

EASEMENT AGREEMENT

This Easement Agreement made this _____ day of _____, 2022 between the City of Key West, Florida (hereinafter Grantor) and SH5, LTD, a Florida limited partnership, whose mailing address is 506 Fleming Street, Key West, FL 33040, its successors and assigns (hereinafter Grantee).

I. RECITALS

Grantor and Grantee dispute ownership of certain accreted lands located along N Roosevelt Blvd and adjacent to the Key West Marriott Beachside Hotel. While definitive ownership of such property can only be established by the filing of a lawsuit, the parties have agreed to settle their dispute regarding such lands by agreeing to the grant of this Easement Agreement which provides for the Grantor granting all rights of use of the Accretion Parcel (as defined below) held by the Grantor, if any, to Grantee, together with the right to install and maintain a fence upon the Easement Parcel, in exchange for Grantee's agreement to pay to the Grantor an annual easement fee.

II. CONVEYANCE OF EASEMENT

Such property being approximately 1,753 square feet in size and being hereinafter defined as the "Accretion Parcel." The Accretion Parcel is more particularly described on the Survey attached hereto as Exhibit "A" attached hereto and incorporated herein by this reference.

The Grantor hereby agrees to grant and convey to the Grantee an easement for encroachments as more specifically described in Exhibit A. The granting of this easement is conditioned upon the following:

- (1) The City may unilaterally terminate the easement upon a finding of public purpose by vote of the City of Key West City Commission.

- (2) The Grantee shall pay the annual fee of \$400.00 specified in Code Section 2-938(b) (3) .
- (3) Prior to the easement becoming effective, the Grantee shall obtain Commercial General Liability insurance that extends coverage to the property that is governed by this easement with limits of no less than \$300,000.00. Coverage must be provided by an insurer authorized to conduct business in the State of Florida and with terms and conditions consistent with the latest version of the Insurance Service Office's (ISO) latest filed Commercial General Liability form. Grantee shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to the City of Key West named as an "Additional Insured".
- (4) The easement areas shall not be used in site size calculations such as lot, yard, and bulk calculations for site development unless approved by the City Manager.
- (5) To the fullest extent permitted by law, the Grantee expressly agrees to indemnify and hold harmless the City of Key West, their respective officers, directors, agenda, and employees (herein called the "indemnitees") from any and all liability for damages caused by or resulting from the Grantee's improvement in the easement area.

The easement is granted without representation or warranty as to Grantor's ownership of the Accretion Parcel and is made solely to the extent of Grantor's ownership interest in the Accretion Parcel, if any.

III. CONSIDERATION

Grantee agrees to pay Grantor an annual fee for this easement in the total amount of \$400.00, payable annually on the anniversary date of the execution of this Easement Agreement, to the City of Key West. Failure to pay such annual fee and/or to conform with agreed upon additional conditions within thirty (30) days of Grantor's notice to Grantee of such failure shall constitute grounds for Grantor to terminate the easement.

IV. NO WAIVER

Grantee's acceptance of this Easement Agreement and Grantee's payment of annual easement fees shall be without prejudice to Grantee's claim of ownership of the Accretion Parcel and shall not in any event be deemed to be a recognition of an ownership interest of Grantor in the Accretion Parcel nor shall it be deemed to be a recognition of an ownership interest of Grantee in the Accretion Parcel.

V. EASEMENT TERMINATION

Grantee shall have the right to repair and maintain the fence.

In the event Grantor unilaterally terminates the easement as provided in Section II(1) above, then no compensation shall be due to Grantee as a result of the termination and, any claim by Grantor of a right to use the property after such termination shall be subject to Grantee's disputed claim of ownership. This easement shall terminate upon failure of the Grantee or its heirs, successors, or assigns, after thirty (30) days' notice from Grantor, to maintain the liability insurance in a minimum amount of three hundred thousands dollars (\$300,000.00) per incident and any other insurance cover specifications set forth in this agreement and/or failure to name the City of Key West as an additional insured, for that portion of real property which is the subject of this easement.

This Easement Agreement shall be considered a covenant that runs with the land and shall be binding upon and inure to the benefit of the parties hereto, and their heirs, successors and assigns.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Easement Agreement the date above written.

ATTEST:

CITY OF KEY WEST

CHERYL SMITH, CITY CLERK

PATTI MCLAUCHLIN, CITY MANAGER

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me by means of [] physical presence, or [] online notarization, this ____ day of _____, 2022, by Patti McLauchlin, authorized person of the City of Key West, on behalf of the City.

Signature of Notary Public
State of Florida

Name of Notary

Personally Known

OR Produced Identification _____

Type of Identification
Produced _____

GRANTEE

SH5, LTD., a Florida limited partnership

SH5, Inc., a Florida corporation, its General Partner

Robert A. Spottswood, Chairman & CEO

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me by means of [] physical presence, or [] online notarization, this ____ day of _____, 2022, by Robert A. Spottswood, as Chairman and CEO of SH5, Inc., a Florida corporation, the General Partner of SH5, Ltd., a Florida limited partnership, authorized person of SH5 Ltd.

Signature of Notary Public
State of Florida

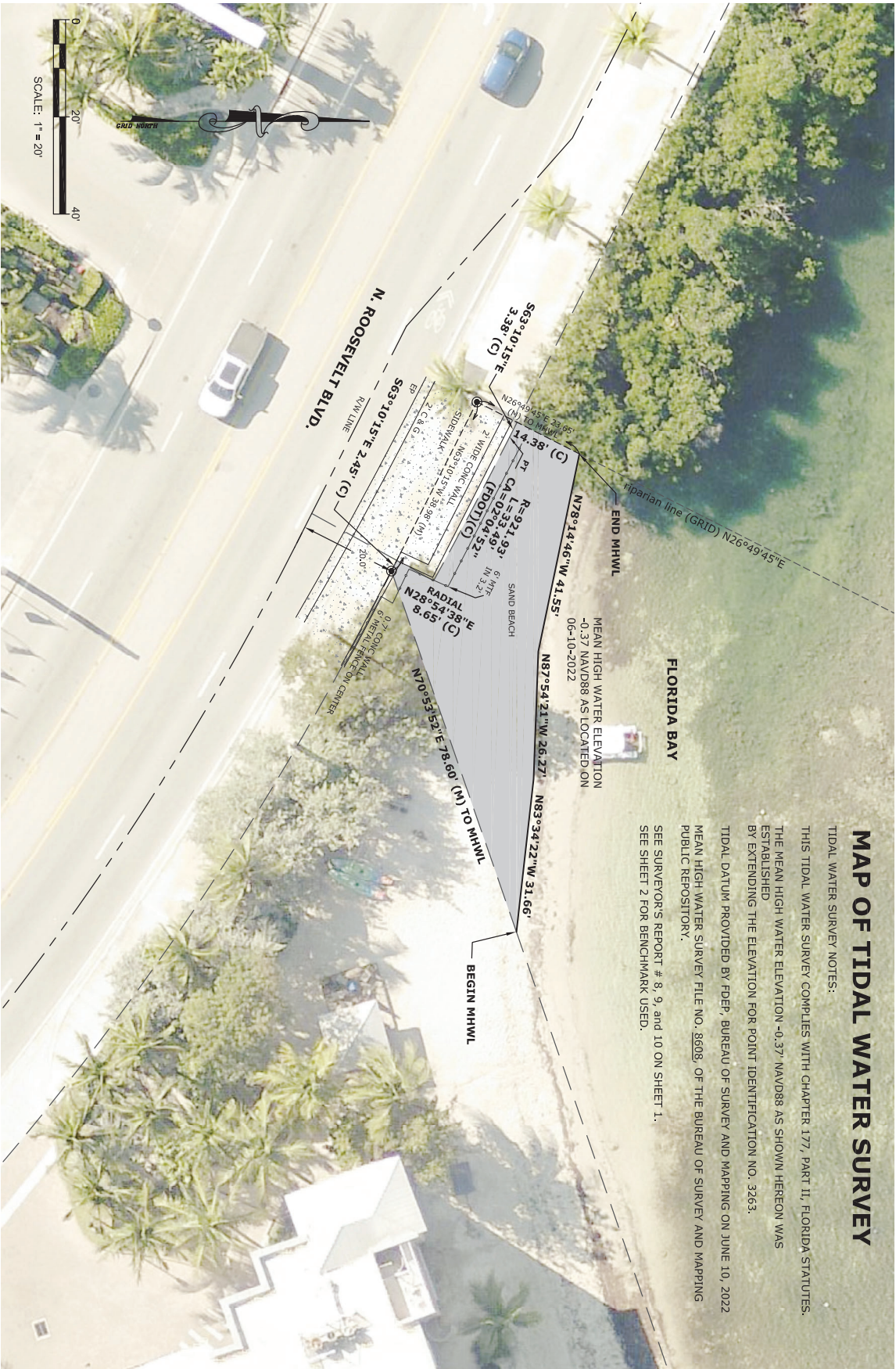
Name of Notary

Personally Known

OR Produced Identification _____

Type of Identification
Produced _____

EXHIBIT A



MAP OF TIDAL WATER SURVEY

TIDAL WATER SURVEY NOTES:

THIS TIDAL WATER SURVEY COMPLIES WITH CHAPTER 177, PART II, FLORIDA STATUTES. THE MEAN HIGH WATER ELEVATION -0.37 NAVD88 AS SHOWN HEREON WAS ESTABLISHED BY EXTENDING THE ELEVATION FOR POINT IDENTIFICATION NO. 3263. TIDAL DATUM PROVIDED BY FDEP, BUREAU OF SURVEY AND MAPPING ON JUNE 10, 2022. MEAN HIGH WATER SURVEY FILE NO. 8608, OF THE BUREAU OF SURVEY AND MAPPING PUBLIC REPOSITORY. SEE SURVEYOR'S REPORT # 8, 9, and 10 ON SHEET 1. SEE SHEET 2 FOR BENCHMARK USED.

**SPECIFIC PURPOSE AND
TIDAL WATER SURVEY
CITY OF KEY WEST
MONROE COUNTY, FLORIDA**

SHEET: 3 OF 3	
FB/PG: 22052306	
FLD: RW / BS	2. ADD DESCRIPTION & SKETCH: 10-01-2022 SHEET 2 OF 3: BY KB
OFF: KB CKD: RER	1. PER FDEP COMMENTS: 8-25-2022: BY KB
DATE: 06/13/2022	REVISIONS/ADDITIONS



REECE & ASSOCIATES
PROFESSIONAL SURVEYOR AND MAPPER, LB 7846
31193 AVENUE A, BIG PINE KEY, FL 33043
OFFICE (305) 872-1348
EMAIL INFO@RECEESURVEYING.COM