

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

Meeting Date: July 22, 2014 **Consent** **Regular**
 Ordinance **Public Hearing**

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Easement in favor of the City of Lake Worth (City) for an irrigation pump within John Prince Park to irrigate landscaping in the median of Lake Worth Road.

Summary: The irrigation pump will be installed within John Prince Park immediately adjacent to the right of way for Lake Worth Road and will use water from the Keller Canal for irrigation of the landscaped median on Lake Worth Road from Congress Avenue east to Boutwell Road. The easement area for the pump and pipelines is 48' long and 30' wide containing 1,440 square feet (.03 acres). This non-exclusive easement is being granted at no charge as it will support a Florida Department of Transportation (FDOT) road project to resurface Lake Worth Road which includes updating landscaping in the median from Congress Avenue east to Boutwell Road. **(PREM) District 3 (HJF)**

Background and Justification:

The City requested an easement on the east side of Keller Canal at the north end of John Prince Park for the irrigation pump. The pump and pipelines are located just south of and adjacent to the FDOT road right-of-way for Lake Worth Road. The City will be responsible for all costs associated with the installation, operation and maintenance of this pump.

Attachments:

1. Location Map
2. Easement

Recommended By: Reh Army Wolf 6/20/14
 Department Director **Date**

Approved By: [Signature] 7/7/14
 County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	_____	_____	_____	_____

Is Item Included in Current Budget: Yes _____ No _____

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____
 Program _____

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

No fiscal impact.

C. Departmental Fiscal Review: _____ *6/19/14*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

M. Diaz 7/1/2014
 OFMB *6/30*
6/30

Dr. J. Jacobson 7/2/14
 Contract Development and Control
7-2-14 Jacobson

B. Legal Sufficiency:

J. J. 7/3/14
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

LOCATION MAP

TWP 44

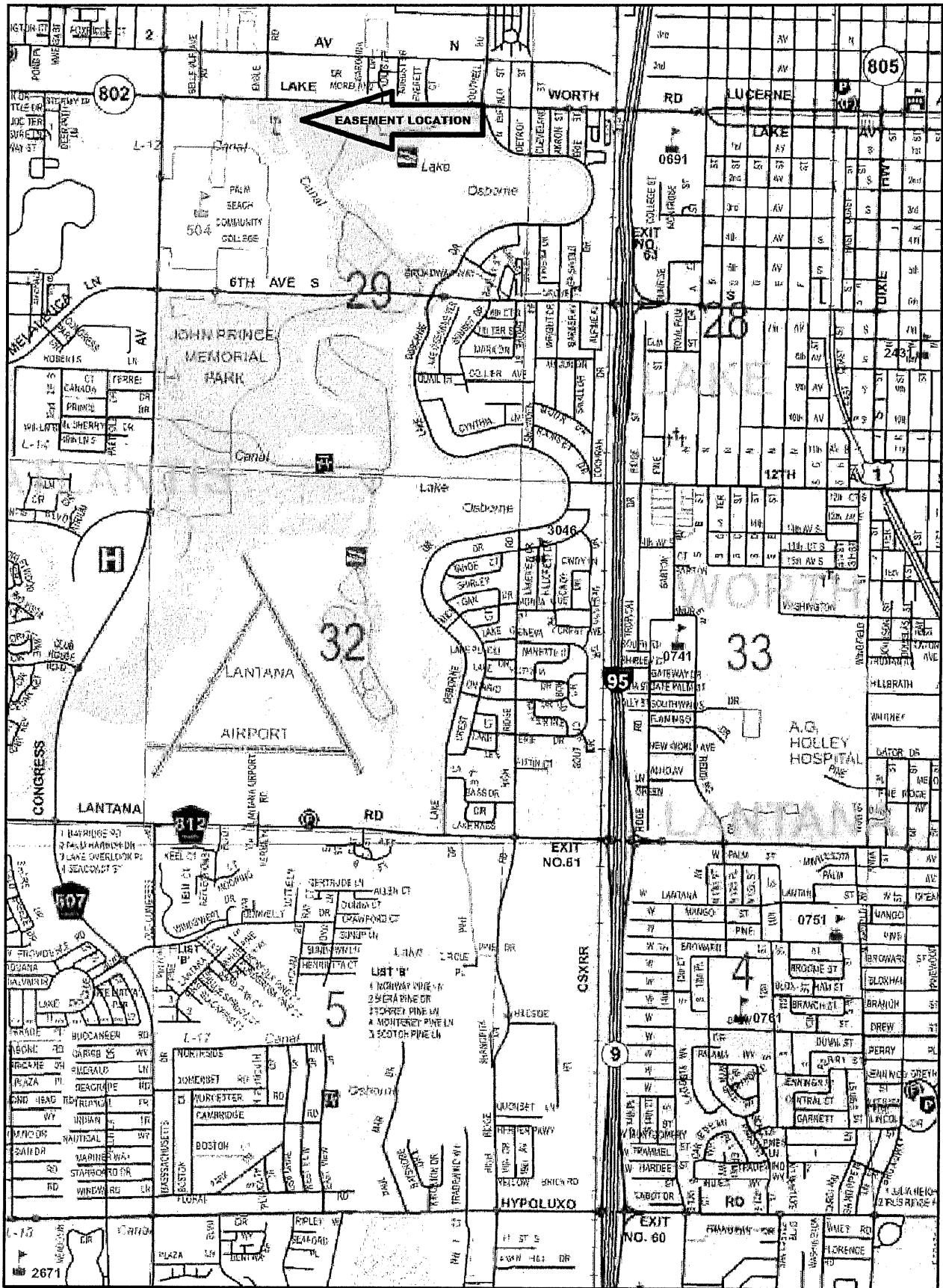
TWP 44

TWP 45

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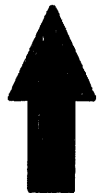
27



RNG 43

See pg 99

RNG 43



NORTH

Prepared by & Return to:
Christine Steiner, Real Estate Specialist
Palm Beach County
Property & Real Estate Management Division
2633 Vista Parkway
West Palm Beach, Florida 33411-5605

A Portion of PCN: 00-43-44-29-00-002-0010

EASEMENT

THIS IS AN EASEMENT, made _____, 2014, granted by **PALM BEACH COUNTY**, a political subdivision of the State of Florida, whose mailing address is 301 N. Olive Avenue, West Palm Beach, Florida 33401-4791 (hereinafter referred to as "County"), in favor of the **CITY OF LAKE WORTH**, a municipal corporation of the State of Florida, whose address is 7 North Dixie Highway, Lake Worth, Florida 33460-3787 (hereinafter referred to as "Grantee").

WITNESSETH:

WHEREAS, County owns the property as legally described as Easement Area 2 in Exhibit "A" attached hereto and by this reference made in part hereof (hereinafter the "Easement Premises"); and

WHEREAS, Grantee has constructed an irrigation pump for the purposes of irrigating the landscaped median located along S.R. 802 (Lake Worth Rd.) within the Easement Premises; and

WHEREAS, Grantee has requested that County grant Grantee an easement over the Easement Premises.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein by reference.
2. **Grant of Easement.** County does hereby grant to Grantee, its successors and assigns, a perpetual, non-exclusive easement in, on, over, under, through, and across the Easement Premises to construct, install and maintain an irrigation pump.
3. **Construction.** Grantee has, at its sole cost and expense, constructed the irrigation pump and pipeline within the confines of the Easement Premises.

4. Maintenance, Repair and Restoration. Grantee shall be solely responsible for and shall, at all times, maintain in good condition and repair the Easement Premises and all improvements constructed therein pursuant to this Easement at its sole cost and expense. Additionally, Grantee shall promptly repair, replace and/or restore the Easement Premises and any improvements now existing or constructed hereafter, including earth, fill and landscaping, to the condition it was in prior to exercise of any rights granted hereunder, using materials of like kind and quality.

5. Other Obligations. Grantee shall diligently pursue all work performed hereunder to completion and exercise the rights granted hereunder in a manner which does not unreasonably interfere with and minimizes the impact upon County's use and enjoyment of the Easement Premises and County's adjoining property.

6. Restrictions. In the event Grantee fails at any time to utilize the Easement Premises for the use granted herein, this Easement shall, at the County's sole discretion be subject to termination upon sixty (60) days written notice from the County to the Grantee. In the event the County elects to terminate this Easement as aforesaid, Grantee shall remove, the irrigation pump and pipeline and any improvements within the Easement Premises and restore the Easement Premises as required in Section 4 herein within 60 days of receipt of notice from the County. Thereafter, County shall record a termination of easement notice into the public records of Palm Beach County, Florida, at which time, any and all rights by the Grantee pursuant to this Easement will be terminated.

7. Access Use Limitation. Grantee shall have the right for ingress and egress over and across the Easement Premises and County's adjoining property adjacent to the public right-of-way as is reasonably necessary to exercise the rights granted herein.

8. Protection of Improvements. Grantee acknowledges that certain above ground and underground improvements have been constructed by County within the Easement Premises or County's adjoining property. Accordingly, Grantee covenants that it will protect all such improvements and any improvements made by County in the future, including, but not limited to, water mains, irrigation pipes, storm water pipes, sanitary sewer pipes, electric service lines, telephone lines, park lighting, fencing, trees, and landscaping which have been or may be placed in the Easement Premises.

9. Extinguished by Abandonment. In the event Grantee, its successors or assigns, shall ever abandon the Easement granted hereby or cease to use the same, this Easement shall automatically terminate. Notwithstanding such automatic termination, Grantee shall promptly deliver to County a Release of Easement, in a form satisfactory to County, if so requested by County.

10. Personal Property. County shall have no liability or responsibility whatsoever for Grantee's improvements, equipment, personal or other property, nor that of any other person or entity, placed upon or located within the Easement Premises.

11. Prohibition Against Liens. Neither County's nor Grantee's interest in the Easement Premises, nor County's interest in the adjoining property, shall be subject to liens arising from Grantee's or any other person or entity's use of the Easement Premises, or exercise of the rights granted hereunder. Grantee shall promptly cause any lien imposed against the Easement Premises or the County's adjoining property to be discharged or bonded off, pursuant to Chapter 255.05 and Chapter 713 of the Florida Statutes. In addition, Grantee shall either require all contractors to furnish a payment and performance bond in accordance with Florida Statutes Section 255.05, naming County as an obligee or, require such contractors to comply with County's Bond Waiver Program as set forth in PPM #CW-F-016 as the same may be amended from time to time, which is hereby incorporated herein by reference. Any required payment or performance bond shall be delivered to County prior to commencement of construction.

12. Approval of Plans, Notice, Permits. Grantee shall obtain from County and all other necessary governmental entities written approval of all plans relating to construction of any improvement within the Easement Premises prior to commencement of construction thereof. Grantee shall give County ten (10) days written notice prior to commencement of construction. Any improvements constructed pursuant to this Easement shall be constructed at Grantee's sole cost and expense within the confines of the Easement Premises in accordance with the approved plans and all permits related thereto and applicable statutes, codes, rules, regulations, and ordinances, shall be diligently pursued to completion, and shall be maintained in a presentable fashion.

13. No Dedication. This Easement is for the use and benefit of Grantee, its successors, and assigns for Grantee's irrigation project as stated herein and is not intended and shall not be construed as a dedication to the public of any portion of the Easement Premises for public use.

14. Liability. Grantee, its successors and assigns shall be liable for its own actions and negligence and, to the extent permitted by law, shall indemnify, defend and hold harmless County from and against any damages, liability, actions, claims or expenses (including reasonable attorney's fees and expenses at trial and all appellate levels) arising out of the City's negligence in connection with this Easement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by Grantee to indemnify County for County's negligent, willful or intentional acts or omissions. Notwithstanding the above, Grantee's indemnification shall not extend to any third parties who are acting under rights granted to them pursuant to Section 16 herein.

15. Insurance.

A. Grantee's general contractor shall, during any construction activities within the Easement Premises, keep in full force and effect Comprehensive General Liability Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence combined single limit bodily injury and property damage liability, and Workers Compensation covering all

employees in accordance with Chapter 440 of the Florida Statutes. The General Liability policy shall include coverage for the Premises, Operation, Contractual Liability, Independent Contractors Contractual Liability, and Broad Form Property Damage Liability coverages. Grantee shall cause any contractor or subcontractor performing work within the Easement Premises on behalf of Grantee to, at all times during the performance of such work, maintain in full force and effect insurance of the same type and amount as the general contractor required above. Except for Workers Compensation, all insurance policies shall name County as an Additional Insured. A Certificate of Insurance evidencing all such insurance coverages shall be provided to County prior to the commencement of construction by any of Grantee's contractors or subcontractors, such Certificate indicating at least thirty (30) days prior notice of cancellation of adverse material changes in coverage. Such insurance shall be issued by an insurance company licensed to do business in the State of Florida and approved by County. A Certificate of Insurance evidencing such insurance coverage shall be provided to County prior to the commencement of any work pursuant to this Easement. Such Certificate shall require at least thirty (30) days prior notice of cancellation or adverse material change in coverage.

B. Grantee shall provide, maintain and keep in full force and effect and provide County with a certificate evidencing self-insurance coverage for comprehensive general liability in the amount of Two Hundred Thousand Dollars (\$200,000) per person and Three Hundred Thousand Dollars (\$300,000) per incident or occurrence and Workers' Compensation insurance covering all employees in accordance with Chapter 440, Florida Statutes. In the event the Legislature should change the Grantee's exposure by statute above or below the sums insured against, the Grantee shall provide insurance to the extent of that exposure. In addition, Grantee shall maintain Business Automobile Liability at a limit of liability not less than One Million Dollars (\$1,000,000) Each Occurrence for all owned, non-owned and hired automobiles. In the event Grantee does not own any automobiles, Grantee shall maintain Hired & Non-Owned Auto Liability in such amount. Coverage shall be provided on a primary basis. Grantee shall cause any contractor or subcontractor performing work within the Easement Premises on behalf of Grantee to, at all times during the performance of such work, maintain in full force and effect insurance of the same type and amount as Grantee required above.

C. In no event shall the limits of said insurance policies be considered as limiting the liability of Grantee under this Agreement. The amount of the insurance required hereby shall be increased every ten (10) years by the increase over such ten (10) year period of the Consumer Price Index.

16. Reservation of Rights. County hereby retains all rights relating to the Easement Premises not specifically conveyed by this Easement including the right to use the Easement Premises and any improvements now existing or constructed hereinafter therein, and the right to grant to third parties additional easements in the Easement Premises or the right to use the improvements therein.

17. Covenant Running with Land. All of the benefits, burdens, covenants and agreements herein shall constitute covenants running with the land, shall be binding upon and/or shall accrue to the benefit of County and Grantee and their respective successors and assigns,

having or hereafter acquiring any right title or interest in or to all or any portion of the Easement Premises.

18. Remedies. In the event Grantee fails or refuses to perform any term, covenant, or condition of this Easement for which a specific remedy is not set forth in this Easement, County shall, in addition to any other remedies provided at law or in equity, have the right of specific performance and injunctive relief.

19. Matters of Record. This Easement is granted without warranty or representation and subject to zoning and other governmental restrictions, matters reflected on any plat relating to the Easement Premises, and all other easements, restrictions, conditions, encumbrances, and other matters of record.

20. Governing Law and Venue. This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Easement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

21. Construction. No party shall be considered the author of this Easement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Easement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such holding shall not affect the remaining portions of this Easement and the same shall remain in full force and effect.

22. Entire Understanding. This Easement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreement, either written or oral, relating to this Easement. No amendment shall be effective unless the same is in writing and signed by all parties.

23. Time of Essence. The parties expressly agree that time is of the essence in this Easement and the failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

24. Non-Discrimination. The parties agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, familial status, marital status, or gender identity or expression, genetic information, age, or sexual orientation be excluded from the benefits of, or be subjected to, any form of discrimination under any activity conducted pursuant to this Easement.

25. Effective Date of Easement. This Easement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective

only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

26. No Third Party Beneficiary. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizens of Palm Beach County or employees of County or Grantee.

27. Office Of The Inspector General. Palm Beach County has established the Office of the Inspector General. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the parties or entities with which the County enters into agreements, their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All parties or entities doing business with the County or receiving County funds shall fully cooperate with the Inspector General including granting the Inspector General access to records relating to the agreement and transaction.

REST OF PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the parties have executed this Easement on the date set forth hereinabove.

Signed, sealed and delivered in the presence of:

CITY OF LAKE WORTH, a municipal corporation created and existing under the laws of the State of Florida:

Deborah M. Andrea
Signature

By: [Signature]
Pam Triolo, Mayor

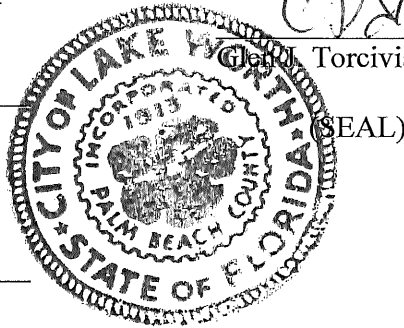
Deborah M. Andrea
Print name of witness

Approved as to form and legal sufficiency:

Kim E. Bureau
Signature

[Signature] FOR
Torcivia, City Attorney

Kim E. Bureau
Print name of witness



ATTEST:

[Signature]
Pamela Lopez, City Clerk

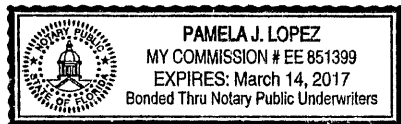
STATE OF Florida

SS:

COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 7 day of May, 2014, by Pam Triolo, Mayor of the City of Lake Worth, who is ~~personally known to me~~ OR who produced _____ as identification and who did not take an oath.

[Signature]
Notary Public
PAMELA J. LOPEZ
Print Notary Name



NOTARY PUBLIC
My Commission Expires: _____

ATTEST:

**SHARON R. BOCK
CLERK & COMPTROLLER**

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:  _____
Assistant County Attorney

COUNTY:

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

By: _____
Priscilla A. Taylor, Mayor

APPROVED AS TO TERMS AND
CONDITIONS

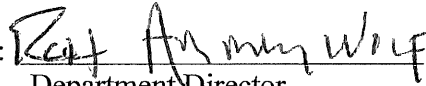
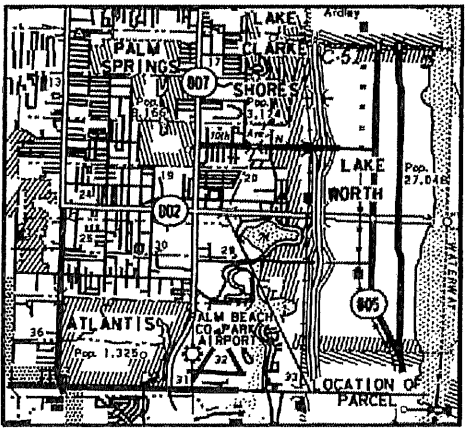
By:  _____
Department Director

EXHIBIT A

LEGAL DESCRIPTION
(As to Easement No. 2 only)

<p style="text-align: center;">RGE. 43 E.</p>  <p style="text-align: center;">LOCATION MAP NOT TO SCALE</p>	<p style="text-align: center;">LEGEND</p> <ul style="list-style-type: none"> ⊖ • BASELINE RGE. • RANGE P.O.B. • POINT OF BEGINNING P.O.C. • POINT OF COMMENCEMENT SEC. • SECTION ORB • OFFICIAL RECORDS BOOK S.R. • STATE ROAD STA. • STATION TWP. • TOWNSHIP LWDD • LAKE WORTH DRAINAGE DISTRICT FDOT • FLORIDA DEPARTMENT OF TRANSPORTATION R/W • RIGHT OF WAY <p style="text-align: center;">GENERAL NOTES</p> <ol style="list-style-type: none"> 1. Bearings and coordinates are relative to the state plane coordinates system, Florida East Coast Zone, North American Datum (NAD) of 1983/1990 adjustment, with a bearing of South 88°04'01" East for the north line of Section 29, Township 44 South, Range 43 East 2. All bearings and distances are calculated unless otherwise noted. 3. Stations and offsets are relative to the Baseline of Survey unless otherwise noted. 4. See attached legal description. 5. Horizontal location of the E-4 Canal Right of Way is approximate and is based upon the Topographic Survey of Palm Beach County Therapeutic Center (File No. 2602) provided by the Florida Department of Transportation. 6. Baseline of Survey and Section Corner coordinates provided by the Florida Department of Transportation. Area Easement No. 1 • +/- 0.041 Acres. Area Easement No. 2 • +/- 0.033 Acres. 				
<p>CERTIFICATION:</p> <p>I hereby certify that this sketch and legal description was prepared under my direction and that they are in compliance with the minimum technical standards as set forth by the Florida Board of Professional Surveyors and Mappers, in Chapter 5J-17.050-052 of the Florida Administrative Code, pursuant to Section 472.027 of the Florida Statutes.</p> <p>FOR THE FIRM,</p> <p style="text-align: right;"><i>Mark R. Sowers</i> Date 05/26/13 Mark R. Sowers, PSM Date Florida Surveyor and Mapper No. 5266 Cardno TBE</p> <p>Not valid unless signed and sealed</p>					
<p>FLORIDA DEPARTMENT OF TRANSPORTATION PARCEL SKETCH - NOT A FIELD SURVEY</p>					
<p>STATE ROAD NO. 802 PALM BEACH COUNTY</p>					
REVISION	BY	DATE	CHECKED	DATE	ITEM/SEG. NO. 422990-1 SECTION 93610-2150 SHEET 1 OF 43
			✓	05-26-13	

EASEMENT NO. 2 (IRRIGATION PURPOSES)

A portion of the Northwest Quarter of Section 29, Township 44 South, Range 43 East, Palm Beach County, Florida; said portion being more particularly described as follows:

Commencing at the Northwest Corner of said Section 29, thence South 88° 04' 01" East along the North line of said Section 29, a distance of 1,889.75 feet; thence South 01° 55' 59" West, a distance of 60.00 feet to the point of intersection with the South Right of Way line of State Road 802 (Lake Worth Road) as shown on Florida Department of Transportation Right of Way Map Section 93610-2150, and the East Right of Way line of the Lake Worth Drainage District E-4 Canal (Keller Canal) as shown on Lake Worth Drainage District Right of Way Map Canal E-4 Job No. 68-122 Sheet 239 of 240, and the Point of Beginning; thence South 88° 04' 01" East, along said South Right of Way line, a distance of 48.00 feet; thence South 01° 55' 59" West, a distance of 30.00 feet; thence North 88° 04' 01" West, a distance of 48.00 feet to the aforementioned East Right of Way line of the E-4 Canal; thence North 01° 55' 59" East, along said East Right of Way line a distance of 30.00 feet, to the Point of Beginning.

Containing 0.033 acres (1,440 sq. ft.), more or less.

				FLORIDA DEPARTMENT OF TRANSPORTATION PARCEL SKETCH - NOT A FIELD SURVEY	
		STATE ROAD NO. 802		PALM BEACH COUNTY	
		BY	DATE	PREPARED BY:	DATA SOURCE:
		DRAWN	06-06-13	CARDNO TBE	VIA
REVISION	BY	DATE	CHECKED	M SOWERS	06-06-13
				ITEM/SEG. NO. 422990-1	SECTION 93610-2150
				3 OF 3 SHEET 4 OF 4	

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