




Interoffice Memorandum

AGENDA ITEM

December 11, 2019

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

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

SUBJECT: January 28, 2020 – Consent Item
Proportionate Share Agreement For Regions Bank at Hamlin
Avalon Road/CR 545

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Wawa at Hamlin Avalon Road/CR 545 ("Agreement") by and between Hamlin Retail Partners North, LLC, and Orange County for a proportionate share payment in the amount of \$13,401. 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 recommendations of the Roadway Agreement Committee providing for the mitigation of road impacts for one deficient trip on the road segment of Avalon Road/CR 545 from Porter Road to New Independence Parkway in the amount of \$11,107 per trip, and one deficient trip on the road segment of Avalon Road/CR 545 from New Independence Parkway to McKinney Road in the amount of \$2,294 per trip.

This project is located in the Town Center Village of Horizon West, and is subject to the Town Center East Road Network Agreement approved by the Board on December 11, 2011, as amended. Pursuant to the 2011 agreement, trips in excess of the authorized amount may be processed consistent with the County's concurrency ordinance. The project impacts a deficient segment of Avalon Road/CR 545 and requires a proportionate share payment as mitigation. The particular segment of Avalon Road is a partnership project addressed under the Hamlin West Amended and Restated Road Network Agreement approved by the Board on August 7, 2018. While a typical proportionate share agreement would have the payment come to the County, this Agreement provides that the mitigation payment be delivered to the escrow agent managing the partnership dollars for that project and will be subject to the Escrow Agreement approved by the Board on October 18, 2016. This Agreement also directs any additional impact fee payments for the project to the escrow agent to reduce the private funding deficit for the Avalon Road improvements.

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December 11, 2019 – Consent Item
Proportionate Share Agreement For Regions Bank at Hamlin
Avalon Road/CR 545

The Roadway Agreement Committee approved the Agreement on December 11, 2019. 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 Regions Bank at Hamlin Avalon Road/CR 545 by and between Hamlin Retail Partners North, LLC and Orange County directing both the proportionate share payment in the amount of \$13,401 and future transportation impact fee payments that may be associated with the project pursuant to the Escrow Agreement for the Hamlin West Amended and Restated Road Network Agreement to be utilized towards the completion of Avalon Road/CR 545 improvements. District 1

JWW/HEGB/fb
Attachment

APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

BCC Mtg. Date: January 28, 2020
This instrument prepared by
and after recording return to:
James G. Willard, Esq.
Shutts & Bowen LLP
300 S. Orange Avenue, Suite 1600
Orlando, Florida 32801

Parcel ID Number(s): 17-23-27-2714-01-002 (a portion of)

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

**PROPORTIONATE SHARE AGREEMENT FOR
REGIONS BANK AT HAMLIN**

AVALON ROAD/CR 545

This Proportionate Share Agreement (the “Agreement”), effective as of the latest date of execution (the “**Effective Date**”), is made and entered into by and between HAMLIN RETAIL PARTNERS NORTH, LLC, a Florida limited liability company (“**Owner**”), whose principal place of business is 14422 Shoreside Way, Suite 130, Winter Garden, Florida 34787, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), whose address is P.O. Box 1393, Orlando, FL 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”**, which exhibits are attached hereto and incorporated herein by this reference (the “**Property**”); and

WHEREAS, the Property is located in County Commission District 1, within the Town Center Village of Horizon West, and the proceeds of the PS Payment, as defined herein, will be allocated to Avalon Road/CR 545; and

WHEREAS, Owner intends to develop the Property as a 1,500 SF commercial bank with drive-thru facilities referred to and known as Regions Bank at Hamlin (the “**Project**”); and

WHEREAS, Owner received a letter from County dated November 4, 2019, stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #CEL-19-09-068 for the Project was denied; and

WHEREAS, the Project will generate one (1) deficient PM Peak Hour trip for the deficient roadway segment on Avalon Road/CR 545 from Porter Road to New Independence Parkway and one (1) deficient PM Peak Hour trip for the deficient roadway segment on Avalon Road/CR 545 from New Independence Parkway to McKinney Road and zero (0) PM Peak Hour trips were available on the foregoing deficient segments on the date the CEL was denied as

further described in the attached **Exhibit “C”**. Both of the foregoing described deficient roadway segments shall collectively hereafter be referred to as the **“Deficient Segments”**, and the number of deficient trips generated shall collectively be referred to as **“Excess Trips”**, all of the foregoing being further described and identified on the attached **Exhibit “C”**; 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 Thirteen Thousand Four Hundred One and 00/100 Dollars (\$13,401.00) (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 Thirteen Thousand Four Hundred One and 00/100 Dollars (\$13,401.00). 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 Segments based upon (i) Owner’s Traffic Study titled “Regions Bank at Hamlin Transportation Concurrency Analysis” prepared by VHB, Inc. dated September, 2019, for Owner (the **“Traffic Study”**), which is incorporated herein by this reference, and (ii) upon the calculations described in Exhibit “C.” The Traffic Study was accepted by the Orange County Transportation Planning Division on October 31, 2019, and is on file and available for inspection with that division (CMS #2019068). Owner and County further acknowledge and agree that the PS Payment as set forth above shall be the final and binding calculation of the amount the Owner is required to pay through the buildout of the currently approved Project as proportionate share mitigation for impacts of the Project upon roadways within Orange County’s jurisdiction, notwithstanding any subsequent variance in the actual cost of improvement to the Deficient Segments or actual traffic impacts created by the Project; provided, however, that if Owner subsequently increases the number of units and/or square footage, as applicable, of the Project, the Project may then be subject to an additional concurrency evaluation and proportionate share agreement as set forth in Section 2(d) below. Owner and County further acknowledge and agree that the calculation of, and agreement regarding, the amount of the PS Payment constitute material inducements for the parties to enter into this Agreement.

(b) *Timing of PS Payment, Issuance of CEL.* Within ninety (90) days following the Effective Date, Owner shall deliver a check to County in the amount of the PS Payment. The check shall be made payable to “Shutts & Bowen LLP Escrow Account” and shall be delivered to the Fiscal and Operational Support Division of the Orange County Planning, Environmental, and Developmental Services Department for acknowledgment of receipt and transmittal to Shutts & Bowen LLP for deposit into the Hamlin West Road Network Agreement escrow account maintained by Shutts & Bowen LLP, as “**Escrow Agent**” pursuant to the Escrow Agreement for Hamlin West Road Network Agreement (the “**Escrow Agreement**”) approved by the Orange County Board of County Commissioners on October 18, 2016. The County hereby determines that because the improvement of Avalon Road/CR 545 is an objective of the Hamlin West Road Network Agreement entered into among Owner, County, and Carter-Orange 45 SR 429 Land Trust dated June 28, 2016 and recorded June 30, 2016 at Document No. 20160338700, Public Records of Orange County, Florida, as amended by that certain Amended and Restated Road Network Agreement dated August 7, 2018 and recorded August 14, 2018 at Document No. 20180482220 (the “**Road Agreement**”), it is in the best interest of the County to accelerate improvement of Avalon Road/CR 545 by directing the PS Payment to Escrow Agent to be held and disbursed as part of the “**Escrowed Funds**” in accordance with, and as defined in, the Escrow Agreement and the Road Agreement.

Within twenty-one (21) days following its receipt of the PS Payment, if the Property’s future land use designation and zoning are consistent with the Project’s proposed development, County shall issue a CEL sufficient to encumber traffic capacity for the Project, irrespective of any actual traffic deficiency on the Deficient Segments. Within the time frame provided in the CEL, the Owner must reserve the encumbered trips by obtaining a Capacity Reservation Certificate as provided in Section 30-591 of the Orange County Code, as may be amended. An amount equal to the PS Payment shall be applied toward the amount of the initial capacity reservation payment (and any subsequent reservation payment(s), if the initial reservation payment does not exceed the amount of the PS Payment) as further set forth in Section 3 below. In the event Owner has not paid the PS Payment within ninety (90) days of the Effective Date, one extension of ninety (90) days may be granted by the manager of County’s Transportation Planning Division. In the event Owner has not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, this Agreement shall become null and void.

(c) *Project Development.* Recordation of a subdivision plat 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. 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: Hamlin Retail Partners North, LLC
14422 Shoreside Way, Suite 130
Winter Garden, Florida 34787

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

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

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

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

Orange County Planning, 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; Termination. 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. 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 Section 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 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. 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.

Section 14. Allocation of Project Transportation Impact Fees. To further enable and accelerate improvement of the Deficient Segments, Owner shall pay any transportation impact fee due at the time of Project development by check in the amount of such required transportation impact fee (less appropriate credit for the PS Payment) payable to “Shutts & Bowen LLP Escrow Account” and delivered to the Orange County Transportation Planning Division for acknowledgement of receipt and transmittal to Escrow Agent for deposit into the Hamlin West Road Network Agreement Escrow Account maintained by Escrow Agent pursuant to the Escrow Agreement.

Section 15. Disposition of Excess Escrowed Funds. Notwithstanding anything herein or in the Escrow Agreement to the contrary, in the event there are Escrowed Funds still held by Escrow Agent pursuant to the Escrow Agreement after completion of all authorized Improvements, as defined in and pursuant to the Road Agreement, such excess funds shall be immediately delivered to County by Escrow Agent.

[Signatures appear on following pages]

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: Bryan W. B. Wors
for Jerry L. Demings
Orange County Mayor

Date: 28 January, 2020

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: Dennis A. Schulte Jr.

[Signature]

Print Name: Heather Easterling

"OWNER"

HAMLIN RETAIL PARTNERS NORTH, LLC, a Florida limited liability company

By: BK Hamlin Retail Partners North, LLC, a Florida limited liability company, its Manager

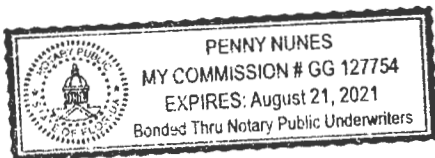
By: [Signature]
Scott T. Boyd, Manager

Date: 11/7/19

**STATE OF FLORIDA
COUNTY OF ORANGE**

Acknowledged freely and voluntarily for the purposes therein expressed before me by Scott T. Boyd, Manager of BK Hamlin Retail Partners North, LLC, a Florida limited liability company, as Manager of Hamlin Retail Partners North, LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 7th day of November, 2019. He/she is personally known to me or has produced _____ (type of identification) as identification and did did not (circle one) take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 7th day of November, 2019.



[Signature]
NOTARY PUBLIC

Print Name: Penny Nunes

My Commission Expires: 8/21/21

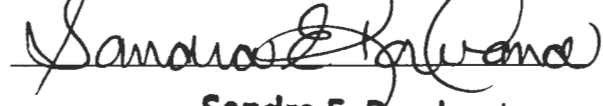
JOINDER AND CONSENT

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

WITNESSES:



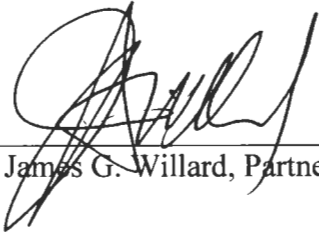
Print Name: Serena M. Williams



Print Name: Sandra E. Rowland

“ESCROW AGENT”

SHUTTS & BOWEN, LLP

By: 
James G. Willard, Partner

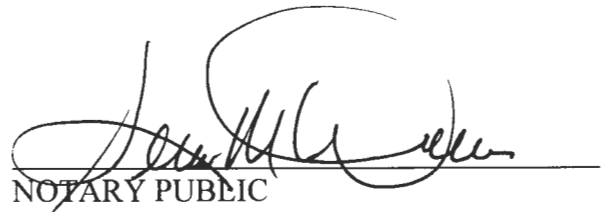
**STATE OF FLORIDA
COUNTY OF ORANGE**

Acknowledged freely and voluntarily for the purposes therein expressed before me by James G. Willard, Partner of Shutts & Bowen, LLP, a Florida limited liability partnership, who is known by me to be the person described herein and who executed the foregoing, this 26th day of November, 2019. He is personally known to me, ~~or has produced~~ _____ (type of identification) as identification and did did not (circle one) take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 26th day of November, 2019.



SERENA M. WILLIAMS
Commission # GG 316007
Expires April 14, 2023
Bonded Thru Budget Notary Services


NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

Exhibit "A" "Regions Bank at Hamlin" Project Location Map

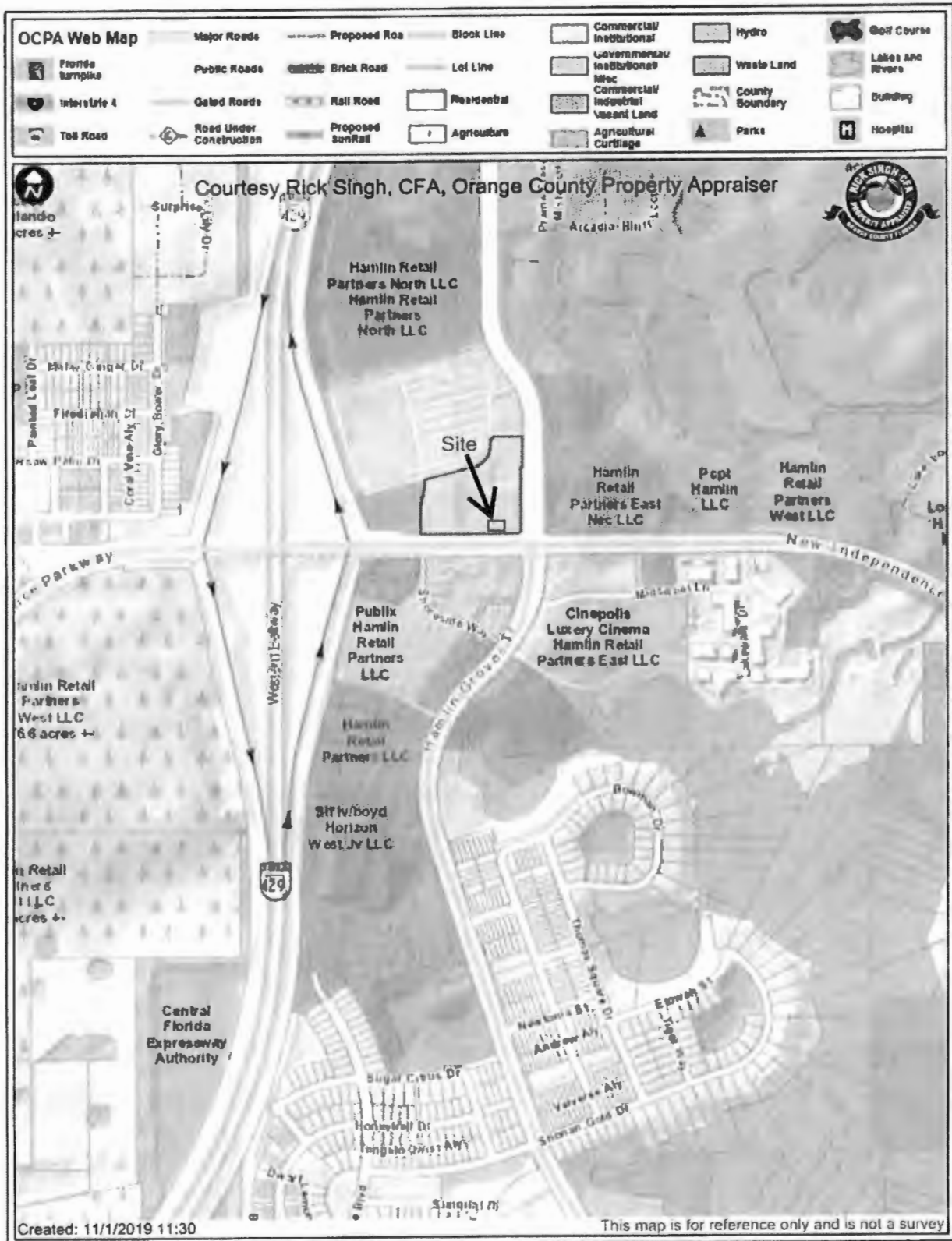


Exhibit "B"
"Regions Bank at Hamlin"
Legal Description

A PARCEL OF LAND LYING IN SECTION 20, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, BEING A PORTION OF LOT 1, HAMLIN NORTH, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 85, PAGE 61, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID LOT 1; THENCE S89°42'03"W, ALONG THE SOUTHERLY LINE OF SAID LOT 1, A DISTANCE OF 132.89 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S89°42'03"W, ALONG SAID SOUTHERLY LINE, A DISTANCE OF 90.80 FEET; THENCE, DEPARTING SAID SOUTHERLY LINE, N00°00'00"E, A DISTANCE OF 142.77 FEET; THENCE N89°52'08"E, A DISTANCE OF 90.06 FEET; THENCE S00°18'03"E, A DISTANCE OF 142.50 FEET TO SAID SOUTHERLY LINE AND THE POINT OF BEGINNING.

CONTAINING 12,898 SQUARE FEET OR 0.296 ACRES, MORE OR LESS.

Log of Project Contributions Avalon Rd (New Independence Pkwy to McKinney 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	Capacity Increase	Total Project Cost	Cost / Trip
Avalon Rd	New Independence Pkwy	McKinney Rd	0.19	E	880	Widen from 2 to 4 lanes	2000	1120	\$2,596,880	\$2,294

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
Avalon Rd	New Independence Pkwy	McKinney Rd	0.19	E	880	555	2000	1120	\$1,273,027

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
Avalon Rd	New Independence Pkwy	McKinney Rd	0.19	E	880	2000	1120	555	565	\$1,285,984	\$2,294

Updated: 11/1/19

Log of Project Contributions

Date	Project	Project Trips	Prop Share
Existing Dec-18	Existing plus Committed	546	\$1,252,524
Dec-18	The Bake at Hamlin	2	\$4,130
Dec-18	Hamlin Self-Storage	1	\$2,065
Dec-18	Hamlin Daycare	4	\$8,260
Dec-19	Restaurant at Hamlin NEC	2	\$4,130
Feb-19	Hamlin Active Adult Living Apartments	1	\$2,065
Feb-19	Hamlin Reserve Office/Daycare Bldg D	3	\$6,195
Feb-19	Hamlin Reserve Medical Office Bldg A&F	4	\$8,260
May-19	Taco Bell/Pizza Hut	2	\$4,130
May-19	SunTrust	1	\$2,065
Oct-19	Hamlin McCoy Federal Credit Union	2	\$4,130
Oct-19	Hamlin SWC Commercial Lot C (McDonalds)	2	\$4,130
	Backlogged Totals:	555	\$1,271,109
Proposed Oct-19	Regions Bank at Hamlin	1	\$2,294
			\$0
			\$0
			\$0
			\$0
	Totals:	886	\$1,273,403