

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: January 12, 2010 ☐ Consent ☒ Regular
☐ Public Hearing
Department: Administration
Submitted By: Administration

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: The Scripps Florida Phase II/Briger Proportionate Share Agreement with the Lester Family Investments L.P., Richard Thall, Robert Thall, Peter L. Briger, Paul H. Briger, and the David Minkin Florida Realty Trust, collectively referred to as "Lester", with The City of Palm Beach Gardens (City), The Florida Department of Transportation (FDOT) and the Florida Turnpike Enterprise (FTE) subject to execution by each agency.

Summary: On May 2, 2006, the Board of County Commissioners (BCC) approved the Grant Agreement with The Scripps Research Institute. On February 28, 2006, the BCC approved an Agreement (R2006-0423) for the donation and purchase and sale with Lester for 70 acres of property within the Briger Property to be utilized by Scripps Florida. The Grant Agreement requires the County to obtain entitlements on the 70 acres to facilitate the construction of an additional 1.6 million square feet (SF) of bioscience use. All required development order applications have been submitted to the required corresponding agencies. It is anticipated that final approval of the Development of Regional Impact (DRI) will go before the City of Palm Beach Gardens City Council on January 14, 2010. The County and Lester desire to provide for proportionate share mitigation payments pursuant to Section 163.3180(12) and Section 380.06, Florida Statutes, and Rule 9J-2.045(7), Florida Administrative Code, to address the traffic impacts anticipated from development of the 863 acre project throughout build-out. The County, FDOT, FTE and City have agreed to accept the proportionate share payment in the amount of \$22,206,098 as adequate mitigation for the transportation impacts of the project on significantly impacted state and regional roadways. Lester and the County have agreed that their respective share of the total proportionate share obligation under this Agreement shall be 79.74% (\$17,707,142) for the Lester Property and 20.26% (\$4,498,955) percent for the County/Scripps Property. To further advance the Bioscience Cluster, the Agreement anticipates that the County will immediately initiate a project at Donald Ross Road and I-95 with an estimated value of \$6 Million. This will satisfy the total proportionate share obligations for the 70 acre property. The County will be fully repaid through road impact fees or other appropriate mechanism when development occurs. Under the Grant Agreement, it is the responsibility of Scripps to fund all costs related to the development of the property. Funding of the Donald Ross Road/I-95 Improvements will come from available District 1 Roadway Impact Fees. District 1 (MRE)

Background and Policy Issues: On November 6, 2007, the BCC approved an Agreement (R2007-1888) with Lester to jointly fund professional services related to a joint application for a Development of Regional Impact (DRI), Future Land Use Amendment, Concurrency Approval, Planned Community Development District and a Conceptual Environmental Resource Permit for the 863 Briger property, including the 70 acres for Scripps Florida, in the amount of \$716,662. (Continued on Page Three)

Attachment

1. Scripps Florida Phase II/Briger Proportionate Share Agreement

Recommended By:

Department Director

12/31/09
Date

Approved By:

Assistant County Administrator

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	\$ 790,000	___	___	\$ 5,250,000	___
Operating Costs	___	___	___	___	___
External Revenues	___	___	___	___	___
Program Income (County)	___	___	___	___	___
In-Kind Match (County)	___	___	___	___	___
NET FISCAL IMPACT	* \$ 790,000 =====	=====	=====	* \$ 5,250,000 =====	=====
No. ADDITIONAL FTE POSITIONS (Cumulative)	___	___	___	___	___
Is Item Included In Current Budget?	Yes <input checked="" type="checkbox"/>	No			
Budget Account No.:	Fund <u>3901</u>	Department <u>301</u>	Unit <u>1324</u>	Object <u>6505</u>	
Reporting Category:	_____				

(As Per 5yr Road Program - 11/17/2009)

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

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

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

* The \$4 million Donald Ross project will satisfy the County's proportionate share and will be funded with Zone 1 impact fees. Impact fees will be repaid when development occurs.

Jan D. 12-21-09
OFMB

Jan. J. 12/19/09
Contract Dev. and Control

B. Legal Sufficiency:

Monroe R. 1/8/10
Assistant County Attorney

At the time of CDC's review,
this Agreement was an
unexecuted draft.

C. Other Department Review:

Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

Background and Policy Issues: On February 28, 2006 (R2006-0922), the BCC approved an Interlocal Agreement with the City for the reimbursement of a portion of the land acquisition and due diligence costs for the 70 acre parcel. A portion of those funds were utilized to fund the November 6, 2007 Agreement. The terms of the Grant Agreement stipulate that failure to obtain the entitlements on the 70 acres will result in the County paying Scripps the difference between the fair market value of the 70 acres with 1.6 million SF of entitlements and the fair market value of the Briger Site with the entitlements actually received pursuant to the Development Orders.

THE SCRIPPS FLORIDA PHASE II/BRIGER
PROPORTIONATE SHARE AGREEMENT

This Scripps Florida Phase II/Briger Proportionate Share Agreement (hereinafter "Agreement") is made and entered into as of this ____ day of _____, 20__, by and between the Lester Family Investments L.P., Richard Thall, Robert Thall, Peter L. Briger, Paul H. Briger, and the David Minkin Florida Realty Trust dated December 12, 1996 (hereinafter "Lester"), Palm Beach County, a political subdivision of the State of Florida (hereinafter "County"), the City of Palm Beach Gardens, Florida, a municipal corporation (hereinafter "City"), District Four of the Florida Department of Transportation, an agency of the State of Florida (hereinafter "FDOT"), and the Florida Department of Transportation Florida's Turnpike Enterprise (hereinafter "FTE").

WITNESSETH:

WHEREAS, the County and Lester (hereinafter jointly referred to as "Applicants" are joint applicants of that certain Development of Regional Impact (hereinafter "DRI") known as the Scripps Florida Phase II/Briger DRI (hereinafter "Project") located on certain real property in Palm Beach Gardens, Florida, as more particularly described on Exhibit A attached hereto (hereinafter the "Property"); and

WHEREAS, the County and Lester desire to provide for proportionate share mitigation payments pursuant to section 163.3180(12), and section 380.06, Florida Statutes, and Rule 9J-2.045(7), Florida Administrative Code, to address the traffic impacts anticipated from development of this Project throughout build-out; and

WHEREAS, the County and Lester seek approval of the DRI by the City, and a certification of concurrency reservation for 2.6 million square feet of Industrial/R&D/biotech

uses, 1.2 million square feet of office uses, 500,000 square feet of retail uses, 2,700 residential units, and 300 hotel rooms for the Property more specifically described on Exhibit A; and

WHEREAS, the Property owned by the Lesters (hereinafter “Lester Property”) described on the attached Exhibit B seeks approval of and certificate of concurrency reservation for the following uses: 1.0 million square feet of Industrial/R&D/biotech, 1.2 million square feet of office uses, 500,000 square feet of retail, 2,700 residential units, and 300 hotel rooms; and

WHEREAS, the property described in the attached Exhibit C (hereinafter “County Property”) seeks approval of and certificate of concurrency reservation for the following uses which are consistent with the Grant Agreement between Palm Beach County and Scripps Research Institute: 1.6 million square feet of Industrial/R&D/biotech; and

WHEREAS, Lester and the County have agreed that their respective share of the total proportionate share obligation under this Agreement shall be 79.74 percent for the Lester Property and 20.26 percent for the County Property as more fully set forth herein; and

WHEREAS, pursuant to section 163.3180(12), and section 380.06, Florida Statutes, and Rule 9J-2.045(7), Florida Administrative Code, FDOT, FTE, the County, and the City have agreed to accept the Project’s proportionate share payment as adequately mitigating the transportation impacts of the Project on significantly impacted state and regional roadways within the respective jurisdiction of the foregoing through build-out. Payment of the Project’s proportionate share shall satisfy the transportation concurrency requirements of the County and City’s Comprehensive Plan, concurrency management systems, traffic performance standards, Section 380.06, and Chapter 163.3180 as may be amended from time to time; and

WHEREAS, the approved traffic study for the DRI identifies the timing and development phasing for the required proportionate share payments; and

WHEREAS, the payment schedule contained in this Agreement provides for the County's Advance Payment at the beginning of the Project, County Property Fee payments upon the issuance of Building Permits for vertical construction (hereinafter "Building Permits") on the County Property, impact fee payments and proportionate share payments by phase for the development of the Lester Property, and the reimbursement to the County of its Advance Payment with interest at the end of the Project after the total required proportionate share payment has been made; and

WHEREAS, the payment requirements and schedule contained in this Agreement will result in the amount of proportionate share payments made throughout the life of the Project being in conformity with the schedule of payments contained in the approved traffic study.

NOW, THEREFORE, for and in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County, Lester, FDOT, FTE and the City, do hereby covenant, stipulate and agree as follows:

1. Incorporation of recitals. The foregoing recitals are true and correct and hereby incorporated by the parties as part of this Agreement as if fully set forth herein.

2. Determination of proportionate share payments.

A. The parties hereto acknowledge and agree that the attached Table 1 contains the proportionate share contribution required at each phase, the peak hour trip thresholds for each phase, a priority list of improvements that are to be constructed and/or implemented to mitigate transportation impacts, an identification of the government agency with maintenance responsibility over each improvement, and the estimated cost of each improvement. Lester and the County have agreed that each shall be responsible for a Part of the total proportionate share contribution, with the obligation for the Lester Property contained in Paragraph 4.B. and the

County Property obligation contained in Paragraph 4.C. FDOT, FTE, the County, and the City acknowledge and agree that these payments adequately mitigate offsite transportation impacts of the Project on all state and regional roadways through build-out, and shall be final and binding as required by Section 163.3180(12), Florida Statutes, Chapter 380, Florida Statutes, and Chapter 9J-2.045, Florida Administrative Code. The County and the City further acknowledge and agree that, as long as payments are timely made consistent with this Agreement, payment of the Project's proportionate share shall satisfy the transportation concurrency requirements of the County and City's Comprehensive Plan, concurrency management systems, and traffic performance standards. Lester and the County acknowledge and agree that the proportionate share payments and the improvements listed in Table 1 do not include the committed developer improvements for internal project roads and project intersection/entrance improvements along Donald Ross Road, Hood Road and Grandiflora Road as specified in the adopted DRI Development Order, and that development of the Project is phased to those improvements as specified in the Development Order.

B. In recognition that construction prices may change over the life of the project, any portion of the Lester Property proportionate share not paid on or before January 1, 2011, shall be subject to the following escalator calculation:

The cost adjustment for the total amount of each payment shall be based on the Bureau of Labor Statistics Producer Price Index (PPI) for Highway and Street Construction Industries (BHWY-Highway and Street Construction). The starting point for the index comparison shall be January 2010. The payment shall be adjusted by the percentage change in the PPI from the January 2010 starting point to the most recently published PPI value (including preliminary values) at the time of the proposed payment.

C. Any portion of the County's Advance Payment pursuant to paragraph 5.A not paid on or before January 1, 2011, shall be subject to the same escalator calculation contained in paragraph 2.B.

3. Allocation and Timing of Project's proportionate share payments.

A. All proportionate share payments made pursuant to this Agreement shall be made directly to Palm Beach County. The parties hereto acknowledge and agree that proportionate share payments received shall be allocated to the improvements in the priority order set forth in Table 1, as it may be amended pursuant to paragraph 8. The County shall establish a separate account (hereinafter "Proportionate Share Trust Account") for the management and disposition of proportionate share payments, which shall be distributed to the appropriate governmental agency consistent with the terms of this Agreement.

B. The monies allocated to the County for improvements in phases 1, 2 and 3 shall be adjusted to include the full cost of the improvements, including but not limited to design costs, right-of-way acquisition, construction and construction engineering inspection. As long as there are sufficient funds in the Proportionate Share Trust Account for all or part of these improvements and all preceding improvements (including the applicable portion of the FTE/FDOT Reserve Funds, as defined in paragraph 3.D. below), the County shall be authorized to withdraw the estimated cost for each phase of each improvement according to the following schedule:

- i. For design, no sooner than 30 days prior to award of a design contract for the improvement, and
- ii. For right of way acquisition, no sooner than 30 days following submittal of 65 percent design plans by the design consultant, and

iii. For construction, no sooner than 30 days prior to award of a construction contract for the improvement.

Upon completion of an improvement, if the actual cost of the improvement exceeded the funds withdrawn by the County, the County shall be authorized to withdraw additional funds from the Proportionate Share Trust Account up to the difference. If the actual cost of all phases of the improvement is less than the funds withdrawn by the County, the County shall return excess funds to the Proportionate Share Trust Account. If there are not sufficient funds in the Proportionate Share Trust Account for any phase of these improvements, the County shall have the option to advance the payment and then withdraw funds for expenses incurred when funds become available. The County shall establish estimated costs for right of way acquisition and construction upon receipt of 96 percent design plans for each of these improvements and reserve these funds in the Proportionate Share Trust Account (hereinafter "Reserve Funds").

C. The monies allocated to the City for improvements in phases 3 and 4 shall be adjusted by the escalator percentage applied to the Lester phase 3 and phase 4 proportionate share payments, respectively, pursuant to paragraph 2.B. As long as there are sufficient funds in the Proportionate Share Trust Account for all or a part of the City improvements and all preceding improvements (including the Reserve Funds and the applicable portion(s) of the FTE/FDOT Reserve Funds, as defined in Paragraph 3.D. below), the City shall be authorized to withdraw funds for its improvements in the priority order shown in Table 1, as it may be amended pursuant to paragraph 8. The City may elect to make a partial withdrawal based on availability of funds and then withdraw the balance of its allocation when funds become available.

D. The monies allocated to FTE and FDOT for improvements in phases 3 and 4 shall be adjusted by the escalator percentage applied to the Lester phase 3 and phase 4 proportionate

share payments, respectively, pursuant to paragraph 2.B. As long as there are sufficient funds in the Proportionate Share Trust Account for an FTE or FDOT improvement and all preceding improvements (including the Reserve Funds), and FTE or FDOT can demonstrate that its own funds were expended in the construction of its respective improvement(s) in Table 1, FTE or FDOT shall be authorized to withdraw the funds for their respective improvements in the priority order shown in Table 1, or as amended pursuant to paragraph 8. The withdrawal amount shall be the actual funds expended or the allocated amount in Table 1 after escalator adjustment, whichever is less. If FTE or FDOT is not eligible to withdraw funds at the time funds are available for a specific improvement, the allocated funds in Table 1 for that improvement shall be reserved in the Proportionate Share Trust Account (hereinafter "FTE/FDOT Reserve Funds"). FTE or FDOT shall have eighteen (18) months from the time the trip threshold for the phase preceding the improvement is exceeded to demonstrate that the allocated funds and the associated improvement have been programmed in the FDOT 5-Year Work Program and another five (5) years to demonstrate that funds have been expended towards the improvement, or the allocated funds in Table 1 shall be forfeited and the allocation of funds shall proceed to the next unfunded improvement in Table 1.

E. The monies allocated to the County for intersection improvements in phase 4 shall be the total proportionate share payment for the Project after escalator adjustments, including any accrued interest in the Proportionate Share Trust Account, less the monies allocated for all other improvements in Table 1 as it may be amended pursuant to paragraph 8. As long as there are remaining funds in the Proportionate Share Trust Account for intersection improvements and all preceding improvements (including the Reserve Funds and the FTE/FDOT Reserve Funds), the

County shall be authorized to withdraw the funds for these improvements in the priority order shown in Table 1 as it may be amended pursuant to paragraph 8.

F. FDOT, FTE, the County and the City acknowledge and agree that, as long as the payments are timely made under this Agreement, the payment amounts set forth in Table 1, as adjusted pursuant to paragraphs 2.B. and 2.C., adequately mitigate the transportation impacts of the Project on all state and regional roadways through Project buildout. FDOT, FTE, the County and the City agree that the contributed monies received by each entity shall only be used for improvements listed in priority order in Table 1, as it may be amended pursuant to paragraph 8. If the adjustments to distributed monies in paragraph 3.B. above result in inadequate funds to complete all improvements shown in Table 1, the available funds shall be allocated to each entity in the priority order in Table 1 until exhausted. Each entity agrees to expeditiously apply the received money to construction and/or implementation of the listed improvements. Delay of improvements or revisions to the improvements shall have no bearing on the ability of the Applicants to pull building permits or develop the DRI.

G. The County shall immediately notify the City in writing whenever a proportionate share payment is made by or received by the County. The notice shall include the date the payment was made or received and the amount of the payment. For County road impact fees and County Property Fees collected and deposited in the Proportionate Share Trust Account pursuant to Paragraphs 4.C., 6.A., and 6.B., the County shall notify the City twice per year, and additionally upon written request, of the amount deposited in the Proportionate Share Trust Account from these County road impact fees and County Property Fees.

4. Project thresholds, timing of payment.

A. The Project trip thresholds and proportionate share payments shall be tracked independently for the Lester Property and the County Property as shown in Table 1. However, the cumulative trips associated with both Properties may only exceed the cumulative trips for a given phase if the total proportionate share payments received (including the County's Advance Payment) meet or exceed the cumulative required Proportionate Share payment for the subsequent phase.

B. The Lester Property shall be responsible for a total of \$17,707,143 of the total proportionate share payment of \$22,206,099. All payments made after January 1, 2011, shall be subject to the escalator provision set forth in Paragraph 2.B. As to the Lester Property: (i) No Building Permits shall be issued for the Lester Property until the Lester Part of proportionate share Payment One in the amount of \$350,779 is paid to Palm Beach County as set forth in Table 1. The Lester Property shall receive a credit for road impact fees in this amount upon receipt of the payment. (ii) Building Permits shall not be issued for uses generating more than 1,204 net AM peak hour trips or 2,036 net PM peak hour trips for the Lester Property until the Lester Part of proportionate share Payment Two in the amount of \$4,182,614.00 is paid to Palm Beach County as set forth in Table 1. The amount due shall be reduced by the amount of road impact fees paid through the due date for this proportionate share payment. (iii) Building Permits shall not be issued for uses generating more than 1,993 net AM peak hour trips or 2,761 net PM peak hour trips on the Lester Property until the Lester Part of proportionate share Payment Three in the amount of \$7,476,413.00 is paid to Palm Beach County. The amount due shall be reduced by the amount of road impact fees paid through the due date for this proportionate share payment that were not applied toward earlier proportionate share payments. (iv) Building Permits shall not be issued for uses generating more than 2,546 net AM peak hour trips or 3,279 net PM peak

hour trips on the Lester Property until the Lester Part of proportionate share Payment Four in the amount of \$5,697,338.00 is paid to Palm Beach County. The amount due shall be reduced by the amount of road impact fees paid through the due date for this proportionate share payment that were not applied toward earlier proportionate share payments. The Lester Property shall receive a credit for road impact fees equal to the final amount of each proportionate share payment upon receipt of the payment. Upon receipt of proportionate share Payment Four, the Lester Property shall be deemed to have met its obligation under this Agreement and shall be fully vested for transportation concurrency purposes to develop the uses approved for the Lester Property.

C. The County Property shall be responsible for a total of \$4,498,956 of the total proportionate share payment of \$22,206,099. The County's Advance Payment pursuant to paragraph 5.A. constitutes a prepayment of the proportionate share obligation, including the full obligation for the County Property. In order to provide funds to reimburse the County for the Advance Payment, development of the County Property shall be subject to the following fee: No Building Permits shall be issued for the County Property until the permit applicant makes a payment to Palm Beach County in the amount of \$2.82 per gross square foot of Industrial/R&D/biotech building area included in the permit being sought (hereinafter "County Property Fee"). This County Property Fee shall be increased at a rate of three (3) percent compounded annually starting on the date the County makes the Advance Payment and continuing through the date of the payment of the County Property Fee. If the permit contains any development that is not considered Industrial/R&D/biotech square footage, that square footage will be converted to its equivalent in Industrial/R&D/biotech square footage using the DRI transportation land use conversion Matrix for purposes of calculating the County Property Fee owed for that building permit application. All County Property Fee payments shall be made

directly to Palm Beach County. The permit applicant must provide a receipt for payment of the County Property Fee from Palm Beach County to the City prior to the issuance of the building permit. The receipt for payment of the County Property Fee must include the amount of development covered by the payment, the net AM peak hour trips and net PM peak hour trips covered by the payment, and the amount of any additional impact fee or other legislatively adopted alternative fee payment that must be paid prior to the issuance of any building permit. All County Property Fee payments received by the County shall be deposited in the Proportionate Share Trust Account. Once the County has collected \$4,498,956 in unadjusted County Property Fees (unadjusted County Property Fees are the County Property Fees collected at the base rate of \$2.82 per square foot of Industrial/R&D/biotech and excludes any County Property Fees collected as a result of the three (3) percent increase compounded annually to the base rate of \$2.82), no further County Property Fee payments shall be required and the County Property shall be deemed to have met its obligation under this Agreement and shall be fully vested for transportation concurrency purposes to develop the uses approved for the County Property.

D. In order to ensure that development of a portion of the Project may continue without limitation relating to future required proportionate share payments, a property owner may elect to prepay County road impact fees, prepay County Property Fees, or assign a County road impact fee credit obtained through a proportionate share payment to a specific parcel(s). Prepaid County road impact fees shall be paid to the City. Prepaid County Property Fees shall be paid to the County. The assignment of County impact fee credit must be provided in writing to the County Impact Fee Coordinator with a copy to the County Traffic Director and must include the specific parcel(s) receiving the credit, the amount of the credit, the uses and intensities receiving

the credit and the number of net AM peak hour trips and net PM peak hour trips associated with the credit. The County shall notify the City in writing when a prepayment of County Property Fees has occurred and when an assignment of County road impact fee credits has occurred. The written notice from the County must include the specific parcel covered by the prepayment or assignment, the uses and densities/intensities associated with the prepayment or assignment, and the number of net AM peak hour trips and net PM peak hour trips that are covered by the prepayment or assignment.

E. The net AM peak hour trips and net PM peak hour trips generated by development that has received a building permit, prepaid County road impact fees or County Property Fees, or had County road impact fee credit specifically assigned to it shall be added together by the City to calculate currently utilized trips (hereinafter "Currently Utilized Trips"). Net AM peak hour trips and net PM peak hour trips associated with prepaid County road impact fees, prepaid County Property Fees or the assignment of County road impact fees shall not be considered Currently Utilized Trips until the City issues a written confirmation specifying the amount of net AM peak hour trips and PM peak hour trips that are recognized as Currently Utilized Trips. Prior to issuing such written confirmation, net AM peak hour trips and net PM peak hour trips covered by the prepayment of County road impact fees, prepayment of County Property Fees or the assignment of County road impact fee credit shall be added to the Currently Utilized Trips in order to determine if any threshold for making a proportionate share payment in Paragraphs 4.A. (Total Project) or 4.B. (Lester Property) is exceeded. If any of the additional trips would result in any threshold in Paragraphs 4.A. or 4.B being exceeded, the City shall issue the written confirmation only for the amount of trips that do not exceed any threshold for making a proportionate share payment. Any trips resulting from the prepayment of impact fees, the

prepayment of County Property Fees, or the assignment of impact fee credit that were not confirmed as Currently Utilized Trips because a threshold for a proportionate share payment in Paragraphs 4.A. or 4.B. was exceeded shall be re-evaluated once the required proportionate share payment is made. Development that is included in the Currently Utilized Trips may continue to pull building permits without limitation relating to any future required proportionate share payments.

F. Prior to the issuance of any building permit for development not already included in the Currently Utilized Trips, net AM peak hour trips and net PM peak hour trips generated by new development seeking building permits shall be added to the Currently Utilized Trips in order to determine if any threshold in Paragraphs 4.A. and 4.B. is exceeded. No building permits for development that would exceed any threshold in Paragraphs 4.A. and 4.B. shall be issued until the required proportionate share payment is made.

5. County Advance Payment.

A. The County has determined that a thriving biomedical industry is critical to the continued economic development of Palm Beach County and that successful development of the Project will further advance this significant public interest. In recognition of this interest, the County agrees to advance payment in the amount of Six Million (\$6,000,000) Dollars ("Advance Payment") in order to expedite the improvement of Donald Ross Road from I-95 to Heights Boulevard including necessary interchange improvements at Donald Ross Road and I-95. This payment shall be made no later than 180 days after the effective date of the DRI Development Order.

B. The County shall be entitled to repayment of the Advance Payment plus interest at a rate of three (3) percent compounded annually starting on January 1, 2010 and continuing

through the time of the repayment. Repayment may only occur once the total proportionate share payment, which is \$22,206,099 plus any additional adjustments based on the escalator calculations in paragraphs 2.B. and 2.C. and including the County's Advance Payment has been received and deposited in the Proportionate Share Trust Account (hereinafter "Repayment Funding Condition"). The County may only withdraw funds in the Proportionate Share Trust Account that are in excess of the Repayment Funding Condition funds (hereinafter "Excess Funds"), as repayment for its Advance Payment. In no event shall the County be entitled to use any of the Repayment Funding Condition funds for reimbursement of the Advance Payment. The County understands and acknowledges that there may not be sufficient Excess Funds to cover the full reimbursement.

6. Road Impact Fees.

A. The Lester Property shall be subject to Palm Beach County road impact fees pursuant to Article 13 of the Unified Land Development Code, as may be amended and/or replaced by legislatively mandated suitable alternative (e.g. mobility fee). Development on the Lester Property will pay such road impact fees beginning with the first building permit less any credits established through the payment of Proportionate Share obligations. Until the full proportionate share amount for the Lester Property has been paid, all impact fees or alternative fees such as a mobility fee collected by the County for this Project shall be deposited in the Proportionate Share Trust Account.

B. Development on the County Property shall be subject to Palm Beach County road impact fees pursuant to Article 13 of the Unified Land Development Code. The County Property Fee shall be a credit against any impact fee or other legislatively adopted alternative fee. So long as the County Property Fee due at time of issuance of building permit exceeds the road impact

fee required for the same permit, no impact fee is paid. In the event that the road impact fee payment or legislatively adopted alternative fee (e.g. mobility fee) required for a building permit exceeds the amount required by this Agreement, the permit applicant shall be responsible for paying the amount of the impact fee or other legislatively adopted alternative fee not offset by the County Property Fee. Any impact fees, mobility fees or other legislatively adopted fees collected by the County pursuant to this paragraph shall not be deposited in the Proportionate Share Trust Account. The receipt issued by the County for payment of the County Property Fee shall specify the amount of any impact fee or other legislatively adopted fee that must be paid prior to the issuance of a building permit.

C. Any road impact fees due shall be collected by Palm Beach Gardens prior to issuance of the building permit(s) requiring their payment. The City shall clearly identify these road impact fees as relating to this Project and shall transfer them to Palm Beach County. Until the full proportionate share amount for the Lester Property has been paid, the County shall deposit the fees collected pursuant to Paragraph 6.A. in the Proportionate Share Trust Account.

7. Contribution in lieu of assessment for off-site improvements. Northern Palm Beach County Improvement District ("the District") has created its Unit of Development No. 2C ("Unit No. 2C") which encompasses the Property and at some point in the future, the District may issue bonds in order to finance the construction of on-site and off-site public infrastructure for the benefit of some or all of the Property. In such event, the District and the other parties hereto acknowledge that the County's timely payment of the \$6,000,000 specified in Paragraph 5 for construction of the therein identified off-site improvements shall for the purposes of the District's Unit No. 2C: (a) constitute a capital contribution in lieu of a District assessment for the District's construction of any of the off-site improvements described in attached Table 1, and (b)

the District shall not impose any Unit No. 2C assessments upon the County Property to pay for the District's construction, if any, of some or all of the off-site improvements described in attached Table 1. The District's conditioned consent to and acceptance of the terms, provisions and understandings set forth in this Paragraph 7 is attached hereto, identified as Exhibit D and incorporated herein by this reference.

8. Reallocation of Proportionate Share Payments to Alternative Improvements. The parties recognize that over the life of the Project, changed conditions may result in an Improvement identified in Table 1 being unnecessary, postponed to a later phase or no longer financially feasible. In order to ensure all proportionate share funds are applied to regionally significant transportation improvements to mitigate the Project's impacts, FDOT, FTE, the County and the City (hereinafter the "Government Parties") may identify alternative improvements. FDOT, FTE, the County, and the City may reorder the priority of projects in Table 1 within and/or between development phases or reallocate proportionate share funds each has received to alternative improvements upon written consent of all the Government Parties. Delay of improvements or revisions to the improvements shall have no bearing on the ability of the Applicant to pull building permits or develop the DRI.

9. Governing Law/Binding Effect. This Agreement shall be interpreted and governed by Florida law in effect as of the date of This Agreement. Each of the parties hereto warrants and represents that this Agreement is valid, binding and enforceable against them in accordance with the terms and conditions of Florida law.

10. Remedies. The parties hereto shall have all rights and remedies provided hereunder and under Florida law with respect to the enforcement of this Agreement and hereby acknowledge and agree that each party hereto shall have the right and remedy to bring an action or actions for

specific performance and such other equitable or injunctive relief as appropriate or necessary to enforce this Agreement. The parties agree that the venue for any enforcement action shall be the Circuit Court in and for Palm Beach County.

11. Notice of Default. The parties acknowledge and agree that no party shall be considered in default for failure to perform under this Agreement until such party has received written notice specifying the nature of such default or failure to perform and said party fails to cure said default or fails to perform within thirty (30) days of receipt of written notice.

12. Notices. All notices which are required or permitted under this Agreement shall be given to the parties by certified mail, return receipt requested, hand delivery, or express courier, and shall be effective upon receipt when delivered to the parties at the addresses set forth herein below (or such other address as provided by the parties by written notice delivered in accordance with this paragraph):

As to:

LESTER

Howard Lester

44 Cocoanut Row

Palm Beach, FL 33480

With copies to:

Alan Ciklin

Casey Ciklin Lubitz Martens & O'Connell

Northbridge Tower I

515 North Flagler Drive, Suite 1900

West Palm Beach, FL 33401

and

Chuck Lubitz

Casey Ciklin Lubitz Martens & O' Connell

Northbridge Tower I

515 North Flagler Drive, Suite 1900

West Palm Beach, FL 33401

PALM BEACH COUNTY

Shannon LaRocque, P.E.

Assistant County Administrator

Governmental Center

301 N Olive Ave.

West Palm Beach, FL 33401

With Copies to:

Marlene Everitt, Esq.

Assistant County Attorney

Governmental Center

301 N Olive Ave.

West Palm Beach, FL 33401

and

Tanya McConnell, P.E.

Deputy County Engineer

2300 N Jog Road, Third Floor

West Palm Beach, FL 33411-2745

CITY OF PALM BEACH GARDENS

City of Palm Beach Gardens

10500 North Military Trail

Palm Beach Gardens, Fl 33410

Attn: City Manager

With a Copy to:

City of Palm Beach Gardens

10500 North Military Trail

Palm Beach Gardens, Fl. 33410

Attn: City Attorney

FLORIDA DEPARTMENT OF TRANSPORTATION – DISTRICT FOUR

Florida Department of Transportation – District Four

3400 West Commercial Boulevard

Fort Lauderdale, FL 33309

Attn: James A. Wolfe, P.E. (District Secretary)

FLORIDA DEPT. OF TRANSPORTATION – FLORIDA’S TURNPIKE ENTERPRISE

Jennifer Olson, P.E.

Deputy Executive Director and Chief Operating Officer

Florida’s Turnpike Enterprise

PO Box 613069

Ocoee, FL 34761

13. Amendments. No amendment, modification or other changes in this Agreement shall be binding upon the parties unless in writing executed by all of the parties.

14. Successors and Assigns Bound. The rights and obligations contained in this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto, including any successor in title to the Lester Property, the County Property, or to all or any part of either Property.

15. Incorporation into the DRI Development Order. This Agreement shall be attached as an exhibit to the DRI Development Order and incorporated therein by reference.

16. Recording. This Agreement shall be recorded in the Public Records of Palm Beach County at the joint applicants' expense.

17. Effective Date and Tolling. This Agreement shall become effective upon the date it is executed by the last party to it and the DRI Development Order necessary for its implementation is effective. If the Development Order is tolled for a period of time pursuant to section 380.06(19)(c), Florida Statutes, due to pendency of or administrative or judicial proceeding relating to development permits, or the effectiveness of the development order is stayed by an appeal or challenge filed pursuant to Section 380.07(3)-(5), Florida Statutes, the obligations under this Agreement shall be tolled for the same period of time.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute duplicates of one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in manner and form sufficient to bind them as of the date set forth herein below.

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Signed, sealed and delivered in the presence of:

(Witness Signature)

(Print Witness Signature)

(Witness Signature)

(Print Witness Signature)

(Witness Signature)

(Print Witness Signature)

(Witness Signature)

(Print Witness Signature)

(Witness Signature)

(Print Witness Signature)

(Witness Signature)

(Print Witness Signature)

THE LESTER FAMILY INVESTMENTS
L.P., a Delaware limited partnership

By: PHL Financing Consulting Co., Inc.,
as General Partner

By: _____
(Signature)

(Print Signatory's Name)

Its: _____

RICHARD THALL

ROBERT THALL

(Witness Signature)

(Print Witness Signature)

(Witness Signature)

(Print Witness Signature)

(Witness Signature)

(Print Witness Signature)

(Witness Signature)

(Print Witness Signature)

(Witness Signature)

(Print Witness Signature)

(Witness Signature)

(Print Witness Signature)

PETER L. BRIGER

PAUL H. BRIGER

THE DAVID MINKIN FLORIDA REALTY
TRUST

By: _____
(Signature)

(Print Signatory's Name)

Its: _____

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER

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

By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chairman

(SEAL)

WITNESSES:

Signature of Witness

By: _____
Signature

Printed Name of Witness

Typed or Printed Name

Signature of Witness

Title/Position

Printed Name of Witness

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

ATTEST:

CITY OF PALM BEACH GARDENS, FLORIDA,
a Florida Municipal Corporation

By: _____
Patricia Snider, CMC, City Clerk

By: _____
Joseph A. Russo, Mayor

Date

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
City Attorney

WITNESSES:

FLORIDA DEPARTMENT
OF TRANSPORTATION – DISTRICT FOUR

Signature of Witness

By: _____
James A. Wolfe, P.E., District Secretary

Printed Name of Witness

Signature of Witness

Printed Name of Witness

Date

Printed Name of Witness

Date

WITNESSES:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
FLORIDA'S TURNPIKE ENTERPRISE

Signature

Typed or Printed Name

By: _____

Jennifer Olson, P.E.
Deputy Executive Director
and Chief Operating Officer

Date: _____

Signature

Typed or Printed Name

{Corporate Seal}

APPROVED AS TO FORM AND LEGALITY:

By: _____

Office of the Turnpike General Counsel

Table 1

Phase	Proportionate Share Payment due at Start of Phase			Net Cum. Trips by Phase				Prioritized Allocation of Proportionate Share Payments		
	Lester	County	Total	AM Peak		PM Peak		Mobility Improvements by Phase	Responsible Agency	Estimated Cost
1	\$350,779 ¹	Note 2	\$439,903	1,204	1,369	2,036	2,174	Donald Ross Rd from I-95 to Heights Blvd (widen, add 3 rd SB left and 3 rd WB left at I-95 SB ramp intersection)	COUNTY	\$6,000,000 ³
2	\$4,182,614 ¹	Note 2	\$5,245,315	1,993	2,397	2,761	3,089			
3	\$7,476,413 ¹	Note 2	\$9,375,988	2,546	3,176	3,279	3,778	Turnpike Interchange Improvements (Indiantown Rd or PGA Bl)	FTE	\$1,500,000 ⁴
								Trolley/Circulator System	CITY	\$750,000 ⁴
								Hood Rd from Parkside Dr to Central Bl (4 lane widening)	COUNTY	\$1,500,000 ³
								Central Bl/Hood Rd Intersection Improvements (Add excl. right and 2nd left to N/S Approaches)	COUNTY	\$1,000,000 ³
								Central Bl/PGA Blvd Intersection Improvements (Add 2 nd SB left and 2 nd SB right)	COUNTY	\$2,500,000 ³
								Trolley/Circulator System	CITY	\$811,206 ⁴
								Indiantown Rd/I-95 Interchange (signalize/extend EB left turn lane)	FDOT	\$1,000,000 ⁴
4	\$5,697,338 ¹	Note 2	\$7,144,893	3,877	5,361	4,380	5,528	Trolley/Circulator System	CITY	\$2,500,000 ⁴
								Construct Park & Ride Lot (within study area)	FDOT	\$1,500,000 ⁴
								Intersection Improvements ⁵	COUNTY	\$3,144,893 ⁶

\$17,707,143 \$4,498,956 \$22,206,099

- Notes:
1. Actual proportionate share payment for the Lester Property may be adjusted by the escalator clause in paragraph 2.B and may be reduced by the amount of road impact fees paid to Palm Beach County through the due date for the proportionate share payment pursuant to paragraph 4.B.
 2. Palm Beach County will make the Advance Payment of \$6,000,000, which may be adjusted by the escalator clause in paragraph 2.C. Development on the County Property will be required to make County Property Fee payments prior to each building permit issued in the amount of \$2.82 per square foot or as adjusted by paragraph 4.C.
 3. The Actual cost of these improvements will be used to determine the exact amount disbursed to the County.
 4. These Estimated Costs will be adjusted by the escalator percentage applied to the Lester phase 3 and 4 prop share payments to determine the exact amount disbursed to each entity.
 5. Phase 4 Intersection Improvements may include: a) Donald Ross Rd/Central Blvd; b) Donald Ross Rd/Military Trail; c) Donald Ross Rd/SR 811
 6. The Estimated Cost shall be adjusted to be the total proportionate share payment for the Project after escalator adjustments, including any accrued interest in the Proportionate Share Trust Account, less the monies allocated for all other improvements in Table 1.