



Meeting Date
11/3/15

AGENDA	
Section	Consent
Item No.	# 8.2

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Resolution and Lease Agreement with the Brevard County Airboat Association, Inc. Re: Lake Washington Parcel – District 4 FISCAL IMPACT: Execution of the Lease Agreement will result in a yearly savings of approximately \$1,500 in the South Area Parks Operation Budget.
DEPT/OFFICE:	Community Services Group / Parks and Recreation Department

Requested Action:
 It is requested the Board authorize the Chairman to execute a Resolution and Lease Agreement with the Brevard County Airboat Association, Inc. (BCAA) for the Lake Washington Parcel.

Summary Explanation & Background:
 The Parks and Recreation Department owns a 5.5 acre parcel of land located at 6600 West Eau Gallie Blvd, Melbourne, FL, commonly known as the Lake Washington Parcel.

Adoption of the Resolution declares the Lake Washington Parcel is not needed for County purposes at this time and states the desire to enter into a Lease Agreement with the BCAA for the purposes of promoting public welfare, serving the public interest, and serving a public purpose. Execution of the Lease Agreement provides the terms between the County and the BCAA: the BCAA will maintain the Lake Washington Parcel to use, operate, maintain, and improve for recreational boating use and public related activities; use of the Lake Washington Parcel will be available to all residents and visitors with no fees; reverter clause back to the County if the BCAA ceases to use the Lake Washington Parcel for public recreational use and public related activities.

Execution of the Lease Agreement leases the Lake Washington Parcel to the BCAA with the agreed upon terms. The initial term of the Lease is for ten (10) years with the option to renew for two (2) additional five (5) year terms. Rent will be in the sum of one dollar (\$1.00) per year. The BCAA will be responsible for all maintenance and repairs and will bear the cost of such for the duration of the Lease Agreement.

The BCAA has reviewed and agrees to the terms of the Lease Agreement. The County Attorney's Office and Risk Management have reviewed and approved the Lease Agreement.

Brevard County Code of Ordinances, Chapter 2, Section 2-241 through Section 2-251, establishes procedures for the sale, leasing and donation of real property. It requires the intent and County Code to be published on the County Internet Website at least 5 days prior to the public meeting and also requires a **supermajority** vote by the Board. The posting requirement was successfully completed on October 20, 2015.

Clerk to the Board Instructions:

Exhibits Attached: Resolution, Lease Agreement and Map.

Contract /Agreement (If attached): Reviewed by County Attorney		Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR <input type="checkbox"/>
County Manager	Assistant County Manager,	Jack Masson, Parks & Recreation Department Director 633-2046; jack.masson@brevardparks.com				
Stockton Whitten, County Manager	Assistant County Manager, Venetta Valdengo					



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

Telephone: (321) 637-2001
Fax: (321) 264-6972

November 4, 2015

MEMORANDUM

TO: Jack Masson, Parks and Recreation Department Director

RE: Item II.B.2., Resolution and Lease Agreement with Brevard County Airboat Association, Inc. for the Lake Washington Parcel

The Board of County Commissioners, in regular session on November 3, 2015, adopted Resolution No. 15-214, authorizing the leasing of real property to a not-for-profit corporation organized under the Laws of the State of Florida; and executed a Lease Agreement with the Brevard County Airboat Association, Inc. (BCAA) for the Lake Washington parcel. Enclosed are three executed Lease Agreements and three certified copies of the Resolution for your action.

Upon execution by the Brevard County Airboat Association, Inc., please return a fully-executed copy of the Lease Agreement to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge

Tammy Etheridge, Deputy Clerk

/ds

Encls. (6)

cc: Contracts Administration
Finance
Budget



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MEMORANDUM

TO: Jack Masson, Parks and Recreation Department Director

RE: Item II.B.2., Resolution and Lease Agreement with Brevard County Airboat Association, Inc. for the Lake Washington Parcel

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Upon execution by the Brevard County Airboat Association, Inc., please return a fully-executed copy of the Lease Agreement to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge

Tammy Etheridge, Deputy Clerk

/ds

Encls. (6)

cc: Contracts Administration
Finance
Budget

PKRECS-ADMIN
NOV102015PM12:55

LEASE

THIS LEASE, made and entered into this 3 day of November, 2015, by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as the "County"), and the Brevard County Airboat Association, Inc., a Florida Not for Profit Corporation, organized under the laws of the State of Florida (hereinafter referred to as the "BCAA").

WHEREAS, the BCAA desires to lease County owned property located at 6600 West Eau Gallie Blvd, Melbourne, FL 32935 (hereinafter referred to as the "Lake Washington Parcel");

WHEREAS, the BCAA has petitioned the County for Lease of the Lake Washington Parcel, has an interest in recreational boating, and is well situated to do so; and

WHEREAS, the County has an interest in allowing recreational boating to be provided to general population of the County;

WHEREAS, the County has by Resolution, a copy of which is attached hereto as **Exhibit A**, determined this Lease would serve community interests, constitutes a service that could be provided by local government, and is compatible with the County purposes for this weather shelter and picnic area.

WITNESSETH:

NOW THEREFORE, in consideration of the mutual promises and terms and conditions contained herein, the parties hereto hereby agree as follows:

1. **Leased Property.** The County hereby leases to the BCAA and BCAA hereby leases from the County, the Lake Washington Parcel at 6600 W Eau Gallie Blvd, Melbourne, FL 32935 as presently constituted and described in **Exhibit B**. The Lake Washington Parcel includes all improvements to the leased real property, whether constructed before or after the date of the Lease on the leased property by the County.
2. **Representation by BCAA.** The BCAA represents that it is a Florida Not for Profit organization under the laws of Florida as described in Section 501(c)(7) of the Internal Revenue Code as amended, and is exempt from Federal income tax pursuant to Section 501(a) of said Code.
3. **Term.** The initial term of this Lease shall be for a period of ten (10) years from the date the last party signs it ("Effective Date"). Thereafter, this Lease may be renewed, at the Parks and Recreation Department Director's discretion, for two (2) additional five (5) year terms by written notice from BCAA at least ninety (90) days prior to the expiration date of this Lease.
4. **Rent.** BCAA agrees to pay the County the sum of one dollar (\$1.00) per year, payable in advance for the Lake Washington Parcel.

5. **Insurance.** BCAA shall maintain a program of insurance covering their liabilities, and shall be responsible for the acts and omissions of BCAA in the event that such acts or omissions result in the injury to persons or damage to their personal property. BCAA shall have the County named as an additional insured on its general liability insurance policy. The County shall not be responsible or liable for injuries to persons or damage to property when such injuries or damage are caused by or the result from BCAA's maintenance, or lack of maintenance, to BCAA improvements. The County does not warrant or represent that the Lake Washington Parcel is safe or suitable for the purpose for which BCAA is permitted to improve and BCAA assumes all risks in its maintenance or lack of maintenance.
6. **Insurance Certificates.** Within 10 days after the execution of this Lease, the BCAA shall provide the County with Certificate(s) of Insurance on all policies of insurance and renewals thereof in a form(s) acceptable to the County. Said certificates shall provide that the County is an additional insured, and that County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the County and licensed and authorized under the laws of the State of Florida.
7. **No Use that Increases Insurance Risk.** The BCAA understands and agrees that BCAA is responsible for BCAA's personal safety and the personal safety of any and all persons accompanying BCAA on the property or accessing the property under direction of the BCAA. BCAA is fully knowledgeable of the risks that are generally associated with traversing property that is in substantially natural condition and assumes all such risks. BCAA voluntarily assumes any other risks, of every kind whatsoever, whether natural or artificial, while conducting activities on the property pursuant to this Lease.
8. **Indemnification.** The BCAA shall indemnify and hold harmless the County and its employees from all claims, damages, losses, and expenses, including attorney's fees, arising out of or associated with their use, occupation, management or control of the BCAA's or any improvements in connection with the Lake Washington Parcel by the BCAA unless such claims, damages, expenses, or losses are caused solely by acts of the County, its employees, or other persons not a party to this Lease acting on the County's request. BCAA agrees that it will, at its own expense, defend any and all such actions, suits, or proceedings which may be brought against the County in connection with the BCAA's use, occupation, management or control of said Lake Washington Parcel and that it will satisfy, pay and discharge any and all judgments that may be entered against the County in such action or proceeding. Likewise, the County shall indemnify and defend the BCAA and its employees, officers, and agents from all claims, damages, losses, and expenses, including attorney's fees, caused solely by the County's use, occupation, or management of the Lake Washington Parcel or any improvements made by the County unless such claims, damages, or losses are caused by the acts of the BCAA, its employees, officers, members or other persons not a party to this Lease acting on/at the BCAA's request. The County agrees that it will, at its own expense, defend any and all such actions, suits, or proceedings which may be brought against the BCAA as the sole result of the County's use, occupation or management of said Lake Washington Parcel and that it will satisfy, pay and discharge any and all judgments that may be entered against the BCAA in such

action or proceeding. However, nothing contained herein shall constitute a waiver by the County of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.

9. **Obligations of the BCAA.** The BCAA shall keep the Lake Washington Parcel clean, orderly and in compliance with all local, state and federal laws, regulations or ordinances. The County reserves the right to perform, or have performed, periodic inspections of the cleanliness and sanitation conditions of the Lake Washington Parcel. BCAA shall maintain said property in its present condition. At the conclusion of this Lease the property shall be restored to not less than the condition that existed prior to when the Lease took effect. The BCAA shall be responsible for maintenance and repair and bear the costs for such for the Lake Washington Parcel.

The BCAA shall not use the Lake Washington Parcel for storage of any material whatsoever. Any personal property of the BCAA remaining on the property following termination of the Lease shall be deemed abandoned and may be removed or relocated by the County.

The Lake Washington Parcel shall be open to the general public at all times. All activities must be approved in writing by the County prior to any action by the BCAA.

The discharge of any fuel, oil, petroleum products, litter or other harmful materials is prohibited. The BCAA shall be solely responsible for any and all costs associated with any resulting clean up and remediation as a result of any of BCAA's actions.

10. **Improvements:** Within 120 days of the Execution Date of this Lease the BCAA must present a detailed development plan for the development of the Lake Washington Parcel. The plan must be approved by the Parks and Recreation Department Director and the BCAA. Failure to present the approved plan within 120 days of the Execution Date will constitute a material breach of this Lease.

All grants, plans, and specifications for any construction or other proposed development or improvements to the Lake Washington Parcel must be reviewed and approved by the Parks and Recreation Department Director prior to any action by the BCAA. Any permanent improvements or equipment installed by the BCAA shall become property of the County upon termination of this Lease.

Any and all construction on the Lake Washington Parcel must be completed within 365 days of commencement. Any extension of the completion of the construction deadline may be approved by the Parks and Recreation Department Director for good cause.

The BCAA shall ensure that no contractor, which the BCAA may hire to perform any portion of construction, renovation, or repairs to the Lake Washington Parcel shall be entitled to file any liens, mechanics or otherwise, against any County property to secure the contractors interests or payments due. Any contract the BCAA signs or executes with a contractor shall contain a provision which waives any right to file any such liens and

provisions which requires the contractor to include the same waiver by any subcontractor which the contractor may hire in any agreement or contract the contractors execute with subcontractors.

11. **ADA Compliance.** The County and BCAA shall conform to current requirements of the Americans with Disabilities Act in the performance of this Lease, and shall not cause or place any condition causing the Lake Washington Parcel to become non-compliant. The parties shall work together to cure any known violations of the ADA that may occur
12. **Severability.** If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall nevertheless continue in full force without being impaired or invalidated in any way.
13. **Venue.** Venue for any legal action brought by any party to this Lease to interpret, construe or enforce this Lease shall be in court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.
14. **Attorney's Fees.** In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.
15. **Governing Law.** This Lease shall be deemed to have been executed and entered into within the State of Florida and this Lease, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.
16. **Compliance with Statutes.** It shall be the BCAA's and the County's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, state, and federal agencies as applicable.
17. **Independent Contractor.** BCAA shall perform the services under this Lease as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Lease shall be interpreted or construed to constitute the BCAA or any of its agents or employees to be the agent, employee or representative of the County.
18. **Right to Audit Records.** The BCAA shall prepare an annual financial statement and shall submit same to the Area Manager. In the performance of this Lease, the BCAA shall keep books, records, and accounts of all activities related to this Lease, in compliance with general accounting procedures. Books, records and accounts related to the performance of this Lease shall be open to inspection during regular business hours by an authorized representative of the County and shall be retained by the agency for a period of three (3) years after the termination of this Lease. All records or documents created by BCAA or provided to BCAA by the County in connection with the activities or services provided by County under the terms of this Lease, are public records and the BCAA agrees to comply with any request for such public records or documents made in accordance with Chapter 119, Florida Statutes.

19. **Unauthorized Alien Workers.** Brevard County 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 Act "INA"). The County shall consider the employment by the contractor of unauthorized aliens a violation of Section 274A (e) of the INA and such violation shall be grounds for unilateral cancellation of this Lease by the County.
20. **Public Entity Crimes.** A person or affiliate who had 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.
21. **Copyright.** No reports, data, programs or other materials produced, in whole or in part, for the benefit and use of the County under this Lease shall be subject to copyright by the BCAA in the United States or any other country.
22. **Music Performance.** The BCAA shall not use, play or perform copyrighted music without appropriate licensing or other permission. The BCAA shall be solely responsible for obtaining appropriate licensing or permission to use, play or perform copyrighted music. The use or performance of copyrighted music without appropriate licensing or other permission shall constitute a breach of this Lease. The BCAA agrees to indemnify and hold harmless the County from damages for unauthorized use or performance of copyrighted music.
23. **Construction of Lease.** The parties hereby acknowledge that they have fully reviewed this Lease and its attachments and have had the opportunity to consult with legal counsel of their choice, and that this Lease shall not be construed against any party as if they were the drafter of this Lease.
24. **No Waiver of Covenants or Conditions.** The failure of either party to insist on strict performance of any covenant or condition hereof, or to exercise any option herein contained, shall not be construed as a waiver of such covenant, condition, or option in any other instance. This Lease cannot be changed or terminated orally.
25. **Modifications.** No modification of this Lease shall be binding on the County or the BCAA unless reduced to writing and signed by a duly authorized representative of County and the BCAA.
26. **Violation of Provisions.** Any violation of these provisions will constitute a breach of the conditions of this Lease and may result in the cancellation of same. The County shall notify the BCAA of any violation of the provisions of this Lease in writing. Such notice shall identify the provision which is being violated and how it is being violated. The BCAA shall then have sixty (60) days within which to fix the violation. It is the intent

of this provision for the parties to work together cooperatively towards a positive resolution of all issues. However, if the violation is not fixed or addressed in a reasonable fashion to the County's reasonable satisfaction, the County has the right to issue a notice of termination/cancellation effective immediately at the end of the sixty day period.

27. **Illegal, Unlawful, or Improper Use.** The BCAA shall make no unlawful, improper, immoral, or offensive use of the Leased Lake Washington Parcel nor will the BCAA use the Leased Lake Washington Parcel or allow the use of the Leased Lake Washington Parcel for any purpose other than that hereinabove set forth. Failure of BCAA to comply with this provision shall be considered a material default under this Lease.
28. **Partial Destruction of Premises.** Partial destruction of the Lake Washington Parcel shall not render this Lease void, or terminate it except as herein provided. If the Lake Washington Parcel is partially destroyed during the term of this Lease, County may endeavor to make repairs, providing the County has the fiscal means to do so, and when such repairs can be made in conformity with local, state, and federal laws and regulations, within ninety (90) days of the partial destruction. If the repairs cannot be so made in ninety (90) days and the County does not elect to make them within a reasonable time, either party hereto has the option to terminate this Lease. If the leased Lake Washington Parcel is more than one-third destroyed, County or BCAA may at its option terminate this Lease, giving ninety (90) day notice to BCAA.
29. **Reverter and Right of Re-Entry and Repossession.** In the event the Lake Washington Parcel is not used or ceases to be used for the public purposes set forth herein, the Lease shall immediately cease and the Lake Washington Parcel shall revert to the County which shall thereafter have the right to repossess the Lake Washington Parcel.
30. **Surrender of Premises.** BCAA shall surrender the Lake Washington Parcel to the County at the end of the Lease term in generally the same condition as when BCAA took possession, allowing for changes and modifications agreed to by the parties over time, reasonable wear and tear, damages by acts of God, including fire and storm.
31. **Emergencies.** In the case of a declared emergency in Brevard County by the Board of County Commissioners the County retains the right to immediately resume occupation, management, and maintenance of the Lake Washington Parcel to use 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.
32. **Termination for Convenience.** Either party may terminate this Lease for their own convenience upon providing thirty (30) day written notice to the other party. In the event of a termination for convenience, the parties agree that the only termination damages payable by either party will be prorated rent up to the date of termination, and any other sums the respective party is otherwise obligated to pay under the terms of this Lease up to the effective date of termination, and any other sums the respective party is otherwise obligated to pay under the terms of this Lease up to the date of termination

33. **Notice.** Notice under this Lease shall be given to the County at Brevard County Parks and Recreation, South Area Operations Office, 1515 Sarno Road, Melbourne, FL 32935. Notice shall be given to BCAA by mailing written notice, postage prepaid to the President of the Brevard County Airboat Association Inc., 6299 Highway 192, Melbourne, FL 32904. Notice shall be effective upon receipt or five (5) days from mailing, whichever even occurs first.

34. **Successors in Interest.** This Lease and the covenants and conditions hereof apply to and are binding on the heirs, successors, legal representatives, and assigns of the parties

35. **Entire Lease.** This Lease, together with any exhibits, constitutes the entire Lease between the County and BCAA and supersedes all prior written or oral understandings. This Lease and any exhibits may only be amended, supplemented or canceled by a written instrument duly executed by both parties hereto.

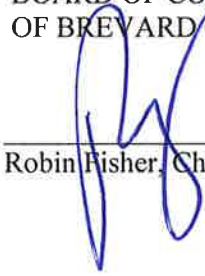
IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

ATTEST:



Scott Ellis, Clerk of Court

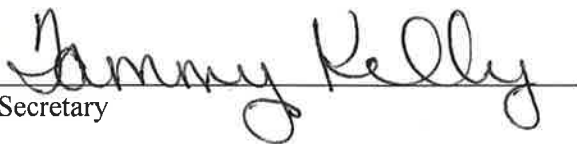
BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Robin Fisher, Chairman

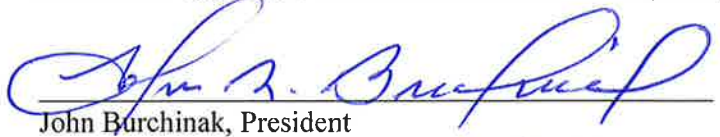
As approved by the Board on 11/3/15

ATTEST:



Secretary

BREVARD COUNTY AIRBOAT ASSOCIATION, INC.



John Burchinak, President

11-13-2015

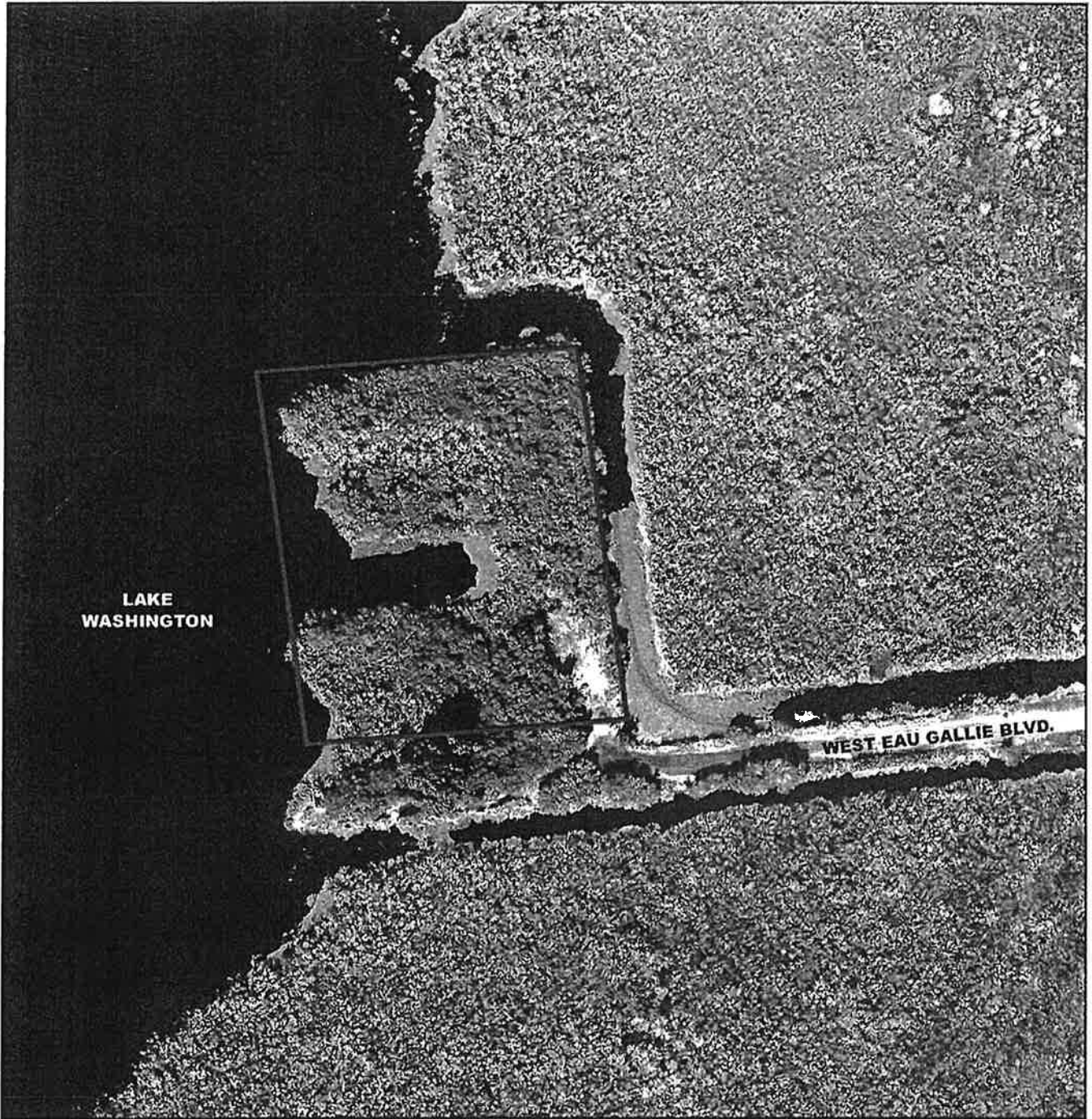
Reviewed for Legal Form and Content



Assistant County Attorney

Exhibit B

Lake Washington Parcel
6600 West Eau Gallie Boulevard
Melbourne, FL 32935



2014 Aerial

Brevard County Parks and Recreation

2725 Judge Fran Jamieson Way
Viera, FL 32940

0 50 100
Feet



DISCLAIMER: This map is intended for display purposes only and is not intended for any legal representation.

RESOLUTION NO. 2015- 214

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, PURSUANT TO SECTION 125.35, FLORIDA STATUTES AND SECTION 2-247 BREVARD COUNTY CODE OF ORDINANCES, AUTHORIZING THE LEASING OF REAL PROPERTY TO A NOT FOR PROFIT CORPORATION ORGANIZED UNDER THE LAWS OF THE STATE OF FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Brevard County, Florida (hereinafter referred to as "County") is the owner of certain property located at 6600 West Eau Gallie Blvd, Melbourne, FL 32935 (hereinafter referred to as the "Lake Washington Parcel");

WHEREAS, the Brevard County Airboat Association, Inc. a Not for Profit Corporation organized under the laws of the State of Florida (hereinafter to "BCAA") has applied to the County to lease Lake Washington Parcel; and

WHEREAS, the BCAA desires to maintain the Lake Washington Parcel for access to recreational boating activities; and

WHEREAS, the County finds that the BCAA's proposed use of the Lake Washington Parcel will promote public health, safety or welfare, will serve the public interest, will serve a public purpose and that the Property is not needed for County purposes.

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

1. The Lake Washington Parcel is public parkland designated as an access to recreational boating.
2. The County has determined that the Lake Washington Parcel is not needed by the County.
3. The BCAA shall maintain the Lake Washington Parcel for the benefit and enjoyment for citizens of Brevard County.
4. The County shall enter into a lease with the BCAA for a term of ten (10) years with the option to renew for two (2) additional five (5) year terms and rent in the amount of One Dollar (\$1.00) per year.
5. This Resolution shall take effect immediately upon its adoption. No obligation to Lease the Lake Washington Parcel to the BCAA shall arise until the Lease is executed by both parties.
6. In the event the BCAA fails to comply with the Lease, then the Lake Washington Parcel shall immediately revert to the County which shall thereafter have the right to reenter and repossess the property.

DONE, ORDERED AND ADOPTED this 3rd day of November, 2015.

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

ATTEST:



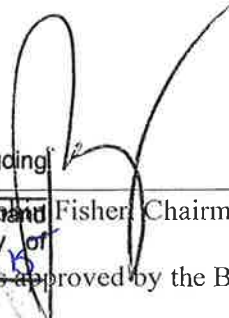
Scott Ellis, Clerk

STATE OF FLORIDA
COUNTY OF BREVARD

This is to certify that the foregoing
is a true and current copy of

Resolution 2015-214 witness my hand
and official seal this 3 day of

November
SCOTT ELLIS, Clerk of Circuit Court



Chairman
As approved by the Board on 11/3/2015.

BY D. Thomas D.C.

LEASE

THIS LEASE, made and entered into this 3 day of November, 2015, by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as the "County"), and the Brevard County Airboat Association, Inc., a Florida Not for Profit Corporation, organized under the laws of the State of Florida (hereinafter referred to as the "BCAA").

WHEREAS, the BCAA desires to lease County owned property located at 6600 West Eau Gallie Blvd, Melbourne, FL 32935 (hereinafter referred to as the "Lake Washington Parcel");

WHEREAS, the BCAA has petitioned the County for Lease of the Lake Washington Parcel, has an interest in recreational boating, and is well situated to do so; and

WHEREAS, the County has an interest in allowing recreational boating to be provided to general population of the County;

WHEREAS, the County has by Resolution, a copy of which is attached hereto as **Exhibit A**, determined this Lease would serve community interests, constitutes a service that could be provided by local government, and is compatible with the County purposes for this weather shelter and picnic area.

WITNESSETH:

NOW THEREFORE, in consideration of the mutual promises and terms and conditions contained herein, the parties hereto hereby agree as follows:

1. **Leased Property.** The County hereby leases to the BCAA and BCAA hereby leases from the County, the Lake Washington Parcel at 6600 W Eau Gallie Blvd, Melbourne, FL 32935 as presently constituted and described in **Exhibit B**. The Lake Washington Parcel includes all improvements to the leased real property, whether constructed before or after the date of the Lease on the leased property by the County.
2. **Representation by BCAA.** The BCAA represents that it is a Florida Not for Profit organization under the laws of Florida as described in Section 501(c)(7) of the Internal Revenue Code as amended, and is exempt from Federal income tax pursuant to Section 501(a) of said Code.
3. **Term.** The initial term of this Lease shall be for a period of ten (10) years from the date the last party signs it ("Effective Date"). Thereafter, this Lease may be renewed, at the Parks and Recreation Department Director's discretion, for two (2) additional five (5) year terms by written notice from BCAA at least ninety (90) days prior to the expiration date of this Lease.
4. **Rent.** BCAA agrees to pay the County the sum of one dollar (\$1.00) per year, payable in advance for the Lake Washington Parcel.

5. **Insurance.** BCAA shall maintain a program of insurance covering their liabilities, and shall be responsible for the acts and omissions of BCAA in the event that such acts or omissions result in the injury to persons or damage to their personal property. BCAA shall have the County named as an additional insured on its general liability insurance policy. The County shall not be responsible or liable for injuries to persons or damage to property when such injuries or damage are caused by or the result from BCAA's maintenance, or lack of maintenance, to BCAA improvements. The County does not warrant or represent that the Lake Washington Parcel is safe or suitable for the purpose for which BCAA is permitted to improve and BCAA assumes all risks in its maintenance or lack of maintenance.
6. **Insurance Certificates.** Within 10 days after the execution of this Lease, the BCAA shall provide the County with Certificate(s) of Insurance on all policies of insurance and renewals thereof in a form(s) acceptable to the County. Said certificates shall provide that the County is an additional insured, and that County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the County and licensed and authorized under the laws of the State of Florida.
7. **No Use that Increases Insurance Risk.** The BCAA understands and agrees that BCAA is responsible for BCAA's personal safety and the personal safety of any and all persons accompanying BCAA on the property or accessing the property under direction of the BCAA. BCAA is fully knowledgeable of the risks that are generally associated with traversing property that is in substantially natural condition and assumes all such risks. BCAA voluntarily assumes any other risks, of every kind whatsoever, whether natural or artificial, while conducting activities on the property pursuant to this Lease.
8. **Indemnification.** The BCAA shall indemnify and hold harmless the County and its employees from all claims, damages, losses, and expenses, including attorney's fees, arising out of or associated with their use, occupation, management or control of the BCAA's or any improvements in connection with the Lake Washington Parcel by the BCAA unless such claims, damages, expenses, or losses are caused solely by acts of the County, its employees, or other persons not a party to this Lease acting on the County's request. BCAA agrees that it will, at its own expense, defend any and all such actions, suits, or proceedings which may be brought against the County in connection with the BCAA's use, occupation, management or control of said Lake Washington Parcel and that it will satisfy, pay and discharge any and all judgments that may be entered against the County in such action or proceeding. Likewise, the County shall indemnify and defend the BCAA and its employees, officers, and agents from all claims, damages, losses, and expenses, including attorney's fees, caused solely by the County's use, occupation, or management of the Lake Washington Parcel or any improvements made by the County unless such claims, damages, or losses are caused by the acts of the BCAA, its employees, officers, members or other persons not a party to this Lease acting on/at the BCAA's request. The County agrees that it will, at its own expense, defend any and all such actions, suits, or proceedings which may be brought against the BCAA as the sole result of the County's use, occupation or management of said Lake Washington Parcel and that it will satisfy, pay and discharge any and all judgments that may be entered against the BCAA in such

action or proceeding. However, nothing contained herein shall constitute a waiver by the County of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.

9. **Obligations of the BCAA.** The BCAA shall keep the Lake Washington Parcel clean, orderly and in compliance with all local, state and federal laws, regulations or ordinances. The County reserves the right to perform, or have performed, periodic inspections of the cleanliness and sanitation conditions of the Lake Washington Parcel. BCAA shall maintain said property in its present condition. At the conclusion of this Lease the property shall be restored to not less than the condition that existed prior to when the Lease took effect. The BCAA shall be responsible for maintenance and repair and bear the costs for such for the Lake Washington Parcel.

The BCAA shall not use the Lake Washington Parcel for storage of any material whatsoever. Any personal property of the BCAA remaining on the property following termination of the Lease shall be deemed abandoned and may be removed or relocated by the County.

The Lake Washington Parcel shall be open to the general public at all times. All activities must be approved in writing by the County prior to any action by the BCAA.

The discharge of any fuel, oil, petroleum products, litter or other harmful materials is prohibited. The BCAA shall be solely responsible for any and all costs associated with any resulting clean up and remediation as a result of any of BCAA's actions.

10. **Improvements:** Within 120 days of the Execution Date of this Lease the BCAA must present a detailed development plan for the development of the Lake Washington Parcel. The plan must be approved by the Parks and Recreation Department Director and the BCAA. Failure to present the approved plan within 120 days of the Execution Date will constitute a material breach of this Lease.

All grants, plans, and specifications for any construction or other proposed development or improvements to the Lake Washington Parcel must be reviewed and approved by the Parks and Recreation Department Director prior to any action by the BCAA. Any permanent improvements or equipment installed by the BCAA shall become property of the County upon termination of this Lease.

Any and all construction on the Lake Washington Parcel must be completed within 365 days of commencement. Any extension of the completion of the construction deadline may be approved by the Parks and Recreation Department Director for good cause.

The BCAA shall ensure that no contractor, which the BCAA may hire to perform any portion of construction, renovation, or repairs to the Lake Washington Parcel shall be entitled to file any liens, mechanics or otherwise, against any County property to secure the contractors interests or payments due. Any contract the BCAA signs or executes with a contractor shall contain a provision which waives any right to file any such liens and

provisions which requires the contractor to include the same waiver by any subcontractor which the contractor may hire in any agreement or contract the contractors execute with subcontractors.

11. **ADA Compliance.** The County and BCAA shall conform to current requirements of the Americans with Disabilities Act in the performance of this Lease, and shall not cause or place any condition causing the Lake Washington Parcel to become non-compliant. The parties shall work together to cure any known violations of the ADA that may occur
12. **Severability.** If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall nevertheless continue in full force without being impaired or invalidated in any way.
13. **Venue.** Venue for any legal action brought by any party to this Lease to interpret, construe or enforce this Lease shall be in court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.
14. **Attorney's Fees.** In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.
15. **Governing Law.** This Lease shall be deemed to have been executed and entered into within the State of Florida and this Lease, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.
16. **Compliance with Statutes.** It shall be the BCAA's and the County's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, state, and federal agencies as applicable.
17. **Independent Contractor.** BCAA shall perform the services under this Lease as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Lease shall be interpreted or construed to constitute the BCAA or any of its agents or employees to be the agent, employee or representative of the County.
18. **Right to Audit Records.** The BCAA shall prepare an annual financial statement and shall submit same to the Area Manager. In the performance of this Lease, the BCAA shall keep books, records, and accounts of all activities related to this Lease, in compliance with general accounting procedures. Books, records and accounts related to the performance of this Lease shall be open to inspection during regular business hours by an authorized representative of the County and shall be retained by the agency for a period of three (3) years after the termination of this Lease. All records or documents created by BCAA or provided to BCAA by the County in connection with the activities or services provided by County under the terms of this Lease, are public records and the BCAA agrees to comply with any request for such public records or documents made in accordance with Chapter 119, Florida Statutes.

19. **Unauthorized Alien Workers.** Brevard County 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 Act “INA”). The County shall consider the employment by the contractor of unauthorized aliens a violation of Section 274A (e) of the INA and such violation shall be grounds for unilateral cancellation of this Lease by the County.
20. **Public Entity Crimes.** A person or affiliate who had 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.
21. **Copyright.** No reports, data, programs or other materials produced, in whole or in part, for the benefit and use of the County under this Lease shall be subject to copyright by the BCAA in the United States or any other country.
22. **Music Performance.** The BCAA shall not use, play or perform copyrighted music without appropriate licensing or other permission. The BCAA shall be solely responsible for obtaining appropriate licensing or permission to use, play or perform copyrighted music. The use or performance of copyrighted music without appropriate licensing or other permission shall constitute a breach of this Lease. The BCAA agrees to indemnify and hold harmless the County from damages for unauthorized use or performance of copyrighted music.
23. **Construction of Lease.** The parties hereby acknowledge that they have fully reviewed this Lease and its attachments and have had the opportunity to consult with legal counsel of their choice, and that this Lease shall not be construed against any party as if they were the drafter of this Lease.
24. **No Waiver of Covenants or Conditions.** The failure of either party to insist on strict performance of any covenant or condition hereof, or to exercise any option herein contained, shall not be construed as a waiver of such covenant, condition, or option in any other instance. This Lease cannot be changed or terminated orally.
25. **Modifications.** No modification of this Lease shall be binding on the County or the BCAA unless reduced to writing and signed by a duly authorized representative of County and the BCAA.
26. **Violation of Provisions.** Any violation of these provisions will constitute a breach of the conditions of this Lease and may result in the cancellation of same. The County shall notify the BCAA of any violation of the provisions of this Lease in writing. Such notice shall identify the provision which is being violated and how it is being violated. The BCAA shall then have sixty (60) days within which to fix the violation. It is the intent

of this provision for the parties to work together cooperatively towards a positive resolution of all issues. However, if the violation is not fixed or addressed in a reasonable fashion to the County's reasonable satisfaction, the County has the right to issue a notice of termination/cancellation effective immediately at the end of the sixty day period.

27. **Illegal, Unlawful, or Improper Use.** The BCAA shall make no unlawful, improper, immoral, or offensive use of the Leased Lake Washington Parcel nor will the BCAA use the Leased Lake Washington Parcel or allow the use of the Leased Lake Washington Parcel for any purpose other than that hereinabove set forth. Failure of BCAA to comply with this provision shall be considered a material default under this Lease.
28. **Partial Destruction of Premises.** Partial destruction of the Lake Washington Parcel shall not render this Lease void, or terminate it except as herein provided. If the Lake Washington Parcel is partially destroyed during the term of this Lease, County may endeavor to make repairs, providing the County has the fiscal means to do so, and when such repairs can be made in conformity with local, state, and federal laws and regulations, within ninety (90) days of the partial destruction. If the repairs cannot be so made in ninety (90) days and the County does not elect to make them within a reasonable time, either party hereto has the option to terminate this Lease. If the leased Lake Washington Parcel is more than one-third destroyed, County or BCAA may at its option terminate this Lease, giving ninety (90) day notice to BCAA.
29. **Reverter and Right of Re-Entry and Repossession.** In the event the Lake Washington Parcel is not used or ceases to be used for the public purposes set forth herein, the Lease shall immediately cease and the Lake Washington Parcel shall revert to the County which shall thereafter have the right to repossess the Lake Washington Parcel.
30. **Surrender of Premises.** BCAA shall surrender the Lake Washington Parcel to the County at the end of the Lease term in generally the same condition as when BCAA took possession, allowing for changes and modifications agreed to by the parties over time, reasonable wear and tear, damages by acts of God, including fire and storm.
31. **Emergencies.** In the case of a declared emergency in Brevard County by the Board of County Commissioners the County retains the right to immediately resume occupation, management, and maintenance of the Lake Washington Parcel to use 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.
32. **Termination for Convenience.** Either party may terminate this Lease for their own convenience upon providing thirty (30) day written notice to the other party. In the event of a termination for convenience, the parties agree that the only termination damages payable by either party will be prorated rent up to the date of termination, and any other sums the respective party is otherwise obligated to pay under the terms of this Lease up to the effective date of termination, and any other sums the respective party is otherwise obligated to pay under the terms of this Lease up to the date of termination

33. **Notice.** Notice under this Lease shall be given to the County at Brevard County Parks and Recreation, South Area Operations Office, 1515 Sarno Road, Melbourne, FL 32935. Notice shall be given to BCAA by mailing written notice, postage prepaid to the President of the Brevard County Airboat Association Inc., 6299 Highway 192, Melbourne, FL 32904. Notice shall be effective upon receipt or five (5) days from mailing, whichever even occurs first.

34. **Successors in Interest.** This Lease and the covenants and conditions hereof apply to and are binding on the heirs, successors, legal representatives, and assigns of the parties


35. **Entire Lease.** This Lease, together with any exhibits, constitutes the entire Lease between the County and BCAA and supersedes all prior written or oral understandings. This Lease and any exhibits may only be amended, supplemented or canceled by a written instrument duly executed by both parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

ATTEST:


Scott Ellis, Clerk of Court

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Robin Fisher, Chairman


As approved by the Board on 11/3/15

ATTEST:

Secretary

BREVARD COUNTY AIRBOAT ASSOCIATION, INC.

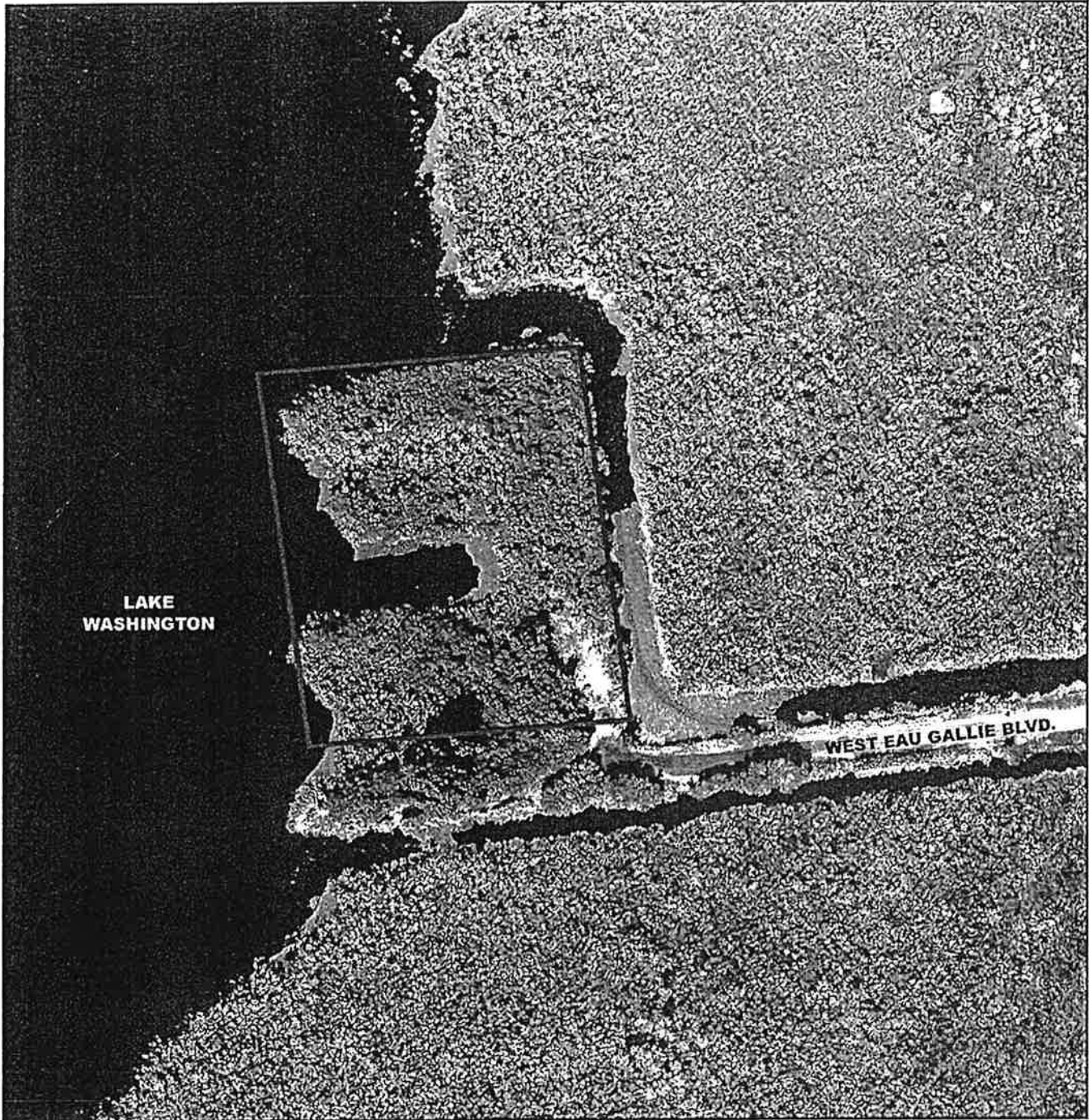
John Burchinak, President

Reviewed for Legal Form and Content


Assistant County Attorney

Exhibit B

Lake Washington Parcel
6600 West Eau Gallie Boulevard
Melbourne, FL 32935



LAKE
WASHINGTON

WEST EAU GALLIE BLVD.

2014 Aerial

Brevard County Parks and Recreation

2725 Judge Fran Jamieson Way
Viera, FL 32940

0 50 100
Feet



DISCLAIMER: This map is intended for display purposes only and is not intended for any legal representation.

RESOLUTION NO. 2015- 214

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, PURSUANT TO SECTION 125.35, FLORIDA STATUTES AND SECTION 2-247 BREVARD COUNTY CODE OF ORDINANCES, AUTHORIZING THE LEASING OF REAL PROPERTY TO A NOT FOR PROFIT CORPORATION ORGANIZED UNDER THE LAWS OF THE STATE OF FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Brevard County, Florida (hereinafter referred to as "County") is the owner of certain property located at 6600 West Eau Gallie Blvd, Melbourne, FL 32935 (hereinafter referred to as the "Lake Washington Parcel");

WHEREAS, the Brevard County Airboat Association, Inc. a Not for Profit Corporation organized under the laws of the State of Florida (hereinafter to "BCAA") has applied to the County to lease Lake Washington Parcel; and

WHEREAS, the BCAA desires to maintain the Lake Washington Parcel for access to recreational boating activities; and

WHEREAS, the County finds that the BCAA's proposed use of the Lake Washington Parcel will promote public health, safety or welfare, will serve the public interest, will serve a public purpose and that the Property is not needed for County purposes.

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

1. The Lake Washington Parcel is public parkland designated as an access to recreational boating.
2. The County has determined that the Lake Washington Parcel is not needed by the County.
3. The BCAA shall maintain the Lake Washington Parcel for the benefit and enjoyment for citizens of Brevard County.
4. The County shall enter into a lease with the BCAA for a term of ten (10) years with the option to renew for two (2) additional five (5) year terms and rent in the amount of One Dollar (\$1.00) per year.
5. This Resolution shall take effect immediately upon its adoption. No obligation to Lease the Lake Washington Parcel to the BCAA shall arise until the Lease is executed by both parties.
6. In the event the BCAA fails to comply with the Lease, then the Lake Washington Parcel shall immediately revert to the County which shall thereafter have the right to reenter and repossess the property.

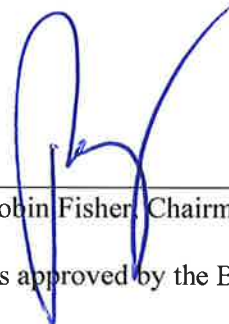
DONE, ORDERED AND ADOPTED this 3rd day of November, 2015.

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

ATTEST:



Scott Ellis, Clerk



Robin Fisher, Chairman

As approved by the Board on 11/3/2015.

PUBLIC NOTICE
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

As provided in Brevard County Code Section 2-249, notice is hereby given that the Board of County Commissioners will hold a public meeting at 9:00 a.m. on November 3, 2015 at the Brevard County Government Center Board Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida. At the meeting the Board will consider Resolution and Agreement with the Brevard County Airboat Association, Inc. for the leasing of a 5.5 acre parcel of land located at 6600 West Eau Gallie Blvd, Melbourne, Florida. Any person objecting to the Agreement may submit written objections to the county manager's office or may appear and speak in objection at the meeting. Additional information may be obtained by contacting Jack Masson, Parks and Recreation Department Director at (321) 633-2046.

If a person desires to appeal any decision made by this Board with respect to any matter considered at this meeting or hearing, such a person will need a record of this proceeding and that, for such purposes, such person may need to ensure that a verbatim record of this proceeding is made, at his/her own expense, which record includes testimony and evidence on which any such appeal is to be based.

In accordance with the Americans with Disabilities Act and Section 286.26, F.S., persons needing accommodations or an interpreter to participate in the meeting should notice County Administration no later than 48 hours prior to the public meeting at 321-633-2012.



Classified Ad Receipt
(For Info Only - NOT A BILL)

Customer: B.O.C.C. COUNTY MANAGER'S OFF
Address: 2725 JUDGE FRAN JAMIESON WAY
MELBOURNE FL 32940
USA

Ad No.: 0000808200
Pymt Method: Invoice
Net Amt: \$114.66

Run Times: 1

No. of Affidavits: 1

Run Dates: 10/22/15

Text of Ad:

AD#808200 10/22/2015
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Please call Melissa X52517 when ready for pick up. Thanks!

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

SECTION I

The following information must be completed on all new contracts submitted to the Board.

1. Contractor: Brevard County Airboat Association, Inc.	
2. Fund/Account #:	3. Division Name: Parks and Recreation Department – South Area
4. Contract Description: Lease Agreement	
5. Contract Monitor: TBD/Greg Minor	6. Mail Stop #: 76
7. Dept./Office Director: Jack Masson	8. Class Code:
ACTION DATE: Upon Receipt	ACTION REQUIREMENT: Approval Signature

SECTION II

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	X	_____	HL	7/7/2015
Risk Management	_____	_____	_____	_____
County Attorney	X	_____	MDX	10/15/15

If any office denies approval, the package will be returned immediately to the User Agency.

NOTE: This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will then forward the Initial Contract Form to Information Systems Division and the contract will be entered into the contract Monitoring System. This initial entry will generate an entry on your monthly contract report and the first report will always show a "Required Action" for the contract. See BC-20 for additional information.

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

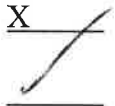
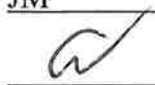
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ACTION DATE: <i>Upon Receipt</i>	ACTION REQUIREMENT: <i>Approval Signature</i>

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	<u>YES</u>	<u>NO</u>		
User Agency	X	_____	JM	10/5/2015
Risk Management		_____		10/15/15
County Attorney	_____	_____	_____	_____

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