

Office of School Facilities  
Raul F. Perez, Chief Facilities Design & Construction Officer

**SUBJECT:                    AUTHORIZE THE SUPERINTENDENT TO EXECUTE A PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT BY AND AMONG 700 EDGEWATER DEVELOPMENT, LLC (THE “APPLICANT”), THE SCHOOL BOARD, AND CITY OF MIAMI, IN CONNECTION WITH A NEW 103-UNIT RESIDENTIAL DEVELOPMENT; AND**

**AUTHORIZE THE SCHOOL BOARD ATTORNEY TO EXECUTE THE WAIVER OF CONFLICT LETTER FROM GREENBERG TRAURIG, WHICH FIRM IS SERVING SOLELY AS COUNSEL FOR THE APPLICANT IN THIS TRANSACTION**

**COMMITTEE:                FACILITIES AND CONSTRUCTION**

**LINK TO STRATEGIC BLUEPRINT:               EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES**

Background

On July 25, 2018, the School Board authorized a Public School Concurrency Proportionate Share Mitigation Development Agreement (“Agreement”) by and among the School Board, the City of Miami (“City”) and Art Plaza, LLC (“Developer”). Under the terms of the Agreement, the Developer contributed the monetary value of forty-four (44) elementary school student stations, at Phillis Wheatley Elementary or another impacted District school facility, which was twenty-one (21) seats above the number needed to meet its school concurrency obligation. As such, Mitigation Bank #2018-014 was established, with a quantity of twenty-one (21) Banked Seats, of which, eight (8) Banked Seats are still available for purchase by other developers.

Additional Information

700 Edgewater Development, LLC, (the “Applicant”) is in the process of obtaining a Tentative Plat approval from the City of Miami (“City”) and revising its building permit to develop an additional 103 units on the property (“Residential Development”), on approximately 1.04 acres, located at 700 NE 26th Terrace, City of Miami, contingent upon the Applicant obtaining a school concurrency determination from the District, in accordance with the terms of the Interlocal Agreement for Public School Facility Planning in Miami-Dade County (“ILA”).

Pursuant to State Statutes and the ILA, the Residential Development application was reviewed by the District for compliance with Public School Concurrency. The review yielded that the applicable Level of Service (“LOS”) standard was met at the middle school and high school levels but is deficient by five (5) elementary school seats.

As such, representatives of the Applicant, the City and the District (collectively “the Parties”), reached consensus on the Mitigation option allowing the Applicant to purchase five (5) available Banked Seats from Mitigation Bank #2018-014, at the established price of \$23,816 per seat, all subject to Board and City approval. This will require the Parties to enter into a Public School Concurrency Proportionate Share Mitigation Development Agreement (“Mitigation Agreement”).

Public School Concurrency Proportionate Share Mitigation Development Agreement

The Agreement between the Board, City and Applicant shall contain, substantially, the following terms and conditions:

- the Applicant shall purchase the five (5) available Banked Seats from Mitigation Bank #2018-014, at the established price of \$23,816 per seat, for a total amount of \$119,080. As required under governing state law and the ILA, the District shall provide the Applicant an Educational Facilities Impact Fee Credit estimated at a not to exceed amount of Sixty-Nine Thousand Eighty Dollars (\$69,080);
- upon the full execution of the Agreement by all Parties and receipt of full payment from the Applicant, the District shall issue a Finding of Available School Facility Capacity (“Finding”). Issuance of the Finding by the District shall be a pre-condition to issuance of building permits by the City for the subject Residential Development;
- the Mitigation Agreement shall expire upon the Parties’ completion of their performance of all obligations or within six (6) years from the date that the Agreement is executed by all Parties, whichever comes first;
- the Applicant may assign its rights, obligations and responsibilities under the Agreement to a third-party purchaser of all or any part of fee simple title to the Residential Development. Any such assignment shall be in writing and shall require the prior written consent of all the Parties;
- the Applicant shall pay all recordation costs to the District necessary to record the Agreement and any related documentation, including without limitation, Assignments, if any, and Releases;
- in the event of any dispute among the Parties, each Party shall be responsible for its own Attorney’s fees, and the Parties waive trial by Jury in any action, proceeding or counterclaim brought by any Party against any other Party or Parties with respect to any matter arising under the Agreement; and

- for purposes of the Agreement, the Superintendent or his/her designee shall be the Party designated by the Board to grant or deny any and all approvals required under the Agreement, including, without limitation, issuance of Reports and Releases, and placing the Applicant in default, as may be applicable.

Waiver of Conflict Letter

The Applicant and its affiliates have selected Greenberg Traurig (“GT”) to serve as legal counsel in this transaction. Greenberg Traurig has represented in the past and presently represents the Board in other unrelated transactions, but not in this one. To that end, GT has proffered a waiver of conflict letter for the Board’s consideration and approval, a copy of which is included as Exhibit “A”.

The Agreement has been reviewed and approved for legal sufficiency by the School Board Attorney’s Office, as well as reviewed by the Office of Risk and Benefits Management and found to be in compliance with risk management requirements. The Agreement, in final form, is attached hereto as Exhibit “B”.

**RECOMMENDED:** That The School Board of Miami-Dade County, Florida,

A) Authorize the Superintendent to:

1. Execute a Public School Concurrency Proportionate Share Mitigation Development Agreement by and among 700 Edgewater Development, LLC (the “applicant”), the School Board, and City of Miami, in connection with a new 103-unit residential development providing for monetary proportionate share mitigation pursuant to the Interlocal Agreement for Public School Facility Planning in Miami-Dade County;
2. execute any other documentation that may be required to effectuate implementation of the Agreement; and
3. grant or deny any approvals required under the Agreement, including, without limitation, issuance of Reports and Releases, and placing the Applicant in default, as may be applicable.

B) Authorize the School Board Attorney to execute the waiver of conflict letter from Greenberg Traurig, which firm is serving solely as counsel for the Applicant in this transaction.

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