



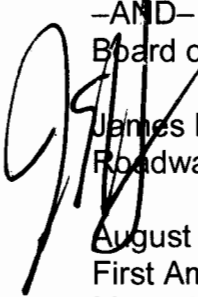
**Interoffice Memorandum**

APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS  
AUG 05 2014 CAS/KH

AGENDA ITEM

July 14, 2014

TO: Mayor Teresa Jacobs  
-AMD-  
Board of County Commissioners

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

SUBJECT: August 5, 2014 – Consent Item  
First Amendment to Proportionate Share Agreement for  
Mango's Tropical Cafe

The Roadway Agreement Committee has reviewed a First Amendment to Proportionate Share Agreement for Mango's Tropical Cafe Sand Lake Road: From Dr. Phillips Boulevard to Turkey Lake Road and from Turkey Lake Road to International Drive ("First Amendment") between Wallack Holdings, LLC ("Owner") and Orange County for an additional proportionate share payment in the amount of \$68,589. 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 a proportionate share payment. The Owner has paid a proportionate share payment in the amount of \$93,678 pursuant to the Proportionate Share Agreement for Mango's Tropical Cafe approved by the Board of County Commissioners on April 22, 2014 and recorded at OR Book/Page 10736/6757. The First Amendment follows the recommendations of the Roadway Agreement Committee providing for the mitigation of additional road impacts on Sand Lake Road for one deficient trip on the road segment from Dr. Phillips Boulevard to Turkey Lake Road and six deficient trips on the road segment from Turkey Lake Road to International Drive for the additional 5,146 square feet of development which has been added to the project through this First Amendment.

The Roadway Agreement Committee approved the First Amendment to Proportionate Share Agreement on July 2, 2014. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

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August 5, 2014 – Consent Item  
First Amendment to Proportionate Share Agreement for Mango's Tropical Cafe

If you have any questions, please feel free to contact me at 407 836-5313.

**ACTION REQUESTED: Approval of First Amendment to Proportionate Share Agreement for Mango's Tropical Cafe Sand Lake Road: From Dr. Phillips Blvd to Turkey Lake Road, and From Turkey Lake Road to International Drive by and between Wallack Holdings, LLC and Orange County for an additional proportionate share payment in the amount of \$68,589. District 6**

JEH/HEB:rep

Attachment

APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS

Prepared by and after recording return to:  
James Edward Cheek, III, Esq.  
Winderweedle, Haines, Ward  
& Woodman, P.A.  
P.O. Box 880  
Winter Park, Florida 32790

AUG 05 2014 CAS/KH

Tax Parcel I.D. No.: 36-23-28-3787-00-020

**FIRST AMENDMENT TO  
PROPORTIONATE SHARE AGREEMENT  
FOR  
MANGO'S TROPICAL CAFE**

**Sand Lake Road: From Dr. Phillips Blvd to Turkey Lake Road, and  
From Turkey Lake Road to International Drive**

This First Amendment (the "First Amendment") is made and entered into by and between WALLACK HOLDINGS, LLC, a Florida limited liability company (the "Owner"), whose mailing address is 900 Ocean Drive, Office 27, Miami Beach, Florida 33139, Attn: Joshua Wallack, and ORANGE COUNTY, a charter county and political subdivision of the state of Florida ("County"), whose mailing address is c/o Orange County Administrator, 201 South Rosalind Avenue, 5th Floor, Orlando, Florida 32801.

**WITNESSETH:**

WHEREAS, County and Owner desire to amend certain terms and provisions of that certain Proportionate Share Agreement for Mango's Tropical Cafe approved by the Orange County Board of County Commissioners ("BCC") on April 22, 2014 and recorded in Official Records Book 10736, Page 6757, in the Public Records of Orange County, Florida (the "Agreement"), to document the changes to the Agreement based on the "Additional Square Footage" and the "Additional PS Payment" (as further defined herein); and

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

WHEREAS, the Owner is the owner of fee simple title to certain real property, as more particularly described as follows:

Lot 2, HOLLYWOOD PLAZA, according to the plat thereof as recorded in Plat Book 36, Page 98, of the Public Records of Orange County, Florida.

(the "Property"); and

WHEREAS, Owner previously sought approval to add 17,725 square feet of retail use to the uses already existing on the Property (the "Original Project"); and

WHEREAS, the Owner received a letter from the County dated March 24, 2014 stating that the Owner's Capacity Encumbrance Letter ("CEL") application #CEL-14-030 for the Original Project was denied; and

WHEREAS, such denial resulted from the determination that certain Excess Trips (as defined in the Agreement) created by the Original Project would cause certain Deficient Segments (as defined in the Agreement) in the roadways to operate below adopted Level of Service standards; and

WHEREAS, as a result thereof, Owner and County entered into the Agreement, which contemplated that the Owner would make proportionate share payment to the County in the amount of Ninety Three Thousand Six Hundred Seventy Eight Dollars (\$93,678.00) (the "Original Payment") necessary to mitigate the impact of the Excess Trips on the Deficient Segments through the Original Project buildout; and

WHEREAS, Owner has paid the County the Original Payment of Ninety-Three Thousand Six Hundred Seventy-Eight Dollars (\$93,678.00), received by County on April 24, 2014, Receipt #487441; and

WHEREAS, Owner desires to increase the originally proposed 17,725 square foot addition at the Project by an additional 5,146 square feet pursuant to this Amendment (the "Additional Square Footage"), making the total square footage addition to the Project 22,871 square feet (the "Total Square Footage") (the Original Project with the Additional Square Footage is hereby known as the "Project"); and

WHEREAS, County agreed to permit Owner to apply for and obtain a building permit for the Additional Square Footage, provided that the County would not issue a certificate of occupancy for the Additional Square Footage until either a parking garage has been constructed on the property located at 8050 International Drive, Orlando, FL 32819, Parcel ID: 36-23-28-3787-00-010 (the "Additional Property") or the existing building on the Additional Property has been demolished and parking has been provided in the footprint of such building, all in accordance with plans previously submitted and approved by the County; and

WHEREAS, Wallack Parking, LLC and 8050 I Drive Realty, LLC, the owners of the Additional Property, intend to allow Owner to park vehicles associated with the Project on the Additional Property pursuant to a perpetual parking easement agreement to be executed and recorded prior to the application for a certificate of occupancy for the Project; and

WHEREAS, County issued a revised denial CEL # 14-030 to the Owner for the Additional Square Footage dated June 23, 2014; and

WHEREAS, this denial is based on the fact that, with respect only to the Additional Square Footage, the Project will generate, in addition to that amount already contemplated in the

Agreement, an additional seven (7) deficient PM Peak Hour trips (the "Additional Excess Trips") for the deficient roadway segments on Sand Lake Road from Dr. Phillips Blvd to Turkey Lake Road (one (1) deficient PM Peak Hour trips) and from Turkey Lake Road to International Drive (six (6) deficient PM Peak Hour trips) (together, 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 on the revised **Exhibit "C"** attached hereto and incorporated herein by reference; and

WHEREAS, the Owner and the County have agreed that the proportionate share payment necessary to mitigate the impact of the Additional Excess Trips on the Deficient Segments through the current anticipated Project buildout, but only as to the Additional Square Footage, is Sixty Eight Thousand Five Hundred Eighty Nine and 00/100 Dollars (\$68,589.00) (the "Additional PS Payment").

NOW, THEREFORE, Owner and County (the "Parties") agree as follows:

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

**Section 2. Calculation of the Additional PS Payment.** Attached hereto as revised **Exhibit "C"** is a breakdown of the Deficient Segments and calculation of the Additional PS Payment based on the Additional Square Footage, which totals Sixty Eight Thousand Five Hundred Eighty Nine and 00/100 Dollars (\$68,589.00) (the "Additional PS Payment"). This Additional PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. The Owner and the County agree that the Additional Excess Trips constitute the Project's impact (with respect to the Additional Square Footage only) on the aforementioned Deficient Segments based upon the Owner's Traffic Study titled "Concurrency Analysis" prepared by Traffic Planning and Design, Inc. (TPD) on March 24, 2014, for Wallack

Holdings, LLC, revised and updated June 13, 2014 (the "Traffic Study"); the revised Memorandum of the Proportionate Share Calculation based on the Traffic Study is attached hereto as revised **Exhibit "C,"** and incorporated herein by reference. The Traffic Study was accepted by the Orange County Transportation Planning Division on March 24, 2014 and June 13, 2014, respectively, and is on file and available for inspection with that Division. The Owner and the County further acknowledge and agree that the Additional PS Payment as set forth above, with the PS Payment already paid (collectively, the "Total Payment"), 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 the Agreement. The Owner and the County further acknowledge and agree that the calculation of and agreement on the amount of the Additional PS Payment constitute material inducements for the parties to enter into this Agreement.

***Section 3. Timing of the Additional PS Payment.*** Within thirty (30) days following the Effective Date of this First Amendment, the Owner shall deliver a check to the County in the amount of Sixty Eight Thousand Five Hundred Eighty Nine and 00/100 Dollars (\$68,589.00) as the Additional 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 Additional PS Payment, the County shall issue a revised 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 Additional 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 Additional PS Payment), as further set forth in Section 5 below. In the event Owner has not paid the Additional PS Payment within thirty (30) days of the Effective Date of this First Amendment, this First Amendment shall become null and void.

***Section 4. Satisfaction of Transportation Improvement Requirements.*** The County hereby acknowledges and agrees that, based upon the Owner's commitment to pay the Additional PS Payment as required herein, in the absence of a change in the Project increasing the number of trips as set forth in the Agreement, 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 5 below.

**Section 5. 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 Additional PS Payment in accordance with Section 163.3180, Florida Statutes, and as more particularly described in **Exhibit "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 Sections 3 and 4 above. In no event shall Owner receive credits in excess of the Total Payment and in the event the Total 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 Total Payment (or any portion thereof) in excess of such transportation impact fees or capacity reservation fees.

**Section 6. No Refund.** The Additional PS Payment (including any reservation fees paid with the Additional PS Payment) is non-refundable.

**Section 7. Notice.** Notice provisions have remained unchanged from the Agreement and Owner acknowledges that any updated address information of any party has been provided in accordance with the notice provisions of the Agreement.

**Section 8. Recordation of First Amendment.** An executed original of this First Amendment shall be recorded, at Owner's expense, in the Public Records of Orange County, Florida within thirty (30) days of the Effective Date.

**Section 9. 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 10. Counterparts.** This First Amendment may be executed in up to three (3) counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

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



ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: *Teresa Jacobs*

*TJ*  
Teresa Jacobs,  
Orange County Mayor

Date: 8.5.14

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

By: *Katie Smith*  
Deputy Clerk

Print Name: **Katie Smith**

WALLACK HOLDINGS, LLC,  
a Florida limited liability company

By: [Signature]  
David Wallack, its Manager  
Date: June 5, 2014

WITNESSES:

[Signature]  
Print Name: J.E. CHEEK, JR.

[Signature]  
Print Name: RANDOLPH J. RUSH

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by David Wallack, as the Manager of Wallack Holdings, LLC, a Florida limited liability company, on behalf of the company, who is known by me to be the person described herein and who executed the foregoing, this 5<sup>th</sup> day of June, 2014. S/he is personally known to me or has produced \_\_\_\_\_ as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 5<sup>th</sup> day of June, 2014

[Signature]  
Notary Public

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



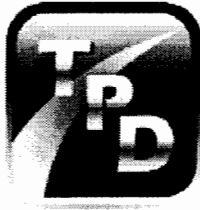


EXHIBIT "C"  
Mango's Tropical Cafe  
Memorandum of Proportionate Share Calculation

June 13, 2014

**Subject: Proportionate Share Calculation  
Mango's Tropical Cafe**

We have completed a Transportation Concurrency Analysis for the proposed expansion of 22,871 square feet of retail development within Hollywood Plaza, located in the southwest quadrant of International Drive and Sand Lake Road. The proposed expansion is anticipated to add 3 peak-hour trips to the peak direction of the deficient section of Sand Lake Road from Dr Phillips Boulevard to Turkey Lake Road and 14 peak-hour trips to the peak direction of the deficient section of Sand Lake Road from Turkey Lake Road to International Drive. According to Orange County policies, the proposed project thereby requires mitigation and a proportionate share agreement.

The improvement needed to provide acceptable operating conditions on Sand Lake Road from Dr Phillips Boulevard to Turkey Lake Road is to widen the road from a four-lane facility to a six-lane facility. The existing capacity on Sand Lake Road on this segment is 1,870 peak-hour directional vehicles, which is insufficient to meet the needs of the project. The improvement will increase the capacity to 2,830 peak-hour directional vehicles, for an increase of 960 peak-hour directional vehicles.

The cost of the widening the improvement on Sand Lake Road from Dr Phillips Boulevard to Turkey Lake Road was determined by Orange County to be \$3,208,887. The cost per trip is \$3,343, calculated as follows:

$$\$3,208,887 / 960 \text{ trips} = \$3,343 \text{ per trip}$$

The improvement needed to provide acceptable operating conditions on Sand Lake Road from Turkey Lake Road to International Drive is to widen the road from a six-lane facility to an eight-lane facility. The existing capacity on Sand Lake Road on this segment is 2,940 peak-hour directional vehicles, which is insufficient to meet the needs of the project. The improvement will increase the capacity to 3,940 peak-hour directional vehicles, for an increase of 1,000 peak-hour directional vehicles.

The cost of the widening improvement on Sand Lake Road from Turkey Lake Road to International Drive was determined by Florida DOT to be \$10,874,000. The cost per trip is \$10,874, calculated as follows:

$$\$10,874,000 / 1,000 \text{ trips} = \$10,874 \text{ per trip}$$

The proportionate share amount for the proposed expansion of 22,871 square feet is \$162,265, calculated as follows:

$$(\$3,343 \text{ per trip} \times 3 \text{ trips}) + (\$10,874 \text{ per trip} \times 14) = \$162,265$$

A proportionate share in the amount of \$93,676 has already been paid for the 17,725 square feet of this expansion. The proportionate share amount for the remaining 5,146 square feet is \$68,589, calculated as follows:

$$\$162,265 - \$93,676 = \$68,589$$

Sincerely,

Turgut Dervish, P.E.

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**Traffic Planning and Design, Inc.**

535 Versailles Drive, Maitland, Florida 32751 ■ Phone (407) 628-9955 ■ Fax (407) 628-8850 ■ www.tpdtraffic.com