

## Landscape Maintenance Agreement

THIS LANDSCAPE MAINTENANCE AGREEMENT (“Agreement”) is made and entered into as of \_\_\_\_\_, 2022 (“Effective Date”) by and between Indian River County, a political subdivision of the State of Florida (“County”), whose address is 1801 27<sup>th</sup> Street, Vero Beach, Florida 32960, and Florida Power & Light Company, a Florida corporation (“FPL”), whose address is 700 Universe Boulevard, Juno Beach, Florida 33408.

### RECITALS

WHEREAS, FPL is the owner of that certain parcel of real property located at 1575 98<sup>th</sup> Avenue, Vero Beach, Indian River County, Florida, as more specifically described on Exhibit A attached hereto and incorporated herein by this reference (“FPL Property”);

WHEREAS, FPL installed those certain cabbage palms and associated irrigation equipment in accordance with landscape plans set forth on Exhibit B attached hereto and incorporated herein by this reference (collectively, “Landscape Improvements”) within a portion of the County’s right-of-way along the FPL Property fronting between 16<sup>th</sup> Street and 98<sup>th</sup> Avenue (“County ROW”);

WHEREAS, FPL desires to maintain the Landscape Improvements located within the County ROW for aesthetic purposes; and

WHEREAS, the County agrees to permit FPL to maintain the Landscape Improvements within the County ROW upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants, agreements and promises contained herein, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, County and FPL agree as follows:

1. **Recitals.** The above recitals are true and correct and incorporated herein by this reference.
  
2. **Maintenance.** FPL, at FPL’s cost and expense, agrees to install and maintain the Landscape Improvements within the County ROW; provided however, FPL shall not be responsible to pay for any repair or damage to the Landscape Improvements caused by County, or its employees, contractors, and/or agents. FPL agrees to perform the work described herein in accordance with the standards set forth in Indian River County Code §926.12, adopted by reference herein, and County hereby waives any permit or application fees which might otherwise be associated with the work described herein within the County ROW. All work required hereunder to maintain the Landscape Improvements that will require lane closures within Indian River County right-of-way, shall have a Traffic Control Plan (TCP) approved by the County’s Public Works Department, which TCP shall provide proposed detour routes, traffic control devices, and other pertinent information for the proposed project. FPL shall have the right, but not the obligation, to trim, replace, and/or remove the Landscape Improvements due to conflicts with any future or existing FPL facilities.
  
3. **Insurance.** During the term of this Agreement, FPL shall maintain the following insurance:
  - a. **General Liability Insurance:** FPL shall obtain and keep in force a general liability insurance policy, occurrence based, with a general aggregate limit of no less than

\$300,000.00 and a single occurrence limit of \$200,000.00. The County shall be named as additional insured.

b. Workers' Compensation: FPL shall ensure that any contractor or subcontractor providing labor pursuant to this Agreement shall maintain Workers Compensation in accordance with the laws of the State of Florida.

c. Automobile Insurance: If applicable, FPL shall ensure that any contractor or subcontractor providing labor pursuant to this Agreement shall maintain Automobile Insurance in accordance with the laws of the State of Florida.

The insurance carriers providing the coverage required by this Section shall be rated at least A- VII by A.M. Best. FPL shall deliver the Certificates of Insurance or a letter of self-insurance evidencing the foregoing policies to the County within 15 calendar days after written request. The Certificates or letter of self-insurance and the insurance policies required by this Section shall contain a provision that provides that the insurance coverage afforded under the policies will not be canceled or non-renewed until at least 30 days prior written notice has been given to the County, excluding workers' compensation and pollution legal liability. With the exception of the workers' compensation policy, the County and its shareholders, partners, officers, directors, divisions, subdivisions, affiliates, agents, employees, successors and assigns shall be shown as additional insureds under all of the insurance policies required by this Section. The policies required by this Section shall be primary and the insurance providers shall agree to waive their rights of subrogation against the County and its shareholders, partners, officers, directors, divisions, subdivisions, affiliates, agents, employees, successors and assigns, excluding pollution legal liability. FPL may meet the requirements in this Section using any combination of primary, umbrella/excess or self-insurance programs.

4. Indemnity.

a. To the extent allowed by law, the County agrees to hold harmless FPL from any liability which may arise from FPL's performance of the work described herein.

b. FPL agrees to exercise the privileges granted under this Agreement at its own risk and to protect, defend, indemnify and save County harmless, from and against any and all claims, demands, damages, actions, causes of action, or suits relating to personal injury, death and/or property damage to the extent arising from FPL's, its employees' or contractors' use of, or activities upon, the Property, and except where caused by the negligence, omission or willful conduct of County. FPL's liability hereunder shall be limited to direct damages and shall exclude any other liability, including special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise.

5. Termination. This Agreement may only be terminated by either party by providing ninety (90) days written notice to the other party at the address listed above.

6. Notices. All notices that may or are required to be given by either party to the other hereunder shall be in writing, directed to such party at the address appearing on the first page of this Agreement and sent by United States certified mail, postage prepaid, or by overnight courier. Notices sent by overnight courier shall be deemed delivered on the date of delivery or rejection of delivery. Notices sent by United States certified mail, postage prepaid shall be deemed delivered three (3) days (Sundays and holidays excluded) following deposit in the United States mail.

7. **Complete Agreement.** This Agreement represents the complete and integrated agreement of the parties with respect to the subject matter herein and supersedes all prior oral or written agreements.

8. **Amendment.** This Agreement may only be modified in writing by mutual agreement of both parties.

9. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. The parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good faith negotiation. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity.

10. **Jurisdiction; Jury Trial Waiver.** Venue for any litigation regarding this Agreement shall be in any federal or state court having jurisdiction in Indian River County, Florida. The parties hereby voluntarily, knowingly, and intentionally agree, to the extent permitted by law, to the waiver of a jury trial in any legal action or proceeding arising under or in connection with this Agreement.

11. **Counterparts.** This Agreement may be executed in counterparts, each of which is an original and all of which together constitute one and the same instrument. For purposes of this Agreement a facsimile or other electronic signature shall be deemed to be an original.

[Signatures appear on following page.]

The parties hereto have executed this Agreement as of the date first written above.

County:

ATTEST:

**JEFFREY R. SMITH  
CLERK & COMPTROLLER**

**INDIAN RIVER COUNTY, a political  
subdivision of the State of Florida**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

By:   
Assistant County Attorney

**APPROVED AS TO TERMS AND  
CONDITIONS**

By: \_\_\_\_\_  
Department Director

**FPL:**

Florida Power & Light Company,  
a Florida corporation

By:   
Name: **Matthew Barrows**  
Title: **Sr. Director Corp. Real Estate**

**Exhibit A**

**FPL Property**

**DESCRIPTION:**

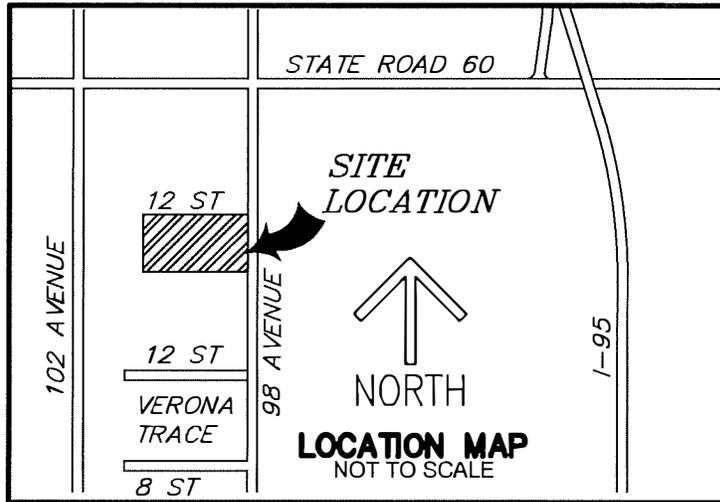
**EXHIBIT "A"**

TRACT 1, SECTION 9, TOWNSHIP 33 SOUTH, RANGE 38 EAST, ACCORDING TO LAST GENERAL PLAT OF LANDS OF INDIAN RIVER FARMS COMPANY RECORDED IN PLAT BOOK 2, PAGE 25, PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA, SAID LAND LYING AND BEING IN INDIAN RIVER COUNTY, FLORIDA, LESS CANALS, DITCHES AND RIGHTS-OF-WAY.

LESS AND EXCEPT THE NORTH 50 FEET AND THE EAST 90 FEET THEREOF.

CONTAINING 36.667 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESERVATIONS, AND/OR RIGHTS-OF-WAY OF RECORD.



**NOTES:**

1. REPRODUCTIONS OF THIS SKETCH ARE NOT VALID UNLESS SEALED WITH A SURVEYOR'S SEAL
2. LANDS SHOWN HEREON ARE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
3. BEARINGS ARE RELATIVE TO A GRID BEARING OF N.00°20'22"E. ALONG THE EAST LINE OF SECTION 9, TOWNSHIP 33 SOUTH, RANGE 38 EAST, INDIAN RIVER COUNTY FLORIDA. BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM OF 1983 (90/98 ADJUSTMENT).
4. DATA SHOWN HEREON WAS COMPILED FROM INSTRUMENTS OF RECORD AND DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.

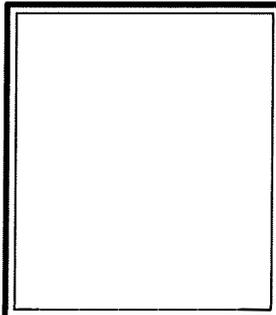
**CERTIFICATE:**

I HEREBY CERTIFY THAT THE ATTACHED SKETCH OF DESCRIPTION OF THE HEREON DESCRIBED PROPERTY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION ON SEPTEMBER 11, 2020. I FURTHER CERTIFY THAT THIS SKETCH OF DESCRIPTION MEETS THE STANDARDS OF PRACTICE SET FORTH IN CHAPTER 5J-17 ADOPTED BY THE FLORIDA BOARD OF SURVEYORS AND MAPPERS PURSUANT TO FLORIDA STATUTES 472.027.

RONNIE L. FURNISS, PSM  
PROFESSIONAL SURVEYOR AND  
MAPPER #6272  
STATE OF FLORIDA - LB #3591

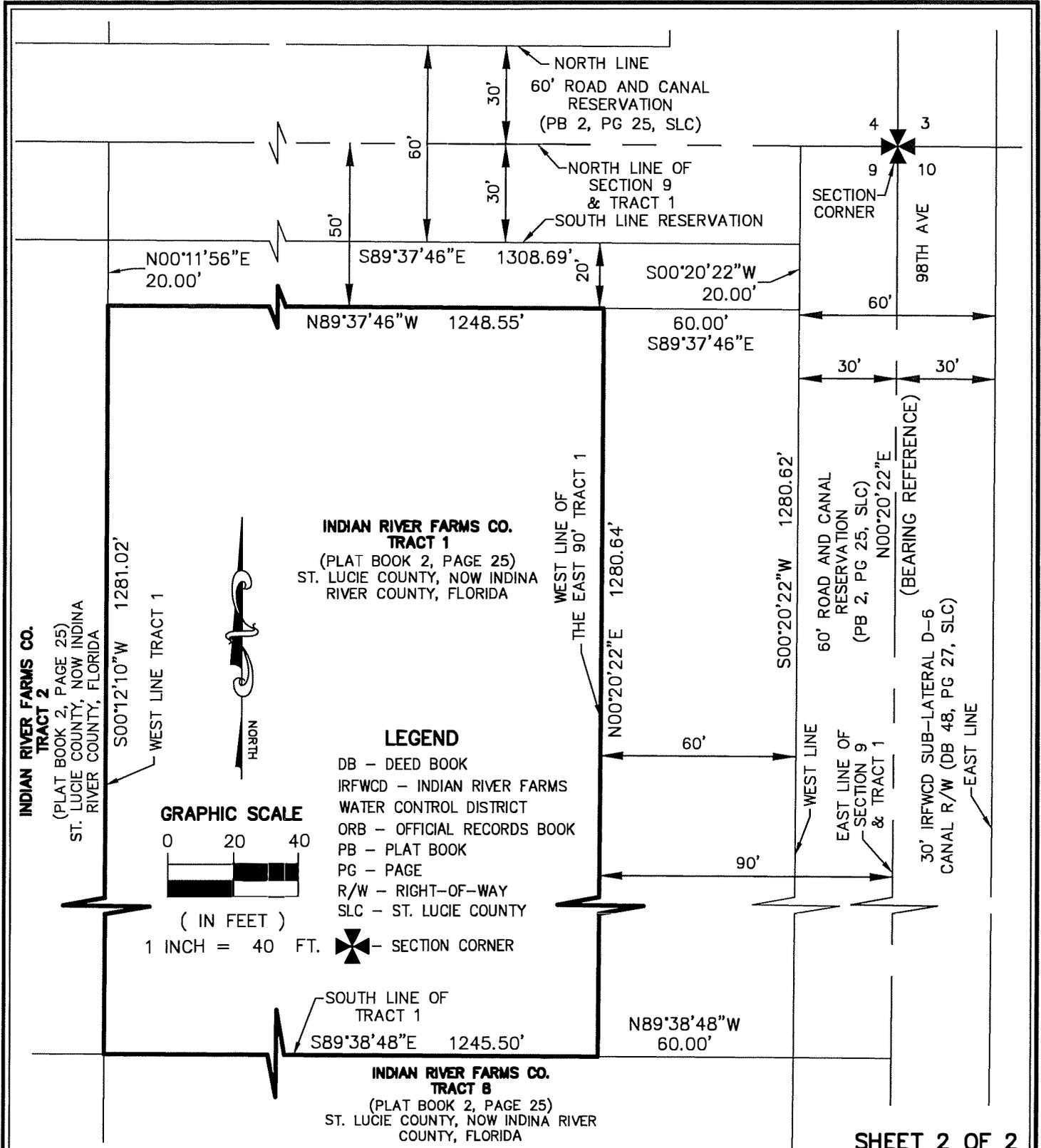
**SHEET 1 OF 2**

CAULFIELD & WHEELER, INC.  
CIVIL ENGINEERING  
LANDSCAPE ARCHITECTURE - SURVEYING  
7900 GLADES ROAD - SUITE 100  
BOCA RATON, FLORIDA 33434  
PHONE (561)-392-1991 / FAX (561)-750-1452



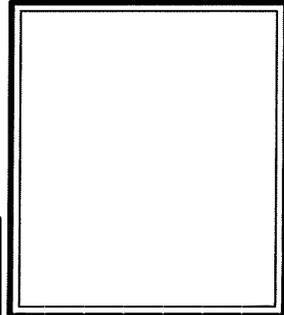
DATE	09/11/2020
DRAWN BY	RLF
F.B./ PG.	N/A
SCALE	AS SHOWN
JOB NO.	8484

**INDIAN RIVER SERVICE CENTER  
SKETCH OF DESCRIPTION**



**SHEET 2 OF 2**

**CAULFIELD & WHEELER, INC.**  
 CIVIL ENGINEERING  
 LANDSCAPE ARCHITECTURE - SURVEYING  
 7900 GLADES ROAD - SUITE 100  
 BOCA RATON, FLORIDA 33434  
 PHONE (561)-392-1991 / FAX (561)-750-1452



DATE	09/11/2020
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F.B. / PG.	N/A
SCALE	AS SHOWN
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**INDIAN RIVER SERVICE CENTER**  
 SKETCH OF DESCRIPTION

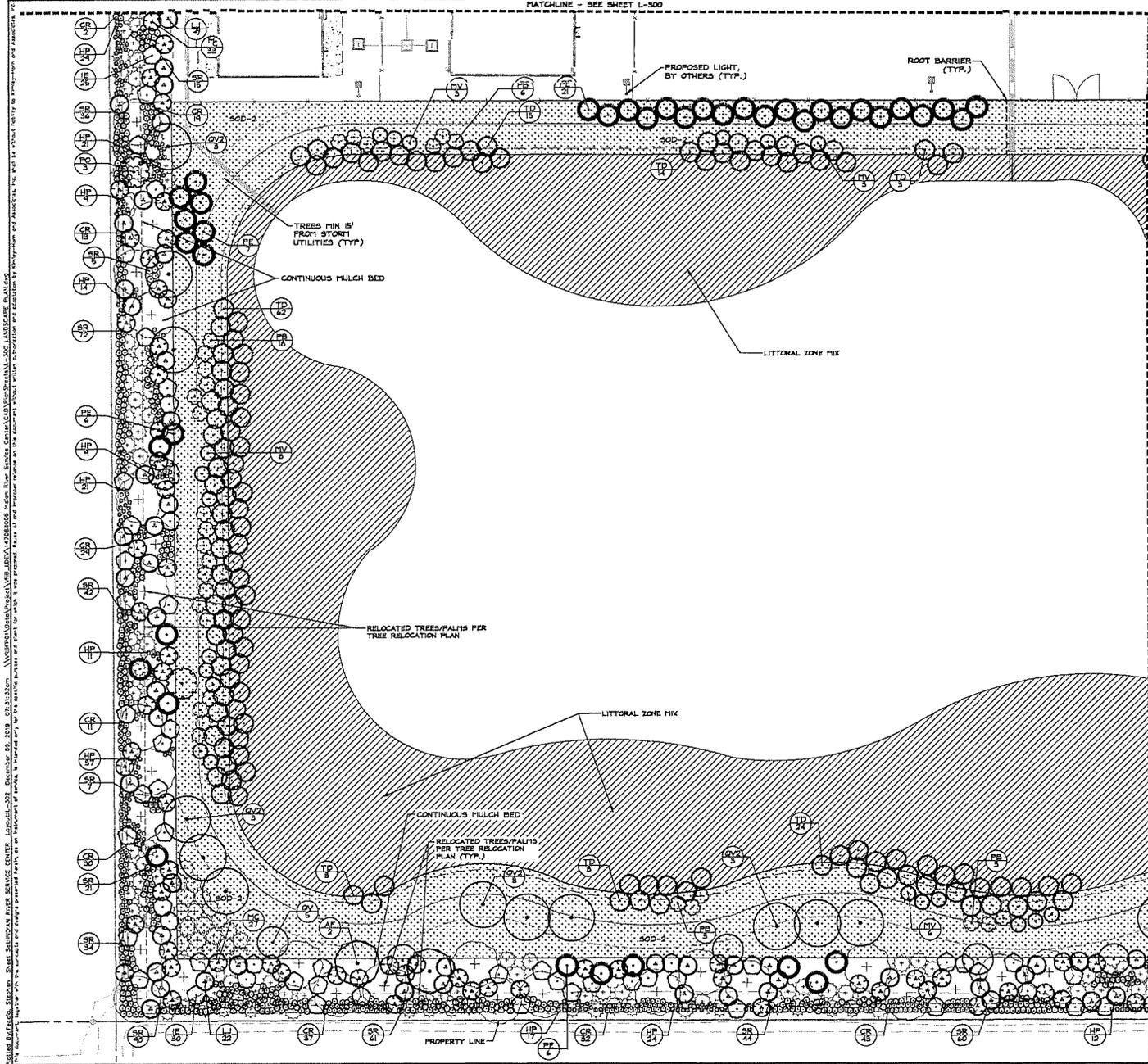
**Exhibit B**

**Landscape Improvements**





# EXHIBIT B

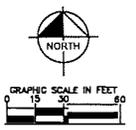
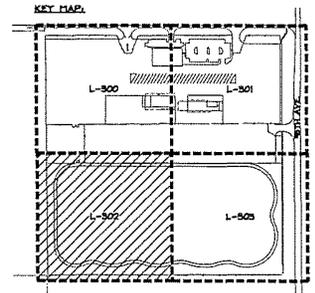


## PLANT SCHEDULE

PALM TREES	COMMON NAME
SP (CN)	Cabbage Palm
CANOPY TREES	COMMON NAME
AF (LG)	Florida Flame Red Maple
IC (CN)	Deham Holly
LS (CN)	Sweet Gum
MG (CN)	Southern Magnolia
TV (LT)	Sweet Bay Magnolia
PB (LT)	Redbay
PE (LG)	Slash Pine
PO (CN)	American Sycamore
QV (CN)	Southern Live Oak
OVD (LG)	Southern Live Oak
TD (LT)	Bald Cypress
UNDERSTORY TREES	COMMON NAME
IC (US)	Deham Holly
IE (US)	East Palmetto Holly
LI (US)	Ligustrum
MC (US)	Haz Myrtle
SHRUBS	COMMON NAME
CR	Floriberry
HP	Pine Bush
JC	Forsythia
RI	Indian Hawthorn
SR	Saw Palmetto
TT	Thyrsilla
WM	Haz Myrtle
SHRUB AREAS	COMMON NAME
IN	Dwarf Yucca
TF	Foksholches Grass
GROUND COVERS	COMMON NAME
LL	Littoral Zone Mix
300	Florham St. Augustine Grass
300-2	Argentine Bahia Grass

**TREE SIZE KEY**  
(SEC. 926.08 & 926.09)

CN	= CANOPY TREE
SP	= SMALL TREE
LG	= LARGE TREE
LT	= LITTORAL TREE
US	= UNDERSTORY TREE



		LICENSED PROFESSIONAL 1470990006 11/25/19 STYVEN H. TEGULAKA SALES AS SHOWN 147667289 DATE: 11/25/19		NO.	REVISIONS	DATE	BY
		LANDSCAPE PLAN					
INDIAN RIVER SERVICE CENTER		FLORIDA		SHEET NUMBER L-302			

