

RESOLUTION NO. 13-283

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED SECOND AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY AND THE KEY WEST BOTANICAL GARDEN SOCIETY, INC; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 06-180, the City Commission approved a lease with the Key West Botanical Garden Society, Inc.; and

WHEREAS, in Resolution No. 07-159 the City Commission approved the First Amendment to Lease Agreement;

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

Section 1: That the attached Second Amendment to Lease Agreement is hereby approved.

Section 2: 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 6th day of November, 2013.

Authenticated by the Presiding Officer and Clerk of the  
Commission on 7th day of November, 2013.

Filed with the Clerk on November 7, 2013.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Yes</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>

  
\_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK

# EXECUTIVE SUMMARY



**TO:** City Commission  
**CC:** Bogdan Vitas,  
**FR:** David Fernandez  
Marilyn D. Wilbarger, RPA, CCIM  
**DT:** September 17, 2013  
**RE:** Key West Botanical Garden Society, Inc.

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## **ACTION STATEMENT:**

This is a request to amend the lease for the Key West Botanical Garden Society, Inc. for the property located at 5210 College Road.

## **BACKGROUND:**

The City received a request from the tenant to amend the lease to allow them to charge an admission fee to the public. The letter is attached for your reference and states the following in regards to the initial fees:

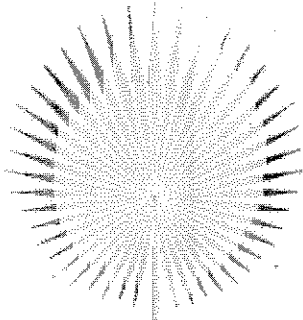
“The initial fee for entrance will be \$7.00 fee for Adults, \$5.00 for seniors 65 and over and active military, children under 12 are free. All Society members are also free. Every first Sunday, all locals (those with a Monroe Co ID) are free. We also participate in the Blue Star Museum’s program which offers free admission to all active duty servicemen and their families from Memorial Day through Labor Day.”

The fees will be used for the operations and construction of additional facilities and pursuant to Section 19 of the lease all capital improvements require the approval of the city manager.

**FINANCIAL:** The city will continue to lease the property at one dollar per year with no portion of the admission fees accruing to the city.

## **ATTACHEMENTS:**

Tenant Request  
Lease Resolution 06-180  
First Amendment to the Lease Resolution 07-159  
Draft Second Lease Amendment



Key  
West  
Botanical  
Garden  
Society

*Managing  
and  
restoring  
the  
only  
frost-free  
tropical  
forest  
and  
botanical  
garden  
in the  
continental  
United  
States.*

August 20, 2013

Mr. David Fernandez  
Assistant City Manager, City of Key West  
3132 Flagler Avenue  
Key West, FL 33040

Dear David,

Please let this letter serve the request we have discussed at several meetings. Specifically, we are asking the City to allow the Key West Botanical Garden Society to charge a fee for visitors. This will require a change to section 15 of the lease, Hours of Operation/Personnel/No Admission Fee. We request that the lease be changed to strike the sentence regarding not charging for admission and replace it with "Lessee may charge the public a fee for admission to be used for operations and for construction of additional facilities."

The initial fee for entrance will be \$7.00 fee for Adults, \$5.00 for seniors 65 and over and active military, children under 12 are free. All Society members are also free. Every first Sunday, all locals (those with a Monroe Co ID) are free. We also participate in the Blue Star Museum's program which offers free admission to all active duty servicemen and their families from Memorial Day through Labor Day.

We look forward to your prompt response because, as you know, funds are badly needed at the Garden.

Thank you!

Mary Chandler  
President  
Key West Botanical Garden Society

5210 College Road  
Key West, FL 33040  
(305) 296-1504  
[kwbgs@kwbgs.org](mailto:kwbgs@kwbgs.org)  
[www.keywestbotanicalgarden.org](http://www.keywestbotanicalgarden.org)  
*a 501(c)3 non profit organization*

**SECOND AMENDMENT TO LEASE AGREEMENT**

This Second Amendment to Lease Agreement is entered into this 12<sup>th</sup> day of November, 2013, by and between The City of Key West hereinafter ("LANDLORD") and Key West Botanical Garden Society, Inc. (hereinafter "TENANT").

**WITNESSETH**

WHEREAS, LANDLORD and TENANT entered into a Lease Agreement on the 16th day of May 2006, (the "Lease Agreement"), as amended on the 7<sup>th</sup> day of May, 2007 pertaining to the premises located at 5210 College Road, Key West, Florida.

WHEREAS, the LANDLORD and TENANT now desire to further amend their Lease Agreement and First Amendment thereto which are attached hereto as Exhibit "A", and Exhibit "A-1".

NOW, THEREFORE, in mutual consideration of the benefits conferred upon the parties by the terms of this Amendment, LANDLORD and TENANT agree as follows:

1. The reference to "No Admission Fee" in the last sentence of paragraph 15 of the Lease Agreement is deleted and replaced with "Lessee may charge the public a fee for admission to be used for operations and for construction of additional facilities."
2. Except as modified herein, the Lease Agreement as amended shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have made this Second Amendment to Lease Agreement on the date first written above.

ATTEST:

Cheryl Smith  
Cheryl Smith, City clerk

Landlord: City of Key West

By: Craig Cates  
Craig Cates, Mayor

Tenant: Key West Botanical Garden Society, Inc.

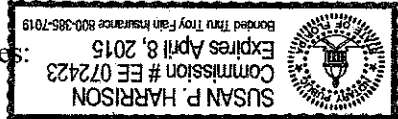
Angela Brown  
Witness  
Vivian Perez  
Witness

Mary Chandler  
Mary Chandler, President

The foregoing First Amendment to Lease Agreement was acknowledged before me this 12<sup>th</sup> day of November, 2013, by Mary Chandler, who is personally known to me, or who  produced Wisconsin D.L.C. as identification.

Susan P. Harrison  
Notary Public

My commission expires:



Print name: Susan P. Harrison

**Exhibit "A-1"**

**First Amendment to the Lease  
Resolution 07-159**

RESOLUTION NO. 07-159

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED FIRST AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY AND THE KEY WEST BOTANICAL GARDEN SOCIETY, INC; PROVIDING FOR AN EFFECTIVE DATE

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


Section 1: That the attached First Amendment to Lease Agreement is hereby approved, contingent upon the completion of the Husbandry Report and Major Specimen Inventory referenced in paragraphs 5 and 17 of the Lease Agreement being completed within 60 days.

Section 2: 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 1st day of May, 2007.

Authenticated by the presiding officer and Clerk of the Commission on May 8, 2007.

Filed with the Clerk May 8, 2007.

  
MORGAN MCPHERSON, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK



## FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement is entered into this 7th day of May, 2007, by and between the City of Key West, Florida, a municipal corporation, (hereinafter "LESSOR") and the Key West Botanical Garden Society, Inc., a not-for-profit corporation organized under the laws of the State of Florida and a 501 (c)(3) exempt organization, (hereinafter "LESSEE").

### WITNESSETH

WHEREAS, LESSOR and LESSEE entered into a Lease Agreement pursuant to City of Key West Resolution No. 06-180, (the "Lease Agreement"), pertaining to the premises located at 5210 College Road on Stock Island, Key West, Florida; and

WHEREAS, the LESSOR and LESSEE now desire to amend their Lease Agreement,

NOW, THEREFORE, in mutual consideration of the benefits conferred upon the parties by the terms of this Amendment, LESSOR and LESSEE agree as follows:

**Section 1:** That the reference to "Purchase of Premises" in the title to paragraph 1 of the Lease Agreement is hereby deleted.

**Section 2:** That paragraph 1(b) and paragraph 1(c) of the Lease Agreement are hereby deleted.

**Section 3:** That paragraph 10 is amended to include the sentence "Such consent may be arbitrarily and unreasonably withheld and is within the absolute discretion of the City Commission."

**Section 4:** That a new paragraph "26" is added which reads:

26. The Lessee expressly agrees that it will include a disclaimer in all contracts, grant applications and other relevant documents with third parties that states

Disclaimer and Waiver of Lien Right. It is acknowledged and agreed between the parties hereto that the Key West Botanical Garden Society, Inc. ("KWBGS") is a Florida corporation wholly and completely independent from the City of Key West; that KWBGS operates its primary activities on land leased from the City of Key West; that the activities contemplated by this contract/grant may involve improvements either to or located on land leased from the City of Key West; that the City of Key West is not a party to this contract/grant, has not been

involved in the negotiations establishing this contract/grant, and is not liable for the obligations of KWBSG under this contract/grant in any way whatsoever either directly or indirectly; and therefore the parties hereto agree that neither of them shall in any way look to the City of Key West, its officers or employees to fulfill obligations under this contract/grant and that the parties hereto waive any right to place a lien upon the property of the City of Key West for the fulfillment of any obligations under this contract/grant.

**Section 5:** Except as modified herein, the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have made this First Amendment to Lease Agreement on the date first written above.

CITY OF KEY WEST, FLORIDA

By: 

JULIO AVAEL, CITY MANAGER

ATTEST:

  
CHERYL SMITH, CITY CLERK

KEY WEST BOTANICAL  
GARDEN SOCIETY, INC.

By: 

GAROLANN SHARKEY  
CHAIRMAN OF THE BOARD

ATTEST:

\_\_\_\_\_  
Secretary

PETER RYSMAN, PRES.

**Exhibit "A"**

**Lease Agreement  
Resolution 06-180**

RESOLUTION NO. 06-180

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED LEASE BETWEEN THE CITY AND THE KEY WEST BOTANICAL GARDEN SOCIETY, INC. FOR THE OPERATION OF THE KEY WEST BOTANICAL GARDEN; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Section 2-941(c) of the Code of Ordinances, the City finds that a not-for-profit botanical garden is a public benefit, justifying a lease that is below market rate;

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


Section 1: That the attached lease for the Key West Botanical Garden is hereby approved.

Section 2: 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 16th day of May, 2006.

Authenticated by the presiding officer and Clerk of the Commission on June 12, 2006.

Filed with the Clerk June 12, 2006.

  
MORGAN MCPHERSON, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

POST OFFICE BOX 1409  
KEY WEST, FLORIDA 33041-1409  
WWW.KEYWESTCITY.COM

MEMORANDUM

TO: Mayor and Members of the City Commission

FROM: Robert Tischenkel <sup>RT</sup>  
City Attorney

DATE: May 2, 2006

RE: Botanical Garden Society Lease

Attached is the new Lease (and Exhibits) between the City and the Botanical Garden Society. It replaces a Memorandum of Understanding from the early 1990s that has become obsolete in light of the City's purchase of the "Botanical Garden Addition." The Lease contemplates its expiration in the event of the sale of the property to the Lessee.

The annual rental of \$1.00 per year makes this a below-market rate Lease that, according to section 2-941(c) of the Code of Ordinances, must be approved by a supermajority vote. Also, a "public benefit" to the Lease must be shown on the record.

Representatives of the Botanical Garden Society and the Key West Tree Commission and its staff met twice during April to resolve their differences and to address a proposal for limiting the Tree Commission's authority in Botanical Garden permitting applications. The result of those meetings is found in Paragraph 4 which establishes a Liaison Committee. This

committee of three persons will stand in the place of the Tree Commission and make all approvals for the planting, transplanting and removal of trees. The purpose of the committee is to provide flexibility and faster decision-making for a garden whose function at its specific location mirrors that of the Tree Commission – the care and preservation of trees. The committee is required to meet quarterly with the Tree Commission and to file an annual report with the City Commission. The Lease provides that the parties will undertake a review of the committee after one year.

Because the Florida Communities Trust grant and accompanying Management Plan anticipate development on the property, particularly on the Addition, the Lease involves the City Manager in an approval process of the proposed capital improvements to the Premises.

While much of this Lease contains standard clauses, there are several that are particular to the current and future management of the Botanical Garden – see paragraphs 5, 17, 19 and 20.

## LEASE AGREEMENT

This Lease Agreement is made and entered into this 7th day of May, 2007 ~~2006~~, by and between the City of Key West, a municipal corporation, ("Lessor"), and the Key West Botanical Garden Society, Inc., a not-for-profit corporation organized under the laws of the State of Florida and a 501 (c)(3) exempt organization ("Lessee").

### WITNESSETH

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, real property located in Key West, Florida, hereinafter referred to as the "Premises," and more particularly described in Exhibit "A", attached hereto and made part hereof, subject to the terms and provisions hereinafter set forth. The Premises are located at 5210 College Road on Stock Island, Key West, Florida.

#### 1. Term; Purchase of Premises.

(a) The term of this Lease shall be ten (10) years, commencing as of the effective date of this Lease Agreement. The effective date shall be the date the last party executes the Lease. Lessee shall have a right of renewal in accordance with City of Key West ordinances.

(b) The parties understand and agree that the Lessee is making efforts to raise funds to purchase the Premises from the Lessor. The Lessee shall complete the purchase within twenty-four (24) months from the effective date of this Lease; providing, however, the following understandings: (1) a purchase of the Premises by Lessee is subject to referendum in accordance with section 7.03 of the City of Key West Charter; (2) the City Commission of the Lessor has no obligation hereunder to

sell the Premises or call for a referendum in support of a proposed sale; and (3) pursuant to section 2-931 to 2-937 of the Code of Ordinances, the Lessor makes no guarantee that the Lessee would be the successful bidder of the Premises in the event of voter approval of a sale. To assist the Lessee in its fundraising efforts, concurrent with this lease approval the Lessor's City Commission will adopt a Resolution expressing its intention to authorize a sale of the Premises.

(c) Upon a sale of the Premises to the Lessee, and final execution of all documents of conveyance, this Lease shall expire automatically.

**2. Rent.**

Lessor and Lessee agree that the Lease represents a public benefit pursuant to Section 2-941(c) of the Key West Code of Ordinances, and therefore the rental amount shall be One Dollar (\$1.00) per year, payable to the Lessor's Finance Department upon each anniversary date of this Lease. Lessee may prepay the rent for all or a portion of the entire term of the lease.

**3. Use of Premises.**

Lessee shall lease the Premises exclusively for use as a botanical garden and arboretum, providing public access, public recreation, and wildlife habitat. Lessee's use of the premises shall be consistent with those restrictions contained in the Grant Award Agreement between the Lessor and Florida Communities Trust ("FCT") as recorded in Official Records Book 2136, Page 2457, of the Public Records of Monroe County, Florida. Further, Lessee's use of the Premises shall be consistent with those restrictions contained in the Grant of Conservation Easement between the Lessor and the Monroe County Comprehensive Plan Land Authority as recorded in Official Records Book 2136, Page 2469, of the Public Records of Monroe County, Florida. Further, Lessee's use of the Premises shall be consistent the management plan approved by Florida Communities Trust. Finally, Lessee's use of the Premises shall be consistent with City of Key West Ordinance No. 06-11. Copies of these documents are attached hereto, incorporated by reference, and more particularly



described as Exhibit "B", Exhibit "C", Exhibit "D" and Exhibit "E", respectively. Further, Lessee expressly acknowledges the existence of and agrees to abide by the easement in favor of Monroe County for ingress, egress, and the operation of utilities over the property described in Exhibit "F", attached hereto. Further, Lessee agrees to comply with all other applicable laws, codes, ordinances, rules and regulations of Lessor, or other governmental agencies, as existing and as may be promulgated during the term hereof. Lessee shall not use or permit any person to use in any manner whatsoever the property, or the building or improvements hereafter constructed or placed on the leased property, nor any portion thereof, for any purpose calculated to injure the reputation of the Premises or of the neighboring property, nor for any purpose or use in violation of the laws of the United States, or of the State of Florida, or of the Ordinances of the City of Key West, Florida.

**4. Liaison Committee.**

(a) There is hereby created a City of Key West Botanical Garden Liaison Committee (the "Liaison Committee") for the purpose of overseeing activities at the Premises in conformance with the Lessor's ordinances governing the activities of the Key West Tree Commission, chapter 110 of the Code of Ordinances..

(b) *Members* The Liaison Committee shall consist of one member who shall be appointed by the Lessor's Tree Commission. That member shall be a Tree Commissioner, shall not be the chair of the Tree Commission, and shall not be an employee of the Lessor. A second member shall be appointed by the Lessee. That member shall be a Director of the Lessee, but shall neither be the Chairperson of the governing board of the Lessee nor an employee of the Lessee. These two members shall appoint a third member to the Liaison Committee. All Liaison Committee members shall have a term of one year or, in the event of a replacement, the expired portion thereof. In the event of a vacancy of the third member existing in excess of ten calendar days, the Mayor of the City of Key West shall have the right to appoint a person to fill that

vacancy. The Tree Commission and the Lessee shall each also appoint one person as an alternate for duty when the member is not available. The alternate members of the Liaison Committee must meet the same qualifications as the primary members.

(c) *Voting and Quorum.* All decisions of the Liaison Committee shall require an affirmative vote of at least two members. The quorum for any meeting shall be two members while a third member may participate and vote telephonically. In all events, a vote is required to be made by the Tree Commissioner. All meetings shall be held at the office of the Botanical Garden Society, shall be open to the public, and shall be held pursuant to 48-hour written notice, which shall be posted at the City Clerk's Office and the office of the Botanical Garden Society. This notice shall be posted timely by the Chair of the Liaison Committee.

(d) *Chair* The members shall appoint a Chair of the Liaison Committee. The Chair shall preserve the procedural requirements of the Liaison Committee. To the greatest extent possible, discussions of any pending matters shall include all three members. It is also the responsibility of the Chair to keep notes, official records, and handle the secretarial aspects of Committee. The Chair shall file copies of all official reports and documents with the Lessor's landscape division.

(e) *Responsibilities.* All permitting responsibilities of the Lessor's Tree Commission pursuant to chapter 110 of the Key West Code of Ordinances are delegated to the Liaison Committee. The Lessee shall submit all permit applications, on a form developed by the Liaison Committee, to the Liaison Committee for the planting, transplanting and/or removal of trees. A decision of the Liaison Committee shall either be to grant or deny the permit. The Liaison Committee shall endeavor to respond to all such requests within a period not to exceed five business days. All permits shall be signed by the member representing the Tree Commission.

(f) *Reporting* The Committee shall meet quarterly with the Tree Commission, and at additional times at the request of the Tree Commission, for the purpose of advising the Tree Commission of the Lessee's activities and for the purpose of receiving advice from the Tree Commission. At least once per year, the Liaison Committee shall file a report with the City Commission to advise the City Commission of activities at the Botanical Garden.

(g) *Review.* On or soon after the first anniversary of the execution of this Lease, representatives of the Lessee and the City of Key West Tree Commission shall meet to review the progress of the Liaison Committee and its delegated responsibilities, and prepare a report to the City Commission. In the event the parties determine to terminate the Liaison Committee, then the permitting role of the Key West Tree Commission shall be restored. In such event, then the City Attorney shall prepare the necessary and appropriate amendments to this Lease and to Ordinance No. 06- 11.

(h) *Understanding.* The parties understand and agree that the Liaison Committee is permitted to act only with respect to the Lessee and the Key West Tree Commission regarding permit applications for the planting, transplanting, and removal of trees located on the Premises under the lease at 5210 College Road on Stock Island, Key West, Florida. This is the only allowed use of such a liaison committee within the city of Key West.

##### **5. Husbandry Report**

No less than annually, the Lessee shall file a Husbandry Report with the Lessor which shall describe changes to the plantings of the Botanical Garden that have occurred since the prior husbandry report as well as husbandry plans for the upcoming year.

**6. Utilities.**

Lessee shall be responsible for payment of all utilities furnished to the Premises, including, but not limited to, electric, gas, water, sewer, garbage, stormwater and solid waste collection service. Furthermore, Lessee shall be responsible for payment of telephone bills and janitorial services.

**7. Maintenance.**

The Lessee expressly agrees to be responsible for maintenance of the buildings and other structures on the Premises in a clean, safe condition, and to return all such buildings and structures to the Lessor at the termination or expiration of the Lease in good and habitable condition, excepting normal wear and tear. The parties understand and agree that subsequent to the execution of this Lease, Lessee will be undertaking additional improvements to such buildings and structures to which Lessee's maintenance obligations hereunder shall also apply.

**8. Taxes.**

As the Premises are municipal-owned property leased to a not-for-profit organization, the parties anticipate that no ad valorem taxes are to be paid. In the event ad valorem taxes become due for whatever reason, they shall be the responsibility of Lessee.

**9. Right of Entry.**

Lessor may enter the Premises at any reasonable time for the purpose of inspecting the Premises.

**10. Assignment or Subletting.**

Lessee shall not assign this Lease nor sublet the Premises without the consent by Resolution of the Key West City Commission.

**11. Responsibility for Damage.**

Lessee agrees that it shall bear full responsibility for all damage to its personal property and other contents not affixed to Premises.

**12. Default/Termination.**

If Lessee shall fail to comply with the Grant Award Agreement (Exhibit B) or the management plan (Exhibit D) referred to herein above, or if Lessee shall fail to perform the terms and conditions agreed upon in this Lease and shall remain in such default for a period of thirty (30) days from the date Lessee receives written notice of default by Lessor, then Lessor, at its sole option, may immediately terminate this Lease Agreement. Further, in the event the Lessee files or declares bankruptcy or for reorganization under the bankruptcy laws of the United States, then Lessor, at its sole option, may immediately terminate this Lease Agreement. In addition, in the event the Lessee corporation is dissolved, voluntarily or otherwise, or ceases to exist for any reason, then Lessor, at its sole option, may immediately terminate this Lease Agreement.

**13. Insurance and Indemnification.**

Lessee shall indemnify and hold harmless the Lessor, its employees and agents, from all suits, claims, actions and judgments as a result of or arising from the loss of or damage to property or the injury or death to person arising out of the use of the Premises as provided herein during the term of this Lease, by reason of any act or failure to act by the Lessee, its employers, officers, agents or members, excluding liability arising from the negligence of the Lessor. This indemnification shall survive the expiration or termination of this lease.

Lessee agrees to provide at its expense comprehensive commercial general liability insurance in the amount of One Million Dollars (\$1,000,000.00) per occurrence insuring itself and Lessor against all claims of damages or injury to persons or property arising for any reason out of Lessee's tenancy or use of the Premises, or arising out of its activities related to the lease use, or otherwise

arising from its exercise of rights or failure to perform obligations pursuant to this Lease. In addition, Lessee will obtain, at its expense, windstorm, flood, and casualty property damage insurance coverage in the amount representing the full insurable value of the buildings located on the premises, including buildings constructed in the future. The insurance policies shall be written by a solvent insurance company in good standing and fully licensed to do business in Florida. The policy shall show Lessor as an additional named insured, and shall provide that it cannot be canceled or revoked except after a minimum of thirty (30) days written notice to the Lessor. A true copy of the insurance contract shall be filed with the City Clerk within twenty (20) days after execution of this Lease, and shall be maintained on file throughout the lease term. Lessee's failure to maintain the insurance policy in full force and effect at any time during the lease term shall be a default hereunder, and upon such default Lessee shall immediately suspend all lease use and shall provide to Lessor written notice of default.

The insurance amounts here provided shall not in any way operate to limit or release, or be construed to limit or release, Lessee from any liability to Lessor, or from any obligation to indemnify Lessor as provided herein. Such insurance amounts are minimum requirements, and shall be supplemented by Lessee as necessary to meet its obligations, and to indemnify the Lessor fully, as provided in this Lease.

If Lessee is subject to the State of Florida Workers' Compensation Law, workers' compensation coverage shall be provided for all employees where the Lessee is obligated to do so by operation of law. The coverage shall be for statutory limits in compliance with applicable state and federal laws.

**14. Mechanics' Liens.**

Lessee agrees that there shall be no mechanics' liens imposed upon any buildings or improvements which may be upon the Premises, or at any time be put upon the Premises, and that in case of any mechanics' liens the Lessee shall satisfy such liens within thirty (30) days of written notice thereof. Failure to do so shall be a breach of this Lease.

**15. Hours of Operation/Personnel/No Admission Fee.**

Lessee herein expressly agrees to be responsible for opening and closing the Premises and ensuring public access. The Lessee shall staff the Premises with persons not employed by the City of Key West. The parties herein specifically acknowledge that employment by the Lessee shall not constitute employment by the City of Key West, and the Lessee's employees shall not be entitled to benefits enjoyed by employees of the City of Key West. Lessee shall not charge the public a fee for admission, but may accept donations at the entrance.

**16. Financial Reports; FCT Reports.**

(a) The Lessee expressly agrees to provide a copy of its annual Form 990 return to the Lessor within sixty (60) days of its filing with IRS.

(b) The Lessee expressly agrees to assist the Lessor in the timely preparation and submission of FCT's annual stewardship report, as well as any other report or documentation required by the FCT pursuant to Exhibit B.

**17. Major Specimen Inventory**

A "Major Specimen" is a tree or plant of unusual stature obtained as a result of either the rarity of the species or its size or condition. Lessee shall maintain an inventory of such Major Specimens. The inventory shall be included with the annual husbandry report to be filed with the Lessor. The inventory shall indicate the location of all such Major Specimens. The Lessor shall have the right to request that certain individual Major Specimens be added to the inventory report but shall

not have the right to request that classes of Major Specimens be added to the inventory report. The Lessee shall have sole authority to determine what Major Specimens to add to the Premises. Lessee shall determine the form and methodology for the inventory. Should the Lessor desire a higher level of inventory specificity than Lessee provides, then Lessor may perform whatever additional inventory analysis it deems necessary.

**18. Grant Writing**

Lessor agrees that its contractual or in-house grant writer, if any, shall be available from time to time to assist the Lessee in preparing grant proposals. All such grant proposals shall reflect the Lessor's ownership of the premises.

**19. Capital Improvements**

(a) Prior to the commencement of any capital improvements, Lessee shall file with the City Manager a full description of the proposed capital improvements, with plans where appropriate. Additionally, the Lessee shall file with the City Manager a funding plan for the completion of same. The funding plan shall require the prior approval of the City Manager who shall review the funding plan to determine that there are sufficient funds to pay contractors so that liens for unpaid work shall not be placed against the Premises. No capital improvements shall be undertaken without the prior written consent of the City Manager. All permit applications shall reflect the Lessor's ownership of the property and shall be signed by the City Manager's Office. The approvals of the City Manager set forth in this subparagraph shall not be unreasonably withheld.

(b) It is acknowledged that most capital improvement projects will be undertaken in phases; that applications for and funding plans for phases shall be limited to the particular phase for which approval is being sought; and that each phase shall be reviewed and determined individually.



**20. Special Events**

The parties understand that the Lessee intends to use the Premises for special events, including, but not limited to, Botanical Garden Society fundraisers and weddings. Lessee shall not require Lessor permission for such special events, except that the Lessee may apply to the City Commission for a noise control permit pursuant to the terms of Section 6-86, Key West Code of Ordinances. The sale, possession or drinking of alcoholic beverages on the Premises shall be limited to special events only, in accordance with the laws of the State of Florida and the City of Key West.

**21. Notices.**

Any notice that either party to this Lease is required to send to the other under any statutes, decision, or rule or law, under any provision of this Lease, or which either desires to send or give to the other, shall be in writing and may be served personally or be enclosed in a sealed, post-paid envelope and be sent by registered or certified United States mail to:

Lessor: City Manager  
City of Key West  
525 Angela Street  
Key West, FL 33040

Lessee: Executive Director  
Key West Botanical Garden Society, Inc.  
PO Box 2436  
Key West, FL 33045

**22. Non-Discrimination.**

Lessee represents and warrants that it will not discriminate against any person for any reason because of race, color, religion, sex, gender identity, national origin, ancestry or physical disability.

**23. Severability.**

If any provision of this Lease shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall not be impaired thereby, but such remaining

provisions shall be interpreted and enforced so to achieve, as near as may be, the purpose of this Lease to the extent permitted by law.

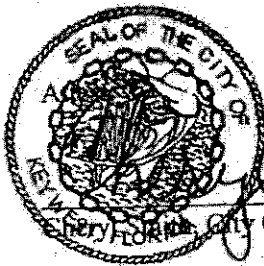
**24. Revocation of Memorandum of Understanding.**

The parties have operated pursuant to a Memorandum of Understanding, adopted in City of Key West Resolution No. 91-322 (as amended) and executed on September 13, 1991. The parties understand and agree that this Lease shall operate to replace and thereby revoke this Memorandum of Understanding.

**25. Entire Agreement.**

This Lease Agreement sets forth the entire agreement between the parties. No amendment or modification may be made unless reduced to writing executed by the parties.

IN WITNESS WHEREOF, Lessee and Lessor have caused this instrument to be executed as of the date first written by their respective officers or parties.



*[Handwritten signature]*  
City Clerk

City of Key West, Florida  
a municipal corporation

*[Handwritten signature]*  
Morgan McPherson, Mayor

Signed in presence of:

*[Handwritten signature]*

Key West Botanical Garden Society, Inc.

By: *[Handwritten signature]*  
Carolann Sharkey, Chairman of the Board  
PETER RYSMAN, PRESIDENT

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

Beginning 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 at 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 N.70°40'03"E., along the said Northerly Right-of-Way Line of U.S. Highway No. 1 a distance of 21.39 feet; thence N.04°20'14"W., a distance of 784.40 feet; thence S.89°21'03"W., a distance of 111.41 feet; thence S.58°05'53"W., a distance of 304.38 feet; thence S.34°13'10"E., a distance of 35.93 feet; thence S.40°13'12"W., a distance of 143.60 feet to the said Easterly Right-of-Way Line of Junior College Road; thence S.39°47'17"E., a distance of 135.59 feet to the point of curvature of a curve to the left, having: a radius of 361.02 feet, a central angle of 14°25'40", a chord bearing of S.47°00'07"E. and a chord length of 90.67 feet; thence along the arc of said curve, on arc length of 90.91 feet to the point of tangency of said curve; thence S.54°12'57"E., a distance of 272.56 feet to the point of curvature of a curve to the right, having: a radius of 265.00 feet, a central angle of 35°06'00", a chord bearing of S.36°39'58"E. and a chord length of 159.82 feet, thence along the arc of said curve, on arc length of 162.34 feet to the point of tangency of said curve; thence S.19°06'58"E., a distance of 36.16 feet to the Point of Beginning.

Parcel contains 209036 square feet or 4.80 acres, more or less.

LESS

Legal Description: Out Parcel:

Prepared by undersigned:

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

Beginning 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 at 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 N.70°40'03"E., along the said Northerly Right-of-Way Line of U.S. Highway No. 1 a distance of 21.39 feet; thence N.04°20'14"W., a distance of 78.14 feet; thence S.71°09'00"W., a distance of 44.31 feet to the said Easterly Right-of-Way Line of Junior College Road and a the point on a curve to the left, having, a radius of 265.00 feet, a central angle of 08°36'44", a chord bearing of S.23°25'20"E. and a chord length of 39.79 feet; thence along the arc of said curve, on arc length of 39.83 feet to the point of tangency of said curve, thence S.19°06'58"E., a distance of 36.16 feet to the Point of Beginning.

Parcel contains 2413.40 square feet or 0.0554 acres, more or less.

This document prepared by:  
Kristen L. Coons, Esq.  
Florida Communities Trust  
Department of Community Affairs  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399

Record and Return To:

FLORIDA COMMUNITIES TRUST  
FF3 AWARD # 03-034-FF3  
KEY WEST BOTANICAL GARDENS  
FCT Contract#~~04~~<sup>06</sup>-CT-9G-03-F3-J1-034

### GRANT AWARD AGREEMENT

THIS AGREEMENT is entered into this 25<sup>th</sup> day of July, 2005, by and between the FLORIDA COMMUNITIES TRUST ("FCT"), a nonregulatory agency within the State of Florida Department of Community Affairs, and [name of recipient], a political subdivision of the State of Florida ("Recipient"), in order to impose terms, conditions, and restrictions on the use of the proceeds of certain bonds, hereinafter described, and the lands acquired with such proceeds and as described in Exhibit "A" attached hereto and made a part hereof ("Project Site"), as shall be necessary to ensure compliance with applicable Florida Law and federal income tax law and to otherwise implement provisions of Chapters 259.105, 259.1051, and 380, Florida Statutes.

WHEREAS, Part III Chapter 380, Florida Statutes, the Florida Communities Trust Act, creates a nonregulatory agency within the Department of Community Affairs, which will assist local governments in bringing into compliance and implementing the conservation, recreation and open space, and coastal elements of their comprehensive plans or in conserving natural resources and resolving land use conflicts by providing financial assistance to local governments and nonprofit environmental organizations to carry out projects and activities authorized by the Florida Communities Trust Act;

WHEREAS, Section 259.105(3)(c), F.S., of the Florida Forever Act provides for the distribution of twenty-two percent (22%) less certain reductions of the net Florida Forever Revenue Bond proceeds to the Department to provide land acquisition grants to local governments and nonprofit environmental organizations through the FCT for acquisition of community-based projects, urban open spaces, natural resource conservation areas, parks, greenways and outdoor recreation areas to implement local comprehensive plans;

WHEREAS, the Bonds were issued as tax-exempt bonds, meaning that the interest on the Bonds is excluded from the gross income of Bondholders for federal income tax purposes;

WHEREAS, Rule Chapter 9K-7, Florida Administrative Code (F.A.C.), authorizes FCT to impose conditions for funding on those FCT applicants whose projects have been selected for funding in accordance with Rule Chapter 9K-7, F.A.C.;

WHEREAS, the FCT has approved the terms under which the Project Site is acquired and the deed whereby the Recipient acquires title to the Project Site shall contain such covenants and restrictions as are sufficient to ensure that the use of the Project Site at all times complies with Section 375.051, Florida Statutes and Section 9, Article XII of the State Constitution and shall contain clauses providing for the conveyance of title to the Project Site to the Board of Trustees of the Internal Improvement Trust Fund upon the failure of the Recipient to use the Project Site acquired thereby for such purposes; and

WHEREAS, such covenants and restrictions shall be imposed by an agreement which shall describe with particularity the real property which is subject to the agreement and shall be recorded in the county in which the real property is located; and

WHEREAS, the purpose of this Agreement is to set forth the covenants and restrictions that are imposed on the Project Site subsequent to its acquisition with the FCT Florida Forever Bond award.

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FCT and Recipient do hereby contract and agree as follows:

#### **I. GENERAL CONDITIONS**

1. Upon execution and delivery by the parties hereto, the Recipient shall cause this Agreement to be recorded and filed in the official public records of **Monroe County, Florida**, and referenced in the warranty deed vesting fee simple title to the Project Site in the Recipient, and in such manner and in such other places as FCT may reasonably request, and shall pay all fees and charges incurred in connection therewith.

2. The Recipient and FCT agree that the State of Florida Department of Environmental Protection will forward this Agreement to Department of Environmental Protection Bond Counsel for review. In the event Bond Counsel opines that an amendment is required to this Agreement so that the tax exempt status of the Florida Forever Bonds is not jeopardized, FCT and Recipient shall amend the Agreement accordingly.

3. This Agreement may be amended at any time. Any amendment must be set forth in a written instrument and agreed to by both the Recipient and FCT.

4. This Agreement and the covenants and restrictions contained herein shall run with the Property herein described and shall bind, and the benefits shall inure to, respectively, the FCT and the Recipient and their respective successors and assigns.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, with respect to both substantive rights and with respect to procedures and remedies.

6. Any notice required to be given hereunder shall be given by personal delivery, by registered mail or by registered expedited service at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto, and any such notice shall be deemed received on the date of delivery if by personal delivery or expedited delivery service, or upon actual receipt if sent by registered mail.

FCT Florida Communities Trust  
Department of Community Affairs  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399-2100  
ATTN: Program Manager

Recipient:

City of Key West  
P.O. Box 1409  
Key West, FL  
37041  
ATTN: Roger Wittenberg

7. If any provision of the Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

## II. PROJECT SITE REQUIREMENTS IMPOSED BY CHAPTER 259, CHAPTER 375, AND CHAPTER 380, PART III, FLORIDA STATUTES

1. If any essential term or condition of this grant agreement is violated by the Recipient or by some third party with the knowledge of the Recipient and the Recipient does not correct the violation within 30 days of notice of the violation, fee simple title to all interest in the Project Site shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund. The FCT shall treat such property in accordance with Section 380.508(4)(e), Florida Statutes.

2. Any transfer of the Project Site shall be subject to the approval of FCT and FCT shall enter into a new agreement with the transferee, containing such covenants, clauses, or other restrictions as are sufficient to protect the interest of the people of Florida.

3. The interest, if any, acquired by the Recipient in the Project Site will not serve as security for any debt of the Recipient unless FCT approves the transaction.

4. If the existence of the Recipient terminates for any reason, title to all interest in real property it has acquired with the FCT award shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund, unless FCT negotiates an agreement with another local government or nonprofit organization which agrees to accept title to all interest in and to manage the Project Site.

5. In the event that the Project Site is damaged or destroyed or title to the Project Site, or

any part thereof, is taken by any governmental body through the exercise or the threat of the exercise of the power of eminent domain, the Recipient shall deposit with the FCT any insurance proceeds or any condemnation award, and shall promptly commence to rebuild, replace, repair or restore the Project Site in such manner as is consistent with the Agreement. The FCT shall make any such insurance proceeds or condemnation award moneys available to provide funds for such restoration work. In the event that the Recipient fails to commence or to complete the rebuilding, repair, replacement or restoration of the Project Site after notice from the FCT, the FCT shall have the right, in addition to any other remedies at law or in equity, to repair, restore, rebuild or replace the Project Site so as to prevent the occurrence of a default hereunder.

Notwithstanding any of the foregoing, FCT will have the right to seek specific performance of any of the covenants and restrictions of this Agreement concerning the construction and operation of the Project Site.

### III. PROJECT SITE OBLIGATIONS IMPOSED BY FCT ON THE RECIPIENT

1. The Project Site shall be managed only for the conservation, protection and enhancement of natural and historical resources and for passive, natural resource-based public outdoor recreation which is compatible with the conservation, protection and enhancement of the Project Site, along with other related uses necessary for the accomplishment of this purpose. The proposed uses for the Project Site are specifically designated in the Project Plan as approved by FCT.
2. The Recipient shall prepare and submit to FCT an annual stewardship report as required by Rule 9K-7.013, F.A.C.
3. The Recipient shall ensure that the future land use designation assigned to the Project Site is for a category dedicated to open space, conservation, or outdoor recreation uses as appropriate. If an amendment to the Recipient's comprehensive plan is required to comply with this paragraph, the amendment shall be proposed at the next comprehensive plan amendment cycle available to the Recipient.
4. Recipient shall ensure, and provide evidence thereof to FCT, that all activities under this Agreement comply with all applicable local, state, regional and federal laws and regulations, including zoning ordinances and the adopted and approved comprehensive plan for the jurisdiction as applicable. Evidence shall be provided to FCT that all required licenses and permits have been obtained prior to the commencement of any construction.
5. The Recipient shall, through its agents and employees, prevent the unauthorized use of the Project Site or any use thereof not in conformity with the FCT approved project plan.
6. FCT staff or its duly authorized representatives shall have the right at any time to inspect the Project Site and the operations of the Recipient at the Project Site.
7. All buildings, structures, improvements, and signs shall require the prior written approval of FCT as to purpose. Further, tree removal, other than non-native species, and/or major

land alterations shall require the written approval of FCT. The approvals required from FCT shall not be unreasonably with-held by FCT upon sufficient demonstration that the proposed structures, buildings, improvements, signs, vegetation removal or land alterations will not adversely impact the natural resources of the Project Site. The approval by FCT of the Recipient's management plan addressing the items mentioned herein shall be considered written approval from FCT.

8. If archaeological and historic sites are located on the Project Site, the Recipient shall comply with Chapter 267, Florida Statutes. The collection of artifacts from the Project Site or the disturbance of archaeological and historic sites on the Project Site will be prohibited unless prior written authorization has been obtained from the Department of State, Division of Historical Resources.

9. The Recipient shall ensure that the Project Site is identified as being publicly owned and operated as a passive, natural resource-based public outdoor recreational site in all signs, literature and advertising regarding the Project Site. The Recipient shall erect a sign(s) identifying the Project Site as being open to the public and as having been purchased with funds from FCT and Recipient.

#### **IV. OBLIGATIONS INCURRED BY RECIPIENT AS A RESULT OF BOND PROCEEDS BEING UTILIZED TO PURCHASE THE PROJECT SITE**

1. If the Project Site is to remain subject, after its acquisition by the State and the Recipient, to any of the below listed activities or interests, the Recipient shall provide at least 60 days written notice of any such activity or interest to FCT prior to the activity taking place, and shall provide to FCT such information with respect thereto as FCT reasonably requests in order to evaluate the legal and tax consequences of such activity or interest:

- a. any lease of any interest in the Project Site to a non-governmental person or organization;
- b. the operation of any concession on the Project Site to a non-governmental person or organization;
- c. any sales contract or option to buy things attached to the Project Site to be severed from the Project Site, with a non-governmental person or organization;
- d. any use of the Project Site by non-governmental persons other than in such person's capacity as a member of the general public;
- e. a management contract of the Project Site with a non-governmental person or organization; and
- f. such other activity or interest as may be specified from time to time in writing by FCT to the Recipient.

2. Recipient agrees and acknowledges that the following transaction, events, and



circumstances may not be permitted on the Project Site as they may have negative legal and tax consequences under Florida law and federal income tax law:

- a. a sale of the Project Site or a lease of the Project Site to a non-governmental person or organization;
- b. the operation of a concession on the Project Site by a non-governmental person or organization;
- c. a sale of things attached to the Project Site to be severed from the Project Site to a non-governmental person or organization;
- d. any change in the character or use of the Project Site from that use expected at the date of the issuance of any series of bonds from which the disbursement is to be made;
- e. any use of the Project Site by non-governmental persons other than in such person's capacity as a member of the general public;
- f. a management contract of the Project Site with a non-governmental person or organization; and
- g. such other activity or interest as may be specified from time to time in writing by FCT to the Recipient.

DELEGATIONS AND CONTRACTUAL ARRANGEMENTS BETWEEN THE RECIPIENT AND OTHER GOVERNMENTAL BODIES, NOT FOR PROFIT ENTITIES, OR NON GOVERNMENTAL PERSONS FOR USE OR MANAGEMENT OF THE PROJECT SITE WILL IN NO WAY RELIEVE THE RECIPIENT OF THE RESPONSIBILITY TO ENSURE THAT THE CONDITIONS IMPOSED HEREIN ON THE PROJECT SITE AS A RESULT OF UTILIZING BOND PROCEEDS TO ACQUIRE THE PROJECT SITE ARE FULLY COMPLIED WITH BY THE CONTRACTING PARTY.

**V. CONDITIONS THAT ARE PARTICULAR TO THE PROJECT SITE AS A RESULT OF THE FCT APPROVED MANAGEMENT PLAN**

The management plan for the Project Site is mentioned throughout this Agreement, and is particularly described in Section IV. above. In addition to the various conditions already described in this Agreement, which apply to all sites acquired with FCT funds, the Management Plan shall address the following conditions that are particular to the Project Site and result from either representations made in the application that received scoring points or observations made by the FCT staff during the site visit described in Rule 9K-7.009(1), F.A.C.:

1. Two or more resource-based outdoor recreational facilities including covered picnic pavilion and walking trails and two or more user-oriented outdoor recreation facilities including a playground and gaming tables shall be provided at the Project Site. The facilities shall be

designed and located with minimal impact to natural resources on the Project Site.

2. A permanent recognition sign shall be maintained in the entrance area of the Project Site. The sign shall acknowledge that the Project Site is open to the public and was purchased with funds from the Florida Communities Trust and the City of Key West.
3. Interpretive signage shall be provided to educate visitors about the natural environment and unique history of the Project Site.
4. At least 24 environmental education classes or programs shall be conducted annually at the Project Site by trained educators or resource professionals.
5. A staffed nature center that provides year- round education programming shall be established on the Project Site.
6. The canopy trees on the Project Site shall be preserved and appropriately managed to ensure the long-term viability of the trees.
7. The Project Site shall be managed in a manner that protects and enhances habitat for native wildlife species that utilize or could potentially utilize the site, including the Stock Island tree snail. The development of the management plan shall be coordinated with the Fish and Wildlife Conservation Commission's Office of Environmental Services to ensure the preservation and viability of native wildlife species and their habitat. Periodic surveys shall be conducted to ensure that site management is compatible with the listed species using the Project Site.
8. The water quality of Florida Bay adjacent to the Project Site shall be protected and enhanced. The City shall implement a plan to improve water quality in the area including the removal of several existing structures and asphalt parking areas.
9. Any proposed stormwater facility for the Project Site shall be designed to provide recreational open space or wildlife habitat.
10. Approximately 4 acres, shall be landscaped with native plant species to enhance the function and appearance of the Project Site.
11. An ongoing monitoring and control program for invasive vegetation including exotic (non-native) and nuisance native plant species shall be implemented at the Project Site. The objective of the control program shall be the elimination of invasive exotic plant species and the maintenance of a diverse association of native vegetation. The Management Plan shall reference the Exotic Pest Plant Council's List of Florida's Most Invasive Species to assist in identifying invasive exotics on the Project Site.
12. A feral animal removal program shall be developed and implemented, as necessary, for dogs, cats, ducks, and other non-native wildlife that may be found on the Project Site.

13. Prior to the commencement of any proposed development activities, measures shall be taken to determine the presence of any archaeological sites. All planned activities involving known archaeological sites or potential site areas shall be closely coordinated with the Department of State, Division of Historic Resources in order to prevent the disturbance of significant sites.
14. The location and design of the parking and other site improvements shall have minimal impact on natural resources. The parking area shall incorporate pervious material wherever feasible.
15. Pedestrian and bicycle access to the Project Site shall be promoted through the provision of pedestrian oriented walkways and bicycle facilities that link the Project Site with City sidewalk and bike trail network.
16. The Project Site shall be managed as an addition to the Key West Botanical Gardens.
17. The Project Site shall be developed and managed as a support parcel of the Overseas Heritage Trail recreational trail system and include trailhead facilities.
18. The Project Site shall be protected and managed as part of linked conservation lands and recreation opportunities along the Florida Keys Paddling Trail
19. Proposed site improvements shall be designed and located to minimize or eliminate the long term risk of storm damage or flooding in conjunction with appropriate hazard mitigation agencies or experts.
20. The requirements imposed by other grant program funds that may be sought for activities associated with the Project Site shall not conflict with the terms and conditions of this Agreement.

This Agreement including Exhibit "A" embodies the entire agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

Witness:

[Signature]  
Print Name: Madeline Lewallen

[Signature]  
Print Name: Charlotte Violet Thompson

CITY OF KEY WEST

By: [Signature]  
Print Name: Roger D. W. Henbers  
Title: Finance Dir

Date: 7/6/05

Approved as to Form and Legality:

By: [Signature]  
Print Name: ROBERT TIXHEMSEL

STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 6th day of July, 2005, by Roger D. W. Henbers, as Finance Director of the City of Key West on behalf of the Local Government, and who is personally known to me.

[Signature]  
Notary Public

Print Name: Pearline R. Lewis  
Commission No. DD154416 MY COMMISSION # DD154416 EXPIRES  
My Commission Expires September 30, 2006  
BONDED THROUGH FARM INSURANCE, INC.

Witness:

[Signature]  
Print Name: BILL WEEBIC

[Signature]  
Print Name: GAYLE H. BRET

FLORIDA COMMUNITIES TRUST

By: [Signature]  
Janice Browning, Division Director  
Housing and Community Development

Date: 7/25/05

Approved as to Form and Legality:

By: [Signature]  
Kristen L. Coons  
Trust Counsel

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of July, 2005, by Janice Browning, Division Director, Housing and Community Development. She is personally known to me.

[Signature]  
Notary Public  
Print Name: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

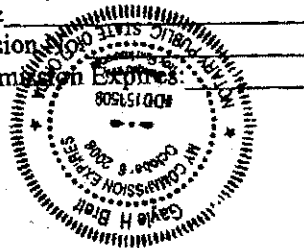


EXHIBIT A

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

Beginning 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 at 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 N.70°40'03"E., along the said Northerly Right-of-Way Line of U.S. Highway No. 1 a distance of 21.39 feet; thence N.04°20'14"W., a distance of 784.40 feet; thence S.89°21'03"W., a distance of 111.41 feet, thence S.58°05'53"W., a distance of 304.38 feet; thence S.34°13'10"E., a distance of 35.93 feet; thence S 40°13'12"W., a distance of 143.60 feet to the said Easterly Right-of-Way Line of Junior College Road; thence S.39°47'17"E., a distance of 135.59 feet to the point of curvature of a curve to the left, having: a radius of 361.02 feet, a central angle of 14°25'40", a chord bearing of S.47°00'07"E. and a chord length of 90.67 feet; thence along the arc of said curve, an arc length of 90.91 feet to the point of tangency of said curve; thence S.54°12'57"E., a distance of 272.56 feet to the point of curvature of a curve to the right, having: a radius of 265.00 feet, a central angle of 35°06'00", a chord bearing of S.36°39'58"E. and a chord length of 159.82 feet, thence along the arc of said curve, an arc length of 162.34 feet to the point of tangency of said curve; thence S.19°06'58"E., a distance of 36.16 feet to the Point of Beginning.

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LESS

Legal Description: Out Parcel:

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Parcel contains 241340 square feet or 0.0554 acres, more or less.

ATTACHMENT D

GRANT OF CONSERVATION EASEMENT

THIS GRANT OF EASEMENT is made on this 26<sup>th</sup> day of July, 2005, by the City of Key West, a municipal corporation existing under the laws of Florida, Grantor, to Monroe County Comprehensive Plan Land Authority, a land authority under Section 380.0663(1), Florida Statutes and Monroe County Ordinance No. 031-1986, whose address is 1200 Truman Avenue, Suite 207, Key West, Florida 33040, as Grantee.

Recitals

- A) The Grantor is the owner of certain real property (the servient estate) located in Monroe County, Florida, known as the Key West Botanical Garden Addition property located at 5100 College Road on Stock Island and more particularly described in Exhibit A.
- B) This easement is a conservation easement created pursuant to Section 704.06, Florida Statutes, and is to be governed by, construed, and enforced in accordance with that statute along with applicable laws of the State of Florida
1. *Grant of easement*  
In consideration for the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable considerations to said Grantor in hand paid by said Grantee, the receipt of which is hereby acknowledged, the Grantor hereby grants to Grantee the easement described below
  2. *Easement area.*  
The location of the easement area on the servient estate is as follows. all of the Key West Botanical Garden Addition property located at 5100 College Road on Stock Island and more particularly described in Exhibit A.
  3. *Restraints imposed by the conservation easement*  
The conservation easement granted by this instrument imposes the following restrictions on the future use of the servient estate within the easement area: use of the property shall be limited to development as an addition to the Key West Botanical Garden providing public access, public recreation, and wildlife habitat consistent with those restrictions in the Grant Award Agreement between the City of Key West and Florida Communities Trust as recorded in Official Record Book 2156, Page 2457, Public Records of Monroe County, Florida.
  4. *Terms and persons bound.*  
This conservation easement is perpetual, subject to Recital B 9., runs with the land and is binding on all present and subsequent owners of the servient estate. Grantor represents that the mortgagee(s), if any, whose consent is attached hereto, is (are) the only mortgagee(s) having a security interest in the servient estate.
  5. *Modification of easement.*  
No modification of this easement is binding unless approved in writing by Florida Communities Trust, evidenced in writing and signed by an authorized representative of the Grantee and Grantor

6. *Attorney's fees*

In the event of any controversy, claim or dispute arising under this instrument, the prevailing party shall be entitled to recover reasonable attorney's fees and costs, including appeals

7. *Entry of Grantee's representative on the servient estate*

The Grantee may enter upon the servient estate, after first furnishing the Grantor no less than 24 hours notice, for the purpose of inspection to determine the Grantor's compliance with this Grant of Easement.

8. *Notice*

Any notice provided for or concerning this grant of easement must be in writing and is sufficiently given when sent by certified or registered mail, or via an equivalent service furnished by a private carrier, to the respective address of each party as set forth at the beginning of this Grant of Easement.

9. *Termination of easement.*

In the event the Board of Trustees of the Internal Improvement Trust Fund takes title to the servient estate pursuant to sections 380.508(4)(d) or (e), Florida Statutes, this easement shall be terminated

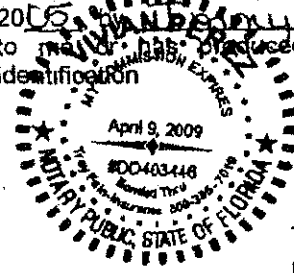
IN WITNESS WHEREOF, Grantor of this Grant of Easement has caused it to be executed on the date in the first sentence of this Grant of Easement.

City of Key West

Cheryl Smith  
Witness  
Jimmy Weekley  
By Jimmy Weekley, Mayor

Portia Hancock  
Witness

SWORN TO AND SUBSCRIBED before me this 20th day of May,  
2009, Jimmy Weekley, who is personally known  
to me or has produced personally known as  
identification



William Perez  
Notary Public, State of Florida



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

Beginning 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 at 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 N.70°40'03"E., along the said Northerly Right-of-Way Line of U.S. Highway No. 1 a distance of 21.39 feet; thence N.04°20'14"W., a distance of 784.40 feet; thence S.89°21'03"W., a distance of 111.41 feet; thence S 58°05'53"W., a distance of 304.38 feet; thence S.34°13'10"E., a distance of 35.93 feet; thence S.40°13'12"W., a distance of 143.60 feet to the said Easterly Right-of-Way Line of Junior College Road; thence S.39°47'17"E., a distance of 135.58 feet to the point of curvature of a curve to the left, having: a radius of 361.02 feet, a central angle of 14°25'40", a chord bearing of S.47°00'07"E. and a chord length of 90.67 feet; thence along the arc of said curve, an arc length of 90.91 feet to the point of tangency of said curve; thence S.54°12'57"E., a distance of 272.56 feet to the point of curvature of a curve to the right, having: a radius of 265.00 feet, a central angle of 35°06'00", a chord bearing of S.36°39'58"E. and a chord length of 159.82 feet, thence along the arc of said curve, an arc length of 162.34 feet to the point of tangency of said curve; thence S.19°06'58"E., a distance of 36.16 feet to the Point of Beginning.

Parcel contains 209036 square feet or 4.80 acres, more or less.

**LESS**

Legal Description: Out Parcel:

Prepared by undersigned:

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

Beginning 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 at 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 N.70°40'03"E., along the said Northerly Right-of-Way Line of U.S. Highway No. 1 a distance of 21.39 feet; thence N.04°20'14"W., a distance of 78.14 feet; thence S.71°09'00"W., a distance of 44.31 feet to the said Easterly Right-of-Way Line of Junior College Road and a the point on a curve to the left, having: a radius of 265.00 feet, a central angle of 08°36'44", a chord bearing of S.23°25'20"E. and a chord length of 39.79 feet; thence along the arc of said curve, an arc length of 39.83 feet to the point of tangency of said curve; thence S 19°06'58"E., a distance of 36.16 feet to the Point of Beginning

Parcel contains 241340 square feet or 0.0554 acres, more or less

***Key West Botanical Gardens Addition  
Management Plan  
Project number 03-034-FF3***

**Key West Botanical Gardens Addition  
Management Plan**

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**EXHIBITS:**

- Exhibit A Location map
- Exhibit B Boundary map
- Exhibit C Vegetative maps and surveys
- Exhibit D Master site plan
- Exhibit E Flood Plan Map
- Exhibit F Estimated development cost table
- Exhibit G Implementation time line
- Exhibit H Florida Master site file

**APPENDIX:**

Appendix 1 Conceptual Approval Agreement

Appendix 2 FNAI notification form

Appendix 3 Exotic Pest Plant Councils List of Florida's Most Invasive Species

Appendix 4 Recorded deed (as applicable)

Appendix 5 Grant Award Agreement

Appendix 6 Comprehensive Plan Objectives and Policies furthered by Project

Appendix 7 Florida Overseas Heritage Trail State Park Map

Appendix 8 Key West Botanical Gardens Plant List

## I. INTRODUCTION

The Key West Botanical Gardens Addition is a 6.02 acre site located on Stock Island in Key West, Florida, immediately adjacent to the Key West Botanical Gardens and the Cow Key Channel. The project site is located in a priority investment area, the Florida Keys Area of Critical State Concern. It was selected for funding by the Governing Board of the Florida Communities Trust in October of 2003. The site was originally part of the Key West Botanical Gardens when it was created with a WPA grant in 1936. At the end of World War II this parcel was developed as a military hospital and eventually was conveyed to Monroe County which developed the site as their administration center. Eventually it came to the County's attention that the buildings on the site were contaminated with asbestos and the buildings were abandoned, and subsequently torn down in 2003.

The purpose of this project is to restore this parcel to the Key West Botanical Gardens and manage it as an addition to the Gardens. The site will be re-planted and developed to further environmental education opportunities for residents and visitors to Key West. Grant funding from FCT was used to acquire the Project Site and the management plan was developed to ensure that the Project Site will be developed in accordance with the Grant Award Agreement and in furtherance of the purpose of the grant application.

## II. PURPOSE OF THE PROJECT

The following were the purposes for acquiring the project site as stated in the grant application:

- Restore land that was originally part of the Key West Botanical Gardens when it was created with a grant from the Works Progress Administration in 1936
- Preservation and restoration of an important "migratory trap", provision of freshwater for migratory birds including many endangered and threatened species
- Provision of resource based recreational activities to residents and visitors to Key West including picnic pavilions, nature trails, wildlife observation, and canoe/kayak landing
- Provision of access and parking to Cow Key Channel
- Provision of trailside facilities for the Florida Keys Overseas Heritage Trail
- Provision of trailside facilities for the Florida Keys Overseas Paddling Trail
- Provision of 30 staffed education programs per year on environmental and historical topics related to the Gardens and the Florida Keys
- Restoration of rare tropical hardwood hammock
- Restoration of habitat for the threatened Stock Island Tree Snail through cooperative agreement with the U.S. Fish and Wildlife Service
- Removal of impervious surfaces, buildings and parking lots and replacement with greenspace in an urban setting
- Purchase of buildable property and conversion to City owned open space in a Special High Hazard Flood Zone to further the Monroe County Local Mitigation Strategy

- Preservation and restoration of lands in an Area of Critical State Concern
- Education of the public of the value of tropical hardwood hammock/forests in terms of biodiversity and medical discoveries

The project site will be managed only for the conservation, protection and enhancement of natural resources, and for public outdoor recreation that is compatible with the conservation, protection and enhancement of the site

Prioritized key management objectives for the site

- Preservation and restoration of lands in an Area of Critical State Concern
- Provision of migratory bird habitat
- Provision of access and parking to waterways
- Provision of environmental education opportunities

This project furthers the following Conservation Element Objectives and Policies in the City of Key West Comprehensive Plan CON 6-1 2, 6-1 2 4,6-1 2 5,6-1 2 9,6-1 3 2, 6-1 7 3, 6-1 8 2 This element is furthered because the project will improve water quality through the removal of impervious surfaces, enhance shoreline through the removal of exotic vegetation, protect water bodies through the provision of open space, protect and conserve the Cow Key Channel, an Outstanding Florida Water, removal of undesirable exotic vegetation, and protection of wildlife and wildlife habitat, including the Stock Island Tree Snail which uses the project site as habitat

The City of Key West's Historic Preservation Element Policy 1A-1 3 6 is furthered through acquisition of an endangered historic site The project site was originally part of the Key West Botanical Gardens which was created through a WPA grant in 1936 This project will restore this property to the garden and re-plant it Intergovernmental Relations Element Policy 8-1 1 3 is furthered through inter-agency coordination including natural resource conservation through acquisition

Recreation and Open Space Element Policies 7-1 1 1 and 7-1 1 9 are furthered by improving the City of Key West's level of service for city parks, by providing parking for water access, and by conservation and recreation through the acquisition of open space The Traffic Circulation Element's Objective 2-1 4 and Policy 2-1 4 1 are furthered by providing trailside facilities for the Florida Key Overseas Heritage Trail For the full text of the Comprehensive Plan Objective and Policies furthered by this project, please see Appendix 6

The Project Site currently has the land use designation of Public Service which is appropriate for passive parks

The project site will be identified in all literature and advertising as being publicly owned and operated as a natural conservation area and that the project site was acquired with funds from the Florida Communities Trust Program

### **III. SITE DEVELOPMENT**

#### **Existing Physical Improvements**

The site was cleared of all buildings in 2003. The Chapel building of approximately 260 square feet remains and will be re-used in site development. The original parking areas and driveways remain, as well as fencing on all perimeters except the College Road frontage.

#### **Proposed Physical Improvements:**

Physical improvements will include

- Restoration of tropical hardwood hammock/forest
- Provision of nature trails 3 miles in length
- Environmental education through a staffed visitor's center/nature center (approx 800 sq ft)
- Special children's gardens with a playground and picnic pavilion. Trash cans will be placed at the picnic pavilion
- Cuban and Caribbean gardens with six stone game tables for chess, checkers and dominoes
- Development of the waterfront parcels will include a boardwalk, nature trail, marine observation deck, and kayak/canoe launch. The kayak/canoe launch will provide access to and from the Gardens from the Florida Keys Overseas Heritage Paddling Trail
- This project will enhance the trailhead facilities at the Key West Botanical Gardens that are part of the Florida Keys Overseas Heritage Trail (FKOHT) by providing access to restrooms and water fountains. A trail spur will connect the Project Site to the FKOHT. This site therefore provides an alternative to automobile transportation to the project site. Bike racks will be provided for visitors
- The project site will include at least 20 signs identifying individual plant and animal species
- In order to prevent encroachments from adjacent development, and to ensure the security, the boundary of the Project Site shall be fenced, with gates locked outside of hours of operation
- Parking will be provided so as to provide access to the water resources at Cow Key Channel as well as to the project site as a whole. Existing parking surfaces will be re-used where appropriate. Pervious surfaces will be used at any new parking locations. Trash cans will be placed in all parking areas

All physical improvements will be designed to limit impacts on natural resources

The proposed master site plan will be provided to the US Fish and Wildlife Service for their

comments so as to avoid any possible impact on Stock Island Tree Snail habitat

The City of Key West commits that access to project sites will be compatible with all applicable state and federal construction standards, including the Americans with Disabilities Act

Before the City of Key West undertakes any site alterations or physical improvements that are not addressed in the FCT-approved management plan and shown on the master site plan they will request written approval from the FCT

**Landscaping:**

Approximately 4 acres of the 5.6 acre parcel will be landscaped with native plants. This figure does not include the Cuban and Caribbean Gardens which could arguably be considered native as well, since the lower Keys are considered part of the Caribbean. Please refer to Exhibit D, Master Site Plan. The site will be xeriscaped when appropriate, keeping in mind that as a botanical gardens providing a representative sample of plant species requires including plants that require regular waterings

The site will be irrigated with both above and below ground irrigation systems to allow for greatest flexibility in establishing new plantings and dealing with drought conditions. The City will explore the option of utilizing reclaimed water available from the adjacent re-use water utility

Fertilizer will only be required during the establishment period. The reuse of leaf litter and seaweed from the beaches will be utilized for plant nutrients. Herbicide and fungicide will only be used as needed, and newer products that are not harmful to the environment and adjacent water bodies will be used exclusively

The tropical hardwood hammock remnant of 2.1 acres will be restored through the removal of paving and exotic plants, and the planting of appropriate understory plants ( please see list in Appendix 8). This will improve the health of the existing gumbo limbo trees that serves as the main Stock Island Tree Snail habitat on site

The freshwater wetland pond of 1 acre was filled when the site was developed as a military hospital in the 1940's will be restored and planted with appropriate aquatic plants (plant list at Appendix 8)

Other native landscaping of approximately 1 acre will occur throughout the gardens (plant list at Appendix 8)



The landscaping plan will be initiated and completed within the first 18 months of the City gaining title to the property

**Fencing:**

In order to prevent encroachments from adjacent development, and to ensure the security, the boundary of the Project Site shall be fenced, with gates locked outside of hours of operation

**Wetland Buffer:**

A 10 foot buffer will be provided between paved nature trails and wetlands. A 25 foot buffer will be provided between minor facilities and the wetlands. A 100 foot buffer will be provided between major facilities and the wetlands. The site's wetlands are located across College Road and will be buffered from all major and minor facilities. Only a boardwalk, marine observation deck, and canoe/kayak launch will be located in the wetlands

**Acknowledgement Sign:**

A permanent recognition sign shall be maintained in the entrance area of the Project Site. The sign shall acknowledge that the project site is open to the public and was purchased with funds from the Florida Communities Trust Program, the Recipient, if the Recipient provided a match, and other contributors, if any. The sign will be at least 3' x 4' in size and, in addition to the language shown below, include the FCT logo. The sign shall state "Funding for the acquisition of this site was provided by The Florida Communities Trust Program and the City of Key West". The next printed line shall identify the year the project site was acquired. Such recognition shall also be included in all printed literature and advertising associated with the project site

**Parking:**

Parking will be provided so as to provide access to the water resources at Cow Key Channel as well as to the project site as a whole. Existing parking surfaces will be re-used where appropriate, providing a total of 40 spaces. Parking stops will be used to contain cars in the parking lot. Pervious surfaces will be used at any new parking locations with the exception of handicapped spaces. Trash cans will be placed in all parking areas. Public parking will be provided near US 1. Additional parking (staff parking) will be located in the rear of the parcel, near Bayshore Manor. 20 spaces to secure bicycles will also be available

**Stormwater Facilities:**

The freshwater wetland pond of 1 acre was filled when the site was developed as a military hospital in the 1940's will be restored and planted with appropriate aquatic plants. This

restoration project will also serve as the stormwater facility for the site and be managed as appropriate for recreational open space and wildlife habitat. This facility will be developed in a park-like manner with shallow slopes and will not be fenced.

**Hazard Mitigation:**

The project site is located within a Special Flood Hazard Area, Zone AE, Elevations 9 and 1, as defined by the Federal Emergency Management Agency, Flood Insurance Rate Maps of Monroe County, Florida, Map Number 12087c 1709G, dated March 3, 1997. Refer to Exhibit E. The proposed use of the property is the least intensive allowable under existing zoning. The project also furthers the Monroe County Local Mitigation Strategy, specifically strategy #34, which recommends purchase of buildable property and conversion to city-owned open space. The proposed project site improvements shall be designed and located to minimize or eliminate the long-term risk of storm damage or flooding in conjunction with appropriate hazard mitigation agencies or experts.

**Permits:**

The following permits will be required for the project site:  
City of Key West permits

- Building
- Plumbing
- Electrical
- Roofing
- Mechanical
- Landscaping

Additional permits will be required from the South Florida Water Management District for irrigation, and from the Florida Department of Environmental Protection and the Army Corps of Engineers for the docks on Cow Key Channel.

**Easements, concessions, or leases:**

There are currently no existing easements, concessions or leases on the project site. The City reserves the right, after review and approval by the FCT, to allow a non-profit agency to manage the site through a lease or management agreement. Any fees collected by the non-profit agency would be placed in a segregated account solely for the upkeep and maintenance of the project site.

The City of Key West will provide 60 days prior written notice and information to FCT regarding any sale or lease of any interest, the operation of any concession, any sale or option to buy things attached to the site, the granting of any management contracts, and any use by any person other than in such person's capacity as a member of the general public.

#### IV. KEY MANAGEMENT ACTIVITIES

##### Resource restoration and enhancement

The project site was almost entirely cleared when it was converted into a military hospital in the 1940's. However, much of the original tropical hardwood hammock tree canopy remains, approximately one acre in area. Many of the trees that remain are also specimen trees that were planted as part of the original Key West Botanical Gardens. The canopy trees on the Project Site shall be preserved and appropriately managed to ensure the long-term viability of the trees.

This project site has been identified as habitat of the Stock Island Tree Snail (*Orthalicus reses reses*). The Stock Island Tree Snail was listed as threatened by the U.S. Fish and Wildlife Service in 1978. The snails have been identified on the Gumbo Limbo trees at the rear of the property. This species lives on trees and shrubs in tropical hardwood hammocks. It is found on a large diversity of tree species, such as *Acacia farnesiana* (sweet acacia), *Bursera simaruba* (gumbo limbo), *Chrisobahmia icaco* (coco plum), *Ficus aurea* (strangler fig), and *Psidium guava* (guava). The site will be managed through the removal of a paved area near the trees, removal of exotic, invasive plants such as Brazilian pepper, and restricting the public from this area during mating season. The development of this management plan will be coordinated with the Fish and Wildlife Conservation Commission's Office of Environmental Services and the U.S. Fish and Wildlife Service to ensure the preservation and viability of native wildlife species and their habitat. Periodic surveys shall be conducted to ensure site management is compatible with the listed species using the Project Site.

Additionally, this site is popular with migratory and resident birds, many of which are threatened or endangered, such as the Everglades snail kite, the Florida grasshopper sparrow, black-whiskered vireos, the painted bunting, the prairie warbler, the worm-eating warbler, the swallowtail kite, the reddish egret, Chuck Wills Widow, and the white crowned pigeon to name a few. Over 200 species of birds can be sighted based on the season, for this reason, the site is very popular with bird watchers.

The site also contains approximately 1/2 acre of mangrove, which will be managed through the removal of invasive plants and garbage. This part of the site is immediately adjacent to Cow Key Channel and the Florida Bay, an Outstanding Florida Water. Intermediate steps to improve water quality have been implemented through the removal of all existing structures on the project site with the exception of the 260 sq ft chapel. Existing impervious asphalt parking surfaces will be removed as appropriate.

##### Survey and Monitoring

The following management techniques will be utilized to protect and enhance the resources on the project site. The City maintains the right to conduct these surveys with city staff, a non-profit lessee (as approved by the FCT Governing Board) or through a contractor

- baseline survey of plant and animal species to occur within six months of acquisition and forwarding of survey information on the occurrence of the listed plant and animal species to the Florida Natural Areas Inventory as appropriate (see Appendix 2)
- Monitoring of the project site every two years to insure the continued viability of vegetative communities, plant species and animal species found on the site and to control invasive exotic vegetation to occur
- Ongoing monitoring and control program for invasive vegetation including exotic (non-native) and nuisance native plant species ( please see Appendix 3, the Exotic Pest Plant Council's List of Florida's Most Invasive Species) shall be implemented at the Project Site. The objective of the control program shall be the elimination of invasive exotic plant species and maintenance of a diverse association of native vegetation
- Ongoing monitoring and removal of feral animals such as necessary such as dogs, cats, ducks, and other non-native wildlife. The City of Key West commits to a long term feral animal monitoring program

**Archaeological and historical resource protection:**

The Project Site is immediately adjacent to the Key West Botanical Gardens, which contains a historic site listed in the Florida Master File as #8Mo3432 (Exhibit H). The Florida Master Site File Form was amended to include the County parcel since it was originally part of the Key West Botanical Gardens when it was established in 1936 and rare trees planted at that time still exist on the project site. Diane E. Silvia, Ph.D., Director of the Historic Preservation Division of the City of Key West has determined the site to be locally significant and potentially significant at the state and national levels as well. This site will be interpreted for the public and coordinated with interpretation of other depression-era Federal projects in Key West. Prior to commencement of any proposed development activities, measures shall be taken to determine the presence of any archaeological sites by the City's Historic Preservation Planner, Diane Silvia, Ph.D. All planned activities involving known archaeological sites or potential site areas shall be closely coordinated with the Department of State, Division of Historic Resources in order to prevent disturbance.

If at any later date archaeological and historic resources are discovered at the project site, the City will immediately contact and coordinate with the Division of Historical Resources, Florida Department of State, to assess the archaeological and historic resources of the find.

Collection of artifacts or the disturbance of archaeological and historic sites will be prohibited unless prior authorization has been obtained from the Department of State, Division of Historic Resources. The management of the Project Site's archaeological and historic resources will comply with the provisions of Chapter 267, Florida Statutes specifically Sections 267.061 2(a) and (b).

#### **Environmental Education Program:**

A staffed nature center that provides year-round education programming will be established on the project site. Initially the 260 sq ft chapel building will operate as the Nature Center. The City reserves the right to build a Nature Center of up to 2000 sq ft at a future date. The City commits to update the FCT on educational activities conducted on the Project Site and any revenues collected for such activities and how such revenues are expended. Any revenues collected will be placed in a segregated account and will only be used for the upkeep and maintenance of the site.

The Key West Botanical Garden Society, Inc. has committed to provide 30 staffed programs per year on the project site. These programs will commence within 2 years of Project Site acquisition. These regularly scheduled programs will include:

- 10 children's educational events with help from different agencies focusing on a selected topic such as butterflies or birds
- 10 adult education programs with help from professional speakers focusing on a special topic related such as medicinal attributes (without giving medical advice) of native plants or planting a native garden
- 10 special educational tour programs, each tour will focus on a specific topic with special guest tour guides such as migratory birds in the spring or the role of mangroves/

Interpretative signage will be provided to educate visitors about the natural environment and unique history of the Project Site.

#### **Greenway Management:**

The Project Site functions as a designated future trailhead for the recreational trail system known as the Florida Keys Overseas Heritage Trail. Through this acquisition the Key West Botanical Gardens site becomes immediately adjacent to the Trail. This linkage will be developed as a trailhead by providing trail users access to water and restrooms. The site will also provide bike racks so that trail users may lock up their bikes and visit the gardens. The Project Site will include a trail spur connection to the FKOHT and signage will be posted on the Trail advising users of the Gardens and its trailhead facilities.

The Project Site also functions as a designated future trailhead for the Florida Keys Paddling Trail, which consists of linked conservation lands and recreational opportunities. The site will provide a canoe/kayak landing on Cow Key Channel. This landing will allow paddlers access to restrooms and water, as well as access to the Project Site and the Key West Botanical Gardens. The project site will provide a vehicle loading zone and canoe drop off not more than 200 feet from the parking area.

### **Coordination**

The Project Site will be managed as an addition to the Key West Botanical Gardens. Therefore, the sites will be managed as one unit. The City reserves the right to have the non-profit agency which manages the Key West Botanical Gardens also manage the Project Site either through a lease or management agreement. This lease or agreement will be provided to the FCT for review before it is executed. The management plan will also be reviewed by the County as the owners of the adjacent Bayshore Manor, an assisted living facility. It is the intent of the City that the Project Site and existing Gardens will be a recreational resource for the residents of Bayshore Manor, and for this reason, stone games tables were selected as a user-oriented outdoor recreation facility. The management plan will also be provided for review to the managers of the adjacent golf course. All efforts will be made to coordinate with them on their use of pesticides and fertilizers that may negatively impact the Project Site. Also exotic plant eradication efforts will be coordinated with the golf course, particularly in the buffer areas along the shared borders of these properties. Please see Exhibit D, Master Site Plan, for a visual depiction of the existing and proposed development of the Project Site and adjacent lands.

The City will coordinate with other agencies for appropriate guidance, recommendations, and necessary permits that may be related to the project site, such as the following:

Florida Game and Fresh Water Fish Commission and the U S Fish and Wildlife Service to avoid impacts to listed species particularly the Stock Island Tree Snail,

Water Management District and Department of Environmental Protection to ensure that development of the project site is done in a manner to protect or improve water quality in Cow Key Channel/Florida Bay,

Monroe County Division of Emergency Management to ensure that site development is designed and located to minimize and eliminate long-term risk of storm damage or flooding,

The Florida Department of State, Division of Historic Resources to avoid impacts to historic and/or archaeological resources

The City's coordination strategy includes requesting cooperating agencies to review the management plan, comment on the proposed development plan for the site, and assist in the development of strategies to protect the resources on the project site

**Maintenance:**

The City of Key West, Community Services Department or an approved non-profit lessee or manager shall provide all required maintenance activities, including but not limited to, trash removal, site cleanup, and facilities upkeep  
The maintenance schedule is as follows

**Daily/Immediate Maintenance:**

Every morning clean, empty trash and pick up

Welcome Center  
Adult Education Facility  
Chapel  
Picnic pavilion  
Visitor Center Courtyard  
Visitor Center Rest Rooms  
Visitor Center Kiosk  
Boardwalk

Daily hand watering as specified on Thursday's schedule

Walk, clear and remove any debris from the Butterfly Garden, Pond, Western loops and all other pathways for guest access

**Monday, Tuesday, Wednesday and Friday**

Prune, trim, and remove all vegetation that is evasive, obtrusive, or for the preservation of plants from all entryways, courtyards, boardwalk, and all trails Add mulch to paths and trails where necessary

**Thursday**

Monitor and evaluate above ground irrigation system to insure proper watering to all areas  
Notify administration of any problems Daily hand water schedule for designated areas in the morning as necessary

Walk all self-guided trails to remove any blockages, review all signage and apparent maintenance needs

Review Coastal Viewing Station and Landing for cleanliness, accessibility and signage

**Monday and Friday**

Empty offices', visitor center, bathrooms, and garden trash receptacles and remove to dumpster

Schedule and monitor trash and debris pick up twice weekly

**Long Term/Preventive Maintenance:**

Schedule to remove invasive growth from garden every other month

Routinely monitor and maintain all night blooming cactus (Butterfly Garden, Boardwalk, and Pond Loop) on a monthly basis

Monitor and maintain snake cactus at the Pond Loop (every other month).

Schedule and administer fertilizer as necessary

Review with administration status of entryway growth and general garden status.

Review and maintain garden landscape lighting system on a monthly basis

Monitor and report on existing mulch pile condition, status, and level

**Security:**

In order to prevent encroachments from adjacent development and to ensure the security the boundary of the Project Site shall be fenced, with gates locked outside of hours of operation. The hours of operation shall be posted. The Key West Police Department will check to make sure the site remains locked during their nightly patrols

**Staffing:**

Upon project build out in 2014 the following are the staffing requirements for operation of the Key West Botanical Gardens in its entirety – as it will be operated as one unit

14 full time staff persons including 5 administrative and 9 operational staff will be needed at full build out

An additional 25 volunteer docents will be needed for operational support



## V. COST ESTIMATE AND FUNDING SOURCE

### Structures and Improvements (capital expenses)

#### Site Work

Site grading \$75,000

Sewer lines \$75,000

Potable water \$38,000

Reclaimed water lines \$100,000

Cisterns 3 @ \$7,500 = \$22,500

Renovate existing Chapel \$50,000

New Nature Center/ Adult Education Center \$500,000

New Welcome Center \$850,000

Pathways/Boardwalks \$380,000(including trail spur to FKOHT)

Picnic Pavilion \$50,000

Signage 24 signs at \$500= \$12,000 (including signage on FKOHT about Gardens and trailhead facilities)

Security fencing and features \$150,000

Parking \$300,000

Lighting \$200,000

Playground \$25,000

Stone Game Tables \$12,000

Total \$3,200,000

Architectural/Engineering @ 15% = \$480,000

Contingency @ 20% = \$640,000

Grand Total= \$4,320,000

### Resource Enhancement Activities (capital expenses)

Cuban Garden \$250,000

Caribbean Garden \$250,000

Children's Garden \$300,000

Meditation Garden \$200,000

Tropical Fruit/Vine/Orchard and Nurseries \$350,000

Coastal Garden \$250,000

Water Features \$100,000

Wetland pond \$100,000

Total = \$1,800,000

Design @ 15% = \$270,000

Contingency @ 20% = \$360,000

Grand Total = \$2,430,000

### Archaeological and Historic Resource Protection

Survey performed by Diane Silvia, Ph D of the City's Historic Preservation Office

Education Program (capital expense)

Design educational computer system \$40,000  
DVD Equipment, other signage \$10,000  
Computer system, printer, phones \$20,000  
Total = \$70,000

Education (Operating)

Educational Materials \$20,000  
Technology Upgrades \$4000

Maintenance (annual)

Capital Maintenance @ 8% = \$119,240  
Gardens Maintenance \$90,000  
Arborist/Tree Trimming \$30,000  
Fertilization \$5000  
Fire Ant treatment \$5000  
Exotic Treatment \$8000  
Utilities \$11,000

Security

Gatekeeper \$25,000

Staffing

Administrative/Educational Personnel \$125,000

Funding Sources to be pursued to fund development and operations

- Tourist Development grants for site development
- Florida Recreational Development and Assistance for playgrounds
- Transportation Enhancement funds for trail development
- Land and Water Conservation Fund for waterfront development
- Cultural Facilities Grants for Nature/adult Education Center

If a non-profit organization manages the project site through management agreement or lease, they will be able to solicit tax deductible donations for development and operations

The requirements imposed by other grant program funds that may be sought for activities associated with the Project Site shall not be in conflict with the terms and conditions of this Agreement

## VI. PRIORITY SCHEDULE

Please see implementation timeline in Exhibit G. The first priority for implementation of this project is the installation of infrastructure to support the plantings that are the next priority

for this project. The first programmatic emphasis is on children's programs including development of the children's gardens.

## **VII. MONITORING**

The City of Key West is responsible for preparing an annual stewardship report that evaluates implementation of the management plan, and is due to the FCT on October 30 of each year. Identify procedures for assessing progress in achieving goals in the management plan, such as the percentage of property restored, inventory of species using the project site, etc. The stewardship report will report the extent and frequency of the monitoring program to insure the continued viability of the vegetative communities and listed animal species.

Any revision of the management plan by the City of Key West will first require review and approval by the FCT.

**EXHIBITS:**

- A - Location map
- B - Boundary map
- C - Vegetative maps and surveys
- D - Master site plan
- E - Flood Plan Map
- F - Estimated development cost table
- G - Implementation time line
- H - Florida Master Site File

**APPENDIX:**

- 1 - Conceptual Approval Agreement
- 2 - FNAI notification form
- 3 - Exotic Pest Plant Council=s List of Florida=s Most Invasive Species
- 4 - Recorded deed
- 5 - Grant Award Agreement
- 6 - Comprehensive Plan Objectives and Policies furthered by Project
- 7- Florida Overseas Heritage Trail State Park Map
- 8 -Key West Botanical Gardens Plant List

**Comprehensive Plan Objectives and Policies furthered by Project**

**Conservation Element**

**Objective 6-1 2 water quality and Quantity** Maintain the environmental health of the Florida Keys Reef tract to ensure the ambient water quality of both the near shore and reef waters is maintained and improved to the adopted Standards for Class III Outstanding Florida Waters

**Policy 6-1 2 4 Preserve and Enhance the Atlantic Ocean, Gulf of Mexico and Canal Shorelines** In order to stabilize areas susceptible to shoreline erosion, upon plan adoption the land development regulation shall require that all new development preserve shoreline native vegetation and shall revegetate areas along shorelines demonstrating historically erosive tendencies. Where exotic vegetation is present, such vegetation shall be removed and shall be replaced with native plant species.

**Policy 6-1 2 5 Protect Deep and Surficial Aquifer recharge Areas** The City has no prime deep aquifer or shallow recharge areas which have been identified by the South Florida Water Management District. However, stipulations for protecting the freshwater lens shall be incorporated into the City's Land development regulations. The City's land development regulations shall require retention of open space for all development in order to Create natural or landscaped urban green space for enhanced community aesthetics and passive pedestrian activities.

**Policy 6-1 2 9 Protect and Conserve Salt Ponds, Outstanding Florida Waters** In order to protect the Atlantic Ocean, the Gulf of Mexico, the Salt Ponds, the City's land development activities which adversely impact water quality, contribute to shoreline erosion and sedimentation, or otherwise threaten the long term existence of these water resources, tidal pond, and freshwater wetlands. The impact of the regulatory measures shall be to conserve and protect these coastal resources from detrimental impacts of development.

**Policy 6-1 3 2 Land Purchase through Save Our Rivers or other Available State and Federal Programs** The City shall identify and recommend to the State and the South Florida Water Management District purchase of floodplains, wetlands, littoral zones, upland buffer areas, lands that support threatened or endangered fish or wildlife, or other lands needed to retain or store water that would comply with program guidelines established under the Conservation and Recreation Lands (CARL) Program, the Save Our Rivers (SOR) Program or other land acquisition programs administered by the federal or state government.

**Policy 6-1 7 3 Removal of Undesirable Exotic Vegetation** Upon plan adoption the City shall adopt a Tree Protection and Land Clearing Ordinance which requires that, prior to the issuance of

a certificate of occupancy for a new development, the owner/applicant shall remove all nuisance and invasive exotic vegetation from the site for which a development order or permit is requested

**Policy 6-1 8 2 Protect Wildlife and Wildlife Habitats** Upon plan adoption the City shall amend the land development regulations to incorporate provisions, which restrict development activities known to adversely impact endangered, threatened, or rare wildlife, and wildlife habitats, including Stock Island Tree Snail. The regulations shall ensure that standards are incorporated to ensure preservation of habitats supporting Stock Island Tree Snail and other threatened and endangered species. The City shall further protect wildlife and wildlife habitats by promoting public acquisition and dedication of conservation easements or reservations as specified in Policy 6-1 4 3.

#### **Historic Preservation Element**

**Policy 1A-1 3 6 Endangered Historic Resources** Public and private funding shall be pursued for the acquisition and adaptive re-use of endangered historic resources

#### **Intergovernmental Relations Element**

**Policy 8-1 1 3 Coordination of Development and Growth Management Issues**  
The City shall pursue resolution of development and growth management issues with impacts transcending the City's political jurisdiction, by participating in the Monroe County Technical Coordination Committee. Issues of regional and state significance shall be coordinated with the South Florida Regional Planning Council, the South Florida Water Management District, and/or State agencies having jurisdictional authority. Issues to be pursued include but are not limited to the following

13 Natural resource conservation, including protecting and enhancing water quality, protecting living marine resources, especially the coral reef, wetland preservation, seagrass protection, and preservation of tidal lands and other environmentally sensitive lands in the Salt Ponds  
Developing effective regulatory frameworks for managing impacts of development on these coastal resources and coordinating program structures for land acquisition using public or conservation trust funds

#### **Recreation and Open Space Element**

**Recreation and Open Space Element Policy 7-1 1 1**  
**Level of Service Standards for Parks and Recreation Facilities** The City shall promote development of park and underdeveloped park land resources. System improvements, including the characteristics of sites and facilities shall be based on the level of service standards cited in Tables VII-1 1 1 (1) and VII-1 1 1(2) of this section which are hereby adopted as the level of service standards for recreation sites and facilities. These tables refer to Neighborhood and Community parks and active recreation facilities. The Key West Botanical Gardens is classified as a "unique" recreational facility. Unique facilities do not have a separate level of service stated. However, Table VII-11 (p 7-32) sets a general level of service for all recreation areas at 5 acres

per 1000 residents. This project furthers the Recreation and Open Space Element of the Comprehensive Plan by improving the level of service for parks within the City of Key West.

Recreation and Open Space Policy 7-1.1.9. Plans for development of the waterfront parcels include a boardwalk, nature trail, marine observation deck, and kayak/canoe launch. The kayak/canoe launch will provide access to and from the Gardens from the Florida Keys Overseas Heritage Paddling Trail.

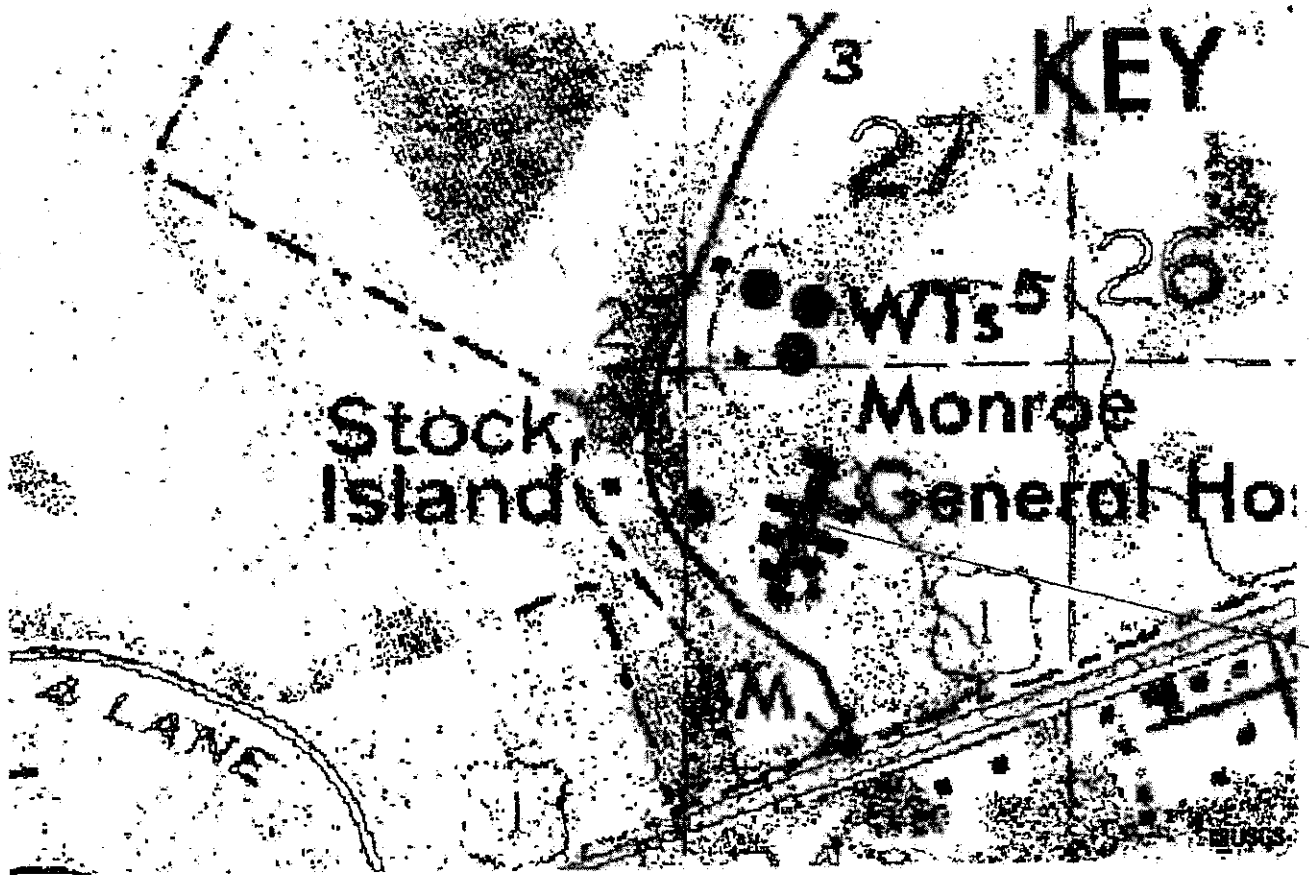
#### Traffic Circulation Element

Objective 2-1.4. Facilities for Bicycle and Pedestrian Ways. By December 1991, the City shall file a grant application with the State to assist implementation of City's plan for bicycle and pedestrian ways.

Policy 2-1.4.1. Planning for Bicycle and Pedestrian Ways. The City shall by the end of 1991 seek state funds to implement the adopted plan for development of bicycle and pedestrian ways, which connect residential areas to recreation areas and major activity centers. The plan shall include programs for implementation and anticipated funding sources and shall be consistent with roadway improvement plans identified in engineered transportation master plan.



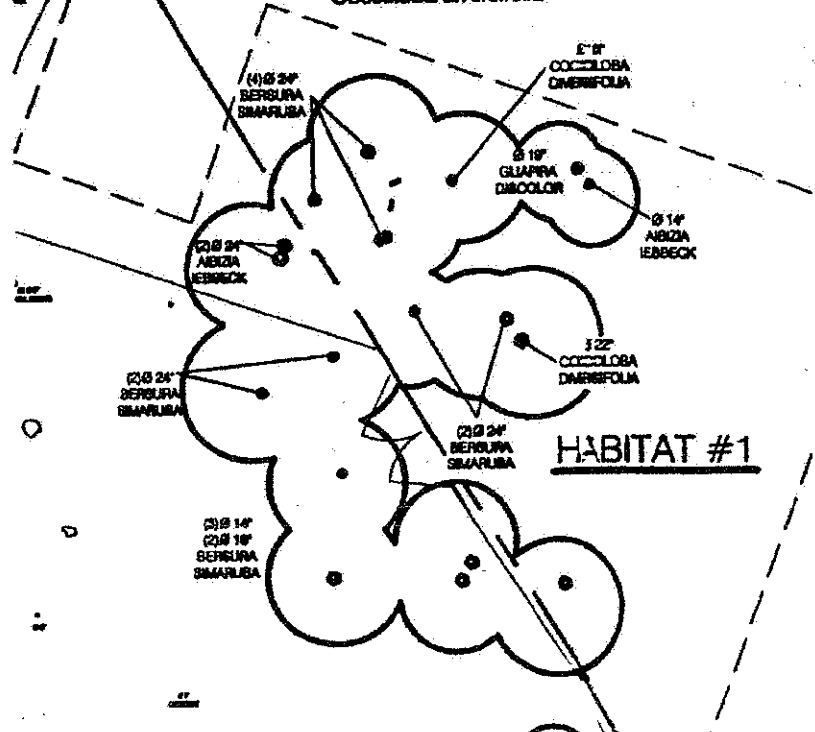
**Exhibit A: Location Map (USGS 7 1/2 minute Quadrangle Map)**



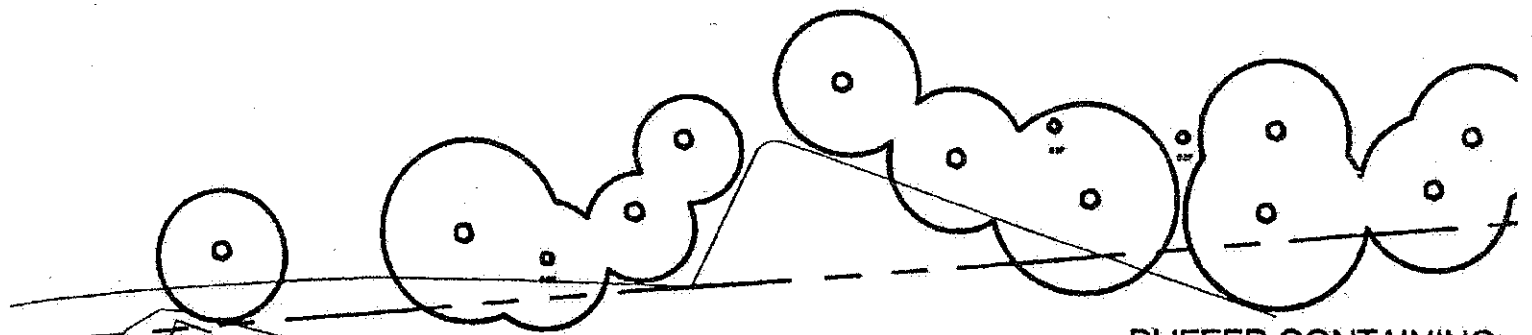
**Project Site**



HABITAT #1  
*Coccoloba diversifolia*

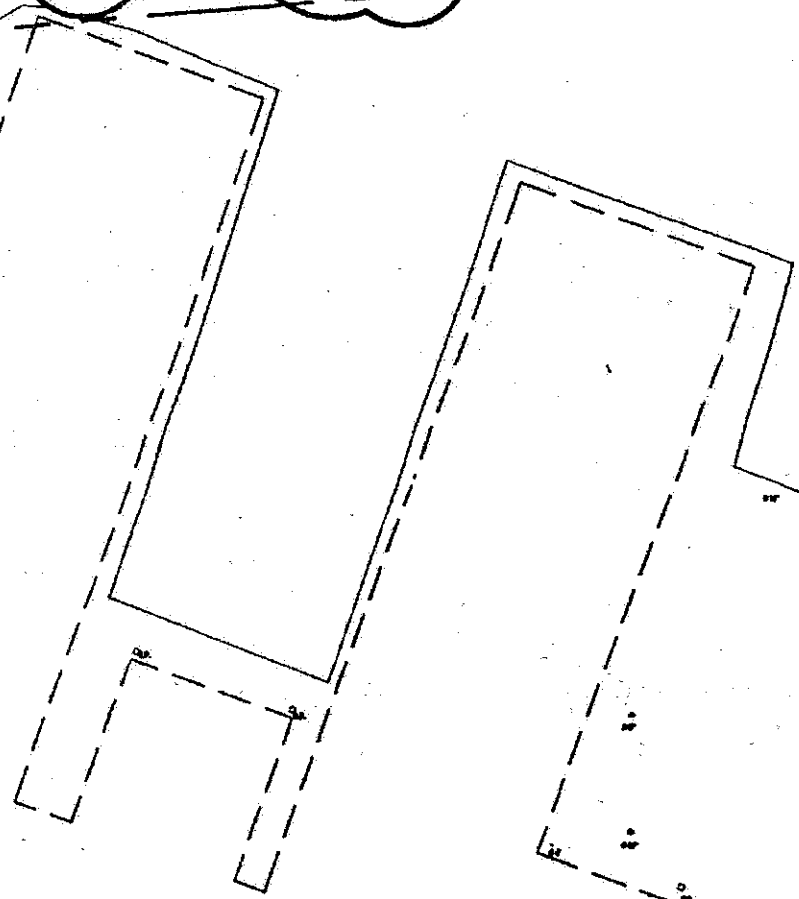


KEY WEST GOLF COURSE



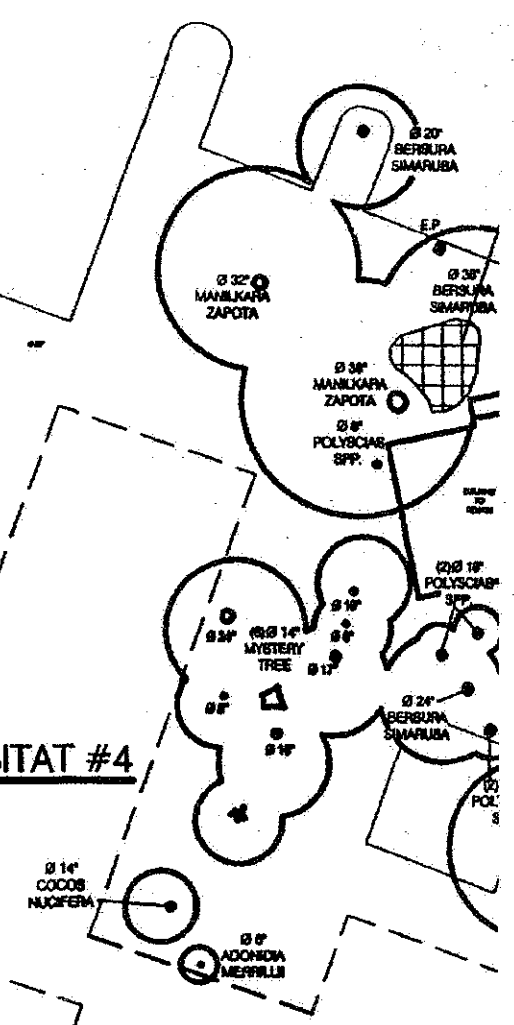
**BUFFER CONTAINING:**

- Bersura simaruba
- Eugenia foetida
- Swaitea mahagoni
- Eugenia rhomb
- Eugenia spp.
- Schaefferia frute
- Delonix regia
- Zanthoxylum m

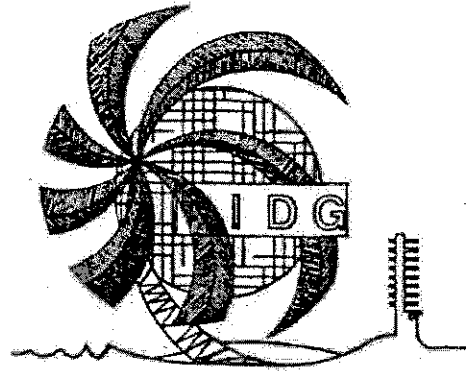
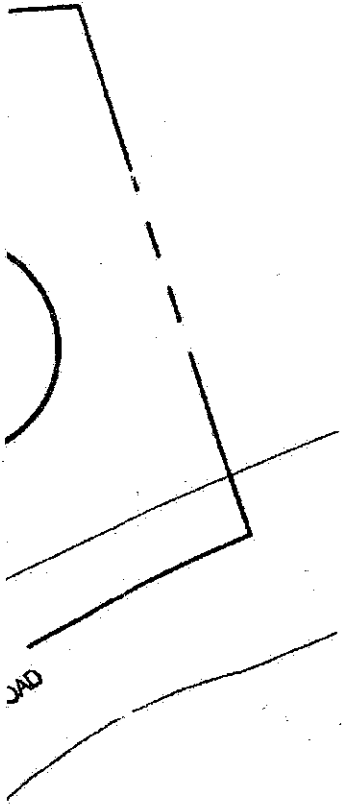


EXISTING 1-STORY BUILDING

HABITAT #4







EXISTING NATIVE SPECIES

Botanical name	Common name
<i>Bersura simaruba</i>	Gumbo Limbo
<i>Capparis flexuosa</i>	Limber Caper
<i>Coccoloba diversifolia</i>	Pigeon Plum
<i>Eugenia foetida</i>	Spanish Stopper
<i>Eugenia rhombea</i>	Red Stopper
<i>Guaicum sanctum</i>	Lignum Vitae
<i>Guapira discolor</i>	Blolly
<i>Metopium toxiferum</i>	Poisonwood
<i>Piscidia piscipula</i>	Jamaica Dogwood
<i>Reynosa septentrionalis</i>	Darling Plum
<i>Schaefferia frutescens</i>	Florida Boxwood
<i>Sideroxylon celastrinum</i>	Saffron Plum
<i>Sweitenia mahagoni</i>	Mahoghany
<i>Zanthoxylum flavum</i>	Yellow Heart

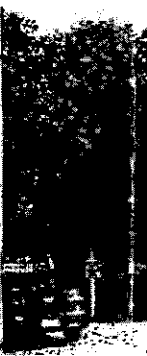
HISTORICALLY SIGNIFIGANT TREES (70 YEARS OLD OR GREATER)

Botanical Name	Common Name
<i>Bersura simaruba</i>	Gumbo Limbo
<i>Coccoloba diversifolia</i>	Pigeon Plum
<i>Guapira discolor</i>	Blolly
<i>Piscidia piscipula</i>	Jamaica Caper
<i>Sweitenia mahagoni</i>	Mahoghany
<i>Kigliea pinnata</i>	Sausage Tree
<i>Calophyllum inophyllum</i>	Mastwood

200' P  
(1) 0' P  
PISCINA  
PISCIPULA

0'00'  
P.M.L.I.

EXISTING  
PLAZA



HABITAT #2  
*Bersura simar*  
*Guapira disco*

# Habitat Invent

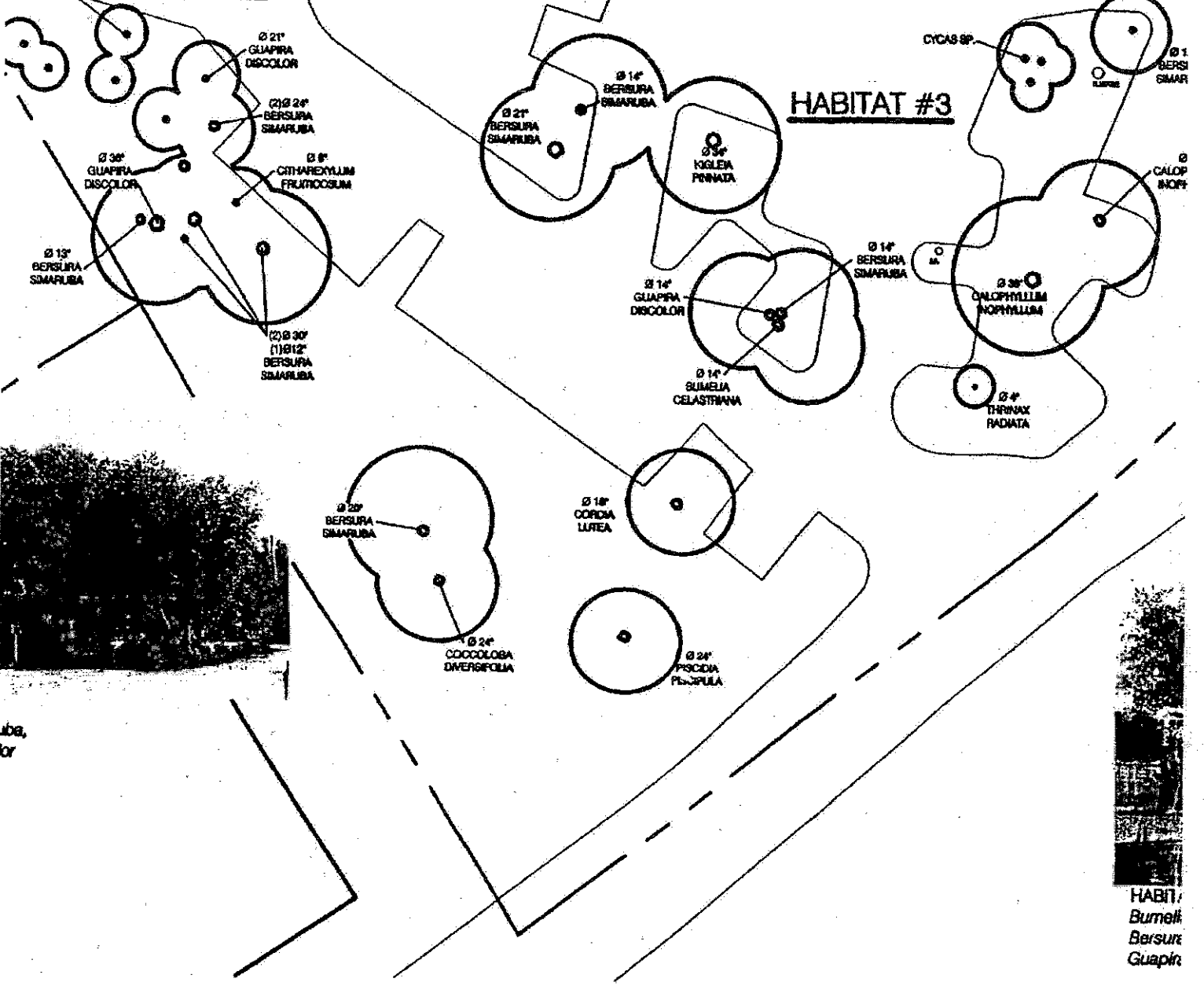
scale: 1/32" = 1'-0"

HABITAT #3  
*Clusia pinnata*

HABITAT #2

HABITAT #3

NM  
KITO



uba,  
lor

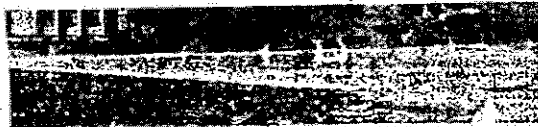
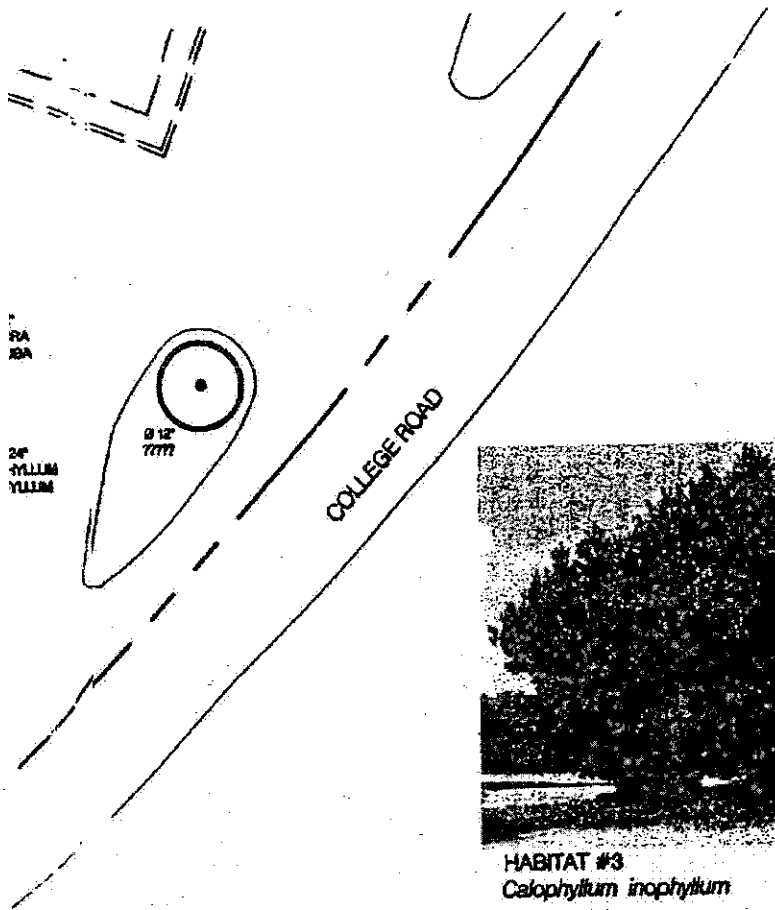


HABITAT  
Burnell  
Bersura  
Guapira

# ory Plan

)"

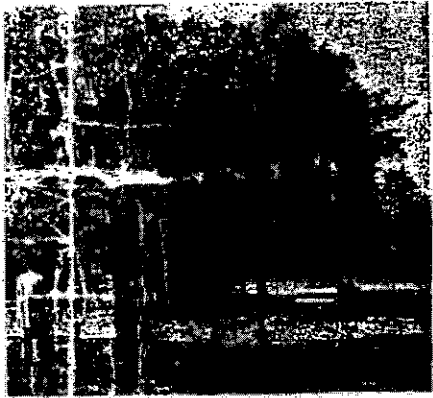




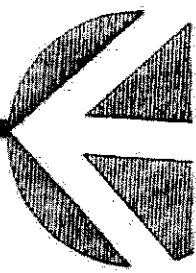
HABITAT #4  
*Sweitenia mahagoni*



HABITAT #3  
*Calophyllum inophyllum*



AT #3  
a cels: ana  
a simar: ba  
a disc: r



**Monroe County Land  
Adjacent to the Key West  
Tropical/Botanical Garden**

06.04.0

**Inventory Plan  
for diagrammatic purpose**

**NOT FOR CONSTRUCTION**

**SA 100**

**COLL**

72080  
.0022

72082  
.0022

72082  
.0027

72082  
.0002

72080.0020

72082.0023

**MONROE  
BOARD OF C  
COUNTY**

**Project Site**

**Cow Key**

64900  
.0004  
Phase 1

Beach House

26

123.85

132.48

SW Estabment

372-72

0.23.46

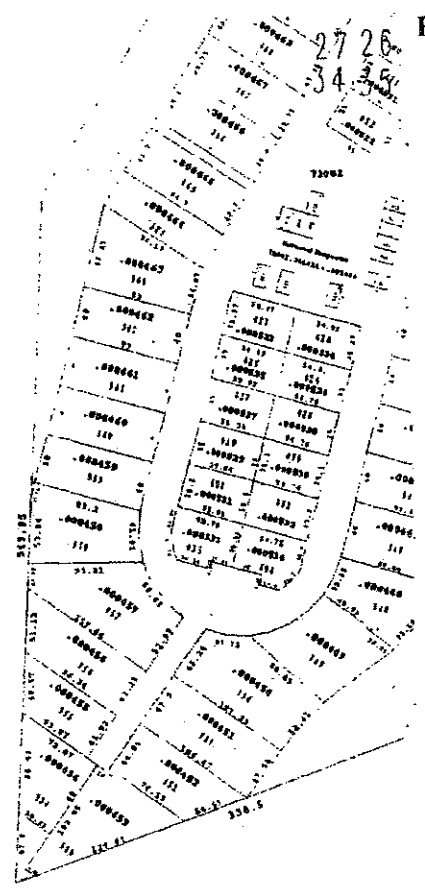
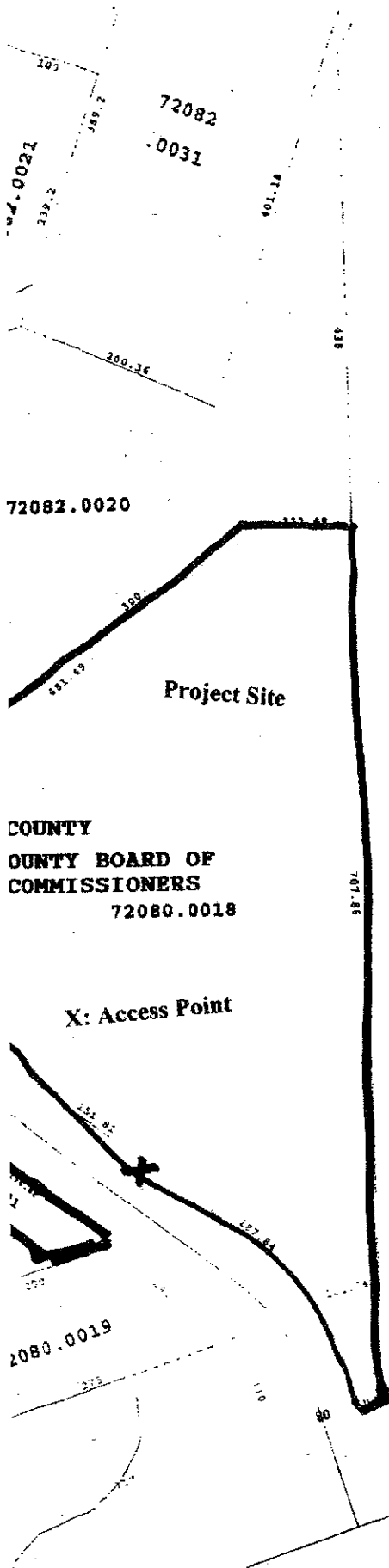
200

210

175

72080.0028

100



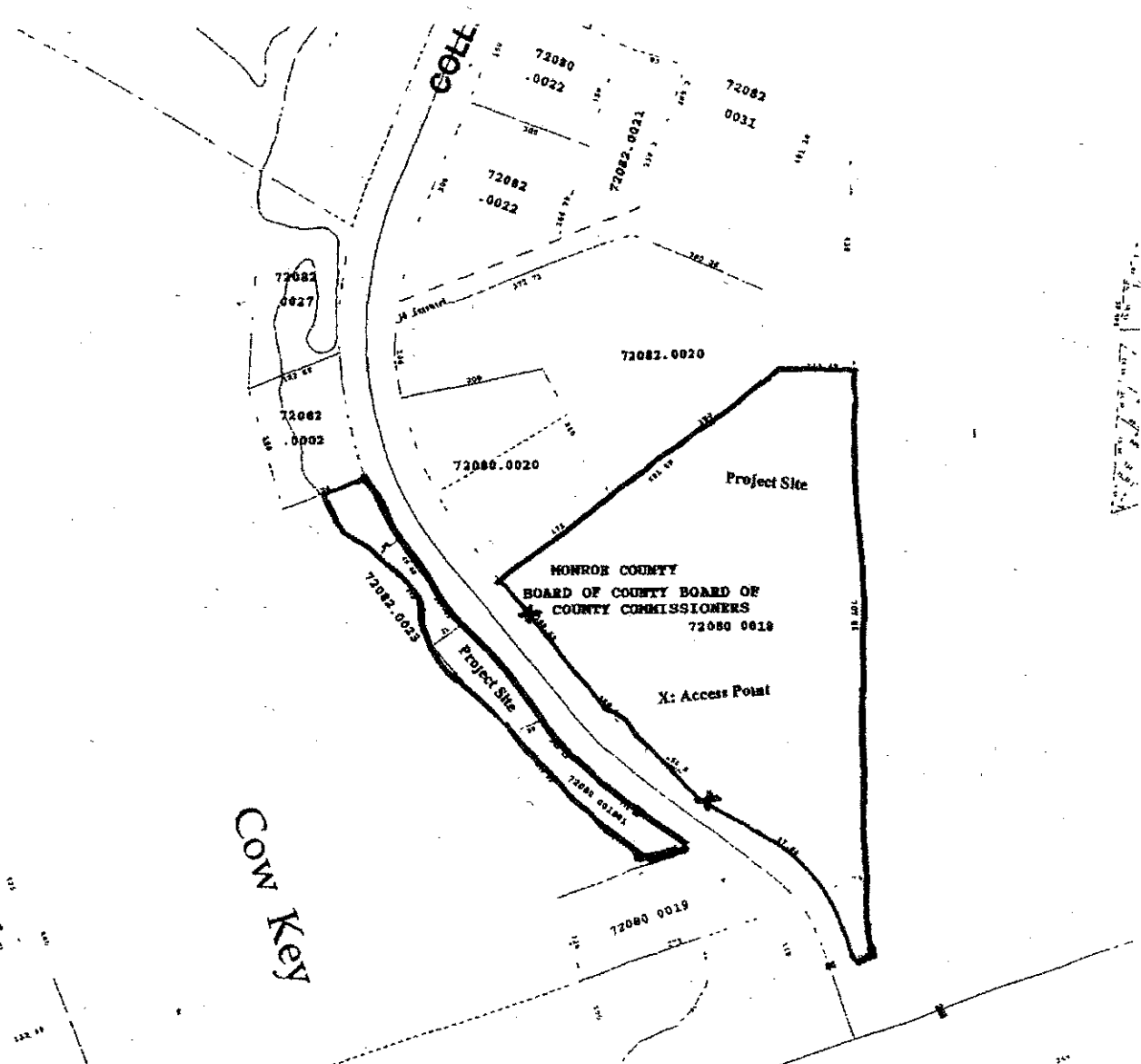
**OVERSE**

1" = 140' jgale:pmwork:02-07-16:09:42.48

132640.0001

1 Beach House  
44700  
9006  
97-023

Cow Key



1007  
1008  
1009  
1010  
1011  
1012  
1013  
1014  
1015  
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1024  
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1028  
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1030

Exhibit B



272  
34  
SPR

**OVERSE**

122449 0001

1" = 140' igela pmwark 02-07-16 09 42 48

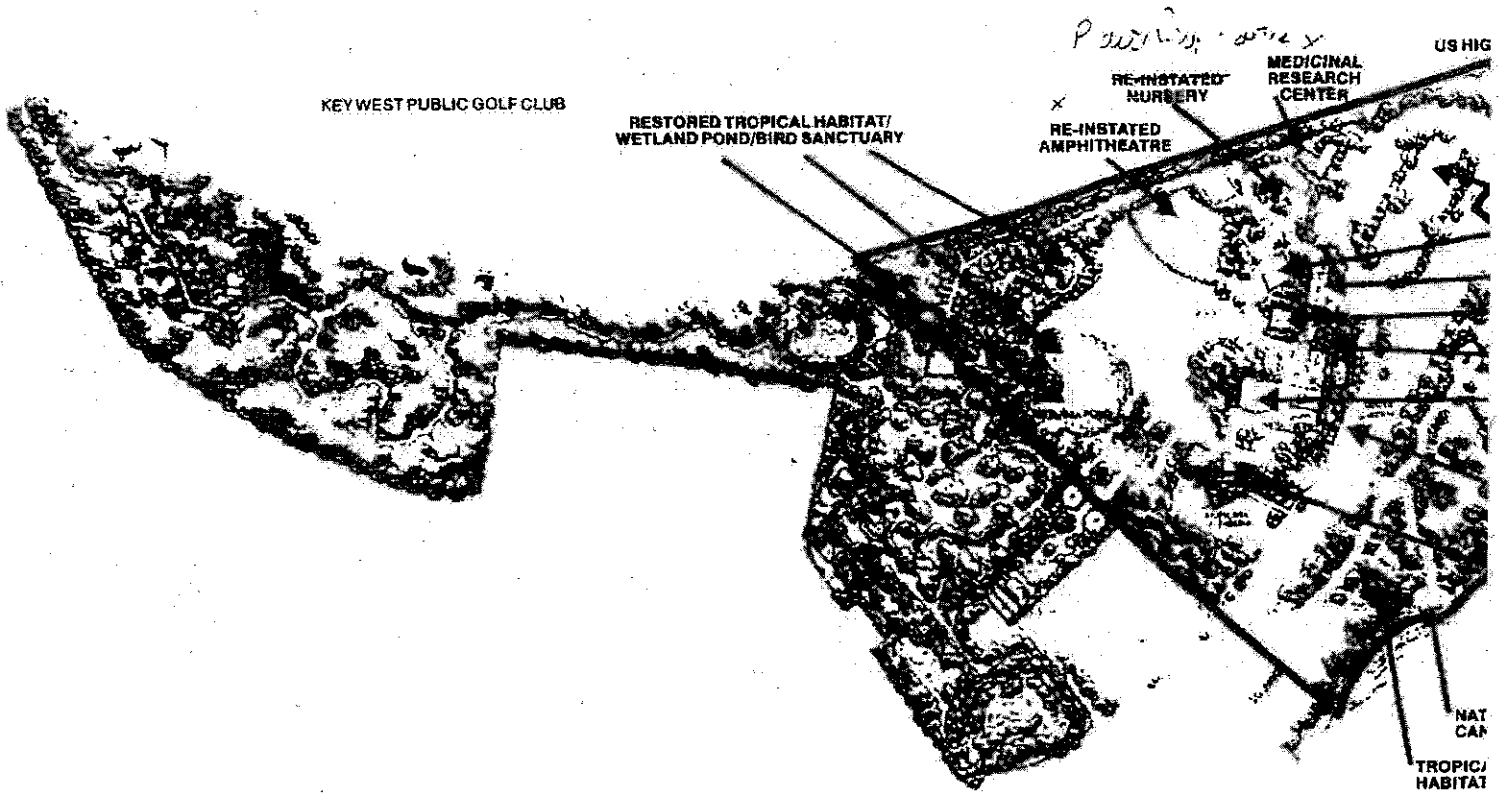
Exhibit C

EXISTING NATIVE SPECIES

Botanical Name	Common Name	Ranking by
Dept of Agriculture and University of Florida		
<i>Bursera simaruba</i>	Gumbo Limbo	NATIVE
<i>Sideroxylon celastrinum</i>	Saffron Plum	NATIVE
<i>Capparis flexuosa</i>	Limber Caper	NATIVE
<i>Coccoloba diversifolia</i>	Pigeon Plum	NATIVE
<i>Eugenia foetida</i>	Spanish Stopper	NATIVE
<i>Eugenia foetida</i>	Red Stopper	ENDANGERED
<i>Guaicum sanctum</i>	Lignum Vitae	ENDANGERED
<i>Guapira discolor</i>	Blolly	NATIVE
<i>Metopium toxiferum</i>	Poisonwood	main food source for
the white crowned pigeon		
<i>Piscidia piscipula</i>	Jamaica Dogwood	NATIVE
<i>Reynosa septentrionalis</i>	Darling plum	THREATENED
<i>Schaefferia frutescens</i>	Florida Boxwood	ENDANGERED
<i>Sweitenia mahagoni</i>	Mahoghany	THREATENED
<i>Zanthoxylum flavum</i>	Yellow Heart	ENDANGERED critically
imperiled		

HISTORICALLY SIGNIFIGANT TREES (70 YEARS OR GREATER)

Botanical Name	Common Name	
<i>Bersura simaruba</i>	Gumbo Limbo	
<i>Coccoloba diversifolia</i>	Pigeon Plum	
<i>Guapira discolor</i>	Blolly	
<i>Piscidia piscipula</i>	Jamaica Dogwood	
<i>Sweitenia mahagoni</i>	Mahoghany	
<i>Kigleia pinnata</i>	Sausage tree	original garden
<i>Calophyllum inophyllum</i>	Mastwood	original garden



KEY WEST PUBLIC GOLF CLUB

RESTORED TROPICAL HABITAT/  
WETLAND POND/BIRD SANCTUARY

RE-INSTATED  
AMPHITHEATRE

RE-INSTATED  
NURSERY

MEDICINAL  
RESEARCH  
CENTER

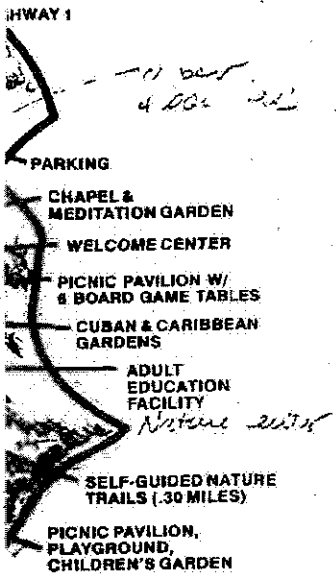
US HIGH

NAT  
CAN  
TROPIC/  
HABITAT

*P. 201-101-012 x*



# Exhibit D



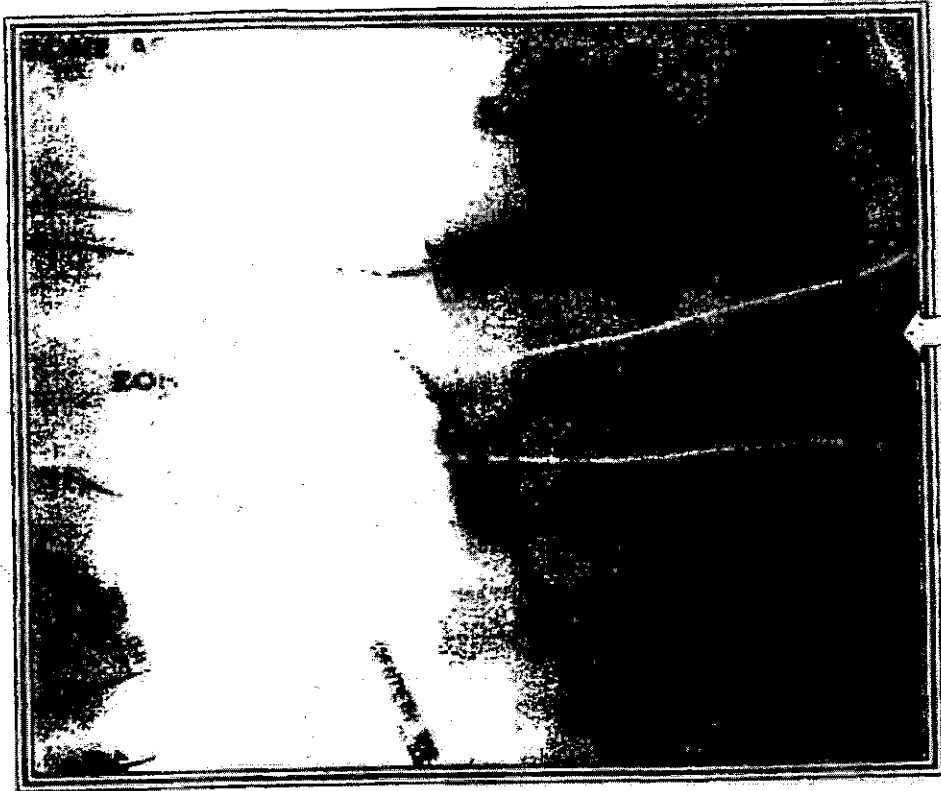
URE VIEWING STATION/  
OE/KAYAK LANDING

L COASTAL  
/GARDEN

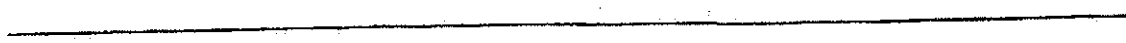


**FLOOD MAP**

**Exhibit E**



**Project Site**



**FLOOD PANEL LEGEND**

FLOOD INSURANCE PROGRAM

**FIRM**

FLOOD INSURANCE RATE MAP

1984

MAP NUMBER  
208701709

MAP REVISED  
MARCH 1989

**COST ESTIMATE AND FUNDING SOURCE**

Structures and Improvements (capital expenses)

Site Work

Site grading \$75,000

Sewer lines \$75,000

Potable water \$38,000

Reclaimed water lines \$100,000

Cisterns 3 @ \$7,500 = \$22,500

Renovate existing Chapel \$50,000

New Nature Center/ Adult Education Center \$500,000

New Welcome Center \$850,000

Pathways/Boardwalks \$380,000(including trail spur to FKOHT)

Picnic Pavilion \$50,000

Signage 24 signs at \$500= \$12,000 (including signage on FKOHT about Gardens and trailhead facilities)

Security fencing and features \$150,000

Parking \$300,000

Lighting \$200,000

Playground \$25,000

Stone Game Tables \$12,000

Total \$3,200,000

Architectural/Engineering @ 15% = \$480,000

Contingency @ 20% = \$640,000

Grand Total= \$4,320,000

Resource Enhancement Activities (capital expenses)

Cuban Garden \$250,000

Caribbean Garden \$250,000

Children's Garden \$300,000

Meditation Garden \$200,000

Tropical Fruit/Vine/Orchard and Nurseries \$350,000

Coastal Garden \$250,000

Water Features \$100,000

Wetland pond \$100,000

Total = \$1,800,000

Design @ 15% = \$270,000

Contingency @ 20% = \$360,000

Grand Total = \$2,430,000

Archaeological and Historic Resource Protection Survey  
performed by Diane Silvia, Ph.D. of the City's Historic Preservation Office

Education Program (capital expense)

Design educational computer system \$40,000  
DVD Equipment, other signage \$10,000  
Computer system, printer, phones \$20,000  
Total = \$70,000

Education (Operating)

Educational Materials \$20,000  
Technology Upgrades \$4,000

Maintenance (annual)

Capital Maintenance @ 8% = \$119,240  
Gardens Maintenance \$90,000  
Arborist/Tree Trimming \$30,000  
Fertilization \$5,000  
Fire Ant treatment \$5,000  
Exotic Treatment \$8,000  
Utilities \$11,000

Security

Gatekeeper \$25,000

Staffing

Administrative/Educational Personnel \$125,000

Funding Sources to be pursued to fund development and operations:

- Tourist Development grants for site development
- Florida Recreational Development and Assistance for playgrounds
- Transportation Enhancement funds for trail development
- Land and Water Conservation Fund for waterfront development
- Cultural Facilities Grants for Nature/adult Education Center

If a non-profit organization manages the project site through management agreement or lease, they will be able to solicit tax deductible donations for development and operations.







# ARCHAEOLOGICAL SITE FORM FLORIDA MASTER SITE FILE

Version 2.2 3/97

Consult Guide to Archaeological Site Form for detailed instructions

Site # Mo3432  
Recorder Site# 1  
Field Date 8 / 2 / 99  
Form Date 8 / 2 / 99

Original  
 Update  
(give date)  
5/29/03

**Exhibit H**

Site Name(s) Key West Botanical Gardens ~~Multiple Listing (DHR only)~~  
Project Name \_\_\_\_\_ FMSF Survey # \_\_\_\_\_  
Ownership:  private-profit  private-nonprofit  private-individual  private-unknown  city  county  state  federal  foreign  Native American  unknown  
USGS 7.5 Map Name & Date Stock Island, Fla 1971 County Monroe  
Township \_\_\_\_\_ Range 25E Section 35  Check if Irregular Section, Qtr Section (check all that apply)  NE  NW  SE  SW  
Landgrant \_\_\_\_\_ Tax Parcel # (s) \_\_\_\_\_  
City / Town (if within 3 mi) Key West In Current City Limits?  Yes  No  Unknown  
UTM Zone  16  17 Easting 424050 Northing 271785  
Address / Vicinity of / Route to Northwest and then northeast about a quarter mile from the west end of College Road.  
Name of Public Tract (e.g. park) Key West Botanical Garden

SETTING *	STRUCTURES - OR - FEATURES *	FUNCTION *
<input checked="" type="checkbox"/> Land - terrestrial <input type="checkbox"/> Cave/Sink - subterranean <input type="checkbox"/> terrestrial <input type="checkbox"/> aquatic <input type="checkbox"/> Intermittently flooded <input checked="" type="checkbox"/> Wetland - palustrine <input checked="" type="checkbox"/> usually flooded <input type="checkbox"/> sometimes flooded <input type="checkbox"/> usually dry	<input checked="" type="checkbox"/> Lake/Pond - lacustrine <input type="checkbox"/> River/Stream/Creek - fluvine <input type="checkbox"/> Tidal - estuarine <input type="checkbox"/> Saltwater - marine <input type="checkbox"/> marine unspecified <input type="checkbox"/> 'high energy' marine <input type="checkbox"/> 'low energy' marine <input checked="" type="checkbox"/> Other <u>Habitat for endangered Orthalicucus reses reses (Stock Island Tree Snail)</u>	<input type="checkbox"/> none specified <input type="checkbox"/> campsite <input type="checkbox"/> extractive site <input type="checkbox"/> habitabon (prehistoric) <input type="checkbox"/> homestead (historic) <input type="checkbox"/> farmstead <input type="checkbox"/> village (prehistoric) <input checked="" type="checkbox"/> town (historic) <input type="checkbox"/> quarry <input checked="" type="checkbox"/> public garden
<input type="checkbox"/> Aboriginal <input type="checkbox"/> Alachua <input type="checkbox"/> Archaic, Early <input type="checkbox"/> Archaic, Middle <input type="checkbox"/> Archaic, Late <input type="checkbox"/> Archaic unspecified <input type="checkbox"/> Belle Glade I <input type="checkbox"/> Belle Glade II <input type="checkbox"/> Belle Glade III <input type="checkbox"/> Belle Glade IV <input type="checkbox"/> Belle Glade unspec <input type="checkbox"/> Cades Pond <input type="checkbox"/> Deptford <input type="checkbox"/> Other (Less common phases are not check listed. For historic sites, also give specific dates if known)	<input type="checkbox"/> Englewood <input type="checkbox"/> Fort Walton <input type="checkbox"/> Glades Ia <input type="checkbox"/> Glades Ib <input type="checkbox"/> Glades IIa <input type="checkbox"/> Glades IIb <input type="checkbox"/> Glades IIc <input type="checkbox"/> Glades II unspec <input type="checkbox"/> Glades IIIa <input type="checkbox"/> Glades IIIb <input type="checkbox"/> Glades IIIc <input type="checkbox"/> Glades III unspec <input type="checkbox"/> Glades unspec <input type="checkbox"/> Hickory Pond <input type="checkbox"/> Leon-Jefferson <input type="checkbox"/> Malabar I <input type="checkbox"/> Malabar II <input type="checkbox"/> Manasota <input type="checkbox"/> Mount Taylor <input type="checkbox"/> Nonwood <input type="checkbox"/> Orange <input type="checkbox"/> Paleoindian <input type="checkbox"/> Pensacola <input type="checkbox"/> Perico Island <input type="checkbox"/> Safety Harbor <input type="checkbox"/> St. Augustine <input type="checkbox"/> St. Johns Ia <input type="checkbox"/> St. Johns Ib <input type="checkbox"/> St. Johns I unspec <input type="checkbox"/> St. Johns IIa <input type="checkbox"/> St. Johns IIb <input type="checkbox"/> St. Johns IIc <input type="checkbox"/> St. Johns II unspec <input type="checkbox"/> St. Johns unspec <input type="checkbox"/> Santa Rosa <input type="checkbox"/> Santa Rosa-Swift Creek <input type="checkbox"/> Seminole Colonization <input type="checkbox"/> Seminole 1st War To 2d <input type="checkbox"/> Seminole 2d War To 3d <input type="checkbox"/> Seminole 3d War On <input type="checkbox"/> Seminole unspecified <input type="checkbox"/> Swift Creek, Early <input type="checkbox"/> Swift Creek, Late <input type="checkbox"/> Swift Creek, unspecified <input type="checkbox"/> Transitional <input type="checkbox"/> Weeden Island I <input type="checkbox"/> Weeden Island II <input type="checkbox"/> Weeden Island unspec <input type="checkbox"/> Prehistoric nonceramic <input type="checkbox"/> Prehistoric ceramic <input type="checkbox"/> Prehistoric unspecified <input type="checkbox"/> 1935 to present	<input type="checkbox"/> Nonaboriginal <input type="checkbox"/> First Spanish 1613-99 <input type="checkbox"/> First Spanish 1600-99 <input type="checkbox"/> First Spanish 1700-1763 <input type="checkbox"/> First Spanish unspecified <input type="checkbox"/> British 1763-1783 <input type="checkbox"/> Second Spanish 1783-1821 <input type="checkbox"/> American Territorial 1821-45 <input type="checkbox"/> American Civil War 1861-65 <input type="checkbox"/> American 19th Century <input type="checkbox"/> American 20th Century <input type="checkbox"/> American unspecified <input type="checkbox"/> Alcan-American

\* Consult Guide to Archaeological Site Form for preferred descriptions not listed above (data are "coded fields" at the Site File)

Potentially eligible for a local register?  Yes name register at right  No  insufficient info Name of local register if eligible City of Key West Historic Site Survey  
Individually eligible for National Register?  Yes  No  insufficient info  
Potential contributor to NR district?  Yes  No  insufficient info  
Explanation of Evaluation (Required if evaluated; limit to 3 lines; attach full justification) Sub-surface investigations have not been undertaken.

Recommendations for Owner or SHPO Action Continued preservation and maintenance. Aquisition of surrounding properties that originally belonged to the gardens. Increased security.

DHR USE ONLY		OFFICIAL EVALUATIONS		DHR USE ONLY	
NR DATE	KEEPER-NR ELIGIBILITY: <input type="checkbox"/> yes <input type="checkbox"/> no	Date	/	/	/
DELIST DATE	SHPO-NR ELIGIBILITY: <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> potentially elig. <input type="checkbox"/> insufficient info	Date	/	/	/
	LOCAL DESIGNATION _____	Date	/	/	/
	Local office _____				
National Register Criteria for Evaluation <input type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d (See National Register Bulletin 15, p. 2)					



# ARCHAEOLOGICAL SITE FORM

Site # Mo3432

Consult Guide to Archaeological Site Form for detailed instructions

**SITE DETECTION\***

no field check     exposed ground     screened shovel

literature search     posthole digger

informant report     auger--size \_\_\_\_\_

remote sensing     unscreened shovel

Other methods; number, size, depth, pattern of units, screen size (attach site plan) \_\_\_\_\_

**SITE BOUNDARIES\***

bounds unknown     remote sensing     unscreened shovel

none by recorder     insp exposed ground     screened shovel

literature search     posthole tests     block excavations

informant report     auger--size \_\_\_\_\_     estimate or guess

**EXTENT AND STRATIGRAPHY**

Extent Size (m<sup>2</sup>) 55 A. Depth/stratigraphy of cultural deposit Site had active greenhouses for regenerating native and endangered plant species.

Temporal Interpretation\* - Components (check one)  single     prob single     prob multiple     multiple     uncertain     unknown

Describe each occupation in plan (refer to attached large scale map) and stratigraphically. Discuss temporal and functional interpretations. The reserve was designated and developed during the WPA era to serve as a public botanical garden, arboretum, wildlife sanctuary, and educational center.

Integrity Overall disturbance:  none seen     minor     substantial     major     redeposited     destroyed-documental     unknown

Disturbances/threats/protective measures The invasion of exotic plants and animals, as well as, vandalism are threats to the gardens. At present most invasive exotic plants have been removed.

Surface area collected \_\_\_\_\_ m<sup>2</sup> # collection units \_\_\_\_\_ ; Excavation # noncontiguous blocks \_\_\_\_\_

Total Artifacts # 0 (C)ount or (E)stimate? ~ Surface # \_\_\_\_\_ (C) or (E) Subsurface # \_\_\_\_\_ (C) or (E)

**COLLECTION SELECTIVITY\***

unknown     unselective (all artifacts)

selective (some artifacts)

mixed selectivity

**SPATIAL CONTROL\***

uncollected     general (not by subarea)

unknown     controlled (by subarea)

variable spatial control

Other \_\_\_\_\_

**ARTIFACT CATEGORIES\* and DISPOSITIONS\*** (example. A\_bone-human)

Pick exactly one code from Disposition List ⇄ ⇄ ⇄

_____ bone-animal	_____ exotic-nonlocal
_____ bone-human	_____ glass
_____ bone-unspecified	_____ lithics-aboriginal
_____ bone-worked	_____ metal-nonprecious
_____ brick/building debris	_____ metal-precious/coin
_____ ceramic-aboriginal	_____ shell-unworked
_____ ceramic-nonaboriginal	_____ shell-worked
_____ daub	_____ Others coral rock wall

**Disposition List\***

A - category always collected

S - some items in category collected

O - observed first hand, but not collected

R - collected and subsequently left at site

I - informant reported category present

U - unknown

Artifact Comments

**DIAGNOSTICS** (Type or mode, and frequency, e.g., Suwanee ppk, heat-treated chert, Deptford Check-stamped, ironstone/white ware)

1 _____ N= 5	_____ N= 9
2 _____ N= 6	_____ N= 10
3 _____ N= 7	_____ N= 11
4 _____ N= 8	_____ N= 12

**ENVIRONMENTAL CONTEXT**

Nearest fresh water type\* & name (incl. relief source) two ponds Distance (m)/bearing within garden \_\_\_\_\_

Natural community (FNAI category\* or leave blank) \_\_\_\_\_

Local vegetation mixed tropical

Topography\* island Min Elevation 1 meters Max Elevation 1.3 meters

Present land use public botanical garden

SCS soil series \_\_\_\_\_ Soil association \_\_\_\_\_

**SCIENTIFIC INVESTIGATION**

Informant(s) Name/Address/Phone/Email Commissioner Merill McCoy, City of Key West 292-8252

Describe field & analysis notes, artifacts, photos. For each, give type\*(e.g., notes), curating organization\*, accession #s, and short description. Aerial photo shows original extent of the garden area. Of interest is Kigalia pinnata, sausage tree located on the Monroe County Hospital property.

Manuscripts or Publications on the site (Use continuation sheet, give FMS# if relevant) quarterly newsletter

Recorder(s) Name/Addr/Phone/Email Diane E. Silvia, P.O. Box 1409, Key West, FL 33041

Affiliation\* or FAS Chapter Historic Preservation Planner, City of Key West (305) 293-6484

\* Consult Guide to Archaeological Site Form for preferred descriptions not listed above (data are "coded fields" at the Site File)

1. SCALE: DISTANCE (FEET) 0 10 20 30 40 50 60 70 80 90 100 110 120 130 140 150 160 170 180 190 200 210 220 230 240 250 260 270 280 290 300 310 320 330 340 350 360 370 380 390 400 410 420 430 440 450 460 470 480 490 500 510 520 530 540 550 560 570 580 590 600 610 620 630 640 650 660 670 680 690 700 710 720 730 740 750 760 770 780 790 800 810 820 830 840 850 860 870 880 890 900 910 920 930 940 950 960 970 980 990 1000

Approximate Site Limits

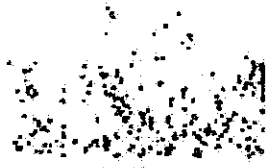




SF

614

30



2

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9

10

**APPENDIX:**

- 1 - Conceptual Approval Agreement
- 2 - FNAI notification form
- 3 - Exotic Pest Plant Council's List of Florida's Most Invasive Species.
- 4 - Recorded deed
- 5 - Grant Award Agreement
- 6 - Comprehensive Plan Objectives and Policies furthered by Project
- 7- Florida Overseas Heritage Trail State Park Map

**FLORIDA NATURAL AREAS INVENTORY  
FIELD REPORT FORM FOR RARE PLANTS**

Thank you for taking the time to complete and mail this form. Information from knowledgeable individuals such as yourself makes an important contribution to the FNAI Biological Conservation Database. If you need help with this form, or would like additional information, please call the FNAI Botanist at 850-224-8207.

Scientific name \_\_\_\_\_ Common name \_\_\_\_\_  
 Basis for identification/manual used \_\_\_\_\_ Date(s) seen \_\_\_\_\_  
 Photograph taken? \_\_\_\_\_ Specimen deposited at a herbarium? \_\_\_\_\_ Name of herbarium \_\_\_\_\_  
 Quad name \_\_\_\_\_ County \_\_\_\_\_ Site or managed area name: \_\_\_\_\_ Directions \_\_\_\_\_  
 (please mark site on copy of USGS 7.5 minute quad map and attach to this form, or draw a detailed map on back of this page, or give GPS coordinates)

Describe the site where the plant was seen: habitat/plant community, topography, hydrology, dominant species in tree, shrub, and ground layers

Estimated Size of Population (no. of individuals & size of area occupied).

Flowering? Yes \_\_\_ No \_\_\_ Fruiting? Yes \_\_\_ No \_\_\_ In bud? Yes \_\_\_ No \_\_\_ In leaf? Yes \_\_\_ No \_\_\_ Dormant? Yes \_\_\_ No \_\_\_

Comments

Have you seen this species at the same location in the past? Yes \_\_\_ No \_\_\_ If yes, give dates \_\_\_\_\_ If yes, describe changes, if any, to site and population since last visit

Are there disturbances or threats (e.g. vehicle use, trash dumping, fire suppression, exotic species invasion) to the population? \_\_\_\_\_ Is there evidence (e.g., fire breaks, scorching) of fire at the site? Yes \_\_\_ No \_\_\_ If yes, describe and give dates of recent fires, if known

Other useful information concerning the population, its ecological conditions, management history, management needs, names of individuals who might be helpful, etc

Your name \_\_\_\_\_ Tel no \_\_\_\_\_ E-mail \_\_\_\_\_  
 Address \_\_\_\_\_

Please include any additional information on the back of this sheet. Please send this form to Botanist, Florida Natural Areas Inventory, 1018 Thomasville Rd., Suite 200-C, Tallahassee FL 32303. THANK YOU!

FLORIDA NATURAL AREAS INVENTORY FIELD REPORT FORM - OCCURRENCES OF SPECIAL ANIMALS

Scientific Name \_\_\_\_\_  
Common Name \_\_\_\_\_  
Basis for Identification \_\_\_\_\_

County \_\_\_\_\_  
Date observed: \_\_\_\_\_  
Investigator \_\_\_\_\_

Location of Animal (please attach map and give specific directions; if possible, mark site on copy of USGS 7.5 minute topo map or draw detailed map on back of this page):

Describe habitat/plant community, list dominant species

Extent of this habitat at site that may support animal (e.g., acres, miles) \_\_\_\_\_  
Number of individuals (or nests, burrows, etc.) seen:

Estimated no. of individuals in population:

Age/population structure (adults, young, etc.) \_\_\_\_\_

Ecological/behavioral notes (e.g., reproductive stage, activity type, feeding, flying, nesting)

Have you seen this species at the same location in the past? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please give date(s) \_\_\_\_\_ Previous condition: \_\_\_\_\_

Is there evidence of disturbance at the site? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please describe

Owner(s) of site \_\_\_\_\_

Is owner protecting this animal? Yes \_\_\_\_\_ No \_\_\_\_\_

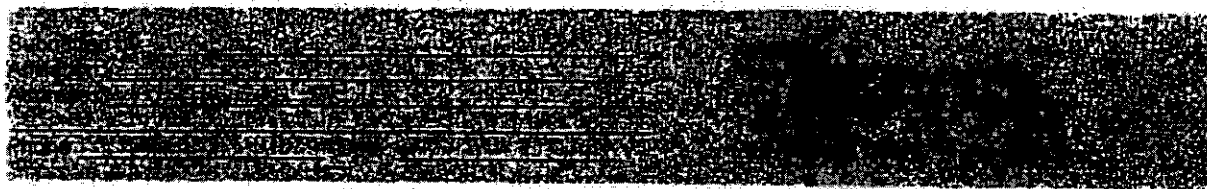
Conservation/Management

Needs \_\_\_\_\_

Comments (other useful information concerning this animal and site - e.g., names and addresses of individuals who might be helpful, publications, museum specimen numbers, etc)

(please include any additional information on the back of this sheet)

Additional forms may be obtained upon request. Please send completed field report forms to



\*\* note each form should include only one species, one locality, and one date

Florida Natural Areas Inventory · Natural Community EOR Form (pg 1 of 2)

D

Surveysite \_\_\_\_\_ Surveyors \_\_\_\_\_ Polygon # or ID \_\_\_\_\_ date \_\_\_\_\_  
 GPS file # \_\_\_\_\_ lat \_\_\_\_\_ long \_\_\_\_\_ Photo # \_\_\_\_\_ Comments \_\_\_\_\_  
 rections/locational comments \_\_\_\_\_

Community type \_\_\_\_\_ Soil series \_\_\_\_\_ Source \_\_\_\_\_

**DOMINANT VEGETATION WITHIN 20M RADIUS OF OBSERVATION POINT**

STRATA	cov. cl	ht cl	DOMINANT SPECIES COVER	Scientific name - Braun/Blanquet scale
emergent tree				
canopy				
sub-canopy				
tall shrub/ sapling				
short shrub/ sapl. seedl				
herbaceous tot				
graminoid				
forb				
fern				
non-vascular				
epiphyte				
vine / liana				

Cover Class - Use Braun/Blanquet scale 1=0-1% 2=1-5% 3=5-25% 4=25-50% 5=50-75% 6=75-100%  
 Height Class - 1<0.5m 2=0.5-2m 3=2-5m 4=5-10m 5=10-15m 6=15-20m 7=20-35m 8>35m

**SUCCESSION COMMENTS**

**CANOPY AGE**

- 1 old growth
- 2 older mature
- 3 mature
- 4 younger mature
- 5 prereproductive trees
- 6 early successional

SUCCESSION COMMENTS (tree size, structure, age, etc) \_\_\_\_\_

**NATURE OF DISTURBANCE**

- 1 firebreaks
- 2 ORV trails or roads
- 3 agriculture
- 4 wildlife food plots
- 5 forestry site prep
- 6 logging activities
- 7 animal digging
- 8 ditching or hydrologic
- 9 shrub encroachment
- 10 exotics encroachment
- 11 natural disturbances

**SEVERITY OF DISTURBANCE**

- 1 light
- 2 moderate
- 3 heavy
- 4 severe

Describe \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**WEEDY SPECIES**

- 1 absent
- 2 occasional - <5%
- 3 common - >5%

List \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**EXOTIC SPECIES**

- 1 absent
- 2 occasional - <5%
- 3 common - >5%

List \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Disturbance Comments \_\_\_\_\_

**HYDROLOGIC ALTERATION**

- 1 shrub encroachment
- 2 fire breaks
- 3 ditching
- 4 roads
- 5 impoundment
- 6 dams in watershed
- 7 canals
- 8 salt water intrusion
- 9 groundwater drawdown
- 10 cause unknown

COMMENTS (Discuss severity for each type and give overall description)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**PAST FIRE**

- 1 not suppressed
- 2 suppressed
- 3 not applicable
- 4 unknown

Comments/evidence \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

**MANAGEMENT COMMENTS**

\_\_\_\_\_  
 \_\_\_\_\_





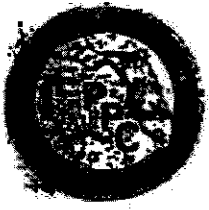


### Appendix 3

species, changing comments  
to economic status as

Common Name	Reg Dist	Cons List
lsp. climbing fern	NR	N
Old World	N	N
climbing fern	N	
uniflorous vine	N	
aspenlike	N	
matricaria	N	P.N.
<b>Chimney</b>	<b>NR</b>	
conifer stems	N	P.N.
horsetail bamboo	N	
swamp fern	N	
Asian sword fern	N	
Burma tree	N	
swamp vine	N	N
slender vine	N	N
terrestrial grass	N	
slender grass	N	
swamp bamboo	N	P
strawberry grass	N	
grass	N	
leaves vine	N	N
diversity vine-ayok	N	N
Madagascar	N	
Chimney hollow	N	N
leaves vine	N	
schiffelia	N	
<b>Iron/Steel</b>	<b>NR</b>	<b>P.N.</b>
Chimney stems	N	
swamp	N	N
slender	N	
tropical scale app.	N	N
swamp vine	N	
<b>Iron plant</b>	<b>N</b>	
leaves hollow	N	
fern	N	
swamp	N	
white-flowered	N	
swamp fern	N	
fern plant	N	
<b>Iron grass</b>	<b>N</b>	





*Florida*  
Native Plant Council's  
2003 List of  
Invasive Species

**USE OF THE LIST:**

Draw attention to 1) the adverse effects of exotic pest plants currently having on Florida's native biodiversity and the integrity of native plant communities, 2) habitat losses from exotic pest plant invasions, 3) the impacts on endangered species via habitat loss and alteration, 4) the need to prevent habitat losses through pest management, 5) the socio-economic impacts of these plants (e.g., increased wildfires in Melaleuca areas), 6) the seriousness of different invasions over time, and 7) the need to have information that helps natural resource managers set priorities for control efforts.

[WWW.FLEPP.ORG](http://WWW.FLEPP.ORG)

Doc# 1531398  
Bk# 2138 Pg# 2453

This Instrument Prepared By:  
Larry R. Erskine  
1200 Truman Avenue, Suite 207  
Key West, FL 33040  
Property Appraisers Parcel Identification (Folio) Number: 00072080-001800

WARRANTY DEED <sup>1</sup>

THIS INDENTURE, made this 27<sup>th</sup> day of July, A D 2005, between the County of Monroe, Florida, a public corporation under the laws of the State of Florida, whose post office address is 1100 Simonton Street, Room 2-205, Key West, FL, 33040, grantor, and City of Key West, a municipal corporation existing under the laws of the State of Florida, whose post office address is 525 Angela Street, Key West, FL, 33040, grantee,

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and their heirs, legal representatives, successors and assigns. "Grantor" and "grantee" are used for singular and plural, as the context requires and the use of any gender shall include all genders.)

WITNESSETH: That the said grantor, for and in consideration of the sum of Ten Dollars and other good and valuable considerations, to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said grantee, and grantee's successors and assigns forever, the following described land situate, lying and being in Monroe County, Florida, to-wit:

See Attachment "A" attached hereto and by this reference made a part hereof.

"By acceptance of this warranty deed, the Grantee hereby agrees that the use of the Property described herein shall be subject to the covenants and restrictions as set forth in the Grant Award Agreement attached hereto as Attachment "B" and recorded in the Public Records of Monroe County, Florida. These covenants and restrictions shall run with the Property herein described. If any term or condition of the Grant Award Agreement is violated by the Grantee or by some third party with the knowledge of the Grantee and the Grantee does not correct the violation pursuant to the Grant Award Agreement, fee simple title to all interest in the Project Site shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida in accordance with Chapter 38C, Part III, Florida Statutes."

TOGETHER WITH; AN EASEMENT TO LAY, MAINTAIN AND OPERATE UTILITY LINES, AS REFERENCED IN THE QUITCLAIM DEED RECORDED IN BOOK G-56, AT PAGE 58, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA.

SUBJECT TO: AN EASEMENT IN FAVOR OF AND RESERVED UNTO THE GRANTOR FOR INGRESS, EGRESS, AND THE OPERATION OF UTILITIES OVER THE PROPERTY DESCRIBED IN ATTACHMENT "C".

SUBJECT TO: A CONSERVATION EASEMENT IN FAVOR OF THE MONROE COUNTY COMPREHENSIVE PLAN LAND AUTHORITY, RESTRICTING THE USE OF THE SUBJECT PROPERTY TO DEVELOPMENT AS AN ADDITION TO THE KEY WEST BOTANICAL GARDEN PROVIDING PUBLIC ACCESS, PUBLIC RECREATION, AND WILDLIFE HABITAT, ATTACHED HERETO AS ATTACHMENT "D".

This conveyance is subject to easements, restrictions, limitations and conditions of record if any now exist, but any such interests that may have been terminated are not hereby re-imposed.

[This property is not the homestead property of the grantor, nor contiguous to homestead property, as such homestead is defined under Florida law.]

AND the said grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF the grantor has hereunto set grantor's hand and seal, the day and year first above written.

Signed, sealed and delivered in the presence of:

M. J. Rosch  
SIGNATURE OF FIRST WITNESS)

MARK J. ROSCH  
(PRINTED, TYPED OR STAMPED  
NAME OF FIRST WITNESS)

Pamela G. Hancock  
(SIGNATURE OF SECOND WITNESS)

PAMELA G. HANCOCK  
(PRINTED, TYPED OR STAMPED  
NAME OF SECOND WITNESS)

COUNTY OF MONROE, FLORIDA

BY: Dixie M. Spear  
MAYOR DIXIE M. SPEAR

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
John R. Collins  
JOHN R. COLLINS  
COUNTY ATTORNEY  
DATE 01/26/85

STATE OF FLORIDA)  
)  
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this 24th day of July, 2005, by Mayor Dixie M Spehar . She is personally known to me ~~or who has produced~~ \_\_\_\_\_ as identification

(NOTARY PUBLIC)  
SEAL

  
(SIGNATURE OF NOTARY PUBLIC)

(PRINTED, TYPED OR STAMPED NAME OF  
NOTARY PUBLIC)

Commission No \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_





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

Beginning 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 at 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 N.70°40'03"E., along the said Northerly Right-of-Way Line of U.S. Highway No. 1 a distance of 21.39 feet; thence N.04°20'14"W., a distance of 784.40 feet; thence S.89°21'03"W., a distance of 111.41 feet; thence S.58°05'53"W., a distance of 304.38 feet; thence S.34°13'10"E., a distance of 35.93 feet; thence S.40°13'12"W., a distance of 143.60 feet to the said Easterly Right-of-Way Line of Junior College Road; thence S.39°47'17"E., a distance of 135.59 feet to the point of curvature of a curve to the left, having: a radius of 361.02 feet, a central angle of 14°25'40", a chord bearing of S.47°00'07"E. and a chord length of 90.67 feet; thence along the arc of said curve, an arc length of 90.91 feet to the point of tangency of said curve; thence S.54°12'57"E., a distance of 272.56 feet to the point of curvature of a curve to the right, having: a radius of 265.00 feet, a central angle of 35°06'00", a chord bearing of S.36°39'58"E. and a chord length of 159.82 feet; thence along the arc of said curve, an arc length of 162.34 feet to the point of tangency of said curve; thence S.19°06'58"E., a distance of 36.16 feet to the Point of Beginning.

Parcel contains 209036 square feet or 4.80 acres, more or less

LESS

Legal Description: Out Parcel:

Prepared by undersigned:

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

Beginning 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 at 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 N.70°40'03"E., along the said Northerly Right-of-Way Line of U.S. Highway No. 1 a distance of 21.39 feet; thence N.04°20'14"W., a distance of 78.14 feet; thence S.71°09'00"W., a distance of 44.31 feet to the said Easterly Right-of-Way Line of Junior College Road and a the point on a curve to the left, having: a radius of 265.00 feet, a central angle of 08°36'44", a chord bearing of S.23°25'20"E. and a chord length of 39.79 feet; thence along the arc of said curve, an arc length of 39.83 feet to the point of tangency of said curve, thence S.19°06'58"E., a distance of 36.16 feet to the Point of Beginning

Parcel contains 2413.40 square feet or 0.0554 acres, more or less.

This document prepared by  
Kristen L. Coons, Esq.  
Florida Communities Trust  
Department of Community Affairs  
2555 Shumard Oak Blvd  
Tallahassee, FL 32399

Record and Return To:

FLORIDA COMMUNITIES TRUST  
FF3 AWARD # 03-034-FF3  
KEY WEST BOTANICAL GARDENS  
FCT Contract#~~04~~<sup>06</sup>-CT-9G-03-F3-J1-034

### GRANT AWARD AGREEMENT

THIS AGREEMENT is entered into this 25<sup>th</sup> day of July, 2005, by and between the FLORIDA COMMUNITIES TRUST ("FCT"), a nonregulatory agency within the State of Florida Department of Community Affairs, and [name of recipient], a political subdivision of the State of Florida ("Recipient"), in order to impose terms, conditions, and restrictions on the use of the proceeds of certain bonds, hereinafter described, and the lands acquired with such proceeds and as described in Exhibit "A" attached hereto and made a part hereof ("Project Site"), as shall be necessary to ensure compliance with applicable Florida Law and federal income tax law and to otherwise implement provisions of Chapters 259.105, 259.1051, and 380, Florida Statutes.

WHEREAS, Part III Chapter 380, Florida Statutes, the Florida Communities Trust Act, creates a nonregulatory agency within the Department of Community Affairs, which will assist local governments in bringing into compliance and implementing the conservation, recreation and open space, and coastal elements of their comprehensive plans or in conserving natural resources and resolving land use conflicts by providing financial assistance to local governments and nonprofit environmental organizations to carry out projects and activities authorized by the Florida Communities Trust Act;

WHEREAS, Section 259.105(3)(c), F.S., of the Florida Forever Act provides for the distribution of twenty-two percent (22%) less certain reductions of the net Florida Forever Revenue Bond proceeds to the Department to provide land acquisition grants to local governments and nonprofit environmental organizations through the FCT for acquisition of community-based projects, urban open spaces, natural resource conservation areas, parks, greenways and outdoor recreation areas to implement local comprehensive plans;

WHEREAS, the Bonds were issued as tax-exempt bonds, meaning that the interest on the Bonds is excluded from the gross income of Bondholders for federal income tax purposes;

WHEREAS, Rule Chapter 9K-7, Florida Administrative Code (F.A.C.), authorizes FCT to impose conditions for funding on those FCT applicants whose projects have been selected for funding in accordance with Rule Chapter 9K-7, F.A.C.;

WHEREAS, the FCT has approved the terms under which the Project Site is acquired and the deed whereby the Recipient acquires title to the Project Site shall contain such covenants and restrictions as are sufficient to ensure that the use of the Project Site at all times complies with Section 375.051, Florida Statutes and Section 9, Article XII of the State Constitution and shall contain clauses providing for the conveyance of title to the Project Site to the Board of Trustees of the Internal Improvement Trust Fund upon the failure of the Recipient to use the Project Site acquired thereby for such purposes; and

WHEREAS, such covenants and restrictions shall be imposed by an agreement which shall describe with particularity the real property which is subject to the agreement and shall be recorded in the county in which the real property is located; and

WHEREAS, the purpose of this Agreement is to set forth the covenants and restrictions that are imposed on the Project Site subsequent to its acquisition with the FCT Florida Forever Bond award.

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FCT and Recipient do hereby contract and agree as follows:

#### **I. GENERAL CONDITIONS**

1. Upon execution and delivery by the parties hereto, the Recipient shall cause this Agreement to be recorded and filed in the official public records of **Monroe County, Florida**, and referenced in the warranty deed vesting fee simple title to the Project Site in the Recipient, and in such manner and in such other places as FCT may reasonably request, and shall pay all fees and charges incurred in connection therewith.

2. The Recipient and FCT agree that the State of Florida Department of Environmental Protection will forward this Agreement to Department of Environmental Protection Bond Counsel for review. In the event Bond Counsel opines that an amendment is required to this Agreement so that the tax exempt status of the Florida Forever Bonds is not jeopardized, FCT and Recipient shall amend the Agreement accordingly.

3. This Agreement may be amended at any time. Any amendment must be set forth in a written instrument and agreed to by both the Recipient and FCT.

4. This Agreement and the covenants and restrictions contained herein shall run with the Property herein described and shall bind, and the benefits shall inure to, respectively, the FCT and the Recipient and their respective successors and assigns.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, with respect to both substantive rights and with respect to procedures and remedies.

6. Any notice required to be given hereunder shall be given by personal delivery, by registered mail or by registered expedited service at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto, and any such notice shall be deemed received on the date of delivery if by personal delivery or expedited delivery service, or upon actual receipt if sent by registered mail.

FCT: Florida Communities Trust  
Department of Community Affairs  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399-2100  
ATTN: Program Manager

Recipient: City of Key West  
P.O. Box 1409  
Key West, FL  
37041  
ATTN: Roger Wittenberg

7. If any provision of the Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**II. PROJECT SITE REQUIREMENTS IMPOSED BY CHAPTER 259, CHAPTER 375, AND CHAPTER 380, PART III, FLORIDA STATUTES**

1. If any essential term or condition of this grant agreement is violated by the Recipient or by some third party with the knowledge of the Recipient and the Recipient does not correct the violation within 30 days of notice of the violation, fee simple title to all interest in the Project Site shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund. The FCT shall treat such property in accordance with Section 380.508(4)(e), Florida Statutes.

2. Any transfer of the Project Site shall be subject to the approval of FCT and FCT shall enter into a new agreement with the transferee, containing such covenants, clauses, or other restrictions as are sufficient to protect the interest of the people of Florida.

3. The interest, if any, acquired by the Recipient in the Project Site will not serve as security for any debt of the Recipient unless FCT approves the transaction.

4. If the existence of the Recipient terminates for any reason, title to all interest in real property it has acquired with the FCT award shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund, unless FCT negotiates an agreement with another local government or nonprofit organization which agrees to accept title to all interest in and to manage the Project Site.

5. In the event that the Project Site is damaged or destroyed or title to the Project Site, or

any part thereof, is taken by any governmental body through the exercise or the threat of the exercise of the power of eminent domain, the Recipient shall deposit with the FCT any insurance proceeds or any condemnation award, and shall promptly commence to rebuild, replace, repair or restore the Project Site in such manner as is consistent with the Agreement. The FCT shall make any such insurance proceeds or condemnation award moneys available to provide funds for such restoration work. In the event that the Recipient fails to commence or to complete the rebuilding, repair, replacement or restoration of the Project Site after notice from the FCT, the FCT shall have the right, in addition to any other remedies at law or in equity, to repair, restore, rebuild or replace the Project Site so as to prevent the occurrence of a default hereunder.

Notwithstanding any of the foregoing, FCT will have the right to seek specific performance of any of the covenants and restrictions of this Agreement concerning the construction and operation of the Project Site.

### **III. PROJECT SITE OBLIGATIONS IMPOSED BY FCT ON THE RECIPIENT**

1. The Project Site shall be managed only for the conservation, protection and enhancement of natural and historical resources and for passive, natural resource-based public outdoor recreation which is compatible with the conservation, protection and enhancement of the Project Site, along with other related uses necessary for the accomplishment of this purpose. The proposed uses for the Project Site are specifically designated in the Project Plan as approved by FCT.

2. The Recipient shall prepare and submit to FCT an annual stewardship report as required by Rule 9K-7.013, F.A.C.

3. The Recipient shall ensure that the future land use designation assigned to the Project Site is for a category dedicated to open space, conservation, or outdoor recreation uses as appropriate. If an amendment to the Recipient's comprehensive plan is required to comply with this paragraph, the amendment shall be proposed at the next comprehensive plan amendment cycle available to the Recipient.

4. Recipient shall ensure, and provide evidence thereof to FCT, that all activities under this Agreement comply with all applicable local, state, regional and federal laws and regulations, including zoning ordinances and the adopted and approved comprehensive plan for the jurisdiction as applicable. Evidence shall be provided to FCT that all required licenses and permits have been obtained prior to the commencement of any construction.

5. The Recipient shall, through its agents and employees, prevent the unauthorized use of the Project Site or any use thereof not in conformity with the FCT approved project plan.

6. FCT staff or its duly authorized representatives shall have the right at any time to inspect the Project Site and the operations of the Recipient at the Project Site.

7. All buildings, structures, improvements, and signs shall require the prior written approval of FCT as to purpose. Further, tree removal, other than non-native species, and/or major

land alterations shall require the written approval of FCT. The approvals required from FCT shall not be unreasonably with-held by FCT upon sufficient demonstration that the proposed structures, buildings, improvements, signs, vegetation removal or land alterations will not adversely impact the natural resources of the Project Site. The approval by FCT of the Recipient's management plan addressing the items mentioned herein shall be considered written approval from FCT.

8. If archaeological and historic sites are located on the Project Site, the Recipient shall comply with Chapter 267, Florida Statutes. The collection of artifacts from the Project Site or the disturbance of archaeological and historic sites on the Project Site will be prohibited unless prior written authorization has been obtained from the Department of State, Division of Historical Resources.

9. The Recipient shall ensure that the Project Site is identified as being publicly owned and operated as a passive, natural resource-based public outdoor recreational site in all signs, literature and advertising regarding the Project Site. The Recipient shall erect a sign(s) identifying the Project Site as being open to the public and as having been purchased with funds from FCT and Recipient.

#### **IV. OBLIGATIONS INCURRED BY RECIPIENT AS A RESULT OF BOND PROCEEDS BEING UTILIZED TO PURCHASE THE PROJECT SITE**

1. If the Project Site is to remain subject, after its acquisition by the State and the Recipient, to any of the below listed activities or interests, the Recipient shall provide at least 60 days written notice of any such activity or interest to FCT prior to the activity taking place, and shall provide to FCT such information with respect thereto as FCT reasonably requests in order to evaluate the legal and tax consequences of such activity or interest:

a. any lease of any interest in the Project Site to a non-governmental person or organization;

b. the operation of any concession on the Project Site to a non-governmental person or organization;

c. any sales contract or option to buy things attached to the Project Site to be severed from the Project Site, with a non-governmental person or organization;

d. any use of the Project Site by non-governmental persons other than in such person's capacity as a member of the general public;

e. a management contract of the Project Site with a non-governmental person or organization; and

f. such other activity or interest as may be specified from time to time in writing by FCT to the Recipient.

2. Recipient agrees and acknowledges that the following transaction, events, and

circumstances may not be permitted on the Project Site as they may have negative legal and tax consequences under Florida law and federal income tax law:

- a. a sale of the Project Site or a lease of the Project Site to a non-governmental person or organization;
- b. the operation of a concession on the Project Site by a non-governmental person or organization;
- c. a sale of things attached to the Project Site to be severed from the Project Site to a non-governmental person or organization;
- d. any change in the character or use of the Project Site from that use expected at the date of the issuance of any series of bonds from which the disbursement is to be made;
- e. any use of the Project Site by non-governmental persons other than in such person's capacity as a member of the general public;
- f. a management contract of the Project Site with a non-governmental person or organization; and
- g. such other activity or interest as may be specified from time to time in writing by FCT to the Recipient.

DELEGATIONS AND CONTRACTUAL ARRANGEMENTS BETWEEN THE RECIPIENT AND OTHER GOVERNMENTAL BODIES, NOT FOR PROFIT ENTITIES, OR NON GOVERNMENTAL PERSONS FOR USE OR MANAGEMENT OF THE PROJECT SITE WILL IN NO WAY RELIEVE THE RECIPIENT OF THE RESPONSIBILITY TO ENSURE THAT THE CONDITIONS IMPOSED HEREIN ON THE PROJECT SITE AS A RESULT OF UTILIZING BOND PROCEEDS TO ACQUIRE THE PROJECT SITE ARE FULLY COMPLIED WITH BY THE CONTRACTING PARTY.

**V. CONDITIONS THAT ARE PARTICULAR TO THE PROJECT SITE AS A RESULT OF THE FCT APPROVED MANAGEMENT PLAN**

The management plan for the Project Site is mentioned throughout this Agreement, and is particularly described in Section IV. above. In addition to the various conditions already described in this Agreement, which apply to all sites acquired with FCT funds, the Management Plan shall address the following conditions that are particular to the Project Site and result from either representations made in the application that received scoring points or observations made by the FCT staff during the site visit described in Rule 9K-7.009(1), F.A.C.:

1. Two or more resource-based outdoor recreational facilities including covered picnic pavilion and walking trails and two or more user-oriented outdoor recreation facilities including a playground and gaming tables shall be provided at the Project Site. The facilities shall be

designed and located with minimal impact to natural resources on the Project Site.

2. A permanent recognition sign shall be maintained in the entrance area of the Project Site. The sign shall acknowledge that the Project Site is open to the public and was purchased with funds from the Florida Communities Trust and the City of Key West.
3. Interpretive signage shall be provided to educate visitors about the natural environment and unique history of the Project Site.
4. At least 24 environmental education classes or programs shall be conducted annually at the Project Site by trained educators or resource professionals.
5. A staffed nature center that provides year-round education programming shall be established on the Project Site.
6. The canopy trees on the Project Site shall be preserved and appropriately managed to ensure the long-term viability of the trees.
7. The Project Site shall be managed in a manner that protects and enhances habitat for native wildlife species that utilize or could potentially utilize the site, including the Stock Island tree snail. The development of the management plan shall be coordinated with the Fish and Wildlife Conservation Commission's Office of Environmental Services to ensure the preservation and viability of native wildlife species and their habitat. Periodic surveys shall be conducted to ensure that site management is compatible with the listed species using the Project Site.
8. The water quality of Florida Bay adjacent to the Project Site shall be protected and enhanced. The City shall implement a plan to improve water quality in the area including the removal of several existing structures and asphalt parking areas.
9. Any proposed stormwater facility for the Project Site shall be designed to provide recreational open space or wildlife habitat.
10. Approximately 4 acres, shall be landscaped with native plant species to enhance the function and appearance of the Project Site.
11. An ongoing monitoring and control program for invasive vegetation including exotic (non-native) and nuisance native plant species shall be implemented at the Project Site. The objective of the control program shall be the elimination of invasive exotic plant species and the maintenance of a diverse association of native vegetation. The Management Plan shall reference the Exotic Pest Plant Council's List of Florida's Most Invasive Species to assist in identifying invasive exotics on the Project Site.
12. A feral animal removal program shall be developed and implemented, as necessary, for dogs, cats, ducks, and other non-native wildlife that may be found on the Project Site.



13. Prior to the commencement of any proposed development activities, measures shall be taken to determine the presence of any archaeological sites. All planned activities involving known archaeological sites or potential site areas shall be closely coordinated with the Department of State, Division of Historic Resources in order to prevent the disturbance of significant sites.
14. The location and design of the parking and other site improvements shall have minimal impact on natural resources. The parking area shall incorporate pervious material wherever feasible.
15. Pedestrian and bicycle access to the Project Site shall be promoted through the provision of pedestrian oriented walkways and bicycle facilities that link the Project Site with City sidewalk and bike trail network.
16. The Project Site shall be managed as an addition to the Key West Botanical Gardens.
17. The Project Site shall be developed and managed as a support parcel of the Overseas Heritage Trail recreational trail system and include trailhead facilities.
18. The Project Site shall be protected and managed as part of linked conservation lands and recreation opportunities along the Florida Keys Paddeling Trail
19. Proposed site improvements shall be designed and located to minimize or eliminate the long term risk of storm damage or flooding in conjunction with appropriate hazard mitigation agencies or experts.
20. The requirements imposed by other grant program funds that may be sought for activities associated with the Project Site shall not conflict with the terms and conditions of this Agreement.

This Agreement including Exhibit "A" embodies the entire agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

Witness:

*M. Lewallen*  
Print Name: Madlene Lewallen

*Charlotte Thompson*  
Print Name: Charlotte V. Thompson

CITY OF KEY WEST

By: *[Signature]*  
Print Name: Roger D.W. Henbers  
Title: Finance Dir

Date: 7/6/05

Approved as to Form and Legality:

By: *[Signature]*  
Print Name: ROBERT TISCHENMEL

STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of July, 2005, by Roger D. Henbers, as Finance Director of the City of Key West on behalf of the Local Government, and who is personally known to me.

*[Signature]*

Notary Public

Print Name: \_\_\_\_\_  
Commission No. \_\_\_\_\_  
My Commission Expires \_\_\_\_\_  
Pearline R. Lewis  
MY COMMISSION # DD15416 EXPIRES  
September 30, 2006  
BONDED THROUGH FARM & INSURANCE, INC.

Witness:

[Signature]  
Print Name: Brian W. Beck

[Signature]  
Print Name: GAYLE H. BRET

FLORIDA COMMUNITIES TRUST

By: [Signature]  
Janice Browning, Division Director  
Housing and Community Development

Date: 7/25/05

Approved as to Form and Legality:

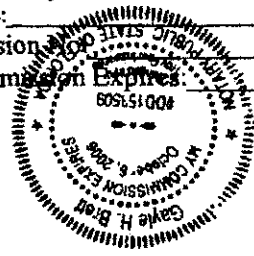
By: [Signature]  
Kristen L Coons  
Trust Counsel

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of July, 2005, by Janice Browning, Division Director, Housing and Community Development. She is personally known to me.

[Signature]  
Notary Public

Print Name: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



**EXHIBIT A**

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

Beginning 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 at 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 N.70°40'03"E., along the said Northerly Right-of-Way Line of U.S. Highway No. 1 a distance of 21.39 feet; thence N.04°20'14"W., a distance of 784.40 feet; thence S.89°21'03"W., a distance of 111.41 feet, thence S.58°05'53"W., a distance of 304.38 feet; thence S.34°13'10"E., a distance of 35.93 feet; thence S.40°13'12"W., a distance of 143.60 feet to the said Easterly Right-of-Way Line of Junior College Road; thence S.39°47'17"E., a distance of 135.59 feet to the point of curvature of a curve to the left, having: a radius of 361.02 feet, a central angle of 14°25'40", a chord bearing of S.47°00'07"E. and a chord length of 90.87 feet; thence along the arc of said curve, an arc length of 90.91 feet to the point of tangency of said curve; thence S.54°12'57"E., a distance of 272.56 feet to the point of curvature of a curve to the right, having: a radius of 265.00 feet, a central angle of 35°06'00", a chord bearing of S 36°39'58"E. and a chord length of 159.82 feet, thence along the arc of said curve, an arc length of 162.34 feet to the point of tangency of said curve; thence S.19°06'58"E., a distance of 36.16 feet to the Point of Beginning.

Parcel contains 209036 square feet or 4.80 acres, more or less.

LESS

Legal Description: Out Parcel:

Prepared by undersigned:

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

Beginning 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 at 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 N.70°40'03"E., along the said Northerly Right-of-Way Line of U.S. Highway No. 1 a distance of 21.39 feet; thence N.04°20'14"W., a distance of 78.14 feet; thence S.71°09'00"W., a distance of 44.31 feet to the said Easterly Right-of-Way Line of Junior College Road and a the point on a curve to the left, having: a radius of 265.00 feet, a central angle of 08°36'44", a chord bearing of S.23°25'20"E. and a chord length of 39.79 feet; thence along the arc of said curve, an arc length of 39.83 feet to the point of tangency of said curve; thence S 19°06'58"E., a distance of 36.16 feet to the Point of Beginning

Parcel contains 241340 square feet or 0.0554 acres, more or less.

ATTACHMENT C

Doc# 1531398  
Bk# 2136 Pg# 2468

Legal Description (Ingress/Egress & Utility Easement):

Prepared by undersigned.

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

Beginning 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 at 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 N.70°40'03"E., along the said Northerly Right-of-Way Line of U.S. Highway No. 1 a distance of 21.39 feet; thence N 04°20'14"W., a distance of 784.40 feet, thence S.89°21'03"W., a distance of 111.41 feet; thence S.58°05'53"W., a distance of 304.38 feet; thence S 34°13'10"E, a distance of 35.93 feet to the Point of Beginning; thence continue S 34°13'10" E for a distance of 46.61 feet, thence S 34°45'03" W for a distance of 142.04 feet to the Northeasterly Right-of-Way Line of Junior College Road; thence N 39°47'17" W along the said Northeasterly Right-of-Way Line of Junior College Road for 59.34 feet, thence N 40°13'12" E for a distance of 143.60 feet to the Point of Beginning

Parcel contains 7286.10 square feet or 0.167 acres, more or less

ATTACHMENT D

GRANT OF CONSERVATION EASEMENT

THIS GRANT OF EASEMENT is made on this 26<sup>th</sup> day of July, 2005, by the City of Key West, a municipal corporation existing under the laws of Florida, Grantor, to Monroe County Comprehensive Plan Land Authority, a land authority under Section 380.0663(1), Florida Statutes and Monroe County Ordinance No. 031-1986, whose address is 1200 Truman Avenue, Suite 207, Key West, Florida 33040, as Grantee

Recitals

A) The Grantor is the owner of certain real property (the servient estate) located in Monroe County, Florida, known as the Key West Botanical Garden Addition property located at 5100 College Road on Stock Island and more particularly described in Exhibit A.

B) This easement is a conservation easement created pursuant to Section 704.06, Florida Statutes, and is to be governed by, construed, and enforced in accordance with that statute along with applicable laws of the State of Florida

1. *Grant of easement*

In consideration for the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable considerations to said Grantor in hand paid by said Grantee, the receipt of which is hereby acknowledged, the Grantor hereby grants to Grantee the easement described below

2. *Easement area.*

The location of the easement area on the servient estate is as follows all of the Key West Botanical Garden Addition property located at 5100 College Road on Stock Island and more particularly described in Exhibit A

3. *Restraints imposed by the conservation easement*

The conservation easement granted by this instrument imposes the following restrictions on the future use of the servient estate within the easement area: use of the property shall be limited to development as an addition to the Key West Botanical Garden providing public access, public recreation, and wildlife habitat consistent with those restrictions in the Grant Award Agreement between the City of Key West and Florida Communities Trust as recorded in Official Record Book 2136, Page 2457, Public Records of Monroe County, Florida.

4. *Terms and persons bound*

This conservation easement is perpetual, subject to Recital B.9., runs with the land and is binding on all present and subsequent owners of the servient estate. Grantor represents that the mortgagee(s), if any, whose consent is attached hereto, is (are) the only mortgagee(s) having a security interest in the servient estate.

5. *Modification of easement.*

No modification of this easement is binding unless approved in writing by Florida Communities Trust, evidenced in writing and signed by an authorized representative of the Grantee and Grantor

- 6. *Attorney's fees*  
In the event of any controversy, claim or dispute arising under this instrument, the prevailing party shall be entitled to recover reasonable attorney's fees and costs, including appeals
- 7. *Entry of Grantee's representative on the servient estate.*  
The Grantee may enter upon the servient estate, after first furnishing the Grantor no less than 24 hours notice, for the purpose of inspection to determine the Grantor's compliance with this Grant of Easement.
- 8. *Notice.*  
Any notice provided for or concerning this grant of easement must be in writing and is sufficiently given when sent by certified or registered mail, or via an equivalent service furnished by a private carrier, to the respective address of each party as set forth at the beginning of this Grant of Easement.
- 9. *Termination of easement*  
In the event the Board of Trustees of the Internal Improvement Trust Fund takes title to the servient estate pursuant to sections 380.508(4)(d) or (e), Florida Statutes, this easement shall be terminated

IN WITNESS WHEREOF, Grantor of this Grant of Easement has caused it to be executed on the date in the first sentence of this Grant of Easement.

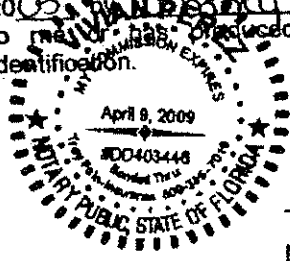
City of Key West

Cheryl Smith  
Witness

Jimmy Weekley  
By: Jimmy Weekley, Mayor

Portia Hancock  
Witness

SWORN TO AND SUBSCRIBED before me this 20<sup>th</sup> day of May, 2005, Jimmy Weekley, who is personally known to me, has produced personally known as identification.



William Perez  
Notary Public, State of Florida

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

Beginning 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 at 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 N.70°40'03"E., along the said Northerly Right-of-Way Line of U.S. Highway No. 1 a distance of 21.39 feet; thence N.04°20'14"W., a distance of 784.40 feet; thence S.89°21'03"W., a distance of 111.41 feet, thence S.58°05'53"W., a distance of 304.38 feet; thence S.34°13'10"E., a distance of 35.93 feet; thence S.40°13'12"W., a distance of 143.60 feet to the said Easterly Right-of-Way Line of Junior College Road; thence S.39°47'17"E., a distance of 135.59 feet to the point of curvature of a curve to the left, having: a radius of 361.02 feet, a central angle of 14°25'40", a chord bearing of S.47°00'07"E. and a chord length of 90.67 feet; thence along the arc of said curve, an arc length of 90.91 feet to the point of tangency of said curve; thence S.54°12'57"E., a distance of 272.56 feet to the point of curvature of a curve to the right, having: a radius of 265.00 feet, a central angle of 35°06'00", a chord bearing of S 36°39'58"E. and a chord length of 159.82 feet, thence along the arc of said curve, an arc length of 162.34 feet to the point of tangency of said curve; thence S.19°06'58"E., a distance of 36.16 feet to the Point of Beginning.

Parcel contains 209036 square feet or 4.80 acres, more or less.

LESS

Legal Description: Out Parcel:

Prepared by undersigned:

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

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Parcel contains 241340 square feet or 0.0554 acres, more or less



FCT Contract Number 04-CT-96-07-FJ-A1-074  
FLORIDA COMMUNITIES TRUST  
03-034-FF3  
KEY WEST BOTANICAL GARDENS ADDITION  
CSFA # - 52002

GRANT CONTRACT

THIS AGREEMENT is entered into on FEBRUARY 5, 2004, the date the last party executes this Agreement, by and between the FLORIDA COMMUNITIES TRUST (FCT), a non-regulatory agency within the State of Florida Department of Community Affairs, and CITY OF KEY WEST, local government of the State of Florida (Recipient) The intent of this Agreement is to impose terms and conditions on the use of the proceeds of certain bonds, hereinafter described, and the lands acquired with such proceeds (Project Site), that are necessary to ensure compliance with applicable Florida law and federal income tax law and to otherwise implement provisions of Sections 259.105, 259.1051, and Chapter 380, Part III, Florida Statutes (F.S.).

\* \* \* \* \*

WHEREAS, Chapter 380, Part III, F.S , the Florida Communities Trust Act, creates a non-regulatory agency within the Department of Community Affairs (Department) that will assist local governments in bringing local comprehensive plans into compliance and implementing the goals, objectives, and policies of the conservation, recreation and open space, and coastal management elements of local comprehensive plans, or in conserving natural resources and resolving land use conflicts by providing financial assistance to local governments and nonprofit environmental organizations to carry out projects and activities authorized by the Florida Communities Trust Act;

WHEREAS, Section 259.105(3)(c), F.S , of the Florida Forever Act provides for the distribution of twenty-two percent (22%) less certain reductions of the net Florida Forever Revenue Bond proceeds to the Department to provide land acquisition grants to local governments or nonprofit environmental organizations through FCT for acquisition of community-based projects, urban open spaces, parks, greenways, and recreational trail systems to implement local comprehensive plans;

WHEREAS, the Bonds are issued as tax-exempt bonds, meaning that the interest on the Bonds is excluded from the gross income of bondholders for federal income tax purposes;

WHEREAS, Rule Chapter 9K-7, Florida Administrative Code (F.A.C ). describes the procedures for evaluation and selection of lands proposed for acquisition using funds allocated to FCT through the Department from the Florida Forever Trust Fund;

WHEREAS, FCT Governing Board met on October 2 - 3, 2003, to score, rank, and select projects to receive approval for funding,

03-034-FF3  
1/15/2004  
Joint Acquisition

WHEREAS, the Recipient's project, described in an application submitted for evaluation, was selected for funding and in accordance with Rule Chapter 9K-7, F.A.C., and as more particularly described within this Agreement;

WHEREAS, Rule 9K-7.009(1), F.A.C., authorizes FCT to impose conditions for funding on those FCT applicants whose projects are selected for funding; and

WHEREAS, the purpose of this Agreement is to set forth the conditions that must be satisfied by Recipient prior to the disbursement of any FCT Florida Forever funds awarded, as well as the restrictions that are imposed on the Project Site subsequent to its acquisition with the Bond proceeds.

NOW THEREFORE, FCT and Recipient mutually agree as follows:

#### **I. GENERAL CONDITIONS**

1. At least two original copies of this Agreement shall be executed by the Recipient and returned to FCT office at 2555 Shumard Oak Boulevard, Tallahassee, FL 32399-2100, as soon as possible and before **February 18, 2004**. If Recipient requires more than one original document, the Recipient should photocopy the number of additional copies needed, and then execute each as an original document. Upon receipt of the signed Agreements, FCT will execute the Agreements, retain one original copy and return all other copies that have been executed to the Recipient.

2. This Agreement between the parties sets forth the requirements and responsibilities for acquisition and management of the Project Site, described in the application that was submitted and selected for funding by FCT (Application). Since the entire Project Site has not yet been negotiated for acquisition, some elements of the project are not yet known, such as the purchase price, other project costs, and the terms upon which an owner will voluntarily convey the property.

3. Approval for funding shall be until **October 3, 2004**. In the event that the Project Plan described in Section V. below has not been approved by the Expiration Date, this Agreement shall be terminated. FCT may extend this Agreement beyond the Expiration Date if the Recipient demonstrates that significant progress is being made toward Project Plan approval or that extenuating circumstances warrant an extension of time. A request for an extension must be made in writing to FCT, fully explaining the reason for the delay and why the extension is necessary. If the Recipient does not request an extension, or if an extension is not granted to the Recipient by FCT, the Florida Forever award granted to the Recipient shall terminate and all obligations hereunder shall cease.

4. This Agreement may be terminated before its Expiration Date at the written request of the Recipient. Such a request shall fully describe the circumstances that compel the Recipient to terminate the project. A request for termination should be mailed to FCT at the address given in paragraph 1 above.

5. This Agreement may be terminated before its Expiration Date by FCT if it is determined by FCT that no significant progress is being made toward the acquisition of the Project Site, non-performance by the Recipient of the requirements listed or that other circumstances are present that would, in all likelihood, preclude or prevent the successful acquisition of the Project Site within the established time frame. Prior to termination, notice of the proposed termination shall be mailed to the Recipient at the address given in paragraph 13 below.

6. Recipient agrees to submit the documentation to FCT that is required in this Agreement as soon as possible so that the Project Site may be acquired in an expeditious manner. Deadlines stated in this Agreement, as well as deadlines associated with any FCT activity relating to the project, are strictly enforced. Failure to adhere to deadlines may result in delays in the project, may result in allocation of time or resources to other recipients that responded timely, and may result in this Agreement being terminated by FCT.

It is the responsibility of the Recipient and its representatives to know all project deadlines, to devise a method of monitoring the project, and to adhere to all deadlines. If the Recipient is identified in paragraph III.1. below as the party responsible for all negotiation and acquisition activities, the Recipient shall provide a monthly status report to FCT of acquisition activities on the Project Site. The monthly report shall contain dates that appraisals are ordered and due, as well as dates that purchase agreements are sent to sellers and the status of each contract, as appropriate.

7. FCT Florida Forever award granted to the Recipient will in no event exceed the lesser of Seventy-Five Percent (75.00%) of the final total eligible project costs, as defined in Rule 9K-7.002(29), F.A.C., or Three Million Three Hundred Eighty-One Thousand Dollars And No Cents (\$3,381,000.00) unless FCT approves a different amount, after determination of the Maximum Approved Purchase Price as provided in Rule 9K-8.007, F.A.C., and which shall be reflected in an addendum to this Agreement. The amount of the grant shall not exceed the Limitation of Award provided in Rule 9K-7.003(3), F.A.C., and as advertised in the Notice of Application.

8. The grant amount stated in paragraph 7 above is based on the Recipient's estimate of total project costs in its Application, as well as limits on awards in the notice of application period announcing the application cycle. When disbursing funds for the project, FCT will recognize the actual total project costs, defined in Rule 9K-7.002(29), F.A.C., for acquisition of the Project Site. The total project costs will be reflected on a grant reconciliation statement prepared pursuant to paragraph 10 below. FCT will participate in the land cost at either the actual purchase price, or the Maximum Approved Purchase Price based on appraisal reports that comply with requirements set forth in Rule 9K-8.007, F.A.C., whichever is less, and multiplied by the percent stated in paragraph 7 above.

9. FCT Governing Board selected the Recipient's Application for funding to acquire the entire Project Site identified in its Application. FCT reserves the right to withdraw or adjust FCT award if the acreage that comprises the Project Site is reduced or the project design in

changed so that the objectives of the acquisition cannot be achieved. Any request for modification of the boundary of the Project Site identified in the Application may be considered by FCT following the procedures for submission and review of boundary modification requests set forth in Rule 9K-7 010, F.A.C

If the Project Site is comprised of multiple parcels and multiple owners, an Acquisition Plan was required in the application. FCT reserves the right to withdraw or adjust FCT award if the priority parcel(s), or a significant portion of the Project Site identified in the Acquisition Plan, incorporated by reference herein and attached as Exhibit "A", cannot be acquired. Approval of this Agreement shall constitute approval of the Acquisition Plan by FCT

10. FCT funds shall be delivered either in the form of eligible project costs prepaid by FCT to vendors or in the form of a State of Florida warrant at the closing of the Project Site, payable to the Seller or the Seller's designated agent authorized by law to receive such payment, provided the Comptroller determines that such disbursement is consistent with good business practices and can be completed in a manner minimizing costs and risks to the State of Florida. If the Project Site is comprised of multiple parcels, FCT shall deliver at the closing of each parcel only the share of FCT award that corresponds to the parcel being closed. FCT will prepare a grant reconciliation statement prior to the closing of the Project Site parcel that will evidence the amount of local match, if any is required, provided by the Recipient and the portion of FCT award that corresponds to the parcel being closed. Funds expended by FCT for eligible project costs incurred by FCT will be recognized as part of FCT grant award amount on the grant reconciliation statement.

11. The Recipient's local match, if any is required, shall be delivered either in the form of eligible project costs prepaid to vendors by the Recipient; eligible documented donation by Seller of land value; or Recipient's funds at the closing of the Project Site. If the Project Site is comprised of multiple parcels, the Recipient shall deliver at the closing of each parcel the share of the local match that corresponds to the parcel being closed. The cash expended by the Recipient for eligible project costs incurred by the Recipient conducting acquisition activities will be recognized as part of the local match, on the grant reconciliation statement prepared pursuant to paragraph 10 above. In the event that land value is the source of local match, if any is required, the value attributed to the land local match, shall be determined after an appraisal report that complies with the procedures and requirements set forth in Rule 9K-8.007, F.A.C. Such appraisal report shall be subject to review and approval by FCT prior to FCT funds being delivered for the project.

12. FCT Governing Board selected applications for funding on October 2 - 3, 2003, at which time the Project Site became part of a list of lands that were approved for consideration for land acquisition. If action initiated by the Recipient that is the local government having jurisdiction over the Project Site, subsequent to October 2 - 3, 2003, results in a governmentally-derived higher value due to an enhanced highest and best use, FCT acquisition activities will be terminated unless the Seller agrees that the appraisal will be based on the highest and best use of the Project Site on or before October 2 - 3, 2003

13. Recipient hereby notifies FCT that the following administrator, officer, or employee is the authorized key contact, or project manager, on behalf of the Recipient for purposes of coordinating project activities for the duration of the project:

Name: Roger D. Wittenberg  
Title: FINANCE DIRECTOR  
Address: P.O. Box 1409, Key West, FL 33041  
Phone: 305-292-8211 Fax: 305-292-8260  
Email: rwittenh@KeyWestCity.com

All contact and correspondence from FCT and the Recipient will be through with the key contact. The Recipient must notify FCT as to any change in the authorization of the key contact on behalf of the Recipient named above. This notification must be made in writing to the Executive Director and signed by the appropriate authorized administrator, officer, or employee named in paragraph III.6.d. below.

14. This Agreement may be amended at any time and must be set forth in a written instrument and agreed to by both FCT and the Recipient. Such amendments shall become a part of this Agreement.

## II. AUDIT REQUIREMENTS

Section 215.97, Florida Statutes, the Florida Single Audit Act, provides uniform state audit requirements for state financial assistance provided by state agencies over the audit threshold as defined in that Section as follows:

1. The Recipient agrees to maintain financial procedures and support documents, in accordance with generally accepted accounting principles, to account for the receipt and expenditure of funds under this Agreement.

2. These records shall be available at all reasonable times for inspection, review, or audit by state personnel and other personnel duly authorized by FCT. "Reasonable" shall be construed according to circumstances, but ordinarily shall mean normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

3. The Recipient shall also provide FCT with the records, reports or financial statements upon request for the purposes of auditing and monitoring the funds awarded under this Agreement.

4 In the event that the Recipient expends a total amount of State financial assistance from all state sources equal to or in excess of \$300,000 in any fiscal year of such Recipient, the Recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10 550 and 10 650, Rules of the Auditor General.

Section I.7. above indicates State financial assistance through FCT by this Agreement. In determining the State financial assistance expended in its fiscal year, the Recipient shall consider all sources of State financial assistance, including State funds received from FCT, except that State financial assistance received by a non-state entity for Federal program matching requirements shall be excluded from consideration. The funding for this Agreement was received by FCT as a grant appropriation.

- a. The annual financial audit report shall include all management letters and the Recipient's response to all findings, including corrective actions to be taken.
- b. The annual financial audit report shall include a schedule of financial assistance specifically identifying all Agreement and other revenue by sponsoring agency and Agreement number.
- c. The complete financial audit report, including all items specified in (d) below, shall be sent directly to

Department of Community Affairs  
Office of Audit Services  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

and

State of Florida Auditor General  
Room 401, Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

- d. In connection with the audit requirements addressed above, the Recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a reporting package as defined by Section 215.97(2)(d), Florida Statutes, and Chapter 10 550 and 10.650, Rules of the Auditor General.
- e. If the Recipient expends less than \$300,000 in State financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215 97, Florida Statutes. is not required. In the event that the

Recipient expends less than \$300,000 in State financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from non-State funds (i.e., the cost of such an audit must be paid from recipient funds obtained from other than State entities).

5. In the event the audit shows that the entire funds disbursed hereunder, or any portion thereof, were not spent in accordance with the conditions of this Agreement, the Recipient shall be held liable for reimbursement to FCT of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after FCT has notified the Recipient of such non-compliance.

6. The Recipient shall retain all financial records, supporting documents, statistical records, and any other documents pertinent to this contract for a period of five years after the date of submission of the final expenditures report. However, if litigation or an audit has been initiated prior to the expiration of the five-year period, the records shall be retained until the litigation or audit findings have been resolved

7. The Recipient shall have all audits completed in accordance with Section 215.97, Florida Statutes, by an independent certified public accountant (IPA) who shall either be a certified public accountant or a public accountant licensed under Chapter 473, Florida Statutes. The IPA shall state that the audit complied with the applicable provisions noted above

### III. REQUIREMENTS THAT MUST BE MET PRIOR TO INITIATION OF PROJECT SITE NEGOTIATION

1. If the Project Site consists of five or fewer ownerships, as reflected on the Acquisition Plan, either FCT or the Recipient may act as the party responsible for all negotiation and acquisition activities. If the Project Site consists of six or more ownerships, as reflected on the Acquisition Plan, the Recipient shall act as the party responsible for all negotiation and acquisition activities. The Recipient hereby notifies FCT that

FCT [Note: Elect FCT or Recipient] will be the party responsible for all negotiation and acquisition activities. If the Recipient is named herein and represented by an agent, the Recipient hereby notifies FCT that the Recipient's agent is:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

2. The Recipient hereby notifies FCT that the Recipient's Federal Employer Identification Number(s) is 59-6000346.

3. No later than **February 18, 2004**, the Recipient must deliver to FCT a written statement from the Project Site property owner(s) evidencing that the owner(s) is willing to entertain an offer from the Recipient and FCT, if not previously provided in the Application. No negotiation or acquisition activity is to be commenced prior to FCT receipt of this statement.

4. No later than **February 18, 2004**, the Recipient must deliver to FCT the executed Confidentiality Agreement provided to the Recipient by FCT, pursuant to Rule 9K-8.008(3), F.A.C. No negotiation or acquisition activity is to be commenced prior to FCT receipt of the executed Confidentiality Agreement.

5. The party named in paragraph 1 above as the party responsible for all negotiation and acquisition activities, shall provide the following.

- a. Title report(s) and appraisal(s) as required by Rule 9K-8.007 (1) - (4), F.A.C., for review by a date not to exceed 90 days after execution of this Agreement. FCT will review the appraisal(s) and, upon approval, will determine the Maximum Approved Purchase Price as provided in Rule 9K-8.007(5) and (6), F.A.C.; and
- b. Purchase agreement(s), based on the Acquisition Plan (if applicable), must be approved by FCT and sent to owner(s) within 45 days of receipt of the appraisal review memo from FCT establishing the Maximum Approved Purchase Price.

6. By execution of this Agreement, the Recipient affirms that:

- a. The Recipient is ready, willing and able to provide the local match, if any is required;
- b. The Recipient reaffirms the representations made in its Application;
- c. The Recipient shall, on January 30 of each year after acquisition of the Project Site, prepare and submit to FCT an annual stewardship report as required by Rule 9K-7 013, F.A.C.,



- d. The Recipient authorizes the administrator, employee, or officer named in this paragraph to execute all documents in connection with this project on behalf of the Recipient, including but not limited to the Grant Contract or any addenda thereto, purchase agreement for the property, grant reconciliation statement, closing documents, statements submitted as a part of the Project Plan, and Grant Award Agreement:

Name: Roger Wittenberg  
Title: FINANCE DIRECTOR  
Address: P.O. Box 1409, Key West, FL 33041  
Phone: 305-292-8211 Fax: 305-292-8160  
Email: rwittenb@KeyWestcity.com

The Recipient must notify FCT as to any change in the authorization of the administrator, officer or employee named in this paragraph to execute all documents on behalf of the Recipient. This notification must be made in writing to the Executive Director and signed by the appropriate administrator, officer or employee.

#### IV. MANAGEMENT PLAN APPROVAL

1. Prior to approval of the Project Plan (described in Section V below), signature of the purchase agreement(s), closing(s) of the real estate transaction(s) and final disbursement of award funds by FCT, the Recipient must prepare a Management Plan that complies with Rule Chapter 9K-7.011, F.A.C., and addresses the criteria and conditions set forth in Sections IV, VI, VII, VIII, and IX herein. Recipient is strongly urged to coordinate with FCT staff in order to ensure that FCT approval of the Management Plan occurs prior to the closing date of the real estate transaction(s) associated with the project and delivery of FCT funds

2. The Management Plan, which is intended to explain how the Project Site will be managed to further the purposes of the project and meet the terms and conditions of this Agreement, shall include the following.

- a. An introduction containing the project name, location and other background information relevant to management
- b. The stated purpose for acquiring the Project Site as proposed in the Application and a prioritized list of management objectives.

- c The identification of known natural resources including natural communities, listed plant and animal species, soil types, surface and groundwater characteristics.
- d A detailed description of all proposed uses including existing and proposed physical improvements and the impact on natural resources.
- e A detailed description of proposed restoration or enhancement activities, if any, including the objective of the effort and the techniques to be used.
- f A scaled site plan drawing showing the project site boundary, existing and proposed physical improvements and any natural resource restoration or enhancement areas.
- g The identification and protection of known cultural or historical resources and a commitment to conduct surveys prior to any ground disturbing activity, if applicable.
- h A description of proposed educational displays and programs to be offered, if applicable.
- i A description of how the management will be coordinated with other agencies and public lands, if applicable.
- j A schedule for implementing the development and management activities of the Management Plan.
- k Cost estimates and funding sources to implement the Management Plan.

3. If the Recipient is not the proposed managing entity, the Management Plan must include a signed agreement between the Recipient and the managing entity stating the managing entity's willingness to manage the site, the manner in which the site will be managed to further the purpose(s) of the project, and identification of the source of funding for management.

In the event that the Recipient is a partnership, the Recipient must also provide FCT with the interlocal agreement that sets forth the relationship among the partners and the fiscal and management responsibilities and obligations incurred by each partner for the Project Site as a part of its Project Plan.

4. To ensure that future management funds will be available for the management of the site in perpetuity pursuant to Section 259 105 and Chapter 380, Part III, F.S., the Recipient(s) shall be required to provide FCT with Reasonable Assurance, pursuant to Rule 9K-7.002(32), F.A.C., that it has the financial resources, background, qualifications and competence to manage the Project Site in perpetuity in a reasonable and professional manner. Where the Recipient does not include at least one Local Government, FCT may require the Recipient to post a

performance or other bond in an amount sufficient to ensure that the Project Site shall be reasonably and professionally managed in perpetuity; require the Recipient to establish an endowment or other fund in an amount sufficient to ensure performance; require a guaranty or pledge by the Local Government, in whose jurisdiction the Project Site is located, which shall require the Local Government to take over the responsibility for management of the Project Site in the event the Nonprofit Environmental Organization Recipient is unable to, and may require the Local Government to be a named co-signer on the Grant Award Agreement; or require such other assurances as the Governing Board may deem necessary to adequately protect the public interest.

## V. PROJECT PLAN APPROVAL

1. Prior to FCT approval of the signed purchase agreement(s), closing(s) of the real estate transaction(s) to acquire the Project Site, and final disbursement of award funds by FCT, the Recipient must submit to FCT a Project Plan that complies with Rule 9K-8 011, F.A.C. This Project Plan is a compilation of the following items listed below, which must be reviewed and approved by FCT.

The Project Plan shall include, and shall not be considered by FCT unless it includes all of the following documents, to be reviewed and approved by FCT to ensure that the interest of the State of Florida will be protected:

- a. A purchase agreement, in a form previously approved by FCT staff, fully executed by both the Seller and the Recipient, and that is based on an appraisal(s) approved by FCT and consistent with the requirements of Rule Chapter 9K-8, F.A.C
- b. A letter from FCT indicating approval of the Management Plan written according to Rule Chapter 9K-7.011, F.A.C., and as described in Section IV above
- c. A statement of the total Project Cost as defined in Rule Chapter 9K-7 002(29), F.A.C.
- d. A statement of the amount of the award being requested from FCT.
- e. Supporting documentation that the conditions imposed as part of this Agreement have been satisfied
- f. A signed statement by the Recipient that the Recipient is not aware of any pending criminal, civil or regulatory violations imposed on the Project Site by any governmental agency or body.
- g. Additional documentation as may be requested by FCT to provide Reasonable Assurance as set forth in Section IV 4. above

2. FCT strongly encourages the Recipient to request a courtesy review of its Project Plan, prior to submission of the Project Plan for approval and release of funds. FCT will recommend approval of complete and accurate Project Plans or disapproval of incomplete or insufficient Project Plans. Recipient is strongly urged to coordinate with FCT staff in order that FCT review of the Project Plan coincides with the closing date of the real estate transaction(s) associated with the project.

3 Real estate transactions associated with the project may close only after FCT approval of the Project Plan and compliance with all purchase agreement requirements.

**VI. PROJECT SITE ACQUISITION REQUIREMENTS IMPOSED BY CHAPTER 259 AND CHAPTER 380, PART III, F.S.**

**RECIPIENT AGREES AS FOLLOWS:**

1 FCT shall approve the terms under which the interest in land is acquired, pursuant to Section 380 510(3), F.S. Such approval is deemed given when FCT approves and executes the purchase agreement for acquisition of the Project Site, further described in Section V.1.a. above, to which FCT is a party.

2. Title to the Project Site shall be titled in the Recipient, unless the Recipient specifically requests that title shall permanently vest in the Board of Trustees of the Internal Improvement Trust Fund (Trustees) Such request shall be subject to the approval of FCT and the Trustees. The Recipient hereby elects that title to the Project Site shall be vested in City of Key West [Note: Insert either the name of Recipient or Board of Trustees of Internal Improvement Trust Fund.] If the Recipient elects that title shall vest in the Trustees, then all acquisition activities shall be administered by the Division of State Lands as specified in Section 253.025, F.S., and Rule 18-1, F.A.C. FCT signature of this Agreement shall constitute approval of this election.

3. The transfer of title to the Recipient for the Project Site shall not occur until the requirements for the acquisition of lands, as specified in Section 380 507(11), F.S., and Rule Chapter 9K-8, F.A.C., have been fully complied with by the Recipient and FCT.

4. Each parcel to which the Recipient acquires title in the Project Site shall be subject to such covenants and restrictions as are, at a minimum, sufficient to ensure that the use of the Project Site at all times complies with Section 375 051 and 380 510, F.S., Section 11(e), Article VII of the State Constitution; the applicable bond indenture under which the Bonds were issued, and any provision of the Internal Revenue Code or the regulations promulgated thereunder that pertain to tax exempt bonds and shall contain clauses providing for the conveyance of title to the Project Site in the Board of Trustees of the Internal Improvement Trust Fund or another local government or nonprofit organization, upon failure to use the Project Site conveyed thereby for such purposes.

5. A Grant Award Agreement containing such covenants and restrictions as referenced in paragraph 4 above and describing the real property subject to the Agreement shall be executed by FCT and Recipient at the time of the conveyance of the Project Site and shall be recorded in the county(s) in which the Project Site is located. The Grant Award Agreement shall restate the conditions that were placed on the Project Site at the time of project selection and initial grant approval. All statements contained in the Grant Award Agreement are contained in this Agreement, with the exception of statements that do not survive the real estate closing of the Project Site.

6. If any essential term or condition of the Grant Award Agreement is violated, and the Recipient does not correct the violation within 30 days of written notice of violation, title to all interest in the Project Site shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund. The deed transferring title to the Project Site to the Recipient shall set forth the executory interest of the Board of Trustees of the Internal Improvement Trust Fund.

7. The interest acquired by the Recipient in the Project Site shall not serve as security for any debt of the Recipient.

8. If the existence of the Recipient terminates for any reason, title to the Project Site shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund, unless FCT negotiates an agreement with another local government or nonprofit organization which agrees to accept title to all interest in and to manage the Project Site.

## **VII. OBLIGATIONS OF FCT RECIPIENT AS A CONDITION OF PROJECT FUNDING**

1. Following the acquisition of the Project Site, the Recipient shall ensure that the future land use designation assigned to the Project Site is for a category dedicated to open space, conservation, or outdoor recreation uses as appropriate. If an amendment to the applicable comprehensive plan is required, the amendment shall be proposed at the next comprehensive plan amendment cycle available to the Recipient subsequent to the Project Site's acquisition.

2. Recipient shall ensure, and provide evidence thereof to FCT, that all activities under this Agreement comply with all applicable local, state, regional and federal laws and regulations, including zoning ordinances and the applicable adopted and approved comprehensive plan.

3. The Recipient shall, through its agents and employees, prevent the unauthorized use of the Project Site or any use thereof not in conformity with the Management Plan approved by FCT as a part of the Project Plan.

4. FCT staff or its duly authorized representatives shall have the right at any time to inspect the Project Site and the operations of the Recipient at the Project Site.

5. All buildings, structures, improvements, and signs shall require the prior written approval of FCT as to purpose. Further, tree removal, other than non-native species, and major land alterations shall require the written approval of FCT. The approvals required from FCT shall not be unreasonably withheld by FCT upon sufficient demonstration that the proposed structures, buildings, improvements, signs, vegetation removal or land alterations will not adversely impact the natural resources of the Project Site. The approval by FCT of the Recipient's Management Plan addressing the items mentioned herein shall be considered written approval from FCT.

## **VII. OBLIGATIONS OF THE RECIPIENT RELATING TO THE USE OF BOND PROCEEDS**

1 FCT is authorized by Section 380.510, F.S., to impose conditions for funding on Recipient in order to ensure that the project complies with the requirements for the use of Florida Forever Bond proceeds including without limitation the provisions of the Internal Revenue Code and the regulations promulgated thereunder as the same pertain to tax exempt bonds.

2. Recipient agrees and acknowledges that the below listed transactions, events, and circumstances, collectively referred to as the "disallowable activities", may be disallowed on the Project Site, as they may have negative legal and tax consequences under Florida law and federal income tax law. The Recipient further agrees and acknowledges that these disallowable activities may be allowed up to a certain extent based on guidelines or tests outlined in the Federal Private Activity regulations of the Internal Revenue Service:

- a any sale or lease of any interest in the Project Site to any person or organization,
- b. the operation of any concession on the Project Site by any person or organization;
- c any sales contract or option to buy things attached to the Project Site to be severed from the Project Site, with any person or organization;
- d. any use of the Project Site by any person other than in such person's capacity as a member of the general public;
- e. any change in the character or use of the Project Site from that use expected at the date of the issuance of any series of Bonds from which the disbursement is to be made,
- f a management contract of the Project Site with any person or organization;  
or
- g. such other activity or interest as may be specified from time to time in writing by FCT to the Recipient

3 If the Project Site, after its acquisition by the Recipient and/or the Trustees, is to remain subject to any of the "disallowable activities", the Recipient shall provide to FCT at least 60 calendar days advance written notice of any such transactions, events, and circumstances, and shall provide to FCT such information as FCT reasonably requests in order to evaluate the legal and tax consequences of such activity or interest for FCT approval.

4 In the event that FCT determines at any time that the Recipient is engaging or allowing others to engage in disallowable activities on the Project Site, the Recipient agrees to immediately cease or cause the cessation of the disallowable activity upon receipt of written notice from FCT. In addition to all other rights and remedies at law or in equity, FCT shall have the right to seek temporary and permanent injunctions against Recipient for any disallowable activity on the Project Site.

**DELEGATIONS AND CONTRACTUAL ARRANGEMENTS BETWEEN THE RECIPIENT AND OTHER GOVERNMENTAL BODIES, NONPROFIT ENTITIES, OR NON GOVERNMENTAL PERSONS FOR USE OR MANAGEMENT OF THE PROJECT SITE WILL IN NO WAY RELIEVE THE RECIPIENT OF THE RESPONSIBILITY TO ENSURE THAT THE CONDITIONS IMPOSED HEREIN ON THE PROJECT SITE AS A RESULT OF UTILIZING BOND PROCEEDS TO ACQUIRE THE PROJECT SITE ARE FULLY COMPLIED WITH BY THE CONTRACTING PARTY**

**IX. CONDITIONS PARTICULAR TO THE PROJECT SITE THAT MUST BE ADDRESSED IN THE MANAGEMENT PLAN**

The Management Plan for the Project Site is mentioned throughout this Agreement, and is particularly described in Section IV. above. In addition to the various conditions already described in this Agreement, which apply to all sites acquired with FCT funds, the Management Plan shall address the following conditions that are particular to the Project Site and result from either commitments made in the application that received scoring points or observations made by FCT staff during the site visit described in Rule 9K-7.009(1), F.A.C.

1. Two or more resource-based outdoor recreational facilities including covered picnic pavilion and walking trails and two or more user-oriented outdoor recreation facilities including a playground and gaming tables shall be provided at the Project Site. The facilities shall be designed and located with minimal impact to natural resources on the Project Site.

2. A permanent recognition sign shall be maintained in the entrance area of the Project Site. The sign shall acknowledge that the Project Site is open to the public and was purchased with funds from the Florida Communities Trust and the City of Key West.

3. Interpretive signage shall be provided to educate visitors about the natural environment and unique history of the Project Site.

4. At least 24 environmental education classes or programs shall be conducted annually at the Project Site by trained educators or resource professionals.

5. A staffed nature center that provides year- round education programming shall be established on the Project Site.

6. The canopy trees on the Project Site shall be preserved and appropriately managed to ensure the long-term viability of the trees

7. The Project Site shall be managed in a manner that protects and enhances habitat for native wildlife species that utilize or could potentially utilize the site, including the Stock Island tree snail. The development of the management plan shall be coordinated with the Fish and Wildlife Conservation Commission's Office of Environmental Services to ensure the preservation and viability of native wildlife species and their habitat. Periodic surveys shall be conducted to ensure that site management is compatible with the listed species using the Project Site.

8. The water quality of Florida Bay adjacent to the Project Site shall be protected and enhanced. The City shall implement a plan to improve water quality in the area including the removal of several existing structures and asphalt parking areas.9. Any proposed stormwater facility for the Project Site shall be designed to provide recreational open space or wildlife habitat.

10. Approximately 4 acres, shall be landscaped with native plant species to enhance the function and appearance of the Project Site.

11. An ongoing monitoring and control program for invasive vegetation including exotic (non-native) and nuisance native plant species shall be implemented at the Project Site. The objective of the control program shall be the elimination of invasive exotic plant species and the maintenance of a diverse association of native vegetation. The Management Plan shall reference the Exotic Pest Plant Council's List of Florida's Most Invasive Species to assist in identifying invasive exotics on the Project Site

12. A feral animal removal program shall be developed and implemented, as necessary, for dogs, cats, ducks, and other non-native wildlife that may be found on the Project Site.

13. Prior to the commencement of any proposed development activities, measures shall be taken to determine the presence of any archaeological sites. All planned activities involving known archaeological sites or potential site areas shall be closely coordinated with the Department of State, Division of Historic Resources in order to prevent the disturbance of significant sites

14. The location and design of the parking and other site improvements shall have minimal impact on natural resources. The parking area shall incorporate pervious material wherever feasible.



15. Pedestrian and bicycle access to the Project Site shall be promoted through the provision of pedestrian oriented walkways and bicycle facilities that link the Project Site with City sidewalk and bike trail network.

16. The Project Site shall be managed as an addition to the Key West Botanical Gardens.

17. The Project Site shall be developed and managed as a support parcel of the Overseas Heritage Trail recreational trail system and include trailhead facilities.

18. The Project Site shall be protected and managed as part of linked conservation lands and recreation opportunities along the Florida Keys Paddling Trail

19. Proposed site improvements shall be designed and located to minimize or eliminate the long-term risk of storm damage or flooding in conjunction with appropriate hazard mitigation agencies or experts.

20. The requirements imposed by other grant program funds that may be sought for activities associated with the Project Site shall not conflict with the terms and conditions of this Agreement.

This Agreement including Exhibit "A", if required, embodies the entire agreement between the parties

THE FLORIDA COMMUNITIES TRUST'S OBLIGATION TO PROVIDE FUNDS UNDER THIS AGREEMENT IS CONTINGENT UPON AN ANNUAL APPROPRIATION BY THE LEGISLATURE.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

CITY OF KEY WEST

By: [Signature]  
Print Name: ROBERT D. WITTENBERG  
Title: FINANCE DIRECTOR  
Date: 1/15/04

Approved as to Form and Legality  
By: [Signature]  
Print Name: ROBERT TISCHENKUF

FLORIDA COMMUNITIES TRUST

By: [Signature]  
Janice Browning  
Executive Director  
Date: 2/5/04

Approved as to Form and Legality  
By: [Signature]  
Trust Counsel/KUSTON (C. O'DONN)

### CONFIDENTIALITY AGREEMENT

This is a Confidentiality Agreement ("Agreement") pursuant to Rule 9K-8,008(3), Florida Administrative Code (F.A.C.).

**Parties to the Confidentiality Agreement:** CITY OF KEY WEST ("FCT Recipient"), a local government of the State of Florida/a nonprofit environmental organization, and the Florida Communities Trust ("FCT"), a non-regulatory agency within the Department of Community Affairs.

**Parcels Covered by this Agreement:** This Agreement covers all parcels identified as part of the project site in FCT application 03-034-FF3 that was selected for funding and is governed by a Conceptual Approval Agreement for FCT Project Number 03-034-FF3 ("Project Site").

**Confidentiality:**

- a) Pursuant to Rule 9K-8.002(9), F.A.C., the term "Confidential" refers to information that shall not be available for public disclosure or inspection and is exempt from the provisions of Section 119 07, Florida Statutes (F.S.)
- b) The FCT Recipient and its agents shall maintain the confidentiality of all appraisals, offers, and counteroffers as required by Section 125.355(1)(a), F.S., for counties, or Section 166 045(1)(a), F.S., for municipalities, and Rule Chapter 9K-8, F.A.C. The FCT Recipient may disclose such confidential information only to the individuals listed herein below.
- c) Requests to add persons to the disclosure list must be made in writing and the FCT Recipient must receive the written consent of the FCT Executive Director and execute an Addendum to the Agreement. All confidentiality requirements outlined above shall apply to individuals added to the list.
- d) The undersigned board members and staff of the FCT Recipient ("FCT Recipient") and its agents, if any, agree to maintain the confidentiality of appraisal information, offers and counter-offers concerning FCT Project Number 03-034-FF3, as required by Section 125.355 (1)(a), F.S., for counties, or Section 166 045 (1)(A), F.S., for municipalities, and Rule Chapter 9K-8, F.A.C. and by this Confidentiality Agreement between the FCT Recipient and FCT

e)  
Site

The undersigned certify that they have no legal or beneficial interest in the Project

Date	FCT Recipient Board Member, Staff or Agent name	Signature
<u>1/15/04</u>	<u>Julio Avael</u>	<u>[Signature]</u>
<u>1/15/04</u>	<u>Roger D. Wittenberg</u>	<u>[Signature]</u>
<u>1/15/04</u>	<u>Robert Tischenkel</u>	<u>[Signature]</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

CITY OF KEY WEST

FLORIDA COMMUNITIES

TRUST

By: [Signature]  
 Title: Finance Director  
 Date: 1/15/04

By: [Signature]  
 Janice Browning  
 Executive Director  
 Date: 2/15/04

Approved as to form  
 and legality:  
[Signature]

Approved as to form  
 and legality:  
[Signature]

By: ROBERT TISCHENKEL  
 Title: CITY ATTORNEY

By: KRISTON COONS  
 Trust Counsel

RESOLUTION NO. 04-018

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED GRANT AGREEMENT BETWEEN THE FLORIDA COMMUNITIES TRUST AND THE CITY OF KEY WEST FOR THE BOTANICAL GARDENS ADDITION; PROVIDING FOR AN EFFECTIVE DATE

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

Section 1: That the attached Grant Agreement between the Florida Communities Trust and the City of Key West for the Botanical Gardens Addition is hereby approved; and the City of Key West shall retain ultimate responsibility for oversight of its development and operation.

Section 2: 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 6 day of January, 2004.

Authenticated by the presiding officer and Clerk of the Commission on January 7, 2004.

Filed with the Clerk January 7, 2004.

ATTEST:

  
CHERYL SMITH, CITY CLERK

  
JIMMY WEEKLEY, MAYOR

Comprehensive Plan Objectives and Policies furthered by Project

Conservation Element

Objective 6-1.2 water quality and Quantity. Maintain the environmental health of the Florida Keys Reef tract to ensure the ambient water quality of both the near shore and reef waters is maintained and improved to the adopted Standards for Class III Outstanding Florida Waters..

Policy 6-1.2.4. Preserve and Enhance the Atlantic Ocean, Gulf of Mexico and Canal Shorelines. In order to stabilize areas susceptible to shoreline erosion, upon plan adoption the land development regulation shall require that all new development preserve shoreline native vegetation and shall revegetate areas along shorelines demonstrating historically erosive tendencies. Where exotic vegetation is present, such vegetation shall be removed and shall be replaced with native plant species.

Policy 6-1.2.5. Protect Deep and Surficial Aquifer recharge Areas. The City has no prime deep aquifer or shallow recharge areas which have been identified by the South Florida Water Management District. However, stipulations for protecting the freshwater lens shall be incorporated into the City's Land development regulations. The City's land development regulations shall require retention of open space for all development in order to. Create natural or landscaped urban green space for enhanced community aesthetics and passive pedestrian activities

Policy 6-1.2.9. Protect and Conserve Salt Ponds, Outstanding Florida Waters. In order to protect the Atlantic Ocean, the Gulf of Mexico, the Salt Ponds, the City's land development activities which adversely impact water quality, contribute to shoreline erosion and sedimentation, or otherwise threaten the long term existence of these water resources, tidal pond, and freshwater wetlands. The impact of the regulatory measures shall be to conserve and protect these coastal resources from detrimental impacts of development.

Policy 6-1.3.2. Land Purchase through Save Our Rivers or other Available State and Federal Programs. The City shall identify and recommend to the State and the South Florida Water Management District purchase of floodplains, wetlands, littoral zones, upland buffer areas, lands that support threatened or endangered fish or wildlife, or other lands needed to retain or store water that would comply with program guidelines established under the Conservation and Recreation Lands (CARL) Program, the Save Our Rivers (SOR) Program or other land acquisition programs administered by the federal or state government

Policy 6-1.7.3. Removal of Undesirable Exotic Vegetation. Upon plan adoption the City shall adopt a Tree Protection and Land Clearing Ordinance which requires that, prior to the issuance of

a certificate of occupancy for a new development, the owner/applicant shall remove all nuisance and invasive exotic vegetation from the site for which a development order or permit is requested.

**Policy 6-1 8.2 Protect Wildlife and Wildlife Habitats.** Upon plan adoption the City shall amend the land development regulations to incorporate provisions, which restrict development activities known to adversely impact endangered, threatened, or rare wildlife, and wildlife habitats, including Stock Island Tree Snail . The regulations shall ensure that standards are incorporates to ensure preservation of habitats supporting Stock Island Tree Snail and other threatened and endangered species. The City shall further protect wildlife and wildlife habitats by promoting public acquisition and dedication of conservation easements or reservations as specified in Policy 6-1 4.3

#### Historic Preservation Element

**Policy 1A-1 3 6. Endangered Historic Resources** Public and private funding shall be pursues for the acquisition and adaptive re-use of endangered historic resources

#### Intergovernmental Relations Element

##### **Policy 8-1.1 3 Coordination of Development and Growth Management Issues**

The City shall pursue resolution of development and growth management issues with impacts transcending the City's political jurisdiction, by participating in the Monroe County Technical Coordination Committee. Issues of regional and state significance shall be coordinated with the South Florida Regional Planning Council, the South Florida Water Management District, and/or State agencies having jurisdictional authority Issues to be pursued include but are not limited to the following

13 Natural resource conservation, including protecting and enhancing water quality; protecting loving manne resources, especially the coral reef, wetland preservation; seagrass protection, and preservation of tidal lands and other environmentally sensitive lands in the Salt Ponds  
Developing effective regulatory frameworks for managing impacts if development on these coastal resources and coordinating program structures for land acquisition using public or conservation trust funds.

#### Recreation and Open Space Element

##### **Recreation and Open Space Element Policy 7-1.1 1**

**Level of Service Standards for Parks and Recreation Facilities.** The City shall promote development of park and underdeveloped park land resources .System improvements, including the characteristics of sites and facilities shall be based on the level of service standards cited in Tables VII-1 1 1 (1) and VII-1 1.1(2) of this section which are hereby adopted as the level of service standards for recreation sites and facilities These tables refer to Neighborhood and Community parks and active recreation facilities The Botanical Gardens is classified as a "unique" recreational facility Unique facilities do not have a separate level of service stated.

However, Table VII-11 (p 7-32) sets a general level of service for all recreation areas at 5 acres per 1000 residents. This project furthers the Recreation and Open Space Element of the Comprehensive Plan by improving the level of service for parks within the City of Key West.

Recreation and Open Space Policy 7-1.1 9. Plans for development of the waterfront parcels include a boardwalk, nature trail, marine observation deck, and kayak/canoe launch. The kayak/canoe launch will provide access to and from the Gardens from the Florida Keys Overseas Heritage Paddling Trail.

#### Traffic Circulation Element

Objective 2-1.4 Facilities for Bicycle and Pedestrian Ways. By December 1991 the City shall file a grant application with the State to assist implementation of City's plan for bicycle and pedestrian ways

Policy 2-1.4 1 Planning for Bicycle and Pedestrian Ways. The City shall by the end of 1991 seek state funds to implement the adopted plan for development of bicycle and pedestrian ways, which connect residential areas to recreation areas and major activity centers. The plan shall include programs for implementation and anticipated funding sources and shall be consistent with roadway improvement plans identified in engineered transportation master plan.











# APPENDIX 8

## KEY WEST BOTANICAL GARDEN PLANT LIST

### Hammock Trees: Canopy

<i>Amphitecna latifolia</i>	Black Calabash	PAL
<i>Ammona glabra</i>	Pond Apple	
<i>Ateramnus lucidus</i>	Crabwood	PAL
<i>Bumelia salicifolia</i>	Willow Bustic	PAL
<i>Bursera simaruba</i>	Gumbo Limbo	PAL
<i>Canella winterana</i>	Wild Cinnamon	PAL
<i>Chrysophyllum oliviforme</i>	Satin Leaf	PAL
<i>Chusia rosea</i>	Pitch Apple	PAL
<i>Citharexylum fruticosum</i>	Fiddlewood	PAL
<i>Coccoloba diversifolia</i>	Pigeon Plum	PAL
<i>Colubrina arborescens</i>	Colubrina	PAL
<i>Colubrina elliptica</i>	Soldierwood	PAL
<i>Conocarpus erectus</i>	Green Buttonwood	PAL
<i>Conocarpus erectus var. sericeus</i>	Silver Buttonwood	PAL
<i>Cordia sebestena</i>	Orange Geiger	PAL
<i>Cupania glabra</i>	Cupania	PAL
<i>Drypetes diversifolia</i>	Milkbark	PAL
<i>Exostema caribaeum</i>	Princewood	PAL
<i>Exothea paniculata</i>	Inkwood	PAL
<i>Ficus aurea</i>	Strangler Fig	
<i>Ficus citrifolia</i>	Shortleaf Fig	PAL
<i>Guapira discolor</i>	Blolly	PAL
<i>Gyminda latifolia</i>	False Boxwood	
<i>Hypelate trifoliata</i>	White Ironwood	
<i>Ilex cassine dahoon</i>	Dahoon Holly	PAL
<i>Krugiodendron ferreum</i>	Black Ironwood	
<i>Lysiloma latisiliquum</i>	Wild Tamarind	PAL
<i>Magnolia virginiana</i>	Sweet Bay Magnolia	
<i>Mánilkara bahamensis</i>	Wild Dilly	
<i>Mastichodendron foetidissimum</i>	Mastic Tree	PAL
<i>Metopium toxiferum</i>	Poisonwood	
<i>Myrica cerifera</i>	Wax -myrtle	PAL
<i>Myrsine floridana</i>	Myrsine	
<i>Nectandra coriacea</i>	Lancewood	PAL
<i>Persea borborea var. pubescens</i>	Swamp Red Bay	
<i>Pinus elliotii var. densa</i>	Dade County Slash Pine	PAL
<i>Piscidia piscipula</i>	Jamaica Dogwood	PAL
<i>Pisonia rotundata</i>	Pisonia	
<i>Pithecellobium unguis-cati</i>	Blackbead	
<i>Reynosia septentrionalis</i>	Darling Plum	
<i>Roystonea elata</i>	Royal Palm	PAL
<i>Sabal palmetto</i>	Cabbage Palm	PAL
<i>Sapindus saponari</i>	Soapberry	

<i>Schaefferia frutescens</i>	Florida Boxwood	
<i>Simarouba glauca</i>	Paradise Tree	<b>PAL</b>
<i>Swietenia mahagoni</i>	Mahogany	<b>PAL</b>
<i>Zanthoxylum flavum</i>	Yellow-heart	<b>PAL</b>

### Understory

<i>Acacia choriophylla</i>	Cinnecord	
<i>Acacia farnesiana</i>	Sweet Acacia	
<i>Acacia macracantha</i>	Long-spine Acacia	
<i>Acacia pinetorum</i>	Pine Acacia	
<i>Acrostichum danaeae-folium</i>	Leather Fern	<b>PAL</b>
<i>Amyris elemifera</i>	Torchwood	<b>PAL</b>
<i>Ardisia escallonioides</i>	Mariberry	<b>PAL</b>
<i>Baccharis angustifolia</i>	Saltbush	
<i>Baccharis halimifolia</i>	Saltbush	
<i>Blechnum serrulatum</i>	Swamp Fern	
<i>Bourreria cassinifolia</i>	Little Strongbark	<b>PAL</b>
<i>Bourreria ovata</i>	Strongbark	<b>PAL</b>
<i>Bourreria radula</i>	Rough Strongbark	
<i>Bumelia celastrina</i>	Saffron Plum	
<i>Byrsonima lucida</i>	Locust-berry	<b>PAL</b>
<i>Callicarpa americana</i>	American Beautyberry	<b>PAL</b>
<i>Calyptrotrichum pallens</i>	Spicewood	<b>PAL</b>
<i>Calyptrotrichum zuzygium</i>	Myrtle-of-the-river	<b>PAL</b>
<i>Capparis cynophallophora</i>	Jamaica Caper	<b>PAL</b>
<i>Capparis flexuosa</i>	Limber Caper	<b>PAL</b>
<i>Casasia clusiifolia</i>	Seven Year Apple	
<i>Cassia chapmanii</i>	Bahama Senna	<b>PAL</b>
<i>Cereus pentagonus</i>	Dildo Cactus	
<i>Cereus robinii</i> var. <i>deeringii</i>		
<i>Chiococca alba</i>	Snowberry	
<i>Chiococca parvifolia</i>	Snowberry	
<i>Chrysobalanus icaco</i>	Cocoplum	<b>PAL</b>
<i>Coccothrinax argentata</i>	Silver Palm	<b>PAL</b>
<i>Cordia globosa</i>	Bloodberry	<b>PAL</b>
<i>Crossopetalum rhacoma</i>	Rhacoma	<b>PAL</b>
<i>Croton linearis</i>	Pineland Croton	
<i>Dodonaea viscosa</i>	Varnish Leaf	
<i>Drypetes lateriflora</i>	Guiana Plum	
<i>Erithalis fruticosa</i>	Black Torch	
<i>Erythrina herbacea</i>	Coral Bean	
<i>Eugenia axillaries</i>	White Stopper	
<i>Eugenia confusa</i>	Red-berry Stopper	
<i>Eugenia foetida</i>	Spanish Stopper	<b>PAL</b>
<i>Eugenia rhombea</i>	Red Stopper	<b>PAL</b>

<i>Forestiera segregata</i>	Florida Privet		
<i>Guaiacum sanctum</i>	Lignum Vitae	PAL	
<i>Guettarda elliptical</i>	Velvet -seed		
<i>Guettarda scabra</i>	Rough Velvetseed		
<i>Hamelia patens</i>	Firebush		
<i>Jacquinia keyensis</i>	Joewood	PAL	
<i>Lycium carolinianum</i>	Christmas Berry		
<i>Maytenus phyllanthoides</i>	Mayten		
<i>Myrcianthes fragrans var. simpsonii</i>	Simpson Stopper	PAL	
<i>Opuntia spinosissima</i>	Semaphore Cactus		
<i>Picramnia pentandra</i>	Bitterbush		
<i>Pithecellobium guadelupense</i>	Blackbead		
<i>Psidium longipes</i>	Long-stalked Stopper		
<i>Pseudophoenix sargentii</i>	Buccaneer Palm	PAL	
<i>Psychotria ligustrifolia</i>	Bahamian Wild Coffee	PAL	
<i>Psychotria nervosa</i>	Wild Coffee	PAL	
<i>Randia aculeata</i>	White Indigo berry		
<i>Savia bahamensis</i>	Maiden Bush		
<i>Schoepfia chrysophylloides</i>	Graytwig		
<i>Serenoa repens</i>	Saw Palmetto	PAL	
<i>Sophora tomentosa</i>	Necklace Pod	PAL	
<i>Suriana maritima</i>	Bay Cedar		
<i>Thrinax morrisii</i>	Brittle Thatch Palm	PAL	
<i>Thrinax radiata</i>	Florida Thatch Palm	PAL	
<i>Trema lamarckianum</i>	West Indies Trema		
<i>Trema micranthum</i>	Florida Trema		
<i>Vallesia antillana</i>	Pearl-berry	PAL	
<i>Ximena americana</i>	Hog Plum		
<i>Zanthoxylum fagara</i>	Wild Lime		

#### Aquatic and wetland vegetation

<i>Acrostichum danaeifolium</i>	Leather Fern		
<i>Annona glabra</i>	Pond Apple		
<i>Avicennia germinans</i>	Black Mangrove		
<i>Blechnum serrulatum</i>	Swamp Fern		
<i>Canna flaccida</i>	Yellow Canna		
<i>Conocarpus erectus</i>	Green Buttonwood		
<i>Croton americanum</i>	Swamp Lily		
<i>Dichromena spp.</i>	Star Rush		
<i>Hymenocallis latifolia</i>	Spider Lily	PAL	
<i>Hymenocallis palmeri</i>	Alligator Lily		
<i>Juncus effuses</i>	Soft Rush		
<i>Laguncularia racemosa</i>	White Mangrove		

*Nymphaea odorata* White Water Lily  
*Pontederia lanceolata* Pickerlweed  
*Rhizophora mangle* Red Mangrove  
*Sagittaria spp.* Arrowhead  
*Scirpus spp.* Giant Bulrush  
*Sisyrinchium atlanticum* Blue-eyed Grass PAL  
*Spartina bakeri* Sand Cordgrass PAL  
*Thalia geniculata* Thalia  
*Tradescantia ohiensis* Spiderwort  
*Tripsacum floridanum* Florida Gamagrass PAL

**Parking Area Landscaping Plants Shrubs and Ground Covers**

See above plants as PAL as well as following

**All Native Wild Flowers**

*Ageratum littorale* Blue Mist  
*Andropogon spp.* Bluestem Grasses  
*Argusia gnaphalodes* Sea Lavender  
*Asclepias spp.* Butterfly weed  
*Borrchia spp.* Sea Oxeye Daisy  
*Calycanthus floridus* Allspice  
*Conoclinium coelestinum* Ageratum  
*Coreopsis spp.* Coreopsis  
*Crossopetalum ilicifolium* Quailberry  
*Echinacea purpurea* Coneflower  
*Eragrostis spp.* Elliot's Lovegrasses  
*Ernodea littoralis* Beach Creeper  
*Gaillardia pulchella* Blanket Flower  
*Glandularia maritime* Beach Verbena  
*Gossypium hirsutum* Wild Cotton  
*Helianthus debilis* Beach Sunflower  
*Hibiscus coccineus* Scarlet Hibiscus  
*Hypericum spp.* St. John's Wort  
*Liatris spp.* Blazing Star  
*Lobelia spp.* Cardinal Flower  
*Muhlenbergia capillaries* Muhly Grass  
*Nephrolepis spp.* Ferns  
*Osmunda spp.* Fern's  
*Passiflora spp.* Passionflower  
*Polystichum acrostichoides* Christmas Fern  
*Rudbeckia hirta Rudbeckia spp.* Black-eyed Susan  
*Ruellia spp.* Ruellia  
*Sabal etonia* Florida Scrub Palmetto  
*Sabal minor*  
*Salvia azurea* Blue Sage  
*Scaevola plumieri* Inkberry

*Schizachyrium scoparium* Bluestem grasses  
*Senna spp.* Cassias  
*Sisyrichium spp.* Blue-eyed Grass  
*Solidago spp.* Goldenrod  
*Spartina spp.* Grasses  
*Stachytarpheta jamaicensis* Blue Porterweed  
*Symphoricarum spp.* Asters  
*Tripsacum spp.* Grasses  
*Zamia pumila* Coontie  
*Zephyranthes spp.* Rain Lilies



ATTACHMENT C

Doc# 1531398  
Bk# 2136 Pg# 2468

Legal Description: (Ingress/Egress & Utility Easement):

Prepared by undersigned:

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

Beginning 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 at 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 N.70°40'03"E., along the said Northerly Right-of-Way Line of U.S. Highway No. 1 a distance of 21.39 feet; thence N.04°20'14"W., a distance of 784.40 feet; thence S.89°21'03"W., a distance of 111.41 feet; thence S.58°05'53"W., a distance of 304.38 feet; thence S.34°13'10"E., a distance of 35.93 feet to the Point of Beginning; thence continue S 34°13'10" E for a distance of 46.61 feet; thence S 34°45'03" W for a distance of 142.04 feet to the Northeasterly Right-of-Way Line of Junior College Road; thence N 39°47'17" W along the said Northeasterly Right-of-Way Line of Junior College Road for 59.34 feet; thence N 40°13'12" E for a distance of 143.60 feet to the Point of Beginning.

Parcel contains 7286.10 square feet or 0.167 acres, more or less.

RESOLUTION NO. 91-322

A RESOLUTION APPROVING AND AUTHORIZING  
EXECUTION OF ATTACHED MEMORANDUM OF  
UNDERSTANDING BETWEEN THE CITY OF KEY WEST,  
FLORIDA AND KEY WEST BOTANICAL GARDEN  
SOCIETY, INC.; PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Key West, Florida that the attached Memorandum of Understanding between the City of Key West, Florida, and the Key West Botanical Garden Society, Inc. is hereby approved, subject to the contingencies stated below:

- 1) City shall have the right to allow County to construct and maintain fence at 6 feet height and parking spaces as shown on 5/1/91 survey
- 2) City shall have the right to allow County to use existing roadway as shown on 5/1/91 survey with access to County compound through proposed 10 feet gates as shown on survey.


The City Manager is hereby authorized to execute said Memorandum on behalf of the City of Key West, and the City Clerk is hereby authorized to attest to his signature and affix the Seal of the City thereto.

This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 16 day of July, 1991.

  
TONY LARRACINO, MAYOR  
By: SALLY J. LEWIS, MAYOR PRO TEMPORE

ATTEST:

  
JOSEPHINE PARKER, CITY CLERK

maintenance, to develop a long-range plan for the enhancement and beautification of the garden, and to encourage the educational use of the premises by all sectors of the community.

2. To encourage state and local agencies to use the premises as a botanical garden and arboretum as the parties hereto shall deem advisable.

3. That the Botanical Society shall not use the premises for any other purpose unless such purpose is approved by the City Commission or (as to one-time uses such as fundraisers) by the City Manager.

4. That any capital improvements to the premises shall be submitted to the City Manager for approval prior to commencement of construction, and the City Manager shall have the right to deny approval for same, and the Botanical Society shall obtain the approval of the City Building Department and the City Engineer and any necessary permits, prior to the commencement of construction. Capital improvements shall include provision of utility services to the premises.

5. That there shall, during the term of this Memorandum, be no mechanics' liens upon any buildings or improvements which may at any time be put upon or be upon said premises, and that in case of any mechanics' liens, the Botanical Society must pay off the same; and that if default in payment thereof shall continue for thirty (30) days after written notice, the City shall have the right and privilege, at its option, to pay off the same or any portion of the same, and the amount so paid, including expenses, shall, at the option of the City be due and payable by the Botanical Society with interest thereon at the rate of six (6) percent per annum, and in addition the City shall have the right to immediately terminate this Memorandum of Understanding without the necessity of providing any further notice to the Botanical Society.

6. That any permanent improvements to the premises shall become the exclusive property of the City at the conclusion of the term of this Memorandum of Understanding without the necessity of any instrument of conveyance.

7. That the Botanical Society will adhere to the Management Practices developed by the Nature Conservancy for Orthalicus reses reses, The Stock Island Tree Snail.

8. That the Botanical Society will not use or permit any person to use in any manner whatsoever the premises, nor any improvements now on or hereafter constructed or placed on said premises, nor any portion thereof, for any purpose calculated to injure the reputation of the premises or of the neighboring property, nor for any purpose or use in violation of federal, state, or local

maintain and preserve the premises; and

WHEREAS, the Key West Garden Club previously entered into a Memorandum of Understanding with The Nature Conservancy delineating responsibilities for the management of the habitat of the federally endangered species, Orthalicus reses reses, The Stock Island Tree Snail, (See attached Exhibit B); and

WHEREAS, the Botanical Society intends to enter into a similar Memorandum of Understanding with The Nature Conservancy upon execution of this Agreement for the same purposes; and

WHEREAS, the Botanical Society has stated in its By-Laws the following purposes: to preserve, develop, and maintain the Key West Botanical Garden as an arboretum, botanical garden, and wildlife refuge; and to encourage educational use of the Key West Botanical Garden by school children, youth organizations, college students, residents of the Florida Keys and visitors from other areas who wish to learn about tropical vegetation and wildlife indigenous to the Florida Keys, (See attached Exhibit C); and

WHEREAS, the Botanical Society will preserve and maintain the premises at no cost to the City for its services; and

WHEREAS, the Botanical Society intends to develop a long-range plan for the enhancement and beautification of the premises utilizing the knowledge of experts in the fields of sub-tropical flora and fauna; and

WHEREAS, it is in the best interests of the City, both fiscally and environmentally, to have the Botanical Society preserve, maintain and enhance the premises;

NOW THEREFORE, the City and the Botanical Society agree as follows:

The Botanical Society agrees:

1. To preserve the premises as a sub-tropical botanical garden and native hardwood hammock, and to operate said premises to provide the necessary care and

MEMORANDUM OF UNDERSTANDING

This Memorandum Of Understanding entered into this 13<sup>th</sup> day of September, 1991, between the City of Key West, Florida, a municipal corporation organized and existing under the laws of the State of Florida, (hereinafter, "City") and the Key West Botanical Garden Society, Inc., a Florida nonprofit corporation (hereinafter, "Botanical Society").

WITNESSETH

WHEREAS, the City is the owner of a parcel of real property known as the Key West Botanical Garden and Arboretum (hereinafter, "the premises") located on Stock Island, Key West, Florida. (See attached Exhibit A, Legal Description adopted and incorporated herein by reference); and

WHEREAS, the City passed and adopted Resolution 2008 on January 3, 1961 establishing the property as a permanent Botanical Garden and Arboretum; and

WHEREAS, both the City and the Botanical Society are committed to the responsible management of the habitat of the only known extant population of the federally endangered species Orthalicus reses reses, The Stock Island Tree Snail, and both are committed to preserving the aesthetic beauty of the remnant tropical hammock which provides habitat for other threatened and endangered species; and

WHEREAS, the City agrees to be responsible for all ordinary costs incurred in preserving the permanent Botanical Garden and Arboretum pursuant to Resolution 2008, with any extraordinary expenses to be approved by the City Commission; and

WHEREAS, the City has previously leased the premises to the Key West Garden Club, a Florida corporation, and said lease expires in September 1991, and the Botanical Garden Committee of the Key West Garden Club assumed responsibility for the preservation and maintenance of the premises; and

WHEREAS, the Botanical Garden Committee of the Key West Garden Club, with the approval of the Key West Garden Club, formally formed the Key West Botanical Garden Society, Inc. for the sole purpose of expanding its membership to better

law.

The City agrees:

1. To provide security, by routine police patrol, for the premises, at no greater level than that currently provided and contingent upon continued funding of the current level.
2. To provide two 55-gallon drums to be serviced for pickup by the City's solid waste contractor at no cost to Botanical Society, and to waive landfill tipping fees until final landfill closure only, of trimmings from the premises. Said fee waiver shall not extend beyond the landfill closure date of the City's landfill.
3. Opening and closing of the premises shall be the responsibility of staff at Bayshore Manor, Monday through Friday, opening to be at 8:00 a.m., closing at 5:00 p.m. Opening and closing on Saturdays and Sundays will be the responsibility of the Botanical Society.

The Memorandum of Understanding sets forth all the covenants, promises, agreements, and understandings between the City and the Botanical Society concerning the premises. No subsequent alteration, amendment, change, or addition to this Memorandum shall be binding upon the City or the Botanical Society unless reduced to writing and duly executed by both parties.

This memorandum shall be effective as of the 7th day of September, 1991 and for fifteen (15) years thereafter.

This Memorandum may be terminated by either party upon one (1) year written notice to the other party at the addresses set forth below, and may also be terminated by either party for material breach of the covenants and agreements contained herein upon thirty (30) days' written notice to the other party at the addresses set forth below.

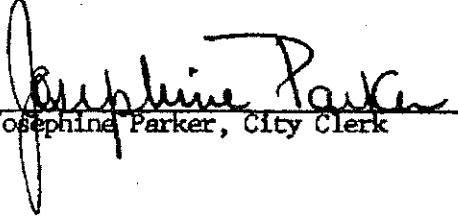
In witness whereof, the parties hereto have executed this Memorandum of Understanding the day and year first above written.

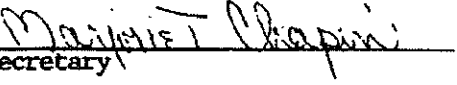
CITY OF KEY WEST, FLORIDA  
P.O. BOX 1409  
KEY WEST, FL 33040-1409

KEY WEST BOTANICAL GARDEN SOCIETY, INC.  
P.O. BOX 2436  
KEY WEST, FL 33045-2436

By:   
G. Felix Cooper  
City Manager

By:   
Ella May Crane  
President

ATTEST:  
  
Josephine Parker, City Clerk

ATTEST:  
  
Secretary  
(SEAL)

## LEGAL DESCRIPTION

From the intersection of the centerline of U.S. Highway Number One (1) and the east abutment of the Stock Island Highway Bridge go easterly along the centerline of U.S. Highway Number One (1) a distance of 300.00 feet to a point; thence making a deflection angle of 91 degrees 10 minutes with the last described course a distance of 305.64 feet to a point; thence making a deflection angle of 32 degrees 40 minutes to the left with the last described course a distance of 330.00 feet to Traverse Point One; thence making a deflection angle of 13 degrees 13 minutes to the right with the last described course a distance of 300.00 feet to Traverse Point Two; thence making a deflection angle of 8 degrees 49 minutes to the right with the last described course a distance of 265.00 feet to Traverse Point Three and the Point of Beginning of the parcel of land herein being described; thence run in a northeasterly direction parallel with the southerly line of the land held by the Cerebral Palsy Association 200 feet to a point; thence turn a deflection angle of 79 degrees 30 minutes right and run thence southerly 210 feet to the northerly line of the Monroe County Hospital property; thence northeasterly and at right angles, along the northerly line of said Hospital property 300 feet to a point; thence turn a deflection angles of 31 degrees 15 minutes 10 seconds right and run thence 111.91 feet to the northeast corner of the said Hospital property; thence turn a deflection angle of 87 degrees 45 minutes left and run thence northwesterly 435 feet to a point; thence turn a deflection angle of 29 degrees zero minutes right and run thence northeasterly 400 feet to a point; thence turn a deflection angle of 12 degrees 15 minutes left and run thence northerly 300 feet to a point; thence turn a deflection angle of 61 degrees 45 minutes left and run thence northwesterly 50 feet to a point; thence turn a deflection angle of 89 degrees zero minutes left and run thence southwesterly 585 feet to a point which bears N 20 degrees 8 minutes E from the northeast corner of property described in OR 365 at Page 324 of the Public Records of Monroe County, Florida; thence run 130 feet more or less to said northeast corner; thence run easterly, along the northerly line of the property of the Florida Keys Aqueduct Commission 200 feet to a point; thence run southerly along the easterly line of said Florida Keys Aqueduct Commission property 401.18 feet to the southeast corner of said property; thence run westerly along the southerly line of said Florida Keys Aqueduct Commission property 200.36 feet to the southwest corner of said property; thence turn a deflection angle of 45 degrees left and run thence southwesterly along the southerly line of a 30 foot wide easement 372.71 feet to a point on the tangent line between traverse points 3 and 4; thence run southerly along said tangent line 106 feet back to the point of beginning, containing 11 acres more or less. ALSO, a parcel purportedly belonging to the City and lying along the Northeast boundary of Hospital Road where it intersects with Junior College Road, and measuring approximately 200.00' x 53.28' x 202.85' x 53.16', and comprising approximately 10,600.00 square feet, shown as Parcel "A" on a Phillips & Trice survey dated May 3, 1981.

Excluding those areas of encroachment by Monroe County depicted on a survey dated 5/1/91 titled "Agreement between Monroe County and City of Key West".

EXHIBIT "A"



# The Nature Conservancy

Florida State Office

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding exists to serve as the document outlining the working relationship between the Key West Garden Club (The Garden Club), West Martello, Key West, Florida 33040 and The Nature Conservancy (TNC), 1800 North Kent Street, Arlington, Virginia 22209.

WHEREAS, TNC is a private, nonprofit organization devoted to the preservation of natural diversity; and

WHEREAS, The Botanical Garden Committee of The Garden Club (The Committee), as managers of the Key West Botanical Garden and Arboretum (The Gardens), is responsible for the management of the habitat of the only known extant population of the federally threatened species Orthalicus reses reses, The Stock Island Tree Snail; and

WHEREAS, both TNC and The Committee are committed to preserving this species, and the aesthetic beauty of the remnant tropical hammock which provides the last remaining habitat for same;

NOW THEREFORE, the parties agree as follows:

The Nature Conservancy agrees to:

1. Assist in the funding of a fence for The Gardens.
2. Assist The Committee in the development of a management plan for The Garden.
3. Provide biological information about the Stock Island Tree Snail to The Committee.
4. Inform The Committee of any protection efforts undertaken by TNC on behalf of the Stock Island Tree Snail.
5. Assist as requested in coordinating any land protection efforts between the City of Key West and TNC with The Garden Club.

The Botanical Garden Committee of the Garden Club agrees that:

1. All long and short term management plans for The Garden must be approved by The Florida TNC Director of Stewardship.
2. It will refrain from the use of any fungicide or insecticide in The Garden except under specific conditions discussed with TNC.
3. The Gardens will develop any watering system in conjunction with the needs of the Stock Island Tree Snail.

This Memorandum shall be effective as of July 1, 1987.

This Memorandum may be terminated by either party upon one (1) year written notice to the other party at the addresses set forth above.

In witness whereof, the parties hereto have caused this instrument to be executed by their representatives as of the day and year written above.

  
Key West Garden Club President

Date

5/1/87

  
The Nature Conservancy Representative  
John Cook, State Director

Date

26 Aug 87

Submit to

Title Serial

Executive Summary on  
Orthalicus reses reses Survey  
prepared by Kevan Sunderland

A survey to determine the current size and distribution of the Stock Island population of the Federally threatened species, Orthalicus reses reses was conducted under contract to The Nature Conservancy during the summer of 1986.

According to museum records, O. reses reses was originally restricted to the Key West/Stock Island area. The only natural population of the animal exists in a highly disturbed and fragmented piece of tropical hammock owned by the city of Key West. The remnant tropical hammock tree species that still sustain animals are scattered in what is now a parking lot, a golf course fairway and a small botanical garden.

During the period of greatest movement, the rainy season, each potential tree throughout these three areas was checked for the presence of individual animals and/or the presence of snail feed lines. Where possible, observed animals were aged by counting growth rings. Live animals were not touched or marked, therefore numbers are not expected to be absolute. Observations concerning dead snails were recorded.

The report contains a discussion of the use of feeding lines for identification, as well as a method for aging using growth lines. A discussion of the known and suspected predators of Liguus spp. and O. reses reses revealed the authors observations of raccoons, grackles, hermit crabs, man and ants preying on these two groups. The author also remarks that in a situation such as the Stock Island locations, where there is no interior protected hammock, "weedy" species such as rats and opossums may prey on the snail.

In addition to predation, the author remarks that the exposed nature of the existing habitat further stresses the population because of the change in humidity. An intact tropical hammock is a dense shady environment. Fluctuations in humidity are moderated because of the density of the vegetation and the low light intensity. This situation favors lichen, fungus and algal growth (food source of snails), helps reduce dessication during dry periods and buffers the thin shelled hatchling in its vulnerable first season. The existing habitat consists of isolated trees in a mowed parking area (County parking lot), a strip of trees next to a fairway (golf course), and a small botanical garden with numerous non-native species (Botanical Garden).

This condition is resulting in more exposure to wind, less available food, more predation, less opportunity for movement between trees and no opportunity for movement between the three centers of distribution.

The total population is estimated to be no more than 120 animals. There were 95 sightings. (Due to the inadvisability of marking these individuals, duplicate sightings were highly probable.) The total extant population has been dramatically reduced since the survey conducted by Jane Deisler in 1981. At that time, Deisler estimated the total population to be slightly less than 200.

In this report the author recognizes three centers of distribution and records sightings as follows:

The Golf Course: 17 individuals were observed in this area. In addition to being removed by man, the author suggests that watering during the dry season may be a main source of stress to this population. Spray from aerial irrigation during the dry season would trigger premature release from estivation for mature snails and possible death to the unhatched shells at the base of the trees, should the area be substantially saturated.

Botanical Garden: 30 individuals were sighted in this area. Although the area is less stressed than the other two, the author recommends continued removal of Brazilian pepper and refurbishing of hammock with mature native species.

The County Parking Lot: Formerly the center of the population, 48 animals were observed in this area. This population is highly stressed. The host trees are isolated by mowed grass. Cars park under the trees, the County has put gravel and, in some cases, concrete under some of the trees (much has since been removed). The animals are being picked off the trees by passersby. Food supplies are very low. The lack of vegetation around the host trees makes the snails very vulnerable to dessication. The nesting boxes, although a valid short-term solution, present long-term problems. They restrict movement between trees and, should a snail fall onto these rocks, the result would be almost certain death.

The author cautions that the species is in immediate danger of extinction at this site. He recommends the following actions:

1. The species be listed as Federally endangered.
2. The extant habitat be enhanced with reforestation efforts.
3. The County parking lot be closed.
4. The rocks surrounding the nesting boxes be removed once the lot is closed.
5. Predators be trapped.
6. All trash and old cars be removed from the area.
7. All watering, fertilizing and/or spraying of the area with pesticides be stopped.
8. Eliminate traffic from golf course hammock area.
9. Refrain from mowing around hammock trees with mower.
10. Eliminate fire ants from habitat areas.
11. On-going monitoring of population.
12. Relocation, to establish greater distribution.

The author outlines recommendations in detail for each unit including suggestions for trees to use in reforestation, methods of relocation, tree trimming practices and survey questions.

BY-LAWS

KEY WEST BOTANICAL GARDEN SOCIETY

ARTICLE I  
NAME

The name of this organization shall be the KEY WEST BOTANICAL GARDEN SOCIETY.

ARTICLE II  
PURPOSE

Section 1.

The purpose of this organization shall be to preserve, develop, and maintain the Key West Botanical Garden as an arboretum, botanical garden, and wildlife refuge.

Section 2.

This organization will encourage educational use of the Key West Botanical Garden by school children, youth organizations, college students, residents of the Florida Keys, and visitors from other areas who wish to learn about tropical vegetation and wildlife indigenous to the Florida Keys.

Section 3.

This organization will seek appropriate funds to provide for financial and volunteer support to the Key West Botanical Garden within the meaning of Section 501 (c) (3) of the Internal Revenue Code of 1954, or amendments thereto.

ARTICLE III  
MEMBERSHIP AND DUES

Section 1.

Membership in this organization shall include all dues-paying individuals and organizations in sympathy with its purposes.

Section 2.

Dues shall be payable annually and become due on the date of the annual meeting. Categories of membership and membership dues will be determined by the Executive Board.

ARTICLE IV  
MEETINGS

Section 1.

This organization shall hold an annual meeting, the date to be determined by the Executive Board.

Section 2.

A special meeting of this organization may be called by the Executive Board.

Section 3.

Ten members shall constitute a quorum to transact business at any general or special meeting.

ARTICLE V  
OFFICERS AND DIRECTORS

Section 1.

The officers of this organization shall be a President, Vice-President, Recording Secretary, Corresponding Secretary, and Treasurer. The officers shall the usual duties and authority exercised by officers of any organization.

Section 2.

There shall be five elected Directors and the immediate past president of the Key West Botanical Garden Society. In addition, there shall be up to five directors appointed by the Executive Board as needed.

Section 3.

Officers and directors shall be nominated by a committee chosen by the Executive Board. At least one member of this committee shall not be a member of the Executive Board. Additional nominations may be made from the floor at the annual meeting with the consent of the nominee.

Section 4.

The nominated officers and directors shall be elected by majority vote of the members present at the annual meeting. The term of office shall be one year, or until successors have been elected, and shall begin immediately following the annual meeting. No officer, except Treasurer, may serve more than three consecutive terms.

Section 5.

Vacancies shall be filled by appointment by the Executive Board until the next regular election.

ARTICLE  
EXECUTIVE BOARD

Section 1.

The officers and directors, elected and appointed, shall constitute the Executive Board. The Chairman of the Botanical Garden Committee of the Key West Garden Club shall serve as ex-officio member of the Executive Board.

Section 2.

Each Executive Board shall establish its own rules and procedures.

Section 3.

The Executive Board shall have the authority to appoint committees consistent with the purposes of this organization. The President shall be ex-officio member of any committees.

Section 4.

The Executive Board shall meet at its discretion.

Section 5.

Five members of the Executive Board shall constitute a quorum.

ARTICLE VII  
AMENDMENTS

Amendments to the By-Laws may be presented at any meeting of the general membership to be approved by a two-thirds vote of the members present at the next regular meeting.

ARTICLE VIII  
DISSOLUTION

In the event of dissolution of this organization for any reason, all assets remaining after payment of expenditures shall be distributed to such organizations qualified for tax exemption, and in accordance with the purposes of this organization. None of the funds shall be distributed to any individual member. The distribution of remaining funds shall be within the meaning of Section 501 (c) (3) of the Internal Revenue Code of 1954, or amendments thereto.

ARTICLE IX  
PARLIAMENTARY PROCEDURE

Robert's Rules of Order, Newly Revised, when not in conflict with these By-Laws, shall govern the proceedings of this organization.

These By-Laws have been adopted this twenty-third day of May, 1988.  
These By-Laws have been revised this sixteenth day of January, 1990.