

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

<b>Meeting Date:</b>	July 2, 2019	(X) Consent	( ) Regular
		( ) Workshop	( ) Public Hearing
<b>Department:</b>	<u>Environmental Resources Management</u>		
<b>Submitted By:</b>	<u>Environmental Resources Management</u>		
<b>Submitted For:</b>	<u>Environmental Resources Management</u>		

**I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to:**

**A) approve** Lease Agreement – Sawfish Island (Agreement) with the Florida Inland Navigation District (FIND) for the restoration and management of an approximate 9.7-acre tract of land known as Sawfish Island for a period of thirty years commencing on July 1, 2019 and terminating on July 1, 2049; and


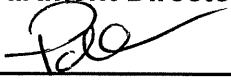
**B) authorize** the County Administrator, or designee, to sign all future time extensions, task assignments, and other forms associated with this Agreement, and any necessary minor amendments that do not significantly change the scope of work, terms, or conditions of this Agreement.

**Summary:** This Agreement provides for the environmental restoration and long-term management of the 9.7-acre Sawfish Island parcel, located on the west side of the Intracoastal Waterway and north of Fullerton Island, in Jupiter, Florida. A grant application for 50% of the construction costs, estimated at \$740,022, was approved by the Board of County Commissioners on March 12, 2019 (R2019-0326). Pending approval of the FIND grant, improvements to this site would include the removal of exotic vegetation and spoil material, and the construction of public kayak landings and an overlook tower. The pending FIND grant to restore the parcel may be matched from Manatee Protection or County Vessel Registration Funds. The Lease provides that if the County defaults in the performance of any of the lease terms, refuses to give up possession at the termination of the lease, or is the unsuccessful party in any litigation arising between the parties under the Lease, the County will be liable to pay FIND's attorney's fees and enforcement costs incurred during mediation, arbitration, trial, appeal, post-judgment proceedings, and bankruptcy and administrative proceedings. District 1 (SF)

**Background and Justification:** FIND and the County wish to enter into a lease agreement for managing the 9.7-acre parcel. This parcel is identified as an important natural resource within the Lake Worth Creek Aquatic Preserve Management Plan. The management of this parcel includes preserving the dense beds of seagrasses that lie within the surrounding submerged portion of the property, as well as removing exotic vegetation and replacing it with mangroves and other native species.

**Attachments:**

1. Lease Agreement
2. Location Map

<b>Recommended by:</b>		<u>6-13-19</u>
	<b>Department Director</b>	<b>Date</b>
<b>Approved by:</b>		<u>6/23/19</u>
	<b>Assistant County Administrator</b>	<b>Date</b>

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	_____	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____
Is Item Included in Current Budget?	Yes _____		No _____		
Does this item include the use of federal funds?	Yes _____		No _____		
<b>Budget Account No.:</b>					
Fund	Department	Unit	Object	Program	
_____	_____	_____	_____	_____	

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**  
No fiscal impacts at this time.

**C. Department Fiscal Review:**

\_\_\_\_\_ *S. Henry*

**III. REVIEW COMMENTS**

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

*[Signature]*  
 OFMB  
*5/24/2019*

*[Signature]*  
 Contract Development & Control  
*6/13/19*  
*6/18/19*

*[Signature]*  
 6/19/19

**B. Legal Sufficiency:**

\_\_\_\_\_ *[Signature]*  
Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_ Department Director

ATTACHMENT 1

LEASE AGREEMENT – SAWFISH ISLAND

THIS LEASE AGREEMENT (“Lease”) dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between FLORIDA INLAND NAVIGATION DISTRICT, an independent special taxing district of the State of Florida, hereinafter referred to as Landlord, and PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as Tenant.

RECITALS

- A. Landlord is the owner of a parcel of land located in Palm Beach County, Florida as more particularly described in that certain Warranty Deed from Mary Hampton Fullerton and Richard M. Fullerton. to Florida Inland Navigation District dated March 2, 1989 and recorded on April 12, 1989 in Official Record Book 6029, Page 296, of the Public Records of Palm Beach County, Florida (the “FIND Parcel”).
- B. Tenant is constructing a public waterfront park located on a spoil island on the west side of the Intracoastal Waterway and north of Fullerton Island, Jupiter, Florida known as Sawfish Island with legal description 31-40-43 6-41-43 Government Lot 12 (Less the right-of-way of the intracoastal waterway) (Exhibit A and Exhibit B).
- C. The Tenant’s project will include removal of spoil material, and construction of public kayak landings and an overlook tower (the “Project”).
- D. Landlord has no current plans to utilize the FIND Parcel in connection with the maintenance and improvement of the Intracoastal Waterway.
- E. Landlord is willing to lease the FIND Parcel to Tenant for use as a public waterfront park, including the Project, upon the terms and conditions of this Lease.

WITNESSETH

Therefore, in consideration of the terms below, the sufficiency of which is mutually acknowledged, Landlord and Tenant agree that:

1. INCORPORATION OF RECITALS

The foregoing recitals are true, correct and incorporated herein by reference.

2. LEASED PREMISES/TERM/CONTINGENCY

Landlord hereby leases to Tenant the FIND Parcel, as more particularly described in Exhibit “A” attached hereto and made a part hereof by reference (the “Leased Premises”), for a term commencing July 1, 2019, and terminating July 1, 2049 (the “Initial Term”).

3. PAYMENT OF RENT

- a. Tenant hereby covenants and agrees to pay to Landlord as rent for the term of this Lease rent in the amount of One Dollar (\$1.00) per year ("Rent"). Rent is due and payable annually in advance or in lump sum.
- b. Tenant shall make any and all payments due hereunder to Landlord at that address set forth as follows unless otherwise notified by Landlord in writing:  
FLORIDA INLAND NAVIGATION DISTRICT  
ATTN: EXECUTIVE DIRECTOR  
1314 MARCINSKI ROAD  
JUPITER, FLORIDA 33477
- c. Tenant agrees to pay any and all charges and deposits for any and all utilities in addition to said rent.
- d. Tenant shall pay such other amounts deemed "additional rent" pursuant to Paragraph 13 hereof.
- e. Tenant shall pay such other charges without demand and without setoff as required to be paid by Tenant under this Lease. If such amounts or charges are not paid at the time provided in this Lease, they shall be collectible as additional charges with the next installment of rent due hereunder and shall bear interest from the due date thereof to the date of payment at the rate of eighteen percent (18%) per annum or such lesser rate as shall be the maximum permitted by law.

4. COVENANTS OF LANDLORD

Landlord covenants that said Tenant, on paying the said Rent and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said Leased Premises for the term aforesaid, PROVIDED ALWAYS, that this Lease is conditioned upon the prompt payment of rent in the manner and at the time stated herein and that there shall be no breach by Tenant of any of the other covenants or agreements of this Lease on Tenant's part to be performed.

5. [INTENTIONALLY OMITTED]

6. USE OF LEASED PREMISES/CONDUCT OF BUSINESS

- a. Tenant shall continuously occupy and use the Leased Premises solely for public waterfront park purposes, to include the following facilities, if funds permit: one informational kiosk, a two-story observation tower, and six picnic tables (hereinafter the "Permitted Use").

Tenant shall not use the Leased Premises or construct other improvements thereupon except as specifically provided above without Landlord's prior written consent.

- b. Tenant shall, at Tenant's expense, comply with all laws, ordinances and regulations of the United States, State of Florida, the County of Palm Beach and, if applicable, the Town of Jupiter, including, without limitation, all applicable permits and conditions thereof, pertaining to the use and occupancy of the Leased Premises, and shall not make any use of the Leased Premises which shall unreasonably disturb Landlord's neighbors or otherwise become a nuisance.

7. TENANT'S FIXTURES AND ALTERATIONS

- a. Tenant agrees that it will not make any alterations (whether structural or otherwise), improvements or additions to the Leased Premises, other than the Project, without first obtaining the written consent of Landlord. All alterations, improvements and additions made by Tenant and all chattels affixed by Tenant to the Leased Premises shall remain upon the Leased Premises at the expiration or earlier termination of this Lease, and shall become the property of Landlord, except as otherwise provided herein.
- b. In addition to the above, Tenant shall also procure from the appropriate governmental agencies all necessary permits and authorizations before proceeding with any alteration, repair or improvement, and shall at all times comply with such permits and all conditions thereof, all at Tenant's expense.

8. ASSIGNMENT AND SUBLETTING

- a. Tenant shall not voluntarily, involuntarily, or by operation of law, assign, transfer, mortgage or otherwise encumber (herein collectively referred to as an "assignment") this Lease or any interest of Tenant herein, in whole or in part, nor sublet the whole or any part of the Leased Premises, nor permit the Leased Premises or any part thereof to be used or occupied by others, without the prior written consent of Landlord in each and every instance, which may not be unreasonably and arbitrarily withheld. The consent of Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. If this Lease or any interest of Tenant herein be assigned or if the whole or any part of the Leased Premises be sublet or used or occupied by others after having obtained Landlord's prior written consent thereto, Tenant shall nevertheless remain fully liable for the full performance of all obligations under this Lease to be performed by Tenant and Tenant shall not be released therefrom in any manner.
- b. Should Tenant, in violation of the provisions of this Paragraph, assign this Lease, or sublet the Leased Premises or any portion thereof without

obtaining Landlord's prior written consent, then such assignment or sublease shall be null and void and of no force and effect. Such act on the part of Tenant shall be deemed a default of Tenant entitling Landlord to exercise any of the rights and remedies therefor as set forth in Paragraph 17 hereof.

- c. In the event Tenant assigns or sublets the Leased Premises pursuant to this Paragraph 8 of this Lease Agreement, any rent collected by Tenant as sublessor or assignor which exceeds the amount of rent due from Tenant to Landlord hereunder shall be due and payable to Landlord.

9. LIENS

- a. Mechanics' or Materialmen's Liens: Tenant shall not cause any liens of mechanics, laborers or materialmen to stand against the Leased Premises for any labor or material furnished or claimed to have been furnished to Tenant in connection with any work of any character performed or claimed to have been performed on the Leased Premises, by or at the direction of Tenant.

If the Leased Premises or any part thereof or Tenant's leasehold interest therein becomes subject to any suppliers, vendors, mechanics, laborers, materialmen's or other lien, encumbrance or charge (collectively hereinafter called a "lien"), other than a lien caused by the actions of the Landlord, Tenant shall immediately notify Landlord of the filing or the threatened filing of any such lien, shall immediately cause the lien to be transferred to other security, and shall from time to time notify Landlord of the status of such contest.

- b. Landlord's Liability for Tenant's Liens: It is hereby agreed by the parties hereto that Landlord will not be liable for any labor, services or materials furnished or to be furnished by Tenant or to anyone holding the Leased Premises, or any part thereof, through or under Tenant, and that no liens for any labor or material shall attach to or affect the interest of Landlord in and to the Leased Premises. All contracts for construction or repair shall contain the above cautionary language and shall require all subcontractors, materialmen and laborers to be so advised. Failure of Tenant to so notify and advise such contractor(s) in writing prior to the commencement of any work to be performed shall constitute a default hereunder and entitle Landlord to those rights and remedies set forth in Paragraph 17 hereof.
- c. Public Construction Bond: Tenant shall obtain a public construction bond in accordance with Section 255.05, F.S. from any contractor doing work upon the Leased Premises prior to the commencement of any such work. The bond shall be substantially in the form provided in Subsection 255.05(3) or as otherwise approved by Landlord, and shall include Landlord as a Principal.

10. LIABILITY OF LANDLORD/WAIVER/INDEMNIFICATION

- a. As a consideration for the making of this Lease and in light of the fact that Tenant has had the opportunity to make such inspections and tests as Tenant, in Tenants' judgment, has deemed necessary, Tenant accepts the Leased Premises in its "As-Is Condition" and Landlord shall not be liable for any defect in the Leased Premises, latent or otherwise, except as provided by law. However, to the extent that Landlord is aware of a defect on the premises, latent or otherwise, Landlord has the obligation to advise Tenant of such defect.
- b. Each party shall be liable for its own actions and negligence and, to the extent permitted by law, Tenant shall indemnify, defend and hold harmless Landlord against any actions, claims or damages arising out of Tenant's negligence in connection with this Agreement, and Landlord shall indemnify, defend and hold harmless Tenant against any actions, claims, or damages arising out of Landlord's negligence in connection with this agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions.
- c. Tenant shall include language in any construction contract for work upon or involving the Leased Premises that the contractor shall indemnify and hold harmless the Tenant and Landlord, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of the construction contract.
- d. Tenant shall be responsible for the payment of any fines or administrative penalties assessed and any remedial or mitigation actions required due to or arising out of any violation or alleged violation by Tenant or Tenant's employees, agents or contractors of laws, ordinances and regulations of the United States, State of Florida, the County of Palm Beach and, if applicable, the Town of Jupiter, including, without limitation, all applicable permits and conditions thereof, pertaining to the use and occupancy of the Leased Premises.
- e. The provisions of this Paragraph 10 shall survive the termination of this Lease.

11. INSURANCE

Without waiving the right to sovereign immunity as provided by section 768.28, Florida Statutes, (Statute), the Tenant represents that it is self-insured with coverage subject to the limitations of the Statute, as may be amended.

If Tenant is not self-insured, Tenant shall, at its sole expense, purchase and maintain in full force and effect at all times during the term of this Agreement, the insurance with limits not less than those contained in the Statute.

The Tenant agrees to maintain or to be self-insured for Workers' Compensation insurance in accordance with Chapter 440, Florida Statutes.

Should Tenant contract with a third-party to perform any service related to the Agreement, Tenant shall require the third-party to provide the following minimum insurance:

- a. Commercial General Liability insurance with minimum limits of \$1,000,000 combined single limit for property damage and bodily injury per occurrence and \$2,000,000 per aggregate. Such policy shall be endorsed to include Tenant and Landlord as Additional Insureds. Tenant shall also require that third-party to include a Waiver of Subrogation against Landlord.
- b. Business Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits for property damage and bodily injury per occurrence.
- c. Workers' Compensation insurance in compliance with Chapter 440, Florida Statutes, and which shall include coverage for Employer's Liability with minimum limits of \$1,000,000 each accident.

When requested, the Tenant shall provide an affidavit or Certificate of Insurance evidencing insurance or self-insurance.

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



12. REPAIRS AND MAINTENANCE OF LEASED PREMISES

Tenant shall at all times at its sole cost and expense keep and maintain the Leased Premises, including, without limitation, the Project, in good order, condition and repair and shall not commit or suffer any waste on the Leased Premises.

13. ADDITIONAL RENT

For purposes of this Paragraph:

- a. "Taxes" shall mean real estate taxes, special and extraordinary assessments and governmental levies against the property upon which the Leased Premises is located.
- b. "Tax Year" shall mean the fiscal year for which taxes are levied by any governmental authority.
- c. Tenant shall pay as additional rent for such Tax Year the said Taxes for such Tax Year. The payment shall be prorated, if necessary, to correspond with that portion of a Tax Year occurring within the term of this Lease. The payment shall be made by Tenant within (30) days after receipt of a demand from Landlord therefor, which demand shall be accompanied by a copy of the tax bill together with Landlord's computation of the payment. Landlord herein reserves the right to elect to pay said taxes so as to take advantage of any discount for early payment of same or to pay said taxes in full on the date same are due and payable in full without said discount.

14. USE OF SAWFISH ISLAND BY LANDLORD

Tenant agrees that, during the term of this Lease, Landlord may use the Leased Premises for maintenance needs of the Intracoastal Waterway. Such use shall not unreasonably interfere with the public use of the remaining lanes. The timing and duration of such use shall be coordinated in advance by Landlord and Tenant. Landlord shall be responsible for repairing any damage to the Leased Premises resulting from such use. Notwithstanding paragraph 10.a., to the extent that Landlord's use of the Leased Premises during the term of this Lease causes a condition, latent or patent, on or under the Leased Premises that causes an injury to person or property, Landlord shall be solely liable.

15. HAZARDOUS MATERIALS

Tenant agrees that, during the term of this Lease, it:

- a. Shall keep or cause the Leased Premises to be kept free of hazardous wastes or substances.

- b. Shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Tenant, or Tenant's assignees, employees, agents or contractors, a release of hazardous wastes or substances onto the Leased Premises.
- c. Shall comply with and ensure compliance by its assignees, employees, agents or contractors and all others under its direction with all applicable federal, state, and local laws, ordinances, rules, and regulations.
- d. The terms "hazardous waste", "hazardous substance", "disposal", "release", and "threatened release", if used in this Lease, shall have the same meaning as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901 et seq., the Florida Resource and Management Act, Chapter 403, Florida Statutes, the Pollution, Spill, Prevention, and Control Act, Chapter 376, Florida Statutes, or any other applicable state or federal laws, rules, or regulations adopted pursuant to any of the foregoing.
- e. Shall immediately provide Landlord with notice of any release or threatened release of hazardous waste on or about the Leased Premises, and shall immediately provide Landlord with notice of any injury or action taken by any local, state, or federal governmental body with respect to hazardous waste on or about the Leased Premises.
- f. Shall remove any hazardous waste or hazardous substances which exceed allowable levels in the ground or the groundwater within the Leased Premises, arising from Tenant's use of the Leased Premises.

16. EVENTS OF DEFAULT

The following shall constitute Events of Default:

- a. If Tenant defaults in the payment of any sum of money due hereunder and such default shall continue for fifteen (15) days after the date of notice from Landlord to Tenant.
- b. If Tenant defaults in fulfilling any of the other covenants of this Lease on Tenant's part to be performed hereunder and such default shall continue for the period of fifteen (15) days after notice from Landlord to Tenant specifying the nature of said default, or, if the default so specified shall be of such a nature that the same cannot be reasonably cured or remedied within said fifteen (15) day period, if Tenant shall not in good faith have commenced the curing or remedying of such default within such fifteen (15) day period and shall not thereafter diligently proceed therewith to

completion.

- c. If any execution or attachment shall be issued against Tenant or any of Tenant's property and shall not be discharged or vacated within fifteen (15) days after the issuance thereof.
- d. The vacation of the Leased Premises by Tenant.

In the Event of Default, Landlord shall provide Tenant with such written notice thereof as shall be required under Florida law.

17. REMEDIES IN EVENT OF DEFAULT

- a. In the event of a default hereunder and such default shall continue after the giving of written notice thereof to Tenant, Landlord may at Landlord's option:
  - i. terminate the Lease and retake possession of the Premises for its own account,
  - ii. stand by and do nothing, holding the Tenant liable for the Rent due as it matures, including any accelerated Rent,
  - iii. retake possession of the Premises for the account of the Tenant, holding the Tenant liable for the difference between the Rent stipulated to be paid under the Lease and what, in good faith, the Landlord is able to recover from a reletting, or
  - iv. avail itself of any other option or remedy available under Florida law; and, in any event Tenant, shall give up the Leased Premises to Landlord.
- b. If the notice provided herein shall have been given and this Lease shall be terminated; or if the Leased Premises become vacant or deserted; then, in addition to all other remedies of Landlord, Landlord may without notice re-enter the Leased Premises either by force or otherwise and, by summary proceedings or otherwise, dispossess Tenant and/or the legal representative of Tenant or other occupant of the Leased Premises, and remove effects and repossess and enjoy the Leased Premises, together with all alterations, additions and improvements, all without being liable to prosecution or damages therefor.
- c. If Tenant defaults in the performance of any of the terms and conditions of this Lease and Landlord employs the services of an attorney to enforce performance of Tenant hereunder, to the extent permitted by law, Tenant shall pay a reasonable attorney's fee as well as all expenses and costs incurred by the Landlord pertaining thereto and in enforcement of any remedy available to the Landlord.

18. SURRENDER OF POSSESSION/HOLDING OVER

- a. At the end of the tenure of this Lease, Tenant shall quit and deliver up the Leased Premises to Landlord in as good a condition as they are now, excepting reasonable wear and tear.
- b. Should Tenant hold over in possession of the Leased Premises after the expiration of the Initial Term or, if applicable, the Renewal Term hereof, without the execution of a new lease or extension or renewal agreement, Tenant, at the option of Landlord, shall be deemed to be occupying the Leased Premises from month to month, subject to being terminated by either party upon at least fifteen (15) days written notice, at the rent in effect during the last month of the term or any extension or renewal thereof and otherwise subject to all of the other terms and conditions of the Lease on a monthly basis.
- c. Should Tenant refuse to give up possession of the Leased Premises after the expiration of the term hereof and after demand to do so by Landlord, Landlord may demand double the monthly rent. In addition, to the extent permitted by law, Tenant shall be liable for all court costs, attorney's fees and other costs related to removing Tenant from the Leased Premises.

19. ACCESS BY LANDLORD

Landlord may, during the term of this Lease at reasonable times, enter to inspect the Leased Premises upon reasonable advance oral notice to Tenant, except that no notice shall be required in emergency situations. Landlord also reserves the right to enter the Leased Premises at any time to make such repairs, additions or alterations as it may deem necessary for the safety, improvement, or preservation thereof, upon reasonable advance oral notice to Tenant, except that no notice shall be required in emergency situations, but Landlord assumes no obligation to do so, and the performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. Landlord shall in no event be liable for any inconvenience, disturbance, loss of business or the damage to Tenant by reason of the performance by Landlord of any work in, upon or under the Leased Premises. Notwithstanding paragraph 10.a., to the extent that Landlord's use of the Leased Premises during the term of this Lease causes a condition, latent or patent, on or under the Leased Premises that causes an injury to person or property, Landlord shall be solely liable.

20. INTENTIONALLY OMITTED

21. EXECUTION OF ESTOPPEL CERTIFICATE

At any time, and from time to time, upon the written request of Landlord, Tenant,

within ten (10) days of the date of such written request, agrees to execute and deliver to Landlord, without charge and in a form satisfactory to Landlord, a written statement: (a) ratifying this Lease; (b) confirming the commencement and expiration dates of the term of this Lease; (c) certifying that Tenant is in possession of the Leased Premises, and that this Lease is in full force and effect and has not been modified, assigned, supplemented or amended, except by such writings as shall be stated; (d) certifying that all conditions and agreements under this Lease to be satisfied or performed by Landlord have been satisfied and performed, except as shall be stated; (e) certifying that Landlord is not in default under this Lease and there are no defenses or offsets against the enforcement of this Lease by Landlord, or stating the defaults and/or defenses claimed by Tenant; and (f) such other information as Landlord or mortgagee shall require.

22. [INTENTIONALLY OMITTED]

23. EMINENT DOMAIN

- a. If the whole of the Leased Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding and all rentals shall be paid up to date and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease.
- b. If any part of the Leased Premises shall be acquired or condemned as aforesaid, and in the event that such partial taking or condemnation shall render the Leased Premises unsuitable for the business of Tenant, then the term of this lease shall cease and terminate as of the date of title vesting in such proceeding and Tenant will have no further responsibility or obligation hereunder. Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease and rent shall be adjusted to the date of such termination. In the event of a partial taking or condemnation which is not extensive enough to render the Leased Premises unsuitable for the business of Tenant, then Landlord shall promptly restore the Leased Premises to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking, and this Lease shall continue in full force and effect without any reduction or abatement of rent.
- c. In the event of any condemnation or taking as aforesaid, whether whole or partial, Tenant shall not be entitled to any part of the award paid for such condemnation, Landlord is to receive the full amount of such award, and Tenant hereby expressly waives any right or claim to any part thereof.
- d. Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's operations by reason of the condemnation and for or on account of any cost or loss to which Tenant might be put in removing Tenant's fixtures, leasehold improvements and equipment.

24. ATTORNEYS' FEES

In the event this Agreement shall be the subject of litigation between the parties hereto for any reason whatsoever, the prevailing party in such litigation shall, to the extent permitted by law, recover from the other party the costs of such action, including, but not limited to, costs incurred in any and all mediation, arbitration, trial, appellate, post-judgment, bankruptcy and administrative proceedings.

25. MISCELLANEOUS

- a. Tenant has inspected the Leased Premises and is familiar with its present condition and takes said Leased Premises in "As-Is" condition.
- b. The failure of Landlord or Tenant to take any action against the other for violation of any of the terms of the Lease shall not prevent a subsequent act of a similar nature from being a violation of the Lease.
- c. No act or agreement to accept surrender of the Leased Premises from Tenant shall be valid unless in writing signed by the parties hereto.
- d. This Lease fully and completely expresses all agreements and understandings of the parties hereto. Furthermore, this Lease shall be binding upon and shall inure to the benefit of the respective heirs, successors, assigns and legal representatives of the parties hereto and shall not be changed or terminated unless in writing and signed by the parties hereto.
- e. **THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER PERTAINING TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE OR TENANT'S USE AND OCCUPANCY OF THE LEASED PREMISES.**
- f. Tenant hereby acknowledges Tenant's responsibility to insure Tenant's property maintained within or upon the said Leased Premises at Tenant's expense.
- g. If any term or condition of this Lease shall, to any extent, be held invalid or unenforceable, the remainder of the terms and conditions of this Lease shall not be affected thereby, and this Lease shall be valid and enforceable to the fullest extent permitted by law.
- h. Receipt of rent by Landlord, with knowledge of any breach of this Lease by Tenant, or of any default by Tenant in the observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to be a waiver of any provision of this Lease.
- i. This Lease shall not be recorded in the Office of the Clerk of any Circuit Court in the State of Florida, except that Landlord may file a memorandum

of this Lease.

- j. This Lease shall be construed under the laws of the State of Florida.
- k. The Section headings of this Lease are for convenience only and are not to be considered in construing the same.
- l. This Lease may be executed in counterparts, all of which taken together shall be deemed an original, with a facsimile and/or an e-mail signature serving as an original thereof.
- m. Each party represents and warrants to the other that: (a) it is duly authorized and competent to execute this Lease; (b) it has all necessary power and authority to enter into this Lease and to perform the agreements contained in this Lease; and (c) the person signing this Lease on behalf of such party is authorized to execute and deliver this Lease on behalf of such party.
- n. The parties participated in the drafting of this Lease and/or had it reviewed by competent counsel. Accordingly, no presumption shall be given in favor of: or against, any party in interpreting this Lease and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease.
- o. **RADON GAS**  
  
**RADON IS NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.**
- p. Office of the Inspector General: Palm Beach County (County) has established the Office of the Inspector General. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the parties or entities with which the County enters into agreements, their officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All parties or entities doing business with the County or receiving County funds shall fully cooperate with the Inspector General including granting the Inspector General access to records relating to the agreement and transaction.

- q. Non-Discrimination: The Tenant agrees that no person shall, on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to any form of discrimination under any activity conducted pursuant to this Lease.
- r. No Third-Party Beneficiary: No provision of this Lease is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this lease, including but not limited to any citizens of Landlord or employees of Landlord or Tenant.
- s. Annual Budgetary Funding/Cancellation: This Lease and all obligations of Tenant hereunder are subject to and contingent upon annual budgetary funding by the Board of County Commissioners of Palm Beach County. Notwithstanding anything in the Lease to the contrary, Tenant shall have the right to cancel this Lease for any reason upon ninety (90) days prior written notice to Landlord, whereupon the parties shall be relieved of all further obligation hereunder.
- t. Notices:

All notices, requests, demands, and other communication hereunder shall be in writing, sent by U. S. certified mail, return receipt requested, postage prepaid to the addresses indicated on the first page of this Agreement or to such other addresses as shall be furnished in writing by either party to the other. All such notices shall be effective upon receipt, or the date which the postal authorities designate the notice as undeliverable as evidenced by the return receipt. Landlord and Tenant hereby designate their address as follows:

Landlord: Florida Inland Navigation District  
1314 Marcinski Road  
Jupiter, Florida 33477  
Attn: Executive Director

Tenant: Palm Beach County  
Environmental Resources Management  
2300 North Jog Road, 4th Floor  
West Palm Beach, FL 33411-2743  
Attn: Director

With a copy to:  
Palm Beach County Attorney's Office  
301 N. Olive Avenue, Suite 601  
West Palm Beach, Florida 33401  
Attn: Real Estate



IN WITNESS WHEREOF, the parties hereto have set forth their hands and seals on the year and date aforesaid.

Signed, sealed and delivered in the presence of:

**AS TO LANDLORD:**  
**FLORIDA INLAND NAVIGATION DISTRICT**

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

BY: \_\_\_\_\_  
Its Chair

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

DATED: \_\_\_\_\_

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Peter L. Breton, Esq., General Counsel

**AS TO TENANT:**

ATTEST:

**SHARON R. BOCK**  
**CLERK & COMPTROLLER**

**PALM BEACH COUNTY, a political subdivision of the State of Florida**

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
Mack Bernard, Mayor

DATED: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

(OFFICIAL SEAL)

By: \_\_\_\_\_  
Assistant County Attorney

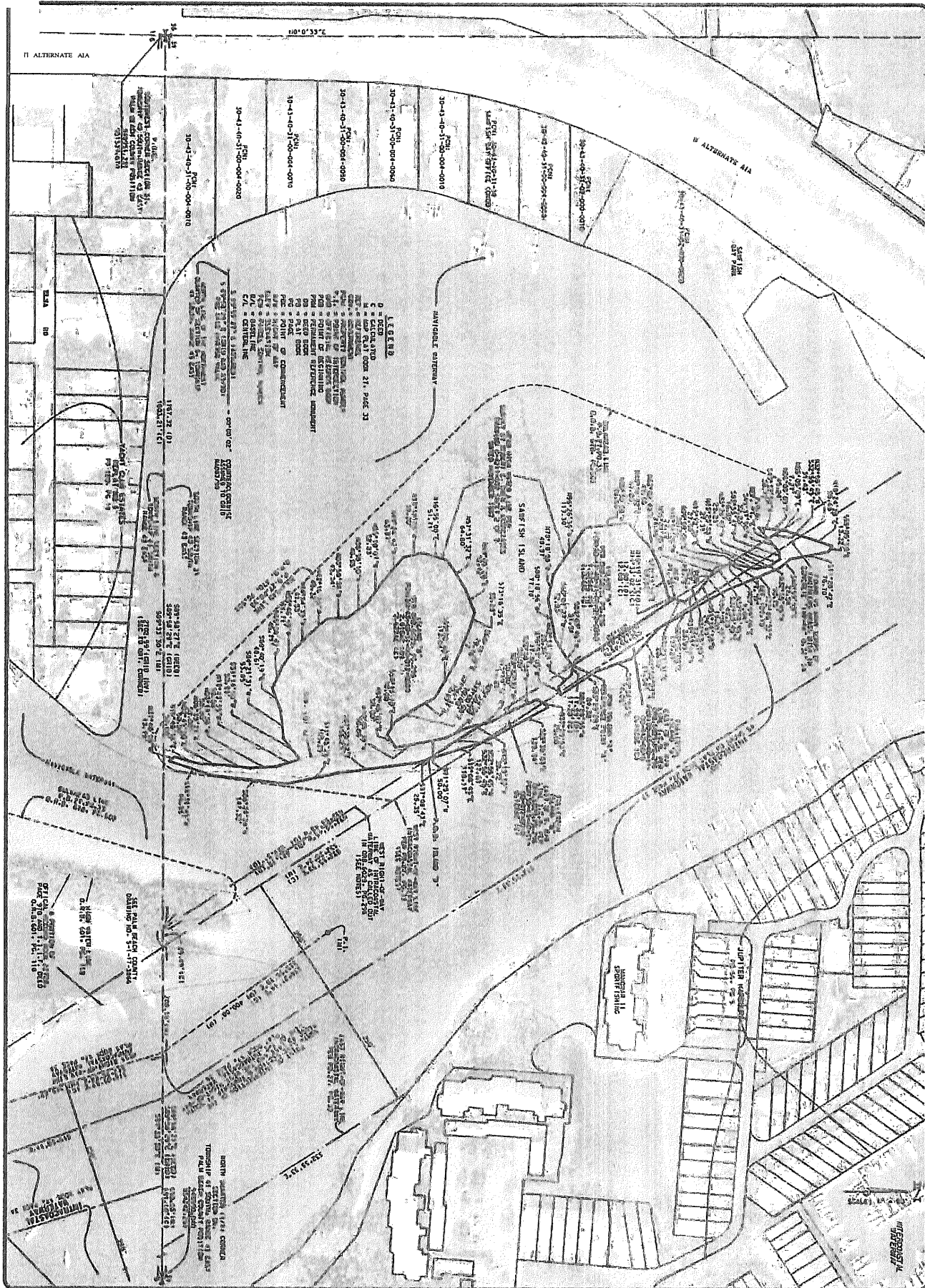
*Sebastian J. [Signature]* 6-13-14  
APPROVED AS TO TERMS AND CONDITIONS DATE

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EXHIBIT "A"

LEGAL DESCRIPTION OF LEASED PREMISES

Project Boundary Map Exhibit A



PROJECT NO. 2010-01-01  
SHEET 3  
OF 3

**SAWFISH ISLAND RESTORATION**  
**SPECIFIC PURPOSE SURVEY**

DATE: 01/22/10  
DRAWN BY: J. S. [unreadable]  
CHECKED BY: [unreadable]

9905-BJ-S-3-3-10-01-0066  
PALM BEACH COUNTY  
ENGINEERING AND PUBLIC WORKS

NO.	REVISION	DATE
1	ISSUED LABEL & MCH.	01/22/10



**PALM BEACH COUNTY**  
**ENGINEERING AND PUBLIC WORKS**  
**ROADWAY PRODUCTION**

2200 NORTH JOO ROAD  
WEST PALM BEACH, FL 33411

APR-12-1989 12:38Pm 89:-102165

ORB 6029 pg 296

Con 1401000.00 Doc 770.00  
JOHN B DUNKLE, CLERK - PB COUNTY, FL

*Return to:*  
Thomas A. Shreehan III  
Moyle, Flanigan, Katz  
P.O. Box 3888  
West Palm Beach, Fl. 33402

**Deed**

THIS INSTRUMENT WAS PREPARED BY:  
ESSE E. FARRELL, ESQ.  
Solely: Harvey Davis Davis & Associates  
1260 BENTLEY CENTER  
WEST PALM BEACH, FLORIDA 33411-4007

This Deed, dated this 2nd day of March A. D. 1989  
between MARY HAMPTON FULLERTON and RICHARD e. FULLERTON

hereinafter **callerantors**, which term shall include when used herein, hereever the context so **requita**, their heirs, personal representatives and assigns,

and **FLORIDA AVIGATION DISTRICT**, an agency of the State of **F**

whoa mailing addressa ia: **Marcinski Road**  
**er, FL**

hereinafter called the Grantee **ich** term shall include when uaed herein, wherever the context so requires or admitta, **its@essors** and/or assigns

WITNESSETH: **t** for the **1 0** n Dollars (\$10.00) and other good and **valuable considerations**, **remise**,  
release, convey and confirm unto the said **all** that certain piece of property  
and tract of land situate in the County of **BEACH** and State of Florida,  
described as follows:

Parcels of land in Section 31, Townshiouth, Range 43 East, Palm Beach County, Florida, more partiri described as follows:

DESCRIPTION  
ISLAND A

*CQ*

A parcel of land lying westerly of **W e** f Intucoaetal  
.Water way in Section 31, iowndshlp 40 South 43 Eut, Palm  
Beach County, Florida, being more part described as  
follows:

Commencing at a Palm Beach County Brau Disc lOCated at the South- west  
t corner of said Section 31; thence South 89°58'27" East along the  
Southerly Line of said section a distance of 1767.32 feet to the  
Wei::terly right-of-way line of the Intracoastal Waterway; then  
ce North 32°55'45" West along said Westerly right-of-way line a di  
Hance of 159.51 feet to the POINT OF BEGINNING and herein after  
r referred to as Point "A"; thence South 55°07'46" West, a dist  
ance of 31.94 feet; thence South 60°07'27" West, a distance of 32.81  
feet; lhence South 80°18'56" West, a distance of 77.78 feet; thence  
North 78°19'58" West, a distance of 48.97 feet; thence North 56  
°26'36" west, a distance of 113.30 feet; thence North  
05°50'06" West, a distance of 86.86 feet; thence North 48°16'42"  
East, a distance of 6L.00 feet; thence North 62°02'43" East, a  
distance of 41.16 feet; thence North 73°53'34" East, a distance of  
68..B'i feet; thence North 16°19'3!" East, a distance of 12.98 feet  
lo a Point on the Westerly right-of-way line of said Intracoastal  
Waterloday, said Point hereinafter referred to as Point "B"; thence Sou  
th 32°55'45" East, along said right-of-way, a distance of 241.  
50 feet to the POINT OF BEGINNING herein referred to as Point "A".

RECORDERS MEMO: Legality  
of Writing, Typing or Printing  
unsatisfactory in this document  
when received.

TOGETHER WITH:

Commencing at Point herein referred to as Point "B"; thence North 32°55'45" West along said right-of-way a distance of 82.51 feet to a Point hereinafter referred to as Point "C" and the POINT OF BEGINNING; thence North 56°04'00" West, a distance of 21.66 feet; thence North 16°34'26" West, a distance of 27.72 feet; thence North 06°06" East, a distance of 1.04 feet to a Point on the Westerly Right-of-way line of said Intracoastal Waterway, said Point hereinafter referred to as Point "D"; thence South 32°55'45" East along said right-of-way, a distance of 47.28 feet to the POINT OF BEGINNING herein referred to as Point "C".

O  
(O). TOGETHER WITH:

Commencing at Point herein referred to as Point "D" thence North 32°55'45" West along said right-of-way, a distance of 90.75 feet to a Point hereinafter referred to as Point "E" and the POINT OF BEGINNING; thence North 49°37'50" West, a distance of 28.72 feet; thence North 09°09" East, a distance of 45.24 feet to a Point on the Westerly Right-of-way of said Intracoastal Waterway; thence South 32°55'45" East along said right-of-way, a distance of 31.43 feet to a Point hereinafter referred to as Point "F" and POINT OF BEGINNING.

Containing 1.026 Acres more or less.

>


parcel Intracoastal Waterway in Section 31, Township 31 South, Range 43 East Palm Beach County, Florida, being more particularly described as follows:

Commencing at a Parcel located at the South-west corner of said Section 31; thence South 89°58'27" East along the Westerly right-of-way line of said Section, a distance of 1757.32 feet to the Westerly right-of-way line of said Intracoastal Waterway; thence North 32°55'45" West along said Westerly right-of-way line a distance of 621.75 feet and the POINT OF BEGINNING; thence South 17°08'43" East, a distance of 25.35 feet; thence South 07°35'52" East, a distance of 156.23 feet; thence North 45°25" East, a distance of 105.29 feet; thence South 06°24'24" East, a distance of 147.32 feet; thence South 18°31'45" West, a distance of 86.85 feet; thence North 37°40'08" West, a distance of 13.79 feet; thence North 15°40'58" East, a distance of 50.00 feet; thence North 02°49'00" East, a distance of 50.00 feet; thence North 06°39'21" East, a distance of 50.00 feet; thence North 03°18'36" West, a distance of 50.00 feet; thence North 17°43'39" West, a distance of 50.00 feet; thence South 51°14'50" West, a distance of 50.99 feet; thence South 84°21'31" West, a distance of 53.85 feet; thence South 69°40'19" West, a distance of 48.61 feet; thence North 65°08'41" West, a distance of 45.71 feet; thence North 55°46'49" West, a distance of 41.71 feet; thence North 44°54'39" West, a distance of 41.53 feet; thence North 42°16'20" West, a distance of 46.32 feet; thence North 03°58'38" West, a distance of 43.34 feet; thence North 36°58'10" West, a distance of 46.55 feet; thence North 55°10'07" West, a distance of 52.83 feet; thence North 49°24'42" West, a distance of 63.87 feet; thence North 13°18'09" West, a distance of 39.20 feet; thence North 16°55'00" East, a distance of 51.71 feet; thence North 57°31'32" East, a distance of 64.80 feet; thence North 69°05'26" East, a distance of 52.42 feet; thence South 73°16'35" East, a distance of 35.28 feet; thence South 66°48'30" East, a distance of 79.16 feet; thence South 59°00'40" East, a distance of 73.01 feet; thence South 27°44'37" East, a

RECORDERS MEMO: Legibility of Writing, Typing or Printing unsatisfactory in this document when received.

distance of 40.67 feet; thence South 32°00'08" East a distance of 50.00 feet; thence South 58°15'10" East, a distance of 30.00 feet; thence North 57°45'07" East, a distance of 30.00 feet; thence North 10°01'39" West, a distance of 50.00 feet; thence North 11°25'07" West, a distance of 50.00 feet; thence North 25°14'08" West, a distance of 50.00 feet; thence North 13°19'32" West a distance of 30.72 feet to a Point on the Westerly right-of-way of the Intracoastal Waterway; thence South 32°55'45" East along said right-of-way a distance of 127.61 feet more or less to the POINT OF BEGINNING.

D, Acres more or less

Containing 



TOGETHER WITH Hillowing described, additional portions of ISLAND "A" and LAND "B" which lie within and are subject to the Right-of-Way of the Atlantic Intracoastal Waterway.

O?erton Island "A"

cription

Area East of West Right-of-Way I.C.W.

A parcel of land lying Easterly of West line of Intracoastal Waterway in Section 31, Township 40 South, Range 43 East, Palm Beach County, Florida, being more particularly described as follows:

Commencing at a Palm Beach County Br  located at the Southwest corner of said Section 31; thence  89°58'27" East along the Southernly line of said, section a distance of 1767.32 feet to the Westerly right-of-way line of the Intracoastal Waterway; thence North 32°55'45" West along said Westerly right-of-way line a distance of 959.51 feet to the POINT OF BEGINNING; thence North 32°55'45" West along said Westerly right-of-way, a distance of 241.50 feet; thence North 16°19'31" East, a distance of 27.68 feet; thence North 37°33'08" West, a distance of 33.99 feet; thence North 51°34'18" West, a distance of 24.43 feet; thence North 56°04'13" East, a distance of 13.03 feet to a point on the Westerly right-of-way of said Intracoastal Waterway; thence North 32°55'45" West along said Westerly right-of-way, a distance of 47.28 feet; thence North 9°59'06" East, a distance of 26.32 feet; thence North 13°12'38" East, a distance of 7.68 feet; thence North 13°23'33" West, a distance of 27.31 feet; thence North 33°29'42" West, a distance of 23.2 feet; thence South 83°55'47" West, a distance of 16.62 feet; thence South 49°37'50" West, a distance of 32.23 feet to a point on aforementioned Westerly right-of-way of the Intracoastal Waterway; thence North 32°55'45" West along said Westerly right-of-way; a distance of 31.43 feet; thence North 06°05'09" East 7.77 feet; thence North 18°24'28" East, a distance of 96.69 feet; thence South 55°05'50" East, a distance of 13.22 feet; thence South 110°28'42" East, a distance of 76.70 feet; thence South 40°59'19" East a distance of 27.54 feet; thence South 22°46'32" East, a distance of 109.70 feet; thence South 28°56'09" East, a distance of 157.21 feet; thence South 47°50'27" East, a distance of 81.54 feet; thence South 19°34'55" East, a distance of 74.05 feet; thence South 33°39'28" East, a distance of 84.38 feet; thence South 76°57'03" West, a distance of 17.36 feet; thence North 42°13'24" West, a distance of 35.36 feet; thence North 86°28'55" West, a distance of 17.59 feet to the POINT OF BEGINNING.

RECORDED MEMO: Legibility of Writing, Typing or Printing unsatisfactory in this document when received.



NOTAirPUBIC  
State of Florida

at Large

- 4 -

My Commission Expires: .-



ATTACHMENT 2

**Project Location Map**

