

## **DONATION AGREEMENT**

**THIS DONATION AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2018, 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

**CATHOLIC CHARITIES OF THE ARCHDIOCESE OF MIAMI, INC.**  
(hereinafter referred to as "CHARITIES"),  
a Florida not for profit corporation  
whose principal place of business is  
1505 Northeast 26<sup>th</sup> Street – 2<sup>nd</sup> Floor, Wilton Manors, Florida 33305.

**WHEREAS**, the Charter School of Excellence erected Modular Classroom Building No. 20 several years ago at its charter school campus located on the grounds of St. Malachy Catholic Church at 7595 Northwest 61<sup>st</sup> Street, Tamarac, Florida 33321 (hereinafter referred to as "Modular Classroom Building"); and

**WHEREAS**, the operations of the Charter School of Excellence at that site thereafter terminated and, as the Modular Classroom Building was erected using public funds, it became district school property upon such termination; and

**WHEREAS**, it was determined that removal of the Modular Classroom Building from its current site would be unduly expensive and serve no useful public purpose as said building does not satisfy the State Requirements for Educational Facilities ("SREF") and is therefore unsuitable for use by the school district; and

**WHEREAS**, SBBC adopted Resolution #18-103 on April 10, 2018 within which it declared that certain Modular Classroom Building to be surplus; and

**WHEREAS**, CHARITIES is a "private nonprofit agency" as defined by Section 273.01(3), Florida Statutes, as it is a non-profit charitable organization, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, which has been held to be tax-exempt under the provisions of Section 501 of the Internal Revenue Code of 1954, and which has as its principal mission: (a) public health and welfare; (b) education; (c) environmental restoration and conservation; (d) civil and human rights; or (e) the relief of human suffering and poverty; and

**WHEREAS**, CHARITIES desires to obtain the surplus Modular Classroom Building by donation from SBBC and is willing to accept the Modular Classroom Building at its current location which is owned by the Archdiocese of Miami, Inc.; and

**WHEREAS**, SBBC and CHARITIES desire to formalize the arrangements to facilitate the donation and transportation of the Modular Classroom Buildings in order to enable the prompt transfer of such surplus property for the purposes identified above.

**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 Property” shall mean the surplus Modular 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 CHARITIES.

2.02 **Delivery to CHARITIES:** SBBC shall be deemed to have delivered to CHARITIES the Donated Property where it is currently located and all title thereto upon the execution of this Agreement.

2.03 **Condition of Portable Classroom Buildings.** CHARITIES accepts the Donated Property in its current condition and SBBC is not responsible for any expenses that may be necessary to make the Donated Property suitable for any intended use by CHARITIES or by any other third person. CHARITIES agrees that the Donated Property 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, 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 Property will not infringe any patent, copyright, trademark, or other proprietary rights.

2.04 **No Warranties.** SBBC makes no warranties, either implied or express, to CHARITIES or any third party that the Donated Property or any of its component parts are operational or in working order. SBBC makes no warranties, either express or implied, as to the condition, safety, usability, suitability for use by CHARITIES or any third party or regarding any other matter concerning the Donated Property.

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 Property to CHARITIES. SBBC represents that it has full power and authority to transfer title to the Donated Property to CHARITIES.

2.06 **Disposition of Donated Property.** CHARITIES has complete freedom in determining how to carry out its principal mission through the use, disposition or transfer of the Donated Property. SBBC will not in any manner restrict, supervise or limit the manner in which CHARITIES conducts its charitable programs or CHARITIES' use, disposition or transfer of any Donated Property subsequent to such surplus property's transfer to CHARITIES.

2.07 **Limitation on Liability.** CHARITIES agrees to assume liability with regard to the Donated Property. SBBC warrants that it has good title to the Donated Property and complete authority and the right to make delivery to CHARITIES. Once the Donated Property is transferred by SBBC to CHARITIES, SBBC shall have no further liability of any kind to CHARITIES or any other third party for any occurrence involving the Donated Property. CHARITIES agrees to indemnify and hold harmless SBBC against any loss, liability, claim, demand or damage asserted by the CHARITIES or by any third party due to or arising from the Donated Property after its transfer to CHARITIES. Nothing herein shall be construed as a waiver of sovereign immunity by SBBC or by 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. CHARITIES 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 Section 2.07 of this Agreement.

2.08 **Hold Harmless and Indemnification.** CHARITIES agrees to indemnify and hold harmless SBBC and all of its Board Members, successors, officers, employees and agents and release them from all liability whatsoever and agrees 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 CHARITIES' respective use or other disposition of the Donated Property, or CHARITIES' breach of this Agreement. CHARITIES 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 Section 2.08 of this Agreement.

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

### **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 CHARITIES, 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.

3.02 **No Third Party Beneficiaries.** 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 **Records.** 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.

3.05 **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.

3.06 **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.

3.07 **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.

3.08 **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.

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

3.10 **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 to the jurisdiction of the state courts of the Seventeenth Judicial Circuit of Broward County, Florida.

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

3.12 **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. Pursuant to Section 2.05 of this Agreement, SBBC hereby authorizes its Superintendent of Schools or his designee to execute any and all documents necessary to implement this Agreement.

3.13 **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.

3.14 **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.

3.15 **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  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

To CHARITIES:

Peter Routsis-Arroyo, Chief Executive Officer  
Catholic Charities of the Archdiocese of Miami, Inc.  
1505 Northeast 26<sup>th</sup> Street – 2<sup>nd</sup> Floor  
Wilton Manors, Florida 33305

3.16 **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 effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.17 **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**

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

By \_\_\_\_\_  
Nora Rupert, Chair

ATTEST:

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

Approved as to Form and Legal Content:

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

FOR CHARITIES

(Corporate Seal)

CATHOLIC CHARITIES OF THE  
ARCHDIOCESE OF MIAMI, INC.

ATTEST:

By Peter Routsis-Arroyo  
Peter Routsis-Arroyo, Chief Executive  
Officer

\_\_\_\_\_  
, Secretary

-OR-

Devika Austin  
Witness

Jules K. Jones  
Witness

**The Following Notarization is Required for Every Agreement Without Regard to  
Whether CHARITIES 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 18<sup>th</sup> day of  
June, 2018 by Peter Routsis-Arroyo of CATHOLIC CHARITIES  
OF THE ARCHDIOCESE OF MIAMI, INC. on behalf of the corporation. He/She is personally  
known to me or produced

\_\_\_\_\_ as identification and did/did not first take an oath.

Type of Identification

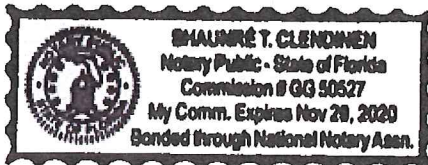
My Commission Expires: 11/28/2020

[Signature]

Signature - Notary Public

Shaunre' Clendinen  
Printed Name of Notary

(SEAL)



#GG50527  
Notary's Commission No.

**EXHIBIT 1**  
**Description and Location of Modular Classroom Building**

<b><u>Modular No.</u></b>	<b><u>Location</u></b>
20	7595 Northwest 61 <sup>st</sup> Street, Tamarac, Florida 33321