This document prepared by: Sidney F. Ansbacher, Esq. Upchurch, Bailey & Upchurch, P.A. Post Office Drawer 3007 St. Augustine, Florida 32085-3007

### **DECLARATION OF RESTRICTIVE COVENANT**

THIS DECLARATION OF RESTRICTIVE COVENANT ("Declaration") is made by the FLORIDA SCHOOL OF THE DEAF AND THE BLIND ("FSDB"), and the FLORIDA BOARD OF EDUCATION ("FBOE"), and their respective successors and assigns (hereinafter, FSDB and FBOE are, collectively, "GRANTOR"), and the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, and its successors and assigns (hereinafter "FDEP").

### **RECITALS**

- A. Pursuant to section 1002.36(4)(d), Florida Statutes (F.S.), the Board of Trustees of FSDB has "complete jurisdiction over the management of the school," and acts as statutory agent for the FBOE. FBOE is the fee simple owner of certain real property situate in St. Johns County, Florida, more particularly described in Exhibit A attached hereto (hereinafter the "Property"). The portion of the Property that is being restricted by this Declaration is more particularly described in Exhibit B attached hereto and made a part hereof (hereinafter the "Restricted Property").
- B. The FDEP Facility Identification Number for the Property is ERIC\_13638 (former COM\_74558). This Declaration addresses the discharge that was reported to the FDEP on May 5, 1994;
- C. The Property is located at 207 N. San Marco Avenue, St. Augustine, St. Johns County, Florida, and is being operated as a Florida public school of choice pursuant to s. 1002.36(1), F.S., by GRANTOR. GRANTOR has conducted site assessment activities at the Property as documented in the following reports which are incorporated by reference:
  - 1. Remedial Action System Status Report 2018-Semi-Annual-1, dated August 14, 2018;
  - 2. Risk Management Option III No Further Action Evaluation, dated August 30, 2018.
  - 3. Memorandum from Michael J. Bland, through Brian Dougherty, to Merrilee L. Palcic, dated September 18, 2018, approving either Risk Management Option II or III.

- D. The reports noted in recital C set forth the nature and extent of the contamination that is located on the Restricted Property. These reports confirm that contaminated groundwater exists on the Restricted Property as defined by Chapter 62-780, Florida Administrative Code ("F.A.C."). Also, these reports document that groundwater contamination is stable or is shrinking, that groundwater contamination does not extend beyond the Restricted Property boundary, that the extent of groundwater contamination does not exceed ¼ acre, that the groundwater contamination is not migrating, and that contamination does not extend to surface fresh or marine waters.
- E. It is the intent of the restrictions in this Declaration to reduce or eliminate the risk of exposure to 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. The FDEP has agreed to issue a Site Rehabilitation Completion Order with Conditions, authorizing Risk Management Option II No Further Action (hereinafter the "Order"), upon recordation of this Declaration, and the FDEP can unilaterally revoke the Order if the conditions of this Declaration or other requirements of the Order are not met. Additionally, if concentrations of the contaminants of concern (COC) increase above the levels approved in the Order, or if a subsequent discharge occurs at the Restricted Property, the FDEP may require site rehabilitation to reduce concentrations of contamination to levels allowed by the applicable FDEP rules. The Order relating to ERIC\_13638 can be found by contacting the FDEP Northeast District Office.
- 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, 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 and requirements, as described in Exhibit B:

### FOR GROUNDWATER:

a. There shall be no use of the groundwater under the Restricted Property described as the Groundwater Restriction Area in Exhibit B (hereinafter referred to as "Groundwater Restriction Area"). There shall be no drilling for water conducted on the Groundwater Restriction Area, nor shall any new wells be installed on the Groundwater Restriction Area, other than monitoring or other wells pre-approved in writing by FDEP Division of Waste Management (DWM), in addition to any authorizations required by the

- Division of Water Resource Management (DWRM), and the St. Johns River Water Management District (WMD).
- b. For any dewatering activities in the Groundwater Restriction Area, a plan approved by FDEP's DWM must be in place to address and ensure the appropriate handling, treatment and disposal of any extracted water that may be contaminated. FDEP will rely on this Declaration, Rule 62-621.300, F.A.C., and the guidance incorporated therein, and prior FDEP DWM review of any dewatering plan as the institutional control to ensure that no exposure to contaminated groundwater resulting in risk to human health, public safety or the environment will occur due to dewatering activities on the Rule 62-621.300, F.A.C., requires a permit when contaminated site. conducting dewatering in the area of a contaminated site. FDEP DWM can only approve a dewatering plan that ensures the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated to avoid adversely impacting or increasing the potential for exposure to contaminants resulting in risk to human health, public safety or the environment. Unless it is demonstrated that the cleanup criteria under Rule 62-780.680(1), F.A.C., have been achieved, FDEP, in addition to other remedies available at law, may institute proceedings to revoke this Declaration and the Order and require the resumption of site rehabilitation activities if any dewatering activities are commenced without FDEP DWM prior approval.
- c. Exhibit B identifies the site and location of existing stormwater swales, stormwater detention or retention facilities, and ditches on the Groundwater Restriction Area. Such existing stormwater features shall not be altered, modified or expanded, and there shall be no construction of new stormwater swales, stormwater detention or retention facilities or ditches on the Groundwater Restriction Area without prior written approval from FDEP's DWM in addition to any authorizations required by DWRM and the WMD. Construction of new or modification of existing stormwater swales, stormwater detention or retention features, or ditches on the Groundwater Restriction Area could destabilize the groundwater plume or increase potential for exposure to contaminants resulting in risk to human health, public safety, or the environment. For this reason, if GRANTOR seeks to construct or modify stormwater features on the Groundwater Restriction Area, GRANTOR must first consult with and receive approval from FDEP DWM in addition to obtaining any authorizations that may be required by FDEP DWRM, the WMD, or other applicable law. FDEP will rely on this Declaration, and prior FDEP review of any plan to construct new or modify existing stormwater features to ensure that there is no exposure to contaminated groundwater entering into new or expanded stormwater features that may result in risk to human health, public safety or the environment due to the contaminated site. A revised exhibit must be recorded when any stormwater feature is altered, modified, expanded, or constructed. Unless it is demonstrated that the cleanup

criteria under Rule 62-780.680(1), F.A.C., have been achieved, FDEP, in addition to other remedies available under law, may institute proceedings to revoke this Declaration and the Order, and require the resumption of site rehabilitation activities if any such stormwater features are constructed or commenced without FDEP DWM prior approval.

- 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 Property at reasonable times and with reasonable notice to the GRANTOR. Access to the Groundwater Restriction Area is granted via providing access to the Property located at 207 N. San Marco Avenue, and as defined in Exhibit A.
- 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. The FDEP may enforce the terms and conditions of this Declaration by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of the FDEP to exercise its right in the event of the failure of the GRANTOR to comply with the provisions of this Declaration shall not be deemed or construed to be a waiver of the FDEP's rights This Declaration shall continue in perpetuity, unless otherwise modified in writing by GRANTOR and the FDEP as provided in paragraph 7 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 this Declaration. If GRANTOR does not or will not be able to comply with any or all of the provisions of this Declaration, the GRANTOR shall notify FDEP in writing within three (3) calendar days. Additionally, GRANTOR shall notify FDEP within 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 record this Declaration, and 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, the GRANTOR agrees to notify in writing all proposed tenants of the Restricted Property of the existence and contents of this Declaration. Without limiting the generality of paragraph 3 above, it is the intention of the parties that if GRANTOR has conveyed the Restricted Property, the GRANTOR's successors and assigns shall be required to perform such notification.

- 7. This Declaration is binding until a release is executed by the FDEP Secretary (or designee) and is recorded in the public records of the county in which the land is located. To receive prior written approval from the FDEP to remove any requirement herein, cleanup target levels established pursuant to Florida Statutes and FDEP rules must have been achieved. This Declaration may be modified in writing only. Any subsequent amendment must be executed by both GRANTOR and the FDEP and be recorded by the real property owner 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 Restricted Property in fee simple and has good right to create, establish and impose this restrictive covenant on the use of the Restricted Property.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK] [SIGNATURES FOUND ON FOLLOWING PAGES]

IN WITNESS WHEREOF, GRANT , 2021.	ΓOR has executed this instrument this day of
	GRANTOR:
	FLORIDA SCHOOL FOR THE DEAF AND THE BLIND
	By:OWEN B. MCCAUL
	OWEN B. MCCAUL Chair, Board of Trustees 207 North San Marco Avenue St. Augustine, Florida 32084
Signed, sealed and delivered in the presence	e of:
Witness Print Name:	
Witness Print Name:	
STATE OF FLORIDA COUNTY OF	
presence or $\square$ online notarization to	ras acknowledged before me by means of $\square$ physical this day of, 2021, by (name and title of position), produced a valid driver's license as identification.
	Notary Public
	(Print/type name)

[NOTARY SEAL]

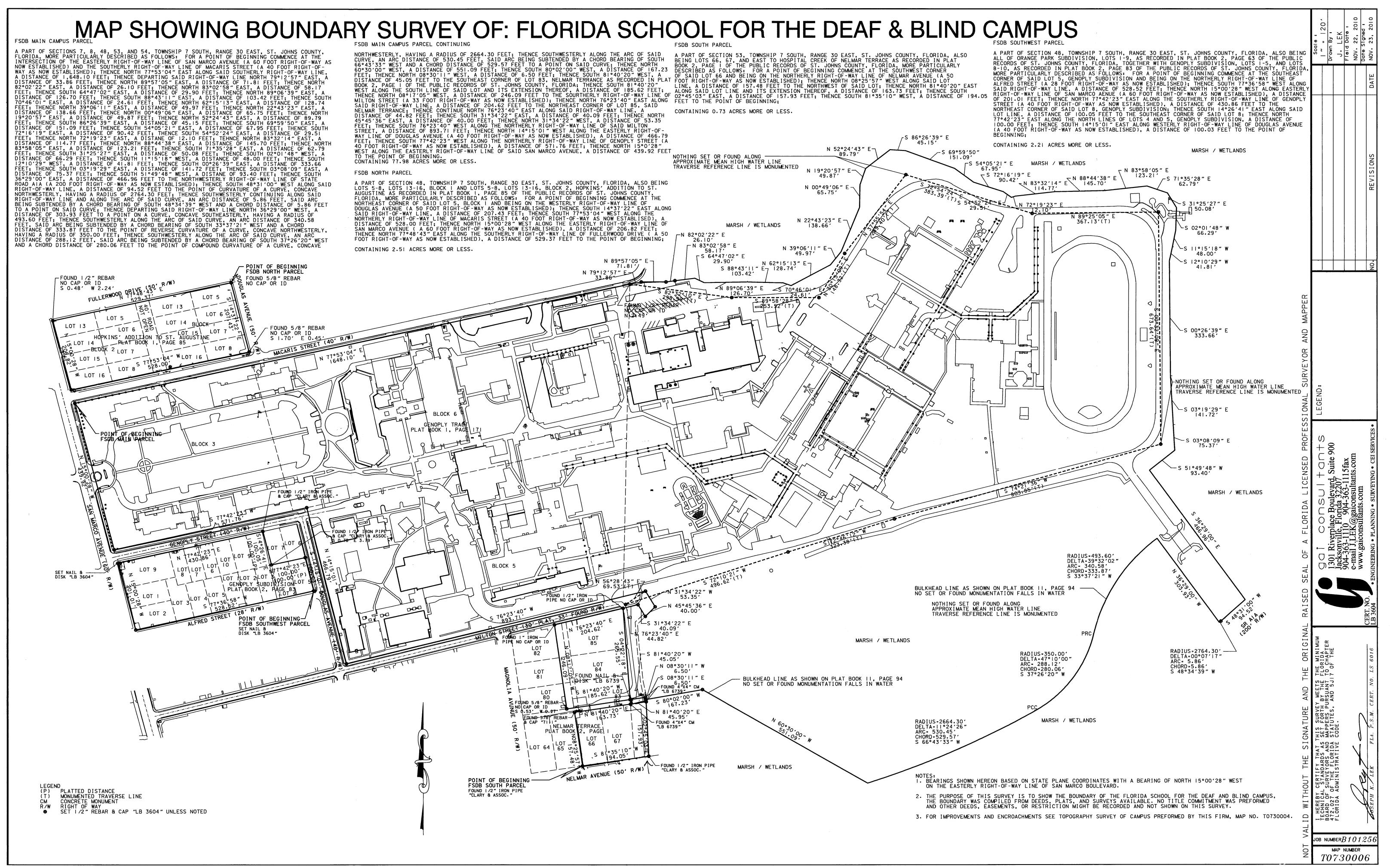
IN WITNESS WHEREOF, GRANTOR, 2021.	has executed this instrument this day of
	GRANTOR:
	FLORIDA BOARD OF EDUCATION
	By:ANDY TUCK
	ANDY TUCK Chair, Board of Education 325 West Gaines Street Tallahassee, Florida 32399
Signed, sealed and delivered in the presence	e of:
<del></del>	Date:
Witness Print Name:	<u>_</u>
Witness	
Print Name:	_
STATE OF FLORIDA COUNTY OF	
presence or $\square$ online notarization t	as acknowledged before me by means of $\square$ physical his day of, 2021, by (name and title of position), produced a valid driver's license as identification.
	Notary Public (Print/type name)  My commission expires  My commission number

[NOTARY SEAL]

	Department of Environmental Protection has
executed this instrument this day of	, 2021.
Approved as to form by:	FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
Print Name: Asst. General Counsel Florida Department of Environmental Protection Office of General Counsel	By:  GREG STRONG  Director of District Management  Northeast District  8800 Baymeadows Way W.  Jacksonville, Florida 32256
Signed, sealed and delivered in the presence of:	
	Date:
Witness Print Name:	Date.
	Date:
Witness Print Name:	
STATE OF FLORIDA COUNTY OF DUVAL	
The foregoing instrument of the physical presence or online notarization the square, as who is personally known to me or who has produced the physical presence or online notarization the square physical presence of the square physical physical presence or online notarization the square physical	
	Notary Public (Print/type name) My commission expires My commission number

[NOTARY SEAL]

# Exhibit A The Property



# Exhibit B Groundwater Restriction Area

# MAP OF

A PART OF THE FLORIDA SCHOOL FOR THE DEAF AND BLIND, ST. AUGUSTINE, ST. JOHNS COUNTY, FLORIDA AND BEING A PART OF SECTION 7, TOWNSHIP 7 SOUTH, RANGE 30 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE COMMENCE AT THE NORTHWEST CORNER OF THE HOGEL BUILDING; THENCE SOUTHERLY, ALONG THE WESTERLY FACE OF SAID HOGEL BUILDING SOUTH 11°49'18" EAST, A DISTANCE OF 38.11 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID WESTERLY FACE OF SAID HOGEL BUILDING SOUTH 78°10'42" WEST, A DISTANCE OF 30.03 FEET; THENCE NORTH 12°17'30" WEST, A DISTANCE OF 47.67 FEET; NORTH 08°05'23" EAST, A DISTANCE OF 51.97 FEET; THENCE NORTH 83°37'14" EAST, A DISTANCE OF 34.49 FEET; THENCE SOUTH 11°49'18" EAST, A DISTANCE OF 45.20 FEET; THENCE SOUTH 12°23'37" WEST, A DISTANCE OF 52.70 FEET TO THE POINT OF BEGINNING. CONTAINING 4,006 SQUARE FEET MORE OR LESS.

## NOTES:

- 1. THIS IS A MAP ONLY.
- 2. BEARINGS SHOWN HEREON ARE BASED ON STATE PLANE COORDINATES, FLORIDA EAST ZONE.
- 3. SEE SHEET 2 OF 2 FOR MAP TO ACCOMPANY DESCRIPTION.

LEGEND:

 $MW-1/DCW-1/INJ \triangle - MONITOR WELLS$ 

THIS MAP WAS MADE FOR THE BENEFIT OF FLORIDA SCHOOL FOR THE DEAF AND BLIND.

THE PROPERTY SHOWN HEREON LIES IN FLOOD ZONE "X" SHADED (AREA OUTSIDE 0.2% ANNUAL CHANCE FLOODPLAIN) AND FLOOD ZONE "AE" (EL 7 FEET) AND (EL 8 FEET) AS WELL AS CAN BE DETERMINED FROM THE FLOOD INSURANCE RATE MAP NUMBER 12109C0312J REVISED DECEMBER 07, 2018 FOR ST. JOHNS COUNTY, FLORIDA

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

JASON D. BOATWRIGHT, P.S.M.
FLORIDA LICENSED SURVEYOR AND MAPPER No. LS 7292
FLORIDA LICENSED SURVEYING & MAPPING BUSINESS No. LB 3672

BOATWRIGHT LAND SURVEYORS, INC.

1500 ROBERTS DRIVE JACKSONVILLE BEACH, FLORIDA (904)241-8550

DATE: MAY 17, 2021

|| SHEET 1 OF 2

