




Interoffice Memorandum

AGENDA ITEM

April 3, 2019

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

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

SUBJECT: April 23, 2019 – Consent Item  
Proportionate Share Agreement For Flamingo Crossings LLC Housing - West  
Avalon Road (CR 545)

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Flamingo Crossings LLC Housing - West ("Agreement") by and among Flamingo Crossings, LLC, ACC OP DCP LLC, and Orange County for a proportionate share payment in the amount of \$1,508,417. 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 90 days of the effective date of this Agreement.

The Agreement follows the recommendation of the Roadway Agreement Committee providing for the mitigation of road impacts for 14 deficient trips on the road segment of Avalon Road from US 192 to Hartzog Road in the amount of \$10,651 per trip, and 33 deficient trips on the road segment of Avalon Road from Hartzog Road to Flamingo Crossings Boulevard in the amount of \$41,191 per trip.

The Roadway Agreement Committee approved the Proportionate Share Agreement on April 3, 2019. 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 Flamingo Crossings LLC Housing - West Avalon Road (CR 545) by and between Flamingo Crossings, LLC, ACC OP DCP LLC, and Orange County for a proportionate share payment in the amount of \$1,508,417. District 1**

JEH/HEGB:aw  
Attachment

BCC Mtg. Date: April 23, 2019

This instrument prepared by  
and after recording return to:

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

Parcel ID Number(s):  
21-24-27-0000-00-061

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

**PROPORTIONATE SHARE AGREEMENT FOR  
FLAMINGO CROSSINGS LLC HOUSING - WEST**

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**AVALON ROAD (CR 545)**

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 FLAMINGO CROSSINGS, LLC, a Florida limited liability company ("**FCLLC**"), whose mailing address is 1375 East Buena Vista Drive, Lake Buena Vista, Florida 32830; ACC OP DCP LLC, a Delaware limited liability company ("**ACCLLC**"), whose mailing address is 12700 Hill Country Boulevard, Suite T-200, Austin, Texas, 78738 (FCLLC and ACCLLC are collectively referred to herein as "**Owner**"), 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, FCLLC 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, pursuant to a seventy-five (75) year ground lease to be entered into between FCLLC and ACCLLC, ACCLLC will be ground leasing the Property from FCLLC; 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 Avalon Road (C.R. 545); and

WHEREAS, ACCLLC intends to develop the Property as 1,291 apartment units, referred to and known as Flamingo Crossings LLC Housing - West (the "**Project**"); and

WHEREAS, FCLLC received a letter from County dated March 21, 2019, stating that Owner's Capacity Encumbrance Letter ("**CEL**") application #CEL-18-10-085 for the Project was denied; and

WHEREAS, the Project will generate Fourteen (14) deficient PM Peak Hour trips (the “**Excess Trips 1**”) for the deficient roadway segment on Avalon Road (C.R. 545) from US 192 to Hartzog Road (the “**Deficient Segment 1**”), and Zero (0) PM Peak Hour trips were available on Deficient Segment 1 on the date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated herein; and

WHEREAS, the Project will generate Thirty-Three (33) deficient PM Peak Hour trips (the “**Excess Trips 2**”) for the deficient roadway segment on Avalon Road (C.R. 545) from Hartzog Road to Flamingo Crossings Boulevard (the “**Deficient Segment 2**”), and Zero (0) PM Peak Hour trips were available on Deficient Segment 2 on the date the CEL was denied, as further described in Exhibit “C” attached hereto and incorporated herein; and

WHEREAS the Excess Trips 1 and Excess Trips 2 shall be referred to herein collectively as the Excess Trips; and

WHEREAS, the Deficient Segment 1 and Deficient Segment 2 shall be referred to herein collectively as the Deficient Segments; and

WHEREAS, the Excess Trips will cause the Deficient Segments 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 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 Segments through the current anticipated Project buildout is One Million Five Hundred Eight Thousand Four Hundred Seventeen and 00/100 Dollars (\$1,508,417.00) (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 Segments, as described in Exhibit “C,” totals One Million Five Hundred Eight Thousand Four Hundred Seventeen and 00/100 Dollars (\$1,508,417.00). 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 Segments based upon (i) FCLLC’s Traffic Study titled “FLAMINGO CIP HOUSING - WEST” prepared by TRAFFIC & MOBILITY CONSULTANTS LLC, dated March, 2019 for FLAMINGO

CROSSINGS, 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 March 19, 2019, and is on file and available for inspection with that division (CMS #2018085). 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 Segments 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 ninety (90) days following the Effective Date, either FCCLLC or ACCLLC shall deliver a check to County in the amount of One Million Five Hundred Eight Thousand Four Hundred Seventeen and 00/100 Dollars (\$1,508,417.00) 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 Planning, Environmental, and Development Services Department. Within twenty-one (21) days following its receipt of the PS Payment, if the Property’s future land use designation and zoning are consistent with the Project’s proposed development, County shall issue a CEL sufficient to encumber traffic capacity for the Project, irrespective of any actual traffic deficiency on the Deficient Segments. 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 that the PS Payment has not been paid within ninety (90) days of the Effective Date, one extension of 90 (ninety) days may be granted by the manager of County’s Transportation Planning Division. In the event that the PS Payment has not been paid to County within one hundred eighty (180) days after 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 Segments 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 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 Segments 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:

If to Owner: Flamingo Crossings, LLC  
Team Disney, 4th Floor North  
1375 Buena Vista Drive  
Lake Buena Vista, Florida 32830  
Attn: Vice President, Real Estate

With copy to: Walt Disney World Resort Legal Department  
Team Disney, 4th Floor North  
1375 Buena Vista Drive  
Lake Buena Vista, Florida 32830  
Attn: Assistant Chief Counsel, Real Estate Team

And a copy to: ACC OP DCP LLC  
c/o American Campus Communities  
12700 Hill Country Boulevard  
Suite T-200  
Austin, Texas 78738  
Attn: Vice President

And a copy to: ACC OP DCP LLC  
c/o American Campus Communities  
12700 Hill Country Boulevard  
Suite T-200  
Austin, Texas 78738  
Attn: General Counsel

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

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

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

Orange County Planning, Environmental, and Development  
Services Department  
Manager, Planning Division  
201 South Rosalind Avenue, 2<sup>nd</sup> 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.

**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.

Proportionate Share Agreement, Flamingo Crossings LLC Housing - West  
Flamingo Crossings, LLC for Avalon Road (C.R. 545), 2019

[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: Brynn W. Brooks  
for Jerry L. Demings  
Orange County Mayor

Date: 23 April 2019

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

By: Katie Smith  
Deputy Clerk

Print Name: Katie Smith

**WITNESSES:**

Ashley Chaffin McGhee

Print Name: Ashley Chaffin McGhee

Christie Paschel

Print Name: CHRISTIE PASCHEL

**"OWNER"**

FLAMINGO CROSSINGS, LLC, a Florida  
limited liability company

By: Walt Disney Imagineering Research &  
Development, Inc., a Delaware corporation,  
its Manager

By: Page P. Pierce

Print Name: Page P. Pierce

Title: Vice President

Date: 3.26.2019

**STATE OF FLORIDA  
COUNTY OF ORANGE**

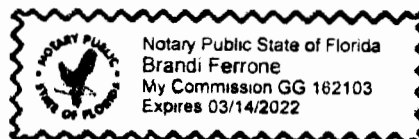
The foregoing instrument was acknowledged before me by Page P. Pierce, as Vice President of Walt Disney Imagineering Research & Development, Inc., a Delaware Corporation, as the Manager of FLAMINGO CROSSINGS, LLC, a Florida limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 26th day of March, 2019. 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 26th day of March, 2019.

Brandi Ferrone  
NOTARY PUBLIC

Print Name: Brandi Ferrone

My Commission Expires: 3/14/2022



WITNESSES:

[Signature]

Print Name: SAM NEWMAN

Bailey J. Martin

Print Name: BAILEY J. MARTIN

"OWNER"

ACC OP DCP LLC, a Delaware limited liability company

By: [Signature]

Print Name: JAMES C. HOPIKE JR.

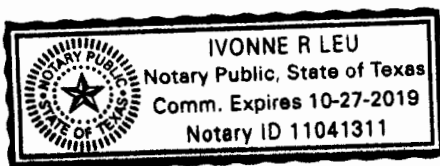
Title: Vice President

Date: 03/26/19

STATE OF TEXAS  
COUNTY OF TRAVIS

The foregoing instrument was acknowledged before me by JAMES C. HOPIKE JR. as Vice President of ACC OP DCP LLC, a Delaware limited liability company, who is known by me to be the person described herein and who executed the foregoing, this 26<sup>th</sup> day of MARCH, 2019. 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 26 day of MARCH, 2019.



Ivonne R. Leu  
NOTARY PUBLIC

Print Name: IVONNE R. LEU

My Commission Expires: 10/27/19

## Exhibit A

**“FLAMINGO CROSSINGS LLC HOUSING - WEST”**

### Project Location Map



**Exhibit "B"**

**"FLAMINGO CROSSINGS LLC HOUSING - WEST"**

Parcel ID: 21-24-27-0000-00-061

**Legal Description:**

A portion of Parcel 1 as described in the Special Warranty Deed recorded in Official Records Book (OR) 10274, Page (PG) 4901 of the public records of Orange County Florida, together with a portion of the Right-of Way for Western Way as recorded in OR 9657, PG 2398 and OR 9836, PG 4845 of said records, all being in Sections 21 and 28 of Township 24 South, Range 27 East in Orange County, Florida, and being more particularly described as follows:

Commence at the South Quarter Corner of said Section 21; thence S89°49'54"W along the South line of the Southwest Quarter of said Section 21 for a distance of 39.31 feet to a point along the boundary of aforesaid Parcel 1; thence along said boundary for the following four (4) courses: continue S89°49'54" W for a distance of 261.02 feet; thence N00°00'00"E for a distance of 358.93 feet; thence N68°45'46"W for a distance of 44.23 feet; thence S51°55'04"W for a distance of 351.54 feet to the Point of Beginning; thence run S 40°17'32"E along said boundary of Parcel 1 for a distance of 208.02 feet to a point along the aforesaid South line of the Southwest Quarter of Section 21; thence S89°49'54"W along said South line for a distance of 179.07 feet to a point on the East line of the West 1/2 of the Northeast 1/4 of the Northeast 1/4 of the Northwest 1/4 of aforesaid Section 28; thence S00°07'29"W along said East line for a distance of 1,325.20 feet to a point on the South line of the Northwest 1/4 of the Northwest 1/4 of said Section 28; thence S89°58'36"W along said South line for a distance of 1,988.94 feet to a point on the West line of the Northwest 1/4 of the Northwest 1/4 of said Section 28; thence N00°08'52"E along said West line for a distance of 1320.16 feet to the Southwest Corner of aforesaid Section 21; thence N00°35'15"E along the West line of the Southwest 1/4 of the Southwest 1/4 of said Section 21 for a distance of 1052.70 feet to a point on the South line of the proposed right-of way for the extension of Western Way; thence S66°04'38"E along said South line for a distance of 548.77 feet to the point of curvature a curve to the left being concave to the Northeast and having a radius of 2,158.48 feet; thence Easterly along said South line and along the arc of said curve through a central angle of 24°05'38" for a distance of 907.68 feet to the point of tangency; thence N89°49'43"E along said South line for a distance of 173.83 feet to a point along the South line of the existing right- of-way for Western Way as described in OR 9657, PG 2398, OR 9836, PG 4845, OR 10170, PG 4299 and OR 10815, PG 4619 of aforesaid public records; thence Easterly along said South line for the following three (3) courses: run S03°54'53" E for a distance of 6.11 feet; thence N86°05'07"E for a distance of 22.85 feet; thence N04°02'59"W for a distance of 4.62 feet to a point along said South line of the proposed right-of way for Western Way; thence N89°49'43"E along said South line of the proposed right-of way, for a distance of 28.34 feet; thence N00°10'17"W along said South line of the proposed right-of way for a distance of 11.33 feet to a point along the South line of said existing right- of-way for Western Way, said point also being on a non-tangent curve to the right being concave to the South and having a radius of 934.00 feet and a chord bearing of N89°16'29"E; thence Easterly along said South line and the arc of said curve, through a central angle of 01°05'31" for a distance of 17.80 feet to the point of tangency; thence N89°49'14"E along said South line, for a distance of 28.71 feet; thence departing said South line run S46°26'37"E for a distance of 43.38 feet to a point along the boundary of Parcel 1 of a Conservation Easement described in OR 9630, PG 3791 of the aforesaid public records; thence along said boundary of the Easement for the following four (4) courses: continue S46°26'37"E for a distance of 65.40 feet; thence S34°30'31"E for a distance of 120.76 feet; thence S32°21'38"E for a distance of 271.63 feet; thence S40°17'32"E for a distance of 115.45 feet to the Point of Beginning.

Exhibit "C"

"FLAMINGO CROSSINGS LLC HOUSING - WEST"

DEFICIENT SEGMENT 1

Log of Project Contributions  
 Avalon Road (C.R. 545) (US 192 to Hartzog Road)

Log of Project Contributions  
 Avalon Rd (US 192 to Hartzog Rd)

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
Avalon Rd	US 192	Hartzog Rd	0.98	E	880	Wider from 2 to 4 lanes	2000	1120	\$11,024,981	\$10,851

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
Avalon Rd	US 192	Hartzog Rd	0.98	E	880	376	2000	1120	\$4,004,591

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
Avalon Rd	US 192	Hartzog Rd	0.98	E	880	2000	1120	376	744	\$7,924,175	\$10,851

Updated: 3/22/19

Log of Project Contributions			
	Date	Project	Prop Share
Existing	Nov-17	Existing plus Committed	381
	Nov-17	CHS Hospital	5
	Apr-18	Bali Boulevard	10
Backlogged Totals:			376
Proposed	Mar-19	Flamingo Crossings LLC Housing - West	14
Totals:			390

