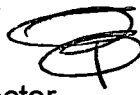




Interoffice Memorandum

DATE: February 14, 2023

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

FROM: Timothy L. Boldig, Interim 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: March 7, 2023 — Consent Item
Second Amendment to Adequate Public Facilities Agreement for
Horizon West Village I Withers PD
Case #APF-22-12-386 / District 1

The Withers PD was originally approved by the Board on November 12, 2019, with a development program consisting of single-family residential and retail commercial uses, as well as a middle and elementary public-school site. The Withers PD contains 320.75 gross acres and is located north of Hartzog Road and east of Avalon Road.

The PD and existing Adequate Public Facilities (APF) agreement currently provide 51.35 acres of APF lands to satisfy the required 16.33 required APF acreage, creating a 25.02-acre surplus. Through coordination with Orange County Public Schools, the applicant is proposing to reduce the size of the middle school APF parcel from 24.39 acres to 23.62 acres.

Through coordination with Orange County Public Schools, the applicant is proposing the Second Amendment to the APF Agreement for Horizon West Village I Withers Planned Development (PD) ("Second Amendment") to reflect the reduction in acreage for the middle school site from 24.39 to 23.62 acres. The Second Amendment will reflect the reduced APF provision of 50.58 acres, creating a 34.17 acre surplus.

The Second Amendment received a recommendation of approval from the Development Review Committee on January 25, 2023. Upon approval by the Board, the Agreement will be recorded in the Public Records of Orange County, Florida.

ACTION REQUESTED: Approval and execution of Second Amendment to Adequate Public Facilities Agreement for Horizon West Village I Withers PD by and between Columnar Partnership Holding I, LLC, Taylor Morrison of Florida, Inc., and Orange County. District 1

Attachment
TB/lme

BCC Mtg. Date: March 7, 2023

This instrument prepared by and after
recording return to:

Carolyn R. Haslam, Esq.
Akerman LLP
420 South Orange Avenue, Suite 1200
Orlando, Florida 32801
(407) 423-4000

Parcel I.D. No(s): 29-24-27-0000-00-001, 29-24-27-0000-00-003, 29-24-27-0000-00-004, 29-24-27-0000-00-008, 29-24-27-0000-00-009, 29-24-27-0000-00-010, 29-24-27-0000-00-017, 30-24-27-0000-00-011, 29-24-27-0000-00-023, 29-24-27-0000-00-026, 29-24-27-0000-00-021 & 29-24-27-0000-00-022

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

THIS SECOND AMENDMENT TO ADEQUATE PUBLIC FACILITIES AGREEMENT FOR HORIZON WEST VILLAGE I WITHERS PD (the “**Second Amendment**”), effective as of the latest date of execution (the “**Effective Date**”), is made and entered into by and between **COLUMNAR PARTNERSHIP HOLDING I, LLC**, an Indiana limited liability company, whose mailing address is Oak Lawn Hall at Old Parkland, 3879 Maple Avenue, Suite 300, Dallas, TX 75219 (“**Columnar**”), **TAYLOR MORRISON OF FLORIDA, INC.**, a Florida corporation, whose mailing address is 4900 North Scottsdale Road, Suite 2000, Scottsdale, Arizona, 85251 (“**Taylor Morrison**”), **DRP FL 5, LLC**, a Delaware limited liability company, whose address is c/o DW Partners, LP, 590 Madison Avenue, 13th Floor, New York, NY 10022 (“**DRP**”) (**Columnar**, **Taylor Morrison** and **DRP** are sometimes hereinafter referred to individually as an “**Owner**” and collectively as the “**Owners**”) and **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida whose mailing address is P.O. Box 1393, Orlando, Florida 32802-1393 (“**County**”). **THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA**, a body corporate and political subdivision of the State of Florida, whose address is 445 West Amelia Street, Orlando, Florida 32801 (“**School Board**”) has joined in and consented to the execution of this Second Amendment for the purposes and upon the terms expressly set forth herein and in the attached Joinder and Consent instrument.

RECITALS:

A. **WHEREAS**, on or about November 13, 2019, the Withers, LLC, a Delaware limited liability company, doing business in Florida as Withers Properties, LLC, a Delaware limited liability company (“**Withers**”), and Columnar, were the owners of certain real property within the Horizon West Village I - Withers PD (the “**PD Property**”) and, designated collectively as “**Owners**”, entered into that certain Adequate Public Facilities Agreement for Horizon West Village I – Withers PD

(the “**Agreement**”) recorded on November 21, 2019, as Document #20190734143, Public Records of Orange County, Florida, that set forth certain requirements pertaining to the designation and conveyance of certain real property for Adequate Public Facilities (APF) lands within the PD Property.

B. **WHEREAS**, on or about March 12, 2020, Withers and Columnar entered into that certain First Amendment to Adequate Public Facilities Agreement for Horizon West Village I – Withers PD (the “**First Amendment**”) recorded on March 19, 2020, as Document #20200176865, Public Records of Orange County, Florida, to modify the APF lands.

C. **WHEREAS**, at the time of the Agreement and the First Amendment, the property subject to the Agreement, (the “PD Property”) was owned by Columnar and Withers and any and all obligations within the Agreement and the First Amendment were the collective obligations of Columnar and Withers as the Owners of the real property, including obligations related to the conveyance of the APF Lands.

D. **WHEREAS**, on or about February 1, 2021, Withers conveyed its interest in a portion of the PD Property to DRP pursuant to the Special Warranty Deed recorded on February 4, 2021, as Document # 20210069448, Public Records of Orange County, Florida.

E. **WHEREAS**, on or about February 18, 2021, Withers and Columnar conveyed their respective interests in a portion of the PD Property to Taylor Morrison pursuant to the Special Warranty Deed recorded on March 12, 2021, as Document # 20210145151, Public Records of Orange County, Florida.

F. **WHEREAS**, on or about December 31, 2021, Withers conveyed its interest in the remaining portions of the PD Property which included portions of the APF Lands to Columnar pursuant to the General Warranty Deed recorded on January 4, 2022, as Document # 20220006243, Public Records of Orange County, Florida.

G. **WHEREAS**, Columnar, Taylor Morrison, and DRP are successors-in-interest to the real property interests of Columnar and Withers in the PD Property and are now, therefore, the “Owners” that are subject to the Agreement and the First Amendment.

H. **WHEREAS**, the Owners have submitted an application to the County to amend the Withers PD, which amendment is on file with the County and includes an amendment to the APF lands (the “**Amended Withers PD**”).

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

J. **WHEREAS**, in all other respects, the original terms of the Agreement, as amended, shall remain unchanged and in full force and effect.

NOW THEREFORE, for and in consideration of the above premises, the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Recitals. The above recitals are true and correct and are hereby incorporated as material provisions of this Second Amendment by this reference.

2. Capitalized Terms. Any capitalized terms not defined herein shall have the same definition as in the Agreement.

3. Recitals to the Agreement. The following recitals to the Agreement are hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“L. The PD Property contains approximately ~~123.63~~ 118.98 acres of **net** developable land, and both the Village I SAP and Section 30-714 of the APF/TDR Ordinance require 1 acre of public facilities acreage for every 7.25 acres of net developable land (the “**APF Ratio**”).

M. When applied to the PD Property, the APF Ratio equals approximately ~~17.05~~ 16.41 acres of public facilities lands.

N. As shown on the Land Use Plan for the Withers PD, and as described in this Agreement, Owners are providing ~~51.35~~ 50.58 acre(s) of adequate public facilities land (the “APF Lands”) to County, thereby creating an APF surplus of ~~34.30~~ 34.17 acres.”

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

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

Future APF Right-of-Way
(to be consistent with New

Approximately 5.81 acres

Hartzog Road Agreement)

APF ROW

Approximately 0.98 acres

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

b) APF Park:

APF Park

Approximately 5.00 acres

c) Schools:

Middle School Site

Approximately ~~24.39~~ 23.62 acres

Elementary School Site

Approximately 15.00 acres

d) Stormwater:

APF Stormwater Treatment

Approximately 0.17 acres

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

5. APF Surplus. Section 3 of the Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“The Withers PD APF Ratio requires that Owners convey to County approximately **16.41** acres of APF Lands. This Agreement provides for conveyance of approximately ~~51.35~~ 50.58 acres of APF Lands, thereby creating a ~~34.30~~ 34.17-acre APF surplus.”

6. APF Surplus. Section 4 of the Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“County hereby acknowledges that the aforementioned APF surplus will result in APF acreage credit equivalent to ~~34.30~~ 34.17 acres of APF Lands, which APF acreage credit may be sold and/or assigned by Owners to other owners within Village I who do not have

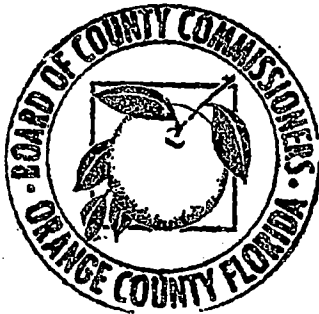
sufficient land within the boundaries of their PD(s) to satisfy the APF Ratio requirements. Such APF acreage credit may only be used within Village I.”

7. Recording. This Second Amendment shall be recorded at the Owners’ expense in the Public Records of Orange County, Florida, within thirty (30) days of the Effective Date.

8. No Further Amendment. Except as set forth herein, the terms and conditions of the Agreement shall remain in full force and effect.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

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

Date: March 7, 2023

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

By: *Jennifer Lara-Klimetz*
Deputy Clerk

Print Name: Jennifer Lara-Klimetz

"Columnar"

COLUMNAR PARTNERSHIP HOLDING I, LLC an Indiana limited liability company

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

WITNESSES:

Ashley L. Shake
Print Name: Ashley L. Shake

Annette M. Williams
Print Name: Annette M. Williams

By: Daniel A. Traylor
Name: Daniel A. Traylor
Title: President
Date: February 17, 2023

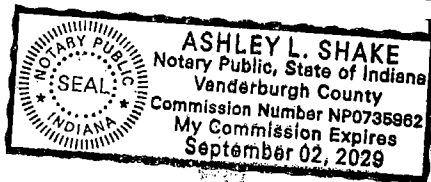
STATE OF INDIANA
COUNTY OF VANDERBURGH

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 17th day of February, 2023, by Daniel A. Traylor, as President of COLUMNAR HOLDINGS, LLC, an Indiana limited liability company, the sole Member of COLUMNAR PARTNERSHIP HOLDING I, LLC, an Indiana limited liability company, on behalf of such company, who ☒ is personally known to me or ☐ has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 17th day of February, 2023.

Ashley L. Shake
Notary Public

Print Name: Ashley L. Shake



My Commission Expires: 09/02/2029
Commission No: 735962

"Taylor Morrison"

Signed, sealed and delivered in
the presence of:

**TAYLOR MORRISON OF FLORIDA,
INC., a Florida corporation**

Susan Kane

Print Name: SUSAN KANE

Chrissie Kirk

Print Name: Chrissie Kirk

By: Heather Isaacs

Name: Heather Isaacs

Its: Vice President, Land Development

(Seal)

STATE OF FLORIDA

COUNTY OF ORANGE

This instrument was acknowledged before me by means of ☒ physical presence or ☐ ~~online notarization~~, this 25th day of January, 2023, by Heather Isaacs, as VP, LAND DEVELOPMENT of TAYLOR MORRISON OF FLORIDA, INC., a Florida corporation, on behalf of the corporation, who ☒ is personally known to me, OR ☐ ~~has produced~~ _____ as ~~identification~~.



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

Chrissie Kirk

Signature of Notary Public - State of Florida

Print Name Chrissie Kirk

Commission Number GG 307723

My Commission Expires 3/4/23

Signed and sealed in the presence of:

Danielle Engelman
Print Name: Danielle Engelman

Ethan Beer
Print Name: ETHAN BEER

"DRP"

DRP FL 5, LLC,
a Delaware limited liability company

By: DW General Partner, LLC, a
Delaware limited liability company,
its Manager

By: Houdin Hovanvar
Printed Name: Houdin Hovanvar
Title: Authorized Signatory

(Seal)

STATE OF New York
) s.s.:
COUNTY OF New York

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 16 day of FEBRUARY, 2023, by Houdin Hovanvar, as Authorized Signatory of DW General Partner, LLC, a Delaware limited liability company, as Manager of **DRP FL 5, LLC**, a Delaware limited liability company, on behalf of the organization. He/she is personally known to me or has produced _____ (type of identification) as identification.

AFFIX NOTARY STAMP

Daniel Jesse Kimmel
NOTARY PUBLIC OF NEW YORK
Print Name: DANIEL JESSE KIMMEL
Commission No.: 0116432051
Expires: 04-25-2026



JOINDER AND CONSENT OF SCHOOL BOARD

The School Board Of Orange County, Florida, a body corporate and political subdivision of the State of Florida, for itself and on behalf of any affiliate that may acquire title to such portion of the Property, hereby joins in and consents to the Second Amendment as a "joinder" party for the limited purpose of acknowledging the terms pertaining to the School Sites as set forth therein, which shall be the only terms of the Second Amendment which will run with title to the land in connection with School Board's future acquisition of title to the School Sites. Nothing in the Second Amendment or School Board's execution of the Second Amendment as a joinder party shall be deemed to modify, alter or vary the terms of the CEA.

Signed, witnessed, executed and acknowledged on this ____ day of _____, 2023.

"SCHOOL BOARD"

Signed and sealed in the presence of:

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

Print Name: _____

By: _____
Teresa Jacobs, its Chair

Print Name: _____

Date: _____

STATE OF FLORIDA)

) s.s.:

COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Teresa Jacobs, Chair of The School Board of Orange County, Florida, a body corporate and political subdivision of the State of Florida, on behalf of The School Board, who is personally known to me or had produced _____ (type of identification) as identification.

NOTARY PUBLIC OF FLORIDA

Print Name: _____

Commission No.: _____

Expires: _____

AFFIX NOTARY STAMP

[ADDITIONAL SIGNATURE PAGES TO FOLLOW]

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

Signed and sealed in the presence of:

Print Name: _____

Print Name: _____

Attest: _____
Maria F. Vazquez, Ed.D, as its Superintendent

Dated: _____

STATE OF FLORIDA)

) s.s.:

COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023,
by Maria F. Vazquez, Ed.D. as its Superintendent of The School Board of Orange County, Florida, a body
corporate and political subdivision of the State of Florida, on behalf of The School Board, who is personally
known to me or has produced _____ (type of identification) as
identification.

NOTARY PUBLIC OF FLORIDA

Print Name: _____

Commission No.: _____

Expires: _____

AFFIX NOTARY STAMP

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

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

Name: Rory Salimbene
Chief Facilities Officer

Jad M. Brewer, Staff Attorney III/Planning
and Real Estate

Date: _____, 2023

Date: _____, 2023