

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 PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENTS BY AND AMONG SOUTHERN ESTATE HOMES, LLC, A FLORIDA LIMITED LIABILITY COMPANY ("APPLICANT"), THE SCHOOL BOARD, AND 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, FOR:
 - SOUTHERN COVE RESIDENTIAL DEVELOPMENT ("SOUTHERN COVE"), 96 SINGLE FAMILY RESIDENTIAL UNITS, LOCATED AT 13251 S.W. 232 STREET, UNINCORPORATED MIAMI-DADE COUNTY, FLORIDA; AND
 - VENTURE HOMES RESIDENTIAL DEVELOPMENT ("VENTURE HOMES"), 21 SINGLE FAMILY RESIDENTIAL UNITS, LOCATED AT S.W. 226 STREET AND S.W. 129 AVENUE, UNINCORPORATED MIAMI-DADE COUNTY, FLORIDA; AND
- 2) EXECUTE ANY OTHER DOCUMENTATION THAT MAY BE REQUIRED TO EFFECTUATE IMPLEMENTATION OF THE SOUTHERN COVE AND VENTURE HOMES AGREEMENTS; AND
- 3) GRANT OR DENY ANY APPROVALS REQUIRED UNDER THE SOUTHERN COVE AND VENTURE HOMES AGREEMENTS, 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

Southern Estate Homes, LLC, a Florida limited liability company ("applicant"), has submitted two residential development applications to Miami-Dade County ("County") to obtain development orders, contingent upon the applicant obtaining a school concurrency determination from the District for each development, 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"). The two residential developments are:

1. **Southern Cove Residential Development** - 96 single-family detached residential dwelling units on approximately 24.18 acres ("Southern Cove Residential Development"), located at 13251 S.W. 232 Street, unincorporated Miami-Dade County, Florida (see location map); and,
2. **Venture Homes Residential Development** - 21 single-family detached residential dwelling units on approximately 7.68 acres ("Venture Homes Residential Development"), located at S.W. 226 Street and S.W. 129 Avenue, unincorporated Miami-Dade County, Florida (see location map);

Pursuant to State Statutes and the ILA, each 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 for both residential development applications, but is deficient by seventeen (17) elementary school seats for the Southern Cove Residential Development, and four (4) elementary school seats for the Venture Homes Residential Development.

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 for each residential development, pursuant to the ILA.

Given that the applicant for the Southern Cove Residential Development and Venture Homes Residential Development is the same, the Parties have agreed to address the combined mitigation required by both developments concurrently, and details of the proposed Southern Cove Mitigation Agreement and Venture Homes Mitigation Agreement are provided below. The minimum acceptable mitigation project is a classroom. In this case, to address the deficiency of seventeen (17) elementary student stations for the Southern Cove Residential Development, and four (4) elementary school seats for the Venture Homes Residential Development, the applicant will provide a monetary contribution equal to the cost of one elementary school classroom containing twenty-two (22) student stations ("School Project"). A line item in the amount of \$495,022 ("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 Caribbean K-8 Center 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 \$342,720 for the Southern Cove Residential Development, and \$74,970 for the Venture Homes Residential Development. The final amount of the Educational Facilities Impact Fee Credit will be adjusted to reflect the actual impact fees assessed by the County for each of the residential developments, prior to the issuance of residential permits.

Establishment of Mitigation Bank and initial allocation of Seats

As stated above, the School Project will yield twenty-two (22) student stations, or five (5) seats beyond the seventeen (17) student stations required to address impact from the Southern Cove Residential Development. These five (5) seats will be transferred to a Mitigation Bank (Mitigation Bank #2017-007), to be established and entirely administered by the District. The Parties have further agreed to allocate and transfer four (4) of the available student stations from Mitigation Bank #2017-007 to the Venture Homes Residential Development to address its proportionate share mitigation requirement. Subsequent to the allocation and transfer, one (1) seat will remain in Mitigation Bank #2017-007 for future residential developments affecting the same Concurrency Service Area and also in need to provide mitigation at the elementary school level.

Public School Concurrency Proportionate Share Mitigation Development Agreement for the Southern Cove Development ("Southern Cove Mitigation Agreement")

The Southern Cove Mitigation 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 Southern Cove Mitigation 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 the Southern Cove Mitigation Agreement by the applicant (with Joinder by all parties in interest), School Board and the County, and receipt of the full Monetary Proportionate Share Mitigation payment of \$495,022, 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 Southern Cove Residential Development;

- as consideration for the applicant's up-front monetary contribution, the District shall provide an Educational Facilities Impact Fee Credit, estimated at \$342,720, toward any Educational Facilities Impact Fees imposed by County ordinance for construction of the Southern Cove 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;
- construction of the twenty-two (22) elementary school seats, results in five (5) seats in excess of the seventeen (17) seats needed to be mitigated by the applicant. As such, the District shall establish and administer a Mitigation Bank (Mitigation Bank #2017-007) and mitigation banking process, which, in this instance, will have an initial quantity of five (5) Banked Seats. Due to the applicant's need to mitigate seventeen (17) elementary student stations valued at \$22,501 each (totaling \$382,517), and an estimated Educational Facilities Impact Fee credit of \$342,720, the combined total of \$725,237 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;
- upon the establishment of Mitigation Bank #2017-007 and execution of the Venture Homes Mitigation Agreement (as described below), four (4) of the Banked seats within Mitigation Bank #2017-007 shall be allocated and transferred to the applicant under the Venture Homes Mitigation Agreement to meet its proportionate share mitigation requirement;
- the Southern Cove Mitigation Agreement shall expire upon the Parties' completion of their performance of all obligations or within six (6) years from the date that the Southern Cove Mitigation Agreement is executed by all Parties, whichever comes first;
- the applicant may assign its rights, obligations and responsibilities under the Southern Cove Mitigation Agreement to a third party purchaser of all or any part of fee simple title to the Southern Cove 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 Southern Cove Mitigation Agreement and any related documentation, including without limitation, Assignments, if any, and Releases; and
- 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 Southern Cove Mitigation Agreement.

Public School Concurrency Proportionate Share Mitigation Development Agreement for the Venture Homes Development ("Venture Homes Mitigation Agreement")

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

- the Southern Cove Mitigation Agreement noted above, shall be executed simultaneously with the Venture Homes Mitigation Agreement, and shall have the same Effective Date;
- subsequent to establishment of Mitigation Bank #2017-007 under the Southern Cove Mitigation Agreement, four (4) of the five (5) available seats will be allocated and transferred to the Venture Homes Residential Development under the Venture Homes Mitigation Agreement to mitigate its impact;
- upon the full execution of the Venture Homes Mitigation Agreement by the applicant (with Joinder by all parties in interest), School Board and the County, 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 Venture Homes Residential Development;
- as consideration for the applicant's up-front monetary contribution, the District shall provide an Educational Facilities Impact Fee Credit, estimated at \$74,970, toward any Educational Facilities Impact Fees imposed by County ordinance for construction of the Venture Homes 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 Venture Homes Mitigation Agreement shall expire upon the Parties' completion of their performance of all obligations or within six (6) years from the date that the Venture Homes Mitigation Agreement is executed by all Parties, whichever comes first;
- the applicant may assign its rights, obligations and responsibilities under the Venture Homes Mitigation Agreement to a third party purchaser of all or any part of fee simple title to the Venture Homes 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 Venture Homes Mitigation Agreement and any related documentation, including without limitation, Assignments, if any, and Releases; and

- 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 Venture Homes Mitigation Agreement.

For purposes of the Southern Cove and Venture Homes Mitigation Agreements, the Superintendent or his/her designee shall be the Party designated by the Board to grant or deny any and all approvals required under both Agreements, including, without limitation, issuance of Reports and Releases, and placing the applicant in default, as may be applicable.

The County will be considering the Southern Cove and Venture Homes Mitigation Agreements at an upcoming meeting of the Board of County Commissioners. Both Agreements have been reviewed by the School Board Attorney's Office for legal sufficiency, and found to be in compliance. The Southern Cove Mitigation Agreement, and Venture Homes Mitigation Agreement, in final form, are attached hereto as Exhibits "A" and "B" respectively.

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

- 1) execute Public School Concurrency Proportionate Share Mitigation Development Agreements by and among Southern Estate Homes, LLC, a Florida limited liability company ("applicant"), the School Board, and 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, for:
 - Southern Cove Residential Development ("Southern Cove"), 96 single family residential units, located at 13251 S.W. 232 Street, unincorporated Miami-Dade County, Florida; and
 - Venture Homes Residential Development ("Venture Homes"), 21 single family residential units, located at S.W. 226 Street and S.W. 129 Avenue, unincorporated Miami-Dade County, Florida; and
- 2) execute any other documentation that may be required to effectuate implementation of the Southern Cove and Venture Homes Agreements; and
- 3) grant or deny any approvals required under the Southern Cove and Venture Homes Agreements, including, without limitation, issuance of reports and releases, and placing the applicant in default, as may be applicable.

IMR:ir

Location Map

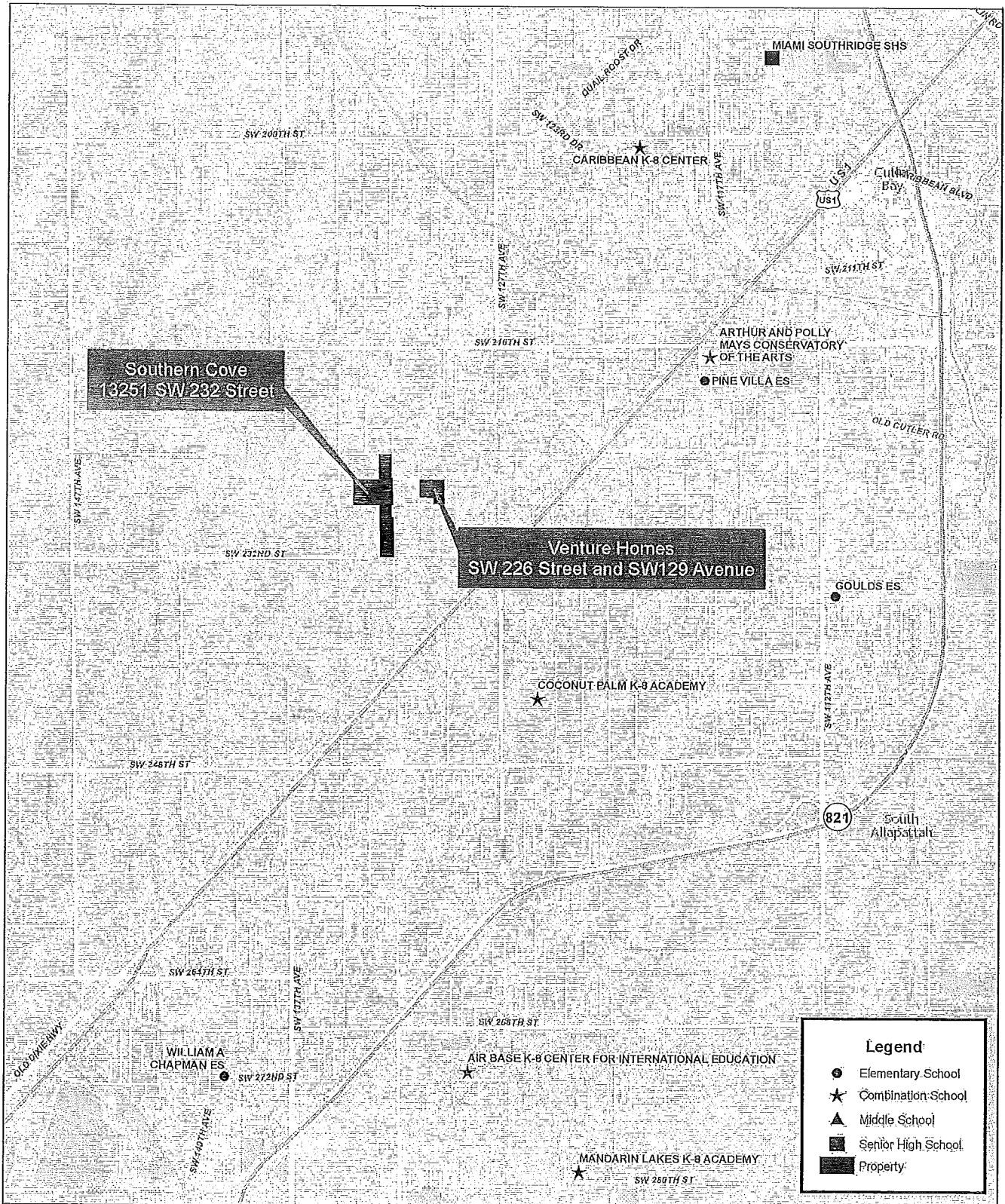


Exhibit "A"

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 **SOUTHERN ESTATE HOMES, LLC**, a Florida limited liability company, hereinafter referred to as "**Applicant**" or "**Developer**", whose address is 4940 SW 72 Avenue, Miami, Florida 33155. 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 # 3069140000351) 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 96 single-family detached residential dwelling units on the Property (the “**Southern Cove 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 June 24, 2016 Southern Estate Homes, LLC filed a T-plat application (T-23811- Southern Cove), and on December 20, 2016 filed a revision to augment the number of units to 96 single-family detached residential dwelling units, 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, on July 26, 2016 Southern Estate Homes, LLC also filed for a separate and distinct T-plat application (T-23828 – Venture Homes), and on April 11, 2017 filed a revision to augment the number of units to 21 single-family detached dwelling units, incorporated herein

by reference (the “**Venture Homes Development Proposal**”), which also requires School Facility Capacity availability for each student generated by the Venture Homes 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 seventeen (17) of the elementary school students generated by the Southern Cove Development Proposal and four (4) of the elementary school students generated by the Venture Homes Development Proposal, at the Level of Service Standard within the Concurrency Service Area in which both Development Proposals are located, to accommodate the anticipated combined twenty-one (21) public school students to be generated; (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 both Development Proposals; and

WHEREAS, the Parties agree that authorizing these new residential dwelling units for the Southern Cove Development Proposal and Venture Homes Development Proposal 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 for the Southern Cove Development Proposal 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 shall enter into a separate legally binding agreement to provide mitigation proportionate to the demand for Public School Facilities to be created by the Venture Homes Development Proposal (“**Venture Homes Mitigation Agreement**”); and

WHEREAS, the Parties agree that the Applicant has selected as the Proportionate Share Mitigation option under this Agreement, to mitigate seventeen (17) of the elementary school students generated by the proposed residential dwelling units in the Southern Cove Development Proposal, by providing 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 have agreed that the Applicant shall meet its proportionate share mitigation obligations under the Venture Homes Mitigation Agreement through the allocation and transferred of four (4) capacity credits from a Mitigation Bank (as both terms are hereinafter defined) to be created under this Agreement; and

WHEREAS, the Venture Homes Mitigation Agreement, incorporated herein by reference, shall be executed simultaneously with this Agreement and shall have the same Effective Date; 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 July 12, 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 Palmcorp Development Group, LLC, a Florida limited liability company, manager of Southern Estate Homes, LLC; Gama Real Estate Holding, LLC and Tosca Real Estate Corporation as managers of Palmcorp Development Group, LLC with either one of Gustavo M. Deribeaux on behalf for Gama Real Estate Holdings, LLC and Carlos J. Tosca on behalf of Tosca Real Estate Corporation, authorized to sign on behalf of Palmcorp Development Group, LLC, a Florida limited liability company, as Authorize Signatories, are hereby fully authorized to execute this Agreement on behalf of Southern Estates Homes, LLC, a Florida limited liability company, pursuant to that certain written consent issued March 1, 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 Southern Cove 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 Caribbean K-8 School (the “**School Project**”). Upon the full execution of this Agreement by all appropriate Parties and receipt of the full Monetary Proportionate Share Mitigation payment, as hereinafter described, the School District shall record this Agreement, in conformance with the provisions of Article 22 hereof, and issue a Finding of Available School Facility Capacity (“**Finding**”) pursuant to the ILA. Issuance of a Finding by the School District shall be a pre-condition to issuance of building permits by the County for the Southern Cove 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 within thirty (30) calendar days following the full and proper execution of this Agreement, unless otherwise extended at the sole and absolute discretion of the School Board or designee (defined hereinafter as Effective Date), 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 as well as the Venture Homes Mitigation Agreement and credit the reserved seats to the Concurrency Service Area from which they were reserved. Issuance of a Finding by the School District shall be a pre-condition to issuance of building permits by the County for the subject Southern Cove Development Proposal.

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 Three Hundred Forty Two Thousand Seven Hundred Twenty Dollars (\$342,720.00), toward any Educational Facilities Impact Fees imposed by Miami-Dade County ordinance for construction of the Southern Cove 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 five (5) seats in excess of the seventeen (17) seats needed to be mitigated by the Applicant for the Southern Cove Development Proposal. As such, the Board shall establish and manage a Mitigation Bank (“**Mitigation Bank #2017-007**”), and transfer the five (5) remaining seats (“**Capacity Credits**”) into the Mitigation Bank #2017-007 for use by future residential developments, as set forth in this Agreement. Notwithstanding this provision, the Parties agree that four (4) of the elementary school seats within Mitigation Bank #2017-007 shall be allocated and transferred to the Applicant under the Venture Homes Mitigation Agreement to meet its proportionate share mitigation requirement. 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 seventeen (17) seats needed to mitigate the Southern Cove Development Proposal, resulting in five (5) Banked Seats (i.e. 22 seats constructed – 17 mitigated seats = 5 Banked Seats). In this Agreement, “**Banked Seats**” and “**Capacity Credits**” shall be used interchangeably unless otherwise specified. The Parties agree that upon the establishment of Mitigation Bank #2017-007 and full and proper execution of the Venture Homes mitigation Agreement, four (4) of the elementary school seats within Mitigation Bank #2017-007 shall be allocated and transferred to the Applicant under the Venture Homes Mitigation Agreement to meet its proportionate share mitigation requirement. In the event that Venture Homes Mitigation Agreement is not executed by all Parties, the four (4) allocated and transferred elementary school seats will remain in Mitigation Bank #2017-007.

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 \$3,570.00 (the estimated Impact Fee per residential dwelling unit) by the number of approved units (96 single-family detached residential dwelling units), resulting in an estimated Impact Fee Credit amount of \$342,720.00 (i.e. \$3,570.00 estimated impact fee x 96 residential dwelling units = \$342,720.00). 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). The amount of the estimated Impact Fee Credit for the Venture Homes Development Proposal shall be as specified in the Venture Homes Mitigation Agreement, incorporated herein by reference

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 five (5) seats in excess

of the seventeen (17) seats needed to be mitigated by the Southern Cove Development Proposal. As such, the School District will establish and administer a Mitigation Bank and mitigation banking process, which will have an initial quantity of five (5) Banked Seats. The reimbursable value of Banked Seats shall be determined by adding the estimated Educational Impact Fee amount of \$342,720 and the value of the seats needed to be mitigated (17 seats x 22,501 per seat = \$382,517), resulting in the amount of \$727,537. Since this amount exceeds the Monetary Proportionate Share Mitigation payment of \$495,022, there is no reimbursable value to the Applicant for the five (5) seats remaining in Mitigation Bank #2017-007.

e. **Annual Reports.** The School District will provide annual reports to the Applicant (“**Annual Reports**”), containing the balance of Banked Seats remaining, if any, and Capacity Credit transfers, if any, prior to July 1 of each year. The School District shall charge an annual administrative fee as may be established in the Procedures Manual for Implementing the Amended, and Restated Interlocal Agreement for Public School Facility Planning in Miami-Dade County. The annual administrative fee shall be paid by the Applicant to the School District prior to issuance of the Annual Report. Upon expiration or transfer of all Capacity Credits, the School District shall issue a final report to Applicant (“**Final Report**”).

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 the last of the Parties signing this Agreement, but in no event later than September 30, 2017 ("Effective Date"). Failure to deliver this Agreement to the School Board executed by the Applicant by June 1, 2017 and by the County by September 29, 2017, may, in the sole discretion of the School District, result in the revocation of the Concurrency Determination issued by the School District on February 24, 2017, incorporated herein by reference.

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:

Palmcorp Development Group, LLC
Gama Real Estate Holdings LLC
Attn: Gustavo M. Deribeaux, Manager
4904 SW 72 Avenue
Miami, FL 33155
Phone: (305) 446-7990
Fax: (305) 446-4151
Gus@gdrpa.com

Palmcorp Development Group, LLC
Tosca Real Estate Corporation
Attn: Carlos J. Tosca, President
4904 SW 72 Avenue
Miami, FL 33155
Phone: (305) 446-7990
Fax: 305-446-4151
carlos@toscarealestate.com

With a copy to:

Southern Estate Homes, LLC
c/o Salome Gonzalez
4904 SW 72nd Avenue
Miami, FL 33155
Email: salome@gdrpa.com
Phone: (305) 446-7990
Fax: (305) 446-4151

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 AND ENCUMBRANCE OF PROPORTIONATE SHARE MITIGATION PAYMENT.** 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, and refunds made, only until the earliest of the following times: (a) issuance of the first building permit for either the Southern Cove Development Project or the Venture Homes development Project; or (b) the School District Encumbers (“Encumbers” shall mean monies committed by contract or purchase order in a manner that obligates the School Board to expend the funded amount upon delivery of goods or the rendering of services provided by a vendor, supplier or contractor for the School Project) any portion of the Monetary Proportionate Share Mitigation payment; or (c) six (6) months after the date that this Agreement is authorized by the School Board.

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. In the event this Agreement is terminated, the Venture Homes Mitigation Agreement shall be terminated concurrently. 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

Southern Estate Homes, LLC, a Florida limited liability company

By: Palmcorp Development Group, LLC, a Florida limited liability company

WITNESSES AS TO BOTH:

By: Gama Real Estate Holdings LLC, a Florida limited liability company.
Manager,

By: _____
Gustavo M. Deribeaux, Manager

Signature

Print Name

By: Tosca Real Estate Corporation, a Florida Corporation.

By: _____
Carlos J. Tosca, President

Signature

Print Name

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, personally appeared Gustavo M. Deribeaux, Manager of Gama Real Estate Holdings, LLC, a Florida limited liability company, and Carlos J. Tosca, President of Tosca Real Estate Corporation a Florida Corporation, Managers of Palmcorp Development Group, LLC, a Florida limited liability company, Manager of Southern Estate Homes, LLC, a Florida limited liability company, on behalf of Southern Estate Homes, LLC, who are personally known to me or have produced _____ as identification.

My Commission Expires: _____
Notary Public – State of Florida

Printed Name

JOINDER BY MORTGAGEE CORPORATION

The undersigned, London Financial Company, LLC a Florida limited liability company and Mortgagee under that certain Mortgage and Security Agreement from Southern Estate Homes, LLC, a Florida limited liability company, dated June 17, 2016 and filed for record on June 20, 2016 in Official Records Book 30120 Page 1523, and that certain Mortgage and Security Agreement from Southern Estate Homes, LLC, dated August 25, 2016, filed for record on August 29, 2016, in O.R. Book 30209, Page 1188, of the Public Records of Miami-Dade County, Florida. 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 _____ 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:

**London Financial Company, LLC,
a Florida limited liability company**

By: _____
I. Edward London, its Manager

Signature

Print Name

Signature

Print Name

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by I. Edward London, as Manager of London Financial Company, LLC, a Florida limited liability company, on behalf of the corporation. He/She is personally known to me or has produced _____, as identification and did/did not take an oath.

Signature

Notary Public, State of Florida
Print Name: _____

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: _____

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

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 "B"

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 **SOUTHERN ESTATE HOMES, LLC**, a Florida limited liability company, hereinafter referred to as "Applicant" or "Developer", whose address is 4940 SW 72 Avenue, Miami, Florida 33155. 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 fee simple owner of that certain tract of land (Folio # 3069140000490) 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 21 residential dwelling units on the Property (the “**Venture Homes 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 July 26, 2016 Southern Estate Homes, LLC filed a T-plat application (T-23828 – Venture Homes), and on April 11, 2017 filed a revision to augment the number of units to 21 single-family detached dwelling units, incorporated herein by reference, which also requires School Facility Capacity availability for each student generated by the Venture Homes Development Proposal at each of the three school levels (i.e. elementary, middle and senior high school); and

WHEREAS, on June 24, 2016 Southern Estate Homes, LLC also filed for a separate and distinct T-plat application (T-23811 – Southern Cove), and on December 20, 2016 filed a revision to augment the number of units to 96 single-family detached residential dwelling units; incorporated herein by reference (the “**Southern Cove Development Proposal**”), 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 Venture Homes Development Proposal, at the Level of Service Standard within the Concurrency Service Area in which the Venture Homes Development Proposal is located; (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 Venture Homes Development Proposal; and

WHEREAS, the Parties agree that authorizing these new residential dwelling units for the Venture Homes Development Proposal, 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, subject to the Parties entering into a proportionate share mitigation agreement to mitigate the need for public school facilities to be created by the Southern Cove Development Proposal ("**Southern Cove Mitigation Agreement**"), and compliance with Article 17 of that Agreement, a Mitigation Bank of five (5) elementary student stations shall be

established (hereinafter referred to as “**Mitigation Bank #2017-007**”), with four (4) seats to be allocated and transferred to the Venture Homes Development Proposal under this Agreement to mitigate its impact (“**Monetary Proportionate Share Mitigation**”); and

WHEREAS, the Southern Cove Mitigation Agreement, incorporated herein by reference, shall be executed simultaneously with this Agreement and shall have the same Effective Date; 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 July 12, 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 Palmcorp Development Group, LLC, a Florida limited liability company, manager of Southern Estate Homes, LLC; Gama Real Estate Holding, LLC and Tosca Real Estate Corporation as managers of Palmcorp Development Group, LLC with either one of Gustavo M. Deribeaux on behalf for Gama Real Estate Holdings, LLC and Carlos Tosca on behalf of Tosca Real Estate Corporation, authorized to sign on behalf of Palmcorp Development Group, LLC, a Florida limited liability company, as Authorize Signatories, are hereby fully authorized to execute this Agreement on behalf of Southern Estate Homes, LLC, a Florida limited liability company, pursuant to written consent issued March 1, 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 Venture Homes Development Proposal for the Property sought to be approved by the County.

4. **MONETARY PROPORTIONATE SHARE MITIGATION.** Subject to the creation of Mitigation Bank #2017-007 under that certain Southern Cove Mitigation Agreement, attached hereto, the Parties agree that the Applicant has elected to satisfy its Monetary Proportionate Share Mitigation requirement under this Agreement through the allocation and transfer of four (4) of the available student stations from Mitigation Bank #2017-007. For purposes of this Agreement, the value of the four (4) Banked Seats to be allocated and transferred from Mitigation Bank #2017-007 to meet its Monetary Proportionate Mitigation requirement has been established at Ninety Thousand Four Dollars (\$90,004) (i.e. 4 seats x \$22,501 value of each Banked Seat = Monetary Proportionate Share Mitigation of \$90,004).

- A. **Payment:** The Parties to this Agreement covenant and agree that the Applicant has met the above referenced \$90,004 Monetary Proportionate Share Mitigation payment requirement as a part of the Southern Cove Mitigation Agreement.
- B. **Issuance of Finding:** Upon the full execution of this Agreement by all appropriate Parties, receipt of the full Monetary Proportionate Share Mitigation payment under the Southern Cove Mitigation Agreement, and allocation and transfer of four (4) Capacity Credits from Mitigation Bank #2017-007 to the Applicant, the School District shall record this Agreement in conformance with the provisions of Article 19 hereof, and 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. Issuance of a Finding by the School District shall be a pre-condition to issuance of building permits by the County for the Venture Homes Development Proposal.

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 estimated at Seventy-Four Thousand Nine Hundred Seventy Dollars (\$74,970) toward any Educational Facilities Impact Fee(s) (“**Impact Fee**”)

imposed by Miami-Dade County ordinance for construction of the Venture Homes Development Proposal (“**Impact Fee Credit**”). However, the Educational Facilities Impact Fee Credit shall not exceed Ninety Thousand Four Dollars (\$90,004). 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.

5. **EFFECTIVE DATE.** This Agreement shall take effect upon the last of the Parties signing this Agreement, but in no event later than September 30, 2017 (“**Effective Date**”). Failure to deliver this Agreement to the School Board executed by the Applicant by June 1, 2017 and by the County by September 29, 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.

6. **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.

7. **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.

8. **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 currency@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:

Palmcorp Development Group, LLC
Gama Real Estate Holdings LLC
Attn: Gustavo M. Deribeaux, Manager
4904 SW 72 Avenue
Miami, FL 33155
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Palmcorp Development Group, LLC
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With a copy to:

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c/o Salome Gonzalez
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Fax: (305) 446-4151

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.

9. **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.

10. **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.

11. **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.

12. **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.

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

14. **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.

15. **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.

16. **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 Property. 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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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.**

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

23. **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.

24. **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@dadescschools.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

Southern Estate Homes, LLC, a Florida limited liability company

By: Palmcorp Development Group, LLC, a Florida limited liability company

By: Gama Real Estate Holdings LLC, a Florida limited liability company.
Manager,

By: _____
Gustavo M. Deribeaux, Manager

By: Tosca Real Estate Corporation, a Florida Corporation.

By: _____
Carlos J. Tosca, President

WITNESSES AS TO BOTH:

Signature

Print Name

Signature

Print Name

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

The foregoing instrument was acknowledged before me this ___ day of _____, 2017, personally appeared Gustavo M. Deribeaux, Manager of Gama Real Estate Holdings, LLC, a Florida limited liability company, and Carlos J. Tosca, President of Tosca Real Estate Corporation a Florida Corporation, Managers of Palmcorp Development Group, LLC, a Florida limited liability company, Manager of Southern Estate Homes, LLC, a Florida limited liability company, on behalf of said company, who are personally known to me or have produced _____ as identification.

My Commission Expires: _____
Notary Public – State of Florida

Printed Name

JOINDER BY MORTGAGEE
CORPORATION

The undersigned, **London Financial Company, LLC** a Florida limited liability company and Mortgagee under that certain **Mortgage and Security Agreement from Southern Estate Homes, LLC, dated August 25, 2016, filed for record on August 29, 2016, in O.R. Book 30209, Page 1188, of the Public Records of Miami-Dade County, Florida. 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 _____ 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:

**London Financial Company, LLC,
a Florida limited liability company**

By: _____
I. Edward London, its Manager

Signature

Print Name

Signature

Print Name

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by I. Edward London, as Manager of London Financial Company, LLC, a Florida limited liability company, on behalf of the corporation. He/She is personally known to me or has produced _____, as identification and did/did not take an oath.

Signature

Notary Public, State of Florida
Print Name: _____

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: _____

MIAMI-DADE COUNTY :

WITNESSES:

MIAMI-DADE COUNTY

Print Name: _____

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

Print Name: _____

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

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
SOUTHERN ESTATES HOMES, LLC, A FLORIDA LIMITED LIABILITY COMPANY
FOR VENTURE HOMES DEVELOPMENT PROPOSAL**

Legal Description

**The Southeast 1/4 of the Northwest 1/4 of the Southeast 1/4 LESS
Beginning at the Southwest corner of the Southeast 1/4 of the Northwest
1/4 of the Southeast 1/4 proceeding East 334.10 feet, then North 155.56 feet,
then Northwest 334.79 feet, then South 175.79 feet to Point of Beginning,
less the North, South, East and West 25 feet thereof for roads, in Section
14, Township 56 South, Range 39 East, lying and being in Miami-Dade
County, Florida. ·**

