

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO.: 10-43869 (18)

ASHBRITT, INC., a Florida corporation

Plaintiff,

vs.

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA,

Defendant.

vs.

NATIONS ROOF, LLC

Third-Party Defendant

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**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT ("AGREEMENT") is entered into and effective as of this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between Plaintiff, ASHBRIIT, INC., a Florida corporation ("Ashbritt"); Defendant/Third-Party Plaintiff, THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA ("SBBC"); and Third-Party Defendant, NATIONS ROOF, LLC ("Nations").

**RECITALS**

WHEREAS, Hurricane Wilma struck Broward County, Florida on October 24, 2005 and caused significant damage to Broward County schools;

WHEREAS, SBBC contracted with Ashbritt to perform and provide certain labor, service and materials in connection with the roof repairs and/or replacements, dry-in, moisture

abatement and general clean-up at various schools, including portable classrooms (the “Hurricane Wilma repairs”);

WHEREAS, Ashbritt contracted with Nations to perform certain roof repairs and/or roof replacements to portable classrooms;

WHEREAS, Ashbritt and Nations assert they successfully completed the Hurricane Wilma repairs;

WHEREAS, the SBBC has had full use of the repaired portables and classrooms since approximately, January, 2006;

WHEREAS, a dispute subsequently arose between Ashbritt and the SBBC as to the amount of work performed by Ashbritt, billed to and paid by the SBBC;

WHEREAS, as a result of findings contained within an audit performed by the SBBC’s Office of the Chief Auditor (“OCA”), Ashbritt filed the above-captioned lawsuit against the SBBC seeking declaratory relief as to the amounts properly chargeable and paid under the contract with the SBBC (the “Lawsuit”); as a result of findings contained within an audit performed by the SBBC’s Office of the Chief Auditor (“OCA”);

WHEREAS, a dispute subsequently arose between SBBC and Nations as to certain roof work performed by Nations;

WHEREAS, the SBBC thereafter asserted its affirmative defenses and counterclaims for breach of contract and warranty against Ashbritt; and asserted a Third Party Claim against Nations for negligent roof repairs and/or replacement;

WHEREAS, the SBBC has denied the claims asserted by Ashbritt, and Ashbritt and Nations have denied the claims and contentions of the SBBC;

WHEREAS, the SBBC has retained experts and has conducted a thorough investigation and examination of all the work and billing performed by Ashbritt and Nations in connection with the Hurricane Wilma repairs;

WHEREAS, as a result of this investigation as well as discovery in the Lawsuit, the SBBC determined that Ashbritt has committed no wrong doing in connection with the cert OCA Audit and the Hurricane Wilma repairs; and that the only issue remaining in dispute is the interpretation of language in the contract regarding per diem expense reimbursements;

WHEREAS, the language in the contract with respect to the per diem expense reimbursements is ambiguous and there is a good faith disagreement over its interpretation;

WHEREAS, the parties hereto desire to settle and resolve their differences without resorting to further litigation conditioned upon full performance with the terms and conditions of this AGREEMENT because it is in their best interest, taking into account, among other concerns, the risk, distraction and expense of further litigation; and

WHEREAS, each of the parties hereto, believing this AGREEMENT to be fair, just and reasonable, have assented freely and voluntarily to its terms;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and in consideration of the obligations and duties assumed by each party, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, is mutually covenanted and agreed as follows:

1. Incorporation. The above recitals are true and correct and are incorporated herein by reference.
2. Ashbritt Settlement. Ashbritt has agreed to voluntarily pay the SBBC the settlement amount of Two Hundred Thousand dollars and Zero cents (\$200,000.00) (the

“Ashbritt Settlement Amount”) within thirty (30) days of the full execution of this AGREEMENT by the parties, including any required approval by the SBBC’s governing Board. The parties acknowledge and agree that the Ashbritt Settlement Amount represents a negotiated resolution of the disputed per diem expense reimbursements together with a payment for expert expense costs incurred by the SBBC in the Lawsuit, and that no other amounts are recoverable by the SBBC for any reason.

3. Nations Settlement.

a. Nations agrees to pay to the SBBC the settlement amount of Ten Thousand Dollars (\$10,000) (the Nations Settlement Amount) within thirty (30) days of the full execution of this AGREEMENT by the parties, including any required approval by the SBBC governing Board. The parties acknowledge that the Nations Settlement Amount represents a negotiated resolution of a disputed claim; and

b. Nations will provide the SBBC with an additional roofing warranty for a period of two years that commences on the date this AGREEMENT is fully executed by the parties. The warranty will cover failures in the roofing materials (excluding failure of the decking) and defective installation. The warranty will not apply to any roofs that have been repaired by others.

4. Releases.

a. Ashbritt, on its own behalf, and on behalf of its subsidiaries, affiliates, owners, shareholders, members, officers, directors, employees, agents, successors and assigns, remises, releases, acquits, satisfies, and forever discharges SBBC, including its affiliates, officers, directors, employees, agents, insurers, reinsurers, sureties, successors and assigns, of and from all manner of action and actions, cause and causes of actions,

suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, whether known or unknown, which Ashbritt ever had, now has, or which any personal representative, successor, heir or assign of Ashbritt, hereafter can, shall or may have, against SBBC, for, upon or by reason of any matter, cause or thing whatsoever with respect to the Hurricane Wilma repairs and the OCA Audit report, from the beginning of the world to the day of these presents, including, but not limited to any claim asserted, or that could have been asserted, in the Lawsuit.

b. Nations, on its own behalf, and on behalf of its subsidiaries, affiliates, owners, shareholders, members, officers, directors, employees, agents, successors and assigns, remises, releases, acquits, satisfies, and forever discharges SBBC, including its affiliates, officers, directors, employees, agents, insurers, reinsurers, sureties, successors and assigns, of and from all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, whether known or unknown, which Nations ever had, now has, or which any personal representative, successor, heir or assign of Nations, hereafter can, shall or may have, against SBBC, for, upon or by reason of any matter, cause or thing whatsoever with respect to the Hurricane Wilma repairs and the OCA Audit report, from the beginning of the world to the day of these presents, including, but not limited to any claim asserted, or that could have been asserted, in the Lawsuit

c. SBBC, on its own behalf, and on behalf of its subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns, remises, releases, acquits, satisfies, and forever discharges Ashbritt, including its subsidiaries, affiliates, owners, shareholders, members, officers, directors, employees, agents, insurers, reinsurers, sureties, successors and assigns, of and from all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, whether known or unknown, which SBBC ever had, now has, or which any personal representative, successor, heir or assign of SBBC, hereafter can, shall or may have, against Ashbritt, for, upon or by reason of any matter, cause or thing whatsoever with respect to the Hurricane Wilma repairs and the OCA Audit report from the beginning of the world to the day of these presents, including, but not limited to any claim asserted, or that could have been asserted, in the Lawsuit.

d. With the exception of its rights to enforce the warranty identified in paragraph 3.b hereinabove, SBBC, on its own behalf, and on behalf of its subsidiaries, affiliates, officers, directors, employees, agents, successors and assigns, remises, releases, acquits, satisfies, and forever discharges Nations, including its subsidiaries, affiliates, owners, shareholders, members, officers, directors, employees, agents, insurers, reinsurers, sureties, successors and assigns, of and from all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever,

in law or in equity, whether known or unknown, which SBBC ever had, now has, or which any personal representative, successor, heir or assign of SBBC, hereafter can, shall or may have, against Nations, for, upon or by reason of any matter, cause or thing whatsoever respect to the Hurricane Wilma repairs and the OCA Audit report, from the beginning of the world to the day of these presents, including, but not limited to any claim asserted, or that could have been asserted, in the Lawsuit.

e. The parties mutually acknowledge and agree that the execution of this AGREEMENT and payment of the Settlement Amounts represents good, valid and new consideration for this General Release and represents the settlement of disputed claims.

5. Stipulation of Dismissal With Prejudice. Contemporaneous with the execution of this AGREEMENT, counsel for the Parties shall execute the Stipulation for Dismissal in the form attached hereto as Exhibit "A" dismissing this action with prejudice with each party to bear its own attorneys' fees and costs.

6. No Admissions by the Parties. The AGREEMENT shall not in any way be construed as an admission by any of the parties as to the validity of any of the claims or defenses alleged in the Lawsuit.

7. Representations of Authority.

a. The execution, delivery and performance of this Agreement by the SBBC, and the execution of any agreement, document or instrument contemplated hereby, or to be delivered in connection herewith, to which SBBC is a party, has been duly and validly authorized by the SBBC's governing Board, and this Agreement has been, and upon payment of the Settlement Amount will be, duly executed and delivered by SBBC. SBBC has the full legal right and power to undertake and perform its obligations under

this AGREEMENT and all other documents contemplated hereby. The agreements of SBBC contained herein constitute the valid and binding obligations of the SBBC, enforceable in accordance with their respective terms.

b. The execution, delivery and performance of this Agreement by Ashbritt, and the execution of any agreement, document or instrument contemplated hereby, or to be delivered in connection herewith, to which Ashbritt is a party, has been duly and validly authorized by Ashbritt, and this Agreement has been, and upon payment of the Settlement Amount will be, duly executed and delivered by Ashbritt. Ashbritt has the full legal right and power to undertake and perform its obligations under this AGREEMENT and all other documents contemplated hereby. The agreements of Ashbritt contained herein constitute the valid and binding obligations of Ashbritt, enforceable in accordance with their respective terms.

c. The execution, delivery and performance of this Agreement by Nations, and the execution of any agreement, document or instrument contemplated hereby, or to be delivered in connection herewith, to which Nations is a party, has been duly and validly authorized by Nations, and this Agreement has been, and upon payment of the Settlement Amount will be, duly executed and delivered by Nations. Nations has the full legal right and power to undertake and perform its obligations under this AGREEMENT and all other documents contemplated hereby. The agreements of Nations contained herein constitute the valid and binding obligations of Nations, enforceable in accordance with their respective terms



8. Attorneys' Fees and Costs. Each party agrees that they shall bear their own attorneys' fees and costs for all claims arising out of, relating to and in connection with the Lawsuit and this AGREEMENT.

9. Advice of Counsel. Each of the parties hereto has received independent legal and/or accounting advice as to the nature and obligations of this AGREEMENT and all exhibits and documents executed in connection herewith and each has been fully informed of its respective legal rights, obligations and liabilities as set forth herein. The parties hereto have entered into this AGREEMENT freely and voluntarily and of their own free will and accord without any threat of force or duress in any form or nature whatsoever.

10. Binding Agreement. This AGREEMENT and the exhibits hereto shall be binding upon, inure to the benefit of, is applicable to and enforceable by all affiliates, successors, assigns, shareholders, officers, directors, representatives, agents, heirs, beneficiaries, personal representatives, related parties and insurers of the SBBC, Nations and Ashbritt.

11. Consideration. The consideration for this AGREEMENT is the mutual benefits each according to the other party that presently exist, or are to be obtained by the parties, and the promise of each to the other. The adequacy of the consideration for this AGREEMENT is hereby admitted by all parties hereto.

12. Entire Agreement. This AGREEMENT, and the exhibits hereto, sets forth the entire understanding of the parties, and supersedes all previous oral and written agreements, if any, and may not be amended, altered or modified except by written instrument signed by all the parties hereto.

13. Headings. The headings used in this AGREEMENT are used for reference purposes only and are not deemed controlling with respect to the contents thereof.

14. Severability. The invalidity or unenforceability of any particular provision of this AGREEMENT shall not affect the other provisions hereof, and this AGREEMENT shall be construed in all respects as if such invalid or unenforceable provision were omitted.

15. Governing Law and Venue. This AGREEMENT and the exhibits hereto have been entered into in the State of Florida, and it is the intention of the parties that all questions as to performance, interpretation, validity, legal effect and enforceability of this AGREEMENT and the exhibit hereto, shall be determined in accordance with the laws of the State of Florida. The exclusive jurisdiction and venue for any action arising out of or related to this AGREEMENT shall be in Broward County, Florida.

16. Gender. Wherever the context shall so require, all words herein referencing any gender shall be deemed to include the masculine, feminine or neuter gender; all singular words shall include the plural and all plural words shall include the singular.

17. Assignment. The rights, duties and obligations of this AGREEMENT and all exhibits hereto shall not be transferable or assigned without the express written consent of all parties hereto.

18. Waiver of Breach. The waiver of any party of a breach of any provision of this AGREEMENT or the exhibits hereto by the other shall not operate or be construed as a waiver of any subsequent breach.

19. Joint Agreement. This AGREEMENT and the exhibits hereto shall be considered the joint product of all parties hereto, and in the event of any controversy as to the construction, interpretation or enforcement of any provision hereof, such controversy shall not be construed against any party as the alleged preparer of this AGREEMENT and the exhibits hereto. It is the intent of all parties that this AGREEMENT and the exhibits hereto shall be deemed to have been

prepared by all of the parties to the end that no party shall be entitled to the benefits of any favorable interpretation or construction of any term or provision hereof under any rule or law.

20. Counterparts. This AGREEMENT may be executed in counterparts, each of which shall be deemed an original but together, shall constitute but one and the same agreement. The parties further agree that this Agreement may be executed by facsimile or e-mail signatures (i.e. PDF copies), which shall be as binding as original hand signed signatures for all purposes.

21. Further Cooperation. Each of the parties hereto agrees to execute whatever additional documentation or instruments as are necessary to carry out the intents and purposes of this AGREEMENT and the exhibits hereto.

22. Time. Time shall be of the essence in the performance of any obligation or the sending of any notice under this AGREEMENT.

**[Intentionally left blank]**

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT, with the intent to be legally bound, on the day and year first above written:

**FOR SBBC**

WITNESSES:

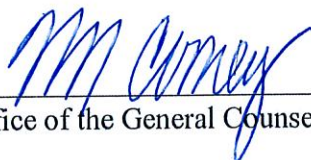
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

\_\_\_\_\_  
Patricia Good, Chair

ATTEST:

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

Approved as to form and legal content:

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

Cadre Counsel for the School Board

  
\_\_\_\_\_  
Oscar E. Soto, Esquire

**FOR ASHBRITT**

ASHBRITT, INC., a Florida corporation

Kelly Beckmann  
Christina Dimedio

BY: [Signature]  
RANDY PERKINS, PRESIDENT  
(Print Name and Title)

STATE OF FLORIDA            )  
  ) SS:  
COUNTY OF BROWARD        )

The foregoing instrument was acknowledged before me this 21 day of MARCH, 2014, by RANDY PERKINS, PRESIDENT of ASHBRITT, INC., a Florida corporation, who  is personally known to me, or  produced \_\_\_\_\_ as identification.

[Signature]  
NOTARY PUBLIC

Print Name: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



FOR NATIONS

NATIONS ROOF, INC.

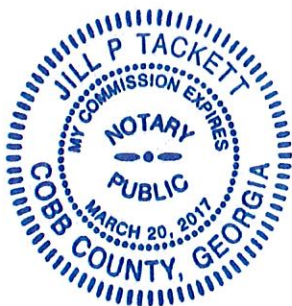
BY: \_\_\_\_\_



JAMES L. NUGENT EVP  
(Print Name and Title)

STATE OF GA )  
 ) SS:  
COUNTY OF COBB )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of MARCH, 2014, by JAMES L. NUGENT, EXEC VP of NATIONS ROOF, INC, a LLC corporation, who  is personally known to me, or [ ] produced \_\_\_\_\_ as identification.



  
NOTARY PUBLIC

Print Name: JILL P. TACKETT  
Commission No.: \_\_\_\_\_  
My Commission Expires: 3/20/2017

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ASHBRITT, INC., a  
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Plaintiff/Counter-Defendant

vs.

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Defendant/Counter-Plaintiff

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THE SCHOOL BOARD OF  
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Third-Party Plaintiff,

vs.

NATIONS ROOF, LLC

Third-Party Defendant.

---

**JOINT STIPULATION FOR DISMISSAL WITH PREJUDICE**

The Parties, Defendant/Counter-Plaintiff, THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA and Plaintiff/Counter-Defendant, ASHBRITT, INC., and Third-Party Defendant, NATIONS ROOF, LLC, by and through their respective counsel and pursuant to the Florida Rules of Civil Procedure hereby file this Joint Stipulation for Dismissal with Prejudice as to of all claims, counterclaims and/or causes of action by the parties hereto. Each Party to this action shall bear their own attorneys' fees and costs. This Court shall retain jurisdiction over the

Settlement Agreement entered into by the parties.

**THE SOTO LAW GROUP, P.A.**  
The Coastal Tower Building  
2400 E. Commercial Blvd, Suite 400  
Fort Lauderdale, Florida 33308

**MOSKOWITZ, MANDELL, SALIM & SIMOWITZ**  
800 Corporate Drive  
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Ft. Lauderdale, Florida 33334

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Attorneys for Defendant/Counter-Plaintiff

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BARRY HERRIN  
Florida Bar Number: 48980  
Attorneys for Third-Party Defendant



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THE SCHOOL BOARD OF  
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NATIONS ROOF, LLC

Third-Party Defendant.

---

**ORDER ON JOINT STIPULATION FOR DISMISSAL**

**THIS CAUSE** came before the Court pursuant to the Joint Stipulation for Dismissal with Prejudice and apprised by agreement by counsel, it is hereby:

**ORDERED and ADJUDGED** that this action is dismissed with prejudice with each side to bear their own attorneys' fees and cost. The Court retains jurisdiction for the sole purpose of enforcing the Settlement Agreement.

**DONE AND ORDERED** in Chambers at Broward County, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
**CIRCUIT COURT JUDGE**

Copies furnished to:  
Counsel of Record