



Interoffice Memorandum

AGENDA ITEM

January 6, 2021

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

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

SUBJECT: February 9, 2021 – Consent Item
Proportionate Share Agreement for University Station
University Boulevard

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for University Station University Boulevard ("Agreement") by and between University Station 18 LLC and Orange County for a proportionate share payment in the amount of \$86,540. Pursuant to Section 163.3180(5)(h), Florida Statutes, an applicant may mitigate capacity deficiencies by entering into a proportionate share agreement and contributing a proportionate share payment. The proportionate share payment is due within 90 days of the effective date of this Agreement. The Agreement follows the recommendation of the Roadway Agreement Committee providing for the mitigation of road impacts on University Boulevard for 10 deficient trips on the segment from Dean Road to Rouse Road in the amount of \$8,654 per trip. As University Boulevard is constrained, mitigation is being assessed and directed towards the East-West Road as a planned, parallel reliever facility.

The Roadway Agreement Committee recommended approval on January 6, 2021. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

If you have any questions, please feel free to contact me at 407-836-5393.

ACTION REQUESTED: Approval and execution of Proportionate Share Agreement for University Station University Boulevard by and between University Station 18 LLC and Orange County for a proportionate share payment in the amount of \$86,540. District 5

JVW/HEGB/fb
Attachment

BCC Mtg. Date: February 9, 2021

This instrument prepared by
and after recording return to:

Jose Chaves
Storybook Holdings, LLC
5260 N. Lake Burkett Lane
Winter Park, FL 32792

Parcel ID Number: 09-22-31-0000-00-004

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

**PROPORTIONATE SHARE AGREEMENT FOR
UNIVERSITY STATION**

UNIVERSITY BOULEVARD

This Proportionate Share Agreement (the “Agreement”), effective as of the latest date of execution (the “**Effective Date**”), is made and entered into by and between **UNIVERSITY STATION 18 LLC, a FLORIDA LIMITED LIABILITY COMPANY (“Owner”)**, whose principal place of business is 3370 ROUSE ROAD, ORLANDO FLORIDA, 33281, and **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida (“**County**”), whose address is P.O. Box 1393, Orlando, FL 32802-1393.

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

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

WHEREAS, Owner intends to develop the Property as 7,800 Square Feet of Retail and 7,200 Square Feet of Fast-Food Restaurant, referred to and known as University Station (the “**Project**”); and

WHEREAS, Owner received a revised letter from County dated December 08, 2020, stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #CEL-20-02-013 for the Project was denied; and

WHEREAS, the Project will generate 10 deficient PM Peak Hour trips (the “**Excess Trips**”) for the deficient roadway segment on University Boulevard from Dean Road to Rouse Road (the “**Deficient Segment**”), and 0 PM Peak Hour trips were available on the Deficient Segment 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 Segment to operate below adopted Level of Service standards; therefore, pursuant to Section 163.3180(5)(h), Florida Statutes, as amended, the Owner shall provide the County with proportionate share mitigation for the Excess Trips; and

WHEREAS, University Boulevard is a constrained road and is not anticipated to be widened beyond 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, Owner and County have agreed that the proportionate share payment necessary to mitigate the impact of the Excess Trips on the Deficient Segment through the current anticipated Project buildout is eighty-six thousand five hundred forty and 00/100 Dollars (\$86,540.00) (the "**PS Payment**"); and

WHEREAS, County and Owner desire to set forth certain terms, conditions, and agreements between them as to the development of the Property into the Project.

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

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

Section 2. PS Payment; CEL.

(a) **Calculation of PS Payment:** The amount of the PS Payment for the Deficient Segment, as described in Exhibit "C," totals eighty-six thousand five hundred forty and 00/100 Dollars (\$86,540.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. Owner and County agree that the Excess Trips will constitute the Project's impact on the aforementioned Deficient Segment based upon (i) Owner's Traffic Study titled "TRAFFIC IMPACT ANALYSIS 3210 ROUSE RD" prepared by Traffic Impact Group, LLC, dated November 4, 2019 for B&B Capital Group (the "**Traffic Study**"), which is incorporated herein by this reference, and (ii) upon the calculations described in Exhibit "C." The Traffic Study was accepted by the Orange County Transportation Planning Division on November 30, 2020 and is on file and available for inspection with that division (CMS #2020013). Owner and County further acknowledge and agree that the PS Payment as set forth above shall be the final and binding calculation of the amount the Owner is required to pay through the buildout of the currently approved Project as proportionate share mitigation for impacts of the Project upon roadways within Orange County's jurisdiction, notwithstanding any subsequent variance in the actual cost of improvement to the Deficient Segment or actual traffic impacts created by the Project; provided, however, that if Owner subsequently increases the number of units and/or square footage, as applicable, of the Project, the Project may then be subject to an additional concurrency evaluation and proportionate share agreement as set forth in Section 2(d) below. Owner and

County further acknowledge and agree that the calculation of, and agreement regarding, the amount of the PS Payment constitute material inducements for the parties to enter into this Agreement.

(b) *Timing of PS Payment, Issuance of CEL.* Within ninety (90) days following the Effective Date, Owner shall deliver a check to County in the amount of eighty-six thousand five hundred forty and 00/100 Dollars (\$86,540.00) as the PS Payment. The check shall be made payable to "Orange County Board of County Commissioners" and shall be delivered to the Fiscal and Operational Support Division of the Planning, Environmental, and Development Services Department. Within twenty-one (21) days following its receipt of the PS Payment, if the Property's future land use designation and zoning are consistent with the Project's proposed development, County shall issue a CEL sufficient to encumber traffic capacity for the Project, irrespective of any actual traffic deficiency on the Deficient Segment. Within the time frame provided in the CEL, the Owner must reserve the encumbered trips by obtaining a Capacity Reservation Certificate as provided in Section 30-591 of the Orange County Code, as may be amended. An amount equal to the PS Payment shall be applied toward the amount of the initial capacity reservation payment (and any subsequent reservation payment(s), if the initial reservation payment does not exceed the amount of the PS Payment) as further set forth in Section 3 below. In the event Owner has not paid the PS Payment within ninety (90) days 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 has not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, this Agreement shall become null and void.

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

(d) *Increase in Project Trips.* Any change to the Project which increases the unit count and/or square footage, as applicable, may result in an increase in trips on the Deficient Segment or other segments within the transportation impact area, as defined by County. Owner understands and agrees that any such additional trips are neither vested nor otherwise permitted under this Agreement, and that Owner is precluded from asserting any such vesting. In addition, Owner understands and agrees that any such changes resulting in an increase in trips may cause this Agreement to become null and void, and/or may require application for and execution of an additional Proportionate Share Agreement, along with any other required documentation, for the number of increased trips.

(e) *Satisfaction of Transportation Improvement Requirements.* County hereby acknowledges and agrees that upon Owner's payment of the PS Payment as required herein, and absent any change in the Project increasing the number of trips as set forth in subparagraph 2(d) above, Owner shall be deemed to have satisfied all requirements for the mitigation of the traffic impacts of the Project on all roads affected by the Project within County's jurisdiction through buildout of the Project. Owner shall be entitled to fully and completely develop the Project, without regard to whether the improvements to the Deficient Segment are actually constructed; provided, however, Owner shall be required to obtain a Capacity Reservation Certificate prior to the expiration of Owner's Capacity Encumbrance Letter and shall be required to maintain the validity of the Capacity Reservation Certificate in accordance with its terms. Additionally, nothing herein shall be construed to exempt Owner from meeting the requirements of all other applicable laws,

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 3 below.

Section 3. Transportation Impact Fee Credits. County and Owner agree that Owner 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 specifically described in Exhibit "C." County further agrees that such credits may be applied on a dollar for dollar basis against capacity reservation fees at such time as capacity reservation fees may be required to be paid by Owner in connection with the issuance of a Capacity Reservation Certificate as contemplated in Section 2 above. In no event shall Owner receive credits in excess of the PS Payment and in the event the PS Payment exceeds either the applicable transportation impact fees or capacity reservation fees, as the case may be, Owner shall not be entitled to a refund for the amount of the PS Payment in excess of such transportation impact fees or capacity reservation fees.

Section 4. No Refund. The PS Payment (including any capacity reservation fees paid with the PS Payment) is non-refundable.

Section 5. Notice. With the exception of the timing of the PS Payment as set forth in Section 2(b) hereof, the parties acknowledge and agree that no party shall be considered in default for failure to perform under this Agreement until such party has received written notice specifying the nature of such default or failure to perform and said party fails to cure said default or fails to perform within thirty (30) days of receipt of written notice. Any notice delivered with respect to this Agreement shall be in writing and be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

As to Owner: UNIVERSITY STATION 18 LLC,
A FLORIDA LIMITED LIABILITY COMPANY
800 SE 4TH AVE SUITE, 804
HALLANDALE BEACH, FLORIDA 33009
EMAIL: FREDDY@BBCAPITALGROUP.COM

With copy to: STORYBOOK HOLDINGS, LLC
5260 N. LAKE BURKETT LANE
WINTER PARK, FL 32792
EMAIL: JOSE@STORYBOOKHOLDINGS.COM

As to County: Orange County Administrator
P. O. Box 1393
Orlando, Florida 32802-1393
Orange County

With copy to: Planning, Environmental, and Development Services Department
Manager, Fiscal and Operational Support Division
201 South Rosalind Avenue, 2nd Floor
Orlando, Florida 32801

Orange County
Planning, Environmental, and Development Services Department
Manager, Transportation Planning Division
4200 South John Young Parkway, 2nd Floor
Orlando, Florida 32839

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

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

Section 7. Recordation of Agreement. The parties hereto agree that this Agreement shall be recorded in the Public Records of Orange County, Florida, at Owner's expense, within ten (10) business days after the Effective Date.

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

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

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

Section 11. Construction of Agreement; Severability. Captions of the Sections and Subsections of this Agreement are for convenience and reference only; any words contained

therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any party hereunder or substantially increase the burden of any party hereunder, shall be held to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

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

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

Section 14. Counterparts. This Agreement may be executed in up to three (3) counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

[Signatures appear on following pages]

Proportionate Share Agreement, University Station
University Station 18 LLC for University Boulevard, 2021.

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

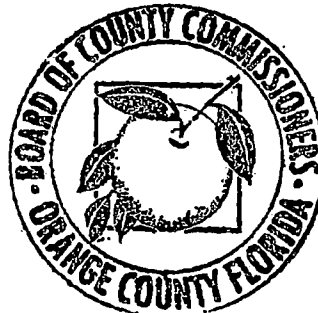
By: Jerry L. Demings
for Jerry L. Demings
Orange County Mayor

Date: FEB 09 2021

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

By: Katie Smith
Deputy Clerk

Print Name: Katie Smith



WITNESSES:

[Signature]
Print Name: Judelys Viquez

[Signature]
Print Name: Thiel Ben-naim

"OWNER"

UNIVERSITY STATION 18 LLC, A
FLORIDA LIMITED LIABILITY
COMPANY

By: [Signature]
Print Name: IZAK BEN NAIM

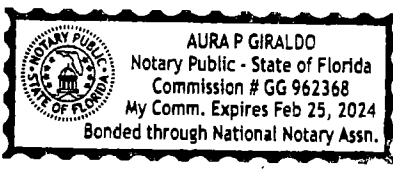
Title: MANAGER

Date: 12/21/2020

STATE OF: Florida
COUNTY OF: Broward

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 21 day of December, 2020, by Izak Ben Naim, as Manager of University Station 18 LLC, a Florida Limited Liability Company, on behalf of such entity, who is personally known to me or has produced _____ as identification.

(Notary Stamp)



[Signature]
Signature of Notary Public
Print Name: Aura P. Giraldo
Notary Public, State of: Florida
Commission Expires: Feb. 25, 2024

Exhibit A
“UNIVERSITY STATION”
Project Location Map



Exhibit "B"

"UNIVERSITY STATION"

Parcel ID: 09-22-31-0000-00-004

Legal Description:

THE EAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4, SECTION 9, TOWNSHIP 22 SOUTH, RANGE 31 EAST, ORANGE COUNTY, FLORIDA, LESS AND EXCEPT THE NORTH 330 FEET THEREOF AND ALSO LESS ROAD RIGHT OF WAY ON EAST FOR ROUSE ROAD AS SET FORTH IN DEED BOOK 347, PAGE 57, DEED BOOK 347, PAGE 58 AND DEED BOOK 347, PAGE 155 AND ORDER OF TAKING RECORDED IN O.R. BOOK 8524, PAGE 470, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NW CORNER OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 22 SOUTH, RANGE 31 EAST; THENCE RUN N89°27'45"E ALONG THE NORTH LINE OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 9, A DISTANCE OF 1308.07 FEET TO THE CENTERLINE OF SAID ROUSE ROAD; THENCE S00°09'52"E ALONG SAID CENTERLINE, A DISTANCE OF 330.01 FEET; THENCE DEPARTING SAID CENTERLINE RUN S89°27'45"W, A DISTANCE OF 109.04 FEET TO THE WEST RIGHT OF WAY OF SAID ROUSE ROAD AS RECORDED IN O.R. 8727, PAGES 1522 TO 1531 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, AND THE POINT OF BEGINNING;

THENCE RUN ALONG SAID WEST RIGHT OF WAY THE FOLLOWING 4 COURSES; 1) S00°33'18"E, A DISTANCE OF 187.18 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 2143.00 FEET, A CENTRAL ANGLE OF 08°58'43" AND A CHORD BEARING AND DISTANCE OF S05°02'39"E, 335.48 FEET; 2) THENCE ALONG SAID CURVE AN ARC DISTANCE OF 335.82 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 2023.00 FEET, A CENTRAL ANGLE OF 08°58'48" AND A CHORD BEARING AND DISTANCE OF S05°02'37"E, 316.74 FEET; 3) THENCE ALONG SAID CURVE AN ARC DISTANCE OF 317.07 FEET TO THE POINT OF TANGENCY OF SAID CURVE; 4) THENCE S00°33'13"E, A DISTANCE OF 161.80 FEET TO THE SOUTH LINE OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 9; THENCE DEPARTING SAID WEST RIGHT OF WAY, RUN S89°34'40"W ALONG SAID SOUTH LINE, A DISTANCE OF 264.60 FEET TO THE WEST LINE OF THE EAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 9; THENCE N00°38'20"W ALONG SAID WEST LINE, A DISTANCE OF 998.65 FEET TO A POINT THAT IS 330.00 FEET SOUTH OF THE NORTH LINE OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 9; THENCE N89°27'45"E PARALLEL TO SAID NORTH LINE, A DISTANCE OF 215.02 FEET RETURNING TO THE POINT OF BEGINNING.

CONTAINING 5.481 ACRES OF LAND, MORE OR LESS.

Exhibit "C"
"UNIVERSITY STATION"
DEFICIENT SEGMENT

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

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								

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							

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									

Updated: 11/30/20

Log of Project Contributions			
	Date	Project	Prop Share
Existing	Aug-19	Existing plus Committed	\$0
	Aug-19	Dean Apartments	\$124,856
	Jan-20	Glen Apartments	\$80,578
	Mar-20	Creative World school	\$80,578
			\$0
		Backlogged Totals:	30
			\$245,012
Proposed	Mar-20	University station	\$86,540
			\$0
			\$0
			\$0
		Totals:	40
			\$332,352