

Facilities Planning and Construction
Paul J. Phillips, Chief Facilities Officer

**SUBJECT: AUTHORIZATION TO EXECUTE A GROUND LEASE AMENDMENT
WITH THE CITY OF NORTH MIAMI FOR THE SITE TO CONSTRUCT
AND OPERATE STATE SCHOOL "QQ1"**

The Board, at its meeting of December 8, 1999, authorized the execution of the Elementary-Middle School Educational Facility Ground Lease Agreement (Lease Agreement) with the City of North Miami (City), for the site of a new K-8 educational facility (State School "QQ1"). Subsequent to the execution of the Lease Agreement by both parties, it was determined that the new facility would be funded through the District's Master Lease/Certificate of Participation Program (COP Program), certain provisions of which would be in conflict with the Lease Agreement. In particular, it is necessary to subordinate the original Lease Agreement to the District's COP Program so that the City cannot exercise certain rights upon default under the Lease Agreement that would interfere with the exercise of rights by Financial Security Assurance, Inc. (the District's Certificate of Participation Insurer), under the COP Program. Without these modifications, Certificate of Participation proceeds cannot be used to finance construction of State School "QQ1." The District's Bond Counsel, in consultation with Financial Security Assurance, Inc., the School Board Attorney's Office, the Office of Treasury Management and the City Attorney, has developed a First Amendment to the Elementary-Middle School Educational Facility Ground Lease Agreement (Lease Amendment), which is acceptable to all parties. The City of North Miami City Council approved the proposed Lease Amendment at its meeting of February 27, 2001.

Pursuant to negotiating procedures, a Management Team meeting was held on March 26, 2001, for direction on negotiating strategies and parameters. Based on this direction, a Lease Amendment with the City of North Miami that includes the following terms and conditions is recommended:

- the prohibition against subletting or encumbering the property contained in the original Lease Agreement will be modified to allow encumbrances in connection with financing of State School "QQ1" under the Master Lease Program Documents;
- the rights of the City to exercise remedies in the event of default by the Board under the original Lease Agreement will be limited to suing for specific enforcement of covenants for a period of 30 years. As such, the Lease Agreement cannot be terminated by the City during the 30 year subordination period so that there is no interference with the rights and remedies of the Insurer under the Master Lease Program Documents;

- the City specifically recognizes that the Board is financing State School "QQ1" under its annual appropriation Master Lease Program. The Board covenants to amend its Master Lease Program documents to provide that in the event of default or nonappropriation of lease payments by the Board, the Trustee, in exercising its right to relet the premises at the direction of the Insurer, shall first offer to the City the right to step in and take over the operation of the school so long as it agrees to make the same annual lease payments as the Board is obligated to make. If the City chooses not to step in, the Trustee, in reletting the property, will give preferences to educational uses so long as the rent is comparable to that which any other potential user would be willing to pay. All uses of the property must comply with local zoning requirements; and
- all other terms and conditions of the Lease Agreement shall remain in full force and effect.

The proposed Lease Amendment has been reviewed by the School Board Attorney's Office. The Treasurer and Chief Financial Officer recommend approval of the proposed Lease Amendment.

A copy of the proposed Lease Amendment will be placed on file in the Citizen Information Center and Recording Secretary's Office.

RECOMMENDED:

That The School Board of Miami-Dade County, Florida, authorize the Superintendent or his designee to execute a ground lease amendment with the City of North Miami for the site to construct and operate State School "QQ1", under the terms and conditions outlined above.

MAL:slr