intended use by FANI or any third party.

2.05 **Transfer Documents.** SBBC hereby authorizes its Superintendent of Schools or his/her designee to execute any bills of sale, assignments or other documents necessary to transfer ownership of the Donated Goods to FANI. SBBC represents that it has full power and authority to transfer title to the Donated Goods to FANI. SBBC hereby authorizes its Superintendent of Schools or his designee to execute any and all documents necessary to implement this Agreement.

2.06 **Disposition of Donated Goods.** FANI has complete freedom in determining how to carry out its objectives through use, disposition or transfer of the Donated Goods. SBBC will not in any manner restrict, supervise or limit the manner in which FANI conducts its programs or FANI’s use, disposition or transfer of any Donated Goods subsequent to such property’s delivery to FANI at the SBBC site at which the Donated Goods are stored.

2.07 **Limitation on Liability.** FANI shall assume any and all liability with regard to the Donated Goods after their delivery by SBBC. SBBC warrants that it has good title to the Donated Goods and complete authority and the right to make delivery to FANI. SBBC makes no representations and extend no warranties of any kind, either express or implied, regarding the Donated Goods to FANI or any other person. FANI agrees that the portable classroom building is being transferred on an “as is” basis, without representation, recourse or warranty, express or

implied, including, without limitation, any warranty of condition, merchantability, capability, safety, usability, suitability, fitness for any purpose or use, description, or with respect to any defect therein (whether known or unknown or latent or apparent) or that the use of the Donated Goods will not infringe any patent, copyright, trademark, or other proprietary rights. Once the Donated Goods are transferred by SBBC to FANI, SBBC shall have no further liability of any kind to FANI or any other party for any occurrence involving the Donated Goods subsequent to SBBC's delivery to FANI. FANI shall indemnify and hold harmless SBBC against any and all loss, liability, claim, demand or damage asserted by FANI or by any third party due to or arising from the Donated Goods after their delivery by SBBC to FANI. Nothing herein shall be construed as a waiver of sovereign immunity by SBBC or any other party to this Agreement to whom sovereign immunity is applicable. Nothing herein shall be construed as a waiver of any rights or limits to liability contained in Section 768.28, Florida Statutes. FANI hereby acknowledges its receipt of and the sufficiency of Ten Dollars and No/00 Cents (\$10.00) and other good and valuable consideration from SBBC in consideration of the obligations set forth in this section of this Agreement. The indemnity and hold harmless provisions of this section shall survive this Agreement in the event of the termination of this Agreement.

2.08 **Hold Harmless and Indemnification.** FANI shall to indemnify and hold harmless SBBC and all of its Board Members, successors, officers, employees and agents and release them from any and all liability whatsoever and shall not to sue them on account of or in connection with any claims, causes of action, injuries, damages, costs or expenses (including reasonable attorney's fees and costs) arising out of FANI's removal, use, transportation, storage or other disposition of the Donated Goods, or FANI's breach of this Agreement. FANI hereby acknowledges its receipt of and the sufficiency of Ten Dollars and No/00 Cents (\$10.00) and other good and valuable consideration from SBBC in consideration of the obligations set forth in this section of this Agreement. The indemnity and hold harmless provisions of this section shall survive this Agreement in the event of the termination of this Agreement.

2.09 **Independent Contractor.** For all purposes hereunder, the relationships of the SBBC and FANI are solely those of independent contractors and this Agreement does not create a partnership, joint venture or other association between SBBC and FANI. SBBC's employees and agents shall be considered to be under the exclusive management and control of SBBC FANI's employees and agents shall be considered to be under the exclusive management and control of FANI.

2.10 **Termination for Non-Performance.** If FANI fails to remove the Donated Goods from SBBC's property within ninety (90) days of the execution of this Agreement, this Agreement shall terminate and become null and void without the necessity of any notice from or action by SBBC.

2.11 **Insurance Requirements.** FANI shall comply with the following insurance requirements throughout the term of this Agreement.

- a) **General Liability.** Limits not less than \$1,000,000 per occurrence for Bodily Injury/Property Damage; \$1,000,000 General Aggregate. Limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

- b) Acceptability of Insurance Carriers. The insurance policies shall be issued by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A- VI by AM Best or Aa3 by Moody's Investor Service.
- c) Verification of Coverage. Proof of Insurance must be furnished within 15 days of execution of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Works to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit FANI time to remedy any deficiencies. Please verify your account information and provide contact details for your company's Insurance Agent via the link provided in the email upon award.
- d) Required Conditions. Liability policies must contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance:
1. The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.
  2. All liability policies are primary of all other valid and collectable coverage maintained by the School Board of Broward County, Florida.
  3. Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P. O. Box 4668-ECM, New York, New York 10163-4668
- e) Cancellation of Insurance. **FANI** is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two business days if required insurance is cancelled.

### **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Waiver of Sovereign Immunity.** The Parties hereto acknowledge that SBBC is a political subdivision of the State of Florida and enjoys sovereign immunity. Nothing in this Agreement shall be construed to require SBBC to indemnify FANI, its employees, directors, trustees, officers, subcontractors, agents or other members of their workforces for its, her, his or their negligence, or to insure them for their negligence, or to assume any liability for their negligence. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or to subject such an agency or political subdivision to liability above the limits of Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this

Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Non-Discrimination.** The Parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

3.04 **Termination.** This Agreement may be canceled with or without cause by any party during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. On the effective date of such termination, any portable classroom building for which FANI has not received delivery shall remain the property of SBBC and SBBC shall have no obligation to donate any further portable classroom building to FANI.

3.05 **Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost to SBBC, all public records in that party's possession upon termination of its Agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.06 **Entire Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.07 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.08 **Preparation of Agreement.** 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 and that the preparation of this

Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.09 **Waiver.** The Parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

3.10 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC Policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.11 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be performable in Broward County, Florida.

3.12 **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida and the United States of America. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the state courts of the Seventeenth Judicial Circuit of Broward County, Florida. FANI agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida and the Southern District of Florida shall have jurisdiction over FANI.

3.13 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

3.14 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party.

3.15 **Force Majeure.** No party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of any party be deemed Force Majeure.

3.16 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

3.17 **Notice.** When any of the Parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Director Facility Planning & Real Estate Department  
The School Board of Broward County, Florida  
600 Southeast Third Avenue – 8<sup>th</sup> Floor  
Fort Lauderdale, Florida 33301

To FANI: Rose S. Davilmar  
Fidelis Angels Network, Inc.  
8441 NW 11 Street,  
Pembroke Pines, FL 33024

3.18 **Captions.** The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Contract Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.20 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.21 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement 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 Agreement.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the date first above written.

**FOR SBBC**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Abby M. Freedman, Chair

\_\_\_\_\_  
Robert W. Runcie, Superintendent of  
Schools

Approved as to Form and Legal Content:

\_\_\_\_\_  
Office of the General Counsel



FOR FIDELIS ANGELS NETWORK, INC.

(Corporate Seal)

Fidelis Angels Network, Inc.

ATTEST:

[Signature]  
-or-

By ROSE S. Savilmar

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of July, 2017 by Rose Davilmar of Fidelis Angels Network Inc. on behalf of the corporation. He/She is personally known to me or produced

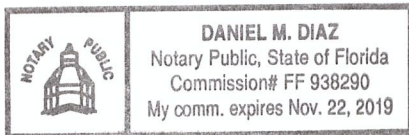
Florida Driver license as identification and did/did not first take an oath.  
Type of Identification

My Commission Expires: 11/22/2019

[Signature]  
Signature - Notary Public

Daniel Diaz  
Printed Name of Notary

(SEAL)



FF938290  
Notary's Commission No.

**EXHIBIT 1**

**Descriptions and Locations of Portable Classroom Building**

<b>Portable No.</b>	<b>Size</b>	<b>Location</b>	<b>DCA No.*</b>
1547P	24X40	Walter C. Young Middle School 901 N.W. 129 <sup>th</sup> Avenue Pembroke Pines, Florida 33028	E010695

\*DCA number is assigned by the Florida Department of Community Affairs to manufactured structures

**EXHIBIT 2**

**ACKNOWLEDGMENT OF DELIVERY**

Fidelis Angels Network Inc. a not-for-profit corporation and Section 501(c) organization, hereby acknowledges its acceptance of delivery from THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA on the [\_\_\_\_\_] day of [\_\_\_\_\_] [\_\_\_\_\_] of those portable classroom building identified on the attached **Exhibit 1**.

Rose S. Davilmar  
Fidelis Angels Network, Inc.

By \_\_\_\_\_