



Interoffice Memorandum

AGENDA ITEM

December 12, 2019

TO: Mayor Jerry L. Demings
–AND–
Board of County Commissioners

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

SUBJECT: January 14, 2020 – Discussion Item
First Amendment to Road Network and Mitigation Agreement for The Grow

On September 20, 2016, the Board approved the Road Network and Mitigation Agreement (The Grow, a/k/a Lake Pickett South) S.R. 50 and Chuluota Road (the "Agreement") associated with the rezoning approval of The Grow LUP-16-01-002. While the rezoning was approved, the comprehensive plan amendments, including the underlying Lake Pickett area policies, were challenged via a Petition with the Department of Administrative Hearings delaying the effective date of the rezoning. On May 28, 2019, the County received notice from the Fifth District Court of Appeals that all final appeals had been exhausted and the County's decision was final.

The Agreement provided for \$26 million in transportation mitigation funding, largely to be directed towards S.R. 50 improvements being advanced by the Florida Department of Transportation (FDOT) and Chuluota Road to be delivered by Orange County. During the time period in resolving the challenge of the County's land use decision, several factors have changed that prevent the Agreement from being implemented as originally negotiated. Most importantly, the six-laning plans for S.R. 50 have been shelved by FDOT, with those improvements being more broadly incorporated into its Colonial Parkway project. As such, an amendment to the Agreement is now necessary.

The First Amendment to Road Network and Mitigation Agreement (The Grow, aka Lake Pickett South) S.R. 50 and Chuluota Road (the "Amendment") amends the terms of the original agreement by providing for an alternative mitigation plan to include a new payment schedule for the required \$26 million mitigation, the overall amount of which is unchanged by this Amendment. Specific transportation improvement projects are not identified in the Amendment. The County's funding commitments towards needed projects would result from future budget worksessions and hearings with the Board.

The Amendment has been approved by the County Attorney's Office as to form. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

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January 14, 2020 – Discussion Item

First Amendment to Road Network and Mitigation Agreement for The Grow

As part of the presentation on January 14, 2020, staff will provide a brief background on The Grow development project and the framework for the original Agreement. Staff will also provide a summary of the key provisions in the Amendment, and outline a potential schedule for future worksessions and community meetings to more broadly discuss needed east Orange County transportation improvements.

If you have any questions, please feel free to contact me at 407-836-5393.

ACTION REQUESTED: Approval and execution of First Amendment to Road Network and Mitigation Agreement (The Grow, a/k/a Lake Pickett South) S.R. 50 and Chuluota Road by and among American Land Investments of Orange County, LLC, Banksville of Florida, Inc., Nivesa of Florida, Inc., and Orange County to provide for an alternative mitigation payment schedule totaling \$26 million. District 5

JVW:fb

Attachment

BCC Mtg. Date: January 14, 2020

Prepared by and after recording return to:

**Derek Bruce, Esquire
Gunster
200 S. Orange Ave., Suite 1400
Orlando, FL 32801**

Tax Parcel I.D. Nos.:
18-22-32-0000-00-025
20-22-32-0000-00-002
17-22-32-0000-00-002
18-22-32-0000-00-001
19-22-32-0000-00-001
08-22-32-0000-00-005

**FIRST AMENDMENT
TO
ROAD NETWORK AND MITIGATION AGREEMENT**

**(The Grow, a/k/a Lake Pickett South)
S.R. 50 and Chuluota Road**

This First Amendment to Road Network and Mitigation Agreement (this “**First Amendment**”), effective as of the latest date of execution (the “**First Amendment Effective Date**”), is made and entered into by and among (i) **AMERICAN LAND INVESTMENTS OF ORANGE COUNTY, LLC**, a Florida limited liability company (“**Am Land**”), **BANKSVILLE OF FLORIDA, INC.**, a Florida corporation (“**Banksville**”), and **NIVESA OF FLORIDA, INC.**, a Florida corporation (“**Nivesa**”) (Am Land, Banksville and Nivesa are sometimes hereinafter referred to individually as an “**Owner**” and collectively as the “**Owners**”); and (ii) **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida (“**County**”). The Owners and County are sometimes hereinafter referred to individually as a “**Party**” and collectively as the “**Parties.**”

WITNESSETH:

- A. On August 20, 2019, Am Land purchased the New Ideas and Lopez Trust properties and, as a result, Am Land, Banksville and Nivesa are the fee simple owners of the Properties described in that certain Road Network and Mitigation Agreement, which was recorded on October 6, 2016 as Instrument #2016052906 of the Public Records of Orange County, Florida (the “**Original Agreement**”). All capitalized terms used but not otherwise defined in this First Amendment shall have the meanings set forth in the Original Agreement.
- B. The Parties entered into the Original Agreement at a time when it was understood by the Parties that FDOT was at “90% plans complete” for certain improvements to S.R. 50 pursuant to FDOT Project 239203-7 and, as indicated in the letter from FDOT attached as Exhibit “D” to the Original Agreement, at a time when FDOT was “prepared to finalize and sign” the Advanced Construction LFPA and the Reimbursement LFPA.
- C. Section 7 of the Original Agreement provides that “(u)pon its execution of the Agreement, County shall diligently and in good faith conduct negotiations with FDOT to finalize and execute the Advanced Construction LFPA” and that such execution “is a condition precedent to the Parties’ performance under this Agreement.” As of the date of this First Amendment, County has not been able to further negotiate and finalize with FDOT the Advanced Construction LFPA.
- D. After execution of the Original Agreement, the Parties learned that FDOT ceased work on FDOT Project 239203-7 and, instead, the Florida Turnpike Enterprise, in consultation with FDOT, has undertaken a project development and

environment study for a new, larger project to improve S.R. 50 identified as the Colonial Parkway project.

E. The Colonial Parkway project includes the S.R. 50 widening identified as FDOT Project 239203-7, but also construction of an elevated, limited-access toll road within the S.R. 50 right-of-way from west of S.R. 408, at its current eastern terminus, to S.R. 520.

F. County's and Owners' full performance under the Original Agreement is currently rendered impossible due to the fact that FDOT has replaced the FDOT Project 239203-7 with the larger Colonial Parkway project.

G. FDOT Project 239203-7 involved a 2.43-mile segment of S.R. 50 with an estimated cost of \$16 Million while the Colonial Parkway project involves a 7.8-mile segment of S.R. 50 improvements plus elevated, limited-access toll road with a total cost currently estimated by FDOT to be \$1.1 Billion.

H. Due to FDOT's change of plans and the resulting situation making it impossible for the Parties currently to perform their respective obligations under the Original Agreement, the Parties desire to amend the Original Agreement in order to provide an alternative mitigation plan as described in this First Amendment ("**Prop Share Mitigation**") that requires Owners to remain obligated to pay \$26 Million as a proportionate share contribution to satisfy the transportation requirements of the Concurrency Management Code (the "**Prop Share Payment**").

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

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

Section 2. Transportation Improvement Plan. The Parties shall continue to be obligated to comply with the transportation improvement plan as contained in the Original Agreement (the “**Original Mitigation**”) but only if, and in the event that, FDOT notifies County in writing that it is abandoning the Colonial Parkway project and that it has resumed planning of FDOT Project 239203-7 as described and contemplated in the Original Agreement (the “**Colonial Parkway Project Abandonment**”). Notwithstanding the foregoing, however, in the event any of the Owners submits a preliminary subdivision plan to County for development of all or any portion of the Property prior to the Colonial Parkway Project Abandonment, then for the entire LPS project and development program the Parties shall thereupon be bound to comply with the requirements of Prop Share Mitigation, as set forth in this First Amendment, in lieu of compliance with the Original Mitigation. In connection with Prop Share Mitigation, County and FDOT execution of an Advanced Construction LFPA is not a condition precedent to the Parties’ performance as set forth in Section 7 of the Original Agreement.

Section 3. Prop Share Mitigation.

- a) *Amount of Prop Share Payment Binding.* The Prop Share Payment shall be the final and binding calculation of the amount Owners are required to pay through the buildout of the currently approved LPS project as proportionate share mitigation for roadway impacts of the LPS project;

provided, however, that if Owners subsequently increase the number of units and/or square footage (the LPS recreational amenities such as the event barn, public community park, community gardens, working farm, equestrian facility and other ancillary facilities and corresponding trips are not subject to concurrency nor the requirements of the Agreement), as applicable, of the LPS project, the LPS project may then be subject to an additional concurrency evaluation and a proportionate share agreement.

b) *Timing of Payments.* Owners shall make the Prop Share Payment to the County in installments, on a pro-rata basis, at such time or times as is required under sub-Section 3.c) below, as a condition of County approval of a plat. The amount of each such installment shall be determined by the LPS Escrow Agent by multiplying the total Prop Share Payment amount by the ratio of trips corresponding to the square feet or residential units as contained on the plans for a plat submittal as compared to the 2,556 total trips for the LPS development program as shown on Exhibit "C" of the Original Agreement. Notwithstanding the foregoing, Owners shall make installments of the Prop Share Payment so that, at a minimum, the following amounts shall have been paid to the County by the dates specified:

Payment #	Amount:	"Pay By" Date:
1	\$180,000	5/15/20
2	\$360,000	10/31/20
3	\$2,900,000	3/31/21*
4	\$2,200,000	1 year after payment 3

5	\$6,500,000	1 year after payment 4
6	\$13,860,000	12/31/24**

* Payment 3 scheduled for 3/31/21 shall be extended automatically if construction plans (“CP”) have not yet been approved by the County for the initial phase of LPS that includes residential lots. In such event, payment 3 shall be made no later than thirty (30) days after County approval of the CP.

** Payment 6 assumes the County has completed design and has obtained all necessary right-of-way, or secured written commitments for conveyance of such, in order for a construction contract to be bid for a major roadway widening project (within The Grow’s significant traffic impact area) in the County’s Fiscal Year 2024/25 (“Contract Ready”). The County shall verify the status of the project upon the Owners’ request. If the project is not Contract Ready, then Payment 6 shall be automatically delayed until no later than thirty (30) days after County notifies the Owners that the project is Contract Ready; the foregoing notwithstanding, in no event shall Payment 6 be made later than September 30, 2026.

The LPS Escrow Agent shall maintain a ledger of the Prop Share Payment determinations for reconciling with County’s records on an “as-needed” basis in accordance with the payment schedule outlined immediately above.

- c) *CEL/CRC.* Installment payments shall be made by check and the checks 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 an installment payment, if the density/intensity of the proposed development contained on the plans is consistent with the Grow PD-RP, County shall issue a CEL sufficient to encumber traffic capacity for such proposed development. 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. The installment payment amount shall

be applied toward the amount of the initial capacity reservation payment (and any subsequent reservation payment(s), if the initial reservation payment does not exceed the amount of the installment) as further set forth in sub-Section 2.f) below. Recordation of a subdivision plat or final approval of a commercial site plan for the LPS project shall not be permitted prior to the issuance of a Capacity Reservation Certificate as contemplated herein.

- d) *Increase in Project Trips.* Any change to the LPS project which increases the unit count and/or square footage, as applicable, may result in an increase in trips within the transportation impact area, as defined by County. Owners understand and agree that any such additional trips are neither vested nor otherwise permitted under this Agreement, and that Owners are precluded from asserting any such vesting. In addition, Owners understand and agree 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 upon an Owner's payment of an installment of the Prop Share Payment in accordance with the terms of this First Amendment, and absent any change in the LPS project increasing the number of trips as set forth in sub-Section 2.d) above, the Owners shall be

deemed to have satisfied all requirements for the mitigation of the traffic impacts from the development of the square feet or residential units as contained on the plans, for all roads affected by the development within County's jurisdiction through buildout of said development. Owners shall be entitled to fully and completely develop the square feet or residential units as contained on the plans. Provided, however, an Owner shall be required to obtain a Capacity Reservation Certificate prior to the expiration of such 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 Owners from meeting the requirements of all other applicable laws, regulations, and/or Orange County Code provisions or from making the required payment of transportation impact fees applicable to the aforesaid development, subject to credits as set forth in sub-Section 2.f) below.

- f) *Transportation Impact Fee Credits.* County and Owners agree that Owners shall be entitled to receive transportation impact fee credits on a dollar for dollar basis in an amount up to but not exceeding the Prop Share Payment in accordance with Section 163.3180, Florida Statutes. 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 elsewhere in Section 2. In no event shall Owners receive credits in excess of the Prop Share

Payment and in the event the Prop Share 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 Prop Share Payment in excess of such transportation impact fees or capacity reservation fees. The County shall establish the LPS Credit Account for the credits created pursuant to this First Amendment. Likewise, the applicable terms under Section 4 of the Original Agreement pertaining to Owners' use and assignment of credits, and also concerning mobility fees, are also applicable with respect to credits created pursuant to this First Amendment. Further, the LPS Escrow Agent shall be responsible for tracking and reporting trips and impact fee credits pursuant to (iii) and (iv) of Section 5 of the Original Agreement.

g) **No Refund.** The Prop Share Payment (including any capacity reservation fees paid with the Prop Share Payment) is non-refundable.

Section 5. Deadline Removed. The outside date of September 1, 2021, contained in sub-Section 3.b) of the Original Agreement is deleted.

Section 6. Definition of Agreement. The Parties agree that all references to the "Agreement" contained in this First Amendment and within any approvals for LPS, including but not limited to that certain BCC Decision, Case # LUP-16-01-002, shall mean and refer to the Original Agreement, as modified by this First Amendment.

Section 7. Full Force and Effect. Except as amended hereby, the Original Agreement remains unmodified and in full force and effect and the Parties hereby ratify and confirm the Original Agreement.

Section 8. Notice. New Ideas and Lopez are deleted from Section 8 of the Original Agreement and, as for notices to Am Land, a copy shall be provided to:

Gunster
200 S. Orange Ave., Suite 1400
Orlando, FL 32801
Attention: Derek Bruce, Esq.

Section 9. Covenants Running with the Land. This First Amendment shall run with the Property and shall be binding upon and shall inure to the benefit and burden of the parties and of the heirs, legal representatives, successors, and assigns of Owners and any person, firm, corporation, or other entity that may become the successor in interest to the Property.

Section 10. Recordation of First Amendment. An executed original of this First Amendment shall be recorded, at Owners' expense, in the Public Records of Orange County, Florida within thirty (30) days of the First Amendment Effective Date.

Section 11. 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.

Section 12. Time is of the Essence. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this First Amendment and in the Original Agreement.

Section 13. 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.

Section 14. Limitation of Remedies. County and Owners expressly agree that the consideration, in part, for each of them entering into this First Amendment is the willingness of

the other to limit the remedies for all actions arising out of or in connection with this First Amendment. Accordingly, the remedies available to each party shall be as stated in the Original Agreement.

Section 15. Amendments. No amendment, modification, or other change to this First Amendment or the Original Agreement shall be binding upon the parties unless in writing and executed by all the parties hereto.

Section 16. Counterparts. This First Amendment may be executed in up to three (3) counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

Section 17. Utilities. This First Amendment does not address utility requirements. Owners shall coordinate with the Orange County Utilities Director, or their designee, with respect to any utility easements necessary to accommodate appropriately-sized wastewater sewer mains or lines, potable water mains or lines, and/or reclaimed water mains or lines.

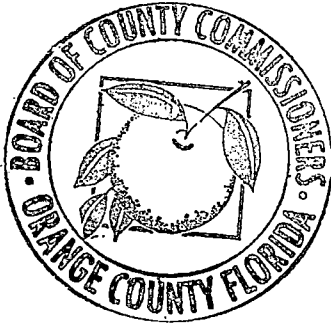
[Signatures appear on following pages]

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be duly executed by their respective duly authorized representatives on the dates set forth below.

COUNTY

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners



By: *Jerry L. Demings*
for Jerry L. Demings,
Orange County Mayor
Date: 16 January 2020

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

By: *Jessica Vaupel*
for Deputy Clerk

Print Name: Jessica Vaupel

<p>WITNESSES:</p> <p><u>Taylor Smith</u> Print Name: <u>TAYLOR SMITH</u></p> <p><u>A Jessalyn Anderson</u> Print Name: <u>A. JESSALYN ANDERSON</u></p>	<p align="center">"AM LAND"</p> <p>AMERICAN LAND INVESTMENTS OF ORANGE COUNTY, LLC, a Florida limited liability company</p> <p>By: AMERICAN LAND INVESTMENTS OF CENTRAL FLORIDA, LLC, a Florida limited liability company, its Managing Member</p> <p>By: <u>DWIGHT SAATHOFF</u> Name: Dwight Saathoff Title: Co-Managing Member Date: <u>12.27.19</u></p>
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STATE OF FLORIDA
COUNTY OF ORANGE

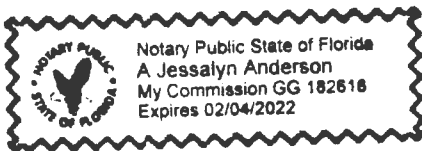
The foregoing instrument was acknowledged before me by Dwight Saathoff, Co-Managing Member of American Land Investments of Central Florida, LLC, the Managing Member of American Land Investments of Orange County, LLC, a Florida limited liability company, on behalf of the company, who is known by me to be the person described herein and who executed the foregoing, this 27TH day of DECEMBER, 2019. He 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 27TH day of DECEMBER, 2019.

A Jessalyn Anderson
Notary Public

Print Name: A. JESSALYN ANDERSON

My Commission Expires: 2/4/22



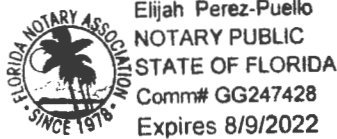
<p>WITNESSES:</p> <p><u>Bryanna A.</u> Print Name: <u>Bryanna Abreide</u></p> <p><u>Kevin P.</u> Print Name: <u>Kevin Perez</u></p>	<p style="text-align: center;">"BANKSVILLE"</p> <p>BANKSVILLE OF FLORIDA, a Florida corporation</p> <p>By: <u>[Signature]</u> Name: <u>David Martinez</u> Title: <u>President</u> Date: <u>01-02-20</u></p>
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STATE OF FLORIDA
COUNTY OF DADE

The foregoing instrument was acknowledged before me by David Martinez, the President of Banksville of Florida, Inc., a Florida corporation, on behalf of the company, who is known by me to be the person described herein and who executed the foregoing, this 2nd day of January, 2020. He is personally known to me or has produced [Redacted] as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 2nd day of January, 2020.

[Signature]
Notary Public



Print Name: Elijah Perez-Puello
My Commission Expires: 8/9/2022

<p>WITNESSES:</p> <p><u>Bryanna a</u> Print Name: <u>Bryanna Abralde</u></p> <p><u>[Signature]</u> Print Name: <u>Kevin Ponce</u></p>	<p style="text-align: center;">"NIVESA"</p> <p>NIVESA OF FLORIDA, INC., a Florida corporation</p> <p>By: <u>[Signature]</u> Name: David Martinez Title: President Date: <u>01-02-20</u></p>
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STATE OF FLORIDA
COUNTY OF DADE

The foregoing instrument was acknowledged before me by David Martinez, the President of Nivesa of Florida, Inc., a Florida corporation, on behalf of the company, who is known by me to be the person described herein and who executed the foregoing, this 2nd day of January, 2020. He is personally known to me or has produced [Redacted] as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 2nd day of January, 2020.

[Signature]
Notary Public

Print Name: Elijah Perez-Puello

My Commission Expires: 8/9/2022

