



Interoffice Memorandum

AGENDA ITEM

DATE: June 24, 2022
TO: Mayor Jerry L. Demings
—AND—
County Commissioners
FROM: Jon V. Weiss, P.E., Director
Planning, Environmental and Development
Services Department

A handwritten signature in black ink, appearing to read "J. Weiss", is written over the name "Jon V. Weiss" in the "FROM" field.

**CONTACT PERSON: Joe Kunkel, P.E., DRC Chairman
Development Review Committee
Public Works Department
(407) 836-7971**

SUBJECT: July 26, 2022 — Consent Item
Adequate Public Facilities Agreement for Lake Dennis PD
Case #APF-22-02-052 / District 1
(Related to LUP-21-10-325)

The proposed Lake Dennis Planned Development (PD) contains 45.17 gross acres and is located north of Lake Star Road and east of the Lake County Boundary. The subject property is located within the Village I Special Planning Area of Horizon West and is designated as Garden Home District (GH) on the Village I Special Planning Area map. Through rezoning application # LUP-21-10-325, the Lake Dennis PD proposes 95 detached single-family residential units.

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 lieu of payment, the owner may obtain APF credits through purchase from others who hold excess APF credits.

In order to satisfy the requirements of Chapter 30, Article XIV of the Orange County Code ("APF/TDR Ordinance"), the Lake Dennis PD is subject to an APF Agreement that recognizes that the project is accountable for a minimum of 2.58 acres of APF lands. The total APF lands conveyed are zero acres, creating an APF deficit of 2.58 acres. In order to satisfy this deficit, the property will purchase 2.58 APF credits from Columnar Partnership Holding I, LLC.

The Lake Dennis PD APF Agreement received a recommendation of approval from the Orange County Development Review Committee on April 27, 2022, and has been placed

on the July 26, 2022 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 Horizon West Village I Lake Dennis PD by and between Holly Equine, LLC and Orange County. District 1

Attachments
JVW/JHS

BCC Mtg. Date: July 26, 2022

This instrument prepared by and after
recording return to:

Carolyn R. Haslam, Esq.
Akerman LLP
420 South Orange Avenue, Suite 1200
Orlando, Florida 32801

Parcel I.D. No: 18-24-27-0000-00-002

**ADEQUATE PUBLIC FACILITIES AGREEMENT
FOR HORIZON WEST VILLAGE I
LAKE DENNIS PD**

THIS ADEQUATE PUBLIC FACILITIES AGREEMENT FOR LAKE DENNIS PD (the “**Agreement**”), effective as of the latest date of execution (the “Effective Date”), is made and entered into by and between **HOLLY EQUINE, LLC**, a Delaware limited liability company, with its principal place of business at 3879 Maple Avenue, Suite 300, Old Lawn Hall at Old Parkland, Dallas, TX 75209 (“**Owner**”) and **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida with a mailing address of P.O. Box 1393, Orlando, Florida 32802-1393 (“**County**”). Owner and County may sometimes be referred to herein individually as a “**Party**” and collectively as the “**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” and as shown on Exhibit “B,” attached hereto and made a part hereof by this reference (The “**PD Property**”).

B. The PD Property, also known as Lake Dennis PD, is identified on the Orange County Comprehensive Plan 2010-2030 (the “**Comprehensive Plan**”) Future Land Use Map with the “Village” future 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 Lake Dennis PD 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. The Horizon West – Village I - Lake Dennis PD 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.

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

F. Owner desires to develop the PD Property in accordance with the Lake Dennis Land Use Plan, submitted by Owner to County, and with the PD zoning application (LUP#21-10-325) on file with County (the “Lake Dennis LUP”).

G. 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.

H. 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 adequate public facilities lands prior to or in conjunction with PD approval, unless otherwise addressed in such agreement, pursuant to Section 30-714(c).

I. The Parties have agreed that this Agreement constitutes the aforementioned developer’s agreement referenced in Division 2 of the APF/TDR Ordinance.

J. 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 Owner may make payment of an adequate public facility lands fee to County. 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 the Lake Dennis LUP with its consideration of this Agreement.

L. The PD Property contains approximately **18.69** acres of **net** developable land, and both the Village I SAP and Section 30-714(a) of the APF/TDR Ordinance require 1 acre of public facilities acreage for every 7.25 acres of net developable land (“**APF Ratio**”).

M. When applied to the PD Property, the APF Ratio equals approximately **2.58** acres of public facilities lands.

N. As shown on the Lake Dennis LUP, and as described in this Agreement, Owner is unable to convey any adequate public facilities land (“**APF Land**”) to County, thereby creating an APF deficit of **2.58** acres.

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 Lake Dennis PD APF Ratio requires that Owner convey to County approximately 2.58 acres of APF Land. The Owner is unable to convey any APF Land, thereby creating a 2.58-acre APF deficit.

3. APF Acreage Credits. Columnar Partnership Holding I, LLC (the “**APF Credit Holder**”), owner of land within Village I, has obtained **34.30** surplus APF acreage credits within Village I. The Owner and the APF Credit Holder have asked County to apply a portion of these credits toward the APF deficit for the Lake Dennis PD. The County hereby approves the transfer of **2.58** APF acreage credits to the PD Property, which satisfies the APF deficit for the Lake Dennis PD. The APF Credit Holder 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 after 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 Lake Dennis LUP 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 the APF Land and/or 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.

Both Parties expressly waive their respective rights to sue for damages of any type for breach of or default under this Agreement by the other. 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 any Party hereunder nor 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.

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

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

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

Owner: Holly Equine, LLC
3879 Maple Avenue, Suite 300
Old Lawn Hall at Old Parkland
Dallas, TX 75209

With copy to: James H. McNeil, Jr.
Akerman LLP
420 South Orange Avenue, Suite 1200
Orlando, Florida 32801-4904

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 the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that all Parties have 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. Attorney Fees. Each Party to this Agreement agrees to bear its own attorney and other legal fees and costs in connection with all actions to be undertaken in compliance with, and enforcement of, this Agreement.

16. Survival. The obligations of this Agreement shall survive the conveyance of the APF Land to County.

17. Amendment. 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.

18. 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.

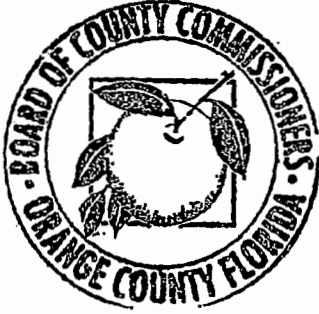
19. Counterparts. This Agreement may be executed in up to two (2) counterparts, both of which taken together shall constitute one and the same instrument and any Party or signatory hereto may execute this Agreement by signing either such counterpart.

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

21. Termination; Effect of Annexation. This Agreement shall remain in effect so long as the PD Property remains in unincorporated Orange County, Florida, unless the Parties terminate it, in writing, with the same formality as its execution. If any portion of the PD Property is proposed to be annexed into a neighboring municipality, County may, in its sole discretion, terminate this Agreement upon notice to Owner.

[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: *Jerry L. Demings*

Jerry L. Demings

Orange County Mayor

Date: July 26, 2022

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

By: *Katie Smith*

Deputy Clerk

Printed Name: **Katie Smith**

Signed, sealed and delivered
in the presence of:

HOLLY EQUINE, LLC, a Delaware limited
liability company

Ashley L. Shake
Name: Ashley L. Shake

Annette M. Williams
Name: Annette M. Williams

By: [Signature]
Print Name: Daniel A. Traylor
Its: Manager
Date: April 28, 2022

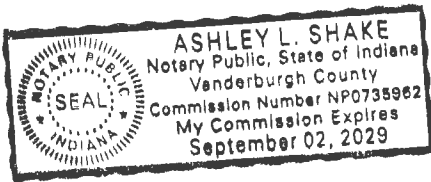
Address:
3879 Maple Avenue, Suite 300
Dallas, TX 75219

STATE OF INDIANA

COUNTY OF VANDERBURGH

The foregoing instrument was acknowledged before me by means of physical presence
or online notarization, this 28th day of April, 2022, by Daniel A. Traylor as Manager
of Holly Equine, LLC, a Delaware limited liability company, on behalf of the company. Said person
(check one) is personally known to me, produced _____ as identification.

(NOTARY SEAL)



Ashley L. Shake
Notary Public Signature
Ashley L. Shake
Typed or Printed Notary Name
Notary Public-State of Indiana
Commission No.: 735962
My Commission Expires: 09/02/2029

JOINER AND CONSENT BY COLUMNAR PARTNERSHIP HOLDING I, LLC

Columnar Partnership Holding I, LLC, as Indiana limited liability company, with its principal place of business at Oak Lawn Hall at Old Parkland, 3879 Maple Avenue, Suite 300, Dallas, TX 75219, hereby joins in and consents to this Agreement as owner of the 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:

Ashley L. Shake

Print Name: Ashley L. Shake

Annette M. Williams

Print Name: Annette M. Williams

Columnar Partnership Holding I, LLC an
Indiana limited liability company

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

By: [Signature]

Name: Daniel A. Traylor

Title: President

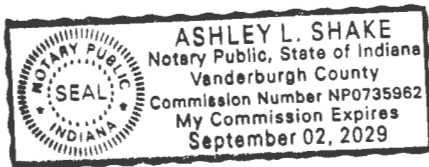
Date: April 28, 2022

STATE OF INDIANA

COUNTY OF VANDERBURGH

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 28th day of April, 2022, by Daniel A. Traylor, as President of Columnar Holdings, LLC, an Indiana limited liability company, the 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)



Ashley L. Shake

Signature of Notary Public

Print Name: Ashley L. Shake

Notary Public, State of Indiana

Commission Expires: 09/02/2029

Exhibit "A"

**Legal Description
for the PD Property**

The Southwest Quarter (SW 1/4) of the Southwest Quarter
(SW 1/4) of Section 18, Township 24 South, Range 27 East,
Orange County, Florida

Exhibit "B"

PD Property Location Map

