



Interoffice Memorandum

APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

BCC Mtg. Date: May 24, 2016

AGENDA ITEM

May 2, 2016

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

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

SUBJECT: May 24, 2016 – Consent Item
Proportionate Share Agreement
Sant Commercial Building, Inc., Reams Road
(From Center Drive (f/k/a Cast Drive) to Taborfield Avenue

The Roadway Agreement Committee has reviewed a Proportionate Share Agreement for Sant Commercial Building, Inc. on Reams Road (From Center Drive (f/k/a Cast Drive) to Taborfield Avenue ("Agreement") by and between Sant Commercial Building, Inc. and Orange County for a proportionate share payment in the amount of \$233,266. 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 30 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 Reams Road for 22 deficient trips on the road segment from Center Drive (f/k/a Cast Drive) to Taborfield Avenue in an amount of \$10,603 per trip.

The Roadway Agreement Committee approved the Proportionate Share Agreement on April 20, 2016. The Specific Project Expenditure Report and Relationship Disclosure Forms are on file with the Transportation Planning Division.

ACTION REQUESTED: Approval and execution of Proportionate Share Agreement for Sant Commercial Building, Inc. Reams Road: From Center Drive (f/k/a Cast Drive) to Taborfield Avenue by and between Sant Commercial Building, Inc. and Orange County for a proportionate share payment in the amount of \$233,266. District 1

JEH/HEGB:rep

Attachment

BCC Mtg. Date: May 24, 2016

This instrument prepared by
and after recording return to:

Anil Sant
Sant Commercial Building, Inc.
1718 Whitney Isles Drive
Windermere, FL 34786

Parcel ID Number(s): 01-24-27-0000-00-021

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

**PROPORTIONATE SHARE AGREEMENT FOR
Sant Commercial Building, Inc.**

Reams Road: From Center Drive (f/k/a Cast Drive) to Taborfield Avenue

This Proportionate Share Agreement (the "Agreement") effective as of the latest date of execution (the "**Effective Date**") is made and entered into by and between Sant Commercial Building, Inc. a Florida corporation ("**Owner**"), whose mailing address is 1718 Whitney Isles Drive, Windermere, FL 34786, and ORANGE COUNTY, a charter county and political subdivision of the State of Florida ("**County**"), whose mailing address is P.O. Box 1393, Orlando, FL 32802-1393.

WHEREAS, 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 1, within the County's Urban Service Area, and the proceeds of the PS Payment, as defined herein, will be allocated to Reams Road; and

WHEREAS, Owner intends to develop the Property as a 19,994 square-foot Shopping Center (the "**Project**"); and

WHEREAS, Owner received a letter from County dated March 08, 2016, stating that Owner's Capacity Encumbrance Letter ("**CEL**") application # 2016007 for the Project was denied; and

WHEREAS, the Project will generate 22 deficient PM Peak Hour trips (the “**Excess Trips**”) for the deficient roadway segment on Reams Road from Center Drive (f/k/a Cast Drive) to Taborfield Avenue (the “**Deficient Segment**”), and 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, as amended, the Owner shall provide the County with proportionate share mitigation for the Excess Trips; and

WHEREAS, Owner and 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 two hundred thirty-three thousand two hundred sixty-six and 00/100 Dollars (\$233,266.00) (the “**PS Payment**”); and

WHEREAS, County and Owner desire to set forth certain terms, conditions, and agreements between them 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 Owner and 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 two hundred thirty-three thousand two hundred sixty-six and 00/100 Dollars (\$233,266.00). This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes. Owner and County agree that the Excess Trips constitute the Project’s impact on the aforementioned Deficient Segment based upon (i) Owner’s Traffic Study titled “TRAFFIC IMPACT STUDY FOR CONCURRENCY APPLICATION REVIEW LAKESIDE NEIGHBORHOOD CENTER” prepared by Traffic Planning and Design, Inc. on December 08, 2015, for Sant Commercial Building, Inc. (the “Traffic Study”), and incorporated herein by this reference, and (ii) upon calculations described in Exhibit “B.” The Traffic Study was accepted by the Orange County Transportation Planning Division on March 08, 2016, and is on file and available for inspection with that Division (CMS # 2016007). Owner and 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 and/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. Owner and County further acknowledge and agree that the calculation of and agreement regarding 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, Owner shall deliver a check to County in the amount of two hundred thirty-three thousand two hundred sixty-six and 00/100 Dollars (\$233,266.00) 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 its receipt of the PS Payment, 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 must reserve the encumbered trips by obtaining a Capacity Reservation Certificate as provided in Section 30-591 of the Orange County Code, as may be amended. An amount equal to the PS Payment shall be applied toward 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 and/or square footage, as applicable, may result in an increase in trips on the Deficient Segment or other segments within the transportation impact area, as defined by County. Owner understands and agrees that any such additional trips are neither vested nor otherwise permitted under this Agreement, and that Owner is precluded from asserting any such vesting. In addition, Owner understands and agrees that any such changes resulting in an increase in trips may cause this Agreement to become null and void, and/or may require 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.* County hereby acknowledges and agrees that, based upon Owner's commitment to pay the PS Payment as required herein and absent any change in the Project increasing the number of trips as set forth in subparagraph 2(d) above, 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 County's jurisdiction 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 Owner from meeting the requirements of all other applicable laws, regulations, or Orange County Code provisions 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. County and Owner agree that 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 PS Payment in accordance with Section 163.3180, Florida Statutes, and as more particularly described in Exhibit "B" attached hereto. 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, 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: Sant Commercial Building, Inc.
Anil Sant, President
1718 Whitney Isles Drive
Windermere, Florida 34786

With copy to: Traffic Planning and Design, Inc.
Turgut Dervish, President
535 Versailles Drive
Maitland, Florida 32751

As to County: Orange County Administrator
P. O. Box 1393
Orlando, Florida 32802-1393

With copies 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 6. Covenants Running with the Property. This Agreement shall be binding and shall inure to the benefit and burden 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 Public Records of Orange County, Florida, at Owner's expense, within ten (10) business days after the Effective Date.

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 lie in the Circuit Court of 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 and legal fees.

Section 11. Construction of Agreement; Severability. Captions of the Sections and Subsections of this Agreement are for convenience and reference only; any 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. Amendments. No amendment, modification, or other change(s) to this Agreement shall be binding upon the parties unless in writing executed by all of the parties.

Section 13. Counterparts. This Agreement may be executed in up to three (3) counterparts, 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 following pages]

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
for Orange County Mayor

Date: 5.24.16

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

By: *Craig A. Stopyla*
for Deputy Clerk

Printed Name: Craig A. Stopyla

"LAKESIDE NEIGHBORHOOD CENTER"

WITNESSES:

Anil Sant

Print Name: ANIL SANT

Dina Roach

Print Name: Dina Roach

"OWNER"

Sant Commercial Building, Inc., a Florida corporation

By: Anil Sant

Print Name: Anil Sant

Title: President

Date: 5/11/16

**STATE OF FLORIDA
COUNTY OF ORANGE**

SWORN to and subscribed freely and voluntarily for the purposes therein expressed before me by Anil Sant, President of *Sant Commercial Building, Inc., a Florida corporation* who is known by me to be the person described herein and who executed the foregoing, this 11 day of May, 2016 He (type of identification) as identification and did not (circle one) take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 11 day of May, 2016.

Emmitt Taylor
NOTARY PUBLIC

Print Name: EMMITT TAYLOR

My Commission Expires: 10-5-18

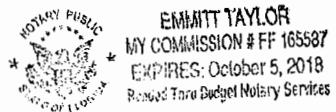


Exhibit "A"

"Lakeside Neighborhood Center"

Parcel ID: 01-24-27-0000-00-021

Legal Description:

LEGAL DESCRIPTION (Parcel 3 Neighborhood Commercial District):

A portion of land lying in Section 1, Township 24 South, Range 27 East, Orange County, Florida.

Being more particularly described as follows:

Commence at the Northeast corner of the Northeast 1/4 of aforesaid Section 1; thence run South 89°49'31" West along the North line of said Northeast 1/4 for a distance of 3.11 feet to the POINT OF BEGINNING; thence departing said North line run South 00°01'33" West for a distance of 81.29 feet to a point on a non tangent curve concave Northwesterly and having a radius of 320.45 feet; thence from a tangent bearing South 04°04'05" West run Southwesterly along said curve through a central angle of 39°39'40" for an arc distance of 221.82 feet to a point of reverse curvature of a curve concave Southeasterly and having a radius of 3605.55 feet; thence run Southwesterly along said curve through a central angle of 01°58'20" for an arc distance of 124.10 feet to a point; thence run North 47°15'25" West for a distance of 299.46 feet to a point on the Southerly right-of-way line of Reams Road according to Order of Taking as recorded in Official Records Book 4692, Page 3660 of the Public Records of Orange County, Florida, also being a point on a non-tangent curve concave Northwesterly and having a radius of 1467.39 feet; thence from a tangent bearing of North 45°12'13" East, run Northeasterly along said curve and said Southerly right-of-way line, through a central angle of 06°44'10" for an arc distance of 172.52 feet to a point on the former Southerly right-of-way line of Reams Road as recorded in Plat Book 3, Pages 85 through 87 of the Public Records of Orange County, Florida; thence run North 88°41'13" East along said former Southerly right-of-way line for a distance of 65.69 feet to a point of curvature of a curve concave Northerly and having a radius of 252.90 feet; thence run Easterly along said curve and said former Southerly right-of-way line, through a central angle of 30°25'00" for an arc distance of 134.26 feet to a point on aforesaid North line of said Northeast 1/4; thence departing said Southerly right-of-way line run North 89°49'31" East along said North line for a distance of 84.39 feet to aforesaid POINT OF BEGINNING, LESS AND EXCEPT any portion thereon lying within road rights of way.

Contains 2.006 acres, more or less,
LESS AND EXCEPT:

A parcel of land lying in Section 1, Township 24 South, Range 27 East, being described as follows:

Commence at the Northwest corner of Section 6, Township 24 South, Range 28 East, for a point of reference; Thence run south 89°57'45" East, along the North line of the Northwest quarter of said section 6. A distance of 660.85 feet to a point lying on the East line of the West quarter of the

northwest quarter of said section 6; thence run south 0002'41" WEST, ALONG THE EAST LINE OF THE WEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 6, A DISTANCE OF 1324.25 FEET; THENCE RUN NORTH 8957'29" WEST, 613.30 FEET TO A POINT LYING 50.00 FEET EAST OF, BY PERPENDICULAR MEASURE, THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 6; THENCE PARALLEL WITH AND 50.00 FEET EAST OF THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 6, RUN NORTH 0009'03" EAST, 735.08 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY; THENCE RUN NORTHWESTERLY ALONG SAID CURVE, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 4724'25", AN ARC LENGTH OF 20.69 FEET, A CHORD LENGTH OF 20.10 FEET, AND A CHORD BEARING OF NORTH 2333'09" WEST TO THE POINT OF TANGENCY; THENCE RUN NORTH 4715'22" WEST, 570.49 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 4715'22" WEST, 22.64 FEET TO A POINT LYING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF REAMS ROAD, AS DESCRIBED IN THAT CERTAIN ORDER OF TAKING, RECORDED IN OFFICIAL RECORDS BOOK 4692, PAGE 3660, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, SAID POINT ALSO LYING ON A CURVE CONCAVE NORTHWESTERLY; THENCE RUN NORTHEASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE AND SAID CURVE, HAVING A RADIUS OF 1467.39 FEET, A CENTRAL ANGLE OF 0011'57", AN ARC LENGTH OF 5.10 FEET, A CHORD LENGTH OF 5.10 FEET, AND A CHORD BEARING OF NORTH 4507'04" EAST; THENCE RUN SOUTH 3427'12" EAST, 23.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND LIES IN ORANGE COUNTY, FLORIDA.

CONTAINS 58 SQUARE FEET, MORE OR LESS.

Together containing 2.004 acres, more or less.

Exhibit "B"

"Lakeside Neighborhood Center"
 Log of Project Contributions

Log of Project Contributions
 Reams Road (Center Dr. to Taborfield Ave)

Roadway Improvement Project Information

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost	Cost / Trip
Reams Road	Center Drive	Taborfield Ave	1.20	E	880	Wden from 2 to 4 lanes	2,000	1,120	\$11,875,200	\$10,603

County Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Backlogged Trips	Improved Generalized Capacity	Capacity Increase	County (Backlog) Responsibility
Reams Road	Center Drive	Taborfield Ave	1.20	E	880	689	2,000	1,120	\$7,305,369

Developer Share of Improvement

Planned Improvement Roadway(s)	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Improved Generalized Capacity	Capacity Increase	Backlogged Trips	Capacity Increase for New Development	Remaining Project Cost	Cost / Trip
Reams Road	Center Drive	Taborfield Ave	1.20	E	880	2,000	1,120	689	431	\$4,569,831	\$10,603

Updated: 4/20/16

Log of Project Contributions

Date	Project	Project Trips	Prop Share	
Existing	March-17-2016 Existing plus Committed		\$7,104,010	
		Fitness	4	\$42,412
		Taco Bell	9	\$95,427
		Mini Storage	6	\$63,618
				\$0
				\$0
			\$0	
			\$0	
	Backlogged Totals:	689	\$7,305,467	
Proposed		Shopping Center	22	\$233,266
				\$0
				\$0
				\$0
				\$0
				\$0
	Totals:	711	\$7,538,733	