

This instrument prepared by:
Lynn Solomon, Assistant City Attorney
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT (hereinafter, "Declaration") is made by CITY OF FORT LAUDERDALE, a Florida municipal corporation (hereinafter, "GRANTOR") and the Florida Department of Environmental Protection (hereinafter, "FDEP"). This Declaration is neither extinguished nor affected by the Marketable Record Title Act per pursuant to section 712.03, Florida Statutes (F.S.)

RECITALS

A. GRANTOR is the fee simple owner of that certain real property situated in the County of Broward, State of Florida, more particularly described in **Exhibit "A"** attached hereto and made a part hereof (hereinafter, "Property").

B. The facility name at the time of this Declaration is Middle River Terrace Park, (FACID/COM_325946 and ERIC_10335). This Declaration addresses the groundwater conditions at the site presented in the "Site Inspection Report" prepared by AMEC dated March 13, 2015.

C. In July 2014, FDEP's Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) Site Screening Section (CSSS) completed a Pre-Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) Screening Assessment (PSA) for this site which resulted in a Preliminary Assessment (PA) being completed in August 2014. The PA recommended the site for further CERCLA evaluation and a Site Inspection (SI). The SI was performed, and a Site Inspection Report (SIR) was completed in March 2015. Although the SIR stated the site is no longer eligible for further CERCLA action, FDEP was unable to approve a No Further Action (NFA) as requested in January 2016 due to the arsenic in the groundwater above Groundwater Cleanup Target Levels (GCTLs). In a March 2016 letter, FDEP stated the groundwater issue can be addressed by placing a Restrictive Covenant on the property.

The following reports/correspondence are incorporated by reference:

1. Preliminary Assessment (Final) dated August 6, 2014, prepared by FDEP.
2. FINAL Analytical Report dated November 21, 2014, prepared by the United States Environmental Protection Agency (EPA).

3. Site Inspection Report dated March 13, 2015, prepared by AMEC for FDEP.
4. FDEP Memorandum dated May 8, 2015 to William Rueckert, PG, EM through Brian Dougherty, Administrator, from Ligia Mora-Applegate, Environmental Consultant and Joy L. Myers, ES III.
5. Health Consultation dated November 20, 2015, prepared by Florida Department of Health (FDOH).
6. City letter to William Rueckert dated January 27, 2016, prepared by Todd Hiteshew, Environmental Services Manager.
7. FDEP letter to Todd Hiteshew dated March 1, 2016, prepared by William Rueckert.

D. The reports noted in Recital "C" set forth the nature and extent of the contamination described in Recital "C" that is located on the Property. These reports confirm that contaminated groundwater as defined by Chapter 62-780, Florida Administrative Code (F.A.C.), exists on the Property. This declaration imposes restrictions on the areas of groundwater contamination. Also, these reports document that the groundwater contamination does not extend beyond the Property boundaries that the extent of the groundwater contamination does not exceed $\frac{1}{4}$ acre, and the groundwater contamination is not migrating.

E. It is the intent of the restrictions in this Declaration to reduce or eliminate the risk of exposure of users or occupants of the Property and the environment to the contaminants and to reduce or eliminate the threat of migration of the contaminants.

F. FDEP has agreed to issue a Site Rehabilitation Completion Order with Conditions (hereinafter "Order") upon recordation of this Declaration. FDEP can unilaterally revoke the Order if the conditions of this Declaration or of the Order are not met. Additionally, if concentrations of petroleum products increase above the levels approved in the Order, or if a subsequent discharge occurs at the Property. FDEP may require site rehabilitation to reduce concentrations of contamination to the levels allowed by the applicable FDEP rules. The Order relating to the Property can be found by contacting the appropriate FDEP district office or Tallahassee program area.

G. GRANTOR deems it desirable and in the best interest of all present and future owners of the Property that an Order be obtained and that the Property be held subject to certain restrictions and engineering controls all of which are more particularly hereinafter set forth.

NOW, THEREFORE, to induce FDEP to issue the Order and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the undersigned parties, GRANTOR agrees as follows:

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

2. GRANTOR hereby imposes on the Property the following restrictions:

a. Groundwater Use. There shall be no use of the groundwater under the Property. There shall be no drilling for water conducted on the Property, nor shall any wells be installed on the Property other than monitoring or other wells pre-approved in writing by FDEP's Division of Waste Management (DWM) in addition to any authorizations required by the Division of Water Resource Management (DWRM) and the Water Management District (WMD).

b. Dewatering. For any dewatering activities on the Property, a plan signed and sealed by a Florida-registered professional engineer or Florida-registered professional geologist to address and ensure the appropriate handling, treatment and disposal of any extracted groundwater that may be contaminated must be submitted to FDEP's DWM. The plan must include the location(s) of the dewatering activity and the effluent disposal area(s) relative to known areas of groundwater contamination, proposed flow rates, duration, volume, estimated drawdown, (based upon design calculations), a technical evaluation demonstrating that the dewatering will not cause the migration of contamination and procedures for proper characterization, treatment, and handling of any contaminated groundwater that may be encountered during dewatering. FDEP's DWM will keep the plan in the site file as documentation of site conditions and will rely on this professional certification for demonstrating compliance with this restriction. GRANTOR is advised that other federal, state, or local laws and regulations may apply to this activity. A copy of all permits obtained for the implementation of dewatering must be provided along with the plan submitted to FDEP's DWM. FDEP will rely on this Declaration, Rule 62-621.300, F.A.C., and the guidance incorporated therein, and the signed and sealed dewatering plan as the institutional controls to ensure that no exposure to contaminated groundwater resulting in risk to human health, public safety or the environment will occur due to dewatering activities on the contaminated site. Rule 62-621.300, F.A.C., requires a permit when conducting dewatering in the area of a contaminated site. For this reason, if GRANTOR seeks to conduct dewatering on the Property, GRANTOR shall submit the signed and sealed plan to FDEP DWM in addition to obtaining any authorizations that may be required by FDEP DWRM, the WMD, or other federal, state, or local laws and regulations that may apply to this activity. The dewatering plan must ensure the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated to avoid adversely impacting or increasing the potential for exposure to contaminants resulting in risk to human health, public safety or the environment. Unless it is demonstrated that the cleanup criteria under subsection 62-780.680(1), F.A.C., have been achieved, FDEP, in addition to other remedies available at law, may institute proceedings to revoke this Declaration and the Conditional Site Rehabilitation Completion Order and require the resumption of site rehabilitation activities if any dewatering activities are commenced without submittal of a signed and sealed plan.

c. **Stormwater Facilities.** There shall be no stormwater swales, stormwater detection or retention facilities, or ditches on the Property. If stormwater features must be constructed, modified, altered or expanded a plan signed and sealed by a Florida-registered professional engineer or a Florida-registered professional geologist must be submitted to FDEP's DWM in addition to any authorizations required by the DWRM and the WMD. The plan must include the feature location, construction and design specifications relative to known areas of soil and groundwater contamination, and a technical evaluation (including calculations, fate and transport modeling, as applicable) to demonstrate that the new stormwater facilities will not cause the migration of contamination. The plan shall also outline the procedures for proper characterization, handling and disposal of any contaminated media that may be encountered during construction. FDEP's DWM will keep the plan in the site file as documentation of site conditions and will rely on this professional certification for demonstrating compliance with this restriction. The GRANTOR is advised that other federal, state, or local laws and regulations may apply to this activity. A copy of all permits obtained for the implementation of dewatering must be provided along with the plan submitted to FDEP's DWM. A revised exhibit must be amended to the Declaration and recorded when any stormwater feature is altered, modified, expanded, or constructed. FDEP will rely on this Declaration and certified plan that should ensure that any construction of a new or modify existing stormwater features to ensure that there is no exposure to contaminated groundwater entering into new or expanded stormwater features resulting in risk to human health, public safety or the environment due to the contaminated site. Construction of stormwater swales, stormwater detention or retention features, or ditches on the property could destabilize the groundwater plume or increase potential for exposure to contaminants resulting in risk to human health, public safety, or the environment. For this reason, if GRANTOR seeks to construct stormwater features on the Property, GRANTOR shall submit the certified plan to FDEP DWM in addition to obtaining any authorizations that may be required by FDEP DWRM, the WMD, or other federal, state, or local laws and regulations that may apply to this activity. Unless it is demonstrated that the cleanup criteria under subsection 62-780.680(1), F.A.C., have been achieved, FDEP, in addition to other remedies available under law, may institute proceedings to revoke this Declaration and the Conditional Site Rehabilitation Completion Order and require the resumption of site rehabilitation activities if any such stormwater features are constructed or commenced without submittal of a certified plan.

3. In the remaining paragraphs, all references to GRANTOR and FDEP shall also mean and refer to their respective successors and assigns.

4. For the purpose of monitoring the restrictions contained herein, FDEP is hereby granted a right of entry upon and access to the Property at reasonable times and with reasonable notice to GRANTOR. Access to the Property is granted by an adjacent public right of way.

5. It is the intention of GRANTOR that this Declaration shall touch and concern the Property, run with the land and with the title to the Property, and shall apply to and be binding upon and inure to the benefit of GRANTOR and FDEP, and to any and all parties

hereafter having any right, title or interest in the Property or any part thereof. FDEP may enforce the terms and conditions of this Declaration by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of FDEP to exercise its right in the event of the failure of GRANTOR to comply with the provisions of this Declaration shall not be deemed or construed to be a waiver of FDEP's rights hereunder. This Declaration shall continue in perpetuity, unless otherwise modified in writing by GRANTOR and FEDEP as provided in paragraph 7 hereof. These restrictions may also be enforced in a court of competent jurisdiction by any other person, firm, corporation, or governmental agency that is substantially benefited by these restrictions. If GRANTOR does not or will not be able to comply with any or all of the provisions of this Declaration, GRANTOR shall notify FDEP in writing within three (3) calendar days. Additionally, GRANTOR shall notify FDEP thirty (30) days prior to any conveyance or sale, granting or transferring the Property or portion thereof, to any heirs, successors, assigns or grantees, including, without limitation, the conveyance of any security interest in said Property.

6. In order to ensure the perpetual nature of this Declaration, GRANTOR shall reference these restrictions in any subsequent lease or deed of conveyance, including the recording book and page of record of this Declaration. Furthermore, prior to the entry into a landlord-tenant relationship with respect to the Property, GRANTOR agrees to notify in writing all proposed tenants of the Property of the existence and contents of this Declaration of Restrictive Covenants. Without limiting the generality of paragraph 3 above, it is the intention of the parties that if GRANTOR has conveyed the Property, the GRANTOR's successors and assigns shall be required to perform such notification.

7. This Declaration is binding until a release of covenant is executed by FDEP Secretary (or designee) and is recorded in the public records of the county in which the land is located. To receive prior approval from the FDEP to remove any requirement herein, cleanup target levels established pursuant to Florida Statutes and FDEP rules must be achieved. This Declaration may be modified in writing only. Any subsequent amendments must be executed by both GRANTOR and FDEP and be recorded by GRANTOR as an amendment hereto.

8. If any provision of this Declaration is held to be invalid by a court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provisions of the Declaration. All such other provisions shall continue unimpaired in full force and effect.

9. GRANTOR covenant and represents that on the date of execution of this Declaration that GRANTOR is seized of the Property in fee simple and has good right to create, establish, and impose this restrictive covenant on the use of the Property. A joinder and consent (or subordination, as applicable) of liens, mortgages, and/or encumbrances is attached hereto.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, Grantor, **City of Fort Lauderdale**, a Florida municipal corporation has executed this instrument this ____ day of _____, 2021.

WITNESSES:

CITY OF FORT LAUDERDALE, a
Florida municipal corporation

DEAN J. TRANTALIS, Mayor
100 North Andrews Avenue
Fort Lauderdale, FL 33301

[Witness-print or type name]

CHRISTOPHER J. LAGERBLOOM, ICMA_CM
City Manager

[Witness-print or type name]

(CORPORATE SEAL)

ATTEST:

JEFFREY A. MODARELLI, City Clerk

Approved as to form:
ALAIN E. BOILEAU, City Attorney

LYNN SOLOMON, Assistant City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online, this _____, 2021, by DEAN J. TRANTALIS, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

Name of Notary Typed,
Printed or Stamped.

My Commission Expires:

Commission Number

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online, this _____, 2021, by CHRISTOPHER J. LAGERBLOOM, ICMA-CM, City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

Name of Notary Typed,
Printed or Stamped.

My Commission Expires:

Commission Number

Approved as to form by the Florida Department of Environmental Protection,
Office of General Counsel _____.

IN WITNESS WHEREOF, the Florida Department of Environmental Protection has
executed this instrument, this _____ day of _____, 2021.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

JASON ANDREOTTA
Director of District Management
Department of Environmental Protection
Southeast District
3301 Gun Club Road, MCS7210-1
West Palm Beach, Florida 33406

Signed, sealed and delivered in the presence of:

Witness: _____

Date: _____

Print Name: _____

Witness: _____

Date: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☐ physical presence
or ☐ online, this _____ day of _____, 2021, by JASON
ANDREOTTA as representative of the Florida Department of Environmental Protection.

Personally Known _____ OR Produced Identification _____.
Type of Identification Produced _____.

Signature of Notary Public

Print Name of Notary Public

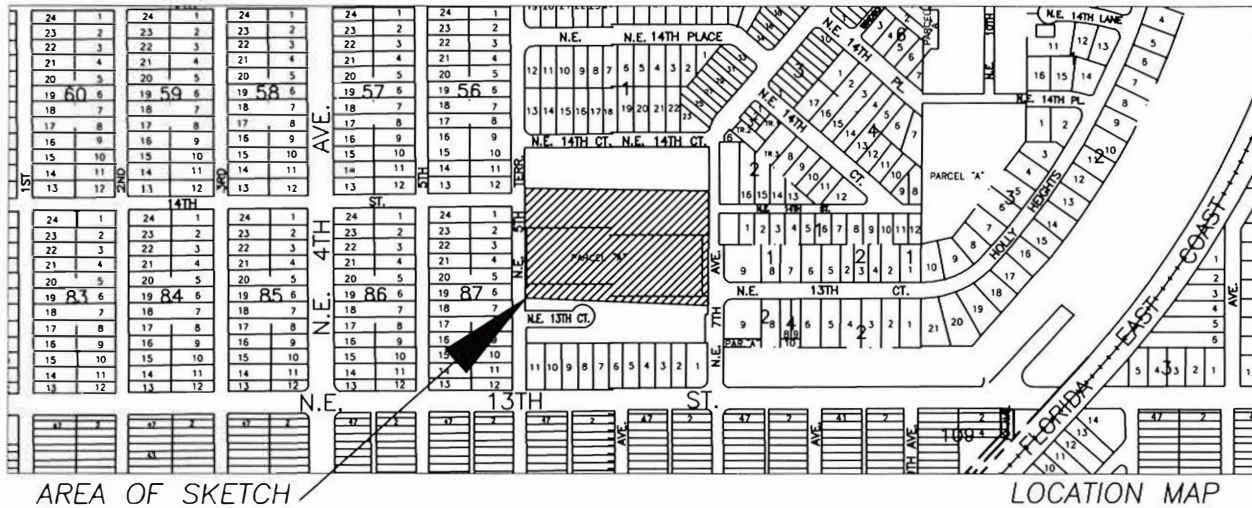
Commission No. _____

Commission Expires: _____

SKETCH AND DESCRIPTION

EXHIBIT A

THIS IS NOT A SURVEY



DESCRIPTION:

ALL OF PARCEL "A", "TREELOFT SQUARE", ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 113, PAGE 23, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA;

TOGETHER WITH;

THE SOUTH 120.00 FEET OF THE NORTH 300.00 FEET OF THE WEST 293.49 FEET OF THE NW $\frac{1}{4}$ OF THE SW $\frac{1}{4}$ OF SECTION 35, TOWNSHIP 49 SOUTH, RANGE 42 EAST. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL "A", THENCE S $87^{\circ}46'40''$ W, ON THE SOUTH LINE OF SAID PARCEL "A", A DISTANCE OF 293.23 FEET; THENCE N $01^{\circ}46'39''$ E, A DISTANCE OF 40.59 FEET; THENCE S $87^{\circ}52'00''$ W, A DISTANCE OF 268.00 FEET TO THE EAST RIGHT OF WAY OF LINE OF NE 5 TERRACE; THENCE N $02^{\circ}11'01''$ W ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 178.01 FEET; THENCE N $87^{\circ}59'39''$ E, A DISTANCE OF 269.26 FEET; THENCE N $01^{\circ}46'39''$ E, A DISTANCE OF 97.37 FEET; THENCE N $88^{\circ}04'41''$ E, A DISTANCE OF 293.49 FEET TO THE WEST RIGHT OF WAY LINE OF NE 7 AVENUE; THENCE S $01^{\circ}43'49''$ E ALONG SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 313.84 FEET TO THE POINT OF BEGINNING.


SAID LANDS SITUATE, LYING AND BEING IN THE CITY OF FORT LAUDERDALE, BROWARD COUNTY, FLORIDA. CONTAINING 140028 SQUARE FEET OR 3.2146 ACRES MORE OR LESS.

NOTES:

- 1) BEARINGS ARE BASED ON EAST LINE OF SAID PARCEL "A" WITH A GRID BEARING BEING S $01^{\circ}43'49''$ E.
- 2) THIS IS NOT A SKETCH OF SURVEY AND DOES NOT REPRESENT A FIELD SURVEY.
- 3) SUBJECT TO EXISTING EASEMENTS, RIGHT-OF WAYS, COVENANTS, RESERVATIONS AND RESTRICTIONS OF RECORD, IF ANY.
- 4) THIS SKETCH IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

CERTIFIED TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATED: NOVEMBER 9TH, 2017

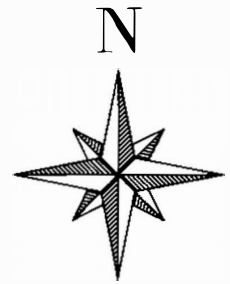
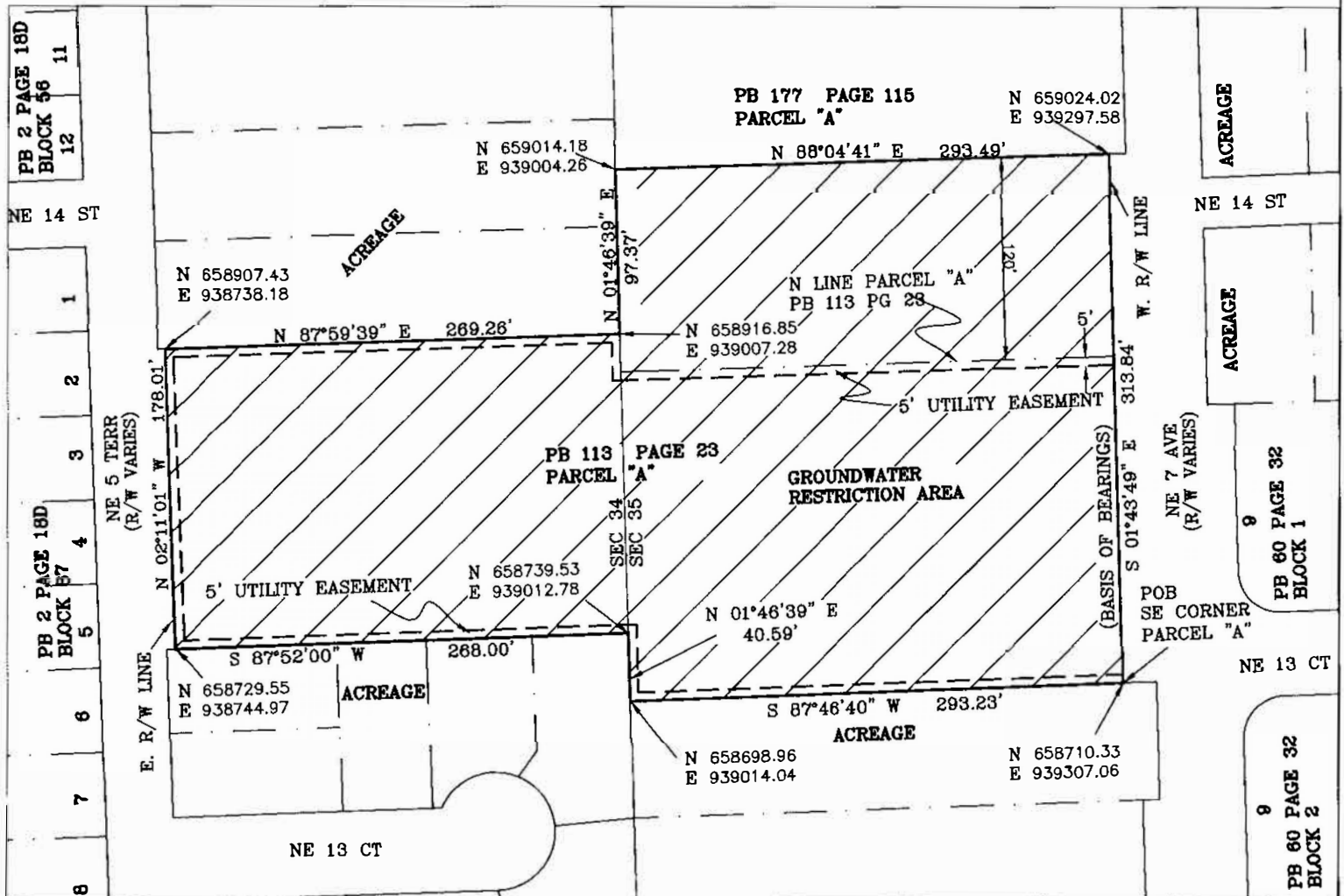
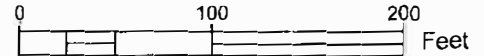

MICHAEL W. DONALDSON
PROFESSIONAL SURVEYOR AND MAPPER NO.6490
STATE OF FLORIDA

DECLARATION SHEET 9 OF 10
SKETCH SHEET 1 OF 2

CITY OF FORT LAUDERDALE	
SKETCH & DESCRIPTION	
RESTRICTED GROUNDWATER	
MIDDLE RIVER TERRACE CAM PARK 099	
BY: MD	ENGINEERING DATE: 11/9/17
CHK'D MD	DIVISION SCALE: N.T.S.

Exhibit 1
Page 9 of 11

EXHIBIT A


$$1'' = 100'$$


THIS IS NOT A SURVEY

E	DENOTES	EASTING
N	DENOTES	NORTHING
N.T.S.	DENOTES	NOT TO SCALE
PB	DENOTES	PLAT BOOK
POB	DENOTES	POINT OF BEGINNING
R/W	DENOTES	RIGHT OF WAY
SEC	DENOTES	SECTION

DECLARATION SHEET 10 OF 10
SKETCH SHEET 2 OF 2

CITY OF FORT LAUDERDALE

SKETCH & DESCRIPTION

GROUNDWATER RESTRICTION

MIDDLE RIVER TERRACE PARK CAM 21-1099

BY: MD

ENGINEERING
DIVISION

Exhibit 17
DATE: 11/9/17
Page 10 of 11
SCALE: 1 = 100'

**JOINDER AND CONSENT OF BROWARD TRUST FOR HISTORIC
PRESERVATION, INC.**

KNOW ALL MEN BY THESE PRESENTS:

THAT, Broward Trust for Historic Preservation, Inc., a Florida not for profit corporation, whose mailing address is P.O. Box 1060, Fort Lauderdale, Florida 33302-1060 (hereinafter "Tenant or Lessee"), hereby certifies that it is the tenant or lessee under that certain Memorandum of Lease dated June 17, 2008, and recorded November 18, 2008, in Official Records Book 45814 at Page 1596, of the Public Records of Broward County, Florida and under that Restated and Amended Lease Agreement Annie Beck House dated October 23, 2018 (collectively referred hereinafter as "Lease") which encumbers the property described on Exhibit "A" attached hereto and incorporated herein, owned by the City of Fort Lauderdale, Florida, a Florida municipal corporation (hereinafter "Owner"). The Tenant hereby joins in and consents to the granting of the Declaration of Restrictive Covenant by the Owner to the Florida Department of Environmental Protection and agrees that the Tenant or Lessee of the Lease joins in and consents to the above referenced Declaration of Restrictive Covenant.

IN WITNESS WHEREOF, this Joinder and Consent is executed by the undersigned this 4th day of September, 2021.

TENANT

**BROWARD TRUST FOR HISTORIC
PRESERVATION, INC., a Florida
Non-profit corporation**

By: [Signature]

Print Name: APRIL KIRK

Title: VICE PRESIDENT

WITNESSES

[Signature]

Print Name: Jonathan Axler

[Signature]
Print Name: John Della-Corra Jr.

**STATE OF FLORIDA
COUNTY OF BROWARD**

The forgoing instrument was acknowledged before me this 4th day of September, 2021, by means of ☒ physical presence or ☐ online notarization by April Kirk, as Vice President of Broward Trust For Historic Preservation, Inc., a Florida non-profit corporation, on behalf of the corporation, who is personally known to me or who produced as identification.

Merle Wajda
Notary Public, State of Florida

Merle Wajda
Printed Notary Name

Commission No. HH11572

My Commission Expires: 3/30/2025

