

Office of School Facilities
Jaime G. Torrens, Chief Facilities Officer

SUBJECT: THAT THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, AUTHORIZE THE SUPERINTENDENT TO:

- 1) EXECUTE A PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT BY AND AMONG ANGELICA BROWN, A SINGLE WOMAN AND ORLANDO FERNANDEZ, A SINGLE MAN (COLLECTIVELY, THE "APPLICANT"), THE SCHOOL BOARD, AND MIAMI-DADE COUNTY, IN CONNECTION WITH A 20-UNIT RESIDENTIAL DEVELOPMENT LOCATED AT S.W. 224 STREET AND S.W. 125 AVENUE, UNINCORPORATED MIAMI-DADE COUNTY, PROVIDING FOR MONETARY PROPORTIONATE SHARE MITIGATION PURSUANT TO THE INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL FACILITY PLANNING BETWEEN MIAMI-DADE COUNTY AND MIAMI-DADE COUNTY PUBLIC SCHOOLS; AND
- 2) EXECUTE ANY OTHER DOCUMENTATION THAT MAY BE REQUIRED TO EFFECTUATE IMPLEMENTATION OF THE AGREEMENT; AND
- 3) GRANT OR DENY ANY APPROVALS REQUIRED UNDER THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, ISSUANCE OF REPORTS AND RELEASES, AND PLACING THE APPLICANT IN DEFAULT, AS MAY BE APPLICABLE

COMMITTEE: FACILITIES AND CONSTRUCTION

LINK TO STRATEGIC BLUEPRINT: EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES

Background

On August 10, 2016, the School Board authorized a Public School Concurrency Proportionate Share Mitigation Development Agreement by and among the School Board, Miami-Dade County ("County") and Karis Village, LLC (the "Agreement"). The

need for the Agreement arose from the fact that the subject development failed to meet school concurrency at the elementary school level, in this case the Caribbean K-8 Center Concurrency Service Area (the "CSA"), by eleven (11) student stations; consequently, pursuant to the Interlocal Agreement For Public School Facility Planning Between Miami-Dade County And Miami-Dade County Public Schools ("ILA"), the developer mitigated by contributing the equivalent monetary value of one elementary school classroom (i.e. twenty-two (22) student stations, net of impact fees).

Since the mitigation contribution exceeded the number of student stations required by the particular development by eleven (11) (the "extra seats"), and as provided under governing state law and the ILA, the developer is entitled to recover a portion of the cost of those extra seats if subsequent residential developments impacting the same CSA choose to purchase some or all of the extra seats. In this regard, the School Board, at its August 10, 2016 meeting, authorized the establishment of a Mitigation Bank to be entirely administered by the District with an initial quantity of eleven (11) Banked Seats (hereinafter referred to as "Mitigation Bank #2016-006").

Additional Information

Angelica Brown, a single woman and Orlando Fernandez, a single man (collectively, the "Applicant") is in the process of obtaining a development order from the County for a new Residential Development at S.W. 224 Street and S.W. 125 Avenue (see location map), impacting the above referenced CSA, contingent upon obtaining a school concurrency determination from the District, in accordance with the terms of the ILA. Pursuant to State Statutes and the ILA, the Residential Development was tested for Public School Concurrency, and failed to meet the applicable level of service ("LOS") standard at the subject CSA (Caribbean K-8 Center). As such, and in light of the availability of the extra seats in Mitigation Bank #2016-006, representatives of the Applicant, the County and the District (collectively "the Parties"), reached consensus on a Mitigation option allowing the Applicant to purchase four (4) of the available Banked Seats from Mitigation Bank #2016-006, at the established price of \$22,544 per seat, all subject to Board and County approval. This will require the Parties to enter into a Public School Concurrency Proportionate Share Mitigation Agreement (the "Mitigation Agreement").

It should be noted that with purchase of these four (4) seats, there will be seven (7) Banked Seats in Mitigation Bank #2016-006 left to be purchased by future developers.

Public School Concurrency Proportionate Share Mitigation Development Agreement

The Mitigation Agreement between the School Board, County and Applicant shall contain, substantially, the following terms and conditions:

- the Applicant shall make an upfront monetary contribution to the School Board for each of the four (4) available Banked Seat purchased from Mitigation Bank #2016-006, at the established price of \$22,544 per seat, for a total amount of \$90,176;
- upon the full execution of the Mitigation Agreement by all appropriate Parties and

receipt of payment, the District shall issue a Finding of Available School Facility Capacity ("Finding"). Issuance of the Finding by the District shall be a pre-condition to issuance of building permits by the County for the subject Residential Development;

- as required under governing state law and the ILA, the District shall provide the Applicant an Educational Facilities Impact Fee Credit of up to \$62,840, once the final amount of the impact fee payment is known;
- the Mitigation Agreement shall expire upon the Parties' completion of their performance of all obligations under the Mitigation Agreement or within six (6) years from the date that the Mitigation Agreement is executed by all Parties, whichever comes first;
- the Applicant may assign its rights, obligations and responsibilities under this Mitigation Agreement to a third party purchaser of all or any part of fee simple title to the Residential Development. Any such assignment shall be in writing and shall require the prior written consent of all of the Parties;
- the Applicant shall pay all recordation costs to the District necessary to record the Mitigation Agreement and any related documentation, including without limitation, Assignments, if any, and Releases;
- in the event of any dispute among the Parties, each Party shall be responsible for its own Attorney's fees, and the Parties waive trial by Jury in any action, proceeding or counterclaim brought by any Party against any other Party or Parties with respect to any matter arising under the Mitigation Agreement; and
- for purposes of this Agreement, the Superintendent or his/her designee shall be the Party designated by the Board to grant or deny any and all approvals required under the Agreement, including, without limitation, issuance of Reports and Releases, and placing the Applicant in default, as may be applicable.

The County will be considering the Mitigation Agreement at an upcoming meeting of the Board of County Commissioners, following which the Mitigation Agreement will be executed by the Parties. The Mitigation Agreement has been reviewed by the School Board Attorney's Office for legal sufficiency, and found to be in compliance. The Mitigation Agreement, in final form, is attached hereto as Exhibit "A".

RECOMMENDED:

That The School Board of Miami-Dade County, Florida, authorize the Superintendent to:

- 1) execute a Public School Concurrency Proportionate Share Mitigation Development Agreement by and among Angelica Brown, a single woman and Orlando Fernandez, a single man (collectively, the "Applicant"), the School Board, and Miami-Dade County, in connection with a 20-unit residential development located at S.W. 224 Street and S.W. 125 Avenue, unincorporated Miami-Dade County, as provided under the Interlocal Agreement For Public School Facility Planning Between Miami-Dade County And Miami-Dade County Public Schools; and
- 2) execute any other documentation that may be required to effectuate implementation of the Agreement; and
- 3) grant or deny any approvals required under the Agreement, including, without limitation, issuance of Reports and Releases, and placing the Applicant in default, as may be applicable.

IMR:ir

Location Map

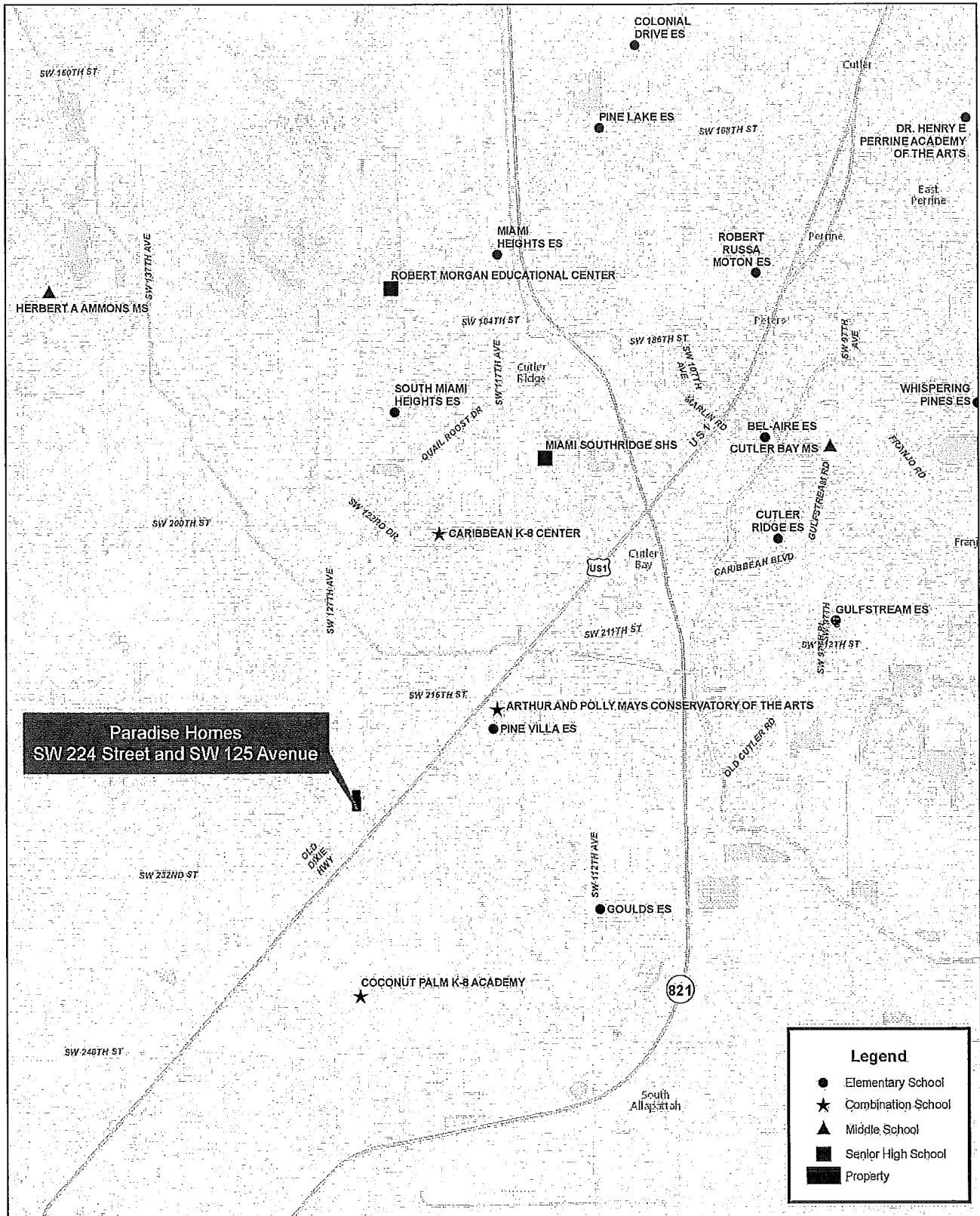


Exhibit "A"

This instrument prepared by
Ana Rijo-Conde
Miami-Dade County Public Schools
1450 NE 2 Avenue, Room 525
Miami, Florida 33132

After Recording return to:
Ana R. Craft, Esquire
School Board Attorney's Office
1450 NE 2nd Avenue, #430
Miami, FL 33132

PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT

THIS PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT ("Agreement"), is made and entered this _____ day of _____, 20__, by and between **THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA**, a body corporate and political subdivision of the State of Florida, hereinafter referred to as "**School Board**" or "**School District**," whose address is 1450 NE 2ND Avenue, Miami, Florida 33132; **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "**County**", whose address is 111 NW First Street, Miami, Florida 33128; and **ANGELICA BROWN, a single woman** and **ORLANDO FERNANDEZ, a single man**, hereinafter referred to as "**Applicant** or "**Property Owner**," whose address is 16259 SW 88 Street, Miami, FL 33193, collectively referred to herein as the "**Parties**."

RECITALS:

WHEREAS, the Applicant is the fee simple owner of that certain tract of land (Folio # 3069130100200) located in the County, as more particularly described on **Exhibit "A"** (the "**Property**"), and as further illustrated within a Sketch To Accompany

A Legal Description, certified to the School Board (**Exhibit “B”**), with both Exhibits attached hereto and incorporated herein and

WHEREAS, the Applicant has submitted an application seeking approval to develop no more than 20 residential dwelling units on the Property (the “**Development Proposal**”); and

WHEREAS, the School Board and the County entered into that certain Interlocal Agreement for Public School Facility Planning Between Miami-Dade County And Miami-Dade County Public Schools, dated May 4, 2009 (adopted and executed by the County on May 7, 2009), to implement public school concurrency and to coordinate the approval of residential development with the provision of adequate public school facilities (“**ILA**”), incorporated herein by reference; and

WHEREAS, the Applicant has filed a T-Plat Application with the County (T-22405 dated April 6, 2016) incorporated herein by reference, which requires School Facility Capacity availability for each student generated by the Development Proposal at each of the three school levels (i.e. elementary, middle and senior high school); and

WHEREAS, the Parties agree that: (1) adequate School Facility Capacity is not available for four (4) of the elementary students generated by the proposed residential dwelling units, at the Level of Service Standard within the Concurrency Service Area in which the Development Proposal is located, to accommodate the anticipated number of public school students that the Development Proposal will generate; (2) the needed School Facility Capacity for the applicable Concurrency Service Area is not available in any contiguous Concurrency Service Areas within the same Geographic Area; and (3)

available School Facility Capacity will not be in place or under actual construction within three (3) years after the approval of the Development Proposal; and

WHEREAS, the Parties agree that authorizing these new residential dwelling units will result in a failure of the Level of Service Standard for School Facility Capacity in the applicable Concurrency Service Area, or will exacerbate existing deficiencies in Level of Service Standards; and

WHEREAS, the Parties agree that Public School Concurrency shall be satisfied by the Applicant's execution of this legally binding Agreement and full compliance therewith, to provide mitigation proportionate to the demand for Public School Facilities to be created by these new residential dwelling units; and

WHEREAS, the School Board, at its meeting of August 10, 2016 (Agenda Item F-4), authorized entering into a Public School Concurrency Proportionate Share Mitigation Development Agreement between the School Board, the County and Karis Village, LLC, a Florida Limited Liability Company (hereinafter referred to as "**Karis Village**"), which agreement is incorporated herein by reference (the "**KARIS VILLAGE, LLC Agreement**"); and

WHEREAS, as a part of the **KARIS VILLAGE, LLC Agreement**, the School Board authorized the creation and establishment of the **KARIS VILLAGE, LLC Mitigation Bank**, hereinafter referred to as "**Mitigation Bank**" or "**Mitigation Bank #2016-006**"; and

WHEREAS, the Parties agree that the Applicant has selected as its Proportionate Share Mitigation option, the purchase of four (4) banked seats (“**Monetary Proportionate Share Mitigation**”) from Mitigation Bank #2016-006, subject to contingencies set forth below; and

WHEREAS, the Parties further agree that the Applicant shall pay the Monetary Proportionate Share Mitigation funds as further required herein; and

WHEREAS, The School Board of Miami-Dade County, Florida, has authorized the execution of this Agreement in accordance with Board Item F-2, Board Action No. _____, at its meeting of March 15, 2017; and

WHEREAS, the Board of County Commissioners, at its meeting of _____, 2017, duly passed and adopted on that date, Resolution No. _____, authorizing the appropriate County officials to enter into this Agreement; and

WHEREAS, the Applicant has duly approved this Agreement, and represented to the School Board and to the County, and hereby confirms, that Angelica Brown, a single woman and Orlando Fernandez, a single man has been and are hereby fully authorized to execute this Agreement.

NOW, THEREFORE, in Consideration of the Sum of Ten Dollars (\$10.00), the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. **INCORPORATION OF RECITALS.** The foregoing recitals are true and correct and are hereby incorporated into this Agreement by this reference as if fully set forth herein.

2. **DEFINITION OF MATERIAL TERMS.** Any terms that are not defined herein are defined as set forth in the ILA or in the KARIS VILLAGE, LLC Agreement. In the event of a conflict between the ILA, the KARIS VILLAGE, LLC Agreement and this Agreement, the ILA shall control.

3. **LEGALLY BINDING COMMITMENT.** The Parties agree that this Agreement constitutes a legally binding commitment by the Applicant to provide Monetary Proportionate Share Mitigation for the Development Proposal for the Property sought to be approved by the Applicant.

4. **MONETARY PROPORTIONATE SHARE MITIGATION.** The Parties agree that the Applicant has elected to satisfy its Monetary Proportionate Share Mitigation requirement under this Agreement through the purchase of available student stations from the Mitigation Bank (“Capacity Credits” or “Banked Seats”) by the Applicant and transfer thereto. The purchase price of the Banked Seat(s) has been established at Twenty Two Thousand Five Hundred Forty Four Dollars (\$22,544) per seat. As such, the amount of the Monetary Proportionate Share Mitigation under this option shall be Ninety Thousand One Hundred Seventy Six Dollars (\$90,176) (i.e. 4 seats x \$22,544 purchase price of a Banked Seat = Monetary Proportionate Share Mitigation payment of \$90,176). The Monetary Proportionate Share Mitigation funds shall be used

by the School District towards the creation of twenty-two (22) elementary school student stations at the Caribbean K-8 Center (the “**School Project**”).

A. **Payment:** The Parties to this Agreement covenant and agree that the Applicant will make its Monetary Proportionate Share Mitigation payment to the School Board within ten (10) calendar days after the School Board approval of the Agreement. Payment of the cost of the Banked Seats, in the amount of Ninety Thousand One Hundred Seventy Six Dollars (\$90,176), shall be by cashier check, wire transfer or any other method of payment acceptable to the School Board’s Office of Treasury Management (“**Capacity Credits Purchase Funds**”). The Monetary Proportionate Share Mitigation payment shall be non-refundable after issuance of Finding, as defined under Section 4B hereof.

B. **Issuance of Finding:** Upon the full execution of this Agreement by all appropriate Parties and receipt by the School District of the Capacity Credits Purchase Funds, and transfer of Capacity Credits to the Applicant, the School District shall issue a Finding of Available School Facility Capacity (“**Finding**”) pursuant to the ILA. The duration and effect of this Finding shall be in accordance with the ILA. However, in no event shall this Finding, or any allocation of student seats based on this Finding (“**School Concurrency Allocation**”), continue to be effective if the Applicant fails to perform his/her/its obligations under this Agreement. Conversely, once Applicant has completely performed his/her/its obligations under this Agreement, Applicant shall be entitled to rely on the Finding and School Concurrency Allocation,

subject to the terms and conditions stated therein. In the event Applicant fails to pay the Monetary Proportionate Share Mitigation Payment as provided for herein, the School District, at its sole option, may cancel this Agreement and return the Capacity Credit to the Mitigation Bank. Issuance of a Finding by the School District shall be a pre-condition to issuance of building permits by the County for the subject Development Proposal.

5. **EDUCATIONAL FACILITIES IMPACT FEE CREDIT.** As consideration for the Applicant's Monetary Proportionate Share Mitigation specified herein, the Parties agree that the School District shall provide a credit toward any Educational Facilities Impact Fee(s) ("**Impact Fee**") imposed by Miami-Dade County ordinance for construction of the Development Proposal ("**Impact Fee Credit**"). The value of the Impact Fee Credit has been estimated at Sixty Two Thousand Four Hundred Dollars (\$62,400), however, the Impact Fee Credit shall not exceed Sixty Two Thousand Eight Hundred Forty Dollars (\$62,840).

The final Impact Fee Credit amount shall be determined by the County, pursuant to the then current Miami-Dade County Educational Facilities Impact Fee Ordinance (Chapter 33K, of Miami-Dade County Code of Ordinances), the Interlocal Agreement Between Dade County and The School Board of Dade County, Florida, relating to Educational Facilities Impact Fee Monies, and the Metropolitan Dade County Educational Facilities Impact Fee Administrative Procedures Manual, as each may have been amended or may be amended from time to time. The amount of the Impact Fee Credit will not include any administrative or other fees which the County may impose as part of its administrative process.

6. **EFFECTIVE DATE.** This Agreement shall take effect upon the last of the Parties signing this Agreement, but in no event later than May 31, 2017 (“Effective Date”). Failure to deliver this Agreement to the School Board executed by the Applicant by March 1, 2017 and by the County by April 21, 2017 may, in the sole discretion of the School District, result in the revocation of the Concurrency Determination issued by the School District on October 25, 2016, incorporated herein by reference.

7. **TERM.** This Agreement shall expire upon the Parties’ completion of their performance of all obligations herein or within six (6) years from the Effective Date, whichever comes first.

8. **STATUTORY COMPLIANCE.** The Parties agree that this Agreement satisfies the requirements for a binding Proportionate Share Mitigation agreement in Section 163.3180(6)(h)2, Florida Statutes and as provided for in the ILA.

9. **NOTICES AND GENERAL CONDITIONS.**

A. All notices or communications and deliverables under this Agreement by any Party to the others shall be sufficiently given or delivered if dispatched by (a) certified U.S. mail, postage pre-paid, return receipt requested, (b) hand delivery, (c) Federal Express or other comparable overnight mail service, (d) telephone facsimile transmission with transmission receipt, or (e) electronic mail to the following addresses, or as the same may be changed in writing from time to time. Whenever any of the Parties desires to give notice to the others, such notice must be in writing, addressed to the Party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it is changed by written notice in compliance with the provisions of this

paragraph. Until otherwise designated by amendment to this Agreement, the Parties designate the following as the respective places for giving notice (“Notice”):

In the case of Notice or communication to the School Board:

The School Board of Miami-Dade County, Florida
c/o Superintendent of Schools
1450 N.E. Second Avenue, Room 912
Miami, Florida 33132

With copies to:

Miami-Dade County Public Schools
Facilities Planning
Attn: Deputy Chief Facilities & Eco-Sustainability Officer
1450 N.E. Second Avenue, Room 525
Miami, Florida 33132
Arijo@dadeschools.net; and concurrency@dadeschools.net

The School Board of Miami-Dade County, Florida
c/o School Board Attorney
1450 NE 2 Avenue, Suite 400
Miami, Florida 33132
Walter.Harvey@dadeschools.net
and Acraft@dadeschools.net

In the case of Notice or communication to the Applicant:

Ms. Angelica Brown
16259 SW 88 Street,
Miami, FL 33193,
Phone: 786-355-2816 - Fax: 305-223-7371
Email: cristhcabuilders@att.net

Mr. Orlando Fernandez
16259 SW 88 Street,
Miami, FL 33193,
Phone: 786-258-3719 - Fax: 305-223-7371
Email: fern8620@att.net

With a copy to:

Rafael Fabian, Esquire
10631 N. Kendall Drive, Suite 145
Miami, Florida 33176
Phone: 305-856-6700 - Fax: 305-856-6909
fabianpa@bellsouth.net

In the case of Notice or communication to the County:

Mark R. Woerner, AICP, Assistant Director,
Assistant Director for Planning, Department of Regulatory and Economic
Resources Development Services Division
Miami-Dade County
111 NW 1st Street - 11th Floor
Miami, Florida 33128
Phone: 305-375-2842 - Fax: 305-375- 2560
mark.woerner@miamidade.gov

With a copy to:

Dennis A. Kerbel, Assistant County Attorney
Miami-Dade County
111 NW 1st Street – Suite 2800
Miami, Florida 33128
Phone: 305-375- 5229 - Fax: 305-375- 5634
DKERBEL@miamidade.gov

B. For purposes of this Agreement, the Superintendent of Schools or his/her designee shall be the Party designated by the School Board to grant or deny any and all approvals required under this Agreement, including, without limitation, issuance of reports, as provided herein.

C. Except as otherwise provided in this Agreement, any Notice or deliverable shall be deemed received only upon actual delivery at the address set forth above. Notices or deliverables delivered after 5:00 PM (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving

Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. “Day” as used in this Agreement shall be defined as calendar day, unless otherwise provided. Counsel for the School Board, counsel for the County and counsel for the Applicant may deliver Notice on behalf of the School Board, the County and the Applicant, respectively. Any Party or other person to whom Notices are to be sent or copied may notify the other Parties of any change in name or address to which Notices shall be sent by providing the same pursuant to this provision.

10. **RELEASE.** When all of the Parties’ obligations set forth herein are fully paid and performed, each Party shall release all other Parties from this Agreement, and all Parties shall release all other Parties from any and all future claims, costs or liabilities arising out of the provision of Monetary Proportionate Share Mitigation in accordance with this Agreement. These releases shall be simultaneously exchanged and shall be recorded in the Official Records of Miami-Dade County, Florida, evidencing such performance.

11. **VENUE; CHOICE OF LAW; ATTORNEY’S FEES.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida without regard to its conflicts of laws provisions. Any controversies or legal issues arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be submitted to the jurisdiction of the State Court of the 11th Judicial Circuit, in and for, Miami-Dade County, Florida. The Parties agree that in the event of any dispute of whatever nature relating to this Agreement, venue shall be in Miami-Dade County, Florida. The Parties

further agree that, in the event of a dispute among the Parties, each Party shall be responsible for its own attorney's fees and costs through all appeals.

12. **CAPTIONS AND PARAGRAPH HEADINGS.** Captions and paragraph headings contained in this Agreement are for convenience and reference only. They in no way define, describe, extend or limit the scope or intent of this Agreement.

13. **NO WAIVER.** No waiver of any provision of this Agreement shall be effective unless it is in writing, and signed by the Party against whom it is asserted. Any such written waiver shall only be applicable to the specific instance to which it relates, and shall not be deemed to be a continuing or future waiver. The failure of any Party to insist upon strict performance of any of the covenants, provisions or conditions of this Agreement shall not be construed as waiving or relinquishing any such covenants, provisions or conditions, but the same shall continue and remain in full force and effect.

14. **EXHIBITS.** All Exhibits attached hereto contain additional terms of this Agreement, and are incorporated herein by reference.

15. **AMENDMENTS.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective, unless contained in a written document prepared, in recordable form, with the same formality as this Agreement and duly executed by all the Parties to this Agreement. Additionally, this Agreement may be modified only until the earliest of the following times: (a) issuance of the first principal building permit for the Development Project; or (b) six (6) months after the date that this Agreement is authorized by the School Board.

16. **COVENANT RUNNING WITH THE LAND.** This Agreement shall constitute a covenant running with the land and shall be recorded by the School Board, at the Applicant's expense, in the public records of Miami-Dade County, Florida, and shall remain in full force and effect and be binding upon the undersigned Applicant, and its heirs, successors and assigns, until such time as the same expires in accordance with the provisions hereof, or is otherwise modified or released pursuant to an instrument executed on behalf of the Parties.

17. **ASSIGNMENT.** The Applicant may assign its rights, obligations and responsibilities under this Agreement to a third party purchaser of all or any part of fee simple title to the Property, subject to the terms and conditions contained herein. Any such assignment shall be in writing and shall require the prior written consent of all of the Parties, such consent not to be unreasonably withheld. At the election of the School District, such consent may be conditioned upon the written agreement of the assignee to assume all of Applicant/Assignor's duties and obligations under this Agreement and to comply with conditions and procedures to aid in the monitoring and enforcement of the assignee's performance of the Monetary Proportionate Share Mitigation under this Agreement. The Assignor under such assignment shall furnish the Parties with a copy of the duly executed assignment, in recordable form, within ten (10) days of the date of execution of same. The Parties further agree that an assignment of this Agreement shall only be permitted where (a) the Applicant/Assignor has mitigated for the public school impacts of the subject Property with Monetary Proportionate Share Mitigation payment having been made, (b) this Agreement is being assigned to the purchaser of the subject Property, and (c) the assigned Monetary Proportionate Share Mitigation continues to be

used for the subject School Project. Purchased Capacity Credits may not be sold, transferred or used in any way other than as provided for under this Section. Any sale, transfer or use of Purchased Capacity Credits in violation of this Agreement shall be deemed null and void.

18. **DEFAULT.** If any Party fails to perform or observe any of the material terms and conditions of this Agreement for a period of thirty (30) calendar days after receipt of written notice of such default from another Party, the Party giving notice of default may terminate this Agreement by providing the Parties with ten (10) days additional written notice. Failure of any Party to exercise its rights in the event of any breach by one or more other Parties shall not constitute a waiver of such rights. No Party shall be deemed to have waived any failure to perform by another Party unless such waiver is in writing and signed by the other Parties. Such waiver shall be limited to the terms specifically contained therein.

19. **COUNTERPARTS.** This Agreement may be executed in three (3) counterparts, each of which when executed and delivered shall be deemed to be an original; however, all such counterparts together shall constitute but one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document. The School Board shall be the last party to execute this Agreement.

20. **RECORDING OF DOCUMENTS AND FEES** The School District shall record this Agreement and any related documentation, including without limitation, Assignments, if any, and Releases, within thirty (30) days after proper execution thereof,

in the Public Records of Miami-Dade County, Florida. The Applicant shall pay all recordation costs to the School District. All duly executed documents and applicable fees shall be delivered to the designated School District staff by the day specified herein.

21. **SEVERABILITY.** If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable provision will be stricken from the Agreement, and the balance of the Agreement will remain in full force and effect as long as doing so would not affect the overall purpose or intent of the Agreement.

22. **WAIVER OF TRIAL BY JURY. THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY OR PARTIES WITH RESPECT TO ANY MATTER ARISING UNDER THIS AGREEMENT.**

23. **TIME IS OF THE ESSENCE.** Time is of the essence in the performance of this Agreement.

24. **MERGER CLAUSE.** This Agreement and all Exhibits thereto set forth the entire agreement among the Parties, and it supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, among the Parties.

25. **PUBLIC RECORDS LAWS.** This Agreement shall be subject to Florida's Public Records Laws, Chapter 119, Florida Statutes. The Parties understand the broad nature of these laws and agree to comply with Florida's Public Records Laws and laws relating to records retention. The Parties acknowledge and accept the authority of the School Board and the County to request and authorize audits, inspections, and

reviews, including, but not limited to, the authority to access the Applicant's records, its/their legal representatives' and contractors' records with respect to this Agreement and the obligation of the Applicant to retain and to make those records available upon request, and in accordance with all applicable laws. Applicant shall keep records to show its/their compliance with this Agreement. In addition, Applicant's contractors and subcontractors must make available, upon School Board's and County's request, any books, documents, papers and records which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

The Applicant, its contractors and sub-contractors shall (i) retain all records for five (5) years after the Effective Date of this Agreement; and (ii) the School Board and the County shall retain records for five (5) years after the expiration, early termination or cancellation of this Agreement.

The Applicant shall incorporate this Section 25 into every contract that it enters into relating to the subject Property.

IF THE APPLICANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-995-1128, pr@dadeschools.net, and 1450 NE 2 Avenue, Miami, Florida 33132.

[SIGNATURE PAGES FOLLOW]

SCHOOL BOARD

Signed, sealed and delivered
in the presence of:

Print Name: _____

Print Name: _____

**THE SCHOOL BOARD OF MIAMI-
DADE COUNTY, FLORIDA**, a body
corporate and politic existing under the
laws of the State of Florida

By: _____
Name: Alberto M. Carvalho
Title: Superintendent of Schools
Date: _____

Recommended by:

Name: Jaime G. Torrens
Title: Chief Facilities Officer
Date: _____

Recommended by:

Name: Michael Fox
Risk Management & Benefits Officer
Date: _____

Recommended as to financial sufficiency
by:

Name: Leonardo Fernandez
Treasurer
Date: _____

To the School Board:
Approved as to form and legal sufficiency

Name: Ana R. Craft
Assistant School Board Attorney
Date: _____

ACKNOWLEDGMENT

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE) **SS:**

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by ALBERTO M. CARVALHO, as Superintendent of Schools, acting on behalf of THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a public body corporate and politic existing under the laws of the State of Florida, who personally appeared before me, and is [] personally known to me or [] produced _____ as identification, and who further acknowledged that he signed the above instrument with full authority, as set forth therein, on behalf of The School Board of Miami-Dade County, Florida.

[NOTARY SEAL]

Notary: _____
Print Name: _____
My Commission expires: _____

MIAMI-DADE COUNTY :

WITNESSES:

Print Name: _____

Print Name: _____

MIAMI-DADE COUNTY

By: _____
_____, Mayor
____ day of _____, 2017.

ATTEST:

Harvey Ruvin, Clerk

By _____
Deputy Clerk
____ day of _____, 2017.

**APPROVED AS TO FORM AND
LANGUAGE AND FOR
EXECUTION:**

By _____
County Attorney

Date: _____

ACKNOWLEDGMENT

STATE OF FLORIDA)
) **SS:**
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ as Mayor, acting on behalf of Miami-Dade County, a political subdivision of the State of Florida. He/she personally appeared before me, and is [] personally known to me or [] produced _____ as identification, , and who acknowledged that he/she signed the above instrument with full authority, as set forth therein, on behalf of Miami-Dade County, Florida.

[NOTARY SEAL]

Notary: _____
Print Name: _____
My Commission expires: _____

EXHIBIT "A"

**TO PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION
DEVELOPMENT AGREEMENT AMONG THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLA; AND MIAMI-DADE COUNTY; AND PROPERTY OWNERS ANGELICA
BROWN, A SINGLE WOMAN AND ORLANDO FERNANDEZ, A SINGLE MAN**

Legal Description

**All of Block 2, "AMENDED MAP OF TRIPLETTS ADDITION TO
GOULDS, FLORIDA", according to the plat thereof, as recorded
in Plat Book 4, at Page 124, of the Public Records, of Miami-
Dade County, Florida, LESS Northerly 15 feet of said Block 2
dedicated for the right of way of public road.**

Also known as: 12490 S.W. 224th Street, Miami, Florida 33170

