



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. *JW.*  
Planning, Environmental and Development  
Services Department

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

SUBJECT: March 10, 2020 — Consent Item  
First Amendment to Adequate Public Facilities Agreement  
for Horizon West Village I Withers PD  
Case # APF-19-12-412  
(Related to Case # CDR-19-10-331)

The Horizon West Village I Withers Planned Development (PD) contains 320.75 gross acres and was originally approved on November 12, 2019 for 814 residential units, 10,000 square feet of commercial uses, a park, an elementary school, and a middle school. The Withers PD is generally located east of County Road 545 (Avalon Road), north of Hartzog Road, and south of Western Way.

The PD and existing Adequate Public Facilities (APF) agreement currently require 51.18 acres of APF, creating a 34.13-acre APF surplus.

The applicant is proposing the First Amendment to Adequate Public Facilities Agreement for Horizon West Village I Withers PD ("First Amendment") to reflect the additional APF provision of 0.17 acres of stormwater treatment for APF land within the PD. The First Amendment will reflect the increased provision of APF lands from 51.18 acres to 51.35 acres and increased APF surplus from 34.13 acres to 34.30 acres.

The First Amendment received a recommendation of approval from the Development Review Committee on February 12, 2020, 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 First Amendment will be recorded in the Public Records of Orange County.

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March 10, 2020 — Consent Item

First Amendment to Adequate Public Facilities Agreement for Horizon West Village I

Withers PD (Case #APF-19-12-412) (Related to Case # CDR-19-10-331)

**ACTION REQUESTED: Approval and execution of First Amendment to Adequate Public Facilities Agreement for Horizon West Village I Withers PD by and between Withers, LLC, Columnar Partnership Holding I, 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): 29-24-27-0000-00-003, 29-24-27-0000-00-004, 29-24-27-0000-00-008,  
29-24-27-0000-00-009, 29-24-27-0000-00-001, 29-24-27-0000-00-010,  
29-24-27-0000-00-017 & 30-24-27-0000-00-011

**FIRST AMENDMENT TO  
ADEQUATE PUBLIC FACILITIES AGREEMENT  
FOR HORIZON WEST VILLAGE I  
WITHERS PD**

**THIS FIRST AMENDMENT TO ADEQUATE PUBLIC FACILITIES AGREEMENT FOR HORIZON WEST VILLAGE I WITHERS PD** (the “**First Amendment**”), effective as of the latest date of execution (the “**Effective Date**”), is made and entered into by and between **WITHERS, LLC**, a Delaware limited liability company, registered to do business in the State of Florida as **WITHERS PROPERTIES, LLC**, whose mailing address is 5956 Sherry Lane, Suite 1000, Dallas, TX 75225 (“**Withers**”), and **COLUMNAR PARTNERSHIP HOLDING I, LLC**, an Indiana limited liability company, whose mailing address is 6442 Commerce Park Drive, Suite 2, Ft. Myers, Florida 33966 (“**Columnar**”) (Withers and Columnar 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**”).

**RECITALS:**

A. **WHEREAS**, on or about November 13, 2019, the parties entered into that certain Adequate Public Facilities Agreement for Horizon West Village I – Withers PD (the “**Agreement**”) recorded on November 21, 2019, as Document #20190734143, Public Records of Orange County, Florida.

B. **WHEREAS**, Owners have submitted an application to the County to amend the Withers PD, which amendment is on file with the County and includes, but is not limited to, an amendment to the APF lands and calculations related to transfer of APF credits within Village I (the “**Amended Withers PD**”).

C. **WHEREAS**, Orange County and Owners desire to amend the Agreement, to incorporate the above-referenced changes, as set forth herein.

D. **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 First 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~~):

“N. As shown on the Land Use Plan for the Withers PD, and as described in this Agreement, Owner is providing ~~51.48~~ 51.35 acre(s) of adequate public facilities land (the “APF Lands”) to County, thereby creating an APF surplus of ~~34.13~~ 34.30 acres.”

4. Conveyance of APF Lands by Owners. Section 2 of the Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

a) “Right(s)- of- way for the following roads (depicted as APF ROW and Future APF Right-of-Way on the Withers PD Land Use Plan):

Future APF Right-of-Way (to be consistent with New Hartzog Road Agreement)	Approximately 5.81 acres
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APF ROW	Approximately 0.98 acres
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It is contemplated that wider right(s)- of- way may be required in some locations, such as at intersections, to facilitate traffic movement.



7. Conveyance Procedure. Section 5.a) of the Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“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 general 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 foregoing notwithstanding, the New Hartzog Right-of-Way shall be conveyed to the County in accordance with the procedures described in the New Hartzog Road Agreement.

8. Timing of Stormwater Conveyance. Section 8.d) is hereby added to the Agreement as follows:

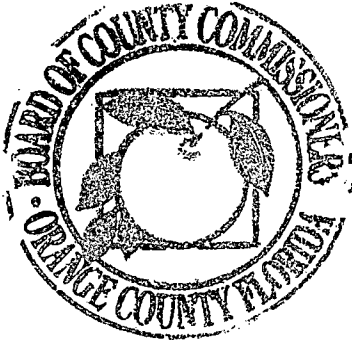
With respect to the Stormwater Site, the conveyance to and acceptance by the County shall occur (i) in conjunction with the recording of the plat or plats that contain such Stormwater Site or portions thereof, or (ii), or no later than one hundred twenty (120) following the delivery by County, and receipt by the Conveying Owners, of written notice that the County desires the consummation of such conveyance, whichever occurs first.

9. Recording. This First 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 First 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*  
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*  
Deputy Clerk

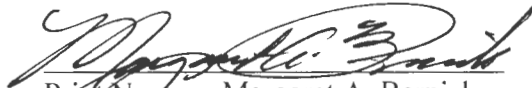
Print Name: Jennifer Klimetz

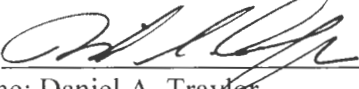
Signed, sealed and delivered  
in the presence of:

**WITHERS, LLC**, a Delaware limited liability  
company doing business in Florida as  
WITHERS PROPERTIES, LLC, a Delaware  
limited liability company

WITNESSES:

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

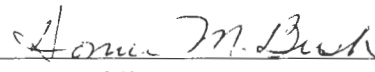
  
Print Name: Margaret A. Bernick

By:   
Name: Daniel A. Traylor  
Title: Manager  
Date: 02/21/2020

STATE OF INDIANA  
COUNTY OF VANDERBURGH

The foregoing instrument was acknowledged before me by means of [] physical  
presence or [] online notarization, this 21st day of February, 2020 by  
Daniel A. Traylor, as Manager of CH II WITHERS, LLC, a Delaware limited liability company,  
as Manager of WITHERS, LLC, a Delaware limited liability company doing business in Florida  
as WITHERS PROPERTIES, LLC, on behalf of such company, who [] is personally known to  
me or [] has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 21st day  
of February, 2020.

  
Notary Public  
Print Name: Donna M. Bush  
Commission No. 677213  
My Commission Expires: 01/20/2024



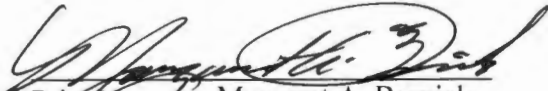
**DONNA M. BUSH**  
Resident of Vanderburgh County, IN  
Commission Expires: January 20, 2024

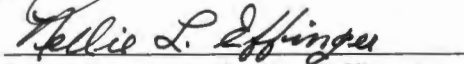


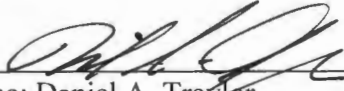
**COLUMNAR PARTNERSHIP HOLDING I, LLC** an Indiana limited liability company

WITNESSES:

By: COLUMNAR HOLDINGS, LLC, an Indiana limited liability company, its sole Member

  
Print Name: Margaret A. Bernick


  
Print Name: Nellie Lou Effinger

By:   
Name: Daniel A. Traylor  
Title: President  
Date: 02/21/2020

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 21st day of February, 2020 by Daniel A. Traylor, as President of COLUMNAR HOLDINGS, LLC, an Indiana limited liability company, the sole Member of COLUMNAR PARTNERSHIP HOLDING I, LLC, an Indiana limited liability company, on behalf of such company, who  is personally known to me or  has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 21st day of February, 2020

  
Notary Public  
Print Name: Donna M. Bush  
Commission No. 677213  
My Commission Expires: 01/20/2024



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