

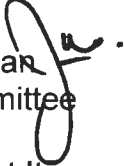


Interoffice Memorandum

AGENDA ITEM

October 2, 2019

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

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

SUBJECT: October 22, 2019 – Consent Item
Proportionate Share Agreement For Elan Cypress Pointe
Vineland Avenue

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Elan Cypress Pointe Vineland Avenue ("Agreement") by and between Diamond Resorts Corporation, formerly known as Sunterra Corp, Diamond Resorts Cypress Pointe III Development, LLC, and Orange County for a proportionate share payment in the amount of \$65,355. 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 segment of Vineland Avenue from Winter Garden-Vineland Road/SR 535 to Little Lake Bryan Parkway in the amount of \$13,071 per trip.

The Roadway Agreement Committee approved the Agreement on October 2, 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 Elan Cypress Pointe Vineland Avenue by and between Diamond Resorts Corporation, formerly known as Sunterra Corp, Diamond Resorts Cypress Pointe III Development, LLC, and Orange County for a proportionate share payment in the amount of \$65,355. District 1

JVW/HEGB/fb
Attachment

BCC Mtg. Date: October 22, 2019

This instrument prepared by
and after recording return to:

Mohammed Abdallah, PE
Traffic & Mobility Consultants LLC
3101 Maguire Blvd, Suite 265
Orlando, FL 32803

Parcel ID Numbers:

15-24-28-6211-98-090
15-24-28-6211-98-010
15-24-28-6211-98-130
15-24-28-6211-14-130
15-24-28-6211-14-010
15-24-28-6211-25-130
15-24-28-6211-25-010
15-24-28-6211-24-131
15-24-28-6211-24-010
15-24-28-6211-24-090
15-24-28-6211-99-010
15-24-28-6211-99-130
15-24-28-6211-99-170
15-24-28-6211-15-131
15-24-28-6211-15-010
15-24-28-6211-16-150
15-24-28-6211-16-130
15-24-28-6211-16-010
15-24-28-6211-17-131
15-24-28-6211-17-010

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

**PROPORTIONATE SHARE AGREEMENT FOR
ELAN CYPRESS POINTE**

VINELAND AVENUE

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 DIAMOND RESORTS CORPORATION, formerly known as SUNTERRA CORP, a Maryland corporation whose principal place of business is 10600 W Charleston Blvd, Las Vegas, NV 89135, and DIAMOND RESORTS CYPRESS POINTE III DEVELOPMENT, LLC, a Delaware limited liability company whose principal place of business is 10600 W Charleston Blvd, Las Vegas, NV 89135 (each an “**Owner**”, and collectively are the “**Owners**”), 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, Owners are the owners 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, and the proceeds of the PS Payment, as defined herein, will be allocated to Vineland Avenue; and

WHEREAS, Owners intend to develop the Property as three hundred eighty (380) apartment units, referred to and known as ELAN CYPRESS POINTE (the "**Project**"); and

WHEREAS, Owners received a letter from County dated TBD, stating that Owner's Capacity Encumbrance Letter ("**CEL**") application #CEL-19-09-066 for the Project was denied; and

WHEREAS, the Project will generate five (5) deficient PM Peak Hour trips (the "**Excess Trips**") for the deficient roadway segment on Vineland Avenue from Winter Garden-Vineland Road/SR 535 to Little Lake Bryan Parkway (the "**Deficient Segment**"), and zero (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, the Owners shall provide the County with proportionate share mitigation for the Excess Trips; and

WHEREAS, Owners 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-five thousand three hundred fifty-five and 00/100 Dollars (\$65,355.00) (the "**PS Payment**"); and

WHEREAS, County and Owners 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 Owners 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 Segment, as described in Exhibit "C," totals sixty-five thousand three hundred fifty-five and 00/100 Dollars (\$65,355.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. Owners and County agree that the Excess Trips will constitute the Project's impact on the aforementioned Deficient Segment based upon (i) Owners' Traffic Study titled "LAKE STREET APARTMENTS" prepared by TRAFFIC

& MOBILITY CONSULTANTS LLC, dated July, 2019 for BERING I, 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 September 20, 2019, and is on file and available for inspection with that division (CMS #2019066). Owners 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 Owners are 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 Segment or actual traffic impacts created by the Project; provided, however, that if Owners subsequently increase 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. Owners 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, Owners shall deliver a check to County in the amount of sixty-five thousand three hundred fifty-five and 00/100 Dollars (\$65,355.00) 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 Owners have 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 Owners have 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 Segment or other segments within the transportation impact area, as defined by County. Owners understand and agree that any such additional trips are neither vested nor otherwise permitted under this Agreement, and that Owners are precluded from asserting any such vesting. In addition, Owners understand and agree 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 Owners' 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, Owners 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. Owners 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, Owners shall be required to obtain a Capacity Reservation Certificate prior to the expiration of Owners' 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 Owners 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 Owners agree that Owners 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 Owners in connection with the issuance of a Capacity Reservation Certificate as contemplated in Section 2 above. In no event shall Owners 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, Owners 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: Diamond Resorts Corporation
16600 W Charleston Boulevard
Las Vegas, Nevada 89135

With copy to: Diamond Resorts Cypress Pointe III Development, LLC
16600 W Charleston Boulevard
Las Vegas, Nevada 89135

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, 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 Owners 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 Owners' 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 Owners 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) Owners have 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) Owners have 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, ELAN CYPRESS POINTE
DIAMOND RESORTS CORPORATION and DIAMOND RESORTS CYPRESS POINTE III DEV LLC for
Vineland Avenue, 2019

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: 22 Oct 19

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

By: *Jennifer Klimetz*
for Deputy Clerk

Print Name: Jennifer Klimetz

WITNESSES:

Miriana

Print Name: Miriana Siquian

[Signature]

Print Name: Michael Avila

“OWNER”

DIAMOND RESORTS CORPORATION, a
Maryland corporation

By: [Signature]

Print Name: Michael Shalmy

Title: Authorized Signatory

Date: 10/4/19

STATE OF Nevada
COUNTY OF Clark

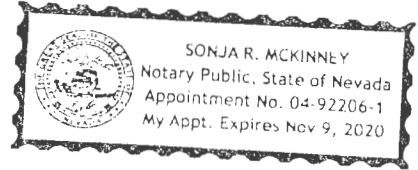
The foregoing instrument was acknowledged before me by Michael Shalmy, as Authorized Signatory of DIAMOND RESORTS CORPORATION, a Maryland corporation, who is known by me to be the person described herein and who executed the foregoing, this 4th day of October, 2019. He is personally known to me or has 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 4th day of October, 2019.

[Signature]
NOTARY PUBLIC

Print Name: SONJA R MCKINNEY

My Commission Expires: 11-9-2020



WITNESSES:

[Signature]

Print Name: Mirjane Siguion

[Signature]

Print Name: Michael Arila

"OWNER"

DIAMOND RESORTS CYPRESS POINTE
III DEVELOPMENT, LLC, a Delaware
limited liability company

By: [Signature]

Print Name: Michael Shalmy

Title: Authorized Signatory

Date: 10/4/19

STATE OF Nevada
COUNTY OF Clark

The foregoing instrument was acknowledged before me by Michael Shalmy , as Authorized Signatory of DIAMOND RESORTS CYPRESS POINTE III DEVELOPMENT, LLC, a Delaware limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 4th day of October, 2019. He ~~is~~ 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 4th day of October, 2019.

[Signature]
NOTARY PUBLIC

Print Name: SONJA R MCKINNEY

My Commission Expires: 11-9-2020

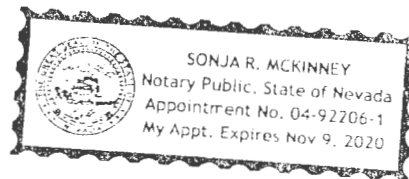


Exhibit "A"

"ELAN CYPRESS POINTE"

Project Location Map



Exhibit "B"

"ELAN CYPRESS POINTE"

Parcel IDs: 15-24-28-6211-98-090, 15-24-28-6211-98-010, 15-24-28-6211-98-130, 15-24-28-6211-14-130, 15-24-28-6211-14-010, 15-24-28-6211-25-130, 15-24-28-6211-25-010, 15-24-28-6211-24-131, 15-24-28-6211-24-010, 15-24-28-6211-24-090, 15-24-28-6211-99-010, 15-24-28-6211-99-130, 15-24-28-6211-99-170, 15-24-28-6211-15-131, 15-24-28-6211-15-010, 15-24-28-6211-16-150, 15-24-28-6211-16-130, 15-24-28-6211-16-010, 15-24-28-6211-17-131, 15-24-28-6211-17-010

Legal Description:

All of Blocks 14, 15, 16, 17, 24, 25, 98 and 99; ORANGE CENTER

SUBDIVISION, according to the plat thereof as recorded in Plat Book "D", Page 143, Public Records of Orange County, Florida.

LESS AND EXCEPT THE FOLLOWING:

COMMENCE AT THE SOUTHWEST CORNER OF LOT 12, BLOCK 17, ORANGE CENTER, AS RECORDED IN PLAT BOOK D, PAGE 143, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, THENCE ALONG THE EAST LINE OF THE ALLEY IN BLOCK 17, RUN NORTH 00°15'44" WEST 61.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID EAST LINE, RUN NORTH 00°15'44" WEST 16.00 FEET; THENCE LEAVING SAID EAST LINE, RUN NORTH 89°46'27" EAST 100.00 FEET; THENCE RUN SOUTH 00°15'44" EAST 69.00 FEET; THENCE RUN SOUTH 89°47'29" WEST 71.88 FEET; RUN SOUTH 89°43'07" WEST 20.12 FEET; THENCE RUN NORTH 00°15'44" WEST 53.00 FEET; THENCE RUN SOUTH 89°43'07" WEST 8.00 FEET TO THE POINT OF BEGINNING.

AND ALSO LESS AND EXCEPT THE FOLLOWING:

THE NORTH 13.09 FEET OF LOT 24, BLOCK 24, ORANGE CENTER, ACCORDING TO THE FLAT THEREOF AS RECORDED IN PLAT BOOK D, PAGE 143, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, LYING NORTH OF THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 15, TOWNSHIP 24 SOUTH, RANGE 28 EAST.

ALSO LESS AND EXCEPT RIGHT-OF-WAY FOR PUBLIC ROAD PURPOSES AS SET FORTH AND DESCRIBED IN DEED BOOK 338, PAGE 460 AND 461, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

Exhibit "C"

"ELAN CYPRESS POINTE"

DEFICIENT SEGMENT

Log of Project Contributions

Vineland Avenue (Winter Garden Vineland Road/SR 535 to Little Lake Bryan Parkway)

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
Vineland Ave	Winter Garden- Vineland Rd/SR 535	Little Lake Bryan Pkwy	0.87	E	800	Widen from 2 to 4 lanes	1700	900	\$11,763,277	\$13,071

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
Vineland Ave	Winter Garden- Vineland Rd/SR 535	Little Lake Bryan Pkwy	0.87	E	800	114	1700	900	\$1,490,015

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
Vineland Ave	Winter Garden- Vineland Rd/SR 535	Little Lake Bryan Pkwy	0.87	E	800	1700	900	114	786	\$10,273,262	\$13,071

Updated: 9/27/19

Log of Project Contributions				
	Date	Project	Project Trips	Prop Share
Existing	Apr-14	Existing plus Committed	101	\$1,157,662
	Apr-14	Lake Buena Vista Village Phase 2 - Candlewood Suites (aka Delores PD)	3	\$34,386
	Sep-18	Downey SR 535	8	\$94,136
	Apr-19	Addison Lake Bryan	2	\$23,534
	Backlogged Totals:			114
Proposed	Sep-19	Elan Cypress Pointe	5	\$65,355
				\$0
				\$0
				\$0
				\$0
Totals:			119	\$1,376,073