




Interoffice Memorandum

AGENDA ITEM

October 18, 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
Supplemental Road Agreement to Hartzog Road Right-of-Way
Agreement

The Roadway Agreement Committee has reviewed a Supplemental Road Agreement to Hartzog Road Right-of-Way Agreement ("Supplemental Road Agreement") by and between Holiday Inn Club Vacations Incorporated and Orange County to amend the terms of the Hartzog Road Right of Way Agreement approved by the Board on June 3, 2008, and recorded at OR Book/Page 9712/4850. The Supplemental Road Agreement adds a provision to allow for reimbursement of transportation impact fees paid under protest to address a disparity in the timing between the payment of impact fees for development and road construction whereby impact fee credits would be earned. Upon the refund of impact fees, the value of any transportation impact credit account shall be equally reduced.

The Roadway Agreement Committee approved the Supplemental Road Agreement to Hartzog Road Right-of-Way Agreement on June 19, 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 Supplemental Road Agreement to Hartzog Road Right-of-Way Agreement Hartzog Road by and between Holiday Inn Club Vacations Incorporated and Orange County to provide for reimbursement of impact fees paid under protest and apply impact fee credits earned towards the construction of Hartzog Road. District 1

JVW/tc
Attachment

BCC Mtg. Date: November 12, 2019

Prepared by and after recording return to:
Baker & Hostetler LLP
Attn: Gregory D. Lee
200 South Orange Avenue
Suite 2300
Orlando, Florida 32801
Telephone: 407-649-4000

Tax Parcel I.D. Nos.: 28-24-27-0000-00-007; 28-24-27-0000-00-016; 29-24-27-0000-00-005; 29-24-27-0000-00-006; 28-24-27-0000-00-011; 28-24-27-0000-00-013; 28-24-27-0000-00-014; 33-24-27-0000-00-019; 33-24-27-0000-00-001; and 28-24-27-0000-00-006.

**SUPPLEMENTAL ROAD AGREEMENT TO
HARTZOG ROAD RIGHT-OF-WAY
AGREEMENT**

HARTZOG ROAD

This Supplemental Road Agreement to Hartzog Road Right-of-Way Agreement (the “Supplemental Agreement”), effective as of the latest date of execution (“Effective Date”), is made and entered into by and between Holiday Inn Club Vacations Incorporated, a Delaware corporation authorized to transact business in Florida, successor by conversion to and formerly known as Orange Lake Country Club, Inc., a Florida corporation (“Owner”), whose mailing address is 9271 S. John Young Parkway, Orlando, Florida 32819 and Orange County, a charter county and political subdivision of the state of Florida (“County”), whose mailing address is c/o Orange County Administrator, Post Office Box 1393, Orlando, Florida 32802-1393.

WITNESSETH:

WHEREAS, Owner remains the sole owner of fee simple title to the Orange Lake Property (as defined in the Agreement (as hereinafter defined)); and

WHEREAS, Owner and various other parcel owners entered into that certain Hartzog Road Right-of-Way Agreement (the “Agreement”) with County, which Agreement was approved by the

Orange County Board of County Commissioners (“BCC”) on June 3, 2008 and recorded in Official Records Book 9712, Page 4850, in the Public Records of Orange County, Florida; and

WHEREAS, due to the disparity in timing between the required payment by Owner of transportation impact fees for the Property, and the time in which the road impact fee credits (the “Credits”) are anticipated to be awarded to Owner pursuant to the Agreement, Owner has requested to pay its applicable transportation impact fees “under protest” as they become due and seek a reimbursement when Credits are awarded; and

WHEREAS, County and Owner desire to enter into this Supplemental Agreement in order to memorialize the treatment of Credits in favor of Owner; and

WHEREAS, the original terms of the Agreement shall remain unchanged and in full force and effect.

NOW, THEREFORE, for and in consideration of the above premises, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and County (the “Parties”) agree as follows:

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

Section 2. Road Impact Fee Credits; Timing; Reimbursement. Pursuant to Section 3(h) of the Agreement, Owner shall be entitled to road impact fee credits for County approved costs of design, permitting, and construction required by County to accommodate the four lane section of Hartzog Road, beyond that required of a typical two lane urban section; provided, however that the same shall be (i) consistent with the Road Impact Fee Ordinance (as defined in the Agreement), and (ii) subject to County’s review and approval of costs of design, engineering,

permitting, and construction. The Road Impact Fee Ordinance, in Section 23-95(d), allows retroactive reimbursement of impact fees only if addressed in an agreement with County. This Supplemental Agreement shall serve as the agreement contemplated by the Road Impact Fee Ordinance. Owner shall be entitled to request reimbursement from County of all transportation impact fees paid "under protest" in the amount of any Credits that are later awarded, as they become available. Upon Owner's request, County shall apply available Credits retroactively and issue refunds for all such corresponding transportation impact fees previously paid "under protest," as contemplated by the Road Impact Fee Ordinance. County will reduce the value of any credit account by any previously paid impact fees that have been refunded. Nothing herein shall prevent Owner from assigning Credits as provided for in the Road Impact Fee Ordinance. The terms of this Supplemental Agreement shall govern and control (but only as between County and Owner).

Section 3. Notice. Any notice delivered with respect to this Supplemental 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 to 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: Holiday Inn Club Vacations Incorporated
 9271 S. John Young Parkway
 Orlando, FL 32819
 Attention: Brian T. Lower, Esq

With a copy to: Baker & Hostetler LLP
 200 South Orange Avenue, Suite 2300
 Orlando, FL 32801
 Attention: Gregory D. Lee, Esq.

As to County: Orange County Administrator
P.O. Box 1393
201 S. Rosalind Ave
Orlando, FL 32802-1393

With a copy to: Orange County Planning, Environmental,
and Development Services Department
Manager, Transportation Planning Division
Orange County Public Works Complex
4200 S. John Young Parkway
Orlando, Florida 32839-9205

Section 4. Covenants Running with the Land. This Supplemental Agreement shall run with the Property and shall be binding upon and shall inure to the benefit and burden of the parties and of the heirs, legal representatives, successors, and assigns of Owner and any person, firm, corporation, or other entity that may become the successor in interest to the Property. Notwithstanding the foregoing, however, the authority to instruct County to make deductions from Owner's transportation impact fee account shall remain with Owner unless expressly assigned in writing to another party by Owner.

Section 5. Recordation of Supplemental Agreement. An executed original of this Supplemental Agreement shall be recorded, at Owner's expense, in the Public Records of Orange County, Florida within thirty (30) days of the Effective Date.

Section 6. Applicable Law. This Supplemental Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

Section 7. Time is of the Essence. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Supplemental Agreement.

Section 8. Further Documentation. The parties agree that at any time following a request therefor by the other party, each shall execute and deliver to the other party such further

documents and instruments reasonably necessary to confirm and/or effectuate the obligations of either party hereunder and the consummation of the transactions contemplated hereby.

Section 9. Limitation of Remedies. County and Owner expressly agree that the consideration, in part, for each of them entering into this Supplemental Agreement is the willingness of the other to limit the remedies for all actions arising out of or in connection with this Supplemental Agreement. Accordingly, the remedies available to each party shall be as stated in the Agreement.

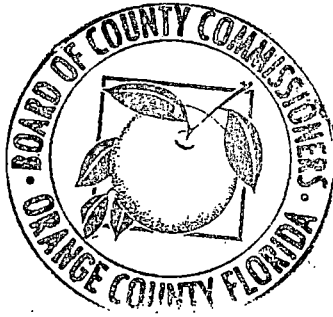
Section 10. Amendments. No amendment, modification, or other change to this Supplemental Agreement shall be binding upon the parties unless in writing and executed by all the parties hereto.

Section 11. Counterparts. This Supplemental Agreement may be executed in up to three (3) counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

Section 12. Utilities. This Supplemental Agreement does not address utility requirements. Owner shall coordinate with the Orange County Utilities Director, or their designee, with respect to any utility easements necessary to accommodate appropriately-sized wastewater sewer mains or lines, potable water mains or lines, and/or reclaimed water mains or lines.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have caused this Supplemental Agreement to be
duly executed by their respective duly authorized representatives on the dates set forth below.



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
Deputy Clerk

Printed name: Jennifer Klimetz

“HARTZOG ROAD”

“OWNER”

HOLIDAY INN CLUB VACATIONS
INCORPORATED, a Delaware corporation
authorized to transact business in Florida, successor
by conversion to and formerly known as Orange
Lake Country Club, Inc., a Florida corporation

By: [Signature]
Print Name: Thomas R. Nelson
Title: President
Date: 10/16/19

WITNESSES:

[Signature: Aida Luz Plaza]

Print Name: AIDA LUZ PLAZA

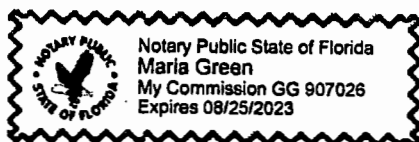
[Signature: Marina Huettel]

Print Name: Marina Huettel

**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Thomas R. Nelson, as President of Holiday Inn Club Vacations Incorporated, a Delaware corporation authorized to transact business in Florida, successor by conversion to and formerly known as Orange Lake Country Club, Inc., a Florida corporation, who is known by me to be the person described herein and who executed the foregoing, this 10th day of October, 2019. He is personally known to me or has produced _____ as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 10th day of October, 2019.



NOTARY PUBLIC
[Signature: Maria Green]

Print Name: Maria Green

My Commission Expires: 08/25/2023