Agenda Item #: 3-C-4

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	March 20, 2012		Consent Workshop	•	Regular Public Hearing
Department:					
Submitted By:	Engineering and Public Works				
Submitted For:	Right-of-Way Acquisition Sectio	n			

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

- A) Approve a Subordination of Utility Interests and Agreement for Reimbursement for Additional Facility Relocations (Subordination Agreement) with Florida Power & Light Company (FPL) on a parcel of land that is for dedicated right-of-way on Wallis Road just east of North Cleary Road; and
- **B)** Accept a Subordination of Property Interests for drainage easements (Drainage Subordination) from Tallman, L.L.C. (Tallman) on a parcel of land that is for dedicated right-of-way on Wallis Road just east of North Cleary Road; and
- C) Accept a Warranty Deed from Southern Waste Systems, Ltd. (Southern) for right-of-way on Wallis Road and North Cleary Road.

SUMMARY: Approval and acceptance of these actions will allow a Subordination Agreement which releases an FPL utility easement interest in a parcel of land just east of North Cleary Road and will allow a Drainage Subordination from Tallman on the same parcel of land dedicated for right-of-way. Acceptance will also allow a Warranty Deed from Southern for a parcel of land that contains ten feet of right-of-way on Wallis Road and 15 feet of right-of-way on North Cleary Road.

District 2 (MRE)

Background and Justification: As part of the platting process for the proposed Southern Waste Systems Sun IV, M.U.P.D., the property owner, Southern is required to dedicate additional right-ofway on both Wallis Road and North Cleary Road. Land conveyed to Palm Beach County (County) must be free and clear of all encumbrances. Therefore, it is required that FPL subordinate their interest in an existing utility easement. The Subordination Agreement requires FPL to relocate any facilities they may have from the dedicated right-of-way, when and if requested by the County, and requires the County to pay for reasonable utility relocation costs as necessary. The dedicated right-of-way is also encumbered by a series of drainage easements. Tallman, the owner of these drainage easements, executed a Drainage Subordination to subordinate any interest in the existing and dedicated right-of-way of Wallis Road. Staff recommends approval of the Subordination Agreement, and acceptance of the Drainage Subordination and Warranty Deed.

Attachments:

- 1. Location Map
- 2. Subordination of Utility Interests and Agreement for Reimbursement for Additional Facility Relocations with Exhibit "A"
- 3. Subordination of Property Interests to Palm Beach County, Florida
- 4. Warranty Deed with Exhibit "A"

WK Recommended by:	Omelis	aFormand	2/14/12
		Division Director	Date
Approved by:	S. J. Web	L	2/21/12
N:\R_O_W\TRIPP\Wallis & Cl	eary/Subordination Bd Item doc	County Engineer	Date

11)

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years Capital Expenditures Operating Costs External Revenues Program Income (County) In-Kind Match (County) NET FISCAL IMPACT # ADDITIONAL FTE POSITIONS (Cumulative)	2012 <u>\$-0-</u> -0- -0- -0- <u>-0-</u> <u>\$-0-</u>	2013 -0- -0- -0- -0- -0- -0- -0-	2014 -0- -0- -0- -0- -0- -0-	2015 -0- -0- -0- -0- -0- -0-	2016
Is Item Included in Co	urrent Bu	dget?	Yes	No	
Budget Acct No.: Fund	De	pt Pr	Unit ogram	Object	

Recommended Sources of Funds/Summary of Fiscal Impact:

This item has no fiscal impact.

C. Departmental Fiscal Review:

Invalance Unit

III. REVIEW COMMENTS

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

OFMB

B. Approved as to Form ^S and Legal Sufficiency:

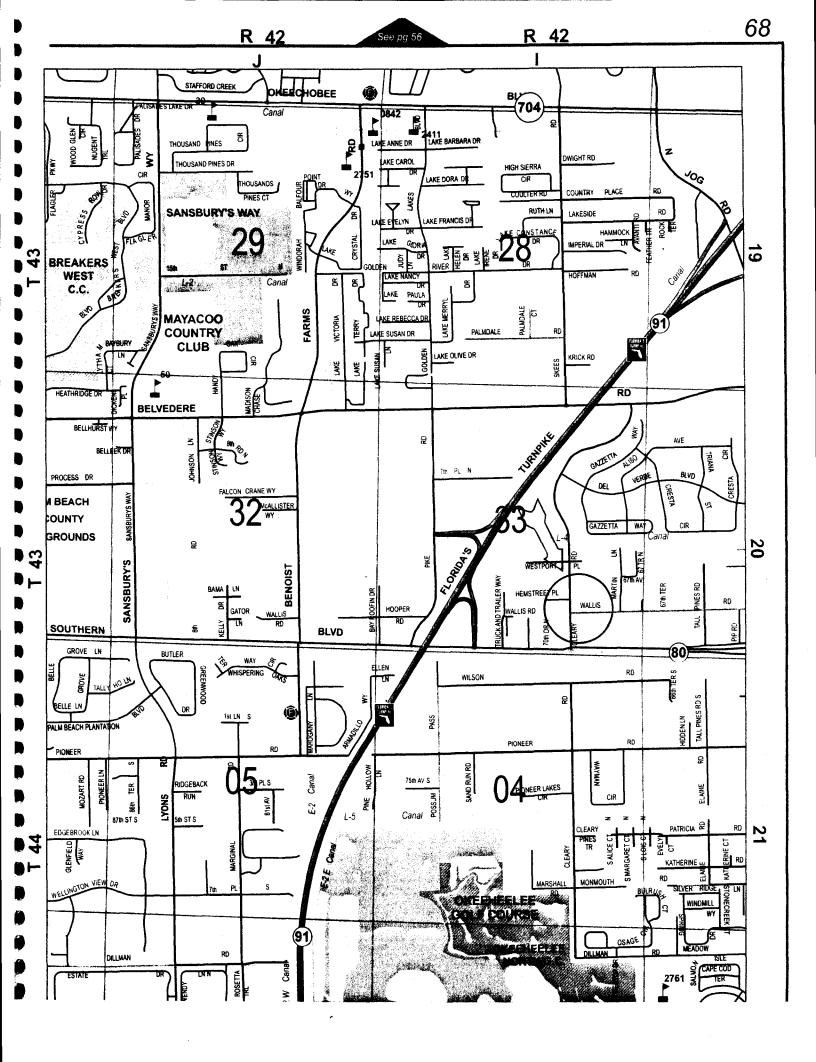
12 Assistant County Attorney

C. Other Department Review:

Department Director

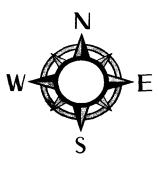
This summary is not to be used as a basis for payment. 2 F:\COMMON\WP\AGENDAPAGE2\AGNPGTWO2012\00.NO FISCAL IMPACT.DOC

17/12 and Cor ontract Dev



Location Map

Attachment #1



This instrument prepared by:
Florida Power & Light Company
P O Box 14000
Juno Beach, Florida 33408-0420

SUBORDINATION OF UTILITY INTERESTS AND AGREEMENT FOR REIMBURSEMENT FOR ADDITIONAL FACILITY RELOCATIONS

THIS AGREEMENT, entered into this <u>18th</u> day of <u>January</u>, 2012, by and between <u>Palm Beach County</u>, hereinafter called the "Government Entity", and FLORIDA POWER & LIGHT COMPANY, a Florida Corporation, whose mailing address is P. O. Box 14000, Juno Beach, Florida 33408, hereinafter called "Utility". Whose mailing address is P.O. Box 21229, West Palm Beach, FL 33416

WITNESETH:

WHEREAS, the Government Entity presently has an interest in certain lands (hereinafter "Property) that have been determined necessary for highway purposes; and

WHEREAS, the proposed use of the Property for highway purposes will require subordination of the interest claimed in the Property by Utility to the Government Entity; and

WHEREAS, the Government Entity, or its successors, hereinafter collectively called the "Governmental Entity", is willing to pay for the initial relocation of the Utility's facilities within the Property shown on Exhibit "A" to prevent conflict between the Governmental Entity's use and the Utility's use, and for the benefit of each, and

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, Utility and Government Entity agree as follows:

A. Utility subordinates any and all of its interest in its easement lands on the Property described on Exhibit "A" attached hereto and made a part hereof, to the interest of the Governmental Entity, for the purpose of constructing, improving, maintaining and operating a road over, through, upon, and/or across such Property, based on the following:

B. Utility is the owner of the following easements:

		Recorded in		
Date	From or Against	In Favor of	ORB Book	Page
4/25/1984	Ken Watson	FL. Power & Light Co.	4224 / 1590	

C. The Government Entity and the Utility further agree that:

1. The Utility shall have the right to construct, operate, maintain, improve, add to, upgrade, remove, and relocate facilities on, within, and upon the Property described in Exhibit "A". However, any such work will be subject to prior approval by the Governmental Entity.

2. Should the Governmental Entity fail to approve any new construction or relocation of facilities by the Utility or hereafter require the Utility to alter, adjust or relocate its facilities from within the Property, The Governmental Entity shall pay all reasonable costs for the relocation of existing facilities. In addition, the Utility retains the right to be reimbursed, either now or in the future, for additional relocation or adjustment of its facilities located presently or to be located on the Property described in Exhibit "A", if said relocation or adjustments is caused by the actions of the Governmental Entity.

3. The Utility shall have the right to enter upon the Property described in Exhibit "A" for the purposes outlined in Paragraph 2 above, including the right to trim such trees, brush, and growth which might endanger or interfere with such facilities. The Governmental Entity shall provide and insure access to said Property by the Utility.

4. This Agreement shall not be assigned by the Governmental Entity except to the State of Florida, or other Governmental Entity.

• IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

FLORIDA POWER & LIGHT COMPANY

Signed, sealed and delivered in our presence as witnesses

+

Signature: 30 1-hur Print Name:

Signature: Print Name: DA

	P. O. Box 14000
	Juno Beach, Florids 33408-0420
By:	e h
Its: $E \cdot P$	
Print Name:	Eliud Perez

(Corporate Seal)

STATE OF FLORIDA AND COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 18 day of ARUARL, 2012, by ELUD HRSZ, the Engineering Leader for Florida Power & Light Company's, a Florida Corporation, West Palm area, on behalf of said corporation who is personally known to me and who did not take an oath.

LESLIEKHALL ALL ALL ALL	Notary
Public, State of Horie My COMMISSION # EE109329	· · · · · ·
EXPIRES July 05, 2015	
My Commission Examinese 0153 Floride Notary Service.com	

IN WITNESS WHEREOF the Governmental Entity has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair or Vice Chair of said Board, the day and year aforesaid.

ATTEST:

SHARON R. BOCK CLERK & COMPTROLLER

PALM BEACH COUNTY, BY ITS BOARD OF COUNTY COMMISSIONERS

By:_

Deputy Clerk

By:__

Shelley Vana, Chair

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS irmanif Engineering

By:_

Assistant County Attorney

Page 3 of 3

EXHIBIT "A"

DESCRIPTION SKETCH FOR: SOUTHERN WASTE SYSTEMS

DESCRIPTION

THE WEST 6 FEET OF THE SOUTH 25 FEET OF THE FOLLOWING DESCRIBED PROPERTY:

THE EAST ONE-HALF (E 1/2) OF TRACT 51, BLOCK 5, PALM BEACH FARMS COMPANY PLAT NO. 3, AS RECORDED IN PLAT BOOK 2, PAGES 45 TO 54, INCLUSIVE, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

ALSO KNOWN AS THE SOUTH 25 FEET OF A 6 FOOT WIDE FLORIDA POWER & LIGHT EASEMENT AS RECORDED IN OFFICIAL RECORDS BOOK 4224, PAGE 1590, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

NOTES:

- ALL INFORMATION REGARDING RECORD EASEMENTS, ADJOINERS, AND OTHER DOCUMENTS THAT 1. MIGHT AFFECT THE QUALITY OF TITLE TO TRACT SHOWN HEREON WAS GAINED FROM COMMITMENT NUMBER 06-2011-00006360, ISSUED BY ATTORNEY'S TITLE FUND SERVICES, LLC, DATED 08/01/2011 NO SEARCH OF THE PUBLIC RECORDS HAS BEEN MADE BY THIS OFFICE.
- THIS SKETCH IS NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYOR'S SEAL AND 2. ACCOMPANIED BY SHEET NO. 2.
- 3. THIS SKETCH CANNOT BE TRANSFERRED OR ASSIGNED WITHOUT THE SPECIFIC WRITTEN PERMISSION OF WALLACE SURVEYING CORPORATION.
- THE NORTH LINE OF THE SOUTH 15 FEET OF TRACT 51, BLOCK 5, PALM BEACH FARMS CO. PLAT No. 3, 4. AS RECORDED IN PLAT BOOK 2, PAGE 45, IS ASSUMED TO BEAR NORTH 89°58'24" WEST (SAID LINE ALSO BEING THE NORTH RIGHT-OF-WAY LINE OF WALLIS ROAD) AND ALL OTHER BEARINGS SHOWN HEREON ARE RELATIVE THERETO.
- COORDINATES SHOWN ARE GRID. 5.
- DATUM = NAD 83, 1990 ADJUSTMENT. 6.
- ZONE = FLORIDA EAST 7.
- 8. LINEAR UNIT = US FOOT
- 9. COORDINATES SHOWN ON THE CONTROL P.R.M.'S ARE BASED UPON THE FLORIDA STATE PLANE COORDINATE SYSTEM ON THE NORTH AMERICAN DATUM OF 1983, 1990 ADJUSTMENT AS READJUSTED BY PALM BEACH COUNTY, FLORIDA, IN 1998.
- 10. ALL DISTANCES ARE GROUND.
- 11. SCALE FACTOR = 1.0000279
- 12. GROUND DISTANCE X SCALE FACTOR = GRID DISTANCE
- 13. THIS IS NOT A SURVEY!

CERTIFICATION:

I HEREBY ATTEST THAT THE DESCRIPTION SKETCH SHOWN HEREON MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS ADOPTED IN RULE 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, EFFECTIVE SEPTEMBER 1, 1981.

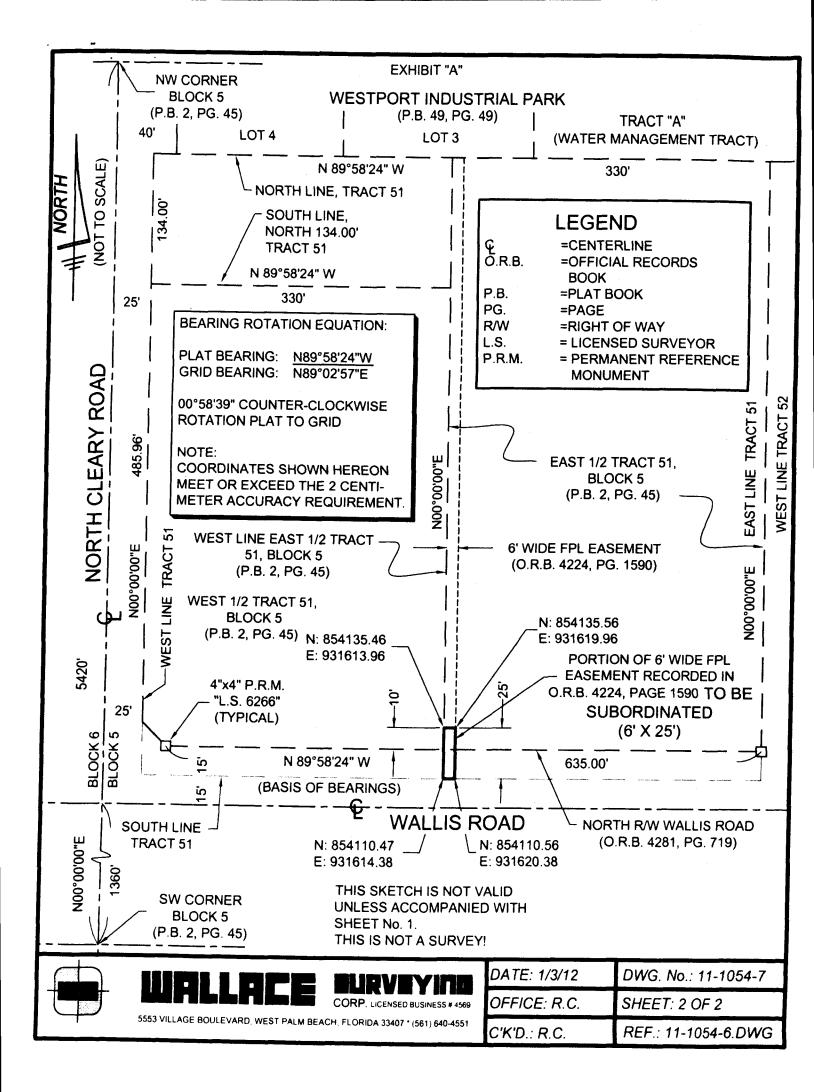
ROBERT J. CAJAL

PROFESSIONAL SURVEYOR AND MAPPER FLORIDA CERTIFICATE NO. 6266



ORP	 _

DATE: 1/3/12 DWG. No.: 11-1054-7 OFFICE: R.C. SHEET: 1 OF 2 SED BUSINESS # 4569 5553 VILLAGE,BOULEVARD, WEST PALM BEACH, FLORIDA 33407 * (561) 640-4551 C'K'D.: R.C. REF.: 11-1054-6.DWG



Return To: Right-of-Way Acquisition Section Name: Palm Beach County Engineering Address: Post Office Box 21229 West Palm Beach Florida 33416 Attn: Tripp Cioci Account No.: 1010 W/C BOX 1 W/C BOX 1066 This Instrument Prepared By: Paul F. King, Esq. Assistant County Attorney Post Office Box 21229 West Palm Beach, Florida Name: 33416

A portion of PCNs: 00-42-43-27-05-005-2090 00-42-43-27-05-005-2080

SUBORDINATION OF PROPERTY INTERESTS TO PALM BEACH COUNTY, / FLORIDA

THIS SUBRODINATION, entered into this 4 day of <u>December</u>,20, TALLMAN, LLC whose mailing address is 13245 Compton Road, Loxahatchee, FL (hereinafter the "Tallman"). ,201 33470

WHEREAS, Tallman presently may hold property interests ("Interests"), as referenced in the recorded documents below ("Documents"), that a portion of said Interests have been determined necessary to be subordinated; and,

WHEREAS, the proposed use of the right-of-way for Wallis Road requires subordination to the County of the Interests claimed in said Documents by Tallman and at the request of the County, Tallman has agreed, subject to the following conditions, to leave its facilities on the existing right-of-way or future right-of-way extending 40 feet from the centerline of Wallis Road, as referenced in Plat Book 2, page 45 (hereinafter "Property"), described in recorded documents below;

NOW THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, Tallman and the County agree as follows:

Tallman hereby subordinates any and all of its interest in that portion of the following Documents lying within the existing and future right-of-way extending 40 feet from the centerline of Wallis Road (hereinafter "Subordinated Interests"), to the interest of the County, its successors or assigns; 1.

NATURE OF ENCUMBRANCE	DATE	FROM OR AGAINST	IN FAVOR OF	BOOK AND PAGE
Description of Drainage Easements	02/11/99	Harold G. Murphy, Jr.	Wastemasters of Palm Beach, Inc.	ORB 10927 Page 1445
Warranty Deed	08/3/98	Harold G. Murphy, Jr.	Wastemasters of Palm Beach, Inc.	ORB 10557 Page 639

- Tallman shall have the right to operate and maintain facilities on, within, and upon all the Subordinated Interests in accordance with the County's current minimum standards for such facilities as of the date of such construction. Any new construction, improvements, upgrade, removal, or relocation of the facilities within the Subordinated Interests will be subject to prior approval by the County 2. by the County.
- 3. Tallman shall have a reasonable right to enter upon the area described in the Subordinated Interests for the purposes outlined in paragraph 2 above.
- Tallman agrees to repair any damage to the County's facilities and to indemnify and hold harmless the County against any loss or damage resulting from Tallman exercising its rights outlined in paragraph 2 and 3 above. 4.
- These terms and conditions shall be attached as an addendum to the permit, if any, required by the County for reasons outlined in paragraph 2. 5.
- 6. This Subordination is not assignable, except to another governmental entity, for the purposes described herein.

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IN WITNESS WHEREOF, Tallman has executed this Subordination on the day and year first written.

Witness Signature By: <u>AI-HUN</u> int Name of Witness

tness Signature

Iren Print Name of witness

TALLMAN, LLC Signature Print Name OWNIR itle

STATE OF FLORIDA COUNTY OF PALM BEACH The foregoing instrument was acknowledged before me this <u>19</u> day of <u>December</u> 2011, by <u>Marcus (). Murphy</u>, who is <u>personally</u> known to me, or who supplied <u>as identification</u>, and who did/did not take an oath.

SEAL

266-LGL REV. 11/19/02

NOTARY PUBLIC STATE OF FLORIDA Linda L. Murphy Commission # DD809885 Expires: SEP. 11, 2012 BONDED THEY ATLANTIC BONDING CO, INC.

Frida NOTART PUBLIC

~2~

Return to):		
	Right-of-Way Acquisition Section		
Name:	Palm Beach County Engineering		
	Post Office Box 21229		
Address:	West Palm Beach, Florida 33416		
	Attn: Tripp Cioci		
	Acct. No.: 1010 W/C BOX 1066		
This Inst	rument Prepared by:		
Name :	Alan J. Ciklin, Esquire		
	Casey Ciklin Lubitz Martens & O'Connell		
515 North Flagler Drive, 20 th Floor			
	West Palm Beach, FL 33401		

NOT TO BE RECORDED WITHOUT BOARD OF COUNTY COMMISSIONERS ACCEPTANCE DATE

SPACE ABOVE THIS LIN	FOR PROCESSING DATE	
Portion of PCNs: 00-42-43-27-05-305-2080 and	PROJECT NO. 98-032A; R2004-2428; E1A	
00-42-43-27-05-005-1301	ROAD NAME: WALLIS	
	PARCEL NO.	

WARRANTY DEED

THIS WARRANTY DEED, made this 16 day of November, 2011, by SOUTHERN WASTE SYSTEMS, LTD., a Florida limited partnership, having its principal place of business at 790 Hillbrath Drive, Lantana, FL 33462, hereinafter called Grantor, to PALM BEACH COUNTY, a political subdivision of the State of Florida, whose post office address is P.O. Box 21229, West Palm Beach, Florida 33416, hereinafter called Grantee.

WITNESSETH: That the Grantor, for and in consideration of the sum of TEN (\$10.00) dollars and other valuable considerations, receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee, all that certain land situate in Palm Beach County, Florida viz:

Property more particularly described in Exhibit "A" attached hereto and made a part hereof

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND the Grantor hereby covenants with said Grantee that it is lawfully seized of said land in fee simple; that it has good right and lawful authority to sell and convey said land; that it nereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whosoever; and that said land is free of all encumbrances, except taxes subsequent to December 31, 2011.

The Grantor further warrants that the property being conveyed to Palm Beach County meets all appropriate and applicable environmental agency requirements. In the event of a determination of contamination which requires remediation or clean up on the property now owned by the Grantor, the Grantor agrees to hold the

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Grantee harmless and shall be responsible for all costs of such clean up, including Attorney's fees as well as the actual cost of the clean up.

IN WITNESS WHEREOF the Grantor has caused these presents to be executed in its name, and its corporate seal to be affixed, by its proper officers thereunto duly authorized, the day and year first above written.

Signed, sealed and delivered in the Presence of:

Al

WITNESS SIGNATURE (Required)

SA_FORI Colling K TYPED OR PRINTED NAME OF WITNESS

Muchili

WITNESS SIGNATURE (Required)

~~~ Muc, nski YPED OR PRINTED NAME OF WITNESS

State of Florida

County of Palm Beach

The foregoing instrument was acknowledged before me this 16<sup>++</sup> day of November, 2011 by Charles Gusmano, Manager of SOUTHERN WASTE HOLDINGS MANAGEMENT, LLC, a Delaware limited liability company the General Partner of SOUTHERN WASTE SYSTEMS, LC., a Florida Limited Partnership, on behalf of the company. He [1] is personally known or [1] has produced a driver's license as identification.

Notary Public Printed Name: Cathy Parizo My Commission Expires: 01/17/2015

SOUTHERN WASTE SYSTEMS, LTD., a

MANAGEMENT, LLC, a Delaware

limited liability company, its

<

um

Charles Gusmano, Its Manager

Florida Limited Partnership

By: SOUTHERN WASTE HOLDINGS

General Partner

790 Hillbrath Drive

MAILING ADDRESS

Lantana, Florida 33462

[NOTARY SEAL]

Notary Public State of Florida Cathy Parizo My Commission EE055848 Port State of 1/17/2018

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# DESCRIPTION SKETCH FOR: SOUTHERN WASTE SYSTEMS

# **DESCRIPTION:**

TRACT "A", SOUTHERN WASTE SYSTEMS, SUN IV, M.U.P.D., ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK \_\_\_\_, PAGE \_\_\_\_, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CONTAINING IN ALL, 14,114 SQUARE FEET OR 0.324 ACRE, MORE OR LESS.

# NOTES:

- 1. ALL INFORMATION REGARDING RECORD EASEMENTS, ADJOINERS, AND OTHER DOCUMENTS THAT MIGHT AFFECT THE QUALITY OF TITLE TO TRACT SHOWN HEREON WAS GAINED FROM COMMITMENT NUMBER 06-2011-00006360, ISSUED BY ATTORNEY'S TITLE FUND SERVICES, LLC, DATED 08/01/2011. NO SEARCH OF THE PUBLIC RECORDS HAS BEEN MADE BY THIS OFFICE.
- 2. THIS SKETCH IS NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYOR'S SEAL AND ACCOMPANIED BY SHEET NO. 2.
- 3. THIS SKETCH CANNOT BE TRANSFERRED OR ASSIGNED WITHOUT THE SPECIFIC WRITTEN PERMISSION OF WALLACE SURVEYING CORPORATION.
- 4. THE WEST LINE OF TRACT 51, BLOCK 5, PALM BEACH FARMS CO. PLAT No. 3, AS RECORDED IN PLAT BOOK 2, PAGE 45, IS ASSUMED TO BEAR NORTH 00°00'00" EAST AND ALL OTHER BEARINGS SHOWN HEREON ARE RELATIVE THERETO.
- 5. THIS IS NOT A SURVEY!

## **CERTIFICATION**:

I HEREBY ATTEST THAT THE DESCRIPTION SKETCH SHOWN HEREON MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS ADOPTED IN RULE 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, EFFECTIVE SEPTEMBER 1, 1981.

ROBERT J. CAJAL PROFESSIONAL SURVEYOR AND MAPPER FLORIDA CERTIFICATE NO. 6266

REV.: 1-31-12, ADD FPL EASEMENT AND DRAINAGE EASEMENTS SUBJECT TO SUBORDINATION AGREEMENT. R.C., 11-1054.13

|                                                                         | DATE: 11/4/11 | DWG. No.: 11-1054-5 |
|-------------------------------------------------------------------------|---------------|---------------------|
| CORP. LICENSED BUSINESS # 4569                                          | OFFICE: M.B.  | SHEET: 1 OF 2       |
| 5553 VILLAGE BOULEVARD, WEST PALM BEACH, FLORIDA 33407 * (561) 640-4551 | C'K'D.: C.W.  | REF.: 11-1054-4.DWG |

