



Interoffice Memorandum

May 2, 2023

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

FROM: Timothy L. Boldig, Interim Director
Planning, Environmental, and Development Services

CONTACT PERSON: **Renzo Nastasi, AICP, Manager
Transportation Planning Division
(407) 836-8072**

SUBJECT: May 2, 2023 – Consent Item
Transportation Impact Fee Agreement Regarding an
Alternative Impact Fee Calculation for Floor and Decor -
Waterford Oaks - Application #22-001

On March 9, 2023, the Alternative Impact Fee Committee approved the alternative transportation impact fee calculation and variables for Floor and Decor – Waterford Oaks.

Variables	Alternative Impact Study Results	Ordinance Rate Retail 50,000 SF or less
Trip Generation Rate per 1,000 SF	8.13	75.05
Trip Length (miles)	12.25	2.46
Percent New Trips (%)	72.57%	56%
Limited Access Discount Factor (%)	56%	36.1%

The Alternative Transportation Impact Fee utilizing the above variables is \$5,384.94 per thousand square feet. This rate differs from the applicable ordinance rate of \$10,051 per thousand square feet (per Ordinance Rate Schedule of October 27, 2020, to the present).

The Alternative Impact Fee Committee requests the approval of the Transportation Impact Fee Agreement regarding an Alternative Impact Fee Calculation between Orange County and Floor and Decor – Waterford Oaks. Additionally, Floor and Decor – Waterford Oaks has paid the County \$28,710 for future monitoring for this site. This fee will be used to conduct a follow-up study of the trip generation, trip length, new trips characteristics of the above referenced site, and limited access discount factor as provided for in the Alternative Impact Fee Agreement. This Agreement has been approved in form by the County Attorney's Office and Risk Management.

Page 2 of 2

Transportation Impact Fee Agreement Regarding an
Alternative Impact Fee Calculation for Floor and
Decor - Waterford Oaks - Application #22-001

ACTION REQUESTED: Approval and execution of Transportation Impact Fee Agreement Regarding an Alternative Impact Fee Calculation for Floor and Decor - Waterford Oaks by and between Bluerock Development, LLC, and Orange County District 4.

TLB/RN/mm

Attachments

BCC Mtg. Date: May 02, 2023

Alt Transp. Imp Fee Agmt
Floor and Decor – Waterford Oaks, 2023

THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

Joseph Schuemann
BLUEROCK DEVELOPMENT, LLC
3408 S. Orange Ave. Ste B, Orlando, FL 32806

Parcel ID (s): **22-22-31-8974-01-000**

**TRANSPORTATION IMPACT FEE AGREEMENT
REGARDING AN ALTERNATIVE IMPACT FEE CALCULATION
FOR FLOOR AND DECOR – WATERFORD OAKS**

This TRANSPORTATION IMPACT FEE AGREEMENT REGARDING AN ALTERNATIVE IMPACT FEE CALCULATION FOR Floor and Decor – Waterford Oaks (the “Agreement”), effective as of the latest day of execution (the “Effective Date”), is made and entered into by and between Bluerock Development, LLC, a Florida limited liability company, with a principal place of business at 3408 S. Orange Avenue, Suite B, Orlando, FL 32806-6265 (“Owner”), and Orange County, a charter county and political subdivision of the State of Florida, with a mailing address at c/o County Administrator, P.O. Box 1393, Orlando, FL 32802-1393 (“County”).

WITNESSETH:

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 are attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, Owner intends to develop all or a portion of the Property as a Floor and Decor at 74,347 square feet, known as Floor and Decor – Waterford Oaks (“the Project”); and

WHEREAS, pursuant to section 23-93 of the Orange County Code (the “Alternative Transportation Impact Fee Code”) and Orange County Administrative Regulations 4.01 and 4.02, as all may be amended, Owner conducted an alternative transportation impact fee traffic study (the “Study”) and submitted the Study (Number AIF#22-001) to County prior to the issuance of any building permit for the Project; and

WHEREAS, Owner calculated an alternative transportation impact fee (the “Alternative Impact Fee Calculation”) in accordance with the formula set forth in section 23-93 of the Orange County Code; and

WHEREAS, on February 23, 2023, County conditionally accepted Owner’s Alternative Impact Fee Calculation with the following results: Average Daily Trip Generation Rate of 8.13 trip(s) per 1000 square feet;

Percentage of New Trips at 72.57%; LADF of 56%; and Assessable Trip Length of 11.75 mile(s), as all such terms are defined in the Alternative Impact Fee Code, as detailed in Exhibit “C”, attached hereto and incorporated herein; and

WHEREAS, pursuant to the Alternative Transportation Impact Fee Code, the parties are required to enter into this Agreement.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration exchanged by and between County and Owner, the receipt and sufficiency of which are hereby acknowledged, the parties hereto stipulate and agree as follows:

1. ***Recitals.*** The above recitals are true and correct and are incorporated herein by this reference.

2. ***Conditional Acceptance of Alternative Impact Fee Calculation.*** Subject to sections 3 and 4 of this Agreement, County conditionally accepts the Alternative Impact Fee calculation submitted by Owner.

3. ***Monitoring.***

(a) Pursuant to Section 23-93(h) of the Alternative Transportation Impact Fee Code, within the applicable time frame, County shall conduct, or shall have begun to conduct, “monitoring.” For purposes of this Agreement, the term “monitoring” shall mean (i) taking machine traffic counts and/or manual traffic counts at all entrances and exits to and from the Project for five (5) consecutive days, excluding legal holidays, and/or (ii) conducting surveys for five (5) consecutive days to determine trip length and/ or percentage of new trips associated with the Project. Such monitoring may be conducted by County or by an authorized agent acting on behalf of County.

(b) Contemporaneously with Owner’s execution and submittal of this Agreement, Owner shall deliver a check to County in the amount of \$28,710 (Twenty-eight thousand seven hundred ten dollars) to cover County’s cost of conducting monitoring pursuant to paragraph 3 (a) (“Monitoring Fees”). The check shall be made payable to “Orange County Board of County Commissioners” and shall be brought to the Fiscal and Operational Support Division of the Planning, Environmental, and Development Services Department. Upon payment of the Monitoring Fees to County, no further Monitoring Fees shall be owed by Owner to County under this Agreement.

(c) If the monitoring performed by County, or by its authorized agent on behalf of County, results in any additional transportation impact fee, Owner shall pay the difference between the amount of transportation

impact fees paid pursuant to the Alternative Traffic Impact Fee Calculation conditionally accepted by County under section 2 above, and any additional fee shown to be owing (the “Additional Impact Fee”).

(d) Owner shall pay the Additional Impact Fee to County no later than thirty (30) days following written demand by County. Owner shall pay to County, by certified cashier’s check, the Additional Impact Fee, plus interest from the date impact fees were due until the date of demand, at the interest rate in effect on the date the monitoring is completed, as established quarterly by the Comptroller of the State of Florida for judgments and decrees, pursuant to section 55.03, Florida Statutes, as may be amended.

(e) Any Additional Impact Fee owed shall be calculated using the cost variables found in the Alternative Transportation Impact Fee Code existing on the Effective Date and the monitoring variables that result from County’s monitoring.

(f) If monitoring by County results in a decreased total impact fee, Owner shall not be entitled to any refund.

(g) Once paid to County, the Alternative Impact Fee, Monitoring Fees, and/or Additional Impact Fee are all non-refundable.

4. ***Expansion of Development.*** This Agreement is effective only for the limits and scope of the Project as identified, described, and approved by County as of the Effective Date. In the event the Project expands or is altered after the Effective Date, Owner, its successors, and assigns shall be subject to County’s usual process, which may include payment of an additional impact fee pursuant to the fee schedule set forth in section 23-92 of the Orange County Code, as may be amended from time to time.

5. ***Successors and Assigns.*** 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 run with 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 Property.

6. ***Notices.*** Any notice delivered with respect to this Agreement shall be in writing and shall 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 at such

other address or to such other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

As to Owner: Bluerock Development, LLC
3408 S. Orange Avenue, Suite B
Orlando, FL 32806-6265
Attn: Joseph N. Schuemann

With a copy to: Floor and Decor Outlets of America, Inc.
2500 Windy Ridge Parkway, SE
Atlanta, GA 30339
Real Estate Department
Attention: Senior Vice President
Real Estate and Construction

As to County: Director, Orange County Public Works Department
4200 South John Young Parkway
Orlando, Florida 32839

With copies to: Orange County Public Works Department
Manager, Transportation Planning Division
4200 South John Young Parkway
Orlando, Florida 32839

Orange County Planning, Environmental,
and Development Services Department
Manager, Fiscal and Operational Support Division
201 South Rosalind Avenue
Post Office Box 1393
Orlando, FL 32802-1393

7. **Recordation of Agreement.** Owner shall record this Agreement in the Public Records of Orange County, Florida, at Owner's expense, no later than ten (10) business days after the Effective Date.

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.

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. Notwithstanding the foregoing statement, nothing herein precludes County from imposing a lien(s) against the Property for non-payment of

impact fees. Venue for any action(s) initiated under or in connection with this Agreement shall be in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

10. ***Attorney Fees, Legal 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 other legal fees.

11. ***Amendment.*** No amendment, modification, or other change to this Agreement shall be binding upon the parties unless in writing and executed by all the parties hereto.

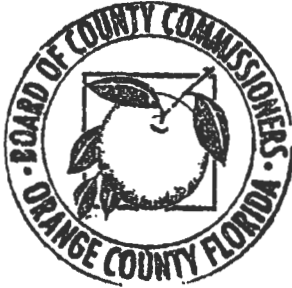
12. ***Construction of Agreement.*** Captions of the sections of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

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

14. ***Termination; Effect of Annexation.*** This Agreement shall remain in effect so long as the Property remains in unincorporated Orange County, Florida, unless the Parties terminate it in writing. If any portion of the Property is proposed to be annexed into a neighboring municipality, and out of the unincorporated areas, County may, in its sole discretion, terminate this Agreement upon notice to the Owner.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, County and Owner 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 02, 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

BLUEROCK DEVELOPMENT, LLC,
a Florida limited liability company

By: *Joseph N. Schuemann*
Joseph N. Schuemann, President

WITNESSES:

Gordon Villard
Print Name: Gordon Villard

Hester Cuing
Print Name: Hester Cuing

STATE OF FLORIDA
COUNTY OF ORANGE

THE FOREGOING instrument was acknowledged before me ✓ in person or via online notarization by Joseph N. Schuemann, President of Bluerock Development, LLC, a Florida limited liability company, who is known by me to be the person described herein, this 21st day of March, 2023. He is personally known to me or has produced personally known (type of identification) as identification.

WITNESS my hand and official seal in the County and State last aforesaid this day of March, 2023.

Heather Coons
NOTARY PUBLIC
Print Name: Heather Coons
My Commission Expires: Jan 16, 2024

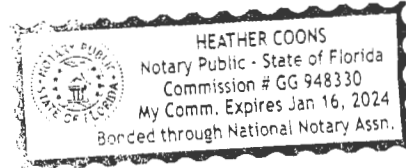


Exhibit “A”

PROJECT LOCATION MAP



Exhibit “B”

Floor and Decor – Waterford Oaks

Parcel ID Number: 22-22-31-8974-01-000

Legal Description for the Property:

DESCRIPTION: A PORTION OF LOT 1, WATERFORD OAKS, AS RECORDED IN PLAT BOOK 86, PAGE 146 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; BEING DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHEAST CORNER OF TRACT A, CONSERVATION AREA, AS SHOWN ON THE PLAT OF WATERFORD OAKS, AS RECORDED IN PLAT BOOK 86, PAGE 146 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE N 01°21'46" W, ALONG THE EAST LINE OF LOT 1, SAID WATERFORD OAKS, 297.02 FEET TO A POINT OF INTERSECTION OF SAID EAST LINE AND THE SOUTHERLY LINE OF LOT 1; THENCE N 03°04'06" W, DEPARTING SAID EAST LINE, 77.74 FEET FOR THE POINT OF BEGINNING; THENCE S 89°41'20" W, 50.00 FEET; THENCE S 00°18'40" EAST, 99.50 FEET; THENCE S 89°41'20" W, 21.79 FEET; THENCE S 00°18'40" E, 37.50 FEET; THENCE S 89°41'20" W, 126.22 FEET; THENCE N 59°20'50" W, 11.66 FEET; THENCE N 00°18'40" W, 32.00 FEET; THENCE S 89°41'20" W, 20.00 FEET; THENCE N 00°18'40" W, 341.83 FEET; THENCE N 89°41'20" E, 228.00 FEET; THENCE S 00°18'40" E, 242.83 FEET TO THE POINT OF BEGINNING. CONTAINING 78,145 SQUARE FEET OR 1.794 ACRES, MORE OR LESS

Exhibit “C”

Alternative Impact Fee Calculations

New Study Parameters	
Trip Rate	8.13
% New Trips	72.57%
ATL (Assessable Trip Length)	11.75
LADF (Limited Access Discount Factor)	56%
Orange County Parameters	
TTL (Total Trip Length)	12.25
COST per VMC (Vehicle Miles of Capacity)	\$ 504.44
Cost per Lane-mile	\$ 4,540,000.00
Capacity	9,000
\$/GAL	\$0.197
MPG (Miles Per Gallon)	18.92
DAYS	365
NPV (Net Present Value)	15.6221
PTF (Person Trip Factor)	100%
Alternative Impact Fee	
Total Impact Cost	\$ 7,693.46
Gas Tax Credit	\$ 2,145.51
Ad Valorem Credit	\$ 163.00
Net Multimodal\Transportation Impact Fee	\$ 5,384.94

Total Impact Cost	\$7,693.46
Annual Capital Improvement Credit	\$137.34
Total Capital Improvement Credit	\$2,145.51
Ad Valorem	\$ 163.00
Net Multi-Modal/Transportation Impact Fee	\$5,384.94

Notes

- * Net Impact Fee = Total Impact Cost – Capital Improvement Credit
- * Total Impact Cost = $([\text{Trip Rate} \times \text{Assessable Trip Length} \times \% \text{ New Trips}] / 2) \times (1 - \text{Interstate/Toll Facility Discount Factor}) \times (\text{Cost per Vehicle-Mile of Capacity})$
- * Capital Improvement Credit = Present Value (Annual Capital Improvement Credit), given 4.0% interest rate & a 25-year facility life
- * Annual Capital Improvement Credit = $([\text{Trip Rate} \times \text{Total Trip Length} \times \% \text{ New Trips}] / 2) \times (\text{Effective Days per Year} \times \$/\text{Gallon to Capital}) / \text{Fuel Efficiency}$