



Interoffice Memorandum

AGENDA ITEM

December 17, 2018

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

FROM: James E. Harrison, Esq., P.E., Chairman
Roadway Agreement Committee
(407) 836-5610

SUBJECT: January 15, 2019 – Consent Item
Second Amendment to Transportation Impact Fee Credit Agreement
Tupperware Heights PD
(Orange Avenue)

The Roadway Agreement Committee has reviewed a Second Amendment to Transportation Impact Fee Credit Agreement for Tupperware Heights PD ("Second Amendment") by and between Deerfield Land Corporation and Orange County to amend the terms of the Transportation Impact Fee Credit Agreement approved by the Board on March 7, 2017, and recorded at Document #20170129428, as amended. The Second Amendment provides for the adjustment of the completion date for the Roadway Conceptual Analysis from September 1, 2018 to August 31, 2019, and the addition of a Joint Pond Provision to allow the option for a joint-use pond, if County approves.

The Roadway Agreement Committee approved the Second Amendment on November 14, 2018. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

ACTION REQUESTED: Approval and execution of Second Amendment to Transportation Impact Fee Credit Agreement Roadway Conceptual Analysis Tupperware Heights PD Orange Avenue by and between Deerfield Land Corporation and Orange County to extend the date for the completion of the Roadway Conceptual Analysis and to include a provision for the consideration of joint-use ponds. District 4

JEH/HEGB:am
Attachment

BCC Mtg. Date: January 15, 2019

Prepared by and after recording return to:

Thomas M. Roehlk
14901 S. Orange Blossom Trail
Orlando, FL 32837

Tax Parcel I.D. No.: 34-24-29-0000-00-004 and 35-24-29-0000-00-002

**SECOND AMENDMENT TO
TRANSPORTATION IMPACT FEE CREDIT
AGREEMENT**

**ROADWAY CONCEPTUAL ANALYSIS
TUPPERWARE HEIGHTS PD**

ORANGE AVENUE

This Second Amendment (the "Second Amendment"), effective as of the latest date of execution ("Effective Date"), is made and entered into by and between Deerfield Land Corporation ("Owner"), a Delaware corporation, whose mailing address is 14901 S. Orange Blossom Trail, Orlando, Florida 32837, and Orange County, a charter county and political subdivision of the state of Florida ("County"), whose mailing address is c/o Orange County Administrator, Post Office Box 1393, Orlando, Florida 32802-1393.

WITNESSETH:

WHEREAS, Owner and County entered into that certain Transportation Impact Fee Credit Agreement approved by the Orange County Board of County Commissioners ("BCC") on March 7, 2017 and recorded as DOC# 20170129428, in the Public Records of Orange County, Florida (the "Original Agreement"); and

WHEREAS, Owner and County entered into that certain First Amendment to Transportation Impact Fee Credit Agreement approved by the BCC on March 20, 2018 and recorded as DOC# 20180198952, in the Public Records of Orange County, Florida (the “First Amendment”, and together with the Original Agreement, the “Agreement”); and

WHEREAS, Owner is the owner of fee simple title to certain real property, as shown in the Agreement; and

WHEREAS, County and Owner desire to amend certain terms and provisions of the Agreement as set forth below; and

WHEREAS, in all other respects, the original terms of the Agreement shall remain unchanged and in full force and effect.

NOW, THEREFORE, for and in consideration of the above premises, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and County (the “Parties”) agree as follows:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Amendment of Completion Date. Section 2(a) of the Agreement is hereby further amended to reference a date of August 31, 2019, rather than September 1, 2018.

Section 3. Addition of Joint Pond Provisions. Section 2 heading of the Agreement is amended to read “Creation of Roadway Conceptual Analysis Study; Right of Way and Pond(s)”, rather than “Creation of Roadway Conceptual Analysis Study”. Additionally, the following subsection 2(d) is hereby created and added to the Original Agreement.

“Owner may propose joint use ponds. If the County approves such, subject to an agreement acceptable to the County, the pond(s) may be designed, permitted, engineered, and constructed as joint use ponds.”

Section 4. Notice. Any notice delivered with respect to this Second Amendment or the Agreement shall be in writing and shall 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 to such other person as the party shall have specified by written notice to the other party delivered in accordance herewith.

As to Owner: Deerfield Land Corporation
 14901 S. Orange Blossom Trail
 Orlando, FL 32837
 Attention: General Counsel

As to County: Orange County Administrator
 P.O. Box 1393
 201 S. Rosalind Ave
 Orlando, FL 32802-1393

With a copy to: Orange County Community, Environmental,
 and Development Services Department
 Manager, Transportation Planning Division
 Orange County Public Works Complex
 4200 S. John Young Parkway
 Orlando, Florida 32839-9205

Section 5. Covenants Running with the Land. This Second Amendment shall run with the Property and shall be binding upon and shall inure to the benefit and burden of the parties and of the heirs, legal representatives, successors, and assigns of the parties and to any person, firm, corporation, or other entity that may become the successor in interest to the Property.

Notwithstanding the foregoing, however, the authority under Section 3 of the Agreement to instruct County to make deductions from Owner's road impact fee account shall remain with Owner unless expressly assigned in writing to another by Owner.

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

Section 7. *Applicable Law.* This Second Amendment and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

Section 8. *Time is of the Essence.* Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Second Amendment and in the Agreement.

Section 9. *Further Documentation.* The parties agree that at any time following a request therefor by the other party, each shall execute and deliver to the other party such further documents and instruments reasonably necessary to confirm and/or effectuate the obligations of either party hereunder and the consummation of the transactions contemplated hereby.

Section 10. *Limitation of Remedies.* County and Owner expressly agree that the consideration, in part, for each of them entering into this Second Amendment is the willingness of the other to limit the remedies for all actions arising out of or in connection with this Second Amendment. Accordingly, the remedies available to each party shall be as stated in the Agreement.

Section 11. *Amendments.* No amendment, modification, or other change to this Second Amendment or the Agreement shall be binding upon the parties unless in writing and executed by all the parties hereto.

Section 12. Counterparts. This Second Amendment may be executed in up to three (3) counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Byronne Brooks*
for Jerry L. Demings
Orange County Mayor
Date: 15 January 2019

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

By: *Katie Smith*
Deputy Clerk

Printed name: Katie Smith

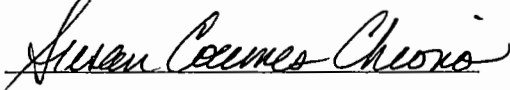
DEERFIELD LAND CORPORATION, a Delaware
corporation

By: 

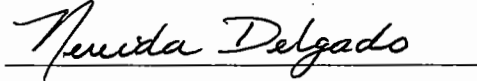
Thomas M. Roehl
Vice President & Secretary

Date: 12/7/18

WITNESSES:



Print Name: Susan Coumes Chiono

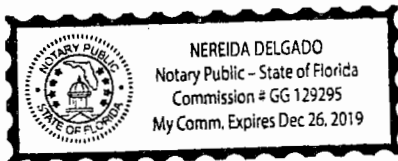


Print Name: Nereida Delgado

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Thomas M Roehl, as Vice President & Secretary of Deerfield Land Corporation, a Delaware Corporation, who is known by me to be the person described herein and who executed the foregoing, this 7th day of December, 2018. S/he is personally known to me or has produced as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 7th day of December, 2018.




Notary Public

Print Name: Nereida Delgado

My Commission Expires: December 26, 2019