

Office of School Facilities
Raul F. Perez, Chief Facilities Design & Construction Officer

SUBJECT: **AUTHORIZE THE SUPERINTENDENT TO EXECUTE A PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT BY AND AMONG 444 BRICKELL PARTNERS, LLC (THE “APPLICANT”), THE SCHOOL BOARD, AND CITY OF MIAMI, IN CONNECTION WITH A NEW 1400-UNIT RESIDENTIAL DEVELOPMENT; AND**

AUTHORIZE THE SCHOOL BOARD ATTORNEY TO EXECUTE THE WAIVER OF CONFLICT LETTER FROM GREENBERG TRAURIG, WHICH FIRM IS SERVING SOLELY AS COUNSEL FOR THE APPLICANT IN THIS TRANSACTION

COMMITTEE: **FACILITIES AND CONSTRUCTION**

LINK TO STRATEGIC BLUEPRINT: **EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES**

444 Brickell Partners, LLC (the “Applicant”) is in the process of obtaining a Site Plan approval from the City of Miami (“City”) for a new 1400-unit residential development (“Residential Development”), on approximately 3.9 acres, located at 444 Brickell Avenue, City of Miami, 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 application was reviewed by the District for compliance with Public School Concurrency. The review yielded that the applicable Level of Service (“LOS”) standard was met at the middle school and high school levels but is deficient by twenty (20) elementary school seats.

Proportionate Share Mitigation

Pursuant to the ILA, where there is insufficient capacity to address the impacts of a proposed development, representatives of the Applicant, impacted local government and District (collectively “the Parties”) are to discuss ways of mitigating the development’s impact, including proportionate share mitigation options (“Mitigation”). After several meetings, the Parties have reached consensus on Mitigation, subject to Board and City approval; this also allows the Parties to enter into a Public School

Concurrency Proportionate Share Mitigation Development Agreement (“Agreement”), pursuant to the ILA.

Under the governing provisions, the minimum acceptable mitigation project is a classroom. In this case, to address the deficiency of twenty (20) elementary student stations, Mitigation by the Applicant will be a monetary contribution equal to the cost of one elementary school classroom containing twenty-two (22) student stations at Southside Elementary School or another impacted District school facility (the “School Project”) as determined by the School District, in the amount of \$519,992 (the “Mitigation Cost”). This amount will be included in the District’s Facilities Work Program as part of the next update. The Mitigation Cost was derived based on the cost per student station, as published by the State of Florida Department of Education (FDOE) for October of 2020, the date by which 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 against the Mitigation Cost in an amount not to exceed said Mitigation Cost.

Mitigation Banking

The School Project will yield twenty-two (22) student stations, or two (2) seats beyond the twenty (20) student stations required to address the Residential Development’s impact. Pursuant to the governing ILA, the two (2) remaining seats will be made available through a Mitigation Bank to be established and administered by the District for future purchase by applicants for future residential developments affecting the same Concurrency Service Area (“CSA”) and also in need of providing mitigation at the elementary school level

Public School Concurrency Proportionate Share Mitigation Development Agreement

The Agreement between the Board, City and Applicant shall contain, substantially, the following terms and conditions:

- as detailed above, the Applicant shall be required to provide a total Monetary Proportionate Share Mitigation Payment (“Mitigation Payment”) to the Board of \$519,992;
- the School Project is to be added to the District’s Facilities Work Program at the time of its next annual update following the execution of the Agreement and upon receipt of the Monetary Proportionate Share Mitigation Payment from the Applicant;
- upon the full execution of the Agreement by all 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 City for the subject Residential Development;

- the District shall establish and administer a Mitigation Bank, which, in this instance, will have two (2) Banked Seats available for purchase by future applicants failing to meet concurrency at the elementary school level within the same CSAs. There will be no reimbursable value to the Applicant for the Banked Seats;
- the Banked Seats may be purchased within a period of six (6) years from the date the School Board authorized the execution of this Agreement. Any remaining Banked Seats shall be deemed expired at that time;
- future residential developments may purchase Banked Seat(s) only if the Mitigation Bank has a sufficient number of available seats to provide for the entire school capacity deficiency. In the event that in the future, multiple Mitigation Banks are created for the same CSA, the Banked Seats shall be transferred to future residential developments in the order in which each Mitigation Bank was created;
- the Agreement shall expire upon the Parties' completion of their performance of all obligations or within six (6) years from the date that the Agreement is executed by all Parties, whichever comes first;
- the Applicant may assign its rights, obligations and responsibilities under the 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 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 Agreement; and
- for purposes of the Agreement, the Superintendent or his/her designee shall be the Party designated by the Board to grant or deny any and all approvals required under the Agreement, including, without limitation, issuance of Reports and Releases, and placing the Applicant in default, as may be applicable.

Waiver of Conflict Letter

The Applicant and its affiliates have selected Greenberg Traurig ("GT") to serve as legal counsel in this transaction. Greenberg Traurig has represented in the past and presently represents the Board in other unrelated transactions, but not in this one. To that end, GT has proffered a waiver of conflict letter for the Board's consideration and approval, a copy of which is included as Exhibit "A".

The 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 "B".

RECOMMENDED:

That The School Board of Miami-Dade County, Florida,

A) Authorize the Superintendent to:

1. execute a Public School Concurrency Proportionate Share Mitigation Development Agreement ("Agreement") by and among 444 Brickell Partners, LLC, a Delaware limited liability company, authorized to transact business in the State of Florida, as Trustee of the 444 Brickell Land Trust, under the provisions of the Land Trust Agreement, dated November 27, 2013 (the "Applicant"), the School Board, and the City of Miami, in connection with a new 1400-unit residential development located at 444 Brickell Avenue, City of Miami, providing for monetary proportionate share mitigation pursuant to the Interlocal Agreement for Public School Facility Planning in Miami-Dade County; and execute any other documentation that may be required to effectuate implementation of the Agreement; and
2. 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.

B) Authorize the School Board Attorney to execute the waiver of conflict letter from Greenberg Traurig, which firm is serving solely as counsel for the Applicant in this transaction.

NS:imr

September 16, 2019

Via Hand Delivery

444 Brickell Partners, LLC
425 NE 22 Street, Suite 301
Miami, Florida 33137

The School Board of Miami-Dade County, Florida
1450 N.E. 2nd Avenue
Miami, Florida 33132

Attn: Matthew J. Allen
Vice President

Attn: Walter J. Harvey
School Board Attorney

Re: School Concurrency Determination for Folio No. 01-0210-000-1060 and 01-0210-000-1020 (the "**Transaction**")

Dear Mr. Harvey and Mr. Allen:

As you are aware, Greenberg Traurig, P.A. ("**GT**") has been asked to serve as legal counsel to 444 Brickell Partners, LLC ("**444 Brickell**") in connection with the Transaction. As you are further aware, GT has served, and continues to serve as counsel to the School Board of Miami-Dade County (the "**School Board**"), and that 444 Brickell is adverse to the School Board in the Transaction.

GT has agreed to undertake this representation of 444 Brickell upon full disclosure to both 444 Brickell and the School Board of the following circumstances and the express mutual understanding and agreement of each of you as follows:

1. School Board confirms and agrees that GT may act as counsel for 444 Brickell in connection with the Transaction (as well as other matters unrelated to the Transaction).
2. School Board confirms and agrees that GT may continue to act as attorney for the School Board and on any and all matters in which they are currently involved or in which they may become involved in the future, including, without limitation, the Transaction and matters related thereto.
3. 444 Brickell has not been required to select GT as its attorneys as a prerequisite or consideration of the Transaction.
4. In seeking this waiver, GT represents that: (1) in representing 444 Brickell, GT will not in whole or in part, disclose to 444 Brickell any information concerning the School Board, that has been identified to GT as confidential or proprietary or that GT should reasonably believe to be confidential or proprietary; (2) GT will not in whole or in part, disclose to 444 Brickell any information concerning the School Board, that has been

identified to GT as confidential or proprietary or that GT should reasonably believe to be confidential or proprietary; and (3) if any litigation arises between 444 Brickell and the School Board in connection with Transaction (an "Action"), GT shall not represent either party in connection with such Action so long as GT continues to represent the School Board.

Please submit this waiver agreement to the School Board for consideration and upon its approval thereof, execute the enclosed copy of this letter where indicated, and return the same to my attention.

This letter may be executed in counterparts.

Sincerely,

GREENBERG TRAUERIG, P.A.

By: 

Iris V. Escarra, Esq.
Shareholder

Agreed and Consented to this ____ day of
September, 2019 by:

444 Brickell, LLC, a Delaware limited
Liability company

By: _____
Name: Matthew J. Allen
Title: Vice President

Agreed and Consented to this ____ day of
September, 2019 by:

THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA

Walter J. Harvey
School Board Attorney

identified to GT as confidential or proprietary or that GT should reasonably believe to be confidential or proprietary; and (3) if any litigation arises between 444 Brickell and the School Board in connection with Transaction (an "Action"), GT shall not represent either party in connection with such Action so long as GT continues to represent the School Board.

Please submit this waiver agreement to the School Board for consideration and upon its approval thereof, execute the enclosed copy of this letter where indicated, and return the same to my attention.

This letter may be executed in counterparts.

Sincerely,

GREENBERG TRAURIG, P.A.

By: 

Iris V. Escarra, Esq.
Shareholder

Agreed and Consented to this 16 day of
September, 2019 by:

444 Brickell, LLC, a Delaware limited
Liability company

By: 

Name: Matthew J. Allen
Title: Vice President

Agreed and Consented to this ____ day of
September, 2019 by:

THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA

Walter J. Harvey
School Board Attorney

This instrument prepared by
Victor Alonso
Miami-Dade County Public Schools
1450 NE 2 Avenue, Room 525
Miami, FL 33132

After Recording return to:
Ana R. Craft, Esquire
School Board Attorney's Office
1450 NE 2 Avenue, Room 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 _____, 2020, by and between **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 2 Avenue, Miami, Florida 33132; **THE CITY OF MIAMI**, a municipal corporation of the State of Florida, hereinafter referred to as **“City”**, whose address is Miami Riverside Center, 444 SW 2nd Avenue, Miami, FL 33130; and **444 BRICKEL PARTNERS, LLC**, a Delaware limited liability company, authorized to transact business in the State of Florida, as Trustee of the **444 Brickell Land Trust**, under the provisions of the Land Trust Agreement, dated **November 27, 2013**, hereinafter referred to as **“Applicant”**, **“Developer”**, or **“Property Owner”** whose address is 315 S. Biscayne Boulevard, 3rd Floor, Miami, FL 33131; the City, School Board and Applicant are collectively referred to herein as the **“Parties.”**

RECITALS:

WHEREAS, the Applicant is the fee simple owner of that certain tract of land (Folio #s 0102100001060 and 0102100001020) located in the City of Miami, 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 (known as One Brickell) seeking approval to develop not more than 1400 residential dwelling units on the Property (the **“Development Proposal”**); and

WHEREAS, the School Board and the City entered into that certain Amended and Restated Interlocal Agreement for Public School Facility Planning in Miami-Dade County, dated December 13, 2007 (adopted and executed by the City on December 20, 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 development application with the City (2014-0151 dated 5/15/15) 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 twenty (20) of the elementary school students generated by the Development Proposal at the Level of Service Standard within the Concurrency Service Area in which the Development Proposal is located, to accommodate the anticipated number of public school students that the

Development Proposal will generate; (2) the needed School Facility Capacity for the applicable Concurrency Service Area is not available in any contiguous Concurrency Service Areas within the same Geographic Area; and (3) available School Facility Capacity will not be in place or under actual construction within three (3) years after the approval of the Development Proposal; and

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

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

WHEREAS, the Parties agree that the Applicant has selected as the Proportionate Share Mitigation option, the full capital cost of a public school project, comprised of one elementary school classroom of twenty-two (22) student stations ("**Monetary Proportionate Share Mitigation**"), as hereinafter described, which will be added to the first three (3) years of the School District's Facilities Work Program; and

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

WHEREAS, The School Board of Miami-Dade County, Florida, has authorized the execution of this Agreement in accordance with Board Item _____, Board Action No. _____, at its meeting of _____, 2020; and

WHEREAS, the City of Miami Commission, at its meeting of December 13, 2007, duly passed and adopted on that date, Resolution No. 07-0717, authorizing the execution of an Interlocal Agreement for the implementation of school concurrency; and

WHEREAS, the Interlocal Agreement establishes proportionate share mitigation ; and

WHEREAS, the Applicant has duly approved this Agreement, and represented to the School Board and to the City, and hereby confirms, that either Matthew J. Allen or Jeffrey Hoyos, each as Vice-President of PRH 444 Brickell Member, LLC, a Florida limited liability company acting as the Managing Member of 444 Brickell Partners, LLC, a Delaware limited liability company, have been and each acting alone is hereby fully authorized to execute this Agreement on behalf of Applicant.

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

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

2. **DEFINITION OF MATERIAL TERMS.** Any terms that are not defined herein are defined as set forth in the ILA.

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

4. **MONETARY PROPORTIONATE SHARE MITIGATION.** 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). The Parties agree that the amount of the Monetary Proportionate Share Mitigation shall be Five Hundred Nineteen Thousand Nine Hundred and Ninety Two Dollars (\$519,992), which the Developer shall provide to the School District via a Cashier's Check, or by wire transfer or any other method of payment acceptable to the School Board's Office of Treasury Management. 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 one of the impacted schools (the "**School Project**"), as determined by the School District. 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 subject Development Proposal. The duration and effect of this Finding shall be in accordance with the ILA. However, in no event shall this Finding, or any allocation of student seats based on this Finding (“**School Concurrency Allocation**”), continue to be effective if the Applicant fails to perform his/her/its obligations under this Agreement. Conversely, once Applicant has completely performed his/her/its obligations under this Agreement, Applicant shall be entitled to rely on the Finding and School Concurrency Allocation to the extent of the School Capacity provided by the Monetary Proportionate Share Mitigation.

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 credit the reserved seats to the Concurrency Service Area from which they were reserved.

5. **EDUCATIONAL FACILITIES IMPACT FEE CREDIT.** As consideration for the Applicant’s Monetary Proportionate Share Mitigation specified herein, **and as further elaborated in Section 6(c) of this Agreement,** the Parties agree that the School District shall provide a credit, estimated at a not-to-exceed figure of Five Hundred Nineteen Thousand Nine Hundred and Ninety Two Dollars (\$519,992), toward any Educational Facilities Impact Fees (“**Impact Fees**”) imposed by Miami-Dade County (“**County**”) ordinance for construction of the Development Proposal (“**Impact Fee Credit**”). However, in no event will the Impact Fee Credit exceed the amount of the Monetary Proportionate Share Mitigation received by the School District from the Applicant; that is, the total amount of the Impact Fee Credit cannot exceed Five Hundred Nineteen Thousand Nine Hundred and Ninety Two Dollars (\$519,992). 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 one classroom of twenty-two (22) elementary school seats resulting in two (2) seats in excess of the twenty (20) seats needed to be mitigated by the Applicant for the Development Proposal. As such, the Board shall establish and manage a Mitigation Bank (“**Mitigation Bank #2020-020**”) and transfer the two (2) remaining seats (“**Capacity Credits**”) into Mitigation Bank #2020-020 for use by future residential developments, as set forth in this Agreement. 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 Five Hundred Nineteen Thousand Nine Hundred and Ninety Two Dollars (\$519,992) 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 \$23,636, 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 (October

2020) (i.e. 22 student stations x \$23,636 cost per station = \$519,992). 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 twenty (20) seats needed to mitigate the Development Proposal, resulting in two (2) Banked Seats (i.e. 22seats constructed – 20 mitigated seats = 2 Banked Seats). In this Agreement, “**Banked Seats**” and “**Capacity Credits**” shall be used interchangeably unless otherwise specified.

c. 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 two (2) seats in excess of the twenty (20) seats needed to be mitigated by the 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 two (2) Banked Seats. The reimbursable value of Banked Seats shall be determined by adding the estimated Educational Impact Fee amount of One Million Eight Hundred Forty Eight Thousand Dollars (\$1,848,000) and the value of the seats needed to be mitigated (20 seats x \$23,636 per seat = \$472,720), resulting in the amount of \$2,320,720, whose amount exceeds the Monetary Proportionate Share Mitigation of \$519,992, thus there is no reimbursable value to the Applicant for each Banked Seat.

d. **Expiration of Capacity Credits.** Capacity Credits may be purchased by future applicant(s) within six (6) years from the date the School Board authorized the execution of this Agreement, which in this instance, is hereby established as, March 18, 2020, and subject to expiration of timeframe set forth under Section 17 hereof. After 5:00 PM (Miami Time), March 18, 2026, any remaining Capacity Credits created by the Monetary Proportionate Share Mitigation option shall be deemed expired, and any Banked Seat(s) not yet transferred will be returned to the Concurrency Service Area where the School Project was constructed.

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

f. **Priority of Capacity Credit Transfers.** In the event multiple mitigation banks are created by other applicants, for the same Concurrency Service Area or Adjacent Concurrency Service Areas within the same Geographic Area, the Capacity Credits shall be made available for transfer to future applicants in the order in which each mitigation bank was created.

g. **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 May 01, 2020. Failure to deliver this Agreement to the School Board executed by the Applicant by March 13, 2020 and by the City by March 27, 2020, may, in the sole discretion of the School District, result in the revocation of the Concurrency Determination issued by the School District on July 24, 2019, 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 DELIVERABLES.

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 2 Avenue, Suite 912
Miami, Florida 33132
Fax: (305) 995-1488

With copies to:

Miami-Dade County Public Schools Facilities Planning
Attn: Deputy Chief Facilities & Eco-Sustainability Officer
1450 NE 2 Avenue, Room 525
Miami, Florida 33132
valonso2@dadeschools.net; and concurrency@dadeschools.net
Fax: (305) 995-7460

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
Fax: 305-995-1412

In the case of Notice or communication to the Applicant:

PRH 444 Brickell Member LLC
Attn: Matthew J. Allen or Jeffrey Hoyos, Vice-President
315 S. Biscayne Boulevard, 4th floor
Miami, FL 33131
Phone: (305) 46-9900
sfigueroa@relatedgroup.com

with a copy to:

Iris V. Escarra, Esquire.
Greenberg Traurig, P.A.
333 SE 2 Avenue, Suite 4400
Miami, Florida 33131
Phone: 305-579-0737
Fax: 305-579-0717
escarra@gtlaw.com

In the case of Notice or communication to the City:

E. Sue Trone, AICP
The City of Miami
Miami Riverside Center
444 SW 2 Avenue, 3rd Floor
Miami, FL 33130
Phone: 305-416-1445
Fax: 305-416-2156
STrone@miamigov.com
planning@miamigov.com

With a copy to:

Victoria Mendez, City Attorney
The City of Miami
Miami Riverside Center
444 SW 2 Avenue, 9th Floor
Miami, FL 33130
Phone: 305-416-1832
Fax: 305-416-1801
VMendez@miamigov.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, 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 a final development order of either the first building permit for the Development Project or District's Final Plat sign-off; 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. 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:

APPLICANT/PROPERTY OWNER

WITNESSES:

444 Brickell Partners, LLC, a Delaware limited liability company, as Trustee of the 444 Brickell Land Trust, under the provisions of the Land Trust Agreement, dated November 27, 2013

Signature

By: PRH 444 Brickell Member, LLC, a Florida limited liability company, its Managing Member

Print Name

By: _____
Matthew J. Allen, Vice-President

Signature

Print Name

APPLICANT'S ACKNOWLEDGMENT

STATE OF NEW YORK)
) SS:
COUNTY OF _____)

Before me, a Notary Public, on the _____ day of _____, 2020, personally appeared Matthew J. Allen, as Vice-President of PRH 444 Brickell Member LLC, a Florida limited liability company, acting as the Managing Member of 444 Brickell Partners, LLC, a Delaware limited liability company, who ___ [] is/are personally known to me or [] has/have produced _____ as identification, and who acknowledged before me that they signed the above instrument with full authority as set forth therein, on behalf of Applicant.

[NOTARY SEAL]

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

SCHOOL BOARD

Signed, sealed and delivered
in the presence of:

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

Print Name: _____

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

Print Name: _____

Recommended by:

Name: Raul F. Perez
Title: Chief Design and Construction Officer
Date: _____

Approved as to Risk Management Issues:

By: _____
Risk & Benefits Management Officer
Date: _____

Approved as to Treasury Management Issues

By: _____
Treasurer
Date: _____

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

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

CITY OF MIAMI:

WITNESSES:

Print Name: _____

Print Name: _____

CITY OF MIAMI

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

Todd B. Hannon, Clerk

By _____
City Clerk

_____ day of _____, 2020.

**APPROVED AS TO LEGAL FORM
AND CORRECTNESS:**

By _____
Victoria Mendez, City Attorney

Date: _____

EXHIBIT "A"

TO PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT AMONG THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FL; CITY OF MIAMI; AND 444 BRICKEL PARTNERS, LLC

Legal Description

A PORTION OF LOT 1, BLOCK 103 S, OF BRICKELL POINT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 8, PAGE 93, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE POINT OF INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF S.E. 5TH STREET, PER CLERK'S FILE NO. 74R-171289, AS RECORDED IN THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, WITH THE WESTERLY RIGHT-OF-WAY OF BRICKELL AVENUE, PER CIRCUIT COURT MINUTE BOOK 36, PAGE 290, AS RECORDED IN THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; THENCE NORTH 76°39'35" WEST FOR 25.00 FEET TO THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED PARCEL OF LAND; THENCE CONTINUE NORTH 76°39'35" WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE FOR 427.50 FEET; THENCE NORTH 13°20'55" EAST FOR 407.72 FEET; THE FOLLOWING TWO COURSES BEING ALONG THE SOUTHERLY BOUNDARY OF THE UNITED STATES GOVERNMENT HARBOR LINE (AS SHOWN ON SAID PLAT OF BRICKELL POINT): (1) THENCE SOUTH 74°08'01" EAST FOR 380.79 FEET; (2) THENCE NORTH 89°33'40" EAST FOR 7.70 FEET; THE FOLLOWING THREE COURSES BEING ALONG THE SAID WESTERLY RIGHT-OF-WAY LINE OF BRICKELL AVENUE: (1) THENCE SOUTH 1°52'35" EAST FOR 169.36 FEET TO A POINT OF CURVATURE OF A 573.14 FOOT RADIUS CURVE; (2) THENCE SOUTHERLY AND WESTERLY ALONG SAID CIRCULAR CURVE LEADING TO THE RIGHT HAVING A CENTRAL ANGLE OF 15°13'30" FOR AN ARC OF 152.30 FEET TO A POINT OF TANGENCY; (3) THENCE SOUTH 13°20'55" WEST FOR 53.83 FEET TO A POINT OF CURVATURE OF A 25.00 FOOT RADIUS CURVE; THENCE SOUTHERLY AND WESTERLY ALONG SAID CIRCULAR CURVE LEADING TO THE RIGHT BEING ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID S.E. 5TH STREET, HAVING A CENTRAL ANGLE OF 89°59'30" FOR AN ARC OF 39.27 FEET TO THE POINT OF BEGINNING.

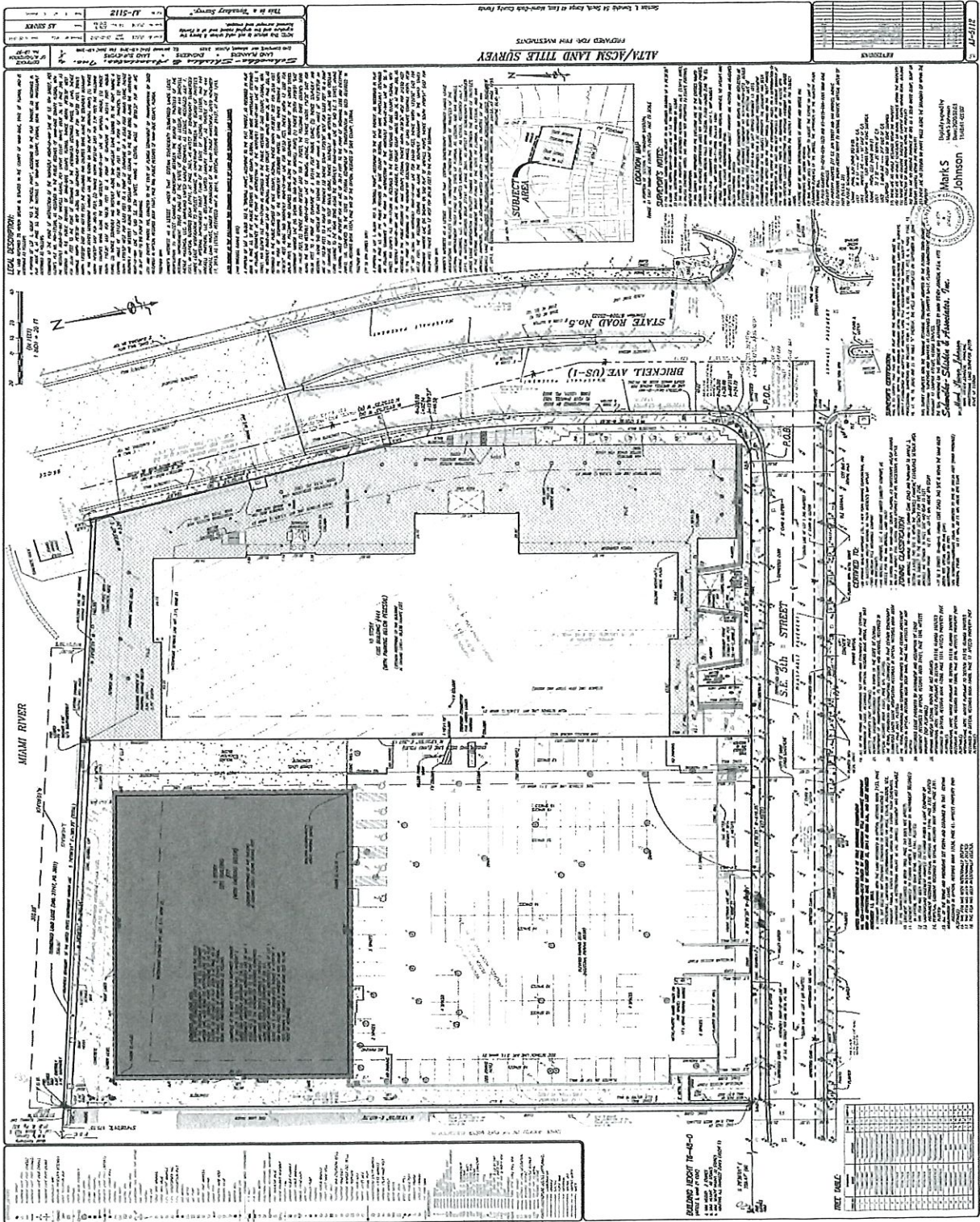
LESS AND EXCEPT PARCEL 105, CONVEYED TO THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION BY DEED RECORDED IN OFFICIAL RECORDS SOOK.1553J, PAGE 969, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

A
D
D
E
D

EXHIBIT "B"

TO PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT AMONG THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FL; CITY OF MIAMI; AND 444 BRICKEL PARTNERS, LLC

SURVEY



A
D
D
E
D

JOINDER
TO PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION
DEVELOPMENT AGREEMENT AMONG THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FL; CITY OF MIAMI; AND 444 BRICKEL PARTNERS, LLC

(Consisting of 2 pages, including this title page)

A
D
D
E
D

