

## **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



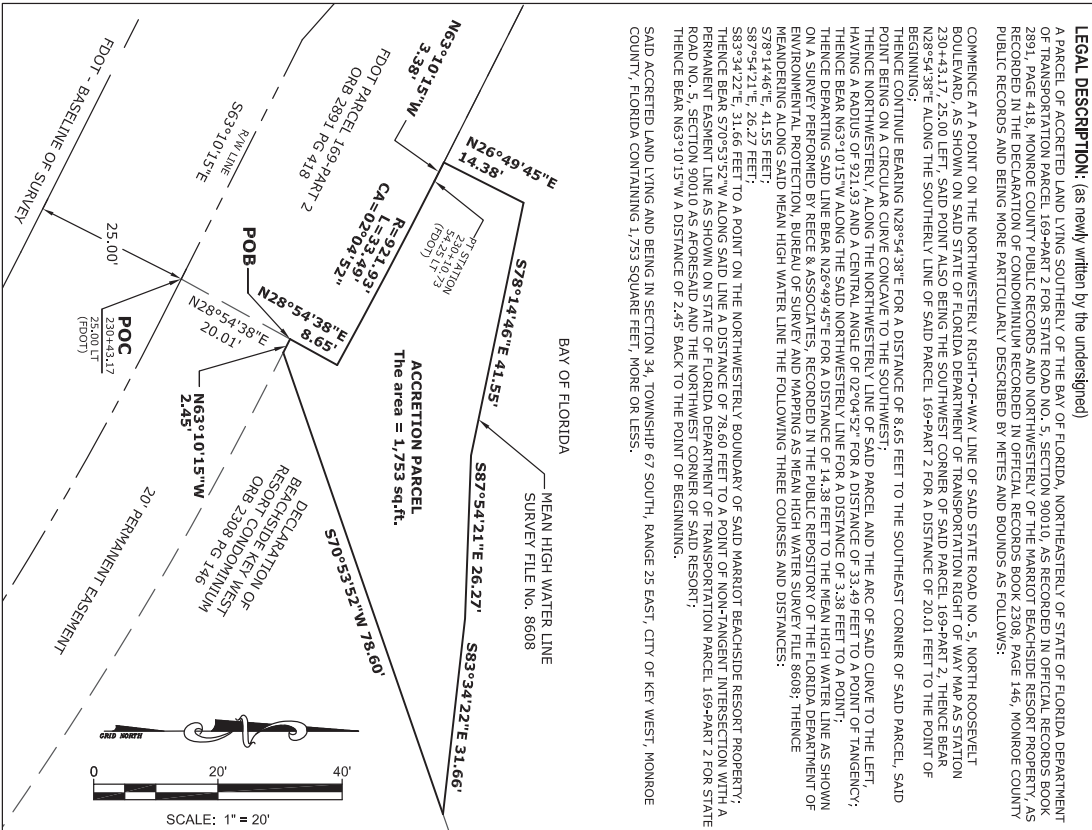
FLORIDA BAY

MAP OF SURVEY

SEE DESCRIPTION & SKETCH THIS SHEET  
SEE TIDAL WATER SURVEY SHEET 3 OF 3



ACCRETION PARCEL  
DESCRIPTION & SKETCH



**LEGAL DESCRIPTION:** (as newly written by the undersigned)  
A PARCEL OF ACCRETED LAND LYING SOUTHWESTLY OF THE BAY OF FLORIDA, NORTHEASTERLY OF STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION PARCEL 169-PART 2 FOR STATE ROAD NO. 5, SECTION 90010, AS RECORDED IN OFFICIAL RECORDS BOOK 2891, PAGE 418, MONROE COUNTY PUBLIC RECORDS AND NORTHWESTERLY OF THE MARRIOTT BEACHSIDE RESORT PROPERTY, AS RECORDED IN THE DECLARATION OF CONDOMINIUM RECORDED IN OFFICIAL RECORDS BOOK 2308, PAGE 146, MONROE COUNTY PUBLIC RECORDS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:  
COMMENCE AT A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SAID STATE ROAD NO. 5, NORTH ROOSEVELT BOULEVARD, AS SHOWN ON SAID STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP AS STATION 230+43.17, 25.00 FEET, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID PARCEL 169-PART 2, THENCE BEAR N28°54'38"E ALONG THE SOUTHWEST CORNER OF SAID PARCEL 169-PART 2 FOR A DISTANCE OF 20.01 FEET TO THE POINT OF BEGINNING;  
THENCE CONTINUE BEARING N28°54'38"E FOR A DISTANCE OF 8.65 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL, SAID POINT BEING ON A CIRCULAR CURVE CONCAVE TO THE SOUTHWEST;  
THENCE NORTHWESTERLY ALONG THE NORTHWESTERLY LINE OF SAID PARCEL AND THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 921.93 AND A CENTRAL ANGLE OF 02°04'52" FOR A DISTANCE OF 33.49 FEET TO A POINT;  
THENCE BEAR N63°10'15"W ALONG THE SAID NORTHWESTERLY LINE FOR A DISTANCE OF 14.38 FEET TO THE MEAN HIGH WATER LINE AS SHOWN ON A SURVEY PERFORMED BY REECE & ASSOCIATES, RECORDED IN THE PUBLIC REPOSITORY OF THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, BUREAU OF SURVEY AND MAPPING AS MEAN HIGH WATER SURVEY FILE 8608; THENCE MEANDERING ALONG SAID MEAN HIGH WATER LINE THE FOLLOWING THREE COURSES AND DISTANCES:  
S87°14'46"E, 41.55 FEET;  
S87°54'21"E, 26.27 FEET;  
S83°34'22"E, 31.66 FEET;  
THENCE BEAR N26°49'45"E ALONG SAID LINE TO THE POINT OF BEGINNING OF SAID PARCEL 169-PART 2 FOR SAID POINT;  
THENCE BEAR N63°10'15"W ALONG SAID LINE AS SHOWN ON STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION PARCEL 169-PART 2 FOR STATE ROAD NO. 5, SECTION 90010 AS AFORESAID AND THE NORTHWEST CORNER OF SAID RESORT;  
THENCE BEAR N63°10'15"W A DISTANCE OF 2.45' BACK TO THE POINT OF BEGINNING.

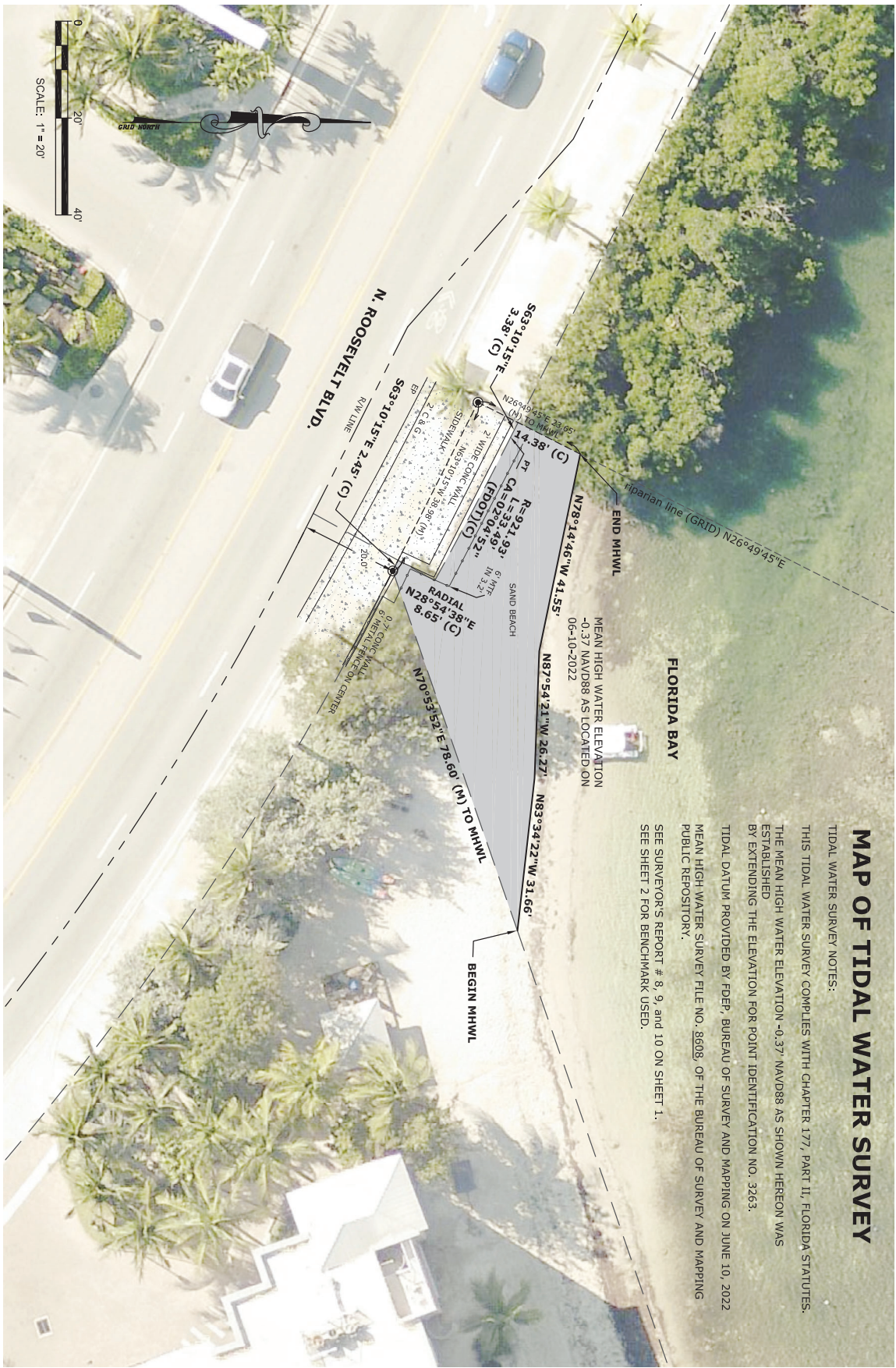
SAID ACCRETED LAND LYING AND BEING IN SECTION 34, TOWNSHIP 67 SOUTH, RANGE 25 EAST, CITY OF KEY WEST, MONROE COUNTY, FLORIDA CONTAINING 1,753 SQUARE FEET, MORE OR LESS.

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CAD: \\RECESERVER\Projects\Key West\DWG\BEACH\22052306 - SURVEY\dwg\22052306.dwg

<b>SPECIFIC PURPOSE AND TIDAL WATER SURVEY CITY OF KEY WEST MONROE COUNTY, FLORIDA</b>	
SHEET: 2 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@RECESURVEYING.COM





# 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.

MEAN HIGH WATER ELEVATION  
-0.37 NAVD88 AS LOCATED ON  
06-10-2022

FLORIDA BAY



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CAD: \\RECESESERVER\Projects\Key West\DWG\ BEACH\22052306 - SURVEY\dwg\22052306.dwg

<b>SPECIFIC PURPOSE AND TIDAL WATER SURVEY CITY OF KEY WEST MONROE COUNTY, FLORIDA</b>	
SHEET: 3 OF 3	
FB/PG: 22052306	
FLD: RW / BS	2. ADD DESCRIPTION & SKETCH: 10-01-2022 SHEET 2 OF 3: BY KB
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