

4-B-1

Approved By:  5/2/16  
Assistant County Administrator Date

## 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	-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-
# ADDITIONAL FTE					
POSITIONS (Cumulative)					

Is Item Included in Current Budget?    Yes    No

Budget Acct No.: Fund\_\_ Dept.\_\_ Unit\_\_ Object  
Program

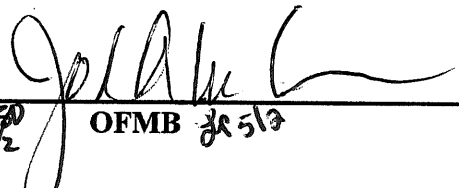
### Recommended Sources of Funds/Summary of Fiscal Impact:

\*\*\*\*The fiscal impact of this item is a developer contribution and road improvements at a maximum of \$105,392,621. \$61,005,900 of the developer contribution is impact fee creditable. Also, a portion of the developer contribution may be offset by improvements done by the developer. A separate fund will be established when the first payment is scheduled to be received and an amendment will go to the Board for approval at that time.

C. Departmental Fiscal Review: Amellhite

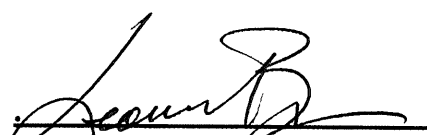
## III. REVIEW COMMENTS

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

5/2 PFD 5/2  OFMB 5/2

5/2  Contract Dev. and Control 5/2/16

### B. Approved as to Form and Legal Sufficiency:

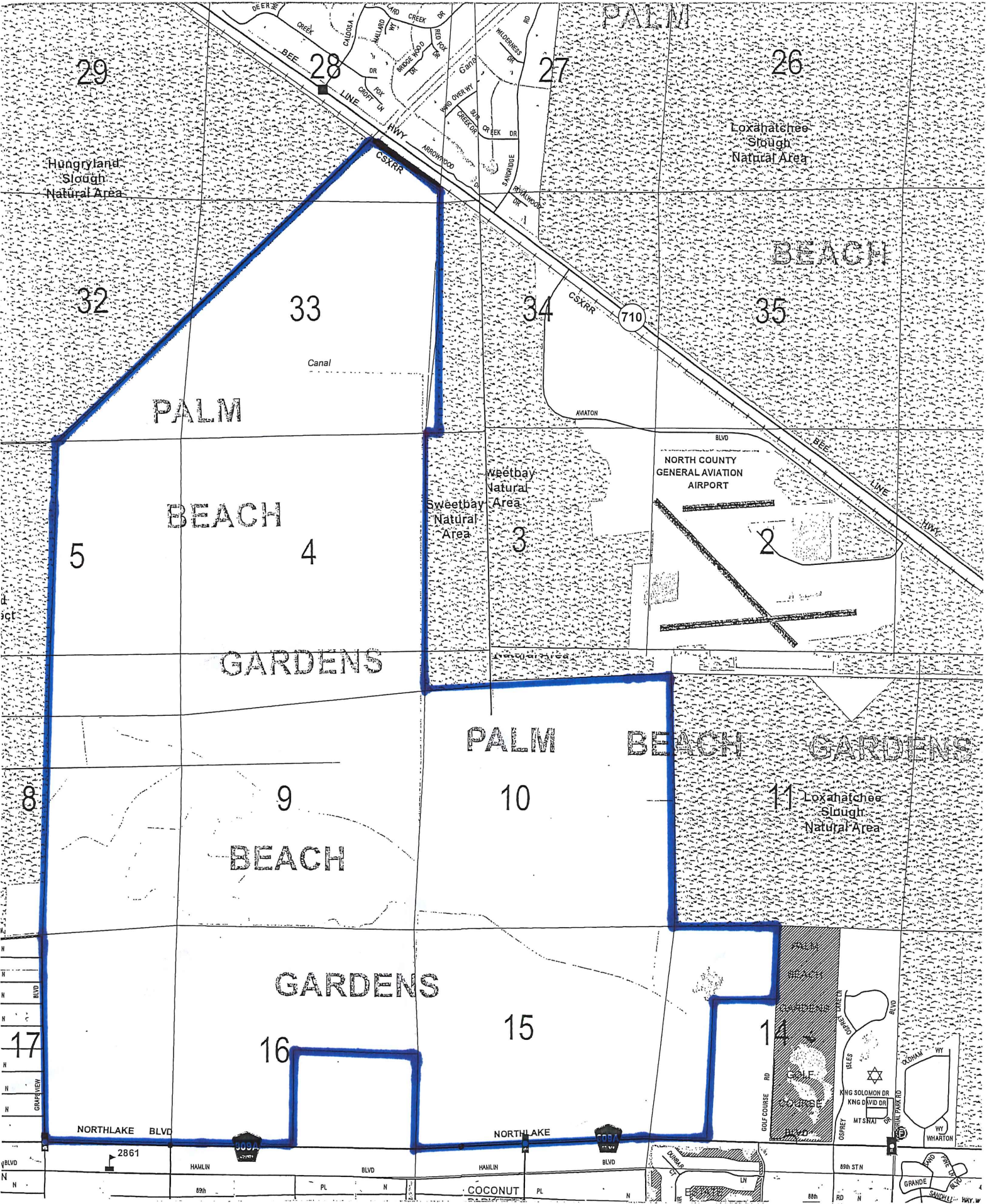
  
Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
Department Director

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

Location Sketch



**AVENIR**  
**PROPORTIONATE SHARE AGREEMENT**

This Proportionate Share Agreement (hereinafter "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between Palm Beach County, a political subdivision of the State of Florida (hereinafter "County") and Avenir Holdings LLC (hereinafter "Applicant").

**WITNESSETH**

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

**WHEREAS**, the Proportionate Share Program allows applicants to proceed with development notwithstanding a failure or potential failure of transportation facilities level of service, by contributing their proportionate share to one or more transportation facilities; and

**WHEREAS**, in order to conform to the requirements of this Proportionate Share Program, the County and the Applicant 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), Applicant, for itself and its successors and assigns, (a) agrees that there is a nexus and rough proportionality between such conditions and the impacts of the Project (as hereinafter defined), and that such conditions are necessary to ensure compliance with the criteria of the Palm Beach County Unified Land Development Code that are applicable to this approval, and (b) waives any claims based on such conditions; and

**WHEREAS**, Applicant is the owner of that certain property identified on the attached Exhibit A (the "Property"); and

**WHEREAS**, Applicant has sought development approval for the Property, including comprehensive plan amendments, rezoning, and Planned Community Development ("Project"), from the City of Palm Beach Gardens ("City"); and



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

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

WHEREAS, by the approval of this Agreement, the Project shall be in conformity with all applicable Palm Beach County traffic concurrency regulations.

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:

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 total proportionate share payment due for the Project shall be One Hundred Five Million Three Hundred Ninety Two Thousand Six Hundred Twenty One Dollars and no/100 (\$105,392,621.00) (“Proportionate Share Payment”). However, in the event that the Florida Department of Transportation includes one or more of the links identified below in its Work Program for funding prior to the Project generating more than 894 AM peak outbound trips, the Proportionate Share Payment shall be reduced by the amount equivalent to each of such included links as set forth herein, less any portion of the Proportionate Share Payment that the County contributes to such links:

i. Beeline Highway from Northlake to Jog	\$2,335,818
ii. Beeline Highway from Jog to Haverhill	\$5,454,473
iii. Beeline Highway from Haverhill to Blue Heron	\$ 424,867

B. The parties hereto acknowledge and agree that the attached Table 1 contains the proportionate share contribution required at each stage of development, the peak hour trip thresholds for each stage, and the estimated cost of each improvement. Payment of the Project's proportionate share, including through construction of improvements, as identified on Table 1 shall satisfy the transportation concurrency requirements of the County's Comprehensive Plan, concurrency management systems, and traffic performance standards.

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

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).

3. Allocation and Timing of Project's Proportionate Share Payments.

A. The Applicant shall make the Proportionate Share Payment on the schedule as set forth in Table 1. The Applicant intends to construct (1) the Avenir Connector Road and (2) the Northlake Boulevard Widening, as defined in Table 1 (the "Applicant Constructed Improvements"), in accordance with the Development Order to be adopted for the Project, utilizing a portion of the Proportionate Share Payment as identified in Table 1. If the Applicant constructs the Applicant Constructed Improvements, the Applicant shall be entitled to those construction costs of Sixty One Million Five Thousand Nine Hundred Dollars and no/00

(\$61,005,900.00) being credited against the required Proportionate Share Payment due for the Project as set forth in Paragraph 2.A of this Proportionate Share Agreement and no monetary payment is due for Payment A based on the cost of construction as set forth in Table 1 and the monetary payment due for Payment B shall be reduced based on the remaining amount of the cost of construction as set forth in Table 1. In the event that the Applicant does not construct the Applicant Constructed Improvements, the entirety of the Proportionate Share Payment shall be subject to the adjustment calculation set forth in Paragraph 2.C.

B. All monetary Proportionate Share Payments made pursuant to this Agreement shall be made directly to Palm Beach County. The County and the Applicant acknowledge and agree that the County presently intends to allocate the monetary Proportionate Share Payments to the improvements in the priority order set forth in Table 2. The parties recognize, however, that over the life of the Project, changed conditions may result in the County determining any or all improvements identified in Table 2 to be unnecessary, postponed to a later stage, or no longer financially feasible. In that event, the County shall notify and consult with the City in determining the appropriate allocation of any remaining funds. County shall have ultimate authority to determine the appropriate allocation of said funds, provided, however, that all such funds are applied toward road improvements that benefit the Project and/or offset impacts from the Project. It shall be presumed that road improvements benefit and/or offset impact of the Project when such improvements are located within the following boundary, as graphically depicted on Exhibit 1 hereto:

Beginning at the intersection of Northlake Boulevard and North Congress Avenue, then directly north to PGA Boulevard, then west along PGA Boulevard to the Beeline Highway, then northwest along the Beeline Highway to the point along the Beeline Highway directly north of the northern terminus of Seminole Pratt Whitney Road, then directly south to the intersection of Seminole Pratt Whitney Road and Northlake Boulevard, then southernly along Seminole Pratt Whitney Road to Okeechobee Boulevard, then east along Okeechobee Boulevard to SR. 7, then directly north to Northlake Boulevard, then east along Northlake Boulevard to the intersection of Northlake Boulevard and North Congress Avenue.

C. The County shall establish a separate account (hereinafter “Proportionate Share Trust Account”) for the management and disposition of monetary proportionate share payments as set forth herein.

D. 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.C., adequately mitigate the transportation impacts of the Project.

E. The County shall notify the City in writing whenever a proportionate share payment is received by the County. The notice shall include the date the payment received and the amount of the payment.

4. Road Impact Fees.

The Project is 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). All proportionate share contributions as set forth in Paragraph 2 above, as may be adjusted pursuant to Paragraph 2.C above, shall be applied as a credit against road impact fees. The Applicant understands and agrees that in no event shall the Applicant be entitled to road impact fee credits in excess of its proportionate share contribution and in the event the contribution exceeds the amount of road impact fees owed by the Project through buildout, Applicant shall not be entitled to a refund for the proportionate share contribution in excess of such road impact fees. In the event County collects roadway impact fees above the proportionate share amount identified in Paragraph 2.A above, as that amount may be adjusted pursuant to Paragraph 2.C above, shall be deposited in appropriate Road Impact Fee Trust Fund.

5. Term of Concurrency Approval. In consideration for entering into this binding Proportionate Share Agreement with Palm Beach County, the Applicant shall be deemed to have satisfied traffic concurrency requirements; provided, however, if the Applicant fails to apply for a development permit, as defined in Chapter 380, F.S., within twelve months of the effective 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. County acknowledges that approval of the pending rezoning and/or Planned Community District requests associated with the Project constitute development permits as



required by this Agreement. In the event the City denies the development order application for the Project, and that denial is not appealed or otherwise challenged or is upheld following an appeal or challenge, or if the Applicant for any reason withdraws the development order application, then this Agreement, and the certificate of concurrency approval will be void and of no further force and effect.

6. Increase in Project Trips. Any change to the Project could result in an increase in trips that impact one or more of Palm Beach County's Major Thoroughfares, as defined by the Palm Beach County Unified Land Development Code, Section 1.I.2.M.6. The Applicant understands and agrees that it is precluded from asserting that those additional trips are vested or otherwise permitted under this Agreement. In addition, Applicant 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.

7. No Refund. Proportionate share contributions are non-refundable.

8. Construction of Improvements. Applicant 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 Applicant 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.

The Applicant shall maintain and require its contractor to maintain workers' compensation coverage in accordance with Florida Statutes. The Applicant 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.

To ensure faithful performance of the construction of the required improvements, the Applicant shall also require all contractors performing work on the required improvements to execute and deliver to the Applicant 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.

9. Governing Law/Binding Effect. 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.

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 and the City 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:

APPLICANT

Rosa Schechter, Esq.  
Avenir Holdings, LLC  
500 Biltmore Way  
Suite 1110  
Coral Gables, Florida 33134

With copy to:

Brian M. Seymour, Esq.  
Gunster  
777 S. Flagler Drive, Suite 500 East  
West Palm Beach, FL 33401

PALM BEACH COUNTY

Tayna McConnell  
Governmental Center  
301 N Olive Ave.  
West Palm Beach, FL 33401

With Copy to:

Leonard Berger, Esq.  
Chief Assistant County Attorney  
Governmental Center  
301 N Olive Ave.  
West Palm Beach, FL 33401

CITY OF PALM BEACH GARDENS

Ronald M. Ferris, City Manager  
10500 N. Military Trail  
Palm Beach Gardens, FL 33410

With Copy to:

R. Max Lohman, Esq.  
City Attorney  
10500 N. Military Trail  
Palm Beach Gardens, FL 33410

13. No Third Party Beneficiaries. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement.
14. Attorney's 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.
15. Amendments. No amendment, modification or other changes in this Agreement shall be binding upon the parties unless in writing executed by both County and Applicant. County acknowledges that Applicant is required to obtain written consent from City before agreeing to amend this Agreement and that without such written consent being provided, no such amendment shall be valid or have any legal force or effect.
16. 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 Project property.
17. Effective Date. This Agreement shall become effective upon the City of Palm Beach Gardens adopting the Planned Community District approval request pending for the Project and that approval being final and unappealable.
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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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.

AVENIR HOLDINGS, LLC

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

By:   
(Signature)  
David Serwiansky  
(Print Signatory's Name)

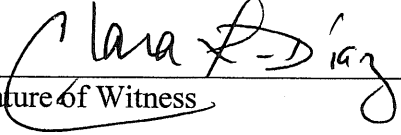
By: \_\_\_\_\_  
Mary Lou Berger, Mayor

ATTEST:

Its: President

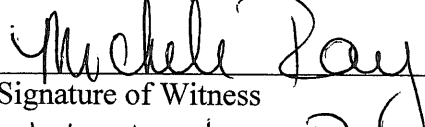
SHARON R. BOCK, CLERK  
CLERK & COMPTROLLER

By: \_\_\_\_\_  
Deputy Clerk

WITNESSES:  
  
Signature of Witness  
CLARA L DIAZ  
Printed Name of Witness

(SEAL)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

  
Signature of Witness  
Michele Ray  
Printed Name of Witness

By: \_\_\_\_\_  
Assistant County Attorney

Date: \_\_\_\_\_

APPROVED AS TO TERMS  
AND CONDITIONS

By: \_\_\_\_\_  
George T. Webb, P.E.  
County Engineer

Date: \_\_\_\_\_

**Table 1**

**PROPORTIONATE SHARE CONTRIBUTIONS BY PHASE**



Table 1: Proportionate Share Contributions by AM/PM inbound Peak Hour

	Cumulative	Cumulative				
Payment			Total Cost/Amount Due	Payment Due		
A			\$59,522,999.00	\$0.00	Note 1	
B	>769 AM OUT	>760 PM IN	\$5,515,867.00	\$4,032,966.00	Note 2	
C	>869 am out	>954 am in	\$4,955,216.00	\$4,955,216.00		
D	>1010 am out	>1100 pm out	\$5,263,080.00	\$5,263,080.00		
E	>1167 AM in	>1267 AM out	\$5,716,449.00	\$5,716,449.00		
F	>1340 AM out	>1589 PM out	\$3,959,187.00	\$3,959,187.00		
G	>1525 AM In	>1688 PM Out	\$7,767,885.00	\$7,767,885.00		
H	>1563 AM In	>1726 PM Out	\$6,563,418.00	\$6,563,418.00		
I	>1948 AM In	>1922 PM In	\$6,128,520.00	\$6,128,520.00		
			\$105,392,621.00	\$44,386,721.00		

Note 1 - The Applicant intends to construct (1) that certain roadway identified in the Project Master Plan connecting Northlake Boulevard to Beeline Highway through the Property, which shall include the entirety of the roadway from the northern portion of the development area identified on the Master plan to Beeline Highway and two lanes of the roadway from Northlake Boulevard to the northern portion of such development area (the "Avenir Connector Road"), and (2) Northlake Blvd from a 4 lane section to a six lane section from 140th Street to SR 7 ("Northlake Boulevard Widening") as required by the City of Palm Beach Gardens in the Development Order approving the Project (the "Avenir Development Order"). Both the Avenir Connector Road and Northlake Boulevard Widening are to be constructed in the first Phase of development as identified in the Avenir Development Order. If the Applicant constructs the Avenir Connector Road and Northlake Boulevard Widening, the Applicant shall be entitled to those construction costs being credited against the required proportionate share payment due for the Project as set forth in Paragraph 2.A of this Proportionate Share Agreement and no monetary payment is due for Payment A based on the cost of construction set forth herein. In the event that the Applicant does not construct the Applicant Constructed Improvements, the entirety of the Proportionate Share Payment shall be subject to the adjustment calculation set forth in Paragraph 2.C. The cost of construction of the Avenir Connector Road is estimated at \$44,324,600.00 (\$34,695,900.00 for that portion between the development area and the Beeline Highway and \$9,628,700.00 for the widening of the portion within the development area from two to four lanes) and the cost of construction of the Northlake Boulevard Widening is estimated at \$16,681,302 for a total of \$61,005,900. These amounts are not subject to the adjustment as set forth in Pararaph 2.C of this Proportionate Share Agreement.

Note 2 - The identified Payment Due is the remaining balance after the costs associated with the construction of the Avenir Connector Road and Northlake Boulevard Widening as set forth in Note 1, i.e. \$1,482,901 is the balance of the construction credit not applied in Payment 1. If the Applicant constructs the Avenir Connector Road and Northlake Boulevard Widening, the Applicant shall be entitled to those construction costs being credited against the required proportionate share payment due for the Project as set forth in Paragraph 2.A of this Proportionate Share Agreement and no monetary payment is due for the remainder of Payment B based on the cost of construction set forth herein. In the event that the Applicant does not construct the Applicant Constructed Improvements, the entirety of the Proportionate Share Payment shall be subject to the adjustment calculation set forth in Paragraph 2.C.

**Table 2**  
**IMPROVEMENTS BY COUNTY**

Table 2: Improvement Priorities	
1. Northlake Blvd from SR 7 to Beeline from 4L to 6L, including intersection Improvements	
2. Northlake and Military Trail intersection Improvements westbound to northbound	
3. PGA and Beeline-intersection improvements	
4. Multimodal contribution to mobility improvement on Northlake Blvd	

**EXHIBIT 1**  
**PROPORTIONATE SHARE PAYMENT ALLOCATION BOUNDARY**



Seminole Pratt Whiteny Road

Beeline Highway

Northlake Boulevard

PGA Boulevard



# AVENIR PROPORTIONATE SHARE

urban  
design  
kilday  
STUDIOS