

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

Meeting Date:	December 4, 2018	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing

Department:	Facilities Development & Operations
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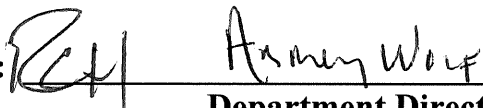
I. EXECUTIVE BRIEF


Motion and Title: Staff recommends motion to approve: a Temporary Construction Easement (TCE) in favor of Pulte Home Company, LLC (Pulte) over a portion of Fire Station No. 57.

Summary: The County’s Fire Station No. 57 is located on Vista Del Lago and Lyons Road just north of Palmetto Park Road in western Boca Raton. Pulte is developing property adjacent to the Fire Station and has been directed by the County Water Utilities Department to connect the Fire Station sewer lines into the Pulte residential gravity sewer system. The project will include the removal of the existing Fire Station lift station, filling the old sewer lines with concrete and constructing new gravity lines from the Fire Station to the Pulte PUD sewer system. The existing lift station and underground lines lie on the west side of the Fire Station. This TCE will expire in 365 days from Board approval and will not be recorded. (PREM) District 5 (HJF)

Background and Justification: Pulte is developing a portion of the Boca Lago Golf Course which is adjacent to Fire Station No. 57. During the Zoning approval process, Pulte was requested to plat the previously unplatted Fire Station during Pulte’s development process for the new PUD, Boca Flores. Pulte agreed to plat the Fire Station site (Plat Bk 125, pgs. 172-176) and agreed to connect the Fire Station to Pulte’s gravity sewer system. This allows for the removal of the Fire Station’s lift station and associated costs to maintain it. The TCE will allow Pulte to enter the Fire Station’s west side, remove the existing lift station and abandon in place the existing sewer lines. Concurrently, Pulte will install gravity sewer lines from the Fire Station to the Boca Flores PUD gravity sewer system.

- Attachments:**
- 1. Location Map
 - 2. Temporary Construction Easement (w/ Exhibit A and Exhibit B)

Recommended By:		10/26/18
	Department Director	Date

Approved By:		11/15/18
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT					
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget: Yes No

Does this item include the use of federal funds? Yes No

Budget Account No: Fund Dept Unit Object
Program

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

No Fiscal Impact.

Fixed Asset Number

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

OFMB 11/11/18 11/13/18
Contract Development and Control 11/13/18

B. Legal Sufficiency:

11/15/18
Assistant County Attorney

C. Other Department Review:

Department Director

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

TWP 47

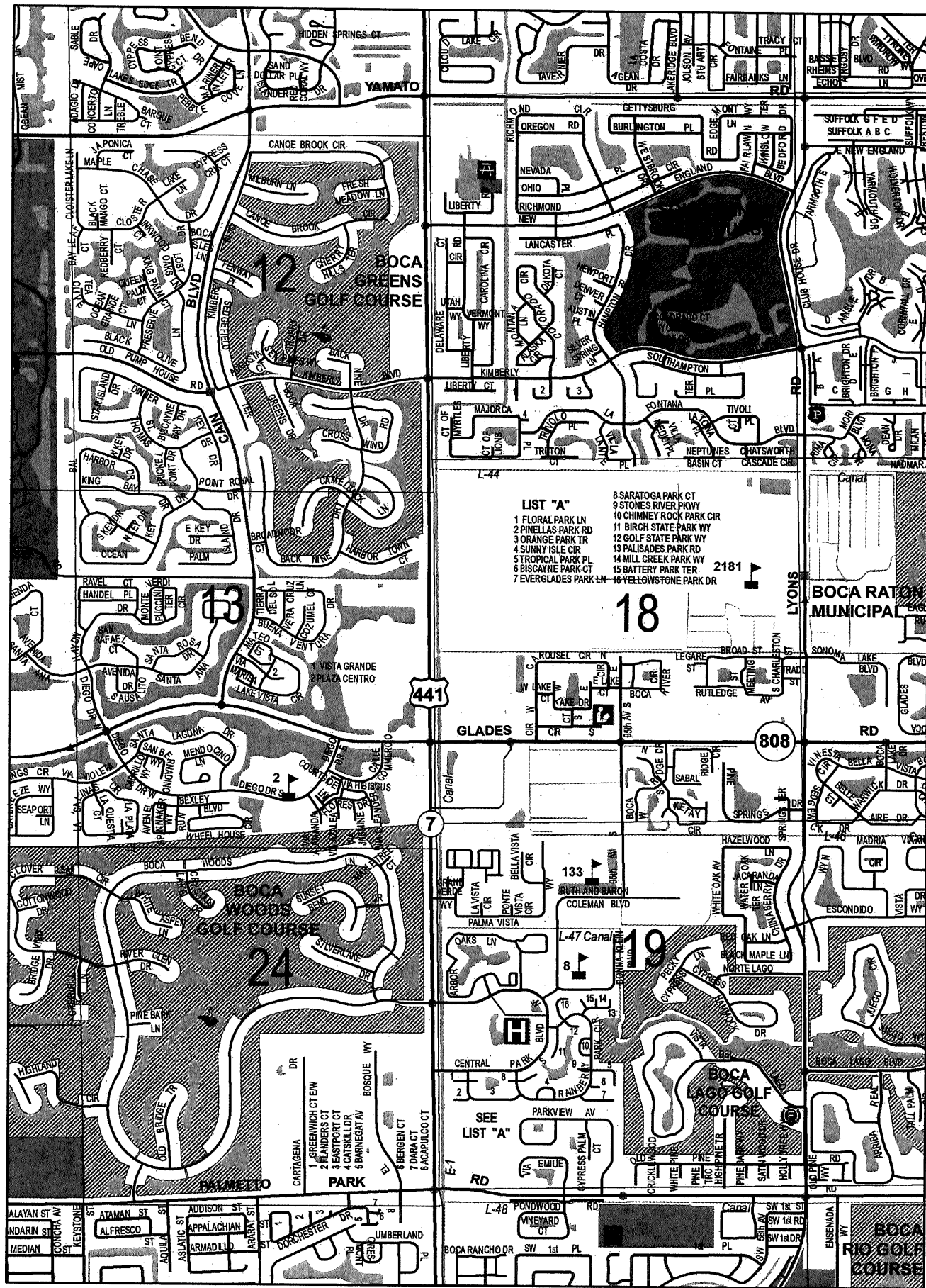
TWP 47

TWP 47

40

41

42



RNG 41

See pg 128

RNG 42

LOCATION MAP

Attachment 1
1 of 1

Attachment 2
Temporary Construction Easement
(11 pages)

Prepared by & Return to:
Peter Banting, Real Estate Specialist
Palm Beach County
Property & Real Estate Management Division
2633 Vista Parkway
West Palm Beach, FL 33411-5605

PCN: 00-42-47-19-01-022-0010

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT made _____ by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, ("County") whose mailing address is 2633 Vista Parkway, West Palm Beach, Florida 33411-5605, and **PULTE HOME COMPANY, LLC**, a Michigan limited liability company authorized to do business in Florida ("Pulte"), whose mailing address is 3350 Peachtree Road Northeast, Suite 150, Atlanta, Ga 30326 ("Grantee").

RECITALS

Whereas, County is the owner of the land described in Exhibit "A" attached hereto (the "County Property"); and

Whereas, Grantee has requested that County grant a Temporary Construction Easement to allow Grantee to remove existing lift station improvements and to construct, and tie into, a replacement wastewater line on the County Property pursuant to Palm Beach County Water Utilities Department's (PBCWUD) request for the Grantee's development of the adjacent Boca Flores PUD.

Now, therefore, for and in consideration of the sum of TEN DOLLARS (\$10.00) to the County in hand paid by said Grantee, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County does hereby grant to the Grantee, a non-exclusive Temporary Construction Easement upon a portion of the County Property as depicted on Exhibit "B" ("the Easement Premises"). The rights granted pursuant to this Easement shall be limited to the right to utilize the Easement Premises solely to remove existing lift station improvements and to construct, and tie into, a replacement wastewater line (the "Project"). The rights granted pursuant to this Easement shall expire and this Easement shall automatically terminate upon the earlier of Grantee's completion of the Project or one year (365) days after the Effective Date. Notwithstanding such automatic termination, Grantee shall promptly deliver to County a Release of Easement, in a form satisfactory to County, upon completion of the Project, if so requested by County.

1. **Conditions to Right of Usage.** Grantee shall obtain from County and any 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. Approval shall be obtained from PBCWUD. All improvements shall be constructed at Grantee's sole cost and expense and within the confines of the Easement Premises in accordance with the approved plans and all permits and applicable statutes, rules, regulations, codes and ordinances. Grantee shall install and maintain a construction fence to secure the Easement Premises area at all times. Grantee shall give County ten (10) days written notice prior to commencement of construction; Grantee shall not be entitled to construct any improvements within the Easement Premises other than those specifically identified herein.

2. **Location of Existing Utilities.** Prior to exercising the rights conferred hereunder, Grantee or any party acting as its agent shall locate the existing utility facilities within the Easement Premises, if any, and shall contact and coordinate with all utilities that have facilities within the Easement Premises.

3. **Use Limitation.** Grantee acknowledges and agrees that the rights granted by this Easement are and shall be strictly limited to those specifically granted herein and that Grantee may not utilize the Easement Premises for any purpose not specifically permitted hereby.

4. **Maintenance, Repair, and Restoration.** Grantee shall be solely responsible for and shall, at all times, maintain and repair at its sole cost and expense the Easement Premises and all improvements currently existing or constructed hereafter therein during the term of this Easement. Grantee shall be solely responsible for and shall, at its own cost and expense, promptly repair any damage arising out of Grantee's exercise of the rights granted hereby and restore any improvements or landscaping now existing or constructed or installed hereinafter within the Easement Premises to the condition it was in prior to such damage, using materials of like kind and quality. In the event that Grantee fails to fulfill these obligations, County may complete the work and Grantee shall reimburse County for all costs and expenses incurred as a result of such failure.

5. **Other Obligations.** Grantee agrees to diligently pursue all work performed hereunder to completion and to exercise the rights granted hereunder in a manner that does not unreasonably interfere with and minimizes the impact on the County's use of the County's Property.

6. **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.

7. **Prohibition Against Liens.** Neither County's nor Grantee's interest in the Easement Premises 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 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 and reviewed and approved by PBCWUD prior to commencement of construction.

8. Insurance. 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. Such insurance shall be underwritten by an insurance company licensed to do business in the State of Florida and approved by the County.

A Certificate of Insurance evidencing such insurance coverage shall be provided prior to the commencement of any work pursuant to this Easement to: Palm Beach County, c/o Insurance Tracking Services, Inc., P.O. Box 20270, Long Beach, CA 90801, Email: pbc@instracking.com or Facsimile: (562) 435-2999, which is Palm Beach County's insurance management system. Such Certificate shall require at least thirty (30) days prior notice of cancellation or adverse material change in coverage. Grantee shall ensure that any contractor or subcontractor entering the Easement Premises on its behalf has and maintains insurance coverage at least equal to that required of the Grantee under the provisions of this Paragraph 8. The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate.

In no event shall the limits of said insurance policies be considered as limiting the liability of Grantee under this Easement. Furthermore, Grantee shall and hereby does hold County harmless from any loss or damage incurred or suffered by County due to Grantee's failure to maintain such insurance.

9. Indemnification. Grantee, its successors and assigns shall indemnify, defend and hold the County harmless 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 exercise of the rights granted hereby and use of this Easement by any person whomsoever, including, without limitation, loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon the Easement Premises or access routes or in connection with the use or operation of the Easement Premises or access routes.

10. **No Dedication.** The grant of Easement contained herein is solely for the use and benefit of Grantee, and Grantee's authorized agents and employees, 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.

11. **Time of Essence.** The parties expressly agree that time is of the essence in this Easement.

12. **Matters of Record.** Grantee hereby accepts the Easement Premises "As-Is", 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.

13. **Non-Discrimination.** Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the parties agree that no person shall, on the grounds of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information be excluded from the benefits of, or be subjected to, any form of discrimination under any activity conducted pursuant to this Easement. Failure to meet this requirement shall be considered default of this Easement.

14. **Palm Beach County Office of the Inspector General** Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General is authorized with the power to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

15. **Construction.** 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 be held by a court of

competent jurisdiction to be invalid, such shall not affect the remaining portions of this Easement and the same shall remain in full force and effect.

16. Entire Understanding. This Easement represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Easement.

17. Notices. All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or overnight delivery service, or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5 PM on a business day and on the next business day if transmitted after 5 PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designated the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

County:

Property & Real Estate Management Division
Attention: Director
2633 Vista Parkway
West Palm Beach, Florida 33411-5605
Telephone: 561-233-0217
Fax: 561-233-0210

With a copy to:

Palm Beach County Attorney's Office
Attention: Real Estate
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401
Telephone: 561-355-2225
Fax: 561-355-4398

Grantee:

Pulte Home Company, LLC

3350 Peachtree Road Northeast
Suite 150
Atlanta, Ga 30326
Telephone: _____
Fax: _____

Any party may from time to time change the address at which notice under this Easement shall be given such party, upon three (3) days prior written notice to the other parties.

18. Default. 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 thereof.

19 Governing Law & 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.

20. Prohibition Against Assignment. This Easement may not be assigned by Grantee.

21. No Third Party Beneficiary. No provision of this Easement 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 Easement, including but not limited to any citizens of County or employees of County or Grantee.

22. 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.

23. 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.

24. Waste or Nuisance. Grantee shall not commit or suffer to be committed any waste upon the Easement Premises or any nuisance or other act or thing which may result in damage or depreciation of value of the Easement Premises or which may affect County's fee interest in the Easement Premises. Grantee shall keep the access to the Easement

Premises, the parking areas, driveways and other contiguous areas to the Easement Premises free and clear of obstruction.

25. Governmental Regulations. Grantee shall, at Grantee's sole cost and expense, secure any required permits and comply with all regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to Grantee or its use of the Easement Premises, and shall faithfully observe in the use of the Easement Premises all municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force and all applicable association/governing body rules and regulations pertaining to the Grantee's use of the Easement Premises. Grantee shall not store or dispose any contaminants including, but not limited to, hazardous or toxic substances, chemicals or other agents, including any petroleum products, used or produced in Grantee's activity, on the Easement Premises or in any manner not permitted by law. Grantee shall indemnify, defend and save County, its agents, officers, and employees harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Grantee's failure to perform its obligations specified in this Section. Grantee's indemnification obligations set forth in the foregoing shall survive termination or expiration of this Easement.

26. Surrender of Premises. Upon termination of the use of the Easement Premises by the Grantee, Grantee, at its sole cost and expense, shall remove all of its personal property from the Easement Premises and shall surrender the Easement Premises to the County in at least the same condition the Easement Premises were in at the start of each period of use.

27. Recording. This Easement shall not be recorded into the public records of Palm Beach County, Florida.

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IN WITNESS WHEREOF, the parties have executed this Temporary Construction Easement as of the day and year first above written.

Signed, sealed, and delivered
in the presence of:

Grantee:

PULTE HOME COMPANY, LLC, a Michigan
limited liability company authorized to do businesses in
Florida

[Signature]
Witness Signature

ANDREW MAXEY
Witness Name Printed

[Signature]
Witness Signature

Debra Flynn
Witness Name Printed

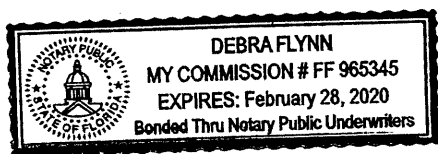
By: [Signature]
PATRICK A. GONZALEZ Vice President
Print Name/Title Land Development

(SEAL)

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 22nd day of
October, 2018, by Patrick Gonzalez the Vice President Land Development of Pulte Home company, LLC
a Michigan LLC (☒) who is personally known to me OR (☐) who
has produced _____ as identification and who (☐) did (☐)
did not take a oath.

(Notary Seal)



[Signature]
Notary Public, State of Florida

Debra Flynn
Type, print or stamp name

Commission Number: FF 965345
My Commission Expires: 2/28/20

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

COUNTY:

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

By: _____
_____, Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: 
Assistant County Attorney

**APPROVED AS TO TERMS
AND CONDITIONS**

By: 
Department Director

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EXHIBIT "A"

COUNTY PROPERTY

As Described in

Plat Book 125, Pg. 172 - 176

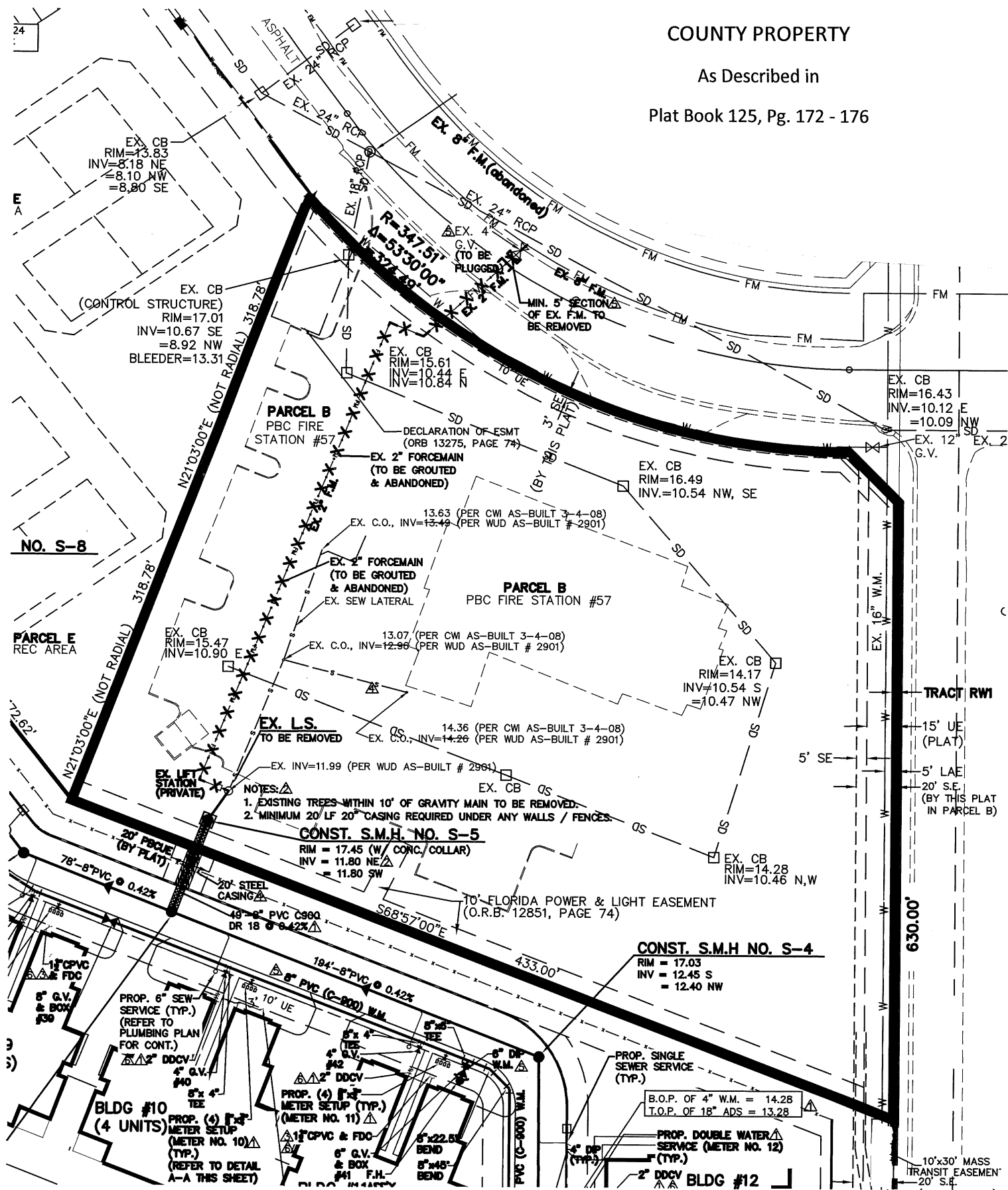


EXHIBIT "B"

THE EASEMENT PREMISES

