

RESOLUTION NO. 2002- 100

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, APPROVING A LEASE AGREEMENT WITH THE GIFFORD YOUTH ACTIVITY CENTER, INC., FOR THE OPERATION OF THE GIFFORD YOUTH ACTIVITIES CENTER.

WHEREAS, on April 9, 2002, the Gifford Youth Activity Center, Inc., requested the Board of County Commissioners to approve the transfer or assignment of the existing lease agreement with the Progressive Civic League of Gifford, Florida, Inc., to the Gifford Youth Activity Center, Inc., for the purpose of operating the Gifford Youth Activities Center; and

WHEREAS, the Board of County Commissioners finds that such a use of County property promotes the community interests and welfare,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, that the Board of County Commissioners of Indian River County, Florida, hereby approves and authorizes the Chairman to execute a lease agreement between the Board of County Commissioners of Indian River County, Florida, and the Gifford Youth Activity Center, Inc., as set out in the attached exhibit for a term of forty (40) years at a rental rate of One Dollar (\$1.00) per year payable in advance.

This lease is entered into pursuant to the authority of Florida Statutes 125.38 and 125.01.

The foregoing resolution was offered by Commissioner Adams and seconded by Commissioner Ginn, and, upon being put to a vote, the vote was as follows:

Chairman Kenneth R. Macht	<u> Aye </u>
Vice Chairman Caroline D. Ginn	<u> Aye </u>
Commissioner Fran B. Adams	<u> Aye </u>
Commissioner Arthur R. Neuberger	<u> Aye </u>
Commissioner Thomas S. Lowther	<u> Aye </u>

The Chairman thereupon declared the resolution duly passed and adopted this 19th day of November 2002.

Attest: J. K. Barton, Clerk
By Patricia M. Ridgely
Deputy Clerk
PATRICIA M. RIDGELY

BOARD OF COUNTY COMMISSIONERS
By Kenneth R. Macht
Kenneth R. Macht, Chairman

Approved as to form and legal sufficiency:
Raul G. Bangel
Raul G. Bangel, County Attorney

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") dated as of November 19, 2002, ("Effective Date") between the **BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter called the "Landlord") and Gifford Youth Activity Center, Inc., a Florida not for profit corporation (hereinafter called the "Tenant").

BACKGROUND RECITALS

- A. Indian River County is authorized pursuant to Section 125.38, Florida Statutes, to lease real property owned by Indian River County to not for profit organizations organized for the purposes of promoting community interest and welfare.
- B. On January 6, 1998, the Indian River County Board of County Commissioners as landlord entered into a lease agreement with Progressive Civic League of Gifford, Florida, Inc. as tenant for the Gifford Youth Activities Center (hereinafter the "Progressive Lease").
- C. The Progressive Lease had a twenty-year term ending January 6, 2012.
- D. Thereafter, an entity known as the Gifford Youth Activity Center, Inc. was incorporated as a Florida not for profit corporation on December 27, 2001 and organized exclusively for religious, charitable, scientific, literary, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986.
- E. The Progressive Civic League of Florida, Inc. and the Gifford Youth Activity Center, Inc. have agreed that the purposes of the Gifford Youth Activity Center would now be best served by being under the auspices of the Gifford Youth Activity Center, Inc.
- F. On April 9, 2002, the Indian River County Board of County Commissioners considered a request made by the Gifford Youth Activity Center, Inc. to become the tenant of the Gifford Youth Activity Center either by the assignment of the Progressive Lease or pursuant to a new lease.
- G. The Indian River County Board of County Commissioners directed that: (i) a new lease, having the Gifford Youth Activity Center, Inc. as tenant, be prepared for the Gifford Youth Activity Center; and (ii) the Progressive Lease be terminated as of the effective date of the new lease.
- H. Landlord desires to lease the Leased Premises (as such term is hereinafter defined) to Tenant on the terms and conditions set forth herein and Tenant desires to lease the Leased Premises from Landlord on the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. **BACKGROUND RECITALS.** The Background Recitals are true and correct and form a material part of this Lease.

2. **PROPERTY.** The Landlord hereby leases to the Tenant, and Tenant hereby leases from Landlord the real property located in the County of Indian River, Florida, as more particularly described on Exhibit "1" attached hereto and by this reference incorporated herein in its entirety, together with the improvements, buildings, and facilities situated thereon (collectively referenced as the "Leased Premises"). Notwithstanding the foregoing, Landlord and Tenant acknowledge and agree that the building known as the "Gifford Aquatic Center" partially located on the Leased Premises is not a part of the leasehold estate granted under this Lease.

3. **TERM.** The initial term of this Lease shall be forty (40) years commencing November 19, 2002 and terminating on November 18, 2042 ("Expiration Date").

4. **RENT.** The rent for the Leased Premises shall be One Dollar (1.00) per year for each year of the term of this Lease, payable in advance on November 12 of each year of the term of this Lease .

5. **USE OF LEASED PREMISES.** During the term of this Lease, the Tenant shall use the Leased Premises for the public purposes provided by the Gifford Youth Activity Center, Inc, as the Gifford Youth Activities Center, which shall be opened to the public on a nondiscriminatory basis without regard to race, creed, handicap, or sex.

6. **LEASED PREMISES LEASED "AS IS".** Tenant agrees that the Leased Premises is being leased "as is" and that Landlord makes no warranty or guarantee of the condition of the Leased Premises or any of the improvements thereon. Tenant has examined the Leased Premises and has determined that the Leased Premises are suitable for Tenant's purposes.

7. **COMPLIANCE WITH LAWS.** Tenant shall comply with all of the laws, rules, ordinances, and regulations of the County, State and Federal Governments, and agencies regarding the use of the Leased Premises.

8. **MAINTENANCE AND REPAIRS.** The Tenant agrees to make any and all repairs and improvements to the Leased Premises and agrees to keep the Leased Premises in a safe, clean and attractive condition during the term of this Lease. Landlord agrees to mow grass and maintain the landscaping and shrubbery. Tenant agrees to maintain the automobile parking areas, driveways and the exterior of the building. Landlord's Renewal and Replacement Fund (see paragraph 13.B.), may be drawn upon for needed repairs with Board of County Commissioners' approval, but not for ordinary maintenance. Upon the expiration of the Lease, the Tenant shall surrender the Leased Premises quietly and peaceably in substantially the same condition as it was at the outset of this Lease, reasonable wear and tear and damage by the elements excepted.

9. **INSTALLATION AND REMOVAL OF EQUIPMENT AND FIXTURES.** Tenant shall have the right to install on the Leased Premises such equipment, fixtures and other items necessary or convenient for its use of the Leased Premises. All equipment and property purchased by the Tenant and placed in, on, or about the Leased Premises, including equipment not affixed to the realty, shall remain the property of the Tenant. Tenant may remove same on or before the termination of the Lease, provided that if removal results in damage to any part of the Leased Premises, the Tenant shall return the Leased Premises to a condition suitable for the original intended use of that part of the Leased Premises. In addition, any and all personal property not attached or installed in any building or structure shall remain Tenant's property and may be removed on or prior to termination of this Lease.

10. **PUBLIC UTILITIES.** The Tenant will pay within time allowed for payment without penalties, all charges for water and electricity and any and all other public utilities which may arise from the Tenant's use of the Leased Premises.

11. **INDEMNIFICATION.** The Tenant shall indemnify, defend and hold harmless the Landlord, its officials, officers, agents, servants, and employees from and against any and all claims, liabilities, losses damages, costs (including all attorneys' fees, court costs and all other legal expenses at any and all stages of mediation or litigation including any and all appeals), or causes of action which may arise, directly or indirectly, from any misconduct or negligent act or omission of the Tenant, its officers, agents, servants or employees in the operation of the Leased Premises, or otherwise in connection with this Lease.

12. **INSURANCE.** The Tenant shall carry the following insurance coverage and shall furnish the Landlord a certificate of said coverage:

12.1. **Workers' Compensation.** Workers' Compensation shall be provided for all employees. Coverage shall be for the statutory limits in compliance with all state and federal laws. The policy shall include Employer's Liability with a limit of \$100,000 per accident.

12.2 **Commercial General Liability.** Tenant shall have commercial general liability coverage and shall be per occurrence Combined Single Limit for Bodily Injury and Property Damage including Premises and Operations. The minimum limit of liability insurance for the Leased Premises shall be \$300,000.00. The policy shall be written by a carrier licensed to do business in Florida and have a rating of A+VII or better per A.M. Best's Key Rating Guide.

12.3. **Special Requirements.** Ten days prior to the commencement of operations, a certificate of insurance shall be provided to the Landlord's Risk Manager for review and approval. The certificate shall provide for the following: (a) Indian River County shall be named as an "Additional Insured" on the general liability policy; and (b) Indian River County will be given thirty (30) days' notice prior to cancellation or modification of any stipulated insurance. Such notice shall be in writing by certified mail, return receipt requested, and addressed to the Landlord's Risk Manager. The Landlord reserves the right to require reasonable amendments to the insurance requirements as to amounts or types of coverage by providing reasonable prior written notice to the Tenant.

13. **OPERATING COSTS.** (A). **County Contribution.** Indian River County agrees to be responsible for a portion of operating costs of the Gifford Youth Activities Center on the terms and conditions set forth in this Lease. For fiscal year 2002/03, Indian River County shall contribute up to \$122,443 on a reimbursement basis for those costs as itemized in the Operating Budget approved by Indian River County. Subsequent years' contribution are expected to be adjusted upward or downward annually to reflect changes in the consumer price index for all urban consumers for the South, all items, 1982-84 equals 100, as published by the U.S. Department of Labor, Bureau of Labor Statistics ("CPI"); provided, however, that no increase or decrease in the contribution by the County shall exceed percent (3%) per annum; and further provided, that the County contribution will be reduced by the amount of grants obtained for each fiscal year's operating expenses and/or programs.

(B) **OPERATING BUDGET AND RENEWAL AND REPLACEMENT FUND.** An itemized operating budget shall be submitted to Indian River County by April 1st of each fiscal year. Actual annual appropriations shall be approved through the County budgetary process. While the CPI shall be utilized as a guide to adjustment of annual operating expenses, the County's annual contribution to the operating expenses shall be subject to annual appropriation from legally available funds. For each fiscal year, five percent (5%) of the County's contribution to the Tenant's operating budget shall be retained by Landlord and held in reserve by Landlord in a Renewal and Replacement Fund for repairs to the Gifford Youth Activities Center.

14. **RIGHT TO INSPECT.** The Landlord may enter and inspect the Leased Premises at all reasonable hours to insure the Leased Premises are being properly maintained and kept in good condition.

15. **PROHIBITION ON ASSIGNMENT, SUBLEASE, OR ENCUMBRANCE.** Tenant shall not, in any manner, assign, transfer, mortgage, pledge, encumber, or otherwise convey an interest in this Lease, or sublet the Leased Premises or any part thereof (any one of the foregoing events hereinafter referenced as an "Assignment"), without the prior written consent of the Landlord which consent may be granted, conditioned, or withheld at Landlord's sole discretion for any reason. Any such attempted Assignment without Landlord approval shall be null and void.

16. **ATTORNEY'S FEES AND COSTS.** In the event there arises any dispute or litigation over the terms and conditions of this Lease, each party shall bear its own attorney's fees, costs, and expenses to resolve that dispute.

17. **NOTICE.** Any notices which are required, or which either party may desire to serve upon the other, shall be in writing and shall be deemed served when hand delivered, or when actually received via U.S. Mail, postage prepaid, return receipt requested, addressed to Tenant at:

Gifford Youth Activity Center, Inc.,
4875 43rd Avenue
Vero Beach, Florida 32967

Such notices to Landlord shall be addressed as follows:

Board of County Commissioners of Indian River County
Attention: Tom Frame
1840 25th Street
Vero Beach, Florida 32960

These addresses may be changed by either party by providing written notification to the other.

18. **TERMINATION OF PROGRESSIVE LEASE.** From and after the Effective Date of this Lease, the Progressive Lease shall have no further force and effect.

19. **NON-DISCRIMINATION.** Tenant for itself, and any of its permitted successors in interest, as a part of the consideration for this Lease, does hereby covenant and agree that no person shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use or operation of the Leased Premises; the Gifford Youth Activity Center programs and opportunities, or any of the facilities thereof on the basis of age, sex, disability, race, color, national origin, religion, or ancestry.

20. **AUDIT REQUIREMENTS.** Tenant acknowledges and agrees that: (i) Tenant is required to have an audit completed by an independent certified public accountant at the end of the Tenant's fiscal year; (ii) a copy of such audit must be submitted to the Indian River County Office of Management and Budget within 120 days after the end of the Tenant's fiscal year; (iii) if the Budget Office has any questions regarding a part of the financial statements, audit comments, or notes, a letter requesting clarification may be sent to Tenant, and Tenant shall timely respond, or cause a response to be made; and (iv) if Tenant receives a qualified opinion from its independent auditor, this will be reported to the Indian River County Board of County Commissioners and Landlord reserves the right to declare this Lease to be in default.

21. **TERMINATION BY LANDLORD FOR DEFAULT.** Landlord shall have the right to terminate this Lease upon the occurrence of any of the following (each an "Event of Default"):

- 1) Loss of non-profit corporate status by the Tenant;
- 2) Institution of proceedings in bankruptcy, by or against the Tenant if such proceedings continue for a period of ninety (90) days and are not dismissed, or any assignment by Tenant for the benefit of creditors;
- 3) Abandonment by Tenant of the Leased Premises, or discontinuance of operations at the Leased Premises for more than ten (10) consecutive days;
- 4) Default of, non-performance of, or other non-compliance with, any term, covenant or condition of any nature whatsoever under this Lease to be performed by Tenant; or
- 5) Failure to pay when due any rent, or any other expense which could result in a lien being placed upon the Leased Premises.

21.1 Upon the occurrence of an Event of Default, the Landlord shall send a written notice to Tenant, in the manner set forth in this Lease, setting forth the Event of Default in specific detail and the date this Lease shall terminate in the event Tenant does not cure the default.

21.2 Within thirty (30) days following receipt of a default notice, Tenant shall have cured the default to the reasonable satisfaction of Landlord.

21.3 In the event Tenant fails to cure the Event of Default within thirty (30) days, this Lease shall be deemed to be terminated with no further action by the Landlord.

22. **TERMINATION BY TENANT.** Tenant shall have the right, upon providing thirty (30) days prior written notice to the Landlord in the manner set forth in this Lease, to terminate this Lease at any time after the occurrence of one or more of the following events:

- 1) Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Leased Premises for the purposes of operating the Gifford Youth Activity Center, and such injunction remains in force for a period of more than sixty (60) calendar days; or
- 2) A breach by the Landlord of any of the terms, covenants or conditions contained in this Lease to be performed by the Landlord and the failure of the Landlord to remedy such breach for a period of thirty (30) calendar days after receipt of written notice thereof.
- 3) Termination for Nonappropriation. In the event that the Landlord in any fiscal year fails to appropriate sufficient funds (in the sole determination of the Tenant), to continue operation of the facility, the Tenant may terminate the Lease by giving the Landlord ninety (90) days' written notice.

23. **QUIET ENJOYMENT.** If and so long as Tenant performs all Tenant's obligations under this Lease, Landlord covenants that Tenant shall and may quietly hold and enjoy the Leased Premises, subject to any applicable laws, ordinances, and governmental regulations, and to any governmental actions, and to any taking under the power of eminent domain.

24. **GOVERNING LAW.** This Lease shall be governed by the laws of the State of Florida and any and all legal action instituted because of this Lease shall be instituted in Indian River County.

25. **CUMULATIVE REMEDIES; NON-WAIVER.** Each right, power and remedy of the Landlord or the Tenant provided for in this Lease shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. The failure of either party to insist upon compliance by the other party with any obligation, or exercise any remedy, does not waive the right to so in the event of a continuing or subsequent delinquency or default. A party's waiver of one or more defaults does not constitute a

waver of any other delinquency or default. Landlord's acceptance of rent does not waive any uncured delinquency or default by Tenant.

26. **ENTIRETY OF LEASE.** This Lease incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings of any nature whatsoever concerning the subject matter of the Lease that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior or contemporaneous representations or agreements, whether oral or written.

27. **SEVERABILITY.** If any term, covenant or provision of this Lease, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable for the remainder of this Lease, then the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and each and every other term and provision of this Lease shall be deemed valid and enforceable to the fullest extent permitted by law.

28. **CAPTIONS.** Captions in this Lease are included for convenience only and are not to be considered in any construction or interpretation of this Lease or any of its provisions.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY, FLORIDA

By: Kenneth R. Macht
Kenneth R. Macht, Chairman

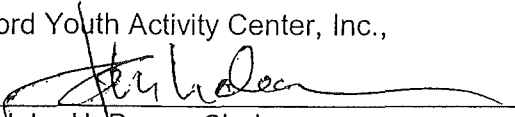
ATTEST:

By: Jeffrey K. Barton
Jeffrey K. Barton
Clerk of Court

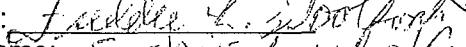
APPROVED:

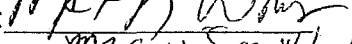
[Signature]
County Administrator
[Signature]
County Attorney

Gifford Youth Activity Center, Inc.,

By: 
John H. Dean, Chairman

Witnessed by:

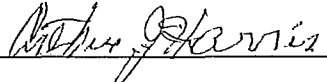
signature: 
printed name: FREDDIE L. WOOLFORK

signature: 
printed name: Mary Smith Williams,

11-20-02

PROGRESSIVE CIVIC LEAGUE OF GIFFORD, FLORIDA, INC. JOINS IN THE EXECUTION OF THIS LEASE SOLELY FOR THE PURPOSE OF AGREEING TO BE BOUND BY THE PROVISIONS OF PARAGRAPH 18 OF SUCH LEASE.

PROGRESSIVE CIVIC LEAGUE OF
GIFFORD, FLORIDA, INC.

By 

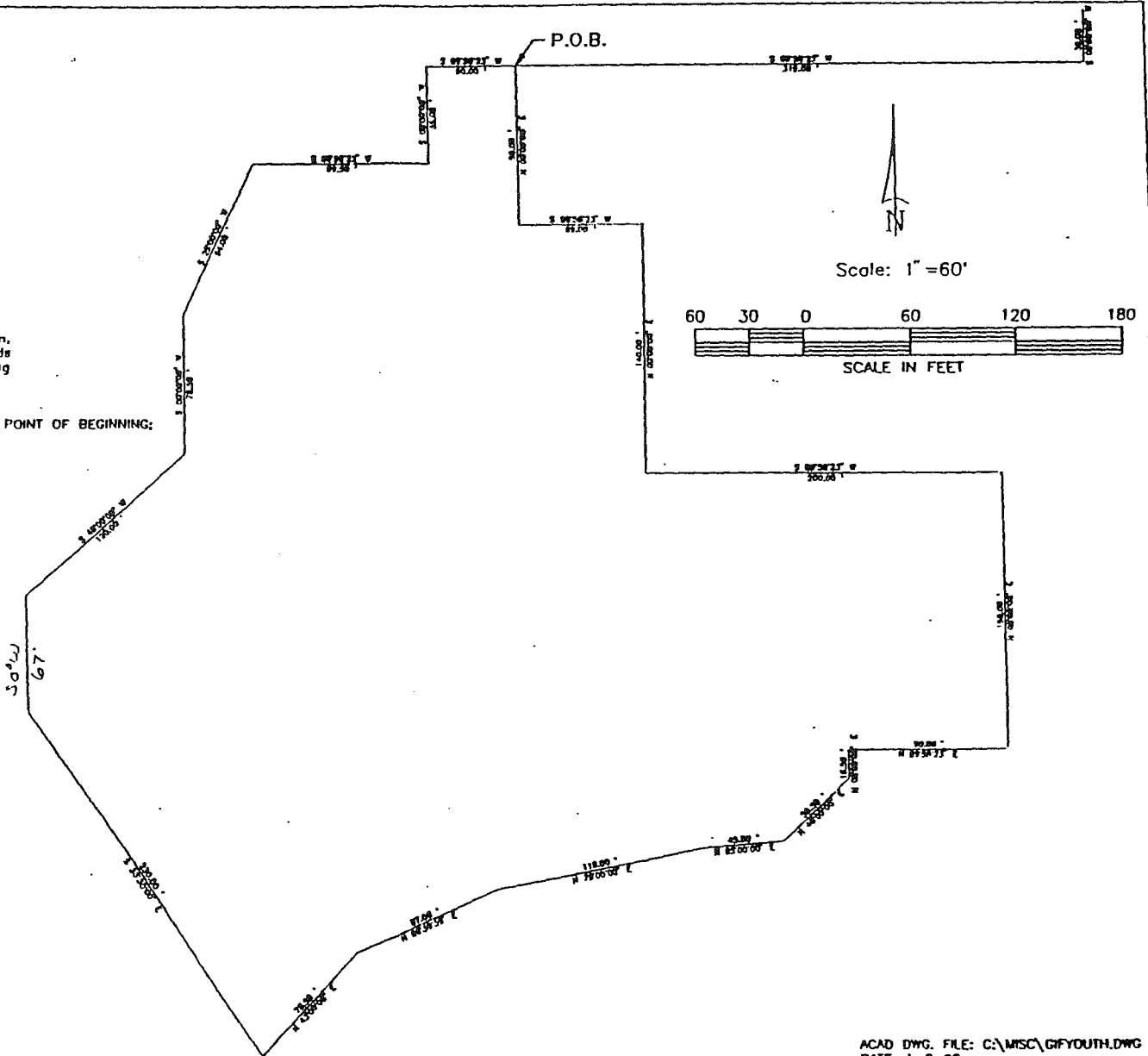
Title President

EXHIBIT " 1"

Legal Description Gifford Youth Activities Center

Commencing at the N.E. corner of Tract 9, Section 21, Township 32 South, Range 39 East, according to the last general plot of the Indian River Farms Company Subdivision, as recorded in Plat Book 2, Page 23 of the Public Records of St. Lucie County, Florida, sold lands now lying and being in Indian River County, Florida;

Run South a distance of 30 feet;
 Then run S 89°58'23" W a distance of 319 feet to the POINT OF BEGINNING;
 Then continue S 89°58'23" W a distance of 50 feet;
 Then run South a distance of 55 feet;
 Then run S89°58'23" W a distance of 99.5 feet;
 Then run S 25° W a distance of 94 feet;
 Then run South a distance of 78.5 feet;
 Then run S 48° W a distance of 120 feet;
 Then run South a distance of 67 feet;
 Then run S 33°30' E, along the Northeast side of an existing paved road, a distance of 230 feet;
 Then run N 43° E a distance of 78.5 feet;
 Then run N 86°38'59" E a distance of 87.08 feet;
 Then run N 79° E a distance of 118 feet;
 Then run N 85° E a distance of 45 feet;
 Then run N 46° E a distance of 50.5 feet;
 Then run North a distance of 18.5 feet;
 Then run N 89°58'23" E a distance of 90 feet;
 Then run North a distance of 158 feet;
 Then run S 89°58'23" W a distance of 200 feet;
 Then run North a distance of 140 feet;
 Then run S 89°58'23" W a distance of 89 feet;
 Then run North a distance of 90 feet to the POINT OF BEGINNING.



ACAD DWG. FILE: C:\MISC\GIFYOUTH.DWG
DATE: 1-8-98