



Interoffice Memorandum

AGENDA ITEM

November 2, 2020

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

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

SUBJECT: December 1, 2020 – Consent Item  
Right-of-Way and Proportionate Share Agreement for Suncrest Village Publix  
University Boulevard and Dean Road

The Roadway Agreement Committee has reviewed a Right-of-Way and Proportionate Share Agreement for Suncrest Village Publix University Boulevard and Dean Road ("Agreement") by and between IA Orlando Suncrest Village, L.L.C. and Orange County for the dedication of right of way, donation of a temporary construction easement ("TCE") on University Boulevard, and a proportionate share payment in the amount of \$59,244. The 0.05 acres of right of way is being conveyed in fee simple in return for \$1,125 in transportation impact fee credits and no transportation impact fee credits are being awarded in conjunction with the donation of the TCE.

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 provides for the mitigation of road impacts on the East-West Road as a parallel facility to University Boulevard for four deficient trips on the road segment of East West Road from Dean Road to Rouse Road in the amount of \$8,654 per trip, and two deficient trips on the road segment of Dean Road from University Boulevard to Seminole County Line in the amount of \$12,314 per trip.

The Roadway Agreement Committee recommended approval of the Agreement on August 5, 2020. 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 Right-of-Way and Proportionate Share Agreement for Suncrest Village Publix University Boulevard and Dean Road by and between IA Orlando Suncrest Village, L.L.C. and Orange County for the dedication of 0.05 acres of right of way for \$1,125 in transportation impact fee credits, the donation of a temporary construction easement on University Boulevard, and a proportionate share payment in the amount of \$59,244. District 5

JVV/HEGB/fb  
Attachment

This instrument prepared by  
and after recording return to:

BCC Mtg. Date: December 1, 2020

Jonathan Huels, Esquire  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
215 North Eola Drive  
Post Office Box 2809  
Orlando, FL 32802-2809  
(407) 843-4600

Parcel ID Number(s):  
05-22-31-8479-00-020

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

**RIGHT-OF-WAY AND PROPORTIONATE SHARE AGREEMENT FOR  
SUNCREST VILLAGE PUBLIX**

**UNIVERSITY BOULEVARD AND DEAN ROAD**

This Right-of-Way And Proportionate Share Agreement (the “**Agreement**”), effective as of the latest date of execution (the “**Effective Date**”), is made and entered into by and between IA ORLANDO SUNCREST VILLAGE, L.L.C., a Delaware limited liability company, successor in interest by name change to Inland American Orlando Suncrest Village, L.L.C., a Delaware limited liability company (“**Owner/Developer**”), with a principal place of business at 3025 Highland Parkway, Suite 350, Downers Grove, IL 60515 and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), with a mailing address at c/o Orange County Administrator, Post Office Box 1393, Orlando, Florida 32802-1393. Owner/Developer and County may sometimes be referred to individually as “**Party**” and collectively as “**Parties.**”

WITNESSETH:

WHEREAS, Owner/Developer is the fee simple owner of certain real property, as more particularly shown in the project location map identified as **Exhibit “A”** and as more particularly described on **Exhibit “B”** (legal description), which is attached hereto and incorporated herein by this reference (the “**Property**”); and

WHEREAS, Owner/Developer intends to develop the Property as retail expansion consisting of 7,158 square feet (the “**Project**”); and

WHEREAS, Owner/Developer is willing to convey certain portions of the Property to County (the “**ROW Conveyance**”) in return for credits against transportation impact fees to be paid in the future in connection with the Project; and

WHEREAS, the Orange County Engineer has declared Dean Road to be impact fee eligible; and

WHEREAS, the Property is located in County Commission District 5, within the County's Urban Service Area, and the proceeds of the PS Payment, as defined herein, will be allocated to Dean Road, University Boulevard and/or appropriate alternate facilities; and

WHEREAS, Owner/Developer received a letter from County dated June 16, 2020, stating that Owner/Developer's Capacity Encumbrance Letter ("CEL") application #CEL- 20-05-038 for the Project was denied; and

WHEREAS, the Project will generate 4 deficient PM Peak Hour trip(s) (the "**University Boulevard Excess Trips**") for the deficient roadway segment on University Boulevard from Dean Road to Rouse Road (the "**University Boulevard Deficient Segment**") and 2 deficient PM Peak Hour trip(s) (the "**Dean Road Excess Trips**"; together with the University Boulevard Excess Trips, the "**Excess Trips**") for the deficient roadway segment on Dean Road from University Boulevard to the Seminole County Line (the "**Dean Road Deficient Segment**" together with the University Boulevard Deficient Segment, the "**Deficient Segments**"), and 0 PM Peak Hour trips were available on the Deficient Segments on the date the CEL was denied as further described in **Exhibit "C"** attached hereto and incorporated herein; and

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

WHEREAS, Owner/Developer 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 fifty-nine thousand two hundred forty-four and 00/100 Dollars (\$59,244.00) (the "**PS Payment**"); and

WHEREAS, University Boulevard is a constrained roadway and is not anticipated to be widened beyond the existing six (6) lanes; and

WHEREAS, that certain roadway identified as East West Road runs parallel to University Boulevard from Dean Road to Rouse Road (the "**Alternative Deficient Segment**") and has been identified in the Orange County Long Range Transportation Plan as the reliever facility for University Boulevard in East Orange County; and

WHEREAS, County and Owner/Developer desire to set forth certain terms, conditions, and agreements between them as to the ROW Conveyance, the PS Payment, and development of the Property into the Project.

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/Developer and County agree as follows:

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

**Section 2. Conveyance of Land to County by Owner/Developer.**

(a) *Conveyed Lands.* Within one hundred twenty (120) days following the Effective Date, Owner/Developer shall convey to County: (i) marketable fee title to those lands described in the legal description and sketch of description attached hereto and incorporated herein as **Exhibit "D"** (the "**Fee Simple Conveyed Lands**"); and (ii) a temporary construction easement to those lands described in the legal description and sketch of description attached hereto and incorporated herein as **Exhibit "E"** (the "**TCE Conveyed Lands**"; together with the Fee Simple Conveyed Lands, the "**Conveyed Lands**"). In the event conveyance does not occur within the aforesaid 120 days, the Manager of the Real Estate Management Division, or a designee, may grant an extension of up to 120 days for the conveyance to take place.

(b) *Procedure for Fee Simple Conveyed Lands.* The conveyance of the Fee Simple Conveyed Lands shall be by plat dedication or general warranty deed, free and clear of all liens and encumbrances, except for easements of record acceptable to County, if any. If by plat dedication, the rest of this paragraph and the following paragraphs (d), (f), and (g) will not apply to the Fee Simple Conveyed Lands. Owner/Developer shall pay all costs associated with the conveyance of the Fee Simple Conveyed Lands, including all recording fees and documentary stamps related to such conveyance. Ad valorem taxes in connection with the conveyance of the Fee Simple Conveyed Lands shall be prorated as of the date of transfer of title and said prorated amount shall be paid by Owner/Developer to the Orange County Tax Collector, in escrow, pursuant to Section 196.295, Florida Statutes, unless the conveyance occurs between November 1 and December 31 of the year of conveyance, in which case ad valorem taxes shall be paid in full by Owner/Developer for the year of conveyance.

(c) *Procedure for TCE Conveyed Lands.* The conveyance of the TCE Conveyed Lands shall be by separate instrument in a form substantially similar as set forth in **Exhibit "F"** attached hereto, free and clear of all liens and encumbrances, except for easements of record acceptable to County, if any. Owner/Developer shall pay all costs associated with the conveyance of the TCE Conveyed Lands, including all recording fees and documentary stamps related to such conveyance.

(d) *Title Policy.* No less than ninety (90) days prior to conveyance of the Conveyed Lands, Owner/Developer shall deliver to County, at Owner/Developer's sole cost and expense, a commitment to issue an Owner's Policy of Title Insurance naming County as the insured (the "Title Commitment"). The original Owner's Policy of Title Insurance (the "Title Policy") shall be delivered to County within thirty (30) days of the conveyance of the Conveyed Lands. The insured value of the Conveyed Lands in the Title Policy shall be \$10,000.00.

(e) *Value of Fee Simple Conveyed Lands.* The Parties hereby agree that the value of the Fee Simple Conveyed Lands, which has been determined in accordance with Section 23-95, Orange County Code, as may be amended from time to time, and for which Owner/Developer shall be entitled to credits against transportation impact fees to be paid in the future in connection with the Project, is one thousand one hundred twenty-five and 00/100 Dollars ("\$1,125.00"). This total

results from a negotiated value of \$22,500.00 per acre, or fraction thereof, and a total acreage of 0.05 acres. No impact fee credits shall be awarded in conjunction with the conveyance of the TCE Conveyed Lands.

(f) *Environmental Audit.* No less than sixty (60) days prior to conveyance by general warranty deed, if applicable, Owner/Developer shall submit to County a current (within 6 months of conveyance to County) Phase I environmental audit of the areas encompassed by the Fee Simple Conveyed Lands. The Phase I environmental audit shall be conducted in accordance with the requirements of the All Appropriate Inquiries Final Rule (AAIFR), or with the standards set forth in the most current version of the American Society for Testing and Materials (ASTM) E-1527. In the event the Phase I environmental audit presents a matter of concern, as determined by County, then prior to the conveyance, Owner/Developer shall submit to County a Phase II environmental audit. The Phase II environmental audit shall be conducted in accordance with the requirements of the AAIFR or with the standards set forth in the most current version of the ASTM E-1903. If the Phase II environmental audit is performed and reveals the need for remediation to the Fee Simple Conveyed Lands, one of the following events shall occur: (i) Owner/Developer shall remediate the Fee Simple Conveyed Lands in such a manner as to obtain regulatory closure without conditions or controls prior to the conveyance; (ii) Owner/Developer and County shall negotiate and enter into a separate agreement whereby Owner/Developer shall pay the full cost of remediation; or (iii) County may terminate this Agreement at its option.

(g) *Compliance with Section 286.23, Florida Statutes.* Regardless whether the conveyance is by deed or by plat, Owner/Developer shall execute and deliver to County the "Disclosure of Beneficial Interests" required pursuant to section 286.23, Florida Statutes.

### ***Section 3. PS Payment; CEL.***

(a) *Calculation of PS Payment:* The amount of the PS Payment for the Deficient Segments, as described in Exhibit "C," totals fifty-nine thousand two hundred forty-four and 00/100 Dollars (\$59,244.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. Owner/Developer and County agree that the Excess Trips constitute the Project's impact on the aforementioned Deficient Segments based upon (i) Owner/Developer's Traffic Study titled Transportation Concurrency Evaluation prepared by Kimley-Horn and Associates, Inc., and dated November 2019 (the "**Traffic Study**"), and incorporated herein by this reference, and (ii) upon calculations described in Exhibit "C." The Traffic Study was accepted by the Orange County Transportation Planning Division on June 3, 2020, and is on file and available for inspection with that Division (CMS #2020038). Owner/Developer 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/Developer is required to pay through the buildout of the Project as proportionate share mitigation for impacts of the Project upon roadways impacted by the Project 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/Developer subsequently increases the number of units and/or square footage, as applicable, the Project may then be subject to an additional concurrency evaluation and proportionate share agreement as set forth in Subsection 3(d). Owner/Developer 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/Developer shall deliver a check to County in the amount of fifty-nine thousand two hundred forty-four and 00/100 Dollars (\$59,244.00) 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 Community, 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/Developer 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 as a credit 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 4(b) below. In the event Owner/Developer 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/Developer has not paid the PS Payment within one hundred eighty (180) days following 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 subsection 3(b).

(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/Developer understands and agrees that any such additional trips are neither vested nor otherwise permitted under this Agreement, and that Owner/Developer is precluded from asserting any such vesting. In addition, Owner/Developer 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/Developer'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 subsection 3(d), Owner/Developer 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/Developer 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/Developer shall be required to obtain a Capacity Reservation Certificate prior to the expiration of Owner/Developer's Capacity Encumbrance Letter

and shall be required to maintain the validity of the Capacity Reservation Certificate in accordance with its terms. Nothing herein shall be construed to exempt Owner/Developer 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 4.

**Section 4. Transportation Impact Fee Credits.**

(a) *Impact Fee Credits for Right of Way.* Promptly upon the County's approval of any environmental assessments and title commitments required under Section 2, and upon approval and acceptance of the conveyance of the Fee Simple Conveyed Lands, either by plat or by general warranty deed as provided above, County shall credit on its books to the account of Owner/Developer, for purposes of Article IV of Chapter 23 of the Orange County Code and any successor code provisions (the "**Impact Fee Ordinance**"), the aforementioned amount of transportation impact fee credits to which Owner/Developer is entitled under the Impact Fee Ordinance. Such impact fee credits may only be used in transportation impact fee zone 2. Thereafter, as impact fees become payable from time to time in connection with the Project, and if so instructed by Owner/Developer, County shall deduct such amounts payable from Owner/Developer's account.

For purposes of the foregoing, County shall make deductions from Owner/Developer's account from time to time only upon receipt of written direction from Owner/Developer (or from such person or entity to whom Owner/Developer expressly may assign this authority, in writing, in the future) to effect the particular deduction.

Nothing herein shall prevent Owner/Developer from assigning all or part of its Right-of-Way Credits as provided for in Section 23-95(e) of the Orange County Code, as may be amended from time to time.

(b) *Impact Fee Credits for PS Payment.* County and Owner/Developer agree that Owner/Developer 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 more particularly described in Exhibit "C" (the "**PS Credits**"). County further agrees that such PS 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/Developer in connection with the issuance of a Capacity Reservation Certificate as contemplated in Section 3. In no event shall Owner/Developer receive PS 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/Developer 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 5. No Refund.** The PS Payment (including any capacity reservation fees paid with the PS Payment) is non-refundable.

**Section 6. Insurance and Indemnification.** During the course of construction of any phase of the Improvements constructed hereunder within the TCE Conveyed Lands, the following provisions shall apply:

(a) *Insurance.* The County shall cause its contractor(s) to, procure and maintain, throughout the construction of the Improvements, insurance with limits and terms as specified below:

(i) Workers' compensation insurance with statutory workers' compensation limits and no less than \$1,000,000 limit for Employers' Liability with a waiver of subrogation in favor of the County, its consultants, agents, employees, and officials.

(ii) Commercial general liability insurance for all operations including but not limited to contractual, products, and completed operations, and personal injury with limits of not less than \$5,000,000 per occurrence and an aggregate limit of at least twice the per occurrence limit.

(iii) Business automobile liability insurance for all owned, non-owned, and hired vehicles with limits of not less than \$5,000,000 per occurrence.

(iv) Contractors Pollution Liability insurance with a limit of not less than \$5,000,000 per occurrence.

The County shall be responsible for ensuring that each of its contractors and subcontractors of every tier procure and maintain the insurance specified above and shall furnish to Owner evidence of such insurance prior to commencement of construction. Owner shall be specifically endorsed as an additional insured on all insurance policies required herein, except workers' compensation. The certificate holder/additional insured shall be listed as:

IA ORLANDO SUNCREST VILLAGE, L.L.C  
3025 Highland Parkway, Suite 350  
Downers Grove, IL 60515

All coverage shall be primary and not contributory with any insurance or self-insurance maintained by the Owner. The Owner shall be notified at least thirty (30) days prior to any material change, cancellation, non-renewal of any policy required herein.

(b) *Indemnification.* The County shall cause its contractor(s) to defend, indemnify, and hold harmless Owner, its officers, directors, employees, agents, legal representatives, successors, assigns, and affiliates, from and against all liabilities, claims, damages, losses, costs, and expenses (including attorneys' fees) arising out of or resulting from the performance of the construction activities, provided that any such liability, claim, damage, loss, cost or expense:

(i) Is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the construction activities themselves) including the loss of use resulting therefrom, and



(ii) Is caused in whole or in part by the negligence, recklessness or intentionally wrongful conduct of the contractors and persons employed or utilized by the contractors in the performance of the construction activities.

The provisions contained herein shall survive the termination of this Agreement.

**Section 7. Utilities.** This Agreement does not address utility requirements. Owner/Developer shall coordinate with the Orange County Utilities Director, or a 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.

**Section 8. Notice.** 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 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/Developer: IA ORLANDO SUNCREST VILLAGE, L.L.C  
3025 Highland Parkway, Suite 350  
Downers Grove, IL 60515

With copy to: Jonathan Huels  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
215 N. Eola Drive  
Orlando, FL 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  
Orlando, Florida 32839

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

**Section 9. Covenants Running with the Property.** This Agreement shall run with the Property and shall be binding upon and shall inure to the benefit and burden of the heirs, legal representatives, successors, and assigns of the parties and to any person, firm, corporation, or other entity that may become a successor in interest to the Property. Notwithstanding the foregoing, however, the authority under Section 4 to instruct County to make deductions from Owner/Developer's transportation impact fee credit account shall remain with Owner/Developer unless expressly assigned in writing to another by Owner/Developer.

**Section 10. Recordation of Agreement.** Owner/Developer shall record this Agreement, at Owner/Developer's expense, in the Public Records of Orange County, Florida, no later than thirty (30) days after the Effective Date.

**Section 11. 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 12. Time is of the Essence.** Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement.

**Section 13. 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 14. Limitation of Remedies.** County and Owner/Developer expressly agree that the consideration, in part, for each of them entering into this Agreement is the willingness of the other to limit the remedies for all actions arising out of or in connection with this Agreement.

(a) **Limitations on County's remedies.** Upon any failure by Owner/Developer to perform its obligations under this Agreement, County shall be limited strictly to only the following remedies:

- (i) action for specific performance or injunction; or
- (ii) the right to set off, against the amounts of impact fees to be credited in favor of Owner/Developer under this Agreement, (A) any amounts due to County from Owner/Developer under this Agreement but remaining unpaid and (B) the cost to County of performing any action or actions required to be done under this Agreement by Owner/Developer, but which Owner/Developer has failed or refused to do when required; or
- (iii) the withholding of development permits and other approvals or permits in connection with the Project and/or the Property; or
- (iv) any combination of the foregoing.

In addition to the foregoing, nothing in this Agreement prohibits or estops County from exercising its power of eminent domain with respect to the Conveyed Lands or any other portion of the Property as County may lawfully elect.

*(b) Limitations on Owner/Developer's remedies.* Upon any failure by County to perform its obligations under this Agreement, Owner/Developer shall be limited strictly to only the following remedies:

- (i) action for specific performance; or
- (ii) action for injunction; or
- (iii) action for declaratory judgment regarding the rights and obligations of Owner/Developer; or
- (iv) any combination of the foregoing.

Both parties expressly waive their respective rights to sue for damages of any type for breach of, or default under, this Agreement by the other. Both parties expressly agree that each Party shall bear the cost of its own attorney fees for any action arising out of or in connection with this Agreement. Venue for any actions 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.

**Section 15. Amendment.** This Agreement may be amended only in writing, formally executed in the same manner as this Agreement.

**Section 16. 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 17. Counterparts.** This Agreement and any amendment(s) 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 18. 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/Developer.

[Signatures appear on following pages]

Right-of-Way and Proportionate Share Agreement for Suncrest Village Publix  
Dean Road and University Boulevard  
IA ORLANDO SUNCREST VILLAGE, L.L.C.

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: 12/01/20

ATTEST:

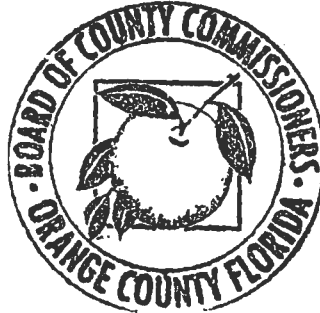
Phil Diamond, CPA, County Comptroller

As Clerk of the Board of County  
Commissioners

*Katie Smith*

By: Deputy Clerk

Print Name: Katie Smith



WITNESSES:

[Signature]  
Print Name Peggy Evans

[Signature]  
Print Name David M Wells

“OWNER/DEVELOPER”

IA Orlando Suncrest Village, L.L.C., a Delaware limited liability company

By: IVT OP Limited Partnership, a Delaware corporation, its sole member

By: IVT OP GP, LLC, a Delaware limited liability company, its general partner

By: InvenTrust Properties Corp., a Maryland corporation, its sole member

By: [Signature]  
Name: Christy C David  
Title: Vp, Chief Investment Officer, GC and Secretary

Date: 10-29-2020

STATE OF Illinois  
COUNTY OF DuPage

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 29 day of October, 2020, by Christy C David, as Vp, Chief Investment Officer, GC and Secretary of InvenTrust Properties Corp., as sole member of IVT OP GP, LLC, as general partner of IVT OP Limited Partnership, as sole member of IA Orlando Suncrest Village, L.L.C., a Delaware limited liability company on behalf of the company. He (She)  is personally known to me or  has produced as identification.

(NOTARY SEAL)



[Signature]  
Notary Public Signature

Christina Georgios  
(Name typed, printed or stamped)

## CONSENT OF LENDER

**The Bank of New York Mellon**, a New York banking corporation, as Trustee under the Reserve Trust Agreement for the PAR U Hartford Life & Annuity Comfort Trust (the “Lender”) is the holder of the following instruments (the “Instruments”):

UCC-1 Financing Statement naming The Prudential Insurance Company of America, a New Jersey corporation, as secured party and Inland American Orlando Suncrest Village, L.L.C., duly organized and validly existing under the laws of the State of Delaware, as debtor, filed May 21, 2014, and recorded in Official Records Book 10747, Page 2479, as amended by UCC Financing Statement Amendment recorded in Official Records Book 10863, Page 5856, as assigned by UCC Financing Statement Amendment by and between The Prudential Insurance Company of America and The Bank of New York Mellon, a New York banking corporation, as Trustee for PAR U Hartford Life & Annuity Comfort Trust recorded in Official Records Book 11020, Page 6932, as affected by UCC Financing Statement Amendment (Continuation) filed December 4, 2018, recorded in Instrument No. 20180699385, all in the Public Records of Orange County, Florida.

Mortgage and Security Agreement (First) executed by Inland American Orlando Suncrest Village, L.L.C., duly organized and validly existing under the laws of the State of Delaware, in favor of The Prudential Insurance Company of America, a New Jersey corporation, in the original principal amount of \$8,400,000.00 and the terms and conditions thereof, recorded May, 22, 2014 in Official Records Book 10747, Page 9166; as assigned by Assignment of Mortgage and Security Agreement (First) by and between The Prudential Insurance Company of America and The Bank of New York Mellon, a New York banking corporation, not in its individual capacity but solely as Trustee under the Reserve Trust Agreement for the PAR U Hartford Life & Annuity Comfort Trust recorded in Official Records Book 10748, Page 3624, all in the Public Records of Orange County, Florida.

Assignment of Leases and Rents from Inland American Orlando Suncrest Village, L.L.C., duly organized and validly existing under the laws of the State of Delaware, to The Prudential Insurance Company of America, a New Jersey corporation, recorded May 22, 2014, in Official Records Book 10747, Page 9192; as assigned by Assignment of Assignment of Leases and Rents by and between The Prudential Insurance Company of America and The Bank of New York Mellon, a New York banking corporation, not in its individual capacity but solely as Trustee under the Reserve Trust Agreement for the PAR U Hartford Life & Annuity Comfort Trust recorded in Official Records Book 10748, Page 3636, all in the Public Records of Orange County, Florida.

Mortgage and Security Agreement (Second) executed by Inland American Orlando Suncrest Village, L.L.C., duly organized and validly existing under the laws of the State of Delaware, in favor of The Prudential Insurance Company of

America, a New Jersey corporation, in the original principal amount of \$7,300,000.00 and the terms and conditions thereof, recorded May 22, 2014 in Official Records Book 10747, Page 9219; as assigned by Assignment of Mortgage and Security Agreement (Second) by and between The Prudential Insurance Company of America and The Bank of New York Mellon, a New York banking corporation, not in its individual capacity but solely as Trustee under the Reserve Trust Agreement for PAR U Hartford Life & Annuity Comfort Trust recorded in Official Records Book 10748, Page 3630, all in the Public Records of Orange County, Florida.

Assignment of Leases and Rents (Second) from Inland American Orlando Suncrest Village, L.L.C., duly organized and validly existing under the laws of the State of Delaware, to The Prudential Insurance Company of America, a New Jersey corporation, recorded May 22, 2014, in Official Records Book 10747, Page 9246; as assigned by Assignment of Assignment of Leases and Rents (Second) by and between The Prudential Insurance Company of America and The Bank of New York Mellon, a New York banking corporation, not in its individual capacity but solely as Trustee under the Reserve Trust Agreement for the PAR U Hartford Life & Annuity Comfort Trust recorded in Official Records Book 10748, Page 3642, all in the Public Records of Orange County, Florida.

upon the property presently owned by IA Orlando Suncrest Village, L.L.C., a Delaware limited liability company, as successor in interest by name change to Inland American Orlando Suncrest Village, L.L.C., a description of which is attached hereto as Exhibit "A" (hereinafter the "Property").

Lender, for itself and its successors and assigns, consents to the foregoing Right-of-Way and Proportionate Share Agreement for Suncrest Village Publix (the "Agreement"), and Lender agrees and acknowledges that any foreclosure or enforcement of any other remedy available to Lender under the Instruments will not render void or otherwise impair the validity of the Agreement. Lender is executing this document solely to provide its consent to the Agreement and to subordinate the lien of the Instruments to the Agreement as lender only and in no other capacity. The consent and the subordination granted herein are expressly limited to the Agreement and shall not be deemed a consent to or as a waiver of any other conditions or requirements in the Instruments or any other loan documents pertaining to the loan held by Lender. Any successor to the Lender through foreclosure or deed-in-lieu of foreclosure will only be liable for obligations arising from the time period of the successor's ownership of the real property interest.



Dated as of the 28<sup>th</sup> day of October, 2020.

**LENDER:**

Signed, sealed, and delivered  
in the presence of:

*[Handwritten Signature]*

Name: Charles M. Soto

*[Handwritten Signature]*

Name: MATT MUSTE

**The Bank of New York Mellon**, a New York banking corporation, as Trustee under the Reserve Trust Agreement for the PAR U Hartford Life & Annuity Comfort Trust

By: PGIM Real Estate Loan Services, Inc., formerly known as Prudential Asset Resources, Inc., a Delaware corporation  
Its: Servicer

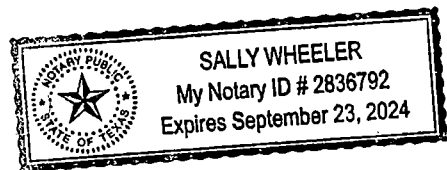
By: *[Handwritten Signature]*  
Print Name: Cheryl T. Eskridge  
Print Title: Vice President

AS

STATE OF: Texas  
COUNTY OF: Dallas

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 28 day of October, 2020, by Cheryl T. Eskridge as Vice president of PGIM Real Estate Loan Services, Inc., formerly known as Prudential Asset Resources, Inc., a Delaware corporation, as Servicer on behalf of **The Bank of New York Mellon**, a New York banking corporation, as Trustee under the Reserve Trust Agreement for the PAR U Hartford Life & Annuity Comfort Trust on behalf of such corporation, who  is personally known to me or  has produced as identification.

(Notary Stamp)



*[Handwritten Signature]*  
Signature of Notary Public  
Print Name: Sally Wheeler  
Notary Public, State of: Texas  
Commission Expires: 9/23/2024

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

**PARCEL 1:**

A PORTION OF LOT 2, SUNCREST VILLAGE CENTER, AS RECORDED IN PLAT BOOK 25, PAGE 136 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID LOT 2 ON THE FORMER EAST RIGHT OF WAY LINE OF DEAN ROAD (S.R. 425, A 60' R/W); THENCE RUN SOUTH 89 DEGREES 58 MINUTES 40 SECONDS EAST 21.95 FEET TO THE POINT OF BEGINNING; THENCE RUN THE FOLLOWING THREE COURSES ALONG THE EAST LINE OF LANDS TAKEN IN EMINENT DOMAIN PROCEEDINGS CASE #C191-7998 FILED AUGUST 19, 1992 IN OFFICIAL RECORDS BOOK 4449, PAGE 2395; NORTH 6 DEGREES 31 MINUTES 12 SECONDS WEST 23.43 FEET, NORTH 1 DEGREE 46 MINUTES 30 SECONDS WEST 555.09 FEET TO A POINT ON A CURVATURE OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 904.95 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 2 DEGREES 28 MINUTES 14 SECONDS FOR A DISTANCE OF 39.02 FEET TO A POINT ON THE SOUTH LINE OF SUNCREST VILLAGE UNIT V AS RECORDED IN PLAT BOOK 23, PAGE 56 THROUGH 58 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN THE FOLLOWING 3 COURSES ALONG THE SOUTH LINE OF SAID SUNCREST VILLAGE UNIT V; NORTH 89 DEGREES 54 MINUTES 34 SECONDS EAST 429.35 FEET, SOUTH 1 DEGREE 46 MINUTES 30 SECONDS EAST 76.48 FEET, SOUTH 46 DEGREES 42 MINUTES 12 SECONDS EAST 595.53 FEET TO A POINT ON A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 575.73 FEET; THENCE FROM A TANGENT BEARING OF SOUTH 31 DEGREES 40 MINUTES 19 SECONDS WEST AND LEAVING SAID SOUTH LINE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG THE WEST RIGHT-OF-WAY LINE OF SUNTREE BOULEVARD (AN 80' R/W) THROUGH A CENTRAL ANGLE OF 31 DEGREES 38 MINUTES 59 SECONDS FOR A DISTANCE OF 318.03 FEET TO THE POINT OF TANGENCY; THENCE RUN SOUTH 0 DEGREES 1 MINUTE 20 SECONDS WEST FOR A DISTANCE OF 147.07 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 30 FEET; THENCE RUN SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES 0 MINUTES 14 SECONDS FOR A DISTANCE OF 47.13 FEET TO A POINT OF TANGENCY AND THE NORTH RIGHT-OF-WAY LINE OF UNIVERSITY BOULEVARD; THENCE RUN NORTH 89 DEGREES 58 MINUTES 27 SECONDS WEST ALONG SAID NORTH RIGHT-OF-WAY LINE FOR A DISTANCE OF 390.34 FEET; THENCE RUN NORTH 1 DEGREE 46 MINUTES 30 SECONDS WEST ALONG THE EAST LINE OF TACO BELL, RECORDED IN PLAT BOOK 24, PAGE 40 OF SAID PUBLIC RECORDS FOR A DISTANCE OF 109.75 FEET; THENCE RUN NORTH 44 DEGREES 58 MINUTES 40 SECONDS WEST ALONG SAID EAST LINE FOR A DISTANCE OF 163.87 FEET TO THE EASTERLY MOST CORNER OF LOT 1, SAID SUNCREST VILLAGE CENTER; THENCE RUN NORTH 37 DEGREES 14 MINUTES 42 SECONDS WEST 151.17 FEET ALONG THE EASTERLY LINE OF SAID LOT 1; THENCE RUN NORTH 89 DEGREES 58 MINUTES 40 SECONDS WEST 128.05 FEET ALONG THE NORTH LINE OF SAID LOT 1 TO THE POINT OF BEGINNING.

**PARCEL 2:**

TOGETHER WITH NON-EXCLUSIVE DRAINAGE EASEMENT AGREEMENT DATED APRIL 4, 1986, RECORDED IN OFFICIAL RECORDS BOOK 3769, PAGE 1501, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

**PARCEL 3:**

TOGETHER WITH THOSE CERTAIN NON-EXCLUSIVE EASEMENTS WHICH BENEFIT THE ABOVE PARCEL 1 AS SET FORTH IN THAT CERTAIN DECLARATION OF COVENANTS AND RESTRICTIONS DATED JUNE 16, 1988, FILED JUNE 17, 1988 IN OFFICIAL RECORDS BOOK 3990, PAGE 2836.

**Exhibit "A"**  
**Project Location Map**



**Exhibit "B"**

**Legal Description**

A PORTION OF LOT 2, SUNCREST VILLAGE CENTER, AS RECORDED IN PLAT BOOK 25, PAGE 136 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID LOT 2 ON THE FORMER EAST RIGHT-OF-WAY LINE OF DEAN ROAD (S.R. 425, A 60' R/W); THENCE RUN S 89°58'40" E 21.95 FEET TO THE POINT OF BEGINNING; THENCE RUN THE FOLLOWING THREE COURSES ALONG THE EAST LINE OF LANDS TAKEN IN EMINENT DOMAIN PROCEEDINGS CASE #C191-7998 FILED 8/19/92 IN OFFICIAL RECORDS BOOK 4449, PAGE 2395; N 06°31'12" W 23.43 FEET, N 01°46'30" W 555.09 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 904.95 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 02°28'14" FOR A DISTANCE OF 39.02 FEET TO A POINT ON THE SOUTH LINE OF SUNCREST VILLAGE UNIT V AS RECORDED IN PLAT BOOK 23, PAGES 56 THROUGH 58 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN THE FOLLOWING 3 COURSES ALONG THE SOUTH LINE OF SAID SUNCREST VILLAGE UNIT V; N 89°54'34" E 429.35 FEET, S 01°46'30" E 76.48 FEET, S 46°42'12" E 595.53 FEET TO A POINT ON A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 575.73 FEET; THENCE FROM A TANGENT BEARING OF S 31°40'19" W AND LEAVING SAID SOUTH LINE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG THE WEST RIGHT-OF-WAY LINE OF SUNTREE BOULEVARD (AN 80' R/W) THROUGH A CENTRAL ANGLE OF 31°38'59" FOR A DISTANCE OF 318.03 FEET TO THE POINT OF TANGENCY; THENCE RUN S 00°01'20" W FOR A DISTANCE OF 147.07 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 30 FEET; THENCE RUN SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'14" FOR A DISTANCE OF 47.13 FEET TO A POINT OF TANGENCY AND THE NORTH RIGHT-OF-WAY LINE OF UNIVERSITY BOULEVARD; THENCE RUN N 89°58'27" W ALONG SAID NORTH RIGHT-OF-WAY LINE FOR A DISTANCE OF 390.34 FEET; THENCE RUN N 01°46'30" W ALONG THE EAST LINE OF TACO BELL, RECORDED IN PLAT BOOK 24, PAGE 40 OF SAID PUBLIC RECORDS FOR A DISTANCE OF 109.75 FEET; THENCE RUN N 44°58'40" W ALONG SAID EAST LINE FOR A DISTANCE OF 163.87 FEET TO THE EASTERLY MOST CORNER OF LOT 1, SAID SUNCREST VILLAGE CENTER; THENCE RUN N 37°14'42" W 151.17 FEET ALONG THE EASTERLY LINE OF SAID LOT 1; THENCE RUN N 89°58'40" W 128.05 FEET ALONG THE NORTH LINE OF SAID LOT 1 TO THE POINT OF BEGINNING.

Right-of-Way and Proportionate Share Agreement for Suncrest Village Publix  
Dean Road and University Boulevard  
IA ORLANDO SUNCREST VILLAGE, L.L.C.

**Exhibit "C"**

**Log of Project Contributions**

**[See attached 2 pages]**

Right-of-Way and Proportionate Share Agreement for Suncrest Village Publix  
 University Boulevard and Dean Road  
 IA ORLANDO SUNCREST VILLAGE, L.L.C.

Log of Project Contributions  
 East West Rd (Dean Rd to Rouse Rd)

**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
East West Rd	Dean Rd	Rouse Rd	1.28	E	0	Widen from 0 to 4 lanes	2000	2000	\$17,306,690	\$8,654

**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)
East West Rd	Dean Rd	Rouse Rd	1.28	E	0	46	2000	2000	\$398,058

**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
East West Rd	Dean Rd	Rouse Rd	1.28	E	0	2000	2000	46	1954	\$16,908,832	\$8,654

Updated: 6/3/20

**Log of Project Contributions**

	Date	Project	Project Trips	Prop Share
Existing	<del>Aug-19</del>	Existing plus Committed	0	\$0
	Aug-19	Dean Apartments	16	\$124,656
	Jan-20	Glen Apartments	7	\$60,578
	Mar-20	Creative World school	7	\$60,578
	Mar-20	University station	16	\$138,464
		<b>Backlogged Totals:</b>	<b>46</b>	<b>\$384,276</b>
Proposed	<del>Mar-20</del>	Suncrest Village Publix	4	\$34,616
				\$0
				\$0
				\$0
		<b>Totals:</b>	<b>50</b>	<b>\$418,892</b>

Right-of-Way and Proportionate Share Agreement for Suncrest Village Publix  
 University Boulevard and Dean Road  
 IA ORLANDO SUNCREST VILLAGE, L.L.C.

Log of Project Contributions  
 Dean Road(University Blvd to Seminole County Line)

**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
Dean Road	University Blvd	Seminole County Line	1.02	E	880	Widen from 0 to 4 lanes	2000	1120	\$13,791,428	\$12,314

**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)
Dean Road	University Blvd	Seminole County Line	1.02	E	880	27	2000	1120	\$332,472

**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
Dean Road	University Blvd	Seminole County Line	1.02	E	880	2000	1120	27	1093	\$13,458,956	\$12,314

Updated: 6/3/20

**Log of Project Contributions**

	Date	Project	Project Trips	Prop Share
Existing		Existing plus Committed	17	\$209,338
	Jan-20	Glenn Apartments	1	\$12,314
	Mar-20	Creative World school	9	\$110,826
				\$0
				\$0
		<b>Backlogged Totals:</b>	<b>27</b>	<b>\$332,478</b>
Proposed		Suncrest Village Publix	2	\$24,628
				\$0
				\$0
				\$0
		<b>Totals:</b>	<b>29</b>	<b>\$357,106</b>

Right-of-Way and Proportionate Share Agreement for Suncrest Village Publix  
Dean Road and University Boulevard  
IA ORLANDO SUNCREST VILLAGE, L.L.C.

**Exhibit "D"**

**Legal Description and Sketch of Description  
for Fee Simple Conveyed Lands**

**[See attached 2 pages]**



Right-of-Way and Proportionate Share Agreement for Suncrest Village Publix  
 University Boulevard and Dean Road  
 IA ORLANDO SUNCREST VILLAGE, L.L.C.

**SCHEDULE "A"**

**DESCRIPTION PARCEL 1011 :**

A portion of Lot 2, Suncrest Village Center according to the plat thereof recorded in Plat Book 25, Page 136, Public Records of Orange County, Florida, being more particularly described as follows:

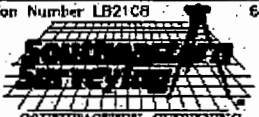
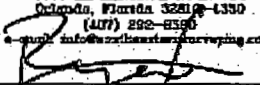
Begin at the Southeast corner of Lot 1, Taco Bell according to the plat thereof recorded in Plat Book 24, Page 40, Public Records of Orange County, Florida, said point being on the Westerly line of Lot 2, Suncrest Village Center according to the plat thereof recorded in Plat Book 25, Page 136, Public Records of Orange County, Florida, said point also being on the North right of way line of University Boulevard as described in Official Records Book 3821, Page 2028, Public Records of Orange County, Florida; thence North 02°04'10" West, a distance of 7.00 feet along said Westerly line to a point on a line that is 7.00 feet North of and parallel with said North right of way line; thence North 89°46'07" East, a distance of 91.80 feet along said parallel line; thence departing said parallel line South 89°39'19" East, a distance of 298.33 feet; thence South 00°13'53" East, a distance of 4.00 feet to a point on said North right of way line; thence South 89°46'07" West, a distance of 389.89 feet along said right of way line to the POINT OF BEGINNING.

Containing 2,283 square feet, more or less.

**SURVEYOR'S REPORT:**

1. Bearings shown hereon are based on the Westerly line of Lot 2, Suncrest Village Center according to the plat thereof recorded in Plat Book 25, Page 136, Public Records of Orange County, Florida being North 02°04'10" West, assumed.
2. I hereby certify that the "Sketch of Description" of the above described property is true and correct to the best of my knowledge and belief as recently drawn under my direction and that it meets the Standards of Practice for Land Surveying Chapter 5J-17 requirements of Florida Administration Code.
3. I have reviewed First American Title Insurance Company (FATIC) Title Search Report number 2037-4232488/18.00162 all recorded survey related encumbrances have been shown or noted on the survey.
4. The above described lands are subject to a 10.00 foot wide Florida Power Corporation distribution easement 5.00 feet on each side of existing facilities per Official Records Book 3914, Page 530, Public Records of Orange County, Florida.

NOT VALID WITHOUT SHEETS 1-2

<b>DESCRIPTION</b>  FOR <b>PEGASUS ENGINEERING, LLC.</b>	Date: 02/13/2020 KR		Certification Number LB21CB 62756013
	Job Number: 62756	Scale: 1" = 100'	 <b>SOUTHEASTERN SURVEYING                  AND MAPPING CORPORATION</b> 9500 All American Boulevard Orlando, Florida 32817-1350 (407) 292-8390 e-mail: info@seasurveying.com
	Chapter 5J-17, Florida Administrative Code requires that a legal description drawing bear the notation that <b>THIS IS NOT A SURVEY.</b>		
SHEET 1 OF 2 SEE SHEET 2 FOR SKETCH		 <b>RYAN E. JOHNSON, P.E.M.</b> Registered Land Surveyor Number 7130	

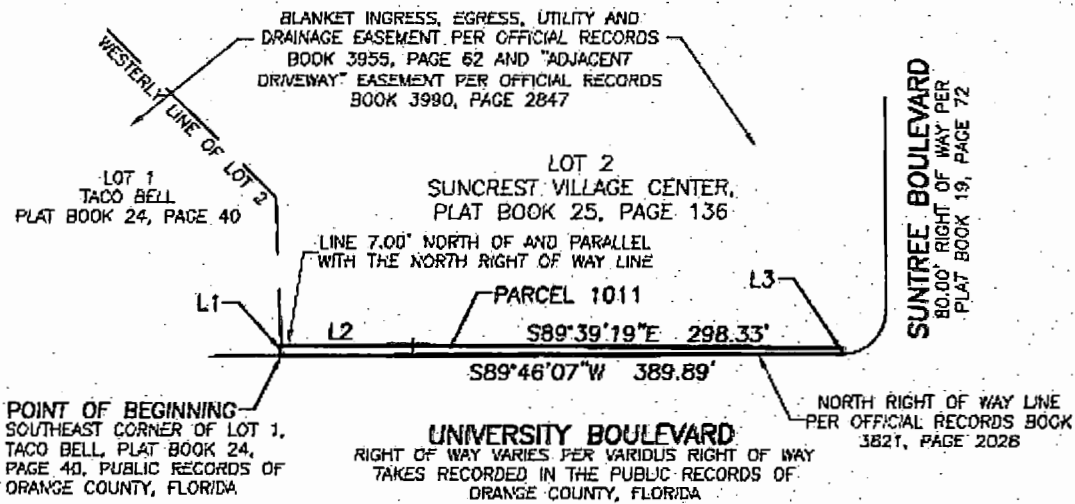
Right-of-Way and Proportionate Share Agreement for Suncrest Village Publix  
 University Boulevard and Dean Road  
 IA ORLANDO SUNCREST VILLAGE, L.L.C.

SKETCH OF DESCRIPTION  
 PARCEL 1011

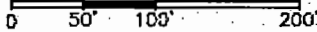
PURPOSE : RIGHT OF WAY

LINE TABLE		
LINE #	BEARING	LENGTH
L1	N02°04'10"W	7.00'
L2	N89°46'07"E	91.80'
L3	S00°13'53"E	4.00'

LEGEND :  
 L1 = LINE NUMBER



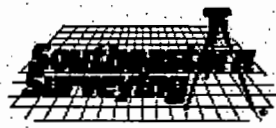
1" = 100'  
 GRAPHIC SCALE



THIS IS NOT A SURVEY.

NOT VALID WITHOUT SHEETS 1 THROUGH 2

Drawing No. 62756013  
 Job No. 62756  
 Date: 02/13/2020  
 SHEET 2 OF 2  
 See Sheet 1 for Description



SOUTHEASTERN SURVEYING  
 AND MAPPING CORPORATION  
 6500 All American Boulevard  
 Orlando, Florida 32810-4350  
 (407) 292-8560  
 Certification Number LB108  
 e-mail: info@southeasternsurveying.com

Right-of-Way and Proportionate Share Agreement for Suncrest Village Publix  
University Boulevard and Dean Road  
IA ORLANDO SUNCREST VILLAGE, L.L.C.

**Exhibit "E"**

**Legal Description and Sketch of Description  
for TCE Conveyed Lands**

**[See attached 2 pages]**

**SCHEDULE "A"**

**DESCRIPTION PARCEL 7011 :**

A portion of Lot 2, Suncrest Village Center according to the plat thereof recorded in Plat Book 25, Page 136, Public Records of Orange County, Florida, being more particularly described as follows:

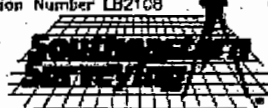
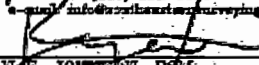
Commence at the Southeast corner of Lot 1, Taco Bell according to the plat thereof recorded in Plat Book 24, Page 40, Public Records of Orange County, Florida, said point being on the Westerly line of Lot 2, Suncrest Village Center according to the plat thereof recorded in Plat Book 25, Page 136, Public Records of Orange County, Florida, said point also being on the North right of way line of University Boulevard as described in Official Records Book 3821, Page 2028, Public Records of Orange County, Florida; thence North 02°04'10" West, a distance of 7.00 feet along said Westerly line to the POINT OF BEGINNING, said point being on a line that is 7.00 feet North of and parallel with said North right of way line; thence continue North 02°04'10" West, a distance of 32.56 feet along said Westerly line; thence departing said Westerly line North 89°44'46" East, a distance of 45.00 feet; thence South 00°15'14" East, a distance of 21.56 feet; thence South 45°14'34" East, a distance of 15.56 feet to a point on said parallel line; thence South 89°46'07" West, a distance of 54.97 feet along said parallel line to the POINT OF BEGINNING.

Containing 1,508 square feet, more or less.

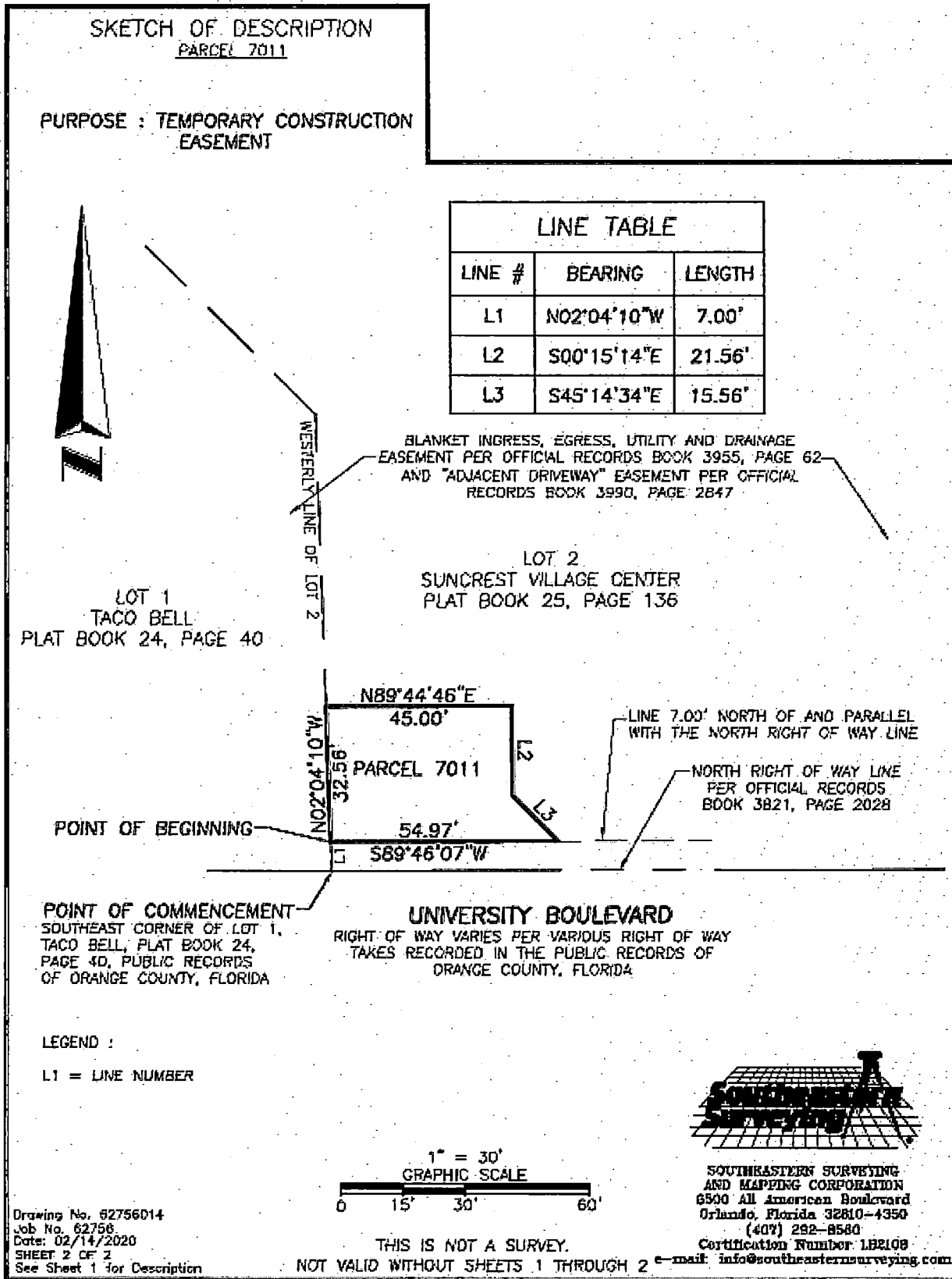
**SURVEYOR'S REPORT:**

1. Bearings shown hereon are based on the Westerly line of Lot 2, Suncrest Village Center according to the plat thereof recorded in Plat Book 25, Page 136, Public Records of Orange County, Florida being North 02°04'10" West, assumed.
2. I hereby certify that the "Sketch of Description" of the above described property is true and correct to the best of my knowledge and belief as recently drawn under my direction and that it meets the Standards of Practice for Land Surveying Chapter 5J-17 requirements of Florida Administration Code.
3. I have reviewed First American Title Insurance Company (FATIC) Title Search Report number 2037-4232511/18.00162 all recorded survey related encumbrances have been shown or noted on the survey.
4. The above described lands are subject to a 10.00 foot wide Florida Power Corporation distribution easement 5.00 feet on each side of existing facilities per Official Records Book 3914, Page 530, Public Records of Orange County, Florida.

NOT VALID WITHOUT SHEETS 1-2.

<b>DESCRIPTION</b>  FOR <b>PEGASUS ENGINEERING, LLC</b>	Date: 02/14/2020 KR		Certification Number LB2108 62756014
	Job Number: 62756	Scale: 1" = 30'	 <b>SOUTHEASTERN SURVEYING AND MAPPING CORPORATION</b> 6500 All American Boulevard Orlando, Florida 32819-4330 (407) 292-6366 info@seasurveying.com
	Chapter 5J-17, Florida Administrative Code requires that a legal description drawing bear the notation that <b>THIS IS NOT A SURVEY.</b>		
	SHEET 1 OF 2 SEE SHEET 2 FOR SKETCH		 <b>RYAN R. JOHNSON, P.S.M.</b> Registered Land Surveyor Number 7130

Right-of-Way and Proportionate Share Agreement for Suncrest Village Publix  
 University Boulevard and Dean Road  
 IA ORLANDO SUNCREST VILLAGE, L.L.C.



Right-of-Way and Proportionate Share Agreement for Suncrest Village Publix  
University Boulevard and Dean Road  
IA ORLANDO SUNCREST VILLAGE, L.L.C.

**Exhibit "F"**

**Form for TCE Conveyed Lands**

This instrument prepared by  
and after recording return to:

Jonathan Huels, Esquire  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
215 North Eola Drive  
Post Office Box 2809  
Orlando, FL 32802-2809  
(407) 843-4600

**TEMPORARY CONSTRUCTION EASEMENT**

For and in consideration of \$10.00, other valuable considerations, and of the benefits accruing to us, we, IA ORLANDO SUNCREST VILLAGE, L.L.C., a Delaware limited liability company, successor in interest by name change to Inland American Orlando Suncrest Village, L.L.C., a Delaware limited liability company, with a principal place of business at 3025 Highland Parkway, Suite 350, Downers Grove, IL 60515, GRANTOR, do hereby give, grant, bargain, and release to ORANGE COUNTY, a charter county and political subdivision of the State of Florida, whose address is P. O. Box 1393, Orlando, Florida, 32802-1393, GRANTEE, a temporary easement to enter upon the portion of the lands of the owners, for the purposes described herein, such lands being described as follows:

SEE ATTACHED SCHEDULE "A"

Property Appraiser's Parcel Identification Number:

a portion of  
05-22-31-8479-00-020

THIS EASEMENT is granted for construction purposes only, including the right to enter upon said lands for the purposes of sloping, grading, clearing, grubbing, storage of materials and equipment, excavation, and restoration during GRANTEE'S construction of a road project, as GRANTEE deems necessary or prudent. Should GRANTEE perform any such construction activities in the easement area, GRANTEE shall, at its sole cost and expense, restore such lands to the condition existing prior to such construction activities, including the repair or replacement of any paving, curbing, sidewalks or landscaping.

THIS EASEMENT is granted upon the condition that the sloping and/or grading upon the above land shall not extend beyond the limits outlined, and that all grading or sloping shall conform to

Right-of-Way and Proportionate Share Agreement for Suncrest Village Publix  
University Boulevard and Dean Road  
IA ORLANDO SUNCREST VILLAGE, L.L.C.

all existing structural improvements within the limits designated, and all work will be performed in such a manner that existing structural improvements will not be damaged.

THIS EASEMENT shall expire upon the completion of the construction of the said road project or after seven (7) years after this easement is recorded in the public records of Orange County, Florida, whichever occurs first.

IN WITNESS WHEREOF, the GRANTOR has caused these presents to be executed in its name.

Signed, sealed and delivered  
in the presence of:

<Name of Entity>

\_\_\_\_\_  
Witness

BY: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

(Signature of TWO witnesses required by Florida law)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of • physical presence or • online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of [name of entity], on behalf of the [type of entity]. He/she • is personally known to me or • has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
(Notary Seal)

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Printed Notary Name

Notary Public in and for  
the County and State aforesaid.  
My commission expires: