

3682352

CONSERVATION EASEMENT

DR2550 PG1675

4200
70

Documentary Tax Pd. \$ 70
Intangible Tax Pd. \$ 70
By CHARLIE GREEN, CLERK, LEE COUNTY
Deputy Clerk

Return to: WCN Communities, Inc.
801 Laurel Oak Drive, #500
Naples, FL 33963

RECORD VERIFIED - CHARLIE GREEN, CLERK
BY: KAY TANNER, D.C.

THIS CONSERVATION EASEMENT is made this 10th day of August, 1994, by BAY CREEK COMMUNITY DEVELOPMENT DISTRICT, a Chapter 190, F.S. community development district organized and existing under the laws of the State of Florida, whose address is 10300 N.W. 11th Manor, Coral Springs, FL 33071, and PELICAN LANDING COMMUNITIES, INC. (formerly known as Westinghouse Bayside Communities, Inc.), a Florida corporation, whose address is 24820 Burnt Pine Drive, Bonita Springs, FL 33923 (hereinafter collectively called "Grantors"), to the State of Florida, Board of Trustees of the Internal Improvement Trust Fund, whose address is 3900 Commonwealth Boulevard, Tallahassee, Florida 32399 (hereinafter called "Grantee").

WHEREAS, the Grantors are the owners of certain lands situated in Lee County, hereinafter referred to as the "Property", more specifically described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, in consideration of the consent of Grantee to permit construction of a dock or other facility consisting of fifteen (15) slips which will preempt sovereignty submerged lands riparian to the Property, which construction is contingent upon consent by the Grantee; and

WHEREAS, the Grantors, in consideration of the consent of the Grantee, pursuant to Sovereignty Submerged Lands Lease Number 36201745, are agreeable to and desirous of granting and securing the enforcement of a perpetual conservation easement as defined in Section 704.06, Florida Statutes, over the Property.

NOW, THEREFORE, in consideration of the issuance of said consent to construct the said facility, the design of which is attached hereto as Exhibit "B" (survey of dock facility) and incorporated by reference, Grantors hereby grant, create, and establish a perpetual conservation easement upon the Property described in Exhibit "A", which shall run with the land and be binding upon the Grantors, their heirs, successors and assigns, and remain in full force and effect forever.

DR2550 Pg 1676

The scope, nature, and character of this conservation easement shall be as follows:

1. It is the purpose of this conservation easement to assure that the Property will be retained predominantly in its natural condition and to prevent any use of the Property that will significantly interfere with such purpose. Except for the specific activities authorized pursuant to Sovereignty Submerged Lands Lease Number 36201745, as depicted in Exhibit "B", and Paragraph 2 of this easement, the construction, placement or maintenance of structures or facilities is prohibited on the Property or the adjacent submerged lands. To carry out this purpose, the following rights are conveyed to Grantee by this easement:

(a) To enter upon the Property at reasonable times to enforce the rights herein granted upon prior notice to Grantors, their heirs, successors or assigns at the time of such entry; and

(b) To enjoin any activity on or use of the Property that is inconsistent with the purpose of this conservation easement and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

2. Notwithstanding the foregoing, this easement shall not preclude the Grantors, their successors or assigns, from making application to Grantee for the following specific water-dependent uses on the Property:

(a) A portion of a walkway commencing at the existing seventeen (17) slip dock located in upper Spring Creek which is described as Reference Point "D" in the legal description attached hereto as Exhibit "A" and extending approximately 225' in a northwesterly direction toward the existing canoe park launching facility located outside the Property's boundaries.

The Grantors recognize that the Grantee, by accepting this easement, does not consent to these uses, but has no objection to the Grantors making application for such uses.

DR2550 PG1677

3. Notwithstanding the foregoing, Grantors reserve to themselves, their successors and assigns, the following rights with respect to the Property:

(a) to engage in environmental preservation, restoration, and other conservation activities required or approved by the requisite regulatory agencies;

(b) to maintain, upkeep and repair the Property;

(c) to trim or remove dead or diseased trees and remove exotic nuisance vegetation as may be approved by the appropriate state, federal and local regulatory agencies;

(d) the riparian rights referenced in Paragraph 13 of this easement; and

(e) the right to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this conservation easement.

4. No right or access by the general public to any portion of the Property is conveyed by this conservation easement.

5. Grantors agree to bear all costs and liabilities of any kind related to the operation, upkeep and maintenance of the Property and do hereby indemnify and hold Grantee harmless therefrom.

6. Grantors agree to pay any and all real property taxes and assessments levied by governmental authorities on the Property.

7. Grantors intend that any cost incurred by Grantee in enforcing, judicially or otherwise, the terms and restrictions of this conservation easement against Grantors, their heirs, successors, personal representatives and assigns, including, without limitation, cost of suit, attorneys' fees and any costs of restoration necessitated by the violation of the terms of this conservation easement by Grantors, their heirs, successors, personal representatives or assigns, be borne by and recoverable against Grantors, their heirs, successors, personal representatives or assigns.

8. Grantors intend that enforcement of the terms and provisions of the conservation easement shall be at the discretion of Grantee and that any forbearance on behalf of Grantee to

exercise its rights hereunder in the event of any breach hereof by Grantors, their heirs, successors, personal representatives or assigns, shall not be deemed or construed to be a waiver of Grantee's rights hereunder in the event of a subsequent breach.

9. Grantee agrees that it will hold this conservation easement exclusively for conservation purposes and that it will not assign its rights and obligations under this conservation easement except to another organization qualified to hold such interests under the applicable state and federal laws and committed to holding this conservation easement exclusively for conservation purposes.

10. If any provision of this conservation easement or the application thereof to any person or circumstances is found to be invalid, the remainder of this conservation easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

11. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party hereto or successor-in-interest.

12. Grantors agree that the terms, conditions, restrictions and purposes of this conservation easement will be included in any subsequent deed or other legal instrument by which any Grantor divests itself of any interest in the Property.

13. This conservation easement shall only convey to the Grantee riparian rights associated with the Property which would permit Grantors or their successors-in-ownership of the Property to erect, construct or maintain any structure on the adjacent submerged lands or water column above those submerged lands other than as may be necessary to maintain the facility shown in Exhibit "B" attached hereto and shall not convey any other riparian rights.

14. This conservation easement may be amended, altered, released or revoked only by written agreement between the parties hereto, their successors and assigns.

DR2550 P61679

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever. The covenants, terms, conditions, restrictions and purposes imposed by this conservation easement shall be binding not only upon Grantors, but also on their agents, personal representatives, heirs, assigns and all other successors in interest and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, the Grantors have executed this instrument on the day and year first above written.

Signed, Sealed and Delivered in our Presence as Witnesses:

David W. Caldwell
DAVID W. CALDWELL
Typed/Printed Name of Witness

BAY CREEK COMMUNITY DEVELOPMENT DISTRICT

By: DLS
Original Signature of Executing Authority
Douglas Schwartz
Typed/Printed Name of Executing Authority
Chairman
Title of Executing Authority

Signed, Sealed and Delivered in our Presence as Witnesses:

Joann Finn
Joann Finn
Typed/Printed Name of Witness

PELICAN LANDING COMMUNITIES, INC.

By: JH
Original Signature of Executing Authority
Jerry H. Schroyer
Typed/Printed Name of Executing Authority
Executive Vice President
Title of Executing Authority

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 10th day of August, 1994, by Douglas Schwartz, Chairman of Bay Creek Community Development District, a Chapter 190, F.S. community development district, on behalf of the district. He is personally known to me.

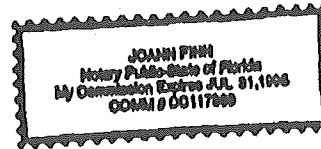
Joann Finn
Notary Public, State of FL
Joann Finn
Printed, Typed or Stamped Name
My Comm. Expires: 7-31-95
Commission/Serial.No.: CC117869



STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 10
day of August, 1994, by Jerry H. Schmoyer, Executive
Vice President of Pelican Landing Communities, Inc., a Florida
corporation. He is personally known to me.

Joann Finn
Notary Public, State of FL
Joann Finn
Printed, Typed or Stamped Name
My Comm. Expires: 7-31-95
Commission/Serial.No.: CC117869



This document prepared by:
Vivien N. Hastings, Esq.
801 Laurel Oak Drive, #500
Naples, FL 33963

DR2550 PG1680



WILSON, MILLER, BARTON & PEEK, INC.

Engineers, Planners, Surveyors, Landscape Architects, Environmental Consultants & Construction Managers
4571 Colonial Boulevard, Suite 200, Fort Myers, Florida 33912 • (813) 939-1020 Fax (813) 939-7479

DESCRIPTION

Conservation Easement

Lying in Tract "D" of Pelican Landing Unit Sixteen
and Tract "G" of Pelican Landing Unit Fourteen
Section 21, Township 47 South, Range 25 East,
Lee County, Florida
"Segment Five"

All that part of Tract "D" of Pelican Landing Unit Sixteen according to the plat thereof as recorded in Plat Book 53, pages 47 through 49, and Tract "G" of Pelican Landing Unit Fourteen according to the plat thereof as recorded in Plat Book 53, pages 35 through 46, Public Records of Lee County, Florida, consisting of a one foot wide strip to run with the land parallel to and landward of the following described Mean High Water Line:

BEGINNING at the intersection of the Mean High Water Line along the North Shore of Spring Creek and the West line of the Southwest quarter of said Section 21; thence easterly and northerly along said Mean High Water Line 780 feet more or less to Reference Point "D"; thence southerly, easterly and northerly along said Mean High Water Line 5,950 feet more or less to the intersection of the Northerly prolongation of said Mean High Water Line and the westerly prolongation of the South line of a 60 foot wide roadway easement as recorded in Official Record Book 7, page 603, Public Records of Lee County, Florida and the Point of Termination for Segment Five having a total of 6,730 linear feet more or less.

Subject to easements and restrictions of record.
Bearings are based on the North line of the Northwest quarter of Section 20, Township 47 South, Range 25 East being S.89°15'13"W.

Prepared by:

WILSON, MILLER, BARTON & PEEK, INC.

Ron L. Wallace

Ron L. Wallace, P.L.S. #4961

REF: D-0250-76
W.O.: 3440
DATE: 12 April 1994
REVISED: 14 June 1994
REVISED: 2 August 1994



EXHIBIT A

8/02/94-1g10036.dwg

Naples
(813) 649-4040
Fax (813) 643-5716

Fort Myers
(813) 939-1020
Fax (813) 939-7479

Sarasota
(813) 371-3690
Fax (813) 377-9852

AP
8/15/94

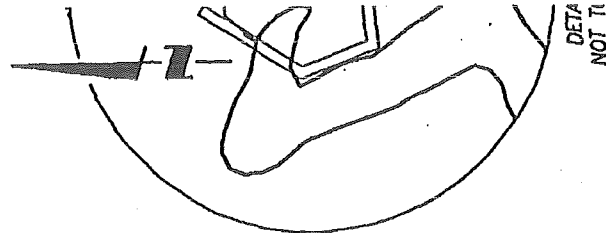
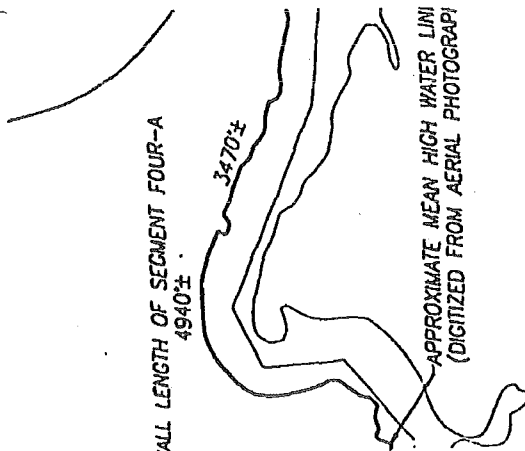
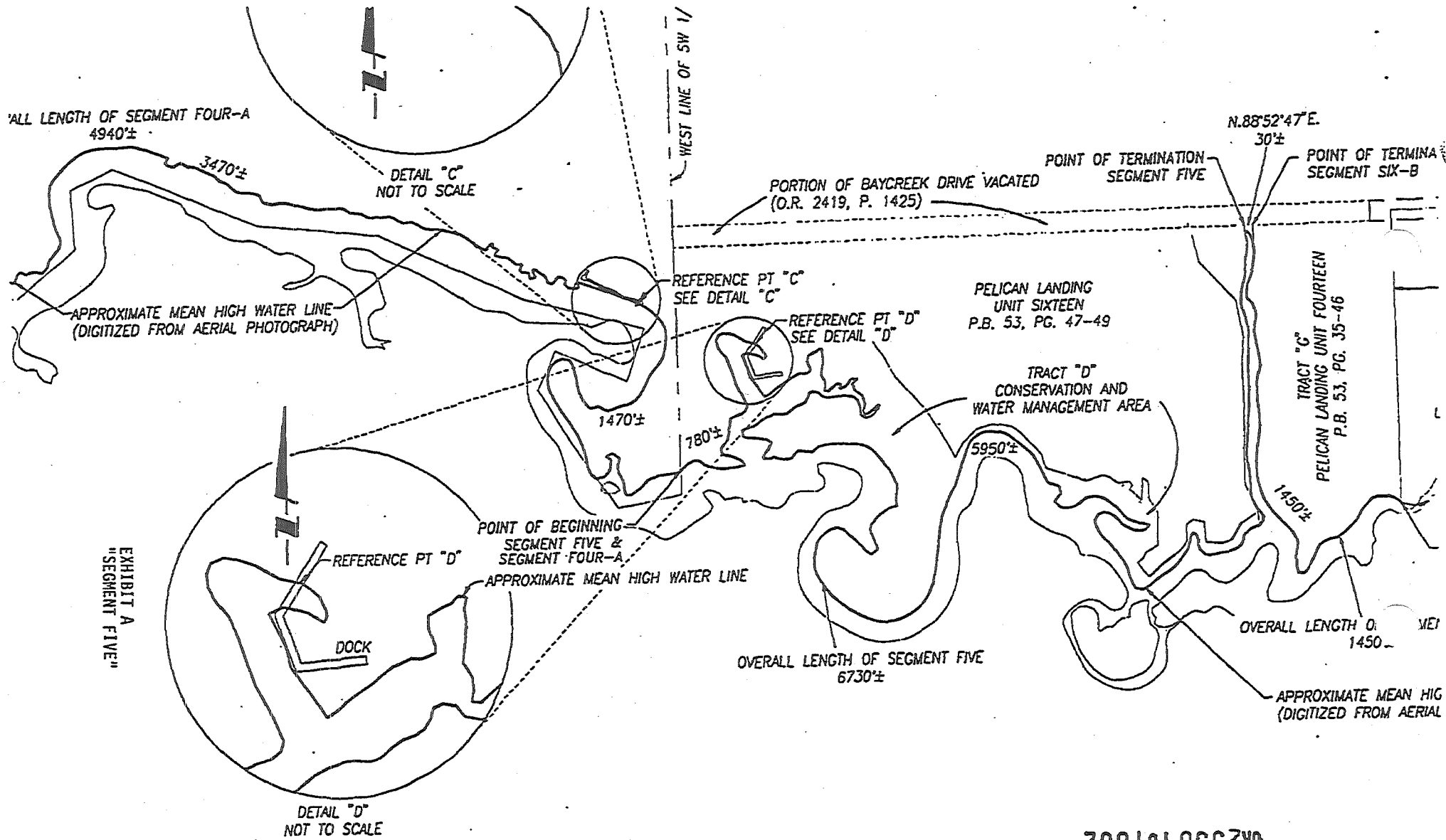


EXHIBIT A
"SEGMENT FIVE"

DATA
NOT TO

0R2550 P61681



0R2550 P61682

DR2550 P61683

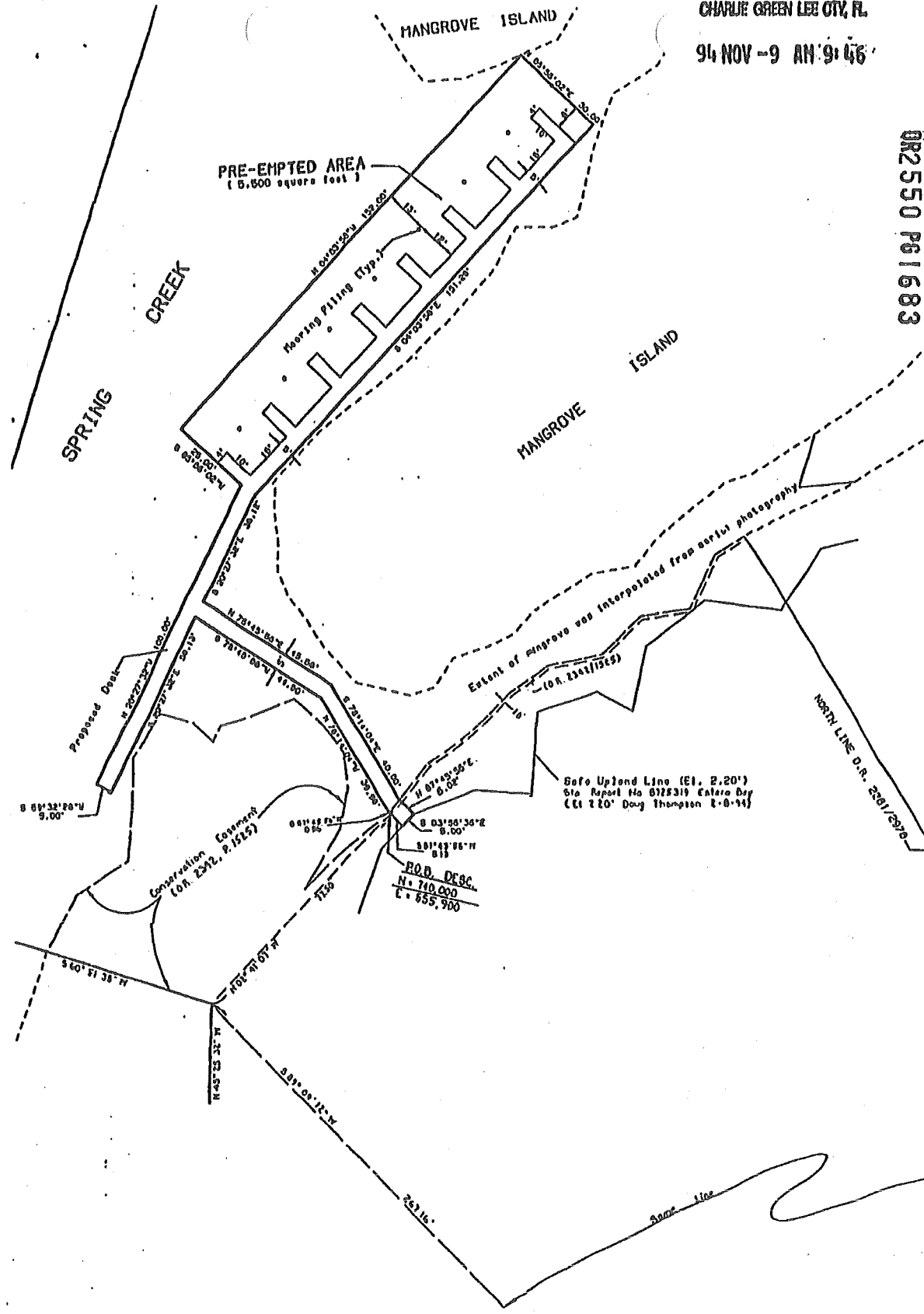


EXHIBIT "B"

(Facility to be located in Segment 3)

File No. 362017145