




Interoffice Memorandum

AGENDA ITEM

September 25, 2017

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

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

SUBJECT: October 17, 2017 – Consent Item
Agreement for Proportionate Share Contribution
Road Mitigation Cost for Hickory Nut Estates
(Related to Case # PSP-16-06-222)

The Roadway Agreement Committee has reviewed an Agreement for Proportionate Share Contribution for Road Mitigation Cost for Hickory Nut Estates ("Agreement") by and between Horizon West Investment Group, LLC ("Owner") and Orange County for the a proportionate share payment for impacts on CR 545 from South Leg of Loop Road to Schofield Road in the amount of \$155,920. Hickory Nut Estates is part of Village H but is not a Participating Owner to the Village H Road Network Agreement. The Village H Road Network Agreement allows for non-participating owners to move forward if they follow the provisions of the County's Comprehensive Plan which provides in Section 4.2.3 the mechanism for a proportionate share payment to be made. Pursuant to Section 2(f) of the Agreement, County shall deliver the amount of the Proportionate Share Payment to the Village H Escrow Agent (Rizzetta & Company, Inc.) within 180 days of the payment by Owner to County with direction to utilize the funds for the CR 545 Road Improvements.

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 180 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 CR 545 on the road segment from South Leg of Loop Road to Schofield Road.

The Roadway Agreement Committee approved the Agreement for Proportionate Share Contribution on June 21, 2017 and has been placed on the October 17, 2017, BCC consent agenda for concurrent consideration with the associated preliminary

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October 17, 2017 – Consent Item

Agreement for Proportionate Share Contribution Road Mitigation Cost for Hickory Nut Estates (Related to Case # PSP-16-06-222)

subdivision plan request. 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 Agreement for Proportionate Share Contribution for Road Mitigation Cost Hickory Nut Estates C.R. 545: From South Leg of Loop Road to Schofield Road also known as Karl Kahlert Parkway by and between Horizon West Investment Group, LLC and Orange County for a proportionate share payment in the amount of \$155,920, the amount of which will then be delivered by the County to the Village H Escrow Agent within 180 days. District 1

JEH/HEGB:rep

Attachment

BCC Mtg. Date: October 17, 2017

This instrument prepared by
and after recording return to:
William E. Barfield, Esq.
William E. Barfield, P.A.
225 S. Westmonte Drive, Suite 2040
Altamonte Springs, Florida 32714

Parcel ID Numbers: 06-24-27-0000-00-002
06-24-27-0000-00-014
06-24-27-0000-00-016
06-24-27-0000-00-017

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**AGREEMENT FOR PROPORTIONATE SHARE CONTRIBUTION FOR ROAD
MITIGATION COST**

Hickory Nut Estates

**C.R. 545: From South Leg of Loop Road to Schofield Road also known as Karl Kahlert
Parkway**

This Agreement for Proportionate Share Contribution for Road Mitigation Cost (the "Agreement") effective as of the latest date of execution (the "**Effective Date**") is made and entered into by and between Horizon West Investment Group, LLC, a Florida limited liability company ("**Owner**"), whose mailing address is 27 Summerlin Ave., Orlando, Florida 32801, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida ("**County**"), whose mailing address is P.O. Box 1393, Orlando, Florida 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 1 and the proceeds of the PSC Payment, as defined herein, will be allocated to C.R. 545 ; and

WHEREAS, Owner intends to develop the Property as Hickory Nut Estates containing 40 single family units (the "**Project**"); and

WHEREAS, the Property is located within an area encompassed by the Village H Specific Area Plan ("Village H"); and

WHEREAS, participating owners within Village H executed the Village H Horizon West Road Network Agreement (C.R. 545) with County for the improvement of C.R. 545, specifically

widening to 4 lanes C.R. 545 from the South Leg of Loop Road to Schofield Road also known as Karl Kahlert Parkway (the "Road Improvements") which was recorded in OR Book 10525 Page 6172, Public Records of Orange County, Florida (the "Road Network Agreement") as amended by the First Amendment to Village H Horizon West Road Network Agreement (C.R. 545) recorded in OR Book 10851 Page 0626, Public Records of Orange County, Florida (the "First Amendment to Road Network Agreement") and by the Second Amendment to Village H Horizon West Road Network Agreement (C.R. 545) recorded in OR Book 10870 Page 7689, Public Records of Orange County, Florida (the "Second Amendment to Road Network Agreement"); and

WHEREAS, Section 4 of the Road Network Agreement provides that impact fees that would be generated by the development of Village H are to be paid into an escrow fund established pursuant to the Road Network Agreement and used to pay for the Road Improvement; and

WHEREAS, the parties to the Road Network Agreement have retained Rizzetta & Company, Inc. (the "Escrow Agent"), 8529 South Park Circle, Suite 330, Orlando, Florida 32819, to serve as escrow agent under the Road Network Agreement to receive the prepaid impact fees to fund the Road Improvements; and

WHEREAS, Section 9.1 of the Road Network Agreement provides that nonparticipating owners within Village H shall not be precluded from developing their property consistent with applicable provisions of the County Code and the applicable provision of County's Comprehensive Plan, including particularly FLU Policy 4.2.3 of the Comprehensive Plan that addresses funding for infrastructure and administrative expenses; and

WHEREAS, County's Comprehensive Plan FLU Policy 4.3.9 requires that Owner pay, among other Pro-rata shares and cost, its proportionate share contribution for road mitigation cost toward the Road Improvements; and

WHEREAS, Owner intends to develop the Property into 40 single family residences which will generate 40.40 P.M. peak hour two-way vehicular trips ("Project Trips"); and

WHEREAS, Owner and County have agreed that Owner's Pro-rata share payment necessary for the Road Improvements pursuant to FLU Policy 4.2.3 of the County's Comprehensive Plan is One Hundred Fifty Five Thousand Nine Hundred Twenty and 00/100 Dollars (\$155,920.00) (the "**PSC Payment**"); and

WHEREAS, County issued to Owner a Capacity Encumbrance Letter CEL-15-07-054 which expires February 22, 2019; 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. Issuance of Capacity Encumbrance Letter.

(a) *Calculation of PSC Payment:* The amount of the PSC Payment for the Road Improvements is One Hundred Fifty Five Thousand Nine Hundred Twenty and 00/100 Dollars (\$155,920.00). This PSC Payment has been calculated by agreement of the Parties as the project units multiplied by the prevailing current single family residential impact fee rate (\$3,898.00 per dwelling unit). Owner and County agree that the Project Trips constitute the Project's impact on C.R. 545. Owner and County further acknowledge and agree that the PSC 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 Pro-rata 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 the Road Improvements 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 Pro-rata share agreement as set forth in Section 2(d) below. Owner and County further acknowledge and agree that the calculation of an agreement regarding the amount of the PSC Payment constitute material inducements for the parties to enter into this Agreement.

(b) *Timing of PSC Payment.* Within one hundred eighty (180) days following the Effective Date, Owner shall deliver a check to County in the amount of One Hundred Fifty Five Thousand Nine Hundred Twenty and 00/100 Dollars (\$155,920.00) as the PSC Payment. The check shall be made payable to "Orange County Board of County Commissioners", shall reference CEL 15-07-054 and shall be delivered to the Fiscal and Operational Support Division of the Community, Environmental, and Development Services Department. Within the timeframe provided in CEL 15-07-054 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 PSC Payment shall be applied toward the amount of the initial reservation payment (and any subsequent reservation payment(s), if the initial reservation payment does not exceed the amount of the PSC Payment) as further set forth in Section 3 below. In the event Owner has not paid the PSC Payment within one hundred eighty (180) 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 C.R. 545 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 Pro-rata 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, based upon Owner's commitment to pay the PSC 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 Road Improvements 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, 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.

(f) *Payment Into Escrow.* County shall deliver the amount of the PSC Payment to Escrow Agent for the Road Network Agreement within one hundred eighty (180) days of payment by Owner to County with directions to utilize said funds consistent with said Road Network Agreement and to reduce the maximum number of trips attributed to the Road Network agreement to 5633 trips. County shall be entitled to extend the payment of the amount of the PSC Payment to Escrow Agent for up to one hundred eighty (180) additional days with the approval of the Director of Orange County Community, Environmental, and Development Services Department.

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 \$148,124.00 (95% of PSC Payment) in accordance with Section 163.3180, Florida Statutes. 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 PSC Payment and in the event the PSC 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 PSC Payment in excess of such transportation impact fees or capacity reservation fees.

Section 4. *No Refund.* The PSC Payment (including any reservation fees paid with the PSC Payment) is non-refundable.

Section 5. Notice. With the exception of the timing of the PSC 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: Horizon West Investment Group, LLC
 Attention: Mr. Sadique Jaffer
 27 Summerlin Ave.
 Orlando, Florida 32810

With copy to: William E. Barfield, Esq.
 William E. Barfield, P.A.
 225 S. Westmonte Ave., Suite 2040
 Altamonte Springs, Florida 32714

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.

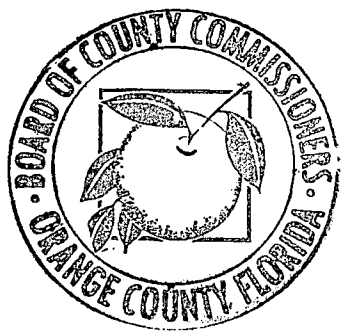
Section 10. Attorney Fees. In the event either party hereto brings an action or proceeding including any counterclaim, cross-claim, or third party claim, against the other party arising out of this Agreement, each party in such action or proceeding, including appeals therefrom, shall be responsible for 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 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.

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

Teresa Jacobs
Orange County Mayor

Date: 10.18.17

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

By: *Craig A. Stopysa*

for Deputy Clerk

Print Name: Craig A. Stopysa

"HICKORY NUT ESTATES"

WITNESSES:

[Signature]
Print Name: William E. Bradford

[Signature]
Print Name: Layla Tsesmelis

"OWNER"

HORIZON WEST INVESTMENT GROUP,
LLC, Florida limited liability company

By: [Signature]

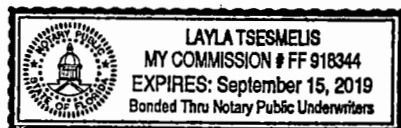
Print Name: Sadique Jaffer
Title: Managing Member

Date: July 5th 2017

STATE OF FLORIDA
COUNTY OF ORANGE

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Sadique Jaffer, as Managing Member, of Horizon West Investment Group, LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 05 day of July, 2017. He/she is personally known to me or has produced _____ (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 05 day of July, 2017.



[Signature]
NOTARY PUBLIC

Print Name: LAYLA TSESMELIS

My Commission Expires: 09/15/19

Exhibit "A"

"HICKORY NUT ESTATES"

Parcel ID: 06-24-27-0000-00-002, 06-24-27-0000-00-014, 06-24-27-0000-00-016 and
06-24-27-0000-00-017

Legal Description:

LEGAL DESCRIPTION: (PROVIDED BY CLIENT)

PARCEL 1

A PORTION OF THE WEST 1/2 OF THE NW 1/4 OF SECTION 6, TOWNSHIP 24 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 24 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA; THENCE S00°28'57"W, 732.95 FEET ALONG THE WEST LINE OF SAID SECTION FOR A POINT OF BEGINNING; THENCE EAST 943.61 FEET, PARALLEL WITH THE NORTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION; THENCE N01°48'10"W 703.29 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF OLD YMCA ROAD; THENCE EAST 60.04 FEET; THENCE S01°48'10"E 703.29 FEET; THENCE EAST 523.29 FEET TO THE WEST LINE OF LOT 42, HICKORY LAKE ESTATES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK V, PAGE 4, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE S00°27'47"W 1942.04 FEET TO THE SOUTH LINE OF THE NW 1/4 OF SAID SECTION; THENCE N89°36'42"W 1527.55 FEET TO THE WEST 1/4 CORNER; THENCE N00°28'57"E 1931.69 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH

LOT 42, HICKORY LAKE ESTATES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK V, PAGE 4, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; LESS THE NORTH 438.02 FEET THEREOF.

PARCEL 2

FROM THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 24 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA RUN EAST ALONG NORTH LINE OF SAID SECTION, 974.64 FEET FOR THE POINT OF BEGINNING; THENCE CONTINUE EAST 552.28 FEET TO THE NORTHEAST CORNER OF THE NW 1/4 OF THE NW 1/4 OF SAID SECTION 6; THENCE S00°27'47"W 732.95 FEET ALONG THE EAST LINE OF SAID NW 1/4 OF NW 1/4, SAID LINE ALSO BEING AT THE WEST LINE OF LOT 42, HICKORY LAKES ESTATES, PLAT BOOK "V", PAGE 4, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE WEST 523.29 FEET; THENCE N01°48'10"W 739.29 FEET TO THE POINT OF BEGINNING, LESS THE NORTH 30 FEET FOR ROAD RIGHT-OF-WAY. SAID PROPERTY

CONTAINS 99.86 ACRES OF LAND, MORE OR LESS.