

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	<\$773,616>	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	<\$773,616>	-0-	-0-	-0-	-0-
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes No x

Budget Acct No.: Fund 3503 Dept. 361 Unit 5903 Revenue Source 2430
Program

Recommended Sources of Funds/Summary of Fiscal Impact:

Road Impact Fee Fund Zone 3
Proportionate Share Fees

C. Departmental Fiscal Review: Atwillhite

III. REVIEW COMMENTS

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

Sherry Brown
AP 9/29 ASD 10/29 OFMB

Dr. J. Jacobs 10/30/15
Contract Dev. and Control
E. Wheeler 10-30-15

B. Approved as to Form and Legal Sufficiency:

Assistant County Attorney
Assistant County Attorney

C. Other Department Review:

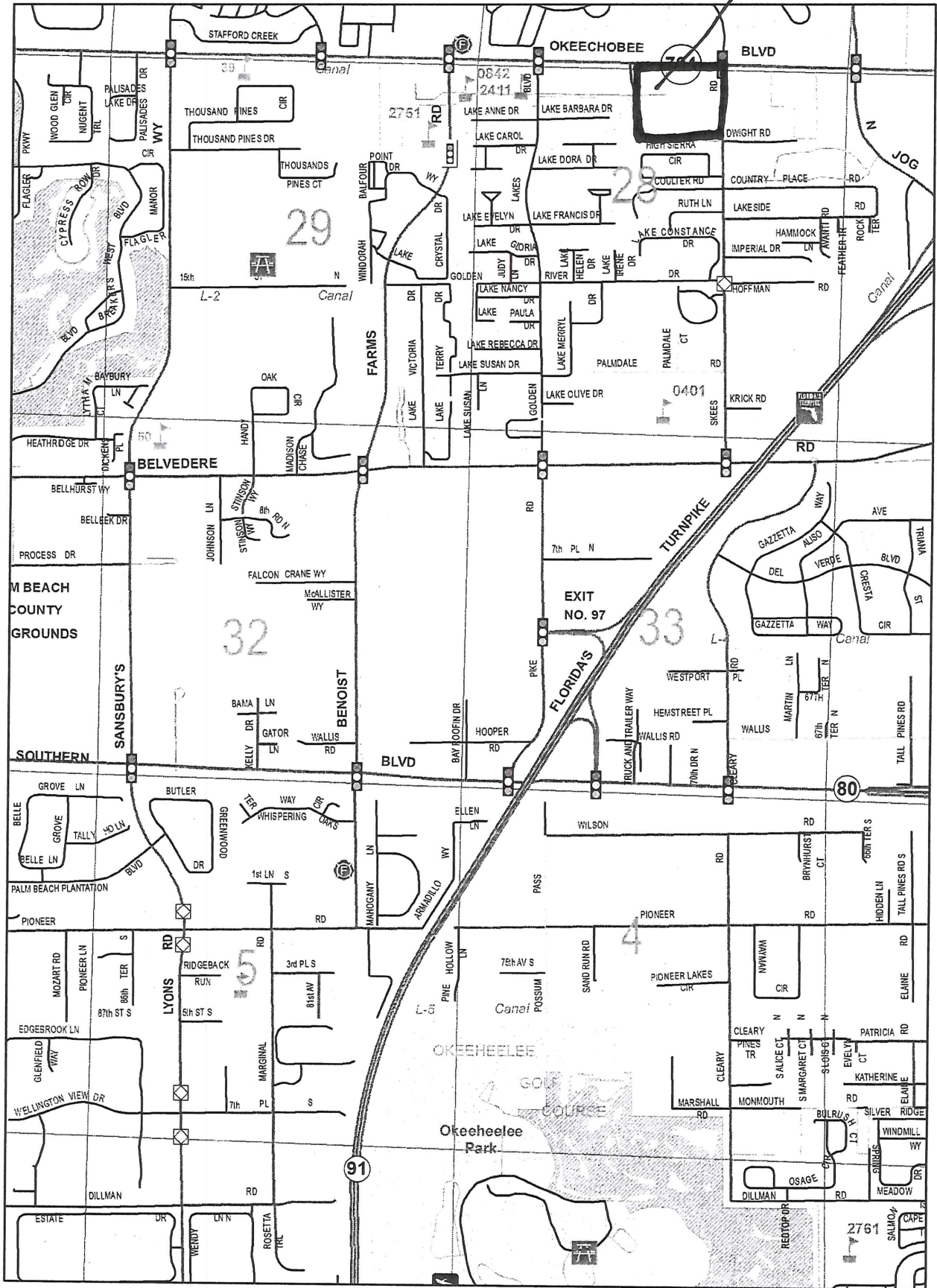
Department Director

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

TWP 43

TWP 43

TWP 44



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PROPORTIONATE SHARE AGREEMENT

This Proportionate Share Agreement (hereinafter "Agreement") is made and entered into this ____ day of _____, 20__, by and between Palm Beach County, a political subdivision of the State of Florida (hereinafter "County"), and CMSJR Development Group, LLC, a Florida limited liability company (hereinafter "Developer").

WITNESSETH

WHEREAS, the Board of County Commissioners has implemented Proportionate Share as required by and in a manner consistent with section 163.3180(5)(h), Florida Statutes; and

WHEREAS, Proportionate Share allows developers to proceed with development notwithstanding a failure of transportation concurrency, by contributing their proportionate share to one or more regionally significant transportation facilities; and

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

WHEREAS, to the extent that any of the conditions of this Agreement constitute monetary or property exactions that are subject to *Nollan v. California Coastal Comm'n*, 483 U. S. 825 (1987), and *Dolan v. City of Tigard*, 512 U. S. 374 (1994), the applicant/owner, and successors and assigns (a) agrees that there is a nexus and rough proportionality between such conditions and the impacts of this project/development, and that such conditions are necessary to ensure compliance with the criteria of the Palm Beach County Unified Land Development Code and Comprehensive Plan that are applicable to this approval, and (b) waives any claims based on such conditions; 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 a 245 unit apartment development known as Okeechobee Commons (also known as Okeechobee and Skees Residential) located at the southwest quadrant of Okeechobee Boulevard and Skees Road (the "Project").

Section 3. Proportionate Share Payment

The total amount of the proportionate share payment for the required road improvement(s) shall be seven hundred seventy three thousand six hundred sixteen and no/100 Dollars (\$773,616.00). This amount was calculated in accordance with the

methodology provided for in section 163.3180(5)(h), Florida Statutes, and based on the Developer's Traffic Study (hereinafter "the Study"), prepared by Pinder Troutman Consulting, Inc., dated August 21, 2015, and approved by the Palm Beach County Traffic Division on September 14, 2015. Payments/contributions shall be submitted to the Palm Beach County Traffic Division pursuant to the following schedule.

- No building permits for more than 172 multi-family dwelling units shall be issued until the first to occur of:
 - the Developer makes a proportionate share payment in the amount of \$700,301.00. Any road impact fees paid by the Developer on this Project prior to this proportionate share payment will be applied as a credit towards the proportionate share payment. The total proportionate share payment shall be adjusted at the time of payment by the escalator payment set forth below. The proportionate share payment is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility; or
 - the contract has been let for the Assured Construction of Roebuck Road from SR 7 to Jog Road as a four-lane divided facility; or
 - before October 1, 2019 if Assured Construction of Roebuck Road from SR 7 to Jog Road is deleted from the 5-Year Road Program;

- No building permits for more than 200 multi-family dwelling units shall be issued until the Developer makes a proportionate share payment in the amount of \$73,315.00 (Original Payment Amount). The total proportionate share payment shall be adjusted at the time of payment by the escalator calculation set forth below. Any road impact fees paid by the Developer on this Project prior to this proportionate share payment will be applied as a credit towards the proportionate share payment. The proportionate share payment is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility.

Pursuant s.163.3180(5)(h)2., F.S., proportionate share payments shall be based on the improvement cost at the time of payment. The parties hereto agree that the payment amounts set forth in this Agreement shall be subject to the following escalator calculation to account for changes in road development costs that may occur between the effective date of this Agreement and the date each proportionate share payment is paid.

Adjusted Payment = Original Payment Amount x (BONS Payment Month / BONS Month of Prop Share Execution)

- Original Payment Amount = Proportionate Share Payment amount specified
- BONS payment = Latest Published Value (including preliminary values) at Time of Payment
- BONS Month of Prop Share Execution = Published Value

The cost adjustment for the total and amount of each payment shall be based on the Bureau of Labor Statistics Producer Price Index (PPI) for Other Non-Residential Construction ((BONS) (Series ID: WPUIP23122301).

As of the effective date of this Agreement, the PPI index information may be accessed through the following link:

<http://data.bls.gov/timeseries/WPUIP2312301>

While the Proportionate Share payment(s) set forth in the Study are based on the proportionate costs of specific road improvements, the parties hereto understand and agree that Palm Beach County, in its sole discretion, may apply such payment(s) to one or more mobility improvements to regionally significant transportation facilities that will directly benefit the Project.

Section 4. Term of concurrency approval

In consideration for entering into this binding Proportionate Share Agreement with Palm Beach County, the Developer shall receive a certificate of concurrency approval; provided, however, if the Developer fails to apply for a development permit (as defined in Section 1.I.2.D.33, Palm Beach County Unified Land Development Code) within twelve (12) 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 to meet Palm Beach County Traffic Performance Standards.

Section 5. Increase in Project Trips

Any change which adds to the intensity of the Project could result in an increase in trips that impact one or more of Palm Beach County's Major Thoroughfares, as defined by Unified Land Development Code, Article 1.I.2.M.6. The Developer understands and agrees that it is precluded from asserting that those additional trips are vested or otherwise permitted under this Agreement. In addition, Developer understands and agrees that any such changes resulting in an increase in trips may cause this Agreement to be null and void, or may require the application for and execution of an additional Proportionate Share Agreement, along with any other traffic study or additional documentation.

Section 6. Road Impact Fee Credit

Proportionate Share contributions shall be applied as a credit against road impact fees regardless of how the County ultimately uses the Proportionate Share payments. The Developer understands and agrees that in no event shall the Developer be entitled to road impact fee credits in excess of the Proportionate Share contribution and in the event the contribution exceeds the amount of road impact fees owed by the Project through buildout, Developer shall not be entitled to a refund for the Proportionate Share contribution in excess of such road impact fees.

Section 7. No refund

Proportionate Share contributions are non-refundable.

Section 8. 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 9. 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 10. 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 11. 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 12. 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 13. Binding Agreement

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

Section 14. 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 15. 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 16. 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:

Tanya N. McConnell, P.E.
Deputy County Engineer
Engineering and Public Works Department
2300 North Jog Road, Third Floor
West Palm Beach, FL 33411

With a copy to County's Legal Representative:

Leonard Berger
Chief Assistant County Attorney
Palm Beach County Attorney's Office
301 North Olive Avenue
Suite 501
West Palm Beach, FL 33405

As to Developer:

CMSJR Development Group, LLC
103 Commerce Road
Boynton Beach, FL 33426
Attn: Charles M. Scardina, Jr.

With a copy to Developer's Legal Representative:

Harvey E. Oyer, III, Esq.
Shutts & Bowen LLP
525 Okeechobee Boulevard, Suite 1100
West Palm Beach, FL 33401

Section 17. Effective Date

The effective date of this Agreement shall be _____.

Section 18. 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.

Section 19. Contingency

If the City does not approve the Developer's request for re-zoning, an amendment to the comprehensive land use plan, and the proposed site plan concerning the Project or Developer withdraws such request (all in Developer's sole discretion), this Agreement shall be void and of no further force or effect.

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

ATTEST:

COUNTY:

SHARON R. BOCK,
CLERK & COMPTROLLER

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

By: _____
Deputy Clerk

By: _____
Shelley Vana, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

County Attorney

APPROVED AS TO TERMS
AND CONDITIONS:

By: _____
Traffic Engineering

ATTEST:

DEVELOPER:

CMSJR DEVELOPMENT GROUP, LLC

Witness

By: _____
_____, its _____