

COTTAGES AT HERON ISLES

After recording return to:

Nassau County School District  
Office of the Superintendent  
1201 Atlantic Avenue  
Fernandina Beach, FL 32034

Inst: 202245018937 Date: 05/26/2022 Time: 9:00AM  
Page 1 of 12 B: 2565 P: 1499, Doc Type: AGR  
John A. Crawford, Clerk of Court, Nassau County,  
By: DW, Deputy Clerk

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**Application Number: 2022SCR0002**  
**Project Name: Cottages at Heron Isles**

**PUBLIC SCHOOL CONCURRENCY  
PROPORTIONATE SHARE MITIGATION AGREEMENT**

**THIS PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION AGREEMENT** ("Agreement"), is entered into by and between THE SCHOOL DISTRICT OF NASSAU COUNTY, a body corporate and political subdivision of the State of Florida, hereinafter referred to as "School District;" NASSAU COUNTY, Florida, a political subdivision of the State of Florida, hereinafter referred to as "County" and HERON ISLES JOINT VENTURE, LLP, a limited liability partnership of the State of Florida, whose address is 12443 San Jose Boulevard, Suite 504, Jacksonville, Florida 32223, hereinafter referred to as "Applicant."

**RECITALS:**

**WHEREAS**, in order to implement a system of school concurrency as provided in the Public School Facilities Element of the Nassau County 2030 Comprehensive Plan (the "Public School Facilities Element"), the School District, Nassau County, and the municipalities within Nassau County have entered into that certain "Amended Interlocal Agreement For Public School Facility Planning," dated as of August 2008 (the "Interlocal Agreement"); and

**WHEREAS**, the County and the School District have adopted and implemented a public school concurrency management system to assure the future availability of public school facilities to serve new development consistent with level of service standards ("Level of Service" and "Level of Service Standards") required in the current Interlocal Agreement and the Public School Facilities Element; and

**WHEREAS**, pursuant to Section 10 of the Interlocal Agreement, Section 08.05 of the Public School Facilities Element, and Section 163.3180, Florida Statutes, an Applicant submitting a development permit application for residential development requiring a rezoning, a subdivision plat approval, site plan approval, or the functional equivalent that will generate additional students in a concurrency service area, as established in the Public School Facilities Element, in which there is insufficient capacity to accommodate the anticipated additional students must enter into a proportionate share mitigation agreement and provide proportionate share mitigation to ensure that the minimum level of service standards are maintained as specified in the Interlocal Agreement, the Public School Facilities Element, and Florida Statutes; and

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**WHEREAS**, Applicant must submit a development permit application to the County along with a School Impact Analysis that identifies the proposed location of the residential development, the number of dwelling units that will be created, a phasing schedule (if applicable), and age restrictions for occupancy (if any) as well as all other information required pursuant to the Interlocal Agreement and Public School Facilities Element; and

**WHEREAS**, Applicant is the fee simple owner, or authorized agent of the owner, of that certain tract of land (Parcel Number(s) 44-3N-28-0000-0001-0500 and 37-3N-28-0000-0001-0030), consisting of 11.27 ± acres and located in the Yulee South Concurrency Service Area specified in the Public School Facilities Element, which property is more particularly described on Exhibit "A," attached hereto and incorporated herein by reference (the "Property"), which such Property location is further illustrated by a map attached hereto as Exhibit "B," and incorporated herein by reference; and

**WHEREAS**, the Applicant has submitted a development permit application and School Impact Analysis to County in connection with a proposal to obtain an application for zoning approval in order to develop twenty-five (25) single-family residential dwelling units on the Property (the "Development Permit Application"), which such Development Permit Application and School Impact Analysis have been forwarded to the School District; and

**WHEREAS**, the School District has reviewed and evaluated the Applicant's Development Permit Application and School Impact Analysis as required by the Interlocal Agreement; and

**WHEREAS**, the School District has determined that at the time of this Agreement, based on the current adopted Level of Service Standards, adequate middle and high school capacity is available within the applicable Concurrency Service Area and any contiguous Concurrency Service Areas to accommodate the middle and high school students the Development Permit Application is anticipated to generate for the proposed dwelling units; and

**WHEREAS**, the School District has determined that based on the current adopted Level of Service Standards, there is insufficient elementary school capacity within the applicable Concurrency Service Area and any contiguous Concurrency Service Areas, including any anticipated new school capacity that will be available in the first three (3) years of the current School District Educational Facilities Plan, to accommodate the anticipated number of elementary school students that the Development Permit Application will generate and that available school capacity will not be in place or under actual construction within three (3) years after the approval of the Development Permit Application; and

**WHEREAS**, approving the Development Permit Application without requiring Proportionate Share Mitigation for the impacts of the proposed new dwelling units will result in a failure of the adopted Level of Service Standards; and

**WHEREAS**, the Applicant has agreed to enter into this Agreement with the School District and County to provide Proportionate Share Mitigation proportionate to the demand for Public School Facilities to be created by the Development Permit Application, as more particularly set forth herein; and

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**WHEREAS**, the Parties agree that public school concurrency shall be satisfied by the Applicant's execution and full performance of this legally binding Agreement to provide mitigation proportionate to the demand for public school facilities to be created by the residential dwelling units proposed in the Development Permit Application ("Proportionate Share Mitigation").

**NOW, THEREFORE**, in consideration of the foregoing, 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, agree as follows:

**SECTION 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.

**SECTION 2. DEFINITION OF MATERIAL TERMS.** Any capitalized terms used herein but not defined shall have the meaning attributed to such term in the Interlocal Agreement, as the context may require.

### **SECTION 3. LEGALLY BINDING COMMITMENT.**

(A) This Agreement constitutes a legally binding commitment by the Applicant to mitigate for the impacts of the new residential dwelling units for which the Applicant is seeking approval pursuant to the Development Permit Application and satisfies the requirements of the Interlocal Agreement and Public School Facilities Element.

(B) The Parties agree that this Agreement satisfies the requirements of Section 163.3180(6)(h), Florida Statutes, as a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by the residential development proposed in the Development Permit Application.

**SECTION 4. PROPORTIONATE SHARE MITIGATION.** The Applicant shall provide the following Proportionate Share Mitigation in order to meet the demand for school capacity created by the proposed residential development, and to provide for capacity for 3.763 elementary school students, as follows, in accordance with Section 10.6 of the Interlocal Agreement and Section 09.03 of Public School Facilities Element:

(A) The payment of a total amount of ONE HUNDRED TWENTY EIGHT THOUSAND, TWO HUNDRED FORTY ONE DOLLARS AND NO/100 (\$128,241.00) for the Development Permit Application, which equates to FIVE THOUSAND ONE HUNDRED TWENTY NINE DOLLARS AND 64/100 (\$5,129.64) per dwelling unit as an appropriate proportionate share payment to enable the School District to maintain the Level of Service Standard for school capacity in the affected Concurrency Service Area or Concurrency Service Areas.

(B) This proportionate share payment shall be made within eighteen (18) months of the Effective Date of this Agreement or at the time of approval by County of the final engineering plans for the Project or any phase of the Project, whichever occurs first. This payment shall be a

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condition precedent to the approval by the County of the final engineering plans for the Project and made directly to the School District.

**SECTION 5. USE OF PROPORTIONATE SHARE MITIGATION.** The School District shall direct any and all Proportionate Share Mitigation, provided in Section 4 above, to a school capacity project identified in the financially feasible five (5) year district work plan of the School District Educational Facilities Plan which mitigates the impacts from the proposed residential development in the Development Permit Application. If such a school capacity project does not exist in the School District Educational Facilities Plan, the School District may, in its sole discretion, add a school capacity project to mitigate the impacts from the proposed residential development, as provided in Section 10.6 of the Interlocal Agreement.

### **SECTION 6. CONCURRENCY RESERVATION.**

(A) Upon final execution of this Agreement by all Parties hereto, the School District shall issue a School Concurrency Reservation Letter documenting that capacity will be available for the proposed residential development in the Development Permit Application. The County shall be entitled to rely on the School Concurrency Reservation Letter in its review and issuance of a Certificate of Concurrency for the proposed development; provided that nothing herein shall require the County to issue a Certificate of Concurrency for the Development Permit Application if the Applicant has otherwise failed to satisfy the requirements of the County's land development regulations.

(B) The duration and effect of any Certificate of Concurrency relating to the development provided in the Development Permit Application shall be in accordance with the Interlocal Agreement and Public School Facilities Element; however, in no event shall this School Concurrency Reservation Letter, a Certificate of Concurrency, or any capacity reservation based on the same, continue to be effective if the Applicant fails to perform its obligations under this Agreement.

### **SECTION 7. IMPACT FEE CREDIT.**

(A) Any Proportionate Share Mitigation paid pursuant to this Agreement shall be credited on a dollar-for-dollar basis at fair market value toward any Educational System Impact Fees due for the same residential development included in the Development Permit Application, as provided in Section 10.7 of the Interlocal Agreement or as provided in Section 163.31801, Florida Statutes, as it is in effect as of the Effective Date of this Agreement.

(B) The School District shall notify the County of the amount of the above described Proportionate Share Mitigation, which fair market value is ONE HUNDRED TWENTY EIGHT THOUSAND, TWO HUNDRED FORTY ONE DOLLARS AND NO/100 (\$128,241.00), and shall request Educational System Impact Fees credits in such amount on behalf of the Applicant upon receipt of the Proportionate Share Mitigation.

(C) An entity that later applies for a building permit for any of the dwelling units included in the Development Permit Application shall obtain an assignment of all or a portion of

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the above mentioned Educational System Impact Fee credits from the Applicant and submit such assignment to the School District and County at the time the Educational Impact Fee is due in order to drawdown from the Educational System Impact Fee credits provided herein, for so long as the Applicant has any remaining Educational System Impact Fee credits. The Parties agree that all the requirements, including those in the Nassau County Comprehensive Impact Fee Ordinance, for the Applicant to receive the Educational System Impact Fee credits set forth herein for the Development Permit Application have been satisfied.

(D) Nothing in this Agreement shall be deemed to require the County to continue to levy or collect Educational System Impact Fees or, if levied, to maintain them at any certain level.

**SECTION 8. NO GUARANTEE OF LAND USE.** Nothing in this Agreement shall require County to approve the Development Permit Application.

**SECTION 9. TERMINATION.** This Agreement shall terminate and Applicant shall forfeit any administrative application fees paid under the following circumstances, unless the County and the School District agree to an extension of the Certificate of Concurrency provided to the Applicant:

(A) The County does not approve the Development Permit Application within one hundred eighty (180) days of the Effective Date of this Agreement. In such event, all Proportionate Share Mitigation paid by the Applicant shall be refunded to the Applicant.

(B) The Certificate of Concurrency expires in accordance with Section 9.9 of the Interlocal Agreement. In such case, this Agreement shall be terminated and any encumbered capacity shall become unencumbered. The Applicant will not be entitled to a refund of Proportionate Share Mitigation paid under this Agreement, but the value of the Proportionate Share Mitigation received shall be held as a credit toward any future Proportionate Share Mitigation that may be required for future residential development on the same property.

**SECTION 10. COVENANTS RUNNING WITH THE LAND.** This Agreement shall be binding, and shall inure to the benefit of the heirs, legal representatives, successors, and assigns of the parties, and shall be a covenant running with the Property and be binding upon the successors and assigns of the Owner and upon any person, firm, corporation, or entity who may become the successor in interest to the Property.

**SECTION 11. NOTICES.** Any notice delivered with respect to this Agreement shall be in writing and be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

School Board: Nassau County School District  
Office of the Superintendent  
1201 Atlantic Avenue  
Fernandina Beach, FL 32034

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Owner/Applicant; Gregory E. Matovina  
Heron Isles Joint Venture, LLP  
12443 San Jose Boulevard, Suite 504  
Jacksonville, Florida 32223

County: Nassau County Manager  
96135 Nassau Place, Suite 6  
Yulee, FL 32097

**SECTION 12. 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.

**SECTION 13. DEFAULT.** If any party to this Agreement materially defaults under the terms hereof, then a non-defaulting party shall give the defaulting party thirty (30) days' notice and a right to cure such breach. Should the Applicant of the property described herein fail to timely cure a default in meeting their obligations set forth herein, the School Concurrency Reservation Letter and Certificate of Concurrency, issued based upon payment and/or performance hereunder, shall be voided and the Applicant and the property described herein shall lose their right to concurrency under this Agreement and their right to Educational System Impact Fee credits under this Agreement. Further, in the case of such default, any development upon that property dependent upon such certificate will be stopped, until and unless the Agreement is reinstated or the default is cured or capacity becomes available and is granted through an appropriate application. Should County or School District fail to timely cure a default in meeting their obligations set forth herein, Applicant may seek any and all remedies available to it in law or equity.

**SECTION 14. 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.

**SECTION 15. EXHIBITS.** All Exhibits attached hereto are a part of this Agreement and are fully incorporated herein by this reference.

**SECTION 16. AMENDMENTS.** No modification, amendment, or alteration in the terms or conditions contained herein shall be binding upon the parties hereto unless in writing and executed by all the Parties to this Agreement.

**SECTION 17. ASSIGNMENT, TRANSFER OF RIGHTS.** 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; provided, however, that any such assignment shall be in writing and shall require the prior written consent of all of the Parties hereto. Such consent may be conditioned upon the receipt by the other parties hereto of the written agreement of the assignee to comply with conditions and procedures to aid in the monitoring and enforcement of the assignee's performance of the Applicant's obligations with regard to Proportionate Share

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Mitigation under this Agreement. The assignor under such assignment shall furnish the Parties with a copy of the written assignment within ten (10) days of the date of execution of same.

**SECTION 18. SURETY.** The Applicant shall post a surety bond or letter of credit in the amount of ONE HUNDRED TWENTY EIGHT THOUSAND, TWO HUNDRED FORTY ONE DOLLARS AND NO/100 (\$128,241.00) as security for provision of the required Proportionate Share Mitigation established herein within 180 days from approval of the Development Permit Application. The bond or letter of credit shall remain in effect until payment in full of all required Proportionate Share Mitigation monetary contributions. All bonds shall be obtained from a surety that is duly licensed or authorized to issue bonds for the limits and coverages so required.

**SECTION 19. COUNTERPARTS.** This Agreement may be signed in counterparts, each of which may be deemed an original, and all of which together constitute one and the same agreement.

**SECTION 20. RECORDING OF THIS AGREEMENT.** The School District agrees to record this Agreement, at Applicant's expense, within fourteen (14) days after the Effective Date, in the Public Records of Nassau County, Florida.

**SECTION 21. ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement among the Parties with respect to the subject matter addressed herein, and it supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, among the Parties.

**SECTION 22. 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.

**SECTION 23. APPLICABLE LAW.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida and in accordance with the Nassau County Code and venue for any action to enforce the provisions of this Agreement shall be in the Fourth Judicial Circuit Court in and for Nassau County, Florida.

**SECTION 24. ATTORNEY'S FEES.** In the event any party hereto brings an action or proceeding, including any counterclaim, cross-claim, or third party claim, against any other party hereto arising out of this Agreement, each party in such action or proceeding, including appeals therefrom, shall be responsible for its own attorney fees.

**SECTION 25. EFFECTIVE DATE.** The effective date of this Agreement shall be the date when the last one of the parties has properly executed this Agreement as determined by the date set forth immediately below their respective signatures (the "Effective Date").

**IN WITNESS WHEREOF,** the Parties have caused this Agreement to be executed by their respective duly authorized representatives on the dates set forth below each signature:

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SCHOOL DISTRICT

(corporate seal)

THE SCHOOL DISTRICT OF NASSAU  
COUNTY, FLORIDA

WITNESSES

Cornio M. Daugherty  
Judith Meredith

By: Donna Martin

Donna Martin, Chair

14 day of April, 2022.

ATTEST:

Approved as to Form:

[Signature]

Kathy J. Su  
Superintendent of Schools

Brett Steger  
School District Attorney

14 day of April, 2022.



COTTAGES AT HERON ISLES

APPLICANT

Signed, witnessed, executed and acknowledged on this 9<sup>th</sup> day of March, 2022.

WITNESSES:

HERON ISLES JOINT VENTURE, LLP

*Dorian Hudson*  
*Sara Jo Hall*

By: *Gregory E. Malouin*  
Title: *Managing Partner*

STATE OF FLORIDA     )  
  ) SS:  
COUNTY OF NASSAU    )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 9<sup>th</sup> day of March, 2022, by *Gregory E. Malouin*, as *Managing Partner* on behalf of *Heron Isles Joint Venture, LLP*, who is personally known to me or who has produced \_\_\_\_\_ as identification.



SARA JO HALL  
Commission # HH 122989  
Expires August 27, 2025  
Bonded Thru Budget Notary Services

(Notary Stamp)

*Sara Jo Hall*  
Notary Public

Printed Name: *SARA JO HALL*  
License No: *HH 122989*  
Expiration Date: *8/27/25*

COTTAGES AT HERON ISLES

COUNTY

NASSAU COUNTY, FLORIDA

WITNESSES

[Signature]  
[Signature]

By: [Signature]

Aaron C. Bell, Chair

9th day of May, 2022.

ATTEST:

\_\_\_\_\_  
Clerk

Approved as to Form:

[Signature]

Denise May

Nassau County, County Attorney

9th day of May, 2022.

ATTESTATION. Only to Authenticity as to Chairman's Signature:

[Signature]  
John A. Crawford, Ex-Officio Clerk

## COTTAGES AT HERON ISLES

**Exhibit A – Legal Description**

A PORTION OF SECTION 37 AND A PORTION SECTION 44, BOTH LYING IN TOWNSHIP 3 NORTH, RANGE 28 EAST, NASSAU COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE MOST NORTHERLY CORNER OF TRACT "A", AS SHOWN ON THE PLAT OF HERON ISLES PHASE TWO, RECORDED IN PLAT BOOK 7, PAGES 218 THROUGH 228, INCLUSIVE OF THE PUBLIC RECORDS OF SAID NASSAU COUNTY, SAID CORNER BEING ON THE EASTERLY RIGHT OF WAY LINE OF CHESTER ROAD (A VARIABLE WIDTH RIGHT OF WAY AS NOW ESTABLISHED); THENCE NORTH 07°37'41" EAST, ALONG LAST SAID LINE, 21.08 FEET; THENCE NORTH 64°02'19" WEST, CONTINUING ALONG LAST SAID LINE, 3.38 FEET, TO THE EASTERLY LINE OF TRACT "RW", AS SHOWN ON THE PLAT OF HERON ISLES PHASE ONE, RECORDED IN PLAT BOOK 7, PAGES 40 THROUGH 46, INCLUSIVE OF SAID PUBLIC RECORDS; THENCE NORTH 08°24'50" EAST, ALONG LAST SAID LINE, 773.65 FEET; THENCE NORTH 07°26'55" EAST, CONTINUING ALONG LAST SAID LINE, 569.27 FEET, TO THE SOUTHWESTERLY CORNER OF LOT 316, AS SHOWN ON SAID PLAT OF HERON ISLES PHASE TWO; THENCE EASTERLY, SOUTHERLY AND NORTHEASTERLY ALONG THE SOUTHERLY AND WESTERLY LINES OF SAID PLAT OF HERON ISLES PHASE TWO, RUN THE FOLLOWING FIVE (5) COURSES AND DISTANCES: COURSE NO. 1: SOUTH 82°35'24" EAST, 200.60 FEET; COURSE NO. 2: SOUTH 09°34'04" WEST, 378.83 FEET; COURSE NO. 3: SOUTH 68°38'35" EAST, 121.69 FEET; COURSE NO. 4: NORTH 31°05'30" EAST, 203.62 FEET; COURSE NO. 5: SOUTH 07°20'56" WEST, 1277.10 FEET, TO THE NORTHERLY LINE OF AFORESAID TRACT "A"; THENCE NORTH 64°03'24" WEST, ALONG LAST SAID LINE, 420.19 FEET, TO THE POINT OF BEGINNING.

CONTAINING 11.27 ACRES, MORE OR LESS.

