

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

- SUBJECT:**
- A) THAT THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, AUTHORIZE THE SUPERINTENDENT TO EXECUTE A PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT BY AND AMONG ART PLAZA, LLC, A DELAWARE LIMITED LIABILITY COMPANY (THE "APPLICANT"), THE SCHOOL BOARD, AND CITY OF MIAMI, IN CONNECTION WITH A NEW 655-UNIT RESIDENTIAL DEVELOPMENT LOCATED AT 1366 N.E. 1 AVENUE, CITY OF MIAMI, PROVIDING FOR MONETARY PROPORTIONATE SHARE MITIGATION PURSUANT TO THE INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL FACILITY PLANNING IN MIAMI-DADE COUNTY

 - B) THAT THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, AUTHORIZE THE SCHOOL BOARD ATTORNEY TO EXECUTE THE WAIVER OF CONFLICT LETTER FROM GREENBERG TRAUIG, WHICH FIRM IS SERVING SOLELY AS COUNSEL FOR THE APPLICANT IN THIS TRANSACTION

COMMITTEE: FACILITIES AND CONSTRUCTION

LINK TO STRATEGIC BLUEPRINT: EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES

Background

Art Plaza, LLC (the "Applicant") has obtained a Site Plan approval from the City of Miami ("City") for a new 655-unit residential development ("Residential Development"), on approximately 1.26 acres, located at 1366 N.E. 1 Avenue, City of Miami, contingent upon the Applicant obtaining a school concurrency determination from the District, in accordance with the terms of the Interlocal Agreement for Public School Facility Planning in Miami-Dade County ("ILA").

Pursuant to State Statutes and the ILA, the Residential Development application was reviewed by the District for compliance with Public School Concurrency. The review yielded that the applicable Level of Service ("LOS") standard was met at the middle

school and high school levels, but is deficient by twenty-three (23) elementary school seats. The impacted school is Phillis Wheatley Elementary School ("School").

Proportionate Share Mitigation

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

Under the governing provisions, the minimum acceptable mitigation project is a classroom. In this case, to address the deficiency of twenty-three (23) elementary student stations, Mitigation by the Applicant will be a monetary contribution equal to the cost of two (2) elementary school classrooms containing twenty-two (22) student stations each, for a total of forty-four (44) student stations at the school of impact (the "School Project"), in the amount of \$1,007,072 (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 DOE for July of 2019, 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 credited for Educational Facilities Impact Fees for its Residential Development in the amount of \$814,085.

Mitigation Banking

The School Project will yield forty-four (44) student stations, or twenty-one (21) seats beyond the twenty three (23) student stations required to address the Residential Development's impact. Pursuant to the governing ILA, the twenty-one (21) remaining seats will be made available for future purchase by applicants for future residential developments affecting the same Concurrency Service Area ("CSA") and also in need of providing mitigation at the elementary school level, through a Mitigation Bank to be established and administered by the District.

Public School Concurrency Proportionate Share Mitigation Development Agreement

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

- as detailed above, the Applicant shall be required to provide a total Monetary Proportionate Share Mitigation Payment ("Mitigation Payment") to the Board of \$1,007,072 minus a credit for already paid Educational Facilities Impact Fees, in the amount of \$814,085, for a net additional payment to the Board under this Agreement of \$192,987;

- the School Project is to be added to the District's Facilities Work Program at the time of its next annual update following the execution of the Agreement and upon receipt of the Additional Payment from the Applicant;
- upon the full execution of the Agreement by all Parties and receipt of the Additional Payment from the Applicant, the District shall issue a Finding of Available School Facility Capacity ("Finding");
- the District shall establish and administer a Mitigation Bank, which, in this instance, will have twenty-one (21) Banked Seats available for purchase by future applicants failing to meet concurrency at the elementary school level within the same CSA. There will be no reimbursable value to the Applicant for the Banked Seats;
- the Banked Seats may be purchased within a period of six (6) years from the date the School Board authorized the execution of this Agreement. Any remaining Banked Seats shall be deemed expired at that time;
- future residential developments may purchase Banked Seat(s) only if the Mitigation Bank has sufficient number of available seats to provide for the entire school capacity deficiency. In the event that in the future, multiple Mitigation Banks are created for the same CSA, the Banked Seats shall be transferred to future residential developments in the order in which each Mitigation Bank was created;
- the Agreement shall expire upon the Parties' completion of their performance of all obligations or within six (6) years from the date that the Agreement is executed by all Parties, whichever comes first;
- the Applicant may assign its rights, obligations and responsibilities under the Agreement to a third party purchaser of all or any part of fee simple title to the Residential Development. Any such assignment shall be in writing and shall require the prior written consent of all of the Parties;
- the Applicant shall pay all recordation costs to the District necessary to record the Agreement and any related documentation, including without limitation, Assignments, if any, and Releases;
- in the event of any dispute among the Parties, each Party shall be responsible for its own Attorney's fees, and the Parties waive trial by Jury in any action, proceeding or counterclaim brought by any Party against any other Party or Parties with respect to any matter arising under the Agreement; and
- for purposes of the Agreement, the Superintendent or his/her designee shall be the Party designated by the Board to grant or deny any and all approvals

required under the Agreement, including, without limitation, issuance of Reports and Releases, and placing the Applicant in default, as may be applicable.

Waiver of Conflict Letter

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

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

RECOMMENDED:

- A) That The School Board of Miami-Dade County, Florida, authorize the Superintendent to:
- 1) execute a Public School Concurrency Proportionate Share Mitigation Development Agreement ("Agreement") by and among Art Plaza, LLC, a Delaware limited liability company (the "Applicant"), the School Board, and the City of Miami, in connection with a new 655-unit residential development located at 1366 N.E. 1 Avenue, City of Miami, 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) That The School Board of Miami-Dade County, Florida, authorize the School Board Attorney to execute the waiver of conflict letter from Greenberg Traurig, which firm is serving solely as counsel for the Applicant in this transaction.

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EXHIBIT "A"

Iris V. Escarra, Esq.
305.579.0737
escarra@gllaw.com

May 29, 2018

VIA: ELECTRONIC MAIL

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

Re: School Concurrency Determination for Folio No. 01-3136-009-0050, 01-3136-009-0060, 01-3136-009-0040, 01-3136-009-0010, 01-3136-009-0020, 01-3136-009-0030 (the "Transaction")

Dear Mr. Rodriguez:

As you are aware, Greenberg Traurig, P.A. ("**GT**") has been asked to serve as legal counsel to Art Plaza, LLC ("**Art Plaza**") 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 Art Plaza is adverse to the School Board in the Transaction.

Art Plaza agrees to GT's representation before the School Board for a mitigation agreement in connection with the Transaction. In seeking this waiver, GT represents that: (1) in representing Art Plaza, GT will not in whole or in part, disclose to Art Plaza 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 Art Plaza 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 Art Plaza 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.

Should you require any additional information, please do not hesitate to contact me directly at 305-579-0737.

Sincerely,

GREENBERG TRAURIG, P.A.

By: 

Iris V. Escarra, Esq.
Shareholder

Exhibit "B"

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

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

PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT

THIS PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT ("Agreement"), is made and entered into this _____ day of _____, 2018, 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 2ND 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 **ART PLAZA LLC**, a **Delaware limited liability company**, hereinafter referred to as "**Applicant**" or "**Developer**", whose address is 425 NE 22 Street, Suite 301, Miami, Florida 33137; the City, School Board and Applicant are collectively referred to herein as the "**Parties**."

RECITALS:

WHEREAS, the Applicant is the fee simple owner of that certain tract of land (Portion of Folio #s 0131360090010, 0131360090020, 0131360090030, 0131360090040, 0131360090050, and 0131360090060) 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 143 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 20, 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 (PR-17-160 dated January 4, 2018) which requires School Facility Capacity availability for each student generated by the Development Proposal at each of the three school levels (i.e. elementary, middle and senior high school); and

WHEREAS, the Parties agree that: (1) adequate School Facility Capacity is not available for twenty-three (23) of the elementary school students generated by the Development Proposal at the Level of Service Standard within the Concurrency Service Area in which the Development Proposal is located, to accommodate the anticipated number of public school students that the Development Proposal will generate; (2) the needed School Facility Capacity

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

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

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

WHEREAS, the Parties agree that the Applicant has selected as the Proportionate Share Mitigation option, the full capital cost of a public school project, comprised of two elementary school classrooms of twenty-two (22) student stations each, for a total of forty-four (44) student stations ("**Monetary Proportionate Share Mitigation**"), as hereinafter described, which will be added to the first three (3) years of the School District's Facilities Work Program; and

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

WHEREAS, The School Board of Miami-Dade County, Florida, has authorized the execution of this Agreement in accordance with Board Item F-1, Board Action No. _____, at its meeting of August 15, 2018; and

WHEREAS, the City of Miami Commission, at its meeting of December 20, 2007, duly passed and adopted on that date, Resolution No. 07-01182, authorizing the appropriate City officials to enter into this type of Proportionate Share Mitigation Agreement; and

WHEREAS, the Applicant has duly approved this Agreement, and represented to the School Board and to the City, and hereby confirms, that either Martin Ferreira de Melo, Carlos Ferreira de Melo, or Jose Luis Ferreira de Melo managers of ART PLAZA LLC, a Delaware limited liability company, have been and are hereby fully authorized to execute this Agreement on behalf of Applicant.

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

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

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

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

4. **MONETARY PROPORTIONATE SHARE MITIGATION.** The Parties to this Agreement covenant and agree that the Applicant will make its Monetary Proportionate Share Mitigation payment to the School Board within thirty (30) calendar days following the full and proper execution of this Agreement, unless otherwise extended at the sole and absolute discretion of the School Board or designee (defined hereinafter as Effective Date). The Parties agree that the amount of the Monetary Proportionate Share Mitigation shall be One Million Seven Thousand Seventy-Two Dollars (\$1,007,072), less the Eight Hundred Fourteen Thousand Eighty Five Dollars (\$814,085) Educational Facilities Impact Fees already paid by the Developer, resulting in the amount of One Hundred Ninety Two Thousand Nine Hundred Eighty Seven Dollars (\$192,987), “**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 funds shall be used by the School District to provide for the creation of two classroom of twenty-two (22) elementary school student stations each for a total of forty-four (44) elementary school student stations at either Frederick Douglass Elementary School or Phillis Wheatley Elementary School (the “**School Project**”), as determined by the School District. Upon the full execution of this Agreement by all appropriate Parties and receipt of the full Monetary Proportionate Share Mitigation payment,

as hereinafter described, the School District shall record this Agreement, in conformance with the provisions of Article 22 hereof, and issue a Finding of Available School Facility Capacity (“**Finding**”) pursuant to the ILA. Issuance of a Finding by the School District shall be a pre-condition to issuance of building permits by the County for the subject Development Proposal. The duration and effect of this Finding shall be in accordance with the ILA. However, in no event shall this Finding, or any allocation of student seats based on this Finding (“**School Concurrency Allocation**”), continue to be effective if the Applicant fails to perform his/her/its obligations under this Agreement. Conversely, once Applicant has completely performed his/her/its obligations under this Agreement, Applicant shall be entitled to rely on the Finding and School Concurrency Allocation to the extent of the School Capacity provided by the Monetary Proportionate Share Mitigation.

In the event Applicant fails to pay the Monetary Proportionate Share Mitigation Payment as provided for herein, the School District, at its sole option, may cancel this Agreement and credit the reserved seats to the Concurrency Service Area from which they were reserved.

5. **EDUCATIONAL FACILITIES IMPACT FEE CREDIT.** As consideration for the Applicant’s Monetary Proportionate Share Mitigation specified herein, ***and as further elaborated in Section 6(c) of this Agreement,*** the Parties agree that the School District shall provide a credit of Eight Hundred and Fourteen Thousand Eighty Five Dollars (\$814,085), which is the actual Educational Facilities Impact Fees imposed by the County and paid by the Applicant for construction of the Development Proposal (“**Impact Fee Credit**”). The final Impact Fee Credit amount was 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 does not include any administrative or other fees which the County may impose as part of its administrative process.

6. **MITIGATION BANKING.** The Applicant has selected the Monetary Proportionate Share Mitigation option which will provide for the cost of construction by the School District of two (2) classrooms of twenty-two (22) elementary school seats each, for a total of forty four (44) elementary school seats, resulting in twenty one (21) seats in excess of the twenty three (23) seats needed to be mitigated by the Applicant for the Development Proposal. As such, the Board shall establish and manage a Mitigation Bank (“**Mitigation Bank #2018-014**”), and transfer the twenty one (21) remaining seats (“**Capacity Credits**”) into Mitigation Bank #2018-014 for use by future residential developments, as set forth in this Agreement. The School District shall create and administer the Mitigation Bank as follows:

a. **Monetary Proportionate Share Mitigation Cost.** The Monetary Proportionate Share Mitigation amount of One Million Seven Thousand Seventy-Two Dollars (\$1,007,072) is the cost of the Monetary Proportionate Share Mitigation option selected by the Applicant, and is derived by multiplying the total number of student stations to be constructed (44 seats), by the student station cost of \$22,888, 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 (July 2019) (i.e. 44 student stations x \$22,888 cost per station = \$1,007,072). 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 (44), less the twenty three (23) seats needed to mitigate the Development Proposal, resulting in twenty one (21) Banked Seats (i.e. 44 seats constructed – 23 mitigated seats = 21 Banked Seats). In this Agreement, “Banked Seats” and “Capacity Credits” shall be used interchangeably unless otherwise specified.

c. Educational Facilities Impact Fee. Pursuant to the Miami-Dade County Educational Facilities Impact Fee Ordinance, the Applicant has paid Educational Facilities Impact Fee(s) (“Impact Fee”) for the subject Development Proposal in the amount of Eight Hundred and Fourteen Thousand Eighty Five Dollars (\$814,085).

d. 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 forty four (44) elementary school seats, results in twenty (21) seats in excess of the twenty three (23) 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 twenty one (21) Banked Seats. Due to the full payment by the Applicant of \$814,085 in

Educational Facilities Impact Fee, and the Applicant's need to mitigate twenty three (23) elementary student stations at an established value of \$22,888 per seat (total of \$526,424), totaling \$1,340,509, whose amount exceeds the Monetary Proportionate Share Mitigation of \$1,007,072, thus there is no reimbursable value to the Applicant for each Banked Seat.

e. **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 15, 2018, and subject to expiration of timeframe set forth under Section 17 hereof. After 5:00 PM (Miami Time), August 15, 2024, 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.

f. **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.

g. **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.

h. **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 October 12, 2018. Failure to deliver this Agreement to the School Board executed by the Applicant by August 10, 2018 and by the City by August 31, 2018, may, in the sole discretion of the School District, result in the revocation of the Concurrency Determination issued by the School District on January 18, 2018, 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 Second Avenue, Room 912
Miami, Florida 33132
Fax: (305) 995-1488

With copies to:

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

The School Board of Miami-Dade County, Florida
c/o School Board Attorney
1450 NE 2 Avenue, Suite 400
Miami, Florida 33132
Walter.Harvey@dadeschools.net; and Acraft@dadeschools.net
Fax: 305-995-1412

In the case of Notice or communication to the Applicant:

Art Plaza, LLC
Attn: Carlos Ferreira de Melo, Managers
425 NE 22 Street, Suite 301
Miami, FL 33137 Phone: (305) 438-1001
carlosdm@themelogroup.com

with a copy to:

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

In the case of Notice or communication to the City:

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

With a copy to:

Victoria Mendez, City Attorney
The City of Miami
Miami Riverside Center
444 SW 2nd Avenue, 9th Floor
Miami, FL 33130
Phone: 305-416-1832
Fax: 305-416-1801
VMendez@miamigov.com

B. For purposes of this Agreement, the Superintendent of Schools or his/her designee shall be the Party designated by the School Board to grant or deny any and all approvals required under this Agreement, including, without limitation, issuance of reports, as provided herein.

C. Except as otherwise provided in this Agreement, any Notice or deliverable shall be deemed received only upon actual delivery at the address set forth above. Notices or deliverables delivered after 5:00 PM (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. “Day” as used in this Agreement shall be defined as calendar day, unless otherwise provided. Counsel for the School Board, Counsel for the County and Counsel for the Applicant may deliver Notice on behalf of the School Board, the County and the Applicant, respectively. Any Party or other person to whom Notices are to be sent or copied may notify the other Parties of any change in name or address to which Notices shall be sent by providing the same pursuant to this provision.

12. **RELEASE.** When all of the Parties’ obligations set forth herein are fully paid and performed, each Party shall release all other Parties from this Agreement, and all Parties shall release all other Parties from any and all future claims, costs or liabilities arising out of the provision of Monetary Proportionate Share Mitigation in accordance with this Agreement. These releases shall be simultaneously exchanged and shall be recorded in the Official Records of Miami-Dade County, Florida, evidencing such performance.

13. **VENUE; CHOICE OF LAW; ATTORNEY’S FEES.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida without regard to its conflicts of laws provisions. Any controversies or legal issues arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be submitted to the jurisdiction of the State Court of the 11th Judicial

Circuit, in and for, Miami-Dade County, Florida. The Parties agree that in the event of any dispute of whatever nature relating to this Agreement, venue shall be in Miami-Dade County, Florida. The Parties further agree that, in the event of a dispute among the Parties, each Party shall be responsible for its own attorney's fees and costs through all appeals.

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

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

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

17. **AMENDMENTS AND ENCUMBRANCE OF PROPORTIONATE SHARE**

MITIGATION PAYMENT. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective, unless contained in a written document prepared, in recordable form, with the same formality as this Agreement and duly executed by all the Parties to this Agreement. Additionally, this Agreement

may be modified, and refunds made, only until the earliest of the following times: (a) issuance of a final development order of either the first building permit for the Development Project or District's Final Plat sign-off; or (b) the School District Encumbers ("**Encumbers**" shall mean monies committed by contract or purchase order in a manner that obligates the School Board to expend the funded amount upon delivery of goods or the rendering of services provided by a vendor, supplier or contractor for the School Project) any portion of the Monetary Proportionate Share Mitigation payment; or (c) six (6) months after the date that this Agreement is authorized by the School Board.

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

19. ASSIGNMENT. The Applicant may assign its rights, obligations and responsibilities under this Agreement to a third party purchaser of all or any part of fee simple title to the Property. Any such assignment shall be in writing and shall require the prior written consent of all of the Parties, such consent not to be unreasonably withheld. At the election of the School District, such consent may be conditioned upon the written agreement of the assignee to assume all of Applicant/Assignor's duties and obligations under this Agreement and to comply with conditions and procedures to aid in the monitoring and enforcement of the assignee's

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

20. **DEFAULT.** If any Party fails to perform or observe any of the material terms and conditions of this Agreement for a period of thirty (30) calendar days after receipt of written notice of such default from another Party, the Party giving notice of default may terminate this Agreement by providing the Parties with ten (10) days additional written notice. Failure of any Party to exercise its rights in the event of any breach by one or more other Parties shall not constitute a waiver of such rights. No Party shall be deemed to have waived any failure to perform by another Party unless such waiver is in writing and signed by the other Parties. Such waiver shall be limited to the terms specifically contained therein.

21. **COUNTERPARTS.** This Agreement may be executed in three (3) counterparts, each of which when executed and delivered shall be deemed to be an original; however, all such counterparts together shall constitute but one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document. The School Board shall be the last party to execute this Agreement.

22. **RECORDING OF DOCUMENTS.** The School District shall record this Agreement and any related documentation, including without limitation, Assignments, if any, and Releases, within thirty (30) days after proper execution thereof and receipt of the document and recordation costs, in the Public Records of Miami-Dade County, Florida. The Applicant shall pay all recordation costs to the School District.

23. **SEVERABILITY.** If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable provision will be stricken from the Agreement, and the balance of the Agreement will remain in full force and effect as long as doing so would not affect the overall purpose or intent of the Agreement.

24. **WAIVER OF TRIAL BY JURY. THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY OR PARTIES WITH RESPECT TO ANY MATTER ARISING UNDER THIS AGREEMENT.**

25. **TIME IS OF THE ESSENCE.** Time is of the essence in the performance of this Agreement.

26. **MERGER CLAUSE.** This Agreement and all Exhibits thereto set forth the entire agreement among the Parties, and it supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, among the Parties.

27. **PUBLIC RECORDS LAWS.** This Agreement shall be subject to Florida's Public Records Laws, Chapter 119, Florida Statutes. The Parties understand the broad nature of

these laws and agree to comply with Florida's Public Records Laws and laws relating to records retention. The Parties acknowledge and accept the authority of the School Board and the County to request and authorize audits, inspections, and reviews, including, but not limited to, the authority to access the Developer's records, its/their legal representatives' and contractors' records with respect to this Agreement and the obligation of the Developer to retain and to make those records available upon request, and in accordance with all applicable laws. Developer shall keep records to show its/their compliance with this Agreement. In addition, Developer's contractors and subcontractors must make available, upon School Board's and County's request, any books, documents, papers and records which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

The Developer, its contractors and sub-contractors shall (i) retain all records for five (5) years after the Effective Date of this Agreement; and (ii) the School Board and the County shall retain records for five (5) years after the expiration, early termination or cancellation of this Agreement. The Developer shall incorporate this Section 27 into every contract that it enters into relating to the subject Property.

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS

AT 305-995-1128, pr@dadescchools.net, and 1450 NE 2 Avenue, Miami,
Florida 33132.

[SIGNATURE PAGES FOLLOW]

SCHOOL BOARD

Signed, sealed and delivered
in the presence of:

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

Print Name: _____

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

Print Name: _____

Recommended by:

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

Approved as to Risk Management Issues:

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

Approved as to Treasury Management Issues

By: _____
Office of Treasury Management
Date: _____

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

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

ACKNOWLEDGMENT

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by ALBERTO M. CARVALHO, Superintendent of Schools, acting on behalf of THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic existing under the laws of the State of Florida, who personally appeared before me, and is [] personally known to me or [] produced _____ as identification, and who further acknowledged that he signed the above instrument with full authority, as set forth therein, on behalf of The School Board of Miami-Dade County, Florida.

[NOTARY SEAL]

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

CITY OF MIAMI:

WITNESSES:

Print Name: _____

Print Name: _____

CITY OF MIAMI

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

Todd B. Hannon, Clerk

By _____
City Clerk

_____ day of _____, 2018.

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

By _____
Victoria Mendez, City Attorney

Date: _____

ACKNOWLEDGMENT

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, 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 Miami-Dade County, Florida.

[NOTARY SEAL]

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

EXHIBIT "A"
**TO PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE
MITIGATION DEVELOPMENT AGREEMENT AMONG
THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FL;
CITY OF MIAMI; AND ART PLAZA, LLC**

Legal Description

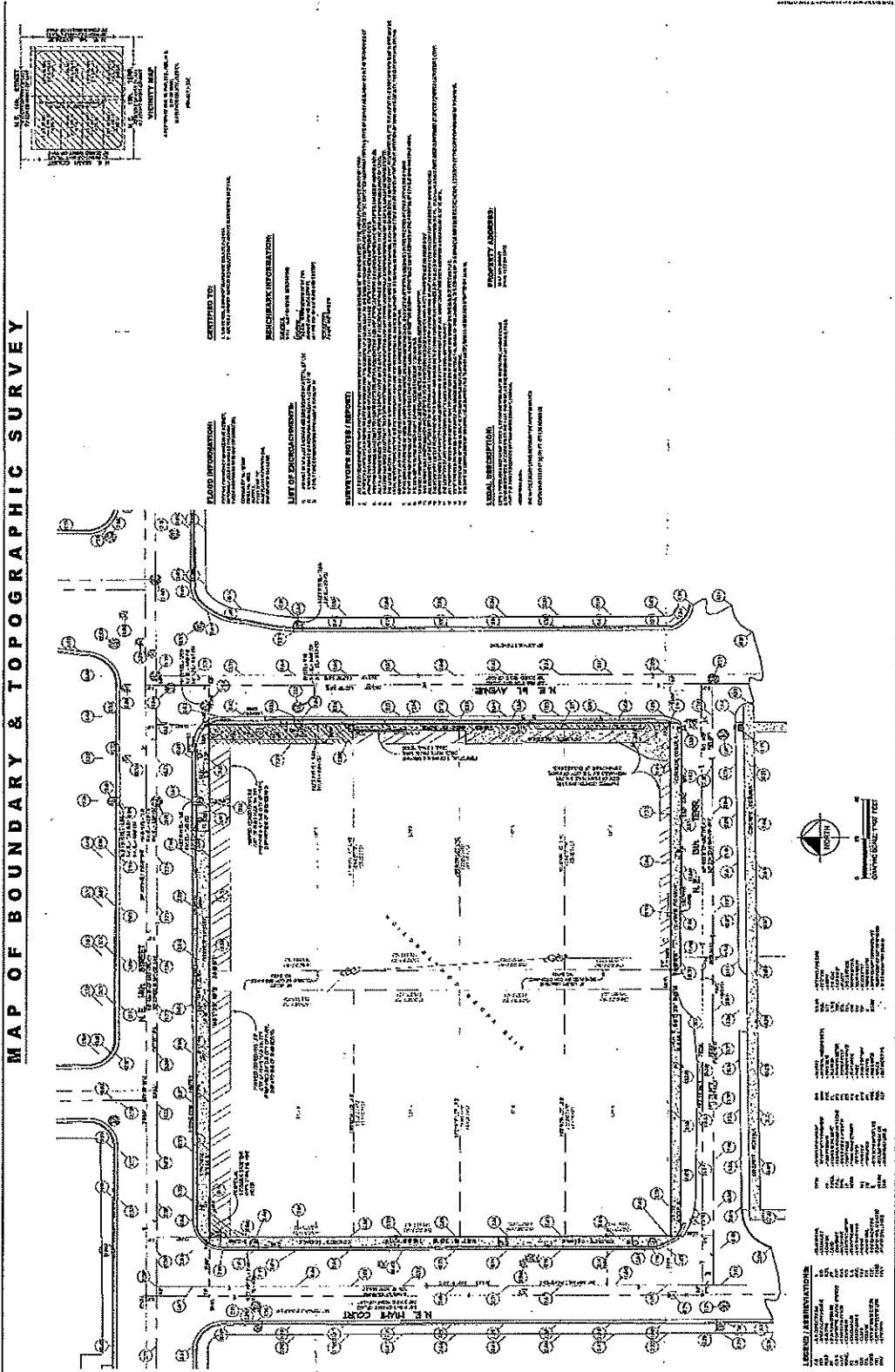
Lots 1 through 8, inclusive, Block 1, of CORRECTED PLAT OF BLOCK ONE, BALDWIN OXAR & OXAR SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 6, Page 43, of the Public Records of Miami-Dade County, Florida,

Together with

The 10 foot alley lying between the aforesaid lots.

EXHIBIT "B"
TO PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE
MITIGATION DEVELOPMENT AGREEMENT AMONG
THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FL;
CITY OF MIAMI; AND ART PLAZA, LLC

MAP OF BOUNDARY & TOPOGRAPHIC SURVEY



<p>SEAL</p>		<p>ART PLAZA</p>
<p>SURVEYOR'S CERTIFICATE</p> <p>I, SOUTH PENINSULA SURVEYING, CORP., a Florida corporation, do hereby certify that I am a duly licensed Professional Surveyor in the State of Florida, License No. 12523, and that I am the duly authorized representative of the above-named firm in the performance of the above-stated duties.</p> <p>I hereby certify that the above-stated survey was made by me or under my direct supervision and that I am a duly licensed Professional Surveyor in the State of Florida, License No. 12523, and that I am the duly authorized representative of the above-named firm in the performance of the above-stated duties.</p> <p>I hereby certify that the above-stated survey was made by me or under my direct supervision and that I am a duly licensed Professional Surveyor in the State of Florida, License No. 12523, and that I am the duly authorized representative of the above-named firm in the performance of the above-stated duties.</p>		<p>DATE OF SURVEY 08/14/14</p> <p>TYPE OF SURVEY BOUNDARY & TOPOGRAPHIC</p> <p>PROJECT NAME ART PLAZA</p> <p>CLIENT ART PLAZA, LLC</p> <p>PROJECT ADDRESS 1400 BAYVIEW BLVD, MIAMI, FL 33134</p> <p>PROJECT OWNER ART PLAZA, LLC</p> <p>PROJECT CONTACT ART PLAZA, LLC</p> <p>PROJECT PHONE 305.555.5555</p> <p>PROJECT FAX 305.555.5555</p> <p>PROJECT EMAIL ART@ARTPLAZA.COM</p> <p>PROJECT WEBSITE ARTPLAZA.COM</p> <p>PROJECT MAP 1400 BAYVIEW BLVD, MIAMI, FL 33134</p> <p>PROJECT PLAN 1400 BAYVIEW BLVD, MIAMI, FL 33134</p> <p>PROJECT PERMIT 1400 BAYVIEW BLVD, MIAMI, FL 33134</p> <p>PROJECT LICENSE 1400 BAYVIEW BLVD, MIAMI, FL 33134</p> <p>PROJECT PLAN 1400 BAYVIEW BLVD, MIAMI, FL 33134</p> <p>PROJECT PERMIT 1400 BAYVIEW BLVD, MIAMI, FL 33134</p> <p>PROJECT LICENSE 1400 BAYVIEW BLVD, MIAMI, FL 33134</p>

