



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.10.

5/9/2023

Subject:

Approval, Re: License Agreement for access across Environmentally Endangered Lands (EEL) Program managed lands at Grant Flatwoods Sanctuary - District 3

Fiscal Impact:

There are no impacts to General Revenue Funds or EEL Program funds.

Dept/Office:

Parks and Recreation EEL Program

Requested Action:

It is requested that the Board of County Commissioners approve a License Agreement that allows Shady Oaks Ranch, LLC (aka Patrick Noll) to access his property through the EEL Program managed Grant Flatwoods Sanctuary which is owned by the State of Florida.

Summary Explanation and Background:

Shady Oaks Ranch, LLC owns property that is adjacent to lands managed under the Environmentally Endangered Lands Program known as the Grant Flatwoods Sanctuary. Mr. Noll does not have improved legal access to his property and the License Agreement provides a mechanism for him to access his property through the Grant Flatwoods Sanctuary via an existing fire line and trail.

The License Agreement, in addition to providing access for Mr. Noll, also ensures that the access is not detrimental to the ecological health of the sanctuary or restrictive to management operations. This access does not conflict with the proposed Management Plan for this site.

The License Agreement does not provide the legal access easement that would be required if Mr. Noll wanted to obtain a building permit for his property. The License Agreement does not prevent Mr. Noll from pursuing a formal ingress / egress easement from the State of Florida in the future.

Clerk to the Board Instructions:

Please return Board Memo and executed License Agreement to the EEL Program.

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Patrick Noll-Shady Oaks, LLC		2. Amount:	
3. Fund/Account #: 1610/300100		4. Department Name: P&R-EEL Program	
5. Contract Description: Shady Oaks Access Agreement			
6. Contract Monitor: Jenny Warner		8. Contract Type: USE AGREEMENT	
7. Dept/Office Director: Mary Ellen Donner			
9. Type of Procurement: Request for Qualifications (RFQ)			

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"/>	Warner, Jenny <small>Digitally signed by Warner, Jenny Date: 2022.10.19 13:41:12 -04'00'</small>
Purchasing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Wall, Katherine <small>Digitally signed by Wall, Katherine Date: 2022.10.19 13:51:55 -04'00'</small>
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
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"/>

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

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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"/>	Warner, Jenny <small>Digitally signed by Warner, Jenny Date: 2022.10.19 13:41:12 -04'00'</small>
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Wilson, Shannon <small>Digitally signed by Wilson, Shannon Date: 2023.02.13 15:30:48 -05'00'</small>
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Caron, Justin <small>Digitally signed by Caron, Justin Date: 2023.02.16 14:46:39 -05'00'</small>

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
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"/>



May 10, 2023

MEMORANDUM

TO: Mike Knight, EEL Program Manager

RE: Item F.10., Approval of License Agreement for Access across Environmentally Endangered Lands (EEL) Program Managed Lands at Grant Flatwoods Sanctuary

The Board of County Commissioners, in regular session on May 9, 2023, approved and executed License Agreement that allows Shady Oaks Ranch, LLC (aka Patrick Noll) to access his property through the EEL Program managed Grant Flatwoods Sanctuary, which is owned by the State of Florida. Enclosed is a fully-executed License Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

/tr

Encl. (1)

cc: Parks and Recreation
Contracts Administration

PROPERTY ACCESS LICENSE AGREEMENT

THIS AGREEMENT is dated this _____ day of _____, 2023, BY and BETWEEN: SHADY OAKS RANCH, LLC (PATRICK NOLL) (hereafter referred to as "Licensee") and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereafter referred to as "Licensor");

WHEREAS, the Licensor is the owner, lessee, or authorized administrator of certain real property in Brevard County, Florida, as depicted in Exhibit "A", attached hereto and made a part of by reference (hereafter referred to as the "Property"); and

WHEREAS, the Licensee is the owner of certain parcel of property (hereafter referred to as the "Licensee's Property"), which is adjacent to and/or surrounded by the Licensor's Property; and

WHEREAS, as highlighted in orange in Exhibit "A", a dirt trail (hereafter the "trail") exists on the Property, which starts on the east side of the Property, runs north and west through various county/state owned lots, for Licensee to access their property; and

WHEREAS, Licensee has expressed an interest in use of the TRAIL identified in Exhibit "A" for access to Licensee's Property.

NOW THEREFORE, for value received and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The recitals set forth above are true and correct and are incorporated into and made a part of this license agreement by reference.
2. Property. This Agreement relates to the land owned, leased, or managed by the County and identified in the legal description set forth in Exhibit "B" to this Agreement (highlighted in bright green), which is attached hereto and incorporated herein by this reference.
3. License. The County hereby grants the Licensee a non-exclusive and revocable license (hereafter referred to as the "License") solely for the purpose of allowing Licensee ingress and egress to Licensee's Property (highlighted in yellow) by use of the TRAIL (highlighted in orange) in Exhibit "A". This License shall not be interpreted or construed to grant any right of ingress over, egress over or use of the TRAIL by any other person, third party, or property owner other than the Licensee, unless a lease has been executed between the Licensee and a third party for use of Licensee's Property whereby the Licensee indemnifies the County from any and all claims relating to the use of the TRAIL. A written request can be made to the County seeking said individuals/entities be allowed to utilize the TRAIL, subject to the terms and conditions outlined herein and County staff review and approval. This Agreement shall extend to include the invited guests of the Licensee. Licensee agrees to restrict any and all guests to the terms of this Agreement. Licensee agrees to maintain strict control over the gate key (if applicable) and will explicitly not loan or give a key to any other person without written approval from County staff. This License shall not be construed or interpreted as granting or attempting to grant the Licensee ingress or egress across property owned by any other person or legal entity.
4. Right of Access. The Licensee shall be entitled to enter the Property and use the TRAIL

for such ingress and egress purposes, subject to and in accordance with the County's rules and regulations governing such access, as well as all applicable laws and regulations promulgated by the State of Florida or its agencies. The County shall allow the Licensee access to the TRAIL, including any gate restricting access to the TRAIL. Neither this License nor the Licensee's use of the TRAIL for ingress and egress to Licensee's Property shall constitute a basis for obtaining a building permit for the construction of any improvements on Licensee's Property.

5. No Other Activity. The Licensee may not enter upon or engage in any other activity upon the Property unless other members of the general public have been expressly permitted, by rule, regulation or management plan approved by the government agency with jurisdiction, to enter upon or engage in the same type of activity upon the Property. Licensee is hereby granted access to Licensee's Property via motorized truck or car (No ATV's). Licensee further agrees to close any gate used by the Licensee to enter or exit.

6. Authority; maintenance. The County represents that it has the authority to grant the license outlined herein. The County shall not bear any responsibility for maintenance of the TRAIL or Licensee's Property, and shall have no duty to keep the TRAIL in a condition passable by Licensee. Licensee shall not undertake any maintenance or improvement of the Property without the expressed written permission of the County, which permission may not be unreasonably withheld. Licensee shall have the right, after obtaining written approval from County staff, to maintain but not improve the TRAIL depicted on "Exhibit A". Maintenance includes, but is not limited to, trimming of trees and brush that restrict travel along the TRAIL and removal/filling of tire ruts and tire tracks so as to keep the TRAIL in good condition to allow travel thereon. No maintenance may be conducted outside of the boundaries of the TRAIL. Licensee shall be responsible for any repairs (conducting the repair or paying the County for the County to make the repair at the option of the County) that are deemed necessary by the County in order to return the TRAIL to its original state. All gate keys must be returned to the County upon termination of this Agreement.

7. Term. The term of this Agreement, and the rights granted herein, shall be effective upon the date of execution of this License by the last party to execute the Agreement and shall continue for a period of ten (10) years thereafter (the Term"). The term of this Agreement shall automatically renew for subsequent one (1) year periods unless either party delivers written notice to the other party at least thirty (30) days prior to the termination of the current term that the License is revoked for any of the reasons recited in paragraph 8 below.

8. Revocation. This License may be revoked or terminated by the Licensor before the expiration of the Term or any automatic renewal term upon thirty (30) days' written notice to the Licensee if the Licensee:

- a. Transfers ownership of all or any part of Licensee's Property. In the event of transfer of ownership of all or any part of Licensee's Property, Licensee agrees to make a condition of the sale that the new owner applies 60 days prior to the transfer of title to the County for an access license, which shall not be unreasonably withheld by the County. In the event the County has reason not to enter into an agreement with the new owner, the County will notify Licensee within this 60-day period of the reasons why a Property Access Management Agreement should not be issued to the prospective new owner.
- b. Obtains alternate access for ingress and egress to Licensee's Property;

- c. Violates any law, rule, regulation or management plan applicable to the Licensee, as promulgated by the State of Florida or any of its agencies; the County; or any other governmental agency with jurisdiction;
 - d. Engages in any hunting activity on the County's Property;
 - e. Discharges any firearms on or across any portion of the County's Property;
 - f. Conducts any illegal activity on the County's Property;
 - g. Enters upon or conducts activity upon the County's Property for uses other than use of the TRAIL for ingress and egress, unless such entry or activity is otherwise allowed under Paragraph 4 above;
 - h. Violates any term, provision or condition of this License Agreement; or,
 - i. If, in the sole discretion of the Board of County Commissioners, Licensee's continued use of the TRAIL for ingress or egress interferes with the County's management of the County's Property. Alternate access for ingress and egress may be provided when agreeable to both parties.
9. **Indemnification.** Licensee agrees to indemnify, defend, and hold harmless Brevard County, the Board of Trustees of the Internal Improvement Trust Fund, and the State of Florida and its respective officers, directors, employees, and agents of each, from and against claims, liabilities, damages, and expenses, including, but not limited to, reasonable attorneys' fees for attorneys selected by the County, resulting from any and all claims arising out of this Agreement. Nothing herein shall constitute a waiver of the County's sovereign immunity or of the limitation on damages, at common law or at law, except as provided for under Section 768.28, Florida Statutes, or to authorize any third-party lawsuits or rights under this agreement. Specific consideration has been given for this indemnification clause.
10. **No Recording.** This License shall not be recorded in the official records of Brevard County, Florida by either party.
11. **No Interest in the Property.** This License is the grant of a personal right to the Licensee. This License shall not be construed to create any real property interest in the County's Property.
12. **Assignment.** This License may not be assigned, transferred or devised to any other person, corporation, partnership or entity without prior written consent from the County.
13. **Acceptance.** This License Agreement constitutes the entire agreement between the County and the Licensee and supersedes all prior arrangements and understandings whether written or oral relative to the subject matters thereof. Except as otherwise specifically set forth in this Agreement, neither party makes any representation or warranty, express or implied, statutory or otherwise to the other. This Agreement may not be amended or modified except by a written instrument executed by both parties.
14. **Venue; Governing Law, Waiver of Jury Trial.** Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury. This License Agreement shall be governed, interpreted and construed according to the laws of the State of Florida
15. **Counterparts.** This License Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. The parties agree that executed counterparts may

be transmitted by facsimile machine and that such counterparts shall be treated as originally executed instruments. Each party undertakes to provide the other with a copy of the original Agreement bearing actual original signatures and initials within a reasonable period of time following execution of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

ATTEST:

Clerk

LICENSOR:
BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

BY:

Rita Pritchett, Chair
Brevard County Commission

As approved by the Board: May 9, 2023

Reviewed for legal form and content:

Justin Caron
Assistant County Attorney-Justin Caron

WITNESS:

Kelley Halley
2/24/23
German Groves

LICENSEE:

Date:

Patrick Nell
2/24/2023

STATE OF Florida

COUNTY OF Indian River

The foregoing instrument was acknowledged before me this 24th day of February, 2023,
by Patrick Nell who is personally known to me or produced
as identification.

Rene M. Cox
Notary Public

(NOTARY PUBLIC SEAL)

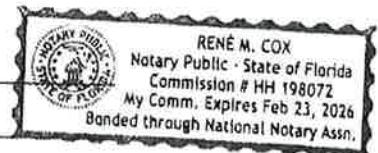
Rene M. Cox

(Printed, Typed or Stamped Name of

Notary Public)

Commission No.:

My Commission Expires:



Shady Oaks Parcel Access Route

Grant Flatwoods Sanctuary

Access Route: _____

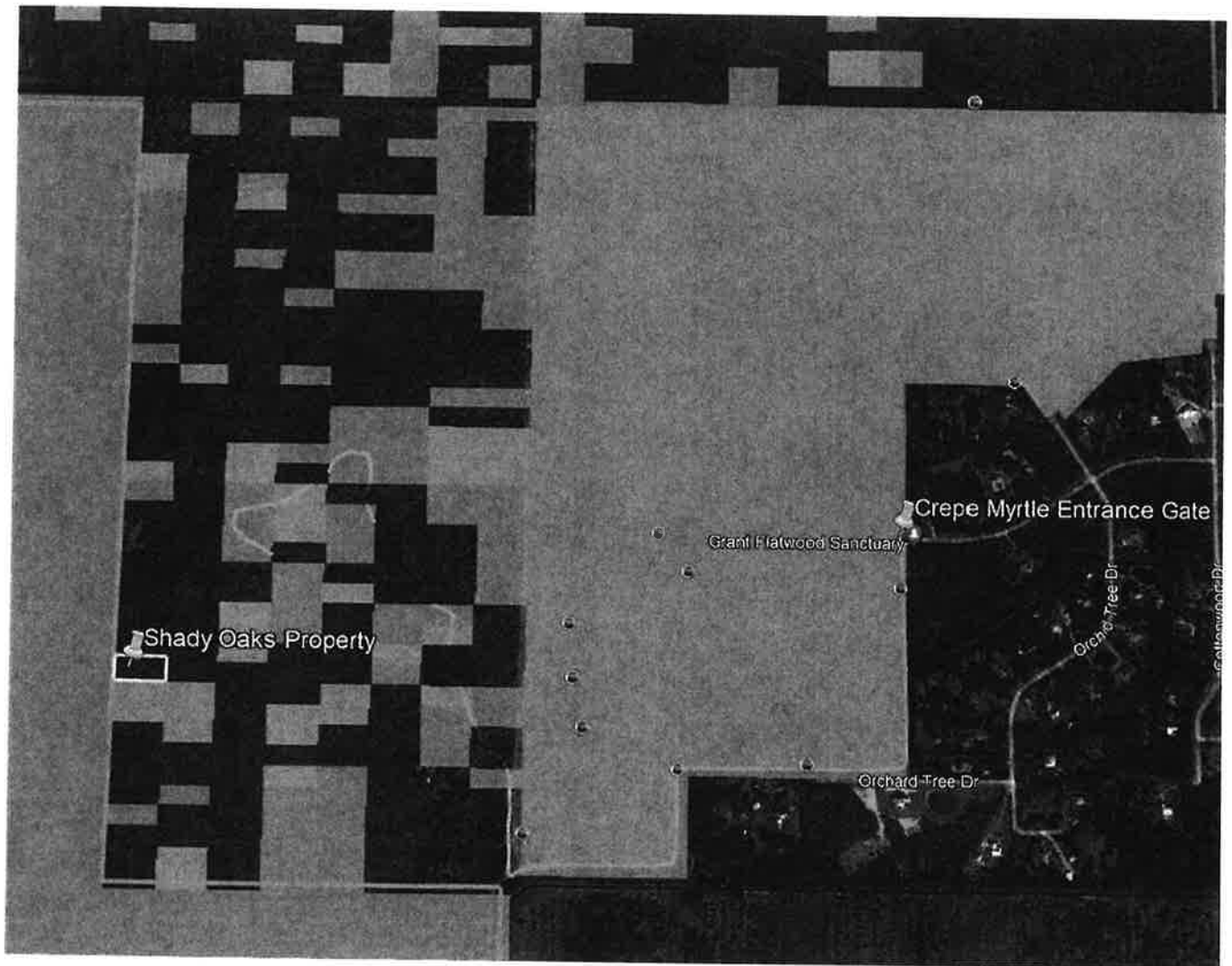


EXHIBIT B

LEGAL DESCRIPTION: (BY SURVEYOR)

A portion of lands described in O. R. Book 2282, Pages 1343-1344 of the Public Records of Brevard County, Florida, Less and Except lands described in O.R. Book 1642, Pages 10-12, of said Public Records of Brevard County, Less and Except lands described in O.R. Book 4242, Pages 2004-2005, of the said Public Records of Brevard County, All of the aforesaid land lying in Sections 1 and 12, Township 30 South, Range 37 East, Sections 5, 6 and 7, Township 30 South, Range 38 East, Brevard County, Florida and being more particularly described as follows:

The East ½ of Section 1, Township 30 South, Range 37 East, Brevard County, Florida, together with The Northeast ¼ of Section 12, Township 30 South, Range 37 East, Brevard County, Florida, lying North of the centerline of the San Sebastian Drainage Canal, together with The West ¾ of Section 6, Township 30 South, Range 38 East, Brevard County, Florida, together with The North ½ of Section 7, Township 30 South, Range 38 East, lying North of the centerline of the San Sebastian Drainage Canal, Less the East 50 feet thereof.

Containing 1066.74 Acres of land more or less.

Together with:

Beginning at the Northeast corner of said Section 5 and the Northwest corner of a 25-foot road Right-of-Way as described in O. R. Book 718, Page 94 of the Public Records of Brevard County, Florida, said point being the POB, thence South 00°41'21" West along the East line of said Section 5 and the West line of said 25 foot road Right-of-Way and the West line of lands described in O.R. Book 3202, Page 4845, a distance of 50.00 Feet to the Northeast corner of lands described in O.R. Book 2285, Page 1949 of said Public Records of Brevard County, thence North 89°45'03" West along the North line of said O R Book 2285, Page 1949, a distance of 348.32 Feet to the Northwest corner of said O.R. Book 2285, Page 1949; thence South 00°41'21" West along the West line of said O. R. Book 2285, Page 1949, a distance of 1, **250.56** Feet to a point on the North line of lands described in O. R. Book 4070, Pages 2686-

2688 of said Public Records of Brevard County, thence North 89°45'03" West along the North line of said O R Book 4070, Pages 2686-

2688, a distance of 303.68 Feet to the Northwest corner of said O. R. Book 4070, Pages 2686-2688; thence South 00°41'21" West along the West line of said O R Book 4070, Pages 2686-2688, a distance of 306.37 Feet to a point on the North line of lands described in O.R. Book 1642, Pages 10-12 of the said Public Records of Brevard County; thence North 89°44'42" West along the North line of said

O. R. Book 1642, Pages 10-12, a distance of 83.03 Feet to the Northwest corner of said O. R. Book 1642, Pages 10-12; thence South **00°42'20"** West along the West line of said O R Book 1642, Pages 10-12, a distance of 106.03 feet to the North line of Cypress Lake Estates, according to the Plat thereof, as recorded in Flat Book 24, Page 111, of the said Public Records of Brevard County, thence South 83°24'00" West along said North line of Cypress Lake Estates, a distance of 568.63 Feet, thence South 43°43'31" West along said North line of

Cypress Lake Estates, a distance of 581 76 Feet to the Southeast corner described in O R book 1642, Pages 10-12, of said Public Records of Brevard County, thence North 33° 19'00" West along the East line of said O R Book 1642, Pages 10-12, a distance of 88 49 Feet to the Northeast corner of said O R Book 1642, Pages 10-12, thence South 56°41'00" West along the North line of said O R Book 1642, & a distance of 32 93 Feet to East line of lands described in O R Book 41 09, Pages 0139-0141, thence North 33°18'12" West along the East line of OR Book 4109, Pages 0139-0141, a distance of 265 94 Feet to the North east corner of said O R Book 41 09, Pages 01 39-014, North 89°43'42" West along the North line of said O R Book 41 09, Pages 01 39-0141, a distance of 781 38 Feet to the northern corner of said O R Book 41 09, Pages 01 39-0141, thence South 00°17'11" West along the West line of the following O R Book and pages of said O R Book 4109, Pages 0139-0141, O R Book 2520, Page 2171, O R Book 2351, Page 2722, O R Book 331 2, Page 208 and the West line of said Cypress Lake Estates, a distance of 2, 61 6 50 Feet to a point on the North line of lands described in O R Book 4242, Pages 2004-2005, thence North 89°53'49" West along the North line of said O R Book 4242, Pages 2004-2005, a distance of 415 62 Feet to the Northwest corner of said O R Book 4242, Pages 2004-2005, thence South 00°41 '22" West along the east line of said O R Book 4242, Pages 2004-2005, a distance of 663 32 Feet to a point lying 50 feet North (by perpendicular measurement) of the South line of the Southwest 1/4 of said Section 5, thence North 89°56'32" West parallel to said South line, a distance of 1, 1 35 90 Feet to a point on the West line of said Section 5 and the West line of Valkaria Intermar Unrecorded Lakes And Tracts, thence North 00°36'51" East along said West line, a distance of 2,606 64 Feet to the West 1/4 corner of said Section 5, thence North 00°01'36" East along said West line, a distance of 2,633 71 Feet to the Northwest corner of said Section 5 and the South line of Florida Indian River Land Company, according to the Plat thereof, as recorded in Plat Book 1, Page 166, of the said Public Records of Brevard County, thence South 89°45'03" East along the North line of said Section 5 and the South line of said Florida Indian River Land Company, a distance of 5,311 48 Feet to the POINT-OF-BEGINNING

Containing 386.257 Acres of land more or less.