

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: December 16, 2008

[X] Consent [ ] Regular  
[ ] Workshop [ ] Public Hearing

Department: County Attorney

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to authorize a settlement as to Parcels 102, 704, 705, 705A, and 705B in the amount of \$5,554,860 inclusive of attorney's fees, in the eminent domain proceeding entitled Palm Beach County v. E.F. Johns, Ltd., et al, Case No.: 50 2007 CA 00-2957 XXXMB AD, for the improvement of Lyons Road.

**Summary:** This action would authorize a settlement of compensation for the acquisition of one parcel in fee simple and four temporary construction easements acquired for the improvement of Lyons Road from Glades Road to Yamato Road (Project No. 1998504), by paying \$5,554,860 for the property acquired, damages, and attorney's fees. District: 5 (PM).

**Background and Justification:** Pursuant to the entry of an Order of Taking, Palm Beach County acquired in fee simple Parcel 102, consisting of 7.43 acres on which a retention pond related to the widening of Lyons road from Glades Road to Yamato Road is to be constructed. The County also acquired four temporary construction easements on property identified as Parcel 704, 705, 705A, and 705B. However, the disparity between the appraisals obtained by the County and the owner's appraisal related to the compensation for the acquisition of Parcel 102.

The property acquired is part of large tract straddling Lyons road currently in use for farming. The County hired one appraiser, initially, and a second, after receiving the owner's significantly higher appraisal, in order to get a second opinion. The first appraiser hired by the County opined, in an updated appraisal, that full compensation for Parcel 102 is in the amount of \$3,457,000 with no damages to the remaining property ("severance damages") plus \$24,300 for the temporary construction easements. The second appraiser opined that full compensation for the taking of Parcel 102 is in the amount of \$3,097,200 for the acquisition of the land plus \$472,600 in severance damages, for a total of \$3,569,800 for Parcel 102 plus compensation for the easements. The owner's appraiser opined that compensation was in the amount of \$6,968,700 for the land, plus severance damages of \$4,741,550, for a total of \$11,710,250 for Parcel 102 (plus compensation for the easements, which were not appraised). The owner's severance damages were based largely on an alleged limitation on the ability to develop the remaining property.

The settlement is in the amount of \$5,000,000 for the taking of Parcel 102 including severance damages, if any, plus \$24,300 for the temporary construction easements. Additionally, the settlement calls for Palm Beach County to enter into an agreement (the form of which has already been reviewed and approved and is attached to the proposed final judgment) for the relocation and incorporation of the detention pond into the drainage system of the remaining property if and when it is developed. The settlement results in monetary benefit attorneys' fees of \$491,860, based on the difference between the settlement amount for the property and easements, \$5,024,300, and the original offer of \$2,915,100. The settlement also calls for a non-monetary benefit fee of \$38,700 based on the elimination of severance damages through the pond relocation agreement. Accordingly, the total amount of attorney's fees under the agreement is \$530,560 and the total settlement amount is \$5,554,860. This settles all matters except payment of the owner's expert fees and costs.

If the owner were fully successful at trial the County would have to pay \$11,710,250 plus attorney's fees of \$1,829,050 for a total of \$13,539,300 plus expert fees and costs that would be greater than under this settlement. Accordingly, this settlement is cost-effective in light of the savings in expert fees and costs which would be incurred if this matter were tried and the potential for a significantly higher jury verdict.

**Attachments:**

1. Budget Availability Statement
2. Mediated Settlement Agreement
3. Proposed Stipulated Final Judgment (with proposed Agreement Regarding Retention Pond) and Joint Motion for Entry executed by owner's counsel

Recommended by: \_\_\_\_\_

Department Director

Date

11/24/08

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	<u>\$2,073,560</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>-0-</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>\$2,073,560</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

# ADDITIONAL FTE

POSITIONS (Cumulative) \_\_\_\_\_

Is Item Included in Current Budget? Yes X No     
Budget Acct No.: Fund 3505 Dept. 361 Unit 0667 Object 6120  
Program

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

Road Impact Fee Fund - Zone 5  
Lyons Rd/Glades Rd to Yamato Rd

Full Compensation & Severance Damages	\$5,024,300
Attorney's Fees	\$ 530,560
Previous Deposits	<\$3,481,300>
Fiscal Impact	<u>\$2,073,560</u>

C. Departmental Fiscal Review: \_\_\_\_\_

## III. REVIEW COMMENTS

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

Janet 12-5-08  
OFMB SN 12/5/07 CN 12/4/08

Jim J. Jones 12/5/08  
Contract Dev. and Control  
6/20/08 12/5/08

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

Philip Magana  
Assistant County Attorney

### C. Other Department Review:

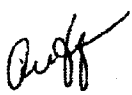
\_\_\_\_\_  
Department Director

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

**INTEROFFICE COMMUNICATION  
PALM BEACH COUNTY  
BUDGET AVAILABILITY STATEMENT**

**DATE:** October 28, 2008

**TO:** Barry S. Balmuth  
Outside Attorney

**FROM:** Richard Farquhar, Director   
Administrative Services

**RE:** Lyons Rd/Glades Rd to Yamato Rd  
Project # 1998504  
PBC v E.F. Johns, Ltd. Et al.  
Case # 50 2007 CA 002957XXXXMB (AD)  
Full Compensation, Severance Damages & Attorney's Fees  
Parcels: 102, 704, 705, 705A and 705B \$5,024,300

**BOARD MEETING DATE:** N/A

**FISCAL IMPACT LOCATION:** F:\COMMON\WP\AgendaPage2\ N/A

**FUNDING STATUS:** FULLY FUNDED

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Is Item Included in Current Budget?      Yes    X      No

Budget Account No:

Fund    3505    Dept    361      Unit    0667      Object    6120

**Recommended Sources of Funds/Summary of Fiscal Impact:**

Road Impact Fee Fund - Zone 5

Lyons Rd/Glades Rd to Yamato Rd

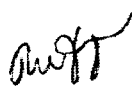
Full Compensation & Severance Damages	\$5,024,300
Attorney's Fees	\$ 530,560
Previous Deposits	<\$3,481,300>
Fiscal Impact	\$2,073,560



**Inter-Office Memo  
Palm Beach County  
Engineering Department**

**DATE:** October 28, 2008

**TO:** Joe Doucette, Budget Director  
OFMB

**FROM:** Richard Farquhar, Director   
Engineering & Public Works/Administrative Services

**RE:** Non-Board Budget Transfer(s) FY 2009 – BGEX 102808-373

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Please process the above referenced transfer document(s).

**Road Impact Fee Fund – Zone 5**

Lyons Rd/Glades Rd to Yamato Rd

3505-361-0667-6120	\$2,021,560
3505-361-9900-9912	<\$2,021,560>
	<u>-0-</u>

Transfer approved Road Program funding for ROW to project. Adjust claims FY 2008.

Authorized Amount	\$6,300,000
Previously Funded	<\$ 0>
This Transfer	<\$2,021,560>
Balance	<u>\$4,278,440</u>

IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

PALM BEACH COUNTY,

Case No. 502007 CA 00-2957XXXXMB AD

Petitioner,

v.

E.F. JOHNS, LTD., *et. al.*,

Defendant.

\_\_\_\_\_ /

**MEDIATED SETTLEMENT AGREEMENT**

Palm Beach County ("COUNTY") and E.F. JOHNS, LTD. ("JOHNS") agree as follows:

1. This agreement is subject to the approval of the Palm Beach County Board of County Commissioners.
2. If approved by the Palm Beach County Board of County Commissioners, the parties shall stipulate to the entry of a Final Judgment by which, subject to apportionment, if any, to lessees, mortgagees and any other interest holders, JOHNS shall have and recover from COUNTY the sum of \$5,024,300 as full compensation inclusive of improvements, land, severance damages, business damages, and any and all other damages and compensation for claims that were brought or could have been brought for and relating to the taking of Parcels 102, 704, 705, 705A, and 705B, plus full and complete monetary benefit and non-monetary benefit attorney's fee and costs of \$530,560.00.
3. The sum referenced in the preceding paragraph is inclusive of all sums deposited

for Parcels 102, 704, 705, 705A, and 705B under the Order of Taking. COUNTY shall only be required to deposit in the registry of the court the difference between the sums in the preceding paragraph and the amounts previously deposited. Notwithstanding this provision, payments for attorneys' fees shall be made directly to counsel for JOHNS. There shall be no further compensation to JOHNS other than expert fees and costs and attorney's fees for prosecuting expert fee claims, if any.

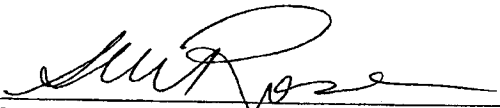
4. This settlement is subject to a mutually-acceptable pond relocation agreement which will entitle JOHNS to relocate the drainage pond to another part or parts of JOHNS' property (or combine it with a larger pond), provided that (i) equal or greater drainage protection for the roadway is provided; (ii) roadway drainage is not disrupted, (iii) adequate drainage easements are granted to COUNTY and (iv) that all permitting and expenses involved in the relocation are born by JOHNS. Any portion of Parcel 102 which is no longer used as a retention and will be reconveyed to JOHNS.

5. This settlement is based on the construction plans as they currently exist, including provisions and calculations for drainage. If the project is built in any way which materially differs from these plans and said change negatively affects the remaining property, JOHNS shall have the right to seek additional compensation.

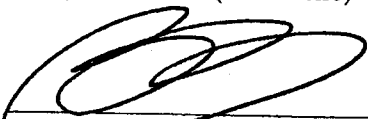
6. All provisions hereof, except Paragraph 1 shall be part of the Stipulated Final Judgment.

Dated this 3<sup>rd</sup> day of September, 2008.

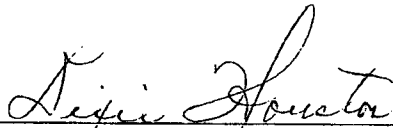
PALM BEACH COUNTY


  
By: L. Morton Rose, PE  
Five-Year Roadway Program Manager

Barry S. Balmuth, P.A.  
Attorney for Palm Beach County  
Centurion Tower, 11<sup>th</sup> Floor  
1601 Forum Place, Suite 1101  
West Palm Beach, Florida 33401  
(561) 242-9400 (Telephone)  
(561) 478-2433 (Facsimile)


  
BARRY S. BALMUTH  
Florida Bar No.:

E.F. JOHNS, LTD.

  
Dixie Houston, as Manager of Johns Family  
Holdings, LLC, as General Partner of E.F.  
Johns, Ltd.

  
Daniel Johns, as Manager of Johns Family  
Holdings, LLC, as General Partner of E.F.  
Johns, Ltd.

Forman Hanratty Montgomery  
Attorneys for JOHNS  
723 East Fort King Street  
Ocala, Florida 344712233  
(352)732-3915 (Telephone)  
(352) 35101690 (Facsimile)

  
CHARLES R. FORMAN  
Florida Bar No: 229253  
JOSEPH M. HANRATTY  
Florida Bar No.: 949760

PALM BEACH COUNTY, a political  
subdivision of the State of Florida,

Petitioner

v.

E.F. JOHNS, LTD, et al.,

Defendants.

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IN THE CIRCUIT COURT OF THE 15<sup>th</sup>  
JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

CASE NO: 50 2007 CA00-2957 (AD)

PARCELS: 102, 704, 705, 705A, 705B

**STIPULATED FINAL JUDGMENT**  
**AND ORDER AWARDING ATTORNEY'S FEES**

THIS CAUSE having come on for consideration upon the Joint Motion for Entry of Final Judgment and Order Awarding Attorney's Fees made by the Petitioner, PALMBEACH COUNTY, and the Defendant, E.F. JOHNS, LTD., a Florida Limited Partnership, and it appearing that the parties are authorized to enter into such Motion, and the Court finding that the compensation to be paid by the Petitioner is full, just and reasonable for all parties concerned, and the Court being fully advised in the premises, it is now, therefore,

ORDERED AND ADJUDGED that the Court has jurisdiction of this action, of the subject property, and of the parties in this cause pursuant to Chapters 73 and 74 of the Florida Statutes; that the pleadings in this cause are sufficient; that the Petitioner is properly exercising its delegated authority in that the condemnation of Parcels 102, 704, 705, 705A and 705B are for a valid purpose, and are necessary for such purpose. It is further

ORDERED AND ADJUDGED that the Motion for Entry of this Stipulated Final



Judgment is approved and incorporated by reference in this Order. It is further

ORDERED AND ADJUDGED that, Defendant, E.F. JOHNS, LTD., does have and recover of and from the Petitioner, PALM BEACH COUNTY, the sum of FIVE MILLION TWENTY-FOUR THOUSAND THREE HUNDRED AND NO/100 DOLLARS (\$5,024,300.00), in full payment for the property and easements taken designated as Parcels 102, 704, 705, 705A and 705B, any improvements, landscaping , and crops in the area of taking, relocation costs, and for all damages of any nature including, but not limited to, damages to the remaining property and business damages, if any, and for all claims that were raised or could have been raised. Petitioner, PALM BEACH COUNTY, has previously deposited the sum of THREE MILLION FOUR HUNDRED EIGHTY-ONE THOUSAND THREE HUNDRED AND NO/100TH DOLLARS (\$3,481,300.00) into the Registry of the Court pursuant to the Order of Taking of Parcels 102, 704, 705, 705A, 705B dated May 25, 2007 which the Defendant has withdrawn pursuant to an Order Allowing Withdrawal of Funds dated May 31, 2007 and, therefore, the additional amount, over and above that already deposited and withdrawn, to be recovered by Defendant from Petitioner for the items of compensation referenced in the preceding sentence is ONE MILLION FIVE HUNDRED FORTY-THREE THOUSAND AND NO/100THS DOLLARS (\$1,543,000.00). It is further

ORDER AND ADJUDGED that Defendant, E.F. JOHNS, LTD., shall further have and recover, with the exception of reasonable attorney's fees for the prosecution of claims for experts' fees and costs, full and complete attorney's fees of FIVE HUNDRED THIRTY THOUSAND FIVE HUNDRED SIXTY AND NO/100 DOLLARS (\$530,560.00). It is

further

ORDER AND ADJUDGED that, within thirty (30) days of its receipt of a certified copy of this final judgment, PALM BEACH COUNTY shall make a check in the amount of **TWO MILLION SEVENTY-THREE THOUSAND FIVE HUNDRED SIXTY AND NO/100THS DOLLARS (\$2,073,560.00)**, representing the additional compensation and attorneys fees referenced above, payable to the FORMAN, HANRATTY & MONTGOMERY TRUST ACCOUNT, and mail same to Charles Forman, Esquire, Forman, Hanratty & Montgomery, 723 East Fort King Street, Ocala, Florida, 34471, as attorney for the Defendant, E.F. JOHNS, LTD., for proper distribution without further order of this Court. It is further

ORDERED AND ADJUDGED that, if the Lyons Road from Glades Road to Yamato Road project in the area of E.F. JOHNS, LTD.'S remaining property is not built in a manner which materially conforms with the current construction plans and, as a result, Defendant's remaining property is damaged to a materially greater extent than the damages resulting from the taking of Parcels 102, 704, 705, 705A, and 705B and the construction of the project as contemplated by those construction plans, Defendant shall have the right to seek any damages over and above the damages that would have been caused by the taking of Parcel 102, 704, 705, 705A, and 705B and the construction of the project as contemplated by the current construction plans. It is further

ORDERED AND ADJUDGED that title to the property designated as Parcels 102, 704, 705, 705A and 705B, which vested in the Petitioner pursuant to that Order of Taking

recorded in the public records of Palm Beach County at Official Records Book 21795, Page 1135 and deposit of money heretofore made, is approved, ratified and confirmed. It is further

ORDERED AND ADJUDGED that the parties shall enter into the Pond Relocation Agreement attached hereto and incorporated by reference as Exhibit "1". It is further and it is further

ORDERED AND ADJUDGED that there shall be no further compensation or attorney's fees in this cause, save for experts' fees and costs and attorney's costs in the defense of this cause through and including this Stipulated Final Judgment, and attorney's fees incurred in supplemental proceedings, if any, for the prosecution of experts' fees and costs and attorney's costs. It is

ORDER AND ADJUDGED that, the Court shall retain jurisdiction over this cause to:

1. enforce this judgment;
2. pursuant to Section 73.091 of the Florida Statutes, tax reasonable experts' fees and costs and attorney's costs incurred by Defendant in defense of this action through the entry of this judgment, upon timely Motion of either party; and
3. pursuant to Section 73.092 of the Florida Statutes, tax against Petitioner attorney's fees for supplemental proceedings, if any, related to the prosecution of claims for experts' fees and costs.

It is further

ORDERED AND ADJUDGED that, as judicial labor has not ceased on this matter, the Clerk of the Court shall not at this time close this case file nor shall the Clerk of the Court require a fee for the filing of future pleadings.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County,  
Florida, this \_\_\_\_ day of \_\_\_\_\_, 2008.

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DAVID E. FRENCH  
CIRCUIT JUDGE

Copies to: Barry S. Balmuth, Esq.  
BARRY S. BALMUTH, P.A.  
Centurion Tower, Eleventh Floor  
1601 Forum Place, Suite 1101  
West Palm Beach, FL 33401

Robert A. Schreiber, Esq.  
Hicks & Schreiber, P.A.  
890 South Dixie Highway  
Coral Gables, FL 33146

Charles R. Forman, Esq.  
Forman, Hanratty & Montgomery  
1323 SE 3<sup>rd</sup> Avenue  
Fort Lauderdale, FL 33316

Joseph M. Hanratty, Esq.  
Forman, Hanratty & Montgomery  
723 E. Ft. King Street  
Ocala, FL 34471

**JOINT MOTION FOR ENTRY OF STIPULATED FINAL JUDGMENT  
AND ORDER AWARDING ATTORNEY'S FEES**

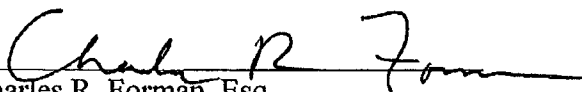
The parties, Petitioner, PALM BEACH COUNTY, and Defendant, E.F. JOHNS, LTD., by and through their undersigned attorneys, respectfully move for the entry of the foregoing Stipulated Final Judgment and Order Awarding Attorney's Fees on this \_\_\_\_ day of \_\_\_\_\_, 2008.

Respectfully submitted,

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Barry S. Balmuth, Esq.  
Fla. Bar No. 868991  
BARRY S. BALMUTH, P.A.  
Centurion Tower, Eleventh Floor  
1601 Forum Place, Suite 1101  
West Palm Beach, FL 33401  
Phone: 561-242-9400  
Fax: 561-478-2433  
Attorney for Petitioner

---

  
Charles R. Forman, Esq.  
Fla. Bar No. 229253  
FORMAN, HANRATTY & MONTGOMERY  
1323 S.E. Third Avenue  
Ft. Lauderdale, FL 33316  
Phone: 954-522-9441  
Fax: 954-522-2076  
Attorney for Defendant, E.F. Johns, Ltd.

**AGREEMENT BETWEEN E.F. JOHNS, LTD AND PALM BEACH COUNTY,  
FLORIDA REGARDING RETENTION POND**

THIS AGREEMENT regarding Lyons Road Retention Pond, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between E.F. JOHNS, LTD., a Florida limited partnership, (hereinafter "Johns"), its successors and assigns and PALM BEACH COUNTY, FLORIDA, as political subdivision of the State of Florida (hereinafter "County"), its successors and assigns.

**WITNESSETH:**

WHEREAS, County acquired, through the eminent domain proceeding styled Palm Beach County v. E.F. Johns, Ltd. et. al; Case No.: 50 2007 CA 00-2957XXXXMB AD in the circuit court of the Fifteenth Judicial Circuit in and for Palm Beach County, from Johns, a 7.43 acre parcel of real property located in Palm Beach County, Florida identified in the eminent domain proceeding papers as Parcel 102 ("Parcel 102"); and

WHEREAS, County conveyed the south 25 feet +/- of Parcel 102 to the Lake Worth Drainage District (hereinafter, Parcel 102 less the south 25 +/- feet of same will be identified as the "Retention Pond;" more clearly described in Exhibit "A"); and

WHEREAS, this Retention Pond provides drainage, treatment, and attenuation for Lyons Road; and

WHEREAS, Johns is the owner of property adjacent to the Retention Pond, (hereinafter "Johns Property"); and

WHEREAS, pursuant to a settlement in the above referenced eminent domain proceeding resulting in a Stipulated Final Judgment containing a provision requiring the parties to enter into this Agreement, the County has agreed to allow Johns, its successors and assigns to

**EXHIBIT 1**

CRF

relocate, combine, expand or reconfigure the Retention Pond (hereinafter, "Modified Retention Pond") to serve as a surface water management system for the adjacent Johns Property should Johns, its successors and assigns develop the Johns Property in the future provided the Modified Retention Pond continues to provide drainage, treatment and attenuation for Lyons Road.

**WHEREAS**, Johns may construct the Modified Retention Pond to serve as the surface water management system for the Johns Property, as well as continuing to serve as the drainage facility for Lyons Road; and

**WHEREAS**, should Johns, its successor and assigns decide to modify the Retention Pond, Johns, its successors and assigns, will design, permit, construct and fund all costs associated therewith, for the Modified Retention Pond including all appurtenances, and the installation of the Modified Retention Pond's landscaping/littoral planting and irrigation in a manner which is in compliance and consistent with the Land Development Regulations of Palm Beach County.

**NOW, THEREFORE**, for and in consideration of the mutual covenants, promises and terms set forth herein, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and are incorporated as set forth fully herein.
2. Until and unless Johns, its successors and assigns, actually develop the Johns Property and have constructed the Modified Retention Pond for drainage from the Johns Property' for joint use with the County and the Johns' Property, the County shall be responsible for all costs associated with the construction and maintenance of the Retention Pond.

3. In the event Johns, its successors and assigns, construct the Modified Retention Pond, Johns, its successors and assigns, shall be responsible for designing, permitting and construction of the Modified Retention Pond and installation of landscaping/littoral planting, irrigation, drainage structures and pipes and all costs associated therewith. Johns also agrees to be responsible for all maintenance of the Modified Retention Pond, drainage structures and pipes associated with the Modified Retention Pond and be responsible for maintenance of the landscaping/littoral planting and irrigation, including but not limited to mowing, weed control, trimming, and removal and replacement of such landscape material as necessary to maintain the areas in a condition comparable to the landscaping of the common areas, and all costs associated therewith. The installation and maintenance of landscaping/littoral planting and irrigation shall be in accordance with all applicable codes, laws, and regulations. Johns shall obtain from the governmental entities having jurisdiction, all necessary permits at Johns cost and expense.
4. Upon completion of the Modified Retention Pond with all appurtenances, Johns, its successors and assigns, shall execute and deliver to the County, prior to the County conveyance of the property described in Exhibit "A," a minimum of twenty foot (20') Drainage Easement satisfactory to the County, beginning at the Lyons Road right-of-way running to, and expanding to include all of the Modified Retention Pond, and from the Modified Retention Pond to the point of ultimate outfall, in favor of the County, granting the County access to the Modified Retention Pond area, such that the County has the right, but not the



obligation to access and maintain the drainage system, including pipes and structures for the Modified Retention Pond. Should the County exercise its right to enter the Johns Property to undertake maintenance of the drainage system, including pipes, structures and the Modified Retention Pond, the County shall not be responsible for damage to landscaping and irrigation. The Drainage Easement shall be in a form similar to that described in Exhibit "C," attached hereto and made a part hereof. County shall have the right, but not the obligation, to enter onto the Modified Retention Pond property and associated Drainage Easements to conduct maintenance upon the Modified Retention Pond and its related pipes and structures.

5. Upon the completion of the Modified Retention Pond and appurtenances, and the drainage system for Lyons Road being put into operation under the Modified Retention Pond system, the County shall convey to Johns, its successors or assigns, as applicable, by County Deed, title to the Retention Pond as described on Exhibit "A".
6. Johns, its successors and assigns, agree to allow County personnel, contractors, or agents free access through the entrance gates and to the roadways, easements and tracts of the Johns' Property at any time that the County would choose to examine, inspect, observe, maintain, repair or for any other reason deemed necessary by the County to gain entrance to the Modified Retention Pond area and easements.
7. Johns, its successors and assigns, agree to permit and provide adequate capacity within the Modified Retention Pond to accommodate the drainage for Lyons Road

pursuant to the applicable calculations attached hereto as Exhibit "B" and made a part hereof. Johns, its successors and assigns, further agree to not disrupt at any time, the drainage operations for Lyons Road as it relates to the Modified Retention Pond or Retention Pond.

8. In the event the County should undertake future major road improvements to its Lyons Road project or change the current construction design plans, the County shall have the right to use the Retention Pond or Modified Retention Pond to accommodate adjustments to the drainage for Lyons Road, provided said adjustments are permitted by the relevant permitting agency, and do not adversely affect the Johns property, excluding the Modified Retention Pond if it is constructed.
9. Upon the completion of the Modified Retention Pond and appurtenances, Johns, its successors and assigns, shall provide the County "As-Built Record Drawings" for the Modified Retention Pond and the associated drainage pipes and structures.
10. All notices required or permitted under this Agreement shall be in writing, and deemed sufficient to each party when sent by United States Mail, postage prepaid, to the following:

As to County:

Tanya N. McConnell, P.E., Deputy County Engineer  
Palm Beach County Department of Engineering  
& Public Works  
Post Office Box 21229  
West Palm Beach, Florida 33416-1229

As to Johns:

E.F. Johns, Ltd.  
c/o Charles R. Forman, Esquire  
Forman, Hanratty & Montgomery  
723 E. Ft. King Street  
Ocala, FL 34471

A party may replace the name or address of the person(s) to whom notice must be sent by sending written notice to the other party, without the need for amending this Agreement.

11. This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreements, whether written or oral, relating to this Agreement.
12. In the event that any section, paragraph, sentence, clause or provision hereof is held invalid by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.
13. This Agreement may be amended or modified only by written addendum or amendment signed by the parties and authorized by their respective elected officials.
14. The effective date of this Agreement shall be the date of full execution by both parties.
15. This Agreement shall be construed and governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement shall be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy

shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy shall preclude any other or further exercise thereof.

16. All costs or expenses (including reasonable attorney's fees) associated with the County's or Johns' enforcement of the terms and conditions of this Agreement against each other shall be borne by the respective parties, this clause pertains only to the parties to the Agreement.
17. Except as expressly permitted herein to the contrary, no modification, amendment, or alteration in the terms of conditions contained herein shall be effective unless contained in a written document executed with the same formality and equality of dignity herewith.
18. Each party agrees to abide by all laws, orders, rules and regulations and Johns, its successors and assigns, will comply with all applicable governmental landscaping codes in the maintenance and replacement of the Retention Pond.
19. Nothing contained herein shall be construed as a waiver by County, by any of the parties, of the liability limits established in Section 768.28, Florida Statutes.
20. Each party shall promptly notify the other parties of any lawsuit-related complaint, or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement.
21. The parties expressly covenant and agree that in the event any of the parties is in default of its obligations under this Agreement, the parties not in default shall provide to the defaulting party thirty (30) days written notice before exercising

any of their rights.

22. 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.
23. This Agreement represents the entire understanding among the parties, and supersedes all other negotiations, representation, or agreements, whether written or oral, relating to this Agreement.
24. Specific reference to this Agreement and the general terms hereof shall be set forth in the Declaration of Covenants, Restrictions and Easements of any future development on Johns' Property in the event the development utilizes the provisions of this Agreement to create a joint use or relocated Retention Pond facility. Any such association created by said Declaration of Covenants, Restrictions and Easements shall agree to be made a party to this Agreement. .
25. This Agreement shall be binding on the successors, assigns, and legal representatives of Johns. Either party may assign, sublet, or transfer an interest in the Agreement without the written consent of the other.

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

ATTEST:

\_\_\_\_\_

E.F. JOHNS, LTD.

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

Printed Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

ATTEST:

SHARON BOCK, CLERK &  
COMPTROLLER

\_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

\_\_\_\_\_  
Assistant County Attorney

PALM BEACH COUNTY, FLORIDA, by  
its Board of County Commissioners,

By: \_\_\_\_\_  
Addie L. Greene, Chairperson

APPROVED AS TO TERMS AND  
CONDITIONS

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

EXHIBIT "A"  
(1/2)

LEGAL DESCRIPTION

PORTIONS OF TRACTS 22 AND 23, BLOCK 76, ACCORDING TO PALM BEACH FARMS COMPANY PLAT NO. 3 AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, INCLUSIVE, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT 22; THENCE NORTH  $89^{\circ}38'24''$  EAST ALONG THE SOUTH LINE OF SAID TRACT 22, A DISTANCE OF 58.02 FEET TO THE POINT OF BEGINNING (SAID POINT BEING ON THE EXISTING EAST RIGHT OF WAY LINE OF LYONS ROAD DESCRIBED IN OFFICIAL RECORDS BOOK 2934, PAGES 1767 THROUGH 1768 OF SAID PUBLIC RECORDS, HAVING A 108 FOOT RIGHT OF WAY); THENCE CONTINUE NORTH  $89^{\circ}38'24''$  EAST ALONG THE SOUTH LINE OF TRACTS 22-24, A DISTANCE OF 547.42 FEET; THENCE NORTH  $00^{\circ}24'29''$  EAST, A DISTANCE OF 588.93 FEET; THENCE NORTH  $89^{\circ}35'31''$  WEST, A DISTANCE OF 584.48 FEET TO SAID EXISTING EAST RIGHT OF WAY LINE OF SAID LYONS ROAD, HAVING A 108 FOOT RIGHT OF WAY; THENCE SOUTH  $00^{\circ}22'17''$  EAST, ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 129.86 FEET TO THE POINT OF CURVATURE; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1,855.86 FEET AND A CENTRAL ANGLE OF  $7^{\circ}03'53''$ , AN ARC LENGTH OF 228.83 FEET TO THE POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1,963.86 FEET AND A CENTRAL ANGLE OF  $6^{\circ}58'45''$ , AN ARC LENGTH OF 239.22 FEET (THE PREVIOUS THREE COURSES BEING COINCIDENT WITH SAID EXISTING EAST RIGHT OF WAY LINE OF LYONS ROAD) TO THE POINT OF BEGINNING.

LESS THE SOUTH 25.00 FEET AS RECORDED IN OFFICIAL RECORDS BOOK 22685, PAGE 1797-1799 SAID PUBLIC RECORDS.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA AND CONTAIN 7.429 ACRES, MORE OR LESS.

BEARINGS SHOWN HEREON ARE RELATIVE TO THE NORTH AMERICAN DATUM (NAD) OF 1983 (1990 ADJUSTMENT) BEING N  $00^{\circ}22'17''$  W ALONG THE EXISTING EAST RIGHT OF WAY LINE OF SAID LYONS ROAD.

NO SEARCH OF THE PUBLIC RECORDS HAS BEEN MADE BY THE SIGNING SURVEYOR.

NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

THIS INSTRUMENT WAS PREPARED BY NORMAN J. HOWARD, P.S.M., IN THE OFFICE OF THE COUNTY ENGINEER, 2300 NORTH JOG ROAD, WEST PALM BEACH, FLORIDA, 33411-2745.

N J Howard  
NORMAN J. HOWARD, P.S.M.  
FLORIDA CERTIFICATE NO. 5776

10-17-08  
DATE

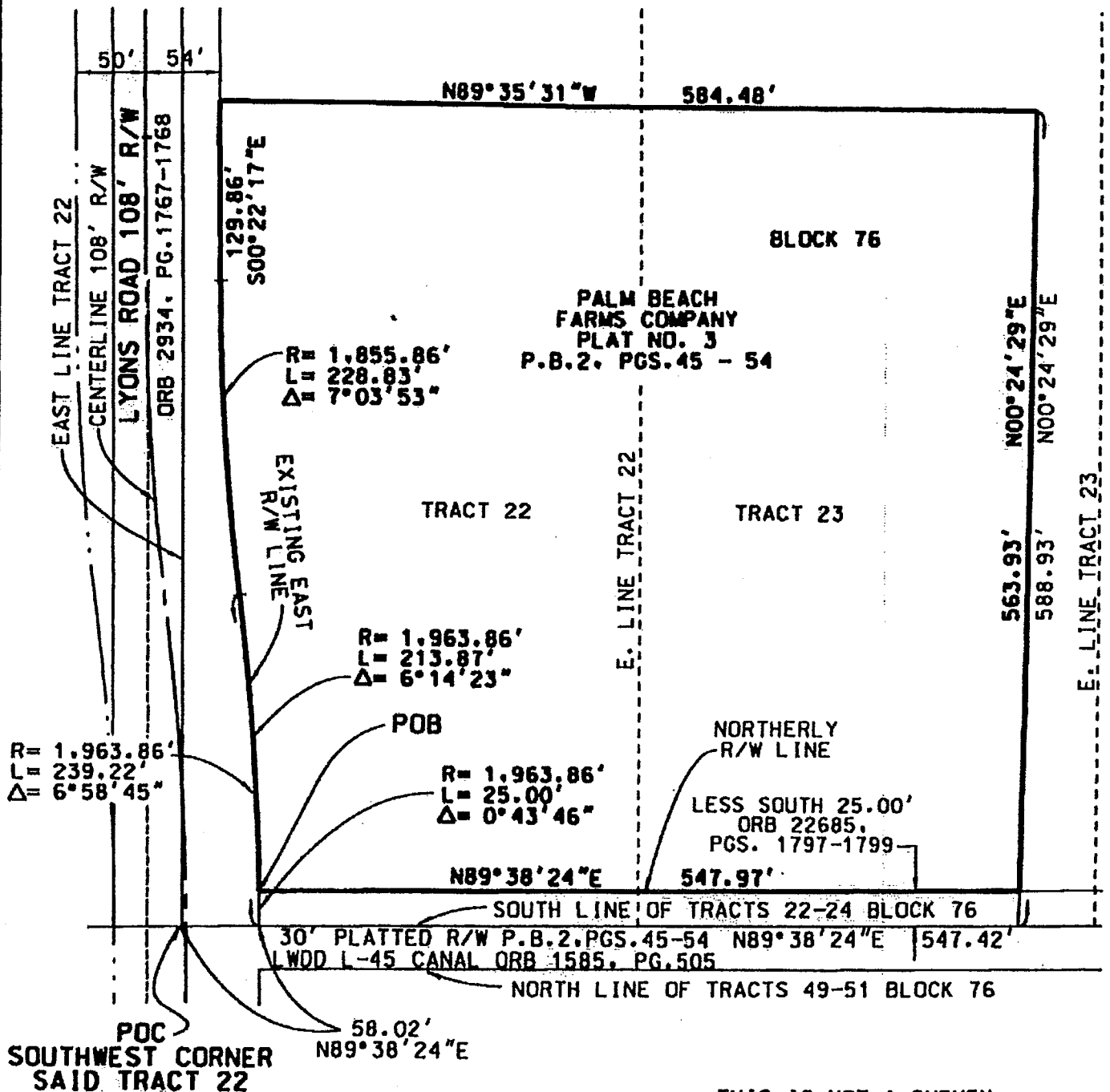
EXHIBIT "A"  
(2/2.)

# LEGEND

LWDD = LAKE WORTH DRAINAGE DISTRICT  
 PRC = POINT OF REVERSE CURVATURE  
 POC = POINT OF COMMENCEMENT  
 ORB = OFFICIAL RECORDS BOOK  
 POB = POINT OF BEGINNING  
 NTS = NOT TO SCALE  
 (P) = PLATTED DATA  
 R/W = RIGHT OF WAY  
 P.B. = PLAT BOOK  
 PGS. = PAGES

R = RADIUS  
 $\Delta$  = CENTRAL ANGLE  
 L = ARC LENGTH

SCALE: 1" = 100'



THIS IS NOT A SURVEY

Chf



EXHIBIT "B"  
(1/2)

# WATER QUALITY, CURVE NUMBER AND ALLOWABLE DISCHARGE SUMMARY

Project: Lyons Road  
Palm Beach County Project 98-504

## WATER QUALITY CALCULATIONS:

Treatment Volume Required. Use greater of: 1inch over entire surface area or 2.5 inches over the impervious surface area.

See Drainage Report for description of basin limits.

Basin Two, Station 23+35 to Station 55+00  
Discharging into proposed wet retention pond.

Basin	Existing Impervious Area (ac)	Additional Impervious Area (ac)	Proposed Pervious Area (ac)	1 Inch over entire area (ac-ft)	2.5 Inches over additional impervious area (ac-ft)	2.5 inches over total impervious area (ac-ft)	Required Treatment Volume (ac-ft)	Pond Storage At Weir El 17.0' (ac-ft)	Required Treatment Volume Met
Basin Two	5.67	1.54	0.90	0.68	0.32	1.50	1.50	6.14	100%

Stage - Storage Information, Wet Retention Pond:

Basin	Pond Stage (ft)	Surface Area (ac)	Incremental Storage (ac-ft)	Cumulative Storage (ac-ft)
Basin Two	16.0	5.67	0.00	0.00
	17.0	5.88	5.77	6.77
	18.5	6.13	8.99	14.76
	19.0	6.60	3.18	17.94

## CURVE NUMBER CALCULATIONS FOR BASIN TWO:

Basin Two	Existing Impervious Area (ac)	Additional Impervious Area (ac)	Proposed Pervious Area (ac)	Curve Number
Pre-Dev.	5.67	0.00	2.44	88.6
Post-Dev.	5.67	1.54	0.90	90.0

## ALLOWABLE DISCHARGE INTO LWDD L-45 CANAL:

Discharge into LWDD L-45 Canal is limited to 2.5 cfs per one half mile of roadway.  
Basin Two limits are from station 23+35 to station 55+00 (0.59 miles).  
Allowable discharge =  $(0.59/0.50) \times 2.5 \text{ cfs} = 2.99 \text{ cfs}$   
Proposed discharge = 2.93 cfs (see AdICPR output, link "Pipe L45").

EXHIBIT "B"  
(2/2)

# CURVE NUMBER/LAND USE SUMMARY

Project: Lyons Road  
SFWMD PERMIT APP. No. 060322-10  
Palm Beach County Project 98-504

CN for Impervious Areas = 92.0  
CN for Pervious Areas = 74

## CURVE NUMBER CALCULATIONS FOR BASIN ONE: PRE-DEV STA 10+63 TO 33+80 POST-DEV STA 10+63 TO 23+35

Basin One	Impervious Area (ac)	Additional Impervious Area (ac)	Pervious Area (ac)	Curve Number
Pre-Dev.	4.79	0.00	1.58	87.5
Post-Dev.	5.59	0.80	0.78	89.8

## CURVE NUMBER CALCULATIONS FOR BASIN FOUR: STA 68+70 TO 82+54

Basin Four	Impervious Area (ac)	Additional Impervious Area (ac)	Pervious Area (ac)	Curve Number
Pre-Dev.	1.99	0.00	1.57	84.1
Post-Dev.	2.89	0.90	0.67	88.6

## CURVE NUMBER CALCULATIONS FOR BASIN TWO: PRE-DEV STA 33+80 TO 55+00 POST-DEV STA 23+35 TO 55+00

Basin Two	Impervious Area (ac)	Additional Impervious Area (ac)	Pervious Area (ac)	Curve Number
Pre-Dev.	5.67	0.00	2.44	86.6
Post-Dev.	7.21	1.54	0.90	90.0

## CURVE NUMBER CALCULATIONS FOR BASIN FIVE: STA 82+54 TO 95+70

Basin Five	Impervious Area (ac)	Additional Impervious Area (ac)	Pervious Area (ac)	Curve Number
Pre-Dev.	1.72	0.00	1.61	83.3
Post-Dev.	2.88	1.16	0.45	89.6

## CURVE NUMBER CALCULATIONS FOR BASIN THREE: STA 55+00 TO 68+70

Basin Three	Impervious Area (ac)	Additional Impervious Area (ac)	Pervious Area (ac)	Curve Number
Pre-Dev.	3.06	0.00	0.65	88.8
Post-Dev.	3.42	0.36	0.29	90.6

## CURVE NUMBER CALCULATIONS FOR BASIN SIX: STA 95+70 TO 106+00

Basin Six	Impervious Area (ac)	Additional Impervious Area (ac)	Pervious Area (ac)	Curve Number
Pre-Dev.	1.94	0.00	0.78	86.8
Post-Dev.	2.57	0.63	0.15	91.0

Return to:  
Name: Right-of-Way Acquisition Section  
Palm Beach County Engineering  
Post Office Box 21229  
Address: West Palm Beach, Florida 33416  
Attn:  
Acct. No.: 1010 W/C BOX 1066  
This Instrument Prepared by:  
Name: Paul F. King, Assistant County Attorney  
Palm Beach County  
Address: Post Office Box 21229  
West Palm Beach, Florida 33416

EXHIBIT "C"

NOT TO BE RECORDED  
WITHOUT BOARD OF COUNTY  
COMMISSIONERS ACCEPTANCE DATE

PCN: SPACE ABOVE THIS LINE FOR PROCESSING DATA

(Corporation)

PROJECT NO.  
ROAD NAME:  
PARCEL NO.

DRAINAGE EASEMENT

THIS EASEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, between  
as the party of the first part, and PALM BEACH COUNTY, a political subdivision of the state  
of Florida, as the party of the second part.

WITNESSETH: That the party of the first part, for and in consideration of the sum of ONE (\$1.00)  
dollar and other valuable considerations, receipt whereof is hereby acknowledged, hereby grant(s)  
unto the party of the second part, its successors and assigns, for the purpose of a perpetual  
drainage easement over, upon, under, through and across the following described land, situate in  
Palm Beach County, Florida, to-wit:

Property more particularly described in Exhibit "A" attached hereto and made a part hereof.

This drainage easement shall be used to permanently install and maintain, when necessary, a pipe  
or pipes underground for the purposes of carrying water to, and or from, water retention areas.  
This drainage easement shall be non-exclusive, provided, however, that the grantors and their  
successors and assigns, shall be permanently prohibited from removing or interfering with the  
operation, functioning, maintenance, when necessary, or repair of any underground pipe or pipes  
installed by the grantee in the drainage easement area. To the extent that the grantors and their  
successors and assigns hinder or obstruct the operation, functioning, maintenance, or repair of  
any underground pipe or pipes installed in the drainage easement area, the grantee shall not be  
liable or responsible for the cost of removal of the obstruction. The installation of the pipe or  
pipes under the land shall not extend beyond the limits outlined in the attached legal  
description.

The party of the second part shall have the right, but not the obligation, to remove and use any  
or all of the soil and/or subsoil, in accordance with current and future construction plans,  
within the easement area.

TO HAVE AND TO HOLD THE SAME unto the party of the second part, its successors and assigns  
forever.

IN WITNESS WHEREOF, the said party has hereto set its hand(s) and seal(s) the day and year first  
above written.

(CORPORATE SEAL)

Signed, sealed and delivered in the presence of:  
(Signature of two witnesses required by Florida law)

WITNESS Signature (Required)

CORPORATION NAME - TYPED OR PRINTED

BY:

SIGNATURE OF PRESIDENT

TYPED OR PRINTED NAME OF WITNESS

TYPED OR PRINTED NAME OF PRESIDENT

ATTEST:

SIGNATURE OF SECRETARY

WITNESS SIGNATURE (Required)

TYPED OR PRINTED NAME OF SECRETARY

TYPED OR PRINTED NAME OF WITNESS

MAILING ADDRESS

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ by \_\_\_\_\_  
of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation.  
He/she is personally known to me or has produced \_\_\_\_\_ as identification.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

Signed: \_\_\_\_\_

Notary Public in and for  
the County and State aforementioned