



Interoffice Memorandum

AGENDA ITEM

June 23, 2017

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

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

SUBJECT: July 18, 2017 – Consent Item
Proportionate Share Agreement Chase Bank – University Blvd &
Alafaya Trail

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Chase Bank - University Blvd & Alafaya Trail ("Agreement") by and between DAT Mortgage One, LLC and Orange County for a proportionate share payment in the amount of \$39,140. 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 30 days of the effective date of this Agreement. The Agreement follows the recommendations of the Roadway Agreement Committee providing for the mitigation of road impacts on Alafaya Trail for four (4) deficient trips on the road segment from University Boulevard to Science Drive in an amount of \$9,785 per trip.

The Roadway Agreement Committee approved the Proportionate Share Agreement on June 21, 2017. 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 407-836-5610.

ACTION REQUESTED: Approval and execution of Proportionate Share Agreement for Chase Bank – University Blvd & Alafaya Trail Alafaya Trail: From University Boulevard to Science Drive by and between DAT Mortgage One, LLC and Orange County for a proportionate share payment in the amount of \$39,140. District 5

JEH/HEGB:rep
Attachment

BCC Mtg. Date: July 18, 2017

This instrument prepared by
and after recording return to:

Eric Swanson, BDG Architects, LLP
100 South Ashley Drive, Suite 100
Tampa, Florida 33602

Parcel ID Number(s): 10-22-31-0000-00-027

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

**PROPORTIONATE SHARE AGREEMENT FOR
CHASE BANK – UNIVERSITY BLVD & ALAFAYA TRAIL**

Alafaya Trail: From University Boulevard to Science Drive

This Proportionate Share Agreement (the “Agreement”), effective as of the latest date of execution (the “**Effective Date**”), is made and entered by and between DAT Mortgage One, LLC, a Limited Liability Company (“**Owner**”), whose mailing address is 941 West Morse Boulevard, Suite 315, Winter Park, FL 32789, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“**County**”), whose mailing address is P.O. Box 1393, Orlando, FL 32802-1393.

WHEREAS, Owner is the owner of fee simple title to certain real property, as more particularly described on Exhibit “A,” 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 Alafaya Trail; and

WHEREAS, Owner intends to develop the Property as one (1) retail bank that is approximately 3,002 square feet in size and referred to as Chase Bank – University Boulevard and Alafaya Trail (the “**Project**”); and

WHEREAS, Owner received a letter from County dated Tuesday, June 20, 2017 stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application # CEL-17-06-035 for the Project was denied; and

WHEREAS, the Project will generate four (4) deficient PM Peak Hour trips (the “**Excess Trips**”) for the deficient roadway segment on Alafaya Trail from University Boulevard to Science Drive (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 “B” hereto; and

WHEREAS, the Excess Trips will cause the Deficient Segment to operate below adopted Level of Service standards and, 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 Segment through the current anticipated Project buildout is Thirty Nine Thousand One Hundred Forty and 00/100 Dollars (\$39,140.00) (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 described in Exhibit “B,” attached hereto and incorporated herein by reference, totals Thirty Nine Thousand One Hundred Forty and 00/100 Dollars (\$39,140.00). 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 constitute the Project’s impact on the aforementioned Deficient Segment based upon (i) Owner’s Traffic Study titled CHASE BANK @ UNIVERSITY BLVD, TRANSPORTATION CONCURRENCY EVALUATION prepared by KIMLEY HORN on June 2, 2017 for BDG ARCHITECTS, LLP (the “Traffic Study”), and incorporated herein by this reference, and (ii) upon calculations described in Exhibit “B.” The Traffic Study was accepted by the Orange County Transportation Planning Division on June 20, 2017, and is on file and available for inspection with that Division (CMS # 2017-06-035). 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 Project as proportionate share mitigation for impacts of the Project upon roadways impacted by the Project 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 thirty (30) days following the Effective Date, Owner shall deliver a check to County in the amount of Thirty Nine Thousand One Hundred Forty and 00/100 Dollars (\$39,140.00) 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 Community, Environmental, and Development Services Department. Within twenty-one (21) days following its receipt of the PS Payment, 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 thirty (30) days of 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. 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 more particularly described in Exhibit “B” attached hereto. 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: DAT Mortgage One, LLC (Attention: Mary Demetree)
941 West Morse Boulevard, Suite 315
Winter Park, Florida 32789

With copy to: JP Morgan Chase (Attention: Dan Bowman, Vice President)
75 Shadow Lakes Boulevard
Ormand Beach, Florida 32174

With copy to: BDG Architects, LLP (Att: Eric Swanson, Project Manager)
100 South Ashley Drive, Suite 100
Tampa, Florida 33602

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

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

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

Orange County Community, Environmental, and Development
Services Department
Manager, Planning Division
201 South Rosalind Avenue, 2nd Floor
Orlando, FL 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. 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]

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: *Teresa Jacobs*

Teresa Jacobs

Orange County Mayor

Date: 7.18.17

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

By: *Craig A. Stopyra*
fol Deputy Clerk

Print Name: Craig A. Stopyra

WITNESSES:

Jeannette E Dodge
Print Name: Jeannette E Dodge
Madelyn Boelter
Print Name: Madelyn Boelter

“OWNER”

DAT Mortgage One, LLC, a Florida limited liability company

By: Mary Demetree

Print Name: Mary Demetree

Title: Principal/Manager

Date: 6-27-17

**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Mary Demetree, as Principal / Manager of DAT One Mortgage, LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 27th day of JUNE, 2017. He/she is personally known to me or has produced N/A (type of identification) as identification and did/did not (circle one) take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 27th day of JUNE, 2017.



Jeannette E Dodge
NOTARY PUBLIC

Print Name: Jeannette E Dodge

My Commission Expires: 2-9-18

Exhibit "A"

CHASE BANK – UNIVERSITY BOULEVARD AND ALAFAYA TRAIL

Parcel ID: 10-22-31-0000-00-027

Legal Description:

Those certain pieces, parcels and tracts of land located in ORANGE County, Florida, described as follows:

Parcel One:

Commencing at the NE corner of the NW 1/4 of the NW 1/4 of Section 10, Township 22 South, Range 31 East, Orange County, Florida; thence run South 88°04'19" West 93.41 feet along the North line of said NW 1/4 of Section 10; thence run South 01°55'41" East 78.02 feet to the South right-of-way line of University Boulevard; thence run South 88°04'19" West, 157.11 feet along said South right-of-way line of University Boulevard to the Point of Beginning; thence run South 01°032'40" East, 174.98 feet; thence run North 88°04'19" East, 199.07 feet to the Westerly right-of-way line of Alafaya Trail; thence run South 01°032'35" East, 30.00 feet along said Westerly right-of-way line of Alafaya Trail; thence departing said right-of-way line run South 88°04'19" West 249.07 feet; thence run North 01°32'40" West 204.98 feet to the said South right-of-way line of University Boulevard; thence run North 88°04'19" East, 50.00 feet along said South right-of-way line of University Boulevard to the Point of Beginning.

Parcel Two:

From the NW corner of Section 10, Township 22 South, Range 31 East run North 88°02'59" East along the North line of said Section 10 a distance of 1294.79 feet; thence South 01°32'12" East, 53 feet to the intersection of the West right-of-way line of Alafaya Trail (State Road No. S-520) with the South right-of-way line of Hall Road (now known as Florida Tech Blvd.) for the Point of Beginning; thence run South 88°02'59" West along said South right-of-way line of Hall Road (now known as Florida Tech Blvd.) 200 feet; thence South 01°032'12" East 200 feet; thence North 88°02'59" East 200 feet to the West right-of-way line of Alafaya Trail (State Road No. S-520); thence North 01°32'31" West along said West right-of-way line 186.68 feet to the P.C. of a curve concave to the easterly and having a radius of 5779.65 feet; run thence Northerly along said right-of-way line and along the arc of said curve 13.32 feet to the Point of Beginning.

Less and except that portion thereof conveyed to the County of Orange by virtue of that certain Special Warranty Deed recorded August 26, 1985 in Official Records Book 3680, Page 532, Orange County, Florida, described as:

The North 22 feet of the following described property:

From the NW corner of Section 10, Township 22 South, Range 31 East run North $88^{\circ}02'59''$ East along the North line of said Section 10 a distance of 1294.79 feet; thence South $01^{\circ}32'12''$ East, 53 feet to the intersection of the West right-of-way line of Alafaya Trail (State Road No. S-520) with the South right-of-way line of Hall Road (now known as University Boulevard) for the Point of Beginning; thence run South $88^{\circ}02'59''$ West along said South right-of-way line of Hall Road (now known as University Boulevard) 200 feet; thence South $01^{\circ}32'12''$ East 200 feet; thence North $88^{\circ}02'59''$ East 200 feet to the West right-of-way line of Alafaya Trail (State Road No. S-520); thence North $01^{\circ}32'31''$ West along said West right-of-way line 186.68 feet to the P.C. of a curve concave to the Easterly and having a radius of 5779.65 feet; run thence Northerly along said right-of-way line and along the arc of said curve 13.32 feet to the Point of Beginning.

And less and except that portion thereof conveyed to the State of Florida by virtue of that certain deed recorded October 25, 1988 in Official Records Book 4025, Page 3569, Orange County, Florida, described as:

That part of:

From the NW corner of Section 10, Township 22 South, Range 31 East run North $88^{\circ}02'59.11''$ East along the North line of said Section 10 a distance of 1294.79 feet; thence South $01^{\circ}32'12.11''$ East, 53 feet to the intersection of the West right of way line of Alafaya Trail (State Road No. S-520) with the South right of way line of Hall Road (now known as University Blvd.) for the Point of Beginning; thence run South $88^{\circ}02'59.11''$ West along said South right-of-way line of Hall Road (now known as University Blvd.) 200 feet; thence South $01^{\circ}32'12.11''$ East 200 feet; thence North $88^{\circ}02'59.11''$ East 200 feet to the West right-of-way line of Alafaya Trail (State Road No. S-520); thence North $01^{\circ}32'31.11''$ West along said West right-of-way line 186.68 feet to the P.C. of a curve concave to the Easterly and having a radius of 5779.65 feet; run thence Northerly along said right-of-way line and along the arc of said curve 13.32 feet to the Point of Beginning (less the North 22 feet thereof for road right-of-way).

Lying within the following described boundaries:

Commence at a point on the North line of Section 10, Township 22 South, Range 31 East, Orange County, Florida, lying 1344.25 feet North $89^{\circ}30'37''$ East of the Northwest corner thereof, said point being on the center line of survey of State Road 434 (Alafaya Trail), Project Section 75037-2501 and the beginning of a curve concave Easterly having a radius of 5728.67 feet; thence run Southerly, from a chord bearing of South $00^{\circ}14'03.11''$ West, along said survey line and the arc of said curve through a central angle of $00^{\circ}40'39.11''$ a distance of 67.74 feet to the end of said curve; thence continuing along said survey line South $0^{\circ}06'17.11''$ East 7.26 feet; thence South $89^{\circ}30'37.11''$ West 49.09 feet to the intersection of the Westerly existing right-of-way line of State Road 434 and the southerly existing right-of-way line of University Blvd., a 138-foot dedicated road, for the Point of Beginning; thence continue South $89^{\circ}30'37''$ West along said South right-of-way line 545.58 feet; thence South $87^{\circ}13'09.11''$ East 52.50 feet; thence North $89^{\circ}30'37.11''$ East 450.20 feet; thence South $45^{\circ}15'27.11''$ East 59.79 feet to the beginning of a curve concave Easterly having a radius of 11,524.16 feet and a chord bearing of South $0^{\circ}04'09.11''$ East; thence Southerly along the arc of said curve through a central angle of $0^{\circ}04'15.11''$ a distance of 14.24 feet to the end of said

curve; thence South $0^{\circ}06'17.11''$ East 372.75 feet; thence North $89^{\circ}30'37.11''$ East 0.88 feet to the Westerly existing right-of-way line of State Road 434; thence North $0^{\circ}05'23''$ West along said Westerly right-of-way line 49.86 feet; thence continuing along West 203.96 feet; thence continuing along said right-of-way line Point of Beginning.

Exhibit “B”

CHASE BANK – UNIVERSITY BOULEVARD AND ALAFAYA TRAIL

Log of Project Contributions

**Log of Project Contributions
 Alafaya Trail (University Blvd to Science Drive)**

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
Alafaya Trail	University Blvd	Science Drive	1.02	E	3020	Widen from 6 to 8 lanes	4040	1020	\$9,980,247	\$9,785

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
Alafaya Trail	University Blvd	Science Drive	1.02	E	3020	200	4040	1020	\$1,956,911

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
Alafaya Trail	University Blvd	Science Drive	1.02	E	3020	4040	1020	200	820	\$8,023,336	\$9,785

Updated: 6/20/17

Log of Project Contributions			
Date	Project	Project Trips	Prop Share
Existing	Jun-17	Existing plus Committed	200
			\$1,957,000
			\$0
			\$0
			\$0
			\$0
Backlogged Totals:		200	\$1,957,000
Proposed	Jun-17	Chase Bank	4
			\$39,140
			\$0
			\$0
			\$0
			\$0
Totals:		204	\$1,996,140