

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: **March 13, 2018** **Consent** **Regular**
 Ordinance **Public Hearing**

Department: **Engineering & Public Works**

Submitted By: **Engineering & Public Works**

Submitted For: **Traffic Division**

I. EXECUTIVE BRIEF

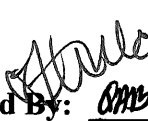

Motion and Title: **Staff recommends motion to receive and file:** a proportionate share agreement for \$963,310.43, Project Number 170412, with W & W V LLC, dated November 27, 2017, for their proposed project located at State Road 7 and Stribling Way.

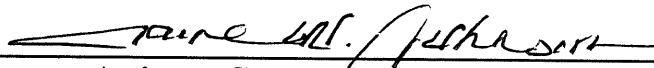
SUMMARY: This agreement is being submitted to the Clerk and Comptroller of Palm Beach County in accordance with Countywide PPM CW-O-051. It was executed by the County Administrator on November 27, 2017. Resolution R2016-0125 delegates authority to the County Administrator or designee to enter into certain proportionate share agreements on behalf of the Board of County Commissioners. District 6 (LB)

Background and Justification: On November 27, 2017, the County Administrator executed the proportionate share agreement with W & W V LLC.

Attachments:

1. Location Map
2. W & W V LLC Proportionate Share Agreement Project Number 170412 with Exhibit A and Exhibit B with Table 1
3. Resolution R2016-0125 with Exhibit A and Appendix A

Recommended By:   1/23/18
 Department Director **Date**

Approved By:  1/29/18
 Assistant County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
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 X
 Does this item include the use of federal funds? Yes No X

Budget Account No:

Fund 3542 Dept 800 Unit 8016-0023 Rvsc 2430

Recommended Sources of Funds/Summary of Fiscal Impact:

Proportionate Share Fund - Zone 2
 Proportionate Share Revenue

****The fiscal impact of this item is a developer contribution and road improvements at a minimum of \$963,310.43. Proportionate share contributions shall be applied as a credit against road impact fees. Revenue received will be deposited in the Zone 2 proportionate share trust fund. Timing of receipt of revenue is indeterminable at this time.

C. Departmental Fiscal Review: Aluciovalameu

III. REVIEW COMMENTS

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

John W. [Signature] 1/24/18
 ASD OFMB
 1/24/18

[Signature] 1/25/18
 Contract Dev. and Control

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.



Village Green
Location Map

Project Number: 170412
Impact Fee Zone: 2

PROPORTIONATE SHARE AGREEMENT

This Proportionate Share Agreement (hereinafter "Agreement") is made and entered into this ~~27th~~ day of ~~November~~, 2017, by and between Palm Beach County, a political subdivision of the State of Florida (hereinafter "County"), and W & W V LLC, a Florida limited liability company (hereinafter "Developer").

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 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 of this Program, 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

WHEREAS, the Board of County Commissioners of Palm Beach County has delegated to the County Administrator or his or her 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 Village Green Shopping Center and is located at State Road 7 and Stribling Way, Wellington, Florida, more particularly described in Exhibit "A".

Section 3. Proportionate Share Payment

The total amount of proportionate share payment for the required road improvement(s) shall be Nine Hundred Sixty Three Thousand Three Hundred Ten and 43/100 Dollars (\$963,310.43). 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 Kimley-Horn and Associates, Inc. dated August 21, 2017, and approved by the Palm Beach County Traffic Division on September 25, 2017. Developer has already made impact fee payments to Palm Beach County totaling Six Hundred Twenty Thousand Eight Hundred Sixty Nine and 55/100 Dollars (\$620,869.55), so the remaining proportionate share payment due is Three Hundred Forty Two Thousand Four Hundred Forty and 88/100 Dollars (\$342,440.88).

The noted Kimley-Horn Study was supplemented by a memorandum dated October 17, 2017, providing for phasing of the continuing development. A copy of this memorandum is attached as Exhibit "B". Accordingly, upon execution of this Agreement, a proportionate share payment of One Hundred Fourteen Thousand Nine Hundred Sixty-Two and 30/100 Dollars (\$114,962.30) shall be due. Upon issuance of building permits for future medical office development generating additional peak hour trips, a proportionate share payment of Two Hundred Twenty-Seven Thousand Four Hundred Seventy-Eight and 58/100 Dollars (\$227,478.58) shall be due.

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: A) any and all payment amounts are subject to adjustment pursuant to Section 4 of this Agreement; and B) Palm Beach County, in its sole discretion, may apply such payment(s) to one or more mobility improvements to regionally significant transportation facilities.

Section 4. Payment Adjustment Calculation

Pursuant to 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 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 due.

Adjusted Payment (when payment is being made) = Original Payment Amount x Cost Adjustment Factor

Where,

Original Payment Amount = Proportionate Share Payment amount specified in the Proportionate Share Agreement

Cost Adjustment Factor =

Producer Price Index (PPI) for Commodities Code ID WPU1P2312301 (month of payment)

The Bureau of Labor Statistics Producer Price Index (PPI) for Commodities (Series ID: WPU1P2312301), can be found at <http://data.bls.gov/itimeseries/WPU1P2312301>.

If at the time a Proportionate Share payment is due, the Commodities Code ID *WPU1P2312301* is no longer used by the United States Bureau of Labor Statistics, the Adjusted Payment will be based on the Producer Price Index for non-residential commodities then in effect. In the event such an index is no longer in use, the Adjusted Payment will be based on the United States Bureau of Labor Statistics Consumer Price Index then in effect.

Section 5. Term of concurrency approval

In consideration for entering into this binding Proportionate Share Agreement with Palm Beach County, the Developer shall be deemed to have satisfied traffic concurrency requirements; provided, however, 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 to meet Palm Beach County Traffic Performance Standards. In the event the County or municipality as applicable denies the development order application that gave rise to this Agreement, or if the Developer 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.

Section 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 Unified Land Development Code, Section 1.1.2.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 7. 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 8. No refund

Proportionate share contributions are non-refundable.

Section 9. 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 10. 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 11. 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 12. 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 13. 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 14. Binding Agreement

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

Section 15. 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 16. 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 17. 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
Palm Beach County
Engineering and Public Works Department
2300 N Jog Road
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 601
West Palm Beach, FL 33401

As to Developer:

Tricia Ward Holloway
W & W V LLC
12180 South Shore Blvd.
Suite 104
Wellington, FL 33414

With a copy to Developer's Legal Representative:

Alfred J. Malefatto, Esquire
Lewis, Longman & Walker, P.A.
515 North Flagler Drive, Suite 1500
West Palm Beach, FL 33401

Section 18. Effective Date

The effective date of this Agreement shall be November 27, 2017.

Section 19. 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 left blank]

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

ATTEST:

PALM BEACH COUNTY, FLORIDA, BY ITS COUNTY ADMINISTRATOR

[Signature]
Witness

By: [Signature]
County Administrator

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

APPROVED AS TO TERMS AND CONDITIONS:

[Signature]
County Attorney

By: ^{OMB} [Signature] 11/2/17

ATTEST:

W & W V, LLC

[Signature]
Witness

By: [Signature] Managing Member
Tricia Ward Holloway, Managing Member Member

NOTARY CERTIFICATION

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 24 day of October, 2017, by Tricia Ward Holloway. He/she is personally known to me OR who produced _____ as identification.

3-4-2020
My Commission Expires

[Signature]
Signature of Notary

FF 939446
Serial Number

Laura Meyer
Typed, Printed or Stamped Name

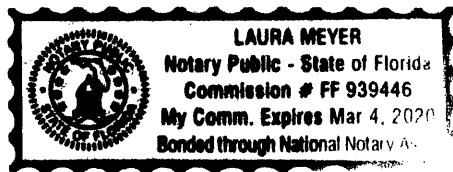


EXHIBIT A

PARCELS 1 THROUGH 6, OF VILLAGE GREEN CENTER REPLAT, A SUBDIVISION ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 120, PAGE 146, BEING A REPLAT OF VILLAGE GREEN CENTER, AS RECORDED IN PLAT BOOK 115, PAGE 153, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

TOGETHER WITH NON-EXCLUSIVE EASEMENT RIGHTS AS ESTABLISHED IN AND SUBJECT TO THE TERMS OF THAT DECLARATION OF COVENANTS AND RESTRICTIONS, FILED FOR RECORD ON AUGUST 8, 2012, IN OFFICIAL RECORDS BOOK 25377, PAGE 1154, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

TOGETHER WITH NON-EXCLUSIVE EASEMENT RIGHTS AS ESTABLISHED IN AND SUBJECT TO THE TERMS OF THAT ACCESS EASEMENT, MAINTENANCE AND COST SHARING AGREEMENT BY AND BETWEEN WELLINGTON GREEN MASTER PROPERTY OWNERS ASSOCIATION, INC., A FLORIDA NOT FOR PROFIT CORPORATION, AND BREFRANK INC., A FLORIDA CORPORATION, AND W & W V, LLC, A FLORIDA LIMITED LIABILITY COMPANY, FILED FOR RECORD IN OFFICIAL RECORDS BOOK 25014, PAGE 1574, AMENDED BY AMENDED AND RESTATED ACCESS EASEMENT, MAINTENANCE AND COST-SHARING AGREEMENT FILED FOR RECORD ON MAY 21, 2012, IN OFFICIAL RECORDS BOOK 25215, PAGE 84, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

FORMERLY KNOWN AS:

PARCELS 1 THROUGH 6, OF VILLAGE GREEN CENTER, A SUBDIVISION ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 115, PAGE 153, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

TOGETHER WITH NON-EXCLUSIVE EASEMENT RIGHTS AS ESTABLISHED IN AND SUBJECT TO THE TERMS OF THAT DECLARATION OF COVENANTS AND RESTRICTIONS, FILED FOR RECORD ON AUGUST 8, 2012, IN OFFICIAL RECORDS BOOK 25377, PAGE 1154, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

SAID LANDS SITUATE IN THE VILLAGE OF WELLINGTON, PALM BEACH COUNTY, FLORIDA AND CONTAINING 572,712 SQUARE FEET OR 13.1476 ACRES, MORE OR LESS.

EXHIBIT B



MEMORANDUM

To: Quazi Bari, P.E.
From: Adam B. Kerr, P.E.
Kimley-Horn and Associates, Inc.
Date: October 17, 2017

**Subject: Village Green – Phasing Information
Wellington, FL
Kimley-Horn # 140162000**

The following memorandum has been prepared to summarize the phasing schedule that has been identified for the remainder of the above-referenced project. The following phases are proposed for the remainder of the project:

Phase 1: Buildout of the Starbucks and additional general commercial retail use

Phase 2: Buildout of the medical office use

Phase 1

Phase 1 consists of fast-food restaurant with drive-through use and general commercial retail use. As shown in the attached trip generation table, the project generates a total of 140 net new external PM peak hour trips, of which 47 net new external PM peak hour trips (25 in, 22 out) are associated with Phase 1. Thus, Phase 1 represents 33.6% of the total net new external PM peak hour trip generation potential for this project.

Phase 2

Phase 2 consists of medical office use. As shown in the attached trip generation table, the project generates a total of 140 net new external PM peak hour trips, of which 93 net new external PM peak hour trips (23 in, 70 out) are associated with Phase 2. Thus, Phase 2 represents 66.4% of the total net new external PM peak hour trip generation potential for this project.

The project's proportionate share contribution toward the improvements are proposed to be paid in accordance with each phase of development.

Should you have any questions regarding this analysis please contact me via telephone at (561) 840-0874 or via email at adam.kerr@kimley-horn.com

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**TABLE 1
VILLAGE GREEN
TRIP GENERATION (EXISTING VS. PROPOSED)**

Land Use	Intensity	Daily Trips	AM Peak Hour			PM Peak Hour		
			Total	In	Out	Total	In	Out
Existing								
General Retail	56,213 sq. ft.	4,670	54	33	21	407	195	212
High-Turnover Sit-Down Restaurant (no Breakfast)*	6,085 sq. ft.	774	--	--	--	60	36	24
Fast-Food Restaurant with Drive-Through	6,769 sq. ft.	3,358	307	157	150	221	115	106
Fast-Food Restaurant with Drive-Through (No Breakfast)	4,272 sq. ft.	2,119	--	0	0	139	72	67
<i>Subtotal</i>		10,921	361	190	171	827	418	409
Internal Capture								
General Retail	Daily 10% AM 10% PM 10%	467	6	3	3	41	21	20
High-Turnover Sit-Down Restaurant (no Breakfast)*	10% 10% 10%	77	0	0	0	6	3	3
Fast-Food Restaurant with Drive-Through	5% 2% 5%	168	6	3	3	12	6	6
Fast-Food Restaurant with Drive-Through (No Breakfast)	5% 2% 5%	106	0	0	0	7	3	4
<i>Subtotal</i>		818	12	6	6	66	33	33
<i>Driveway Volumes</i>		10,103	349	184	165	761	385	376
Pass-By Capture								
General Retail	45.71%	1,921	22	14	8	167	80	87
High-Turnover Sit-Down Restaurant (no Breakfast)*	43%	300	0	0	0	23	14	9
Fast-Food Restaurant with Drive-Through	49%	1,563	147	75	72	102	53	49
Fast-Food Restaurant with Drive-Through (No Breakfast)	49%	986	0	0	0	65	34	31
<i>Subtotal</i>		4,770	169	89	80	357	181	176
<i>Net New External Existing Trips</i>		5,333	180	95	85	404	204	200
Proposed								
General Retail	58,483 sq. ft.	4,792	56	35	21	418	201	217
High-Turnover Sit-Down Restaurant (no Breakfast)*	6,693 sq. ft.	851	--	--	--	66	40	26
Fast-Food Restaurant with Drive-Through	9,137 sq. ft.	4,533	415	212	203	298	155	143
Fast-Food Restaurant with Drive-Through (No Breakfast)	4,272 sq. ft.	2,119	--	0	0	139	72	67
Medical Office	35,277 sq. ft.	1,275	84	66	18	114	32	82
<i>Subtotal</i>		13,570	555	313	242	1,035	500	535
Internal Capture								
General Retail	Daily 10% AM 10% PM 10%	479	6	3	3	42	21	21
High-Turnover Sit-Down Restaurant (no Breakfast)*	10% 10% 10%	85	0	0	0	7	4	3
Fast-Food Restaurant with Drive-Through	5% 2% 5%	227	8	4	4	15	7	8
Fast-Food Restaurant with Drive-Through (No Breakfast)	5% 2% 5%	106	0	0	0	7	3	4
Medical Office	10% 10% 10%	128	8	4	4	11	6	5
<i>Subtotal</i>		1,025	22	11	11	82	41	41
<i>Driveway Volumes</i>		12,545	533	302	231	953	459	494
Pass-By Capture								
General Retail	45.34%	1,956	23	15	8	170	82	88
High-Turnover Sit-Down Restaurant (no Breakfast)*	43%	329	0	0	0	25	15	10
Fast-Food Restaurant with Drive-Through	49%	2,110	199	102	97	139	73	66
Fast-Food Restaurant with Drive-Through (No Breakfast)	49%	986	0	0	0	65	34	31
Medical Office	10%	115	8	6	2	10	3	7
<i>Subtotal</i>		5,496	230	123	107	409	207	202
<i>Net New Driveway Trips (for Prop Shore at SR 7)</i>		2,442	184	118	66	192	74	118
<i>Net New External Proposed Trips</i>		7,049	303	179	124	544	252	292
<i>Trip Differential (Proposed - Existing)</i>		1,716	123	84	39	140	48	92
<i>Phase 1 (Starbucks + Retail) Net New External Proposed Trips</i>		684	55	28	27	47	25	22
<i>Phase 2 (Medical Office) Net New External Proposed Trips</i>		1,032	68	56	12	93	23	70

Trip generation was calculated using the following data:

Daily Traffic Generation		
General Retail	[PBC]	= $\ln(T) = 0.65 \ln(X) + 5.83$
Drive-In Bank	[PBC]	= $T = 148.15 \text{ trips} / 1,000 \text{ sq. ft.}$
High-Turnover Sit-Down Restaurant	[PBC]	= $T = 127.15 \text{ trips} / 1,000 \text{ sq. ft.}$
Fast-Food Restaurant with Drive-Through	[PBC]	= $T = 496.12 \text{ trips} / 1,000 \text{ sq. ft.}$
General Office	[PBC]	= $\ln(T) = 0.77 \ln(X) + 3.65$
Medical Office	[PBC]	= $T = 36.13 \text{ trips} / 1,000 \text{ sq. ft.}$
AM Peak Hour Traffic Generation		
General Retail	[PBC]	= $T = 1.00 \text{ trips} / 1,000 \text{ sq. ft. (61% in / 39% out)}$
Drive-In Bank	[PBC]	= $T = 12.35 \text{ trips} / 1,000 \text{ sq. ft. (56% in / 44% out)}$
High-Turnover Sit-Down Restaurant	[PBC]	= $T = 11.52 \text{ trips} / 1,000 \text{ sq. ft. (52% in / 48% out)}$
Fast-Food Restaurant with Drive-Through	[PBC]	= $T = 49.35 \text{ trips} / 1,000 \text{ sq. ft. (51% in / 49% out)}$
General Office	[PBC]	= $\ln(T) = 0.80 \ln(X) + 1.55 \text{ (88% in / 12% out)}$
Medical Office	[PBC]	= $T = 2.39 \text{ trips} / 1,000 \text{ sq. ft. (79% in / 21% out)}$
PM Peak Hour Traffic Generation		
General Retail	[PBC]	= $\ln(T) = 0.67 \ln(X) + 3.37 \text{ (48% in / 52% out)}$
Drive-In Bank	[PBC]	= $T = 25.82 \text{ trips} / 1,000 \text{ sq. ft. (50% in / 50% out)}$
High-Turnover Sit-Down Restaurant	[PBC]	= $T = 11.15 \text{ trips} / 1,000 \text{ sq. ft. (59% in / 41% out)}$
Fast-Food Restaurant with Drive-Through	[PBC]	= $T = 33.84 \text{ trips} / 1,000 \text{ sq. ft. (52% in / 48% out)}$
General Office	[PBC]	= $\ln(T) = 0.74 \ln(X) + 1.83 \text{ (17% in / 83% out)}$
Medical Office	[PBC]	= $\ln(T) = 0.90 \ln(X) + 1.53 \text{ (28% in / 72% out)}$
Pass-By Rate		
General Retail	[PBC]	= $\% = 83.18 - 9.30 \ln(X)$

RESOLUTION NO. R-2016-0125

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, DELEGATING TO THE COUNTY ADMINISTRATOR THE AUTHORITY TO ENTER INTO CERTAIN PROPORTIONATE 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 Share Program as required by and in a manner consistent with Section 163.3180(5)(h), Florida Statutes, as may be amended; and

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

WHEREAS, the Board of County Commissioners of Palm Beach County desires to delegate to the County Administrator, or her designee, the authority to enter into Proportionate 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 this delegation of authority will eliminate the delay caused by requiring such items to be brought before the Board for its approval; and

WHEREAS, the Board finds that delegation of this authority 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 her designee, is hereby delegated the authority to enter into on behalf of the Board of County Commissioners Proportionate 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 Vana, who moved its adoption. The motion was seconded by Commissioner Burdick, and upon being put to a vote, the vote was as follows:

Commissioner Mary Lou Berger, Mayor	-	Aye
Commissioner Hal R. Valeche, Vice Mayor	-	Aye
Commissioner Paulette Burdick	-	Aye
Commissioner Shelley Vana	-	Aye
Commissioner Steven L. Abrams	-	Aye
Commissioner Melissa McKinlay	-	Aye
Commissioner Priscilla A. Taylor	-	Aye

The Mayor thereupon declared the Resolution duly passed and adopted this 26th day of January, 2016.

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

SHARON R. BOCK, CLERK & COMPTROLLER

By: [Signature]
Deputy Clerk



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]
Assistant County Attorney

EXHIBIT A

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 identify and describe developer (hereinafter "Developer").

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 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 of this Program, 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

WHEREAS, the Board of County Commissioners of Palm Beach County has delegated to the County Administrator or his or her 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 Share Payment

The total amount of proportionate share payment for the required road improvement(s) shall be _____ and no/100 Dollars (\$ _____). 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 _____ dated _____, and approved by the Palm Beach County Traffic Division on _____. *If the contribution involves money, as opposed to contribution of land or construction, add this sentence.* 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: A) any and all payment amounts are subject to adjustment pursuant to Section 4 of this Agreement; and B) Palm Beach County, in its sole discretion, may apply such payment(s) to one or more mobility improvements to regionally significant transportation facilities. *As applicable, add here: Payment/contribution of land(right of way)/required construction and posting of surety/ shall be submitted to Palm Beach County no later than XX, or if phased, pursuant to the following phasing schedule.*

If it is cash, insert amount, terms and conditions and notice that the amount is subject to an escalator calculation; 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, and include the agreed upon value of the land here; if the fair share turns out to be construction of a facility, describe generally here, but again include a more detailed description of the project, its limits, timing, etc., as an attachment to this Agreement.

If it is a phased development, all of this needs to be done for each phase.

Several sections must be added to the form agreement if the contribution involves road construction. These sections are included in the attached Appendix A, but should be inserted immediately after Section 4, renumbering the remaining sections accordingly.

If the contribution involves money, as opposed to contribution of land or construction, include this section:

Section 4. Payment Adjustment Calculation

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 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 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).

Section 5. Term of concurrency approval

In consideration for entering into this binding Proportionate Share Agreement with Palm Beach County, the Developer shall be deemed to have satisfied traffic concurrency requirements; provided, however, 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 to meet Palm Beach County Traffic Performance Standards. In the event the County or municipality as applicable denies the development order application that gave rise to this Agreement, or if the Developer 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.

Section 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 Unified Land Development Code, Section 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 his 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 7. 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 8. No refund

Proportionate share contributions are non-refundable.

Section 9. 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 10. 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 11. 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 12. 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 13. 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 14. Binding Agreement

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

Section 15. 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 16. 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 17. 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 18. Effective Date

The effective date of this Agreement shall be _____.

Section 19. 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.

ATTEST:

PALM BEACH COUNTY, FLORIDA, BY ITS
COUNTY ADMINISTRATOR

Witness

By: _____
County Administrator

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

APPROVED AS TO TERMS
AND CONDITIONS:

County Attorney

By: _____

ATTEST:

DEVELOPER

Witness

By: _____

NOTARY CERTIFICATION

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____ . He/She is personally known to me OR who produced _____ as identification.

My Commission Expires

Signature of Notary

Serial Number

Typed, Printed or Stamped Name

APPENDIX A

In the event the proportionate share contribution consists of constructing a road facility, the following provisions need to be inserted into this Agreement immediately after Section 4:

Section 5. Construction of Improvements

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.

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.

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.

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.