

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

SUBJECT: AUTHORIZE THE SUPERINTENDENT TO EXECUTE A PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT BY AND AMONG ABBOTT AVENUE PARTNERS, LLC (THE “APPLICANT”), THE SCHOOL BOARD, AND CITY OF MIAMI BEACH, IN CONNECTION WITH A NEW 148-UNIT RESIDENTIAL DEVELOPMENT

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, at Miami Beach Senior High School, 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, of which, seven (7) Banked Seats are still available for purchase by other developers.

Additional Information

Abbott Avenue Partners, LLC (the “Applicant”) has obtained a Design Review Board approval from the City of Miami Beach (City) to develop not more than 232 residential units, which are composed of 139 co-living units (counted as 70 units for density calculations), 93 regular units and 15 credits for existing units, for a net total of 148-unit residential development (“Residential Development”), on approximately 1.2 acres, located at 7120 Abbott Avenue, 7117 Byron Avenue and 409 71 Street, Miami Beach, Florida, contingent upon the Applicant obtaining a school concurrency determination from the District for the 148 new units, 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 elementary and middle school levels but is deficient by three (3) high school seats.

As such, representatives of the Applicant, the City and the District (collectively “the Parties”), reached consensus on the Mitigation option allowing the Applicant to purchase the three (3) available Banked Seats from Mitigation Bank #2016-004, at the established price of \$33,356 per seat, all subject to Board and City 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, City and Applicant shall contain, substantially, the following terms and conditions:

- the Applicant shall purchase the three (3) available Banked Seats from Mitigation Bank #2016-004, at the established price of \$33,356 per seat, for a total amount of \$100,068. As required under governing state law and the ILA, the District shall provide the Applicant an Educational Facilities Impact Fee Credit estimated at a not to exceed amount of Twenty-Three Thousand Eight Hundred Twenty Three Dollars (\$23,823);
- 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 City 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.

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 by and among Abbott Avenue Partners, LLC (the "Applicant"), the School Board, and City of Miami Beach, in connection with a new 148-unit residential development 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.

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.

IMR:imr

This instrument prepared by
Nathaly Simon
Miami-Dade County Public Schools
1450 NE 2nd Avenue, Room 525
Miami, FL 33132

Exhibit "A"

After Recording return to:
Ana R. Craft, Esquire
School Board Attorney's Office
1450 NE 2nd 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 this _____ day of _____, 2021, 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; **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida, hereinafter referred to as "**City**", whose address is 1700 Convention Center Drive, Miami Beach, Florida 33139; and **ABBOTT AVENUE PARTNERS, LLC**, a Delaware limited liability company, **PUMPS AT 71, LLC**, a Delaware limited liability company, **7433 COLLINS AVE. CORP.**, a Florida corporation, all authorized to transact business in the State of Florida, hereinafter referred to collectively as "**Applicant**", "**Developer**", or "**Property Owner**", whose address is 2999 N.E. 191 Street, Suite 800, Aventura, Florida 33180; The School Board, City and Applicant are collectively referred to in this agreement as the "**Parties**."

RECITALS:

WHEREAS, the Applicant (also referred to herein as "**Property Owner**") is the fee simple owner of that certain tract of land (consisting of, collectively, folio #s 0232110020430,

0232110020440, 0232110020460, 0232110020470, 0232110020360, 0232110020370, 0232110020380, 0232110020390, 0232110020410) located in the City of Miami Beach, 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, on July 7, 2020, the Property Owner obtained Design Review Board approval from the City of Miami Beach (File No. DRB 19-0482) to develop the Property, with 148 multifamily residential dwelling units, which are composed of 139 co-living units (counted as 70 for density calculations) and 93 regular units. The site has 15 credits for existing units, thus the net total is 148 residential units for school concurrency determination purposes;; 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 12, 2007 (adopted and executed by the City on February 13, 2008), 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 obtained Design Review Board approval from the City of Miami Beach (File No. DRB 19-0482) , 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 three (3) 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 three (3) 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 _____, 2021; and

WHEREAS, the City of Miami Beach, at its meeting of _____, 2021, duly passed and adopted on that date, Resolution No._____, authorizing the appropriate City officials to enter into this Agreement; and

WHEREAS, the Applicant has duly approved this Agreement, and represented to the School Board and to the City, and hereby confirms, that (i) Robert Finvarb, in his capacity as Manager of Abbott Avenue Partners, LLC, a Delaware limited liability company; (ii) Robert Finvarb, in his capacity as Manager of Pumps at 71, LLC, a Delaware limited liability company; and (iii) Juliette Klepach, in her capacity as President of 7433 Collins Ave. Corp., a Florida corporation; are each authorized to transact business in the State of Florida, and have been and are hereby fully authorized to execute this Agreement on behalf of the 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 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-Three Thousand Four Hundred Ninety-Five Dollars (\$33,356) per seat. As such, the amount of the Monetary Proportionate Share Mitigation under this option shall be One Hundred Thousand Sixty Eight Dollars (\$100,068) (i.e. 3 seats x \$33,356 purchase price of a Banked Seat = Monetary Proportionate Share Mitigation payment of \$100,068).

- 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 One Hundred Thousand Sixty Eight Dollars (\$100,068), 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 City for the subject Development Proposal. Therefore, the Applicant must obtain the Finding prior to building permit approval.

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 Twenty Three Thousand Eight Hundred Twenty Three Dollars (\$23,823), derived by subtracting the cost of the three banked seats (\$100,068), less the Reimbursable Value to be paid to the owner of Bank #2016-004 for the sale of three banked seats ($\$25,415 \times 3 = \$76,245$), resulting in $\$100,068 - \$76,245 = \$23,823$. 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 April 30, 2021 (“**Effective Date**”). Failure to deliver this Agreement to the School Board executed by the Applicant by March 12, 2021 and by the City by March 31, 2021, may, in the sole discretion of the School District, result in the revocation of the Concurrency Determination issued by the School District on July 28, 2020, 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: Eco-Sustainability Officer
1450 NE 2 Avenue, Room 525
Miami, Florida 33132
NSimon1@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:

Abbott Avenue Partners, LLC
Attn: Robert Finvarb
2999 N.E. 191 Street, Suite 800
Aventura, Florida 33180
Phone: (305) 866-7555
Robert@finvarb.com

Pumps at 71, LLC
Attn: Robert Finvarb
2999 N.E. 191 Street, Suite 800
Aventura, Florida 33180
Phone: (305) 866-7555
Robert@finvarb.com

7433 Collins Ave. Corp.
Attn: Bernard Klepach
555 NE 185 Street, Suite 201
Miami, Florida 33179
Phone: (305) 866-7555
Benny@jjackfo.com

With copy to:

Greenberg Traurig, P.A.
Attn: Ethan B. Wasserman
333 S.E. 2nd Avenue, 41st Floor
Miami, FL 33131
Phone: (305) 579-0784
wassermane@gtlaw.com

In the case of Notice or communication to the City:

Michael Belush, AICP, Principal Planner
Planning Department, City of Miami Beach
1700 Convention Center Dr., Miami Beach, FL 33139
Phone: (305) 673-7000
Email: michaelbelush@miamibeachfl.gov

With a copy to:

Raul Aguila, City Attorney
Office of the City Attorney
1700 Convention Center Dr., Miami Beach, FL 33139
RaulAguila@miamibeachfl.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 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 City and Counsel for the Applicant may deliver Notice on behalf of the School Board, the City 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 (except for failure to pay the Proportionate Share Mitigation Payment as set forth under Section 4 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.

Notwithstanding the foregoing, the Parties further agree that in the event the Applicant does not make the Proportionate Share Mitigation Payment 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 within the established period, as detailed above, the Applicant must within five (5) business days of written notice of demand from the School Board make such payment. In the event the Developer still fails to make payment within the five (5) business days to the School District as prescribed above, the following shall occur: (1) the Finding shall not be issued by the School District and the City shall be so notified so that no building permits may be issued; (2) if the School District had previously included the School Project in the District's Capital Plan, the School Project will be placed on hold and/or removed from the District's Capital Plan until the total Monetary Proportionate Share Mitigation payment is received; (3) 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; and (4) in order for the development to proceed, the Local Government will need to submit a new application to the School District for school concurrency determination.

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 City 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 City'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 City 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]

IN WITNESS WHEREOF, the Parties have made and executed this Agreement on the respective dates under each signature:

APPLICANT/PROPERTY OWNER

WITNESSES:

ABBOTT AVENUE PARTNERS, LLC,
a Delaware limited liability company

Print Name: _____

By: Robert Finvarb , Manager

PUMPS AT 71, LLC,
a Delaware limited liability company

Print Name: _____

By: Robert Finvarb , Manager

7433 COLLINS AVE. CORP.,
a Florida Corporation

Print Name: _____

By: Juliette Klepach , President

APPLICANT’S ACKNOWLEDGMENT

STATE OF FLORIDA)
) **SS:**
COUNTY OF _____)

Before me, a Notary Public, on the _____ day of _____, 2021, personally appeared, by means of [] physical presence or [] online notarization, (i) Robert Finvarb, in his capacity as Manager of Abbott Avenue Partners, LLC, a Delaware limited liability company; (ii) Robert Finvarb, in his capacity as Manager of Pumps at 71, LLC, a Delaware limited liability company; and (iii) Juliette Klepach, in her capacity as President of 7433 Collins Ave. Corp., a Florida corporation, 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:

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: 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: _____

ACKNOWLEDGMENT

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by means of [] physical presence or [] online notarization, ALBERTO M. CARVALHO, Superintendent of Schools, acting on behalf of THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic existing under the laws of the State of Florida, who personally appeared before me, and is [] personally known to me or [] produced _____ as identification, and who further acknowledged that he signed the above instrument with full authority, as set forth therein, on behalf of The School Board of Miami-Dade County, Florida.

[NOTARY SEAL]

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

CITY OF MIAMI BEACH:

WITNESSES:

City of Miami Beach:

By: _____
_____, Mayor
____ day of _____, 2021

ATTEST:

_____, _____ Clerk

By: _____
Planning Director

ATTEST

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

By: _____
City Attorney

Date: _____

ACKNOWLEDGMENT

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by [] physical presence or [] by online notarization, by _____ as Mayor, acting on behalf of City of Miami Beach, a Municipal Corporation, existing under the laws 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 City of Miami Beach, 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; CITY OF MIAMI BEACH; AND ABBOTT AVENUE PARTNERS, LLC, PUMPS AT 71, LLC, AND 7433 COLLINS AVE. CORP.

Legal Description

Lots 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, in Block 6, Normandy Beach South, according to the plat thereof as recorded in Plat Book 21 at Page 54 of the Public Records of Miami-Dade County, Florida.

AND:

All of a 10' Alley also known as Normandy Beach Court lying adjacent to Lots 7, 8, 9 10 and 11, Block 6, NORMANDY BEACH SOUTH, according to the plat thereof, as recorded in Plat Book 21 at Page 54 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Northeast corner of said Lot 10; thence S 87°34'52" W along the North line of said Lots 7, 8, 9 and 10 for 100.01 feet to the Northwest corner of said Lot 7; thence N 02°21'31" W along the Northerly projection of the East right of way line of a 20' Alley also known as Abbott Court for 10.00 feet to the Southwest corner of said Lot 11; thence N 87°34'52" E along the South line of said Lot 11 for 100.01 feet to the Southeast corner of said Lot 11; thence S 02°21'42" E along the Southerly projection of the West right of way line of Abbott Avenue for 10.00 feet to the Point of Beginning.

AND:

A portion of a 20' Alley also known as Abbott Court lying adjacent to Lots 1, 2, 3, 4, 11, 12, 13, 14, 15, 16, 17 and 18, Block 6, NORMANDY BEACH SOUTH, according to the plat thereof, as recorded in Plat Book 21 at Page 54 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Northeast corner of said Lot 1; thence S 02°21'31" E along the East line of said Lots 1, 2, 3 and 4, also being the West right of way line of a 20' Alley also known as Abbott Court for 166.44 feet to a point on a circular curve concave to the Southwest and whose radius point bears S 25°49'29" W; thence Southeasterly along a 37.90 foot radius curve leading to the right through a central angle of 61°49'00" for an arc distance of 40.89 feet to a non-tangent point; thence N 02°21'31" W along the West line of said Lots 11, 12, 13, 14, 15, 16, 17 and 18, also being the East right of way line of said 20' Alley also known as Abbott Court for 199.87 feet to the Northwest corner of said Lot 18; thence S 87°35'51" W along the Westerly projection of the South right of way line of 72nd Street for 20.00 feet to the Point of Beginning.

LESS AND EXCEPT THE FOLLOWING:

A portion of Lot 4, Block 6, NORMANDY BEACH SOUTH, according to the plat thereof, as recorded in Plat Book 21 at Page 54 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Southwest corner of said Lot 4, thence N 02°21'18" W along the West line of said Lot 4, also being the East right of way line of Byron Avenue for 38.00 feet; thence N 87°34'53" E along the North line of Normandy Beach Court for 107.07 feet to a point of curvature; thence Southeasterly along a 37.90 foot radius curve leading to the right through a central angle of 28°14'36" for an arc distance of 18.68 feet to a non-tangent point; thence S 02°21'31" E along the East line of said Lot 4, also being the West right of way line of a 20' Alley also known as Abbott Court for 33.49 feet to the Southeast corner of said Lot 4; thence S 87°34'53" W along the South line of said Lot 4 for 125.01 feet to the Point of Beginning.

**JOINDER
TO PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION
DEVELOPMENT AGREEMENT AMONG THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FL;
CITY OF MIAMI BEACH; AND ABBOTT AVENUE PARTNERS, LLC, PUMPS AT 71, LLC, AND
7433 COLLINS AVE. CORP.**

(Consisting of 3 pages, including this title page)

JOINDER BY MORTGAGEE

The undersigned, City National Bank of Florida, a national banking association, and Mortgagee under those certain mortgages filed in the Public Records of Miami-Dade County, Florida described in Schedule 1 to this Joinder, 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 Abbott Avenue Partners, LLC, a Delaware limited liability company, Pumps at 71, LLC, a Delaware limited liability company and 7433 Collins Ave. Corp., a Florida corporation 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 _____, 2021.

WITNESSES:
a national banking association

CITY NATIONAL BANK OF FLORIDA,

Signature

Print Name

By: _____
Name: _____
Title: _____

Signature

Print Name

STATE OF FLORIDA)
) SS COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of _____ physical presence or online _____ notarization this _____ day of _____ 20__ by

_____ of City National Bank of Florida, a national banking association. He/She is personally known to me or has produced _____ as identification and did/did not take an oath.

Signature

Notary Public State of _____
_____ Print Name: _____

Schedule 1 to Joinder by Mortgagee

1. Mortgage, Assignment of Rents and Security Agreement from Pumps at 71, LLC, a Delaware limited liability company, and 7433 Collins Ave. Corp., a Florida corporation, in favor of City National Bank of Florida, recorded August 26, 2014 in Official Records Book 29285, Page 540, Public Records of Miami-Dade County, Florida.
2. Mortgage Modification Agreement by and between Pumps at 71, LLC, a Delaware limited liability company, and 7433 Collins Ave. Corp., a Florida corporation, in favor of City National Bank of Florida, recorded November 8, 2016 in Official Records Book 30301, Page 1740, Public Records of Miami-Dade County, Florida.
3. Mortgage, Assignment and Rents and Security Agreement from Abbott Avenue Partners, LLC, a Delaware limited liability company, in favor of City National Bank of Florida, recorded November 8, 2016 in Official Records Book 30301, Page 1255, Public Records of Miami-Dade County, Florida.
4. Third Mortgage, Assignment of Rents and Security Agreement from Pumps at 71, LLC, a Delaware limited liability company, and 7433 Collins Ave. Corp., a Florida corporation, in favor of City National Bank of Florida, recorded November 8, 2016 in Official Records Book 30301, Page 1288, Public Records of Miami-Dade County, Florida.
5. Mortgage, Assignment of Rents and Security Agreement from Abbott Avenue Partners, LLC, a Delaware limited liability company, in favor of City National Bank of Florida, recorded August 31, 2017 in Official Records Book 30676, Page 2707, Public Records of Miami-Dade County, Florida.
6. Amended and Restated Mortgage, Assignment of Rents and Security Agreement from Pumps at 71, LLC, a Delaware limited liability company, and 7433 Collins Ave. Corp., a Florida corporation, in favor of City National Bank of Florida, recorded August 31, 2017 in Official Records Book 30676, Page 2736, Public Records of Miami-Dade County, Florida.
7. Mortgage Modification, Notice of Future Advance and Spreader Agreement by and between Abbott Avenue Partners, LLC, a Delaware limited liability, and City National Bank of Florida, recorded December 4, 2017 in Official Records Book 30777, Page 4998, Public Records of Miami-Dade County, Florida.
8. Mortgage Modification Agreement by and between Abbott Avenue Partners, LLC, a Delaware limited liability company, and City National Bank of Florida, recorded December 4, 2017 in Official Records Book 30779, Page 2111, Public Records of Miami-Dade County, Florida.
9. Mortgage Modification Agreement by and between Abbott Avenue Partners, LLC, a Delaware limited liability, and City National Bank of Florida, recorded December 4, 2017 in Official Records Book 30779, Page 2118, Public Records of Miami-Dade County, Florida.
10. Mortgage Modification Agreement by and between Pumps at 71, LLC, a Delaware limited liability company, and 7433 Collins Ave. Corp., a Florida corporation, and City National Bank of Florida, recorded December 4, 2017 in Official Records Book 30779, Page 2125, Public Records of Miami-Dade County, Florida.
11. Mortgage Modification and Spreader Agreement by and between Abbott Avenue Partners, LLC, a Delaware limited liability, and City National Bank of Florida, recorded December 4, 2017 in Official Records Book 30779, Page 2133, Public Records of Miami-Dade County.