



Interoffice Memorandum

APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS  
JUN 10 2014 NP/BS

May 16, 2014

AGENDA ITEM

TO: Mayor Teresa Jacobs  
-AND-  
Board of County Commissioners  
FROM: James E. Harrison, Esq., P.E., Chairman  
Roadway Agreement Committee  
SUBJECT: June 10, 2014 – Consent Item  
Proportionate Share Agreement

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Town Park Multi-Family Woodbury Road: From Lake Underhill Road to Waterford Lakes Parkway and from Waterford Lakes Parkway to Colonial Drive ("Agreement") by and between UCFP Owner, LLC, a Delaware limited liability company, as Trustee under the BC/CDP Colonial Trust Agreement dated December 15, 2013 ("Owner") and Orange County for a proportionate share payment in the amount of \$46,231. 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 Agreement follows the recommendations of the Roadway Agreement Committee providing for the mitigation of road impacts on Woodbury Road for two deficient trips on the road segment from Lake Underhill Road to Waterford Lake Parkway in an amount of \$26,038 and for three deficient trips on the road segment from Waterford Lakes Parkway to Colonial Drive in an amount of \$20,193 which totals the \$46,231 amount due.

The Roadway Agreement Committee approved the Proportionate Share Agreement on February 19, 2013. 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 of Proportionate Share Agreement for Town Park Multi-Family Woodbury Road: From Lake Underhill Road to Waterford Lakes Parkway and from Waterford Lakes Parkway to Colonial Drive by and between UCFP Owner, LLC and Orange County for a proportionate share payment in the amount of \$46,231. District 5.**

JEH/HEGB:rep

Attachment

**APPROVED**  
**BY ORANGE COUNTY BOARD**  
**OF COUNTY COMMISSIONERS**  
JUN 10 2014 NP/BS

This instrument prepared by  
and after recording return to:  
Mark Mechlowitz  
UCFP Owner, LLC  
880 Glenwood Avenue SE  
Suite H  
Atlanta, GA 30316

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----  
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**PROPORTIONATE SHARE AGREEMENT FOR**  
**Town Park Multi-Family**  
**Woodbury Road: From Lake Underhill Road to Waterford Lakes Parkway**  
**and from Waterford Lakes Parkway to Colonial Drive**

This Proportionate Share Agreement (the "Agreement") is made and entered into by and between UCFP Owner, LLC, a Delaware limited liability company, as Trustee under BR/CDP Colonial Trust Agreement, dated December 15, 2013, (the "**Owner**") and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (the "**County**").

WHEREAS, the Owner is the owner 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 #5, and the proceeds of the PS Payment, as defined herein, will be allocated to Capital Improvements Project number 3075; and

WHEREAS, the Owner intends to develop the Property as a 296 unit multi-family apartment complex to be known as Town Park Multi-Family (the "**Project**"); and

WHEREAS, the Owner received a letter from the County dated February 10, 2014, stating that the Owner's Capacity Encumbrance Letter ("**CEL**") application #13-297 for the Project was denied; and

WHEREAS, the Project will generate 5 deficient PM Peak Hour trips (the "**Excess Trips**") for the deficient roadway segments on Woodbury Road, with 2 trips on the segment from Lake Underhill Road to Waterford Lakes Parkway and 3 trips on the segment from Waterford Lakes Parkway to Colonial Drive (the "**Deficient Segments**"), and 0 PM Peak Hour trips were available on the Deficient Segments on the date the CEL was denied as further described in Exhibit "C" hereto; and

WHEREAS, the Excess Trips will cause the Deficient Segments to operate below adopted Level of Service standards and, therefore, pursuant to Section 163.3180(5)(h), Florida Statutes, the Owner must provide the County with proportionate share mitigation for the Excess Trips; and

WHEREAS, the Owner and the 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 Forty-Six Thousand Two Hundred Thirty-One and No/100 Dollars (\$46,231.00) (the “**PS Payment**”).

WHEREAS, County and Owner 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 Owner 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 Segments described in Exhibit “B,” attached hereto and incorporated herein by reference, totals Forty-Six Thousand Two Hundred Thirty-One and No/100 Dollars (\$46,231.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. The Owner and the County agree that the Excess Trips constitute the Project’s impact on the aforementioned Deficient Segments based upon the Owner’s Traffic Study titled “Transportation Concurrency Analysis prepared by Kimley-Horn and Associates, Inc. on October, 2013 for Halvorsen (the “Traffic Study”); the Memorandum of the Proportionate Share Calculation based on the Traffic Study is attached hereto as Exhibit “C,” and incorporated herein by this reference. The Traffic Study was accepted by the Orange County Transportation Planning Division on November, 2013, and is on file and available for inspection with that Division. The Owner 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 Owner is 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 Segments or actual traffic impacts created by the Project; provided, however, that if Owner subsequently increases 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 Owner 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 Owner shall deliver a check to the County in the amount of Forty-Six Thousand Two Hundred Thirty-One and No/100 Dollars (\$46,231.00) 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 Segments. Within the time frame provided in the CEL, the Owner shall reserve the encumbered trips by obtaining a Capacity Reservation Certificate 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 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 or square footage, as applicable, could result in an increase in trips on the Deficient Segments or other segments within the Concurrency Road Network. The Owner understands and agrees that it is precluded from asserting that those additional trips are vested or otherwise permitted under this Agreement. In addition, the Owner understands and agrees 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, along with any other required documentation, for the number of increased trips.

(e) *Satisfaction of Transportation Improvement Requirements.* The County hereby acknowledges and agrees that, based upon the Owner’s 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 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 the jurisdiction of the County 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 the Owner from meeting the requirements of all other applicable laws, regulations, and County Code sections 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.** The County and the Owner agree that the 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 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 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, the 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 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: Mark Mechlowitz  
UCFP Owner, LLC, as Trustee  
880 Glenwood Avenue SE  
Suite H  
Atlanta, GA 30316

With copy to: Jay R. Jackson  
Kimley-Horn and Associates, Inc.  
3660 Maguire Boulevard, Suite 200  
Orlando, Florida 32803

As to County: Orange County Administrator  
201 South Rosalind Avenue, 5<sup>th</sup> 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, 2<sup>nd</sup> 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 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 Official Records of Orange County, Florida, at Owner's 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 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 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.

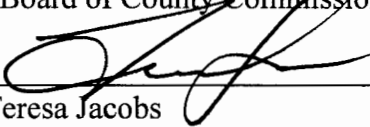
**Section 13. Amendments.** No amendment, modification or other changes to this Agreement shall be binding upon the parties unless in writing executed by all of the parties.

**Section 14. Counterparts.** This Agreement may be executed in the same number of counterparts as there are parties to this Agreement, each of which shall be deemed to be an original and all of which together shall constitute 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:   
Teresa Jacobs  
Orange County Mayor  
Date: JUN 10 2014



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

By:   
Deputy Clerk  
Printed Name: Katie Smith

**WITNESSES:**

Mark Mechlowitz

Print Name: Mark Mechlowitz

Benjamin Field

Print Name: Benjamin Field

**"OWNER"**

UCFP Owner, LLC, a Delaware limited liability company, as Trustee under the BR/CDP Colonial Trust Agreement dated December 15, 2013

By: BR/CDP UCFP VENTURE, LLC, a Delaware limited liability company, Its Manager

By: CDP UCFP Developer, LLC, a Georgia limited liability company, Its Manager

By: Catalyst Development Partners II, LLC, a Georgia limited liability company, as Its Managing Member

By: Robert Meyer  
Robert Meyer, Manager

Date: 5/13/14

STATE OF Georgia  
COUNTY OF Cobb

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Robert Meyer, Manager, who is known by me to be the person described herein and who executed the foregoing on behalf and as Manager of Catalyst Development Partners II, LLC, a Georgia limited liability company, as the Managing Member of CDP UCFP Developer, LCC, a Georgia limited liability company, as Manager of BR/CDP UCFP Venture, LLC, a Delaware limited liability company, as Manager of UCFP Owner, LLC, a Delaware limited liability company, as Trustee under the BR/CDP Colonial Trust Agreement dated December 15, 2013, this 13<sup>th</sup> day of May, 2014. 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.

13<sup>th</sup> WITNESS my hand and official seal in the County and State last aforesaid this 13<sup>th</sup> day of May, 2014.

Sheronda Davis  
NOTARY PUBLIC  
Print Name: Sheronda Davis  
My Commission Expires: 8/21/15



**Exhibit "A"**

**"TOWN PARK MULTI-FAMILY"**

Parcel ID: 22-22-31-0000-00-102

**Legal Description:**

A PORTION OF THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 22 SOUTH, RANGE 31 EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID NORTHEAST 1/4 OF SECTION 22; THENCE RUN S87°58'03"W ALONG THE NORTH LINE OF SAID NORTHEAST 1/4, A DISTANCE OF 45.02 FEET, SAID POINT BEING THE INTERSECTION OF A LINE 45.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 22 AND THE NORTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 22; THENCE CONTINUE ALONG SAID NORTH LINE OF THE NORTHEAST 1/4 S87°58'03"W, A DISTANCE OF 610.44 FEET TO THE POINT OF BEGINNING; THENCE RUN S00°56'14"E, A DISTANCE OF 842.92 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 31.00 FEET; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 98°26'21", AN ARC DISTANCE OF 53.26 FEET; THENCE RUN N82°29'53"W, A DISTANCE OF 41.52 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 109.00 FEET; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 12°16'52", AN ARC DISTANCE OF 23.36 FEET; THENCE RUN S07°30'07"W, A DISTANCE OF 287.92 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF STATE ROAD NUMBER 50, AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP, SECTION 7506-201, PAGE 9; THENCE RUN N82°29'53"W ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 45.95 FEET; THENCE RUN N07°30'07"E, A DISTANCE OF 20.00 FEET; THENCE RUN S82°29'53"E, A DISTANCE OF 2.05 FEET; THENCE RUN N07°30'07"E, A DISTANCE OF 248.38 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 129.00 FEET; THENCE FROM A RADIAL BEARING OF N20°31'47"W, RUN WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 28°01'54", AN ARC DISTANCE OF 63.11 FEET; THENCE RUN N82°29'53"W, A DISTANCE OF 339.09 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 89.50 FEET; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 17°07'59", AN ARC DISTANCE OF 26.76 FEET TO A POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 208.50 FEET; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 18°25'26", AN ARC DISTANCE OF 67.04 FEET; THENCE RUN N00°56'14"W, A DISTANCE OF 844.21 FEET TO THE SAID NORTH LINE OF THE NORTHEAST 1/4; THENCE RUN N87°58'03"E ALONG SAID NORTH LINE A DISTANCE OF 634.12 FEET TO THE POINT OF BEGINNING.

CONTAINING 12.745 ACRES, MORE OR LESS.

**Exhibit "B"**

**"TOWN PARK MULTI-FAMILY"**

**Proportionate Share Summary Calculation**

**Woodbury Road**

Lake Underhill Road to Waterford Lakes Parkway

2 Trips x \$13,019.00/Trip = \$26,038.00

Waterford Lakes Parkway to Colonial Drive

3 Trips x \$6,731.00/Trip = \$20,193.00

**Total \$46,231.00**