

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	September 12, 2023	<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: an amended proportionate share agreement for \$2,585,919 with Boca Raton Associates IX LLLP, as successor in interests and title to G.L. Acquisitions Corporation, dated July 11, 2023, for their proposed project located at the northern terminus of Golf Course Road approximately one-third of a mile north of Glades Road.

SUMMARY: On November 15, 2018, Palm Beach County (County) entered into a proportionate share agreement for \$2,784,899, Project Control Number 1981-00019, with G.L. Acquisitions Corporation for their proposed project located at the northern terminus of Golf Course Road approximately one-third of a mile north of Glades Road. The receive and file process was completed on February 5, 2019 (R2019-0917). On July 11, 2023, the County entered into this amended proportionate share agreement with Boca Raton Associates IX LLLP in order to reduce the proportionate share amount from \$2,784,899 to \$2,585,919, to reflect a reduction in the number of residential units from 564 to 525 which was approved through application ZAR 2022-377. In accordance with Countywide 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 amended agreement was executed by the County Administrator on July 11, 2023 per Resolution R2016-0125. The County's 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. District 5 (SAS)

Background and Justification: Resolution R2016-0125 delegates authority to the County Administrator or designee to enter into proportionate share agreements on behalf of the Board of County Commissioners.

Attachments:

1. Location Map
2. Boca Raton Associates IX LLLP Proportionate Share Agreement

Recommended By: <i>ms</i>	<i>S Z Leit</i>	<i>8/12/2023</i>
	County Engineer	Date
Approved By:	<i>Pa</i>	<i>8/28/23</i>
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
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-	-0-
# ADDITIONAL FTE POSITIONS (Cumulative)	-0-	-0-	-0-	-0-	-0-

Is Item Included in Current Budget? Yes No

Does this item include the use of federal funds? Yes No

Budget Account No:

Fund 3545 Dept 800 Unit 8016-0043 Object 2430

Recommended Sources of Funds/Summary of Fiscal Impact:

Proportionate Share Fund - Zone 5
 Proportionate Share Revenue

****The Amended Proportionate share agreement with Boca Raton Associates IX LLLP reduced the proportionate share amount from \$2,784,899.00 to \$2,585,919.00. The fiscal impact of this item is a developer contribution and road improvements at a minimum of \$ 2,585,919.00 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: *Danny Ramalsingh*

III. REVIEW COMMENTS

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

Laura Martin 8/21/2023 *John S. Javal*
 OFMB *QAM* 8/16/23 *JA* 8/21 Contract Dev. and Control 8/25/23

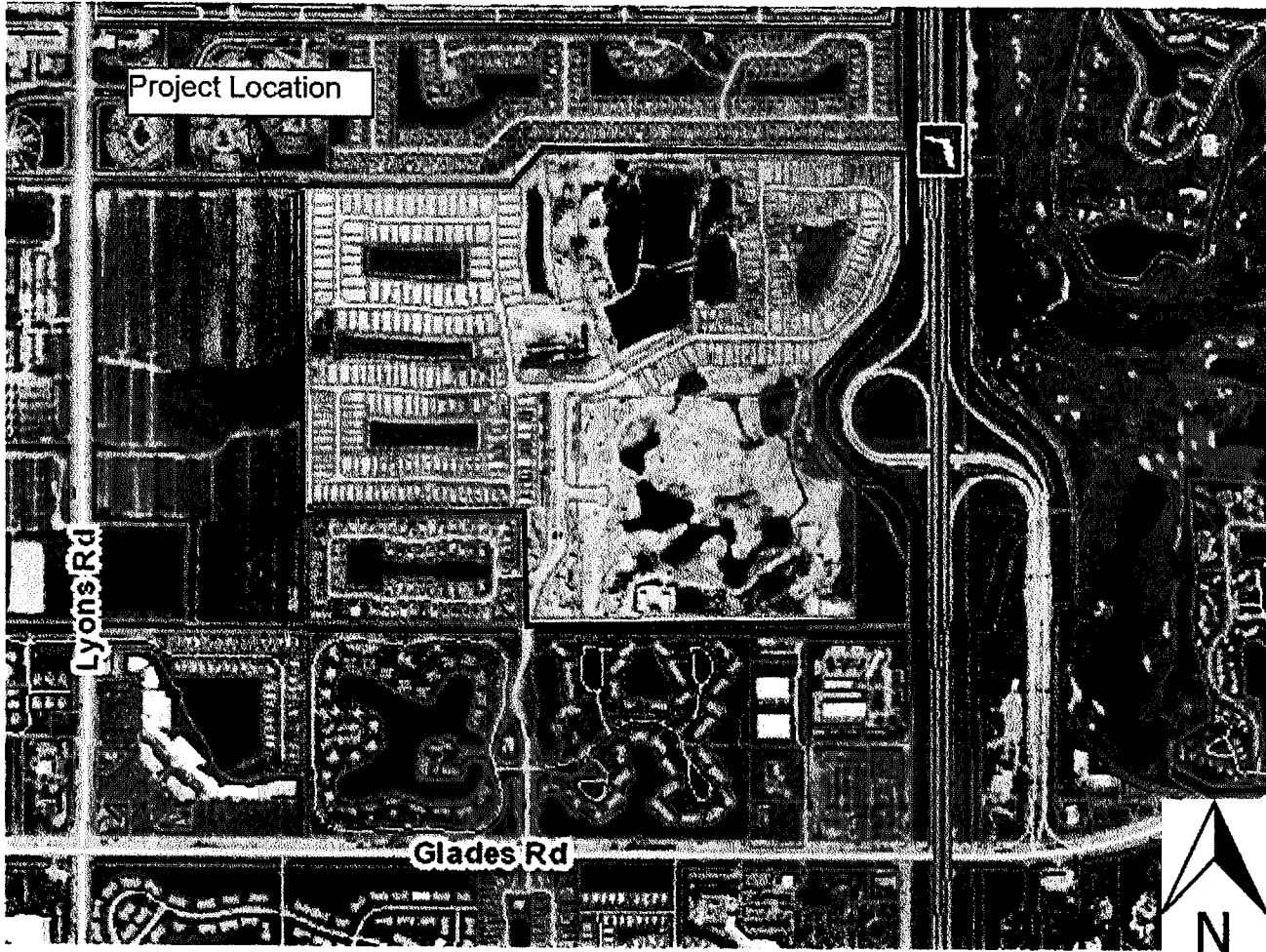
B. Approved as to Form and Legal Sufficiency:

NA 8/28/23
 Assistant County Attorney

C. Other Department Review:

 Department Director

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



AMENDED PROPORTIONATE SHARE AGREEMENT

This Proportionate Share Agreement (hereinafter "Agreement") is made and entered into this 11 day of July, 2023, by and between Palm Beach County, a political subdivision of the State of Florida (hereinafter "County"), and Boca Raton Associates IX LLLP, a Florida Limited Liability Limited Partnership (hereinafter "Developer"), as the successor in interests and title to GL Acquisitions Corporation.

WITNESSETH

WHEREAS, on November 15, 2018, the County and GL Acquisitions Corporation entered into a Proportionate Share Agreement relating to the Boca Raton Municipal Golf Course project (the "Original Agreement"); and

WHEREAS, the parties wish to amend the Original Agreement in order to reduce the total proportionate share payment amount to reflect the reduction in total number of approved dwelling units from 564 to 525, as described in the approved Boca Raton Golf Course PUD Final Master Plan, ZAR 2022-377; and

WHEREAS, the Original Agreement shall be replaced by this Agreement; and

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 Boca Municipal Golf Course and is generally located at the northern terminus of Golf Course Road approximately one-third of a mile north of Glades Road.

Section 3. Proportionate Share Payment

The total amount of proportionate share payment for the required road improvement(s) shall be Two Million Five Hundred Eighty Five Thousand Nine Hundred Nineteen and no/100 Dollars (\$2,585,919.00). This amount was calculated in accordance with the methodology provided for in section 163.3180(5)(h), Florida Statutes, and based on the Developer's Traffic Study (hereinafter "the Study"), prepared by Simmons and White, Inc. dated February 24, 2023, and approved by the Palm Beach County Traffic Division on February 27, 2023. 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

1. No more than 134 building permits shall be issued until the Property Owner makes a proportionate share payment of \$1,557,120.00.
2. No more than 281 building permits shall be issued until the Property Owner makes a proportionate share payment of \$1,028,799.00.

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 =

Producer Price Index (PPI) for Commodities Code ID WPUIP2312301 (month of payment)

Producer Price Index (PPI) for Commodities Code ID WPUIP2312301 (month of Prop Share Execution)

The Bureau of Labor Statistics Producer Price Index (PPI) for Commodities (Series ID: WPUIP2312301), can 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.

The original payment amount shall be based on PPI data from February 2019.

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 made pursuant to this Agreement shall establish road impact fee credits. These credits are assignable and transferrable in accordance with Section 163.31801(10), Florida Statutes as described in Chapter 2021-63, Laws of Florida. 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 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:

David L. Ricks, P.E.
Palm Beach County Engineer
Director of Engineering and Public Works Department
P.O. Box 21229
West Palm Beach, FL 33416-1229

With a copy to County's Legal Representative:

Scott A. Stone
Assistant County Attorney II
Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

As to Developer:

Alan Fant
Boca Raton Associates IX, LLLP
1600 Sawgrass Corporate Parkway, Suite 400
Sunrise, FL 33323

With a copy to Developer's Legal Representative:
Steve Helfman, General Counsel
Boca Raton Associates IX, LLLP
1600 Sawgrass Corporate Parkway, Suite 400
Sunrise, FL 33323

Section 18. Effective Date

The effective date of this Agreement shall be 07/11/2023.

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.

Section 20. Repeal of Original Agreement

The Original Agreement shall be repealed in its entirety, and replaced by this 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: [Signature]
County Administrator

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

APPROVED AS TO TERMS AND CONDITIONS:

[Signature]
County Attorney

By: [Signature]
Traffic Division Director

ATTEST:

DEVELOPER

Witness
Signature [Signature]
Printed Name KEVIN RATTERREE

Signature [Signature] V.P.
Printed Name ALAN FANT
Title VICE PRESIDENT

NOTARY CERTIFICATION

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 23rd day of June, 2023 by Alan Fant, as Vice President for Boca Raton IX Corporation, a Florida Corporation, the General Partner of Boca Raton Associates IX, LLLP, a Florida Limited Liability Limited Partnership, who is personally known to me or has produced a driver's license as identification.

1-28-27
My Commission Expires
HH332663
Serial Number

[Signature]
Signature of Notary
JEFFREY SPEVACEK
Typed, Printed or Stamped Name

