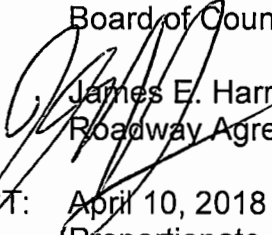




March 19, 2018

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

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

SUBJECT: April 10, 2018 – Consent Item
Proportionate Share Agreement For Lake Buena Vista Village
Phase 2 – Candlewood Suites (AKA Delores PD)
Vineland Avenue: From Winter Garden Vineland Road to Little Lake
Bryan Parkway

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Lake Buena Vista Village Phase 2 – Candlewood Suites (AKA Delores PD) ("Agreement") by and between Lake Buena Vista Investments LLC and Orange County for a proportionate share payment in the amount of \$34,386. 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 Vineland Avenue for three deficient trips on the road segment from Winter Garden Vineland Road to Little Lake Bryan Parkway in an amount of \$11,462 per trip.

The Roadway Agreement Committee approved the Agreement on February 21, 2018. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

ACTION REQUESTED: Approval and execution of Proportionate Share Agreement for Lake Buena Vista Village Phase 2 – Candlewood Suites (AKA Delores PD) Vineland Avenue: From Winter Garden Vineland Road to Little Lake Bryan Parkway by and between Lake Buena Vista Investments, LLC and Orange County for a proportionate share payment in the amount of \$34,386. District 1

JEH/HEGB:aw/lab

Attachment

BCC Mtg. Date: April 10, 2018

This instrument prepared by:

Mohammed N. Abdallah, PE
Traffic & Mobility Consultants LLC
3101 Maguire Boulevard, Suite 265
Orlando, Florida 32803

and after recording return to:

Jonathan P. Huels
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
215 N Eola Drive
Orlando, Florida 32801

Parcel ID Number(s):

21-24-28-0000-00-020,
21-24-28-0000-00-006,
21-24-28-5844-00-320

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

**PROPORTIONATE SHARE AGREEMENT FOR
Lake Buena Vista Village Phase 2 – Candlewood Suites (AKA Delores PD)**

Vineland Avenue: From Winter Garden Vineland Road to Little Lake Bryan Parkway

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 **LAKE BUENA VISTA INVESTMENTS LLC**, a Florida limited liability company (“**Owner**”), whose principal place of business is 15951 SW 41st Street, Suite 800, Davie, Florida, 33331, and **ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“County”)**, whose address is P.O. Box 1393, Orlando, FL 32802-1393.

WHEREAS, Owner is the owner of 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 1, and the proceeds of the PS Payment, as defined herein, will be allocated to Vineland Avenue; and

WHEREAS, Owner intends to develop the Property as a 163-room hotel, referred to and known as Lake Buena Vista Village Phase 2 – Candlewood Suites (AKA Delores PD) (the “**Project**”); and

WHEREAS, Owner received a letter from County dated February 8, 2018, stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #CEL-17-06-044 for the Project was denied; and

WHEREAS, the Project will generate three (3) deficient PM Peak Hour trip(s) (the “**Excess Trip(s)**”) for the deficient roadway segment on Vineland Avenue from Winter Garden Vineland Road to Little Lake Bryan Parkway (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” attached hereto and incorporated herein; 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, the Owner shall provide the 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 Thirty-Four Thousand Three Hundred Eighty-Six and 00/100 Dollars (\$34,386.00) (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, as described in Exhibit “C,” totals Thirty-Four Thousand Three Hundred Eighty-Six and 00/100 Dollars (\$34,386.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. Owner and County agree that the Excess Trip(s) constitute the Project’s impact on the aforementioned Deficient Segment based upon (i) Owner’s Traffic Study titled “LBV CANDLEWOOD SUITES” prepared by Traffic & Mobility Consultants LLC, dated January 4, 2018, for Lake Buena Vista Investments LLC (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 January 31, 2018, and is on file and available for inspection with that division (CEL-17-06-044). 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 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-Four Thousand Three Hundred Eighty-Six and 00/100 Dollars (\$34,386.00) 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 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.

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: Jack Flechner, Esq.
Lake Buena Vista Investments LLC
15951 SW 41st Street, Suite 800
Davie, Florida 33331

With copy to: Mohammed Abdallah, PE
Traffic & Mobility Consultants LLC
3101 Maguire Boulevard, Suite 265
Orlando, Florida 32803



With copy to: Jonathan P. Huels, Esquire
Lowndes, Drosdick, Doster Kantor & Reed, P.A.
215 North Eola Drive
Orlando, Florida 32801

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, Florida 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.

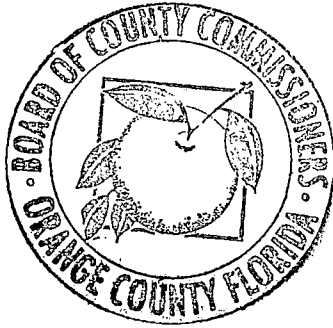
Section 12. Amendments. No amendment, modification, or other change(s) to this Agreement shall be binding upon the parties unless in writing and formally executed by all of the parties.

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: 4.10.18

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


By: *Katie Smith*

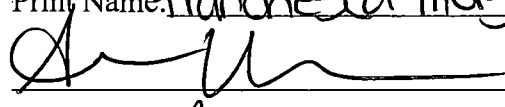
Deputy Clerk

Katie Smith

Print Name: _____

WITNESSES:

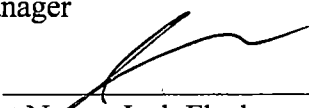

Print Name: Franchesca Morganti


Print Name: Amber Wood

"OWNER"

**LAKE BUENA VISTA INVESTMENTS
LLC**, a Florida limited liability company

By: JAFREJO-CP Investments LLC, a
Florida limited liability company,
Manager

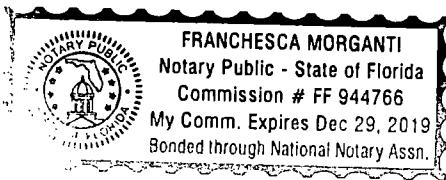
By: 
Print Name: Jack Flechner, Esq.
Title: Manager


Date: 3/13/18

**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Jack Flechner, as Manager JAFREJO-CP Investments, LLC, a Florida limited liability company, as Manager of Lake Buena Vista Investments LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 13 day of March, 2018. 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 13 day of March, 2018.




NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____



**JOINDER AND CONSENT TO
PROPORTIONATE SHARE AGREEMENT**

The undersigned hereby certifies that it is the holder of the following Insured Mortgage and Security Agreement:

Mortgage and Security Agreement executed as of June 15, 2016 by and between TOUCHMARK NATIONAL BANK, as Mortgagee, and LAKE BUENA VISTA INVESTMENTS LLC, as Mortgagor, recorded July 11, 2016 as Document No. 20160352269 of the Public Records of Orange County, Florida in the original principal amount of \$5,000,000.00; Assignment of Leases and Rents by and between Touchmark National Bank, as Assignee, and Lake Buena Vista Investments LLC, as Assignor, dated as of June 15, 2016 and recorded July 11, 2016 as Document No. 20160352270 of the Public Records of Orange County, Florida; and UCC-1 Financing Statement naming Lake Buena Vista Associates, LLC, as Debtor, and Touchmark National Bank, as Secured Party, recorded July 11, 2016 as Document No. 20160352271 of the Public Records of Orange County, Florida (together the “Loan Documents”) and the terms and conditions thereof


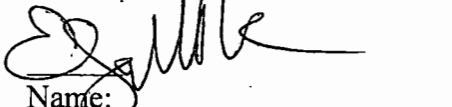
upon the property presently owned by Lake Buena Vista Investments LLC as described in the Loan Documents (hereinafter the “**Property**”).

The undersigned hereby joins in, and consents to, the recording of the Proportionate Share Agreement For Lake Buena Vista Village Phase 2 – Candlewood Suites (AKA Delores PD) (the “**Agreement**”), and agrees that its above-referenced Loan Documents, as they have been, and may be, modified, amended, and assigned from time to time, shall be subordinated to the Agreement, as said Agreement may be modified, amended, and assigned from time to time.


[Signatures follow on next page.]

IN WITNESS WHEREOF, the Issuer has executed this Joinder and Consent in manner and form sufficient to bind it.

Signed, sealed and delivered
in the presence of:

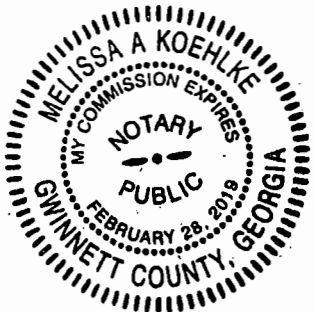

Name: _____

Name: _____

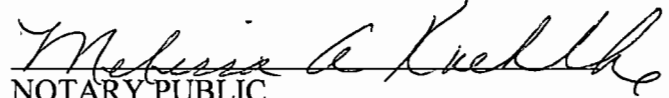
TOUCHMARK NATIONAL BANK, a
national banking association

By: 
Print Name: Tran Doragh
Print Title: VP

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 14 day of March, 2018, by Tran Doragh, as VP of TOUCHMARK NATIONAL BANK, a national banking association, on behalf of the association. He/She is personally known to me or has produced _____ as identification.




NOTARY PUBLIC

Print Name: Melissa A Koehlke

My Commission Expires: 2-28-19

Exhibit "A"

"Lake Buena Vista Village Phase 2 – Candlewood Suites (AKA Delores PD)"

Project Location Map

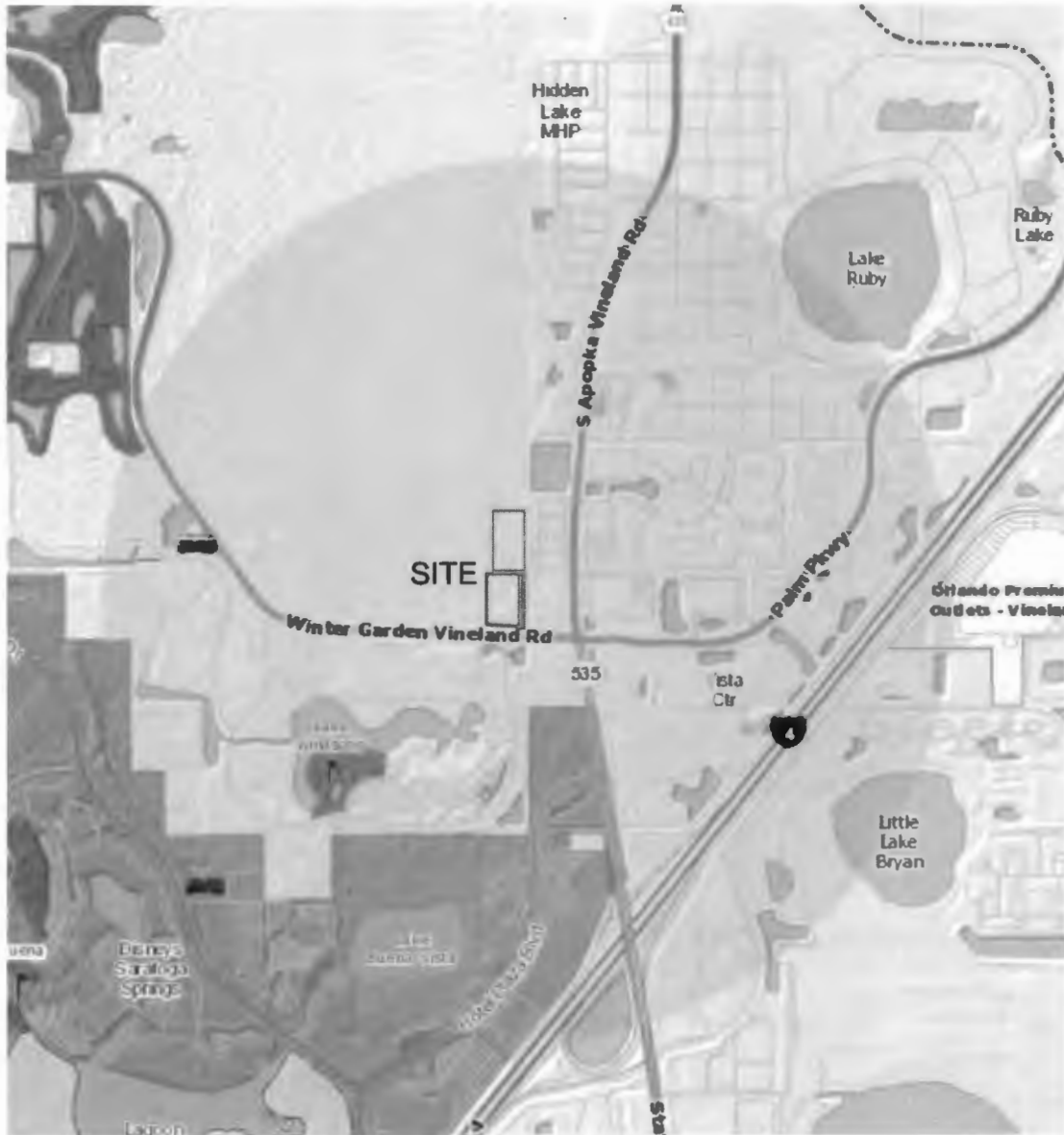


Exhibit "B"

"Lake Buena Vista Village Phase 2 – Candlewood Suites (AKA Delores PD)"

Parcel IDs: 21-24-28-0000-00-020, 21-24-28-0000-00-006, and 21-24-28-5844-00-320

Legal Description:

A TRACT OF LAND LYING IN SECTION 21, TOWNSHIP 24 SOUTH, RANGE 28 EAST,
DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION 21, FOR A POINT OF REFERENCE; THENCE RUN SOUTH 00°04'25" WEST, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 21, FOR A DISTANCE OF 677.51 FEET TO THE INTERSECTION OF SAID EAST LINE WITH THE EASTERLY EXTENSION OF THE SOUTH LINE OF LOT 1, ALSO BEING THE NORTH LINE OF LOT 32, MUNGER AND COMPANY, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK E, PAGE 22 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE RUN SOUTH 00°04'25" WEST, CONTINUING ALONG SAID EAST LINE OF THE NORTHEAST QUARTER OF SECTION 21, ALSO BEING THE WEST LINE OF BRINKER FLORIDA INC, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 34, PAGE 63 OF SAID PUBLIC RECORDS, AND THE WEST LINE OF LIVENGOOD PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK Q, PAGE 64 OF SAID PUBLIC RECORDS, FOR A DISTANCE OF 1228.75 FEET TO THE NORTH RIGHT-OF-WAY LINE OF COUNTY ROAD 535 (WINTER GARDEN-VINELAND ROAD), AS RECORDED IN OFFICIAL RECORDS BOOK 5029, PAGE 3387 AND OFFICIAL RECORDS BOOK 5185, PAGE 3066 OF SAID PUBLIC RECORDS; THENCE RUN NORTH 84°40'54" WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, FOR A DISTANCE OF 110.07 FEET; THENCE RUN NORTH 87°24'24" WEST, CONTINUING ALONG SAID NORTH RIGHT-OF-WAY LINE, FOR A DISTANCE OF 309.12 FEET; THENCE RUN NORTH 00°13'03" WEST, DEPARTING SAID NORTH RIGHT-OF-WAY LINE, FOR A DISTANCE OF 527.92 FEET TO THE NORTH LINE OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 21; THENCE RUN SOUTH 89°52'58" EAST, ALONG SAID NORTH LINE, FOR A DISTANCE OF 84.26 FEET TO A THE INTERSECTION OF SAID NORTH LINE WITH THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 31 OF SAID MUNGER AND COMPANY, ALSO BEING THE WEST LINE OF THE AFORESAID LOT 32; THENCE RUN NORTH 00°01'32" EAST, ALONG SAID EAST LINE OF LOT 31, ALSO BEING SAID WEST LINE OF LOT 32, FOR A DISTANCE OF 676.82 FEET TO THE NORTHEAST CORNER OF SAID LOT 31, ALSO THE NORTHWEST CORNER OF SAID LOT 32 AND THE SOUTHWEST CORNER OF THE AFORESAID LOT 1; THENCE RUN SOUTH 89°59'58" EAST, ALONG THE SOUTH LINE OF SAID LOT 1 AND THE EASTERLY EXTENSION THEREOF, ALSO BEING THE NORTH LINE OF SAID LOT 32 AND THE EASTERLY EXTENSION THEREOF, FOR A DISTANCE OF 337.43 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OF LAND LIES IN ORANGE COUNTY, FLORIDA AND CONTAINS 10.422 ACRES OF LAND MORE OR LESS.

Updated: 2/12/16

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
Vineland Ave.	Winter Garden Vineland Rd	Little Lake Bryan Pkwy	0.87	E	800	1700	900	101	799	\$9,157,964	\$11,452

	Date	Project	Project Trips	Prop Share
Existing	Feb-13	Existing plus Committed	101	\$1,157,662
	Backlogged Totals:		101	\$1,157,662
Proposed	Mar-17	Lake Buena Vista Hotel	3	\$34,386
	Totals:		104	\$1,192,048