



Interoffice Memorandum

AGENDA ITEM

October 12, 2022

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

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

SUBJECT: November 15, 2022 – Consent Item
Proportionate Share Agreement for Tapestry Nona
Boggy Creek Road

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Tapestry Nona Boggy Creek Road ("Agreement") by and between Arlington Nona, LLC and Orange County for a proportionate share payment in the amount of \$616,160. 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 32 deficient trips on the road segments of Boggy Creek Road from Central Florida Greenway to Osceola County Line in the amount of \$19,255 per trip.

The Roadway Agreement Committee recommended approval on October 12, 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 Tapestry Nona Boggy Creek Road by and between Arlington Nona, LLC and Orange County for a proportionate share payment in the amount of \$616,160. District 4

JVW/NC/fb
Attachment

APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

BCC Mtg. Date: November 15, 2022

This instrument prepared by:

Mohammed Abdallah
Traffic & Mobility Consultants LLC
3101 Maguire Boulevard, Suite 265
Orlando, Florida 32803

After recording return to:

Arlington Nona, LLC
c/o Arlington Properties, Inc.
2 N 20th Street, Suite 700
Birmingham, Alabama 35203

Parcel ID Number:
33-24-30-8540-03-000

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

**PROPORTIONATE SHARE AGREEMENT FOR
TAPESTRY NONA**

BOGGY CREEK 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 ARLINGTON NONA, LLC, an Alabama limited liability company (“**Owner**”), with a principal place of business c/o Arlington Properties, Inc., 2 North 20th Street, Suite 700, Birmingham, Alabama 35203, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), with its principal address at P.O. Box 1393, Orlando, Florida 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 #4, and the proceeds of the PS Payment, as defined herein, will be allocated to Boggy Creek Road; and

WHEREAS, Owner intends to develop the Property as three hundred fifty (350) apartment units, referred to and known as “Tapestry Nona” (the “**Project**”); and

WHEREAS, Owner received a letter from County dated August 31, 2022, stating that Owner's Capacity Encumbrance Letter ("CEL") application #CEL-22-06-050 for the Project was denied; and

WHEREAS, the Project will generate thirty-two (32) deficient PM Peak Hour trips (the "Excess Trips") for the deficient roadway segment on Boggy Creek Road from Central Florida Greenway to Osceola County Line (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 "C"; and

WHEREAS, the Excess Trips will cause the Deficient Segment to operate below adopted Level of Service standards; therefore, pursuant to Section 163.3180(5)(h), Florida Statutes, as amended, Owner has offered to provide 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 six hundred sixteen thousand one hundred sixty and 00/100 Dollars (\$616,160.00) (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 Segment, as described in Exhibit "C", totals six hundred sixteen thousand one hundred sixty and 00/100 Dollars (\$616,160.00). 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 Segment based upon (i) Owner's Traffic Study titled "Tapestry Nona Apartments" prepared by Traffic & Mobility Consultants LLC, dated July 2022 for Arlington Properties, Inc. (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 August 25, 2022, and is on file and available for inspection with that division (CMS #2022050). 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 Segment or actual traffic /travel impacts created by the Project; provided, however, that if Owner modifies the Project's development program and/or 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 Subsection 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.* Not later than ninety (90) days following the Effective Date, Owner shall deliver a check to County in the amount of six hundred sixteen thousand one hundred sixty and 00/100 Dollars (\$616,160.00) 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 Segment. 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) additional 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 and/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 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 upon Owner's payment of the PS Payment as required herein, and absent any change or modification to the Project as set forth in Subsection 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 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. 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 applicable only toward development of the Project on the Property 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. 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 and cannot be transferred or applied to another project or property.

Section 5. *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: Arlington Nona, LLC
c/o Arlington Properties, Inc.
2 North 20th Street, Suite 700
Birmingham, Alabama 35203

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 a successor in interest to the Property.

Section 7. Recordation of Agreement. Owner shall record an original of this Agreement in the Public Records of Orange County, Florida, at no expense to County, not 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. 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, in accordance with Section 5, 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.

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.

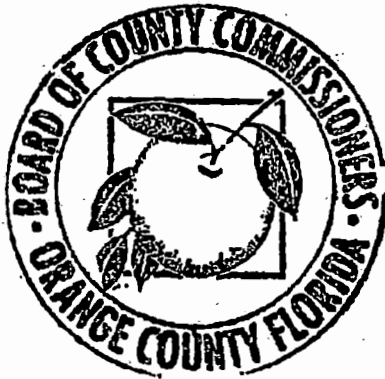
Section 13. Termination. In the event either (i) Owner has not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, as contemplated in Subsection 2(b), or (ii) Owner has timely paid the PS Payment to County and the Project has been constructed on the Property and completed, 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, Tapestry Nona
Arlington Nona, LLC for Boggy Creek 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:

By: *Jerry L. Demings*

for Jerry L. Demings
Orange County Mayor

Date: November 15, 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: WILLIAM MORRIS

[Signature]

Print Name: ANDREW SINK

"OWNER"

ARLINGTON NONA, LLC, an Alabama limited liability company

By ARLINGTON PROPERTIES, INC., an Alabama corporation, its manager

By: [Signature]

Print Name: Mark Stuermann

Title: Vice President

STATE OF: ALABAMA
COUNTY OF: JEFFERSON

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 13TH day of SEPTEMBER 2022, by Mark Stuermann, as Vice President of ARLINGTON PROPERTIES, INC., an Alabama corporation, manager of ARLINGTON NONA, LLC, an Alabama 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 13TH day of SEPTEMBER, 2022.

(Notary Stamp)



[Signature]

Signature of Notary Public

Print Name: Astarsha D Hillin

Notary Public, State of: Alabama

Commission Expires: 05/10/2024

(mm/dd/yyyy)

Exhibit "A"
"TAPESTRY NONA"
Project Location Map

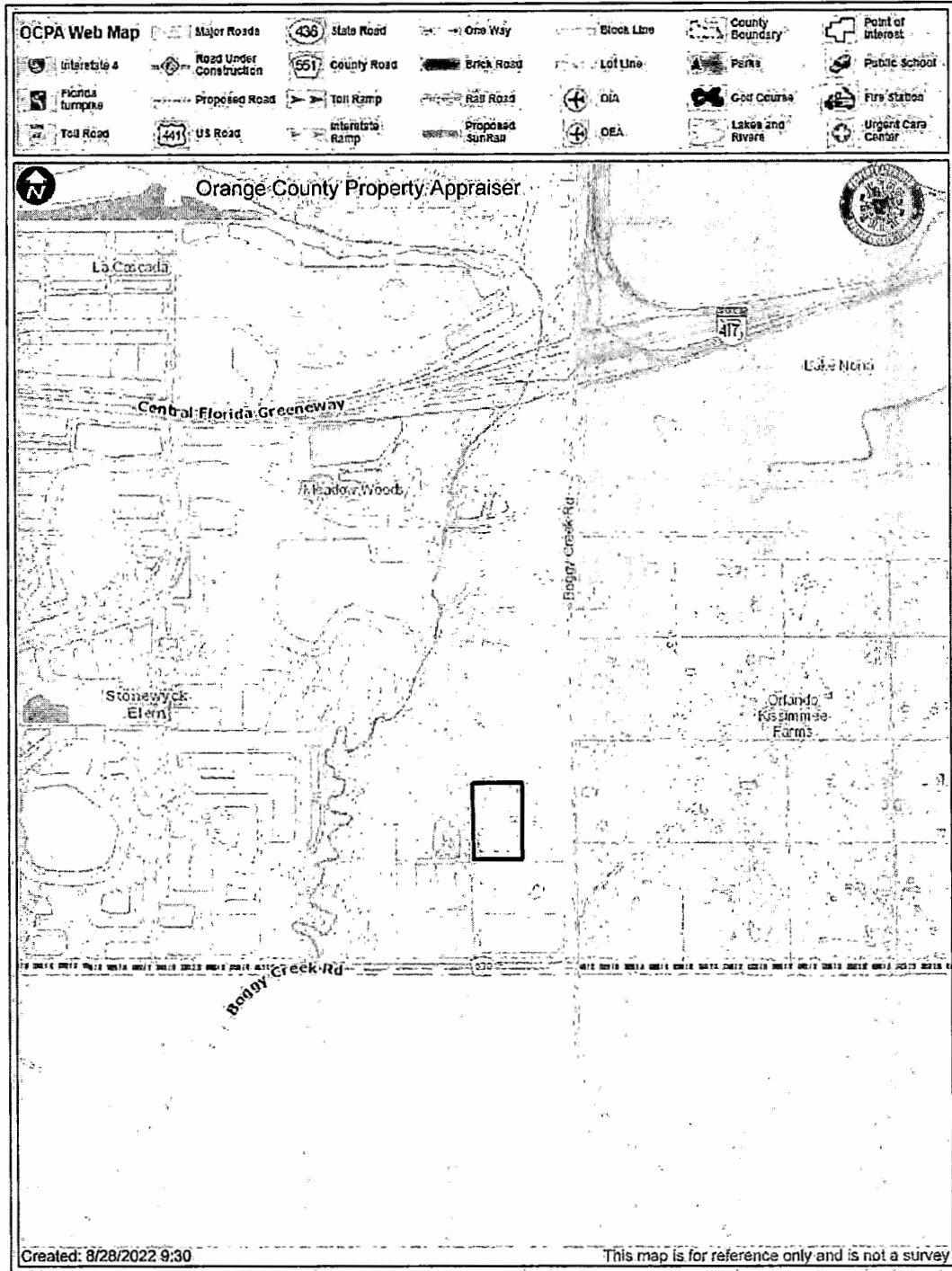


Exhibit "B"

"TAPESTRY NONA"

Parcel ID: 33-24-30-8540-03-000

Legal Description:

PARCEL I:

Parcel 3, TYSON RANCH, according to the Plat thereof, recorded in Plat Book 106, Page 94, of the Public Records of Orange County, Florida.

PARCEL II:

TOGETHER WITH the non-exclusive, perpetual easements for the benefit of Parcel I described above, as contained in that certain Declaration of Covenants, Conditions, Restrictions and Easements for Tyson Ranch recorded September 3, 2021, in Official Records Instrument 20210542275, of the Public Records of Orange County, Florida.

Exhibit "C"

"TAPESTRY NONA"

DEFICIENT SEGMENT

Log of Project Contributions

Boggy Creek Road (Central Florida Greenway to Osceola County Line)

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
Boggy Creek Rd	Central Florida Greenway - Osceola County Line	1.46	E	880	Widen from 2 to 4 lanes	2000	1120	\$21,564,539	\$19,255

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
Boggy Creek Rd	Central Florida Greenway - Osceola County Line	1.46	E	880	194	2000	1120	\$3,735,286

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
Boggy Creek Rd	Central Florida Greenway - Osceola County Line	1.46	E	880	2000	1120	194	926	\$17,829,253	\$19,255

Updated: 8/26/22

Log of Project Contributions				
Date	Project	Project Trips	Prop. Share	
Existing	Nov-20	Existing plus Committed	139	\$2,327,894
	Apr-21	Tyson Ranch Townhomes	52	\$963,196
	Jun-22	Tyson Ranch Self Storage	3	\$57,765
		Backlogged Totals:	194	\$3,348,655
Proposed	Aug-22	Tapestry Nona	32	\$616,160
				\$0
				\$0
				\$0
		Totals:	226	\$3,964,815