

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact: See Comment Section B.

| Fiscal Years | 2008 | 2009 | 2010 | 2011 | 2012 |
|--------------------------|---------------|------------|------------|------------|------------|
| Capital Expenditures | \$ -0- | -0- | -0- | -0- | -0- |
| Operating Costs | -0- | -0- | -0- | -0- | -0- |
| External Revenues | -0- | -0- | -0- | -0- | -0- |
| Program Income (County) | -0- | -0- | -0- | -0- | -0- |
| In-Kind Match (County) | -0- | -0- | -0- | -0- | -0- |
| NET FISCAL IMPACT | \$ -0- | -0- | -0- | -0- | -0- |

See comments below

ADDITIONAL FTE POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____ No _____
 Budget Acct No.: Fund _____ Dept. _____ Unit _____ Object _____
 Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

* This item has no immediate fiscal impact.

The dedication of the required right of way items may or may not carry some value but this is not determinable at this time. The amount of the impact fee credits will be calculated at the conclusion of the construction when the actual cost becomes known.

C. Departmental Fiscal Review: R.D. Ward 6/5/08

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Shirley White 6.20.08
 OFMB
 SN 6/19/08 CN 6/17/08

James J. Jacoby 6/23/08
 Contract Dev. and Control
 James 6/23/08
 This Contract complies with our contract review requirements.

B. Approved as to Form and Legal Sufficiency:
Marlene K. [Signature] 6/24/08
 Assistant County Attorney

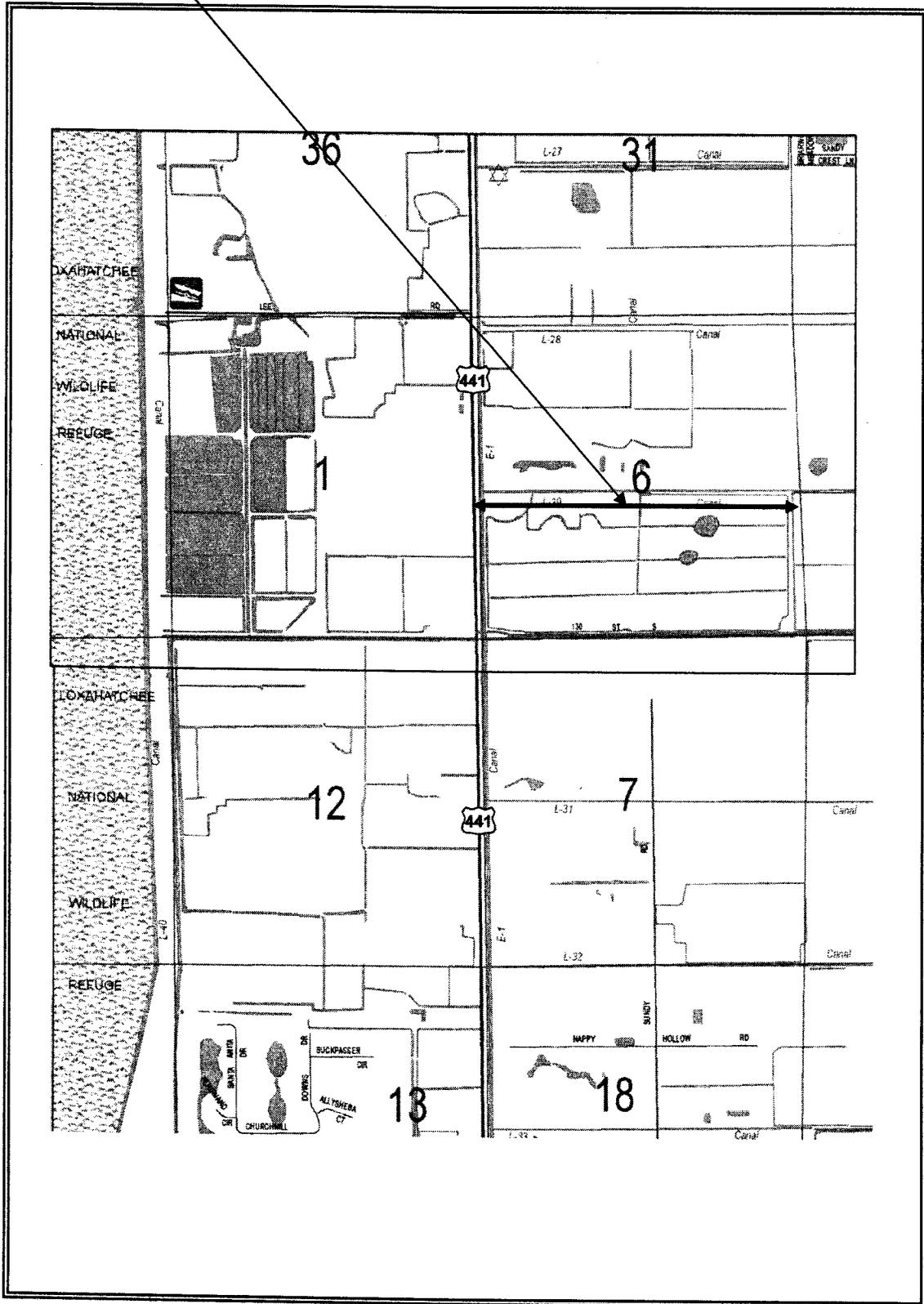
C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

LOCATION MAP

FLAVOR PICT ROAD - SR 7 TO LYONS ROAD



FLAVOR PICT ROAD CONSTRUCTION AGREEMENT

This Agreement made and entered into this _____ day of _____ 2008, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, hereinafter called "**COUNTY**", and **KENCO ANSCA DELRAY HOLDINGS, LLC**, a Florida limited liability company, hereinafter called "**DEVELOPER**" whose address for the purposes hereof is 7593 Boynton Beach Boulevard, Suite 220, Boynton Beach, Florida 33437. The **COUNTY** and **DEVELOPER** are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, COUNTY intends to construct Lyons Road from just north of Atlantic Avenue to north of the L-28 Canal (the "Lyons Road Project"); and

WHEREAS, DEVELOPER is the developer of Delray Holdings 282 PUD a single family home project (the "Community") located between the Lyons Road Project and SR 7 along the future extension of Flavor Pict Road and intends to construct a new entrance on to Flavor Pict Road (the "Community's Entrance Road"); and

WHEREAS, DEVELOPER is required to obtain construction permit approval and construct Flavor Pict Road as a 2-lane facility from SR 7 to the Community's Entrance Road pursuant to the Delray Holdings 282 PUD Zoning Conditions E2 and E3 (Resolution No. R-2005-1135); and

WHEREAS, DEVELOPER is further required to fund the construction plans and construction of Flavor Pict Road as a 2-lane facility from Lyons Road to the Community's Entrance Road prior to August 15, 2008 pursuant to the Delray Holdings 282 PUD Zoning Condition E6 (Resolution No. R-2005-1135); and

WHEREAS, DEVELOPER desires to obtain construction permit approval, and construct Flavor Pict Road as a 2-lane facility from SR 7 to Lyons Road (the Flavor Pict Road Project, as defined in Section 2.1) at one time; and

WHEREAS, DEVELOPER is required to convey to **COUNTY** by warranty deed, road right of way 55 feet from centerline of Lyons Road; road right of way of 120 feet for Flavor Pict Road; sufficient right of way to provide an expanded intersection at Flavor Pict Road and Lyons Road; and right of way for the construction of a right turn lane at the Community's Entrance Road prior to July 1, 2008 pursuant to the Delray Holdings 282 PUD Zoning Conditions E10.a, 10.b, E10.c, and E11 (Resolution No. R-2005-1135); and

WHEREAS, DEVELOPER is further required to convey to **COUNTY** a temporary roadway construction easement along Lyons Road and Flavor Pict Road and sufficient road drainage easement(s) throughout the Community's internal drainage system prior to July 1, 2008 pursuant to the Delray Holdings 282 PUD Zoning Conditions E13 and E14 (Resolution No. R-2005-1135); and

WHEREAS, the Parties now seek to enter into and execute this Agreement to: (1) reduce to writing and memorialize their agreements and understandings in connection with the Flavor Pict Road Project; (2) accelerate the design, permitting and construction of the Flavor Pict Road Project; and (3) identify the road impact fee credits generated by the Flavor Pict Road Project.

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

Section 2: Flavor Pict Road obligations

2.1 **DEVELOPER** shall be obligated to design and obtain construction permit approval for the Flavor Pict Road Project by November 30, 2008, in accordance with the plans and specifications approved by the **COUNTY** (as amended from time to time, the "Plans and Specifications"). **DEVELOPER** shall bid, and complete construction of the Flavor Pict Road Project prior to issuance of the first Certificate of Occupancy. The term "Flavor Pict Road Project" shall mean the design, permitting, bidding, and construction for:

- (a) Flavor Pict Road as a two (2) lane road from SR 7 to the Community's Entrance Road;
- (b) Flavor Pict Road as a two (2) lane road from the Community's Entrance Road to Lyons Road;
- (c) A right turn-lane west approach on Flavor Pict Road at the Community's Entrance Road;
- (d) A left turn-lane east approach on Flavor Pict Road at the Community's Entrance Road;
- (e) A left turn-lane north approach on S.R. 7 at Flavor Pict Road;
- (f) A right turn-lane south approach on S.R. 7 at Flavor Pict Road;
- (g) A left turn-lane east approach on Flavor Pict Road at S.R. 7;
- (h) A second left turn-lane east approach on Flavor Pict Road at S.R. 7;
- (i) A right turn-lane east approach on Flavor Pict Road at S.R. 7;
- (j) A bridge across the LWDD E-1 Canal to accommodate an eastbound through lane and the lanes in items 2.1 (g) through (i);
- (k) A left turn-lane west approach on Flavor Pict Road at Lyons Road;

together with all necessary drainage and retention areas for storm water runoff, and easements (including, without limitation, drainage easements, temporary construction easements, permanent construction easements and embankment easements) in connection with items 2.1 (a) through 2.1 (k) above. Construction of the Flavor Pict Road Project shall not be phased.

2.2 Pursuant to Article 13 of the Unified Land Development Code, the **DEVELOPER** shall be entitled to Road Impact Fee Credits in an amount equal to the actual cost of design and construction of the Flavor Pict Road Project items 2.1 (b), 2.1 (h), and 2.1 (k). Subject to Article 13 of the Unified Land Development Code (as the same may be amended from time to time), and except as otherwise provided in this paragraph, all Road Impact Fee Credits shall not be subject to forfeiture, rescission, reduction or diminishment, and the **COUNTY** shall not have the right or power to rescind, redeem, reduce or diminish all or any portion of the Road Impact Fee Credits. This Section shall survive the completion of the Flavor Pict Road Project and acceptance of the same by the **COUNTY**.

2.3 **COUNTY** hereby acknowledges and agrees that upon its execution of this Agreement, Condition of Approval E2 (Resolution No. R-2005-1135) shall be deemed satisfied, however, it remains the Developer's sole risk and responsibility to complete construction of Flavor Pict Road from SR 7 to the Community's Entrance Road prior to issuance of the first Certificate of Occupancy; and further, the **DEVELOPER** shall obtain construction permit approval from the **COUNTY** and shall commence construction of the Flavor Pict Road Project prior to recordation of the Community's second plat.

2.4 **DEVELOPER** shall be responsible for the performance of all work, services and activities in connection with the Flavor Pict Road Project. **DEVELOPER** shall require all of its contractors providing any work on the Flavor Pict Road Project to maintain: (a) workers compensation insurance in accordance with Florida Law; (b) commercial general liability insurance naming the **COUNTY** as an additional insured party with minimum limits of One Million and No/100 (\$1,000,000) Dollars per occurrence and Three Million and No/100 (\$3,000,000) Dollars in the aggregate; (c) automobile insurance with minimum limits of One Million and 1/10/100 (\$1,000,000) Dollars per occurrence combined single limits; and (d) to post a payment bond and a performance bond in favor of the **COUNTY** and **DEVELOPER** for 110% of the Contract Amount.

- 2.5 The **DEVELOPER** represents, warrants, covenants and agrees to and with the **COUNTY** that the following are true and correct as of the date of this Agreement and shall be true until the completion of the Flavor Pict Road Project that: (a) **DEVELOPER** is a limited liability company duly formed and validly existing in the State of Florida and has the full right and lawful authority to enter into this Agreement; and (b) the execution, delivery and performance of this Agreement by the **DEVELOPER** has been duly authorized and no consent of any other person or entity to such execution, delivery and performance is required to render this Agreement a valid and binding instrument enforceable against the **DEVELOPER** in accordance with its terms and conditions.
- 2.6 The **COUNTY** represents, warrants and covenants with the **DEVELOPER** that the following are true and correct as of the date of this Agreement and shall be true and correct until the completion of the Flavor Pict Road Project: (a) the **COUNTY** is a corporate body politic duly formed and validly existing in the State of Florida and has the full right and lawful authority to enter into this Agreement; (b) the execution, delivery and performance of this Agreement by the **COUNTY** has been duly authorized and no consent of any other person or entity to such execution, delivery and performance is required to render this Agreement a valid and binding instrument enforceable against the **COUNTY** in accordance with its terms and conditions; and (c) the **COUNTY** shall issue the Road Impact Fee Credits to the **DEVELOPER** upon completion of construction of the Flavor Pict Road Project.

Section 3: 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. This Agreement shall not be construed against the party who drafted it as all parties have consulted experts and attorneys of their choice. If any litigation should be brought in connection with this Agreement, venue shall lie in Palm Beach County, Florida.

Section 4: Attorney's 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, covenants and provisions of this agreement, each party in such litigation shall bear its own cost and expenses incurred and expended in connection therewith including, but not limited to, reasonable attorney's fees and court costs through all trial and appellate levels.

Section 5: Agreement

This Agreement contains the entire agreement between the parties. No right, duties or obligations of the parties shall be created unless specifically set forth in this Agreement and will not be binding and valid unless in writing and executed and approved by both parties or their successors or assigns.

Section 6: Amendment

No modification or amendment of this Agreement shall be of any legal force or effect unless in writing and executed by all parties.

Section 7: Binding Agreement

This Agreement shall inure to the benefit of and shall bind the parties, heir successors and assigns.

Section 8: Assignment

This Agreement may not be assigned without the prior written consent of the other party (such consent not being unreasonably withheld) and all of the terms and conditions set for herein shall inure to the benefit of and shall bind all assignees.

Section 9: 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 10: Notices

Any notice, request, demand, instruction or other communication to be given to either party hereunder shall be in writing and shall be hand-delivered, telecopied, 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: Omelio Fernandez, P.E.
Director
Engineering & Public Works Operations
2300 North Jog Road, 3rd Floor
West Palm Beach, FL 33411

As to COUNTY's
Legal Representative: Marlene R. Everitte, Esquire
Palm Beach County Attorney's Office
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401

As to DEVELOPER: Charles Scardina
Kenco-Ansca Delray Holdings, LLC
7593 Boynton Beach Boulevard, Suite 220
Boynton Beach, FL 33437

As to DEVELOPER: Richard Finkelstein
Kenco-Ansca Delray Holdings, LLC
1000 Clint Moore Road, Suite 110
Boca Raton, FL 33487

Section 11: Effective Date

This Agreement shall be effective when executed by all parties and approved by the Board of County Commissioners of Palm Beach County, Florida.

Section 12: 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.

Section 13: State Law

This Agreement will be interpreted and enforced in accordance with the internal laws of the State of Florida without giving effect to the principles of conflicts of laws. The Parties hereby irrevocably and unconditionally stipulate and agree that the Federal Courts in the State of Florida or the Circuit Court of the State of Florida with jurisdiction over Palm Beach County, shall have exclusive jurisdiction to hear and finally determine any dispute, claim, or controversy or action arising out of or connected (directly or indirectly) with this Agreement.

Section 14: No Third-Party Beneficiaries

This Agreement is entered into solely for the benefit of **DEVELOPER** and **COUNTY**. No other person or entity is intended to be a third-party beneficiary of this Agreement.

Section 15: Divisibility

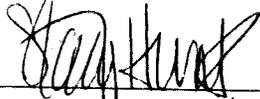
If any article, section or exhibit of this Agreement is deemed illegal or unlawful, the same will be struck from this Agreement and all other articles, sections and exhibits will remain valid and in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

DEVELOPER

WITNESSES:

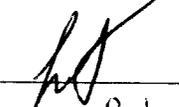


Print: Stacy Hunt



Print: M. ELAINE BROWNING

KENCO-ANSCA DELRAY HOLDINGS, LLC
By: Kenco Delray Holdings, Inc,
its Manager

By: 

Print: Richard Finkelstein

Its: PRESIDENT

PALM BEACH COUNTY

PALM BEACH COUNTY, FLORIDA,
a Political Subdivision of the State of Florida

ATTEST:

BY ITS BOARD OF COUNTY
COMMISSIONERS

SHARON R. BOCK,
CLERK & COMPTROLLER

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
Assistant County Attorney

Approved: As To Terms And Conditions

By: 