

RESOLUTION NO. 11-164

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED DEED OF CONSERVATION EASEMENT WITH THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT (SFWMD) FOR THE KEY WEST BOTANICAL GARDEN; PROVIDING THAT MITIGATION CREDITS ARE RESERVED FOR USE BY THE CITY OF KEY WEST ON CITY PROPERTY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution 08-064, the City Commission approved a Major Development Plan for the Key West Botanical Gardens; and

WHEREAS, in Resolution 08-170, the City Commission approved a Letter of Agreement regarding maintenance and improvements at the Key West Botanical Garden;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Deed of Conservation Easement with the South Florida Water Management District for the Key West Botanical Garden is hereby approved.

Section 2: That mitigation credits awarded by this Conservation Easement shall be reserved for use by the City on City property.

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

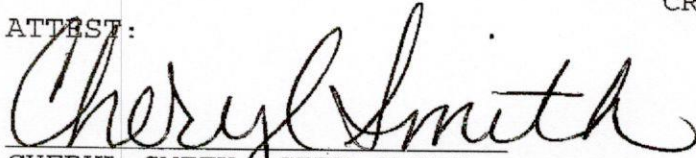
Passed and adopted by the City Commission at a meeting held this 7th day of June, 2011.

Authenticated by the presiding officer and Clerk of the Commission on June 8, 2011.

Filed with the Clerk June 8, 2011.


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH CITY CLERK



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

TO: Jim Scholl, City Manager
E. David Fernandez, Asst. City Manager – Operations
Mark Finigan, Asst. City Manager - Administration

FROM: Birchard Ohlinger, City Engineer

DATE: May 24, 2011

SUBJECT: Approval of a Conservation Easement with the South Florida Water Management District (SFWMD) at the Key West Botanical Garden and that mitigation credits awarded shall be assigned to the City.

ACTION STATEMENT:

Resolution authorizing the City Manager to execute the attached Deed of Conservation Easement with the SFWMD. Mitigation credits awarded by this Conservation Easement shall be used by the City on City property. KWBG may request from the City the use of credits for improvement of the property they currently lease.

BACKGROUND:

On 14 November 2007 the Key West Botanical Garden Society was awarded a TDC Grant in the amount of \$265,000 dollars to develop a 1.576 acre mitigation pond on property currently leased from the city. Construction of this pond is a part of the KWBG Major Development Plan that was approved by the Commission under Resolution No. 08-064. . As a stipulation to this grant, the City agreed to maintain the wetland and upland hammock in perpetuity, with the understanding that such duties will be covered by the current tenant and future tenants and not the taxpayers of Key West. Approval of the plan and agreement to maintain this mitigation pond was passed under Resolution 08-170.

PURPOSE & JUSTIFICATION:

Approval of this Conservation Easement defines what is required by the city under our agreement to maintain the property "in perpetuity". In addition the City is able to obtain mitigation credits resulting from this project to be used on other projects. Obtaining these credits is contingent upon the KWBG submitting the required monitoring reports required by the SFWMD.

OPTIONS:

There are two (2) options:

1. Approval to authorize the City Manager to execute this Deed of Conservation

MEMORANDUM

- Easement. This option will enable the City to use the credits awarded by this project.
2. The City could not approve this request and our obligations to maintain the pond will not be defined and the mitigation credits awarded by this project may be lost.

FINANCIAL IMPACT:

Approval of this easement will not have any additional financial impact on the City. Not recording this may increase the cost of future projects the City may have as South Florida Water Management Credits will have to be sourced elsewhere.

RECOMMENDATION:

City Staff recommends option #1: Approval to have this Deed of Conservation Easement approved and recorded with the County.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

DEED OF CONSERVATION EASEMENT

Return recorded document to:
South Florida Water Management District
3301 Gun Club Road, MSC 4210
West Palm Beach, FL 33406

Doc# 1841245
Bk# 2523 Pg# 684

THIS DEED OF CONSERVATION EASEMENT is given this 7th
day of JUNE, 2011, by
The City of Key West, a political subdivision of the State of
Florida, _____ ("Grantor") whose mailing address is
P. O. BOX 1409, Key West, Florida 33041-1409

to the South Florida Water Management District ("Grantee"). As used herein, the term
"Grantor" shall include any and all successors or assigns of the Grantor, and all
subsequent owners of the "Property" (as hereinafter defined) and the term "Grantee"
shall include any successor or assignee of Grantee.

WITNESSETH

WHEREAS, the Grantor is the owner of certain lands situated in
MONROE County, Florida, and more
specifically described in Exhibit "A" attached hereto and incorporated herein
("Property"); and

WHEREAS, the Grantor desires to construct
a freshwater pond, wetland and boardwalk/loop trail ("Project") at a site in
MONROE County, which is subject to the
regulatory jurisdiction of South Florida Water Management District ("District"); and

WHEREAS, District Permit No. 060711-17 (application no.)
("Permit") authorizes certain activities which affect surface waters in or of the State of
Florida; and

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

Deed of Conservation Easement - Local Governments, Incorporated by reference in Section 4.3.8, Basis of Review for
Environmental Resource Permit Applications within the South Florida Water Management District, incorporated by reference in Rule
40E-4.091, F.A.C.

sfwmd.gov

WHEREAS, the Grantor has developed and proposed as part of the Permit conditions, a conservation tract and maintenance buffer involving preservation of certain wetland and/or upland systems on the Property; and

WHEREAS, the Grantor, in consideration of the consent granted by the Permit, is agreeable to granting and securing to the Grantee a perpetual Conservation Easement as defined in Section 704.06, Florida Statutes, over the area described on Exhibit "A" ("Conservation Easement").

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 the Grantee upon the Property described on Exhibit "A" which shall run with the land and be binding upon the 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 recitals hereinabove set forth are true and correct and are hereby incorporated into and made a part of this Conservation Easement.

2. Purpose. It is the purpose of this Conservation Easement to retain land or water areas in their natural, vegetative, hydrologic, scenic, open, agricultural or wooded condition and to retain such areas as suitable habitat for fish, plants or wildlife. Those wetland and/or upland areas included in the Conservation Easement which are to be preserved, 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 Conservation Easement that may be damaged by any inconsistent activity or use.

3. Prohibited Uses. Except for restoration, creation, enhancement, maintenance and monitoring activities, or surface water management improvements, or other activities described herein that are permitted or required by the Permit, the following activities are prohibited in or on the Conservation Easement:

Deed of Conservation Easement – Local Governments, Incorporated by reference in Section 4.3.8, Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, incorporated by reference in Rule 40E-4.091, F.A.C.

- 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, except for the removal of exotic or nuisance vegetation in accordance with a District approved maintenance plan;
- 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. Passive Recreational Facilities. 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 that are not inconsistent with any District rule, criteria, the Permit and the intent and purposes of this Conservation Easement. Passive recreational uses that are not contrary to the purpose of this Conservation Easement may be permitted upon written approval by the District. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- a. The Grantor may conduct limited land clearing for the purpose of constructing such pervious facilities as docks, boardwalks or mulched walking trails; and
- b. The Grantor may construct and maintain passive public use facilities for the purpose of educating the public or allowing public access and recreation which have minimal or no impact on natural resources; and
- c. Grantor may place signs and markers as necessary to identify trails, restoration areas, or other site features related to public use and land management activities; and

Deed of Conservation Easement – Local Governments, Incorporated by reference in Section 4.3.8, Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, incorporated by reference in Rule 40E-4.091, F.A.C.

d. Grantor may construct and maintain to the extent allowed by current and future permits, at grade, management roads, fire breaks, trails, walkways, piers, observation platforms or boardwalks necessary to provide public access and management activities as provided for in the site's management plan; and

e. Grantor may remove or kill by any lawful means, exotic or nuisance vegetation or animal species, conduct prescribed burns and conduct other management activities necessary to carry out management for conservation purposes; and

f. Grantor may conduct restoration and enhancement projects which do not conflict with the purpose of this easement; and

g. The construction and use of the approved passive recreational facilities shall be subject to the following conditions:

i. Grantor shall minimize and avoid, to the fullest extent possible, impact to any wetland or upland buffer areas within the Conservation Easement Area and shall avoid materially diverting the direction of the natural surface water flow in such area;

ii. Such facilities and improvements shall be constructed and maintained utilizing Best Management Practices;

iii. Adequate containers for litter disposal shall be situated adjacent to such facilities and improvements and periodic inspections shall be instituted by the maintenance entity, to clean any litter from the area surrounding the facilities and improvements;

iv. This Conservation Easement shall not constitute permit authorization for the construction and operation of the passive recreational facilities. Any such work shall be subject to all applicable federal, state, District or local permitting requirements.

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. Property Assessments. If and to the extent that the Grantor is not exempt from assessments and assessments are levied against the Easement Parcel, Grantor shall keep the assessments on the Easement Parcel current.

8. 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

Deed of Conservation Easement – Local Governments, Incorporated by reference in Section 4.3.6, Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, incorporated by reference in Rule 40E-4.091, F.A.C.

rights hereunder.

9. 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.

10. 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.

11. Terms, Conditions, Restrictions, Purpose. The terms, conditions, restrictions and purpose of this Conservation Easement shall be referenced by Official Record Book and Page Number by Grantor in any subsequent deed or other legal instrument by which Grantor divests itself of any interest in the Conservation Easement. Any future holder of the Grantor's interest in the Property shall be notified in writing by Grantor of this Conservation Easement.

12. 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.

13. 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

MONROE

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.

The Grantor agrees to defend the title to the Conservation Easement property hereby conveyed against the lawful claims of all persons claiming by, through, or under the Grantor, except those claims created or arising from any act or omission of Grantee.

IN WITNESS WHEREOF,

The City of Key West
(Grantor) has hereunto set its authorized hand this
7th day of June,
2011.

A political subdivision of the State of Florida

By: Jim Scholl
Jim Scholl, City Manager
(Print Name and Title)

ATTEST:
BY: Cheryl Smith
City Clerk

DATE: 6-8-11

APPROVED AS TO FORM AND SUFFICIENCY

By: Larry R. Erskine
LARRY R. ERSKINE, CHIEF ASST. CITY ATTORNEY
(Print Name and Title)

Deed of Conservation Easement - Local Governments. Incorporated by reference in Section 4.3.8, Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, incorporated by reference in Rule 40E-4.091, F.A.C.

EXHIBIT A

[DESCRIPTION OF PROPERTY]

Deed of Conservation Easement – Local Governments, Incorporated by reference in Section 4.3.8. Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, incorporated by reference in Rule 40E-4.091, F.A.C.



IBI GROUP, Inc.

AUTHORIZATION # LB 3810

ENGINEERS SURVEYORS PLANNERS
 LANDSCAPE ARCHITECTS ENVIRONMENTAL CONSULTANTS
 2200 PARK CENTRAL BLVD. N. SUITE 100
 POMPANO BEACH, FLORIDA, 33064 (954) 974-2200
 2803 WATLAND CENTER PARKWAY SUITE C
 MAITLAND, FLORIDA, 32751 (407) 880-2120

Doc# 1841245
Bk# 2523 Pg# 691

LEGAL DESCRIPTION: MITIGATION AREA ONE

Being a part of land located on Stock Island, Monroe County, Florida, and being more particularly described as follows:

COMMENCING at coordinates of which are N 87,268.27 and E 407,559.07, based on the United States Coast and Geodetic Survey's Mercator Grid Coordinate System, Florida East Zone, 1983, which has for its zero coordinates a point of Latitude 24°20'00" North and 500,000 feet West of Longitude 81°00'00", said point being the intersection of the Easterly Right-of-Way Line of Junior College Road and the Northerly Right-of-Way Line of U.S. Highway No. 1 (State Road No. 5), at the Westerly end of Junior College Road; Thence North 70°40'03" East along said Northerly Right-of-Way Line of U.S. Highway No. 1, a distance of 21.39 feet; Thence North 04°20'14" West, a distance of 604.65 feet to the POINT OF BEGINNING; Thence South 58°11'42" West, a distance of 199.85 feet; Thence North 31°48'18" West, a distance of 27.14 feet; Thence South 58°11'42" West, a distance of 87.80 feet; Thence North 31°48'24" West, a distance of 189.52 feet; Thence North 58°05'53" East, a distance of 275.22 feet; Thence North 89°21'03" East, a distance of 111.41 feet; Thence South 04°20'14" East, a distance of 179.75 feet to the POINT OF BEGINNING.

Containing 1.576 acres (68,653 square feet), more or less.

Subject to existing easements, rights-of-way, covenants, reservations and restrictions of record, if any.

Said lands situate, lying and being in the City of Key West, Monroe County, Florida.

NOTES:

(NOT A SURVEY-SKETCH AND DESCRIPTION ONLY)

UNLESS IT BEARS THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER THIS DRAWING, SKETCH, PLAT OR MAP IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT VALID. ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.

LANDS SHOWN HEREON WERE NOT ABSTRACTED BY IBI GROUP, INC. FOR EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

DATA SHOWN HEREON WAS COMPILED FROM OTHER INSTRUMENTS AND DOES NOT CONSTITUTE A FIELD SURVEY.

BEARINGS ARE ASSUMED, THE NORTHERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 1 BEARING N 70°40'03" E.

5. IBI GROUP, INC'S CERTIFICATE OF AUTHORIZATION No. 5610, IS ISSUED BY THE FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION.

CERTIFICATION:

I HEREBY CERTIFY that the attached Sketch and Description is true and correct to the best of my knowledge and belief and that it meets the Minimum Technical Standards set forth by the Florida Board of Professional Surveyors And Mappers in Chapter 61G17-6, Florida Administrative Code.

For The Firm:
IBI Group, Inc.

REVISIONS

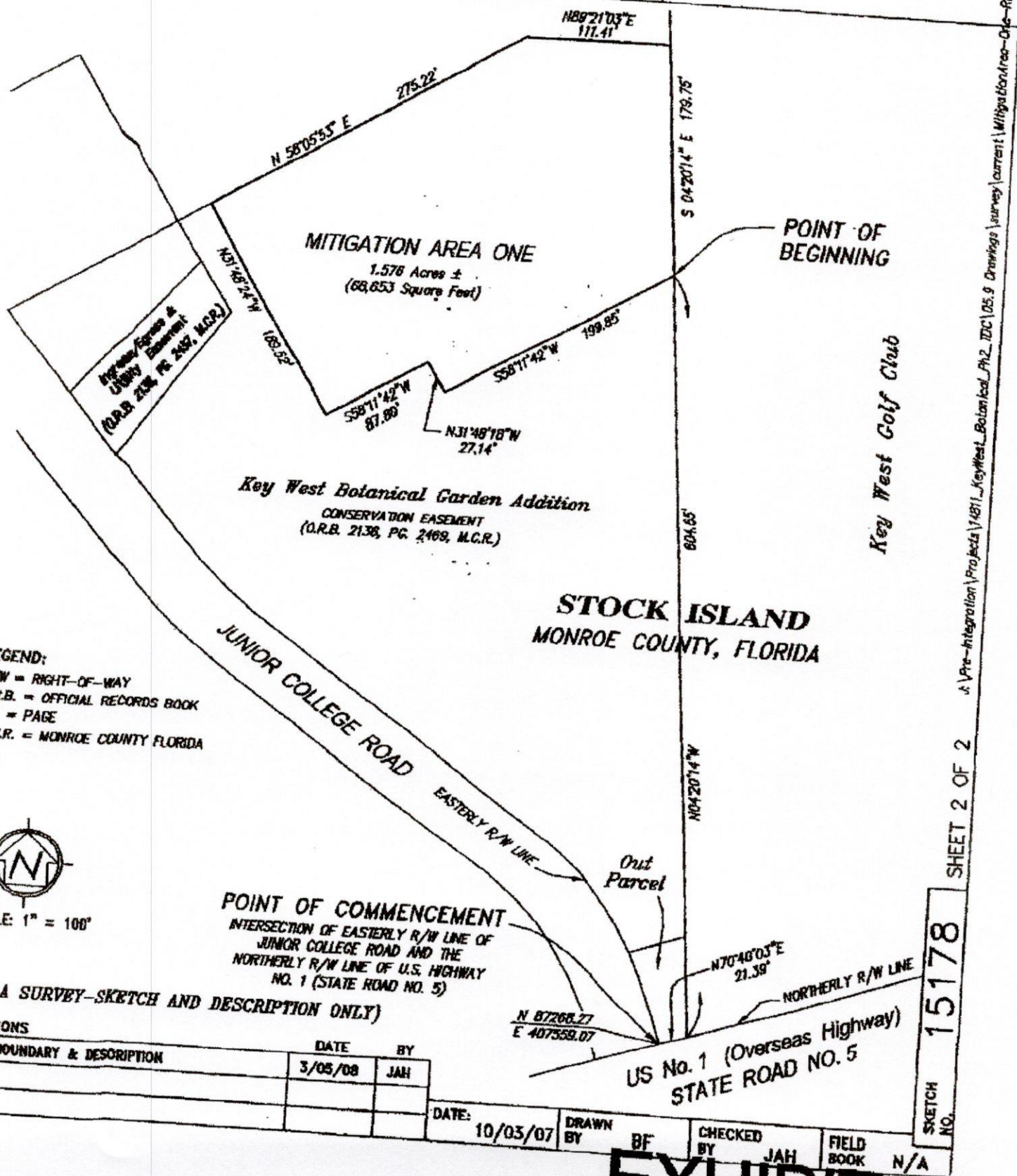
| REVISIONS | DATE | BY |
|-----------|------|----|
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JAMES A. HAMILTON, III, P.S.M
 PROFESSIONAL SURVEYOR and MAPPER #3406 STATE OF FLORIDA
 DATE: 10/03/07 DRAWN BY: JAH CHECKED BY: JAH FIELD BOOK: N/A

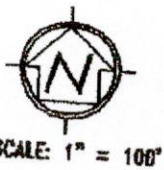
I:\Pre-Integration\Projects\14811_KeyWest_Botanical_Ph2_TDC\05.9 Drawings\Survey\current\MitigationArea-One-REY.dwg
 SHEET 1 OF 2
 SKETCH NO. 15178

EXHIBIT 3.1

ENGINEERS SURVEYORS PLANNERS
LANDSCAPE ARCHITECTS ENVIRONMENTAL CONSULTANTS
2200 PARK CENTRAL BLVD. N. SUITE 100 POMPANO BEACH, FLORIDA, 33084 (854) 874-2200
2803 HAYLAND CENTER PARKWAY SUITE C HAYLAND, FLORIDA, 32751 (407) 880-2120



LEGEND:
R/W = RIGHT-OF-WAY
O.R.B. = OFFICIAL RECORDS BOOK
PG. = PAGE
M.C.R. = MONROE COUNTY FLORIDA



NOT A SURVEY-SKETCH AND DESCRIPTION ONLY

| REVISIONS | DATE | BY |
|---------------------------|---------|-----|
| 1. BOUNDARY & DESCRIPTION | 3/05/08 | JAH |
| | | |
| | | |

DATE: 10/03/07
DRAWN BY: BF
CHECKED BY: JAH
FIELD BOOK: N/A

SHEET 2 OF 2
15178
SKETCH NO.

C:\Pre-Integration\Projects\18711-KeyWest_Botanical_Ph2_IDC\05.9 Drawings\Survey\current\MitigationArea-01a-REV.dwg

South Florida Water Management District
Work Schedule Requirements

Application No : 060711-17

Page 1 of 1

Mitigation Plan ID: KEY WEST BOTANICAL
Activity

| | Due Date |
|--|-----------|
| EXCAVATION AND GRADING OF WETLAND CREATION AREA | 09-OCT-08 |
| SUBMIT GPS DISK OF BOUNDARIES OF CONSERVATION EASEMENT | 09-OCT-08 |
| SUBMIT RECORDED CONSERVATION EASEMENT | 09-OCT-08 |
| SUBMIT AS-BUILT SURVEY | 23-NOV-08 |
| COMPLETE PLANTING OF CREATION AREA | 23-DEC-08 |
| SUBMIT BASELINE MONITORING REPORT | 09-JAN-09 |
| SUBMIT TIME ZERO MONITORING REPORT | 09-JUN-09 |
| SUBMIT FIRST MONITORING REPORT | 09-JUN-10 |
| SUBMIT SECOND MONITORING REPORT | 09-JUN-11 |
| SUBMIT THIRD MONITORING REPORT | 09-JUN-12 |
| SUBMIT FOURTH MONITORING REPORT | 09-JUN-13 |
| SUBMIT FIFTH MONITORING REPORT | 09-JUN-14 |

Doc# 1841245
Bk# 2523 Pg# 693