

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 this \_\_\_\_ day of \_\_\_\_\_, 2017 by CITY OF FORT LAUDERDALE, a Florida municipal corporation (hereinafter, "GRANTOR") and the Florida Department of Environmental Protection (hereinafter, "FDEP").

### 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, "RESTRICTED Property").

B. The FDEP Facility Identification Number for the Restricted Property is 06-8943045. The facility name at the time of this Declaration is CFL GTL WW REPUMP STATION A. This Declaration addresses the discharge that was reported to the FDEP on May 31, 2013.

C. In May 2013, approximately 500-gallons of diesel fuel discharged due to a mechanical malfunction of a generator day tank located east of the pump station at the southern portion of the overall property. The spill migrated to the south and west off the generator/day tank concrete pad into an open ground area. A Discharge Reporting Form (DRF) was submitted for the release.

The discharge of petroleum products on the Restricted Property is documented in the following reports that are incorporated by reference:

1. Site Assessment Report dated March 2014, submitted by EE&G.
2. Site Assessment Report Addendum dated July 2014, submitted by EE&G.
3. 1<sup>st</sup> Quarter (August 2014), 2<sup>nd</sup> Quarter (November 2014), 3<sup>rd</sup> Quarter (February 2015), 4<sup>th</sup> Quarter (May 2015) MOP reports.
4. No Further Action with Conditions Proposal dated October 2015, submitted by EE&G.

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 Restricted Property. These reports confirm that contaminated soil and groundwater as defined by Chapter 62-780, Florida Administrative Code (F.A.C.), exists on the Restricted Property. This declaration imposes restrictions on the areas of soil and groundwater contamination. Also, these reports document that the groundwater contamination does not extend beyond the Restricted Property boundaries that the extent of the groundwater contamination does not exceed ¼ 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 Restricted 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 Restricted Property. FDEP may require site rehabilitation to reduce concentrations of contamination to the levels allowed by the applicable FDEP rules. The Order relating to FDEP Facility No. 06-8943045 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 Restricted Property that an Order be obtained and that the Restricted 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 Restricted Property the following restrictions:

a. There shall be no use of the groundwater under the Restricted Property whose location is shown on Exhibit "A". There shall be no drilling for water conducted on the Restricted Property nor shall any wells be installed on the Restricted Property other than monitoring 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 and the Water Management Districts. Additionally, there shall be no stormwater swales,

stormwater detention or retention facilities, or ditches on the Restricted Property. For any dewatering activities, a plan approved by FDEP's DWM must be in place to address and ensure the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated.

b.i. The area of soil contamination is located on a portion of the Restricted Property and is shown on Exhibit B as 1) "Soil Engineering Control," and 2) "Concrete Engineering Control." The area called Soil Engineering Control shall be permanently covered and maintained with a minimum of two (2) feet of clean and uncontaminated soil that prevents human exposure. The area called Concrete Engineering Control shall be permanently covered and maintained with an impermeable material that prevents human exposure and prevents water infiltration. Collectively, these two areas are called "the Engineering Control." An Engineering Control Plan (ECP) and an Engineering Control Maintenance Plan (ECMP) have been approved by FDEP. The ECP describes the specifics of the FDEP approved Engineering Control on the Restricted Property. The ECMP specifies the frequency of inspections and monitoring for the Engineering Control and the criteria for determining when the Engineering Control has failed. The Engineering Control shall be maintained in accordance with the ECMP as it may be amended upon the prior written consent of FDEP. The ECMP, as amended, relating to FDEP Facility No. 068943045, can be obtained by contacting the appropriate FDEP district office or Tallahassee program area; and

b.ii. Excavation and construction is not prohibited under the Soil Engineering Control and the Concrete Engineering Control provided any contaminated soils that are excavated are removed and properly disposed of pursuant to Chapter 62-780, F.A.C., and any other applicable local, state, and federal requirements. Nothing herein shall limit any other legal requirements regarding construction methods and precautions that must be taken to minimize risk of exposure while conducting work in contaminated areas. For any dewatering activities, a plan pre-approved by FDEP's Division of Waste Management must be in place to address and ensure the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated. Nothing in this Declaration shall prevent, limit or restrict any excavation or construction at or below the surface outside the boundary of the Soil Engineering Control Area and the Concrete Engineering Control Area.

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 Restricted Property at reasonable times and with reasonable notice to GRANTOR. Access to the Restricted 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 Restricted Property, run with the land and with the title to the Restricted 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 Restricted 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 Restricted Property or portion thereof, to any heirs, successors, assigns or grantees, including, without limitation, the conveyance of any security interest in said Restricted 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 Restricted Property, GRANTOR agrees to notify in writing all proposed tenants of the Restricted Property of the existence and contents of this Declaration of Restrictive Covenants.

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 Restricted Property in fee simple and has good right to create, establish, and impose this restrictive covenant on the use of the Property. GRATOR also covenants and warrants that the Property is free and clear of any and all liens, mortgages, or encumbrances that could impair GRANTOR's rights to impose the restrictive covenant described in this Declaration.

IN WITNESS WHEREOF, Grantor, **City of Fort Lauderdale**, a Florida municipal corporation has executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2017.

WITNESSES:

CITY OF FORT LAUDERDALE, a  
Florida municipal corporation

\_\_\_\_\_

\_\_\_\_\_  
JOHN P. "JACK" SEILER, Mayor

\_\_\_\_\_  
[Witness-print or type name]

\_\_\_\_\_

\_\_\_\_\_  
LEE R. FELDMAN, City Manager

\_\_\_\_\_  
[Witness-print or type name]

(CORPORATE SEAL)

ATTEST:

\_\_\_\_\_  
JEFFREY A. MODARELLI, City Clerk

Approved as to form:  
Cynthia A. Everett, City Attorney

\_\_\_\_\_  
LYNN SOLOMON, Assistant City Attorney

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2017, by JOHN P. "JACK" SEILER, 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 this \_\_\_\_\_, 2017, by LEE R. FELDMAN, 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

IN WITNESS WHEREOF, FDEP, Florida Department of Environmental Protection has executed this Declaration on the day first above written.

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_  
Joseph Ullo  
Director  
Division of Waste Management

2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

Signed, sealed and delivered in the presence of:

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

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_)  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2017, by DIANE PICKETT, P.G., Administrator of Petroleum Restoration Program of the Florida Department of Environmental Protection. She 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

# SKETCH AND DESCRIPTION

## EXHIBIT "A"

LOT 38  
CITRUS PARK FARMS  
P.B. 1 PAGE 138, D.C.R.

CITY OF FORT LAUDERDALE  
PLANT "A"



LIMITED ACCESS R/W LINE  
STATE ROAD NO. 9 (I-95)  
AS SHOWN ON R/W MAP  
SECTION 86070-2412

N 88°16'16" E  
92.79'

RESTRICTED PROPERTY

P.O.C.

STATE ROAD NO. 9  
(I-95)

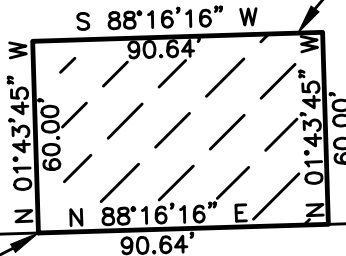
P.O.B.

LOT A BLOCK 1  
RIVERBEND  
P.B. 25 PAGE 50

NW 21 AVE.  
(50' R/W)

LOT A BLOCK 2  
RIVERBEND  
P.B. 25 PAGE 50

NORTHWEST 6 ST. (SISTRUNK BLVD.)  
(70' R/W)



### DESCRIPTION: RESTRICTED PROPERTY

A PARCEL OF LAND BEING A PORTION OF LOT 38, "CITRUS PARK FARMS", ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 1, PAGE 138, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE EASTERLY LIMITED ACCESS RIGHT-OF-WAY LINE OF STATE ROAD NO. 9 (I-95) AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP SECTION 86070-2412 AND THE NORTH RIGHT-OF-WAY OF NORTHWEST 6 STREET (SISTRUNK BOULEVARD) THENCE N 88°16' 16" E, ALONG SAID NORTH RIGHT-OF-WAY OF NORTHWEST 6 STREET A DISTANCE OF 92.79 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N 88°16'16" E, ALONG SAID NORTH RIGHT-OF-WAY A DISTANCE OF 90.64 FEET; THENCE N 01°43'45" W, A DISTANCE OF 60.00 FEET; THENCE S 88°16'16" W, A DISTANCE OF 90.64 FEET; THENCE S 01°43'45" E, A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE WITHIN THE CITY OF FORT LAUDERDALE, BROWARD COUNTY, FLORIDA, CONTAINING 5438 SQUARE FEET MORE OR LESS.

### LEGEND

P.O.B. = POINT OF BEGINNING  
P.O.C. = POINT OF COMMENCEMENT  
R/W = RIGHT OF WAY  
P.B. = PLAT BOOK

### NOTES:

- 1) BEARINGS SHOWN HEREON ARE BASED ON GRID BEARINGS DERIVED FROM FLORIDA STATE PLANE COORDINATES (1983/90) BASED ON THE SOUTH LINE OF LOT 38, "CITRUS PARK FARMS", ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 1, PAGE 138, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, BEING N 88°16'16" 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: FEBRUARY 9, 2017

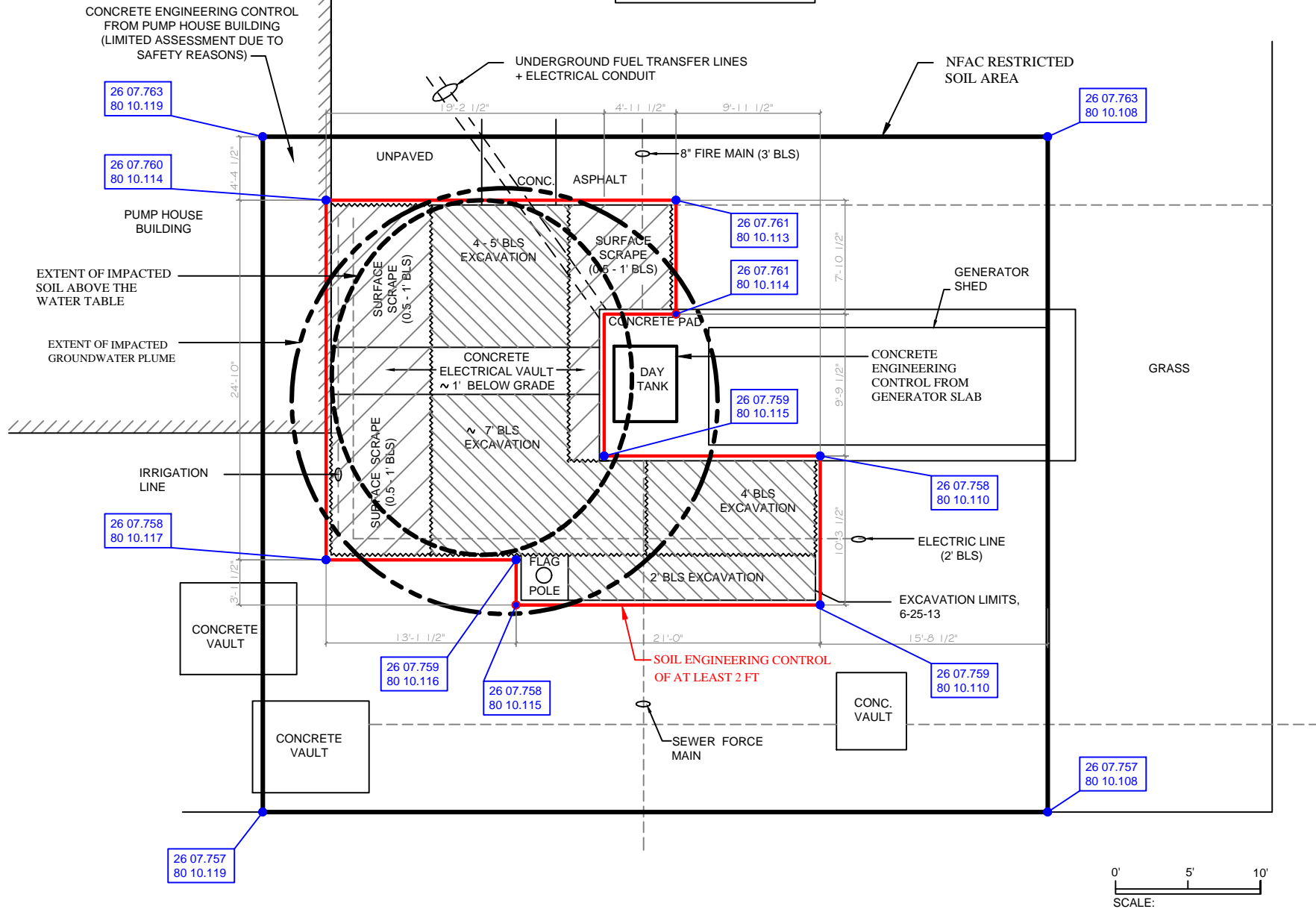
MICHAEL DONALDSON  
PROFESSIONAL SURVEYOR AND MAPPER NO. 6490  
STATE OF FLORIDA

PAGE 1 OF 1

CITY OF FORT LAUDERDALE		
SKETCH AND DESCRIPTION		
RESTRICTED PROPERTY		
PLANT "A"		
FILE NUMBER 4-139-23		
BY: MD	ENGINEERING	DATE: 2/9/17
CHK'D MD	DIVISION	SCALE: 1"=60'



# EXHIBIT B



ENVIRONMENTAL SERVICES, LLC  
5751 MIAMI LAKES DRIVE  
MIAMI LAKES, FLORIDA 33014  
(305) 374-8300  
(305) 374-9004 FAX

ENGINEERING  
CONTROLS  
SUMMARY MAP

CFL LINCOLN PARK  
TRANSFER STATION - PLANT "A"  
1901 NW 6th ST  
FORT LAUDERDALE, FL

Date: 06/19/17  
Project # 2013-3210  
Drawn by: NV  
Cad File: FIG2  
Dwg. Scale: As Noted

FIGURE  
2

CAM# 17-1179

Exhibit 1  
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