



Interoffice Memorandum

AGENDA ITEM

DATE: February 11, 2020

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

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

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

SUBJECT: March 10, 2020 — Consent Item
Second Amendment to Adequate Public Facilities Agreement
for Horizon West – Village I - West Neighborhood Spring Grove
- Jaffers PD
Case # APF-19-07-237
(Related to Case # CDR-18-10-353)

The Spring Grove - Jaffers Planned Development (PD) contains 136.94 gross acres, was originally approved on July 19, 2016, and currently allows for 308 residential dwelling units. The Spring Grove - Jaffers PD is generally located south of Flemings Road, west of County Road 545 (Avalon Road), and east of the Lake County line.

The PD and existing Adequate Public Facilities (APF) agreement currently requires 8.83 acres of APF lands, creating an 8.46-acre APF deficit. Through the concurrent PD substantial change request, the applicant is seeking to transfer 1.44 gross acres to the Serenade at Ovation PD (LUP-18-10-354). This reduction will decrease the required APF lands from 8.83 to 8.76 acres, and decreases the APF deficit from 8.46 acres to 8.39 acres. A transfer of surplus APF credits from the Withers PD (CDR-19-10-331) will satisfy this APF deficit.

The applicant is proposing the Second Amendment to Adequate Public Facilities Agreement for Horizon West – Village I - West Neighborhood Spring Grove - Jaffers PD ("Second Amendment") to reflect the changes associated with the proposed PD substantial change. The Second Amendment received a recommendation of approval from the Orange County Development Review Committee on December 18, 2019, and has been placed on the March 10, 2020, consent agenda to be pulled for consideration with the associated PD Land Use Plan Amendment. Upon approval by the Board, the Second Amendment will be recorded in the Public Records of Orange County.

Page Two

March 10, 2020 — Consent Item

Second Amendment to Adequate Public Facilities Agreement for Horizon West – Village I - West
Neighborhood Spring Grove - Jaffers PD (Case # APF-19-07-237) (Related to Case # CDR-18-10-353)

ACTION REQUESTED: Approval and execution of Second Amendment to Adequate Public Facilities Agreement for Horizon West – Village I – West Neighborhood Spring Grove – Jaffers PD by and between Spring Grove, LLC, M/I Homes of Orlando, LLC and Orange County. District 1

JWW/EPR/nt
Attachments

BCC Mtg. Date: March 10, 2020

This instrument prepared by and after
recording return to:

Christopher P. Roper
Akerman LLP
420 South Orange Avenue, Suite 1200
Orlando, Florida 32801
(407) 423-4000

Tax Parcel I.D. No(s): 19-24-27-0000-00-003
19-24-27-0000-00-022
19-24-27-0000-00-004 (a portion of)
30-24-27-0000-00-028 (a portion of)

**SECOND AMENDMENT TO
ADEQUATE PUBLIC FACILITIES AGREEMENT
FOR HORIZON WEST - VILLAGE I - WEST NEIGHBORHOOD
SPRING GROVE - JAFFERS PD**

THIS SECOND AMENDMENT TO ADEQUATE PUBLIC FACILITIES AGREEMENT FOR HORIZON WEST VILLAGE I - WEST NEIGHBORHOOD - SPRING GROVE - JAFFERS PD (the “**Second Amendment**”), effective as of the latest date of execution (the “**Effective Date**”), is made and entered into by and between **Spring Grove, LLC**, a Delaware limited liability company, whose mailing address is 5956 Sherry Lane, Suite 1000, Dallas, Texas 75225 (“**Spring Grove**”) and **M/I Homes of Orlando, LLC**, a Florida limited liability company, whose mailing address is 400 International Parkway, Suite 470, Lake Mary, Florida 32746 (“**M/I Homes**”) (“**Spring Grove**” and “**M/I Homes**” are sometimes hereinafter referred to as individually as an “**Owner**” and collectively as the “**Owners**”) 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**” collectively referred to herein as “**Parties**”).

RECITALS:

A. **WHEREAS**, on or about July 20, 2016, the Parties entered into that certain Adequate Public Facilities Agreement for Horizon West – Village I – West Neighborhood Spring Grove – Jaffers PD (the “**Original Agreement**”) recorded on August 17, 2016, as Document #20160429794, Public Records of Orange County, Florida.

B. **WHEREAS**, on or about January 7, 2019, M/I Homes acquired a portion of the PD Property as more particularly described in that certain Special Warranty Deed recorded on January 7, 2019, as Document # 20190013381, in the Public Records of Orange County, Florida.

C. **WHEREAS**, on or about January 11, 2019, Spring Grove, M/I Homes, and County entered into that certain First Amendment to the Adequate Public Facilities Agreement for Horizon West Village I West Neighborhood, Spring Grove – Jaffers PD (the “**First Amendment**”) recorded on April 9, 2019, as Document #20190215857, Public Records of Orange County, Florida.

D. **WHEREAS**, Owner has submitted an application to the County to amend the Spring Grove – Jaffers PD, which amendment is on file with the County and includes, but is not limited to, a decrease in the overall size of the Spring Grove – Jaffers PD and a decrease in the amount of net developable land within said PD (the “**Second Amended Spring Grove – Jaffers PD**”). References in the Agreement to the Amended Spring Grove – Jaffers PD shall hereafter mean and refer to the Second Amended Spring Grove – Jaffers PD.

E. **WHEREAS**, Orange County and Owners desire to amend the Original Agreement, as revised by the First Amendment (collectively, the “**Agreement**”), to incorporate the above-referenced changes, as set forth herein.

F. **WHEREAS**, in all other respects, the original terms of the Agreement shall remain unchanged and in full force and effect.

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 Second Amendment by this reference.

2. Capitalized Terms. Any capitalized terms not defined herein shall have the same definition as in the Agreement.

3. Recitals to the Agreement. The following recitals to the Agreement are hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“L. The PD Property contains approximately ~~64.03~~ 63.52 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 ~~8.83~~ 8.76 acres of public facilities lands.

N. As shown on the PD Land Use Plan for the Spring Grove – Jaffers PD, and as described in this Agreement, Owner is providing 0.37 acre(s) of adequate public facilities land (the “APF Land”) to County, thereby creating an APF deficit of ~~8.46~~ 8.39 acres.”

4. Legal Description of PD Property and Location Map. The description of the PD Property as contained in the Agreement is hereby amended and replaced in its entirety by that certain description attached hereto as Exhibit “A” and as shown on the PD Property location map attached hereto as Exhibit “B.”

5. Water Facility. Section 2.b) of the of the Original Agreement is hereby amended to reflect that Owners’ obligations with respect to the APF Utility Tract and Access/Utility Conveyance have been satisfied. Such obligations were satisfied by the conveyance to and acceptance by the County of that certain Special Warranty Deed recorded at Document # 20180175181 and that certain Access and Utility Easements recorded at Document # 20180175182, in the Public Records of Orange County, Florida.

6. APF Deficit. Section 3 of the Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“APF Deficit. The Village I APF Ratio requires that Owners convey to County approximately ~~8.83~~ 8.76 acres of APF Lands. This Agreement provides for conveyance of approximately 0.37 acres of APF Lands, thereby creating an ~~8.46~~ 8.39-acre APF deficit.”

7. APF Acreage Credits. Section 4 of the Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“APF Acreage Credits. ~~OWNER~~ Columnar Partnership Holding I, LLC and Withers, LLC (collectively, “APF Credit Assignors”), has have obtained or will obtain approximately ~~19.37~~ 34.13 APF acreage credits within Village I and has. The Owners and APF Credit Assignors have asked County to apply ~~8.46~~ a portion of these credits toward the APF deficit for the Second Amended Spring Grove – Jaffers PD. The County hereby approves the transfer of 8.39 APF acreage credits to the PD Property, when they

become available, and application of the such APF acreage credits will satisfy satisfies the APF deficit for the Spring Grove – Jaffers PD. Each of the APF Credit Assignors has executed a joinder attached to this Second Amendment acknowledging the foregoing transfer of APF acreage credits to the PD Property.”

8. Notices. Section 12 of the Agreement is hereby amended to add the following addresses as follows:

“M/I Homes of Orlando, LLC
Attn: David Byrnes and
Daniel Kaiser
400 International Pkwy., Suite 470
Lake Mary, Florida 32746
Email: dbyrnes@mihomes.com and
dkaiser@mihomes.com

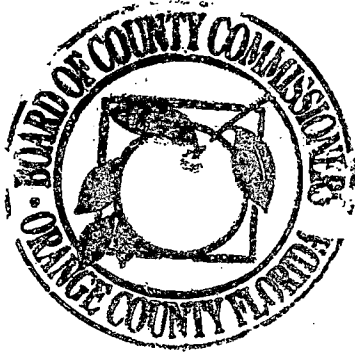
With a copy to:
Holland & Knight LLP
200 South Orange Avenue
Suite 2600
Orlando, Florida 32801
Attn: Barton Morrison, Esq.
Telephone: 407.244.1131”

9. Recording. This Second Amendment shall be recorded at the Owners’ expense in the Public Records of Orange County, Florida, within thirty (30) days of the Effective Date.

10. No Further Amendment. Except as set forth herein, the terms and conditions of the Agreement shall remain in full force and effect.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Second Amendment 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*
for Jerry L. Demings, Orange County Mayor

Date: *12 March 2020*

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

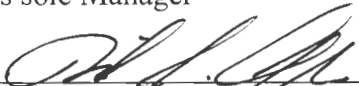
By: *Jennifer Klimetz*
for Deputy Clerk

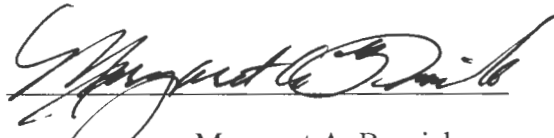
Print Name: *Jennifer Klimetz*

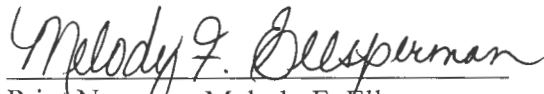
Signed, sealed and delivered
in the presence of:

SPRING GROVE, LLC,
a Delaware limited liability company

By: CH II Spring Grove, LLC,
a Delaware limited liability company,
as its sole Manager

By: 
Daniel A. Traylor, Manager


Print Name: Margaret A. Bernick


Print Name: Melody F. Ellsperman

(Seal)


STATE OF INDIANA

COUNTY OF VANDERBURGH

The foregoing instrument was acknowledged before me this 16th day of December,
2019 by Daniel A. Traylor, as Manager of CH II Spring Grove, LLC, a Delaware limited liability
company, as the sole Manager of SPRING GROVE, LLC, a Delaware limited liability company,
on behalf of the limited liability company, who [] is personally known to me or [] has
produced _____ as identification.

(Notary Stamp)




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

Signed, sealed and delivered
in the presence of:

M/I HOMES OF ORLANDO, LLC.
a Florida limited liability company

Elizabeth Pacheco
Print Name: Elizabeth Pacheco

By: [Signature]
Daniel Kaiser, Vice President

Fris Colon
Print Name: Fris Colon

(Seal)

STATE OF Florida
COUNTY OF Seminole

The foregoing instrument was acknowledged before me this 18 day of December
2019 by Daniel Kaiser, as Vice President of M/I HOMES OF ORLANDO, LLC, a Florida
limited liability company, on behalf of the limited liability company, who is
personally known NA to me or has produced
as identification.

(Notary Stamp)

[Signature]
Signature of Notary Public
Print Name: Angela G. Galati
Notary Public, State of Florida
Commission Expires: Sept. 7, 2020



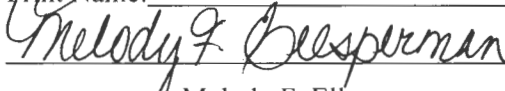
JOINDER AND CONSENT BY WITHERS, LLC

The undersigned, on behalf of Withers, LLC, registered to do business in the State of Florida as Withers Properties, LLC, hereby joins in and consents to this Second Amendment as co-owner of the APF acreage credits being transferred to the PD Property in accordance with Section 4 of the Agreement, as revised herein, for the sole and limited purpose of consenting to such transfer.

WITNESS:



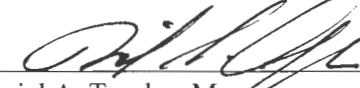
Print Name: Margaret A. Bernick



Print Name: Melody F. Ellsperman

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, Manager

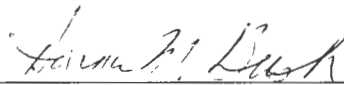
This 16th day of December, 2019.

STATE OF INDIANA

COUNTY OF VANDERBURGH

The foregoing instrument was acknowledged before me this 16th day of December, 2019 by Daniel A. Traylor, as Manager of CH II Withers, LLC, a Delaware limited liability company, the Manager of 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)



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, on behalf of Columnar Partnership Holding I, LLC, hereby joins in and consents to this Second Amendment as co-owner of the APF acreage credits being transferred to the PD Property in accordance with Section 4 of the Agreement, as revised herein, for the sole and limited purpose of consenting to such transfer.

WITNESS:

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

Margaret A. Bernick

Print Name: Margaret A. Bernick

Melody F. Ellsperman

Print Name: Melody F. Ellsperman

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

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

This 16th day of December, 2019.

STATE OF INDIANA

COUNTY OF VANDERBURGH

The foregoing instrument was acknowledged before me this 16th day of December, 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

Exhibit "A"
Legal Description of the PD Property

A portion of Sections 19 and 30, Township 24 South, Range 27 East, Orange County, Florida, described as follows:

BEGIN at the southwest corner of the Southwest 1/4 of the Southwest 1/4 of said Section 19; thence run N 00°13'04" E, along the west line of the Southwest 1/4 of the Southwest 1/4 of said Section 19, a distance of 1,324.86 feet to a point on the north line of the Southwest 1/4 of the Southwest 1/4 of said Section 19; thence run N 89°00'27" E, along said north line, a distance of 1,471.85 feet to a point on the east line of the Southwest 1/4 of the Southwest 1/4 of said Section 19; thence run S 00°05'11" W, along said east line, a distance of 526.06 feet; thence, departing said east line, run S 89°54'49" E, a distance of 265.00 feet; thence run S 00°59'29" E, a distance of 795.11 feet to a point on the south line of the Southeast 1/4 of the Southwest 1/4 of said Section 19; thence run S 89°03'23" W, along said south line, a distance of 280.00 feet to a point on the east line of the West 1/2 of the Northwest 1/4 of said Section 30; thence run S 00°46'47" W, along said east line, a distance of 2,392.97 feet; thence run S 62°24'56" W, a distance of 559.03 feet to a point on the south line of the Northwest 1/4 of said Section 30; thence run S 89°23'07" W, along said south line, a distance of 954.16 feet to a point on the west line of the Northwest 1/4 of said Section 30; thence run N 00°09'46" E, along said west line, a distance of 2,637.56 feet to the POINT OF BEGINNING.

Containing 136.94 acres, more or less.

Exhibit "B"
Project Area Location Map

