



Interoffice Memorandum

June 14, 2013

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

JUL 16 2013 *NPIBS*

TO: Mayor Teresa Jacobs
and the Board of County Commissioners

FROM: Mark V. Massaro, P.E., Director, Public Works Department *M*

CONTACT PERSON: Renzo Nastasi, AICP, Manager *RN*
Transportation Planning Division

PHONE NUMBER: (407) 836-8072

SUBJ: Proportionate Share Agreement for Waterford Oaks PD Phase 1 Woodbury Road: From Waterford Lakes Parkway to Colonial Drive

Pursuant to Section 163.3180(5)(h)(3), Florida Statutes, an applicant may mitigate capacity deficiencies by entering into a Proportionate Share Agreement and contributing to a proportionate share payment. The Agreement (Waterford Oaks PD Phase 1) follows the recommendations of the Concurrency Review Committee providing for the mitigation of road impacts on Woodbury Road.

The proportionate share fee for Waterford Oaks PD Phase 1 amounts to \$20,193.

Action Requested: Approval of Proportionate Share Agreement for Waterford Oaks PD Phase 1 Woodbury Road: From Waterford Lakes Parkway to Colonial Drive by and among Lincoln B. Taylor, individually, Robert A. and June Senay, as husband and wife, and Lucinda Idarolla, individually and Orange County, Florida regarding a proportionate share payment in the amount of \$20,193. District 4.

MM/RN/hegb

III 16 2013 NP/BS

This instrument prepared by
and after recording returned to:
Mohammed N. Abdallah, PE
Traffic & Mobility Consultants, LLC
1507 S. Hiawasse Road, Suite 212
Orlando, Florida 32835

**PROPORTIONATE SHARE AGREEMENT FOR
WATERFORD OAKS PD PHASE 1
Woodbury Road: From Waterford Lakes Parkway to Colonial Drive**

This Proportionate Share Agreement (the "Agreement") is made and entered into by and between Lincoln B. Taylor, individually, Robert A. and June Senay, as husband and wife, and Lucille Idarolla, individually, (each individually an "Owner" and collectively, the "Owners") and ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida (the "County").

WHEREAS, the Owners are the owners 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 # 4 and is within the County's Urban Service Area ; and

WHEREAS, the Owners intend to develop the Property as a commercial site with 13,600 square feet of high-turnover restaurant space (the "Project"); and

WHEREAS, the Owners received a letter from the County dated April 9, 2013 stating that the Owners' Capacity Encumbrance Letter ("CEL") application #13-023 for the Project was denied; and

WHEREAS, the Project will generate Three (3) deficient PM Peak Hour trips (the "Excess Trips") for the deficient roadway segment on Woodbury Road from Waterford Lakes Parkway to Colonial Drive (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" 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)(3), Florida Statutes (2012), the Owners must provide the County with proportionate share mitigation for the Excess Trips; and

WHEREAS, the Owners and the 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 Twenty Thousand One Hundred Ninety Three and No/100 Dollars (\$20,193.00) (the “**PS Payment**”).

WHEREAS, County and Owners desire to set forth certain terms, conditions, and agreements between the parties 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 the Owners and the 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 Twenty Thousand One Hundred Ninety Three and No/100 Dollars (\$20,193.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes; the Memorandum of such Proportionate Share Calculation is attached hereto as Exhibit “C,” and incorporated herein by this reference. The Owners and the County agree that the Excess Trips constitute the Project’s impact on the aforementioned Deficient Segment based upon the Owners’ Traffic Study dated March 15, 2013. The Owners and the County further acknowledge and agree that the PS Payment as set forth above shall be the final and binding calculation of the amount the Owners are 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 Owners subsequently increase the number of units (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. The Owners and the County further acknowledge and agree that the calculation of and agreement on 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 (as defined in Section 12 hereof) of this Agreement, the Owners shall deliver a check to the County in the amount of Twenty Thousand One Hundred Ninety Three and No/100 Dollars (\$20,193.00) 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 the County’s receipt of the PS Payment, the 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 Owners shall reserve the encumbered trips as provided in Section 30-591 of the County Code. An amount equal to the PS Payment shall be applied to 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 Owners have 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 or square footage, as applicable, could result in an increase in trips on the Deficient Segment or other segments within the Concurrency Road Network. The Owners understand and agree that they are precluded from asserting that those additional trips are vested or otherwise permitted under this Agreement. In addition, the Owners understand and agree that any such changes resulting in an increase in trips may cause this Agreement to be null and void, or may require the application for and execution of an additional Proportionate Share Agreement for the number of increased trips.

(e) *Satisfaction of Transportation Improvement Requirements.* The County hereby acknowledges and agrees that, based upon the Owners' commitment to pay the PS Payment as required herein, in the absence of a change in the Project increasing the number of trips as set forth in subparagraph 2(d) above, the Owners 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 the jurisdiction of the County through buildout of the Project. Owners 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, Owners shall be required to obtain a Capacity Reservation Certificate prior to the expiration of Owners' Capacity Encumbrance Letter and shall be required to maintain the validity of Capacity Reservation Certificate in accordance with its terms. Nothing herein shall be construed to exempt the Owners from meeting the requirements of all other applicable laws, regulations, and County Code sections or from making the required payment of road impact fees applicable to the Project, subject to credits as set forth in Section 3 below.

Section 3. Road Impact Fee Credits. The County and the Owners agree that the Owners shall be entitled to receive road impact fee credits on a dollar for dollar basis in an amount up to, but not exceeding the amount of, the PS Payment in accordance with Section 163.3180, Florida Statutes, and as more particularly described in Exhibits "B" and "C" attached hereto. The 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 Owners in connection with the issuance of a Capacity Reservation Certificate as contemplated in Section 2 above. In no event shall Owners receive credits in excess of the PS Payment and in the event the PS Payment exceeds either the applicable road impact fees or

capacity reservation fees, as the case may be, the Owners shall not be entitled to a refund for the amount of the PS Payment in excess of such road 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 Owners: Mr. Lincoln Taylor
3302 Coronet Avenue
Orlando, Florida 32833

Mr. Robert Senay and Mrs. June Senay
1538 Indianhead Trail
Orlando, Florida 32828

Ms. Lucille Idarola
2495 SW Centerville Avenue
Fort White, Florida 32083

With copy to: Mr. Joe Schuemann
Bluerock Real Estate Services, LLC
8998 Gladin Court
Orlando, Florida 32819

Mr. Mohammed Abdallah, PE
Traffic & Mobility Consultants, LLC
1507 S. Hiawasse Road, Suite 212
Orlando, Florida 32835

As to County: Orange County Administrator
201 South Rosalind Avenue, 5th Floor
Orlando, Florida 32801

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 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 Owners 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 Official Records of Orange County, Florida, at Owners' expense, within ten (10) business days after the Effective Date of this Agreement (as defined in Section 12 below).

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 Owners 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 be in the Circuit Court for 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 fees.

Section 11. Construction of Agreement; Severability. Captions of the Sections and Subsections of this Agreement are for convenience and reference only, and the 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. Effective Date. The effective date of this Agreement (the "Effective Date") shall be the date when the last one of the parties has properly executed this Agreement as determined by the date set forth immediately below their respective signatures.

Section 13. Amendments. No amendment, modification or other changes to this Agreement shall be binding upon the parties unless in writing executed by all of the parties.

Section 14. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute duplicates of 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.

"COUNTY"

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: 

Tereza Jacobs

Orange County Mayor


Date: 7.16.13



ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: 

Deputy Clerk

"WATERFORD OAKS PD PHASE 1"

WITNESSES:

Joseph Schueneman
Print Name: Joseph Schueneman

Audrey Bryson
Print Name: Audrey Bryson

"OWNER"

LINCOLN B. TAYLOR, individually

By: Lincoln B. Taylor

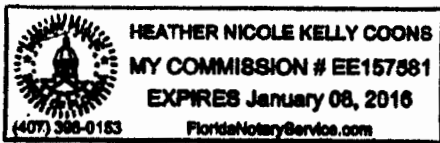
Print Name: Lincoln B. Taylor, individually

Date: 5/13/2013

**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by LINCOLN B. TAYLOR, individually, who is known by me to be the person described herein and who executed the foregoing, this 13 day of May, 2013. He/she is personally known to me or has produced drivers license (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 May, 2013.




Heather Nicole Kelly Coons
NOTARY PUBLIC

Print Name: Heather Nicole Kelly Coons


My Commission Expires: January 08, 2016

"WATERFORD OAKS PD PHASE 1"

WITNESSES:



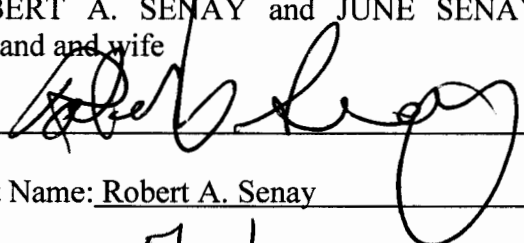
Print Name: Debra M. Camarda



Print Name: Evelyn M. Moninger

"OWNER"

ROBERT A. SENAY and JUNE SENAY,
husband and wife

By: 

Print Name: Robert A. Senay

Date: 5/23/13

By: June Senay

Print Name: June Senay

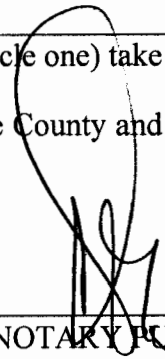
Date: 5/23/13

**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by ROBERT A. SENAY who is known by me to be the person described herein and who executed the foregoing, this 23~~rd~~ day of May, 2013. 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 23~~rd~~ day of May, 2013.





NOTARY PUBLIC

Print Name: Debra M. Camarda

My Commission Expires: 8/10/2015



STATE OF FLORIDA
COUNTY OF ORANGE

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by JUNE SENAY who is known by me to be the person described herein and who executed the foregoing, this 23rd day of May, 2013. 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 23rd day of May, 2013.



[Signature]
NOTARY PUBLIC

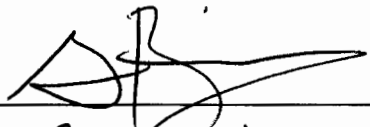
Print Name: Debra M Camarda

My Commission Expires: 8/10/2015

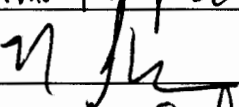
[Handwritten initials]

“WATERFORD OAKS PD PHASE 1”

WITNESSES:



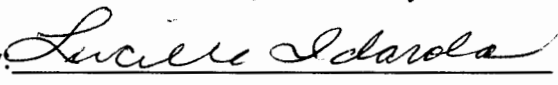
Print Name: Guillermo Rodriguez



Print Name: Joseph Schumann

“OWNER”

LUCILLE IDAROLA, individually

By: 

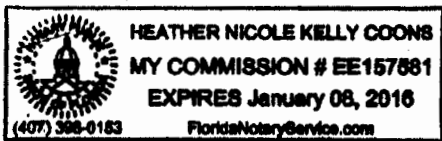
Print Name: Lucille Idarola, individually

Date: May 14, 2013

**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by LUCILLE IDAROLA who is known by me to be the person described herein and who executed the foregoing, this 14th day of May, 2013. He/she is personally known to me or has produced drivers license (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 14 day of May, 2013.




NOTARY PUBLIC

Print Name: Heather Nicole Kelly Coons

My Commission Expires: January 08, 2016

Exhibit "A"

WATERFORD OAKS PD, PHASE 1

Parcel ID: 22-22-31-8469-00-010, 22-22-31-8469-00-020, 22-22-31-8469-00-180,
22-22-31-8469-00-190

Legal Description:

LOT 1 OF SUNSET TERRACE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK X, PAGE(S) 11, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA;

LESS THAT PART DEEDED TO ORANGE COUNTY FOR ROAD RIGHT OF WAY IN BOOK 3355, PAGE 1835, MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 1 OF SUNSET TERRACE, AS RECORDED IN PLAT BOOK X, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, RUN S89°D41'20" W 14.33 FEET ALONG THE SOUTH BOUNDARY OF SAID LOT 1; THENCE N04°D59'06" W 139.30 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 518.00 FEET AND AN INTERSECTION ANGLE OF 01°D27'34"; THENCE RUN NORTHERLY 13.19 FEET ALONG THE ARC OF SAID CURVE TO A POINT ON THE NORTH BOUNDARY OF THE AFORESAID LOT 1, THENCE RUN N89°D41'20" E 24.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE S01°D24'49" E 152.00 FEET TO THE POINT OF BEGINNING. AND

LOT 2 OF SUNSET TERRACE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK X, PAGE(S) 11, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA;

LESS THAT PART DEEDED TO ORANGE COUNTY FOR ROAD RIGHT OF WAY IN BOOK 3355, PAGE 1844, MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 2, SUNSET TERRACE, AS RECORDED IN PLAT BOOK X, PAGE 11, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, RUN S89°D41'20" W 4.83 FEET ALONG THE SOUTH BOUNDARY OF SAID LOT 2; THENCE RUN N04°D59'06" W 152.48 FEET TO A POINT ON THE NORTH BOUNDARY OF SAID LOT 2; THENCE RUN N89°D41'20" E 14.33 FEET TO THE NORTHEAST CORNER OF SAID LOT 2; THENCE RUN S01°D24'49" E 152.00 FEET TO THE POINT OF BEGINNING. AND

LOT 18 OF SUNSET TERRACE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK X, PAGE(S) 11, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; AND

LOT 19 OF SUNSET TERRACE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK X, PAGE(S) 11, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA;

Exhibit "B"

Proportionate Share Summary Calculation

Woodbury Road

Waterford Lakes Parkway to Colonial Drive

$$3 \text{ Trips} \times \$ 6,731.00/\text{Trip} = \$20,193.00$$

Exhibit "C"
Memorandum of Proportionate Share Calculation

PROPORTIONATE FAIR SHARE SUMMARY

Project Name:

Waterford Oaks Phase 1

Development Program:

13,600 square feet of High Turnover – Sit Down Restaurant

Trip Generation:

50 PM Peak hour trips (30 entering / 20 exiting)

Deficient Segment:

Segment 467.3, Woodbury Road – Waterford Lakes Parkway to Colonial Drive

Total Deficient Trips:

3 PM peak hour directional trips

Mitigation Plan:

Improve Woodbury Road to a 4-Lane divided facility with urban cross section.

Estimated Mitigation Project Cost:

\$7,270,000.00

Total Excess Capacity Created by Improvement:

1,080 PM peak hour trips

Total Cost per Trip:

\$6,731.00 / trip

Project Proportionate Share Calculation:

3 PM peak hour trips x \$6,731.00 / trip = \$20,193.00



**Waterford Oaks Phase 1
Project No 12-044 (v1.1)
Executive Summary, ii**