

Exhibit E - Palm Beach County Traffic Letter



September 20, 2017

**Department of Engineering
and Public Works**

P.O. Box 21229

West Palm Beach, FL 33416-1229

(561) 684-4000

FAX: (561) 684-4050

www.pbcgov.com



**Palm Beach County
Board of County
Commissioners**

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County Administrator

Verdenia C. Baker

Adam B. Kerr, P.E.
Kimley-Horn and Associates, Inc.
1920 Wekiva Way
West Palm Beach, FL 33411

**RE: Village Green
Project #: 170412
Traffic Performance Standards Review**

Dear Mr. Kerr:

The Palm Beach County Traffic Division has reviewed the **Village Green** revised Traffic Impact Analysis, dated August 21, 2017, pursuant to the Traffic Performance Standards in Article 12 of the Palm Beach County Unified Land Development Code (ULDC). The project is summarized as follows:

Municipality:	Village of Wellington
Location:	NWC of Stribling Way and SR-7
PCN #:	73-41-44-13-12-006-0000,-007-0000,001-0000,-002-0000, -003-0000, -004-0000, -005-0000
Access:	1 RI/RO on SR-7, 1 RI/RO and 1 Full on Stribling Way, 2 Full on Nu Vista Ave (Service Rd)
Existing Uses:	Retail=56,213 sf, HT Sit-Down Restaurant (no breakfast) =6,085 sf, FF Restaurant w/DT=6,769 sf, FF Restaurant w/DT (no breakfast) =4,272 sf
Proposed Uses:	Retail=58,483 sf, HT Sit-Down Restaurant (no breakfast) =6,693 sf, FF Restaurant w/DT=9,137 sf, FF Restaurant w/DT (no breakfast) =4,272 sf, Medical Office=35,277 sf
New Daily Trips:	1,716 (Prop-Exist)/7,049 (Prop)
New Peak Hour Trips:	123 AM, 140 PM (Prop-Exist)/303 AM, 544 PM (Prop)
Build-out:	December 31, 2021

Based on the review, Traffic Division has determined that the Project meets the Palm Beach County Traffic Performance Standards, based on the following conditions:

1. No Building Permit for the site shall be issued after December 31, 2021.
2. The High Turn-Over Sit-Down Restaurant and the Fast Food Restaurants (no breakfast) shall not be open for business before 10 am on weekdays.
3. No new Building Permits for the development shall be issued until the Property Owner/Developer makes a Proportionate Share payment of 27.76% of the total cost of adding a south approach left turn lane (making it dual), that includes the appropriate modifications required for receiving these dual lanes, at the intersection of Stribling Way and SR-7.

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4. No new Building Permits for the development shall be issued until the Property Owner/Developer makes a Proportionate Share payment of 1.85% of the total cost of widening Lyons Rd from Southern Blvd to Forest Hill Blvd from a 2-Lane facility to a 4-Lane Divided facility.
5. Before receiving the first Certificate of Occupancy, the Property Owner/Developer shall extend the west approach right turn lane on Stribling Way at SR-7 to 670 ft storage plus 50 ft taper.
6. All of the conditions, numbered 1 thru 5 above, shall be incorporated into the municipal Development Order exactly as set forth above. No later than ten calendar days after approval of the Development Order, the municipality shall transmit an official, recorded copy of same to the County Engineer. In the event: 1) the municipal Development Order is not received by the County Engineer within fifteen calendar days after approval of same; or 2) the official, recorded Development Order does not contain conditions 1 thru 10 exactly as set forth above, then the Traffic Division's conditional finding that this proposed development meets the Traffic Performance Standards of Palm Beach County shall be deemed rescinded and rendered void.
7. A Proportionate Share Agreement must be fully executed, by the Property Owner/Developer seeking approval of the project and Palm Beach County, before the municipality considers approval of the proposed project. The agreement shall be in substantially the same form as set forth in Attachment A, which is attached hereto. In lieu of a Proportionate Share Agreement, the Developer/Property Owner may make a payment to Palm Beach County for the proportionate share included in conditions 6 thru 8 above. If such payment is received prior to the approval of the municipal Development Order, a Proportionate Share Agreement will not be required. Otherwise, a Proportionate Share Agreement must be fully executed as outlined in this letter. In the event the municipality approves the proposed development before this proportionate share agreement is fully executed, or the County has not received the payment, then the Traffic Division's conditional finding that this proposed development meets the Traffic Performance Standards of Palm Beach County shall be deemed rescinded and rendered void.

Please note the receipt of a Traffic Performance Standards (TPS) approval letter does not constitute the review and issuance of a Palm Beach County Right-of-Way (R/W) Construction Permit nor does it eliminate any requirements that may be deemed as site related. For work within Palm Beach County R/W, a detailed review of the project will be provided upon submittal for a R/W permit application. The project is required to comply with all Palm Beach County standards and may include R/W dedication. It is strongly suggested that the Developer consult with Palm Beach County to discuss any access locations of the project on any County maintained ROW, before submitting any plans to the municipality for approval.



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The approval letter shall be valid no longer than one year from date of issuance, unless an application for a Site Specific Development Order has been approved, an application for a Site Specific Development Order has been submitted, or the approval letter has been superseded by another approval letter for the same property. The County traffic concurrency approval is subject to the Project Aggregation Rules set forth in the Traffic Performance Standards Ordinance.

Please note that this review did not include the Village of Wellington required analysis and is focused only with PBC TPS requirements.

If you have any questions regarding this determination, please contact me at (561) 684-4030 or email to QBari@pbcgov.org.

Sincerely,

Quazi Bari, P.E.
Senior Professional Engineer
Traffic Division

QB:bc
Attachment: Form Proportionate Share Agreement

cc: Steve Bohovsky, Technical Assistant III, Traffic Division

File: General - TPS - Mun - Traffic Study Review
F:\TRAFFIC\MMT\MUNICIPALITIES\APPROVALS\2017\170412 - VILLAGE GREEN.DOC

Attachment A

Form Proportionate Share Agreement

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 Exhibit 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 (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 =

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

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.

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:

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:

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

EXHIBIT 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.