

**CLAY COUNTY PUBLIC SCHOOL
CONCURRENCY PROPORTIONATE SHARE
MITIGATION AGREEMENT**

THIS SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT (“Agreement”) is made by and between **CLAY COUNTY, FLORIDA, a political subdivision of the State of Florida** (hereinafter referred to as “County”), whose address is 477 Houston Street, Green Cove Springs, Florida, 32043; **THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA, a body corporate and political subdivision of the State of Florida** (hereinafter referred to as “School Board”), whose address is 900 Walnut Street, Green Cove Springs, Florida, 32043; and **REINHOLD CORPORATION, a Florida corporation** (hereinafter referred to as “Reinhold”), whose address is c/o T.R. Hainline, Esq., Rogers Towers, P.A., 1301 Riverplace Blvd, , Suite 1500, Jacksonville, Florida, 32207 (collectively, the “Parties”).

RECITALS

WHEREAS, Reinhold Corporation is the fee simple owner of that certain tract of land (Folio #s 33-05-25-010556-000-00, 32-05-25-010555-000-00, 34-05-25-010145-000-00, and part of 04-06-25-010561-000-00, and part of 05-06-25-010562-000-00) located in Clay County, Florida, more particularly described on Exhibit “A” attached hereto and incorporated herein (hereinafter “the Property”). The location of the Property described in Exhibit “A” is illustrated with a map appearing in Exhibit “B”; and further described in the School Concurrency Determination application entitled Reinhold North Residential CRC-18-000033; and

WHEREAS, Reinhold has applied for a School Concurrency Reservation Certificate, submitted to the County on November 30, 2018, seeking approval to develop up to 725 single family residential dwelling units on the Property (the “Development Proposal”); and

WHEREAS, the County has enacted its Clay County Public School Concurrency Management Ordinance, which is codified in Article XI of the Clay County Land Development Regulations (the Public School Concurrency Management Ordinance); and

WHEREAS, the primary purpose of the Public School Concurrency Management Ordinance is to ensure that public schools needed to support new residential development within the County will meet Level of Service Standards, as defined therein; and

WHEREAS, the School Board staff has reviewed the application for School Concurrency Reservation Certificate and has determined that the Development Proposal meets the Level of Service Standards as to middle school and high school capacity but fails to meet the Level of Service Standard as to elementary school capacity—specifically, the Development Proposal generates 152 elementary school students which, after the consideration of applicable factors, exceeds by 36 elementary school students the capacity in the Shadowlawn Elementary School Concurrency Service Area, in which the Property is located; and

WHEREAS, Section 163.3180(6), Florida Statutes, recognizes that school concurrency for a development is satisfied if the developer executes a legally binding commitment to provide mitigation proportionate to the demand to be generated for public school facilities, which mitigation may be in the form of a monetary payment of Proportionate Share Mitigation, as defined in and calculated pursuant to the applicable formula in the Public School Concurrency Management Ordinance; and

WHEREAS, the Parties agree that payment of Proportionate Share Mitigation for the Development Proposal in the amount of \$877,788, or \$1,211 per dwelling unit shall provide mitigation proportionate to the demand for public school facilities to be created by the Development Proposal and shall result in a reservation of capacity for the Development Proposal for 152 elementary school students in the School Concurrency Service Area for Shadowlawn Elementary School; and

NOW, THEREFORE, in consideration of the foregoing described Proportionate Share Mitigation, 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 Public School Concurrency Management Ordinance.

3. **LEGALLY BINDING COMMITMENT.** The Parties agree that this Agreement constitutes a legally binding commitment by Reinhold, and any assignees pursuant to Section 19 below, to provide Proportionate Share Mitigation for the residential dwelling units in the Development Proposal.

4. **PROPORTIONATE SHARE MITIGATION.** The Parties agree that the payment of Proportionate Share Mitigation in the total amount of \$877,788 for the Development Proposal, or \$1,211 per dwelling unit, is an appropriate Proportionate Share Mitigation option for the Development Proposal and is necessary to maintain the Level of Service Standard for school

capacity in the affected Concurrency Service Area and/or Contiguous Concurrency Service Areas. Reinhold, and its assignees pursuant to Section 19 below, shall pay to the School Board the Proportionate Share Mitigation in the form of a monetary contribution. Payment of the Proportionate Share Mitigation for each phase of residential development is due on a per-unit basis (\$1,211 per unit) for the number of single family residential lots shown on the approved final plat prior to the recording of the final plat for each applicable phase of the Development Proposal. The Proportionate Share Mitigation is at least proportionate to the demand for Public School Facilities to be created by the additional or new residential units in the Development Proposal for which there is no Available School Capacity.

5. **SATISFACTION OF SCHOOL CONCURRENCY.** Upon final execution of this Agreement, the School Board shall issue a Finding of Available School Capacity for the Development Proposal of 725 single family dwelling units. Consistent with Section 163.3180(6)(h)2.c, Florida Statutes, the School Board shall direct such Proportionate Share Mitigation toward a school capacity improvement listed in a financially feasible 5-year district Educational Facilities Plan (EFP) that satisfies the demands created by the Development Proposal for which such Proportionate Share Mitigation was paid.

6. **PAYMENT OF SCHOOL IMPACT FEES.** Reinhold, or its assignees pursuant to Section 19 below, shall pay school impact fees pursuant to the then-applicable School Impact Fee Ordinance as and when the fees become due under such ordinance and in the amounts as are established from time to time for new residential development in Clay County.

7. **SCHOOL IMPACT FEE CREDIT.** In accordance with Section 163.3180(6)(h)2.b, Florida Statutes, and Section 20.11-9(e), Public School Concurrency Management Ordinance, the Parties agree that the County and the School Board shall provide

school impact fee credit equal to the dollar value of the Proportionate Share Mitigation payment (“School Impact Fee Credit” or “Credit”). The Credit must be applied against the total school impact fee assessed and not on the impact fee for any particular type of school. Reinhold may assign School Impact Fee Credit (or entitlement to School Impact Fee Credit) to assignee(s) pursuant to Section 19 below.

The Proportionate Share Mitigation shall be paid prior to recording of the final plat for which the Proportionate Share Mitigation is due. Upon payment of all or a portion of the Proportionate Share Mitigation due to the School Board as provided in Section 4 above, the School Board shall issue to Reinhold, or its assignees pursuant to Section 19 below, a written School Impact Credit Ledger confirming: payment of and the dollar amount of the Proportionate Share Mitigation paid; the date of payment; the identity of the paying party; and the name/description of the subdivision final plat and the number of dwelling units therein for which the Proportionate Share Mitigation is being paid (collectively the “School Impact Fee Credit Ledger”). The School Board shall maintain in its records a copy of each School Impact Fee Credit Ledger issued. Reinhold or its assignee shall also submit such a copy of the School Impact Fee Credit Ledger to the County’s Impact Fee Coordinator.

At the time of a payment of school impact fees due for a dwelling unit (or payment of school impact fees for multiple dwelling units) within a final plat of the subdivision for which there is a School Impact Fee Credit Ledger, Reinhold or its assignee shall present a School Impact Fee Credit Voucher to the County’s Impact Fee Coordinator, which will reduce the then-applicable school impact fee due for each dwelling unit by \$1,211. Both the School Board and County Impact Coordinator shall deduct the amount of the School Impact Fee Credit Voucher presented from the Impact Fee Credit Ledger for the subdivision and maintain on-going records

of the remaining balance available on the Impact Fee Credit Ledger for the subdivision. By way of example, if an assignee pays \$121,100 in Proportionate Share Mitigation for a final plat of 100 dwelling units then thereafter when the payment of a school impact fee is due for each dwelling unit within the final plat, the Impact Fee Coordinator shall deduct \$1,211 from the total school impact fee due for that dwelling unit with respect to that plat.

8. **EFFECTIVE DATE.** This Agreement shall become effective on the date it is recorded in the Public Records of Clay County, Florida (the “Effective Date”).

9. **TERM.** This Agreement shall have an initial term of twenty (20) years from the date of its full execution. However, pursuant to Section 163.3180(13)(e)1, Florida Statutes, and in consideration of the Proportionate Share Mitigation, the Parties agree to a continuing renewal of this Agreement following completion of the initial term until the Parties have completed performance of all obligations herein.

10. **LOCAL AND STATUTORY REQUIREMENTS.** It is the intent of the parties that this Agreement be recognized as an action of the School Board and the County under Section 163.3180(6)(h)2, Florida Statutes, Article XI, Section 20.11-9, Clay County Land Development Regulations, Clay County’s home rule powers, and any other authority held by the School Board and the County to enter into such agreement. The proposed development contemplated by this Agreement is consistent with the Clay County Comprehensive Plan. This Agreement is also consistent with the applicable County Land Development Regulations.

11. **NOTICES.** Whenever any of the Parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, 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:

FOR COUNTY:

Clay County Board of County
Commissioners
477 Houston Street
Green Cove Springs, Florida 32043

FOR SCHOOL DISTRICT:

School Board of Clay County, Florida
Attention: Superintendent of Schools
900 Walnut Street
Green Cove Springs, Florida 32043

FOR REINHOLD:

Reinhold Corporation
1845 Town Center Blvd., Suite 105
Fleming Island, FL 32003

With copy to:

Attorney for the School Board
School Board of Clay County, Florida
900 Walnut Street
Green Cove Springs, Florida 32043

with copy to:

T.R. Hainline, Esq.
Rogers Towers, P.A.
1301 Riverplace Blvd., Suite 1500
Jacksonville, Florida 32207

12. **RELEASE.** When all of Reinhold's obligations set forth herein are fully paid and performed, the School Board shall release Reinhold from this Agreement, and when all of the County's and School Board's obligations as set forth herein are fully performed, Reinhold shall release the School Board and the County from any and all future claims, costs or liabilities arising out of the provision of Proportionate Share Mitigation in accordance with this Agreement. These releases shall be recorded in the Official Records of Clay County, Florida, evidencing such performance.

13. **VENUE; CHOICE OF LAW.** 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 Fourth Judicial Circuit,

in and for Clay County, Florida, the venue situs, and shall be governed by the laws of the State of Florida.

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 of 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.

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

17. **FURTHER ASSURANCES.** The Parties hereby agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further assurances and to perform such acts as shall reasonably be requested of them in order to carry out this Agreement.

18. **AMENDMENTS.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by all the Parties to this Agreement.

19. **ASSIGNMENT.** Reinhold may assign any or all of its obligations and rights under this Agreement, including the obligation to pay Proportionate Share Mitigation or entitlement to school impact fee credits provided in Section 7 above, to one or more third party purchasers of fee simple title to all or any part of the Property. In the event of such assignment,

the term "Reinhold" in this Agreement shall refer to such assignees(s). A notice of such assignment, identifying the assignee(s) and containing an acknowledgement by the assignee(s) of its assumption of any obligations and rights assigned to it by Reinhold under this Agreement, shall be provided to the School Board and the County and may be recorded in the public records of the County. Any assignment of the obligation to pay Proportionate Share Mitigation shall automatically constitute a release of Reinhold as to the amount of the Proportionate Share Mitigation specified in the assignment. By such assignment, the assignee shall be bound to pay the Proportionate Share Mitigation specified in the assignment and due under this Agreement and, upon payment by the assignee, shall be entitled to the school impact fee credit provided in Section 7 above. Any assignment of entitlement to school impact fee credits may be used by the assignee as provided in Section 7 above. The Parties hereto agree to furnish each other any additional documentation upon reasonable request providing the development status of dwelling units approved under this Agreement and the status of mitigation that has been provided, including the number of dwelling units which have been mitigated for through payments. Upon the date of any assignment of all obligations and rights under this Agreement and providing notice of such assignment to the County, the original contracting party to this Agreement, Reinhold Corporation, shall have no further obligations or rights under this Agreement.

20. **COUNTERPARTS.** This Agreement may be executed in three (3) counterparts, each of which may be deemed to be an original.

21. **RECORDING OF THIS AGREEMENT.** The School Board agrees to record this Agreement in the Clay County Public Records within fourteen (14) days after execution.

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

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.

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

Clay County, Florida, through its Clay County Board of County Commissioners, signing by and through its Chair, authorized to execute same by the Board of County Commissioners' action on this ____ day of _____, 2019.

The School Board of Clay County, Florida, signing by and through its Chair, authorized to execute same by Board action on this ____ day of _____, 2019.

Reinhold Corporation, signing by and through its President, duly authorized to execute same, on this ____ day of _____, 2019.

CLAY COUNTY, FLORIDA

CLAY COUNTY BOARD OF COUNTY
COMMISSIONERS

By: Mike Cella
Its Chairman

Witness

Witness

ATTEST:

APPROVED AS TO FORM:

County Manager and Clerk of the Board

By: _____
County Attorney

Dated this ____ day of _____, 2019.

* * * * *

SCHOOL BOARD OF CLAY COUNTY, FLORIDA

SCHOOL BOARD OF CLAY COUNTY,
FLORIDA

By: Carol Studdard
Its Chairman

Witness

Witness

ATTEST:

APPROVED AS TO FORM:

Addison Davis
Superintendent of Schools

By: J. Bruce Bickner
Attorney for School Board

Dated this ____ day of _____, 2019.

* * * * *

REINHOLD

Reinhold Corporation, a Florida corporation

By: George Egan
Its President

Witness

Dated this ____ day of _____, 2019.

Witness

STATE OF FLORIDA

COUNTY OF _____

Before me, the undersigned authority, personally appeared _____ in his/her capacity as President of Reinhold Corporation, a Florida corporation, who acknowledged that he signed the foregoing Clay County Public School Concurrency Proportionate Share Mitigation Development Agreement on behalf of said corporation as his free and voluntary act.

WITNESS my hand and official seal this ____ day of _____, 2019, at _____, _____ County, Florida.

NOTARY PUBLIC, STATE OF FLORIDA

(Official Seal)

Print name: _____
Commission No: _____
Commission Expires: _____

____ personally known
____ produced identification
type: _____

Exhibit "A"
Legal Description

All of Sections 32, 33 and 34, lying in Township 5 South, Range 25 East, Clay County, Florida, together with the North $\frac{1}{2}$ of Section 4 and the North $\frac{1}{2}$ of Section 5, both lying in Township 6 South, Range 25 East, said county, less and excepting therefrom those lands described and recorded in Official Records Book 2905, Page 547, of the Public Records of said County.

Exhibit "B" Location Map

