



ORIGINAL
Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: August 18, 1998
TO: Division of Records and Reporting
FROM: Division of Water and Wastewater (Walker) *NDW BOG W ll*
RE: Docket No. 980238-WS - Joint Application for Approval of Transfer of Majority Organizational Control of Spruce Creek South Utilities, Inc. (Holder of Certificates Nos. 511-w and 467-s in Marion and Sumter Counties) from Harvey and Brenda Erp and Jay and Lori Thompson to Del Webb's Spruce Creek Communities, Inc.

On August 5, 1998, Mr. Bruce May, the attorney for the buyer (Del Webb's Spruce Creek Communities, Inc.), filed a Second Amendment to the Stock Purchase Agreement. This amendment provides further detail regarding assumed liabilities per the purchase agreement. The modification also increases the net purchase price from \$6,043,404 to \$6,050,752. The attached letter should be added to the docket file.

Attachment

cc: Division of Legal Services (Fleming)

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- LIN _____
- OPC _____
- RCH _____
- SEC I
- WAS _____
- OTH _____

DOCUMENT NUMBER-DATE
08998 AUG 20 88
 FPSC-RECORDS/REPORTING

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Florida Public Service Commission
Division of Water and Wastewater

D. BRUCE MAY
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August 5, 1998

VIA FACSIMILE

N.D. Walker
Division of Water & Wastewater
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Joint Application for Approval of Transfer of Majority Organizational Control of Spruce Creek South Utilities, Inc. (Holder of Certificate Nos. 511-W and 467-S) In Marion and Sumter Counties to Del Webb's Spruce Creek Communities, Inc., Docket No. 980238-WS

Dear N.D.:

We previously have advised you that our client, Del Webb's Spruce Creek Communities, Inc. ("Buyer"), and Harvey D. Erp and certain of his family members (collectively "Seller") have been discussing possible minor clarifying amendments to the Stock Purchase Agreement dated December 22, 1997 ("Agreement") related to Buyer's acquisition of the stock of Spruce Creek South Utilities, Inc. ("Company")

The Buyer and Seller now have agreed that such clarifications are warranted and, thus, have prepared an amendment ("Amendment") to the Agreement. We have attached a copy of the Amendment for informational purposes only.

As you can see, the Amendment clarifies that the term "Purchase Price" equals, in effect, the book value of the Company's assets less "Assumed Liabilities." Schedule 2.2 is also revised to reflect the liabilities of the Company which are being treated as "Assumed Liabilities." The Buyer intends to cause the Company to satisfy those liabilities immediately after it obtains control of the Company. Furthermore, Schedules 3.13.6 and 3.32 are being revised to clarify that the total book value of the Company's assets equals \$6,050,752.28.

N.D. Walker
August 5, 1998
Page 2

The Amendment does not materially change the structure of the transaction and should in no way alter Staff's analysis of the transaction as set forth in the Staff Recommendation dated July 9, 1998. The Staff Recommendation recognized that the purchase price for the Company's stock matches net book value (excluding certain assets transferred to the Company as of December 31, 1997) reduced by any assumed liabilities (this has not changed). The Staff Recommendation estimated that the net asset balance equals approximately \$6,043,404 (not a material difference from the \$6,050,752 reflected on the revised schedules).

We would respectfully request that the Joint Application for Approval of Transfer of Majority Organizational Control of Spruce Creek South Utilities, Inc. (Holder of Certificate Nos. 511-W and 467-S) In Marion and Sumter Counties to Del Webb's Spruce Creek Communities, Inc., Docket No. 980238-WS be placed back on the Commission's August 18, 1998 Agenda.

Should you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,

HOLLAND & KNIGHT LLP



for D. Bruce May

DBM:chs
Enclosures

cc: Mary Alexander
Marty Deterding
Glenn A. Adams
Samantha McRae

**SECOND AMENDMENT TO
STOCK PURCHASE AGREEMENT**

BY AND AMONG

DEL WEBB COMMUNITIES, INC., an Arizona Corporation,

DEL WEBB'S SPRUCE CREEK COMMUNITIES, INC., an Arizona Corporation

and

HARVEY D. ERP, BRENDA ERP, JAY A. THOMPSON AND LORI A. THOMPSON.

August __, 1998

**SECOND AMENDMENT TO
STOCK PURCHASE AGREEMENT**

PREFACE

This Second Amendment to Stock Purchase Agreement (the "Second Amendment") is entered into this _____ day August, 1998 by and among, Del Webb Communities, Inc., an Arizona corporation ("*Buyer*"), Del Webb's Spruce Creek Communities, Inc., an Arizona corporation ("*Successor*"), Harvey D. Erp ("*H. Erp*"), Brenda Erp ("*B. Erp*"), Jay A. Thompson ("*J. Thompson*") and Lori A. Thompson ("*L. Thompson*"), (H. Erp, B. Erp, J. Thompson and L. Thompson hereinafter are referred to collectively as "*Sellers*"). Buyer, Successor and Sellers hereinafter are referred to singularly as "*Party*" and referred to collectively herein as the "*Parties*."

RECITALS

A. The Buyer and Sellers entered into a certain Stock Purchase Agreement (the "Stock Purchase Agreement") dated December 22, 1997 whereby Buyer agreed to purchase from Sellers all the issued and outstanding capital stock of Spruce Creek South Utilities, Inc. (the "Company").

B. The Buyer and Sellers entered into a First Amendment to Stock Purchase Agreement, dated as of January 15, 1998 (the "First Amendment").

C. Buyer assigned its rights under the Stock Purchase Agreement, as amended, to Successor pursuant to an Assignment and Assumption Agreement between Buyer and Successor dated as of January 15, 1998.

D. The Parties desire to amend the Stock Purchase Agreement, as provided below, to clarify the terms of the Stock Purchase Agreement.

AMENDMENT

Now, therefore, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties hereby agree as follows:

1. **Effective Date.** This Second Amendment shall be effective, nunc pro tunc, as of January 15, 1998.

2. **Modification.** The following provisions of the Stock Purchase Agreement are amended as follows:

A. The introductory language of Section 2.3 of the Stock Purchase Agreement shall be deleted and the following language shall be inserted in its place:

"2.3 **Purchase Price.** Buyer agrees to pay to Sellers at the Closing an amount equal to the difference between: (i) the book value of the Utility Assets as set forth on the books and records of Company on December 31, 1997; provided, however, that the book value of the Utility Assets for this purpose shall not include the book value of assets transferred from the books of Golf and County Club to Company on or about December 31, 1997 equal to approximately One Million Eight Hundred Seventy-eight Thousand Dollars (\$1,878,000), less (ii) the Assumed Liabilities (the difference between subclause (i) minus subclause (ii) shall be referred to hereinafter as the "Purchase Price")."

B. Schedule 2.2 attached to the Stock Purchase Agreement shall be deleted and Schedule 2.2 attached hereto shall be inserted in its place.

C. Schedule 3.13.6 attached to the Stock Purchase Agreement shall be deleted and Schedule 3.13.6 attached hereto shall be inserted in its place.

D. Schedule 3.32 attached to the Stock Purchase Agreement shall be deleted and Schedule 3.32 attached hereto shall be inserted in its place.

3. Continued Effectiveness. As amended hereby, the provisions of the Stock Purchase Agreement shall remain in full force and effect.

4. Counterparts. This Second Amendment may be executed in separate counterparts, each of which will be an original and all of which taken together will constitute one and the same agreement.

The Parties hereto have executed this Second Amendment on the date first above written.

BUYER:

DEL WEBB COMMUNITIES, INC.,
an Arizona corporation

By: _____
Name: _____
Title: _____

SUCCESSOR:

DEL WEBB'S SPRUCE CREEK COMMUNITIES, INC.,
an Arizona corporation

By: _____
Name: _____
Title: _____

SELLERS:

HARVEY D. ERP

BRENDA ERP

JAY A. THOMPSON

LORI A. THOMPSON
ORL1-233946.1/5222

SCHEDULE 2.2

ASSUMED LIABILITIES

Buyer and Sellers acknowledge that a liability owed by Company to an affiliated company in the amount of \$338,532 shall be treated as an Assumed Liability under the terms hereof and will be paid off upon distribution from escrow.

Two Barnett Bank loans equal to approximately \$1,929,217, in the aggregate, shall be treated as Assumed Liabilities under the terms hereof and will be paid off upon distribution from escrow.

SCHEDULE 3.13.6

TAX BASIS

Equipment	\$4,050,488.18
Land Value	<u>121,927.10</u>
Sub Total	<u>\$4,172,415.28</u>
Assets Transferred from Developer	<u>\$1,878,337.00</u>
Grand Total	<u>\$6,050,752.28</u>

SCHEDULE 3.32
NET BOOK VALUE

Equipment	\$4,050,488.19
Land Value	<u>121,927.10</u>
Sub Total	<u>\$4,172,415.28</u>
Assets Transferred from Developer	<u>\$1,878,337.00</u>
Grand Total	<u>\$6,050,752.28</u>