



**Interoffice Memorandum**

**AGENDA ITEM**

**DATE:** August 12, 2020

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

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

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

**SUBJECT:** September 1, 2020 — Consent Item  
Adequate Public Facilities Agreement for Silverleaf – Horizon  
West Town Center PD / RP  
Case # APF-19-11-386 / District 1  
(Related to Case # LUP-19-09-290)

The proposed Silverleaf Planned Development – Regulating Plan (PD-RP) contains 563 gross acres (280 acres net developable) and is located generally north of Schofield Road and west of Avalon Road. The subject property is located within the Town Center Special Planning Area of Horizon West. The applicant has submitted a request (LUP-19-09-290) to change the current designations on the Town Center Special Planning Area map to CCMU (Corporate Campus Mixed-Use), Schools, Open Space, and Adequate Public Facilities (APF) Park, in order to allow for a mixed-use project with a development program consisting of up to 2,926 residential dwelling units (single-family and multi-family), 2,903,286 square feet of non-residential uses including hotel, commercial, office, and/or light industrial.

Pursuant to Orange County Code Section 30-714, each property owner in a Horizon West PD is required to convey their proportionate share of Adequate Public Facilities (APF) lands, which are based on the ratio of required APF acres to net developable acres within the Special Planning Area. For the Town Center Special Planning Area, the adopted ratio of APF acres to net developable acres is 1.0 to 5.1. In the event that APF land requirements cannot be met within a particular PD, an owner may pay a fee to the County equal to the value of the ratio of required APF lands and based upon the average fair market value of land, as established by Board resolution 2014-M-09. Alternately, they may receive a transfer of surplus APF credits from another property owner in the same Village.

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September 1, 2020 — Consent Item  
Adequate Public Facilities Agreement for Silverleaf-Horizon West Town Center PD-RP (Case #APF-19-11-386)  
(Related to Case # LUP-19-09-290)

In order to satisfy the requirements of Chapter 30, Article XIV of the Orange County Code ("APF/TDR Ordinance"), the Silverleaf PD-RP is subject to an APF Agreement that recognizes that the project is responsible for a minimum of 55 acres of APF lands. The project provides 82 acres of APF lands resulting in an APF surplus of 27 acres. The APF lands provided consist of an APF Park and APF Trail, APF Schools (combined Elementary and Middle School site), and rights-of-way for Valencia Parkway, Avalon Road, and Horizon Boulevard/Porter Road, and related stormwater areas including the stormwater area for the school site. The 27 acres of APF land surplus will be available as APF acreage credits which may be sold and/or assigned by the owner to other owners within the same Village.

The APF Agreement for Silverleaf PD-RP received a recommendation of approval from the Development Review Committee on March 11, 2020 and has been placed on the September 1, 2020 consent agenda to be pulled for consideration with the associated PD-RP. Upon approval by the Board, the Agreement will be recorded in the Public Records of Orange County.

**ACTION REQUESTED: Approval and execution of Adequate Public Facilities Agreement for Silverleaf-Horizon West Town Center PD/RP by and between JEN Florida 36, LLC and Orange County. District 1**

JVW/EPR/jhs  
Attachments

BCC Mtg. Date: September 1, 2020

This instrument prepared by  
and after recording return to:

Juli Simas James, Esq.  
Shutts & Bowen LLP  
300 S. Orange Avenue, Suite 1600  
Orlando, Florida 32801

Cross Reference: 20170435628

Tax Parcel I.D. Numbers:	19-23-27-5836-15-030	19-23-27-5840-11-010	30-23-27-0000-00-004
	19-23-27-5836-15-011	19-23-27-5840-12-090	30-23-27-0000-00-007
	19-23-27-5836-15-010	19-23-27-5836-17-010	30-23-27-0000-00-005
	19-23-27-5840-14-010	19-23-27-5836-16-010	30-23-27-0000-00-010
	19-23-27-5840-13-100	19-23-27-5836-16-110	29-23-27-0000-00-004
	19-23-27-5840-10-000	30-23-27-0000-00-001	

**ADEQUATE PUBLIC FACILITIES AGREEMENT FOR  
SILVERLEAF-HORIZON WEST TOWN CENTER PD/RP**

**THIS ADEQUATE PUBLIC FACILITIES AGREEMENT FOR SILVERLEAF-HORIZON WEST TOWN CENTER PD/RP** (the “**Agreement**”), effective as of the date of execution by the last party to execute this Agreement (the “**Effective Date**”), is made and entered into by and between **JEN FLORIDA 36, LLC**, a Florida limited liability company, with its principal place of business at Unit #111, 1750 West Broadway Street, Oviedo, Florida 32765 (“**Owner**”), and **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida, whose address is P.O. Box 1393, Orlando, Florida 32802-1393 (“**County**”) (Owner and County are referred to herein sometimes individually, as a “**Party**” and collectively, as the “**Parties**”). **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**” or the “**Joinder Party**”) 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. Owner is the fee simple owner 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/RP Property**”).

B. The PD/RP Property, also known as the Silverleaf-Horizon West Town Center Planned Development Regulating Plan (the “**Silverleaf PD/RP**”), is identified on the Orange County Comprehensive Policy Plan 2010-2030 (the “**Comprehensive Plan**”) Future Land Use Map with the “Village” land use designation and constitutes a portion of Town Center, in Horizon West, as same is described and depicted in the Town Center Specific Area Plan approved by the Board of County Commissioners of Orange County, Florida (the “**BCC**”) on December 14, 2004 (the “**Town Center SAP**”).

C. The PD/RP 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 Silverleaf PD/RP has relied on the prior approvals of the Horizon West Study and the Town Center SAP, and studies included in the SAP.

E. The Town Center SAP contemplates a mix of nonresidential and residential uses within the PD/RP Property.

F. County and DeWitt Enterprises, Inc., a Florida corporation (“**DeWitt**”), entered into that certain Adequate Public Facilities Agreement for School Site Conveyance (Lake Ingram PD/UNP), as joined in and consented to by School Board, recorded as Instrument No. 20170435628 in the Public Records of Orange County, Florida (“**Lake Ingram APF Agreement**”), whereby DeWitt was required to convey a 13.5 acre elementary school site with a 1.5 acre drainage easement to School Board (“**Ingram School Site**”).

G. The Lake Ingram APF Agreement establishes the agreed-upon fair market value for the Ingram School Site as \$22,500.00 per acre, or fraction thereof, for a total of 13.5 acres.

H. Owner, as the successor in title to the Lake Ingram PD/UNP property encumbered by the Lake Ingram APF Agreement and the assignee to the Lake Ingram APF Agreement pursuant to that certain Assignment and Assumption of Adequate Public Facilities Agreement for School Site Conveyance (Lake Ingram PD/UNP), recorded as Instrument No. 20190586582 in the Public Records of Orange County, Florida, desires to relocate the Ingram School Site to the PD/RP Property. As part of the application for the Silverleaf PD/RP, the Lake Ingram PD/UNP will be subsumed within the Silverleaf PD/RP.

I. Owner desires to develop the PD/RP Property in accordance with the Silverleaf PD/RP submitted by Owner to County, and with the Silverleaf PD/RP zoning application on file with County (the “**Project**”).

J. 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.

K. Division 2 of the APF/TDR Ordinance requires, in Section 30-712(b) that Owner enter into a developer’s agreement identifying required adequate public facilities within the development and addressing the conveyance to the County of adequate public facilities lands prior to or in conjunction with PD approval, unless otherwise addressed in such agreement pursuant to Section 30-714(c).

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

M. If Owner is unable to convey sufficient adequate public facilities lands to County, the APF/TDR Ordinance, at Sections 30-712(b) and 30-714(d), states that Owner may make payment of an adequate public facility lands fee to County. Additionally, the APF/TDR Ordinance, at Section 30-714(g), allows for application of APF acreage credits to satisfy an APF deficit.

N. It is the intent of the Parties that County will consider approval of the Silverleaf PD/RP with its consideration of this Agreement.

O. The PD/RP Property contains approximately 280 acres of **net** developable land, and both the Town Center SAP and Section 30-714 of the APF/TDR Ordinance require 1 acre of public facilities acreage for every 5.10 acres of net developable land (the “**APF Ratio**”).

P. When applied to the PD/RP Property, the APF Ratio equals approximately 55 acres of public facilities lands.

Q. As shown on the Silverleaf PD/RP, and as described in this Agreement, Owner is providing 82 acres of adequate public facilities lands (the “**APF Lands**”) to County, thereby creating an APF surplus of 27 acres.

R. As more particularly described herein, the APF Lands will include land for a combined elementary school and middle school site, thereby creating certain rights and obligations of the School Board as more particularly provided in Section 5 (b) of this Agreement and the need for the joinder and consent of the School Board attached hereto.

S. As more particularly described herein, the APF Lands will include Stormwater Areas that will serve the APF ROW, the School Site, and the Property as developed pursuant to the Silverleaf PD/RP, which Stormwater Areas will ultimately be owned and maintained by a not-for-profit property owners association (“**POA**”) formed by Owner.

**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 Lands by Owner.** Owner shall convey APF Lands as follows:

(a) **APF Right(s)-of-Way.** Rights-of-way for the following transportation improvements/roads (depicted as APF Road ROW on the Silverleaf PD/RP):

<u>APF LAND TYPE</u>	<u>ACREAGE</u>
Valencia Parkway	Approximately <b>9.96</b> acres

Avalon Road (C.R. 545)	Approximately <b>2.36</b> acres
Horizon Blvd./Porter Rd.	Approximately <b>9.68</b> acres

It is contemplated by the Parties that wider right(s)-of-way than depicted on the Silverleaf PD/RP may be required in some locations, such as at intersections, to facilitate traffic movement.

(b) **Stormwater Areas.**

(i) **County Stormwater Area:** Owner shall convey to County a permanent non-exclusive easement for stormwater drainage for the APF Lands, other than the School Site, as follows:

<u>APF LAND TYPE</u>	<u>ACREAGE</u>
Stormwater Areas (sufficient to service all improvements constructed within the APF Lands, other than the School Site (" <b>County Stormwater Area</b> "))	Approximately <b>5.75</b> acres

Any Stormwater Areas that are part of the master drainage system and which service the APF Right-of-Way shall be designed and constructed in a location mutually acceptable to the County and the Owner.

(ii) **School Site Stormwater Area:** Owner shall convey to School Board a permanent non-exclusive easement for stormwater drainage serving the School Site as follows:

<u>APF LAND TYPE</u>	<u>ACREAGE</u>
Stormwater Areas (sufficient to service all improvements constructed within the School Site (" <b>School Site Stormwater Area</b> ") Pond Tract SW-2	Approximately <b>6.25</b> acres

(c) **APF Park and APF Trail.** Owner shall convey APF Lands for a park and a multipurpose path as generally depicted on the Silverleaf PD/RP as follows:

<u>APF LAND TYPE</u>	<u>ACREAGE</u>
APF Park	Approximately <b>4</b> acres
APF Multipurpose Path (" <b>APF Trail</b> ")	Approximately <b>10.0</b> acres

(d) **APF School Site.** Owner shall convey APF Lands for a combination elementary school site (“**Elementary School Site**”) and middle school site (“**Middle School Site**”) as generally depicted on the Silverleaf PD/RP as follows (the Elementary School Site and the Middle School Site, collectively, the “**School Site**”):

<u>APF LAND TYPE</u>	<u>ACREAGE</u>
APF Elementary School (ES) Site	Approximately <b>13.5</b> acres
APF Middle School (MS) Site	Approximately <b>20.5</b> acres
TOTAL	Approximately <b>34</b> acres

The APF Lands identified in clauses (a) through (d) above are referred to herein as the “**Road Right-of-Way**,” “**Stormwater Areas**,” “**APF Park**,” “**APF Trail**” and “**School Site**,” respectively.

3. **APF Surplus.** The Town Center Ratio requires Owner to convey approximately 55 acres of APF Lands. This Agreement provides for conveyance of approximately 82 acres of APF Lands, thereby creating a 27 acre surplus.

4. **APF Acreage Credits.** County hereby acknowledges that the aforementioned APF Surplus will result in APF acreage credit equivalent to approximately 27 acres of APF Land, which APF acreage credits may be sold and/or assigned by Owner to other owners within Town Center Special Planning Area 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 Town Center Special Planning Area.

5. **Conveyance Procedure.**

(a) *Road Right-of-Way, APF Park, and APF Trail.* The conveyance of the Road Right-of-Way for Avalon Road (C.R. 545) shall be as provided in the Town Center West (Silverleaf) Road Network Agreement between the County and Owner (the “**Road Agreement**”), which Road Agreement has been approved the County’s Road Agreement Committee and is anticipated to be considered for approval by the County’s Board of County Commissioners contemporaneously with this Agreement. The conveyance of the Road Right-of-Way for Valencia Parkway and Horizon Boulevard (a/k/a Porter Road Extension), APF Park, and the APF Trail, which APF Trail shall be maintained by the POA, 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 remainder of this paragraph and the following paragraphs (c), (d) and (e) shall not apply to the conveyance. Owner shall pay all costs related to such conveyance, 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 Owner to Orange County Tax Collector, 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 Owner for the year of conveyance.

(b) *School Site*. The Owner shall convey the School Site to School Board by general warranty deed, free and clear of all liens and encumbrances, except for easements contemplated by this Agreement and matters as provided in the School Site Purchase Agreement (as defined below), no later than the closing date provided in the School Site Purchase Agreement (“**School Closing Date**”). Owner shall pay all costs related to such conveyance, including all recording fees and documentary stamps related to such conveyance. Ad valorem taxes in connection with the conveyance of the School Site shall be prorated as of the date of transfer of title and said prorated amount shall be paid by Owner to the Orange County Tax Collector, 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 Owner for the year of conveyance. Contemporaneously herewith, Owner and School Board are entering into a Real Estate Purchase Agreement providing the terms and conditions for conveyance of the School Site from Owner to School Board (the “**School Site Purchase Agreement**”).

(i) Conditions to Close. The Owner shall be required to fulfill each of the following conditions precedent to closing for the School Site (collectively, the “**School Conditions to Close**”) in accordance with the terms of the School Site Purchase Agreement:

(1) The School Site shall be free and clear of the presence of any wetlands, endangered or threatened species or the Owner shall, at the 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 to the extent required to allow use of the School Site for School Board's intended use of the School Site as an elementary school and middle school (“**School Board's Intended Use**”), including necessary submittals of the LOMR and LOMR-F;

(2) The Owner shall vacate all existing easements and utilities (other than easements contemplated by this Agreement and the School Site Purchase Agreement and easements of record acceptable to School Board), 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 School Board's Intended Use;

(3) Certificate of Non-Foreign Status. The Owner shall submit a Certificate of Non-Foreign Status confirming the 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;

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

(5) The Owner shall submit an owner's affidavit in form sufficient to enable the title company to delete all standard title exceptions other than survey exceptions from the title policy to be issued to the School Board as required in the School Site Purchase Agreement;



(6) Any Phase I environmental audit shall be conducted in accordance with the requirements of the All Appropriate Inquiries Final Rule or with the standards set forth in the most current version of the American Society for Testing and Materials (ASTM) E-1527. If a Phase II environmental site assessment or audit of the School Site is performed by the School Board in accordance with the School Site Purchase Agreement, based on a Phase I environmental assessment or audit of the School Site performed by the School Board which identifies recognized environmental conditions on the School Site and recommends a Phase II environmental site assessment or audit, and such Phase II environmental site assessment or audit recommends remediation of the School Site, Owner, at no cost or expense to School Board, shall remediate or cause to be remediated the School Site to the reasonable satisfaction of School Board, prior to conveyance of the School Site to School Board. The Phase II environmental audit, if any, shall be conducted in accordance with the requirements of the AAIFR or most current version of the ASTM E-1903. Owner's failure to perform or cause to be performed the required remediation shall be deemed a default under this Agreement;

(7) The School Site shall be free and clear of any subsurface condition that would interfere with the School Board's Intended Use as reasonably determined by the School Board and as identified in a geotechnical study or other subsurface investigation or study of the School Site conducted by School Board or the Owner. In the event any such geotechnical studies reveal the need for remediation to the School Site, the 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 the conveyance of the School Site to School Board. Owner's failure to perform or cause to be performed the required remediation shall be deemed a default under this Agreement;

(8) Entitlements. The Owner shall, at the Owner's sole cost and expense, use commercially reasonable efforts to obtain zoning approval and preliminary plat approval from the County for use of the School Site for School Board's Intended Use, with the applicable appeal period having expired, and with such matter being approved containing no terms, conditions, or provisions that are unsatisfactory or objectionable to School Board in its reasonable discretion. School Board acknowledges and agrees that School Board has accepted and approved the Silverleaf PD/RP (LUP-19-09-290) and all terms, conditions, or provisions thereof. The Owner shall also use commercially reasonable efforts to 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 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 Owner;

(9) The Owner shall, at the 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**");

(10) The Owner shall, at the 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;

(11) There will be no person or legal entity occupying the School Site or asserting a right of possession of the School Site through the Owner;

(12) The School Site shall not have been affected by any legislative or regulatory change, or any flood, accident or other materially adverse event that would prohibit the School Board’s Intended Use of the School Site;

(13) Temporary Access Improvements. At closing on the School Site, the Owner shall at its sole cost and expense, grant or cause to be granted to School Board a temporary access easement, in form and content reasonably acceptable to School Board and Owner, over such portion of the PD/RP Property as is reasonably acceptable to the School Board and Owner (“**Temporary Access Easement**”), and construct a temporary construction access road to the School Site (“**Temporary Access Road**”), as provided in the School Site Purchase Agreement.

(14) Temporary Water for School Board's Construction. From the School Closing Date until such time as School Board’s contractor commences work with lightweight concrete, Owner shall provide temporary, non-potable well water to the School Site. Within thirty (30) days after School Board provides written notice to Owner of School Board’s intent for its contractor to commence work with lightweight concrete on the School Site, Owner, at its sole cost and expense, shall provide temporary potable water with twenty-four (24) psi to the School Site (“**Temporary Water Work**”), until such time as the permanent potable water is substantially completed in accordance with the terms of the Post-Closing Agreement (hereinafter defined).

(15) Stormwater Improvements. Owner, at its sole cost and expense, shall design, permit, construct, and convey to School Board at the time of closing on the School Site a permanent non-exclusive stormwater drainage easement over the School Site Stormwater Area (the “**School Site Stormwater Easement**”) to accommodate the reasonable stormwater retention/detention needs of the schools to be constructed upon the School Site, as reasonably determined by School Board’s engineer; provided, however, that the maximum water volume and drainage area to be contributed to the offsite drainage system from the School Site shall not exceed an amount based on impervious surfaces covering up to eighty percent (80%) of the School Site. The form and content of the School Site Stormwater Easement shall be reasonably acceptable to School Board and Owner and shall provide that School Site Stormwater Areas will be owned and maintained by the POA as contemplated in Section 5(c)(iii) below; provided, however, the School Site Stormwater Easement shall provide that the School Board shall exercise the stormwater easement rights in compliance with the terms and conditions of the School Site Stormwater Easement and all applicable laws, rules, regulations, regulatory standards and requirements, permits and ordinances. School Board shall be responsible to repair any damage to the School Site Stormwater Area caused by School Board, its employees, agents or contractors, or caused by or related to the failure of School Board, its employees, agents or contractors to comply with the terms of the School Site Stormwater Easement or applicable laws, rules, regulations, regulatory standards and requirements, permits and ordinances. Furthermore, School Board, its employees, agents or contractors shall not cause any hazardous or toxic

substance or other contaminant regulated under any local, state, or federal code, law, statute, rule, regulation, and/or requirement to be discharged and/or released into or upon School Site Stormwater Area. In the event of any discharge and/or release by School Board, its employees, agents or contractors in violation of this paragraph, School Board shall have thirty (30) days after the discovery of such to remedy such non-compliance at the School Board's sole cost and expense.

(16) Clear, Fill and Grading. Owner, at its sole cost and expense, shall clear, fill and grade the School Site as set forth in the School Site Purchase Agreement and, upon completion, provide density tests and compaction reports in connection with its grading and fill activities in accordance with the School Site Purchase Agreement (“**Fill Work**”).

(17) Design, Engineering and Permitting of Post-Closing Improvements. Owner, at no cost or expense to School Board, shall, or shall cause others to (i) complete the engineering plans, specifications, and drawings for the permitting and construction of the Owner's Post-Closing Improvements in accordance with the Land Development Plans (hereinafter defined) and shall deliver copies of such engineering plans, specifications, and drawings to School Board upon completion of said plans, specifications and drawings; and (ii) obtain the issuance of all Required Permits for the Post-Closing Improvements. “**Required Permits**” shall mean all permits, approvals, licenses, authorizations, and development entitlements of/from all Governmental Authorities that are required to construct the Owner's Post-Closing Improvements in accordance with the Land Development Plans. For the purposes of this Agreement, the term “**Governmental Authorities**” shall mean any and all federal, state, county, municipal, or other governmental department or entity, or any authority, commission, board, bureau, court, community development district, or agency having jurisdiction over the Silverleaf PD/RP or any portion thereof, and whose approval is necessary for the construction of the Owner's Post-Closing Improvements, including without limitation, the United States Army Corps of Engineers, the Florida Department of Environmental Protection, the Florida Department of Transportation, the South Florida Water Management District, Orange County, Florida and Orange County Utilities. For the purposes of this Agreement, the term “**Land Development Plans**” shall mean the final construction plans, to be prepared by Poulos & Bennett, LLC, for the development of the subdivision grading and infrastructure, roadways, utilities and stormwater drainage, which have not yet been duly approved by the applicable Governmental Authorities whose approval is required in order for Owner to lawfully construct the improvements described therein.

(18) Post-Closing Agreement. Owner and School Board shall agree upon the form and content of a separate post-closing agreement (“**Post-Closing Agreement**”) to be executed at the closing of the School Site as required to complete the following improvements necessary for School Board's Intended Use of the School Site (“**Post-Closing Improvements**”):

a. Access Improvements. Owner shall design, permit, construct and dedicate as a public right-of-way either by deed or plat, the three (3) lane east/west roadway abutting the south boundary of the School Site, including turn/deceleration lanes to be located within the School Site and traffic signalization at the intersection of CR 545 and the

East/West Road (“**Access Improvements**”) at the Owner's sole expense, no later than the date set forth in the School Site Purchase Agreement.

b. Access Points. Owner, at Owner's sole cost and expense, shall construct three (3) access points along the south boundary and one (1) access point along the west boundary of the School Site as agreed upon in the School Site Purchase Agreement (collectively, the “**Access Points**”) no later than the date set forth in the School Site Purchase Agreement; provided that such Access Points shall be at the locations reasonably agreed upon by the School Board and such turn/deceleration lanes for the Access Points shall be located on the School Site.

c. Utilities. Owner shall design, permit, install, construct, and dedicate permanent potable water, reuse water and sanitary sewer facilities available at the boundary of the School Site, as applicable, in accordance with the terms of the School Site Purchase Agreement no later than the date set forth in the School Site Purchase Agreement, which 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 of the School Site as determined by School Board and School Board's engineer, in School Board's reasonable discretion;

d. Owner shall use commercially reasonable efforts to ensure that Duke Energy, as to electrical service, and Spectrum, as to telephone, internet and fiber/data service, make available at the boundary of the School Site, no later than the date set forth in the School Site Purchase Agreement, permanent electrical, telephone, internet, and fiber/data facilities of 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 sole reasonable discretion.

(ii) Deadline to Complete Conditions to Close. The School Site is within the School Board's Five Year Capital Improvement Plan. The Owner shall complete and satisfy the Conditions to Close for the School Site no later than the date set forth in the School Site Purchase Agreement. In the event the Conditions to Close are not satisfied by the Owner by the date set forth in the School Site Purchase Agreement, as applicable, it shall be a default under this Agreement, unless otherwise extended by Owner and School Board pursuant to Section 20 below.

(c) Stormwater Areas.

(i) APF Park, APF Trail and Right-of-Way. In addition to conveying the Road Right-of-Way, APF Park, and APF Trail to County, Owner shall convey to County a permanent non-exclusive easement over the County Stormwater Areas for stormwater drainage sufficient to serve the Road Right-of-Way, APF Park, and APF Trail (the “**County Stormwater Easement**”).

(ii) School Site. In addition to conveying the School Site to the School Board, the Owner shall convey to the School Board the School Site Stormwater Easement as contemplated in Section 5(b)(i)(15) above.

(iii) Owner shall form a POA for the purpose of owning and maintaining the Stormwater Areas and all stormwater drainage improvements constructed therein, and shall thereafter convey the Stormwater Areas to the POA, subject to the County Stormwater Easement and School Site Stormwater Easement.

(d) *Title Policy.* No less than ninety (90) days prior to any conveyance to County, Owner shall deliver to County, at Owner's sole cost and expense, an updated commitment to issue an Owner's Policy of Title Insurance naming County as the insured with respect to the fee interest in the applicable APF Lands to be conveyed to County and an easement interest in the County Stormwater Easement (the "**Title Commitment**"). The original Owner's Policy of Title Insurance (the "**Title Policy**") shall be delivered to County within thirty (30) days after the conveyance of each of the Right-of-Way, County Stormwater Easement, APF Park, and APF Trail. Owner's obligations to deliver to School Board the title commitment and title policy for the School Site are provided in the School Site Purchase Agreement.

(e) *Environmental Audit.* No less than sixty (60) days prior to any conveyance to County, Owner shall submit to County a current (within 6 months of conveyance to County) Phase I environmental audit of the areas encompassed by the APF Lands being conveyed to County. The Phase I environmental audit shall be conducted in accordance with the requirements of the All Appropriate Inquiries Final Rule or with the standards set forth in the most current version of the American Society for Testing and Materials (ASTM) E-1527. In the event the Phase I environmental audit presents a matter of concern as determined by County, then prior to the conveyance, Owner shall submit to County a Phase II environmental audit. The Phase II environmental audit, if any, shall be conducted in accordance with the requirements of the AAIFR or most current version of the ASTM E-1903. If the Phase II environmental audit is performed and reveals the need for remediation to the APF Lands, one of the following events shall occur: (i) Owner shall remediate the APF Lands to County's satisfaction prior to the conveyance; or (ii) Owner and County shall negotiate and enter into a separate agreement whereby Owner shall pay the full cost of remediation; or (iii) County may terminate this Agreement at its option. The rights and obligations of School Board and Owner with respect to environmental assessment of the School Site are provided in Section 5(b)(i)(6) of this Agreement and in the School Site Purchase Agreement.

(f) *Compliance with Section 286.23, Florida Statutes.* Owner shall execute and deliver to County the "Disclosure of Beneficial Interests" required pursuant to section 286.23, Florida Statutes.

(g) *Entitlement to Impact Fee Credits.*

(i) *APF Park and APF Trail.* In accordance with Policy 4.2.1 of the Future Land Use Element of the County's Comprehensive Plan, the APF/TDR Ordinance and Article VI of Chapter 23 of the Orange County Code (the "**Parks and Recreation Impact Fee Ordinance**"), the Owner is entitled to obtain impact fee credits at the rate of \$22,500.00 per acre (or 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 the APF Park and APF Trail.

(ii) APF Right-of-Way. In accordance with Policy 4.2.1 of the Future Land Use Element of the County's Comprehensive Plan, the APF/TDR Ordinance and Article IV of Chapter 23 of the Orange County Code (the "**Transportation Impact Fee Ordinance**"), the Owner is entitled to obtain impact fee credits at the rate of \$22,500.00 per acre (or 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 the Road Right-of-Way for Valencia Parkway and Horizon Boulevard (a/k/a Porter Road Extension). Any entitlement to, and award of, impact fee credits for the conveyance of the Road Right-of-Way for Avalon Road (C.R. 545) shall be in accordance with the Road Agreement.

(iii) School Site. The Owner shall be entitled to obtain school impact fee credits for the conveyance of the Elementary School Site and Middle School Site. The Parties and the Joinder Party agree that the value of the Elementary School Site, as determined in accordance with Article V of Chapter 23 of the Orange County Code (the "**School Impact Fee Ordinance**") and the prior Lake Ingram APF Agreement, is Two Hundred Fifty-Eight Thousand Seven Hundred Fifty Dollars (\$258,750.00), resulting from an agreed upon fair market value of Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) per net usable acre, or fraction thereof, based upon 11.5 net usable acres of the 13.5 gross acres in the Elementary School Site. The Parties and the Joinder Party agree that the value of the Middle School Site, as determined in accordance with the School Impact Fee Ordinance, is One Million Five Hundred Seventy-Two Thousand Five Hundred Dollars (\$1,572,500.00), resulting from an agreed upon fair market value of Eighty-Five Thousand Dollars (\$85,000.00) per net usable acre, or fraction thereof, based upon 18.5 net usable acres of the 20.5 gross acres in the Middle School Site. Pursuant to the School Site Purchase Agreement, the Owner and the Joinder Party have acknowledged and agreed that, for purposes of calculating the purchase price for the School Site and the amount impact fee credits to which Owner is entitled, the Elementary School Site contains 11.5 net usable acres and the Middle School Site contains 18.5 net usable acres. The Parties and the Joinder Party agree and acknowledge that the agreed upon value includes any and all improvements constructed or installed by the Owner, and as such, Owner shall not be entitled to receive additional school impact fee credits for the cost of (a) certain turn/deceleration lanes benefiting the School Site; or (b) the School Site Stormwater Area.

6. Refinement of Size and Location of APF Lands. The size and location of all APF Lands as depicted on the Silverleaf PD/RP is approximate, although the final size and location shall be substantially similar to that shown on the Silverleaf PD/RP. The dimensions and location for a particular component of the APF Lands shall be finalized by County and Owner, or School Board and Owner as to the School Site, prior to County approval of the Preliminary Subdivision Plan or Development Plan ("**PSP/DP**") that includes the particular APF Land, and shall be in full compliance with this Agreement. Parties and Joinder Party agree that the legal descriptions used to convey the APF Lands may be revised based upon final engineering.

7. Award of Impact Fee Credits.

(a) APF Park Land and APF Trail. Promptly upon the County's approval and acceptance of a General Warranty Deed conveying the APF Park or APF Trail, 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 Owner, for purposes of the Parks and Recreation Impact Fee Ordinance, the aforementioned amount of impact fee credits to which the Owner is entitled. Thereafter, as impact fees become due and payable from time to time in connection with the Project, and if so instructed by the Owner, the County shall deduct such amounts payable from the Owner's parks and recreation impact fee credit account. Park impact fee credits may only be used to satisfy obligations for the payment of parks and recreation impact fees.

(b) *Road Right-of-Way.* Promptly upon the County's approval and acceptance of a General Warranty Deed conveying the Road Right-of-Way for Valencia Parkway and Horizon Boulevard (a/k/a Porter Road Extension), 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 Owner, for purposes of the Transportation Impact Fee Ordinance, the aforementioned amount of impact fee credits to which the Owner is entitled. Thereafter, as impact fees become due and payable from time to time in connection with the Project, and if so instructed by the Owner, the County shall deduct such amounts payable from the Owner's transportation impact fee credit account. Transportation impact fee credits may only be used to satisfy obligations for the payment of transportation impact fees.

(c) *School Site.* Promptly upon School Board's notice to County of closing of the conveyance of the School Site from Owner to School Board in accordance with the School Site Purchase Agreement, County shall credit on its book to the account of Owner, for purposes of the School Impact Fee Ordinance, school impact fee credits in the amount of the aforementioned value of the School Site, subject to holdback of impact fee credits as security for completion of the Post-Closing Improvements as provided in the Post-Closing Agreement. Promptly upon School Board's notice to County of completion of the Post-Closing Improvements in accordance with the Post-Closing Agreement, County shall credit on its book to the account of Owner the balance of the impact fee credits due Owner. School impact fee credits may only be used to satisfy obligations for the payment of school impact fees.

(d) *Stormwater Area.* Owner shall not be entitled to impact fee credits of any type with regard to the conveyance of the County Stormwater Easement to County or the School Site Stormwater Easement to the School Board.

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

(f) Nothing herein shall prevent the Owner from assigning impact fee credits as provided for in Chapter 23 of the Orange County Code as it may be amended from time to time.

(g) Notwithstanding anything in the foregoing seemingly to the contrary, to the extent that the Owner pays impact fees to the County in connection with the development of the Silverleaf PD/RP and there is thereafter an impact fee credit balance created in favor of the 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 impact fees to the Owner (or to such person or entity to whom the Owner expressly may assign the right to receive such

refund) and shall make deduction from the appropriate impact fee credit account in the amount of any such refund. This Agreement shall serve as the agreement contemplated by Chapter 23 of the Orange County Code, including Section 23-95(d), for the refund of such impact fees.

8. **Option on Conveyance.** As an alternative to conveyance prior to or in connection with Silverleaf PD/RP approval, Owner has elected to convey at a later time, as contemplated by Sec. 30-714 of the APF/TDR Ordinance, as more particularly set forth below (the “**Conveyance Schedule**”). Conveyance shall be defined as submittal of all conveyance documents, approval by the BCC, and recordation of the deed(s).

(a) With respect to the Road Right-of-Way for Avalon Road (C.R. 545), the conveyance to and acceptance by the County shall occur as provided in the Road Agreement. With respect to the Road Right-of-Way for Valencia Parkway and Horizon Boulevard (a/k/a Porter Road Extension), the conveyance to and acceptance by the County shall occur (i) in conjunction with the recording of the deed or plat that contains such Road Right-of-Way, or (ii) no later than one hundred twenty (120) days following the delivery by County and receipt by the Owner of written notice that County desires the consummation of such conveyance, whichever occurs first.

(b) With respect to the APF Park and APF Trail, the conveyance to and acceptance by the County shall occur (i) in conjunction with the recording of the deed or plat that contains the APF Park and APF Trail, or (ii) no later than one hundred twenty (120) days following the delivery by County and receipt by the Owner of written notice that County desires the consummation of such conveyance, whichever occurs first.

(c) With respect to the County Stormwater Easement, the conveyance to and acceptance by the County shall occur (i) in conjunction with the recording of the plat(s) that contain the County Stormwater Areas, or (ii) no later than one hundred twenty (120) days following the delivery by County and receipt by the Owner of written notice that County desires the consummation of such conveyance, whichever occurs first.

(d) With respect to the School Site, the conveyance to and acceptance by the School Board shall occur as provided in the School Site Purchase Agreement.

(e) With respect to the School Site Stormwater Easement, the conveyance to and acceptance by the School Board shall occur as provided in the School Site Purchase Agreement.

The Parties and the Joinder Party agree that, prior to conveyance to County or School Board, as applicable, the Owner of the APF Lands may continue to use the APF Lands in a manner consistent with the County’s intended use, or School Board’s Intended Use with respect to the School Site and the School Site Stormwater Easement, including, but not limited to, the reasonable right to grade and to import or export fill material upon the APF Lands, subject to and in accordance with an approved grading permit and/or excavation fill permit. Further, the Owner agrees to relinquish control of the Road Right-of-Way for Valencia Parkway and Horizon Boulevard (a/k/a Porter Road Extension), the APF Park, and/or the APF Trail, as applicable, and convey such APF Lands to County, within one hundred twenty (120) days of demand by County in accordance with the Conveyance Schedule set forth above. If a conveyance does not occur



within such one hundred twenty (120) day period in accordance with the Conveyance Schedule, the Manager of County's Real Estate Division may grant one extension of up to one hundred twenty (120) days to complete the conveyance.

As contemplated by the Silverleaf PD/RP, development within the PD/RP Property is permitted to proceed beyond the 5% development cap set forth in Section 30-714(c) of the Code, provided that prior to development proceeding beyond 5% of the approved entitlements for the Silverleaf PD/RP:

(i) Owner has conveyed the Road Right-of-Way to the County or placed a deed for such Road Right-of-Way into escrow, pursuant to an escrow agreement acceptable to the County;

(ii) Owner has conveyed the County Stormwater Easement and School Site Stormwater Easement to County and School Board, respectively, or placed such easements into escrow, pursuant to an escrow agreement acceptable to the County and School Board;

(iii) Owner has conveyed the APF Park and the APF Trail to the County or placed a deed for the APF Park and APF Trail into escrow, pursuant to an escrow agreement acceptable to the County; and

(iv) Owner has conveyed the School Site to the School Board or placed a deed for the School Site into escrow, pursuant to an escrow agreement acceptable to the School Board.

With respect to the APF Lands, 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 School Board and their respective 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, Owner shall indemnify and hold harmless County and School Board and their respective 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 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 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, Owner shall indemnify and hold harmless County and School Board and their respective 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 or School Board 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. Owner shall be responsible for the immediate notification to County and School Board 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 Owner's activities related to the APF Lands.

In the event that any of the above occurs, County or School Board may refuse to accept conveyance of the applicable APF Lands to be conveyed to County or School Board, and County or School Board may require that Owner (i) pay an APF Fee in lieu of conveyance and/or (ii) convey alternative adequate public facilities land(s) acceptable to County. Notwithstanding anything seemingly or actually to the contrary above, the Parties acknowledge and agree that satisfaction of Owner's APF obligations must take place prior to County approval of the initial plat for the PD/RP Property.

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

10. **Limitation of Remedies.** County and Owner expressly agree that the consideration, in part, for each of them entering into this Agreement is the willingness of the other to limit the remedies for all actions arising out of or in connection with this Agreement.

(a) **Limitations on County's Remedies.** Upon any failure by Owner to perform its obligations under this Agreement, County shall be limited strictly to only the following remedies:

- (i) action for specific performance or injunction; or
- (ii) the right to set off, against the amounts of impact fees to be credited in favor of Owner, its successors and assigns (a) any amounts due to County from 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 Owner, but which Owner has failed or refused to do when required;
- (iii) the withholding of development permits and other approvals or permits in connection with the PD/RP Property; or
- (iv) any combination of the foregoing.

In addition to the foregoing, nothing in this Agreement prohibits or estops County, with respect to the APF Lands and the County Stormwater Easement to be conveyed to County, or School Board, with respect to the School Site and School Site Stormwater Easement to be conveyed to School Board, from exercising its power of eminent domain with respect to the applicable APF Lands or any other portion of the Property as County or School Board, as applicable, may lawfully elect. Notwithstanding the foregoing, in the event of a default by Owner of its obligations under this Agreement pertaining to the School Site, School Board, after providing Owner with thirty (30) days advance written notice and opportunity to cure, may request the County withhold or discontinue the issuance of any development permits, building permits, certificates of occupancy or plat approval in connection with the PD/RP Property; or

otherwise discontinue the process for any other approvals for the PD/RP Property until such default has been cured to the reasonable satisfaction of the School Board.

(b) Limitations on Owner's Remedies. Upon any failure by County to perform its obligations under this Agreement, Owner shall be limited strictly to only the following remedies:

- (i) action for specific performance; or
- (ii) action for injunction; or
- (iii) action for declaratory judgment regarding the rights and obligations of Owner; or
- (iv) any combination of the foregoing.

The 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.

11. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit and burden of the Parties hereto, to the Joinder Party only as to the applicable provisions, and to their respective heirs, successors, and assigns and shall run with title to the PD/RP Property and be binding upon any person, firm, corporation, or other entity acquiring any interest in all or any portion of the PD/RP Property.

12. Severability. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by either party hereunder or substantially increase the burden of either 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.

13. Notices. Any notice required or allowed to be delivered hereunder 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 a copy to: Orange County Planning, Environmental  
And Development Services Department  
Manager, Planning Division  
Post Office Box 1393  
Orlando, Florida 32802-1393

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

Owner: Jen Florida 36, LLC  
Attn: Denver Marlow, Vice President  
1750 W. Broadway St., #111  
Oviedo, FL 32765

With a copy to: Shutts & Bowen LLP  
Attn: Juli S. James, Esq.  
300 S. Orange Ave., Ste. 1600  
Orlando, FL 32801

School Board: The School Board of Orange County, Florida  
445 West Amelia Street  
Orlando, FL 32801

With a copy to: Orange County Public Schools  
Attn: Facilities Planning  
6501 Magic Way, Bldg 200  
Orlando, FL 32809

14. **OCPS Interest in School Site.** Owner and the School Board acknowledge that they are currently negotiating a School Site Purchase Agreement, which will address, among other things, the School Board's right to conduct its desired due diligence into the acceptability of the School Site for School Board's Intended Use and may impose additional obligations on the Owner in connection with the proposed conveyance of the School Site. It shall be a condition precedent to conveyance of the School Site to School Board, and to the School Board's obligation to accept the conveyance of the School Site, that the Owner shall not be in default under any material term or condition of the School Site Purchase Agreement beyond all applicable cure periods at the time of the conveyance of the School Site to the School Board. Notwithstanding anything to the contrary contained in this Agreement, Owner, School Board and County acknowledge and agree that, in the event any right or obligation of Owner and / or School Board with respect to the School Site or School Site Stormwater Easement set forth herein is in conflict with the provisions of the School Site Purchase Agreement, the terms and conditions of such matters shall be governed by the School Site Purchase Agreement.

15. **School Board Sole Third Party Beneficiary.** The Parties agree that School Board, as the Joinder Party, shall be an express third party beneficiary to this Agreement with respect to all provisions herein relating to the School Site and School Site Stormwater Easement, including remedies set forth in Section 10. Except as specifically noted, 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. 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 the School Board with respect to the School Site and School Site Stormwater Easement, and their respective representatives, heirs, successors and assigns.

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

17. **Interpretation.** This Agreement shall not be construed more strictly against one party than against any 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.

18. **Attorneys' Fees.** Each party to this Agreement agrees to bear its own attorneys' fees and costs in connection with all actions to be undertaken in compliance with, and enforcement of, this Agreement.

19. **Survival.** The obligations of this Agreement shall survive the conveyance of the APF Lands to County and School Board.

20. **Amendments.** 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. School Board does hereby delegate to and confer upon its Chief Facilities Officer the authority to extend deadlines for performance of Owner's obligations with respect to the School Site provided in this Agreement without formal approval from School Board. To the extent any amendment, modification, or other change to this Agreement does not affect the School Site or School Site Stormwater Easement, School Board's execution of any such amendment, modification, or other change to this Agreement shall not be required.

21. **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 agreements, understandings, representations, and statements, oral or written, are merged into this Agreement.

22. **Counterparts.** This Agreement may be executed in multiple counterparts, all of which taken together shall constitute one and the same instrument and any party or signatory hereto may execute this Agreement by signing any such counterpart.

23. **Authority to Contract.** The execution of this Agreement has been duly authorized by the appropriate body or official of the County, School Board, and the Owner.

24. **Termination; Effect of Annexation.** This Agreement shall remain in effect so long as the PD/RP 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/RP Property is proposed to be annexed into a neighboring municipality, County may, in its sole discretion, terminate this Agreement upon notice to Owner

25. **Termination of Lake Ingram PD/UNP APF Agreement.** Upon approval of this Agreement, the Lake Ingram APF Agreement shall automatically terminate and be deemed null and void and of no further force and effect.

**SIGNATURE PAGES FOLLOW**

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: SEP 01 2020

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

By: *Katie Smith*  
Deputy Clerk  
Print Name: Katie Smith



Signed, sealed, and delivered  
in the presence of:

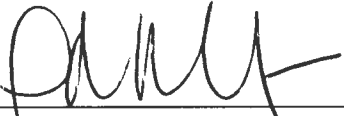
**JEN FLORIDA 36, LLC**, a Florida limited  
liability company



Print Name: Bill A. Jerman



Print Name: Jennifer Jerman

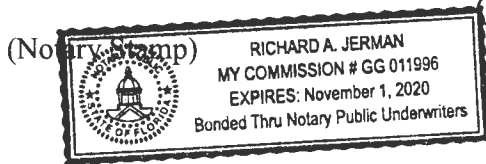
By: 

Name: Denver Marlow

Title: Manager

STATE OF FLORIDA  
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me by means of  physical presence  
or  online notarization, this 20th day of August, 2020, by Denver Marlow, as  
Manager of **JEN FLORIDA 36, LLC**, a Florida limited liability company, on behalf of such  
company, who  is personally known to me or  has produced  
\_\_\_\_\_ as identification.





Signature of Notary Public

Print Name: Richard A. Jerman

Notary Public, State of Florida

Commission Expires: 11/1/20



**JOINDER AND CONSENT OF SCHOOL BOARD**

The School Board of Orange County, Florida, a body corporate and political subdivision of the State of Florida, hereby joins in and consents to the foregoing Adequate Public Facilities Agreement for Silverleaf-Horizon West Town Center PD/RP ("**Agreement**") as a "Joinder Party" for the limited purpose of acknowledging and agreeing to comply with the terms and conditions of the Agreement pertaining to the School Site and the School Site Stormwater Easement, which shall be the only terms and conditions of the Agreement which will run with title to the School Site and the School Site Stormwater Easement area.

Signed, witnessed, executed and acknowledged on this 28<sup>th</sup> day of August, 2020.

**"SCHOOL BOARD"**

Signed and sealed in the presence of:

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

*Arabia Hentley*  
Print Name: Arabia Hentley

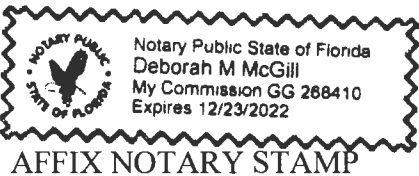
By: *Teresa Jacobs*  
Teresa Jacobs, its Chairman

*Marilyn Gutierrez*  
Print Name: Marilyn Gutierrez

Date: August 28, 2020

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

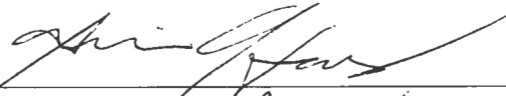
The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 28 day of August, 2020, by Teresa Jacobs, Chairman of The School Board of Orange County, Florida, a public corporate body and political subdivision of the State of Florida, on behalf of The School Board, who is personally known to me or had produced \_\_\_\_\_ (type of identification) as identification.

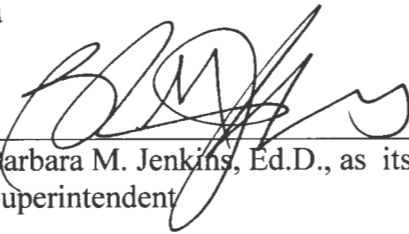


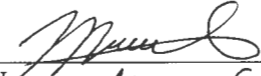
*Deborah M. McGill*  
NOTARY PUBLIC OF FLORIDA  
Print Name: Deborah M. McGill  
Commission No.: \_\_\_\_\_  
Expires: \_\_\_\_\_

Signed and sealed in the presence of:

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

  
Print Name: Araba Henley

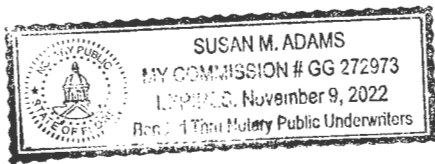
By:   
Barbara M. Jenkins, Ed.D., as its Superintendent

  
Print Name: Merion Gutierrez

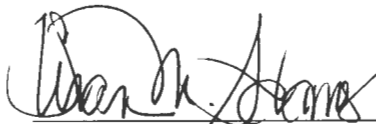
Date: August 27, 2020

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

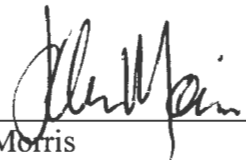
The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 27<sup>th</sup> day of August, 2020, by Barbara M. Jenkins, Ed.D., as Superintendent of The School Board of Orange County, Florida, a public corporate body and political subdivision of the State of Florida, on behalf of The School Board. She is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.



AFFIX NOTARY STAMP

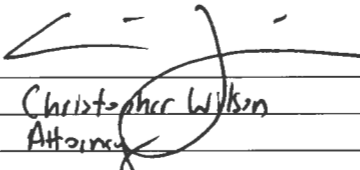
  
NOTARY PUBLIC OF FLORIDA  
Print Name: Susan M. Adams  
Commission No.: \_\_\_\_\_  
Expires: \_\_\_\_\_

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

  
John T. Morris  
Chief Facilities Officer

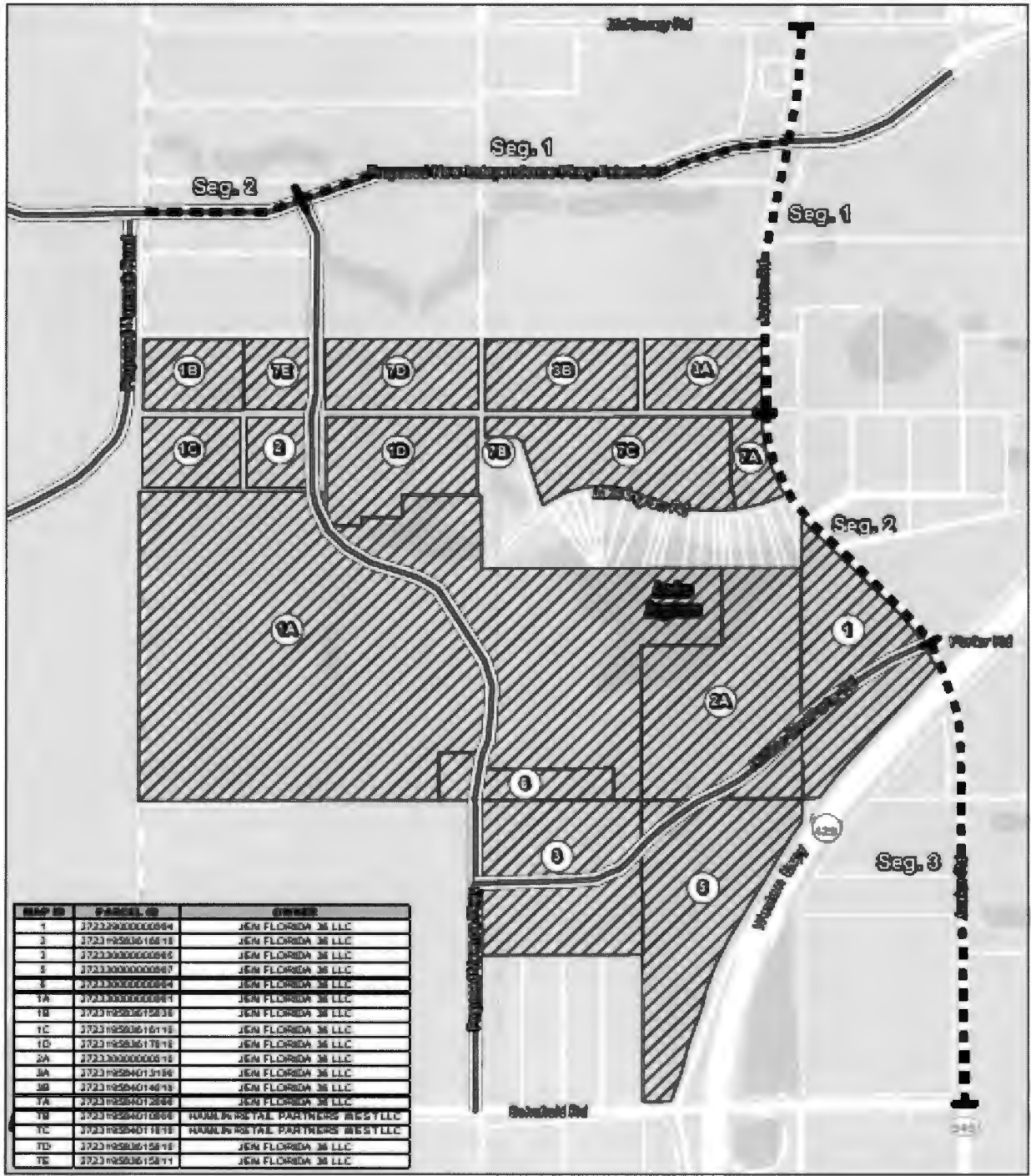
Date: Aug 25, 2020

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

  
By: Christopher Wilson  
Title: Attorney

Date: 8/21/20, 2020

**Exhibit "A"**  
**DEPICTION OF PD/RP PROPERTY**



Map Source: Tax, Orange County

- Subject Property
- Future Roads
- Boundary Segments
- Privatized Segment Boundaries

**Exhibit F - Segment Limits of Construction**  
**FORD-ROSS PROPERTY**

**POULOS & BENNETT**

5/18/2019  
P & B Sub Title

1 Month 31 Days 4 Weeks 16 Weeks 6 Months 1 Year

www.poulosandbennett.com  
10000 N. 1st Street, Suite 100, Orlando, FL 32817

**Exhibit "B"**

**LEGAL DESCRIPTION OF PD/RP PROPERTY**

A parcel of land comprising all of Blocks 15, 15-A, 16 16-A and 17 and a portion of the unnamed road right of ways in the Plat of MOUNTAIN PARK HOMESITES according to the Plat thereof as recorded in Plat Book P, Page 88 of the Public Records of Orange County, Florida, lying in Sections 19 and 30, Township 23 South, Range 27 East

Together with

A portion of Block 9, all of Blocks 10, 11, 12, 13 and 14 and a portion of the unnamed road right of ways in the Plat of MOUNTAIN PARK ORANGE GROVES, according to the Plat thereof as recorded in Plat Book P, Page 91 of the Public Records of Orange County, Florida, lying in Sections 19 and 30, Township 23 South, Range 27 East

Together with

A portion of the unplatted lands lying in Sections 29 and 30, Township 23 South, Range 27 East, Orange County, Florida

Being more particularly described as:

BEGINNING at the Northwest corner of the Northwest Quarter of said Section 30; thence run South 89°59'44" East along the North line of said Northwest Quarter for a distance of 30.00 feet to a point on the Southerly extension of the West line of aforesaid Block 16-A; thence departing aforesaid North line run North 00°13'40" East along the West line of Blocks 15-A and 16-A of the aforesaid MOUNTAIN PARK HOMESITES and the Southerly extension thereof for a distance of 1296.48 feet to the Northwest corner of aforesaid Block 15-A, said point lying on the South right of way line of an unnamed 30.00 foot right of way lying North of said Blocks 15 and 15-A according to said Plat of Mountain Park Homesites; thence run South 89°59'46" East along said South right of way line for a distance of 2798.78 feet to a point on the West line of the Southeast Quarter of aforesaid Section 19; thence run North 89°54'33" East along the South right of way line of an unnamed 30.00 foot right of way lying North of said Blocks 13 and 14 according to the aforesaid Plat of MOUNTAIN PARK ORANGE GROVES for a distance of 2318.93 feet to a point on the West right of way line of Avalon Road / County Road 545 according to said Plat of MOUNTAIN PARK ORANGE GROVES; thence run the following courses along said West right of way line: South 00°08'53" East for a distance of 601.38 feet to the point of curvature of a curve, concave Easterly having a radius of 1465.70 feet, with a chord bearing of South 15°02'13" East, and a chord distance of 753.21 feet; thence run Southerly through a central angle of 29°46'40" along the arc of said curve for a distance of 761.75 feet to Southeast corner of Lot 10, Block 12 of said MOUNTAIN PARK ORANGE GROVES, being at the intersection with the North right of way line of Lake Ingram Road of said MOUNTAIN PARK ORANGE GROVES and a point on a non tangent curve; concave Northerly having a radius of 1372.70 feet, with a chord bearing of South 90°00'00" West, and a chord distance of 1187.98 feet; thence run Westerly through a central angle of 51°16'48" along the arc of said curve for a distance of 1228.57 feet to a point of reverse curvature of a curve; concave Southerly having a radius of 776.80 feet, with a chord bearing of South 82°18'06" West, and a chord

distance of 853.83 feet; thence run Westerly through a central angle of  $66^{\circ}40'35''$  along the arc of said curve for a distance of 903.98 feet to a point on a non tangent line, being the centerline of the unnamed right of way lying West of Block 11 of said MOUNTAIN PARK ORANGE GROVES; thence run North  $16^{\circ}29'18''$  West along said centerline for a distance of 514.98 feet to the intersection with the Easterly projection of the South line of Block 10; thence run South  $72^{\circ}44'19''$  West along said South line and the Easterly extension thereof for a distance of 349.73 feet to the East right of way line of the unnamed road lying East of aforesaid Block 17, of MOUNTAIN PARK HOMESITES; thence run South  $00^{\circ}05'23''$  East along said East right of way line for a distance of 247.04 feet to the Southwest corner of the Southeast Quarter of aforesaid Section 19 and the Northeast corner of the Northwest Quarter of aforesaid Section 30; thence run South  $00^{\circ}09'08''$  East along the East line of said Northwest Quarter for a distance of 659.90 feet to the Northwest corner of the South Half of the North Half of the Northeast Quarter of aforesaid Section 30; thence run North  $89^{\circ}48'54''$  East along the North line of said South Half for a distance of 2650.45 feet to the Northeast corner of the South Half of the North Half of the Northeast Quarter of aforesaid Section 30 and the Southwest corner of the Northwest Quarter of the Northwest Quarter of the Northwest Quarter of aforesaid Section 29; thence run North  $00^{\circ}09'08''$  West along the West line off said Northwest Quarter for a distance of 423.65 feet to a point on the Southwesterly right of way line of Avalon Road / County Road 545 as recorded in Deed Book 400, Page 315 of the aforesaid Public Records and a point on a non tangent curve, concave Northeasterly having a radius of 1465.39 feet, with a chord bearing of South  $42^{\circ}16'26''$  East, and a chord distance of 156.02 feet; thence run the following courses along said Southwesterly right of way line: Southeasterly through a central angle of  $06^{\circ}06'12''$  along the arc of said curve for a distance of 156.10 feet to a point of tangency; thence run South  $45^{\circ}19'32''$  East for a distance of 882.37 feet to the point of curvature of a curve, concave Southwesterly having a radius of 1876.86 feet, with a chord bearing of South  $35^{\circ}12'17''$  East, and a chord distance of 659.58 feet; thence run Southeasterly through a central angle of  $20^{\circ}14'26''$  along the arc of said curve for a distance of 663.02 feet to a non tangent point on the Northwesterly right of way line of State Road 429 according to the Orlando-Orange County Expressway Authority Project, Map Number 75320-6460-653; thence run the following courses along said Northwesterly right of way line: South  $41^{\circ}47'01''$  West for a distance of 1009.40 feet to the point of curvature of a curve, concave Southeasterly having a radius of 5160.00 feet, with a chord bearing of South  $39^{\circ}05'51''$  West, and a chord distance of 483.63 feet; thence run Southwesterly through a central angle of  $05^{\circ}22'20''$  along the arc of said curve for a distance of 483.81 feet to a point of on a non tangent line and the North line of the Southwest Quarter of aforesaid Section 29; thence run South  $89^{\circ}45'00''$  West along said North line for a distance of 128.70 feet to the Northeast corner of the Southeast Quarter of aforesaid Section 30; thence run South  $00^{\circ}08'22''$  East along the East line of said Southeast Quarter for a distance of 185.93 feet to the aforesaid Northwesterly right of way line of State Road 429 and a point on a non tangent curve, concave Southeasterly having a radius of 5150.35 feet, with a chord bearing of South  $36^{\circ}01'11''$  West, and a chord distance of 97.49 feet; thence run Southwesterly through a central angle of  $01^{\circ}05'04''$  along the arc of said curve for a distance of 97.49 feet to a point on a non tangent curve; concave Southeasterly having a radius of 5162.00 feet, with a chord bearing of South  $31^{\circ}39'29''$  West, and a chord distance of 208.69 feet; thence run Southwesterly through a central angle of  $02^{\circ}18'59''$  along the arc of said curve for a distance of 208.70 feet to a point of tangency; thence run South  $30^{\circ}30'00''$  West for a distance of 792.88 feet to the point of curvature of a curve, concave Southeasterly having a radius of 2385.83 feet, with a chord bearing of South  $24^{\circ}35'09''$  West, and a chord distance of 491.65 feet; thence run Southwesterly through a central angle of

11°49'41" along the arc of said curve for a distance of 492.52 feet to a point of tangency; thence run South 18°40'18" West for a distance of 86.29 feet; thence run South 10°42'08" West for a distance of 100.98 feet; thence run South 18°40'18" West for a distance of 400.00 feet; thence run South 14°22'57" West for a distance of 200.56 feet; thence run South 18°40'18" West for a distance of 256.35 feet; thence run South 55°41'40" West for a distance of 24.14 feet; thence run South 89°37'34" West for a distance of 219.03 feet to a point on the West line of the East Half of the Southeast Quarter of aforesaid Section 30; thence run North 00°08'44" West along said West line for a distance of 1254.55 feet to the Southeast corner of the Northwest Quarter of the Southeast Quarter of said Section 30; thence run South 89°46'36" West along the South line of the Northwest Quarter of the Southeast Quarter of said Section 30 for a distance of 1325.08 feet to the Southwest corner of the Northwest Quarter of the Southeast Quarter of said Section 30; thence run North 00°09'08" West along the West line of the Northwest Quarter of the Southeast Quarter of said Section 30 for a distance of 1326.79 feet to the Southeast corner of the Northwest Quarter of said Section 30; thence run South 89°48'53" West along the South line of said Northwest Quarter for a distance of 2849.72 feet to the Southwest corner of the Northwest Quarter of said Section 30; thence run North 00°08'44" East along the West line of said Northwest Quarter for a distance of 2649.05 feet to the POINT OF BEGINNING.