

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

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

- 1) **FINALIZE NEGOTIATIONS AND EXECUTE A CONSTRUCTION ACCESS AGREEMENT (“AGREEMENT”) WITH INFINITY ESPANOLA HOTEL VENTURE LLC (“INFINITY”), FOR TEMPORARY USE BY INFINITY OF A PORTION OF THE FIENBERG FISHER K-8 CENTER CAMPUS (“SCHOOL”), LOCATED AT 1420 WASHINGTON AVENUE, MIAMI BEACH, FLORIDA, 33139, TO FACILITATE INFINITY’S CONSTRUCTION OF IMPROVEMENTS WITHIN ADJACENT PROPERTY OWNED BY INFINITY, AND FOR INFINITY TO CONSTRUCT IMPROVEMENTS WITHIN THE SCHOOL AT NO COST TO THE DISTRICT; AND**

- 2) **EXECUTE ANY AMENDMENTS TO THE AGREEMENT WITHIN THE AUTHORITY GRANTED TO THE SUPERINTENDENT BY THE BOARD IN THE AGREEMENT, INCLUDING EXTENDING THE AGREEMENT FOR A PERIOD NOT TO EXCEED SIX MONTHS, AND TO GRANT OR DENY ALL APPROVALS REQUIRED UNDER THE AGREEMENT, INCLUDING MODIFYING THE EXHIBITS UNDER THE AGREEMENT, CANCELLING OR TERMINATING THE AGREEMENT, AND PLACING INFINITY IN DEFAULT**

COMMITTEE: FACILITIES AND CONSTRUCTION

LINK TO STRATEGIC BLUEPRINT: EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES

Background

Infinity Espanola Hotel Venture LLC (“Infinity”) leases the Clay Hotel, located at 1434 Washington Avenue, Miami Beach, Florida 33139 (“Clay Hotel”), from Clay Hotel Partnership Ltd. (“Owner of Clay Hotel”), pursuant to a 99-year lease agreement. The

Clay hotel is located adjacent to Fienberg Fisher K-8 Center, located at 1420 Washington Avenue, Miami Beach, Florida 33139 ("School") (see Exhibit "A"). Infinity will be making certain utility improvements ("Utility Improvements") to the Clay Hotel, and has approached the District requesting temporary access to a portion of the School site to facilitate Infinity's construction of these improvements. In return, Infinity has agreed to construct, entirely on the School site and at no cost to the Board, a concrete block structure wall ("CBS Wall") along the northern portion of the School site abutting the Clay Hotel property. The CBS Wall will replace an existing chain link fence between the School and the Clay Hotel. Title to the CBS Wall will be conveyed to the Board, without compensation due to Infinity or any other party, at such time as the Board accepts installation of same. In addition, in the event the CBS Wall is destroyed or damaged by a catastrophic or other event, Infinity has agreed to repair or replace the CBS Wall, at its sole cost and expense. The Owner of Clay Hotel has authorized Infinity to enter into agreements necessary to facilitate construction activities on the Clay Hotel site.

Construction Access Agreement

In order to facilitate the above noted improvements, Infinity has requested that the Board enter into a Construction Access Agreement ("Agreement") with Infinity, to allow Infinity and its contractor temporary access to a portion of the School site under, substantially, the following terms and conditions:

- Infinity shall have temporary access to a designated portion of the School site (see Exhibit "A") solely for the purpose of constructing the Utility Improvements within the Clay Hotel site, removing the existing Florida Power & Light utility poles, constructing the CBS Wall along the northern property line of the School site abutting the Clay Hotel, and performing other construction related activities directly related thereto;
- the District's Building Department shall review and approve any construction documents, issue required construction permits and provide final acceptance of any work constructed within the School site;
- the Agreement shall commence upon issuance of permits by the District's Building Department, and shall terminate six months thereafter, or upon Infinity's completion of the work, whichever occurs first. The Superintendent may, at his/her sole option and upon receipt of a written request from Infinity, extend the term of the Agreement by up to six additional months;
- in consideration of the Board granting Infinity temporary access to a portion of the School, Infinity will, at no cost to the Board, remove the existing chain link fencing separating the School from the Clay Hotel and construct a CBS Wall, entirely on Board-owned land, along the northern portion of the School site abutting the Clay Hotel;

- title to the CBS Wall will be conveyed to the Board, without compensation due to Infinity or any other party, at such time as the Board accepts installation of same;
- all work shall be at Infinity's sole cost and expense;
- Infinity and its contractors shall take all necessary safety precautions, secure all construction areas by appropriate construction fencing and coordinate with the School Principal and assigned District Project Manager to assure the safety of students, staff, visitors, invitees and the public at all times during construction. In addition, Infinity shall coordinate with the School principal on an ongoing basis to assure that the work does not interfere with or disrupt the operations of the School;
- Infinity and its contractors shall indemnify and hold the Board harmless from all liability which may arise as a result of the proposed work;
- Infinity and its contractors shall provide the Board with evidence of insurance as required by the District;
- Infinity and its contractors shall comply with all applicable laws, rules, regulations, ordinances and codes of all governmental authorities, including, without limitation, the Florida Building Code, the Americans with Disabilities Act and the Jessica Lunsford Act;
- if at any time subsequent to the expiration of the Agreement, the CBS Wall is (1) damaged due to Infinity's actions or failure to act, or (2) destroyed or damaged by a catastrophic or other event, Infinity shall repair or replace the CBS Wall, at its sole cost and expense;
- in the event of default by Infinity, which default is not cured within the prescribed timeframe, the Board shall have the right to either: (1) cancel the Agreement, (2) seek specific performance, or (3) cure the default at Infinity's expense;
- in the event of any litigation between the parties under the Agreement, each party shall be responsible for its own attorney's fees and court costs through trials and appellate levels;
- for purposes of the Agreement, the Superintendent of Schools or his/her designee shall be the party designated by the Board to grant or deny any and all approvals required by the Agreement relating to construction of the work by Infinity, scheduling of the work, access to the School, establishing safety criteria or guidelines, and any other operational issues impacting the work or the School; and

- in addition to the above, the Superintendent shall be the party designated by the Board to execute any amendments to the Agreement within the authority granted to the Superintendent by the Board in the Agreement, including extending the term of the Agreement for up to six additional months, and to grant or deny any approvals required by the Agreement, including, amending any of the exhibits to the Agreement, placing Infinity in default, and canceling or terminating the Agreement.

The proposed Agreement will be reviewed and approved by the School Board Attorney's Office and the Office of Risk and Benefits Management for legal sufficiency and risk management issues, respectively, prior to execution.

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

- 1) finalize negotiations and execute a Construction Access Agreement ("Agreement") with Infinity Espanola Hotel Venture LLC ("Infinity"), for temporary use by Infinity of a portion of the Fienberg Fisher K-8 Center campus ("School"), located at 1420 Washington Avenue, Miami Beach, Florida 33139, to facilitate Infinity's construction of improvements within adjacent property owned by Infinity, and for Infinity to construct improvements within the School at no cost to the District, under, substantially, the terms and conditions noted above; and
- 2) execute any amendments to the Agreement within the authority granted to the Superintendent by the Board in the Agreement, including extending the Agreement for a period not to exceed six months, and to grant or deny all approvals required under the Agreement, including modifying the exhibits under the Agreement, cancelling or terminating the Agreement, and placing Infinity in default.

MCA:mca

Exhibit "A"

DREXEL AVE

ESPANOLA WAY

Clay Hotel


Fienberg Fisher
K-8 Center

PENNSYLVANIA AVE

14TH ST

WASHINGTON AVE

Legend

 Construction Area



Not to scale