

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**

Paulette Burdick, Mayor

Melissa McKinlay, Vice Mayor

Hal R. Valeche

Dave Kerner

Steven L. Abrams

Mary Lou Berger

Mack Bernard

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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Affirmative Action Employer"



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.



Adam B. Kerr
September 20, 2017
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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,

A handwritten signature in blue ink that reads "Quazi Bari".

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 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)

Producer Price Index (PPI) for Commodities Code ID WPU1P2312301 (month of Prop Share Execution)

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.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.

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 _____.

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

Witness

By: _____
County Administrator

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

APPROVED AS TO TERMS
AND CONDITIONS:

County Attorney

By: _____

ATTEST:

W & W V, LLC

[Signature]
Witness

By: Tricia Ward Holloway, Managing Member
Tricia Ward Holloway, Managing Member

NOTARY CERTIFICATION

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 24th 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

Laura Meyer
Signature of Notary

FF 939 446
Serial Number

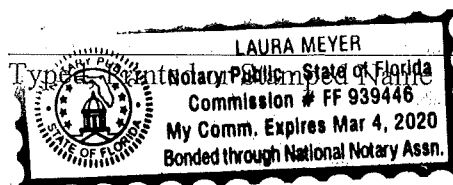


EXHIBIT A

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.

From: Alfred Malefatto
To: [Cory Cramer](#); [Kelly Ferraiolo](#)
Cc: "tricia@wardrealestatellc.com"; "[Kate DeWitt](#)"
Subject: FW: Village Green Prop Share
Date: Tuesday, November 14, 2017 3:49:10 PM

Cory & Kelly,
See below from Lenny Berger, Palm Beach County.
-Al

Alfred J. Malefatto | Shareholder
515 North Flagler Drive, Suite 1500 | West Palm Beach, Florida 33401
amalefatto@llw-law.com | (o) 561.640.0820 | (m) 561.346.6779
[vCard](#) | [Website](#) | [Bio](#) | [join us online](#)



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From: Leonard W. Berger [<mailto:LBerger@pbcgov.org>]
Sent: Tuesday, November 14, 2017 3:00 PM
To: Alfred Malefatto <amalefatto@llw-law.com>
Subject: Village Green Prop Share

You'll be pleased to learn that the prop share agreement is on its way to Verdenia for final signature. A fully executed original should be on its way before too long.

Leonard Berger
Chief Assistant County Attorney
Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

tel. (561) 355-2542

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