

EXECUTIVE SUMMARY

First Amendment to the Agreement of Sale and Purchase with Lennar Homes, LLC

The Elementary D-1 School Site (No. 352.1) is an approximate 11.84-acre property that is located at the southeast corner of Broward Boulevard and Hiatus Road in the City of Plantation. The property was purchased by The School Board of Broward County, Florida (SBBC) on March 13, 1997, at a cost of \$2,001,723.00 (which consists of a purchase price of \$1,993,500.00 and closing cost of \$8,223.00) for the purposes of constructing a future elementary school. However, on April 20, 2010, and consistent with Section 1013.28, Florida Statutes (FS), SBBC approved the surplus of the property to indicate that it was no longer needed for educational purposes.

After several unsuccessful attempts to sale the property, on April 9, 2019, SBBC entered into an Agreement of Sale and Purchase (Agreement) with Lennar Homes, LLC for the sale of the 11.84-acre parcel. During the Inspection Period, as permitted in the Agreement, Lennar Homes, LLC met with the City of Plantation (City) officials and staff(s) regarding its proposed residential development. Per feedback from Lennar Homes, LLC legal counsel, the City officials and staff(s) did not express any real serious objections to the proposed residential development and felt confident that the proposed residential development would ultimately be approved by the City.

Also as part of its due diligence, Lennar Homes, LLC meet with the adjacent Hawks Landing Property Owners Association, Inc. and Hawks Landing Community (Community) regarding its proposed development. Per feedback from Lennar Homes, LLC legal counsel, the Community felt the proposed development was out of character with the surrounding communities, due to Lennar Homes, LLC proposed density of 9 – 10 dwelling units per acre, compared to the existing home density of 3 units per acre from the neighboring communities; which concerns were memorialized in a letter dated May 22, 2019 from the Hawks Landing Property Owners Association to the Mayor, City of Plantation.

Due to the looming challenges posed by the Community or any other third party, Lennar Homes, LLC is requesting a First Amendment to the Agreement of Sale and Purchase (First Amendment), to amend language in the Agreement, to state that in the case of a challenge or appeal by a third party, dates in the Agreement would toll automatically until such challenge or appeal is adjudicated and resolved.

It should be noted that in subsequent preliminary discussions with Lennar Homes, LLC regarding its request, staff expressed that if its request is forwarded to the SBBC for consideration, some form of time limit and extension fees should be tied to the time frame granted (i.e. One (1) Year); to which Lennar Homes, LLC rejected. One reason given was that there is no prediction on the length of time the litigation regarding such challenges may last. Thus it would be premature to impose a time frame at this time. Rather, Lennar Homes, LLC. countered that given the history of Broward County Public Schools several unsuccessful attempts to sell the Elementary D-1 School site, it would be prudent that both the SBBC and Lennar Homes, LLC work mutually to ensure a successful sale and closing on the site this time. Thereafter, staff suggested additional language be added to the First Amendment, to Indemnify SBBC against any future litigations and specifically state that all cost associated with potential litigation will be at the sole expense of Lennar Homes, LLC. Subsequently, Lennar Homes, LLC agreed to the additional language; hence this First Amendment for SBBC consideration.

As stated in the Agenda Request Form (ARF), SBBC voted to postpone the Board item to the September 17, 2019 Regular School Board Meeting and directed staff to work with Lennar Homes, LLC to achieve the SBBC's desire as stated at the Board meeting; hence this Board item.

It should be noted that the Agreement currently grants Lennar Homes, LLC 365 days to complete its Entitlement Approval Period, which language in the Entitlement Approval Period currently provides Lennar Homes LLC the right to three (3) ninety (90) day extensions and two (2) additional thirty (30) day extensions, which both are subject to extension fees. Thus, per the Agreement, Lennar Homes, LLC currently has a total of one (1) year and ninety (90) days to complete the Entitlement Approval process called for in the Agreement.

Also, it should be noted that if SBBC grants Lennar Homes, LLC the one (1) year and two (2) subsequent automatic one (1) year time frames stated in the First Amendment to address any challenges or appeals by a third party, inclusive of the one (1) year ninety (90) days that Lennar Homes, LLC is currently entitled to complete the Entitlement Approval process called for in the Agreement, Lennar Homes, LLC will now have a total of four (4) years and ninety (90) days.

Also, it should be noted that the Inspection Period for Lennar Homes, LLC is slated to expire on September 18, 2019, based on the SBBC vote at the September 4, 2019 School Board Operational Meeting (SBOM). Therefore, if this Board item is approved by SBBC, Lennar Homes, LLC will transition into the Entitlement Approval Period on September 19, 2019. As such, it is presumed Lennar Homes, LLC will proceed to file their application pertaining to the first phase of its proposed development with the City of Plantation. The unknown is when a challenge or appeal would be filed by a third party upon Lennar Homes, LLC receiving development approval from the City. Per the First Amendment, if and when a challenge or appeal is filed the one (1) year time frame granted to Lennar Homes, LLC will commence. Regardless of the above, as called for in the Agreement, if Lennar Homes, LLC proceeds to terminate the Agreement during the Entitlement Approval Period, monies will become due to the SBBC. For example, if Lennar Homes, LLC terminates the Agreement after the Inspection Completion Date and prior to the transmittal hearing before the City for Lennar Homes, LLC land use amendment, the Escrow Agent shall pay SBBC \$15,000 of Lennar Homes, LLC deposit. Also, the First Amendment provides for Lennar Homes, LLC to terminate the Agreement if it chooses not to Intervene upon an appeal or challenge by a third party. However, Lennar Homes, LLC election to withdraw from such challenge or appeal during the Tolling Period shall be deemed a termination of the Agreement. Furthermore, if Lennar Homes, LLC fails to provide a written progress report within the period called for in the First Amendment, and such report is not provided within an additional days delineated in the First Amendment, the Tolling Period shall automatically terminate as stated in the First Amendment.

It should be noted, Lennar Homes, LLC communicated that it is committed to seeing this transaction through to the end, and believes it has a very good chance at overcoming any challenges from a third party.