

ALACHUA COUNTY MULTI-MODAL TRANSPORTATION MITIGATION AGREEMENT

This Multi-Modal Transportation Mitigation Agreement (hereinafter “Agreement”) is made and entered into this ____ day of _____, 20____ (“Effective Date”) by and between Alachua County, a charter county and political subdivision of the State of Florida (hereinafter “County”), and Ospina Enterprises, Inc. (hereinafter “Developer”).

WITNESSETH

WHEREAS, the applicant is the developer of an approximately 1.00 acre parcel of land identified as Tax Parcel Number(s) 04341-001-001 and located at 401 NW 143rd Street as set forth in the legal description attached hereto as Exhibit “A” (“Property”); and

WHEREAS, the Developer has applied for final development plan approval to develop a drive-through restaurant, to be known as El Indio Jonesville (“Development”) on the Property; and

WHEREAS, the Board of County Commissioners has established by ordinance a multimodal transportation mitigation program in Section 407.125.3, Alachua County Unified Land Development Code (“ULDC”), as required by and in a manner consistent with Section 163.3180, Florida Statutes; and

WHEREAS, the Developer has made proper application for use of multi-modal transportation mitigation to address transportation impacts in accordance with Section 407.125.3, ULDC, the Project is consistent with the Comprehensive Plan and ULDC, and the Developer has demonstrated that all conditions contained in Chapter 407, Article XII, ULDC, have been met in order for Developer and County to enter into this multi-modal transportation mitigation agreement; and

WHEREAS, the Developer has voluntarily chosen to satisfy transportation concurrency requirements through contribution of multimodal transportation mitigation consistent with the methodology found in Ordinance 11-03 adopted by the Board of County Commissioners; and

WHEREAS, the County has agreed to accept the mitigation the Developer has proposed to offset the impacts on the transportation system caused by the Developer’s proposed development; and

WHEREAS, the implementation of the agreement is authorized by Chapter 163, Florida Statutes, the County’s Comprehensive Plan (as amended by the Mobility Plan), and Chapter 407 Article XII, ULDC.

NOW, THEREFORE, in consideration of the promises, mutual covenants, and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement agree as follows:

Section 1. Recitals. The above recitals are true and correct and form a part of this Agreement.

Section 2. Purpose. The Purpose of this Agreement is:

- a. To grant to any owner of the Property transportation concurrency as provided for a Final Certificate of Level of Service Compliance (CLSC) as required for the construction of the Project, subject to compliance by Developer with the terms and conditions of this Agreement and the CLSC; and
- b. To recognize payment of the multimodal transportation mitigation by Developer as providing significant benefit to the impacted transportation system in the area of the Property.
- c. To fulfill the Developer's obligation to pay multimodal transportation mitigation.

Section 3. Development Identification. The proposed Development is known as the El Indio Jonesville and is located at 401 NW 143rd Street, which is identified as Alachua County Tax Parcel number(s) 04341-001-001.

The Development is a drive-through restaurant.

Section 4. Multimodal Transportation Mitigation. The methodology used to calculate an Applicant's Multi-Modal Transportation Mitigation shall be as follows:

The target funding level divided by the growth in vehicle miles of travel times the vehicle miles of travel for the proposed use.

OR

$$VMT_g = VMT_f - VMT_b$$

$$Tcfl = Cc - Cr$$

$$Ttofl = Toc - Cr$$

$$VMT_r = \left(\frac{Tcfl + Ttofl}{VMT_g} \right)$$

$$VMT_p = (Tg \times Atl \times 0.5) \times (1 - \%CC) \times (\%NT)$$

$$\text{Multi-modal Transportation Mitigation} = VMT_r \times VMT_p$$

Where:

Vehicle Miles of Travel Growth (VMT_g) = The projected total of vehicle miles traveled in the horizon year (VMT_f) minus the base year (VMT_b) vehicle miles of travel.

Target Capital Funding Level (Tcfl) = The total cost of transportation capital (Cc) for projects consistent with the Capital Improvements Element. Cost shall include all capital infrastructure construction costs, along with cost for design, right-of-way, planning, engineering, maintenance of traffic, utility relocation, inspection, contingencies, project management, stormwater facilities, turn lanes, traffic control devices, bicycle and pedestrian facilities, transit vehicles, and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred.

Target Transit Operations Funding Level (Ttofl) = The total cost of transit operations (Toc) consistent with the Capital Improvements Element.

Committed Revenue (Cr) = The total committed revenue to fund transportation capital and transit operations.

Vehicle Miles of Travel Rate (VMTr) = Target Funding Level for transportation capital and transit operations divided by Vehicle Miles of Travel Growth

Vehicle Miles of Travel Proposed (VMTp) = The projected vehicle miles of travel for a specific land use

(Tg) = Trip Generation Rate

(AtL) = Average Trip Length

(CC) = Community Capture

(NT) = New Trips

For the purposes of determining Multi-Modal Transportation Mitigation obligations, Alachua County shall determine mobility improvement costs, including transit, based upon the actual cost of the improvement utilizing the latest available data. Mobility improvements, including transit should be consistent with projects identified in the Capital Improvements Element.

Section 5. Certificate of Level of Service Compliance. In consideration for payment of the Multimodal Transportation Mitigation, Developer shall receive a Final Certificate of Level of Service Compliance (“CLSC”), subject to the following condition:

- a. Developer has elected to either utilize the Multimodal Transportation Mitigation schedule to determine the payment due or the applicant has completed an alternative Multimodal Transportation Mitigation study and the findings of the alternative study have been accepted and approved by Alachua County.
- b. Developer, if applicable, has requested Multi-Modal Transportation Mitigation credit, has provided all required documentation and has agreed to either a value of the credit or the process to be utilized to determine the value of the credit.

The details for any proposed dedication or infrastructure project for which credit is requested shall be provided in this agreement.

- c. Developer agrees that any requested change to a development order may be subject to additional Multimodal Transportation Mitigation to the extent the change generates additional traffic that would require mitigation.

Section 6. Multimodal Transportation Mitigation Payment. Alachua County shall maintain a multimodal transportation mitigation contribution schedule in its building division office's and on the County website consistent with Ordinance 11-03.

- a. Recognizing the "time value of money," Alachua County offers the following reductions in payment amount:
 - 1. Payment concurrent with Development Plan Approval = 15% reduction
 - 2. Payment concurrent with Building Permit Application = 7.5% reduction
 - 3. Payment concurrent with Final Building Inspection = 0% reduction
- b. Developer is responsible for payment of the multi-modal transportation mitigation. Developer may receive credit for the payment of all or a portion of the MMTM by a person who applies for and pays all or a portion of the Developer's MMTM calculated pursuant to Section 4 herein.
- c. Developer expressly agrees to pay the multimodal transportation mitigation payment set forth in Section 4.0, above within 10 days of the County's request for payment. County shall not request payment until after a request for final inspection has been submitted, or at such a time concurrent with the appropriate approval when a discount is requested per Section 6(a)1 and 6(a)2 above.
- d. This agreement does not constitute Final Development Plan approval or any intent by Alachua County to guarantee approval of the Final Development Plan application. If County denies the application for Final Development Plan, this agreement shall be null and void.

Section 7. Credit for Dedication of Right-of-Way. The Developer agrees to dedicate 10 ft. of right-of-way along the entire frontage of the property adjacent to NW 143rd street for the purposes of construction of a multi-use path. The multi-use path is identified in the Capital Improvements Element of the Comprehensive Plan and is part of the cost basis of the County's multi-modal transportation mitigation. Accordingly, the Developer shall receive credit for the value of the right-of-way in the amount of **\$28,939.54**.

- Section 8. Impact of Development.** The Developer agrees that the conveyances and commitments pursuant to this Agreement are necessary to reduce the impacts of the Development and meet the "essential nexus" and "rough proportionality" requirements established by the United States Supreme Court in the cases of *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*.
- Section 9. Vesting for Concurrency Purposes.** Upon completion of the payment described in Section 6, the, Project shall be deemed vested for concurrency purposes as defined in Chapter 163, F.S. and Chapter 407, Article XII of the ULDC.
- Section 10. Governing Law.** The Agreement and the rights and obligations created hereunder shall be interpreted, construed and enforced in accordance with the laws the State of Florida. If any litigation should be brought in connection with this Agreement, venue shall lie in Alachua County, Florida. The parties waive trial by jury.
- Section 11. Attorneys' Fees and Costs.** The parties hereto agree that in the event it becomes necessary for either party to defend or institute legal proceedings as a result of the failure of either party to comply with the terms and provisions of this Agreement, each party in such litigation shall bear its own costs and expenses incurred and expended in connection therewith including, but not limited to, reasonable attorneys' fees and court costs through all trial and appellate levels.
- Section 12. Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
- Section 13. Agreement.** This Agreement contains the entire agreement between the parties. No rights, duties or obligations of the parties shall be created unless specifically set forth in this Agreement.
- Section 14. Amendment.** No modification or amendment of this Agreement shall be of any legal force or effect unless it is in writing and executed by both parties, and meets the requirements of the Comprehensive Plan, ULDC, and County Code.
- Section 15. Assignment.** This Agreement may not be assigned without the prior written consent of the other party, and all the terms and conditions set forth herein shall inure to the benefit of and shall bind all future assignees and successors.
- Section 16. Annexation.** This Agreement is not intended to be, and indeed is not, a "development agreement" within the meaning of Sections 163.3220-163.3242, Florida Statutes. The parties shall not be deprived of their rights and

obligations, and this agreement shall not be terminated, modified, or affected by operation of a municipal annexation of any portion of the Property.

Section 17. Waiver. Failure to enforce any provision of this Agreement by either party shall not be considered a waiver of the right to later enforce that or any provision of this Agreement.

Section 18. Further Documentation. The parties agree that at any time following a request therefore by the other party, each shall execute and deliver to the other party such further documents and instruments in form and substance reasonably necessary to confirm or effectuate the obligations of either party hereunder and the consummation of the transactions contemplated hereby.

Section 19. Notices. Any notice, request, demand, instruction or other communication to be given to either party under this Agreement shall be in writing and shall be hand delivered, sent by Federal Express or a comparable overnight mail service, or by U.S. Registered or Certified Mail, return receipt requested, postage prepaid, to County and to Developer at their respective addresses below:

As to County:

Ramon Gavarrete, P.E.
County Engineer
5620 NW 120th Lane
Gainesville, FL 32653

And with a copy to:

Jeff Hays, AICP
Acting Director, Growth Management
10 S.W. 2nd Avenue
Gainesville, FL 32601

As to Developer:

Hernan Ospina (VP) Registered Agent
Ospina Enterprises, Inc.
9445 NW 23rd Place
Gainesville, FL 32606

Section 20. Construction of Agreement. Captions of the Sections and Subsections of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

Section 21. Effective Date. The effective date of this Agreement (the “Effective Date”) shall be the date when the last one of the parties has properly executed this Agreement as determined by the date set forth immediately below their respective signatures.

Section 22. Counterparts. This Agreement may be executed by the parties in any number of counterparts, each of which shall be deemed to be an original, and all of which shall be deemed to be one and the same Agreement.

(signatures start on next page)

DEVELOPER:

Hernan Ospina

By: _____
Ospina Enterprises, Inc.

Witness #1 for the Developer:

Witness #2 for the Developer:

Signature

Signature

Printed Name

Printed Name

STATE OF FLORIDA
COUNTY OF _____

The foregoing document was acknowledged before me this ____ day of _____, 20____, by _____ as _____ of _____, who is personally known to me or has produced _____ as identification.

Notary Public, State of Florida

Printed Name

Commission Number: _____

Commission expires: _____

(signatures continued on next page)

ALACHUA COUNTY:

**BOARD OF COUNTY COMMISSIONERS
ALACHUA COUNTY, FLORIDA**

By: _____
Anna Prizzia, Chair

ATTEST

J.K. "Jess" Irby, Esq., Clerk

APPROVED AS TO FORM

County Attorney

(SEAL)

EXHIBIT "A"

Legal Description

LAND DESCRIPTION: (OFFICIAL RECORDS BOOK 4920, PAGE 2260)

A TRACT OF LAND SITUATED IN FRACTIONAL SECTION 3, TOWNSHIP 10 SOUTH, RANGE 18 EAST, INSIDE THE ARREDONDO GRANT, ALACHUA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A NAIL AND DISK AT THE NORTHWEST CORNER OF THE AFOREMENTIONED FRACTIONAL SECTION 3 FOR THE POINT OF REFERENCE AND RUN S. 89 DEG. 28' 30" E., ALONG THE NORTH LINE OF SAID FRACTIONAL SECTION 3, A DISTANCE OF 40.00 FEET TO THE EAST RIGHT OF WAY LINE OF COUNTY ROAD NO. 241 (80 FOOT RIGHT OF WAY); THENCE RUN S. 00 DEG. 13' 17" W., ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 1075.93 FEET TO A CONCRETE MONUMENT AT THE BEGINNING OF A CURVE CONCAVE EASTERLY, SAID CURVE HAVING A RADIUS OF 11421.52 FEET; THENCE RUN SOUTHERLY, ALONG SAID RIGHT OF WAY LINE AND WITH SAID CURVE THROUGH AN ARC ANGLE OF 00 DEG. 50' 50", AN ARC DISTANCE OF 168.89 FEET (CHORD BEARING AND DISTANCE OF S. 00 DEG. 12' 08" E., 168.89 FEET RESPECTIVELY) TO A CONCRETE MONUMENT AND THE TRUE POINT OF BEGINNING; THENCE CONTINUE SOUTHERLY, ALONG SAID RIGHT OF WAY LINE AND WITH SAID CURVE THROUGH AN ARC ANGLE OF 00 DEG. 59' 07", AN ARC DISTANCE OF 196.41 FEET (CHORD BEARING AND DISTANCE OF S. 01 DEG. 07' 07" E., 196.40 FEET RESPECTIVELY) TO A CONCRETE MONUMENT AT THE END OF SAID CURVE; THENCE RUN S. 01 DEG. 36' 40" E., ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 12.32 FEET TO A CONCRETE MONUMENT; THENCE RUN N. 89 DEG. 48' 16" E. A DISTANCE OF 206.84 FEET TO A CONCRETE MONUMENT; THENCE RUN N. 00 DEG. 11' 44" W., A DISTANCE OF 208.70 FEET TO A CONCRETE MONUMENT; THENCE RUN S. 89 DEG. 48' 16" W., A DISTANCE OF 210.31 FEET TO THE TRUE POINT OF BEGINNING.

SUBJECT TO A SIDEWALK EASEMENT ACROSS THE WESTERLY 10.0 FEET OF THE ABOVE DESCRIPTION.