



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

F.8.

9/12/2023

### Subject:

Approval, Re: Right of Way Reconveyance from the Florida Department of Transportation (FDOT) to Brevard County Relating to A. Max Brewer Causeway Project - District 1.

### Fiscal Impact:

None

### Dept/Office:

Public Works Department / Land Acquisition Section / Parks and Recreation Department

### Requested Action:

It is requested that the Board of County Commissioners delegate authority to the Chair to accept and/or execute any and all necessary documents, upon review and approval by the Parks and Recreation Department, the Public Works Department, the County Manager's Office and the County Attorney, pertaining to the reconveyance of certain right-of-way under the terms of the Memorandum of Agreement dated May 4th, 2004; and authorize staff to record any necessary documents to effectuate the reconveyance.

### Summary Explanation and Background:

The subject property is located in Sections 34, 35, and 36, Townships 21 and 22 South, Range 35 East, on the east side of the A. Max Brewer Causeway in Titusville.

The Board of County Commissioners, in regular session on May 4, 2004, adopted Resolution Number 04-089 authorizing the transfer of A. Max Brewer Memorial Bridge and Roadway to FDOT in order for FDOT to construct a new high-rise bridge with associated infrastructure. As part of this transfer, the County entered into a Memorandum of Agreement with FDOT and the City of Titusville outlining each party's responsibilities before, during, and after construction.

The intent of the Agreement was to establish the roles of each entity and identify the specific conveyances that would be necessary to allow FDOT to secure funding for the project and to enable FDOT to move forward with design and construction. Paragraph 2 of the Agreement states that, upon completion of the project, FDOT will reconvey to the County all of the County's right-of-way not needed by FDOT to maintain and repair the bridge.

FDOT has completed the A. Max Brewer Memorial Bridge and Roadway project. Meanwhile, the Parrish Park Trailhead Project (Trailhead Project) is ready to proceed to construction but, in order for that contract to be awarded, the underlying property must be in the name of the County. In order to avoid unnecessary delays, with respect to the Trailhead Project, it is requested that the Board authorize the Chair to accept and/or execute any necessary documents pertaining to the reconveyance of the previously identified property from

FDOT to the County.

The User Department approves this request.

This acquisition follows the policies and procedures as set forth in Administrative Order 37.

**Clerk to the Board Instructions:**



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

September 13, 2023

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

**TO:** Marc Bernath, Public Works Director

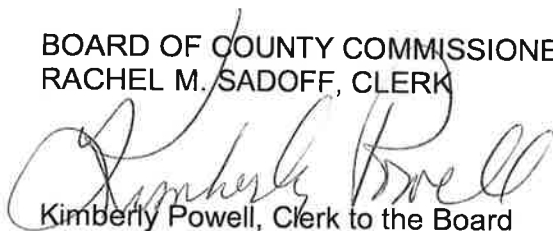
**RE:** Item F.8., Approval for Right-of-Way Re-conveyance from the Florida Department of Transportation (FDOT) to Brevard County Relating to the A. Max Brewer Causeway Project

The Board of County Commissioners, in regular session on September 12, 2023, authorized the Chair to accept and/or execute any and all necessary documents, upon review and approval by the Parks and Recreation Department, Public Works Department, County Manager's Office, and the County Attorney, pertaining to the re-conveyance of certain right-of-way under the terms of the Memorandum of Agreement dated May 4, 2004; and authorized staff to record any necessary documents to effectuate the re-conveyance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

  
Kimberly Powell, Clerk to the Board

/sm

cc: County Manager  
County Attorney  
Parks and Recreation

# BOARD OF COUNTY COMMISSIONERS

## AGENDA REVIEW SHEET

AGENDA: Right of Way Reconveyance from Florida Department of Transportation (FDOT) to Brevard County Related to A. Max Brewer Causeway Project.

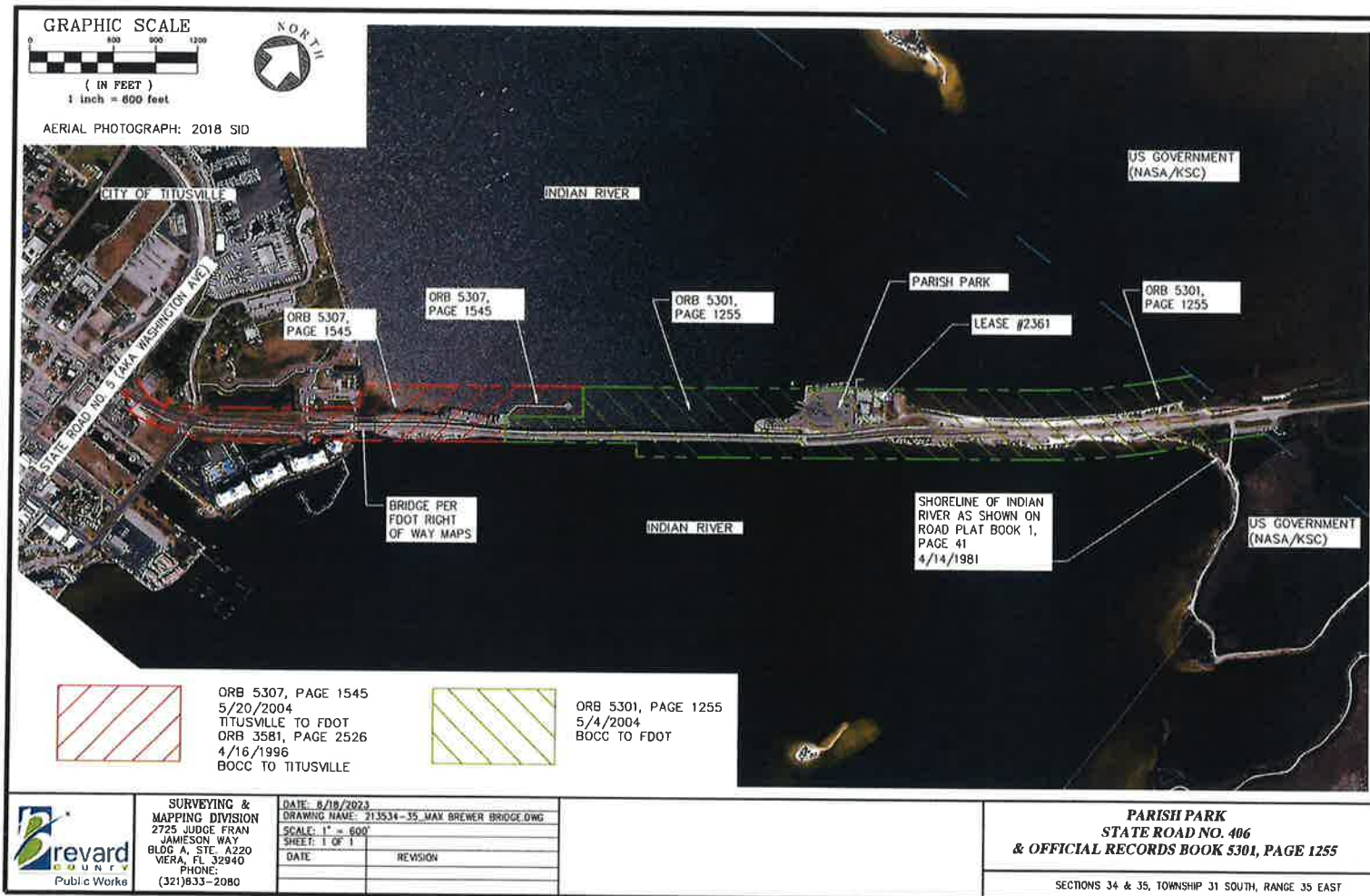
AGENCY: Public Works Department / Land Acquisition

AGENCY CONTACT: Lucy Hamelers, Land Acquisition Supervisor

CONTACT PHONE: 321-350-8336

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Lucy Hamelers, Supervisor	<u>SA</u>	<u>                    </u>	<u>8/28/23</u>
COUNTY ATTORNEY ALEXANDER ESSEESSE Deputy County Attorney	<u>AZ</u>	<u>                    </u>	<u>8/29/23</u>

## Location Map





May 5, 2004

MEMORANDUM

TO: John Denninghoff, Transportation Engineering Director Attn: Harriet Raymond

RE: Item III.A.9., Resolution, Memorandum of Agreement with Department of Transportation and City of Titusville, and County Deed for Transfer of A. Max Brewer Memorial Bridge and Causeway

The Board of County Commissioners, in regular session on May 4, 2004, adopted Resolution No. 04-089 authorizing the transfer of A. Max Brewer Memorial Bridge and Causeway, executed Memorandum of Agreement with Department of Transportation and City of Titusville, with revised language in Section 8, and executed County Deed transferring the Bridge and Causeway. Enclosed are three certified copies of the Resolution, and the original and two copies of the Memorandum of Agreement for your action.

Please return a fully-executed copy of the Memorandum of Agreement and a copy of the County Deed to this office for the official minutes.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

  
Bernadette Talbert, Deputy Clerk

/tjr

Encls. (6)

cc: Contracts Administration



**MEMORANDUM OF AGREEMENT FOR  
CONSTRUCTION OF NEW SPAN AT  
A. MAX BREWER CAUSEWAY**

This Agreement is made and entered into this 4th day of May, 2004 by and between the State of Florida, Department of Transportation, an agency of the State, hereinafter, the "Department", Brevard County, a political subdivision of the State of Florida, hereafter the "County" and the City of Titusville, a municipality incorporated under the laws of the State of Florida, hereinafter the "City", and each of the foregoing party's heirs, successors and assigns.

**WITNESSETH:**

**WHEREAS**, the Department is authorized and required by provisions of the Florida Statutes to coordinate the planning, development and use of the State Highway System; and

**WHEREAS**, the Secretary of Transportation, Jose' Abreu, has directed the Department to place the A. Max Brewer Causeway back onto the State Highway System as an extension of State Road 402 so as to allow the securing of Federal funding for the design and construction of a new bridge; and

**WHEREAS**, the County and the City fully support the effort to secure the funding and the construction of a new bridge for the causeway; and

**WHEREAS**, the County and the City understand that the existing right of way owned by each entity needs to be conveyed to the Department to facilitate the funding and the construction of the new bridge; and

**WHEREAS**, the County and the City have certain improvements and property interests that are located in the area of the right of way for the existing causeway and the County and the City desire to continue to enjoy and to maintain those uses and interests; and

**WHEREAS**, the Department desires to allow use by the County and the City to continue for the benefit of the County and the City while securing the rights necessary to accomplish the project.

**NOW THEREFORE**, based on the premises above, the parties hereby covenant and agree:

1. The intent of this Memorandum of Agreement is to establish a common understanding of the specific conveyances that are necessary to allow the Department to secure the funding for the project and to move forward with the design and construction of the new bridge and to address the needs of the City and the County concerning the existing uses within the right of way and the ongoing repair and maintenance of the existing bridge.

2. The City and the County will each convey (subject to the County's adoption of a Resolution authorizing such conveyance) to the Department all of the existing right of way for the A. Max Brewer Causeway. Following adoption of the appropriate Resolution, the conveyance will encompass the entire width of right of way on each side of the causeway extending from the NASA boundary on the east to the eastern edge of right of way for SR 5 on the west. These conveyances will be made as soon as possible after the execution of this agreement. Following adoption of the appropriate Resolution, the County shall convey their interest by way of County Deed and the City shall convey their interest by way of Quit Claim Deed. Upon completion of construction by the Department, the Department shall reconvey to the City and to the County all right of way not needed to maintain and to repair the bridge. The City and the County agree to accept said conveyance when made by the Department.

3. The conveyance made by the City and the County shall reserve to each the right to continue the use and possession of the parks, piers, parking, water retention, lighting and any and all other uses now in existence within the right of way. Along with said use and possession, the City and the County shall be responsible for all maintenance, repairs, improvements, contracts and liability associated with the use and possession of the property. The County shall be responsible to continue to repair and maintain the existing bridge and swing span and to remain obligated under the terms of the contract for the repair and remediation of the existing swing span. The Department shall have no responsibility whatsoever in regard to the improvements, use and possession allowed herein nor shall it be responsible to repair or improve the existing bridge or swing span.

4. The City shall remain responsible for the northern relief bridge located west of the existing bridge and swing span until such time as said relief bridge is put to use for the maintenance of traffic during the construction of the new bridge at which time the Department shall be responsible to maintain and repair the relief bridge, if necessary. Once construction is completed, the northern relief bridge will become the sole responsibility of the City.

5. The parties understand that the southern relief bridge on the western side of the existing bridge and swing span shall be reconstructed as a part of the new bridge and shall remain under the jurisdiction of the Department after the new bridge project is completed.

6. So long as City or County planned improvements within the limits of right of way do not drain to or from the Department's right of way or drainage structures or ponds, the Department agrees that said drainage does not need to progress through Department drainage permitting processes. The City and County agree to provide to the Department all plans so as to allow the Department to be aware of the planned improvements and to verify that the Department's drainage will not be impacted by said improvements.

7. The County and the Department agree to cooperate with each other and the St. Johns River Water Management District ( hereinafter SJRWMD) vis a vis future SJRWMD permits that may be applied for. The Department, after review of the permit applications and plans and after consultation with the SJRWMD,




shall sign a letter of authorization to allow the County to permit water retention areas within the right of way to be received by the Department pursuant to the terms of the Agreement but that is anticipated to be outside the limits of right of way to be retained by the Department after construction is completed. In the event the water retention areas to be permitted by the SJRW impacts Department drainage within the right of way after the conveyance back to the City and the County, then said permitting will need to be permitted by the Department in the ordinary process.

8. The Department acknowledges that the City and the County have previously entered into a lease regarding the historical Veterans Memorial Titusville Fishing Pier. The Department agrees to allow the conveyance from the County and the City to except from the conveyance the area subject to the leasehold interest. Further, the Department acknowledges that the County has plans to improve the leasehold area through the construction of an additional building. The County agrees to make all plans associated with said improvement available to the Department.

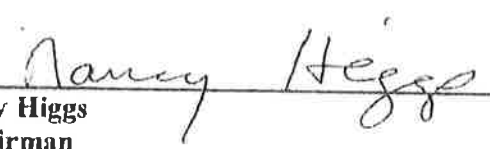
9. The Department agrees to satisfy the nineteen commitments made in the PD&E study completed by Reynolds Smith & Hills, Inc.

10. The parties agree to take all further action necessary to allow the Department to secure funding for the project and to take all further action necessary to fulfill the intent and commitments expressed and made herein.


**STATE OF FLORIDA, Department of Transportation**

  
By: George Gilhooley  
Title: Interim District Secretary  
Date: 5/18/04

**BREVARD COUNTY, a political subdivision**

  
By: Nancy Higgs  
Title: Chairman  
Date: 05-04-04

**Reviewed for legal form and content**

  
\_\_\_\_\_, Assistant County Attorney  
Attest:

  
By: Scott Ellis, Clerk to the Board

**CITY OF TITUSVILLE. an incorporated municipality**

A handwritten signature in cursive script, reading "Ronald G. Swann", written over a horizontal line.

By: Ronald G. Swann  
Title: Mayor  
Date: May 11, 2004

**RESOLUTION NO. 2004-089**

**A RESOLUTION PURSUANT TO SECTION 125.38, FLORIDA STATUTES (2004), AUTHORIZING THE TRANSFER OF REAL PROPERTY INTEREST IN COUNTY PROPERTY; PROVIDING FOR CONDITIONS UPON TRANSFER; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS, Brevard County, Florida (County), owns certain real property described in Exhibit "A"; and**

**WHEREAS, the Florida Department of Transportation (FDOT) has requested that Brevard County transfer the ownership of said Bridge and Roadway to the FDOT; and**

**WHEREAS, the County would retain maintenance responsibilities for the bridge and roadway east of the bridge until such time as the FDOT completes the construction of a new high rise bridge over the Intercoastal Waterway to replace the existing bridge. Upon completion of the new high rise bridge, the FDOT would assume maintenance responsibilities for the new bridge and the roadway.**

**NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida as follows:**

- 1. The Board of County Commissioners of Brevard County, Florida hereby agrees to transfer to the Florida Department of Transportation (FDOT) the real property described in Exhibit "A" by County Deed.**
- 2. The Board of County Commissioners will retain maintenance responsibilities for the Bridge and roadway until such time as the FDOT completes construction of a new high rise bridge over the Intercoastal**

Waterway to replace the existing bridge. Upon completion of the new bridge the FOT will assume responsibility for the bridge and the roadway.


3. The FDOT will return to the County title for any County infrastructure that exists within the existing right-of-way.

4. The real property interest is being transferred to the FDOT without charge.

5. This Resolution shall become effective immediately upon adoption.

DONE, ORDERED AND ADOPTED in regular session this 4<sup>th</sup> day of May, 2004.

ATTEST:

  
SCOTT ELLIS, CLERK

  
NANCY HIGGS, CHAIR  
BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

As approved by the BCC on: 06-04-04

STATE OF FLORIDA  
COUNTY OF BREVARD

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

04-089 witness my hand  
and official seal this 7<sup>th</sup> day of  
May 2004

SCOTT ELLIS  
Clerk Circuit Court  
BY B. McHenry, D.C.

**For Informational Purposes Only**

03-BREVARD CTY-08/01

April 30, 2004

This instrument prepared by  
Louis Reinoso

Under the direction of

GEORGE S. LOVETT, ATTORNEY

Department of Transportation

719 South Woodland Boulevard

DeLand, Florida 32720-8834

CFN:2004160003 05-21-2004 08:30 am  
OR Book/Page: 5301 / 1255

**Scott Ellis**

Clerk Of Courts, Brevard County

#Pgs: 2 #Names: 2  
Trust: 1.80 Rec: 9.00 Serv: 0.00  
Mtg: 0.70 Exclsp: 0.00  
Int Tax: 0.00

PARCEL NO. 100.1  
SECTION 70000  
F.P. NO. 2412001  
STATE ROAD 402  
COUNTY Brevard

**COUNTY DEED**

THIS DEED, made this 4<sup>th</sup> day of May, 2004 by BREVARD COUNTY, a political subdivision of the State of Florida, grantor, to the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, grantee: (Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors, and assigns of organizations).

WITNESSETH: That the grantor, for and in consideration of the sum of \$1.00 and other valuable considerations, receipt and sufficiency being hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in Brevard County, Florida, viz:

PARCEL NO. 100

SECTION NO. 70000  
F.P. NO. 2412001

ALL OF:

The road right of way, together with the submerged and tidal lands in Sections 34, 35 and 36, Township 21 South, Range 35 East and Section 3, Township 22 South, Range 35 East, as shown and recorded in Road Plat Book 1, Page 1, dated March 8, 1978, Road Plat Book 1, Page 40, dated April 21, 1981 and Road Plat Book 1, Page 41, dated April 21, 1981, being recorded in the Public Records of Brevard County, Florida.

LESS AND EXCEPT:

"That portion of State Road 402, also known as A. Max Brewer Memorial Parkway, as depicted on the Right of Way map prepared by the State of Florida Department of Transportation, Section 70160-2502 and recorded in Road Plat Book 1, Page 1, Public Records of Brevard County, Florida, from State Road 5 to Station 210+49.05, including any and all appurtenances thereto."

The above described lands being the same as recorded in Official Records Book 2977, Page 1420, Public Records of Brevard County, Florida.

ALSO LESS AND EXCEPT:

"A parcel of submerged land lying in Section 34, Township 21 South, Range 35 East, Brevard County, Florida.

Commence at the Department of Transportation survey line station 210+49.05 (bearing of said survey line being North 51°50'18" East) as recorded in Official Records 2297, Page 1420, Public Records of Brevard County, Florida, as depicted on the right of way map prepared by the State of Florida State Department of Transportation, Section 70160-2502 and recorded in Road Plat Book 1, Page 1, Public Records of Brevard County, Florida; thence run North 38°09'42" West, 30.00 feet to the Point of Beginning; thence run North 38°09'42" West, 270.00 feet to the north right of way line of State Road 402 (A. Max Brewer Memorial



Parkway); thence run North 51°50'18" East along said North right of way line 550.95 feet to a point at station 216+ 00.00; thence run South 38°09'42" East, 270.00 feet to a point lying 30.00 feet north of and parallel to aforementioned Department of Transportation survey line; thence run South 51°50'18" West parallel to Transportation survey line; thence run South 51°50'18" West parallel to said survey line 550.95 feet to the Point of Beginning; containing 3.41 acres."

The above described lands being the same as recorded in Official Records Book 3581, Page 2526, Public Records of Brevard County, Florida.

TOGETHER with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

PROVIDED that the following rights are reserved to Grantor:

1. The Grantor shall have the right to construct, operate, maintain, improve, add to, upgrade, remove, and relocate facilities on, within, and upon the lands described herein in accordance with the F.D.O.T.'s current minimum standards for such facilities as required by the F.D.O.T. Utility Accommodation Manual in effect at the time the agreement is executed. Any new construction or relocation of facilities within the lands will be subject to prior approval by the F.D.O.T. Should the F.D.O.T. fail to approve any new construction or relocation of facilities by the Grantor or require the Grantor to alter, adjust, or relocate its facilities located within said lands, the F.D.O.T. hereby agrees to pay the cost of such alteration, adjustment, or relocation, including, but not limited to the cost of acquiring appropriate easements.
2. Notwithstanding any provisions set forth herein, the terms of the utility permits shall supersede any contrary provisions, with the exception of the provision herein with reimbursement rights.
3. The Grantor shall have a reasonable right to enter upon the lands described herein for the purposes outlined in Paragraph 1 above, including the right to trim such trees, brush, and growth which might endanger or interfere with such facilities, provided that such rights do not interfere with the operation and safety of the F.D.O.T.'s facilities.
4. The Grantor agrees to repair any damage to F.D.O.T. facilities and to indemnify the F.D.O.T. against any loss or damage resulting from the Grantor exercising its rights outlined in Paragraphs 1 and 3 above except "as limited by law".
5. Notwithstanding the terms contained in paragraphs 1 through 4 above, the terms, conditions, obligations, reservations and responsibilities set forth in the Memorandum of Agreement, by and between the State of Florida, Department of Transportation, the City of Titusville and Brevard County shall apply and limit the conveyance made herein.

IN WITNESS WHEREOF, the said grantor has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairperson or Vice-Chairperson of said Board, the day and year aforesaid.

ATTEST:

*[Signature]*  
Scott Ellis, Clerk  
*[Seal]*

BREVARD COUNTY, FLORIDA,  
By its Board of County Commissioners

By:

*[Signature]*  
Nancy Higgs, Chair  
ADDRESS OF GRANTOR:  
2725 Judge Fran Jamieson Way  
Viera, Florida 32940