



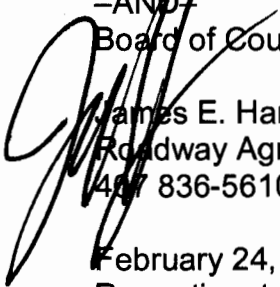
Interoffice Memorandum

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
FEB 24 2015 *CS/PS*

AGENDA ITEM

February 2, 2015

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

FROM:  James E. Harrison, Esq., P.E., Chairman
Roadway Agreement Committee
407 836-5610

SUBJECT: February 24, 2015 – Consent Item
Proportionate Share Agreement Bishop Property

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Bishop Property Boggy Creek Road: from Wetherbee Road to South Access Road ("Agreement") by and among Edna Y. Bishop, as Co-Trustee of the Trust created under the Last Will and Testament of Robert J. Bishop dated February 13, 1959; Carol B. Phifer, as Co-Trustee of the Trust created under the Last Will and Testament of Robert J. Bishop dated February 13, 1959; Judith B. Greene as Co-Trustee of the Trust created under the Last Will and Testament of Robert J. Bishop dated February 13, 1959 (collectively as "Owner"); and KB Home Orlando, LLC, a Delaware limited liability company (the "Contract Purchaser") and Orange County for a proportionate share payment in the amount of \$321,932. 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 Proportionate Share Payment is due within one-hundred eighty (180) days of the effective date of this Agreement. The Agreement follows the recommendations of the Roadway Agreement Committee providing for the mitigation of road impacts on Boggy Creek Road for twenty-six deficient trips on the road segment from Wetherbee Road to South Access Road in an amount of \$12,382 per trip.

The Roadway Agreement Committee approved the Proportionate Share Agreement on November 12, 2014.

Page Two
February 24, 2015 – Consent Item
Proportionate Share Agreement Bishop Property

The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

ACTION REQUESTED: Approval of Proportionate Share Agreement for Bishop Property Boggy Creek Road: From Wetherbee Road to South Access Road by and among Edna Y. Bishop, Carol B. Phifer, and Judith B. Greene, and KB Home Orlando, LLC, and Orange County for a proportionate share payment in the amount of \$321,932. District 4

JEH/HEGB:rep

Attachment

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
FEB 24 2015 CS/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: 33-24-30-0000-00-011

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

**PROPORTIONATE SHARE AGREEMENT FOR
BISHOP PROPERTY
Boggy Creek Road: From Wetherbee Road to South Access Road**

This Proportionate Share Agreement (the "Agreement") is made and entered into by and among Edna Y. Bishop, as Co-Trustee of the Trust created under the Last Will and Testament of Robert J. Bishop dated February 13, 1959; Carol B. Phifer, as Co-Trustee of the Trust created under the Last Will and Testament of Robert J. Bishop dated February 13, 1959; Judith B. Greene, as Co-Trustee of the Trust created under the Last Will and Testament of Robert J. Bishop dated February 13, 1959, (collectively, the "**Owner**"); and KB Home Orlando LLC, a Delaware limited liability company (the "**Contract Purchaser**") 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 #4, and the proceeds of the PS Payment, as defined herein, will be allocated to the improvements on Boggy Creek Road from Wetherbee Road to Osceola County Line; and

WHEREAS, KB Home Orlando LLC, as contract purchaser from the Owner, intends to develop the Property as 114 single-family residential units (the "**Project**"); and

WHEREAS, the Owner received a letter from the County dated April 18, 2014 stating that the Owner's Capacity Encumbrance Letter ("**CEL**") application #14-038 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 Boggy Creek Road from Wetherbee Road to South Access Road (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 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 Segment through the current anticipated Project buildout is Three Hundred Twenty One Thousand Nine Hundred Thirty Two and No/100 Dollars (\$321,932.00) (the "**PS Payment**"); and

WHEREAS, the PS Payment is typically required to be paid within thirty (30) days of the Proportionate Share Agreement's Effective Date; and

WHEREAS, the Osceola County Expressway Authority ("**OCX**") recently published proposed alignment options for the Osceola Parkway Extension which will have a significant impact upon the Project (the "**Proposed Roadway**"); and

WHEREAS, given the unique and extraordinary circumstances created by the Proposed Roadway, the County, Owner and Contract Purchaser wish to extend the payment deadline for the PS Payment such that Contract Purchaser may obtain clarification with regard to OCX's plans for the alignment of the Proposed Roadway and adjust the Project accordingly; and

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 Segment described in Exhibit "B," attached hereto and incorporated herein by reference, totals Three Hundred Twenty One Thousand Nine Hundred Thirty Two and No/100 Dollars (\$321,932.00). 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 Segment based upon the Owner's Traffic Study titled "Bishop Subdivision Traffic Impact Analysis, Version 1.3" prepared by Traffic & Mobility Consultants, LLC on February 4, 2014, for KB Home Orlando LLC, as contract purchaser of the Property (the "Traffic Study"); the Traffic Study is 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 April 8, 2014, 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 Segment 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 one hundred eighty (180) 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 Three Hundred Twenty One Thousand Nine Hundred Thirty Two and No/100 Dollars (\$321,932.00) 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 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 one hundred eighty (180) days of the Effective Date, this Agreement and CEL application #14-038 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 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 Segment 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 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 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: Judith B. Greene, as Co-Trustee
Edna Y. Bishop, as Co-Trustee
Carol B. Phifer, as Co-Trustee
1215 Munster Street
Orlando, Florida 32803

With copy to: KB Home Orlando LLC
9102 Southpark Center Loop, Suite 100
Orlando, Florida 32819

Attention: Christopher Wrenn, AICP

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 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.

[SIGNATURES ON NEXT PAGE]

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: 2.24.15

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

By: Craig A. Stopysa
Deputy Clerk

Printed Name: Craig A. Stopysa

“BISHOP PROPERTY”

WITNESSES:

“OWNER”

Edna Y. Bishop, as Co-Trustee of the Trust created by the Last Will and Testament of Robert J. Bishop dated February 13, 1959

Maria Alice Remy
Print Name: Maria Alice Remy

By: Edna Y. Bishop
Edna Y. Bishop as Co-Trustee

D. Bradley Hester
Print Name: D. BRADLEY HESTER

Date: 1-29-15

**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Edna Y Bishop as Co-Trustee of the Trust created by the Last Will and Testament of Robert J. Bishop dated February 13, 1959, who is known to me to be the person described herein and who executed the foregoing, this 29 day of JANUARY, 2015. 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 29 day of JANUARY, 2015.



D. Bradley Hester
NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

“BISHOP PROPERTY”

WITNESSES:

“OWNER”

Carol B. Phifer, as Co-Trustee of the Trust created by the Last Will and Testament of Robert J. Bishop dated February 13, 1959

maie Alice Remy
Print Name: *maie Alice Remy*

By: *Carol B Phifer*
Carol B. Phifer as Co-Trustee

D. Bradley Hester
Print Name: *D. BRADLEY HESTER*

Date: *1-29-15*

**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Carol B. Phifer as Co-Trustee of the Trust created by the Last Will and Testament of Robert J. Bishop dated February 13, 1959, who is known to me to be the person described herein and who executed the foregoing, this *29* day of *JANUARY, 2015, 2014*. She is personally known to me or has produced _____ (type of identification) as identification and did (circle one) take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this *29* day of *JANUARY*, *2015*.



D. Bradley Hester
NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

“BISHOP PROPERTY”

WITNESSES:

“OWNER”

Judith B. Greene, as Co-Trustee of the Trust created by the Last Will and Testament of Robert J. Bishop dated February 13, 1959

Alice Remy

Print Name: *Alice Remy*

D. Bradley Hester

Print Name: *D. BRADLEY HESTER*

By: *Judith B. Greene*
Judith B. Greene, as Co-Trustee

Date: *1-29-15*

**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Judith B. Greene as Co-Trustee of the Trust created by the Last Will and Testament of Robert J. Bishop dated February 13, 1959, who is known to me to be the person described herein and who executed the foregoing, this *29* day of *JANUARY 2015*, ~~2014~~. She is personally known to me or has produced _____ (type of identification) as identification and did (circle one) take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this *29* day of *JANUARY*, *2015*.



D. Bradley Hester
NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

“BISHOP PROPERTY”

WITNESSES:

“CONTRACT PURCHASER”

KB Home Orlando LLC , a Delaware limited liability company

D. Bradley Hester

By: [Signature]

Print Name: D. BRADLEY HESTER

Print Name: JOHN B. SHOEMAKER

Allison E. Warren

Date: 1/20/2015

Print Name: Allison E. Warren

Title: VP LAND ACQ & DEV.

**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by JOHN B. SHOEMAKER, of KB Home Orlando LLC a Delaware limited liability company, the individual and officer who is known by me to be the person described herein and who executed the foregoing, and as such officer is duly authorized on behalf of such limited liability company, this 30 day of JANUARY, 2015, ~~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 30 day of January, 2015.



D. Bradley Hester
NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

Exhibit "A"

"BISHOP PROPERTY"

Parcel ID: 33-24-30-0000-00-011

Legal Description:

The West $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 33, Township 24 South, Range 30 East, Orange County, Florida, LESS the North 825 feet thereof, and LESS the South 495 feet thereof.

Containing 46.474 acres, more or less.

