

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

Blue Sheet No. 20060902

1. ACTION REQUESTED/PURPOSE: Approve proposed settlement agreement attached hereto marked Exhibit "A" with the Plaintiffs in the case of James L. Mann Declaration of Trust, et al. v. Lee County, Case No. 2:05-CV-589-Ftm-33SPC, United States District Court, Middle District of Florida.

2. WHAT ACTION ACCOMPLISHES: Settles the case.

3. MANAGEMENT RECOMMENDATION: Approve proposed settlement agreement.

4. Departmental Category: 12 -

A12B

5. Meeting Date: August 1, 2006

6. Agenda:
 Consent
 Administrative
 Appeals
 Public
 Walk-On

7. Requirement/Purpose: (specify)
 Statute
 Ordinance
 Admin. Code
 Other

8. Request Initiated:
 Commissioner _____
 Department County Attorney
 Division Litigation
 By: John S. Turner, Assistant
 County Attorney

9. Background: In November of 2005, the Plaintiffs, James L. Mann Declaration of Trust, Coastal Precast of Florida, Inc., Guymann Construction of Florida, Inc., and Ajax Paving Industries, Inc. of Florida, owners of the businesses located north of Alico Road on Pennsylvania Street (a private road) initiated the current litigation against Lee County by filing a six-count complaint alleging Lee County violated their rights by relocating a proposed full access opening at the intersection of Pennsylvania Street and Alico Road to the west approximately 200 feet in front of the Schwab/Rinker access. The Plaintiffs presented evidence at a hearing for temporary restraining order to the effect that Lee County should be estopped from relocating the center median opening because of the representations made by its employees and representatives that the Plaintiffs would have full access for their oversized vehicles. Subsequent to the hearing, the Plaintiffs amended their complaint to include a claim for civil rights violation and Lee County removed the case to federal court. The federal judge denied the Plaintiffs' requested temporary restraining order and the case has proceeded into the discovery stages. Lee County proposed resolving the case by constructing an access road that would connect to Pennsylvania Street and maintain the opening on Alico Road and Pennsylvania Street until construction is completed. Once the new access road at Schwab/Rinker is completed, the median opening at Pennsylvania Street will be closed. As noted in the agreement, all parties will be responsible for their fees and costs incurred to date and the Plaintiffs will file a dismissal without prejudice. Once all the access points are completed pursuant to the construction plans, the case will be dismissed with prejudice.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
					Analyst RK 7/10	Risk NY 7/11/06	Grants M 7/10/06	Mgr. J 7/12/06	HS 7/14/06

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

COUNTY ATTORNEY
 APPROVED
 TO CO. MGR.
 7/7/06

RECEIVED BY
 COUNTY ADMIN:
 7/7/06 4:10 MP.
 COUNTY ADMIN
 7/14/06
 SPAN

SETTLEMENT/TOLLING AGREEMENT

THIS SETTLEMENT AGREEMENT (“the Agreement”) is made by and between James L. Mann Declaration of Trust; Coastal Precast of Florida, Inc.; Guymann Construction of Florida, Inc.; and Ajax Paving Indus., Inc. of Florida (collectively, “Plaintiffs”) and Lee County, Florida (“Lee County”).

WHEREAS, Plaintiffs and Lee County are litigants in a case styled James L. Mann Declaration of Trust, et al. v. Lee County, Case No. 2:05-cv-589-FtM-99SPC, in the District Court of the Middle District of Florida, Fort Myers Division (“the Lawsuit”).

WHEREAS, the parties desire to enter into this Settlement/Agreement without admission of liability to resolve the claims in the Lawsuit;

NOW THEREFORE, in consideration of their mutual promises made herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Lee County intends to construct, at the County’s expense, one of the following two alternative routes of access to the traffic signal at Schwab Driveway and Alico Road: 1) a curved road from Pennsylvania Street to Alico Road, intersecting only the Ortega property, (adjacent to Pennsylvania on the northwest corner of the Alico/Pennsylvania (“Option 1”) or 2) a straight road from Pennsylvania Street to Alico Road, intersecting both the Ortega and Lewis property (adjacent to the Ortega property on the north side) (“Option 2”). A diagram generally depicting each access route is attached and hereby incorporated into this Agreement as Exhibit “A.”

2. The parties agree to the entry of the attached Stipulation of Dismissal Without Prejudice attached as Exhibit “B.”

3. Without legally obligating Lee County to construct either access option as set forth in Exhibit "A," Lee County will make all reasonable efforts to construct option 2 provided the Plaintiffs have, within ninety (90) days from entry of the Order of Dismissal Without Prejudice, entered into an agreement with the Lewis property owner or otherwise persuaded the Lewis property owner or Lee County to construct the straight access road from Pennsylvania Street to Alico Road. (Option 2). If, after ninety (90) days, Plaintiffs have failed to do so, Lee County may construct either of the two alternative access roads.

4. The parties will work in good faith to design and construct an access road that Plaintiffs' trucks and tractor-trailers can safely and efficiently travel upon subject to public safety requirements.

5. Lee County will leave the median opening at Pennsylvania Street and Alico Road intact until the alternative access road is completed so that Plaintiffs can continue to access eastbound Alico Road from their property. However, Lee County will retain its police powers to close the median opening if it determines that it poses a hazard to the traveling public.

6. Lee County agrees to toll the statute of limitations and any pending deadlines for any action Plaintiffs have against Lee County relating to the allegations in the Lawsuit until there is a dismissal of the action with prejudice.

7. Once the alternative access road is completed, Plaintiffs will dismiss their claims with prejudice as set forth in the Dismissal with Prejudice attached as Exhibit "C" and the median opening at Pennsylvania Street and Alico Road may be closed by Lee County.

8. The undersigned represent that they have read and understand this Agreement and have reviewed the Agreement with their counsel. The parties are responsible for their own legal fees, costs and expenses to this point.

Dated this _____ of _____, 2006.

By: _____

James L. Mann, for the James L. Mann
Declaration of Trust

By: _____

For Lee County

By: _____

Fred Russell, for Guymann Construction of
Florida, Inc.

By: _____

Greg Kovacs, for Coastal Precast of Florida,
Inc.

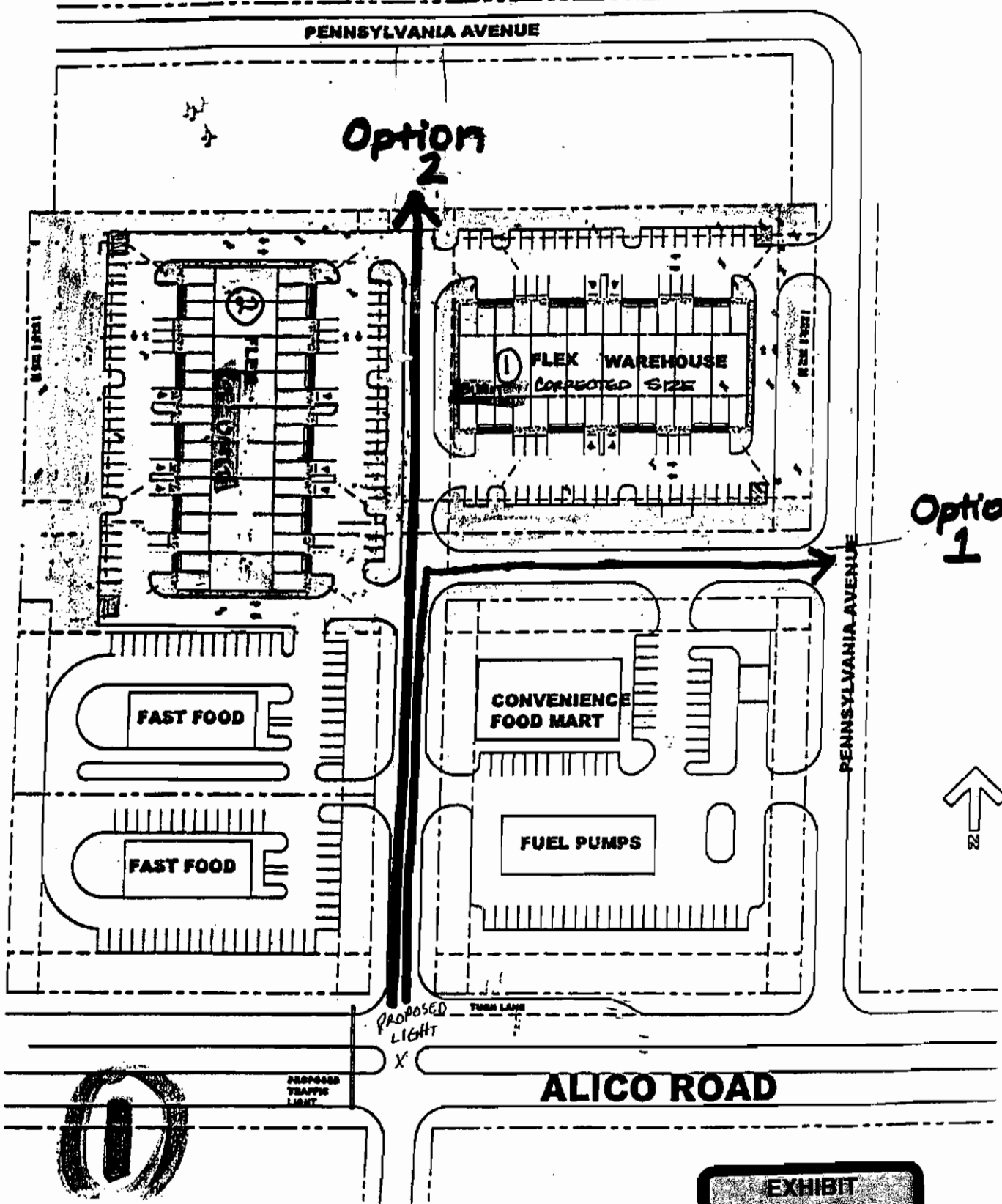
By: _____

Mike Horan, for Ajax Paving Industries of
Florida

PENNSYLVANIA AVENUE

Option 2

Option 1



FAST FOOD

FAST FOOD

2

FLEX WAREHOUSE
CORRECTED SIZE

CONVENIENCE
FOOD MART

FUEL PUMPS

PENNSYLVANIA AVENUE

ALICO ROAD

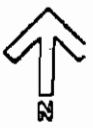
PROPOSED
LIGHT
X

TURN LANE

PROPOSED
TRAFFIC
LIGHT

EXHIBIT

A



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS, FLORIDA

JAMES L. MANN DECLARATION OF TRUST;
COASTAL PRECAST OF FLORIDA, INC., a
Florida corporation; GUYMANN
CONSTRUCTION OF FLORIDA, INC., a Florida
corporation; and AJAX PAVING INDUS., INC. OF
FLORIDA, a Florida corporation,

CASE NO.: 2:05-CV-589-FtM-99SPC

PLAINTIFFS,

vs.

LEE COUNTY, a political subdivision of the state of
Florida,

DEFENDANT.

NOTICE OF DISMISSAL WITHOUT PREJUDICE

Plaintiffs James L. Mann Declaration of Trust; Coastal Precast of Florida, Inc.; Guymann
Construction of Florida, Inc.; and Ajax Paving Indus., Inc. of Florida (collectively, "Plaintiffs")
and Defendant Lee County ("Defendant") stipulate to the dismissal of Plaintiffs' claims
WITHOUT PREJUDICE.

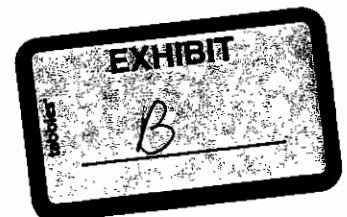
Dated this _____ of June, 2006.

By: _____

Paul W. Rebein
FBN: 0488003
100 N. Tampa St. Ste. 2900
Tampa, FL 33602-5810
(813) 202-7100
Attorneys for Plaintiffs

By: _____

John S. Turner
FBN: 0869570
Lee County Administration Building
2115 Second Street
6th Floor
Fort Myers, FL 33901
Attorney for Defendant



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS, FLORIDA

JAMES L. MANN DECLARATION OF TRUST;
COASTAL PRECAST OF FLORIDA, INC., a
Florida corporation; GUYMANN
CONSTRUCTION OF FLORIDA, INC., a Florida
corporation; and AJAX PAVING INDUS., INC. OF
FLORIDA, a Florida corporation,

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Dated this _____ of June, 2006.

By: _____

By: _____

Paul W. Rebein
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100 N. Tampa St. Ste. 2900
Tampa, FL 33602-5810
(813) 202-7100
Attorneys for Plaintiffs

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