

Office of School Facilities
Raul F. Perez, Chief Facilities Design & Construction Officer

SUBJECT: AUTHORIZATION FOR THE SUPERINTENDENT TO EXECUTE A SETTLEMENT AGREEMENT, CONDITIONAL MUTUAL RELEASE & REPLACEMENT OF COVENANT RUNNING WITH THE LAND, IN CONNECTION WITH LAND USE APPLICATION NO. 3 OF THE APRIL 2005 CYCLE, FOR APPROXIMATELY 14 ACRES IN UNINCORPORATED MIAMI-DADE COUNTY LOCATED WEST OF BISCAYNE BOULEVARD BETWEEN NE 112 STREET AND NE 115 STREET

COMMITTEE: FACILITIES AND CONSTRUCTION

LINK TO STRATEGIC PLAN: EFFECTIVE & SUSTAINABLE OPERATIONAL PRACTICES

Background

At its December 14, 2005 meeting, the School Board authorized the Superintendent to accept a voluntary proffer from Dynamic Biscayne Shores Associates, Ltd. (“Applicant”) in connection with Land Use Application No. 3 of the April 2005 Cycle, providing for a voluntary donation to the School Board of a minimum of 37,000 net square feet of land within the proposed mixed-use development located west of Biscayne Boulevard between NE 112 Street and NE 115 Street, as a contribution in-lieu-of educational facilities impact fees. The Applicant, which represented an assemblage of several parcels of land, entered into a CDMP Covenant with Miami-Dade County (“CDMP Covenant”) that stipulated the voluntary proffer to the School Board. The CDMP Covenant binds the proposed assemblage, and runs with the land, binding the proposed assemblage owners, their heirs, successors and assigns, for a minimum of thirty (30) years.

Other Information

The proposed development was never implemented, and the Applicant has since abandoned the project. The owners of the 14-acre assemblage (collectively, the “Land Owners”), approached the District with a request to negotiate a release of the CDMP Covenant and replace it with three (3) separate Replacement Covenants (“Replacement Covenants”) allowing each of the Land Owners to develop its land independently. As an inducement to the District to initiate discussions in this regard, the Land Owners have proffered a one-time contribution to the School Board of Two Hundred Fifty Thousand Dollars (\$250,000), and to include a provision in each Replacement Covenant

stipulating that if residential development is proposed, the Land Owner shall comply with Miami-Dade County Public Schools Concurrency requirements and mitigate the impact of its development in accordance therewith, and comply with all applicable Educational Facilities Impact Fee requirements. All of the foregoing terms, in addition to the release of the CDMP Covenant and replacement with the three (3) proposed Replacement Covenants, is intended to settle all claims between the School Board and Land Owners which were promised pursuant to the CDMP Covenant, and will be in lieu of the dedication to the School Board of 37,000 net square feet of land. The School Board's approval of the proposed Settlement Agreement, Conditional Mutual Release & Replacement of Covenant Running With The Land ("Settlement Agreement"), is not an automatic denial of acceptance of the 37,000 net square feet of land, but an agreement to release the obligations of the CDMP Covenant and agree to the obligations in the Replacement Covenants.

In anticipation of moving this process forward, the Land Owners have filed a CDMP Amendment application with Miami-Dade County to release the CDMP Covenant and replace it with three (3) separate Replacement Covenants (the "CDMP Amendment Application").

Proposed Board action

The Chief Operating Officer, Office of District Operations, recommends entering into the proposed Settlement Agreement for this purpose. Accordingly, it is recommended that the School Board authorize the Superintendent to execute a Settlement Agreement with the Land Owners, under, substantially, the following terms and conditions:

- The effective date of the Settlement Agreement shall be the date on which the School Board executes the Settlement Agreement;
- Each Replacement Covenant shall include provisions running with the land requiring that, if residential development is proposed, the Land Owner shall comply with the Miami-Dade County Public Schools Concurrency requirements, and mitigate the impact of its development in accordance therewith at the time of development, and shall also comply with all applicable Educational Impact Fee requirements;
- Any modification, amendment or release of the Replacement Covenant impacting School Concurrency or Educational Impact Fee requirements shall require approval by the School Board;
- In the event the School Board fails to approve and execute the Settlement Agreement, the Land Owners' offer of settlement will be null and void and of no further force and effect, and the parties shall return to the status quo existing before preparation of the Settlement Agreement. In the same fashion, if either (a) the Board of County Commissioners ("BCC") denies the CDMP Amendment

Application or (b) the BCC approves the CDMP Amendment Application but a challenge is filed and ultimately the CDMP Amendment Application is held to be invalid, then in either event the Land Owners may seek reconsideration within six (6) months from the date of the applicable decision, and shall have one (1) calendar year to obtain approval of a refiled CDMP Amendment Application. If reconsideration of the CDMP Amendment Application is not sought or if approval of a refiled CDMP Amendment Application is not obtained within eighteen (18) months from the date of denial or appellate determination, the terms of the Settlement Agreement shall automatically terminate by operation of law;

- Once the Settlement Agreement is fully executed by all parties, the School District shall be authorized to communicate to Miami-Dade County (“County”) that it has reached an agreement with the applicants relating to the release and replacement of the CDMP Covenant, and that it has no objection to the CDMP Amendment Application with respect to the Educational Facilities provision set forth in each of the three (3) Replacement Covenants;
- Within five (5) business days after execution of the Settlement Agreement, the Land Owners shall deposit Two Hundred Fifty Thousand Dollars (\$250,000), into an escrow account (“Settlement Sum”) which will be disbursed to the School Board ten (10) days after the CDMP Amendment Application is adopted by the BCC or upon the successful resolution of any appeal within the 18-month appellate process;
- In consideration of the payment of the Settlement Sum and execution and recordation by the Land Owners of the three (3) Replacement Covenants, the School Board will forever release and discharge the Land Owners from any and all claims or causes of action related to or in any way arising out of the CDMP Covenant or the CDMP Amendment Application. However, the School Board does not release the Land Owners from any and all claims related to or in any way arising out of the duties and obligations that they may have under the respective Replacement Covenants;
- The Land Owners will forever release and discharge the School Board from any and all claims or causes of action related to or in any way arising out of the CDMP Covenant or the CDMP Amendment Application; and
- For purposes of the Settlement Agreement, the Superintendent or his/her designee shall be the party designated by the School Board to execute amendments to the Settlement Agreement within the authority granted him by the School Board in the Settlement Agreement, and to grant or deny any approvals required under the Settlement Agreement, including placing the Land Owners in

default, and renewing, extending, canceling or terminating the Settlement Agreement as provided therein.

The Settlement 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 Settlement Agreement has been submitted to the School Board members under separate cover.

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

- 1) a Settlement Agreement, Conditional Mutual Release & Replacement of Covenant Running With The Land ("Settlement Agreement"), in connection with Land Use Application No. 3 of the April 2005 Cycle, for approximately 14 acres in unincorporated Miami-Dade County located west of Biscayne Boulevard between NE 112 Street and NE 115 Street, substantially in conformance with the terms set forth in the agenda item; and
- 2) any other documents or agreements that may be required to effectuate implementation of the Settlement Agreement.

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