RESOLUTION R-19-027

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, REGARDING REAL POPERTY, FINDING THAT PROPERTY IS NEEDED FOR A PUBLIC PURPOSE; AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT; REQUESTING THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION TO ENTER INTO A LEASE AGREEMENT WITH MANATEE COUNTY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Manatee County, Florida (Board) has concluded that it is in the best interest of the citizens of Manatee County for the County to enter into a lease agreement for certain property owned by the State of Florida and controlled by the Florida Department of Transportation (FDOT); and

WHEREAS, counties are authorized pursuant to Section 125.031, Florida Statutes, to enter into certain leases related to property needed for public purposes; and

WHEREAS, the property which is the subject of the lease agreement property is located in Section 26, Township 34 South, Range 16 East, and more particularly described in **Exhibit "A"**, attached hereto and by reference incorporated herein; and

WHEREAS, the Board authorized during the November 27, 2018 Regular Board Meeting to assume operational responsibility for the Palma Sola Boat Ramp Facility located on the Property, beginning January 1, 2019, and which will require the County to enter into a Public Purpose Lease with FDOT for the continued public purpose of: use and maintenance of a boat ramp, dock and parking area; and

WHEREAS, the current Lease Agreement for Public Purpose by and between FDOT and the City of Bradenton expires on March 4, 2019; and

WHEREAS, the Board finds the terms and conditions of the lease agreement, attached hereto as **Exhibit "B"** and by reference incorporated herein, acceptable and reasonable.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Manatee County, Florida, that:

1. The findings set forth in the recitals above are hereby adopted as findings of the Board and are incorporated herein by reference.

2. The Board hereby approves, and the Chairperson or Vice Chairperson of the Board is hereby authorized to execute, the lease agreement, attached as **Exhibit "B,"** which pertains to the property described in **Exhibit "A."**

3. The Board hereby formally requests that FDOT enter into the attached lease agreement with Manatee County.

4. This Resolution shall be effective immediately upon adoption.

DULY ADOPTED with a quorum present and voting this _____ day of _____, 2019.

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

By: _____
Chairperson

ATTEST: ANGELINA COLONNESO
CLERK OF CIRCUIT COURT AND COMPTROLLER

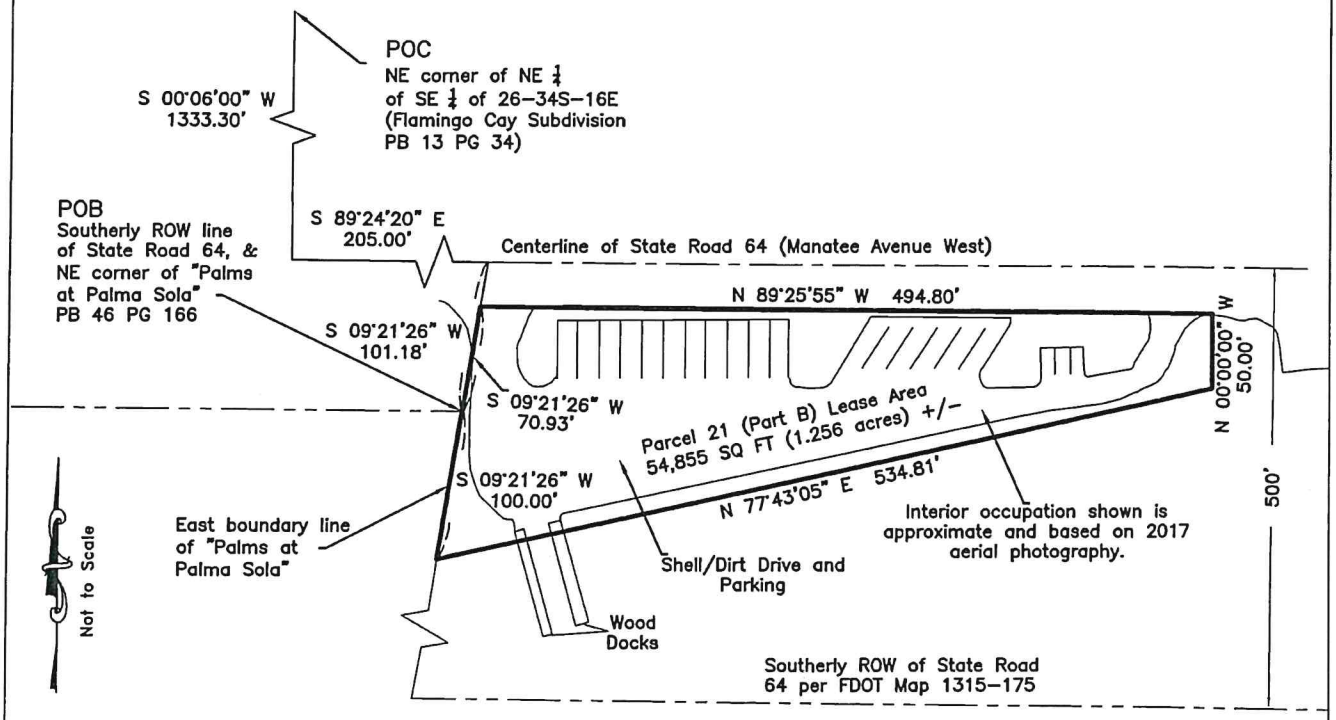
By: _____
Deputy Clerk

Exhibit "A"
Description and Sketch

LEASE AREA DESCRIPTION (NOT A SURVEY)
FP: N/A, Section/Job #1315-175, Parcel 21 (Part B)

COMMENCE at the Northeast corner of the Northeast ¼ of the Southeast ¼ of Section 26, Township 34 South, Range 16 East, Manatee County, Florida, per "Flamingo Cay Subdivision, First Unit" as recorded in Plat Book 13, Page 34 of the Public Records of Manatee County, Florida; thence South 00°06'00" West, 1333.30 feet to the centerline of State Road 64 (Florida Department of Transportation Map Section 1315-175); thence South 89°24'20" East, 205.00 feet along said centerline; thence South 09°21'26" West, 101.18 feet to the southerly right of way line of said State Road 64 and the Northeast corner of the Plat of "Palms at Palma Sola" as recorded in Plat Book 46, Page 166, Public Records of Manatee County, Florida for a POINT OF BEGINNING; thence South 09°21'26" West, 100.00 feet along the East boundary of "Palms of Palma Sola"; thence North 77°43'05" East, 534.81 feet; thence North 00°00'00" West, 50.00 feet; thence North 89°25'55" West, 494.80 feet; thence South 09°21'26" West, 70.93 feet to the POINT OF BEGINNING.

Containing 54,855 square feet (1.256 acres) more or less.



Notes:
1. This Description and Sketch does not certify of warranty: title, zoning, easements, or freedom of encumbrances.
2. Subject to easements, dedications and restrictions of record not provided to the surveyor and mapper.
3. Not valid without the signature and original raised seal of a Florida licensed surveyor & mapper. This is not a survey.
4. The Basis of Bearing is the centerline of State Road 64, which bears S88°24'20"E per the plat of Palms at Palma Sola, recorded in Plat book 46, Page 167.
5. This Description and Sketch utilized a Description and Sketch from a previously prepared lease agreement between FDOT and the city of Bradenton (Parcel 21).

Manatee County Property Management Department Survey Division
Manatee County FLORIDA
1112 Manatee Avenue West
Bradenton, Florida, 34205.
(941)748-4501

1/19/2019
Todd E. Boyle, RSM — Date
Florida Registered Professional Surveyor & Mapper, 6047

PB = Plat Book
PG = Page
PID = Parcel Identification Number
FDOT = Florida Department of Transportation
POB = Point of Beginning
POC = Point of Commencement
SQ FT = Square Feet
+/- = More or less
ROW = Right-of-Way

Drawing Path: S:\SURVEY\2018 jobs\20181103_Palma Sola Boat Ramp\CAD_DWG's\carlson
Sheet: 1 OF 1
Section 25, Township 34 South, Range 16 East
Drawing Date: 12/03/18

EXHIBIT "B"

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

LEASE AGREEMENT

ITEM/SEGMENT NO.: N/A (4140482) 1315-175
MANAGING DISTRICT: One
F.A.P. NO.: N/A
STATE ROAD NO.: 64
COUNTY: Manatee
PARCEL NO.: 21 (part B) Excess Parcel 4339

THIS **AGREEMENT**, made this _____ day of _____, 2019_____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, (hereinafter called the Lessor), and MANATEE COUNTY, a political subdivision, of the State of Florida, Post Ofice Box 1000, Bradenton, Florida 34206 (hereinafter called the Lessee).

WITNESSETH:

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Property and Term. Lessor does hereby lease unto Lessee the property described in Exhibit "A", attached and made a part hereof, for a term of 25 years _____ beginning _____ and ending _____. This Lease may be renewed for an additional 25 years _____ term at Lessee's option, subject to the rent adjustment as provided in Paragraph 3 below. Lessee shall provide Lessor 60 _____ days advanced written notice of its exercise of the renewal option.

If Lessee holds over and remains in possession of the property after the expiration of the term specified in this Lease, or any renewals of such term, Lessee's tenancy shall be considered a tenancy at sufferance, subject to the same terms and conditions as herein contained in this Lease.

This Lease is subject to all utilities in place and to the maintenance thereof as well as any other covenants, easements, or restrictions of record.

This Lease shall be construed as a lease of only the interest, if any, of Lessor, and no warranty of title shall be deemed to be given herewith.

2. Use. The leased property shall be used solely for the purpose of use & maintenance of boat ramp, dock, parking area ____. If the property is used for any other purpose, Lessor shall have the option of immediately terminating this Lease. Lessee shall not permit any use of the property in any manner that would obstruct or interfere with any transportation facilities.

Lessee will further use and occupy the leased property in a careful and proper manner, and not commit any waste thereon. Lessee will not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the property. Lessee will not use or occupy said property for any unlawful purpose and will, at Lessee's sole cost and expense, conform to and obey any present or future ordinances and/or rules, regulations, requirements, and orders of governmental authorities or agencies respecting the use and occupation of the leased property.

Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations, or as those terms are understood in common usage, are specifically prohibited. The use of petroleum products, pollutants, and other hazardous materials on the leased property is prohibited. Lessee shall be held responsible for the performance of and payment for any environmental remediation that may be necessary, as determined by the Lessor, within the leased property. If any contamination either spread to or was released onto adjoining property as a result of Lessee's use of the leased property, the Lessee shall be held similarly responsible. The Lessee shall indemnify, defend, and hold harmless the Lessor from any claim, loss, damage, costs, charge, or expense arising out of any such contamination.

3. Rent. Lessee shall pay to Lessor as rent, on or before the first day of each rent payment period, the sum of N/A-public purpose _____ plus applicable tax, for each N/A _____ of the term. If this Lease is terminated prior to the end of any rent payment period, the unearned portion of any rent payment, less any other amounts that may be owed to Lessor, shall be refunded to Lessee. Lessee shall pay any and all state, county, city, and local taxes that may be due during the term hereof, including any real property taxes. Rent payments shall be made payable to the Florida Department of Transportation and shall be sent to FDOT-D1 ROW, Property Management, 801 N. Broadway Avenue, MS 1-66, Bartow, FL 33830-1249 _____. Lessor reserves the right to review and adjust the rental fee biennually and at renewal to reflect market conditions. Any installment of rent not received within ten (10) days after the date due shall bear interest at the highest rate allowed by law from the due date thereof, per Section 55.03(1), Florida Statutes. This provision shall not obligate Lessor to accept late rent payments or provide Lessee a grace period.

4. Improvements. No structures or improvements of any kind shall be placed upon the property without the prior written approval of the District Secretary for District One _____ of Lessor. Any such structures or improvements shall be constructed in a good and workmanlike manner at Lessee's sole cost and expense. Subject to any landlord lien, any structures or improvements constructed by Lessee shall be removed by Lessee, at Lessee's sole cost and expense, by midnight on the day of termination of this

Lease and the leased property restored as nearly as practical to its condition at the time this Lease is executed. Portable or temporary advertising signs are prohibited.

Lessee shall perform, at the sole expense of Lessee, all work required in the preparation of the leased property for occupancy by Lessee, in the absence of any special provision herein contained to the contrary; and Lessee does hereby accept the leased property as now being in fit and tenantable condition for all purposes of Lessee.

Lessor reserves the right to inspect the property and to require whatever adjustment to structures or improvements as Lessor, in its sole discretion, deems necessary. Any adjustments shall be done at Lessee's sole cost and expense.

5. Maintenance. Lessee shall keep and maintain the leased property and any building or other structure, now or hereafter erected thereon, in good and safe condition and repair at Lessee's own expense during the existence of this Lease, and shall keep the same free and clear of any and all grass, weeds, brush, and debris of any kind, so as to prevent the same from becoming dangerous, inflammable, or objectionable. Lessor shall have no duty to inspect or maintain any of the leased property or buildings, and other structures thereon, during the term of this Lease; however, Lessor shall have the right, upon twenty-four (24) hours notice to Lessee, to enter the leased property for purposes of inspection, including conducting an environmental assessment. Such assessment may include: surveying; sampling of building materials, soil, and groundwater; monitoring well installations; soil excavation; groundwater remediation; emergency asbestos abatement; operation and maintenance inspections; and, any other actions which may be reasonable and necessary. Lessor's right of entry shall not obligate inspection of the property by Lessor, nor shall it relieve the Lessee of its duty to maintain the leased property. In the event of emergency due to a release or suspected release of hazardous waste on the property, Lessor shall have the right of immediate inspection, and the right, but not the obligation, to engage in remedial action, without notice, the sole cost and expense of which shall be the responsibility of the Lessee.

6. Indemnification. *(select applicable paragraph)*

☒ **Lessee is a Governmental Agency**

To the extent provided by law, Lessee shall indemnify, defend, and hold harmless the Lessor and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by Lessee, its agents, or employees, during the performance of the Lease, except that neither Lessee, its officers, agents, or employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Lessor or any of its officers, agents, or employees during the performance of the Lease.

When the Lessor receives a notice of claim for damages that may have been caused by the Lessee, the Lessor will immediately forward the claim to the Lessee. Lessee and the Lessor will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Lessor will determine whether to require the participation of Lessee in the defense of the claim or to require that Lessee defend the Lessor in such claim as described in this section. The Lessor's failure to promptly notify Lessee of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Lessee. The Lessor and Lessee will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any.

☐ **Lessee is not a Governmental Agency**

Lessee shall indemnify, defend, save, and hold harmless Lessor, its agent, officers, and employees, from any losses, fines, penalties, costs, damages, claims, demands, suits, and liabilities of any nature, including attorney's fees, (including regulatory and appellate fees), arising out of or because of any acts, action, neglect, or omission by Lessee, or due to any accident, happening, or occurrence on the leased property or arising in any manner from the exercise or attempted exercise of Lessee's rights hereunder whether the same regards person or property of any nature whatsoever, regardless of the apportionment of negligence, unless due to the sole negligence of Lessor.

Lessee's obligation to indemnify, defend and pay for the defenses or at Lessor's option, to participate, and to associate with the Lessor in the defense and trial of any claim and any related settlement negotiations, shall be triggered by the Lessor's notice of claim for indemnification to Lessee. Lessee's inability to evaluate liability or its evaluation of liability shall not excuse Lessee's duty to defend and indemnify within seven days after such notice by the Lessor is given by registered mail. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the Lessor solely negligent shall excuse performance of this provision by Lessee. Lessee shall pay all costs and fees related to this obligation and its enforcement by Lessor. Lessor's failure to notify Lessee of claim shall not release Lessee of the above duty to defend.

7. Insurance. Lessee at its expense, shall maintain at all times during the term of this Lease, public liability insurance protecting Lessor and Lessee against any and all claims for injury and damage to persons and property, and for the loss of life or property occurring in, on, or about the property arising out of the act, negligence, omission, nonfeasance, or malfeasance of Lessee, its employees, agents, contractors, customers, licensees, and invitees. Such insurance shall be carried in a minimum amount of not less than 1 million dollars ($ 1,000,000.00) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than five hundred thousand ($ 500,000.00) for property damage, or a combined coverage of not less than 1 million 5 hundred thousand ($ 1,500,000.00). All such policies shall be issued by companies licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be

canceled or modified unless Lessor is given at least sixty (60) days prior written notice of such cancellation or modification. Lessee shall provide Lessor certificates showing such insurance to be in place and showing Lessor as additional insured under the policies. If self-insured or under a risk management program, Lessee represents that such minimum coverage for liability will be provided for the leased property.

Lessor may require the amount of any public liability insurance to be maintained by Lessee be increased so that the amount thereof adequately protects Lessor's interest. Lessee further agrees that it shall during the full term of this Lease and at its own expense keep the leased property and any improvements thereon fully insured against loss or damage by fire and other casualty. Lessee also agrees that it shall during the full term of this Lease and at its own expense keep the contents and personal property located on the leased property fully insured against loss or damage by fire or other casualty and does hereby release and waive on behalf of itself and its insurer, by subrogation or otherwise, all claims against Lessor arising out of any fire or other casualty whether or not such fire or other casualty shall have resulted in whole or in part from the negligence of the Lessor.

8. Eminent Domain. Lessee acknowledges and agrees that its relationship with Lessor under this Lease is one of landlord and tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Lease. Termination of this Lease for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Lease, including any residual interest in the Lease, or any other facts or circumstances arising out of or in connection with this Lease.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from Lessee's loss of occupancy of the leased property, or any such rights, claims, or damages flowing from adjacent properties owned or leased by Lessee as a result of Lessee's loss of occupancy of the leased property. Lessee also hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort as set out above, as a result of Lessee's loss of occupancy of the leased property, when any or all adjacent properties owned or leased by Lessee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Lease is still in existence on the date of taking or sale; or has been terminated prior thereto.

9. Miscellaneous.

a. This Lease may be terminated by Lessor immediately, without prior notice, upon default by Lessee hereunder, and may be terminated by either party, without cause upon sixty (60) days prior written notice to the other party.

b. In addition to, or in lieu of, the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.

c. Lessee acknowledges that it has reviewed this Lease, is familiar with its terms, and has had adequate opportunity to review this Lease with legal counsel of Lessee's choosing. Lessee has entered into this Lease freely and voluntarily. This Lease contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and the previous owner of the leased property and landlord of Lessee are merged in this Lease, which alone, fully and completely expresses the agreement between Lessee and Lessor with respect to the subject matter hereof. No modification, waiver, or amendment of this Lease or any of its conditions or provisions shall be binding upon Lessor or Lessee unless in writing and signed by both parties.

d. Lessee shall not sublet the property or any part thereof, nor assign this Lease, without the prior consent in writing of the Lessor; this Lease is being executed by Lessor upon the credit and reputation of Lessee. Acceptance by Lessor of rental from a third party shall not be considered as an assignment or sublease, nor shall it be deemed as constituting consent of Lessor to such an assignment or sublease.

e. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, and telegraph services, or any other utility or service used on the property.

f. This Lease shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

g. All notices to Lessor shall be sent to the address for rent payments and all notices to Lessee shall be sent to: Manataee County, Attn: Charlie Bishop, Director of Property Management, 1112 Manatee Avenue West, Ste. 800/POB 1000, Bradenton, FL 34205 (941-748-4501 ext. 6289 Charles Meador)

EXHIBIT "B"

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Manatee County
Lessee (Company Name, if applicable)

By: _____
District Secretary

BY: Board of County Commissioners

L.K. Nandam P.E.
Printed Name

_____
Steve Jonsson

Attest: _____

Title: Chairperson

Name/Title: _____

Attest: _____ (SEAL)

LEGAL REVIEW:

_____
Angelina Colonneso Deputy Clerk

_____
District Counsel

Title: Clerk of Circuit Court and Comptroller

Don Conway
Printed Name

EXHIBIT "B"

ADDENDUM

This is an Addendum to that certain Lease Agreement between MANATEE COUNTY, a political subdivision of the State of, Florida, Post Office Box 1000, Bradenton, Florida 34206
and the State of Florida Department of Transportation dated the _____ day of _____, _____
In addition to the provisions contained in said Agreement, the following terms and conditions shall be deemed to be a part thereof pursuant to Paragraph 9 (b) of said Agreement:

1. Regardless of the purpose(s) for which the lessor grants the lessee to use this property, the property's primary purpose will remain as a transportation corridor into perpetuity. All other uses, including the use(s) approved in this lease, will remain incidental to the property's primary purpose as a transportation corridor and public state road right of way..

2. Any construction or changes to FDOT property requires a permit and approval from FDOT.

3. Exhibit A is hereby incorporated by reference into this lease.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Manatee County
Lessee (Company Name, if applicable)

By: _____
District Secretary

BY: Board of County Commissioners

L.K. Nandam P.E.
Printed Name

_____
Steven Jonsson

Attest: _____

Title: Chairperson

Name/Title: _____

Attest: _____ (SEAL)

LEGAL REVIEW:

_____
Angelina Colonneso, Deputy Clerk

_____
District Counsel

Title: Clerk of Circuit Court and Comptroller

Don Conway
Printed Name

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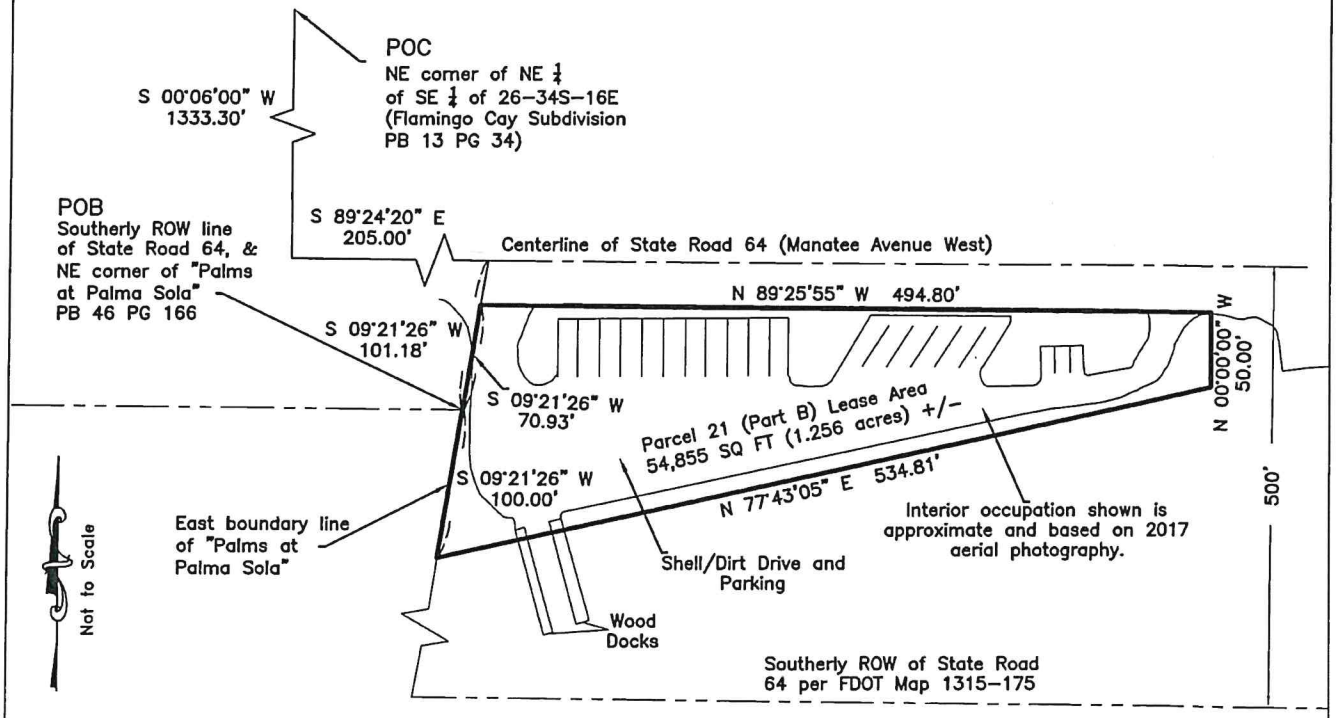

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