

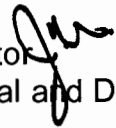


**Interoffice Memorandum**

**AGENDA ITEM**

May 20, 2016

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

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

**CONTACT PERSON: John Smogor, Chairman  
Development Review Committee  
407 836-5616**

SUBJECT: June 14, 2016 — Consent Item  
Zanzibar Phase 1 Preliminary Subdivision Plan  
Adequate Public Facilities Agreement  
(Related to Case # PSP-15-07-200)

The proposed Zanzibar Phase 1 Preliminary Subdivision Plan (PSP) contains 141.57 gross acres and is generally located on the north of Old YMCA Road, west of State Road 429. More specifically, the subject property is located within the Village H Specific Area Plan (SAP) of Horizon West, and is primarily designated Estate Rural, Garden Home, and Townhome on the Village H SAP Recommended Land Use Plan (LUP), with limited areas designated Upland Greenbelt and Wetlands. Through the PSP application #PSP-15-07-200, the proposed Zanzibar Phase I PSP subdivides 141.57 acres in order to construct 213 single-family residential dwelling units.

Pursuant to Orange County Code Section 30-714, each property owner in a Horizon West Planned Development (PD) is required to convey their proportionate share of Adequate Public Facilities (APF) Agreement lands, which are based on the ratio of required APF acres to net developable acres within the SAP. 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 H SAP, the adopted ratio of APF acres to net developable acres is 1.0 to 7.6.

In order to satisfy the requirements of Chapter 30, Article XIV of the Orange County Code ("APF/TDR Ordinance"), the Zanzibar PD was subject to an APF agreement, which was entered into on December 3, 2013. That APF agreement recognizes that the project is accountable for a minimum of 14.77 acres of APF lands. The owner has provided 5.78 acres of APF land to the County creating an APF deficit of 8.99 acres.

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June 14, 2016 — Consent Item

Zanzibar Phase 1 Preliminary Subdivision Plan (PSP)

Adequate Public Facilities (APF) Agreement (Related to Case # PSP-15-07-200)

The first amendment to the agreement revises the APF agreement entered into on December 3, 2013 to change certain provisions related to conveyance of the APF land from plat to General Warranty Deed or easement document. The First Amendment to APF Agreement for the Zanzibar PD, received a recommendation of approval from the Orange County Development Review Committee on May 11, 2016, and should be considered with the associated PSP public hearing. Upon approval by the Board of County Commissioners, the Agreement will be recorded in the Public Records of Orange County, Florida.

**ACTION REQUESTED: Approval and execution of First Amendment to Adequate Public Facilities Agreement for Zanzibar PD by and between Zanzibar Properties, LLC, and Orange County for Phase 1 Preliminary Subdivision Plan. District 1**

JVW/JS:rep

Attachments

BCC Mtg. Date: Jun. 14, 2016

**THIS INSTRUMENT PREPARED BY AND  
AFTER RECORDING RETURN TO:**

Daniel T. O'Keefe, ESQUIRE  
Shutts & Bowen LLP  
300 S. Orange Avenue, Suite 1000  
Orlando, FL 32801

Tax Parcel I.D. No.: 31-23-27-0000-00-004

**FIRST AMENDMENT TO  
ADEQUATE PUBLIC FACILITIES AGREEMENT  
FOR ZANZIBAR PD**

**THIS FIRST AMENDMENT TO ADEQUATE PUBLIC FACILITIES AGREEMENT FOR ZANZIBAR PD** (this "First Amendment") is made and entered into by and between **ZANZIBAR PROPERTIES, LLC**, a Florida limited liability company, whose mailing address is 27 Summerlin Avenue, Orlando, Florida 32801 ("Owner"), and **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida, whose address is P.O. Box 1393, Orlando, Florida 32802-1393 ("County") and.

**RECITALS:**

A. The County and the Owner entered into that certain Adequate Public Facilities Agreement for Zanzibar PD (the "Agreement") on December 3, 2013, as recorded in Official Records Book 10732, Page 3563, of the Public Records of Orange County, Florida, for the property more particularly described therein (the "PD Property").

B. The County and the Owner desire to amend the Agreement to revise certain provisions related to conveyance of the APF Land.

**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 First Amendment by this reference.

2. Amendment to Section 4. Section 4 of the Agreement is deleted in its entirety and replaced with the following:

"4.1 APF Fee. The Owner will satisfy the APF deficit attributable to each PSP/DP for the Property prior to the County's approval of each such PSP/DP by purchasing APF credits from other owners in Village H, as contemplated by the Cooperation Agreement, or will pay the County a fee in accordance with Chapter

30, Article XIV, Division 2, Section 30-714(d), as may be amended.”

“4.2. Schedule for Conveyance of APF Land. As an alternative to conveyance prior to or in connection with PD approval, the Owner has elected to convey the APF Land at a later time, as contemplated by Section 30-714 of the APF/TDR Ordinance. Unless otherwise provided herein, at the time of PSP/DP approval for the parcel in which APF Land is located, the County and the Owner shall mutually determine whether that portion of the APF Land within such PSP/DP shall be dedicated by deed or by plat. The APF Land for (i) the Town Center Connector right-of-way; (ii) the old YMCA East right-of-way; (iii) the old YMCA West right-of-way; and (iv) the related stormwater areas for the PSP shall be conveyed by plat. If the particular APF Land is to be conveyed to the County by deed or easement, then prior to County approval of the applicable PSP/DP, the Owner, or its assigns, shall execute one or more General Warranty Deeds and/or easements for the APF Land that is included in the PSP/PD, naming the County as Grantee, and shall deliver the executed deed(s) and/or easements to the County. Conveyance of APF Land by deed or easement shall be in accordance with the process described in Section 5 of this Agreement. Conveyance of APF Land by plat shall be in accordance with the County’s platting process.”

3. Amendment to Section 5. The first two sentences of Section 5, Conveyance Procedure, are deleted and replaced with the following:

“In accordance with the terms and conditions of this Agreement, the Owner, or its assigns, shall deliver to the County the General Warranty Deed or easement document, as applicable, to any APF Land that will **not** be conveyed by plat. All conveyances to the County shall be free and clear of all liens and encumbrances, except for easements and other matters of record which would not prevent the utilization of the conveyance for the intended purposes and which are consistent with County’s intended use(s) and acceptable to the County (collectively referred to as the “Permitted Exceptions”).”

4. Effect of the Amendment. Except as amended hereby, the Agreement shall remain in full force and effect. Capitalized terms not defined herein shall have the same definition as in the Agreement.

5. Counterparts. This First Amendment may be executed in not more than two (2) counterparts, both of which taken together shall constitute one and the same instrument and either party or signatory hereto may execute this First Amendment by signing any such counterpart.

6. Notice. Any notice delivered with respect to this First Amendment 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.

As to Owner:           Zanzibar Properties, LLC  
27 Summerlin Ave.  
Orlando, FL 32801  
Attention: Sadique Jaffer  
Email: [sidjaffer@yahoo.com](mailto:sidjaffer@yahoo.com)

With a copy to:       William E. Barfield, P.A.  
225 S. Westmonte Drive, Suite 2040  
Altamonte Springs, FL 32714  
Attention: William E. Barfield, Esq.  
Email: [wbarfield@wbarfieldlaw.com](mailto:wbarfield@wbarfieldlaw.com)

As to County:         Orange County Administrator  
P.O. Box 1393  
201 S. Rosalind Ave  
Orlando, FL 32802-1393

With a copy to:       Orange County Growth Management Department  
Manager, Transportation Planning Division  
Orange County Public Works Complex  
4200 S. John Young Parkway  
Orlando, Florida 32839-9205

7.     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 detriment of the heirs, legal representatives, successors, and assigns of Owner and any person, firm, corporation, or other entity that may become the successor in interest to the PD Property, as that term is defined in the Agreement.

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

9.     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.

10. 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 Agreement.

11. 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.

12. Limitation of Remedies. County and Owner 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.

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

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

In addition to the foregoing, nothing in this First Amendment prohibits or estops County from exercising its power of eminent domain with respect to the APF Right-of-Way or any other portion of the PD Property as County may lawfully elect.

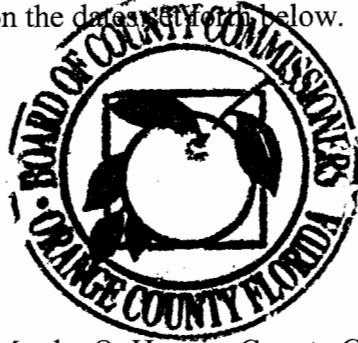
(b) *Limitations on Owner's remedies.* Upon any failure by County to perform its obligations under this First Amendment, Owner shall be limited strictly to only the following remedies:

- (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 First Amendment by the other. Both parties expressly agree that each party shall bear the cost of its own attorney fees for any action arising out of or in connection with this Amendment. Venue for any actions initiated under or in connection with this First Amendment shall be in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida

13. Authority to Contract. The execution of this First Agreement has been duly authorized by the appropriate body or official of the County and the Owner.

IN WITNESS WHEREOF, the County and the Owner have executed this First Amendment by their respective duly, authorized representatives in manner and form sufficient to bind them on the dates set forth below.



“COUNTY”

ORANGE COUNTY, FLORIDA

BY: Board of County Commissioners

ATTEST: Martha O. Haynie, County Comptroller,  
As Clerk of the Board of County Commissioners

By: Craig A. Stopyra  
for Deputy Clerk

Print Name: Craig A. Stopyra

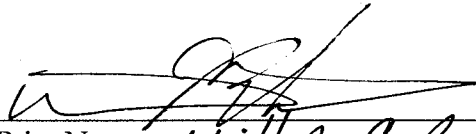
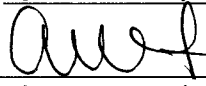
By: Peresa Jacobs  
Peresa Jacobs,  
Orange County Mayor

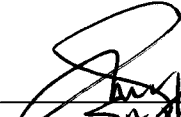
Date: June 14, 2016

Signed, sealed and delivered in  
the presence of:

“OWNER”

ZANZIBAR PROPERTIES, LLC,  
a Florida limited liability company

  
Print Name: William E. Barnfield  
  
Print Name: Ashley Westmoreland

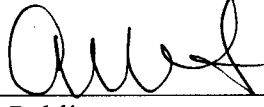
By:   
Print Name: Sadique Jaffer  
Title: MANAGING MEMBER  
Date: May 17<sup>th</sup>, 2016

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Sadique Jaffer, as Managing Member of Zanzibar Properties, LLC, a Florida limited liability company, on behalf of the company, and who is known by me to be the person described herein and who executed the foregoing, this 17<sup>th</sup> day of May, 2016. He / she  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 17<sup>th</sup> day of May, 2016.



  
Notary Public  
Print Name: Ashley Westmoreland  
My Commission Expires: 2/4/2020