Interoffice Memorandum





August 17, 2022

TO:

Mayor Jerry L. Demings

-AND-

County Commissioners

FROM:

Jon V. Weiss, P.E., Chairman

Roadway Agreement Committee

SUBJECT:

September 13, 2022 – Consent Utem

Proportionate Share Agreement for The Parks at Mount Dora

Orange Blossom Trail

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for The Parks at Mount Dora Orange Blossom Trail ("Agreement") by and between CND-MT DORA, LLC and Orange County for a proportionate share payment in the amount of \$2,568,426. 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 for 21 deficient trips on the road segments of Orange Blossom Trail from Ponkan Road to Sadler Road in the amount of \$51,606 per trip and 35 deficient trips on the road segments of Orange Blossom Trail from Earlwood Avenue to Lake County Line in the amount of \$42,420 per trip.

The Roadway Agreement Committee recommended approval on August 17, 2022. 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 The Parks at Mount Dora Orange Blossom Trail by and between CND-MT DORA, LLC and Orange County for a proportionate share payment in the amount

of \$2,568,426. District 2

JVW/NC/fb Attachment APPROVED BY ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS

BCC Mtg. Date: September 13, 2022

This instrument prepared by:

Mohammed Abdallah Traffic & Mobility Consultants LLC 3101 Maguire Boulevard, Suite 265 Orlando, Florida 32803

and after recording return to:

CND-MT DORA, LLC 1111 Post Oak Road Houston, Texas 77055

Parcel ID Number: 04-20-27-0000-00-001

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

PROPORTIONATE SHARE AGREEMENT FOR THE PARKS AT MOUNT DORA

ORANGE BLOSSOM TRAIL

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 CND-MT DORA, LLC, a Florida limited liability company ("Owner"), whose principal place of business is 1111 North Post Oak Road, Houston, Texas, 77055, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida ("County"), whose address is P.O. Box 1393, Orlando, Florida 32802-1393.

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

WHEREAS, the Property is located in County Commission District 2 and the proceeds of the PS Payment, as defined herein, will be allocated to Orange Blossom Trail; and

WHEREAS, Owner intends to develop the Property as one hundred seventy-seven (177) single-family dwelling units, referred to and known as The Parks at Mount Dora (the "Project"); and

WHEREAS, Owner received a letter from County dated July 7, 2022, stating that Owner's Capacity Encumbrance Letter ("CEL") application #CEL-21-12-103 for the Project was denied; and

WHEREAS, the Project will generate twenty-one (21) deficient PM Peak Hour trips (the "Excess Trips 1") for the deficient roadway segment on Orange Blossom Trail from Ponkan Road to Sadler Road (the "Deficient Segment 1"), and zero (0) PM Peak Hour trips were available on Deficient Segment 1 on the date the CEL was denied, as further described in Exhibit "C" attached hereto and incorporated herein; and

WHEREAS, the Project will generate thirty-five (35) deficient PM Peak Hour trips (the "Excess Trips 2") for the deficient roadway segment on Orange Blossom Trail from Earlwood Avenue to Lake County Line (the "Deficient Segment 2"), and zero (0) PM Peak Hour trips were available on Deficient Segment 2 on the date the CEL was denied, as further described in Exhibit "C" attached hereto and incorporated herein; and

WHEREAS the Excess Trips 1 and Excess Trips 2 shall be referred to herein collectively as the "Excess Trips"; and

WHEREAS, the Deficient Segment 1 and Deficient Segment 2 shall be referred to herein collectively as the "Deficient Segments"; and

WHEREAS, the Excess Trips will cause the Deficient Segments 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, Owner 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 two million five hundred sixty-eight thousand four hundred twenty-six and 00/100 Dollars (\$2,568,426.00) (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 Segments, as described in Exhibit "C", totals two million five hundred sixty-eight thousand four hundred twenty-six and 00/100 Dollars (\$2,568,426.00). 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 Segments based upon (i) Owner's Traffic Study titled "PARKS AT MOUNT DORA" prepared by TRAFFIC & MOBILITY CONSULTANTS LLC, dated September, 2021 for DAVID

WEEKLEY HOMES (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 May 24, 2022, and is on file and available for inspection with that division (CMS #2021103). 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 Segments 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 two million five hundred sixty-eight thousand four hundred twenty-six and 00/100 Dollars (\$2,568,426.00) 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 Segments. 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 Segments 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 Segments 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, applicable only toward development of the Project on the Property, 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 and cannot be transferred or applied to another project or property.
- **Section 5.** 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: CND-MT DORA, LLC

1111 Post Oak Road Houston, Texas 77055

With copy to: DM Weekley, Inc.

1111 Post Oak Road Houston, Texas 77055

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, 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.** Owner shall record an original of this Agreement in the Public Records of Orange County, Florida, at no expense to County, not later than thirty (30) 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. 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, in accordance with Section 5, 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.
- **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 two (2) counterparts, each of which shall be deemed to be an original and both of which together shall constitute one and the same instrument.

[Signatures appear on following pages]

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"

	GE COUNTY, FLORIDA ard of County Commissioners
By:	Trumw. Bwohn ry L. Demings unge County Mayor
Date: _	September 13, 2022

As Clerk of the B	iamond, CPA, County Comptroller oard of County Commissioners
By:Katic Snick_	
Deputy Clerk	
Print Name:	September 13, 2022

WITNESSES	"OWNER"
Way Max	,
	CND-MT DORA, LLC, a Florida limited liability company
Print Name: 1 ren 11 bes	—
Centua Oprich	By DM WEEKLEY, INC., a Delaware limited liability company, its manager
Print Name: Cynthia J. Miller	Ву:
U	Print Name: Ricky Diaz
	Title: Authorized Agent
	Date: 8/8/22
•	
•	
STATE OF: Florida COUNTY OF: Sewingle	- _
online notarization, this <u>6th</u> day of <u>Mul</u> for DM WEEKLEY, INC., a Delaware c	ged before me by means of physical presence or physical presence or physical presence or physical presence or proposed physical presence or proposed physical presence or proposed physical presence or physical presence or present physical presence or physical presence or physical presence or present physical presence or phy
WITNESS my hand and official se	eal in the County and State last aforesaid this 8th day
(Notary Stamp)	Centra Mila
CYNTHIA J MILLER	Signature of Notary Public Print Name:
Notary Public - State of Florida Commission # HH 144480	Notary Public, State of: Florida
My Comm. Expires Oct 12, 2025 Bonded through National Notary Assn.	Commission Expires: 10 12 25

Exhibit "A"

"THE PARKS AT MOUNT DORA"

Project Location Map

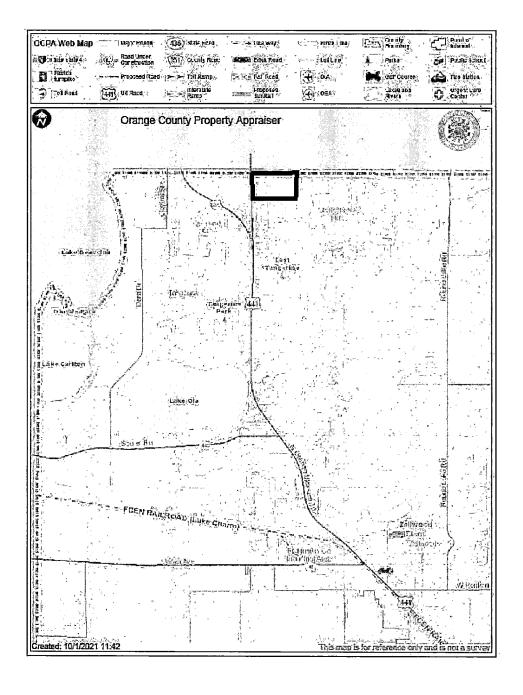


Exhibit "B"

"THE PARKS AT MOUNT DORA"

Parcel ID: 04-20-27-0000-00-001

Legal Description:

THAT PART OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 4, TOWNSHIP 20 SOUTH, RANGE 27 EAST, IN ORANGE COUNTY, FLORIDA, LYING EAST OF THE EASTERLY LINE OF THE RIGHT-OF-WAY OF U.S. HIGHWAY NO. 441 A/K/A STATE ROAD 500, LESS THE SOUTH 200 FEET THEREOF.

AND

A PORTION OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 19 SOUTH, RANGE 27 EAST, LAKE COUNTY, FLORIDA, AND A PORTION OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 4, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, LYING 30 FEET EITHER SIDE OF THE FOLLOWING DESCRIBED SURVEY LINE:

COMMENCE ON THE SOUTH LINE OF SAID SECTION 33/NORTH LINE OF SAID SECTION 4, AT A POINT 312.10 FEET EAST OF THE SOUTHWEST CORNER OF SAID SECTION 33/NORTHWEST CORNER OF SAID SECTION 4, AND ON THE CENTERLINE OF SURVEY OF STATE ROAD 500, AS SHOWN ON THE STATE ROAD DEPARTMENT RIGHT OF WAY MAPS FOR SECTION 11010-2111 AND SECTION 75020-2108, FILED OF RECORD AT THE FLORIDA DEPARTMENT OF TRANSPORTATION DISTRICT FIVE HEADQUARTERS IN DELAND, FLORIDA; THENCE SOUTH 04°20'00" EAST ALONG SAID CENTERLINE OF SURVEY, 20.70 FEET; THENCE NORTH 89°10'00" EAST, 100.19 FEET TO THE POINT OF BEGINNING OF SAID SURVEY LINE; THENCE CONTINUE NORTH 89°10'00" EAST, 49.81 FEET TO THE TERMINUS OF SAID SURVEY LINE.

LESS AND EXCEPT THE FOLLOWING:

COMMENCE AT THE SOUTHWEST CORNER OF SECTION 33, TOWNSHIP 19 SOUTH, RANGE 27 EAST, LAKE COUNTY, FLORIDA; THENCE RUN SOUTH 89°42'29" EAST ALONG THE SOUTH LINE OF SAID SECTION 33, ALSO BEING THE SOUTH LINE OF SAID LAKE COUNTY FOR A DISTANCE OF 412.16 FEET TO THE EAST RIGHT OF WAY LINE OF STATE ROAD 500 (ALSO KNOWN AS US HIGHWAY 441), BEING THE POINT OF BEGINNING; THENCE RUN NORTH 01°43'18" WEST ALONG SAID EAST RIGHT OF WAY LINE FOR A DISTANCE OF 6.76 FEET TO THE NORTH LINE OF PROPERTY DESCRIBED IN OFFICIAL RECORDS BOOK 5876, PAGE 1240, PUBLIC RECORDS OF LAKE COUNTY, FLORIDA; THENCE DEPARTING SAID EAST RIGHT OF WAY LINE, RUN SOUTH 88°13'18" EAST ALONG SAID NORTH LINE FOR A DISTANCE OF 50.09 FEET TO THE NORTHEAST CORNER OF SAID PROPERTY; THENCE RUN SOUTH 01°43'18" EAST ALONG THE EAST LINE OF SAID PROPERTY FOR A DISTANCE OF 5.46 FEET TO THE AFORESAID SOUTH LINE OF SECTION 33 AND AFORESAID SOUTH LINE OF LAKE COUNTY; THENCE RUN NORTH 89°42'29" WEST ALONG SAID SOUTH LINE FOR A DISTANCE OF 50.03 FEET TO THE POINT OF BEGINNING.

Roadway Improvement Project Information

Planned Improvement Roadway(s)		vement (From - To)	Segment Length	Adopted LOS	Existing Generalized Capacity	Tŷpe of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost	Cost / Trip
Orange Blossom Trail	Pońkan Rd	Sadler Rd	1,91	E	1580	Widen from 4 to 6 lanes	2,400.	820	\$42,316,715	\$51,606

County Share of Improvement

Planned improvement Roadway(s)	Limits of Improvement (From -To)		Segment Length			Existing: Generalized Backlogged Capacity Trips		Capacity Increase	County (Backlog) Responsibility
Orange Blossom Tráil	Ponkan Rid	SádteirRd	1.91	in.	(1580	;499	2400	820	\$25,751,269

Developer Share of Improvement

Planned Improvement Roadway(s)		vement (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
Orange Blossom Trail	Ponkan Rd	SadierRd	1:91,	ш	1580	2400	820	499,	,321	\$16,565,446	\$51,606

Updated: 6/21/22

Log of Project Contributions Project Prop Тпрѕ Share Date **Project** Existing plus Committed Existing Sep-21 469 \$23,284,443 Sep-21 28 \$1,390,116 Foothills of Mount Dora Mar-22 Wesley Place 2, \$103,212 \$24,777,771 **Backlogged Totals:** 499 Proposed Jun-22 21 \$1,083,726 Parks at Mount Dora \$0 \$0 \$0 \$0 \$25,861,497 520 Totals

Exhibit "C"

"THE PARKS AT MOUNT DORA"

DEFICIENT SEGMENT 1 Log of Project Contributions

Orange Blossom Trail (Ponkan Road to Sadler Road)

Roadway Improvement Project Information

P	Planned Improvement Roadway(s)		vement (From -To)	Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost	Cost / Trip
0	range Blossom Țraji	Earlwood Ave	Lake County Line	1:57	E	1,580	Widen from 4 to 6 lanes	2,400	ĝ 20	\$34,783,896	\$42,420

County Share of Improvement

Planned Improvement Roadway(s)		vement (From - To)	Segment: Length	Adopted LOS	Existing Generalized Capacity	Backlogged Trips	Improved Generalized Capacity	Capacity Increase	County (Backlog) Responsibility
Orange Blossom Trail	Earlwood Ave	Lake County Line	1.57	Έ	1,580	487	2,400	820:	\$20,658,241

Developer Share of Improvement

Planned Improvement Roadway(s)		vement (From - To)	Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Capacity	Backlogged Trips	Capacity Increase for New `Development	Remaining Project Cost	Cost/Trip
Oranga Blossom Trail	Earlwood Ave	Lake County Line	1;57	ıη	1,580	2,400	820	487	333	\$14,125,655	\$42,420

Updated: 6/21/22

		Log of Project Contribut	ions	
Ī	Daté:	Project:	Project Trips	Prop Share
Existing	Mar-21	Existing plus Committed	487	\$20,658,540
F		Bácklogged Totals:	487	\$20,658,540
Proposed	Jun-22	Parks at Mount Dora	35	\$1,484,700 \$0
ŀ				\$0 \$0
		Totals:	.522	\$0 \$22,143,240

Exhibit "C"

"THE PARKS AT MOUNT DORA"

DEFICIENT SEGMENT 1

Orange Blossom Trail (Earlwood Avenue to Lake County Line)

Log of Project Contributions