

FILE

Return to:
Lorri Hall, Planner
Ruden, McClosky
200 East Broward Boulevard
Fort Lauderdale, Florida 33301

Prepared by:
Bonnie Miskel, Esq.
Ruden, McClosky
200 East Broward Boulevard
Fort Lauderdale, Florida 33301

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AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS

THIS AMENDED AND RESTATED Declaration of Restrictive Covenants ("Declaration") related to Broward County Public Schools student impacts is executed this 14 day of August, 2006 by SHOAL CREEK PROPERTIES- POMPANO LLC, a Florida limited liability company, its successors and assigns ("Shoal Creek") whose address is 200 South Park Road, Suite 455, Hollywood, Florida, 33021, shall be for the benefit of BROWARD COUNTY, a political subdivision of the State of Florida, with a post office address at 115 South Andrews Avenue Fort Lauderdale FL 33301, ("County") and THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, with a post office address of 600 Southeast 3rd Avenue, Fort Lauderdale, FL 33301 ("School Board").

WHEREAS, Shoal Creek is the fee simple owner of approximately 5.56 gross acres of land generally located west of Federal Highway and south of N.W. 48 Street, in the City of Pompano Beach, Florida, in Broward County, more particularly described in the attached Exhibit "A" ("Property"); and

WHEREAS, Shoal Creek has submitted Land Use Plan Amendment Application PC 05-23, ("Application") for the Property, to change the Property's designation from Commercial and Low (5) Residential to Irregular (21) Residential permitting additional residential units consisting of 115 townhouse units which are anticipated to generate 21 students consisting of 11 elementary, 4 middle and 6 high school students; and

WHEREAS, the existing Low (5) Residential would permit the development of 12 single family units and, if developed, was determined to generate 5 students consisting of 3 elementary, 1 middle and 1 high school student, and with credit provided for the 1 middle school student that would be generated, mitigation is only due for the 3 additional middle school students attributable to the overcrowded middle school; and

WHEREAS, Shoal Creek entered into that Declaration dated August 7, 2006, recorded in Official Records Book 42549, page 705 of the Public Records of Broward County, Florida on August 7, 2006 ("Original Declaration"); and

WHEREAS, pursuant to the Original Declaration, in connection with the Application, Shoal Creek has voluntarily agreed to mitigate student impacts for the 3 additional students consistent with the Public School Facility Impact Statement Report dated October 17, 2005, a copy of which is attached hereto as Exhibit "B", associated with the proposed development on the Property; and

WHEREAS, the School Board has agreed with the voluntary student mitigation plan outlined herein, and has requested the execution and recordation of this Declaration;

WHEREAS, Shoal Creek desires to amend and restate the Original Declaration, in its entirety, in accordance with the terms and provisions of this Declaration.

NOW, THEREFORE, the undersigned agree and covenant to the following:

1. The above recitals are true and correct and are incorporated herein.
2. Prior to environmental review approval of construction plans as set forth within Chapter 27, Broward County Code of Ordinances, by the Development Management Division for the first building permit for construction or erection of the first residential unit, Shoal Creek shall make one lump sum payment to the School Board for the Broward County School Impact Fee due for the 115 townhouse units, plus the Florida established Student Station Cost Factors amount for the three additional middle school students attributable to the overcrowded middle school. The total payment amount due shall be determined at the time of payment and shall be based upon the then current Broward County School Impact Fee schedule and the applicable cost per Student Station Cost Factor Schedule; however, the total mitigation payment shall be no less than \$365,290.00. Shoal Creek shall obtain proof of such payment from the School Board and provide same to the Broward County Development Management Division. The School Board has issued a letter dated October 17, 2005, a copy of which is attached hereto as Exhibit "C", stating its concurrence with the payment of the fees referenced herein as mitigation for the students generated by the Application.

Said payment shall mitigate towards the cost of providing student stations for the total number of students anticipated from the Property and created as a result of the approval of Broward County Land Use Plan Amendment PC 05-23. This voluntary commitment constitutes the totality of all obligations to pay school impact fees and mitigation fees subject to the provisions set forth within this Paragraph 2 above.

3. Once the mitigation payment has been made, no additional school impact fees will be required of Shoal Creek upon payment of the amount referenced in Paragraph 2 above for the development referenced above. In the event that the total number of residential units change from what is represented in the Application and there is an increase in the number of residential units or unit type(s) and/or bedroom mix, Shoal Creek agrees to provide written notification to the Executive Director, Facility Management, Planning and Site Acquisition of the School Board or designee, with a copy to the Broward County Development Management Division. The Executive Director, or designee, shall determine the additional students anticipated from any increase in residential units beyond the 115 townhouse units contemplated herein and notify Shoal Creek and the County of any further increase in the number of anticipated students. Shoal Creek shall then purpose additional mitigation for the newly anticipated additional students, subject to the terms and provisions contained in the adopted School Board Growth Management Policy. Any such additional mitigation amount shall be paid, in full, to the School Board no later than the date in which Shoal Creek obtains the first building permit for such residential units and shall be a condition of the School Board's delivery of any partial release of this Declaration of Restrictive Covenants for the subject unit. In the event that changes in the overall mix of residential units and/or mix

of bedrooms result in a net reduction in the amount of units, no refund of any portion of the school impact and/or mitigation fees shall be due and owing to Shoal Creek by the County or the School Board.

4. Upon Shoal Creek obtaining a final certificate of occupancy for any given residential unit, a copy of same shall be promptly delivered to Executive Director, Facility Management, Planning and Site Acquisition of the School Board and the Broward County Development Management Division, or their designees. Upon receipt of any such final certificate of occupancy and confirmation that the amount of bedrooms in the subject residential unit has not been increased, the School Board and County shall promptly deliver to Shoal Creek, in recordable form, a release of this Declaration of Restrictive Covenants.

5. If any court of competent jurisdiction shall declare any section, paragraph or part thereof invalid or unenforceable, then such judgment or decree shall have no effect on the enforcement or validity of any other section, paragraph or part hereof, and the same shall remain in full force and effect.

6. The County and the School Board are the beneficiaries of these restrictive covenants and as such, both or either may enforce these restrictive covenants by action at law or in equity against any person or persons, entity or entities, violating or attempting to violate the terms of these Restrictions. Any failure of either the County or the School Board to enforce these restrictive covenants shall not be deemed a waiver of the right to do so thereafter.

7. This Declaration shall be recorded in the Public Records of Broward County, Florida, and the provisions hereof shall constitute a covenant running with the land and shall remain in full force and effect and binding upon the undersigned, its heirs, legal representatives, estate successors, grantees and assigns until released as provided for herein.

8. This Declaration constitutes the entire agreement, with regard to the subject matter contained herein, and may only be amended, modified or released with the consent of the parties. . The Original Declaration is hereby amended and restated in its entirety pursuant to the terms of this Declaration.

9. The undersigned hereto expressly covenants and represents that he/she has the authority to enter into this Agreement and so bind all general partners and affiliated partnerships.

[Reminder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed this 14 day of August, 2006.

Signed, sealed and delivered in the presence of:

WITNESSES:

Beth Rohling
Print Name: Beth Rohling
Lorri Hall
Print Name: Lorri Hall

SHOAL CREEK PROPERTIES -
POMPANO, LLC,
a Florida limited liability company

By: Urban Ventures At Pompano, LLC
its Managing Member

James W. Harris
Print Name: James W. Harris
Title: Manager
Address: 200 South Park Road, Suite 456
Hollywood, FL 33021

STATE OF FLORIDA)
) SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 14th day of August, 2006, by James W. Harris, as Manager of Urban Ventures at Pompano, LLC, Managing Member of SHOAL CREEK PROPERTIES-POMPANO, LLC, a Florida Limited Liability Company, freely and voluntarily on behalf of said limited liability company. He/She is personally known to me or has produced _____ as identification or is known to me personally.

NOTARY PUBLIC-STATE OF FLORIDA
Marcelina Morales
Commission # DD560114
Expires: JULY 21, 2010
MIRIAM ATLANTIC BONDING CO., INC.

Marcelina Morales

FILE

EXHIBIT "A"
PROPERTY LEGAL DESCRIPTION
(TOGETHER WITH A PROPERTY SKETCH)

1 1 1

PARCEL 1

ALL THAT PART OF THE NORTH ONE-HALF (N 1/2) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF SECTION 18, TOWNSHIP 48 SOUTH, RANGE 43 EAST, LYING WEST OF THE WEST RIGHT-OF-WAY LINE OF STATE ROAD NO. 8, (FORMERLY STATE ROAD NO. 4, I.A. HIGHWAY NO. 5), COMMONLY KNOWN AS FEDERAL HIGHWAY, LYING SOUTH OF A LINE PARALLEL TO AND 328.87 FEET SOUTH OF THE NORTH LINE OF SAID NORTH ONE-HALF (N 1/2) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF SAID SECTION 18.

TOGETHER WITH: PARCEL 2

THAT PORTION THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF SECTION 18, TOWNSHIP 48 SOUTH, RANGE 43 EAST, LYING WEST OF THE WEST RIGHT-OF-WAY LINE OF STATE ROAD NO. 4, ALSO KNOWN AS FEDERAL HIGHWAY, AS NOW LOCATED AND ESTABLISHED, WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF SAID SECTION 18, THENCE RUNNING NORTH 89°07'30" EAST, A DISTANCE OF 448.8 FEET TO THE WEST BOUNDARY LINE OF SAID STATE ROAD NO. 4, ALSO KNOWN AS FEDERAL HIGHWAY, AS NOW LOCATED AND ESTABLISHED; THENCE SOUTH 87°47'30" WEST, ALONG THE WEST BOUNDARY OF SAID HIGHWAY, A DISTANCE OF 180 FEET TO A POINT; THENCE SOUTH 89°07'30" WEST, A DISTANCE OF 428.17 FEET TO A POINT ON THE WEST LINE OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF SAID SECTION 18; THENCE NORTH 80°28'30" WEST, ALONG THE WEST LINE OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF SAID SECTION 18, A DISTANCE OF 148.8 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH: PARCEL 3

A PORTION OF THE SOUTH 89.08 FEET OF THE NORTH 328.87 FEET OF THAT PART OF THE NORTH ONE-HALF (N 1/2) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF THE NORTHWEST ONE-QUARTER (NW 1/4) LYING WEST OF THE RIGHT-OF-WAY OF FEDERAL HIGHWAY IN SECTION 18, TOWNSHIP 48 SOUTH, RANGE 43 EAST, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY BOUNDARY OF THE ABOVE DESCRIBED PROPERTY 115.88 FEET WEST OF THE SOUTHEAST CORNER THEREOF; THENCE NORTH ALONG THE WESTERLY BOUNDARY THEREOF 79.08 FEET TO A POINT; THENCE EAST PARALLEL WITH THE SOUTHERLY BOUNDARY THEREOF 80 FEET TO A POINT; THENCE SOUTH PARALLEL WITH THE WESTERLY BOUNDARY THEREOF 79.08 FEET TO THE SOUTHERLY BOUNDARY; THENCE WEST ALONG THE SAID SOUTHERLY BOUNDARY 80 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE IN BROWARD COUNTY, FLORIDA, CONTAINING 5.87 ACRES MORE OR LESS.

NOTES:

- 1. THE BEARINGS, DISTANCES, AND AREA SHOWN HEREON AND ON THE ATTACHED SKETCH ARE SUBJECT TO CHANGE BASED ON THE FIELD LOCATION OF EXISTING PROPERTY MONUMENTATION.

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2. THE BEARINGS SHOWN HEREON ARE BASED ON AN ASSUMED MERIDIAN. THE WEST RIGHT-OF-WAY OF FEDERAL HIGHWAY BEARS NORTH 07°18'30" EAST ACCORDING TO FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP SECTION 8802S-2828, SHEET 8 OF 28, DATED DECEMBER 21, 1977, REVISED NOVEMBER 24, 1980.

3. THE ABOVE DESCRIPTION IS BASED ON THE FOLLOWING DEEDS:

- WARRANTY DEED OFFICIAL RECORDS BOOK 34627, PAGE 875 (LOT 6)
- QUIT-CLAIM DEED OFFICIAL RECORDS BOOK 33186, PAGE 886 (LOT 6)
- QUIT-CLAIM DEED OFFICIAL RECORDS BOOK 38790, PAGE 1888 (LOT 7)
- WARRANTY DEED OFFICIAL RECORDS BOOK 30882, PAGE 1828 (LOT 6 & PARCELS "1" & "2")
- WARRANTY DEED OFFICIAL RECORDS BOOK 31802, PAGE 1819 (PARCEL "3")

THE ABOVE DEEDS ARE ALL RECORDED IN THE OFFICIAL RECORDS OF BROWARD COUNTY, FLORIDA.

CERTIFICATE:

WE HEREBY CERTIFY THAT THIS DESCRIPTION AND SKETCH CONFORMS TO CHAPTER 81017-6 (FLORIDA ADMINISTRATIVE CODE), MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN THE STATE OF FLORIDA AS ADOPTED BY THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, BOARD OF PROFESSIONAL LAND SURVEYORS IN SEPTEMBER, 1981, AS AMENDED, PURSUANT TO CHAPTER 472.027 OF THE FLORIDA STATUTES, AND IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF.

GRAVEN THOMPSON & ASSOCIATES, INC.
CERTIFICATE OF AUTHORIZATION LB271

DOUGLAS M. DAVIS
PROFESSIONAL SURVEYOR AND MAPPER NO. 4343
STATE OF FLORIDA

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EXHIBIT "B"

PUBLIC SCHOOL FACILITY IMPACT STATEMENT REPORT

The Nation's Largest Fully



Accredited School System

Facility Management, Planning & Site Acquisition Department
600 S.E. 3rd Avenue, 4th Floor
Fort Lauderdale, Florida 33301

Land Use Plan Amendment Public School Facility Impact Statement

Property Description	SRC 18	TWP 41	RMG 43
Type:	County		
Amendment #:	PC 05-23		
Owner / Developer:	TCR SF Properties		
Jurisdiction:	City of Pompano Beach		
Current Land Use:	Commercial and Low (5) Residential (Approx. 5.5 Acres)		
Proposed Land Use:	Irregular (21) Residential (Approx. 5.5 Acres)		

Potential Student Impact*		Additional Impact:		Commutative Grade-by-Grade From LUPA Approved Maps:			
Existing Permitted Units:	12	Elementary Students:	11	Since 1/03/05 to 6/18/05			
Proposed Units:	115	Middle Students:	4	Elem	Middle	High	Total
Net Change:	+103	High Students:	6				
		Total:	21				

* Note: Calculations are based upon the maximum student generation rates in the Land Development Code.

Currently Assigned Schools**	School Capacity	2004/05 Enrollment	Over/Under Enrolled	Projected Enrollment**			
				06/07	07/08	08/09	09/10 10/11
Norcrest Elementary	1,032	760	272	733	759	741	733
Deerfield Beach Middle	1,442	1,534	92	1,473	1,575	1,632	1,619
Deerfield Beach High	2,434	2,473	39	2,429	2,290	2,156	2,241

COMMENTS: Staff is advising the Broward County Planning Council, the Broward County Commission, the applicant(s)/owner(s) and/or future developer(s) of the subject site that based on the School Director's 2005/06 Twelfth Day Membership Count Report, Norcrest Elementary School is under-enrolled (< 90% of permanent capacity) in the 2005/06 school year, Deerfield Beach Middle is neutral (> =90% 110% of permanent capacity), but is projected to be overcrowded in the 2006/07 school year, and Deerfield Beach High School is neutral. Indications are that the current land use designation for the site permits 12 single family units, which generates 5 (3 elementary, 1 middle and 1 high school) students. This application was reviewed as a potential 115-unit multi-unit development, and is anticipated to generate a total of 21 (or 16 additional) students into Broward County Public Schools, which will exacerbate overcrowded conditions at the pertinent impacted schools. This application is subject to the provisions of School Board Policy 1161 as it relates to proposed incidental applications with increased density impacting over-enrolled schools. Therefore, the owner/developer should be directed to provide mitigation for the applicable anticipated students. The applicant/owner is advised that changes to accommodate students generated from development in the County. Also, information on charter schools located within a two-mile radius of the site this school year is provided below.

* Note: 2005/06 School Year Data - School attendance areas are subject to change each year.
** Adjacent School projections - Cohort Survival Model, School Boundaries Department.

Elementary Schools: None	
Middle Schools:	Deerfield Beach Middle School : 6 modular classrooms addition, bulk funding slated for FY 2006/07.
High Schools:	None
Comments:	Englewood (Grades K-5): Enrollment - 172, Current Capacity - 400, Over/Under - (228), 2006/07 Projected Enrollment - 240; Englewood (6-8): Enrollment - 65, Current Capacity - 420, Over/Under - (354), 2006/07 Projected Enrollment - 100

Date: October 12, 2005
By: Facility Management, Planning & Site Acquisition Department

Revised 6/23/01

EXHIBIT C



THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
600 Southeast Third Avenue, 14th FL, FT. LAUDERDALE, FLORIDA 33301 • TEL 754-321-2161 • FAX 754-321-2179

Chris O. Akagbosu, Director
Growth Management Division
Facilities Management, Planning & Site Acquisition
chris.akagbosu@browardschools.com

SCHOOL BOARD
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STEPHANIE ARMA KRAFT, ESQ.
Vice Chair
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CAROLE L. ANDREWS
ROBIN BARTLEMAN
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MAUREEN S. DENNEN
BEVERLY A. GALLAGHER
DR. ROBERT D. PARKS
MARTY RUBINSTEIN

October 17, 2005

Dr. Frank Till
Superintendent of Schools

Charles F. Fink, President
Charles F. Fink, Inc.
5342 NW 92nd Lane
Coral Springs, Florida 33067

Re: Voluntary Commitment for Land Use Plan Amendment PC 05-23

Dear Mr. Fink:

This correspondence is in response to your letter dated October 12, 2005 regarding the voluntary commitment to address the impact of the 3 additional middle school students anticipated from the proposed development of 115 townhouse units in the City of Pompano Beach. The development as proposed is anticipated to generate a total of 21 (11 elementary, 4 middle and 6 high school) or 16 additional students into Broward County Public Schools. Schools impacted in the 2005/06 school year are the currently under-enrolled Norcrest Elementary (< 90% of permanent capacity), the neutral (>=90% to 110% of permanent capacity) Deerfield Beach High School, and the 2006/07 projected overcrowded Deerfield Beach Middle School.

The voluntary commitment indicates that the applicant/owner of the above referenced amendment will pay the Florida established Student Station Cost Factor or cost per student station amount as mitigation for the 3 additional middle school students, plus the applicable school impact fee due for the 115 townhouse units. Utilizing the November 2005 Student Station Cost Factor Schedule, the cost per student station amount due translates to approximately \$47,850, and based on the current school impact fee schedule (effective October 1, 2005), the current school impact fee due is estimated at \$246,790.

The proposed voluntary commitment meets the mitigation provisions of School Board Policy 1161. However, be advised that the Student Station Cost Factor amount is adjusted each month based on the consumer price index, and the school impact fee schedule is adjusted annually on October 1. Therefore, the total mitigation amount due will be based on the Student Station Cost Factor amount in effect, and the applicable townhouse unit school impact fee contained in the effective school impact fee schedule when payment is made.

Voluntary Commitment for Land Use Plan Amendment PC 05-23
October 17, 2005
Page 2

As a condition for approval of the land use plan amendment by the Broward County Planning Council and the Broward County Commission, staff requests that your client must execute a Declaration of Restrictive Covenant prior to the proposed land use designation becoming effective. At the minimum, the Restrictive Covenant must address the following:

1. The voluntary commitment cited above.
2. That the cited voluntary commitment must run with the property until the obligation is deemed fulfilled.
3. That payment of the total mitigation amount due will be made directly to the School Board of Broward County, Florida prior to the issuance of Broward County Department of Planning and Environmental Protection (DPEP) construction approval for the first building permit of the total units.

Correspondence containing this payment should be addressed to my attention at the above stated address. Further, the Declaration of Restrictive Covenant must be submitted to District staff for review and deemed acceptable by the School Board Attorney's Office before execution and recordation. Also, an executed copy of the Restrictive Covenant must be provided to the Broward County School District. Be advised that a copy of the School District's standard Declaration of Restrictive Covenant document can be obtained via www.browardschools.com, by accessing the web page of the Facility Management, Planning and Site Acquisition Department, and by clicking on the Growth Management Division.

Thank you for your cooperation and please email at the above indicated email address or call me at 754.321.2162 if you have additional questions regarding this matter.

Sincerely,



Chris O. Akagbese, Director
Growth Management Division
Facility Management, Planning & Site Acquisition

COA:coa

cc: Thomas J. Coates, Executive Director, Facility Management, Planning and Site Acquisition
Omar Shim, Director, Capital Systems, Reporting and Control
Sharon Cruz, Deputy County Attorney
Henry Sniezek, Executive Director, Broward County Planning Council
David Danovitz, Director, Development Management Division