



Interoffice Memorandum

AGENDA ITEM

March 16, 2022

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

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

SUBJECT: April 5, 2022 – Consent Item
Proportionate Share Agreement for Carl Black Chevrolet Building
Expansion
Alafaya Trail

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Carl Black Chevrolet Building Expansion Alafaya Trail ("Agreement") by and between Carl Black of Orlando, LLC and Orange County for a proportionate share payment in the amount of \$64,745. 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 five deficient trips on the road segments of Alafaya Trail from Science Drive to Colonial Drive in the amount of \$12,949 per trip.

The Roadway Agreement Committee recommended approval on March 16, 2022. 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 Carl Black Chevrolet Building Expansion Alafaya Trail by and between Carl Black of Orlando, LLC and Orange County for a proportionate share payment in the amount of \$64,745. District 4

JVW/NC/fb
Attachment

BCC Mtg. Date: Apr. 5, 2022

This instrument prepared by
and after recording return to:

Carl Black of Orlando, LLC
Attn: Omar Rodriguez, Manager
11500 East Colonial Drive
Orlando, Florida 32817

Parcel ID Number: 21-22-31-0000-00-019

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

**PROPORTIONATE SHARE AGREEMENT FOR
CARL BLACK CHEVROLET BUILDING EXPANSION**

ALAFAYA TRAIL

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 Carl Black of Orlando, LLC a Florida limited liability company (“**Owner**”), with a principal place of business at 11500 East Colonial Drive, Orlando, Florida 32817, 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, FL 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 4, and the proceeds of the PS Payment, as defined herein, will be allocated to Alafaya Trail; and

WHEREAS, Owner intends to develop the Property as a 18,766 Sq. Ft. New/Used Car Service Expansion, referred to and known as Carl Black Chevrolet Building Expansion (the “**Project**”); and

WHEREAS, Owner received a letter from County dated February 24, 2022 stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application CEL-22-02-020 for the Project was denied; and

WHEREAS, the Project will generate 5 deficient PM Peak Hour trips (the “**Excess Trips**”) for the deficient roadway segment on Alafaya Trail from Science Drive to Colonial Drive (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 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 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 Segment through the current anticipated Project buildout is Sixty-Four Thousand Seven Hundred Forty-Five and 00/100 Dollars (\$64,745.00) (the "**PS Payment**"); and

Whereas, prior to denial of the CEL, Owner paid to County transportation impact fee credits in the amount of \$116, 830.01; and

Whereas, upon payment of the PS Payment, Owner will receive transportation impact fee credits in the amount of such payment; and

Whereas, Owner has requested and County has agreed to accept a portion of the payment of the transportation impact fees as payment of 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) **Owner Calculation of PS Payment:** The amount of the PS Payment for the Deficient Segment, as described in Exhibit "C," totals Sixty-Four Thousand Seven Hundred Forty-Five and 00/100 Dollars (\$64,745.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes, as may be amended. Owner and County agree that the Excess Trips will constitute the Project's impact on the aforementioned Deficient Segment based upon (i) Owner's Traffic Study titled "Traffic Impact Analysis" an in-house study was prepared by Orange County's Transportation Planning Division, dated February 16, 2022 for Carl Black Chevrolet Building Expansion (the "Traffic Study"), which is incorporated herein by this reference, and (ii) upon the calculations described in Exhibit "C." The Traffic Study is on file and available for inspection with that division (CMS #2022020). **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 County's jurisdiction, notwithstanding any subsequent variance in the actual cost of any improvement(s) to the Deficient Segment or actual traffic /travel impacts created by the Project; provided, however, that if Owner modifies the Project's development program and/or 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 Subsection 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.* As soon as practical after the Effective Date, County will effectuate a transfer in the amount of Sixty-Four Thousand Seven Hundred Forty-Five and 00/100 Dollars (\$64,745.00) as the PS Payment from the road impact fee zone into which the impact fees were paid to the appropriate accounting line for proportionate share payments. County will then transfer or apply the corresponding impact fee credits, as contemplated by Section 3, to the original permit for which the impact fees were originally paid by Owner. Within twenty-one (21) days following its transfer 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 Segment. Within the time frame provided in the 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 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 after the Effective Date, one extension of ninety (90) additional 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 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 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 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. 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.

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, 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.

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: Carl Black of Orlando, LLC
Attn: Omar Rodriguez, Manager
11500 East Colonial Drive
Orlando, Florida 32817
omar@carlblack.com
407-426-3000

With copy to: Alex Patton, Agent
5700 Dot Com Ct
Suite 1070
Oviedo, Florida 32765
apatton@rlh-llc.com

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.

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.

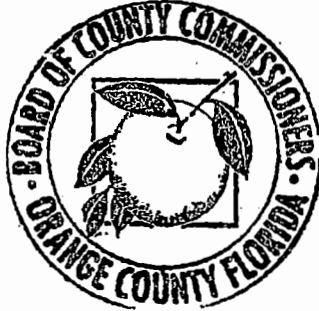
Section 13. Termination. In the event either (i) Owner has not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, as contemplated in Subsection 2(b), or (ii) Owner has timely paid the PS Payment to County and the Project has been constructed on the Property and 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 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.

Proportionate Share Agreement, Carl Black Chevrolet Building Expansion
Carl Black of Orlando, LLC for Alafaya Trail, 2022

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: April 5, 2022

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

By: *Katie Smith*
Deputy Clerk

Print Name: **Katie Smith**

WITNESSES:

[Signature]

Print Name: Barheim Brown

[Signature]

Print Name: Jenifer L. Jones

“OWNER”

Carl Black of Orlando, LLC a Florida limited liability company

By: [Signature]

Print Name: Omar Rodriguez

Title: Manager

STATE OF: FLORIDA
COUNTY OF: Orange

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 7 day of March, 2022, by Omar Rodriguez, as Manager of Carl Black of Orlando, LLC a Florida limited liability company, on behalf of such Corporation, who is personally known to me or has produced FL Drivers License as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 7 day of March, 2022

(Notary Stamp)



[Signature]

Signature of Notary Public

Print Name: Dana M Curcuru

Notary Public, State of: FLORIDA

Commission Expires: 12/12/2022

(mm/dd/yyyy)

Exhibit A

CARL BLACK CHEVROLET BUILDING EXPANSION

Project Location Map



Exhibit "B"

"CARL BLACK CHEVROLET BUILDING EXPANSION"

Parcel ID: 21-22-31-0000-00-019

Legal Description:

EXHIBIT "A"

A parcel of land lying within the North half of the Northeast Quarter of Section 21, Township 22 South, Range 31 East, Orange County Florida, being more particularly described as follows:

Commence at the East Quarter Corner of said Section 21, said corner being monumented by a 6" X 6" concrete monument; Thence run N 00°01'49" E, along the East line of the Northeast Quarter of said Section 21, a distance of 1429.44 feet to the Southeast corner of the Northeast Quarter of the Northeast Quarter of said Section 21; Thence run N 88°00'36" W, along the South line of the Northeast Quarter of said Northeast Quarter, 327.88 feet to a point on the West line of the East Quarter of the Northeast Quarter of the Northeast Quarter of said Section 21; Thence departing said South line, run N 00°06'13" E, along said West line, 30.02 feet to the POINT OF BEGINNING of the following described parcel, Said POINT OF BEGINNING being monumented by a nail & disk (#4596); Thence run N 88°00'36" W, parallel to and 30.00 feet, measured at right angles, North of the South line of the North Half of said Northeast Quarter, 788.44 feet to a point which lies 195.00 feet, measured at right angles, Easterly of the West line of said Northeast Quarter of said Northeast Quarter; Thence run N 00°19'39" E, parallel to and 195.00 feet, measured at right angles, Easterly of said West line, 598.42 feet, said point lies 200.00 feet Southerly of the monumented Southerly right-of-way line of East Colonial Drive (a 200.00 feet right-of-way) also referred to as State Road No. 50; Thence run S 81°15'28" E, 133.37 feet to a point on the East line of the West Quarter of the Northeast Quarter of the Northeast Quarter of said Section 21; Thence run S 00°15'08" W, along said East line, 12.77 feet; Thence run S 87°56'37" E, 269.53 feet; Thence run N 00°10'28" E, 181.09 feet to a point on the monumented Southerly right-of-way line of said East Colonial Drive; Thence run S 81°15'13" E, along said right-of-way line, 388.66 feet to a point on the West line of the East Quarter of the Northeast Quarter of the Northeast Quarter of said Section 21; Thence run S 00°06'13" W along said West line, 705.07 feet to the POINT OF BEGINNING

**Log of Project Contributions
Alafaya Trail (Science Dr to Colonial Dr)**

Proportionate Share Agreement, Carl Black Chevrolet Building Expansion
Carl Black of Orlando, LLC for Alafaya Trail, 2022

Exhibit "C"

DEFICIENT SEGMENT

"CARL BLACK CHEVROLET BUILDING EXPANSION"

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 |
|--------------------------------|-----------------------------------|-------------|----------------|-------------|-------------------------------|-------------------------|-------------------------------|-------------------|--------------------|-------------|
| Alafaya Trail | Science Dr | Colonial Dr | 1.12 | E | 3020 | Widen from 6 to 8 lanes | 4040 | 1020 | \$13,207,135 | \$12,040 |

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 |
|--------------------------------|-----------------------------------|-------------|----------------|-------------|-------------------------------|------------------|-------------------------------|-------------------|---------------------------------|
| Alafaya Trail | Science Dr | Colonial Dr | 1.12 | E | 3020 | 202 | 4040 | 1020 | \$2,615,531 |

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 |
|--------------------------------|-----------------------------------|-------------|----------------|-------------|-------------------------------|-------------------------------|-------------------|------------------|---------------------------------------|------------------------|-------------|
| Alafaya Trail | Science Dr | Colonial Dr | 1.12 | E | 3020 | 4040 | 1020 | 202 | 818 | \$10,591,604 | \$12,040 |

Updated: 2/25/22

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Log of Project Contributions

| | Date | Project | Project Trips | Prop Share | |
|----------|----------|-----------------------------------|---|--------------------|--------------------|
| EXISTING | Feb-19 | Existing plus Committed | 158 | \$4,691,652 | |
| | Mar-20 | Chabad at UCF | 4 | \$118,776 | |
| | May-20 | Waterford Lakes Multifamily | 6 | \$178,164 | |
| | Jul-20 | Bani and Fast Food at East 50 | 1 | \$29,694 | |
| | Sep-20 | Union at Collegiate Village- East | 4 | \$118,776 | |
| | Sep-20 | Union at Collegiate Village- West | 7 | \$207,858 | |
| | Feb-21 | Chase bank at Waterford Lakes | 1 | \$31,205 | |
| | Apr-21 | Waterford Lakes Golf | 3 | \$37,714 | |
| | May-21 | Science Drive Student Housing | 18 | \$226,279 | |
| | | | Backlogged Totals: | 202 | \$5,344,920 |
| | PROPOSED | Feb-22 | Carl Black Chevrolet Building Expansion | 5 | \$64,745 |
| | | | | \$0 | |
| | | | | \$0 | |
| | | | | \$0 | |
| | | Totals: | 207 | \$5,409,665 | |