



WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

MEMORANDUM

TO: Honorable Mayor and Town Council of the Town of Miami Lakes

FROM: Matthew Mandel, Esq., Matthew Ramenda, Esq., and Haydee Sera, Esq.

DATE: November 15, 2017

RE: First Public Hearing to Consider a First Amendment to Development Agreement among F71-1, LLC, F69-1, LLC, Lennar Homes, LLC, and the Town of Miami Lakes as a result of the settlement of *F71-1, LLC and F69-1, LLC v. Town of Miami Lakes* (Case No.: 2016-015279-CA-01) (the “Breach of Contract Lawsuit”) and the following lawsuits (the “Public Records Lawsuits”):
F71-1, LLC v. Ceasar Mestre (Case No.: 2017-006866-CA-01);
F71-1, LLC v. Manny Cid (Case No.: 2017-006887-CA-01);
F71-1, LLC v. Tim Daubert (Case No.: 2017-006885-CA-01);
F71-1, LLC v. Tony Lama (Case No.: 2017-006891-CA-01);
F71-1, LLC v. Frank Mingo (Case No.: 2017-006892-CA-01); and
F71-1, LLC v. Nelson Rodriguez (Case No.: 2017-006900-CA-01)

Recommendation:

It is recommended that the Town of Miami Lakes (the “Town”) Council move to adopt a Resolution approving a First Amendment to Development Agreement among F71-1, LLC, F69-1, LLC, Lennar Homes, LLC, and the Town.

Background:

On March 28, 2011, the Town Council adopted Resolution No. 11-883, which approved a Chapter 163, Florida Statutes, Development Agreement (the “Development Agreement”) concerning the future development of certain Property more particularly defined therein as “Parcel A,” “Parcel B,” and “Parcel C,” which Property is generally located at the northeast and northwest corners of NW 154th Street and NW 87th Avenue.

Pursuant to Sections 9 and 10 of the Development Agreement, the first developer (“First Developer”) of any of the three parcels identified in the Development Agreement is required to complete the following roadway infrastructure improvements (“Roadway Improvements”):

1. construction of an additional southbound left-turn lane at NW 82nd Avenue and

- NW 154th Street;
2. construction of an exclusive westbound right-turn lane at NW 82nd Avenue and NW 154th Street;
3. construction of an exclusive eastbound right-turn lane at NW 82nd Avenue and NW 154th Street;
4. construction of an additional eastbound through lane on NW 154th Street from NW 79th Court to NW 77th Court;
5. construction of an additional southbound left-turn lane at NW 154th Street and NW 79th Avenue; and,
6. construction of an exclusive northbound right-turn lane at NW 138th Street and NW 87th Avenue.
7. completion of construction of NW 154th Street to 60 feet west of NW 89th Avenue prior to issuance of the first building permit, and
8. completion of landscaping of NW 87th Avenue adjacent to its property (including medians).

Parcel A was acquired by Lennar Homes LLC (“Lennar”) who became the “First Developer” under the Development Agreement.

On June 7, 2016, the Town Council, pursuant to Resolution 15-1336 and Ordinance 16-192, adopted a Resolution confirming that Lennar could satisfy the Town’s transportation concurrency requirements for the residential development of the Property by paying the applicable mobility fee. Pursuant to Resolution 15-1336 and Ordinance 16-192, the First Developer and the Town have agreed to dispense with the required construction of Item Nos. 1 through 5 of the Roadway Improvements in exchange for the First Developer paying a mobility fee. Item No. 6 of the Roadway Improvements is not within the jurisdiction of the Town. Lennar has agreed to perform and is in the process of completing Item No. 7 of the Roadway Improvements and Miami-Dade County has agreed to perform and is in the process of completing Item No. 8 of the Roadway Improvements.

On June 23, 2016, F71-1, LLC and F69-1, LLC filed a lawsuit against the Town alleging breach of the Development Agreement. The lawsuit is pending in Miami-Dade Circuit Court as *F71-1, LLC and F69-1, LLC v. Town of Miami Lakes* (Case No.: 2016-015279-CA-01) (the “Breach of Contract Lawsuit”).

On March 22, 2017, F71-1, LLC filed six separate lawsuits against Town Councilmembers alleging violations of Chapter 119, Florida Statutes (Florida’s Public Records Act). The lawsuits are pending in Miami-Dade Circuit Court as follows: *F71-1, LLC v. Ceasar Mestre* (Case No.: 2017-006866-CA-01); *F71-1, LLC v. Manny Cid* (Case No.: 2017-006887-CA-01); *F71-1, LLC v. Tim Daubert* (Case No.: 2017-006885-CA-01); *F71-1, LLC v. Tony Lama* (Case No.: 2017-006891-CA-01); *F71-1, LLC v. Frank Mingo* (Case No.: 2017-006892-CA-01); and *F71-1, LLC v. Nelson Rodriguez* (Case No.: 2017-006900-CA-01) (collectively, the “Public Records Lawsuits”). F71-1, LLC later amended the Public Records Lawsuits to include the Town as a defendant.

Over the last several months, the Town, F71-1, LLC, and F69-1, LLC have been involved in settlement negotiations to resolve the Breach of Contract Lawsuit and the Public Records Lawsuits. At the July 25, 2017 Town Council meeting, the Town Council adopted Resolution No. 17-1467 approving and ratifying the terms and conditions of a settlement agreement in the Breach of

Contract Lawsuit and the Public Records Lawsuits. Although the Town Council approved the settlement agreement, it was not executed by the parties who felt further, substantive revisions should be made to the settlement agreement.

As such, between July 25, 2017 and October 18, 2017, the parties conducted further settlement negotiations and revised the settlement agreement. On October 18, 2017, the Town Council adopted Resolution No. 17-1488 approving the revised Settlement Agreement (the "Settlement").

The approved Settlement requires that the Development Agreement be modified to reflect the changes contemplated by the Settlement (i.e., to reflect and confirm the actions taken by the Town and/or the First Developer with respect to the Roadway Improvements as described in Resolution No. 16-1383 and the Settlement Agreement). The Parties have agreed to amend and/or modify the Development Agreement in accordance with Section 163.3225, Florida Statutes, which requires two public hearings and compliance with certain notice requirements, including publication in a newspaper of general circulation approximately 7 days before each public hearing. Pursuant to the Settlement, the amendments to the Development Agreement must take place within forty-five days of the execution of the Settlement.

As litigation counsel for the Town and the Councilmembers in the Breach of Contract and Public Records Lawsuits, and in furtherance of the Settlement, our Firm has drafted a First Amendment to the Development Agreement ("First Amendment"). In accordance with the Town's previous actions and the Settlement, the First Amendment only modifies Sections 9 and 10 of the Development Agreement. All other provisions of the Development Agreement remain the same.

The proposed First Amendment has been reviewed by the Town Attorney, Raul Gastesi, Jr., Esq., and the Town's Land Use Counsel, Nancy Stroud, Esq. In addition, the First Amendment has been circulated for review to counsel for the parties to the Agreement, to wit: Melissa Tapanes, Esq. of Bercow Radell Fernandez & Larkin as land use counsel for F71-1, LLC and F69-1, LLC, and Juan Mayol, Esq. of Holland & Knight as land use counsel for Lennar Homes, LLC.

If the Council approves of the First Amendment at the first public hearing on November 15, 2017, a second public hearing will take place during the regular Town Council meeting on December 5, 2017 at 6:30 p.m. Pursuant to Section 163.3225, Florida Statutes, the day, time, and place at which the second public hearing will be held must be announced at the first public hearing.

After the second hearing, if the Council adopts the Resolution approving the First Amendment, certain actions are to take place pursuant to the Settlement Agreement. These actions include: F71-1, LLC and F69-1, LLC dismissing with prejudice the Breach of Contract and Public Records Lawsuits. In addition, the Town will pay or cause F71-1, LLC and F69-1, LLC to be paid \$86,575.94 in full settlement of the Breach of Contract Lawsuit and the Public Records Lawsuits within five business days of the Final Public Hearing Approval (as defined in the Settlement Agreement).

We are available to answer the Council's questions regarding these matters.

Attachments:

1. Resolution
2. Resolution - Exhibit A: First Amendment to Development Agreement