

**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 **ARMSTRONG DEVELOPMENT , INC., a Virginia corporation** (hereinafter referred to as “Armstrong”, whose address is: 14700 Village Square Place, Midlothian, Virginia, 23112 (collectively, the “Parties”).

RECITALS

WHEREAS, Armstrong is the fee simple owner of that certain tract of land (Folio # 18-04-25-007953-001-30) 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 Armstrong PUD 2019-000017-1.

WHEREAS, Armstrong has applied for a School Concurrency Reservation Certificate, submitted to the County in October, 2019 and modified on October 24, 2019 to phase the development, seeking approval to develop up to 249 multi-family dwelling units in Phase 1 and 251 multi-family dwelling units in Phase 2 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 for Phase 1 as to elementary school, middle school and high school capacity and for Phase 2 as to middle school and high school capacity but fails to meet the Level of Service Standard as to elementary school capacity—specifically, Phase 2 of the Development Proposal generates 8 elementary school students which, after the consideration of applicable factors, exceeds by 3 elementary school students the capacity in the Discovery Oaks Elementary School Concurrency Service Area, in which the Property is located, and that there is no capacity available in any elementary school concurrency service area contiguous to the Discovery Oaks Elementary School Concurrency Service Area; 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 \$69,312 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 Phase 2 of the Development Proposal for 8 elementary school students in the School Concurrency Service Area for Discovery Oaks 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 Armstrong and any assignees pursuant to Section 20 below, to provide Proportionate Share Mitigation for the multi-family dwelling units in Phase 2 of the Development Proposal.

4. **PROPORTIONATE SHARE MITIGATION.** The Parties agree that the payment of Proportionate Share Mitigation in the total amount of \$69,312 for Phase 2 of the Development Proposal is an appropriate Proportionate Share Mitigation option for Phase 2 of 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. Armstrong and its assignees pursuant to Section 20 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 Phase 2 is due in its entirety at the time of approval of final of final construction plans prior to the initiation of vertical construction of the multi-family dwelling units in Phase 2 of the Development Proposal unless the number of multi-family dwelling in Phase 2 of the Development Proposal does not exceed 219, in which case the Proportionate Share Mitigation for Phase 2 shall be reduced to \$46,208, said reduction representing the Proportionate Share Mitigation for 2 elementary school student stations. The Proportionate Share Mitigation is at least proportionate to the demand for Public School Facilities to be created by the additional or new multi-family dwelling units in Phase 2 of 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 Phase 2 of the Development Proposal of 251 multi-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 Phase 2 of the Development Proposal for which such Proportionate Share Mitigation was paid.

6. **PAYMENT OF SCHOOL IMPACT FEES.** Armstrong or its assignees pursuant to Section 20 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 multi-family 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 on the total school impact fee assessed and not on the impact fee for any particular type of school. Armstrong may assign School Impact Fee Credit (or entitlement to School Impact Fee Credit) to assignee(s) pursuant to Section 20 below.

The Proportionate Share Mitigation shall be paid prior to approval of the building permit authorizing vertical construction for any portion of Phase 2 of the Development Proposal. Upon payment of all of the Proportionate Share Mitigation due to the School Board as provided in Section 4 above, the School Board shall issue to Armstrong, or its assignees pursuant to Section 20 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 Development Proposal and the number of multi-family 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 and identify the school capacity improvement listed in a financially feasible 5-year district Educational Facilities Plan (EFP) that satisfies the demands created by Phase 2 of the Development Proposal toward which the Proportionate Share Mitigation is directed. Armstrong or its assignee shall submit such a copy of the School Impact Fee Credit Ledger to the County’s Impact Fee Coordinator.

At the time of payment of school impact fees due for Phase 2, Armstrong or its assignee shall present a School Impact Fee Credit Voucher (the “Voucher”) to the County’s Impact Fee Coordinator, which will reduce the then-applicable school impact fee due by the amount of the

Proportionate Share Mitigation identified on the Voucher. Both the School Board and County Impact Coordinator shall deduct the amount of the Voucher presented from the Impact Fee Credit Ledger for Phase 2 of the Development Proposal.

8. **COUNTY’S OBLIGATIONS MINISTERIAL.** The County, through its Impact Fee Coordinator, shall:

a. Accept any Credit Voucher presented from Armstrong, or an assignee through Section 20 below that is signed by the School Board for any particular development within any portion of the Property at the time any school impact fee is otherwise due, which may include acceptance of multiple fees under a single application. The Credit Voucher shall state with particularity how the Credit shall be applied to the school impact fee obligations, which are due for the proposed new development.

b. Not be responsible for determining whether any particular Credit Voucher is valid as between Armstrong or any assignee through Section 20 below, as applicable, for any development within any portion of the Property;

c. Accept a monetary payment by an applicant of school impact fees due for a development within the Property where no Credit Voucher is presented from Armstrong, or an assignee through Section 20 below. Any such payment is non-refundable by the County.

d. Not be responsible for tracking the balance of the Credit available to Armstrong, or an assignee through Section 20 below, as applicable, nor be responsible for maintaining any documentation to reflect the amount credited against school impact fees due.

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

10. **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.

11. **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.

12. **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
900 Walnut Street
Green Cove Springs, Florida 32043

FOR Armstrong:

14700 Village Square Place
Midlothian, Virginia 23112

with copy to:

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

13. **RELEASE.** When all of Armstrong's obligations set forth herein are fully paid and performed, the School Board shall release Armstrong from this Agreement, and when all of the County's and School Board's obligations as set forth herein are fully performed, Armstrong 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.

14. **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.

15. **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.

16. **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.

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

18. **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.

19. **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.

20. **ASSIGNMENT.** Armstrong 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 "Armstrong" 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 Armstrong 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 Armstrong 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, Armstrong Development, Inc., shall have no further obligations or rights under this Agreement.

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

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

23. **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.

24. **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 _____, 2020.

The School Board of Clay County, Florida, signing by and through its Chair, authorized to execute same by Board action on this ____ day of _____, 2020.

Armstrong Development, Inc. signing by and through its President, duly authorized to execute same, on this ____ day of _____, 2020.

CLAY COUNTY, FLORIDA

**CLAY COUNTY BOARD OF COUNTY
COMMISSIONERS**

By: Gayward Hendry
Its Chairman

Witness

Witness

ATTEST:

County Manager and Clerk of the Board

Dated this ____ day of _____, 2020.

* * * * *

SCHOOL BOARD OF CLAY COUNTY, FLORIDA

**SCHOOL BOARD OF CLAY COUNTY,
FLORIDA**

By: Carol Studdard
Its Chairman

Witness

Witness

ATTEST:

APPROVED AS TO FORM:

David Broskie
Superintendent of Schools

By: J. Bruce Bickner
Attorney for School Board

Dated this ____ day of _____, 2020.

* * * * *

ARMSTRONG DEVELOPMENT , INC.

Armstrong Development, Inc., a Virginia corporation

By: Roger Arrowsmith
Its President

Witness

Dated this ____ day of _____, 2020. _____
Witness

STATE OF VIRGINIA

COUNTY OF _____

Before me, the undersigned authority, personally appeared _____ in his/her capacity as President of Armstrong Development, Inc., a Virginia 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 _____, 2020,
at

_____, _____ County, Virginia.

NOTARY PUBLIC, STATE OF VIRGINIA

(Official Seal)

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

____ personally known
____ produced identification
type: _____

Exhibit "A"
Legal Description and Survey

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

A parcel of land situated in Lot 4, Armstrong Plat, Clay County, Florida, according to plat thereof recorded in Plat Book 59, pages 34 through 38 of the public records of said county, said parcel being more particularly described as follows:

Begin at the northeast corner of Lot 149, Greyhawk Unit One, according to plat thereof recorded in Plat Book 60, pages 50 through 61 of said public records (also being the northwest corner of said Lot 4); thence on the north line of said lot 4 (also being the south line of Royal Pines Drive) run North 87 degrees 49 minutes 35 seconds East, 734.12 feet; thence continue on said north line, and along the arc of a curve concave northerly and having a radius of 805.00 feet, an arc distance of 298.18 feet, said arc being subtended by a chord bearing and distance of North 77 degrees 12 minutes 54 seconds East, 296.48 feet; thence South 23 degrees 26 minutes 51 seconds East, 279.53 feet; thence North 61 degrees 51 minutes 45 seconds East, 368.79 feet; thence South 30 degrees 40 minutes 38 seconds East, 61.88 feet; thence South 27 degrees 33 minutes 30 seconds East, 386.53 feet; thence South 62 degrees 26 minutes 05 seconds West, 160.01 feet; thence South 26 degrees 47 minutes 36 seconds West, 851.05 feet; thence South 41 degrees 18 minutes 18 seconds West, 341.29 feet to the southwesterly line of said Lot 4; thence on said southwesterly line, run the following 35 courses: 1) North 44 degrees 24 minutes 26 seconds West, 51.20 feet; 2) North 48 degrees 09 minutes 44 seconds West, 49.88 feet; 3) North 24 degrees 28 minutes 37 seconds West, 24.45 feet; 4) North 19 degrees 18 minutes 25 seconds West, 61.93 feet; 5) North 43 degrees 00 minutes 54 seconds West, 54.31 feet; 6) North 27 degrees 21 minutes 55 seconds West, 37.78 feet; 7) North 19 degrees 15 minutes 26 seconds East, 34.08 feet; 8) North 03 degrees 04 minutes 23 seconds East, 57.81 feet; 9) North 72 degrees 15 minutes 16 seconds East, 35.72 feet; 10) North 18 degrees 00 minutes 37 seconds East, 65.81 feet; 11) North 41 degrees 57 minutes 42 seconds East, 56.35 feet; 12) North 47 degrees 11 minutes 51 seconds East, 118.71 feet; 13) North 69 degrees 26 minutes 27 seconds West, 78.17 feet; 14) North 29 degrees 12 minutes 08 seconds West, 86.06 feet; 15) South 63 degrees 33 minutes 37 seconds West, 25.03 feet; 16) South 71 degrees 38 minutes 20 seconds West, 71.64 feet; 17) North 65 degrees 18 minutes 15 seconds West, 57.41 feet; 18) North 82 degrees 20 minutes 41 seconds West, 49.43 feet; 19) South 69 degrees 21 minutes 15 seconds West, 46.88 feet; 20) South 46 degrees 42 minutes 11 seconds West, 49.35 feet; 21) South 18 degrees 57 minutes 24 seconds West, 33.62 feet; 22) South 82 degrees 34 minutes 09 seconds West, 49.92 feet; 23) South 88 degrees 15 minutes 42 seconds West, 68.85 feet; 24) North 17 degrees 38 minutes 37 seconds West, 43.20 feet; 25) North 74 degrees 28 minutes 23 seconds West, 95.70 feet; 26) North 86 degrees 17 minutes 33 seconds West, 44.37 feet; 27) South 60 degrees 07 minutes 26 seconds West, 22.43 feet; 28) North 63 degrees 01 minutes 42 seconds West, 51.80 feet; 29) North 77 degrees 35 minutes 19 seconds West, 31.99 feet; 30) North 45 degrees 50 minutes 44 seconds West, 52.82 feet; 31) North 43 degrees 54 minutes 09 seconds West, 37.46 feet; 32) North 48 degrees 16 minutes 51 seconds West, 35.54 feet; 33) North 63 degrees 36 minutes 43 seconds West, 45.04 feet; 34) North 52 degrees 33 minutes 15 seconds West, 23.33 feet; 35) South 83 degrees 53 minutes 31 seconds West, 13.96 feet to the west line of said Lot 4; thence on said west line, North 02 degrees 13 minutes 02 seconds West, 748.17 feet to the point of beginning; being 34.05 acres, more or less, in area.

