



Interoffice Memorandum

AGENDA ITEM

July 10, 2020

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

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

SUBJECT: August 11, 2020 – Consent Item
Escrow Agreement for Town Center West (Silverleaf) Road Network Agreement
(Related to Case # LUP-19-09-290)

The Roadway Agreement Committee has reviewed the Escrow Agreement for Town Center West (Silverleaf) Road Network Agreement ("Escrow Agreement") by and among Jen Florida 36, LLC, Shutts & Bowen, LLP, and Orange County. Pursuant to Section 2.5 of the pending Town Center West (Silverleaf) Road Network Agreement, the Owner and Orange County are to enter into an Escrow Agreement for the purpose of governing the receipt, use and disbursement of the Fair Share Payment which would be made by a non-constructing owner. Shutts and Bowen, LLP is designated to serve as the Escrow Agent. The Escrow Agent would release funds as reimbursement to the Owner for reimbursement of expenses subject to a draw request and associated documentation approved by the County.

The Escrow Agreement was recommended for approval by the Roadway Agreement Committee on July 1, 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 Escrow Agreement for Town Center West (Silverleaf) Road Network Agreement by and among Jen Florida 36, LLC, Orange County, and Shutts & Bowen, LLP outlining the duties and responsibilities of the Escrow Agent. District 1.

JVW/HEGB/fb
Attachment

ESCROW AGREEMENT
FOR
TOWN CENTER WEST (SILVERLEAF)
ROAD NETWORK AGREEMENT

THIS ESCROW AGREEMENT (“Escrow Agreement”) is made and entered into as of the date of the latest execution hereof (“**Effective Date**”), by and among **JEN FLORIDA 36, LLC**, a Florida limited liability company (“**Owner**”); **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida (“**County**”) and **SHUTTS & BOWEN, LLP**, a Florida limited liability partnership (“**Escrow Agent**”).

W I T N E S S E T H:

WHEREAS, Owner, and County (sometimes collectively hereafter referred to as “**Principals**”) are parties to that certain Town Center West (Silverleaf) Road Network Agreement dated _____, 2020 and recorded _____, 2020 at Document No. _____, Public Records of Orange County, Florida (the “**Road Agreement**”); and

WHEREAS, pursuant to the Road Agreement, this Escrow Agreement is intended to govern the receipt, use and disbursement of the “Fair Share” funds as more particularly set forth in the Road Agreement; and

WHEREAS, the parties desire to enter into this Escrow Agreement to carry out the intent and purposes of the Road Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto represent, warrant, covenant, and agree as follows:

1. **Recitals; Defined Terms.** The recitals set forth above are true and correct and incorporated herein by this reference. All capitalized terms not otherwise defined in this Escrow Agreement shall have the meanings ascribed to them in the Road Agreement.

2. **Establishment of Escrow Relationship; Acceptance by Escrow Agent.** The Principals hereby retain Escrow Agent to serve as escrow agent with respect to the Escrowed Funds and Escrow Agent hereby accepts such retention.

3. **Escrowed Funds.** From time to time during the term of this Escrow Agreement, Escrow Agent may receive various sums of money (the “**Escrowed**

Funds") representing the Fair Share payments made by Non-Constructing Owners in accordance with the terms of the Road Agreement.

Within five (5) business days after receipt, Escrow Agent shall place the Escrowed Funds into an escrow account (the "**Escrow Account**") to be held, administered, distributed, and released as provided for herein. Escrow Agent shall acknowledge receipt of the Escrowed Funds by providing notice, either in writing or by electronic mail, to each of the Principals within five (5) business days after receipt of the Escrowed Funds.

4. **Release of Escrowed Funds to Constructing Owner.** In accordance with the Road Agreement, Owner, as Constructing Owner, intends to design and construct certain roadway Improvements. From time to time during the course of completing/constructing the Improvements, Constructing Owner may request, not more frequently than monthly, Escrow Agent to release to Constructing Owner a portion of the Escrowed Funds pursuant to periodic construction draws or to reimburse Constructing Owner for County approved PDS or DEP expenses. Each draw request by Constructing Owner shall be submitted to Escrow Agent, and copied to County, and shall consist of a standard draw request from the contractor performing the Improvements certifying that portion of the Improvements completed during the preceding month and the amount due pursuant to each such draw request. Escrow Agent shall release the percentage of the Escrowed Funds to the Constructing Owner equal to the percentage of the Improvements shown as completed with each draw request. Each draw request shall also be certified as substantially accurate by the Improvements project civil engineer. Each draw request shall be subject to a ten percent (10%) holdback for retainage. Upon completion of the Improvements and issuance of a Certificate of Completion by County, the remaining ten percent (10%) retainage shall be released by Escrow Agent to Constructing Owner.

5. **Release of Escrowed Funds to County.** In the event construction of the Improvements is not commenced within two (2) years after the Effective Date of this Escrow Agreement, County may, at its sole discretion, direct Escrow Agent to disburse all Escrowed Funds to County.

6. **Termination.** This Escrow Agreement and all of the parties' rights and obligations hereunder shall automatically terminate upon the earlier of (i) delivery of all of the Escrowed Funds to the County pursuant to Section 5 hereof, or (ii) delivery of the balance of the Escrowed Funds to Constructing Owner pursuant to Section 4 hereof.

7. **Duties of Escrow Agent.** Escrow Agent is acting as a stakeholder only with respect to the Escrowed Funds and if there is any dispute as to whether Escrow Agent is obligated to deliver the Escrowed Funds or as to whom the Escrowed Funds are to be delivered, Escrow Agent may refuse to make delivery and may continue to hold the Escrowed Funds until receipt by Escrow Agent of an authorization in writing, signed by the Principals, directing the disposition of the Escrowed Funds. In the absence of any such authorization, Escrow Agent may hold the Escrowed Funds until a final determination of the rights of the parties in an appropriate proceeding or may bring an appropriate action or proceeding for leave to deposit the Escrowed Funds in a court of competent jurisdiction pending such determination in which event the Escrow Agent may recover all of its court costs and reasonable attorneys' fees. Escrow Agent shall have no duties or responsibilities except for those expressly set forth herein. Escrow Agent shall not be bound by any modification of this Agreement unless the same is in writing and signed by all parties hereto, and to the extent Escrow Agent's duties hereunder will in any way be affected by said modification, Escrow Agent will be bound only if Escrow Agent has given its prior written consent thereto.

8. **Indemnification of Escrow Agent.** It is agreed that the duties of the Escrow Agent are purely ministerial in nature and shall be expressly limited to the matters herein for which Escrow Agent is expressly obligated. The Principals hereby indemnify Escrow Agent and agree to hold Escrow Agent harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits, or proceedings at law or in equity, and any other expenses, fees, or charges of any character or nature, which Escrow Agent may incur or with which Escrow Agent may be threatened directly or indirectly arising from or in any way connected with this Escrow Agreement, except in the case of gross negligence, willful misconduct, or breach of trust of Escrow Agent. In connection therewith, the Principals indemnify Escrow Agent against any and all reasonable expenses, including reasonable attorney fees (pre-litigation, litigation, and appellate) and the cost of defending or prosecuting any action, suit, or proceeding or resisting any claim, whether or not litigation is instituted. Nothing contained herein is intended as, nor shall constitute, a waiver by County of its sovereign immunity protections pursuant to Section 768.28, Florida Statutes.

9. **Waiver of Conflict of Interest.** Principals acknowledge that Escrow Agent has represented, and will continue to represent, Owner with respect to its obligations under the Road Agreement and other development matters within the County. All Principals hereby waive any conflict of interest arising from Escrow Agent's prior or continuing representation of Owner and simultaneous services as Escrow Agent hereunder.

10. **Investment of Escrowed Funds.** Upon receipt of the Escrowed Funds, Escrow Agent shall have the authority to invest the Escrowed Funds in an interest bearing money market account at SunTrust Bank in Orlando, Florida. All interest earned on the Escrowed Funds shall be added to the principal and disbursed in accordance with the terms of this Escrow Agreement.

11. **Notices.** All notices, consents, approvals, waivers, and elections which any party shall be required or shall desire to make or give under this Escrow Agreement shall be in writing and shall be sufficiently made or given (i) when mailed by certified mail, postage prepaid, return receipt requested, (ii) by hand delivery to the named individuals representing the party to be notified, or (iii) by private parcel delivery services, or facsimile transmission for which receipt is provided to the notifying party. Notices, including notice of change of address, shall be addressed or transmitted to the addresses set forth below or such other address that a party may designate in the manner prescribed herein:

As to Owner: Jen Florida 36, LLC
1750 West Broadway Street
Oviedo, FL 32765
Attn: Richard Jerman

With a copy to: Shutts & Bowen LLP
300 S. Orange Avenue, Suite 1600
Orlando, Florida 32801
Attn: James G. Willard, Esquire

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

As to Escrow Agent: Shutts & Bowen, LLP
300 S. Orange Avenue, Suite 1600
Orlando, Florida 32801
Attn: James G. Willard, Esquire

Notices, consents, approvals, waivers, and elections given or made as aforesaid shall be deemed to have been given and received on the date of the mailing, delivery, or transmission thereof as aforesaid.

12. **Governing Law.** This Escrow Agreement shall be governed by, and be construed and interpreted in accordance with, the laws of the State of Florida, without regard to choice of law rules. Venue for any action arising out of or in connection with this Escrow Agreement shall lie in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida. Notwithstanding anything contained herein seemingly to the contrary, the Parties shall comply with all applicable federal, state, and local laws, rules, and regulations, including County ordinances and regulations, including applicable development approvals.

16. **Entire Agreement, Modification.** This Escrow Agreement contains the entire understanding and agreement among the parties relating to the subject matter hereof, and all prior or extrinsic agreements, understandings, representations and statements, oral or written, concerning the subject matter hereof are merged herein and/or superseded hereby. There are no other agreements, written or oral, among the parties with respect to the subject matter hereof except those contained in this Escrow Agreement. Neither Escrow Agent nor the Principals shall be bound by any modification, cancellation, or rescission of this Escrow Agreement unless in writing and signed by Escrow Agent and principals.

17. **Waiver.** The failure of any party to insist in any one or more cases upon the strict performance of any one of the terms, covenants, conditions, or provisions of this Escrow Agreement shall not be construed as a waiver or a relinquishment of such party's right to insist on strict performance of any such term, covenant, condition, or provision in the future.

18. **Telecopy Execution.** A facsimile, telecopy, pdf or other reproduction of this Escrow Agreement may be executed by the parties (in counterparts or otherwise) and, when so executed, shall be considered valid, binding, and effective for all purposes. At the request of any party, the parties hereto agree to execute an original of this Escrow Agreement, as well as any facsimile, telecopy, or other reproduction.

19. **Counterparts.** This Escrow Agreement may be executed in up to four (4) identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Escrow Agreement, it shall not be necessary to produce or account for more of such counterparts than are required to show that each party hereto executed at least one such counterpart.

20. **Time.** Time is of the essence in connection with this Escrow Agreement and each provision hereof.

21. **Construction.** All parties to this Escrow Agreement having participated fully and equally in the negotiation and preparation hereof, the fact that one of the

parties to this Escrow Agreement, or its attorney, may be deemed to have drafted or structured any provision of this Escrow Agreement shall not be considered in construing or interpreting any particular provision of this Escrow Agreement, either in favor of or against such party.

22. **Settlement of Dispute.** In the event Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Escrowed Funds, Escrow Agent shall, at its option, either: (a) tender the Escrowed Funds into the registry of the appropriate court; or (b) disburse the Escrowed Funds in accordance with the court's ultimate disposition of the case. In the event Escrow Agent tenders the Escrowed Funds into the registry of the appropriate court and files an action of interpleader naming Principals and any affected third parties of whom Escrow Agent has received actual notice, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith. The Principals agree that Escrow Agent shall not be liable to any party or person whomsoever for the misdelivery of any monies except where such misdelivery shall be due to willful misconduct, gross negligence, or breach of trust by Escrow Agent.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement or caused this Escrow Agreement to be executed and delivered by their duly authorized officers on the date(s) noted below.

ATTEST:

Phil Diamond, CPA, County Comptroller,
as Clerk of the Board of County
Commissioners

By: _____
Deputy Clerk

"COUNTY"

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners


By: _____
Jerry L. Demings
Orange County Mayor

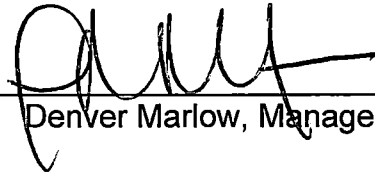
Execution Date: _____

Signed, sealed and delivered in the presence of:

"JEN FLORIDA 36, LLC"

JEN FLORIDA 36, LLC, a Florida limited liability company


Print Name: Richard Jerman

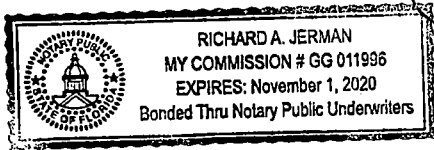
By: 
Denver Marlow, Manager



Print Name: Chris Gardner

Execution Date: 07/07/20

STATE OF FLORIDA)
 Seminole)
COUNTY OF ~~ORANGE~~)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 7th day of July, 2020 by Denver Marlow, of Jen Florida 36, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me or has produced _____ as identification.

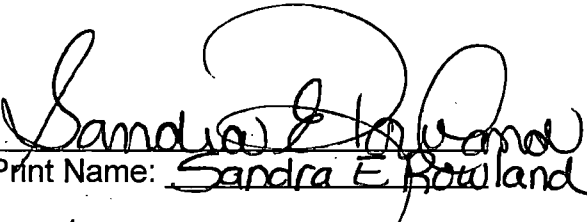



(Signature of Notary Public)
Print Name: Richard Jerman
Notary Public, State of Florida
Commission No.: GG 011996
My Commission Expires: 11/1/20

Signed, sealed, and delivered
in the presence of:

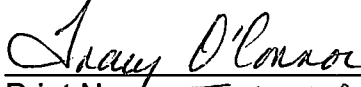
"ESCROW AGENT"

SHUTTS & BOWEN, LLP


Print Name: Sandra E Rowland

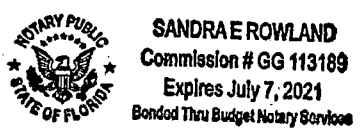
By: 
James G. Willard, Partner

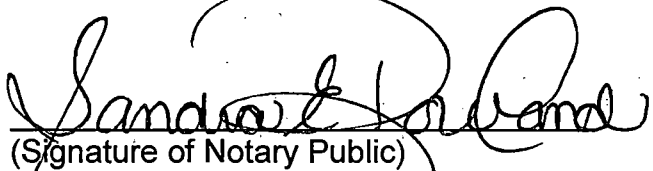
Execution Date: 7/9/2020


Print Name: TRACY O'CONNOR

STATE OF FLORIDA)
)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this July 9, 2020 by James G. Willard, Partner of Shutts & Bowen, LLP, on behalf of the partnership, who is personally known to me or who has produced _____ as identification.




(Signature of Notary Public)
Print Name: _____
Notary Public, State of Florida
Commission No.: _____
My Commission Expires: _____