

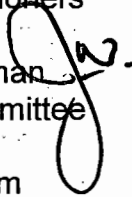


Interoffice Memorandum

AGENDA ITEM

May 28, 2020

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

FROM: Jon V. Weiss, P.E., Chairman   
Roadway Agreement Committee

SUBJECT: July 7, 2020 – Consent Item  
Adequate Public Facilities Agreement for  
Horizon West Village I Gem Groves PD  
(Related to LUP-18-10-334)

The Roadway Agreement Committee has reviewed an Adequate Public Facilities Agreement ("Agreement") by and between Titan Liberty Lake Underhill Joint Venture, Village I 545, LLC (collectively referred to as "Owners") and Orange County for the dedication of Adequate Public Facility (APF) lands. Under the terms of the Agreement, the Owners shall convey to Orange County a total of 1.24 acres of right-of-way (ROW) for CR 545/Avalon Road, 1.07 acres for Flemings Road, 0.65 acres for APF ROW for school access, 0.86 acres for Lake Star Road and 0.94 acres of internal APF ROW. In addition, 5.0 acres for an APF park, 15.0 acres for an elementary school, and 1.40 acres for stormwater treatment and attenuation will be dedicated. The dedication of these lands shall serve to satisfy the Adequate Public Facilities requirement under the APF/TDR Ordinance which requires 17.11 acres of public facilities lands to be provided from this property. This creates an APF surplus of 9.05 acres.

The Owners will receive \$22,500 per acre for the conveyance of 1.24 acres of right-of-way for CR 545/Avalon Road and the 1.07 acres for Flemings Road for a total of \$51,975 in transportation impact fee credits. The School Board of Orange County, Florida has signed a Joinder and Consent to this agreement as the Owners may be entitled to School Impact Fee Credits under this agreement.

The Roadway Agreement Committee approved the Agreement on December 11, 2019. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

Page Two

July 7, 2020 – Consent Item

Adequate Public Facilities Agreement for Horizon West Village I Gem Groves PD

**ACTION REQUESTED: Approval and execution of Adequate Public Facilities Agreement for Horizon West Village I Gem Groves PD by and between Titan Liberty Lake Underhill Joint Venture, Village I 545, LLC, and Orange County conveying 26.16 acres of APF lands and providing \$51,975 in Transportation Impact Fee Credits. District**

**1**

JWW|HEGB  
Attachments

BCC Mtg. Date: July 7, 2020

This instrument prepared by and after  
recording return to:

Christopher P. Roper, Esq.  
Akerman LLP  
420 South Orange Avenue, Suite 1200  
Orlando, Florida 32801

Tax Parcel I.D. No(s): 19-24-27-0000-00-002, 19-24-27-0000-00-012, 19-24-27-0000-00-013,  
19-24-27-0000-00-014, 19-24-27-0000-00-015, 19-24-27-0000-00-021

**ADEQUATE PUBLIC FACILITIES AGREEMENT  
FOR HORIZON WEST VILLAGE I  
GEM GROVES PD**

**THIS ADEQUATE PUBLIC FACILITIES AGREEMENT FOR HORIZON WEST VILLAGE I GEM GROVES PD** (the “**Agreement**”), effective as of the latest date of execution (the “**Effective Date**”), is made and entered into by and between **TITAN LIBERTY LAKE UNDERHILL JOINT VENTURE**, a Florida general partnership whose address is 2281 Lee Road, Suite 204, Winter Park, Florida 32789, as to 50% vested interest (“**Titan**”), and **VILLAGE I 545, LLC**, a Florida limited liability company, whose address is 2281 Lee Road, Suite 204, Winter Park, FL 32789, as to 50% vested interest (“**I 545**”), (Titan and I 545 are sometimes hereinafter referred to 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**”). **THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA**, a body corporate and political subdivision of the State of Florida, whose address is 445 West Amelia Street, Orlando, Florida 32801 (“**School Board**”) has joined in and consented to the execution of this Agreement for the purposes and upon the terms expressly set forth herein and in the attached Joinder and Consent instrument.

**RECITALS:**

A. Owners are the fee simple owners of certain real property located in Orange County, Florida, as generally depicted in **Exhibit “A”** and as more particularly described in **Exhibit “B,”** both of which exhibits are attached hereto and made a part hereof by this reference (The “**PD Property**”).

B. The PD Property, also known as Gem Groves PD, is identified in the Orange County Comprehensive Plan 2010-2030 (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 PD 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. The Horizon West - Village I - Gem Groves PD (the “**Gem Groves 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, commercial and public facility uses within the PD Property.

F. Owners desire to develop the PD Property in accordance with the Gem Groves PD submitted by Owners to County and with the PD zoning application on file with County.

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 Owners 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 Owners are 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 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 Gem Groves PD with its consideration of this Agreement.

L. The PD Property contains approximately **124.06** 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 equals approximately **17.11** acres of public facilities lands.

N. As shown on the Land Use Plan for the Gem Groves PD, and as described in this Agreement, Owners are providing **26.16** acre(s) of adequate public facilities land (the “**APF Lands**”) to County, thereby creating an APF surplus of **9.05** acres.

O. As more particularly described herein, the APF Lands will include land for an elementary school, thereby creating the need for the rights and related obligations accruing to the benefit of the School Board as more particularly set forth in Section 9 of this Agreement and for the joinder and consent of the School Board attached hereto.

P. The Parties acknowledge that, on January 28, 2020, the County approved that certain Village I Horizon West Road Network Agreement (the “**Road Network Agreement**”), which outlines obligations related to the conveyance and construction of transportation improvements/roads within Village I.

Q. The approximately 1.07 acres of Flemings Road ROW Expansion described in Section 2.a) below may not reflect the additional acreage required to establish an appropriate intersection at Avalon Road based on Flemings Road as a two-lane APF ROW. Accordingly, such acreage may be revised at the time of design as detailed within the Road Network Agreement.

R. The County Engineer has declared both Flemings Road and Avalon Road (County Road 545) to be impact fee credit eligible.

**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. Conveyance of APF Land by Owners. Owners shall convey the APF Lands which are generally depicted on the Land Use Plan for the Gem Groves PD and generally described below, as follows, and:

a) Right(s)-of-way for the following transportation improvements/roads:

Avalon Rd. ROW Expansion	Approximately 1.24 acres
Flemings Rd. ROW Expansion (to 2-lane APF standards)	Approximately 1.07 acres
APF ROW (Public road that also provides access to School & Village Center)	Approximately 0.65 acres
Lake Star Rd. ROW Expansion (Equals that portion of the right-of-way for Lake Star Rd. to be conveyed to the County in excess of the existing Lake Star Rd. ROW that is proposed to be vacated by the County.)	Approximately 0.86 acres
Internal APF ROW	Approximately 0.94 acres

It is contemplated that wider right(s)- of-way may be required in some locations, such as at intersections, to facilitate traffic movement.

b) APF Park:

APF Park	Approximately 5.00 acres
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c) Stormwater:

Treatment and Attenuation	Approximately 1.40 acres
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d) School:

Elementary School Site	Approximately 15.00 acres
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The APF Lands identified in clauses (a) through (d) above are referred to herein as the “**Road Right-of-Way**,” “**Park Site**,” “**Stormwater Site**,” and “**School Site**,” respectively, and are sometimes referred to herein individually as an “**APF Parcel**.” The owner of an APF Parcel immediately prior to its conveyance to the County as described herein may be hereafter referred to as a “**Conveying Owner**.”

3. APF Surplus. The Gem Groves PD APF Ratio requires that Owners convey to County approximately 17.11 acres of APF Lands. This Agreement provides for conveyance of approximately 26.16 acres of APF Lands, thereby creating a 9.05-acre APF surplus.

4. APF Surplus. County hereby acknowledges that the aforementioned APF surplus will result in APF acreage credit equivalent to **9.05** acres of APF Lands, which APF acreage credit may be sold and/or assigned by Owners to other owners within Village I who do not have sufficient land within the boundaries of their PD(s) to satisfy their APF Ratio requirements. Such APF acreage credit may only be used within Village I.

5. Conveyance Procedure.

a) *Road Right-of-Way, Stormwater Site and Park Site.* The conveyance of the Road Right-of-Way, Stormwater Site and Park Site shall be by plat dedication or special warranty deed, free and clear of all liens and encumbrances, except for easements of record acceptable to County, if any. If by plat dedication, the rest of this paragraph and the following paragraphs c), d), and e) shall not apply. The Conveying Owner of such APF Lands shall pay all costs associated with their conveyance to the County, including all recording fees and documentary stamps related to such conveyance. Ad valorem taxes in connection with the conveyance of such APF Lands shall be prorated as of the date of transfer of title and said prorated amount shall be paid by the Conveying Owner(s) to Orange County, in escrow, pursuant to Section 196.295, Florida Statutes, unless the conveyance occurs between November 1 and December 31 of the year of conveyance, in which case ad valorem taxes shall be paid in full by such Conveying Owners for the year of conveyance.

The Road Right-of-Way for Flemings Road (including the intersection at Avalon Road) and the Stormwater Site(s) associated therewith are for a 2-lane undivided facility as shown on the Village I SAP. This Agreement is not intended to address the conveyance of and compensation for any additional right-of-way and Stormwater Site(s) which may be needed for a future 4-lane divided facility on Flemings Road, which are intended to be addressed in the Road Network Agreement. The timing of the conveyance of the Road Right-of-Way for Flemings Road and the Stormwater Site(s) associated therewith may be coordinated with the conveyances of any additional right-of-way and Stormwater Site(s) which may be needed for a future 4-lane divided facility on Flemings Road under the terms of the Road Network Agreement.

b) *School Site.* No later than one hundred twenty (120) days after OCPS's CIP Deadline (as defined in Section 9.b) below) or the Early Notice Deadline (as defined in Section 9.b) below), as applicable, the Conveying Owner shall convey to the County the School Site by general warranty deed, free and clear of all liens and encumbrances, except for easements of record acceptable to County and School Board, as applicable, if any. At the option of County and School Board, County and School Board may direct Owner to convey the School Site directly to School Board, in which case the School Board shall be substituted as the appropriate party in lieu of the County. The Owners understand and acknowledge that neither the County nor the School Board shall be required to accept the School Site, nor shall the School Board be required to

authorize the County to establish a school impact fee credit account for the payment of the School Site, until such time as all of the Conditions to Close (defined below) for the School Site have been satisfied, unless otherwise waived in writing by School Board.

The Conveying Owner of the School Site shall pay all costs associated with the conveyance of the School Site, including all recording fees and documentary stamps related to the conveyance. Ad valorem taxes in connection with the conveyance of a School Site shall be prorated as of the date of transfer of title and said prorated amount shall be paid by the Conveying Owner to Orange County, in escrow, pursuant to Section 196.295, Florida Statutes, unless the conveyance occurs between November 1 and December 31 of the year of conveyance, in which case ad valorem taxes shall be paid in full by the Conveying Owner for the year of conveyance. The Owners acknowledge that, pursuant to Section 9 below, the School Site may be conveyed directly to the School Board.

In connection with the conveyance of the School Site, the Conveying Owner shall (i) submit, or cause to be submitted, a Certificate of Non-Foreign Status confirming that the grantor is not a foreign person or entity for purposes of U.S. income taxation in compliance with Section 1445 of the Internal Revenue Code; (ii) submit, or cause to be submitted, such partial releases, satisfactions or other instruments necessary to release or remove any outstanding mortgages, liens, encumbrances or other matters which would prevent the utilization of the School Site for the School Board's Intended Use (as hereinafter defined), and (iii) submit, or cause to be submitted, a sworn affidavit confirming that there are no liens, encumbrances, agreements, deed restrictions or other matters affecting title to the School Site which would prevent utilization of such School Site by School Board for the School Board's Intended Use, as applicable.

No later than ninety (90) days prior to OCPS's CIP Deadline or the Early Notice Deadline as defined in Section 9(b), as applicable, the Conveying Owner shall provide, or cause to be provided to School Board, at no cost to School Board, the following due diligence materials, studies, reports, and investigations:

(i) Survey. Recertified or new current surveys and legal description of the School Site ("**Survey**") prepared by a registered surveyor, licensed in the State of Florida (the "**Surveyor**"). The Survey shall locate all existing improvements, if any, situated upon the School Site and shall locate and identify with the relevant recorded information all utility lines and access, easements, streets, rights-of-way and other man-made objects, and locate all other matters not of record which are ascertainable by a visual inspection of the School Site, including evidence that the School Site has or will have prior to conveyance thereof to School Board, direct access to public right-of-ways. The Survey shall identify any portion of the School Site which are within a floodplain or which is subject to the jurisdiction of the Department of Environmental Protection, the Army Corps of Engineers, the applicable water management district, or any agency of the



County. The Survey shall also determine and certify within one-one hundredth (1/100th) of an acre the total acreage contained within the boundaries of the School Site. The Survey shall be certified to the Conveying Owner, School Board and the relevant title company, and shall certify that such Survey was prepared in accordance with the ALTA/ACSM land survey requirements and the minimum technical requirements and standards promulgated by the Florida Board of Professional Land Surveyors, Chapter 61G-17 of the Florida Administrative Code and Section 427.027 of the Florida Statutes. The Survey shall also contain such other matters as are required by the relevant title company. The Surveyor's seal shall be affixed to the Survey.

(ii) Geotechnical Studies. Current geotechnical investigation, studies or test analyzing the subsurface condition of the School Site, as may be reasonably requested by School Board (collectively, "**Geotechnical Studies**"). In the event the Geotechnical Studies reveal the need for remediation of the School Site, the Conveying Owner, at no cost or expense to School Board, shall cause to be remediated the School Site, to School Board's reasonable satisfaction, prior to any such conveyance to School Board. In the event such conditions cannot reasonably be remediated by the Conveying Owner, School Board shall have the right, at its election, to require the Conveying Owner to either modify the property boundaries of the School Site or provide an alternative site or location within the PD Property or Village I for consideration. If the Conveying Owner fails to remediate any geotechnical issues as provided above and also fails to either modify the property boundaries of the School Site or provide alternative sites or locations within the PD Property or Village I for consideration as provided above, it shall be a default under this Agreement.

(iii) Wetlands Determination. Wetland determination on the School Site certified to School Board and performed by a consultant reasonably acceptable to School Board ("**Wetlands Determination**"). In the event the Wetlands Determination indicates the presence of wetlands on the School Site, the Conveying Owner shall be required, at no cost to School Board, to mitigate the wetlands on the School Site, as applicable and as necessary for the School Board's Intended Use to the reasonable satisfaction of the School Board. Upon the Conveying Owner's request and at no cost to School Board, School Board shall be a joint applicant on any permit application involving the School Site that seeks to remove or impact wetlands and to mitigate for such loss or impact. In the event such conditions cannot reasonably be mitigated by the Conveying Owner, School Board shall have the right, at its election, to require the Conveying Owner to either modify the property boundaries of the School Site or provide an alternative site or location within the PD Property or Village I for consideration. If the Conveying Owner (i) fails to mitigate wetlands located on the School Site that are identified on the Wetlands Determination and approved for mitigation by the ACOE and SFWMD as provided above; and (ii) also fails to either modify the property boundaries of the School Site or provide alternative sites or locations within the PD Property or Village I for consideration as provided above, it shall be a default under this Agreement.

(iv) Right of Entry. School Board shall, at all times prior to date of conveyance of the School Site to the County or School Board, as applicable (“**Inspection Period**”), have the right to enter upon the School Site with its agents and engineers as needed to conduct due diligence, inspect, examine, survey, appraise, and otherwise undertake those actions the School Board, in its sole discretion, deems necessary or desirable to determine the suitability of the School Site for use as an elementary school, with specifications that are consistent with other elementary schools that exist within Horizon West (“**School Board’s Intended Use**”), including, without limitation, the right to perform appraisals, make surveys, soils tests, borings, percolation tests, compaction tests, environmental tests and tests to obtain any other information relating to the surface, subsurface and topographic conditions of the School Site, all of the foregoing (hereinafter collectively referred to as the “**Inspections**”) to be performed at School Board’s expense. School Board covenants and agrees that such activities will not cause any harm to the Conveying Owner or the School Site, and that the School Site will be restored to the same condition as existed immediately prior to School Board’s inspection activities pursuant to this Section, in the event School Board does not acquire same. Within the limits of Section 768.28, Florida Statutes, School Board shall at all times indemnify, save harmless and defend the Conveying Owner from and against any and all claims, liabilities, losses, costs, lawsuits, disputes, damages and expenses (including reasonable attorneys’ fees whether incurred at or before the trial level or in any appellate proceedings) which Conveying Owner may suffer, sustain or incur by reason of the exercise of School Board’s right under this Section, including, without limitation, any damage to the School Site or to any person or other real or personal property, and including the filing of any mechanics’ or other statutory or common law lien or claims against the School Site or any part thereof. Notwithstanding any provision herein to the contrary, to the extent permitted by law, the indemnity contained in the preceding sentence shall survive termination of this Agreement.

c) *Title Policy*. No less than ninety (90) days prior to conveyance, the Conveying Owner shall deliver to County or School Board, if applicable, at such Conveying Owner’s sole cost and expense, an updated commitment to issue an Owner’s Policy of Title Insurance naming County or School Board, if applicable, as the insured (the “**Title Commitment**”). The original Owner’s Policy of Title Insurance (the “**Title Policy**”) shall be delivered to County or School Board, if applicable, within thirty (30) days after the conveyance of the APF Lands. The Owners acknowledge that, pursuant to Section 9 below, the School Site may be conveyed directly to the School Board.

d) *Environmental Audit; Due Diligence*. No less than sixty (60) days prior to conveyance, the Conveying Owner shall submit to County and School Board, as applicable, a current (within 6 months of conveyance to County or School Board) Phase I environmental audit of the areas encompassed by the APF Lands that are the subject of such conveyance. The Phase I environmental audit shall be conducted in accordance with the requirements of the All Appropriate Inquiries Final Rule (AAIFR) and with the standards set forth in the American Society for Testing and Materials (ASTM) E-1527-13. In the event the Phase I environmental audit presents a matter of concern, as determined by County or School Board, as applicable, then

prior to the conveyance, the Conveying Owner shall submit to County and School Board, as applicable, a Phase II environmental audit. The Phase II environmental audit shall be conducted in accordance with the requirements of the AAIFR and ASTM E-1903-11. If the Phase II environmental audit is performed and reveals the need for remediation to the subject APF Lands, one of the following events shall occur: (i) the Conveying Owner shall remediate such APF Lands to County's or School Board's, if applicable, satisfaction prior to the conveyance; or (ii) the Conveying Owner and County or School Board, if applicable, shall negotiate and enter into a separate agreement whereby the Conveying Owner shall pay the full cost of remediation; or (iii) County or School Board, if applicable, may terminate this Agreement at its option as to such Conveying Owner's property.

e) *Compliance with Section 286.23, Florida Statutes.* The Conveying Owner shall execute and deliver to County (or School Board, if applicable) the “**Disclosure of Beneficial Interests**” required pursuant to section 286.23, Florida Statutes.

f) *Easements.* In addition to the conveyance by the Conveying Owner of the respective APF Lands as contemplated in this Agreement, the Conveying Owner shall grant, or cause to be granted, at no cost to County and in accordance with County conveyance procedures, the below easements in favor of County. The benefit of any easements intended to benefit the School Site shall run with title to such School Site.

(i) If, at the time of conveyance of the Park Site to the County, there does not exist a public road providing access to the Park Site, the Conveying Owner shall grant, or cause to be granted, to County a temporary access easement, in form reasonably acceptable to County, over such portion of the PD Property as is reasonably acceptable to both the County and the Conveying Owner, providing to County the right to construct a temporary access road to the Park Site and to use such temporary road for construction access and public access to the Park Site, which easement shall terminate upon conveyance or dedication of public access to the Park Site.

(ii) The Parties acknowledge that the School Board may require that the Conveying Owner of the School Site make provision for public road access to such School Site, as a School Condition to Conveyance. However, if, at the time of conveyance of the School Site to the County, the School Board has elected not to require such access improvements prior to said conveyance, the Conveying Owner shall grant, or cause to be granted, to County a temporary access easement, in form reasonably acceptable to the County, over such portion of the PD Property as is reasonably acceptable to both the County and the Conveying Owner, providing to County the right to construct a temporary access road to the School Site and to use such temporary road for construction access and public access to the School Site, which easement shall terminate upon conveyance or dedication of public access to the School Site.

g) *Entitlement to Impact Fee Credits.* In accordance with Policy 4.2.1 of the Future Land Use Element of the County's Comprehensive Plan, the APF/TDR Ordinance and Chapter 23 of the Orange County Code, the Conveying Owner(s) of the impact fee eligible APF Lands is/are entitled to obtain impact fee credits at the rate of \$22,500.00 per acre (or, except as to schools, such higher amount as may be approved by the Board of County Commissioners following execution of this Agreement but prior to conveyance) for the conveyance of such impact fee eligible APF Lands. The parties agree that the impact fee eligible APF Lands include the School Site, Park Site, Stormwater Site and those portions of the Road Right-of-Way consisting of the Avalon Road ROW Expansion and the Flemings Road ROW Expansion.

6. Refinement of Size and Location of APF Lands. The size and location of all APF Lands as depicted on the Gem Groves PD Land Use Plan are approximate, although the final size and location shall be substantially similar to those shown on the Gem Groves PD Land Use Plan. The dimensions and location(s) for a particular component of the APF Lands shall be finalized by County and Owners prior to County approval of the Preliminary Subdivision Plan or Development Plan ("PSP/DP") that includes the particular APF Lands, and shall be in full compliance with this Agreement. **County and School Board, as applicable, and Owners agree that the legal descriptions used to convey the APF Lands to County may be revised based upon final design, engineering and permitting and the Preliminary Design Study, or Alignment and Grade Study, as the case may be (as such terms are defined in the Road Network Agreement).**

7. Award of Impact Fee Credits.

a) Promptly upon the County's approval and acceptance of a general or special warranty deed (as applicable) conveying an APF Parcel that is eligible for impact fee credits pursuant to above or in the case of conveyance of the School Site directly to School Board, with notice thereof provided to County by School Board, or in the case of conveyance by plat dedication, the County's acceptance of the plat dedication, the County shall credit on its book to the account of the Conveying Owner of such impact fee eligible APF Parcel, for purposes of Chapter 23 of the Orange County Code (or any successor code provisions) (the "**Impact Fee Ordinance**"), the aforementioned amount of impact fee credits to which the Conveying Owner is entitled under the Impact Fee Ordinance for each type of dedication. Thereafter, as impact fees become due and payable from time to time in connection with the Gem Groves PD, and if so instructed by such Conveying Owner, the County shall deduct such amounts payable from the Conveying Owner's impact fee credit account that is applicable to the particular impact fee payment. For example, park impact fee credits may only be used to satisfy obligations for the payment of parks and recreation impact fees, and school impact fee credits may only be used to satisfy obligations for payment of school impact fees.

b) For purposes of the foregoing, County shall make deductions from the Conveying Owner's various impact fee credit accounts from time to time only upon receipt of written direction from such Conveying Owner (or from such person or entity to whom the Conveying Owner expressly may assign this authority, in writing, in the future), to effect the particular deduction.

c) Nothing herein shall prevent the Conveying Owner from assigning impact fee credits as provided for in the Impact Fee Ordinance as it may be amended from time to time.

d) In consideration for the conveyance of the School Site and other obligations of the Conveying Owner contained herein and in accordance with the Policy FLU4.2.1 of the Orange County Comprehensive Plan, the Conveying Owner shall receive TWENTY-TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$22,500.00) per Net Usable Acre in the form of School Impact Fee Credits, which shall be established through a school impact fee credit account by the County at such time as the Conveying Owner conveys the School Site to the County or School Board, and School Board accepts such conveyance, and shall be applied to the School Impact Fees imposed under the County Impact Fee Ordinance, as provided in the Interlocal Agreement ("**School Impact Fee Conveyance Credits**"). The Conveying Owner agrees, understands and acknowledges that the School Impact Fee Conveyance Credits as established herein are a reasonable valuation of the fair market value of the School Site.

"**Net Usable Acres**" shall mean the total gross acres within the School Site minus (i) areas the development or use of which are precluded by regulated wetlands or wildlife and prescribed wetland buffers; and (ii) conservation areas. Net Usable Acres shall include all stormwater ponds or retention/detention areas necessary to service the School Site.

If location or boundaries of the School Site is adjusted after the Effective Date, School Board shall have the right to approve or deny the location or boundaries of the School Site in its sole and absolute discretion. In the event the School Board fails to approve the adjusted boundaries of the School Site, School Board shall have the right, at its election, to require the Conveying Owner to either modify the property boundaries of the School Site or provide an alternative site or location within the PD Property or Village I for consideration. This process shall be repeated until the School Board approves the boundaries, location, layout and configuration of the School Site. In the event the location is adjusted, the School Site shall be in a location whereby the Owners, using commercially reasonable efforts, will complete and satisfy all Conditions to Close (hereinafter defined) no later than OCPS's CIP Deadline or the Early Notice Deadline, as applicable (and each, as hereinafter defined).

School Impact Fee Conveyance Credits granted pursuant to this Section may be used by the Conveying Owner or assigned to other developers of residential units anywhere in Village I of

Horizon West. Alternatively, the Conveying Owner may assign its School Impact Fee Conveyance Credits to other developers of residential units located outside of Village I of Horizon West, but within unincorporated Orange County, Florida, with the prior written consent of School Board (an “**Out of Village Transfer**”). The School Board shall have fifteen (15) days after receipt of written request from the Conveying Owner to approve or deny a request for an Out of Village Transfer, which consent shall not be unreasonably withheld, conditioned or delayed. The School Board hereby authorizes the Superintendent or his/her designee to consent to any request for an Out of Village Transfer. In the event the Superintendent or his/her designee fails to deny a request for an Out of Village Transfer within the time period prescribed herein, such request shall be deemed approved.

To the extent the Project’s School Impact Fees exceeds the School Impact Fee Conveyance Credits, the Conveying Owner shall be obligated to pay such excess amounts in accordance with the School Impact Fee Ordinance.

e) Notwithstanding anything in the foregoing seemingly to the contrary, to the extent school impact fees are paid to the County in connection with the development of the PD Property and there is thereafter a school impact fee credit balance created in favor of a Conveying Owner pursuant to above, then upon reasonable request and in compliance with the Orange County Code and its usual procedures, the County shall refund such school impact fees to the Conveying Owner (or to such person or entity to whom the Conveying Owner expressly may assign the right to receive such refund) and shall make deduction from the appropriate school impact fee credit account in the amount of any such refund. This Agreement shall serve as the authorization required by Chapter 23 of the Orange County Code for the refund of such school impact fees.

8. Timing for Conveyance of APF Lands/Continuing Occupancy by Owners. As an alternative to conveyance prior to or in connection with Planned Development approval, Owners have elected to convey at a later time, as contemplated by Sec. 30-714 of the APF/TDR Ordinance, as more particularly set forth below (“**Conveyance Schedule**”).

a) With respect to the Road Right-of-Way, the conveyance to and acceptance by the County shall occur (i) in conjunction with the recording of the plat or plats that contain such Road Right-of-Way or portions thereof, or (ii) no later than one hundred twenty (120) days following the delivery by County, and receipt by the applicable Conveying Owners, of written notice that County desires the consummation of such conveyance. Notwithstanding the foregoing, in the event that any portion of the Road Right-of-Way and associated Stormwater Site is conveyed to the County prior to the Effective Date on this Agreement, the Conveying Owner shall still be eligible to receive impact fee credits under Section 7. In the event of a conflict with this Section, the Road Network Agreement shall control.

b) With respect to the Park Site, the conveyance to and acceptance by the County shall occur no later than one hundred twenty (120) days following the delivery by County, and receipt by the Conveying Owners of such APF Parcel, of written notice that County desires the consummation of such conveyance, whichever occurs first.

c) With respect to the School Site, assuming satisfaction of the applicable School Conditions to Conveyance, the conveyance to and acceptance by the County (or School Board, if applicable pursuant to Section 9 below) of the School Site shall occur not later than 120 days after OCPS's CIP Deadline or the Early Notice Deadline, as applicable, unless otherwise extended in writing by the County, School Board, and the Conveying Owner of such School Site.

The parties agree that, prior to conveyance to County or School Board, as applicable, the Conveying Owner of an APF Parcel shall have the reasonable right to grade and to import or export fill material upon the APF Parcel, subject to and in accordance with an approved grading permit and/or excavation fill permit. Further, the Conveying Owner agrees to relinquish control of the APF Parcel and convey such APF Parcel to County in accordance with the Conveyance Schedule set forth above. If a conveyance does not occur in accordance with the Conveyance Schedule, the Manager of County's Real Estate Management Division may grant one extension of up to 120 days to complete the conveyance.

Owners acknowledge and agree that any development in connection with the PD Property shall not proceed with obtaining building permits beyond five percent (5%) of the PD Property's entitlements prior to such conveyance and/or payment of any required APF Fee in lieu of conveyance. For purposes of this Agreement, the parties agree that 5% of the PD Property's entitlements is defined as issuance of a building permit for the forty-second (42<sup>nd</sup>) residential unit (attached or detached) located anywhere within the PD Property. Notwithstanding anything herein to the contrary, in the event that the BCC approves the following as a waiver to Sec. 30-714(c) of the APF/TDR Ordinance ("**Waiver**"), then the Owners may proceed with obtaining building permits beyond such five percent (5%) threshold once the following has occurred: (a) the Road Right-of-Way has been conveyed to the County or placed into escrow, pursuant to an escrow agreement acceptable to the County; (b) the Stormwater Site has been conveyed to the County or placed into escrow, pursuant to an escrow agreement acceptable to the County; and (c) the Park Site has been conveyed to the County or placed into escrow, pursuant to an escrow agreement acceptable to the County. The Parties acknowledge and agree that (i) nothing herein implies that the BCC will approve the Waiver, and (ii) the Owners shall be required to convey all APF Lands no later than as provided in the Conveyance Schedule regardless of whether the BCC approves the Waiver.

With respect to the APF Lands, each Owner shall continue to be responsible for any and all risk of injury and property damage attributable to the acts or omissions of its officers and employees and agrees to defend, indemnify, and hold harmless County and its officers, employees, and agents from and against all claims, actions, losses, judgments, fines, liabilities, costs, and expenses in connection therewith. More specifically, to the extent permitted by law, each Owner shall indemnify and hold harmless County, its officers, agents, and employees from and against any all claims, liability, demands, damages, surcharges, expenses, fees, fines, penalties, suits, proceedings, and actions (including, without limitation, reasonable paralegal, attorney, and other legal fees and expenses, whether in court, out of court, in administrative proceedings, or on appeal), including damage to property or property rights that may arise and which are proximately caused by the acts, errors, or omissions of such Owner, its agents, and/or representatives, arising out of its activities related to the APF Lands. In addition, without limiting the foregoing, in the event that any act or omission of an Owner, its agents, and/or representatives, arising from or related to this Agreement, results in any spill or release of hazardous materials or other pollutants, as those terms are defined in federal and state environmental laws and regulations including, without limitation, any petroleum-based substances, then, to the extent permitted by law, such Owner shall indemnify and hold harmless County, its officers, agents, and employees from and against any and all claims, liability, demands, damages, surcharges, expenses, fees, fines, penalties, suits, proceedings, and actions, including, without limitation, all reasonable actual cleanup and/or remediation costs and expenses expended by County at the direction of any federal or state agency having jurisdiction, and further including, without limitation, reasonable paralegal, attorney, and other legal fees and expenses, whether in court, out of court, in administrative proceedings, or on appeal. Each Owner shall be responsible for the immediate notification to County of any environmental condition, spill, or release, or any other condition or occurrence of which it becomes aware that may result in a claim for damages, or that occurs as a result of such Owner's activities related to the APF Lands.

In the event that any of the above occurs, County may refuse to accept conveyance of the APF Lands and such Owner may be required to pay an APF fee in lieu of conveyance or to convey alternative adequate public facilities lands acceptable to County.

9. OCPS Interest in School Site. Upon reasonable request of the School Board the County will convey the School Site in its possession to the School Board. Alternatively, notwithstanding anything in Section 5.b seemingly to the contrary, upon reasonable advance written notice from School Board to the parties, the Conveying Owner of the School Site will, at such time as is otherwise required elsewhere in this Agreement, convey, or cause to be conveyed, the School Site directly to the School Board.

In the event that the School Site is to be conveyed directly to the School Board, then the Title Commitment shall be endorsed, prior to conveyance, to name School Board as the proposed



insured for the School Site, and the Title Policy for the School Site shall be issued to the School Board.

In recognition of the intent that the School Site ultimately be conveyed to the School Board, the parties hereby agree that (i) a copy of the Title Commitment and Title Policy pertaining to the School Site shall be delivered to School Board when delivered to County, (ii) School Board shall be entitled to participate in the final determination of the dimensions and location of the School Site pursuant to Section 6 above, and (iii) the County shall be under no obligation to accept conveyance of a School Site until it receives written notice from the School Board that the School Conditions to Conveyance have been satisfied by the Conveying Owner for such School Site to the School Board's reasonable satisfaction. Prior to conveyance to the County, the School Board may also conduct such due diligence with respect to the School Site as is required by applicable School Board policies, including, but not limited to, geotechnical studies, wetland delineations, surveys and wildlife studies, and School Board may reasonably enter upon the School Site as and to the extent reasonably required to conduct such due diligence. All such due diligence efforts by School Board shall be at School Board's sole cost and expense and conducted in accordance with Section 5.b)iv) above. Copies of any Phase I or Phase II environmental audits received with respect to the School Site shall be provided to School Board, and, as part of the School Conditions to Conveyance, School Board shall have the right to review and approve the results of the environmental audits, or any decisions reached pursuant to Section 5.d above regarding the School Site.

Any easements intended to benefit the School Site shall run with title to the School Site, and shall be in form acceptable to County and School Board, and, if the School Site are to be conveyed directly to the School Board as provided above, shall name School Board as the beneficiary rather than the County.

a) **Conditions to Close.** The Conveying Owner for the School Site shall be required to fulfill each of the following conditions precedent (collectively, the "**Conditions to Close**") no later than OCPS's CIP Deadline or the Early Notice Deadline, as applicable:

i. The School Site shall be free and clear of the presence of any wetlands, endangered or threatened species or, as required hereunder, the Conveying Owner shall, at the Conveying Owner's sole cost and expense, mitigate all impacts to FEMA flood zones, associated wetland area impacts, gopher tortoise, sand skink, or other endangered species to the reasonable satisfaction of the School Board and as required to allow use of the School Site for School Board's Intended Use, including necessary submittals of the LOMR and LOMR-F;

ii. The Conveying Owner shall vacate all existing easements and utilities, if any, that are contained on the School Site and which would prevent the utilization of

the School Site for the School Board's Intended Use and move such existing easements and utilities to a location that does not conflict with such Intended Use;

iii. Potable water, reuse water and sanitary sewer facilities shall be installed and available at the boundaries of the School Site, as applicable, and shall be of sufficient size, pressure, flow and force and have sufficient capacity, including, without limitation, adequate fire suppression flow, to accommodate the use of the School Site for School Board's Intended Use as determined by School Board and School Board's engineer, in School Board's sole and absolute discretion;

iv. Electrical service shall be available at the boundary of the School Site and shall be of sufficient size and have sufficient capacity to accommodate the use of the School Site for School Board's Intended Use, as determined by School Board and School Board's engineer, in School Board's sole and absolute discretion. In addition, if telephone, internet and data/fiber services are available and are located within one thousand five hundred feet (1,500') of the School Site, then such services shall be brought to the boundary of the School Site at sufficient size and capacity to accommodate the use of the School Site for School Board's Intended Use, as determined by School Board and School Board's engineer, in School Board's reasonable discretion;

v. Certificate of Non-Foreign Status. The Conveying Owner shall submit a Certificate of Non-Foreign Status confirming the Conveying Owner is not a foreign person or entity for purposes of U.S. income taxation in compliance with Section 1445 of the Internal Revenue Code;

vi. The Conveying Owner shall submit such partial releases, satisfactions or other instruments necessary to release or remove any outstanding mortgages, liens, encumbrances or other matters which would prevent the utilization of the School Site for the School Board's Intended Use;

vii. The Conveying Owner shall submit a sworn affidavit confirming, to the Conveying Owner's knowledge, that there are no liens, encumbrances, deed restrictions, or other matters affecting title to the School Site which would prevent utilization of such site by School Board for the School Board's Intended Use;

viii. Compliance with Section 286.23, Florida Statutes. The Conveying Owner shall execute and deliver to County the "**Disclosure of Beneficial Interests**" required pursuant to Section 286.23, Florida Statutes;

ix. The School Site shall be free and clear of any recognized environmental conditions as identified in the Phase I or any Phase I or Phase II environmental site assessment or audit conducted on behalf of the School Board, or in the event any recognized environmental conditions are identified on the School Site, the Conveying Owner, at no cost or expense to School Board, shall remediate or cause to be remediated the School Site, if applicable, to School Board's reasonable satisfaction, prior to any such conveyance of the School Site to School Board. In the event such conditions cannot reasonably be remediated by the Conveying Owner, and the School Board has not exercised any of its other remedies as provided for in Section 5.d, School Board shall have the right, at its election, to require the Conveying Owner to either modify the property boundaries of the affected School Site or provide an alternative site or location within the PD Property or Village I for consideration. If the Conveying Owner fails to remediate any recognized environmental conditions and also fails to either modify the property boundaries of the School Site or provide alternative sites or locations within the PD Property or Village I for consideration as provided above, and the School Board has not exercised any of its other remedies as provided for in Section 5.d, it shall be a default under this Agreement;

x. The School Site shall be free and clear of any subsurface condition that would interfere with the School Board's Intended Use as evidenced by the Geotechnical Studies or other subsurface investigations or studies conducted by School Board or the Conveying Owner. In the event the Geotechnical Studies reveal the need for remediation to the School Site, the Conveying Owner, at no cost or expense to School Board, shall cause to be remediated the School Site, to School Board's reasonable satisfaction, prior to any such conveyance to School Board. In the event such conditions cannot reasonably be remediated by the Conveying Owner, School Board shall have the right, at its election, to require the Conveying Owner to either modify the property boundaries of the School Site or provide an alternative site or location within the PD Property or Village I for consideration. If the Conveying Owner fails to remediate any conditions identified in the Geotechnical Studies as interfering with the School Board's Intended Use and also fails to either modify the property boundaries of the School Site or provide alternative sites or locations within the PD Property or Village I for consideration as provided above, it shall be a default under this Agreement;

xi. Entitlements. The Conveying Owner shall, at the Conveying Owner's sole cost and expense, obtain zoning approval and preliminary plat approval from the County for use of the School Site as an elementary school, and the applicable appeal period shall have expired, with such matter being approved containing no terms, conditions, or provisions that are unsatisfactory or objectionable to School Board in its sole, exclusive and absolute discretion, or that will cause the School Board to incur additional costs not otherwise anticipated for the construction of the School Site for the School Board's Intended Use. The Conveying Owner shall also obtain approval of any plat that may be required by the County for the development of the School Site for the School Board's Intended Use ("**Plat**"), although the Plat, if required, may be

obtained by the Conveying Owner after the School Site is conveyed to the School Board pursuant to a post-closing agreement reasonably acceptable to the School Board and the Conveying Owner of the School Site;

xii. Access Improvements and Access Points. The Conveying Owner shall cause, or (at the School Board's option) be required to cause pursuant to a separate post-closing agreement entered into by the School Board and the Conveying Owner of the School Site, to be completed roadway access improvements as necessary for providing the School Site with direct access to public right(s)-of-way ("**Access Improvements**") at the Conveying Owner's sole expense. "**Completion**" of the Access Improvements shall mean the Access Improvements have been dedicated as a public right-of-way. Unless otherwise agreed by the parties in writing, access points to the School Site shall be as depicted on the Land Use Plan for the Gem Groves PD ("**Access Points**"). Such Access Points shall be on a publicly dedicated, paved and improved access road (minimum two-lane) accepted by the County or other governmental entity with jurisdiction ("**Access Road**"), which Access Road shall be contiguous to the boundary of the School Site, as shown on the Survey, and shall otherwise satisfy any applicable regulations for publicly dedicated paved roadways, including, without limitation, any requirements for maintenance. It shall be the responsibility of the Conveying Owner of the School Site to satisfy this condition and not the County's;

xiii. The Conveying Owner shall, at the Conveying Owner's cost and expense, remove or otherwise exempt or cause the School Site to be removed or exempt from any homeowners association or property owners association, if applicable, and any obligations, liens, and / or assessments associated therewith so long as the School Site is owned by School Board (the "**Association Exemption**"). The Conveying Owner and School Board shall cooperate in good faith to agree upon the form, manner, and content of the instrument establishing such Association Exemption prior to the expiration of OCPS's CIP Deadline or the Early Notice Deadline, as applicable, which form may be recorded in the Public Records of Orange County, Florida;

xiv. The Conveying Owner shall, at the Conveying Owner's cost and expense, cause the School Site to be exempt from any community development district, if applicable, and any obligations, liens, charges, costs and/or assessments associated therewith (the "**CDD Exemption**") so long as the School Site is owned by School Board. School Board and the Conveying Owner shall cooperate in good faith to agree upon the form, manner, and content of the instrument establishing such CDD Exemption, if applicable, prior to the expiration of OCPS's CIP Deadline or the Early Notice Deadline, as applicable, which form may be recorded in the Public Records of Orange County, Florida; and

xv. There will be no person or legal entity occupying the School Site or asserting a right of possession of the School Site through the Conveying Owner.

xvi. The School Site shall not have been affected by any legislative or regulatory change, or any flood, accident or other materially adverse event.

b) **Deadline to Complete Conditions to Close.** In the event the School Board determines that School Site will be added to or within the School Board's Five Year Capital Improvement Plan, the School Board shall provide written notice ("**School Board Notice**"), which School Board Notice shall be given to the Owners at least four (4) years in advance of the projected school opening, identifying the School Site and shall include a projected school year opening of the School Site ("**School Year Opening**"). The Conveying Owner shall complete and satisfy the Conditions to Close for the School Site no later than three (3) years prior to the earliest projected School Year Opening identified in the School Board Notice for the School Site ("**OCPS's CIP Deadline**"). Notwithstanding the foregoing, the School Board and/or County shall have the option of requiring an early conveyance of the School Site by delivering a written request for such conveyance to the Conveying Owner of the School Site, in which event such Conveying Owner shall complete and satisfy the Conditions to Close for the School Site within one (1) year following its receipt of such written request from School Board and/or County (the "**Early Notice Deadline**"). In the event the Conditions to Close cannot reasonably be satisfied by the Conveying Owner prior to OCPS's CIP Deadline or the Early Notice Deadline, as applicable, School Board shall have the right, at its election, to require the Conveying Owner to either modify the property boundaries of the School Site or provide an alternative site or location within the PD Property or Village I for consideration. If the Conveying Owner fails to complete or satisfy the Conditions to Close by OCPS's CIP Deadline or the Early Notice Deadline, as applicable, and also fails to either modify the property boundaries of the School Site or provide alternative sites or locations within the PD Property or Village I for consideration as provided above, it shall be a default under this Agreement.

10. Limitation on Use of Land. In accordance with the express purpose of the Horizon West Goals, Objectives and Policies contained in the CPP, the APF Lands being conveyed to the County and School Board shall only be utilized for the purposes described herein. For example, the School Site may only be used as public schools and for purposes related thereto. The instruments of conveyance of the APF Lands may contain similar restrictions to this effect. Neither the foregoing nor any separate deed restriction shall preclude the use of the APF Right-of-Way for sidewalks, bike paths, utilities, landscaping, transit stops or shelters and other uses typically allowed in the public right-of-way. Nor shall any such deed restriction contain any limitations or requirements mandating that a certain type or number of recreation facilities be constructed by the County on the Park Site.

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

12. Limitation of Remedies. County and Owners 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 any Owner to perform its obligations under this Agreement, County shall be limited strictly to only the following remedies:

- (i) action for specific performance or injunction against such Owner; or
- (ii) the right to set off, against the amounts of any impact fees to be credited in favor of any Owner in default under this Agreement, (A) any amounts due to County from such Owner under this Agreement but remaining unpaid and (B) the cost to County of performing any action or actions required to be done under this Agreement by such Owner, but which such Owner has failed or refused to do when required; or
- (iii) the withholding of development permits and other approvals and/or permits in connection with such Owner's property within the Gem Groves PD; 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 Lands and/or any portion of the PD Property as County may lawfully elect.

b) Limitations on Owners' Remedies. Upon any failure by County to perform its obligations under this Agreement, Owners 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 Owners; 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.

13. 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.

Notwithstanding the foregoing to the contrary, this Agreement shall not run with the land of, or be binding upon or provide any rights as to this Agreement to, a single family residential end user or homeowner of an attached or detached dwelling.

14. 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.

15. 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

School Board: The School Board of Orange County, Florida  
Attn: Superintendent of Schools

445 West Amelia Street  
Orlando, Florida 32801

With a Copy to: Orange County Public Schools  
Attn: Facilities Planning  
6501 Magic Way, Building 200  
Orlando, Florida 32809

Titan: Titan Liberty Lake Underhill Joint Venture  
2281 Lee Road, Suite 204  
Winter Park, Florida 32789  
Attn: Dell Avery

I 545: Village I - 545, LLC  
2281 Lee Road, Suite 204  
Winter Park, Florida 32789  
Attn: J. Kenneth Fulmer

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

16. 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.

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

18. 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.



19. 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.

20. Survival. The obligations of this Agreement shall survive the conveyance of the APF Lands to County.

21. 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.

22. 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. Nothing contained herein shall be construed to in any way amend or modify the Road Network Agreement.

23. Counterparts. This Agreement may be executed in up to three (3) 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 either such counterpart.

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

25. 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 Owners.

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

27. Conflicts. In the event of any conflicts between the terms of the Road Network Agreement and this Agreement, it is agreed that the terms of the Road Network Agreement shall control.

[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*

for Jerry L. Demings  
Orange County Mayor

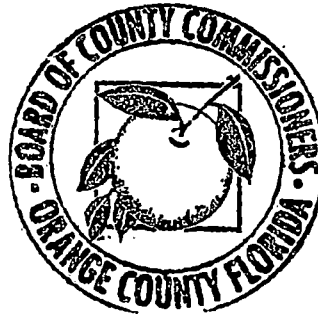
Date: JUL 07 2020

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

By: *Katie Smith*

Deputy Clerk

Printed Name: Katie Smith



**“TITAN”**

Signed and sealed in the presence of:

**TITAN LIBERTY LAKE UNDERHILL  
JOINT VENTURE, a Florida general  
partnership**

Neco Downey  
Print Name: Neco Downey

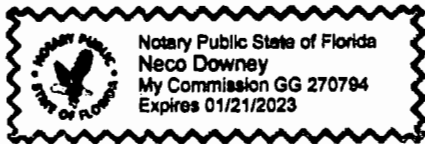
By: Titan Lake Underhill, Inc., a Florida  
corporation, its Managing Partner

[Signature]  
Print Name: Ken Fulmer

By: [Signature]  
Dell Avery, Vice-President

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

The foregoing instrument was acknowledged before me by means of [] physical presence  
or [ ] online notarization, this 6 day of April, 2020, by DELL AVERY as Vice-  
President of Titan Lake Underhill, Inc., a Florida corporation, Managing Partner of TITAN  
LIBERTY LAKE UNDERHILL JOINT VENTURE a Florida general partnership, on behalf of  
the organization. (He/she' is personally known to me or has produced  
(type of identification) as identification.



AFFIX NOTARY STAMP

Neco Downey  
NOTARY PUBLIC OF FLORIDA  
Print Name: Neco Downey  
Commission No.: GG 270794  
Expires: 01/21/2023

"I 545"

Signed and sealed in the presence of:

VILLAGE I 545, LLC, a Florida limited liability company

Neco Downey  
Print Name: Neco Downey

By: [Signature]

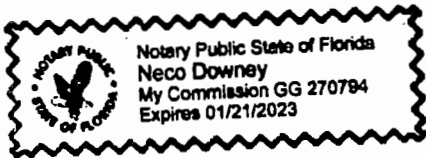
J. Kenneth Fulmer, Manager

[Signature]  
Print Name: DEU Avery

Date: 4/7/20

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

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this 7 day of April, 2020, by J. KENNETH FULMER as MANAGER of VILLAGE I 545, LLC, a Florida limited liability company, on behalf of the organization. He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.



AFFIX NOTARY STAMP

Neco Downey  
NOTARY PUBLIC OF FLORIDA  
Print Name: Neco Downey  
Commission No.: GG 270794  
Expires: 01/21/2023

**JOINDER AND CONSENT OF SCHOOL BOARD**

The School Board Of Orange County, Florida, a body corporate and political subdivision of the State of Florida, for itself and on behalf of any affiliate that may acquire title to such portion of the Property, hereby joins in and consents to the Agreement as a "joinder" party for the limited purpose of acknowledging the terms pertaining to the School Site as set forth therein, which shall be the only terms of the Agreement which will run with title to the land in connection with School Board's future acquisition of title to the School Site.

Signed, witnessed, executed and acknowledged on this 14 day of May, 2020.

Signed, sealed and delivered in the Presence of:

"SCHOOL BOARD"

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

Mariely Pagan  
Print Name: Mariely Pagan  
Arabia Henley  
Print Name: Arabia Henley

By: \_\_\_\_\_  
Teresa Jacobs, Chair

Date: 5/14/20, 2020

STATE OF FLORIDA )

) s.s.:

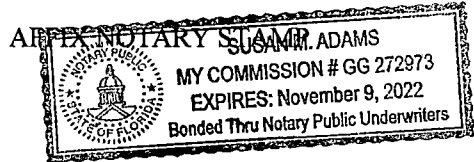
COUNTY OF ORANGE )

The foregoing instrument was acknowledged before me this 14th day of May, 2020, by Teresa Jacobs, Chair of The School Board of Orange County, Florida, a body corporate and political subdivision of the State of Florida, on behalf of The School Board, who is personally known to me or had produced \_\_\_\_\_ (type of identification) as identification.

Print Name: Susan M Adams

Susan M Adams  
NOTARY PUBLIC OF FLORIDA

Commission No.: \_\_\_\_\_  
Expires: \_\_\_\_\_



[ADDITIONAL SIGNATURE PAGES TO FOLLOW]

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

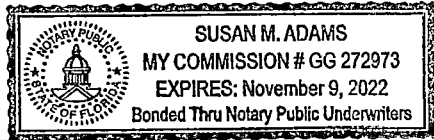
Signed and sealed in the presence of:

Marilyn Pagan  
Print Name: Marilyn Pagan  
Archie Healy  
Print Name: Archie Healy

Attest: [Signature]  
Barbara M. Jenkins, Ed.D. as its  
Superintendent  
Dated: 5-15-2020

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

The foregoing instrument was acknowledged before me, by means of  physical presence  
or  online notarization, this 15<sup>th</sup> day of May, 2020, by Barbara M. Jenkins,  
Ed.D., as Superintendent of The School Board of Orange County, Florida, a body corporate and  
political subdivision of the State of Florida, on behalf of The School Board, who is personally  
known to me or has produced \_\_\_\_\_ (type of identification) as  
identification.



AFFIX NOTARY STAMP

[Signature]  
NOTARY PUBLIC OF FLORIDA  
Print Name: Susan M. Adams  
Commission No.: \_\_\_\_\_  
Expires: \_\_\_\_\_

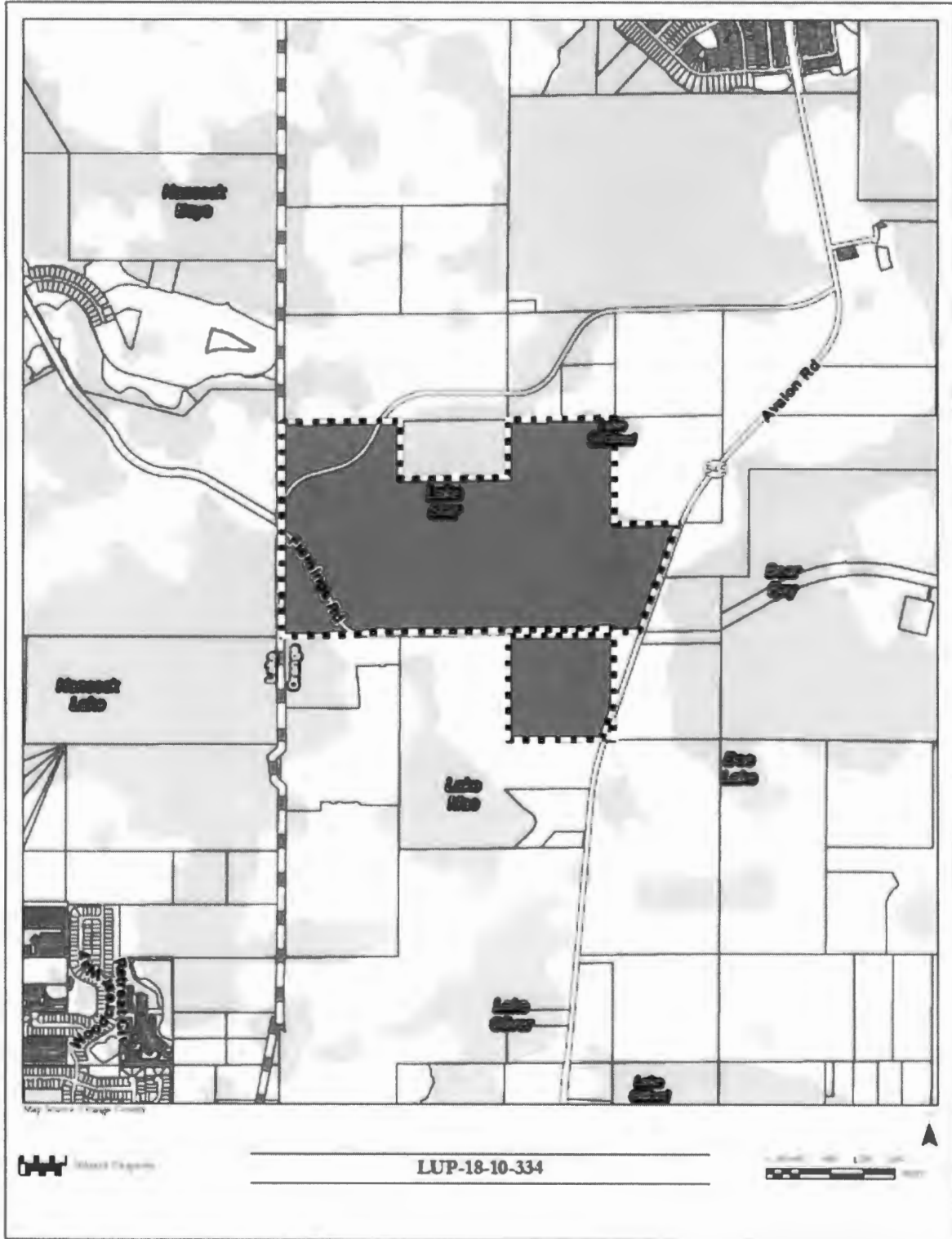
Reviewed and approved by Orange County  
Public School's Chief Facilities Officer

[Signature]  
John T. Morris  
Chief Facilities Officer  
Date: May 14, 2020

Approved as to form and legality by legal  
counsel to The School Board of Orange  
County, Florida, exclusively for its use and  
reliance.

[Signature]  
Christopher J. Wilson, Esquire, OCPS Counsel  
Date: May 11, 2020

**Exhibit "A"**  
**Project Area Location Map**



**Exhibit "B"**

**Legal Description  
for the PD Property**

The Southwest 1/4 of the Northeast 1/4;  
The North 1/2 of the Southwest 1/4, less Flemings Road;  
The Southwest 1/4 of the Southeast 1/4, less State Road 545 and less Flemings Road;  
The Northwest 1/4 of the Southeast 1/4, less Flemings Road;  
The Southwest 1/4 of the Northwest 1/4, less Lake Star Road No. 1;  
That part of the Northeast 1/4 of the Southeast 1/4 lying West of State Road 545; and  
The South 600 feet of the Southeast 1/4 of the Northwest 1/4.

All in Section 19, Township 24 South, Range 27 East, Orange County, Florida.