AGREEMENT

THIS AGREEMENT made and entered into this _____ day of ______, 2020, by and between the City of Key West, a municipal corporation of the State of Florida, whose mailing address is P.O. Box 1409, Key West, Florida 33040, hereafter referred to as the "CITY" and Reef Relief, Inc., a not for profit corporation of the State of Florida, whose address is 631 Greene Street, Key West, Florida, 33040, hereafter referred to as "REEF RELIEF". This agreement shall be effective on the date of execution of the last party to sign the AGREEMENT for the term specified in Paragraph 3.1.

Whereas, Reef Relief is a not for profit membership organization with headquarters in Key West, Florida, dedicated to protecting coral reef ecosystems and educating the public on coral reef ecosystems; and

Whereas, on March 20, 2001, at the request of Reef Relief, the City Commission of the City of Key West passed Resolution No. 01-89, supporting the development of a marine park on the oceanside of Key West from Duval Street to the White Street Pier; and

Whereas, on September 5, 2001, the City Commission of the City of Key West passed Resolution No. 01-259, approving a Memorandum of Understanding between City and Reef Relief providing for the development of the Key West Marine Park on the oceanside of Key West from Duval Street to the White Street Pier; and

Whereas, the Key West Marine Park is located on state-owned, submerged land; and

Whereas, on June 17, 2011, the Florida Department of Environmental Protection issued its Letter of Consent to City to manage a near shore swimming area in waters located in the Key West Marine Park and adjacent to the southwestern part of Key West in the Atlantic Ocean, a copy of which is attached hereto, incorporated by reference, and more particularly described as Exhibit "A"; and

Whereas, the parties desire to amend the provisions contained in the Memorandum of Understanding referred to herein above; and

Whereas, Reef Relief has the expertise, equipment, and funding to maintain the Key West Marine Park.

NOW THEREFORE, City and Reef Relief agree as follows:

Article 1. Obligations of Reef Relief

1.1. At no cost whatsoever to the City, Reef Relief agrees to provide the following services to maintain the Key West Marine Park in accordance with the conditions contained in the Letter of Consent from the Florida Department of Environmental Protection referred to herein above:

- A. Maintenance: Reef Relief agrees to assume responsibility for maintaining and servicing the thirty-four (34) demarcation buoys associated with the Key West Marine Park.
- B. Education: Reef Relief agrees to produce educational materials to be available to residents and visitors to the park containing the rules for ecofriendly snorkeling, boating, and fishing. Reef Relief agrees to install and maintain educational signage along the shoreline on both public and private uplands of the Key West Marine Park.

Article 2. Obligations of the City

2.1 Subject to the limitations contained herein, the City herein expressly agrees to grant Reef Relief access to City property for the purpose of fulfilling Reef Relief's obligations as specified herein.

Article 3. General Legal Provisions

- 3.1. Agreement Period
 - A. The duration of this Agreement shall be 5 years commencing from the effective date of this Agreement. The City shall have the option to renew this Agreement for a period of five years upon written notice to Reef Relief no less than 60 days prior to the expiration of the initial term.

3.2. Termination

A. This agreement may be terminated at any time, with or without cause, by either party hereto upon one hundred eighty (180) days written notice to the other party. No further work will be performed by Reef Relief upon receipt of the City's notice unless specifically authorized by the General Services Department Director of the City of Key West.

3.3. Indemnification

A. Reef Relief agrees to protect, defend, indemnify, save and hold harmless The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss of destruction of any property which may occur or in any way grow out of any act or omission of Reef Relief, its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the City as a result of any claim, demands, and/or causes of action except of those claims, demands, and/or causes of action arising out of the negligence of The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees. Reef Relief agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense

and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent. Nothing contained in this indemnification is intended to act as a waiver of City's right of sovereign immunity pursuant to Florida law, including those rights contained in section 768.28, Florida Statutes. This indemnification shall survive the expiration or termination of this Agreement. Reef Relief shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the City's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the City whether performed by Reef Relief, or by persons employed or used by Reef Relief.

- 3.4. Insurance
 - A. Reef Relief shall keep in full force and effect at all times during the effective period of this contract, and at its own cost and expense, the following insurance in insurance companies authorized in the State of Florida, with an A.M. Best rating of A-:VI or higher and shall provide evidence of such insurance to the City. The policies or certificates shall provide thirty (30) days prior to cancellation notices of same shall be given to the City by U.S. Mail for all of the required insurance policies stated below. All notices shall name Reef Relief and identify the contract number. The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees are to be added as "additional insured" as respects liability arising out of activities performed by or on behalf of the Contractor. *Waiver of Subrogation in favor of the City of Key West City Government is required on all policies excepting Workers' Compensation*.

Reef Relief shall maintain limits no less than those stated below:

- 1. Worker's Compensation Statutory in compliance with the Compensation law of the State of Florida. The coverage must include Employer's Liability with a limit of One Million (\$1,000,000) Dollars each accident.
- 2. Commercial General Liability The Contractor's Commercial General Liability (CGL) shall be in an amount acceptable to the City of Key West but not less than Five Hundred Thousand Dollars (\$500,000.00) Dollars Combined Single Limit per occurrence and One Million (\$1,000,000.00) Dollars annual aggregate. The coverage must include:
 - Commercial Form
 - Premises/Operations
 - Products/Completed Operations
 - Independent Contractors (if any part of the Work is to be subcontracted)
 - Broad Form Property Damage
 - Personal Injury

- 3. Automobile Liability Insurance with a minimum limit of liability per occurrence of One Million (\$1,000,000.00) Dollars for bodily injury and property damage. This insurance shall include for bodily injury and property damage the following coverage:
 - Owned automobiles
 - Hired automobiles
 - Non-owned automobiles
- 4. Certificates of Insurance

Certificates of Insurance shall be filed and maintained throughout the life of this Contract with the City Clerk evidencing the minimum limits of insurance cited above. All policies shall provide they may not be terminated or modified without insurer providing the City of Key West at least thirty (30) days advance notice. Additionally, Reef Relief shall immediately notify the City of any cancellation of such insurance.

In addition, it is understood if at any time any of the policies required by City shall become unsatisfactory to the City as to form or substance, or if a company issuing any such policy shall become unsatisfactory to the City, Reef Relief shall obtain an new policy, submit the same to the City for approval and submit a certificate of insurance as which may be required by the contract. It is understood that upon failure of Reef Relief to furnish, deliver and maintain such insurance as above provided, the contract at the election of the City may be declared suspended, discontinued or terminated. Further, failure of Reef Relief to take out and/or maintain any required insurance shall not relieve Reef Relief from any liability under the contract, nor shall the insurance requirements be construed to conflict with the obligations of Reef Relief concerning indemnification.

- 3.1. Assignment
 - A. Reef Relief shall not assign all or any part of this Agreement.
- 3.2. Jurisdiction
 - A. The law of the state of Florida and Monroe County will govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.
- 3.3. Severability and Survival
 - A. If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will affect any other provision, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

- 3.4. Attorney's Fees
 - A. In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights, including those expended on appeal.

IN WITNESS WHEREOF, the parties execute below on this _____ day of _____, 2020

THE CITY OF KEY WEST, FLORIDA

By: ______ Teri Johnston, Mayor

ATTEST:

Cheri Smith City Clerk

REEF RELIEF, INC.

By: _____

Bob Cardenas, its President

EXHIBIT "A"



Florida Department of Environmental Protection

South District Branch Office 2796 Overseas Highway Sulte 221 Marathon, FL 33050 Rick Scott Governor

Jennifer Carroll L. Governor

Herschel T. Vinyard Jr. Secretary

May 27, 2011

City of Key West c/o David M Hawthorne 1801 North Roosevelt Boulevard Key West, FL 33040

Re: Monroe County - ERP Use Agreement No. 44-143 BOT: 440224505 PA File No: 44-0190163-001

Dear Mr. Hawthorne:

Thank you for applying to the Submerged Lands and Environmental Resources Program, as staff to the Board of Trustees of the Internal Improvement Trust Fund, to manage a nearshore swimming area in waters located adjacent to the southwestern part of Key West in the Atlantic Ocean, Class III, Outstanding Florida Waters, Section 5, Township 68 South, Ranges 25 East, Monroe County.

PROPRIETARY REVIEW - APPROVED

Your project occurs on state-owned, submerged land and will require authorization from the Department to use these lands. The Department has reviewed your project as described above and on the documents and/or drawings attached to your Management Agreement No. 44-143, and as long as the work performed is located within the boundaries as described and is consistent with the terms and conditions therein, we find your project qualifies for consent to use state-owned submerged lands. As such, consider this letter to also constitute authorization to perform the activity. This consent is conditioned upon acceptance of and compliance with the attached General Consent Conditions.

Consider this the authority sought under Section 253.77, Florida Statutes (F.S.), and Chapters 18-21, Florida Administrative Code (F.A.C.), to pursue this project.

Prior to the commencement of construction and/or activities authorized herein, you must obtain the U.S. Army Corps of Engineers (Corps) permit if it is required by the Corps. Any modifications to the construction and/or activities authorized herein that may be required by the Corps shall require reconsideration by and the prior written

"More Protection, Less Process" www.dep.state.fi.us City of Key West Use Agreement No. 44-143 BOT No. 440224505 Page 2 of 3

approval of the Department of Environmental Protection prior to commencement of construction and/or any activities on sovereignty submerged lands.

This letter in no way waives the authority and/or jurisdiction of any government entity, nor does it disclaim any title interest the state may have in the project site. Please check with your local government for specific requirements. Where local governments have standards, the more stringent standards shall apply. This letter does not constitute authority to proceed with your project under Chapter 403, F.S.

Your project may be inspected by authorized state personnel in the future to ensure compliance with appropriate laws and rules. If your project is not in compliance, you may be subject to penalties under Chapter 18-14, F.A.C.

GENERAL CONSENT CONDITIONS FOR AUTHORIZATIONS

Rule 18-21.004(7), Florida Administrative Code (F.A.C.), provides that all authorizations granted by rule or in writing under Rule 18-21.005, F.A.C., except those for aquaculture activities and geophysical testing, shall be subject to the general conditions as set forth in paragraphs (a) through (i) below. The general conditions shall be part of all authorizations under this chapter, shall be binding upon the grantee, and shall be enforceable under Chapter 253 or Chapter 258, Part II, Florida Statutes, (F.S.).

- a) Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use the conditions for undertaking that activity or use shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.
- b) Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.
- c) Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in Sections 253.04 and 258.46, F.S., or Chapter 18-14, F.A.C.
- d) Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.

City of Key West Use Agreement No. 44-143 BOT No. 440224505 Page 3 of 3

- e) Construction, use, or operation of the structure or activity shall not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004, and 68A-27.005, F.A.C.
- f) Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.
- g) Structures or activities shall not create a navigational hazard.
- h) Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions of Rule 18-21.005, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident, or fire.
- Structures or activities shall be constructed, operated, and maintained solely for water dependent purposes, or for non-water dependent activities authorized under Rule 18-21.004(1) (g), F.A.C., or any other applicable law.

Thank you for applying to the Submerged Lands and Environmental Resources Program. If you have any questions, please contact Yanett Langley at the letterhead address, by telephone at (305) 289-7085, or by e-mail at

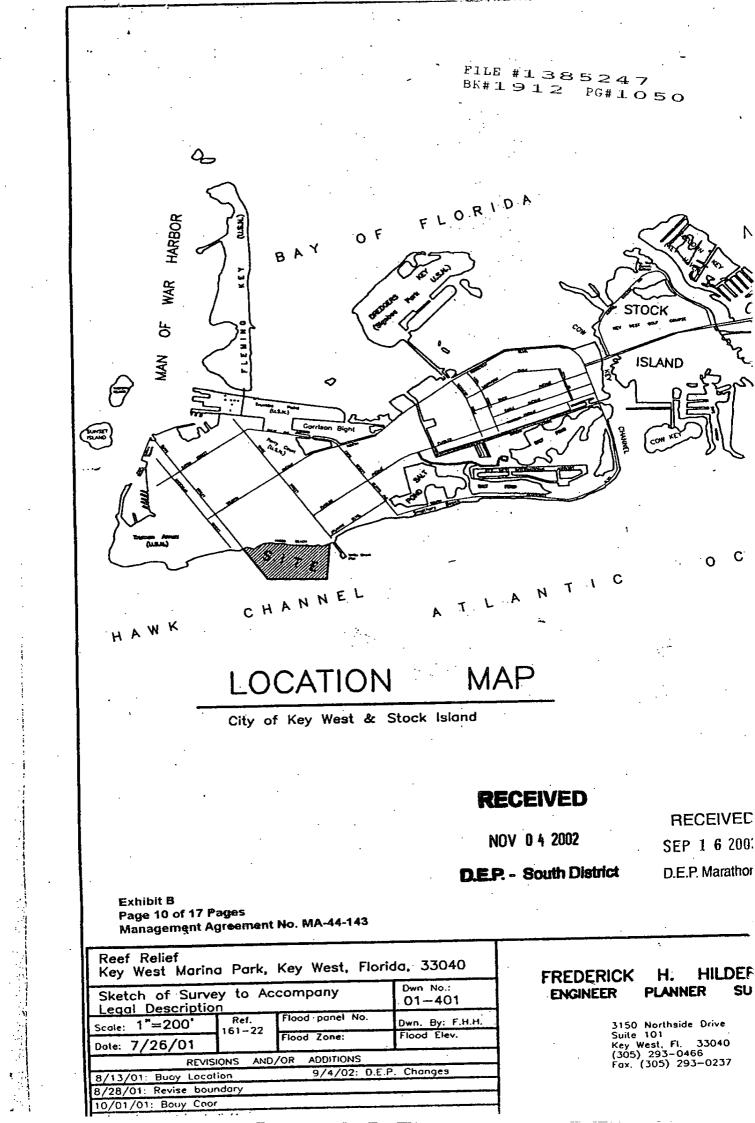
<u>Yanett.Langley@dep.state.fl.us</u>. When referring to this project, please reference this file number listed above.

Sincerely,

Since parch

Bruce Franck Environmental Manager Submerged Lands and Environmental Resource Program

BF/yl



LEGAL DESCRIPTION: Swim Area & Entry Lane One & Two:

A parcel of submerged land lying and being in Section 5. Township 68 South, Range 25 East, in the Straits of Florida, and lying Southerly of and adjacent to the Mean High wate line of the Island of Key West, between Duval Street and the White street pier, Monroe County, Florida, and being more particularly described as follows:

Commence at the intersection of the Southeasterly Right-of-Way Line of South Street and the Southwesterly Right-of-Way line of Duval Street; thence S 34.03'06" E (bearings devired from State Plane Coordinates, 1983, Florida East Zone) along the said

Southwesterly Right-of-Way line of Duval Street for 266.14 feet, more or less to the Mec High Water Line of the Straits of Florida and the Point of Beginning (N 24.32'47.55", W 081°47'45.45"); thence S 34°03'06" E for 351.60 feet; thence S 88°30'00" E for 3350.45 feet; thence N 8'00'00" E for 626.75 feet. more or less (N 24'32'50.15", W

081°47'06.12") to the said Mean High water line of the Straits of Florida; thence meander the said Mean High Water Line in a Westerly direction along Boulder Rip-Rap seawalls, concrete seawalls and sandy beaches for 3650 feet, more or less to the Point of Beginning;

Containing 32.44 Acres, more or less.

LEGAL DESCRIPTION: Entry Lane One:

A parcel of submerged land lying and being in Section 5, Township 68 South, Range 25 East, in the Straits of Florida, and lying Southerly of and adjacent to the Mean High water line of the Island of Key West, Monroe County, Florida, and being more particularly described as follows:

Commence at the intersection of the Southeasterly Right-of-Way Line of South Street and the Southwesterly Right-of-Way line of Simonton Street; thence S 34'03'06" E (bearings devired from State Plane Coordinates, 1983, Florida East Zone) along the said Southwesterly Right-of-Way line of Simonton Street for 521.98 feet, more or less to the Mean High Water Line of the Straits of Florida and the Point of Beginning (N

24.32'48.43", W 081.47'39.13"); thence S 05.00'00" E for 390.07 feet to the Southerly line of the Swim area; thence S 88'30'00" E for 125.81 feet along the said Southerly line of the Swim area; thence N 5.00'00" W for 434.31 feet, more or less (N 24.32'48.84", W 081°47'37.81") to the soid Mean High water line of the Straits of Florida; thence meander the said Mean High Water Line in a Westerly direction along a Sandy Beach and a concrete for 125 feet, more or less to the Point of Beginning; seawall Containing 1.20 Acres, more or less.

LEGAL DESCRIPTION: Entry Lane Two:

A parcel of submerged land lying and being in Section 5, Township 68 South, Range 25 East, in the Straits of Florida, and lying Southerly of and adjacent to the Mean High water line of the Island of Key West, Monroe County, Florida, and being more particularly described as follows:

Commence at the intersection of the Southwesterly Right-of-Way Line of Alberta Street and the Northwesterly Right-of-Way line of Seminole Street; thence S 55'54'26" W(bearings devired from State Plane Coordinates, 1983, Florida East Zone) along the said Northwesterly Right-of-Way line of Seminole Street for 155.80 feet, to the Mean High Water Line of the Straits of Florida; thence N 85'21'21" W for 121.13 feet to the Point of Beginning; thence S 06'37'21" E for 533.26 feet to the Southerly line of the Swim area; thence S 88'30'00" E for 426.62 feet along the said Southerly line of the Swim area; thence N 6'30'00" E for 533.21 feet, more or less (N 24'32'49.63", W 081'47'28.05") to the said Mean High water line of the Straits of Florida; thence meander the said Mean High Water Line in a Westerly, Southerly, Northwesterly and Westerly direction along a Sandy Beach and a concrete seawall for 500 feet, more or less to the Point of Beginning; Containing 5.77 Acres, more or less.

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<mark>Reef Relief</mark> Key West Marin	a Park,	Key West, Flo	orida, 33040		·			
Sketch of Survey to Accompany Dwn No.: Legal Description 01-401				FREDERICK H. HILDEBRANI ENGINEER PLANNER SURVEYO				
Scale: 1"=200"	"=200" Ref. Flood panel No.		Dwn. By: F.H.H.					
Dote: 7/26/01	161-22	Flood Zone:	Flood Elev.	3150 Northside Drive Suite 101				
REVIS		OR ADDITIONS		Key West, Fl. 33040 (305) 293−0466				
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BUOY LOCATIONS

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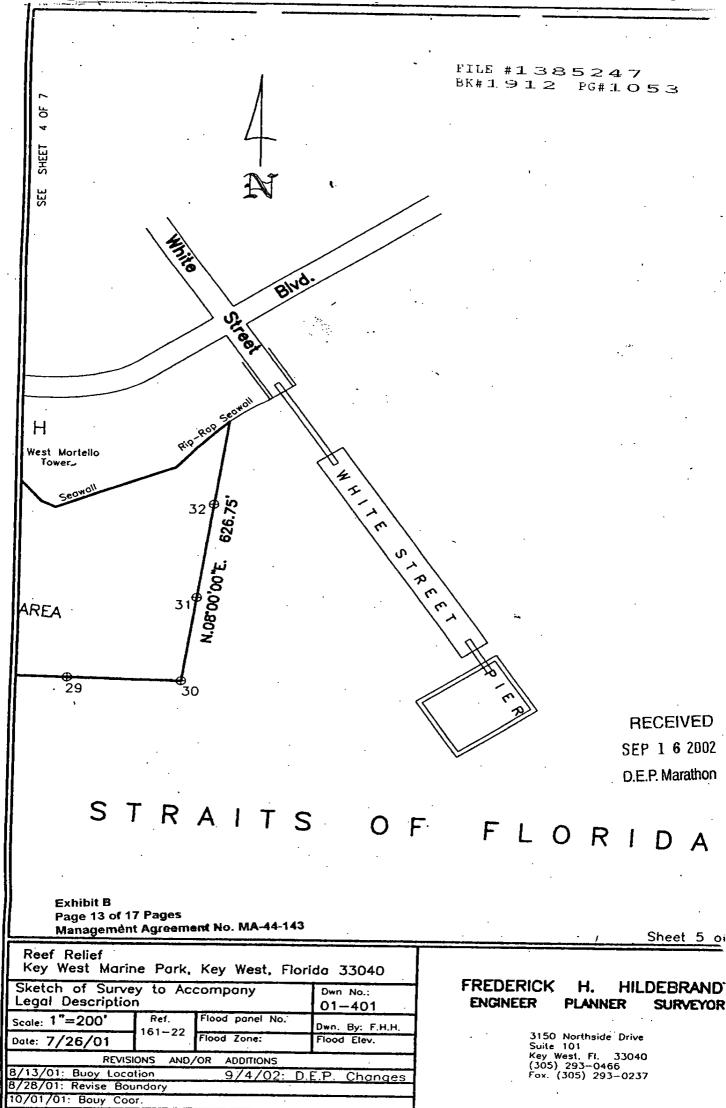
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3	77947.84	391694.39		
4	77942.32	391792.82		
5	77936.72	392003.64	N 24'32'44.64	
6	77958.72	392214.59	N 24°32'44.59	· · · -
7		392204.42	N 24°32°45.73	
. 8	78157.80	392195.12	N 24'32'46.78	
	78266.04	392185.65	N 24'32'47.85	
9	78267.23	392311.02	N 24'32'47.87	· · · · · · ·
10	78158.66	392320.52	N 24'32'46.80'	
11	78053.26	392329.74	N 24'32'45.75'	-
12	77934.45	392340.32	N 24°32'44.58'	
13	77930.22	392465.59	N 24°32'44.54'	
14	77926.29	392615.80	N 24'32'44.51"	
. 15 .	77923.61	392717.97	N 24 32 44.49"	
16	78097.59	392697.77	N 24'32'46.21"	
17	78308.94	392673.24	N 24'32'48.31"	•
18	78336.92	393192.81	N 24°32'48.61"	W 81'47'28.16"
19 ·	78215.72	393179.00	N 24'32'47.41"	W 81'47'28.30"
20	78081.96	39,3163.76	N 24'32'46.08"	W 81'47'28.46"
21	77912.45	393144.45	N 24'32'44.40"	W 81'47'28.66"
22	77906.69	393364.37	N 24'32'44.36"	W 81°47'26.27"
23	77900.93	393584.30	N 24'32'44.32"	W 81°47'23.89°
24	77895.17	393804.22	N 24°32'44.27"	W 81'47'21.51"
- 25	77889.41	394024.15	N 24°32'44.23"	W 81'47'19.13"
26	77883.65	394244.07	N 24'32'44.18"	W 81'47.16.75 ["]
. 27	77877.89	394464.00	N 24°32'44.14"	W 81'47'14.36"
28	77872.13	, 394683.92	N 24°32'44.09"	W 81'47'11.98"
29	77866.37	394903.85	N 24°32'44.05"	W 81'47'09.60"
30	77860.13	395142.13	N 24'32'44.00"	W 81'47'07.02"
31	78058.19	395169.96	N 24'32'45.96"	W 81'47'06.73"
32 .	78282.73	395201.52	N 24'32'48.19"	W 81'47'06.40"
. 33	77834.98	392282.50	N 24'32'43.59"	W 81'47'37.99"
34	77817.79	392939.14	N 24°32'43.46"	W 81'47'30.87"
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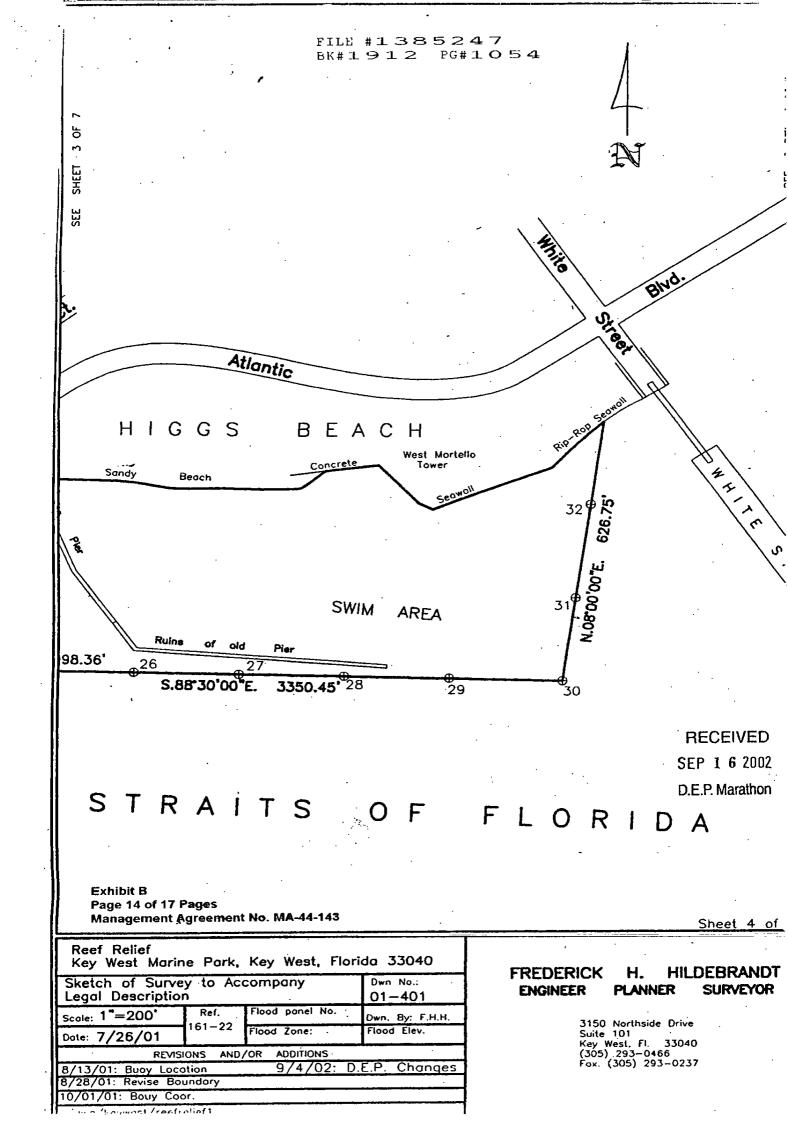
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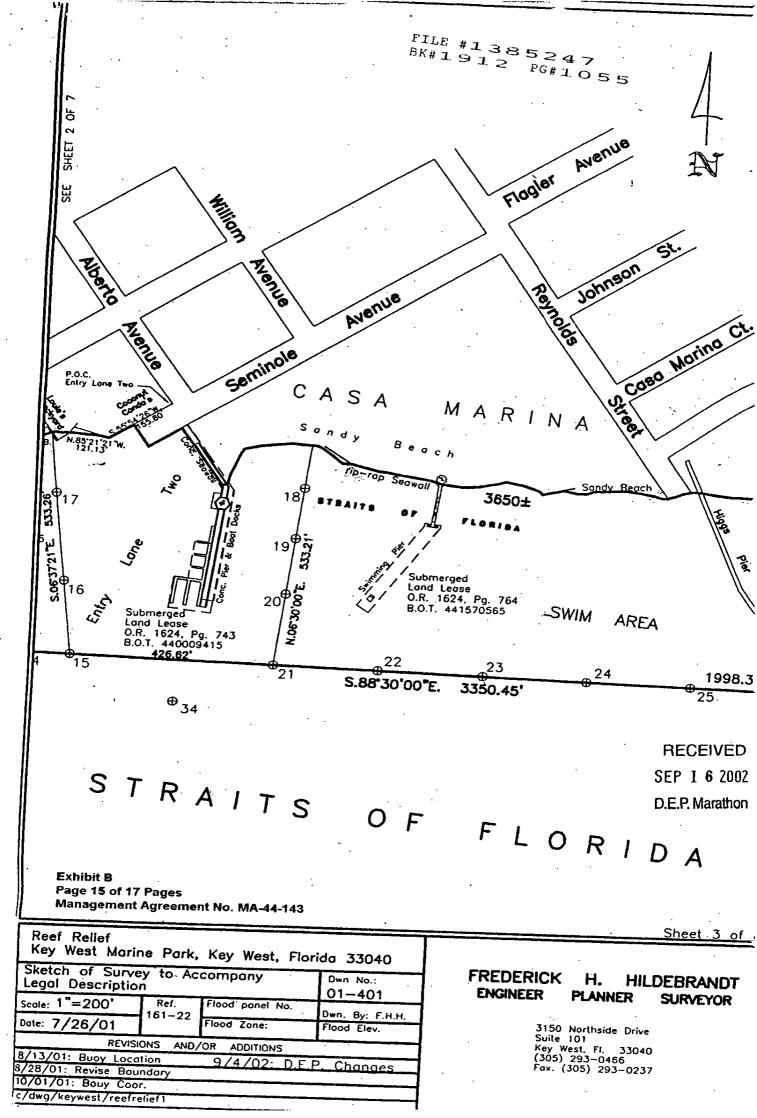
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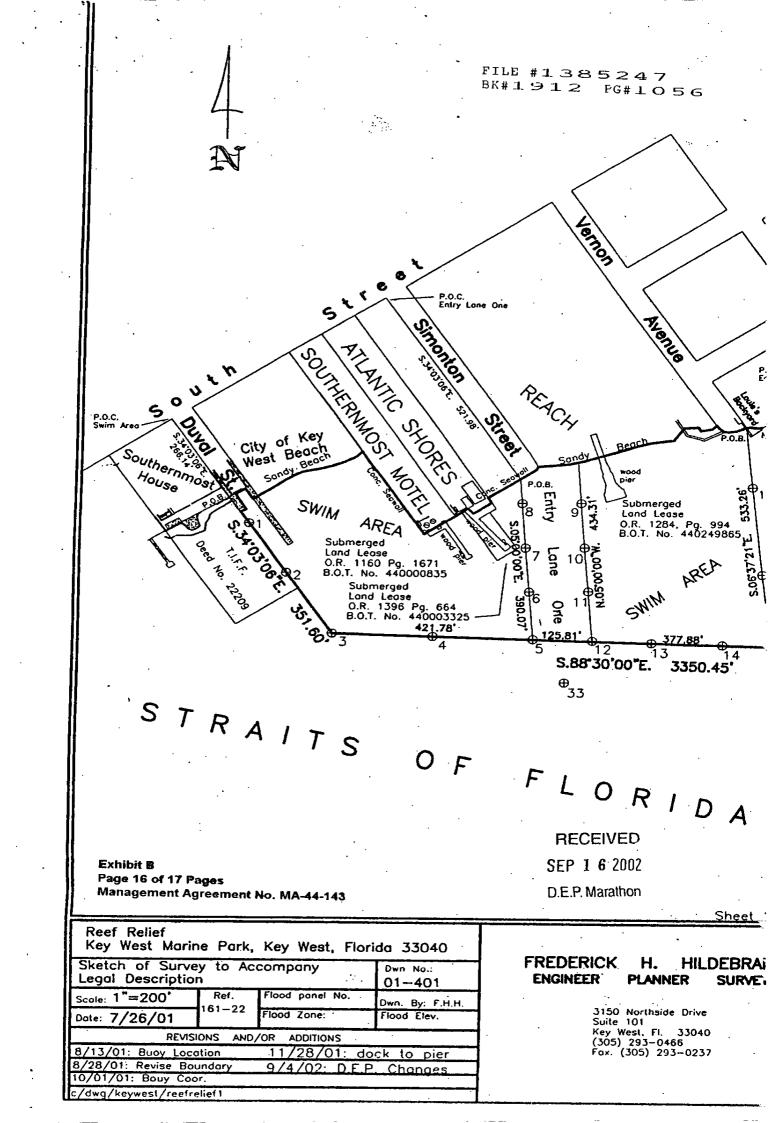
3150 Northside Drive Suite 101 Key West, Fl. 33040 (305) 293–0466 Fax. (305) 293–0237







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SURVEYORS NOTES:

- 1. North arrow and bearings devired from State Plane Coordinates, 1983, Florida, east Zone.
- 2. Field work performed on 7/16/01.
- 3. The Mean High Water line is not intended to be a legal boundary between private and state ownership.
- 4. Mean High Water Line lies at Elevation 0.92 N.G.V.D. 1929 Datum. 5. All improvements, T.I.I.F. Deeds, and Submerged land leases are shown on the survey.
 - P.O.C. = Point of Commencement P.O.B. = Point of Beginning

⊕ Denotes Bouy

CERTIFICATION:

I HEREBY CERTIFY that the attached Survey Sketch to Accompany Legal Description is true and correct to the best of my knowledge and belief; that it meets the minimum technical standards adopted by the Florida Board of Land Surveyors, Chapter 61G17-6, Florida Statute Section 472.027, and the American Land Title Association, and that there are no visible encroacements unless shown hereon. 1

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FREDERICK H. HILDEBRANDT Professional Land Surveyor & Mapper No.	2740
Professional Engineer No. 36810 State of Florida	2/73

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SFP 1 6 2002

D.E.P. Marathon

Exhibit B								
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Management Agreement No). MA-⁄	44-143						

Reef Relief Key West Marin	a Park,	Key West, Flo	rida, 33040		
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Scale: 1"=200'	Ref.	Flood ponel No.	Dwn. By: F.H.H.		
Date: 7/26/01	161-22	Flood Zone:	Flood Elev.		
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ENGINEER	PLANN	ER	SURVEYOR

. Sheet 8 of

3150 Northside Drive Suite 101 Key West, Fl. 33040 (305) 293-0466 Fax. (305) 293-0237 MONROE COUNTY OFFICIAL RECORDS