

Meeting Date
October 18, 2016



AGENDA	
Section	Consent
Item No.	II A.2

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	APPROVAL RE: AMENDED PROPORTIONATE FAIR SHARE MITIGATION AGREEMENT (DISTRICT 3)
DEPT/OFFICE:	PLANNING AND DEVELOPMENT DEPARTMENT

Requested Action:
It is requested that the Board of County Commissioners consider approval of the Amended Proportionate Fair Share Mitigation Agreement between the County, City of West Melbourne and KB Home Jacksonville, LLC; authorize the Chairman to execute the agreement; and authorize the Budget Office to execute any budget changes necessary to implement the proportionate share payment.

Summary Explanation & Background:
On January 29, 2013 the Board approved the original Proportionate Fair Share Mitigation Agreement between the County, City of West Melbourne and KB Home Jacksonville, LLC. The builder is developing the Cypress Landings residential subdivision in the City of West Melbourne. This amendment to the original agreement is necessary because the builder has revised the development program to construct 141 single family residences rather than 89 single family residences and 110 townhouse dwelling units.
The developer has paid a \$41,475.00 proportionate fair share payment toward the installation of a mast arm traffic signal at the intersection of Hollywood Boulevard and Imagine Way and will construct \$701,000 in improvements to the offsite roads, Imagine Way and Durham Drive, to address concurrency requirements in the City of West Melbourne. This payment constitutes 11.85% of the cost of the traffic signal installation and full cost of the construction of Imagine Way and Durham Drive. In the event that the transportation impact fee moratorium sunsets, the developer would receive a maximum of \$613,773 in transportation impact fee credits. Construction of Imagine Way and Durham Drive improvements will be a condition of plat approval imposed by the City.
The City of West Melbourne will consider this item at its October 18th City Council meeting. The developer has requested that adoption of the amended agreement be completed before November 1, 2016.
Fiscal Impact: FY17 --The fiscal impact will accrue primarily to the City of West Melbourne. The City will receive roadway improvements valued at \$701,000 and will lose \$613,773 in transportation impact fees. The County has already received the \$41,475.00 proportionate fair share mitigation payment for the traffic signal.
Staff Contact: Stephen M. Swanke (321) 633-2069

Clerk to the Board instruction:
Chair to execute three originals and return a return them to the Department for execution by the City and Builder.

Exhibits Attached:
Amended Proportionate Fair Share Mitigation Agreement, Location Map

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager Stockton Whitten	Assistant County Manager	Department Director / Extension Robin M. DiFabio, AICP 5-2069
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BOARD OF COUNTY COMMISSIONERS

Planning & Development Department

2725 Judge Fran Jamieson Way

Building A, Room 114

Viera, Florida 32940

Inter-Office Memo

TO: Tammy Rowe, Deputy Clerk

FROM: Stephen M. Swanke, Program Manager
Planning & Development Department 

DATE: February 20, 2017

SUBJECT: First Amendment to Proportionate Fair Share Agreement

I am returning a fully executed original of the First Amendment to the Proportionate Fair Share Agreement between Brevard County, the City of West Melbourne and KB Home Jacksonville, LLC. for inclusion in the official records.

Attachment as noted.

RECEIVED

FEB 24 2017

Board of County Commissioners



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

October 19, 2016

MEMORANDUM

TO: Robin DiFabio, Planning and Development Director Attn: Stephen Swanke

RE: Item II.A.2., First Amendment to Proportionate Fair Share Mitigation Agreement with City of West Melbourne and KB Home Jacksonville, LLC for Builder to Revise the Development Program to Construct 141 Single-Family Residences Rather than 89 Single-Family Residences and 110 Townhouse Dwelling Units

The Board of County Commissioners, in regular session on October 18, 2016, executed and approved the First Amendment to Proportionate Fair Share Mitigation Agreement between the City of West Melbourne and KB Home Jacksonville, LLC; and authorized the Budget Office to execute any budget changes necessary to implement the proportionate fair share payment. Enclosed are three executed Agreements for your action.

Upon execution by City of Melbourne and KB Home Jacksonville, LLC, please return the fully-executed Agreement to this office for inclusion in the official record.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds

Encls. (3)

**FIRST AMENDMENT TO
PROPORTIONATE FAIR SHARE MITIGATION AGREEMENT**

This **FIRST AMENDMENT TO PROPORTIONATE FAIR SHARE MITIGATION AGREEMENT** (the "**Amendment**") entered into this 18 day of October, 2016, is made by and among the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida, 32940 (the "**County**"), the **CITY OF WEST MELBOURNE, FLORIDA**, a Florida municipal corporation, whose address is 2285 Minton Road, West Melbourne, Florida 32904 (the "**City**") and **KB HOME JACKSONVILLE LLC**, a Delaware limited liability company, whose address is 10475 Fortune Parkway, Suite 100, Jacksonville, Florida 32256 (the "**Developer**").

RECITALS

WHEREAS, County, City and Developer executed that certain Proportionate Fair Share Mitigation Agreement (the "**Agreement**") dated January 29, 2013, relating to the construction of a residential subdivision and related offsite improvements in the subdivision commonly known as Cypress Landings (the "**Subdivision**").

WHEREAS, the Subdivision was initially entitled for Eighty Nine (89) single-family dwelling units and One Hundred Ten (110) townhouse dwelling units.

WHEREAS, the Developer has revised the development rights and approvals to construct One Hundred Forty One (141) single-family dwelling units in the Subdivision.

WHEREAS, the parties desire to amend the Performance Schedule in the Agreement to reflect the revised number of certificates of occupancy to be pulled in the Subdivision.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and which includes the mutual promises of the parties, the parties agree as follows:

1. **Recitals, Capitalized Terms.** The above recitals are true and correct and constitute part of this Amendment. All capitalized terms used in this Amendment shall have the meaning ascribed thereto in the Agreement unless specifically otherwise defined herein.

2. **Performance Schedule.** The Performance Schedule attached the Agreement as **Exhibit "D"** is hereby deleted in its entirety and replaced with the schedule set forth in **Exhibit "A"**, attached hereto.

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3. **Effective Date of Amendment.** This Amendment shall take effect on the date the last party executes the Amendment.

4. **Recording in Public Records.** This Amendment shall be recorded in the Public Records of Brevard County, Florida, at the expense of the Developer.

5. **Counterparts.** This Amendment may be executed in counterparts.

6. **Remainder of Agreement.** Except as herein specifically modified or amended, the Agreement shall remain unchanged and in full force and effect.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Amendment has been executed on behalf of the County, the City, and the Developer by their duly authorized representatives on the respective dates below.

ATTEST:



Scott Ellis, Clerk

BREVARD COUNTY BOARD
OF COUNTY COMMISSIONERS



Jim Barfield, Chairman

As approved by the Board of County
Commissioners on October 18, 2016.





Sue Frank, City Clerk

CITY OF WEST MELBOURNE



Hal J. Rose, Mayor

WITNESSES:


Name: Jim Fiedler


Name: Derek Cifino

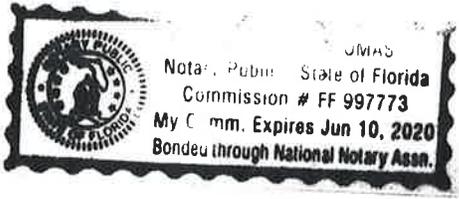
DEVELOPER

KB HOME JACKSONVILLE LLC,
a Delaware limited liability company

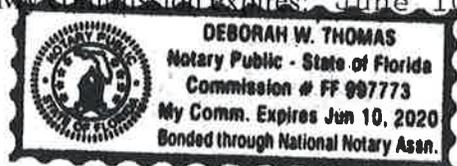
By: 
Name: WES HINTON
Its: VP OF LAND DEVELOPMENT

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 18 day of October, 2016 by Jim Barfield, Chairman of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or produced _____ as identification and who did (did not) take an oath.



Deborah W. Thomas
Name: DEBORAH W THOMAS
NOTARY PUBLIC – State of Florida
My commission expires: June 10, 2020



STATE OF FLORIDA
COUNTY OF BREVARD

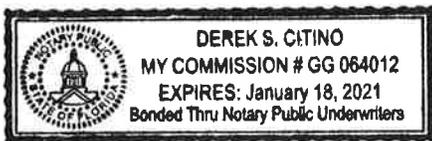
The foregoing instrument was acknowledged before me this 3rd day of February, 2017, 2016 by Hal J. Rose, Mayor of the City of West Melbourne, Florida, who is personally known to me ~~or produced~~ _____ as identification and who ~~did~~ (did not) take an oath.



Christine D. Pennington
Name: _____
NOTARY PUBLIC – State of Florida
My commission expires: _____

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 27th day of January, ~~2016~~ 2017 by Wes Hinton, the VP of Land Development of KB Home Jacksonville LLC, a Delaware limited liability company, who is personally known to me or produced _____ as identification and who did (did not) take an oath.



Derek S. Citino
Name: Derek S. Citino
NOTARY PUBLIC – State of Florida
My commission expires: January 18, 2021

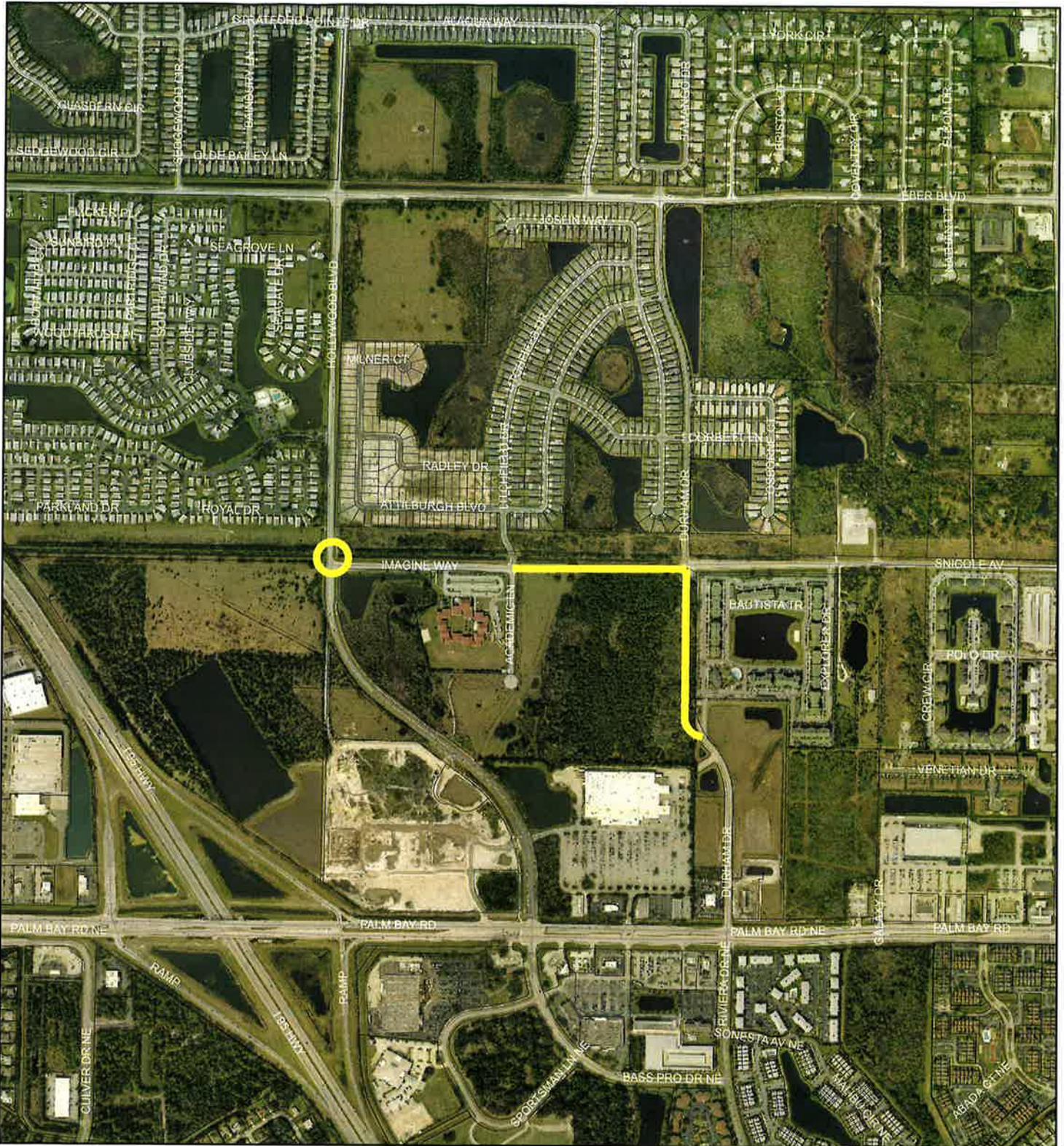
EXHIBIT "A"

(Performance Schedule)

1. Prior to recordation of the plat for the first phase of the Subdivision, Developer shall pay \$41,475.00 to the County as proportionate fair share mitigation, whereupon ten (10) dwelling units shall be vested from further payment of Transportation Impact Fees.
2. Prior to recordation of the plat for the first phase of the Subdivision, Developer shall post a performance bond for the construction of Imagine Way and 71 additional dwelling units shall be vested from further payment of Transportation Impact Fees.
3. Prior to issuance of the Fortieth (40) certificate of occupancy, Developer shall have begun construction of Imagine Way.
4. Prior to issuance of the Seventy Second (72) certificate of occupancy, Developer shall have completed construction of Imagine Way and dedicated it to the City.
5. Prior to issuance of the Seventy Second (72) certificate of occupancy, developer shall post a performance bond for the construction of Durham Drive for future dedication to the City, and at such time all remaining dwelling units shall be vested from further payment of Transportation Impact Fees.
6. Prior to issuance of the Ninety Sixth (96) certificate of occupancy, Developer shall have completed construction of Durham Drive and dedicated it to the City.

AERIAL MAP

Cypress Landings
Proportionate Fair Share



1:12,000 or 1 inch = 1,000 feet

PHOTO YEAR: 2016

 Subject Property

 Parcels

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by the Brevard County Planning and Zoning Office - GIS Section Date: 9/29/2016