

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 ("AGREEMENT") BY AND AMONG ASCEND BLUE LAGOON, LLC, A DELAWARE LIMITED LIABILITY COMPANY ("APPLICANT"), THE SCHOOL BOARD, AND MIAMI-DADE COUNTY, IN CONNECTION WITH CONSTRUCTION OF A NEW 272-UNIT RESIDENTIAL DEVELOPMENT, LOCATED AT APPROXIMATELY 6746 N.W. 7 STREET, 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;
- 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

Ascend Blue Lagoon, LLC, a Delaware limited liability company ("applicant"), has secured a development order ("Development Order") from Miami-Dade County

("County") for the development of a 272-unit residential development ("Residential Development") on approximately 7.44 acres, located at approximately 6746 N.W. 7 Street, unincorporated Miami-Dade County (see location map), contingent upon the applicant obtaining a school concurrency determination from the District in accordance with the terms of the Interlocal Agreement For Public School Facility Planning Between Miami-Dade County And Miami-Dade County Public Schools ("ILA").

Pursuant to State Statutes and the ILA, the Residential Development application was reviewed by the District for compliance with Public School Concurrency. The review yielded that the applicable Level of Service ("LOS") standard was met at the middle school and high school levels, but is deficient by nine (9) elementary school seats.

Proportionate Share Mitigation

Pursuant to the ILA, where there is insufficient capacity to address the impacts of a proposed development, representatives of the applicant, impacted local government and District (collectively "the Parties") are to discuss ways of mitigating the development's impact, including proportionate share mitigation options ("Mitigation"). Mitigation has been identified as further discussed below, and the applicable terms and conditions will be incorporated into a Public School Concurrency Proportionate Share Mitigation Agreement ("Agreement"), pursuant to the ILA.

Under the governing provisions, the minimum acceptable mitigation project is a classroom. In this case, to address the deficiency of nine (9) elementary student stations, Mitigation by the applicant will be a monetary contribution equal to the cost of one elementary school classroom containing twenty-two (22) student stations (the "School Project"). A line item in the amount of \$495,022 (the "Mitigation Cost") will be included in the District's Facilities Work Program as part of the next update, for the creation of one classroom of twenty-two (22) elementary school student stations at Fairlawn Elementary School.

The Mitigation Cost was derived based on the cost per student station published by the State of Florida Department of Education ("DOE") for May of 2018, the date by which implementation of the School Project would likely start. It should be noted that as required under state law and the ILA, the applicant will be eligible to receive Educational Facilities Impact Fee Credits in an amount currently estimated at \$408,000. The final amount of the Educational Facilities Impact Fee Credit will be adjusted to reflect the actual impact fees assessed by the County for the Residential Development, once all the residential permits are issued.

Mitigation Banking

As stated above, the School Project will yield twenty-two (22) student stations, or thirteen (13) seats beyond the nine (9) student stations required to address the Residential Development's impact. Pursuant to the governing ILA, the developer will retain the right to transfer these thirteen (13) seats to future residential developments affecting the same Concurrency Service Area and also in need to provide mitigation at the elementary school level, through a Mitigation Bank to be established and entirely

administered by the District.

Public School Concurrency Proportionate Share Mitigation Development Agreement

The Agreement between the Board, County and applicant shall contain, substantially, the following terms and conditions:

- the applicant shall make a total monetary contribution to the Board of \$495,022, which is the estimated cost of constructing one classroom of twenty-two (22) elementary school student stations, based on the May 2018 cost per student station published by DOE;
- the value of the School Project is to be added to the District's Facilities Work Program at the time of its next annual update following the execution of the Agreement and upon receipt of the full monetary contribution of \$495,022 from the applicant, most likely as part of the preparation for the FY 2018-19 five-year work plan cycle;
- upon the full execution of this Agreement by the applicant (with Joinder by all parties in interest) and the School Board, in reliance of the County's issuance of the Development Order, and receipt of the full Monetary Proportionate Share Mitigation 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 consideration for the applicant's up-front monetary contribution, the District shall provide an Educational Facilities Impact Fee Credit, estimated at Four Hundred Eight Thousand Dollars (\$408,000), toward any Educational Facilities Impact Fees imposed by County ordinance for construction of the Residential Development. The final Educational Facilities Impact Fee Credit amount shall be determined by the County, pursuant to the then current Miami-Dade County School Impact Fee Ordinance;
- the selected monetary contribution, which will provide for the cost of construction by the District of twenty-two (22) elementary school seats, results in thirteen (13) seats in excess of the nine (9) seats needed to be mitigated by the applicant. As such, the applicant has the right to transfer some or all of the excess thirteen (13) seats to future residential developments, should such a need arise. In this regard, the District shall establish and administer a Mitigation Bank and mitigation banking process, which, in this instance, will have an initial quantity of thirteen (13) Banked Seats. Due to the applicant's need to mitigate nine (9) elementary student stations at \$22,501 each (totaling \$202,509), and an Educational Facilities Impact Fee estimated of \$408,000, the combined total of \$610,509 will exceed the Monetary Proportionate Share Mitigation payment of \$495,022. As such, there will be no reimbursable value to the applicant for each banked seat;

- Banked Seats may be purchased by future residential developments affecting the same Concurrency Service Area up to six (6) years from the date the School Board authorized the execution of this Agreement. Any remaining Banked Seats shall be deemed expired at that time;
- future residential developments may purchase Banked Seat(s) only if the Mitigation Bank has sufficient number of available seats to provide for the entire school capacity deficiency. In the future, should multiple Mitigation Banks be created for the same Concurrency Service Area, the Banked Seats shall be transferred to future residential developments in the order in which each Mitigation Bank was created and the Banked Seats are available for transfer to another residential developer applicant;
- the Agreement shall expire upon the Parties' completion of their performance of all obligations or within six (6) years from the date that the Agreement is executed by all Parties, whichever comes first;
- 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 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 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 this 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. The 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 ("Agreement") by and among Ascend Blue Lagoon, LLC, a Delaware limited liability company ("Applicant"), the School Board, and Miami-Dade County, in connection with construction of a new 272-unit residential development, located at approximately 6746 N.W. 7 Street, 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;
- 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

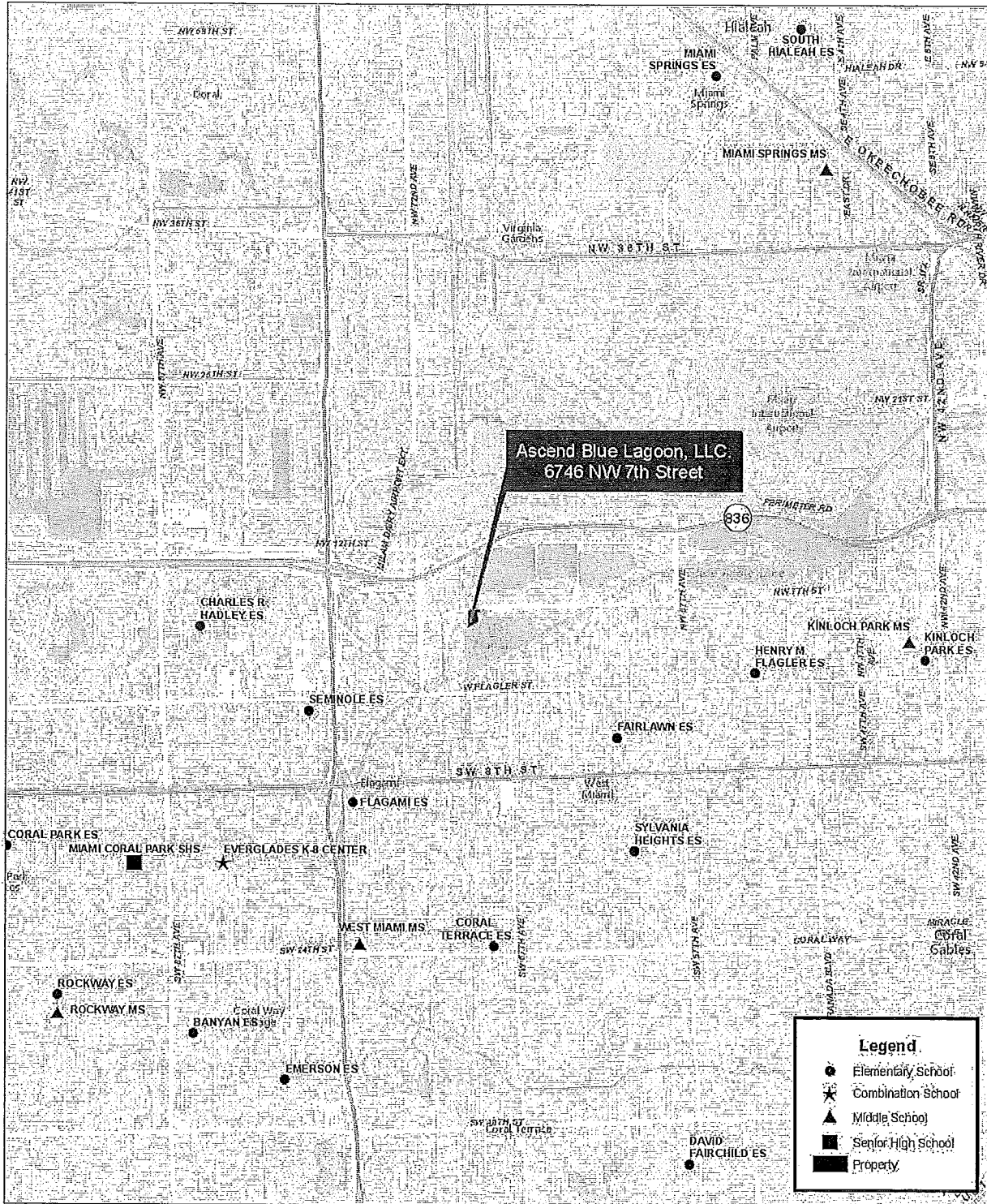


Exhibit "A"

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 into this _____ day of _____, 2017, by and among **THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA**, a body corporate and politic, existing under the laws 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 **ASCEND BLUE LAGOON, LLC**, a Delaware limited liability company, authorized to do business in the State of Florida, hereinafter referred to as "Applicant" or "Developer", whose address is 9400 Dadeland Blvd., Suite 100, Miami, Florida 33156. The School Board, County and Applicant are sometimes referred to in this Agreement individually as "Party" and collectively as the "Parties."

RECITALS:

WHEREAS, the Applicant is the developer of that certain tract of land (consisting of Folio # 3040020490030) 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 not more than 272 multifamily 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, on December 29, 2015 the Applicant filed for a building permit application (process No. C2016043649), and on December 9, 2016, the Applicant obtained an Administrative Modification for Resolution CZAB-8-3-15 (Application #M2016000010), which was approved with condition(s) (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) (“**Development Order**”); and

WHEREAS, the Parties agree that: (1) adequate School Facility Capacity is not available for nine (9) of the elementary school 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 Parties agree that the Applicant has selected as the Proportionate Share Mitigation option, the full capital cost of a public school project, comprised of one elementary school classroom of twenty-two (22) student stations ("**Monetary Proportionate Share Mitigation**"), as hereinafter described, which will be added to the first three (3) years of the School District's Facilities Work Program; and

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

WHEREAS, The School Board of Miami-Dade County, Florida, has authorized the execution of this Agreement in accordance with Board Item F-___, Board Action No. _____, at its meeting of May 24, 2017; and

WHEREAS, the County, 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 Michael Wohl, , as Manager of Ascend Properties Master, LLC, a Florida limited liability company, as Manager of Ascend Blue Lagoon manager, LLC, a Florida limited liability company, the Manager of the Property, has been and is hereby fully authorized to execute this Agreement on behalf of Ascend Blue Lagoon, LLC, a Delaware limited liability company, pursuant to written consent issued March 15, 2017.

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.

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 County.

4. **MONETARY PROPORTIONATE SHARE MITIGATION.** The Parties agree that the amount of the Monetary Proportionate Share Mitigation shall be Four Hundred Ninety Five Thousand Twenty Two Dollars (\$495,022). The Monetary Proportionate Share Mitigation funds shall be used by the School District to provide for the creation of one classroom of twenty-two (22) elementary school student stations at Fairlawn Elementary School (the “**School Project**”). Upon the full execution of this Agreement by the Applicant (with Joinder by all parties in interest) and the School Board, in reliance of the County’s issuance of the Development Order, and receipt of the full Monetary Proportionate Share Mitigation payment, as hereinafter described, the School District shall issue a Finding of Available School Facility Capacity (“**Finding**”) pursuant to the ILA. The Applicant agrees that the full Monetary Proportionate Share Mitigation payment shall be deemed non-refundable concurrently with issuance of the Finding. 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. 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 to the extent of the School Capacity provided by the Monetary Proportionate Share Mitigation. Delivery of the Monetary Proportionate Share Mitigation payment shall be made by the Applicant on or before June 7, 2017, which payment shall be a pre-condition to issuance of the Finding, , by wire transfer or any other method of payment acceptable to the School Board's Office of Treasury Management. 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 may credit the reserved seats to the Concurrency Service Area from which they were reserved.

5. **EDUCATIONAL FACILITIES IMPACT FEE CREDIT.** As consideration for the Applicant's Monetary Proportionate Share Mitigation specified herein, *and as further elaborated in Section 6(c) of this Agreement*, the Parties agree that the School District shall provide a credit estimated at Four Hundred Eight Thousand Dollars (\$408,000.00), toward any Educational Facilities Impact Fees imposed by Miami-Dade County ordinance for construction of the Development Proposal ("**Impact Fee Credit**"). 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. **MITIGATION BANKING.** The Applicant has selected the Monetary Proportionate Share Mitigation option which will provide for the cost of construction by the School District of twenty-two (22) elementary school seats, resulting in thirteen (13) seats in excess of the nine (9) seats needed to be mitigated by the Applicant. As such, the Applicant has the right to transfer the excess thirteen (13) seats (“**Capacity Credits**”) to future residential developments, as set forth in this Agreement. In order for the School District to manage and transfer Capacity Credits for the Applicant, a mitigation bank shall be established in connection with this Development Proposal (“**Mitigation Bank**”) for the School Project. The School District shall create and administer the Mitigation Bank as follows:

a. **Monetary Proportionate Share Mitigation Cost.** The Monetary Proportionate Share Mitigation amount of Four Hundred Ninety Five Thousand Twenty Two Dollars (\$495,022.00) is the cost of the Monetary Proportionate Share Mitigation option selected by the Applicant, and is derived by multiplying the total number of student stations to be constructed (22 seats), by the student station cost of \$22,501.00, which is the construction cost projected by the Florida Department of Education to be in place at the time of construction of the School Project (May 2018) (i.e. 22 student stations x \$22,501.00 cost per station = \$495,022.00). In this Agreement, “**student station**” and “**seat**” shall be used interchangeably unless otherwise specified.

b. **Number of Banked Seats.** The number of Banked Seats shall be established by determining the excess number of school seats, if any, resulting from construction of the School Project (“**Banked Seats**”), to wit: the number of seats to be constructed (22), less the number of seats needed to be mitigated (9), resulting in thirteen (13) Banked Seats for the subject Development Proposal (i.e. 22 seats constructed – 9 mitigated seats = 13 Banked Seats). In this Agreement, “**Banked Seats**” and “**Capacity Credits**” shall be used interchangeably unless otherwise specified.

c. **Estimated Educational Facilities Impact Fee Credits.** Pursuant to the Miami-Dade County Educational Facilities Impact Fee Ordinance, the Applicant must pay Educational Facilities Impact Fee(s) (“**Impact Fee**”) prior to issuance of any residential building permit. However, since the Applicant is required to pay the Monetary Proportionate Share Mitigation payment to the School District prior to obtaining building permits, the School District shall issue the Impact Fee Credit to the Applicant, which the Applicant may present to the County in satisfaction (in whole or in part) of its Educational Facilities Impact Fee obligation. The amount of the estimated Impact Fee Credit shall be the result of multiplying \$1,500.00 (the estimated Impact Fee per residential dwelling unit) by the number of approved units (272 multi-family residential dwelling units), resulting in an estimated Impact Fee Credit amount of \$408,000.00 (i.e. \$1,500.00 estimated impact fee x 272 residential dwelling units= \$408,000.00). The Impact Fee Credit shall not include any administrative or other fees, which the County may impose as part of its administrative process. The Parties understand and agree that the Impact Fee Credit

stated herein shall be adjusted to reflect the actual amount assessed by the County for the subject Development Proposal. Adjustment to the Mitigation Banking Cost, as hereinafter defined, shall also be required inasmuch as any adjustment to the Impact Fee Credit will also affect the value of the Banked Seat(s).

d. **Reimbursable Value of Banked Seats.** As detailed above, the selected monetary contribution, which will provide for the cost of construction by the School District of twenty-two (22) elementary school seats, results in thirteen (13) seats in excess of the nine (9) seats needed to be mitigated by the Applicant. As such, the School District will establish and administer a Mitigation Bank and mitigation banking process, which will have an initial quantity of thirteen (13) Banked Seats. Due to the estimated Educational Facilities Impact Fee of \$408,000, and the Applicant's need to mitigate nine (9) elementary student stations at an established value of \$202,509 (combined total of \$610,509), which exceeds the Monetary Proportionate Share Mitigation payment of \$495,022, there is no reimbursable value to the Applicant for each banked seat.

e. **Purchase of Banked Seats.** Banked Seats will be made available to future residential developers affecting the same Concurrency Service Area at the then current cost per student station, as established by DOE, with the School Board to retain all proceeds. Banked Seats may be purchased up to six (6) years from the date the School Board authorized the execution of this Agreement. Any remaining Banked Seats shall be deemed expired at that time. Applicant hereby authorizes the School District to effectuate the transfer of Capacity Credits accordingly.

f. **Expiration of Capacity Credits.** Capacity Credits may be purchased by future applicant(s) within six (6) years from the date the School Board authorized the execution of this Agreement, which in this instance, is hereby established as May 24, 2017, and subject to expiration of timeframe set forth under Section 17 hereof. After 5:00 PM (Miami Time), May 10, 2023, any remaining Capacity Credits created by the Monetary Proportionate Share Mitigation option shall be deemed expired, and any Banked Seat(s) not yet transferred will be returned to the Concurrency Service Area where the School Project was constructed.

g. **Purchasing of Capacity Credits by Future Applicants.** The School District agrees to make known to all future residential development applicants within the Concurrency Service Area or Adjacent Concurrency Service Areas within the same Geographic Area, the option to purchase Capacity Credits from this Mitigation Bank. Future applicants may purchase Capacity Credit(s) only if the Mitigation Bank(s) has sufficient number of available seats to provide for the entire school capacity deficiency.

h. **Priority of Capacity Credit Transfers.** In the event multiple mitigation banks are created by other applicants, for the same Concurrency Service Area or Adjacent Concurrency Service Areas within the same Geographic Area, the Capacity Credits shall be made available for transfer to future applicants in the order in which the Mitigation Bank has been established and the Banked Seats are readily available for transfer to another residential developer applicant, as set forth in Section 17 of this Agreement.

7. **SCHOOL CAPACITY IMPROVEMENT.** The School District agrees to apply the Monetary Proportionate Share Mitigation payment made by the Applicant toward the School Project described under Section 4 of this Agreement. The School Project will include the Monetary Proportionate Share Mitigation, which will be reflected in the District's Facilities Work Program at the time of its next annual update following the execution of this Agreement and receipt of the total Monetary Proportionate Share Mitigation payment as set forth herein.

8. **EFFECTIVE DATE** This Agreement shall take effect upon execution hereof by the Applicant, the School Board and issuance of the Finding, ("**Effective Date**"), but in no event later than July 31, 2017. Failure to deliver this Agreement to the School Board executed by the Applicant by May 1, 2017 and by the County by June 30, 2017, may, in the sole discretion of the School District, result in the revocation of the Concurrency Determination issued by the School District on January 31, 2017, incorporated herein by reference. The School District shall record this Agreement after execution hereof by the Applicant, the School Board and the County in conformance with the provisions of Section 22 of this Agreement.

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

10. **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.

11. **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:

Ascend Blue Lagoon, LLC
Attn: Mitchell M. Friedman
9400 S. Dadeland Blvd., Suite 100
Miami, FL 33156
Phone: (305) 854-7100
Fax: (305) 854-9858
mitch@pinnaclehousing.com

With a copy to:

Weiss Serota Helfman Cole & Bierman, P.L.
Attn: Edward Martos, Esquire
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134
Phone: 305-854-0800
Fax: (305) 854-2323
EMartos@wsh-law.com

In the case of Notice or communication to the County:

Jerry H. Bell, AICP
Assistant Director for Planning Department of Regulatory and Economic Resources
111 NW 1st Street, 12th Floor
Miami, Florida 33128
Phone: (305) 375-2835
Fax: (305)375-2560
Jerry.Bell@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.

12. **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.

13. **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.

14. **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.

15. **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.

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

17. **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.

18. **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.

19. **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. 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.

20. **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.

21. **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.

22. **RECORDING OF DOCUMENTS.** 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 and receipt of the document and recordation costs, in the Public Records of Miami-Dade County, Florida. The Applicant shall pay all recordation costs to the School District.

23. **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.

24. **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.**

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

26. **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.

27. **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 Developer's records, its/their legal representatives' and contractors' records with respect to this Agreement and the obligation of the Developer to retain and to make those records available upon request, and in accordance with all applicable laws. Developer shall keep records to show its/their compliance with this Agreement. In addition, Developer'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 Developer, 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 Developer shall incorporate this Section 27 into every contract that it enters into relating to the subject Property.

IF THE DEVELOPER 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]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates under each signature, and this Agreement shall be effective pursuant to Section 8 hereof:

APPLICANT/DEVELOPER

ASCEND BLUE LAGOON, LLC, a Delaware limited liability company, authorized to do business in the State of Florida

By: Ascend Blue Lagoon Manager, LLC, a Florida limited liability company, its Manager

WITNESSES:

Signature

Print Name

Signature

Print Name

By: Ascend Properties Master, LLC, a Florida limited liability company, its Manager

By: _____

Michael Wohl, Manager

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

The foregoing instrument was acknowledged before me this ___ day of _____, 2017, by Michael Wohl, as Manager of Ascend Properties Master, LLC, a Florida limited liability company, Manager of Ascend Blue Lagoon Manager, LLC, a Florida limited liability company, Manager of Ascend Blue Lagoon, LLC, a Delaware limited liability company, on behalf of said company, who is personally known to me or has produced _____ as identification.

My Commission Expires: _____
Notary Public – State of Florida

Printed Name

**JOINDER BY MORTGAGEE
IBERIABANK**

The undersigned, IBERIABANK, as Mortgagee under that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing from Ascend Blue Lagoon, LLC, A Delaware limited liability company ("Mortgagor"), recorded in Official Records Book 29626, Pages 3956 through 3979, in the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the Declaration of Restrictions, does hereby consent to the execution of the foregoing Public School Concurrency Proportionate Share Mitigation Development by Ascend Blue Lagoon, LLC, a Delaware limited liability company, and agrees that in the event Mortgagee or any other party shall obtain title to the property through foreclosure or deed-in-lieu of foreclosure, this Public School Concurrency Proportionate Share Mitigation Development shall be binding upon the entity obtaining title as the then owner of such property.

IN WITNESS WHEREOF, these presents have been executed this _____ day of _____, 2017.

WITNESSES:

IBERIABANK

Signature

By: _____

Name: _____

Title: _____

Print Name

Signature

Print Name

STATE OF _____)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by _____ as, _____, of IBERIABANK, on behalf of the bank. He/She is personally known to me or has produced _____ as identification and did/did not take an oath.

Signature

Notary Public State of _____

Print Name: _____

MIADOCs 14465620 2 39544.0009

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 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: _____

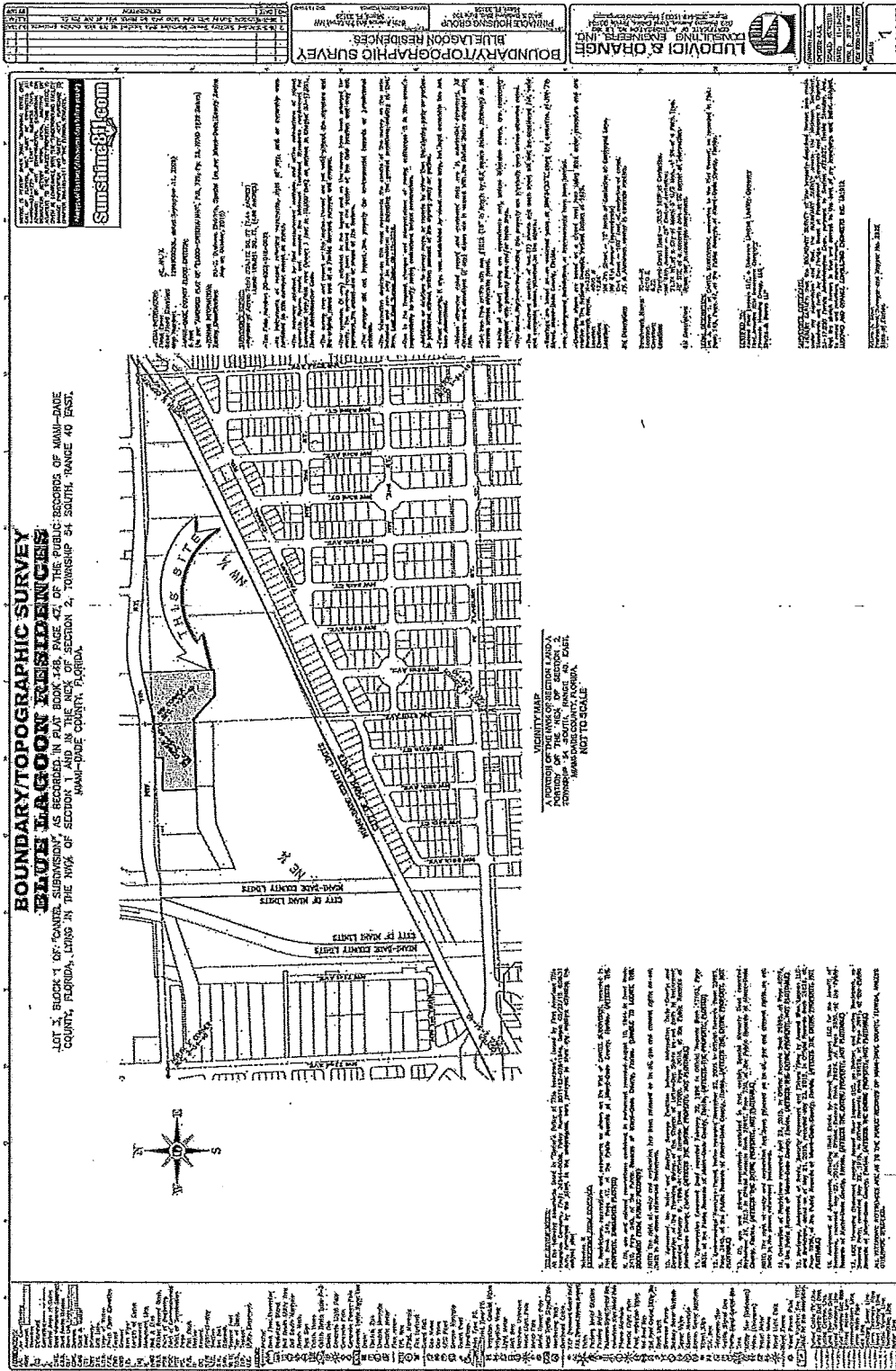
EXHIBIT "A"

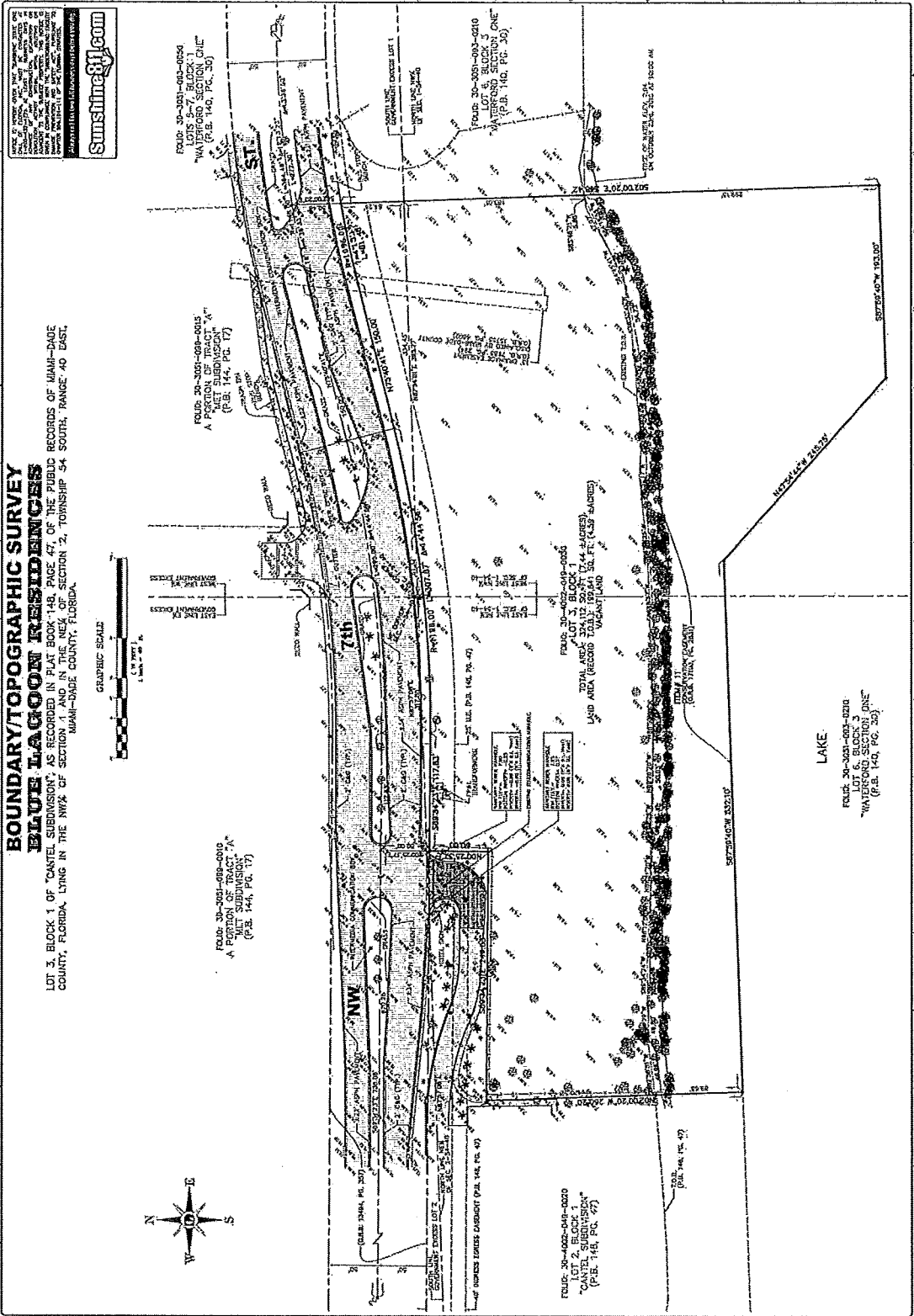
**TO PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT AMONG
THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLA; AND MIAMI-DADE COUNTY; AND
ASCEND BLUE LAGOON LLC, A DELAWARE LIMITED LIABILITY COMPANY**

Legal Description

**Lot 3, Block 1, of CANTEL SUBDIVISION, according to the Plat
thereof, as recorded in Plat Book 148, Page 47, of the Public
Records of Miami-Dade County, Florida**

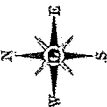
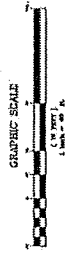
EXHIBIT "B"
**TO PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT AMONG
 THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLA; AND MIAMI-DADE COUNTY; AND
 ASCEND BLUE LAGOON LLC, A DELAWARE LIMITED LIABILITY COMPANY**





BOUNDARY/TOPOGRAPHIC SURVEY
BLUE LAGOON RESIDENCES

LOT 3, BLOCK 1 OF "CASTEL SUBDIVISION", AS RECORDED IN PLAT BOOK 148, PAGE 47, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, LYING IN THE NW¼ OF SECTION 1, AND IN THE NE¼ OF SECTION 2, TOWNSHIP 54 SOUTH, RANGE 40 EAST, MIAMI-DADE COUNTY, FLORIDA.



<p>LUDWIGI & ORANGE CONSULTING ENGINEERS 1111 S.W. 15th St., Suite 200 Miami, FL 33135 Phone: (305) 358-1111 Fax: (305) 358-1112 www.ludlud.com</p>	<p>BOUNDARY/TOPOGRAPHIC SURVEY BLUE LAGOON RESIDENCES</p>	<p>PRIMA E HOUSING GROUP 17th Street NW, Suite 100 Atlanta, GA 30333 Phone: (404) 525-1111</p>	<p>DATE: 11/11/11 SCALE: AS SHOWN SHEET: 2 OF 2 PROJECT: BLUE LAGOON RESIDENCES</p>
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