

AGENDA REQUEST FORM
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Meeting Date <div style="border: 1px solid black; padding: 2px; text-align: center;">07/22/14</div>	<div style="display: flex; justify-content: space-around;"><div style="text-align: center;">Open Agenda <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</div><div style="text-align: center;">Special Order Request <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</div></div>	Agenda Item Number <div style="border: 1px solid black; padding: 2px; text-align: center;">HH-1</div>
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TITLE:	Settlement Agreement between The School Board of Broward County, Florida and Greenspoon Marder, P.A.
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REQUESTED ACTION:	Approve the Settlement Agreement between The School Board of Broward County, Florida and Greenspoon Marder, P.A.
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SUMMARY EXPLANATION AND BACKGROUND:	Please see the attached Summary Explanation and Background.
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SCHOOL BOARD GOALS:	<div style="margin-left: 20px;"><input type="checkbox"/> •Goal 1: High Quality Instruction. <input checked="" type="checkbox"/> •Goal 2: Continuous Improvement. <input type="checkbox"/> •Goal 3: Effective Communication.</div>
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FINANCIAL IMPACT:	There is a positive financial impact to the District in the amount of \$400,000.
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EXHIBITS: (List)	1. Settlement Agreement between The School Board of Broward County, Florida and Greenspoon Marder, P.A.
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BOARD ACTION: <div style="text-align: center; font-size: 1.2em; font-weight: bold; margin: 10px 0;">APPROVED</div> <div style="font-size: 0.8em;">(For Official School Board Records' Office Only)</div>	SOURCE OF ADDITIONAL INFORMATION: <table style="width: 100%; border-collapse: collapse;"><tr><td style="width: 60%; border-bottom: 1px solid black;">Thomas C. Cooney, Esq. </td><td style="width: 40%; border-bottom: 1px solid black; text-align: right;">754-321-2050</td></tr><tr><td style="border-bottom: 1px solid black;">J. Paul Carland, II, Esq. </td><td style="border-bottom: 1px solid black; text-align: right;">754-321-2050</td></tr><tr><td style="font-size: 0.7em;">Name</td><td style="font-size: 0.7em;">Phone</td></tr></table>	Thomas C. Cooney, Esq.	754-321-2050	J. Paul Carland, II, Esq.	754-321-2050	Name	Phone
Thomas C. Cooney, Esq.	754-321-2050						
J. Paul Carland, II, Esq.	754-321-2050						
Name	Phone						

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
J. Paul Carland, II, General Counsel
Office of the General Counsel

Approved in Open Board Meeting on: JUL 22 2014

By: School Board Chair

SUMMARY EXPLANATION AND BACKGROUND

This Agreement is the result of efforts to resolve differences and disputes between Greenspoon Marder, P.A. ("Greenspoon") and The School Board of Broward County, Florida (the "SBBC") (the "Parties") arising out of a "Development and Escrow Agreement" dated February 21, 2006 between MPG Parkland, Ltd. as "Developer" ("MPG"), SBBC as "Principal," and Ruden McClosky, P.A. as "Escrow Agent" ("Ruden"). Greenspoon came into possession of the funds held in escrow (the "Escrowed Funds") through Ruden bankruptcy proceedings.

The Development and Escrow Agreement (the "Agreement") concerned property for the proposed new Elementary School "Z" (AKA Elementary School "A-1"), and defined construction requirements for Primary Drive Aisles and the Plat Improvements defined by Broward County.

Pursuant to the Agreement, the SBBC placed \$747,691.43 into Ruden's interest-bearing trust account. On or about July 8, 2008, Ruden disbursed \$408,443.40 of the Escrowed Funds to MPG, including accrued interest. After the disbursement, MPG failed and refused to perform its further development obligations pursuant to the Agreement, ceased operations and was ultimately administratively dissolved.

As a result of MPG's failure and refusal to perform pursuant to the Agreement, Ruden filed an action in Broward County Case Number 10 24454 (02), asking the Court to determine each Defendant's entitlement to the remaining Escrowed Funds.

SBBC filed an Answer and Affirmative Defenses to Ruden's allegations including but not limited to alleging that Ruden's disbursement to MPG was improper. SBBC also filed a Crossclaim against MPG for Breach of the Agreement. The Clerk of Court entered Defaults against MPG in favor of both Ruden and SBBC on July 27, 2010 and August 31, 2010, respectively.

On November 1, 2011, Ruden filed for bankruptcy, and on or about April 23, 2013, Greenspoon was substituted for Ruden into the Lawsuit for all purposes.

On May 30, 2013 Greenspoon obtained Default Final Judgment against MPG. On April 8, 2014, the SBBC obtained Default Final Judgment against MPG which awarded SBBC \$313,764.43 in damages (inclusive of prejudgment interest, attorney's fees and court costs), which has been recorded in the Public Records of Broward County, Florida. A Judgment Lien shall be filed against MPG in the full amount of the award, with accruing interest.

On May 19, 2014, the Court entered a Final Judgment requiring Greenspoon to disburse the Escrowed Funds as set forth in this Settlement Agreement. The Escrowed Funds, including interest, totals \$415,549.40. The Settlement Agreement requires Greenspoon to disburse \$400,000 to the SBBC (the "Settlement Sum"), minus a portion of its accrued fees and costs as provided for in the Escrow Agreement in the amount of \$15,549.40.

This Settlement Agreement resolves all issues remaining in the Lawsuit and all underlying claims and disputes of Greenspoon and SBBC. District staff and the Office of the General Counsel recommend approval of the Settlement Agreement as a fair, reasonable and cost-effective resolution of the dispute between the parties.

End of Document

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereinafter "Settlement Agreement") made and effective as of the 22nd of July, 2014, by and between THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA (hereinafter referred to as "SBBC") and the law firm of GREENSPOON MARDER, P.A. ("GREENSPOON"). SBBC and GREENSPOON shall hereinafter collectively be referred to as the "Parties" unless otherwise referenced herein:

WITNESSETH:

WHEREAS, the Parties to this Settlement Agreement have existing between them certain differences and disputes arising out of a "Development and Escrow Agreement" (the "Escrow Agreement") dated February 21, 2006 between MPG PARKLAND, LTD. ("Developer" or "MPG"), SBBC as "Principal", and RUDEN McCLOSKEY, P.A. as "Escrow Agent" ("RUDEN"), with GREENSPOON having come into possession of the funds held in escrow (the "Escrowed Funds") pursuant to the Escrow Agreement through the Ruden bankruptcy proceedings; and

WHEREAS, pursuant to the Escrow Agreement, RUDEN was to hold the Escrowed Funds and disburse such Escrowed Funds to MPG on certain conditions as set forth in the Escrow Agreement; and

WHEREAS, on or about July 8, 2008, RUDEN, disbursed a portion of the Escrowed Funds to MPG, including accrued interest on the amount disbursed (collectively the "MPG Disbursement"); and

WHEREAS, after the MPG Disbursement, MPG failed and refused to perform its further development obligations pursuant to the Escrow Agreement; and

WHEREAS, as a result of MPG's failure and refusal to perform pursuant to the Escrow Agreement, on June 10, 2010, RUDEN filed an action for interpleader against both MPG and SBBC

in Broward County Case Number 10 24454 (02), alleging and seeking entitlement to attorneys' fees and costs for filing the action and for the Court to otherwise determine each Defendant's entitlement to the remaining Escrowed Funds (hereinafter referred to as the "Lawsuit"); and

WHEREAS, SBBC filed an Answer and Affirmative Defenses to RUDEN's allegations including but not limited to alleging that the MPG Disbursement was improper; and

WHEREAS, SBBC filed a Crossclaim against MPG for Breach of the Escrow Agreement; and

WHEREAS, on July 27, 2010 the Clerk of Court entered a Default against MPG in favor of RUDEN; and

WHEREAS, on August 31, 2010 the Clerk of Court entered a Default against MPG in favor of SBBC; and

WHEREAS, on or about November 1, 2011, RUDEN filed for bankruptcy; and

WHEREAS, on or about April 16, 2012, GREENSPOON was added as a Plaintiff to the Lawsuit for the purpose of resolving RUDEN's entitlement to attorneys' fees and costs and disbursing the remaining funds; and

WHEREAS, on or about April 23, 2013, GREENSPOON was substituted for Ruden into the Lawsuit for all purposes; and

WHEREAS, SBBC and GREENSPOON obtained Final Default Judgments against MPG on April 9, 2014 and May 30, 2013, respectively.

WHEREAS, on May 19, 2014, the Court entered a Final Judgment in Interpleader, requiring GREENSPOON to disburse the Escrowed Funds as set forth herein;

WHEREAS, this Settlement Agreement, subject to the provisions below, resolves all issues remaining in the Lawsuit and all underlying claims and disputes of GREENSPOON and SBBC and

their employees, agents, subcontractors, consultants, officers, directors, servants, executors, heirs, administrators, successors and assigns, relative to the Escrow Agreement, including, without limitation, those claims or causes of action that arose or could have arisen due to any and all events associated with the Lawsuit and those other matters referenced in this Settlement Agreement and any and all other matters related to the Escrow Agreement; and

WHEREAS, nothing in this Settlement Agreement is intended to nor shall any part of this Settlement Agreement act as a release, waiver, limitation, compromise, or discharge of liability or responsibility of MPG, or any of its successors, affiliates or assigns; and

WHEREAS, the Parties hereby enter into this Settlement Agreement, under which GREENSPOON agrees to disburse the remaining Escrowed Property, minus GREENSPOON's fees and costs in the amount of \$15,549.40 ("Allowed Greenspoon Fees"), for a total disbursement to SBBC in the amount of \$400,000.00 (the "Settlement Sum"), in full and complete settlement of the Lawsuit as between SBBC and GREENSPOON.

WHEREAS, the Parties to this Settlement Agreement do not admit any wrongdoing or liability, but have determined to settle and compromise the Lawsuit to avoid the financial expense, burden and uncertainties associated with protracted and complex litigation; and

WHEREAS, the Parties desire to reduce this, their agreement of settlement, to writing so that it may be binding upon the Parties, their successors and assigns; and

WHEREAS, with regard to resolution of the Lawsuit as outlined in this Settlement Agreement, the Parties agree to bear their own fees and costs, including expert and attorney's fees, except for the Allowed Greenspoon Fees specifically set forth herein.

NOW, THEREFORE, in consideration of the foregoing representation of the mutual covenants, promises and considerations hereinafter set forth with the intent to be legally bound, it is agreed by and between the Parties as follows:

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

2. **Matters Settled:** This Settlement Agreement settles all claims relating to the Escrow Agreement and any and all claims and causes of action of any nature whatsoever that the Parties had, have or will have in the future relating to the above referenced Escrow Agreement and Lawsuit, other than any claims which might exist against MPG. This Settlement Agreement does not settle any claims against MPG, and specifically excludes any release from any liability, duty or responsibility of MPG relating to or associated with the Escrow Agreement.

3. **Payment of Settlement Sums:** In full and complete settlement of the Lawsuit, GREENSPOON shall disburse the Settlement Sum to SBBC within thirty (30) days after approval of this Settlement Agreement as described in Paragraph 4 below and delivery to Greenspoon of a fully executed duplicate original of the Settlement Agreement by SBBC.

4. **Approval of Settlement Agreement:** Approval of this Settlement Agreement by SBBC at a duly called Board Meeting shall serve as a condition precedent to any obligations of the Parties relating to this Settlement Agreement. SBBC shall use its best efforts to have the Settlement Agreement submitted and approved at a duly called Board Meeting within a reasonable time from Greenspoon's execution hereof. If the Settlement Agreement is not approved at the Board Meeting, it shall be null and void and of no force or effect whatsoever.

5. **Releases:** At the time the Settlement Sum is paid to SBBC, GREENSPOON shall provide a fully executed Release in favor of SBBC in the form labeled and attached hereto as

Exhibit “A” and SBBC shall simultaneously provide a fully executed Release in favor of GREENSPOON in the form labeled and attached hereto as **Exhibit “B.”**

6. **Assignment of Claims:** GREENSPOON and SBBC each hereby warrants and represents to the other that it has not and shall not assign or transfer any of its rights, title or interest to any claims or causes of action that it has or may have in the future relating to the Escrow Agreement or Lawsuit to any person or entity.

7. **Attorney’s Fees and Costs:**

a. The Parties shall each bear their own attorney’s fees and costs incurred in relation to the Lawsuit, except for the Allowed Greenspoon Fees specifically set forth herein.

b. The prevailing party in any action to enforce any terms of this Settlement Agreement shall be entitled to recover reasonable attorney’s fees and costs, whether incurred pre-litigation, in trial or appellate proceedings.

8. **Choice of Law and Venue:**

a. This Settlement Agreement shall be interpreted in accordance with the substantive laws of the State of Florida.

b. Venue for any dispute arising out of this Settlement Agreement shall lie solely and exclusively in a court of competent jurisdiction in the 17th Judicial Circuit in and for Broward County, Florida and the Parties waive the right to venue elsewhere.

9. **Waiver of Jury Trial:** THE PARTIES TO THIS SETTLEMENT AGREEMENT EXPRESSLY WAIVE THEIR RIGHT TO A JURY TRIAL FOR ANY DISPUTE ARISING OUT OF THIS SETTLEMENT AGREEMENT.

10. **Authority:** The signatories to the Settlement Agreement represent that they have the authority to enter into this Settlement Agreement and have the authority to execute the Releases attached hereto as Exhibit "A" and Exhibit "B."

11. **Entire Agreement:**

a. This Settlement Agreement sets forth the entire Agreement between the Parties hereto and supersedes any and all prior agreements, understandings, or representations between the Parties hereto pertaining to the subject matter hereof.

b. The Parties acknowledge that this Settlement Agreement is the result of their joint efforts and shall be construed as having been drafted by all Parties hereto.

c. The Parties acknowledge and agree that each is foregoing certain rights and assuming certain duties and obligations which, but for this Settlement Agreement, would not have been released or assumed. Accordingly, the Parties agree that this Settlement Agreement is fully and adequately supported by consideration, is fair and reasonable, and that the Parties have had the opportunity to consult with and have in fact discussed this matter with counsel of their choice.

d. The Parties have read this Settlement Agreement and the Exhibits attached hereto, and have freely and voluntarily entered into this Settlement Agreement.

12. **Modification and Waiver:** This Settlement Agreement may not be modified except by a writing signed by all Parties hereto. The failure of any of the Parties executing this Settlement Agreement to require the performance of any term or obligation of this Settlement Agreement or the waiver by any of the Parties executing this Settlement Agreement of any breach of this Settlement Agreement shall not prevent any subsequent enforcement of such term or obligation and shall not be deemed a waiver of any subsequent breach.

13. **Counterparts:** This Settlement Agreement may be executed in counterparts with each counterpart being deemed an original.

14. **Notices:** Notices, to the extent they are referenced in this Settlement Agreement, shall be to the following persons on behalf of the Parties by certified mail, return receipt requested:

As to the SBBC: THOMAS C. COONEY, ESQ.
OFFICE OF THE GENERAL COUNSEL
The School Board of Broward County, Florida
600 Southeast Third Avenue - 11th Floor
Fort Lauderdale, Florida 33301

As to GREENSPOON: BRUCE GOORLAND, ESQ.
200 East Broward Boulevard, Suite 1800
Fort Lauderdale, FL 33301

15. **Effective Date:**

a. This Settlement Agreement shall be binding upon and shall inure to the benefit of the Parties, as well as their successors and assigns.

b. This Settlement Agreement shall be effective as of the time set forth above.

16. **Time is of the Essence:** Time is of the essence for the performance and completion of all duties required by this Settlement Agreement.

17. **Headings:** All headings contained in this Settlement Agreement are designed and used for reference purposes only. The language used in the headings is not controlling and is not considered a substantive part of this Settlement 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:

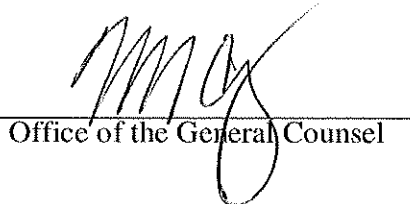


Patricia Good, Chair



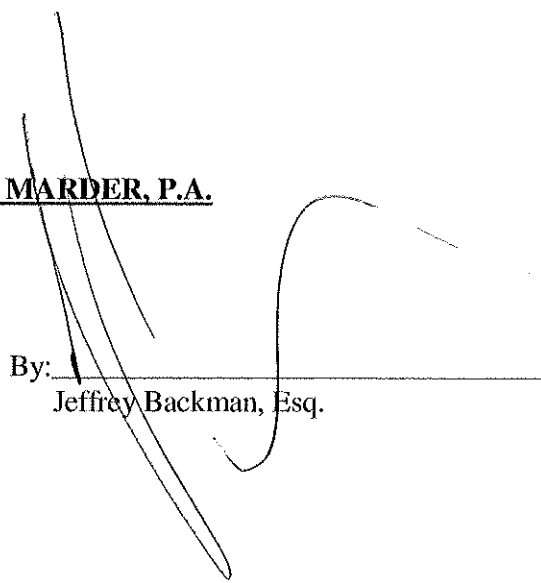
Robert W. Runcie, Superintendent of
Schools

Approved as to form and legal content



Office of the General Counsel

FOR GREENSPOON MARDER, P.A.

By: 

Jeffrey Backman, Esq.

EXHIBIT "A"

RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That GREENSPOON MARDER, P.A., along with its officers, agents, servants, successors, heirs, administrators, executors, successors, and assigns (hereinafter collectively referred to as "GREENSPOON"), for and in consideration of the mutual covenants and promises as set forth in that certain Settlement Agreement, dated the 22nd day of July, 2014 ("Settlement Agreement"), hereby remises, releases, acquit, satisfies and forever discharges THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, and any of its employees, agents, officers, directors, and administrators (hereinafter collectively referred to as "SBBC"), from the matters referenced in the above-referenced Settlement Agreement, as well as from any causes of action or claims whatsoever, in law or in equity, which GREENSPOON can, shall, or may have in the future or did have against SBBC emanating or relating, directly or indirectly, from SBBC's involvement relating to the matters alleged in the Lawsuit initiated by RUDEN McCLOSKEY, P.A. currently styled Ruden McClosky P.A. and Greenspoon Marder P.A. v. MPG Parkland, LTD and The School Board of Broward County, Florida, Broward County Case Number 10-024454 (02). In the event that any portion or provision of this Release is finally adjudged to be invalid or unenforceable for any reason, such portion or provision shall be deemed excised, and such provision shall have no effect upon the remaining portions and provisions of this Release.

It is further stated that the undersigned has read the foregoing Release and knows the content and signs it as a free act.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 8th day of July, 2014.

GREENSPOON MARDER, P.A.

By: _____

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 8 day of July, 2014 by Jeffrey A. Backman, on behalf of GREENSPOON MARDER, P.A., who is personally known to me ~~or who has produced~~ as identification and who did take an oath.


NOTARY PUBLIC, STATE OF FLORIDA

Rachel B. Farkas
Printed Name of Notary Public

My Commission Expires:



EXHIBIT "B"

RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, its officers, agents, servants, successors, heirs, administrators, executors, successors, and assigns (hereinafter collectively referred to as the "SBBC"), for and in consideration of the mutual covenants and promises as set forth in that certain Settlement Agreement, dated the 22nd day of July, 2014 ("Settlement Agreement"), hereby remises, releases, acquits, satisfies and forever discharges GREENSPOON MARDER, P.A., and any of its employees, agents, officers, directors, servants, executors, heirs, administrators, successors, assigns, design professionals, architects, engineers, attorneys and consultants, subcontractors, materialmen and suppliers (hereinafter collectively referred to as "GREENSPOON"), from the matters referenced in the above-referenced Settlement Agreement, as well as from any and all manner of action and actions, claims, liabilities, losses, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, warranties (including express, implied, contractual and statutory), claims and demands whatsoever, in law or in equity, which the SBBC can, shall, or may have in the future or did have against GREENSPOON emanating or relating, directly or indirectly, from the matters alleged in the Lawsuit initiated by RUDEN McCLOSKEY, P.A., styled Ruden McClosky P.A. and Greenspoon Marder P.A. v. MPG Parkland, LTD and The School Board of Broward County, Florida, Broward County Case Number 10-024454 (02). In the event that any portion or provision of this Release is finally adjudged to be invalid or unenforceable for any reason, such portion or provision shall be deemed excised, and such provision shall have no effect upon the remaining portions and provisions of this Release.

It is further stated that the undersigned has read the foregoing Release and knows the content and signs it as a free act.


FOR SBBC

(Corporate Seal)

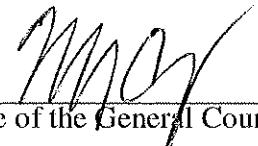
THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA

ATTEST:


Patricia Good, Chair


Robert W. Runcie, Superintendent of
Schools

Approved as to form and legal content


Office of the General Counsel