




**Interoffice Memorandum**

April 19, 2023

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

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

SUBJECT: May 23, 2023 – Consent Item  
Proportionate Share Agreement for Starbucks (Shoppes at Alafaya Trail)  
Alafaya Trail, Colonial Drive & Woodbury Road

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Starbucks (Shoppes at Alafaya Trail) Alafaya Trail, Colonial Drive, & Woodbury Road ("Agreement") by and between HM-UP Development Alafaya Trails – TRU, LLC and Orange County for a proportionate share payment in the amount of \$113,374. 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 four deficient trips on the road segment of Alafaya Trail from Science Drive to Colonial Drive in the amount of \$13,374 per trip, five deficient trips on the road segment of Colonial Drive from Woodbury Road to Lake Pickett in the amount of \$9,075 per trip, and one deficient trip on the road segment of Woodbury Road from Lake Underhill Road to Waterford Lakes Parkway in the amount of \$14,503 per trip.

The Roadway Agreement Committee recommended approval on April 19, 2023. 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 Starbucks (Shoppes at Alafaya Trail) Alafaya Trail, Colonial Drive & Woodbury Road by and between HM-UP Development Alafaya Trails – TRU, LLC and Orange County for a proportionate share payment in the amount of \$113,374. District 4**

JVW/NC/js  
Attachment

BCC Mtg. Date: May 23, 2023

This instrument prepared by  
and after recording return to:

Eric Sheppard  
HM-Up Development Alafaya Trails – Tru LLC  
180 Bal Cross Drive  
Bal Harbour, Florida 33154

Parcel ID Number: 22-22-31-8030-04-000

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

**PROPORTIONATE SHARE AGREEMENT FOR  
STARBUCKS (SHOPPES AT ALAFAYA TRAIL)**

**ALAFAYA TRAIL, COLONIAL DRIVE & WOODBURY 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 HM-UP DEVELOPMENT ALAFAYA TRAILS – TRU, LLC a Florida Limited Liability Company (“**Owner**”), with a principal place of business at 180 Bal Cross Drive Bal Harbour, Florida 33154, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), with its principal address at P.O. Box 1393, Orlando, Florida 32802-1393. Owner and County may sometimes be referred to herein individually as “Party” and collectively as “Parties.”

WHEREAS, Owner holds fee simple title to certain real property, as generally depicted on Exhibit “A” and more particularly described on Exhibit “B”, both of which exhibits are attached hereto and incorporated herein by this reference (the “**Property**”); and

WHEREAS, the Property is located in County Commission District 4, and the proceeds of the PS Payment, as defined herein, will be allocated to Alafaya Trail, Colonial Drive & Woodbury Road; and

WHEREAS, Owner intends to develop the Property as a 2,500 Sq. Ft. Coffee Shop with Drive Thru, referred to and known as Starbucks (Shoppes at Alafaya Trail) (the “**Project**”); and

WHEREAS, Owner received a letter from County dated February 14, 2023 stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #CEL-23-01-002 for the Project was denied; and

WHEREAS, the Project will generate 4 deficient PM Peak Hour trips (the “**Excess Trips 1**”) for the deficient roadway segment on Alafaya Trail from Science Drive to Colonial Drive (the “**Deficient Segment 1**”), and 0 PM Peak Hour trips were available on the 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 5 deficient PM Peak Hour trips (the “**Excess Trips 2**”) for the deficient roadway segment on Colonial Drive from Woodbury Road to Lake Pickett Road (the “**Deficient Segment 2**”), and 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 Project will generate 1 deficient PM Peak Hour trip (the “**Excess Trip 3**”) for the deficient roadway segment on Woodbury Road from Lake Underhill Road to Waterford Lakes Parkway (the “**Deficient Segment 3**”), and 0 PM Peak Hour trips were available on Deficient Segment 3 on the date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated herein; and

WHEREAS, the Excess Trips 1, Excess Trips 2, and Excess Trip 3 shall be referred to herein collectively as the Excess Trips; and

WHEREAS, the Deficient Segment 1, Deficient Segment 2, and Deficient Segment 3 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, Owner has offered to provide County with proportionate share mitigation for the Excess Trips; and

WHEREAS, Owner and County have agreed that the proportionate share payment necessary to mitigate the impact of the Excess Trips on the Deficient Segments through the current anticipated Project buildout is One Hundred Thirteen Thousand Three Hundred Seventy-Four and 00/100 Dollars (\$113,374.00) (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 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 One Hundred Thirteen Thousand Three Hundred Seventy-Four and 00/100 Dollars (\$113,374.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes, as may be amended. Owner and County agree that the Excess Trips will constitute the Project’s impact on the aforementioned Deficient Segments based upon (i) Owner’s Traffic Study titled “Starbucks Alafaya Trail” prepared by Kimley-Horn & Associates, Inc, dated January 2023 for Hm-Up Development Alafaya Trails – Tru, 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 February 6, 2023 and is on file and available for inspection with that division (CMS #2023002). Owner and County further acknowledge and agree that the PS Payment as set forth above shall be the final and binding calculation of the amount the Owner is required to pay through the buildout of the currently approved Project as proportionate share mitigation for impacts of the Project upon roadways within County’s jurisdiction, notwithstanding any subsequent variance in the actual cost of any improvement(s) to the Deficient Segments or actual traffic /travel impacts created by the Project; provided, however, that if Owner modifies the Project’s development program and/or subsequently increases the number of units and/or square footage, as applicable, of the Project, the Project may then be subject to an additional concurrency evaluation and proportionate share agreement as set forth in Subsection 2(d) below. Owner and County further acknowledge and agree that the calculation of, and agreement regarding, the amount of the PS Payment constitute material inducements for the Parties to enter into this Agreement.

(b) *Timing of PS Payment, Issuance of CEL.* Not later than ninety (90) days following the Effective Date, Owner shall deliver a check to County in the amount of One Hundred Thirteen Thousand Three Hundred Seventy-Four and 00/100 Dollars (\$113,374.00) 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, Owner must reserve the encumbered trips by obtaining a Capacity Reservation Certificate as provided in Section 30-591 of the Orange County Code, as may be amended. An amount equal to the PS Payment shall be applied toward the amount of the initial capacity reservation payment (and any subsequent reservation payment(s), if the initial reservation

payment does not exceed the amount of the PS Payment) as further set forth in Section 3 below. In the event Owner has not paid the PS Payment within ninety (90) days after the Effective Date, one extension of ninety (90) additional days may be granted by the manager of County’s Transportation Planning Division. In the event Owner has not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, this Agreement shall become null and void.

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

(d) *Increase in Project Trips.* Any change or modification to the Project that increases the unit count and/or square footage, as applicable, may result in an increase in trips on the Deficient 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 or modification to the Project as set forth in Subsection 2(d) above, Owner shall be deemed to have satisfied all requirements for the mitigation of the traffic impacts of the Project on all roads affected by the Project within County’s jurisdiction through buildout of the Project. Owner shall be entitled to fully and completely develop the Project, without regard to whether improvements to the Deficient 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, rules, regulations, and/or Orange County Code provisions or from making the required payment of transportation and other impact fees applicable to the Project, subject to any credits as set forth in Section 3 below. For avoidance of doubt, nothing herein is intended to, nor shall constitute, prepayment of any densities and/or intensities of development or of any development program.

**Section 3. Transportation Impact Fee Credits.** County and Owner agree that Owner shall be entitled to receive transportation impact fee credits, applicable only toward development of the Project on the Property, on a dollar for dollar basis in an amount up to but not exceeding the PS Payment in accordance with Section 163.3180, Florida Statutes, as may be amended, and as specifically described in Exhibit “C”. County further agrees that such credits may be applied on a

dollar for dollar basis against capacity reservation fees at such time as capacity reservation fees may be required to be paid by Owner in connection with the issuance of a Capacity Reservation Certificate as contemplated in Section 2 above. In no event shall Owner receive credits in excess of the PS Payment and in the event the PS Payment exceeds either the applicable transportation impact fees or capacity reservation fees, as the case may be, Owner shall not be entitled to a refund for the amount of the PS Payment in excess of such transportation impact fees or capacity reservation fees. For avoidance of doubt, nothing herein is intended to, nor shall constitute, prepayment of any densities and/or intensities of development or of any development program.

**Section 4. No Refund.** The PS Payment (including any capacity reservation fees paid with the PS Payment) is non-refundable and cannot be transferred or applied to another project or property.

**Section 5. 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: HM-Up Development Alafaya Trails – Tru, LLC  
C/o Eric Sheppard  
180 Bal Cross Drive  
Bal Harbour, Florida 33154

With copy to: Kimley-Horn & Associates, Inc.  
C/o Sue Lorentz  
189 South Orange Avenue, Suite 1000  
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, 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, 2nd Floor  
Orlando, Florida 32839

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

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

**Section 7. Recordation of Agreement.** Owner shall record an original of this Agreement in the Public Records of Orange County, Florida, at no expense to County, not later than thirty (30) days after the Effective Date.

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

**Section 9. Specific Performance.** County and Owner shall each have the right to enforce the terms and conditions of this Agreement only by an action for specific performance. Venue for any action(s) initiated under or in connection with this Agreement shall lie in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida. 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, in accordance with Section 5, 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.

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

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

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

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

**Section 14. Counterparts.** This Agreement may be executed in up to two (2) counterparts, each of which shall be deemed to be an original and both of which together shall constitute one and the same instrument.

[Signatures appear on following pages]



Proportionate Share Agreement, Starbucks (Shoppes at Alafaya Trail)  
HM-Up Development Alafaya Trails – Tru LLC for Alafaya Trail, Colonial Drive & Woodbury Road, 2023

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.

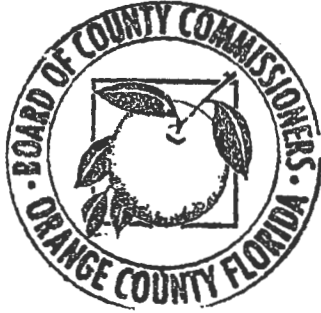
“COUNTY”

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*  
for Jerry L. Demings  
Orange County Mayor

Date: May 23, 2023



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

By: *Jennifer Lara-Klimetz*  
Deputy Clerk

Print Name: Jennifer Lara-Klimetz

WITNESSES:

“OWNER”

C. Feltz

HM-UP DEVELOPMENT ALAFAYA  
TRAILS – TRU, LLC a Florida Limited  
Liability Company

Print Name: Catherine Feltz

Caitlin Lawrence

By: Eric Sheppard

Print Name: Caitlin Lawrence

Print Name: Eric Sheppard

Title: Manager

STATE OF: Florida

COUNTY OF: Orange

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 24<sup>th</sup> day of April, 2023, by Eric Sheppard, as Manager of HM-UP Development Alafaya Trails – TRU, LLC a Florida Limited Liability Company, who  is personally known to me or  has produced FL DL as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 24<sup>th</sup> day of April, 2023

(Notary Stamp)

Susan D. Lorentz

Signature of Notary Public

Print Name: Susan D. Lorentz

Notary Public, State of: Florida

Commission Expires: 03/05/2027

(mm/dd/yyyy)



**Exhibit “A”**

**“STARBUCKS (SHOPPES AT ALAFAYA TRAIL)”**

**Project Location Map**



**Exhibit “B”**

**“STARBUCKS (SHOPPES AT ALAFAYA TRAIL)”**

**Parcel ID: 22-22-31-8030-04-000**

**Legal Description:**

SHOPPES AT ALAFAYA TRAIL.  
LOT 4

A PORTION OF LOT 7, SUNSET TERRACE. ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK “X”, PAGE 11 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; SAID LANDS LYING IN SECTION 22, TOWNSHIP 22 SOUTH, RANGE 31 EAST, ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 22 SOUTH, RANGE 31 EAST, ORANGE COUNTY, FLORIDA; THENCE RUN N87°58'30"E ALONG THE NORTH LINE OF SAID NORTHWEST 1/4 OF THE SOUTHWEST 1/4, A DISTANCE OF 30.00 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF O'BERRY HOOVER ROAD AS RECORDED IN OFFICIAL RECORDS BOOK 1913, PAGE 245 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE CONTINUE N87°58'30"E, ALONG SAID NORTH LINE, A DISTANCE OF 1317.54 FEET TO THE WESTERLY RIGHT OF WAY LINE OF ALAFAYA TRAIL AS RECORDED IN OFFICIAL RECORDS BOOK 2612, PAGE 1894 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN N01°25'12"W ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 344.62 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID WESTERLY RIGHT OF WAY LINE RUN S89°09'06"W, A DISTANCE OF 156.13 FEET; THENCE RUN N00°50'54"W, A DISTANCE OF 104.28 FEET TO THE NORTH LINE OF SAID LOT 7, SUNSET TERRACE; THENCE RUN N89°41'52"E ALONG SAID NORTH LINE, A DISTANCE OF 155.11 FEET TO THE AFOREMENTIONED WESTERLY RIGHT OF WAY LINE OF ALAFAYA TRAIL; THENCE RUN S01°25'12"E ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 102.80 FEET TO THE POINT OF BEGINNING.





