

**SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION  
AGREEMENT  
(Bella Lago Townhomes)**

**THIS SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION AGREEMENT** (“**Agreement**”) is made by and among **CLAY COUNTY, FLORIDA** a political subdivision of the state of Florida, whose address is 477 Houston Street, Green Cove Springs, Florida 32043 (the “**County**”); **CLAY COUNTY DISTRICT SCHOOLS**, a body corporate and political subdivision of the State of Florida, whose address is 900 Walnut Street, Green Cove Springs, Florida 32043 (hereinafter referred to as “**School District**”); and **HOLSTEIN COMMERCIAL LLC**, a Florida limited liability company, whose address is 8825 Perimeter Park Blvd, Jacksonville, Florida 32218 (hereinafter referred to as the “**Developer**”).

RECITALS:

**WHEREAS**, Developer is the contract purchaser of that certain tract of land being approximately 15.416 acres located in unincorporated Clay County, Florida, being a portion of Clay County Parcel Identification No. 23-05-25-010101-015-00 as more particularly described on **Exhibit “A”** attached hereto incorporated herein by this reference (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 Reservation Certificate Application No. SCRC # 2022000014; and

**WHEREAS**, the Developer has submitted an application for a development proposal seeking approval to develop a maximum of 136 ~~multi-family~~single-family attached residential dwelling units on the Property, hereinafter referred to as the “**Development Proposal**”; and

**WHEREAS**, the County and the School District have adopted and implemented a public school concurrency management system to assure the future availability of public school facilities to serve new development consistent with level of service standards (“**Level of Service**” and “**Level of Service Standards**”) consistent with the terms of the current Interlocal Agreement for Coordinated Planning, Public Educational Facility Siting and Review and School Concurrency in Clay County between the School District, the Clay County Board of County Commissioners and the local governments (the “**Interlocal Agreement**”), and the public school facilities and capital improvement elements of the respective comprehensive plans (individually, “**Element**”; plural, “**Elements**”); and

**WHEREAS**, at the time of this Agreement, adequate elementary, middle school, or high school capacity is not available to accommodate the elementary, junior high school, and high school students the Development Proposal is anticipated to generate by the Development Proposal; and

**WHEREAS**, at the adopted Level of Service standards, (i) adequate school capacity is not available for zero (0) elementary students, zero (0) junior high school students, and eleven (11) high school students generated by the Development Proposal at the Level of Service Standard within the school concurrency services area or areas (“**Concurrency Service Area**”;

“**Concurrency Service Areas**”) in which the Development Proposal is located, to accommodate the anticipated number of public school students that the Development Proposal will generate; (ii) the needed elementary, junior high school, and high school capacity for the applicable Concurrency Service Area or Concurrency Service Areas within which the Development Proposal is located is also not available in any contiguous Concurrency Service Areas; and (iii) available elementary, junior high school, and high school capacity will not be in place or under actual construction at the time of the approval of the Development Proposal; and

**WHEREAS**, authorizing these new residential dwelling units without the mitigation provided for in this Agreement would result in a failure of the Level of Service Standard for public school facilities in one or more applicable Concurrency Service Areas, or will exacerbate existing deficiencies in Level of Service; and

**WHEREAS**, the Parties agree that public school concurrency shall be satisfied by the Developer’s execution of this legally binding Agreement to provide mitigation proportionate to the demand for public school facilities to be created by these new residential dwelling units (“**Proportionate Share Mitigation**”); and

**WHEREAS**, the Parties further agree that the appropriate Proportionate Share Mitigation option necessary to satisfy public school concurrency is payment of Proportionate Share Mitigation in the amount of **\$575,076 for the Development Proposal, or \$4,228.50 per dwelling unit**, as more specifically depicted or described herein; and

**WHEREAS**, the purpose of this Agreement is to set forth the terms and conditions upon which the Developer shall pay funds as Proportionate Share Mitigation for the Property impacts on K-12 educational facilities under control of the School District.

**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. **PARTIES**. The County, the School District and the Developer shall be collectively referred to as the “**Parties**.”
3. **LEGALLY BINDING COMMITMENT**. The Parties agree that this Agreement constitutes a legally binding commitment by the Developer to provide Proportionate Share Mitigation for the new residential dwelling units sought to be approved by County in the Development Proposal for the Property.
4. **PROPORTIONATE SHARE MITIGATION**. The Parties agree that the payment of Proportionate Share Mitigation in the total amount of \$575,076 for the Development Proposal, or \$4,228.50 per dwelling unit, is an appropriate Proportionate Share Mitigation option necessary to maintain the Level of Service Standard for school capacity in the affected Concurrency Service Area or Concurrency Service Areas. Upon the final execution of this

Agreement, the School District shall issue a revised School Concurrency Determination showing adequate mitigation. The duration and effect of this School Concurrency Determination shall be in accordance with the Interlocal Agreement and the Public School Facilities Element. However, in no event shall this School Concurrency Determination, or any capacity reservation based on this Determination, continue to be effective if the Developer fails to perform its obligations under this Agreement. Conversely, once the Developer has completely performed its obligations under this Agreement, the Developer shall be entitled to rely on the School Concurrency Determination and capacity reservation to the extent of the capacity provided by the Proportionate Share Mitigation and once the Developer has completely performed its obligations under this Agreement, such right of reliance shall survive the expiration of this Agreement.

5. **TIMING**. The Parties agree that the Proportionate Share Mitigation shall occur at the time of, and be a condition for the issue by County of, final site plan approval for each unit within the Property. For example, if a site plan contains 100 units, the Developer shall pay \$422,850 (100 units times \$4,228.50 per unit) in Proportionate Share Mitigation prior to the County's approval of such site plan. Each payment shall be made directly to the School District.

6. **PHASING**. The Developer agrees that it shall make every effort to adhere to the phasing schedule that was provided in the application for the School Concurrency Reservation Certificate (as applicable) and will notify the School District Designee if changes to the phasing schedule occur.

7. **IMPACT FEE CREDIT**. As consideration for the Developer's Proportionate Share Mitigation specified herein, the Parties agree that the County shall provide a credit of \$575,076.04 for the Development Proposal, or \$4,228.50 per dwelling unit, toward any school impact fee or exaction imposed by ordinance of Clay County for the same need. Should the school impact fee or exaction be greater than the above-described credit, the Developer shall pay the difference at the time school impact fees are due. The Developer shall provide a school impact fee voucher, verified by the School District Designee prior to submittal, substantially in the form of "**Exhibit C**" to the County, at the time of impact fee payment. Should the school impact fee or exaction be less, the Developer shall not be entitled to the use of any excess credits. Should school impact fees be pre-paid in order to extend the Final Certificate of Concurrency, any remaining balance due on the Proportionate Share Mitigation shall be paid at the time of final subdivision approval. Provided, however nothing in this Agreement shall be deemed to require the County to continue to levy or collect School Impact Fees, or, if levied, to levy them for any certain amount.

8. **SCHOOL CAPACITY IMPROVEMENT**. The School District agrees to apply the Proportionate Share Mitigation contributed by the Developer toward a school capacity improvement which will be added to the planned capital improvements in the Five Year District Facilities Work Plan at the time of its next annual update, and which satisfies the demands created by the Development Proposal in accordance with this Agreement.

9. **NO GUARANTEE OF LAND USE/ZONING**. Nothing in this Agreement shall require the County to approve any Land Use Amendment or Rezoning application associated with the Property.

10. **EFFECTIVE DATE.** This Agreement shall become effective on the date it is recorded in the Public Records of Clay County, Florida (the “**Effective Date**”). If this Agreement is not executed by the Developer and delivered to the County within thirty (30) days after the latter of County or School District approval of this Agreement, this Agreement shall become void.

11. **TERM.** This Agreement shall expire upon the Parties' completion of their performance of all obligations herein.

12. **STATUTORY COMPLIANCE.** The Parties agree that this Agreement satisfies the requirements for a binding Proportionate Share Mitigation Agreement in Section 163.3180(6)(h), Florida Statutes.

13. **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:

**TO THE COUNTY:**

County Manager  
Clay County  
477 Houston Street  
Green Cove Springs, Florida 32043

**WITH COPIES TO:**

County Attorney  
Clay County  
477 Houston Street  
Green Cove Springs, Florida 32043  
mailto:  
[cityattorney@greencovesprings.com](mailto:cityattorney@greencovesprings.com)  
[courtney.grimm@claycountygov.com](mailto:courtney.grimm@claycountygov.com)

**FOR SCHOOL DISTRICT:**

Lance Addison  
Coordinator of Planning and  
Intergovernmental Affairs  
Clay County District Schools  
900 Walnut Street  
Green Cove Springs, Florida 32043

**FOR DEVELOPER:**

Holstein Commercial, LLC  
c/o The Alterra Group, LLC  
Attn: Levi Ritter  
8825 Perimeter Park Blvd,  
Jacksonville, Florida 32218  
E-mail: [lritter@alterragroup.com](mailto:lritter@alterragroup.com)

**WITH COPIES TO:**

Sodl & Ingram, PLLC

Attn: Andrew M. Sodl, Esq.  
1617 San Marco Blvd.,  
Jacksonville, Florida 32207  
E-mail: andrew.sodl@si-law.com

14. **RELEASE**. Upon the performance of all obligations of all Parties hereto, the School District shall release the Developer from this Agreement, and the Developer shall release the School District 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 at the Developer's expense in the Official Records of Clay County, Florida, evidencing such performance.

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

16. **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 Circuit Court of Clay County, Florida, the venue sites, and shall be governed by the laws of the State of Florida.

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

18. **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.

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

20. **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.

21. **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.

22. **ASSIGNMENT**. This Agreement runs with the land. The Developer may assign its rights, obligations and responsibilities under this Agreement to a third-party purchaser of all or any part of fee simple title to the Property. Any such assignment shall be in writing and shall require the prior acknowledgement of all of the Parties. At the election of the School District, such acknowledgement may be conditioned upon the written agreement of the assignee to comply with conditions and procedures to aid in the monitoring and enforcement of the assignee's performance of the Proportionate Share Mitigation under this Agreement. The assignor under such assignment shall furnish the Parties with a copy of the written assignment within ten (10) days of the date of execution of same.

23. **NO THIRD-PARTY BENEFICIARIES**. This Agreement is made for the sole benefit and protection of the parties, their successors and assigns, and no other persons shall have any right of action hereunder.

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

25. **RECORDING OF THIS AGREEMENT**. The Developer shall record this Agreement, at its expense, within fourteen (14) days after full execution and receipt of original counterpart signature pages, in the Clay County Public Records. Time is of the essence in the recording, and failure to timely record shall render this Agreement void.

26. **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.

27. **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 this Agreement will remain in full force and effect as long as doing so would not affect the overall purpose or intent of the Agreement.

*{The remainder of this page is intentionally left blank, signature pages to follow }*

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

**COUNTY:**

CLAY COUNTY, through its COUNTY COMMISSION, signing by and through its County Manager, authorized to execute same by Commission action on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Passed and Duly Adopted by the County Commission of the City of Green Cove Springs, Florida this \_\_\_\_ day of \_\_\_\_\_, 2023.

Attest:

CLAY COUNTY, FLORIDA, a political subdivision of the State of Florida

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Howard Wanamaker, County

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Approved as to form, legal sufficiency and execution:

By: \_\_\_\_\_  
Courtney Grimm, County

**SCHOOL DISTRICT:**

The SCHOOL DISTRICT OF CLAY COUNTY, signing by and through its Chair, authorized to execute same by District action on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Signed, witnessed, executed and acknowledged on this \_\_\_\_ day of \_\_\_\_\_, 2023.

WITNESSES

**THE SCHOOL BOARD OF CLAY COUNTY,  
FLORIDA**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_, Chair

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
(Please Print)

ATTEST:

By: \_\_\_\_\_, Superintendent of Schools

\_\_\_\_\_  
(Please Print)



**DEVELOPER**

The DEVELOPER signing by \_\_\_\_\_ its \_\_\_\_\_ duly authorized to execute same, on this \_\_\_ day of \_\_\_\_\_, 2023.

Signed, witnessed, executed and acknowledged on this \_\_\_ day of \_\_\_\_\_, 2023.

WITNESSES

DEVELOPER

HOLSTEIN COMMERCIAL, LLC, a Florida limited liability company

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of \_\_\_ physical presence or \_\_\_ online notarization on this day \_\_\_ of \_\_\_\_\_, 2023, by \_\_\_\_\_, as \_\_\_\_\_ of Developer Name, on behalf of the corporation, who is (check one)  personally known to me or  has produced a valid driver's license as identification.

Notary Public

\_\_\_\_\_

Name: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

## Exhibit "A"

### The Property (Legal Description)

#### LEGAL DESCRIPTION:

A PORTION OF SECTIONS 23 AND 26, TOWNSHIP 5 SOUTH, RANGE 25 EAST, CLAY COUNTY, FLORIDA AND ALSO BEING A PORTION OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 3694, PAGE 15 OF THE PUBLIC RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF AFORESAID SECTION 23, TOWNSHIP 5 SOUTH, RANGE 25 EAST AND THENCE RUN NORTH 01°45'21" EAST, ALONG THE WESTERLY LINE OF SAID SECTION 23, A DISTANCE OF 1649.45 FEET TO AN INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF COUNTY ROAD 739-B (ALSO KNOWN AS SANDRIDGE ROAD, AN 80' RIGHT-OF-WAY AS PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP SECTION #71523-2601); THENCE NORTH 89°34'28" EAST, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 1.17 FEET TO A POINT OF INTERSECTION; THENCE SOUTH 89°25'32" EAST, CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 379.48 TO AN INTERSECTION WITH THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD No. 23 (A VARIABLE WIDTH RIGHT-OF-WAY AS PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP SECTION #71493); THENCE DEPARTING SAID SOUTHERLY RIGHT-OF-WAY LINE SOUTH 02°30'54" WEST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD No. 23, A DISTANCE OF 433.23 FEET TO A POINT OF INTERSECTION; THENCE SOUTH 01°45'54" WEST, CONTINUING ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 276.41 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID EASTERLY RIGHT-OF-WAY LINE SOUTH 89°25'34" EAST, A DISTANCE OF 766.28 FEET; THENCE SOUTH 18°43'43" EAST, A DISTANCE OF 62.53 FEET TO THE POINT OF CURVATURE OF A CURVE BEING CONCAVE WESTERLY; THENCE RUN SOUTHERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 260.00 FEET, THROUGH A CENTRAL ANGLE OF 54°01'52", AN ARC DISTANCE OF 245.18 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 08°17'13" WEST, 236.20 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 35°18'09" WEST, A DISTANCE OF 1,000.23 FEET TO THE POINT OF CURVATURE OF A CURVE BEING CONCAVE EASTERLY; THENCE RUN SOUTHERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 540.00 FEET, THROUGH A CENTRAL ANGLE OF 31°21'16", AN ARC DISTANCE OF 295.51 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 19°37'31" WEST, 291.84 FEET; THENCE NORTH 88°15'01" WEST, A DISTANCE OF 119.06 FEET TO AN INTERSECTION WITH SAID EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD No. 23; THENCE NORTH 01°45'54" EAST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 1,388.84 FEET TO THE POINT OF BEGINNING.

LANDS THUS DESCRIBED CONTAIN 671,535 SQUARE FEET AND/OR 15.416 ACRES, MORE OR LESS, IN AREA.

# Exhibit "B"

## The Property (Map Depiction)

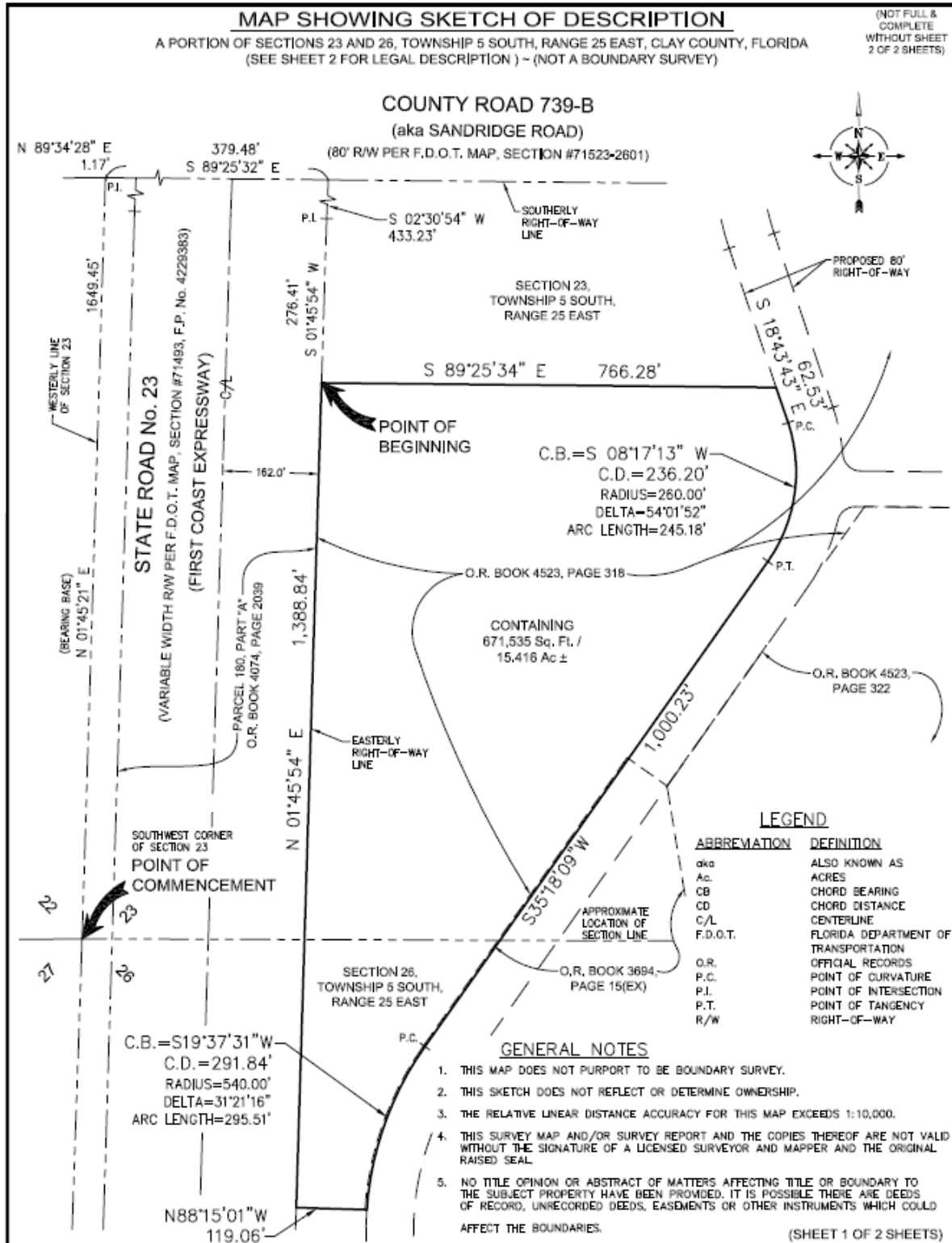


Exhibit "C"

**CLAY COUNTY EDUCATIONAL IMPACT FEE CREDIT VOUCHER**

Voucher # \_\_\_\_\_

Date \_\_\_\_\_

Assignor/Developer: \_\_\_\_\_

Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Phone# \_\_\_\_\_ Email: \_\_\_\_\_

Builder/Owner Name -Assignee \_\_\_\_\_ -

Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Phone# \_\_\_\_\_

Email \_\_\_\_\_

**Parcel Information**

Legal Description/Parcel ID#: \_\_\_\_\_

Lot No. \_\_\_\_\_ Block No. \_\_\_\_\_

Street Address: \_\_\_\_\_

Subdivision Name, Unit, Phase: \_\_\_\_\_

The undersigned Assignor hereby gives notice to Clay County, Florida that the sum of \$\_\_\_\_\_ should be deducted from the remaining educational impact fee credit for the above referenced address/parcel as referenced in the Fourth Amendment to Interlocal Agreement as Clay County Agreement/Contract # ("Agreement") of the current public records of Clay County, as amended by the Clay County Board of County Commissioners dated \_\_\_\_\_ for educational impact fees as required under Clay County Ordinance No. 2009-30. The deduction leaves a remaining balance of \$\_\_\_\_\_. The School Board will record the credit in the School Impact Fee Credit Ledger.

Assignor:

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Coordinator, Planning and Intergovernmental Relations**

Verified by: \_\_\_\_\_

Date: \_\_\_\_\_

School District Designee