



Interoffice Memorandum

AGENDA ITEM

October 23, 2017

TO: Mayor Teresa Jacobs
AND-
Board of County Commissioners

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

SUBJECT: November 14, 2017 – Consent Item
Proportionate Share Agreement
Windermere Village LLC Winter-Garden Vineland Road:
From Fiquette Road to Lake Butler Boulevard

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Windermere Village LLC Winter Garden-Vineland Road: From Fiquette Road to Lake Butler Boulevard ("Agreement") by and between Windermere Village LLC and Orange County for a proportionate share payment in the amount of \$481,880. 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 Winter Garden-Vineland Road for 20 deficient trips on the road segment of Winter Garden-Vineland Road from Fiquette Road to Lake Butler Boulevard in an amount of \$24,094 per trip.

The Roadway Agreement Committee approved the Proportionate Share Agreement on October 11, 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 Windermere Village LLC Winter Garden-Vineland Road: from Fiquette Road to Lake Butler Boulevard by and between Windermere Village LLC and Orange County for a proportionate share payment in the amount of \$481,880. District 1

JEH/HEGB:rep
Attachment

BCC Mtg. Date: November 14, 2017

This instrument prepared by
and after recording return to:

Marc Skorman
6000 Metrowest Boulevard
Suite 111
Orlando, FL 32853

Parcel ID Number(s): 14-23-27-0000-00-011

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

**PROPORTIONATE SHARE AGREEMENT FOR
Windermere Village LLC
Winter Garden-Vineland Road: From Ficquette Road to Lake Butler Boulevard**

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 Windermere Village LLC, a Florida Limited Liability Company (“**Owner**”), whose mailing address is 6000 Metrowest Boulevard, Suite 111, Orlando, FL 32835, 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 1, within the County’s West Windermere Rural Settlement, and the proceeds of the PS Payment, as defined herein, will be allocated to Winter Garden-Vineland Road; and

WHEREAS, Owner intends to develop the Property as a Shopping Center comprising 9,990 square-feet of Office, 18,190 square-feet of Retail and 21,810 square-feet of supermarket uses (the “**Project**”); and

WHEREAS, Owner received a letter from County dated October 5th, 2017 stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #16-11-097 for the Project was denied; and

WHEREAS, the Project will generate 20 deficient PM Peak Hour trips (the “**Excess Trips**”) for the deficient roadway segment on Winter Garden-Vineland Road from Ficquette Road

to Lake Butler Boulevard (the “**Deficient Segment**”), and 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 four hundred eighty-one thousand, eight hundred eighty and 00/100 Dollars (\$481,880.00) (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. Issuance of Capacity Encumbrance Letter.

(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 four hundred eighty-one thousand, eight hundred eighty and 00/100 Dollars (\$481,880.00). 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 “CHANCELLOR AT WINDERMERE TRAFFIC ANALYSIS” prepared by TRIDENT ENGINEERING LLC on May 18th, 2017 for SKORMAN DEVELOPEMNT CORP. (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 October 3rd, 2017, and is on file and available for inspection with that Division (CMS #16-11-097). 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.* Within thirty (30) days following the Effective Date, Owner shall deliver a check to County in the amount of four hundred eighty-one thousand, eight hundred eighty and 00/100 Dollars (\$481,880.00) 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 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, based upon Owner's commitment to pay 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, 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 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: Windermere Village LLC
Marc Skorman, Manager
6000 Metrowest Boulevard, Suite 111
Orlando, FL 32835

With copy to: Skorman Development Corp.
6000 Metrowest Boulevard, Suite 111
Orlando, FL 32835

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.

[Signatures appear on following pages]

"COUNTY"

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*

Teresa Jacobs

Orange County Mayor

Date: 11.14.17

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

By: *Craig A. Stopyra*

for Deputy Clerk

Print Name: Craig A. Stopyra



"WINDERMERE VILLAGE LLC"

WITNESSES:

Print Name: MARK KEDWEL

Print Name: Danielle Hicks

"OWNER"

Windermere Village, a Florida Limited Liability Company.

By: Marc Skorman, Manager

Print Name: Marc Skorman

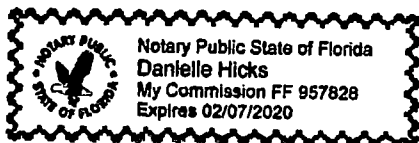
Title: Manager

Date: OCTOBER 20, 2017

**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Marc Skorman, as Manager, of Windermere Village, a Florida Limited Liability company who is known by me to be the person described herein and who executed the foregoing, this 20 day of October, 2017. He 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 20 day of October, 2017.



Danielle Hicks
NOTARY PUBLIC

Print Name: Danielle Hicks

My Commission Expires: 02/07/2020

EXHIBIT "A"
LEGAL DESCRIPTION

A parcel of land lying in the Southwest 1/4 of the Southeast 1/4 of Section 14, Township 23 South, Range 27 East, Orange County, Florida, being more particularly described as follows:

Commencing at the Northeast corner of the Southeast 1/4 of said Section 14; thence South 89° 19' 43" West, along the North line of the Southeast 1/4 of said Section 14, a distance of 1,323.12 feet to the Northeast corner of the Northwest 1/4 of the Southeast 1/4 of said Section 14, said point also being the Northwest corner of the Plat of OXFORD MOOR as recorded in Plat Book 47, Page 30, of the Public Records of Orange County, Florida; thence leaving the North line of the Southeast 1/4 of said Section 14, South 00° 05' 37" East along the East line of the West 1/2 of the Southeast 1/4 of said Section 14 and along the West line of said Plat of OXFORD MOOR, a distance of 2, 281.24 feet to the Point of Beginning; thence South 00° 05' 37" East along the East line of the West 1/2 of the Southeast 1/4 of said Section 14 and along the West line of said Plat of OXFORD MOOR, a distance of 338.75 feet to a point on the Northerly right of way line of Winter Garden Vineland Road (variable-width right of way); thence leaving the East line of the West 1/2 of the Southeast 1/4 of said Section 14 and the West line of said Plat of OXFORD MOOR; South 89° 32' 57" West along the Northerly right of way line of said Winter Garden Vineland Road, a distance of 1,256.90 feet to a point; thence continuing along the Northerly right of way line of said Winter Garden Vineland Road Northwesterly along the arc of a curve to the right (said curve having a radius of 29.00 feet, a central angle of 90° 12' 08" and a chord bearing and distance of North 45° 20' 59" West, 41.08 feet) for an arc distance of 45.66 feet to a point on the Easterly right of way line of said Winter Garden Vineland Road; thence North 00° 14' 55" West, along the Easterly right of way line of said Winter Garden Vineland Road, a distance of 309.64 feet to a point; thence leaving the Easterly right of way line of said Winter Garden Vineland Road, North 89° 32' 57" East a distance of 1,286.92 feet to the Point of Beginning.

LESS THE FOLLOWING:

A parcel of land lying in a portion of the Southwest 1/4 of the Southeast 1/4 of Section 14, Township 23 South, Range 27 East, Orange County, Florida, being more particularly described as follows:

Commence at the South 1/4 corner of said Section 14; thence run North 89° 49' 26" East along the South line of aforesaid Southwest 1/4 of the Southeast 1/4 of Section 14 for a distance of 59.21 feet; thence departing said South line run North 00° 10' 34" West for a distance of 30.00 feet to a point along the Northerly right of way line of County Road 535 (Winter Garden - Vineland Road), also being a point of curvature of a curve concave Northeasterly having a radius of 29.00 feet and the Point of Beginning; thence from a tangent bearing of South 89° 49' 26" West run Northwesterly along said curve and said Northerly right of way line through a central angle of 90° 12' 16" for an arc distance of 45.66 feet to a point along the Easterly right of way line of aforesaid County Road 535; thence departing said Northerly right of way line run North 00° 01' 42" East along said Easterly right of way line for a distance of 309.64 feet; thence departing said Easterly right of way line run North 89° 49' 26" East for a distance of 52.46 feet; thence run South 00° 22' 13" East for a distance of 304.66 feet; thence run South 45° 16' 24" East for a distance of 48.29 feet to a point along aforesaid Northerly right of way line of County Road 535; thence run South 89° 48' 26" West along said Northerly right of way line for a distance of 59.80 feet to the aforesaid Point of Beginning.

EXHIBIT "B"
Log of Project Contributions
Winter Garden Vineland Rd (Ficquette Rd to Lake Butler 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 |
|--------------------------------|-----------------------------------|------------------|----------------|-------------|-------------------------------|-------------------------|-------------------------------|-------------------|--------------------|-------------|
| Winter Garden Vineland Road | Ficquette Rd | Lake Butler Blvd | 1.59 | E | 2000 | Widen from 4 to 6 lanes | 3020 | 1020 | \$24,575,040 | \$24,094 |

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 |
|--------------------------------|-----------------------------------|------------------|----------------|-------------|-------------------------------|------------------|-------------------------------|-------------------|---------------------------------|
| Winter Garden Vineland Road | Ficquette Rd | Lake Butler Blvd | 1.59 | E | 2000 | 385 | 3020 | 1020 | \$9,275,873 |

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 |
|--------------------------------|-----------------------------------|------------------|----------------|-------------|-------------------------------|-------------------------------|-------------------|------------------|---------------------------------------|------------------------|-------------|
| Winter Garden Vineland Road | Ficquette Rd | Lake Butler Blvd | 1.59 | E | 2000 | 3020 | 1020 | 385 | 635 | \$15,299,167 | \$24,094 |

Updated: 10/18/17

Log of Project Contributions

| | Date | Project | Project Trips | Prop Share |
|----------|--------|---------------------------|---------------|--------------------|
| Existing | Jul-17 | Existing plus Committed | 383 | \$9,228,002 |
| | | | 2 | \$48,188 |
| | | | | \$0 |
| | | | | \$0 |
| | | | | \$0 |
| | | Backlogged Totals: | 385 | \$9,276,190 |
| Proposed | Oct-17 | Chancellor at Windermere | 20 | \$481,880 |
| | | | | \$0 |
| | | | | \$0 |
| | | | | \$0 |
| | | | | \$0 |
| | | Totals: | 405 | \$9,758,070 |