CITY OF BROOKSVILLE
CITY COUNCIL
EXECUTIVE SESSION & WORKSHOP
JOSEPH E. JOHNSTON, III COUNCIL CHAMBERS
201 HOWELL AVENUE
BROOKSVILLE, FL 34601

AGENDA

November 2, 2016 **5:30 P.M.**

A. CALL TO ORDER

B. ADJOURN MEETING AND CONVENE IN EXECUTIVE SESSION

EXECUTIVE SESSION PURSUANT TO F.S. CHAPER 286.011(8)
The purpose of the Executive Session is to discuss settlement options and litigation strategy for pending City actions. The persons attending the meeting will be Mayor Natalie Kahler, Vice Mayor Robert Battista, Council Members Frankie Burnett, Betty Erhard, and William Kemerer; Attorney's for the City of Brooksville, Thomas Hogan, Jr., Debbie Hogan, Clifford A. Taylor, and Jennifer Rey; City Manager T. Jennene Norman-Vacha; and Court Reporter of Carolyn F. Engel & Associates. The meeting is expected to last approximately one-hour.

ADJOURN EXECUTIVE SESSION

RECONVENE COUNICL MEETING 7:00 P.M.

C. INVOCATION AND PLEDGE OF ALLEGIANCE

D. FLORIDA BLUEBERRY FESTIVAL – GROUND LEASE AGREEMENT

Public input and discussion of proposed the Ground Lease Agreement between the City of Brooksville and the Florida Blueberry Festival, Inc.

Attachments: Proposed Ground Lease Agreement

E. ADJOURNMENT

In accordance with the Americans with Disabilities Act, persons with disabilities needing a special accommodation to participate in this proceeding should contact Lynn Sosa, ADA Coordinator, no later than 48 hours in advance of the meeting at (352) 540-3810. Meeting agendas and supporting documentation are available from the City Clerk's office and on line at www.cityofbrooksville.us.

Any person desiring to appeal any decision with respect to any matter considered at this meeting, may need a record of the proceedings including the testimony and evidence upon which the appeal is to be based, and therefore must make arrangements for a court reporter to ensure that a verbatim record of the proceedings is made.

GROUND LEASE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2016, by and between City of Brooksville, a public body existing under the State of Florida ("City" or "Lessor"), having an address of 201 Howell Avenue, Brooksville, FL 34601, and The Florida Blueberry Festival, Inc. ("Tenant"), having an address of P.O. Box 308, Brooksville, FL 34605, Attn: Executive Director of the Florida Blueberry Festival, Inc.

FOR GOOD AND VALUABLE CONSIDERATION, Lessor and Tenant agree as follows:

1. **Premises and Duration**. Lessor hereby grants unto Tenant, a ground lease ("Lease") to use and occupy, subject to the terms and conditions herein set forth, those certain premises (the "Premises") located in Brooksville and described as Parcels 1, 1A, 2, 2A and 4 in Exhibit "A" and is made a part hereof as if set forth in haec verba.

Tenant and Lessor shall provide necessary mutual easements required to cross the leased and City property in connection with its intended use which easements include property described as Parcel 3 in Exhibit A. The initial term of this Lease shall be for a term of fifty years, with two (2) twenty (20) year options which approval for the two option periods cannot be unreasonably withheld by the Lessor.

a. **Commencement Date.** The Commencement Date of this Lease shall be the date on which this Lease is last signed.

b. **Due Diligence.** Tenant shall, at Tenant's sole expense, conduct all feasibility studies to satisfy itself that the Premises can be developed as contemplated as a multi-purpose premise to house the Florida Blueberry Growers' Association, Inc. and provide a home for the annual Florida Blueberry Festival as

well as other events to pay for improvements and upkeep to the premises along with a shared use with the City of Brooksville of the premises.

c. **Utilities.** Lessor agrees that Tenant may run power, water and telephone lines underground, where feasible, upon the Lessor's property to service the Premises. Tenant shall be responsible for and pay all costs and charges for water, gas, electricity, sewer service, garbage service, telephone service, or any utility used in connection with the Premises. Tenant shall provide a master meter connection maintained by the Tenant and enter into a utility service agreement with Lessor.

d. **Non-Interference.** Tenant shall not do anything or allow anything to be done, which interferes with the function of Bud McKethan Park facilities, unless Lessor shall separately consent in writing. In addition, Tenant will honor the Construction and Occupancy Agreement for a Special Needs Emergency Shelter at Brooksville Quarry recorded in O.R. Book 2733, Page 1794, public records of Hernando County ("Occupancy Agreement"), until terminated by agreement of The Enrichment Centers, Inc. of Hernando County and shall indemnify the City for any claims related to the Occupancy Agreement.

e. **Option**. Tenant shall have the option to lease the property described as Parcel 6 in Exhibit A upon written request to Lessor, and provided the property is used to supplement and enhance activities associated with the Coast to Coast Trail, and on terms negotiated between the parties upon exercise of the option.

2. **Use and Scheduled Events and Right of First Refusal.** The Premises shall be used to hold community events and sub-lease the Premises to other entities for other events as contemplated in the site plan.. Tenant shall also be permitted to enter into a sublease agreement with the Florida Blueberry Grower's Association, Inc. City shall have the right to hold scheduled events each year on the Premises at a user fee based on direct costs associated with the clean-up, utility expenses and repair of potentially damaged areas. The dates for City events must be approved by Tenant in advance to avoid conflicts with Tenant's scheduled

events. Tenant shall have a right of first refusal to use the Premises for recreation and events and it shall serve as the primary site for the Florida Blueberry Festival and other events throughout the year to attract people into the City of Brooksville. Tenant shall not have the right to assign this Lease without the written consent of City. Assignment consent by the Lessor shall not be unreasonably withheld by Lessor.

3. **Rent.**

a. **Base Rent.** Tenant shall pay to Lessor at the address stated above, in advance, without demand and without any set-off, annual rent of $6,000.

b. **Taxes.** Tenant and subtenants shall pay all applicable Florida Sales and Property Taxes.

c. **Payment.** Upon commencement of the Term, Tenant shall pay to Lessor without previous demand therefor and without any setoff or deduction whatsoever.

4. **Insurance.** Tenant shall, at its full cost and expense, procure and continue in force, during the Term of this Lease, including renewal periods, comprehensive general and property liability insurance with contractual liability endorsement relating to the Premises covering any and all claims for injuries to persons or upon Premises. Such insurance shall be in coverage amounts acceptable to City, but in no event less than a single event coverage of One Million and No/100 Dollars ($1,000,000.00) and Three Million and No/100 Dollars ($3,000,000) for any aggregate claim for bodily injury and property damage arising out of any one occurrence. Any insurance policies required hereunder shall name Lessor as an additional insured and shall furnish evidence of such insurance coverage prior to occupancy of the Premises. Any property damage shall include a policy endorsing full replacement cost. Tenant will also provide by written assurances to the Lessor

that any required worker compensation coverage for any of its employees or its subcontractors will be in force at all times material to this lease.

5. **Indemnity.** Tenant shall indemnify, defend and save harmless the Lessor from and against any and all claims and/or liability to the extent resulting from any negligent or willful act or omission of Tenant in connection with Tenant's use or occupancy of the Premises.

6. **Leasehold Mortgage and Security Agreement.**

a. Lessor hereby grants permission to the Tenant to execute and deliver unto a financial institution a Leasehold Mortgage and Security Agreement pledging this Agreement, and the buildings and attendant facilities erected upon the Land, as security for said loan, as contemplated by this Section.

Lessor agrees that, in the event that the Tenant shall pledge this Agreement pursuant to the terms of a Leasehold Mortgage and Security Agreement, then the Lessor, so long as said Leasehold Mortgage and Security Agreement remains outstanding and has not been satisfied of record, will not enter into any agreement with the Tenant purporting to change, modify, amend or terminate this Agreement without the mortgagee's joinder and prior consent, which consent shall not be unreasonably withheld as to any non-material change, modification or amendment, The Lessor agrees that any attempted change, modification, amendment or mutual termination between the Lessor and the Tenant without the mortgagee's joinder and prior written consent shall be void and of no force or effect. However, in no event shall the Tenant enter into any Leasehold Mortgage or Security Agreement with a duration longer than the Lease Termination Date of this Agreement. In the event that the Tenant shall pledge this Agreement pursuant to a Leasehold Mortgage and Security Agreement as herein provided, then the Lessor agrees that if and when the Lessor notifies the **Tenant** of a default or claim of default by the Tenant under this Agreement, Lessor shall send a copy of the written notice or a written explanation of any oral notice concurrently therewith to the mortgagee, at an address certified to the Lessor in writing by said

mortgagee upon the granting of said Leasehold Mortgage and Security Agreement. The mortgagee shall be permitted to remedy any such default or claimed default specified in the notice within an equal period of time, commencing on the date mortgagee receives or is deemed to have received such notice, as the Tenant would be permitted to remedy same pursuant to this Agreement. Notwithstanding the foregoing provisions of this paragraph, said mortgagee shall have a minimum of thirty (30) days after its receipt of the notice to remedy the default. The Lessor further agrees that in the event that Tenant pledges the Agreement pursuant to a Leasehold Mortgage and Security Agreement, then should said mortgagee, or a purchaser at a foreclosure sale, acquire the Tenant's interest under this Agreement, through foreclosure or otherwise, the Lessor shall recognize said mortgagee, or such purchaser, as the Tenant under this Agreement and shall accept performance by said mortgagee or purchaser under this Agreement provided that said mortgagee or purchaser agrees to be bound by the terms and conditions for the rest of the unexpired term of this Agreement or that the Lessor, mortgagee or purchaser can reach mutual agreement on any changes to the terms of this Agreement, The Lessor further agrees that in the event that the Tenant shall hereafter file for protection under the bankruptcy laws of the United States and shall reject or otherwise terminate this Agreement, the Lessor shall enter into a new ground lease on the exact same terms and conditions as this Agreement with the mortgagee, but only to the extent of the original terms of this Agreement. It is further understood and agreed that the Leasehold Mortgage and Security Agreement described herein and in favor of the named mortgagee shall be the only mortgage, pledge or encumbrance permitted on the Land absent prior written consent of the Lessor, which consent the Lessor may withhold for any reason or no reason.

b. The mortgagee named above shall be a bona fide federal or state chartered financial institution insured through the Federal Deposit Insurance Corporation. Tenant (mortgagor) agrees that if it is in default of any provision of the Leasehold Mortgage and Security Agreement, Tenant and the mortgagee shall give notice to the Lessor of any default within ten days of said default notice. Lessor shall have the right to cure said default.

c. The parties further understand and agree that any requests for the Lessor (City) to subordinate in any manner or form its position relative to, or any rights under, this Agreement shall be in the sole discretion of the City; and the City reserves the right to refuse requests for "subordination" for any reason or no reason. Notwithstanding anything in this Article, in no event shall the City, as a political subdivision of the State of Florida, give, lend, pledge or use its taxing powers or credit to any corporation, association, partnership or person in connection with or furtherance of this Agreement.

7. **Mowing and Maintenance Obligations of Lessor.** Lessor shall mow and maintain those areas of Open Spaces and Facilities that have been historically cared for by the Lessor on the "Premises" for the Tenant. Lessor shall continue to mow and maintain those areas that are not affected by any construction by the tenant. Any and all Southwest Florida Water Management District maintenance, management reporting requirements of the "Current" retention areas, structures and any improvements to those "Current" areas shall be the sole responsibility of the Lessor.

8. **Maintenance Obligations of Tenant**.

a. **General Obligations.** Tenant shall be obligated to maintain the Premises and every part thereof in good appearance, repair and safe condition, consistent with good business practices, whether installed by the Lessor or the Tenant, such maintenance shall be without cost to the Lessor. Such maintenance shall include, but not be limited to, the scheduled maintenance of the Premises listed in Section 8b. Tenant shall repair all damages to the Premises caused by its employees, patrons or its operations thereon. All such maintenance, repair and replacements shall be of a quality equal to the original in materials and workmanship.

b. **Required Scheduled Maintenance to Premises**. In addition to the Tenant's maintenance obligations included in this Agreement, Tenant further agree to maintain, at a minimum, certain components (singular use shall not limit the Tenant's obligations herein where buildings or the parts thereof exist in the plural) of the Premises as reflected by Exhibit "A" and any amendments thereto according to the following maintenance schedule: (1) Building Exterior. Buildings' exteriors inspected annually. Mildew, staining, dirt, cobwebs, etc., cleaned as needed. (2) Landscaping. The landscaping shall be maintained in a manner consistent with good horticultural practices, and free of unsightly conditions. (3) Electrical Service and HVAC. Keep area free of debris and foreign objects at all times. (4) Parking Lots. Clean, sweep, remove oil and debris, repair and stripe, on a routine basis. All maintenance schedules of the Tenant shall be provided to the Lessor on an annual basis or when amended. Copies of all manufacturer warranties, approved building plans, builder warranties shall be provided to the Lessor.

c. **Conditions of Premises at End of Term**. In addition to manufacturer's recommended scheduled maintenance in Section 8b above, the Tenant shall return the premises at the end of the term of this Agreement to the original or improved leasable condition.

d. **Failure to Repair and Maintain Premises**. If the Tenant fails to perform the Tenant's maintenance obligations, the Lessor shall have the right, but not the obligation, to perform such maintenance responsibilities, provided the Lessor has first, in any situation not involving an emergency, by written notice to Tenant, afforded the Tenant a period within which to correct the failure of thirty (30) days or of such longer duration as may be reasonably required to rectify the failure through the exercise of prompt, diligent and continuous effort said extension must be approved by the Lessor. All costs incurred by the Lessor in performing the Tenant's maintenance responsibility, plus a fifteen percent (15%) administrative charge, shall be paid by the Tenant within 30 days of receipt of billing thereof. Failure of the Tenant to pay within 30 days after receipt of Lessor's notice of delinquency shall be deemed a condition of default. The Lessor retains the right, after giving reasonable advance notice to the Tenant, to enter upon the Land to repair any utilities thereon that

serve any areas, including the Tenant's premises. Lessor shall endeavor to use commercial reasonable efforts to minimize interference or disruption to the Tenant's operations.

9. **Care of Premises.** Tenant shall not perform any acts or carry on any practices which may injure the building or the Premises or be a nuisance and shall keep the Premises clean and free from rubbish and dirt, at all times. Tenant shall not burn any trash or garbage in or about the Premises. Tenant shall, at all times, keep the Premises in a clean and sanitary condition in accordance the laws, directions, rules and regulations of the governmental agencies having jurisdiction, at the sole cost and expense of Tenant, and in all respects Tenant shall comply with all requirements of law applicable to the Premises.

10. **Future Improvements and Alternations by Tenant**. Provided Tenant obtains funding, Tenant shall construct improvements substantially in any master site plan provided and approved by any lender. In the event any improvement would affect any existing use, such as including but not limited to the current location of the horseshoe pit and/or the tennis courts, Tenant shall be required to seek and get approval from the City Council for such change to any existing use. City shall participate in the funding of water and sewer improvements for the project contemplated in the master site plan if it is determined by the City to be regionally significant. If construction by the Tenant does not begin by June 1, 2018, this Lease shall terminate and be null and void, and all rent money paid by Tenant shall be non-refundable and retained by City.

a. **Written Approval.** Following completion of the construction of the Tenant's Improvements, if any, Tenant shall make no further improvements or alterations whatsoever to the Premises without the prior written approval of the Lessor, which consent shall not be unreasonably withheld, provided, however, that such improvements do not conflict with the current use and future development of the premises and that such alterations or fixed leasehold improvements shall be commenced only after plans and specifications thereof have been submitted to and approved in writing by the Lessor. Within forty-five (45) days after receipt by the Lessor

of the Tenant's plans and specifications, the Lessor shall inform the Tenant that the plans are either approved, approved subject to certain stated conditions and changes; or not approved.

b. **Conditions.** If the Tenant's request for approval to make improvements or alterations is permitted pursuant to Section 10a, the following conditions shall apply: (1) Tenant shall obtain all required permits and licenses necessary under, and shall comply with applicable zoning laws, building codes and other laws or regulations of all appropriate governing entities, including the Federal, State and County, applicable to the construction or installation of approved improvements or alterations; (2) Tenant agrees that all construction shall conform to the general architectural and construction requirements of the Florida Building Code, as may be amended, from time to time, as well as the development standards and ordinances of City of Brooksville; (3) Tenant agrees to hire only licensed contractors and subcontractors and to indemnify the Lessor in the event of any loss or damage resulting from work performed on the Premises by its contractors and subcontractors; (4) Tenant shall comply with all then current building, permitting and licensing requirements; (5) Tenant covenants and agrees to accept and pay all costs necessary to complete the approved alterations or improvements; and (6) Tenant agrees to be solely responsible for any damage (other than normal wear and tear) resulting from the removal by the Tenant of its personal property or signs.

11. Default. In the event Tenant shall fail for ten (10) days following receipt of written notice from Lessor to remedy any default in the payment of any sum required to be paid by Tenant under this Lease, or in the event that Tenant shall fail to take reasonable steps to perform any other term, covenant or condition herein after thirty (30) days' written notice from Lessor to do so (provided, however, that if said failure is such that it cannot be cured or corrected within said thirty (30) days, then said failure shall not be a default hereunder so long as Tenant begins curative or corrective action within said thirty (30) day period and diligently pursues such action to completion), then in either such event Lessor may, at Lessor's option, to be exercised in writing, terminate this Lease. Possession of the Premises and all additions and permanent improvements thereof (except

as otherwise provided in this Lease) shall be delivered to Lessor within ten (10) days after Tenant receives the written notice that Lessor has exercised such option, and thereupon Lessor shall be entitled to and may take immediate possession of the Premises, any other notice or demand being hereby waived.

If Tenant is declared insolvent or adjudicated bankrupt or if Tenant makes an assignment for the benefit of creditors, or if Tenant's leasehold interest is sold under execution or a trustee in bankruptcy or a receiver is appointed for Tenant, City, without prejudice to its rights hereunder and at its option, may terminate this Lease and retake possession of the premises immediately and without notice to Tenant or any assignee, transferee, trustee or any other person or persons, using force if necessary.

12. <u>No Liens</u>.

a. Tenant shall not permit any construction or materialmen's or other liens to be imposed upon the premises for any labor or material furnished Tenant in connection with work of any character performed on the Leased Property by or at the direction of Tenant. Tenant shall have the right to contest the validity of amount of such lien, provided that the payment of such amount is bonded during the pendency of such contest, but upon the final determination of such contest but upon the final determination of such contest, as appropriate, Tenant shall be responsible for such lien and shall immediately pay any judgment rendered with all proper costs and charged (including reasonable attorney's fees) and shall have the lien released at its own expense. In lieu of bonding, Tenant may obtain other security approved by City in writing.

b. Tenant shall, at Tenant's sole cost and expense, comply with the requirements of any Federal, State, County, municipal or other governmental law or ordinance, and any rule, regulation, requirement and/or directive thereunder pertaining to the environment (hereinafter called an "Environmental Law) with respect to any dangerous or hazardous substances or wastes in and upon the Leased Property placed or

discharged by Tenant during the term of any extension of this Lease. Should any Environmental Law require any action to clean up, remove and/or eliminate any spills or discharges by Tenant of dangerous or hazardous substances or wastes in and upon the Leased Property placed or discharged by Tenant during the term or any extension of this Lease, then and in that event, Tenant shall, at Tenant sole cost and expense, take any and all such action required. Tenant shall indemnify, defend and hold harmless City from any and all fines, suits, procedures, claims and actions of any kind arising out of Tenant's failure to provide all information, make all submissions and take all actions required by any Environmental Law.

13. Damage or Destruction of Premises.

a. **Partial Damage**. In the event all or a portion of the Premises are partially damaged by fire, flooding, wind, explosion, implosion, the elements, a public enemy, terrorism, aircraft accident, or other casualty, but not rendered untenable, the Tenant will make the repairs immediately, at its own cost and expense.

b. **Extensive Damage**. In the event damages as referenced in Section 13a shall be so extensive as to render all or a significant portion of the Premises untenable, but capable of being repaired within one hundred twenty (120) days, the Tenant will make the repairs with due diligence, at its sole expense.

c. **Complete Destruction**. In the event the Premises are completely destroyed by fire, explosion, implosion, the elements, a public enemy, terrorism, aircraft accident, or other casualty or are so damaged that they are untenable and cannot be replaced within one hundred twenty (120) days, the Tenant shall fully restore the Premises within twelve (12) months or, pay to the Lessor, the Tenant's insurance payment equal to the replacement value of the Premises prior to the destruction.

14. Environmental.

a. **Hazardous Substances**. The term "Hazardous Substance" means any substance:

1. The presence of which requires or may later require notification, investigation or remediation under any environmental law; or,

2. That is or becomes defined as a "hazardous waste", "hazardous material", "hazardous substance", "pollutant" or "contaminant" under any environmental law, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U,S.C. § 9601 *et seq.),* the Resource Conservation and Recovery Act (42 U.S.C, § 6901 *et seq.)* and the Code of Federal Regulations thereunder, as said regulations may be amended or renumbered; and including Chapters 376 and **403,** *Fla, Stat.,* and the Florida Administrative Rules thereunder, as said regulations may be amended or renumbered; or

3. That is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States and/or the State of Florida; or,

4. The presence of which on the Premises causes or threatens to cause a nuisance on the Premises or to adjacent properties or poses or threatens to pose a hazard to the Premises or to the health or safety of persons on or about the Premises; or,

5. That contains gasoline, diesel fuel or other petroleum hydrocarbons or volatile organic compounds; or,

6. That contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or,

7. That contains or emits radioactive particles, waves or materials, including, without limitation, radon gas.

b. **General Conditions: Environmental.** Notwithstanding any other provisions of this Agreement, and in addition to any and all other requirements of this Agreement or any other covenants, representations or warranties of the Tenant, the Tenant hereby expressly covenants, warrants and represents to the **Lessor,** in connection with the Tenant's operations on the Premises, the following:

1. Tenant is knowledgeable of all applicable federal, State and local environmental laws, ordinances, rules, regulations and orders, that apply to the Tenant's operations at the Premises located on premises and acknowledges that such environmental laws, ordinances, rules, regulations and orders change from time-to-time, and the Tenant agrees to keep informed of any such future changes.

2. Tenant agrees to comply with all applicable federal, State and local environmental laws, ordinances, rules, regulations and orders that apply to the Tenant's operations. Tenant agrees to hold harmless and indemnify the Lessor for any violation by the Tenant of such applicable federal, State and local environmental laws, ordinances, rules, regulations and orders and for any noncompliance by the Tenant with any permits issued to the Tenant pursuant to such environmental laws, which hold harmless and indemnify shall include but not be limited to, enforcement actions to assess, abate, remediate, undertake corrective measures and monitor environmental conditions and for any monetary penalties, costs, expenses or damages, including natural resource damages, imposed against the Tenant, its employees, invitees, suppliers or service providers or the Lessor by reason of the Tenant's violation or non-compliance.

3. Tenant agrees to cooperate with any investigation, audit or inquiry by the Lessor or any governmental agency, regarding possible violation of any environmental law or regulation upon the premises.

4. Tenant agrees that all remedies of the Lessor as provided herein with regard to violation of any federal, State or local environmental laws, ordinances, rules, regulations or orders shall be deemed cumulative in nature and shall survive termination of this Agreement.

5. Tenant agrees that any notice of violation, notice of non-compliance, or other enforcement action of the nature described in Section 18.b.2. shall be provided to the Lessor within twenty-four (24) hours of receipt by the Tenant or the Tenant's agent. Any violation or notice of violation or non-compliance with federal, State or local environmental law or ordinance that the Tenant fails to rectify within the earlier of the time provided in said notice or thirty (30) days or such other applicable provision herein, shall be deemed a default under this Agreement. Any such default which is not cured shall be grounds for termination of this Agreement.

6. In entering this Agreement, the Lessor expressly relies on the covenants, representations and warranties of the Tenant as stated herein.

7. The contamination at the Quarry site is limited to shallow soil based on the results of recent soil and groundwater testing. The State is paying for 100% of the assessment and cleanup of the site. The City has opted for a conditional closure, which should ensure that no active remediation (excavation, system installation, etc.) should be required. Lessor acknowledges that it shall remain liable for and remediate all environmental matters related to the land and regarding the contamination.

15. **Non Waiver Provision.** The failure of Lessor to insist upon performance of any of the terms, conditions and covenants, hereof shall not be deemed to be a waiver of any rights or remedies that Lessor may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

16. **Material Breaches**. Material breaches include but are not limited to any of the covenants set out in the Lease. Tenant shall cure any material breach contained within this lease within thirty (30) days or show good cause that it is making satisfactory good faith efforts to the Lessor of said cure.

17. **Termination**. The Tenant and Lessor may terminate this lease upon mutual consent. The Tenant may terminate this lease while there are no scheduled organized events and/or any outstanding Lease Mortgage and Security Agreement upon sixty (60) day notice. Further, within the first five (5) years of the lease and Tenant has not secured financing and no scheduled events are pending, the Tenant may also terminate the lease. The Lessor may terminate the lease upon learning of any material breach of the lease and the Tenant has not cured the breach as defined herein.

18. **Surrender of Premises.** Tenant will deliver up and surrender possession of the Premises to Lessor upon expiration of this Lease, any renewal or extension hereof, or its termination in any way in good order and condition, reasonable wear and tear excepted.

19. **Title Buildings, Fixtures and Improvements.** Notwithstanding anything else to the contrary in this Lease:

a. Any machinery and equipment installed upon, attached, or affixed to the Leased Property by Tenant shall remain the personal property of Tenant and may be removed by the Tenant at the

expiration or sooner termination of this Agreement, provided that Tenant must repair any damage to the Leased Property caused by such removal. Tenant agrees that Tenant will hold harmless the City against all expenses, liens, claims, and damages to either property or person that may or might arise because any repairs, alterations, additions or improvements are made. All alterations, additions and improvements permanently attached and made by Tenant, (excepting movable furniture, equipment, supplies and inventory) shall become and remain the property of City on the termination of Tenant's occupancy of the premises.

b. Title to the improvements on the Premises and any repairs, alterations or additions to said improvements shall be vested in and remain in Tenant at all times during the original term of this Lease and any renewal or extension thereof.

20. **Governing Law.** This Lease shall be governed by the laws of the State of Florida. No provision in this lease will alter or modify the sovereign immunity Venue for any action related to this Lease shall be in Hernando County, Florida and any venue in federal court shall be located within the Tampa Division of the Middle District of Florida.

21. **Pre-Litigation.** Before any party initiates litigation to enforce the terms of the lease, the parties shall mediate the issues within thirty (30) days. This provision does not apply to any injunctive relief to preserve the premises, the standing of the parties or to prevent any irreparable harm.

22. **Attorney's Fees.** The prevailing party in any action related to this Agreement shall be entitled to reasonable attorney's fees and costs, including attorney's fees on appeal and in bankruptcy.

23. **Broker.** Lessor and Tenant represent and warrant to each other that they have not engaged or used any real estate brokers in connection with this Lease or the creation of this Tenancy.

24. **Entire and Binding Agreement.** This Agreement contains all of the agreements between the parties hereto, and it may not be modified in any manner other than by agreement, in writing, signed by all the parties hereto or their successors in interest. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon Lessor and its successors and assigns.

IN WITNESS WHEREOF, this Lease has been duly executed by the parties hereto, under seat, as of the day and year first written above. Signed, sealed and delivered in the presence of:

LESSOR:

CITY OF BROOKSVILLE, Florida

ATTEST:

(Seal)

By:_____

Virginia Wright

as its City Clerk

By: _____

Natalie Kahler

as its Mayor

Approved as to legal form for the reliance of the City of Brooksville only.

By: _____

Thomas S. Hogan, Jr., City Attorney

THE FLORIDA BLUEBERRY FESTIVAL, INC.

00621910

WITNESS AS TO TENANT

By: _____

_____

Printed Name

TENANT:

By: _____

_____

Printed Name

Its: _____

Date:_____

00621910
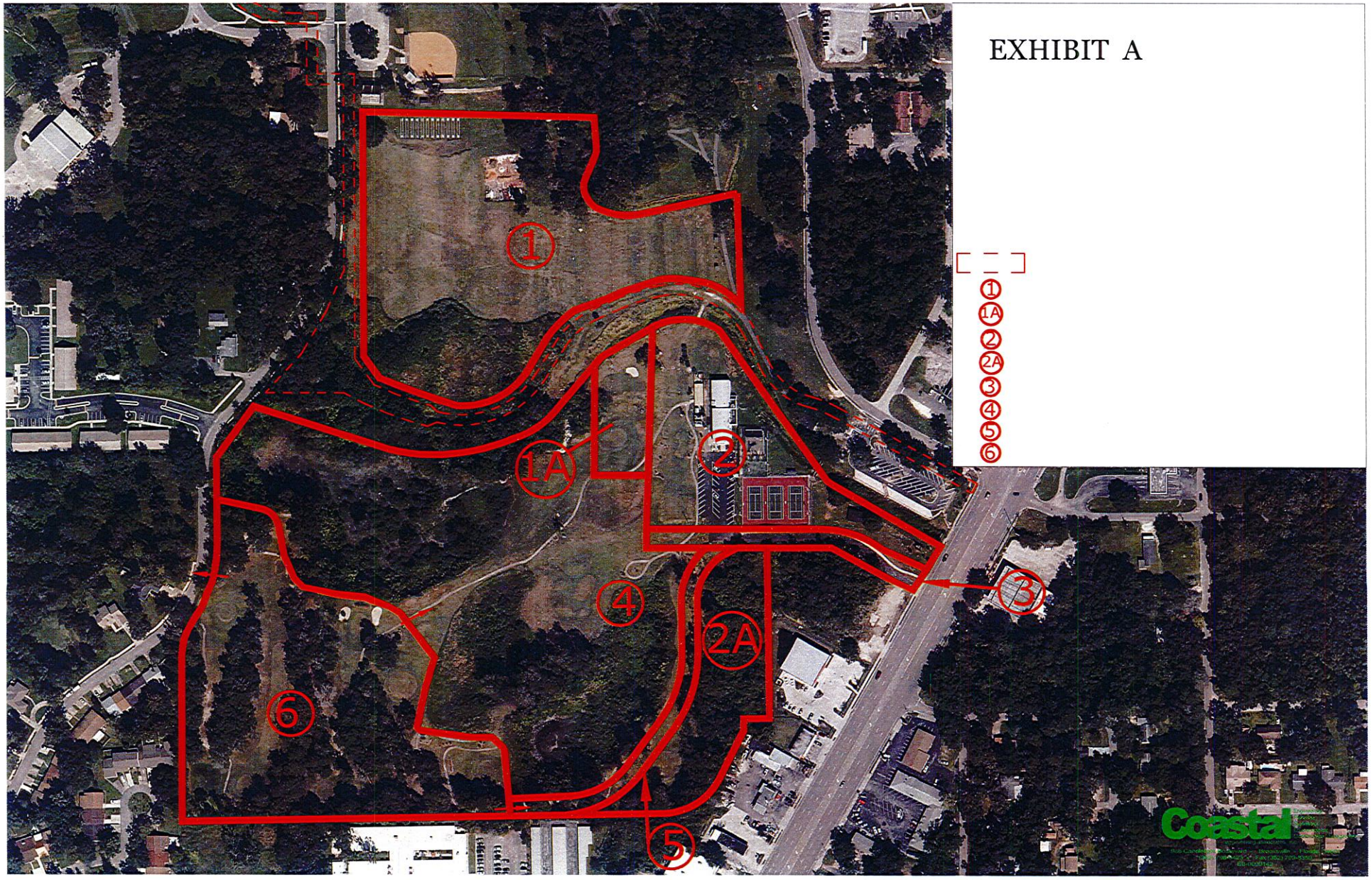
EXHIBIT A