

**Lee County Board of County Commissioners  
Agenda Item Summary**

DATE CRITICAL  
Blue Sheet No. 20041630

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Approve a request for a license to allow the placement of a storm sewer (drainage pipe) in a portion of the Plantation Road right-of-way and authorize the Chairman to execute the license.

**WHY ACTION IS NECESSARY:** Board approval is necessary to authorize the license

**WHAT ACTION ACCOMPLISHES:** Authorizes a license to allow the placement of a storm sewer in a portion of the Plantation Road right-of-way.

**2. DEPARTMENTAL CATEGORY:** 12  
**COMMISSION DISTRICT #2**

*C12B*

**3. MEETING DATE:** *12-14-2004*

**4. AGENDA:**

CONSENT  
 ADMINISTRATIVE  
 APPEALS  
 PUBLIC  
 WALK ON  
 TIME  
 REQUIRED: 5 Min.

**5. REQUIREMENT/PURPOSE:**  
(Specify)

STATUTE Ch. 125, F.S.  
 ORDINANCE  
 ADMIN. CODE  
 OTHER

**6. REQUESTOR OF INFORMATION:**

A. COMMISSIONER \_\_\_\_\_  
 B. DEPARTMENT \_\_\_\_\_  
 C. DIVISION \_\_\_\_\_

BY: *John J. Fredyma*  
 John J. Fredyma, Asst. Co. Atty.

**7. BACKGROUND:** Ryan Plantation Road, LLC ("Ryan"), is the owner of property located at 14550 Plantation Road, Fort Myers, Florida (STRAP#: 30-45-25-00-00002.103A) and is developing a warehouse and corporate office at the site. To complete the project, Ryan also needs to construct approximately 750 feet of storm sewer (drainage pipe) within a portion of the Plantation Road right-of-way. The storm sewer is part of the water management system for the site. Plantation Road is a County-maintained road and Ryan needs the County's permission to install the storm sewer in the road right-of-way. This is a single purpose, private storm drainage pipe, not intended to be dedicated for use by the public, Lee County or any other entity.

DOT does not object to allowing the storm drainage pipe to be placed in the Plantation Road right-of-way, provided certain conditions apply. One condition is the issuance of license from the Board to allow the installation. The license would be temporary and fully revocable by the County. If approved, the license would require Ryan, or any successor property owner, to remove or relocate the storm drainage pipe if the requested to do so by the County. Ryan would also be fully responsible for maintenance of the drainage pipe, and must also agree to hold the County harmless from any claims resulting from the installation or maintenance of the drainage pipe. A copy of the License & Agreement to Hold Lee County Harmless is attached. Ryan will be responsible for the cost of recording the license in the Public Records of Lee County, Florida.

Attachments: (1) License & Agreement to Hold Lee County Harmless  
 (2) Sketch of project location

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
				<i>[Signature]</i>	OA <i>[Signature]</i>	OM <i>[Signature]</i>	RISK <i>[Signature]</i>	GC <i>[Signature]</i>	<i>[Signature]</i>

**10. COMMISSION ACTION:**

\_\_\_\_\_ APPROVED  
 \_\_\_\_\_ DENIED  
 \_\_\_\_\_ DEFERRED  
 \_\_\_\_\_ OTHER

CO. ATTY.  
FORWARDED  
TO CO. ADMIN.  
*12/2/04 9 AM*

RECEIVED BY  
COUNTY ADMIN: *[Signature]*  
*12/2/04*  
*9:00 AM*  
 COUNTY ADMIN  
FORWARDED TO: *[Signature]*  
*12/2/04*  
*4:30 PM*

This Instrument Prepared by:

Office of the County Attorney  
Lee County, Florida  
Post Office Box 398  
Fort Myers, Florida 33902-0398

STRAP No. 30-45-25-00-00002.103A

THIS SPACE FOR RECORDING

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**LICENSE & AGREEMENT TO HOLD  
LEE COUNTY HARMLESS**

**THIS LICENSE & AGREEMENT TO HOLD LEE COUNTY HARMLESS** (*"License"*) is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by **LEE COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, Florida 33902-0398, (*"County"* or *"Licensor"*), in favor of **RYAN PLANTATION ROAD, LLC**, a Delaware Limited Liability Company, authorized to do business in the State of Florida, whose address is 50 South Tenth Street, Suite 300, Minneapolis, Minnesota 55403-2012 (*"Ryan"* or *"Licensee"*).

**WHEREAS**, Ryan is the owner of real property located at 14550 Plantation Road, Fort Myers, Florida, being more particularly described in the Warranty Deed of Fort Myers Partnership to Ryan Plantation Road, LLC, dated April 7, 2004 and recorded in the Official Records (O.R.) of the Public Records of Lee County, Florida at O.R. Book 4306, Pages 3358 - 3361, which description is incorporated herein by reference (the *"Property"*); and

**WHEREAS**, the County has maintenance jurisdiction over the public road bordering Owner's Property. This road (and road right-of-way) is commonly known as Plantation Road (the *"Plantation Road Right-of-way"*); and

**WHEREAS**, Ryan seeks to construct a storm sewer within a portion of the Plantation Road Right-of-way to service buildings and related improvements being constructed on the Property; and

**WHEREAS**, Ryan's storm sewer construction plans are detailed on the application for Lee County Right-of-way Permit ROW2004-00546 and Lee County Local Development Order DOS2003-00258, the terms of which are both incorporated herein by reference (the *"Storm Sewer"*) and

**WHEREAS**, the Storm Sewer cannot be constructed within the Plantation Road Right-of-way without the County's permission or approval; and

**WHEREAS**, the County has the authority to issue a non-exclusive license to Ryan, which license is revocable at the will of the County, to allow the construction of the Storm Sewer within the Plantation Road Right-of-way.

**NOW THEREFORE**, for and in consideration of the sum of One and xx/100 Dollar (\$1.00), the promises of the Licensee contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County hereby authorizes, approves and issues a non-exclusive, temporary License to Ryan to construct a Storm Sewer within a portion of the Plantation Road Right-of-way, subject to the following conditions:

1. The above recitals are acknowledged by the parties to be true and correct and are incorporated herein by reference.
2. This License is temporary, non-exclusive and fully revocable by the County at any time and for any reason whatsoever as determined solely by the County. The License may be terminated by the County upon the sending of a notice of revocation to the Licensee, via regular mail, postage prepaid, at the address for the property as maintained by the Lee County Tax Collector.
3. This License allows the placement and construction of the Storm Sewer within the Plantation Road Right-of-way, but such use is specifically made subject to the terms and conditions approved and made a part of the above-referenced Lee County Right-of-way Permit ROW2004-00546 and Local Development Order DOS2003-00258. This License will create the relationship of Licensor and Licensee between the parties, and no estate or title will pass out of the Licensor. This License may not be construed to constitute an easement.
4. Licensee agrees to perpetually maintain the Storm Sewer installed at no cost to the County. This includes timely replacement of damaged or broken materials and the avoidance of uneven pavement surfaces. Owner is also required to perform all maintenance at its sole expense. In the event the Owner fails to make timely repairs, the parties agree that the County may revoke this License or any underlying County approval for the Storm Sewer.
5. Licensee may alter the improvements constructed within the Plantation Road Right-of-way, provided prior approval for the alteration is obtained from the Lee County Department of Transportation (DOT). Approval to alter the improvements will not diminish the Licensee's responsibility for continued maintenance. Licensee agrees to prevent the creation of any obstructions or conditions that may be dangerous to the public without the consent of the County.
6. Licensee agrees to repair any damage caused by Licensee or its agents that may occur to any adjoining building, structure, utility easement, roadway, County property or private property during the course of this work. Licensee also agrees to repair, restore or rebuild any damage to County property caused by Licensee's installation, construction or maintenance of the Storm Sewer contemplated by this License.

7. Licensee, as the current owner of the Property benefitted by the License herein, for themselves, their heirs, successors and assigns, agree, upon the receipt of a request from the County, to immediately remove or relocate the Storm Sewer, in part or in whole, as requested. In the event Licensee fails to immediately remove or relocate the Storm Sewer when requested, then the County is authorized to remove or relocate the Storm Sewer, in part or in whole, at the full expense of the Licensee or any subsequent owner of the Property.
8. Licensee, for itself, its successors and assigns, agrees to indemnify, hold harmless and defend the County and all of its officers, agents, consultants and employees from and against all losses, claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recoverable against it or them by reason of any negligent or willful act or omission of the Licensee, or the Licensee's agents, consultants, employees or subcontractors during the installation or maintenance of the Storm Sewer. This includes any costs related to these actions.
9. If the Licensee desires to abandon the Storm Sewer located within the Plantation Road right-of-way, then the County may, after receipt of Licensee's written abandonment notice, require Licensee to remove, at Licensee's sole expense, the Storm Sewer placed within the right-of-way in accordance with this License. Alternatively, the County may allow the Licensee to abandon the Storm Sewer in place.
10. The terms and condition of this License are deemed to run with the Property and, as such, will be binding upon and inure to the benefit of the successors, assigns, executors, personal representatives and administrators of the respective parties hereto..
11. This License will be construed and enforced in accordance with Florida law.
12. This License constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be modified except by written agreement executed with the same formality.
13. Licensee, by accepting this License, specifically accepts and agrees to be bound by the stated conditions contained therein
14. This License must be recorded in the Official Records of the Public Records of Lee County, Florida.

This License applies only to the interest of Lee County and its Board of County Commissioners in the Plantation Road right-of-way referenced herein, and does not warrant the title or represent any state of facts concerning the title.

**IN WITNESS WHEREOF** the COUNTY has caused this License to be executed in its name by its Board of County Commissioners, acting by the Chair or Vice Chair of said Board, the day and year first written above.

(OFFICIAL SEAL)

ATTEST:  
CHARLIE GREEN, CLERK

LEE COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairman

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
John J. Fredyma  
Assistant County Attorney  
Office of County Attorney

**Licensee's Acceptance of Terms and Conditions  
of License & Agreement to Hold Lee County Harmless**

Licensee specifically accepts and agrees to be bound by the terms and conditions stated and contained in this License & Agreement to Hold Lee County Harmless.

**IN WITNESS WHEREOF**, the Licensee has hereunto set its corporate hand intending to be bound as of the date first written above.

Signed, sealed and delivered  
in the presence of

**Ryan Plantation Road, LLC  
by Ryan Companies US, Inc.**

\_\_\_\_\_  
[1<sup>st</sup> Witness' Signature]

\_\_\_\_\_  
[Type or Print Name]

\_\_\_\_\_  
[2<sup>nd</sup> Witness' Signature]

\_\_\_\_\_  
[Type or Print Name]

BY: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Type or Print Name]

\_\_\_\_\_  
[Corporate Office or Title]

COUNTY OF \_\_\_\_\_ :  
STATE OF \_\_\_\_\_ :

The foregoing instrument was acknowledged before me this \_\_\_\_ of \_\_\_\_\_  
2004, by \_\_\_\_\_, the \_\_\_\_\_ of  
[Name] [Corporate Office or Title]

Ryan Companies US, Inc., a Delaware Corporation authorized to do business in the State of Florida, as the Managing Member of Ryan Plantation Road. LLC Partners, Inc., a Delaware Limited Liability Company, also authorized to do business in the State of Florida, on behalf of the company. He/she is personally known to me, or has produced \_\_\_\_\_ as identification.

[stamp or seal]

\_\_\_\_\_  
[Signature of Notary]

\_\_\_\_\_  
[Typed or printed name]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Serial number, if any]

Robb & Stucky site on Plantation Road

