



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.16.

8/30/2022

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### Subject:

Approval, Re: Golf Brevard, Inc. Golf Course Properties Agreement for Habitat Golf Course (District 3)

### Fiscal Impact:

\$130,000 yearly lease payment for The Habitat Golf Course; Golf Brevard, Inc. retains and operates the Golf Course through the revenue generated by the course.

### Dept/Office:

Parks and Recreation Department

### Requested Action:

It is requested the Board:

1. Authorize the Chair to execute the Golf Course Properties Agreement with Golf Brevard, Inc. for the management, operation, maintenance and promotion of The Habitat Golf Course.
2. Authorize the County Manager to sign any associated budget change requests;
3. Authorize the County Manager to execute Contract renewal, amendments and/or modifications upon approval of Risk Management and the County Attorney's Office.

### Summary Explanation and Background:

The Board of County Commissioners, in regular session on April 24, 2018, executed a Golf Course Properties Agreement with Golf Brevard, Inc. to manage, operate, maintain and promote Brevard County's Spessard Holland and The Habitat golf courses. The commencement date was September 1, 2018 and the expiration date of the Agreement was forty-nine months thereafter - September 30, 2022.

The Agreement included \$390,000 in Transition Funding to Golf Brevard, Inc. that is to be repaid over three years starting in 2021. Golf Brevard, Inc. has paid \$215,841.07 and is scheduled to pay off the Transition Funding on time.

The partnership between the County and Golf Brevard, Inc. has been very successful. Golf Brevard, Inc. has demonstrated knowledge, expertise and experience in operating the County's golf courses. The courses conditions are excellent and customer comments / satisfaction have been extremely positive.

The County desires to continue to contract for service with Golf Brevard, Inc. for the management, operation, maintenance and promotion of The Habitat Golf Course for a term of ten years with an option to renew for an additional ten years. As The Habitat Golf Course is located is on Valkaria Airport Property, there is a required lease payment to the Airport of \$130,000 per year with escalator clauses.

### Clerk to the Board Instructions:


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F.16.

8/30/2022

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Please send the executed Agreement to [MaryEllen.Donner@BrevardFL.gov](mailto:MaryEllen.Donner@BrevardFL.gov)



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**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**CONTRACT REVIEW AND APPROVAL FORM**

**SECTION I - GENERAL INFORMATION**

1. Contractor: <b>Golf Brevard, Inc.</b>		2. Amount: <b>\$130,000</b>
3. Fund/Account #:	4. Department Name: <b>Parks &amp; Recreation</b>	
5. Contract Description: <b>Habitat Golf Course Property Management Agreement</b>		
6. Contract Monitor: <b>Mary Ellen Donner</b>		8. Contract Type:  <b>SERVICES</b>
7. Dept/Office Director: <b>Mary Ellen Donner</b>		
9. Type of Procurement: <b>Other</b>		

**SECTION II - REVIEW AND APPROVAL TO ADVERTISE**

**APPROVAL**

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	

**SECTION III - REVIEW AND APPROVAL TO EXECUTE**

**APPROVAL**

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>Mary Ellen Donner 8/25/2022</i>
Purchasing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>Kathy Allen 8/25/2022</i>
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>[Signature] 8/25/22</i>
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>[Signature] 8/25/2022</i>

**SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST**

<b>CM 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 G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored Items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



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

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

August 31, 2022

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

**TO:** Mary Ellen Donner, Parks and Recreation Director

**RE:** Item F.16., Approval of Golf Brevard, Inc. Golf Course Properties Agreement for Habitat Golf Course

The Board of County Commissioners, in regular session on August 30, 2022, approved and authorized the Chair to execute the Golf Course Properties Agreement with Golf Brevard, Inc. for the management, operation, maintenance and promotion of The Habitat Golf Course; authorized the County Manager to sign any associated Budget Change Requests; and authorized the County Manager to execute Contract renewal, amendments, and/or modifications upon approval of Risk Management and the County Attorney's Office. Enclosed are two executed Agreements.

**Upon execution by Golf Brevard, Please return a fully-executed Agreement to this office for inclusion in the official minutes.**

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

*Kimberly Powell*  
Kimberly Powell, Clerk to the Board

/ns

Encls. (2)

cc: County Manager  
Finance  
Budget

**GOLF COURSE PROPERTY MANAGEMENT AGREEMENT**  
**(Habitat Golf Course)**

**THIS GOLF COURSE PROPERTY MANAGEMENT AGREEMENT** (the "Agreement") is dated this first day of October, 2022 ("**Commencement Date**"), by and between Brevard County, a political subdivision of the State of Florida (hereinafter "**COUNTY**"), and Golf Brevard, Inc., a Florida Not for Profit Corporation (hereinafter "**GOLF BREVARD**").

**RECITALS:**

**WHEREAS**, the parties previously entered into a Golf Course Properties Agreement dated April 24, 2018 (the "**Prior Agreement**") whereby the COUNTY contracted with GOLF BREVARD for the operation and management of golf courses known as the Spessard Holland Golf Course and the Habitat Golf Course. The Habitat Golf Course is located at 3591 Fairgreen St., Malabar, Florida 32950, Florida more specifically described on Exhibit "A" (the "**Golf Course Property**");

**WHEREAS**, in connection with the Prior Agreement, COUNTY loaned GOLF BREVARD three hundred ninety thousand dollars (\$390,000.00) (the "**Transition Funding**") to assist GOLF BREVARD with the operation and management of the Habitat Golf Course and the Spessard Holland Golf Course.

**WHEREAS**, as of the Commencement Date of this Agreement, GOLF BREVARD has repaid two hundred fifteen thousand eight hundred forty-one dollars and seven cents (\$215,841.07) of the Transition Funding to the COUNTY, leaving a remaining balance of one hundred seventy-four thousand one hundred fifty-eight dollars and ninety-three cents (\$174,158.93) (the "**Remaining Balance**") which shall be paid according to the terms and conditions set forth in this Agreement and the Related Agreement.

**WHEREAS**, the COUNTY now desires to continue to contract with GOLF BREVARD and GOLF BREVARD does hereby agree to continue to manage, operate, maintain, and promote the Habitat Golf Course under the terms and conditions of this Agreement for the term and according to the covenants and conditions set forth below; and

**WHEREAS**, the Brevard County Board of County Commissioners approved this Agreement on August 30, 2022; and

**WHEREAS**, this Agreement replaces the Prior Agreement and all related amendments.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, all of which each party agrees constitutes sufficient consideration received at or before the execution of this Agreement, the parties hereby agree as follows:

## DEFINITIONS AND EXHIBITS.

### 1.1 Definitions.

For purposes of this Agreement, the following terms shall have the meanings set forth below, unless the context clearly requires otherwise:

- (a) "**Attorneys' Fees**" shall mean all costs, fees and expenses, including, but not limited to, witness fees, expert fees, attorney (in-house and outside counsel), paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal.
- (b) "**Clubhouse**" shall mean the clubhouse facilities located on the Golf Course Property.
- (c) "**Commencement Date**" shall mean October 1, 2022.
- (d) "**Default Rate**" shall mean the lesser of:
  - i. five percent (5%), or
  - ii. the highest rate then allowable by Law.
- (e) "**Excusable Delay**" shall mean any of the following:
  - i. strike,
  - ii. organized labor disputes,
  - iii. governmental preemption in connection with a national emergency,
  - iv. any rule, order or regulation of any governmental agency,
  - v. conditions of supply or demand which are affected by war or other national, state or municipal emergency, or any other cause, or
  - vi. any cause beyond a party's reasonable control.
- (f) "**Expiration Date**" shall mean effective date of termination of this Agreement, which ten years after the Commencement Date unless extended or sooner terminated as provided in this Agreement.
- (g) "**Fiduciary**" means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. *Svanoe v. Jurgens*, 144111. 507, 33 N.E. 955; *Stoll v. King*, 8 How. Prac., N.Y., 299. A person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. *Haluka v. Baker*, 66 Ohio App. 308, 34 N.E.2d 68, 70.
- (h) "**First-Class**" or "**First-Class Standard**" or "**First-Class Condition**" shall mean that the Golf Course Property will be maintained to a standard that is expected for municipally operated golf courses. At no time are the Golf Course Property to be

maintained at a lesser standard than as set forth in Exhibit "B" attached hereto.

- (i) **"Furniture, Fixtures and Equipment" or "FF&E"**, shall mean all equipment and supplies used or useful in the operation of the Golf Course Property, including, without limitation, golf carts, mowers, sprayers, vacuums, flags, grass seed, pesticides, herbicides, maintenance and janitorial equipment and supplies, office supplies, all furniture, furnishings, fixtures, equipment, inventory and supplies necessary or appropriate for the operation of the retail and food and beverage portions of the Golf Course Property in accordance with this Agreement, including, without limitation, shelves, racks and display cases, pro shop inventory such as golf-related clothing, equipment and supplies, food and beverage inventories, paper supplies, cleaning materials and equipment, tables, chairs, linens, uniforms, eating utensils, dishes, glassware, cookware, stoves, ovens, dishwashers, computer equipment and communication equipment.
- (j) **"Hazardous Material"** shall include, but not be limited to:
  - i. any flammable, explosive, toxic, radioactive, biological, corrosive or otherwise hazardous chemical, substance, liquid, gas, device, form of energy, material or waste or component thereof,
  - ii. petroleum-based products, diesel fuel, paints, solvents, lead, radioactive materials, cyanide, biohazards, infectious or medical waste and "sharps", printing inks, acids, DDT, pesticides, ammonia compounds, and any other items which now or subsequently are found to have an adverse effect on the environment or the health and safety of persons or animals or the presence of which require investigation or remediation under any Law or governmental policy, and
  - iii. any item defined as a "hazardous substance", "hazardous material" "hazardous waste", "regulated substance" or "toxic substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., Clean Water Act, 33 U.S.C. §1251, et seq., Safe Drinking Water Act, 14 U.S.C. §300f, et seq., Toxic Substances Control Act, 15 U.S.C. §2601, et seq., Atomic Energy Act of 1954, 42 U.S.C. §2014 et seq., and any similar federal, state or local Laws (as hereinafter defined), and all regulations, guidelines, directives and other requirements thereunder, all as may be amended or supplemented from time to time.
- (k) **"Improvement"** shall mean a valuable addition made to property or an amelioration in its condition, amounting to more than mere repairs or replacement, costing labor or capital, and intended to enhance its value, beauty, or utility or to adapt it for new or further purposes. Generally, buildings, but may also include any permanent structure or other development, such as a street, sidewalks, sewers, utilities, etc.
- (l) **"Laws"** shall mean all federal, state, county, municipal and other governmental

constitutions, statutes, ordinances, codes, regulations, resolutions, rules, judgments, injunctions, orders, decrees or demands of courts, administrative bodies and other authorities construing any of the foregoing, together with all permits, approvals and obligations granted to or imposed upon COUNTY, and/or GOLF BREVARD with respect to the Golf Course Property by any governmental entity from time to time. "Law" shall mean the singular reference to Laws.

- (m) "**Transition Funding**" shall mean those funds provided by COUNTY to GOLF BREVARD which are to be repaid by GOLF BREVARD under the terms of this Agreement.
- (n) "**Agreement Year**" shall mean each a twelve-month period commencing on October 1<sup>st</sup> and ending on September 30<sup>th</sup> during the Term of this Agreement.
- (o) "**Operating Agreements**" shall mean any of the following relating to the Golf Course Property:
  - i. all Agreements and other similar agreements by which COUNTY or GOLF BREVARD (as applicable) has the right to use or possess, FF&E and any other equipment used in the operation of the Golf Course Property,
  - ii. all service, maintenance, management, distribution, marketing, supply (including, without limitation, "open buy" contracts), franchise and/or license agreements and any other agreements relating to the operation of the Golf Course Property, and
  - iii. all assignable licenses (including, without limitation, liquor licenses, if applicable) issued in connection with the Golf Course Property.
- (p) "**Pro Shop**" shall mean the retail store located within the Golf Course Property.
- (q) "**Prohibited Use**" shall mean any use that is not a Permitted Use (as defined in Section 9.1), and, in addition to, and not in limitation of, the foregoing, lists of uses that might be considered permissible within the definition of Permitted Use but are, nonetheless, prohibited by this Agreement are provided on Exhibit "C" attached hereto.
- (r) "**Reporting Requirements**" shall have the meaning set forth on Exhibit "D" attached hereto.
- (s) "**Term**" of this Agreement shall mean a period of time:
  - i. commencing on the Commencement Date; and
  - ii. continuing until midnight of the Expiration Date.
- (t) "**Utilities**" shall mean electric, reuse, stormwater, potable water, sanitary sewer, CATV, phone, and internet.
- (u) "**Vouchers**" shall mean any issued and outstanding certificate, gift card, coupon, comp card, promotional allowance, voucher or other writing that entitles the holder or bearer thereof to a credit (whether in a specified dollar amount or for a specified item, e.g., a meal or round of golf) to be applied against the usual charge for meals, rounds of golf and/or such other goods or services.



### **1.2 Exhibits.**

Each exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement, and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if such exhibit were set forth in full and at length every time it is referred to or otherwise mentioned. Any floor plan, drawing or sketch that is attached to or made a part of this Agreement is used solely for the purpose of reasonably approximately identification and location of the Property, and any markings, measurements, dimensions or notes of any kind contained therein (other than the outline of the Habitat Golf Course for approximate identification and location of the Habitat Golf Course Property) are not be considered a part of this Agreement.

## **REPRESENTATIONS OF GOLF BREVARD.**

### **2.1 Representations of GOLF BREVARD.**

GOLF BREVARD represents to COUNTY that:

- (a) GOLF BREVARD is a company duly organized and validly existing, and in good standing under the laws of the State of Florida; and
- (b) GOLF BREVARD has full power, authority and legal right to enter into, perform and observe the provisions of this Agreement; and
- (c) This Agreement constitutes a valid and binding obligation of GOLF BREVARD and does not constitute a breach of or default under any other agreement to which GOLF BREVARD is a party or by which any of its assets are bound or affected; and
- (d) GOLF BREVARD shall comply with all applicable Laws relating to non-discriminatory treatment of individuals in all aspects of employment, accommodation and otherwise; and
- (e) GOLF BREVARD's execution and delivery of this Agreement and the performance of GOLF BREVARD's obligations hereunder are duly authorized.

### **2.2 Representations of COUNTY.**

COUNTY represents to GOLF BREVARD that:

- (a) COUNTY is a political subdivision of the State of Florida.
- (b) COUNTY has full power, authority and legal right to enter into, perform and observe the provisions of this Agreement.

## **TERM AND OPTION TO RENEW.**

### **3.1 Length of Term.**

The Term of this Agreement begins on the Commencement Date ("Commencement Date"), and ends ten (10) years from the Commencement Date hereinafter ("Expiration Date") unless extended or sooner terminated in accordance with this Agreement.

### **3.2 Renewals.**

It is hereby mutually agreed and understood that GOLF BREVARD may request 1 additional renewal of the Agreement for an additional 10-year term upon written notice to COUNTY, received no sooner than three hundred and sixty-five (365) days prior to the date of termination of the current term, but received at least one hundred and eighty (180) days prior to the date of termination of the current term. This 1 renewal term shall each be for a term of 10 years. The Agreement, if renewed, shall be renewed under the same terms and conditions as found herein unless modified by both parties. The parties agree and understand that the COUNTY is under no obligation to renew this Agreement and GOLF BREVARD is not entitled to damages for non-renewal of this Agreement. The parties agree and understand that GOLF BREVARD is under no obligation to renew this Agreement and the COUNTY is not entitled to damages for non-renewal of this Agreement, except for the payment of financial obligations found herein. Said obligations shall survive the termination or early expiration of this Agreement.

### **3.3 Quiet Enjoyment.**

COUNTY shall ensure that GOLF BREVARD shall and may peaceably and quietly enjoy the Golf Course Property for the Term as against all persons claiming by, through or under COUNTY, subject, however, to the terms of this Agreement and any underlying agreements and mortgages or deeds of trust, if any.

### **RECORDS.**

- (a) Florida Public Records Law.
- (b) Pursuant to Section 119.0701, a request to inspect or copy public records relating to this Agreement must be made directly to COUNTY. If COUNTY does not possess the requested records, COUNTY shall immediately notify GOLF BREVARD of the request and GOLF BREVARD must provide the records to COUNTY or allow the records to be inspected or copied within twenty-four (24) hours (not including weekends and legal holidays) of the request so COUNTY can comply with the requirements of Sections 119.07. GOLF BREVARD may also provide a cost estimate to produce the requested documents consistent with the policy set forth in Brevard County Administrative Order AO-47, incorporated herein by this reference. A copy of AO-47 is available upon request from COUNTY's public records custodian designated below.
- (c) If GOLF BREVARD fails to provide the requested public records to COUNTY within a reasonable time, GOLF BREVARD may face civil liability for the reasonable cost of enforcement incurred by the party requesting the records and may be subject to criminal penalties. Sections 119.0701, 119.110. GOLF BREVARD's failure to comply with public records requests is considered a material breach of this Agreement and grounds for termination. GOLF BREVARD shall require any contractors with which it contracts for services to abide by the requirements of Florida's public records laws and all other provisions of this Agreement.
- (d) Should COUNTY face any legal action to enforce inspection or production of the

records within GOLF BREVARD's possession and control, GOLF BREVARD agrees to indemnify COUNTY for all damages and expenses, including attorney's fees and costs. GOLF BREVARD shall hire and compensate attorney(s) to represent GOLF BREVARD and COUNTY in defending such action. GOLF BREVARD shall pay all costs to defend such action and any costs and attorney's fees awarded pursuant to Section 119.12.

**IF GOLF BREVARD HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO GOLF BREVARD'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE PARKS AND RECREATION DIRECTOR AND CUSTODIAN OF PUBLIC RECORDS FOR PARKS AND RECREATION AT (321) 633-2046 OR AT MARYELLEN.DONNER@BREVARDFL.GOV**

**RIGHT TO AUDIT RECORDS.**

- (a) In performance of this Agreement, GOLF BREVARD shall keep books, records, and accounts of all activities related to this Agreement in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by GOLF BREVARD in conjunction with this Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of COUNTY. GOLF BREVARD shall retain all documents, books and records for a period of five (5) years after termination of this Agreement, unless such records are exempt from section 24(a) of Article I of the State Constitution and Ch. 119, Florida Statutes. All records or documents created by or provided to GOLF BREVARD by COUNTY in connection with this Agreement are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to COUNTY in a format compatible with the information technology systems of COUNTY.
- (b) GOLF BREVARD shall ensure that public records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement and following termination of the Agreement if GOLF BREVARD do not transfer the records to the public agency. In lieu of retaining all public records upon termination of this Agreement, GOLF BREVARD may transfer, at no cost to COUNTY, all public records in possession of GOLF BREVARD. If GOLF BREVARD transfer all public records to COUNTY upon termination of the Agreement, GOLF BREVARD shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- (c) COUNTY shall have the right to inspect, audit, examine and copy, or to engage an independent certified public accounting firm, at the County's expense, at any time, and from time to time, during normal business hours, all files, books, records, costs and expenses maintained by GOLF BREVARD pertaining to this Agreement or services provided pursuant to this Agreement. GOLF BREVARD,

shall cooperate with COUNTY and/or its independent certified public accountant in their performance of the audit. The provisions of this Section 5 shall survive the expiration date or the earlier termination of this Agreement.

#### **TAXES, ASSESSMENTS, IMPACT FEES AND SERVICE CHARGES**

- (a) Sales and Ad Valorem Taxes. GOLF BREVARD agrees to pay directly to the appropriate governmental taxing authority before delinquency, any and all sales and use taxes on tax able transactions and all ad valorem taxes (if any) levied or assessed against the GOLF BREVARD's FF&E or other taxable tangible personal property on the Golf Course Property, as well as any ad valorem taxes assessed against GOLF BREVARD's interest arising out of this Agreement or the Golf Course Property. GOLF BREVARD agrees to reimburse COUNTY for the payment of all ad valorem taxes (if any) levied or assessed against the Golf Course Property which payment may be the responsibility of COUNTY under the terms of the Agreement. In the event ad valorem taxes are levied and assessed against the Golf Course Property, GOLF BREVARD may, within 30 days of the assessment, terminate this Agreement for convenience upon 30 days' notice to the COUNTY.
- (b) GOLF BREVARD also agrees to pay directly to the applicable government authority all other applicable non-ad valorem assessments, special assessments, levies or taxes that may be imposed by a governmental authority upon GOLF BREVARD as a result of this Agreement, or arising out of GOLF BREVARD's use or occupancy of the Golf Course Property under this Agreement.
- (c) GOLF BREVARD's Personal Property. As may be required, GOLF BREVARD shall file all required ad valorem tax returns for its interest and all tangible personal property of GOLF BREVARD used in the operation of the Golf Course Property and shall obtain, evaluate and verify assessments and pay applicable tax bills. In the event COUNTY files any such returns and pays for any such taxes, COUNTY shall inform GOLF BREVARD of the amount of tangible personal property ad valorem taxes paid by COUNTY and GOLF BREVARD shall reimburse COUNTY for all amounts so paid by COUNTY within thirty (30) days after receipt from COUNTY of an invoice therefor.
- (d) Directly Assessed Fees and Service Charges. During the Term of this Agreement, GOLF BREVARD shall be responsible for any applicable permit fees, impact fees or service charges made by any public or quasi- public authority including, but not limited to: sanitary sewer charges and water charges, all of which GOLF BREVARD agrees to pay, before delinquency, directly to the appropriate governmental taxing authority.

#### **VOUCHERS.**

COUNTY shall not be responsible for any and all outstanding Vouchers sold at the Golf Course Properties.

## **GOLF BREVARD'S RIGHTS AND OBLIGATIONS WITH RESPECT TO THE GOLF COURSE PROPERTY.**

### **8.1 Initial Condition.**

GOLF BREVARD understands and agrees that COUNTY has no obligation and has made no promise to alter, remodel, improve, repair, decorate or paint the Golf Course Property or any part thereof.

### **8.2 Obligations of GOLF BREVARD and COUNTY for Repairs, Replacements, and Maintenance.**

#### **(a) GOLF BREVARD'S OBLIGATIONS:**

GOLF BREVARD shall, at GOLF BREVARD's expense, keep the Golf Course Property (including any and all Improvements, including, without limitation, the Clubhouse, roofs, all fairways, greens, tees and tee boxes, bunkers, water hazards and practice ranges) and the fixtures and appurtenances therein in good condition and repair, in a sanitary and safe condition and shall commit no waste of the Golf Course Property. Without limiting the generality of the foregoing, GOLF BREVARD will, at its own cost, keep in good order and repair, and maintain, repair and replace as needed: ceilings, walls, floors, plate glass and all fixtures in, on and about the Golf Course Property, including, but not limited to, HVAC, water, plumbing, irrigation, sewer, electrical and utility and GOLF BREVARD shall be liable for the repair to or replacement of such systems arising out of wear and tear, deterioration, corrosion, inherent vice, and other non-insurance covered causes of loss to such systems occurring during the Agreement Term. GOLF BREVARD shall be liable for the repair to or replacement of such systems, no matter the cause, arising out of wear and tear, deterioration, corrosion, inherent vice, and other non-insurance covered causes of loss. In addition, GOLF BREVARD shall, at its cost, repair, replace or restore any damage to the Golf Course Property caused by GOLF BREVARD, its employees and invitees. If GOLF BREVARD fails to make repairs (including replacement) and maintain the Golf Course Property or any part thereof in a First-Class manner and condition, COUNTY shall, upon written notice to GOLF BREVARD and an opportunity to cure for a period of thirty (30) days, have the right to make such repairs or perform such maintenance and/or replacement on behalf of GOLF BREVARD, and GOLF BREVARD shall reimburse to COUNTY the reasonable cost incurred by COUNTY in performing the same; provided, however, that if such cure cannot be reasonably accomplished within such thirty (30) days, then COUNTY shall not have the right to make such repairs or perform such maintenance and/or replacement if GOLF BREVARD has commenced the requested cure within such thirty (30) days and thereafter diligently pursues such cure to completion. GOLF BREVARD shall do, or cause to be done, all repair and maintenance work required or appropriate for all of the Golf Course Property, including, without limitation, maintaining the interior elements including, without limitation, the FF&E, and, in furtherance thereof, shall institute and administer a preventative maintenance program for all mechanical, electrical and plumbing

systems and equipment, all of the foregoing to be consistent with the First-Class Standard. GOLF BREVARD shall also, from time to time, in accordance with the operating budget, make purchases of and replace such items of FF&E and operating supplies as GOLF BREVARD deems necessary for the proper operation and maintenance of the Golf Course Property in accordance with the First-Class Standard, including, without limitation, those that may be deemed to constitute capital improvements. GOLF BREVARD shall be responsible for all capital improvements. Any structural alterations, modifications, or repairs in excess of \$25,000.00 dollars, of portions of the Golf Course Property or new construction thereof must be approved in advance in writing by COUNTY. Such work shall be done in aesthetically similar manner as the remainder of the Golf Course Property and in accordance with the First-Class Standard. Any replacement shall be of at least the same quality as originally installed or better quality as the item replaced, and any replacement or system installation shall meet all applicable laws and building, electrical, fire prevention, or life safety code. For the avoidance of doubt, any alteration, modification, replacement, or repair necessary for the ordinary course of business and not in excess of \$25,000.00 of portions of the Golf Course Property, or new construction thereof, need not require prior consent by COUNTY. GOLF BREVARD shall furnish prior written notification to COUNTY of the proposed activity.

**(b) BREVARD COUNTY'S OBLIGATIONS.**

Brevard County shall maintain a policy of commercial property insurance for County-owned buildings, structures and assets for damage or loss arising out of covered perils.

**8.3 Payment.**

GOLF BREVARD hereby agrees to pay COUNTY, as required herein, the total annual sum of \$130,000.00 in monthly installments of \$10,833.33 due and payable in advance on the first day of each month commencing on the Commencement Date of this agreement.

Beginning March 1<sup>st</sup>, 2023 and each year thereafter, the Base Payment will be increased by 2% annually or by the Consumer Price Index for All Urban Consumers (CPI-U) utilizing the previous calendar years 12-month CPI average, whichever amount is higher.

The Habitat Golf Course property will be appraised every ten (10) years and the Base Payment amount will be adjusted to equal 8% of the property's Fair Market Value, as established by the latest available appraisal, which shall be reviewed for federal grant assurance consistency and approved by the Federal Aviation Administration and consistent with the lease agreement between the Valkaria Airport and the Brevard County Parks and Recreation Department.

**8.4 Alterations.**

GOLF BREVARD shall not make nor allow to be made any alterations, additions or

Improvements to or of the Golf Course Property or any part thereof in excess of twenty-five thousand dollars (\$25,000.00) without the express prior written consent of COUNTY, which COUNTY may grant or withhold in its sole discretion. In the event COUNTY approves GOLF BREVARD'S request, the work shall be performed in a good, workmanlike, lawful and lien-free manner, and in compliance with all applicable Laws and this Agreement.

#### **8.5 Construction Liens.**

In accordance with the applicable provisions of the Florida Construction Lien Law and specifically Florida Statutes, Section 713.10, no interest of COUNTY shall be subject to liens for improvements made by GOLF BREVARD or caused to be made by GOLF BREVARD hereunder. The parties acknowledge that, for the purposes of the Construction Lien Law, COUNTY hereunder is a political subdivision of the State of Florida and is not an "owner" within the meaning of section 713.01(23), Florida Statutes.

#### **8.6 Access and Parking.**

During the Term of this Agreement, COUNTY shall provide to GOLF BREVARD, its employees, customers, patrons, suppliers, licensees and other invitees with parking and reasonable access to and from the Habitat Golf Course. The COUNTY shall have the right to use the driveway accessing the Habitat Golf Course as necessary. There shall be no overnight parking of any vehicles on the Golf Course Property without prior written consent by COUNTY.

#### **8.7 Repayment of Transition Funding.**

- (a) Under the terms of this Agreement and the Related Agreement, GOLF BREVARD shall remit to the COUNTY the Remaining Balance of the Transition Funding as follows:
  - i. within 7 days of October 1, 2022 the sum of no less than \$130,000.00.
  - ii. within 7 days of October 1, 2023 the balance then remaining.
- (b) For purposes of clarity, the Remaining Balance of the Transition Funding shall be paid in accordance with this Agreement and the Related Agreement, but shall not create an obligation upon GOLF BREVARD to remit to COUNTY a total amount in excess of the Remaining Balance.
- (c) After the COUNTY has been repaid in full for the Transition Funding, it is understood by both parties to this Agreement that any and all future revenues generated by GOLF BREVARD under this Agreement shall be used by GOLF BREVARD for no other purpose than the operation and improvement of the Golf Course Property and facilities. Operations of the Golf Course Property and Facilities shall mean all costs, fees and expenses, including, but not limited to, employee wages, equipment, legal, accounting, marketing, insurance, and administrative expenses. However, GOLF BREVARD shall still be responsible for all duties and obligations, including financial obligations, provided for in this Agreement. The provisions of the Section shall survive the expiration or earlier termination of this Agreement.

#### **8.8 Other Revenue.**

Unless specified herein otherwise, any sums due to COUNTY shall be due within 30 calendar days upon receipt of invoice from COUNTY. Any sums not paid within said period shall bear interest thereafter at the Default Rate until payment is made.

### **9. OPERATING COVENANTS.**

#### **9.1 Permitted Use.**

The Golf Course Property shall be used solely for the operation of a public (18) hole golf courses, and ancillary retail golf Pro-Shop, Food and Beverage Services, driving range and such other uses and amenities that are compatible with the other like facilities including, by way of illustration, other comparable golf course properties, in a First-Class manner and in accordance with this Agreement and for no other uses or purposes (the "Permitted Use"). The Golf Course Property shall be operated under the golf courses' current respective name and such name may not be changed without the prior written approval of COUNTY, which approval may be granted or withheld by COUNTY in COUNTY's sole and absolute discretion.

#### **9.2 Standards.**

GOLF BREVARD shall operate and maintain the Golf Course Property in accordance with the First-Class Standard and in accordance with the terms and conditions of the operating budget for each Agreement Year during the Term of this Agreement. GOLF BREVARD agree to:

(i) maintain and operate the Golf Course Property in a First Class Condition; (ii) confer with COUNTY regarding excessive complaints by COUNTY's employees, guests and invitees which come to the attention of COUNTY and if such complaints are reasonably found by COUNTY to be justified, to remedy the cause or causes of such complaints; and (iii) give due consideration to recommendations that COUNTY may make from time to time with respect to maintenance and operation of the Golf Course Property. GOLF BREVARD shall attempt to amicably resolve all complaints, disputes or disagreements in connection with the Golf Course Property as promptly and as reasonably possible.

#### **9.3 Meetings.**

Not less frequently than twice a year commencing after the Commencement Date, representatives of COUNTY and GOLF BREVARD shall meet, at a mutually agreeable time, to discuss and coordinate the performance by COUNTY and GOLF BREVARD of their respective obligations under this Agreement, including, without limitation, GOLF BREVARD's past operating results, GOLF BREVARD's operating plans for the future and opportunities to obtain and increase profits, so that GOLF BREVARD's promotion, operation, management and maintenance of the Golf Course Property may be conducted in an efficient and effective manner and in accordance with the terms and provisions of this Agreement. The parties may confer on all matters related to the Golf Course Property's operation and/or GOLF BREVARD's or COUNTY's performance and compliance of its obligations under this Agreement. Meetings shall be held at a location which is mutually agreeable to the parties. COUNTY and GOLF BREVARD shall each, from time to time, designate an authorized representative who shall be the point of



contact for the other party with respect to day to day issues and questions relative to the Golf Course Property and who shall serve as the person through whom each party shall communicate to the other party on routine matters. COUNTY's initial representative shall be the Parks and Recreation Director or designee. GOLF BREVARD 's representative shall be the chair of GOLF BREVARD. The COUNTY or GOLF BREVARD may call a meeting in addition to this minimum standard.

#### **9.4 General.**

GOLF BREVARD shall arrange for, coordinate, supervise, administer and manage all activities and services required for the promotion, management, operation and maintenance of the Golf Course Property, in accordance with the First-Class Standard and in accordance with the other requirements of this Agreement. Both GOLF BREVARD and COUNTY shall use due diligence and reasonable care and shall act at all times in good faith. Subject to the provisions of this Agreement, GOLF BREVARD shall cause the Golf Course Property to be open for business to the public seven (7) days a week, three hundred sixty-three (363) days a year, except: (i) during such periods when opening for business is rendered impracticable as a result of casualties to the Golf Course Property; (ii) during periods of inclement weather; (iii) during periods when repairs or maintenance (i.e., overseeding) make it impractical or impossible for the Golf Course Property to be open for business; and (iv) during Thanksgiving and Christmas holidays as desired by GOLF BREVARD. GOLF BREVARD shall submit holiday annual closing scheduled to the COUNTY. GOLF BREVARD shall ensure that the Pro Shop and Food and Beverage Services maintain hours of operation in accordance with good business practices and reasonably consistent with the hours of operation for said services at other municipal golf courses in Brevard County. All costs and expenses relating to the foregoing shall be the responsibility of GOLF BREVARD. All contracts with third parties shall be in the name of GOLF BREVARD. Notwithstanding the foregoing, all or applicable portions of the Golf Course Property may be closed to the public during periodic special events conducted by GOLF BREVARD.

#### **9.5 Rules and Regulations.**

GOLF BREVARD shall comply with all applicable Federal, State and County rules, laws, Best Management Practices for Golf Course Maintenance Departments as published by the State of Florida, Department of Environmental Protection, and ordinances.

#### **9.6 Management; Personnel.**

GOLF BREVARD shall select, employ, train, pay, discharge and supervise such persons as may be necessary to enable GOLF BREVARD to satisfy GOLF BREVARD's obligations under this Agreement.

#### **9.7 Operating Contracts and Membership Agreements.**

All contracts with third parties shall be in the name of GOLF BREVARD and should contain a contract provision that allows for early termination if the COUNTY terminates this Agreement early and in the alternative authorizes the County to take an assignment of the third party contract at the COUNTY's option contemporaneously with the

execution of this Agreement and effective as of the Commencement Date, GOLF BREVARD shall, at no cost or expense to COUNTY, assume all Operating Agreements and membership agreements that may exist at this time, provided that any such assumption shall be in writing and otherwise in a form and content reasonably acceptable to GOLF BREVARD and the third-party. Notwithstanding the foregoing, in the event that any Operating Agreement, by its terms, is not assignable, in the event that third-party consent is required in connection with the assignment of any Operating Agreement, or in the event that any fee is payable in connection with the assignment of any Operating Agreement, COUNTY, at COUNTY's sole cost and expense, shall be responsible for securing such assignment right, securing such third-party consent, or paying any such fee. If COUNTY is unsuccessful in securing such assignment right and/or securing such third-party consent, then as to an Operating Agreement that cannot be assigned in accordance with this Section: (i) as between COUNTY and GOLF BREVARD, GOLF BREVARD shall be responsible for the satisfaction of COUNTY's non-monetary obligations existing in such non-assigned Operating Agreement; and (ii) GOLF BREVARD shall pay to COUNTY, upon request for reimbursement, all sums paid by COUNTY to a third party under such non-assigned Operating Agreement provided, however, that GOLF BREVARD shall not be responsible for additional sums that become due and payable under a non-as signed Operating Agreement due to the actions of COUNTY or anyone for whom COUNTY is legally responsible (e.g. a COUNTY-caused default of the non-assigned Operating Agreement or a COUNTY-executed amendment of the non-assigned Operating Agreement) .

#### **9.8 Utilities.**

GOLF BREVARD is responsible for payment of all Utilities. GOLF BREVARD shall pay all bills for Utilities services rendered to it on or before the date due in accordance with the payment instructions contained in such bills; provided, however, that if any Utilities are furnished to GOLF BREVARD through COUNTY's meters, GOLF BREVARD shall reimburse COUNTY for the cost of such Utilities upon demand. This Agreement shall be subordinate to any easements that COUNTY may elect to grant to Utility providers to provide service to the Golf Course Property or other lands owned by COUNTY or its affiliates surrounding the Golf Course Property and GOLF BREVARD's consent shall not be required for the granting thereof; provided, however, that no such easements shall materially or adversely impact GOLF BREVARD and/or GOLF BREVARD's rights under this Agreement. GOLF BREVARD shall ensure that no utility related lien is placed on the property.

#### **9.9 Food and Beverage Operations.**

GOLF BREVARD shall perform all the food and beverage operations at the Golf Course Property, including Food and Beverage Services/Concessions ("Food and Beverage Services") and banquet/catering services. GOLF BREVARD shall develop the food and beverage offerings and all menus to be used by GOLF BREVARD in the Food and Beverage Services as well as the catering operations. GOLF BREVARD shall ensure that the Food and Beverage Services are maintained and operated in accordance with the First-Class Standard. GOLF BREVARD reserves the right to operate the Food and Beverage Services directly or to engage a contractor under the supervision of the

General Manager. Any contractor shall be required to adhere to the terms and conditions of this Agreement.

**9.10 Pro Shop Operations.**

GOLF BREVARD shall insure that the Pro Shop is maintained and operated in good First-Class condition. GOLF BREVARD shall remove and withdraw from sale any goods or services which may be found objectionable (as determined in COUNTY's sole and absolute discretion) following receipt of notification from COUNTY. Upon termination of the Agreement, COUNTY shall not be responsible for purchasing or acquiring any pro-shop merchandise from GOLF BREVARD.

**9.11 Golf Course Property Play Operations.**

GOLF BREVARD shall perform all operations relating to golf play and tee time reservations at the Golf Course Property, including but not limited to, the sale of tee times and memberships.

**9.12 Advertising and Promotion.**

The Golf Course Property shall be promoted, marketed and advertised by GOLF BREVARD. The County will continue to maintain a link to the Golf Course Property's website on the County's website.

**9.13 Community Outreach.**

GOLF BREVARD agree to establish and maintain programs to improve the conditions and operation of the Golf Course Property. To this end, GOLF BREVARD agree as promptly as possible:

- (a) To provide access to the Golf Course Property for charitable events and assist in providing such events on reasonable terms and conditions;
- (b) To establish and document a program for the physical improvement of the Golf Course Property;
- (c) To establish and document a comprehensive program to teach and make the game of golf available to the citizens of the Brevard County area, including working with public and private schools to advance their opportunity to play;
- (d) To establish and publicly post rules and regulations regarding the use and operation of the Golf Course Property, including such matters as starting methods, starting times, use of carts, trespassing, vandalism, green fees, rain delays and rainouts, group functions, charity events, hours of operation, etc.; and
- (e) In order to develop interest in competitive golf in the Brevard County area, to establish a program for both team and individual competition between and among men and women at the junior, adult and senior levels.

**9.14 Other Obligations of GOLF BREVARD.**

Subject to any restrictions or limitations set forth elsewhere in this Agreement, GOLF BREVARD shall also perform or cause to be performed all tasks which may be reasonably and commercially necessary or appropriate in connection with the operation,

management, promotion, maintenance, repair and upkeep of the Golf Course Property. In performing such tasks, GOLF BREVARD shall, at a minimum, do the following:

- (a) Advise COUNTY in writing of any discovery by GOLF BREVARD of any Hazardous Materials in, on or about the Golf Course Property at levels in violation of applicable laws, and promptly following such discovery jointly determine with COUNTY the actions which should be taken to ensure that the presence of such Hazardous Materials in, on or about the Golf Course Property will not constitute a violation of any Laws, and upon approval by COUNTY of any actions recommended by GOLF BREVARD promptly take, or cause to be taken, such actions.
- (b) GOLF BREVARD shall notify COUNTY of any instances or circumstances resulting, or that could result in loss or damage, or lawsuits filed and/or related to the County's property or assets and relative to damage to County's property, shall and cooperate with County in its preparation, submission to the County's property insurance carrier and processing of such claims. GOLF BREVARD shall notify its insurance carriers of all claims for third-party injury or damage arising out of GOLF BREVARD's operations and service.
- (c) With respect to any construction work done by or under GOLF BREVARD's supervision, obtain all warranties provided by, and lien waivers from, laborers, materialmen and contractors in connection with any work done on, or goods or materials incorporated into; the Golf Course Property, or any part thereof, and do such other acts as may be necessary or appropriate to preserve and maintain the Golf Course Property free and clear of any new liens.
- (d) GOLF BREVARD shall implement its own hiring process to employ the employees at the Golf Course Property and for GOLF BREVARD's food and beverage operations to incorporate GOLF BREVARD's own training module.

#### **9.15 Restrictions.**

Without the prior written consent of COUNTY, which consent shall not be unreasonably withheld, GOLF BREVARD shall not do, or cause or permit to be done, any of the following throughout the Term of this Agreement:

- (a) Retain any entity to manage the day to day operation of the Golf Course Property, food and beverage operations excepted.
- (b) Except as provided herein, GOLF BREVARD shall not illegally or improperly transport, use, store, maintain, generate, manufacture, handle, dispose, discharge, spill or leak any Hazardous Materials, or permit GOLF BREVARD's employees, agents, contractors, or other occupants of the Golf Course Property to engage in such activities on or about the Golf Course Property. GOLF BREVARD shall indemnify, defend and hold COUNTY harmless from any and all liability, claims costs, fines, fees, actions, or sanction arising from or in connection with GOLF BREVARD's use or misuse, handling or mishandling, storage, spillage, discharge, seepage into water bodies or the groundwater supply, or release into the atmosphere of any hazardous materials, toxic substances,

pollutants, or contaminants, whether solid, liquid or gas. GOLF BREVARD shall take all reasonable precautions and safety measures, in accordance with current technology, to prevent the release of hazardous materials, toxic substances, pollutants, and contaminants under GOLF BREVARD's control. In the event GOLF BREVARD learns of the discharge upon the Golf Course Property of any hazardous materials, pollutant or contaminant under GOLF BREVARD's control, GOLF BREVARD shall undertake to contain, remove, and abate the discharge. This indemnification obligation shall survive the expiration or termination of this Agreement. GOLF BREVARD shall not be responsible for any Hazardous Materials:

- i. present on the Golf Course Property prior to the date of the Prior Agreement between the parties, or
- ii. which becomes present on the Golf Course Property after termination of this Agreement and all extensions hereof; provided, however, GOLF BREVARD shall immediately notify COUNTY of any notice received by GOLF BREVARD from any governmental authority of any actual or threatened violation of any applicable laws, regulation or ordinances governing the use, storage or disposal of any Hazardous Materials and shall respond to such notice and correct or contest any alleged violation.

#### **9.16 Entry and Inspection by COUNTY.**

GOLF BREVARD agrees that COUNTY shall have the right to enter the Golf Course Property during normal working hours to inspect the same, to exercise COUNTY's rights under this Agreement, to show the Golf Course Property to prospective purchasers or other entities, and to post appropriate or lawful notices.

#### **9.17 Fiduciary Duty of GOLF BREVARD.**

- (a) **Fiduciary Duty.** GOLF BREVARD shall have a fiduciary duty to COUNTY with regard to the operation of the county golf course.
- (b) **Duty to Report.** As part of the fiduciary duty, GOLF BREVARD shall report to COUNTY any operational problems or issues which result or may result in a shortfall of funds to operate the golf course and which cause or may cause Brevard Golf to request additional funding from COUNTY.

### **10. E-VERIFY, RECORDS, REPORTS, FISCAL MATTERS**

10.1 In accordance with Chapter 448.095, Florida Statutes, the Contractor shall register and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract; and

10.2 The Contractor shall expressly require any subcontractors performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Contract; and

10.3 The Contractor agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the County consistent with the terms of the Contractor's enrollment in the program. This includes maintaining a copy of proof of the Contractor's and subcontractors' enrollment in the E-Verify Program; and

10.4 Compliance with the terms of this section is made an express condition of this Contract and the County may treat a failure to comply as a material breach of this Contract; and

10.5 A Contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E verify program, the Contractor hires or employs a person who is not eligible for employment; and

10.6 Nothing in this section may be construed to allow intentional discrimination of any class protected by law; and

10.7 Financial Reports. GOLF BREVARD shall deliver a monthly report to COUNTY no later than thirty (30) days after the end of each one (1) month period. In addition, GOLF BREVARD shall deliver an annual report to COUNTY no later than sixty (60) days after the end of each Fiscal Year, summarizing all operations of the Golf Course Property and containing all of the Reporting Requirements set forth on Exhibit "D" attached hereto. Furthermore, during the Term or/and Extended Term of this Agreement, COUNTY or its agent may inspect and review the books and records of GOLF BREVARD at the Golf Course Property.

## **11. COMPLIANCE WITH REQUIREMENTS**

### **11.1 Compliance with Law.**

GOLF BREVARD shall not cause the violation of any Law, ordinance, or regulations of a governmental body or agency.

### **11.2 Permits and Licenses.**

GOLF BREVARD shall apply for, process, take all necessary steps to procure and maintain (and renew as necessary), all permits and licenses required for the operation, management and maintenance of the Golf Course Property, including, without limitation, occupational and liquor licenses, all of which licenses shall be duly valid and in effect as of the Commencement Date and at all times during the Term of this Agreement. GOLF BREVARD shall expend GOLF BREVARD's commercially reasonable efforts to ensure that all permits and licenses required for the operation, management and maintenance of the Golf Course Property, and its related facilities, are not violated by any action or omission by GOLF BREVARD in the course of GOLF BREVARD's performance of its obligations hereunder.

## **12. INSURANCE**

### **12.1 Insurance to Be Maintained by GOLF BREVARD.**

Except as provided for in Section 12.1 (c), GOLF BREVARD, throughout the Term of this Agreement, shall obtain and maintain in full force and affect the following types and amounts of insurance coverage at GOLF BREVARD's expense:

- (a) **Commercial General Liability Insurance.** A policy of Commercial General Liability Insurance, insuring GOLF BREVARD against liability for bodily injury, property damage (including loss of use of property) and personal injury, including contractual liability, and Errors and Omissions. The initial amount of such insurance shall be One Million Dollars (\$ 1,000,000) per occurrence, Two Million Dollars (\$2,000,000) in the aggregate, and Five Million Dollars (\$5,000,000) umbrella coverage. The liability insurance obtained by GOLF BREVARD under this Section shall insure GOLF BREVARD's indemnification and other obligations to COUNTY. The amount and coverage of such insurance shall not limit GOLF BREVARD's liability nor relieve GOLF BREVARD of any other obligation under this Agreement.
- (b) **Pollution Liability Insurance.** Pollution Liability Insurance for damage, injury or loss arising out of the application, storage, or use of pesticides, herbicides and other hazardous substances with a \$1,000,000 combined single limit for each occurrence. Such insurance coverage, if issued on a claims-made basis shall be purchased and maintained throughout the terms of this contract, and for a minimum period of four (4) years after termination or expiration of the contract.
- (c) **Property Insurance.**

#### **GOLF BREVARD:**

- 1. COUNTY will provide Property Insurance coverage for County-owned buildings and assets on the premises.
- 2. Golf Brevard shall provide Property Insurance and Inland Marine coverage for all assets owned, leased, used or acquired by GOLF BREVARD.
- 3. In the event damage to County property triggers an insurance claim and County receives insurance proceeds or the loss amount falls within County's deductible, County (if the loss is within the deductible) or its carrier (if the loss is paid by the carrier) reserves the right to pursue GOLF BREVARD for recovery of those sums should the loss have resulted from GOLF BREVARD's negligence.

County shall be responsible for covering loss of or damage to COUNTY-owned Property, COUNTY-owned improvements, and COUNTY-owned furniture, COUNTY-owned fixtures and COUNTY-owned equipment, in the amount of their replacement value with such endorsements and deductibles as COUNTY shall determine from time to time. Neither GOLF BREVARD or COUNTY shall do or permit anything to be done which shall invalidate any such insurance. COUNTY shall be entitled to all insurance proceeds. If GOLF BREVARD owns, brings, acquires, or uses any assets, other than COUNTY-owned assets, then GOLF BREVARD shall be responsible for providing adequate insurance for such assets.

- (d) **Workers' Compensation Insurance.** Workers' Compensation Insurance (including Employer's Liability Insurance) in the statutory amount covering all employees of GOLF BREVARD employed or performing services at the Golf Course Property, in order to provide the statutory benefits required by the laws of Florida.
- (e) **Liquor Liability Insurance.** A policy providing Liquor Liability Insurance coverage with policy limits and deductible equal to those hereinabove specified in subsection 12.1 (a) with respect to liability insurance, covering the full amount of potential liability from time to time provided or imposed upon the sellers of alcoholic beverages under the laws of the State of Florida and fully protecting both GOLF BREVARD and COUNTY (and if such insurance providing protection for the following is available, at COUNTY's option, COUNTY's other Affiliates, and the officers, directors, agents and assigns of each of them) in connection with any such sales (or other offering) of alcoholic beverages.
- (f) **Business Interruption Insurance.** Until such time as GOLF BREVARD has completed repayment of the Transition Funding, GOLF BREVARD shall obtain Business Interruption Insurance, providing in the event of damage or destruction of the Golf Course Property an amount sufficient to sustain GOLF BREVARD for a period of not less than one (1) year for: (i) the net profit that would have been realized had GOLF BREVARD's business continued; and (ii) such fixed charges and expenses as must necessarily continue during a total or partial suspension of business to the extent to which they would have been incurred had no business interruption occurred, including, but not limited to, interest on indebtedness of GOLF BREVARD, salaries of executives, foremen, and other employees under contract, charges under non-cancelable contracts, charges for advertising, legal or other professional services, taxes and rents that may still continue, trade association dues, insurance premiums, and depreciation.
- (g) **Automobile Liability Insurance.** Automobile Liability Insurance, on all owned, non-owned, and hired vehicles, with a combined single limit per occurrence of not less than One Million Dollars (\$1,000,000).

## **12.2 Hold Harmless/Indemnification.**

- (a) GOLF BREVARD agrees and shall indemnify, defend and hold harmless COUNTY from any and all liability, claims, proceedings or causes of action for bodily injury, sickness, disease, death, personal injury, damages to property or loss of use of any property or assets, penalties or fines resulting from or arising out of the performance or actions of GOLF BREVARD, its officers, agents or employees or contractors in connection with this Agreement.
- (b) GOLF BREVARD agrees and shall indemnify, defend and hold COUNTY harmless from any and all liability, claims costs, fines, fees, actions, or sanction arising from or in connection with GOLF BREVARD's use or misuse, handling or mishandling, storage, spillage, discharge, seepage into water bodies or the groundwater supply, or release into the atmosphere of any hazardous materials, toxic substances, pollutants, or contaminants, whether solid, liquid or gas.



- (c) GOLF BREVARD agrees that such duty to indemnify, defend and hold the COUNTY harmless, includes the duty to either (at GOLF BREVARD's option) assume and conduct the defense of any claim with counsel reasonably acceptable to the COUNTY, in which case GOLF BREVARD shall not settle or compromise such claim without the prior written consent of the COUNTY, or to pay the cost of the COUNTY's legal defense(s) and related legal expenses and costs, including fees of attorneys as may be selected by the COUNTY, for all causes of action, claims, proceedings, etc. described in this paragraph. Such payment on behalf of the County shall be in addition to any and all other legal remedies available to the COUNTY and shall not be considered the COUNTY's exclusive remedy. GOLF BREVARD will satisfy, pay and discharge any and all judgments that may be entered against COUNTY in any such action or proceeding.
- (d) This indemnification obligation shall survive the expiration or termination of this Agreement
- (e) It is agreed by the parties hereto that specific consideration has been received by GOLF BREVARD under this Agreement for this hold harmless/indemnification provision.

#### **12.3 No Waiver of Sovereign Immunity.**

Nothing herein shall be construed as a waiver of the COUNTY's sovereign immunity, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations and claims. Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim or cause of action which would otherwise be barred by sovereign immunity or by operation of law.

#### **12.4 Certificates of Insurance.**

GOLF BREVARD shall obtain, maintain and provide certificates of insurance to COUNTY issued by companies and carriers approved by the County and demonstrating that the aforementioned insurance requirements have been met. The certificates of insurance shall indicate that the policies have been endorsed to cover COUNTY as an additional insured and that the insurer will provide the County with thirty (30) days advanced written notice to COUNTY of any cancelation or changes in coverages or in the policies.

- (a) The insurance coverage enumerated above constitutes the minimum requirements and shall in no way lessen or limit the liability of GOLF BREVARD under the terms of the Agreement.
- (b) GOLF BREVARD shall require all sub-contractors to secure appropriate insurance coverage for the work being performed, in such limits as provided for herein.

#### **12.5 Insurance to Be Maintained by Independent Contractors.**

GOLF BREVARD shall require any independent contractor or entity performing services for the Golf Course Property, including the Food and Beverages Services, to obtain and maintain in full force and effect the following types and amounts of insurance coverage

at such independent contractor or entity's expense:

- (a) A policy of commercial general liability insurance as required by Florida Law, insuring such independent contractor or entity against liability for bodily injury, property damage (including loss of use of property) and personal injury, including contractual liability, and errors and omissions. The initial amount of such insurance shall be one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) in the aggregate.
- (b) A policy of workers' compensation insurance (including Employer's Liability Insurance) in the statutory amount covering all employees of the independent contractor or entity performing services at the Golf Course Property, in order to provide the statutory benefits required by the laws of Florida.

### **13. ASSIGNMENT AND SUBLETTING.**

GOLF BREVARD may not, without the prior written consent of COUNTY which consent may be withheld in COUNTY's sole discretion, assign, transfer, sell, convey, mortgage, pledge, hypothecate or encumber this Agreement, or any interest therein, nor sublet the Golf Course Property or any part thereof, or permit the use of the Golf Course Property by any third-party. Food and Beverage Services are excepted from the sublet restrictions.

### **14. EXCUSABLE DELAY.**

If, by reason of an Excusable Delay, COUNTY or GOLF BREVARD is unable to perform or is delayed in performing any of its obligations under this Agreement, other than financial obligations, or is unable to supply or is delayed in supplying any service which such party is obligated to supply, then such party shall, for the period of any delay in the performance of any of its obligations, have no liability in connection with that inability and this Agreement and the other party's obligation to perform all of its obligations under this Agreement shall in no way be affected, impaired or excused.

### **15. DEFAULT AND REMEDIES.**

#### **15.1 Default by GOLF BREVARD.**

The following shall be events of default by GOLF BREVARD hereunder:

- (a) In the event that any monetary amounts owed by GOLF BREVARD hereunder, are not paid within five (5) business days after receipt of written notice of default from COUNTY that the same are due; or
- (b) except as otherwise provided for in this Section 15, in the event GOLF BREVARD fails to comply with a term, provision or covenant of this Agreement and such failure is not cured within fifteen (15) days after receipt of written notice from COUNTY advising GOLF BREVARD of such default; or
- (c) To the extent permitted by applicable law, any petition is filed by or against GOLF BREVARD under any section or chapter of the Federal Bankruptcy Act as amended; (and with respect to an involuntary petition, GOLF BREVARD shall not have discharged or caused same to be discharged within thirty (30) days from the

- date of filing or such petition); or creditors; or
- (d) In the event GOLF BREVARD becomes insolvent or makes a transfer in fraud; or
  - (e) In the event GOLF BREVARD makes an assignment of benefit of creditors; or
  - (f) In the event a receiver is appointed for a substantial part of all of the assets of GOLF BREVARD and said receiver is not discharged within thirty (30) days after the date of appointment thereof; or
  - (g) In the event any representation or warranty made by GOLF BREVARD under this Agreement shall prove to be false, untrue or misleading in any material respect; or
  - (h) GOLF BREVARD fails to comply with the terms of the operating covenants contained in Section 9 of this Agreement, uses the Golf Course Property for other than the Permitted Use and/or operates the Golf Course Property under a name other than the Permitted Name, and such failure is not cured within thirty (30) days after receipt of written notice from COUNTY advising GOLF BREVARD of such default; or
  - (i) With exception to the Food and Beverage Services, in the event GOLF BREVARD engages any entity other than GOLF BREVARD to manage and/or operate the Golf Course Property; or
  - (j) In the event GOLF BREVARD defaults on any required payment to COUNTY;
  - (k) In the event GOLF BREVARD or requires additional funds from COUNTY for any reason; or
  - (l) In the event GOLF BREVARD fails to obtain COUNTY's confirmation of a board of directors' member or fails to remove a director upon request for removal by a super-majority vote of the County Commission.

#### **15.2 Remedies of COUNTY.**

Upon the occurrence of a default by GOLF BREVARD under this Agreement and the expiration of any applicable cure period set forth herein, COUNTY may pursue any one or more of the following remedies, separately or concurrently or in any combination:

- (a) Terminate this Agreement, in which event GOLF BREVARD shall immediately surrender the Golf Course Property to COUNTY, but if GOLF BREVARD shall fail to do so, COUNTY may, without further notice and without prejudice to any other remedy COUNTY may have for possession under this Agreement, enter upon the Golf Course Property, refuse to repair and maintain any mechanical or electrical system or disconnect any such services to the Golf Course Property and expel or remove GOLF BREVARD and its personal property without being liable to prosecution or any claim for damages therefore and without said entry affecting COUNTY's right to thereafter exercise any other remedy set forth herein.
- (b) Enter the Golf Course Property and rent the Golf Course Property, and receive the rental therefore, and GOLF BREVARD shall pay to COUNTY, on demand, at the office of COUNTY any deficiency that may arise in the event of such reletting;

- (c) As agent of GOLF BREVARD, do whatever GOLF BREVARD is obligated to do by provisions of this Agreement and enter the Golf Course Property, without being liable to prosecution or any claims for damage therefore, in order to accomplish this purpose.
- (d) With or without terminating this Agreement, COUNTY may bring an action against GOLF BREVARD to recover from GOLF BREVARD all actual damages suffered, incurred or sustained by COUNTY as a result of, by reason of or in connection with such default but COUNTY may not recover punitive damages, speculative damages or consequential damages.
- (e) Pursuit by COUNTY of any of the foregoing causes of action shall not constitute an election of remedies. No termination of this Agreement by lapse of time or otherwise shall affect COUNTY's right to collect monetary obligations for the period prior to the termination hereof.

### **15.3 Default by COUNTY.**

The occurrence of any one of the following events shall constitute a default by COUNTY under this Agreement:

- (a) If COUNTY shall fail to fully and completely perform its duties and obligations under this Agreement and such failure is not cured within thirty (30) days after receipt of written notice from GOLF BREVARD advising COUNTY of such default (provided, if the nature of COUNTY's failure is such that more time is reasonably required in order to cure, COUNTY shall not be in default if COUNTY commences to cure within such period and thereafter diligently seeks to cure such failure to completion within ninety (90) days following notice thereof); or
- (b) If any representation or warranty made by COUNTY under this Agreement shall prove to be intentionally false, untrue or misleading in any respect; or
- (c) In the event COUNTY becomes insolvent or makes a transfer in fraud of creditors; or
- (d) In the event COUNTY makes an assignment for the benefit of creditors; or
- (e) In the event, a receiver is appointed for a substantial part or all of the assets of COUNTY and said receiver is not discharged within thirty (30) days after the date of appointment thereof.

### **15.4 Remedy of GOLF BREVARD.**

Upon the occurrence of a default by COUNTY under this Agreement, GOLF BREVARD may solely pursue the following remedy:

- (a) GOLF BREVARD may terminate this Agreement by giving COUNTY written notice of such termination, in which event this Agreement shall terminate at the time designated by GOLF BREVARD in its notice of termination to COUNTY or thirty (30) days after the date of the termination notice whichever occurs first.

### **15.5 Attorneys' Fees.**

In the event of any litigation or arbitration between the parties relating to this Agreement

and/or the Golf Course Property (including pretrial, trial, appellate, administrative, bankruptcy or insolvency proceedings), each party shall bear its own attorneys' fees and costs, including appellate fees and costs. The termination of this Agreement by either GOLF BREVARD or COUNTY by reason of default by another party shall not relieve the parties of any of obligations theretofore accrued under this Agreement prior to the effective date of such termination.

#### **15.6 Abandonment.**

In the event of abandonment of the Golf Course Property, any personal property belonging to GOLF BREVARD and left on the Golf Course Property shall be deemed to be abandoned, at the option of COUNTY, and the rights conferred upon COUNTY by this Agreement with regard to the disposition of said personal property shall remain in full force and effect.

#### **15.7 GOLF BREVARD's Obligations.**

Upon the expiration or earlier termination of this Agreement, GOLF BREVARD shall promptly:

- (a) peaceably and quietly surrender and deliver to COUNTY the Golf Course Property in good condition and repair and in the same condition as found on the Commencement Date, reasonable wear and tear excepted, and free and clear of all liens, encumbrances and sub tenancies. In addition, GOLF BREVARD shall also deliver to COUNTY, free and clear of all liens, title to the Improvements and the FF&E, except for such FF&E that GOLF BREVARD determines, in its sole discretion, can be transferred and utilized at the Spessard Holland Golf Course in connection with the Related Agreement in the event that the Related Agreement, or any extension thereof, has not yet expired or terminated. If requested to do so by COUNTY, GOLF BREVARD shall promptly thereafter execute and deliver to COUNTY such deed or bill of sale as COUNTY may reasonably request, provided they contain no covenant, warranty, representation or other liability of GOLF BREVARD except as otherwise provided herein. COUNTY may require GOLF BREVARD to remove all or a portion of the FF&E at GOLF BREVARD's expense and GOLF BREVARD shall repair any damage to the Golf Course Property resulting from such removal;
- (b) deliver to COUNTY or such other person or entity as COUNTY shall designate, all materials, supplies, equipment, keys, contracts, documents, files, books and records pertaining to this Agreement and the management, operation and maintenance of the Golf Course Property;
- (c) at COUNTY's request, assign all existing contracts relating to the management, operation and maintenance of the Golf Course Property to COUNTY or such other person or entity as COUNTY shall designate (provided, however, that COUNTY shall have the right, but shall not be obligated to, accept any contract which was entered into in violation of the terms of this Agreement);
- (d) furnish all such information, take all such other action and cooperate with COUNTY as COUNTY shall reasonably require in order to effectuate an orderly

and systematic termination of GOLF BREVARD's services, duties, obligations and activities hereunder;

- (e) to the extent legally transferable, surrender and transfer and/or assign to COUNTY or any person or entity designated by COUNTY, all of GOLF BREVARD's right, title and interest in and to all licenses, permits and other authorizations used by GOLF BREVARD in operating and/or managing the Golf Course Property;
- (f) at GOLF BREVARD's sole cost, conduct an inventory of the supplies, inventory and FF&E and deliver a list of such inventory to COUNTY; and
- (g) within thirty (30) days after the expiration or termination of this Agreement, cause to be furnished to COUNTY a report similar in form and content to GOLF BREVARD's monthly reports covering the period from the last previous monthly report to the date of expiration or termination of this Agreement.
- (h) all income generated and assets owned by GOLF BREVARD's shall remain the property of GOLF BREVARD minus any outstanding obligations to the COUNTY.

#### **15.8 Survival.**

The provisions of this Section 15 shall survive any termination of this Agreement.

### **16. DAMAGE BY CASUALTY AND CONDEMNATION**

#### **16.1 Damage by Casualty.**

In the event the Clubhouse or any other material portion of the Golf Course Property is damaged by fire or other casualty, and insurance coverage for the Golf Course Property is sufficient to repair such damage, COUNTY shall forthwith repair the damage, provided the repairs can be made within two hundred seventy (270) days from the date of casualty and provided COUNTY receives insurance proceeds for the Golf Course Property adequate to pay for the cost of the repairs. During the period of repair, this Agreement shall remain in full force and effect. If COUNTY determines that the repairs cannot be made within the two hundred seventy (270) day period, or if insurance proceeds are not available to cover the cost of said repairs, COUNTY shall have the option either (1) to repair or restore such damage, this Agreement continuing in full force and effect, or (2) give notice to GOLF BREVARD at any time within ninety (90) days after the date of the casualty terminating this Agreement. In the event of the giving of such notice this Agreement shall expire and all interest of GOLF BREVARD in the Golf Course Property shall terminate on the date so specified in such notice and other sums shall be paid up to the date of such termination.

Notwithstanding anything to the contrary, COUNTY shall not be required to repair any injury or damage by fire or other casualty, or to make repairs or replacements of any paneling, decorations, partitions, railings, ceilings, floor coverings, office fixtures, FF&E, or any other property installed in the Clubhouse or on Golf Course Property by GOLF BREVARD.

In the event that COUNTY elects to repair or restore the damage to the Golf Course

Property and such repairs or restoration are not completed within two hundred seventy (270) days from the date of casualty, GOLF BREVARD may, at its option, cancel this Agreement by giving notice to COUNTY at any time within thirty (30) days after the expiration of such two hundred seventy (270) days.

Notwithstanding the forgoing, if any damage renders more than thirty percent (30%) of the Clubhouse unusable, COUNTY shall, with reasonable promptness after receipt of written notice from GOLF BREVARD of the occurrence of such damage, but no more than ninety (90) days thereafter, estimate the length of time that will be required to substantially complete the repair and restoration of such damage and shall by written notice advise GOLF BREVARD of such estimate.

If such estimate is that the amount of time required to substantially complete the repair and restoration will exceed two hundred seventy (270) days from the occurrence of such damage, then GOLF BREVARD shall have the right to terminate this Agreement upon giving notice to COUNTY at any time within thirty (30) days after COUNTY gives GOLF BREVARD the notice containing said estimate.

In all events, even in the event COUNTY elects not to repair or replace the portion of the Golf Course Property damaged, COUNTY shall be entitled to the proceeds of all insurance claims.

#### **16.2 Condemnation.**

If all or a material portion of the Clubhouse or other part of the Golf Course Property, or access thereto (notwithstanding the fact that the Golf Course Property may not be affected by such taking or appropriation) shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, COUNTY shall have the right at its option, to terminate this Agreement, and COUNTY shall be entitled to any and all income, rent, awards, or any interest therein whatsoever that may be paid or made in connection with such public or quasi-public use or purpose and GOLF BREVARD shall have no claim against COUNTY or the condemning authority for the value of any unexpired term of this Agreement. GOLF BREVARD may, however, in a separate, subsequent proceeding make a claim for trade fixtures installed in the Golf Course Property, at GOLF BREVARD' expense, GOLF BREVARD 's moving costs and GOLF BREVARD 's Attorneys' Fees. If only a part of the Clubhouse or other part of the Golf Course Property shall be so taken or appropriated, and COUNTY does not terminate this Agreement in accordance with the foregoing, then this Agreement shall continue in full force and effect. GOLF BREVARD may terminate this Agreement by reason of taking or an appropriation under eminent domain authority only if such taking or appropriation shall be of such extent and nature as to substantially handicap, impede or impair GOLF BREVARD ' use of the Golf Course Property for the purposes set forth herein.

### **17. SPECIAL COVENANTS AND CONDITIONS.**

#### **17.1 Use of Trade Names/Marks and Symbols.**

The Golf Course Property shall be known by such trade name and/or trademark or logo

as may from time to time be determined by COUNTY. All names, logos and designs used at the Golf Course Property shall be the exclusive property of COUNTY. However, during the Term of this Agreement, GOLF BREVARD shall have a non-exclusive license to use the Golf Course Property names and logos in connection with the operation of the Golf Course Property. Any software data analysis system developed by GOLF BREVARD shall be the exclusive property of GOLF BREVARD.

#### **17.2 Promotional Rights; Advertising.**

- (a) Advertising. All advertisements and promotional materials, and all regional and national media, shall be in good taste and reflective of the high standards associated with the profession of golf and Brevard County. GOLF BREVARD shall remove and withdraw from circulation any advertisements or promotions which may be found objectionable (as determined in COUNTY's sole and absolute discretion) following receipt of notification from COUNTY.
- (b) Prohibited Uses. GOLF BREVARD agrees that it shall not do any of the following at any time during the Term of this Agreement
  - i. Use of any COUNTY-Owned Names as its own trademark or service mark;
  - ii. Sell, or distribute for free, any literature, merchandise, memorabilia, souvenirs or other items which refer to or depict the Golf Course Property and/or any of the COUNTY-Owned Names, which may be found objectionable by COUNTY (as determined in COUNTY's sole and absolute discretion) following receipt of notification from COUNTY.
  - iii. Construct or install any fencing within or around the Golf Course Property;
  - iv. Utilize any portion of the Golf Course Property for any marketing, promotional or advertising purpose that benefits or promotes any person, entity or location other than the Golf Course Property, without COUNTY's prior written consent, including without limitation, the sale or distribution of materials, merchandise and/or admission media, which consent may be withheld or granted in COUNTY's sole and absolute discretion.
  - v. Allow any golf carts not owned or leased by GOLF BREVARD or COUNTY, that have been modified or have been manufactured for any purpose other than use on a golf course to be driven, or used on any part of the Golf Course Property. GOLF BREVARD, at its discretion, may allow privately owned golf carts which meet specifications to be used on the Courses for a fee. GOLF BREVARD shall be responsible for any damage done to the Golf Course Property caused by golf carts.

#### **17.3 COUNTY-Owned Names Logoed Products.**

Some of the merchandise for sale in the Pro Shop may include merchandise that contains COUNTY-Owned Names (hereinafter, "Logoed Merchandise"). GOLF BREVARD shall be permitted to sell Logoed Merchandise only within the Pro Shop, unless expressly approved by COUNTY.



## **18. MISCELLANEOUS.**

### **18.1 Notices.**

All notices and demands that may be or are required to be given by either party to the other shall be in writing. Any written notice to COUNTY or GOLF BREVARD shall be deemed delivered (whether or not received) when mailed by certified or registered mail, postage prepaid, return receipt requested, and deposited in the United States Mail or delivered personally or by national courier service that provides receipt for delivery. Any written notice not so mailed shall be deemed to have been received upon its actual receipt, with the sender of the notice bearing the burden of proving receipt. Notices to GOLF BREVARD may be addressed to Chair of GOLF BREVARD, 2374 Oak St, Melbourne Beach, FL 32951, or to such other place as GOLF BREVARD may from time to time designate in a notice to the other parties. All notices and demands to COUNTY shall be sent as above-required to the Parks and Recreation Director, 2725 Judge Fran Jamieson Way, Bldg. B, Viera, FL 32940, or to such other person or place as COUNTY may from time to time designate in a notice to the other parties. Attorneys for the parties are authorized to deliver notices.

### **18.2 Successors and Assigns.**

The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heir's successors, executors, administrators and assigns of the parties hereto.

### **18.3 Severability.**

If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws (the deletion of which would not adversely affect the receipt of any material benefit or substantially increase the burden of any part hereto) effective during this Term, then and in that event, it is the intention of the parties that the remainder of this Agreement, and the Term covered thereby, shall not be affected. All rights, powers, and privileges conferred by this Agreement upon the parties shall be cumulative but not restricted to those given by law.

### **18.4 Time of Essence.**

Time is of the essence of this Agreement and each and all of its provisions.

### **18.5 Applicable Law.**

This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Florida.

### **18.6 Entire Agreement and Modification.**

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this instrument shall be of any force or effect. No amendment, modification or variation of this Agreement or any of its terms or provisions shall be effective, binding or valid unless and until it is reduced to writing and executed by the parties. No failure of COUNTY to exercise any power given COUNTY by this instrument, or to insist upon strict compliance by GOLF BREVARD of any obligations hereunder, and no custom or

practice of the parties at variance with the terms hereof shall constitute a waiver of COUNTY's right to demand exact compliance with the terms of this Agreement.

**18.7 Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

**18.8 Venue and WAIVER OF JURY TRIAL.**

The venue of any suit or proceeding brought for the enforcement of or otherwise with respect to this Agreement shall always be lodged in the State Courts of the Eighteenth Judicial Circuit in and for Brevard County, Florida; or if the Circuit Court does not have jurisdiction, then before the United States District Court for the Middle District of Florida; or if neither of such courts shall have jurisdiction, then before any other court sitting in Brevard County, Florida, having subject matter jurisdiction, regardless of whether, under any applicable principle of law, venue may also be properly lodged in the courts of any other federal, state or county jurisdiction. To the extent permitted by law, COUNTY AND GOLF BREVARD HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PREMISES OR THE PROPERTY.

**18.9 Radon Gas.**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present a health risk to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

**18.10 Disaster Assistance.**

COUNTY will provide necessary advice and available logistical assistance in support of recovery operations from a named storm or hurricane. During any national emergency declared by the President or by the Congress, the United States shall have the right to take exclusive control and possession of the above-mentioned real property, or of such portion thereof as it may desire, rent to be abated accordingly in proportion to said occupancy

**18.11 Relationship between Parties.**

Nothing herein shall be deemed to create any joint venture or principal-agent relationship between the parties, and neither part is authorized to, and neither party shall act toward third parties or the public in any manner which would indicate any such relationship with the other. GOLF BREVARD is an independent contractor in terms of managing and operating the Golf Course Property. GOLF BREVARD'S employees or directors are in no way COUNTY employees and shall not represent themselves as such.

**19. INTERPRETATION AND CONSTRUCTION**

**19.1 Recitals.**

The recitals at the beginning of this Agreement are true and correct and are hereby incorporated in and made a part of this Agreement.

**19.2 Interpretation.**

Except as otherwise expressly provided in this Agreement, the following rules of interpretation shall apply:

- (a) the singular includes the plural and the plural includes the singular;
- (b) the word "or" is not exclusive and the words "includes" and "including" are not limiting;
- (c) a reference in this Agreement to a section or an exhibit shall mean and refer to the section of or exhibit to, this Agreement;
- (d) a reference to a section in this Agreement shall, unless the context clearly indicates to the contrary, refer to all subparts or subcomponents of such section;
- (e) words such as "hereunder", "hereto", "hereof" and "herein" and other words of like import shall, unless the context clearly indicates to the contrary, refer to the whole of this Agreement and not to any particular clause hereof;
- (f) capitalized terms used in this Agreement shall have the meaning ascribed to them at the point where defined, irrespective of where their use occurs, with the same effect as if the definitions of said terms were set forth in full and at length every time such terms are used;
- (g) the words "COUNTY" and "GOLF BREVARD" as used herein shall include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter;
- (h) the term "business day" or "business days" as used in this Agreement, and except as modified by the rules and regulations from time to time adopted by COUNTY, shall exclude Saturdays, Sundays and all holidays for federal banks in Brevard County, Florida; and
- (i) the headings of the sections of this Agreement, and the numbering or position thereof, are for convenience only in identifying and indexing the various provisions of this Agreement, and shall not in any way be deemed to affect the construction or interpretation of any provision of this Agreement.

**19.3 Construction of Agreement.**

This Agreement has been negotiated at "arm's length" by and between COUNTY and GOLF BREVARD, each having an opportunity to be represented by legal counsel of its choice and to negotiate the form and substance of this Agreement; and, therefore, in construing the provisions of this Agreement, no party shall be deemed disproportionately responsible for draftsmanship. No inference shall be drawn from the addition, deletion or modification of any language contained in any prior draft of this Agreement. This Agreement shall create the relationship of COUNTY and GOLF BREVARD.

## **20. CONFIRMATION AND REMOVAL OF THE BOARD OF DIRECTORS OF GOLF BREVARD**

### **20.1 Confirmation and Removal of Board of Directors.**

- (a) Each member of GOLF BREVARD 's board of directors shall be subject to confirmation by Brevard County Board of County Commissioners.
- (b) A super majority of the Brevard County Board of County Commissioners shall have the ability to remove any member of GOLF BREVARD's board of directors.

### **21. NO LIENS CREATED**

Each party covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of the other whomsoever, shall be bound by this provision of the Agreement. Should any such lien be filed, the GOLF BREVARD shall discharge the same within thirty (30) days thereafter by paying the same or by filing a bond, or otherwise, as permitted by law. GOLF BREVARD shall not be deemed to be the agent of the COUNTY so as to confer upon a laborer bestowing labor upon the Golf Course Property or upon a materialman who furnishes material incorporated in the construction of improvements upon the Golf Course Property, a mechanic's lien upon the Golf Course Property under the provisions of Chapter 713, Florida Statutes, 1975, and any subsequent revisions of that law.

### **22. SUBORDINATION**

This Agreement shall be subordinate to the provisions of any existing or future Agreement between the COUNTY and the United States of America relative to the operation or maintenance of the Valkaria Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for development of the Valkaria Airport. Except to the extent required for the performance of the obligations of GOLF BREVARD under this Agreement, nothing contained in this Agreement shall grant to GOLF BREVARD any rights whatsoever in the airspace above the premises other than those rights which are subject to Federal Aviation Administration orders, regulations or advisory circulars currently or subsequently effective. Compatible with all requirements under 14 CFR part 77. GOLF BREVARD expressly acknowledges it is conducting activities and managing property that is an airport.

### **23. NONDISCRIMINATION.**

GOLF BREVARD for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

- (a) That no person of the ground of race, color or national origin shall be excluded from participation or denied the benefits of, or be otherwise subject to discrimination in the use of the facility, GOLF BREVARD shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulation, Department of Transportation, Subtitle A, Office of the Secretary Part 21, Non-discrimination in Federally assisted programs of the

Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as such Regulations may be amended. GOLF BREVARD shall operate the facility in accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 u.s.c.794) and will assure that no qualified handicapped person shall, solely by reason of such person's handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, including discrimination in employment.

- (b) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or
- (c) be otherwise subjected to discrimination,
- (d) that GOLF BREVARD shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- (e) That in the event of breach of any of the above nondiscrimination covenants, COUNTY shall have the right to terminate the Agreement and to re-enter and as if said Agreement had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

#### **24. PROPERTY RIGHTS RESERVED AND CONTROLLING LEASE.**

Title to any building, structure or other improvement of a permanent character constructed, erected, or installed upon the premises by GOLF BREVARD as permitted by this Agreement shall forthwith vest the COUNTY subject to this Agreement. GOLF BREVARD shall not remove such improvements from the premises nor materially modify, waste, or destroy such improvements without the prior written consent of the COUNTY. Upon the expiration or sooner termination of this Agreement and all extensions thereof, the COUNTY's title to such improvements shall be free and clear of all claims to or against such improvements by GOLF BREVARD, any mortgagee of GOLF BREVARD, or any third person claiming under GOLF BREVARD. GOLF BREVARD shall defend and indemnify COUNTY against all liability and loss arising from such claims.

This Agreement and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which the COUNTY acquired the subject property from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the Lease of said lands from the Airport Owner, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by the Airport Owner pertaining to the Valkaria Airport and its lease of the Golf Course property to COUNTY as attached to this

Agreement and concurred with by the FAA.

Notwithstanding anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this agreement are non-exclusive and the COUNTY herein reserves the right to grant similar privileges to another Party on other locations not subject to this Agreement.

This Agreement shall in no way convey the exclusive use of any part of the Airport except as described herein and shall not be construed as providing any special privilege for any public portion of the Airport. The Airport reserves the right to Lease to other parties any portion of the Airport property not described in Exhibit A for any purpose deemed suitable for the Airport by the Airport.

**25. AGREEMENT OF THE COUNTY WITH THE UNITED STATES OF AMERICA.**

The terms and conditions hereof shall not be construed to prevent the COUNTY from making commitments it desires to the Federal Government or to the State of Florida to qualify for the expenditure of State or Federal funds upon the Golf Course Property.

**26. NATIONAL EMERGENCY.**

During any national emergency declared by the President or by the congress, the United States shall have the right to take exclusive or non-exclusive control and possession of the above-mentioned real property, or of such portion thereof as it may desire, rent to be abated accordingly in proportion to said occupancy.

**27. RESTRICTIONS IN LEASE WITH VALKARIA AIRPORT.**

GOLF BREVARD hereby agrees to abide with all elements as contained in the Airport Rules and Regulations and Minimum Standards for Valkaria Airport as attached hereto as Exhibit F and hereby made a part hereof.

**28. PERFORMANCE GUARANTEE SPECIAL CONDITIONS.**

- (a) The COUNTY reserves unto itself, its successors, and assigns for the use and benefit of the public, a right to flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described together with the right to cause in said airspace such noise as may be inherent in the operations of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport.
- (b) GOLF BREVARD shall restrict the height of structures, objects of natural growth and other obstructions to such a height so as to comply with Federal Aviation Regulation, Part 77 or as directed by the Airport.
- (c) GOLF BREVARD shall not use the said 211.111 acres for any use which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard. Clear zones shall remain clear of any permanent structures and golf course activity.
- (d) GOLF BREVARD is expressly prohibited from interfering with the landing and taking off of aircraft, of interfering with navigational aids/communications

equipment, prohibits activities with potential to attract wildlife, etc.). GOLF BREVARD expressly acknowledges the property is used as an airport.

- (e) Prior to any construction, a Notice of Proposed Construction, Federal Aviation Administration (FAA) Form 7460-1, should be submitted to and approved by the FAA if it falls within the requirements of FAR Part 77.13.
- (f) GOLF BREVARD shall provide any information requested by the COUNTY required to comply with this section and prior to any construction. GOLF BREVARD shall not begin any construction until express consent is given by the COUNTY in order to comply with any local, state, or federal laws and permitting requirements. GOLF BREVARD shall adhere to the rules and regulations of the Airport, minimum standards, and all local ordinances, building codes, fire codes or as otherwise required by law.
- (g) GOLF BREVARD agrees, at its sole cost and expense to maintain all of the improvements including the golf course and clubhouse in good state of repair and to keep the premises in a clean, neat, and orderly condition. Nothing in this clause shall constitute a waiver of any sovereign immunity or protections under 768.28 Florida Statutes.
- (h) GOLF BREVARD agrees hereby to indemnify and hold the FAA and the COUNTY harmless from any and all actions, demands, liabilities, claims, losses or litigation arising out of or connected with GOLF BREVARD which results from any alleged act or negligence of GOLF BREVARD or any condition existing on the premises. Nothing in this clause or agreement shall constitute a waiver of any sovereign immunity or protections under 768.28 Florida Statutes
- (i) If any section, subsection, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

## **29. VALKARIA AIRPORT LEASE AND FAA REGULATIONS.**

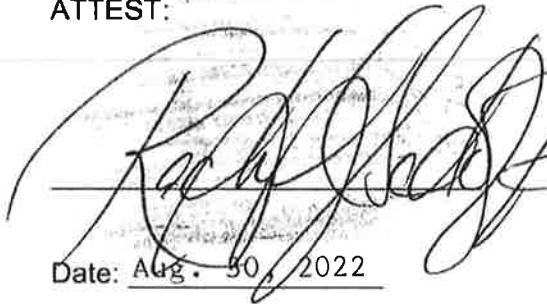
The parties expressly recognize that the Golf Course Property is leased from the owner Valkaria Airport to the Brevard County Parks and Recreation Department, both of which are entities of Brevard County. This Agreement between COUNTY and GOLF BREVARD constitutes a management and operation agreement as laid out herein.

To the extent of any conflict between this Agreement and the lease between the Valkaria Airport and the Brevard County Parks and Recreation Department, said lease shall control to the extent of the conflict. If any current or future regulations, rules, legal guidance of the FAA, or the state and federal government conflict with this Agreement, the Parties shall comply with such as required.

**WHEREFORE**, COUNTY and GOLF BREVARD have caused this Agreement to be executed, sealed and delivered as of the day and year written below.

ATTEST:

COUNTY:

  
Date: Aug. 30, 2022

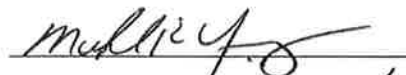
**BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA**

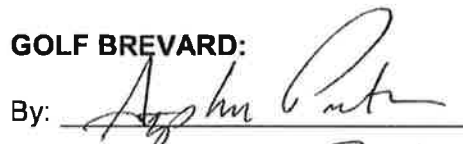
By:   
Kristine Zonka, Chair


Date: Aug. 30, 2022

WITNESSES:

GOLF BREVARD:

  
Print Name: Michael R. Yurigan

By:   
Print: Stephen Proctor  
Title: Chair, Golf Brevard, Inc.

  
Print Name: MARY ELLEN DONNER

Date: 9/8/2022

(CORPORATE SEAL)

Review for legal form and Content:

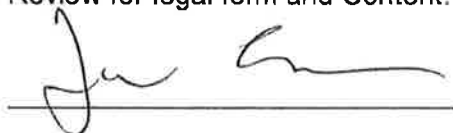


Exhibit A	Legal Description
Exhibit B	Golf Course Maintenance Standards
Exhibit C	Prohibited Uses
Exhibit D	Reporting Requirements
Exhibit E	St. Johns Permit
Exhibit F	Lease Agreement



## EXHIBIT "A" LEGAL DESCRIPTIONS

### THE HABITAT LEGAL DESCRIPTION

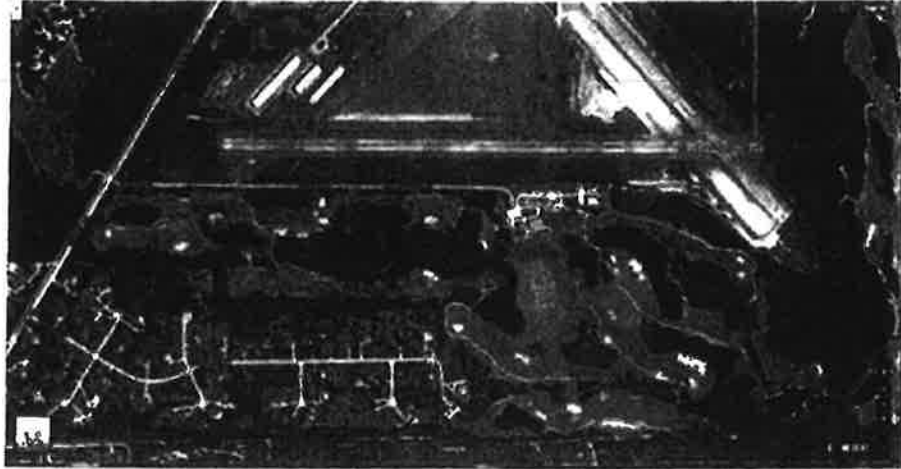
Part of Sections 17 and 18, Township 29 South, Range 38 East, Brevard County, Florida, being more particularly described as follows:

Beginning at the Southeast corner of Section 18, Township 29 South, Range 38 East, Brevard County, Florida; thence S 88° 43' 10" W along the south line of the Southeast ¼ of Section 18 a distance of 968.90 feet to the Southeast corner of Pomello Ranch, Unit Three, as recorded in Plat Book 28, Page 13, Public Records of Brevard County, Florida; thence N 0° 02' 57" East a distance of 40.00 feet; thence N 88° 43' 10"

East a distance of 140.00 feet; thence N 40° 17' 42" East a distance of 294.01 feet; thence N 0° 2' 57" East a distance of 215.00 feet; thence N 52° 33' 21" West a distance of 415.35 feet to the east line of aforesaid Pomello Ranch, Unit Three; thence N 0° 02' 57" East a distance of 255.09 feet to the Northeast corner of said plat of Pomello Ranch, Unit Three; thence S 88° 43' 10" West along the north line of Pomello Ranch, Unit Three and Pomello Ranch, Unit Two, for a distance of 1601.38 feet; thence N 0° 02' 30" East a distance of 330.00 feet; thence S 88° 43' 10" West a distance of 1115.44 feet to the easterly R/W line of Valtaria Road; thence N 30° 27' 26" East along said easterly R/W line a distance of 694.66 feet; thence East a distance of 4287.79 feet; thence S 42° 30' 00" East a distance of 960.00 feet; thence N 47° 36' 00" East a distance of 540.00 feet; thence N 8° 58' 06" East a distance of 849.11 feet; thence N 25° 56' 32" West a distance of 411.46 feet; thence North a distance of 280.00 feet; thence N 21° 04' 04" East a distance of 581.97 feet; thence S 89° 47' 56" East a distance of 525.00 feet to the east line of property described in O.R.B. 171, Page 493; thence S 0° 13' 58" East along said east line a distance of 2230.32 feet; thence S 0° 05' 27" East a distance of 1345.23 feet to the Southeast corner of the Southwest ¼ of aforesaid Section 17, Township 29 South, Range 38 East, thence N 89° 49' 54" West a distance of 2688.09 feet to the P.O.B.

Contains 211.111 Acres more or less.

The Habitat Golf Course



**Exhibit "B"**  
**GOLF COURSE MAINTENANCE STANDARDS**

Golf Brevard shall maintain the Habitat Golf Course in accordance with the current edition of Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses as prescribed by the Department of Environmental Protection as follows:

**GOLF COURSE MAINTENANCE**

The golf courses will have soil testing performed annually.

Golf Brevard will comply with all terms and conditions of the St. John's River Management Water District Consumptive Use Permit Number 20-009-1764-5, including but not limited to, the monthly water testing at the Habitat Golf Course. The St. John's River Water District Consumptive Use Permit is attached.

Greens will be aerified and verticut.

Top dressing will be applied following aerification. Fairways and tees will be aerified.

Tees, fairways and roughs will be fertilized.

Integrated Pest Management methods and techniques will be followed on all courses.

Lakes and drainage will be maintained by Golf Brevard and the lakes will be aesthetically pleasing and environmentally sound.

All chemicals, pesticide, fertilizer, and fuel storage must meet OSHA and Florida statutes.

**LANDSCAPE MAINTENANCE**

All landscape beds and lawn areas around the clubhouse and property will be maintained in a first-class standard.

Landscape materials will be designed and installed to support both sun and/or shade as the areas present themselves.

All cart paths will be clean, well defined, and in good repair.

All driveways and parking lots will be maintained in good condition.

Course amenities will be replaced or repaired on an as needed basis.

**BUILDING MAINTENANCE**

All buildings, exterior and interior, will be well-maintained, clean, orderly, properly lighted and in good condition.

The heating, ventilating and air conditioning (HVAC) system will be inspected.

All buildings will be properly secured and security systems in existing buildings

will be operational and maintained.

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**Exhibit "C"**  
**PROHIBITED USES**

1. The term Prohibited Use shall include, without limitation, the following:
  - (a) adult entertainment uses (as such term is defined in the Brevard County Zoning Code), and any uses that include any exhibition of nude or partially dressed persons, the sale or rental of "X-Rated" or adult movies, magazines, media items or materials;
  - (b) the retail or wholesale of any goods or services other than the sale of golf related products from the golf Pro Shop or the sale of food and beverages in the Clubhouse; and
  - (c) any other use that COUNTY reasonably believes is inconsistent with the character and use of Golf Course Properties.
2. General Rules for Golf Club Management and Operation
  - (a) Maintenance, repair and construction activities (including, without limitation, Golf Course Properties maintenance) shall be performed in accordance with any and all applicable noise ordinances.

**Exhibit "D"**  
**REPORTING REQUIREMENTS**

The monthly and annual reports required to be given by GOLF BREVARD to COUNTY shall each contain the following information:

**Monthly & Annual Reports:**

- (i) A profit and loss statement, balance sheet, cash flow statement, and budget variance report showing the results of operation of the Golf Course Properties for such month and for the Agreement Year to date, which statement shall include sufficient detail to reflect all Gross Revenues and Golf Course Properties Expenses, and which shall further breakdown revenues and expenses between the golf courses, restaurants, pro shop sales, rentals and lessons, and other categories as appropriate and/or as reasonably required by COUNTY.
- (ii) Total Rounds Report with comparison to prior year
- (iii) Course Maintenance Schedules
- (iv) Update on Current Conditions
- (v) Rate Schedule for each player category
- (vi) Capital Projects Update

The monthly financial information included as part of those reports shall be unaudited and unreviewed; the annual financial information included as part of the annual report shall be audited by an independent certified public accountant selected by COUNTY.

**EXHIBIT E**  
Habitat Golf Course  
Consumptive Use Permit Number 1764-6

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# St. Johns River Water Management District

Michael A. Registrar, P.E., Executive Director

4049 Reid Street • P.O. Box 1429 • Palatka, FL 32178-1429 • 386-329-4500 • [www.sjrwmd.com](http://www.sjrwmd.com)

January 4, 2022

Mary Ellen Donner  
Brevard County Parks and Recreation  
2725 Judge Fran Jamieson Way Bldg A  
Melbourne, FL 32940-6605

SUBJECT: Habitat Golf Course, Consumptive Use Permit Number 1764-6  
Brevard County, Florida

Dear Ms. Donner:

Enclosed is the permit authorized by the District on January 4, 2022. The enclosed permit is a legal document and should be kept with other important records. Please read the permit and conditions carefully because the referenced conditions may require submittal of additional information. Where possible, please submit all information required to comply with permit conditions electronically at [www.sjrwmd.com/permitting](http://www.sjrwmd.com/permitting) via the District's e-Permitting portal.

Please be advised that the District will not publish a notice in the newspaper advising the public that the permit has been issued. Enclosed is information on publishing notice of the permit. If a newspaper notice is not published to close the point of entry, the time to challenge the issuance of the permit will not expire. A potential petitioner has 26 days from the date on which the actual notice is deposited in the mail, or 21 days from publication of this notice when actual notice is not provided, within which to file a petition for an administrative hearing pursuant to Sections 120.569 and 120.57, *Florida Statutes*. Receipt of such a petition by the District may result in this permit becoming null and void. Also, enclosed is a copy of the Notice of Rights.

If you have any questions concerning the permit, please contact Jason Sirois in the Palm Bay Service Center at (321) 409-2122 or Rex Cosgrove in the Palm Bay Service Center at (321) 473-1353

Sincerely,

Richard Burklew, Bureau Chief  
Water Use Regulation

## GOVERNING BOARD

Rick Bradley, Chairman  
PLUMING HOUND

Maryann H. Chynoweth, Vice Chairman  
ORANGE BUNCH

J. Chris Peterson, Secretary  
WILLOW PARK

Ron Holmes, Treasurer  
OCCOA



ST. JOHNS RIVER WATER MANAGEMENT DISTRICT  
Post Office Box 1429  
Palatka, Florida 32178-1429

PERMIT NO: 1764-6

DATE ISSUED: January 4, 2022

PROJECT NAME: Habitat Golf Course

**A PERMIT AUTHORIZING:**

The District authorizes, as limited by the attached permit conditions, the use of 74 million gallons per year (mgy) (0.20 million gallons per day (mgd), annual average) of surface water and 32.4 mgy (0.09 mgd, annual average) of groundwater from the surficial and Upper Floridan aquifers to irrigate 92 acres of golf course turf and landscape; and 2.7 mgy (0.007 mgd, annual average) of groundwater from the surficial aquifer for domestic use.

**LOCATION:**

Site: Habitat Golf Course  
Brevard County

SECTION(S):  
17, 18

TOWNSHIP(S):  
29S

RANGE(S):  
38E

**ISSUED TO:**

Brevard County Parks and Recreation  
2725 Judge Fran Jamieson Way Bldg A  
Melbourne, FL 32940-6605

The permittee agrees to hold and save the St. Johns River Water Management District and its successors harmless from any and all damages, claims, or liabilities which may arise from permit issuance. Said application, including all plans and specifications attached thereto, is by reference made a part hereof.

This permit does not convey to the permittee any property rights nor any rights or privileges other than those specified herein, nor relieve the permittee from complying with any applicable local government, state, or federal, rule, or ordinance.

This permit may be revoked, modified or transferred at any time pursuant to the appropriate provisions of Chapter 373, Florida Statutes and 40C-1, Florida Administrative Code.

**PERMIT IS CONDITIONED UPON:**

See conditions on attached "Exhibit A", dated January 4, 2022

**AUTHORIZED BY:** St. Johns River Water Management District  
Division of Regulatory Services

By: 

Richard Burklew  
Bureau Chief

**"EXHIBIT A"**  
**CONDITIONS FOR ISSUANCE OF PERMIT NUMBER 1764-6**  
**Habitat Golf Course**  
**DATE ISSUED: January 04, 2022**

1. With advance notice to the permittee, District staff with proper identification shall have permission to enter, inspect, observe, collect samples, and take measurements of permitted facilities to determine compliance with the permit conditions and permitted plans and specifications. The permittee shall either accompany District staff onto the property or make provision for access onto the property.
2. Nothing in this permit should be construed to limit the authority of the St. Johns River Water Management District to declare a water shortage and issue orders pursuant to Chapter 373, F.S. In the event of a declared water shortage, the permittee must adhere to the water shortage restrictions, as specified by the District. The permittee is advised that during a water shortage, reports shall be submitted as required by District rule or order.
3. Prior to the construction, modification or abandonment of a well, the permittee must obtain a water well permit from the St. Johns River Water Management District or the appropriate local government pursuant to Chapter 40C-3, F.A.C. Construction, modification, or abandonment of a well will require modification of the consumptive use permit when such construction, modification, or abandonment is other than that specified and described on the consumptive use permit application form.
4. Leaking or inoperative well casings, valves, or controls must be repaired or replaced as required to eliminate the leak or make the system fully operational.
5. The permittee's consumptive use of water as authorized by this permit shall not interfere with legal uses of water existing at the time of permit application. If interference occurs, the District shall revoke the permit, in whole or in part, to curtail or abate the interference, unless the interference associated with the permittee's consumptive use of water is mitigated by the permittee pursuant to a District-approved plan.
6. The permittee's consumptive use of water as authorized by this permit shall not have significant adverse hydrologic impacts to off-site land uses existing at the time of permit application. If significant adverse hydrologic impacts occur, the District shall revoke the permit, in whole or in part, to curtail or abate the adverse impacts, unless the impacts associated with the permittee's consumptive use of water are mitigated by the permittee pursuant to a District-approved plan.
7. The permittee shall notify the District in writing within 30 days of any sale, transfer, or conveyance of ownership or any other loss of permitted legal control of the Project and/or related facilities from which the permitted consumptive use is made. Where permittee's control of the land subject to the permit was demonstrated through a lease, the permittee must either submit documentation showing that it continues to have legal control or transfer control of the permitted system/project to the new landowner or new lessee. All transfers of ownership are subject to the requirements of Rule 40C-1.612, F.A.C. Alternatively, the permittee may surrender the consumptive use permit to the District, thereby relinquishing the right to conduct any activities under the permit.
8. A District-issued identification tag shall be prominently displayed at each withdrawal site by permanently affixing such tag to the pump, headgate, valve, or other withdrawal facility as provided by Rule 40C-2.401, F.A.C. The permittee shall notify the District in the event that a replacement tag is needed.

9. The permittee's consumptive use of water as authorized by this permit shall not adversely impact wetlands, lakes, rivers, or springs. If adverse impacts occur, the District shall revoke the permit, in whole or in part, to curtail or abate the adverse impacts, unless the impacts associated with the permittee's consumptive use of water are mitigated by the permittee pursuant to a District-approved plan.
10. The permittee's consumptive use of water as authorized by this permit shall not reduce a flow or level below any minimum flow or level established by the District or the Department of Environmental Protection pursuant to Section 373.042 and 373.0421, F.S. If the permittee's use of water causes or contributes to such a reduction, then the District shall revoke the permit, in whole or in part, unless the permittee implements all provisions applicable to the permittee's use in a District-approved recovery or prevention strategy.
11. The permittee's consumptive use of water as authorized by the permit shall not cause or contribute to significant saline water intrusion. If significant saline water intrusion occurs, the District shall revoke the permit, in whole or in part, to curtail or abate the saline water intrusion, unless the saline water intrusion associated with the permittee's consumptive use of water is mitigated by the permittee pursuant to a District-approved plan.
12. Legal uses of water existing at the time of the permit application may not be interfered with by the consumptive use. If unanticipated interference occurs, the District may revoke the permit in whole or in part to curtail or abate the interference unless the permittee mitigates for the interference. In those cases where other permit holders are identified by the District as also contributing to the interference, the permittee may choose to mitigate in a cooperative effort with these other permittees. The permittee must submit a mitigation plan to the District for approval prior to implementing such mitigation.
13. All consumptive uses authorized by this permit shall be implemented as conditioned by this permit, including any documents incorporated by reference in a permit condition. The District may revoke this permit, in whole or in part, or take enforcement action, pursuant to Section 373.136 or 373.243, F.S., unless a permit modification has been obtained to address the noncompliance. The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.
14. This permit does not convey to the permittee any property rights or privileges other than those specified herein, nor relieve the permittee from complying with any applicable local government, state, or federal law, rule, or ordinance.
15. A permittee may seek modification of any term of an unexpired permit. The permittee is advised that Section 373.239, F.S., and Rule 40C-2.331, F.A.C., are applicable to permit modifications.
16. If chemicals are to be injected into the irrigation system, the permittee shall install and maintain a backflow prevention device on all wells or surface pumps that are connected to the irrigation system.
17. All submittals made to demonstrate compliance with this permit must include CUP number 1764 labeled on the submittal. Submittals should be made on-line at [www.sjrwmd.com/permitting](http://www.sjrwmd.com/permitting) whenever possible.
18. This permit will expire on January 3, 2042.
19. The average annual surface water withdrawals from onsite stormwater ponds to irrigate urban landscape and golf course is 74 million gallons (0.20 mgd average). When available, additional surface water may be used if needed and must be used prior to utilizing

groundwater.

20. Maximum annual groundwater withdrawals from the Upper Floridan aquifer using wells A (Station ID 5040), C (Station ID 5042), D (Station ID 5043), and E (Station ID 5044) for irrigation and back-up supply use is 32.4 million gallons (0.09 mgd average). All available surface water must be used prior to using groundwater and the annual groundwater withdrawal shall be less than this except during a two-in-ten year drought.
21. Maximum annual groundwater withdrawals from the surficial aquifer using well F (Station ID 5045) for domestic use must not exceed 2.7 million gallons (0.0074 mgd average).
22. The permittee must maintain a staff gauge in Lake D which provides surface water elevations in NGVD. Records must be kept of lake levels on a daily basis and submitted to the District on an annual basis. The records must be tabulated for one-year periods ending June 30th of each year and submitted to the District in acceptable electronic format.
23. The permittee must maintain a float valve mechanism (or functional equivalent) at wells A (Station ID 5040), C (Station ID 5042), D (Station ID 5043), and E (Station ID 5044). The float valves must be set so that augmentation does not start until the surface water elevation, as measured at the staff gauge in Lake D, reaches 18.50 feet NGVD, and must cease when the water level reaches 19.00 feet NGVD. If problems with off-site seepage or discharges result from maintaining the pond level at the permitted reference elevation range, the permittee must reduce the level so that it does not contribute to off-site seepage or discharge.
24. The total withdrawal from wells A (Station ID 5040), C (Station ID 5042), D (Station ID 5043), E (Station ID 5044), F (Station ID 5045), and Pumps G (Station ID 1188), H (Station ID 38591), and I (Station ID 38592), as listed on the application, must be recorded continuously, totaled monthly, and reported to the District at least every six months from the initiation of the monitoring using District Form No. EN-50. The reporting dates each year will be as follows:

Reporting Period	Report Due Date
January - June	July 31
July - December	January 31
25. Wells A (Station ID 5040), C (Station ID 5042), D (Station ID 5043), E (Station ID 5044), F (Station ID 5045), and Pumps G (Station ID 1188), H (Station ID 38591), and I (Station ID 38592), as listed on the permit application, must be equipped with totalizing flowmeters. The flowmeters must maintain 95% accuracy, be verifiable and be installed according to the manufacturer's specifications.
26. The permittee must have all flow meters checked for accuracy at least once every 10 years, specifically before January 3, 2032, and recalibrated if the difference between the actual flow and the meter reading is greater than 5%. Flow Meter Accuracy Report Form (EN-51) must be submitted to the District within 10 days of the inspection/calibration.
27. The permittee must implement the Water Conservation Plan submitted to the District on December 13, 2021, in accordance with the schedule contained therein.
28. The lowest quality water source, such as reclaimed water, must be used as irrigation water in place of groundwater when available and deemed feasible pursuant to District rules and applicable state law.

### Notice of Rights

1. A person whose substantial interests are or may be affected has the right to request an administrative hearing by filing a written petition with the St. Johns River Water Management District (District). Pursuant to Chapter 28-106 and Rule 40C-1.1007, Florida Administrative Code, the petition must be filed (received) either by delivery at the office of the District Clerk at District Headquarters, P. O. Box 1429, Palatka Florida 32178-1429 (4049 Reid St., Palatka, FL 32177) or by e-mail with the District Clerk at [Clerk@sjrwmd.com](mailto:Clerk@sjrwmd.com), within twenty-six (26) days of the District depositing the notice of District decision in the mail (for those persons to whom the District mails actual notice), within twenty-one (21) days of the District emailing the notice of District decision (for those persons to whom the District emails actual notice), or within twenty-one (21) days of newspaper publication of the notice of District decision (for those persons to whom the District does not mail or email actual notice). A petition must comply with Sections 120.54(5)(b)4. and 120.569(2)(c), Florida Statutes, and Chapter 28-106, Florida Administrative Code. The District will not accept a petition sent by facsimile (fax), as explained in paragraph no. 4 below.
2. Please be advised that if you wish to dispute this District decision, mediation may be available and that choosing mediation does not affect your right to an administrative hearing. If you wish to request mediation, you must do so in a timely-filed petition. If all parties, including the District, agree to the details of the mediation procedure, in writing, within 10 days after the time period stated in the announcement for election of an administrative remedy under Sections 120.569 and 120.57, Florida Statutes, the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, shall be tolled to allow mediation of the disputed District decision. The mediation must be concluded within 60 days of the date of the parties' written agreement, or such other timeframe agreed to by the parties in writing. Any mediation agreement must include provisions for selecting a mediator, a statement that each party shall be responsible for paying its pro-rata share of the costs and fees associated with mediation, and the mediating parties' understanding regarding the confidentiality of discussions and documents introduced during mediation. If mediation results in settlement of the administrative dispute, the District will enter a final order consistent with the settlement agreement. If mediation terminates without settlement of the dispute, the District will notify all the parties in writing that the administrative hearing process under Sections 120.569 and 120.57, Florida Statutes, is resumed. Even if a party chooses not to engage in formal mediation, or if formal mediation does not result in a settlement agreement, the District will remain willing to engage in informal settlement discussions.
3. A person whose substantial interests are or may be affected has the right to an informal administrative hearing pursuant to Sections 120.569 and 120.57(2), Florida Statutes, where no material facts are in dispute. A petition for an Informal hearing must also comply with the requirements set forth in Rule 28-106.301, Florida Administrative Code.

#### Notice of Rights

4. A petition for an administrative hearing is deemed filed upon receipt of the complete petition by the District Clerk at the District Headquarters in Palatka, Florida during the District's regular business hours. The District's regular business hours are 8:00 a.m. – 5:00 p.m., excluding weekends and District holidays. Petitions received by the District Clerk after the District's regular business hours shall be deemed filed as of 8:00 a.m. on the District's next regular business day. The District's acceptance of petitions filed by e-mail is subject to certain conditions set forth in the District's Statement of Agency Organization and Operation (issued pursuant to Rule 28-101.001, Florida Administrative Code), which is available for viewing at [www.slrwmd.com](http://www.slrwmd.com). These conditions include, but are not limited to, the petition being in the form of a PDF or TIFF file and being capable of being stored and printed by the District. Further, pursuant to the District's Statement of Agency Organization and Operation, attempting to file a petition by facsimile is prohibited and shall not constitute filing.
5. Failure to file a petition for an administrative hearing within the requisite timeframe shall constitute a waiver of the right to an administrative hearing. (Rule 28-106.111, Florida Administrative Code).
6. The right to an administrative hearing and the relevant procedures to be followed are governed by Chapter 120, Florida Statutes, Chapter 28-106, Florida Administrative Code, and Rule 40C-1.1007, Florida Administrative Code. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means the District's final action may be different from the position taken by it in this notice. A person whose substantial interests are or may be affected by the District's final action has the right to become a party to the proceeding, in accordance with the requirements set forth above.
7. Pursuant to Section 120.68, Florida Statutes, a party to the proceeding before the District who is adversely affected by final District action may seek review of the action in the District Court of Appeal by filing a notice of appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, within 30 days of the rendering of the final District action.
8. A District action is considered rendered, as referred to in paragraph no. 7 above, after it is signed on behalf of the District and filed by the District Clerk.
9. Failure to observe the relevant timeframes for filing a petition for judicial review as described in paragraph no. 7 above will result in waiver of that right to review.

NOR, Decision, DOC.001  
Revised 12.7.11

**Notice of Rights**

**Certificate of Service**

I HEREBY CERTIFY that a copy of the foregoing Notice of Rights has been sent to the  
permittee:

Brevard County Parks and Recreation  
2725 Judge Fran Jamieson Way Bldg A  
Melbourne, FL 32940-6605

This 4th day of January 2022.



Richard Burklew, Bureau Chief

Permit Number: 1764-6

### NOTICING INFORMATION

Please be advised that the St. Johns River Water Management District will not publish a notice in the newspaper advising the public that it has issued a permit for this project.

Newspaper publication, using the District's notice form, notifies members of the public of their right to challenge the issuance of the permit. If proper notice is given by newspaper publication, then there is a 21-day time limit for someone to file a petition for an administrative hearing to challenge the issuance of the permit.

To close the point of entry for filing a petition, you may publish (at your own expense) a one-time notice of the District's decision in a newspaper of general circulation within the affected area as defined in Section 50.011 of the Florida Statutes. If you do not publish a newspaper notice to close the point of entry, the time to challenge the issuance of your permit will not expire and someone could file a petition even after your project is constructed.

A copy of the notice form and a partial list of newspapers of general circulation are attached for your convenience. However, you are not limited to those listed newspapers. If you choose to close the point of entry and the notice is published, the newspaper will return to you an affidavit of publication. In that event, it is important that you either submit a scanned copy of the affidavit by emailing it to [compliancesupport@sjrwmd.com](mailto:compliancesupport@sjrwmd.com) (preferred method) or send a copy of the original affidavit to:

Office of Business and Administrative Services  
4049 Reid Street  
Palatka, FL 32177

If you have any questions, please contact the Office of Business and Administrative Services at (386) 329-4570.



NOTICE OF AGENCY ACTION TAKEN BY THE  
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

Notice is given that on \_\_\_\_\_ the District issued Permit No. \_\_\_\_\_ for a  
Consumptive Use Permit to serve (type of project) \_\_\_\_\_ activities. The total  
allocation authorized is \_\_\_\_\_ mgd of (groundwater/surface water). The project is located in  
\_\_\_\_\_ County, Section(s) \_\_\_\_\_, Township \_\_\_\_\_ South, Range  
\_\_\_\_\_ East. The permit applicant is \_\_\_\_\_.

If you wish to receive a copy of a Technical Staff Report (TSR) that provides the St. Johns River Water Management District (District) staffs' analysis on the above-listed compliance report(s) and associated permit(s), please submit your request to Office Director, Office of Business and Administrative Services, PO Box 1429, Palatka, FL 32178-1429. You may view the TSR by going to the Permitting section of the District's website at [www.sjrwmd.com/permitting/index.html](http://www.sjrwmd.com/permitting/index.html). To obtain information on how to find and view a TSR, visit [https://permitting.sjrwmd.com/permitting/html/EP\\_FAQs.html](https://permitting.sjrwmd.com/permitting/html/EP_FAQs.html), and then follow the directions provided under "How to find a Technical Staff Report (TSR) or other application file documents."

A person whose substantial interests are or may be affected has the right to request an administrative hearing by filing a written petition with the District. Pursuant to Chapter 28-106 and Rule 40C-1.1007, Florida Administrative Code (F.A.C.), the petition must be filed (received) either by delivery at the office of the District Clerk at District Headquarters, P. O. Box 1429, Palatka Florida 32178-1429 (4049 Reid St., Palatka, FL 32177) or by e-mail with the District Clerk at [Clerk@sjrwmd.com](mailto:Clerk@sjrwmd.com), within twenty-one (21) days of newspaper publication of the notice of District decision (for those persons to whom the District does not mail or email actual notice). A petition for an administrative hearing is deemed filed upon receipt of the complete petition by the District Clerk at the District Headquarters in Palatka, Florida during the District's regular business hours. The District's regular business hours are 8 a.m. – 5 p.m., excluding weekends and District holidays. Petitions received by the District Clerk after the District's regular business hours shall be deemed filed as of 8 a.m. on the next regular District business day. A petition must comply with Sections 120.54(5)(b)4. and 120.569(2)(c), Florida Statutes (F.S.), and Chapter 28-106, F.A.C. The District's acceptance of petitions filed by e-mail is subject to certain conditions set forth in the District's Statement of Agency Organization and Operation (issued pursuant to Rule 28-101.001, F.A.C.), which is available for viewing at [www.sjrwmd.com](http://www.sjrwmd.com). The District will not accept a petition sent by facsimile (fax). Mediation may be available if you meet the conditions stated in the full Notice of Rights (see last paragraph).

The right to an administrative hearing and the relevant procedures to be followed are governed by Chapter 120, F.S., Chapter 28-106, F.A.C., and Rule 40C-1.1007, F.A.C. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means the District's final action may be different from the position taken by it in this notice. **Failure to file a petition for an administrative hearing within the requisite time frame shall constitute a waiver of the right to an administrative hearing. (Rule 28-106.111, F.A.C.).**

If you wish to do so, please visit [http://www.sjrwmd.com/nor\\_dec/](http://www.sjrwmd.com/nor_dec/) to read the complete Notice of Rights to determine any legal rights you may have concerning the District's decision(s) on the Consumptive Use Permit Application(s) described above. You can also request the Notice of Rights by contacting the Office Director, Office of Business and Administrative Services, P. O. Box 1429, Palatka, FL 32178, phone (386)329-4570.

## **NEWSPAPER ADVERTISING**

### **ALACHUA**

The Alachua County Record, Legal Advertising  
P. O. Box 806  
Gainesville, FL 32602  
352-377-2444/ fax 352-338-1986

### **BRADFORD**

Bradford County Telegraph, Legal Advertising  
P. O. Drawer A  
Starks, FL 32901  
904-864-6305/ fax 904-864-8628

### **CLAY**

Clay Today, Legal Advertising  
1560 Kinsley Ave., Suite 1  
Orange Park, FL 32073  
904-264-3200/ fax 904-264-3285

### **FLAGLER**

Flagler Tribune, c/o News Journal  
P. O. Box 2831  
Daytona Beach, FL 32120-2831  
386-681-2322

### **LAKE**

Daily Commercial, Legal Advertising  
P. O. Drawer 490007  
Leesburg, FL 34749  
352-365-8235/fax 352-365-1951

### **NASSAU**

News-Leader, Legal Advertising  
P. O. Box 786  
Fernandina Beach, FL 32035  
904-261-3696/fax 904-261-3698

### **ORANGE**

Sentinel Communications, Legal Advertising  
633 N. Orange Avenue  
Orlando, FL 32801  
407-420-5160/ fax 407-420-5011

### **PUTNAM**

Palatka Daily News, Legal Advertising  
P. O. Box 777  
Palatka, FL 32178  
386-312-5200/ fax 386-312-5209

### **SEMINOLE**

Seminole Herald, Legal Advertising  
300 North French Avenue  
Sanford, FL 32771  
407-323-9408

### **BAKER**

Baker County Press, Legal Advertising  
P. O. Box 598  
Macclenny, FL 32063  
904-259-2400/ fax 904-259-6502

### **BREVARD**

Florida Today, Legal Advertising  
P. O. Box 419000  
Melbourne, FL 32941-9000  
321-242-3832/ fax 321-242-8618

### **DUVAL**

Daily Record, Legal Advertising  
P. O. Box 1769  
Jacksonville, FL 32201  
904-356-2468 / fax 904-353-2628

### **INDIAN RIVER**

Treasure Coast News, Legal Advertising  
760 NW Enterprise Dr.  
Port St. Lucie, FL 34986  
772-283-5252

### **MARION**

Ocala Star Banner, Legal Advertising  
2121 SW 19th Avenue Road  
Ocala, FL 34474  
352-867-4010/fax 352-867-4126

### **OKEECHOBEE**

Okeechobee News, Legal Advertising  
P. O. Box 639  
Okeechobee, FL 34973-0639  
863-763-3134/fax 863-763-5901

### **OSCEOLA**

Little Sentinel, Legal Advertising  
633 N. Orange Avenue  
Orlando, FL 32801  
407-420-5160/ fax 407-420-5011

### **ST. JOHNS**

St. Augustine Record, Legal Advertising  
P. O. Box 1630  
St. Augustine, FL 32085  
904-819-3439

### **VOLUSIA**

News Journal Corporation, Legal Advertising  
P. O. Box 2831  
Daytona Beach, FL 32120-2831  
(386) 681-2322

**Exhibit F**

**Lease Agreement between Valkaria Airport and the Brevard County Parks  
and Recreation Department**

**TO BE REPLACED WITH EXECUTED COPY OF LEASE UPON COUNTY  
COMMISSION APPROVAL**

## **LEASE AGREEMENT**

THIS LEASE AGREEMENT, made and entered into this 30th day of August, 2022 by the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, a political subdivision of the State of Florida and between the VALKARIA AIRPORT, a County Airport, hereinafter referred to as "Airport", and the DEPARTMENT OF PARKS AND RECREATION, an organizational Division of Brevard County, hereinafter referred to as "Tenant".

### **WITNESSETH:**

WHEREAS, the United States of America, by Quit-Claim Deed, dated, September 8, 1958, granted to Brevard County, acting by and through its Board of County Commissioners, 631.65 acres, more or less, which lands are known as the Valkaria Airport; and

WHEREAS, the Brevard County Board of County Commissioners has made improvements to the approximately 211.11 acres of the said Airport by the development of the Valkaria Golf Course; and

WHEREAS, the development of the said 211.111 acres as a County Golf Course will directly and indirectly benefit the Airport property; and

WHEREAS, the Property will be used solely as a golf course; and

WHEREAS, the Valkaria Golf Course is a public recreation facility open to any person who wishes to utilize the facilities without exception or qualification; and

WHEREAS, Paragraph 6 of the Quit-Claim Deed of September 8, 1958, provided that the Valkaria Airport shall not be used for any purpose other than airport purposes without written consent of the Administrator of the Federal Aviation Agency, which consent shall be granted after the Administrator finds that such property can be so used for other than airport purposes without materially and adversely affecting the development, improvement, operation or maintenance of the Airport; and

WHEREAS, in view of the foregoing, the Airport Fund shall be paid for the use of the airport property for use as a recreational facility.

NOW, THEREFORE, the parties hereby agree as follows:

### **1. TERM.**

The initial term of this agreement shall be ten years. Upon mutual written agreement of both parties, and concurrence from the FAA, this agreement may be extended for an additional period of ten years.

### **2. PROPERTY.**

The property subject to this Agreement shall be the property described in Exhibit "A".

### **3. PURPOSE.**

The Tenant shall utilize the land Leased from the Airport as a Golf Course and related recreational facilities open to all persons.

### **4. RENTAL.**

The Tenant hereby agrees to pay to the Airport, as required herein, the total annual sum of \$130,000.00 in monthly installments of \$10,833.33 due and payable in advance on the third day of each month commencing on the effective date of this agreement.

Beginning March 1<sup>st</sup>, 2023 and each year thereafter, the Base Rent will be increased by 2% annually or by the Consumer Price Index for All Urban Consumers (CPI-U) utilizing the previous calendar years 12-month CPI average, whichever amount is higher.

The golf course property will be appraised every ten (10) years and the Base Rent amount will be adjusted to equal 8% of the property's Fair Market Value, as established by the latest available appraisal, which shall be reviewed for federal grant assurance consistency and approved by the Federal Aviation Administration.

### **5. FAIR MARKET VALUE.**

Lease payments shall be based upon fair market value of the property as described above and as determined by a current appraisal of the value of the property.

### **6. DELINQUENCIES.**

Payments required shall be considered delinquent thirty (30) days after the date they are due and payable. A service charge at the applicable prime rate per annum from the date due and payable until paid shall be assessed the Tenant for such delinquencies.

### **7. NO LIENS CREATED.**

Each party covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of the other whomsoever, shall be bound by this provision of the Lease. Should any such lien be filed, the Tenant shall discharge the same within thirty (30) days thereafter by paying the same or by filing a bond, or otherwise, as permitted by law. The Tenant shall not be deemed to be the agent of the Airport so as to confer upon a laborer bestowing labor upon the Leased premises, or upon a materialman who furnishes material incorporated in the construction of improvements upon the Leased premises, a mechanic's lien upon the Airport's estate under the provisions of Chapter 713, Florida Statutes, 1975, and any subsequent revisions of that law.

#### **8. LEASEHOLD INTEREST.**

Tenant may, from time to time, pledge its Leasehold interest as security for a bona fide loan or loans from reputable established lenders or lending institutions, such pledges to be subject to the approval of the Airport. The Tenant shall not subordinate the Airport's interest in the premises to any such security holder under any circumstances whatsoever.

#### **9. SUBORDINATION.**

This Lease Agreement shall be subordinate to the provisions of any existing or future Agreement between the County and the United States of America relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for development of the Valkaria Airport. Except to the extent required for the performance of the obligations of Tenant in this Lease, nothing contained in this Agreement shall grant to Tenant any rights whatsoever in the airspace above the premises other than those rights which are subject to Federal Aviation Administration orders, regulations or advisory circulars currently or subsequently effective. Compatible with all requirements under 14 CFR part 77. The Tenant expressly acknowledges it is leasing property that is an airport.

#### **10. NONDISCRIMINATION.**

The Tenant for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

- a) That no person of the ground of race, color or national origin shall be excluded from participation or denied the benefits of, or be otherwise subject to discrimination in the use of the facility, Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulation, Department of Transportation, Subtitle A, Office of the Secretary Part 21, Non-discrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as such Regulations may be amended. Tenant shall operate the facility in accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 u.s.c.794) and will assure that no qualified handicapped person shall, solely by reason of such person's handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, including discrimination in employment.
- b) That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination.
- c) That the Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of

Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

- d) That in the event of breach of any of the above nondiscrimination covenants, Airport Owner shall have the right to terminate the Lease and to re-enter and as if said Lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

#### **11. PROPERTY RIGHTS RESERVED.**

Title to any building, structure or other improvement of a permanent character constructed, erected, or installed upon the premises by Tenant as permitted by this Lease shall forthwith vest in the Airport subject to the Leasehold estate and options to renew granted to the Tenant under the terms of this Lease. Tenant shall not remove such improvements from the premises nor materially modify, waste, or destroy such improvements without the prior written consent of the Airport. Upon the expiration or sooner termination of this Lease and all extensions thereof, the Airport's title to such improvements shall be free and clear of all claims to or against such improvements by Tenant, any mortgagee of Tenant, or any third person claiming under Tenant. Tenant shall defend and indemnify Airport against all liability and loss arising from such claims.

This Lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which the Airport Owner acquired the subject property from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the Lease of said lands from the Airport Owner, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by the Airport Owner pertaining to the Valkaria Airport.

Notwithstanding anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this agreement are non-exclusive and the Lessor herein reserves the right to grant similar privileges to another Lessee or other Lessees on other parts of the airport.

#### **12. DEFAULT.**

Payments in arrears, in full or part, more than ninety (90) days shall constitute a default and shall be sufficient cause for Airport to terminate this Agreement.

#### **13. AMENDMENT.**

This agreement may only be modified by written agreement of both parties.

#### **14. TERMINATION.**

Either may terminate this agreement with or without cause upon six (6) months written notice to the other party. Upon termination or cancellation of this agreement, and provided all monies due to the AIRPORT have been paid, the Tenant shall have the right to remove all temporary buildings, machinery and equipment which it has installed or placed in the real property, with the exception of the fixed utilities. Tenant agrees to repair any damage occasioned by reason of such removal or because of its occupancy. In the event the Tenant fails to remove its property or to repair any damage done to real property, the airport reserves the right to remove and store all such property at the risk and expense of the Tenant and to make repairs as the Airport deems necessary to restore the real property with the cost of repairs to be paid by the Tenant.

#### **15. MAINTENANCE AND REPAIRS.**

The Tenant will be solely responsible for the maintenance, repair, and upkeep of the Leased property. Tenant shall, at Tenant's expense, keep the Golf Course Properties (including any and all Improvements, including, without limitation, the Clubhouse, all fairways, greens, tees and tee boxes, bunkers, water hazards and practice ranges) and the fixtures and appurtenances therein in good condition and repair, in a sanitary and safe condition and shall commit no waste of the Golf Course Properties. Without limiting the generality of the foregoing, Tenant will keep in good order and repair, and maintain, repair and replace as needed: ceilings, walls, floors, plate glass and all fixtures in, on and about the Golf Course Properties, including, but not limited to, HVAC, water, plumbing, irrigation, sewer, electrical and utility and Tenant shall be liable for any damage to such systems occurring during the Agreement Term. Tenant shall, at its cost, repair, replace or restore any damage to the Golf Course Property caused by Tenant, its employees and invitees. If Tenant fails to make repairs (including replacement) and maintain the Golf Course Properties or any part thereof in a First-Class manner and condition, AIRPORT shall, upon written notice to Tenant and an opportunity to cure for a period of thirty (30) days, have the right to make such repairs or perform such maintenance and/or replacement on behalf of Tenant, and Tenant shall reimburse to AIRPORT the cost incurred by AIRPORT in performing the same; provided, however, that if such cure cannot be reasonably accomplished within such thirty (30) days, then AIRPORT shall not have the right to make such repairs or perform such maintenance and/or replacement if Tenant has commenced the requested cure within such thirty (30) days and thereafter diligently pursues such cure to completion. Tenant shall do, or cause to be done, all repair and maintenance work required or appropriate for all of the Golf Course Property including, without limitation, maintaining the interior elements including, without limitation, the FF&E, and, in furtherance thereof, shall institute and administer a preventative maintenance program for all mechanical, electrical and plumbing systems and equipment, all of the foregoing to be consistent with the First-Class Standard. Tenant shall also, from time to time, in accordance with the Operating Budget, make purchases of and replace such items of FF&E and operating supplies as Tenant deems necessary for the proper operation and maintenance of the Golf Course Property in accordance with the First-Class Standard, including, without limitation, those that may be deemed to constitute Capital Improvements. Tenant shall be responsible for all Capital Improvements. Any



structural alterations, modifications, or repairs in excess of \$25,000.00 dollars, of portions of the Golf Course Property or new construction thereof must be approved in advance in writing by AIRPORT.

#### **16. DAMAGE OR DESTRUCTION TO LEASED PREMISES.**

Except as otherwise provided in this Lease, if the premises or any part of them (including any Leasehold improvements), shall be damaged or destroyed. Tenant shall promptly repair or replace the same. Any other terms or provisions of this Lease agreement pertaining to repair, alteration, construction or reconstruction by Tenant shall be binding upon Tenant in repairing or reconstructing the Leased premises under the terms and provisions of this Lease. If such a substantial portion of the Leased premises is destroyed so that Airport and Tenant mutually agree that Tenant cannot reasonably continue to utilize the Leased premises until the same are repaired or replaced, then Tenant may elect to either repair or replace the same in which event the rent shall be abated until such time as Tenant can reasonably resume operation of its business, and the term shall be extended for a period equal to the rent abatement period. The rent abatement period shall not exceed 4 months.

#### **17. INDEMNIFICATION.**

The Tenant shall indemnify the Airport and hold the Airport harmless for any and all liability, claims, damages, expenses (including attorney's fees and costs for trial or appeal), proceedings and causes of action of every kind and nature arising out of or connected with the use, maintenance, operation or control of the subject property by the Tenant. The Airport shall likewise indemnify and hold the Tenant harmless for all liability, claims, damages, expenses (including attorney's fees and costs for trial or appeal), proceedings and causes of action of every kind and nature arising out of the Airport's sole negligence as owner of the subject property. The Airport and Tenant rely on sovereign immunity F.S. 768.28.

#### **18. ABANDONMENT OF PROPERTY BY TENANT.**

In case the Tenant shall abandon said real property, or any part thereof, during the continuance of this Agreement, the Airport may, at its option, without notice, relet said real property or any part thereof, on such terms and for such rent as it may deem expedient or proper. Such reletting shall not operate as a waiver of any right whatsoever which the Airport would otherwise have to hold the Tenant responsible for the rent above reserved.

#### **19. INSPECTION.**

During the term of this Agreement, the Airport shall have the right to enter the Golf Course Properties to inspect the same, to exercise COUNTY's rights under this Agreement, to show the Golf Course Properties to prospective purchasers or other entities, and to post appropriate or lawful notices.

## **20. ALTERATIONS.**

Tenant shall not make nor allow to be made any alterations, additions or Improvements to or of the Golf Course Property or any part thereof in excess of \$25,000 without the express prior consent of the Airport, which Airport may grant or withhold in its sole discretion. In the event the Airport approves the Tenant's request, the work shall be performed in a good, workmanlike, lawful and lien-free manner, and in compliance with all applicable Laws and this Agreement.

The Tenant shall indemnify and save harmless the Airport against all claims by any person, firm, or corporation. Alterations may be subject to review through 14 CFR part 77.

## **21. TAXES.**

The Tenant shall pay all ad valorem taxes levied or assessed against the premises by the appropriate governmental authorities, if applicable, together with all ad valorem taxes levied against any stock or merchandise, furniture, furnishings, equipment, and other property located in, on or upon the premises.

## **22. EXCLUSIVE USE.**

This Agreement shall in no way convey the exclusive use of any part of the Airport, except as described herein and shall not be construed as providing any special privilege for any public portion of the Airport. The Airport reserves the right to Lease to other parties any portion of the Airport property not described in Exhibit A for any purpose deemed suitable for the Airport by the Airport

## **23. SUBLEASE.**

The Tenant is hereby prohibited from assigning or subleasing any rights provided in this agreement without the written consent of the Airport. Food and beverage services are exempt from the sublease restrictions.

## **24. AGREEMENT OF THE COUNTY WITH THE UNITED STATES OF AMERICA.**

The terms and conditions hereof shall not be construed to prevent the County from making commitments it desires to the Federal Government or to the State of Florida to qualify for the expenditure of State or Federal funds upon said airport property.

## **25. NATIONAL EMERGENCY.**

During any national emergency declared by the President or by the congress, the United States shall have the right to take exclusive or non-exclusive control and possession of the above-mentioned real property, or of such portion thereof as it may desire, rent to be abated accordingly in proportion to said occupancy.

## **26. NOTICES.**

Whenever any notice or payment is required by this Agreement to be made, given or transmitted to the parties hereto, such notice or payment shall be addressed to: The Airport Manager, Valkaria Airport, 1 Pilots' Place Malabar, Florida 32950 and The Director of Parks and Recreation Department, 2725 Judge Fran Jamieson Way. Viera, FL 32940

## **27. WAIVER OF TERMS.**

The waiver by the Airport or the Tenant of any breach of the terms, covenants, or conditions herein contained shall not be deemed a waiver of a subsequent breach.

## **28. CONDEMNATION.**

If it be in the interest of the public, the county shall have the right to condemn said demised premises even though it is itself a part to said Agreement for said real property.

## **29. SEVERABILITY.**

It is the intention of both of the parties hereto that the provisions of this Agreement shall be severable in respect to a declaration of invalidity of any provisions hereof.

## **30. ASSIGNS AND SUCCESSORS.**

Except as herein otherwise provided, the covenants and conditions shall be binding upon and inure to the benefit of the successors of the parties hereto.

## **31. LEASE RESTRICTIONS.**

The Tenant hereby agrees to abide with all elements as contained in the Airport Rules and Regulations and Minimum Standards for Valkaria Airport as attached hereto as Attachment B and hereby made a part hereof.

## **32. PERFORMANCE GUARANTEE SPECIAL CONDITIONS**

- a) The Airport may take back the land and terminate this Lease if the TENANT fails to perform under the terms of this agreement. The airport must first give the Tenant written notice of the breach. If the breach is not cured within the 30 days, the airport may terminate the Lease, in its sole discretion and require the Tenant and any sub lessee to vacate the property within 30 days. The Airport reserves any right under the law to enforce this contract and terms of removal of any Tenant and sublessee, including but not limited evictions or injunctive relief.
- b) The Airport reserves unto itself, its successors, and assigns for the use and benefit of the public, a right to flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described together with the right to cause in said airspace

such noise as may be inherent in the operations of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport.

- c) The Tenant shall restrict the height of structures, objects of natural growth and other obstructions to such a height so as to comply with Federal Aviation Regulation, Part 77 or as directed by the Airport.
- d) The Tenant shall not use the said 211.111 acres for any use which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard. Clear zones shall remain clear of any permanent structures and golf course activity.
- e) Tenant is expressly prohibited from interfering with the landing and taking off of aircraft, of interfering with navigational aids/communications equipment, prohibits activities with potential to attract wildlife, etc.). The Tenant expressly acknowledges the Leased property is used as an airport.
- f) Prior to any construction, a Notice of Proposed Construction, Federal Aviation Administration (FAA) Form 7460-1, should be submitted to and approved by the FAA if it falls within the requirements of FAR Part 77.13.
- g) Tenant shall provide any information requested by the Airport required to comply with this section and prior to any construction. Tenant shall not begin any construction until express consent is given by the airport in order to comply with any local, state, or federal laws and permitting requirements. The Tenant shall adhere to the rules and regulations of the Airport, minimum standards, and all local ordinances, building codes, fire codes or as otherwise required by law.
- h) The Tenant agrees, at its sole cost and expense to maintain all of the improvements including the golf course and clubhouse in good state of repair and to keep the premises in a clean, neat, and orderly condition. Nothing in this clause shall constitute a waiver of any sovereign immunity or protections under 768.28 Florida Statutes.
- i) The Tenant shall be responsible for electricity, lights, water, sewer, heat, janitor service or any other utility or service consumed in connection with the occupancy by the golf course.
- j) The Tenant agrees hereby to indemnify and hold the FAA and the Airport harmless from any and all actions, demands, liabilities, claims, losses or litigation arising out of or connected with the Tenant which results from any alleged act or negligence of the Tenant or any condition existing on the premises. Nothing in this clause or agreement shall constitute a waiver of any sovereign immunity or protections under 768.28 Florida Statutes.

- k) If any section, subsection, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

### 33. ADDITIONAL FAA REQUIREMENTS.


Compatible with airport operations Airport must meet all requirements under 14 CFR Part 77, which prohibits Tenant from interfering with the, landing and taking off of aircraft of interfering with navigational aids/communications equipment, prohibits activities with potential to attract wildlife, etc.). The Tenant explicitly acknowledges that the Tenant is leasing property used as an airport.

### 34. EFFECTIVE DATE.


The effective date of this Agreement shall be October 01, 2022 and all terms and conditions stated herein shall apply as of that date.

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

ATTEST

  
Rachel M. Sedoff, Clerk


BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

  
Kristine Zonka, Chair  
As approved by the Board on 8/30/2022


Reviewed for Legal Form and Content

  
Justin Caron, Assistant County Attorney

Brevard County Valkaria Airport

  
Stephen Borowski, Airport Manager

Brevard County Parks and Recreation

  
Mary Ellen Donner, Director

## EXHIBIT A

### LEGAL DESCRIPTION OF VALKARIA AIRPORT GOLF COURSE SITE:

Part of Sections 17 and 18, Township 29 South, Range 38 East, Brevard County, Florida, being more particularly described as follows:

Beginning at the Southeast corner of Section 18, Township 29 south, Range 38 East, Brevard County, Florida; thence S 88°43' 10" w along the south line of the Southeast 1/4 of Sec 18 a distance of 960.90 ft. to the Southeast corner of Pomella Ranch, Unit Three, as recorded in Plat Book 28, Page 13, Public Records of Brevard County, Florida; thence N 0°02' 57" East a distance of 40.00 ft.; thence N 88°43' 10"

East a distance of 140.00 ft.; thence N 40°17' 42" East a distance of 294.01 ft.; thence N 0°02' 57" East a distance of 215.00 ft.; thence N 52°32'21" West a dist. of 415.35 ft. to the east line of aforesaid Pomella Ranch, Unit Three; thence N 0°02' 57" East of distance of 255.09 ft. to the Northeast corner of said plat of Pomello Ranch, Unit Three; thence S 88°43'10" West along the north line of Pomello Ranch, Unit Three and Pomello Ranch, Unit Two, for a dist. of 1601.38 ft.; thence N 0°02'30" East a distance. of 330.00 ft.; thence S 88°43'10" West a distance of 1115.44 ft. to the easterly R/W line of Valkaria Road; thence N 30°27' 26" East along said easterly R/W line a dist. of 694.66 ft.; thence East a dist. of 4287.79 ft.; thence S 42°30'00" East a distance of 900.00 ft.; thence N 47°30'00" East a distance of 540.00 ft.; thence N 8°58'06" East a distance of 849.11 ft.; thence N 25°56'32" West a distance of 411.46 ft.; thence North a distance of 280.00 ft.; thence N 21°04'04" East a distance of 581.93 ft.; thence S 89°47'56" East a distance of 525.00 ft. to the east line of property described in O.R.B. 171 Pg. 493; thence s 0°13' 56" East along said east line a dist. of 2230.52 ft.; thence s 0°05'27" East a distance of 1345.23 ft. to the Southeast corner of the Southwest 1/4 of aforesaid Sec. 17, Township 29 South, Range 38 East; thence N 89°49' 54" West a distance of 2668.09 ft. to the P.O.B. Contains 211.111 Acres more or less.