



Board Meeting Date: January 25, 2006

Agenda Item # RE4

**SCHOOL DISTRICT OF PALM BEACH COUNTY
BOARD AGENDA ITEM SUMMARY
REAL ESTATE SERVICES**

APPROVED

I recommend the School Board approve the Third Amendment to the Agreement for Purchase, Sale and Exchange between GL Homes of Florida II Corporation and the School Board involving the existing Hagen Road Elementary School site; and authorize the Chairman and Superintendent to sign all necessary documents.

- The School Board approved the Agreement for Purchase, Sale and Exchange (the "Agreement") at its August 31, 2005 special meeting, and approved a First Amendment to the Agreement at its October 12, 2005 special meeting and a Second Amendment to the Agreement at its November 9, 2005 special meeting.
- The Agreement involves the conveyance to the School Board of an approximately 13-acre site for a new elementary school, plus cash considerations, in exchange for the conveyance to GL Homes of Florida II Corporation of 40 acres of land that consists of the approximately 14-acre existing Hagen Road Elementary School site and approximately 26 acres of vacant land adjacent to and west of the existing school site (see location map, Exhibit "A").
- The Agreement, as amended, provides each party with the right to conduct inspections of their respective exchange properties and to terminate the Agreement if for any reason the terminating party is not satisfied. The School Board has until January 31, 2006 to so terminate.
- A comprehensive environmental audit of the 13-acre proposed new elementary school site conducted by the School Board staff and its agents revealed the existence of a kerosene tank and associated lines and several used oil tanks.
- Pursuant to the Third Amendment to the Agreement, GL Homes agrees to remove the kerosene tank and all associated lines and the used oil tanks and to use its best efforts to obtain a letter of "No Further Action" from the appropriate regulatory agencies with respect to these tanks and lines prior to October 31, 2006. The May 1, 2006 closing on the School Board's acquisition of the 13-acre site under the Agreement will not be affected.
- Pursuant to the Third Amendment, in the event GL Homes does not obtain the No Further Action letter by October 31, 2006, the School Board shall have the right to terminate the Agreement and either convey the 13-acre site back to GL Homes or retain title to the 13-acre site. If the School Board terminates the Agreement and elects to convey the 13-acre site back to GL Homes, GL Homes will pay the School Board \$2,800,000, which is the cash equivalent of the property GL Homes will be credited with conveying to the School Board under the Agreement at the May 1, 2006 closing. If the School Board does not terminate the Agreement, then GL Homes must obtain the No Further Action letter by October 31, 2007 and any

obligations of the School Board under the Agreement to commence construction of the new school or open the new school will be automatically extended for one year. In the event GL Homes does not then obtain the No Further Action letter by October 31, 2007, the Agreement shall terminate and the School Board shall have the right to either convey the 13-acre site back to GL Homes for the \$2,800,000 amount or retain title to the 13-acre site.

- While not part of the Third Amendment to the Agreement, for the School Board's information, the environmental audit of the 13-acre proposed new elementary school site also revealed the presence of certain conditions that will require the School Board to perform clean up work that is typical to numerous other sites acquired by the School Board and is always handled as part of construction. The specific work on the 13-acre site will be abandonment of existing wells and septic systems, removal of solid waste including a mobile home, and clean up of minor petroleum spills in isolated areas of stained soils.
- The result of the School Board not approving the Third Amendment is termination of the Agreement.

BOARD GOAL(S): 6 **KEY RESULT(S):** 10

LEGAL SIGN-OFF Yes **BRL** N/A

CONTACT: Joseph M. Moore (moorej@Mail.palmbeach.k12.fl.us)

Joseph M. Sanches

FINANCIAL IMPACT	N/A
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CONSENT AGENDA ITEM

THIRD AMENDMENT TO AGREEMENT FOR PURCHASE, SALE AND EXCHANGE

THIS THIRD AMENDMENT TO AGREEMENT FOR PURCHASE, SALE AND EXCHANGE (the "Amendment") is made by and between G.L. HOMES OF FLORIDA II CORPORATION, a Florida corporation (the "Purchaser"), and the SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, a corporate body politic (the "Seller").

WITNESSETH:

WHEREAS, Purchaser and Seller entered into that certain August 31, 2005 Agreement for Purchase, Sale and Exchange (the "Original Agreement"); and,

WHEREAS, Purchaser and Seller entered into that certain October 12, 2005 First Amendment to Agreement for Purchase, Sale and Exchange (the "First Amendment"); and,

WHEREAS, Purchaser and Seller entered into that certain November 9, 2005 Second Amendment to Agreement for Purchase, Sale and Exchange (the "Second Amendment"; the Original Agreement, as amended by the First Amendment and the Second Amendment, is referred to herein as the "Agreement"); and,

WHEREAS, Purchaser and Seller desire to amend and modify certain provisions of the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by this reference. Any capitalized term used, but not otherwise defined, in this Amendment shall have the meaning given to such term in the Agreement.

2. In the event of any conflict between the terms of the Agreement and the terms of this Amendment, the terms of this Amendment shall control. Except as otherwise modified by the terms of this Amendment, the Parties hereby reaffirm each and every provision of the Agreement.

3. A. Seller has delivered to Purchaser that certain December 5, 2005 Limited Phase II Environmental Site Assessment prepared by Handex (the "Audit"). Section 2.3.4 of the Audit identifies several aboveground storage tanks and certain associated pipes located within the Purchaser Property (all such aboveground storage tanks and associated pipes specifically identified in Section 2.3.4 of the audit are collectively referred to herein as the "Tanks and Pipes"). Purchaser shall: (a) timely make such applications to the appropriate regulatory agencies for the approvals necessary to remove the Tanks and Pipes from the Purchaser Property; (b) remove the Tanks and Pipes from the Purchaser Property in accordance with applicable statutes, rules, regulations, ordinances and codes promptly upon receiving the necessary approvals for such removal from the appropriate regulatory agencies; and (c) use its good faith efforts to obtain a letter of "No Further Action" from the appropriate regulatory agencies with respect to the removal of the Tanks and Pipes from the Purchaser Property on or before October 31, 2006 (the "No Further Action Letter").

B. Purchaser and its Agents shall have the right, from and after the First Closing, to enter and go upon the Purchaser Property from time to time to perform all actions necessary to remove the Tanks and Pipes from the Purchaser Property in accordance with applicable statutes, rules, regulations, ordinances and codes, and to obtain the No Further Action Letter. Purchaser shall notify Seller and its CFM of the date on which Purchaser or any of its Agents intends to enter and go upon the Purchaser Property to commence activities for the removal of the Tanks and Pipes and obtainment of the No Further Action

Letter, and from and after such date, Purchaser and its Agents shall have the right to enter and go upon the Purchaser Property from time to time for such purposes. Purchaser shall require any contractor it retains to remove the Tanks and Pipes from the Purchaser Property to obtain and maintain in full force and effect a comprehensive general public liability insurance policy in an amount not less than \$1,000,000 Dollars per occurrence as to damage to property and/or personal injury or death which insurance shall name Seller as an additional insured.

C. Purchaser shall indemnify, defend and hold Seller harmless from and against any and all claims, causes of action, damages, injuries (to property or person including death), liabilities, losses, costs and expenses incurred by Seller in connection with Purchaser's removal of the Tanks and Pipes from the Purchaser Property. Any obligation of Purchaser to indemnify, defend and hold Seller harmless under this paragraph shall only be effective and survive for a period of six (6) months after the date on which all of the Tanks and Pipes are removed from the Purchaser Property, or until the No Further Action Letter is obtained, whichever is the first to occur.

4. A. If Purchaser does not obtain the No Further Action Letter on or before October 31, 2006, then Seller shall, on or before December 15, 2006, deliver written notice to Purchaser of Seller's election to either: (a) extend the date by which Seller is to obtain the No Further Action Letter to October 31, 2007; or (b) terminate the Agreement and either retain ownership of the Purchaser Property, or re-convey the Purchaser Property back to Purchaser.

B. If Seller elects to extend the date by which Purchaser is to obtain the No Further Action Letter to October 31, 2007, then all of the dates set forth in paragraphs 9(d)(ii) and 9(d)(iii) of the Agreement shall be automatically extended by one (1) year. If, however, Purchaser does not obtain the No Further Action Letter on or before October 31, 2007, then Seller shall, on or before December 15, 2007, deliver written notice to Purchaser of Seller's election to either: (a) extend the date by which Seller is to obtain the No Further Action Letter to October 31, 2008; or (b) terminate the Agreement and either retain ownership of the Purchaser Property, or re-convey the Purchaser Property back to Purchaser.

C. If Seller elects to extend the date by which Purchaser is to obtain the No Further Action Letter to October 31, 2008, then all of the dates set forth in paragraphs 9(d)(ii) and 9(d)(iii) of the Agreement shall be automatically extended by another one (1) year. If, however, Purchaser does not obtain the No Further Action Letter on or before October 31, 2008, then the Agreement shall terminate and Seller shall, on or before December 15, 2008, deliver written notice to Purchaser of Seller's election to either retain ownership of the Purchaser Property, or re-convey the Purchaser Property back to Purchaser.

D. If Seller elects to re-convey the Purchaser Property back to Purchaser (whether under paragraph 4.A., paragraph 4.B. or paragraph 4.C. above), then: (a) such re-conveyance shall take place on February 5, 2007 (if Seller elected to re-convey the Purchaser Property back to Purchaser under paragraph 4.A. above), or February 5, 2008 (if Seller elected to re-convey the Purchaser Property back to Purchaser under paragraph 4.B. above), or February 5, 2009 (if Seller elected to re-convey the Purchaser Property back to Purchaser under paragraph 4.C. above) as applicable; (b) Purchaser shall pay Seller an amount equal to the Per Acre Price multiplied by the actual acreage of the Purchaser Property plus one (1) acre at such re-conveyance; (c) Purchaser shall pay all costs and expenses to re-convey the Purchaser Property from Seller to Purchaser (including, without limitation, documentary stamp tax, title insurance, and recording costs); (d) Seller shall have no further right to acquire the Purchaser Property from Purchaser; and (e) Purchaser shall have no right to purchase and acquire the Second Acquisition Property from Seller.

E. Purchaser shall have the absolute right and obligation to obtain a Modification in the event Seller terminates this Agreement under paragraph 4.A., paragraph 4.B. or paragraph 4.C. above in order to, among other things, remove from and/or include within the Development Order such portions of the Properties necessary for the Development Order to accurately reflect and continue the development and construction of the Community. Seller covenants and agrees to cooperate with Purchaser in Purchaser's effort to obtain such a Modification by executing and delivering (within ten (10)

days after request) all Approval Submittals requested by Purchaser, and in that regard, Seller hereby authorizes and directs the CFM (or his designee) to sign and deliver to Purchaser (within ten (10) days after Purchaser's request) all such Approval Submittals in connection with such a Modification. Seller also covenants and agrees not to withdraw, hinder, delay or object to any submission made by Purchaser to any governmental authority in connection with a Modification sought by Purchaser under this paragraph unless requested to so by Purchaser in writing.

F. If Seller fails to timely deliver any notice to be given to Purchaser under paragraph 4.A., paragraph 4.B. or paragraph 4.C. above, then it shall be conclusively deemed that Seller elected to terminate the Agreement and retain ownership of the Purchaser Property. It is hereby acknowledged and agreed by the Parties that although Seller has the right to terminate (or may have been deemed to have terminated) the Agreement under this paragraph 4, no such termination (whether elected or deemed to have been elected) shall operate to relieve Seller from any of its obligations to: (a) re-convey the Purchaser Property back to Purchaser if Seller has elected to do so; or (b) cooperate with Purchaser in Purchaser's effort to obtain such a Modification.

G. Upon any termination of the Agreement (and whether or not Seller elects to either retain ownership of the Purchaser Property or re-convey the Purchaser Property back to Purchaser), Purchaser shall be relieved from any (and shall have no further) duty, responsibility or obligation to remove the Tanks and Pipes from the Purchaser Property or to obtain the No Further Action Letter.

5. All of the provisions of this Amendment shall survive the First Closing.

[signatures follow on next page]

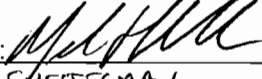
EXECUTED BY EACH PARTY as of the date set beneath each such Party's respective signature.

PURCHASER:

G.L. HOMES OF FLORIDA II CORPORATION,
a Florida corporation

BY: 
Larry Portney

ITS: Vice President
TITLE

ATTEST BY: 
MICHAEL SHEITELMAN


ITS: Associate General Counsel
TITLE

Date executed by Purchaser: _____

SELLER:

THE SCHOOL BOARD OF PALM BEACH
COUNTY, FLORIDA

BY: 
Chairman

BY: 
Art Johnson Ph.D., Superintendent

Board Approval Date: 1/25/06

REVIEWED AND APPROVED AS TO LEGAL
FORM

By: 
School Board Attorney

Date: 1/25/06