

Meeting Date
March 21, 2017



AGENDA	
Section	Consent
Item No.	II. A. 13.

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

<b>SUBJECT:</b>	Approval Re: Grant of Easement to Brevard County from Patrick Air Force Base needed for Minton Road right of way – District 5 (Fiscal Impact: None)		
<b>DEPT/OFFICE:</b>	Public Works Department / Land Acquisition Section		
<b>Requested Action:</b>	It is requested that the Board of County Commissioners approve and accept and, if accepted, authorize the Chairman to execute the Grant of Easement from Patrick Air Force Base.		
<b>Summary Explanation &amp; Background:</b>	<p>The subject property is located in Section 25, Township 28 South, Range 36 East.</p> <p>Minton Road is a main thoroughfare running through District 5. This Grant of Easement is a renewal easement necessary to ensure continued access over a portion of Minton Road. Under Federal guidelines, the Air Force is only permitted to grant easements for a period of 25 years. Neither the County Attorney's Office nor the Risk Management Department could approve the language requested by the Air Force due to the potential liability placed on the County. Staff request approval of the easement under the terms dictated by the Air Force notwithstanding the potential liability issues.</p> <p>Land Acquisition Policies and Procedures require approval and acceptance by the Board of County Commissioners for all easements.</p> <p>Fiscal impact: FY 2016-2017: No impact  <b>FY 2017-2018: No impact</b></p>		
<b>Clerk to the Board Instructions:</b>	Forward the original partially executed Grant of Easement with Exhibits A, B, C, D and the Board approval memo to Department.		
<b>Exhibits Attached:</b>	Original partially executed Grant of Easement with Exhibits A, B, C, D , Location Map		
<b>Contract /Agreement (If attached):</b>	Reviewed by County Attorney	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/> PR <input type="checkbox"/>
<b>County Manager</b>	<b>Assistant County Manager</b>	<b>Department Director / Extension</b>	
Stockton Whitten 	Assistant County Manager	 John Denninghoff / 57202	

**BOARD OF COUNTY COMMISSIONERS**

AGENDA: GRANT OF EASEMENT TO BREVARD COUNTY FROM PATRICK AIR FORCE BASE (OWNER) – MINTON ROAD RIGHT OF WAY EASEMENT - DISTRICT 5

AGENCY: PUBLIC WORKS DEPARTMENT / LAND ACQUISITION SECTION

AGENCY CONTACT: LUCY HAMELERS, LAND ACQUISITION SPECIALIST

CONTACT PHONE: 321-690-6847 (56316)

**REVIEW**

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Dan Jones, Supervisor	<u>DJ</u>	_____	<u>3/6/17</u>
COUNTY ATTORNEY Eden Bentley Deputy County Attorney	<u>Subject to comment OTO ✓</u>	_____	<u>3/2/17</u>
PUBLIC WORKS John Denninghoff, Director	<u>JD</u> <u>same comment as OTO</u>	_____	<u>3/6/17</u>

AGENDA DUE DATE: March 7, 2017 for the March 21, 2017 Board meeting

IF ANY REVIEWING OFFICE HAS QUESTIONS OR CONCERNS REGARDING THIS PACKAGE, PLEASE ADVISE AGENCY CONTACT IMMEDIATELY.

PLEASE CALL DEBBIE CRUZ AT 690-6847 (5-6847) WHEN READY TO BE PICKED UP.

THANK YOU.



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

March 22, 2017

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

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

**RE:** Item II.A.13., Grant of Easement to Brevard County from Patrick Air Force Base for Property Located in Section 25, Township 28 South, Range 36 East – Minton Road Right-of-Way

The Board of County Commissioners, in regular session on March 21, 2017, approved and accepted the Grant of Easement from Patrick Air Force Base for property located in Section 25, Township 28 South, Range 36 East – Minton Road Right-of-Way. Enclosed is the executed Grant Easement for your action.

**Upon execution by the Secretary of the Air Force, please return a fully-executed copy to this office for inclusion in the official minutes.**

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds

Encl. (1)

cc: Utility Services Director  
Asset Management

Instrument Number: USAF-AFSPC-NYRL-17-2-0214

DEPARTMENT OF THE AIR FORCE  
GRANT OF EASEMENT  
FOR  
BREVARD COUNTY, FLORIDA  
ON  
MALABAR TRANSMITTER ANNEX, FLORIDA

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**DEPARTMENT OF THE AIR FORCE**

**GRANT OF EASEMENT**

**PREAMBLE**

**THE UNITED STATES OF AMERICA**, acting by and through the Secretary of the Air Force (the "Grantor"), under and pursuant to the authority granted in 10 U.S.C. § 2668, the Secretary of the Air Force having determined that no more land than needed for the Easement is included herein, and the granting of this Easement is not against the public interest, does hereby grant and convey to Brevard County, Florida, a political-subdivision, duly incorporated in the State of Florida and authorized to do business in this State (Grantee), a nonexclusive Easement to for a right-of way for a road or street over, across, in and upon lands of the United States, as described in **Exhibit A** and depicted on **Exhibit B** (the "Easement Area"). The Grantor and Grantee may be referred to as Parties or separately as a Party.

**BASIC TERMS**

**1. TERM**

**1.1. Term.** This Grant shall be for a term of twenty five (25) years commencing **19 April 2017** ("Term Beginning Date") and ending **18 April 2042** ("Term Expiration Date") unless sooner terminated.

**1.2. Termination.** The Government may terminate this easement at any time in the event of national emergency as declared by the President or the Congress of the United States, base closure, deactivation or substantial realignment, or in the interest of national defense upon 120 days' written notice to Grantee. If the giving of such notice is impracticable under the circumstances, the Secretary will use good faith efforts to give Grantee such advance written notice as the circumstances permit.

**2. RENT**

This is a no cost easement to a sub-state governmental agency (Brevard County, Florida). Its sole purpose is to serve the public interest.

**3. CORRESPONDENCE**

Any written notices under this instrument shall be made by mailing or hand delivering such notice to the parties at the following addresses.

GRANTOR:  
REAL PROPERTY OFFICER  
1224 JUPITER STREET  
PATRICK AFB, FL 32925

GRANTEE:

BREVARD COUNTY PUBLIC WORKS DEPT.  
LAND ACQUISITION SECTION  
2725 JUDGE JAMIESON WAY, BLDG A-204  
VIERA, FL 32940

**4. USE OF EASEMENT AREA**

**4.1. Permitted Uses.** The Grantee shall use the Easement Area solely for a right-of way for a road or street over, across, in and upon lands of the United States for a right-of way for a road or street over, across, in and upon lands of the United States. Grantee's use of the Easement Area shall comply, at Grantee's sole cost and expense, with all Applicable Laws. The Grantee shall not use or occupy the Easement Area in any manner that is unlawful, dangerous, or that results in waste, unreasonable annoyance, or a nuisance to the Government.

**4.2. Grantee Access.** Grantee is granted the nonexclusive right to use the walkways, streets, and roads on Patrick AFB, Florida in common with the Grantor and its grantees and licensees for access to and from the Easement Area and the nearest public street or highway.

**4.3. Grantor's Right of Access And Inspection.** Grantor shall have the right to enter the Easement Area at any time and shall have the right to reasonably inspect Grantee's use of it and any of Grantee's improvements or property placed thereon, without notice.

**4.4. Grantor's Reasonable Regulation.** The use and occupation of the Easement Area and the exercise of the rights herein granted shall be subject to Grantor's reasonable restrictions and regulations regarding ingress, egress, safety, sanitation, and security, as Grantor, or its duly authorized representatives, may from time to time impose.

**4.5. No Obstructions.** Neither party shall use the property nor construct, erect, or place any objects, buildings, structures, signs, or wells of a permanent nature on, under, or over the Easement Area that will unreasonably interfere with the other Party's use of the premises, as set out in this Easement or its reservations.

**4.6. Limitation Of Grantee Rights.** Except as is reasonably required to effect the purpose of this Easement, the Grantee has no right of use, license, easement, servitude, or usufruct, for any purpose, by necessity or otherwise, express or implied, on, over, across, or under any of the real property of the Grantor, and the Grantee agrees not to assert any such right or interest by reason of this Easement.

**5. ABANDONMENT OR TERMINATION OF EASEMENT**

**5.1. Termination.** This Easement may be terminated in whole or in part by the Grantor for Grantee's failure to comply with the terms of this Easement, and Grantor may terminate it for any part of the Easement Area that is abandoned or not used by the Grantee for 24 consecutive

months. The Grantor shall give written notice of any termination, which shall be effective as of the date of the notice.

**5.2. Remedies For Non-Compliance.** In the event the Grantee fails to comply with any obligation under this Easement, the Grantor may pursue monetary damages, equitable relief, or both, and the Grantee shall reimburse the Grantor for its attorney fees and costs.

## **OPERATION OF THE EASEMENT AREA**

### **6. EASEMENTS AND RIGHTS OF WAY**

This Easement is subject to all outstanding easements, rights-of-way, rights in the nature of an easement, leases, permits, licenses, and uses (collectively, "Outgrants") for any purpose affecting the Easement Area. The Air Force may make additional Outgrants and make additional uses that may affect the Easement Area. However, any such additional Outgrants shall not be inconsistent with the use of the Easement Area by the Grantee under this Easement.

### **7. CONDITION OF EASEMENT AREA**

The Grantee has inspected and knows the condition of the Easement Area. It is understood that the Easement is granted "as is, where is" without any warranty, representation, or obligation on the part of the Grantor to make any alterations, repairs, improvements, or corrections to conditions or to defects whether patent or latent. The Parties shall jointly perform and sign or otherwise authenticate a Physical Condition Report at the beginning of the Easement term to document the condition of the Easement Area. This report will be made a part of this Easement as **Exhibit C**.

### **8. MAINTENANCE OF EASEMENT AREA**

**8.1. Maintenance of Easement Area.** The Grantee, at no expense to the Government, shall at all times preserve, maintain, repair, and manage the Easement Area, Grantee improvements, and Grantee equipment in an acceptable, safe, and sanitary condition in accordance with this Easement.

**8.2. Damage to Government Property.** If the Grantee damages or destroys any real or personal property of the Government, the Grantee shall promptly repair or replace such real or personal property to the reasonable satisfaction of the Government. In lieu of such repair or replacement, the Grantee shall, if so required by the Government, pay to the Government money in an amount sufficient to compensate for the loss sustained by the Government by reason of damage or destruction of Government property, including natural resources.

### **9. TAXES**

The Grantee shall pay to the proper authority, when and as the same become due and payable, all taxes, assessments, and similar charges which, at any time during the term of this Easement may be imposed on the Grantee or the Easement Area.

## 10. INSURANCE

**10.1. Risk of Loss.** The Grantee shall in any event and without prejudice to any other rights of the Government bear all risk of loss or damage or destruction to the Easement Area, and any building(s), Easement Area improvements, Grantee equipment, fixtures, or other property thereon, arising from any causes whatsoever, with or without fault by the Government, provided, however, the Government shall not be relieved of responsibility for loss or damage that is solely the result of the gross negligence or willful misconduct of the Government to the extent such loss or damage is not covered by coverage of insurance required under this Easement.

**10.2. Grantee Insurance Coverage.** During the entire Easement Term, the Grantee, at no expense to the Government, shall carry and maintain the following types of insurance:

10.2.1. Commercial general liability insurance, on an occurrence basis, insuring against claims for bodily injury, death and property damage, occurring upon, in or about the Easement Area, including any building thereon and sidewalks, streets, passageways and interior space used to access the Easement Area. Such insurance must be effective at all times throughout the Easement Term, with limits of not less than \$1,000,000 per occurrence, general aggregate and products and completed operations aggregate, and include coverage for fire, legal liability, and medical payments. This coverage may be provided under primary liability and umbrella excess liability policies, and shall include business auto liability insurance that insures against claims for bodily injury and property damage arising from the use of "any auto" with a combined single limit of \$1,000,000 per accident. All liability policies shall be primary and non-contributory to any insurance maintained by the Government.

10.2.1.1. The insurance carried and maintained by the Grantee pursuant to Paragraph 10.2.1 shall provide coverage to protect the Government from any damage and liability for which the Grantee is liable or responsible or agrees to hold harmless and indemnify the Government under this Easement.

10.2.1.2. Commercial general liability and business auto liability insurance required pursuant to Paragraph 10.2.1 shall be maintained for the limits specified, and shall provide coverage for the mutual benefit of the Grantee and the Government as an additional insured with equal standing with the named insured for purposes of submitting claims directly with the insurer.

10.2.2. Workers' compensation or similar insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against the Government or the Grantee, in form and amounts required by law (statutory limits), and employers' liability, with limits of \$1,000,000 each coverage and policy limit.

**10.3. General Requirements.** All insurance required by this Easement shall be: (i) effected under valid and enforceable policies, in such forms and amounts required under this Easement, (ii) issued by Qualified Insurers defined for purposes of this paragraph as insurers authorized to do business and to issue the insurance policies required under this Paragraph 10 in the State of Florida ; (iii) provide that no reduction in amount or material change in coverage thereof shall be

effective until at least sixty (60) days after receipt by the Government of written notice thereof; (iv) provide that any cancellation of insurance coverage based on nonpayment of the premium shall be effective only upon ten (10) days' written notice to the Government; (v) provide that the insurer shall have no right of subrogation against the Government; and (vi) be reasonably satisfactory to the Government in all other respects. Proceeds under all policies of insurance carried and maintained to provide coverage required by this Paragraph 10 shall be available only for the stated purposes of the insurance. Under no circumstances will the Grantee be entitled to assign to any third-party rights of action that the Grantee may have against the Government in connection with any insurance carried pursuant to this Paragraph.

**10.4. Evidence of Insurance.** The Grantee shall deliver or cause to be delivered upon execution of this Easement (and thereafter not less than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this Paragraph 10), at the Government's option, a certified copy of each policy of insurance required by this Easement, or a certificate of insurance evidencing the insurance and conditions relating thereto required by this Easement, in a form acceptable to the Government, and including such endorsements necessary to afford additional insured status.

**10.5. Damage or Destruction of Easement Area.** In the event all or part of the Easement Area is damaged (except de minimis damage) or destroyed, the risk of which is assumed by the Grantee under Paragraph 10.1, the Grantee shall promptly give notice thereof to the Government and the Parties shall proceed as follows:

10.5.1. In the event that the Government, in consultation with the Grantee, determines that the magnitude of damage is so extensive that the Easement Area cannot be used by the Grantee for its operations and the repairs, rebuilding, or replacement of the Easement Area cannot reasonably be expected to be substantially completed within three (3) months of the occurrence of the casualty ("Extensive Damage or Destruction of Easement Area"), either Party may terminate this Easement as provided in Paragraph 5.1. If this Easement is terminated pursuant to Paragraph 5.1, any insurance proceeds received as a result of any casualty loss to the Easement Area shall be applied to the restoration of the Easement Area in accordance with Paragraph 13.

10.5.2. In the event that the Government, in consultation with the Grantee, shall determine that Extensive Damage or Destruction of the Easement Area has not occurred, then neither Party shall have the right to terminate this Easement. The Grantee shall, as soon as reasonably practicable after the casualty, restore the Easement Area as nearly as possible to the condition that existed immediately prior to such loss or damage. Any insurance proceeds received as a result of any casualty loss to the Easement Area shall be applied first, to restoring the damaged area and removing any related debris to the reasonable satisfaction of the Government and second, to repairing, rebuilding, and/or replacing the Easement Area to the reasonable satisfaction of the Government.

## **11. ALTERATIONS**

**11.1. Alterations.** At least 30 days before doing any work to repair, build, alter, modify, or demolish any improvements in the Easement Area, Grantee shall give written notice of its plans

to the Installation Commander through the Base Civil Engineer, who shall have the right to review and approve or reasonably modify the plans and to place reasonable restrictions on Grantee's access, equipment, methods, materials, and manpower related to accomplishing the work, in order to ensure it is done consistent with Grantor's use of the Easement Area and the operation of the Installation.

**11.2. Airfield Construction.** Any new construction or alteration at the end of the runway, or within lateral clear zones for the runway, shall comply with any applicable Air Force requirements, such as those contained in Unified Facilities Criteria (UFC) 3-260-01 titled "Airfield and Heliport Planning and Design," dated 17 November 2008.

## **12. COSTS OF UTILITIES/SERVICES**

Reserved

## **13. RESTORATION**

**13.1. Grantee's Removal Obligation.** Upon the expiration, abandonment, or termination of the Easement, Grantor may elect, in its sole discretion, to require Grantee to remove all its improvements and other property from the Easement Area and restore the Easement Area at Grantee's sole expense to substantially the same condition that existed immediately before the grant, all to Grantor's satisfaction. Grantor shall give notice to Grantee of such election within a reasonable time after learning of Grantee's abandonment, or together with Grantor's notice of termination. Alternatively, at those same times, Grantor may elect and give written notice to Grantee that some or all of Grantee's easement improvements and any other property Grantee may leave on the Easement Area will revert or be transferred to Grantor. Such reversion or transfer in lieu of Grantee's removal and restoration obligation shall be automatic and at no cost to Grantor and shall be effective on the Easement Term Expiration Date or the effective date of any abandonment or termination, without additional consideration therefore. Grantee shall execute any documentation reasonably requested by the Grantor to confirm any transfer or conveyance.

**13.2. Government Restoration of Easement Area.** If Grantee fails to timely satisfy its removal and restoration obligations, then at Grantor's option, Grantee's improvements and personal property located on the Easement Area shall either become Grantor's property without compensation therefore or the Government may cause them to be removed or destroyed and the Easement Area to be so restored at the expense of Grantee; and no claim for damages against Grantor, its officers, employees, agents, or contractors shall be created by or made on account of such removal or destruction and restoration work. Grantee shall reimburse Grantor for any expenses it incurs to restore the Easement Area to the condition required by this grant within thirty (30) days after the Government provides written notice to Grantee of the reimbursement amount together with reasonable documentary support of the reimbursement amount.

## CHANGES IN OWNERSHIP OR CONTROL

### 14. ASSIGNMENT

The Grantee may not assign this Easement without the prior written consent of the Grantor.

### 15. LIENS AND MORTGAGES

Reserved

## ENVIRONMENT

### 16. ENVIRONMENTAL PROTECTION

**16.1. Compliance with Applicable Laws.** Grantee shall comply with all applicable federal, State, and local laws, regulations, and standards for environmental protection, including flood plains, wetlands, and pollution control and abatement, as well as for payment of all fines and assessments by regulators for the failure to comply with such standards. Grantee shall also indemnify the Grantor to the full extent permitted by law for any violation of such law, regulation, or standard and shall also reimburse the Grantor for any civil or criminal fines or penalties levied against the Grantor for any environmental, safety, occupational health, or other infractions caused by or resulting from Grantee's action or inaction or that of its officers, agents, employees, contractors, subcontractors, licensees, or the invitees of any of them. In the event that any actions by Grantee including those of its officers, agents, employees, contractors, subcontractors, licensees, or invitees cause or contribute to a spill or other release of a substance or material, Grantee shall conduct any required cleanup, abatement, or response action in accordance with all applicable federal, State and local laws and regulations or, at the discretion of Grantor, indemnify Grantor for all costs of completing such cleanup, abatement, or response action.

**16.2. Environmental Permits.** The Grantee shall obtain at its sole cost and expense any environmental and other necessary permits required for its operations under this Easement, independent of any existing permits.

**16.3. Indemnification.** The Grantee shall, to the extent permitted by law, indemnify the Grantor, its agents and employees, from and against any loss, damage, claim, or liability whatsoever resulting in personal injury or death, or damage of property of the Grantor and others, directly or indirectly due to the negligent exercise by the Grantee of any of the rights granted by the Easement, or any other negligent act or omission of the Grantee, including failure to comply with the obligations of this Easement or of any applicable laws that may be in effect from time to time.

**16.4. Government Caused Environmental Damage.** Grantee does not assume any of Grantor's liability or responsibility for environmental impacts and damage resulting from Grantor's activities; however, this provision does not relieve Grantee of any obligation or

liability it might have or acquire with regard to third parties or regulatory authorities by operation of law.

**16.5. Records Maintenance and Accessibility.** The Government's rights under this Easement specifically include the right for Government officials to inspect the Easement Area, upon reasonable notice as provided under Paragraph 4.3, for compliance with Applicable Laws, including environmental laws, rules, regulations, and standards. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. Violations identified by the Government will be reported to the Grantee and to appropriate regulatory agencies, as required by Applicable Law. The Grantee will be liable for the payment of any fines and penalties that may be imposed as a result of the actions or omissions of the Grantee.

**16.6. Grantee Response Plan.** The Grantee shall comply with all Installation plans and regulations for responding to hazardous waste, fuel, and other chemical spills.

**16.7. Pesticide Management.** Any pesticide use will require prior Government approval.

**16.8. Compliance with Water Conservation Policy.** The Grantee will comply with the Installation water conservation policy, as amended from time to time (to the extent that such policy exists and the Grantee receives copies thereof), from the Term Beginning Date through the Term Expiration Date.

**16.9. Protection of Environment and Natural Resources.** The Grantee will use all reasonable means available to protect environmental and natural resources, consistent with Applicable Laws and this Easement. Where damage nevertheless occurs, arising from the Grantee's activities, the Grantee shall be fully liable for any such damage.

**16.10. Pesticides and Pesticide Related Chemicals in Soil.** The Grantee acknowledges that the surface soil on the Easement Area may contain elevated levels of pesticides and pesticide-related chemicals applied in the normal course of maintaining the Easement Area. The Grantee shall manage all such soil on the Easement Area in accordance with the requirements of any Applicable Laws. The Government will not be responsible for injury or death of any person affected by such soil conditions whether the person is warned or not.

## **17. ASBESTOS-CONTAINING MATERIALS (ACM) AND LEAD-BASED PAINT (LBP)**

Reserved

## **18. SAFETY, HAZARDOUS MATERIALS, AND WASTE MANAGEMENT**

**18.1. Compliance With Health and Safety Plan.** The Grantee agrees to comply with the provisions of any health or safety plan in effect under the Installation Restoration Program (IRP) (to the extent the Grantee has received notice thereof), or any hazardous substance remediation or response agreement of the Government with environmental regulatory authorities (to the

extent the Grantee receives notice thereof if the agreement is not of public record) during the course of any of the response or remedial actions described in Paragraph 20.3. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Grantee. The Grantee and any assignees, licensees, or invitees shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof, except to the extent permitted under federal law, including the Federal Tort Claims Act.

**18.2. Occupational Safety and Health.** The Grantee must comply with all Applicable Laws relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes.

## **19. HISTORIC PRESERVATION**

The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the Easement Area, the Grantee shall immediately notify the Government and protect the site and the material from further disturbance until the Government gives clearance to proceed.

## **20. INSTALLATION RESTORATION PROGRAM (IRP)**

**20.1. IRP Records.** On or before the Term Beginning Date, the Government shall provide the Grantee access to the IRP records applicable to the Easement Area, if any, and thereafter shall provide to the Grantee a copy of any amendments to or restatements of the IRP records affecting the Easement Area. The Grantee expressly acknowledges that it fully understands the potential for some or all of the response actions to be undertaken with respect to the IRP may impact the Grantee's quiet use and enjoyment of the Easement Area. The Grantee agrees that notwithstanding any other provision of this Easement, the Government shall have no liability to the Grantee or any assignees, licensees, or invitees should implementation of the IRP or other hazardous waste cleanup requirements, whether imposed by law, regulatory agencies, or the Government or the Department of Defense, interfere with the Grantee's or any of its assignee's, licensee's, or invitee's use of the Easement Area. The Grantee shall have no claim or cause of action against the United States, or any officer, agent, employee, contractor, or subcontractor thereof, on account of any such interference, whether due to entry, performance of remedial or removal investigations, or exercise of any right with respect to the IRP or under this Easement or otherwise.

**20.2. Government Right of Entry.** The Government and its officers, agents, employees, contractors, and subcontractors shall have the right, upon reasonable notice to the Grantee, to enter upon the Easement Area for the purposes enumerated in this Paragraph.

**20.2.1.** To conduct investigations and surveys, including, where necessary, drilling, soil and water samplings, testpitting, testing soil borings, and other activities related to the IRP;

20.2.2. To inspect field activities of the Government and its contractors and subcontractors in implementing the IRP;

20.2.3. To conduct any test or survey related to the implementation of the IRP or environmental conditions at the Easement Area or to verify any data submitted to the EPA or the State Environmental Office by the Government relating to such conditions; and

20.2.4. To construct, operate, maintain, or undertake any other response or remedial action as required or necessary under the IRP, including, but not limited to, monitoring wells, pumping wells, and treatment facilities. Any investigations and surveys, drilling, testpitting, test soil borings, and other activities undertaken pursuant to this Subparagraph 20.2.4 shall be conducted in a manner that is as inconspicuous as practicable. Any monitoring wells, pumping wells, and treatment facilities required pursuant to this Paragraph 20.2.4 shall be designed and installed to be as inconspicuous as practicable. The Government shall attempt to minimize any interference with the Grantee's quiet use and enjoyment of the Easement Area arising as the result of such wells and treatment facilities. The Government shall, subject to the availability of appropriations therefor, repair any damage caused by its exercise of the rights in this Paragraph.

### **20.3. ACCESS FOR RESTORATION**

20.3.1. Nothing in this Easement shall be interpreted as interfering with or otherwise limiting the right of the Air Force and its duly authorized officers, employees, contractors of any tier, agents, and invitees to enter upon the Premises for the purposes enumerated in Paragraph 20.3 and for such other purposes as are consistent with the provisions of a Federal Facility Agreement (FFA) or required to implement the IRP conducted under the provisions of 10 U.S.C. §§ 2701-2705. The Grantee shall provide reasonable assistance to the Air Force to ensure Air Force's activities under this Paragraph 20.3 do not damage property of the Grantee on the Easement Area.

20.3.2. The United States Environmental Protection Agency (USEPA) and State of Florida, including their subordinate political units, and their duly authorized officers, employees, contractors of any tier, and agents may, upon reasonable notice to the Grantee and with Air Force's consent, enter upon the Premises for the purposes enumerated in Paragraph 20.3 and for such other purposes as are consistent with the provisions of an FFA. The Grantee shall provide reasonable assistance to USEPA and the State to ensure their activities under this Paragraph 20.3 do not damage property of the Grantee on the Easement Area.

## **21. ENVIRONMENTAL BASELINE SURVEY / ENVIRONMENTAL CONDITION OF PROPERTY**

An Environmental Baseline Survey ("EBS") waiver for the Easement Area dated 16 September 2016 has been delivered to the Grantee and is attached as **Exhibit D** hereto. The EBS sets forth those environmental conditions and matters on and affecting the Easement Area on the Easement Term Beginning Date as determined from the records and analyses reflected therein. The EBS is not, and shall not constitute, a representation or warranty on the part of the Government regarding the environmental or physical condition of the Easement Area, and the Government shall have no liability in connection with the accuracy or completeness thereof. In this regard the

Grantee acknowledges and agrees that the Grantee has relied, and shall rely, entirely on its own investigation of the Easement Area in determining whether to enter into this Easement. A separate EBS for the Easement Area shall be prepared by the Government, after the expiration or earlier termination of this Easement ("Final EBS"). Such Final EBS shall document the environmental conditions and matters on and affecting the Easement Area on the Term Expiration Date as determined from the records and analyses reflected therein. The Final EBS will be used by the Government to determine whether the Grantee has fulfilled its obligations to maintain and restore the Easement Area under this Easement including, without limitation, Paragraph 13 and Paragraph 16.

## GENERAL PROVISIONS

### 22. GENERAL PROVISIONS

**22.1. Covenant Against Contingent Fees.** The Grantee warrants that it has not employed or retained any person or agency to solicit or secure this Easement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul this Easement without liability or in its discretion to recover from the Grantee the amount of such commission, percentage, brokerage, or contingent fee, in addition to the consideration herewith set forth. This warranty shall not apply to commissions payable by the Grantee on the Easement secured or made through bona fide established commercial agencies retained by the Grantee for the purpose of doing business. "Bona fide established commercial agencies" has been construed to include licensed real estate brokers engaged in the business generally.

**22.2. Officials Not to Benefit.** No Member of, or Delegate to the Congress, or resident commissioner, shall be admitted to any part or share of this Easement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Easement if made with a corporation for its general benefit.

**22.3. Facility Nondiscrimination.** As used only in this Condition, the term "Facility" means lodgings, stores, shops, restaurants, cafeterias, restrooms, and any other facility of a public nature in any building covered by, or built on land covered by, this Easement.

22.3.1. The Grantee agrees that it will not discriminate against any person because of race, color, religion, sex, or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any Facility, including any and all services, privileges, accommodations, and activities provided on the Easement Area. This does not require the furnishing to the general public the use of any Facility customarily furnished by the Grantee solely for use by any assignees, licensees, or invitees or their guests and invitees.

22.3.2. The Parties agree that in the event of the Grantee's noncompliance, the Government may take appropriate action to enforce compliance, and may terminate this Easement for default and breach as provided in Paragraph 5, or may pursue such other remedies as may be provided by law.

#### **22.4. Gratuities.**

22.4.1. The Government may, by written notice to the Grantee, terminate this Easement if, after notice and hearing, the Secretary of the Air Force or a designee determines that the Grantee, or any agent or representative of the Grantee, offered or gave a gratuity (e.g., an entertainment or gift) to any officer, official, or employee of the Government and intended, by the gratuity, to obtain an easement or other agreement or favorable treatment under an easement or other agreement, except for gifts or benefits of nominal value offered to tenants of the Easement Area in the ordinary course of business.

22.4.2. The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

22.4.3. If this Easement is terminated under Paragraph 22.4.1, the Government shall be entitled to pursue the same remedies against the Grantee as in a breach of this Easement by the Grantee, and in addition to any other damages provided by law, to exemplary damages of not fewer than three (3), or more than ten (10), times the cost incurred by the Grantee in giving gratuities to the person concerned, as determined by the Government.

22.4.4. The rights and remedies of the Government provided in this Paragraph shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Easement.

**22.5. No Joint Venture.** Nothing contained in this Easement will make, or shall be construed to make, the Parties' partners or joint venturers with each other, it being understood and agreed that the only relationship between the Government and the Grantee under this Easement is that of landlord and tenant. Nothing in this Easement will render, or be construed to render, either of the Parties liable to any third party for the debts or obligations of the other Party.

**22.6. Records and Books of Account.** The Grantee agrees that the Secretary of the Air Force, the Comptroller General of the United States, or the Auditor General of the United States Air Force, or any of their duly authorized representatives, shall, until the expiration of three (3) years after the expiration or earlier termination of this Easement, have access to, and the right to examine, any directly pertinent books, documents, papers, and records of the Grantee involving transactions related to this Easement.

**22.7. Remedies Cumulative; Failure of Government to Insist on Compliance.** The specified remedies to which the Government may resort under the terms of this Easement are distinct, separate, and cumulative, and are not intended to be exclusive of any other remedies or means of redress to which the Government may be lawfully entitled in case of any breach or threatened breach by the Grantee of any provisions of this Easement. The failure of the Government to insist on any one or more instances upon strict performance of any of the terms, covenants, or conditions of this Easement shall not be construed as a waiver or a relinquishment of the Government's right to the future performance of any such terms, covenants, or conditions, but the obligations of the Grantee with respect to such future performance shall continue in full force and effect. No waiver by the Government of any provisions of this Easement shall be deemed to

have been made unless expressed in writing and signed by an authorized representative of the Government.

**22.8. Counterparts.** This Easement is executed in three (3) counterparts, each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

**22.9. Personal Pronouns.** All personal pronouns used in this Easement, whether used in the masculine, feminine, or neuter gender, will include all other genders.

**22.10. Entire Agreement.** It is expressly agreed that this written instrument, together with the provisions of other documents that are expressly incorporated by reference by the terms of this Easement, embodies the entire agreement between the Parties regarding the use of the Easement Area by the Grantee. In the event of any inconsistency between the terms of this Easement and of any provision that has been incorporated by reference, the terms of this Easement shall govern. There are no understandings or agreements, verbal or otherwise, between the Parties except as expressly set forth in this Easement. This instrument may only be modified or amended by mutual agreement of the Parties in writing and signed by each of the Parties.

**22.11. Partial Invalidity.** If any term or provision of this Easement, or the application of the term or provision to any person or circumstance, is, to any extent, invalid or unenforceable, the remainder of this Easement, or the application of the term or provision to persons or circumstances other than those for which the term or provision is held invalid or unenforceable, will not be affected by the application, and each remaining term or provision of this Easement will be valid and will be enforced to the fullest extent permitted by law.

**22.12. Interpretation of Easement.** The Parties and their legal counsel have participated fully in the negotiation and drafting of this Easement. This Easement has been prepared by the Parties equally, and should be interpreted according to its terms. No inference shall be drawn that this Easement was prepared by, or is the product of, either Party.

**22.13. Identification of Government Agencies, Statutes, Programs, and Forms.** Any reference in this Easement, by name or number, to a government department, agency, statute, regulation, program, or form shall include any successor or similar department, agency, statute, regulation, program, or form.

**22.14. Approvals.** Any approval or consent of the Parties required for any matter under this Easement shall be in writing and shall not be unreasonably withheld, conditioned or denied unless otherwise indicated in this Easement.

**22.15. Third-Party Beneficiaries.** There shall be no third-party beneficiaries of this Easement and none of the provisions of this Easement shall be for the benefit of, or enforceable by, any creditors of the Grantee.

**22.16. No Individual Liability of Government Officials.** No covenant or agreement contained in this Easement shall be deemed to be the covenant or agreement of any individual officer,

agent, employee, or representative of the Government, in his or her individual capacity, and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Easement, whether by virtue of any constitution, statute, or rule of law, or by the enforcement of any assessment or penalty, or otherwise.

**22.17. Excusable Delays.** The Government and Grantee shall be excused from performing an obligation or undertaking provided for in this Easement, and the period for the performance of any such obligation or undertaking shall be extended for a period equivalent to the period of such delay, so long as such performance is prevented or unavoidably delayed, retarded, or hindered by an act of God; fire; earthquake; flood; explosion; war; invasion; insurrection; riot; mob; violence; sabotage; act of terrorism; inability to procure or a general shortage of, labor, equipment, facilities, materials, or supplies in the open market; failure or unavailability of transportation, strike, lockout, action of labor unions; a taking by eminent domain, requisition, laws, orders of government, or of civil, military, or naval authorities (but only such orders of a general nature pertaining to the Easement Area and comparable properties in the state of Florida; governmental restrictions (including, without limitation, access restrictions imposed by the Government and arising without fault or negligence on the part of the Grantee that significantly hinder the Grantee's ability to access the Easement Area and perform its obligations under the Development Plan in a timely manner); required environmental remediation; or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control, and without the fault or negligence of, the Government or the Grantee, as the case may be, and/or any of their respective officers, agents, servants, employees, and/or any others who may be on the Easement Area at the invitation of the Grantee, or the invitation of any of the aforementioned persons, specifically excluding, however, delays for adjustments of insurance and delays due to shortage or unavailability of funds (collectively, "Excusable Delays"). Nothing contained in this Paragraph 22.17 shall excuse the Grantee from the performance or satisfaction of an obligation under this Easement that is not prevented or delayed by the act or occurrence giving rise to an Excusable Delay.

## **23. SPECIAL PROVISIONS**

Reserved

## **24. RIGHTS NOT IMPAIRED**

**24.1. Rights Not Impaired.** Nothing contained in this Easement shall be construed to diminish, limit, or restrict any right, prerogative, or authority of the Government over the Easement Area relating to the security or mission of the Installation, the health, welfare, safety, or security of persons on the Installation, or the maintenance of good order and discipline on the Installation, as established in law, regulation, or military custom.

**24.2. Installation Access.** The Grantee acknowledges that it understands that the Installation is an operating military Installation that could remain closed to the public and accepts that the Grantee's operations may from time to time be restricted temporarily or permanently due to the needs of national defense. Access on the Installation may also be restricted due to inclement weather and natural disasters. The Grantee further acknowledges that the Government strictly

enforces federal laws and Air Force regulations concerning controlled substances (drugs) and that personnel, vehicles, supplies, and equipment entering the Installation are subject to search and seizure under 18 U.S.C. § 1382. The Government will use reasonable diligence in permitting the Grantee access to the Easement Area at all times, subject to the provisions of this paragraph. Notwithstanding the foregoing, the Grantee agrees the Government will not be responsible for lost time or costs incurred due to interference, delays in entry, temporary loss of access, barring of individual employees from the Installation under federal laws authorizing such actions, limitation, or withdrawal of an employee's on-base driving privileges, or any other security action that may cause employees to be late to, or unavailable at, their work stations, or delay arrival of parts and supplies. The Government retains the right to refuse access to the Easement Area by the Grantee's parties. The Grantee, its assignees, employees, and invitees fully agree to abide with all access restrictions imposed by the Government in the interest of national defense.

**24.3. Permanent Removal and Barment.** Notwithstanding anything contained in this Easement to the contrary, the Government has the right at all times to order the permanent removal and barment of anyone from the Installation, including but not limited to assignees, if it believes, in its sole discretion, that the continued presence on the Installation of that person represents a threat to the security or mission of the Installation, poses a threat to the health, welfare, safety, or security of persons occupying the Installation, or compromises good order and/or discipline on the Installation.

**24.4. No Diminishment of Rights.** Except as provided in Paragraph 24.1, nothing in this Easement shall be construed to diminish, limit, or restrict any right of the Grantee under this Easement, or the rights of any assignees, licensees, or invitees as prescribed under their easements or Applicable Laws.

## **25. APPLICABLE LAWS**

**25.1. Compliance With Applicable Laws.** The Grantee shall comply, at its sole cost and expense (except for matters for which the Government remains obligated hereunder pursuant to Paragraph 16), with all Applicable Laws including without limitation, those regarding construction, demolition, maintenance, operation, sanitation, licenses, or permits to do business, protection of the environment, pollution control and abatement, occupational safety and health, and all other related matters. The Grantee shall be responsible for determining whether it is subject to local building codes or building permit requirements, and for compliance with them to the extent they are applicable.

**25.1.1. "Applicable Laws"** means, collectively, all present and future laws, ordinances, rules, requirements, regulations, and orders of the United States, the State where the Easement Area is located and any other public or quasi-public federal, State, or local authority, and/or any department or agency thereof, having jurisdiction over the Project ("Project" means, collectively, the Easement Area and the Easement Area Improvements) and relating to the Project or imposing any duty upon the Grantee with respect to the use, occupation, or alteration of the Project during the Easement Term.

**25.2. Permits, Licenses, and Approvals.** The Grantee will be responsible for and obtain, at its sole expense, prior to the commencement of construction and demolition, and upon completion of the building of Easement Area improvements, any approvals, permits, or licenses that may be necessary to construct, occupy, and operate the Grantee improvements and Grantee equipment in compliance with all Applicable Laws.

**25.3. No Waiver of Sovereign Immunity.** Nothing in this Easement shall be construed to constitute a waiver of federal supremacy or federal sovereign immunity. Only laws and regulations applicable to the Easement Area under the Constitution and statutes of the United States are covered by this Paragraph. The United States presently exercises exclusive federal legislative jurisdiction over the Easement Area.

**25.4 Grantee Responsibility for Compliance.** Responsibility for compliance as specified in this Paragraph 25 rests exclusively with the Grantee. The Government assumes no enforcement or supervisory responsibility, except with respect to matters committed to its jurisdiction and authority. The Grantee shall be liable for all costs associated with compliance, defense of enforcement actions or suits, payment of fines, penalties, or other sanctions and remedial costs related to the Grantee's use and occupation of the Easement Area.

**25.5. Minimum Wage Under Executive Order 13658 and 29 CFR Part 10.** This condition is required to be included in contract-like instruments entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and when the wages of the workers under such contract or contract-like instrument are governed by the Fair Labor Standards Act, the Services Contract Act, or the Davis Bacon Act. If applicable, the grantee (and any contractor/sub-contractors of any tier (hereafter, "Contractors")) must comply with Executive Order 13658 (E.O.) and 29 CFR Part 10, and as such order and regulation may amended from time to time. Therefore, as applicable, this clause shall be inserted in all such covered contracts and shall require such Contractors to include this clause in any covered contracts in connection with the use of this federal property. Grantee shall ensure the clause is properly inserted in such covered contracts, including its own contracts and shall be responsible for such compliance. The grantee must comply with the requirements of this clause, in conjunction with the requirements of the E.O. and 29 CFR Part 10 in their entirety. In the event a conflict arises between the provisions of this clause and the requirements of the E.O. and 29 CFR Part 10, the E.O. and 29 CFR Part 10 (and as such order and regulation(s) may be amended from time to time) prevail.

**25.5.1.** If Contractor employs such covered workers, Contractor must comply with the E.O. and 29 CFR Part 10 (including as such order and regulation(s) as may be amended), the minimum hourly wage rate required to be paid to workers performing on, or in connection with, contracts, subcontracts, or contract-like instruments subject to the E.O. and 29 CFR Part 10, and pay its covered workers at least \$10.10 per hour beginning 1 January 2015; and beginning 1 January 2016, and annually thereafter, the hourly wage amount determined by the Secretary of Labor pursuant to the E.O. and 29 CFR part 10 (including as such order and regulation(s) as may be amended). The Administrator of the Wage and Hour Division (the Administrator) will notify the public of the new E.O. minimum wage rate at least 90 days before it is to take effect. For covered tipped workers, as defined under 29 U.S.C. 203, the hourly cash wage the grantee must

pay such workers shall be at least \$4.90 an hour beginning January 1, 2015 and increase this hourly cash wage each succeeding year as required pursuant to the E.O. and 29 CFR Part 10 (including as such order and regulation(s) as may be amended). The grantee (or contractor/sub-contractor) is responsible for reviewing the rates established by the Secretary of Labor each year for covered wage workers, properly determining the minimum hourly wage for tipped employees, complying with E.O. and 29 CFR Part 10 (including as such order and regulation(s) as may be amended), and paying the required minimum wage for such covered workers each year.

25.5.2. Definitions. As used in this clause

25.5.2.1. United States means the 50 states and the District of Columbia.

25.5.2.2. Worker.

25.5.2.2.1. Any person engaged in performing work on, or in connection with, a contract covered by the E.O., and (i) whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV, Davis Bacon Act), (ii) other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR Part 541, (iii) regardless of the contractual relationship alleged to exist between the individual and the employer.

25.5.2.2.2. Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. § 214(c).

25.5.2.2.3. Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

25.5.3. The E.O. Minimum Wage rate.

25.5.3.1. The Contractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this contract, a minimum hourly wage rate of \$10.10 per hour beginning January 1, 2015.

25.5.3.2. The Contractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2016 and annually thereafter, to meet the Secretary of Labor's annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on [www.wdol.gov](http://www.wdol.gov) (or any successor Web site) and on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate

Requirements (Construction) statute. The applicable published E.O. minimum wage is incorporated by reference into this clause.

#### 25.5.3.3. Price adjustments to contracts, subcontracts

25.5.3.3.1. The Contractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only if labor costs increase as a result of an increase in the annual E.O. minimum wage, and for associated labor costs and relevant subcontract costs. Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

25.5.3.3.2. Subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to section 25.5.3.2. Contractors shall consider any subcontractor requests for such price adjustment.

25.5.3.3.3. The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in section 25.5.3.3.1 of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

25.5.3.4. The Contractor warrants that the prices in this contract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

25.5.3.5. A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

25.5.3.6. The Contractor shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The Contractor may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 10.23, Deductions.

25.5.3.7. The Contractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

25.5.3.8. Nothing in this clause shall excuse the Contractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this Section 25.5.3.

25.5.3.9. The Contractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

25.5.3.10. The Contractor shall follow the policies and procedures in 29 CFR 10.24(b) and 10.28 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

#### 25.5.4. Applicability

25.5.4.1. This clause applies to workers as defined in paragraph 25.5.2.2. As provided in that definition--

25.5.4.1.1. Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker;

25.5.4.1.2. Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. § 214(c) are covered; and

25.5.4.1.3. Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

25.5.4.2. This clause does not apply to--

25.5.4.2.1. Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., i.e. those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;

25.5.4.2.2. Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. § 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to--

25.5.4.2.2.1. Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. § 214(a).

25.5.4.2.2.2. Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b).

25.5.4.2.2.3. Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. § 213(a)(1) and 29 CFR part 541).

25.5.5. Notice. The Contractor shall notify all workers performing work on, or in connection with, this contract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate

Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Contractor shall post notice, utilizing the poster provided by the Administrator, which can be obtained at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts), in a prominent and accessible place at the worksite. Contractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

#### 25.5.6. Payroll Records.

25.5.6.1. The Contractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker:

25.5.6.1.1. (i) Name, address, and social security number;

25.5.6.1.2. (ii) The worker's occupation(s) or classification(s);

25.5.6.1.3. (iii) The rate or rates of wages paid;

25.5.6.1.4. (iv) The number of daily and weekly hours worked by each worker;

25.5.6.1.5. (v) Any deductions made; and

25.5.6.1.6. (vi) Total wages paid.

25.5.6.2. The Contractor shall make records pursuant to section 25.5.6.1 of this clause available for inspection and transcription by authorized representatives of the Administrator. The Contractor shall also make such records available upon request of the Contracting Officer.

25.5.6.3. The Contractor shall make a copy of the contract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

25.5.6.4. Failure to comply with this section 25.5.6. shall be a violation of 29 CFR 10.26 and this contract. Upon direction of the Administrator or upon the Contracting Officer's own action, payment shall be withheld until such time as the noncompliance is corrected.

25.5.6.5. Nothing in this clause limits or otherwise modifies the Contractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

25.5.7. Access. The Contractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

25.5.8. Withholding. The Contracting Officer, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Contractor under this or any other Federal contract with the same Contractor, sufficient to pay workers the full amount of wages required by this clause.

25.5.9. Disputes. Department of Labor has set forth in 29 CFR 10.51, Disputes concerning contractor compliance, the procedures for resolving disputes concerning a contractor's compliance with Department of Labor regulations at 29 CFR part 10. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. These disputes include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.

25.5.10. Anti-retaliation. The Contractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

25.5.11. Subcontractor compliance. The Contractor is responsible for subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due subcontractor workers.

25.5.12. Subcontracts. The Contractor shall include the substance of this clause, including this section in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

**25.6. Grantee Right to Contest.** The Grantee shall have the right to contest by appropriate proceedings diligently conducted in good faith, without cost or expense to the Government, the validity or application of any law, ordinance, order, rule, regulation, or requirement of the nature referred to in this Paragraph 25. The Government shall not be required to join in or assist the Grantee in any such proceedings.

## **26. AVAILABILITY OF FUNDS**

The obligations of any Party to this Easement or of any transferee of the Easement shall be subject to the availability of appropriated funds for any such obligation, unless such Party or transferee is a non-appropriated fund instrumentality of the United States. No appropriated funds are obligated by this Easement.

## **27. CONGRESSIONAL REPORTING**

This Easement is not subject to 10 U.S.C. § 2662.

## **28. AMENDMENTS**

This Easement may be amended at any time by mutual agreement of the Parties in writing and signed by a duly authorized representative of each of the respective Parties. Such amendments may include, but are not limited to, extensions of the Easement Termination Date.

## **29. GENERAL INDEMNIFICATION BY GRANTEE**

**29.1. No Government Liability.** Except as otherwise provided in this Easement, the Government shall not be responsible for damage to property or injuries or death to persons that may arise from, or be attributable or incident to, the condition or state or repair of the Easement Area, or the use and occupation of the Easement Area, or for damages to the property of the Grantee, or injuries or death of the Grantee's officers, agents, servants, employees, or others who may be on the Easement Area at their invitation or the invitation of any one of them.

**29.2. Grantee Liability.** Except as otherwise provided in this Easement, the Grantee agrees to assume all risks of loss or damage to property and injury or death to persons by reason of, or incident to, the possession and/or use of the Easement Area by the Grantee, the Grantee's officers, agents, servants, employees, or others (excluding those employees or agents of the Government who are on the Easement Area for the purpose of performing official duties) who may be on the Easement Area at their invitation or the invitation of any one of them (the "Grantee Parties"), or the activities conducted by or on behalf of the Grantee Parties under this Easement. The Grantee expressly waives all claims against the Government for any such loss, damage, bodily injury, or death caused by, or occurring as a consequence of, such possession and/or use of the Easement Area by the Grantee Parties, or the conduct of activities or the performance of responsibilities under this Easement. The Grantee further agrees, to the extent permitted by Applicable Laws, to indemnify, save, and hold harmless the Government, its officers, agents, and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, claimed on account of, or in any manner predicated upon bodily injury, death, or property damage resulting from, related to, caused by, or arising out of the possession and/or use of any portion of the Easement Area, or any activities conducted or services furnished by or on behalf of the Grantee Parties in connection with, or pursuant, to this Easement, and all claims for damages against the Government arising out of, or related to, the Easement. The agreements of Grantee contained in this Paragraph 29.2 do not extend to claims caused by the gross negligence or willful misconduct of officers, agents, contractors, or employees of the United States without contributory fault on the part of any other person, firm, or corporation. The Government will give the Grantee notice of any claim against it covered by this indemnity as soon as practicable after learning of it.

## **30. ENTIRE AGREEMENT**

It is expressly understood and agreed that this written instrument embodies the entire agreement between the Parties regarding the use of the Premises by the Grantee, and there are no understandings or agreements, verbal or otherwise, between the Parties except as expressly set forth in this Easement.

### **31. CONDITION AND PARAGRAPH HEADINGS**

The brief headings or titles preceding each Paragraph are merely for purposes of identification, convenience, and ease of reference, and will be completely disregarded in the construction and interpretation of this Easement.

### **32. STATUTORY AND REGULATORY REFERENCES**

Any reference to a statute or regulation in this Easement shall be interpreted as being a reference to the statute or regulation as it has been or may be amended from time to time.

### **33. PRIOR AGREEMENTS**

This Easement supersedes all prior agreements, if any, to the Grantee for the Easement Area, but does not terminate any obligations of the Grantee under such prior easements that may by their terms survive the termination or expiration of those easements, except to the extent such obligations are inconsistent with this Easement.

### **34. EXHIBITS**

Four (4) exhibits are attached to and made a part of this Grant, as follows:

- Exhibit A - Description of Premises
- Exhibit B - Map of Premises
- Exhibit C - Physical Condition Report
- Exhibit D - Environmental Baseline Survey

IN WITNESS WHEREOF, I have hereunto set my hand the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

THE UNITED STATES OF AMERICA  
by its Secretary of the Air Force

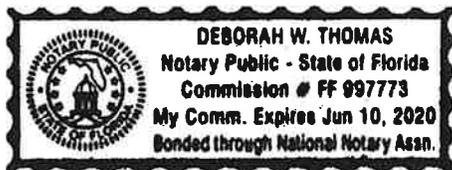
By: \_\_\_\_\_  
WAYNE R. MONTEITH  
Brigadier General, USAF  
Commander

State of Florida

ss

County of Brevard

This document was acknowledged before me, the undersigned Notary Public, by  
CURT SMITH CHAIRMAN on this the 21 day of MARCH, 2017



Deborah W. Thomas  
Notary Public, State of Florida

ACCEPTANCE

The Grantee hereby accepts this Grant of Easement and agrees to be bound by its terms.

DATED: 21 day of MARCH, 2017.

GRANTEE:

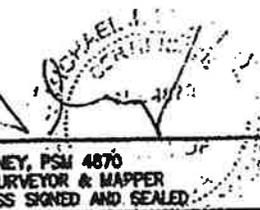
BREVARD COUNTY, FLORIDA

By: [Signature]  
CURT SMITH  
Chairman of the Board of County Commissioners  
Approved by Board 3/21/17

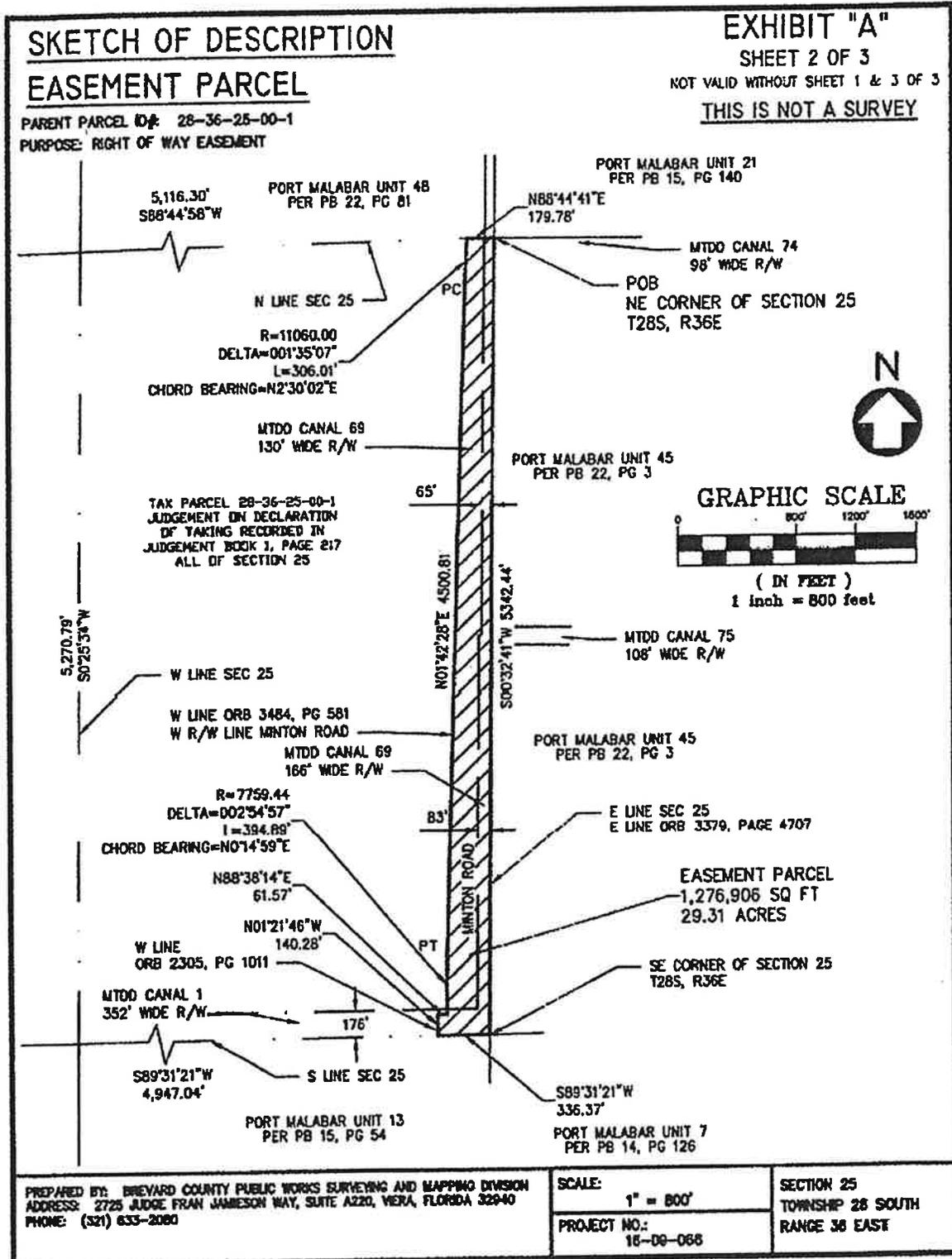
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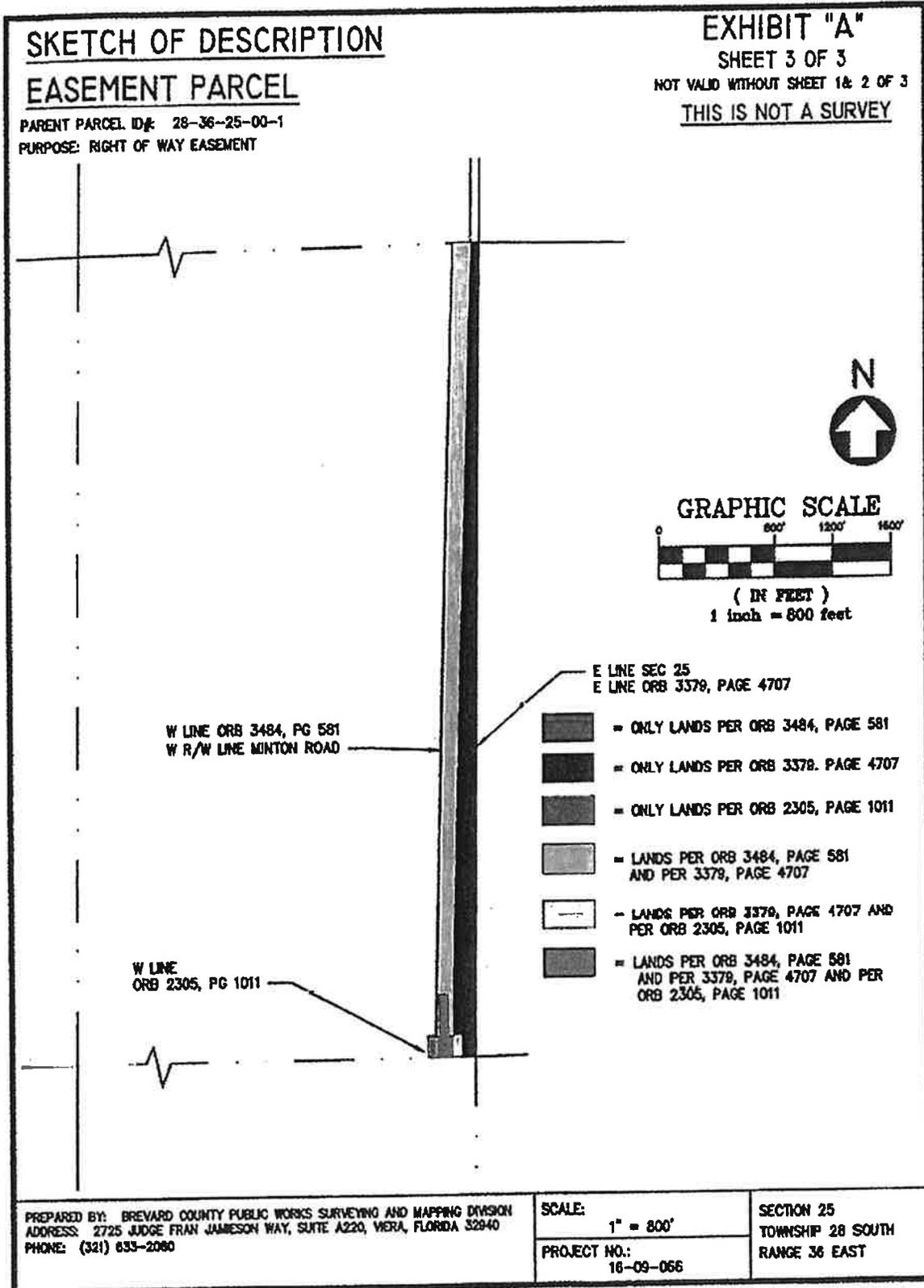
[Signature]  
SCOTT ELLIS, CLERK

## Exhibit A - Description of Premises

<p><b>LEGAL DESCRIPTION</b></p> <p><b>EASEMENT PARCEL</b></p> <p>PARENT PARCEL ID#: 28-36-25-00-1                  PURPOSE: RIGHT OF WAY EASEMENT</p> <p>LEGAL DESCRIPTION: EASEMENT PARCEL (BY SURVEYOR)</p> <p>A PARCEL OF LAND BEING A PORTION OF THOSE LANDS DESCRIBED IN JUDGEMENT OF DECLARATION OF TAKING RECORDED IN JUDGMENT BOOK 1, PAGE 217 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; AND BEING ALL OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 2305, PAGE 1011, IN OFFICIAL RECORDS BOOK 3379, PAGE 4707, AND IN OFFICIAL RECORDS BOOK 3484, PAGE 581 LYING WITHIN SECTION 25, TOWNSHIP 28 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:</p> <p>BEGIN AT THE NORTHEAST CORNER OF SAID SECTION 25; THENCE, SOUTH 00° 32' 41" WEST ALONG THE EAST LINE OF SECTION 25, SAID LINE ALSO BEING THE EAST LINE OF THOSE LANDS DESCRIBED IN SAID OFFICIAL RECORDS BOOK 3379, PAGE 4707, FOR A DISTANCE OF 5342.44 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 25; THENCE SOUTH 89° 31' 21" WEST ALONG THE SOUTH LINE OF SAID SECTION 25 FOR A DISTANCE OF 336.37 FEET TO A POINT ON THE WEST LINE OF THOSE LANDS DESCRIBED IN SAID OFFICIAL RECORDS BOOK 2305, PAGE 1011; THENCE NORTH 01° 21' 46" WEST ALONG SAID WEST LINE FOR A DISTANCE OF 140.28 FEET; THENCE NORTH 88° 38' 14" EAST CONTINUING ALONG SAID WEST LINE FOR A DISTANCE OF 61.57 FEET TO A POINT ON THE WEST LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3484, PAGE 581, SAID POINT ALSO BEING POINT OF CURVATURE OF A NON-TANGENTIAL CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 7759.44 FEET, AN INCLUDED ANGLE OF 02° 54' 57", AND WHOSE LONG CHORD BEARS NORTH 00° 14' 59" EAST; THENCE ALONG THE ARC OF SAID CURVE AND ALONG THE WEST LINE OF AFORESAID DESCRIBED LANDS FOR A DISTANCE OF 394.89 FEET; THENCE NORTH 01° 42' 28" EAST ALONG SAID WEST LINE FOR A DISTANCE OF 4500.81 FEET TO THE POINT OF CURVATURE OF A TANGENTIAL CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 11060.00 FEET AND AN INCLUDED ANGLE OF 01° 35' 07"; THENCE ALONG THE ARC OF SAID CURVE AND ALONG SAID WEST LINE FOR A DISTANCE OF 306.01 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION 25; THENCE NORTH 88° 44' 41" EAST ALONG SAID NORTH LINE FOR A DISTANCE OF 179.78 FEET TO THE POINT OF BEGINNING; CONTAINING 29.31 ACRES (1,276,906 SQUARE FEET), MORE OR LESS.</p> <p>UNLESS OTHERWISE INDICATED, ALL PUBLIC RECORDS REFER TO THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA. THE ABOVE DESCRIBED LANDS IS SUBJECT TO ALL EASEMENTS, RIGHTS OF WAY, COVENANTS, AND RESTRICTIONS OF RECORD. THIS SURVEYOR DID NOT PERFORM A SEARCH OF THE PUBLIC RECORDS; NO TITLE OPINION IS EXPRESSED OR IMPLIED. NO INSTRUMENTS OF RECORD AND/OR TITLE COMMITMENT REFLECTING OWNERSHIP, ENCUMBRANCES OF EXISTING EASEMENTS, RIGHTS OF WAY, OR RESTRICTIONS OF RECORD WERE PROVIDED TO THIS SURVEYOR.</p> <p>SURVEYORS NOTES:                  1. THIS SKETCH IS NOT A SURVEY BUT ONLY A GRAPHIC DEPICTION OF THE LEGAL DESCRIPTION SHOWN HEREIN.                  2. BEARINGS ARE BASED ON AN ASSUMED BEARING REFERENCED TO THE EAST LINE OF SAID SECTION 25 AS BEING SOUTH 00°32'41" EAST, AS STATED WITHIN OFFICIAL RECORDS BOOK 3379, PAGE 4707 AND WITHIN OFFICIAL RECORDS BOOK 3484, PAGE 581.                  3. THIS SKETCH AND DESCRIPTION PREPARED WITH THE BENEFIT OF TITLE SEARCH REPORT, FUND FILE NUMBER 368877, DATED OCTOBER 11, 2016, PREPARED BY DAWSON LAW P.A.                  4. MINTON ROAD RIGHT OF WAY PER RIGHT OF WAY PLANS FOR MINTON ROAD PREPARED BY DYER, RIDDLE, MILLS AND PRECOURT INC., DATED 3/12/81.</p>	<p><b>EXHIBIT "A"</b></p> <p>SHEET 1 OF 3</p> <p>NOT VALID WITHOUT SHEET 2 &amp; 3 OF 3</p> <p><b>THIS IS NOT A SURVEY</b></p>														
<p><b>ABBREVIATIONS</b></p> <table style="width: 100%;"> <tr> <td style="width: 50%;">L = LENGTH</td> <td style="width: 50%;">PC = POINT OF CURVATURE</td> </tr> <tr> <td>MTDD = MELBOURNE TILLMAN DRAINAGE DISTRICT</td> <td>PT = POINT OF TANGENCY</td> </tr> <tr> <td>ORB = OFFICIAL RECORDS BOOK</td> <td>R = RANGE OR RADIUS</td> </tr> <tr> <td>PB = PLAT BOOK</td> <td>R/W = RIGHT OF WAY</td> </tr> <tr> <td>PG = PAGE</td> <td>SEC = SECTION</td> </tr> <tr> <td>POB = POINT OF BEGINNING</td> <td>SQ FT = SQUARE FEET</td> </tr> <tr> <td></td> <td>T = TOWNSHIP</td> </tr> </table>		L = LENGTH	PC = POINT OF CURVATURE	MTDD = MELBOURNE TILLMAN DRAINAGE DISTRICT	PT = POINT OF TANGENCY	ORB = OFFICIAL RECORDS BOOK	R = RANGE OR RADIUS	PB = PLAT BOOK	R/W = RIGHT OF WAY	PG = PAGE	SEC = SECTION	POB = POINT OF BEGINNING	SQ FT = SQUARE FEET		T = TOWNSHIP
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<p>PREPARED FOR AND CERTIFIED TO:                  BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS</p>	<p>MICHAEL J SWEENEY, PSM 4870                  PROFESSIONAL SURVEYOR &amp; MAPPER                  NOT VALID UNLESS SIGNED AND SEALED</p> 														
<p>PREPARED BY: BREVARD COUNTY PUBLIC WORKS SURVEYING AND MAPPING DIVISION                  ADDRESS: 2725 JUDGE FRAN JAMIESON WAY, SUITE A220, VIERA, FLORIDA 32940                  PHONE: (321) 633-2080</p>															
<p>DRAWN BY: MJS</p> <p>DATE: 11/02/16</p>	<p>CHECKED BY: TV</p> <p>DRAWING: 283625_EX_16-06-066_Mjrtb                  Road-USAFA.dwg</p>														
<p>PROJECT NO. 16-06-066</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>REVISIONS</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		REVISIONS	DATE	DESCRIPTION											
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**Exhibit B - Map of Premises**

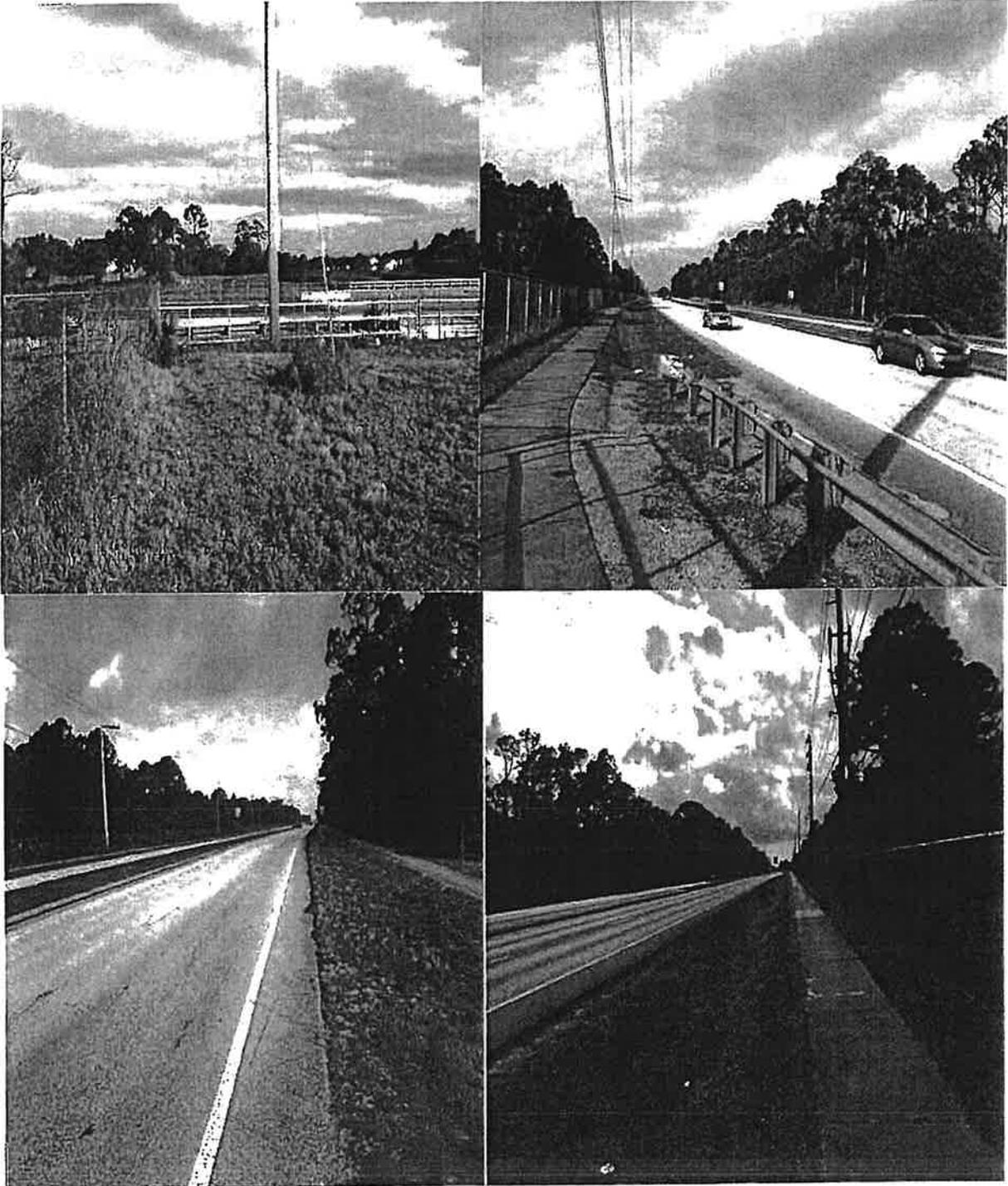




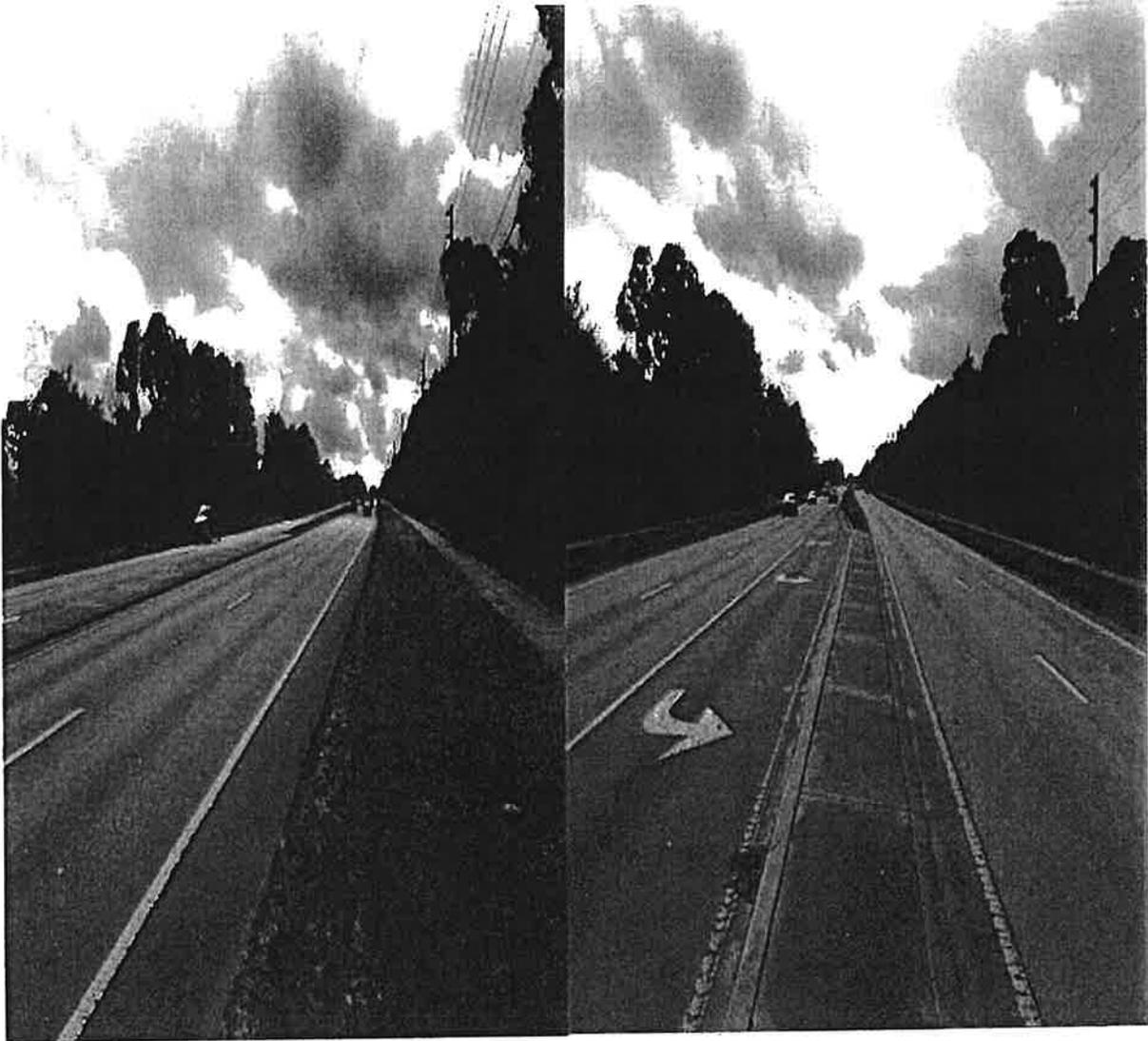


## Exhibit C - Physical Condition Report

The condition of the easement area is depicted in the following photographs taken on the 18th of November 2016.







The photographs shown above are certified accurate and representative of general condition for the Premises as described and depicted in the Permit.

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DAN JONES  
Land Acquisition Supervisor

---

THOMAS E. PHILLIPS  
45th Space Wing RPAO

## Exhibit D – Environmental Baseline Survey



**DEPARTMENT OF THE AIR FORCE  
45TH SPACE WING (AFSPC)**

MEMORANDUM FOR 45 CES/CC

NOV 16 2016

FROM: 45 CES/CEI

SUBJECT: Statement of Waiver for Environmental Baseline Survey (EBS) in Support of Non- Exclusive Easement for Brevard County Public Works Department for the Operation and Maintenance of Minton Road Located adjacent to Malabar Trucking Annex, Brevard County, Florida

1. The 45th Space Wing plans to renew an easement to the Brevard County Public Works Department for land located adjacent to the Malabar Trucking Annex, Brevard County, Florida. This easement will permit Brevard County to continue to operate and maintain the Minton Road public transportation corridor.

2. Air Force Instruction (AFI) 32-7066, *Environmental Baseline Surveys in Real Estate Transactions*, paragraph 3.3.3, provides that transactions that may be eligible for a waiver to the EBS requirement include an easement granting non-exclusive use of Air Force property.

3. The 45th Civil Engineer Squadron, Installation Management Flight, has performed environmental due diligence and notes that the condition of the property will not create health or safety risks. The allowable use of the site will not introduce any new hazardous materials or petroleum products on the property and is consistent with environmental compliance requirements.

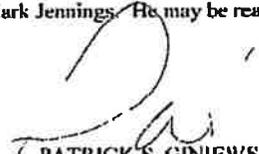
4. AFI 32-7066, paragraph 3.3.2, provides for a waiver to the EBS requirement if the subject real estate is free of potential sources of contamination, as determined by an initial records review, interviews, site inspection, and when the following criteria are met:

a. The condition of the property will not create unacceptable human health and safety risks from usage of the property allowed under the real property transaction documents.

b. The allowable use of the property will not introduce any hazardous substances or petroleum products in quantities greater than the minimum levels.

c. The allowable use of the property is consistent with environmental compliance requirements (such as those pertaining to wetlands, historic preservation, etc.).

5. The point of contact for this matter is Mr. Wm. Mark Jennings. He may be reached at (321) 494-6084, or email [william.jennings.15@us.af.mil](mailto:william.jennings.15@us.af.mil).

  
PATRICK S. GINIEWSKI, GS-14  
Chief, Installation Management

Attachment:  
45 CES/CEIE, Environmental Due Diligence Memorandum

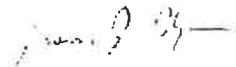
GUARDIANS OF THE HIGH FRONTIER

1st Ind. 45 CES/CEIE, 16 Nov 2016, Statement of Waiver for Environmental Baseline Survey (EBS) in Support of Non- Exclusive Easement for Brevard County Public Works Department for the Operation and Maintenance of Minton Road Located adjacent to Malabar Tracking Annex, Brevard County, Florida

45 CES/CC

MEMORANDUM FOR 45 CES/CEI

This EBS waiver has been declared legally sufficient by the 45 SW/JA per requirements outlined in AFI 32-7066. In review of the enclosed documentation, the 45 AMDS/SGPB and 45 SW/SEG units have concluded that renewing this will not create or exhibit a health or safety risk.



JASON J. GLYNN, Lt Col, USAF  
Commander

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# LOCATION MAP

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SEC: 25 TW 28 RNG: 36 DISTRICT: 5

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**STREET NAME:** Minton Road

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**OWNER'S NAME:** THE UNITED STATES OF AMERICA

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