

This instrument prepared by:
Lynn Solomon, Esq.
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 _____, 2019 by City of Fort Lauderdale, a Florida municipal corporation (hereinafter "GRANTOR") and Broward County, a political subdivision of the State of Florida, by and through its Environmental Protection and Growth Management Department, Environmental Engineering and Permitting Division (hereinafter "EPPD"). The GRANTOR and the EPPD are the "PARTIES" Under this Declaration.

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 Exhibit A (hereinafter the "Property")

B. The EPPD issued an Environmental Assessment and Remediation ("EAR") License No 1256, to GRANTOR for the Property. This Declaration addresses the discovery of arsenic in groundwater and benzo(a)pyrene equivalents in soil on the Property.

C. The Property was formerly used by Florida East Coast (FEC) Railway freight yard, and a series of transport, trucking, and shipping companies. There are no records of the storage or use of petroleum products or hazardous material at the Property. Benzo(a)pyrene impacts to soil were identified at certain locations on the Property. An arsenic groundwater contaminant plume may be present beneath the Property. Both the benzo(a)pyrene and arsenic are considered to be related to anthropogenic, non-point source type releases associated with past land use activities. Environmental conditions on the Property are documented in the following reports that are incorporated by reference

1. *Site Assessment Report dated November 28, 2016, submitted by Kimley-Horn and Associates, Inc.; and*
2. *No Further Action with Conditions Proposal dated April 18, 2017, submitted by Kimley-Horn and Associates*

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 soil as defined by Chapter 62-780, Florida Administrative Code (F.A.C.), exists on the Property. The soil exceeds the Direct Exposure Commercial-Industrial Soil Cleanup Target Level as defined in Chapter 62-777 F.A.C. The benzo(a) pyrene impacts will be addressed through application of an engineering control. The reports document the high potential for arsenic to be present in groundwater on the Property.

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. EEPD has agreed to issue a No Further Action with Controls Approval (hereinafter "NFAC Approval") upon recordation of this Declaration, and EEPD can unilaterally revoke the Order if the conditions of this Declaration or of the Order are not met. Additionally, if concentrations of benzo(a)pyrene and arsenic increase above the levels approved in the Order, or if a subsequent discharge occurs at the Property, EEPD may require site rehabilitation to reduce concentrations of contamination to the levels allowed by the applicable department rules. The NFAC Approval relating to EAR License No. 1256, as applicable is on file at the EEPD at One North University Drive, Plantation, Florida 33324.

G. GRANTOR deems it desirable and in the best interest of all present and future owners of the Property that an NFAC Approval 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 EEPD to issue the NFAC Approval 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:

GROUNDWATER USE RESTRICTIONS

a. 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 the EEPD, in addition to any authorizations required by Broward County, the Division of Water Resource Management, and the Water Management Districts. For any dewatering activities, a plan approved by EEPD must be in place to address and ensure the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated.

SOIL RESTRICTIONS AND REQUIREMENTS

b.i. The “Area of Soil Contamination” as located on the portion of the Property as shown on Exhibit B shall be permanently covered and maintained with an impervious surface or minimum of two (2) feet of clean soil cap that prevents human exposure. The clean soil cap may consist of either two (2) feet of clean fill or minimum of one (1) foot of clean fill placed on top of an orange demarcation barrier consisting of US Fabrics OD 5340 or similar type product. An Engineering Control Maintenance Plan (ECMP) has been approved by the EEPD. 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 the EEPD.

b.ii. Excavation and construction below the Engineering Control is not prohibited on the Soil Contamination Area 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 the EEPD’s must be in place to address and ensure the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated.

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

4. For the purpose of monitoring the restrictions contained herein, EEPD is hereby granted a right of entry upon, over and through 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 Broward County, and to any and all parties hereafter having any right, title or interest in the Property or any part thereof. Broward County may enforce the terms and conditions of this Declaration by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of Broward County 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 Broward County’s rights hereunder. This Declaration shall continue in perpetuity, unless otherwise modified in writing by GRANTOR and Broward County, by and through EEPD, 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 EEPD in writing within three (3) calendar days. Additionally, GRANTOR shall notify EEPD 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 record this Declaration, and 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 Covenant.

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

8. If any provision of this Declaration is held to be invalid by any 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 covenants 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. GRANTOR 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.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, CITY OF FORT LAUDERDALE, a Florida municipal corporation has executed this instrument, this _____ day of _____, 2019.

Signed, sealed and delivered in the presence of:

CITY OF FORT LAUDERDALE, a Florida municipal corporation

Witnesses:

By: _____
Christopher J. Lagerbloom, City Manager
Date: _____

Print or Type Name
Date: _____

Print or Type Name
Date: _____

APPROVED AS TO FORM:

Alain Boileau, City Attorney

ATTEST:

Lynn Solomon, Assistant City Attorney
Date: _____

Jeffrey A. Modarelli, City Clerk

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Christopher J. Lagerbloom, City Manager of the City of Fort Lauderdale. They are personally known to me or have produced valid Florida drivers' licenses as identification.

(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, BROWARD COUNTY, by and through its Environmental Engineering and Permitting Division, has executed this instrument, this _____ day of _____, 20__ to acknowledge its consent to this Declaration by City of Fort Lauderdale.

Signed, sealed and delivered in the presence of:

BROWARD COUNTY, by and through its ENVIRONMENTAL ENGINEERING AND PERMITTING DIVISION

Witnesses:

Print or Type Name
Date:_____

By: _____
Name: _____
Title: _____
Date: _____

Print or Type Name
Date:_____

Approved as to form by:
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone (954) 357-7600
Fax: (954) 357-7641

By: _____
Joseph K. Jarone
Assistant County Attorney
Date: _____

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____ as representative for Broward County Environmental Engineering And Permitting Division. Personally Known _____ OR Produced Identification _____. Type of Identification Produced _____.

Signature of Notary Public

Print Name of Notary Public

Commission No. _____
Commission Expires: _____

Exhibit "A"

Legal Description

A PORTION OF PARCEL "A", "A RESUBDIVISION OF PART OF BLOCKS 47 AND 48, CROISSANT PARK", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 36, PAGE 18 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID PARCEL "A";

THENCE NORTH 78°51'44" EAST, ALONG THE NORTH LINE OF SAID PARCEL "A" AND THE SOUTH RIGHT OF WAY LINE OF SOUTHWEST 17TH STREET, A DISTANCE OF 10.50 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUE NORTH 78°51'44" EAST, ALONG THE LAST DESCRIBED LINE, A DISTANCE OF 114.50 FEET TO A POINT ON THE MOST WESTERLY EAST LINE OF SAID PARCEL "A";

THENCE SOUTH 11°08'16" EAST, ALONG SAID MOST WESTERLY EAST LINE, A DISTANCE OF 100.00 FEET TO A POINT ON THE MOST SOUTHERLY NORTH LINE OF SAID PARCEL "A";

THENCE NORTH 78°51'44" EAST, ALONG SAID MOST SOUTHERLY NORTH LINE, A DISTANCE OF 54.78 FEET TO A POINT ON THE EASTLINE OF SAID PARCEL "A";

THENCE SOUTH 11°08'16" EAST, ALONG SAID EAST LINE, A DISTANCE OF 175.00 FEET TO A POINT ON A LINE 275.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID PARCEL "A";

THENCE SOUTH 78°51'44" WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 179.78 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL "A";

THENCE NORTH 11°08'16" WEST, ALONG SAID WEST LINE, A DISTANCE OF 60.30 FEET; THENCE NORTH 78°51'44" EAST, A DISTANCE OF 10.50 FEET TO A POINT ON A LINE 10.50 FEET EAST OF AND PARALLEL WITH SAID WEST LINE;

THENCE NORTH 11°08'16" WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 214.70 FEET TO THE POINT OF BEGINNING.

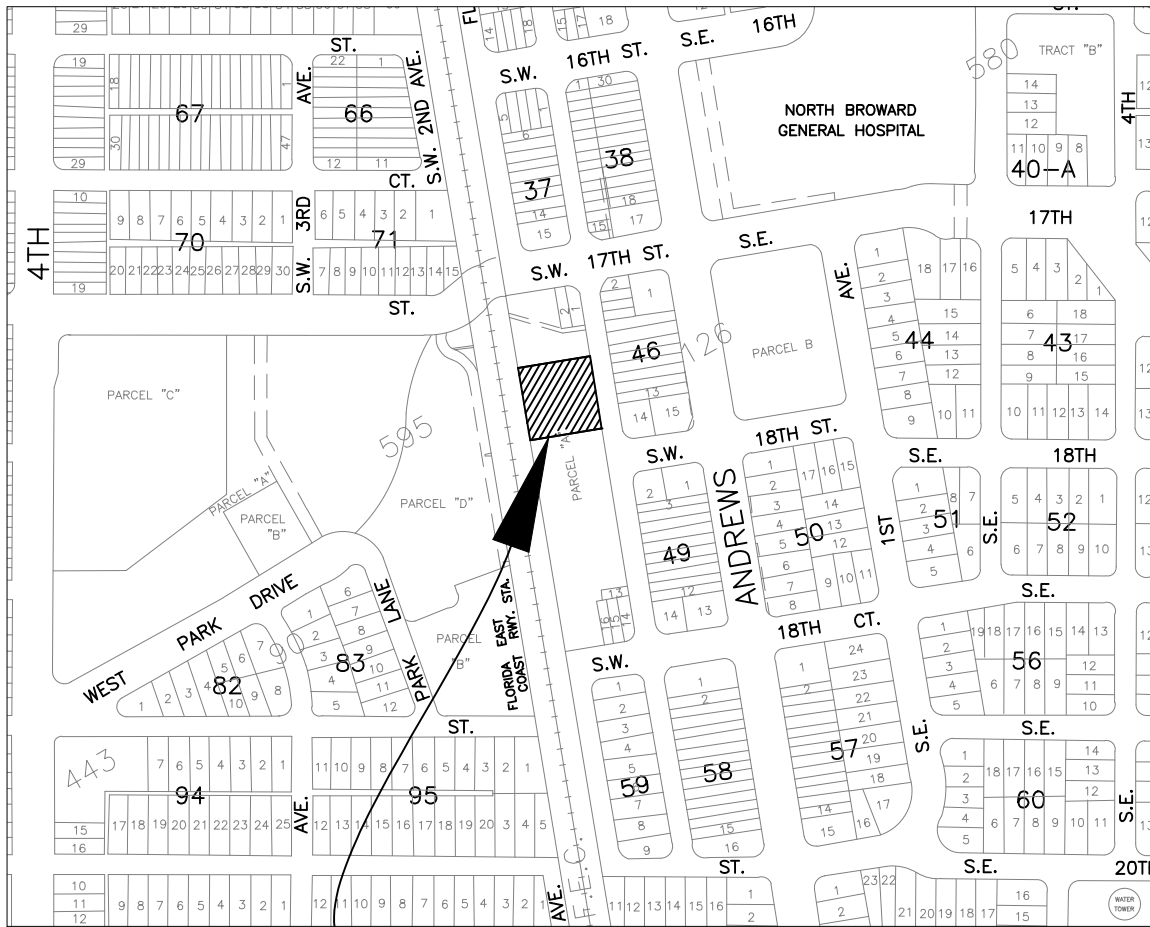
SAID LANDS SITUATE, LYING AND BEING IN THE CITY OF FORT LAUDERDALE, BROWARD COUNTY, FLORIDA, CONTAINING 0.96 ACRES (41,707 SQUARE FEET) MORE OR LESS.

SKETCH & DESCRIPTION

RESTRICTED COVENANT SOIL AND GROUND WATER AREA

EXHIBIT B

THIS IS NOT A SURVEY



LOCATION MAP

MAP OF SKETCH

N.T.S.

NOTES:

- 1) BEARINGS ARE BASED ON THE SOUTH RIGHT-OF-WAY LINE S.W. 17TH ST. PER SAID PLAT BEING N 78°50'22" 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 RESRTICTIONS 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: AUGUST 11TH, 2017

SHEET 1 OF 4

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

| | | |
|---|-------------|---------------|
| CITY OF FORT LAUDERDALE | | |
| SKETCH & DESCRIPTION RESTRICTED COVENANT SOIL AND GROUND WATER AREA | | |
| BY: CH | ENGINEERING | DATE: 8/11/17 |
| CHK'D MD | DIVISION | SCALE: N.T.S. |

SKETCH & DESCRIPTION

RESTRICTED COVENANT SOIL AND GROUND WATER AREA

EXHIBIT B

DESCRIPTION RESTRICTED COVENANT SOIL AREA:

A PORTION OF PARCEL "A", "A RESUBDIVISION OF PART OF BLOCKS 47 AND 48, CROISSANT PARK", ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 36, PAGE 18, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID PARCEL "A", THENCE N 78°50'22" E, ALONG THE NORTH LINE OF SAID PARCEL "A" AND THE SOUTH RIGHT OF WAY LINE OF SOUTHWEST 17TH STREET, A DISTANCE OF 10.50 FEET; THENCE S 11°09'38" E ALONG A LINE THAT IS 10.50 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID PARCEL "A", A DISTANCE OF 172.00 FEET TO THE POINT OF BEGINNING(1); THENCE N 78°52'12" E, A DISTANCE OF 169.31 FEET TO THE EAST LINE OF SAID PARCEL "A" AND THE WEST RIGHT OF WAY OF SW 1ST AVENUE; THENCE S 11°09'38" E ALONG SAID EAST LINE, A DISTANCE OF 102.91 FEET; THENCE S 78°50'22" W, A DISTANCE OF 179.78 FEET TO THE WEST LINE OF SAID PARCEL "A" AND THE EAST RIGHT OF LINE OF THE FLORIDA EAST COAST RAILWAY; THENCE N 11°09'38" W ALONG SAID WEST LINE, A DISTANCE OF 60.30 FEET; THENCE S 78°50'22" W, A DISTANCE OF 10.50 FEET; THENCE N 11°09'38" W, A DISTANCE OF 42.70 FEET ALONG A LINE THAT IS 10.50 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID PARCEL "A" TO THE POINT OF BEGINNING(1).

TOGETHER WITH:

COMMENCE AT THE NORTHWEST CORNER OF SAID PARCEL "A, THENCE N 78°50'22" E, ALONG THE NORTH LINE OF SAID PARCEL "A" AND THE SOUTH RIGHT OF WAY LINE OF SOUTHWEST 17TH STREET, A DISTANCE OF 73.80 FEET; THENCE S 11°09'38" E, A DISTANCE OF 71.82 FEET TO THE POINT OF BEGINNING (2); THENCE N 78°28'38" E, A DISTANCE OF 17.04 FEET; THENCE S 11°31'22" E, A DISTANCE OF 15.11 FEET; THENCE S 78°28'38" W, A DISTANCE OF 17.04 FEET; THENCE N 11°31'22" W, A DISTANCE OF 15.11 FEET TO THE POINT OF BEGINNING(2).

SAID LANDS SITUATE WITHIN THE CITY OF FORT LAUDERDALE, BROWARO COUNTY, FLORIDA, CONTAINING 18320 SQUARE FEET OR 0.4206 ACRES MORE OR LESS.

DESCRIPTION RESTRICTED COVENANT GROUND WATER AREA:

A PORTION OF PARCEL "A", "A RESUBDIVISION OF PART OF BLOCKS 47 AND 48, CROISSANT PARK", ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 36, PAGE 18, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID PARCEL "A", THENCE N 78°50'22" E, ALONG THE NORTH LINE OF SAID PARCEL "A" AND THE SOUTH RIGHT OF WAY LINE OF SOUTHWEST 17TH STREET, A DISTANCE OF 10.50 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N 78°50'22" E, ALONG SAID NORTH LINE OF PARCEL "A" AND SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 114.50 FEET TO THE NORTHEAST CORNER OF SAID PARCEL "A"; THENCE S 11°09'38" E, A DISTANCE OF 100.0 FEET; THENCE N 78°50'22" E, A DISTANCE OF 54.78 FEET TO THE WEST RIGHT OF WAY LINE OF SW 1ST AVENUE; THENCE S 11°09'38" E ALONG SAID WEST LINE AND ALSO BEING THE EAST LINE OF SAID PARCEL "A", A DISTANCE OF 175.00 FEET; THENCE S 78°50'22" W, A DISTANCE OF 179.78 FEET TO THE WEST LINE OF SAID PARCEL "A" AND THE EAST RIGHT OF LINE OF THE FLORIDA EAST COAST RAILWAY; THENCE N 11°09'38" W ALONG SAID WEST LINE, A DISTANCE OF 60.30 FEET; THENCE S 78°50'22" W, A DISTANCE OF 10.50 FEET; THENCE N 11°09'38" W ALONG A LINE THAT IS 10.50 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID PARCEL "A" , A DISTANCE OF 214.70 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE WITHN THE CITY OF FORT LAUDERDALE, BROWARO COUNTY, FLORIDA, CONTAINING 41707 SQUARE FEET OR 0.9575 ACRES MORE OR LESS.

SHEET 2 OF 4

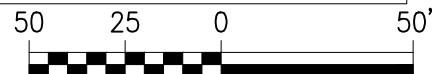
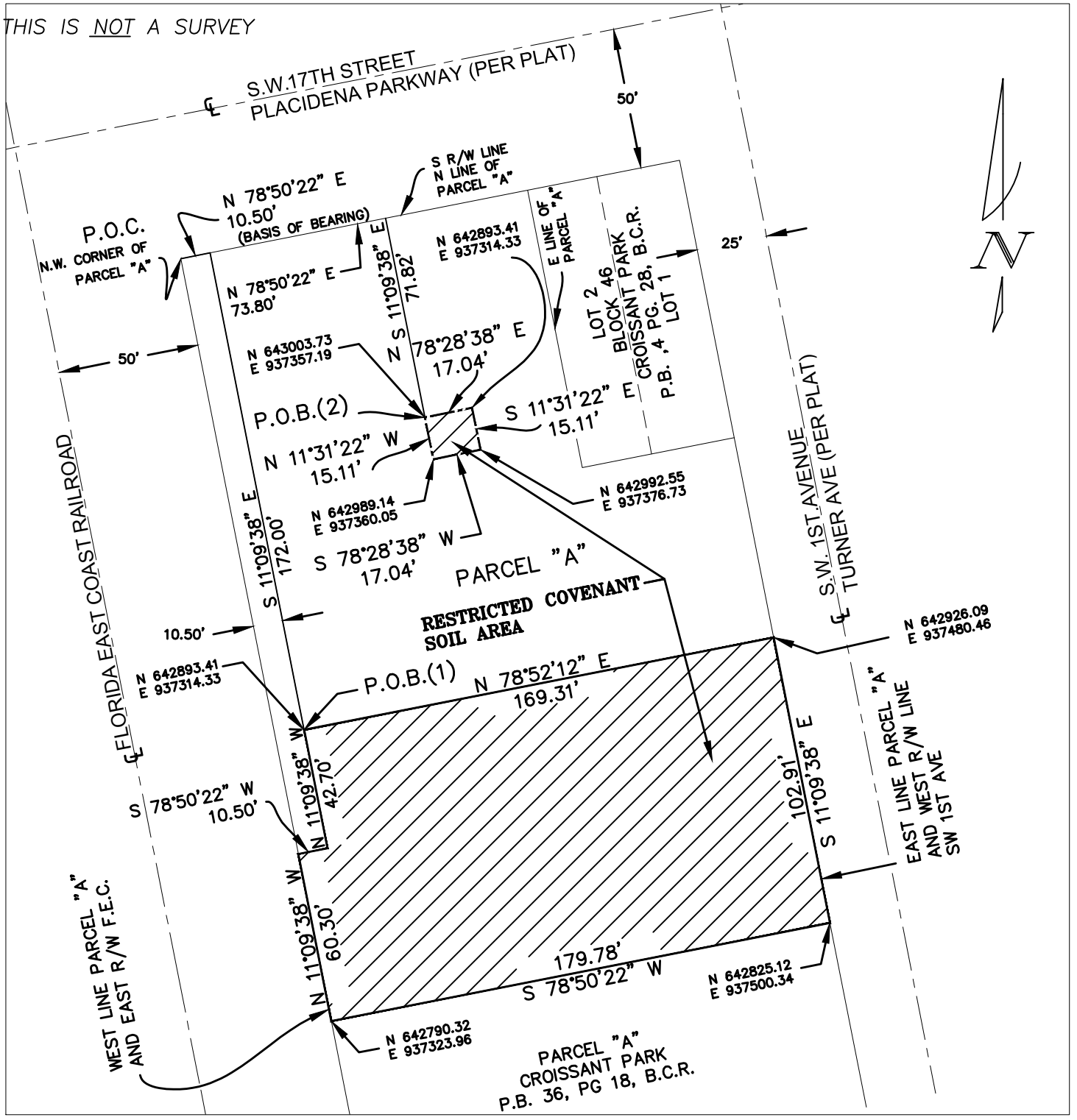
| | | |
|---|-------------|---------------|
| CITY OF FORT LAUDERDALE | | |
| SKETCH & DESCRIPTION RESTRICTED COVENANT FIRE STATION 8 | | |
| BY: CH | ENGINEERING | DATE: 8/11/17 |
| CHK'D MD | DIVISION | SCALE: NTS |

THIS IS NOT A SURVEY

SKETCH & DESCRIPTION

RESTRICTED COVENANT SOIL AND GROUND WATER AREA

THIS IS NOT A SURVEY



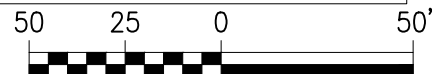
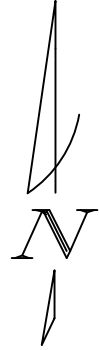
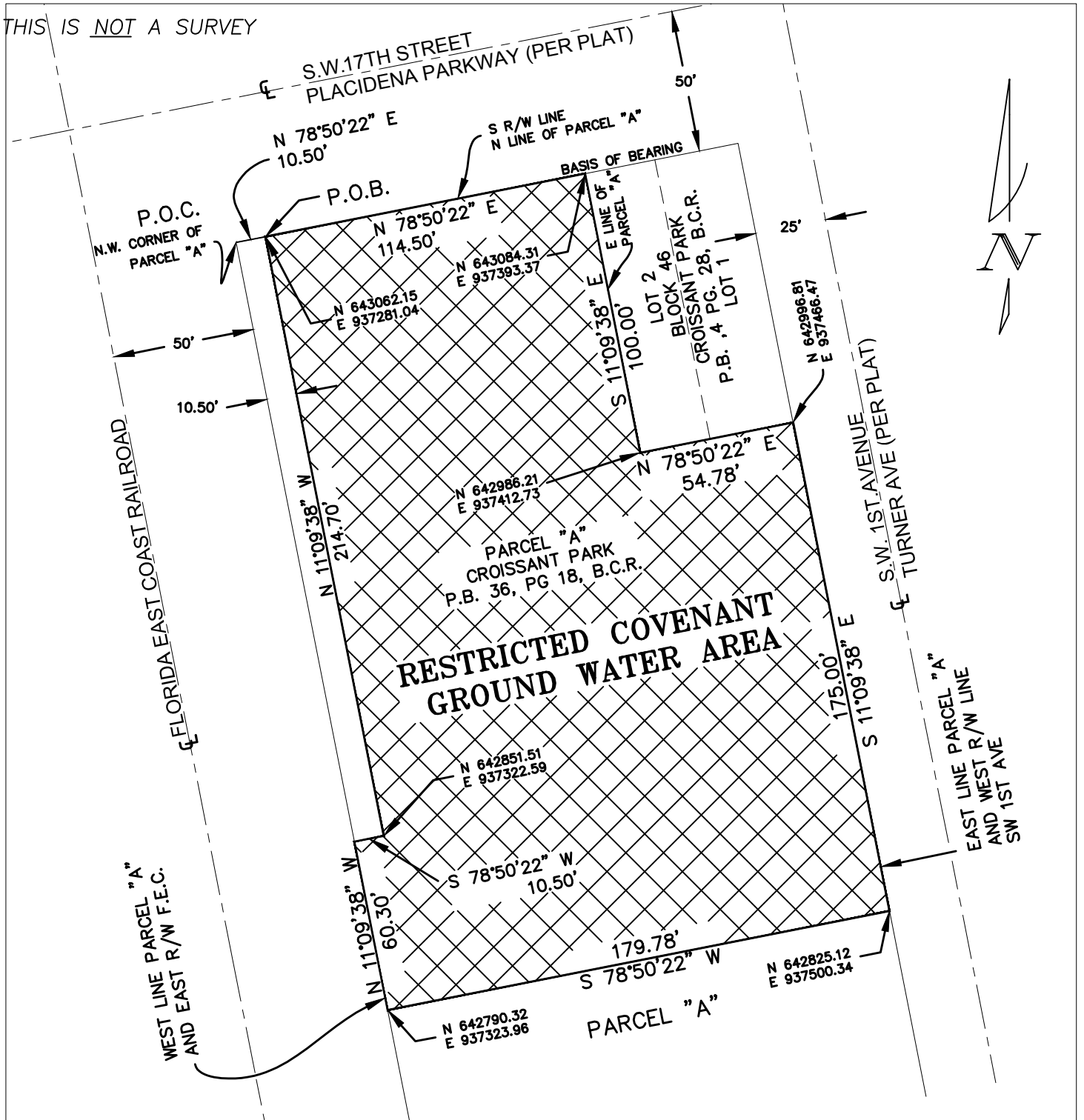
- C/L DENOTES CENTER LINE
- B.C.R. DENOTES BROWARD COUNTY RECORDS
- F.E.C. DENOTES FLORIDA EAST COAST RAILWAY
- P.O.B. DENOTES POINT OF BEGINNING
- P.O.C. DENOTES POINT OF COMMENCEMENT
- P.B. DENOTES PLAT BOOK
- PG DENOTES PAGE
- R/W DENOTES RIGHT-OF-WAY

| | | |
|---|-------------|---------------|
| EXHIBIT B | | SHEET 3 OF 4 |
| CITY OF FORT LAUDERDALE | | |
| SKETCH & DESCRIPTION RESTRICTED COVENANT SOIL AREA FIRE STATION 8 | | |
| BY: CH | ENGINEERING | DATE: 8/11/17 |
| CHK'D MD | DIVISION | SCALE: 1"=50' |

SKETCH & DESCRIPTION

RESTRICTED COVENANT SOIL AND GROUND WATER AREA

THIS IS NOT A SURVEY



- C/L DENOTES CENTER LINE
- B.C.R. DENOTES BROWARD COUNTY RECORDS
- F.E.C. DENOTES FLORIDA EAST COAST RAILWAY
- P.O.B. DENOTES POINT OF BEGINNING
- P.O.C. DENOTES POINT OF COMMENCEMENT
- P.B. DENOTES PLAT BOOK
- PG DENOTES PAGE
- R/W DENOTES RIGHT-OF-WAY

EXHIBIT B SHEET 4 OF 4

| | | |
|---------------------------------------|-------------|---------------|
| CITY OF FORT LAUDERDALE | | |
| SKETCH & DESCRIPTION | | |
| RESTRICTED COVENANT GROUND WATER AREA | | |
| FIRE STATION 8 | | |
| BY: CH | ENGINEERING | DATE: 8/11/17 |
| CHK'D MD | DIVISION | SCALE: 1"=50' |