




Interoffice Memorandum

AGENDA ITEM

February 21, 2022

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

FROM: Jon V. Weiss, P.E., Chairman 
Roadway Agreement Committee

SUBJECT: March 22, 2022 – Consent Item
Proportionate Share Agreement for Red Lobster
Vineland Avenue and Winter Garden-Vineland Road

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Red Lobster Vineland Avenue and Winter Garden-Vineland Road ("Agreement") by and between Fishbones-LLB, LLC and Orange County for a proportionate share payment in the amount of \$160,021. 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 90 days of the effective date of this Agreement.

The Agreement follows the recommendation of the Roadway Agreement Committee providing for the mitigation of road impacts for 12 deficient trips on the road segment of Vineland Avenue from Winter Garden-Vineland Rd/SR 535 to Little Lake Bryan Pkwy in the amount of \$12,858 per trip and one deficient trip on the road segment of Winter Garden-Vineland Rd from I-4 to Apopka Vineland Road in the amount of \$5,725 per trip.

The Roadway Agreement Committee recommended approval on February 16, 2022. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

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

ACTION REQUESTED: Approval and execution of Proportionate Share Agreement for Red Lobster Vineland Avenue and Winter Garden-Vineland Road by and between Fishbones-LLB, LLC and Orange County for a proportionate share payment in the amount of \$160,021. District 1

JVW/NC/fb
Attachment

BCC Mtg. Date: March 22, 2022

This instrument prepared by
and after recording return to:

Jonathan Huels
Lowndes Law Firm
215 N. Eola Drive
Orlando, FL 32801

Parcel ID Numbers:
22-24-28-5109-00-014
22-24-28-5109-00-012
22-24-28-5109-00-018

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

**PROPORTIONATE SHARE AGREEMENT FOR
RED LOBSTER**

VINELAND AVENUE AND WINTER GARDEN-VINELAND ROAD

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 FISHBONES-LLB, LLC, a Florida limited liability company ("**Owner**"), with its principal place of business at 1260 Central Florida Parkway, Orlando, FL 32837 and ORANGE COUNTY, a charter county and political subdivision of the State of Florida ("**County**"), with a mailing address of P.O. Box 1393, Orlando, FL 32802-1393. Owner and County may sometimes be referred to herein individually as "Party" and collectively as "Parties."

WHEREAS, Owner holds fee simple title to certain real property, as generally depicted on Exhibit "A" and more particularly described on Exhibit "B," both of which exhibits are 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 Vineland Avenue and Winter Garden-Vineland Road; and

WHEREAS, Owner intends to develop the Property as 6,371 sq. ft, referred to and known as Red Lobster (the "**Project**"); and

WHEREAS, Owner received a revised letter from County dated February 18, 2022, stating that Owner's Capacity Encumbrance Letter ("**CEL**") application #CEL-21-06-058 for the Project was denied; and

WHEREAS, the Project will generate 12 deficient PM Peak Hour trips (the “**Excess Trips 1**”) for the deficient roadway segment on Vineland Road from Winter Garden-Vineland Road to Little Lake Bryan Pkwy (the “**Deficient Segment 1**”), and zero PM Peak Hour trips were available on Deficient Segment 1 on the date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated herein; and

WHEREAS, the Project will generate 1 deficient PM Peak Hour trip (the “**Excess Trip 2**”) for the deficient roadway segment on Winter Garden-Vineland Road from I-4 to Apopka-Vineland Road (the “**Deficient Segment 2**”), and zero PM Peak Hour trips were available on Deficient Segment 2 on the date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated herein; and

WHEREAS the Excess Trips 1 and Excess Trip 2 shall be referred to herein collectively as the Excess Trips; and

WHEREAS, the Deficient Segment 1 and Deficient Segment 2 shall be referred to herein collectively as the Deficient Segments; and

WHEREAS, the Excess Trips will cause the Deficient Segments to operate below adopted Level of Service standards; 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 Segments through the current anticipated Project buildout is One Hundred Sixty Thousand Twenty-One and 00/100 Dollars (\$160,021.00) (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 stipulate and agree as follows:

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

Section 2. PS Payment; CEL.

(a) *Calculation of PS Payment:* The amount of the PS Payment for the Deficient Segments, as described in Exhibit “C,” totals One Hundred Sixty Thousand Twenty-One and 00/100 Dollars (\$160,021.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes, as may be amended. Owner and County agree that the Excess Trips will constitute the Project’s impact on the aforementioned Deficient Segments based upon (i) Owner’s Traffic Study titled “TECHNICAL MEMORANDUM

Little Lake Bryan Center Concurrency” prepared by Kittelson & Associates, dated October 18, 2021 for FISHBONES LLB, LLC (the “**Traffic Study**”), which is incorporated herein by this reference, and (ii) upon the calculations described in Exhibit “C.” The Traffic Study was accepted by the Orange County Transportation Planning Division on November 30, 2021, and is on file and available for inspection with that division (CMS #2021058). 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 currently approved Project as proportionate share mitigation for impacts of the Project upon roadways within County’s jurisdiction, notwithstanding any subsequent variance in the actual cost of any improvement(s) to the Deficient Segments or actual traffic impacts created by the Project; provided, however, that if Owner subsequently modifies the Project’s development program and/or 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, Issuance of CEL.* No later than ninety (90) days following the Effective Date, Owner shall deliver a check to County in the amount of One Hundred Sixty Thousand Twenty-One and 00/100 Dollars (\$160,021.00) 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 Planning, Environmental, and Development Services Department. Within twenty-one (21) days following its receipt of the PS Payment, if the Property’s future land use designation and zoning are consistent with the Project’s proposed development, County shall issue a CEL sufficient to encumber traffic capacity for the Project, irrespective of any actual traffic deficiency on the Deficient Segments. Within the time frame provided in the CEL, 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 capacity 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 ninety (90) days after the Effective Date, one extension of ninety (90) days may be granted by the manager of County’s Transportation Planning Division. In the event Owner has not paid the PS Payment to County within one hundred eighty (180) days after 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 or modification to the Project that increases the unit count and/or square footage, as applicable, may result in an increase in trips on the Deficient Segments 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 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 Owner's payment of the PS Payment as required herein, and absent any change or modification to the Project, 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 any improvements to the Deficient Segments 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. Additionally, nothing herein shall be construed to exempt Owner from meeting the requirements of all other applicable laws, rules, regulations, and/or Orange County Code provisions or from making the required payment of transportation and other impact fees applicable to the Project, subject to any 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, as may be amended, and as specifically described in Exhibit "C." 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. Furthermore, for avoidance of doubt, nothing herein is intended to, nor shall constitute, prepayment of any densities and/or intensities of development or of any development program.

Section 4. No Refund. The PS Payment (including any capacity 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: FISHBONES-LLB, LLC
1260 Central Florida Parkway
Orlando, FL 32837

With copy to: Jonathan Huels
Lowndes Law Firm
215 N. Eola Drive
Orlando, FL 32801

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

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

Orange County
Planning, Environmental, and Development Services Department
Manager, Transportation Planning Division
4200 South John Young Parkway, 2nd Floor
Orlando, Florida 32839

Orange County
Planning, 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 upon 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 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 Owner shall record this Agreement in the Public Records of Orange County, Florida, at no expense to County, no later than thirty (30) 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 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 and formally executed by all of the parties.

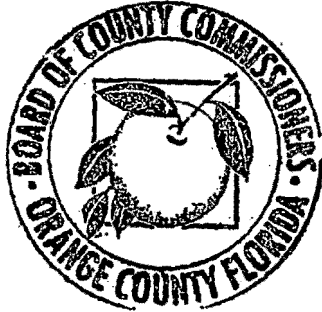
Section 13. *Termination.* In the event either (i) Owner has not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, as contemplated in Subsection 2(b), or (ii) Owner has timely paid the PS Payment to County and the Project has been constructed on the Property pursuant to a County building permit, this Agreement shall automatically terminate and thereafter be null and void for all purposes.

Section 14. *Counterparts.* This Agreement may be executed in up to two (2) counterparts, each of which shall be deemed to be an original and both of which together shall constitute one and the same instrument.

[Signatures appear on following pages]

Proportionate Share Agreement, Red Lobster
FISHBONES-LLB, LLC for Vineland Avenue and Winter Garden-Vineland Road, 2022

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: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: March 22, 2022

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

By: *Katie Smith*
Deputy Clerk

Print Name: **Katie Smith**

WITNESSES:

[Signature]

Print Name: Paul Daimon

[Signature]

Print Name: KAREN NARCISI

"OWNER"

FISHBONES-LLB, LLC, a Florida limited liability company

By: [Signature]

Print Name: Ronald E. Woodsby

Title: PRES

Date: 2/04/2022

STATE OF: Florida
COUNTY OF: Orange

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 4th day of February, 2022, by Ronald E. Woodsby as President of FISHBONES-LLB, LLC, a Florida limited liability company, on behalf of such limited liability company, who is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 4th day of February, 2022

(Notary Stamp)

[Signature]
Signature of Notary Public
Print Name: Lourdes Rosario
Notary Public, State of: Florida
Commission Expires: May 19, 2023

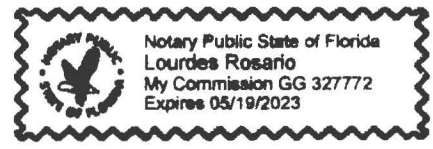


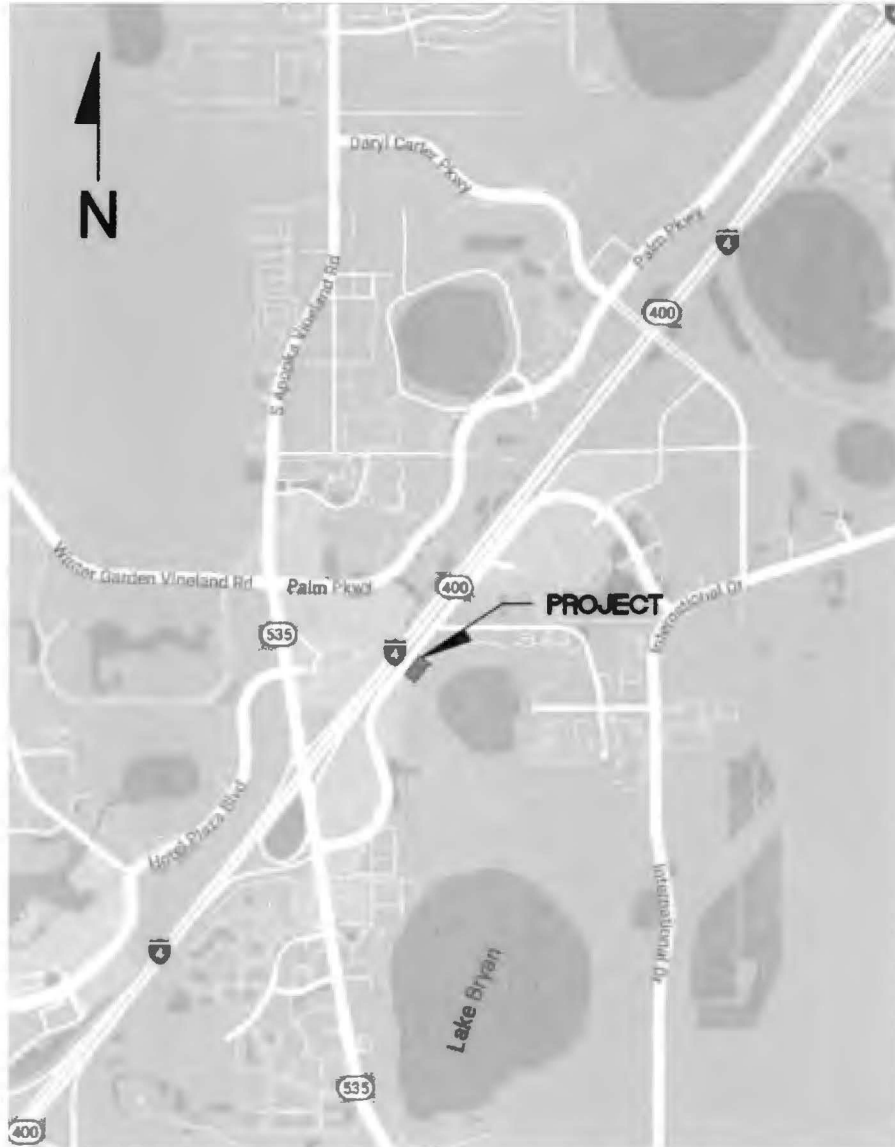
Exhibit A

RED LOBSTER

Project Location Map

[SEE ATTACHED 1 PAGE]

22-24-28-5109-00-014, 22-24-28-5109-00-018, 22-24-28-5109-00-012
8400 VINELAND AVENUE
ORLANDO, FLORIDA 32821



LOCATION MAP

NTS

SECTION 22, TOWNSHIP 24, RANGE 28

Exhibit "B"

"RED LOBSTER"

Parcel IDs: 22-24-28-5109-00-014, 22-24-28-5109-00-012 and

22-24-28-5109-00-018

Legal Description:

A PARCEL OF LAND LOCATED IN SECTION 22, TOWNSHIP 24 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA, BEING A PORTION OF LOT 1 AND TRACT 3, LITTLE LAKE BRYAN PARCEL 4, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 54, PAGES 144-149, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHERLY-MOST CORNER OF LOT 1 OF SAID LITTLE LAKE BRYAN PARCEL 4, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF VINELAND AVENUE (102-FOOT RIGHT OF WAY PER ROAD MAP BOOK 1, PAGE 8 AND PLAT BOOK 37, PAGES 68-69, BOTH OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA); THENCE ALONG SAID EAST RIGHT-OF-WAY LINE, S38°40'21"W, A DISTANCE OF 427.64 FEET TO THE POINT OF BEGINNING;

THENCE LEAVING SAID EAST RIGHT-OF-WAY LINE, S51°19'39"E, A DISTANCE OF 396.87 FEET TO THE WEST LINE OF TRACT 3 OF SAID LITTLE LAKE BRYAN PARCEL 4; THENCE ALONG SAID WEST LINE THE FOLLOWING THREE (3) COURSES: 1) N73°30'57"W, A DISTANCE OF 50.71 FEET; 2) S51°59'39"W, A DISTANCE OF 56.33 FEET; 3) S56°23'25"W, A DISTANCE OF 11.29 FEET; THENCE LEAVING SAID WEST LINE, S38°40'21"W, A DISTANCE OF 336.55 FEET TO THE WEST LINE OF SAID TRACT 3; THENCE ALONG SAID WEST LINE THE FOLLOWING TWO (2) COURSES: 1) S23°10'44"W, A DISTANCE OF 10.28 FEET; 2) N86°58'41"W, A DISTANCE OF 3.38 FEET; THENCE LEAVING SAID WEST LINE, S38°40'21"W, A DISTANCE OF 181.30 FEET; THENCE N51°19'45"W, A DISTANCE OF 333.50 FEET TO THE EAST RIGHT-OF-WAY LINE OF SAID VINELAND AVENUE; THENCE WITH SAID EAST RIGHT-OF-WAY LINE, N38°40'21"E, A DISTANCE OF 614.45 FEET TO THE POINT OF BEGINNING.

Exhibit “C”

“RED LOBSTER”

DEFICIENT SEGMENT [#1]

[SEE ATTACHED 1 PAGE]

Log of Project Contributions
Vineland Ave (Winter Garden-Vineland Rd/SR 535 to Little Lake Bryan Pkwy)

Roadway Improvement Project Information

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost	Cost / Trip
Vineland Ave	Winter Garden-Vineland Rd/SR 535	Little Lake Bryan Pkwy	0.87	E	800	Widen from 2 to 4 lanes	1700	900	\$11,571,883	\$12,858

County Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Backlogged Trips	Improved Generalized Capacity	Capacity Increase	County (Backlog) Responsibility
Vineland Ave	Winter Garden-Vineland Rd/SR 535	Little Lake Bryan Pkwy	0.87	E	800	142	1700	900	\$1,825,786

Developer Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Capacity Increase	Backlogged Trips	Capacity Increase for New Development	Remaining Project Cost	Cost / Trip
Vineland Ave	Winter Garden-Vineland Rd/SR 535	Little Lake Bryan Pkwy	0.87	E	800	1700	900	142	758	\$9,746,097	\$12,858

Updated: 12/29/21

Log of Project Contributions

	Date	Project	Project Trips	Prop Share	
Existing	Apr-14	Existing plus Committed	101	\$1,157,662	
	Apr-14	Lake Buena Vista Village Phase 2 - Candlewood Suites (aka Delores PD)	3	\$34,386	
	Sep-18	Downey SR 535	8	\$94,136	
	Apr-19	Addison Lake Bryan	2	\$23,534	
	Sep-19	Elan Cypress Pointe	5	\$58,835	
	Apr-21	Lake Buena Vista Hotel	1	\$12,484	
	May-21	Daryl Carter Mukti Family	21	\$262,164	
	Dec-21	Chick-Fill A	1	\$12,858	
			Backlogged Totals:	142	\$1,643,201
Proposed	Dec-21	Red Lobster	12	\$154,296	
				\$0	
				\$0	
				\$0	
				\$0	
		Totals:	164	\$1,797,497	

Exhibit “C”

“RED LOBSTER”

DEFICIENT SEGMENT [#2]

[SEE ATTACHED 1 PAGE]

Log of Project Contributions
Winter Garden-Vineland Rd from (I4 to Apopka Vineland Rd)

Roadway Improvement Project Information

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost	Cost / Trip
Winter Garden-Vineland Rd	I4	Apopka Vineland Rd	0.51	E	3020	Adding 2 lanes	4040	1020	\$5,838,799	\$5,725

County Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Backlogged Trips	Improved Generalized Capacity	Capacity Increase	County (Backlog) Responsibility
Winter Garden-Vineland Rd	I4	Apopka Vineland Rd	0.51	E	3020	337	4040	1020	\$1,929,093

Developer Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Capacity Increase	Backlogged Trips	Capacity Increase for New Development	Remaining Project Cost	Cost / Trip
Winter Garden-Vineland Rd	I4	Apopka Vineland Rd	0.51	E	3020	4040	1020	337	683	\$3,909,706	\$5,725

Updated: 12/29/21

Log of Project Contributions

	Date	Project	Project Trips	Prop Share
Existing	Apr-21	Existing plus Committed	326	\$1,866,350
	Apr-21	Lake Buena Vista Hotel	9	\$51,525
	Jun-21	Buena Vista Commons PD Building 4	1	\$5,725
	Dec-21	Chick-Fil-A	1	\$5,725
		Backlogged Totals:	337	\$1,929,325
Proposed	Dec-21	Red Lobster	1	\$5,725
				\$0
				\$0
				\$0
				\$0
		Totals:	338	\$1,935,050