

Office of Facilities Design & Construction  
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 1775 BISCAYNE L/CAL LLC (THE “APPLICANT”), THE SCHOOL BOARD, AND THE CITY OF MIAMI, IN CONNECTION WITH A NEW 544-UNIT RESIDENTIAL DEVELOPMENT**

**COMMITTEE:                FACILITIES AND CONSTRUCTION**

**LINK TO STRATEGIC PLAN:                        EFFECTIVE & SUSTAINABLE OPERATIONAL PRACTICES**

Background

1775 Biscayne L/CAL LLC (the “Applicant”), is in the process of obtaining an approval from the City of Miami (“City”) to develop not more than 544 residential dwelling units (“Residential Development”), on approximately 1.09 acres, located at 1775 Biscayne Blvd., Miami, FL 33132, 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 eight (8) 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, affected 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 eight (8) elementary school 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 Phillis Wheatley Elementary or another impacted District school facility (the "School Project") as determined by the School District, in the amount of \$613,118 (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 March of 2024, 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 Credit estimated at \$613,118, however in no event shall the Impact Fee Credit exceed the amount of the Monetary Proportionate Share Mitigation of \$613,118.

#### Mitigation Banking

The School Project will yield twenty-two (22) student stations, with fourteen (14) remaining seats for future purchase by future residential developments affecting the same Concurrency Service Area ("CSA") at the elementary school level.

#### Public School Concurrency Proportionate Share Mitigation Development Agreement

The Mitigation Agreement between the School Board, the 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 in the amount of \$613,118 for the cost of one elementary classroom containing twenty-two (22) student stations;
- the School Project is to be added to the District's Facilities Work Program at the time of its next update following the execution of the Agreement and upon receipt of the Monetary Proportionate Share Mitigation Payment from the Applicant;
- as required under governing state law and the ILA, the District shall provide the Applicant an Educational Facilities Impact Fee Credit estimated at \$613,118, however in no event shall the Impact Fee Credit exceed the amount of the Monetary Proportionate Share Mitigation of \$613,118;
- 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 fourteen (14) 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 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.

The Agreement has been reviewed and approved for legal sufficiency by the School Board Office of General Counsel, as well as reviewed by the Office of Risk and Benefits Management and found to be in compliance with risk management requirements. The Agreement, in final form, is attached hereto as Exhibit "A".

**RECOMMENDED:**

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

- 1) finalize and execute a Public School Concurrency Proportionate Share Mitigation Development Agreement (“Agreement”) by and among 1775 Biscayne L/CAL LLC (the “Applicant”), the School Board, and the City of Miami in connection with a new 544-unit residential development located at 1775 Biscayne Blvd., Miami, FL 33132, 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.

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

# Exhibit "A"

**After Recording return to:**  
Ana R. Craft, Esq., Associate General Counsel  
The School Board of Miami-Dade County, Florida  
Office of the General Counsel,  
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 \_\_\_\_\_, 2023, 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 **1775 BISCAYNE L/CAL LLC, a Delaware limited liability company**, authorized to transact business in State of Florida, hereinafter referred to as **“Applicant”**, **“Developer”**, or **“Property Owner”** whose address is One Penn Plaza, New York, NY 10119; the City, School Board and Applicant are collectively referred to herein 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 folio # 0132310720010) 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 seeking approval to develop not more than 544 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 12, 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 Site Plan application with the City and is in the process of obtaining an approval (Application PZ-22-15559) 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 eight (8) elementary school students generated by the proposed residential dwelling units, at the Level of Service Standard within the Concurrency Service Area in which the Development Proposal is located, to accommodate the anticipated number of public school students that the Development Proposal will generate; (2) the needed School Facility Capacity for the applicable Concurrency Service Area is not available in any contiguous Concurrency Service Areas within the same Geographic Area; and (3) available School Facility Capacity will not be in place or

under actual construction within three (3) years after the approval of the Development Proposal;  
and

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

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

**WHEREAS**, the Parties agree that the Applicant has selected as its 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, as hereinafter described, which will be added to the first three (3) years of the School District's Facilities Work, subject to contingencies set forth below ("**Monetary Proportionate Share Mitigation**"); 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 \_\_\_\_\_, 2023; 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 Seth R. Landau, as authorized signatory of 1775 Biscayne Apartments LLC, the Sole Member of the Owner (1775 Biscayne L/Cal LLC), and/or Anthony Totoro as authorized representative, are authorized to execute the Agreement on behalf of 1775 Biscayne L/Cal LLC;

**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 Six Hundred Thirteen Thousand One Hundred and Eighteen Dollars (\$613,118) for the construction of a 22-seat elementary classroom (22 x \$27,869 = \$613,118), “**Monetary Proportionate Share Mitigation Payment**”, 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 payment shall be non-refundable after issuance of the Finding. 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 City 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, 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 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 Six Hundred Thirteen Thousand One Hundred and Eighteen Dollars (\$613,118), 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 Six Hundred Thirteen Thousand One Hundred and Eighteen Dollars (\$613,118). 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 has imposed as part of its administrative process. The Impact Fee Credit shall survive the expiration of this Agreement, unless a refund is provided pursuant to Article 17 hereof, in which case no Impact Fee Credit will be due.

**6. MITIGATION BANKING.** The Applicant has selected a Monetary Proportionate Share Mitigation option that includes providing for the cost of construction by the School District of one classroom of twenty-two (22) elementary school seats to fully mitigate the Development Proposal. As such, the Board shall establish and manage a Mitigation Bank (“**Mitigation Bank #2023-050**”) with fourteen (14) remaining seats (“**Capacity Credits**”) 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 Six Hundred Thirteen Thousand One Hundred and Eighteen Dollars (\$613,118) is the cost of the Monetary Proportionate Share Mitigation option selected by the Applicant, includes creating a Mitigation Bank whose cost is derived by multiplying the total number of student stations to be constructed (22 seats), by the student station cost of \$27,869, 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 (March 2024) (i.e. 22 student stations x \$27,869 cost per station = \$613,118). 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), resulting in fourteen (14) Banked Seats (i.e., 22 seats constructed – 8 mitigated seats = 14 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 fourteen (14) seats in excess of the eight (8) 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 fourteen (14) Banked Seats. The reimbursable value of Banked Seats shall be determined by adding the estimated Educational Impact Fee amount of Six Hundred Thirteen Thousand One Hundred and Eighteen Dollars (\$613,118) and the value of the seats needed to be mitigated (8 seats x \$27,869 per seat = \$222,952), resulting in the amount of \$836,904, whose amount exceeds the Monetary Proportionate Share Mitigation of \$613,118, 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, August 16, 2023, and subject to expiration of timeframe set forth under Section 17 hereof. After 5:00 PM (Miami Time), August 16, 2029, 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 December 22, 2023 (“Effective Date”). Failure to deliver this Agreement to the School Board executed by the Applicant by October 13, 2023 and by the City by November 17, 2023, may, in the sole discretion of the School District, result in the revocation of the Concurrency Determination issued by the School District on December 6, 2022, 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

With copies to:

Miami-Dade County Public Schools Facilities Planning  
Attn: Design and Planning Officer  
1450 NE 2 Avenue, Room 525  
Miami, Florida 33132  
[nsimon1@dadeschools.net](mailto:nsimon1@dadeschools.net); and [concurrency@dadeschools.net](mailto:concurrency@dadeschools.net)

The School Board of Miami-Dade County, Florida  
Office of the General Counsel, c/o General Counsel  
1450 NE 2 Avenue, Suite 400  
Miami, Florida 33132  
[Walter.Harvey@dadeschools.net](mailto:Walter.Harvey@dadeschools.net); and [Acraft@dadeschools.net](mailto:Acraft@dadeschools.net)

**In the case of Notice or communication to the Applicant:**

1775 Biscayne L/CAL LLC  
Attn: Anthony Tortora  
One Penn Plaza, Suite 1801  
New York, NY 10119  
Phone: (646) 356-0760  
[atortora@lcor.com](mailto:atortora@lcor.com)

with a copy to:

Javier F. Aviño, Esquire.  
Bilzin Sumberg Baena Price & Axelrod LLP.  
1450 Brickell Avenue, 23 Floor  
Miami, Florida 33131  
Phone: 305-350-7207  
[javino@bilzin.com](mailto:javino@bilzin.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, 3<sup>rd</sup> Floor  
Miami, FL 33130  
Phone: 305-416-1445  
[STrone@miamigov.com](mailto:STrone@miamigov.com) and [planning@miamigov.com](mailto:planning@miamigov.com)

With a copy to:

Victoria Mendez, City Attorney  
The City of Miami  
Miami Riverside Center  
444 SW 2 Avenue, 9<sup>th</sup> Floor  
Miami, FL 33130  
Phone: 305-416-1832  
[VMendez@miamigov.com](mailto: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 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.

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 11<sup>th</sup> 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 (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.

**21. COUNTERPARTS/ORIGINAL SIGNATURES.** 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. ALL SIGNATURES TO THIS AGREEMENT (INCLUDING JOINDERS AND NOTARIZATIONS) SHALL BE ORIGINAL SIGNATURES, NOT ELECTRONIC.

**22. 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 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 City 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 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 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 City 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](mailto:pr@dadeschools.net), and 1450 NE 2 Avenue, Miami, Florida 33132.**

**[INDIVIDUAL SIGNATURE PAGES FOLLOW]**

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

**APPLICANT/PROPERTY OWNER**

WITNESSES:

**1775 BISCAYNE L/CAL LLC,**  
a Delaware limited liability company

\_\_\_\_\_

Print Name: \_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

By: 1775 BISCAYNE APARTMENTS LLC,  
a Delaware limited liability company, as  
sole member

By: \_\_\_\_\_

Name: Seth R. Landau

Title: Authorized Signatory

**APPLICANT'S ACKNOWLEDGMENT**

STATE OF FLORIDA )

) SS:

COUNTY OF \_\_\_\_\_)

Before me, a Notary Public, on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, personally appeared, by means of [ ] physical presence or [ ] online notarization Seth R. Landau, as authorized signatory of 1775 Biscayne Apartments LLC, the Sole Member of the Owner (1775 Biscayne L/Cal LLC), is authorized to sign the Agreement on behalf of 1775 Biscayne L/CAL LLC, who \_\_\_\_\_ [ ] is personally known to me or [ ] 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: Dr. Jose L. Dotres  
Title: Superintendent of Schools  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Recommended by:

\_\_\_\_\_  
Name: Raul F. Perez  
Chief Facilities 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  
Associate General Counsel  
Date: \_\_\_\_\_

**ACKNOWLEDGMENT**

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by means of [ ] physical presence or [ ] online notarization, JOSE L. DOTRES, 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:**

**WITNESSES:**

\_\_\_\_\_

Print Name: \_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

**CITY OF MIAMI**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

Todd B. Hannon, Clerk

By \_\_\_\_\_  
City Clerk

\_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

By \_\_\_\_\_  
Victoria Mendez, City Attorney

Date: \_\_\_\_\_

**ACKNOWLEDGMENT**

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by [ ] physical presence or [ ] by online notarization, by \_\_\_\_\_ as \_\_\_\_\_, acting on behalf of City of Miami, a political subdivision of the State of Florida. He/she personally appeared before me, and is [ ] personally known to me or [ ] produced \_\_\_\_\_ as identification, and who acknowledged that he/she signed the above instrument with full authority, as set forth therein, on behalf of City of Miami, Florida.

**[NOTARY SEAL]**

**Notary:** \_\_\_\_\_  
**Print Name:** \_\_\_\_\_  
**My Commission expires:** \_\_\_\_\_

## **EXHIBIT “A”**

**TO  
PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE  
MITIGATION DEVELOPMENT AGREEMENT BY AND AMONG  
THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA; CITY OF MIAMI; AND  
1775 BISCAYNE L/CAL LLC, A DELAWARE LIMITED LIABILITY COMPANY**

### **Legal Description**

Tract A, V DOWNTOWN, according to the Plat thereof, as recorded in Plat Book 169, Page 3, of the Public Records of Miami-Dade County, Florida.



**JOINDER**

**TO  
PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE  
MITIGATION DEVELOPMENT AGREEMENT BY AND AMONG  
THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA; CITY OF MIAMI; AND  
1775 BISCAYNE L/CAL LLC, A DELAWARE LIMITED LIABILITY COMPANY**

**(Consisting of 2 pages, including this title page)**

JOINDER BY MORTGAGEE  
Webster Bank, N.A.

The undersigned, Webster Bank, N.A., a national banking corporation and Mortgagee under that certain mortgage from 1775 Biscayne L/Cal LLC, recorded in Official Records Book 33214, Pages 47-78, in the public records of Miami-Dade County, Florida, covering all/or a portion of the property described in the Declaration of Restrictions, does hereby consent to the execution of the foregoing Public School Concurrency Proportionate Share Mitigation Development Agreement by 1775 Biscayne L/Cal LLC 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 Agreement 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 \_\_\_\_\_, 20\_\_.

WITNESSES:

Webster Bank, N.A.

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

STATE OF FLORIDA            )  
  ) SS  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared, by means of [ ] physical presence or [ ] online notarization, \_\_\_\_\_ who is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature

Notary Public State of \_\_\_\_\_  
Print Name: \_\_\_\_\_