

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: February 3, 2009 [ ] Consent [ X ] Regular  
[ ] Ordinance [ ] Public Hearing  
Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to:**

- A) approve a Third Amendment to the Lease between Palm Beach County, the South Florida Water Management District (SFWMD) and Pero Family Farms, Inc. (R-2002-1489); and
- B) adopt a Resolution finding that the extension of the term of the Lease until May 31, 2012 and the reduction in rent from \$1,311.27/acre to \$500/acre is in the best interests of the County.


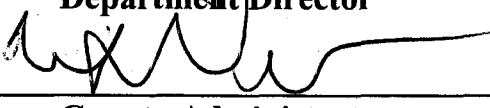
**Summary:** The County and the SFWMD jointly own the 570-acre McMurrain property in the Ag Reserve. The property has been leased to Pero Family Farms, Inc. (Pero) since prior to the County's acquisition of the property in 2000. The Lease assigns responsibility for managing the County's and SFWMD's interest to SFWMD. The term of the Lease expires May 31, 2009. Rent is currently \$1,311.27/gross acre. This Third Amendment extends the term until May 31, 2012 and reduces the rent to \$500/gross acre. In preparation for the approaching expiration of the Lease, the SFWMD obtained an appraisal of the Fair Market Value rental rates for ag land in the Ag Reserve. The appraisal indicates that values have decreased to \$500/net acre. Because of the complexities involved in determining "net acreage" and because of the size of this reduction, Staff recommended, and SFWMD and Pero accepted, a rent of \$500/gross acre with three percent (3%) increases. Rent will be retroactive to January 1, 2009 to coincide with the scheduled semiannual rental payment which has been withheld pending consideration of this item. Due to increased costs of production, and no increase in yields or crop prices, all farmers in the Ag Reserve are seeking to reduce the rents they pay. The extension of the term until 2012 coincides with SFWMD's timeframe for needing the property for their reservoir project. (PREM) Countywide (HJF)

**Background and Policy Issues:** The original acquisition of the 627-acre McMurrain property was approved on June 6, 2000, as a joint acquisition with SFWMD (R-2000-0806 an R-2000-0907). At that time, it was contemplated that the property would be used for a reservoir as part of the SFWMD's East Coast Buffer project and for other water resources projects. As the reservoir project was not planned to commence until 2012, the property would continue in agricultural production until then. There was an existing lease between McMurrain Farms and Pero Family Farms which the parties agreed they would take title subject to. Due to concerns regarding pesticide residues existing on the property from years of agricultural use and the potential risks to its reservoir project discovered after the Interlocal Agreement with SFWMD was signed, the SFWMD was hesitant to close upon the acquisition and the County proceeded to acquire the property independently.

Continued on Page 3

**Attachments:**

- 1. Location Map
- 2. Third Amendment
- 3. Resolution

Recommended By:  1-29-09  
Department Director Date  
Approved By:  2/2/09  
County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>\$97,809</u>	<u>(\$291,806.16)</u>	<u>(\$300,560.35)</u>	<u>(\$205,627.86)</u>	<u>0</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>\$97,809</u>	<u>(\$291,806.16)</u>	<u>(\$300,560.35)</u>	<u>(\$205,627.86)</u>	<u>0</u>

# ADDITIONAL FTE POSITIONS (Cumulative) \_\_\_\_\_

Is Item Included in Current Budget: Yes \_\_\_\_\_ No x

Budget Account No: Fund 1222 Dept 800 Unit 8011 Object 6225  
 Program \_\_\_\_\_

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

Rent was budgeted for 2009 only through expiration on May 31, 2009. However, Ag Reserve program revenues are utilized for maintenance of Environmentally Sensitive lands. The reduction in revenue will decrease future funding for ESL maintenance.

Rent represents the County's 39.4% share with a 3% annual increase.

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

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development Comments:**

Jim O'Neil 1-30-09  
 OFMB  
 (UD) Head CN 1/30/09

Jim J. Jacobson 1/30/09  
 Contract Development and Control  
 At the time of OAC's review the Amendment was not executed.

**B. Legal Sufficiency:**

R. J. Fal 2/2/09  
 Assistant County Attorney  
 Amendment was not executed at time of CAO review.

**C. Other Department Review:**

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

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

**Background and Policy Issues, continued:**

Pero owned roughly 34 acres adjacent to the McMurrain property upon which they had constructed a packing plant and hydroponic farming operation. There were significant concerns regarding the potential impact of the SFWMD's reservoir project upon Pero's facilities. Essentially, the above-ground reservoir could cause the water elevations of surrounding properties to rise due to seepage. Negotiations ensued in an effort to design a system to control seepage and its effects on the Pero property.

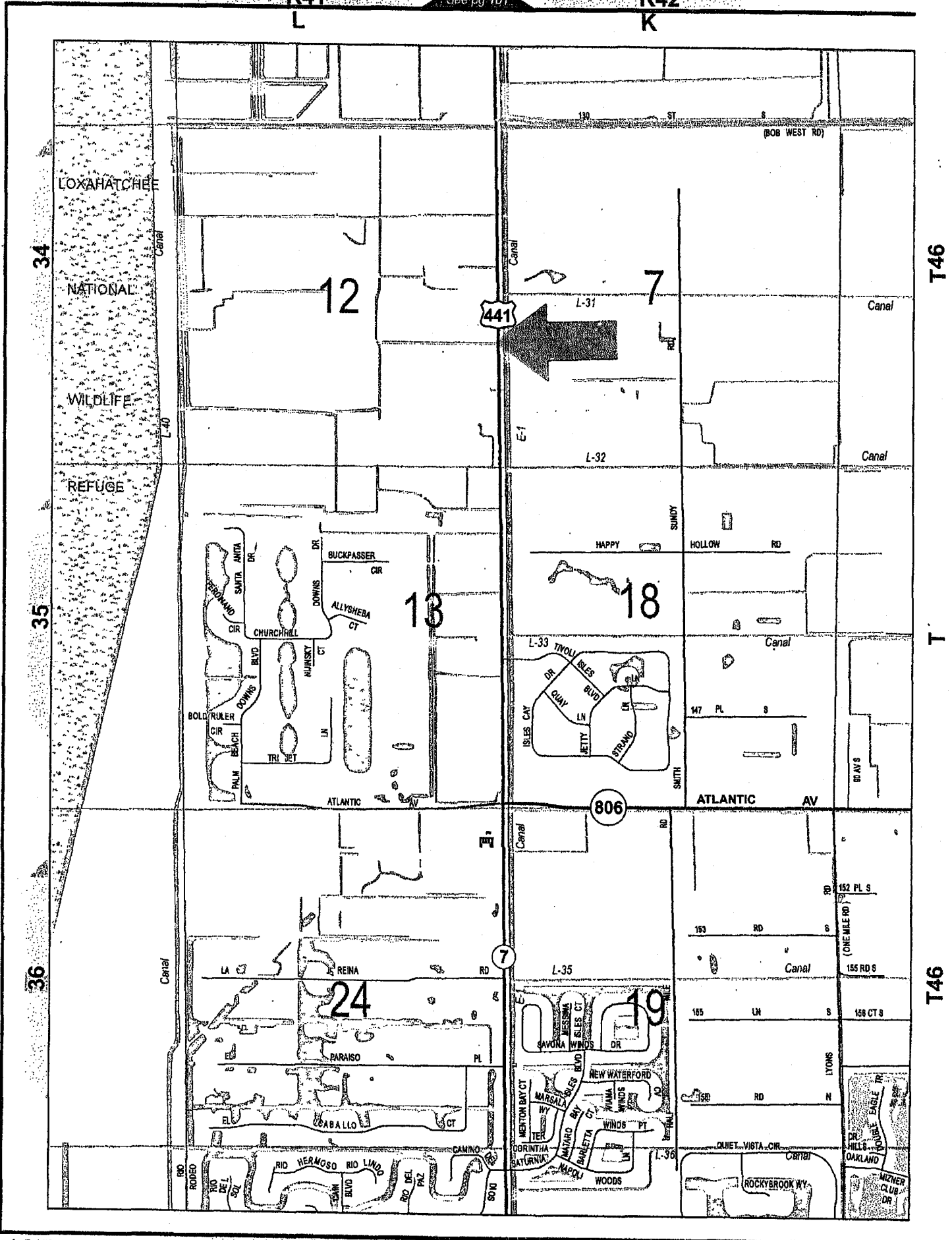
After two years of further environmental testing showing that pesticide levels were acceptable and successful conclusion of negotiations with Pero regarding the reservoir project that resulted in 53 acres being carved out for expansion of Pero's hydroponic facilities, the County sold the SFWMD a 60.6% interest in 570.77 acres of the McMurrain property in August of 2002 (R-2002-1489 and R-2002-1490). As part of the sale to SFWMD, the parties amended and assigned the Lease with Pero to transfer managerial control of the Lease to SFWMD and to provide for increases in rent to Fair Market Value as determined by appraisal. In December of 2002, the County entered into an agreement to sell the retained 53 acres to Pero and that transaction closed on March of 2006.

In July of 2005, the SFWMD entered into Amendment No. 1 to the Lease which increased the rent to the then Fair Market Value of \$1,200/acre and extended to term of the Lease to May 31, 2006. The Second Amendment to the Lease was approved in May of 2006 (R-2006-0904) which extended the term until May 31, 2009, and increased the rent to \$1,236/acre with 3% annual increases. The Second Amendment facilitated refinancing of the bonds issued to finance the Ag Reserve Program.

In preparation for the expiration of the Lease with Pero in May of this year, the SFWMD obtained an appraisal of the Fair Market Rent for agricultural use of the property. The appraisal reflects that the demand for agricultural land has diminished and that rents have dropped substantially to \$500/net acre. Several factors have contributed to this reduction. First, the farmers' costs for fertilizers and fuel have increased by roughly 30%. The volatility in prices has reduced the level of risk farmers are willing to take and some have left the business. The remaining farmers are not willing to expand their operations unless the price is right. Second, in this economic downturn, property owners are willing to take a rent reduction in order to preserve their agricultural exemption. The SFWMD, as the managing entity under this Lease, supports a reduction in the rent to \$500/gross acre.

Normally, upon expiration of the term of a lease, the County conducts a competitive process to allow all interested parties an opportunity to lease the property. This competitive process also ensures that the County receives fair compensation. The County's ordinance does allow for extending the term or otherwise modifying the terms of an existing lease upon a finding by the Board that such extension or modification is in the best interests of the County. Staff has avoided utilizing this alternative process except in those instances where there is substantial justification.

In this case, Pero has been in possession of the property for in excess of 10 years. Pero has a substantial investment in the property and owns adjacent property used in support of their agricultural operations on this property. The purpose of the Agricultural Preservation and Conservation Bond program was to preserve agricultural in the Ag Reserve. The Board has consistently given preference to existing farmers in selecting proposals to lease ag land, with the notable exception that Pero displaced Dubois on the York Farm lease. In addition, the SFWMD only wants to lease the property for 3 years as they anticipate needing the property for the reservoir project thereafter. Arguably, SFWMD, as managing agent, could unilaterally enter into this Amendment, as was done with Amendment No. 1. Finally, the reduction in rent is based upon an appraisal obtained by the SFWMD. With the use of gross acreage rather than net acreage as the means for calculating rent, the rental rate is higher than Fair Market Value as determined by the appraisal. Therefore, Staff believes that there is ample justification for a further extension of this Lease at a rental rate of \$500/gross acre and that such extension and modification is in the best interest of the County.



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# LOCATION MAP



ATT.#1

\*\*\*\*\*  
SFWMD No. C-13488-A03  
SAP#4600000050

**THIRD AMENDMENT TO LEASE**

**between**

**PALM BEACH COUNTY, FLORIDA**

**and**

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

**and**

**PERO FAMILY FARMS, INC.**

\*\*\*\*\*

**Exhibits:**

**Exhibit "A" – Rent Schedule**

ATT. #2

### **THIRD AMENDMENT TO LEASE**

**THIS THIRD AMENDMENT ("Amendment")**, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY", South Florida Water Management District, hereinafter referred to as the "DISTRICT", a public corporation of the State of Florida, and Pero Family Farms, Inc., a Florida corporation, hereinafter referred to as "PERO".

#### **WITNESSETH:**

**WHEREAS**, PERO entered into a lease, effective as of June 1, 2000, with McMurrain Farms Limited Partnership, a Florida limited partnership, hereinafter referred to as the "LEASE", for approximately 623.96 acres of farm land, referred to as the "McMurrain Property", located on State Road 7/U.S. Highway 441, Delray Beach, Florida; and

**WHEREAS**, the COUNTY subsequently purchased the McMurrain Property and was assigned the LEASE; and

**WHEREAS**, in accordance with an Interlocal Agreement (R2000 0806) between the DISTRICT and the COUNTY dated June 6, 2000, as amended, the DISTRICT acquired from the COUNTY an undivided 60.6% fee interest in 570.77 acres of the McMurrain Property (hereinafter the "PREMISES"); and

**WHEREAS**, COUNTY, DISTRICT and PERO, entered into a Partial Assignment, Bifurcation and Amendment of Lease dated August 27, 2002 (R2002-1489) (the "Partial Assignment"); and

**WHEREAS**, DISTRICT and PERO, entered into that certain Amendment Number One dated July 26, 2005 in order to extend the term of the LEASE through May 31, 2006 and to increase the rent to \$1,200.00 per acre; and

**WHEREAS**, DISTRICT and PERO, entered into that certain Amendment Number Two dated May 16, 2006 in order to extend the term of the LEASE through May 31, 2009 and to establish the rent through the extended term; and

**WHEREAS**, COUNTY, DISTRICT and PERO, desire to extend the term of the LEASE and establish the rent for the remainder of the term.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, and various other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. All defined terms as used herein shall have the same meaning and effect as in the LEASE, as amended.
2. The term of the LEASE shall be fixed and run through May 31, 2012. All references to extension options and the rights of any party to approve such extensions shall be of no force and effect.
3. PERO shall pay rent during the remainder of the term of this LEASE on the dates and in the amounts set forth in Exhibit "A" attached hereto.

4. Except as modified by the Partial Assignment, Amendment Number One, Amendment Number Two and this Third Amendment, the LEASE, remains unmodified and in full force and effect in accordance with the terms thereof.
5. In the event of a natural disaster or other act of God which would have a material adverse effect on the business operations of Pero, Pero may thereafter terminate the Lease upon thirty (30) days' notice.

IN WITNESS WHEREOF, COUNTY, DISTRICT, and PERO have executed this amendment, or have caused the same to be executed by their duly authorized representatives, as of the day and year first above written.

ATTEST:

COUNTY

SHARON R. BOCK  
CLERK & COMPTROLLER

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

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
John F. Koons, Chairman

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS  
AND CONDITIONS

By: \_\_\_\_\_  
Assistant County Attorney

By: RC 17  
Department Director

SFWMD Procurement Approved:

DISTRICT

\_\_\_\_\_  
Sign

SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
a public corporation of the State of Florida

\_\_\_\_\_  
Print Name – Date

By: \_\_\_\_\_  
Name: Frank Hayden  
Title: Procurement Director

ATTEST:

Legal Form Approved:  
SFWMD Office of Counsel

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

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

(CORPORATE SEAL)

Witnesses:

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

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

WITNESS:

**PERO**

PERO FAMILY FARMS, INC.  
a Florida corporation

\_\_\_\_\_  
Sign

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

\_\_\_\_\_  
Sign

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

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

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

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

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**EXHIBIT "A"**  
**(rent schedule)**

**PERO** shall pay rent to **DISTRICT** on or before the dates shown herein and in the amount set forth as follows:

<b>Term</b>	<b>Per Gross Acre</b>	<b>Semi-Annual Payment</b>
01/01/09-06/30/09 07/01/09-12/31/09	\$500.00	\$142,692.50 \$142,692.50
01/01/10-06/30/10 07/01/10-12/31/10	\$515.00	\$146,973.28 \$146,973.27
01/01/11-06/30/11 07/01/11-12/31/11	\$530.45	\$151,382.47 \$151,382.47
01/01/12-5/31/12	\$546.36	\$155,922.95

RESOLUTION NO. 2009-\_\_\_\_\_

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING REDUCTION OF RENT AND EXTENDING THE TERM OF THE LEASE BETWEEN THE COUNTY, SOUTH FLORIDA WATER MANAGEMENT DISTRICT AND PERO FAMILY FARMS, INC.; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Pero Family Farms, Inc., a Florida corporation, ("Tenant"), pursuant to a lease dated August 27, 2002 (R2002-1489), leases 570.77 acres from Palm Beach County and the South Florida Water Management District (SFWMD), as co-owners, in the Ag Reserve for the purpose of agricultural production;

**WHEREAS**, Tenant has made application to the Board of County Commissioners of Palm Beach County requesting that Palm Beach County and SFWMD extend the term of the Lease for a period of three (3) years until May 31, 2012;

**WHEREAS**, Tenant has requested a rent reduction due to current adverse economic conditions and County and SFWMD have agreed to reduce the rent on the basis of an appraisal obtained by its co-owner, SFWMD;

**WHEREAS**, the Board of County Commissioners of Palm Beach County hereby finds: that the continued use of the property by Pero Family Farms, Inc. will preserve and promote agriculture production in the Ag Reserve and is otherwise in the best interests of the County.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

**Section 1. Recitals**

The foregoing recitals are true and correct and incorporated herein by reference.

**Section 2. Authorization to Extend the Term of the Lease and Reduce Rent**

The Board of County Commissioners of Palm Beach County shall lease to Pero Family Farms, Inc., a Florida corporation, pursuant to the Third Amendment to Lease attached hereto and incorporated herein by reference, the 570.77 acres identified in the Third Amendment, at a reduced rental rate of \$500 (Five Hundred Dollars) per gross acre effective January 1, 2009, for the use identified above, for a term extending until May 31, 2012.

**Section 3. Conflict with Federal or State Law or County Charter**

Any statutory or Charter provisions in conflict with this Resolution shall prevail.

ATT.#3

**Section 4. Effective Date**

The provisions of this Resolution shall be effective immediately upon adoption hereof.

The foregoing resolution was offered by Commissioner \_\_\_\_\_ who moved its adoption. The Motion was seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

- COMMISSIONER JOHN F. KOONS, CHAIRMAN
- COMMISSIONER BURT AARONSON, VICE CHAIRMAN
- COMMISSIONER KAREN T. MARCUS
- COMMISSIONER SHELLEY VANA
- COMMISSIONER
- COMMISSIONER JESS R. SANTAMARIA
- COMMISSIONER ADDIE L. GREENE

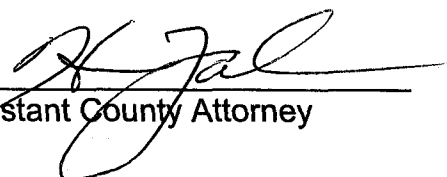
The Chair thereupon declared the resolution duly passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

PALM BEACH COUNTY, a  
political subdivision of the State of Florida  
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK  
CLERK & COMPTROLLER

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By:   
Assistant County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS

By:   
Department Director