

Prepared by:
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Florida Inland Navigation District
1314. Marcinski Road
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FLORIDA INLAND NAVIGATION DISTRICT

Return to:
COUNTY ATTORNEY'S OFFICE
INDIAN RIVER COUNTY
1801 27th Street
Vero Beach, Florida 32960

AND

INDIAN RIVER COUNTY

LEASE AGREEMENT

This LEASE AGREEMENT ("LEASE") is made and entered into this 21st day of January 2010, between "the Parties", the Florida Inland Navigation DISTRICT, an independent special district existing under the laws of the State of Florida (the "DISTRICT"), and INDIAN RIVER COUNTY, a political subdivision of the State of Florida, (the "COUNTY").

WITNESSETH:

WHEREAS, DISTRICT is the owner in fee simple of a parcel of land in Indian River County, Florida, designated as Dredged Material Management Area IR-14B which will be used by DISTRICT and the United States for the improvement and maintenance of the Intracoastal Waterway from Jacksonville to Miami, Florida, and the DISTRICT holds title subject to a future easement that will be granted by it to the United States of America for such use; and

WHEREAS, the DISTRICT and the COUNTY desire to provide benefits to the citizens of the COUNTY and others by providing passive recreational opportunities; and

WHEREAS, COUNTY desires to lease from DISTRICT a portion of Dredged Material Management Area IR-14B, a description of which is attached hereto as Exhibit "A" and made a part hereof, for passive recreation purposes subject to said rights of DISTRICT and the future rights and easement of the United States of America and to the terms and conditions of this LEASE; and

WHEREAS, DISTRICT desires to collaborate with the COUNTY in the proper use and

management of DISTRICT's property; and

WHEREAS, DISTRICT is of the opinion that such use by the COUNTY pursuant to the provisions of this LEASE is in the public interest; and

WHEREAS, DISTRICT is agreeable that this LEASE should be executed for a limited term at a nominal rental subject to the terms and conditions stated herein.

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the parties hereto:

1. RECITALS: The recitals contained herein above are true and correct and incorporated herein by reference.

2. LEASE: DISTRICT hereby leases to the COUNTY the property hereinafter known as the "Leased Premises" as described in paragraph 4 below, subject to the terms and conditions set forth herein.

3. PROJECT MANAGEMENT: The Project Manager for the DISTRICT is its Executive Director and all correspondence and communications from the COUNTY shall be directed to him/her. The Project Manager shall be responsible for overall coordination and oversight on behalf of DISTRICT related to the performance of this lease.

4. DESCRIPTION OF THE PREMISES: The Leased Premises is situated in Indian River County, State of Florida, as described in Exhibit "A", attached hereto and made a part of this LEASE. In general the Leased Premises is a strip of land consisting only of an existing dike system around a wetland mangrove area on District property known as IR-14B.

5. EXISTING CONDITIONS: The COUNTY agrees to accept the Leased Premises in "as is" condition subject to any existing easements and deed restrictions that may be placed on the Leased Premises by the DISTRICT or others with DISTRICT approval.

6. TERM: The term of this LEASE shall be for an initial thirty (30) year period with one (1) option to renew for a twenty-five (25) year extension. Rent shall be one (1) dollar per year and shall be paid in advance. Prepayment of the rent shall not affect in any way the DISTRICT's rights under paragraph 24 below. The initial period shall commence on the date of execution, and continue for a period of thirty (30) years. A second term of twenty-five (25) years shall automatically commence absent written notice of termination by the DISTRICT or the COUNTY at least ninety (90) days prior to the end of the initial term.

7. PURPOSE: COUNTY shall manage the Leased Premises solely to provide a pathway or trail for passive public outdoor recreation.

8. QUIET ENJOYMENT AND RIGHT OF USE: COUNTY shall have the right of ingress and egress to, from, and upon the Leased Premises for all purposes consistent with paragraph 7 above that do not conflict with the DISTRICT's and the United States of America's Dredge Material Management Program.

9. UNAUTHORIZED USE: COUNTY shall, through its agents and employees, make every reasonable effort to prevent the unauthorized use of the Leased Premises or any use thereof not in conformance with this LEASE.

10. ASSIGNMENT: This LEASE shall not be assigned, except as noted in Paragraph 13, in whole or in part without the prior written consent of DISTRICT. Any assignment made either in whole or in part without the prior written consent of DISTRICT shall be void and without legal effect.

11. PLANS: The terms of this LEASE shall guide the passive recreational use and the associated management of the Leased Premises in accordance with the schedule and methodology stipulated below.

A. DEVELOPMENT PLAN: The COUNTY will develop a passive recreational

pathway or trail plan for the Leased Premises. This plan will be reviewed and approved by the DISTRICT prior to the solicitation for contractors for the preparation of the COUNTY passive recreational pathway or trail for passive public recreational use.

B. COUNTY PLAN FOR PASSIVE RECREATIONAL PATHWAY OR TRAIL: COUNTY shall develop and implement, subject to approval by the DISTRICT, an Operational Management Plan (OMP) for the property. The OMP shall provide general background data on the property, contain information on the properties resources, set forth general and specific management goals, objectives and guidelines and outline the specific procedures, funding requirements, staffing levels and management practices necessary for their accomplishment. The OMP shall be submitted by the COUNTY to the DISTRICT at the same time as the development plan is submitted.

The OMP shall be submitted for approval to the DISTRICT'S Board of Commissioners. In the event the parties are not able to come to agreement on the OMP within one hundred eighty (180) days of submittal, this shall be sufficient cause for either party to terminate the LEASE pursuant to Paragraph 26 below. The Leased Premises shall not be developed or physically altered in any way without the prior written approval of DISTRICT until the OMP is approved. The COUNTY shall not proceed with development of said Leased Premises until the OMP required herein has been submitted and approved by DISTRICT'S Board.

After the COUNTY pathway has been constructed, the COUNTY and the DISTRICT will meet at least once annually to review and discuss the management activities authorized by this OMP and to agree to any changes in the OMP and/or additional rules and regulations governing public use of the lands covered by the OMP

that may be deemed appropriate. The COUNTY shall prepare and submit for discussion at the annual meeting a yearly summary report to include:

1. COUNTY'S management program and activities on the property.
2. Status of visitor use.
3. Review of special problems and concerns encountered over the previous year.

The approved OMP shall provide the basic guidance for all management activities and shall be reviewed jointly by DISTRICT and COUNTY during the annual meeting and updated as necessary. The COUNTY shall not use or alter the Leased Premises except as provided for in the approved OMP without the prior written approval of DISTRICT.

C. DISTRICT SITE MANAGEMENT PLAN: The DISTRICT and the U.S. Army Corps of Engineers will utilize and operate the site during Intracoastal waterway dredging operations in accordance with Exhibit "B" which may be amended from time to time without prior notice to COUNTY.

12. EASEMENTS: This LEASE is for the purposes specified herein, and easements of any nature are prohibited without the prior written approval of DISTRICT. Any easement not approved in writing by DISTRICT shall be void and without legal effect.

13. SUBLEASES: This LEASE is solely for the purposes specified herein, and subleases of any nature are prohibited without the prior written approval of DISTRICT. Any sublease not approved in writing by DISTRICT shall be void and without legal effect. However, the DISTRICT acknowledges that the COUNTY intends to enter into an agreement with the

Indian River Land Trust to develop and manage the Leased Premises. This sub-lease and any other approved sub-leases shall contain this LEASE as an attachment and the sub-lease shall require that the sub-lessee abide by all conditions of this LEASE.

14. RIGHT OF INSPECTION: DISTRICT or its duly authorized agents, representatives or employees shall have the right at any and all times to inspect the Leased Premises and the works and operations of COUNTY in any matter pertaining to this LEASE.

15. PLACEMENT AND REMOVAL OF IMPROVEMENTS: All structures, improvements, and signs, if any, associated with the Leased Premises shall be constructed at the expense of COUNTY and/or DISTRICT in accordance with the park development plan and the OMP approved by the DISTRICT. Further, no trees, other than non-native species, shall be removed or major land alterations done without the prior written approval of DISTRICT. No permanent equipment or non-removable improvements shall be placed on the Leased Premises by COUNTY; provided, however, the DISTRICT and the COUNTY agree to cooperate with regard to and coordinate the placement of park benches, regulatory signage, and other similar types of objects that are typically associated with passive recreational uses within the Leased Premises; provided, further, however, that the DISTRICT's determination relative to such placement shall be conclusive and final. Removable equipment and removable improvements placed on the Leased Premises by COUNTY which do not become a permanent part of the Leased Premises will remain the property of COUNTY and may be removed by COUNTY upon termination of this LEASE, pursuant to Paragraph 27 below.

16. INDEMNITY BY COUNTY: To the extent and limits permitted by Florida law, COUNTY hereby covenants and agrees to investigate all claims of every nature at its own expense, and to indemnify, protect, defend, and hold and save harmless the DISTRICT from

any and all claims, bodily injury, personal injury, property injury, actions, lawsuits and demands of any kind or nature arising out of any action taken by the County or its sub-lessee as related to this Lease or the COUNTY's use of the Leased Premises. Nothing contained herein shall be construed as a waiver of sovereign immunity enjoyed by the parties hereto, as provided in Section 768.28, Florida Statutes, as amended, or any other law providing limitations on claims. Further, nothing herein shall be construed as a waiver of the limitations on liability enjoyed by a landowner providing land to the public for outdoor recreational purposes, provided in Section 375.251, Florida Statutes.

17. INSURANCE:

A. The COUNTY shall procure and maintain, throughout the term (including any extended term) of this LEASE, Worker's Compensation insurance as may be required by Florida law. The COUNTY shall provide an insurance certificate demonstrating such coverage prior to the commencement of this LEASE. The Worker's Compensation insurance policy required by this LEASE shall also include Employer's Liability. The COUNTY shall require all COUNTY contractors working on the Leased Premises to procure and maintain Worker's Compensation insurance.

B. The COUNTY shall procure and maintain, through the term of this LEASE, comprehensive general liability insurance or be self-insured under Florida law (the "policy"). This policy shall provide coverage for death, personal injury, or property damage that could arise directly from the performance of this LEASE. The policy shall have minimum limits of \$1,000,000.00 per occurrence, combined single limit for bodily injury liability and property damage liability. This minimum limit may need to be reviewed and increased during the life of this lease. This shall include the following endorsements:

- i. premises and operations;

- ii. independent contractors’;
- iii. products and completed operations; and
- iv. contractual liability

C. The COUNTY shall provide insurance certificates as proof of insurance prior to the commencement of performance. All such insurance shall name the DISTRICT, its commissioners, officers, and employees (and the United States of America once the DISTRICT has conveyed an easement to the United States of America) as additional insureds, and shall be written by a financially sound company which shall be acceptable to the DISTRICT and authorized to do business in the State of Florida. The policy shall contain a provision requiring the certificates to shall be countersigned by a registered Florida insurance agency or broker. The insurance certificate shall contain a clause that the insurer shall endeavor to notify the DISTRICT at least thirty (30) Days prior to cancellation or modification of any insurance policy required by this LEASE.

18. PAYMENT OF TAXES AND ASSESSMENTS: COUNTY shall assume full responsibility for and shall pay all taxation liabilities that accrue to the Leased Premises and/or to the improvements thereon, including any and all ad-valorem taxes and drainage and special assessments or taxes of every kind which may be hereafter lawfully assessed and levied against the Leased Premises.

19. NO WAIVER OF BREACH: The failure of DISTRICT to insist in any or more instances upon strict performance of any one (1) or more of the covenants, terms and conditions of this LEASE shall not be construed as a waiver of such covenants, terms or conditions, but the same shall continue in full force and effect, and no waiver of DISTRICT of any of the provisions hereof shall in any event be deemed to have been made unless the

waiver is set forth in writing and signed by DISTRICT.

20. NON-DISCRIMINATION: COUNTY shall assure and certify that it will comply with Title IV of the Civil Rights ACT of 1964 (PL 88-352) as amended and, in accordance with that Act, shall not discriminate against any individual's race, color, creed, sex, national origin, age, handicap, or marital status with respect to any activity occurring within the Leased Premises or upon lands adjacent to and used as an adjunct of the Leased Premises.

21. UTILITY FEES: COUNTY shall be responsible for payment of all charges for the furnishing of gas, electric, water and other public utilities to the Leased Premises and for having the utilities turned off when the Leased Premises are surrendered.

22. COMPLIANCE WITH LAWS: COUNTY agrees that this LEASE is contingent upon and subject to COUNTY obtaining all applicable permits and complying with all applicable permits, regulations, ordinances, rules, and laws of the State of Florida or the United States of America or of any political subdivision or agency with jurisdiction over the Leased Premises.

23. NOTICE: All notices given under this LEASE shall be in writing and shall be served by certified mail to the last address of the party to whom notice is to be given, as designated by such party in writing. DISTRICT and COUNTY hereby designate their address as follows:

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

TO COUNTY: Indian River County Government
1801 27th St.
Vero Beach, FL 32960
Attn: Environmental Lands Director

Facsimile transmittals shall not be an acceptable means of providing notice.

24. BREACH OF COVENANTS, TERMS, OR CONDITIONS: Should COUNTY breach any of the covenants, terms, or conditions of this LEASE, DISTRICT shall give written notice to COUNTY to remedy such breach within thirty (30) days of such notice. In the event COUNTY fails to remedy the breach to the satisfaction of DISTRICT within thirty (30) days of receipt of written notice, DISTRICT may either terminate this LEASE and recover from the COUNTY all damages DISTRICT may incur by reason of the breach including, but not limited to, the cost of recovering the Leased Premises and attorney's fees; or maintain this LEASE in full force and effect and exercise all rights and remedies herein conferred upon DISTRICT.

25. DAMAGE TO THE PREMISES: COUNTY agrees that it will not do, or cause to be done, in, on, or upon the Leased Premises or as affecting said Leased Premises, any act which may result in damage or depreciation of value to the Leased Premises, or any part thereof.

26. HAZARDOUS MATERIALS: COUNTY 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 except those permitted to be utilized in the normal operation of a passive recreational pathway or trail which substances shall be used only as permitted by law. In no event shall the COUNTY store or mix any such substances on the Leased Premises.

B. Shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of COUNTY or any assignees, a release of hazardous wastes or substances onto the Leased Premises.

C. Shall comply with and ensure compliance by its employees and all others under its direction with all applicable Federal, State, and local laws, ordinance, 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 DISTRICT with notice of any release or threatened release of hazardous waste within the Leased Premises. And shall immediately provide DISTRICT with notice of any injury or action taken by any local, State, or Federal governmental body with respect to hazardous waste within 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.

27. SURRENDER OF PREMISES: Upon termination or expiration of this LEASE, COUNTY, shall surrender the Leased Premises to DISTRICT. In the event no further use of the Leased Premises or any part thereof is needed, COUNTY shall give written notification to the DISTRICT at least six (6) months prior to the release of any of all of the Leased Premises. Notification shall include a legal description, this LEASE number, and explanation of the release. Upon termination or expiration of this LEASE, all structures permanently affixed to the land, if any, and all improvements made, if any, will become the property of the DISTRICT; provided, however, that if any structures are such, in the DISTRICT's determination, that they can be moved without harm to the area where situated then the COUNTY may, within thirty

(30) days following the termination of the lease, remove the same. Upon final termination, the Leased Premises must be left in essentially the same condition as when first leased to the COUNTY, save for ordinary wear and tear, unless otherwise approved in writing by the DISTRICT.

28. BEST MANAGEMENT PRACTICES: COUNTY shall implement applicable Best Management Practices for all activities conducted under this LEASE in compliance with Rule 18-20.004, Florida Administrative Code, which have been selected, developed, or approved by DISTRICT or other land managing agencies for the protection and enhancement of the Leased Premises.

29. PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES:
Fee title to the Leased Premises is held by DISTRICT. COUNTY shall not do or permit anything to be done which purports to create a lien or encumbrance of any nature against the Leased Premises including, but not limited to, mortgages or construction liens against the Leased Premises or against any interest of DISTRICT therein.

30. PARTIAL INVALIDITY: If any term, covenant, condition, or provision of this LEASE shall be ruled by a court of competent jurisdiction to be invalid, void,

order and repair including, but not limited to, keeping the Leased Premises free of trash or litter, meeting all building and safety codes in the location situated, and maintaining the Leased Premises in accordance with the approved development plan and the OMP. As may be mutually agreed to by the Parties, any removal, closure, etc., of the above improvements, if any, shall be acceptable when the proposed activity is consistent with sound goals of conservation, protection, and enhancement of the natural and historical resources within the Leased Premises and with the approved OMP. Maintenance of any and all existing dredge material management structures is reserved to the DISTRICT.

34. GOVERNING LAW: This LEASE shall be governed by and interpreted according to the laws of the State of Florida.

35. SECTION CAPTIONS: Articles, subsection and other captioned contained in this LEASE are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope or extent of intent of this LEASE or any provisions thereof.

36. SPECIAL CONDITIONS: The following special conditions shall apply to this LEASE:

A. COUNTY shall ensure that the area is identified as being publicly owned and operated as a public outdoor recreational facility in all signs, literature, and advertising. COUNTY shall erect signs identifying the Leased Premises as being open to the public, as a DISTRICT assisted project and as a DISTRICT property which will be used from time to time as a dredged material management area. All such signs are subject to the District's approval which shall not be unreasonably withheld; and

B. The COUNTY agrees to install and maintain all required entrance and informational signage for its management activities; and

C. The COUNTY shall not in any way restrict access of the DISTRICT and/or the United States of America to the property as needed during periodic use of the dredge material management area, as both parties recognize that such use is to be the paramount use of the Leased Premises.

D. The COUNTY shall comply with any public access restrictions required by the DISTRICT and/or the United States of America during the periodic use of the property for dredge material management.

37. VENUE/ATTORNEY'S FEES: In the event of any litigation arising out of or resulting from this LEASE, the venue of such litigation shall be had only in the State courts in Palm Beach County, Florida. The prevailing party in such litigation shall be entitled to its costs and reasonable attorney's fees (at trial, appellate, and post-judgment proceeding levels).

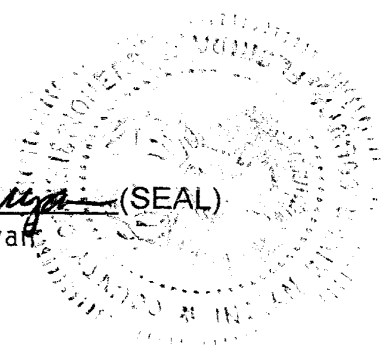
IN WITNESS WHEREOF, the parties have caused this LEASE to be executed on the day and year first written above.

COUNTY:

ATTEST:

Jean Allen, D.C.
BY: J.K. BARTON
Clerk

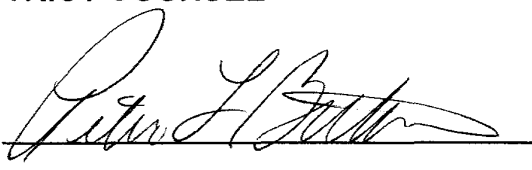
BY: Peter D. O'Bryan (SEAL)
Chairman Peter D. O'Bryan



APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

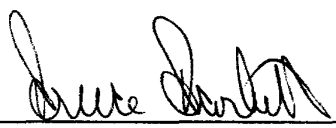
BY: *[Signature]*
for County Attorney

LEGAL FORM APPROVED
DISTRICT COUNSEL


BY: 

DISTRICT:

FLORIDA INLAND
NAVIGATION DISTRICT

BY:  (SEAL)
Chairman

ATTEST:


Secretary

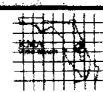
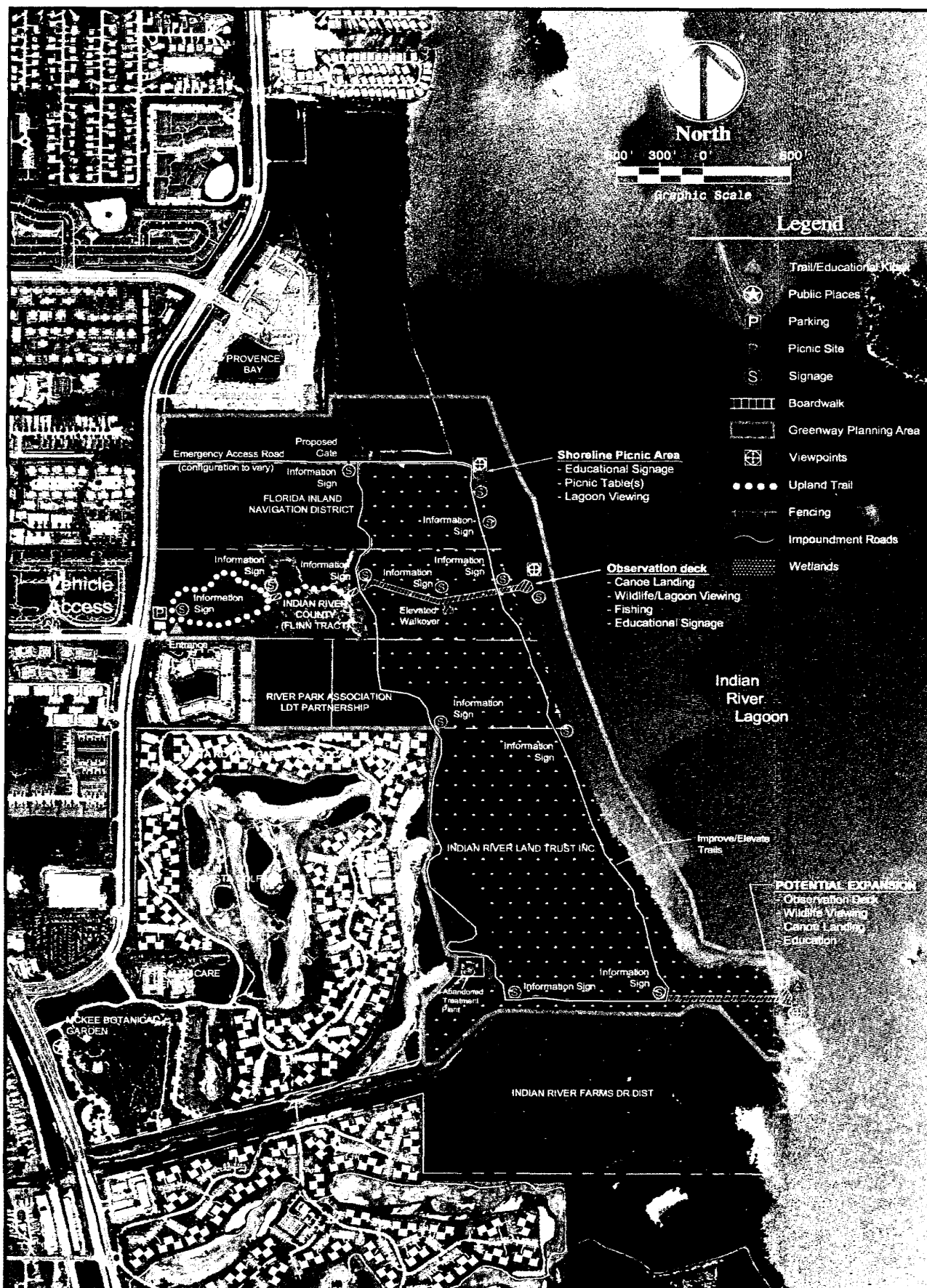




Exhibit A "text"

The existing mosquito impoundment road on the FIND tract will be used for part of the greenway trail system and for establishing a small picnic area on the eastern edge of the property near the shoreline of the Indian River Lagoon. The pervious road leading east from Indian River Blvd. will be available for trail maintenance vehicles by county officials and emergency access vehicles only. Fencing and/or gates will be installed and maintained to prevent public access to the dredge management containment area and private properties to the north.

EXHIBIT "B"

**Management Plan
IR-14
Dredged Material Management Area**

May 1999

**Exhibit "B" in its entirety is on
file in the Office of the Clerk to
the Board of County
Commissioners**

**Management Plan
IR-14
Dredged Material Management Area**

Prepared for
FLORIDA INLAND NAVIGATION DISTRICT

by
**R. Bruce Taylor, Ph.D., P.E.
William F. McFetridge**

**Taylor Engineering, Inc.
9000 Cypress Green Drive, Suite 200
Jacksonville, Florida 32256
(904) 731-7040**

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