



ADDED ITEM

AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ITEM No.:
LL-3.

MEETING DATE	2020-02-19 10:05 - Regular School Board Meeting
AGENDA ITEM	ITEMS
CATEGORY	LL. OFFICE OF PORTFOLIO SERVICES
DEPARTMENT	Facility Planning and Real Estate

Special Order Request <input type="radio"/> Yes <input checked="" type="radio"/> No
Time
Open Agenda <input checked="" type="radio"/> Yes <input type="radio"/> No

TITLE:

Third Amendment to Agreement of Sale and Purchase with D.R. Horton, Inc.

REQUESTED ACTION:

Approve the Third Amendment to Agreement of Sale and Purchase (Third Amendment) between The School Board of Broward County, Florida (SBBC) and D.R. Horton, Inc. for the South Area Portable Annex 24.475 Acreage (Parcel 235) Site.

SUMMARY EXPLANATION AND BACKGROUND:

This Third Amendment was scheduled for SBBC consideration at the January 14, 2020 School Board Operational Meeting (SBOM). See Supporting Docs for continuation of Summary Explanation and Background. This Third Amendment has been reviewed and approved as to form and legal content by the Office of the General Counsel and will be executed by D.R. Horton, Inc., after SBBC consideration.

SCHOOL BOARD GOALS:

Goal 1: High Quality Instruction Goal 2: Safe & Supportive Environment Goal 3: Effective Communication

FINANCIAL IMPACT:

The financial impact of this Third Amendment is a reduction in the initial sales price of \$21,025,000.00 to \$20,331,730.00 (minus closing cost), resulting in a reduction amount of \$693,270.00. Currently, closing on the South Area Portable Annex site is anticipated to occur prior to the end of the 2019/20 fiscal year.

EXHIBITS: (List)

(1) Continuation Summary Explanation and Background (2) Executive Summary (3) Third Amendment to Agreement of Sale and Purchase (4) Executed Second Amendment (5) Executed First Amendment (6) Executed Agreement of Sale and Purchase (7) Timeline for South Area Portable Annex (8) South Area Portable Annex Survey (9) REVISED - Appraisal Review Report

BOARD ACTION:
APPROVED
(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:

Name: Chris O. Akagbosu	Phone: 754-321-2162
Name:	Phone:

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
Senior Leader & Title

Leslie M. Brown - Chief Portfolio Services Officer

Signature
Leslie M. Brown
2/13/2020, 5:20:48 PM

Approved In Open Board Meeting On:

FEB 19 2020

By: *Donna Kan*
School Board Chair

Continuation Summary Explanation and Background

Upon discussions by the School Board members on the item, the SBBC voted to defer the Third Amendment to the February 19, 2020 Regular School Board Meeting for further discussion and consideration.

EXECUTIVE SUMMARY

Third Amendment to Agreement of Sale and Purchase with D.R. Horton, Inc.

As stated in the Agenda Request Form (ARF), The School Board of Broward County, Florida (SBBC) at its January 14, 2020 School Board Operational Meeting (SBOM), voted to defer the Third Amendment to Agreement of Sale and Purchase (Third Amendment) to the February 19, 2020 Regular School Board Meeting (RSBM) for further discussions and consideration. To address School Board Members questions as to the reason for the widespread variation in the three (3) appraisals conducted for the 0.975-acre parcel, and consistent with related Board Members discussions/expectations, the District retained the services of an appraiser to review the three (3) appraisal reports; and the findings of the appraisal review is attached hereto as Exhibit No. 8. Also, additional information which addresses the School Board members comments/Board directive have been incorporated into the Executive Summary for this Board item. Furthermore, in addition to the July 30, 2019 and December 9, 2019 progress report memorandum to School Board Members as related to the relocation of Community School South (CSS) to Flanagan High School, and ESOL to Pines Lakes Elementary School, and which memorandum detailed the status of the planned relocation to the cited destinations, the revised timeline for these relocations are attached to this Board item, as Exhibit No. 6.

For additional background purposes, Section 1013.28, Florida Statute, allows a school board to dispose of any land or real property that is by resolution of the SBBC, determined to be unnecessary for educational purposes as recommended in an educational plant survey.

In December 2018, the Agreement of Sale and Purchase (Agreement) between SBBC and D.R. Horton, Inc., for the sale of the South Area Portable Annex 24.475 Acreage Site, for a purchase price of \$21,025,000, was approved and became effective on December 20, 2018. As a result of a title defect identified during the Title Review Period, the First Amendment to the Agreement (First Amendment) was presented to SBBC for consideration and approved at the March 5, 2019 SBOM, which granted D.R. Horton, Inc. an additional thirty (30) days under the Inspection Period to further research outstanding title issues and amend the legal description as necessary. Thereafter, on June 25, 2019, the SBBC approved as amended, the Second Amendment to the Agreement (Second Amendment) with D.R. Horton, Inc. to further address the title issues discovered during the Title Review Period and provide clarifying language to pertinent sections of the Agreement.

Thereafter, and upon further due diligence by Broward County Public Schools (BCPS) staff and D.R. Horton, Inc., it was revealed that the 0.975-acre parcel of land discovered during the Title Review Period, was in fact dedicated to the SBBC via an Easement Deed granted by K. Hovnanian at Pembroke Shore, Inc., who was the developer for the adjacent community. The 0.975-acre parcel of land had been previously identified in the property's boundary survey and Broward County Property Appraiser's records as being owned by the SBBC. However, upon this discovery, BCPS staff worked with DR. Horton, Inc. and K. Hovnanian at Pembroke Shore, Inc. for a potential solution regarding the 0.975-acre parcel. After several failed attempts to come to a resolution, on September 9, 2019 D.R. Horton, Inc. informed BCPS staff via an email correspondence, of its desire to move forward with the purchase of the South Area Portable Annex Site; however, requested that the 0.975-acre parcel be removed from the sale due to pending title issues, and that the purchase price be reduced accordingly.

Upon receipt of D.R. Horton, Inc. email correspondence, requesting the removal of the 0.975-acre parcel from the sale transaction and the reduction of the sales price, in accordance with Section 1013.14(1)(b), Florida Statutes (FS), and School Board Policy 7002-B, three (3) appraisals were obtained to determine the value of the 0.975-acre parcel, at which time the appraisers were informed by staff of SBBC's rights and interest in the 0.975-acre parcel and requested that each appraiser derive an opinion of value with consideration of BCPS disposing its rights to the 0.975-acre parcel.

At the January 14, 2020, SBOM, discussions regarding the appraisals provided additional School Board members input and Board directive. To this end, NPC was convened and presented the three (3) appraisals as well as the review of the appraisals conducted by Autrey Appraisals to the NPC for review. Subsequently, the NPC met on February 13, 2020, and upon review and deliberation of the three (3) appraisal reports and the Autrey Appraisals review report, voted to establish \$693,270.00 as the value for the 0.975-acre parcel; hence the presentation of the \$693,270.00 value to the SBBC for further consideration as the reduction amount from the original price of \$21,025,000 offered by D.R. Horton, Inc to purchase the reduced 23.50 acre South Area Portable Annex site. It should be noted, that the NPC decided to establish the value based on the minimum asking price set by the NPC in October 2017 of \$17,400,000.00, and not the appraisal reports presented at the February 13, 2020 NPC meeting. The value established for the 0.975-acre parcel is \$693,270; the NPC derived this value based on the cost per square foot calculations for the 0.975-acre parcel. The NPC thought it to be prudent to set such price based on the 2017 minimum asking price to align with the 2017 market value at the time the \$17,400,000 price was established.

If approved by SBBC, this Third Amendment would reduce the purchase price from **\$21,025,000.00** to **\$20,331,730.00**, a decrease of **\$693,270.00**. The Third Amendment would also reduce the number of acres being sold to D.R. Horton, Inc. from **24.475** to **23.50** due to the removal of the 0.975-acre parcel from the sale transaction. It should also be noted, if approved, SBBC will retain all its easement rights to the 0.975-acre parcel, until such time additional action is taken by SBBC to vacate the granted easement in the near future, most likely prior to closing on the land sale transaction.

Currently in the Second Amendment, D.R. Horton, Inc. is entitled to three (3) ninety (90) day extensions during the Entitlement Approval Period, which extension shall be accompanied by an extension fee in the amount of fifty thousand dollars (\$50,000.00) per extension. However, as a component of this Third Amendment, D.R. Horton, Inc., is also requesting the right to extend the Entitlement Approval Period for an additional three (3) ninety (90) days, and which extension shall be accompanied by an extension fee in the amount of ninety thousand dollars (\$90,000.00) per extension. If this request is approved, D.R. Horton, Inc. would then be entitled to six (6) ninety (90) day extensions during the Entitlement Approval Period via this Third Amendment, and such extensions shall be subject to the extension fees as stated herein.

In addition to the updated timeline, attached to this Board Item as Exhibit No. 6 regarding the ongoing efforts to relocate Community School South (CSS) to Flanagan High School, and ESOL to Pines Lakes Elementary School; the SBBC directed staff at its January 14, 2020, SBOM to provide a summary of the relocation efforts. This summary is as follows:

PROJECT UPDATE AS OF February 2020:

Relocation of ESOL and CSS from the South Area Portable Annex site is complete. Currently, work is ongoing to finish details of all operational requirements, with the installation of some furnishings and data communications, scheduled for completion by the end of February 2020. At Pines Lakes Elementary School, construction of the permanent parking is slated for completion at the end of June 2020. Also, students occupied the new building at Flanagan High School in January of 2020, and the portable complex permit to install a permanent restroom on the School campus was received in January 2020. Thus, efforts are ongoing to complete all work at both sites by no later than the end of June 2020.

It should be noted that as of date, the South Area Portable Annex site is empty of activity, with data and telecommunication devices removed from the site.

STATE: FLORIDA
COUNTY: BROWARD

DIVISION: SOUTHEAST FLORIDA
PROJECT: BROWARD SCHOOL BOARD SITE

THIRD AMENDMENT TO AGREEMENT OF SALE AND PURCHASE

This Third Amendment to Agreement of Sale and Purchase (the "Amendment") is made and entered into by and between **D.R. Horton, Inc.**, a Delaware corporation ("Purchaser"), and **The School Board of Broward County, Florida**, a body corporate and political subdivision of the State of Florida ("Seller").

BACKGROUND

Seller and Purchaser entered into that certain Agreement of Sale and Purchase effective as of December 20, 2018, as amended by that certain First Amendment to Agreement of Sale and Purchase effective March 5, 2019 and as further amended by that certain Second Amendment to Agreement of Sale and Purchase effective June 25, 2019 (collectively, the "Agreement") and Seller and Purchaser have agreed to amend the terms and provisions thereof as more particularly set forth herein.

AGREEMENT

1. The above recitals are true and correct and are incorporated herein by reference. Capitalized terms which are not defined in this Amendment shall have the same meaning as defined in the Agreement.

2. Section 3.1 of the Agreement is hereby amended such that the Purchase Price shall be defined as Twenty Million Three Hundred Thirty-One Thousand Seven Hundred Thirty Dollars (\$20,331,730.00).

3. The fourth (4th) sentence of Section 18 of the Agreement is hereby deleted, and replaced with the following sentences:

"If Purchaser has proceeded with commercially reasonable efforts and in good faith towards obtaining the Entitlements, Purchaser shall have the right to extend the Entitlement Approval Period for six (6), ninety (90) day extension periods (the "Extension Periods") by delivery of written notice to Seller of its election to so extend on or before the expiration of the Entitlement Approval Period, or the then-applicable Extension Period, as applicable. Purchaser's written notice to extend shall be accompanied by an extension fee in the amount of Fifty Thousand and 00/100 Dollars (\$50,000.00) per extension for the first three (3) extensions, and Ninety Thousand and 00/100 Dollars (\$90,000.00) per extension for the remaining three (3) extensions thereafter, which extension fees shall be promptly released to Seller upon payment, shall be non-refundable except in the event of an uncured Seller default, and shall not be credited towards the Purchase Price."

4. Buyer and Seller hereby agree to delete Parcel 4 from the legal description of the Property. Exhibit "A" to the Agreement is hereby deleted and replaced with Exhibit "A" attached hereto and incorporated herein.

5. IN ACCORDANCE WITH SECTION 42 OF THE AGREEMENT, THIS THIRD AMENDMENT SHALL NOT BE A VALID, BINDING AND ENFORCEABLE OBLIGATION OF PURCHASER UNLESS AND UNTIL SUCH DOCUMENT IS RATIFIED IN WRITING BY ONE OF THE FOLLOWING AUTHORIZED OFFICERS OF PURCHASER: DONALD R. HORTON, MICHAEL J. MURRAY, BILL W. WHEAT, DAVID V. AULD OR PAUL ROMANOWSKI.

6. This Third Amendment is subject to the formal approval by The School Board of Broward County, Florida (the "Board") in a meeting to be held on or before January 14, 2020 and is non-binding on the Seller until such time as it shall be reviewed and approved by the Board.

7. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all such counterparts together shall constitute one in the same instrument. Signature and acknowledgement pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document. In addition, facsimile or electronic counterparts of this Third Amendment shall be deemed for all purposes as an original.

8. The ratification of this Third Amendment by any of the Authorized Officers on behalf of Purchaser, may be accomplished by electronic signature using DocuSign or other similar technology.

9. In the event of conflict between the provisions of the Agreement, the First Amendment, the Second Amendment and the provisions contained herein, the provisions of the following documents shall take precedence in this order:

- a) this Third Amendment to Agreement; then
- b) the Second Amendment to Agreement; then
- c) the First Amendment to Agreement; then
- d) the Agreement.

10. Except as amended and modified herein, the remaining terms and provisions of the Agreement, the First Amendment and the Second Amendment shall remain in full force and effect as originally set forth therein.

11. Each person signing this Third Amendment to Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Third Amendment to Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Third Amendment to Agreement.

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IN WITNESS WHEREOF, the parties have executed this Third Amendment as of the last date set forth below.

(Corporate Seal)




SELLER:

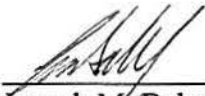
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, a body corporate and political subdivision of the State of Florida

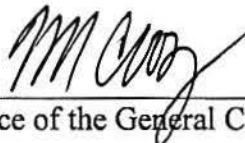
By: 
Donna P. Korn, Chair

ATTEST:


Robert W. Runcie
Superintendent of Schools

Approved as to form and legal content:


Joseph M. Balocco, Jr., President
JOSEPH M. BALOCCO, JR., P.A.


Office of the General Counsel

PURCHASER:
D.R. HORTON, INC.,
a Delaware Corporation

By: _____
Rafael J. Roca, Vice President

Date: _____

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by Rafael J. Roca _____ of D.R. Horton, Inc., a Delaware corporation, on behalf of the corporation. He is personally known to me or produced _____ as identification and did/did not first take an oath.
Name of Person
Type of Identification

My Commission Expires:

Signature – Notary Public

(SEAL)

Printed Name of Notary

Notary's Commission No.

Pursuant to Section 42 of the Agreement and Section 5 above, the undersigned hereby ratifies the Agreement on behalf of D.R. Horton, Inc.

Print Name: _____
Title: _____
Date: _____

STATE OF TEXAS

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by _____ of D.R. Horton, Inc.,
Name of Person
a Delaware corporation, on behalf of the corporation. He/She is personally known to me or produced _____ as identification and did/did not first take an oath.
Type of Identification

My Commission Expires:

Signature – Notary Public

(SEAL)

Printed Name of Notary

EXHIBIT "A"

PARCEL 1:

Parcel D of PEMBROKE SHORES, according to the Plat thereof, recorded in Plat Book 157, page 22, of the Public Records of Broward County, Florida.

LESS AND EXCEPT THEREFROM: A portion of Parcel D of PEMBROKE SHORES, according to the Plat thereof, recorded in Plat Book 157, page 22, of the Public Records of Broward County, Florida, more particularly described as follows:

Begin at the Southwest corner of said parcel D; thence along West boundary of said Parcel "D" the following three (3) courses: (1) North 01°47'25" West 40.01 feet; (2) South 88°12'35" West 12.00 feet; (3) North 01°47'25" West 138.14 feet; thence North 89°39'15" East 643.91 feet; thence South 01°47'17" East 177.85 feet to the South line of said Parcel "D"; thence along said South line South 89°39'15" West 631.89 feet to the Point of Beginning. Said lands situate, lying, and being in the City of Pembroke Pines, Broward County, Florida. (Acreage 18.293)

PARCEL 2:

A portion of Parcel A-1 of PEMBROKE SHORES, according to the Plat thereof, recorded in Plat Book 157, page 22, of the Public Records of Broward County, Florida, more particularly described as follows:

Begin at the Northwest corner of said Parcel A-1; thence along the North line of said Parcel A-1 on a Plat bearing of North 89° 39'58" East 11.30 feet; thence parallel with and 11.30 feet East of the West line of said Parcel A-1, also being the East line of Parcel D, South 00° 20'02" East 839.58 feet to a line parallel with and 50.00 feet North of the boundary of said Parcel A-1; thence along said parallel line, South 89° 39'26" West 11.30 feet to the East line of said Parcel D; thence along said East line, North 00° 20'02" West 839.58 feet to the Point of Beginning. (Acreage 0.218)

PARCEL 3:

Tract 45, less the West 1/2 thereof, of FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. ONE of Section 17, Township 51 South, Range 40 East, according to the Plat thereof, recorded in Plat Book 2, page 17, of the Public Records of Miami-Dade County, Florida, said lands lying, being and situate in Broward County, Florida. (Acreage 4.989)