

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
OFFICE OF THE SUPERINTENDENT
ROBERT W. RUNCIE
SUPERINTENDENT OF SCHOOLS

September 13, 2019

TO: School Board Members

FROM: Leslie M. Brown *L. Brown*
Chief Portfolio Services Officer

VIA: Robert W. Runcie *RWR*
Superintendent of Schools

SUBJECT: REVISION TO LL-2, FIRST AMENDMENT TO THE AGREEMENT OF SALE AND PURCHASE WITH LENNAR HOMES, LLC FOR THE SEPTEMBER 17, 2019 REGULAR SCHOOL BOARD MEETING

Attached is a revision for LL-2, First Amendment to the Agreement of Sale and Purchase with Lennar Homes, LLC for the September 17, 2019 Regular School Board Meeting.

Specifically, the First Amendment has been replaced with a new First Amendment due to typographical errors and the addition of new signature pages.

RWR/LMB/COA: sr
Attachments

**FIRST AMENDMENT TO AGREEMENT
OF SALE AND PURCHASE**

This First Amendment ("**First Amendment**") to that certain Agreement of Sale and Purchase with an effective date of April 9, 2019 (the "**Agreement**"), entered into by and between THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, a body corporate and political subdivision of the State of Florida ("**Seller**"), and LENNAR HOMES, LLC, a Florida limited liability company ("**Purchaser**") (Seller and Purchaser hereinafter collectively referred to as the "**Parties**"), with the joinder and consent of JOSEPH M. BALOCCO, JR., P.A. ("**Escrow Agent**") shall read as follows:

WHEREAS, the Seller and Purchaser acknowledge and agree that the Agreement is in full force and effect except to the extent this First Amendment modifies specific provisions thereof; and

WHEREAS, pursuant to the Agreement Purchaser shall initiate or pursue governmental approvals ("**Approvals**") within certain deadlines; and

WHEREAS, there exists the possibility of a third party challenge or appeal to the Purchaser's Approvals which would subject Purchaser to additional costs and attorneys' fees in opposing said challenge or appeal; and

WHEREAS, considering the possibility of third party challenge or appeal, the parties mutually desire to implement a process by which all deadlines are temporarily tolled until the challenge or appeal can be resolved .

NOW THEREFORE, in exchange for the mutual covenants and promises as set forth herein, the parties agree as follows:

1. The recitals contained hereinabove are true and correct and are incorporated herein by reference.
2. The capitalized terms used in this First Amendment shall have the same meaning as given in the Agreement unless otherwise changed or altered herein.
3. TOLLING PERIOD. In the event any Approval initiated or pursued by Purchaser under the Agreement is challenged or appealed by a third party, all dates under the Agreement shall be extended automatically and tolled until the earlier of: (a) the date that such challenge or appeal is withdrawn or fully and finally adjudicated and resolved, or (b) one (1) year from the filing of said challenge or appeal (the "**Tolling Period**").
4. TOLLING PERIOD EXTENSIONS. So long as Purchaser is using good faith efforts to oppose such challenge or appeal and is not using dilatory tactics to delay such proceedings, and provided that Purchaser provides Seller with written progress reports every ninety (90) days during a challenge or appeal, then the Tolling Period shall be extended for one (1) year commencing as of the expiration of the first one (1) year Tolling Period and shall be further extended for one (1) year to commence as of the expiration of the second one (1) year Tolling Period. If Purchaser fails to provide a written progress report within the required ninety (90) day period, and such report is not provided within an additional ten (10) days of receipt of

written notice from Seller, the Tolling Period shall automatically terminate on the tenth day after receipt of written notice.

5. RIGHT TO INTERVENE. Purchaser and Seller acknowledge that Purchaser may intervene in the challenge or appeal. Purchaser shall deliver to Seller a written notice of its election to either (a) intervene, or (b) to not intervene, within fifteen (15) days of the filing of said challenge or appeal. Purchaser's election to not intervene, shall be deemed a termination of the Agreement effective as of the date of receipt of the written notice by Seller. Upon such termination, the Deposit shall be promptly released by Escrow Agent and allocated between Purchaser and Seller as more fully set forth in Section 18 of the Agreement. In the event that the Purchaser elects to intervene, the Purchaser shall use commercially reasonable efforts to oppose such challenge or appeal and shall comply with all other obligations set forth in Article 4 hereinabove. Purchaser may elect to withdraw from opposing such challenge or appeal by delivering Seller with a written notice of such election. Purchaser's election to withdraw shall be deemed a termination of the Agreement and upon such termination, the Deposit shall be promptly released by Escrow Agent and allocated between Purchaser and Seller as more fully set forth in Section 18 of the Agreement.

6. INDEMNIFICATION HOLD HARMLESS AND DEFEND. If Seller is joined in such third party challenge or appeal, Purchaser agrees to indemnify, hold harmless and defend Seller, its agents, servants and employees from any and all actual out of pocket costs, and expenses including but not limited to reasonable attorney's fees, reasonable investigative and discovery costs, administrative fees, court costs, appellant's attorneys' fees and costs assessed against Seller, if any, and all other sums which Seller, its agents, servants and employees may pay or become obligated to pay on account of Seller being joined in such third party challenge or appeal (collectively, the "**Indemnification Obligations**").

- a. Purchaser shall have the right to select legal counsel to defend the Seller (which legal counsel may also represent Purchaser), subject to Seller's approval of said legal counsel, which approval shall not be unreasonably withheld.
- b. Notwithstanding the foregoing, in the event that Purchaser elects or is deemed to have elected to terminate the Agreement as provided for in Paragraph 5 hereof, and if Seller elects to proceed with such defense, Purchaser shall only be liable for its Indemnification Obligations incurred prior to the effective date of Purchaser's termination of the Agreement.
- c. If Seller elects to proceed with such defense notwithstanding Purchaser's termination of the Agreement, Seller shall be liable for all Indemnification Obligations from and after the date of such termination. The entirety of this paragraph shall survive termination of the Agreement.

7. This First Amendment may be executed in one or more separate counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall, together, constitute and be one and the same instrument; and, facsimile or electronically submitted signatures of the authorized representatives of the parties hereto shall be considered original signatures for all intents and purposes.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the day and year as stated below.

FOR SELLER

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

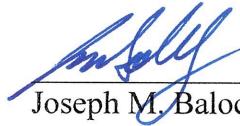
By _____
Heather P. Brinkworth, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:



Office of the General Counsel



Joseph M. Balocco, Jr., Esq.

[Remainder of page intentionally left blank]

FOR PURCHASER

(Corporate Seal)

FOR LENNAR HOMES, LLC

ATTEST:

By [Signature], [title]

_____, Secretary

-or-

[Signature]
Witness

[Signature]
Witness

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 11 day of September, 2019 by Greg McPherson on behalf of the Lennar Homes, LLC. Mr. McPherson is personally known to me or produced _____ as identification and did/did not first take an oath.

My commission expires: 04-30-2023

(SEAL)



[Signature]
Signature – Notary Public

Ileana Rios
Printed Name of Notary

GG 329218
Notary's Commission No.