



Interoffice Memorandum

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

NOV 18 2014 KHHS

AGENDA ITEM

October 27, 2014

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

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

SUBJECT: November 18, 2014 – Consent Item
 First Amendment to Proportionate Share Agreement
 For Waterford Oaks PD Phase I

The Roadway Agreement Committee has reviewed a First Amendment to Proportionate Share Agreement for Waterford Oaks PD Phase I Woodbury Road: From Waterford Lakes Parkway to Colonial Drive ("First Amendment") between Cardinal ALF, LLC ("Owner") and Orange County for a modification to the development program. 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 \$20,193 for a commercial site with 13,600 square feet of high turnover restaurant space pursuant to the Proportionate Share Agreement for Waterford Oaks PD Phase I approved by the Board of County Commissioners on July 16, 2014 and recorded at OR Book/Page 10613/6467. The First Amendment follows the recommendations of the Roadway Agreement Committee providing there are no additional road impacts on Woodbury Road from Waterford Lakes Parkway to Colonial Drive for the change in use from restaurant space to 38,258 square feet of furniture store development.

The Roadway Agreement Committee approved the First Amendment to Proportionate Share Agreement on October 1, 2014. 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 First Amendment to Proportionate Share Agreement for Waterford Oaks PD Phase I Woodbury Road: From Waterford Lakes Parkway to Colonial Drive by and between Cardinal ALF, LLC and Orange County to provide for a modification to the land use to and retain the same proportionate share payment amount. District 4

JEH/HEGB:rep

Attachment

NOV 18 2014 KH/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

Tax Parcel I.D. Numbers: 22-22-31-8469-00-010, 22-22-31-8469-00-020, 22-22-31-8469-00-180, 22-22-31-8469-00-190

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

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

This First Amendment (the "First Amendment") is made and entered into by and between Cardinal ALF, LLC, a Delaware Limited Liability Company (the "Owner"), whose address is 11540 E US Highway 92, Seffner, Florida 33584, 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 Waterford Oaks PD Phase I approved by the Orange County Board of County Commissioners ("BCC") on July 16, 2013, and recorded in Official Records Book 10613, Page 6467, in the Public Records of Orange County, Florida (the "Agreement"), to document the changes to the Agreement based on the change of use; and

WHEREAS, the Owner is the owner of fee simple title to certain real property, as more particularly described in Exhibit "A" to the Agreement (the "Property"); and

WHEREAS, the Agreement was entered into with Lincoln B. Taylor, individually, Robert A. and June Senay, as husband and wife, and Lucille Idarola, individually (collectively, the "Original Owners"); and

WHEREAS, pursuant to Section 6 of the Agreement, the Agreement is a covenant running with the Property and shall 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; and

WHEREAS, the Owner is a successor in interest to the Property; and

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

WHEREAS, the Original Owners received a letter from the County dated April 9, 2013, stating that the Owner's Capacity Encumbrance Letter ("CEL") application #13-023 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 Project would cause certain Deficient Segments (as defined in the Agreement) on the roadways to operate below adopted Level of Service standards; and

WHEREAS, as a result thereof, Original Owners and County entered into the Agreement, which contemplated that the Original Owners would make a proportionate share payment to the County in the amount of Twenty Thousand One Hundred Ninety-Three and No/100 Dollars (\$20,193.00) (the "Original Payment") necessary to mitigate the impact of the Excess Trips on the Deficient Segments through the Original Project buildout; and

WHEREAS, the Original Payment was paid to the County; and

WHEREAS, the County issued Capacity Reservation Certificate #13-023 (the "CRC") dated February 20, 2014; the CRC is attached hereto and incorporated herein by reference as Exhibit "A;" and

WHEREAS, Owner is now proposing to develop the Property as a commercial site with 38,258 square feet of furniture store (the "Proposed Project"); and

WHEREAS, the Proposed Project does not generate more traffic impacts to the Deficient Segments than the Original Project, as further demonstrated by the calculation attached hereto and incorporated herein by reference as Exhibit "B".

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. Change of Use. The Parties hereby agree that the Agreement is amended by this First Amendment to reflect the change of use for the Proposed Project and that no proportionate share payment other than the Original Payment is required for the Proposed Project.

In all other respects, the terms of the Agreement shall remain unchanged and in full force and effect.

Section 3. Notice. The text of Section 5 of the Agreement is hereby amended to read as follows: 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: Cardinal ALF, LLC
11540 E US Highway 92
Seffner, Florida 33584

Attn: Mr. Jeffrey H. Finkel

With copy to: Traffic & Mobility Consultants, LLC
1507 S. Hiawassee Road, Suite 212
Orlando, Florida 32835

Attn: Mr. Mohammed Abdallah, PE

D2 Law Group
3239 Henderson Blvd.
Tampa, Florida 33609

Attn: John T. Diamandis

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, Florida 32801

Section 4. Recordation of First Amendment. An executed original of this First Amendment shall be recorded, at Owners' expense, in the Public Records of Orange County, Florida within thirty (30) days of the Effective Date.

Section 5. Effective Date. The effective date of this First Amendment (the "Effective Date") shall be the date the last one of the parties has properly executed this First Amendment as determined by the date set forth immediately below their respective signatures.

Section 6. Counterparts. This First Amendment may be executed in in the same number of counterparts as there are Parties to this First Amendment, 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 THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have caused this First 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*
Teresa Jacobs
Orange County Mayor

Date: 11.18.14

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

By: *Craig A. Stopyra*
fof Deputy Clerk

Print Name: Craig A. stopyra

FIRST AMENDMENT TO PROPORTIONATE SHARE AGREEMENT

WATERFORD OAKS PD PHASE 1

WITNESSES:

[Signature]
Print Name: Samantha Price
[Signature]
Print Name: Leontine Gipami'o

"OWNER"

CARDINAL ALF, LLC, a Delaware Limited Liability Company

By: [Signature]
Title: Vice President

Print Name: Jeffrey H. Finkel

Date: Oct 23, 2014

**STATE OF GEORGIA
COUNTY OF DE KALB**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Jeffrey H Finkel, of Cardinal Alf, LLC, who is known by me to be the person described herein and who executed the foregoing, this 23 day of October, 2014. 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 23 day of October, 2014.



[Signature]
NOTARY PUBLIC

Print Name: Terri Thiro

My Commission Expires: March 13, 2018

Exhibit "A" to the First Amendment
WATERFORD OAKS PD, PHASE 1
Approved Capacity Reservation Certificate



CONCURRENCY MANAGEMENT OFFICE
DEAN STITES, Concurrency Management Official
 201 South Rosalind Avenue, 2nd Floor
 Reply To: Post Office Box 1393
 Orlando FL 32802-1393
 Telephone 407-836-5617 ■ Fax 407-836-2930 ■ <http://www.ocfl.net>

February 20, 2014

Mr. Joseph Schuermann
 Bluerock Real Estates Services, L.L.C
 8998 Gladen Court
 Orlando, Florida 32819-4408

SUBJECT: Transportation Capacity Reservation Certificate (TCRC) No. 13-023
 Parcel I.D. Number(s): 22-22-31-8469-00-010; 22-22-31-8469-00-020,
 22-22-31-8469-00-180 & 22-22-31-8469-00-190
 Transportation Impact Fee Zone No. 002
WATERFORD OAKS PD PHASE 1

ACTION: **Approved**
 Expiration Date: **February 7, 2017**

USE: Commercial – 13,600 Sq. Ft. High-Turnover (HT) Restaurant

Dear Mr. Schuermann:

This is a (3) three-year "Fixed" Transportation Capacity Reservation Certificate (TCRC). The total Transportation Capacity Reservation Fee for the above referenced project is \$173,128.00 (\$12,730.00 x 13,600SF ÷ Per 1,000SF). Therefore, the balance of Transportation Capacity Reservation Fees for the remaining units is due based on the following schedule:

TCRC Payment Schedule	TCRC Year 1	TCRC Year 2	TCRC Year 3	TCRC Totals
TCRC Installments	*PAID \$57,709.37	\$57,709.30	\$57,709.33	\$173,128.00
Development Size (SF)	4,534 Sq. Ft. HT Restaurant	4,533 Sq. Ft. HT Restaurant	4,533 Sq. Ft. HT Restaurant	13,600 Sq. Ft. HT Restaurant

Please Note: Payment due dates will fall on the anniversary date of the 1st TCRC payment (February 7th). Development Size noted above is to notify the developer of the allowable square footage available at permitting per TCRC year. *The Project's Proportionate Fair Contribution Payment in the amount of \$20,193.00 was applied to TCRC Year 1 payment. The difference of \$37,516.37 was paid with check #1098. The check was overstated by 3 cents; overpayment was applied to TCRC Year 2.*

This Transportation Capacity Reservation Certificate expires on February 7, 2017 three (3) years from the date of your initial TCRC payment. If all or any portion of the reserved capacity is not permitted within the reservation period, the Concurrency Management Official shall transfer the non-permitted portion of the reserved capacity to the available capacity bank on February 8, 2017. A Capacity Reservation Certificate extension may be granted under the Concurrency Management Official's determination. Please refer to Section 30-593 thru 596 (attached) of the Orange County Code for more information pertaining to capacity reservations.

Transportation Capacity Reservation Certificate (TCRC) No. 13-023
February 20, 2014
Page 7

A notarized assignment request will be required by the account owner before prepaid credits can be applied towards the transportation impact fee assessed on building permits. Assignment request(s) must be submitted to the Concurrence Management Office a minimum of 48 hours prior to requesting a building permit in order to have credits applied to building permits. Detailed information will be required on the assignment request as outlined in Attachment "A" (*Assignment Request Example*). Any transactions from this account will need to reference account number TCRC No. 13-023 on company letterhead and submitted in its original format with original signatures; copies will not be accepted.

CAPACITY RESERVATION CERTIFICATE REFUND POLICY

Refund requests shall be submitted in writing and will be processed in the order in which they are received. Such requests will be processed in a timely manner and subject to availability of funds.

Capacity Reservation Certificates issued for three (3) or more years or for a Flexible Reservation Certificate may be issued a refund for 90% of the capacity reservation fees not applied as a credit against impact fees.

If you need further assistance, please contact the Concurrence Management Office at 407-836-5617.

Sincerely,



Dean Stiles
Concurrence Management Official
Community, Environmental & Development Services Department

DS/s

Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.

Exhibit “B” to the First Amendment
WATERFORD OAKS PD, PHASE 1
Calculation of Trip Equivalency

Description	LU Code	Quantity	PM Peak Hour Trips Rate	PM Peak Hour Trips Trips
Approved Development Program				
HTSD Restaurant	932	13.6 KSF	9.85	134
Pass-by Trips (63%) ¹			63%	84
Net Trip Generation				50
Proposed Development Program				
Furniture Store	890	38.258 KSF	0.45	17
Change in Net Trip Generation				-33

1. From the Impact Fee Study in effect at the time of approval