

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: September 13, 2011 Consent Regular
 Workshop Public Hearing

Department

Submitted By: Environmental Resources Management
Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Termination of Easement, which will terminate a duplicate 1.5 acre Conservation Easement at the Whispering Woods Subdivision.

Summary: On January 13, 2005, Tuttle Land Holding Corp. executed a 1.5 acre Conservation Easement in favor of the County within the Whispering Woods PUD. On June 16, 2005, Shelby Homes executed a duplicative Conservation Easement in favor of the County to the same property. The dedication of the preserve area was required as a condition of approval for Resolution No. R-2004-2034. Due to a miscommunication between the Tuttle Land Holdings, the original developer, and Shelby Homes, the purchaser, two conservation easements were recorded over the same preserve. At the request of Shelby Homes' successor, D.R. Horton, Inc., the conservation easement executed by Tuttle Land Holdings will be released leaving only the easement executed by Shelby Homes. District 6 (SF)

Background and Justification: On January 13, 2005, Shelby Homes, predecessor in title, Tuttle Land Holdings, executed and recorded a Conservation Easement on 1.5 acres of property as a requirement of its development order approval in Resolution No. R-2004-2034. Subsequently, Shelby Homes recorded a duplicated easement on June 16, 2005, after Shelby Homes took over the property. The release of the easement recorded by the Tuttle Land Holdings will remove the duplicate easement, leaving only the easement executed by Shelby Homes. [SF].

Attachments:

1. Termination of Easement
2. Tuttle Conservation Easement
3. Shelby Conservation Easement

Recommended by: Richard E. W. [Signature] 8/17/11
 Department Director Date

Approved by: [Signature] 8/19/11
 County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	<u>0</u>	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>0</u>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>0</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____

Budget Account No.: Fund _____ Department _____ Unit _____ Object _____

Program _____

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

There is no fiscal impact associated with this item.

C. Department Fiscal Review:

JF

III. REVIEW COMMENTS

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

<p>_____ OFMB</p> <p><i>JS</i> <i>stsk</i> <i>mm</i> <i>8-25-11</i></p>	<p>_____ Contract Development and Control</p> <p><i>Dr. J. Jacobson</i> <i>8/26/11</i></p>
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B. Legal Sufficiency:

Assistant County Attorney

Anne Delgant 8/29/11

C. Other Department Review:

Department Director

TERMINATION OF EASEMENT

THIS TERMINATION OF EASEMENT is executed this ____ day of _____, 2011, by **PALM BEACH COUNTY**, a political subdivision of the State of Florida (the "County"), whose mailing address is 301 N. Olive Ave., Suite 601, West Palm Beach, Florida 33401, and **D.R. Horton, Inc.**, a Delaware corporation ("Horton"), whose mailing address is 1245 S. Military Trail Suite 100, Deerfield Beach, FL 33442.

WHEREAS, on or about January 11, 2005 Tuttle Land Holding Corp., a Florida corporation, granted to the County, in accordance with Section 704.06, Florida Statutes, a Conservation Easement in and over certain real property situate in Palm Beach county, Florida, as more particularly described on Exhibit "A" attached hereto (the "Property"), as created by instrument recorded January 13, 2005 in Official Record Book 18013, Page 0885 of the Public Records of Palm Beach County, Florida (the "Easement") and; and

WHEREAS, Horton is the successor in interest to the Property; and

WHEREAS, at the request of Horton, The County has agreed to terminate the aforesaid Easement and to forever release the Property from said Easement; and

WHEREAS, the purpose for the termination of this Easement is because it is duplicative of the Conservation Easement recorded in Official Records Book 18799, Page 1029 in the Public Records of Palm Beach County, Florida, which is in effect and shall remain in effect and is not affected at all by this Termination of Easement.

NOW, THEREFORE, in consideration of the payment of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, the County and Horton hereby agree that the Property is hereby forever released from the Easement which is hereby terminated.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the County and Horton have executed this Termination of Easement on the day and year first indicated hereinabove.

ATTEST:
SHARON BOCK, Clerk

PALM BEACH COUNTY BOARD OF
COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Karen Marcus, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO
TERMS AND CONDITIONS

By: Anne Helgen
County Attorney

By: Richard E. Walesky
Rich Walesky, Director
Department of Environmental Resources
Management

Signed, sealed and delivered
in the presence of:

D.R. Horton, Inc., a Delaware Corporation

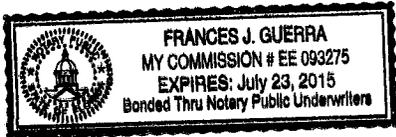
[Signature]
Printed Name: Amalia Papadimitriou

By: [Signature]
RAFAEL J. ROCA, DIVISION PRESIDENT

[Signature]
Printed Name: Jennifer P. Reay

STATE OF Florida
COUNTY OF Broward

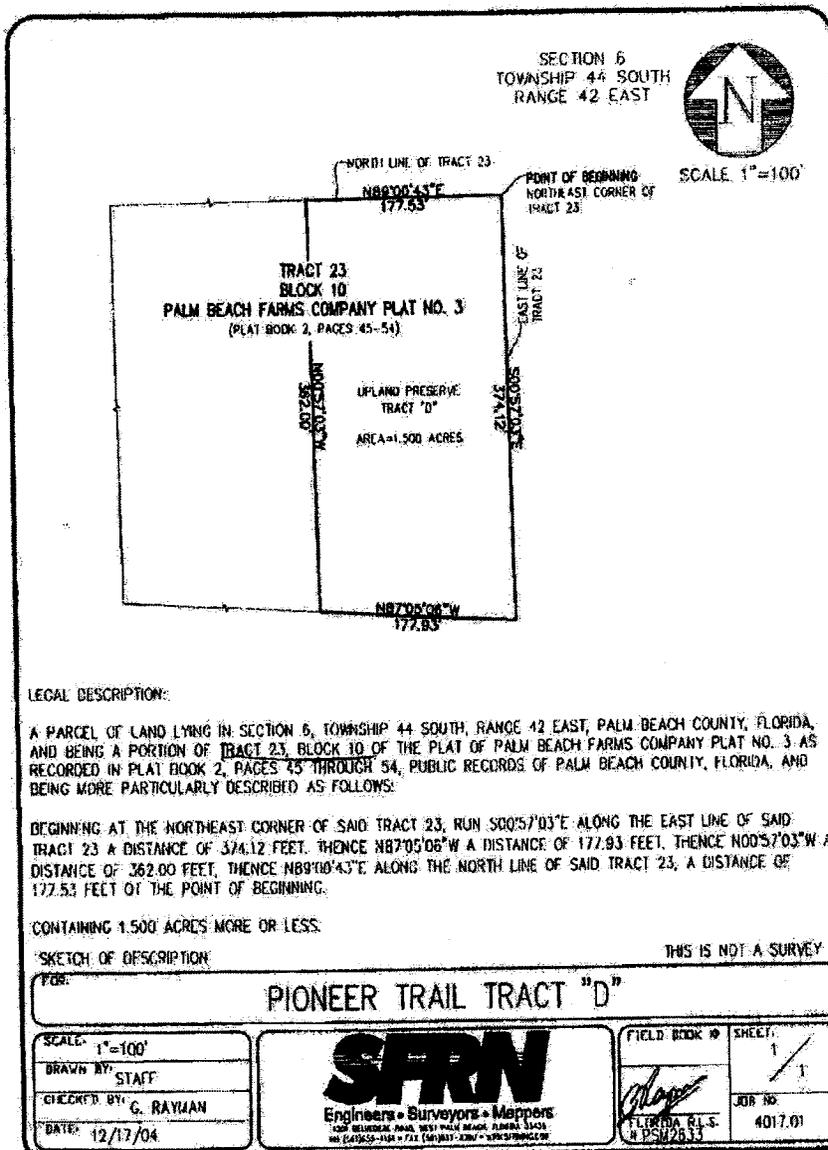
The foregoing instrument was acknowledged before me this 22 day of July, 2010, by Rafael J. Roca, as Vice President of D.R. Horton, Inc., a Delaware limited liability company.



[Signature] (SEAL)
Notary Public
My Commission Expires:

Personally known OR
Produced Identification
Type of Identification Produced:

Exhibit "A"



11/18/2009 8:30:41 AM

Prepared by and Return to:
Richard K. Barra, Esq.
Scott, Harris, Bryan, Barra
& Jorgensen, P.A.
4400 PGA Blvd., Suite 800
Palm Beach Gardens, FL 33410
File No. 40972
w/c 32

CFN 20050025063
OR BK 18013 PG 0885
RECORDED 01/13/2005 10:46:51
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0885 - 887; (3pgs)

CONSERVATION EASEMENT

The undersigned, **TUTTLE LAND HOLDING CORP.**, a Florida corporation having a place of business at 8958 Wendy Lane West, West Palm Beach, Florida 33411 ("Grantor") have for good and valuable consideration, the receipt of which is hereby acknowledged, granted **PALM BEACH COUNTY**, a political subdivision of the State of Florida, c/o _____ ("Grantee"), a Conservation Easement in accordance with Section 704.06, Florida Statutes, in and over the real property in Palm Beach County, Florida, as set forth in the legal description attached hereto as Exhibit A (the "Property").

As used herein, the term Grantors shall include any successor or assignee of the Grantor, and the term Grantee shall include any successor or assignee of the Grantee.

It is the purpose and intent of this Conservation Easement to assure that the Property will be retained and maintained forever predominately in the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement, which shall mean that the following activities are prohibited on the Property:

1. Construction or placement of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
2. Dumping or placing of soil or other substances or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
3. Removal, destruction, cutting, trimming, mowing, alteration or biocide spraying of trees, shrubs, or other vegetation; with the exception of removal of nuisance and exotic plant species as may be required or permitted by law, ordinance, or other government approval;
4. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in any manner which affects the surface or sub-surface;
5. Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
6. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
7. Acts or uses detrimental to such aforementioned retention and maintenance of land or water areas; and
8. Acts or uses detrimental to the preservation of any features or aspects of the property having historical, archaeological or cultural significance.

It is understood that the granting of this Conservation Easement entitles the Grantee or its authorized representatives to enter the Property in a reasonable manner and at reasonable times to assure compliance.

The Grantor on behalf of itself and its successors or assigns hereby agrees to bear all costs and liability relating to the maintenance of the Property in the natural vegetative and hydrologic conditions as existing at the time of execution of this Conservation Easement. The Conservation Easement hereby granted and the obligation to retain and maintain the Property forever predominately in the vegetative and hydrologic condition is herein specified shall run with the land and shall be binding upon the Grantor and its successors and assigns, and shall inure to the benefit of the Grantee and its successors and assigns.

B-2
#24

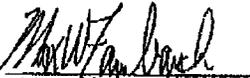
Venue for any actions in connection with this Conservation Easement shall be in Palm Beach County, Florida. The prevailing party shall be entitled to recover reasonable attorney's fees and costs in the trial and appellate courts, in addition to the cost of restoring the land to the natural vegetative and hydrologic conditions as required and stated in this Conservation Easement, if the prevailing party is the Grantee. These remedies are in addition to any other remedy, fine or penalty which may be applicable under Chapter 373 and 403, Florida Statutes, of Palm Beach County ordinance.

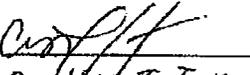
Any forbearance on behalf of the Grantee to exercise its rights in the event of the failure of Grantor to comply with the provisions of this Conservation Easement shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent failure by the Grantor to comply. This Conservation Easement expressly gives third-party and non-party to the easement the right and authority to enforce the terms of this easement as allowed in 704.06 Florida Statutes.

The Grantor hereby represents that the Grantor is seized of the Property in fee simple and has good right and title to grant and convey this Conservation Easement to the Grantee and that the Property is free and clear of any encumbrances, other than those mortgages and related instruments referred to in the attached Mortgage Consent.

IN WITNESS WHEREOF, Grantor has hereunto caused this Conservation Easement to be executed and sealed this 11 day of January, 2005.

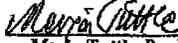
Signed sealed, and delivered in our presence of:


MAX W. FARNBAUGH
Typed or Printed Name


Cynthia J. Jackson
Typed or Printed Name

GRANTOR:

TUTTLE LAND HOLDING CORP., a Florida corporation

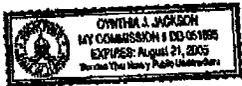
By: 
Merja Tuttle, President

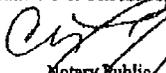
(Corporate Seal)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this Jan. 11, 2005 (date), by Merja Tuttle, as president of Tuttle Land Holding Corp., a Florida corporation, on behalf of the corporation. She is personally known to me, produced a valid driver's license and (did/did not) take an oath.

(Seal)




Notary Public
State of Florida

My Commission Expires: _____

K:\FILES\REK\40972\conservation easement tuttle.wpd



CFN 20050391006
 OR BK 18799 PG 1029
 RECORDED 06/23/2005 15:39:22
 Palm Beach County, Florida
 Sharon R. Bock, CLERK & COMPTROLLER
 Pgs 1029 - 1032; (4pgs)

CONSERVATION EASEMENT

STATE OF FLORIDA
 COUNTY OF PALM BEACH

The undersigned, Shelby Homes at Whispering Woods, (Grantor) has for good and valuable consideration, the receipt of which is hereby acknowledged, granted Palm Beach County (Grantee), a Conservation Easement in accordance with Section 704.06, Florida Statutes, in and over the real property in Palm Beach County, Florida, as set forth in the legal description attached hereto as Exhibit A (the "Property").

As used herein, the term Grantor shall include any successor or assignee of the Grantor, and the term Grantee shall include any successor or assignee of the Grantee.

It is the purpose and intent of this Conservation Easement to assure that the Property will be retained and maintained forever predominantly in the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement, which shall mean that the following activities are prohibited on the Property.

1. Construction or placement of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
2. Dumping or placing of soil or other substances or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
3. Removal, destruction, cutting, trimming, mowing, alteration or biocide spraying of trees, shrubs, or other vegetation; with the exception of removal of nuisance and exotic plant species as may be required or permitted by law, ordinance, or other government approval;
4. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in any manner which affects the surface or sub-surface;
5. Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
6. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
7. Acts or uses detrimental to such aforementioned retention and maintenance of land or water areas; and

8. Acts or uses detrimental to the preservation of any features or aspects of the property having historical, archaeological or cultural significance.

It is understood that the granting of this Conservation Easement entitles the Grantee or its authorized representatives to enter the Property in a reasonable manner and at reasonable times to assure compliance.

The Grantor on behalf of itself and its successors or assigns hereby agrees to bear all costs and liability relating to the maintenance of the Property in the natural vegetative and hydrologic conditions as existing at the time of execution of this Conservation Easement. The Conservation Easement hereby granted and the obligation to retain and maintain the Property forever predominantly in the vegetative and hydrologic condition as herein specified shall run with the land and shall be binding upon the Grantor and its successors and assigns, and shall inure to the benefit of the Grantee and its successors and assigns.

Venue for any actions in connection with this Conservation Easement shall be in Palm Beach County, Florida. The prevailing party shall be entitled to recover reasonable attorney's fees and costs in the trial and appellate courts, in addition to the cost of restoring the land to the natural vegetative and hydrologic conditions as required and stated in this Conservation Easement, if the prevailing party is the Grantee. These remedies are in addition to any other remedy, fine or penalty which may be applicable under Chapters 373 and 403, Florida Statutes, or Palm Beach County ordinance.

Any forbearance on behalf of the Grantee to exercise its rights in the event of the failure of Grantor to comply with the provisions of this Conservation Easement shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent failure by the Grantor to comply. This Conservation Easement expressly gives third-party and non-party to the easement the right and authority to enforce the terms of this easement as allowed in 704.06 Florida Statutes.

The Grantor hereby represents that the Grantor is seized of the Property in fee simple and has good right and title to grant and convey this Conservation Easement to the Grantee and that the Property is free and clear of any encumbrances.

[THIS SPACE INTENTIONALLY LEFT BLANK -
SEE NEXT PAGE FOR ACKNOWLEDGEMENT]

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal this 10th day of June, 2005.

Signed, sealed, and delivered in our presence of:

WITNESSES:

[Signature]
[Signature]
Typed or Printed Name
[Signature]
JACK E. SWEET
Typed or Printed Name

GRANTOR:
Shelby Homes at Whispering Woods, LC

By: [Signature]
Robert Shelley
Typed or Printed Name

Address: 6363 N.W. 6th Way, Suite 250
Fort Lauderdale, FL 33309

ACKNOWLEDGMENT

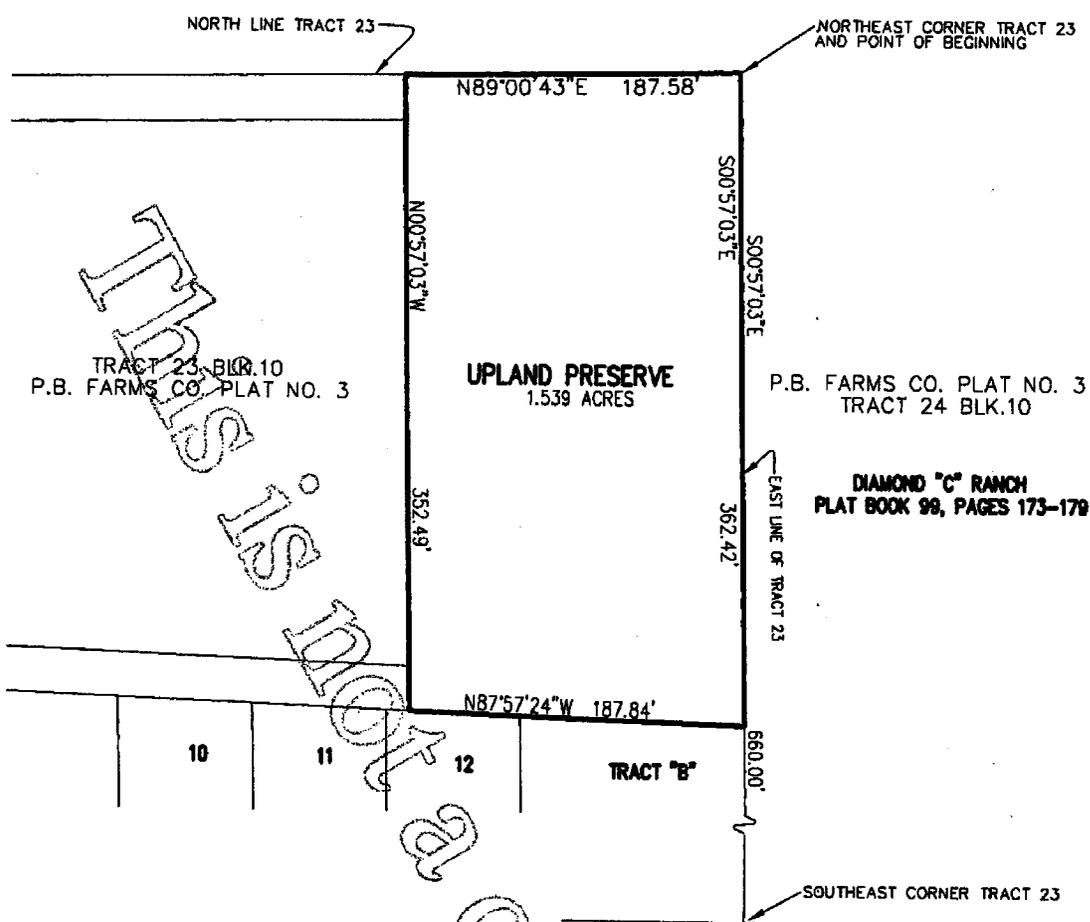
The foregoing instrument was acknowledged before me this 10th day of June, 2005 by Robert Shelley, of Shelby Homes at Whispering Woods, L.C., a Florida corporation, on behalf of the corporation, he is personally known to me ~~or has produced a valid driver's license~~ and did take an oath.

(Seal)
Kristen Ferretti
Commission # DD387305
Expires May 22, 2007
Bonded Tray Felt - Insurance, Inc. 800-365-7019

[Signature]
Notary Public
State of Florida

My Commission Expires:

SECTION 6
TOWNSHIP 44 S
RANGE 42 E



SCALE: 1"=100'

LEGAL DESCRIPTION -- PIONEER PARK UPLAND PRESERVE.

A PARCEL OF LAND LYING IN SECTION 6, TOWNSHIP 44 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEING A PORTION OF TRACT 23, BLOCK 10, OF THE PLAT OF PALM BEACH FARMS COMPANY, PLAT NO. 3 AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID TRACT 23, RUN S00°57'03"E ALONG THE EAST LINE OF SAID TRACT 23 AND THE WEST LINE OF THE PLAT OF DIAMOND "C" RANCH AS RECORDED IN PLAT BOOK 99, PAGES 173 THROUGH 179 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, A DISTANCE OF 362.42 FEET; THENCE N87°57'24"W A DISTANCE OF 187.84 FEET; THENCE N00°57'03"W A DISTANCE OF 352.49 FEET; THENCE N89°00'43"E ALONG THE NORTH LINE OF SAID TRACT 23, A DISTANCE OF 187.58 FEET TO THE POINT OF BEGINNING.
SAID HEREIN DESCRIBED PARCEL CONTAINING 1.539 ACRES MORE OR LESS.

SKETCH OF DESCRIPTION

THIS IS NOT A SURVEY

FOR:

PIONEER TRAIL

SCALE: 1"=100'

DRAWN BY: STAFF

CHECKED BY: C.A.R

DATE: 06/06/05



FIELD BOOK NO

SHEET:

1 / 1

FLORIDA R.L.S. # LS2633

JOB NO

4017.02.02