

15350 87 Street
Fellsmere, FL 32948
January 15, 2018

Fellsmere Water District
109 Willow St.
Fellsmere, FL 32948

RE: 87. Street north of Route 512

Dear Sir,

Pursuant to the Florida Freedom of Information Law, please advise who owns, and who is responsible, for the maintenance of the above cited street.

The road currently floods due to the fact that the swale on the north side of the street has not been maintained, causing the aforementioned ponding, and flooding of the road.

If it becomes necessary, the residents of the street will dig the necessary drainage ditches to permit the surface water runoff to enter the adjacent canal for discharge.

Yours, etc.

R. Meadow
RD.jr

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Fellsmere Water Control District

P.O. Box 438 • Fellsmere, Florida 32948
772-571-0640 • 772-571-0203 fax
fwcd@bellsouth.net



January 23, 2018

R. Meadow
15350 -87th Street
Fellsmere, FL 32948

Re: 87th Street North of Route CR 512

Dear R. Meadow,

In response to your letter dated January 15, 2018, the road in question 87th Street is a private road located adjacent to the Fellsmere Water Control Districts Sub-Lateral nineteen (19) located between District laterals Park Lateral and Lateral U. It is a two and one fourth (2 ¼) mile long dirt road located within the Circle Z subdivision that runs east to west. Circle Z subdivision was a privately owned tract of land that was part of the Minor Platt Ranch Property located within the Plat of the Fellsmere Farms Land Sales Company formed in 1911.

Circle Z purchased the property from the Platts in 2004 and permitted it into a subdivision of 10 acre and larger tracts. It is permitted by the Florida Department of Environmental Protection, Army Core of Engineers and St. Johns River Water Management. The roads were constructed by Circle Z, a now defunct company, according to those permits. The secondary drainage was on the opposite side of the roads from the District system for drainage and piped under the roads into the Districts Sub-laterals. With lack of maintenance by the landowners these swales have deteriorated to a point they now do not function as permitted.

Fellsmere Water Control District is a Florida Statute 298 Single Purpose Independent Water Control District has no authority or taxing powers to maintain roads. There is some confusion, since some of the Districts fee simple right-of-way is involved with easements done by Circle Z to create the roads.

In 1974, with later amendments there is an Interlocal Agreement between Fellsmere Water Control District and Indian River County where the County grades some roads within the Fellsmere Water Control District. (See enclosed map) However, Circle Z Properties is not a part of this agreement. Therefore, the roads are privately owned by those Landowners of the adjacent tracts and as such would be maintained by them.

Any connections to the Districts Sub-Lateral system must be via culvert pipe under the road and be permitted by the District. Repairs to the road swales falls under the jurisdiction of St. Johns River Water Management and Florida Department of Environmental Protection.

Please go to fellsmerewatercontroldistrict.com to the Districts website for more information.

Sincerely,

A handwritten signature in black ink that reads "Rodney Tillman". The signature is fluid and cursive, with a horizontal line above the name.

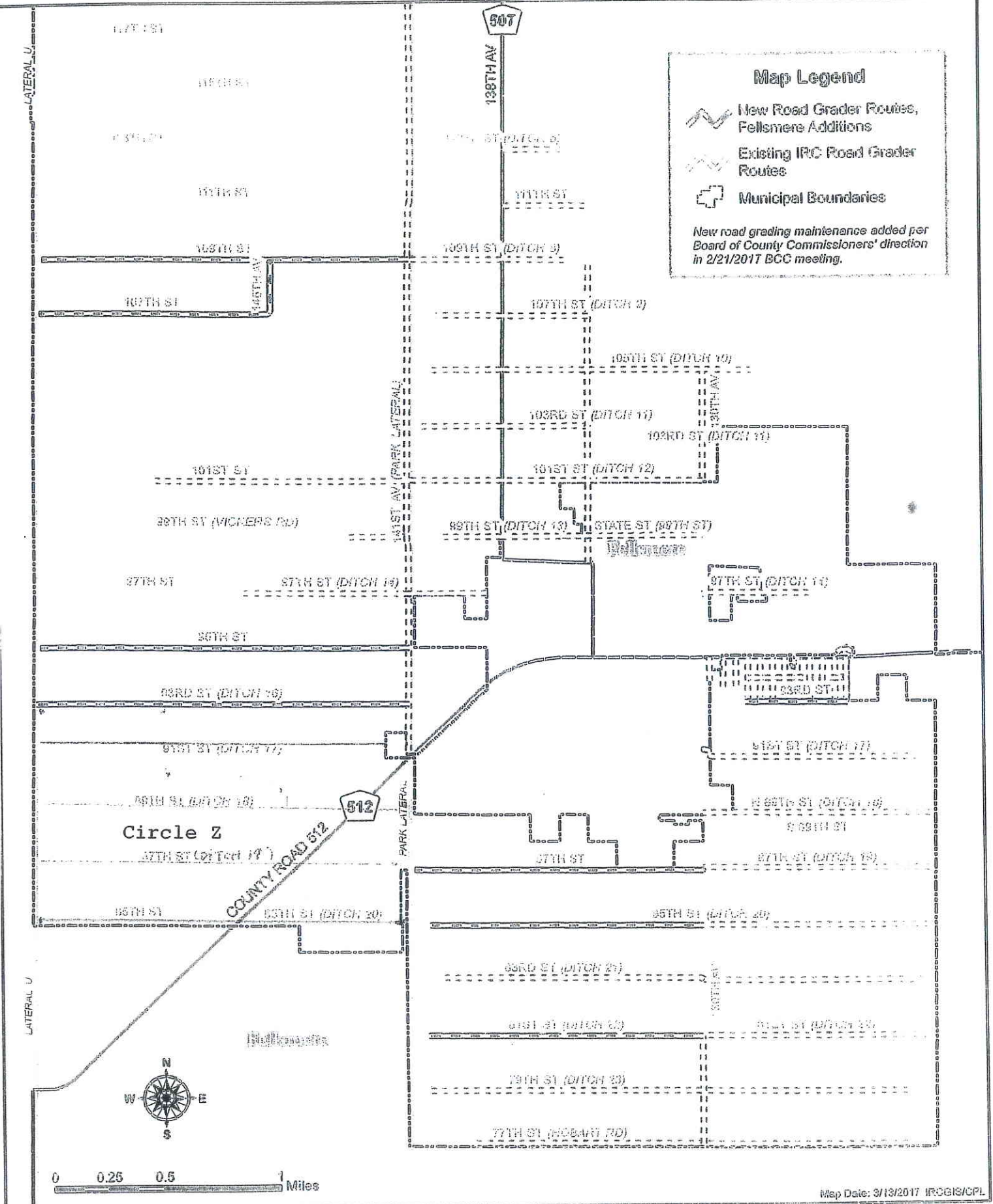
Rodney Tillman, CDM
Superintendent Plant and Operations
Fellsmere Water Control District

Enclosure

Cc: Susan Adams, County Commissioner
George Simons, District Engineer Carter Associates
Board of Fellsmere Water Control District

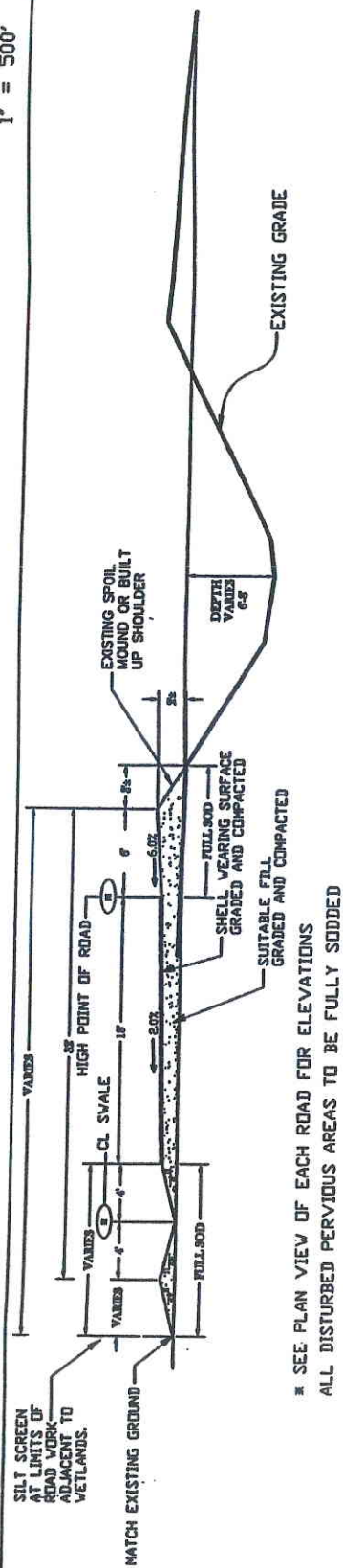
EXHIBIT A: ROAD GRADER ROUTES IN FELLSMERE

Indian River County Public Works Department, Road and Bridge Division



[illegible]

OVERALL PLAN

$$\underline{1' = 500'}$$


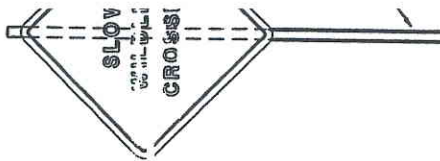
SEE PLAN VIEW OF EACH ROAD FOR ELEVATIONS
ALL DISTURBED PERVIOUS AREAS TO BE FULLY SODDED

DISCLAIMER: NOT FOR ROADWAY
GEOMETRY. ONLY FOR
DRAINAGE.

CROSS-SECTION A-A

TYP. ROAD CROSS-SECTION DETAIL

N.T.S.



Record & Return to:
Professional Title of Indian River, Inc.
1546 N US 1, Sebastian, FL 32958

P-33920
Prepared by and Return to:
Peter Z. Skokos, Esq.
Norton, Hammersley, Lopez & Skokos, P.A.
1819 Main St, Suite 610
Sarasota, FL 34236

**DECLARATION OF COVENANTS, RESTRICTIONS AND OBLIGATIONS FOR ROADWAY
MAINTENANCE**

THIS DECLARATION is made this 16th day of December, 2003, by CIRCLE Z RANCH OF
FELLSMERE, L.L.C. ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of that certain property described on the attached Exhibit "A",
the "Subject Property".

WHEREAS, Declarant desires that the Subject Property be developed under certain covenants,
restrictions, conditions and easements as more specifically set forth herein.

NOW, THEREFORE, Declarant, as owner of the Subject Property, hereby establishes this
Declaration of Covenants, Restrictions and Obligations for Maintenance and hereby place same
over the Subject Property.

ARTICLE I
Property Subject to This Declaration

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to the
provisions of this Declaration is all of the Subject Property described on the attached Exhibit "A".

ARTICLE II
Restrictive Covenants

In order to establish and maintain the highest quality environment for the maximum benefit and
enjoyment of the owners of the Subject Property (hereinafter sometimes collectively referred to as
"Owners"), the following covenants, conditions, easements, roadway maintenance obligations and
restrictions shall constitute covenants running with the land and shall be binding upon and inure to
the benefit of all owners of all of the land subject to this Declaration. The following covenants,
conditions, and restrictions shall affect the Subject Property:

1. **Commercial Agriculture Restricted.** The Subject Property may be utilized for suitable

agricultural cultivation and the keeping of personal livestock. Commercial floriculture, horticulture, agriculture, tree or sod farming, and commercial animal (including but not limited to cattle, swine, poultry, and goat) breeding and development, feedlot operations, commercial livestock slaughtering and dressing, and/or the commercial processing of food, animal byproducts, and related products shall be prohibited within the limits of the Subject Property.

2. **Restriction Regarding Fruit Fly Species.** Buyer, its successors in title, heirs and/or assigns, recognizing that the absence of Caribbean, Mediterranean, or other similar fruit fly species from the Property is critical to the continued success of citrus groves on nearby properties, shall not plant, cultivate nor allow to grow in a cultivated manner any tropical fruit plant which may be deemed to be an attractive host plant for such fly species. Examples of such plants include, but are not limited to, guava, surinam cherry, loquat, kumquat, mango and papaya. This covenant shall not prohibit the cultivation of citrus on the Property, provided the citrus is cultivated in accordance with standard industry practices.
3. **Maintenance of Roadways.** The Owners of the Subject Property, their grantees, purchasers for value, successors or assigns in interest shall repair and maintain those public rights of way within the Subject Property known as 85th Street, 87th Street, 89th Street, and 91st Street (collectively, the "Maintained Roadways") shown on the attached diagram attached hereto as Exhibit "B" and as more fully described on the Plat of Fellsmere Farms Company recorded in Plat Book 2, Pages 1 and 2, of the Public Records of St. Lucie County, Florida, said land now lying and being in Indian River County, Florida.
 - a. **Apportionment.** Declarant, its heirs, assignees, grantees, purchasers for value, and successors in interest, acknowledge that the responsibility for maintenance of the Maintained Roadways shall be apportioned equally among the Owners of property adjacent to and served by a Maintained Roadway within the Subject Property in accordance with this section. Declarant, its heirs, assignees, grantees, purchasers for value, and successors in interest, may assess such Adjacent Owners for the cost of maintaining the Maintained Roadway serving the Adjacent Owners, and may impose liens against the property of those Adjacent Owners for which payment of any assessment is not made within thirty (30) days of the written request therefore and such lien shall be effective upon the date of recording. The lien may be foreclosed in the same manner as mortgage foreclosures are accomplished pursuant to the laws of the State of Florida. Furthermore, the cost of maintaining any culvert, bridge, driveway or other means of access from the property of an adjacent owner to a Maintained Roadway shall be borne solely by the adjacent owner served thereby.
 - i. **85th Street Adjacent Owners.** The Owners of Tracts 2065-2077 are hereby deemed the Adjacent Owners of 85th Street. The Adjacent Owners of 85th Street, their grantees, purchasers for value, successors or assigns in interest shall be solely responsible for the repair and maintenance 85th Street within the limits of the Subject Property.
 - ii. **87th Street Adjacent Owners.** The Owners of Tracts 2016-1028 and the Owners of Tracts 1965-1977 are hereby deemed the Adjacent Owners of 87th Street. The Adjacent Owners of 87th Street, their grantees, purchasers for value, successors or assigns in interest shall be solely responsible for the repair and maintenance 87th Street within the limits of the Subject Property.
 - iii. **89th Street Adjacent Owners.** The Owners of Tracts 1916-1925, the Owners of Tracts 1927-1928, the Owners of Tracts 1865-1866, and the Owners of Tracts 1870-1877 are hereby deemed the Adjacent Owners of 89th Street. The Adjacent Owners of 89th

Street, their grantees, purchasers for value, successors or assigns in interest shall be solely responsible for the repair and maintenance 89th Street within the limits of the Subject Property.

- iv. **91st Street Adjacent Owners.** The Owners of Tracts 1816-1819 and The Owners of Tracts 1774-1777 are hereby deemed the Adjacent Owners of 91st Street. The Adjacent Owners of 91st Street, their grantees, purchasers for value, successors or assigns in interest shall be solely responsible for the repair and maintenance 91st Street within the limits of the Subject Property.
- B. **No Assumption or Contribution beyond Limits of Subject Property.** Nothing contained in this Declaration shall be construed as an assumption by the Declarant or any Owner of any obligation to perform any maintenance work beyond the limits of the Subject Property or to contribute to the cost of repair or maintenance incurred by owners of other property served said Maintained Roadways beyond the limits of the Subject Property. However, nothing contained in this Declaration shall be construed as a waiver by the Declarant or any Owner of any right to seek contribution from owners of other property served said Maintained Roadways beyond the limits of the Subject Property for maintenance work performed by the Declarant or any Owner beyond the limits of the Subject Property.
- 4. **Declarant Maintenance Period.** The Declarant shall maintain the Maintained Roadways for a period of one (1) year following the date of this Declaration, or until such time as Declarant is no longer an Owner of Subject Property, whichever is the first to occur (the "Declarant Maintenance Period"). Thereafter, the Owners shall assume all obligations for the maintenance and upkeep of the Maintained Roadways in accordance with this Declaration.
- 5. **No Association.** Although no association is created hereby, Owners may, but are not obligated to, create a homeowner's association, a property owner's association, or some other association which, after the expiration of the Declarant Maintenance Period, may be responsible for such repair and maintenance.
- 6. **Indemnification.** Upon the expiration of the Declarant Maintenance Period, the Owners shall indemnify and hold the Declarant harmless from all losses, damages, costs, claims, suits, liabilities, expenses and attorney's fees (including those for legal services rendered at the Appellate Court level), resulting from or relating to the use, construction, repair or maintenance of the Maintained Roadways, or the failure to repair or maintain the Roadway in accordance with this Declaration. This paragraph shall survive the amendment, modification and/or termination of this Declaration.

7. **Access Easement.** Declarant, on behalf of its heirs, assignees, grantees, purchasers for value and successors in interest hereby provides an easement granting the right of ingress, egress, and access across all Maintained Roadways, which easement shall run with the land.

ARTICLE III Default

In addition to and without limitation of the assessment and lien rights for Roadway maintenance, set forth above, an aggrieved Owner ("Non-Defaulting Owner"), may seek appropriate relief at law or in equity to specifically enforce the terms and conditions of this Declaration, including the right of injunctive relief in the event of a failure by any Owner ("Defaulting Owner") to this Declaration to perform, fulfill or observe any agreement contained within this Declaration to be performed, fulfilled or observed by it, continuing for (30) days after written notice. The Non-Defaulting Owner shall be specifically entitled to the right to receive a reimbursement of all costs, fees and expenses, including but not limited to reasonable attorneys' fees and expenses incurred by such party in enforcing this Declaration, which cost, fees and expenses shall be payable by the party or parties violating this Declaration. The Non-Defaulting Owner shall have all other rights and remedies available at law or in equity to enforce the terms and provisions, restrictions and obligations contained in this Declaration.

ARTICLE IV General Conditions

1. **Amendment.** This Declaration may be amended, modified or terminated only with the unanimous written consent of the Owners, which amendment, modification or termination shall be in writing signed by all parties and recorded in the public records of Indian River County, Florida. Notwithstanding the foregoing, this Declaration may be amended, modified or terminated by Declarant unilaterally, in its sole and absolute discretion, as may be necessary in connection with the annexation of the Subject Property into the City of Fellsmere.
2. **Agreement to Run with the Land.** The agreements, covenants and obligations set forth herein run with the land and shall be binding upon Declarant, its heirs, assignees, grantees, purchasers for value, or successors in interest until a particular provision is duly amended or until this Declaration is duly revoked and terminated by the unanimous written consent of the Owners, their successors or assigns. If any term, covenant or restriction herein shall be invalid or unenforceable, the remainder shall not be affected thereby, and each term, covenant and restriction shall be valid and enforceable to the fullest extent permitted by law.
3. **Effective Date.** This Declaration shall become effective upon the date of its recording in the Official Records of Indian River County, Florida
4. **Time is of the Essence.** Time is of the essence for the performance of the Owners' obligations herein.
5. **Governing Law.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Florida.

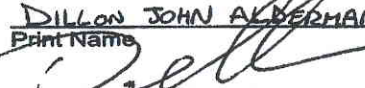
[Signatures Commence on Following Page]

IN WITNESS WHEREOF, Declarant has executed this Declaration of the date first above written.

Signed, sealed and delivered in the presence of:



Witness Signature

DILLON JOHN ALBERMAN
Print Name


Witness Signature

Donald Shoen
Print Name

CIRCLE Z RANCH OF FELLSMERE, L.L.C.

By: 
Name: Paul Paluzzi
Its: Manager

Notary Acknowledgment

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 16th day of DECEMBER
2003 by PAUL PALUZZI for CIRCLE Z RANCH OF FELLSMERE, L.L.C., on behalf of the
_____ and who is personally known to me and did not take an oath.





Notary Public