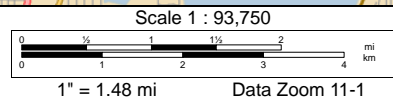
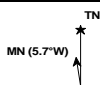
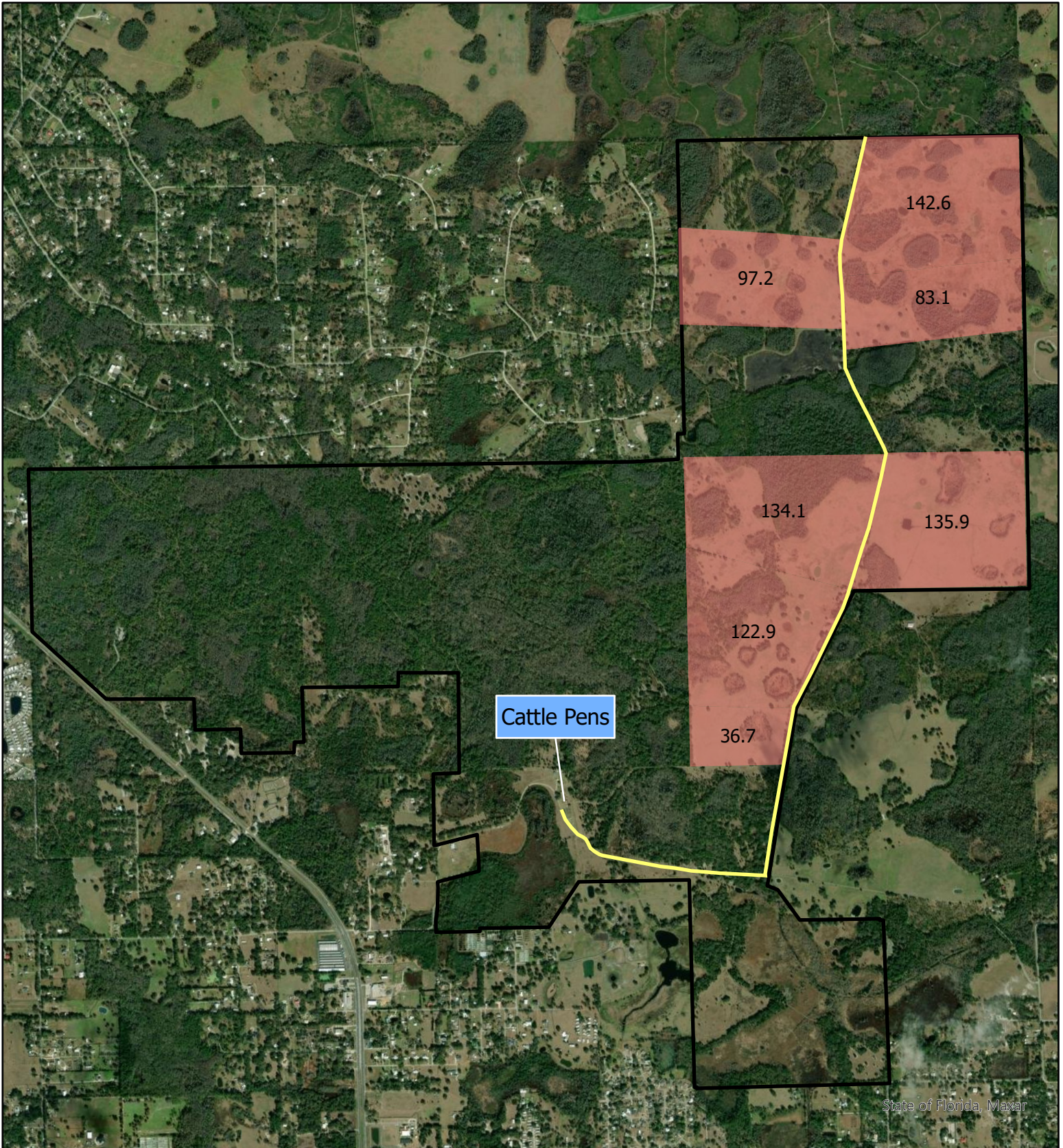


Gator Creek Reserve

Lakeland



Gator Creek Reserve Grazing Map



- Center Line Road
- Cattle Grazing Areas
- Gator Creek Reserve

0 0.25 0.5 1 Miles
N
Approximate Acreage: 750

Date Created: 07/19/2023



GRAZING LEASE AGREEMENT

THIS LEASE AGREEMENT (the “Agreement”), is entered into as of the Effective Date defined in Section 35, below, by and between **POLK COUNTY**, a political subdivision of the State of Florida (the “Lessor”), 330 West Church Street, Bartow, Florida 33830, and **BERN KINARD AUCTIONEER, INC.**, (the “Lessee”), a Florida Profit Corporation, 250 West Tom Costine Road, Lakeland, Florida 33809-5292.

RECITALS

WHEREAS, the Lessor owns that certain real property (the “Property”) located in Polk County, Florida, which is more particularly described and depicted on the attached composite Exhibit “A;” and

WHEREAS, the Property is unimproved and the County division responsible for managing the Property, the Parks & Natural Resources Division, has concluded that the current highest and best use of the Property is for cattle grazing purposes; and

WHEREAS, the Lessor has solicited responsive proposals from those who could use the Property for cattle grazing purposes pursuant to Request for Proposal 23 - 364 (the “RFP”); and

WHEREAS, upon receipt and evaluation of all responsive proposals, the Lessee has been selected to lease the Property from the County in accordance with the terms and conditions of this Agreement; and

WHEREAS, the Lessor’s Board of County Commissioners acting pursuant to Florida Statutes, Section 125.35, has determined that it is in the Lessor’s best interest to Lease the Property to the Lessee for the term and upon all the conditions described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants stated herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree, as follows:

1. **RECITALS**. The foregoing recitals are true and correct and are incorporated into this Agreement.
2. **LEASE**. Lessor hereby leases and rents the Property to the Lessee, and the Lessee does hereby lease and rent the Property from Lessor, in accordance with the terms and conditions stated in this Agreement.
3. **TERM**.
 - (a) **Term**. The term (the “Term”) of the lease governed by this Agreement shall be Five (5) years to commence on September 23, 2023, which is the date (the “Commencement Date”) that the Lessor delivers possession of the Property to the Lessee, and shall terminate September 22, 2028, unless sooner terminated in accordance with another provision of this Agreement.

- (b) Early Termination. Either party may terminate this Agreement at any time by delivering sixty (60) days prior written notice to the other party. Upon termination of the Agreement the Lessee shall surrender possession of the Property to the Lessor in accordance with Section 20, below. Provided Lessee is not in default of the Agreement, within thirty (30) days after an early termination pursuant to this Section 3(b) the Lessor shall deliver to the Lessee a prorated amount of the Base Rent Lessee has paid Lessor for the Initial Term being terminated.

4. **RENT.** The term “Rent” as used in this Agreement shall mean Base Rent and Additional Rent, both as defined in this Section 4, together with any and all other amounts that are payable from the Lessee to the Lessor pursuant to this Agreement.

- (a) Base Rent. For its use and occupancy of the Property during each year of the Term, the Lessee shall pay Lessor in advance an annual Base Rent of Eleven Thousand and 00/100 Dollars (\$11,000.00), together with any sales, use or other tax due thereon, without abatement, demand, deduction, or offset whatsoever.
- (b) Additional Rent. The Lessee shall pay as “Additional Rent” all other sums due from the Lessee to the Lessor in accordance with this Agreement.
- (c) Payment. The Lessee’s obligation to pay Rent (which includes the Base Rent and any Additional Rent) shall commence on the Commencement Date. For the first year of the Term, the Lessee shall pay a prorated amount of the annual Base Rent on the Commencement Date. Thereafter during the Term, the Lessee shall pay the Lessor the annual Base Rent on or before January 1st of each subsequent year. Any Additional Rent shall be payable as and when due pursuant to the applicable Agreement sections. If Rent is not paid on or before the tenth (10th) day after it is due, then Lessee shall also pay Lessor a late payment fee equal to five percent (5%) of the Rent payment. Lessee shall remit payment to Lessor at the address stated in Section 31, Notice, below, or at such other place or places that Lessor may from time to time designate to Lessee by written notice.

5. **ACCEPTANCE OF PROPERTY; ASSUMPTION OF RISK.**

- (a) The Lessee acknowledges that the Lessor has not made any representation to the Lessee as to whether the Property is suitable or safe for the Lessee’s intended use. The Lessee has examined the condition of the Property, determined that the Property is acceptable for its intended and permitted use, and waives any and all defects that may exist within the Property and any structures or other improvements thereon.
- (b) By its execution of this Agreement, the Lessee does hereby assume all risks associated with its occupancy and use of the Property and acknowledges that the Lessee shall be solely responsible and answerable for any and all accidents and injuries to persons or property occurring in, on, or around the Property, without regard to the limits of Lessee’s liability insurance required pursuant to Section 12, below.

- (c) The Lessor is not required or obligated to make any repair or improvement to the Property.
- (d) The Lessor shall not be responsible to the Lessee, its officers, agents, employees, guests or invitees, for any damage or injury caused by or due to the Property, or any structures, improvements, or any appurtenance thereof, being out-of-repair or improperly constructed unless such damage or injury results from the sole negligence of the Lessor, and then only to the extent permitted in accordance with Section 768.28, Florida Statutes.

6. USE OF PROPERTY; RESTRICTIONS; LESSOR ACCESS.

- (a) Grazing shall be limited to domestic cattle only and the Lessee shall manage the stocking rate, as determined by the Lessor, to prevent damage to the property. Lessee shall not permit any swine, bison, fowl, goats, sheep, or any other animal to pasture, graze, or be located on the Property. Lessee shall not permit any malnourished or diseased cattle on the Property. In addition, since the property is open to the public for equestrian activities, all horses used on site should be up to date on Coggins testing.
- (b) The Lessee shall not permit the cattle grazing to restrict the movement of wildlife through the Property or to interfere with any use of adjoining real property.
- (c) The Lessee shall not hunt or fish on the Property and shall not permit any other person to hunt or fish on the Property. Lessee acknowledges that the Lessor has reserved all hunting and fishing rights and privileges upon the Property. The Lessee must obtain approval from the Lessor to trap or remove any feral animals causing damage to the leased area or harm to the cattle from the property.
- (d) The Lessee shall use and conduct its operations on the Property in accordance with all applicable federal, state and local laws, statutes, regulations, and ordinances. The Lessee shall obtain and maintain all necessary permits and licenses required to conduct its business on the Property.
- (e) The Lessee shall not use the Property in any manner that would (i) violate the conditions and restrictions stated in this Agreement; (ii) create a nuisance or trespass; or (iii) vitiate or increase the rate of the Lessor's insurance on the Property.
- (f) The Lessee shall not store any equipment or any materials on the Property that are not directly related to the use of its cattle operations on the Property.
- (g) The Lessee shall not dump, spray, or spread sludge on the Property and shall prevent others from doing the same.
- (h) The Lessor will be responsible for all prescribed burning on Gator Creek Reserve site and will notify the Lessee of scheduled burns within the grazing areas. The Lessee may conduct a prescribed burn, only if Lessee is a Certified Florida Prescribed Burn Manager. All burns conducted by Lessee must be approved, in writing, by the Lessor before the Lessee requests a burn authorization from the Department of Agriculture and Consumer Sciences – Florida Forest Service. Lessee must submit burn authorization

with authorization number, weather reports, and all other related material to the Lessor proceeding the burn. Lessee will be responsible for all activities from the burn from ignition to mop up to declared out. Failure to comply with this directive shall be cause for immediate termination of this lease by the Lessor.

- (i) The Lessee shall pay or cause to be paid all charges for water, electricity, gas, oil, sewer, telephone service and any and all other utilities used upon the Property throughout the Term, including any connection fees.
- (j) The Lessee acknowledges that Lessee is strictly prohibited from cultivating and harvesting any hay crop grasses located on the Property. Lessee may not fertilize the pasture area. Lessee may not treat native vegetation.
- (k) Lessor retains the right to restrict grazing in certain areas of the Property when deemed necessary by the Lessor. The temporary restriction of the Lessee's right to graze cattle on the affected areas of the Property shall not give rise to a reduction or refund of Base Rent or be the basis for any claim Lessor is in default of the Agreement.
- (l) Lessee must provide the Lessor a phone number for contact in case of an emergency and during the Term keep such number in service or immediately notify the Lessor of a new contact phone number where the Lessee may be contacted at all times. It is the responsibility of the Lessee to provide to the Lessor a person and a phone number that can be reached at all times in case of an emergency, the person must be able to be on site and able to make repairs within four (4) hours.
- (m) Lessee must remain professional when approached by the public. No use of profanity is allowed. No use of derogatory, provocative, or foul music is allowed. Music must stay at an acceptable volume.
- (n) Lessee acknowledges that the Property may only be used for "bona fide agricultural purposes" as described in Section 193.461(3)(b), Florida Statutes, and Lessee shall not take any action or inaction, nor cause or permit any action or inaction to be taken, which would result in the loss of the Agricultural (AG) Classification on the Property, as further set forth and described in Section 11 below.
- (o) The parties acknowledge that the Property contains two (2) separate, noncontiguous areas to be used by Lessee for the pasture of domestic cattle, as depicted on the attached composite Exhibit "A", incorporated herein by reference. The approved grazing areas total approximately 750 acres, of which only 476 acres are semi-improved pasture. The total number of cow/calf units shall not exceed 80 unless approved by the Lessor's Parks and Natural Resources Division Director, or his or her designee. Movement of cattle between the two areas must occur through the designated "center line road"(lane) as depicted on the attached Exhibit "A". The lane is part of the equestrian trail system open to the public at Gator Creek Reserve. This lane is for only moving cattle from pasture to pasture. Cattle cannot remain in this area. The public access cannot be restricted by cattle operations. The Lessee should prepare and provide to the Lessor's

Parks and Natural Resources Division Director, or his or her designee a Grazing Management Plan. The Plan must be approved within the first 60 days of the notice to proceed. The Lessor, as the owner of the property said areas, hereby grants Lessee ingress/egress access over, across and through such property for the purpose of allowing the Lessee to conduct routine maintenance and care of the Property and the Lessee's cattle located thereon, without the requirement of further written approval from the Lessor. Notwithstanding anything to the contrary contained herein, the Lessor may grant the Lessee access over, across and through certain portions of said Lessor property in order to move Lessee's cattle from one area of the Property to another; provided that such access and movement of cattle must be coordinated with and pre-approved in writing by the Lessor's Parks and Natural Resources Division Director, or his or her designee, pursuant to the notice provisions stated in Section 31. Such prior written consent may be withheld in the Lessor's discretion.

- (p) The Lessee shall comply with all other requirements, responsibilities, prohibitions, and specifications as provided in the RFP.

7. **ALTERATIONS AND IMPROVEMENTS.** The Lessee shall not make or permit anyone to alter the Property in any way including, but not limited, to plowing, ditching, digging water holes, changing the Property grading or drainage, or to construct any improvement or place any structure, whether temporary or permanent, thereon (any of the foregoing, an "Alteration") without the prior express written consent of Lessor, which the Lessor may withhold in its discretion. Any permissible Alteration that the Lessee may make to the Property shall, at the sole election of the Lessor, either: (i) remain in and be surrendered with the Property and shall become the property of the Lessor at the expiration or early termination of this Agreement, free and clear of any claims, liens, mortgages or encumbrances; or (ii) be removed by Lessee upon termination of this Agreement with Lessee restoring the Property to the same condition that existed on the Commencement Date, reasonable wear and tear excepted. If the Lessee incurs reasonable costs necessary to make a permissible Alteration that will remain with the Property upon the expiration or earlier termination of the Lease, then, provided that the Lessee has received prior written consent from the Lessor acknowledging and approving the Alteration cost, the Lessee may apply the reasonable cost it incurred in making the Alteration toward its next annual Base Rent payment, but in no case shall the credit for such incurred costs in any year of the Term exceed the annual Base Rent payment. To qualify for the credit toward that payment, the Lessee must timely submit sufficient proof to the Lessor of the reasonable costs actually incurred for the Alteration and provide evidence all project work has been completed. The chemical cost for herbicide chemicals purchased and used in the treatment of the invasive exotic plants at Gator creek Reserve may be used to reduce the annual lease payment. Proof of purchase of chemicals and application records must be submitted to the Lessor's Parks and Natural Resources Division Director, or his or her designee. This Section 7 shall survive expiration or any termination of this Agreement. The Lessee's use of portable freestanding panels and pens at locations approved in advance by the Lessor is not a violation of the restriction stated in this subparagraph.

8. **MAINTENANCE, REPAIR AND OPERATIONAL RESPONSIBILITIES.**

- (a) While the boundary/perimeter fence surrounding the Property is the responsibility of the Lessor to maintain, the Lessee shall at its sole cost and expense build, maintain and keep in good state of repair, adequate and substantial fences within the Property to ensure all cattle are contained therein. Before installing any fencing, the Lessee shall obtain the Lessor's approval of its proposed Property fencing plan. To do so, the Lessee shall deliver to the Lessor a written Property fencing plan that depicts and describes the type and location of all the proposed fencing to include proper gates and passageways for automobiles and other vehicles. The Lessee may use existing cattle pens. If the existing pens are utilized, then the Lessee must maintain those cattle pens. The Lessor is open to the Lessee constructing portable cattle pens. Locations and designs must be approved, in writing, by the Lessor's Parks and Natural Resources Division Director, or his or her designee. The Lessor shall not unreasonably withhold its approval of the proposed Property fencing plan or unreasonably delay in delivering its response to the Lessee's request, however, the Lessor may condition its approval of a proposed fencing plan upon the Lessee making reasonable adjustments to the plan. When installing its fencing, the Lessee will provide locks to the fence gates and shall furnish a key to these locks to the Lessor.
- (b) The Lessee shall actively manage and secure the Property by mowing, pasture management, maintaining all existing fencing and gates within the grazing areas and, if needed, install new fences or gates prior to delivery of cattle complying with the terms and conditions of this Agreement.
- (c) The Lessor may provide fence materials to the Lessee to make necessary repairs or replace fence sections, however, all labor and equipment costs for the fence work will be the responsibility of the Lessee. Any modifications to the fencing alignment needs to be approved in writing by the Lessor's Parks and Natural Resources Division Director, or his or her designee.
- (d) The mowing of the pastures must be at a time agreed to by the Lessor's Parks and Natural Resources Division Director, or his or her designee. The mowing schedule will be developed to include variables such as excessive rainfall, drought, or other unforeseen conditions. At a maximum, the mowing requirement of the Lessee will not be more than twice a year over the pastures included in this Agreement.
- (e) The Lessee shall be responsible for exotic plant removal in the pastures, holding pens and center lane. The exotic removal will be by mechanical and/or chemical treatment with an herbicide approved by the Environmental Protection Agency (EPA) for use on the target species. Mechanical control may be accomplished by mowing (i.e. batwing, bush hog, or fixed width). The Lessee shall spot spray invasive exotic weeds mainly consisting of tropical soda apple (*Solanum viarum*), Old world climbing fern (*Lygodium microphyllum*), Japanese climbing fern (*Lygodium japonicum*), Cogongrass (*Imperata cylindrical*), Chinese Tallow (*Triadica sebifera*), Camphor tree (*Cinnamomum camphora*) and Brazilian pepper (*Schinus terebinthifolius*) with herbicides provided by Lessee following the approved labels. At a minimum, treatment must be conducted every six months.

- (f) The Lessee shall, at its own cost and expense, keep and maintain the Property in good order and in a clean, safe, and attractive condition. The Lessee shall keep the Property free of overgrowth, junk, debris, and litter.
- (g) The Lessee shall implement and comply with current Florida Department of Agriculture and Consumer Services Water Quality Best Management Practices for Florida Cow/Calf Operations and adhere to any future updates.
- (h) The Lessee shall provide biweekly security of the premises by examining the perimeter fencing and all gates within the pasture areas. Repairs should be made upon discovery. The Lessee should also provide emergency phone numbers to the Lessor's Parks and Natural Resources Division Director, or his or her designee. Emergency repairs or cattle outside of the designated pasture areas, must be corrected within five hours of notice to the Lessee.
- (i) The Lessee shall immediately report to the Lessor the occurrence of the following incidents on the Property: fire, vandalism, theft, poaching, trespass, any condition that poses a nuisance or a threat to the public health, safety and welfare, and any hazard, condition, or situation which results or may result in damage to the Property or any improvements thereon, or which may be or become a liability to the Lessor.
- (j) During the Term, the Lessor and the Lessee shall meet annually at a mutually convenient time to review the Lessee's Property maintenance and management plan and its performance. If at such meeting the parties cannot agree as to any required changes to such plan, then either party may terminate the Agreement pursuant to Section 3(b), above.
- (k) In accordance with Section 5(c) above, the Lessor is not responsible for maintaining or repairing any part of the Property.

9. **SIGNAGE.** The Lessee shall not paint or place any signs, placards, or any other notice or advertisement of any type or character in, on, or upon the Property without the prior written consent of the Lessor which the Lessor may withhold in its discretion.

10. **LIENS.** The Lessee shall not mortgage, pledge or otherwise encumber its interests (i) in the Property, and (ii) under this Agreement. The Lessee, at its own cost and expense, shall at all times keep the Lessor's interests in and to the Property free and clear from and against all claims, liens, and legal processes of the Lessee's creditors and the Lessee shall protect and defend the Lessor's interests against the same.

11. **TAXES / AGRICULTURAL CLASSIFICATION.**

(a) The Lessee shall be solely responsible for payment of any applicable sales taxes, use fees, excise fees, tariffs, property taxes and charges of any government, utility or other regulating entity arising from or related to its use, occupation, or operation of the Premises, including, without limitation, any real or personal property taxes assessed against the Property. Any and all such taxes and fees shall be considered Additional Rent, as defined in Section 4(b), and shall be paid by

Lessee to Lessor within fifteen (15) days of Lessee's receipt of written notice from Lessor specifying the amount of such fees assessed by the applicable taxing authority for the particular Term year. Lessee shall remit payment in accordance with the terms of Section 4(c) above.

(b) The Lessee acknowledges and agrees that the Lessor may submit an application for Agricultural (AG) Classification on the Property to the Polk County Property Appraiser for the 2023 Tax Year and each year thereafter, as may be required to maintain the classification, throughout the Term. The Lessee shall timely provide copies of any supporting documentation required in order for Lessor to submit a complete application. The Lessor shall be responsible for payment of any fees associated with the filing of the application and any petition to the value adjustment board, as applicable. The Lessor shall notify the Lessee in writing as to whether the application for AG Classification is denied or approved. If the AG Classification is approved, Lessee shall cooperate with Lessor in the filing of any additional returns required, including, without limitation, a Tangible Personal Property Return. In no event shall the Lessor be liable to the Lessee for any denial of the AG Classification for any year.

(c) In addition to the Property use restrictions set forth in Section 6, above, throughout the Term, the Lessee shall comply with all requirements of Section 193.461, Florida Statutes, to maintain the Property's use for a bona fide agricultural purpose. This shall include, without limitation, the Lessee's maintenance of a commercial herd of at least the minimum number head of cattle on the Property as may be established from time to time by the Property Appraiser, maintenance of receipts from the sale of stock and expenses incurred from the AG operation, and compliance with any and all other statutory requirements and minimum guidelines for AG Classification published by the Property Appraiser related to use of the Property as Pasture.

(d) Notwithstanding anything to the contrary contained herein, including, without limitation, Section 7 above, the Lessee shall not make, nor cause or permit to be made, any alteration or improvement to the Property which would result in the failure of the Property to receive the AG Classification, or once received, the loss of such classification.

(e) Any violation of the provisions of this Section 11 shall be grounds for the Lessor to immediately terminate this Agreement, resume possession of the Property for its own account, and pursue any other remedy or remedies provided by law or equity, without any further notice or demand to the Lessee.

12. INSURANCE. During the Term the Lessee shall purchase and maintain in force during the Lease Term the insurance as specified with an insurer licensed to do business in the State of Florida; rated "A" or better by A.M. Best Rating Company for Class VIII financial size category. Polk County, a political subdivision of the State of Florida, must be named as an additional insured with respect to liability arising from all work performed for Polk County, for Automobile and General Liability policies of insurance. Workers' Compensation Insurance providing statutory benefits, including those that may be required by any applicable federal statute. Any sole proprietor or partner actively engaged in the construction industry, and any corporate officer of a

construction or non-construction industry corporation who elects to be exempt from the provisions of the workers' compensation law must provide either a workers' compensation exemption certificate (construction industry) or a letter stating the exemption status and number of employees (non- construction industry). Commercial General Liability Insurance \$1,000,000 combined single limit of liability for bodily injuries, death, and property damage, and personal injury resulting from any one occurrence, including the following coverages: Completed Operations, Broad Form CG. Comprehensive Automobile Liability Insurance \$1,000,000; combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired and non-owned vehicles. Lessee shall maintain Pollution Liability insurance coverage with a minimum limit of not less than \$2,000,000 Each Occurrence / \$4,000,000 annual aggregate. The general liability and workers' compensation policies shall contain a waiver of subrogation in favor of Polk County. An original certificate of insurance must be on file in the Procurement Division prior to taking possession of the property. Each Certificate of Insurance must list the Certificate Holder as: Polk County, a political subdivision of the State of Florida, 330 W Church St, Room 150, Bartow, FL 33830.

13. **INDEMNITY**. The Lessee shall indemnify, defend (by counsel reasonably acceptable to the Lessor), protect and hold the Lessor and its commissioners, officers, employees and agents, harmless from and against any and all claims, actions, causes of action, penalties, forfeitures, damages, losses, expenses and liabilities whatsoever (including, without limitation, attorneys' fees, costs and expenses incurred during negotiation, through litigation and all appeals therefrom) caused by, incident to, resulting from, arising out of, or occurring in connection with, directly or indirectly, (i) the Lessee's performance, non-performance, or breach of its duties and obligations under this Agreement, (ii) the use and occupation of the Property by the Lessee, its officers, employees, agents, guests, licensees, or invitees, and (iii) the negligent acts, error or omissions, or the intentional or willful misconduct of the Lessee, its officers, employees, agents, guests, licensees, invitees, or anyone for whose acts any of them may be liable. This Section 13 shall survive the expiration or early termination of this Agreement.

14. **DEFAULT**.

- (a) Except as stated in the following sentence, if the Lessor materially defaults in any of its duties or obligations stated in this Agreement and fails to cure the same within ten (10) days after the date that the Lessee delivers written notice to the Lessor of any such default, then the Lessee may terminate this Agreement. If, however, the Lessor's material default is such that it cannot be reasonably cured within ten (10) days, then the Lessee shall not have the right to terminate this Agreement for such default if the Lessor commences the necessary curative actions within a reasonable time after receiving Lessee's notice and thereafter diligently pursues the cure to completion.
- (b) Except as otherwise stated in this subparagraph, if the Lessee materially defaults in any of its duties and obligations under this Agreement and fails to cure such default within ten (10) days after the date Lessor delivers written notice to the Lessee of any such default or if the Lessee should cease or discontinue use and occupancy of the Property for any period in excess of sixty (60) days, then upon either event the Lessor

may terminate this Agreement, resume possession of the Property for its own account, and pursue any other remedy or remedies provided by law or equity, without any further notice or demand to the Lessee. If, however, the Lessee's material default of any Agreement duty or obligation is such that it cannot be reasonably cured within ten (10) days, then the Lessor shall not have the right to pursue a remedy for such default if the Lessee commences the necessary curative actions within a reasonable time after receiving the Lessor's notice and thereafter diligently pursues the cure to completion. Notwithstanding the foregoing, if at any time a condition exists on the Property, whether through the Lessee's material default or otherwise, that poses a nuisance or a threat to the public health, safety and welfare, then upon its notice of such condition from any source, the Lessee shall immediately notify the Lessor of such nuisance or threat and immediately begin to remediate the condition.

- (c) The Lessor will not be liable for any loss or damage suffered by Lessee resulting from the Lessor's exercise of its rights pursuant to this Section 14.

15. LIABILITY LIMIT. IN NO EVENT, SHALL THE LESSOR BE LIABLE TO THE LESSEE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY THE LESSOR WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

16. ATTORNEYS' FEES AND COSTS. In connection with any dispute or any litigation arising out of, or relating to this Agreement, each party shall be responsible for its own legal and attorneys' fees, costs and expenses incurred in connection with any dispute or any litigation arising out of, or relating to this Agreement, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

17. EMINENT DOMAIN. If the whole of the Property, or such portion thereof as will make the Property unusable to the Lessee for its intended purpose, is condemned or taken by any legally constituted authority for any public use or purpose, then in either of these events, this Agreement shall terminate and the lease of the Property shall cease on the date when possession of the Property is taken by the condemning authorities. If a portion of the Property is taken, but not an amount that would make the Property unusable to the Lessee for its intended purpose, then this Agreement shall continue in full force and effect. The Lessee shall have no right or claim to any part of any award made to or received by the Lessor for such condemnation or taking, and all awards for the same shall be made solely to the Lessor. The Lessee shall, however, have the right to pursue any separate award that does not reduce the award to which the Lessor is entitled.

18. ASSIGNMENT. The Lessee shall not (i) assign this Agreement or any interest therein; (ii) sublease the Property or any portion thereof; or (iii) permit use of the Property by any party other than the Lessee, all without the Lessor's prior written consent, which consent may be withheld in the Lessor's sole discretion.

19. **HAZARDOUS MATERIALS.** Lessee shall not knowingly or unknowingly generate, store, treat, dispose of, install or otherwise cause or permit any Hazardous Material (defined, below) to be brought upon, kept or used in or about the Property by the Lessee, its guests, employees, contractors or invitees. If Lessee fails to comply with the foregoing covenant, then the Lessee shall be wholly responsible for (i) all costs incurred in connection with any investigation of site conditions and cleanup, remediation, removal, or restoration work required by any federal, state, or local governmental agency because of the presence of the Hazardous Materials; and (ii) all consequential damage or loss that the Lessor incurs, both regardless of whether such costs, damages or loss arise during or after the term of this Agreement. If Lessee must take any remedial action in accordance with this section, the Lessee shall first obtain Lessor's approval and then immediately take all actions (at the Lessee's sole expense) that are necessary to return the Property to the condition existing prior to the introduction of such Hazardous Materials. The term "Hazardous Materials" is defined to include, but not be limited, to any and all substances, materials, wastes, pollutants, elements or compounds in such quantities as are currently or shall in the future be classified as hazardous, toxic, dangerous or capable of posing a risk of injury to health, safety, or property by any Federal, State or local statute, law, ordinance, code, rule, regulation, order, or decree. This Section 19 shall survive the expiration or the early termination of this Agreement.

20. **SURRENDER OF PROPERTY.** Upon the expiration of the Agreement or whenever the Lessor is entitled to the possession of the Property, the Lessee shall immediately surrender the Property to the Lessor in essentially the same condition as at the beginning of the Term with the Lessee having removed all its personalty from the Property. The Lessee's obligation to observe and perform the covenants of this section shall survive the expiration or early termination of this Agreement. Upon an Early Termination of the Agreement pursuant to Section 3(b), above, the Lessee shall remove the grazing animals and any Alterations to be removed pursuant to Section 7, above, during the time period between receipt of the termination notice and the Agreement Early Termination date.

21. **HOLDING OVER.** If the Lessee holds over after the expiration of the Term, with or without the express written consent of Lessor, the resulting tenancy shall be a month-to-month tenancy. There shall not be an automatic renewal or extension of the month-to-month tenancy and the Lessee shall pay Rent in the same amount payable during the last full month of the Agreement Term. Any month-to-month tenancy established pursuant to this Section 21 shall be subject to every other term, covenant, condition and agreement contained herein. The Lessor may terminate the month-to-month tenancy without cause upon giving 15 days prior written notice to the Lessee.

22. **FORCE MAJEURE.** Either party hereunder may be temporarily excused from performance if an Event of Force Majeure directly or indirectly causes its nonperformance. An "Event of Force Majeure" is defined as any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions. Neither party

shall be excused from performance if non-performance is due to forces which are reasonably preventable, removable, or remediable and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied prior to, during, or immediately after their occurrence. Within five (5) days after the occurrence of an Event of Force Majeure, the non-performing party shall deliver written notice to the other party describing the event in reasonably sufficient detail, along with proof of how the event has precluded the non-performing party from performing its obligations hereunder, and a good faith estimate as to the anticipated duration of the delay and the means and methods for correcting the delay. The non-performing party's obligations, so far as those obligations are affected by the Event of Force Majeure, shall be temporarily suspended during, but no longer than, the continuance of the Event of Force Majeure and for a reasonable time thereafter as may be required for the non-performing party to return to normal business operations. If excused from performing any obligations under this Agreement due to the occurrence of an Event of Force Majeure, the non-performing party shall promptly, diligently, and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations under this Agreement. During any such time period, the non-performing party shall keep the other party duly notified of all such actions required for it to be able to commence or resume performance of its obligations under this Agreement.

23. **BROKERS.** Lessor and Lessee represent and warrant to each other that they have had no dealings with any broker or agent in connection with this Agreement and that no third party is due a commission, fee, or any other payment in association with the lease of the Property to the Lessee. Each party shall be responsible to pay any claims made by anyone for any compensation, commissions, and charges claimed by any broker or agent with whom such party may have dealt with respect to this Agreement or the negotiations thereof.

24. **NO DISCRIMINATION.** The Lessee warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

25. **RELATIONSHIP.** This Agreement creates a Lessor-Lessee relationship between the parties. Nothing in this Agreement shall be deemed or construed as creating any other relationship between the parties.

26. **WAIVER.** The failure of a party to enforce any right hereunder shall not be deemed a waiver of such right. No covenant, condition, or provision of this Agreement can be waived except with the written consent of each party. Any such waiver by the parties in one instance shall not constitute a waiver of any subsequent similar condition, circumstance, or default, unless specifically stated in the written consent.

27. **SEVERABILITY.** If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstances shall to any extent, be deemed lawfully invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, and condition of this

Agreement shall be valid and enforced to the fullest extent permitted by law. The Lessor and Lessee shall reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined void.

28. **CONSTRUCTION; CAPTIONS.** This Agreement is the product of joint efforts of the parties and no provision shall be interpreted or construed in favor of either party by virtue of authorship of such provision. The captions in this Agreement are for convenience of reference only and shall not define or limit any the terms or provisions hereof.

29. **MODIFICATION.** This Agreement may only be modified by a written amendment properly executed by the parties. No oral modifications will be effective or binding.

30. **INTEGRATION.** Lessee and Lessor agree that this Agreement sets forth the entire agreement between the parties with respect to its subject matter and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between the parties pertaining to the lease of the above-described property, whether written or oral.

31. **NOTICE.** All notices under this Agreement (except those required under Section 6(q), as further described below) shall be in writing and may be given by any of the following methods: (1) personal delivery, (2) certified mail, postage prepaid, or (3) via nationally recognized overnight delivery service, prepaid, when sent to the following:

Lessor	Polk County Attention: R. Wade Allen, Administrator Real Estate Services P.O. Box 9005, Drawer RE-01 Bartow, Florida 33831-9005
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Lessee	Bern Kinard Auctioneer, Inc. 250 West Tom Costine Road Lakeland, Florida 33809-5292 Email: Bernkinard@gmail.com
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Notices shall be effective when received or refused at the addresses specified above. A party may from time to time change the address to which its notice is to be directed by delivering written notice to the other in accordance with this Section 31. Any communications between the parties that are not required by this Agreement may be sent via U. S. first-class mail, postage prepaid, at

the addresses designated above, or as may otherwise be agreed between the parties. For any notice required pursuant to Section 6(q) of this Agreement, in addition to the notice methods set forth above, notice shall be sufficient when emailed: (i) to the Lessor at the email address on file for the Lessor's Parks and Natural Resources Division Director, or his or her designee; and (ii) to the Lessee at the Lessee's email address listed above, as may be subsequently changed by providing written notice consistent with the provisions herein. Such emailed notice shall be effective upon receipt, confirmed via reply email.

32. **LESSEE REPRESENTATIONS.** The Lessee hereby represents and warrants the following to the Lessor:

- (a) Lessee is a Cattle Rancher that is duly organized and existing in good standing under the laws of the State of Florida with full right and authority to do business within the State of Florida.
- (b) Lessee's performance under this Agreement will not violate or breach any contract or agreement to which the Lessee is a party or is otherwise bound, and will not violate any governmental statute, ordinance, rule, or regulation.
- (c) Lessee has the full right and authority to enter into this Agreement and to perform its obligations in accordance with its terms.
- (d) Lessee now has and will continue to maintain all licenses and approvals required to conduct its businesses, and that it will at all times conduct its business activities in a reputable manner.
- (e) Lessee has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.
- (f) Each individual executing this Agreement on behalf of the Lessee is authorized to do so.

33. **COUNTERPARTS.** This Agreement may be executed in multiple counterparts each of which shall be an original, but which collectively shall form a single agreement.

34. **GOVERNING LAW; VENUE.** This Agreement shall be governed and interpreted under the laws of the State of Florida. Venue for any action relating to the construction, interpretation, or enforcement of this Agreement shall be in or for the Tenth Judicial Circuit, Polk County, Florida.

35. **PUBLIC ENTITY CRIMES.** The Lessee understands and acknowledges that this Agreement will be voidable by the County in the event the conditions stated in Florida Statutes, Section 287.133 relating to conviction for a public entity crime apply to the Lessee.

36. **INDEPENDENT CONTRACTOR.** Nothing stated in this Agreement is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties, or as constituting the Lessee (including its officers, employees, and agents) as the agent,

representative, or employee of the County for any purpose, or in any manner, whatsoever. The Lessee is to be and shall remain forever an independent Lessee with respect to all Services performed under this Agreement. The Lessee shall not pledge the County's credit or make the County a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and the Lessee shall have no right to speak for or bind the County in any manner.

37. PUBLIC RECORDS LAW.

(a) The Lessee acknowledges the County's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and comply in the handling of the materials created under this Agreement. The Lessee further acknowledges that the constitutional and statutory provisions control over the terms of this Agreement. In association with its performance pursuant to this Agreement, the Lessee shall not release or otherwise disclose the content of any documents or information that is specifically exempt from disclosure pursuant to all applicable laws.

(b) Without in any manner limiting the generality of the foregoing, to the extent applicable, the Lessee acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

(i) keep and maintain public records required by the County to perform the services required under this Agreement;

(ii) upon request from the County's Custodian of Public Records or his/her designee, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(iii) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of this Agreement if the Lessee does not transfer the records to the County; and

(iv) upon completion of this Agreement, transfer, at no cost, to the County all public records in possession of the Lessee or keep and maintain public records required by the County to perform the service. If the Lessee transfers all public records to the County upon completion of this Agreement, the Lessee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Lessee keeps and maintains public records upon completion of this Agreement, the Lessee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

(c) IF THE LESSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LESSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO

**THIS AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF
PUBLIC RECORDS AT:**

**RECORDS MANAGEMENT LIAISON OFFICER
POLK COUNTY**

330 WEST CHURCH ST.

BARTOW, FL 33830

TELEPHONE: (863) 534-7527

EMAIL: RMLO@POLK-COUNTY.NET

38. **EFFECTIVE DATE.** The Effective Date of this Agreement shall be the date that the later of the two parties executes this Agreement.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of Effective Date.

LESSEE:

WITNESSES:

**BERN KINARD AUCTIONEER,
INC., a Florida Profit Corporation**

Nancy Grey
Witness #
Tracy Grey
Print Name 810 Ashton Oaks Circle
Lakeland, FL 33813
Address

By: Ben Kinard
BERN KINARD Pres.
Print Name Title

Dena Frye
Witness #2
Dena Frye
Print Name
635 Erin Way
Address Brooksville, FL, 34601

**STATE OF FLORIDA
COUNTY OF POLK**

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 19th day of December, 2023, by Bern Kinard, who is personally known to me or has produced _____ as identification.

(AFFIX NOTARY SEAL)



Kathryn D. Chestnut
Notary Public
Kathryn D. Chestnut
Print Name
My Commission Expires 06/27/2026

LESSOR:

ATTEST:

Stacy M. Butterfield, Clerk

By: _____
Deputy Clerk

County Attorney's Office

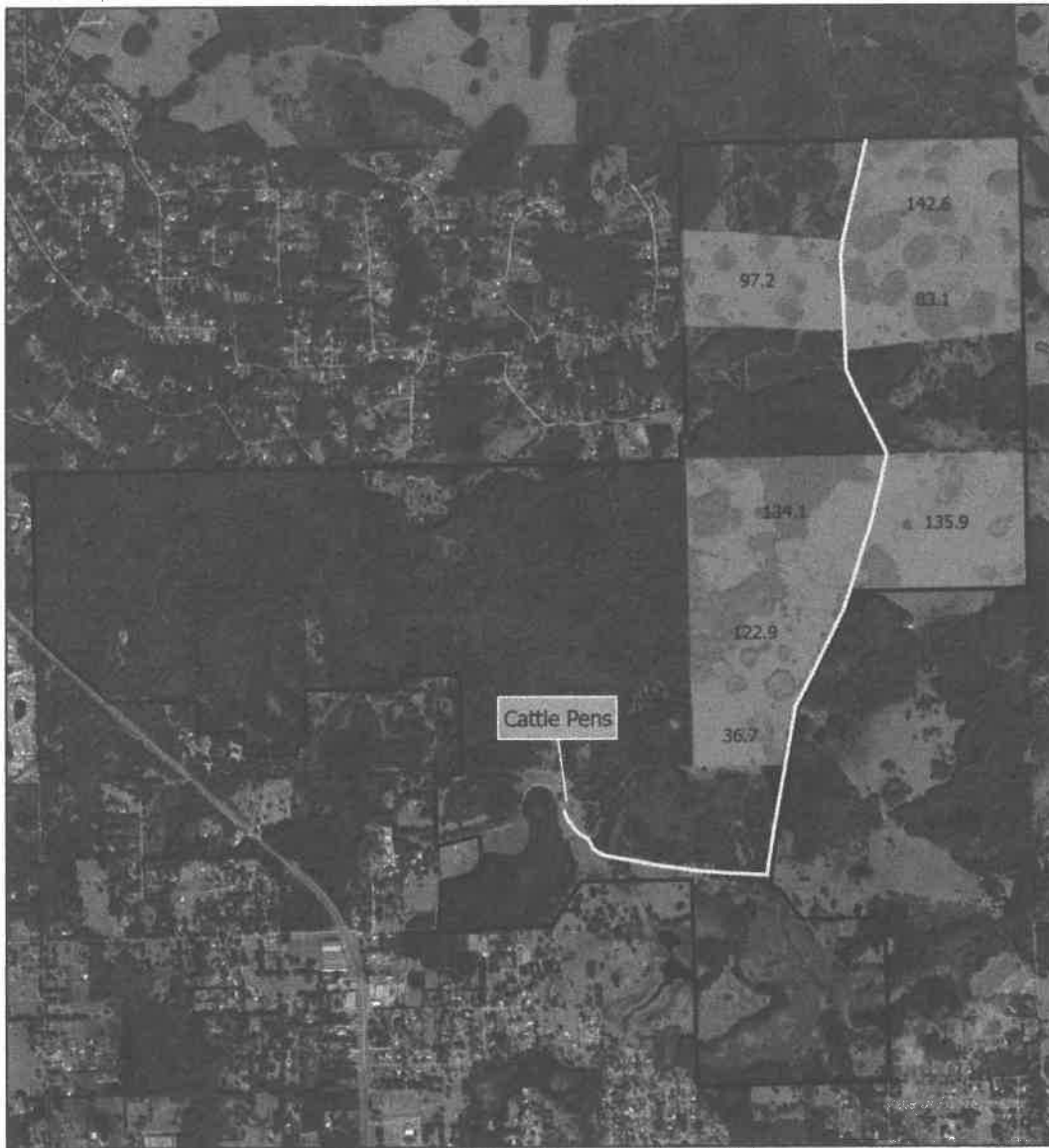
POLK COUNTY,
a political subdivision of the State of Florida

By: _____
W. C. Braswell, Chair
Board of County Commissioners

Date: _____

Exhibit "A"

Gator Creek Reserve Grazing Map



- Center Line Road
- Cattle Grazing Areas
- Gator Creek Reserve

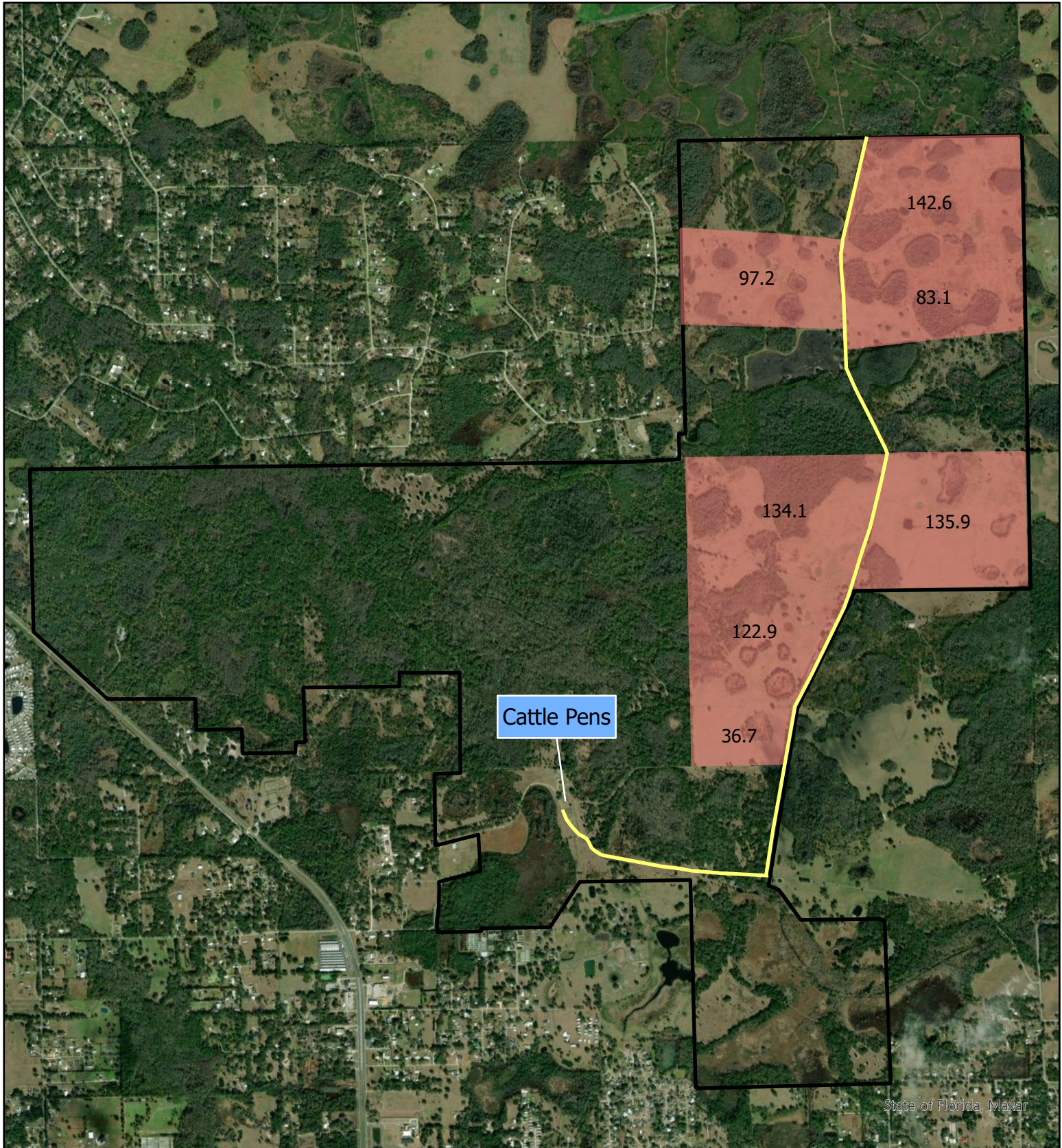
0 0.25 0.5 1 Miles

Date Created: 07/19/2023

Approximate Acreage: 750



Gator Creek Reserve Grazing Map



- Center Line Road
- Cattle Grazing Areas
- Gator Creek Reserve

0 0.25 0.5 1 Miles
N
Approximate Acreage: 750

Date Created: 07/19/2023

