



Interoffice Memorandum

December 14, 2022

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

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

SUBJECT: January 24, 2023 – Consent Item
Proportionate Share Agreement for Shenandoah Reserve
Goldenrod Road

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Shenandoah Reserve Goldenrod Road ("Agreement") by and between E3 Community Church, Inc. and Orange County for a proportionate share payment in the amount of \$157,698. 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 six deficient trips on the road segments of Goldenrod Road from Pershing Avenue to Curry Ford Road in the amount of \$26,283 per trip.

The Roadway Agreement Committee recommended approval on December 14, 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 Shenandoah Reserve Goldenrod Road by and between E3 Community Church, Inc. and Orange County for a proportionate share payment in the amount of \$157,698. District 3

JVW/NC/js
Attachment

BCC Mtg. Date: January 24, 2023

This instrument prepared by
and after recording return to:

Dwight Saathoff
Project Finance & Development, LLC
7575 Dr. Phillips Boulevard, Suite 265
Orlando, Florida 32819

Parcel ID Numbers: 11-23-30-0000-00-022; 10-23-30-3032-00-673; 10-23-30-3032-00-672; and
10-23-30-3032-00-670

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

**PROPORTIONATE SHARE AGREEMENT FOR
SHENANDOAH RESERVE**

GOLDENROD ROAD

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 E3 COMMUNITY CHURCH, INC., a Florida, not-for-profit corporation (“**Owner**”), with a principal place of business at 7308 Pershing Ave. Orlando, Florida 32822, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), with its principal address at P.O. Box 1393, Orlando, Florida 32802-1393. Owner and County may sometimes be referred to herein individually as “Party” and collectively as “Parties.”

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 3, and the proceeds of the PS Payment, as defined herein, will be allocated to Goldenrod Road; and

WHEREAS, Owner intends to develop the Property as 90 single-family attached residential dwelling units, referred to and known as Shenandoah Reserve (the “**Project**”); and

WHEREAS, Owner received a letter from County dated October 21, 2022, stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #CEL-21-12-101 for the Project was denied; and

WHEREAS, the Project will generate 6 deficient PM Peak Hour trips (the “**Excess Trips**”) for the deficient roadway segment on Goldenrod Road from Pershing Avenue to Curry Ford Road (the “**Deficient Segment**”), and zero (0) PM Peak Hour trips were available on the Deficient Segment on the date the CEL was denied, as further described in Exhibit “C”; and

WHEREAS, the Excess Trip(s) 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, Owner has offered to provide County with proportionate share mitigation for the Excess Trip(s); and

WHEREAS, Owner and County have agreed that the proportionate share payment necessary to mitigate the impact of the Excess Trip(s) on the Deficient Segment through the current anticipated Project buildout is one hundred fifty-seven thousand six hundred ninety-eight and 00/100 dollars (\$157,698.00) (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 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 one hundred fifty-seven thousand six hundred ninety-eight and 00/100 dollars (\$157,698.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes, as may be amended. Owner and County agree that the Excess Trip(s) will constitute the Project’s impact on the aforementioned Deficient Segment based upon (i) Owner’s Traffic Study titled “Traffic Impact Analysis for Concurrency Application Shenandoah Reserve” prepared by Traffic Planning and Design Inc., dated April 2022 for Project Finance & Development (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 September 14, 2022, and is on file and available for inspection with that division (CMS #2021101). 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 County’s jurisdiction, notwithstanding any subsequent variance in the actual cost of any

improvement(s) to the Deficient Segment or actual traffic /travel impacts created by the Project; provided, however, that if Owner modifies the Project's development program and/or 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 Subsection 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.* Not later than ninety (90) days following the Effective Date, Owner shall deliver a check to County in the amount of one hundred fifty-seven thousand six hundred ninety-eight and 00/100 dollars (\$157,698.00) 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, 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 after the Effective Date, one extension of ninety (90) additional 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 and/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 or modification to the Project that 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 or modification to the Project as set forth in Subsection 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 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, rules, regulations, and/or Orange County Code provisions or from making the required payment of transportation and other impact fees applicable to the Project, subject to any 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, as may be amended, 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. For avoidance of doubt, nothing herein is intended to, nor shall constitute, prepayment of any densities and/or intensities of development or of any development program.

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: E3 Community Church, Inc.
7308 Pershing Avenue
Orlando, Florida 32822

With copy to: Project Finance & Development, LLC
7575 Dr. Phillips Boulevard, Suite 265
Orlando, Florida 32819
Attn: Dwight Saathoff

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 upon 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 Owner and upon any person, firm, corporation, or entity who may become a 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 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.

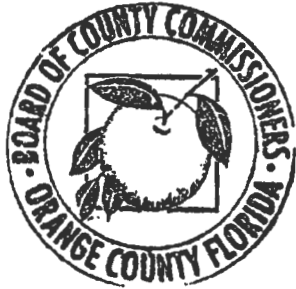
Section 12. Amendments. No amendment, modification, or other change(s) to this Agreement shall be binding upon the parties unless in writing and formally executed by all of the parties.

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 and completed, 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"

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*

for Jerry L. Demings
Orange County Mayor

Date: January 24, 2023

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

By: *Katie Smith*
Deputy Clerk

Print Name: Katie Smith

WITNESSES:

Print Name: Peter S. Dhaniraj

Print Name: MARK DHANIRAJ

"OWNER"

E3 Community Church, Inc., a Florida, not-for-profit corporation

By: Steven Rymer

Print Name: Steven Rymer

Title: President

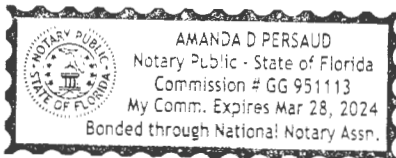
STATE OF: Florida

COUNTY OF: Orange

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 13th day of December, 2022, by Steven Rymer, as president of E3 Community Church, Inc., a Florida, not-for-profit corporation, on behalf of such corporation, who ☐ is personally known to me or ☒ has produced FBI ID# as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 13th day of December, 2022

(Notary Stamp)



Signature of Notary Public

Print Name: Amanda Persaud

Notary Public, State of: Florida

Commission Expires: 3/28/2024

(mm/dd/yyyy)

**Joinder and Consent to Proportionate Share Agreement for Shenandoah Reserve by
and between Orange County, Florida ("Orange County") and E3 COMMUNITY
CHURCH, INC., a Florida, not-for-profit corporation ("E3 Community Church")
(the "Agreement")**

As the contract purchaser of the Property, Project Finance & Development, LLC ("Contract Purchaser"), by executing this Joinder and Consent were indicated below, joins in and consents to the Agreement and the terms and conditions thereof, and the recording of same against the Property. Furthermore, at such time that Project Finance & Development, LLC acquires the Property, Contract Purchaser shall be deemed a Developer/Owner under the Agreement and shall assume any and all obligations and shall acquire all rights of E3 Community Church under said Agreement and Contract Purchaser shall indemnify and hold harmless E3 Community Church for any claims or liabilities that arise pursuant to said Agreement.

Taylor Smith
Signature of Witness

TAYLOR SMITH
Printed Name of Witness

A. Jessalyn Anderson
Signature of Witness

A. JESSALYN ANDERSON
Printed Name of Witness

**Project Finance & Development, LLC, a
Florida Limited Liability Company**

By: DWIGHT SAATHOFF
Dwight Saathoff

Title: Manager

Date: 12.5.22

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged online or in person before me by DWIGHT SAATHOFF as MANAGER of PROJECT FINANCE & DEVELOPMENT, LLC, who is known by me to be the person described herein and who executed the foregoing, this 5TH day of DECEMBER, 2022. S/he is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 5TH day of DECEMBER, 2022



A. Jessalyn Anderson
Notary Public

Print Name: A. JESSALYN ANDERSON

My Commission Expires: 2/4/2026

Exhibit "A"
"Shenandoah Reserve"
Project Location Map

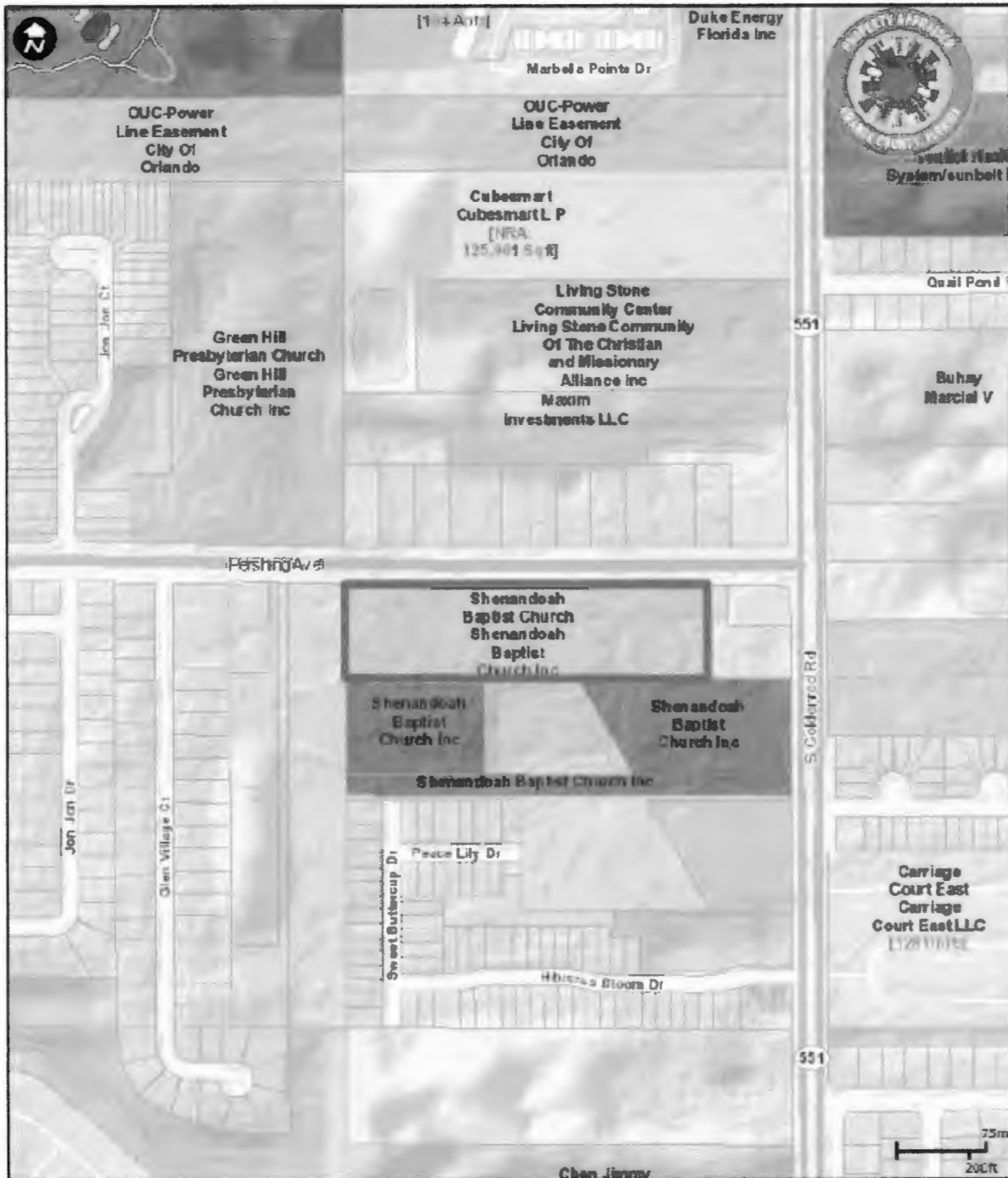


Exhibit "B"
"Shenandoah Reserve"

Parcel ID: 11-23-30-0000-00-022; 10-23-30-3032-00-673; 10-23-30-3032-00-672; & 10-23-30-3032-00-670

Legal Description:

PROPOSED LEGAL DESCRIPTION(S):

PROPOSED PARCEL "A"

COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 23 SOUTH RANGE 30 EAST, THENCE RUN NORTH 89°49'32" WEST, A DISTANCE OF 290.01 FEET TO A POINT; THENCE RUN SOUTH 00°07'25" EAST, A DISTANCE OF 64.50 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF PERSHING AVENUE (AS IT CURRENTLY EXISTS) SAID POINT BEING THE POINT OF BEGINNING;

THENCE RUN SOUTH 00°07'25" EAST, A DISTANCE OF 268.32 FEET; THENCE RUN SOUTH 89°46'14" EAST, A DISTANCE OF 239.93 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF SOUTH GOLDENROD ROAD (AS IT CURRENTLY EXISTS); THENCE ALONG SAID WEST RIGHT-OF-WAY LINE RUN SOUTH 00°07'57" EAST, A DISTANCE OF 330.00 FEET TO A POINT; THENCE DEPARTING SAID WEST RIGHT-OF-WAY LINE RUN NORTH 89°53'44" WEST, A DISTANCE OF 1275.70 FEET TO A POINT; THENCE RUN NORTH 00°05'35" WEST, A DISTANCE OF 300.00 FEET TO A POINT; THENCE RUN NORTH 90°00'00" EAST, A DISTANCE OF 284.11 FEET TO A POINT; THENCE RUN NORTH 45°18'13" EAST, A DISTANCE OF 163.06 FEET; THENCE RUN NORTH 00°00'03" EAST, A DISTANCE OF 181.28 FEET TO A POINT ON THE AFORESAID SOUTH RIGHT-OF-WAY LINE OF PERSHING AVENUE (AS IT CURRENTLY EXISTS); THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE RUN SOUTH 89°51'51" EAST, A DISTANCE OF 634.40 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING.

LESS AND EXCEPT THOSE LANDS RECORDED IN OFFICIAL RECORDS BOOK 4301, PAGE 2890 OF THE OFFICIAL RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 23 SOUTH RANGE 30 EAST, THENCE RUN SOUTH 89°49'32" WEST, A DISTANCE OF 290.01 FEET TO A POINT; THENCE RUN SOUTH 00°07'25" EAST, A DISTANCE OF 64.50 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF PERSHING AVENUE (AS IT CURRENTLY EXISTS) THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE RUN NORTH 89°51'51" WEST, A DISTANCE OF 634.40 FEET TO A POINT ON SAID SOUTH RIGHT-OF-WAY LINE; THENCE DEPARTING SAID SOUTH RIGHT-OF-WAY LINE RUN SOUTH 00°00'03" WEST, A DISTANCE OF 181.28 FEET; THENCE RUN SOUTH 00°27'17" WEST, A DISTANCE OF 85.33 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING;

THENCE RUN SOUTH 89°42'37" EAST, A DISTANCE OF 267.11 FEET; THENCE RUN SOUTH 29°35'17" EAST, A DISTANCE OF 311.83 FEET; THENCE RUN NORTH 89°36'00" WEST, A DISTANCE OF 422.71 FEET; THENCE RUN NORTH 00°20'45" EAST, A DISTANCE OF 269.82 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING.

Exhibit "C"

"Shenandoah Reserve"

DEFICIENT SEGMENT

Log of Project Contributions Goldenrod Rd (Pershing Ave to Curry Ford Rd)

Roadway Improvement Project Information										
Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost	Cost / Trip
Goldenrod Rd	Pershing Ave	Curry Ford Rd	1.21	E	2000	Widen from 4 to 6 lanes	3020	1020	\$26,607,971	\$26,283

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
Goldenrod Rd	Pershing Ave	Curry Ford Rd	1.21	E	2000	20	3020	1020	\$525,646

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
Goldenrod Rd	Pershing Ave	Curry Ford Rd	1.21	E	2000	3020	1020	20	1000	\$26,282,325	\$26,283

Updated: 11/11/22

Log of Project Contributions				
Date	Project	Project Trips	Prop Share	
Existing Aug-19	Existing plus Committed	13	\$281,590	
Sep-19	S. Goldenrod Subdivision AKA (Solidago)	7	\$151,620	
	Backlogged Totals:	20	\$433,210	
Proposed Jan-22	Shenandoah Reserve	6	\$157,699	
			\$0	
			\$0	
			\$0	
			\$0	
	Totals:	26	\$590,898	