

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2010 | 2011 | 2012 | 2013 | 2014 |
|--|------------------|------------------|------------|-----------------|---------------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | _____ | _____ | _____ | _____ | _____ |
| External Revenues | _____ | _____ | _____ | _____ | _____ |
| Program Income (County) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | <u> *</u> _____ | _____ | _____ | _____ | _____ |
| # ADDITIONAL FTE POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |
| Is Item Included in Current Budget? | | | Yes _____ | No <u> X </u> | |
| Budget Account No.: | Fund _____ | Department _____ | Unit _____ | Object _____ | Program _____ |

B. Recommended Sources of Funds/Summary of Fiscal Impact:

**NO FISCAL IMPACT*

C. Department Fiscal Review:

JP

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Dev. and Control Comments:

Jan 19 1-19-10

 OFMB *SP 1/19/10 PM 11-10*

Jan 21 1/21/10

 Contract Development and Control

B. Legal Sufficiency:

[Signature]

 Assistant County Attorney

C. Other Department Review:

 Department Director

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") made and entered into this ___ day of _____, 2009, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as ("County") and Northern Palm Beach County Improvement District, an independent special district created under the laws of Florida, whose address is 359 Hiatt Drive, Palm Beach Gardens, Florida 33418, hereinafter referred to as ("Licensee").

WITNESSETH:

WHEREAS, County, is the owner of certain real property in Palm Beach County, Florida more particularly described in **Exhibit "A"** attached hereto and incorporated herein (such property is hereinafter referred to as the "Property"); and

WHEREAS, County is willing to grant Licensee a revocable license to use the Property for the purposes hereinafter defined.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth on the part of the Licensee to be observed and performed, the County hereby grants the Licensee a non-exclusive, revocable license to use the Property (as hereinafter defined) upon the following terms and conditions:

**ARTICLE 1
BASIC PROVISIONS**

1.01 **Recitals.** The foregoing recitals are true and correct and incorporated herein.

1.02 **Property.** The Property, which is the subject of this Agreement, is more particularly identified in **Exhibit "A"**.

**ARTICLE 2
LENGTH OF TERM AND COMMENCEMENT DATE**

2.01 **Term.** The term of this Agreement shall commence on the date this License Agreement is executed by both parties' authorized signatories (the "Commencement Date") and expire upon notice from the South Florida Water Management District and the U. S. Army, Corps of Engineers that the terms and conditions in permit nos. 50-0128848-002 and SAJ-2001-00515 have been met with regard to enhancement of the Loxahatchee Slough.

**ARTICLE 3
LICENSE FEE**

3.01 License Fee. Licensee shall pay County for the use and occupancy of the Property a license fee in the amount of Ten Dollar (\$10.00), together with applicable sales taxes thereon. The license fee shall be payable in advance of the Commencement Date.

**ARTICLE 4
CONDUCT OF BUSINESS AND USE OF PROPERTY BY LICENSEE**

4.01 Use of Property. Licensee shall use the Property solely and exclusively for the construction, management, operation, maintenance, repair, replacement, removal, enlargement and/or upgrade of water management facilities, systems, wetland plants, berms and works located in, over, under and upon the Property. Licensee shall not use, permit or suffer the use of the Property for any other business or purpose whatsoever.

4.02 Improvements. Licensee shall make no improvements, alterations or additions to the Property whatsoever, without the prior written consent of the Palm Beach County Department of Environmental Resources Management (the "Department"), which may be granted or withheld in the Department's sole and absolute discretion.

4.03 Condition of Property. Licensee accepts the Property in its "As is", "Where is" condition as of the Commencement Date. Licensee further acknowledges that County has not made any warranties or representations of any nature whatsoever regarding the Property including, but not limited to, any warranties or representations relating to the physical condition of the Property or any improvements located therein, or the suitability of the Property or any improvements for the Licensee's intended use.

4.04 Waste or Nuisance. Licensee shall not commit or suffer to be committed any waste upon the Property or any nuisance or other act or thing which may result in damage or depreciation of value of the Property.

4.05 Compliance with Laws. Licensee shall, at its sole cost and expense, secure any and all required licenses and permits and shall comply with all local, state, and federal laws pertaining to Licensee or its use of the Property, including all applicable zoning, building and fire laws and regulations. Licensee acknowledges and agrees that County has made no representations whatsoever regarding Licensee's ability to use the Property for the purposes set forth in this Agreement. Licensee shall ensure that its invitees, guests and any all other persons entering the Property with Licensee's consent or knowledge comply with all applicable laws on the Property. Subject to and without waiver or limitation of the provisions of Section 768.28, Florida Statutes, Licensee shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Licensee's failure to perform its obligations specified in this Section. The foregoing indemnification shall survive the

expiration or earlier termination of this Agreement.

4.06 Non-Discrimination. Licensee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (a) that no person on the grounds of race, creed, color, national origin, sex, sexual orientation, religion, marital status, age, disability, or gender identity or expression shall be excluded from participation in or denied the use of the Property, (b) that in the construction of any improvements on, over, or under such Property and the furnishing of services, no person on the grounds of race, creed, color, national origin, sex, sexual orientation, religion, marital status, age, disability or gender identity or expression shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that Licensee shall use the Property in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended from time to time. In the event of the breach of any of the foregoing non-discrimination covenants, County shall have the right to terminate this Agreement and to reenter and repossess the Property and the facilities hereon, and hold the same as if the Agreement had never been made or issued. This cancellation provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21, are followed and completed including exercise or expiration of appeal rights.

4.07 Restoration and Surrender of Property. Upon expiration or earlier termination in accordance with paragraph 9.01 or 9.02 of Licensee's license to use the Property, Licensee, at its sole cost and expense, shall remove the temporary berm currently existing on the Property and restore the Property up to the top of the bank of the existing Old Marsh Canal to the natural grade that existed prior to construction of the temporary berm within ninety (90) days of such notice. The Licensee's removal of the temporary berm shall be accomplished by either pushing the fill into the existing Old Marsh Canal in a manner that will not interfere with gravity recharge connection to the C-18 canal at low levels, or hauling the fill off-site at the Licensee's expense. As part of the restoration required, Licensee shall replant the temporary berm area with wetland species at densities of 4800 plants per acre (3' more or less on center). The wetland species may include sand cordgrass, panicum grass, spike rush, pickerelweed, arrowhead and bulrush. The Licensee shall submit a written planting plan to County for approval prior to planting. County shall have ten (10) days to review the planting plan and to provide written requests for changes to Licensee. If County does not provide written requests for changes to the planting plan within the required time, Licensee may plant in accordance with the plan submitted to County. County may request commercially available, herbaceous, native species at the density described above. Planting shall be completed by the Licensee within thirty (30) days of restoration of the Property.

If the Licensee intends to use a contractor(s) to perform the above cited work, prior to retaining such contractor(s), it shall notify the County in writing of the name of any

contractor(s) proposed for the work. Subject to and without waiver or limitation of the provisions of Section 768.28, Florida Statutes, the Licensee will be responsible to the County for all acts and omissions of its contractor(s) and of persons either directly or indirectly employed by them and for their timely and proper completion of the work. Nothing in this License shall create any contractual relationship between any contractor(s) of the Licensee and the County. Subject to and without waiver or limitation of the provisions of Section 768.28, Florida Statutes the Licensee shall indemnify and hold the County harmless from any and all actions or claims in connection with the Licensee or its contractor(s)' use or occupancy of or work upon the Property pursuant to this License.

4.08 County's Right to Enter. County shall have the right to enter the Property at any time, without notice, for any purpose whatsoever. County agrees to exercise reasonable efforts to minimize interference with or disruption of Licensee's operations on the Property; provided, however, County shall not be required to expend additional sums of money in order to comply with the foregoing requirement. In the event that a County work activity must take place within the Property during Licensee's operating hours, which will disrupt or interfere with the Licensee's operations, County will endeavor to provide prior notice to Licensee. The notice requirements provided under Section 10.02 shall not apply to this Section.

ARTICLE 5 REPAIRS AND MAINTENANCE OF PROPERTY/SECURITY

5.01 Repairs & Maintenance. County shall not be obligated or required to make or conduct any maintenance or repairs whatsoever to the Property. All portions of the Property and all improvements erected on the Property shall be kept in good repair and condition by Licensee. Licensee shall not dispose of trash or debris on the Property. Upon expiration or earlier termination of this Agreement, Licensee shall deliver the Property to County in good repair and condition as specified in paragraph 4.07. In the event of any damage to the Property, County may complete the necessary repairs or maintenance of the Property and Licensee shall reimburse County for all reasonable expenses incurred by County in doing so, plus a fifteen percent (15%) overhead, within thirty (30) days after written request for reimbursement from County.

5.02 Security. Licensee acknowledges and accepts full responsibility for the security and protection of the Property and any and all personal property and improvements now existing or hereafter placed on or installed in or upon the Premises, and for the prevention of unauthorized access to the Premises. Licensee fully understands that the police security protection provided by County is limited to that provided to any other business situated in Palm Beach County by the Palm Beach County Sheriff's Office and expressly acknowledges that any special security measures deemed necessary or desirable for additional protection of the Property, shall be the sole responsibility of Licensee and shall involve no additional cost to County.

ARTICLE 6 INSURANCE

6.01 Maintenance of Insurance.

Without waiving the right to sovereign immunity as provided by s.768.28 f.s., Licensee acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature.

In the event Licensee maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under s.768.28 f.s., Licensee shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage.

Licensee agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute 440.

When requested, Licensee shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which COUNTY agrees to recognize as acceptable for the above mentioned coverage.

Compliance with the foregoing requirements shall not relieve Licensee of its liability and obligations under this Agreement.

ARTICLE 7 INDEMNIFICATION

Subject to and without waiver or limitation of the provisions of Section 768.28, Florida Statutes, Licensee shall indemnify, defend and save County harmless from and against any and all claims, actions, damages, liability and expense in connection with: (i) loss of life, personal injury and/or damage to or destruction of property arising from or out of any occurrence in, upon or at the Property; (ii) the occupancy or use by Licensee of the Property or any part thereof; or (iii) any act or omission of Licensee, its agents, contractors, employees or invitees. In the event the County is made a party to any litigation commenced against Licensee or by Licensee against any third party, then Licensee shall protect and hold County harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. Licensee recognizes the broad nature of this indemnification provision and specifically acknowledges the receipt of good and value separate consideration in support thereof. This provision shall survive expiration or earlier termination of this Agreement.

**ARTICLE 8
ASSIGNMENT**

Licensee may not assign, sublet or rent any portion of the Property.

**ARTICLE 9
REVOCATION OF LICENSE/DEFAULT**

9.01 Revocation of License. Notwithstanding any provision of this Agreement to the contrary, the rights granted to Licensee hereunder amount only to a non-exclusive license to use the Property, which license is expressly revocable by County for any reason whatsoever upon notice to Licensee. Upon notice from County of the revocation of the license granted hereby, this Agreement shall terminate and County shall be relieved of all further obligations hereunder accruing subsequent to the date of such termination.

9.02 Termination by Licensee. Licensee may terminate this Agreement only after written notice has been provided to the County and the berm currently existing on the Property has been removed and the Property has been restored in accordance with the requirements provided in Section 4.07.

9.03 Default. Failure to perform or observe any of the agreements, covenants, or conditions contained in this Agreement to be performed or observed by such party upon five (5) business days prior written notice shall constitute a default of this Agreement.

**ARTICLE 10
MISCELLANEOUS**

10.01 Entire Agreement. This Agreement and any Exhibits attached hereto and forming a part thereof as if fully set forth herein, constitute all agreements, conditions and understandings between County and Licensee concerning the Property. All representations and prior agreements, either oral or written, shall be deemed to be merged into this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon County or Licensee unless reduced to writing and signed by them.

10.02 Notices. All notices and elections (collectively, Anotices@) to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, telecopied or faxed (provided in each case a receipt is obtained), or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or on the date of transmission with confirmed receipt if by telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice

designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

(a) If to the County at:

Palm Beach County
Department of Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411-2743
Attn: _____
Fax: (561) 233-2414

(b) If to the Licensee at:

Northern Palm Beach County Improvement District
359 Hiatt Drive
Palm Beach Gardens, FL 33418
Attn: Executive Director
Phone: (561) 624-7830
Fax: (561) 624-7839

Either party may from time to time change the address to which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other party.

10.03 Recording. Licensee shall not record this Agreement or any memorandum or short form thereof.

10.04 Waiver of Jury Trial. The parties hereto waive trial by jury in connection with proceedings or counterclaims brought by either of the parties hereto against the other, in connection with this Agreement.

10.05 Governing Law and Venue. This Agreement shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in Palm Beach County.

10.06 Time of Essence. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

10.07 Captions. The captions and section designations set forth herein are for convenience only and shall have no substantive meaning.

10.8 Severability. In the event that any section, paragraph, sentence, clause, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

10.9 Waiver. No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

10.10 Liability of County. Licensee shall look solely to the estate and property of the County in the Property for the collection of any judgment, or in connection with any other judicial process, requiring the payment of money by County in the event of any default by County with respect to any of the terms, covenants and conditions of this Agreement to be observed and performed by County, and no other property or estates of County shall be subject to levy, execution or other enforcement procedures for the satisfaction of Licensee's remedies and rights under this Agreement.

10.11 Effective Date. This Agreement shall become effective when executed by the parties hereto and approved by the Palm Beach Board of County Commissioners.

IN WITNESS WHEREOF, County and Licensee have executed this Agreement, or have caused the same to be executed as of the day and year first above written.

WITNESSES:

**PALM BEACH COUNTY, FLORIDA,
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA**

Signature

Typed or Printed Name

By: _____
Burt Aaronson, Chair

Signature

Typed or Printed Name

APPROVED AS TO TERMS AND CONDITIONS:

By: Richard E. Walesky
Richard Walesky, Director
Department of Environmental Resources Management

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
County Attorney

LICENSEE: NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT

By: _____
Signature

Print: _____

Title: _____

ATTEST:

By: _____
O'Neal Bardin, Jr., Secretary

(District Seal)

11

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LEGAL DESCRIPTION

A PARCEL OF LAND SITUATE IN SECTION 05, TOWNSHIP 42 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEING AN EASEMENT 30.00 FEET IN WIDTH, LYING 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE, SAID CENTERLINE BEING 15.00 FEET NORTH OF AND PARALLEL WITH A 100.00 FEET WIDE NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT DRAINAGE EASEMENT AS RECORDED IN OFFICIAL RECORD BOOK 4247, PAGE 580 OF THE PUBLIC RECORDS OF SAID PALM BEACH COUNTY:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 05; THENCE ALONG THE SOUTH LINE OF SAID SECTION 05, NORTH 88°39'12" WEST, A DISTANCE OF 1231.83 FEET; THENCE DEPARTING SAID SOUTH LINE, NORTH 01°20'48" EAST, A DISTANCE OF 450.00 FEET TO A POINT ON THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORD BOOK 10993, PAGE 1073 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, AND THE POINT OF BEGINNING; THENCE DEPARTING SAID NORTH LINE, NORTH 75°33'03" EAST, A DISTANCE OF 68.30 FEET; THENCE NORTH 79°25'33" EAST, A DISTANCE OF 690.75 FEET TO THE TERMINUS OF SAID CENTERLINE.

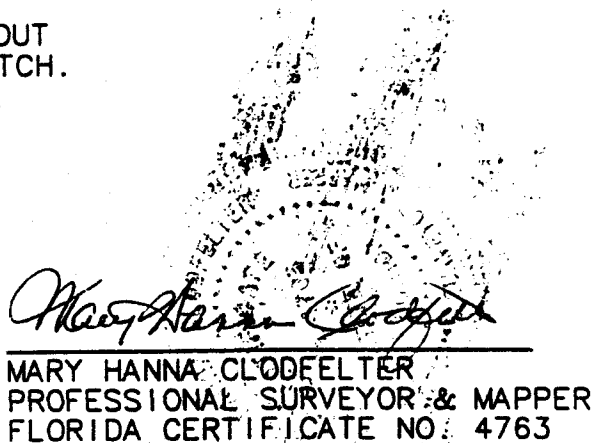
THE SIDES OF THE ABOVE DESCRIBED EASEMENT SHALL BE LENGTHENED OR SHORTENED, AS NECESSARY, IN ORDER TO MAINTAIN A CONTINUOUS STRIP OF LAND 30.00 FEET IN WIDTH AND TO INTERSECT EXISTING EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

BEARINGS SHOWN HEREON ARE BASED ON THE SOUTH LINE OF SECTION 05, TOWNSHIP 42 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEARING BEING NORTH 88°39'12" WEST.

NOT VALID WITHOUT
ACCOMPANYING SKETCH.
SHEET 2 OF 2


NOTES:

1. INFORMATION SHOWN HEREON DOES NOT CONSTITUTE, NOR DOES IT REPRESENT, A SURVEY OF THE SUBJECT PREMISES.
2. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
3. MOCK, ROOS AND ASSOCIATES, INC., LICENSED AUTHORIZATION NO. LB-048.

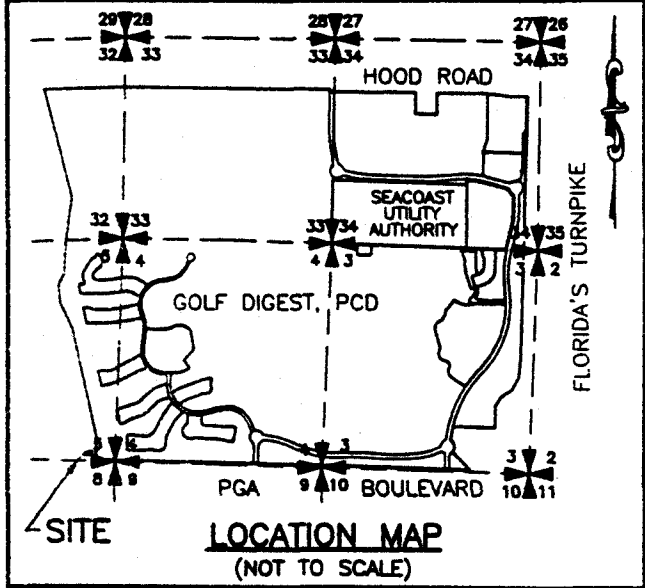


MARY HANNA CLODFELTER
PROFESSIONAL SURVEYOR & MAPPER
FLORIDA CERTIFICATE NO. 4763

SHEET 1 OF 2
SEC. 05, TWP. 42 S., RGE. 42 E.

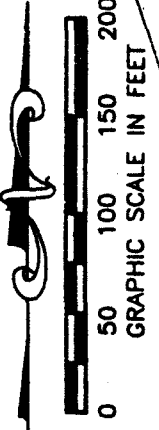
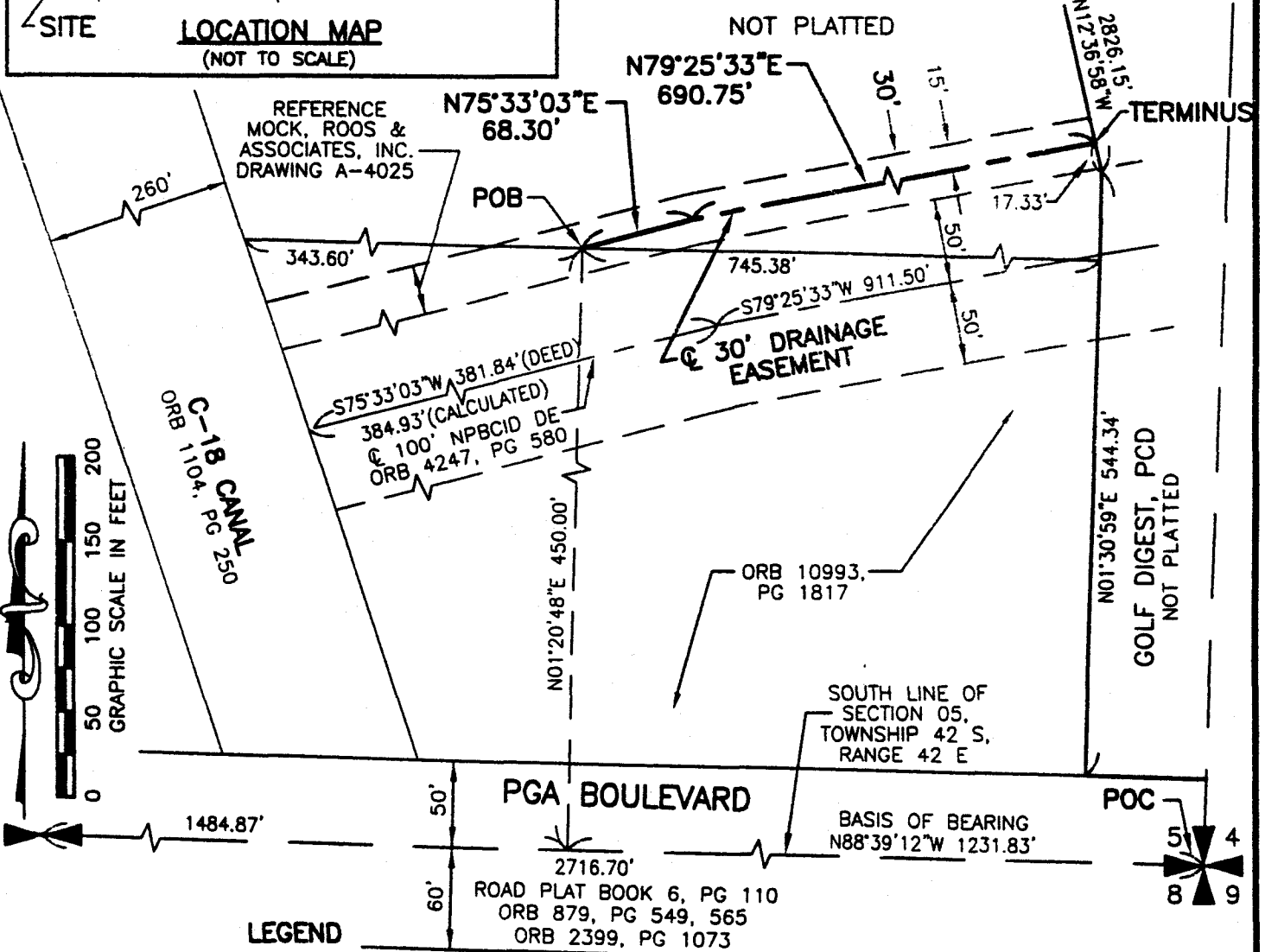
| | | | | |
|-----------------------|---|----------------|--|----------------------|
| REV: - | FL. E.B. NO. 48 | FL. LB. NO. 48 | 30' DRAINAGE EASEMENT GOLF DIGEST, PCD SECTION 05, TOWNSHIP 42 SOUTH, RANGE 42 EAST | SCALE: 1/2" = 1' N/A |
| FIELD: - |  MOCK • ROOS ENGINEERS • SURVEYORS • PLANNERS 5720 Corporate Way, West Palm Beach, Florida 33407 (561) 683-3113, fax 478-7248 | | | DATE: 08-13-01 |
| DRAWN: KMB <i>KMB</i> | | | | P.A.NO. 99360.02 |
| APPR: MHC <i>MHC</i> | | | | DR. NO. A-3959 |

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NOTES:

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2. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
3. MOCK, ROOS AND ASSOCIATES, INC., LICENSED AUTHORIZATION NO. LB-048.
4. BEARINGS SHOWN HEREON ARE BASED ON THE SOUTH LINE OF SECTION 05, TOWNSHIP 42 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEARING BEING NORTH 88°39'12" WEST.



LEGEND

| | | | |
|-----|-------------------------------|--------|---|
| DE | DRAINAGE EASEMENT | PG | PAGE |
| ORB | OFFICIAL RECORD BOOK | POB | POINT OF BEGINNING |
| PB | PLAT BOOK | POC | POINT OF COMMENCEMENT |
| PCD | PLANNED COMMUNITY DEVELOPMENT | NPBCID | NORTHERN PALM BEACH COUNTY IMPROVEMENT DISTRICT |

SHEET 2 OF 2
SEC. 05, TWP. 42 S., RGE. 42 E.

| | | | |
|------------|--|-----------------|---|
| REV: - | FL. E.B. NO. 48 | FL. L.B. NO. 48 | SCALE: 1"=100' |
| FIELD: - | MOCK • ROOS ENGINEERS • SURVEYORS • PLANNERS 5720 Corporate Way, West Palm Beach, Florida 33407 (561) 683-3113, fax 478-7248 | | DATE: 08-13-01 |
| DRAWN: KMB | | | 30' DRAINAGE EASEMENT GOLF DIGEST, PCD SECTION 05, TOWNSHIP 42 SOUTH, RANGE 42 EAST |
| APPR: MHC | | | DR. NO. A-3959 |