

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: August 21, 2007 **Consent** **Regular**
 Workshop **Public Hearing**

Department:

Submitted By: Engineering & Public Works

Submitted For: Streetscape Section

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

- A. Termination of the Maintenance Agreement (R2007-0260) (Agreement) with Cocoa Pine Estates Homeowners' Association, Inc. (Association).
- B. Issuance of a letter to be signed by the Chairperson notifying Association of the termination of the Agreement.

Summary: The Agreement was created in order to provide for the Association's maintenance of roadway beautification improvements to be installed by Palm Beach County (County) using funds provided from Reserve for District 4. The Association failed to comply with the requirements of Paragraph 4 of the Agreement, and does not have the authority to perform the obligations contained in the Agreement as required by Paragraph 25.

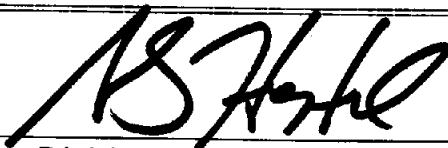
District: 4 (ME)

Background and Justification: On February 27, 2007, the Association and County entered into an Agreement. The Association has failed to obtain a required permit to maintain the planned improvements to be installed by the County. It was determined that the Association is unable to obtain the required maintenance permit, as the Association's documents do not allow them to commit to maintain all of the area addressed by the Agreement. After termination of the Agreement, funding in the amount of \$232,000, previously allocated for the planned improvements, will be returned to Reserve for District 4.

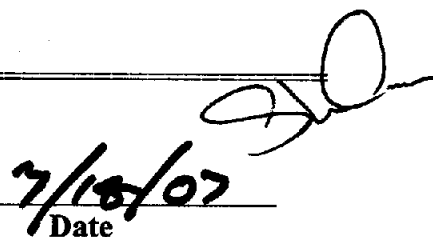
Attachments:

- 1. Location Sketch.
- 2. Commissioner authorization to pursue termination of the Agreement
- 3. Copy of Agreement (R2007-0260)
- 4. Letter Prepared for Chairperson's Signature

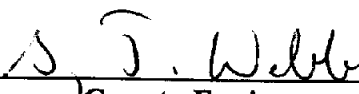
Recommended By:



Division Director


7/18/07
Date

Approved By:



County Engineer

7/23/07
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	<\$232,000>	-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	<\$232,000>	-0-	-0-	-0-	-0-

ADDITIONAL FTE
POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes X No .
Budget Acct No.: Fund 3500 Dept. 368 Unit 1117 Object 6510.
Program

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

Transportation Improvement Fund
Coconut Ln/Between Military & Barwick Rd Beaut-Dist 4
Reserve for District 4

The funding will be returned to the District 4 Reserve administratively.

C. Departmental Fiscal Review: _____ *[Signature]*

III. REVIEW COMMENTS

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

[Signature] 7-24-07
OFMB *[Handwritten: 1/24/07, 1/23/07]*

[Signature] 7/25/07
Contract Dev. and Control
[Handwritten: E. Jones 7/25/07]

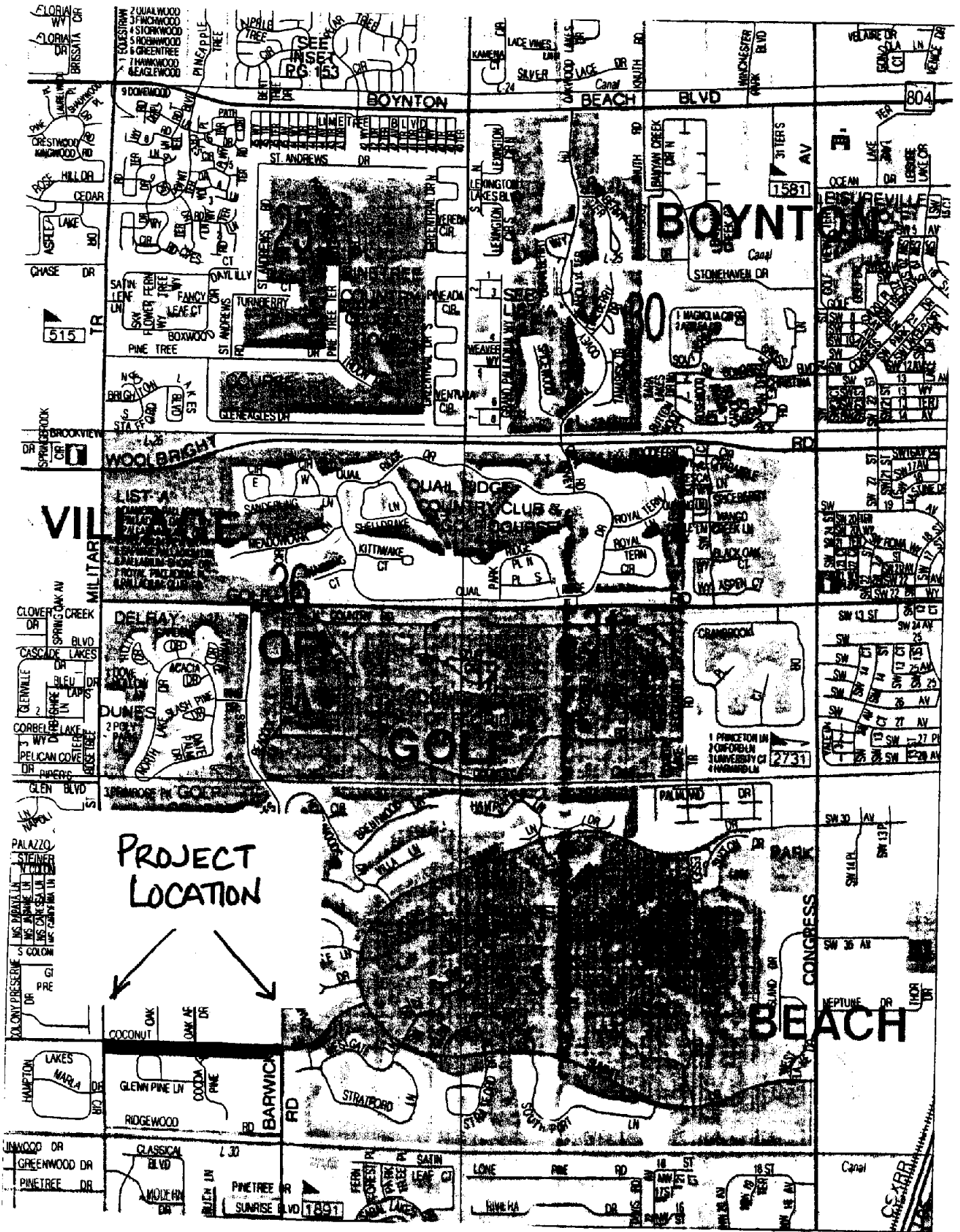
B. Approved as to Form and Legal Sufficiency:

[Signature] 8/7/07
Assistant County Attorney

C. Other Department Review:

Department Director

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



LOCATION SKETCH

From: Kate Scott
To: Hertel, Andrew
Date: Tuesday, June 26, 2007 4:31:20 PM
Subject: Fwd: Re: Cocoa Pines Estates

Andy,
Commissioner McCarty has requested for you to move forward as described in the attached email.

Kate (Freddie) Scott
Aide to Commissioner Mary McCarty
561-276-1220
kfscott@co.palm-beach.fl.us

Attachment 2
Page 2 of 2

From: "Mary McCarty" <marymccarty@mycingular.blackberry.net>
To: "Kate Scott" <KFScott@co.palm-beach.fl.us>
Date: Tuesday, June 26, 2007 4:22:34 PM
Subject: Re: Cocoa Pines Estates

Do it.

-----Original Message-----

From: "Kate Scott" <KFScott@co.palm-beach.fl.us>
Date: Tue, 26 Jun 2007 16:20:16
To: <marymccarty@comcast.net>
Subject: Cocoa Pines Estates

Mary,

FYI: Natalie Mitchell called Andy this afternoon to inquire the whereabouts of the reimbursement of \$18,000 for the design plans for the beautification project. He asked her about whether Cocoa Pines Estates was going to move forward with maintenance obligation, Natalie reported the HOA board is tired of dealing w/ it. The extended agreement expires on Thursday, June 28th.

Please advise me to ask Andy to prepare an agenda item to have the project canceled, and budget transfer of \$232,000 back to your Gas Tax Fund. Thanks.

kfs

COCOA PINE ESTATES HOMEOWNERS' ASSOCIATION, INC. - BEAUTIFICATION AND PEDESTRIAN LIGHTING MAINTENANCE

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**AGREEMENT WITH COCOA PINE ESTATES HOMEOWNERS' ASSOCIATION, INC.,
BEAUTIFICATION AND PEDESTRIAN LIGHTING MAINTENANCE WITHIN THE
COUNTY'S RIGHT OF WAY FOR COCONUT LANE**

THIS AGREEMENT is made and entered into this ____ day of
FEB 27 2007, 200__, by and between COCOA PINE ESTATES HOMEOWNERS'
ASSOCIATION, INC., a not-for-profit corporation of the State of Florida, hereinafter
"ASSOCIATION", and PALM BEACH COUNTY, a political subdivision of the State of
Florida, hereinafter "COUNTY".

WITNESSETH:

WHEREAS, in order to assist ASSOCIATION, COUNTY wishes to install
beautification, pedestrian lighting and sidewalk within the COUNTY's right of way
for Coconut Lane, between Military Trail and Barwick Road, utilizing the
ASSOCIATION-provided plans prepared by CH2M Hill, hereinafter "IMPROVEMENTS";
and

WHEREAS, of the designed IMPROVEMENTS, sidewalk shall be the COUNTY's
first priority to be constructed, and the remainder of the designed IMPROVEMENTS
will be selected, and as necessary, omitted by COUNTY in order to remain within
established budgetary constraints (including COUNTY project oversight costs); and

WHEREAS, COUNTY believes that these efforts serve a public purpose in the
enhancement of the safety and appearance of the right of way; and

WHEREAS, prior to the COUNTY's installation of any of the IMPROVEMENTS,
ASSOCIATION will contract with Florida Power and Light Company (FPL) for
ASSOCIATION to fund FPL's perpetual maintenance and operation of the pedestrian
lighting components of the IMPROVEMENTS; and

WHEREAS, prior to the COUNTY's installation of any of the IMPROVEMENTS,
ASSOCIATION will obtain a permit from the COUNTY for ASSOCIATION's perpetual
maintenance of the beautification and pedestrian lighting components of the
IMPROVEMENTS; and

WHEREAS, after installation, ASSOCIATION will be responsible for the
perpetual maintenance of the beautification and pedestrian lighting components of
the IMPROVEMENTS; and

1 **WHEREAS, after installation, COUNTY will be responsible for the perpetual**
2 **maintenance of the sidewalk component of the IMPROVEMENTS;**

3 **NOW, THEREFORE, in consideration of the mutual covenants, promises, and**
4 **agreements herein contained, the parties agree as follows:**

5 1. **The above recitals are true, correct and are incorporated herein.**

6 2. **Prior to the execution of this Agreement, ASSOCIATION agrees to**
7 **provide to COUNTY complete, COUNTY-approved plans for the IMPROVEMENTS**
8 **which were prepared by CH2M Hill, as funded under a separate Agreement with**
9 **COUNTY.**

10 3. **COUNTY agrees to fund (from Commission District 4 Funds) and install**
11 **IMPROVEMENTS in accordance with the approved plans and specifications prepared**
12 **for ASSOCIATION by CH2M Hill. Sidewalk shall be the COUNTY's first priority to be**
13 **constructed, and the remainder of the designed IMPROVEMENTS will be selected,**
14 **and as necessary, omitted by COUNTY in order to remain within established**
15 **budgetary constraints (including COUNTY project oversight costs).**

16 4. **ASSOCIATION agrees to be responsible for the perpetual maintenance**
17 **of the IMPROVEMENTS (except for sidewalk). This perpetual maintenance of**
18 **IMPROVEMENTS shall include, but is not limited to, routine mowing, trimming,**
19 **fertilization, pest control, irrigation and irrigation system repairs. This perpetual**
20 **maintenance shall also include street lighting components, including, but not limited**
21 **to, providing necessary electricity, repairs and other related items. Prior to**
22 **COUNTY's installation of any of the IMPROVEMENTS, ASSOCIATION also agrees to**
23 **contract with and fund FPL's perpetual maintenance and operation of the pedestrian**
24 **lighting components of the IMPROVEMENTS. Also prior to the installation of any**
25 **IMPROVEMENTS, ASSOCIATION shall obtain and comply with a required permit for**
26 **the maintenance of any of the IMPROVEMENTS for which they will have maintenance**
27 **responsibility. ASSOCIATION shall be responsible for obtaining all necessary**
28 **approvals and authorizations from any federal, state, regional, or COUNTY agency**
29 **which are required for the subsequent maintenance of the IMPROVEMENTS.**

1 5. **COUNTY** agrees to be responsible for the perpetual maintenance of the
2 sidewalk component of the IMPROVEMENTS.

3 6. **ASSOCIATION** agrees to grant access to **ASSOCIATION** property for
4 **COUNTY** employees and/or contractors to make necessary connections to
5 **ASSOCIATION's** irrigation system(s).

6 7. **ASSOCIATION** understands and agrees that if the **COUNTY** determines
7 that any portion of the right of way containing the IMPROVEMENTS is needed for
8 another public purpose, then **ASSOCIATION** must remove all or a portion of the
9 IMPROVEMENTS (as determined by the **COUNTY**), and shall restore the right of way
10 to a condition acceptable to the County Engineer, or **ASSOCIATION** shall reimburse
11 **COUNTY** for it's costs to accomplish the required removal and restoration.

12 8. **ASSOCIATION** recognizes that it is an independent contractor, and not
13 an agent or servant of **COUNTY** or its Board of County Commissioners. In the event
14 a claim or lawsuit is brought against **COUNTY**, its officers, employees, servants or
15 agents, relating to the IMPROVEMENTS or any item which is the responsibility of
16 **ASSOCIATION**, **ASSOCIATION** hereby agrees to indemnify, save and hold harmless
17 **COUNTY**, its officers, employees, servants or agents, and to defend said persons
18 from any such claims, liabilities, causes of action and judgments of any type
19 whatsoever arising out of or relating to the existence of the IMPROVEMENTS or the
20 performance by **ASSOCIATION** as may relate to this Agreement. **ASSOCIATION**
21 agrees to pay all costs, attorney's fees and expenses incurred by **COUNTY**, its
22 officers, employees, servants or agents in connection with such claims, liabilities or
23 suits except as may be incurred due to the negligence of **COUNTY**.

24 9. **ASSOCIATION** shall, at all times during the term of this Agreement (the
25 installation and existence of the IMPROVEMENTS), maintain in force its status as an
26 insured corporation, and shall provide evidence of this insurance prior to **COUNTY's**
27 execution of this Agreement.

1 **10. As provided in F.S. 287.132-133, by entering into this Agreement or**
2 **performing any work in furtherance hereof, ASSOCIATION certifies that its affiliates,**
3 **suppliers, sub-contractors, and consultants who perform work hereunder, have not**
4 **been placed on the convicted vendor list maintained by the State of Florida**
5 **Department of Management Services within 36 months immediately preceding the**
6 **date hereof. This notice is required by F.S. 287.133(3)(a).**

7 **11. ASSOCIATION shall require each contractor engaged by ASSOCIATION**
8 **for work associated with this Agreement to maintain Commercial General Liability**
9 **coverage, including vehicle coverage, in combined single limits of not less than ONE**
10 **MILLION AND 00/100 DOLLARS (\$1,000,000.00). COUNTY shall be included in the**
11 **coverage as an additional insured.**

12 **12. In the event of termination, ASSOCIATION shall not be relieved of**
13 **liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the**
14 **contract by ASSOCIATION. In the event ASSOCIATION elects to discontinue its**
15 **maintenance obligation for the IMPROVEMENTS under this Agreement, it shall be**
16 **the obligation of ASSOCIATION to restore, if necessary, the area of the**
17 **IMPROVEMENTS on COUNTY's right-of-way to a condition acceptable to COUNTY**
18 **Engineer, which shall be in accordance with Federal, State and COUNTY standards**
19 **for road construction and/or maintenance. In the event ASSOCIATION fails to restore**
20 **the area of the IMPROVEMENTS to a condition acceptable to COUNTY Engineer,**
21 **COUNTY may undertake such restoration and ASSOCIATION shall be liable for the**
22 **costs of such restoration.**

23 **13. COUNTY and ASSOCIATION agree that no person shall, on the grounds**
24 **of race, color, national origin, sexual orientation, religion or creed, sex, age, or**
25 **handicap be discriminated against in performance of the Agreement.**

26 **14. COUNTY may, at COUNTY's discretion and for the duration of**
27 **IMPROVEMENTS, install signs within the public property or easement, notifying the**
28 **public that the IMPROVEMENTS were funded with COUNTY dollars.**

1 **19. Except as expressly permitted herein to the contrary, no modification,**
2 **amendment, or alteration in the terms or conditions contained herein shall be**
3 **effective unless contained in a written document executed with the same formality**
4 **and equality of dignity herewith.**

5 **20. Each party agrees to abide by all laws, orders, rules and regulations and**
6 **ASSOCIATION will comply with all applicable governmental codes in the**
7 **maintenance and replacement of the IMPROVEMENTS that are the responsibility of**
8 **the ASSOCIATION to maintain.**

9 **21. The parties to this Agreement shall not be deemed to assume any**
10 **liability for the negligent or wrongful acts, or omissions of the other party (or**
11 **parties). Nothing contained herein shall be construed as a waiver by COUNTY, by**
12 **any of the parties, of the liability limits established in Section 768.28, Florida**
13 **Statutes.**

14 **22. ASSOCIATION shall promptly notify COUNTY of any lawsuit-related**
15 **complaint, or cause of action threatened or commenced against it which arises out**
16 **of or relates, in any manner, to the performance of this Agreement.**

17 **23. The parties expressly covenant and agree that in the event any of the**
18 **parties is in default of its obligations under this Agreement, the parties not in default**
19 **shall provide to the defaulting party thirty (30) days written notice before exercising**
20 **any of their rights.**

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

24 **25. ASSOCIATION has the authority to enter into this Agreement, and to**
25 **perform the obligations contained herein.**

26 **26. This Agreement represents the entire understanding among the parties,**
27 **and supersedes all other negotiations, representations, or agreements, either written**
28 **or oral, relating to this Agreement.**

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27. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

28. This Agreement shall take affect upon execution and the effective date shall be the date of execution.

INTENTIONALLY LEFT BLANK

1 IN WITNESS WHEREOF, the parties have executed this Agreement and it is effective
2 on the date first above written.
3

4 COCOA PINE ESTATES HOMEOWNERS' ASSOCIATION, INC.

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7 (ASSOCIATION SEAL)

COCOA PINE ESTATES
HOMEOWNERS' ASSOCIATION, INC.
BY ITS BOARD OF DIRECTORS

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11 ATTEST:

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16 By: [Signature]
17 ASSOCIATION SECRETARY

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21 By: [Signature]
22 PRESIDENT

23 APPROVED AS TO FORM AND LEGAL SUFFICIENCY

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25 By: [Signature]
26 ASSOCIATION ATTORNEY

R2007 0260

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29 PALM BEACH COUNTY FEB 27 2007

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32 (COUNTY SEAL)

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

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36 ATTEST:

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38 SHARON R. BOCK, CLERK
39 AND COMPTROLLER

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42 By: [Signature]
43 DEPUTY CLERK FLORIDA
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46 By: [Signature]
47 ADDIE L. GREENE, CHAIRPERSON

48 APPROVED AS TO FORM AND LEGAL SUFFICIENCY

49
50 By: [Signature]
51 ASSISTANT COUNTY ATTORNEY

52 APPROVED AS TO TERMS AND CONDITIONS

53
54
55 BY: [Signature]
56



August 21, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert Rose, President
Cocoa Pine Estates Homeowners' Association, Inc
c/o Mitchell Management of Boca Raton, Inc
2081 NW 25th Street
Boca Raton, FL 33431

SUBJECT: Notification of Termination of Agreement
No. R2007-0260

Dear Mr. Rose:

This is to advise you that as of this date, the subject Agreement is **terminated** due to your Association's failure or inability to comply with the following provisions of the Agreement:

Paragraph 4 "...Prior to COUNTY's installation of any of the IMPROVEMENTS, ASSOCIATION also agrees to contract with and fund FPL's perpetual maintenance of the lighting components of the IMPROVEMENTS. Also prior to the installation of any of the IMPROVEMENTS, ASSOCIATION shall obtain and comply with a required permit for the maintenance of any of the IMPROVEMENTS for which they will have maintenance responsibility."

Paragraph 25 "ASSOCIATION has the authority to enter into this Agreement, and to perform the obligations contained herein."

A copy of the Agreement is attached for your reference.

Sincerely,

Addie L. Greene
Chairperson, Palm Beach County
Board of County Commissioners

Attachment: Copy of Agreement R 2007--0260

cc: Mary McCarty, Commissioner, District 4
Irwin Jacobowitz - Director, Contract Development & Control
George T. Webb, P.E., County Engineer
Steve Carrier, P.E., Assistant County Engineer
Andrew S. Hertel, AICP, Streetscape Section

**Department of Engineering
and Public Works**

P.O. Box 21229
West Palm Beach, FL 33416-1229
(561) 684-4000
www.pbcgov.com



**Palm Beach County
Board of County
Commissioners**

- Addie L. Greene, Chairperson
- Jeff Koons, Vice Chair
- Karen T. Marcus
- Warren H. Newell
- Mary McCarty
- Burt Aaronson
- Jess R. Santamaria

County Administrator

Robert Weisman

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Affirmative Action Employer"*

