



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 2

DATE: April 18, 2019

TO: Mayor Jerry L. Demings
and the
Board of County Commissioners

THROUGH: Paul Sladek, Manager *PS*
Real Estate Management Division

FROM: Russell L. Corriveau, Assistant Manager
Real Estate Management Division

CONTACT PERSON: **Paul Sladek, Manager**

DIVISION: **Real Estate Management**
Phone: (407) 836-7090

ACTION REQUESTED: Approval and execution of Remediation Agreement between Speedway LLC and Orange County and authorization to disburse funds to pay recording fees and record instrument

PROJECT: Taft-Vineland Road (Orange Blossom Trail to Orange Avenue)

District 4

PURPOSE: To provide for the release of deed restrictions.

ITEM: Remediation Agreement
Revenue: None

APPROVALS: Real Estate Management Division
County Attorney's Office
Public Works Department
Risk Management Division

BUDGET: Account No.: 1033-072-3037-6110

FUNDS: \$61.00 Payable to Orange County Comptroller
(recording fees)

REMARKS:

On February 12, 2019, the Board approved a Contract for Sale and Purchase (Contract) with Tampa Acquisitions, Inc. to acquire Parcels 163 and 963 (Parcels) of the Taft-Vineland Road project (Project). The Parcels will be used for road widening and a retention pond. Closing of the Contract is expected to occur on or before May 31, 2019, but is contingent upon County receiving clear title to the Parcels.

Speedway LLC (Speedway), a former owner of the Parcels, is currently responsible for monitoring and conducting remediation activities on the Parcels (Remediation) related to a petroleum release that occurred on the Parcels in 1989 when the site was a gas station (1989 Release). In furtherance of such activities, Speedway by deed restriction retained a license for access to the Parcels (Access Right) when Speedway sold the site in 2003. This Access Right must be released by Speedway for County to receive clear title to the Parcels.

The Remediation Agreement being presented to the Board as part of this action requested provides for Speedway to release its Access Right subject, however, to County assuming Speedway's responsibility for the Remediation and releasing Speedway from any liabilities associated with the 1989 Release. Although County did not contemplate entering this Remediation Agreement with Speedway, County has always anticipated performing the Remediation itself and resolving the 1989 Release as part of the Project, without any recourse to Speedway. The Public Works Department, the County Attorney's Office, and the Risk Management Division have reviewed and approved the Remediation Agreement.

County to pay recording fees.

BCC Mtg. Date: May 7, 2019

This instrument prepared by:

José L. González, Jr.
Senior Attorney
Speedway LLC
500 Speedway Drive
Enon, OH 45323

REMEDIATION AGREEMENT BETWEEN
SPEEDWAY LLC AND ORANGE COUNTY

THIS AGREEMENT (the "Agreement"), is entered into by and between Speedway LLC, a Delaware limited liability company with a mailing address at 500 Speedway Drive, Enon Ohio 45323 ("Speedway") , and Orange County, a charter county and political subdivision of the State of Florida ("County") with a mailing address at P.O. Box 1393, Orlando, FL 32802-1393.

WHEREAS, Speedway formerly owned and operated a convenience store with fuel dispensing operations known as Speedway Store 389 located at 9495 South Orange Blossom Trail, Orlando, Florida 32837-8303 FDEP Fac. #8944029 (the "Property"); and

WHEREAS, Speedway reported a petroleum release at the Property in October 1989 referred to as Release # 10/24/89 (the "1989 Release") to the Florida Department of Environmental Protection ("FDEP");

WHEREAS, Speedway has conducted Corrective Action of the 1989 release to the present time pursuant to applicable law and regulations in order to obtain a Site Rehabilitation Completion Order;

WHEREAS, Speedway sold and conveyed the Property in May 2003 to SSA Florida LLC., which later merged into Sunoco, Inc. (R&M).

WHEREAS, Speedway changed its name from Speedway SuperAmerica LLC to Speedway LLC in February 2011.

WHEREAS, Sunoco, Inc. (R&M) sold and conveyed the Property in September 2004 to Tampa Acquisitions, Inc., a Florida Corporation;

WHEREAS, Speedway LLC has at all times material hereto remained responsible for the Corrective Action of the 1989 Release;

WHEREAS, the County desires to take over responsibility for completion of Corrective Action of the 1989 Release in connection with its acquisition of the Property;

WHEREAS, the County has requested that Speedway release a license for access to the Property to conduct Corrective Action in two deeds which Speedway as seller of the Property issued to SSA Florida LLC;

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set forth herein, the parties hereby covenant and agree that the foregoing recitals are incorporated herein and agree as follows:

1. ASSUMPTION OF CORRECTIVE ACTION. Effective with its acquisition of the Property, County shall assume and retain the obligation to conduct and complete all required Corrective Action (as defined immediately below) of the 1989 Release. County shall complete such required Corrective Action in accordance with law and as expeditiously as possible. Corrective Action shall be deemed complete upon the issuance of a Site Rehabilitation Completion Order. Speedway shall have no further obligation to perform Corrective Action of the 1989 Release. As used herein, the term "Corrective Action" shall mean any investigation, assessment, monitoring, sampling, analysis, cleanup, removal, disposal, on-site treatment, off-site treatment, active remediation, passive remediation, remediation alternatives including but not limited to risk-based corrective action ("RBCA"), if applicable, including institutional controls, Declaration of Restrictive Covenant and/or other activities approved, concurred in or required by the governmental agency having jurisdiction, including the Florida Department of Environmental Protection (the "Agency") through completion and receipt of a "Site Rehabilitation Completion Order", or its functional equivalent from the Agency. Upon request, County shall provide Speedway with copies of any reports, documents or any information regarding the 1989 Release which it forwards to or receives from the Agency.

2. HAZARDOUS MATERIALS. County shall be responsible for Hazardous Materials relating to the 1989 Release in, at, on, under or about the Property or which migrate from the Property after County acquires the Property. The term "Hazardous Materials" shall mean any substance, pollutant, contaminant, material or waste, or combination thereof, whether solid, liquid or gaseous in nature, subject to regulations, liability (as defined under applicable common law), investigation, control or remediation under any Environmental Law (herein defined). "Hazardous Materials" also means any environmental media, including without limitation, soil, sediment and water, containing any of the materials described or set forth in the preceding sentence. The term "Environmental Laws" shall mean any and all applicable laws, rules, orders, regulations,

statutes, ordinances, codes, decrees, judicial decisions, permits, licensing or other legally enforceable requirement (including without limitation, common law) of any federal, state, local, municipal or other Agency, regulating, relating to or imposing liability or standards of conduct concerning protection of the environment, human health or safety, including, but not limited to, the Chapter 376, Fla. Stat., Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.) the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Federal Water Pollution Control Act (32 U.S.C. §§ 1251 et seq.), the Safe Drinking Water Act (32 U.S.C. §§ 300f et seq.), and any regulation pursuant to any of the above laws, as may be amended from time to time.

3. **RELEASE.** County hereby releases, Speedway and its affiliates from any and all liabilities, claims, losses, suits, actions, judgments, damages, and costs (including, but not limited to, attorneys', consultant, laboratory and expert fees), whether known or unknown, contingent or otherwise, arising out of or in any way connected with the occurrence, existence or presence of any Hazardous Materials relating to the 1989 Release and as defined in paragraph 2 above, in, at, on, under or about the Property or which migrate from the Property.
4. **INDEMNIFICATION.** To the fullest extent permitted by law and without waiving its sovereign immunity, County shall indemnify, defend and hold Speedway and its affiliates harmless of, from and against any and all liabilities, claims, losses, suits, actions, judgments, damages, costs (including but not limited to attorneys', consultant, laboratory and expert fees) or penalties levied or asserted against Speedway or its affiliates by a third party relating solely to claims arising under the Environmental Laws, resulting from the occurrence, existence or presence of any Hazardous Materials relating to the 1989 Release and as defined in paragraph 2 above in, at, on, under or about the Property or which migrate from the Property. Nothing in this agreement shall be construed as a waiver of County's sovereign immunity or the provisions of Section 768.28, Florida Statutes as it may be amended from time to time.
5. **RELEASE OF RESERVATION FOR ACCESS.** Subject to the terms and conditions of this Agreement, including but not limited to Paragraph 6, Speedway does hereby release, terminate, cancel and discharge any right, title, claim and/or interest that Speedway has in or to the Property, including but not limited to a "...license for access ... to conduct corrective action...in connection with any remediation of hazardous substances" set forth in: (1) the Special Warranty Deed from Speedway to SSA Florida LLC dated May 29, 2003 and recorded in Official Records Book 6960, Page 0189 of the Public Records of Orange County, Florida; and (2) the Quitclaim Deed from Speedway to SSA Florida LLC dated May 29, 2003 and recorded in Official Records Book 7100, Page 3163, of the Public Records of Orange County, Florida.

6. COVENANTS RUNNING WITH THE LAND. The provisions of this Agreement shall constitute covenants running with the land or an equitable servitude upon the land, as the case may be, applicable to all of the Property described herein or any portion thereof. Furthermore, this Agreement shall be binding on all parties having any right, title, or interest in the Property described herein or any portion thereof, and their heirs, personal representatives, successors and assigns. County declares that the Property described in this Agreement and any portion thereof shall be held, sold, and conveyed subject to the provisions of this Agreement. This Agreement shall inure to the benefit of and be enforceable by Speedway and its respective legal representatives, successors, and assigns.
7. AMENDMENT. This Agreement contains the entire understanding of the parties hereto with respect to the subject matter set forth herein and supersedes all prior agreements and understandings, oral and written between the parties with respect to such subject matter. The provisions, restrictions, and covenants of this Agreement shall not be modified or amended except in a written instrument approved by a majority of the Orange County Board of County Commissioners and Speedway or its successors or assigns. No such modification or amendment shall be effective until said written instrument has been signed, acknowledged, and recorded in the Public Records of Orange County, Florida.
8. NO ADMISSIONS. This Agreement shall not constitute or be used as evidence of any admission of law, fact, or liability or a waiver of any right or defense by either party.
9. COMPLIANCE WITH APPLICABLE LAWS. County shall comply with all applicable laws and regulations in performing Corrective Action as provided herein.
10. HEADINGS. The headings used in this Agreement are for reference only.
11. EFFECTIVE DATE. This Agreement is contingent upon the acquisition of title to the Property by the County. This Agreement shall take effect upon being recorded in the Public Records of Orange County, Florida.

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.

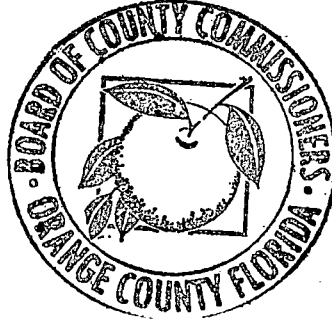
COUNTY

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: Bryan Brooks

for Jerry L. Demings
Orange County Mayor



Date: 7 May 2019

ATTEST: Phil Diamond

Phil Diamond
As Clerk of the Board of County Commissioners

By: Jessica Vaughn
for Deputy Clerk

SPEEDWAY LLC

By: Rick DeFend

Print Name: Rick DeFend

Title: Director Environmental & Safety

Date: 4/15/19



STATE OF OHIO
COUNTY OF CLARK

The forgoing instrument was acknowledged before me this day of April 15th, 2019 by Rick DeFend of Speedway LLC, a Delaware limited liability company, on behalf of said company, who is personally known to me.

WITNESS my hand and official seal in the County and State last aforesaid this 15th day of April, 2019.

Erin A Moosbrugger

Notary Public

Print Name: Erin A Moosbrugger

My Commission Expires: N/A



ERIN ASHWORTH MOOSBRUGGER, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date.
Section 147.03 O. R. C.

SPEEDWAY LLC

CERTIFICATION

October 1, 2018

I, David E. Ball, Vice President – Law of Speedway LLC, a Delaware limited liability company (the “Company”), on behalf of the Company and not in my individual capacity, hereby certify as follows:

That the following resolution was duly adopted by written consent of the managers of the Company on February 6, 2006:

“RESOLVED: That the President, any Vice President, any director, or any Regional Director, be and each hereby is authorized and empowered, as occasion may require from time to time in the ordinary course of business of the Company, to enter into, in the name and in behalf of the Company, transactions pertaining to business of the Company or to the acquisition, care, operation, management, sale or other disposition of property of the Company, real or personal, upon such terms and conditions each may deem advisable, and to execute and deliver any and all instruments of writing in connection with any such transaction; and that the Secretary or any Assistant Secretary be and hereby is authorized and empowered to attest the execution of any and all such instruments of writing.

That the foregoing resolution is in full force and effect as of the date hereof and has not been amended, superseded or otherwise modified in any material respect.

That Rick DeFend is the Director, Environmental & Safety of the Company and that he is serving as such on this date.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on behalf of the Company as of the date first written above.

SPEEDWAY LLC

By: David E. Ball
David E. Ball
Vice President - Law

REQUEST FOR FUNDS FOR LAND ACQUISITION

X Under BCC Approval

Under Ordinance Approval

Date: April 16, 2019

Amount: \$61.00

DEC 21/21/19

Project: Taft-Vineland Road (OBT to Orange Avenue)

Parcels: 163/963

Charge to Account #1033-072-3037-6110 4/23/19

Controlling Agency Approval

4/24/19
Date

Fiscal Approval

Belkys Jorge Date

TYPE TRANSACTION (Check appropriate block(s))
 X Pre-Condemnation _____ Post-Condemnation

District #4

- _____ Acquisition at Approved Appraisal
- _____ Acquisition at Below Approved Appraisal
- _____ Acquisition at Above Approved Appraisal
- X Advance Payment Requested

Orange County Comptroller \$61.00
(Recording Fee)

DOCUMENTATION ATTACHED (Check appropriate block(s))

- X Remediation Agreement
- _____ Copy of Executed Instruments
- _____ Certificate of Value
- _____ Settlement Analysis

Payable to: Orange County Comptroller \$61.00, (Recording Fee)

CHECKS ARE TO BE PICKED UP BY THE REAL ESTATE MANAGEMENT DIVISION (DO NOT MAIL)

Recommended by Russell L. Corriveau
Russell L. Corriveau, Assistant Manager, Real Estate Mgmt.

4/16/19

Date

Payment Approved Paul Sladek
Paul Sladek, Manager, Real Estate Management Division

4/18/19

Date

Certified Jessica Vaughn
Approved by BCC for Deputy Clerk to the Board

MAY 07 2019

Date

Examined/Approved _____
Comptroller/Government Grants

Check No. / Date

REMARKS:
Please do not mail the check. The check will be picked up as soon as it is ready. Please Contact Russ Corriveau, Assistant Manager @ 407-836-7074 if there are any questions.

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
MAY 07 2019