



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.3.

2/9/2021

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### Subject:

Approval Re: Second Amendment to Developer's Agreement with Benchmark Melbourne 35 Associates, Limited Partnership and the City of West Melbourne

### Fiscal Impact:

There should be no fiscal impact to Brevard County. A transportation impact fee credit in the amount of \$441,887.00 remains in effect until April 3, 2023. Since this development is entirely within the City of West Melbourne, the potential fiscal impact will be to reduce transportation impact fee collections within the City by no more than the full amount of the credit.

### Dept/Office:

Planning and Development Department

### Requested Action:

It is requested that the Board of County Commissioners consider approval of the Second Amendment to the Developer's Agreement between Brevard County, City of West Melbourne and Benchmark Melbourne 35 Associates, Limited Partnership; authorize the Chair to announce the date and time of the second public hearing as February 23, 2021 beginning at 9:00 am; authorize the Chair to execute the agreement as amended on behalf of the County if approved; and authorize the Budget Office to execute any budget changes necessary to implement the Agreement as amended.

### Summary Explanation and Background:

This Developer's Agreement was originally adopted on April 2, 2013 by the Board of County Commissioners. As originally adopted, the Agreement required Benchmark Melbourne 35 Associates, LP (M35) to construct certain roadway improvements on Hollywood Boulevard beginning at its intersection with Palm Bay Road; provides M35 with vesting for transportation concurrency for a period of ten years; awards M35 a transportation impact fee credit, and provides for the purchase of right-of-way along Hollywood Boulevard.

The First Amendment to the Developer's Agreement was approved by the Board of County Commissioners on January 8, 2019. The effect of that amendment was to reduce shopping center land use and add a 260-room hotel to the development program.

The effect of the Second Amendment to the Developer's Agreement, as proposed, will be to allow a child day care facility, automotive care center and medical office within the development while reducing the shopping

center land use. The external trip generation from the development will be balanced through the use of a traffic equivalency matrix. The City of West Melbourne will consider approval of the Second Amendment to the Developer's Agreement on February 2, 2021.

**Clerk to the Board Instructions:**

After the second public hearing on February 23, 2021, have three copies of the Second Amendment to the Developer's Agreement executed on behalf of the County and return them to Planning and Development for recording.



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

Telephone: (321) 637-2001

Fax: (321) 264-6972

Kimberly.Powell@brevardclerk.us

February 10, 2021

**M E M O R A N D U M**

**TO:** Tad Calkins, Planning and Development Director

**RE:** Item H.3., Second Amendment to Developer's Agreement with Benchmark Melbourne 35 Associates, Limited Partnership and the City of West Melbourne

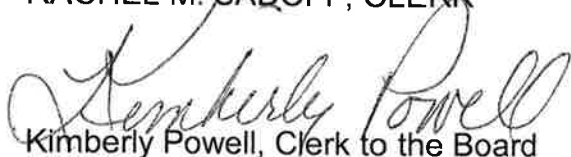
The Board of County Commissioners, in regular session on February 9, 2021, approved the Second Amendment to the Developer's Agreement with Benchmark Melbourne 35 Associates, Limited Partnership and the City of West Melbourne; authorized the Chair to announce the date and time of the second public hearing as February 23, 2021, beginning at 9:00 a.m.; authorized the Chair to execute the Agreement as amended; and authorized the Budget Office to execute any budget changes necessary to implement the Agreement as amended. Enclosed is the executed Agreement.

**Upon execution by Benchmark Melbourne 35 Associates, Limited Partnership and the City of West Melbourne, please return a fully-executed Agreement to this office for inclusion in the official minutes.**

Your continued cooperation is always appreciated.

Sincerely,

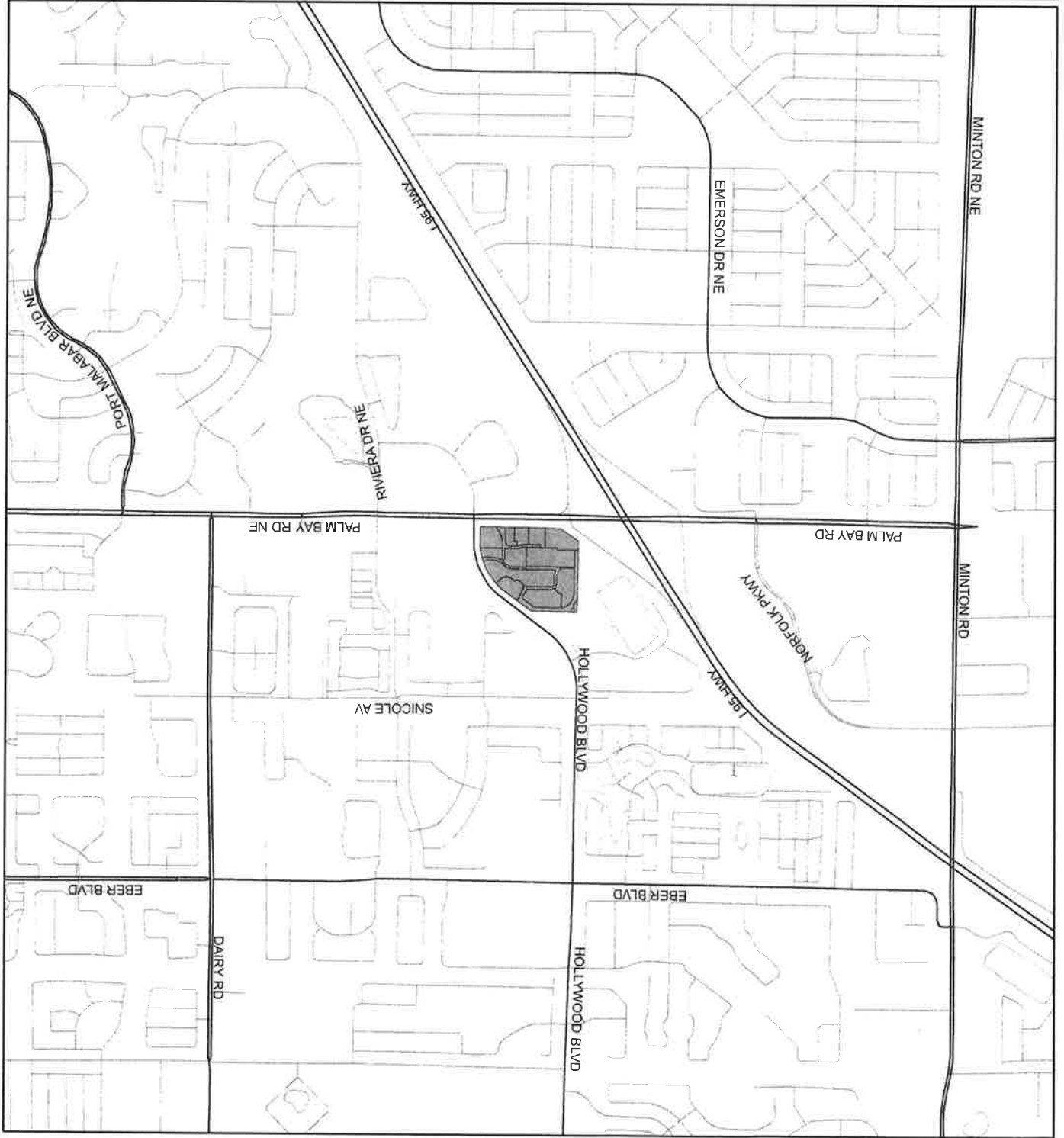
BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

  
Kimberly Powell, Clerk to the Board

/ds

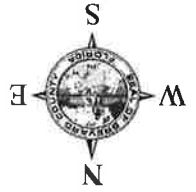
Encl. (1)

# LOCATION MAP DEVELOPER'S AGREEMENT FOR BENCHMARK 35 - 2nd AMENDMENT



 Subject Property

1:24,000 or 1 inch = 2,000 feet



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 BoCC - GIS Date: 1/25/2021

**SECOND AMENDMENT TO THE TRAFFIC CONCURRENCY AND TRAFFIC  
IMPACT FEE CREDIT DEVELOPMENT AGREEMENT**

**THIS SECOND AMENDMENT TO TRAFFIC CONCURRENCY AND TRAFFIC IMPACT FEE CREDIT DEVELOPMENT AGREEMENT** is hereby entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between **BENCHMARK MELBOURNE 35 ASSOCIATES LIMITED PARTNERSHIP**, a foreign limited partnership, registered to do business in the State of Florida, whose address is 4053 Maple Road, Amherst, NY 14226 Maple Road, Amherst, NY 14226 (hereinafter referred to as “Developer”); **CITY OF WEST MELBOURNE, FLORIDA**, a municipal corporation, whose address 2240 Minton Road, West Melbourne, Florida 32904 (hereinafter referred to as “City”); and 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, (hereinafter referred to as “County”), and is based on the following premises:

**RECITALS:**

**WHEREAS**, on April 2, 2013, Developer, County, and City entered into the Traffic Concurrence and Traffic Impact Fee Credit Development Agreement (“Agreement”), which Agreement was recorded in Official Records Book 6852, at Page 1866 of the Public Records of Brevard County on April 14, 2013. The Agreement was then amended on January 8th, 2019 and recorded into the Official Records Book 8354, at Page 563 of the Public Records of Brevard County; and

**WHEREAS**, Exhibit “1” to this Second Amendment is a Traffic Technical Memorandum (“TTM”) which states that the Developer wishes to include Child Day Care Facility, Automobile Care Center, and Medical Office land uses to the development while reducing shopping center land use intensity accordingly; and

**WHEREAS**, a revised TTM under date of December 8, 2020 has been prepared by Lassiter Transportation Group, Inc. for the Project, which establishes trip equivalency rates for each land use to accommodate future modifications; and

**WHEREAS**, the net external trip generation for the rebalance of the land uses will remain within the 5,483 trips vested in the Agreement; and

**WHEREAS**, the revised TTM of December 8, 2020 has been approved by the County and City; and

**WHEREAS**, the Developer is seeking approvals from the City and County to reduce the shopping center land use intensity accordingly to accommodate a Child Day Care Facility, Automobile Care Center, and Medical Office without increasing the vested trips, as set forth herein.

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

1. **Recitals.** The above recitals are hereby incorporated and made a part of this Second Amendment.

2. **Technical Memorandum Provision.** The City and County agree that the TTM of December 8, 2020 as set forth in Exhibit "1" attached and incorporated herein shall replace the Traffic Technical Memorandum of October 18, 2012 and the revised Technical Memorandum dated September 25, 2018, and the Project as defined in the Agreement is changed to consist of previously approved 260 hotel rooms and 133,100 square feet of shopping center with an option to substitute shopping center land uses for "daycare, auto service, or medical office" with the equivalencies specified in the TTM.

3. **Validity.** The parties agree that all of the terms and conditions contained within the Agreement and First Amendment not in conflict with this Second Amendment shall remain in full force and effect and remain binding on the parties.

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed and their corporate seals affixed as of the day and year first above written.

*Signed, sealed and delivered  
in the presence of:*

\_\_\_\_\_  
*Witness 1*

\_\_\_\_\_  
*Print Name of Witness 1*

\_\_\_\_\_  
*Witness 2*

\_\_\_\_\_  
*Print Name of Witness 2*

**ATTEST:**

\_\_\_\_\_  
*Cynthia Hanscom, City Clerk*  
  
(SEAL)

*Reviewed for legal form and sufficiency:*

\_\_\_\_\_  
*Morris Richardson, City Attorney*

**ATTEST:**

  
\_\_\_\_\_  
*Rachel M. Sudoff, Clerk*  
(SEAL)

**DEVELOPER:**

**BENCHMARK MELBOURNE 35  
ASSOCIATES, LIMITED PARTNERSHIP,**  
*a Delaware limited partnership by  
Benchmark Blue Ash Properties, a  
Delaware Corporation, its General Partner*

\_\_\_\_\_  
**By: John Rehak**  
**Its: Vice President**

**CITY OF WEST MELBOURNE, a**  
*chartered municipal corporation*

\_\_\_\_\_  
**Hal J. Rose, Mayor**  
*As approved by the Council on \_\_\_\_\_*

**BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA, a**  
*political subdivision of the State of Florida*

  
\_\_\_\_\_  
**Rita Pritchett, Chair**  
*As approved by the Board on 2/9/21*

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by **John Rehak, Vice President of Benchmark Blue Ash Properties, Inc., General Partner of Benchmark Melbourne 35 Associates Limited Partnership**, a Delaware corporation of the State of New York. He is [ ] personally known to me or [ ] produced as identification and did/did not take an oath.

My commission expires:

\_\_\_\_\_  
Notary Public

SEAL

Commission No.:

\_\_\_\_\_  
(Name typed, printed or stamped)

STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by **Hal J. Rose, Mayor of The City of West Melbourne, Florida**, a chartered municipal Corporation, on behalf of the City. They are [ ] personally known to me or [ ] produced as identification and did/did not take an oath.

My commission expires:

\_\_\_\_\_  
Notary Public

SEAL

Commission No.:

\_\_\_\_\_  
(Name typed, printed or stamped)

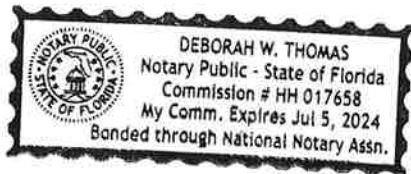


STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this 9 day of FEBRUARY, 2021, by **Rita Pritchett, Chair Board County Commissioners of Brevard County, Florida**, a political, subdivision of the State of Florida, who is [☒] personally known to me or [☐] produced as identification and did/did not take an oath.

My commission expires: 7/5/24

SEAL  
Commission No.: HH 017658



  
Notary Public

DEBORAH W. THOMAS  
(Name typed, printed or stamped)

**EXHIBIT “1”**

**Traffic Technical Memorandum by Lassiter Transportation Group, Inc.**

**Dated January 14, 2021**


**[Attached]**

Ref: 3419.31

## TECHNICAL MEMORANDUM

**To:** John Denninghoff, PE  
Assistant County Manager, Brevard County

**To:** Christy Fischer  
Planning and Economic Development Director, City of West Melbourne

**From:** Matthew West, AICP 

**Date:** January 14, 2021

**Subject:** West Melbourne Interchange Center – Land Use Modification

### Introduction

LTG Inc. (LTG) has been retained by The Benchmark Group to provide a trip equivalency matrix which will permit the conversion of land uses without exceeding the maximum number of vested trips included in the Traffic Concurrency and Traffic Impact Fee Credit Development Agreement (the Agreement) for the West Melbourne Interchange Center. The Agreement is attached as Exhibit B of this memorandum.

### West Melbourne Interchange Conversion Matrix

The matrix below allows the conversion of shopping center space to Child Care Center, Auto Care Center, and/or Medical Office uses. The conversion is based on the daily rates in the Institute of Transportation Engineers (ITE) Trip Generation Manual, 9<sup>th</sup> edition. The Agreement was based on 9<sup>th</sup> edition. The ITE land use codes are noted in the matrix for each use. The Shopping Center rate received a 34% reduction based on pass-by capture as noted in the original analysis included in Exhibit B of the Agreement. Also, the rates for all uses were reduced ten (10) percent to reflect internal capture per the Agreement, Exhibit B. The rate adjustments are shown in Exhibit A of this memorandum.

**Land Use Exchange Matrix  
(Based on Daily Traffic)  
West Melbourne Interchange Center**

	<b>To:</b>		
<b>From 1000 square feet – s.f. of the following uses</b>	<b>Medical Office/ 1,000 s.f.</b>	<b>Child Care Center/ 1,000 s.f.</b>	<b>Automobile Care Center/1,000 s.f.</b>
ITE Code 820	ITE Code 720	ITE Code 565	ITE Code 942
Shopping Center	0.78	0.38	1.19

Automobile Care Center does not have a weekday daily rate, so the Saturday daily rate was used.

**TECHNICAL MEMORANDUM**

Christy Fischer

John Denninghoff, PE

January 14, 2021

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c: John Rehak (The Benchmark Group)  
Robert Robb (Robb & Taylor Engineering)

Exhibit A - Land Use Exchange Matrix

Exhibit B - Traffic Concurrency and Traffic Impact Fee Credit Development Agreement

**TECHNICAL MEMORANDUM**

Christy Fischer  
 John Denninghoff, PE  
 January 14, 2021  
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# EXHIBIT A

## Land Use Exchange Matrix

**Daily Net Rates Matrix  
 West Melbourne Interchange Center**

USE	ITE Code*	Daily Rate*	34% Pass-by +10 % internal Capture	10% Internal Capture Only
Shopping Center	820	42.7	25.36	NA
Medical Office	720	36.13	NA	32.52
Child Care Center	565	74.06	NA	66.65
Automobile Care Center	942**	23.72	NA	21.35

\* Source: ITE Trip Generation, 9th Edition

\*\*Saturday Daily Rate was utilized

**Land Use Exchange Matrix  
 (Based on Daily Traffic)  
 West Melbourne Interchange Center**

	To:		
From 1000 square feet – s.f. of the following uses	Medical Office/ 1,000 s.f.	Child Care Center/ 1,000 s.f.	Automobile Care Center/1,000 s.f.
ITE Code 820	ITE Code 720	ITE Code 565	ITE Code 942
Shopping Center	0.78	0.38	1.19

**TECHNICAL MEMORANDUM**

Christy Fischer  
John Denninghoff, PE  
January 14, 2021  
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**Exhibit B**  
**Traffic Concurrency and Traffic Impact Fee**  
**Credit Development Agreement**

**TRAFFIC CONCURRENCY AND TRAFFIC IMPACT FEE CREDIT  
DEVELOPMENT AGREEMENT**

**PROVIDING FOR VESTING FOR TRANSPORTATION CONCURRENCY AND  
TRANSPORTATION IMPACT FEE CREDIT AGREEMENT.**

**THIS VESTING FOR TRANSPORTATION CONCURRENCY AND  
TRANSPORTATION IMPACT FEE CREDIT AGREEMENT** is entered into this 2  
day of April, 2013 by and between 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,  
(hereinafter referred to as "County"), the **CITY OF WEST MELBOURNE, FLORIDA**, a  
municipal corporation, whose address 2285 Minton Road, West Melbourne, Florida 32904  
(hereinafter referred to as "City"), and **BENCHMARK MELBOURNE 35 ASSOCIATES  
LIMITED PARTNERSHIP**, a foreign limited partnership, registered to do business in the State  
of Florida, whose address is 4053 Maple Road, Amherst, NY 14226 Maple Road, Amherst, NY  
14226 (hereinafter referred to as "Developer"), and is based on the following premises:

**RECITALS:**

**WHEREAS**, on January 17, 1989 the County adopted Ordinance 89-04 which amended  
the Code of Laws and Ordinances of Brevard County, Florida to include Article XI known as the  
"Brevard County Transportation Impact Fee Ordinance;" (hereinafter referred to as the  
"Ordinance"); and

**WHEREAS**, the County and the City entered into an interlocal agreement, executed on  
April 11, 1989 by the City and May 16, 1989 by the County, providing for the participation by  
the City in the program created by the Ordinance; and

**WHEREAS**, the City and County have entered into an Interlocal Agreement regarding  
collection and distribution of Transportation Impact Fees; and

**WHEREAS**, the City and County Transportation Impact Fee Ordinances provide a mechanism for credits against Impact Fees for qualifying contributions towards off-site roadway improvements and further provides that no credit shall exceed the assessed transportation impact fee for the land development activity awarded the credit; and

**WHEREAS**, the provisions of the Ordinance are applicable within the incorporated limits of the City including the real property owned by the Developer; and

**WHEREAS**, the Ordinance includes a schedule of Impact Fees assessable against the users of property for the public purpose of requiring new developments to pay their fair share of the impacts attributable to said development on the transportation network of Brevard County; and

**WHEREAS**, the County has enacted a moratorium on the assessment of Impact Fees, which moratorium the County and City acknowledge applies to the Benchmark Property; and

**WHEREAS**, Developer acknowledges that the County and City may, but are not obligated to reinstate Transportation Impact Fees, and in the event of reinstatement may alter the amount of Impact Fees previously charged; and

**WHEREAS**, Developer is the owner of that certain property located at the Northwest corner of Palm Bay Road and Hollywood Boulevard in the City of West Melbourne and more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Benchmark Property"); and

**WHEREAS**, in the event that the moratorium on the assessment of Transportation Impact Fees are lifted, and Impact Fees on some or all of the Benchmark Property is assessed against the Developer, its successors and/or assigns, then in that event, the County and City agree that any Transportation Impact Fees collected shall be paid to Developer regardless of the then



owner at time of collection up to the amount of the Transportation Impact Fee Credit granted under this Agreement.

**WHEREAS**, the City has adopted a Comprehensive Plan and Zoning Regulations that are applicable within its corporate limits; and

**WHEREAS**, the City has established a Future Land Use Map designation of Commercial and established the C-1 Zoning Districts on the Benchmark Property; and

**WHEREAS**, the technical Memorandum prepared by Lassiter Transportation Group, Inc. dated October 18, 2012, and more particularly described on Exhibit "B," which Memorandum has been approved by the County and City states that the Project will generate 5,483 new external trips, which trips were approved as part of the County's Concurrency Approval for driveway permit; and

**WHEREAS**, Developer as part of its Project and subject to receiving Transportation Impact Fee Credits if and when the moratorium is lifted and Impact Fees are in fact collected during the term of this Agreement, all as set forth herein, is willing to make certain roadway improvements to the southern portion of Hollywood Boulevard and signaling the entranceway to its development and Wal-Mart all as set forth in the attached list and diagram prepared by Robb & Taylor Engineering Solutions, Inc. ("Roadway Improvements") which are attached as Exhibit "C"; and

**WHEREAS**, Benchmark Property has received Concurrency Approval from Brevard County for the development of 174,500 square feet of commercial/retail plus a 114 room hotel ("Project") per Exhibit "D" attached; and

**WHEREAS**, the parties agree that a portion of the Roadway Improvements include site related improvements, and that any and all expenses associated with the completion of any site related improvement as described herein are not eligible for Transportation Impact Fees Credits; and

**WHEREAS**, the Roadway Improvements to be constructed by Developer is expected to further increase the capacity of and improve traffic safety on Hollywood Boulevard, and the additional capacity will accommodate traffic that is not generated by the Project; and

**WHEREAS**, the Roadway Improvements shall be constructed according to the design specifications of Brevard County, which shall be incorporated in the plans being submitted for review and approval; and

**WHEREAS**, Developer shall commence the Roadway Improvements within twelve (12) months from the adoption of this Agreement, subject only to Developer obtaining all of the necessary government permits for the Roadway Improvements and finalization of the right-of-way purchase described herein.

**WHEREAS**, the City is responsible for issuance of building permits on the Benchmark Property and the City based upon the County's Trip Capacity Analysis on Hollywood Boulevard has verified the Trip Capacity Analysis in determining trip availability or capacity; and

**WHEREAS**, a traffic concurrency evaluation of the proposed development program for the Benchmark Property was conducted by the County and the City and a Finding of Non-Deficiency was issued on October 11, 2012; and

**WHEREAS**, the Florida Local Government Development Agreement Act as set forth in Chapter 163, Subsections 163.3220 through 163.3243, Florida Statutes was established to authorize local governments to provide assurances to developers through the approval of development agreements that the developers will be able to implement their development programs subject to the conditions of the development agreements and thereby to encourage a stronger commitment to capital facilities planning, ensure the provisions of adequate public facilities for development, encourage the efficient use of resources, encourage private participation in comprehensive planning, and reduce the economic cost of development; and

**WHEREAS**, the City and County desires to utilize the provisions of the Florida Local Government Development Agreement Act in order to promote the stated goals and objectives of the Act in Brevard County by entering into this Agreement; and

**WHEREAS**, the design and construction of the Roadway Improvements is consistent with and serves to implement the goals, objectives, and policies of the City's Comprehensive Plan; and

**WHEREAS**, Developer wishes to document it is authorized to implement its Project subject to the conditions set forth herein and that the Project is vested for development and transportation concurrency for a period not to exceed ten years; and

**WHEREAS**, the City and County endorse the Developer's request for a credit against Transportation Impact Fees if and only if said Impact Fees through Brevard County are levied on the Project in the future.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by all parties, the parties hereto agree as follows:

1. **Recitals.** The above recitals are hereby incorporated and made a part of this Agreement.

2. **Roadway Improvements.** Developer shall be responsible for and construct Roadway Improvements pursuant to the design and engineering plans prepared by Lassiter Transportation Group, Job No. 3419.04 dated December 7, 2012, Pages T-1 through T-9, and Robb & Taylor Engineering Solutions, Inc., Project No. DR-12-10-01-D, dated December 7, 2012 ("Plans") as said Plans may be amended by Developer and County. The Roadway Improvements shall consist of those improvements as shown on Exhibit "C," including all improvements necessary to integrate the new road area with the County's Advance Traffic Management System, and all improvements shall be constructed in compliance with Brevard

County Right of Way Permit #10RW-00700. The Roadway Improvements illustrated in Exhibit "C" shall commence within twelve (12) months of the adoption of this Agreement by all parties subject only to the Developer obtaining all of the necessary government permits for the Roadway Improvements.

3. **Engineer's Opinion of Costs.** The Engineer's Opinion of Costs (hereinafter the "Estimated Costs") for completing the site-related and non-site related Roadway Improvements in accordance with the requirements of this Agreement and the Plans are itemized in Exhibit "E" attached hereto and by this reference made a part hereof. For the purpose of calculating the amount of transportation impact fee credit due Benchmark, the Engineer's Opinion of costs shall have the same meaning as estimated costs in the Ordinance. The estimated costs itemized in Exhibit "E" are those costs associated with the completion of the site-related improvements described in Paragraph 2 and 3 above. The estimated costs of \$441,877.00 itemized in Exhibit "E" are those costs associated with the completion of the non-Site Related Improvements and which are eligible for a traffic impact fee credit.

4. **Non-related Roadway Improvements.** For the purposes of this Agreement and in accordance with the definitions, limitations, and other provisions of the Ordinance, the parties agree that the non-Site related Roadway Improvements have been determined on a percentage basis as set forth in Exhibit "C" attached hereto and incorporated herein.

5. **Initiation of the Project.** Developer shall design and construct the Roadway Improvements in the manner and time as provided for in the Plans. Prior to the commencement of any work on the Project, Developer shall notify the County and City that it is ready to proceed.

6. **Delivery by Developer's Certificate of Completion.** Upon the delivery by Developer and/or its agents of its Certificate of Completion and request for final inspection of the Roadway Improvements, and the issuance of final "As Built" plans, the County within five (5) days thereafter shall conduct any remaining inspections, if any, and issue its Certificate of Completion or in the event of any deficiencies state in writing the specifics of the deficiency, and

the Developer shall within thirty (30) days thereafter correct any deficiencies, and thereafter the County shall issue its Certificate of Completion within five (5) days of the additional submittal. Road construction shall be inspected by the County's Development Inspection Group, and Developer shall pay all fees associated with such review.

7. **Statement of Actual Costs.** Within sixty (60) days from the date that the County issues a certificate of completion for the Roadway Improvements, the Developer shall provide to the City and County a statement of the actual total cost of the Roadway Improvements including the non-site related portion thereof, which statement shall be certified by the engineer of record. The County and City shall have sixty (60) days to review the costs for eligibility and reasonableness and approve the engineer's certification. In the event the City or County does not approve the engineer's certification of cost, the parties shall, within fifteen (15) days of rejection of Engineer's certification, choose a mutually acceptable engineer familiar with road design and construction to arbitrate the dispute. The parties shall be bound by said engineer's determination of the actual total cost of eligible improvements.

8. **Impact Fee Credit.** In consideration of the financial expenses associated with the construction of the Roadway Improvements described in Paragraph 2 above the City and County agree that the Developer and its successors in interest shall enjoy the benefit of a credit against any future Transportation Impact Fees that maybe assessed (hereinafter referred to as the "Impact Fee Credit") assessed on new construction on the Real Property whichever is less. The amount of the Impact Fee Credit shall not exceed the estimated cost of constructing the eligible improvements or the actual cost of construction of said improvements, whichever is less, nor shall it exceed the actual cumulative amount of Transportation Impact Fees assessed for the Project. The estimated cost of constructing the eligible improvements are \$441,877.00.

9. **Non- Transferability of Impact Fee Credit.** The Impact Fee Credit shall be applicable to Transportation Impact Fees that maybe assessed on new construction on the Benchmark Property. The Impact Fee Credit shall not be applicable, creditable or transferable to any other property. The Impact Fee Credit shall be available to the Developer and its successors in interest, including without limitation any subsequent owners of all or any portion of the

Benchmark Property. In no event shall the Developer or its successors in interest enjoy the benefit of the Impact Fee Credit more than ten (10) years from the effective date of this Agreement. Any unused credit shall be forfeited at the expiration of such ten (10) year period, and in no event shall it be reimbursed or redeemable for cash or other valuable consideration other than the Impact Fee Credit described herein. The County agrees that any and all Transportation Impact Fees that it receives from the Benchmark Property shall regardless of who the current owner of the Property or any portion thereof maybe, shall be forwarded to and/or reimbursed directly to the Developer up to the total amount of the Impact Fee Credit, if said fees are received within ten (10) years from the effective date of this Agreement. In the event no Impact Fees are imposed or Impact Fees are eliminated, County shall not owe Developer or be liable to Developer for any money compensation or other consideration as a result of this Agreement.

10. **Vesting.** The parties hereto recognize that Hollywood Boulevard is within the control of the County. The Benchmark Property is within the jurisdiction of the City. The City has jurisdiction over the Benchmark property for site plan permitting purposes other than County road connection permits and other state, federal or regional permitting requirements. A Concurrence evaluation on the Project was conducted by the County, a finding of non-deficiency was issued on October 11, 2012, a copy of which is attached as Exhibit "D" and has been verified by the City Engineer. Provided there is no material default under this Agreement, the Benchmark Property shall be vested for 5,483 new trips for a period of ten years from the date of this Agreement. The driveway permit may be subject to revision or revocation if the plans change or the regulations change within ten years of the date of this Agreement. The City acknowledges that it shall treat the 5,483 new vested trips as already existing and shall not issue building permits for other projects which would require such projects to utilize or consume any of the 5,483 trips that are being vested hereunder. The City shall not be prohibited from issuing building permits for other projects, if and only to the extent that there is still capacity available on the effective roadways to serve such projects after taking into account the Project's 5,483 new trips, existing trips, and otherwise committed trips. To assist in addressing the capacity issue, the County shall include the trips to be vested herein as existing trips when conducting any future

traffic concurrency analysis on the subject roadway or other projects for the period of ten (10) years.

11. **Right-of-Way Purchase.** County has agreed to purchase and Developer has agreed to sell to County additional right-of-way on Hollywood Boulevard the legal descriptions and diagrams of which are shown on Exhibit "F" attached. The County shall purchase the right-of-way pursuant to the Right-of-Way Purchase Agreement between the parties as set forth in Exhibit "F".

12. **Applicability of Ordinances and Resolutions of City to Agreement.** The applicability of Ordinances and Resolutions of the City to the Agreement are as set forth below:

- A. As provided in Section 163.3233(1), Florida Statutes (2011), the ordinances and regulations of the City governing the Development of the Benchmark Property on the Effective Date of this Agreement shall continue to govern the Development, except as otherwise provided herein. At the termination of this Agreement, all then existing codes shall become applicable to the Development of the Benchmark Property. Except as otherwise specifically set forth herein, no fee (including the existence or lack thereof), fee structure, amount computation method or fee amount, including any Impact Fees, then in existence or hereafter imposed, shall be vested by virtue of this Agreement.
- B. As provided in Section 163.3233(2), Florida Statutes (2011), the City may apply changes to vested ordinances and policies, or new requirements, adopted subsequently to the execution of this Agreement to the Benchmark Property, only if the City has held a public hearing and determined that: (a) such new ordinances or policies are not in conflict with the laws and policies governing this Agreement and do not prevent Development of the land uses, intensities or densities as allowed under the terms of this Agreement; (b) such new ordinances or policies are essential

to the public health, safety, or welfare and the new ordinances or policies expressly state that they shall apply to a Development that is subject to a Development Agreement; (c) as provided in Section 163.3233(3). This Ordinance does not abrogate any rights that may vest pursuant to common law; d) such new ordinances or policies are specifically anticipated and provided for in this Agreement; (e) the City has demonstrated that substantial changes have occurred in pertinent conditions existing at the time of the approval of this Agreement; or (f) this Agreement is based on substantially inaccurate information supplied by the Developer.

- C. As provided in Section 163.3241, Florida Statutes (2011), in the event that state or Federal laws are enacted after the approval, effectiveness, or execution of this Agreement which are applicable to and preclude the parties' compliance with the terms of this Agreement, such Agreement shall be modified or revoked as is necessary to comply with the relevant state or Federal laws, such modification or revocation to take place only after the notice provisions provided for the adoption of a Development Agreement have been complied with. The City shall cooperate with the Developer in the securing of any permits which may be required as a result of such modifications.
  
- D. As provided in Section 163.3235, Florida Statutes (2011), the City shall review this Agreement not less than once every twelve (12) months to determine if good faith compliance with this Agreement has been shown. If the Community Development Department determines there is a lack of compliance by Developer with this Agreement, it shall notify the Developer of same and give Developer a reasonable time, not to exceed ninety (90) days, to correct such noncompliance. If Developer fails to comply with the requirements of the notice, the Community Development Department shall report its findings to the City Council and the City Attorney. If the City finds, on the basis of competent substantial evidence



there has been a failure to comply with the terms of this Agreement after affording Developer such period of time within its discretion to come back into compliance, the Agreement may be revoked or modified by the City upon thirty (30) days' notice to the Developer. Such termination or modification may be accomplished only after public hearing and notice otherwise required for the adoption of this Agreement.

13. **Effective Date and Duration.** In accordance with Section 163.3239, Florida Statutes, this Agreement shall become effective when: (a) it has been recorded in the Public Records of Brevard County, Florida, and (b) thirty (30) days after a certified copy of the recorded Agreement has been received by the Florida Department of Community Affairs (the "**Effective Date**"), Unless terminated earlier by either party as provided herein, this Agreement shall remain in effect for a period of ten (10) years pursuant to Fla. Statute Section 163.3220, et seq. Additionally, the duration of this Agreement may be extended as provided for in Fla. Statute 163.3220, et seq.

14. **Notices.** All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person or dispatched by certified mail, postage prepaid, return receipt requested. Notice required to be given shall be addressed as follows:

If to Developer:	Benchmark Melbourne 35 Associates Limited Partnership Attn: Mr. John Rehak, Jr. 4053 Maple Road Amherst, NY 14226 Telephone: 716-833-4986 Facsimile: 716-833-2954 Email: jrehak@benchmarkgrp.com
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With a copy to:	GrayRobinson, P.A. Attn: Philip F. Nohrr, Esq. P.O. Box 1870 Melbourne, FL 32902-1870 Telephone: 321-727-8100 Facsimile: 321-984-1156 Email: pnohrr@gray-robinson.com
-----------------	---

If to City: City of West Melbourne  
Attn: Scott Morgan, City Manager  
2285 Minton Road  
West Melbourne, FL 32904-4928  
Telephone: 321-727-7700  
Facsimile: 321-768-2390  
Email: smorgan@westmelbourne.org

With a copy to: James Wilson, City Attorney  
City of West Melbourne  
2285 Minton Road  
West Melbourne, FL 32904-4928  
Telephone: 321-727-7700  
Facsimile: 321-768-2390  
Email: jwilson@westmelbourne.org

If to County: Brevard County  
Attn: Howard Tipton, County Manager  
2725 Judge Fran Jamieson Way  
Viera, FL 32940  
Telephone: 321-633-2000  
Facsimile: 321-633-2115  
Email: howard.tipton@brevardcounty.us

With Copy to: Brevard County Public Works Department  
Attn: John Denninghoff  
2725 Judge Fran Jamieson Way  
Viera, FL 32940  
Telephone: 321 617-7202  
Facsimile:  
Email: John.Denninghoff@brevardcounty.us

15. **Miscellaneous.** The execution of this Agreement has been duly authorized by the appropriate body of each of the parties hereto. Each party has complied with all the applicable requirements of law and has full power and authority, to comply with the terms and conditions of this Agreement. The venue of any litigation arising out of this Agreement shall be Brevard County, Florida. The exhibits attached hereto and incorporated by reference herein are by such attachment and incorporation made a part of this Agreement for all purposes. The fact that one of the parties to this Agreement may be deemed to have drafted or structured the provisions of this Agreement, whether in whole or in part, shall not be considered in construing or interpreting any

particular provision hereof, whether in favor of or against such party. The terms and conditions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement is solely for the benefit the parties hereto and their respective successors and assigns, and no right or cause of action shall accrue upon or result by reason hereof or for the benefit of any third party not a formal party hereto. Nothing in this Agreement whether express or implied, is intended or shall be construed to confer upon any person other than the parties hereto any right, remedy, or claim under or by reason of this Agreement or any of the provisions hereof. This Agreement may not be changed amended, or modified in any respect whatsoever, nor may any covenant,, condition, agreement, requirement, provision, or obligation contained herein be waived, except in writing signed by an of the parties hereto.

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

17. **Attorneys' Fees/Hold Harmless/Prevailing Party.** Should any litigation arise between the parties each party shall bear its own attorneys' fees and costs in the event of litigation or claims against the County and City from third parties arising from this agreement or the construction described herein. Developer shall indemnify and hold harmless the County and City for any such claims; however, nothing contained herein shall be deemed to be a waiver by the County and City's sovereign immunity. Developer acknowledges specific consideration has been paid and other good and sufficient consideration has been received for this.

18. **Captions.** Headings of a particular paragraph of this agreement are inserted only for convenience and are in no way to be construed as part of the agreement or as a limitation of the scope of the paragraphs to which they refer.

19. **Severability.** If any part of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way. If any party's joinder in

or execution of this agreement is deemed invalid for any particular purpose, the sections for which the joinder or execution is valid shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed and their corporate seals affixed as of the day and year first above written.

*Signed, sealed and delivered  
in the presence of:*

*Witness 1*

*Print Name of Witness 1*

*Witness 2*

*Print Name of Witness 2*

**DEVELOPER:**

**BENCHMARK MELBOURNE 35  
ASSOCIATES, LIMITED PARTNERSHIP,**  
*a Delaware limited partnership by  
Benchmark Blue Ash Properties, a  
Delaware Corporation, its General Partner*

*By:*

*Its:*

**ATTEST:**

*Scott Morgan*  
\_\_\_\_\_  
*, City Manager*

**(SEAL)**

**CITY OF WEST MELBOURNE, a**  
chartered municipal corporation

*Hal Rose*  
\_\_\_\_\_  
*, Mayor*

**ATTEST:**

*Scott Ellis*  
\_\_\_\_\_  
*Scott Ellis, Clerk*

**BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA, a**  
political subdivision of the State of Florida

*Andy Anderson*  
\_\_\_\_\_  
*Andy Anderson, Chairman (SEAL)*  
*As approved by the Board on 4-2-13*

STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of MARCH, 2013, by John Rehak on behalf of the Managing Partner of Benchmark Melbourne 35 Associates Limited Partnership, a Delaware corporation of the State of New York. He/She is ☒ personally known to me or ☐ produced as identification and did/did not take an oath.

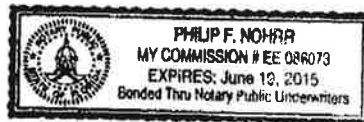
My commission expires:

Philip F. Mohr  
Notary Public

SEAL

Commission No.:

(Name typed, printed or stamped)



STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of March, 2013, by Hal J. Rose and Scott Morgan, Mayor and City Manager, respectively, of The City of West Melbourne, Florida, a chartered municipal Corporation, on behalf of the City. They are ☒ personally known to me or ☐ produced as identification and did/did not take an oath.

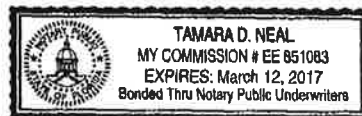
My commission expires:

Tamara D. Neal  
Notary Public

SEAL

Commission No.:

(Name typed, printed or stamped)



STATE OF FLORIDA     §  
COUNTY OF BREVARD   §

The foregoing instrument was acknowledged before me this 2 day of  
April, 2013, by Andy Anderson, Chairman of the  
Board of County Commissioners of Brevard County, Florida, a political subdivision of the State  
of Florida, who is [ ] personally known to me or [ ] produced as identification and did/did not  
take an oath.

My commission expires:

Tammy Lynn Etheridge  
Notary Public

SEAL

Commission



Tammy Lynn Etheridge  
(Name typed, printed or stamped)

**LIST OF EXHIBITS**

- A. Benchmark Property
- B. Trip Memorandum by Lassiter Transportation Group, Inc.
- C. Roadway Improvements
- D. Concurrency Approval for Driveway Permit (10/11/12)
- E. Engineer's Opinion of Total Costs and Percentage of Non-Site Related Costs
- F. Legal Description and Diagram of right-of-way being acquired and Contract for Sale and Purchase of Right-Of-Way with price to be determined.

**EXHIBIT "A"****BENCHMARK PROPERTY****Property Description:**

A portion of Lots 22, 23, and 24, FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION of Section 20, Township 28 South, Range 37 East, according to the plat thereof as recorded in Plat Book 1, Page 164 of the Public Records of Brevard County, Florida, being more particularly described as follows:

Commence at the Southwest corner of the Northwest one-quarter of said Section 20; thence N00°53'40"E, along the West line of the Northwest one-quarter of said Section 20, a distance of 296.72 feet, to a point on the Limited Access right of way of Interstate 95 and the POINT OF BEGINNING of the herein described parcel; thence continue, N00°53'40"E, along the West line of the Northwest one-quarter of said Section 20, a distance of 1,026.94 feet; thence S89°12'13"E, along the North lines of said Lots 24 and 23, a distance of 729.13 feet, to a point on the Westerly right of way line of Hollywood Boulevard (a 100.00 foot wide right of way); thence the following 3 courses along said Westerly right of way line: (1) S53°29'51"E, a distance of 397.65 feet, to the point of curvature of a curve, concave Southwesterly, having a radius of 950.00 feet and a central angle of 54°16'33"; (2) Southeasterly, along the arc of said curve to the right, a distance of 899.93 feet, to a point of tangency; (3) S00°46'42"W, a distance of 226.00 feet, to a point on the North right of way line of Palm Bay Road as shown on the Interstate 95 Right of Way Map (Section 70220-2429); thence N89°13'18"W, along said North right of way line and along the Interstate 95 Limited Access right of way as shown on said map, a distance of 1,040.69 feet; thence N00°36'57"E, along said Limited Access right of way, a distance of 1.45 feet; thence N86°47'35 "W, along said Limited Access right of way, a distance of 117.77 feet; thence N55°13'18"W, along said Limited Access right of way, a distance of 351.00 feet, to the POINT OF BEGINNING.

Less and except those lands described in that Warranty Deed recorded in Official Records Book 5477, Page 3131.



**EXHIBIT "B"**

**TRIP MEMORANDUM BY LASSITER TRANSPORTATION GROUP, INC.**



Ref: 3419.04

**TECHNICAL MEMORANDUM**

**To:** John Denninghoff, PE  
Director of Transportation Engineering, Brevard County

**From:** Daniel M. D'Antonio, PE

**Date:** October 18, 2012

**Subject:** West Melbourne Interchange Center – Proportionate Fair-Share Determination  
Hollywood Boulevard

**INTRODUCTION**

Lassiter Transportation Group, Inc. (LTG) has been retained by The Benchmark Group (the developer) to determine the proportionate fair-share (PFS) responsibility for the West Melbourne Interchange Center to satisfy transportation mitigation requirements on Hollywood Boulevard. The West Melbourne Interchange Center is a proposed development located between Hollywood Boulevard and I-95, north of Palm Bay Road, in the City of West Melbourne. The developer has been granted concurrency approval from Brevard County for 179,000 square feet of shopping center and a 114-room hotel on the 35-acre parcel.

LTG previously submitted to Brevard County a traffic impact study (TIS) which was followed by responses to County comments and additional analyses. The PFS analysis presented in this memorandum incorporates all previous analyses and is intended to establish the developer's proportionate fair-share and transportation impact fee credits related to proposed improvement to Hollywood Boulevard.

**TRIP GENERATION**

Project trips are a key input variable in the equation used to calculate PFS. As such, the project trip generation was calculated using the procedures also used by Brevard County to evaluate transportation concurrency. A copy of the concurrency worksheet is attached as Exhibit B-1 with the total trip generation presented in Table 1.

**Table 1**  
**Total Trip Generation**  
**West Melbourne Interchange Center – PFS Determination**

Time Period	Land Use	Land Use Code	Trip Rate Equation	Size (X)	Total Trips (T)	Percent Entering	Percent Exiting	Trips Entering	Trips Exiting
Daily	Hotel	310	$T = 8.92(X)$	114 rooms	1,018	50%	50%	509	509
	Shopping Center	820	$T = 42.94(X)$	179.00 KSF	7,688	50%	50%	3,844	3,844
<b>Totals:</b>					<b>8,706</b>			<b>4,353</b>	<b>4,353</b>
P.M. Peak-Hour	Hotel	310	$T = 0.70(X)$	114 rooms	80	49%	51%	39	41
	Shopping Center	820	$\ln(T) = 0.67 \ln(X) + 3.37$	179.00 KSF	940	49%	51%	461	479
<b>Totals:</b>					<b>1,020</b>			<b>500</b>	<b>520</b>

123 Live Oak Ave. • Daytona Beach, FL 32114 • Phone 386.257.2571 • Fax 386.257.6996

www.lassitertransportation.com

**TECHNICAL MEMORANDUM**

John Denninghoff, PE

October 18, 2012

Page 2

According to the Institute of Transportation Engineer's (ITE) reference manual titled *Trip Generation Handbook, 2<sup>nd</sup> Edition*, mixed-use developments retain a portion of total trips internal to the site. These trips do not travel on the external network and are removed from the external trip generation. Additionally, retail developments attract a portion of trips already on the existing roadway network adjacent to the site. This attraction is referred to as pass-by capture. Table 2 presents the net external trip generation for the West Melbourne Interchange Center.

**Table 2**  
**Net External Trip Generation**  
**West Melbourne Interchange Center – PFS Determination**

Time Period	Land Use	Total Trips			Pass-By Trips <sup>1</sup>			Internal Trips (10%) <sup>2</sup>			New External Trips		
		Enter	Exit	Total	Enter	Exit	Total	Enter	Exit	Total	Enter	Exit	Total
Daily	Hotel	509	509	1,018	0	0	0	51	51	102	458	458	916
	Shopping Center	3,844	3,844	7,688	1,307	1,307	2,614	254	254	507	2,283	2,283	4,567
	<b>Totals:</b>	<b>4,353</b>	<b>4,353</b>	<b>8,706</b>	<b>1,307</b>	<b>1,307</b>	<b>2,614</b>	<b>305</b>	<b>305</b>	<b>609</b>	<b>2,741</b>	<b>2,741</b>	<b>5,483</b>
P.M. Peak-Hour	Hotel	39	41	80	0	0	0	4	4	8	35	37	72
	Shopping Center	461	479	940	157	163	320	30	32	62	274	285	558
	<b>Totals:</b>	<b>500</b>	<b>520</b>	<b>1,020</b>	<b>157</b>	<b>163</b>	<b>320</b>	<b>34</b>	<b>36</b>	<b>70</b>	<b>309</b>	<b>321</b>	<b>630</b>

<sup>1</sup> Pass-by trips for ITE land use code 820 equals 34% of the total trip generation

<sup>2</sup> Consistent with Brevard County concurrency calculations, internal capture equals 10%

**PROPOSED ROADWAY IMPROVEMENTS**

The developer has met with County Staff on several occasions to discuss improvements to Hollywood Boulevard to increase capacity and provide efficient access to the site. Exhibit B-2 shows the improvements that provide access to the site as well as additional capacity at the intersection of Palm Bay Road and Hollywood Boulevard.

As shown on Exhibit B-2, the following improvements are proposed to benefit the general motoring public:

- 1.) Signalize existing over-capacity intersection of Hollywood Boulevard at Wal-Mart Driveway
- 2.) Construct additional southbound left-turn lane at Hollywood Boulevard/Palm Bay Road and provide a southbound right-turn overlap phase

It should be noted that LTG performed a traffic signal warrant study (TSWS) for the intersection of Hollywood Boulevard/Wal-Mart Drive using existing count data. The study concluded that a signal is warranted based on the westbound (Wal-Mart traffic) approach volumes.

**PROPORTIONATE FAIR-SHARE**

The Florida Statutes (FS) provide a mechanism for developers to pay a proportionate share of transportation infrastructure improvement costs based the ratio of project traffic versus the increase in roadway capacity due to an improvement. This mechanism is known as proportionate fair-share (PFS). The developer's PFS calculations for transportation improvements previously mentioned are presented below.

**Hollywood Boulevard at Wal-Mart Driveway/Project Driveway – Improvement: Signalize**

As previously stated, the intersection of Hollywood Boulevard and Wal-Mart Drive warrants signalization under existing conditions, with no traffic from the proposed project. As such, the developer should only be responsible for a portion of the signal that benefits the eastbound approach comprised exclusively of project traffic. Exhibit B-3 graphically shows the p.m. peak-hour turning movements used to evaluate the existing capacity under two-way

**TECHNICAL MEMORANDUM**

John Denninghoff, PE

October 18, 2012

Page 3

stop control and improved capacity under signal control. The project traffic was determined based on the trip generation presented in Table 2 and the prior project trip distribution results. Background traffic was obtained by applying growth factors based on the last five years of historic traffic counts to the 2012 turning movement counts.

The current version of *Highway Capacity Software* (HCS) was used to determine the unsignalized capacity based on build-out traffic. Exhibit B-4 presents the HCS results with the unsignalized capacities reported on Page 5. The intersection was then analyzed under signal control to determine the improved capacity. Exhibit B-5 presents HCS results of the improved lane group capacity.

For the purposes of determining PFS, only the capacities of the minor street left-turn movements were considered. This is consistent with TSWS procedures as it is recognized that major-street movements and exclusive right-turn lanes do not generally experience capacity benefits from signal control. Table 3 summarizes the PFS calculations using the data presented in Exhibits B-3 through B-5.

**Table 3  
Hollywood Boulevard at Wal-Mart/Project Driveway PFS Summary  
West Melbourne Interchange Center – PFS Determination**

Lane Group	Existing Capacity	Resultant Capacity	Change in Capacity	Project Trips	Prop. Fair-Share %
<i>Eastbound</i>					
Left	28	196	168	75	
<i>Westbound</i>					
Left	32	311	279	0	
<b>Totals:</b>	<b>60</b>	<b>507</b>	<b>447</b>	<b>75</b>	<b>16.78%</b>

As indicated in Table 3, the West Melbourne Interchange Center project traffic is expected to consume only 16.78% of the additional minor-street capacity available under signal control. Alternatively, the developer's share of the signal can be evaluated based the portion of project traffic benefitted by the signal versus the portion of Wal-Mart traffic benefitted by the signal. As shown below, this comparison results in a 38.9% share of signalization costs for which the developer would be responsible.

$$\text{Wal - Mart Volume} = 145 + 147 + 124 + 161 = 577$$

$$\text{Project Volume} = 75 + 88 + 132 + 73 = 368$$

$$\text{Total Volume} = 577 + 368 = 945$$

$$\text{Project Share} = \frac{368}{945} = \underline{\underline{38.9\%}}$$

It should be noted that although a traffic signal will facilitate ingress/egress of the proposed project, it is warranted under existing conditions by westbound (Wal-Mart) approach traffic. Based traffic projections, the eastbound approach (project traffic) will not warrant signalization under build-out conditions.

**Palm Bay Road at Hollywood Boulevard – Improvement: Additional Southbound Left-Turn Lane**

As part of the proposed improvement plan, the developer has proposed an additional southbound left-turn lane at the Palm Bay Road/Hollywood Boulevard intersection. This improvement is illustrated on Exhibit B-2. The additional lane will add capacity to the intersection by directly affecting the southbound left-turn movement as well as facilitating the redistribution of green time to other approaches.

**TECHNICAL MEMORANDUM**

John Denninghoff, PE

October 18, 2012

Page 4

According to FS 163.3180(16)(b)2, PFS mitigation shall be applied as a credit against impact fees to the extent that the mitigation is used to address improvements contemplated by the local government's impact fee ordinance. Based on Brevard County's current transportation impact fee schedule, West Melbourne Interchange Center will generate \$1,255,120 in revenue. The improvements will be made by the developer to the intersection of Palm Bay Road and Hollywood Boulevard in exchange for transportation impact fee credits. As indicated on Exhibit B-2, only a portion of the proposed Hollywood Boulevard improvements will be eligible for transportation impact fee credits. However, according to statutes, the portion should be 100% creditable.


**CONCLUSION**

The proposed West Melbourne Interchange Center has received transportation concurrency approval from Brevard County for 179,000 square feet of shopping center and a 114-room hotel. The development program is expected to generate 5,483 net external daily trips with 630 occurring in the p.m. peak-hour.

Two improvements which will benefit the general motoring public are proposed as part of a Hollywood Boulevard improvement plan. The developer is responsible for his PFS to signalize the intersection of Hollywood Boulevard at Wal-Mart Drive and add a second southbound left-turn lane at the intersection of Palm Bay Road at Hollywood Boulevard. A maximum of 83.22% and a minimum of 61.1% of the signalization costs should be impact fee creditable while 100% of the capacity improvements at Palm Bay Road/Hollywood Boulevard should be impact fee creditable.

c: John Rehak (The Benchmark Group)  
 Rob Robb (Robb & Taylor Engineering)  
 Phil Nohr, Esq. (Gray Davis)  
 R. Sans Lassiter, PE (LTG)

I affirm, by affixing my signature and seal below, that the findings contained herein are, to my knowledge, accurate and truthful and were developed using current procedures standard to the practice of professional engineering.

Name: Daniel M. D'Antonio  
 Signature:   
 Florida PE License No.: 68399  
 Date: October 18, 2012



**Lassiter Transportation Group, Inc.**  
 Engineering and Planning

# Exhibit B-1

## Brevard County Concurrency Worksheet

Reservation Fee: \_\_\_\_\_ Paid by cash/check # \_\_\_\_\_ Received by: \_\_\_\_\_ Date: \_\_\_\_\_  
 Site Plan/subdivision application must be made by: driveway/r.o.w. permit application made by 10/16/08 Receipt #: 217381  
 Site Plan/subdivision must be approved by: \_\_\_\_\_  
 Building Permit must be obtained by: \_\_\_\_\_

Current Road Segment Info	
04/05/08	
SEG#:	164A
Local Name:	Hollywood
From:	Palm Bay
To:	Cher
Current Volume:	14,139
100% MAV (ADT):	15,800
ALOS:	E
Current Vol/MAV:	90.63%
Max Capacity Allocation:	365 per project if vesting
D/R LOS Group:	UM
Permit Trips:	546
ADT Count:	13,593
Count Date:	11/12/2007



Current Road Segment Info			
04/05/08			
SEG #:	230B		
Local Name:	Palm Bay Rd		
From:	I-95		
To:	Babcock (SR 507)		
Current Volume:	41,421		
100% MAV/ADT:	51,800	ALOS:	E
Current Vol/MAV:	79.96%		
Max Capacity/Alignment:	2,595	per project if vesting	
U/R LOS Group:	U2		
Permit Trips:	2,454		
ADT Count:	38,907		
Count Date:	11/13/2007		

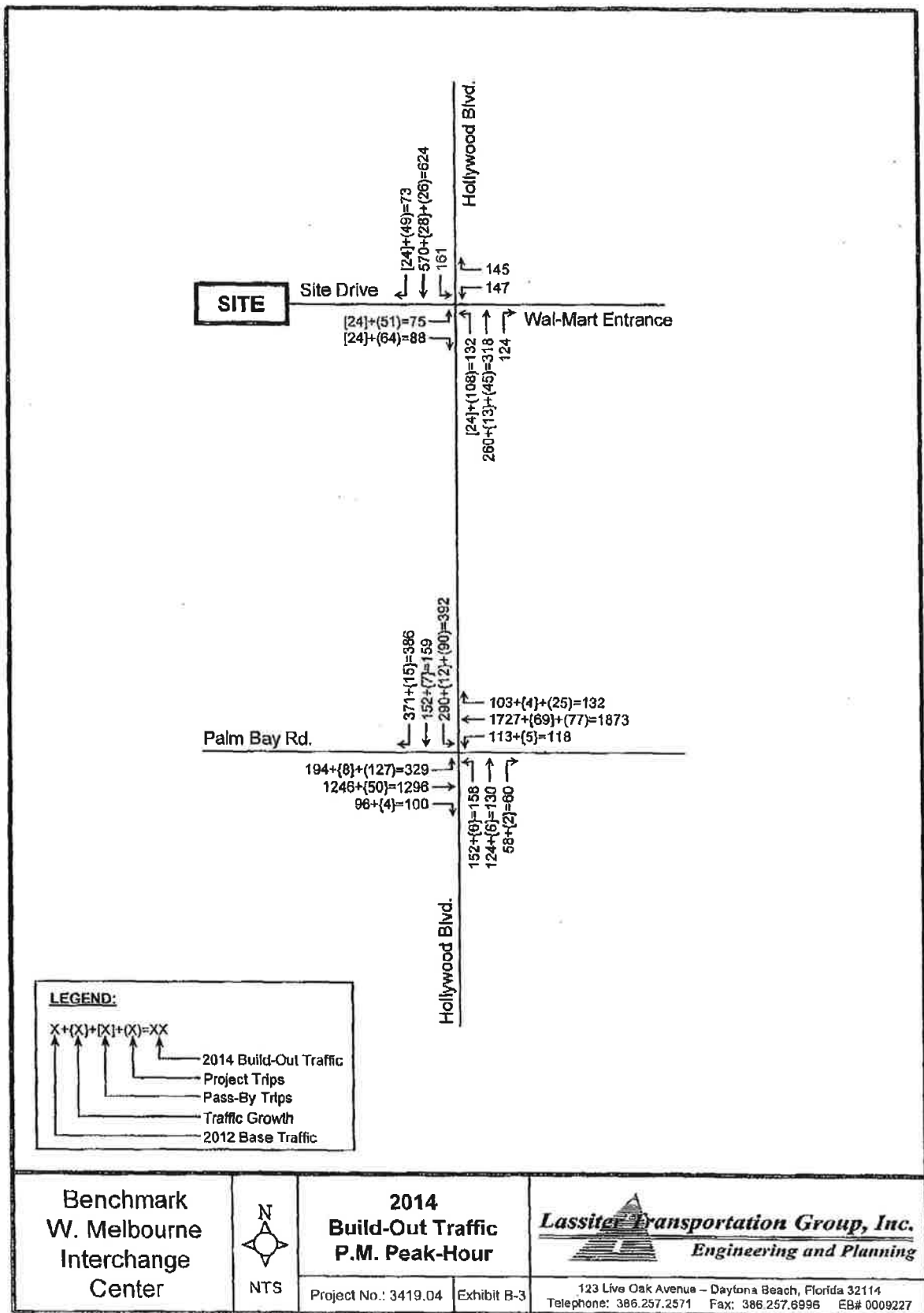
## **Exhibit B-2**

### **Hollywood Boulevard Improvement Plan**



## **Exhibit B-3**

### **Build-Out P.M. Peak-Hour Traffic**



**Exhibit B-4**  
**Hollywood Boulevard at Wal-Mart Drive/Project Drive**  
**HCS Two-Way Stop Control Worksheet**

## HCS+: Unsignalized Intersections Release 5.5

## TWO-WAY STOP CONTROL SUMMARY

Analyst: KLD  
 Agency/Co.: LTG  
 Date Performed: 10/17/2012  
 Analysis Time Period: P.M. Peak-Hour  
 Intersection: Hollywood Blvd.  
 Jurisdiction: West Melbourne  
 Units: U. S. Customary  
 Analysis Year: Build-Out  
 Project ID: Benchmark Project  
 East/West Street: Wal-Mart Dr./Site Dr.  
 North/South Street: Hollywood Blvd.  
 Intersection Orientation: NS

Study period (hrs): 0.25

Vehicle Volumes and Adjustments							
Major Street:	Approach Movement	Northbound			Southbound		
		1 L	2 T	3 R	4 L	5 T	6 R
Volume		132	318	124	161	624	73
Peak-Hour Factor, PHF		0.84	0.84	0.84	0.95	0.95	0.95
Hourly Flow Rate, HFR		157	378	147	169	656	76
Percent Heavy Vehicles		2	--	--	2	--	--
Median Type/Storage		Undivided			/		
RT Channelized?		No			No		
Lanes		1	1	1	1	1	1
Configuration		L	T	R	L	T	R
Upstream Signal?		Yes			No		
Minor Street:	Approach Movement	Westbound			Eastbound		
		7 L	8 T	9 R	10 L	11 T	12 R
Volume		147	0	145	75	0	88
Peak Hour Factor, PHF		0.77	0.77	0.77	0.75	0.75	0.75
Hourly Flow Rate, HFR		190	0	188	100	0	117
Percent Heavy Vehicles		2	0	0	2	0	0
Percent Grade (%)		0			0		
Flared Approach: Exists?/Storage		No			/		
Lanes		1	1	0	1	1	0
Configuration		L		TR	L		TR
Delay, Queue Length, and Level of Service							
Approach Movement	Lane Config	NB 1 L	SB 4 L	Westbound 7 L	8 TR	Eastbound 10 L	11 TR
v (vph)		157	169	190	188	100	117
C(m) (vph)		873	1030	32	699	28	469
v/c		0.18	0.16	5.94	0.27	3.57	0.25
95% queue length		0.65	0.59	22.87	1.09	12.10	0.98
Control Delay		10.0+	9.2	2467	12.0	1448	15.2
LOS		B	A	F	B	F	C
Approach Delay		1246			675.4		
Approach LOS		F			F		

## HCS+: Unsignalized Intersections Release 5.5

Phone:  
E-Mail:

Fax:

## TWO-WAY STOP CONTROL (TWSC) ANALYSIS

Analyst: KLD  
Agency/Co.: LTG  
Date Performed: 10/17/2012  
Analysis Time Period: P.M. Peak-Hour  
Intersection: Hollywood Blvd.  
Jurisdiction: West Melbourne  
Units: U. S. Customary  
Analysis Year: Build-Out  
Project ID: Benchmark Project  
East/West Street: Wal-Mart Dr./Site Dr.  
North/South Street: Hollywood Blvd.  
Intersection Orientation: NS

Study period (hrs): 0.25

Vehicle Volumes and Adjustments						
Major Street Movements	1	2	3	4	5	6
	L	T	R	L	T	R
Volume	132	318	124	161	624	73
Peak-Hour Factor, PHF	0.84	0.84	0.84	0.95	0.95	0.95
Peak-15 Minute Volume	39	95	37	42	164	19
Hourly Flow Rate, HFR	157	378	147	169	656	76
Percent Heavy Vehicles	2	--	--	2	--	--
Median Type/Storage	Undivided			/		
RT Channelized?	No			No		
Lanes	1	1	1	1	1	1
Configuration	L	T	R	L	T	R
Upstream Signal?	Yes			No		
Minor Street Movements	7	8	9	10	11	12
	L	T	R	L	T	R
Volume	147	0	145	75	0	88
Peak Hour Factor, PHF	0.77	0.77	0.77	0.75	0.75	0.75
Peak-15 Minute Volume	48	0	47	25	0	29
Hourly Flow Rate, HFR	190	0	188	100	0	117
Percent Heavy Vehicles	2	0	0	2	0	0
Percent Grade (%)	0			0		
Flared Approach: Exists?/Storage	No			/		
RT Channelized?	No			/		
Lanes	1	1	0	1	1	0
Configuration	L	TR		L	TR	

Pedestrian Volumes and Adjustments				
Movements	13	14	15	16
Flow (ped/hr)	0	0	0	0



Lane Width (ft)	12.0	12.0	12.0	12.0
Walking Speed (ft/sec)	4.0	4.0	4.0	4.0
Percent Blockage	0	0	0	0

Upstream Signal Data							
	Prog. Flow vph	Sat Flow vph	Arrival Type	Green Time sec	Cycle Length sec	Prog. Speed mph	Distance to Signal feet
S2 Left-Turn	329	1700	3	17	140	45	615
Through	130	1700	3	0	140	45	615
S5 Left-Turn							
Through							

## Worksheet 3-Data for Computing Effect of Delay to Major Street Vehicles

	Movement 2	Movement 5
Shared ln volume, major th vehicles:		
Shared ln volume, major rt vehicles:		
Sat flow rate, major th vehicles:		
Sat flow rate, major rt vehicles:		
Number of major street through lanes:		

## Worksheet 4-Critical Gap and Follow-up Time Calculation

Critical Gap Calculation								
Movement	1	4	7	8	9	10	11	12
	L	L	L	T	R	L	T	R
t(c,base)	4.1	4.1	7.1	6.5	6.2	7.1	6.5	6.2
t(c,hv)	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
P(hv)	2	2	2	0	0	2	0	0
t(c,g)			0.20	0.20	0.10	0.20	0.20	0.10
Percent Grade			0.00	0.00	0.00	0.00	0.00	0.00
t(3,lt)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
t(c,T): 1-stage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2-stage	0.00	0.00	1.00	1.00	0.00	1.00	1.00	0.00
t(c) 1-stage	4.1	4.1	7.1	6.5	6.2	7.1	6.5	6.2
2-stage								

Follow-Up Time Calculations								
Movement	1	4	7	8	9	10	11	12
	L	L	L	T	R	L	T	R
t(f,base)	2.20	2.20	3.50	4.00	3.30	3.50	4.00	3.30
t(f,HV)	0.90	0.90	0.90	0.90	0.90	0.90	0.90	0.90
P(HV)	2	2	2	0	0	2	0	0
t(f)	2.2	2.2	3.5	4.0	3.3	3.5	4.0	3.3

## Worksheet 5-Effect of Upstream Signals

Computation 1-Queue Clearance Time at Upstream Signal				
	Movement 2		Movement 5	
	V(t)	V(l,prot)	V(t)	V(l,prot)
V prog	130	329		

Total Saturation Flow Rate, s (vph)	1700	1700
Arrival Type	3	3
Effective Green, g (sec)	0	17
Cycle Length, C (sec)	140	140
Rp (from Exhibit 16-11)	1.000	1.000
Proportion vehicles arriving on green P	0.000	0.121
g(q1)	10.7	23.8
g(q2)	0.9	5.7
g(q)	11.6	29.5

## Computation 2-Proportion of TWSC Intersection Time blocked

	Movement 2		Movement 5	
	V(t)	V(l,prot)	V(t)	V(l,prot)
alpha		0.550		
beta		0.645		
Travel time, t(a) (sec)		9.297		
Smoothing Factor, F		0.233		
Proportion of conflicting flow, f	1.000	1.000		
Max platooned flow, V(c,max)	1621	1699		
Min platooned flow, V(c,min)	1000	1000		
Duration of blocked period, t(p)	-3.4	13.6		
Proportion time blocked, p		0.074		0.000

## Computation 3-Platoon Event Periods

	Result
p(2)	0.074
p(5)	0.000
p(dom)	0.074
p(subo)	0.000
Constrained or unconstrained?	U

## Proportion

	(1)	(2)	(3)
unblocked	Single-stage	Two-Stage Process	
for minor	Process	Stage I	Stage II
movements, p(x)			
p(1)	1.000		
p(4)	0.926		
p(7)	0.926		
p(8)	0.926		
p(9)	0.926		
p(10)	0.926		
p(11)	0.926		
p(12)	1.000		

## Computation 4 and 5

## Single-Stage Process

Movement	1	4	7	8	9	10	11	12
	L	L	L	T	R	L	T	R
V c, x	732	525	1782	1762	378	1854	1833	656
s	1500	1500	1500	1500	1500	1500	1500	1500
Px	1.000	0.926	0.926	0.926	0.926	0.926	0.926	1.000
V c, u, x	732	448	1804	1783	289	1882	1859	656
C r, x	873	1112	61	83	755	54	74	469
C plat, x	873	1030	57	77	699	50	69	469

## Two-Stage Process

7	8	10	11
---	---	----	----

	Stage1	Stage2	Stage1	Stage2	Stage1	Stage2	Stage1	Stage2
V(C,x)								
s	1500	1500	1500	1500	1500	1500	1500	1500
P(x)								
V(C,u,x)								
C(r,x)								
C(plat,x)								

## Worksheet 6-Impedance and Capacity Equations

Step 1: RT from Minor St.	9	12
Conflicting Flows	378	656
Potential Capacity	699	469
Pedestrian Impedance Factor	1.00	1.00
Movement Capacity	699	469
Probability of Queue free St.	0.73	0.75
Step 2: LT from Major St.	4	1
Conflicting Flows	525	732
Potential Capacity	1030	873
Pedestrian Impedance Factor	1.00	1.00
Movement Capacity	1030	873
Probability of Queue free St.	0.84	0.82
Maj L-Shared Prob Q free St.		
Step 3: TH from Minor St.	8	11
Conflicting Flows	1762	1833
Potential Capacity	77	69
Pedestrian Impedance Factor	1.00	1.00
Cap. Adj. factor due to Impeding mvmnt	0.69	0.69
Movement Capacity	53	47
Probability of Queue free St.	1.00	1.00
Step 4: LT from Minor St.	7	10
Conflicting Flows	1782	1854
Potential Capacity	57	50
Pedestrian Impedance Factor	1.00	1.00
Maj. L, Min T Impedance factor	0.69	0.69
Maj. L, Min T Adj. Imp Factor.	0.76	0.76
Cap. Adj. factor due to Impeding mvmnt	0.57	0.55
Movement Capacity	32	28

## Worksheet 7-Computation of the Effect of Two-stage Gap Acceptance

Step 3: TH from Minor St.	8	11
Part 1 - First Stage		
Conflicting Flows		
Potential Capacity		
Pedestrian Impedance Factor		
Cap. Adj. factor due to Impeding mvmnt		
Movement Capacity		
Probability of Queue free St.		

## Part 2 - Second Stage

Conflicting Flows  
 Potential Capacity  
 Pedestrian Impedance Factor  
 Cap. Adj. factor due to Impeding mvmnt  
 Movement Capacity

## Part 3 - Single Stage

Conflicting Flows	1762	1833
Potential Capacity	77	69
Pedestrian Impedance Factor	1.00	1.00
Cap. Adj. factor due to Impeding mvmnt	0.69	0.69
Movement Capacity	53	47

## Result for 2 stage process:

a

y

C t	53	47
Probability of Queue free St.	1.00	1.00

Step 4: LT from Minor St.	7	10
---------------------------	---	----

## Part 1 - First Stage

Conflicting Flows  
 Potential Capacity  
 Pedestrian Impedance Factor  
 Cap. Adj. factor due to Impeding mvmnt  
 Movement Capacity

## Part 2 - Second Stage

Conflicting Flows  
 Potential Capacity  
 Pedestrian Impedance Factor  
 Cap. Adj. factor due to Impeding mvmnt  
 Movement Capacity

## Part 3 - Single Stage

Conflicting Flows	1782	1854
Potential Capacity	57	50
Pedestrian Impedance Factor	1.00	1.00
Maj. L, Min T Impedance factor	0.69	0.69
Maj. L, Min T Adj. Imp Factor.	0.76	0.76
Cap. Adj. factor due to Impeding mvmnt	0.57	0.55
Movement Capacity	32	28

## Results for Two-stage process:

a

y

C t	32	28
-----	----	----

## Worksheet 8-Shared Lane Calculations

Movement	7 L	8 T	9 R	10 L	11 T	12 R
Volume (vph)	190	0	188	100	0	117
Movement Capacity (vph)	32	53	699	28	47	469
Shared Lane Capacity (vph)			699			469

## Worksheet 9-Computation of Effect of Flared Minor Street Approaches

Movement	7 L	8 T	9 R	10 L	11 T	12 R
C sep	32	53	699	28	47	469
Volume	190	0	188	100	0	117
Delay						
Q sep						
Q sep +1						
round (Qsep +1)						
n max						
C sh			699			469
SUM C sep						
n						
C act						

## Worksheet 10-Delay, Queue Length, and Level of Service

Movement	1	4	7	8	9	10	11	12
Lane Config	L	L	L		TR	L		TR
v (vph)	157	169	190		188	100		117
C(m) (vph)	873	1030	32		699	28		469
v/c	0.18	0.16	5.94		0.27	3.57		0.25
95% queue length	0.65	0.59	22.87		1.09	12.10		0.98
Control Delay	10.0+	9.2	2467		12.0	1448		15.2
LOS	B	A	F		B	F		C
Approach Delay				1246			675.4	
Approach LOS				F			F	

## Worksheet 11-Shared Major LT Impedance and Delay

	Movement 2	Movement 5
p(oj)	0.82	0.84
v(i1), Volume for stream 2 or 5		
v(i2), Volume for stream 3 or 6		
s(i1), Saturation flow rate for stream 2 or 5		
s(i2), Saturation flow rate for stream 3 or 6		
P*(oj)		
d(M,LT), Delay for stream 1 or 4	10.0+	9.2
N, Number of major street through lanes		
d(rank,1) Delay for stream 2 or 5		

**Exhibit B-5**  
**Hollywood Boulevard at Wal-Mart Drive/Project Drive**  
**HCS Signal Control Worksheet**

## HCS+: Signalized Intersections Release 5.5

Analyst: Inter.: Hollywood Blvd. at Wal-mart Dr  
 Agency: LTG Area Type: All other areas  
 Date: 10/17/2012 Jurisd: West Melbourne  
 Period: P.M. Peak-Hour Year : 2014 Build-Out  
 Project ID: Benchmark Project  
 E/W St: Wal-Mart Dr./Project Dr. N/S St:

## SIGNALIZED INTERSECTION SUMMARY

	Eastbound			Westbound			Northbound			Southbound		
	L	T	R	L	T	R	L	T	R	L	T	R
No. Lanes	1	1	0	1	1	0	1	1	1	1	1	1
LGConfig	L	TR		L	TR		L	T	R	L	T	R
Volume	75	0	88	147	0	145	132	318	124	161	624	73
Lane Width	12.0	12.0		12.0	12.0		12.0	12.0	12.0	12.0	12.0	12.0
RTOR Vol			0			0			0			0

Duration 0.25 Area Type: All other areas

## Signal Operations

Phase Combination		1	2	3	4	5	6	7	8
EB Left		A		A		NB Left	A	A	
Thru				A		Thru		A	
Right				A		Right		A	
Peds						Peds			
WB Left		A	A	A		SB Left	A	A	
Thru			A	A		Thru		A	
Right			A	A		Right		A	
Peds						Peds			
NB Right						EB Right			
SB Right						WB Right			
Green		6.9	5.3	16.3			11.3	75.2	0.0
Yellow		4.0	4.0	4.0			4.0	4.0	
All Red		1.0	1.0	1.0			1.0	1.0	

Cycle Length: 140.0 secs

## Intersection Performance Summary

Appr/ Lane Grp	Lane Group Capacity	Adj Sat Flow Rate (s)	Ratios		Lane Group		Approach	
			v/c	g/C	Delay	LOS	Delay	LOS
Eastbound								
L	196	1770	0.51	0.17	55.4	E		
TR	184	1583	0.64	0.12	66.1	E	61.1	E
Westbound								
L	311	1770	0.61	0.28	45.2	D		
TR	301	1583	0.62	0.19	56.1	E	50.6	D
Northbound								
L	194	1770	0.81	0.65	51.5	D		
T	1001	1863	0.38	0.54	18.9	B	25.9	C
R	850	1583	0.17	0.54	16.6	B		
Southbound								
L	592	1770	0.28	0.65	10.8	B		
T	1001	1863	0.65	0.54	24.5	C	21.2	C
R	850	1583	0.09	0.54	15.8	B		

Intersection Delay = 31.8 (sec/veh) Intersection LOS = C

**EXHIBIT "C"**  
**ROADWAY IMPROVEMENTS**

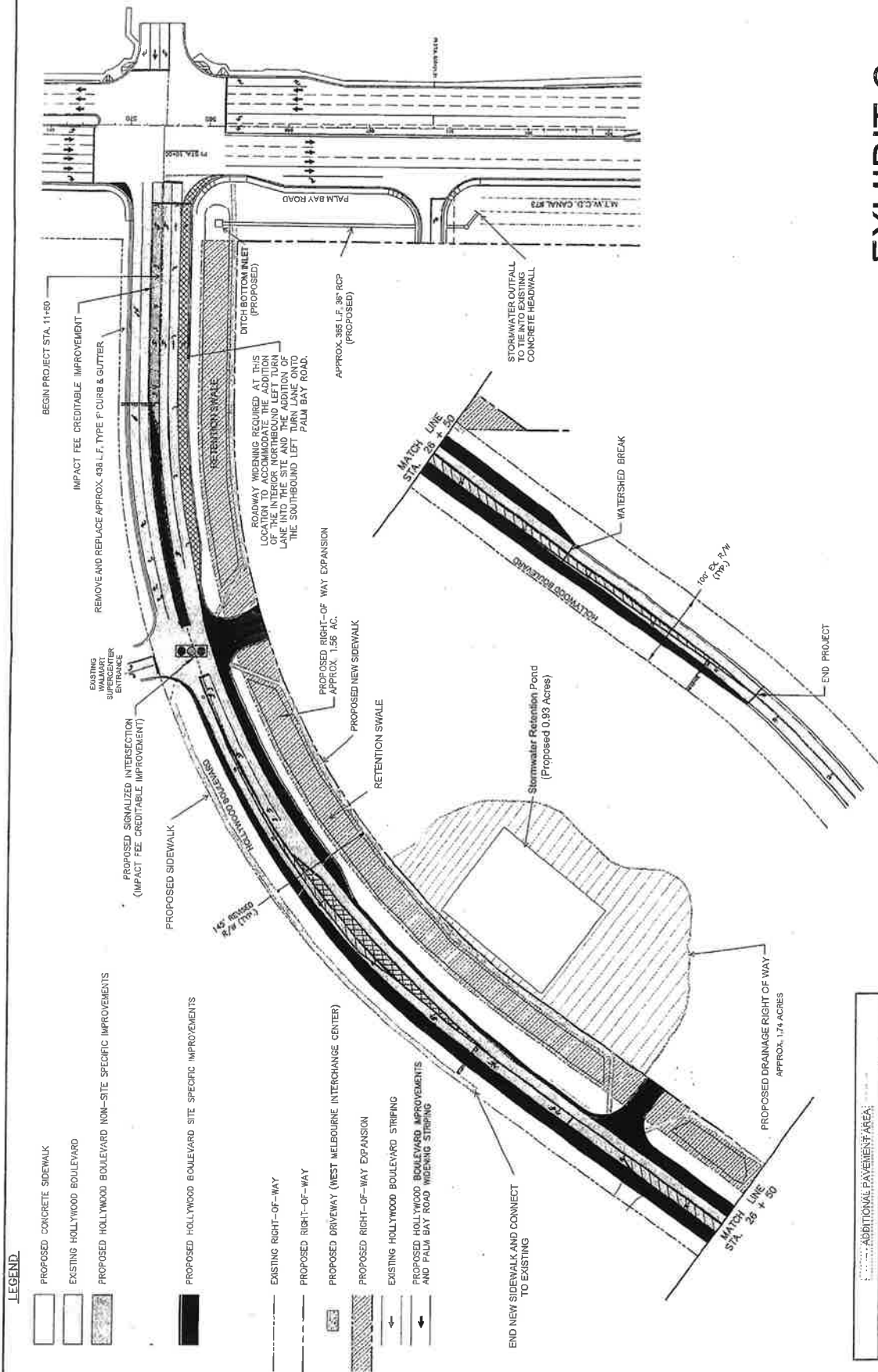


**ROADWAY IMPROVEMENTS**

- (a) Construct a mast arm traffic signal on Hollywood Boulevard at the WalMart entrance/main Benchmark Property entrance;
- (b) Widen Hollywood Boulevard by constructing a southbound left-turn lane at Palm Bay Road and a northbound left-turn on Hollywood Boulevard at the main Benchmark Property entrance opposite the Wal-Mart entrance;
- (c) Widen Hollywood Boulevard to accommodate a northbound left-turn lane at the northerly, minor Benchmark Property entrance;
- (d) Construct two separate southbound right-turn lanes on Hollywood Boulevard into the main and minor Benchmark Property entrances;
- (e) Construct a wet retention/detention drainage system which will provide water quality treatment for runoff from Hollywood Boulevard as more fully described in the stormwater analysis report prepared by Robb & Taylor Engineering Solutions, Inc.

**EXHIBIT "C"**

**Page 1 of 2**



ADDITIONAL PAVEMENT AREA			
NON-SITE SPECIFIC PAVEMENT	3,145.91 SF	0.07 AC.	7.6%
SITE SPECIFIC PAVEMENT	37,095.51 SF	0.85 AC.	92.2%
TOTAL	40,241.54 SF	0.92 AC	100%

**EXHIBIT "D"**

**CONCURRENCY APPROVAL FOR DRIVEWAY PERMIT**

Project Number: DR-12-10-01-D

Project Name: West Melbourne Interchange Center 11<sup>th</sup> Submittal

Applicant/Engineer: Robb & Taylor Engineering Solutions, Inc.

CONCURRENCY APPROVAL FOR DRIVEWAY PERMIT AND OR A RIGHT OF WAY PERMIT  
WITH AN ASSOCIATED SITE PLAN OR SUBDIVISION PLAN

NOTICE TO APPLICANT REGARDING CONCURRENCY APPROVALS:

This concurrency approval is for a Brevard County Driveway or a Right of Way Permit only, and is not intended to satisfy or eliminate any concurrency requirements from any affected municipality.

This Concurrency Evaluation Finding of Non-Deficiency will expire on: 4/11/2013, 6 months from the review date. The Driveway or Right of Way Permit submittal and approval must be made prior to this expiration date.

THE APPLICANT IS HEREBY NOTIFIED THAT THIS CONCURRENCY APPROVAL  
DOES NOT GUARANTEE THE ISSUANCE OF A BUILDING PERMIT.

This project was evaluated for a 174,500 s.f. shopping center and a 114 room hotel.

In performing the concurrency evaluation for the above-named project,  
infrastructure facilities were within established levels of service.

Paul Body, Planner I  
Reviewed By

10-11-2012  
Date

I acknowledge that I have read and understand the above information pertaining to Concurrency Approvals.

[Signature]  
Name

10/18/12  
Date

Rev 04 17.07

Concurrency File Copy

Applicant's Copy

EXHIBIT "D"  
PAGE 1 OF 2

Replaces DR-12-04-01D

District # <u>3</u>	<b>APPLICATION FOR CONCURRENCY EVALUATION</b>	<b>OFFICE USE ONLY</b>
Segment # <u>1641, 230B</u>	BREVARD COUNTY, FLORIDA	Review # <u>DR-12-10-01D</u>
	PLANNING & ZONING OFFICE	
	2725 JAMIESON WAY, BLDG A, SUITE 114, VIERA, FL 32940	
	PHONE: (321) 633-2070 FAX: (321) 633-2074 INTERNET: <a href="http://www.brevardcounty.us/zoning/">http://www.brevardcounty.us/zoning/</a>	
<small>NOTE: This application (together with all required attachments) shall be completed and submitted to the Planning &amp; Zoning Office for Evaluation. The Project must have Concurrence Approval prior to making application for Site Plan, Subdivision Plat, Driveway Permit and/or a Right of Way Use Permit Submittal. A finding of Non-Deficiency only entitles the owner/applicant to apply for development permits pursuant to the time parameters established in the Concurrence Evaluation Ordinance (91-36).</small>		

Owner: <u>Benchmark Melbourne 35 Associates</u>	Applicant/Company: <u>Robb &amp; Taylor Engineering Solutions, Inc.</u>
Address: <u>4053 Maple Road</u>	Engineer: <u>Robert Robb, P.E.</u>
<u>Amherst, New York 14226</u>	Address: <u>4685 Hidden Lakes Place</u>
Phone: <u>716-833-4986</u>	<u>Melbourne, FL 32934</u>
Email: _____	Phone & Fax: <u>321-302-2313</u>
	Email: <u>r-engineering@cfl.rr.com</u>

## PROPERTY DESCRIPTION

Township: 28S Range: 37E Section: 20 SD #: \_\_\_\_\_ Parcel: 26 Block: \_\_\_\_\_ Lot: \_\_\_\_\_

Acreage: 34.57 Zoning: C-1 Tax Parcel ID, Legal: 28-37-20-00-00260.0-0000.00

## PROPOSED DEVELOPMENT INFORMATION/POTENTIAL

☐ Site Plan Submittal or Amendment: Project Name: West Melbourne Interchange Center

☐ Subdivision Plat Submittal: Nearest Major Road: Hollywood Blvd / Palm Bay Road

## Residential Uses (check all that apply): (du = dwelling units)

- ☐ Single-Family Houses Detached \_\_\_\_\_ du
- ☐ Single-Family Homes Attached (duplex, triplex, condo, townhome) \_\_\_\_\_ du
- ☐ Multi-Family Apartments (4 or more units/buildings) \_\_\_\_\_ du
- ☐ Mobile/Manufactured Homes (lots & or acreage) \_\_\_\_\_ du
- ☐ Recreational Homes (lots/sites & or acreage) \_\_\_\_\_ du

Note: If project will be phased, or has multiple buildings, please give a breakdown showing the type and number of units in each phase or building.

Phase #/Building # \_\_\_\_\_

## Non-residential Uses (check all that apply): (sf = square feet)

- ☐ Bank (with or without drive-through) \_\_\_\_\_ sf
- ☐ Church (all uses except classroom space) \_\_\_\_\_ sf
- ☐ Convenience store (with gas sales, or without gas) \_\_\_\_\_ sf
- ☒ Hotel/Motel (# of rooms) 114 rm
- ☐ Office \_\_\_\_\_ sf
- ☒ Retail 168,625 sf
- ☒ Restaurant (all down indoor & or outdoor seating) 5,875 sf
- ☐ Restaurant (fast food with drive-through or without) \_\_\_\_\_ sf
- ☐ Warehouse \_\_\_\_\_ sf
- ☐ ACLF & or Nursing Home (number of beds or rooms) \_\_\_\_\_ beds or rooms
- ☐ Other: \_\_\_\_\_ size: \_\_\_\_\_
- ☐ Other: \_\_\_\_\_ size: \_\_\_\_\_

# of vehical fueling positions/hoses: \_\_\_\_\_

<b>OFFICE USE ONLY</b>		
<input checked="" type="checkbox"/> Fee of \$175.00 in Cash or Check (No. <u>574</u> ) drawn to the order of Brevard County Board of County Commissioners.	Provider: <u>Melbourne</u>	Expires: <u>Unlimited</u>
<input checked="" type="checkbox"/> Potable Water Capacity Availability Certificate or Reservation	Provider: <u>West Melbourne</u>	Expires: <u>Unlimited</u>
<input checked="" type="checkbox"/> Sanitary Sewer Capacity Availability Certificate or Reservation		Expires: <u>4-10-14</u>
<input checked="" type="checkbox"/> Solid Waste Capacity Reservation Certificate from Brevard County Solid Waste Department		
<input checked="" type="checkbox"/> 1 Copy of Site Plan, Subdivision Plan or Concept Drawing with A General Statement		
Received By: <u>Paul Body</u>	Date: <u>10-11-12</u>	Receipt: <u>322858</u>
<input checked="" type="checkbox"/> A Finding of Non Deficiency	Applicant must Apply for and Receive Approval for Site Plan, Subdivision Plat, Driveway Permit and/or a Right of Way Use Permit with the Land Development Office prior to: <u>4-11-13</u>	
<input checked="" type="checkbox"/> APPROVED CONDITIONALLY		
<input type="checkbox"/> Exempt per: _____	Site Plan Number: _____	
<input type="checkbox"/> A Finding of Deficiency		
<input type="checkbox"/> DEFERRED OR DENIED		
Reviewed By: <u>Paul Body</u>	Date: <u>10-11-12</u>	Title: <u>Planner I</u>
White - Office Original	Yellow - Land Development Copy	Pink - Applicant Copy

**EXHIBIT "E"**

**ENGINEER'S OPINION OF TOTAL COSTS AND PERCENTAGE OF NON-SITE  
RELATED COSTS**

HOLLYWOOD BOULEVARD IMPROVEMENTS OPINION OF PROBABLE CONSTRUCTION COST ROADWAY LENGTH: 2090 LINEAL FEET						
Owner: The Benchmark Group Firm: Robb & Taylor Engineering, Inc.						R. Robb 10/30/2012
ITEM DESCRIPTION	QUANTITY	UNIT	UNIT COST	% REIMBURSABLE	REIMBURSABLE COST	TOTAL COST
Start - up Items						
Mobilization	1	ls	22000	7.80%	\$ 1,716.00	\$ 22,000
Trailer	6	mos	385	7.80%	\$ 180.18	\$ 2,310
Dumpster	12	ea	55	7.80%	\$ 51.48	\$ 660
Chemical Toilets	6	mos	230	7.80%	\$ 107.64	\$ 1,380
Staging Area	1	ea	5500	7.80%	\$ 429.00	\$ 5,500
Temporary Electric	6	mos	770	7.80%	\$ 360.36	\$ 4,620
Testing	1	ls	11000	7.80%	\$ 858.00	\$ 11,000
					\$ 3,703	\$ 47,470
Erosion Control						
Silt Fence - Staked	4500	lf	\$ 3.00	7.80%	\$ 1,053.00	\$ 13,500
Floating Turbidity Barriers	225	lf	\$ 5.50	7.80%	\$ 96.53	\$ 1,238
NPDES Compliance	1	ls	\$ 5,500.00	7.80%	\$ 429.00	\$ 5,500
					\$ 1,579	\$ 20,238
Demolition						
Sign relocation	1	ea	\$ 330.00	7.80%	\$ 25.74	\$ 330
18" RCP removal	262	lf	\$ 11.00	7.80%	\$ 224.80	\$ 2,882
24" RCP removal	218	lf	\$ 11.00	7.80%	\$ 187.04	\$ 2,398
18" MES removal	4	ea	\$ 110.00	7.80%	\$ 34.32	\$ 440
24" MES removal	1	ea	\$ 110.00	7.80%	\$ 8.58	\$ 110
Asphalt Paved Shoulder Removal	1470	sy	\$ 1.65	7.80%	\$ 189.19	\$ 2,426
Asphalt pavement removal (Traffic Lanes)	5850	sy	\$ 1.65	7.80%	\$ 752.90	\$ 9,653
Asphalt Milling (1 1/2" depth)	1270	sy	\$ 1.45	7.80%	\$ 143.64	\$ 1,842
Type F Concrete Curb Removal	515	lf	\$ 5.50	7.80%	\$ 220.94	\$ 2,833
6" Force Main Relocation	750	lf	\$ 65.00	7.80%	\$ 3,802.50	\$ 48,750
Dewatering - Force Main Relocation	750	lf	\$ 11.00	7.80%	\$ 643.50	\$ 8,250
Power Pole Relocation	6	ea	\$ 18,700.00	100.00%	\$ 112,200	\$ 112,200
Traffic Hand Signal Removal	1	ea	\$ 8,250.00	7.80%	\$ 643.50	\$ 8,250
Traffic Control Box and loop removal	1	ea	\$ 8,800.00	7.80%	\$ 686.40	\$ 8,800
4' barbed wire fence / post removal	1549	lf	\$ 4.40	7.80%	\$ 531.62	\$ 6,816
					\$ 120,295	\$ 215,978

## EXHIBIT "E"

Page 1 of 3

HOLLYWOOD BOULEVARD IMPROVEMENTS						
OPINION OF PROBABLE CONSTRUCTION COST						
ITEM DESCRIPTION	QUANTITY	UNIT	UNIT COST	% REIMBURSABLE	REIMBURSABLE COST	COST
Roadway Construction						
Cemented Coquina 10" Thk base (shoulder)	1500	sy	\$ 13.20	7.80%	\$ 1,544	\$ 19,800
Cemented Coquina 10" Thk base (new traffic lanes)	2980	sy	\$ 15.40	7.80%	\$ 3,580	\$ 45,892
Cemented Coquina base (existing traffic lanes - add'l)	1110	cy	\$ 61.50	7.80%	\$ 5,325	\$ 68,265
Stabilized Shoulder Subgrade (12" thk.)	1500	sy	\$ 8.25	7.80%	\$ 965	\$ 12,375
Stabilized New Traffic Lane Subgrade (12" thk.)	2980	sy	\$ 8.25	7.80%	\$ 1,918	\$ 24,585
2" Thk. Asphalt structural course (Superpave 12.5)	11370	sy	\$ 9.90	7.80%	\$ 8,780	\$ 112,563
1 1/2" FC-12.5 Dense Graded Friction Course	10235	sy	\$ 14.85	7.80%	\$ 11,855	\$ 151,990
Bituminous Prime Coat	1150	gal	\$ 2.85	7.80%	\$ 256	\$ 3,278
Bituminous Tack Coat	1150	gal	\$ 2.85	7.80%	\$ 256	\$ 3,278
Guardrail	577	lf	\$ 20.35	7.80%	\$ 916	\$ 11,742
					\$ 35,394	\$ 453,767
Earthwork						
Clear and grub roadway area	3.60	ac.	\$ 6,050.00	7.80%	\$ 1,699	\$ 21,780
Fill Placement / Rough Grading	3669	cy	\$ 2.75	7.80%	\$ 787	\$ 10,090
Earthwork cut	2125	cy	\$ 3.30	7.80%	\$ 547	\$ 7,013
Seed and Mulch of disturbed areas and swales	17310	sy	\$ 0.80	7.80%	\$ 1,080	\$ 13,848
Sod (2' strip along curb)	114	sy	\$ 5.50	7.80%	\$ 49	\$ 629
Final Grading	17450	sy	\$ 1.55	7.80%	\$ 2,110	\$ 27,048
					\$ 6,272	\$ 80,407
Drainage - Conveyance System						
Reinforced Concrete Pipe (36" Dia.)	356	lf	\$ 71.50	7.80%	\$ 1,985	\$ 25,454
M.E.S. (36" Dia.)	1	ea	\$ 2,750.00	7.80%	\$ 215	\$ 2,750
M.E.S. (18" Dia.)	6	ea	\$ 550.00	7.80%	\$ 257	\$ 3,300
18" R.C.P.	177	lf	\$ 30.00	7.80%	\$ 414	\$ 5,310
FDOT Type D Inlet	2	ea	\$ 2,100.00	7.80%	\$ 328	\$ 4,200
Manholes (Type J)	2	ea	\$ 3,850.00	7.80%	\$ 601	\$ 7,700
Manholes (5' dia.)	6	ea	\$ 2,300.00	7.80%	\$ 1,076	\$ 13,800
14" x 23" ERCP	1512	lf	\$ 35.00	7.80%	\$ 4,128	\$ 52,920
14" x 23" M.E.S.	7	ea.	\$ 750.00	7.80%	\$ 410	\$ 5,250
					\$ 9,413	\$ 120,684

## EXHIBIT "E"

Page 2 of 3



**HOLLYWOOD BOULEVARD IMPROVEMENTS  
OPINION OF PROBABLE CONSTRUCTION COST**

ITEM DESCRIPTION	QUANTITY	UNIT	UNIT COST	% REIMBURSABLE	REIMBURSABLE COST	COST
<b>Stormwater Retention Basin</b>						
Clear and Grub Pond Area	1.2	ac.	\$ 7,150.00	7.80%	\$ 669	\$ 8,580
Excavation	11100	cy	\$ 2.75	7.80%	\$ 2,381	\$ 30,525
Dewatering	11100	cy	\$ 1.65	7.80%	\$ 1,429	\$ 18,315
Sod	1700	sy	\$ 2.20	7.80%	\$ 292	\$ 3,740
Final Grading	2420	sy	\$ 2.75	7.80%	\$ 519	\$ 6,655
Outfall Control Structure	1	ea	\$ 4,950.00	7.80%	\$ 386	\$ 4,950
					<b>\$ 5,676</b>	<b>\$ 72,765</b>

<b>Miscellaneous</b>						
FDOT Type 'F' concrete curb	515	lf	\$ 25.30	7.80%	\$ 1,016	\$ 13,030
5' Sidewalk	1549	lf	\$ 24.50	7.80%	\$ 2,960	\$ 37,951
8' Sidewalk	539	lf	\$ 39.20	7.80%	\$ 1,648	\$ 21,129
Signage	9	ea	\$ 350.00	7.80%	\$ 246	\$ 3,150
Detectable Warning (Truncated Domes) Ped Ramps	5	ea	\$ 550.00	7.80%	\$ 215	\$ 2,750
Reflective Pavement Markers	390	ea	\$ 11.00	7.80%	\$ 335	\$ 4,290
Striping	1	ls	\$ 14,025.00	7.80%	\$ 1,094	\$ 14,025
Layout and "As-Built"	1	ls	\$ 16,500.00	7.80%	\$ 1,287	\$ 16,500
Turn arrows	37	ea	\$ 100.00	7.80%	\$ 289	\$ 3,700
Stop Bars	5	ea	\$ 265.00	7.80%	\$ 103	\$ 1,325
Maintenance of Traffic			\$ 88,000.00	7.80%	\$ 6,864	\$ 88,000
Traffic Signal Design	1	ls	\$ 25,000.00	61.10%	\$ 15,275	\$ 25,000
Civil Engineering Design			\$ 75,000.00	7.80%	\$ 5,850	\$ 75,000
Legal			\$ 25,000.00	7.80%	\$ 1,950	\$ 25,000
					<b>\$ 39,131</b>	<b>\$ 330,849</b>

<b>Traffic Signalization</b>						
Traffic Signalization w/mast arms	1	ls	\$ 295,000.00	61.10%	\$ 180,245	\$ 295,000
					<b>\$</b>	<b>\$ 295,000</b>

**Total Reimbursable Costs:**  
**Subtotal Cost Hollywood Boulevard Improvements:** \$ 401,707  
**Contingency (10%):** \$ 40,171  
**Total Cost Hollywood Boulevard Improvements:** \$ 441,877

**\$ 1,637,156**  
**\$ 163,716**  
**\$ 1,800,872**

**EXHIBIT "F"**

**LEGAL DESCRIPTION OF RIGHT-OF-WAY AND**  
**RIGHT OF WAY PURCHASE AGREEMENT**

**CONTRACT FOR SALE AND PURCHASE****Seller:** Benchmark Melbourne 35 Associates Limited Partnership, a foreign limited partnership**Buyer:** Board of County Commissioners, Brevard County, Florida  
2725 Judge Fran Jamieson Way, Viera, Florida 32940**Legal description of property being transferred:** See Exhibit "A".

The transfer shall be made pursuant to the following terms and conditions and the Standards for Real Estate Transactions, on the reverse side of this contract.

**Purchase price:** \$578,250.00**Deposit:** \$100 to be transferred to an escrow account established and held by the Brevard County Clerk, such deposit to be applied to the purchase price.**Time for acceptance of offer; effective date; facsimile:** If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or before April 17, 2013, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed this offer. A facsimile copy of this Contract and any signatures hereon shall be considered for all purposes as originals.**Title evidence:** At least 15 days before closing date, ☒ Seller shall, at Seller's expense, deliver to Buyer or Buyer's attorney or ☐ Buyer shall at Buyer's expense obtain ☐ a title search and/or ☒ title insurance commitment (with legible copies of instruments listed as exceptions attached thereto) and, after closing, an owner's policy of title insurance.**Closing Date:** This transaction shall be closed and the deed and other closing papers delivered on June 30, 2013, unless modified by other provisions of this Contract.**Warranties:** The following warranties are made and shall survive closing.

- a. SELLER warrants that there are no parties in occupancy other than Seller.
- b. SELLER warrants there is no hazardous waste or other environmental contamination located in or upon the property being acquired by the County. Seller shall indemnify and defend Buyer from any and all claims or expenses resulting from hazardous waste or environmental contamination located in or upon the property provided such waste or contamination was not placed on the property by the Buyer.
- c. SELLER warrants that he/she has no knowledge of any fact or restriction which would prevent use of the property for purposes.
- d. SELLER hereby represents and warrants to COUNTY that SELLER has not engaged or dealt with any agent, broker or finder, in regard to this Agreement or to the sale and purchase of the property contemplated hereby. SELLER hereby acknowledges and covenants that SELLER is solely responsible for any and all commissions due arising out of or connected within the sale or transfer of the property. SELLER hereby indemnifies COUNTY and agrees to hold COUNTY free and harmless from and against any and all liability, loss, costs, damage and expense, including but not limited to attorney's fees and costs of litigation both prior to and on appeal, which COUNTY shall ever suffer or incur because of any claim by any agent, broker or finder engaged by SELLER, including broker, whether or not meritorious, for any fee, commission or other compensation with respect to this Agreement or to the sale and purchase of the property contemplated hereby.

**Inspections:** The BUYER shall have 60 days after the Brevard County Board of County Commissioners executes the contract within which to complete physical inspection and evaluation of the property for environmental, hazardous materials, developability, access, drainage and subsurface conditions. In the event a Phase I environmental assessment meeting ASTM standards is prepared and environmental issues objectionable to BUYER are detected, SELLER shall 1) take all steps necessary to remove BUYER'S objections prior to the expiration of the 60 day inspection period, if possible or 2) if acceptable to BUYER, SELLER shall allow an additional 90 days to provide adequate time to conduct a Phase II assessment meeting ASTM standards. If the Phase I assessment reveals contamination this agreement may be terminated by BUYER and BUYER may decline to allow SELLER to clean up or to proceed to a Phase II assessment. Likewise, if the Phase II assessment reveals contamination objectionable to BUYER, BUYER may terminate this agreement. Alternatively, BUYER may grant SELLER an additional 90 days to clean up the site after the Phase II assessment, but BUYER is not required to do so. SELLER shall allow the BUYER or its agents reasonable right of entry upon the property for inspection purposes. Before the expiration of the initial 60-day inspection period or the additional 90-day extension for a Phase II assessment, BUYER shall have the right to terminate this agreement with a full refund of any deposits, should the results of the inspection indicate the property cannot be used for its intended purpose or that mitigation of conditions would be required. If clean up after a Phase II assessment is attempted but unacceptable to BUYER, the BUYER shall receive a full refund of its deposit.**Condemnation:** This property ☐ is ☒ is not being acquired under threat of condemnation. If so, this agreement, includes and settles all issues of full compensation for the property being acquired, including fees and costs.

SELLER shall comply with §196.295, Fla. Stat.

SELLER hereby agrees to provide the necessary information and execute a beneficial interest and disclosure affidavit as required by §286.23, Fla. Stat.

**Special Clauses:** ☐ See attached addendum ☐ NOT APPLICABLEBOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDABENCHMARK MELBOURNE 35 ASSOCIATES LIMITED PARTNERSHIP a Delaware Limited Partnership  
By Benchmark Blue Ash Properties, a Delaware Corporation, its General Partner\_\_\_\_\_  
Andy Anderson, CHAIRMAN\_\_\_\_\_  
(Seller) By: Benchmark Blue Ash Properties, Inc., General Partner  
By: \_\_\_\_\_, as President

As approved by the Board \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
(Seller) \_\_\_\_\_ Date \_\_\_\_\_

## STANDARDS FOR REAL ESTATE TRANSACTIONS

**A. EVIDENCE OF TITLE:** A title insurance commitment issued by a Florida licensed title insurer agreeing to issue to Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price insuring Buyer's title to the Real Property, subject only to liens, encumbrances, exceptions or qualifications set forth in this Contract and those which shall be discharged by Seller at or before closing. Seller shall convey marketable title subject only to liens, encumbrances, exceptions or qualifications specified in this Contract. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving evidence of title to examine it. If title is found defective, Buyer shall within 3 days thereafter, notify Seller in writing specifying defect(s). If the defect(s) render title unmarketable, Seller will have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within five (5) days after expiration of the thirty (30) day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall immediately be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) in the title within the time provided therefor. If Seller is unable to remove the defects within the times allowed therefor, Buyer shall either waive the defects or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligation under this Contract.

**B. SURVEY:** Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certified by a registered Florida surveyor. If survey shows encroachment on Real Property or that improvements located on Real Property encroach on setback lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulation, the same shall constitute a title defect.

**C. INGRESS AND EGRESS:** Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described in the Warranties section of the agreement.

**D. LIENS:** Seller shall furnish to Buyer at time of closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Property for 90 days immediately preceding date of closing. If Property has been improved or repaired within that time Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen and further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at closing of this Contract.

**E. TIME PERIOD:** Time is of the essence in this Contract.

**F. DOCUMENTS FOR CLOSING:** Seller shall furnish the deed, bill of sale, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgagee estoppel letters and corrective instruments. Buyer shall furnish closing statement.

**G. EXPENSES:** Documentary stamps on the deed, if required, and recording of corrective instruments shall be paid by Seller. Buyer will pay for the cost of recording the deed.

**H. PRORATIONS; CREDITS:** Taxes, assessments, rent, interest, insurance and other expenses and revenue of Property shall be prorated through day before closing. Buyer shall have the option of taking over any existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at closing shall be increased or decreased as may be required by prorations. Prorations will be made through day prior to occupancy if occupancy occurs before closing. Advance rent and security deposits will be credited to Buyer and escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage. If current year's assessment is not available, then taxes will be prorated on the prior year's tax. If there are completed improvements on the Real Property by January 1st of year of closing, which improvements were not in existence on January 1st of the prior year, then taxes shall be prorated based upon the prior year's millage and an equitable assessment to be agreed upon between the parties, failing which, request will be made to the County Property Appraiser for an informal assessment taking into consideration available exemptions. Any tax proration based on an estimate shall, at request of either Buyer or Seller, be subsequently readjusted upon receipt of tax bill on condition that a statement to that effect is in the closing statement.

**I. SPECIAL ASSESSMENT LIENS:** Certified, confirmed and ratified special assessment liens as of date of closing (not as of Effective Date) are to be paid by Seller. Pending liens as of date of closing shall be assumed by Buyer. If the improvement has been substantially completed as of Effective Date, any pending lien shall be considered certified, confirmed or ratified and Seller shall, at closing, be charged an amount equal to the last estimate of assessment for the improvement by the public body.

**J. PROCEEDS OF SALE; CLOSING PROCEDURE:** The deed shall be recorded upon clearance of funds. If abstract of title has been furnished, evidence of title shall be continued at Buyer's expense to show title in Buyer, without any encumbrances or change which would render Seller's title unmarketable from the date of the last evidence. Proceeds of the sale shall be held in escrow by Seller's attorney or by another mutually acceptable escrow agent for a period of not more than 5 days after closing date. If Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5-day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect. If Seller fails to timely cure the defect, all deposit(s) and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of sale. If Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale. The escrow and closing procedure required by this Standard shall be waived if title agent insures adverse matters pursuant to Section 627.7841, F.S. (1993), as amended.

**K. FAILURE OF PERFORMANCE:** If Buyer fails to perform this Contract within the time specified, including payment of all deposit(s), the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be retained by or for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, the Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach. In the event of any litigation arising out of this contract, each party shall bear its own attorney's fees and costs. The parties hereby agree to waive trial by jury.

**L. CONVEYANCE:** Seller shall convey title to the Real Property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to the status of Seller. Personal Property shall, at request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

**M. OTHER AGREEMENTS:** No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

**N. WARRANTY:** Seller warrants that there are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed.

Reviewed for legal form and content:

\_\_\_\_\_, (Assistant) County Attorney

OFFICIAL COURT USE ONLY (CFN#)

**SKETCH & DESCRIPTION****-NOT A SURVEY-**

SECTION 20, TOWNSHIP 28 SOUTH, RANGE 37 EAST

PARCEL ID# 28-37-20-00-00260.0-0000.00

PURPOSE OF SURVEY: Right-of-Way dedication of  
Hollywood Boulevard Roadway Improvements

EXHIBIT A-1

page 1

SHEET 1 OF 2

NOT VALID WITHOUT THE SKETCH  
ON SHEET 2 OF 2**LEGAL DESCRIPTION:**

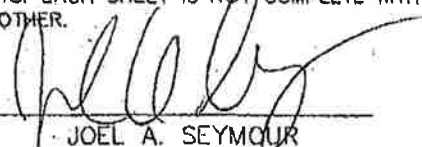
A parcel of land lying in the Northwest one-quarter of Section 20, Township 28 South, Range 37 East, Brevard County, Florida being a portion of those lands described in Official Records Book 5526, Page 5122 of the Public Records of Brevard County, Florida and being more particularly described as follows: Commence at the Southwest corner of said Northwest one-quarter and run S 89°13'18" E along the South line of said Northwest one-quarter, a distance of 1450.20 feet; thence N 00°46'42" E 114.00 feet to a point on the North right-of-way line of Palm Bay Road, as presently occupied, and the Point of Beginning of the herein described parcel; thence N 89°13'18" W along said North right-of-way line 45.00 feet; thence run Northwesterly parallel to and 45 feet Westerly of (by perpendicular measure) the Westerly right-of-way line of Hollywood Boulevard, as presently occupied for the next three (3) courses; (1) N 00°46'42" E 205.88 feet to a point of curvature of a circular curve concave to the Southwest having a radius of 905.00 feet; (2) thence run Northwesterly along the arc of said curve through a central angle of 54°16'33" a distance of 857.30 feet to a point of tangency; (3) thence N 53°29'51" W 460.26 feet to the North line of said lands described in Official Records Book 5526, Page 5122; thence S 89°12'25" E along the North line of said lands 77.10 feet to the said Westerly right-of-way line of Hollywood Boulevard; thence run Southeasterly along said Westerly right-of-way line for the next three (3) courses; (1) S 53°29'51" E 397.66 feet to a point of curvature of a circular curve concave to the Southwest having a radius of 950.00 feet; (2) thence run Southeasterly along the arc of said curve through a central angle of 54°16'33" a distance of 899.93 feet to a point of tangency; (3) thence S 00°46'42" W 205.88 feet to the Point of Beginning. Containing 1.56 acres more or less.

**ABBREVIATIONS:**

A = ARC  
BRG = BEARING  
CHD = CHORD  
C/L = CENTERLINE  
DA = DELTA ANGLE  
ORB = OFFICIAL RECORDS BOOK  
PC = POINT OF CURVATURE  
POB = POINT OF BEGINNING  
POC = POINT OF COMMENCEMENT  
PT = POINT OF TANGENCY  
R = RADIUS  
R/W = RIGHT-OF-WAY.

**SURVEYORS NOTES:**

1. BEARINGS BASED ON ORB 5526, PAGE 5122
2. NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
3. THIS SKETCH AND DESCRIPTION CONTAINS 2 SHEETS. EACH SHEET IS NOT COMPLETE WITHOUT THE OTHER.



JOEL A. SEYMOUR  
FLORIDA LICENSED PROFESSIONAL  
SURVEYOR & MAPPER, PSM NO. 6133  
NOT VALID UNLESS SIGNED AND SEALED

PREPARED FOR:  
BENCHMARK MELBOURNE 35 ASSOCIATES, LP

PREPARED BY: KANE SURVEYING  
ADDRESS: 505 DISTRIBUTION DRIVE, MELBOURNE, FLORIDA 32904  
PHONE: (321) 676-0427

DRAWN BY: JAS	CHECKED BY: JAS	DRAWING NO. 23229	SECTION 20
DATE: 8/10/09	SHEET 1 OF 2	REVISIONS 8/26/09	TOWNSHIP 28 SOUTH
			RANGE 37 EAST

OFFICIAL COURT USE ONLY (CFN#)

**SKETCH & DESCRIPTION**

-NOT A SURVEY-

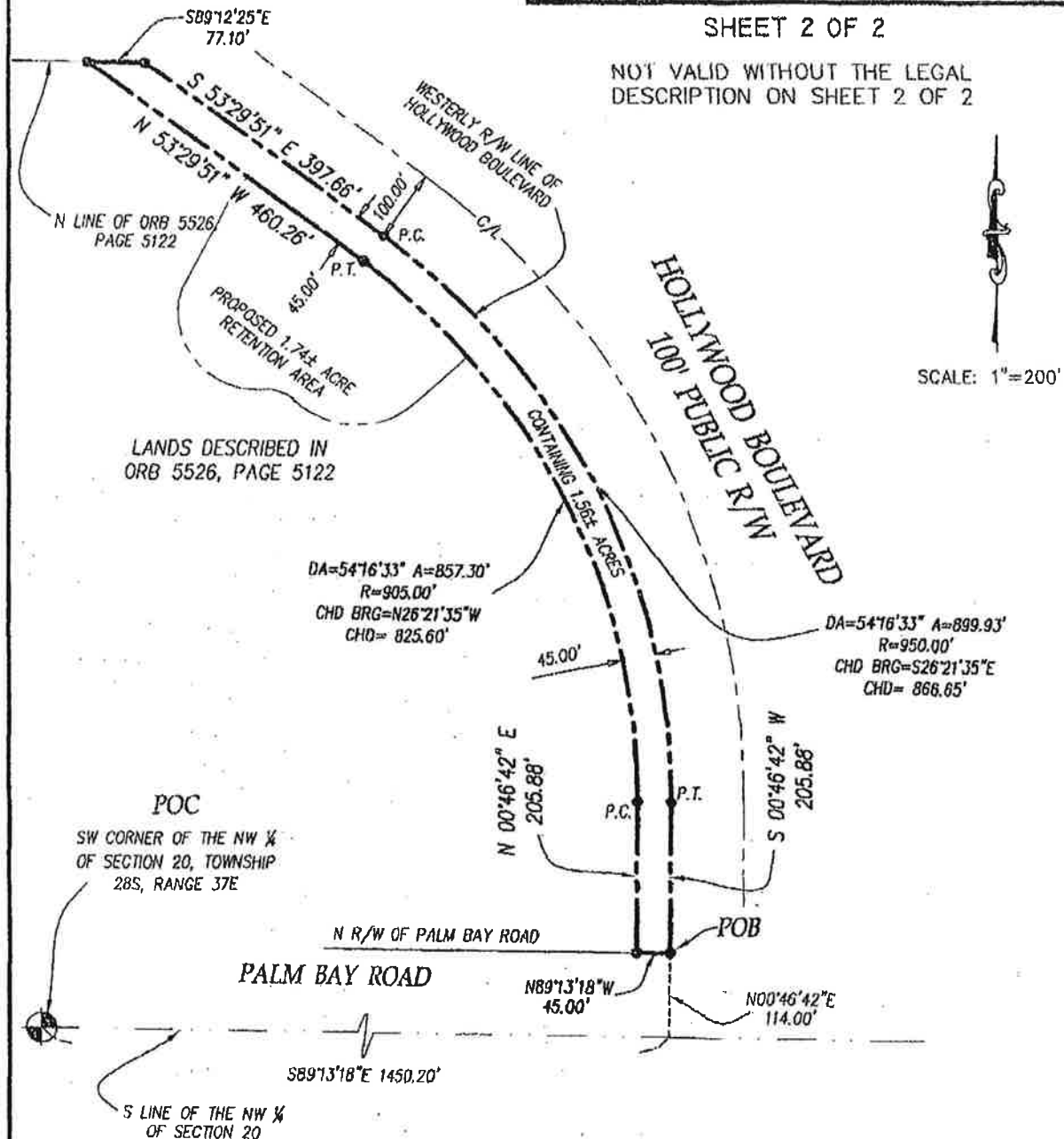
SECTION 20, TOWNSHIP 28 SOUTH, RANGE 37 EAST

PARCEL ID# 28-37-20-00-00260.0-0000.00

EXHIBIT A-1

page 2

SHEET 2 OF 2

NOT VALID WITHOUT THE LEGAL  
DESCRIPTION ON SHEET 2 OF 2SECTION 20, TOWNSHIP 28  
SOUTH, RANGE 37 EASTPREPARED BY:  
Kane Surveying  
505 Distribution Drive  
Melbourne, Florida 32904  
(321) 676-0427

PROJECT NO. 23229

OFFICIAL COURT USE ONLY (CFN#)

**SKETCH & DESCRIPTION****-NOT A SURVEY-**SECTION 20, TOWNSHIP 28 SOUTH, RANGE 37 EAST  
PARCEL ID# 28-37-20-00-00260.0-0000.00PURPOSE OF SURVEY: Retention Pond description for  
Hollywood Boulevard Roadway Improvements

EXHIBIT A-2

page 1

SHEET 1 OF 2

NOT VALID WITHOUT THE SKETCH  
ON SHEET 2 OF 2**LEGAL DESCRIPTION:**

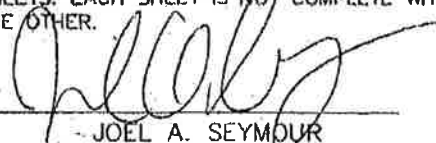
A parcel of land lying in the Northwest one-quarter of Section 20, Township 28 South, Range 37 East, Brevard County, Florida being a portion of those lands described in Official Records Book 5526, Page 5122 of the Public Records of Brevard County, Florida and being more particularly described as follows: Commence at the Southwest corner of said Northwest one-quarter and run S 89°13'18" E along the South line of said Northwest one-quarter, a distance of 1450.20 feet; thence N 00°46'42" E 114.00 feet to a point on the North right-of-way line of Palm Bay Road, as presently occupied; thence N 89°13'18" W along said North right-of-way line 45.00 feet; thence run Northwesterly parallel to and 45 feet Westerly of (by perpendicular measure) the Westerly right-of-way line of Hollywood Boulevard, as presently occupied for the next two (2) courses; (1) N 00°46'42" E 205.88 feet to a point of curvature of a circular curve concave to the Southwest having a radius of 905.00 feet; (2) thence run Northwesterly along the arc of said curve through a central angle of 42°04'52" a distance of 664.68 feet to the Point of Beginning of the herein described parcel; thence S 48°41'50" W 95.70 feet to the point of curvature of a circular curve concave to the North having a radius of 122.00 feet; thence run Westerly along the arc of said curve through a central angle of 86°14'15" a distance of 183.63 feet to a point of reverse curvature with a circular curve concave to the Southwest having a radius of 47.00 feet; thence run Northwesterly along the arc of said curve through a central angle of 51°15'13" a distance of 42.04 feet to a point of reverse curvature with a circular curve concave to the Northeast having a radius of 103.00 feet; thence run Westerly and Northerly along the arc of said curve through a central angle of 124°22'40" a distance of 223.59 feet to a point of tangency; thence N 28°03'32" E 116.54 feet; thence N 36°30'09" E 45.19 feet to a point that is 45 feet Westerly of the said Westerly right-of-way line of Hollywood Boulevard; thence S 53°29'51" E parallel to and 45 feet Westerly of (by perpendicular measure) the said Westerly right-of-way line, a distance of 194.03 feet to the point of curvature of a circular curve concave to the Southwest having a radius of 905.00 feet; thence continue parallel to and 45 feet Westerly of (by perpendicular measure) the said Westerly right-of-way line along the arc of said curve through a central angle of 12°11'41" a distance of 192.62 feet to the Point of Beginning. Containing 1.74 acres more or less.

**ABBREVIATIONS:**

A = ARC  
BRG = BEARING  
CHD = CHORD  
C/L = CENTERLINE  
DA = DELTA ANGLE  
ORB = OFFICIAL RECORDS BOOK  
PC = POINT OF CURVATURE  
POB = POINT OF BEGINNING  
POC = POINT OF COMMENCEMENT  
PRC = POINT OF REVERSE CURVATURE  
PT = POINT OF TANGENCY  
R = RADIUS  
R/W = RIGHT-OF-WAY

**SURVEYORS NOTES:**

1. BEARINGS BASED ON ORB 5526, PAGE 5122
2. NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
3. THIS SKETCH AND DESCRIPTION CONTAINS 2 SHEETS. EACH SHEET IS NOT COMPLETE WITHOUT THE OTHER.



JOEL A. SEYMOUR  
FLORIDA LICENSED PROFESSIONAL  
SURVEYOR & MAPPER, PSM NO. 6133  
NOT VALID UNLESS SIGNED AND SEALED

PREPARED FOR:  
BENCHMARK MELBOURNE 35 ASSOCIATES, LP

PREPARED BY: KANE SURVEYING  
ADDRESS: 505 DISTRIBUTION DRIVE, MELBOURNE, FLORIDA 32904  
PHONE: (321) 676-0427

DRAWN BY: JAS

CHECKED BY: JAS

DRAWING NO. 23229

SECTION 20

DATE: 8/10/09

SHEET 1 OF 2

REVISIONS 8/26/09

TOWNSHIP 28 SOUTH  
RANGE 37 EAST

OFFICIAL COURT USE ONLY (CFN#)

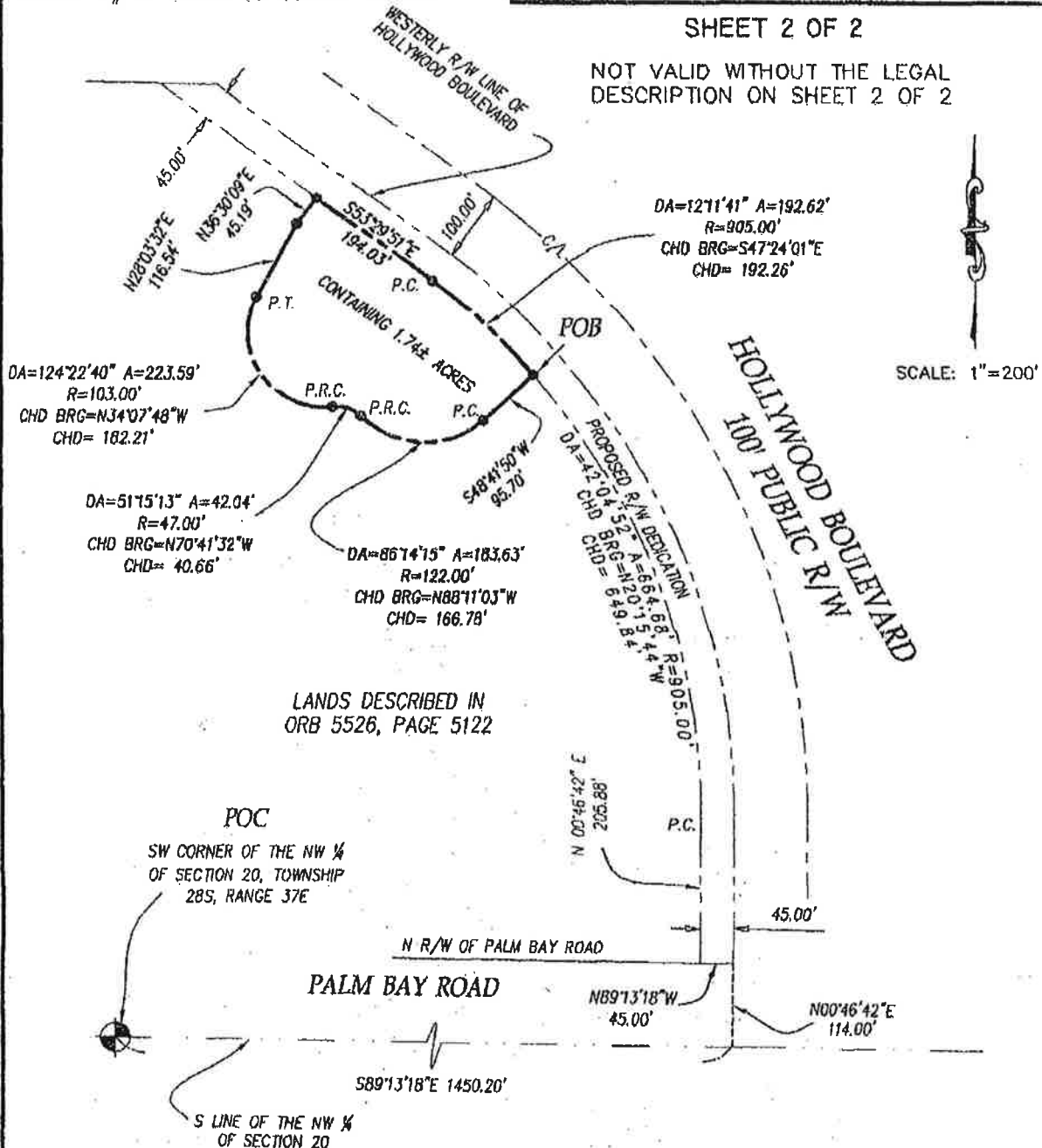
**SKETCH & DESCRIPTION****-NOT A SURVEY-**

SECTION 20, TOWNSHIP 28 SOUTH, RANGE 37 EAST

PARCEL ID# 28-37-20-00-00260.0-0000.00

EXHIBIT A-2  
page 2

SHEET 2 OF 2

NOT VALID WITHOUT THE LEGAL  
DESCRIPTION ON SHEET 2 OF 2SECTION 20, TOWNSHIP 28  
SOUTH, RANGE 37 EASTPREPARED BY:  
Kane Surveying  
505 Distribution Drive  
Melbourne, Florida 32904  
(321) 676-0427

PROJECT NO. 23229