



Interoffice Memorandum

AGENDA ITEM

DATE: August 10, 2022

TO: Mayor Jerry L. Demings
—AND—
County Commissioners

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

CONTACT PERSON: Joe Kunkel, P.E., DRC Chairman
Development Review Committee
Public Works Department
(407) 836-7971

SUBJECT: August 30, 2022 — Consent Item
Adequate Public Facilities Agreement for Selnik PD - 2022
Case #APF-22-02-044 / District 1
(Related to LUP-20-08-239)

The proposed Selnik Planned Development (PD) contains 33.68 gross acres and is located on the west side of Winter Garden Vineland Road across the street from Windermere High School. The subject property is located within the Village of Bridgewater Special Planning Area of Horizon West and is designated as Townhome District (TH) on the Village of Bridgewater Special Planning Area map. Through rezoning application # LUP-20-08-239, the Selnik PD proposes 110 residential units consisting of 17 detached single-family homes and 93 attached single-family townhomes.

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. 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 an independent appraiser. For the Village of Bridgewater Special Planning Area, the adopted ratio of APF acres to net developable acres is 1.0 to 5.5. The owner can either make a payment to satisfy the APF deficit, or in lieu of payment, the owner may obtain APF credits through purchase from others who hold excess APF credits.

In order to satisfy the requirements of Chapter 30, Article XIV of the Orange County Code ("APF/TDR Ordinance"), the Selnik PD is subject to an APF Agreement that recognizes that the project is accountable for a minimum of 3.23 acres of APF lands. The total APF lands conveyed are zero acres, creating an APF deficit of 3.23 acres. In order to satisfy this deficit, the owner will pay \$156,437.01.

The Adequate Public Facilities Agreement for Selnik PD – 2022 received a recommendation of approval from the Development Review Committee on July 13, 2022, and has been placed on the August 30, 2022 Board consent agenda to be pulled for consideration with the associated PD Land Use Plan. Upon approval by the Board, the Agreement will be recorded in the Public Records of Orange County, Florida.

ACTION REQUESTED: Approval and execution of Adequate Public Facilities Agreement for Selnik PD – 2022 by and between Windermere Acquisition Company, LLC and Orange County. District 1

Attachment
JVW/JHS

This instrument prepared by and after
recording return to:

Daniel T. O'Keefe, Esq.
Shutts & Bowen LLP
300 S. Orange Avenue, Suite 1600
Orlando, FL 32801

APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

BCC Mtg. August 30, 2022

Parcel I.D. Nos:
14-23-27-0000-00-006

**ADEQUATE PUBLIC FACILITIES AGREEMENT
FOR SELNIK PD - 2022**

THIS ADEQUATE PUBLIC FACILITIES AGREEMENT FOR SELNIK PD - 2022 (the "Agreement"), effective as of the latest date of execution (the "Effective Date"), is made and entered into by and between WINDERMERE ACQUISITION COMPANY, LLC, a Florida limited liability company, with its principal place of business at 5911 Turkey Lake Road, Suite 303, Orlando, Florida 32819 ("Owner") and ORANGE COUNTY, a charter county and political subdivision of the State of Florida whose mailing address is P.O. Box 1393, Orlando, Florida 32802-1393 ("County").

RECITALS:

A. 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 Property").

B. The PD Property, also known as Selnik Planned Development, is identified in the Orange County Comprehensive Plan 2010-2030 (the "Comprehensive Plan") Future Land Use Map with the "Village" land use designation and constitutes a portion of the constitutes a portion of the Village of Bridgewater Specific Area Plan approved by the Board of County Commissioners of Orange County, Florida (the "BCC") on March 2, 1999 (the "Bridgewater Village SAP").

C. The PD Property is included in the Horizon West Village Land Use Classification Area. The BCC adopted the Horizon West Village Land Use Classification Comprehensive Policy Plan ("CPP") amendment on June 5, 1995. The Horizon West Village Land Use Classification was the result of a public-private partnership between the BCC and Horizon West, Inc. The partnership conducted an extensive visioning and community consensus building process that was summarized in the Horizon West Study Report issued February 7, 1995.

D. The PD Property has relied on the prior approvals of the Horizon West Study and the Bridgewater Village SAP, and on the Bridgewater Village SAP approvals and studies included in the SAP.

E. The Bridgewater Village SAP contemplates certain civic and recreational uses within the PD Property.

F. OWNER desires to develop the PD Property in accordance with the Selnik Planned Development Land Use Plan (“PD LUP”), submitted by OWNER to COUNTY, and with the PD zoning application on file with COUNTY.

G. The Goals, Objectives, and Policies contained in the Future Land Use Element of the Comprehensive Plan have been implemented through Chapter 30, Article XIV, of the Orange County Code (“APF/TDR Ordinance”) adopted by the BCC on May 20, 1997, as amended.

H. Division 2 of the APF/TDR Ordinance requires, in Section 30-712(b), that 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).

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

J. If 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.

K. It is the intent of the parties that COUNTY will consider approval of the PD LUP with its consideration of this Agreement.

L. The PD Property contains approximately 17.74 acres of **net** developable land, and both the Bridgewater Village SAP and Section 30-714 of the APF/TDR Ordinance require 1 acre of public facilities acreage for every 5.5 acres of net developable land (the “APF Ratio”).

M. When applied to the PD Property, the APF Ratio equals approximately 3.23 acres of public facilities lands.

N. As shown on the Selnik PD Land Use Plan, and as described in this Agreement, OWNER is not providing any acreage of adequate public facilities land (the “APF Land”) to COUNTY, thereby creating an APF deficit of 3.23 acres.

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. **APF Deficit.** The Bridgewater Village SAP ratio requires that Owner convey to County approximately 3.23 acres of APF Land. This Agreement provides for conveyance of approximately 0 acre(s) of APF Land, thereby creating a 3.23-acre APF Deficit.

3. **APF Fee.** OWNER will pay to COUNTY an APF Fee of One Hundred Fifty-Six Thousand Four Hundred Thirty-Seven and 01/100 Dollars (\$156,437.01) in order to account for the APF deficit, representing OWNER'S full and final APF contribution for the PD Property. Application of the APF fee satisfies the APF deficit. OWNER has agreed that payment of the APF Fee shall occur prior to COUNTY's approval of the first platting of the PD Property.

4. **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

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

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

- (i) action for specific performance; or
- (ii) action for injunction; or
- (iii) the withholding of development permits and other approvals and/or permits in connection with the Project and/or the PD Property; or
- (iv) any combination of the foregoing.

In addition to the foregoing, nothing in this Agreement prohibits or estops COUNTY from exercising its power of eminent domain with respect to the APF Land and/or any portion of the PD Property as County may lawfully elect.

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.

Both parties expressly waive their respective rights to sue for damages of any type for breach of or default under this Agreement by the other. Venue for any actions initiated under or in connection with this Agreement shall be in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

6. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit and burden of the parties hereto and their respective heirs, successors, and assigns and shall run with title to the PD Property and be binding upon any person, firm, corporation, or other entity acquiring any interest in all or any portion of the PD Property.

7. Severability. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any party hereunder nor substantially increase the burden of any party hereunder, shall be held to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

8. Notices. Any notice delivered with respect to this Agreement shall be in writing and shall be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or to such other person as the party shall have specified by written notice to the other party delivered in accordance herewith.

COUNTY: Orange County, Florida
 c/o County Administrator
 Post Office Box 1393
 Orlando, Florida 32802-1393

With copies to: Orange County Planning, Environmental,
 and Development Services Department

Manager, Planning Division
Post Office Box 1393
Orlando, Florida 32802-1393

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

OWNER: Windermere Acquisition Company, LLC
Attn: Anil H. Thadani and Nikhail Thadani
5911 Turkey Lake Road, Suite 303
Orlando, FL 32819

With a copy to: Shutts & Bowen LLP
Attn: Daniel T. O’Keefe, Esq.
300 S. Orange Avenue, Suite 1600
Orlando, Florida 32801

9. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of the formal parties hereto and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the parties hereto and their respective representatives, heirs, successors, and assigns.

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

11. Interpretation. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that all parties have contributed substantially and materially to the preparation hereof. Captions and section headings in this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify, or aid in the interpretation, construction, or meaning of this Agreement.

12. Attorney Fees. Each party to this Agreement agrees to bear its own attorney and other legal fees and costs in connection with all actions to be undertaken in compliance with, and enforcement of, this Agreement.

13. Survival. The obligations of this Agreement shall survive the satisfaction of the APF Deficit by OWNER.

14. Amendment. No amendment, modification, or other change to this Agreement shall be binding upon the parties unless in writing and formally executed in the same manner as this Agreement.

15. Entire Agreement. This Agreement embodies and constitutes the entire understanding of the parties with respect to the subject matter addressed herein, and all prior or contemporaneous agreement, understandings, representations, and statements, oral or written, are merged into this Agreement.

16. Counterparts. This Agreement may be executed in up to two (2) counterparts, both of which taken together shall constitute one and the same instrument and any party or signatory hereto may execute this Agreement by signing either such counterpart.

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

18. Termination; Effect of Annexation. This Agreement shall remain in effect so long as the PD Property remains in unincorporated Orange County, Florida, unless the Parties terminate it, in writing, with the same formality as its execution. If any portion of the PD Property is proposed to be annexed into a neighboring municipality, County may, in its sole discretion, terminate this Agreement upon notice to Owner.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

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

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

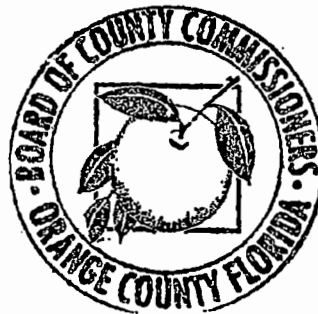
By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: August 30, 2022

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

By: *Katie Smith*
Deputy Clerk

Printed Name: Katie Smith



WINDERMERE ACQUISITION COMPANY, LLC

By: _____

Anil H. Thadani

Manager

Date: _____

08/15/2022

WITNESSES:

Dawn A. Haddler
Print Name: Dawn A. Haddler

Terry Bissen
Print Name: TERRY BISSEN

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or [] online notarization, by Anil H. Thadani, as Manager of WINDERMERE ACQUISITION COMPANY, LLC, who is known by me to be the person described herein and who executed the foregoing, this 15TH day of AUGUST, 2022. He is personally known to me or has produced _____ as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 15TH day of AUGUST, 2022.

Notary Public

Print Name: _____

Terry E. Bissen

Terry E. Bissen

My Commission Expires: _____

5/22/2024



TERRY E. BISSEN
Commission # GG 977970
Expires May 22, 2024
Bonded Thru Budget Notary Services

Exhibit “A”

Survey of PD Property

[a copy of the survey appears on the immediately following pages]



Ditch at the Northwest corner of Lot L, Lake Connard Embankment, A Right-of-way across the [plot] thereof as recorded in Plat Book Six, page 118, of the Public Records of Orange County, Florida.

Thence run South 07° 35' 35" West along the North line of said Lake Connard Embankment, A Right-of-way across the [plot] thereof as recorded in Plat Book Six, page 118, of the Public Records of Orange County, Florida, a distance of 772.15 feet; thence departing said North and South line North 57° 23' 20" East for a distance of 260.95 feet; thence run N 42° 16' 18" East for a distance of 99.69 feet; thence run North 61° 30' 18" East for a distance of 154.27 feet; thence run North 65° 25' 51" East for a distance of 105.59 feet; thence run North 65° 06' 27" East for a distance of 105.59 feet; thence run North 65° 06' 27" East for a distance of 2.50 feet; thence run North 62° 18' 17" East for a distance of 82.19 feet; thence run North 53° 42' 10" East for a distance of 70.28 feet; thence run North 53° 42' 10" East for a distance of 105.59 feet; thence run North 74° 05' 05" East for a distance of 92.23 feet; thence run North 63° 30' 18" East for a distance of 105.59 feet; thence run South 61° 16' 18" East for a distance of 350.13 feet to the closed point of Beginning.

- 2021.12.22
15:11:50-0500

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This instrument prepared by and after
recording return to:

Daniel T. O'Keefe, Esq.
Shutts & Bowen LLP
300 S. Orange Avenue, Suite 1600
Orlando, FL 32801

Exhibit "B"

Legal Description of the PD Property

The land referred to herein below is situated in the County of ORANGE, State of Florida,
and described as follows:

THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 AND THE
SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 AND THE EAST 1/2
OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4, ALL IN SECTION
14, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, LESS AND
EXCEPT THE ROAD RIGHT OF WAY.

LESS and EXCEPT:

A parcel of land lying in a portion of the Northeast 1/4 of the Southwest 1/4 of Section 14,
Township 23 South, Range 27 East, Orange County, Florida and the Southeast 1/4 of the
Southeast 1/4 of the Northwest 1/4 of Section 14, Township 23 South, Range 27 East, Orange
County, Florida, being more particularly described as follows:

Begin at the Northeast corner of Lot 1, Lake Cawood Estates, A Replat, according to the plat
thereof as recorded in Plat Book 36, Page 119, of the Public Records of Orange County, Florida;
thence run North 01° 16' 16" West for a distance of 1323.01 feet to a point along the North line of
the Northeast 1/4 of the Southwest 1/4 of said Section 14; thence departing said North line run
North 00° 01' 45" East for a distance of 660.66 feet to the Southeast corner of Tract "T",
Summerport, Phase 3, according to the plat thereof as recorded in Plat Book 56, Pages 9 through
17, of the Public Records of Orange County, Florida; thence run North 89° 37' 32" East for a
distance of 45.00 feet along the Westerly right-of-way line of County Road 535 (Winter Garden -
Vineland Road); thence run South 00° 01' 42" West continuing along said Westerly right of way
line for a distance of 660.63 feet to a point along aforesaid North line of the Northeast 1/4 of the
Southwest 1/4 of Section 14; thence departing said North line run South 00° 01' 42" West
continuing along said Westerly right-of-way line for a distance of 1322.91 feet to a point along the
South line of aforesaid Northeast 1/4 of the Southwest 1/4 of Section 14; thence run South 89° 39'
32" West along said South line and Westerly right-of-way line for a distance of 15.00 feet to the
aforesaid Point of Beginning.

ALSO LESS AND EXCEPT:

A parcel of land lying in a portion of the Northeast 1/4 of the Southwest 1/4 of Section 14,
Township 23 South, Range 27 East, Orange County, Florida, being more particularly described as
follows:

Begin at the Northeast corner of Lot 1, Lake Cawood Estates, A Replat, according to the plat

thereof as recorded in Plat Book 36, Page 119, of the Public Records of Orange County, Florida;
thence run South 89° 39' 32" West along the North line of said Lake Cawood Estates, A Replat
also being the South line of aforesaid Northeast 1/4 of the Southwest 1/4 of Section 14 for a
distance of 772.19 feet; thence departing said North and South line run North 57° 23' 26" East for a
distance of 28.89 feet; thence run North 61° 18' 23" East for a distance of 91.69 feet; thence run
North 61° 30' 16" East for a distance of 154.27 feet; thence run North 68° 21' 51" East for a
distance of 79.27 feet; thence run North 64° 07' 06" East for a distance of 118.89 feet; thence run
North 83° 07' 29" East for a distance of 7.59 feet; thence run North 62° 12' 17" East for a distance
of 82.19 feet; thence run North 55° 42' 15" East for a distance of 79.28 feet; thence run North 77°
17' 32" East for a distance of 91.02 feet; thence run North 74° 01' 01" East for a distance of 92.33
feet; thence run North 61° 23' 46" East for a distance of 22.90 feet; thence run South 01° 16' 16"
East for a distance of 350.13 feet to the aforesaid Point of Beginning.

This instrument prepared by and after
recording return to:

Daniel T. O'Keefe, Esq.
Shutts & Bowen LLP
300 S. Orange Avenue, Suite 1600
Orlando, FL 32801

Exhibit "B"

Legal Description of the PD Property

The land referred to herein below is situated in the County of ORANGE, State of Florida,
and described as follows:

THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 AND THE
SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 AND THE EAST 1/2
OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4, ALL IN SECTION
14, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, LESS AND
EXCEPT THE ROAD RIGHT OF WAY.

LESS and EXCEPT:

A parcel of land lying in a portion of the Northeast 1/4 of the Southwest 1/4 of Section 14,
Township 23 South, Range 27 East, Orange County, Florida and the Southeast 1/4 of the
Southeast 1/4 of the Northwest 1/4 of Section 14, Township 23 South, Range 27 East, Orange
County, Florida, being more particularly described as follows:

Begin at the Northeast corner of Lot 1, Lake Cawood Estates, A Replat, according to the plat
thereof as recorded in Plat Book 36, Page 119, of the Public Records of Orange County, Florida;
thence run North 01° 16' 16" West for a distance of 1323.01 feet to a point along the North line of
the Northeast 1/4 of the Southwest 1/4 of said Section 14; thence departing said North line run
North 00° 01' 45" East for a distance of 660.66 feet to the Southeast corner of Tract "T",
Summerport, Phase 3, according to the plat thereof as recorded in Plat Book 56, Pages 9 through
17, of the Public Records of Orange County, Florida; thence run North 89° 37' 32" East for a
distance of 45.00 feet along the Westerly right-of-way line of County Road 535 (Winter Garden -
Vineland Road); thence run South 00° 01' 42" West continuing along said Westerly right of way
line for a distance of 660.63 feet to a point along aforesaid North line of the Northeast 1/4 of the
Southwest 1/4 of Section 14; thence departing said North line run South 00° 01' 42" West
continuing along said Westerly right-of-way line for a distance of 1322.91 feet to a point along the
South line of aforesaid Northeast 1/4 of the Southwest 1/4 of Section 14; thence run South 89° 39'
32" West along said South line and Westerly right-of-way line for a distance of 15.00 feet to the
aforesaid Point of Beginning.

ALSO LESS AND EXCEPT:

A parcel of land lying in a portion of the Northeast 1/4 of the Southwest 1/4 of Section 14,
Township 23 South, Range 27 East, Orange County, Florida, being more particularly described as
follows:

Begin at the Northeast corner of Lot 1, Lake Cawood Estates, A Replat, according to the plat

thereof as recorded in Plat Book 36, Page 119, of the Public Records of Orange County, Florida; thence run South 89° 39' 32" West along the North line of said Lake Cawood Estates, A Replat also being the South line of aforesaid Northeast 1/4 of the Southwest 1/4 of Section 14 for a distance of 772.19 feet; thence departing said North and South line run North 57° 23' 26" East for a distance of 28.89 feet; thence run North 61° 18' 23" East for a distance of 91.69 feet; thence run North 61° 30' 16" East for a distance of 154.27 feet; thence run North 68° 21' 51" East for a distance of 79.27 feet; thence run North 64° 07' 06" East for a distance of 118.89 feet; thence run North 83° 07' 29" East for a distance of 7.59 feet; thence run North 62° 12' 17" East for a distance of 82.19 feet; thence run North 55° 42' 15" East for a distance of 79.28 feet; thence run North 77° 17' 32" East for a distance of 91.02 feet; thence run North 74° 01' 01" East for a distance of 92.33 feet; thence run North 61° 23' 46" East for a distance of 22.90 feet; thence run South 01° 16' 16" East for a distance of 350.13 feet to the aforesaid Point of Beginning.