



Interoffice Memorandum

July 7, 2023

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

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

SUBJECT: August 8, 2023 – Consent Item
First Amendment to Proportionate Share Agreement for
Prime Logistics Center Taft-Vineland Road

The Roadway Agreement Committee has reviewed a First Amendment to Proportionate Share Agreement for Prime Logistics Center Taft-Vineland Road ("First Amendment") by and between BSREP III Prime Logistics Center LLC and Orange County for an additional proportionate share payment in the amount of \$12,556. 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 Owner has paid a proportionate share payment in the amount of \$856,096 pursuant to the Proportionate Share Agreement for Prime Logistic Center Taft-Vineland Road approved by the Board on June 23, 2020, and recorded at Document Number 20200357097. The additional proportionate share payment is due within 90 days of the effective date of this Agreement.

The First Amendment follows the recommendation of the Roadway Agreement Committee providing for the additional mitigation of road impacts from a 10,000 sq. ft. increase in size of the project for one deficient trip on the road segment of Taft-Vineland Road from General Boulevard to Orange Avenue in the amount of \$12,556 per trip.

The Roadway Agreement Committee recommended approval of the First Amendment on February 15, 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 First Amendment to Proportionate Share Agreement for Prime Logistics Center Taft-Vineland Road by and between BSREP III Prime Logistics Center LLC and Orange County for an additional proportionate share payment in the amount of \$12,556. District 4

JVW/tc
Attachment

BCC Mtg. Date: August 8, 2023

This instrument prepared by
and after recording return to:
Gregory D. Lee, Esq.
Baker & Hostetler LLP
200 S. Orange Avenue
Suite 2300
Orlando, Florida 32801

Parcel ID Number: 11-24-29-7268-00-130

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

**FIRST AMENDMENT TO PROPORTIONATE SHARE AGREEMENT FOR
PRIME LOGISTICS CENTER**

TAFT-VINELAND ROAD

This First Amendment to Proportionate Share Agreement (the “**Amendment**”), effective as of the latest date of execution (the “**Effective Date**”), is made and entered into by and between BSREP III PRIME LOGISTICS CENTER LLC, a Delaware limited liability company, whose address is c/o Brookfield Property Group, 250 Vesey Street, 15th Floor, New York, New York 10281 (“**BSREP**” or “**Owner**”) and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), whose address is P.O. Box 1393, Orlando, Florida 32802-1393.

WHEREAS, pursuant to that certain Warranty Deed dated October 21, 2020, and recorded on October 22, 2020, in the Public Records of Orange County, Florida as Document Number 20200554474, BSREP 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, Owner’s predecessors in ownership of the Property, Taft Vineland Land Company, LLC, a Florida limited liability company, and Welwyn Management Company, a Florida corporation (collectively, “**Taft and Welwyn**”) desired to develop the Property, and in connection therewith, Taft and Welwyn and the County entered into that certain Proportionate Share Agreement dated June 23, 2020, and recorded on June 30, 2020, in the Public Records of Orange County, Florida as Document Number 20200357097 (the “**Initial Agreement**”); and

WHEREAS, on October 21, 2020, the Initial Agreement was assigned from Taft and Welwyn to Owner and recorded on October 22, 2020, in the Public Records of Orange County, Florida as Document Number 20200554475 (the “**Assignment**” and together with the Initial Agreement hereinafter referred to as the “**Agreement**”); and

WHEREAS, as set forth in the Agreement, Taft and Welwyn originally intended to develop the Property as an 830,000 square foot warehouse complex, referred to and known as Prime Logistics Center (the “**Initial Project**”); and

WHEREAS, as set forth in the Agreement, with respect to the Initial Project, Taft and Welwyn received a letter from County dated March 11, 2020 (the “**2020 Letter**”), stating that the Capacity Encumbrance Letter (“**CEL**”) application #19-08-059 for the Initial Project was denied due to certain deficiencies as reflected in the 2020 Letter; and

WHEREAS, Owner has subsequently increased the size of the development on the Property to an 840,000 square foot warehouse complex (the “**Revised Project**”); and

WHEREAS, due to the increase in size between the Initial Project and the Revised Project, Owner received a letter from County dated February 2, 2022 (the “**2022 Letter**”), stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application # CEL-19-08-059 2nd Revision) for the Revised Project was denied; and

WHEREAS, in addition to the deficient trips described in the Agreement pursuant to the 2020 Letter (“**Prior Excess Trips**”), the Revised Project will generate 1 deficient PM Peak Hour directional trip (the “**Additional Excess Trip**” and together with the Prior Excess Trips, hereinafter collectively referred to as the “**Excess Trips**”) for the deficient roadway segment on Taft-Vineland Road from General Boulevard to Orange Avenue (the “**Deficient Segment**”) and 0 PM Peak Hour trips were available on the Deficient Segment on the date the CEL was denied, as further described in **Exhibit “C”**, attached hereto and incorporated herein; and

WHEREAS, the Additional Excess Trip 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 will provide County with proportionate share mitigation for the Additional Excess Trip consistent with the terms and conditions stated herein; 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 provided County with proportionate share mitigation for the Prior Excess Trips on December 18, 2020, in the amount of Eight Hundred Fifty-Six Thousand Ninety-Six and NO/100 Dollars (\$856,096.00) (the “**PS Payment**”); and

WHEREAS, on December 18, 2020, County issued that certain CEL #19-08-059 approving Owner’s capacity for the Original Project and such CEL was revised on June 21, 2021 to extend the expiration of the CEL to April 10, 2023. On May 2, 2023, County’s Concurrency Management Office issued an emergency extension to the CEL extending its expiration date to November 30, 2024; and

WHEREAS, on May 23, 2023, Owner filed a revision to the CEL application in connection with CEL-19-08-059 2nd Revision with County pursuant to which Owner requested that the use of the Revised Project be changed from industrial complex to warehouse (the “**2023 CEL Application**”); and

WHEREAS, on May 23, 2023, in connection with the 2023 CEL Application, Owner received a letter from County dated May 23, 2023, stating that the 2023 CEL Application for the Revised Project was denied; and

WHEREAS, Owner and County agree that the proportionate share payment necessary to mitigate the impact of the Additional Excess Trip on the Deficient Segment through the current anticipated Revised Project buildout is Twelve Thousand Five Hundred Fifty-Six and NO/100 Dollars (\$12,556.00) (the “**Additional PS Payment**”); and

WHEREAS, the Orange County Engineer has declared Taft-Vineland Road to be impact fee eligible; 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 Revised Project.

WHEREAS, except as amended, the original terms of the Agreement shall remain unchanged and in full force and effect.

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. Increase in Square Footage of Initial Project. County and Owner agree that the square footage of the Revised Project shall be 840,000 square feet.

Section 3. Additional PS Payment; CEL.

(a) *Calculation of Additional PS Payment:* The amount of the Additional PS Payment for the Deficient Segment, as described in **Exhibit “C”**, totals Twelve Thousand Five Hundred Fifty-Six and NO/100 Dollars (\$12,556.00). This Additional PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. Owner and County agree that the Excess Trip constitutes the Project’s impact on the aforementioned Deficient Segment based upon (i) Owner’s Traffic Study titled “Cone Property Project No. 21003.1, v 2.0 Transportation Concurrency Analysis Orange County, Florida” prepared by Traffic & Mobility Consultants, dated September 2021 for Brookfield Properties (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 January 28, 2022, and is on file and available for inspection with that division (CMS # 2019059). Owner and County further acknowledge and agree that the Additional PS Payment as set forth above shall be the final and binding calculation of the amount Owner is required to pay through the buildout of the currently approved Revised Project as proportionate share mitigation for impacts of the Revised Project upon roadways within Orange County’s jurisdiction, notwithstanding any subsequent variance in the actual cost of improvement to the Deficient Segment or actual traffic impacts created by the Revised Project; provided, however, that if Owner subsequently increases the number of units and/or square footage, as applicable, of the Revised Project, the Revised Project may then be subject to an additional concurrency evaluation and proportionate share agreement as set forth in Section 3(d) below. Owner and County further acknowledge and agree that the calculation of, and agreement regarding, the amount of the Additional PS Payment constitute material inducements for the parties to enter into this Amendment.

(b) *Timing of Additional PS Payment, Issuance of CEL.* Within ninety (90) days following the Effective Date, Owner shall deliver a check to County in the amount of Twelve Thousand Five Hundred Fifty-Six and NO/100 Dollars (\$12,556.00) as the Additional 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 Additional PS Payment, if the Property’s future land use designation and zoning are consistent with the Revised Project’s proposed development, County shall issue a revised CEL sufficient to encumber traffic capacity for the Revised Project, irrespective of any actual traffic deficiency on the Deficient Segment. Within the time frame provided in the revised 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 Additional 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 Additional PS Payment) as further set forth in Section 4 below. In the event Owner has not paid the Additional 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 Additional PS Payment to County within one hundred eighty (180) days after the Effective Date, this Amendment shall become null and void.

(c) *Project Development.* Recordation of a subdivision plat or approval of a commercial site plan for the Revised Project shall not be permitted prior to the issuance of a Capacity Reservation Certificate as contemplated in Section 3(b) above.

(d) *Increase in Project Trips.* Any change to the Revised Project which 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 Amendment, 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 Amendment 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 Additional PS Payment as required herein, and absent any change in the Revised Project increasing the number of trips as set forth in Section 3(d) above, Owner shall be deemed to have satisfied all requirements for the mitigation of the traffic impacts of the Revised Project on all roads affected by the Project within County’s jurisdiction through buildout of the Revised Project. Owner shall be entitled to fully and completely develop the Revised Project, without regard to whether the 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. 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 Revised Project, subject to credits as set forth in Section 4 below.

Section 4. 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 Additional 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 3 above. In no event shall Owner receive credits in excess of the Additional PS Payment and in the event the Additional 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 Additional PS Payment in excess of such transportation impact fees or capacity reservation fees.

Section 5. No Refund. Except as may otherwise be agreed to by Owner and County in a separate document or future modification to this Amendment, such applicable document to be recorded in the Public Records of Orange County, the Additional PS Payment (including any capacity reservation fees paid with the Additional PS Payment) is non-refundable and cannot be transferred or applied to another project or property.

Section 6. Notice. Any notice delivered with respect to this Amendment 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:

BSREP III PRIME LOGISTICS CENTER LLC
c/o Brookfield Property Group
601 South Figueroa Street, Suite 2200
Los Angeles, California 90017
Attention: Gautam Huded, Senior Vice President

With copy to:

Baker & Hostetler LLP
200 South Orange Avenue
Suite 2300
Orlando, Florida 32801
Attention: Gregory D. Lee, Esquire

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 7. Covenants Running with the Property. This Amendment 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 Owner and upon any person, firm, corporation, or entity who may become the successor in interest to the Property.

Section 8. Recordation of Amendment. The parties hereto agree that Owner shall record this Amendment in the Public Records of Orange County, Florida, at Owner's expense, within thirty (30) calendar days after the Effective Date.

Section 9. Applicable Law. This Amendment 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 10. Specific Performance. County and Owner shall each have the right to enforce the terms and conditions of this Amendment only by an action for specific performance. Venue for any action(s) initiated under or in connection with this Amendment 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 Additional PS Payment as set forth in Section 3(b) hereof, the parties acknowledge and agree that no party shall be considered in default for failure to perform under this Amendment 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 11. 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 Amendment, each party in such action or proceeding, including appeals therefrom, shall be responsible for its own attorney and legal fees.

Section 12. Construction of Amendment; Severability. Captions of the Sections and Subsections of this Amendment 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 Amendment. If any provision of this Amendment, 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 Amendment.

Section 13. Amendments. No amendment, modification, or other change(s) to this Amendment shall be binding upon the parties unless in writing and formally executed by all of the parties.

Section 14. Termination. In the event either (i) Owner has not paid the Additional PS Payment to County within one hundred eighty (180) days after the Effective Date, as contemplated in Section 3(b), or (ii) Owner has timely paid the Additional PS Payment to County and the Revised Project has been constructed on the Property pursuant to a County building permit, this Amendment shall automatically terminate and thereafter be null and void for all purposes.

Section 15. Counterparts. This Amendment may be executed in up to two 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]

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



“COUNTY”

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*

for Jerry L. Demings
Orange County Mayor

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

**STATE OF FLORIDA
COUNTY OF ORANGE**

WITNESSES:

Marita C. Van Dyne

Print Name: Marita C. Van Dyne

Matthew Sadiker

Print Name: Matthew Sadiker

“OWNER”

BSREP III PRIME LOGISTICS CENTER
LLC, a Delaware limited liability company

By: *Gautam Huded*

Print Name: Gautam Huded

Title: Senior Vice President

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 27th day of June, 2023, by Gautam Huded, as Senior Vice President of BSREP III PRIME LOGISTICS CENTER LLC, a Delaware limited liability company, on behalf of such limited liability company, who is personally known to me or has produced _____ as identification.

(Notary Stamp)

Jennifer Tapia
Signature of Notary Public

Print Name: Jennifer Tapia

Notary Public, State of Georgia

Commission Expires: June 5, 2026



Exhibit "A"
"PRIME LOGISTICS CENTER"
Project Location Map

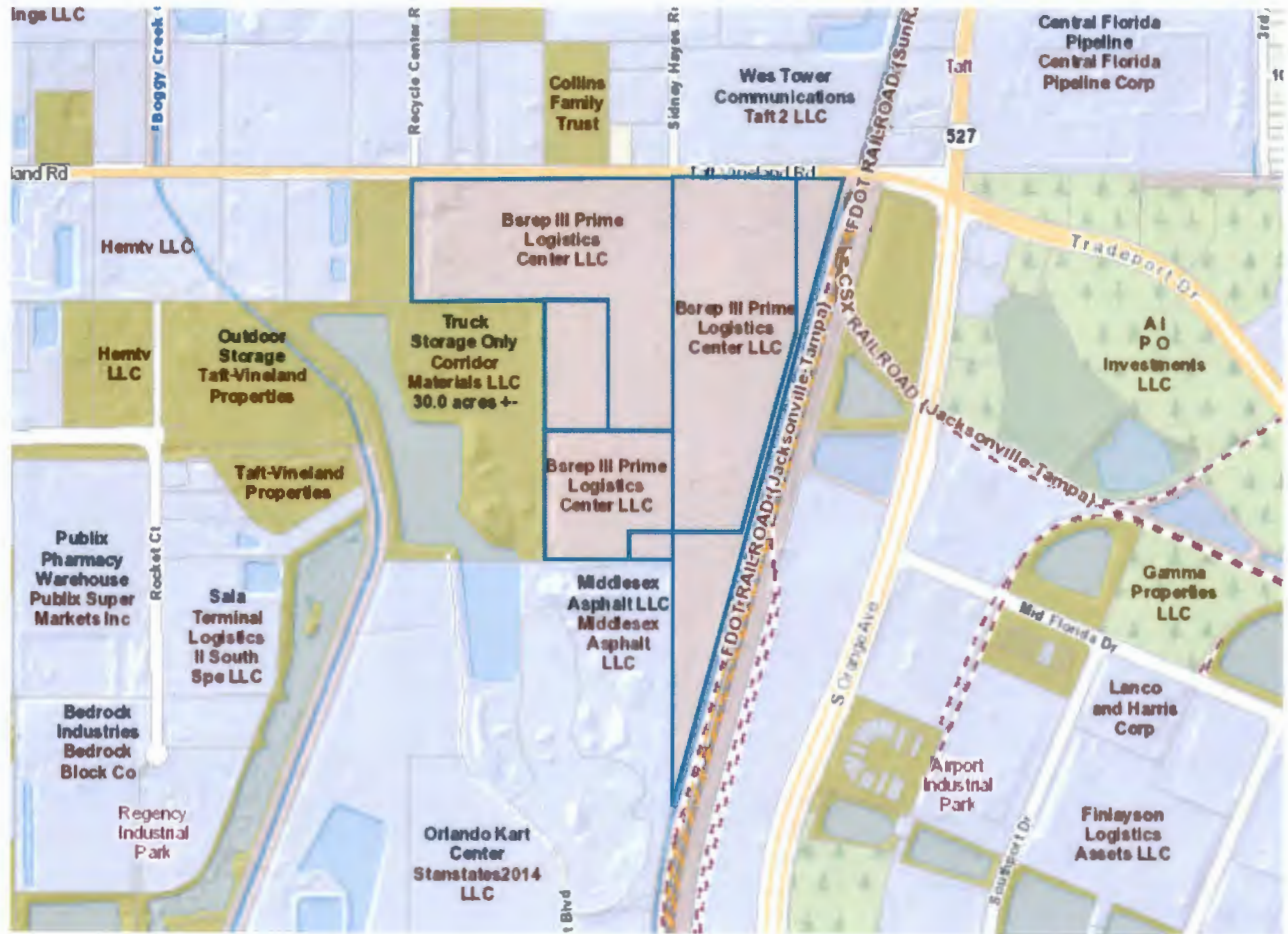


Exhibit "B"
"PRIME LOGISTICS CENTER"

Parcel ID Number: 11-24-29-7268-00-130

Legal Description:

West 1/2 of Lot 7 lying West of A.C.L. Railroad right of way; Lot 9 lying West of A.C.L. Railroad right of way; Farm No. 8 (Lot 8) lying West of A.C.L. Railroad right of way; and Lot 24 lying West of A.C.L. Railroad right of way; all of HUNTER LAND COMPANY SUBDIVISION in Section 12, Township 24 South, Range 29 East, according to the Plat thereof as recorded in Plat Book D, Page 139, of the Public Records of Orange County, Florida; LESS the right of way for Taft Vineland Road.

AND

Lots 13, 14, 15, 16, 17, 18, 47 and 48 of PROSPER COLONY in Section 11, Township 24 South, Range 29 East, as recorded in Plat Book F, Page 16 of the Public Records of Orange County, Florida. (Lots 47 and 48 are further described as all of lots and blocks of Sunny Mede Subdivision, Plat Book M, Page 52, Public Records of Orange County, Florida; LESS the right of way for Taft Vineland Road.

AND

TOGETHER WITH that certain right of way lying Easterly of Lots 16 and 17, Prosper Colony, Plat Book F, Page 16, of the Public Records of Orange County, Florida and Westerly of Lots 8 and 9 and part of Lot 24 of Hunter Land Company Subdivision in Section 12, Township 24 South, Range 29 East, Plat Book D, Page 139, of the Public Records of Orange County, Florida; together with that certain Vacated Road Right of Way in Sunny Mede Subdivision recorded in Plat Book M, Page 52, of the Public Records of Orange County, Florida; together with that certain right of way lying South of Lot 9 and North of Lot 24 of Hunter Land Company Subdivision in Section 12, Township 24 South, Range 29 East, Plat Book D, Page 139, of the Public Records of Orange County, Florida; together with that certain right of way lying South of Lots 17 and 18, Prosper Colony, Plat Book F, Page 16, Public Records of Orange County, Florida and north of Sunny Mede recorded in Plat Book M, Page 52, of the Public Records of Orange County, Florida, all being described and vacated in that certain resolution recorded in Official Records Book 3103, Page 1120, of the Public Records of Orange County, Florida.

Exhibit "C"
"PRIME LOGISTICS CENTER"
DEFICIENT SEGMENT
Log of Project Contributions
Taft Vineland Rd (General Blvd to Orange Ave)

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
Taft Vineland Rd	General Blvd	Orange ave	1.04	E	880	Widen from 2 to 4 lanes	2000	1120	\$14,061,848	\$12,558

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
Taft Vineland Rd	General Blvd	Orange ave	1.04	E	880	234	2000	1120	\$2,937,922

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
Taft Vineland Rd	General Blvd	Orange ave	1.04	E	880	2000	1120	234	888	\$11,123,926	\$12,558

Updated: 1/28/22

Log of Project Contributions

	Date	Project	Project Trips	Prop Share
Existing	Feb-20	Existing plus Committed	152	\$2,285,182
	Feb-20	Prime Logistics Center	52	\$652,912
		Backlogged Totals:	234	\$2,938,104
Proposed	Jan-22	Prime Logistics Center Revised	1	\$12,558
				\$0
				\$0
				\$0
				\$0
		Totals:	235	\$2,950,660