UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Key West Division

Case No. 09-10023-CIV-MARTINEZ/BROWN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TRUMAN ANNEX MASTER PROPERTY
OWNERS' ASSOCIATION,

Defendant.
_____/

STIPULATION FOR ENTRY OF
FINAL JUDGMENT AND PERMANENT INJUNCTION

Plaintiff, the United States of America ("the United States" or "the Plaintiff") and the Defendant, Truman Annex Master Property Owners' Association ("TAMPOA" or "Defendant"), by and through their respective undersigned attorneys, hereby stipulate and agree that based on a Settlement Agreement entered into by the Parties that a judgment may be entered in favor of the Plaintiff and against the Defendant upon the following terms and conditions.

1. TAMPOA admits the jurisdiction of this Court over it and the subject matter of this action, further admits to the service upon it of a Summons and Plaintiff's Emergency Complaint for Declaratory and Injunctive Relief ("Complaint") (D.E. 1) and waives the filing of an Answer.

2. The Settlement Agreement entered between the Parties is attached hereto and by reference made a part of this Stipulation as Exhibit 1.

3. The parties hereby stipulate and agree that judgment may be entered in favor of the United States in conformity with the proposed Final Judgment and Permanent Injunction

attached to the Settlement Agreement as Exhibit A.

4. The parties hereby waive the entry of findings of fact and conclusions of law.

5. TAMPOA hereby waives all of its rights of appeal from the Final Judgment and Permanent Injunction in the form attached to the Settlement Agreement as Exhibit A.

6. The United States and TAMPOA agree to each bear its own costs, expenses and attorneys' fees incurred in connection with this action and its settlement.

7. The parties agree that this Stipulation and Settlement Agreement constitutes a complete and full settlement of all claims, of whatsoever nature arising out of the filing of the subject case. This Stipulation and the attached Settlement Agreement embodies the entire understanding of the parties hereto, and supersedes all prior understandings and agreements between them with respect to the subject matter hereof. The provisions of this Stipulation and the Settlement Agreement may be waived, supplemented or amended only by an instrument in writing signed by the parties. The parties further agree that the Settlement Agreement (Exhibit 1) is not intended to expand or limit any of the rights enjoyed by either party under the terms of the Southard Street Easement as more fully described in the Quitclaim Deed recorded in Official Records Book 1005, at pages 78-128 of the Public Records of Monroe County, Florida.

9. Nothing contained in this Stipulation or Settlement Agreement shall limit or waive the Plaintiff's right to enforce its rights under the Southard Street Easement for any encroachment occurring after the date TAMPOA executes this Stipulation or TAMPOA from exercising its rights regarding ownership of Southard Street and the other property owned by TAMPOA.

10. The parties further agree that this Court shall retain jurisdiction of this cause for the purpose of enforcing the terms of this Stipulation and Settlement Agreement.

Dated: June 17th, 2009

JEFFREY H. SLOMAN
ACTING UNITED STATES ATTORNEY

By: _____
GRISEL ALONSO
ASSISTANT U.S. ATTORNEY
99 N.E. 4th Street, 3rd Floor
Miami, Florida 33132
Tel: (305) 961-9310
Fax: (305) 530-7139
Fla. Bar 702994
Email: grisel.alonso@usdoj.gov

By: _____
ANTHONY POGORZELSKI
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99 N.E. 4th Street, 3rd Floor
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Tel: (305) 961-9296
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Fla. Bar 619884
Email: anthony.pogorzelski@usdoj.gov

Counsel for Plaintiff, United States

and

_____
RICHARD G. RUMRELL, ESQ.
Rumrell, Costabel, Warrington & Brock, LLP
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Counsel for Defendant, TAMPOA

SEAN R. SANTINI, ESQ.
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Fax No. (786) 425-3905
Fla. Bar No. 832898
Email: ssantini@boydlawgroup.com

Counsel for Defendant, TAMPOA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 18, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Grisel Alonso
GRISEL ALONSO
Assistant United States Attorney

SERVICE LIST

United States of America v. Truman Annex Master Property Owners' Association
Case No. 09-10023-CIV-MARTINEZ/BROWN

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Email: ssantini@boydlawgroup.com
Counsel for Defendant, TAMPOA

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Key West Division

Case No. 09-10023-CIV-MARTINEZ/BROWN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TRUMAN ANNEX MASTER PROPERTY
OWNERS' ASSOCIATION,

Defendant.
_____/

SETTLEMENT AGREEMENT

WHEREAS, the Plaintiff, the United States of America ("United States" or "the Plaintiff") and the Defendant, Truman Annex Master Property Owners' Association ("TAMPOA" or "the Defendant"), desire to enter into a settlement arising out of a dispute between United States and TAMPOA regarding the use of Southard Street located on property owned by TAMPOA and with an easement in favor of the United States.

WHEREAS, the United States filed an action against TAMPOA which is currently pending in the U.S. District Court of Florida, Southern District in the case entitled United States of America vs. Truman Annex Master Property Owners' Association, Case No. 09-10023-CIV-MARTINEZ/BROWN (hereinafter "the Litigation");

WHEREAS, the Parties desire to resolve the Litigation and other potential disputes, and have agreed to a settlement of the Litigation upon the terms and conditions set forth below as a result of a recent settlement conference in Key West;

NOW THEREFORE, the Parties hereby agree as follows:

Exhibit 1

1. TAMPOA admits the jurisdiction of the U.S. District Court over it and the subject matter of this action, further admits to the service upon it of a Summons and Plaintiff's Emergency Complaint for Declaratory and Injunctive Relief ("Complaint") (D.E. 1) and waives the filing of an Answer.

2. The parties hereby stipulate and agree that a judgment may be entered in favor of the United States and against TAMPOA in conformity with the proposed Final Judgment and Permanent Injunction attached hereto as Exhibit A.

3. The parties hereby waive the entry of findings of fact and conclusions of law.

4. TAMPOA agrees to the entry of an Order permanently enjoining it from commencing, continuing, or completing any construction of gates, fences, speed bumps, guard houses, columns, bollards, and/or any other structures or taking any other actions that would obstruct, interfere or restrict in any way with the Plaintiff's rights to use its Southard Street Easement through TAMPOA's property, except as follows:

a. The parties agree that TAMPOA may install the columns, pedestrian gates, pedestrian crosswalks, and fences by affixing them to the property adjacent to Southard Street (regardless of their similarity to or construction as a gate), as depicted in the diagrams attached hereto as Exhibit B-1 and B-2. TAMPOA shall install the fences so that they remain affixed and are incapable of being closed or moved in any way unless TAMPOA secures the written consent of the United States or an order of this Court.

b. TAMPOA shall restore Southard Street from curb to curb to a surface similar to its previous condition, including the removal of the columns, bollards and other obstructions placed within or on Southard Street (i.e., within the curbs) on or about February 18, 2009.

Nothing herein shall preclude TAMPOA from improving the existing surface of the street through the installation of brick pavers or other equally durable surfaces.

c. The parties agree that the existing guard house at the east end of Southard Street will remain. It is further agreed that bollards can be installed at the four corners of the existing guard house to protect it and the TAMPOA security staff from harm. The placement of the bollards shall be within two inches of the existing roof-line of the guard house.

d. TAMPOA agrees to move the curb over at the existing guard house to provide for a 17-foot wide lane on each side as depicted in the diagram attached hereto as Exhibit C. TAMPOA shall provide a total 17-foot wide lane width from the outside edge of the bollards, if installed pursuant to paragraph 4.c. above, or from the edge of the roof overhang if no bollards are installed, to the curb in the vicinity of the existing guard house. To the extent that any portion of the 17-foot wide lanes described above falls outside of the Plaintiff's Southard Street Easement, TAMPOA agrees to allow Plaintiff the full use of the 17-foot wide lane on each side.

e. TAMPOA agrees to trim the tree canopy and other vegetation on Southard Street as to allow Plaintiff's vehicles, including, at a minimum, a standard height tractor trailer, to pass without interference through Southard Street.

f. TAMPOA agrees to allow United States Government personnel and visitors of United States Government facilities at the Truman Annex to utilize the Southard Street sidewalks after the pedestrian gates are closed and the persons have reached a point that is beyond the new pedestrian gates and columns.

g. The parties agree that TAMPOA may install a second guard house at the western end of Southard Street on its property as depicted in the diagram attached hereto as Exhibit D, as long as the proposed guard house does not encroach upon the Plaintiff's Southard Street

Easement except as depicted on Exhibit D, attached hereto. It is further agreed that bollards can be installed at the four corners of the new guard house to protect it and the TAMPOA security staff from harm. The placement of the bollards shall be placed off Southard Street (i.e., outside the curbs). TAMPOA may post a guard at both ends of Southard Street, so long as the posted guard does not interfere with the United States' access and use of Southard Street under the easement as specifically detailed in this Settlement Agreement.

h. The parties agree that all persons bound for or departing United States Government facilities, including but not limited to military personnel, government civilians, contractors or visitors, shall have access at all times through the Southard Street Easement, and the existing and proposed guard house areas. TAMPOA shall be prohibited from seeking identification (of any form) from United States Government personnel and visitors. TAMPOA agrees to install signage at or before each guard house to the satisfaction of the Plaintiff. The sign will read as follows: "United States Government personnel and persons visiting government facilities may proceed without stopping. All others must stop at the guard house."

5. TAMPOA agrees that no further encroachment on Plaintiff's Southard Street Easement will occur except as specifically agreed to herein by the parties.

6. TAMPOA hereby waives all of its rights of appeal from the Final Judgment and Permanent Injunction in the form attached hereto as Exhibit A.

7. Each party shall bear its own attorneys fees, costs and expenses associated with the Litigation or its settlement.

8. The parties agree that this Settlement Agreement is not intended to expand or limit any of the rights enjoyed by either party under the terms of the Southard Street Easement as more fully described in the Quitclaim Deed recorded in Official Records Book 1005, at pages

78-128 of the Public Records of Monroe County, Florida. Exhibit E is the March 6, 2009 survey by Island Surveying Inc. of the easement area. The parties agree that in the event of a conflict between the easement and the survey that the easement will govern. The parties agree to enter into this Settlement Agreement in order to completely and fully settle all claims, of whatsoever nature, arising out of the filing of the Litigation. This Settlement Agreement embodies the entire understanding of the parties, and supersedes all prior understandings and agreements between them, with respect to the subject matter of the Litigation. The provisions of this Settlement Agreement may be waived, supplemented or amended only by an instrument in writing signed by the parties.

9. Nothing contained in this Settlement Agreement shall limit or waive the Plaintiff's right to enforce its rights under the Southard Street Easement for any encroachment not agreed upon herein occurring after the date TAMPOA executes this Stipulation. However, the Parties agree that they will first meet and confer with each other in a cooperative manner regarding any encroachment issues or if security becomes a further issue or on any other maters that related to the Southard Street use.

10. The parties agree to work together in good faith to ensure all agreed to terms of this Settlement Agreement that require third party involvement or approval (e.g., the City of Key West)—including, but not limited to, paragraphs 4 and 5—are completed timely.

11. The parties further agree that this Court shall retain jurisdiction of this cause for the purpose of enforcing the terms of this Settlement Agreement.

12. This Settlement Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original and all of which together shall constitute one and the same instrument.

Dated: June 17th, 2009.

JEFFREY H. SLOMAN
ACTING UNITED STATES ATTORNEY

By: _____
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By: _____
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Counsel for Plaintiff, United States

and

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Counsel for Defendant, TAMPOA

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Counsel for Defendant, TAMPOA

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Key West Division

Case No. 09-10023-CIV-MARTINEZ/BROWN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TRUMAN ANNEX MASTER PROPERTY
OWNERS' ASSOCIATION,

Defendant.
_____/

FINAL JUDGMENT AND PERMANENT INJUNCTION

THIS CAUSE came before the Court upon the Plaintiff, United States of America ("the Plaintiff or United States") and the Defendant, Truman Annex Master Property Owners' Association's ("Defendant or TAMPOA") Stipulation for Entry of Final Judgment and Permanent Injunction [D.E. 20]. The Court having considered the Stipulation and the file, and being otherwise duly advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. The Settlement Agreement executed by the parties is hereby ratified and approved in all respects.

2. Judgment is hereby entered in favor of the United States and against TAMPOA. TAMPOA shall be and hereby is permanently enjoined from commencing, continuing, or completing any construction of gates, fences, speed bumps, guard houses, columns, bollards, and/or any other structures or taking any other actions that would obstruct, interfere or restrict in

Exhibit A

any way with the Plaintiff's rights to use its Southard Street Easement through TAMPOA's property, except as follows:

a. TAMPOA may install the columns, pedestrian gates, pedestrian crosswalks, and fences by affixing them to the property adjacent to Southard Street (regardless of their similarity to or construction as a gate), as depicted in the diagrams attached to the Settlement Agreement as Exhibit B-1 and B-2. TAMPOA shall install the fences so that they remain affixed and are incapable of being closed or moved in any way unless TAMPOA secures the written consent of the United States or an order of this Court.

b. TAMPOA shall restore Southard Street from curb to curb to a surface similar to its previous condition, including the removal of the columns, bollards and other obstructions placed within or on Southard Street (i.e., within the curbs) on or about February 18, 2009. Nothing herein shall preclude TAMPOA from improving the existing surface of the street through the installation of brick pavers or other equally durable surfaces.

c. The parties agree that this Settlement Agreement is not intended to expand or limit any of the rights enjoyed by either party under the terms of the Southard Street Easement as more fully described in the Quitclaim Deed recorded in Official Records Book 1005, at pages 78-128 of the Public Records of Monroe County, Florida.

d. The existing guard house at the east end of Southard Street will remain. Bollards can be installed at the four corners of the existing guard house to protect it and the TAMPOA security staff from harm. The placement of the bollards shall be within two inches of the existing roof-line of the guard house.

e. TAMPOA shall move the curb over at the existing guard house to provide for a 17-foot wide lane on each side as depicted in the diagram attached to the Settlement Agreement

as Exhibit C. TAMPOA shall provide a total 17-foot wide lane width from the outside edge of the bollards, if installed pursuant to paragraph 4.c. above, or from the edge of the roof overhang if no bollards are installed, to the curb in the vicinity of the existing guard house. To the extent that any portion of the 17-foot wide lanes described above falls outside of the Plaintiff's Southard Street Easement, TAMPOA agrees to allow Plaintiff the full use of the 17-foot wide lane on each side.

f. TAMPOA shall trim the tree canopy and other vegetation on Southard Street as to allow Plaintiff's vehicles, including, at a minimum, a standard tractor trailer, to pass without interference through Southard Street.

g. TAMPOA shall allow United States Government personnel and visitors of United States Government facilities at the Truman Annex to utilize the Southard Street sidewalks after the pedestrian gates are closed and the persons have reached a point that is beyond the new pedestrian gates and columns.

h. TAMPOA may install a second guard house at the western end of Southard Street on its property as depicted in the diagram attached to the Settlement Agreement as Exhibit D, as long as the proposed guard house does not encroach upon the Plaintiff's Southard Street Easement except as depicted on Exhibit D, attached hereto. It is further agreed that bollards can be installed at the four corners of the new guard house to protect it and the TAMPOA security staff from harm. The placement of the bollards shall be placed off Southard Street (i.e., outside the curbs). TAMPOA may post a guard at both ends of Southard Street, so long as the posted guard does not interfere with the United States' access and use of Southard Street under the easement as specifically detailed in the Settlement Agreement.

i. All persons bound for or departing United States Government facilities, including but not limited to military personnel, government civilians, contractors or visitors, shall have access at all times through the Southard Street Easement, and the existing and proposed guard house areas. TAMPOA shall be prohibited from seeking identification (of any form) from United States Government personnel and visitors. TAMPOA shall install signage at or before each guard house to the satisfaction of the Plaintiff. The sign will read as follows: "United States Government personnel and persons visiting government facilities may proceed without stopping. All others must stop at the guard house."

3. TAMPOA is hereby enjoined from further encroachment on Plaintiff's Southard Street Easement except as set forth above in Paragraphs 2 a-i.

4. Each party shall bear its own attorneys fees, costs and expenses associated with the Litigation or its settlement.

5. The Court shall maintain jurisdiction over this action for the purpose of enforcing this Final Judgment and Permanent Injunction and the terms of the parties' Settlement Agreement.

DONE AND ORDERED in Chambers, at Miami, Florida, this _____ day of June, 2009.

_____
JOSE E. MARTINEZ
United States District Judge

Copies furnished to:
The Honorable Magistrate Judge Stephen T. Brown
Counsel of Record

EXHIBIT B-1

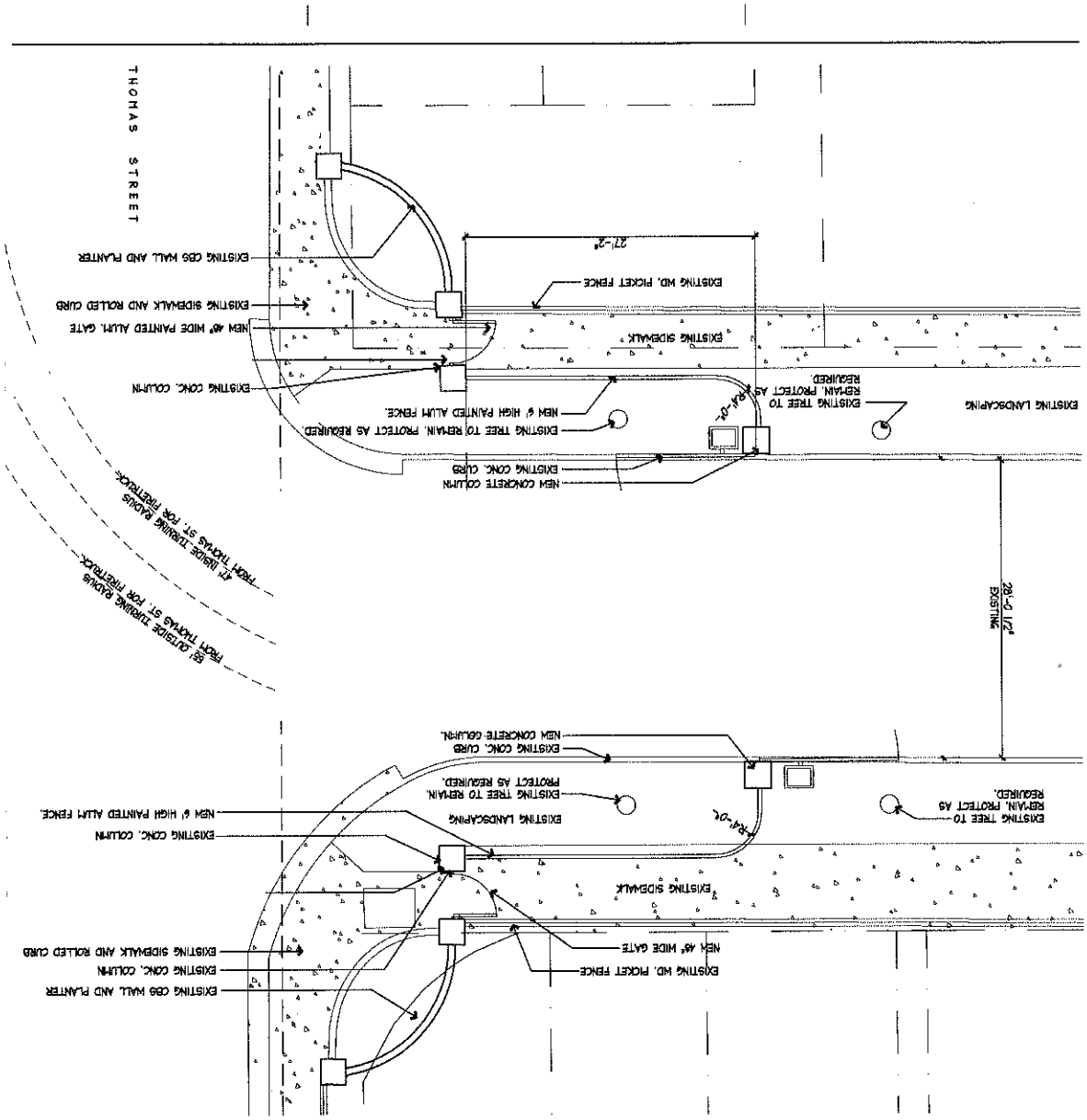

THOMAS STREET
EXISTING CBS WALL AND PLANTER
EXISTING SIDEWALK AND ROLLED CURB
NEW 48" WIDE PAINTED ALUM. GATE
EXISTING CONC. COLUMN
EXISTING WD. PICKET FENCE
EXISTING SIDEWALK
EXISTING TREE TO REMAIN, PROTECT AS REQUIRED.
EXISTING LANDSCAPING
NEW 6' HIGH PAINTED ALUM FENCE.
EXISTING TREE TO REMAIN, PROTECT AS REQUIRED.
EXISTING CONC. CURB
NEW CONCRETE COLUMN
27'-2"
28'-0 1/2" EXISTING
R4'-0"
EXISTING CONC. CURB
NEW CONCRETE COLUMN.
EXISTING TREE TO REMAIN, PROTECT AS REQUIRED.
EXISTING LANDSCAPING
EXISTING TREE TO REMAIN, PROTECT AS REQUIRED.
NEW 6' HIGH PAINTED ALUM FENCE.
EXISTING CONC. COLUMN
EXISTING SIDEWALK
EXISTING SIDEWALK AND ROLLED CURB
EXISTING CONC. COLUMN
EXISTING CBS WALL AND PLANTER
NEW 48" WIDE GATE
EXISTING WD. PICKET FENCE

Exhibit B-1

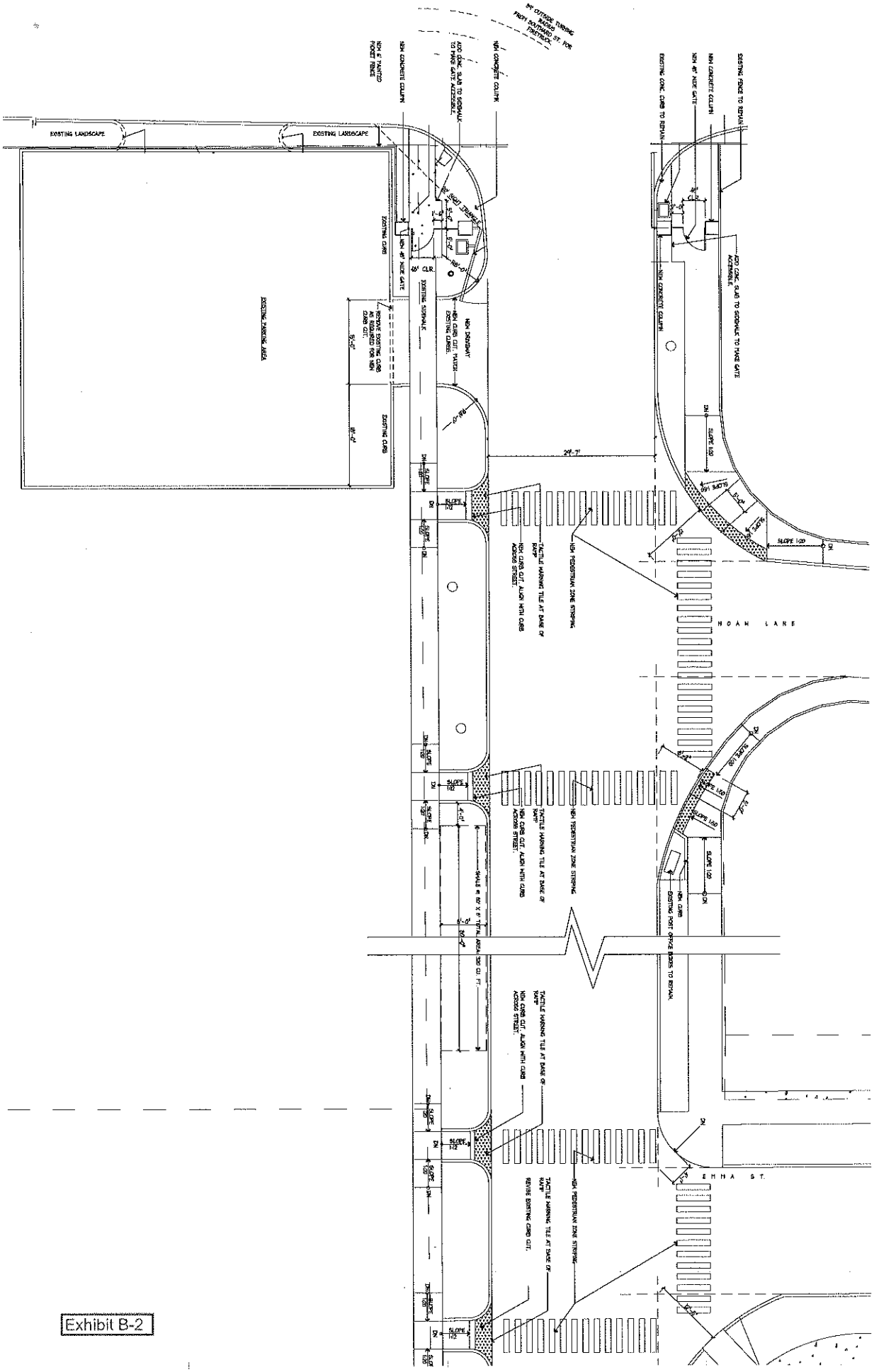
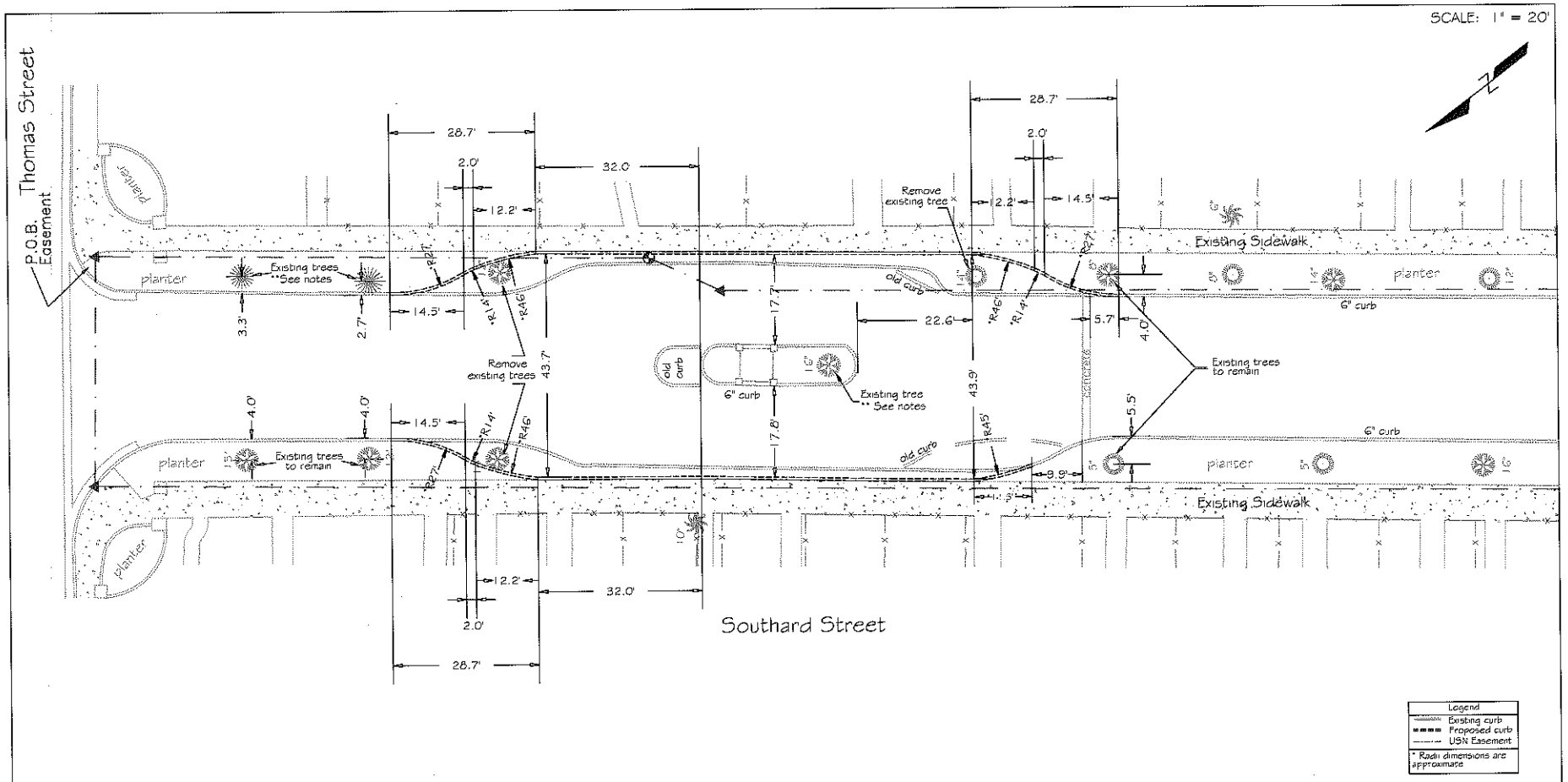

EXISTING LANDSCAPE
EXISTING LANDSCAPE
EXISTING PARKING AREA
EXISTING CURB
NEW CONCRETE COLUMN
NEW CONCRETE COLUMN
NEW CONCRETE COLUMN
NEW CONCRETE COLUMN
EXISTING FENCE TO REMAIN
EXISTING CONC. CURB TO REMAIN
NEW 48" NIDE GATE
NEW 48" NIDE GATE
EXISTING SIDEWALK
NEW DRIVEWAY
NEW CURB CUT, MATCH EXISTING CURBS.
REMOVE EXISTING CURB AS REQUIRED FOR NEW CURB CUT.
ADD CONC. SLAB TO SIDEWALK TO MAKE GATE ACCESSIBLE.
NEW CONCRETE COLUMN
NEW PEDESTRIAN ZONE STRIPING
TACTILE WARNING TILE AT BASE OF RAMP
NEW CURB CUT, ALIGN WITH CURB ACROSS STREET.
NEW CURB
EXISTING POST OFFICE BOXES TO REMAIN.
NOAH LANE
EMMA ST.
SLOPE 1:20
SLOPE 1:12
29'-7"

Exhibit B-2

EXHIBIT B-2

EXHIBIT C



** Notes:
This drawing is prepared based on a survey by Island Surveying Inc. dated March 5, 2009. The purpose of this drawing is to depict the curb alignment and modifications required to accommodate a vehicle name transport approximately 14x60 feet nos counting tractor and hitch, and/or a standard tractor/trailer configuration carrying a wide load of 17 feet on a standard size trailer and is not intended for any other purpose.
The decision to remove any additional trees (not identified to be removed herein) located less than 4 feet from the face of the curb is left to the discretion of those with an easement or ownership interest in the property and maybe subject to the approval of the Key West Tree Commission.
The speed limit on Southard Street is currently posted as 15 MPH.

REVISIONS		
DATE	BY	DESCRIPTION
6/11/09	AG	Revised notes concerning tree ownership and speed limit.

Exhibit C

Adriana Gómez
Professional Engineer No 60718
State of Florida

NOT VALID UNLESS EMBOSSED WITH RAISED SEAL & SIGNATURE

TAP
TRANSPORT ANALYSIS PROFESSIONALS, INC.
State of Florida Engineering Business #3786
8701 S.W. 137th Avenue Suite 210
Miami, Florida 33183 Ph (305) 385-6777

US Navy Access Road N69450-08-D-0059
Southard Street, Key West, FL 33040

DESIGN	DRAWN	DATE	T.A.P. PROJECT No.
AG	AG	6/5/09	9048

Proposed Changes to Existing Curb-Truman Annex

SHEET No 1 OF 1

EXHIBIT D

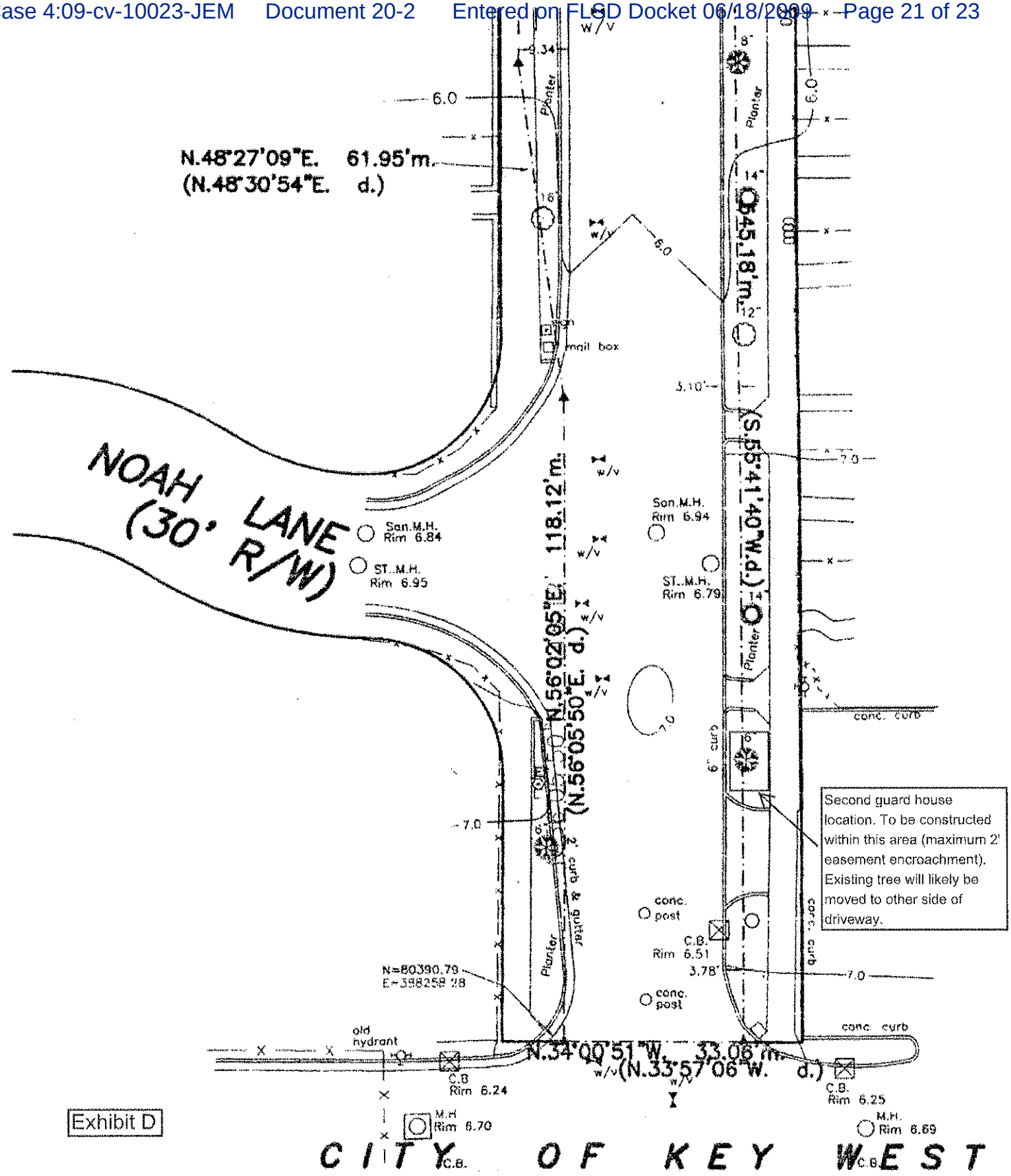

N.48°27'09"E. 61.95'm.
(N.48°30'54"E. d.)
NOAH LANE
(30' R/W)
San.M.H.
Rim 6.84
ST..M.H.
Rim 6.95
N.56°02'05"E. 118.12'm.
(N.56°05'50"E. d.)
S.55°41'40"W.(d.) 145.18'm.
San.M.H.
Rim 6.94
ST..M.H.
Rim 6.79
mail box
Planter
conc. curb
Second guard house location. To be constructed within this area (maximum 2' easement encroachment). Existing tree will likely be moved to other side of driveway.
conc. post
C.B.
Rim 6.51
N=80390.79
E=398258.28
old hydrant
N.34°00'51"W. 33.06'm.
(N.33°57'06"W. d.)
C.B.
Rim 6.24
C.B.
Rim 6.25
M.H.
Rim 6.70
M.H.
Rim 6.69
CITY OF KEY WEST

Exhibit D

EXHIBIT E

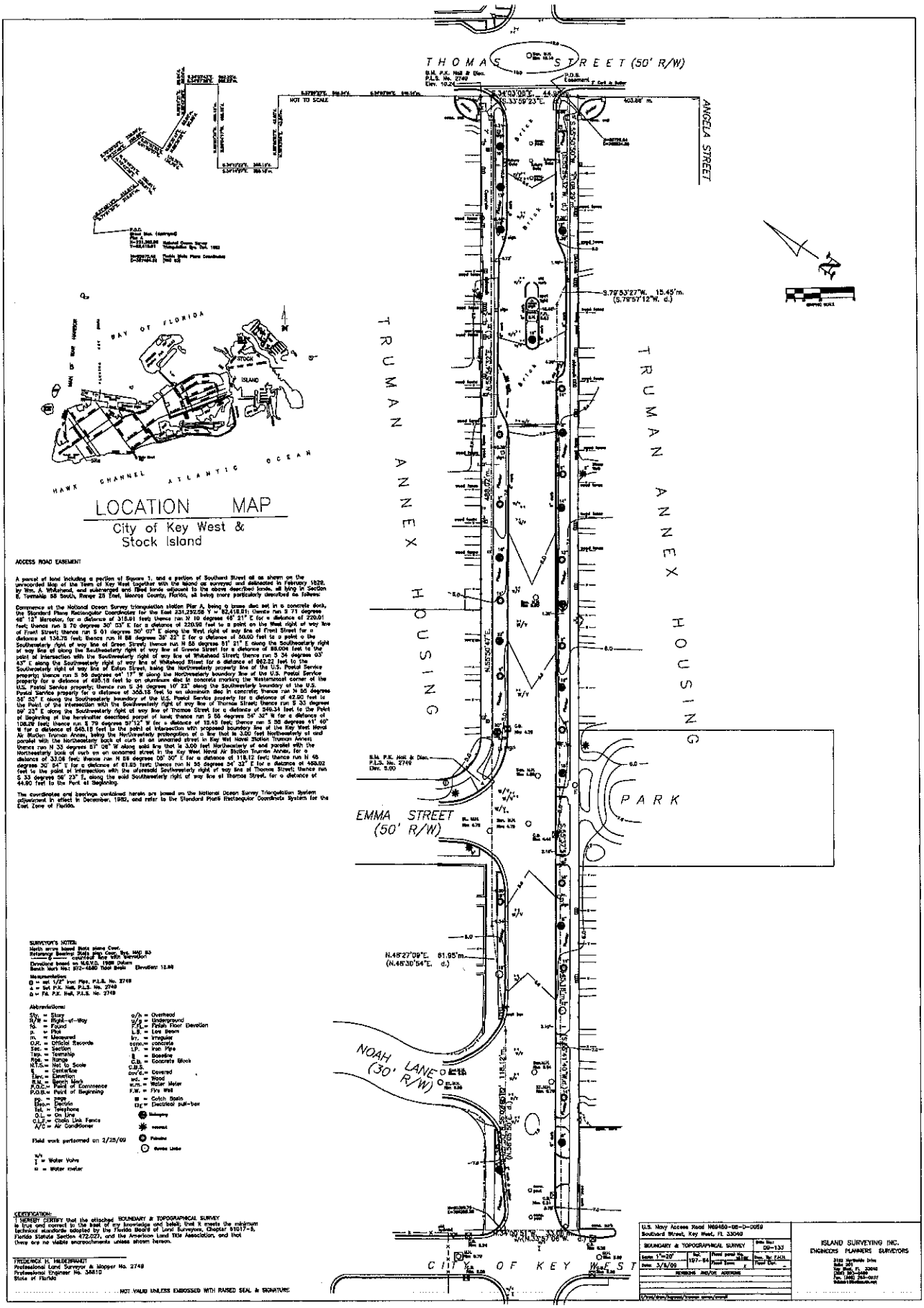

THOMAS STREET (50' R/W)
ANGELA STREET
TRUMAN ANNEX HOUSING
TRUMAN ANNEX HOUSING
PARK
EMMA STREET (50' R/W)
NOAH LANE (30' R/W)
CITY OF KEY WEST
BAY OF FLORIDA
STOCK ISLAND
HAWK CHANNEL
ATLANTIC OCEAN
LOCATION MAP
City of Key West &
Stock Island
ACCESS ROAD EASEMENT
SURVEYOR'S NOTES:
Abbreviations:
Field work performed on 2/25/09
CERTIFICATION:
I HEREBY CERTIFY that the attached BOUNDARY & TOPOGRAPHICAL SURVEY
FREDERICK H. HEIDEMANN
Professional Land Surveyor & Mapper No. 2749
Professional Engineer No. 34810
State of Florida
NOT VALID UNLESS EMBOSSED WITH RAISED SEAL & SIGNATURE
U.S. Navy Access Road N69450-08-D-0059
Southard Street, Key West, FL 33040
BOUNDARY & TOPOGRAPHICAL SURVEY
ISLAND SURVEYING INC.
ENGINEERS PLANNERS SURVEYORS

Exhibit E