Office of the Superintendent of Schools   October 7, 2020
Board Meeting of October 21, 2020

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 NOBE CREEK, LLC (THE "APPLICANT"), THE SCHOOL BOARD, AND CITY OF MIAMI BEACH, IN CONNECTION WITH A NEW 70-UNIT RESIDENTIAL DEVELOPMENT**

COMMITTEE: **FACILITIES AND CONSTRUCTION**

**LINK TO STRATEGIC
BLUEPRINT:**   **EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES**

Background
On March 9, 2016, the School Board authorized a Public School Concurrency Proportionate Share Mitigation Development Agreement ("Agreement") by and among the School Board, the City of Miami Beach ("City") and 3425 Collins, LLC ("Developer"). Under the terms of the Agreement, the Developer contributed the monetary value of twenty-five (25) high school student stations, at Miami Beach Senior High, which was twenty-two (22) seats above the number needed to meet its school concurrency obligation. As such, Mitigation Bank #2016-004 was established, with a quantity of twenty-two (22) Banked Seats, of which, nine (9) Banked Seats are still available for purchase by other developers.

Additional Information
Nobe Creek, LLC (the "Applicant") is in the process of obtaining a development order from the City of Miami Beach (City) for a new 70-unit residential development ("Residential Development"), on approximately 0.6 acres, located at 666 71 Street, 6994 Carly Avenue, and 6973 Indian Creek Drive, Miami Beach, Florida, 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 elementary and middle school levels but is deficient by two (2) high school seats.

As such, representatives of the Applicant, the City and the District (collectively "the

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Parties"), reached consensus on the Mitigation option allowing the Applicant to purchase the two (2) available Banked Seats from Mitigation Bank #2016-004, at the established price of $33,495 per seat, all subject to Board and City approval. This will require the Parties to enter into a Public School Concurrency Proportionate Share Mitigation Development Agreement ("Mitigation Agreement").

<u>Public School Concurrency Proportionate Share Mitigation Development Agreement</u>
The Mitigation Agreement between the School Board, City and Applicant shall contain, substantially, the following terms and conditions:

- the Applicant shall purchase the three (3) available Banked Seats from Mitigation Bank #2016-004, at the established price of $33,495 per seat, for a total amount of $66,990. As required under governing state law and the ILA, the District shall provide the Applicant an Educational Facilities Impact Fee Credit estimated at a not to exceed amount of Sixteen Thousand One Hundred Sixty Dollars ($16,160);

- upon the full execution of the Agreement by all appropriate 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 Mitigation Agreement shall expire upon the Parties' completion of their performance of all obligations under the Mitigation Agreement 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 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 the Parties;

- the Applicant 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 the Mitigation Agreement; and

- for purposes of the Mitigation 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 and Releases, and placing the Applicant in default, as may be applicable.

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 "A".

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

1) execute A Public School Concurrency Proportionate Share Mitigation Development Agreement by and among Nobe Creek, LLC, a Florida Limited Liability Company (The "Applicant"), The School Board, and City of Miami Beach, in connection with a new 70-Unit residential development located at 666 71 Street, 6994 Carly Avenue, and 6973 Indian Creek Drive, Miami Beach, Florida, 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.

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