

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

SUBJECT: THAT THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, AUTHORIZE THE SUPERINTENDENT TO EXECUTE A PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT BY AND AMONG NR/WHARTON KANE CONCOURSE PROPERTY OWNER LLC, A DELAWARE LIMITED LIABILITY COMPANY (“APPLICANT”), THE SCHOOL BOARD, AND THE TOWN OF BAY HARBOR ISLANDS, IN CONNECTION WITH 104 RESIDENTIAL UNITS, WHICH ARE PART OF A MIXED-USE DEVELOPMENT, LOCATED AT 1177 KANE CONCOURSE, TOWN OF BAY HARBOR ISLANDS, PROVIDING FOR MONETARY PROPORTIONATE SHARE MITIGATION PURSUANT TO THE INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL FACILITY PLANNING IN MIAMI-DADE COUNTY

COMMITTEE: FACILITIES AND CONSTRUCTION

LINK TO STRATEGIC BLUEPRINT: EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES

Background

On March 9, 2016, the School Board authorized a Public School Concurrency Proportionate Share Mitigation Development Agreement (“Agreement”) by and among the School Board, the City of Miami Beach (“City”) and 3425 Collins, LLC (“Developer”). Under the terms of the Agreement, the Developer contributed the monetary value of twenty-five (25) high school student stations, which was twenty-two (22) seats above the number needed to meet its school concurrency obligation. As such, Mitigation Bank #2016-004 was established, with a quantity of twenty-two (22) Banked Seats, all of which are available for purchase by other developers.

Additional Information

NR/Wharton Kane Concourse, LLC (“Applicant”) is in the process of obtaining a development order from the Town of Bay Harbor Islands (Town) for a new mixed-use development that includes 104 residential units known as 1177 Kane Concourse, on approximately 2.08 acres located at 1177 Kane Concourse, 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 in Miami-Dade County ("ILA"). Pursuant to State Statutes and the ILA, the Residential Development was tested for Public School Concurrency and failed to meet the applicable Level of Service ("LOS") standard by two (2) student stations at the high school level. As such, representatives of the Applicant, the Town and the District (collectively "the Parties"), reached consensus on the Mitigation option allowing the Applicant to purchase the two (2) available Banked Seats from Mitigation Bank #2016-004, at the established price of \$32,812 per seat, all subject to Board and Town approval. This will require the Parties to enter into a Public School Concurrency Proportionate Share Mitigation Development Agreement ("Mitigation Agreement").

Public School Concurrency Proportionate Share Mitigation Development Agreement

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

- the Applicant shall purchase the two (2) available Banked Seats from Mitigation Bank #2016-004, at the established price of \$32,812 per seat, for a total amount of \$65,624. As required under governing state law and the ILA, the District shall provide the Applicant an Educational Facilities Impact Fee Credit estimated at Fourteen Thousand Seven Hundred Ninety Four Dollars (\$14,794);
- upon the full execution of the Agreement by all appropriate Parties and receipt of full payment from the Applicant, 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 Town for the subject Residential Development;
- the Mitigation Agreement shall expire upon the Parties' completion of their performance of all obligations under the Mitigation Agreement or within six (6) years from the date that the Agreement is executed by all Parties, whichever comes first;
- the Applicant may assign its rights, obligations and responsibilities under the Mitigation Agreement to a third-party purchaser of all or any part of fee simple title to the Residential Development. Any such assignment shall be in writing and shall require the prior written consent of all the Parties;
- the Applicant shall pay all recordation costs to the District necessary to record the Mitigation Agreement and any related documentation, including without limitation, Assignments, if any, and Releases;
- in the event of any dispute among the Parties, each Party shall be responsible for its own Attorney's fees, and the Parties waive trial by Jury in any action, proceeding or counterclaim brought by any Party against any other Party or Parties with respect to any matter arising under the Mitigation Agreement; and

- for purposes of the Mitigation 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 Mitigation Agreement, including, without limitation, issuance of Reports and Releases, and placing the Applicant in default, as may be applicable.

The Mitigation Agreement has been reviewed and approved for legal sufficiency by the School Board Attorney's Office, as well as reviewed by the Office of Risk and Benefits Management and found to be in compliance with risk management requirements. The 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 NR/Wharton Kane Concourse Property Owner, LLC, a Delaware Limited Liability Company ("Applicant"), the School Board, and Town of Bay Harbor Islands, in connection with 104 residential units, which are part of a mixed-use development, located at 1177 Kane Concourse, Bay Harbor Islands, providing for monetary proportionate share mitigation pursuant to the Interlocal Agreement for Public School Facility Planning in Miami-Dade County;
- 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.

Ns:ns

Exhibit "A"

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

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

PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT

**THIS PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE
MITIGATION DEVELOPMENT AGREEMENT ("Agreement")**, is made and entered
this _____ day of _____, 2019, by and between **THE SCHOOL
BOARD OF MIAMI-DADE COUNTY, FLORIDA**, a body corporate and political,
existing under the laws of the State of Florida, hereinafter referred to as "**School Board**"
or "**School District**," whose address is 1450 NE Second Avenue, Miami, Florida 33132;
TOWN OF BAY HARBOR ISLANDS, a municipal corporation of the State of Florida,
hereinafter referred to as "**Town**", whose address is 9665 Bay Harbor Terrace, Bay Harbor
Islands, FL 33154; and **NR/WHARTON KANE CONCOURSE PROPERTY OWNER
LLC**, a Delaware limited liability company, authorized to transact business in the State of
Florida, hereinafter referred to as "**Applicant**" or "**Property Owner**," whose address is
1819 Wazee Street, 2nd Floor, Denver, Colorado 80202; the School Board, Town and
Applicant are sometimes referred to in this agreement as "**Party**", and collectively as the
"**Parties.**"

RECITALS:

WHEREAS, the Applicant is the fee simple owner of that certain tract of land (Folio #s 1322270013640, 1322270013650, 1322270013660, 1322270013670, 1322270013680, 1322270013690) located in the Town, 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 104 residential dwelling units on the Property (the “**Development Proposal**”); and

WHEREAS, the School Board and the Town entered into that certain Amended and Restated Interlocal Agreement for Public School Facility Planning in Miami-Dade County, dated December 12,2007, adopted and executed by the Town on December 10, 2007 to implement public school concurrency and to coordinate the approval of residential development with the provision of adequate public school facilities (“**ILA**”), incorporated herein by reference; and

WHEREAS, the Applicant has filed a Site Plan Approval application with the Town on July 20, 2018, incorporated herein by reference, which requires School Facility Capacity availability for each student generated by the Development Proposal at each of the three school levels (i.e. elementary, middle and senior high school); and

WHEREAS, the Parties agree that: (1) adequate School Facility Capacity is not available for two (2) senior high students generated by the proposed residential dwelling units, at the Level of Service Standard within the Concurrency Service Area in which the Development Proposal is located, to accommodate the anticipated number of public school students that the Development Proposal will generate; (2) the needed School Facility Capacity for the applicable Concurrency Service Area is not available in any contiguous Concurrency Service Areas within the same Geographic Area; and (3) available School Facility Capacity will not be in place or under actual construction within three (3) years after the approval of the Development Proposal; and

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

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

WHEREAS, the School Board, at its meeting of March 9, 2016 (Agenda Item F-1), authorized entering into a Public School Concurrency Proportionate Share Mitigation Development Agreement between the School Board, the City of Miami Beach and 3425 Collins, LLC, a Delaware Limited Liability Company (hereinafter referred to as "**3425**

Collins”), which agreement is incorporated herein by reference (the “**3425 Collins Agreement**”); and

WHEREAS, as a part of the 3425 COLLINS Agreement, the School Board authorized the creation and establishment of the 3425 COLLINS Mitigation Bank, hereinafter referred to as “**Mitigation Bank**” or “**Mitigation Bank #2016-004**”; and

WHEREAS, the Parties agree that the Applicant has selected as its Proportionate Share Mitigation option, the purchase of two (2) banked seats (“**Monetary Proportionate Share Mitigation**”) from Mitigation Bank #2016-004, subject to contingencies set forth below; and

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

WHEREAS, The School Board of Miami-Dade County, Florida, has authorized the execution of this Agreement in accordance with Board Item F-____, Board Action No. _____, at its meeting of March 13, 2019; and

WHEREAS, the Applicant has duly approved this Agreement, and represented to the School Board and to the Town, and hereby confirms, that Ben Yorker, as Vice President of NR/WHARTON KANE CONCOURSE PROPERTY OWNER LLC, a Delaware limited liability company, has been and is hereby fully authorized to execute this Agreement on behalf of the said company.

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

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

2. **DEFINITION OF MATERIAL TERMS.** Any terms that are not defined herein are defined as set forth in the ILA or in the 3425 COLLINS Agreement. In the event of a conflict between the ILA, the 3425 COLLINS Agreement and this Agreement, the ILA shall control.

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

4. **MONETARY PROPORTIONATE SHARE MITIGATION.** The Parties agree that the Applicant has elected to satisfy its Monetary Proportionate Share Mitigation requirement under this Agreement through the purchase of available student stations from the Mitigation Bank (“**Capacity Credits**” or “**Banked Seats**”) by the Applicant and transfer thereto. The purchase price of the Banked Seat(s) has been established at Thirty Two Thousand Eight Hundred Twelve Dollars (\$32,812) per seat. As such, the amount of the Monetary Proportionate Share Mitigation under this option shall be Sixty Five

Thousand Six Hundred Twenty Four Dollars (\$65,624) (i.e. 2 seats x \$32,812 purchase price of a Banked Seat = Monetary Proportionate Share Mitigation payment of \$65,624).

- A. **Payment:** The Parties to this Agreement covenant and agree that the Applicant will make its Monetary Proportionate Share Mitigation payment to the School Board within 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). Payment of the cost of the Banked Seats, in the amount of Sixty Five Thousand Six Hundred Twenty Four Dollars (\$65,624), shall be by cashier check, wire transfer or any other method of payment acceptable to the School Board's Office of Treasury Management ("**Capacity Credits Purchase Funds**"). The Monetary Proportionate Share Mitigation payment shall be non-refundable after issuance of the Finding, as defined under Section 4B hereof.
- B. **Issuance of Finding:** Upon the full execution of this Agreement by all appropriate Parties and receipt by the School District of the Capacity Credits Purchase Funds, and transfer of Capacity Credits to the Applicant, the School District shall issue a Finding of Available School Facility Capacity ("**Finding**") pursuant to the ILA. The duration and effect of this Finding shall be in accordance with the ILA. However, in no event shall this Finding, or any allocation of student seats based on this Finding ("**School Concurrency Allocation**"), continue to be effective if the Applicant fails to perform his/her/its obligations under this Agreement. Conversely, once Applicant has

completely performed his/her/its obligations under this Agreement, Applicant shall be entitled to rely on the Finding and School Concurrency Allocation, subject to the terms and conditions stated therein. In the event Applicant fails to pay the Monetary Proportionate Share Mitigation Payment as provided for herein, the School District, at its sole option, may cancel this Agreement and return the Capacity Credit to the Mitigation Bank. Issuance of a Finding by the School District shall be a pre-condition to issuance of building permits by the Town for the subject Development Proposal.

C. **Educational Facilities Impact Fee Credit.** As consideration for the Applicant's Monetary Proportionate Share Mitigation specified herein, the Parties agree that the School District shall provide a credit toward any Educational Facilities Impact Fee(s) ("**Impact Fee(s)**") imposed by Miami-Dade County Ordinance for construction of the Development Proposal ("**Impact Fee Credit**"). The Impact Fee Credit for this Development Proposal has been estimated at a not-to-exceed amount of Fourteen Thousand Seven Hundred Ninety Four Dollars (\$14,794), derived by subtracting the cost of the two banked seats (\$65,624), less the Reimbursable Value to be paid to the owner of Bank #2016-004 for the sale of two banked seats ($\$25,415 \times 2 = \$50,830$), resulting in $\$65,624 - \$50,830 = \$14,794$. The final Impact Fee Credit amount shall be determined after the County provides the actual Impact Fee amount, 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 May 31, 2019 (“**Effective Date**”). Failure to deliver this Agreement to the School Board executed by the Applicant by March 8, 2019 and by the Town by April 12, 2019 may, in the sole discretion of the School District, result in the revocation of the Concurrency Determination issued by the School District on August 30, 2018, 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 (“**Notice**”) 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:

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 NE 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 NE 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:

Ben Yorker, Vice President
NR/Wharton Kane Concourse Property Owner LLC
1819 Wazee Street, 2nd Floor
Denver, CO 80202
Phone: (305) 570-1000
Email: byorker@nwravin.com

With a copy to:

Nicholas Barshel
Akerman LLP
98 Southeast Seventh Street, Suite 1100
Miami, FL 33131
Phone: (305) 374-5600
Email: nicholas.barshel@akerman.com

In the case of Notice or communication to the Town:

J. C. Jimenez
Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Phone: (305) 866-6241
Email: cjimenez@bayharborislands-fl.gov

With a copy to:

Craig B. Sherman
Town Attorney
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Phone: (305) 221-8000
Email: shermans@shermanlaw.com

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 and Releases, and placing the Applicant in default, 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 Town and Counsel for the Applicant may deliver Notice on behalf of the School Board, the Town 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, and (b) this Agreement is being assigned to the purchaser of 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.

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 Town 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 Town'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

Town shall retain records for five (5) years after the expiration, early termination or cancellation of this Agreement. The Applicant shall incorporate this Section 24 into every contract that it enters into relating to the subject Property.

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

[INDIVIDUAL SIGNATURE PAGES FOLLOW]

SCHOOL BOARD

Signed, sealed and delivered
in the presence of:

Print Name: _____

Print Name: _____

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

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

Recommended by:

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

Approved as to Risk Management Issues:

By: _____
Office of Risk & Benefits Management
Date: _____

Approved as to Treasury Management Issues:

By: _____
Office of Treasury Management
Date: _____

To the School Board:

Approved as to form and legal sufficiency

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

TOWN OF BAY HARBOR ISLANDS:

WITNESSES:

Print Name: _____

Print Name: _____

TOWN OF BAY HARBOR ISLANDS

By: _____

Name: J. C. Jimenez

Title: Town Manager

Date: _____

ATTEST:

By _____

Name: Marlene M. Siegel

Title: Town Clerk

Date: _____

**APPROVED AS TO LEGAL
SUFFICIENCY:**

By _____

Name: Craig B. Sherman,

Title: Town Attorney

Sherman & Sherman P.A.

Date: _____

ACKNOWLEDGMENT

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____ as _____, acting on behalf of the Town of Bay Harbor Islands, a municipal corporation 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 the Town of Bay Harbor Islands, 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, FL;
TOWN OF BAY HARBOR ISLANDS; AND
NR/WHARTON KANE CONCOURSE PROPERTY OWNER LLC**

Legal Description

PARCEL A:

Lots 7, 8, 9, 10 and 11, less the South 15 feet of Lots 9, 10 and 11, Block 21, of BAY HARBOR ISLAND, according to the plat thereof, as recorded in Plat Book 46, Page 5, of the Public Records of Miami-Dade County, Florida.

PARCEL B:

Lots 5, 6, 12, 13 and 14, less the South 15 feet of Lots 12, 13 and 14, Block 21, of BAY HARBOR ISLAND, according to the plat thereof, as recorded in Plat Book 46, Page 5, of the Public Records of Miami-Dade County, Florida.

