



Interoffice Memorandum

AGENDA ITEM

DATE: October 24, 2019

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: November 12, 2019 — Consent Item
Adequate Public Facilities Agreement
for Horizon West Village I Withers PD –
Case # APF-19-07-252
(Related to Case # LUP-18-10-355)

The proposed Withers Planned Development (PD) contains 320.75 gross acres (123.63 net developable acres) and is generally located east of Avalon Road, north of Hartzog Road and south of Western Way. The subject property is located within the Village I Special Planning Area of Horizon West and is designated as Village Home District, Apartment District, Garden Home Mixed Use District, Neighborhood Center District, Elementary School, Park and Greenbelt on the Village I Special Planning Area map. Through rezoning application # LUP-18-10-355, the Withers PD, the applicant is proposing to convert the underlying land use districts to Village Home District, Townhome District, Neighborhood Center District, Elementary School, Middle School, Park and Greenbelt, to allow for the development of 814 single-family dwelling units, 10,000 square feet of non-residential uses, and associated public facilities and infrastructure.

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 I Special Planning Area, the adopted ratio of APF acres to net developable acres is 1.0 to 7.25.

In order to satisfy the requirements of Chapter 30, Article XIV of the Orange County Code ("APF/TDR Ordinance"), the Withers PD is subject to an APF Agreement that recognizes that the project is accountable for a minimum of 17.05 acres of APF lands. The total APF lands conveyed are 51.18 acres, creating an APF surplus of 34.12 acres.

Page Two

November 12, 2019 — Consent Item

Adequate Public Facilities Agreement for Horizon West Village I Withers PD (Case #APF-19-07-252)
(Related to Case # LUP-18-10-355)

The APF Agreement for Horizon West Village I Withers PD received a recommendation of approval from the Orange County Development Review Committee on September 11, 2019, and has been placed on the November 12, 2019 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 Horizon West Village I Withers PD by and between Withers, LLC, Columnar Partnership Holding I, LLC, Orange County, and The School Board of Orange County, Florida. District 1

JWW/EPR

Attachments

This instrument prepared by and after recording return to:

APPROVED BY ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS

Christopher P. Roper, Esq.
Akerman LLP
420 South Orange Avenue, Suite 1200
Orlando, Florida 32801

BCC Mtg. Date: November 12, 2019

2 Tax Parcel I.D. No(s): 29-24-27-0000-00-003
 29-24-27-0000-00-004
 4 29-24-27-0000-00-008
 29-24-27-0000-00-009
 6 29-24-27-0000-00-001
 29-24-27-0000-00-010
 8 29-24-27-0000-00-017
 30-24-27-0000-00-011

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

THIS ADEQUATE PUBLIC FACILITIES AGREEMENT FOR HORIZON WEST VILLAGE I WITHERS PD (the “**Agreement**”), effective as of the latest date of execution (the “**Effective Date**”), is made and entered into by and between **WITHERS, LLC**, a Delaware limited liability company, registered to do business in the State of Florida as **WITHERS PROPERTIES, LLC**, whose mailing address is 5956 Sherry Lane, Suite 1000, Dallas, TX 75225 (“**Withers**”), and **COLUMNAR PARTNERSHIP HOLDING I, LLC**, an Indiana limited liability company, whose mailing address is 6442 Commerce Park Drive, Suite 2, Ft. Myers, Florida 33966 (“**Columnar**”) (Withers and Columnar are sometimes hereinafter referred to individually as an “**Owner**” and collectively as the “**Owners**”) and **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 Agreement for the purposes and upon the terms expressly set forth herein and in the attached Joinder and Consent instrument.

RECITALS:

A. Owners are the fee simple owners of certain real property located in Orange County, Florida, as more particularly described in **Exhibit “A”** and as shown on **Exhibit “B”** attached hereto and made a part hereof by this reference (The “**PD Property**”).

B. The PD Property, also known as Withers PD, is identified on the Orange County Comprehensive Plan 2010-2030 (the “**Comprehensive Plan**”) Future Land Use Map with the

1 “Village” land use designation and constitutes a portion of Village I, in Horizon West, as same is
2 described and depicted in the Village I Specific Area Plan approved by the Board of County
Commissioners of Orange County, Florida (the “BCC”) on June 10, 2008 (the “Village I SAP”).

4
6 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
8 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
10 that was summarized in the Horizon West Study Report issued February 7, 1995.

12 D. The Horizon West - Village I - Withers PD (the “Withers PD”) has relied on the
prior approvals of the Horizon West Study and the Village I SAP, and on the Village I SAP
14 approvals and studies included in the SAP.

16 E. The Village I SAP contemplates certain residential and public facility uses within
the PD Property.

18
20 F. Owners desire to develop the PD Property in accordance with the Withers PD
submitted by Owners to County and with the PD zoning application on file with County.

22 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
24 County Code (“APF/TDR Ordinance”) adopted by the BCC on May 20, 1997, as amended.

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

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

34
36 J. If Owners are 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 Owners may
make payment of an adequate public facility lands fee to County. Additionally, the APF/TDR
38 Ordinance, at Section 30-714(g), allows for application of APF acreage credits to satisfy an APF
deficit.

2 K. It is the intent of the parties that County will consider approval of the Withers PD
with its consideration of this Agreement.

4 L. The PD Property contains approximately 123.63 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**”).

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

8
10 N. As shown on the Land Use Plan for the Withers PD, and as described in this
Agreement, Owners are providing 51.18 acre(s) of adequate public facilities land (the “APF
Lands”) to County, thereby creating an APF surplus of 34.13 acres.

12
14 O. As more particularly described herein, the APF Lands will include land for an
elementary school and a middle school, thereby creating the need for the rights and related
obligations accruing to the benefit of the School Board as more particularly set forth in Section 9
16 of this Agreement and for the joinder and consent of the School Board attached hereto.

18 P. As detailed herein, the PD Property contains land identified as New Hartzog Right-
of-Way, which shall be conveyed to the County in accordance with the procedures described in
20 that certain Hartzog Road Right-of-Way Agreement recorded at Official Records Book 9712, Page
4850, as affected by that certain First Amendment to Agreement Concerning Hartzog Road Right-
22 of-Way Agreement recorded at Official Records Book 11021, Page 4154, all of the Public Records
of Orange County, Florida, as either or both of such agreements may be amended from time to
24 time (collectively, the “New Hartzog Road Agreement”).

26 **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
28 receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

30 **AGREEMENT**

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

34 2. Conveyance of APF Lands by Owners. Owners shall convey APF Lands as
36 follows:

- 38 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):

2 Future APF Right-of-Way Approximately 5.81 acres
4 (to be consistent with New
Hartzog Road Agreement)

6 APF ROW Approximately 0.98 acres

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

12 b) APF Park:

14 APF Park Approximately 5.00 acres

16 c) Schools:

18 Middle School Site Approximately 24.39 acres

Elementary School Site Approximately 15.00 acres

20 The APF Lands identified in clauses (a) through (c) above are referred to herein as the
22 “Road Right-of-Way,” “Park Site,” and “School Sites,” respectively, and are sometimes referred
24 to herein individually as an “APF Parcel.” The portion of the Road Right-of-Way described above
26 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.”

28 3. APF Surplus. The Withers PD APF Ratio requires that Owners convey to County
approximately 17.05 acres of APF Lands. This Agreement provides for conveyance of
approximately 51.18 acres of APF Lands, thereby creating a 34.13-acre APF surplus.

30 4. APF Surplus. County hereby acknowledges that the aforementioned APF surplus
32 will result in APF acreage credit equivalent to 34.13 acres of APF Lands, which APF acreage
34 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.

36 5. Conveyance Procedure.

38 a) *Road Right-of-Way and Park Site.* The conveyance of the Road Right-of-
40 Way and Park Site 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 rest of this paragraph and the following paragraphs c), d), and e) shall not apply.
2 The Conveying Owner of such APF Lands shall pay all costs associated with their conveyance to
the County, including all recording fees and documentary stamps related to such conveyance. Ad
4 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 the Conveying Owner(s) to
6 Orange County, 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
8 valorem taxes shall be paid in full by such Conveying Owners for the year of conveyance. The
foregoing notwithstanding, the New Hartzog Right-of-Way shall be conveyed to the County in
10 accordance with the procedures described in the New Hartzog Road Agreement.

12 b) *School Sites.* The conveyance of the School Sites shall be by general
warranty deed, free and clear of all liens and encumbrances, except for easements of record
14 acceptable to County and School Board, as applicable, if any. The Conveying Owner of a School
Site shall pay all costs associated with the conveyance of the School Site, including all recording
16 fees and documentary stamps related to such conveyance. Ad valorem taxes in connection with
the conveyance of a School Site shall be prorated as of the date of transfer of title and said
18 prorated amount shall be paid by the Conveying Owner to Orange County, in escrow, pursuant to
Section 196.295, Florida Statutes, unless the conveyance occurs between November 1 and
20 December 31 of the year of conveyance, in which case ad valorem taxes shall be paid in full by the
Conveying Owner for the year of conveyance. The Conveying Owners of the School Sites
22 acknowledge that, pursuant to Section 9 below, the School Sites may be conveyed directly to the
School Board and that additional requirements for such conveyance to the School Board may
24 apply as more particularly described in the CEA.

26 c) *Title Policy.* No less than thirty (30) days prior to conveyance, the
Conveying Owner shall deliver to County at such Conveying Owner's sole cost and expense, an
28 updated commitment to issue an Owner's Policy of Title Insurance naming County as the insured
(the "Title Commitment"). The original Owner's Policy of Title Insurance (the "Title Policy")
30 shall be delivered to County within thirty (30) days after the conveyance of the APF Lands. The
Conveying Owners of the School Sites acknowledge that, pursuant to Section 9 below, the School
32 Sites may be conveyed directly to the School Board and that additional requirements for such
conveyance to the School Board may apply as more particularly described in the CEA.

34 d) *Environmental Audit; Due Diligence.* No less than sixty (60) days prior to
36 conveyance, the Conveying 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
38 that are the subject of such conveyance. The Phase I environmental audit shall be conducted in
accordance with the requirements of the All Appropriate Inquiries Final Rule (AAIFR) and with
40 the standards set forth in the American Society for Testing and Materials (ASTM) E-1527-11. In

the event the Phase I environmental audit presents a matter of concern, as determined by County, then prior to the conveyance, the Conveying Owner shall submit to County, a Phase II environmental audit. The Phase II environmental audit shall be conducted in accordance with the requirements of the AAIFR and ASTM E-1903-11. If the Phase II environmental audit is performed and reveals the need for remediation to the subject APF Lands, one of the following events shall occur: (i) the Conveying Owner shall remediate such APF Lands to County satisfaction, prior to the conveyance; or (ii) the Conveying Owner and County shall negotiate and enter into a separate agreement whereby the Conveying Owner shall pay the full cost of remediation; or (iii) County may terminate this Agreement at its option as to such Conveying Owner's property. The CEA may contain additional requirements regarding environmental due diligence for the School Sites and satisfaction of such requirements may be required by the School Board as a School Conditions to Conveyance (defined below).

e) *Compliance with Section 286.23, Florida Statutes.* The Conveying Owner shall execute and deliver to County (or School Board, if applicable) the "Disclosure of Beneficial Interests" required pursuant to section 286.23, Florida Statutes.

f) *Easements.* In addition to the conveyance by the Conveying Owners of the respective APF Lands as contemplated in this Agreement, the Conveying Owners shall grant, or cause to be granted, at no cost to County and in accordance with County conveyance procedures, the below easements in favor of County. The benefit of any easements intended to benefit any of the School Sites shall run with title to such School Sites.

(i) If, at the time of conveyance of the Park Site to the County, there does not exist a public road providing access to the Park Site, the Conveying Owners shall grant, or cause to be granted, to County a temporary access easement, in form reasonably acceptable to County, over such portion of the PD Property as is reasonably acceptable to both the County and the Conveying Owners, providing to County the right to construct a temporary access road to the Park Site and to use such temporary road for construction access and public access to the Park Site, which easement shall terminate upon conveyance or dedication of public access to the Park Site.

(ii) The Parties acknowledge that the School Board may require that a Conveying Owner of a School Site make provision for public road access to such School Site, pursuant to the CEA and as a School Conditions to Conveyance. However, if, at the time of conveyance of a School Site to the County, the School Board has elected not to require such access improvements prior to said conveyance, the Conveying Owners shall grant, or cause to be granted, to County a temporary access easement, in form reasonably acceptable to County, over such portion of the PD Property as is reasonably acceptable to both the County and the Conveying Owners, providing to County the right to construct a temporary access road to the School Site and

to use such temporary road for construction access and public access to the School Site, which easement shall terminate upon conveyance or dedication of public access to the School Site.

g) *Entitlement to Impact Fee Credits.* In accordance with Policy 4.2.1 of the Future Land Use Element of the County's Comprehensive Plan, the APF/TDR Ordinance and Chapter 23 of the Orange County Code, the Conveying Owner(s) of the Park Site is/are 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 such APF Parcels. Any entitlement to, and award of, impact fee credits for the conveyance of the New Hartzog Right-of-Way shall be in accordance with the New Hartzog Road Agreement. Furthermore, the Conveying Owner of a School Site shall be entitled to obtain school impact fee credits for the conveyance of such School Site in accordance with the applicable provisions of this Agreement and any Capacity Enhancement Agreement entered into by the Owners with the School Board ("CEA"). Any impact fee credits that are awarded by the County may be assigned, sold, or transferred pursuant to County Code. In addition, County and School Board acknowledge that any impact fee credits that are awarded by the County for conveyance of a School Site may be assigned, sold, or transferred to properties located anywhere in Village I of Horizon West or, subject to the terms set forth in the CEA (including any School Board consent requirements set forth in the CEA), anywhere within unincorporated Orange County.

h) Notwithstanding anything to the contrary in this Section 5, the parties acknowledge that, pursuant to Section 9 below, the School Sites may be conveyed directly to the School Board and that additional requirements for such conveyance to the School Board may apply as more particularly described in the CEA.

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

7. Award of Impact Fee Credits.

a) Promptly upon the County's approval and acceptance of a General Warranty Deed conveying an APF Parcel that is eligible for impact fee credits pursuant to above or in the case of conveyance of a School Site directly to School Board, notice thereof provided to

County by School Board, 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 Conveying Owner of such APF Parcel, for purposes of Chapter 23 of the Orange County Code (or any successor code provisions) (the "**Impact Fee Ordinance**"), the aforementioned amount of impact fee credits to which the Conveying Owner is entitled under the Impact Fee Ordinance for each type of dedication. Thereafter, as impact fees become due and payable from time to time in connection with the Withers PD, and if so instructed by such Conveying Owner, the County shall deduct such amounts payable from the Conveying Owner's impact fee credit account that is applicable to the particular impact fee payment. For example, park impact fee credits may only be used to satisfy obligations for the payment of parks and recreation impact fees, and school impact fee credits may only be used to satisfy obligations for payment of school impact fees.

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

c) Nothing herein shall prevent the Conveying Owner from assigning impact fee credits as provided for in the Impact Fee Ordinance as it may be amended from time to time.

d) The value of land conveyed for each School Site shall be \$22,500.00 for each acre or fraction thereof, pursuant to Policy FLU4.2.1 of the Orange County Comprehensive Plan and the CEA, including satisfaction of the applicable School Conditions to Conveyance set forth therein.

e) Notwithstanding anything in the foregoing seemingly to the contrary, to the extent that a Conveying Owner pays impact fees to the County in connection with the development of the PD and there is thereafter an impact fee credit balance created in favor of such Conveying 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 authorization required by Chapter 23 of the Orange County Code for the refund of such impact fees.

8. Timing for Conveyance of APF Lands/Continuing Occupancy by Owners. 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, as more particularly set forth below ("**Conveyance Schedule**").

2 a) With respect to the Road Right-of-Way, the conveyance to and acceptance
by the County shall occur (i) in conjunction with the recording of the plat or plats that contain
4 such Road Right-of-Way or portions thereof, or (ii) no later than one hundred twenty (120) days
following the delivery by County, and receipt by the applicable Conveying Owners, of written
6 notice that County desires the consummation of such conveyance, whichever occurs first. The
foregoing notwithstanding, the New Hartzog Right-of-Way shall be conveyed to the County in
8 accordance with the New Hartzog Road Agreement.

10 b) With respect to the Park Site, the conveyance to and acceptance by the
County shall occur no later than one hundred twenty (120) days following the delivery by County,
12 and receipt by the Conveying Owners of such APF Parcel, of written notice that County desires
the consummation of such conveyance.

14 c) With respect to the School Sites, assuming satisfaction of the applicable
16 School Conditions to Conveyance, the conveyance to and acceptance by the County (or School
Board, if applicable pursuant to Section 9 below) of each School Site shall occur by the earlier of
18 (i) four hundred eighty-five (485) days following the Conveying Owner's receipt of a written
request for such conveyance by the County or School Board, or (ii) one hundred twenty (120) days
20 following the CIP Deadline (defined below) for the applicable School Site, unless otherwise
extended in writing by the County, School Board, and the Conveying Owner of such School Site
22 (the "School Conveyance Deadline"). The School Conditions to Conveyance shall be satisfied no
later than one hundred twenty (120) days prior to the School Conveyance Deadline set forth
24 herein. The "**CIP Deadline**" shall mean the date that is three (3) years prior to the earliest
projected school year opening of the applicable School Site as identified in a written notice
26 provided to the Conveying Owner by the School Board, a copy of which shall be provided to the
County.

28
The parties agree that, prior to conveyance to County or School Board, as applicable, the
30 Conveying Owner of an APF Parcel may continue to use the APF Parcel in a manner not
inconsistent with the County's or School Board's intended use, including, but not limited to, the
32 right to grade and to import or export fill material upon the APF Parcel, subject to and in
accordance with an approved grading permit and/or excavation fill permit. Further, the Conveying
34 Owner agrees to relinquish control of the APF Parcel and convey such APF Parcel to County in
accordance with the Conveyance Schedule set forth above. If a conveyance does not occur in
36 accordance with the Conveyance Schedule, the Manager of County's Real Estate Division may
grant one extension of up to 120 days to complete the conveyance.

38
Each Owner acknowledges and agrees that any development in connection with the portion
40 of the PD Property owned by such Owner shall not proceed with obtaining building permits

beyond five percent (5%) of the entitlements shown on an approved development plan for such Owner's property prior to conveyance of the APF Lands owned by such Owner to the County (or School Board, as applicable) or payment of any required APF fee in lieu of conveyance. Without limiting the foregoing, the parties agree that such 5% threshold will be reached no later than upon issuance of a building permit for the fortieth (40th) residential unit (attached or detached) located anywhere within the PD Property. Notwithstanding anything herein to the contrary, in the event that the BCC approves the following as a waiver to Sec. 30-714(c) of the APF/TDR Ordinance ("Waiver"), then the Owners may proceed with obtaining building permits beyond such five percent (5%) threshold once the following has occurred: (a) the New Hartzog Right-of-Way has been conveyed to the County or to an escrow agent who is obligated to release a deed conveying such right-of-way to the County, in accordance with the New Hartzog Road Agreement; (b) the remaining Road Right-of-Way (*i.e.*, excluding the New Hartzog Right-of-Way) has been conveyed to the County or placed into escrow, pursuant to an escrow agreement acceptable to the County; and (c) the Park Site has been conveyed to the County or placed into escrow, pursuant to an escrow agreement acceptable to the County. The Parties acknowledge and agree that (i) nothing herein implies that the BCC will approve the Waiver, and (ii) the Owners shall be required to convey all APF Lands no later than as provided in the Conveyance Schedule regardless of whether the BCC approves the Waiver.

With respect to the APF Lands, each 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 its 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, each Owner shall indemnify and hold harmless County, its 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 and attorney 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 such 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 an 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, such Owner shall indemnify and hold harmless County, its 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 at the direction of any federal or state agency having jurisdiction, and further including, without limitation, reasonable paralegal and attorney fees and expenses,

whether in court, out of court, in administrative proceedings, or on appeal. Each Owner shall be responsible for the immediate notification to County 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 such Owner's activities related to the APF Lands.

In the event that any of the above occurs, County may refuse to accept conveyance of the APF Lands and such Owner may be required to pay an APF fee in lieu of conveyance or to convey alternative adequate public facilities lands acceptable to County.

9. OCPS Interest in School Sites. The parties acknowledge that the Owners and School Board are parties to a CEA executed on or about the Effective Date of this Agreement, which imposes additional obligations upon the Owners in connection with the proposed conveyance of the School Sites. The CEA addresses, among other things, the School Board's right to conduct its desired due diligence into the acceptability of the School Sites for its APF purposes and imposing various obligations upon the Conveying Owner of such School Sites in connection with the development and conveyance of the School Sites. It shall be a condition precedent to conveyance of the School Sites to County or School Board, and to the County or School Board obligation to accept the conveyance of the School Sites, that the Conveying Owner(s) of such School Sites shall be in compliance with the CEA at the time of the conveyance of the School Sites to the County or School Board (the "School Conditions to Conveyance").

Upon reasonable request of the School Board the County will convey a School Site in its possession to the School Board. Notwithstanding anything in the foregoing seemingly to the contrary, upon reasonable advance written notice from School Board to the parties, the Conveying Owners of the School Sites will, at such time as is otherwise required elsewhere in this Agreement, convey, or cause to be conveyed, the School Sites directly to the School Board.

In the event that the School Sites are to be conveyed directly to the School Board, then the Title Commitment shall be endorsed, prior to conveyance, to name School Board as the proposed insured for the School Sites, and the Title Policy for the School Sites shall be issued to the School Board.

In recognition of the intent that the School Sites ultimately be conveyed to the School Board, the parties hereby agree that (i) a copy of the Title Commitment and Title Policy pertaining to the School Sites shall be delivered to School Board when delivered to County, (ii) School Board shall be entitled to participate in the final determination of the dimensions and location of the School Sites pursuant to Section 6 above, and (iii) the County shall be under no obligation to accept conveyance of a School Site until it receives written notice from the School Board that the School Conditions to Conveyance have been satisfied by the Conveying Owner for such School Site to the School Board's reasonable satisfaction. Prior to conveyance to the County, the School

2 Board may also conduct such due diligence with respect to the School Sites as is required by
3 applicable School Board policies, including, but not limited to, geotechnical studies, wetland
4 delineations, surveys and wildlife studies, and School Board may reasonably enter upon the
5 School Sites as and to the extent reasonably required to conduct such due diligence, subject to the
6 provisions set forth in the CEA. All such due diligence efforts by School Board shall be at School
7 Board's sole cost and expense. Copies of any Phase I or Phase II environmental audits received
8 with respect to the School Sites shall be provided to School Board, and, as part of the School
9 Conditions to Conveyance, School Board shall have the right to review and approve the results of
10 the environmental audits, or any decisions reached pursuant to Section 5.d above regarding the
11 School Sites.

12 Any easements intended to benefit the School Sites shall run with title to the School Sites,
13 and shall be in form acceptable to County and School Board, and, if the School Sites are to be
14 conveyed directly to the School Board as provided above, shall name School Board as the
15 beneficiary rather than the County.

16
17 10. Limitation on Use of Land. In accordance with the express purpose of the Horizon
18 West Goals, Objectives and Policies contained in the CPP, the APF Lands being conveyed to the
19 County and School Board shall only be utilized for the purposes described herein. For example,
20 the School Sites may only be used as public schools and for purposes related thereto. The
21 instruments of conveyance of the APF Lands may contain similar restrictions to this effect.
22 Neither the foregoing nor any separate deed restriction shall preclude the use of the APF Right-of-
23 Way for sidewalks, bike paths, utilities, landscaping, transit stops or shelters and other uses
24 typically allowed in the public right-of-way. Nor shall any such deed restriction contain any
25 limitations or requirements mandating that a certain type or number of recreation facilities be
26 constructed by the County on the Park Site.

27 11. Recording. Within thirty (30) days after the Effective Date, this Agreement shall
28 be recorded in the Public Records of Orange County, Florida, at Owners' expense.

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

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

- 35 (i) action for specific performance or injunction against such Owner; or
36 (ii) the right to set off, against the amounts of any impact fees to be credited
37 in favor of the Conveying Owner in default under this Agreement, (A)
38
39
40

- 2 any amounts due to County from such Conveying Owner under this
3 Agreement but remaining unpaid and (B) the cost to County of
4 performing any action or actions required to be done under this
5 Agreement by such Conveying Owner, but which the Conveying Owner
6 has failed or refused to do when required; or
7 (iii) the withholding of development permits and other approvals and/or
8 permits in connection with such Owner's property within the Withers
9 PD; or
10 (iv) any combination of the foregoing.

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

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

- 16 (i) action for specific performance; or
17 (ii) action for injunction; or
18 (iii) action for declaratory judgment regarding the rights and
19 obligations of Owners; or
20 (iv) any combination of the foregoing.
21

22 Both parties expressly waive their respective rights to sue for damages of any type for
23 breach of or default under this Agreement by the other. Venue for any actions initiated under or in
24 connection with this Agreement shall be in the Circuit Court of the Ninth Judicial Circuit in and
25 for Orange County, Florida.
26

27 13. Binding Effect. This Agreement shall be binding upon and shall inure to the
28 benefit and burden of the parties hereto and their respective heirs, successors, and assigns and
29 shall run with title to the PD Property and be binding upon any person, firm, corporation, or other
30 entity acquiring any interest in all or any portion of the PD Property.
31

32 14. Severability. If any provision of this Agreement, the deletion of which would not
33 adversely affect the receipt of any material benefits by any party hereunder nor substantially
34 increase the burden of any party hereunder, shall be held to be invalid or unenforceable to any
35 extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the
36 validity or enforceability of the remainder of this Agreement.
37
38

15. Notices. Any notice delivered with respect to this Agreement shall be in writing
2 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,
4 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
6 shall have specified by written notice to the other party delivered in accordance herewith.

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

12 With copies to: Orange County Planning, Environmental,
14 and Development Services Department
Manager, Planning Division
16 Post Office Box 1393
Orlando, Florida 32802-1393

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

26 School Board: The School Board of Orange County, Florida
Attn: Superintendent of Schools
28 445 West Amelia Street
Orlando, Florida 32801

30 With a Copy to: Orange County Public Schools
32 Attn: Facilities Planning
6501 Magic Way, Building 200
34 Orlando, Florida 32809

36 Withers: Withers, LLC
5956 Sherry Lane, Suite 1000
38 Dallas, Texas 75225-8021
Attention: Daniel Traylor

40 Columnar: Columnar Partnership Holding I, LLC
42 6442 Commerce Park Drive, Suite 2,

Ft. Myers, Florida 33966
Attention: Daniel Traylor

With copy to: James H. McNeil, Jr.
Akerman LLP
420 South Orange Avenue, Suite 1200
Orlando, Florida 32801-4904

16. 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.

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

18. 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.

19. 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.

20. Survival. The obligations of this Agreement shall survive the conveyance of the APF Lands to County.

21. 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.

22. 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.

2 23. Counterparts. This Agreement may be executed in up to three (3) counterparts,
both of which taken together shall constitute one and the same instrument and any party or
4 signatory hereto may execute this Agreement by signing either such counterpart.

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

8
 25. Termination; Effect of Annexation. This Agreement shall remain in effect so long
10 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
12 proposed to be annexed into a neighboring municipality, County may, in its sole discretion,
terminate this Agreement upon notice to Owners.

14

16

18

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

20

22

24

26

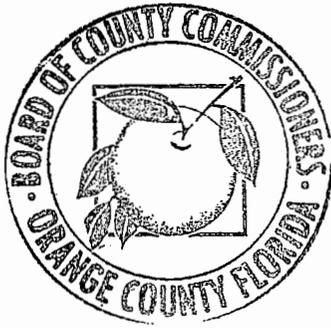
28

30

32

34

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*
JL Jerry L. Demings
Orange County Mayor

Date: *13 Nov 19*

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

By: *Jennifer Klimetz*
JL Deputy Clerk

Printed Name: *Jennifer Klimetz*

WITHERS, LLC, a Delaware limited liability
company doing business in Florida as
WITHERS PROPERTIES, LLC, a Delaware
limited liability company

WITNESSES:

By: CH II WITHERS, LLC, a Delaware
limited liability company, its Manager

Melody F. Ellsperman
Print Name: Melody F. Ellsperman

By: [Signature]
Name: Daniel A. Traylor
Title: Manager
Date: 09/12/2019

Sharon M. Goodson
Print Name: Sharon M. Goodson

2

STATE OF INDIANA
4 COUNTY OF VANDERBURGH

6

The foregoing instrument was acknowledged before me this 12th day of September, 2019,
by Daniel A. Traylor, as Manager of CH II WITHERS, LLC, a Delaware limited liability company,
8 as Manager of WITHERS, LLC, a Delaware limited liability company doing business in Florida as
WITHERS PROPERTIES, LLC, on behalf of such company, who [X] is personally known to me
10 or [] has produced _____ as identification.

8

10

12

WITNESS my hand and official seal in the County and State last aforesaid this 12th day of
September, 2019.

14

[Signature]

Notary Public No. 677213

16

Print Name: Donna M. Bush

18



DONNA M. BUSH
Resident of Vanderburgh County, IN
Commission Expires: January 20, 2024

My Commission Expires: 01/20/2024

20

22

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

WITNESSES:

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

Melody F. Ellsperman
Print Name: Melody F. Ellsperman

Sharon M. Goodson
Print Name: Sharon M. Goodson

By: *Daniel A. Traylor*
Name: Daniel A. Traylor
Title: President
Date: 09/12/2019

2

STATE OF INDIANA

4

COUNTY OF VANDERBURGH

6

The foregoing instrument was acknowledged before me this 12th day of September, 2019,
by Daniel A. Traylor, as President of COLUMNAR HOLDINGS, LLC, an Indiana limited liability
8 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 []
10 has produced _____ as identification.

12

WITNESS my hand and official seal in the County and State last aforesaid this 12th day of
September, 2019.

14

Donna M. Bush
Notary Public No. 677213
Print Name: Donna M. Bush

16

18

My Commission Expires: 01/20/2024



COUNTY, FLORIDA, a body corporate
and political subdivision of the State of Florida

2 Signed and sealed in the presence of:

4
6 Margarita Rivera
Print Name: Margarita Rivera

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

8
10 Nancy L. Conover Dated: October 4, 2019
Print Name: _____

12 STATE OF FLORIDA)
14) s.s.:
16 COUNTY OF ORANGE)

18 October The foregoing instrument was acknowledged before me this 4th day of
20 October, 2019, by Barbara M. Jenkins, Ed.D., as 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.

22
24 Susan M. Adams
NOTARY PUBLIC OF FLORIDA
26 Print Name: Susan M. Adams
Commission No.: _____
Expires: _____

28 AFFIX NOTARY STAMP

30
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.

John T. Morris
John T. Morris
Chief Facilities Officer

Laura L. Kelly
Laura L. Kelly, Staff Attorney III/Planning
and Real Estate

Date: OCT 3, 2019

Date: Oct 2, 2019

Exhibit "A"

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50

**Legal Description
for the PD Property**

The West 1/2 of the Northeast 1/4 of Section 29, Township 24 South, Range 27 East.

AND

The East 1/2 of the Northwest 1/4 of Section 29, Township 24 South, Range 27 East.
All lying in Orange County, Florida, being described as follows:

BEGIN at the northwest corner of the Northwest 1/4 of the Northeast 1/4 of said Section 29; thence run N 89°29'00" E, along the north line of the Northwest 1/4 of the Northeast 1/4 of said Section 29, a distance of 1,337.92 feet to a point on the east line of the West 1/2 of the Northeast 1/4 of said Section 29; thence run S 00°18'56" W, along the east line thereof, a distance of 2,629.87 feet to a point on the south line of the Southwest 1/4 of the Northeast 1/4 of said Section 29; thence run S 89°54'59" W, along the south line thereof, a distance of 1,337.20 feet to a point on the south line of the Southeast 1/4 of the Northwest 1/4 of said Section 29; thence continue S 89°54'59" W, along the south line thereof, a distance of 1,319.37 feet to a point on the west line of the East 1/2 of the Northwest 1/4 of said Section 29; thence run N 00°19'17" E, along the west line thereof, a distance of 2,636.43 feet to a point on the north line of the Northeast 1/4 of the Northwest 1/4 of said Section 29; thence run S 89°21'33" E, along the north line thereof, a distance of 1,318.48 feet to the POINT OF BEGINNING.

Containing 160.17 acres, more or less.

AND

The Southwest 1/4 of the Southwest 1/4 of Section 29, Township 24 South, Range 27 East.

AND

The North 1/2 of the Southwest 1/4 of Section 29, Township 24 South, Range 27 East.

AND

The Southeast 1/4 of the Southeast 1/4 of Section 30, Township 24 South, Range 27 East.
All lying in Orange County, Florida, being described as follows:

BEGIN at the southeast corner of the Southeast 1/4 of the Southeast 1/4 of said Section 30; thence run S 89°29'44" W, along the south line of the Southeast 1/4 of the Southeast 1/4 of said Section 30, a distance of 1,352.60 feet to a point on the west line of the Southeast 1/4 of the Southeast 1/4 of said Section 30; thence run N 00°44'55" E, along the west line thereof, a distance of 1,324.89 feet to a point on the north line of the Southeast 1/4 of the Southeast 1/4 of said Section 30; thence run N 89°26'27" E, along the north line thereof, a distance of 1,342.93 feet to a point on the west line of the Northwest 1/4 of the Southwest 1/4 of said Section 29; thence run N 00°19'46" E, along the west line thereof, a distance of 1,326.00 feet to a point on the north line of the North 1/2 of the Southwest 1/4 of said Section 29; thence run N 89°54'59" E, along the north line thereof, a distance of 2,638.74 feet to a point on the east line of the Northeast 1/4 of the Southwest 1/4 of said Section 29; thence run S 00°18'08" W, along the east line thereof, a distance of 1,323.30 feet to a point on the south line of the Northeast 1/4 of the Southwest 1/4 of said Section 29;

52 thence run S 89°51'29" W, along the south line thereof, a distance of 1,319.70 feet to a point on the east
line of the Southwest 1/4 of the Southwest 1/4 of said Section 29; thence run S 00°18'57" W, along the east
54 line thereof, a distance of 1,294.65 feet to a point on the northerly right-of-way line of Hartzog Road (a
30.00 foot wide right-of-way per Deed Book 844, Page 263, Public Records of Orange County, Florida);
56 thence run westerly along said northerly right-of-way line, the following two (2) courses and distances: run
S 89°47'58" W, a distance of 1,017.75 feet to a point of curvature of a curve, concave southerly, having a
58 radius of 1,312.31 feet and a central angle of 12°16'29"; thence run westerly, along the arc of said curve, a
distance of 281.14 feet to a point on the south line of the Southwest 1/4 of the Southwest 1/4 of said
60 Section 29; thence run S 89°47'58" W, along the south line thereof, a distance of 23.54 feet to the Point of
Beginning.

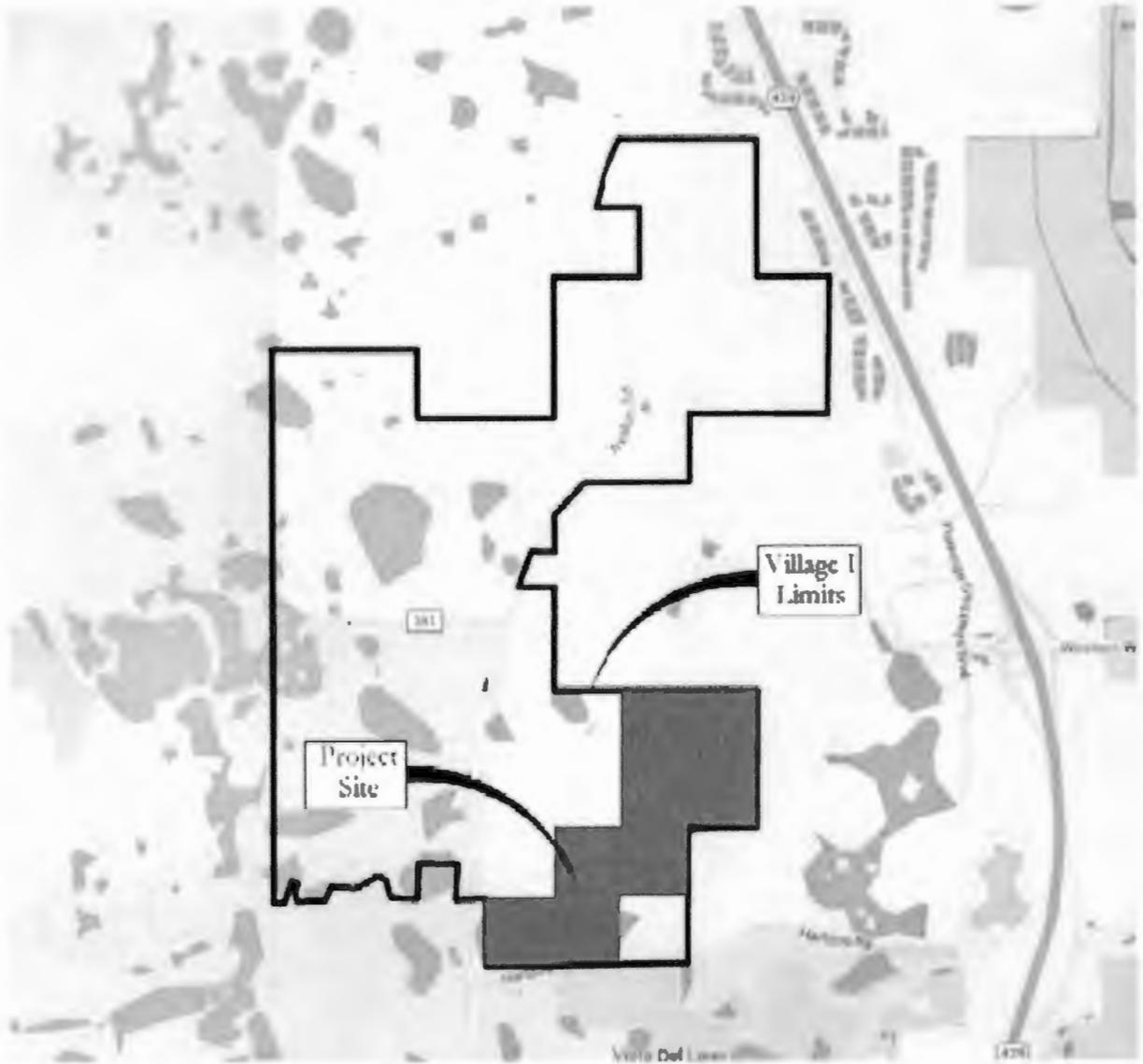
62 Containing 160.58 acres, more or less.

64

Exhibit "B"

66

Project Area Location Map



68