

ADD ON

AGENDA	
Section	New Business
Item No.	VI D 1



Meeting Date
November 15, 2016

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Entering into a lease agreement with a non-profit corporation for the purpose of allowing development of a 114 acre site into a Wildlife and STEM Education Center.
DEPT/OFFICE:	Curt Smith, District 4 Commission Office / Scott Knox, County Attorney's Office

Requested Action:

It is requested that the Board of County Commissioners approve a lease agreement and authorize the Chairman to sign, confirming their desire to enter into a lease agreement with Hundred Acres Hollows, Inc., a not-for-profit corporation, relating to a 114 acres of county-owned surplus land for use as a Wildlife and STEM Education Center and conservation area.

Summary Explanation & Background:

At the October 4th County Commission Meeting there was a citizen's request by Tom and Anita Unrath to allow for the creation of a Wildlife and STEM Education Center on the 114 acres of surplus land in Suntree.

On October 18th the Commission adopted a resolution authorizing the transfer of a 114 acres site to a not-for-profit corporation, pursuant to Section 125.38, Florida Statutes, and Section 2-247, Brevard County Code of Ordinances, for the purpose of allowing development of the site into a Wildlife and STEM Education Center.

The attached lease agreement accomplishes the transfer of the site as authorized by the Commission on October 18, 2016.

Contact:

Clerk to the Board Instructions:

Exhibits Attached: Lease Agreement

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager 	Assistant County Manager	Department Director / Extension <i>COUNTY ATTORNEY PER D4 COMMISSIONERS OFFICE</i>
Stockton Whitten	Assistant County Manager	



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

November 16, 2016

MEMORANDUM

TO: Commissioner Curt Smith, District 4

RE: Item VI.D.1., Lease Agreement with Hundred Acre Hollows, Inc., and Not-For-Profit Corporation, for the Purpose of Allowing Development of a 114-Acre Site into a Wildlife and STEM Education Center and Conservation Area

The Board of County Commissioners, in regular session on November 15, 2016, executed Lease Agreement with Hundred Acre Hollows, Inc., a not-for-profit corporation, for the purpose of allowing development of 114-acre site of County-owned surplus land for use as a Wildlife and STEM Education Center and conservation area. Enclosed is the executed Lease Agreement.

Upon execution by Hundred Acre Hollows, Inc., please return the fully-executed Lease Agreement to this office for inclusion in the official minutes.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

Encl. (1)

cc: Contracts Administration
Asset Management

LEASE AGREEMENT

THIS AGREEMENT, made this 15 day of Nov. 2016 between the Board of County Commissioners of Brevard County, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY", and HUNDRED ACRE HOLLOWS, INC., a Florida not for profit corporation under the laws of the State of Florida, hereinafter referred to as the "FOUNDATION".

WITNESSETH:

WHEREAS, the FOUNDATION is desirous of leasing 114 acres of COUNTY-owned property situated in Brevard County, Florida, hereinafter referred to as the "Property" and as described in Exhibit "A"; and

WHEREAS, the FOUNDATION wishes to provide facilities and programs for the general public in Brevard County, Florida; and

WHEREAS, the COUNTY wishes to assist the FOUNDATION in providing such facilities; and

WHEREAS, the FOUNDATION has petitioned the COUNTY for the lease of the Property for the purposes of providing a Wildlife and STEM Education Center and conservation area; and

WHEREAS, the COUNTY makes specific findings by Resolution (attached as Exhibit B) that the objectives of the FOUNDATION and the lease of the Property would serve the public health, safety, and welfare; and

WHEREAS, the COUNTY by Resolution finds that the lease of the Property is consistent with the COUNTY'S purposes and the property is not required for COUNTY purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

1. **Premises Leased:** That the COUNTY, in consideration of the covenants herein contained, does hereby lease to the FOUNDATION the "Property" as described in Exhibit "A".

2. **Term:** The term of this lease is for a period of five (5) years commencing on the date of the execution of this lease by both parties. In the event the Property is not used for the public purpose set forth in paragraph 6 herein, the lease term shall immediately cease, and the COUNTY shall have the right to re-enter and repossess the Property.

3. **Renewal:** It is hereby mutually agreed and understood that the FOUNDATION has the option to request renewal of this Agreement for ten (10) additional five (5) year terms upon written notice to the COUNTY received at least ninety (90) days prior to the date of termination of the current term. Approval of the renewal is at the discretion of the COUNTY and may be renewed by the Natural Resources Department Director, or designee, hereinafter referred to as DIRECTOR. The FOUNDATION agrees it shall not be entitled to such renewal and agrees it shall not be entitled to any monies or damages should the COUNTY decide not to renew this Agreement.

4. **Rental Payments and Maintenance:** The FOUNDATION agrees to pay the COUNTY as rent for use and occupancy of the leased property the sum of \$10.00 per year, payable in advance.

In addition, FOUNDATION shall be responsible for any and all maintenance to the Property and shall be responsible for all costs incurred for those services.

5. **Monuments, Plaques, Furniture, etc.:** Neither the FOUNDATION nor the COUNTY will install, place, or build any permanent monument, plaque, or similar object on the Property without the specific approval of both parties concerned, to wit:

_____, President or Designee on behalf of the FOUNDATION and DIRECTOR or Designee on behalf of the COUNTY, in their absence, or with their specific written approval, a person or persons designated to represent them may act on their behalf. A rejection by either party indicated will result in disapproval of the request to install such objects on the Property.

a. Any permanent monument, plaque, or similar object approved for installation on Property, will, upon being placed on the Property, become the property of the COUNTY.

6. **Permitted Activities of the FOUNDATION on the Property:**

a. The FOUNDATION shall use the Property as a Wildlife and Science, Technology, Engineering and Math “STEM” Education Center and conservation area. The FOUNDATION shall operate and maintain the Property for the enjoyment of the residents and visitors of Brevard County, and the FOUNDATION agrees to make use of the Property available to all County residents and visitors. The FOUNDATION shall submit Quarterly Reports to the COUNTY outlining their accomplishments, goals, and commitments to the COUNTY and citizens of Brevard County.

b. The COUNTY consents to the FOUNDATION’s use of the platted access, Blue Springs Road, which is an undeveloped legally-platted road between two existing single family homes, and connects to the existing residential roadway, Rock Springs Drive, and the Property. However, the Foundation shall be responsible for improving/constructing/clearing that access and any planned parking area and for obtaining any necessary site plan approvals and required permits.

c. The FOUNDATION shall ensure that use of the Property does not significantly impact the flow of traffic within the adjacent subdivisions, and the FOUNDATION shall develop a traffic and parking management plan, prior to the opening of the Property to the public. Within six (6) months of the execution of this lease agreement, said traffic and parking management plan shall be submitted to the COUNTY for review and approval.

7. **Improvements:** The FOUNDATION may pursue funding for improvements on the leased property. All grants, plans and specifications for any construction, or other proposed development or improvements to the Property shall be reviewed and approved by the DIRECTOR or designee prior to any action by the FOUNDATION. Any permanent improvement or equipment installed by the FOUNDATION on COUNTY property shall become property of the COUNTY upon termination of this Agreement.

The FOUNDATION shall ensure that no contractor or subcontractor, which the FOUNDATION may hire to perform any portion of construction, renovation, or repairs to the facility, shall be entitled to file any liens, construction, mechanics or otherwise, against the Property or facilities on the Property. Any contract which the FOUNDATION signs or executes with a contractor shall contain a provision in which the contractor waives any right to file any such liens and a provision which requires the contractor to include the same waiver in contracts with any subcontractors which the contractor may hire to perform work on the Property or facilities on the Property.

8. **Fees:** The FOUNDATION may charge users of the facilities reasonable fees and entrance fees for the use of the Property. A schedule of the fees must be approved by the DIRECTOR or designee. Such fees shall be used in support of the FOUNDATION's responsibilities.

9. **Attorney's Fees:** In the event of any legal action to enforce the terms of this contract each party shall bear its own attorney's fees and costs.

10. **Unauthorized Alien Workers:** The FOUNDATION will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e)

(Section 274A(e) of the Immigration and Nationality Action "INA". The COUNTY shall consider the employment by the contract of unauthorized aliens a violation of Section 274A9e of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of the Agreement by the COUNTY.

11. **Public Entity Crimes:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

12. **Illegal, Unlawful or Improper Use:** The FOUNDATION shall make no unlawful, improper or offensive use of the Property, nor will the FOUNDATION use the Property, or allow the use of the Property, for any purpose other than as stated in Paragraph 6 above. Failure of the FOUNDATION to comply with this provision shall be considered a material default under the lease.

13. **Indemnification and Insurance:** The FOUNDATION agrees that it will indemnify and hold harmless the COUNTY from any and all liability, claims, damages, expenses (including attorney's fees and costs), proceedings and causes of action of every kind and nature arising out of or connected with the FOUNDATION's use, occupation, management, improvement or control of the Property or of any facilities thereon or any furniture, furnishings, equipment and fixtures utilized in connection therewith. The FOUNDATION agrees that it will, at its own

expense, defend any and all actions, suits or proceedings which may be brought against the COUNTY in connection with said facilities arising from the FOUNDATION'S activities or activities allowed by the FOUNDATION and that it will satisfy, pay, and discharge any and all judgments that may be entered against the COUNTY in any such action or proceeding.

The parties agree that specific consideration has been received by the FOUNDATION for this hold harmless/indemnification clause.

a. The FOUNDATION further agrees to provide and maintain at all times during the term of this lease, without cost or expense to the COUNTY, policies of insurance generally known as comprehensive general liability policies insuring the FOUNDATION against any and all claims, demands, causes of action whatsoever for injuries received and damage to property in connection with the FOUNDATION's use, occupation, and management, and control of the property and the improvements thereon.

b. Such policies of insurance shall insure the FOUNDATION in the amount of not less than one million dollars (\$1,000,000) to cover bodily injury and property damage in connection with any particular accident or occurrence that may arise or be claimed to have arisen against the FOUNDATION. The COUNTY shall be named as an additional insured on all such policies of insurance issued. Such policies shall also contain a clause that the COUNTY shall be entitled to thirty (30) days' advanced notice of cancellation of such policies. Current copies of such insurance policies shall be filed with the DIRECTOR or designee during the term of this agreement. The required policy limits may be increased from time to time, by the COUNTY, during the term of this contract to levels similar to those required in COUNTY lease agreements with other organizations currently issued at that time.

14. **Right of Entry by COUNTY:** COUNTY or its agents may at any reasonable time enter in and on the Property for the purpose of inspecting such property or performing other duties as required by the terms of this lease and rules, regulations, ordinances or laws of the appropriate government units.

15. **Termination:** This Agreement may be terminated without cause or for convenience by either party upon one hundred and eighty (180) days written notice to the other party. Upon termination of this Agreement, the FOUNDATION shall have thirty (30) days within which to remove any personal property from the County facility. Any personal property not removed within said thirty (30) day period shall become the property of the COUNTY.

16. **Emergencies:** In the case of a declared state of emergency in Brevard County by the Board of County Commissioners, the COUNTY retains the right to immediately resume occupation, management, and maintenance of the Property, to use the Property to meet any emergency needs of the citizens of Brevard County for the period of that emergency and a reasonable period of time thereafter as deemed necessary by the COUNTY.

17. **Right to Audit Records:** In the performance of this Agreement, the FOUNDATION shall keep books, records, and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures. Books, records, and accounts related to the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the COUNTY and shall be retained by the FOUNDATION for a period of three years after termination of this Agreement. All records, books, and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes.

All records or documents created by the FOUNDATION or provided to the FOUNDATION by the County in connection with the activities or services provided by County under the terms of this Agreement, are public records and the FOUNDATION agrees to comply with any request for such public records or documents made in accordance with section 119.07, Florida Statutes.

18. **Copyright:** No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the COUNTY, under this Agreement shall be subject to copyright by FOUNDATION in the United States or any other country.

19. **Governing Law:** This Agreement shall be deemed to have been executed and entered into within the State of Florida and this Agreement, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

20. **Non-Agency Status:** Nothing in this Agreement shall, in any way, be construed to constitute the FOUNDATION or any of its agents or employees, representatives as agents of the COUNTY.

21. **Modification:** No modification of this Agreement shall be binding on COUNTY or the FOUNDATION unless reduced to writing and signed by a duly authorized representative of COUNTY and the FOUNDATION.

22. **Venue:** Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in court of competent jurisdiction in and for Brevard COUNTY, Florida, and any trial shall be **non-jury**.

23. **Severability:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

24. **Notice:** Notice under this Agreement shall be given to the COUNTY by mailing written notice postage prepaid, to the Director, Natural Resources Management Department 2725 Judge Fran Jamieson Way, Bldg. A, Room 219; and notice shall be given to the FOUNDATION by mailing written notice, postage prepaid to: Eric Enrique 836 Executive Ln., Ste. 120 Rockledge, FL 32955 and Anita Unrath, 1170 Ida Way Melbourne, FL 32940.

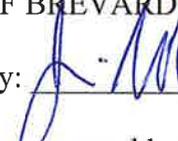
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ATTEST:



Scott Ellis, Clerk of Court

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

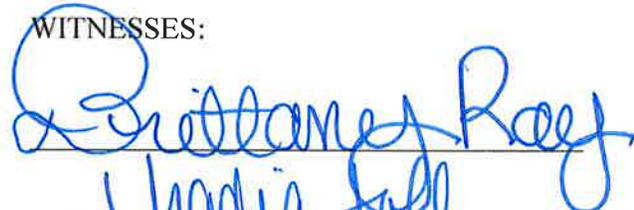
By: 
_____, Chairman
As approved by the Board on 11/15/16.

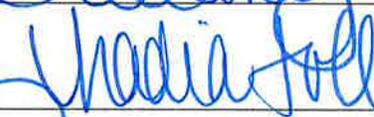
Reviewed for Legal Form and Content:

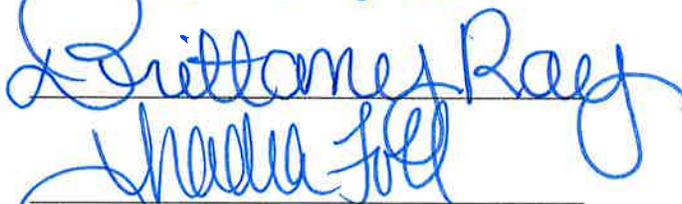


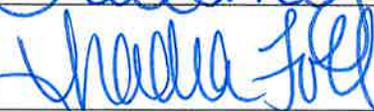
Matthew Soss, Assistant County Attorney

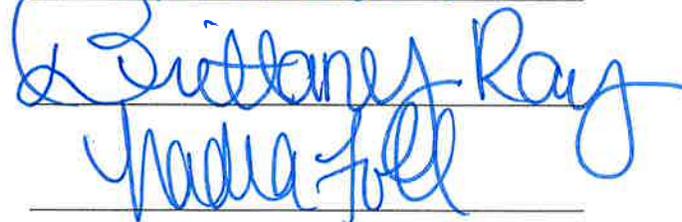
WITNESSES:

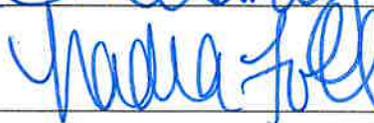












FOUNDATION:

By: 

Anita P. Unrath

By: 

Carl J. Roskamp

By: 

Dolores H. Lee

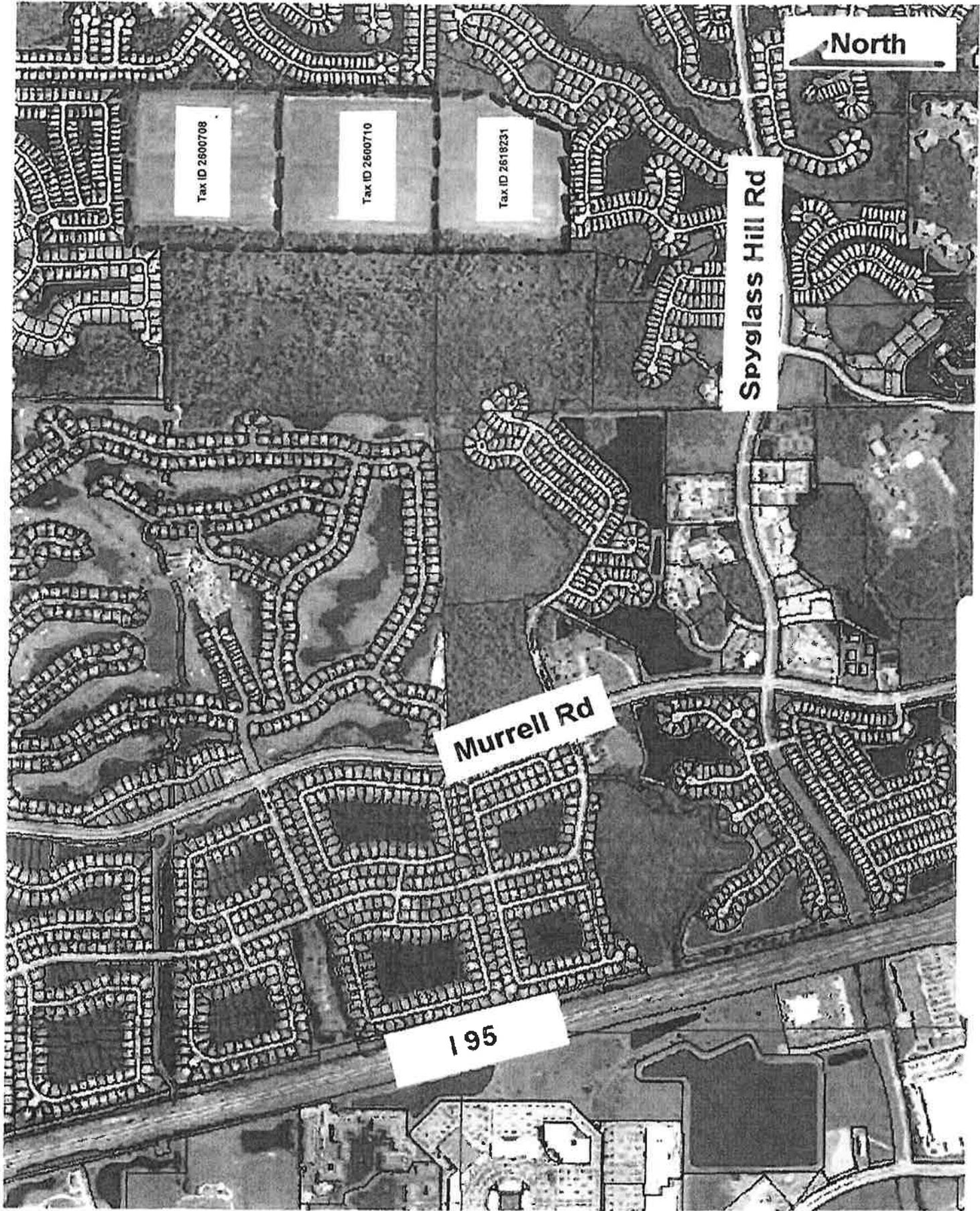


EXHIBIT "A"

RESOLUTION NO. 2016-190

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, AUTHORIZING A TRANSFER OF COUNTY PROPERTY TO A NOT-FOR-PROFIT UNINCORPORATED ASSOCIATION PURSUANT TO SECTION 125.38, FLORIDA STATUTES, AND SECTION 2-247, BREVARD COUNTY CODE OF ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, 100 ACRE HOLLOWS, a not-for-profit unincorporated association under the laws of the State of Florida (hereinafter referred to as the "Organization") has applied to the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA (hereinafter referred to as the "County"), to transfer by sale or lease or other instrument 114 acres described in Exhibit A attached hereto, (hereinafter referred to as the "Property"); and

WHEREAS, the Organization desires to use and maintain the property as an environmental education and conservation area;

WHEREAS, the County finds that the Organization's proposed use of the Property will promote public health, safety or welfare, will serve the public interest, will serve a public purpose, constitutes a service that could be provided by local government, and that the Property is not needed for County purposes at this time.

WHEREAS, the County desires to cooperate with and assist the 100 Acre Hollows in acquiring the real property.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that:

1. The Property is located within the area described on Exhibit A which will be used in a manner compatible with County purposes.

EXHIBIT "B"

2. The Organization shall use and maintain the Property for the purposes as an environmental education and conservation area and shall ^{complete} the steps toward that use as identified in the lease.

3. The County shall enter into a lease agreement with the Organization to transfer the Property.

4. The Organization shall pay \$10 per year as consideration for the agreement.

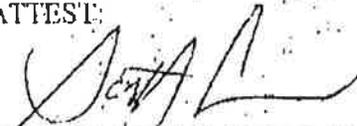
5. The term of the lease shall be five (5) years with automatic renewals for ten (10) additional terms of five (5) years each unless earlier terminated by either party after six (6) months advanced notice to the other party.

6. In the event the Property is not used or ceases to be used for the purpose stated herein term of lease term shall immediately cease and the Property shall revert to the County which thereafter shall have the right to re-enter and repossess the Property.

This resolution shall take effect immediately.

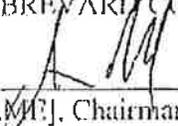
DONE, ORDERED AND ADOPTED, in regular session, this 18 day of October, 2016

ATTEST:



[NAME], Clerk

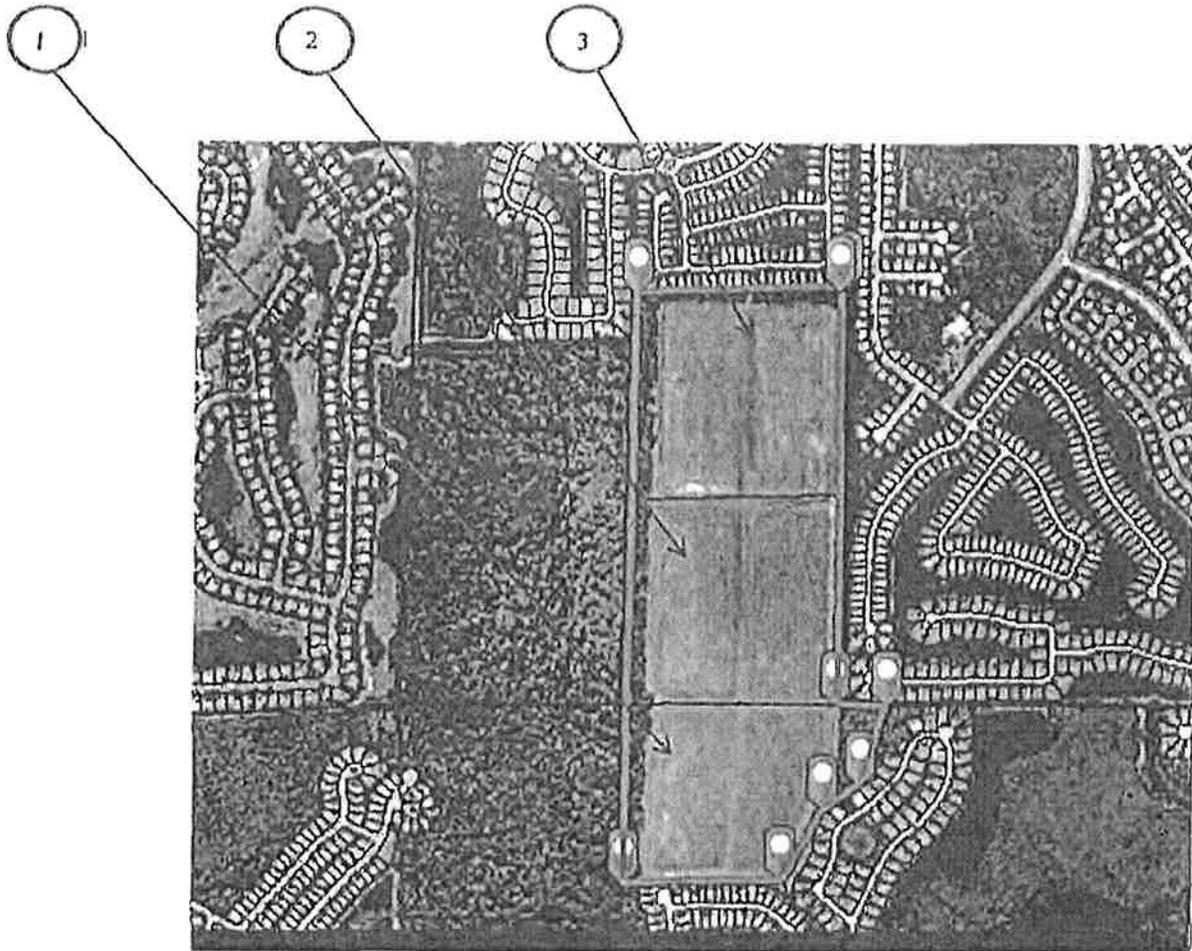
BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 

[NAME], Chairman

As Approved By the Board on: October 18, 2016

Exhibit A



1. NE 1/4 Of SW 1/4

2. Se 1/4 Of SW 1/4

3. Part Of NW 1/4 Of NE 1/4 As Desc IN Orb 3420 Pg 620 Par 253