

BCC Mtg. Date: November 15, 2016



Interoffice Memorandum

AGENDA ITEM

October 24, 2016

TO: Mayor Teresa Jacobs
—AND—
Board of County Commissioners

FROM: James E. Harrison, Esq., P.E., Chairman
Roadway Agreement Committee

SUBJECT: November 15, 2016 – Consent Item
Proportionate Share Agreement
Dale R. Nichols Dean Road: From Curry Ford Road to Lake Underhill Road

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Dale R. Nichols on Reams Dean Road From Curry Ford Road to Lake Underhill Road ("Agreement") by and between Dale R. Nichols and Orange County for a proportionate share payment in the amount of \$43,456. 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 30 days of the effective date of this Agreement. The Agreement follows the recommendations of the Roadway Agreement Committee providing for the mitigation of road impacts on Dean Road for two deficient trips on the road segment from Curry Ford Road to Lake Underhill Road in an amount of \$21,728 per trip.

The Roadway Agreement Committee approved the Proportionate Share Agreement on July 6, 2016. 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 407-836-5610.

ACTION REQUESTED: Approval and execution of Proportionate Share Agreement for Dale R. Nichols Dean Road: From Curry Ford Road to Lake Underhill Road by and between Dale R. Nichols and Orange County for a proportionate share payment in the amount of \$43,456. District 3.

JEH/HEGB:rep
Attachment

BCC Mtg. Date: November 15, 2016

This instrument prepared by
and after recording return to:

Chris Roper, Esq.
Akerman LLP
420 South Orange Avenue, Suite 1200
Orlando, Florida 32801

Parcel ID Number(s):
30-22-31-0000-00-042
30-22-31-0000-00-043
30-22-31-0000-00-049

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

**PROPORTIONATE SHARE AGREEMENT FOR
Dale R. Nichols**

Dean Road: From Curry Ford Road to Lake Underhill 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 DALE R. NICHOLS (“**Owner**”), whose mailing address is 1212 Riverside Drive, Titusville, Florida 32780, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), whose mailing address is P.O. Box 1393, Orlando, FL 32802-1393.

WHEREAS, Owner is the owner of fee simple title to certain real property, as more particularly described on Exhibit “A,” attached hereto and incorporated herein by this reference (the “**Property**”); and

WHEREAS, the Property is located in County Commission District 3, within the County’s Urban Service Area, and the proceeds of the PS Payment, as defined herein, will be allocated to Dean Road; and

WHEREAS, Owner intends to develop the Property as a residential townhome community with up to 184 townhome dwelling units (the “**Project**”); and

WHEREAS, Owner received a letter from County dated May 4, 2016 stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application # 16-04-023 for the Project was denied; and

WHEREAS, the Project will generate 2 deficient PM Peak Hour trips (the “**Excess Trips**”) for the deficient roadway segment on Dean Road from Curry Ford Road to Lake Underhill Road (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 “B” hereto; and

WHEREAS, the Excess Trips will cause the Deficient Segment to operate below adopted Level of Service standards and, 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 Segment through the current anticipated Project buildout is Forty-Three Thousand, Four Hundred Fifty-Six and 00/100 Dollars (\$43,456.00) (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. Issuance of Capacity Encumbrance Letter.

(a) *Calculation of PS Payment:* The amount of the PS Payment for the Deficient Segment described in Exhibit “B,” attached hereto and incorporated herein by reference, totals Forty-Three Thousand Four Hundred Fifty-Six and 00/100 Dollars (\$43,456.00). 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 Segment based upon (i) Owner’s Traffic Study titled “Econ Trails Traffic Impact Analysis” prepared by Traffic & Mobility Consultants on April 7, 2016 for CalAtlantic Homes (the “**Traffic Study**”), and incorporated herein by this reference, and (ii) upon calculations described in Exhibit “B.” The Traffic Study was accepted by the Orange County Transportation Planning Division on April 29, 2016, and is on file and available for inspection with that Division (CMS #16-04-023). 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 Project as proportionate share mitigation for impacts of the Project upon roadways impacted by the Project 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 Project; provided, however, that if Owner subsequently increases the number of units and/or changes the primary use of the Project to other than a residential townhome community, 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.* Within thirty (30) days following the Effective Date, Owner shall deliver a check to County in the amount of Forty-Three Thousand Four Hundred Fifty-Six and 00/100 Dollars (\$43,456.00) 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 Community, Environmental, and Development Services Department. Within twenty-one (21) days following its receipt of the PS Payment, County shall issue a CEL sufficient to encumber traffic capacity for the Project, irrespective of any actual traffic deficiency on the Deficient Segment. Within the time frame provided in the CEL, 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. Transportation impact fee credits equal to the PS Payment may, at Owner's option, be applied toward the amount of the initial 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 thirty (30) days following the Effective Date, this Agreement shall become null and void.

(c) *Project Development.* Recordation of a subdivision plat 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 changes the primary use of the Property to other than a residential townhome community may result in an increase in trips on the Deficient Segment or other segments within the transportation impact area, as defined by County. Owner understands and agrees that any such additional trips are neither vested nor otherwise permitted under this Agreement, and that Owner is precluded from asserting any such vesting. In addition, Owner understands and agrees that any such changes resulting in an increase in trips may cause this Agreement to become null and void, and/or may require application for and execution of an additional Proportionate Share Agreement, along with any other required documentation, for the number of increased trips.

(e) *Satisfaction of Transportation Improvement Requirements.* County hereby acknowledges and agrees that, based upon Owner's commitment to pay 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 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, 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 more particularly described in Exhibit "B" attached hereto. County further agrees that such credits may, at Owner's option, 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 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: Dale R. Nichols
1212 Riverside Drive
Titusville, Florida 32780

With copy to: Jason W. Searl, Esq.
GRAYROBINSON, PA
301 East Pine Street, Suite 1400
Orlando, Florida 32801
Phone: (407) 244-5601
Fax: (407) 244-5690
E-mail: Jason.Searl@gray-robinson.com

CalAtlantic Group, Inc.
444 W. New England Avenue, Suite 220
Winter Park, Florida 32789

Chris Roper, Esq.
Akerman LLP
420 South Orange Avenue, Suite 1200
Orlando, Florida 32801

As to County: Orange County Administrator
P. O. Box 1393
Orlando, Florida 32802-1393

With copy to: Orange County Community, Environmental, and Development
Services Department
Manager, Fiscal and Operational Support Division
201 South Rosalind Avenue, 2nd Floor
Orlando, Florida 32801

Orange County Community, Environmental, and Development
Services Department
Manager, Transportation Planning Division
4200 South John Young Parkway
Orlando, Florida 32839

Orange County Community, Environmental, and Development
Services Department
Manager, Planning Division
201 South Rosalind Avenue, 2nd Floor
Orlando, FL 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 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.

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.

[Signatures appear on following pages]



"COUNTY"

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*

Teresa Jacobs

Orange County Mayor

Date: *11.15.16*

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: *Jessica Vaupel*

for Deputy Clerk

Print Name: Jessica Vaupel

"Econ Trail"

"OWNER"

Dale R. Nichols

By: *Dale R. Nichols*

Print Name: Dale R. Nichols

Date: *Dale R. Nichols*
9-15-16

WITNESSES:

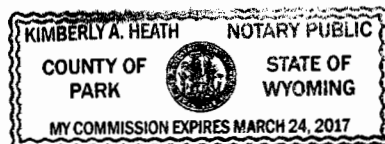
Ariel Cottonair
Print Name: Ariel Cottonair

Kindal McNulty
Print Name: Kindal McNulty

^{KAH Wyoming}
STATE OF FLORIDA
COUNTY OF ORANGE ^{Park}
_{KAH}

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Dale R. Nichols who is known by me to be the person described herein and who executed the foregoing, this 15 day of September, 2016. He is personally known to me or has produced Driver's License (type of identification) as identification and did (circle one) take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 15 day of September, 2016.



Kimberly A. Heath
NOTARY PUBLIC

Print Name: Kimberly A. Heath

My Commission Expires: March 24, 2017

Exhibit "A"

"Econ Trail"

Parcel ID Number(s):
30-22-31-0000-00-042
30-22-31-0000-00-043
30-22-31-0000-00-049

Legal Description:

Property located in Orange County, Florida:

Parcel #1

The South ½ of the North ½ of the South ½ of the Northwest ¼ of the Southeast ¼ of Section 30, Township 22 South, Range 31 East, Less the West 30 feet for road; and the North ½ of the South ¼ of the Northwest ¼ of the Southeast ¼ of Section 30, Township 22 South, Range 31 East , Less the West 30 feet for road.

Parcel #2

The South ¼ of the North ½ of the Northwest ¼ of the Southeast ¼ of Section 30, Township 22 South, Range 31 East, Less the West 30 feet for road; and the North ¼ of the South ½ of the Northwest ¼ of the Southeast ¼ of Section 30, Township 22 South, Range 31 East, Less the West 30 feet for road.

Parcel #3

The North ½ of the South ½ of the North ½ of the Northwest ¼ of the Southeast 1/4 of Section 30, Township 22 South, Range 31 East, Less the West 30 feet for road.

LESS AND EXCEPT FROM THE ABOVE DESCRIBED PARCELS, the portion of lands described in that certain "Right of Way Taking" by Orlando/Orange County Expressway Authority, a body politic and corporation, and an agency of the state, under the laws of the State of Florida, as set forth in Stipulated Final Judgment recorded in Official Records Book 3965, Page 1767, of the Public Records of Orange County, Florida.

Containing 24.330 acres, more or less.

Exhibit "B"
"Econ Trail"
Log of Project Contributions

Log of Project Contributions
Dean Road (Curry Ford Rd to Lake Underhill 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
Dean Road	Curry Ford Rd	Lake Underhill Drive	2.11	E	880	Widen from 2 to 4 lanes	2000	1120	\$24,335,060	\$21,728

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
Dean Road	Curry Ford Rd	Lake Underhill Drive	2.11	E	880	217	2000	1120	\$4,714,918

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
Dean Road	Curry Ford Rd	Lake Underhill Drive	2.11	E	880	2000	1120	217	903	\$19,620,142	\$21,728

Updated: 8/22/16

Log of Project Contributions

	Date	Project	Project Trips	Prop Share
Existing	Mar-16	Existing plus Committed	217	\$4,714,976
		Wawa	7	\$152,096
		Econ Medical	8	\$173,824
	Backlogged Totals:		232	\$5,040,896
Proposed		Econ Townhomes	2	\$43,456
				\$0
				\$0
				\$0
				\$0
				\$0
	Totals:		234	\$5,084,352