

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 TF SECOND AND 23RD, LLC (THE “APPLICANT”), THE SCHOOL BOARD, AND THE CITY OF MIAMI, IN CONNECTION WITH A NEW 369-UNIT RESIDENTIAL DEVELOPMENT

COMMITTEE: FACILITIES AND CONSTRUCTION

LINK TO STRATEGIC PLAN: EFFECTIVE & SUSTAINABLE OPERATIONAL PRACTICES

Background

TF Second and 23rd, LLC (the “Applicant”), is in the process of obtaining a Site Plan approval from the City of Miami (“City”) to develop not more than 369 residential dwelling units (“Residential Development”), on approximately 2.26 acres, located at 212 NE 23rd Street, Miami, FL 33137, 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 fifteen (15) 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 fifteen (15) 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 \$602,228 (the "Mitigation Cost"). This amount will be included in the District's Facilities Work Program as part of the next update. The Mitigation Cost was derived based on the cost per student station, as published by the State of Florida Department of Education (FDOE) for October of 2023, 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 \$553,500, however in no event shall the Impact Fee Credit exceed the amount of the Monetary Proportionate Share Mitigation of \$602,228.

Mitigation Banking

The School Project will yield twenty-two (22) student stations, with seven (7) 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 \$602,228 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 \$553,500, however in no event shall the Impact Fee Credit exceed the amount of the Monetary Proportionate Share Mitigation of \$602,228;
- 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 ~~fifteen (15)~~ seven (7) 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.

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 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 "B".

RECOMMENDED:

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

A) Authorize the Superintendent to:

- 1) execute a Public School Concurrency Proportionate Share Mitigation Development Agreement (“Agreement”) by and among TF Second and 23rd, LLC (the “Applicant”), the School Board, and the City of Miami in connection with a new 369-unit residential development located at 212 NE 23rd Street, Miami, FL 33137, 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 Office of General Counsel to execute the waiver of conflict letter from Greenberg Traurig, which firm is serving solely as counsel for the Applicant in this transaction.

IMR:ir

August 2, 2022

Via Email

TF Second and 23rd, LLC
520 West Erie Street, #100
Chicago, IL 60654

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

Attn: K. Shaylan Baldwin
Secretary

Attn: Walter J. Harvey
School Board Attorney

Re: School Concurrency Determination for Folio No. 01-3230-107-0010/
SP0122072100365 (the "**Transaction**")

Dear Mr. Harvey and Mr; Baldwin:

As you are aware, Greenberg Traurig, P.A. ("**GT**") has been asked to serve as legal counsel to, a TF Second and 23rd, LLC, a Delaware limited liability company ("**TF Second and 23rd**") in connection with the Transaction. As you are further aware, GT has served, and continues to serve as counsel to the School Board of Miami-Dade County (the "**School Board**"), and that TF SECOND AND 23RD is averse to the School Board in the Transaction.

GT has agreed to undertake this representation of TF Second and 23rd upon full disclosure to both TF Second and 23rd and the School Board of the following circumstances and the express mutual understanding and agreement of each of you as follows:

1. School Board confirms and agrees that GT may act as counsel for TF Second and 23rd in connection with the Transaction (as well as other matters unrelated to the Transaction).
2. School Board confirms and agrees that GT may continue to act as attorney for the School Board on any and all matters in which they are currently involved or in which they may become involved in the future, including, without limitation, the Transaction and matters related thereto.
3. TF Second and 23rd has not been required to select GT as its attorneys as a prerequisite or consideration of the Transaction.
4. In seeking this waiver, GT represents that: (1) in representing TF Second and 23rd, GT will not in whole or in part, disclose to TF Second and 23rd any information concerning the School Board, that has been identified to GT as confidential or proprietary or that GT should reasonably believe to be confidential or proprietary; (2) GT will not in whole or in part, disclose to TF Second and 23rd any information concerning the School Board, that has been identified to GT as confidential or proprietary or that GT should reasonably believe to be confidential or proprietary; and (3) if any litigation arises between TF Second and 23rd and the School Board in connection with Transaction (an

“Action”), GT shall not represent either party in connection with such Action so long as GT continues to represent the School Board.

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

This letter may be executed in counterparts.

Sincerely,

GREENBERG TRAUERIG, P.A.

By: Carlos R. Lago
Carlos R. Lago, Esq.
Shareholder

Agreed and Consented to this 3rd day of
August, 2022 by:

TF SECOND AND 23RD LLC, a Delaware limited
Liability company

By: [Signature]
Name: K. Shaylan Baldwin
Title: Secretary

Agreed and Consented to this ____ day of
_____, 2022 by:

THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA

Walter J. Harvey
School Board Attorney

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

Exhibit "B"

After Recording return to:
Ana R. Craft, 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 **TF SECOND AND 23RD, 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 520 West Erie Street, Chicago, IL 60654; 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 # 0132301070010) 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 369 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-22-14839) 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 fifteen (15) 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 K. Shaylan Baldwin, as Secretary of the of TF Second and 23rd, LLC, is authorized to execute the Agreement on behalf of TF Second and 23rd, 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 Two Thousand Two Hundred and Twenty Eight Dollars (\$602,228) for the construction of a 22-seat elementary classroom (22 x \$27,374 = \$602,228), “**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 Five Hundred Fifty Three Thousand Five Hundred Dollars (\$553,500), 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 Two Thousand Two Hundred and Twenty Eight Dollars (\$602,228). 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.

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 #2023-047**”) with seven (7) 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 Two Thousand Two Hundred and Twenty Eight Dollars (\$602,228) 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 \$27,374, which is the construction cost projected by the Florida Department of Education to be in place at the time of construction of the School Project (October 2023) (i.e. 22 student stations x \$27,374 cost per station = \$602,228). 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 seven (7) Banked Seats (i.e., 22 seats constructed – 15 mitigated seats = 7 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 seven (7) seats in excess of the fifteen (15) 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 seven (7) Banked Seats. The reimbursable value of Banked Seats shall be determined by adding the estimated Educational Impact Fee amount of Six Hundred Two Thousand Two Hundred and Twenty Eight Dollars (\$602,228) and the value of the seats needed to be mitigated (15 seats x \$27,374 per seat = \$410,610), resulting in the amount of \$1,012,838, whose amount exceeds the Monetary Proportionate Share Mitigation of \$602,228, 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, June 21, 2023, and subject to expiration of timeframe set forth under Section 17 hereof. After 5:00 PM (Miami Time), June 21, 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 July 22, 2023 ("Effective Date"). Failure to deliver this Agreement to the School Board executed by the Applicant by May 19, 2023 and by the City by June 24, 2023, may, in the sole discretion of the School District, result in the revocation of the Concurrency Determination issued by the School District on August 1, 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: 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
Office of the General Counsel, c/o General Counsel
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:

TF Second and 23rd, LLC
Attn: K. Shaylan Baldwin
520 West Erie Street,
Chicago, IL 60654
Phone: (913) 961-4401
sbaldwin@trilogyreg.com

with a copy to:

Carlos R. Lago, Esquire.
Greenberg Traurig, P.A.
333 SE 2 Avenue, Suite 4400
Miami, Florida 33131
Phone: 305-579-0578
Fax: 305-579-0717
lago@gtlaw.com

In the case of Notice or communication to the City:

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

With a copy to:

Victoria Mendez, City Attorney
The City of Miami
Miami Riverside Center
444 SW 2 Avenue, 9th Floor
Miami, FL 33130
Phone: 305-416-1832
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 11th Judicial Circuit, in and for, Miami-Dade County, Florida. The Parties agree that in the event of any dispute of whatever nature relating to this Agreement, venue shall be in Miami-Dade County, Florida. The Parties further agree that, in the event of a dispute among the Parties, each Party shall be responsible for its own attorney's fees and costs through all appeals.

14. CAPTIONS AND PARAGRAPH HEADINGS. Captions and paragraph headings contained in this Agreement are for convenience and reference only. They in no way define, describe, extend or limit the scope or intent of this Agreement.

15. NO WAIVER. No waiver of any provision of this Agreement shall be effective unless it is in writing, and signed by the Party against whom it is asserted. Any such written waiver shall only be applicable to the specific instance to which it relates, and shall not be deemed to be a continuing or future waiver. The failure of any Party to insist upon strict performance of any of the covenants, provisions or conditions of this Agreement shall not be construed as waiving or relinquishing any such covenants, provisions or conditions, but the same shall continue and remain in full force and effect.

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

17. AMENDMENTS AND ENCUMBRANCE OF PROPORTIONATE SHARE

MITIGATION PAYMENT. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective, unless contained in a written document prepared, in recordable form, with the same formality as this Agreement and duly executed by all the Parties to this Agreement. Additionally, this Agreement may be modified, and refunds made, only until the earliest of the following times: (a) issuance of a final development order of either the first building permit for the Development Project or District's Final Plat sign-off; or (b) the School District Encumbers ("Encumbers" shall mean monies committed by contract or purchase order in a manner that obligates the School Board to expend the funded amount upon delivery of goods or the rendering of services provided by a vendor, supplier or contractor for the School Project) any portion of the Monetary Proportionate Share Mitigation payment; or (c) six (6) months after the date that this Agreement is authorized by the School Board.

18. COVENANT RUNNING WITH THE LAND. This Agreement shall

constitute a covenant running with the land and shall be recorded by the School Board, at the Applicant's expense, in the public records of Miami-Dade County, Florida, and shall remain in full force and effect and be binding upon the undersigned Applicant, and its heirs, successors and assigns, until such time as the same expires in accordance with the provisions hereof, or is otherwise modified or released pursuant to an instrument executed on behalf of the Parties.

19. ASSIGNMENT. The Applicant may assign its rights, obligations and

responsibilities under this Agreement to a third-party purchaser of all or any part of fee simple title to the Property. Any such assignment shall be in writing and shall require the prior written consent of all of the Parties, such consent not to be unreasonably withheld. At the election of the School District, such consent may be conditioned upon the written agreement of the assignee to

assume all of Applicant/Assignor's duties and obligations under this Agreement and to comply with conditions and procedures to aid in the monitoring and enforcement of the assignee's performance of the Monetary Proportionate Share Mitigation under this Agreement. The Assignor under such assignment shall furnish the Parties with a copy of the duly executed assignment, in recordable form, within ten (10) days of the date of execution of same. The Parties further agree that an assignment of this Agreement shall only be permitted where (a) the Applicant/Assignor has mitigated for the public school impacts of the subject Property with Monetary Proportionate Share Mitigation payment having been made, (b) this Agreement is being assigned to the purchaser of the subject Property, and (c) the assigned Monetary Proportionate Share Mitigation continues to be used for the subject School Project.

20. DEFAULT. If any Party fails to perform or observe any of the material terms and conditions of this Agreement (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, 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:

TF SECOND AND 23RD, LLC, a Delaware limited liability company

Print Name: _____

Print Name: _____

By: _____

Name: K. Shaylan Baldwin

Title: Secretary

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 K. Shaylan Baldwin, as Secretary, is authorized to sign the Agreement on behalf of TF SECOND AND 23RD, 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: _____

EXHIBIT "A"

**TO PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT
AGREEMENT AMONG THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FL;
CITY OF MIAMI; AND TF SECOND AND 23RD, LLC**

Legal Description

TRACT "A", NYAF NORTH, A SUBDIVISION ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 172, PAGE 100, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

