

**DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS
FOR
HUNTINGTON PLACE**

EXHIBIT "C"

(Conservation Easement)

RECORDED AND RETURN TO:
C J. ATWOOD TAYLOR, III, ESQ.
SUITE 200
13070 NORTH AVENUE
VERO BEACH, FL 33490
772-251-4440

Prepared by:
Record and return to:
Office of General Counsel
St. Johns River Water Management District
4049 Reid Street
Palatka, Florida 32177

1760816
THIS DOCUMENT HAS BEEN RECORDED
IN THE PUBLIC RECORDS OF
INDIAN RIVER COUNTY FL
BK: 2045 PG:105, Page1 of 10
06/14/2006 at 09:31 AM,
D DOCTAX PD \$0.70
JEFFREY K BARTON, CLERK OF
COURT

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is given this 2nd day of June, 2006 by FOSTER I.R.C., LLC, a California limited liability company authorized to do business in Florida (hereinafter referred to as "Grantor"), whose mailing address is 250-A Twin Dolphin Drive, Redwood City, California 94065, to the ST. JOHNS WATER MANAGEMENT DISTRICT (hereinafter referred to as either "Grantee" or "District"). As used herein, the term *Grantor* shall include any and all heirs, successors or assigns of Grantor, and all subsequent owners of the *Property* (as hereinafter defined) and the term *Grantee* shall include any successor or assignee of Grantee.

WHEREAS, Grantor is the owner of certain lands situated in Indian River County, Florida, and more specifically described in EXHIBIT "A" attached hereto and incorporated herein by reference (heretofore and hereinafter referred to as the "Property"); and

WHEREAS, Grantor desires to construct and develop a subdivision known as HUNTINGTON PLACE SUBDIVISION (hereinafter referred to as the "Project") at a site in Indian River County, which is subject to the regulatory jurisdiction of the District; and

WHEREAS, District Permit No. 40-061-96176-1 (hereinafter referred to as the "Permit") authorizes certain activities which affect waters in or of the State of Florida; and

WHEREAS, this Permit requires that Grantor preserve, enhance, restore and/or mitigate wetlands and/or uplands under the District's jurisdiction; and

WHEREAS, Grantor, in consideration of the consent granted by the Permit, is agreeable to granting and securing to Grantee a perpetual Conservation Easement as defined in Section 704.06, *Florida Statutes*, over the Property.

NOW, THEREFORE, in consideration of the issuance of the Permit to construct and operate the permitted activity, and as an inducement to Grantee in issuing the Permit, together with other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, Grantor hereby grants, creates, and establishes a

perpetual Conservation Easement for and in favor of Grantee upon the Property which shall run with the land and be binding upon Grantor, and shall remain in full force and effect forever.

The scope, nature, and character of this Conservation Easement shall be as follows:

1. **Recitals.** The above recitals are hereby affirmed as being true and correct and are incorporated in this Agreement by reference.

2. **Purpose.** The purpose of this Conservation Easement is to assure that the Property will be retained forever in the existing natural condition and to prevent any use of the Property that will impair or interfere with the environmental value of the Property. Those wetland and/or upland areas included in this Conservation Easement which are to be enhanced or created pursuant to the Permit shall be retained and maintained in the enhanced or created conditions required by the Permit.

To carry out this purpose, the following rights are conveyed to Grantee by this easement:

a. To enter upon the Property at reasonable times with any necessary equipment or vehicles to enforce the rights herein granted in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor at the time of such entry; and

b. To enjoin any activity on or use of the Property that is inconsistent with this Conservation Easement and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

3. **Prohibited Uses.** Any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation;

d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;

e. Surface use except for purposes that permit the land or water area to remain in its natural or enhanced condition;

f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking, and fencing;

g. Acts or uses detrimental to such aforementioned retention of land or water areas;

h. Acts or uses which are detrimental to the preservation of the structural integrity or physical appearance of sites or properties having historical, archaeological, or cultural significance.

4. **Grantor's Reserved Rights.** Grantor reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and which are not inconsistent with any District rule, criteria, permit and the intent and purposes of this Conservation Easement.

5. **No Dedication.** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement.

6. **Grantee's Liability.** Grantee shall not be responsible for any costs or liabilities related to the operation, upkeep or maintenance of the Property.

7. **Acts Beyond Grantor's Control.** Nothing contained in this instrument shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in any portion of the Property other than Conservation Areas specified in Permit No. 40-061-96176-1, that result from natural causes beyond Grantor's control, and not initiated by Grantor, including but not limited to fire, flood, storm, and earth movement. Should any Conservation Area be injured or changed from natural causes, including but not limited to fire, flood, storm, and earth movement, Grantor shall be provided notice and a reasonable opportunity to restore the affected Conservation Area to a condition that satisfies the permit requirements prior to Grantee bringing any action for noncompliance with the Permit.

8. **Property Taxes.** Grantor shall keep the payment of taxes and assessments on the Easement Parcel current and shall not allow any lien on the Easement Parcel superior to this Easement. In the event Grantor fails to extinguish or obtain a subordination of such lien, in addition to any other remedy, Grantee may, but shall not be obligated to, elect to pay the lien on behalf of Grantor and Grantor shall reimburse Grantee for the amount paid by Grantee, together with Grantee's reasonable attorneys' fees and costs, with interest at the maximum rate allowed by law, no later than fifty (50) days after such payment. In the event Grantor does not so reimburse Grantee, the debt owed to Grantee shall constitute a lien against the Easement Parcel which shall automatically relate back to the recording date of this Easement. Grantee may foreclose this lien on the Easement Parcel in the manner provided for mortgages on real property.

9. **Enforcement.** Enforcement of the terms, provisions, and restrictions of this Conservation Easement shall be at the reasonable discretion of Grantee, and any

forbearance on behalf of Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor, shall not be deemed or construed to be a waiver of Grantee's rights hereunder.

10. **Assignment.** Grantee will hold this Conservation Easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this Conservation Easement except to another organization or entity qualified to hold such interests under the applicable state laws.

11. **Severability.** If any provision of this Conservation Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby, as long as the purpose of the Conservation Easement is preserved.

12. **Terms and Restrictions.** Grantor shall insert the terms and restrictions of this Conservation Easement in any subsequent deed or other legal instrument by which Grantor divests itself of any interest in the Property.

13. **Written Notice.** All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

14. **Modifications.** This Conservation Easement may be amended, altered, released or revoked only by written agreement between the parties hereto or their heirs, assigns or successors-in-interest, which shall be filed in the public records in Indian River County.

TO HAVE AND TO HOLD unto Grantee forever. The covenants, terms, conditions, restrictions, and purposes imposed with this Conservation Easement shall be binding upon Grantor, and shall continue as a servitude running in perpetuity with the Property.

Grantor hereby covenants with said Grantee that Grantor is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this Conservation Easement; and all mortgages and liens have been subordinated to this Conservation Easement by joinder of all mortgagees and lienholders; and that Grantor has good right and lawful authority to convey this Conservation Easement; and that it hereby fully warrants and defends the title to the Conservation Easement hereby conveyed against the lawful claims of all persons whomsoever.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

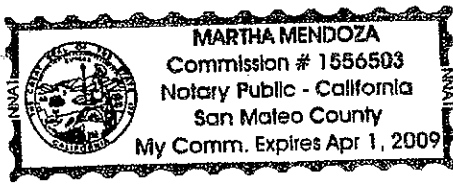
State of California }
County of San Mateo } ss.

On June 2, 2006, before me, Martha Mendoza, a Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Mark C. Foster
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Deed of Conservation Easement

Document Date: June 2, 2006 Number of Pages: Seven (7)

Signer(s) Other Than Named Above: Lisolette Owens + Arlene Dozier - witnesses

Capacity(ies) Claimed by Signer

Signer's Name: Mark C. Foster

- Individual
- Corporate Officer — Title(s): Managing Member
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: Foster I.B.C., LLC

RIGHT THUMBPRINT DESIGNER

Top of thumb here

MORTGAGEE JOINDER, CONSENT, AND SUBORDINATION

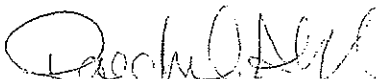
For Ten Dollars (\$10.00) and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, **BANK OF AMERICA, N.A.**, the owner and holder of a mortgage dated January 12, 2005, in the original principal amount of \$7,125,000.00, given by **FOSTER I.R.C., LLC, a California limited liability company, authorized to do business in Florida** ("Grantor"), to **BANK OF AMERICA, N.A.** ("Mortgagee"), encumbering the real property described on EXHIBIT "A" attached hereto and incorporated herein by reference (the "Property"), which is recorded in Official Records Book 1824, at Page 799 (together with that certain Assignment of Leases and Rents recorded in Official Records Book 1824, at Page 818 and that certain UCC-1 Financing Statement recorded in Official Records Book 1824, at Page 825), all of the Public Records of Indian River County, Florida (said Mortgage, Assignment of Leases and Rents, and UCC-1 Financing Statement, as modified, are hereinafter collectively referred to as the "Mortgage"), hereby joins in, consents to and subordinates the lien of its Mortgage, as it has been, and as it may be, modified, amended, and assigned from time to time, to the foregoing Conservation Easement, executed by **FOSTER I.R.C., LLC, a California limited liability company**, in favor of the St. Johns Water Management District applicable to the Property ("Easement"), as said Easement may be modified, amended, and assigned from time to time, with the intent that the Mortgage shall be subject and subordinate to the Easement.

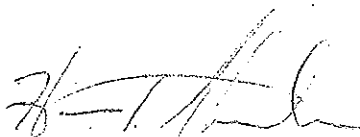
IN WITNESS WHEREOF, this Mortgagee Joinder, Consent, and Subordination is made this 31st day of MAY, 2006.

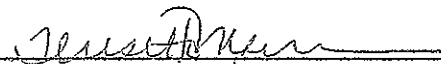
Signed, sealed, and delivered in the presence of:

"Mortgagee"

BANK OF AMERICA, N.A.


(Name: Rachel A. Koh, AVP)

By: 
(Name: James E. Starks)
(Title: Vice President)


(Name: TERESA Ho MARKS)

STATE OF CALIFORNIA)
) ss:
COUNTY OF ALAMEDA)

I HEREBY CERTIFY that before me, a Notary Public, personally appeared HANS E. STARKS, as VICE PRESIDENT of **BANK OF AMERICA, N.A.**, who did acknowledge and swear before me that said person executed the foregoing instrument for the uses and purposes therein set forth on behalf of said banking institution. I further state that (check one) I have examined the current driver's license of the aforesaid person or ✓ I am familiar with the identity of the aforesaid person and have confirmed said person's identity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at the County and State aforesaid this 31st day of MAY, 2006.

Teresa Ho Marrs
NOTARY PUBLIC, STATE OF CALIFORNIA
(Name: TERESA HO MARRS)

My commission expires:

(Affix Seal)



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EXHIBIT "A"

**Sketch of Legal Description
for a Conservation Easement
at the Huntington Place Site
Indian River County, Florida**

Sheet 1 of 2

Not Valid Without All Sheets

SURVEYORS NOTES

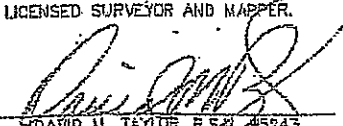
- 1) THE BEARING BASIS IS THE SOUTH LINE OF TRACT 1, BEING S89°53'53"W.
- 2) THIS SKETCH EXISTS SOLELY FOR THE PURPOSE OF ILLUSTRATING THE LEGAL DESCRIPTION TO WHICH IT IS ATTACHED.
- 3) ALL DIMENSIONS ARE CALCULATED UNLESS OTHERWISE NOTED.
- 4) THIS SKETCH MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 61C17-6, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

LEGEND

| | |
|-----|----------------------------------|
| R/W | RIGHT-OF-WAY |
| NO. | NUMBER |
| R | RADIUS |
| L | LENGTH |
| CH | CHORD DISTANCE |
| CB | CHORD BEARING |
| PSM | PROFESSIONAL SURVEYOR AND MAPPER |
| Δ | DELTA ANGLE |
| N | NORTH |
| S | SOUTH |
| E | EAST |
| W | WEST |

LEGAL DESCRIPTION

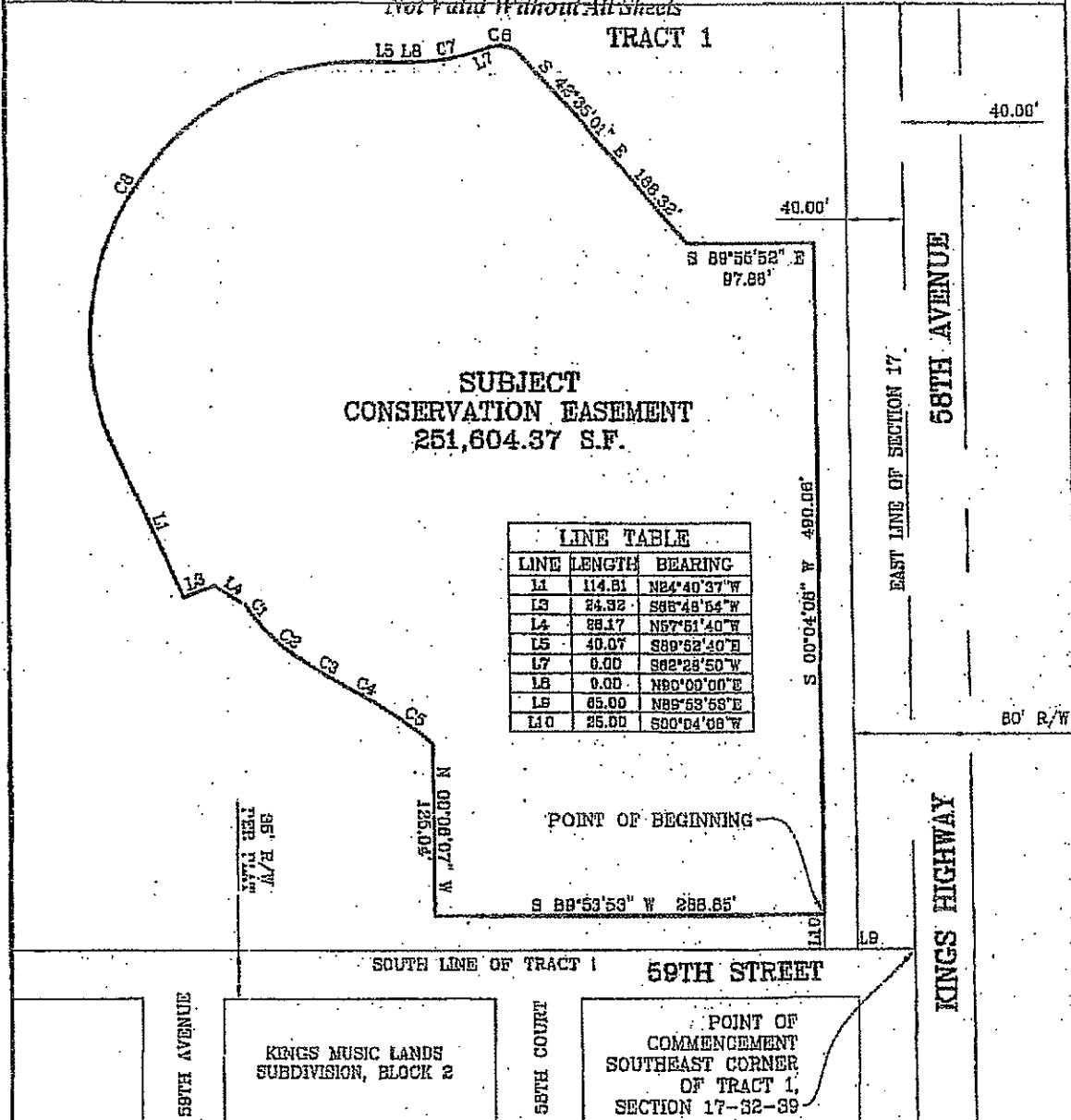
A PORTION OF TRACT 1, SECTION 17, TOWNSHIP 32 SOUTH, RANGE 39 EAST, ACCORDING TO THE LAST GENERAL PLAT OF THE LANDS OF THE INDIAN RIVER FARMS COMPANY AS FILED IN PLAT BOOK 2, PAGE 12 OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA, NOW INDIAN RIVER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT 1; THENCE S.89°53'53"W. ALONG THE SOUTH LINE OF SAID TRACT 1, A DISTANCE OF 65.00 FEET; THENCE N.00°04'08"E., A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING; THENCE S.89°53'53"W. AND PARALLEL WITH THE SAID SOUTH OF TRACT 1, A DISTANCE OF 285.85 FEET; THENCE N.00°06'07"W., A DISTANCE OF 125.04 FEET TO THE POINT OF CURVE OF A NON TANGENT CURVE TO THE LEFT, OF WHICH THE RADIUS POINT LIES S.42°15'00"W., A RADIAL DISTANCE OF 218.60 FEET; THENCE NORTHWESTERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 11°37'38", A DISTANCE OF 44.36 FEET TO A POINT OF COMPOUND CURVE TO THE LEFT HAVING A RADIUS OF 592.62 FEET AND A CENTRAL ANGLE OF 03°51'12"; THENCE NORTHWESTERLY ALONG THE ARC, A DISTANCE OF 39.86 FEET TO A POINT OF REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 235.88 FEET AND A CENTRAL ANGLE OF 06°23'35"; THENCE NORTHWESTERLY ALONG THE ARC, A DISTANCE OF 26.32 FEET TO A POINT OF COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 178.64 FEET AND A CENTRAL ANGLE OF 14°07'38"; THENCE NORTHWESTERLY ALONG THE ARC, A DISTANCE OF 44.05 FEET TO A POINT OF COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 189.78 FEET AND A CENTRAL ANGLE OF 06°09'04"; THENCE NORTHWESTERLY ALONG THE ARC, A DISTANCE OF 20.37 FEET; THENCE N.57°51'41"W., A DISTANCE OF 26.17 FEET; THENCE S.68°46'54"W., A DISTANCE OF 24.32 FEET; THENCE N.24°40'37"W., A DISTANCE OF 114.81 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 200.00 FEET AND A CENTRAL ANGLE OF 114°47'57"; THENCE NORTHEASTERLY ALONG THE ARC A DISTANCE OF 400.72 FEET; THENCE S.89°52'40"E., A DISTANCE OF 40.07 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 150.00 FEET AND A CENTRAL ANGLE OF 21°13'56"; THENCE EASTERLY ALONG THE ARC A DISTANCE OF 55.59 FEET TO A POINT OF REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 48°11'06"; THENCE EASTERLY ALONG THE ARC, A DISTANCE OF 21.02 FEET; THENCE S.42°35'0"E., A DISTANCE OF 188.32 FEET; THENCE S.89°55'52"E., A DISTANCE OF 87.86 FEET; THENCE S.00°04'08"W., A DISTANCE OF 490.08 FEET TO THE POINT OF BEGINNING. CONTAINING 251,604.37 SQUARE FEET OR 5.7760 ACRES, MORE OR LESS.

| | | | | | | | |
|--|------------------|--------------------|-----------------------|--|---------------|---------------|------------------------------|
| SKETCH OF LEGAL DESCRIPTION "This is NOT a Boundary Survey" | Drawn by: DMT | Checked by: DMT | File name: 5447.02 | Date: 08/11/05 | Scale: N/A | disk #: CD | Drawing Name: 5447-02.dwg |
| MASTELLER, MOLER & REED INC. PROFESSIONAL SURVEYORS AND MAPPERS LAND SURVEYING BUSINESS #1644 | | | | NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER. | | | |
| 1555 27th Street, Suite 2, Vero Beach, Florida 32960 Phone: (772) 564-8050 Fax: (772) 794-0647 | | | |  DAVID M. TAYLOR, F.S.M. #5243 | | | |

**Sketch of Legal Description
for a Conservation Easement
at the Huntington Place Site
Indian River County, Florida**

Sheet 2 of 2

Not Valid Without All Sheets



| LINE TABLE | | |
|------------|--------|-------------|
| LINE | LENGTH | BEARING |
| L1 | 114.81 | N84°40'37"W |
| L2 | 24.32 | S88°48'54"W |
| L4 | 88.17 | N57°51'40"W |
| L5 | 40.07 | S89°52'40"E |
| L7 | 0.00 | S62°28'50"W |
| L8 | 0.00 | N80°00'00"E |
| L9 | 85.00 | N89°53'53"E |
| L10 | 25.00 | S00°04'08"W |

| CURVE TABLE | | | | | | | | | | | |
|-------------|--------|--------|-----------|-------|-------------|-------|--------|--------|------------|--------|-------------|
| CURVE | LENGTH | RADIUS | DELTA | CHORD | CH. BEARING | CURVE | LENGTH | RADIUS | DELTA | CHORD | CH. BEARING |
| C1 | 20.87 | 189.74 | 8°09'04" | 20.88 | S29°38'06"E | C3 | 44.36 | 218.68 | 11°37'38" | 44.28 | N53°38'50"W |
| C2 | 44.05 | 178.64 | 14°07'38" | 43.93 | S49°46'27"E | C5 | 21.02 | 25.00 | 48°11'06" | 20.41 | N87°01'02"W |
| C3 | 26.92 | 235.84 | 6°23'35" | 26.31 | S89°02'03"E | C7 | 55.59 | 150.00 | 21°13'56" | 55.27 | N78°30'22"E |
| C4 | 38.65 | 592.83 | 3°51'12" | 38.65 | N61°16'16"W | C8 | 400.72 | 200.00 | 114°47'57" | 396.95 | S32°43'28"W |

SKETCH OF LEGAL DESCRIPTION "This is NOT a Boundary Survey" Drawn by: DMT Checked by: DMT File name: 5447.02 Date: 05/11/05 Scale: 1"=100' disk #: CD Drawing Name: 5447-02.dwg

MASTELLER, MOLER & REED INC.

PROFESSIONAL SURVEYORS AND MAPPERS

LAND SURVEYING BUSINESS #1664



1655 27th Street, Suite 2, Vero Beach, Florida 32960
Phone: (772) 564-8050 Fax: (772) 794-0547

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

David M. Taylor
DAVID M. TAYLOR, P.S.M. #3243