

Meeting Date
February 21, 2017



AGENDA	
Section	Consent
Item No.	II.A.7

**AGENDA REPORT**  
*BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS*

SUBJECT:	Approval Re: Amendment to Right of Way Use Agreement with River Cove Owners Association, Inc., for Improvements Within the Right of Way – District 5 (Fiscal Impact: None)
DEPT/OFFICE:	Public Works Department – Finance and Contracts Administration

Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chairman to execute the Amendment to Right of Way Use Agreement with River Cove Owners Association, Inc. for improvements in the public right of way of River Cove Place located within the River Cove subdivision.

Summary Explanation & Background:

On August 18, 2009, the Board entered into Right of Way Use Agreement with the River Cove Owners Association, Inc. This Use Agreement granted the Association permission to install landscaping, signage, and irrigation improvements on a portion of the County-owned right of way of River Cove Place in the River Cove subdivision. Presently, the Association desires to utilize a portion of this right of way to expand the median located in River Cover Place by six (6) feet and to install pavers within River Cove Place. These improvements have been reviewed by Public Works engineering staff and shall be installed pursuant to Permit #16RW01046.

The County is authorized to allow the use of the right of way for purposes which do not conflict with the interests of the public as set forth in Section 125.01, Florida Statutes. In accordance with the Amendment to the Right of Way Use Agreement, the Association shall be required to maintain the improvements without cost to the County. Additionally, the Association is required to provide general liability insurance during the term of the Agreement. The Amendment has been reviewed and approved by the County Attorney’s Office.

Fiscal Impact: FY 2016/2017 – There is no fiscal impact to Brevard County as a result of this action.

Clerk to the Board Instructions: Return Amendment to Right of Way Use Agreement (2 executed originals) to the Public Works Department

Exhibits Attached: Amendment to Right of Way Use Agreement (3 originals)

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					Department Director / Extension	
Stockton Whitten		Assistant County Manager					John P. Denninghoff / 57202	



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

February 22, 2017

**M E M O R A N D U M**

**TO:** John Denninghoff, Public Works Director

**RE:** Item II.A.7., Approval of Amendment to Right of Way Use Agreement with River Cove Owners Association, Inc. for Improvements Within the Right of Way

The Board of County Commissioners, in regular session on February 21, 2017, executed and approved the Amendment to Right of Way Use Agreement with River Cove Owners Association, Inc. for improvements in the public right-of-way of River Cove Place, located with the River Cove Subdivision. Enclosed are two fully-executed Agreements for your action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds

Encls. (2)

cc: Contracts Administration

**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.**

<b>1. Contractor:</b> River Cove Owners Association, Inc.	
<b>2. Fund/Account #:</b>	<b>Department Name:</b> Public Works
<b>4. Contract Description:</b> Amendment to Right of Way Use Agreement	
<b>5. Contract Monitor:</b> Jeanette Scott	<b>6. Mail Stop #:</b> EXT 52853
<b>7. Dept./Office Director:</b> John P. Denninghoff / Public Works Department	<b>8. Contract Type:</b> Use Agreement
<b>ACTION DATE:</b> 30 days from entry	<b>ACTION REQUIREMENT:</b> Need complete data

**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	✓	_____	ttv	2/2/17
Risk Management	_____	_____	_____	_____
County Attorney	✓	_____	DEY	1/24/2017

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

**SECTION III - CONTRACT MANAGEMENT DATABASE CHECKLIST**

<b>DATABASE REQUIRED FIELDS</b>	<b>Complete ✓</b>
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund and GL Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Data (No Additional renewals/extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in database (Initial Contract Form with County Attorney/Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>
<b>Note:</b> Insurance Certificates uploaded under collapsible/expandable <u>Monitor Bar Section</u> Change Order/Task Order uploaded under collapsible/expandable <u>Monitor Bar Section</u> Contract Renewal documents uploaded under collapsible/expandable <u>Renewal /Bar Section</u>	
<b>NOTE:</b> 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 return the Initial Contract Form, Executed/Attested Contract to department for contract to be entered and uploaded into the Contract Management System. See AO-29 for additional information.	

AMENDMENT TO RIGHT OF WAY USE AGREEMENT

THIS AMENDMENT made and entered into this 21 day of February, 2017 by and between RIVER COVE OWNERS ASSOCIATION, INC., hereinafter referred to as the ASSOCIATION, and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as the COUNTY.

WITNESSETH:

**WHEREAS**, the parties thereto have previously entered into a Right of Way Use Agreement on August 18, 2009, hereinafter referred to as AGREEMENT, a copy of which is attached as Exhibit "B"; and

**WHEREAS**, the AGREEMENT granted the ASSOCIATION permission to perform landscaping, signage, and irrigation improvements on a portion of County-owned right of way, known as River Cove Place in the River Cove subdivision, hereinafter referred to as PREMISES.

**WHEREAS**, the ASSOCIATION desires to utilize a portion of the PREMISES to expand the median located in River Cove Place by six (6) feet and to install pavers within the County-owned right of way of River Cove Place.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants contained, the parties hereby agree, as follows:

1. **PURPOSES.** The COUNTY shall permit the ASSOCIATION to utilize a portion of the PREMISES for the expansion of the median by six (6) feet and the installation of pavers located within the PREMISES as depicted in Exhibit "A", attached hereto. This median expansion and pavers installation shall be pursuant to Permit #16RW01046.
2. That all the terms and conditions, as amended, which are incorporated herein by this reference, not inconsistent with the provisions of the AGREEMENT, shall remain in full force and effect.

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

ATTEST:



  
\_\_\_\_\_  
Scott Ellis, Clerk

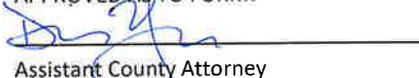
BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA



\_\_\_\_\_  
Curt Smith, Chairman

AS APPROVED BY THE BOARD ON: 2/21/17

APPROVED AS TO FORM:



\_\_\_\_\_  
Assistant County Attorney

RIVER COVE OWNERS ASSOCIATION, INC.

Cory G. Clark  
President, Title

This area is reserved for the notary as a witness to the HOA's signature.

STATE OF FLORIDA §  
COUNTY OF Broward §

I HEREBY CERTIFY that before me, an officer duly authorized to take acknowledgments, personally appeared Coy A Clark to me known to be the Pres. of River Cove Apartments or provided as identification and who did (did not) take an oath, acknowledged before me that they executed the within instrument freely and voluntarily for the purposes therein expressed.

2<sup>th</sup> WITNESS my hand and official seal in the State and County last aforesaid this day of Jan, 2017.

(SEAL)



Kathi A. Shotwell  
Signature

Kathi A. Shotwell  
Notary Name (typed or printed)

Notary  
Title or Rank

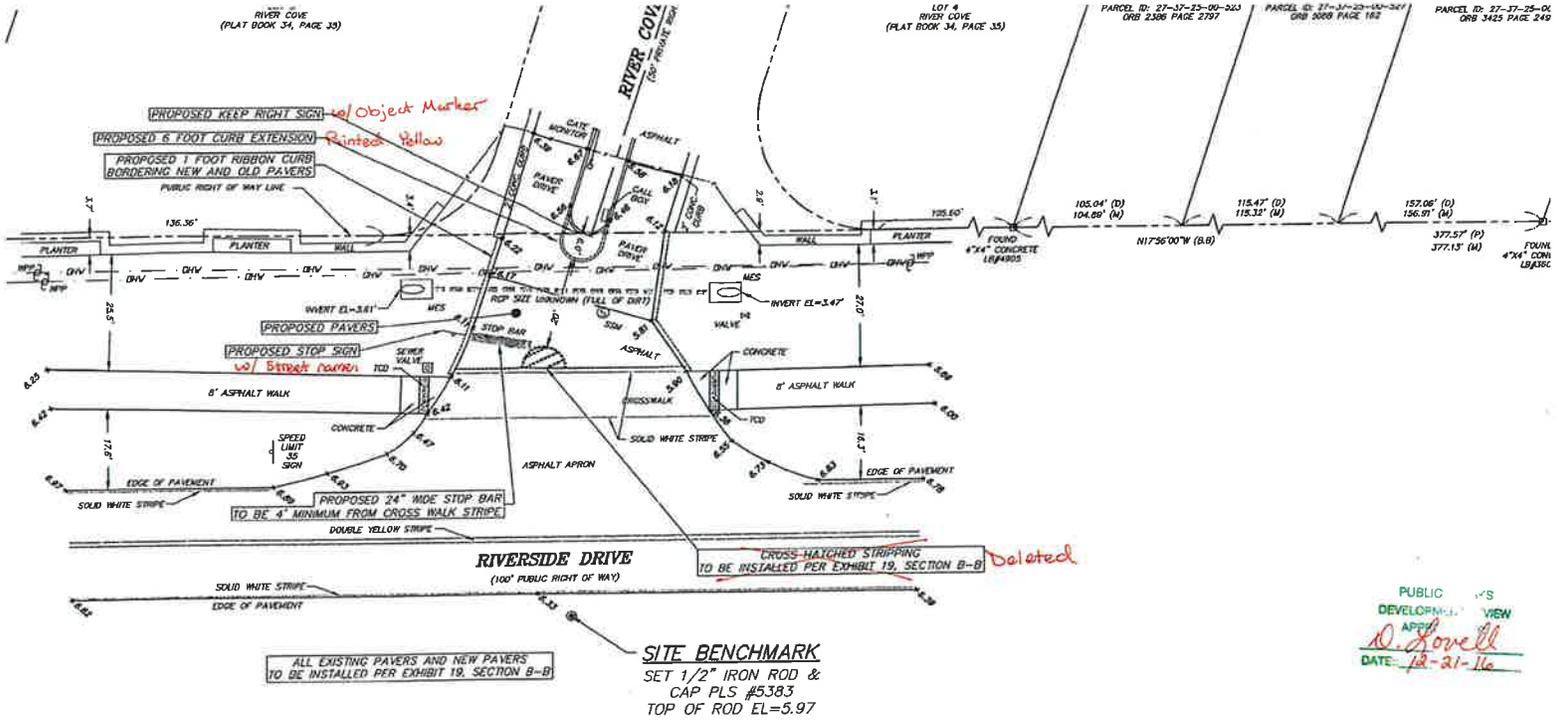
PARCEL 30  
RIVER COVE  
(PLAT BOOK 34, PAGE 33)

LOT 4  
RIVER COVE  
(PLAT BOOK 34, PAGE 35)

PARCEL 21: 27-37-25-30-343  
ORB 2386 PAGE 2797

PARCEL 22: 37-37-25-30-344  
ORB 2008 PAGE 162

PARCEL 23: 27-37-25-30  
ORB 3425 PAGE 249



PUBLIC vs  
DEVELOPMENT VIEW  
APPROVED  
*D. Lovell*  
DATE: 12-21-16

Changes Approved  
*[Signature]*

NOTE:  
THERE IS AN EXISTING BREVARD COUNTY RIGHT OF WAY AGREEMENT—CONTRACT #71 DATED 08-25-09

Exhibit "A"

# AAL LAND SURVEYING SERVICES, INC.

ACCORDING TO FLORIDA STATUTE CHAPTER 462, PART 1, THIS PROPERTY WAS SURVEYED AND THIS DRAWING WAS PREPARED ON MARCH 15, 2016. THIS PROPERTY IS LOCATED WITHIN PLAT BOOK 34, PAGE 33.

GENERAL NOTES: THIS SURVEY AND DRAWING HAVE BEEN PREPARED TO CONFORM WITH APPLICABLE STANDARDS OF PRACTICE AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 462, PART 1.

LEGEND  
[Symbol] - PLAT

**RIGHT OF WAY USE AGREEMENT**

THIS AGREEMENT, made and entered into this 18th day of August, 2009, by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD, COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY", and RIVER COVE OWNERS ASSOCIATION, INC., a/k/a River Cove Homeowners Association, Inc., a Florida Non-profit Corporation, hereinafter referred to as the Association.

**WITNESSETH**

WHEREAS, the COUNTY is the owner of certain real property located in Brevard County, Florida, which is located within the North right of way of River Cove Place in the River Cove Subdivision, and more particularly described in the attached Exhibit "A" and as shown on the attached Exhibits "B-1" and "B-2";

WHEREAS, the parties herein had previously entered into an Agreement on October 4, 1994, and most recently renewed on August 24, 2004, under the same conditions, as amended;

WHEREAS, the previous Agreement expires on August 24, 2009; and

WHEREAS, the Association desires to continue to utilize that portion of right of way for the purpose set forth herein.

NOW THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. **MAINTENANCE OF PROPERTY.** The Association hereby agrees to perform landscape improvements and maintenance, in the manner described in this Agreement, on the property described in the attached Exhibit "A", and hereinafter referred to as the "premises".
2. **TERM.** The initial term of this Agreement shall be ten (10) years commencing with the date of the execution of this Agreement and shall thereafter be automatically renewed annually unless terminated by either party, in accordance with Item 13 - **TERMINATION**, herein.
3. **USE OF PREMISES.** The Association shall use the premises for a sign, a sprinkler system, and landscaping. It is hereby mutually agreed and understood that the use of any structure, improvement or facility now or hereafter located on the premises shall be for decorative purposes only and not for human occupancy, nor shall such structures or improvements create traffic hazards. It is specifically agreed and understood that the use herein set forth shall be the only use consented to by the COUNTY, and that failure to comply with this provision shall be considered a material breach of this Agreement, whereupon the COUNTY shall be entitled to immediately terminate this Agreement.

4. IMPROVEMENTS. The plans and specifications for all improvements, structures, landscaping and facilities made by the Association on the premises shall be in accordance with all COUNTY specifications and shall be submitted as an attachment to the County's "Roadway and Easement Improvement Application Form" with appropriate fees, for approval by the COUNTY or its designated representative prior to the construction or installation of such improvement, structure, landscaping or facility. It is hereby agreed and understood that any structure placed on or constructed on the premises and permanently attached thereto, shall remain the property of the Association and that the Association retains the right to remove such structure within forty-five (45) days of the date of termination of this Agreement, whether by breach or by expiration of its natural term. In the event such structure is not removed within forty-five (45) days of termination, the structure shall become the property of the COUNTY.

5. UTILITIES. The Association shall pay all charges for electrical service and other utility services supplied to the Association at the premises.

6. REPAIRS AND MAINTENANCE. The Association shall, at its own expense, maintain the grounds and all improvements, structures and facilities on the premises and make all necessary repairs and replacements to the premises and to any improvements constructed thereon. Such maintenance, repairs and replacements shall be made promptly as and when necessary.

7. ILLEGAL, UNLAWFUL OR IMPROPER USE. The Association shall make no unlawful, improper, immoral or offensive use of the premises, nor will the Association use the premises or allow use of the premises for any purposes other than that hereinabove set forth. Failure of the Association to comply with this provision shall be considered a material default under this Agreement. In the event any structure, improvement or landscaping is deemed a traffic safety hazard by the COUNTY or Florida Department of Transportation, such use shall be deemed an improper use and the agreement shall be subject to immediate termination.

8. INDEMNIFICATION AND INSURANCE. Except where limited by law, the Association agrees that it will indemnify and save harmless the COUNTY from any and all liability, claims, damages, expenses, proceedings and causes of action of every kind and nature arising out of or connected with the use, occupation, management or control of the premises or any improvement thereon or any equipment or fixtures used in connection with the premises.

The Association 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 its premises and that it will satisfy, pay and discharge any and all judgments that may be entered against the COUNTY in any such action or proceedings. The parties acknowledge specific consideration has been exchanged for the provision.

The Association further agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the COUNTY, policies of General Liability Insurance insuring the Association against any and all claims, demands or causes of action whatsoever for injuries received and damages to property in connection with the use, occupation, management and control of the premises and the improvements thereon. Such policies of insurance shall insure the Association in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) to cover any and all claims arising in connection with any one particular

accident or occurrence. A certificate of such insurance policies shall be filed with the Public Works Department, 2725 Judge Fran Jamieson Way, Bldg. A-204, Viera, Florida, 32940, within fifteen (15) days of the date of execution of this Agreement. The COUNTY shall be named as an additional insured on the policy that the Association secures and endorsed with a provision that entitles the COUNTY to thirty (30) days written notice from the insurer of any change or cancellation in said policies.

The Association shall notify the COUNTY immediately in writing of any potentially hazardous condition existing on or about the premises.

All personal property, equipment, fixtures, structures or improvements constructed or placed on or about the premises shall be at the risk of the Association and the COUNTY shall not be liable for any damage or loss to personal property, equipment, fixtures, structures or improvements located thereon for any cause whatsoever. The Association agrees and understands that the COUNTY does not and shall not carry liability, theft, or fire insurance on any of said items or facilities to cover the Association's interests therein.

At the time of execution of this agreement, any existing landscaping installed or caused to be installed by the developer on the premises, and subsequently transferred to the control of the Association, will be the responsibility of the Association. In the event this pre-existing landscaping causes damage to County property, to include but not limited to, sidewalk/roadway/curb and gutter/drainage inlets, the Association will be responsible for immediate repair to County property. If the Association fails to repair the damage, the Association will pay the County all costs incurred by the County to repair the damage.

9. RIGHT OF ENTRY. The COUNTY or its agents may enter in and on the premises at any reasonable time for the purpose of inspecting such property or performing other duties as are required by law or by the terms of this Agreement.

10. COMPLIANCE WITH STATUTES. The Association shall promptly execute and comply with all statutes, ordinances, rules, regulations, and requirements of all local, state and federal governmental; bodies applicable to the premises, for the correction, prevention and abatement of nuisances or other grievances in, upon, or connected with the premises during the term of the Agreement.

11. ASSIGNABILITY. The Association shall not assign its responsibilities under this Agreement without the prior written consent of the COUNTY. In the event the Association does assign this Agreement, the Association and any such assigns shall be jointly and severally responsible for the Association's responsibilities under this Agreement. The Association shall provide the COUNTY with a written list of all subcontractors or other persons other than the members of the Association that will be performing work for the Association pursuant to this Agreement.

12. INDEPENDENT CONTRACTOR. The Association shall perform the services under this Agreement as an Independent Contractor and nothing herein shall be construed to be inconsistent with this relationship or status. Nothing in the Agreement shall be interpreted or construed to constitute that the Association or any of its agents or employees to be the agent, employee or representative of the COUNTY.

13. TERMINATION. This Agreement may be terminated with or without cause by either party upon forty-five (45) days' written notice thereof to the other party; provided, however, that upon termination, the Association shall, at the request of the COUNTY, remove all improvements to the premises, or, in the alternative, reimburse the COUNTY for the cost of such removal.

14. NOTICE. Notice under this Agreement shall be given to the COUNTY at the office of Land Acquisition of the Public Works Department, 2725 Judge Fran Jamieson Way, Bldg. A, Room 204, Viera, Florida 32940, and to Deer Run Community Association, Inc. at Space Coast Management Company, 645 Classic Court, Suite 104, Melbourne, FL 32940.

15. WAIVER. The waiver by the COUNTY of any of the Association's obligations or duties under this Agreement shall not constitute a waiver of any other obligation or duty of the Association under this Agreement.

16. ENTIRETY. This Agreement represents the understanding between the parties in its entirety and no other agreements, either oral or written, exist between the COUNTY and the Association.

DONE, ORDERED and ADOPTED in Regular Session this 18<sup>th</sup> day of August, 2009.

ATTEST

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

[Signature]  
STATE OF FLORIDA  
COUNTY OF BREVARD  
This is to certify that the foregoing is a true and current copy of Chuck Nelson, Chairman  
[Signature] witness my hand  
and official seal this 19 day of August, 2009

APPROVED AS TO FORM

SCOTT ELLIS  
Clerk Circuit Court

[Signature]  
Eden Bentley, Deputy County Attorney

BY [Signature] RIVER COVE OWNERS ASSOCIATION, INC.

[Signature]  
Coy A. Clark, President

STATE OF FLORIDA  
COUNTY OF BREVARD

BEFORE ME personally appeared Coy A. Clark, known to me to be the person who executed the foregoing Agreement, and they acknowledged before me that they executed the same for the purposes described therein.

WITNESS my hand and official seal this 22 day of July, 2009.

[Signature]  
Notary Public, State of Florida  
My Commission Expires May 19, 2013



CERTIFICATE

I, the undersigned, Coy A. Clark, do HEREBY CERTIFY that the following is a true and correct statement of resolutions adopted by Consent of the Board of Directors of River Cove Owner's Association, Inc., on \_\_\_\_\_ and the action taken has not in any manner been rescinded or modified.

APPROVAL OF AGREEMENT

RESOLVED, that the Agreement between River Cove Owners Association, Inc. and the Board of County Commissioners of Brevard County, Florida, appended hereto and by reference made a part hereof is hereby approved by the Association.

FURTHER RESOLVED, that the President or Vice President, as well as other appropriate officers of this Association, are empowered to execute any and all documents, and/or instruments, to affect the purposes of the above Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Association this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Coy A. Clark  
Coy A. Clark, President  
River Cove Owners Association, Inc.

I HEREBY CERTIFY that on this day personally appeared before me Coy A. Clark, to me known to be the person who signed the foregoing Certificate as such officer, and acknowledged the execution thereof to be his free act and deed on behalf of River Cove Owners Association, Inc.; that he affixed thereto the official seal of River Cove Owners Association, Inc.; and that as such officer, he is duly authorized to do so.

WITNESS my signature and official seal this 22 day of July 2009.

Rachel Crow  
Notary Public, State of Florida  
My Commission Expires May 19, 2013



EXHIBIT "A"

COMMENCE AT THE INTERSECTION OF THE N. LINE OF RIVIERA, A SUBDIVISION AS RECORDED IN PLAT BOOK 17, PAGE 137, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND THE WEST RIGHT OF WAY LINE OF RIVERSIDE DRIVE AS THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL:

FROM SAID POINT OF BEGINNING RUN  $N17^{\circ}56'00''1$ , ALONG SAID WEST RIGHT-OF-WAY LINE OF RIVERSIDE DRIVE, A DISTANCE OF 346.62 FEET; THENCE RUN  $S89^{\circ}52'48''W$  A DISTANCE OF 390 FEET, MORE OR LESS, TO AND INTO THE WATERS OF THE INDIAN RIVER, THENCE RUN SOUTHWESTERLY ALONG SAID INDIAN RIVER TO A POINT THAT IS  $S89^{\circ}52'48''$  WEST OF THE POINT OF BEGINNING; THENCE RUN  $N89^{\circ}52'48''E$  A DISTANCE OF 537 FEET, MORE OR LESS, TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL, CONTAINING 3.511 ACRES, MORE OR LESS, TOGETHER WITH ALL RIPARIAN RIGHTS THERETO BELONGING.

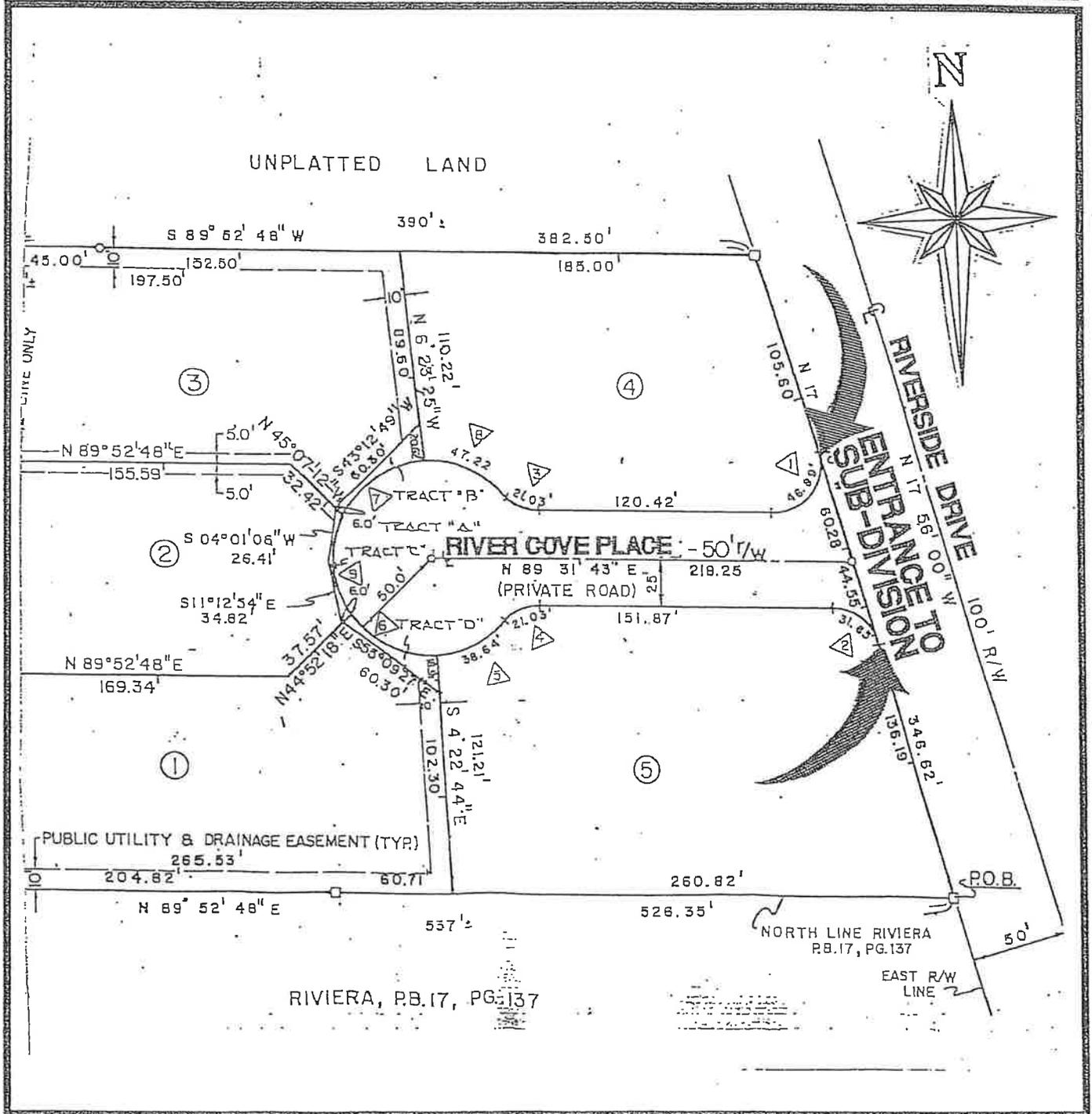
# PLAT MAP

SEC: 25 TWP: 27 RNG: 37

DISTRICT: # 5

## RIVERSIDE DRIVE @ RIVER COVE PLACE

### OWNER: RIVER COVE H/O ASSN.



RIVIERA, P.B. 17, P.G. 137

# LOCATION MAP

SEC: 25 TWP: 27 RNG: 37

DISTRICT: # 5

## RIVERSIDE DRIVE @ RIVER COVE PLACE

### OWNER: RIVER COVE H/O ASSN.

