

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

Meeting Date: August 19, 2014

Consent  
 Workshop

Regular  
 Public Hearing

Department:

Submitted By: Engineering & Public Works  
Submitted For: Roadway Production Division

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to approve: a Declaration of Restrictive Covenant with the Florida Department of Environmental Protection (FDEP) for the Lyons Road right-of-way, from approximately 700' south of Atlantic Avenue to Atlantic Avenue.

**SUMMARY:** Approval of the restrictive covenant will resolve soil and groundwater contamination concerns with FDEP by restricting the future use of the Lyons Road right-of-way. The restrictions on the future use of the Lyons Road right-of-way are compatible with continued use of the right-of-way for roadway purposes.

District 5 (MRE)

**Background and Justification:** On December 22, 2010, FDEP notified Palm Beach County (County) that contamination may be present in the vicinity of the intersection of Atlantic Avenue and Lyons Road, and that the County was required to initiate a site assessment. The County initiated a site assessment, consisting of soil sampling and groundwater sampling and monitoring. The site assessment found dieldrin in the soil and arsenic in the groundwater at concentrations above cleanup target levels. In lieu of initiating cleanup of these contaminants, FDEP will allow them to remain in place provided certain restrictions on the future use of the property are put in place via a restrictive covenant. These restricted uses include, but are not limited to, parks, camps, gardens, residential uses, and educational uses such as elementary or secondary schools, or day care services. Future modification of the right-of-way for roadway purposes will require FDEP approval.

**Attachments:**

- 1. Location Map
- 2. Declaration of Restrictive Covenant with Exhibit "A" and Title Report

Recommended by:

*[Signature]*  
Division Director

6/18/14  
Date

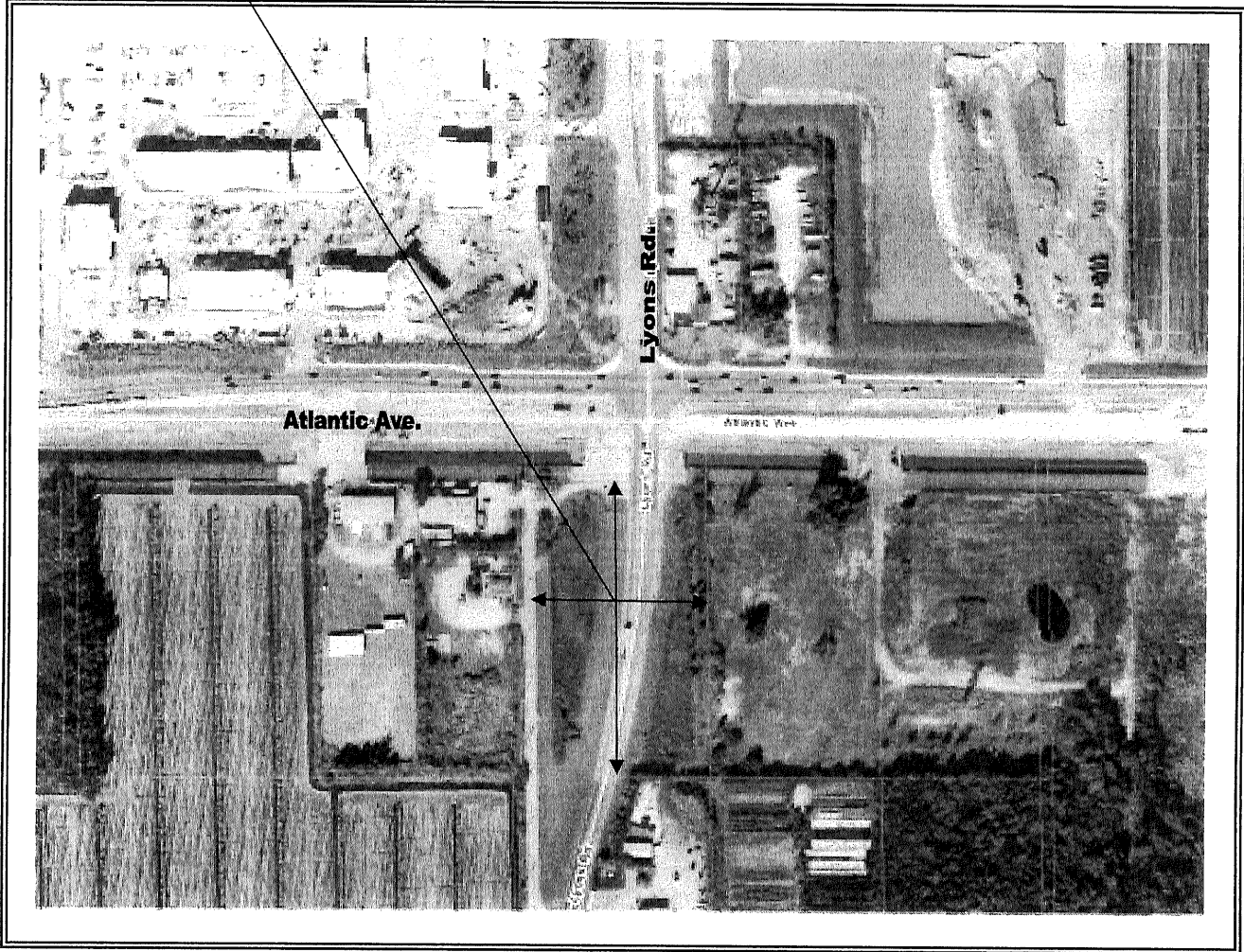
Approved By:

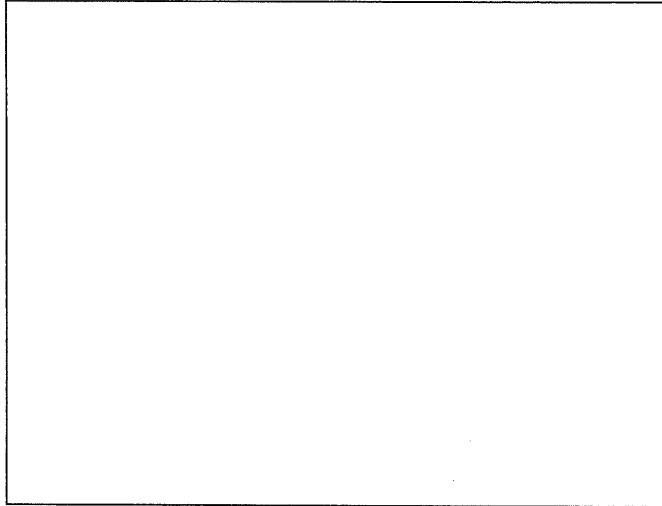
*[Signature]*  
County Engineer

7/18/14  
Date



**LOCATION MAP  
LYONS ROAD SOUTH OF ATLANTIC AVENUE  
AREA OF RESTRICTIVE COVENANT**





This instrument prepared by:

Palm Beach County Engineering and Public Works Department  
Roadway Production Division  
2300 N. Jog Road  
West Palm Beach, FL 33411

#### **DECLARATION OF RESTRICTIVE COVENANT**

THIS DECLARATION OF RESTRICTIVE COVENANT (hereinafter "Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Palm Beach County (hereinafter "GRANTOR") and the Florida Department of Environmental Protection (hereinafter "FDEP").

#### **RECITALS**

A. GRANTOR is the fee simple owner of that certain real property situated in the County of Palm Beach, State of Florida, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter the "Restricted Property").

B. The FDEP Facility Identification Number for the Restricted Property is COM\_304815. The facility name at the time of this Declaration is Property South of Intersection of Lyons Road and West Atlantic Avenue, Delray Beach, Palm Beach County, Florida. This Declaration addresses the legal application of pesticides by others during previous agricultural use of the property and conditional no further action of pesticide residual remaining on property as documented in multiple reports referenced herein, and per FDEP correspondence dated January 10, 2013.

C. The Restricted Property was used for agricultural purposes from at least the mid-1950s to December 2007, when it was redeveloped for roadway use and storm water retention/ management. Between 2011-2012, property assessment activities identified dieldrin above State generic soil cleanup target level for leachability in unsaturated soils; however, dieldrin was not present (below detection limit) in groundwater indicating it was not leaching; and arsenic above State groundwater cleanup target level in shallow groundwater. Four quarters of monitoring of arsenic in groundwater was completed at the Restricted Property to confirm plume extent/stability. The Restricted Property (described in Exhibit A) has groundwater restrictions due to arsenic contamination in the groundwater and soil restrictions due to the dieldrin contamination in unsaturated soils.

The arsenic and dieldrin on the Restricted Property is documented in the following reports that are incorporated by reference:

1. Site Assessment Report, dated August 2011, ARCADIS;
2. Site Assessment Report Addendum, dated January 2012, ARCADIS;
3. Quarterly Arsenic in Groundwater Monitoring Reports dated January 2012, May 2012, and August 2012, ARCADIS; and
4. Annual (and 4<sup>th</sup> Quarter) Arsenic in Groundwater Monitoring Report, dated November 2012, ARCADIS.

D. The reports noted in Recital C set forth the nature and extent of the contamination described in Recital C that is located on the Restricted Property. These reports confirm that contaminated soil and groundwater as defined by Chapter 62-780, Florida Administrative Code (F.A.C.), exists on the Restricted Property. Also, these reports document that the groundwater contamination does not extend beyond the Restricted Property boundaries and the groundwater contamination is not migrating.

E. It is the intent of the restrictions in this Declaration to reduce or eliminate the risk of exposure of users or occupants of the Restricted Property and the environment to the contaminants and to reduce or eliminate the threat of migration of the contaminants.

F. The FDEP has agreed to issue a Site Rehabilitation Completion Order with Conditions (hereinafter "Order") upon recordation of this Declaration. The FDEP can unilaterally revoke the Order if the conditions of this Declaration or of the Order are not met. Additionally, if concentrations of arsenic increase above the levels approved in the Order, or if a subsequent discharge occurs at the Restricted Property, the FDEP may require site rehabilitation to reduce concentrations of contamination to the levels allowed by the applicable FDEP rules. The Order relating to FDEP Facility No. COM\_304815 can be found by contacting the appropriate FDEP district office or bureau.

G. GRANTOR deems it desirable and in the best interest of all present and future owners of the Restricted Property as depicted on Exhibit A that an Order be obtained and that the Restricted Property be held subject to certain restrictions, and that the if the Restricted Property, as described in Exhibit A, all of which are more particularly hereinafter set forth.

NOW, THEREFORE, to induce the FDEP to issue the Order and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the undersigned parties, GRANTOR agrees as follows:

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

2. GRANTOR hereby imposes on the Restricted Property the following restrictions:

a. i. There shall be no use of the groundwater under the Restricted Property, as described in Exhibit A. There shall be no drilling for water conducted on the Restricted Property, nor shall any wells be installed on the Restricted Property other than monitoring wells pre-approved in writing by FDEP's Division of Waste Management (DWM) in addition to any authorizations required by the Division of Water Resource Management (DWRM) and the Water Management District (WMD).

a. ii. For any dewatering activities on the Restricted Property, a plan, approved by FDEP's DWM must be in place to address and ensure the appropriate handling, treatment and disposal of any extracted groundwater that may be contaminated.

a. iii. Attached in Exhibit A, and incorporated by reference herein, is a Survey identifying the size and location of existing stormwater swales, stormwater detention or retention facilities, and ditches on the Restricted Property. Such existing stormwater features shall not be altered, modified or expanded, and there shall be no construction of new stormwater swales, stormwater detention or retention facilities or ditches on the Restricted Property without prior written approval from FDEP's DWM in addition to any authorizations required by the DWRM and the WMD. A revised Exhibit A must be recorded when any stormwater feature is altered, modified, expanded, or constructed.

b. i. The following uses of the Restricted Property are prohibited: agricultural use of the land including forestry, fishing and mining; hotels or lodging; recreational uses including amusement parks, parks, camps, museums, zoos, or gardens; residential uses, and educational uses such as elementary or secondary schools, or day care services. These prohibited uses are specifically defined by using the North American Industry Classification System, United States, 2012 (NAICS), Executive Office of the President, Office of Management and Budget. The prohibited uses by code are: Sector 11 Agriculture, Forestry, Fishing and Hunting; Subsector 212 Mining (except Oil and Gas); Code 512132 Drive-In Motion Picture Theaters; Code 51912 Libraries and Archives; Code 53111 Lessors of Residential Buildings and Dwellings; Subsector 6111 Elementary and Secondary Schools; Subsector 623 Nursing and Residential Care Facilities; Subsector 624 Social Assistance; Subsector 711 Performing Arts, Spectator

Sports and Related Industries; Subsector 712 Museums, Historical Sites, and Similar Institutions; Subsector 713 Amusement, Gambling, and Recreation Industries; Subsector 721 Accommodation (hotels, motels, RV parks, etc.); Subsector 813 Religious, Grantmaking, Civic, Professional, and Similar Organizations; and Subsector 814 Private Households.

3. In the remaining paragraphs, all references to "GRANTOR" and "FDEP" shall also mean and refer to their respective successors and assigns.

4. For the purpose of monitoring the restrictions contained herein, FDEP is hereby granted a right of entry upon and access to the Restricted Property at reasonable times and with reasonable notice to the GRANTOR. Access to the Restricted Property is granted by the adjacent Lyons Road county public right of way.

5. It is the intention of GRANTOR that this Declaration shall touch and concern the Restricted Property, run with the land and with the title to the Restricted Property, and shall apply to and be binding upon and inure to the benefit of GRANTOR and FDEP, and to any and all parties hereafter having any right, title or interest in the Restricted Property or any part thereof. The FDEP may enforce the terms and conditions of this Declaration by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of the FDEP to exercise its right in the event of the failure of the GRANTOR to comply with the provisions of this Declaration shall not be deemed or construed to be a waiver of the FDEP's rights hereunder. This Declaration shall continue in perpetuity, unless otherwise modified in writing by GRANTOR and the FDEP as provided in paragraph 7 hereof. These restrictions may also be enforced in a court of competent jurisdiction by any other person, firm, corporation, or governmental agency that is substantially benefited by these restrictions. If the GRANTOR does not or will not be able to comply with any or all of the provisions of this Declaration, the GRANTOR shall notify FDEP in writing within three (3) calendar days. Additionally, GRANTOR shall notify FDEP thirty (30) days prior to any conveyance or sale, granting or transferring the Restricted Property or portion thereof, to any heirs, successors, assigns or grantees, including, without limitation, the conveyance of any security interest in said Restricted Property.

6. In order to ensure the perpetual nature of this Declaration, GRANTOR shall reference these restrictions in any subsequent lease or deed of conveyance, including the recording book and page of record of this Declaration. Furthermore, prior to the entry into a landlord-tenant relationship with respect to the Restricted Property, the GRANTOR agrees to notify in writing all proposed tenants of the Restricted Property of the existence and contents of this Declaration of Restrictive Covenant.

7. This Declaration is binding until a release of covenant is executed by the FDEP Secretary (or designee) and is recorded in the public records of the county in which the land is located. To receive prior approval from the FDEP to remove any requirement herein, cleanup target levels established pursuant to Florida Statutes and FDEP rules must be achieved. This Declaration may be modified in writing only. Any subsequent

amendments must be executed by both GRANTOR and the FDEP and be recorded by GRANTOR as an amendment hereto.

8. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provisions of the Declaration. All such other provisions shall continue unimpaired in full force and effect.

9. GRANTOR covenants and represents that on the date of execution of this Declaration that GRANTOR is seized of the Restricted Property in fee simple and has good right to create, establish, and impose this restrictive covenant on the use of the Property. GRANTOR also covenants and warrants that the Restricted Property is free and clear of any and all liens, mortgages, or encumbrances that could impair GRANTOR'S rights to impose the restrictive covenant described in this Declaration.

INTENTIONALLY LEFT BLANK



IN WITNESS WHEREOF, Palm Beach County has executed this instrument, this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

GRANTOR:

Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners:

BY: \_\_\_\_\_  
Priscilla A. Taylor, Mayor

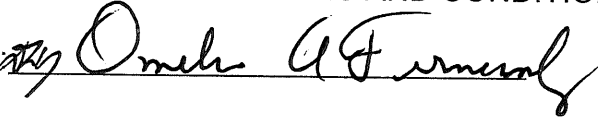
**SEAL**

ATTEST:

Sharon R. Bock, Clerk & Comptroller  
Circuit Court

BY: \_\_\_\_\_  
(Deputy Clerk)

APPROVED AS TO TERMS AND CONDITIONS:

BY:  \_\_\_\_\_

APPROVED AS TO FORM & LEGAL SUFFICIENCY:

BY: \_\_\_\_\_  
Assistant County Attorney

Approved as to form by Florida Department of Environmental Protection, Office General Counsel.

IN WITNESS WHEREOF, the Florida Department of Environmental Protection has executed this instrument, this \_\_\_\_ day of \_\_\_\_\_, 2014.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_  
Jill S. Creech, P.E.  
District Director  
Southeast District  
400 North Congress Avenue, Suite 200,  
West Palm Beach, Florida 33401-2913

Signed, sealed and delivered in the presence of:

Witness: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Witness: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_ as representative for the Florida Department of Environmental Protection.

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Print Name of Notary Public

Commission No. \_\_\_\_\_

Commission Expires: \_\_\_\_\_

# EXHIBIT "A"

## LEGAL DESCRIPTION:

TRACT 16, BLOCK 20, PALM BEACH FARMS COMPANY PLAT NO. 1 AS RECORDED IN PLAT BOOK 2, PAGES 26 THROUGH 28 INCLUSIVE, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

LESS AND EXCEPT THE NORTHERLY 119.00 FEET THEREOF.

CONTAINING 4.611 ACRES, MORE OR LESS.

## CERTIFICATION:

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



WILBUR F. DIVINE  
PROFESSIONAL LAND SURVEYOR & MAPPER  
LICENSE NO. 4190, STATE OF FLORIDA

DATE: 12-11-13

NOTE: THIS IS NOT A SKETCH OF SURVEY, BUT ONLY A GRAPHIC DEPICTION OF THE DESCRIPTION SHOWN HEREON. THERE HAS BEEN NO FIELD WORK, VIEWING OF THE SUBJECT PROPERTY, OR MONUMENTS SET IN CONNECTION WITH THE PREPARATION OF THE INFORMATION SHOWN HEREON.

NOTE: LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RESTRICTIONS, RIGHTS-OF-WAY AND EASEMENTS OF RECORD.



ARCADIS U.S., Inc.

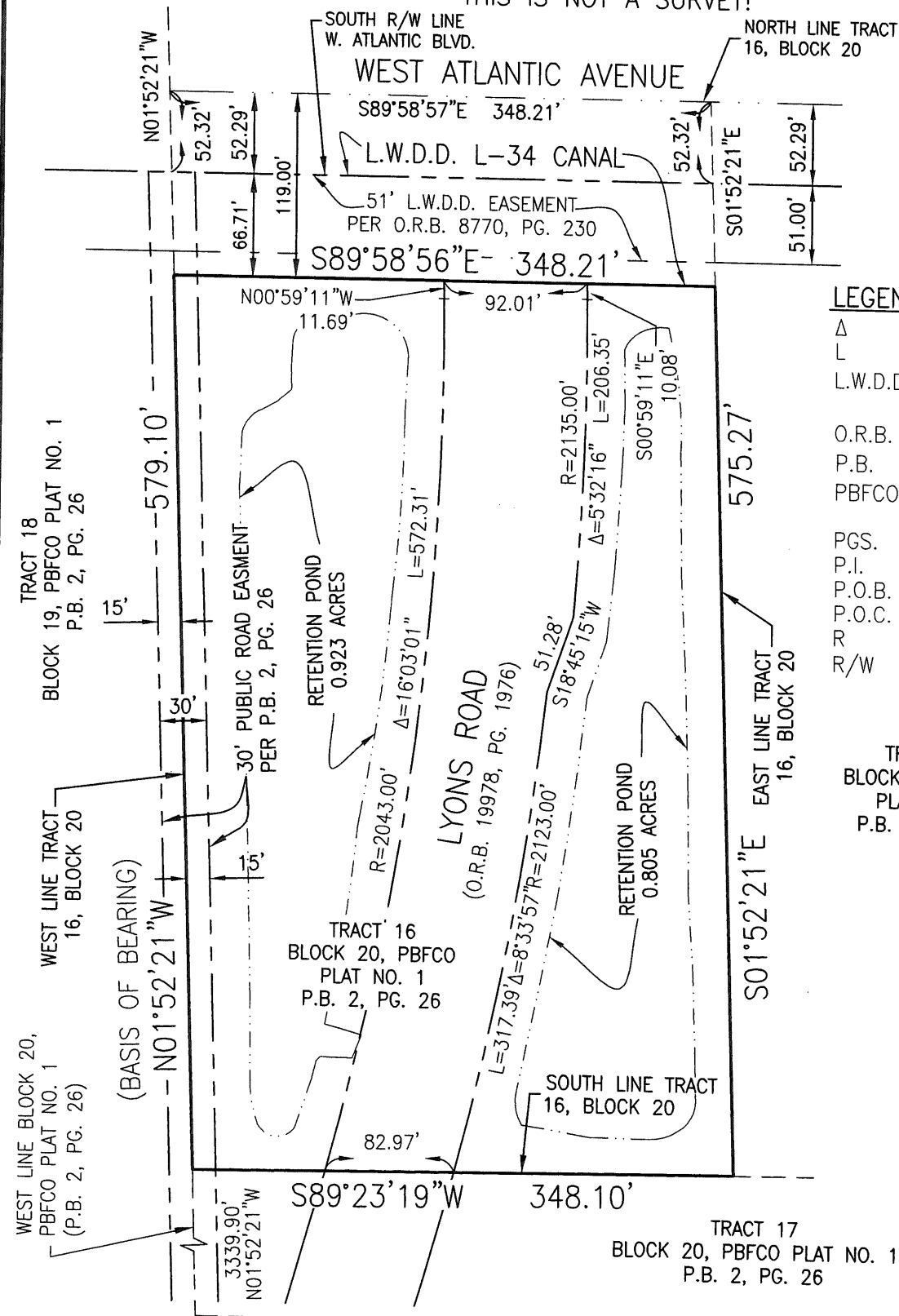
2081 Vista Parkway  
West Palm Beach, Florida 33411

Tel: (561) 697-7000 Fax: (561) 697-7751  
www.arcadis-us.com

LB 7062	PROJECT MANAGER WFD	DEPARTMENT MANAGER RWL	SCALE:	CHECKED BY WFD
	SHEET TITLE SKETCH AND DESCRIPTION RESTRICTED AREA		DATE: 12-11-13	DRAWN BY JAF
	SHEET 1 OF 2		PROJECT NUMBER WF900156	DRAWING NUMBER WF900156-SD05

Date/Time : Fri, 21 Feb 2014 - 3:33pm Path/Name : C:\Projects\NRF\WF\WF900156-LYONS ROAD\CAD\SURVEY\WF900156-SD05.dwg © 2013 ARCADIS U.S., Inc.

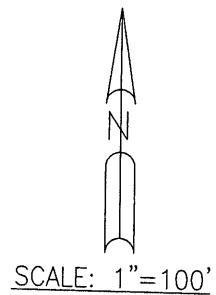
**EXHIBIT "A"**  
 SKETCH TO ACCOMPANY DESCRIPTION.  
 THIS IS NOT A SURVEY!



**LEGEND:**

- Δ - CENTRAL ANGLE
- L - ARC LENGTH
- L.W.D.D. - LAKE WORTH DRAINAGE DISTRICT
- O.R.B. - OFFICIAL RECORDS BOOK
- P.B. - PLAT BOOK
- PBFCO - PALM BEACH FARMS COMPANY
- PGS. - PAGES
- P.I. - POINT OF INTERSECTION
- P.O.B. - POINT OF BEGINNING
- P.O.C. - POINT OF BEGINNING
- R - RADIUS
- R/W - RIGHT-OF-WAY

TRACT 15  
 BLOCK 20, PBFCO  
 PLAT NO. 1  
 P.B. 2, PG. 26



DATE/TIME : Fri, 21 Feb 2014 - 3:39PM PATH\NAME : G:\Projects\LINR\WF\900156-LYONS ROAD\CAD\SURVEY\WF900156-SD05.dwg

<p><b>ARCADIS</b>          ARCADIS U.S., Inc.          2081 Vista Parkway          West Palm Beach, Florida 33411          Tel: (561) 697-7000 Fax: (561) 697-7751          www.arcadis-us.com</p>	PROJECT MANAGER WFD	DEPARTMENT MANAGER RWL	SCALE: 1" = 100'	CHECKED BY WFD
	SHEET TITLE SKETCH AND DESCRIPTION RESTRICTED AREA		DATE: 12-11-13	DRAWN BY JAF
	SHEET 2 OF 2		PROJECT NUMBER WF900156	DRAWING NUMBER WF900156-SD05

**ROADWAY PRODUCTION TITLE REPORT**

**Search Date:** Friday, November 22, 2013

**Project Name:** Draft Restrictive Covenant Package

**Project Number:** 1993901

**Project Limits:** Tract 16, Block 20

**Title Abstractor:** Gary M. Specht

PART A

Title is vested in: Palm Beach County, a Political Subdivision of the State of Florida, by Stipulated Order of Taking and Final Judgment against AMKBJ Partners, Ltd., dated February 10, 2006, recorded February 27, 2006 in Official Records Book 19978, Page 1976;

The Land referred to in this Title Report is described as follows:

Tract 16, Block 20, Palm Beach Farms Company Plat No. 1, as recorded in Plat Book 2, Pages 26 through 28, inclusive, Public Records of Palm Beach County, Florida.

Less and Except the Northerly 119.00 feet thereof.

Containing 4.611 acres, more or less.

ENCUMBRANCES

The following appear as encumbrances unless satisfied prior to closing:

This report lists the following encumbrances:

1. Reservations, dedications and Easements as set forth and shown on Palm Beach Farms Company Plat No. 1 recorded in Plat Book 2, Page 26.

For informational purposes only:

1. NOTE: Property is Exempt from Taxes.
2. Quit Claim Deed from Lake Worth Drainage District to State of Florida Department of Transportation, dated November 16, 2005, recorded November 17, 2005 in Official Records Book 19545, Page 1578.
3. Quit Claim Deed from Lake Worth Drainage District to State of Florida Department of Transportation, dated January 28, 2011, recorded on January 28, 2011 in Official Records Book 24335, Page 1708.
4. County Deed from Palm Beach County to Lake Worth Drainage District, dated July 20, 2010, recorded August 2, 2010 in Official Records Book 23982, Page 1753; And re-recorded January 4, 2011, in Official Records Book 24292, Page 858.
5. Easement Deed from Bluebird Farms, Inc., to Lake Worth Drainage District, dated July 27, 1993, recorded June 1, 1995 in Official Records Book 8770, Page 230.
6. See Maintenance Map in Road Plat Book 5, Page 76, attached.

NOTE: This Title Report is based on a 60 year search of the premises.