



Interoffice Memorandum

AGENDA ITEM

October 21, 2019

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

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

SUBJECT: November 12, 2019 – Consent Item  
Proportionate Share Agreement For Windermere Cay Phase 3  
Reams Road

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Windermere Cay Phase 3 Reams Road ("Agreement") by and between Timberlock Partners II, LP and Orange County for a proportionate share payment in the amount of \$269,536. 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 eight deficient trips on the road segment of Reams Road from Lake Hancock Road to Floridian Place in the amount of \$18,802 per trip and eight deficient trips on the road segment of Reams Road from Floridian Place to Taborfield Avenue in the amount of \$14,890 per trip.

The Roadway Agreement Committee approved the Agreement on October 16, 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 Windermere Cay Phase 3 Reams Road by and between Timberlock Partners II, LP and Orange County for a proportionate share payment in the amount of \$269,536. District 1**

JVW/HEGB/fb  
Attachment

BCC Mtg. Date: November 12, 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 Number:  
02-24-27-7150-01-001

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

**PROPORTIONATE SHARE AGREEMENT FOR  
WINDERMERE CAY PHASE 3**

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**REAMS 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 TIMBERLOCK PARTNERS II, LP, a Texas limited partnership (“**Owner**”), whose principal place of business is 1717 Woodstead Ct, Suite 207, The Woodlands, TX 77380, 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,” 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 Reams Road; and

WHEREAS, Owner intends to develop the Property as one hundred twenty-four (124) apartment units, referred to and known as WINDERMERE CAY PHASE 3 (the “**Project**”); and

WHEREAS, Owner received a letter from County dated October 7, 2019, stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #CEL-19-08-055 for the Project was denied; and

WHEREAS, the Project will generate eight (8) deficient PM Peak Hour trips (the “**Excess Trips 1**”) for the deficient roadway segment on Reams Road from Lake Hancock Road to Floridian Place (the “**Deficient Segment 1**”), and zero (0) PM Peak Hour trips were available on Deficient Segment 1 on the date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated herein; and

WHEREAS, the Project will generate eight (8) deficient PM Peak Hour trips (the “**Excess Trips 2**”) for the deficient roadway segment on Reams Road from Floridian Place to Taborfield Avenue (the “**Deficient Segment 2**”), and zero (0) PM Peak Hour trips were available on Deficient Segment 2 on the date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated herein; and

WHEREAS the Excess Trips 1 and Excess Trips 2 shall be referred to herein collectively as the “**Excess Trips**”; and

WHEREAS, the Deficient Segment 1 and Deficient Segment 2 shall be referred to herein collectively as the “**Deficient Segments**”; and

WHEREAS, the Excess Trips will cause the Deficient Segments to operate below adopted Level of Service standards; therefore, pursuant to Section 163.3180(5)(h), Florida Statutes, as amended, the Owner shall provide the County with proportionate share mitigation for the Excess Trips; and

WHEREAS, Owner and County have agreed that the proportionate share payment necessary to mitigate the impact of the Excess Trips on the Deficient Segments through the current anticipated Project buildout is two hundred sixty-nine thousand five hundred thirty-six and 00/100 Dollars (\$269,536.00) (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 two hundred sixty-nine thousand five hundred thirty-six and 00/100 Dollars (\$269,536.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. Owner and County agree that the Excess Trips will constitute the Project’s impact on the aforementioned Deficient Segments based upon (i) Owner’s Traffic Study titled “WINDERMERE CAY PHASE 3” prepared by Traffic & Mobility Consultants LLC, dated July 2019 for CATALYST DEVELOPMENT PARTNERS, 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 August 26, 2019, and is on file and available for inspection with that division (CMS #2019055). 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 two hundred sixty-nine thousand five hundred thirty-six and 00/100 Dollars (\$269,536.00) as the PS Payment. The check shall be made payable to "Orange County Board of County Commissioners" and shall be delivered to the Fiscal and Operational Support Division of the Planning, Environmental, and Development Services Department. Within twenty-one (21) days following its receipt of the PS Payment, if the Property's future land use designation and zoning are consistent with the Project's proposed development, County shall issue a CEL sufficient to encumber traffic capacity for the Project, irrespective of any actual traffic deficiency on the Deficient Segments. Within the time frame provided in the CEL, the Owner must reserve the encumbered trips by obtaining a Capacity Reservation Certificate as provided in Section 30-591 of the Orange County Code, as may be amended. An amount equal to the PS Payment shall be applied toward the amount of the initial capacity reservation payment (and any subsequent reservation payment(s), if the initial reservation payment does not exceed the amount of the PS Payment) as further set forth in Section 3 below. In the event Owner has not paid the PS Payment within ninety (90) days of the Effective Date, one extension of ninety (90) days may be granted by the manager of County's Transportation Planning Division. In the event Owner has not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, this Agreement shall become null and void.

(c) *Project Development.* Recordation of a subdivision plat or approval of a commercial site plan for the Project shall not be permitted prior to the issuance of a Capacity Reservation Certificate as contemplated in subparagraph 2(b) above.

(d) *Increase in Project Trips.* Any change to the Project which increases the unit count and/or square footage, as applicable, may result in an increase in trips on the Deficient Segments or other segments within the transportation impact area, as defined by County. Owner understands and agrees that any such additional trips are neither vested nor otherwise permitted under this Agreement, and that Owner is precluded from asserting any such vesting. In addition, Owner understands and agrees that any such changes resulting in an increase in trips may cause this Agreement to become null and void, and/or may require application for and execution of an additional Proportionate Share Agreement, along with any other required documentation, for the number of increased trips.

(e) *Satisfaction of Transportation Improvement Requirements.* County hereby acknowledges and agrees that upon Owner's payment of the PS Payment as required herein, and absent any change in the Project increasing the number of trips as set forth in subparagraph 2(d) above, Owner shall be deemed to have satisfied all requirements for the mitigation of the traffic impacts of the Project on all roads affected by the Project within County's jurisdiction through buildout of the Project. Owner shall be entitled to fully and completely develop the Project, without regard to whether the improvements to the Deficient Segments are actually constructed; provided, however, Owner shall be required to obtain a Capacity Reservation Certificate prior to the expiration of Owner's Capacity Encumbrance Letter and shall be required to maintain the validity of the Capacity Reservation Certificate in accordance with its terms. Additionally, nothing herein shall be construed to exempt Owner from meeting the requirements of all other applicable laws, regulations, and/or Orange County Code provisions or from making the required payment of transportation impact fees applicable to the Project, subject to credits as set forth in Section 3 below.

**Section 3. Transportation Impact Fee Credits.** County and Owner agree that Owner shall be entitled to receive transportation impact fee credits on a dollar for dollar basis in an amount up to but not exceeding the PS Payment in accordance with Section 163.3180, Florida Statutes, and as specifically described in Exhibit "C." County further agrees that such credits may be applied on a dollar for dollar basis against capacity reservation fees at such time as capacity reservation fees may be required to be paid by Owner in connection with the issuance of a Capacity Reservation Certificate as contemplated in Section 2 above. In no event shall Owner receive credits in excess of the PS Payment and in the event the PS Payment exceeds either the applicable transportation impact fees or capacity reservation fees, as the case may be, Owner shall not be entitled to a refund for the amount of the PS Payment in excess of such transportation impact fees or capacity reservation fees.

**Section 4. No Refund.** The PS Payment (including any capacity reservation fees paid with the PS Payment) is non-refundable.

**Section 5. Notice.** With the exception of the timing of the PS Payment as set forth in Section 2(b) hereof, the parties acknowledge and agree that no party shall be considered in default for failure to perform under this Agreement until such party has received written notice specifying the nature of such default or failure to perform and said party fails to cure said default or fails to perform within thirty (30) days of receipt of written notice. Any notice delivered with respect to this Agreement shall be in writing and be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

As to Owner: Billy J. Brice, III, Vice President  
Timberlock Partners II, LP  
1717 Woodstead Court, Suite 207  
The Woodlands, Texas 77380

With copy to: Mark Mechlowitz, Partner  
Catalyst Development Partners, LLC  
880 Glenwood Avenue, Suite H  
Atlanta, Georgia 30316

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

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

Orange County  
Planning, Environmental, and Development Services Department  
Manager, Transportation Planning Division  
4200 South John Young Parkway, 2<sup>nd</sup> Floor  
Orlando, Florida 32839

Orange County  
Planning, Environmental, and Development Services Department  
Manager, Planning Division  
201 South Rosalind Avenue, 2<sup>nd</sup> Floor  
Orlando, Florida 32801

**Section 6. Covenants Running with the Property.** This Agreement shall be binding and shall inure to the benefit and burden of the heirs, legal representatives, successors, and assigns of the parties, and shall be a covenant running with the Property and be binding upon the successors and assigns of the Owner and upon any person, firm, corporation, or entity who may become the successor in interest to the Property.

**Section 7. Recordation of Agreement.** The parties hereto agree that this Agreement shall be recorded in the Public Records of Orange County, Florida, at Owner's expense, within ten (10) business days after the Effective Date.

**Section 8. Applicable Law.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida and in accordance with the Orange County Code.

**Section 9. Specific Performance.** County and Owner shall each have the right to enforce the terms and conditions of this Agreement only by an action for specific performance. Venue for any action(s) initiated under or in connection with this Agreement shall lie in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

**Section 10. Attorney Fees.** In the event either party hereto brings an action or proceeding including any counterclaim, cross-claim, or third party claim, against the other party arising out of this Agreement, each party in such action or proceeding, including appeals therefrom, shall be responsible for its own attorney and legal fees.

**Section 11. Construction of Agreement; Severability.** Captions of the Sections and Subsections of this Agreement are for convenience and reference only; any words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any party hereunder or substantially increase the burden of any party hereunder, shall be held to be invalid or

unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

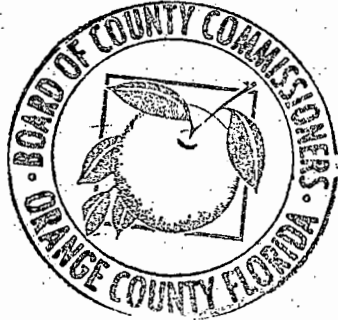
**Section 12. Amendments.** No amendment, modification, or other change(s) to this Agreement shall be binding upon the parties unless in writing and formally executed by all of the parties.

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

**Section 14. Counterparts.** This Agreement may be executed in up to three (3) counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

[Signatures appear on following pages]

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: 12 Nov 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:

Kriss Lattimer

Print Name: KRISS LATTIMER

Kathryn L. Collins

Print Name: Kathryn L. Collins

“OWNER”

TIMBERLOCK PARTNERS II, LP, a Texas limited partnership

By: [Signature]

Print Name: Billy J. Brice, III

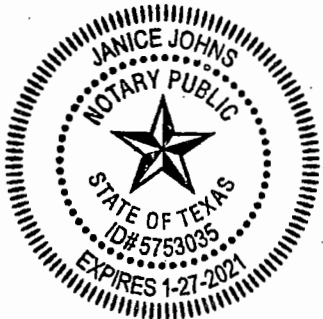
Title: Vice President

Date: 10/01/19

STATE OF Texas  
COUNTY OF Montgomery

The foregoing instrument was acknowledged before me by Billy J. Brice, III, as Vice President of TIMBERLOCK PARTNERS II, LP, a Texas limited partnership, who is known by me to be the person described herein and who executed the foregoing, this 1st 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 1st day of October, 2019.



Janice Johns  
NOTARY PUBLIC

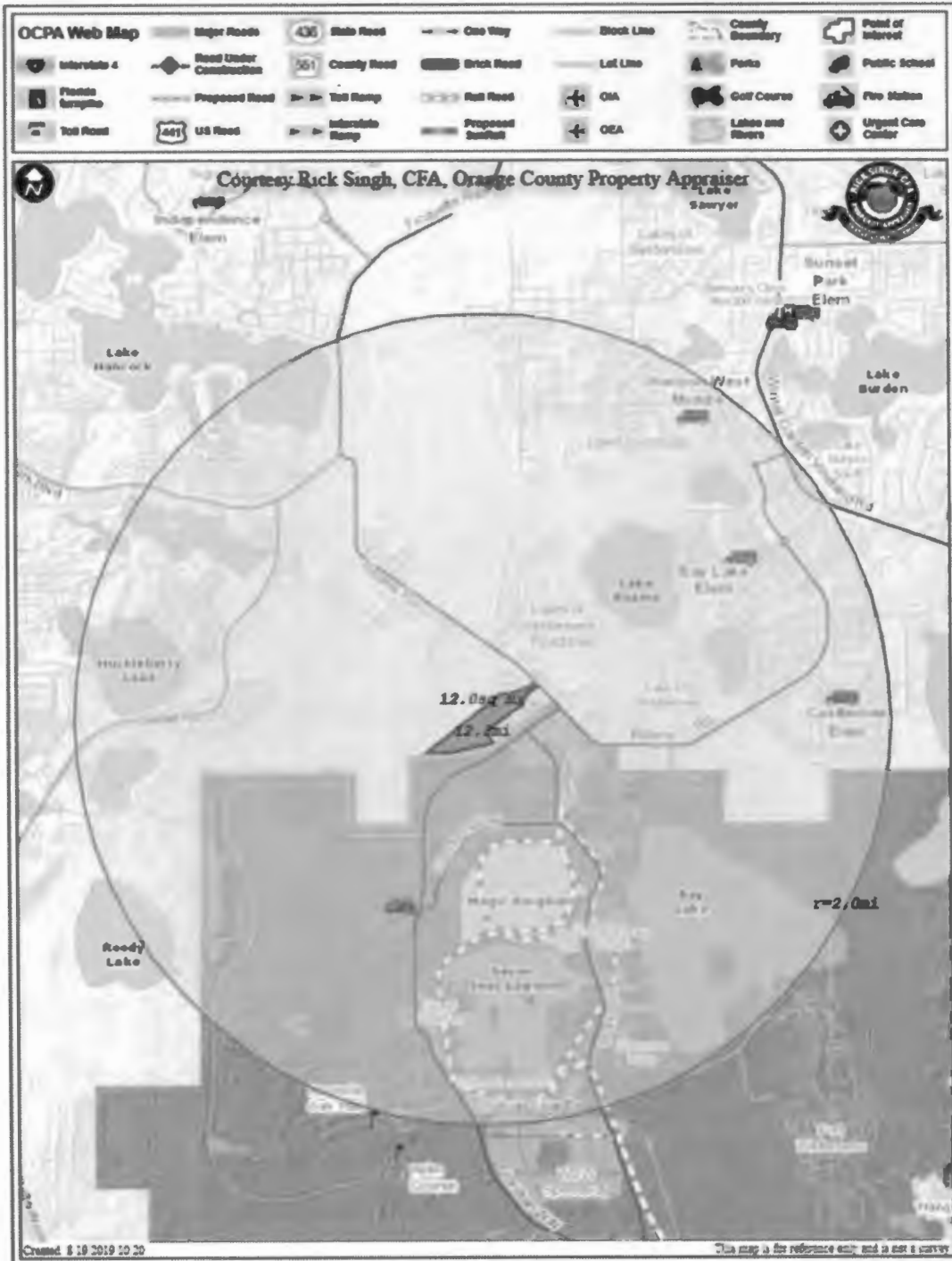
Print Name: JANICE JOHNS

My Commission Expires: 1-27-2021

Exhibit "A"

"WINDERMERE CAY PHASE 3"

Project Location Map



**Exhibit "B"**

**"WINDERMERE CAY PHASE 3"**

Parcel ID: 02-24-27-7150-01-001

**Legal Description:**

SAGO CAY 78/109 LOT 1 (LESS BEGIN AT THE SE CORNER OF LOT 1 TH S53-30-09W 1773.88 FT TH N35-42-19W 303.53 FT TH N53-30-09E 1008.94 FT TH N53-29-48E 73.77 FT TO A PT ON A NON-TAN CURVE CONCAVE NWLY HAVING A RADIUS 162.89 FT DELTA 31-51-51 CHORD BRG N37-08-09E AN ARC LENGTH 90.59 FT TH N21-12-14E 186.04 FT TO A PT ON A NON-TAN CURVE CONCAVE SELY HAVING A RADIUS 335.62 FT DELTA 05-03-55 CHORD BRG N23-38-47E AN ARC LENGTH 29.67 FT TO A PT ON A NON-TAN CURVE CONCAVE SELY HAVING A RADIUS 348 FT DELTA 22-56-10 CHORD BRG N37-33-25E AN ARC LENGTH 139.31 FT TO A PCC CONCAVE SELY HAVING A RADIUS 148 FT DELTA 15-54-01 CHORD BRG N56-58-30E AN ARC LENGTH 41.07 FT TO A PCC CONCAVE SELY HAVING A RADIUS 24.5 FT DELTA 33-31-30 CHORD BRG N81-41-16E AN ARC LENGTH 14.34 FT TH N76-14-07E 53.2 FT TO A PT ON A NON-TAN CURVE CONCAVE SELY HAVING A RADIUS 19.5 FT DELTA 32-43-07 CHORD BRG N53-00-02E AN ARC LENGTH 11.14 FT TO A PRC CONCAVE NWLY HAVING A RADIUS 176 FT DELTA 19-19-10 CHORD BRG N59-42-00E AN ARC LENGTH 59.35 FT TH S50-02-25W 50.13 FT TO A PT ON A NON-TAN CURVE CONCAVE SELY HAVING A RADIUS 71.82 FT DELTA 06-26-57 CHORD BRG N54-04-28E AN ARC LENGTH 8.08 FT TH S43-29-23E 451.21 FT TO THE POB)

Exhibit "C"

"WINDERMERE CAY PHASE 3"

DEFICIENT SEGMENT 1

Log of Project Contributions

Reams Road Segment (Lake Hancock Road to Floridian Place)

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
Reams Road	Lake Hancock Road - Floridian Pl	1.73	E	880	Widen from 2 to 4 lanes	2000	1120	\$21,058,100	\$18,602

County Share of Improvement					
Planned Improvement Roadway(s)	Limits of Improvement (From - To)	Segment Length	Adopted LOS	Existing Generalized Capacity	County Backlog Responsibility
Reams Road	Lake Hancock Road - Floridian Pl	1.73	E	880	\$13,405,043

Development 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
Reams Road	Lake Hancock Road - Floridian Pl	1.73	E	880	2000	1120	663	457	\$6,592,357	\$18,602

Updated: 8/28/19

Log of Project Contributions			
Date	Project	Project Trips	Prop Share
Existing Jun-18	Existing plus Committed	844	\$12,108,488
Jun-18	Windermere Center	19	\$357,238
Backlogged Totals:			\$12,465,726
Proposed Aug-19	Windermere Cay Phase 3	8	\$150,416
Totals:			\$12,616,142

**DEFICIENT SEGMENT 2**

Log of Project Contributions  
 Reams Road (Floridian Place to Taborfield Avenue)

**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
Reams Rd	Floridian Pl	Taborfield Ave	1.37	E	880	Widen from 2 to 4 lanes	2000	1120	\$18,876,087	\$14,890

**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
Reams Rd	Floridian Pl	Taborfield Ave	1.37	E	880	127	2000	1120	\$1,880,947

**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
Reams Rd	Floridian Pl	Taborfield Ave	1.37	E	880	2000	1120	127	993	\$14,785,121	\$14,890

Updated: 8/28/19

Log of Project Contributions				
	Date	Project	Project Trips / Prop Share	
Existing	Nov-15	Anytime Fitness Village Lake Retail	4 / \$66,448	
	Dec-15	Lakeside II Partners Taco Bell/Pizza Hut	9 / \$128,034	
	Dec-15	Reams Rd Self Storage	3 / \$53,016	
	Dec-15	Reams Rd Self Storage	6 / \$85,356	
	Mar-16	Windermere Business Plaza	5 / \$53,015	
	Mar-16	BOA Lakeside Village South PD	5 / \$53,015	
	Apr-16	Lakeside Neighborhood SANT	22 / \$233,266	
	May-16	Reams Rd Development LLC 7-Eleven	8 / \$63,618	
	Jul-16	Reams Development LLC Mattamy	21 / \$222,863	
	Feb-17	Lakeside Village Properties LLC	9 / \$95,427	
	Mar-17	Lakeside Village II Lot 3	10 / \$106,030	
	Mar-17	Sweetwater Car Wash	7 / \$74,221	
	Jun-17	Action Gator Tire	1 / \$10,603	
	May-18	Regions Bank (Windermere)	2 / \$29,008	
	Jun-19	Windermere Center	14 / \$203,066	
	Aug-19	Lakeside Village Lot 7	3 / \$44,870	
	<b>Backlogged Totals:</b>			<b>127 / \$1,273,720</b>
	Proposed	Aug-19	Windermere Cay Phase 3	8 / \$119,120
			\$0	
			\$0	
			\$0	
			\$0	
<b>Totals:</b>			<b>135 / \$1,392,840</b>	