

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this ____ day of _____, 2012, by and between The School Board of Broward County, Florida ("School Board") and Thermal Concepts, Inc., ("Thermal").

Witnesseth

WHEREAS, the School Board and Thermal entered into an agreement ("Agreement"), dated February 6, 2007, pursuant to which Thermal agreed to perform certain work for the addition and alteration of HVAC systems at Sandpiper Elementary School (Main Building), as further defined in the Agreement, for Project No. 3061-99-06 (the "Project"); and

WHEREAS, disputes have arisen between the School Board and Thermal regarding the School Board's failure to pay Thermal retainage under the Agreement; and

WHEREAS, Thermal filed a lawsuit against the School Board in a case styled *Thermal Concepts, Inc v. The School Board of Broward County, Florida*: Case No.: 10-045492 (05) in the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida (the "Lawsuit"); and

WHEREAS, the School Board has agreed to pay retainage of \$156,225.90, plus interest on the retainage of \$11,345.90, as final payment to Thermal under the Agreement and Thermal has agreed to accept retainage of \$156,225.90 and interest on the retainage of \$11,345.90, as final payment under the Agreement in the amount of one hundred sixty-seven thousand five hundred seventy one dollars and 80/100 (\$167,571.80); and

WHEREAS, counsel and staff of the School Board recommend resolving Thermal's

pending claim for payment against the School Board involving the Project in accordance with the terms set forth below.

NOW THEREFORE, the parties hereto, intending to be legally bound hereby, in consideration of the mutual covenants and conditions set forth herein, receipt and sufficiency of which consideration are hereby acknowledged, it is agreed, by and between the parties, as follows:

1. **Recitals**. The recitals contained herein are true and correct and are incorporated herein by reference.

2. **Settlement Amount**. The School Board shall pay to the order of "Thermal Concepts, Inc." the sum of one hundred sixty-seven thousand five hundred seventy one dollars and 80/100 (\$167,571.80), and deliver such payment to counsel for Thermal within thirty (30) days of the School Board's approval and execution of this Settlement Agreement.

3. **Thermal's Release**. As a condition precedent to the receipt of payment, Thermal shall provide the School Board a release, the form of which is attached hereto as Exhibit "A."

4. **Stipulation and Order of Dismissal**. Within ten (10) days of delivery of payment, the parties shall execute and file a Stipulation for Entry of Order of Dismissal with Prejudice, reflecting that each party shall bear its own costs and fees. (A true and correct copy of the form of Stipulation and Order of Dismissal with Prejudice are attached hereto as Comp. Ex. "B").

5. **Extended Labor Warranty**. In addition to what is required by the Agreement,

Thermal shall provide to the School Board a labor only warranty for the Work provided by Thermal pursuant to the Agreement which shall expire at 11:59 pm, June 7, 2012.

6. **Extended Training.** Thermal shall provide School Board personnel training on the proper operation and maintenance of the Project consistent with the provisions of sections 1.03 and 1.04, Demonstration and Instructions, Section 01820 of the Contract Documents contained within the Agreement.

7. **Governing Law.** The Agreement shall remain in full force and effect and shall be altered only to the extent modified herein. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Florida, without regard to its conflict of laws principles, except to the extent federal law provides the rule of decision. The provisions of the *Florida Rules of Civil Procedure* dealing with computation of time shall control the calculation of the beginning or ending of any period referenced in this Settlement Agreement.

8. **Representation by Counsel.** Each of the parties represents that it has read and understands the provisions of this Settlement Agreement, and has had the opportunity to receive advice from independent counsel of its own choice. For the purpose of resolving any disputes arising out of this Settlement Agreement, the Settlement Agreement shall be deemed to have been drafted by each of the parties, neither of whom may assert that it should be construed against the other.

9. **Authorization to Execute.** The persons executing this Settlement Agreement on behalf of the respective parties represent and warrant that they are authorized to execute this Settlement Agreement and bind their respective party.

10. **Intended Beneficiaries.** This Settlement Agreement is intended for the sole benefit of the parties named herein and shall not inure to the benefit of any persons not specifically named herein.

11. **Execution in Counterparts.** This Settlement Agreement may be signed in counterparts, of which together constitute one Settlement Agreement. Facsimile signatures shall be permitted and binding.

IN WITNESS WHEREFORE, the parties having set forth their duly authorized signatures on the following dates:

Executed the 16 day of February, 2012.

Thermal Concepts, Inc.,

By: [Signature]

Print: M. JESSE MAURER

Title: Vice President

ATTEST:

[Signature]
Name: David Valentinis

State of Florida)
County of Brevard) ss:

BEFORE ME, the undersigned authority, personally appeared M. Jesse Maurer as Vice President of **Thermal Concepts, Inc.**, to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same freely and voluntarily for the purposes expressed.

IN WITNESS WHEREOF, I have hereunto affixed my hand and official seal in the County and State last aforesaid this 16 day of February, 2012.

[Signature]
Notary Public, State of Florida
Name: Gina Lixie
My Commission Expires: 5-23-2012

(Seal)



GINA LIXIE
MY COMMISSION # DD 775936
EXPIRES: May 23, 2012
Bonded Thru Budget Notary Services

FOR SBBC

Executed the ____ day of _____, 2012.

(Corporate Seal)


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

ATTEST:

By _____
Ann Murray, Chair

**Robert W. Runcie, Superintendent of
Schools**

Approved as to Form and Legal Content:

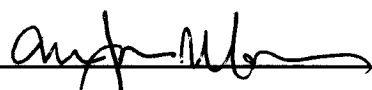


School Board Attorney

GENERAL RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS that THERMAL CONCEPTS, INC. ("THERMAL"), and its respective successors, assigns, corporate affiliates, subsidiaries, parent corporations, officers, shareholders, employees, partners, representatives, attorneys, and personal representatives, for and in consideration of the sum of TEN (\$10.00) Dollars and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, hereby remises, releases, acquits, satisfies and forever discharges THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA (the "School Board") and its respective successors, assigns, corporate affiliates, subsidiaries, parent corporations, Board members, officers, shareholders, employees, partners, representatives, attorneys and personal representatives, of and from any and all actions, causes of action, suits, claims, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, and demands whatsoever, in law or in equity, which THERMAL its successors, assigns, employees, representatives, attorneys and personal representatives had or now have for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of these presents relating to all matters, actions, causes of action, claims, and damages arising out of, raised in, that could have been raised in, concerning, referring or relating to the litigation styled: *Thermal Concepts, Inc. v. The School Board of Broward County, Florida*: Case No.: 10-45492 (05) in the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida arising out of Thermal Concepts, Inc.'s Agreement with School Board regarding the Sandpiper Elementary School, Project No. 3061-99-06 (the "Project").

THERMAL CONCEPTS, INC.,

By: 

Print Name: M. JESSE MAURER

Title: VICE PRESIDENT

State of Florida)
) ss:
County of Broward)

BEFORE ME, the undersigned authority, personally appeared M. Jesse Maurer, as Vice President of **Thermal Concepts, Inc.**, to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same freely and voluntarily for the purposes expressed.

IN WITNESS WHEREOF, I have hereunto affixed my hand and official seal in the County

and State last aforesaid this 16 day of February, 2012.

Gina Lixie

Notary Public, State of Florida

Name: Gina Lixie

My Commission Expires: 5-23-2012

(Seal)



GINA LIXIE
MY COMMISSION # DD 775936
EXPIRES: May 23, 2012
Bonded Thru Budget Notary Services

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

**THERMAL CONCEPTS, INC.,
a Florida corporation,**

Plaintiff,

v.

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

Defendant.

CASE NO: CACE 10-045492

STIPULATION FOR ENTRY OF ORDER OF DISMISSAL WITH PREJUDICE

Plaintiff Thermal Concepts, Inc. ("Thermal"), through its undersigned counsel, hereby voluntarily dismisses this action with prejudice, and Thermal and The School Board of Broward County, Florida stipulate that each party shall bear its own attorney's fees and costs.

**F. Malcolm Cunningham, Jr., Esq.
The Cunningham Law Firm
Attorneys for SBBC
400 Australian Ave. S.
Suite 700
West Palm Beach, FL 33401
Tel: 561/833-6400**

**Michael E. Stearns, Esq.
Stearns, Roberts & Guttentag
Attorneys for Thermal
1000 Sawgrass Corporate Pkwy.
Suite 552
Ft. Lauderdale, FL 33134
Tel: 954-382-9199**

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

**THERMAL CONCEPTS, INC.,
a Florida corporation,**

Plaintiff,

v.

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

Defendant.

CASE NO: CACE 10-045492

ORDER OF DISMISSAL WITH PREJUDICE

THIS CAUSE having come before the Court on the agreement of Thermal Concepts, Inc., to voluntarily dismiss its action with prejudice and on the stipulation of the parties to bear their own costs and attorney's fees, the Court having reviewed the agreement and stipulation and being otherwise advised in the premises, it is hereby

ORDERED and ADJUDGED that this action is dismissed with prejudice, with each party to bear its own costs and attorney's fees.

DONE AND ORDERED in Chambers, at Fort Lauderdale, Broward County, Florida
this _____ day of _____, 2011.

The Honorable Richard D. Eade
Circuit Court Judge

conformed copies:

F. Malcolm Cunningham, Jr., Esq., Cunningham Law Firm, P.A., 400 Australian Ave., So. 700, W. Palm Beach, FL 33401
Thomas C. Cooney, Esq., Office of the School Board Attorney, 600 Southeast 3rd Ave., 11th Fl, F. Lauderdale, FL 33301
Michael E. Stearns, Esq., Stearns & Roberts, P.A., 100 Sawgrass Corp. Pkwy. #552, Ft. Lauderdale, FL 3332