

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$ -0-	-0-	-0-	-0-	-0-

ADDITIONAL FTE POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____ No _____
 Budget Acct No.: Fund _____ Dept. _____ Unit _____ Object _____
 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

This item has no immediate fiscal impact.

C. Departmental Fiscal Review: R. J. Ward 11/3/06

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Fiscal impact is undetermined at this time.

Elizabeth Blaise 11/15/06
 OFMB
 11-15-06
 (14)
 11/15/06 PM
 11-9-06

Ann J. Jacoby 11/16/06
 Contract Dev and Control
 E. Jones 11/16/06

B. Approved as to Form and Legal Sufficiency:

[Signature]
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

RESOLUTION NO. R-2006-_____

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, DELEGATING TO THE COUNTY ADMINISTRATOR OR HIS DESIGNEE THE AUTHORITY TO ENTER INTO CERTAIN PROPORTIONATE FAIR SHARE AGREEMENTS AS SET FORTH IN EXHIBIT A; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners has established by Ordinance the Proportionate Fair Share Program as required by and in a manner consistent with Section 163.3180(16), Florida Statutes; and

WHEREAS, the Proportionate Fair Share Program allows developers under certain conditions to enter into Proportionate Fair Share Agreements to conform to the requirements of State law and of the Proportionate Fair Share Program; and

WHEREAS, the Board of County Commissioners of Palm Beach County desires to delegate to the County Administrator or his designee the authority to enter into Proportionate Fair Share Agreements that are in substantially the same form as provided for in Exhibit A, which is attached hereto and made a part hereof; and

WHEREAS, the Board of County Commissioners finds that delegating this authority to the County Administrator or his designee will eliminate the delay caused by requiring such items to be brought before the Board for its approval; and

WHEREAS, the Board finds that delegating this authority to the County Administrator or his designee furthers the County Commission's objective of streamlining the agenda process and the development review process; and

WHEREAS, the Board of County Commissioners has determined that delegation of this authority is consistent with Florida Statutes and its Home Rule Charter.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1. The recitals contained above are true and correct and incorporated herein by reference.

2. The County Administrator or his designee is hereby delegated the authority to enter into on behalf of the Board of County Commissioners Proportionate Fair Share Agreements in substantially the same form as provided for in Exhibit A.
3. The terms of this Resolution shall take effect upon adoption by the Board of County Commissioners.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Addie L. Greene, Chairperson
Jeff Koons, Vice-Chair
Karen T. Marcus
Warren H. Newell
Mary McCarty
Burt Aaronson
Jess R. Santamaria

The Chair thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2006.

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK, CLERK &
COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By:  _____
Assistant County Attorney

PROPORTIONATE FAIR SHARE AGREEMENT

This Proportionate Fair Share Agreement (hereinafter "Agreement") is made and entered into this _____ day of _____, 200_, by and between Palm Beach County, a political subdivision of the State of Florida (hereinafter "County"), and identify and describe developer (hereinafter "Developer").

WITNESSETH

WHEREAS, the Board of County Commissioners has established by Ordinance the Proportionate Fair Share Program as required by and in a manner consistent with section 163.3180(16), Florida Statutes; and

WHEREAS, the Proportionate Fair Share Program allows developers under certain conditions to proceed with development notwithstanding a failure of transportation concurrency, by contributing their proportionate fair share of a transportation facility; and

WHEREAS, the County has determined that the Developer's proposed project is eligible for the Proportionate Fair Share Program; and

WHEREAS, in order to conform to the requirements of this Program, the County and the Developer agree to the conditions, rights and obligations established in this Agreement; and

WHEREAS, the Board of County Commissioners of Palm Beach County has delegated to the County Administrator or his designee the authority to enter into this Agreement on behalf of the County; and

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. Project Identification

The proposed Project is known as include the name of the Project here if it is known at this point; if not, provide location and is located at provide property location.

Section 3. Proportionate Fair Share

The required road improvement that triggered application of the Proportionate Fair Share Program is identify the improvement, which is scheduled for construction in insert year for construction, according to the Five Year Road Program and the Capital Improvement Element of the Comprehensive Plan. The Proportionate Fair Share for this improvement shall be:

If it is cash, insert amount here; if contribution of land, describe generally here, and indicate that the land contributed is described more particularly by the legal description attached as an exhibit to this Agreement; if the fair share turns out to be construction of a facility, describe generally here, but include a more detailed description of the project, its limits, timing, etc., as an attachment to this Agreement. Several sections must be added to the form agreement if the contribution involves road construction. These sections are included in the attached appendix, but should be inserted immediately after section 4, renumbering the remaining sections accordingly.

In consideration for providing the Proportionate Fair Share as described above, the Developer shall receive a certificate of concurrency approval, subject to the following conditions:

- A. If the Developer fails to apply for a development permit within twelve months of the date of this Agreement, then this Agreement and, the certificate of concurrency approval, shall be considered null and void, and the applicant shall be required to reapply.
- B. Any requested change to a development order may be subject to additional Proportionate Fair Share contributions to the extent the change generates additional traffic that would require mitigation.
- C. If the Proportionate Fair Share contribution is cash payment, such payment is due in full no later than issuance of the first building permit, and shall be nonrefundable. If the payment is submitted more than six months from the date of execution of this Agreement, then the Proportionate Fair Share cost shall be recalculated at the time of payment, and adjusted accordingly.
- D. If the Proportionate Fair Share requires construction of one or more road improvements, all such improvements must be commenced prior to issuance of a development permit and assured by a binding agreement that is accompanied by a performance security in a form acceptable by the County sufficient to ensure the completion of all required improvements.
- E. If the Proportionate Fair Share contribution requires dedication of right-of-way, such dedication must be completed prior to issuance of the first building permit; however, this requirement shall not apply to a building permit issued for the construction of a dry model.

Section 4. Road Impact Fee Credit

Proportionate Fair Share contributions shall be applied as a credit against road impact fees to the extent that the Proportionate Fair Share contribution is used to address the same improvements contemplated by ULDC Article 13, Impact Fees.

Section 5. Governing Law

The Agreement and the rights and obligations created hereunder shall be interpreted, construed and enforced in accordance with the laws of the United States and the State of Florida. If any litigation should be brought in connection with this Agreement, venue shall lie in Palm Beach County, Florida.

Section 6. 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 7. 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 8. 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 9. 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.

Section 10. Binding Agreement

This Agreement shall inure to the benefit of and shall bind the parties, their heirs, successors and assigns.

Section 11. 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.

Section 12. 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 13. 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:

With a copy to County's Legal Representative:

As to Developer:

With a copy to Developer's Legal Representative:

Section 14. Effective Date

The effective date of this Agreement shall be _____.

Section 15. 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.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement on the date and year first above written.

PALM BEACH COUNTY, FLORIDA

Witness

By _____

Witness

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

County Attorney

APPROVED AS TO TERMS
AND CONDITIONS:

By: _____

ATTEST:

DEVELOPER

Witness

By: _____

[Agreement shall be executed in a manner and form consistent with PPM CW-F-049]

APPENDIX A

In the event the Proportionate Fair Share contribution consists of constructing a road facility, the following provisions need to be inserted into this Agreement immediately after Section 4 and the following Sections numbered accordingly::

Section 5. Construction of Improvements

- A. The Developer shall commence construction of the required improvements before the first building permit may be issued. If the contract for the required road improvements has not been let and construction has not commenced by *insert date*, the County shall have the right but not the obligation to draw on the performance security and take over the Developer's responsibility to construct the required improvement. If the County exercises its rights under this Section, upon written request by the County, the Developer agrees to deliver to the County all plans and permits related to the required improvements which are in the Developer's possession.
- B. Developer recognizes that it is an independent contractor and not an agent or a service of the County. No person employed by any party to this Agreement shall in connection with the performance of the required improvement, be considered the employee of the other party, nor shall any employee claiming a right in or entitlement to any pension, workers' compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law or otherwise, except through and against the entity by whom they are employed. The Developer shall protect, defend, reimburse, indemnify and hold the County, its agents, employees, and elected officers harmless from and against all claims, liability, expense, loss, cost, damages, or causes of action of every kind or character including attorneys' fees and costs, whether at trial or appellate levels or otherwise, arising during or out of construction of the required improvements contemplated by this Agreement.
- C. The Developer shall maintain and require its contractor to maintain workers' compensation coverage in accordance with Florida Statutes. The Developer and contractor shall carry insurance naming the County as an Additional Insured Party, with minimum limits of one million dollars per occurrence and three million dollars general aggregate insurance, and shall carry automobile liability insurance with minimum limits of one million dollars per occurrence combined single limits.
- D. To ensure faithful performance of the construction of the required improvements, the Developer shall also require all contractors performing work on the required improvements to execute and deliver to the Developer a payment and performance bond in an amount equal to one hundred ten percent (110%) of the certified cost estimate of the improvement prior to the issuance of any permit authorizing commencement of construction of the improvement. The bond shall be issued by a company authorized to do business in this State and which has a current valid certificate of authority issued by the United States Department of Treasury under 31 USC §9304-9308.