



Interoffice Memorandum

AGENDA ITEM

DATE: December 13, 2018

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director
Community, Environmental and Development
Services Department

**CONTACT PERSON: Eric Raasch, Interim DRC Chairman
Development Review Committee
Planning Division
(407) 836-5523**

SUBJECT: January 8, 2019 — Consent Item
Spring Grove - Jaffers Planned Development
First Amendment to Adequate Public Facilities
Agreement - Case # APF-18-04-132
(Related to Case # LUPA-17-10-302)

The Spring Grove - Jaffers Planned Development (PD) contains 133.39 gross acres, was originally approved on July 19, 2016, and currently allows for 264 residential dwelling units. The Spring Grove - Jaffers PD is generally located east of Avalon Road and south and west Flemings Road.

The PD and existing Adequate Public Facilities (APF) agreement currently requires 7.85 acres of APF lands, with 0.37 acres of APF lands being provided for right-of-way, creating a 7.48 acre APF deficit.

Through the concurrent PD Land Use Plan Amendment, the applicant is seeking to add 4.99 acres of property into the Spring Grove - Jaffers PD (a total of 138.38 acres). This addition of land necessitates an increase of 0.98 acres of APF land into the PD, with the new required APF of 8.83 acres. As the PD is not providing additional APF lands, the APF deficit has also increased by 0.98 acres to 8.46 acres. The applicant has amended the APF Agreement to reflect the changes associated with the proposed PD Land Use Plan Amendment.

The APF Agreement revision received a recommendation of approval from the Development Review Committee on August 22, 2018, and has been placed on the January 8, 2019 consent agenda to be pulled for consideration with the associated PD Land Use Plan Amendment. Upon approval by the Board, the Agreement will be recorded in the Public Records of Orange County, Florida.

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January 8, 2019 — Consent Item

Spring Grove – Jaffers PD / APF Agreement (Case #APF-18-04-132)

(Related to Case # LUPA-17-10-302)

ACTION REQUESTED: Approval and execution of First Amendment to Adequate Public Facilities Agreement for Horizon West – Village I- West Neighborhood Spring Grove – Jaffers PD by and between Spring Grove, LLC, M/I Homes of Orlando, LLC, and Orange County. District 1

JVW/EPR/stt

Attachments

BCC Mtg. Date: January 8, 2019

This instrument prepared by and after
recording return to:

Christopher P. Roper
Akerman LLP
420 South Orange Avenue, Suite 1200
Orlando, Florida 32801
(407) 423-4000

Tax Parcel I.D. No(s): 19-24-27-0000-00-003 and a portion of 19-24-27-0000-00-004

**FIRST AMENDMENT TO
ADEQUATE PUBLIC FACILITIES AGREEMENT
FOR HORIZON WEST - VILLAGE I - WEST NEIGHBORHOOD
SPRING GROVE - JAFFERS PD**

THIS FIRST AMENDMENT TO ADEQUATE PUBLIC FACILITIES AGREEMENT FOR HORIZON WEST VILLAGE I - WEST NEIGHBORHOOD - SPRING GROVE - JAFFERS PD (the "First Amendment"), effective as of the latest date of execution (the "Effective Date"), is made and entered into by and between **SPRING GROVE, LLC**, a Delaware limited liability company, whose mailing address is 5956 Sherry Lane, Suite 1000, Dallas, Texas 75225 ("Spring Grove") and **M/I Homes of Orlando, LLC**, a Florida limited liability company, whose mailing address is 400 International Parkway, Suite 470, Lake Mary, Florida 32746 ("M/I Homes") ("Spring Grove" and "M/I Homes" collectively referred to herein as "Owner") and **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida, whose mailing address is P.O. Box 1393, Orlando, Florida 32802-1393 ("County") ("Owner" and "County" collectively referred to herein as "Parties").

RECITALS:

A. **WHEREAS**, on or about July 20, 2016, the Parties entered into that certain Adequate Public Facilities Agreement for Horizon West – Village I – West Neighborhood Spring Grove – Jaffers PD (the "Original Agreement") recorded on August 17, 2016, as Document #20160429794, Public Records of Orange County, Florida.

B. **WHEREAS**, on or about January 7, 2019, M/I Homes acquired a portion of the PD Property as more particularly described in that certain Special Warranty Deed recorded on January 7, 2019, as Document # 20190013381, in the Public Records of Orange County, Florida.

C. **WHEREAS**, Owner has submitted an application to the County to amend the Spring Grove – Jaffers PD, which amendment is on file with the County and includes, but is not limited to, an increase in the overall size of the Spring Grove – Jaffers PD and an increase in the amount of net developable land within the said PD (the “Amended Spring Grove – Jaffers PD”). References in the Original Agreement to the Spring Grove – Jaffers PD shall hereafter mean and refer to the Amended Spring Grove – Jaffers PD.

D. **WHEREAS**, Orange County and Spring Grove desire to modify and amend certain provisions of the Original Agreement to incorporate the above-referenced changes, as set forth herein.

NOW THEREFORE, for and in consideration of the above premises, the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Recitals. The above recitals are true and correct and are hereby incorporated as material provisions of this First Amendment by this reference.

2. Capitalized Terms. Any capitalized terms not defined herein shall have the same definition as in the Original Agreement.

3. Recitals to the Original Agreement. The following recitals to the Original Agreement are hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“L. The PD Property contains approximately ~~56.92~~ 64.03 acres of **net** developable land, and both the Village I SAP and Section 30-714 of the APF/TDR Ordinance require 1 acre of public facilities acreage for every 7.25 acres of net developable land (the “APF Ratio”).

M. When applied to the PD Property, the APF Ratio requires approximately ~~7.85~~ 8.83 acres of public facilities lands.

N. As shown on the PD Land Use Plan for the Spring Grove – Jaffers PD, and as described in this Agreement, OWNER is providing 0.37 acre(s) of adequate public facilities land (the “APF Land”) to COUNTY, thereby creating an APF deficit of ~~7.48~~ 8.46 acres.”

4. Legal Description of PD Property and Location Map. The description of the PD Property as contained in the Original Agreement is hereby amended and replaced in its entirety by that certain description attached hereto as Exhibit “A” and as shown on the PD Property location map attached hereto as Exhibit “B.”

5. APF Deficit. Section 3 of the Original Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“APF Deficit. The Village I APF Ratio requires that Owner convey to County approximately ~~7.85~~ 8.83 acres of APF Lands. This Agreement provides for conveyance of approximately 0.37 acres of APF Lands, thereby creating a ~~7.48~~ 8.46-acre APF deficit.”

6. APF Acreage Credits. Section 4 of the Original Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“APF Acreage Credits. OWNER has obtained 19.37 APF acreage credits within Village I and has asked COUNTY to apply ~~7.48~~ 8.46 of these credits toward the APF deficit. Application of the APF acreage credits satisfies the APF deficit.”

7. Option on Conveyance. The first paragraph of Section 7 of the Original Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“As an alternative to conveyance prior to or in connection with Planned Development approval, Owner has elected to convey at a later time, as contemplated by Sec. 30-714 of the APF/TDR Ordinance. The parties agree that, prior to conveyance to County for its intended purpose, Owner shall have the reasonable right to grade and to import or export fill material upon the APF Lands, subject to and in accordance with an approved grading permit and/or excavation fill permit. Further, Owner agrees to relinquish control of the APF Lands and convey such APF Lands to County, upon demand by County, upon sixty (60) days’ notice. Owner acknowledges and agrees that any development in connection with the PD Property shall not proceed beyond five percent (5%) of the PD Property’s entitlements prior to such conveyance ~~and~~ or payment of any APF fee in lieu of conveyance. For purposes of this Agreement, the parties agree that 5% of development is defined as ~~17~~ 19 residential units. Until such demand by County, Owner may continue to use the APF Lands in a manner not inconsistent with County’s intended use.

8. Notices. Section 12 of the Original Agreement is hereby amended to revise the address given for Akerman LLP as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“Akerman LLP
420 South Orange Avenue
Suite 1200
Orlando, FL 32801-4904
Attn. ~~Heather M. Himes, Esq.~~ Christopher P. Roper, Esq.
Telephone: 407-423-4000”

9. Recording. This First Amendment shall be recorded at Spring Grove's expense in the Public Records of Orange County, Florida, within thirty (30) days of the Effective Date.

10. No Further Amendment. Except as set forth herein, the terms and conditions of the Original Agreement shall remain in full force and effect.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this First Amendment to be duly executed by their respective duly authorized representatives on the dates set forth below.

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings, Orange County Mayor

Date: JAN 11 2019

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Craig A. Stopyla*
for Deputy Clerk

Print Name: Craig A. Stopyla



First Amendment to APF Agreement
Horizon West- Village I- West Neighborhood, Spring Grove- Jaffers PD
Spring Grove, LLC, 2018

Signed, sealed and delivered
in the presence of:

SPRING GROVE, LLC,
a Delaware limited liability company

By: CH II Spring Grove, LLC,
a Delaware limited liability company,
as its sole Manager

By: *[Signature]*
Daniel A. Traylor, Manager

Melody F. Ellsperman

Print Name: Melody F. Ellsperman

Sharon M. Goodson

Print Name: Sharon M. Goodson

(Seal)

STATE OF INDIANA

COUNTY OF VANDERBURGH

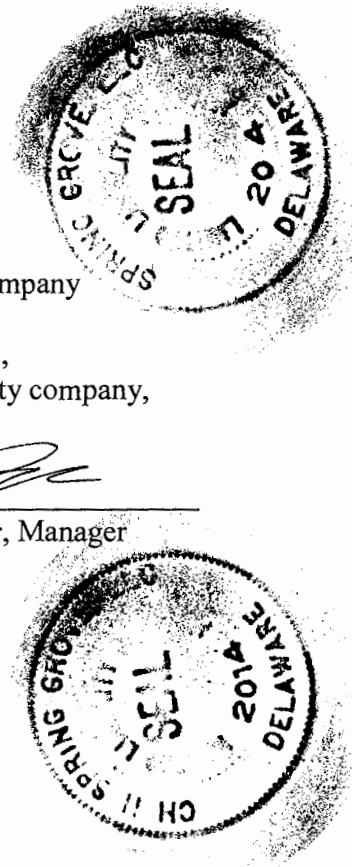
The foregoing instrument was acknowledged before me this 27th day of December,
2018 by Daniel A. Traylor, as Manager of CH II Spring Grove, LLC, a Delaware limited liability
company, as the sole Manager of SPRING GROVE, LLC, a Delaware limited liability company,
on behalf of the limited liability company, who [X] is personally known to me or [] has
produced _____ as identification.

(Notary Stamp)



DONNA M. BUSH
Resident of Vanderburgh County, IN
Commission Expires: January 20, 2024

Donna M. Bush
Signature of Notary Public
Print Name: Donna M. Bush
Notary Public, State of Indiana No. 677213
Commission Expires: 01/20/2024



Signed, sealed and delivered
in the presence of:

J. W.
Print Name: JAMES G. L. SEAY

Barton Morrison
Print Name: Barton Morrison

STATE OF Florida

COUNTY OF Orange

The foregoing instrument was acknowledged before me this 27th day of December, 2018 by David Byrnes, as Vice President of M/I HOMES OF ORLANDO, LLC, a Florida limited liability company, on behalf of the limited liability company, who is personally known to me.

(Notary Stamp)



M/I HOMES OF ORLANDO, LLC,
a Florida limited liability company

By: [Signature]
David Byrnes, Vice President

(Seal)

[Signature]
Signature of Notary Public
Print Name: _____
Notary Public, State of _____
Commission Expires: _____

Exhibit "A"
Legal Description of the PD Property

A portion of Sections 19 and 30, Township 24 South, Range 27 East, Orange County, Florida, described as follows:

BEGIN at the southwest corner of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 19; thence run N 00°13'04" E, along the west line of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 19, a distance of 1,324.86 feet to a point on the north line of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 19; thence run N 89°00'27" E, along said north line, a distance of 1,471.85 feet to a point on the east line of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 19; thence run S 00°05'11" W, along said east line, a distance of 526.06 feet; thence, departing said east line, run S 89°54'49" E, a distance of 265.00 feet; thence run S 00°59'29" E, distance of 795.11 feet to a point on the south line of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 19; thence run S 89°03'23" W, along said south line, a distance of 280.00 feet to a point on the east line of the West $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of said Section 30; thence run S 00°46'47" W, along said east line, a distance of 2,646.57 feet to a point on the south line of the Northwest $\frac{1}{4}$ of said Section 30; thence run S 89°23'07" W, along said south line, a distance of 1,446.22 feet to a point on the west line of the Northwest $\frac{1}{4}$ of said Section 30; thence run N 00°09'46" E, along said west line, a distance of 2,637.56 feet to the PONT OF BEGINNING.

Containing 138.38 acres, more or less.

Exhibit "B"
Project Area Location Map

