



Interoffice Memorandum

APPROVED

BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

DEC 16 2014 KH/BS

AGENDA ITEM

November 18, 2014

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

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

SUBJECT: December 16, 2014 – Consent Item
Proportionate Share Agreement Waterford Oaks PD Phase II

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Waterford Oaks PD Phase II Woodbury Road: from Colonial Drive to Waterford Lakes Parkway ("Agreement") by and between Bluerock Development LLC; Harry H. Copeland and Deborah C. Copeland, as husband and wife (collectively "Owners"), and Orange County for a proportionate share payment in the amount of \$175,015. 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 twenty-six deficient trips on the road segment from Colonial Drive to Waterford Lakes Parkway.

The Roadway Agreement Committee approved the Proportionate Share Agreement on October 15, 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 Proportionate Share Agreement for Waterford Oaks PD Phase II Woodbury Road: From Colonial Drive to Waterford Lakes Parkway by and between Bluerock Development LLC, Harry H. Copeland and Deborah C. Copeland, and Orange County for a proportionate share payment in the amount of \$175,015. District 4

JEH/HEGB:rep

Attachment

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
DEC 16 2014 KTH/BS

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

Parcel ID Numbers:
22-22-31-0000-00-011,
22-22-31-8469-00-150,
22-22-31-8469-00-160,
22-22-31-8469-00-170

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

This Proportionate Share Agreement (the "Agreement") is made and entered into by and between Bluerock Development LLC, a Florida Limited Liability Company; and Harry H. Copeland and Deborah C. Copeland, as husband and wife; (each an "**Owner**" and collectively, the "**Owners**") and ORANGE COUNTY, 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, is within the County's Urban Service Area and the proceeds of the PS Payment, as defined herein, will be allocated to Capital Improvements Project number 5059, including but not limited to roadway improvements and intersection improvements to Woodbury Road from Lake Underhill Road to Colonial Drive; and

WHEREAS, the Owners intend to develop the Property as a 125,000 square foot shopping center and an 8,500 square foot high turnover sit down restaurant (the "**Project**"); and

WHEREAS, the Owners received a letter from the County dated July 25, 2014 stating that the Owners' Capacity Encumbrance Letter ("**CEL**") application #14-109 for the Project was denied; and

WHEREAS, the Project will generate twenty six (26) deficient PM Peak Hour trips (the "**Excess Trips**") for the deficient roadway segment on Woodbury Road from Colonial Drive to Waterford Lakes Parkway (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 “B” 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), Florida Statutes, 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 One Hundred Seventy Five Thousand Fifteen and No/100 Dollars (\$175,015.00) (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 One Hundred Seventy Five Thousand Fifteen and No/100 Dollars (\$175,015.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. 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 titled “Waterford Oaks Phase II” prepared by Traffic & Mobility Consultants, LLC on July 3, 2014 for Bluerock Real Estate Services, LLC (the “Traffic Study”) on file with Orange County Transportation Planning, CMS # 14-109 and incorporated herein by this reference and upon calculations described in Exhibit “B”. The Traffic Study was accepted by the Orange County Transportation Planning Division on July 24, 2014, and is on file and available for inspection with that Division. 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 One Hundred Seventy Five Thousand Fifteen and No/100 Dollars (\$175,015.00) 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 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 the 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, 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 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 the 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 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 Owners agree that the Owners 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 Exhibit "B" 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 transportation 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 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: Bluerock Development, LLC
8998 Gladin Court
Orlando, Florida 32819

Attention: Mr. Joseph N. Schuemann

Harry H. Copeland and Deborah C. Copeland
2935 Independence Ave
Oviedo, Florida 32765

With copy to: Traffic & Mobility Consultants, LLC
1507 South Hiawasse Road, Suite 212
Orlando, Florida 32835

Attention: Mr. Mohammed Abdallah

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.

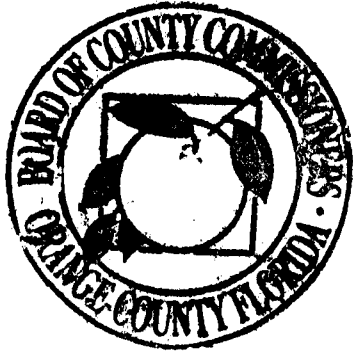
Section 12. *Effective Date.* The effective date of this Agreement (the “Effective Date”) shall be the date when the last one of the parties has properly executed this Agreement as determined by the date set forth immediately below their respective signatures.

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 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
Teresa Jacobs
Orange County Mayor

Date: 12.16.14

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

By: Jessica Moore
for Deputy Clerk
Print Name: Jessica Moore

“WATERFORD OAKS PD PHASE II”

WITNESSES:

Heather Coons

Print Name: Heather Coons

Guillermo Rodriguez

Print Name: Guillermo Rodriguez

“OWNER”

Bluerock Development, LLC, a Florida
Limited Liability Company

By: *Joseph N. Schuemann*

Print Name: Joseph N. Schuemann

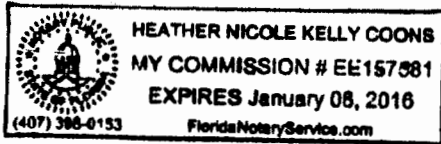
Title: member

Date: 11-10-14

**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Joseph N. Schuemann, of Bluerock Development who is known by me to be the person described herein and who executed the foregoing, this 10th day of November, 2014. He/she is personally known to me or has produced personally known (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 10th day of November, 2014.



Heather Nicole Kelly Coons
NOTARY PUBLIC

Print Name: Heather Nicole Kelly Coons

My Commission Expires: January 08, 2016

“WATERFORD OAKS PD PHASE II”

WITNESSES:

[Signature]

Print Name: Heather Coons

[Signature]

Print Name: Emiliano Rodriguez

“OWNERS”

Harry H. Copeland and Deborah C. Copeland,
as husband and wife

By: [Signature]

Print Name: Harry H. Copeland

Title: owner

Date: 11-11-14

WITNESSES:

[Signature]

Print Name: Heather Coons

[Signature]

Print Name: Emiliano Rodriguez

[Signature]

Print Name: Deborah C. Copeland

Title: _____

Date: 11-11-14

**STATE OF FLORIDA
COUNTY OF ORANGE**

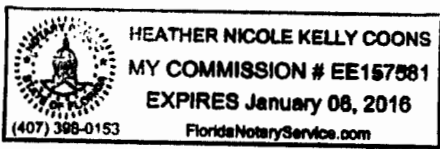
SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Harry H. Copeland, of _____ who is known by me to be the person described herein and who executed the foregoing, this 11th day of November, 2014. He/she is personally known to me or has produced drivers license (type of identification) as identification and did/did not (circle one) take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 11th day of November, 2014.

[Signature]
NOTARY PUBLIC

Print Name: Heather Nicole Kelly Coons

My Commission Expires: January 08, 2016



**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Deborah Copeland, of _____ who is known by me to be the person described herein and who executed the foregoing, this 11th day of November, 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.

WITNESS my hand and official seal in the County and State last aforesaid this 11th day of November, 2014.

Heather Nicole Kelly Coons
NOTARY PUBLIC

Print Name: Heather Nicole Kelly Coons

My Commission Expires: January 08, 2016

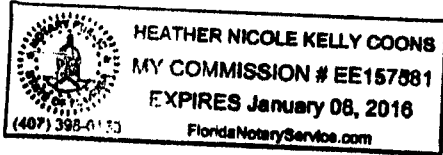


Exhibit "A"

Legal Description and Sketch of Description for the Property

Parcel ID: 22-22-31-0000-00-011, 22-22-31-8469-00-150, 22-22-31-8469-00-160, 22-22-31-8469-00-170

Legal Description: THE E1/2 OF W1/2 OF SW1/4 OF NW1/4 (LESS N 130 FT OF E 60 FT) OF SEC 22-22-31; SUNSET TERRACE X/11 LOT 15; SUNSET TERRACE X/11 LOT 16; AND SUNSET TERRACE X/11 LOT 17

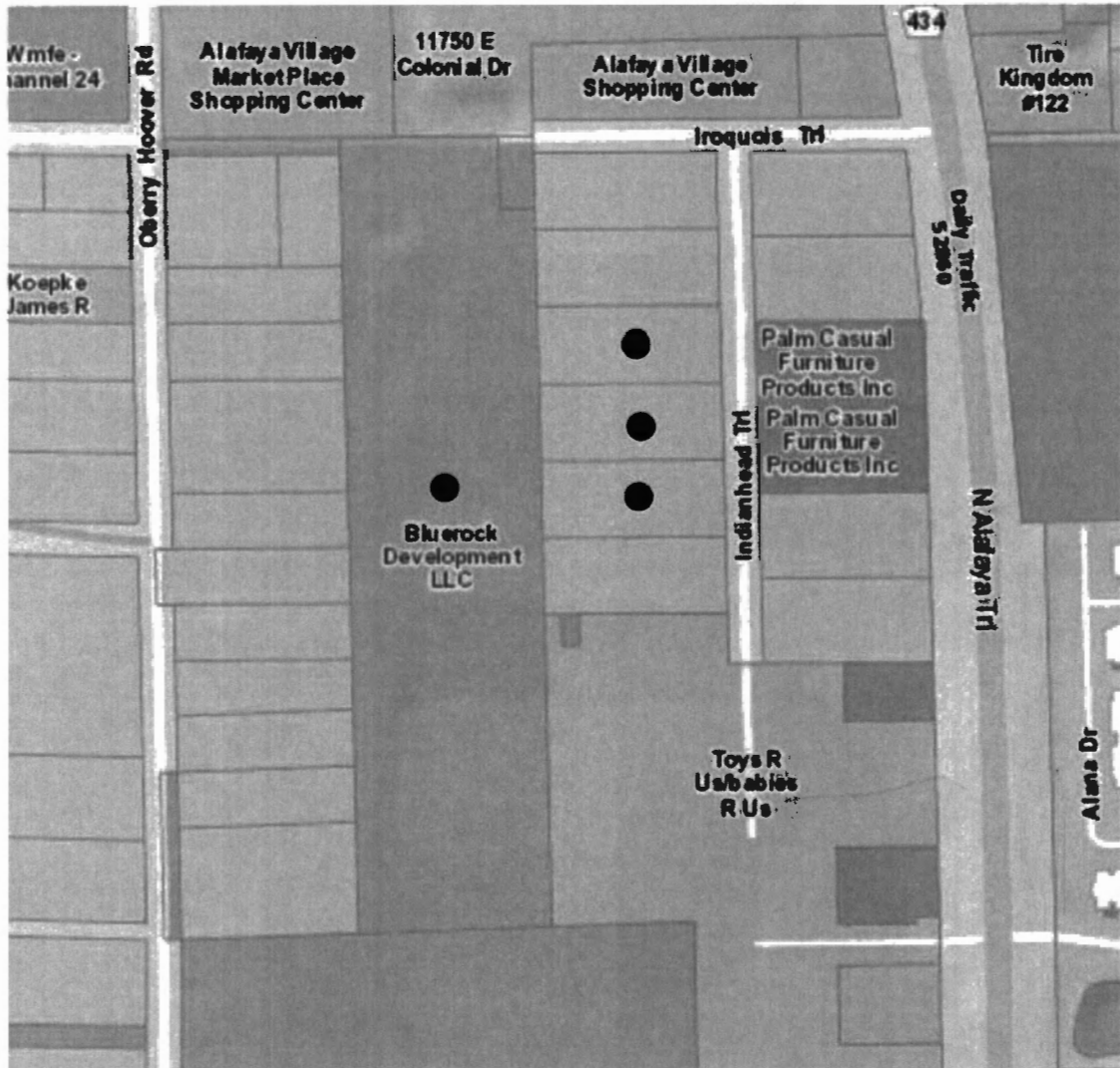


Exhibit "B"

Log of Project Contributions

Roadway Improvement Project Information

Planned Improvement Roadway(s)	Limits of Improvement From	Limits of Improvement To	Segment Length	Adopted LOS	Existing Generalized	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost	Cost per Mile	Cost / Trip / Mile
Woodbury	Waterford Lakes Pkway	Colonial Drive	0.77	E	880	Widen from 2 to 4 Lanes	1960	1080	\$7,270,000	\$9,441,558	\$8,742

Current County Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement From	Limits of Improvement To	Segment Length	Adopted LOS	Existing Generalized Capacity	Backlogged Trips	Improved Generalized Capacity	Capacity Increase	Remaining Project Cost	Cost per Mile	Cost / Trip / Mile
Woodbury	Waterford Lakes Pkway	Colonial Drive	0.77	E	880	39	1960	1041	\$7,007,479	\$9,100,622	\$8,742

Project Contributions

Date	Project	Project Trips	Prop Share
May-13	Waterford Oaks PD	3	\$20,193
Jul-13	Town Park Outparcels	3	\$20,194
Oct-13	Town Park Multi Family	3	\$20,194
Oct-13	Popeye's East Colonial	4	\$26,925
Aug-14	Waterford Oaks PD Phase II	26	\$175,015
			\$0
			\$0
			\$0
			\$0
			\$0
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			\$0
			\$0
			\$0
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			\$0
			\$0
			\$0
			\$0
Totals:		39	\$262,521

Updated: 10/22/14