

FAMLEE INVESTMENT COMPANY
TRANSPORTATION IMPACT FEE CREDIT AGREEMENT
RELATING TO GOLDENROD/HAZELTINE SIGNAL

THIS FAMLEE INVESTMENT COMPANY TRANSPORTATION IMPACT FEE CREDIT AGREEMENT RELATING TO GOLDENROD/HAZELTINE SIGNAL (hereinafter the "Agreement") is entered into this ____ date of _____, 2014, by and between the **City of Orlando**, Florida, a municipal corporation organized and existing pursuant to the laws of the State of Florida with an address of 400 South Orange Avenue, Orlando, Florida 32802 (hereinafter "the City") and **Famlee Investment Company**, a Florida corporation with an address of 6509 Hazeltine National Drive, Suite # 6, Orlando, Fl. 32822 (hereinafter "the Owner" or "Famlee").

W I T N E S S E T H:

WHEREAS, Famlee was the owner of certain real property consisting of approximately 119 acres and located at the southeast quadrant of Hazeltine National Drive and Goldenrod Road, "Subject Property"; and

WHEREAS, the Subject Property is within the LeeVista DRI; and

WHEREAS, Publix Super Markets Inc., purchased the Subject Property from Famlee on July 15, 2009; and

WHEREAS, pursuant to Master Plan #MPL 2008-00026, approved by the City on August 8, 2008, Publix is developing the Subject Property as a regional distribution center, "Project," consisting of approximately 970,000 sq. feet; and

WHEREAS, a condition of the City's approval of the Project is Publix's construction of signal improvements, "Signal," to the intersection of Hazeltine National Drive and Goldenrod Road; and

WHEREAS, the City, Famlee and Publix entered into an agreement, "Signal Agreement" on November 5, 2013, providing for their joint participation in funding the Signal construction; and

WHEREAS, per the terms of the Signal Agreement, Famlee paid Publix One Hundred Thousand Dollars (**\$100,000.00**) as an initial contribution, "Initial Contribution," towards the Signal construction; and

WHEREAS, due to the fact that Famlee is not the entity developing the Project and would therefore not normally be required to fund the Signal construction, the City has agreed to grant Famlee a transportation impact fee credit, "Credit," in the amount of the initial contribution; and

WHEREAS, Chapter 56 of the Orlando City Code provides that developers may propose to enter into impact fee agreements with the City to permit or recognize the construction of specific non-site related transportation improvements as a credit against the transportation impact fee assessable.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to set forth the rights, duties and powers of the parties for the purpose of the foregoing, the City and Famlee hereby covenant and agree as follows:

1. Recitals. The Recitals set forth in the preamble to this Agreement are true and correct and are incorporated herein by this reference as if fully set out below.

2. Transportation Impact Fee Credit. Based on the foregoing Recitals, the City agrees to grant Famlee a Credit in the amount of One Hundred Thousand Dollars (**\$100,000.00**), "Credit." The Credit shall be deemed effective upon Famlee's written notification to City that Famlee has paid the Initial Contribution, (in the amount of \$100,000) to Publix under the terms of the Signal Agreement.

3. Use and Transfer of Credit. The Credit may be freely transferred to the successors and assigns of the Developer, by separate, written assignment agreement, but may only be utilized in connection with the development of property within the LeeVista DRI. In the alternative, the Credit may be utilized to offset any Developer payment required under Sections 2.4.2 - 2.4.8 of the First Amended and Restated Lee Vista Development of Regional Impact Development Order entered into in February, 2007 between Developer and City.

4. Refund. If any portion of the Initial Contribution is refunded to Famlee per the Signal Agreement, Famlee shall (i) pay to the City the refunded amount to the extent that the Credit has been utilized and/or (ii) acknowledge a reduction in the Credit by the refunded amount to the extent that the Credit has not been utilized.

5. Legal Validity. No statements, representations, warranties, either written or oral from whatsoever source arising, except as expressly stated in this Agreement, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties with the same formalities as this Agreement is executed.

6. Terms. All terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.

7. No Waiver. This Agreement does not, in any way, constitute a waiver of City's rights to approve and/or regulate development of the Property in accordance with the City Code and any other applicable laws or regulations.

8. Interpretation. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

9. Legal Counsel. All the parties to this Agreement acknowledge that they have had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement and all parties represent and warrant that they have sought such independent legal advice and counsel or have knowingly or voluntarily waived this right.

10. Negotiation. The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arm's length and all documents executed in connection herewith were prepared and executed without undue influence exerted by any party. Further, this Agreement was drafted jointly by all parties and no party is entitled to the benefit of any rule of construction with respect to the interpretation of any terms, conditions or provisions of this Agreement in favor of or against any person or party who drafted this Agreement.

11. Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supercedes all previous discussions, understandings and agreements.

12. Release. At such time as the terms, obligations and conditions of this Agreement have been met, the parties hereto agree to execute a document in recordable form, stating that said terms, obligations, and conditions have been satisfied.

13. Severability. If any term or provision of this Agreement is deemed unenforceable by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect so long as the purpose and intent of this Agreement may be achieved.

14. Governing Law. This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations and policies of the City now in effect and those hereinafter adopted. The location for settlement of any and all claims, controversies or disputes arising out of or relating to any part of this Agreement or any breach thereof shall be Orange County, Florida.

15. Due Diligence. All parties to this Agreement covenant that they shall immediately commence all reasonable action necessary to fulfill their obligations hereunder and shall diligently pursue same throughout the existence of this Agreement.

16. Binding Effect. This Agreement, once effective, shall run with the Property described herein and shall be binding upon and enforceable by and against the parties hereto and their beneficiaries, heirs, successors and assigns.

17. Enforcement and Remedies. If any party hereto fails to perform or breaches any obligation, requirement, duty or covenant contained herein, any other non-defaulting party or parties shall have the right, at its option, in addition to any of its other rights, privileges or remedies otherwise stated in this Agreement, to (i) bring an action for the recovery of actual damages (not including punitive, consequential or incidental loss or damage) in a court of competent jurisdiction; and/or (ii) bring an action for specific performance in a court of competent jurisdiction. In the event the City asserts that the Developer is in material breach of a covenant contained herein, the City shall provide written notice of such event and allow the Developer forty-five (45) days from the receipt of such notice in which to cure such material

breach; provided, however, if such material breach is of a nature that it cannot reasonably be cured within such forty-five (45) day period, then the Developer shall be allowed a reasonable period of time to cure such material breach provided that it diligently undertakes and pursues such cure. In the event the Developer asserts that the City is in material breach of a covenant contained herein, the Developer shall provide written notice of such event and allow the City forty-five (45) days from the receipt of such notice in which to cure such material breach; provided, however, if such material breach is of a nature that it cannot reasonably be cured within such forty-five (45) day period, then the City shall be allowed a reasonable period of time to cure such material breach provided that it diligently undertakes and pursues such cure.

18. Notice. Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered upon receipt before 5:00 p.m. on a business day by hand delivery, facsimile, overnight courier or U.S. Mail, postage prepaid, certified mail, return receipt requested and addressed to a party at the address set forth opposite the party's name below, or at such other address the party may have specified by written notice to the other party delivered in accordance herewith:

As to the City: Public Works Director
City of Orlando
Post Office Box 4990
Orlando, Florida 32802-4990
Fax Number: (407) 246-2892

Copy To: City Attorney
City of Orlando
Post Office Box 4990
Orlando, Florida 32802-4990
Fax Number: (407) 246-2854

As to Developer: Famlee Investment Company
Attn: Richard Lee
6509 Hazeltine National Drive, Ste. #6
Orlando, FL 32822
Fax Number (407) 857-3646

Copy To: Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
Attn: Hal H. Kantor
215 N. Eola Drive
Orlando, Florida 32801
Fax Number (407) 843-4444

19. Force Majeure. The parties shall use reasonable diligence to complete the obligations set forth herein but shall not be liable to each other, or their successors or assigns for damages, costs, attorney's fees (including costs or attorney's fees on appeal) for breach of contract or otherwise for failure, suspension, demolition or other variations of services occasioned by acts of God or of the public enemy, acts of other government (including regulatory

entities or court) in its sovereign or prior contractual capacity, fires, floods, epidemics, quarantines, restrictions, strikes or failure or breakdown of transmission or other facilities.

20. Effective Date. This Agreement shall become effective upon its execution by all parties.

IN WITNESS WHEREOF, the Owner has caused this instrument to be executed in its name and the City, acting by and through its Mayor and City Council, has caused this instrument to be executed in its name by the Mayor or Mayor Pro Tem, its seal hereunto affixed and attested by the City Clerk, on the day and year first above written.

ATTEST:

CITY OF ORLANDO

Alana C. Brenner, City Clerk

By: _____
Mayor/Mayor Pro Tem

APPROVED AS TO FORM AND
LEGALITY

for the use and reliance of the City of Orlando,
Florida, only.

_____, 20__.
Chief Assistant City Attorney
Orlando, Florida

STATE OF FLORIDA
COUNTY OF ORANGE

PERSONALLY APPEARED before me, the undersigned authority,
_____ and _____, well known to me
and known by me to be the Mayor/Mayor Pro Tem and City Clerk, respectively, of the City of
Orlando, Florida, and acknowledged before me that they executed the foregoing instrument on
behalf of the City of Orlando as its true act and deed, and that they were duly authorized so to do.

WITNESS MY hand and official seal this ____ day of _____, 20__.

Notary Public - State of Florida at Large

Print Name: _____

My commission expires:

TWO WITNESSES:

Signature:_____

Print Name:_____

Signature:_____

Print Name:_____

OWNER:

Famlee Investment Company, a Florida corporation

By:_____

Print Name:_____

Title:_____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by _____, who is personally known to me or who has produced _____, as identification, and acknowledged before me that he executed the foregoing instrument as _____ of _____, as its true act and deed, and that he was duly authorized so to do.

WITNESS MY hand and official seal this ____ day of _____, 20__.

Notary Public - State of Florida at Large

Print Name:_____

My commission expires: