




Interoffice Memorandum

AGENDA ITEM

September 18, 2019

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

FROM: Jon V. Weiss, P.E., Chairman
Roadway Agreement Committee 

SUBJECT: October 8, 2019 – Consent Item
Proportionate Share Agreement For Fountains at Crystal Creek
John Young Parkway

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Fountains at Crystal Creek John Young Parkway ("Agreement") by and between Lennar Homes, LLC and Orange County for a proportionate share payment in the amount of \$377,587. Pursuant to Section 163.3180(5)(h), Florida Statutes, an applicant may mitigate capacity deficiencies by entering into a Proportionate Share Agreement and contributing a proportionate share payment. The Proportionate Share Payment is due within 90 days of the effective date of this Agreement.

The Agreement follows the recommendation of the Roadway Agreement Committee providing for the mitigation of road impacts for two deficient trips on the road segment of John Young Parkway from Town Center Boulevard to Deerfield Boulevard in the amount of \$28,403 per trip, nine deficient trips on the road segment of John Young Parkway from Deerfield Boulevard to Whisper Lakes Boulevard in the amount of \$25,777 per trip, and four deficient trips from John Young Parkway from Whisper Lakes Boulevard to Central Florida Parkway in the amount of \$22,197 per trip.

The Roadway Agreement Committee approved the Agreement on September 18, 2019. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

If you have any questions, please feel free to contact me at 407-836-5393.

ACTION REQUESTED: Approval and execution of Proportionate Share Agreement for Fountains at Crystal Creek John Young Parkway by and between Lennar Homes, LLC and Orange County for a proportionate share payment in the amount of \$377,587. District 1

JVW/HEGB/fb
Attachment

BCC Mtg. Date: October 08, 2019

This instrument prepared by
and after recording return to:

Mohammed N. Abdallah, PE
Traffic & Mobility Consultants LLC
3101 Maguire Boulevard, Suite 265
Orlando, Florida 32803

Parcel ID Number:
20-24-29-2980-00-011

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

**PROPORTIONATE SHARE AGREEMENT FOR
FOUNTAINS AT CRYSTAL CREEK**

JOIN YOUNG PARKWAY

This Proportionate Share Agreement (the “**Agreement**”), effective as of the latest date of execution (the “**Effective Date**”), is made and entered into by and between LENNAR HOMES, LLC, a Florida limited liability company (“**Owner**”), whose principal place of business is 6750 Forum Drive, Orlando, FL 32821, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), whose address is P.O. Box 1393, Orlando, FL 32802-1393.

WHEREAS, Owner is the owner of fee simple title to certain real property, as generally depicted on Exhibit “A” and more particularly described on Exhibit “B,” both of which exhibits are attached hereto and incorporated herein by this reference (the “**Property**”); and

WHEREAS, the Property is located in County Commission District #1, and the proceeds of the PS Payment, as defined herein, will be allocated to John Young Parkway; and

WHEREAS, Owner intends to develop the Property as sixty (60) townhome dwelling units, referred to and known as Fountains at Crystal Creek (the “**Project**”); and

WHEREAS, Owner received a letter from County dated September 10, 2019, stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #19-07-047 for the Project was denied; and

WHEREAS, the Project will generate two (2) deficient PM Peak Hour trips (the “**Excess Trips 1**”) for the deficient roadway segment on John Young Parkway from Town Center Boulevard to Deerfield Boulevard (the “**Deficient Segment 1**”), and zero (0) PM Peak Hour trips were available on Deficient Segment 1 on the date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated herein; and

WHEREAS, the Project will generate nine (9) deficient PM Peak Hour trips (the “**Excess Trips 2**”) for the deficient roadway segment on John Young Parkway from Deerfield Boulevard to Whisper Lakes Boulevard (the “**Deficient Segment 2**”), and zero (0) PM Peak Hour trips were available on Deficient Segment 2 on the date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated herein; and

WHEREAS, the Project will generate four (4) deficient PM Peak Hour trips (the “**Excess Trips 3**”) for the deficient roadway segment on John Young Parkway from Whisper Lakes Boulevard to Central Florida Parkway (the “**Deficient Segment 3**”), and zero (0) PM Peak Hour trips were available on Deficient Segment 3 on the date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated herein; and

WHEREAS the Excess Trips 1, Excess Trips 2, and Excess Trips 3 shall be referred to herein collectively as the “**Excess Trips**”; and

WHEREAS, the Deficient Segment 1, Deficient Segment 2, and Deficient Segment 3 shall be referred to herein collectively as the “**Deficient Segments**”; and

WHEREAS, the Excess Trips will cause the Deficient Segments to operate below adopted Level of Service standards; therefore, pursuant to Section 163.3180(5)(h), Florida Statutes, as amended, the Owner shall provide the County with proportionate share mitigation for the Excess Trips; and

WHEREAS, Owner and County have agreed that the proportionate share payment necessary to mitigate the impact of the Excess Trips on the Deficient Segments through the current anticipated Project buildout is Three Hundred Seventy-Seven Thousand Five Hundred Eighty-Seven and 00/100 Dollars (\$377,587.00) (the “**PS Payment**”); and

WHEREAS, County and Owner desire to set forth certain terms, conditions, and agreements between them as to the development of the Property into the Project.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration exchanged by and between Owner and County, the receipt and sufficiency of which are hereby acknowledged, the parties hereto stipulate and agree as follows:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. PS Payment; CEL.

(a) *Calculation of PS Payment:* The amount of the PS Payment for the Deficient Segments, as described in Exhibit “C,” totals Three Hundred Seventy-Seven Thousand Five Hundred Eighty-Seven and 00/100 Dollars (\$377,587.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. Owner and County agree that the Excess Trips will constitute the Project’s impact on the aforementioned Deficient Segments based upon (i) Owner’s Traffic Study titled “FOUNTAINS AT CRYSTAL CREEK” prepared by TRAFFIC & MOBILITY CONSULTANTS LLC, dated September 6, 2019 for LENNAR HOMES, LLC (the “**Traffic Study**”), which is incorporated herein by this reference, and (ii) upon the calculations described in Exhibit “C.” The Traffic Study was accepted by the Orange County Transportation Planning Division on September 9, 2019, and is on file and available for inspection with that division (CMS #2019047). Owner and County further acknowledge and agree that the PS Payment as set forth above shall be the final and binding calculation of the amount the Owner is required to pay through the buildout of the currently approved Project as proportionate share mitigation for impacts of the Project upon roadways within

Orange County's jurisdiction, notwithstanding any subsequent variance in the actual cost of improvement to the Deficient Segments or actual traffic impacts created by the Project; provided, however, that if Owner subsequently increases the number of units and/or square footage, as applicable, of the Project, the Project may then be subject to an additional concurrency evaluation and proportionate share agreement as set forth in Section 2(d) below. Owner and County further acknowledge and agree that the calculation of, and agreement regarding, the amount of the PS Payment constitute material inducements for the parties to enter into this Agreement.

(b) *Timing of PS Payment, Issuance of CEL.* Within ninety (90) days following the Effective Date, Owner shall deliver a check to County in the amount of Three Hundred Seventy-Seven Thousand Five Hundred Eighty-Seven and 00/100 Dollars (\$377,587.00) as the PS Payment. The check shall be made payable to "Orange County Board of County Commissioners" and shall be delivered to the Fiscal and Operational Support Division of the Planning, Environmental, and Development Services Department. Within twenty-one (21) days following its receipt of the PS Payment, if the Property's future land use designation and zoning are consistent with the Project's proposed development, County shall issue a CEL sufficient to encumber traffic capacity for the Project, irrespective of any actual traffic deficiency on the Deficient Segments. Within the time frame provided in the CEL, the Owner must reserve the encumbered trips by obtaining a Capacity Reservation Certificate as provided in Section 30-591 of the Orange County Code, as may be amended. An amount equal to the PS Payment shall be applied toward the amount of the initial capacity reservation payment (and any subsequent reservation payment(s), if the initial reservation payment does not exceed the amount of the PS Payment) as further set forth in Section 3 below. In the event Owner has not paid the PS Payment within ninety (90) days of the Effective Date, one extension of ninety (90) days may be granted by the manager of County's Transportation Planning Division. In the event Owner has not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, this Agreement shall become null and void.

(c) *Project Development.* Recordation of a subdivision plat or approval of a commercial site plan for the Project shall not be permitted prior to the issuance of a Capacity Reservation Certificate as contemplated in subparagraph 2(b) above.

(d) *Increase in Project Trips.* Any change to the Project which increases the unit count and/or square footage, as applicable, may result in an increase in trips on the Deficient Segments or other segments within the transportation impact area, as defined by County. Owner understands and agrees that any such additional trips are neither vested nor otherwise permitted under this Agreement, and that Owner is precluded from asserting any such vesting. In addition, Owner understands and agrees that any such changes resulting in an increase in trips may cause this Agreement to become null and void, and/or may require application for and execution of an additional Proportionate Share Agreement, along with any other required documentation, for the number of increased trips.

(e) *Satisfaction of Transportation Improvement Requirements.* County hereby acknowledges and agrees that upon Owner's payment of the PS Payment as required herein, and absent any change in the Project increasing the number of trips as set forth in subparagraph 2(d) above, Owner shall be deemed to have satisfied all requirements for the mitigation of the traffic impacts of the Project on all roads affected by the Project within County's jurisdiction through buildout of the Project. Owner shall be entitled to fully and completely develop the Project, without

regard to whether the improvements to the Deficient Segments are actually constructed; provided, however, Owner shall be required to obtain a Capacity Reservation Certificate prior to the expiration of Owner's Capacity Encumbrance Letter and shall be required to maintain the validity of the Capacity Reservation Certificate in accordance with its terms. Additionally, nothing herein shall be construed to exempt Owner from meeting the requirements of all other applicable laws, regulations, and/or Orange County Code provisions or from making the required payment of transportation impact fees applicable to the Project, subject to credits as set forth in Section 3 below.

Section 3. Transportation Impact Fee Credits. County and Owner agree that Owner shall be entitled to receive transportation impact fee credits on a dollar for dollar basis in an amount up to but not exceeding the PS Payment in accordance with Section 163.3180, Florida Statutes, and as specifically described in Exhibit "C." County further agrees that such credits may be applied on a dollar for dollar basis against capacity reservation fees at such time as capacity reservation fees may be required to be paid by Owner in connection with the issuance of a Capacity Reservation Certificate as contemplated in Section 2 above. In no event shall Owner receive credits in excess of the PS Payment and in the event the PS Payment exceeds either the applicable transportation impact fees or capacity reservation fees, as the case may be, Owner shall not be entitled to a refund for the amount of the PS Payment in excess of such transportation impact fees or capacity reservation fees.

Section 4. No Refund. The PS Payment (including any capacity reservation fees paid with the PS Payment) is non-refundable.

Section 5. Notice. With the exception of the timing of the PS Payment as set forth in Section 2(b) hereof, the parties acknowledge and agree that no party shall be considered in default for failure to perform under this Agreement until such party has received written notice specifying the nature of such default or failure to perform and said party fails to cure said default or fails to perform within thirty (30) days of receipt of written notice. Any notice delivered with respect to this Agreement shall be in writing and be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

As to Owner: Lennar Homes, LLC
6750 Forum Drive, Suite 310
Orlando, Florida 32821

As to County: Orange County Administrator
P. O. Box 1393
Orlando, Florida 32802-1393

With copy to: Orange County
Planning, Environmental, and Development Services Department
Manager, Fiscal and Operational Support Division
201 South Rosalind Avenue, 2nd Floor
Orlando, Florida 32801

Orange County
Planning, Environmental, and Development Services Department
Manager, Transportation Planning Division
4200 South John Young Parkway, 2nd Floor
Orlando, Florida 32839

Orange County
Planning, Environmental, and Development Services Department
Manager, Planning Division
201 South Rosalind Avenue, 2nd Floor
Orlando, Florida 32801

Section 6. Covenants Running with the Property. This Agreement shall be binding and shall inure to the benefit and burden of the heirs, legal representatives, successors, and assigns of the parties, and shall be a covenant running with the Property and be binding upon the successors and assigns of the Owner and upon any person, firm, corporation, or entity who may become the successor in interest to the Property.

Section 7. Recordation of Agreement. The parties hereto agree that this Agreement shall be recorded in the Public Records of Orange County, Florida, at Owner's expense, within ten (10) business days after the Effective Date.

Section 8. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida and in accordance with the Orange County Code.

Section 9. Specific Performance. County and Owner shall each have the right to enforce the terms and conditions of this Agreement only by an action for specific performance. Venue for any action(s) initiated under or in connection with this Agreement shall lie in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

Section 10. Attorney Fees. In the event either party hereto brings an action or proceeding including any counterclaim, cross-claim, or third party claim, against the other party arising out of this Agreement, each party in such action or proceeding, including appeals therefrom, shall be responsible for its own attorney and legal fees.

Section 11. Construction of Agreement; Severability. Captions of the Sections and Subsections of this Agreement are for convenience and reference only; any words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any party hereunder or substantially increase the burden of any party hereunder, shall be held to be invalid or

unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

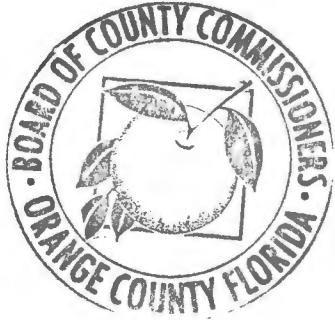
Section 12. Amendments. No amendment, modification, or other change(s) to this Agreement shall be binding upon the parties unless in writing and formally executed by all of the parties.

Section 13. Termination. In the event either (i) Owner has not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, as contemplated in Subsection 2(b), or (ii) Owner has timely paid the PS Payment to County and the Project has been constructed on the Property pursuant to a County building permit, this Agreement shall automatically terminate and thereafter be null and void for all purposes.

Section 14. Counterparts. This Agreement may be executed in up to three (3) counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

[Signatures appear on following pages]

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



“COUNTY”

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Bryan W. Brooks*
for Jerry L. Demings
Orange County Mayor

Date: *8 Oct 19*

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

By: *Noelia Perez*
for Deputy Clerk

Print Name: *Noelia Perez*

WITNESSES:

Nora Schuster

Print Name: Nora Schuster

Fred Miller

Print Name: Fred Miller

“OWNER”

LENNAR HOMES, LLC, a Florida limited liability company

By: Mark McDonald

Print Name: Mark McDonald

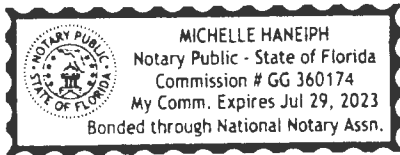
Title: Authorized Agent

Date: 9/17/19

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Mark McDonald, as Authorized Agent of LENNAR HOMES, LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 17th day of September, 2019. He/she is personally known to me or has produced _____ (type of identification) as identification and did did not (circle one) take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 17th day of September, 2019.



Michelle Haneiph
NOTARY PUBLIC

Print Name: Michelle Haneiph

My Commission Expires: 7/29/2023

Exhibit "A"

"FOUNTAINS AT CRYSTAL CREEK"

Project Location Map



Exhibit "B"

"FOUNTAINS AT CRYSTAL CREEK"

Parcel ID: 20-24-29-2980-00-011

Legal Description:

THAT PART OF LOT 1, FUENTE DE AGUA VIVA, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 38, PAGE 148, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, LYING IN SECTION 20, TOWNSHIP 24 SOUTH, RANGE 29 EAST, ORANGE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF LOT 56, CRYSTAL CREEK, AS RECORDED IN PLAT BOOK 36, PAGES 149 AND 150, OF SAID PUBLIC RECORDS; THENCE RUN N89°55'35"E ALONG THE SOUTH LINE OF SAID CRYSTAL CREEK FOR A DISTANCE OF 517.50 FEET; THENCE RUN S00°04'25"E FOR A DISTANCE OF 373.00 FEET; THENCE RUN S89°55'35"W FOR A DISTANCE OF 292.50 FEET; THENCE RUN S00°04'25"E FOR A DISTANCE OF 102.00 FEET; THENCE RUN S89°55'35"W FOR A DISTANCE OF 160.00 FEET; THENCE RUN S00°04'25"E FOR A DISTANCE OF 176.61 FEET; THENCE RUN S89°55'35"W FOR A DISTANCE OF 50.00 FEET; THENCE RUN S00°04'25"E FOR A DISTANCE OF 194.09 FEET; THENCE RUN N49°09'23"W FOR A DISTANCE OF 296.34 FEET; THENCE RUN S89°55'35"W FOR A DISTANCE OF 122.00 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 75.00 FEET AND A CHORD BEARING OF N45°04'25"W; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" FOR A DISTANCE OF 117.81 FEET TO THE POINT OF TANGENCY; THENCE RUN N00°04'25"W FOR A DISTANCE OF 71.52 FEET; THENCE RUN S89°56'58"W FOR A DISTANCE OF 214.07 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 75.00 FEET AND A CHORD BEARING OF N45°04'25"W; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" FOR A DISTANCE OF 117.81 FEET TO THE POINT OF TANGENCY; THENCE RUN N00°04'25"W FOR A DISTANCE OF 430.00 FEET TO THE AFORESAID SOUTH LINE OF CRYSTAL CREEK; THENCE RUN N89°55'35"E ALONG SAID SOUTH LINE FOR A DISTANCE OF 695.00 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THAT PORTION OF WHICH IS NOW KNOWN AS:

THE FOUNTAINS AT CRYSTAL CREEK CONDOMINIUM I, AS DESCRIBED IN THE DECLARATION OF CONDOMINIUM OF THE FOUNTAINS AT CRYSTAL CREEK CONDOMINIUM I, AS RECORDED IN OFFICIAL RECORDS BOOK 9058, PAGE 2882, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

AND

LESS AND EXCEPT THAT PORTION OF WHICH IS NOW KNOWN AS:

THE FOUNTAINS AT CRYSTAL CREEK II, ACCORDING TO THE DECLARATION OF CONDOMINIUM THEREOF, AS RECORDED IN OFFICIAL RECORDS BOOK 9188, PAGE 2801, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

TOGETHER WITH:

EASEMENT PARCEL 1:

TOGETHER WITH THAT CERTAIN SLOPE MAINTENANCE EASEMENT CONTAINED IN THAT CERTAIN CONSTRUCTION, GRADING AND SLOPE MAINTENANCE EASEMENT AGREEMENT RECORDED IN OFFICIAL RECORDS BOOK 7946, PAGE 3665 AND CORRECTIVE CONSTRUCTION, GRADING AND SLOPE MAINTENANCE EASEMENT AGREEMENT RECORDED IN OFFICIAL RECORDS BOOK 9553, PAGE 4788, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

EASEMENT PARCEL 2:

TOGETHER WITH THAT CERTAIN PERPETUAL, NON-EXCLUSIVE DRAINAGE AND RETENTION POND EASEMENT RECORDED IN DEDICATION OF DRAINAGE AND RETENTION POND EASEMENT RECORDED IN OFFICIAL RECORDS BOOK 7946, PAGE 3673, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

EASEMENT PARCEL 3:

TOGETHER WITH THOSE CERTAIN NON-EXCLUSIVE STREET ACCESS EASEMENT, UTILITY EASEMENTS AND CHURCH STORM DRAINAGE EASEMENT CONTAINED IN THE DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS RECORDED IN OFFICIAL RECORDS BOOK 9188, PAGE 2781, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

Exhibit "C-2"

"FOUNTAINS AT CRYSTAL CREEK"

DEFICIENT SEGMENT 2

Log of Project Contributions

John Young Parkway (Deerfield Boulevard to Whisper Lakes Boulevard)

Roadway Improvement Project Information									
Planned Improvement Roadway(s)	Limits of Improvement (From - To)	Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost	Cost / Tmp
John Young Parkway	Deerfield Blvd - Whisper Lakes Blvd	1.08	E	3020	Conversion from 6 to 8 lanes	4040	1020	\$26,202,194	\$25,777

County Share of Improvement							
Planned Improvement Roadway(s)	Limits of Improvement (From - To)	Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Capacity Increase	County (Backlog) Responsibility
John Young Parkway	Deerfield Blvd - Whisper Lakes Blvd	1.08	E	3020	4040	1020	\$1,082,620

Developer Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)	Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Capacity Increase	Backlogged Trips	Capacity Increase for New Development	Remaining Project Cost	Cost / Tmp
John Young Parkway	Deerfield Blvd - Whisper Lakes Blvd	1.08	E	3020	4040	1020	42	978	\$25,209,574	\$25,777

Updated: 9/9/19

Log of Project Contributions			
Date	Project	Project Trips	Prop Share
Existing	Existing Plus Committed	42	\$1,022,634
Proposed	Fountains at Crystal Creek	42	\$1,022,634
	Backlogged Totals	84	\$2,045,268
	Totals	84	\$3,087,532

