



## Interoffice Memorandum

October 22, 2018

## AGENDA ITEM

TO: Mayor Teresa Jacobs  
-AND-  
Board of County Commissioners

FROM: James E. Harrison, Esq., P.E., Chairman  
Roadway Agreement Committee  
(407) 836.5610

SUBJECT: November 13, 2018 – Consent Item  
First Amendment to Adequate Public Facilities and Right of Way  
Agreement for Village I, Spring Grove – Northeast Planned Development (County  
Road 545)  
(Related to Case #CDR 17-10-301)

The Roadway Agreement Committee has reviewed a First Amendment to Adequate Public Facilities and Right of Way Agreement for Village I, Spring Grove – Northeast Planned Development (County Road 545) ("Agreement") between Spring Grove, LLC; Columnar Partnership Holding I, LLC; KHOV Winding Bay II, LLC ; (collectively the "Owners"), and Orange County to amend the terms of the Adequate Public Facilities and Right of Way Agreement for Village I, Spring Grove – Northeast Planned Development (County Road 545) approved by the Board of County Commissioners on July 20, 2016 and recorded under Document #20160390723. This project is associated with Change Determination Request CDR-17-10-301 which has been approved by the Development Review Committee.

The First Amendment incorporates a new party (KHOV Winding Bay II, LLC) to the agreement, and provides for the adjustment in the Conveyance Schedule for the school site. Indemnification language in Section 8 has also been revised to release the Owners from meeting their APF obligations prior to initial plat approval.

The Roadway Agreement Committee approved the First Amendment on June 6, 2018 and should be considered with the associated Planned Development/Land Use Plan, Public Hearing. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

**ACTION REQUESTED: Approval and execution of First Amendment to Adequate Public Facilities and Right of Way Agreement for Village I, Spring Grove – Northeast Planned Development (County Road 545) by and among Spring Grove, LLC, Columnar Partnership Holding I, LLC, KHOV Winding Bay II, LLC, and Orange County to amend the terms to include a new party to the agreement, adjust the Conveyance Schedule, and change the obligation from initial plat. District 1**

JEH/HEGB:am  
Attachment

BCC Mtg. Date: November 13, 2018

Prepared by and after recording return to:

Christopher P. Roper  
Akerman LLP  
420 South Orange Avenue, Suite 1200  
Orlando, Florida 32801  
(407) 423-4000

Tax Parcel I.D. No(s): 17-24-27-0000-00-003 and 20-24-27-0000-00-009

**FIRST AMENDMENT TO  
ADEQUATE PUBLIC FACILITIES AND RIGHT OF WAY AGREEMENT  
FOR VILLAGE I, SPRING GROVE - NORTHEAST PLANNED DEVELOPMENT  
(COUNTY ROAD 545)**

**THIS FIRST AMENDMENT TO ADEQUATE PUBLIC FACILITIES AND RIGHT OF WAY AGREEMENT FOR VILLAGE I, SPRING GROVE – NORTHEAST PLANNED DEVELOPMENT (COUNTY ROAD 545)** (the “First Amendment”), effective as of the latest date of execution (the “Effective Date”), is made and entered into by and among **SPRING GROVE, LLC**, a Delaware limited liability company, whose mailing address is 5956 Sherry Lane, Suite 1000, Dallas, Texas 75225 (“Spring Grove”), **COLUMNAR PARTNERSHIP HOLDING I, LLC**, an Indiana limited liability company, whose mailing address is 5956 Sherry Lane, Suite 1000, Dallas, Texas 75225 (“Columnar”), and **KHOV WINDING BAY II, LLC**, a Florida limited liability company, whose mailing address is 90 Matawan Road, Fifth Floor, Matawan, NJ 07747 (“KHOV” and, together with Spring Grove and Columnar, “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”) (“Owners” and “County” collectively referred to herein as “Parties”).

**RECITALS:**

A. **WHEREAS**, on or about July 20, 2016, the Parties entered into that certain Adequate Public Facilities and Right of Way Agreement for Village I, Spring Grove – Northeast PD (the “Original Agreement”) recorded on July 28, 2016, as Document #20160390723, Public Records of Orange County, Florida;

B. **WHEREAS**, on or about March 30, 2018, KHOV acquired a portion of the Spring Grove Property as more particularly described in that certain Special Warranty Deed recorded on April 3, 2018, as Document # 20180197480, in the Public Records of Orange County, Florida;

C. **WHEREAS**, County and the Owners desire to amend certain terms and provisions of the Agreement as set forth below; and

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

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

1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

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

3. Schedule for Conveyance of APF Land and Access/Utility Easement to County. Section 7 of the Original Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“As an alternative to conveyance prior to or in connection with Planned Development approval, Owners have elected to convey at a later time, as contemplated by Sec. 30-714 of the APF/TDR Ordinance. The Parties agree that, prior to conveyance to County for its intended purpose, Owners shall have the reasonable right to grade and to import or export fill material upon the APF Land, subject to and in accordance with an approved grading permit and/or excavation fill permit. Further, Owners agree to relinquish control of the APF Land and convey such APF Land to County in accordance with the following schedule (the “Conveyance Schedule”): (i) for the School Site, not later than six (6) months following Owners’ receipt of a written notice therefor as provided in Section 5b) above; and (ii) for all other APF Lands, within sixty (60) days of Owners’ receipt of a written demand therefor from County, upon demand by County, upon sixty (60) days’ notice. Owners acknowledge and agree that any development in connection with the PD Property shall not proceed beyond five percent (5%) of the PD Property's entitlements prior to such conveyance to the County of at least 8.39 acres of APF Lands or such lesser amount of APF Lands as may be approved by the County Board of County Commissioners, and payment of any APF fee in lieu of conveyance. For purposes of this Agreement, the Parties agree that 5% of development is defined as ~~38~~ 24 single family residential units (attached or detached). Notwithstanding anything herein to the contrary, (a) the foregoing does not imply that any waiver to Sec. 30-714 of the APF/TDR Ordinance will be granted by the County Board of County Commissioners, and (b) the Owners shall be required to convey all APF Lands to the County in accordance with the Conveyance Schedule.”

4. Indemnification. The last paragraph in Section 8 of the Original Agreement is hereby revised to read as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“In the event that any of the above occurs, County may refuse to accept conveyance of the APF Lands and Owners may be required to pay an APF fee in lieu of conveyance or to convey alternative adequate public facilities lands acceptable to County. ~~Notwithstanding anything seemingly to the contrary above, the Parties acknowledge and agree that satisfaction of Owners’ APF obligations must take place prior to County approval of the initial plat for the PD Property.~~”

5. Notices. Section 19 of the Original Agreement is hereby amended to revise the address for Akerman LLP and add the contacts for KHOV Winding Bay II, LLC as follows (with additional language indicated as underlined and deleted language indicated as ~~struck through~~):

“Akerman LLP  
420 South Orange Avenue  
Suite 1200  
Orlando, Florida 32801-4904  
Attn: ~~Heather M. Himes, Esq.~~ Christopher P. Roper, Esq.  
Telephone: 407.423.4000

KHOV: KHOV Winding Bay II, LLC  
151 Southhall Lane, Suite 129  
Maitland, FL 32751  
Attention: Justin Allen, V.P. of Land Acquisition & Development  
Telephone: 321.263.2608

With a copy to: Shutts & Bowen LLP  
300 South Orange Avenue  
Suite 1600  
Orlando, Florida 32801  
Attn: Juli Simas James, Esq.  
Telephone: 407.835.6774”

6. Covenants Running with the Land. This First Amendment shall run with the PD Property and shall be binding upon and shall inure to the benefit and burden of the parties and of the heirs, legal representatives, successors, and assigns of Owners and any person, firm, corporation, or other entity that may become the successor in interest to the PD Property. Notwithstanding the foregoing, however, the authority under Section 9 of the Original Agreement to instruct County to make deductions from Owners' road impact fee account shall remain with Owners unless expressly assigned in writing to another by Owners.

7. Recordation of First Amendment. An executed original of this First Amendment shall be recorded, at Owners' expense, in the Public Records of Orange County, Florida within thirty (30) days of the Effective Date.

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

9. Time is of the Essence. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this First Amendment and in the Original Agreement.

10. Further Documentation. The parties agree that at any time following a request therefor by the other party, each shall execute and deliver to the other party such further documents and instruments reasonably necessary to confirm and/or effectuate the obligations of either party hereunder and the consummation of the transactions contemplated hereby.

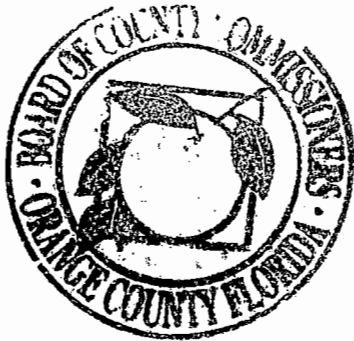
11. Limitation of Remedies. County and Owners expressly agree that the consideration, in part, for each of them entering into this First Amendment is the willingness of the other to limit the remedies for all actions arising out of or in connection with this First Amendment. Accordingly, the remedies available to each party shall be as stated in the Original Agreement.

12. Amendments. No amendment, modification, or other change to this First Amendment or the Original Agreement shall be binding upon the parties unless in writing and executed by all the parties hereto.

13. Counterparts. This First Amendment may be executed in up to four (4) counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

[Signatures appear on the following pages.]

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: *B. D. Dalchanda*  
Teresa Jacobs,  
for Orange County Mayor

Date: 11.14.18

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

By: *Lakela Louis*  
for Deputy Clerk

Printed name: Lakela Louis

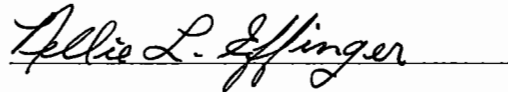
Signed, sealed and delivered  
in the presence of:

**SPRING GROVE, LLC**, a Delaware limited  
liability company

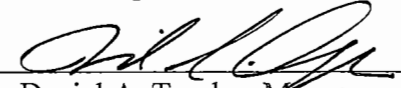
By: CH II SPRING GROVE, LLC,  
a Delaware limited liability company,  
as its sole Manager



Printed Name: Margaret A. Bernick



Printed Name: Nellie L. Effinger

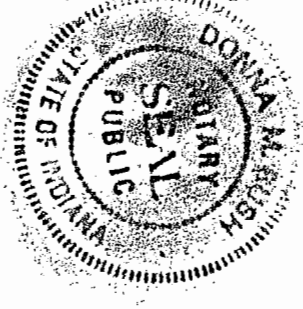
By:   
Daniel A. Traylor, Manager

Date: 7/2/2018

STATE OF INDIANA  
COUNTY OF VANDERBURGH

The foregoing instrument was acknowledged before me this 2nd day of July, 2018, by Daniel A. Traylor, as Manager of CH II SPRING GROVE, LLC, a Delaware limited liability company, the Manager of SPRING GROVE, LLC, a Delaware limited liability company, on behalf of such company, who [X] is personally known to me or [ ] has produced \_\_\_\_\_ as identification.

(Notary Stamp)





Signature of Notary Public

Print Name: Donna M. Bush

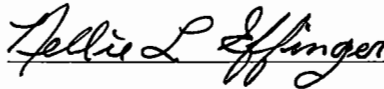
Notary Public, State of Indiana

Commission Expires: 01/20/2024

Signed, sealed and delivered  
in the presence of:

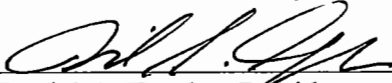


Printed Name: Margaret A. Bernick



Printed Name: Nellie L. Effinger

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

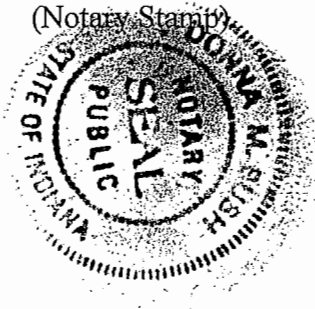
By:   
Daniel A. Traylor, President


Date: 7/2/2018

STATE OF INDIANA  
COUNTY OF VANDERBURGH

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of July, 2018, by Daniel A. Traylor, as President of **COLUMNAR PARTNERSHIP HOLDING I, LLC**, an Indiana limited liability company, on behalf of such company, who [X] is personally known to me or [ ] has produced \_\_\_\_\_ as identification.

(Notary Stamp)





Signature of Notary Public

Print Name: Donna M. Bush

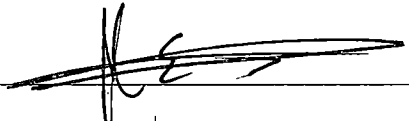
Notary Public, State of Indiana

Commission Expires: 01/20/2024

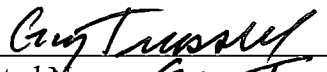


Signed, sealed and delivered  
in the presence of:

**KHOV WINDING BAY II, LLC,**  
a Florida limited liability company

  
Printed Name: JOHN E. KASSIK

By:   
Kyle Upper, Division President

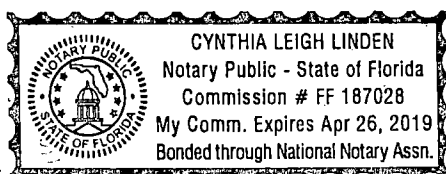
  
Printed Name: Guy Trussell

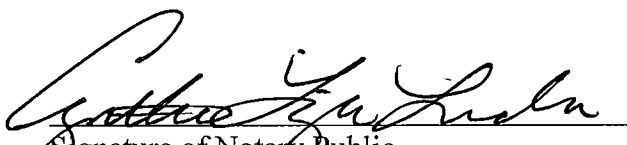
Date: 9-19-18

STATE OF Florida  
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 19 day of September, 2018, by Kyle Upper, as Division President of **KHOV WINDING BAY II, LLC**, a Florida limited liability company, on behalf of such company, who ☒ is personally known to me or ☐ has produced \_\_\_\_\_ as identification.

(Notary Stamp)



  
Signature of Notary Public  
Print Name: Cynthia Leigh Linden  
Notary Public, State of Florida  
Commission Expires: April 26 2019

**JOINDER AND CONSENT BY MORTGAGEE**

The undersigned, Valley National Bank, hereby joins in and consents to this First Amendment as the mortgagee on a portion of the property described in the hereinabove First Amendment for the express purpose of acknowledging and agreeing to the terms contained in this First Amendment.

WITNESS:

Valley National Bank

Patricia Botsolas  
Print Name: **PATRICIA BOTSOLAS**  
Jeenal Shah  
Print Name: **Jeenal Shah**  
~~Assistant Cashier~~

By: Nick Anthony  
Name: **NICK ANTHONY**  
Title: **Senior Vice President**  
This 24<sup>th</sup> day of September, 2018.

STATE OF New Jersey  
COUNTY OF Passaic

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of September, 2018 by Nick Anthony, as S.V.P. of Valley National Bank, on behalf of said entity, who ☒ is personally known to me or ☐ has produced \_\_\_\_\_ as identification.

(Notary Stamp)

Maria Nicosia

Signature of Notary Public

Print Name: **MARIA NICOSIA**  
Notary Public, State of **NOTARY PUBLIC OF NEW JERSEY**  
**MY COMMISSION EXPIRES APRIL 13, 2021**  
Commission Expires: \_\_\_\_\_