



**VILLAGE OF EL PORTAL VILLAGE COUNCIL
VIRTUAL SPECIAL PLANNING & ZONING COMMITTEE MEETING
AGENDA
TUESDAY, March 31, 2020
6:30 PM**

- A. CALL TO ORDER**
- B. MOMENT OF SILENT MEDITATION & PLEDGE OF ALLEGIANCE**
- C. ROLL CALL**
- D. APPROVAL OF AGENDA**
- E. AGENDA ITEMS:**
- E1. Cristo Rey Miami High School-Development Agreement
- Ordinance
- F. GOOD & WELFARE:** (NOTE: This section of the agenda is reserved in the spirit of a representative democracy “of, by, and for the people” and is specifically provided as a mechanism for the input and solutions on matters of concern of Villagers. We request that comments be limited to 3 minutes per person, and that speakers and the audience maintain proper decorum at-large. *The speaker may speak on any issue of concern.*)
- G. ADJOURNMENT**
- Members:
- Claudia V. Cubillos, Chairperson
- Omarr C. Nickerson, Vice-Chairperson
- Anders Urbom, Member
- Vimari Roman, Member

“Pursuant to Florida Statutes, Chapter 286.0105: If a person decided to appeal any decision made by the Board, Agency or Commission with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, and that, for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.”

Prepared by and Return to:

Joseph G. Goldstein, Esq.
701 Brickell Avenue, Suite 3300
Miami, Florida 33131

(Space Reserved for Clerk)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into as of the [_____] day of [_____] 2020, by and among the VILLAGE OF EL PORTAL, a Florida municipal corporation (the “**Village**”), and CRISTO REY MIAMI HIGH SCHOOL, INC., its successors and/or assigns (the “**School Operator**”).

RECITALS

A. The property that is the subject of this Agreement lies in the Village of El Portal, Miami-Dade County, Florida. This Agreement, among other things, is intended to and shall constitute a development agreement between the parties pursuant to Sections 163.3220-163.3243, Florida Statutes, and Article VIII, Section 24-32(d)(1)b.5. and 24-33 of the Village’s Code.

B. The School Operator is deemed the Developer of the Project as defined below.

C. The School Operator has a legal or equitable interest in the property located at the 205 Northeast 87th Street, El Portal, Florida, further identified by Miami-Dade County Property Appraiser as Folio Numbers 18-3206-021-0110 (the “**School Parcel**”) and 18-3206-022-0151 (the “**Sanctuary Garden Parcel**”), and more specifically described in **Attachment “A”** attached hereto and incorporated herein by reference (together referred to as the “**Property**”).

D. The Property has historically been developed and used as a church and school, but, while developed, the Property is currently unused.

E. The Village has determined that the church and school use of the Property has terminated and that a special exception is required to reestablish the use of the Property as a high school and church (the “**Special Exception**”).

F. The School Operator has applied for a Special Exception to allow for the redevelopment and operation of a high school and ancillary church on the Property in accordance with Article III of the Village’s Code, requiring that the Property is developed and maintained substantially in conformity with the Site Plan (the “**Project**”).

G. The proposed Project contemplates the development and operation of a high school and ancillary church subject, in part, to the following, as more specifically provided below:

1. Limit the number of students to 400 enrolled students with approximately twenty-five percent (25%) of the enrolled students off-campus on any given day

participating in corporate work study programs as part of the normal course of operations of the Project.

2. In the event that the Property becomes exempt from the payment of property taxes, to be subject to a payment in lieu of taxes agreement (“PILOT”).

3. Limit the use of the Property (i) to school with ancillary church use, special events and activities related-thereto, (ii) for municipal events by the Village with the prior approval from the School Operator, or (iii) non-school/Project-related special events by the School Operator that are approved by the Village Council, which approvals shall not be unreasonably withheld.

4. Up to ten percent (10%) of each annual incoming first year class shall be given priority enrollment for residents of the Village of El Portal who do not otherwise qualify for the Florida Tax Credit or Endowment Scholarship.

5. The School Operator shall pay the Village seventy percent (70%) of the salary for one entry level El Portal Police Officer, who will be assigned as the resource officer for the school (“**Officer**”), whose duties require that the Officer shall be present during school hours and whose work shall commence upon the initiation of school operations on the Property.

6. The School Operator shall endeavor to manage the traffic congestion issues in proximity to the Project during peak access hours by providing teachers and staff and, as needed, retain off-duty El Portal police/public safety officers, or others as approved by the Village, to manage traffic conditions between 7:00 A.M. and 8:00 A.M. when students arrive and 2:30 P.M. and 3:30 P.M. when students depart (with the exception of those partaking in extracurricular activities or special event) depart the Project.

7. The School Operator shall develop the Property substantially in conformity with the Project Site Plan, including using commercially reasonable efforts to preserve the existing trees shown on the landscape plan, repair sidewalks abutting the Property, and to restore, maintain and use the existing church structure in a manner that is consistent and compatible with its current appearance.

8. The Sanctuary Garden Parcel shall only be used for passive open space, contemplation, mindfulness, and learning. The Sanctuary Garden Parcel may also be used (i) for municipal special events, upon approval of the School Operator, and (ii) active Project-related events, upon approval by the Village Council, which approvals shall not be unreasonably withheld.

H. The intent of this Agreement is for the School Operator to formally commit to the foregoing and other representations made by the School Operator during the Village’s consideration of the Special Exception.

I. The Village is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act, Florida Statutes, the Village of El Portal Charter and the Village of El Portal 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 other 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 inhabitants.

J. Having fully considered this Agreement at two (2) duly noticed public hearings in compliance with Section 163.3225 of the Act; and, having determined that the Project and this Agreement is in compliance with the Village's Comprehensive Plan and Code as of the Effective Date; and, having further determined that it is in the Village's best interest to address the issues covered by this Agreement in a comprehensive manner; the Village has agreed to enter into this Agreement with the School Operator.

K. All capitalized terms used in this Introduction are defined in Paragraph 3 of or elsewhere in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

A. Recitals. The foregoing Recitals are true and correct and are incorporated herein by reference.

B. Authority. This Agreement is entered into pursuant to Sections 163.3220-163.3243, Florida Statutes, and Article VIII, Section 24-32(d)(1)b.5. and 24-33 of the Village Code.

C. Definitions. All capitalized terms used in this Agreement shall have the definitions set forth in this Paragraph 3 unless such terms are defined elsewhere in the body of this Agreement.

1. "**Act**" shall mean the Florida Local Government Development Agreement Act (Sections 163.3220 - 163.3243, Florida Statutes (2014)).

2. "**Building Permit**" shall mean any permit issued by the Village of El Portal Building Department or Building Official, including any foundation, building or phase permits.

3. "**Business Day**" shall mean any day other than a Saturday, Sunday, any federal or state holiday and the following Jewish holidays: Passover (the first two (2) days and last two (2) days only), Shavuot (two (2) days), Rosh Hashanah (two (2) days), Yom Kippur (one (1) day), and Sukkot (the first two (2) days and last two (2) days only). If any period expires on a day which is not a Business Day or any event or condition is required by the terms of this Agreement to occur or be fulfilled on a day which is not a Business Day, such period shall expire or such event or condition shall occur or be fulfilled, as the case may be, on the next succeeding Business Day.

4. "**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.

5. “**Cristo Rey Network®**” is a network of high schools that integrates four years of rigorous college preparatory academics with four years of professional work experience through a corporate work study program.
6. “**Developer**” and “**School Operator**” shall mean the persons or entities named in the preamble to this Agreement, and any permitted successors, assigns, or heirs thereof; provided, however, the term “Developer” shall not mean the Village.
7. “**Development Order**” shall mean any order granting, denying, or granting with conditions an application for a Development Permit.
8. “**Development Permit**” shall have the meaning set forth in Section 163.3221(5), Florida Statutes (2017).
9. “**Effective Date**” shall mean the date when the Village records the executed Agreement in the Public Records of Miami-Dade County, as provided in Section 163.3239, Florida Statutes (2017), and subparagraph 26(a) of this Agreement.
10. “**Execution Date**” shall mean the date the last of the required parties executes this Agreement.
11. “**Land Development Regulations**” shall have the meaning set forth in Section 163.3221(8), Florida Statutes (2017) and shall also include, without limitation Chapter 24 - Zoning and Land Development Code of the Village’s Code of Ordinances.
12. “**Laws**” shall mean all laws, rules, regulations, ordinances, plans, resolutions, comprehensive plans and land development regulations, specifically including the Village’s Comprehensive Plan, the Village’s Code and Zoning and Land Development Code.
13. “**Project**” shall mean the development and operation of the Property as a high school and church, consistent with the zoning regulations of the Village’s Code.
14. “**Property**” shall mean the property more specifically described in **Attachment “A”** attached hereto and incorporated herein by this reference.
15. “**Site Plan**” shall mean those plans entitled “Cristo Rey Miami High School,” consisting of 5 pages as prepared by Bermello Ajamil & Partners, Inc., as approved by the Village pursuant to Village Resolution _____ (the “**Resolution**”).
16. “**Village**” shall mean the Village of El Portal, a Florida municipal corporation, having its principal offices at 500 NE 87th Street, El Portal, Florida 33138. In the event the Village exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any laws, rules, regulations, ordinances, and plans (including through the exercise of the Village’s building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to the Village’s regulatory authority as a governmental body and shall not be attributable in any manner to the Village as a party to this Agreement or in any way deemed in conflict with, or a default under, the Village’s obligations hereunder.

DEVELOPMENT APPROVALS

D. **Special Exception.** The School Operator acknowledges that development of the Project will require approval of an application for a Special Exception by the Village Council (the “**Special Exception Application**”), that the School Operator has submitted a Special Exception Application and that the Village retains all rights and powers to deny the Special Exception Application. The School Operator further acknowledges and agrees that the preparation of the Special Exception Application and process shall be at the sole cost and expense of the School Operator, in accordance with all Village requirements, and shall include proposed plans sufficiently developed to permit the Village Council to act on the Application.

SCHOOL OPERATOR REPRESENTATIONS AND COMMITMENTS

E. Use of Property / Number of Enrolled Students. The Property shall be used as a high school with ancillary church as part of the Cristo Rey Network®. The maximum number of students enrolled and attending school within the Project is up to four hundred (400), with approximately twenty-five percent (25%) of the enrolled students off-campus on any given day participating in corporate work-study programs as part of the normal course of operations of the Project.

F. Village of El Portal Student Preference. In addition to those students who, due to financial status, qualify to attend this Cristo Rey Network® school, the School Operator will provide priority enrollment of up to ten percent (10%) of its annual incoming class for students who are residents of the Village of El Portal, who may not qualify for the Florida Tax Credit or Endowment Scholarship

G. School Operator Annual Enrollment Report. At the beginning of each school year and upon the request of the Village, the School Operator will provide the Village Manager with a report that includes the total number of students enrolled and percentages of the enrolled students off-campus on a daily basis, and the number of students who are residents of the Village of El Portal.

H. Sanctuary Garden Parcel. The Sanctuary Garden Parcel shall only be used for passive open space, contemplation, mindfulness, and learning. The Sanctuary Garden Parcel may also be used (i) for municipal special events, upon approval of the School Operator, and (ii) active Project-related events, upon approval by the Village Council, which approvals shall not be unreasonably withheld.

I. Drop-Off / Pick-Up and Traffic Controls. The School Operator shall endeavor to manage the traffic congestion issues in proximity to the Project during peak access hours by providing teachers and staff and, as needed, retain off-duty El Portal police/public safety officers or others approved by the Village to manage traffic conditions between 7:00 A.M. and 8:00 A.M. when students arrive and 2:30 P.M. and 3:30 P.M. when students depart (with the exception of those partaking in extracurricular activities or special event) depart the Project.

J. Police Officer. The School Operator shall pay the Village seventy percent (70%) of the salary for one entry level El Portal Police Officer who will be assigned as the resource officer for the school (“**Officer**”), whose duties require that the Officer shall be present during school hours and whose work shall commence upon the initiation of school operations on the Property.

K. Payment in Lieu of Taxes. In order to cover the lost municipal revenues, in the event that the Property becomes exempt from or is otherwise not required to pay property taxes, the parties agree to enter into a payment in lieu of taxes agreement (“PILOT”) substantially in the form attached as **Attachment “B”** upon approval, rendition and expiration of all appeal periods following the approval of this Agreement and the Special Exception.

L. Project Site Plan. The School Operator shall develop the Property substantially in conformity with the Project Site Plan, including using commercially reasonable efforts to preserve the existing and proposed trees shown on the landscape plan, repair the sidewalks that abut the Property and using commercially reasonable efforts to restore, maintain and use the existing church structure in a manner that is consistent and compatible with and generally preserves the current structure.

GENERAL PROVISIONS

M. Annual Meeting. At the end of the academic school year, and upon the request of the Village Manager, the School Operator’s school administrative personnel may coordinate a meeting with the Village to discuss any issues that are deemed pertinent by the parties with regard to meeting the terms of this Agreement and the Resolution.

N. Laws Governing this Agreement. For the entire Term of this Agreement, the Village hereby agrees that the Village’s Land Development Codes (as may be amended by the Land Development Regulation Amendments) and the Code governing the development of the Property as it exists as of the Execution Date of this Agreement shall govern the development of the Property during the entire Term of this Agreement. Notwithstanding the foregoing, the Village may apply subsequently adopted laws or policies of general applicability to the Property as permitted or required by the Act, including, without limitation, Section 163.3233(2), Florida Statutes, as same may be amended from time to time; provided, however, that in no event shall the Village apply any subsequently adopted law or policies in a manner that requires any alterations or modifications to the Project or any amendments or modifications to the Project Zoning Approvals.

O. Compliance with Local Regulations Regarding Development Permits. This Agreement is not and shall not be construed as a Development Permit, Development Order, approval or authorization to commence any development, fill, or other land modification. The School Operator and the Village agree that the failure of this Agreement to address a particular permit, approval, procedure, condition, fee, open space requirement, term or restriction in effect on the Effective Date shall not relieve the School Operator of the necessity of complying with any such permit, approval, procedure, condition, fee, open space requirement, term or restriction, subject however to the terms and provisions of this Agreement.

P. Cooperation. The Village and School Operator agree to cooperate with each other to the full extent practicable pursuant to the terms and conditions of this Agreement. In that regard, any approvals requested by the Parties to this Agreement shall not be unreasonably withheld. The Village and School Operator agree that time is of the essence in all aspects of their respective responsibilities pursuant to this Agreement. The Village shall use its reasonable best efforts to expedite the permitting and approval process in an effort to assist School Operator in achieving its development and construction milestones. The Village will accommodate requests from School Operator’s general contractor and subcontractors for expeditious review of permitting applications.

Notwithstanding the foregoing, the Village shall not be obligated to issue development permits to the extent that they do not comply with the applicable requirements of the Code, the comprehensive plan, this Agreement and applicable building codes.

Q. Required Permits. The development of the Property in accordance with the Special Exception approval is contemplated by the School Operator. The Project may require additional permits or approvals from the Village, county, state, or federal government and any division thereof. Subject to the required legal process and approvals, the Village shall make a good faith effort to take reasonable steps to cooperate with and facilitate all such approvals, including acting as an applicant. Such approvals include, without limitation the following approvals and Permits:

1. Covenant or unity of title acceptance or release of existing unities or covenants.
2. Building Permits.
3. Certificate(s) of Use and/or Occupancy.
4. Water and Sewer/Septic Tank Approvals.
5. Driveway and Access Permits.
6. Paving and Drainage Plan Approvals.
7. Impact Fees
8. Signage Permits.
9. Stormwater Management Permit(s).
10. Any other official action of the Village and/or Miami-Dade County, Florida or other applicable regulatory agencies having the effect of permitting the development of land or providing permits required for the development of Property.
11. Any Village liens, fees, code violations or unpaid assessments shall be satisfied prior to the execution of this Agreement for this Property.

R. Adequate Public Facilities. The Village affirmatively finds that, as of the Effective Date, the Project complies with concurrency and finds that all public services and facilities necessary to serve the development herein described meet or exceed the established level of service standards. Furthermore, the Village agrees that during the term of this Development Agreement, it shall provide and reserve concurrency-related public facility capacity for the Project. The School Operator shall be solely responsible for obtaining all land use permits for the Project, including, but not limited to, all permits and approvals required pursuant to Section 163.3180, Florida Statutes (2020), with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation, and schools (the “**Concurrency Requirements**”). Prior to applying for the Initial Building Permit for the Project, School Operator shall apply to the appropriate governmental authorities and obtain letters or other evidence that the School Operator has satisfied all applicable Concurrency Requirements with respect to the Project, and shall

diligently and in good faith obtain such letters or other evidence that the Project meets all applicable Concurrency Requirements, and shall pay such impact fees or mobility fees as may then be due or applicable to meet Concurrency Requirements. The Project shall be subject to the level of impact fees in effect in the Village at the time of the execution of this Agreement. Impact, or other similar fees, enacted by the Village subsequent to the execution of this Agreement shall be inapplicable to the Project.

S. Reservation of Rights. This Agreement shall not affect any rights that may have accrued to any party to this Agreement under any applicable law, rule or regulation and each party hereto reserves any and all of such rights.

T. Consistency with the Village's Comprehensive Plan. The Village has adopted and implemented the Comprehensive Plan. The Village hereby finds and declares that the provisions of this Agreement dealing with the Property is consistent with the Village's Comprehensive Plan and the Village Code, subject to all applicable requirements, permits and approvals.

U. Effective Date; Duration; and Term.

1. Within fourteen (14) days following approval of this Agreement at two (2) public hearings and the execution of this Agreement by all parties, the Village shall record this Agreement in the Public Records of Miami-Dade County. This Agreement shall become effective only after it has been recorded in the Public Records of Miami-Dade County, Florida. The School Operator agrees that it shall be responsible for all recording fees related to the recording of this Agreement.

2. This Agreement shall run for as long as the Property is operated as school or thirty (30) years from the Effective Date, whichever occurs first (the "**Term**"); the Term of this Agreement may be extended only by the mutual written consent of the Village and the School Operator subject to a public hearing pursuant to Section 163.3225, Florida Statutes unless extended in accordance with Section 252.363, F.S. No notice of termination shall be required by either party upon the expiration of this Agreement, and after the expiration of this Agreement, the parties shall have no further obligations under this Agreement, except for those obligations that expressly survive the expiration of this Agreement.

V. Permitted Development.

1. Permitted Development and Uses. The Property is to be constructed and operated as a school with ancillary church in Zone 4 (Z-4) Urban Center according to the Comprehensive Plan, Land Development Regulations, Village Code and the Official Zoning Map of the Village of El Portal contained in Article II. Figure 2 of the Village Code. The Property may be used for the purposes permitted and regulated in these designations and zoning district, as further limited by the by the Village's Land Development Codes, Village Code, and Comprehensive Plan.

2. Density, Building Heights, Setbacks and Intensities. The maximum density, heights, setbacks and intensities for any development on the Property shall be regulated by the Village Land Development Regulations, Village Code,

Comprehensive Plan and any applicable Federal, State or County laws, rules and regulations.

W. Default. An “**Event of Default**” by the School Operator hereunder shall arise if the School Operator fails to observe or perform any term, or condition of this Agreement on the School Operator’s part to be observed or performed and the School Operator shall fail to cure or remedy the same within (i) thirty (30) days of the School Operator’s receipt of written notice from the Village with respect to monetary defaults, or (ii) sixty (60) days of the School Operator’s receipt of written notice from the Village with respect to non-monetary defaults (each, a “**Default Notice**”). If such non-monetary default is susceptible to cure but cannot reasonably be cured within such sixty (60) day period, then the School Operator shall have an additional thirty (30) days to cure such default. Notwithstanding the foregoing, the Village and School Operator may agree on additional time in the event additional time is necessary to cure a default.

X. Enforcement of Performance; Damages; and Termination. If an Event of Default occurs under this Agreement, and such Event of Default has not been cured within any applicable notice and cure period, the Village may elect (subject to the terms, conditions and limitations set forth in this Agreement) any one or more of the following remedies:

1. Enforce strict performance by the School Operator;
2. Terminate this Agreement; or
3. Pursue any other remedy available to the Village at law or in equity.

The Village’s election of a remedy under this Agreement with respect to any one or more Events of Default shall not limit or otherwise affect the Village’s right to elect any of the remedies available to it under this Agreement with respect to any other Event of Default.

In the event the Village elects to terminate this Agreement after the occurrence of an Event of Default that was not cured within any applicable notice and cure period, and such termination is stayed by order of any court having jurisdiction of any matter relating to this Agreement, or by any federal or state statute, then following the expiration of any such stay, the Village shall have the right, at its election, to terminate this Agreement with five (5) Business Days’ written notice to the School Operator, the School Operator as debtor in possession, or if a trustee has been appointed, to such trustee.

Y. Termination Outside of Default. In the event that the School Operator determines that it will no longer operate a school within the Property, it may formally and in writing terminate this Agreement and expressly revoke the Special Exception. At such time that this Agreement and the Special Exception shall be expressly revoked by the School Operator, this Agreement and the Special Exception shall hereby be terminated and of no further force and effect.

Z. Strict Performance; Waiver. No failure by the Village or the School Operator 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 hereunder shall constitute a waiver of any such default or of such other covenant, agreement, term or condition hereunder.

AA. Notices. All 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 El Portal, Village Hall
500 NE 87th Street
El Portal, Florida 33138
Attn: Christia Alou, Village Manager

With a copy to: Norman C. Powell, Village Attorney
1666 J. F. Kennedy Causeway, Suite 420
North Bay Village, Florida 33141

To School Operator: Cristo Rey Miami High School
11415 NE 2nd Avenue
Miami, Florida 33161
Attn: Anamarie Moreiras

With a copy to: Holland & Knight LLP
701 Brickell Avenue, Suite 3300
Miami, Florida 33131
Attn: Joseph G. Goldstein, Esq.

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mails. The terms of this Paragraph shall survive the expiration or earlier termination of this Agreement.

BB. Governing Laws, Construction and Litigation. This Agreement shall be governed 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 School Operator and the Village agree that Miami-Dade County, Florida is the appropriate and exclusive state court venue, and that the U.S. District Court, Southern Division of Florida is the appropriate and exclusive federal court venue, in connection with any litigation between the parties with respect to this Agreement. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; and accordingly, this Agreement shall not be more strictly construed against any of the parties hereto. In construing this Agreement, captions, and section and paragraph headings shall be disregarded and the use of any gender shall include every other and all genders. All of the attachments referenced in this Agreement are incorporated in, and made a part of, this Agreement. In the event of any litigation between the parties under this Agreement for a breach thereof, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels. BY ENTERING INTO THIS AGREEMENT, THE VILLAGE AND THE SCHOOL OPERATOR EXPRESSLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT. The terms of this Paragraph shall survive the expiration or earlier termination of this Agreement.

CC. Severability. In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

DD. Time of Essence. Time shall be of the essence for each and every provision hereof.

EE. Entire Agreement. This Agreement, together with the documents referenced herein, constitutes the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein. Neither party shall be bound by any agreement, condition, warranty nor representation other than as expressly stated in this Agreement. This Agreement may not be changed, altered or modified except by an instrument in writing signed by both parties hereto, subject to the requirements for the amendment of development agreements in the Act.

FF. Other Agreements. This Agreement has no effect on any other agreement, the Village's development orders, or declaration of restrictions otherwise encumbering the Property. Any and all agreements currently in the public records remain valid. The parties incorporate by reference each and every requirement set forth in the Act.

GG. Binding Effect. The obligations imposed pursuant to this Agreement upon the School Operator and upon the Property shall run with and bind the Property as covenants running with the Property, and this Agreement shall be binding upon and enforceable by and against the parties hereto and their respective successors, assigns and heirs.

HH. Transfer and Assignment., School Operator may, not assign this Agreement without the prior written consent of the Village, except that the initial conveyances of the Property from the current owner to an entity related to or affiliate of Cristo Rey Miami High School, Inc. ("**Related Entity**") and the conveyance from the Related Entity back to Cristo Rey Miami High School, Inc., if applicable. For purposes of this paragraph, Related Entity shall mean a person or entity that is affiliated with, or is controlled by a member of the Board of Trustees of Cristo Rey Miami High School, Inc.

II. Assignment and transfer due to foreclosure or deed-in-lieu of foreclosure. This Agreement and the rights and obligations hereunder can be assigned and transferred to any lender, lender designee or non-lender affiliated purchaser (any of the foregoing being referred to herein as a "**Foreclosure Purchaser**") who acquires the Property or any portion thereof through a foreclosure sale or deed-in-lieu of foreclosure without the prior written consent or approval from the Village Council. This Paragraph and the restrictions, limitations and prohibitions contained herein shall automatically terminate, extinguish and be of no further force or effect immediately upon the earlier of the following events to occur, or the acquisition of the Property or any portion thereof by any Foreclosure Purchaser through a foreclosure sale or deed-in-lieu of foreclosure; whereupon, the School Operator, any Subsequent Owner and/or any Foreclosure Purchaser shall have the absolute and unconditional right to sell, transfer and convey all or any portion of the Property to any person or entity and to assign and transfer this Agreement and the rights and obligations hereunder in whole or in part to any person or entity in connection with such sale, transfer or conveyance of the Property or any portion thereof without the prior written consent or approval from the Village

Council . Any assignee or transferee (including, any Subsequent Owner or Foreclosure Purchaser) shall assume all remaining obligations of the School Operator under this Agreement at the time of such assignment or transfer of this Agreement.

JJ. Force Majeure and Third Party Challenges. All time periods set forth in this Agreement and in any approval or permit issued in connection with the Project will be tolled due to force majeure events (including, without limitation, strikes, lockouts, acts of God, hurricanes and severe weather, and other causes beyond the control of either party), and due to delays in obtaining permits and approvals from governmental agencies, during the pendency of any “Lawsuit” (as hereinafter defined) and any unexpired appeal period thereof or may be extended in accordance with Section 252.363, F.S.. In the event that a third party unrelated to or unaffiliated with the Village or the School Operator institutes any action, suit or proceeding relating to the Project, including, without limitation, any action, suit or proceeding challenging the validity or execution of this Agreement, the Land Development Regulation Amendments, the Project Zoning Applications, the Project Zoning Approvals, or any Building Permit (in each instance, including any related appeals, a “**Lawsuit**”), then the School Operator shall defend any such Lawsuit at its sole cost and expense using legal counsel reasonably acceptable to the Village. The School Operator shall further indemnify and hold the Village harmless from and against all actual damages, losses, liabilities, fees, cost and expense (including attorneys’ fees, costs and expenses) of any and every kind arising out of or relating to any such Lawsuit. This Paragraph shall survive the expiration or any earlier termination of this Agreement.

KK. Indemnification of Village. The School Operator shall indemnify, defend, and hold harmless the Village from and against any actual damages, losses, liabilities, fees, costs and expenses incurred by the Village in any action, suit or proceeding brought against the Village by any third-party as a result of any negligent act or omission of the School Operator and/or its officers, directors, managers, members, employees, contractors and agents in performing under this Agreement. The School Operator shall directly pay all actual costs and expenses related to any expense or cost charged, or legal defense required by the Village, using legal counsel reasonably acceptable to the Village, pursuant to the foregoing. The Village shall reasonably cooperate and collaborate (but at no expense to the Village) with the School Operator in connection with any legal proceeding in which the School Operator is defending the Village. This Paragraph shall survive the expiration or any earlier termination of this Agreement.

LL.Corporate Obligations. It is expressly understood that this Agreement and the 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, managers, members, partners, trustees, beneficiaries, elected or appointed officials (including, without limitation, the Mayor and Village Commissioner of the Village) or employees , as such, of the School Operator, the Village, or any successor or assign of 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 of all such rights and claims against, every such incorporators, stockholders, officers, directors, managers, members, partners, trustees, beneficiaries, elected or appointed officials (including, without limitation, the Mayor and Village Commissioner of the Village) or employees, 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 consideration for, the execution of this Agreement.

MM. No Conflict of Interest. The School Operator represents and warrants that 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. The School Operator represents and warrants that 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 the School Operator.

NN. No Third Party Beneficiaries. This Agreement is not intended to, and shall not be construed to give, any third party (including, without limitation, any homeowners association, condominium association, or neighborhood association in the surrounding area, or any individual members thereof) any rights or interests whatsoever, nor is it intended that any third party shall be a third party beneficiary of any provisions hereof.

OO. Limitations of Liability and Waiver of Consequential Damages.

1. Any tort liability to which the Village is exposed under this Agreement shall be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations shall be applied as if the parties had not entered into this Agreement, and Village expressly does not waive any of its rights and immunities thereunder.

2. The Village will not in any event whatsoever be liable for any injury or damage to the School Operator (unless caused by the negligence, gross negligence or willful misconduct of the Village, its agents, contractors or employees), nor for any injury or damage to the Property (unless caused by the negligence, gross negligence or willful misconduct of the Village, its agents, contractors or employees).

3. Except as may be otherwise expressly provided herein, no approval to be made by the Village in its proprietary capacity under this Agreement or any inspection of the Project by the Village under this Agreement, shall render the Village liable for its failure to discover any defects or nonconformance with any governmental requirement.

4. No member, official, elected representative or employee of the Village shall be personally liable to the School Operator or any successor, assign or heir thereof in the event of any default or breach of this Agreement by the Village or for any amount which may become due to the School Operator or successor, assign or heir thereof under this Agreement.

PP. Police Power.

1. The parties recognize and agree that certain provisions of this Agreement require the Village and its boards, departments or agencies, acting in their governmental capacity, to consider governmental actions. All such considerations and actions shall be undertaken in accordance with established requirements of state statutes and municipal ordinances in the exercise of the Village's jurisdiction under the police power. Nothing

contained in this Agreement shall entitle the School Operator to compel the Village to take any such actions, save and except for the execution of consents (if applicable) to the filing of applications for the Project Approvals, Development Permits and/or Development Orders as more fully set forth herein and to timely process such applications.

2. 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 in this Agreement shall be construed to prohibit the Village from duly acting under its police power to approve, approve with conditions, or reject any public hearing application dealing with the Property.

QQ. Conflict. In the event of an inconsistency or conflict between the terms of this Agreement and the terms of the Vacation Resolution, the terms of this Agreement shall control.

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

Signed, sealed and delivered
in the presence of:

VILLAGE OF EL PORTAL,
a Florida municipal corporation

Print Name: _____

By: _____

Name: _____

Print Name: _____

Attest: _____
Village Clerk

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

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 2020, by _____, who is personally known to me or who has produced _____ as identification.

[NOTARIAL SEAL]

Print Name: _____
Notary Public, State of Florida
Commission #: _____
My Commission Expires: _____

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

Signed, sealed and delivered
in the presence of:

CRISTO REY MIAMI HIGH SCHOOL, INC.,

Print Name: _____

By: _____
[Name], [Title] of
Cristo Rey Miami High School, Inc.

Print Name: _____

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

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 2020, by _____, who is personally known to me or who has produced _____ as identification.

[NOTARIAL SEAL]

Print Name: _____
Notary Public, State of Florida
Commission #: _____
My Commission Expires: _____

ATTACHMENT "A"

LEGAL DESCRIPTION

School Parcel: Parcel 1: 18-3206-021-0110

LOTS 1 THROUGH 10, INCLUSIVE, BLOCK 2 OF "EL PORTAL HOMES", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 42, PAGE 7 OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA.

Sanctuary Garden Parcel: Parcel 2: 18-3206-022-0151

LOT 6, BLOCK 2 OF "SHERWOOD FOREST UNIT 2", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 27, PAGE 80 OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA.

ATTACHMENT “B”
CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT (this “**Agreement**”) is made and entered into as of the ___ day of March, 2020 (“**Execution Date**”) by and among the Village of El Portal, a municipal corporation organized and existing under the laws of the State of Florida (the “**Village**”), and _____, a _____ corporation as the owner of the Property defined herein (the “**Developer**”) (hereinafter the Village and the Developer are each individually referred to as a “**Party**” and, collectively, as the “**Parties**”). This Agreement is intended to establish annual contribution payments (“**Contribution Payments**”) to be paid to the Village by the Developer in connection with the Gables Property (as defined herein).

RECITALS

WHEREAS, the Developer is a non-profit corporation organized under the laws of the State of Florida; and

WHEREAS, the Developer recently acquired and is the owner of the property located at 205 NE 87 Street, El Portal, Florida as legally described in **Exhibit “A”** (the “**Property**”); and

WHEREAS, The Property has historically been developed and used as a church and school, but, while developed, the Property is currently unused and is not currently exempt from property taxes; and

WHEREAS, the Property is presently designated for Medium Density Mixed Use on the Village's Comprehensive Plan and is presently designated Zone 4 – Main Street (“Z4”) under the Village’s form-based zoning code; and

WHEREAS, the Developer desires to use all or a portion of the Property as a high school and ancillary church (“School Use”); and

WHEREAS, the School Use by the Developer is or will be exempt from federal and state income and other taxation pursuant to Internal Revenue Code §501(c)(3) and property taxation; and

WHEREAS, the Village and the Developer have agreed that the acquisition and subsequent School Use of the Property by the Developer is consistent with the underlying goals of the Village's land development regulations; and

WHEREAS, the Village has determined that the proposed use of the Property requires a special exception to reestablish the use of the Property as a high school and church (the “**Special Exception**”); and

WHEREAS, the Developer has applied for a Special Exception to allow a high school and ancillary church on the Property in accordance with Article 3 of the Village's Code for development substantially in conformity with the Site Plan (the "**Project**"); and

WHEREAS, the Village and the Developer mutually desire that the possible revenue impact of the acquisition and subsequent use of the Property by the Developer be addressed; and

WHEREAS, the granting of a Special Exception for this purpose conveys a special benefit and thing of value to the Property; and

WHEREAS, the Parties seek to memorialize their understanding by establishing an contribution payment in lieu of certain exempt property taxes.

NOW THEREFORE, in consideration of the mutual agreements, understandings, and obligations set forth herein, as well as other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Village and the Developer hereby agree as follows:

1. Term. The term of this Agreement shall be for a period commencing on the Execution Date and continuing in perpetuity thereafter ("**Term**"). However, the Agreement may be terminated with respect to the Property by either Party in the event that the Property becomes taxable for property tax purposes or if the Property ceases to be operated as a school. This Agreement shall only apply in the event that the Property is determined to be exempt from municipal property taxes, and only during the time periods during which the Property is exempt from municipal property taxes.

2. Contribution Payments.

(a) Subject to the provisions of paragraph 4 below, the Developer hereby agrees that during the term of this Agreement, that it shall make an annual payment of a special assessment in lieu of its property tax exemption, as described below ("**Special Assessment Payment**"). The Village agrees to accept the Special Assessment Payment as a voluntary contribution by the Developer as provided herein. The base amount of the Special Assessment Payment shall be forty-one thousand five hundred dollars (\$41,500) subject to the following circumstances. This base amount presumes the Project achieving all four grade levels (freshman, sophomore, junior, and senior) and the determination that the Property is subject to a property tax exemption. In the event that the Project does not achieve all four grade levels, but is exempt from property tax, then the Special Assessment Payment shall be:

- i. Seventeen thousand dollars (\$17,000) if only the freshman class is present;
- ii. Twenty-five thousand one hundred sixty-six dollars and sixty-seven cents (\$25,166.67) if only freshman and sophomore grade levels are present; and
- iii. Thirty-three thousand three hundred thirty-three and thirty-four cents (\$33,333.34) if freshman, sophomore and junior grade levels are present.

Once the full complement of grade levels is achieved and the property tax exemption is established, the \$41,500 shall be subject to an automatic adjustment on January 1 of each subsequent year, in accordance with the Consumer Price Index, Miami - Fort Lauderdale - West Palm Beach as prepared by the United States Bureau of Labor and Statistics.

(b) The Village and the Developer agree that the grant of the Special Exception to this Property conveys to the Developer a special benefit to the Property and that the Village has foregone the ability to levy property taxes due to the exempt nature of the Property. The Developer agrees to an annual special assessment (as provided in Chapter 170 and Section 197.363 of Florida Statutes and Article IV Section 4.09 of the Village of El Portal Charter on the Property in the amount provided for annually in (paragraph (a) above).

(c) The Village shall send to Developer an annual notice of the special assessment that will be levied for the Village's next fiscal year by the end of July each year. The Developer will be afforded an opportunity to contest the annual special assessment at a public hearing no later than September 15th following the notice each year. The Developer will have the right to pay the assessment in the same manner and with the same discounts provided for properties that pay property taxes to the Miami Dade County Tax Collector.

4. Approval of Special Exception. The Developer shall have no obligation to make Contribution Payments pursuant to paragraph 2 above unless and until such time as the Village approves the Special Exception. The obligation to make Contribution Payments shall only apply to the Developer and continue for so long as the Property is permitted to be used as a high school and ancillary church.

5. Entire Agreement. This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof. This Agreement may only be modified or amended in writing and with the consent of the Parties hereto. No oral modification shall be enforceable or effective.

6. Notices. All notices, certificates, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this section, collectively called "**Notices**", shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested and received or overnight delivery by a recognized public or private carrier, or by facsimile, in either case as evidenced by a receipt or other evidence of delivery showing the date, time, and, for a facsimile, telephone number or receipt and addressed to the party to receive such Notice as set forth below:

If to Village: Village of El Portal, Village Hall
500 NE 87th Street
El Portal, Florida 33138
Attn: Village Manager

Copies to: Norman C. Powell, Village Attorney

1666 J. F. Kennedy Causeway, Suite 420\
North Bay Village, Florida 33141

To Developer: Cristo Rey Miami High School
 11415 NE 2nd Avenue
 Miami, Florida 33161
 Attn: Anamarie Moreiras

With a copy to: Holland & Knight LLP
 701 Brickell Avenue, Suite 3300
 Miami, Florida 33131
 Attn: Joseph G. Goldstein, Esq.

8. Applicable Law. This Agreement shall be construed under the laws of the State of Florida.

9. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement. The exchange of fully executed Agreement (in counterparts or otherwise) by fax shall be sufficient to bind the Parties to the terms and conditions of this Agreement.

[Remainder of Page Intentionally Left Blank]

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

Signed, sealed and delivered _____,
in the presence of:

Print Name: _____

By: _____
[Name], [Title] of
[Organization]

Print Name: _____

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

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, _____, by _____, who is personally known to me or who has produced _____ as identification.

[NOTARIAL SEAL]

Print Name: _____
Notary Public, State of Florida
Commission #: _____
My Commission Expires: _____

VILLAGE OF EL PORTAL, FLORIDA

ORDINANCE NO. _____

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF EL PORTAL, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND VILLAGE MANAGER TO EXECUTE AND TO OTHERWISE ENTER INTO A DEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF EL PORTAL AND CRISTO REY MIAMI HIGH SCHOOL, INC., FOR THE DEVELOPMENT OF PROPERTY LOCATED WITHIN THE VILLAGE, AS RECORDED IN OFFICIAL RECORDS BOOK 29964, PAGE 2748 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, AND AS MORE FULLY DESCRIBED IN THE DEVELOPMENT AGREEMENT WHICH IS ATTACHED HERETO AS EXHIBIT “A”; AUTHORIZING THE APPROPRIATE VILLAGE OFFICIALS TO DO ALL THINGS NECESSARY TO EFFECTUATE THE INTENT OF THIS ORDINANCE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of El Portal Village Council (“Village”), hereby finds that the development of property for educational and religious uses within the Village is desired for an improved property values and a more positive community appearance; and,

WHEREAS, pursuant to the Florida Local Government Development Agreement Act, Sections 163.3220 through 163.3243, Florida Statutes, the Village Council desires to enter into the Development Agreement with Cristo Re Miami High School, Inc., which is attached hereto as Exhibit “A”, and incorporated herein by reference, for the purpose of developing two (2) contiguous parcels located at 205 NE 87th Street, El Portal Florida 33138 and legally described in Exhibit “A”; and,

WHEREAS, pursuant to the requirements of Chapter 163, Florida Statutes, the Village has conducted the two (2) duly noticed public hearings relating to the consideration of the Development Agreement; and,

WHEREAS, the Village Council finds that the approval of the Development Agreement is in the best interest of the health, safety, and welfare of the citizens and residents of the Village.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF EL PORTAL, FLORIDA, THAT:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct, and are incorporated herein by this reference. All exhibits attached hereto are incorporated herein and made a specific part of this Ordinance.

Section 2. Pursuant to the Florida Local Government Development Agreement Act, Sections 163.3220 through 163.3243, Florida Statutes, the Village Council hereby approves the Development Agreement between the Village and Cristo Re Miami High School, Inc., which is attached hereto as Exhibit "A", and authorizes the Mayor and Village Manager to execute the Development Agreement.

Section 3. The Development Agreement shall take effect upon proper recordation in the public records of Miami-Dade County, pursuant to Section 163.3239 Florida Statutes.

Section 4. The Village Clerk shall record a certified copy of this Ordinance and the Development Agreement in the Public Records of Miami-Dade County, Florida, at the expense of Cristo Re Miami High School, Inc.

Section 5. The Village Council hereby authorizes and directs the appropriate Village Officials to do all things necessary and expedient to effectuate the intent of this Ordinance.

Section 6. All Ordinances inconsistent or in conflict herewith shall be and are hereby repealed insofar as there is conflict or inconsistency.

Section 7. If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 8. This Ordinance shall become effective upon its passage and adoption by the Village Council.

PASSED, FIRST READING this ___ day of _____, 2020.

PASSED, SECOND READING this ___ day of _____, 2020.

Claudia Cubillos, Mayor

ATTEST: _____
Yenise Jacobi, Village Clerk

Approved as to form and legal sufficiency:
Interim Village Attorney

Law Office of Norman C. Powell

By: _____
Norman C. Powell, Esq.

RECORD OF COMMISSION VOTE: 1st Reading

Councilperson Urbom: ___ (Yes) ___ (No)
Councilperson Pirela : ___ (Yes) ___ (No)
Councilperson Roman: ___ (Yes) ___ (No)
Vice Mayor Nickerson.: ___ (Yes) ___ (No)
Mayor Cubillos: ___ (Yes) ___ (No)

RECORD OF COMMISSION VOTE: 2nd Reading

Councilperson Urbom: ___ (Yes) ___ (No)
Councilperson Pirela : ___ (Yes) ___ (No)
Councilperson Roman: ___ (Yes) ___ (No)
Vice Mayor Nickerson.: ___ (Yes) ___ (No)
Mayor Cubillos: ___ (Yes) ___ (No)

I, Yenise Jacobi, Village Clerk of the Village of El Portal, Miami-Dade County, Florida, do hereby certify that this is a true and correct copy of Ordinance No.: 2020-___ adopted on _____, 2020, as shown in the Official Records of the Village of El Portal, Miami-Dade County, Florida. Given under my hand and seal, this _____ day of _____, 2020.

Yenise Jacobi
Village Clerk