

May 29, 2013

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

SUBJECT: THAT THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, AUTHORIZE THE SUPERINTENDENT TO FINALIZE NEGOTIATIONS AND EXECUTE:

- 1) PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENTS BY AND AMONG THE SCHOOL BOARD, IMPACTED LOCAL GOVERNMENTS AND DEVELOPERS IN CONNECTION WITH EIGHT PROPOSED RESIDENTIAL DEVELOPMENTS, AS PROVIDED UNDER THE INTERLOCAL AGREEMENT FOR PUBLIC SCHOOL FACILITY PLANNING IN MIAMI-DADE COUNTY; AND**
- 2) ANY OTHER DOCUMENTATION THAT MAY BE REQUIRED TO EFFECTUATE IMPLEMENTATION OF EACH AGREEMENT**

COMMITTEE: FACILITIES PLANNING AND CONSTRUCTION

LINK TO

STRATEGIC FRAMEWORK: FINANCIAL EFFICIENCY/STABILITY

Background

On December 5, 2012, the School Board authorized a Public School Concurrency Proportionate Share Mitigation Development Agreement by and among the School Board, North Bay Village and CLPF-NBV, L.P., successor in interest to ZF Development, LLC (the "Agreement"). The need for the Agreement arose from the fact that the subject development failed to meet school concurrency at the senior high level, in this case the Miami Beach Senior High School Concurrency Service Area (the "CSA"), by six (6) student stations; consequently, pursuant to the Interlocal Agreement for Public School Facility Planning in Miami-Dade County ("ILA"), the developer mitigated by contributing the equivalent monetary value of one senior high school classroom, i.e. twenty-five (25) student stations, net of impact fees. Establishment of a Mitigation Bank was also authorized by the Board at the December 5, 2012 meeting.

Since the mitigation contribution exceeded the number of student stations required by the particular development by nineteen (19) (the "extra seats"), and as provided under governing state law and the ILA, the developer is entitled to recover a portion of the cost of those extra seats, if subsequent residential developments impacting the same CSA choose to purchase from the Mitigation Bank (hereinafter referred to as "Mitigation Bank #2012-001").

Additional Information

Eight (8) residential developers (“Developers”) are in the process of receiving site plan approval from the respective local government (“Local Government”) for new residential projects (“Residential Developments”) impacting the above referenced CSA, contingent upon obtaining a school concurrency determination from the District, in accordance with the terms of the ILA. Pursuant to State Statutes and the ILA, the Residential Developments were tested for Public School Concurrency, and failed to meet the applicable level of service (“LOS”) standard at the subject CSA (Miami Beach Senior High School). As such, and in light of the availability of the extra seats in Mitigation Bank #2012-001, representatives of Developers, the respective impacted Local Government and the District (collectively “the Parties”), reached consensus on a Mitigation option allowing each of the Developers to purchase available Banked Seats from Mitigation Bank #2012-001, at the established price of \$30,192 per seat, all subject to Board and Local Government approval. This will require the Parties to enter into individual Public School Concurrency Proportionate Share Mitigation Agreements.

The following chart lists the Residential Developments seeking to purchase Banked Seats from Mitigation Bank #2012-001 and relevant details. It should be noted that the number of Banked Seats to be purchased total eighteen (18) out of the available nineteen (19).

Local Government	Development	Location	Number of Seats to be purchased	Total Upfront Contribution*
1.- Miami Beach	Palau Sunset Harbor	1201-1237 20th Street	1	\$30,192
2.- Bay Harbor Islands	The Ivory Condominiums	9211 East Bay Harbor Dr.	1	\$30,192
3.- Bay Harbor Islands	Royale Club Towers	9431-9461-9481 East Bay Harbor Dr.	1	\$30,192
4.- Bay Harbor Islands	Island House	9201 East Bay Harbor Drive	2	\$60,384
5.- Surfside	The Surf Club	9011 Collins Avenue	8	\$241,536
6.- Surfside	Chateau Ocean LLC	9379, 9365 and 9349 Collins Avenue	2	\$60,384
7.- Bay Harbor Islands	Bay Harbor Residences	9920-60 West Bay Harbor Drive	2	\$60,384
8.- Bay Harbor Islands	North Bay Harbor View	9821 East Bay Harbor Drive	1	\$30,192

* Note: Developers will be eligible to receive Educational Facilities Impact Fee Credits up to the amount of the total purchase price of the Banked Seats.

Public School Concurrency Proportionate Share Mitigation Development Agreements

There shall be one Agreement for each of the eight (8) Residential Developments. Each Agreement between the Board, Local Government and Developer shall contain, substantially, the following terms and conditions:

- the Developer shall make an upfront monetary contribution to the Board for each available Banked Seat purchased from Mitigation Bank #2012-001, at the established price of \$30,192 per seat, and as shown in the table above;
- upon the full execution of the Agreement by all appropriate Parties and receipt of payment, 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 Local Government for the subject Residential Development;
- as required under governing state law and the ILA, the District shall provide each Developer an Educational Facilities Impact Fee Credit of up to the total purchase price of the seat(s) purchased, once the final amount of the impact fee payment is known;
- the 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 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 Residential Development. Any such assignment shall be in writing and shall require the prior written consent of all of the Parties;
- the Developer 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 this 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.

Each Agreement will be reviewed by the School Board Attorney's Office prior to execution.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the Superintendent to finalize negotiations and execute:

- 1) public school concurrency proportionate share mitigation development agreements by and among the School Board, impacted local governments and developers in connection with eight proposed residential developments, as provided under the Interlocal Agreement for Public School Facility Planning in Miami-Dade County; and
- 2) any other documentation that may be required to effectuate implementation of each Agreement.

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