



Interoffice Memorandum

AGENDA ITEM

August 3, 2022

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

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

SUBJECT: September 27, 2022 – Consent Item
Proportionate Share Agreement for Village at Hunters Creek Pad O
John Young Parkway

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Village at Hunters Creek Pad O John Young Parkway ("Agreement") by and between ARB Hunter's Creek Holding Company, LLC and Orange County for a proportionate share payment in the amount of \$251,838. 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 15 deficient trips on the road segments of John Young Parkway from Town Center Boulevard to Deerfield Boulevard in the amount of \$14,210 per trip and three deficient trips on the road segments of John Young Parkway from Deerfield Boulevard to Whisper Lakes Boulevard in the amount of \$12,896 per trip.

The Roadway Agreement Committee recommended approval on August 3, 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 Village at Hunters Creek Pad O John Young Parkway by and between ARB Hunter's Creek Holding Company, LLC and Orange County for a proportionate share payment in the amount of \$251,838. District 1

JVW/NC/fb
Attachment

BCC Mtg. Date: September 27, 2022

This instrument prepared by
and after recording return to:

L. Jordan Draper, PE
Kimley-Horn and Associates, Inc.
189 South Orange Avenue, Suite 1000
Orlando, Florida 32801

Parcel ID Number: 29-24-29-3208-15-001

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

**PROPORTIONATE SHARE AGREEMENT FOR
Village at Hunters Creek Pad O**

John Young Parkway

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 ARB Hunter's Creek Holding Company, LLC, a Florida limited liability company (to be known as ARB Hunter's Creek Phase II, LLC) (“**Owner**”), whose principal place of business is 711 N Orlando Ave, Suite 302, Maitland, FL 32751, 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 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, Owner has filed Articles of Amendment with the Secretary of State of the State of Florida to change the Owner's name from ARB Hunter's Creek Holding Company, LLC to ARB Hunter's Creek Phase II, LLC, which amendment is pending approval by the State at the time of this Agreement.

WHEREAS, the Property is located in County Commission District 1 and the proceeds of the PS Payment, as defined herein, will be allocated to John Young Parkway; and

WHEREAS, Owner intends to develop the Property as a 42,910 sq. ft. office building, referred to and known as Village at Hunters Creek Pad O (the “**Project**”); and

WHEREAS, Owner received a letter from County dated August 11, 2022, stating that Owner's Capacity Encumbrance Letter (“**CEL**”) application #22-05-045 for the Project was denied; and

WHEREAS, the Project will generate 15 deficient PM Peak Hour trips (the "**Excess Trips 1**") for the deficient roadway segment on John Young Parkway from Town Center Blvd to Deerfield Blvd (the "**Deficient Segment 1**"), and 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 3 deficient PM Peak Hour trips (the "**Excess Trips 2**") for the deficient roadway segment on John Young Parkway from Deerfield Blvd to Whisper Lakes Blvd (the "**Deficient Segment 2**"), and 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 Hundred Fifty-One Thousand Eight Hundred Thirty-Eight and 00/100 Dollars (\$251,838.00) (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 Hundred Fifty-One Thousand Eight Hundred Thirty-Eight and 00/100 Dollars (\$251,838.00). 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) The in-house study that was prepared by Orange County's Transportation Planning Division, dated June 8, 2022 for Village at Hunter's Creek Pad O (the "**Traffic Study**"), which is incorporated herein by this reference, and (ii) upon the calculations described in Exhibit "C". The

Traffic Study is on file and available for inspection with that division (CMS #2022045). 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 Hundred Fifty-One Thousand Eight Hundred Thirty-Eight and 00/100 Dollars (\$251,838.00) 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: ARB Hunter's Creek Holding Company, LLC
(to be known as ARB Hunter's Creek Phase II, LLC)
711 N Orlando Ave, Suite 302
Maitland, Florida 32751

With copy to: L. Jordan Draper, PE
Kimley-Horn and Associates, Inc.
189 South Orange Avenue, Suite 1000
Orlando, Florida 32801

Michael G. Candiotti, Esquire
Greenspoon Marder LLP
201 East Pine Street, Suite 500
Orlando, Florida 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, 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.

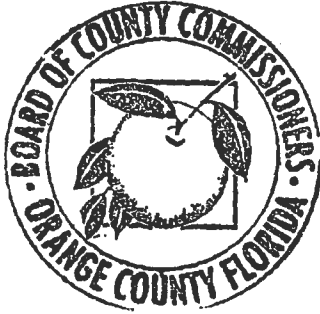
Section 14. Counterparts. This Agreement may be executed in up to two (2) counterparts, each of which shall be deemed to be an original and both of which together shall constitute one and the same instrument.

[Signatures appear on following pages]

Proportionate Share Agreement, Village at Hunters Creek Pad O
ARB Hunter's Creek Holding Company, LLC for John Young Parkway, 2022

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: September 27, 2022

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: Michael Candioti

[Signature]

Print Name: Jessica Douglas

"OWNER"

ARB Hunter's Creek Holding Company, LLC, a Florida limited liability company (to be known as ARB Hunter's Creek Phase II, LLC, a Florida limited liability company.

By: Bellavista Development Group, LLC, a Florida limited liability company, its Manager

By: [Signature]

Print Name: Aldo D. Martin

Title: Manager

Date: August 18, 2022

STATE OF: Florida
COUNTY OF: Orange

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 18th day of August, 2022, by Aldo D. Martin, as Manager of Bellavista Development Group, LLC, a Florida limited liability company, the of ARB Hunter's Creek Holding Company, a Florida limited liability company to be known as ARB Hunter's Creek Phase II, LLC, a Florida limited liability company, on behalf of such Florida limited liability company, who ☒ is personally known to me or ☐ has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 18th day of August, 2022.



Jessica Douglas
COMMISSION # GG251786
EXPIRES: Sept. 25, 2022
Bonded Thru Aaron Notary

[Signature]
Signature of Notary Public
Print Name: Jessica Douglas
Notary Public, State of: Florida
Commission Expires: 9/25/22

Exhibit "A"

"Village at Hunter's Creek Pad O"

Project Location Map

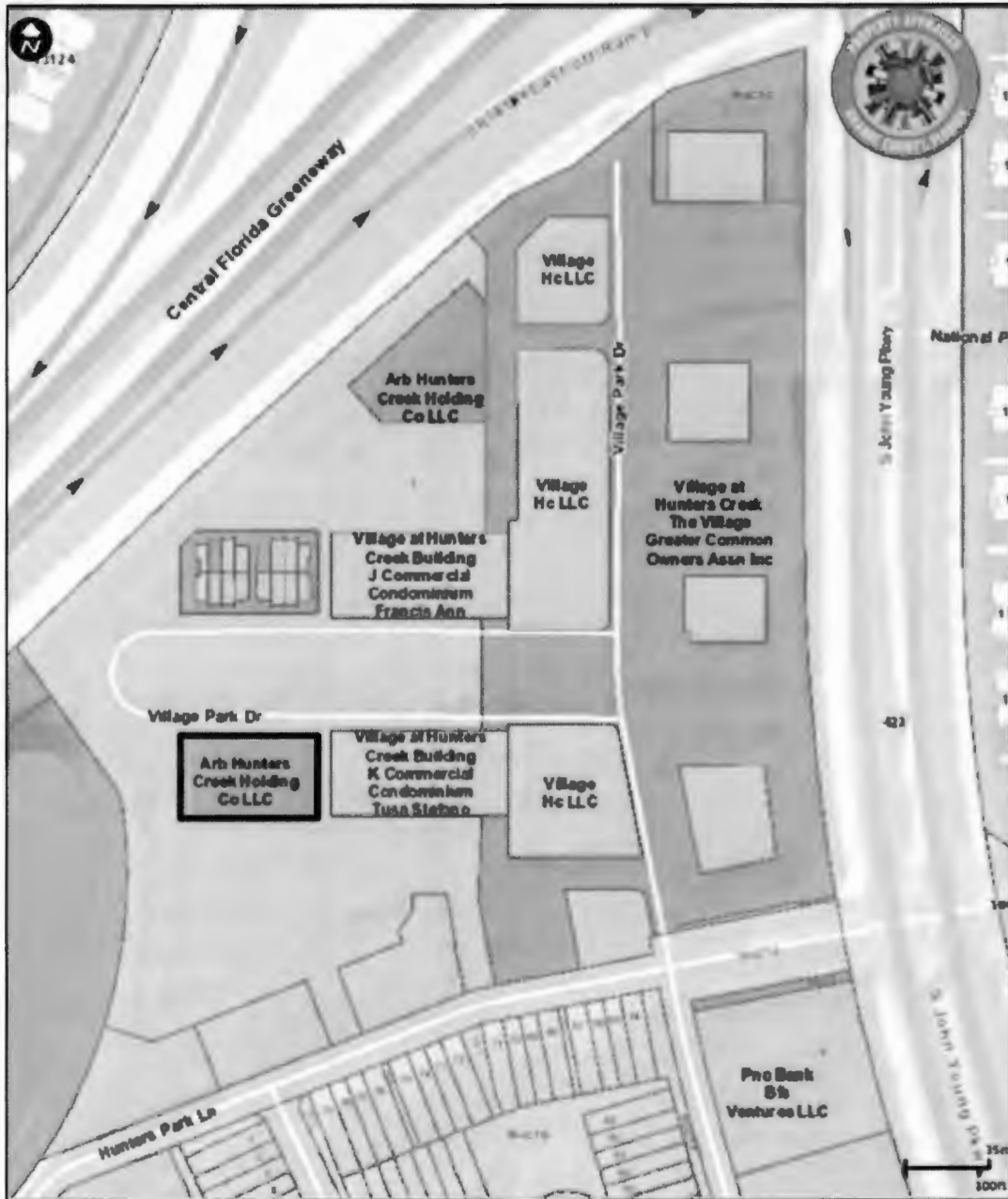


Exhibit "B"

"Village at Hunter's Creek Pad O"

Parcel ID: 29-24-29-3208-15-001

Legal Description:

Lot O:

A portion of Lot 1/Tract 370, Hunter's Creek Northwest Village Town Center, Tracts 330 and 370 as recorded in Plat Book 58, Pages 143 through 146, Public Records of Orange County, Florida, being described as follows:

Commence at the Northeast corner of Tract C, Hunter's Creek Northwest Village Town Center, Tracts 330 and 370 as recorded in Plat Book 58, Pages 143 through 146, Public Records of Orange County, Florida; thence South 00 degrees 08 minutes 47 seconds East along the East line of said Tract C and said Lot 1/Tract 370, a distance of 690.96 feet to the point of curvature of a curve concave Easterly having a radius of 2976.78 feet; thence Southerly along the arc of said curve, through a central angle of 09 degrees 49 minutes 23 seconds, a distance of 510.35 feet to the Southerly line of said Lot 1/Tract 370; thence the following courses and distances along said Southerly line; South 78 degrees 51 minutes 31 seconds West, 230.04 feet; thence South 11 degrees 08 minutes 29 seconds East, 8.00 feet; thence South 78 degrees 51 minutes 31 seconds West, 40.15 feet to a point on a curve concave Easterly having a radius of 3246.78 feet and a chord bearing of South 10 degrees 25 minutes 43 seconds East; thence Southerly along the arc of said curve, through a central angle of 00 degrees 26 minutes 28 seconds, a distance of 25.00 feet; thence South 78 degrees 51 minutes 31 seconds West, 229.60 feet; thence continue South 76 degrees 51 minutes 31 seconds West along said Southerly line of Lot 1/Tract 370, a distance of 31.24 feet; thence South 68 degrees 30 minutes 50 seconds West, along said Southerly line, 662.83 feet to the Westerly line of said Lot 1/Tract 370 and a point on a non-tangent curve, concave Westerly, having a radius of 720.00 feet and a chord bearing of North 14 degrees 08 minutes 57 seconds East; thence Northerly along said curve and said Westerly line through a central angle of 39 degree 56 minutes 10 seconds, a distance of 501.85 feet; thence North 84 degrees 10 minutes 52 seconds East, departing said Westerly line, 78.13 feet for the Point of Beginning; thence North 00 degrees 00 minutes 00 seconds West 117.43 feet; thence South 89 degrees 52 minutes 47 seconds East, 195.91 feet; thence South 00 degrees 15 minutes 28 seconds West, 117.07 feet; thence North 89 degrees 59 minutes 13 seconds West, 195.38 feet to the point of Beginning.

Together with easements appurtenant thereto as set forth in Declaration of Covenants, Conditions and Restrictions for The Village at Hunter's Creek recorded in O.R. Book 8170, Page 4758, as amended by First Amendment recorded in O.R. Book 8220, Page 1633, Second Amendment recorded in O.R. Book 9225, Page 4468, Third Amendment recorded in O.R. Book 10069, Page 7552, and Fourth Amendment recorded in O.R. Book 10716, Page 8178, of the Public Records of Orange County, Florida.

Exhibit "C"

"Village at Hunter's Creek Pad O"

DEFICIENT SEGMENT 1

Log of Project Contributions
John Young Parkway (Town Center Blvd to Deerfield Blvd)

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
John Young Parkway	Town Center Blvd	Deerfield Blvd	1.19	E	3020	Adding Two lanes	4040	1020	\$14,493,657	\$14,210

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
John Young Parkway	Town Center Blvd	Deerfield Blvd	1.19	E	3020	63	4040	1020	\$895,196

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
John Young Parkway	Town Center Blvd	Deerfield Blvd	1.19	E	3020	4040	1020	63	957	\$13,598,461	\$14,210

Initiated: 6/14/22

Log of Project Contributions

	Date	Project	Project Trips	Prop Share
Existing	Aug-19	Existing plus Committed	58	\$1,647,374
	Sep-19	Fountains at Crystal Creek	2	\$56,806
	Sep-19	Focal Point Church	2	\$56,806
	Oct-21	Crystal Creek Animal Hospital	1	\$13,357
		Backlogged Totals:	63	\$1,774,343
Proposed	Jun-22	Villages @ Hunters Creek	15	\$213,150
				\$0
				\$0
				\$0
				\$0
		Totals:	78	\$1,987,493

“Village at Hunter’s Creek Pad O”

DEFICIENT SEGMENT 2

Log of Project Contributions
John Young Parkway (Deerfield Blvd to Whisper Lakes Blvd)

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
John Young Parkway	Deerfield Blvd	Whisper Lakes Blvd	1.08	E	3020	Adding two lanes	4040	1020	\$13,153,908	\$12,896

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
John Young Parkway	Deerfield Blvd	Whisper Lakes Blvd	1.08	E	3020	54	4040	1020	\$696,383

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
John Young Parkway	Deerfield Blvd	Whisper Lakes Blvd	1.08	E	3020	4040	1020	54	966	\$12,457,524	\$12,896

Updated: 6/14/22

Log of Project Contributions

	Date	Project	Project Trips	Prop Share
Existing	Aug-19	Existing plus Committed	42	\$1,082,634
	Sep-19	Fountains at Crystal Creek	9	\$231,993
	Sep-19	Focal Point Church	1	\$25,777
	Oct-21	Crystal Creek Animal Hospital	2	\$24,246
	Backlogged Totals:		54	\$1,364,650
Proposed	Jun-22	Villages @ Hunters Creek	3	\$38,688
				\$0
				\$0
				\$0
				\$0
	Totals:		57	\$1,403,338