

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this “Agreement”) is entered into as of May 8, 2018, by and between BURKE CONSTRUCTION GROUP, INC., (hereinafter “BURKE”), THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA (hereinafter the “SCHOOL BOARD”), T.Y. LIN INTERNATIONAL (hereinafter “TYLI”) and PIERCE GOODWIN ALEXANDER & LINVILLE, INC. (hereinafter “PGAL”). Collectively, BURKE, SCHOOL BOARD, TYLI AND PGAL shall be referred to collectively as the “Parties”.

### BACKGROUND

**WHEREAS**, this Agreement arises from the design and construction improvement of Sheridan Technical Center, Project No. P.000197 (hereinafter the “Project”); and

**WHEREAS**, on or about November 4, 2003, TYLI executed a Professional Services Agreement (hereinafter “PSA”) with the SCHOOL BOARD to act as Design Professional of Record for the renovations of the Cosmetology Building at the Project; and

**WHEREAS**, on or about February 22, 2012, BURKE entered into a lump sum contract with the SCHOOL BOARD to act as general contractor for the Project; and

**WHEREAS**, on or about July 12, 2007, TYLI entered into a contract with PGAL whereby PGAL provided architectural services as a sub-consultant to TYLI; and

**WHEREAS**, the Certificate of Occupancy for this Project was issued on or about August 15, 2013; and

**WHEREAS**, at the time of completion, BURKE and SCHOOL BOARD experienced disputes as to monies owed with regard to change orders and claims and were not able to resolve their differences; and

**WHEREAS**, BURKE has asserted monetary claims against the SCHOOL BOARD for contract balances, change orders and delays arising from the Project; and

**WHEREAS**, the SCHOOL BOARD has denied liability for the claims and this Agreement is not an admission of liability. The SCHOOL BOARD does acknowledge the Project completion was delayed; and

**WHEREAS**, the SCHOOL BOARD has asserted indemnification and contract claims against TYLI for design errors, omissions and contract administration duties. TYLI denies liability for all claims asserted and this Agreement is not an admission of liability; and

**WHEREAS**, TYLI has asserted indemnification and contract claims against PGAL should the SCHOOL BOARD prevail on its indemnification and contract claims. PGAL denies liability for all claims asserted and this Agreement is not an admission of liability; and

**WHEREAS**, the Parties have taken extensive discovery and reviewed extensive Project documents; and

**WHEREAS**, the SCHOOL BOARD acknowledges that BURKE performed in a workmanlike manner and in accordance with the Project plans provided and acted with competence to overcome the Project issues that arose due to the age of the building and Project plans; and

**WHEREAS**, the Parties have agreed to resolve and settle all claims asserted in the case styled, BURKE CONSTRUCTION GROUP, INC. v. THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA v. TY LIN INTERNATIONAL v. PIERCE GOODWIN ALEXANDER & LINVILLE, INC., Case No. 13-027283, pending in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida (“Lawsuit”).

**WHEREAS**, BURKE has agreed to accept the sum of Five Hundred Thousand Dollars

(\$500,000.00) from the SCHOOL BOARD as full and final settlement of its claims in the Lawsuit;  
and

**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 agree as follows:

**AGREED TERMS**

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

2. **Settlement Payment.**

A. TYLI and PGAL will pay the sum of Two Hundred Thousand Dollars (\$200,000.00) to the SCHOOL BOARD, which amount represents a compromised sum as full and final payment of the claims made by the SCHOOL BOARD against TYLI, and also represents a compromised sum as full and final payment of the claims made by TYLI against PGAL. The payment of Two Hundred Thousand Dollars (\$200,000.00) shall be paid and held in Shendell & Pollock's Trust Account within five (5) business days of execution of this Agreement by BURKE, TYLI, and PGAL. TYLI's counsel, Kenneth Pollock, Esq., of Shendell & Pollock, P.L., shall confirm in writing to SCHOOL BOARD'S counsel, Felena Talbott, Esq., of The Soto Law Group, that said funds have been received and are being held in his law firm's Trust Account within the five (5) business days set forth above.

B. Within two (2) business days of execution of this Agreement by the SCHOOL BOARD, attested to by the Superintendent of the SCHOOL BOARD and approved as to form by the SCHOOL BOARD's Attorney at the next available School Board of Broward County, Florida Meeting which shall be May 8, 2018, and the execution of this Agreement by

BURKE, TYLI and PGAL set forth in Section 2(A) above, the attorneys for TYLI will wire the Two Hundred Thousand Dollars (\$200,000.00) held in its Trust Account to The Soto Law Group Trust Account.

C. The SCHOOL BOARD shall pay BURKE the sum of Three Hundred Thousand Dollars (\$300,000.00) and The Soto Law Group shall pay BURKE the Two Hundred Thousand Dollars (\$200,000.00) it receives from Shendell & Pollack. The total amount (\$500,000.00) represents a compromised sum as full and final payment of the claims made by BURKE against the SCHOOL BOARD. The payment of Three Hundred Thousand Dollars (\$300,000.00) shall be made within thirty (30) calendar days of execution of this Agreement by the SCHOOL BOARD at the next available School Board of Broward County, Florida Meeting, which is May 8, 2018. The payment of the Two Hundred Thousand Dollars shall be made within 5 business days of execution of this Agreement by the SCHOOL BOARD at the next available School Board of Broward County, Florida Meeting which shall be May 8, 2018. The settlement funds to BURKE shall be wired to the Trust Account of Elder & Lewis. In all events, if TYLI and/or PGAL does not pay their respective portion of the \$200,000.00 into the trust account of The Soto Law Group Trust Account in accordance with the terms of this Agreement, the SCHOOL BOARD and BURKE shall each have the option, within their absolute discretion, of enforcing the terms of this settlement or declaring the settlement null and void.

3. Mutual Release.

A. The Parties, on behalf of themselves, their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns, and its and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents,

employees, managers, representatives, assigns, and successors in interest, and all persons acting by, through, under, or in concert with them, and each of them, hereby release and discharge the other Parties, together with their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, insurers companies, under common control with any of the foregoing, affiliates and assigns and its and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns and successors in interest, and all persons acting by, through, under or in concert with them, and each of them, from all known and unknown charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, tort claims, personal injury claims, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, medical costs, pain and suffering, mental anguish, emotional distress, expenses (including attorneys' fees and costs actually incurred), and punitive damages, of any nature whatsoever, known or unknown, which the Parties have, or may have had, against the other Parties, whether or not apparent or yet to be discovered, or which may hereafter develop, for any acts or omissions related to or arising between the Parties regarding the Project and/or the Lawsuit except SCHOOL BOARD excludes claims against BURKE for latent defects regarding the Project. Latent defects are specifically not released by SCHOOL BOARD against BURKE. The SCHOOL BOARD expressly states that as of the date of this Agreement, it has no knowledge of any such defects.

B. This Agreement resolves any claim for relief that could have been alleged, no matter how characterized, including, without limitation, compensatory damages, damages for breach of contract, tort damages, personal injury damages, bad faith damages, reliance damages, liquidated damages, damages for humiliation and embarrassment, punitive damages, costs and attorneys' fees related to or arising from any claims amongst the Parties.

4. Stipulation and Order of Dismissal. Within ten (10) days of receipt of the payment by the SCHOOL BOARD to BURKE above, the SCHOOL BOARD, BURKE and TYL, subject to the approval of the other Parties, shall file a Joint Stipulation for Dismissal with Prejudice of all claims, counterclaims, third and fourth party claims the Parties now have or may have in the future with respect to the Lawsuit excluding any claims by SCHOOL BOARD against BURKE for latent defects regarding the Project.

5. Attorneys' Fees. The Parties are solely responsible for paying any attorneys' fees and costs they incurred and no Party nor their attorney(s) will seek any award of attorneys' fees or costs from the other Party regarding the Lawsuit, except as provided herein.

6. Authority to Execute Agreement. 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.

7. Entire Agreement. This Agreement contains the entire agreement between Parties, and the terms of the Agreement are contractual and not a mere recital. The Parties agree that all prior negotiations and understandings between them have been merged herein and that this Agreement may not be modified or changed, except by a writing signed by a duly authorized representative of each Party.

8. No Admission of Liability. The Parties acknowledge that the Settlement Payment was agreed upon as a compromise and final settlement of disputed claims and that payment of the Settlement Payment is not, and may not be construed as, an admission of liability by any of the Parties and is not to be construed as an admission that any of the Parties engaged in any wrongful, tortious or unlawful activity. The Parties specifically disclaim and deny (a) any liability regarding

the Project and (b) engaging in any wrongful, tortious or unlawful activity regarding the Project.

10. Interpretation. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and such illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. The headings within this Agreement are purely for convenience and are not to be used as an aid in interpretation. Moreover, this Agreement shall not be construed against either Party as the author or drafter of the Agreement.

11. Governing Law and Choice of Forum. This Agreement is made and entered into within and shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Florida, without regard to the principles of conflicts of laws. Any action to enforce this Agreement shall be brought only in the Circuit Court in Broward County, Florida.

12. Counterparts. This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. Effective Date. The terms of the Agreement will be effective when a fully executed copy of this Agreement is delivered to counsel for the Parties (the "Effective Date").

14. Default Provisions. If any legal action of any kind is brought by any Party to resolve a dispute regarding any of the Parties' rights or obligations under this Agreement, then the prevailing Party shall be entitled to recover reasonable attorney's fees and costs incurred. The Court shall retain jurisdiction over this Agreement.

**READ THE FOREGOING DOCUMENT CAREFULLY. IT INCLUDES A RELEASE OF KNOWN AND UNKNOWN CLAIMS EXCEPT SCHOOL BOARD EXCLUDES CLAIMS AGAINST BURKE FOR LATENT DEFECTS REGARDING THE PROJECT.**

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto have made and executed this Agreement on the date first above written.

**FOR SCHOOL BOARD:**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

By: \_\_\_\_\_  
Signature

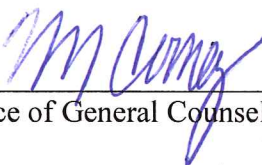
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Nora Rupert, Chair

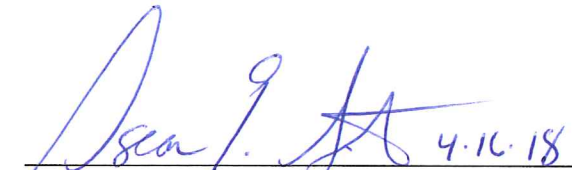
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Date

ATTEST:

\_\_\_\_\_  
ROBERT W. RUNCIE, Superintendent of the SCHOOL BOARD

*Approved as to form:*

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

  
\_\_\_\_\_  
OSCAR E. SOTO, ESQ. Cadre Counsel to The School Board of Broward County, FL



(Corporate Seal)

FOR BURKE:

BURKE CONSTRUCTION GROUP, INC.

By: [Signature]  
Signature

Anthony Burke  
Print Name/Title

4/10/18  
Date

ATTEST:

[Signature]  
Secretary

-or-

\_\_\_\_\_  
Witness

STATE OF FLORIDA  
COUNTY OF MIAMI DADE

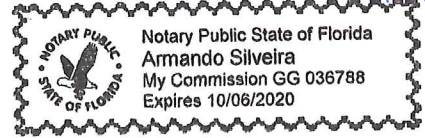
SWORN TO and SUBSCRIBED before me this 10 day of APRIL,  
2018, by ANTHONY BURKE, as PRES. of BURKE  
CONSTRUCTION GROUP, INC., who  is personally known to me or  produced  
\_\_\_\_\_ as identification and who did/did not first take an oath.

(SEAL)

[Signature]  
Signature, Notary Public

ARMANDO SILVEIRA  
Print Name of Notary

My Commission expires: 10/6/20





(Corporate Seal)

FOR PGAL:

PIERCE GOODWIN ALEXANDER & LINVILLE, INC.

By: [Signature]  
Signature

IAN A. HESTLER / EXECUTIVE VP  
Print Name/Title

4/9/18  
Date

ATTEST:

[Signature]  
-or- \_\_\_\_\_, Secretary

\_\_\_\_\_  
Witness

STATE OF FLORIDA  
COUNTY OF Palm Beach

SWORN TO and SUBSCRIBED before me this 9th day of April, 2018, by Ian A. Hestler, as Executive VP of PIERCE GOODWIN ALEXANDER & LINVILLE, INC., who  is personally known to me or  produced \_\_\_\_\_ as identification and who did/did not first take an oath.

(SEAL)



[Signature]  
Signature, Notary Public

Jennifer Restivo  
Print Name of Notary

My Commission expires: May 20, 2021