

**THE TOMOKA INDEPENDENT LIVING
TRANSPORTATION IMPROVEMENTS COST ALLOCATION AGREEMENT**

THIS AGREEMENT is entered into by and between the following entities: **THP, LLC**, a Florida limited liability company, (“Owner”), the record title property owner mailing address: 529 North Magnolia Avenue, Orlando, FL 32801, and **BPS Independent Living, LLC** (“Developer”) a Florida limited liability company, (Collectively the “Applicant”) and **The City of Daytona Beach**, a Florida municipal corporation (“City”), mailing address: 301 S. Ridgewood Ave., Daytona Beach, FL 32114.

WHEREAS, the Property has undergone site plan review by the City to authorize the construction of Tomoka Independent Living on the Property located west of Tomoka Farms Road and north of First Baptist Parkway at 1500 Tomoka Farms Road; and

WHEREAS, in connection with the site plan review, the Applicant has performed a traffic impact analysis (“TIA”) of the existing road network in the vicinity of the Project in order to determine the availability of roadway capacity to serve the Project; and

WHEREAS, the results of the TIA indicate that insufficient roadway capacity exists in the vicinity of the Property without the anticipated traffic impacts of the Project; and

WHEREAS, Florida Statute § 163.3180(16) (2018) authorizes payment of proportionate fair share mitigation funds as an alternative to demonstrating traffic concurrency in certain circumstances, but specifically exempts backlogged failures from the requirement for proportionate share payment; and

WHEREAS, through the Tomoka Independent Living Transportation Impact Analysis, certain transportation impacts were identified in the area of the development (“Impact Area”) and payment for such site related improvements are set forth in this Agreement; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and with the intent to be legally bound and to bind their successors and assigns, the Applicant and City do hereby agree as follows:

1. The recitals set forth above are true and correct, form a material part of this Agreement, and are incorporated herein by reference.
2. Roadway Improvements. Applicant shall take the following actions to address transportation improvements identified by the City as a result of the impacts by Tomoka Independent Living:
 - (a) Proportionate Share. For purposes of this Agreement, the amount of \$3,505.44, as further detailed in Exhibit A, and referred to herein as "Proportionate Share," shall be paid to the County prior to the City’s issuance of a Certificate of Occupancy (“CO”) for Tomoka Independent Living. Once payment is made, the Applicant agrees to waive the right to request a return of the Proportionate Share.

(b) The Parties intend that the County will apply the Proportionate Share for the purpose of installing improvements in the Impact Area (“Improvement”).

3. Applicant Acknowledgement/Waiver. Applicant acknowledges that the payment of the Proportionate Share does not release the Applicant from payment of any other City development or building related fees including impact fees, or such other City fees as may be prescribed by law. Applicant specifically waives Applicant’s right to claim any and all City road impact fee credits unless otherwise provided herein. Applicant acknowledges that it has no right to direct or claim a right to direct the application of payment to making any specific public roadway infrastructure improvements. In the event the Applicant is legally entitled to City impact fee credits and the amount due for City impact fees exceeds the amount of credits, Applicant shall pay the City the balance due to satisfy the full amount of City impact fees.
4. Timing. The parties agree that construction of the Williamson Improvement shall be constructed as determined by the County of Volusia.
5. Effective Date. The effective date of this Agreement shall be the last date upon which all parties hereto cause this Agreement to be executed as indicated below their respective signatures.
6. Binding Nature of this Agreement. This Agreement shall inure to the benefit of the parties hereto and the subject property, and shall be binding upon any person, firm, or corporation that may become a subsequent owner, successor in interest or assign, directly or indirectly, of the subject property or any portion thereof.
7. Venue. In the event of any claim, action, litigation or proceeding under this Agreement, venue shall be in Volusia County, State of Florida.
8. Recordation. This Agreement will be recorded in the Public Records of Volusia County, Florida, at Applicant’s expense.
9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The electronic (i.e. facsimile or email) transmittal of an executed copy of this Agreement shall be deemed valid as if an original signature was delivered.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on behalf of the respective entities, their successors and assigns.

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SIGNATURE PAGES FOLLOW

Signed, sealed and delivered in the presence of:

THE CITY OF DAYTONA BEACH,
FLORIDA, a Florida municipal corporation

Witness 1

By: _____
Derrick L. Henry, Mayor

Print Name of Witness 1

Attest

Witness 2

By: _____
Letitia LaMagna, City Clerk

Print Name of Witness 2

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by Derrick L. Henry and Letitia LaMagna, Mayor and City Clerk, respectively, of The City of Daytona Beach, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public
Commission No: _____

Approved as to form by:

Robert Jagger, City Attorney

Date: _____

Signed, sealed and delivered in the presence of:

THP, LLC
a, Florida limited liability company

Witness 1

By _____

Name:

Title:

Print Name of Witness 1

Date: _____

Witness 2

[Corporate Seal]

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 201_, by _____ as _____ of _____, referred to in this agreement as "Owner". He or she is personally known to me or produced as identification and did not take an oath.

Signed, sealed and delivered in the presence of:

BPS Independent Living, LLC,
a, Florida limited liability company

Witness 1

By _____

Name:

Title:

Print Name of Witness 1

Date: _____

Witness 2

[Corporate Seal]

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 201_, by _____ as _____ of _____, referred to in this agreement as "Developer". He or she is personally known to me or produced as identification and did not take an oath.

LTG - Tomoka Farms Road ILF Proportionate Share Determination (including PE-CEI at 1.25)

SEGMENTS			FDOT Cost per Lane Mile ¹	Estimated Lane Length (mils) ²	Improvement	Segment Improvement Costs	Additional Costs	Cost + Preliminary Engineering & CEI (25%)	Project Volume	Unimproved Lane Group Capacity	Improved Lane Capacity*	Project Share	Proportionate Share
Location	From	To											
Williamson Blvd	Willow Run Blvd	Madeline Ave	\$2,830,080.51	1.50	Widen 2 to 4 Lanes (Rural)	\$4,245,120.77	\$0.00	\$5,306,400.96	0	1,540	3,410	0.00%	\$0.00
	Madeline Ave	Beville Road	\$2,830,080.51	1.85	Widen 2 to 4 Lanes (Rural)	\$5,244,139.19	\$0.00	\$6,555,173.98	1	1,540	3,410	0.05%	\$3,505.44
LPGA Blvd	Welshinger-Butler Cir	Tournament Dr	\$2,830,080.51	1.50	Widen 2 to 4 Lanes (Rural) - estimated future improvement	\$4,528,128.82	\$0.00	\$5,660,161.02	0	2,420	3,410	0.00%	\$0.00
Segment PFS SubTotal:												\$3,505.44	

OFF SITE INTERSECTIONS	FDOT Cost per Lane Mile ¹	Estimated Lane Length (feet) ²	Improvement	Intersection Improvement Costs	Cost + Preliminary Engineering & CEI	Project Volume	Total Build-Out Volume (Existing + Growth + Vested + Project Trips)	Project Share	Proportionate Share
						(a)	(b)	(c)=a/b	
N/A	-	-	-	-	-	0	0	0.00%	\$0.00
Offsite Intersection PFS SubTotal:									\$0.00

PFS GRAND TOTAL:										\$3,505.44
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¹ Extension cost from the FDOT LRE Cost-per-mile
² Turn lanes are measured in feet, based on 300 feet
 *Improved Capacity based on comparable roadway on VC AADT Table