

BCC Mtg. Date: May 10, 2016

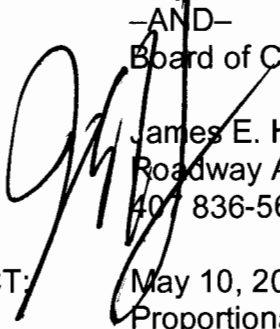


Interoffice Memorandum

AGENDA ITEM

April 18, 2016

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

FROM:  James E. Harrison, Esq., P.E., Chairman
Roadway Agreement Committee
407 836-5610

SUBJECT: May 10, 2016 – Consent Item
Proportionate Share Agreement Windermere Business Plaza
Reams Road Improvements: From Center Drive (f/k/a Cast Drive)
to Taborfield Avenue

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Windermere Business Plaza on Reams Road (from From Center Drive (f/k/a Cast Drive) to Taborfield Avenue) ("Agreement") by and between Windermere Business Plaza, LLC and Orange County for a proportionate share payment in the amount of \$53,015. Pursuant to Section 163.3180(5)(h), Florida Statutes, an applicant may mitigate capacity deficiencies by entering into a Proportionate Share Agreement and contributing a proportionate share payment. The Proportionate Share payment is due within thirty days of the effective date of this Agreement. The Agreement follows the recommendations of the Roadway Agreement Committee providing for the mitigation of road impacts on Reams Road for five deficient trips on the road segment from Center Drive (f/k/a Cast Drive) to Taborfield Avenue in an amount of \$10,603 per trip.

The Roadway Agreement Committee approved the Proportionate Share Agreement on March 16, 2016. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

ACTION REQUESTED: Approval and execution of Proportionate Share Agreement for Windermere Business Plaza Reams Road Improvements: From Center Drive (f/k/a Cast Drive) to Taborfield Avenue by and between Windermere Business Plaza, LLC and Orange County for a proportionate share payment in the amount of \$53,015. District 1

JEH/HEGB:rep

Attachment

BCC Mtg. Date: May 10, 2016

This instrument prepared by
and after recording return to:
Mohammed N. Abdallah, PE, PTOE
Traffic & Mobility Consultants, LLC
3101 Maguire Blvd, Ste 265
Orlando, Florida 32803

Parcel ID Number(s):
36-23-27-5452-03-000

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

**PROPORTIONATE SHARE AGREEMENT FOR
WINDERMERE BUSINESS PLAZA
Reams Road Improvements: From Center Drive (f/k/a Cast Drive) to Taborfield Avenue**

This Proportionate Share Agreement (the “Agreement”), effective as of the latest date of execution (the “**Effective Date**”), is made and entered into by and between Windermere Business Plaza, LLC, a Florida limited liability company (“**Owner**”), whose mailing address is 11107 Coniston Way, Windermere, FL 34786, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), whose mailing address is P.O. Box 1393, Orlando, FL 32802-1393.

WHEREAS, Owner is the owner of fee simple title to certain real property, as more particularly described on Exhibit “A,” attached hereto and incorporated herein by this reference (the “**Property**”); and

WHEREAS, the Property is located in County Commission District 1, within the County’s Urban Service Area, and the proceeds of the PS Payment, as defined herein, will be allocated to Reams Road from Taborfield Avenue to Summerlake Park Boulevard; and

WHEREAS, Owner intends to develop the Property as 23,275 square feet of medical office and commercial uses (the “**Project**”); and

WHEREAS, Owner received a letter from County dated March 7, 2016, stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #15-11-100 for the Project was denied; and

WHEREAS, the Project will generate five (5) deficient PM Peak Hour trips (the “**Excess Trips**”) for the deficient roadway segment on Reams Road from Center Drive (f/k/a Cast Drive) to Taborfield Avenue (the “**Deficient Segment**”), and zero (0) PM Peak Hour trips were available on

the Deficient Segment on the date the CEL was denied, as further described in Exhibit “B” hereto;
and

WHEREAS, the Excess Trips will cause the Deficient Segment to operate below adopted Level of Service standards and, therefore, pursuant to Section 163.3180(5)(h), Florida Statutes, as amended, the Owner shall provide the County with proportionate share mitigation for the Excess Trips; and

WHEREAS, Owner and County have agreed that the proportionate share payment necessary to mitigate the impact of the Excess Trips on the Deficient Segment through the current anticipated Project buildout is fifty-three thousand fifteen and no/100 Dollars (\$53,015.00) (the “PS Payment”); and

WHEREAS, County and Owner desire to set forth certain terms, conditions, and agreements between them as to the development of the Property into the Project.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration exchanged by and between Owner and County, the receipt and sufficiency of which are hereby acknowledged, the parties hereto stipulate and agree as follows:

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

Section 2. Issuance of Capacity Encumbrance Letter.

(a) **Calculation of PS Payment:** The amount of the PS Payment for the Deficient Segment described in Exhibit “B,” attached hereto and incorporated herein by reference, totals fifty-three thousand fifteen and no/100 Dollars (\$53,015.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. Owner and County agree that the Excess Trips constitute the Project’s impact on the aforementioned Deficient Segment based upon (i) Owner’s Traffic Study titled “Windermere Village Plaza, Lakeside Village South PD Traffic Impact Analysis” prepared by TRAFFIC & MOBILITY CONSULTANTS, LLC on January 20, 2016, for WINDERMERE BUSINESS PLAZA, LLC (the “Traffic Study”), and incorporated herein by this reference, and (ii) upon calculations described in Exhibit “B.” The Traffic Study was accepted by the Orange County Transportation Planning Division on March 7, 2016, and is on file and available for inspection with that Division (CMS #15-11-100). Owner and County further acknowledge and agree that the PS Payment as set forth above shall be the final and binding calculation of the amount the Owner is required to pay through the buildout of the Project as proportionate share mitigation for impacts of the Project upon roadways impacted by the Project within Orange County’s jurisdiction, notwithstanding any subsequent variance in the actual cost of improvement to the Deficient Segment or actual traffic impacts created by the Project; provided, however, that if Owner subsequently increases the number of units and/or square footage, as applicable, of the Project, the Project may then be subject to an additional concurrency evaluation and proportionate share agreement as set forth in Section 2(d) below. Owner and County further acknowledge

and agree that the calculation of and agreement regarding the amount of the PS Payment constitute material inducements for the parties to enter into this Agreement.

(b) *Timing of PS Payment.* Within thirty (30) days following the Effective Date, Owner shall deliver a check to County in the amount of fifty-three thousand fifteen and no/100 Dollars (\$53,015.00) as the PS Payment. The check shall be made payable to "Orange County Board of County Commissioners" and shall be delivered to the Fiscal and Operational Support Division of the Community, Environmental, and Development Services Department. Within twenty-one (21) days following its receipt of the PS Payment, County shall issue a CEL sufficient to encumber traffic capacity for the Project, irrespective of any actual traffic deficiency on the Deficient Segment. Within the time frame provided in the CEL, the Owner must reserve the encumbered trips by obtaining a Capacity Reservation Certificate as provided in Section 30-591 of the Orange County Code, as may be amended. An amount equal to the PS Payment shall be applied toward the amount of the initial reservation payment (and any subsequent reservation payment(s), if the initial reservation payment does not exceed the amount of the PS Payment) as further set forth in Section 3 below. In the event Owner has not paid the PS Payment within thirty (30) days of the Effective Date, this Agreement shall become null and void.

(c) *Project Development.* Recordation of a subdivision plat or approval of a commercial site plan for the Project shall not be permitted prior to the issuance of a Capacity Reservation Certificate as contemplated in subparagraph 2(b) above.

(d) *Increase in Project Trips.* Any change to the Project which increases the unit count and/or square footage, as applicable, may result in an increase in trips on the Deficient Segment or other segments within the transportation impact area, as defined by County. Owner understands and agrees that any such additional trips are neither vested nor otherwise permitted under this Agreement, and that Owner is precluded from asserting any such vesting. In addition, Owner understands and agrees that any such changes resulting in an increase in trips may cause this Agreement to become null and void, and/or may require application for and execution of an additional Proportionate Share Agreement, along with any other required documentation, for the number of increased trips.

(e) *Satisfaction of Transportation Improvement Requirements.* County hereby acknowledges and agrees that, based upon Owner's commitment to pay the PS Payment as required herein and absent any change in the Project increasing the number of trips as set forth in subparagraph 2(d) above, Owner shall be deemed to have satisfied all requirements for the mitigation of the traffic impacts of the Project on all roads affected by the Project within County's jurisdiction through buildout of the Project. Owner shall be entitled to fully and completely develop the Project, without regard to whether the improvements to the Deficient Segment are actually constructed. Provided, however, Owner shall be required to obtain a Capacity Reservation Certificate prior to the expiration of Owner's Capacity Encumbrance Letter and shall be required to maintain the validity of the Capacity Reservation Certificate in accordance with its terms. Nothing herein shall be construed to exempt Owner from meeting the requirements of all other applicable laws, regulations, or

Orange County Code provisions or from making the required payment of transportation impact fees applicable to the Project, subject to credits as set forth in Section 3 below.

Section 3. Transportation Impact Fee Credits. County and Owner agree that Owner shall be entitled to receive transportation impact fee credits on a dollar for dollar basis in an amount up to but not exceeding the PS Payment in accordance with Section 163.3180, Florida Statutes, and as more particularly described in Exhibit "B" attached hereto. County further agrees that such credits may be applied on a dollar for dollar basis against capacity reservation fees at such time as capacity reservation fees may be required to be paid by Owner in connection with the issuance of a Capacity Reservation Certificate as contemplated in Section 2 above. In no event shall Owner receive credits in excess of the PS Payment and in the event the PS Payment exceeds either the applicable transportation impact fees or capacity reservation fees, as the case may be, Owner shall not be entitled to a refund for the amount of the PS Payment in excess of such transportation impact fees or capacity reservation fees.

Section 4. No Refund. The PS Payment (including any reservation fees paid with the PS Payment) is non-refundable.

Section 5. Notice. With the exception of the timing of the PS Payment as set forth in Section 2(b) hereof, the parties acknowledge and agree that no party shall be considered in default for failure to perform under this Agreement until such party has received written notice specifying the nature of such default or failure to perform and said party fails to cure said default or fails to perform within thirty (30) days of receipt of written notice. Any notice delivered with respect to this Agreement shall be in writing and 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 other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

As to Owner: Windermere Business Plaza, LLC
11107 Coniston Way
Windermere, Florida 34786

Attention: Dr. Niral Patel

With copy to: Traffic & Mobility Consultants, LLC
3101 Maguire Blvd, Ste 265
Orlando, Florida 32803

Attention: Mr. Mohammed N. Abdallah, PE, PTOE

As to County: Orange County Administrator
P. O. Box 1393
Orlando, Florida 32802-1393

With copies to: Orange County Community, Environmental, and Development
Services Department
Manager, Fiscal and Operational Support Division
201 South Rosalind Avenue, 2nd Floor
Orlando, Florida 32801

Orange County Community, Environmental, and Development
Services Department
Manager, Transportation Planning Division
4200 South John Young Parkway
Orlando, Florida 32839

Orange County Community, Environmental, and Development
Services Department
Manager, Planning Division
201 South Rosalind Avenue, 2nd Floor
Orlando, Florida 32801

Section 6. Covenants Running with the Property. This Agreement shall be binding and shall inure to the benefit and burden of the heirs, legal representatives, successors, and assigns of the parties, and shall be a covenant running with the Property and be binding upon the successors and assigns of the Owner and upon any person, firm, corporation, or entity who may become the successor in interest to the Property.

Section 7. Recordation of Agreement. The parties hereto agree that this Agreement shall be recorded in the Public Records of Orange County, Florida, at Owner's expense, within ten (10) business days after the Effective Date.

Section 8. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida and in accordance with the Orange County Code.

Section 9. Specific Performance. County and Owner shall each have the right to enforce the terms and conditions of this Agreement only by an action for specific performance. Venue for any action(s) initiated under or in connection with this Agreement shall lie in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

Section 10. Attorney Fees. In the event either party hereto brings an action or proceeding including any counterclaim, cross-claim, or third party claim, against the other party arising out of this Agreement, each party in such action or proceeding, including appeals therefrom, shall be responsible for its own attorney and legal fees.

Section 11. Construction of Agreement; Severability. Captions of the Sections and Subsections of this Agreement are for convenience and reference only; any words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement. If any provision of this Agreement, the deletion

of which would not adversely affect the receipt of any material benefits by any party hereunder or substantially increase the burden of any party hereunder, shall be held to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

Section 12. Amendments. No amendment, modification, or other change(s) to this Agreement shall be binding upon the parties unless in writing executed by all of the parties.

Section 13. Counterparts. This Agreement may be executed in up to three (3) counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

[Signatures appear on following pages]

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.



“COUNTY”

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By:

Teresa Jacobs
Teresa Jacobs

Orange County Mayor

Date:

5.10.16

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

By:

Jennifer Klimetz
for Deputy Clerk

Print Name:

Jennifer Klimetz

“WINDERMERE BUSINESS PLAZA”

WITNESSES:

Morgan E. Pearsall

Print Name: Morgan E. Pearsall

Penny Nunes

Print Name: Penny Nunes

“OWNER”

Windermere Business Plaza, LLC, a Florida
limited liability company

By: Patel

Print Name: Dr. Niral Patel

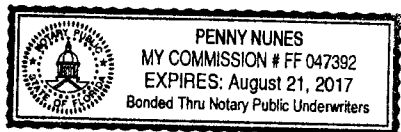
Title: Manager

Date: 4/7/2016

**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Dr. Niral Patel, as Manager of Windermere Business Plaza, LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 7th day of April, 2016. He is personally known to me or has produced _____ (type of identification) as identification and did/did not (circle one) take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 7th day of April, 2016.



Penny Nunes
NOTARY PUBLIC

Print Name: Penny Nunes

My Commission Expires: _____

Exhibit "A"

"WINDERMERE BUSINESS PLAZA"

Parcel ID: 36-23-27-5452-03-000

Lot 3 of Lakeside Village Center South, according to the plat thereof, as recorded in Plat Book 87, Page 94 of the Public Records of Orange County, Florida also being described as:

<p>LEGAL DESCRIPTION – PROPOSED DR. PATEL SITE</p> <p>A PARCEL OF LAND LYING IN THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:</p> <p>COMMENCE AT THE INTERSECTION OF THE EAST LINE OF THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, WITH THE SOUTHERLY RIGHT OF WAY LINE OF WINTER GARDEN – VINELAND ROAD (COUNTY ROAD 535) AS SHOWN ON THE ORANGE COUNTY, FLORIDA, RIGHT OF WAY MAP PHASE 1 (NORTH SECTION) PROJECT NUMBER YO-808B PREPARED BY KIMLEY-HORN; THENCE RUN N71°01'07"W ALONG SAID SOUTHERLY RIGHT OF WAY LINE 191.12 FEET; THENCE CONTINUE ALONG SAID SOUTHERLY RIGHT OF WAY LINE N74°41'25"W 24.61 FEET TO A POINT ON THE NORTHERLY LINE OF THE PARCELS OF LAND DEEDED TO ORANGE COUNTY, FLORIDA, FOR ROAD RIGHT OF WAY PURPOSES BY THE WARRANTY DEEDS RECORDED IN OFFICIAL RECORDS BOOK 10084, PAGE 2169 AND OFFICIAL RECORDS BOOK 10440, PAGE 1798; THENCE LEAVING AFORESAID SOUTHERLY RIGHT OF WAY LINE OF WINTER GARDEN – VINELAND ROAD RUN ALONG SAID NORTHERLY LINE OF THE WARRANTY DEED PARCELS THE FOLLOWING NINE COURSES: S21°15'16"W 93.25 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 800.00 FEET AND A CENTRAL ANGLE OF 32°14'44"; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 450.23 FEET TO THE POINT OF TANGENCY; THENCE S53°29'59"W 329.96 FEET FOR A POINT OF BEGINNING; THENCE CONTINUE S53°29'59"W 249.07 FEET; THENCE RADIALLY N36°30'01"W 1.25 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 34.00 FEET AND A CENTRAL ANGLE OF 64°10'52"; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE 38.09 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 156.00 FEET AND A CENTRAL ANGLE OF 39°04'49"; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE 106.40 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 34.00 FEET AND A CENTRAL ANGLE OF 64°35'59"; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE 38.33 FEET TO THE POINT OF TANGENCY; THENCE N36°47'59"W 126.73 FEET; THENCE LEAVING AFOREMENTIONED NORTHERLY LINE OF THE PARCELS OF LAND DEEDED TO ORANGE COUNTY, FLORIDA, RUN N53°12'01"E 374.17 FEET; THENCE S36°30'01"E 253.07 FEET TO THE POINT OF BEGINNING.</p>		
<p>NOTES</p> <ol style="list-style-type: none"> 1. THIS SKETCH AND DESCRIPTION WAS PREPARED BY THOMAS L. CONNER, 5424 SOUTH BRACKEN COURT, WINTER PARK, FLORIDA, FLORIDA LICENSED SURVEYOR AND MAPPER. 2. NOT A BOUNDARY SURVEY, SKETCH OF DESCRIPTION ONLY. SEE BOUNDARY AND TOPOGRAPHY SURVEY BY THE UNDERSIGNED FOR COMPLETE SURVEY OF IMPROVEMENTS, EASEMENTS AND OTHER MATTERS OF SURVEY, INCLUDING NOTES RELATED TO THE COMPOSITION OF THIS DESCRIPTION. 3. NO UNDERGROUND FEATURES, INCLUDING UTILITIES AND FOOTERS HAVE BEEN SHOWN. 4. BEARINGS ARE BASED ON THE EAST LINE OF THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA AS BEING ASSUMED S00°06'17"W ACCORDING TO THE PLAT OF RESIDENCES AT LAKESIDE VILLAGE, AS RECORDED IN PLAT BOOK 78, PAGE 86 & 87, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA. 5. THE ENTIRE PARCEL CONTAINS 2.00 ACRES, MORE OR LESS. 6. THIS SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH IN FLORIDA ADMINISTRATIVE CODE RULE 5J-17.05 PURSUANT TO FLORIDA STATUTE 472, FOR A SKETCH OF DESCRIPTION. 7. THIS SKETCH OF DESCRIPTION IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER. 		
<p>THOMAS L. CONNER FLORIDA LICENSED SURVEYOR AND MAPPER NUMBER LS4340</p>		
<p>NOTE: SEE SHEETS 2 & 3 OF 3 FOR SKETCH OF DESCRIPTION. THIS DESCRIPTION IS NOT VALID WITHOUT SHEETS 2 & 3 OF 3 ATTACHED.</p>		
<p>DATE <u>3/24/14</u> SCALE <u>NONE</u> DRAWING <u>20568SD3</u> PROJECT <u>20568</u> 1 OF 3 SHEET NUMBER</p>	<p>SKETCH AND DESCRIPTION PROPOSED DR. PATEL SITE LAKESIDE VILLAGE CENTER ORANGE COUNTY, FLORIDA PREPARED FOR BOYD DEVELOPMENT CORPORATION</p>	<p>THOMAS L. CONNER, PSM SURVEY AND MAPPING CONSULTANT 5424 SOUTH BRACKEN COURT WINTER PARK, FLORIDA 32782-8405 TELEPHONE: (407) 538-9137 FLORIDA LICENSED SURVEYOR AND MAPPER BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS LICENSE NUMBER LS0004340</p>

Proportionate Share Agreement for
 Windermere Business Plaza, LLC for Reams Road Improvements, 2016

