



Interoffice Memorandum

AGENDA ITEM

DATE: October 24, 2019

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

FROM: Jon V. Weiss, P.E., Director *JW.*
Planning, Environmental and Development
Services Department

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

SUBJECT: November 12, 2019 — Consent Item
Adequate Public Facilities Agreement
for KRPC Hartzog – Village I Planned Development –
Case # APF-19-02-077
(Related to Case # LUP-18-07-223)

The proposed KRPC Hartzog Road Planned Development (PD) contains 19.90 gross acres (8.68 net developable acres) and is located at 14080 Hartzog Road, or generally located on the north side of Hartzog Road, approximately 3,800 feet east of Avalon Road. The subject property is located within the Village I Special Planning Area of Horizon West and is designated as Garden Home Mixed Use District and Greenbelt on the Village I Special Planning Area map. Through rezoning application # LUP-18-07-233, the KRPC Hartzog Road PD, the applicant is proposing to entitle the subject property for 54 single-family dwelling units, consistent with the underlying Garden Home Mixed Use District.

Pursuant to Orange County Code Section 30-714, each property owner in a Horizon West PD is required to convey their proportionate share of Adequate Public Facilities (APF) lands, which are based on the ratio of required APF acres to net developable acres within the Special Planning Area. In the event that APF land requirements cannot be met within a particular PD, an owner may pay a fee to the County equal to the value of the ratio of required APF lands and based upon the average fair market value of land as established by an independent appraiser. For the Village I Special Planning Area, the adopted ratio of APF acres to net developable acres is 1.0 to 7.25.

In order to satisfy the requirements of Chapter 30, Article XIV of the Orange County Code ("APF/TDR Ordinance"), the KRPC Hartzog Road PD is subject to an APF Agreement that recognizes that the project is accountable for a minimum of 1.20 acres of APF lands. As shown on the associated Land Use Plan, the owners is unable to convey any APF land to the County, resulting in an APF deficit of 1.20 acres for the property. To satisfy this deficit, this agreement recognizes the assignment of 1.20 acres of surplus APF credits from the Withers PD.

The APF Agreement for KRPC Hartzog – Village I PD received a recommendation of approval from the Orange County Development Review Committee on August 14, 2019, and has been placed on the November 12, 2019 Board consent agenda to be pulled for consideration with the associated PD Land Use Plan. Upon approval by the Board, the Agreement will be recorded in the Public Records of Orange County, Florida.

ACTION REQUESTED: Approval and execution of Adequate Public Facilities Agreement for KRPC Hartzog – Village I Planned Development by and between KRPC Hartzog, LLC and Orange County. District 1

JVW/EPR
Attachments

BCC Mtg. Date: November 12, 2019

This Instrument prepared by and after
recording return to:

Miranda F. Fitzgerald, Esq.
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
Orlando, Florida 32801
(407) 843-4600

Tax Parcel I.D. No(s): 29-24-27-0000-00-013
29-24-27-0000-00-014

**ADEQUATE PUBLIC FACILITIES AGREEMENT
FOR KRPC HARTZOG - VILLAGE I PLANNED DEVELOPMENT**

THIS ADEQUATE PUBLIC FACILITIES AGREEMENT FOR KRPC HARTZOG - VILLAGE I PLANNED DEVELOPMENT (the "Agreement"), effective as of the latest date of execution (the "Effective Date"), is made and entered into by and between **KRPC HARTZOG, LLC**, a Florida limited liability company, whose mailing address is 121 Garfield Avenue, Winter Park, FL 32789 ("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 are collectively referred to herein as "Parties").

RECITALS:

A. Owner is the fee simple owner of certain real property located in Orange County, Florida, as more particularly described in **Exhibit "A"** attached hereto and made a part hereof by this reference (the "Owner's Property").

B. The Owner's Property is identified on the Orange County Comprehensive Plan 2030 (the "Comprehensive Plan") Future Land Use map with the "Village" land use designation and constitutes a portion of Village I, in Horizon West, as same is described and depicted in the Village I Specific Area Plan approved by the Board of County Commissioners of Orange County, Florida (the "BCC") on June 10, 2008 (the "Village I SAP").

C. The Owner's Property is included in the Horizon West Village Land Use Classification Area. The BCC adopted the Horizon West Village Land Use Classification Comprehensive Policy Plan ("CPP") amendment on June 5, 1995. The Horizon West Village Land Use Classification was the result of a public-private partnership between the BCC and Horizon West, Inc. The partnership conducted an extensive visioning and community consensus building process that was summarized in the Horizon West Study Report issued February 7, 1995.

D. A rezoning application is pending with the County to create the KRPC Hartzog - Village I PD on the Owner's Property (hereinafter called the "PD Property").

E. Owner has relied on the prior approvals of the Horizon West Study and the Village I SAP, and on the Village I SAP approvals and studies included in the SAP in proposing development for the PD Property.

F. The Village I SAP contemplates residential uses within the PD Property.

G. Owner desires to develop the PD Property in accordance with the KRPC Hartzog – Village I PD LUP and the PD zoning application on file with County (the “Project”).

H. The Goals, Objectives, and Policies contained in the Future Land Use Element of the Comprehensive Plan have been implemented through Chapter 30, Article XIV of the Orange County Code (“APF/TDR Ordinance”) adopted by the BCC on May 20, 1997, as amended.

I. Division 2 of the APF/TDR Ordinance requires, in Section 30-712(b), that Owner enter into a developer’s agreement identifying required adequate public facilities within the development and addressing the conveyance to the County of such adequate public facilities lands prior to or in conjunction with PD approval, unless otherwise addressed in such agreement pursuant to Section 30-714(c).

J. However, if Owner is unable to convey sufficient adequate public facilities lands to County, the APF/TDR Ordinance, at Sections 30-712(b) and 30-714(d), states that owners may make payment of a fee to County for adequate public facility lands. Additionally, the APF/TDR Ordinance, at Section 30-714(g), allows for application of APF acreage credits to satisfy an APF deficit.

K. It is the intent of the Parties that County will consider approval of KRPC Hartzog – Village I PD with its consideration of this Agreement.

L. The PD Property contains approximately 8.68 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 1.20 acres of public facilities lands.

N. As shown on the PD Land Use Plan for the PD Property, Owner is unable to convey any APF land to the County, resulting in an APF deficit for the PD Property.

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 Agreement by this reference.

2. APF Deficit. The Village I APF Ratio requires Owner to convey to County approximately 1.20 acres of APF Lands; however, Owner is unable to convey any APF Land to the County, thereby creating a 1.20-acre APF deficit.

3. APF Acreage Credits. Withers, LLC, a Delaware limited liability company doing business in Florida as Withers Properties, LLC, a Delaware limited liability company, and Columnar Partnership Holding I, LLC, an Indiana limited liability company, (collectively, "APF Credit Assignors"), have obtained approximately 34.13 surplus APF acreage credits within Village I. The Owner and the APF Credit Assignors have asked County to apply a portion of these credits toward the APF deficit for the PD Property. The County hereby approves the transfer of 1.20 APF acreage credits to the PD Property, which satisfies the APF deficit for the PD Property. Each of the APF Credit Assignors has executed a Joinder attached to this Agreement acknowledging the foregoing transfer of APF acreage credits to the PD Property.

4. Recording. Within thirty (30) days of the Effective Date, this Agreement shall be recorded in the Public Records of Orange County, Florida, at Owner's expense.

5. Time is of the Essence. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement.

6. Further Documentation. The Parties agree that at any time following a request therefor by the other Party, the Party receiving the request shall execute and deliver to the requesting Party such further documents and instruments reasonably necessary to confirm and/or effectuate the obligations of the Parties hereunder and the consummation of the transactions contemplated hereby.

7. Limitation of Remedies. County and Owner expressly agree that the consideration, in part, for each of them entering this Agreement is the willingness of the other to limit the remedies for all actions arising out of or in connection with this Agreement.

a) Limitations on County's Remedies. Upon any failure by Owner to perform its obligations under this Agreement, County shall be limited strictly to only the following remedies:

- (i) action for specific performance; or
- (ii) action for injunction; or
- (iii) the withholding of development permits and other approvals and/or permits in connection with the Project and/or the PD Property; or
- (iv) any combination of the foregoing.

In addition to the foregoing, nothing in this Agreement prohibits or estops County from exercising its power of eminent domain with respect to any portion of the PD Property as County may lawfully elect.

b) Limitations on Owner's Remedies. Upon any failure by County to perform its obligations under this Agreement, Owner shall be limited strictly to only the following remedies:

- (i) action for specific performance; or
- (ii) action for injunction; or
- (iii) action for declaratory judgment regarding the rights and obligations of Owner; or
- (iv) any combination of the foregoing.

c) The Parties expressly waive their respective rights to sue for damages of any type for breach of or default under this Agreement. The Parties expressly agree that each Party shall bear the cost of its own attorney fees for any action arising out of or in connection with this Agreement. Venue for any actions initiated under or in connection with this Agreement shall be in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

8. Agricultural Exemptions. Nothing in this Agreement shall be construed to adversely affect agricultural exemptions for the PD Property.

9. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit and burden of the Parties hereto and their respective heirs, successors, and assigns and shall run with title to the PD Property and be binding upon any person, firm, corporation, or other entity acquiring any interest in all or any portion of the PD Property.

10. Severability. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by either Party hereunder nor substantially increase the burden of either 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.

11. Notices. Any notice delivered with respect to this Agreement shall be in writing and shall 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 to such other person as the Party shall have specified by written notice to the other party delivered in accordance herewith.

County: Orange County, Florida, c/o County Administrator
Post Office Box 1393
Orlando, Florida 32802-1393
Telephone: 407.836.7370

With copies to: Orange County Community, Environmental,
and Development Services Department
Manager, Planning Division
Post Office Box 1393
Orlando, Florida 32802-1393
Telephone: 407.836.5600

Orange County Community, Environmental,
and Development Services Department
Manager, Transportation Planning Division
Orange County Public Works Complex
4200 S. John Young Parkway
Orlando, Florida 32839-8070
Telephone: 407.836.8070

Owner: KRPC Hartzog, LLC
121 Garfield Avenue
Winter Park, FL 32789
Attn: Steven A. Rosser
Telephone: 407.645.4400

With a copy to: Lowndes, Drosdick, Doster, Kantor
& Reed, P.A.
215 N. Eola Drive
Orlando, FL 32801
Attn: Miranda F. Fitzgerald, Esq.
Telephone: 407.418.6340

12. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of the formal Parties hereto and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal Party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof; other than the Parties hereto and their respective representatives, heirs, successors, and assigns.

13. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

14. Interpretation. This Agreement shall not be construed more strictly against one Party than against another Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that each Party has contributed substantially and materially to the preparation hereof. Captions and section headings in this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify, or aid in the interpretation, construction, or meaning of this Agreement.

15. Amendments. No amendment, modification, or other change to this Agreement shall be binding upon the Parties unless in writing and formally executed in the same manner as this Agreement.

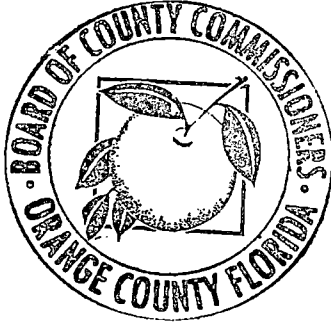
16. Entire Agreement. This Agreement embodies and constitutes the entire understanding of the Parties with respect to the subject matter addressed herein, and all prior or contemporaneous agreement, understandings, representations, and statements, oral or written, are merged into this Agreement.

17. Counterparts. This Agreement may be executed in up to four (4) counterparts, each of which taken together shall constitute one and the same instrument and any Party or signatory hereto may execute this Agreement by signing any such counterpart.

18. Authority to Contract. The execution of this Agreement has been duly authorized by the appropriate body or official of each Party hereto.

[Signatures appear on the 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.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

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

Date: 13 Nov 19

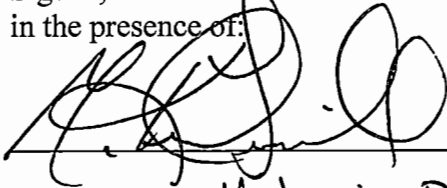
ATTEST: Phil Diamond, CPA, County
Comptroller As Clerk of the Board of
County Commissioners

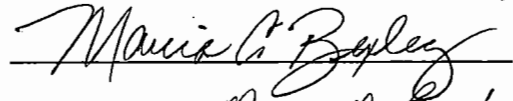
By: *Jennifer Klimetz*
for Deputy Clerk

Print Name: Jennifer Klimetz

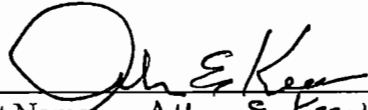
[Signatures Continue on Following Pages]

Signed, sealed and delivered
in the presence of:


Printed Name: McKinzie D Terill


Printed Name: Marcia A. Bexley

KRPC HARTZOG, LLC, a Florida limited
liability company

By: 
Print Name: Allan E. Keen
Its: MEMBER

Date: 10-1-19

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 1st day of Oct, 2019,
by Allan E. Keen, as Member of KRPC HARTZOG, LLC, a Florida
limited liability company, on behalf of such company, who is personally known to me or
has produced _____ as identification.

(Notary Stamp)

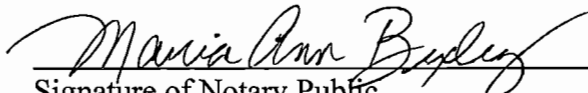

Signature of Notary Public
Print Name: Marcia Ann Bexley
Notary Public, State of Florida
Commission Expires: Aug 15, 2023



EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

THE EAST 370.00 FEET OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 34 SOUTH, RANGE 27 EAST, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

LESS AND EXCEPT THE SOUTH 30 FEET THEREOF PURSUANT TO RIGHT OF WAY AGREEMENT RECORDED IN DEED BOOK 844, PAGE 263, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

PARCEL 2:

THE WEST 300.00 FEET OF THE EAST 670.00 FEET OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 34 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA.

LESS AND EXCEPT THE SOUTH 30 FEET THEREOF PURSUANT TO RIGHT OF WAY AGREEMENT RECORDED IN DEED BOOK 844, PAGE 263, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

THE ABOVE DESCRIBED PARCELS CONTAIN 19.90 ACRES MORE OR LESS.

JOINDER AND CONSENT BY WITHERS, LLC

The undersigned, Withers, LLC, hereby joins in to this Agreement as co-owner of the surplus APF acreage credits being transferred to the PD Property in accordance with Section 3 of this Agreement, for the sole and limited purpose of consenting to such transfer.

WITNESS:

Nellie L. Effinger
Print Name: Nellie L. Effinger
Margaret A. Bernick
Print Name: Margaret A. Bernick

Withers, LLC, a Delaware limited liability company, registered to do business in the State of Florida as Withers Properties, LLC

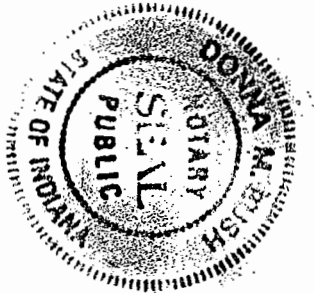
By: CH II Withers, LLC, a Delaware limited liability company, its sole Manager
By: *Daniel A. Traylor*
Daniel A. Traylor, Manager

This 1st day of October, 2019.

STATE OF INDIANA
COUNTY OF VANDERBURGH

The foregoing instrument was acknowledged before me this 1st day of October, 2019 by Daniel A. Traylor, as Manager of CH II Withers, LLC, a Delaware limited liability company, registered to do business in the State of Florida as Withers Properties, LLC, on behalf of the company, who [] is personally known to me or [] has produced _____ as identification.

(Notary Stamp)



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

JOINDER AND CONSENT BY COLUMNAR PARTNERSHIP HOLDING I, LLC

The undersigned, Columnar Partnership Holding I, LLC, hereby joins in to this Agreement as co-owner of the surplus APF acreage credits being transferred to the PD Property in accordance with Section 3 of this Agreement, for the sole and limited purpose of consenting to such transfer.

WITNESS:

Columnar Partnership Holding I, LLC, an
Indiana limited liability company

Nellie L. Effinger

Print Name: Nellie L. Effinger

Margaret A. Bernick

Print Name: Margaret A. Bernick

By: Columnar Holdings, LLC, an Indiana
limited liability company, its sole
Member

By: *D. A. Traylor*
Daniel A. Traylor, President

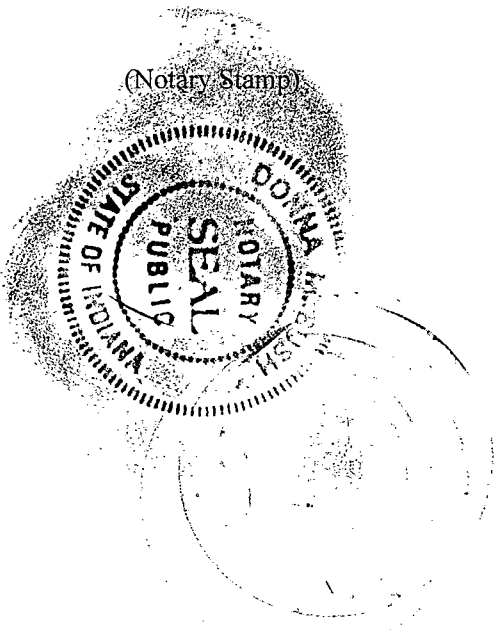
This 1st day of October, 2019

STATE OF INDIANA

COUNTY OF VANDERBURGH

The foregoing instrument was acknowledged before me this 1st day of October, 2019 by Daniel A. Traylor, as President of Columnar Holdings, LLC, an Indiana limited liability company, sole Member of Columnar Partnership Holding I, LLC, an Indiana limited liability company, on behalf of such company, who is personally known to me or has produced _____ as identification.

(Notary Stamp)



Donna M. Bush

Signature of Notary Public

Print Name: Donna M. Bush

Notary Public, State of Indiana

Commission Expires: 01/20/2024

Commission No. 677213