ITEM 4A

To: Mayor and Village Council

Date: May 20, 2013

From: Eve A. Boutsis, Village Attorney

Re: Settlement Agreement

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO SETTLEMENT AFTER PUBLIC HEARING; RELATING TO THE SHORES AT PALMETTO BAY, LLC. V. VILLAGE OF PALMETTO BAY UNDER APPELLATE CASE NUMBER 12-029; PROVIDING AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS:

Shores at Palmetto Bay, LLC ("Owner") owns property along Franjo Road bearing folio number 33-5033-000-0860 which entity applied for public hearing to do a mixed-use project on the site, including a charter school. The property in question is an approximately 5 acre parcel just east of Village Hall. On December 2, 2011, the Village Council of Palmetto Bay considered the original application of the Owner for the development in accordance with Quasi-judicial hearing procedures, as defined under section 286.011, Florida Statutes. Following the hearing, the Village Council made findings of fact, conclusions of law, and issued a final order denying the application. The Owner timely filed a petition for certiorari review (an "appeal") to the Appellate Division of the Circuit Court under Appellate Court case number 12-029.

The Village Council denied applicant's request for approval of the charter school as the application was, amongst other factors, incomplete. The applicant had failed to provide a usable charter. The remainder of the site plan application was not subject to Village Council review. The Village filed its answer brief on February 27, 2012. The Owner filed its reply briefly thereafter. On February 13, 2013, oral argument was held before a three judge panel. The presiding Judges were Korvick, Hogan-Scola, and Cynamon. Thereafter, the Owner filed an unopposed motion for a 60-day stay of proceedings in order to discuss possible settlement. The Appellate Panel granted a Stay of the decision/proceedings through the end of April. Due to ongoing settlement discussions, the parties filed a second request to stay the decision/proceedings in order to complete settlement discussions. The Appellate Panel granted a second stay through June 28, 2013.

In order to amicably resolve the appellate litigation and the possibility of any original action regarding the subject matter herein, the parties desire, in compliance with state law and the Village's Land Development Code and after public hearing, to enter into the attached Settlement Agreement.

In synopsis, the settlement provides that the Owner shall proceed to the public hearing on the charter school application. A charter school is a public school under Florida law. Following the required noticed public hearing (in compliance with Division 30-30 of the Land Development Code), should the application be approved by the Village Council, the Owner will dismiss the

underlying appeal. The Applicant has submitted a site plan - a portion of which shall be reviewed administratively (residential, retail, and office units portion of project) and the remainder shall be reviewed by the Village Council (charter school portion). The Owner is to comply with the Village's Land Development Code, as well as all applicable regulations. Section 30-120, of the Land Development Code, requires a public hearing when establishing a charter school. This Code provision is consistent with the requirements imposed by Miami-Dade County. The Application, if approved, would allow a concession to the Owner: the usable charter does not have to be produced at the hearing, but, must be produced prior to a building permit being issued for the charter school portion of the site. The applicant must also comply with 30-30.2(c)(16), which states: "A proposed construction timetable is required for all development applications anticipated to exceed 24 months for completion of construction." As part of the settlement agreement, the Owner and any assigns agree not to seek to increase the number of students beyond 1400 students. If the application is not approved by the Village Council, the settlement agreement contemplates that the Owner may proceed with its Appeal, and the Appellate Panel may issue its ruling.

If settlement is not reached and the Appeal was to proceed, there are two possible outcomes. First, the Village could prevail on Appeal, in which case the Appellate Panel would remand the matter back to the Village for the Village to hold a quasi-judicial hearing on the application. The criteria for a charter school is ultimately governed by the requirements of Florida Statutes. As a result, provided certain minimum criteria are met, the Owner would ultimately be entitled to open the charter school. The Owner would simply have to provide a "usable" charter and respond to some minor Public Works Comments from the December, 2011, hearing. The second possible outcome involves the Owner prevailing on the Appeal, which would mean that the Appellate Panel would remand the matter to the Village, and require the Village Council to review and approve the charter school application as originally presented in December of 2011. In doing so, the Court could over turn the Village's Code provision relating to charter schools. Should the appeal proceed the application that would be reviewed, in the above scenarios, would be the original application from the December 2011 hearing. The Appellate review would not be of the revised site plan proposed by the Owner as part of the underlying settlement agreement. The mix of uses and the number of students (1400) remains the same in either plan. The remaining details of the plan would be delineated as part of the quasi-judicial proceeding.

The settlement agreement also provides that each party shall bear its own legal costs. The zoning application fee associated with the revised and substituted site plan application would be waived. However, the applicant will be required to pay the costs associated with the advertising and mailing of the notice of hearing on the quasi-judicial application. The Owner would file with the court a copy of the settlement agreement and request dismissal of the underlying appeal. Once the settlement agreement is executed no further litigation may be filed against the Village relating to this matter, unless it is to enforce the terms of the settlement agreement. The agreement would be recorded with the Clerk of Court.

The law in Florida requires the approval of a settlement, in a public forum, after public hearing. In order to preclude litigation relating to "contract zoning", the settlement agreement does not

authorize approval of the proposed plan - that decision must occur at a quasi-judicial proceeding, scheduled in accordance with the Village's notice and advertising requirements. Doing so ensures that there are no due process violations and ensures there should be no valid "contract zoning" challenges. A contract zoning challenge may occur if the Village were to agree to a rezoning, or a zoning item without adhering to its quasi-judicial review procedures. By requiring the quasi-judicial hearing and staff review of the plan, the Village adheres to its procedures. Additionally, at no point in the settlement agreement does the Village contract-away its zoning authority. Rather, the settlement is contingent upon going through the appropriate zoning process.

The settlement agreement, once approved, would then authorize staff to complete an expedited review of the application; and, once completed, issue the appropriate zoning notices and advertisement. A zoning hearing would be scheduled to hear the application as it relates to the charter school portion of the application.

It is necessary for me to emphasize that the State Legislature enacted several laws that provide charter schools with greater discretion in construction and location then what is permitted for "traditional" public schools. Further, the Legislature has imposed limits on municipal review of charter school facility applications. The State Legislature has defined "charter school" as a public school. [Section 1002.31, Florida Statutes]. Florida Statute Section 1013.33(13), provides, that once a public school facility is determined consistent with the Village's Comprehensive Plan Land use policies, the application may <u>not be denied</u>. However, the municipality may impose reasonable conditions on the development. The municipality "may consider the site plan and its adequacy as it relates to environmental concerns, health, safety and welfare, and effects on adjacent property. Standards and conditions may be not imposed which conflict with those established under Chapter 1013.33[entitled "Educational Facilities] or the Florida Building Code, unless mutually agreed upon and consistent with the [Educational Facility] Interlocal Agreement." Start-up Charter Schools are required to comply with the Florida Building Code but are <u>not</u> required to comply with the State Requirements for Educational Facilities. [Section 1002.33(18), Florida Statutes].

Moreover, during the 2011 Legislative session, the Legislature modified Section 1002.33(18)(a), Florida Statutes, entitled "Facilities," to provide the following restrictions on municipal review of an application:

> The local governing authority shall not adopt or impose <u>any</u> local building requirements or <u>site-development</u> restrictions<u>, such as parking and site-size criteria,</u> that are <u>addressed by and</u> more stringent that those found in the <u>State Requirements for Educational Facilities</u> of the Florida Building Code. <u>Beginning July 1, 2011, a local governing authority must treat charter schools equitably in comparison to similar requirements restrictions, and processes imposed upon public schools that are not charter schools</u>. [Emphasis added].

The property in question is within the South Dade (Cutler Ridge/Perrine) Enterprise Zone and is; therefore, exempt from transportation concurrency. This should not; however, be interpreted to

mean that the project is exempt from any reasonable condition that will mitigate any impacts that may occur from the proposed charter school facility. Specifically, Section 1013.33(13), Florida Statutes, permits the reasonable imposition of conditions on the approval of a charter school. However, the reasonable conditions must be consistent with the implementing statutes, and controlling code provisions.

FISCAL/BUDGETARY IMPACT:

Approval of the settlement would eliminate litigation costs as to the underlying matter. It would preclude further appeals and other possible civil litigation relating to the underlying action. The Owner is responsible for the costs associated with the underlying public hearing on the quasi-judicial application. The Village shall bear its own costs as it relates to the underlying appeal.

RECOMMENDATION:

Approval.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO SETTLEMENT AFTER PUBLIC HEARING; RELATING TO THE SHORES AT PALMETTO BAY, LLC. V. VILLAGE OF PALMETTO BAY UNDER APPELLATE CASE NUMBER 12-029; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Shores at Palmetto Bay, LLC owns property along Franjo Road bearing folio number 33-5033-000-0860 which entity applied for public hearing to do a mixed-use project on the site including a charter school; and,

WHEREAS, on December 2, 2011, the Village Council of Palmetto Bay considered the original application of the Owner for the development of the previous project in accordance with Quasi-judicial hearing procedures as defined under 286.011, Florida Statutes, and at which time, the Village Council made findings of fact, conclusions of law and a final order denying the application; and,

WHEREAS, the Property Owner timely filed a petition for certiorari review (an "appeal") to the Appellate Division of the Circuit Court under Appellate Court case number 12-029; and,

WHEREAS, In order to amicably resolve the appellate litigation and the possibility of any original action regarding the subject matter herein the parties hereto, in compliance with state law and the Village's Land Development Code, desire, after public hearing, to enter into this Settlement Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. The above whereas clauses are incorporated by reference herein.

Section 2. A public hearing was held on May 20, 2013 relating to the settlement agreement.

Section 3. The settlement agreement is approved in substantial form as provided in attached Exhibit A.

Section 4. Once approved, and upon completion of staff review of the applicant's plan for compliance with the requirements of Section 30-120 and any other applicable section of the Village's Land Development Code, the public hearing item will be advertised and scheduled in accordance with Section 30-30.11 for Planning and Zoning approval of the charter school establishment request.

Section 5. This resolution shall take effect immediately.

PASSED and ADOPTED this 20th day of May, 2012.

Attest: _____ _____

Meighan Alexander
Village Clerk

Shelley Stanczyk
Mayor

APPROVED AS TO FORM:

_____

Eve A. Boutsis
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore _____

Council Member Tim Schaffer _____

Council Member Joan Lindsay _____

Vice-Mayor John DuBois _____

Mayor Shelley Stanczyk _____

This instrument was prepared by (record and return to)

Name: Village Attorney
Address: Office of the Village Attorney
Village of Palmetto Bay
9705 East Hibiscus Street
Palmetto Bay, Florida 33157

(Space reserved for Clerk)

EXECUTION COPY

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into as of the __ day of ____ 2013, by and among the Village of Palmetto Bay, a Florida municipal corporation (the "Village) and Shores at Palmetto Bay, LLC, a Florida limited liability company (the "Owner). The Commencement Date of this Agreement is the date of approval by the Village Council of the Village of Palmetto Bay.

Introduction and Background

A. This Agreement, among other things, is intended to and shall constitute a final settlement agreement among the parties.

B. Owner is the owner of that certain parcel of property located in the Village of Palmetto Bay containing approximately +/-5.1 acres legally described as follows:

F33 55 40 5.01 AC M/L
N1/2 of SW 1/4 of SW 1/4 Less W 40 feet for R/W
F/A/I 30-5033-000-0860
COC 24034-4438 11 2005 1
OR 24034-4438 1105 00
Folio number: 33-5033-000-0860

C. Owner filed a public hearing application with the Village of Palmetto Bay Department of Planning and Zoning for the purpose of seeking a series of zoning approvals (FT&I administrative site plan review of the mixed use component and public hearing review of charter school application).

D. The Owner owns certain real property in the Village of Palmetto Bay, located in an area known as the "Franjo Triangle and U.S. 1 Island District", of which it intends to develop that portion (the "Property") of the real property identified in the attached site plan attached hereto as Exhibit "A" (the "Site Plan"), as a multi-use development which will encompass both residential and commercial aspects and will include a charter school (the "Project").

E. On December 2, 2011, the Village Council of Palmetto Bay considered the original application of the Owner for the development of the previous project in accordance with Quasi-judicial hearing procedures as defined under 286.011, Florida Statutes, and at which time, the Village Council made findings of fact, conclusions of law and a final order denying the application, as further described in attached Exhibit "B".

F. The Owner timely filed a petition for certiorari review (an "appeal") under the matter entitled Shores of Palmetto Bay LLC v. Village of Palmetto Bay to the Appellate Division of the Circuit Court under Appellate Court case number 12-029 (Fla. 11th Jud. Cir.).

G. In order to amicably resolve the appellate litigation and the possibility of any original action regarding the subject matter herein the parties hereto, in compliance with state law and the Village's Land Development Code, desire to enter into this Settlement Agreement.

H. As further consideration for the foregoing, the parties hereby agreed to certain other terms and conditions, pertaining to the Project as set forth in this Agreement.

I. The Village of Palmetto Bay is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act, Florida Statutes, and the Village Charter and Code. The Village has all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal and governmental functions and render municipal services, including the authority to adopt, implement and enforce (together with any required governmental approvals) comprehensive plans, zoning ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the Village and its residents and visitors.

J. Owner is a Florida limited liability company organized and created pursuant to Florida Statutes.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in settlement of all current and possible disputes between the parties hereto, the parties hereby agree as follows:

1. Recitations. The foregoing recitations are true and correct and are incorporated herein by this reference.

2. Definitions. All capitalized terms in this Agreement shall have the definitions set forth in this Section unless such terms are defined elsewhere in the body of this Agreement.

2.1 "Building Permit" means a "Full Building Permit," as such term is defined in the Village's land development regulations, issued by the Village's Building Department, which allows building or structures to be erected, constructed, altered, moved, converted extended, enlarged, or used, for any purpose, in conformity with applicable codes and ordinance.

2.2 "Comprehensive Plan" shall mean the comprehensive plan which the Village has adopted and implemented for the redevelopment and continuing development of the Village pursuant to Chapter 163 Part II, of the Florida Statutes.

2.3 "Development Approvals" shall mean all Development Permits and all approvals, consents, permits, special use exemptions or variances, as well as other official actions of the federal, state or county governments or other governmental agencies.

2.4 "Development Permits" shall mean any building permit (including, without limitation, a Full Building Permit), zoning permit, subdivision approval, zoning certification, special exceptions, variances issued or granted by the Village or any other official actions of the Village (whether by the Village Commission or any Village board, department or agency) having the effect of permitting the development of the Project.

2.5 "Charter School Portion of the Project" shall mean the design, development, construction and operation, by Owner, or its assignees, of the public charter school development to be situated on the Property.

2.5 "The Property" shall mean the parcel of real property described as

F33 55 40 5.01 AC M/L
N1/2 of SW 1/4 of SW 1/4 Less W 40 feet for R/W
F/A/I 30-5033-000-0860
COC 24034-4438 11 2005 1
OR 24034-4438 1105 00
Folio number: 33-5033-000-0860

3.0 Site Plan Approval. In connection with the development of the Property as set forth in the Zoning Application, the parties agree to the following:

a. Owner has submitted plans to the Village of Palmetto Bay ("Village") detailing the development and use of the Property. Owner shall develop and use the property in strict accordance with the proposed Site Plan once it has been approved by the Village, attached herein as Exhibit A, upon approval by The Village, unless otherwise modified by the Owner and approved by The Village.

b. The structures to be utilized for the public charter school shall not deviate from the charter school structures identified on the Site Plan.

c. The number of children in the Charter School Portion shall not exceed One Thousand Four Hundred (1,400) students in a facility that will encompass up to grades Kindergarten through 12th.

d. The number of parking spaces shall be consistent with the parking spaces contained in the approved Site Plan after hearing.

e. The Owner shall comply with the requirements of all other applicable departments/agencies as part of the Village of Palmetto Bay building permit submittal process.

f. The Owner shall comply with the recommendations as per Miami-Dade County Public Works Traffic Engineering Division (TED) except for that portion requiring exclusive designation of parking spaces to the applicant, and the Roundabout, and the Village of Palmetto Bay's Traffic Consultant. In the event of a conflict, between TED and the Village, the Owner shall comply with the Village's Traffic Consultant requirement over that of the TED report.

g. As provided for in the Village of Palmetto Bay Code of Ordinances, the Owner shall be provided two years from the non-appealable date of the issuance of the last permit or approval required to commence construction to construct the site, unless a longer duration is provided by the Owner in a timetable in compliance with 30-30.2(c)(16), which states: "A proposed construction timetable is required for all development applications anticipated to exceed 24 months for completion of construction. [Cross-reference with subsection (i)]. The time table shall be included as part of the public hearing application and/or administrative site plan review. If approved, the time table shall be imposed as a covenant running with the land.

h. Upon execution of this Agreement by the parties hereto, the Village will cause the Site Plan review process to be fast tracked with the approval of the Site Plan being scheduled for the next Village Council meeting, providing all notice requirements of Division 30-30 of the Village's Code of Ordinances are complied with.

i. As part of the site plan approval process relating to the charter school request, the applicant is required to provide a usable charter(s) (non-site specific) to the Village along with an application to the School Board to transfer the usable charter to the location of the property. A "usable charter(s)" is (1) an available charter(s) dedicated elsewhere; (2) a charter contract that has received authorization by the School Board to be transferred from its current location; or (3) is a site specific charter(s) for this location. Review by the Village is contemplated to proceed with the application and the quasi-judicial hearing by the Council described herein. No building permits shall be issued by the Village until the Miami Dade School Board has approved the change in location of the current usable charter(s) or a charter contract for the location of the property. This

provision shall be read consistent with Subsection "g.", above relating to the application of 30-30.2(c)(16). No Certificate of Use shall issue until a charter contract is provided to the Village for the specific site.

j. Notwithstanding anything to the contrary herein, at any time, the Owner or its assignees may decide to either (a) not develop the Property or (b) develop the Property in any other manner consistent with the permitted uses of the Property under the Village Code. Owner may apply to the Village for a new site plan approval pursuant to the Village Code. In approving the new site plan, prior development approvals would expire, consistent with the Village Code. Nothing in this Agreement shall compel or require the Owner to develop the Property or otherwise improve the Property in any manner.

4.0 **Implementation and compliance of all conditions of approval.**

Site Plan Approval. Upon execution of this Agreement by the parties hereto, the Village Commission shall be deemed to have approved the Site Plan, with the following provisions:

a. Unless specified otherwise herein, all the conditions of approval provided herein shall be in effect at which time charter school enrollment is operational.

b. Owner or its designee shall not apply to the Village or any governmental entity with authority to grant such approvals or shall support or cooperate in any way with any application for an increase in student enrollment beyond that authorized herein, notwithstanding any "Charter" issued by the Miami-Dade County School Board that is for a greater number of students, and notwithstanding any current or future State of Florida legislation that would allow for an increase in student enrollment or have the effect of limiting the conditions herein.

c. Any non-material changes (as determined by the Village's Planning Director) which are required by any Village land use board or any other applicable board, agency, or authority, or any non-material changes (non-substantial compliance modifications under Division 30-30) which are initiated by Owner, shall not require the approval of the Village Council.

d. Any technical changes in the approved Site Plan not governed by subsection 3.0 above, and which are (i) required in order for the Project to be in compliance with any and all applicable laws, codes, rules and regulations of any governmental or regulatory agencies including, without limitation, the Florida Building Code and the Americans with Disabilities Act (ADA), or (ii) otherwise required or necessary including, without limitation, any changes in connection with ingress

and egress and public works, shall be delegated to the appropriate government official of the Village for review and approval of such technical changes.

4. Zoning and Other Approvals for Project.

4.1 Development Permits. Certain provisions of this Agreement will require that the Village and/or its boards, departments, or agencies take certain governmental actions, acting in their governmental capacity, and issue Development Permits in order to accomplish and satisfy the authorization and construction of the Project:

4.2 Applications for Development Approvals. The Owner has already begun to initiate and diligently pursue all Development Approval applications for the Project. The Village shall process all Development Permit applications in a timely fashion and the Village shall cooperate with the Owner in processing all necessary Development Approvals from federal, State, and County agencies, as needed.

4.3 Laws Governing this Agreement. The Village's laws and policies governing the development of the Project at the time of the execution of this Agreement by the parties hereto shall govern the development of the Project for the duration of this Agreement. The Village may apply subsequently adopted laws and policies to the Project only as otherwise permitted or required by the Act. Except as required by Chapter 163, Florida Statutes, the Project may proceed for the life of this Agreement and is vested as to the rights provided herein.

4.4 Comprehensive Plan, Zoning and Other Approvals. As provided above, the parties recognize and agree that certain provisions of this Agreement will require the Village and/or its boards, departments, or agencies, acting in their governmental capacity, to consider governmental actions, as set forth in this Agreement. All such considerations and actions shall be undertaken in accordance with established requirements of State statutes and Village ordinances, in the exercise of the Village's jurisdiction under the police power. The parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly, in full accordance with law and with both procedural and substantive due process to be accorded the applicant and any member of the public. Nothing contained in this Agreement shall entitle the Owner to compel the Village to take any such actions, save and except the consents, if applicable, to the filing of such applications for Development Permits or other required Development Approvals, as more fully set forth herein, and to timely process such applications.

4.5 Owner shall be responsible for obtaining all Development Approvals and Development Permits for the Project.

6. No Permit or Waiver of Fees Other than Application Fee. This Agreement is not and shall not be construed as a Development Permit, Development Approval, or authorization to commence development of the Project, nor shall it relieve Owner of the obligation to obtain all necessary Development Approvals, Development Permits, or any other approvals and/ or permits that are required under applicable law and under and

pursuant to the terms of this Agreement. Except as otherwise expressly provided herein, nothing contained in this Agreement shall be deemed to constitute a waiver of any fee, charge, or cost imposed by the Village in connection with the issuance of any Development Approval, Development Permit or any other approval and/or permit. The Village acknowledges that the Owner has previously paid the Site Plan review fee for the previously submitted version of the Site Plan, and Owner will not be required to pay an additional Site Plan review fee as part of the amended Site Plan submitted in accordance with this Agreement.

7. Good Faith; Further Assurances; No Cost. The parties to this Agreement have negotiated in good faith. It is the intent and agreement of the parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of, and to satisfy their obligations under, this Agreement in order to secure to themselves the mutual benefits created under this Agreement; and, in that regard, the parties shall execute such further documents as may be reasonably necessary to effectuate the provisions of this Agreement; provided, that the foregoing shall in no way be deemed to inhibit, restrict or require the exercise of the Village's police power or actions of the Village when acting in a quasi-judicial capacity. Wherever in this Agreement a provision requires cooperation, good faith or similar effort to be undertaken at no cost to a party, the concept of no cost shall not be deemed to include any cost of review (whether legal or otherwise), attendance at meetings, hearings or proceedings and comment and/or execution of documents, all such costs to be borne by the party receiving a request to so cooperation, act, in good faith or so forth. Despite the foregoing, Owner shall be responsible for the costs associated with advertising and mailing notice of the quasi-judicial hearing as required under Division 30-30, of the Land Development Code.

8. Recording of Agreement.

8.1 Within 30 days after the parties execute this Agreement, the Village shall record this agreement with the Clerk of the Appellate Division of the Circuit Court of Miami-Dade County. This Agreement shall become effective only after it has been recorded in the Public Records of Miami-Dade County. Owner agrees that it shall be responsible for all recording fees and other related fees and costs related to the recording and delivery of this Agreement.

8.2 As such, settlement is contingent upon Village Council finding the application substantially consistent with the Village's Code. If during the public hearing, the Village denies the application, or imposes material conditions on the approval of the application, without the concurrence of the Owner, then this settlement agreement shall be null and void, and the underlying petition for certiorari shall proceed under Appellate Court case no. 12-029

8.3 If the site plan is approved after the public hearing, then, this settlement agreement, shall remain in full force and affect during the term hereto, and subject to the conditions of this Agreement, shall be binding upon the undersigned and all successors in interest to the parties to this Agreement.

8.4 The Owner, upon approval of the Site Plan, shall immediately withdraw or dismiss the petition for certiorari review by the Circuit Court Appellate Panel. The Owner shall petition the Appellate Panel to stay the appellate action during the process of approving this settlement agreement and the holding of the quasi-judicial hearing on the Site Plan.

8.5 Whenever an extension of any material deadline is permitted or provided for under the terms of this Agreement, at the request of either party, the other party shall join in a short-form recordable Memorandum of Agreement confirming such extension to be recorded in the Public Records of Miami-Dade County.

8.6 The parties shall include this Settlement Agreement as part of the record of the Zoning Application hearing and seek Village Council direction that this document and all exhibits shall remain in the public records of the Village until such time that the owner or designee ceases to operate a school on the property.

8.7 Notwithstanding any language to the contrary in this Agreement, if the Village Council conditions for approval are contradictory to those contained in this Agreement, the Owner retains their right to object to the Zoning Application, retains its right to challenge any such approval by appeal and original action in court. If Owner agrees on the public record at the hearing on the zoning application that they accept the Village's different conditions, said conditions will not be deemed "contradictory" for the purposes of this Agreement and said modified conditions will be incorporated by reference into this agreement.

9. Dismissal of Petition for Certiorari. Within 30 days of the final non-appealable approval of the Owner's zoning application Owner agrees to file a voluntary dismissal of its petition for certiorari styled Shores at Palmetto Bay, LLC v. Village of Palmetto Bay under case no: 12-029.

10. Claims Released by the Owner. Upon approval of the Site Plan and the filing of a voluntary dismissal of its petition for certiorari styled Shores at Palmetto Bay, LLC v. Village of Palmetto Bay under case no: 12-029, Owner on behalf of itself, and its legal representatives, predecessors, successors, heirs, executors, assigns, officers, agents, employees, directors, shareholders, trustees and attorneys, and each of them, hereby fully and forever release and discharge the Village and its representatives, from any and all claims, demands, covenants, actions, suits, causes of action, obligations, controversies, debts, costs, expenses, attorneys' fees, damages, losses and liabilities, arising under or directly or indirectly to the issues raised in the appellate litigation which are encompassed in this settlement agreement, including, but not limited to, any matter or claim which was, or could have been, asserted in reason the litigation.

11. Duration of Agreement. The duration of this Agreement shall not exceed fifteen (15) years from the Commencement Date; provided, however, that the duration of

this Agreement may be extended by mutual agreement of the Village and Owner. During the term of this Agreement, the Village's laws and policies governing the development of land in effect as of the date hereof shall govern development of the Property. The Village may apply subsequently adopted laws and policies to the Project only if the Village has held a public hearing pursuant to Section 163.3225, Florida Statutes, and determined:

(a) They are not in conflict with the laws and policies governing this Agreement and do not prevent development of the land uses, intensities, or densities in this Agreement; or

(b) They are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement; or

(c) They are specifically anticipated and provided for in this Agreement.

12. Required Development Approvals. Owner shall be solely responsible for obtaining, at its sole cost and expense, the Development Approvals. Notwithstanding the preceding, the Village and Owner agree and acknowledge that the Development Approvals may not constitute a full listing and description of all local development approvals or permits needed to be approved for development of the Project, and that the omission of any other approval or permit (required for the development of the Project) shall not relieve Owner of its sole obligation, whether under applicable law or this Agreement, to obtain same.

13. Confirmation of Land Development Regulations. The Property is located within the zoning district classification as the Franjo Triangle and U.S. 1 Island District as defined in Village's land development regulations, Section 30-50.18 of the Village Code.

14. Omissions. The parties hereto recognize and agree that the failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction notwithstanding any such omission.

15. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the Village at: Village of Palmetto Bay, Village Hall
9705 East Hibiscus Street
Palmetto Bay, Florida 33157
Attn: Village Manager

If to Owner at: Shores at Palmetto Bay, LLC
c/o Michael Latterner & Associates
13 SW 7th Street
Miami, Florida 33130-3009

16. Indemnification of Owner. Owner hereby agrees to hold the Village, its officers, employees, agents, contractors, and representatives harmless from any liability/or damage or claims for damage for personal injury, including wrongful death, and claims for property damage, which may arise from the direct or indirect activities and/or operations of Owner, or these of any officer, employee, agent, contractor, sub-contractor, or other person acting on Owner's behalf, which relate to the design, development, and construction of the Project. Owner agrees to, and shall afford at its sole cost and expense, the Village and its officers, employees, agents, contractors, and representatives from any and all actions for damages caused, or alleged to have been caused, by reason of Owner's activities in connection with Project. This indemnification agreement applies to all damages and claims for damages including, without limitation, interest, costs and attorney's fees, outlined or alleged to have been suffered by reason of the activities and/or operations referenced herein. This indemnification shall not apply to the gross negligence or willful misconduct of the Village, or of its officer's employees, agents, contractors, or representatives. The aforestated indemnification, and the provisions of this shall survive expiration of this Agreement.

17. Default. Notwithstanding anything to the contrary set forth in this Agreement, under no circumstances shall any party to this Agreement lose any right or benefit granted under this Agreement or suffer any harm as a result of the occurrence of any Default or default of such party as to which Default or default such party has not received notice thereof from the other party. If either party defaults in the observance or performance of any term, covenant or condition of this Agreement to be observed or performed shall be provided 30 days to cure the default. Failure to cure, after 30 days prior written notice shall entitle the non-defaulting party to seek injunctive, declaratory or other equitable relief in Court.

18. Strict Performance No failure by Village or Owner to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of the other party's default or an Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by either party and no default by either party, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any Default or Event of Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default. Owner's compliance with any request or demand made by Village shall not be deemed a waiver of Owner's right to contest the validity of such request or demand.

19. Right To Perform The Other Party's Obligations.

(a) If an Event of Default shall occur, Village may, but shall be under no obligation to, perform the obligation of Owner the breach of which gave rise to such Default, without waiving or releasing Owner from any of its obligations contained herein, provided that Village shall exercise such right only in the event of a *bona fide* emergency and after five (5) business days' notice, and Owner hereby grants Village access to Property, as applicable, in order to perform any such obligation.

(b) If a default by Village under this Agreement shall occur and be continuing beyond any applicable grace period, Owner may, but shall be under no obligation to, perform the obligations of Village (other than those which are governmental as opposed to proprietary obligations) the breach of which gave rise to such default, without waiving or releasing Village from any of its obligations contained herein, provided that Owner or Tenant shall exercise such right only in the event of *a bona fide* emergency or after five (5) business days' notice to Village.

20. Waiver, Release and Assumption of Obligations. Village's performance pursuant to the provisions of this Section shall not be, nor be deemed to constitute, Village's assumption of Owner's obligations to perform any of Owner's past, present or future obligations hereunder.

21. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, riot, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, excluding the financial inability of such party to perform and excluding delays resulting from appeals or re-hearings commenced by the Owner (any such causes or events to be referred to herein as a "Force Majeure"), shall excuse the performance by such party for a period equal to any such period of prevention, delay or stoppage.

22. Miscellaneous.

(a) Counterparts. To facilitate execution, the parties hereto agree that this Agreement may be executed in counterparts as may be required and it shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single Agreement.

(b) References. All references in the Agreement to the "Agreement" shall hereafter mean and refer to the Development Agreement.

(c) Governing Law and Exclusive Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami Dade County, Florida, if in State court, and the U.S. District Court, Southern District of Florida, if in federal court.

(d) Waiver, Modification, etc. No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by Village and Owner. No waiver of any Default or default shall affect or after this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default or default thereof.

(e) Effect of Other Transactions. No mortgage, whether executed simultaneously with this Agreement or otherwise, and whether or not consented to by Village, shall be deemed to modify this Agreement in any respect, and in the event of an inconsistency or conflict between this Agreement and any such instrument, this Agreement shall control. The Parties acknowledge that a mortgage exists on the Property, and the Owner shall secure lender's consent to this Agreement.

(f) Invalidity of Certain Provisions. If any provision of this Agreement or the application thereof to any Person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(g) Remedies Cumulative. Each right and remedy of either party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement).

(h) Performance at Each Party's Sole Cost and Expense. Unless otherwise expressly provided in this Agreement, when either party exercises any of its rights, or renders or performs any of its obligations hereunder, such party shall do so at its sole cost and expense.

(i) Time is of the Essence. Time is of the essence with respect to all matters in, and requirements of, this Agreement as to Village and Owner.

(j) Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of Village and Owner, and, except as otherwise provided herein, their respective successors and assigns. The Agreement shall run with the Property, and the Owner, in its absolute and sole discretion, shall have the absolute right to assign, pledge or hypothecate this Agreement as part of any sale, lease, joint venture, partnership, financing, or development structure related to the Property.

(l) Corporate Obligations. It is expressly understood that this Agreement and obligations issued hereunder are solely corporate obligations, and, that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, elected or appointed officials (including, without limitation, the Mayor and Village Commission of the Village and the Owner, or employees, as such, of Village, or Owner, or of any successor corporation, or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer, director, elected or appointed officials (including, without limitation, the Mayor and Village Commission of the Village of Palmetto and the Chairman and Members of the Owner) or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom, are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(m) Non-liability of Officials and Employees. No member, official or employee of Village shall be personally liable to Owner, or any successor in interest (as applicable and authorized), in the event of any default or breach by Village or for any amount or obligation which may become due to Owner or successor under the terms of this Agreement; and, any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such person, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom, are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

No member, official or employee of Owner shall be personally liable to Village, or any successor in interest, in the event of any default or breach by Owner under the terms of this Agreement; and, any and all such personal liability, either at

common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such person, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom, are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(n) Partnership Disclaimer. Owner acknowledges, represents and confirms that it is an independent contractor in the performance of all activities, functions, duties and obligations pursuant to this Agreement. The parties hereby acknowledge that it is not their intention to create between themselves a partnership, joint venture, tenancy in common, joint tenancy, or co ownership for the development. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement, or the other documents executed by the parties with respect to the Project, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, or co-ownership of any kind or nature whatsoever between the parties hereto. The provisions of this subsection (n) shall survive expiration of this Development Agreement.

(o) No Third Party Rights. Nothing in this Development Agreement, express or implied, shall confer upon any person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement. Owner shall disclose the existence and contents of this Agreement to its successors in interest. The Notice of Settlement Agreement required by this Agreement shall be recorded in the Public Records of Miami-Dade County as provided herein, to insure that any successor in interest of Owner shall have knowledge of the rights and obligations set forth in this Agreement.

(p) No Conflict of Interest. Owner represents and warrants that, to the best of its actual knowledge, no member, official or employee of the Village has any direct or indirect financial interest in this Agreement nor has participated in any decision relating to this Agreement that is prohibited by law. Owner also represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the Village has received any payment or other consideration for the making of this Agreement, directly or indirectly, from Owner. Owner represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys. Owner acknowledges that Owner is relying upon the foregoing representations and warranties in entering into this Agreement and would not enter into this Agreement absent the same.

23. Entire Agreement. This Agreement, together with the documents referenced herein, constitute the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties, oral or written, other than as set forth herein.

24. Acknowledgment That Settlement Agreement Was Not Drafted By One Party: The parties agree that no one party drafted this Settlement Agreement, that the Settlement Agreement is the result of negotiation and a mutual decision between the parties, and that it is not to be interpreted against any party.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

EXECUTED as of the date first above written in several counters, each of which shall be deemed an original, but all constituting only one agreement.

Signed, sealed and delivered
in the presence of:

_____

_____

VILLAGE:
Village of Palmetto Bay

By: _____
Name: _____
Village Manager

Attest: _____
Village Clerk

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____, as _____ for the Village of Palmetto Bay, a Florida municipal corporation, on behalf of Village of Palmetto Bay. He/She is personally known to me or produced _____ as identification, and did (did not) take an oath.

_____
NOTARY PUBLIC

_____
Typed or Printed Name of Notary
My Commission expires:
Serial No., if any: _____

____ Owner
_____ Village

Signed, sealed and delivered
in the presence of:

_____

_____

OWNER:
Shores at Palmetto Bay, LLC

By: _____
Name: _____
Attest: _____
By: _____

OFFICIAL NOTARY SEAL

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

The foregoing instrument was acknowledged before me this _____day of _____, 2013, by _____, as _____ of Shores at Palmetto Bay, LLC, a Florida limited liability company, on behalf of the company. He/She is personally known to me or produced _____ as identification, and did (did not) take an oath.

_____
NOTARY PUBLIC

_____
Typed or Printed Name of Notary
My Commission expires:
Serial No., if any: _____