



## Interoffice Memorandum

April 3, 2017

## AGENDA ITEM

TO: Mayor Teresa Jacobs  
—AND—  
Board of County Commissioners

FROM: James E. Harrison, Esq., P.E., Chairman  
Roadway Agreement Committee  
407.836.5610

SUBJECT: April 25, 2017 – Consent Item  
First Amendment to Road Network Agreement Northerly Extension of  
Hamlin Groves Trail from New Independence Parkway to Tiny Road

The Roadway Agreement Committee has reviewed a First Amendment to Road Network Agreement ("First Amendment") by and between SLF IV/BOYD HORIZON WEST JV, LLC ("Owner") and Orange County. The Road Network Agreement ("Agreement") was originally approved by the Board of County Commissioners on February 26, 2015 and recorded at OR Book/Page 10881/2327. The agreement addressed provisions for the construction of the northerly extension of Hamlin Groves Trail from New Independence Parkway to Tiny Road in west Orange County. The First Amendment adjusts the timing for the award of transportation impact fee credits to the Owner for construction of the extension within the limits of their development. The Amendment also includes a revision to the construction cost payment procedure and extends the timeframe for construction to be completed to five years from the Effective Date of the Agreement.

The Roadway Network Agreement Committee approved the First Amendment to Road Network Agreement on March 15, 2017. The Specific Project Expenditure Report and Relationship Disclosure Forms are attached and on file with the Transportation Planning Division.

**ACTION REQUESTED:** Approval and execution of First Amendment to Road Network Agreement Northerly Extension of Hamlin Groves Trail from New Independence Parkway to Tiny Road by and between SLF IV/Boyd Horizon West JV, LLC and Orange County to adjust the timeframe for the payment of transportation impact fee credits to the Owner and revise the construction cost payment procedure and timeframe for construction. District 1

Attachments  
JEH|HEGB:rep

BCC Mtg. Date: April 25, 2017

**PREPARED BY AND RETURN TO:**  
**JAMES G. WILLARD, ESQUIRE**  
**SHUTTS & BOWEN LLP**  
**300 S. ORANGE AVENUE, SUITE 1000**  
**ORLANDO, FLORIDA 32801**

**Tax Parcel I.D. No.:** 17-23-27-2714-01-000  
17-23-27-2714-02-000  
17-23-27-2714-02-001

## **FIRST AMENDMENT TO** **ROAD NETWORK AGREEMENT**

### **NORTHERLY EXTENSION OF HAMLIN GROVES TRAIL FROM NEW INDEPENDENCE PARKWAY TO TINY ROAD**

**THIS FIRST AMENDMENT TO ROAD NETWORK AGREEMENT** (the “**First Amendment**”), is effective as of the latest date of execution by the parties hereto (the “**Amendment Effective Date**”), and is made and entered into by and between **SLF IV/BOYD HORIZON WEST JV, LLC**, a Delaware limited liability company (the “**Owner**”), whose address is c/o Boyd Development Corporation, Attn: Scott T. Boyd, 7586 West Sand Lake Road, Orlando, Florida 32819 and **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida, whose mailing address is P.O. Box 1393, 201 S. Rosalind Avenue, Orlando, Florida 32802-1393 (“**County**”).

### **WITNESSETH:**

**WHEREAS**, Owner and County entered into that certain Road Network Agreement for the northerly extension of Hamlin Groves Trail from New Independence Parkway to Tiny Road (the “**Agreement**”), which Agreement was approved by the County Board of County Commissioners on February 24, 2015 and was recorded on February 26, 2015 at Official Record Book 10881, Page 2327, Orange County Public Records; and

**WHEREAS**, the initial phase of the Project through the Property has been constructed and is in the process of being conveyed to the County; and

**WHEREAS**, there has been an unforeseen delay in completing the design and construction of the remainder of the Project through the Conserv II Land, which delay has been beyond the reasonable control of Owner; and

**WHEREAS**, the parties are desirous of amending the Agreement to allow the grant of Credits for the construction work performed to date by Owner relating to the initial phase of the Project through the Conveyed Lands.

**WHEREAS**, this First Amendment is being joined in and consented to by Hamlin Retail Partners North, LLC and Hamlin Retail Partners East, LLC, successors in title to portions of the Property pursuant to a separate Joinder and Consent attached hereto.

**NOW, THEREFORE**, in consideration of the premises, County and Owner hereby agree to amend the Agreement as follows:

1. **Recitals; Defined Terms.** The above recitals are true and correct and are incorporated herein by reference. Capitalized terms used in this First Amendment not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

2. **Timing of Credits.** The first sentence of Paragraph 4.1 of the Agreement is hereby amended as follows:

"4.1 **Allocation of Credits.** Upon completion of that portion of the Project through the Conveyed Lands and Project Completion and conveyance to and acceptance by County of the Conveyed Lands, Owner shall be entitled to receive transportation impact fee credits ("**Credits**")."

Paragraph 4.2 of the Agreement is hereby amended as follows:

"4.2 **Timing and Amount of Credits.** Upon completion of that portion of the Project Completion through the Conveyed Lands and conveyance to and acceptance by County of the Conveyed Lands, County shall award Credits to Owner based upon Owner certification to County and County confirmation of payment and approval of the total eligible costs incurred by Owner with respect to, and located upon, that portion of the Project on the Conveyed Lands. No Credits shall be allocated for any design or construction cost of improvements located on right-of-way dedicated from the Conserv II Land."

3. **Revision to Construction Cost Payment Procedure.** Paragraph 6.5.2(iv) of the Agreement is hereby amended as follows:

"6.5.2(iv) County shall, within thirty (30) days after receipt of a Complete Funding Request, determine the accuracy of such request and notify Owner that County has approved the same, or if the Complete Funding Request has not been entirely approved, what portion thereof has been approved for reimbursement payment to Owner by County. Owner shall thereafter pay to deliver to County satisfactory unconditional lien waivers from the General Contractor that portion of the Complete Funding Request approved by County and provide satisfactory evidence of such payment to County. for all work covered by the current Complete Funding Request, satisfactory unconditional lien waivers from all subcontractors and suppliers for all work covered by the

immediately preceding Complete Funding Request, and consent of the Surety for the current Complete Funding Request. For the final Complete Funding Request, Owner shall also provide to County final lien releases from the General Contractor and all subcontractors and suppliers, and final payment from the County shall be subject to satisfaction of Highway Construction's closeout checklist. All of the above shall be satisfactory to County in its sole discretion. County shall make reasonable efforts, within thirty (30) days after receipt of such evidence of payment, to reimburse/deliver to Owner the amount of such approved payment to be made by the Owner to the General Contractor."

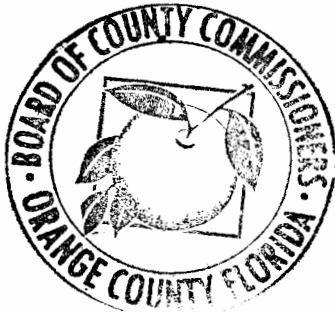
4. **Extension of Project Completion Date.** The first sentence of the last paragraph of Section 6.2 of the Agreement is hereby amended as follows:

"The Project shall be completed within ~~three~~five (35) years after the Effective Date."

5. **Incorporation by Reference; Ratification.** The Agreement is hereby incorporated by reference and other than as modified by the terms of this First Amendment, is hereby ratified in all respects and shall remain in full force and effect in accordance with its terms.

6. **Recordation of First Amendment.** An executed original of this First Amendment shall be recorded, at Owner's expense, in the Public Records of Orange County within thirty (30) days after the Amendment Effective Date.

**IN WITNESS WHEREOF**, the Parties have caused this First Amendment to be duly executed by their respective authorized representatives on the dates set forth below.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*

Teresa Jacobs

*TJ* Orange County Mayor

Date: 4.25.17

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

By: *Phil Diamond*

for Deputy Clerk

Print Name: Phil Diamond

WITNESSES:

T. J. Schwab  
Print Name: T. J. Schwab  
Dennis R. Seliga  
Print Name: Dennis R. Seliga

OWNER

SLF IV/BOYD HORIZON WEST JV, LLC,  
a Delaware limited liability company

By: Boyd Horizon West, LLC, a Florida  
limited liability company, Managing  
Member

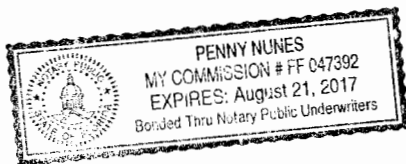
By: Scott T. Boyd  
Scott T. Boyd, Manager

Date: 3/29/17

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Scott T. Boyd, Manager of Boyd Horizon West, LLC, a Florida limited liability company, Managing Member of SLF IV/BOYD HORIZON WEST JV, LLC, a Delaware limited liability company, on behalf of the company, and who is known by me to be the person described herein and who executed the foregoing, this 29th day of March, 2017. He/she is personally known to me or has produced N/A as identification and did/did not take an oath.

29th day of March, 2017. WITNESS my hand and official seal in the County and State last aforesaid this



Penny Nunes  
Notary Public  
Print Name: Penny Nunes  
My Commission Expires: 8/21/17

**JOINDER AND CONSENT**

The undersigned, Hamlin Retail Partners North, LLC, a Florida limited liability company, and Hamlin Retail Partners East, LLC, a Florida limited liability company, each as owners of a portion of the Property being the subject of the Agreement and First Amendment hereinbefore defined, do hereby join in, consent to and subordinate their interest in their respective lands to the terms and conditions of the Agreement, as hereby amended, and do further acknowledge that all right, title and interest in any Credits issued by the County pursuant to the Agreement, as amended, shall belong solely to the Owner, SLF IV/Boyd Horizon West JV, LLC, a Delaware limited liability company.

Hamlin Retail Partners North, LLC, a  
Florida limited liability company, its  
Manager

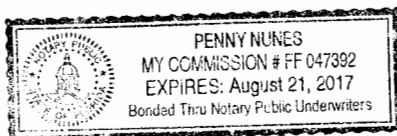
By: BK Hamlin Retail Partners North,  
LLC, a Florida limited liability  
company, its Manager

By:   
Scott T. Boyd, Manager

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Scott T. Boyd, Manager of BK Hamlin Retail Partners North, LLC, a Florida limited liability company, Manager of Hamlin Retail Partners North, LLC, a Florida limited liability company, on behalf of the company, and who is known by me to be the person described herein and who executed the foregoing, this 24th day of march, 2017. He is personally known to me or has produced N/A as identification and did/did not take an oath.

20th WITNESS my hand and official seal in the County and State last aforesaid this day of march, 2017.



  
Notary Public

Print Name: Penny Nunes

My Commission Expires:

Hamlin Retail Partners East, LLC, a  
Florida limited liability company

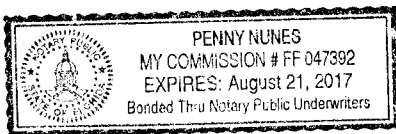
By: BK Hamlin Retail Partners East,  
LLC, a Florida limited liability  
company, its Manager

By: [Signature]  
Scott T. Boyd, Manager

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Scott T. Boyd, Manager of BK Hamlin Retail Partners East, LLC, a Florida limited liability company, Manager of Hamlin Retail Partners East, LLC, a Florida limited liability company, on behalf of the company, and who is known by me to be the person described herein and who executed the foregoing, this 29<sup>th</sup> day of March, 2017. He is personally known to me or has produced N/A as identification and did/did not take an oath.

29<sup>th</sup> day of March, 2017. WITNESS my hand and official seal in the County and State last aforesaid this



[Signature]  
Notary Public  
Print Name: Penny Nunes  
My Commission Expires: \_\_\_\_\_