



Interoffice Memorandum

March 5, 2018

TO: Mayor Teresa Jacobs
and Board of County Commissioners

FROM: Raymond E. Hanson, P. E., Director
Utilities Department

A handwritten signature in black ink, appearing to read "Raymond E. Hanson", written over the "FROM:" field.

**SUBJECT: BCC Agenda Item – Consent Agenda
March 20, 2018 BCC Meeting
Hold Harmless Agreement – Northeast PD (Parcel 27 Phase 1B Off-Site)
Contact Person: Andres Salcedo, P. E.
Assistant Director, Utilities Department
407-254-9719**

The developer, Spring Grove, LLC, has applied for approval of the final engineering plans for a roadway project referred to as "A Portion of the Northeast PD (Parcel 27 Phase 1B Off-Site)," located in Orange County, Florida, which application is filed under Permit No. 17-E-035 (permit).

In order to better serve areas within its wastewater and reclaimed water service territory, Orange County requested the developer oversize the wastewater and reclaimed water mains and agreed to enter into a developer reimbursement agreement.

This hold harmless agreement is an acknowledgement by the developer that they understand and agree that no reimbursement can be permitted or shall be made without Board approval of the developer reimbursement agreement. The developer acknowledges that it is applying for the permit with that knowledge and holding the County harmless with respect to reimbursement.

The County Attorney's Office staff has reviewed the agreement and finds it acceptable. Utilities Department staff recommends approval.

Action Requested: Approval and execution of Hold Harmless Agreement by Spring Grove, LLC for the benefit of Orange County for a portion of the Northeast PD (Parcel 27 Phase 1B Off-Site).

District 1.

HOLD HARMLESS AGREEMENT

THIS HOLD HARMLESS AGREEMENT (the "Agreement") is made and entered into as of the date of later execution below (the "Effective Date") by **SPRING GROVE, LLC**, a Delaware limited liability company (the "Developer") whose principal address is 5956 Sherry Lane, Suite 1000, Dallas, Texas 75225, for the benefit of **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida (the "County"), whose principal address is 201 South Rosalind Avenue, Orlando, Florida 32801.

WHEREAS, Developer has applied to the Orange County Utilities Department (the "OCU") for approval of Final Engineering Plans for a roadway project referred to as "A portion of the Northeast PD (PARCEL 27 PHASE 1B OFF-SITE)," located in Orange County, Florida, described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Property"), which application is filed under Permit No. 17-E-035 (the "Permit"); and

WHEREAS, the Developer contemplates the development of a number of improvements for various uses within the Property (collectively, the "Project"); and

WHEREAS, in order to proceed with the Project, or any part thereof, it will be necessary to obtain wastewater and reclaimed water service to the Property; and

WHEREAS, the Developer, in order to facilitate the provision of wastewater and reclaimed water service to the Project, requires the installation of a 16-inch wastewater force main and 20-inch reclaimed water main from the points of connection with the OCU wastewater and reclaimed water systems to the Project (the "Utility Work"); and

WHEREAS, the County, in order to better serve areas within its wastewater and reclaimed water service territory, requested that the Developer oversize the wastewater and reclaimed water mains to a 20-inch wastewater forcemain and 24-inch reclaimed water mains (the "Oversized Utility Work"); and

WHEREAS, in order for the Developer to receive reimbursement from the County for the Oversized Utility Work, the County and the Developer must enter into a Developers Reimbursement Agreement documenting the terms for reimbursing the Developer for the Oversized Utility Work successfully completed; and

WHEREAS, at the time that the parties have entered into this Agreement, a final draft of the Developers Reimbursement Agreement has not been finalized and executed by the Orange County Board of County Commissioners (the "BCC") or the Developer; and

WHEREAS, in order for OCU to issue the Permit prior to the BCC approval of the Developers Reimbursement Agreement, OCU required the submittal of a hold harmless agreement, in connection with its approval of the Final Engineering Plans; and

WHEREAS, the Developer has added a note on the plan sheets of the Final Engineering Plans referenced herein that states: "ORANGE COUNTY SHALL NOT BE REQUIRED TO PAY FOR ANY INFRASTRUCTURE REFLECTED ON THESE PLANS BUILT PRIOR TO THE BOARD OF COUNTY COMMISSIONERS APPROVAL OF A DEVELOPERS REIMBURSEMENT AGREEMENT SPECIFICALLY DELINEATING SUCH AN OBLIGATION. THE CONTRACTOR AND DEVELOPER SHALL HOLD ORANGE COUNTY HARMLESS WITH RESPECT TO THE APPROVAL OF THESE PLANS PRIOR TO APPROVAL OF THE DEVELOPERS REIMBURSEMENT AGREEMENT AND MAY BUILD THE APPROVED INFRASTRUCTURE AT THEIR OWN RISK."

NOW, THEREFORE, in consideration of the above premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer hereby agrees as follows:

SECTION 1. RECITALS INCORPORATED. All of the recitals set forth above are true and correct, and are incorporated herein and made a part hereof by this reference.

SECTION 2. REIMBURSEMENT CONTINGENT ON BCC APPROVAL OF DEVELOPER AGREEMENT. The Developer understands and agrees that no reimbursement can be permitted or shall be made without BCC approval of the Developers Reimbursement Agreement, and Developer acknowledges that it is applying for the Permit with that knowledge and holding the County harmless (with respect to the reimbursement obligation) for approving the Permit without having the Developers Reimbursement Agreement approved by the BCC.

SECTION 3. HOLD HARMLESS. The Developer on behalf of itself, its agents, contractors, successors and assigns, shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless and forever release and discharge the County, its elected officials, officers, employees, and agents, from and against any and all liabilities, claims, damages, losses, costs, and expenses pertaining to claims for reimbursement for any and all costs related to the Oversize Utility Work arising out of, or in connection with the approval of the Permit prior to the BCC's approval of the Developers Reimbursement Agreement, including the costs of any suits, attorney's fees and other expenses in connection therewith, including trial and appeals therefrom.

SECTION 4. FUTURE AGREEMENTS; COUNTY PERMITS. The parties hereto acknowledge that by entering into this Agreement the County is not required to enter into any other agreement, including any Developers Reimbursement Agreement referenced herein. Moreover, nothing in this Agreement shall be construed to impede, interfere with, or supersede the authority of the County to issue any permit, condition any permit, or deny any permit, and no rights to any permit are created as a result of this Agreement.

SECTION 5. NOTICE. Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when (i) hand delivered to the

official hereinafter designated, or (ii) three (3) days after the date on which deposited in the United States mail, postage prepaid, certified mail return receipt requested, and addressed to a Party at the address set forth opposite the Party's name below, or such other address as the Party shall have specified by written notice to the other Party delivered in accordance herewith.

If to the COUNTY: Orange County Utilities Department
9150 Curry Ford Road
Orlando, Florida 32825
Attn: Director
Telephone: (407) 254-9804

With copy to: Orange County Administrator's Office
Orange County Administration Building
201 S. Rosalind Avenue, 5th Floor
Orlando, Florida 32801
Attn: County Administrator

If to the DEVELOPER: Spring Grove, LLC
5956 Sherry Lane, Suite 1000
Dallas, Texas 75225
Attention: Daniel Traylor
Telephone: (214) 934-5553

With copy to: James H. McNeil, Jr.
Akerman LLP
420 South Orange Avenue, Suite 1200
Orlando, Florida 32801
Telephone: (407) 419-8543

SECTION 6. **AMENDMENT/TERMINATION.** This Agreement may be amended or terminated only by express written instrument approved by the BCC and the Developer.

SECTION 7. **APPLICABLE LAW.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

SECTION 8. **EFFECTIVE DATE.** This Agreement shall become effective on the date of execution by the County or the date of execution of the Developer, whichever is later.

SECTION 9. **RATIFICATION.** This Agreement must be ratified by the Orange County Board of County Commissioners. This Agreement shall terminate if the Orange County Board of County Commissioners does not ratify this Agreement within sixty days of the Effective Date.

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

ORANGE COUNTY, FLORIDA

By: Orange County Utilities Department

By: [Signature]
Ray Hanson, P.E., Director

Date: 3-2-18

WITNESSES:

SPRING GROVE, LLC,

a Delaware limited liability company

By: CH II SPRING GROVE, LLC,
a Delaware limited liability company,
its Manager

[Signature]
Print Name: Melody F. Ellsperman

By: [Signature]
Daniel A. Traylor, Manager

[Signature]
Print Name: Margaret A. Bernick

Date: 02/27/2018

(Seal)

STATE OF INDIANA

COUNTY OF VANDERBURGH

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

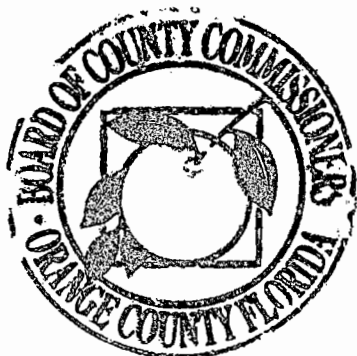
(Notary Stamp)



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

[Signature]
Signature of Notary Public
Print Name: Donna M. Bush
Notary Public, State of Indiana
Commission Expires: 01/20/2024

IN WITNESS WHEREOF, the Orange County Board of County Commissioners has hereby ratified this Agreement by its authorized representative on the date set forth below.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor
Date: 3.20.18

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

By: *Neelia Pey*
Deputy Clerk

Date: MAR 20 2018

EXHIBIT "A 1 of 1"

Property Legal Description

THAT PART OF THE NORTHWEST $\frac{1}{4}$ OF THE NORTHWEST $\frac{1}{4}$ AND THE NORTHEAST $\frac{1}{4}$ OF THE NORTHWEST $\frac{1}{4}$, EAST OF STATE ROAD NO. 545 IN SECTION 20, TOWNSHIP 24 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA.

AND

THAT PART OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ LYING EAST OF STATE ROAD 545, AND THE WEST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$, AND THE WEST $\frac{1}{2}$ OF THE SOUTHWEST $\frac{1}{4}$ LYING EAST OF STATE ROAD NO. 545, ALL IN SECTION 17, TOWNSHIP 24 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA.

LESS AND EXCEPT:

THAT PORTION OF THE NORTH $\frac{1}{2}$ OF THE NORTHWEST $\frac{1}{4}$ OF SAID SECTION 20, TOWNSHIP 24 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF THE NORTHWEST $\frac{1}{4}$ OF SAID SECTION 20; THENCE RUN SOUTH $00^{\circ}32'15''$ WEST, ALONG THE EAST LINE OF THE NORTHWEST $\frac{1}{4}$ OF SAID SECTION 20, A DISTANCE OF 722.64 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH $00^{\circ}32'15''$ WEST, ALONG SAID EAST LINE, A DISTANCE OF 611.52 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST $\frac{1}{4}$ OF THE NORTHWEST $\frac{1}{4}$ OF SAID SECTION 20; THENCE DEPARTING SAID EAST LINE, RUN NORTH $89^{\circ}58'44''$ WEST, ALONG THE SOUTH LINE OF THE NORTH $\frac{1}{2}$ OF THE NORTHWEST $\frac{1}{4}$ OF SAID SECTION 20, A DISTANCE OF 2068.83 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF AVALON ROAD (STATE ROAD 545, A 66.00 FOOT WIDE RIGHT-OF-WAY PER ORANGE COUNTY PUBLIC WORKS RIGHT-OF-WAY MAP, CONTRACT NO. YA-903A BY PROFESSIONAL ENGINEERING CONSULTANTS, INC. UNDER PROJECT NO. 70109); THENCE RUN NORTH $43^{\circ}33'32''$ EAST, ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 843.54 FEET; THENCE RUN SOUTH $89^{\circ}58'44''$ EAST, DEPARTING SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 1493.28 FEET TO THE POINT OF BEGINNING.