

Office of School Facilities
Jaime G. Torrens, Chief Facilities Officer

SUBJECT: THAT THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA: (I) ACCEPT THE DONATION OF A SCHOOL SITE IN THE CITY OF DORAL ("CITY") IN LIEU OF PAYMENT OF EDUCATIONAL FACILITIES IMPACT FEES, (II) GROUND LEASE SUCH SCHOOL SITE TO THE DOWNTOWN DORAL CHARTER ELEMENTARY SCHOOL, INC., A NOT-FOR-PROFIT CORPORATION ("CHARTER SCHOOL"), WHICH AT THE TIME OF EXECUTION OF SUCH LEASE WILL BE AN ENTITY DESCRIBED IN SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE (THE "CODE") AND EXEMPT FROM FEDERAL INCOME TAXATION PURSUANT TO SECTION 501(A) OF THE CODE, FOR A TERM OF NOT LESS THAN TWENTY (20) YEARS, (III) CONSTRUCT AN APPROXIMATELY 800 STUDENT STATION CHARTER SCHOOL ("CHARTER SCHOOL FACILITY") FROM PROCEEDS OF REVENUE BONDS ("BONDS"), TO BE ISSUED BY THE FLORIDA DEVELOPMENT FINANCE CORPORATION OR OTHER CONDUIT ISSUER ("ISSUER"), WHICH PROCEEDS WILL BE LOANED TO THE CHARTER SCHOOL UPON TERMS SUFFICIENT TO PAY THE CAPITAL COSTS OF THE CHARTER SCHOOL FACILITY AND (IV) MANAGE THE OPERATION OF THE CHARTER SCHOOL FACILITY; AND FURTHER, THAT THE SUPERINTENDENT BE AUTHORIZED TO FINALIZE NEGOTIATIONS, AND THE CHAIR AND/OR THE SUPERINTENDENT, AS MAY BE REQUIRED, BE AUTHORIZED TO EXECUTE AND DELIVER THE FOLLOWING AGREEMENTS IN ORDER TO IMPLEMENT THE FOREGOING:

- A. A TRI-PARTY AGREEMENT BY AND AMONG THE SCHOOL BOARD, THE CITY AND CM DORAL DEVELOPMENT COMPANY LLC, ITS SUCCESSORS OR ASSIGNS ("DEVELOPER"), AMENDING THAT CERTAIN MASTER DEVELOPMENT AGREEMENT RECORDED ON OCTOBER 3, 2006 (OR. BK. 24968, PGS. 2689-2725), BETWEEN THE CITY AND DEVELOPER TO PROVIDE FOR DONATION TO THE SCHOOL BOARD OF AN APPROXIMATE 3-ACRE SCHOOL SITE LOCATED AT THE SOUTHEAST CORNER OF N.W. 84 AVENUE AND N.W. 53 STREET ("SCHOOL SITE") IN LIEU OF EDUCATIONAL FACILITIES IMPACT FEES BASED ON A**

DISTRICT-COMMISSIONED APPRAISAL, FOR CONSTRUCTION BY THE BOARD OF THE CHARTER SCHOOL FACILITY TO SERVE THAT CERTAIN MIXED-USE PLANNED UNIT DEVELOPMENT IN THE DOWNTOWN DORAL DISTRICT; AND

- B. A COVENANT RUNNING WITH THE LAND BY DEVELOPER, IN FAVOR OF THE SCHOOL BOARD, CONVEYING THE SCHOOL SITE IN LIEU OF IMPACT FEES; AND**

- C. A TRI-PARTY AGREEMENT BY AND AMONG THE SCHOOL BOARD, THE DEVELOPER AND THE CHARTER SCHOOL PURSUANT TO WHICH THE SCHOOL BOARD WILL:**
 - 1. AGREE TO GROUND LEASE THE SCHOOL SITE TO THE CHARTER SCHOOL;**
 - 2. ACKNOWLEDGE THAT THE CHARTER SCHOOL WILL INCUR DEBT PURSUANT TO A LOAN AGREEMENT WITH THE ISSUER FROM THE PROCEEDS OF THE BONDS, IN AN AMOUNT SUFFICIENT TO PAY ALL CAPITAL COSTS ASSOCIATED WITH THE DESIGN AND CONSTRUCTION OF THE CHARTER SCHOOL FACILITY ON THE SCHOOL SITE, INCLUDING BUT NOT LIMITED TO, PREPAYMENT OF ALL GROUND RENT OWED TO THE SCHOOL BOARD FOR THE FULL TERM OF THE GROUND LEASE, PAYMENT OF THE COSTS OF DESIGNING, CONSTRUCTING, FURNISHING AND EQUIPPING THE CHARTER SCHOOL FACILITY, PAYMENT OF CAPITALIZED INTEREST ON THE BONDS WITHIN IRS GUIDELINES, FUNDING A DEBT SERVICE RESERVE, IF REQUIRED, AND PAYMENT OF COSTS OF ISSUANCE;**
 - 3. ACKNOWLEDGE THAT THE CHARTER SCHOOL MAY INCUR BRIDGE FINANCING PRIOR TO THE ISSUANCE OF BONDS;**
 - 4. AUTHORIZE THE SCHOOL DISTRICT TO PROCURE AND MANAGE THE DESIGN AND CONSTRUCTION SERVICES REQUIRED TO BUILD THE CHARTER SCHOOL FACILITY;**
 - 5. AUTHORIZE THE SCHOOL DISTRICT TO ENTER INTO A MANAGEMENT AGREEMENT WITH THE CHARTER SCHOOL;**

6. REQUIRE THAT THE BOND FINANCING DOCUMENTS CONTAIN REMEDIAL PROVISIONS ALLOWING THE BOARD THE OPTION TO REPLACE THE CHARTER SCHOOL ENTITY UPON DEFAULT UNDER ITS LOAN AGREEMENT;
 7. REQUIRE THAT AT THE END OF THE TERM OF THE GROUND LEASE WITH THE CHARTER SCHOOL, THE CHARTER SCHOOL FACILITY IMPROVEMENTS WILL REVERT TO THE SCHOOL BOARD AT NO COST, PROVIDED, HOWEVER, THAT THE SCHOOL BOARD SHALL PROVIDE THE CHARTER SCHOOL THE OPTION TO LEASE THE SCHOOL SITE AND CHARTER SCHOOL FACILITY FOR UP TO THREE (3) ADDITIONAL TERMS OF TEN (10) YEARS EACH, BASED ON MUTUALLY ACCEPTABLE TERMS AND CONDITIONS;
 8. AGREE TO ENTER INTO A SUBORDINATION AND STANDSTILL AGREEMENT, AS MAY BE REQUIRED, PURSUANT TO WHICH THE SCHOOL BOARD WILL CONSENT TO THE GRANT OF A LEASEHOLD MORTGAGE OF THE CHARTER SCHOOL FACILITY SITE BY THE CHARTER SCHOOL TO THE BOND TRUSTEE, AS SECURITY FOR ITS OBLIGATIONS UNDER THE LOAN AGREEMENT; AND
- D. ANY OTHER DOCUMENTS THAT MAY BE REQUIRED TO EFFECTUATE THE IMPLEMENTATION OF THE FOREGOING AGREEMENTS

COMMITTEE: FACILITIES AND CONSTRUCTION REFORM

LINK TO STRATEGIC FRAMEWORK: FINANCIAL EFFICIENCY/STABILITY

The Board, at its meeting of July 18, 2012, authorized (i) the acceptance of the donation of a school site ("School Site") in the City of Doral ("City") in lieu of payment of educational facilities impact fees, (ii) a ground lease of such site to the Downtown Doral Community Development District ("CDD") for a term of not less than 20 years, (iii) the construction of an approximately 800 student station charter school ("the Charter School Facility") from proceeds of bonds to be issued by such CDD, for lease by the CDD to a not-for-profit charter school ("the Charter School") at rentals sufficient to pay the capital cost of the school, (iv) District management of the operation of the Charter School; and further, that the Superintendent be authorized to finalize negotiations, and the Chair and/or the

Superintendent, as may be required, be authorized to execute and deliver a number of agreements in order to implement the foregoing.

Subsequent to the July Board meeting, the Internal Revenue Service (IRS) in connection with an audit of another CDD in Florida has questioned the ability of CDD's in the development stage to issue tax exempt debt. An IRS Technical Advise Memorandum has yet to be released and the matter is still pending. This uncertainty would seem to preclude, at least in the foreseeable future, issuance of debt for infrastructure funding by a CDD. As a result, and to ensure the project remains on track, after further discussions among the parties, the Charter School will procure project funding through revenue bonds to be issued by the Florida Development Finance Corporation or other conduit issuer. The resulting agreements between the parties will be adjusted to reflect the elimination of the CDD as a party in the transactions, and its replacement with the Charter School; all other terms and conditions, as previously enumerated in the July 18, 2012 Board action remain substantially unchanged. If needed the Charter School may obtain bridge financing prior to issuance of the bonds in order to assure a 2014 school opening schedule.

The Office of School Facilities, Office of Financial Services, and School Choice, District/School Operations, recommend the present proposal.

RECOMMENDED: That the School Board of Miami-Dade County, Florida: (i) accept the donation of a school site in the City of Doral ("City") in lieu of payment of Educational Facilities Impact Fees, (ii) ground lease such school site to the Downtown Doral Charter Elementary School, Inc., a not-for-profit corporation ("Charter School"), which at the time of execution of such lease will be an entity described in section 501(c)(3) of the Internal Revenue Code (the "Code") and exempt from federal income taxation pursuant to Section 501(a) of the Code, for a term of not less than twenty (20) years, (iii) construct an approximately 800 student station Charter School ("Charter School Facility") from proceeds of Revenue Bonds ("Bonds"), to be issued by the Florida Development Finance Corporation or other conduit issuer ("Issuer"), which proceeds will be loaned to the Charter School upon terms sufficient to pay the capital costs of the Charter School Facility and (iv) manage the operation of the Charter School Facility; and further, that the Superintendent be authorized to finalize negotiations, and the Chair and/or the Superintendent, as may be required, be authorized to execute and deliver the following agreements in order to implement the foregoing:

- A. a tri-party agreement by and among the School Board, the City and CM Doral Development Company LLC, its successors or assigns ("Developer"), amending that certain Master Development Agreement recorded on October 3, 2006 (OR. BK. 24968, Pgs. 2689-2725), between the City and Developer to provide for donation to the School Board of an

approximate 3-acre school site located at the southeast corner of N.W. 84 Avenue and N.W. 53 Street ("School Site") in lieu of Educational Facilities Impact Fees based on a District-commissioned appraisal, for construction by the Board of the Charter School Facility to serve that certain mixed-use planned unit development in the Downtown Doral district; and

B. a Covenant Running with the Land by Developer, in favor of the School Board, conveying the School Site in lieu of impact fees; and

C. a Tri-party Agreement by and among the School Board, the Developer and the Charter School pursuant to which the School Board will:

1. agree to ground lease the School Site to the Charter School;
2. acknowledge that the Charter School will incur debt pursuant to a loan agreement with the issuer from the proceeds of the Bonds, in an amount sufficient to pay all capital costs associated with the design and construction of the Charter School Facility on the School Site, including but not limited to, prepayment of all ground rent owed to the School Board for the full term of the ground lease, payment of the costs of designing, constructing, furnishing and equipping the Charter School Facility, payment of capitalized interest on the Bonds within IRS guidelines, funding a debt service reserve, if required, and payment of costs of issuance;
3. acknowledge that the Charter School may incur bridge financing prior to the issuance of the bonds;
4. authorize the School District to procure and manage the design and construction services required to build the Charter School Facility;
5. authorize the School District to enter into a Management Agreement with the Charter School;
6. require that the bond financing documents contain remedial provisions allowing the Board the option to replace the Charter School entity upon default under its loan agreement;
7. require that at the end of the term of the ground lease with the Charter School, the Charter School Facility improvements will revert to the School Board at no cost, provided, however, that the School Board shall provide

the Charter School the option to lease the School Site and Charter School Facility for up to three (3) additional terms of ten (10) years each, based on mutually acceptable terms and conditions;

8. agree to enter into a subordination and standstill agreement, as may be required, pursuant to which the School Board will consent to the grant of a leasehold mortgage of the Charter School Facility site by the Charter School to the Bond Trustee, as security for its obligations under the loan agreement; and

D. any other documents that may be required to effectuate the implementation of the foregoing agreements.

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