




Interoffice Memorandum

AGENDA ITEM

June 28, 2021

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

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

SUBJECT: July 27, 2021 – Consent Item  
Proportionate Share Agreement for Waterstar Orlando Multifamily  
Avalon Road and US 192

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Waterstar Orlando Multifamily Avalon Road and US 192 ("Agreement") by and between Madison Waterstar Owner, LLC and Orange County for a proportionate share payment in the amount of \$694,434. 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 one deficient trip on the road segments of Avalon Road from US 192 to Hartzog Road in the amount of \$12,484 per trip and 31 deficient trips on the road segments of US 192 from Lake County Line to Osceola County Line in the amount of \$22,000 per trip.

The Roadway Agreement Committee recommended approval on June 16, 2021. 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 Waterstar Orlando Multifamily Avalon Road and US 192 by and between Madison Waterstar Owner, LLC and Orange County for a proportionate share payment in the amount of \$694,434. District 1**

JVW/HEGB/fb  
Attachment

BCC Mtg. Date: July 27, 2021

This instrument prepared by  
and after recording return to:

Jonathan A. Martin, PE  
Senior Vice President/Principal  
Kimley-Horn and Associates, Inc.  
189 South Orange Avenue, Suite 1000  
Orlando, Florida 32801

Parcel ID Number: 33-24-27-0000-00-025

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

**PROPORTIONATE SHARE AGREEMENT FOR  
Waterstar Orlando Multifamily**

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**Avalon Road and US 192**

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 Madison Waterstar Owner, LLC, a Florida limited liability company (“**Owner**”), whose principal place of business is 6805 Morrison Boulevard, Suite 250, Charlotte, North Carolina 28211, 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, 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 1, within the County’s Urban Service Area, and the proceeds of the PS Payment, as defined herein, will be allocated to Avalon Road and US 192; and

WHEREAS, Owner intends to develop the Property as 320 multifamily units, referred to and known as Waterstar Orlando Multifamily (the “**Project**”); and

WHEREAS, Owner received a letter from County dated May 19, 2021, stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #20-12-096 for the Project was denied; and

WHEREAS, the Project will generate 1 deficient PM Peak Hour trip (the “**Excess Trip 1**”) for the deficient roadway segment on Avalon Road from US 192 to Hartzog Road (the “**Deficient Segment 1**”), and 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 31 deficient PM Peak Hour trips (the “**Excess Trips 2**”) for the deficient roadway segment on US 192 from the Lake County Line to the Osceola County Line (the “**Deficient Segment 2**”), and 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 Trip 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 six hundred ninety-four thousand four hundred thirty-four and 00/100 dollars (\$694,434.00) (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 six hundred ninety-four thousand four hundred thirty-four and 00/100 dollars (\$694,434.00). 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 “WaterStar Orlando-Multifamily Traffic Concurrency Evaluation” prepared by Kimley-Horn and Associates, Inc., dated April 2021 for Waterstar Orlando, LLC (the “**Traffic Study**”), which is incorporated herein by this reference, and (ii) upon the calculations described in Exhibit “C.” The Traffic Study was accepted by the Orange County Transportation Planning Division on May 12, 2021, and is on file and available for inspection with that division (CMS #2020096). 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 six hundred ninety-four thousand four hundred thirty-four and 00/100 dollars (\$694,434.00) 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 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 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. Additionally, 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 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: Madison Waterstar Owner, LLC  
6805 Morrison Boulevard, Suite 250  
Charlotte, North Carolina 28211

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, 2<sup>nd</sup> 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 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 action(s) initiated under or in connection with this Agreement shall lie in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

**Section 10. Attorney Fees.** In the event either party 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 change(s) to this Agreement shall be binding upon the parties unless in writing and formally executed by all of the parties.

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

**Section 14. Counterparts.** This Agreement may be executed in up to 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]

Proportionate Share Agreement, Waterstar Orlando Multifamily  
Madison Waterstar Owner, LLC for Avalon Road and US 192, 2021

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: July 27, 2021

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

By: *Katie Smith*  
Deputy Clerk

Print Name: **Katie Smith**



WITNESSES:

\_\_\_\_\_

Print Name: Robert Bernstein

Joe Teague Jr.

Print Name: Joe Teague Jr.

“OWNER”

Madison Waterstar Owner, LLC, a Florida limited liability company

By: Ryan Hanks

Print Name: Ryan Hanks

Title: Manager

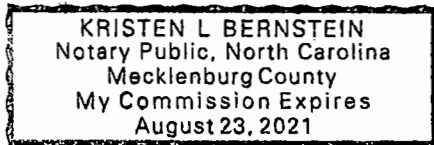
Date: 6.8.21

STATE OF: NORTH CAROLINA  
COUNTY OF: MECKLENBURG

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 8th day of June, 2021 by Ryan Hanks as Manager of Madison Waterstar Owner, LLC, a Florida limited liability company. He/she  is personally known to me or  has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 8th day of June, 2021.

(Notary Stamp)



Kristen L. Bernstein  
Signature of Notary Public  
Print Name: Kristen L. Bernstein  
Notary Public, State of: North Carolina  
Commission Expires: Aug. 23, 2021

**Exhibit "A"**

**"Waterstar Orlando Multifamily"**

**Project Location Map**



**Exhibit "B"**

**"Waterstar Orlando Multifamily"**

Parcel ID: 33-24-27-0000-00-025

**Legal Description:**

That part of Section 33, Township 24 South, Range 27 East, Orange County, Florida, being more particularly described as follows:

Commence at the Southeast corner of said Section 33, Township 24 South, Range 27 East, Orange County, Florida; thence run South 89 degrees 56 minutes 28 seconds West along the South line of said Section 33, also being the centerline of State Road 530 (US. Highway No. 192), a distance of 994.86 feet to a point on the Southerly projection of the East line of Shoppes of West 192, according to the plat thereof as recorded in Plat Book 93, Pages 127 and 128, Public Records of Orange County, Florida; thence run North 00 degrees 14 minutes 00 seconds East along said Southerly projection, a distance of 100.00 feet to a point on the North right of way line of said State Road 530 (US. Highway No. 192); thence continue North 00 degrees 14 minutes 00 seconds East along the East line of said Shoppes of West 192 and along the East line of the lands described in Official Records Book 5526, Page 1669, Public Records of Orange County, Florida, a distance of 1037.89 feet for the Point of Beginning; thence run South 89 degrees 46 minutes 00 seconds East, a distance of 43.60 feet to a point on a non-tangent curve, concave to the East, having a radius of 91.00 feet; thence from a radial bearing of South 83 degrees 27 minutes 27 seconds East run northeasterly along the arc of said curve through a central angle of 23 degrees 47 minutes 55 seconds, an arc distance of 37.80 feet, having a chord bearing of North 18 degrees 26 minutes 30 seconds East and a chord distance of 37.53 feet; thence run South 30 degrees 20 minutes 28 seconds West, a distance of 1.48 feet to the beginning of a curve concave to the West, having a radius of 133.00 feet; thence run Northeasterly along the arc of said curve through a central angle of 26 degrees 32 minutes 02 seconds, an arc distance of 61.59 feet, having a chord bearing of North 17 degrees 04 minutes 27 seconds East and a chord distance of 61.04 feet; thence run South 89 degrees 46 minutes 00 seconds East, a distance of 80.65 feet; thence run North 58 degrees 30 minutes 45 seconds East, a distance of 18.93 feet; thence run North 26 degrees 47 minutes 29 seconds East, a distance of 17.99 feet; thence run South 89 degrees 39 minutes 32 seconds East, a distance of 227.45 feet; thence run South 00 degrees 57 minutes 03 seconds West, a distance of 47.73 feet; thence run South 44 degrees 18 minutes 50 seconds East, a distance of 44.13 feet; thence run South 89 degrees 44 minutes 58 seconds East, a distance of 177.16 feet; thence run North 37 degrees 54 minutes 25 seconds East, a distance of 53.22 feet; thence run South 66 degrees 56 minutes 12 seconds East, a distance of 65.35 feet; thence run North 18 degrees 26 minutes 28 seconds East, a distance of 59.31 feet; thence run South 89 degrees 36 minutes 22 seconds East, a distance of 269.13 feet; thence run North 00 degrees 11 minutes 30 seconds East along the East line of said Southeast 1/4 of Section 33, a distance of 414.43 feet; thence run North 89 degrees 39 minutes 32 seconds West along the South line of lands described in Official Records Book 5526, Page 1669, a distance of 993.64 feet; thence run South 00 degrees 14 minutes 00 seconds West along the aforesaid East line of the lands described in Official Records Book 5526, Page 1669, a distance of 530.38 feet to the Point of Beginning.

**Exhibit "C"**  
**"Waterstar Orlando Multifamily"**  
**DEFICIENT SEGMENT 1**

**Log of Project Contributions**  
 Avalon Rd (US 192 to Hartzog 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
Avalon Rd	US 192 - Hartzog Rd	0.08	E	880	Widen from 2 to 4 lanes	2000
						Capacity Increase
						1120
						Total Project Cost
						\$13,825,200
						Cost / Trip
						\$12,494

**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	County (Backlog) Responsibility
Avalon Rd	US 192 - Hartzog Rd	0.08	E	880	434	2000	\$5,360,015
						Capacity Increase	
						1120	

**Developer Share of Improvement**

Planned Improvement Roadway(s)	Limits of Improvement (From - To)	Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Backlogged Trips	Capacity Increase	Capacity Increase for New Development	Remaining Project Cost	Cost / Trip
Avalon Rd	US 192 - Hartzog Rd	0.08	E	880	2000	434	1120	686	\$8,520,185	\$12,494

Updated: 6/2/21

**Log of Project Contributions**

Date	Project	Project Trips	Prop Share
Nov-17	Existing plus Committed	381	\$3,748,875
Nov-17	CHS Hospital	5	\$51,875
Apr-18	Ball Boulevard	10	\$103,750
Apr-18	Flamingo Crossings LLC Housing West	10	\$100,510
Jan-20	Four Corners	5	\$50,155
Mar-20	AOS Orlando Hotels	14	\$165,634
Apr-20	Avalon Pointe	28	\$343,009
	<b>Backlogged Totals:</b>	<b>434</b>	<b>\$4,573,208</b>
Proposed May-21	WaterStar Orlando Multifamily	1	\$12,494
			\$0
			\$0
			\$0
	<b>Totals:</b>	<b>435</b>	<b>\$4,585,702</b>

“Waterstar Orlando Multifamily”

DEFICIENT SEGMENT 2

Log of Project Contributions  
 US 192 (Lake County Line 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
US 192	Lake County Line	Osceola County Line	1.99	E	3020	Adding Two lanes	4040	1020	\$22,439,307	\$22,000

**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
US 192	Lake County Line	Osceola County Line	1.99	E	3020	395	4040	1020	\$8,689,732

**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
US 192	Lake County Line	Osceola County Line	1.99	E	3020	4040	1020	395	625	\$13,749,575	\$22,000

Updated: 6/4/21

Log of Project Contributions			
Date	Project	Project Trips	Prop Share
Existing May-21	Existing plus Committed	395	\$8,689,000
Backlogged Totals:		395	\$8,689,000
Proposed May-21	WaterStar Orlando Multifamily	31	\$682,000
			\$0
			\$0
			\$0
Totals:		426	\$9,371,000