

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 444 BRICKELL PARTNERS, LLC (THE “APPLICANT”), THE SCHOOL BOARD, AND CITY OF MIAMI, IN CONNECTION WITH A NEW 1400-UNIT RESIDENTIAL DEVELOPMENT; AND

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

COMMITTEE: FACILITIES AND CONSTRUCTION

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Background

444 Brickell Partners, LLC (the “Applicant”) is in the process of obtaining a Site Plan approval from the City of Miami (“City”) for a new 1400-unit residential development (“Residential Development”), on approximately 3.9 acres, located at 444 Brickell Avenue, 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 twenty (20) elementary school seats.

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 Development Agreement (“Agreement”), pursuant to the ILA.

Under the governing provisions, the minimum acceptable mitigation project is a classroom. In this case, to address the deficiency of twenty (20) elementary student stations, Mitigation by the Applicant will be a monetary contribution equal to the cost of one elementary school classroom containing twenty-two (22) student stations at Southside Elementary School or another impacted District school facility (the “School Project”) as determined by the School District, in the amount of \$519,992 (the “Mitigation Cost”). This amount will be included in the District’s Facilities Work Program as part of the next update. The Mitigation Cost was derived based on the cost per student station, as published by the State of Florida Department of Education (FDOE) for October of 2020, the date by which the School Project would likely start.

It should be noted that as required under state law and the ILA, the Applicant will be eligible to receive Educational Facilities Impact Fee Credits against the Mitigation Cost in an amount not-to-exceed said Mitigation Cost.

Mitigation Banking

The School Project will yield twenty-two (22) student stations, or two (2) seats beyond the twenty (20) student stations required to address the Residential Development’s impact. Pursuant to the governing ILA, the two (2) remaining seats will be made available through a Mitigation Bank to be established and administered by the District for future purchase by applicants for future residential developments affecting the same Concurrency Service Area (“CSA”) and also in need of providing mitigation at the elementary school level

Public School Concurrency Proportionate Share Mitigation Development Agreement

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

- as detailed above, the Applicant shall be required to provide a total Monetary Proportionate Share Mitigation Payment (“Mitigation Payment”) to the Board of \$519,992;
- the School Project is to be added to the District’s Facilities Work Program at the time of its next annual update following the execution of the Agreement and upon receipt of the Monetary Proportionate Share Mitigation Payment from the Applicant;
- 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 District shall establish and administer a Mitigation Bank, which, in this instance, will have two (2) Banked Seats available for purchase by future applicants failing to meet concurrency at the elementary school level within the same CSAs. There will be no reimbursable value to the Applicant for the Banked Seats;
- the Banked Seats may be purchased within a period of six (6) years from the date the School Board authorized the execution of this Agreement. Any remaining Banked Seats shall be deemed expired at that time;
- future residential developments may purchase Banked Seat(s) only if the Mitigation Bank has a sufficient number of available seats to provide for the entire school capacity deficiency. In the event that in the future, multiple Mitigation Banks are created for the same CSA, 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 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 ("Agreement") by and among 444 Brickell Partners, LLC, a Delaware limited liability company, authorized to transact business in the State of Florida, as Trustee of the 444 Brickell Land Trust, under the provisions of the Land Trust Agreement, dated November 27, 2013 (the "Applicant"), the School Board, and the City of Miami, in connection with a new 1400-unit residential development located at 444 Brickell Avenue, City of Miami, 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.

NS:imr