



Interoffice Memorandum

AGENDA ITEM

February 10, 2021

TO: Mayor Jerry L. Demings
—AND—
County Commissioners

FROM: Jon V. Weiss, P.E., Chairman
Roadway Agreement Committee

SUBJECT: March 9, 2021 – Consent Item
Proportionate Share Agreement for Reserve at Park Manor
Lake Underhill Road

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Reserve at Park Manor Lake Underhill Road ("Agreement") by and between Reserve at Park Manor, LLC and Orange County for a proportionate share payment in the amount of \$59,961. 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 two deficient trips on the road segments of Lake Underhill Road from Dean Road to Rouse Road in the amount of \$18,304 per trip, and one deficient trip on the road segments of Lake Underhill Road from Madeira Avenue to Dean Road in the amount of \$23,353 per trip.

The Roadway Agreement Committee recommended approval on January 6, 2021. 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 407-836-5393.

ACTION REQUESTED: Approval and execution of Proportionate Share Agreement for Reserve at Park Manor Lake Underhill Road by and between Reserve at Park Manor, LLC and Orange County for a proportionate share payment in the amount of \$59,961. District 4

JVW/HEGB/fb
Attachment

BCC Mtg. Date: March 9, 2021

This instrument prepared by
and after recording return to:

DDCM
Neil Klaproth
1323 Brookhaven Drive
Orlando, Florida 32803

Parcel ID Number: 29-22-31-0000-00-007 and 29-22-31-0000-00-012

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

**PROPORTIONATE SHARE AGREEMENT FOR
RESERVE AT PARK MANOR**

LAKE UNDERHILL ROAD

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 Reserve at Park Manor, LLC a Florida Limited Liability Company (“**Owner**”), whose principal place of business is 3601 Rigby Road Suite 300, Miamisburg, Ohio 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 4, within the County’s Urban Service Area, and the proceeds of the PS Payment, as defined herein, will be allocated to Lake Underhill Road; and

WHEREAS, Owner intends to develop the Property as 32 Single Family Homes, referred to and known as Reserve at Park Manor (the “**Project**”); and

WHEREAS, Owner received a letter from County dated December 22, 2020, stating that Owner’s Capacity Encumbrance Letter (“**CEL**”) application #20-10-078 for the Project was denied; and

WHEREAS, the Project will generate two deficient PM Peak Hour trips (the “**Excess Trips 1**”) for the deficient roadway segment on Lake Underhill Road from Dean Road to Rouse Road (the “**Deficient Segment 1**”), and zero 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 one deficient PM Peak Hour trip “**Excess Trip 2**” for the deficient roadway segment on Lake Underhill Road from Madeira Avenue to Dean Road, the “**Deficient Segment 2**”, and zero 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 Trip 1 and Excess Trip 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 fifty-nine thousand nine hundred sixty-one and 00/100 dollars (\$59,961.00) 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 fifty-nine thousand nine hundred sixty-one and 00/100 dollars (\$59,961.00). 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 will constitute the Project’s impact on the aforementioned Deficient Segments based upon (i) Owner’s Traffic Study titled “Lake Underhill Study” the in-house study was prepared by Orange County’s Transportation Planning Division, dated December 14, 2020 for Reserve at Park Manor (the “**Traffic Study**”), which is incorporated herein by this reference, and (ii) upon the calculations described in Exhibit “C.” The Traffic Study is on file and available for inspection with that division CMS #2020-078. 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, Owner shall deliver a check to County in the amount of fifty-nine thousand nine hundred sixty-one and 00/100 dollars (\$59,961.00) 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 Owner has not paid the PS Payment within ninety (90) days of the Effective Date, one extension of ninety (90) days may be granted by the manager of County's Transportation Planning Division. In the event Owner has not paid the PS Payment 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 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 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. Additionally, 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: Reserve at Park Manor, LLC
 Attn: Aaron Matson
 3601 Rigby Road, Suite 300
 Miamisburg, Ohio 45342

With copy to: DDCM
 Attn: Neil Klaproth
 1323 Brookhaven Drive
 Orlando, Florida 32803

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, 2nd Floor
Orlando, Florida 32801

Orange County
Planning, Environmental, and Development Services Department
Manager, Transportation Planning Division
4200 South John Young Parkway, 2nd Floor
Orlando, Florida 32839

Orange County
Planning, 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. Termination. In the event either (i) Owner has not paid the PS Payment to County within one hundred eighty (180) days after the Effective Date, as contemplated in Subsection 2(b), or (ii) Owner has timely paid the PS Payment to County and the Project has been constructed on the Property pursuant to a County building permit, this Agreement shall automatically terminate and thereafter be null and void for all purposes.

Section 14. 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]

Proportionate Share Agreement, Reserve at Park Manor
Reserve at Park Manor, LLC for Lake Underhill Road 2021

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

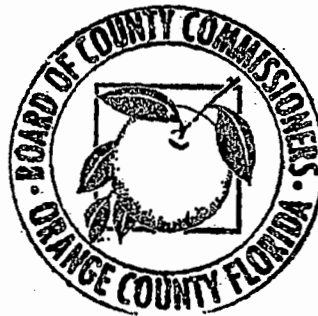
By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: MAR 09 2021

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

By: *Katie Smith*
Deputy Clerk

Print Name: Katie Smith



WITNESSES:

Mandy LeBeau

Print Name: Mandy LeBeau

Teri Frantz

Print Name: Teri Frantz

"OWNER"

Reserve at Park Manor, LLC, a Florida
Limited Liability Company

By: Aaron Matson

Print Name: Aaron Matson

Title: Manager

Date: 1/11/21

STATE OF: Ohio

COUNTY OF: Montgomery

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 11 day of January, 2021, by Aaron Matson, as of Manager of Reserve at Park Manor, LLC, a Florida Limited Liability Company, on behalf of such Corporation, who [☒] is personally known to me or [☐] has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 11 day of January, 2021.

(Notary Stamp)

Mandy LeBeau

Signature of Notary Public

Print Name: Mandy LeBeau

Notary Public, State of: _____

Commission Expires: _____



MANDY LeBEAU, Notary Public
In and for the State of Ohio
My Commission Expires Aug. 29, 2025

Exhibit A

“RESERVE AT PARK MANOR”

Project Location Map



Exhibit "B"

"RESERVE A PARK MANOR"

Parcel ID: 29-22-31-0000-00-007 AND 29-22-31-0000-00-012

Legal Description:

A PORTION OF SECTION 29, TOWNSHIP 22 SOUTH, RANGE 31 EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF THE SOUTHWEST ONE-QUARTER, OF THE NORTHWEST-ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 29; THENCE NORTH 89°45'08" EAST, ALONG THE NORTH LINE OF THE SOUTHWEST ONE-QUARTER, OF THE NORTHWEST-ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 29, A DISTANCE OF 639.99 FEET TO THE NORTHEAST CORNER OF THE SOUTHWEST ONE-QUARTER, OF THE NORTHWEST-ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 29,

THENCE SOUTH 00°21'15" WEST, ALONG THE EAST LINE OF THE SOUTHWEST ONE-QUARTER, OF THE NORTHWEST-ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 29, A DISTANCE OF 672.74 FEET, TO A POINT ON THE NORTH BOUNDARY OF "HUNTRIDGE UNIT TWO", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 29 PAGE 107 OF THE PUBLIC RECORDS OF ORANGE COUNTY FLORIDA; THENCE SOUTH 89°48'46" WEST, ALONG SAID LINE, 641.43 FEET TO THE SOUTHWEST CORNER, OF THE SOUTHWEST ONE-QUARTER, OF THE NORTHWEST-ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 29; THENCE NORTH 00°28'40" EAST, ALONG THE WEST LINE OF THE OF THE SOUTHWEST ONE-QUARTER, OF THE NORTHWEST-ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 29, A DISTANCE OF 672.08 FEET TO THE POINT OF BEGINNING. SAID LANDS ARE COINCIDENT WITH THE CORRESPONDING BOUNDARIES OF "PARK MANOR ESTATES UNIT TEN" AS SHOWN ON THE PLAT, AS RECORDED IN PLAT BOOK 4 PAGE 60 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, SAID LANDS CONTAIN 9.88 ACRES.

Exhibit "C"

"RESERVE AT PARK MANOR"

DEFICIENT SEGMENT 1

Log of Project Contributions
Lake Underhill Rd (Dean Rd to Rouse 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
Lake Underhill Rd	Dean Rd	Rouse Rd	1.45	E	880	Widen from 2 to 4 lanes	2000	1120	\$20,400,736	\$18,304

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
Lake Underhill Rd	Dean Rd	Rouse Rd	1.45	E	880	134	2000	1120	\$2,452,647

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
Lake Underhill Rd	Dean Rd	Rouse Rd	1.45	E	880	2000	1120	134	966	\$18,047,089	\$18,304

Updated: 12/14/20

Log of Project Contributions

	Date	Project	Project Trips	Prop Share
Existing	Jan-18	Existing Plus Committed	83	\$1,292,042
	May-14	Eastmar Commons	29	\$451,751
	May-17	Verona Subdivision	2	\$36,608
	Feb-18	Dean Road Storage	1	\$18,304
	Apr-18	Amazing Explorers Academy	9	\$150,759
	Oct-18	Lake Underhill Self Storage	2	\$33,602
	Mar-19	Plunk Property	3	\$50,253
	Apr-19	River Run	3	\$50,253
	May-19	Orlando Bilingual Montessori School	2	\$33,602
		Backlogged Totals:	134	\$2,117,874
Proposed	Nov-20	Reserve at Park Manor	2	\$36,608
				\$0
				\$0
				\$0
				\$0
		Totals:	136	\$2,154,482

Exhibit "C"

"RESERVE AT PARK MANOR"

DEFICIENT SEGMENT 2

Log of Project Contributions
Lake Underhill Rd (Madeira Ave to Dean 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
Lake Underhill Rd	Madeira Ave	Dean Rd	1.30	E	880	Widen from 2 to 4 lanes	2000	1120	\$28,155,947	\$23,353

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
Lake Underhill Rd	Madeira Ave	Dean Rd	1.30	E	880	98	2000	1120	\$2,288,567

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
Lake Underhill Rd	Madeira Ave	Dean Rd	1.30	E	880	2000	1120	98	1022	\$23,868,480	\$23,353

Updated: 12/14/20

Log of Project Contributions

	Date	Project	Project Trips	Prop Share
Existing	Jan-18	Existing plus Committed	80	\$1,888,240
	Apr-18	Verona Subdivision	3	\$70,056
	Jan-18	Dean Road Storage	1	\$23,353
	Mar-19	Punk Property	3	\$70,056
	Apr-19	River Run	0	\$210,177
	Apr-19	Orlando Bilingual Montessori School	2	\$42,744
				\$0
Backlogged Totals:			98	\$2,284,632
Proposed	Nov-20	Reserve at Park Manor	1	\$23,353
				\$0
				\$0
				\$0
				\$0
Totals:			99	\$2,307,985