

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	<u>\$350,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(\$200,000)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>\$150,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

ADDITIONAL FTE
POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____ No x _____

Budget Account No:

Fund 3500 Dept 361 Unit 1502 RevSrc/Object 6693/5303

Recommended Sources of Funds/Summary of Fiscal Impact:

Transportation Improvement Fund
Traffic Signals - Mast Arms - FY 2012

Estimated Construction Costs	\$350,000.00
Publix Funding	< 60,000.00>
Chick-fil-A Funding	<\$140,000.00>
Fiscal Impact	\$150,000.00

C. Departmental Fiscal Review: atwillhite

III. REVIEW COMMENTS

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

[Signature] 8/14/2012
OFMB
8/14/12 A 1/13/12

Barbara Wheeler 8-21-12
for Contract Dev. and Control

County to review/approve
design plans

**B. Approved as to Form
and Legal Sufficiency:**

[Signature]
Assistant County Attorney

C. Other Department Review:

Department Director

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

TWP 44

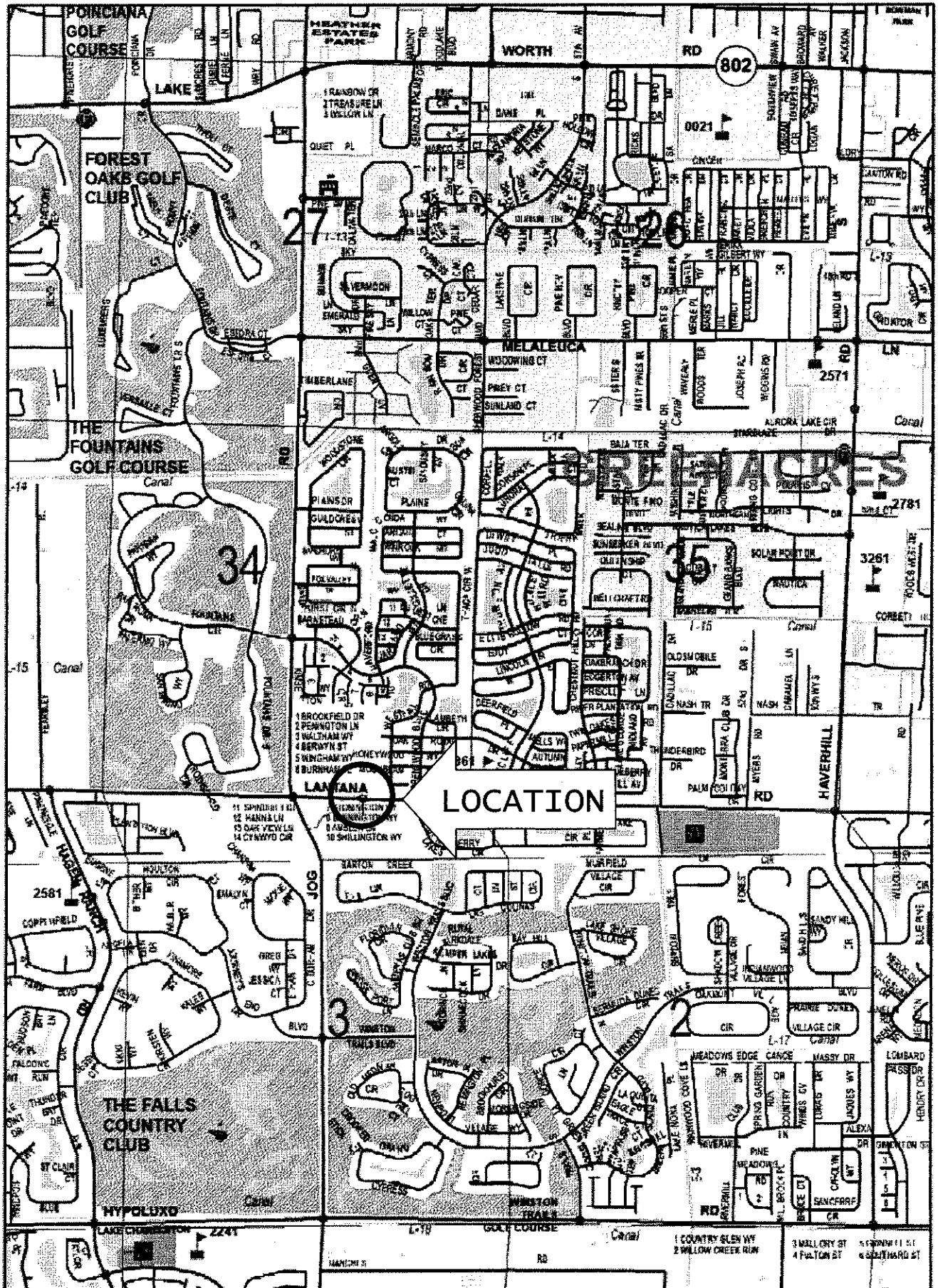
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TWP 44

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TWP 45

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LOCATION SKETCH

**AN AGREEMENT BETWEEN PALM BEACH COUNTY, FL AND PUBLIX SUPER MARKETS, INC.
FOR JOINT PARTICIPATION AND PROJECT FUNDING OF A TRAFFIC SIGNAL AT LANTANA
ROAD AND LEE SQUARE SHOPPING CENTER**

This Agreement made and entered into this _____ day of _____, 2012, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, hereinafter called "COUNTY", and **PUBLIX SUPER MARKETS, INC.**, a Florida corporation, hereinafter called "DEVELOPER". The COUNTY and DEVELOPER are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, COUNTY intends to construct a traffic signal on Lantana Road at the eastern driveway to the Lee Square shopping center / central driveway to the Pinewood Square shopping center located approximately 1,000 feet east of Jog Road and associated median modifications on Lantana Road, hereinafter called "IMPROVEMENTS"; and

WHEREAS, DEVELOPER is a lease tenant of Lee Square, a commercial shopping center located in the northeast quadrant of Lantana Road and Jog Road; and

WHEREAS, DEVELOPER has agreed to employ IBI Group Inc., herein after called "CONSULTANT", at DEVELOPER's expense, to accomplish the design, obtain all necessary permits and provide sketch and legal description for any necessary right-of-way or easements for the IMPROVEMENTS (hereinafter the "CONSULTANT'S WORK"); and

WHEREAS, DEVELOPER has agreed to make a financial contribution to COUNTY in the amount of one hundred thousand dollars and zero cents (\$100,000.00), hereinafter called the "CONTRIBUTION", consisting of payment for the CONSULTANT'S WORK, and the remainder to be paid directly to COUNTY toward construction of the IMPROVEMENTS, hereinafter called "REMAINING CONTRIBUTION"; and

WHEREAS, COUNTY is agreeable to completing construction of the IMPROVEMENTS upon receipt of the REMAINING CONTRIBUTION together with the CONSULTANT'S WORK; and

WHEREAS, the Parties now seek to enter into and execute this Agreement to reduce to writing and memorialize their agreements and understandings in connection with the design, funding and construction of the IMPROVEMENTS.

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 1: Recitals

The above recitations are true and correct and are incorporated herein by this reference.

Section 2: Party Obligations

2.1 DEVELOPER shall be obligated to employ CONSULTANT to accomplish the CONSULTANT'S WORK for any necessary right-of-way or easements for the IMPROVEMENTS. The term IMPROVEMENTS shall include the design and permitting for:

(a) a traffic signal at the intersection of Lantana Road and the eastern driveway to the Lee Square shopping center / central driveway to the Pinewood Square shopping center located approximately 1,000 feet east of Jog Road;

- (b) the extension of the existing single west approach left turn lane on Lantana Road at the above intersection to a minimum length of 280 feet plus a 50-foot taper or as approved by the County Engineer;
- (c) the closure of the existing directional median opening and associated east approach left turn lane on Lantana Road approximately 500 feet east of Jog Road;
- (d) the extension of the existing dual east approach left turn lanes on Lantana Road at Jog Road to a minimum length of 450 feet plus a 100-foot taper or as approved by the County Engineer;

as more particularly shown on the attached and incorporated Exhibit "A", together with the provision of sketch and legal description for all necessary easements (including, without limitation, drainage easements, temporary construction easements, permanent construction easements and embankment easements, if needed) in connection with items 2.1 (a) through 2.1 (d) above.

- 2.2 Promptly upon obtaining all of the permits for the IMPROVEMENTS, DEVELOPER shall assign to COUNTY all right, title and interest in and to such permits, and upon such assignment, only the COUNTY shall have ownership rights in and to the same. DEVELOPER expressly disclaims any and all warranties whether express or implied regarding the IMPROVEMENTS including without limitation the permits, design, plans and specifications; provided, however upon delivery of the plans DEVELOPER shall assign any warranties it may have received from CONSULTANT to COUNTY.
- 2.3 Simultaneous with delivery of the permits to COUNTY, DEVELOPER shall deliver the design plans and specifications and REMAINING CONTRIBUTION to COUNTY. The amount of the REMAINING CONTRIBUTION shall be calculated as follows:

$$\text{REMAINING CONTRIBUTION} = \$100,000 - \text{Actual Cost Paid to CONSULTANT}$$

The CONTRIBUTION is a not-to-exceed amount. Of the CONTRIBUTION, Actual Cost Paid to CONSULTANT may not exceed \$40,000 unless all PARTIES agree to a modified amount.

Notwithstanding anything herein to the contrary DEVELOPER's maximum liability to the County hereunder shall not exceed the amount of the CONTRIBUTION.

- 2.4 DEVELOPER shall deliver the CONSULTANT'S WORK and REMAINING CONTRIBUTION to COUNTY within six (6) months of the effective date of this Agreement. The failure of which shall, unless all Parties agree to extend such time and date, result in automatic termination of this Agreement at such time on such date and all Parties shall be released from any and all obligations, each to the other, under this Agreement.
- 2.5 COUNTY shall commence construction of IMPROVEMENTS within twelve (12) months of receipt of the CONSULTANT'S WORK and the REMAINING CONTRIBUTION. The failure of which shall, unless all Parties agree to extend such date, result in automatic termination of this Agreement and COUNTY shall promptly refund the REMAINING CONTRIBUTION to DEVELOPER. In case of such failure, DEVELOPER shall not be entitled to nor seek a refund for the Actual Cost Paid to CONSULTANT from COUNTY.

Section 3: 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 4: 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 5: 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 6: Binding Agreement

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

Section 7: 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 8: 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 9: 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: Dan Weisberg, P.E.
Director – Traffic Division
Engineering & Public Works Department
2300 North Jog Road, 3rd Floor
West Palm Beach, FL 33411

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

As to DEVELOPER: Publix Super Markets, Inc.
Corporate Office
ATTN: Director of Real Estate
3300 Publix Corporate Parkway
Lakeland, Florida 33811-3002

As to DEVELOPER's
Legal Representative: Publix Super Markets, Inc.
Corporate Office
ATTN: Managing Real Estate Attorney
3300 Publix Corporate Parkway
Lakeland, Florida 33811-3002

Section 10: 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 11: 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 12: Venue

This Agreement shall be construed and governed by the laws of the State of Florida and any and all legal action necessary to enforce the Agreement will be held in Palm Beach County, Florida.

Section 13: Joint Participation

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial constraint, be construed more severely against one of the parties than the other.

Section 14: No Third-Party Beneficiaries Created

This Agreement is made solely and specifically among and for the benefits of the parties hereto and no other person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

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.

Section 16: Office of the Inspector General

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 – 2-440, as may be amended. The Inspector General's authority includes but is not limited to, the power to review past, present, and proposed County contracts, transaction, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities related to this Agreement in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General, interfering with, or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440, punishable pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

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

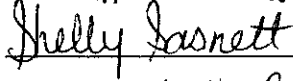
DEVELOPER

WITNESSES:

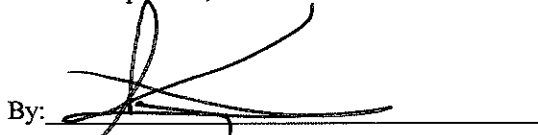
PUBLIX SUPER MARKETS, INC.,
a Florida corporation,



Print: Allison E. Nokes



Print Name: Shelly Sasnett

By: 

Print: Jeffrey Chamberlain

Its: Vice President, Real Estate

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

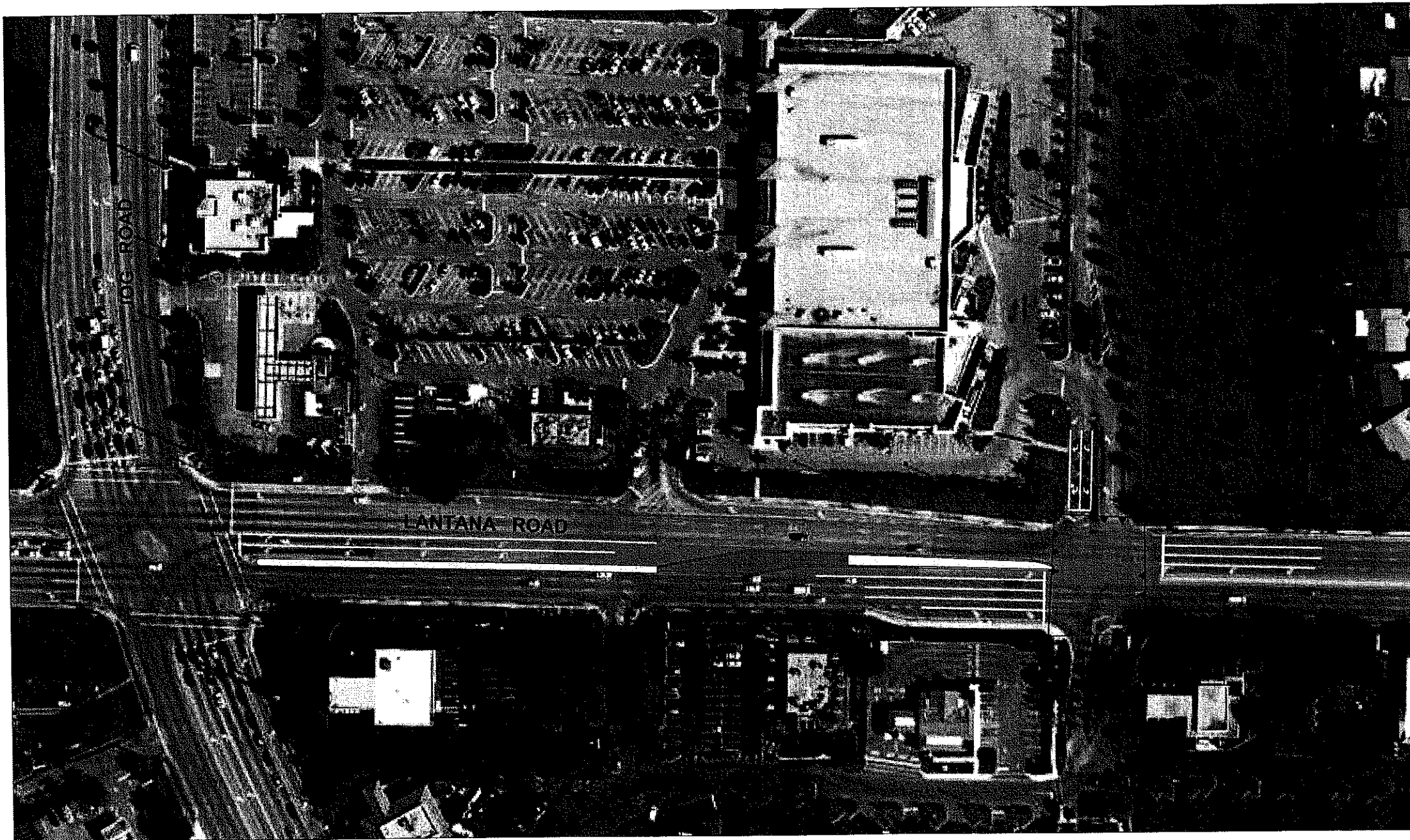
By: _____
~~Shelly Vana, Chairperson~~
Shelley

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: 
Assistant County Attorney

Approved: As To Terms And Conditions

By: 



IBI Group (Florida) Inc
2200 Park Central Blvd North - Suite 100
Pompano Beach Florida 33064
tel 954 974 2200
fax 954 973 2686

Publix - Left Turn Request
Proposed Conditions

EXHIBIT
A

**BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY
BUDGET Amendment**

FUND Transportation Improvement

BGRV 073012-567
BGEX 073012-1791

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF 07/30/12	REMAINING BALANCE
<u>REVENUES</u>								
<u>TRAFFIC SIGNALS – MAST ARMS FY 2012</u>								
3500-361-1502-6693	Developer Contributions	0	0	200,000	0	200,000		
TOTAL RECEIPTS & BALANCES		239,160,219	225,785,609	200,000	0	225,985,609		
<u>EXPENDITURES</u>								
<u>TRAFFIC SIGNALS – MAST ARMS FY 2012</u>								
3500-361-1502-5303	Materials Signal Section	600,000	200,000	200,000	0	400,000	0	400,000
TOTAL APPROPRIATIONS & EXPENDITURES		239,160,219	225,785,609	200,000	0	225,985,609		

	SIGNATURE	DATE	By Board of County Commissioners At Meeting of <u>09/11/12</u>
Engineering & Public Works	<u>Atwellhite</u>	<u>8/1/12</u>	
Administration / Budget Approval	_____	_____	_____
OFMB Department – Posted	_____	_____	Deputy Clerk to the Board of County Commissioners