

**Hardee County School Board
Agenda Analysis**



5.03

Author:

Todd Markel, Coordinator of IT / MIS

Date:

September 21, 2015

Subject:

Agreement with ModSpace for two District Office portables

Background Information:

IT/ MIS staff currently have offices in two 24' x 60' portables leased from ModSpace. They were put in place as a temporary solution in 2004 after Hurricane Charley. We pay ModSpace \$1,376 per month for these portables. The two existing 24' x 60' portables have the following deficiencies:

- Both roofs leak
- Windows leak
- Walls have been replaced because of rot and mold.
- Plumbing was built as temporary and needs constant repair.
- Doors do not seal properly
- Flooring is deteriorating in several locations.

After an on-site review, ModSpace's repair manager and regional manager determined that both portables are no longer worthy of required repair costs and offered the attached lease agreement. The replacement portables are refurbished and will have the same dimensions as existing portables and have more insulation and new windows for better energy efficiency.

Administrative Consideration:

1001.51 Duties and responsibilities of district school superintendent- Recommend to the district school board the desirable terms, conditions, and specifications for contracts for supplies, materials, or services to be rendered and see that materials, supplies, or services are provided according to contract.

Fiscal Impact:

	<u>2015-16</u>	<u>2016-17</u>
Monthly lease costs of \$1,643 x 19 months= \$31,217	\$11,501	\$19,716
One-time removal of old portables	\$ 2,400	
One-time delivery and set up of new portables	\$ 3,600	

Proposed Recommendation to School Board:

Recommend approval lease with ModSpace for two District Office portables and associated removal, delivery and set up fees.

Action Required:

Action Agenda

10/2

BOARD ACTION

9/24/15
Approved



LEASE AGREEMENT NO:

OFFER NO: 127729

ACCOUNT NO: 200112

**RETURN EQUIPMENT to
ModSpace:**

FL-Tampa
3075 Whitten Road
Lakeland, FL

Phone:+US(863)648-1464
Fax:+US(863)648-1174

Modular Space Corporation a Delaware corporation ("ModSpace") hereby leases the equipment specified below (the "Equipment") to:

HARDEE COUNTY SCHOOL BOARD.
ATTN:Accounts Payable
Maintenance Dept.
P.O. Box 1678
FL, Wauchula 33873

The Equipment will be located at
(subject to Section 3 on attached page):

District Office
Wauchula, FL 33873

Contact : Todd Markel
Phone : (863)773-9058
PO # :
Proj Name:
Proj :

Customer hereby leases Equipment from ModSpace for a minimum term of 19 Month(s) (the "Minimum Lease Term" or "Term") from the start of the lease term in accordance with the terms and conditions of this Lease Agreement including the terms and conditions set forth on the attached page (this "Lease"). Rental month is defined as a thirty-day period.

Customer agrees to pay ModSpace without demand and in advance the Monthly rental and other charges on the due dates set forth in this Lease. The anticipated delivery date for the Equipment, subject to Section 3(c) on the attached page, will be on or about .

Unit	Class	Width	Length	Serial No.	Insurance Value	Term	Frequency	Rental Amount
24x60 four corner offices and two restrooms	DBL1260	24.00	60.00	None	\$0.00	19	Monthly	\$1,550.00

ONE TIME CHARGES	
Delivery	
Fuel Charge	(Qty: 4) \$ 72.00
Transportation of Building	(Qty: 4) \$ 400.00
Installation	
Block, Level & Anchor <i>Setup on level site</i>	(Qty: 2) \$ 3128.00
Remove	
Unblock	(Qty: 2) \$ *
Return Delivery	
Fuel Charge	(Qty: 4) \$ *
Transportation of Building	(Qty: 4) \$ *
One Time : \$3,600.00	
* Sales Tax (One Time) : \$0.00	
Grand Total (One Time) : \$3,600.00	

OTHER MONTHLY CHARGES	
Rental	
Personal Property Expense	(Qty: 2) \$93.00
Monthly : \$1,643.00	
* Sales Tax (Monthly Lease Items) : \$0.00	
Grand Total (Monthly) : \$1,643.00	

*Building Set-up (block, level, anchor) on Level Dirt Site
-- other set-ups (i.e., concrete, asphalt) will require additional installation charges --*

* Tax rates will vary with delivery address. Taxes are subject to change by tax authorities without notice.

** If Building Return and Removal rates are not specified , such charges will be billed at current rates at time of termination. **



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Prevailing/ Davis-Bacon Wage Applicable: No

Badging or Access Requirements Applicable: No

Union Labor: No

No agent, employee or representative of ModSpace has any authority to make any representation or warranty concerning the Equipment that is not specifically included in this Lease. Unless specifically identified in this Lease, this Lease supersedes all prior negotiations, proposals and documents. This Lease will not be subject to any additional provision that may be contained in the Customer's purchase order, although Customer's purchase order number may be used by the parties as a convenient reference for invoicing purposes.

Dolly and rigging trailer in place are not included in the standard setup price and additional charges may apply.

Customer is responsible for any and all plumbing manifolds between and Underneath units as necessary water supply and waste. All fixtures are stubbed out below fixtures.

Customer is responsible for changing the HVAC filter at least every 30 days and will bear costs of repairs resulting from failure to change the filter or damages to the HVAC system resulting from extraordinary conditions.

The removal and installation of tires, axels or hitches to setup or teardown a trailer is not included in ModSpace's standard setup unless otherwise specified.

Installation charges based on level, flat compacted surface not to exceed 6" slope within 100' or additional charges may apply.

Additional charges will be billed in the event site is not ready or for any reason ModSpace is not allowed to do their scope of work upon arrival at site.

This Lease incorporates General Terms and Conditions, Form US20150216, a copy of which can be provided in full text or viewed electronically on ModSpace's website at http://www.modspace.com/resources/document-library/ (Form US20150216). Those General Terms and Conditions include, but are not limited to, disclaimers of warranties of merchantability and fitness and limitation on damages. It is the Customer's responsibility to receive or obtain Form US20150216. Customer's direction to deliver the Equipment or commence performance, whether such direction is verbal or in written form, serves as Customer's acceptance of all such terms and conditions contained therein.

If Customer has previously executed a Master Agreement with ModSpace, those terms and conditions shall govern this transaction.

Signed by duly authorized agents, with the intent to be legally bound, this 24 day of Sept, 20 15.

By: [Signature]
(Customer or authorized agent)

By: _____
(ModSpace authorized agent)

Name (Please print): Thomas Trevino

Name (please print): _____

Accepted and delivered by: School Board Chair

Date: _____

Remarks: _____

Received and accepted by: _____

Date: _____

ALL RIGHT, TITLE AND INTEREST OF MODULAR SPACE CORPORATION ("LESSEE") AND RESUN CHIPPEWA, LLC (AS SUCCESSOR BY CONVERSION TO RESUN CHIPPEWA, INC.) (THE "LESSOR") HEREUNDER HAS BEEN PLEDGED TO, AND ARE SUBJECT TO THE SECURITY INTEREST OF (i) BANK OF AMERICA, N.A., AS FIRST LIEN AGENT, PURSUANT TO THAT CERTAIN THIRD AMENDED AND RESTATED SECURITY AGREEMENT, DATED AS OF JUNE 6, 2011, BETWEEN THE LESSEE AND BANK OF AMERICA, N.A., AS FIRST LIEN AGENT, AS AMENDED, RESTATED, AMENDED AND RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME (THE "FIRST LIEN SECURITY AGREEMENT") AND (ii) WELLS FARGO BANK, NATIONAL ASSOCIATION, AS SECOND LIEN AGENT, PURSUANT TO THAT CERTAIN SECOND LIEN SECURITY AGREEMENT, DATED AS OF FEBRUARY 25, 2014, AMONG THE LESSEE, CERTAIN OF ITS AFFILIATES AND WELLS FARGO BANK, NATIONAL ASSOCIATION, AS SECOND LIEN AGENT, AS AMENDED, RESTATED, AMENDED AND RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME (THE "SECOND LIEN SECURITY AGREEMENT", TOGETHER WITH THE FIRST LIEN SECURITY AGREEMENT, THE "SECURITY AGREEMENTS"). NEITHER THE LESSOR NOR THE LESSEE SHALL HAVE ANY RIGHT TO TRANSFER ITS RIGHT, TITLE OR INTEREST HEREUNDER TO ANY PARTY EXCEPT PURSUANT TO AND IN ACCORDANCE WITH THE PROVISIONS OF THE CREDIT AGREEMENT OR INDENTURE, AS APPLICABLE, REFERRED TO IN THE RESPECTIVE SECURITY AGREEMENT.

**TERMS AND CONDITIONS OF LEASE AGREEMENT****1. Lease**

This transaction is a lease as defined by the Uniform Commercial Code and not a sale. Customer does not acquire through this Lease or by payment of rental under this Lease any right, title or interest in or to the Equipment (individually, a "Unit"), except the right to possess and use the Equipment so long as Customer is not in default under this Lease. Customer acknowledges that the Equipment is personal property and shall not, at any time, constitute real property, an improvement thereon or a fixture.

2. Rent and Other Payments

(a) The Minimum Lease Term ("Term") begins on the date that ModSpace substantially completes its scope of work for installation ("Substantial Completion"). Monthly rent accrues through and including the later of the month in which the Term (as may have been renewed on a month-to-month basis or otherwise) expires or the Equipment is made available for removal and returned to ModSpace in accordance with the terms of this Lease. Teardown and return charges are due and payable at the expiration or earlier termination of the Term. All sums payable by Customer under this Lease, including rent, delivery, installation, Equipment modification and change orders, are due and payable in accordance without demand and are not subject to or contingent upon Customer's prior receipt of payment from its customer under any prime contract. This Lease Agreement is a net lease and Customer's obligation to pay rent under this Agreement shall be absolute and unconditional under all circumstances, notwithstanding: (i) any setoff, abatement, reduction, counterclaim, recoupment, defense or other right which Customer may have against ModSpace, its assignees, the manufacturer or seller of the Equipment, or any other person for any reason whatsoever; (ii) any defect in operation, or any damage to, or destruction of the Equipment; (iii) any interruption or cessation of use or possession of the real property or project site where the Equipment is or is to be installed; or (iv) any insolvency, bankruptcy, reorganization or similar proceedings instituted by or against Customer.

(b) Customer will pay or reimburse ModSpace for all sales, use taxes, personal property expenses, and other taxes, fees or assessments related directly or indirectly to the Equipment, its use or value, excluding taxes relating to income ("Taxes"). In the event a properly executed tax exemption certificate is presented to and approved by ModSpace, Customer will not be charged for sales and use taxes for which it is exempt, but will remain liable for personal property expenses and other taxes, fees or assessments related directly or indirectly to the Equipment, its use or value for which the exemption does not apply. If at any time the exemption claimed is deemed invalid, ModSpace shall invoice Customer for any tax not previously invoiced. Customer's obligations under this subsection will survive the termination of this Lease.

(c) Invoices issued by ModSpace are solely for Customer's convenience. Any amount not paid within twenty (20) days of the due date set forth on the invoice will be subject to a late charge of one and one-half percent (1-1/2%) per month (or the highest rate permitted by law), with a minimum charge of fifteen dollars (\$15.00) per month, until such invoice is paid in full.

(d) If applicable, Customer shall pay the amount specified on the first page hereof as a security deposit (the "Security Deposit"), to be held by ModSpace without liability to Customer for interest, as security for Customer's performance of the terms and conditions of this Agreement; and in furtherance thereof, Customer hereby grants to ModSpace a security interest in the cash from time to time comprising the Security Deposit and all proceeds thereof. In the event of Customer's default, ModSpace may apply the Security Deposit in payment of its cost, expenses and attorney fees in enforcing the terms of this Agreement and to indemnify ModSpace against any damages sustained by ModSpace, provided however, nothing herein contained shall be construed to mean that the recovery of damages by ModSpace shall be limited to the amount of the Security Deposit. In the event all or any portion of the Security Deposit is applied as aforesaid, upon demand Customer shall deposit additional amounts with ModSpace so that the Security Deposit shall always be maintained at its original amount.

3. Delivery, Installation and Return Delivery

(a) Customer will provide clear access for delivery and installation of the Equipment by standard mobile transport vehicles at the site on which the Equipment is to be used (the "Site"). Unless otherwise set forth in this Lease, Customer is solely responsible, at its cost, for Site preparation, including, without limitation, structural or grade alterations, snow and water removal, identification and relocation of utility lines. Customer will provide firm and level ground with no more than a six-inch slope, from one end to the other, for safe and unobstructed installation for the Equipment. Customer is solely responsible for Site selection and subsurface conditions, including environmental conditions. MODSPACE ASSUMES NO LIABILITY NOR OFFERS ANY WARRANTY FOR THE FITNESS OR ADEQUACY OF THE SITE OR UTILITIES AVAILABLE AT THE SITE. Customer will schedule its operations at the Site so that the installation of the Equipment by ModSpace can be carried out in one continuous operation and in proper sequence. ModSpace operations will be subject to ModSpace safety guidelines and operating instructions. Unless otherwise agreed to in writing by ModSpace, for Site services including, but not limited to, Equipment anchoring, utility runs, footings, and foundations, the Customer will verify and demonstrate to ModSpace the presence or absence of any underground utilities in the designated building location via "mark-out" or other accepted means prior to ModSpace installation of the building. Should this physical verification and identification not be completed prior to delivery of the Equipment, ModSpace may choose to perform this verification at Customer's cost or reschedule its operation, as appropriate, at Customer's cost.

(b) Unless otherwise set forth in this Lease, Customer is solely responsible, at its cost, for obtaining all licenses, building and other permits, approvals and certificates as may be required for the installation of the Equipment and its lawful operation or occupancy. All certificates applicable to the Equipment will reflect ModSpace ownership thereof. Customer represents and warrants to ModSpace that, prior to delivery of the Equipment, Customer shall have obtained all necessary approvals and permits required for the installation of the Equipment at the Site.

(c) Substantial Completion and Equipment removal are subject to delay due to weather, fire, riot, civil disobedience, strike or other labor actions, acts of God, or any circumstances beyond ModSpace's control (including but not limited to breaches by ModSpace subcontractors or manufacturers) which delay the manufacture or modification of products or the making of deliveries in the normal course of business.

(d) Prices for delivery, installation, teardown, return delivery and other "one-time" charges, the due dates of such charges, the Substantial Completion target date, the scheduled date for and completion of Equipment demobilization and return delivery assume accuracy of the information given to ModSpace with respect to Site conditions, are subject to adjustment to the extent that the timing of or physical nature of access to the Site is or becomes limited, the Site does not have adequate load bearing or topographic qualities or is otherwise not properly prepared, snow or water is not removed, utilities are not correctly located or properly disconnected, provision of utilities is not timely, applicable licenses or permits are not provided in a timely manner or Customer otherwise delays completion of ModSpace's scope of work. In the event that any act or omission by Customer (including the failure of Customer to complete any work or obtain any permits for which it is responsible) or

**TERMS AND CONDITIONS OF LEASE AGREEMENT**

Customer's failure to make the Site available and ready causes a delay in Substantial Completion or removal of the Equipment ("Customer Delay") or causes ModSpace to suspend, reschedule or duplicate its performance of work Customer will be liable for applicable charges and additional costs incurred by ModSpace to the extent caused by such delay. ModSpace may start the Term and commence billing prior to Substantial Completion in the event Customer Delay exceeds fourteen (14) days.

(e) ModSpace may suspend work at the Site if ModSpace deems the Site to be unsafe. If, in ModSpace's opinion, anchor straps are required for the safe installation of the Equipment, ModSpace may install anchor straps at an additional cost to Customer.

(f) ModSpace will not be obligated to modify the scope of work prior to execution of a mutually acceptable written change order.

(g) Customer will not interfere or allow others to interfere with the progress of ModSpace's work. Customer will not occupy or allow others to work on or in any portion of the Equipment prior to Substantial Completion without ModSpace's permission and Customer will be responsible for and indemnify and hold ModSpace harmless from and against any damage to the Equipment or other property, or injury or death arising in connection to such occupancy or work. No charge for labor or material furnished by Customer shall be allowed as a credit under this Lease.

4. Maintenance

(a) Customer will not move or in any way modify the Equipment without prior written consent from ModSpace. Notwithstanding any such consent, Customer is liable, upon termination of the Lease, for the cost of restoration of the Equipment to its original specification and building code compliance. ModSpace may place its name on the Equipment, and Customer will assure that such name is not removed or concealed in whole or in part.

(b) This is an absolute net lease. Customer is solely responsible for routine maintenance including, but not limited to, janitorial services, changing of HVAC filters, light bulbs and ballasts, minor repairs of the Equipment and removal of snow from and about the Equipment. At its sole cost, Customer will keep the Equipment at all times, until removed from the Site, in good repair and operating condition, subject to ordinary wear and tear, free of any and all liens and encumbrances and will maintain Site grading to ensure proper water diversion from the Equipment. Customer is solely responsible for damage due to settling. ModSpace may inspect the Equipment at any time and, if ModSpace believes the Equipment to be misused, abused or neglected, ModSpace may, with written notice, summarily remove and repossess the Equipment at Customer's cost.

(c) Customer will perform, execute and comply with all Laws that in any way affect the use, operation, maintenance or storage of the Equipment. "Laws" means all laws, rules, regulations, orders, writs and decrees that now exist or hereafter arise (including without limitation the Americans with Disabilities Act).

(d) Customer will not use or store any hazardous, toxic, radioactive or bio-hazardous substances or petroleum products ("Hazardous Materials") in the Equipment, except for such household cleaning products in quantities as would be normal in the operation of a commercial office; locate the Equipment at a remediation, decontamination or nuclear site or adjacent to any site at which any biological, chemical or nuclear agent is believed to have been released; or use the Equipment as a medical laboratory or for Hazardous Materials testing or remediation. Ordinary wear and tear does not include contamination. ModSpace may, at Customer's sole cost, have the Equipment inspected for and decontaminated of Hazardous Materials. In addition to any other remedy available to ModSpace, in its sole discretion ModSpace may require Customer to purchase the contaminated Equipment at the stated Insurance Value absent contamination or at the full Replacement Cost at time of loss for identical new Equipment (whichever is greater), or convey to Customer title for any Equipment used in breach of this section and Customer hereby appoints ModSpace as attorney-in-fact for such purpose.

(e) Customer agrees that the Equipment leased hereunder will not be occupied by any person other than Customer or its agents, employees or invitees or used for residential or dormitory purposes.

5. Warranties

Excepting for the repair of structural or mechanical defects in the Equipment not caused or contributed to by Customer abuse, misuse, neglect, or excessive wear and tear, **THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, AND ALL WARRANTIES OF ANY KIND, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE ARE HEREBY EXCLUDED.** ModSpace will have no liability for the repair of any defect or condition resulting from Customer's relocation of the Equipment, utility connections, alterations or use of the Equipment for a purpose for which it was not intended, vandalism. ModSpace will not be liable for loss of use of the Equipment or other damages arising from use of the Equipment.

(a) Damage or contamination of the Equipment due to water infiltration or exposure is not considered ordinary wear and tear. If any returned Equipment is found to be damaged or contaminated by water infiltration or exposure, ModSpace will charge the Customer for the remediation or require Customer to purchase the Equipment at the current market price charged for a similar undamaged Unit.

(b) The Equipment made part of this Lease is manufactured and coded for commercial use and occupancy only. MODSPACE MAKES NO REPRESENTATIONS, EXPRESS OR IMPLIED, AND SHALL HAVE NO LIABILITY OF ANY NATURE WHATSOEVER, AS TO THE SUITABILITY, STRUCTURAL OR OTHERWISE, FOR THE USE OF THE EQUIPMENT.

6. Limitation of Damages

Customer and ModSpace do expressly waive against each other all claims and demands for loss of profits and other consequential, incidental or punitive damages arising in connection with this Lease. ModSpace is not liable for any loss or damage to any property stored, located or transported in, upon, under or around any Equipment, and Customer does hereby waive any and all claims and demands for any such loss or damage.

7. Termination and Equipment Return

(a) Subsequent to the delivery of the Equipment, Customer has no right to terminate this Lease prior to the expiration of the Minimum Lease Term or any renewal or extension thereof. Acceptance of Equipment return before expiry of the Minimum Lease Term or any renewal or extension does not constitute a release of Customer's rental obligations. In the event of such termination, Customer must provide ModSpace ninety (90) days prior written notice of the date on which the Equipment is to be returned. Customer unconditionally agrees to pay a Lease cancellation charge equal to the remaining payments for the unfulfilled Minimum Lease Term, any applicable charges for services or modifications performed by ModSpace, any applicable charges related to Value Added Products including, but not limited to, steps, ramps, furniture, generators, holding tanks, third party storage, plus return delivery and tear down charges. In the event Customer terminates this Lease prior to the delivery of the Equipment, Customer further unconditionally agrees to pay cancellation charges in accordance with the following: (i) for in-fleet Equipment, a cancellation charge equal to three (3) months rent plus any applicable charges for modifications performed on the Equipment and other services completed by ModSpace, (ii) for new or custom built Equipment, a cancellation charge equal to all payments for the unfulfilled Minimum Lease Term plus any charges for services completed by ModSpace. All such charges will be billed on a lump sum basis unless other payment options are agreed to in writing by ModSpace.

(b) If Customer continues to possess or occupy the Equipment after the expiration of the initial Term or any Lease renewal term, with or without consent of ModSpace, Customer will be deemed to have renewed this Lease on a month-to-month basis at the then current ModSpace month-to-month Flex Rate and further subject to the terms and conditions hereof. Customer or ModSpace may terminate any such month-to-month renewal upon thirty (30) days written

**TERMS AND CONDITIONS OF LEASE AGREEMENT**

notice. ModSpace may adjust teardown and return charges if any renewal or month-to-month term exceeds three (3) months.

(c) Prior to Equipment return, Customer will, at its sole cost, disconnect all utilities, disconnect and remove all appendices, remove all personal property, prepare the Site for unobstructed access to and removal of the Equipment by standard mobile transport, and vacate the Equipment. ModSpace will not be liable for any personal property left in or on the Equipment, and such property shall be deemed abandoned. Any accessories and additions to the Equipment shall, at ModSpace's option, be deemed property of ModSpace upon Equipment return.

(d) At its sole cost, Customer will provide clear access to the Equipment for teardown and removal by standard mobile transport vehicles upon the expiration or termination of the Term or, if ModSpace elects to terminate a month-to-month renewal, upon fifteen (15) days prior notice, and Customer irrevocably grants ModSpace authority to enter the Site for such purpose. The Equipment shall be returned to ModSpace broom clean and in the same condition as delivered, ordinary wear and tear excepted. Customer will pay ModSpace for all missing or damaged tires, axles and hitches. The Equipment will be deemed returned to ModSpace upon removal from the Site. Termination of this Lease will become effective only when the Equipment has been returned to ModSpace in accordance with this Lease and Customer has paid to ModSpace all rent and other charges.

8. Indemnification

Except to the extent of the negligence or willful misconduct of ModSpace, its employees, subcontractors and agents, Customer shall indemnify, defend and hold harmless ModSpace, its employees and agents from any and all loss, claims, liabilities, damages, fines, forfeitures, seizures, penalties and expenses (including attorneys' fees and investigative costs) (collectively "Losses") that may arise from or in connection with any of the following:

- (a) The loss of or damage to the Equipment following delivery and prior to removal from the Site by ModSpace due to any and all perils or casualty including, without limitation, flood and earthquake;
- (b) The death of or injury to any person or damage to the property of any person as a result of, in whole or in part, the use or condition of the Equipment following delivery and prior to removal from the Site by ModSpace;
- (c) Any act or omission of Customer in violation of this Lease;
- (d) The use or possession of the Equipment following delivery and prior to removal from the Site by ModSpace; and
- (e) Any damage to Customer's property or the property of any third parties incurred during or in connection with the Equipment following delivery and prior to removal from the Site by ModSpace.

The obligations contained in this Section 8 will survive expiration or termination of this Lease and removal from the Site by ModSpace.

9. Insurance

(a) At its sole expense, Customer will procure and keep in full force and effect, from the initial delivery date until the removal of all Equipment the following policies of insurance satisfactory to ModSpace as to the insurer and as to the form and amount of coverage, with premiums prepaid: (i) Commercial General Liability Insurance with a minimum combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate, written on an Occurrence Form, including coverage for premises, operations, contractual liability, broad form property damage and independent contractors, naming Modular Space Corporation as an additional insured. (ii) Commercial Property Insurance protecting against all loss and damages, at the full Insurance Value, as stated on the front of the Lease, sustained or suffered due to the loss of or damage to the Equipment as a result of any peril or casualty, including flood, naming Modular Space Corporation and Bank of America, NA as a loss payee. In the event the Equipment is new or custom built to Customer's specifications, the Commercial Property Insurance shall cover all loss and damages at the full Replacement Cost at time of loss for identical new Equipment. Customer may self-insure the obligations contained herein with ModSpace Risk Department approval.

(b) Customer will deliver certificates evidencing all such insurance to ModSpace prior to delivery of the Equipment except to the extent not required pursuant to Section 10 below. Each certificate will state that such insurance will not terminate or be materially changed without thirty (30) days' prior written notice to ModSpace.

(c) Obtaining insurance as described herein, including Section 10 below, will not affect Customer's obligations and indemnities under this Lease, and the loss, damage to or destruction of any of the Equipment will neither terminate this Lease nor, except to the extent that ModSpace is actually compensated by insurance paid for by Customer, relieve Customer of any of Customer's liability under this Lease. Until the Equipment is removed from the Site, Customer assumes all risk of loss or damage to the Equipment and agrees to indemnify and hold ModSpace harmless from any loss resulting from theft, destruction or damage to the Equipment.

(d) For Special Event transactions, the insurance limits required in Section 9(a) are to be adjusted to reflect a minimum combined single limit of \$5,000,000 per occurrence and \$10,000,000 annual aggregate.

(e) Upon request, ModSpace will furnish its standard insurance certificate evidencing Workman's Compensation, General Liability and Auto Liability, each to be effective for ModSpace's performance of delivery, installation, removal and maintenance work on the Site. ModSpace's insurance will be primary with respect to its scope of work only. Waivers of subrogation and policy endorsements will not be provided.

10. Optional Insurance and Damage Waiver

(a) Customer may choose to (i) enroll in an Optional Insurance Program to cover general liability risks (the "Optional General Liability Insurance Program") to satisfy its obligations in Section 9(a)(i) and/or (ii) accept a Damage Waiver Option to cover damage to the Equipment (the "Damage Waiver Option Program") to satisfy its obligations in Section 9(a)(ii). In addition, Customer will be enrolled automatically in the Damage Waiver Option Program if it fails to deliver certificates of insurance required by Section 9 above within 30 days after execution of this Lease or during the term of the lease within 30 days after the expiration of a pre-existing certificate

(b) The Optional General Liability Insurance Program is provided through an independent insurance carrier and is subject to the terms and conditions (including cancellation provisions) of that policy, which is not underwritten by ModSpace. The Optional Insurance Program is not offered in all geographic areas, at all times during the year or for Special Event transactions. Additional information may be found at www.modspace.com or from an authorized ModSpace representative

(c) The Damage Waiver Option Program is subject to additional terms and conditions, a copy of which may be found at www.modspace.com or from an authorized ModSpace representative. The Damage Waiver Option Program may be cancelled by the Customer at any time by delivering evidence of policies of insurance as set forth in Sections 9(a)(i) or 9(a)(ii), as appropriate, within ten (10) days prior to the effective date of such cancellation. **THE DAMAGE WAIVER IS NOT INSURANCE COVERAGE**

(d) The coverage provided under the Optional General Liability Insurance Program and limitation of liability under the Damage Waiver Option Program does not extend to Equipment transportation, installation, removal services or Equipment contents and extends only to Equipment installed on ground level.

11. Default



TERMS AND CONDITIONS OF LEASE AGREEMENT

The occurrence of any of the following constitutes an Event of Default:

- (a) Customer fails to pay when due any rent or fails to perform its obligations under Section 9 hereof;
(b) Customer fails to pay when due any other amount due or perform or observe any other term or condition hereunder and such failure remains uncured more than ten (10) days after delivery of written notice;
(c) Customer or any person or entity which controls more than fifty percent (50%) of Customer's equity (a "Control Person") or any guarantor of any of Customer's obligations hereunder (a "Guarantor") becomes insolvent, becomes subject to any voluntary or involuntary bankruptcy or reorganization proceedings, makes an assignment for the benefit of creditors, becomes subject to a receiver, admits its inability to pay its debts as they become due or enters into any type of liquidation or dissolution;
(d) Customer, any Control Person or any Guarantor defaults under any other agreement with ModSpace or any affiliate of ModSpace; and
(e) Any letter of credit, guaranty or other security given to secure the performance of Customer's obligations under this Lease expires, terminates or in the reasonable opinion of ModSpace becomes worthless.

Upon an Event of Default, ModSpace may withhold delivery or declare the entire rent for the remainder of the Term (as may have been renewed or extended) and tear-down and return costs immediately due and payable and accelerate and make immediately due and payable any other amounts owing under this Lease. ModSpace may also retake and retain any of the Equipment free of all rights of Customer without any further liability or obligation to redeliver to Customer, and Customer hereby grants ModSpace the right to enter upon any premises where the Equipment is located in order to remove the same. If an Event of Default occurs under Section 11(c), such accelerations will occur automatically without the need for declaration. Customer will pay to ModSpace on demand all costs incurred by ModSpace in enforcing its rights under this Lease, including without limitation reasonable attorneys' fees. The remedies provided in favor of ModSpace will be cumulative and in addition to all other remedies provided in this Lease or existing at law or in equity. No action taken by ModSpace hereunder will release Customer from any of its obligations under this Lease.

If ModSpace retakes possession of the Equipment or any part of the Equipment and there is in, upon or attached to such repossessed Equipment any other property owned by Customer or in the custody of Customer, ModSpace may dispose or take possession thereof and hold the same for Customer, at Customer's sole cost.

12. ModSpace Right to Cure

If Customer defaults in any of its obligations under this Lease, whether or not an Event of Default then exists, ModSpace may pay all amounts or perform or cause to be performed all obligations required to be paid or performed by Customer under this Lease and recover from Customer as additional rent all amounts so paid and the reasonable value of all services so performed.

13. Notices

Any notice or demand under this Agreement shall be valid only if in writing and shall be deemed effective three (3) days following mailing if mailed by US certified mail, or upon receipt if given in any other manner, addressed to the attention of ModSpace at the branch location set forth on the face page hereof, and to Customer at the address set forth thereon, or at such other address as either may designate in writing.

14. Miscellaneous

- (a) Customer may not assign this Lease or sublet, rent or otherwise hire out or transfer possession of any of the Equipment to any person or entity without the prior written consent of ModSpace. ModSpace may assign this Lease and the rentals reserved under this Lease. If ModSpace makes such an assignment, the assignee will acquire all rights and remedies possessed by or available to ModSpace under this Lease. ModSpace may subcontract any or all of its obligations under this Lease in the ordinary course of business.
(b) In the event the face page of the Lease omits specific Unit identification, the Equipment subject to this Lease will be the Equipment identified on the delivery receipt or, in the absence thereof, in fact delivered to the Site or identified on the invoice.
(c) If this Lease is executed in connection with a federal government transaction, the only prime contract flow down provisions applicable to this Lease and associated site services are those set forth in FAR 52.244-6 (2/2009).

IN WITNESS WHEREOF, the parties hereto have the authority and duly executed this Lease Agreement as of the 24 day of Sept., 20 15

LESSOR: MODULAR SPACE CORPORATION

LESSEE: Hardee County School Board

By: [Signature]

Print Name: Thomas Trevino

Title: School Board Chair

E-MAIL ADDRESS: TTrevino@hardee.k12.fl.us

JURISDICTION OF ORGANIZATION: Hardee County, Florida

ORGANIZATIONAL NUMBER OR TAX IDENTIFICATION NUMBER: 85-8013896129C-6 ; Federal Tax No. 59-6000631



Contractual Insurance Requirements for Mobile and Modular Buildings (US ONLY)

Per Section 9(a) of the Modular Space Corporation lease agreement, you must provide insurance for all units leased from Modular Space Corporation with the following coverage:

1. **Commercial General Liability Insurance** with a minimum combined single limit of \$1,000,000 per occurrence, written in an occurrence form, including coverage for premises, operations, contractual liability, broad form property damage, independent contractors and personal injury liability, naming Modular Space Corporation as an additional insured.
2. **Commercial Property Insurance** protecting against all loss and damages, at full replacement cost, sustained or suffered due to the loss of or damage to the Equipment as a result of collision, fire, lightning, theft, flood, windstorm, explosion or any other casualty, naming Modular Space Corporation and Bank of America, N.A. as a loss payees.
3. A **Blanket Certificate** (covering all leased equipment) is strongly recommended.

Please indicate how you will be meeting the Modular Space Corporation lease requirements and send back with lease documents:

OPTION 1 - select one or both of the ModSpace's convenient and cost-effective programs:	
<input type="checkbox"/> Commercial General Liability Program This program satisfies the lease requirement for Commercial General Liability Insurance. Under this program, you receive insurance coverage offered by Philadelphia Indemnity Insurance Company and administered by Thomas Rutherford, Inc. The insurer will defend you and pay those amounts that you are legally obligated to pay due to bodily injury and property damage arising from the proper use and occupancy of a modular unit leased from Modular Space Corporation up to the policy limits. Steps, stairs, and ramps are also covered when they are used in connection with a modular unit leased from Modular Space Corporation. An outline of cover is available upon request. Coverage is subject to underwriting and specific terms and conditions set forth in your policy.	<input type="checkbox"/> Damage Waiver Program This program satisfies the lease requirements for Commercial Property Insurance. With this program we waive, for a fee, (a) your obligation under the Lease agreement to carry Commercial Property Insurance and (b) your liability to us for repair or replacement of the building structure for loss or damage as specified in Section 9(a)(ii) of the Lease Agreement. The waiver is effective only if the Lessee does not violate any other provision of the Lease Agreement. You will remain liable to us for the first \$1000 of damage per unit per occurrence. This waiver does not cover unit contents not owned by ModSpace, damage due to collision, vandalism or "Act of God". This waiver is not insurance coverage.
OPTION 2 - I will be providing my own insurance for the leased units:	
<input checked="" type="checkbox"/> I (the lessee) have insurance in accordance with Section 9 of the lease agreement with respect to all requirements except as elected in Option 1 above. I will deliver a certificate of insurance no later than 14 days after equipment delivery as required by Section 9(b) of the lease agreement. "Modular Space Corporation, 1200 Swedesford Road, Berwyn, PA 19312" must be listed as "Additional Insured" & "Loss Payee" and to include full replacement cost with \$1,000,000 minimum Liability coverage. If I fail to deliver the insurance certificate within the 14 days I understand that all Modular Space Corporation has the right to impose an insurance processing fee as well as an	
Agency Name: <u>Ascension Benefits & Insurance Solutions</u>	Agency Name: <u>Regina Lucente, CIC, CRIS, CPIA</u>
Agency Address: <u>700 Central Parkway</u> <u>Stuart, FL 34994</u>	Agency Phone#: <u>800-431-2221</u>
	Agency Fax#: <u>772-287-1387</u>

X Signature of Lessee

Thomas Trevino
 Print Name

9/24/15
 Date

TO BE FILLED OUT BY MODSPACE BRANCH PERSONNEL	
Customer Account #	Customer Number
Lease Agreement Number	Unit Number
Module #	Unit (s) Serial Number
Unit Inventory Value	Model Year

IF OPTION 2 is selected please fax form to 888-204-0015 or email modspaceinsurance@modspace.com
 Corporate Headquarters - 1200 Swedesford Road, Berwyn, PA 19312 www.modspace.com



INDEMNITY AGREEMENT

This Indemnity Agreement ("Agreement") is hereby included and made a part of Modular Space Corporation d/b/a ModSpace ("ModSpace") quotation to and any subsequent award by _____ ("Customer") to perform work at _____. In the event of conflict, the terms and conditions contained herein shall supersede those contained in any notice to proceed or subsequent contract ("Agreement").

Customer has requested ModSpace to perform certain work related to the installation of modular buildings ("Equipment"). ModSpace is solely relying on Customer's knowledge of the geographic area where the Equipment is to be installed including, but not limited to, seismic activity, possibility of high winds, tornadoes and flooding. ModSpace **recommends** that the Equipment be anchored to reduce damage to the Equipment, injury to occupants or other persons, and the property of third parties. In the event Customer declines ModSpace's installation of anchors, ModSpace will comply with Customer's refusal based on and in express and sole reliance on the representations and other terms and conditions set forth herein.

Customer acknowledges that ModSpace has not done and is not expected to perform any analysis, due diligence or investigation related to the appropriateness, installation or use of anchors, anchor straps or other anchoring products. MODSPACE MAKES NO REPRESENTATIONS, EXPRESS OR IMPLIED, AND SHALL HAVE NO LIABILITY OF ANY NATURE WHATSOEVER, DUE TO CUSTOMER'S REFUSAL TO HAVE ANCHORS, ANCHOR STRAPS, OR OTHER ANCHORING PRODUCTS INSTALLED AT THE SITE OR ATTACHED TO THE EQUIPMENT.

Customer agrees to indemnify, defend and hold ModSpace harmless from and against any and all loss, cost, expense, damage, penalty, obligation or liability whatsoever including, but not limited to, attorney's fees (collectively "Losses") arising from or claimed to be in connection with Customer's refusal to have anchors, anchor straps or other anchoring products installed at the site or attached to the Equipment. This indemnity shall survive the termination of the Agreement.

Company Name: Hardee County School Board

Authorized Signature: _____

Date: 9/24/15

Name & Title: Thomas Trevino, Chair

Modular Space Corporation

Authorized Signature: _____

Date: _____

Name & Title: _____

Corporate Headquarters - 1200 Swedesford Road, Berwyn, PA 19312 www.modspace.com

Hardee County School Board will accept anchors, anchor straps and any anchoring products installed at the site or attached to the equipment.