

Meeting Date
January 24, 2017



AGENDA	
Section	Consent
Item No.	II.A.3

**AGENDA REPORT**  
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	APPROVAL RE: PROPORTIONATE FAIR SHARE MITIGATION AGREEMENT (DISTRICT 3)
DEPT/OFFICE:	PLANNING AND DEVELOPMENT DEPARTMENT

Requested Action:  
 It is requested that the Board of County Commissioners consider approval of the Proportionate Fair Share Mitigation Agreement between the County, City of West Melbourne and DHIC – Minton Cove, LLC; authorize the Chairman to execute the agreement; and authorize the Budget Office to execute any budget changes necessary to implement the proportionate share payment.

Summary Explanation & Background:  
 The developer, DHIC – Minton Cove, LLC, contracted with Lassiter Transportation Group to have a traffic analysis prepared to assess the traffic impacts associated with construction of this 300 unit apartment complex. The traffic analysis concluded that the developer’s proportionate fair share of needed transportation improvements was \$379,672.00. The developer will pay the proportionate fair share payment prior to initiating construction of the project and will receive a dollar for dollar transportation impact fee credit upon completion of the project and be vested for concurrency by the City for a period of ten years.

The City of West Melbourne will consider approval of this agreement at the January 17, 2017 City Council meeting.

Fiscal Impact: FY17 – The fiscal impact is extremely limited and will accrue primarily to the City of West Melbourne. The proportionate fair share payment will be received by the County prior to construction of the apartment complex and will be deposited in the Transportation Impact Fee Trust Fund for the South Mainland Benefit District. The transportation impact fees due on the project will be collected by the County prior to the issuance of the Certificate of Occupancy by the City but will be reduced by the proportionate fair share payment leaving a remaining balance of approximately \$334,628.00. The proportionate fair share payment and the transportation impact fee payment can be appropriated to any eligible project in the South Mainland Benefit District that are recommended by the Transportation Impact Fee Technical Advisory Committee and approved by the Board of County Commissioners.

Staff Contact: Stephen M. Swanke (321) 633-2069

Clerk to the Board instruction:  
 Chair to execute three originals and return them to the Department for execution by the City and Builder.

Exhibits Attached:  
 Proportionate Fair Share Mitigation Agreement, Location Map

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager  Stockton Whitten	Assistant County Manager	Department Director / Extension  Robin M. DiFabio, AICP 5-2069
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Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

January 25, 2017

**M E M O R A N D U M**

**TO:** Robin DiFabio, Planning and Development Director Attn: Stephen Swanke

**RE:** Item II.A.3., Proportionate Fair Share Mitigation Agreement with City of West Melbourne and DHIC – Minton Cove, LLC, for Transportation Improvements

The Board of County Commissioners, in regular session on January 24, 2017, approved the Proportionate Fair Share Mitigation Agreement with the City of West Melbourne and DHIC – Minton Cove, LLC; and authorized the Budget Office to execute any budget changes necessary to implement the proportionate share payment. Enclosed are fully-executed and certified copy of the Agreement for your action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds

Encls. (2)

cc: Contracts Administration  
Finance  
Budget

**Roger D Pryor**

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**From:** Roger D Pryor  
**Sent:** Friday, January 6, 2017 2:39 PM  
**To:** 'Christy Fischer'  
**Cc:** 'Scott A. Glass'  
**Subject:** RE: Proportionate Fair Share Mitigation Agreement (Minton Cove Multi-family Project in West Melbourne)  
**Attachments:** DOC010617-001.pdf

Christy –

Attached is a copy of the signed, witnessed and notarized Proportionate Fair Share Mitigation Agreement.

The two original signed copies will be fed-ex to you for a Monday morning delivery.

Please let me know if you need anything else.

Thanks,

Roger

**From:** Christy Fischer [mailto:CFischer@WESTMELBOURNE.ORG]  
**Sent:** Tuesday, January 3, 2017 12:54 PM  
**To:** Scott A. Glass; 'Swanke, Stephen M'  
**Cc:** Bentley, Eden; Morris Richardson; Roger D Pryor  
**Subject:** RE: Proportionate Fair Share Mitigation Agreement (Minton Cove Multi-family Project in West Melbourne)

Scott

Please have them delivered to me since I will write the staff report for the Council agenda related to the item.

Thanks.

Christy Fischer

Planning and Economic Development Director  
City of West Melbourne  
2240 Minton Road  
West Melbourne, FL 32904  
Phone: 321-837-7778  
Fax: 321-768-2390  
[www.westmelbourne.org](http://www.westmelbourne.org)

Please Note: Florida has a broad public records law. As a result, any written communication created or received by City of West Melbourne officials and employees will be made available to the public and media, upon request, unless otherwise exempt. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this office. Instead, contact our office by phone or in writing.



BOARD OF COUNTY COMMISSIONERS

*file*  
Planning & Development Department

2725 Judge Fran Jamieson Way

Building A, Room 114

Viera, Florida 32940

*1/24/17*

TO: Tammy Rowe, Deputy Clerk

FROM: Stephen M. Swanke, Program Manager  
Planning & Development Department

A blue ink signature of Stephen M. Swanke.

DATE: February 3, 2017

SUBJECT: Return of Recorded Originals

I am returning the recorded original documents for the Transportation Impact Fee Disbursement Agreement with Indian Harbour Beach and the Proportionate Fair Share Mitigation Agreement with West Melbourne and DHIC, LLC for inclusion in the official minutes.



orig to Steve  
Copy of Clerk's  
memo in  
BCC file

Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

January 25, 2017

**MEMORANDUM**

**TO:** Robin DiFabio, Planning and Development Director    Attn: Stephen Swanke

**RE:** Item II.A.3., Proportionate Fair Share Mitigation Agreement with City of West Melbourne and DHIC – Minton Cove, LLC, for Transportation Improvements

The Board of County Commissioners, in regular session on January 24, 2017, approved the Proportionate Fair Share Mitigation Agreement with the City of West Melbourne and DHIC – Minton Cove, LLC; and authorized the Budget Office to execute any budget changes necessary to implement the proportionate share payment. Enclosed are fully-executed and certified copy of the Agreement for your action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

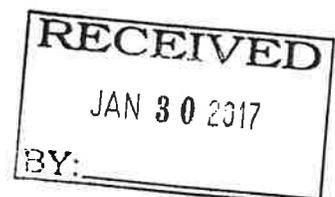
BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds

Encls. (2)

cc:    Contracts Administration  
      Finance  
      Budget



This Agreement prepared by:  
Scott A. Glass, Esq.  
300 S. Orange Ave., Ste. 1000  
Orlando, FL 32801

After recording return to:  
Department Director  
Brevard County Planning & Development Department  
2725 Judge Fran Jamieson Way, Suite A-114  
Viera, FL 32940

D/C

## **PROPORTIONATE FAIR SHARE MITIGATION AGREEMENT**

**THIS AGREEMENT**, entered into this 24 day of January, 2017 by and between the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida, 32940, (hereinafter referred to as “County”), City of West Melbourne, Florida, a Florida municipal corporation, whose address is 2240 Minton Road, West Melbourne, Florida 32904 (hereinafter referred to as “City”), and DHIC – Minton Cove, LLC, a Delaware limited liability company registered to do business in the State of Florida, whose address is 20410 North 19<sup>th</sup> Avenue, Suite 120, Phoenix, AZ 85027 (hereinafter referred to as “Developer”), is based on the following premises.

### **RECITALS:**

**WHEREAS**, Developer is the owner of approximately 30 acres of property generally located east of Minton Road, south of Norfolk Parkway, as more particularly described on Exhibit “A” attached hereto and incorporated herein by this reference (the “Property”);

**WHEREAS**, the Developer has, concurrently with approval of this Agreement by the City, received approval from the City to construct a 12 building, 300 dwelling unit residential apartment project with attendant amenities known as Minton Cove (the “Project”); and

**WHEREAS**, the City of West Melbourne’s duly adopted Comprehensive Plan contains a transportation concurrency requirement to ensure that the City’s road network operates at adopted levels of service; and

**WHEREAS**, Developer previously retained Lassiter Transportation Group, Inc. (“Lassiter”) to perform a traffic study to determine the projected impact of the Project on the surrounding road network, the results of which were reported in that certain Minton Cove Apartments Traffic Impact Study dated June, 2016 (the “Traffic Impact Study”) which was subsequently reviewed by the City and the County; and

**WHEREAS**, pursuant to section 163.3180, F.S., the County previously enacted Ordinance 2006-60 which was codified as Chapter 62, Article IV, Division 2, Code of Ordinances of Brevard County, Florida and which provides a method by which a developer may vest development against transportation concurrency by paying, in cash or via in-kind contributions, such developer’s proportionate fair share of the cost of providing transportation network improvements necessary to mitigate a projected transportation capacity deficiency; and

**WHEREAS**, Chapter 62, Article IV, Division 2, Code of Ordinances of Brevard County, known as the “Brevard County Proportionate Fair-Share Program for Transportation,” (Proportionate Fair Share Ordinance) applies to property within the corporate limits of the City of West Melbourne pursuant to Article VIII, Section 1(g) of the Constitution of the State of Florida and Section 1.7 of the Charter of Brevard County; and

**WHEREAS**, Chapter 62, Land Development Regulations, Article V, Impact Fees, Division 4, Transportation, of the Code of Ordinances of Brevard County, Florida, commonly known as the “Brevard County Transportation Impact Fee Ordinance,” is also applicable within the incorporated limits of the City pursuant to Interlocal Agreements between the City and County and sets forth a schedule of impact fees assessable against the development of property; and

**WHEREAS**, section 163.3180(5)(h)2.e, F.S., provides that a developer who has paid his proportionate fair share of transportation mitigation costs shall receive credit, on a dollar-for-dollar basis, for impact fees and other transportation concurrency mitigation requirements paid or payable in the future; and,

**WHEREAS**, Developer wishes to avail itself of the provisions of the Proportionate Fair Share Ordinance and section 163.3180(5)(h), F.S. in order to determine: (1) its proportionate fair share; (2) the terms by which payment thereof shall be made; and, (3) the terms by which transportation impact fee credits shall be awarded; and

**WHEREAS**, upon review of the Traffic Impact Study the City’s Transportation Consultant, Traffic Engineering Data Solution, Inc., concluded that the Project’s proportionate fair share cost of traffic mitigation to address the Project’s impacts on the surrounding road network is THREE HUNDRED SEVENTY-NINE THOUSAND SIX HUNDRED AND SEVENTY-TWO DOLLARS AND NO CENTS (\$379,672.00), and County and Developer have agreed with such conclusion.

**NOW, THEREFORE**, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the parties hereto agree as follows:

**Recitals.** The foregoing recitals are hereby ratified and approved and made a part of this Agreement.

**Proportionate Fair Share.** The proportionate fair share mitigation contribution from the Developer shall be Three Hundred Seventy-Nine Thousand Six Hundred and Seventy-Two Dollars and No Cents (\$379,672.00) (the “Proportionate Fair Share”) which shall be paid in a single, lump-sum payment on or before issuance of the first building permit for vertical construction of a residential apartment building on the Property.

**Vesting.** The parties hereto recognize that the Property is within the jurisdiction of the City and that the City has jurisdiction over the Property for permitting purposes other than County road connection permits and other state, federal or regional permitting requirements. The Parties

hereby acknowledge that, so long as Developer pays the Proportionate Fair Share and obtains a building permit within one year of the effective date of this Agreement the Project shall be fully vested against transportation concurrency for a period of ten (10) years from the effective date of this Agreement as provided in paragraph 7 below. The City acknowledges that it shall treat the Project as already existing and shall not issue building permits for other projects which would utilize or consume any of the trips vested for the Project. The City shall not be prohibited from issuing building permits for other projects to the extent that there is capacity available to serve such projects after taking into account the trips generated by the Project, existing trips, and otherwise committed trips, or to the extent that such other projects have entered into their own proportionate share agreements. To assist in addressing the capacity issue, the County shall include the trips to be vested herein as existing trips when conducting any future traffic concurrency analysis for the term of this Agreement.

**Impact Fee Credits.** Credit will be awarded as a credit against transportation impact fees assessed to the Project in accordance with section 163.3180(5)(h)2.e, Florida Statutes, and the Proportionate Fair Share Ordinance. Based on the anticipated costs of the planned improvements, Developer's contribution, and the ratio to all planned improvements in the impact fee benefit district, Developer shall be awarded a dollar-for-dollar transportation impact fee credit for each dollar of proportionate fair share payment made by Developer pursuant to this Agreement.

**Non-Transferability of Impact Fee Credit.** Pursuant to current County Code provisions, transportation impact fee credits awarded pursuant to this Agreement shall be applicable only against transportation impact fees that are assessed for development of the Property or any portion thereof within ten (10) years from the effective date of this Agreement. In the event that the County Code is amended in the future to allow transfer of transportation impact fee credits any portion of such transportation impact fee credits remaining at such time shall be transferable in accordance with such amended County Code provisions. In no event shall the Developer or its assigns enjoy the benefit of such transportation impact fee credits more than ten (10) years from the effective date of this Agreement and any unused portion shall thereafter be forfeited and of no value. In the event any transportation impact fee credits remain unused after their ten (10) year "shelf life" then the County shall not be liable to Developer, or any assignee, for any money compensation or other consideration for such expired credits as a result of this Agreement.

**Use of Developer's Proportionate Share Payments.** Developer consents to the appropriation of the proportionate fair-share mitigation contribution as may be subsequently agreed by the City and County consistent with any legal requirements regarding the same.

**Recording, Effective Date and Duration.** Within fourteen (14) days after this Agreement has been executed by all parties hereto, the City, or at the City's request the Developer, shall record this Agreement with the clerk of the circuit court of Brevard County. Said recording, whether done by the City or Developer, shall be at the Developer's sole cost and expense. This Agreement shall become effective when it has been so recorded in the Public Records of Brevard County, Florida (the "Effective Date"). Unless terminated earlier by either party as provided herein, this Agreement shall remain in effect for a period of ten (10) years. The duration of this Agreement may be extended by mutual agreement of the parties in writing.

**Notices.** All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person or dispatched by certified mail, postage prepaid, return receipt requested. Notice required to be given shall be addressed as follows:

- If to Developer: Chris Frandsen, V.P.  
DHIC – Minton Cove, LLC  
c/o D.R. Horton, Inc.  
20410 N. 19<sup>th</sup> Avenue, Suite 120  
Phoenix, Arizona 85027  
[cfrandsen@drhorton.com](mailto:cfrandsen@drhorton.com)  
(480) 338-2007
- And a copy to: Shutts & Bowen LLP  
Attn: Scott A. Glass, Esq.  
300 S. Orange Ave., Ste. 1000  
Orlando, FL 32801  
Telephone: 407-423-3200  
Email: [sglass@shutts.com](mailto:sglass@shutts.com)
- If to City: City of West Melbourne  
Attn: Scott Morgan, City Manager  
2240 Minton Road  
West Melbourne, FL 32904-4928  
Telephone: 321-727-7700  
Facsimile: 321-768-2390  
Email: [smorgan@westmelbourne.org](mailto:smorgan@westmelbourne.org)
- With a copy to: Morris Richardson, City Attorney  
City of West Melbourne  
2240 Minton Road  
West Melbourne, FL 32904-4928  
Telephone: 321-727-7700  
Email: [mrichardson@westmelbourne.org](mailto:mrichardson@westmelbourne.org)
- If to County: Brevard County  
Attn: Stockton Whitten, County Manager  
2725 Judge Fran Jamieson Way  
Viera, FL 32940  
Telephone: 321-633-2000  
Email: [stockton.whitten@brevardcounty.us](mailto:stockton.whitten@brevardcounty.us)
- With a copy to: Brevard County Public Works Department  
Attn: John Denninghoff  
2725 Judge Fran Jamieson Way  
Viera, FL 32940  
Telephone: 321 617-7202  
Email: [John.Denninghoff@brevardcounty.us](mailto:John.Denninghoff@brevardcounty.us)

And a copy to: Brevard County Attorney's Office  
Attn: Eden Bentley  
2725 Judge Fran Jamieson Way  
Viera, FL 32940  
Telephone: 321 617-7202  
Email: [Eden.Bentley@brevardcounty.us](mailto:Eden.Bentley@brevardcounty.us)

And a copy to: Brevard County Planning and Development Department  
Attn: Department Director  
2725 Judge Fran Jamieson Way  
Viera, FL 32940  
Telephone: 321 617-7202  
Email: [Robin.Sobrino@brevardcounty.us](mailto:Robin.Sobrino@brevardcounty.us)

**Miscellaneous.** The execution of this Agreement has been duly authorized by the appropriate body of each of the parties hereto. Each party has complied with all the applicable requirements of law and has full power and authority, to comply with the terms and conditions of this Agreement. The venue of any litigation arising out of this Agreement shall be Brevard County, Florida. The exhibit attached hereto and incorporated by reference herein is by such attachment and incorporation made a part of this Agreement for all purposes. The fact that one of the parties to this Agreement may be deemed to have drafted or structured the provisions of this Agreement, whether in whole or in part, shall not be considered in construing or interpreting any particular provision hereof, whether in favor of or against such party. The terms and conditions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement is solely for the benefit of the parties hereto and their respective successors and assigns, and no right or cause of action shall accrue upon or result by reason hereof or for the benefit of any third party not a formal party hereto. Nothing in this Agreement whether express or implied, is intended or shall be construed to confer upon any person other than the parties hereto any right, remedy, or claim under or by reason of this Agreement or any of the provisions hereof. This Agreement may not be changed, amended, or modified in any respect whatsoever, nor may any covenant, condition, agreement, requirement, provision, or obligation contained herein be waived, except in writing signed by all of the parties hereto. Failure to enforce any provision of this Agreement by any party shall not be considered a waiver of the right to later enforce that or any provision of this Agreement.

**Attorneys' Fees.** Should any litigation arise between the parties each party shall bear its own attorneys' fees and costs.

**Captions.** Headings of a particular paragraph of this Agreement are inserted only for convenience and are in no way to be construed as part of the agreement or as a limitation of the scope of the paragraphs to which they refer.

**Severability.** If any part of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way. If any party's execution of this Agreement is

deemed invalid for any particular purpose, the sections for which the execution is valid shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have caused this agreement to be duly executed and their corporate seals affixed as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

**DHIC – MINTON COVE, LLC**  
**By: DHI Communities II, LLC, its sole member**

*Roger Pryor*  
Witness 1  
ROGER PRYOR  
Print Name of Witness 1

By: *C. Frandsen*  
Name: Christopher Frandsen  
Title: Vice President

*Eric Montgomery*  
Witness 2  
ERIC MONTGOMERY  
Print Name of Witness 2



*Sue Frank*  
Sue Frank, City Clerk

**CITY OF WEST MELBOURNE**, a chartered municipal corporation

*Hal Rose*  
Hal Rose, Mayor

Reviewed as to form and content:

*Morris Richardson*  
Morris Richardson, City Attorney

**ATTEST:**

**BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida

*Scott Ellis*  
Scott Ellis, Clerk

*[Signature]*  
Chairman (SEAL)

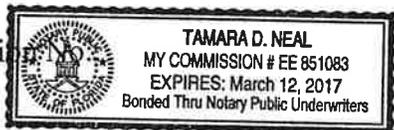
As approved by the Board on 1/24/17

STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of January, 2017, by Hal Rose and Sue Frank, Mayor and City Clerk, respectively, of The **City of West Melbourne**, Florida, a chartered municipal Corporation, on behalf of the City. They are [] personally known to me or [] produced \_\_\_\_\_ as identification and did/did not take an oath.

My commission expires:

SEAL  
Commission No.:



Tamara D. Neal  
Notary Public

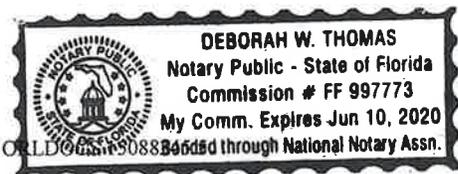
Tamara D. Neal  
(Name typed, printed or stamped)

STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 24 day of January, 2017, by CURT SMITH, Chairman of the **Board of County Commissioners of Brevard County**, Florida, a political, subdivision of the State of Florida, who is [] personally known to me or [] produced \_\_\_\_\_ as identification and did/did not take an oath.

My commission expires:

SEAL  
Commission No.:



Deborah W. Thomas  
Notary Public

DEBORAH W. THOMAS  
(Name typed, printed or stamped)

STATE OF Arizona §  
COUNTY OF Maricopa §

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of January, 2017, by Christopher Frandsen, as Vice President of **DHI Communities II, LLC**, the sole member of **DHIC – Minton Cove, LLC**, a Delaware limited liability company. He is [  ] personally known to me or [  ] produced \_\_\_\_\_ as identification and did/did not take an oath.

My commission expires: July 30, 2018

S. Berquist  
\_\_\_\_\_  
Notary Public

SEAL  
Commission No.:

S. Berquist  
\_\_\_\_\_  
(Name typed, printed or stamped)



EXHIBIT "A"

(Legal description)

A PORTION OF LOTS 23, 26, 27 AND 28 OF THE FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION OF SECTION 19, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 19, THENCE SOUTH 89°22'11" EAST ALONG THE NORTH LINE OF SAID SECTION 19, A DISTANCE OF 50.00 FEET, TO THE EAST LINE OF THE MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO. 69, THENCE SOUTH 00°25'16" WEST, ALONG THE EAST LINE OF THE MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO.69, A DISTANCE OF 45.00 FEET, TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF THE MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO.72; THENCE SOUTH 89°22'11" EAST ALONG THE SOUTH RIGHT OF WAY LINE OF THE MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO.72, A DISTANCE OF 994.32 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE SOUTH 10°00'54" WEST, A DISTANCE OF 266.49 FEET; THENCE SOUTH 01°15'06" WEST, A DISTANCE OF 692.42 FEET; THENCE NORTH 89°21'54" WEST, A DISTANCE OF 9.59 FEET; THENCE SOUTH 00°38'06" WEST, A DISTANCE OF 688.39 FEET TO THE NORTH LINE OF THAT PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 3931, PAGE 3235, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE SOUTH 89°21'54" EAST ALONG SAID NORTH LINE, A DISTANCE OF 246.50 FEET, THENCE NORTH 00°31'55" EAST, A DISTANCE OF 239.84 FEET, TO THE POINT OF CURVATURE OF A CIRCULAR CURVE, CONCAVE TO THE SOUTHEAST WHOSE CHORD IS NORTH 15°25'24" EAST HAVING A DISTANCE OF 308.39 FEET, THE RADIUS POINT OF WHICH BEARS SOUTH 89°28'05" EAST, A DISTANCE OF 600.00 FEET, THENCE NORTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 29°46'58" A DISTANCE OF 311.88 FEET TO THE POINT OF TANGENCY; THENCE NORTH 30°18'53" EAST, A DISTANCE OF 75.19 FEET; THENCE SOUTH 58°00'50" EAST, A DISTANCE OF 90.20 FEET, TO THE POINT OF CURVATURE OF A CIRCULAR CURVE, CONCAVE TO THE NORTHEAST WHOSE CHORD IS SOUTH 74°01'02" EAST HAVING A DISTANCE OF 394.77 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 31°59'10" EAST, A DISTANCE OF 715.97 FEET; THENCE EASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 32°00'23" A DISTANCE OF 399.95 FEET TO THE POINT OF TANGENCY; THENCE NORTH 89°58'47" EAST, A DISTANCE OF 393.05 FEET, TO A POINT OF INTERSECTION WITH THE WEST RIGHT OF WAY LINE OF NORFOLK PARKWAY; THENCE ALONG THE WEST RIGHT OF WAY LINE OF NORFOLK PARKWAY, NORTH 15°23'10" WEST, A DISTANCE OF 691.55 FEET; THENCE NORTH 10°11'11" WEST, A DISTANCE OF 200.83 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST WHOSE CHORD IS NORTH 28°42'31" WEST HAVING A DISTANCE OF 373.30 FEET, THE RADIUS POINT OF WHICH BEARS SOUTH 74°29'34" WEST, A DISTANCE OF 817.29 FEET, THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 26°24'11" A DISTANCE OF 376.62 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF THE MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO.72; THENCE LEAVING SAID WEST RIGHT OF WAY LINE, NORTH 89°22'11" WEST ALONG THE SOUTH LINE OF THE MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO.72, A DISTANCE OF 740.79 FEET TO THE POINT OF BEGINNING.

This Agreement prepared by:  
Scott A. Glass, Esq.  
300 S. Orange Ave., Ste. 1000  
Orlando, FL 32801

After recording return to:  
Department Director  
Brevard County Planning & Development Department  
2725 Judge Fran Jamieson Way, Suite A-114  
Viera, FL 32940

## **PROPORTIONATE FAIR SHARE MITIGATION AGREEMENT**

**THIS AGREEMENT**, entered into this 24 day of January, 2017 by and between the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida, 32940, (hereinafter referred to as “County”), City of West Melbourne, Florida, a Florida municipal corporation, whose address is 2240 Minton Road, West Melbourne, Florida 32904 (hereinafter referred to as “City”), and DHIC – Minton Cove, LLC, a Delaware limited liability company registered to do business in the State of Florida, whose address is 20410 North 19<sup>th</sup> Avenue, Suite 120, Phoenix, AZ 85027 (hereinafter referred to as “Developer”), is based on the following premises.

### **RECITALS:**

**WHEREAS**, Developer is the owner of approximately 30 acres of property generally located east of Minton Road, south of Norfolk Parkway, as more particularly described on Exhibit “A” attached hereto and incorporated herein by this reference (the “Property”);

**WHEREAS**, the Developer has, concurrently with approval of this Agreement by the City, received approval from the City to construct a 12 building, 300 dwelling unit residential apartment project with attendant amenities known as Minton Cove (the “Project”); and

**WHEREAS**, the City of West Melbourne’s duly adopted Comprehensive Plan contains a transportation concurrency requirement to ensure that the City’s road network operates at adopted levels of service; and

**WHEREAS**, Developer previously retained Lassiter Transportation Group, Inc. (“Lassiter”) to perform a traffic study to determine the projected impact of the Project on the surrounding road network, the results of which were reported in that certain Minton Cove Apartments Traffic Impact Study dated June, 2016 (the “Traffic Impact Study”) which was subsequently reviewed by the City and the County; and

**WHEREAS**, pursuant to section 163.3180, F.S., the County previously enacted Ordinance 2006-60 which was codified as Chapter 62, Article IV, Division 2, Code of Ordinances of Brevard County, Florida and which provides a method by which a developer may vest development against transportation concurrency by paying, in cash or via in-kind contributions, such developer’s proportionate fair share of the cost of providing transportation network improvements necessary to mitigate a projected transportation capacity deficiency; and

**WHEREAS**, Chapter 62, Article IV, Division 2, Code of Ordinances of Brevard County, known as the “Brevard County Proportionate Fair-Share Program for Transportation,” (Proportionate Fair Share Ordinance) applies to property within the corporate limits of the City of West Melbourne pursuant to Article VIII, Section 1(g) of the Constitution of the State of Florida and Section 1.7 of the Charter of Brevard County; and

**WHEREAS**, Chapter 62, Land Development Regulations, Article V, Impact Fees, Division 4, Transportation, of the Code of Ordinances of Brevard County, Florida, commonly known as the “Brevard County Transportation Impact Fee Ordinance,” is also applicable within the incorporated limits of the City pursuant to Interlocal Agreements between the City and County and sets forth a schedule of impact fees assessable against the development of property; and

**WHEREAS**, section 163.3180(5)(h)2.e, F.S., provides that a developer who has paid his proportionate fair share of transportation mitigation costs shall receive credit, on a dollar-for-dollar basis, for impact fees and other transportation concurrency mitigation requirements paid or payable in the future; and,

**WHEREAS**, Developer wishes to avail itself of the provisions of the Proportionate Fair Share Ordinance and section 163.3180(5)(h), F.S. in order to determine: (1) its proportionate fair share; (2) the terms by which payment thereof shall be made; and, (3) the terms by which transportation impact fee credits shall be awarded; and

**WHEREAS**, upon review of the Traffic Impact Study the City’s Transportation Consultant, Traffic Engineering Data Solution, Inc., concluded that the Project’s proportionate fair share cost of traffic mitigation to address the Project’s impacts on the surrounding road network is THREE HUNDRED SEVENTY-NINE THOUSAND SIX HUNDRED AND SEVENTY-TWO DOLLARS AND NO CENTS (\$379,672.00), and County and Developer have agreed with such conclusion.

**NOW, THEREFORE**, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the parties hereto agree as follows:

**Recitals.** The foregoing recitals are hereby ratified and approved and made a part of this Agreement.

**Proportionate Fair Share.** The proportionate fair share mitigation contribution from the Developer shall be Three Hundred Seventy-Nine Thousand Six Hundred and Seventy-Two Dollars and No Cents (\$379,672.00) (the “Proportionate Fair Share”) which shall be paid in a single, lump-sum payment on or before issuance of the first building permit for vertical construction of a residential apartment building on the Property.

**Vesting.** The parties hereto recognize that the Property is within the jurisdiction of the City and that the City has jurisdiction over the Property for permitting purposes other than County road connection permits and other state, federal or regional permitting requirements. The Parties

hereby acknowledge that, so long as Developer pays the Proportionate Fair Share and obtains a building permit within one year of the effective date of this Agreement the Project shall be fully vested against transportation concurrency for a period of ten (10) years from the effective date of this Agreement as provided in paragraph 7 below. The City acknowledges that it shall treat the Project as already existing and shall not issue building permits for other projects which would utilize or consume any of the trips vested for the Project. The City shall not be prohibited from issuing building permits for other projects to the extent that there is capacity available to serve such projects after taking into account the trips generated by the Project, existing trips, and otherwise committed trips, or to the extent that such other projects have entered into their own proportionate share agreements. To assist in addressing the capacity issue, the County shall include the trips to be vested herein as existing trips when conducting any future traffic concurrency analysis for the term of this Agreement.

**Impact Fee Credits.** Credit will be awarded as a credit against transportation impact fees assessed to the Project in accordance with section 163.3180(5)(h)2.e, Florida Statutes, and the Proportionate Fair Share Ordinance. Based on the anticipated costs of the planned improvements, Developer's contribution, and the ratio to all planned improvements in the impact fee benefit district, Developer shall be awarded a dollar-for-dollar transportation impact fee credit for each dollar of proportionate fair share payment made by Developer pursuant to this Agreement.

**Non-Transferability of Impact Fee Credit.** Pursuant to current County Code provisions, transportation impact fee credits awarded pursuant to this Agreement shall be applicable only against transportation impact fees that are assessed for development of the Property or any portion thereof within ten (10) years from the effective date of this Agreement. In the event that the County Code is amended in the future to allow transfer of transportation impact fee credits any portion of such transportation impact fee credits remaining at such time shall be transferable in accordance with such amended County Code provisions. In no event shall the Developer or its assigns enjoy the benefit of such transportation impact fee credits more than ten (10) years from the effective date of this Agreement and any unused portion shall thereafter be forfeited and of no value. In the event any transportation impact fee credits remain unused after their ten (10) year "shelf life" then the County shall not be liable to Developer, or any assignee, for any money compensation or other consideration for such expired credits as a result of this Agreement.

**Use of Developer's Proportionate Share Payments.** Developer consents to the appropriation of the proportionate fair-share mitigation contribution as may be subsequently agreed by the City and County consistent with any legal requirements regarding the same.

**Recording, Effective Date and Duration.** Within fourteen (14) days after this Agreement has been executed by all parties hereto, the City, or at the City's request the Developer, shall record this Agreement with the clerk of the circuit court of Brevard County. Said recording, whether done by the City or Developer, shall be at the Developer's sole cost and expense. This Agreement shall become effective when it has been so recorded in the Public Records of Brevard County, Florida (the "Effective Date"). Unless terminated earlier by either party as provided herein, this Agreement shall remain in effect for a period of ten (10) years. The duration of this Agreement may be extended by mutual agreement of the parties in writing.

**Notices.** All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person or dispatched by certified mail, postage prepaid, return receipt requested. Notice required to be given shall be addressed as follows:

- If to Developer: Chris Frandsen, V.P.  
DHIC – Minton Cove, LLC  
c/o D.R. Horton, Inc.  
20410 N. 19<sup>th</sup> Avenue, Suite 120  
Phoenix, Arizona 85027  
[cfrandsen@drhorton.com](mailto:cfrandsen@drhorton.com)  
(480) 338-2007
- And a copy to: Shutts & Bowen LLP  
Attn: Scott A. Glass, Esq.  
300 S. Orange Ave., Ste. 1000  
Orlando, FL 32801  
Telephone: 407-423-3200  
Email: [sglass@shutts.com](mailto:sglass@shutts.com)
- If to City: City of West Melbourne  
Attn: Scott Morgan, City Manager  
2240 Minton Road  
West Melbourne, FL 32904-4928  
Telephone: 321-727-7700  
Facsimile: 321-768-2390  
Email: [smorgan@westmelbourne.org](mailto:smorgan@westmelbourne.org)
- With a copy to: Morris Richardson, City Attorney  
City of West Melbourne  
2240 Minton Road  
West Melbourne, FL 32904-4928  
Telephone: 321-727-7700  
Email: [mrichardson@westmelbourne.org](mailto:mrichardson@westmelbourne.org)
- If to County: Brevard County  
Attn: Stockton Whitten, County Manager  
2725 Judge Fran Jamieson Way  
Viera, FL 32940  
Telephone: 321-633-2000  
Email: [stockton.whitten@brevardcounty.us](mailto:stockton.whitten@brevardcounty.us)
- With a copy to: Brevard County Public Works Department  
Attn: John Denninghoff  
2725 Judge Fran Jamieson Way  
Viera, FL 32940  
Telephone: 321 617-7202  
Email: [John.Denninghoff@brevardcounty.us](mailto:John.Denninghoff@brevardcounty.us)

And a copy to: Brevard County Attorney's Office  
Attn: Eden Bentley  
2725 Judge Fran Jamieson Way  
Viera, FL 32940  
Telephone: 321 617-7202  
Email: [Eden.Bentley@brevardcounty.us](mailto:Eden.Bentley@brevardcounty.us)

And a copy to: Brevard County Planning and Development Department  
Attn: Department Director  
2725 Judge Fran Jamieson Way  
Viera, FL 32940  
Telephone: 321 617-7202  
Email: [Robin.Sobrino@brevardcounty.us](mailto:Robin.Sobrino@brevardcounty.us)

**Miscellaneous.** The execution of this Agreement has been duly authorized by the appropriate body of each of the parties hereto. Each party has complied with all the applicable requirements of law and has full power and authority, to comply with the terms and conditions of this Agreement. The venue of any litigation arising out of this Agreement shall be Brevard County, Florida. The exhibit attached hereto and incorporated by reference herein is by such attachment and incorporation made a part of this Agreement for all purposes. The fact that one of the parties to this Agreement may be deemed to have drafted or structured the provisions of this Agreement, whether in whole or in part, shall not be considered in construing or interpreting any particular provision hereof, whether in favor of or against such party. The terms and conditions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement is solely for the benefit of the parties hereto and their respective successors and assigns, and no right or cause of action shall accrue upon or result by reason hereof or for the benefit of any third party not a formal party hereto. Nothing in this Agreement whether express or implied, is intended or shall be construed to confer upon any person other than the parties hereto any right, remedy, or claim under or by reason of this Agreement or any of the provisions hereof. This Agreement may not be changed, amended, or modified in any respect whatsoever, nor may any covenant, condition, agreement, requirement, provision, or obligation contained herein be waived, except in writing signed by all of the parties hereto. Failure to enforce any provision of this Agreement by any party shall not be considered a waiver of the right to later enforce that or any provision of this Agreement.

**Attorneys' Fees.** Should any litigation arise between the parties each party shall bear its own attorneys' fees and costs.

**Captions.** Headings of a particular paragraph of this Agreement are inserted only for convenience and are in no way to be construed as part of the agreement or as a limitation of the scope of the paragraphs to which they refer.

**Severability.** If any part of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way. If any party's execution of this Agreement is

deemed invalid for any particular purpose, the sections for which the execution is valid shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have caused this agreement to be duly executed and their corporate seals affixed as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

**DHIC – MINTON COVE, LLC**  
**By: DHI Communities II, LLC, its sole member**

  
\_\_\_\_\_  
Witness 1  
**ROGER PRYOR**  
\_\_\_\_\_  
Print Name of Witness 1

By:   
\_\_\_\_\_  
Name: **Christopher Frandsen**  
\_\_\_\_\_  
Title: **Vice President**  
\_\_\_\_\_

  
\_\_\_\_\_  
Witness 2  
**Eric Montgomery**  
\_\_\_\_\_  
Print Name of Witness 2



  
\_\_\_\_\_  
Sue Frank, City Clerk

**CITY OF WEST MELBOURNE**, a chartered municipal corporation

  
\_\_\_\_\_  
Hal Rose, Mayor

Reviewed as to form and content:

  
\_\_\_\_\_  
Morris Richardson, City Attorney

**ATTEST:**

**BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida

  
\_\_\_\_\_  
Scott Ellis, Clerk

  
\_\_\_\_\_  
Chairman (SEAL)

As approved by the Board on 1/24/17

STATE OF FLORIDA §  
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of January, 2017, by Hal Rose and Sue Frank, Mayor and City Clerk, respectively, of The **City of West Melbourne**, Florida, a chartered municipal Corporation, on behalf of the City. They are [] personally known to me or [] produced \_\_\_\_\_ as identification and did/did not take an oath.

Tamara D. Neal  
Notary Public

My commission expires:



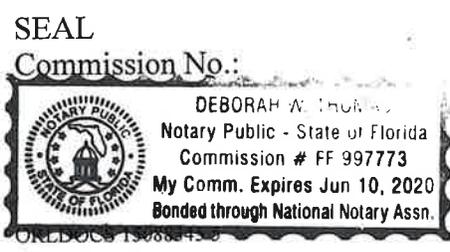
Tamara D. Neal  
(Name typed, printed or stamped)

STATE OF FLORIDA §  
COUNTY OF BREVARD §

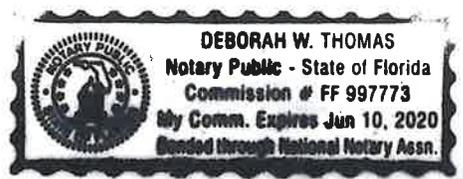
The foregoing instrument was acknowledged before me this 24 day of January, 2017, by CURT SMITH, Chairman of the **Board of County Commissioners of Brevard County**, Florida, a political, subdivision of the State of Florida, who is [] personally known to me or [] produced \_\_\_\_\_ as identification and did/did not take an oath.

Deborah W. Thomas  
Notary Public

My commission expires:



DEBORAH W. THOMAS  
(Name typed, printed or stamped)



STATE OF Arizona §  
COUNTY OF Maricopa §

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of January,  
2017, by Christopher Frandsen, as Vice President of **DHI Communities II, LLC**, the sole member of **DHIC – Minton Cove, LLC**, a Delaware limited liability company.  
He is [X] personally known to me or [ ] produced \_\_\_\_\_ as identification  
and did/did not take an oath.

My commission expires: July 30, 2018

SEAL  
Commission No.:

S. Berquist  
\_\_\_\_\_  
Notary Public

S. Berquist  
\_\_\_\_\_  
(Name typed, printed or stamped)



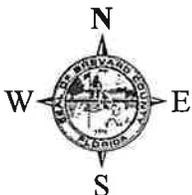
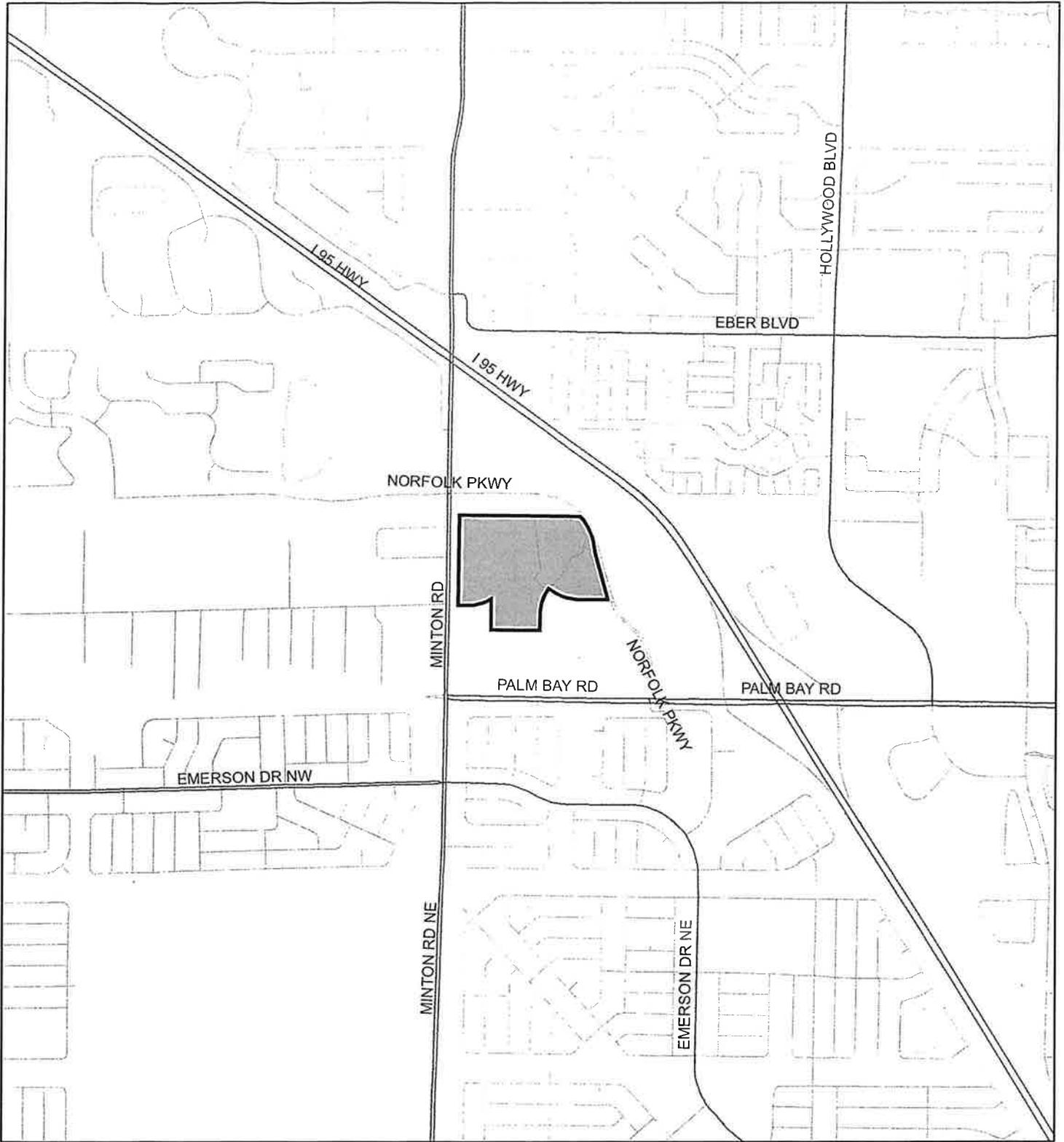
**EXHIBIT "A"**

(Legal description)

A PORTION OF LOTS 23, 26, 27 AND 28 OF THE FLORIDA INDIAN RIVER LAND COMPANY SUBDIVISION OF SECTION 19, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 19, THENCE SOUTH 89°22'11" EAST ALONG THE NORTH LINE OF SAID SECTION 19, A DISTANCE OF 50.00 FEET, TO THE EAST LINE OF THE MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO. 69, THENCE SOUTH 00°25'16" WEST, ALONG THE EAST LINE OF THE MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO.69, A DISTANCE OF 45.00 FEET, TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF THE MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO.72; THENCE SOUTH 89°22'11" EAST ALONG THE SOUTH RIGHT OF WAY LINE OF THE MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO.72, A DISTANCE OF 994.32 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE SOUTH 10°00'54" WEST, A DISTANCE OF 266.49 FEET; THENCE SOUTH 01°15'06" WEST, A DISTANCE OF 692.42 FEET; THENCE NORTH 89°21'54" WEST, A DISTANCE OF 9.59 FEET; THENCE SOUTH 00°38'06" WEST, A DISTANCE OF 688.39 FEET TO THE NORTH LINE OF THAT PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 3931, PAGE 3235, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE SOUTH 89°21'54" EAST ALONG SAID NORTH LINE, A DISTANCE OF 246.50 FEET, THENCE NORTH 00°31'55" EAST, A DISTANCE OF 239.84 FEET, TO THE POINT OF CURVATURE OF A CIRCULAR CURVE, CONCAVE TO THE SOUTHEAST WHOSE CHORD IS NORTH 15°25'24" EAST HAVING A DISTANCE OF 308.39 FEET, THE RADIUS POINT OF WHICH BEARS SOUTH 89°28'05" EAST, A DISTANCE OF 600.00 FEET, THENCE NORTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 29°46'58" A DISTANCE OF 311.88 FEET TO THE POINT OF TANGENCY; THENCE NORTH 30°18'53" EAST, A DISTANCE OF 75.19 FEET; THENCE SOUTH 58°00'50" EAST, A DISTANCE OF 90.20 FEET, TO THE POINT OF CURVATURE OF A CIRCULAR CURVE, CONCAVE TO THE NORTHEAST WHOSE CHORD IS SOUTH 74°01'02" EAST HAVING A DISTANCE OF 394.77 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 31°59'10" EAST, A DISTANCE OF 715.97 FEET; THENCE EASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 32°00'23" A DISTANCE OF 399.95 FEET TO THE POINT OF TANGENCY; THENCE NORTH 89°58'47" EAST, A DISTANCE OF 393.05 FEET, TO A POINT OF INTERSECTION WITH THE WEST RIGHT OF WAY LINE OF NORFOLK PARKWAY; THENCE ALONG THE WEST RIGHT OF WAY LINE OF NORFOLK PARKWAY, NORTH 15°23'10" WEST, A DISTANCE OF 691.55 FEET; THENCE NORTH 10°11'11" WEST, A DISTANCE OF 200.83 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST WHOSE CHORD IS NORTH 28°42'31" WEST HAVING A DISTANCE OF 373.30 FEET, THE RADIUS POINT OF WHICH BEARS SOUTH 74°29'34" WEST, A DISTANCE OF 817.29 FEET, THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 26°24'11" A DISTANCE OF 376.62 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF THE MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO.72; THENCE LEAVING SAID WEST RIGHT OF WAY LINE, NORTH 89°22'11" WEST ALONG THE SOUTH LINE OF THE MELBOURNE TILLMAN DRAINAGE DISTRICT CANAL NO.72, A DISTANCE OF 740.79 FEET TO THE POINT OF BEGINNING.

LOCATION MAP  
MINTON COVE PROPORTIONATE FAIR SHARE  
AGREEMENT



1:24,000 or 1 inch = 2,000 feet

 Subject Property

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by the Brevard County Planning and Zoning Office - GIS Section Date: 1/9/2017