

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement"), by and between the School Board of Sarasota County Florida, a political subdivision of the State of Florida (the "School Board") and Manhattan Construction (Florida), Inc., a Florida Corporation, f/k/a Manhattan Kraft Construction, Inc, f/k/a Kraft Construction Company, Inc. ("Manhattan") is made as of the date of its execution by the last of the parties hereto (the "Effective Date").

WITNESSETH:

WHEREAS, on or about July 25, 2012, the School Board filed a lawsuit against Manhattan in the Circuit Court of the Twelfth Judicial Circuit of the State of Florida, in and for Sarasota County Florida, Civil Division, Case No. 2012 CA 005987 NC, (the "Litigation"), which action arose from a contract between these parties dated June 14, 2007 (the "Contract", a copy of which is attached as Exhibit A to the School Board's Complaint in the Litigation). The terms of the Contract provided for Manhattan to serve as the construction manager for the Woodland Middle School Project in Sarasota County, Florida (the "Project").

WHEREAS, Manhattan has denied and continues now to deny each and all of the material allegations of the Complaint that the School Board filed in the Litigation. The parties hereto acknowledge and agree that their execution of this Agreement does not constitute and that it is not to be construed as an admission of liability of any kind on the part of Manhattan;

WHEREAS, based on the foregoing, the Parties have agreed to a complete settlement of all matters that were the subject of the Litigation and that it is in their mutual best interest to fully and finally conclude this matter based on the terms that are set forth herein;

WHEREAS, all of the provisions of this Agreement shall be binding upon the parties as of the Effective Date, unless otherwise specified in a particular provision of this Agreement;

WHEREAS, if, for any reason, it is necessary for any or all of the Parties to sign additional documents to implement or carry out the purpose of the provisions of this Agreement, each such party shall sign and deliver them as required for that purpose;

WHEREAS, it is agreed that the provisions of such additional documents shall conform to and shall be consistent with the provisions of this Agreement;

WHEREAS, this Agreement shall be deemed to have been jointly prepared by all of the undersigned Parties;

WHEREAS, all previous or contemporaneous oral or written promises, representations or acknowledgments relating to any matters that are directly or indirectly referenced or otherwise addressed in this Agreement are hereby expressly excluded and superseded by the terms that are specifically set forth in this Agreement;

WHEREAS, all oral and written communications in the course of prior negotiations, except for this Agreement and its exhibits, shall be and remain confidential and inadmissible in any action or proceeding to interpret this Agreement or for any other purpose;

WHEREAS, this Agreement may be amended only by a writing signed by the Parties to this Agreement; and

WHEREAS, this Agreement shall be admissible in evidence and shall be enforceable in any judicial or administrative proceeding or arbitration to enforce the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and respective obligations of the Parties hereto, as set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals**. The Parties agree that the foregoing recitals are hereby adopted and incorporated into this Agreement.

2. **Release**. Except for the obligations of this Agreement, which are not hereby released and which shall survive the execution hereof, The School Board, for itself and on behalf of all other parties claiming or that could claim by or through the School Board, hereby remises, releases, acquits, waives, satisfies and forever discharges Manhattan and their respective officers, directors, shareholders, members, employees, agents, servants, representatives, insurers, sureties, subcontractors, including but not limited to Quality Walls Enterprises Inc. and Spectrum Contracting Inc., material suppliers, and any and all other parties or entities that provided work, material or services to the Project or in any way associated with Manhattan with respect to the matters that are the subject of the Litigation or that participated with Manhattan in performing the scope of work specified in the Contract Documents for the Project (collectively, the "Released Parties") of and from all manner of action and actions, cause and causes of action, suit, debts, and sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, subrogation, agreements, promises, guarantees, third-party claims, damages, judgments, executions, claims and demands whatsoever, which The School Board has or may have against any Released Parties, whether arising in tort, contract, by virtue of statute, or otherwise, and whether in law or in equity, regardless of whether the same are known or unknown, suspected or unsuspected, patent or latent, or have yet accrued or not accrued as of the date of execution hereof, arising out of or related in any way to the construction and/or design issues that were raised in this Litigation. This Release also includes any and all known defects and/or conditions discovered prior to the execution of this Agreement irrespective of whether they were raised in this Litigation,

including but not limited to the alleged asphalt defect. However, notwithstanding anything herein to the contrary, this Release specifically excludes latent defects that may arise or be discovered after the date of this Settlement and Release which are unrelated to any specific issues raised in this Settlement Agreement and/or Litigation.

3. Acts in Furtherance of Settlement.

a) Within ten (10) business days from the Effective Date, Manhattan will pay by means of a check for the benefit of the School Board the sum of \$80,000 (the "Settlement Funds"). Manhattan's check will be made payable to the Matthews, Eastmoore, et al, P.A. Trust Account and delivered to the School Board's counsel, Martin Garcia, Suite 500, 1777 Main Street, Sarasota, FL 34236.

b) Counsel for the School Board shall present the Manhattan check for payment, but shall thereafter hold the Settlement Funds in escrow and not release those funds to the School Board until the parties have filed with the Court the Settlement Stipulation and Joint Motion for Entry of Order of Dismissal with Prejudice and the Court has entered the proposed Order Confirming Settlement and Entry of Dismissal With Prejudice, copies of which are attached as Exhibits "A" and "B", respectively, to this Agreement.

c) The Parties hereto shall pay their own, respective attorneys' fees and costs that have previously been incurred in this action, including but not limited to those incurred in concluding and effectuating the terms of this Agreement.

4. **Successors and Assigns.** The Parties hereto agree that this Agreement shall be binding upon their successors, assigns, heirs, executors, administrators, spouses, associates, partners, officers, directors, shareholders, servants, agents, attorneys, employees, insurance companies, bonding companies, sureties and affiliates.

5. **Choice of Law and Venue.** If any action is commenced to enforce or interpret any of the provisions of this Agreement, the parties hereby agree that this Agreement shall be interpreted, enforced and governed by the laws of the State of Florida. Each party hereby agrees that the exclusive venue and jurisdiction for any action to enforce this Agreement, or all rights provided for herein, shall be in the County or Circuit Court of the Twelfth Judicial Circuit, in and for Sarasota County, Florida and no other court.

6. **Advice of Counsel.** The Parties acknowledge that they have been represented by counsel of their choice in the negotiations leading up to the execution of this Agreement, that they have read this Agreement and have had it fully explained to them by their counsel.

7. **No Presumption Against Any Party As Drafter.** Each party has participated in the review, revision and finalization of the terms of this Agreement. Accordingly, the parties hereto therefore acknowledge and agree that in interpreting this Agreement, any

uncertain or ambiguous provisions shall not be construed against any party solely on the basis that that party selected the uncertain or ambiguous language.

8. **Authority**. The signatories hereto, and each of them, represent and warrant that they have the sole right and exclusive authority to execute this Agreement and that they are not restricted in doing so. Additionally, the signatories hereto also represent and warrant that they are the sole and lawful owners of all claims that they are releasing herein, that they have the power and authority to execute a release of all such claims and that they have not sold, assigned, transferred, conveyed, hypothecated or otherwise disposed of any claim or demand relating to any matter covered by this Agreement.

Each party agrees to indemnify each other party from any and all claims, demands, loss, damage, liability and expense, including costs of suit and reasonable attorneys' fees resulting from any breach of the representations and warranties that are set forth in this paragraph 8.

9. **Good Faith; Other Actions**. Each party expressly covenants to deal with the other Parties in good faith in the performance of this Agreement. The Parties further agree and authorize their respective attorneys to execute any and all documents and to undertake any and all actions reasonably necessary to effectuate the terms of this Agreement.

10. **Integration**. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter herein contained. There are no promises, warranties, covenants, undertakings or representations other than those expressly set forth herein, and each party hereby expressly acknowledges that he, she or it has not relied upon any prior or current promises, warranties, covenants, undertakings or representations whatsoever by any other party hereto, nor any agent or attorney of any other party hereto, other than those that are expressly set forth herein. This Agreement may be amended only by written instrument, executed by all of the parties hereto.

11. **Severability**. Wherever possible, each provision of this Agreement shall be interpreted in a manner so as to effectuate and render valid each and all of the provisions set forth herein. If, however, any provision of this Agreement, or any portion thereof, is prohibited by law or otherwise found invalid under any law, only that prohibited or invalid provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provisions, which are hereby deemed severable.

12. **Attorneys' Fees**. In the event that any party to this Agreement institutes or defends against any action or proceeding, including but not limited to litigation or arbitration, to preserve, protect or enforce any claim or right arising under this Agreement, the prevailing party in such action or proceeding shall be entitled, in addition to any other relief granted therein, to an award in said action or proceeding of that sum of money which represents the actual attorneys' fees reasonably incurred by that prevailing party in the prosecution or defense of said action or proceeding.

13. **Counterparts/Execution.** This Agreement may be executed in counterparts and shall be effective when such counterparts have been executed by all parties hereto, as if such Parties had all executed one original. A facsimile or electronic signature will be deemed to be equally as valid as an original signature.

IN WITNESS WHEREOF, the School Board and Manhattan have executed this Agreement the day and year indicated below.

The School Board of Sarasota
County, Florida

Manhattan Construction (Florida), Inc.

By: _____
Jane Goodwin, Chair

By: _____
Michael C. Lauder
Senior Vice President - Central Florida
Area Manager

Date: _____

Date: _____

Approved for Legal Content,
April 10, 2013, by Matthews Eastmoore,
Attorneys for The School Board
of Sarasota County, Florida
Signed: ____ASH_

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA**

THE SCHOOL BOARD OF SARASOTA COUNTY,

Plaintiff,

v.

Case No. 2012 CA 005987 NC

MANHATTAN CONSTRUCTION (FLORIDA), INC.

Defendant.

_____ /

**SETTLEMENT STIPULATION AND JOINT MOTION
FOR ENTRY OF ORDER OF DISMISSAL WITH PREJUDICE**

Plaintiff The School Board of Sarasota County (the "School Board") and defendant Manhattan Construction (Florida), Inc. ("Manhattan"), by their undersigned counsel, hereby stipulate and petition the Court for entry of an order dismissing this action with prejudice, and state as follows:

1. The School Board and Manhattan have reached a settlement and thereby resolved the disputes that are the subject of this action.
2. The parties hereby confirm their agreement to the voluntary dismissal **WITH PREJUDICE** of this action.
3. Each party shall bear their own attorneys' fees and costs incurred herein.

WHEREFORE, the School Board and Manhattan request that this Court enter the attached, proposed form of Order Confirming Settlement and Entry of Dismissal with Prejudice.

Martin Garcia
Matthews, Eastmore, Hardy,
Crauwells & Garcia, P.A.
1777 Main Street, Suite 500
Sarasota, FL 34236
Counsel for the School Board

Date: _____

Michelle M. Krone
Kubicki Draper
13350 Metro Parkway
Suite 401
Fort Myers, FL 33966
Counsel for Manhattan

Date: _____

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA**

THE SCHOOL BOARD OF SARASOTA COUNTY,

Plaintiff,

v.

Case No. 2012 CA 005987 NC

MANHATTAN CONSTRUCTION (FLORIDA), INC.,

Defendant.

_____ /

**ORDER CONFIRMING SETTLEMENT
AND ENTRY OF DISMISSAL WITH PREJUDICE**

This matter having come before the Court upon the parties' Settlement Stipulation and Joint Motion for Entry of Order of Dismissal with Prejudice, and the Court having reviewed the pleadings and being otherwise fully advised in the premises, it is upon consideration thereof,

ORDERED and ADJUDGED as follows:

1. This cause is hereby dismissed **WITH PREJUDICE**.
2. Each party shall bear their own attorneys' fees and costs incurred herein.

DONE AND ORDERED in Chambers at Sarasota, Sarasota County, Florida, this

_____ day of _____, 2013.

Circuit Court Judge

CC: Martin Garcia, Esq.
Michelle M. Krone, Esq.
Thomas F. Icard, Jr., Esq.