

**Memorandum
from the
Bonita Springs City Attorney**

Date: June 2, 2016

To: Debbie Filipek, City Clerk

From: 
Audrey E. Vance
City Attorney

RE: Mosaic at Oak Creek
Bonus Density Agreement

Attached is the recorded Bonus Density Agreement between the City of Bonita Springs and Mosaic at Oak Creek, LLC. The Agreement is recorded as instrument No. 2016000114928 in the Official Records of the Lee County Clerk of the Circuit Court.

As the official custodian of the City documents, please retain the original of this record for safekeeping. By copy to those below, I am providing them with a copy for their files.

Please advise if there are any questions related to this matter.

AEV/

Attachment

cc: Carl L. Schwing, City Manager
Arleen M. Hunter, Assistant City Manager
Matt Feeney, Director, Public Works
John Dulmer, Director, Community Development
Jacqueline Genson, AICP, Planning and Zoning Manager
Jay Sweet, PSM, AICP
Stuart Smith, P.E., Development Services
Anne Wright, Director, Finance
Alexander Boswell-Ebersole, Assistant City Attorney
Above with attachment

Reply to
Amanda L. Brock
Direct Dial Number 239.344.1269
E-Mail: amanda.brock@henlaw.com

May 31, 2016

Audrey E. Vance
City Attorney
City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, FL 34135

Re: Bonus Density Agreement

Dear Audrey:

Please find enclosed the original Bonus Density Agreement between the City of Bonita Springs and Mosaic at Oak Creek, LLC which was recorded at the Lee County Clerk of Courts on May 27, 2016.

If you have any questions, please feel free to contact me.

Sincerely,



Amanda L. Brock

ALB/mls
Enclosure

JUN 1 2016 PM 2:47

BONUS DENSITY AGREEMENT

This Agreement is made and entered into this 10th day of May, 2016 between the City of Bonita Springs, Florida Municipal Corporation, hereinafter referred to as the "CITY" and Mosaic at Oak Creek, LLC, a Florida Limited Liability Company, whose mailing address is 1763 First Avenue North, St. Petersburg, FL 33713 hereinafter referred to as the "DEVELOPER."

WITNESSETH, that for a consideration of the mutual terms and conditions, promises, covenants and payment hereinafter set forth, "CITY" and the "DEVELOPER" hereby agree as follows:

ARTICLE I

For the purpose of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS set forth in this Agreement shall be consistent with those set forth in the City of Bonita Springs Land Development Code ("LDC"), as amended.

ARTICLE II

In order to establish the background, context and frame of reference for this agreement, and to manifest the objectives and the intentions of the respective parties herein, the following statements, representations, and explanations are set forth. These statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow, and may be relied upon by the parties as essential elements of the mutual considerations upon which the Agreement is based.

- 2.1 The "CITY" adopted a Comprehensive Plan pursuant to Chapter 163, Florida Statutes, by Bonita Springs Ordinance No. 02-16, as amended.
- 2.2 The Future Land Use Element of the aforesaid Comprehensive Plan, in order to meet the general goal of said plan, requires the "CITY" to, in part, provide density bonuses to developers in the "Old 41" area who provide certain enumerated features under Policy 1.1.11.b.2.B of said plan.
- 2.3 The "DEVELOPER" will contribute certain of those items as listed under the referenced Policy above and provide great public benefit to the CITY and its residents.
- 2.4 The "CITY" will grant to the "DEVELOPER" bonus density units, consistent with the City's Comprehensive Plan and this Agreement. This Agreement is being entered into before the enactment of an Administrative Code or Land Development Code provision directing the grant of bonus density in conformance with Policy 1.1.11.b.2.B.

BSC-16-02-19

**ARTICLE III
IMPLEMENTATION AND TIMETABLE**

- 3.1 The development will be completed by the “DEVELOPER” according to the timetable in the Development Order which shall control the time frames for construction of the project. The Development Order is hereby incorporated by reference.
- 3.2 No work may begin until the Development Order is approved and permits are issued.
- 3.3 The DEVELOPER intends to construct this project in phases. DEVELOPER further intends to initiate construction of the enhancements identified in Section 4.3 below prior to vertical construction of the residential portion of the project, and will abide by CITY regulations regarding inspections of said enhancements as provided for in the City’s Land Development Code after completion of each phase of construction.

**ARTICLE IV
ASSURANCES**

- 4.1 The “DEVELOPER” enters into this contract as a condition for issuance of a building permit or Development Order, as applicable.
- 4.2 The “DEVELOPER” agrees to comply with all other legal requirements imposed by the current or future federal, state, or local laws and regulations as they exist at the time of issuance of the Development Order.
- 4.3 The “DEVELOPER” agrees to provide the following enhancements as in-kind contributions to the CITY for the value as identified in that certain appraisal prepared for the purposes of this Agreement dated 2/12/16 and maintained by the CITY and available for public view, such value as indicated to be \$954,000 attached hereto in lieu of cash contribution or on-site housing units to achieve 53 bonus density units:
 - a. Provide public access to Oak Creek including an access trail, identified three (3) parking spaces, and canoe/kayak launch, at a value of \$36,265 with an additional multiplier of 5.0 for the public benefit received, for a total valuation of \$181,325. Hours of operation for this trail and launch area will be limited to dawn until dusk. DEVELOPER intends to own and maintain the trail and launch area but will dedicate said trail and launch area to the CITY for public use upon recordation of the plat covering the property upon which the trail and launch area are located. The Engineering Opinion of Cost associated with this enhancement is attached hereto as Exhibit “A.”
 - b. Provide compensating water quality treatment for Dean Street utilizing pervious parking and exfiltration trenches at a value of \$115,000 with an additional multiplier of 5.0, for a total valuation of \$575,000 for the public benefit received.

The Engineering Opinion of Cost associated with this enhancement is attached hereto as Exhibit "B."

c. Relocate the Dixie Moon Café, install the Dixie Moon Café on a new foundation at its new location as determined by the CITY, and construct public restrooms at a value of \$140,000 with an additional multiplier of 1.5 for the public benefit received, for a total valuation of \$210,000. The DEVELOPER will obtain all necessary permits for the relocation and renovations as stated to the Dixie Moon Café.

d. DEVELOPER will provide a surety or letter of credit for the total value of enhancements detailed in subsections (a)-(c) above in the amount of \$954,000. As each enhancement or phase is deemed complete after CITY inspections, the surety for that enhancement or phase shall also be released.

4.4 The "CITY" hereby agrees to permit the development of 53 bonus density units so long as:

- (a) the bonus density units do not exceed those units permitted in Policy 1.1.11 of the Future Land Use Element of the City of Bonita Springs Comprehensive Plan;
- (b) a building permit or Development Order, as applicable, has been approved; and
- (c) the "DEVELOPER" has met all the terms and conditions of the Agreement.

ARTICLE V ASSIGNABILITY

The right to develop the Bonus Density Units shall run with the building permit or Development Order, as applicable, and shall run with the land. The development of units pursuant to this Agreement shall not be assignable, and any attempt to do so will be considered a breach of this contract.

ARTICLE VI BREACH

Enforcement of this Agreement shall be as provided by the City of Bonita Springs LDC. Waiver by the "CITY" of a breach of any provision of this Agreement shall not be construed to be a modification of the terms of this Agreement. In the event of a total or partial breach of this Agreement, the Parties will refer to the valuations provided in Section 4.3 above and as evidenced in the enclosed Exhibits to determine the conversion value of the in-kind enhancement to a cash contribution. Such cash contribution will not exceed the total valuation noted for any individual enhancement as identified in Section 4.3. In the event of a partial breach, the extent of the breach shall be determined by an engineer mutually selected and agreed to by both Parties. The cash contribution necessary to fulfill the DEVELOPER's obligation will be determined by the proportionate value of the enhancement remaining as determined by the engineer (i.e. if the

engineer deems the enhancement is 90% complete, DEVELOPER shall only be responsible to pay for 10% of the value of that enhancement as identified in Section 4.3).

ARTICLE VII. MISCELLANEOUS PROVISIONS

- 7.1 It is understood and agreed that this document incorporates and includes all prior negotiation, correspondence, conversation, or understanding applicable to the matters contained herein and that the parties agree that there are no commitments, agreements, or understanding concerning the subject matter of this Agreement that are not contained in this document unless specifically referred to and incorporated by reference. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.
- 7.2 The "DEVELOPER" agrees to indemnify and hold harmless the "CITY" from or on account of any injuries, damages, omissions, commissions, actions or causes of action accruing as a result of services performed, or not performed, pursuant to this Agreement. "DEVELOPER" shall be liable for all claims, suits, judgments or damages arising from the services or lack of services provided pursuant to this Agreement.

ARTICLE VIII AMENDMENTS

The covenants, terms and provisions contained in this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement. The Mayor of the City of Bonita Springs on behalf of City Council, or the Deputy Mayor, shall act in behalf of the "CITY" in executing Amendment(s) to the Agreement. The "DEVELOPER" named hereinabove as a party to this Agreement, as an individual, or if a corporation by its corporate president or vice president, shall act in executing Amendment(s) to the Agreement. In the event of any conflicts between the requirements, provision and/or terms of the Agreement and any written Amendment(s), the requirements, provisions and/or terms of the latest executed Amendment(s) shall take precedence.

ARTICLE IX MODIFICATIONS

- 9.1 No modifications, waiver, or termination of this Agreement or of any terms thereof shall impair the "CITY'S" rights with respect to any liabilities, whether or not liquidated, of the "DEVELOPER" to the "CITY" therefore occurred.
- 9.2 Any changes in the terms of this Agreement are subject to the approval of the City Attorney.

ARTICLE X ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

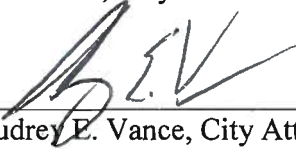
IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:

CITY COUNCIL OF BONITA
SPRINGS, FLORIDA

By: 
Debbie Filipek, City Clerk


By: 
Ben Nelson, Mayor

By: 
Audrey E. Vance, City Attorney

MOSAIC AT OAK CREEK, LLC
A Florida Limited Liability Company
By: Mosaic Development, LLC, Manager


By: 
Roxanne Amore, President
Principal

By: 
(Witness)

By: 
(Witness)

State of Florida
County of Lee

The foregoing contract was acknowledged before me this 17th day of May 2016, by Roxanne Davis in his capacity as Principal of Mosaic at Oak Creek, LLC, a Florida Limited Liability Company. She is personally known to me or has produced as identification.


(Signature of person taking acknowledgement)

Kimberlyann Holbrook
(Name typed, printed, or stamped)
(Title or Rank)
(Serial Number, if any)



Mosaic @ Oak Creek				
Engineer's Opinion Of Probable Construction Costs				
Proposed Kayak Launch and Parking				
February 9, 2016				
Mosaic @ Oak Creek				
Kayak Launch and Parking	QTY	Unit	Unit Price	Price
12" Stabilization	55	SY	\$ 2.00	\$ 110.00
6" Limerock base	55	SY	\$ 10.00	\$ 550.00
1" Asphalt Type S-III	55	SY	\$ 5.50	\$ 302.50
1" Asphalt Type S-I	55	SY	\$ 5.50	\$ 302.50
12' Wide Mulch Trail	100	SY	\$ 50.00	\$ 5,000.00
Kayak Launch Dock (Includes Re-Grading for Kayak Entry Point)	1	LS	\$ 30,000.00	\$ 30,000.00
			Total Kayak Launch	\$ 36,265.00

Mosaic @ Oak Creek				
Engineer's Opinion Of Probable Construction Costs				
Proposed Exfiltration Trench				
January 14, 2016				
Mosaic @ Oak Creek				
Exfiltration trench	QTY	Unit	Unit Price	Price
18" ADS Pipe	705	LF	\$ 45.00	\$ 31,725.00
Pervious Pavers	5,650	SF	\$ 4.50	\$ 25,425.00
Permeable Base and Sub Base Material under Parking	630	SY	\$ 25.00	\$ 15,750.00
Exfiltration Trench (Includes Woven Geotextile Fabric and ASTM No. 2)	705	LF	\$ 60.00	\$ 42,300.00
			Total Exfiltration Trench	\$ 115,200.00