



Interoffice Memorandum

April 19, 2023

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

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

SUBJECT: May 23, 2023 – Consent Item
Proportionate Share Agreement for Stoneybrook Spirits Hamlin
Avalon Road/CR 545

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Stoneybrook Spirits Hamlin Avalon Road/CR 545 ("Agreement") by and between Hamlin Retail Partners East Porter Road, LLC and Orange County for a proportionate share payment in the amount of \$156,911. 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 four deficient trips on the road segment of Avalon Road/CR 545 from Porter Road to New Independence Parkway in the amount of \$13,841 per trip and nine deficient trips on the road segment of Avalon Road/CR 545 from Schofield Road to Porter Road in the amount of \$11,283 per trip.

This project is located in the Town Center Village of Horizon West, and is subject to the Town Center East Road Network Agreement approved by the Board on December 11, 2011, as amended. Pursuant to the 2011 agreement, trips in excess of the authorized amount may be processed consistent with the County's concurrency ordinance. The project impacts a deficient segment of Avalon Road/CR 545 and requires a proportionate share payment as mitigation. The particular segment of Avalon Road is a partnership project addressed under the Town Center West (Silverleaf) Road Network Agreement approved by the Board on September 1, 2020 and amended on July 13, 2021. While a typical proportionate share agreement would have the payment come to the County, this Agreement provides that the mitigation payment be delivered to the

escrow agent managing the partnership dollars for that project and will be subject to the Amended and Restated Town Center West (Silverleaf) Escrow Agreement for receipt of additional funds as authorized by the County for the completion of Avalon Road/CR 545 improvements. This Agreement also directs any additional impact fee payments for the project to the escrow agent to accelerate the Avalon Road improvements.

The Roadway Agreement Committee recommended approval on April 19, 2023. 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 Stoneybrook Spirits Hamlin Avalon Road/CR 545 by and between Hamlin Retail Partners East Porter Road, LLC and Orange County directing both the proportionate share payment in the amount of \$156,911 and future transportation impact fee payments that may be associated with the project to be utilized towards the completion of Avalon Road/CR 545 improvements pursuant to the Amended and Restated Escrow Agreement for Town Center West (Silverleaf). District 1

JVW/NC/js
Attachment

BCC Mtg. Date: May 23, 2023

This instrument prepared by
and after recording return to:

James G. Willard, Esq.
Shutts & Bowen LLP
300 S. Orange Avenue, Suite 1600
Orlando, Florida 32801

Parcel ID Number: 29-23-27-2716-01-001

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

**PROPORTIONATE SHARE AGREEMENT FOR
STONEBROOK SPIRITS HAMLIN**

AVALON ROAD/CR 545

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 HAMLIN RETAIL PARTNERS EAST PORTER ROAD, LLC, a Florida limited liability company (“**Owner**”), with a principal place of business at 14422 Shoreside Way, Suite 130, Winter Garden, Florida 34787 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 1, within the Town Center of Horizon West, and the proceeds of the PS Payment, as defined herein, will be allocated to Avalon Road/CR 545; and

WHEREAS, Owner intends to develop the Property as a 9,500 Sq. Ft. Retail Plaza and 4,200 Sq. Ft. High-Turnover Restaurant, referred to and known as Stoneybrook Spirits Hamlin (the “**Project**”); and

WHEREAS, Owner received a letter from County dated February 24, 2023 stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application # CEL-22-11-107 for the Project was denied; and

WHEREAS, the Project will generate 4 deficient PM Peak Hour trips (the “**Excess Trips 1**”) for the deficient roadway segment on Avalon Road/CR 545 from Porter Road to New Independence Parkway (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 9 deficient PM Peak Hour trips (the “**Excess Trips 2**”) for the deficient roadway segment on Avalon Road/CR 545 from Schofield Road to Porter Road (the “**Deficient Segment 2**”), and zero (0) PM Peak Hour trips were available on the 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, 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 Segments through the current anticipated Project buildout is One Hundred Fifty-Six Thousand Nine Hundred Eleven and 00/100 Dollars (\$156,911.00) 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 Fifty-Six Thousand Nine Hundred

Eleven and 00/100 Dollars (\$156,911.00). 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 will constitute the Project's impact on the aforementioned Deficient Segments based upon (i) Owner's Traffic Study titled "Stoneybrook Spirits Hamlin" prepared by VHB, dated December 2022 for Owner (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 February 13, 2023, and is on file and available for inspection with that division (CMS #2022107). 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 the PS Payment. The check shall be made payable to "Shutts & Bowen LLP Escrow Account" and shall be delivered to the Fiscal and Operational Support Division of the Orange County Planning, Environmental, and Developmental Services Department for acknowledgment of receipt and transmittal to Shutts & Bowen LLP for deposit into the Town Center West (Silverleaf) Road Network Agreement escrow account maintained by Shutts & Bowen LLP, as "**Escrow Agent**" pursuant to the Escrow Agreement for the Town Center West (Silverleaf) Road Network Agreement (the "**Escrow Agreement**") approved by the Orange County Board of County Commissioners on September 1, 2020 and amended on July 13, 2021. The County hereby determines that because the improvement of Avalon Road/CR 545 is an objective of the Town Center West (Silverleaf) Road Network Agreement approved by the County Board of County Commissioners on September 1, 2020 recorded at Document No. 20200467436, as amended by that certain First Amendment recorded July 20, 2021 at Document No. 20210435632, Public Records of Orange County, Florida (the "**Road Agreement**"), it is in the best interest of the County to accelerate improvement of Avalon Road/CR 545 by directing the PS Payment to Escrow Agent to be held and disbursed as part of the "**Escrowed Funds**" in accordance with, and as defined in, the Escrow Agreement and the Road Agreement. 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 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 of 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 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 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 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 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. 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 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: Hamlin Retail Partners East, LLC
Attn: Scott T. Boyd
14422 Shoreside Way, Suite 130
Winter Garden, Florida 34787

With copy to: Shutts & Bowen LLP
Attn: James G. Willard, Esquire
300 S. Orange Avenue, Suite 1600
Orlando, Florida 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 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.

Section 15. Allocation of Project Transportation Impact Fees. To further enable and accelerate improvement of the Deficient Segments, Owner shall pay any transportation impact fee due at the time of Project development (unless such obligation is satisfied by the use of transportation impact fee credits) by check in the amount of such required transportation impact fee (less appropriate credit for the PS Payment) payable to "Shutts & Bowen LLP Escrow Account" and delivered to the Orange County Transportation Planning Division for acknowledgement of receipt and transmittal to Escrow Agent for deposit into the Town Center West (Silverleaf) Road Network Agreement Escrow Account maintained by Escrow Agent pursuant to the Escrow Agreement.

Section 16. Disposition of Excess Escrowed Funds. Notwithstanding anything herein or in the Escrow Agreement to the contrary, in the event there are Escrowed Funds still held by Escrow Agent pursuant to the Escrow Agreement after completion of all authorized Improvements,

Proportionate Share Agreement, Stoneybrook Spirits Hamlin
Hamlin Retail Partners East Porter Road, LLC for Avalon Road/CR 545, 2023

as defined in and pursuant to the Road Agreement, such excess funds shall be immediately delivered to County by Escrow Agent.

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.

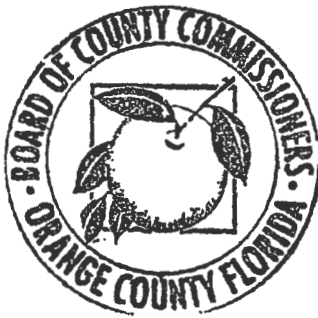
“COUNTY”

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

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

Date: May 23, 2023



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

By: *Jennifer Lara-Klimetz*
Deputy Clerk

Print Name: Jennifer Lara-Klimetz

WITNESSES:

[Signature]

Print Name: GAVIN STEPHENSON

[Signature]

Print Name: Carson Kupp

“OWNER”

HAMLIN RETAIL PARTNERS EAST PORTER ROAD, LLC, a Florida limited liability company

By: HRPE HOLDING COMPANY, LLC, a Florida limited liability company, Its Manager

By: BK HAMLIN RETAIL PARTNERS EAST, LLC, a Florida limited liability company, Its Manager

By: [Signature]
Scott T. Boyd, Manager

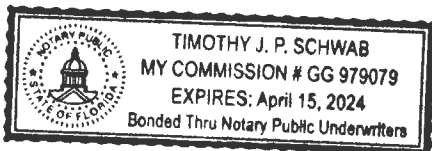
Date: 3/9/23

**STATE OF FLORIDA
COUNTY OF ORANGE**

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 9th day of March, 2023, by Scott T. Boyd, as Manager of BK HAMLIN RETAIL PARTNERS, LLC, a Florida limited liability company, which is Manager of HRPE HOLDING COMPANY, LLC, a Florida limited liability company; which is Member of HAMLIN RETAIL PARTNERS EAST PORTER ROAD, LLC, a Florida limited liability company, on behalf of such company, who is personally known to me or has produced a valid Florida Driver’s License as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 9th day of March, 2023.

(Notary Stamp)



[Signature]

Signature of Notary Public

Print Name: Timothy J. P. Schwab

Notary Public, State of: FL

Commission Expires: 4/15/2024

JOINDER AND CONSENT

This Agreement is joined in by Shutts & Bowen, LLP in its capacity as Escrow Agent under the Escrow Agreement and the Road Agreement to acknowledge and consent to the performance of its additional duties as set forth in this Agreement.

WITNESSES:

“ESCROW AGENT”

Dawn A. Hodder

Print Name: Dawn A. Hodder

Megan Meredith

Print Name: Megan Meredith

SHUTTS & BOWEN, LLP

By: James G. Willard
James G. Willard, Partner

**STATE OF FLORIDA
COUNTY OF ORANGE**

Acknowledged freely and voluntarily for the purposes therein expressed before me by **James G. Willard**, Partner of Shutts & Bowen, LLP, a Florida limited liability partnership, who is known by me to be the person described herein and who executed the foregoing, this 20 day of March, 2023. He appeared before me by means of: online notarization or physical presence and is personally known to me, or has produced a valid Florida Driver’s License 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 20 day of March, 2023.



Megan Meredith
NOTARY PUBLIC

Print Name: Megan Meredith

My Commission Expires: 6.14.2025

Exhibit A
“STONEYBROOK SPIRITS HAMLIN”
Project Location Map



Exhibit "B"

"STONEYBROOK SPIRITS HAMLIN"

Parcel ID: 29-23-27-2716-01-001

Legal Description:

A portion of Parcel A, HAMLIN RESERVE, according to the Plat thereof as recorded in Plat Book 88, Pages 78 through 95, inclusive, of the Public Records of Orange County, Florida, described as follows:

Commence at the Southeast corner of Lot 43, said HAMLIN RESERVE, thence run North $11^{\circ}28'14''$ West, along the West line of said Parcel A, 81.77 feet, to the beginning of a curve concave to the west, with a radius of 688.00, a delta of $07^{\circ}21'27''$, and a chord bearing and distance of North $15^{\circ}08'58''$ West, 88.29 feet; thence run northerly along said curve, 88.35 feet, to a point of tangency; thence run North $18^{\circ}49'41''$ West, along the West line of said Parcel A, 68.69 feet, to the beginning of a curve concave southeasterly, with a radius of 211.02 feet, a delta of $74^{\circ}10'41''$, and a chord bearing and distance of North $18^{\circ}15'39''$ East, 254.51 feet; thence run along said curve northeasterly, 273.20 feet, to the point of beginning.

Continue along said curve easterly, a curve distance of 24.02 feet, with a delta of $06^{\circ}31'20''$, and a chord bearing and distance of North $58^{\circ}36'25''$ East, 24.01 feet, to the end of said curve; thence run North $29^{\circ}54'01''$ West, along the West line of said Tract A, also being the East Right-of-Way line of Sunquat Drive, 107.10 feet, to the beginning of a curve concave southeasterly, with a radius of 25.00 feet, a delta of $90^{\circ}00'00''$, and a chord bearing and distance of North $15^{\circ}05'59''$ East, 35.36 feet; thence run along said curve, northeasterly, 39.27 feet, to a point of tangency; thence run North $60^{\circ}05'59''$ East, along the South Right-of-Way line of Calamondin Drive, 140.00 feet, to the West Right-of-Way line of Hamlin Groves Trail; thence run the following (4) courses along the West Right-of-Way line of said Hamlin Groves Trail: South $29^{\circ}54'01''$ East, 62.94 feet; South $60^{\circ}05'59''$ West, 10.50 feet; South $29^{\circ}54'01''$ East, 67.61 feet; South $28^{\circ}19'41''$ East, 97.39 feet; thence departing the West Right-of-Way line of said Hamlin Groves Trail, run South $60^{\circ}00'52''$ West, 193.34 feet; thence run North $19^{\circ}29'44''$ West, 97.06 feet, to the Point of Beginning.

Together with the beneficial rights and easements set forth in that certain Cross-Access, Parking and Utilities Easement Agreement by and between Hamlin Retail Partners East Porter Road, LLC and DNC Hamlin Holdings, LLC recorded of even date herewith in the Public Records of Orange County, Florida.

