

REVISED

Agenda Item #: 5-0-1

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

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Meeting Date:	November 17, 2009	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Regular
		<input type="checkbox"/> Workshop	<input type="checkbox"/> Public

Department:

Submitted By:	Engineering and Public Works
Submitted For:	Land Development Division

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve and authorize: A License Agreement with Whippoorwill Homeowners Association on Dillman Road to allow a card reader to remain within the public right-of-way, until such time as that portion of Dillman Road is abandoned.

SUMMARY: The card reader for the gate that was constructed on Dillman Road was incorrectly placed on that portion of Dillman Road maintained by Palm Beach County. Until such time as that portion of Dillman Road is made private, staff is recommending that a License Agreement be executed so the homeowners can utilize the gate.

District 6 (PK)

Background and Justification: The Board of County Commissioners, at their meeting on July 12, 2005, in conjunction with the Municipal Street Taxing Unit (MSTU) for Dillman Road, directed the Engineering Department to proceed with abandoning the public's interest in a portion of the reconstruction of Dillman Road. The abandonment was desired by the residents of the adjoining Whippoorwill Lakes community to install a gated access. The card reader for the gate was incorrectly constructed on that portion of Dillman Road that was not abandoned. Card readers are not permitted within public roads. Until such time as that portion of Dillman Road is made private, staff is recommending that a Licensing Agreement be executed so the homeowners can utilize the gate. Palm Beach County (County) now has liability for accidents which may occur on the road where the card reader exists.

Attachments:

1. Location sketch
2. License Agreement
3. Certificate of Liability Insurance

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Recommended by:	_____ Division Director	_____ Date
Approved by:	<u>S. J. Webb</u> County Engineer	<u>11/12/09</u> Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	(\$100)	(\$100)	(\$100)	(\$100)	(\$100)
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	(\$100)	(\$100)	(\$100)	(\$100)	(\$100)

ADDITIONAL FTE
POSITIONS (Cumulative)

Is Item Included in Current Budget? Yes _____ No x _____
Budget Acct No.: Fund 3500 Dept. 800 Unit 8005 Revenue 6999

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

Transportation Improvement Fund
Right-of-Way/Miscellaneous Revenue

C. Departmental Fiscal Review: Admiller

III. REVIEW COMMENTS

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

* Whippoorwill Homeowners Association, Inc. will pay \$100 per year to the County for this license.

na 10-27-09 OFMB 10/28/09 10/22/09

11/19/09
Contract Dev and Control
11/4/09

B. Approved as to Form and Legal Sufficiency:

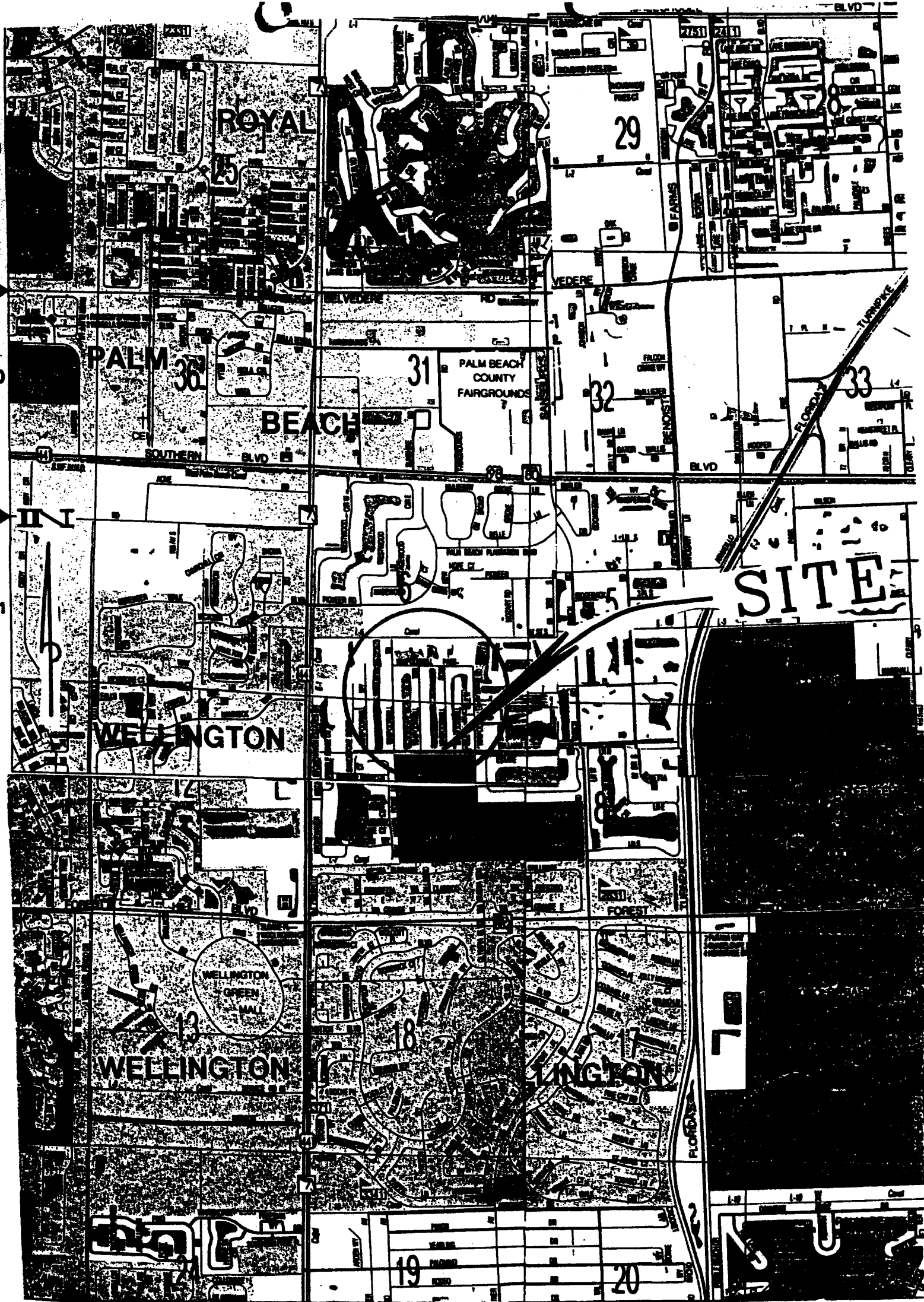
Paul F. Jones 11/12/09
Assistant County Attorney

This item complies with current County policies.

C. Other Department Review:

Department Director

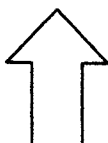
This summary is not to be used as a basis for payment.



DILLMAN ROAD LICENSE AGREEMENT

LOCATION SKETCH

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LICENSE

This will serve as a license and authorization (hereinafter the "License") by Palm Beach County (hereinafter the "County") for Whippoorwill Homeowners Association, Inc. (hereinafter the "Association") to maintain and operate the card reader island on Dillman Rd. Please see Attachment 1, attached hereto and made a part hereof, subject to and conditioned upon the following:

1. This License is granted for the purpose of allowing the members of the Association to maintain a card reader island in whole or in part on the County's Right-of-Way as of August 25, 2009. The use of the island and card reader shall be limited to residential purposes for the association members and their guests. The Association shall pay \$100.00 per year to the County for this License.

2. The Association shall maintain at its sole cost and expense the installation and maintenance of the card reader in a manner acceptable to the County. The Association shall neither make nor cause to make any additions or modifications to the right-of-way that are not required for ordinary maintenance of the aforementioned card reader island or safety purposes without the prior written consent of the County Engineer or his deputy.

3. The existence and use of the card reader island shall not interfere with or be a sight obstruction for the public traveling on Dillman Rd., nor cause damage to or interfere with maintenance of Dillman Rd.

4. This License is personal to the Association and may not be assigned or transferred.

5. At all times during its use of the property covered by this License, the Association agrees to comply with all laws and ordinances, orders, rules, regulations and requirements of all governmental authority which may be applicable to the property.

6. The Association expressly understands and agrees that the rights and privileges herein set out in the License are granted only to the extent of the County's rights, title and interest in the Right-of-Way and used by Association. The Association shall indemnify and hold the County harmless from any and all claims, liability, losses or causes of action which may arise out of the performance of this License. The Association will at all times assume all risks and further will protect, defend, reimburse, indemnify and save the County harmless from and against any and all claims, liability, expense, loss, costs, fine, and damage (including attorney's fees) of every kind and character by reason of the exercise or attempted exercise by the Association of the aforesaid rights and privileges regardless of the apportionment of negligence of the parties

involved. Further the Association agrees to indemnify the County for the County's own negligence arising out of this License. Said indemnification shall include all contractors, sub-contractors, or anyone acting for, on behalf of, or at the request of the Association. The Association recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges the receipt of valuable consideration provided by the County in support of this indemnification in accordance with the laws of Florida.

7. Except as otherwise provided herein any notice under this License shall be in writing and sent by U.S. Mail as follows:

TO THE COUNTY:

K. S. Rogers, P.E., Director of
Land Development Division
Palm Beach County Engineering Department
2300 North Jog Road
West Palm Beach, Florida 33411

TO THE ASSOCIATION:

Mark Pignato, as President of
Whippoorwill Homeowners' Association, Inc.
c/o Davenport Property Management
6620 Lake Worth Rd., Suite F
Lake Worth, FL 33467

and to

Ramsay J. Bulkeley, Esq.
Casey Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., Suite 1700
West Palm Beach, Florida 33401

8. This License contains the entire agreement of the parties and may only be modified by a written amendment signed by both parties.

9. This License shall be governed by Florida Law. Any legal action arising out of this License shall be brought in a court of competent jurisdiction in Palm Beach County, Florida.

10. This license may be revoked by:

(a) The Association's breach which is uncured after thirty (30) days written notice to the Association.

(b) Written notice from the County Engineer. The County may revoke this License upon six (6) months notice to the Association without cause.

11. This license shall automatically terminate once the Right-of-Way where the card reader and island are located is formally abandoned.

12. In the event of an emergency as determined in the sole discretion of the County Engineer involving the health, safety and welfare of the County, this License may be terminated or suspended immediately. The County Engineer or his deputy shall notify the Association in a manner and time appropriate to the circumstances of the emergency, if possible. The Association agrees to vacate or cooperate in vacating the Right-of-Way consistent with such notice. If the County Engineer notifies the Association that the emergency requiring a suspension of this License has ended, this License will continue according to its terms.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officials thereto duly authorized.

ATTEST:

By: *Sherley D Brown*
SECRETARY

WHIPPOORWILL HOMEOWNERS'
ASSOCIATION, INC.

By: *[Signature]*
Mark Pignato, President

Dated: 10/14/09

ATTEST:

Sharon R. Bock, Clerk & Comptroller

By: _____
Clerk

PALM BEACH COUNTY, FLORIDA

By: _____
, Chairman
Board of County Commissioners

[SEAL]

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

County Attorney

[Handwritten mark]

ACORD CERTIFICATE OF LIABILITY INSURANCE		OP ID SE WHITE-2	DATE (MM/DD/YYYY) 09/28/09
PRODUCER R V Johnson Insurance (WG) 1680 St. Lucie West Blvd #209 Fort St. Lucie FL 34986 Phone: 772-621-9533 Fax: 772-621-9534		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Whippoorwill Homeowners c/o Davenport Property Mng 6620 Lake Worth Rd Lake Worth FL 33467		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A: Southern Owners Insurance	10190
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURANCE TYPE	TYPICAL TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	72717137	05/23/09	05/23/10	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ca occurrence)	\$300,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP* (Any one person)	\$10,000
					PERSONAL & ADV INJURY	\$1,000,000
					GENERAL AGGREGATE	\$2,000,000
					PRODUCTS - COMP/OP AGG	\$2,000,000
	GENL. AGGREGATE LIMIT APPLIES FOR:					
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO <input type="checkbox"/> LOC					
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ca accident)	\$
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS					
	<input type="checkbox"/> NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	\$
					AGG	\$
	EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	\$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
						\$
	<input type="checkbox"/> DEDUCTIBLE					\$
	RETENTION \$					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				INC. STATUTORY LIMITS	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED?				E.L. EACH ACCIDENT	\$
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$
	OTHER				E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
Homeowners Assoc

CERTIFICATE HOLDER

PALMBCO Palm Beach County Attorney's Office 301 N. Olive Avenue West Palm Beach FL 33401	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL, <u>10*</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Walter W. Schaefer II</i>
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IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.