



Interoffice Memorandum

April 15, 2020

TO: Mayor Jerry L. Demings and Board of County Commissioners

FROM: Joseph C. Kunkel, P.E., Director, Public Works Department

CONTACT PERSON: **Diana M. Almodovar, P.E., Deputy Director
Public Works Department**

PHONE NUMBER: **(407) 836-7972**

SUBJ: **Hold Harmless and Indemnification Agreement for the Woodland
Park Phase 6 Pond between Taylor Morrison of Florida, Inc. and
Orange County**

The purpose of this agreement is to hold harmless, indemnify and protect Orange County from any claims or damages associated with the stormwater pond in Woodland Park Phase 6.

The enclosed Agreement has been reviewed and approved by the County Attorney's Office and the County Engineer.

Action Requested: Approval and execution of Hold Harmless and Indemnification Agreement (Woodland Park Phase 6 Pond) by and between Taylor Morrison of Florida, Inc. and Orange County. District 4.

DMA/jo

Attachments

BCC Mtg. Date: May 5, 2020

Instrument prepared by:

James H. McNeil, Jr., Esq.
Akerman LLP
420 S. Orange Avenue, Suite 1200
Orlando, Florida 32801

Return to:
Orange County Attorney's Office
P.O. Box 1393
Orlando, Florida 32802

**HOLD HARMLESS AND
INDEMNIFICATION AGREEMENT
(Woodland Park Phase 6 Pond)**

This Hold Harmless and Indemnification Agreement (the "Agreement") is made by and between **Taylor Morrison of Florida, Inc.**, a Florida corporation whose mailing address is 2600 Lake Lucien Drive, Suite 350, Maitland, Florida 32751 ("Applicant") and **Orange County**, a charter county and political subdivision of the State of Florida, whose mailing address is c/o Orange County Administrator, P.O. Box 1393, Orlando, Florida 32802-1393 ("County").

WITNESSETH:

WHEREAS, Applicant holds fee simple title to property as shown on the Woodland Park PD Land Use Plan, including Phase 6 and 7, which property is more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, Applicant has requested that County approve the Phase 6 and 7 plat for recording, which includes a stormwater pond in Phase 6 which is intended to be dedicated to the public in perpetuity (the "Phase 6 Pond"); and

WHEREAS, beginning in June 2019, the Applicant was performing construction of the Phase 6 Pond, including excavation and dewatering, in accordance with the County approved Woodland Park Phases 6 & 7 Construction Plans, Permit Number: 18-S-068, dated February 2, 2019; and

WHEREAS, on or about July 3, 2019, a breach occurred in the embankment between the borrow pit previously constructed on the adjacent property owned by Florida Recycling Center, LLC (the "Adjacent Owner") and the Phase 6 Pond bank (the "Breach"); and

WHEREAS, the Breach caused internal slope erosion to occur within the Phase 6 Pond under construction and resulted in contaminated materials traveling through the underground pathways and into the Phase 6 Pond from the borrow pit (the “Pond Impact”); and

WHEREAS, Applicant maintains that the cause of the Breach and Pond Impact is related to the adverse hydrological modifications made on the adjacent property by the owner of, and/or predecessors in title to, the Florida Recycling property; and

WHEREAS, Applicant asserts that it responded to the Breach expeditiously and hired engineering, geotechnical, and environmental consultants to evaluate the Pond Impact as well as to create and execute a plan of action, as approved by the applicable permitting agencies, in order to promptly remedy the Pond Impact; and

WHEREAS, Applicant and its consultants have worked with staff from the applicable permitting agencies to create and execute a plan to refill voided areas, remove debris, and clean up any and all hazardous materials in the Phase 6 Pond (the “Environmental Work”); and

WHEREAS, Applicant and its consultants will obtain the final approval of the Environmental Work from the applicable permitting agencies and provide such information to the County Public Works Director, with a copy to County’s Environmental Protection Division; and

WHEREAS, Applicant and its consultants have worked with the County staff to create and execute an engineering fix, including a ground stabilization plan to stabilize the pond slope in order to maintain the Phase 6 Pond consistent with County standards (the “Engineering Work”); and

WHEREAS, upon completion of the Engineering Work, Applicant will cause remediation testing to be performed, to include dewatering of the Phase 6 Pond and completion of any required excavation, in order to confirm the sufficiency of the Engineering Work; and

WHEREAS, Applicant will provide a completion report by their geotechnical consultant showing that the Engineering Work has been completed using industry specifications and that the work is complete such that pond maintenance may be performed on the Phase 6 Pond by the maintenance authority consistent with County standards; and

WHEREAS, due to the potential threat of litigation related to and/or arising from the Breach, the County has requested that the Applicant provide assurances for the County to accept the Phase 6 Pond.

NOW, THEREFORE, in consideration of these 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, Applicant and County hereby agree as follows:

1. **RECITALS.** The above recitals are true and correct and are hereby incorporated as a material part of this Agreement by this reference.

2. **HOLD HARMLESS AND INDEMNIFICATION.** To the fullest extent permitted by law, Applicant on behalf of itself and its successors, assigns, heirs, grantees, representatives, invitees, and permittees hereby agrees to release, indemnify, defend (with legal counsel acceptable to County), and hold harmless County, its Board members, officers, employees, contractors, agents, and elected and appointed officials from and against any and all claims, suits, judgments, demands, liabilities, damages, costs, and expenses (including but not limited to reasonable attorneys' fees, paralegals' fees, consultants' fees, and costs at all administrative, pretrial, trial, and appellate levels) of any kind or nature whatsoever arising out of or related to any litigation filed against the County including, without limitation, any litigation filed by the Adjacent Owner, related to the Breach (the "Indemnity/Hold Harmless"). The Indemnity/Hold Harmless shall expire on July 3, 2023, except that Applicant's obligations under this paragraph shall continue in full force and effect for any claim, notice of claim, lawsuit, and/or notice of intent to file a lawsuit filed on or before July 3, 2023, until such time as such claim, notice of claim, lawsuit, or notice of intent is resolved through settlement or final adjudication.

3. **MAINTENANCE WARRANTY.** Applicant agrees to obtain an extended maintenance warranty acceptable to Orange County (Letter of Credit (LOC) or CASH) to cover the Phase 6 Pond for a period of two (2) years after County acceptance of the Phase 6 Pond.

4. **AMENDMENT; TERMINATION.** This Agreement may be amended or terminated only by express written instrument executed by County and Applicant. The foregoing notwithstanding, this Agreement shall automatically terminate on July 3, 2023, except that Applicant's obligations under paragraph 2 shall continue in full force and effect for any claim, notice of claim, lawsuit, and/or notice of intent to file a lawsuit filed on or before July 3, 2023, until such time as such claim, notice of claim, lawsuit, or notice of intent is resolved through settlement or final adjudication.

5. **APPLICABLE LAW; WAIVER; ATTORNEY FEES; VENUE.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida. 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. Both parties expressly agree that each party shall bear the cost of its own attorney and legal fees for any action arising out of or in connection with this Agreement. Venue for any action 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.

6. **RECORDATION.** An executed original of this Agreement shall be recorded, at Applicant's expense, in the Public Records of Orange County, Florida, and proof of recording provided to County's Director of the Public Works Department within ten (10) business days after this Agreement is executed by County.

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

[Signature pages follow]

Hold Harmless and Indemnification Agreement
Taylor Morrison of Florida, Inc., Woodland Park, 2020

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

ORANGE COUNTY, FLORIDA

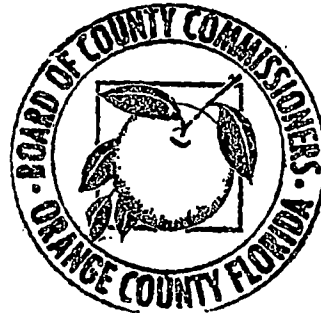
By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: MAY 05 2020

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

By: *Katie Smith*
Deputy Clerk

Print name: Katie Smith



Hold Harmless and Indemnification Agreement
Taylor Morrison of Florida, Inc., Woodland Park, 2020

TAYLOR MORRISON OF FLORIDA, INC.,
a Florida corporation

WITNESSES:

C. Kirk
Printed Name: Chrissie Kirk

Shelley Kaercher
Print Name: Shelley Kaercher

By: [Signature]
Name: Brian Brunhofer
Title: Vice President

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me in person/ by online notarization this 24 day of February, 2020, by Brian Brunhofer, as Vice President of Taylor Morrison of Florida, Inc., a Florida corporation, on behalf of said corporation, who is personally known to me or has produced (type of identification) _____ as identification.



CHRISSIE KIRK
Commission # GG 307723
Expires March 4, 2023
Bonded Thru Budget Notary Services

[Signature]
Notary Public
Printed Name Chrissie Kirk

My Commission Expires: 3/4/23

EXHIBIT "A"

LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN SECTIONS 17 AND 18, TOWNSHIP 24 SOUTH, RANGE 30 EAST, ORANGE COUNTY, FLORIDA. INCLUDING A PORTION OF TRACTS ZZ AND LL, WOODLAND PARK PHASE 3, AS RECORDED IN PLAT BOOK 92, PAGES 67 THROUGH 76, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND A PORTION OF UNPLATTED LAND,

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION SAID SECTION 17; THENCE RUN SOUTH 00°10'12" WEST ALONG THE EAST LINE OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 17 FOR A DISTANCE OF 1758.69 FEET TO THE NORTHEAST CORNER OF WOODLAND PARK PHASE 10, AS RECORDED IN PLAT BOOK 101, PAGE 58, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN SOUTH 90°00'00" WEST ALONG THE NORTHERLY LINE OF SAID WOODLAND PARK PHASE 10 AND THE EASTERLY LINE OF WOODLAND PARK PHASE 5, AS RECORDED IN PLAT BOOK 98, PAGE 106, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA FOR A DISTANCE OF 851.66 FEET; THENCE RUN ALONG SAID EASTERLY LINE THE FOLLOWING COURSES: NORTH 54°51'12" WEST FOR A DISTANCE OF 264.75 FEET; THENCE RUN SOUTH 75°10'13" WEST FOR A DISTANCE OF 180.30 FEET; THENCE RUN NORTH 01°42'49" EAST FOR A DISTANCE OF 101.31 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 73°27'24", THE CHORD OF WHICH BEARS NORTH 38°26'31" EAST FOR A DISTANCE OF 29.90 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 32.05 FEET TO A POINT OF TANGENCY; THENCE RUN NORTH 75°10'13" EAST FOR A DISTANCE OF 27.95 FEET; THENCE RUN NORTH 14°49'47" WEST FOR A DISTANCE OF 50.00 FEET TO A NON-TANGENT POINT OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 105°19'03", THE CHORD OF WHICH BEARS NORTH 52°10'16" WEST FOR A DISTANCE OF 39.75 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 45.95 FEET TO A POINT OF TANGENCY; THENCE RUN NORTH 00°29'16" EAST FOR A DISTANCE OF 207.37 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 74°40'57", THE CHORD OF WHICH BEARS NORTH 37°49'44" EAST FOR

A DISTANCE OF 30.33 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 32.59 FEET TO A POINT OF TANGENCY; THENCE RUN NORTH $75^{\circ}10'13''$ EAST FOR A DISTANCE OF 27.39 FEET; THENCE RUN NORTH $14^{\circ}49'47''$ WEST FOR A DISTANCE OF 50.00 FEET TO A NON-TANGENT POINT OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF $105^{\circ}19'03''$, THE CHORD OF WHICH BEARS NORTH $52^{\circ}10'16''$ WEST FOR A DISTANCE OF 39.75 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 45.95 FEET TO A POINT OF TANGENCY; THENCE RUN NORTH $00^{\circ}29'15''$ EAST FOR A DISTANCE OF 197.00 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF $74^{\circ}40'57''$, THE CHORD OF WHICH BEARS NORTH $37^{\circ}49'44''$ EAST FOR A DISTANCE OF 30.33 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 32.59 FEET TO A NON-TANGENT POINT; THENCE RUN NORTH $14^{\circ}49'47''$ WEST RADIAL WITH SAID CURVE FOR A DISTANCE OF 50.00 FEET; THENCE RUN SOUTH $75^{\circ}10'13''$ WEST FOR A DISTANCE OF 35.24 FEET; THENCE RUN NORTH $14^{\circ}49'47''$ WEST FOR A DISTANCE OF 210.62 FEET; THENCE RUN NORTH $49^{\circ}30'16''$ EAST FOR A DISTANCE OF 1043.82 FEET TO THE NORTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 17; THENCE RUN SOUTH $89^{\circ}28'08''$ EAST ALONG SAID NORTH LINE FOR A DISTANCE OF 5.83 FEET; THENCE DEPARTING SAID NORTH LINE RUN NORTH $00^{\circ}11'18''$ EAST FOR A DISTANCE OF 9.71 FEET; THENCE RUN SOUTH $89^{\circ}48'42''$ EAST FOR A DISTANCE OF 50.00 FEET; THENCE RUN SOUTH $00^{\circ}11'18''$ WEST FOR A DISTANCE OF 5.86 FEET; THENCE RUN NORTH $65^{\circ}02'34''$ EAST FOR A DISTANCE OF 160.18 FEET; THENCE RUN SOUTH $00^{\circ}11'18''$ WEST FOR A DISTANCE OF 73.08 FEET TO THE NORTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 17; THENCE RUN SOUTH $89^{\circ}28'08''$ EAST ALONG SAID NORTH LINE FOR A DISTANCE OF 326.46 FEET TO THE POINT OF BEGINNING.