

**THIS DOCUMENT PREPARED BY**

**AND RETURN TO:**

Roy K. Payne, Esq.  
Chief Assistant City Attorney  
City Attorney's Office  
City of Orlando  
400 S. Orange Avenue  
Orlando, Florida 32802  
(407) 246-2295

**PUBLIX SUPER MARKETS, INC.**  
**TRANSPORTATION IMPACT FEE CREDIT AGREEMENT**  
**AND AGREEMENT REGARDING STATE GRANT FUNDS**

**THIS TRANSPORTATION IMPACT FEE CREDIT AGREEMENT** (hereinafter the "Agreement") is entered into this \_\_\_\_ date of \_\_\_\_\_, 2012 by and between the **City of Orlando, Florida**, a municipal corporation organized and existing pursuant to the laws of the State of Florida with an address of 400 South Orange Avenue, Orlando, Florida 32801 (hereinafter "the City") and **Publix Super Markets, Inc.**, a Florida corporation with an address of 3300 Publix Corporate Parkway, Lakeland, FL, 33811 (hereinafter "the Developer or Publix").

**WITNESSETH:**

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**WHEREAS**, the Developer is the owner of real property in the City of Orlando, consisting of \_\_\_\_\_ acres and generally located north of State Road 528 (Beachline), east of Goldenrod Road and south of Lee Vista Boulevard, more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference (hereinafter the "Property"); and

**WHEREAS**, Developer intends to develop the Property as an approximately 1,000,000 sq. ft. warehouse/distribution center (hereinafter the "Project"); and

**WHEREAS**, Developer shall secure all necessary permits for construction of the Project no later than December 31 2013; and

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**WHEREAS**, in conjunction with development of the Project, the Developer will design and construct, certain public transportation improvements, "Transportation Improvements," as shown in **Exhibit "B"**, attached hereto and made a part hereof by reference, upon certain land consisting of: (i) seventy-two feet of right-of-way to be dedicated to the City by Developer and described on **Exhibit "B"** (the "Road Right-of-Way"); (ii) a ten foot City Services Easement lying south of and adjacent to the Road Right-of-Way to be granted to the City by Developer for stormwater, sidewalks and general utilities, as more particularly described in **Exhibit "C"** (the "South Easement"); and (iii) a ten foot City Services Easement lying north of and adjacent to the

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Road Right-of-Way to be granted to the City by adjoining land owner Famlee Investment Company, for stormwater, sidewalks and general utilities, as more particularly described in **Exhibit “D”** (the “North Easement”) (the Road Right-of-Way, the South Easement and the North Easement hereinafter collectively the “Right-of-Way”); and

**WHEREAS**, the Transportation Improvements consist of the construction of a four-lane roadway, known as the “Hazeltine Extension,” with attendant improvements; and

**WHEREAS**, Chapter 56 of the Orlando City Code (hereinafter “the Transportation Impact Fee Ordinance”) provides that developers may propose to enter into impact fee agreements with the City to permit or recognize the cost of construction of specific transportation improvements as a credit against transportation impact fees; and

**WHEREAS**, the Transportation Impact Fee Ordinance provides that such credits shall be an amount equal to the costs of non-site related transportation improvements to the major road network including onsite and site adjacent arterial roads and major collectors; and

**WHEREAS**, the Transportation Impact Fee Ordinance further provides that credits are available for the contribution of land, money or services for non-site related transportation improvements to the major road network including on-site and site adjacent arterial roads and major collectors; and

**WHEREAS**, the Transportation Impact Fee Ordinance also provides that credits are available for the cost of land or capital improvements for public transportation related projects to the extent that such projects are non-site related and reduce the external vehicular trip generation of a development; and

**WHEREAS**, the Developer and the City wish to delineate and confirm the transportation impact fee credits due for the dedication of land for the Transportation Improvements and for the construction and/or funding of the Transportation Improvements related to the Project (hereinafter “Transportation Impact Fee Credits” or “Credits”); and

**WHEREAS**, in addition to the Credits, the City has entered into an agreement, “Grant Agreement,” with the State of Florida Department of Economic Opportunity, Division of Strategic Business Development, “DSBD,” providing for the DSBD’s contribution of \$1,092,000, (or some lesser amount as determined by DSBD), “Grant Funds,” towards the construction costs of the Transportation Improvements; and

**WHEREAS**, per the terms of the Grant Agreement, the grant funds will be released to the City upon (i) the City’s certification to DSBD that the Transportation Improvements have been constructed consistent with applicable laws, rules and regulations; (ii) the City’s acceptance of the Transportation Improvements for maintenance; and (iii) Publix’s submittal of invoices and supporting documentation to the City, (and the City’s submittal of same to DSBD,) evidencing

Publix's expenditure of at least \$1,092,000 in eligible construction costs as described in this Agreement and the Grant Agreement.

**NOW THEREFORE**, in consideration of the mutual promises set forth in this agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and the City agree as follows:

1. Recitals. The Recitals set forth in the preamble to this Agreement are true and correct and are incorporated herein by this reference as if fully set out below.

2. Hazeltine Extension. Developer is solely responsible for the design, permitting and construction of the Hazeltine Extension. Developer shall ensure that said design and construction occurs consistent with all applicable laws, rules and regulations, including standards developed by the Florida Department of Transportation in accordance with Section 336.045, Florida Statutes. Per the terms of the Grant Agreement, Developer shall commence construction of the Transportation Improvements no later than September 30, 2013 and shall complete same on or before September 30, 2014. Developer acknowledges that DSBD has the right to immediately terminate the Grant Agreement if Developer fails to meet either requirement and Developer hereby releases City from any liability related thereto.

(a) Acceptance by the City. Upon completion of the Hazeltine Extension, the Developer may request that the City conduct an inspection for the purpose of accepting the Hazeltine Extension for ownership and maintenance. Upon completion of its inspection, City shall notify Developer of its determination(s) in writing. If the City determines that all work has been completed in conformance with the permitted construction plans and any other applicable construction, permitting or engineering requirements, the City may notify Developer in writing of its intent to accept the Hazeltine Extension for ownership and maintenance. Upon receipt of the City's written notification, Developer shall cause the Contractor to submit a final completion certification of the Hazeltine Extension. This certification shall be accompanied by the As-Built drawings as well as any necessary warranties, waivers and releases from contractors, subcontractors and suppliers, test certifications, operation manuals and documentation of approval of the construction by governmental agencies having jurisdiction other than the City, if any. Upon the City's review of the certification and supporting documents, City shall notify Developer in writing of its acceptance or denial of the Hazeltine Extension for ownership and maintenance. As a condition of the City's acceptance of the Hazeltine Extension, the Developer shall: (i) dedicate or convey the Transportation Improvements to the City; (ii) dedicate or convey to the City the Road Right-of-Way; (iii) grant to the City the South Easement; and (iv) cause to be granted to the City the North Easement. The Right-of-Way shall be conveyed to the City, by standard fee simple deed with respect to the Road Right-of-Way, and by standard City Services Easement with respect to the South Easement and the North Easement, all conveyances warranting marketable title and being free and clear of any and all liens,

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encumbrances or mortgages, within ten (10) days of the City's acceptance of the Hazeltine Extension for ownership and maintenance. Nothing in this Agreement obligates the City to accept ownership and maintenance of the Hazeltine Extension, which determination remains in the City's sole discretion.

(b) Warranty/Maintenance Bond. Upon the City's acceptance of the Hazeltine Extension, Developer shall obtain from its contractor for the Hazeltine Extension a one-year warranty (in a form acceptable to the City) on the materials and work performed. The City shall be named as additional beneficiary of the warranty/bond. The commencement date of the warranty/bond shall be the date upon which the Hazeltine Extension is accepted by the City as described in subparagraph (a) above, unless otherwise agreed by the parties.

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3. Transportation Impact Fee Credits for the Hazeltine Extension. The value of the Right-of-Way shall be determined consistent with City Code, in an amount equal to one hundred fifty percent (150%) of the Property Appraiser's assessed value of the Right-of-Way at the time of dedication, as long as said amount does not exceed the fair market value.

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The value of the design, permitting, and construction services for the Hazeltine Extension shall be based on the reasonable costs actually incurred for said design, permitting and construction. In no event shall the eligible design costs exceed 10% of the construction costs for the Hazeltine Extension.

Forty-one and six-tenths (41.6%) of the value of the land dedicated by Developer and accepted by the City, as provided in this Agreement, that is necessary for the operation of the Hazeltine Extension from Goldenrod Road to the eastern boundary of the Property, as shown in **Exhibit "B,"** shall be eligible for transportation impact fee credits as set forth herein and in accordance with Chapter 56 of the City Code. Thirty-one and six-tenths percent (31.6%) of the reasonable costs actually incurred by Developer for the design, permitting and construction of the Hazeltine Extension shall also be eligible for transportation impact fee credits in accordance with Chapter 56 of the City Code. Upon completion of the construction of the Hazeltine Extension, and acceptance by the City, Developer shall submit a signed engineer's statement, certifying the costs incurred by Developer to design, permit and construct the Hazeltine Extension. City shall have thirty (30) days to review the submittal and/or inspect the construction, at the conclusion of which, City shall grant Developer transportation impact fee credits in full or in part and notify Developer of the City's objection(s) to any portion of the submitted costs, if any. City and Developer shall cooperate in good faith to resolve the City's concerns; however, the ultimate determination of the amount of the Transportation Impact Fee Credits for the Hazeltine Extension is in the sole, reasonable discretion of the City.

4. Grant Funds. Subject to the terms of the Grant Agreement, including, though not exclusively, DSBD'S right to terminate the Grant Agreement, City shall reimburse Publix for a

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portion of the costs incurred by Publix to construct the Transportation Improvements. City's reimbursement obligation is strictly limited to, and shall only be drawn from, the Grant Funds made available to the City by DSBD under the Grant Agreement and from no other funds whatsoever. **Publix confirms that it has reviewed, and is fully aware of, the Grant Agreement and shall comply with the terms thereof as necessary to aid the City in complying with the terms of the Grant Agreement, and to ensure disbursement of the Grant Funds to the City. Furthermore, Publix acknowledges that DSBD will not release the Grant Funds to the City unless Publix has complied with the terms of the Grant Agreement, including, though not exclusively, the accounting, certification and invoicing requirements in Sections 7.3, 8.0, 10.1, and 19.** Specifically, Publix acknowledges that, even though Publix is solely responsible for designing and constructing the Transportation Improvements, the DSBD will ultimately hold the City responsible for compliance with the terms of the Grant Agreement. City would therefore not enter into the Grant Agreement or this Agreement (and could not comply with the terms thereof) if not for the representations and obligations of Publix contained herein, which representations and obligations the City is relying on to justify its execution of the Grant Agreement and this Agreement. Based on all of the foregoing, Publix hereby releases the City, and agrees to indemnify and hold the City harmless, from and against any and all liability, claims and damages related directly or indirectly, to Publix' failure to comply with the terms of the this Agreement or the Grant Agreement. The City agrees that it will not initiate termination of the Grant Agreement unless the City also has the right to terminate this Agreement pursuant to the terms hereof. Upon DSBD's release of the Grant Funds to the City and subject to DSBD's concurrence, City shall disburse the Grant Funds to Publix within thirty (30) days after the last of the following events to occur: (i) the City's certification that the Transportation Improvements have been constructed consistent with applicable laws, rules and regulations; (ii) the City's acceptance of the Transportation Improvements for maintenance; and (iii) Publix's submittal of invoices and supporting documentation to the City that provides sufficient evidence, in the City's and DSBD's reasonable discretion pursuant to the terms of the Grant Agreement, that Publix has expended at least \$1,092,000 in eligible construction costs as described in this Agreement and the Grant Agreement. City agrees that DSBD's determination that Publix's submittal of invoices and supporting documentation is sufficient under the Grant Agreement shall be binding on the City. Notwithstanding anything in this Agreement to the contrary, any reimbursement to Publix from the Grant Funds as provided in this paragraph 4 shall not be considered in the calculation of, or serve to reduce, the Transportation Impact Fee Credits as described in paragraph 3 above. Publix grants assurances to the City and DSBD that the Transportation Improvements will be carried through to their completion and will not require the expenditure of any additional funds from DSBD. Publix shall be responsible for all cost overruns related to the Transportation Improvements.

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5. **Non-Discrimination.** Developer will not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. Developer

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shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. Developer shall insert similar provisions in all subcontracts for services by this Agreement.

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6. Minority Vendors. The City has encouraged Developer to use small businesses, including minority and women-owned businesses as subcontractors or sub-vendors under this Agreement. The directory of certified minority and women-owned businesses can be accessed from the website of the State of Florida, Department of Management Services, Office of Supplier Diversity. The City shall require Developer to report on a quarterly basis its expenditures with minority and women-owned businesses. The report shall contain the names and addresses of the minority and women-owned businesses; the aggregate dollar figure disbursed that quarter for each business, the time period, type of goods or services; and the applicable code. If no expenditures were made to minority or women-owned businesses, Developer shall submit a statement to this effect.

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7. Subcontracts. Developer shall be responsible for all work performed and all expenses incurred in connection with the Transportation Improvements. It is understood by the Developer that City will not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that the Developer will be solely liable to the subcontractor. When contracting with subcontractors, the Developer shall require subcontractors to indemnify and hold harmless the City and the State of Florida for actions of the subcontractor resulting in personal injury or death, or destruction or damage to property, arising out of activities performed under this Agreement and shall investigate all claims at its own expense.

8. Independent Contractors. Developer, its agents, contractor, subcontractors or design engineer, shall perform all activities that are outlined in this Agreement as independent entities and not as agents, employees or representatives of the City, or their employees or representatives. Nothing herein operates to impose any obligation, responsibility or liability upon the City with respect to the Hazeltine Extension.

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9. Indemnification. Developer shall indemnify, release and hold harmless the City, its agents, employees and elected and appointed officials, from and against all liability, claims, damages, losses and expenses (including all costs and attorney's fees and all costs and attorney's fees on appeal), arising out of or resulting from this Agreement, and the design, permitting and construction of the Hazeltine Extension, or which are caused in whole or in part, directly or indirectly, by the negligence or willful misconduct of Developer or any of its contractors, subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. This provision shall survive termination of this Agreement but only to the extent of covering acts or omissions occurring prior to the date the dedication of the Right-of-Way and Transportation Improvements are accepted by the City. Nothing in this Agreement operates to waive the City's sovereign immunity or the limits of liability established under Florida law.

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10. Use and Transfer of Impact Fee Credits. The Credits granted pursuant to this Agreement may be freely transferred to the successors and assigns of the Developer but only to be used in connection with the development of the Property.

11. Legal Validity. No statements, representations, warranties, either written or oral from whatsoever source arising, except as expressly stated in this Agreement, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties with the same formalities as this Agreement is executed.

12. Terms. All terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.

13. No Waiver. This Agreement does not, in any way, constitute a waiver of City's rights to approve and/or regulate development of the Property in accordance with the City Code and any other applicable laws or regulations.

14. Interpretation. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

15. Legal Counsel. All the parties to this Agreement acknowledge that they have had ample opportunity to seek and consult with independent legal counsel prior to executing this Agreement and all parties represent and warrant that they have sought such independent legal advice and counsel or have knowingly or voluntarily waived this right.

16. Negotiation. The parties to this Agreement acknowledge that all terms of this Agreement were negotiated at arm's length and all documents executed in connection herewith were prepared and executed without undue influence exerted by any party. Further, this Agreement was drafted jointly by all parties and no party is entitled to the benefit of any rule of construction with respect to the interpretation of any terms, conditions or provisions of this Agreement in favor of or against any person or party who drafted this Agreement.

17. Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings and agreements; provided however that it does not supersede City Code.

18. Release. At such time as the terms, obligations and conditions of this Agreement have been met, the parties hereto agree to execute a document in recordable form, stating that said terms, obligations, and conditions have been satisfied.

19. Severability. If any term or provision of this Agreement is deemed unenforceable by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect so long as the purpose and intent of this Agreement may be achieved.

20. Governing Law. This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations and policies of the City now in effect and those hereinafter adopted. The location for settlement of any and all claims, controversies or disputes arising out of or relating to any part of this Agreement or any breach thereof shall be Orange County, Florida.

21. Due Diligence. All parties to this Agreement covenant that they shall immediately commence all reasonable action necessary to fulfill their obligations hereunder and shall diligently pursue same throughout the existence of this Agreement.

22. Binding Effect. This Agreement, once effective, shall run with the Property described herein and shall be binding upon and enforceable by and against the parties hereto and their beneficiaries, heirs, successors and assigns.

23. Notice. Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered upon receipt before 5:00 p.m. on a business day by hand delivery, facsimile, overnight courier or U.S. Mail, postage prepaid, certified mail, return receipt requested and addressed to a party at the address set forth opposite the party's name below, or at such other address the party may have specified by written notice to the other party delivered in accordance herewith:

As to the City:           Transportation Planning Manager  
                                  City of Orlando  
                                  Post Office Box 4990  
                                  Orlando, Florida 32802-4990  
                                  Fax Number: (407) 246-2892

Copy To:                 City Attorney  
                                  City of Orlando  
                                  Post Office Box 4990  
                                  Orlando, Florida 32802-4990  
                                  Fax Number: (407) 246-2854

As to Developer:       Attn: Tax and Treasury  
                                  Publix Super Markets, Inc.  
                                  P.O. Box 32018  
                                  Lakeland, FL 33802

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Copy To:

24. Effective Date. This Agreement shall become effective upon its execution by all parties.

**IN WITNESS WHEREOF**, Developer has caused this instrument to be executed in its name and the City, acting by and through its Mayor and City Council, has caused this instrument to be executed in its name by the Mayor, its seal hereunto affixed and attested by the City Clerk, on the day and year first above written.

Two Witnesses:

Sign: \_\_\_\_\_

Print Name: \_\_\_\_\_

Sign: \_\_\_\_\_

Print Name: \_\_\_\_\_

**PUBLIX SUPER MARKETS, INC., A  
FLORIDA CORPORATION (Seal)**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing was acknowledged before me by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_, as identification, and acknowledged before me that he executed the foregoing instrument as \_\_\_\_\_ of \_\_\_\_\_, as its true act and deed, and that he was duly authorized so to do.

WITNESS MY hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public - State of Florida at Large

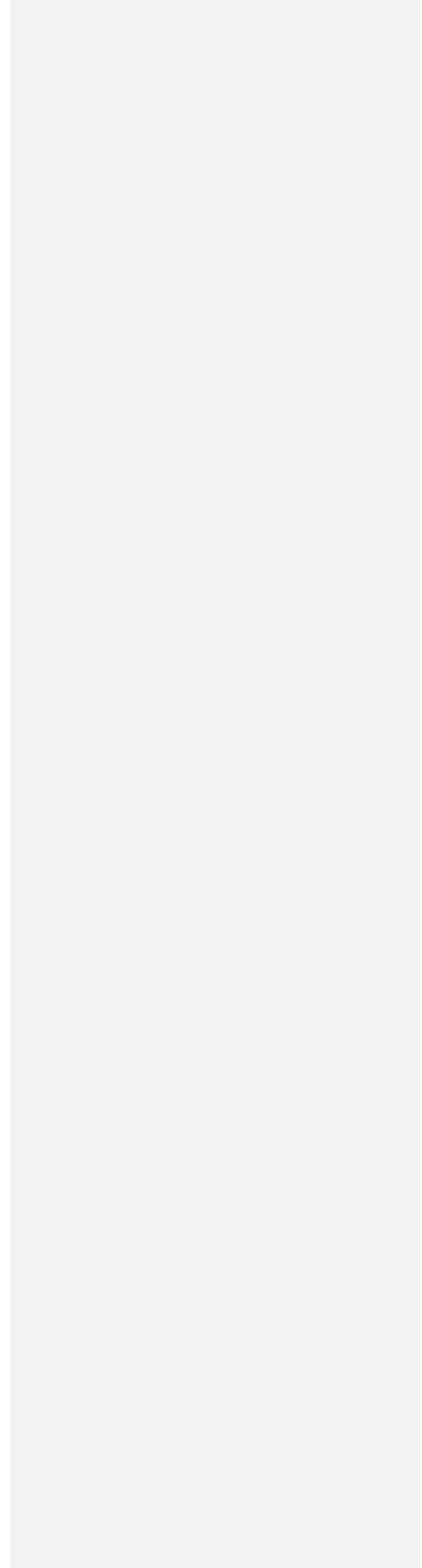
Print Name: \_\_\_\_\_

My commission expires:

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**EXHIBIT "A"**  
**Legal Description**



**EXHIBIT "B"**

