

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date:	April 2, 2019	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> 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 \$2,546,648, Project Control Number 2016-2029, with Boca Raton Associates VIII, LLLP, dated February 5, 2019, for their proposed project located on the east side of Lyons Road approximately one-half mile north of Clint Moore Road.

**SUMMARY:** In accordance with County PPM CW-O-051, all delegated contracts, agreements, and grants must be submitted by the initiating Department as a receive and file agenda item. This agreement was executed by the County Administrator on February 5, 2019. 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 5 (LB)

**Background and Justification:** On February 5, 2019, the County Administrator executed the proportionate share agreement with Boca Raton Associates VIII, LLLP.

**Attachments:**

- 1. Location Map
- 2. Boca Raton Associates VIII, LLLP Proportionate Share Agreement 2016-2029
- 3. Resolution R2016-0125 with Exhibit A and Appendix A

Recommended By:	<u>ma David L. Hub</u>	<u>2/26/2019</u>
	County Engineer	Date
Approved By:	<u>Pdo</u>	<u>3/8/19</u>
	Assistant County Administrator	Date

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
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 3545 Dept 800 Unit 8016-0030 Rvsc 2430

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

Proportionate Share Fund - Zone 5

Proportionate Share Revenue

\*\*\*\*The fiscal impact of this item is a developer contribution and road improvements at a minimum of \$2,546,648.00. Proportionate share contributions shall be applied as a credit against road impact fees. Revenue received will be deposited in the Zone 5 proportionate share trust fund. Timing of receipt of revenue is indeterminable at this time

### C. Departmental Fiscal Review:

## III. REVIEW COMMENTS

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

MS [Signature] 2/27/19  
OFMB  
2/27/19  
Contract Dev. and Control  
3/5/19 [Signature]

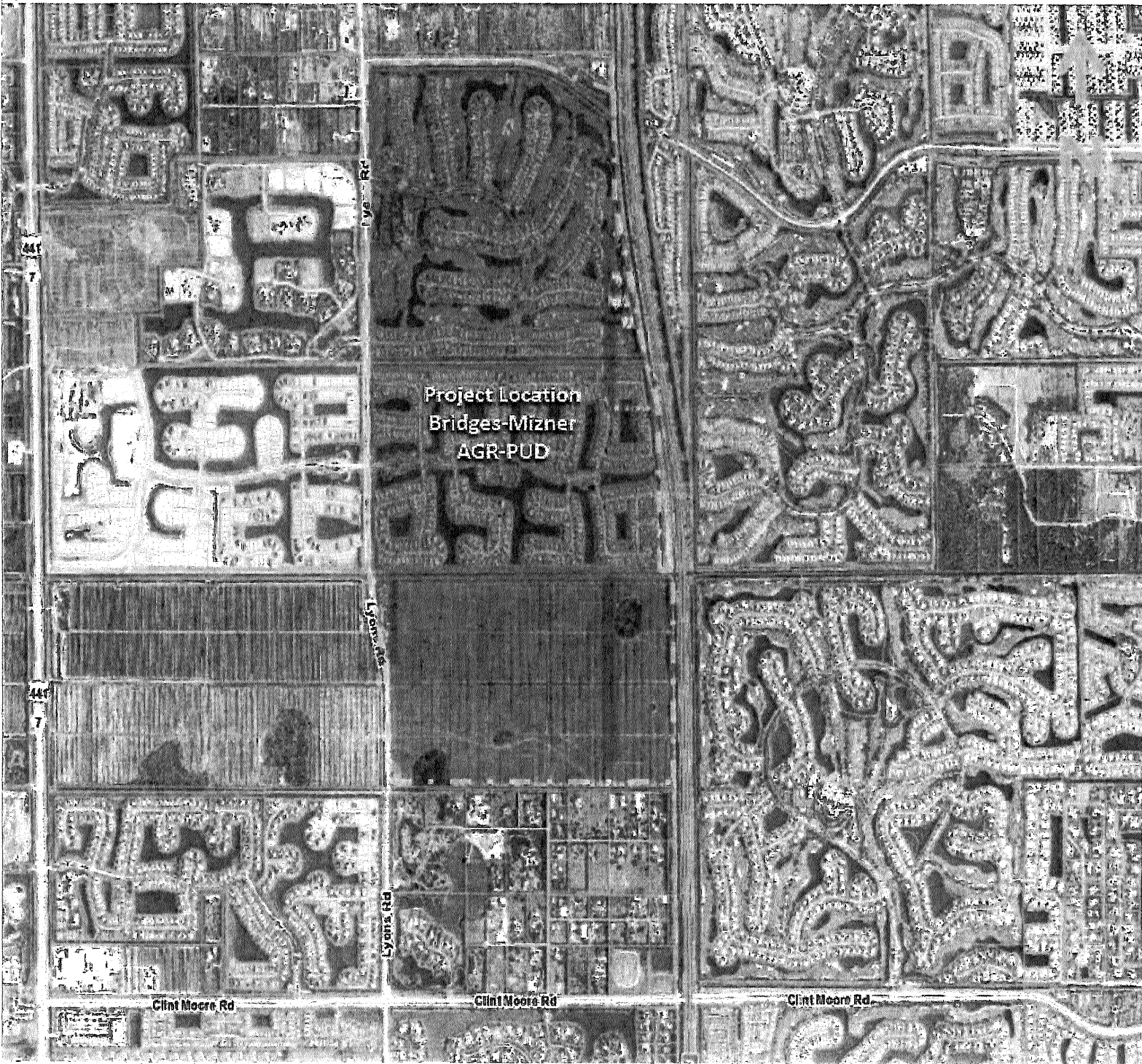
### B. Approved as to Form and Legal Sufficiency:

[Signature]  
Assistant County Attorney

### C. Other Department Review:

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

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



Project Control #: 2016-2029  
Impact Fee Zone: 5

## PROPORTIONATE SHARE AGREEMENT

This Proportionate Share Agreement (hereinafter "Agreement") is made and entered into this 5<sup>th</sup> day of February, 2018 by and between Palm Beach County, a political subdivision of the State of Florida (hereinafter "County"), and Boca Raton Associates VIII, LLLP By: Boca Raton VIII Corporation, General Partner (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**, that certain Proportionate Share Agreement, entered into August 21, 2017, by and between the County and Boca Raton Associates VIII, LLLP By: Boca Raton VIII Corporation, General Partner, is hereby rescinded and replaced in its entirety by this Agreement; 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 Bridges-Mizner AGR-PUD and is generally located east of Lyons Road approximately one-half mile north of Clint Moore Road.

## **Section 3. Proportionate Share Payment**

The minimum amount of proportionate share payment for the required road improvement(s) shall be Two Million Five Hundred Forty Six Thousand Six Hundred Forty Eight and no/100 Dollars (\$2,546,648), provided contracts are let for the widening of Lyons Road from Atlantic Avenue to Clint Moore Road from two lanes to four lanes prior to the project phasing schedule documented herein (hereinafter "development/trip threshold"). If the contracts are not let for the aforementioned Lyons Road widening project by the development/trip threshold, then the proportionate share payment for the required roadway improvements will increase to Five Million Two Hundred Seventy One Thousand Six Hundred Seventy Seven and no/100 Dollars (\$5,271,677). 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 Simmons and White, Inc. dated March 21, 2017, and approved by the Palm Beach County Traffic Division on 4/12/2017. 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.

Payments shall be submitted to Palm Beach County pursuant to the following schedule (minimum payments):

1. No more than 1325 overall (263 new) building permits shall be issued until the Property Owner makes a proportionate share payment of \$2,144,375.00.
2. No more than 1776 overall (714 new) building permits shall be issued until the Property Owner makes a proportionate share payment of \$402,273.00.

### **Lyons Road Assured Construction Option**

In the event the contract has not been let for the Assured Construction improvement to widen Lyons Road from Atlantic Ave to the Project site entrance from a 2 lane facility to a 4 lane divided facility before the development/trip threshold as per the following schedule, the Property Owner will not be allowed to continue development of the Project without first making the proportionate share payment, as set forth below:

- No more than 1097 overall (35 new) building permits shall be issued until the Property Owner makes a proportionate share payment of \$1,910,560.00. This payment is required in addition to the minimum payments identified above.

In the event the contract has not been let for the Assured Construction improvement to widen Lyons Road from the Project site entrance to Clint Moore Road from a 2 lane facility to a 4

lane divided facility before the development/trip threshold as per the following schedule, the Property Owner will not be allowed to continue development of the Project without first making the proportionate share payment, as set forth below:

- No more than 1097 overall (35 new) building permits shall be issued until the Property Owner makes a proportionate share payment of \$814,469.00. This payment is required in addition to the minimum payments identified above.

#### **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 (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 =

$$\frac{\text{Producer Price Index (PPI) for Commodities Code ID WPUIP2312301 (month of payment)}}{\text{Producer Price Index (PPI) for Commodities Code ID WPUIP2312301 (month of Proportionate Share Execution)}}$$

The Bureau of Labor Statistics Producer Price Index (PPI) for Commodities (Series ID: WPUIP2312301), could be found at <http://data.bls.gov/timeseries/WPUIP2312301>.

If at the time a Proportionate Share payment is due, the Commodities Code ID WPUIP2312301 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.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 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.

Road impact fees imposed on development within the Project as described in Attachment A to this Agreement, paid prior to a proportionate share contribution shall be applied as a credit against proportionate share contributions. In the event the road impact fees paid exceed the required proportionate share contribution at the time the required proportionate share contribution is due, the Developer shall not be required to make the required proportionate share contribution. In the event the road impact fees paid are less than the required proportionate share contribution at the time the required proportionate share contribution is due, the Developer shall be required to pay the difference between the road impact fees and the required proportionate share contribution.

#### **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:*

Alan Fant, Vice President  
Boca Raton Associates VIII, LLLP  
By: Boca Raton VIII Corporation, General Partner  
1600 Sawgrass Corporate Parkway  
Suite 400  
Sunrise, FL 33323

*With a copy to Developer's Legal Representative:*

Steve Helfman, General Counsel  
Boca Raton Associates VIII, LLLP  
By: Boca Raton VIII Corporation, General Partner  
1600 Sawgrass Corporate Parkway  
Suite 400  
Sunrise, FL 33323

**Section 18. Effective Date**

The effective date of this Agreement shall be February 5, 2019.

**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

*[Signature]*  
Witness

By: *Vardena C. Baker*  
County Administrator

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

APPROVED AS TO TERMS  
AND CONDITIONS:

*[Signature]*  
County Attorney

By: *ma/ds McConnell* 1/9/19

ATTEST:

DEVELOPER  
Boca Raton Associates VIII, LLLP;  
By: Boca Raton VIII Corporation, General

Partner

*[Signature]*  
Witness  
GLADYS DIGIBOLAMO

By: *[Signature]* V.P.  
Kevin Ratterree, V.P.

STATE OF Florida  
COUNTY OF Broward

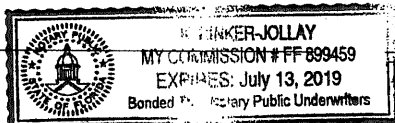
NOTARY CERTIFICATION

The foregoing instrument was acknowledged before me this 29 day of Nov,  
7-13-19, by Kevin Ratterree. He/She is personally known to me OR who produced  
as identification.

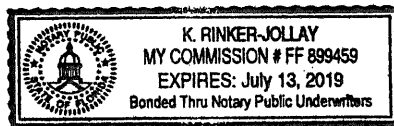
7-13-19  
My Commission Expires

*[Signature]*  
Signature of Notary

Serial Number



*Kandida Rinker Jollay*  
Typed, Printed or Stamped Name



**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.

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### 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.