



Interoffice Memorandum

April 26, 2019

TO: Mayor Jerry L. Demings  
and the Board of County Commissioners

FROM: Mark V. Massaro, P. E., Director, Public Works Department

CONTACT PERSON: Christine N. Lofye, P.E., Manager  
Traffic Engineering Division

PHONE NUMBER: (407) 836-7891

SUBJ: School Impact Fee Agreement for Creative Village Parcel M Apartments  
Application #18-006

The alternative school impact fee calculation for Creative Village Parcel M Apartments, located within the City Of Orlando, was reviewed and approved by the Impact Fee Committee, in consultation with The Orange County School Board and the City of Orlando, on November 8, 2018.

The School Impact Fee Code governs school impact fees throughout Orange County, including within municipalities.

The impact fee variables approved by the Committee to be used to calculate the alternative impact fee for this development are:

Variable	Alternative School Impact Study Results (2600 DU)	Ordinance Rate Multi-Family
Student Generation Rate (SGR)	0.0320	.2810
Student Threshold	13	115
Total cost per student station		\$27,053.00
Net impact cost per student station		\$21,065.00
Monitoring Fee	\$2,000.00	N/A

The alternative school impact fee utilizing the above variables and based on 409 dwelling units is \$674.08 per dwelling unit. This rate differs from the applicable ordinance rate of \$5,919 per dwelling unit (per Ordinance Rate Schedule of January 1, 2017 to present). The alternative school impact fee for 409 units totals \$275,698.72 and will be paid directly to the City of Orlando at the time of building permit issuance. Additionally, Creative Village Parcel M Owner, LLC will pay The School Board of Orange County, Florida \$2,000.00 to cover the anticipated costs of conducting the monitoring over the course of the five-year monitoring period.

April 26, 2019

SUBJ: **School Impact Fee Agreement for Creative Village Parcel M Apartments  
Application #18-006**

Page 2

The Impact Fee Committee requests the approval of the School Impact Fee Agreement regarding an alternative impact fee calculation for Creative Village Parcel M Apartments by and among Creative Village Parcel M Owner, LLC; The School Board of Orange County, Florida; and Orange County. This agreement has been approved in form by the County Attorney's Office and Risk Management.

**Action Requested: Approval and execution of School Impact Fee Agreement regarding an alternative impact fee calculation for Creative Village Parcel M Apartments #18-006 by and among Creative Village Parcel M Owner, LLC, City of Orlando, The School Board of Orange County, Florida, and Orange County. District 6.**

MVM/CNL/lt

BCC Mtg. Date: May 21, 2019

1 THIS INSTRUMENT PREPARED BY  
2 AND AFTER RECORDING RETURN TO:  
3  
4 Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
5 Attn: M. Rebecca Wilson  
6 215 North Eola Drive  
7 Post Office Box 2809  
8 Orlando, FL 32801-3344  
9 (407) 843-4600

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Tax Parcel ID(s): 26-22-29-1853-03-000

**SCHOOL IMPACT FEE AGREEMENT  
REGARDING AN ALTERNATIVE IMPACT FEE CALCULATION  
FOR CREATIVE VILLAGE PARCEL M APARTMENTS  
#18-006**

22 This SCHOOL IMPACT FEE AGREEMENT REGARDING AN  
23 ALTERNATIVE IMPACT FEE CALCULATION FOR CREATIVE VILLAGE PARCEL  
24 M APARTMENTS (the "Agreement"), effective as of the latest day of execution (the  
25 "Effective Date"), is made and entered into by and among CREATIVE VILLAGE  
26 PARCEL M OWNER, LLC, whose mailing address is c/o Ustler Development, Inc., 800  
27 North Orange Avenue, Suite 200, Orlando, Florida 32801 ("Owner"); CITY OF  
28 ORLANDO, whose mailing address is 400 South Orange Avenue, Orlando, Florida 32801  
29 ("Municipality"); THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA, a body  
30 corporate and political subdivision of the State of Florida, whose address is 445 West  
31 Amelia Street, Orlando, Florida 32801 ("OCPS"), and ORANGE COUNTY, a charter  
32 county and political subdivision of the State of Florida, whose mailing address is c/o  
33 County Administrator, P.O. Box 1393, Orlando, FL 32802-1393 ("County"). Owner,  
34 OCPS, Municipality and County are sometimes collectively referred to herein as the  
35 "Parties."

City Council Meeting: 3-25-19  
Item: C-6 Documentary: 190325 C04

**WITNESSETH:**

1  
2 WHEREAS, Owner holds fee simple title to certain real property, as shown on  
3 Exhibit “A” and as particularly described on Exhibit “B”, both attached hereto and  
4 incorporated herein by this reference (the “Property”); and

5 WHEREAS, Owner intends to develop all or a portion of the Property as a  
6 multifamily apartment complex with 409 multifamily units, known as Creative Village  
7 Parcel M Apartments (“the Project”); and

8 WHEREAS, pursuant to Sections 23-144 and -145 of the Orange County Code, as  
9 may be amended (the “Alternative School Impact Fee Code”), Owner conducted an  
10 alternative school impact fee study titled the “Alternative Impact Fee Calculation for  
11 Banner Development Final” (the “Study”) to calculate an alternative school impact fee  
12 (“Alternative Impact Fee”) calculation for the Project and show that the Project will  
13 generate fewer school age children than would be expected under the current student  
14 generation rate for multifamily residential development established in the Orange County  
15 Public Schools School Impact Fee Study Updated Final Report dated February 5, 2016, as  
16 may be amended from time to time (“Updated Final Report”);

17 WHEREAS, the purpose of the Study is to determine whether the permanent  
18 physical characteristics and limitations of the Project will result in a reduced student  
19 generation rate initially and during the useful life of the improvements of the Project as  
20 compared to the student generation rate for multifamily residential development in  
21 accordance with the Updated Final Report;

22 WHEREAS, Owner submitted the Study and the Alternative Impact Fee calculation  
23 to County prior to the issuance of any building permit for the Project; and

24 WHEREAS, on November 8, 2018, County conditionally accepted Owner’s  
25 Alternative Impact Fee calculation with an anticipated Alternative Impact Fee calculation  
26 of \$674.08 per unit, subject to the terms and conditions hereafter set forth; and

1 WHEREAS, the Parties are entering into this Agreement pursuant to the Alternative  
2 School Impact Fee Code.

3 NOW, THEREFORE, in consideration of the premises contained herein and other  
4 good and valuable consideration exchanged by and among the Parties, the receipt and  
5 sufficiency of which are hereby acknowledged, the Parties hereto stipulate and agree as  
6 follows:

7 1. **Recitals.** The above recitals are true and correct and are incorporated herein  
8 by this reference.

9 2. **Conditional Acceptance of Alternative Impact Fee Calculation.** Subject  
10 to the terms and conditions set forth in sections 3, 4 and 5 of this Agreement, County  
11 conditionally accepts the Alternative Impact Fee calculation submitted by Owner.

12 3. **Establishment of Student Threshold and Threshold Amount.** Owner,  
13 County, Municipality, and OCPS hereby agree and accept that the student generation rate  
14 for the Project as set forth in the Alternative Impact Fee calculation submitted by Owner  
15 shall be 0.0320 per multifamily residential dwelling unit (“SGR”), for a total of 13 students  
16 generated for the Project (“Student Threshold”) as of the Effective Date. Owner, County,  
17 Municipality and OCPS hereby agree and acknowledge that Owner shall pay to  
18 Municipality on behalf of OCPS the Alternative Impact Fee in the amount of \$275,698.72  
19 for the Project.

20 4. **Monitoring.**

21 (a) Within the applicable time frame, defined below, “monitoring” shall  
22 be conducted by OCPS. For purposes of this Agreement, the term “monitoring” shall mean  
23 the monitoring and auditing process and reporting process as set forth below:

24 (i) Monitoring and auditing process: No more than two (2)  
25 times per year for a period of five (5) consecutive years from the date upon which the  
26 Project is completed and ready for occupancy by tenants as evidenced by obtaining a  
27 certificate of occupancy for the Project (“Monitoring Term”), OCPS, at the sole cost and

1 expense of the Owner, which such cost and expense shall not exceed the amount set forth  
2 in Section 5(a) of this Agreement, shall conduct an audit of the number of students  
3 generated by the Project to determine if the student generation rate for the Project exceeds  
4 the Student Threshold set forth herein and calculated pursuant to the adopted Alternative  
5 Impact Fee calculation by reviewing the actual number of school age children generated at  
6 the address associated with the Project (“Audited SG”). OCPS shall conduct the monitoring  
7 and auditing of the Project based on the student enrollment data for the Project prepared  
8 and compiled biannually by OCPS in October and February of each year.

9 (ii) Reporting process: The Parties recognize that, in order to  
10 ensure adequate capacity is available as and when needed, OCPS needs as much lead time  
11 as possible to address any significant influx of new students generated by the Project over  
12 and above the anticipated Student Threshold. The Parties also recognize that it is possible  
13 that such a potential influx of students might not be discovered in time for OCPS to make  
14 arrangements to accommodate them if such potential students become residents at the  
15 Project shortly after one of OCPS’ semi-annual audits. Therefore, during the Monitoring  
16 Term, Owner agrees that it shall, to the extent permitted by applicable housing and privacy  
17 laws, if any, maintain an ongoing record of the number and address of school age children  
18 who reside in the Project as their primary and permanent residence for purposes of  
19 establishing school attendance. If at any time during the Monitoring Term such number  
20 exceeds the Student Threshold by five percent (5%) Owner shall, within ten (10) days after  
21 becoming aware of same, report such number in writing to OCPS (the “Reported SG”).  
22 During the Monitoring Term upon thirty (30) days from written request from OCPS but no  
23 more than two (2) times per year, Owner, at Owner’s sole cost and expense, shall provide  
24 a written report to OCPS of the Reported SG. Owner further agrees, at Owner’s sole cost  
25 and expense, to promptly and diligently provide written notice to OCPS of any material  
26 modifications to the permanent physical characteristics and limitations of the Project, or  
27 any material changes to the composition of occupied units within the Project by Owner,

1 which could reasonably be expected to cause an increase in the student generation rate for  
2 the Project during the Monitoring Term.

3 (b) The SGR identified in the Alternative Impact Fee calculation and  
4 Student Threshold shall be the benchmark value for comparison against the monitoring  
5 results.

6 5. ***Payments.***

7 (a) Within thirty (30) days of the Effective Date, Owner shall pay to  
8 OCPS an amount equal to Two Thousand and No/00 Dollars (\$2,000.00) to cover the  
9 anticipated costs of conducting the monitoring over the Monitoring Term (“Monitoring  
10 Fee”). In the event OCPS is required to expend any funds in excess of the Monitoring Fee  
11 or otherwise retain or engage an independent consultant to conduct the monitoring required  
12 hereunder (“Additional Monitoring Costs”), OCPS shall provide written notice to Owner  
13 of the actual costs incurred by OCPS to conduct the monitoring and Owner shall be  
14 responsible for paying OCPS any Additional Monitoring Costs within thirty (30) days of  
15 receipt of any invoice from OCPS, provided; however, in no event shall Owner be  
16 responsible for additional monitoring fees in excess of Four Thousand and No/00 Dollars  
17 (\$4,000.00) total during the Monitoring Term of this Agreement.

18 (b) If the Audited SG or Reported SG (collectively, the “Actual SG”)   
19 exceeds the Student Threshold and SGR set forth in the Alternative Impact Fee calculation,  
20 Owner shall pay the difference between the Alternative Impact Fee accepted by the  
21 Municipality under section 2 above, and any additional fee shown to be owing (the  
22 “Additional School Impact Fee Amount”). The Additional School Impact Fee Amount  
23 shall be calculated by multiplying the difference between Actual SG and Student Threshold  
24 by \$21,065.00, in effect at the time of the monitoring, as shown below:

25 (Actual SG-Student Threshold) x \$21,065.00 = Additional School Impact Fee  
26 Amount

27

1 Upon payment of any Additional School Impact Fee Amount, the Student Threshold shall  
2 be increased to the Actual SG as the benchmark for additional / forthcoming monitoring  
3 by OCPS and self-reporting by Owner.

4 (c) OCPS shall provide written notice to Owner and Municipality  
5 outlining the Actual SG, Student Threshold and Additional School Impact Fee Amount  
6 (“Additional Fee Notice”). Owner shall pay the Additional School Impact Fee Amount to  
7 Municipality within thirty (30) days of Owner’s receipt of the Additional Fee Notice.

8 (d) If monitoring shows a decreased SGR, Owner shall not be entitled  
9 to any refund.

10 (e) Once paid to Municipality, the Alternative Impact Fee, Monitoring  
11 Fee, and/or Additional School Impact Fee Amount are all non-refundable.

12 (f) Notwithstanding anything herein seemingly to the contrary, the total  
13 amount of Owner’s payment(s) of the Alternative Impact Fee and any Additional School  
14 Impact Fee Amount(s) shall not exceed the total amount of the school impact fee that would  
15 have been payable pursuant to the fee schedule set forth in Article V of Chapter 23 of the  
16 Orange County Code (the “School Impact Fee Ordinance”) which was in effect on the  
17 Effective Date.

18 6. ***Expansion of Development.*** This Agreement is effective only for the limits  
19 and scope of the Project as identified, described, and approved for development by  
20 Municipality as of the Effective Date. In the event the Project materially expands or is  
21 materially altered after the Effective Date, Owner, its successors, and/or assigns shall be  
22 subject to Municipality’s development review process and OCPS’ capacity and  
23 concurrency processes as set forth in that certain First Amended and Restated Interlocal  
24 Agreement for Public School Facility Planning and Implementation of Concurrency (as  
25 may be amended from time to time), which may include payment of additional school  
26 impact fees as applicable and pursuant to the fee schedule set forth in the School Impact  
27 Fee Ordinance at that time.



1           7.       **Successors and Assigns.** This Agreement shall be binding upon, and shall  
2 inure to the benefit and burden of, the heirs, legal representatives, successors, and assigns  
3 of the Parties and shall run with Property and be binding upon the successors and assigns  
4 of Owner and upon any person, firm, corporation, or entity who may become a successor  
5 in interest to Property.

6           8.       **Notices.** Any notice delivered with respect to this Agreement shall be in  
7 writing and shall be deemed to be delivered (whether or not actually received) (i) when  
8 hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice  
9 in the United States Mail, postage prepaid, certified mail, return receipt requested,  
10 addressed to the person at the address set forth opposite the Party's name below, or at such  
11 other address or to such other person as the party shall have specified by written notice to  
12 the other Party delivered in accordance herewith:

13  
14 As to Owner:                   Creative Village Parcel M Owner, LLC  
15                                   c/o Ustler Development, Inc.  
16                                   800 North Orange Avenue, Suite 200  
17                                   Orlando, FL 32801  
18                                   Attn: Craig Ustler  
19

20 With a copy to:               The Allen Morris Company  
21                                   c/o Yazmin Gil  
22                                   121 Alahambra Plaza, Suite 1600  
23                                   Coral Gables, FL 33134  
24

25 With copy to:                 Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
26                                   215 N. Eola Drive  
27                                   Orlando, FL 32801  
28                                   Attn: M. Rebecca Wilson, Esq.  
29

30 As to County:                 Director, Orange County Public Works Department  
31                                   4200 South John Young Parkway  
32                                   Orlando, FL 32839  
33

34 With copies to:               Orange County Public Works Department  
35                                   Manager, Traffic Engineering Division  
36                                   4200 South John Young Parkway  
37                                   Orlando, FL 32839  
38

1 Orange County Planning, Environmental,  
2 and Development Services Department  
3 Manager, Fiscal and Operational Support Division  
4 201 South Rosalind Avenue  
5 Post Office Box 1393  
6 Orlando, FL 32802-1393  
7  
8 As to OCPS: The School Board of Orange County, Florida  
9 Facilities Planning  
10 6501 Magic Way, Building 200  
11 Orlando, FL 32809  
12  
13 With a copy to: The School Board of Orange County, Florida  
14 Office of Legal Services  
15 445 West Amelia Avenue  
16 Orlando, FL 32801  
17  
18 As to Municipality: City Planning Division, Economic Development  
19 Department  
20 City of Orlando  
21 400 S. Orange Avenue  
22 Orlando FL 32802-4990  
23  
24 With a copy to: City Attorney's Office  
25 City of Orlando  
26 400 S. Orange Avenue  
27 Orlando FL 32802-4990  
28

29 9. **Recordation of Agreement.** The Parties hereto agree that this Agreement  
30 shall be recorded in the Public Records of Orange County, Florida, at Owner's expense,  
31 within ten (10) business days of the Effective Date.

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

35  
36 11. **Specific Performance.** County, Municipality, OCPS, and Owner shall each  
37 have the right to enforce the terms and conditions of this Agreement only by an action for  
38 specific performance. Notwithstanding the foregoing statement, nothing herein precludes  
39 Municipality from imposing a lien(s) against the Property for non-payment of impact fees

1 as such would be due as set forth herein. Venue for any action(s) initiated under or in  
2 connection with this Agreement shall be in the Circuit Court of the Ninth Judicial Circuit  
3 in and for Orange County, Florida.

4 12. **Attorney Fees** In the event any Party hereto brings an action or proceeding,  
5 including any counterclaim, cross-claim, or third party claim, against another Party arising  
6 out of this Agreement, each Party in such action or proceeding, including appeals  
7 therefrom, shall be responsible for its own attorney and other legal fees.

8 13. **Amendments.** No amendment, modification, or other change to this  
9 Agreement shall be binding upon the Parties unless in writing and executed by all the  
10 Parties hereto.

11 14. **Construction of Agreement.** Captions of the sections of this Agreement are  
12 for convenience and reference only, and the words contained therein shall in no way be  
13 held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of  
14 the provisions of this Agreement.

15 15. **Counterparts.** This Agreement may be executed in up to four (4)  
16 counterparts, each of which shall be deemed an original, and all of which together shall  
17 constitute one and the same instrument.

18 16. **Termination.** This Agreement shall automatically terminate upon the  
19 expiration of the Monitoring Term and payment of the Additional School Impact Fee, if  
20 any. Provided herein the provisions of Section 6 survive the Termination hereof.

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22 **[SIGNATURES APPEAR ON THE FOLLOWING PAGES]**  
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IN WITNESS WHEREOF, County, Municipality, OCPS, and Owner 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: *Bruno Brooks*  
for Jerry L. Demings  
Orange County Mayor

Date: 21 May 19

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

By: *Katie Smith*  
Deputy Clerk

Print name: Katie Smith

ATTEST:

CITY OF ORLANDO, FLORIDA, a municipal corporation, organized and existing under the laws of the State of Florida (SEAL)

By: Denise Aldridge  
Denise Aldridge, City Clerk

By: R. J. Hill  
Mayor / Mayor Pro Tem

Date: APRIL 2, 2019

1 STATE OF FLORIDA  
2 COUNTY OF ORANGE  
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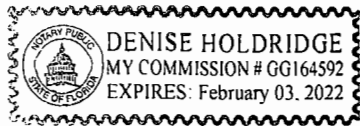
4 The foregoing was acknowledged before me this 2 day of APRIL  
5 \_\_\_\_\_, 2019, By REGINA I. HILL, Mayor / Pro Tem and DENISE ALDRIDGE  
6 \_\_\_\_\_, City Clerk, who is personally known to me who did (did not) take an oath.  
7

Denise Holdridge  
Name

Notary Public

Serial Number: 66164592

My Commission Expires: 2-3-22



FOR THE USE AND RELIANCE OF  
CITY OF ORLANDO ONLY.

Approved as to form and legality,

Melissa Clarke

Melissa Clarke, Esq.

Assistant City Attorney

City of Orlando, Florida


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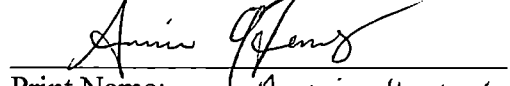
City Council Meeting: 3-25-19  
Item: C-6 Documentary: 190325C06

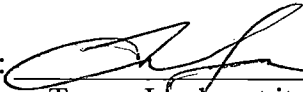
Signed, sealed and delivered in the  
presence of:

“OCPS”

**THE SCHOOL BOARD OF ORANGE  
COUNTY, FLORIDA**, a public corporate  
body and political subdivision of the State of  
Florida

  
Print Name: Nancy L. Connor

  
Print Name: Arabia Henley

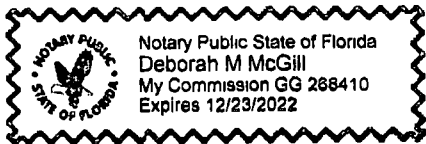
By:   
Teresa Jacobs, at its Chair

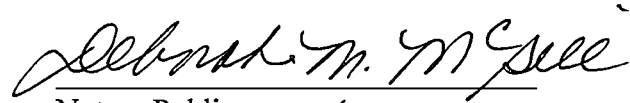
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STATE OF FLORIDA     )  
  ) s.s.:  
COUNTY OF ORANGE    )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of  
MARCH, 2019, by Teresa Jacobs, as Chair of The School Board of Orange  
County, Florida, a public corporate body and political subdivision of the State of Florida,  
on behalf of The School Board. She is personally known to me or had produced  
\_\_\_\_\_ (type of identification) as identification and has  
acknowledged that she signed the instrument voluntarily for the purpose expressed in it.



  
Notary Public  
Printed Name: Deborah M. McGill  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

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**WITNESSES:**

Arabia Henley  
Print Name: Arabia Henley

Marceliz Pagan  
Print Name: MARCELIZ Pagan

**THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA**, a public corporate body and political subdivision of the State of Florida

By: [Signature]  
Barbara M. Jenkins, Ed.D.,  
as its Superintendent

Date: 3-27-2019

STATE OF FLORIDA )  
) s.s.:  
COUNTY OF ORANGE )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of March, 2019, by Barbara M. Jenkins, Ed.D., as Superintendent of The School Board of Orange County, Florida, a public corporate body and political subdivision of the State of Florida, on behalf of The School Board. She is personally known to me or had produced \_\_\_\_\_ (type of identification) as identification and has acknowledged that he/she signed the instrument voluntarily for the purpose expressed in it.

[Signature]  
Notary Public  
Printed Name: Susan M. Adams  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



Approved as to form and legality by legal counsel to The School Board of Orange County, Florida this 13<sup>th</sup> day of March, 2019, for its exclusive use and reliance.

By: [Signature]  
Laura L. Kelly, Esquire

Reviewed and approved by Orange County Public Schools Chief Facilities Officer this 13<sup>th</sup> day of MARCH, 2019.

By: [Signature]  
John T. Morris, Chief Facilities Officer

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WITNESSES:

OWNER

Creative Village Parcel M Owner, LLC, a  
Delaware limited liability company

[Signature]  
Print Name: MARCELA CRAVEIRO

By: [Signature]  
Name: Yazmin Gil  
Title: Manager

[Signature]  
Print Name: CHRISTIAN BARRERA

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

THE FOREGOING instrument was acknowledged before me by Yazmin Gil, as  
Manager of Creative Village Parcel M Owner, LLC, a Delaware limited liability company,  
known by me to be the person described herein, this 27 day of February,  
2019. He/she is personally known to me and has acknowledged that he/she signed the  
instrument voluntarily for the purpose expressed in it.

WITNESS my hand and official seal in the County and State last aforesaid this  
27 day of February, 2019.

[Signature]  
NOTARY PUBLIC  
Print  
Name: Maria L. Chapdelaine  
My Commission Expires: \_\_\_\_\_

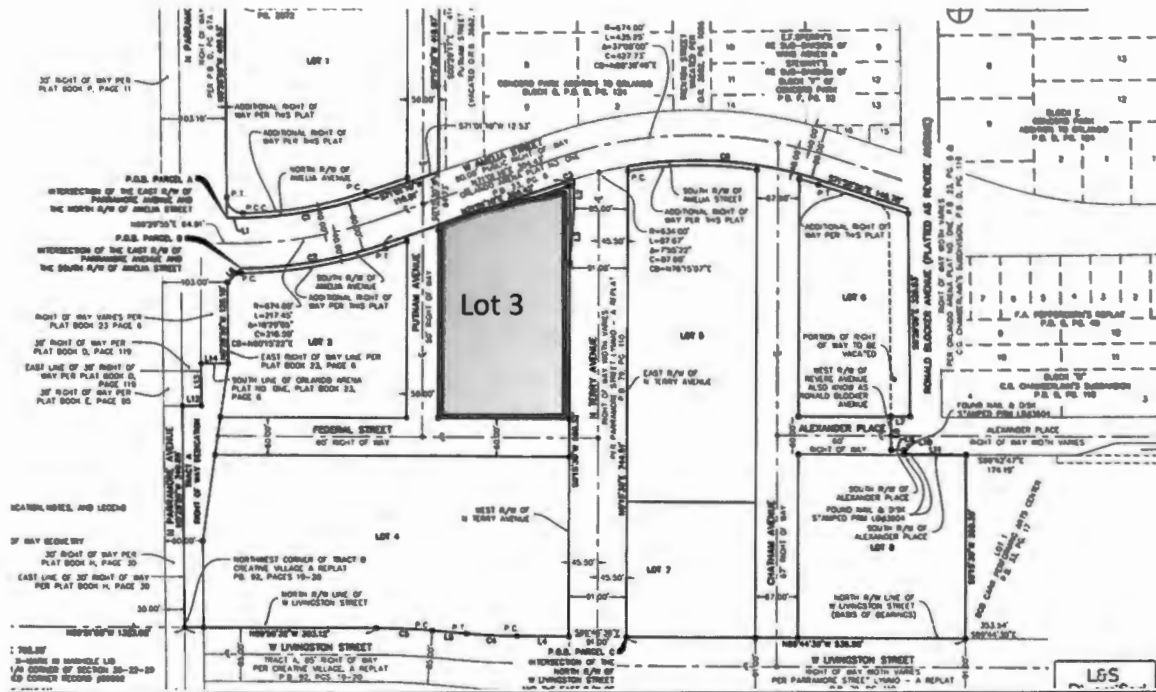






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**Exhibit "A" (Cont'd)**



**Exhibit "B"**

**REAL PROPERTY DESCRIPTION**

LOT 3 OF THE CREATIVE VILLAGE – PHASE 1 PLAT, AS RECORDED IN PLAT  
BOOK 93, PAGES 60 - 64 OF THE PUBLIC RECORDS OF ORANGE COUNTY,  
FLORIDA.

1.57 Acres