



Interoffice Memorandum

AGENDA ITEM

March 20, 2019

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

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

A handwritten signature in black ink, appearing to read "James E. Harrison", written over the printed name in the "FROM" field.

SUBJECT: April 9, 2019 – Consent Item
Proportionate Share Agreement For Woodspring Suites
Colonial Drive and Woodbury Road

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Woodspring Suites ("Agreement") by and between DI Development, LLC, also known in the state of Florida as DI Development of Florida, LLC, and Orange County for a proportionate share payment in the amount of \$193,204. 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 19 deficient trips on the road segment of Colonial Drive from Woodbury Road to Lake Pickett Road in the amount of \$7,976 per trip and four deficient trips on the road segment of Woodbury Road from Waterford Lakes Parkway to Colonial Drive in the amount of \$10,415 per trip.

The Roadway Agreement Committee approved the Proportionate Share Agreement on March 20, 2019. 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 Woodspring Suites Colonial Drive and Woodbury Road by and between DI Development, LLC and Orange County for a proportionate share payment in the amount of \$193,204. District 4

JEH/HEGB:am
Attachment

BCC Mtg. Date: April 9, 2019

This instrument prepared by
and after recording return to:

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

Parcel ID Number:

23-22-31-0000-00-046

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

**PROPORTIONATE SHARE AGREEMENT FOR
WOODSPRING SUITES**

COLONIAL DRIVE AND WOODBURY 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 DI DEVELOPMENT, LLC, a Georgia Limited Liability Company also known in the state of Florida as DI Development of Florida, LLC (“**Owner**”), whose principal place of business is 900 Old Dawson Village Road East, Suite 120, Dawsonville, Georgia 30534, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), whose address is P.O. Box 1393, Orlando, FL 32802-1393.

WHEREAS, Owner is the owner of 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 Colonial Drive and Woodbury Road; and

WHEREAS, Owner intends to develop the Property as a 51,048 square foot hotel with 123 rooms, referred to and known as Woodspring Suites (the “**Project**”); and

WHEREAS, Owner received a letter from County dated October 26, 2018, stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #CEL-18-07-063 for the Project was denied; and

WHEREAS, the Project will generate Nineteen (19) deficient PM Peak Hour trips (the “**Excess Trips 1**”) for the deficient roadway segment on Colonial Drive from Woodbury Road to Lake Pickett Road (the “**Deficient Segment 1**”), and Zero (0) 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 Four (4) deficient PM Peak Hour trips (the “**Excess Trips 2**”) for the deficient roadway segment on Woodbury Road from Waterford Lakes Parkway to Colonial Drive (the “**Deficient Segment 2**”), and Zero (0) 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 Trips 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 Ninety-Three Thousand Two Hundred Four and 00/100 Dollars (\$193,204.00) (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. 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 Ninety-Three Thousand Two Hundred Four and 00/100 Dollars (\$193,204.00). 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 Segments based upon (i) Owner’s Traffic Study titled “WOODSPRING SUITES” prepared by TRAFFIC & MOBILITY CONSULTANTS LLC, dated December 17, 2018 for Tri3 Civil Engineering

Design Studio, 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 December 17, 2018, and is on file and available for inspection with that division (CMS #2018063). 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 Orange County’s jurisdiction, notwithstanding any subsequent variance in the actual cost of improvement to the Deficient Segments 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, Issuance of CEL. Within ninety (90) days following the Effective Date, Owner shall deliver a check to County in the amount of One Hundred Ninety-Three Thousand Two Hundred Four and 00/100 Dollars (\$193,204.00) 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, 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 capacity reservation payment (and any subsequent reservation payments, 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 of the Effective Date, one extension of 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 to the Project which 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 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 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 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. Nothing herein shall be construed to exempt Owner 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 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 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.

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 persons 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: Timothy L. Miller
DI Development, LLC also known in the state of Florida as DI
Development of Florida, LLC
900 Old Dawson Village Road East, Suite 120
Dawsonville, Georgia 30534

With copy to: Mohammed N. Abdallah, PE
Traffic & Mobility Consultants LLC
3101 Maguire Boulevard, Suite 265
Orlando, Florida 32803

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
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 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 actions 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 changes to this Agreement shall be binding upon the parties unless in writing and formally 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: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: 9 April 19

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

By: *Katie Smith*
Deputy Clerk

Katie Smith

Print Name: _____



WITNESSES:

[Signature]
Print Name: Julie Bohl

[Signature]
Print Name: Scott D. Blair

"OWNER"

DI Development, LLC, a Georgia Limited Liability Company also known in the state of Florida as DI Development of Florida, LLC

By: [Signature]

Print Name: Timothy L. Miller

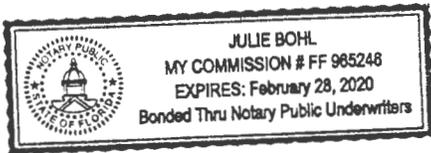
Title: Member

Date: 3/4/2019

STATE OF Florida
COUNTY OF Lee

The foregoing instrument was acknowledged before me by Timothy L. Miller, as Member of DI Development, LLC, a Georgia Limited Liability Company also known in the state of Florida as DI Development of Florida, LLC, who is known by me to be the person described herein and who executed the foregoing, this 6th day of March, 2019. He/she is personally known to me or has produced Drivers License (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 6th day of March, 2019.



[Signature]
NOTARY PUBLIC

Print Name: Julie Bohl

My Commission Expires: Feb. 28, 2020

**JOINDER AND CONSENT TO
PROPORTIONATE SHARE AGREEMENT FOR WOODSPRING SUITES**

COLONIAL DRIVE AND WOODBURY ROAD

The undersigned hereby certifies that it is the holder of the following instruments (the “**Instruments**”):

Mortgage, by DI Development, LLC, a Georgia Limited Liability Company also known in the state of Florida as DI Development of Florida, LLC to First Farmers Bank & Trust, an Indiana bank, dated September 10, 2015, and recorded September 22, 2015, Instrument No. 20150494815, Book 10986, Page 3901, Public Records of Orange County, Florida, in the original principal amount of \$420,000.00 and the terms and conditions thereof,

upon the property presently owned by DI Development, LLC, a Georgia Limited Liability Company also known in the state of Florida as DI Development of Florida, LLC, a description of which is attached hereto as Exhibit “B” (herein after the “**Property**”).

The undersigned hereby joins in, and consents to, the recording of the Proportionate Share Agreement for Woodspring Suites for Colonial Drive and Woodbury Road (the “**Agreement**”), and agrees that its above-referenced Instruments, as they may be modified, amended, and assigned from time to time, shall be subordinated to the Agreement, as said Agreement may be modified, amended, and assigned from time to time.

[Signatures appear on following pages]

IN WITNESS WHEREOF, the undersigned has executed this Joinder and Consent in manner and form sufficient to bind it.

Signed, sealed, and delivered
in the presence of:

Alice M. Rexing
Name: Alice M. Rexing
Lori A. Verbruyck
Name: Lori A. Verbruyck

First Farmers Bank & Trust, an Indiana bank
By: Cary Mawbey
Print Name: Cary Mawbey
Print Title: Senior Vice President
Date: 3-8-19

STATE OF INDIANA
COUNTY OF Howard

The foregoing instrument was acknowledged before me this 8 day of March, 2019, by Cary Mawbey, as Senior Vice President of First Farmers Bank & Trust, an Indiana bank, on behalf of First Farmers Bank & Trust. He is personally known to me or has produced personally known as identification.

(NOTARY SEAL)

JUANITA JACKSON HILL
Notary Public, State of Indiana
Cass County
Commission # 711436
My Commission Expires
March 13, 2026



Juanita Jackson Hill
Notary Public; State of Indiana
Juanita Jackson Hill
Typed or Printed Name of Notary

Exhibit "A"
"WOODSPRING SUITES"
Project Location Map



Exhibit "B"

"WOODSPRING SUITES"

Parcel ID: 23-22-31-0000-00-046

Legal Description:

THE EAST 1/2 OF SOUTHEAST 1/4 OF NORTHWEST 1/4 (LESS EAST 100 FEET & LESS NORTH 475 FEET OF THE WEST 100 FEET OF EAST 200 FEET & LESS STATE ROAD RIGHT OF WAY ON NORTH AND EXPRESSWAY RIGHT OF WAY ON NORTH, SECTION 23, TOWNSHIP 22 SOUTH, RANGE 31 EAST, ORANGE COUNTY, FLORIDA.

Exhibit "C"

"WOODSPRING SUITES"

DEFICIENT SEGMENT 1

Log of Project Contributions

Colonial Drive (Woodbury Road to Lake Pickett Road)

Log of Project Contributions
 Colonial Dr (Woodbury Rd to Lake Pickett 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
Colonial Dr	Woodbury Rd - Lake Pickett Rd	0.76	E	3020	Widened from 6 to 8 lanes	4040	1020
							Total Project Cost: \$7,976

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
Colonial Dr	Woodbury Rd - Lake Pickett Rd	0.76	E	3020	536	4040	1020	\$4,275,10*

Planned Improvement Roadway(s)	Limits of Improvement (From - To)	Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Backlogged Trips	Capacity Increase	Remaining Project Cost	Cost / Trip
Colonial Dr	Woodbury Rd - Lake Pickett Rd	0.76	E	3020	4040	536	1020	\$3,660,353	\$7,976

Updated: 1/23/19

Log of Project Contributions			
Date	Project	Project Trips	Prop Share
Existing	Existing plus Committed	536	\$1,917,624
Jan-17	Lake Pickett Act	86	\$4,38,944
Mar-17	Cube Smart Storage Facility	7	\$35,728
Jun-17	CTI Building #300	1	\$3,785
Jan-18	Woodbury Plaza	5	\$38,455
Jan-18	Park Square Plaza	43	\$313,513
Jun-18	Brennville Creek Properties Office	1	\$7,996
Aug-18	Lake Pickett ER	9	\$77,984
Aug-18	Lake Pickett Senior Parcel 3	26	\$223,888
	Backlogged Totals:	536	\$2,966,297
Proposed	Woodspring Suites	19	\$151,544
			\$0
			\$0
			\$0
	Totals:	565	\$3,106,841

DEFICIENT SEGMENT 2

Log of Project Contributions
Woodbury Road (Waterford Lakes Parkway to Colonial Drive)

Log of Project Contributions
Woodbury Rd (Waterford Lakes Pkwy to Colonial Dr)

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
Woodbury Rd	Waterford Lakes Pkwy Colonial Dr	0.77	E	800	Widened from: 2 to 4 lanes	1700	900		\$10,415

County Share of Improvement				
Planned Improvement Roadway(s)	Limits of Improvement (From - To)	Segment Length	Adopted LOS	County (Backlog) Responsibility
Woodbury Rd	Waterford Lakes Pkwy Colonial Dr	0.77	E	\$1,864,122

Planned Improvement Roadway(s)	Limits of Improvement (From - To)	Segment Length	Adopted LOS	Existing Generalized Capacity	Project Trips	Prop Share	Capacity Increase	Backlogged Trips	Capacity Increase for New Development	Remaining Project Cost	Cost / Trip
Woodbury Rd	Waterford Lakes Pkwy Colonial Dr	0.77	E	800			900	179	721	\$7,546,538	\$10,415

Updated: 12/07/19

Log of Project Contributions							
Date	Project	Project Trips	Prop Share	Existing Generalized Capacity	Adopted LOS	Segment Length	Limits of Improvement (From - To)
Existing	Sep-13 Existing plus Committed	121	\$814,451				
	Sep-13 Town Park Outparcel	2	\$13,462				
	Nov-13 Sailormen's Popeye's	4	\$26,924				
	Feb-14 Town Park Multi-Family	3	\$20,193				
	Oct-18 Waterford Oaks Phase 1	3	\$20,193				
	Oct-18 Waterford Oaks Phase II	26	\$175,015				
	Oct-15 7-Eleven Development	2	\$13,464				
	Apr-17 Storage Facility	1	\$8,816				
	Apr-17 Lake Pickett MFU	11	\$96,976				
	Feb-18 Park Square Plaza aka Cricket Club	3	\$26,448				
	Aug-18 Lake Pickett ER	1	\$10,145				
	Aug-18 Lake Pickett Center Parcel 1	2	\$20,290				
	Backlogged Totals:	179	\$1,246,377				
Proposed	Jan-19 Woodspring Suites	4	\$41,660				
			\$0				
			\$0				
			\$0				
			\$0				
	Totals:	463	\$1,288,037				