

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) A PUBLIC SCHOOL CONCURRENCY PROPORTIONATE SHARE MITIGATION DEVELOPMENT AGREEMENT BY AND AMONG THE SCHOOL BOARD, CITY OF MIAMI BEACH AND 3425 COLLINS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN CONNECTION WITH CONSTRUCTION OF A NEW 67-UNIT RESIDENTIAL DEVELOPMENT, LOCATED AT 3425 COLLINS AVENUE, MIAMI BEACH, FLORIDA 33140, PROVIDING FOR MONETARY PROPORTIONATE SHARE MITIGATION PURSUANT TO 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 THE AGREEMENT

COMMITTEE: FACILITIES AND CONSTRUCTION

LINK TO STRATEGIC BLUEPRINT: EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES

Background

On December 2, 2015, the School Board authorized a Public School Concurrency Proportionate Share Mitigation Development Agreement (the "Agreement") by and among the School Board, City of Miami Beach ("City") and 500 Alton Road Ventures, LLC, South Beach Heights I, LLC, 1220 Sixth, LLC, and KGM Equities, LLC (the "Owners"). The Agreement makes provisions for the establishment of a Mitigation Bank (designated as "Mitigation Bank #2015-003") comprising sixteen (16) available high school seats. The banked seats will be available for purchase by other developers no later than June 2, 2016, provided the Owners fully fund the bank, and all other provisions under the Agreement have been satisfied, which has not yet occurred.

Additional Information

3425 Collins, LLC, a Delaware limited liability company ("Developer"), is in the process of obtaining a development order from the City for a new residential project ("Residential Development"), contingent upon 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 was tested for Public School Concurrency, and failed to meet the applicable Level of Service ("LOS") standard at the subject Concurrency Service Area ("CSA"). The review yielded that the applicable LOS was met at the elementary school and middle school levels, but is deficient by two (2) high school seats. The impacted school is Miami Beach Senior High School.

Proportionate Share Mitigation

Pursuant to the ILA, where there is insufficient capacity to address the impacts of a proposed development, representatives of the applicant, impacted local government and District (collectively "the Parties") are to discuss ways of mitigating the development's impact, including proportionate share mitigation options ("Mitigation"). After several meetings, the Parties have reached consensus on Mitigation, subject to Board and City approval; this also allows the Parties to enter into a Public School Concurrency Proportionate Share Mitigation Agreement ("Mitigation Agreement"), pursuant to the ILA.

The Developer expressed a preference to purchase two (2) high school seats from Mitigation Bank #2015-003, referenced above, to satisfy its Monetary Proportionate Share Mitigation requirement. However, because Mitigation Bank #2015-003 has not yet been established and in the event it is not in place by June 2, 2016, under the proposed Mitigation Agreement, the Developer is providing the sum of \$698,475, which represents the full capital cost of a twenty-five (25) seat high school classroom ("School Project") at \$788,650 minus a credit in the amount of \$90,175 for impact fees already paid. This sum shall be deposited into an Escrow Account, to be held by the School Board Attorney's Office, as Escrow Agent. This will ensure funds are available to cover the creation of either the School Project or the cost of purchasing banked seats from Mitigation Bank #2015-003, should it become available.

The two Mitigation alternatives are further described below:

Mitigation Alternative #1 – Purchase available banked seats from Mitigation Bank #2015-003

If Mitigation Bank #2015-003 has been established, the Developer agrees to purchase two (2) banked seats at the established price of \$31,546 per seat (total \$63,092). As noted above, the Developer is eligible to receive an Educational Facilities Impact Fee Credit up to the amount of the total purchase price of the banked seats. Since the Developer has already paid impact fees in the amount of \$90,175, which exceeds the purchase price of the banked seats, under this Alternative the Escrow Agent is authorized to disburse the full amount held in Escrow (\$698,475) to the Developer, less any fees and costs.

Mitigation Alternative #2 – Provide full capital cost of a School Project

If Mitigation Bank #2015-003 has not been established, the Developer agrees to provide the full monetary contribution equal to the cost of one senior high school classroom containing twenty-five (25) student stations, less the Educational Facilities Impact Fee paid to Miami-Dade County, as noted above. In that event, a line item in the amount of \$788,650 will be added to the District's Facilities Work Program as part of the next update, for the creation of an additional twenty-five (25) student stations at Miami Beach Senior High School.

This Alternative will yield twenty-three (23) seats beyond the two (2) student stations required to address the Residential Development's impact. Pursuant to the governing ILA, the Developer will retain the right to transfer these twenty-three (23) seats to future residential developments affecting the same CSA and also in need to provide mitigation at the senior high school level, through a new Mitigation Bank to be established and entirely administered by the District.

Public School Concurrency Proportionate Share Mitigation Development Agreement

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

- the Developer shall satisfy its Monetary Proportionate Share Mitigation requirement through one of the following Mitigation Alternatives, as referenced above;
- the Developer shall make an upfront monetary contribution to the Board of \$698,475, which amount covers the Developer's financial obligation under either Mitigation Alternative. These funds shall be deposited into an Escrow Account, to be held by the School Board Attorney's Office, as Escrow Agent;
- under Mitigation Alternative #1, the Developer has already paid impact fees in the amount of \$90,175, which exceeds the purchase price of the banked seats. In this event, the Escrow Agent is authorized to disburse the full amount held in Escrow (\$698,475) to the Applicant, less any fees and costs;
- under Mitigation Alternative #2, the funds retained by the District will be utilized for construction of twenty-five (25) high school student stations. In this event, the Escrow Agent is authorized to disburse the full amount held in Escrow (\$698,475) to the Board to be designated for the School Project;
- upon the full execution of the Mitigation Agreement by all appropriate Parties and receipt of payment from the Developer, 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;

- if the Developer funds the construction of twenty-five (25) senior high school seats under Mitigation Alternative #2, this will result in twenty-three (23) seats in excess of the two (2) seats needed to be mitigated by the Developer. As such, the Developer has the right to transfer some or all of the excess twenty-three (23) seats to future residential developments, should such a need arise (“Banked Seats”). In this regard, the District shall establish and administer a new Mitigation Bank, which will have an initial quantity of twenty-three (23) Banked Seats. The reimbursable value of each Banked Seat has been established at \$25,415 (total upfront contribution minus the value of two (2) mitigated seats, divided by 25 seats);
- Banked Seats may be purchased by future residential developments affecting the same Concurrency Service Area up to six (6) years from the date the School Board authorized the execution of this Mitigation Agreement. Future residential developments may purchase Banked Seat(s) only if the Mitigation Bank has sufficient number of available seats to provide for the entire school capacity deficiency. Any remaining Banked Seats shall be deemed expired at that time;
- in the event that in the future, multiple Mitigation Banks are created for the same Concurrency Service Area, the banked seats shall be transferred to future residential developments in the order in which each Mitigation Bank was created;
- 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 Mitigation Agreement is executed by all Parties, whichever comes first;
- the Developer may assign its rights, obligations and responsibilities under this Mitigation 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 Mitigation 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 this Mitigation Agreement; and
- for purposes of this Mitigation Agreement, including the Escrow 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 Mitigation Agreement, including, without limitation, issuance of reports.

The Mitigation Agreement has been reviewed by the School Board Attorney’s Office for legal sufficiency. Both Counsel for the City and Counsel for the Developer have

reviewed the Mitigation Agreement and indicated their concurrence with the proposed terms and conditions.

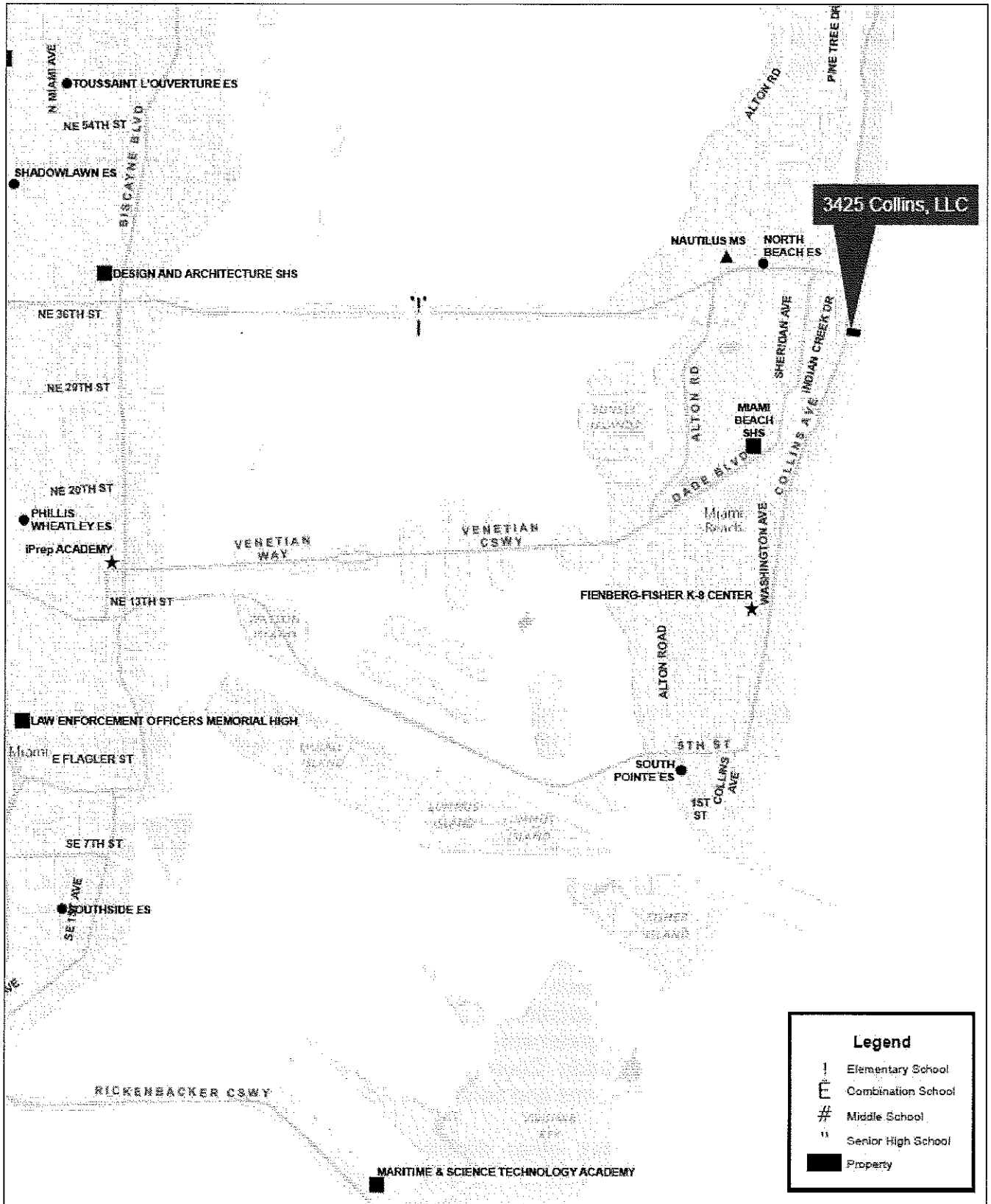
RECOMMENDED:

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

- 1) a Public School Concurrency Proportionate Share Mitigation Development Agreement by and among the School Board, City of Miami Beach and 3425 Collins, LLC, a Delaware limited liability company, in connection with construction of a new 67-unit residential development, located at 3425 Collins Avenue, Miami Beach, Florida 33140, providing for monetary proportionate share mitigation pursuant to the Interlocal Agreement for Public School Facility Planning in Miami-Dade County, substantially in conformance with the terms and conditions noted above; and
- 2) any other documentation that may be required to effectuate implementation of the Agreement.

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Location Map



3425 Collins, LLC

Legend	
	Elementary School
E	Combination School
#	Middle School
	Senior High School
■	Property