

This instrument prepared by:
Sandra B. Howard, Esq
Polk County Attorney's Office
330 W. Church St.,
Bartow, FL 33830

**PROPORTIONATE SHARE AGREEMENT for
HAINES CITY COMMERCIAL
(CR 544 at Barrington Drive)**

This Proportionate Share Agreement (the "Agreement") is made and entered into as of the Effective Date (defined in Section 3.7 below), by and between POLK PETRO, LLC, a Florida limited liability company (the "Owner") and **POLK COUNTY**, a political subdivision of the State of Florida, whose address is 330 West Church Street, Bartow, Florida 33830 (hereinafter referred to as "Polk County" or "County") pursuant to the authority of Section 163.3180, Florida Statutes (2022). Owner and Polk County are referred to herein individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, Owner is the owner of real property located at the northwest corner of the CR 555 and Barrington Drive intersection, as more specifically described in the legal description attached hereto as **Exhibit "A"** ("Owner's Property"); and

WHEREAS, Owner is seeking to enter into a proportionate share agreement with the County to mitigate transportation impacts on a County owned and maintained road. The proposed development is a convenience store with retail on the Owner's Property ("Project"), which is located within the City Limits of Haines city and as depicted in the site plan attached as **Exhibit "B"**; and

WHEREAS, direct access to the Project is via C.R. 544 (Lake Marion Creek Road), which is a County-maintained roadway; and

WHEREAS, Owner has submitted to the County for Level 2 review of a driveway permit and concurrency review, Polk County project number: **LDROW-2025-4**; and

WHEREAS, as part of the Level 2 review, the County has notified the Owner that the Project will generate deficient PM Peak Hour trips (collectively, the "Excess Trips") for the roadway segments of CR 544 at Detour Road; CR 544 at Barrington Drive; and CR 544 at SR 17 (collectively, the "Deficient Segments"); and

WHEREAS, the Excess Trips will cause the Deficient Segments to operate below adopted Level of Service standards; therefore, pursuant to Section 163.3180(5)(h), Florida Statutes, the Owner shall provide the County with proportionate share mitigation for the Excess Trips; and

WHEREAS, the Owner has commissioned a traffic study by Kimley Horn dated May 2024 (the "Traffic Study"), which is incorporated herein by this reference, to identify certain

improvements necessary to alleviate existing infrastructure deficiencies, Project-related impacts, and maintain the functionality of the transportation network, and a copy of the Estimated PM Peak Hour Project Trips as included in the Traffic Study is attached hereto as **Exhibit "C"**; and

WHEREAS, the County has reviewed and approved the Traffic Study; and

WHEREAS, the County and Owner have agreed that the proportionate share payment necessary to mitigate the impact of the Excess Trips on the Deficient Segments through the current anticipated Project buildout is One hundred Forty-three thousand, three hundred thirty-four dollars and fourteen cents (**\$143,334.14**) (the "Proportionate Share amount"); and

WHEREAS, this Agreement will provide the assurance to the Owner that upon payment of the Proportionate Share amount, Owner shall be deemed to have satisfied all requirements for mitigation of the traffic impacts of the Project on all roads affected by the Project within the County's jurisdiction through buildout of the Project; and

WHEREAS, while this Agreement shall reserve transportation capacity forestablished amounts of development on Owner's Property as provided herein, Owner is not hereby granted the right to develop until Owner obtains all other necessary approvals from Polk County and other applicable local, regional, state and federal governmental agencies.

NOW THEREFORE, in consideration of the premises hereof, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto covenant and agree as follows:

Article I RECITALS AND DEFINITIONS

- 1.1 Recitals.** The Recitals stated above are an integral part of this Agreement and are incorporated herein by reference as if fully set forth herein.
- 1.2 Definitions.** Terms which are capitalized herein shall be defined as set forth in the Recitals above or as otherwise defined in this Agreement.

Article II CONDITIONS OF AGREEMENT

- 2.1 Legal Description of the Properties.** The legal description of the Owner's Property is attached to this Agreement as **Exhibit "A"**;
- 2.2 Calculation of PS Payment.** The calculated Proportionate Share amount for the Deficient Segments, as described in **Exhibit "D,"** totals One hundred Forty-three thousand, three hundred thirty-four dollars and fourteen cents (**\$143,334.14**) and shall be paid by Owner to the County (the "PS Payment") to mitigate the Excess Trips. This PS Payment was calculated in accordance with the methodology outlined in Section 163.3180, Florida Statutes, and is specific to development of the proposed convenience store Project only. For clarity, Table 15 of the Traffic Study as set forth on Exhibit "D" calculates the total intersection proportionate fair share amount (\$286,668.29) for development of the entire Owner's Property parcel, including multiple additional projects and uses, however, this Agreement

relates only to the Proportionate Share amount, as set forth above, calculated to address impacts specific to development of the convenience store Project. Owner and County agree that the Excess Trips will constitute the Project's impact on the Deficient Segments based upon (i) the Owner's Traffic Study, and (ii) the calculations described in Exhibits "C" and "D." The Traffic Study is on file with the Land Development Division and available for inspection. The Owner and County further acknowledge and agree that the PS Payment as set forth above shall be the final and binding calculation of the amount the Owner is required to pay through the buildout of the currently approved Project as proportionate share mitigation for impacts of the Project upon roadways within the County's jurisdiction; provided, however, that if Owner subsequently increases the number of units and/or square footage, as applicable, of the Project, the Project may then be subject to an additional concurrency evaluation and proportionate share agreement as set forth in Section 2.7 below. Owner and County further acknowledge and agree that the calculation of, and agreement regarding, the amount of the PS Payment constitute material inducements for the parties to enter into this Agreement. The Owner further understands and agrees that Polk County reserves the right to allocate the PS Payment to one or more transportation improvements within the Project's transportation impact fee district.

- 2.3 Timing of PS Payment, Issuance of Concurrency.** Within sixty (60) days following the Effective Date, Owner shall deliver a check to County in the amount of One hundred Forty-three thousand, three hundred thirty-four dollars and fourteen cents (**\$143,334.14**) as the PS Payment. Within twenty-one (21) days following its receipt of the PS Payment, County shall issue Level 2 approval and concurrency sufficient to encumber traffic capacity for the Project, irrespective of any actual traffic deficiency on the Deficient Segments. In the event Owner has not paid the PS Payment within sixty (60) days of the Effective Date, this Agreement shall become null and void.
- 2.4 Satisfaction of Transportation Improvement Requirements.** County hereby acknowledges and agrees that upon Owner's payment of the PS Payment as required herein, and absent any change in the Project increasing the number of trips as set forth in section 2.7 below, Owner shall be deemed to have satisfied all requirements for the mitigation of the traffic impacts of the Project on all roads affected by the Project within County's jurisdiction through buildout of the Project. Owner shall be entitled to fully and completely develop the Project, without regard to whether the improvements to the Deficient Segments are actually constructed. Additionally, nothing herein shall be construed to exempt Owner from meeting the requirements of all other applicable laws, regulations, and/or County Code provisions or from making the required payment of transportation impact fees applicable to the Project.
- 2.5 No Refund.** The PS Payment is non-refundable.
- 2.6 Development Permits.** Owner shall be required to secure all applicable local development permits for any proposed construction on its Property. Owner will also obtain all required county, region, state, or federal approvals, prior to the development of its Property.
- 2.7 Increase in Project Trips.** Any change to the Project which increases the unit count and/or square footage, as applicable, may result in an increase in trips on the Deficient Segments or other segments within the transportation impact area, as defined by County. Owner

understands and agrees that any such additional trips are neither vested nor otherwise permitted under this Agreement, and that Owner is precluded from asserting any such vesting. In addition, Owner understands and agrees that any such changes resulting in an increase in trips may cause this Agreement to become null and void, and/or may require application for and execution of an additional Proportionate Share Agreement, along with any other required documentation, for the number of increased trips.

2.8 Insufficiency of Agreement. In the event that this Agreement fails to address a particular permit, condition, term, or restriction, Owner shall not be relieved of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

2.9 Compliance with Applicable Standards. Any public facility, including water, wastewater or transportation facility, designed and constructed by Owner shall be in compliance with all applicable Polk County requirements, and applicable region, state and federal standards and requirements.

2.10 Consistency with Florida Statutes. The Parties agree that this Agreement satisfies the requirements for all applicable statutes, including without limitation, requirements for a binding Proportionate Share Mitigation Agreement in Section 163.3180(5), Florida Statutes.

2.11 Transportation Impact Fee Credits. Pursuant to Section 163.3180(5), Transportation Impact Fees shall be credited to Owner for payment of the Proportionate Share amount minus the percentage share that the Project's traffic represents of the added capacity of the selected improvement. The Transportation Impact Fee Credits shall be subject to Section 2.11 of the Polk County Amended and Restated Comprehensive Impact Fee Ordinance (Ord. No. 2024-062, referred to hereinafter as the "Ordinance") and the following requirements:

2.11.1 The total, maximum, cumulative amount of Transportation Impact Fee credits issued hereunder shall not exceed One Hundred Nineteen Thousand, Ten dollars and Thirty-Four cents (**\$119,010.34**), which includes a credit reduction in the amount of Twenty-Four thousand Three hundred Twenty-Three dollars and eighty cents (**\$24,323.80**) for the percentage share that the Project's traffic represents of the added capacity to CR 544 . In no event shall Owner receive credits in excess of the PS Payment, and in the event the PS Payment exceeds the applicable Transportation Impact Fees, Owner shall not be entitled to a refund for the amount of the PS Payment in excess of such Transportation Impact Fees. Nothing in this Agreement shall be deemed to require the County to continue to levy or collect Transportation Impact Fees, or, if levied, to levy them for any certain amount.

2.11.2 Transportation Impact Fee credits granted pursuant to this Agreement are assignable and transferrable in accordance with section 163.31801, Florida Statutes.

2.11.3 The value of each impact fee credit(s) shall be the value of the impact fee at the time each future development project is submitted to Polk County for transportation impact fee credit. The submittal for impact fee credits shall occur during the site/construction plan (Level 2) review, in conjunction with granting concurrency for the Project or any future projects. Said submittal shall include a development site plan(s) and access to the County road system approvals as granted by the County and the local government that has jurisdiction.

2.11.4 Owner, and their successors and assigns, shall have ten (10) years from the date of issuance in which to use any Transportation Impact Fee Credits issued hereunder. Any impact fee credits issued hereunder shall be governed by the Ordinance.

Article III MISCELLANEOUS PROVISIONS

- 3.1 Notices.** Any notice delivered with respect to this Agreement shall be in writing and deemed delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth below, or to such other address or other person as the party shall have specified by written notice to the other party delivered in accordance herewith:

3.1.1 Polk County:

Chairman
Polk County Board of County Commissioners
330 West Church Street
Bartow, Florida 33830

with a copy to:

County Attorney
Polk County Board of County Commissioners
330 West Church Street
Bartow, Florida 33830

Concurrency and Entitlements Manager
Polk County Office of Planning and Development
330 West Church Street
Bartow, Florida 33830

Owner:
Polk Petro, LLC
2067 Professional Center Drive
Orange Park, FL 32073-4461

- 3.2 Amendment or Cancellation.** No amendment, modification, or other change(s) to this Agreement shall be binding upon the Parties unless in writing and formally executed by all of the Parties.
- 3.3 Recordation.** Within 14 days after Polk County approves and executes this Agreement, Polk County shall record the Agreement in the public records of Polk County, Florida. Polk County shall pay the costs of recording this Agreement as well as any amendment, cancellation, modification, extension, or revocation thereto.
- 3.4 Applicable Law, Enforcement, Jurisdiction and Venue.** This Agreement shall be subject to the following provisions:
- 3.4.1** This Agreement and the rights and obligations of the County and Owner hereunder shall be interpreted, governed by, construed under, and enforced in accordance with the applicable laws of the State of Florida, and the Laws of Polk County pursuant to the LDC, Polk County Comprehensive Plan, and any amendments thereto in effect on the Effective Date of this Agreement.
 - 3.4.2** Venue for any litigation pertaining to the subject matter hereof shall be exclusively in the state courts in and for Polk County, Florida, or Federal Court in the Middle District of Florida, located in Tampa, Florida.
 - 3.4.3** Each Party shall bear its own expense for any litigation resulting from this Agreement, which shall include but not be limited to attorney fees and applicable courts costs, including appellate proceedings.
 - 3.4.4** If any section, phrase, sentence or portion of this Agreement is, for any reason, held to be invalid by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.
 - 3.4.5** The fact that this Agreement does not detail all laws, rules, regulations, permits, conditions, terms and restrictions that must be satisfied to develop the Owner's Property shall not relieve the Owner, the County, or their respective successors in interest, of the obligation to comply with the laws governing such permit requirements, conditions, terms and regulations, except as otherwise provided herein.

- 3.5 Successors; Notice of Transfer.** This Agreement shall be binding upon and the benefits and obligations of this Agreement shall inure to all heirs, legal representatives, successors and assigns of the Parties to this Agreement, and shall be a covenant running with the Property and be binding upon the successors and assigns of the Owner and upon any person, firm, corporation, or entity who may become the success in interest in the Owner's Property. Within thirty (30) days of the date of the Owner's transfer of any of its interests in the Property, Owner shall provide notice to the County.
- 3.6 Entire Agreement.** This Agreement contains the entire understanding between the Parties, and the Parties agree that no representation was made by or on behalf of any Party that is not contained in this Agreement, and that in entering into this Agreement neither relied upon, or was entitled to rely upon, any representation not herein specifically set forth.
- 3.7 Effective Date.** This Agreement shall become effective upon the County's execution of the Agreement (the "Effective Date").
- 3.8 No Third Party Beneficiaries.** This Agreement is made for the sole benefit and protection of the Parties, their successors and assigns, and no other persons shall have any right of action hereunder.
- 3.9 Default and Opportunity to Cure.** With exception of the timing of the PS Payment as set forth in Section 2.3, the Parties acknowledge and agree that in the event of a default by the Parties respecting an obligation under this Agreement, the non-defaulting Party or Parties shall provide notice of said default to the defaulting Party pursuant to Paragraph 3.1 above, and the defaulting Party shall have thirty (30) days after receipt of said notice within which to cure the default described in said notice.
- 3.10 Days.** The term "days" in this Agreement shall mean calendar days unless otherwise so noted. If a date for performance falls on a Saturday, Sunday or legal State of Florida or federal holiday, the date for performance shall be extended until the next calendar day that is not a Saturday, Sunday or legal Holiday.
- 3.11 Exhibits.** All exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by this reference.
- 3.11 Release.** For and in consideration of the mutual agreements set forth herein, Owner agrees the terms and conditions of this Agreement are reasonable under the totality of the circumstances, and on behalf of its successors, assigns or trustees, and anyone claiming by, through, or under any of them, do hereby fully waive, release and forever discharge Polk County from and against any claims for inverse condemnation, regulatory takings, U.S.C. Section 1983, or claims under Chapter 70, Florida Statutes, arising out of or resulting from the terms and conditions hereof. The Owner acknowledges and agrees that its agreement to this release is a material inducement to Polk County to enter into this Agreement. The Owner agrees that this release is to the specific causes of action listed and should not be deemed a release of any non-listed causes of action to which the Owner may be entitled.
- 3.12 Limitation of Liability.** IN NO EVENT SHALL POLK COUNTY BE LIABLE TO THE OWNER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL,

EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY POLK COUNTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representatives, have executed this Agreement on the day(s) and year set forth below.

(SEAL)

BOARD OF COUNTY COMMISSIONERS OF
POLK COUNTY

ATTEST:

Stacy M. Butterfield, County Clerk

By: _____
T.R. Wilson, Chairperson

By: _____

Date: _____

Signature Blocks Continues on Next Page

OWNER

WITNESSES

[Signature]
Witness
Print Name Sunil Shah

[Signature]
Witness
Print Name Mita Shah

POLK PETRO, LLC, a Florida
limited liability company

By: [Signature]

Print Name: AKASH SHAH

Title: MGR

Date: 8/1/2025

State of Florida
County of Polk

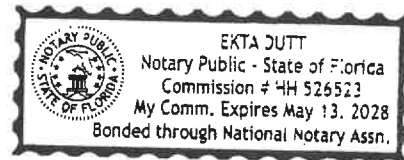
The foregoing instrument was acknowledged before me this 1st day of August, 2025, by Akash Shah, as MGR, on behalf of said company, by means of ☒ physical presence or ☐ online notarization() who is personally known to me or ☒ who has produced a driver's license as identification.

(AFFIX NOTARIAL SEAL)

My Commission Expiration

and Commission Number:

[Signature]
Notary Public – State of Florida
Print Name: Ekta Dutt



List of Exhibits

Exhibit A – Legal Description

Exhibit B – Site Plan

Exhibit C – Estimated PM Peak Hour Trips

Exhibit D – Proportionate Share Cost

Exhibit E – Impact Fee Credit Reimbursement

EXHIBIT "A"

LEGAL DESCRIPTION

A parcel of land being a portion of Lots 1, 2 and 3 of TOTTEN AND MADDUX'S SUBDIVISION, as recorded in Plat Book 1 A, Page 23A, Public Records of Polk County, Florida; and a portion of the Southwest 1/4 of Section 33, Township 27 South, Range 27 East, Polk County, Florida, being further described as follows:

Commence at the Southeast corner of the Southwest 1/4 of said Section 33; thence S 89 degrees 43 minutes 14 seconds W, along the South line of said Southwest 1/4, a distance of 995.15 feet to the Southerly extension of the West line of Lot 3 of said Totten and Maddux's Subdivision; thence leaving the South line of said Southwest 1/4 run N 00 degrees 13 minutes 35 seconds W along the West line of said Lot 3 and its Southerly extension, a distance of 40.00 feet to the existing right of way line of County Road 544, formerly State Road 544 as depicted on Florida Department of Transportation right of way map Section 16841-2601, said point also being the point of beginning; thence continue N 00 degrees 13 minutes 35 seconds W along the West line of said Lot 3, a distance of 46621 feet; thence leaving said West line run N 89 degrees 34 minutes 14 seconds E, a distance of 688.52 feet; thence S 00 degrees 25 minutes 46 seconds E, a distance of 468.01 feet to the North right of way line of said County Road 544; thence S 89 degrees 43 minutes 14 seconds W along said North right of way line, a distance of 690.17 feet to the point of beginning.

EXHIBIT "B" SITE PLAN

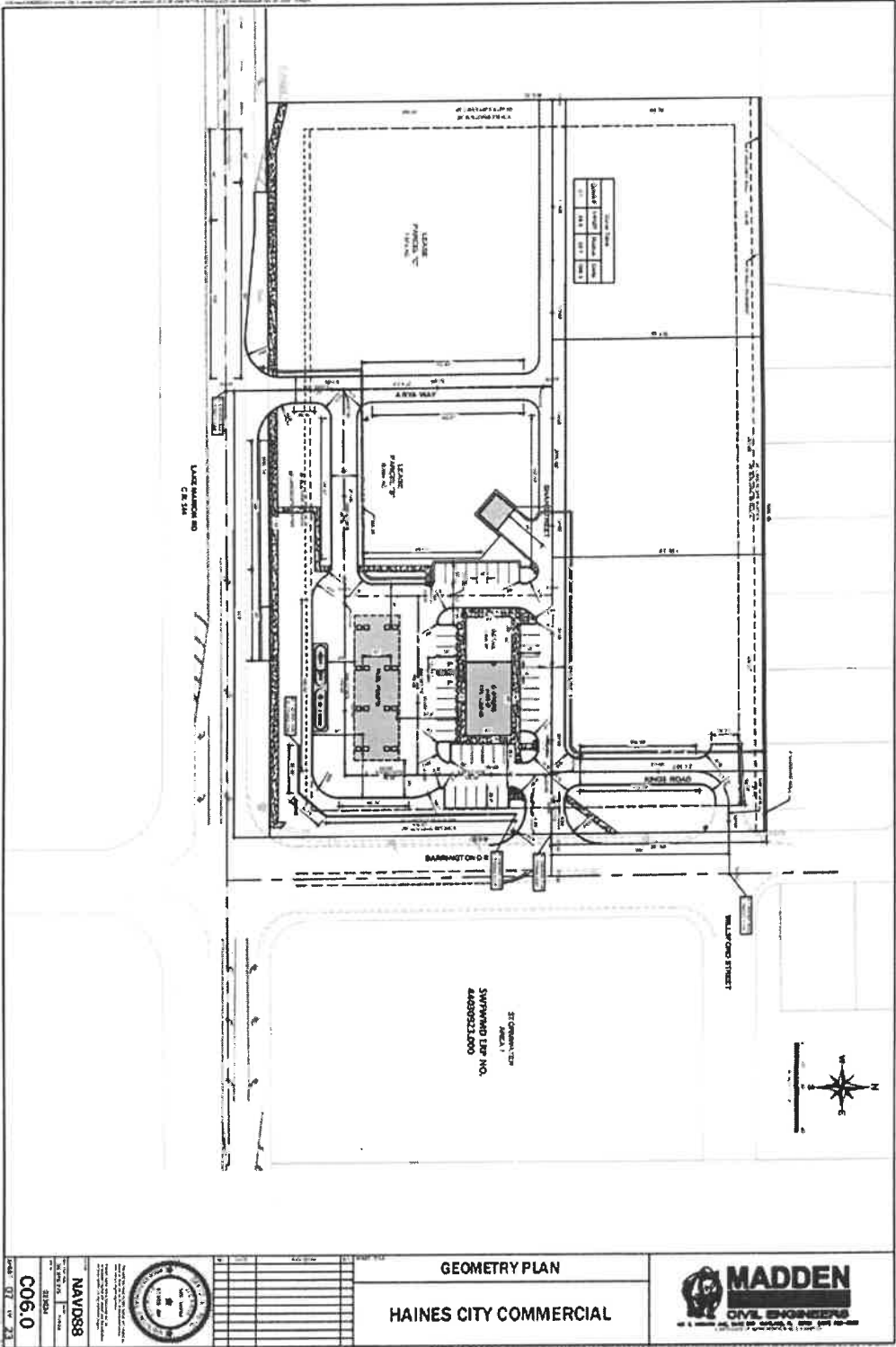


EXHIBIT "C"

ESTIMATED PM PEAK HOUR TRIPS

Table 9: Buildout (2026) Intersection Conditions (PM Peak Hour)

Buildout Condition - 2026						
Intersection	Control Type	Approach	PM Peak Hour			Max V/C Ratio
			Max Level of Service	Max V/C Movement		
1	CR 544 & SR 17	Signalized	EB	D	EBT	0.95
			WB	F	WBT	1.15
			NB	D	NBT/R	0.90
			SB	C	SBL	0.76
			Overall	D (54.7s)	WBT	1.15
2	CR 544 & Detour Rd	Unsignalized (TWSC)	EB (L)	-	-	-
			WB (L)	B	WBL	0.15
			NB	F	NBL/R	1.95
			SB	-	-	-
			Overall	-	NBL/R	1.95
3	CR 544 & S 30th St	Unsignalized (AWSC)	EB	C	EBL	0.94
			WB	C	WBT	0.77
			NB	B	NBL/T/R	0.02
			SB	C	SBR	0.59
			Overall	C (25.1s)	EBL	0.94
4	CR 544 & Barrington Dr	Unsignalized (TWSC)	EB (L)	A	EBL	0.07
			WB (L)	A	WBL	0.00
			NB	D	NBL/T/R	0.10
			SB	F	SBL/T	1.38
			Overall	-	SBL/T	1.38
5	CR 544 & Driveway 1	Unsignalized (TWSC)	EB(L)	A	EBL	0.08
			WB(L)	-	-	-
			NB	-	-	-
			SB	B	SBR	0.15
			Overall	-	SBR	0.15
6	Barrington Dr & Driveway 2	Unsignalized (TWSC)	EB	A	EBL/R	0.18
			WB	-	-	-
			NB (L)	A	NBL	0.09
			SB (L)	-	-	-
			Overall	-	EBL/R	0.18
7	Barrington Dr & Driveway 3	Unsignalized (TWSC)	EB	A	EBL/R	0.09
			WB	-	-	-
			NB (L)	A	NBL	0.04
			SB (L)	-	-	-
			Overall	-	EBL/R	0.09

EXHIBIT "D"

PROPORTIONATE SHARE COST

Table 15: Intersection Proportionate Fair Share Calculation

	Improvement	Improvement Cost ¹	Existing Capacity ²	Improved Capacity ²	Project Trips	Proportionate Share % ³	Proportionate Share (\$)
CR 544 & Delour Road	Convert from TWSC to Signal	\$414,279.00	1,084	2,486	425	30.31%	\$125,567.96
CR 544 & Barrington Drive	Convert from TWSC to Signal	\$414,279.00	2,641	3,984	506	37.68%	\$156,100.33
CR 544 & SR 17	Signal Timing Adjustments	\$5,000.00	-	-	-	100.00%	\$5,000.00
TOTAL							\$286,668.29
Convenience Store PS Total							\$143,334.14

Notes:

1. Construction costs per previously completed studies in Haines City.
2. Intersection Capacity determined from Synchro v11 analysis completed as part of the TIA.
3. Proportionate share based on project trips using the intersection. Prop. Share % = Project Trips / (Improved Capacity - Existing Capacity) x 100
4. Proportionate share for the convenience store impacts have been calculated to be 50% of the identified total costs.

EXHIBIT "E"

IMPACT FEE CREDIT REIMBURSEMENT

Impact Fee Credit Reimbursement Requirements

1. To submit a request for impact fee credits as outlined in the agreement with the County, the developer must first complete all transportation improvements as depicted and described in the agreement; or provide documentation that required proportionate share payment has been made and received by the County as described in the agreement.
2. The developer shall then submit a request for reimbursement of impact fee credits to the County. This request shall include backup documentation of the actual construction costs, as evidenced by invoices paid and other appropriate supporting documentation deemed sufficient by the County. Only expenditures on qualifying transportation improvements are eligible for impact fee credits as described in the agreement and Section 4.04B of the Impact Fee Ordinance.
3. Once the review of the backup documentation is complete, the request for reimbursement shall be forwarded to the Fiscal Manager of the Office of Planning & Development to begin the issuance of impact fee credits.
4. Polk County prepares the impact fee credits as individual vouchers applied on a per-lot basis for future development. The value of each impact fee credit voucher is based on the County transportation impact fees assessed on each lot at the time of request.
5. Impact fee credits granted to the developer pursuant to the agreement are assignable and transferable in accordance with section 163.31801(10), Florida Statutes.
6. Once impact fee credits have been issued, the developer must assign a person to sign each voucher as the impact fee credit holder.
7. Impact fee credit vouchers must be provided to the appropriate jurisdiction prior to the payment of impact fees on a lot. If impact fees are paid prior to the submittal of the impact fee credit voucher, the developer may not request a refund of paid Impact fees.
8. The jurisdiction must be provided with the original voucher; a copy will not be honored. Each voucher has a stamp and raised seal from the County to confirm its validity.
9. Each impact fee credit voucher has a cash value; thus, it is the responsibility of the developer to maintain their vouchers. The County shall not replace lost impact fee credit vouchers. If a permit is voided the developer may request a replacement voucher only if the County is provided with the voided impact fee credit voucher.

Questions regarding impact fee credits can be directed to the Fiscal Manager of the Office of Planning & Development by calling (863) 534-6460.