

This Instrument prepared by:
Herbert W.A. Thiele, Esq., County Attorney
Leon County Attorney's Office
301 South Monroe Street, Suite 202
Tallahassee, Florida 32301

Parcel No: 1127208510000

DECLARATION OF RESTRICTIVE COVENANTS

Reserving a Conservation Area (with Management Plan)

**American Red Cross Facility; Future City of Tallahassee Weems Road Improvements;
Future Leon County/City of Tallahassee Public Safety Complex (including Fire Station);**

THIS DECLARATION, made on the date hereinafter set forth by LEON COUNTY, FLORIDA, a charter county and political subdivision of the state of Florida (the "County"), and joined in by the CITY OF TALLAHASSEE, a Florida municipal corporation, (the "City") (hereinafter the County and the City shall be collectively referred to as the "Declarants");

WITNESSETH:

WHEREAS, the County is the owner of a tract of real property described in the Quitclaim Deed dated October 12, 1979, and recorded in Official Records Book 947, Page 1829 of the Public Records of Leon County, Florida, which is more particularly depicted and identified in Exhibit "A" attached hereto and incorporated herein as Section Two ("Section Two"), and which contains within its boundaries a smaller area depicted and identified therein as Section Two Part A ("Section Two Part A"); and

WHEREAS, Exhibit "B", attached hereto and incorporated herein, depicts and delineates in a bold broken line an area contained within the boundaries Section Two identified as the Project Area (the "Project Area"), within which also lies the entirety of Section Two Part A; and

WHEREAS, Section Two Part A was designated as a portion of Tom Brown Park under the First Amendment of the Parks and Recreation Agreement between the County and City, dated February 19, 2008; and

WHEREAS, notwithstanding the fact that the County is the owner of the area comprising Section Two Part A, the responsibility for the development, continuous operation, management, and maintenance of Tom Brown Park, including Section Two Part A, lies with the City by virtue of the Parks and Recreation Agreement between the Declarants dated May 10, 2005 and the First Amendment to the Parks and Recreation Agreement dated February 19, 2008 (collectively the "Parks and Recreation Agreement") which also includes provisions for the following:

- allows the City to use Section Two Part A for the purpose of providing bicycle trails to the public for recreational use;

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- allows the County to retain its right to utilize any and all portions of Section Two Part A to meet greenspace requirements associated with any development that may occur on any portion of Section Two, including but not limited to the preservation of urban forest area and constructed landscape area; and

WHEREAS, the County leases a portion of the Project Area to The American National Red Cross, a nonprofit corporation (the "Red Cross"), in accordance with that certain Ground Lease Agreement for Construction of Facilities dated July 8, 2008, as evidenced by the Memorandum of Ground Lease Agreement recorded in Official Records Book 3879, Page 1663 of the Public Records of Leon County, Florida, the approximate location of which is depicted and identified in **Exhibit "B"** as the Red Cross Property (the "Red Cross Property"), upon which the Red Cross plans to construct its Red Cross Facility; and

WHEREAS, within the Project Area, adjoining the westerly boundary of the Red Cross Property is an area depicted and identified on **Exhibit "B"** as the Centers Property (the "Centers Property") upon which the Declarants plan, subject to the terms of that certain Memorandum of Agreement dated January 9, 2009, to jointly construct and operate a Public Safety Complex which may consist of a Joint Communications Center, the City's Regional Transportation Management Center, the Fire and EMS Headquarters, the County Emergency Operations Center, and, if the site configuration allows, a possible future location of a Fire Station; and

WHEREAS, within the Project Area, the City intends to make certain intersection and related roadway improvements at the corner of Weems Road and Easterwood Drive as generally depicted on **Exhibit "C"** attached hereto and incorporated herein (the "Weems Road Improvements"); and

WHEREAS, the improvements contemplated for construction within the Project Area will require the construction and installation of a stormwater pond and a stormwater conveyance system, with the pond component located in the northwesterly portion of Section Two Part A and the conveyance component located primarily in the Centers Property, and which are legally described and depicted in **Composite Exhibit "D"** attached hereto and incorporated herein (collectively the "Stormwater Facility"); and

WHEREAS, the Stormwater Facility is intended to be a regional stormwater management facility, shared exclusively by the Red Cross, the County, and the City to accommodate the conveyance, storage, treatment and collection of stormwater associated with the construction of any and all improvements within the Project Area, including those improvements currently contemplated and any that may be otherwise constructed within the Project Area; and

WHEREAS, the construction of any and all improvements within the Project Area, including those improvements currently contemplated and any that may be otherwise constructed

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within the Project Area, will be permitted as part of the entire Project Area with regard to conservation area requirements; and

WHEREAS, Chapter 5 – Environmental Management, of the City of Tallahassee Land Development Code, as amended, requires the reservation of a conservation area for certain on-site areas of the development to ensure that such areas will be protected and preserved, and

WHEREAS, the City of Tallahassee Growth Management Department (“the Department”) has agreed with the Declarants’ determination that the most appropriate location within the Project Area for a conservation area has been identified within an approximate 10.35-acre portion of Section Two Part A comprising three adjacent parcels, each of which are legally described and depicted in **Composite Exhibit “E”** (collectively the “Conservation Area”); and

WHEREAS, the County, as the Owner of Section Two Part A, joined by the City, as the party responsible for development, continuous operation, management, and maintenance of Section Two Part A, are agreeable to and desirous of declaring and securing the enforcement of restrictive covenants to perpetually protect and preserve the Conservation Area by restricting its use in accordance with the terms and conditions herein.

NOW, THEREFORE, the Declarants for and in consideration of the sum of One Dollar (\$1.00) and the Department’s approval of the *Environmental Impact Analysis* required for the construction of any and all improvements within the Project Area, including those improvements currently contemplated and any that may be otherwise constructed within the Project Area, and in compliance with the terms and conditions thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Declarants hereby declare that all of the Conservation Area shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which shall run with the Conservation Area in perpetuity and which shall be binding on all parties having any right title or interest in the Conservation Area, or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of the Declarants, the Department, and each Owner thereof. The Declarants acknowledge that this Declaration of Restrictive Covenants is being executed and recorded in connection with the Department’s approval of the construction of any and all improvements within the Project Area, including those improvements currently contemplated and any that may be otherwise constructed within the Project Area.

ARTICLE I
Definitions

Section 1. “Owner” shall mean and refer to the record owner of the Conservation Area, whether one or more persons or entities, and the owner’s heirs, successors, and assigns,

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including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2. "Declarants" shall mean and refer collectively to LEON COUNTY, FLORIDA, a charter county and political subdivision of the state of Florida, and the CITY OF TALLAHASSEE, a Florida municipal corporation, or their successors, and assigns.

Section 3. "County" shall mean and refer to LEON COUNTY, FLORIDA, a charter county and political subdivision of the state of Florida

Section 4. "City" shall mean and refer to the CITY OF TALLAHASSEE, a Florida municipal corporation.

Section 5. "Department" shall mean and refer to the City of Tallahassee Growth Management Department.

Section 6. "Red Cross" shall mean THE AMERICAN NATIONAL RED CROSS, a nonprofit corporation, a Federally chartered instrumentality of the United States, and a body corporate and politic under the laws of the United States (36 U.S.C. §§ 300101-300111 (1998)).

Section 7. "Conservation Area" shall mean and refer to the underlying land within the boundaries of the approximate 10.35-acre portion of Section Two Part A comprising three adjacent parcels, each of which are legally described and depicted in **Composite Exhibit "E"**.

Section 8. "Project Area" shall mean and refer to the area depicted and delineated in a bold broken line in **Exhibit "B"** attached hereto and incorporated herein, which area is identified therein as the Project Area.

Section 9. "Parks and Recreation Agreement" shall mean the Parks and Recreation Agreement between the County and the City dated May 10, 2005 and the First Amendment to the Parks and Recreation Agreement dated February 19, 2008.

Section 10. "Management Plan" shall mean and refer to the Conservation Area Management Plan attached hereto and incorporated herein as Exhibit "F."

ARTICLE II
Intent and Purpose of Restrictions

Section 1. It is the purpose and intent of these restrictive covenants to provide within the Conservation Area an area where the processes of natural vegetation succession are allowed to proceed, in accordance with the approved management plan, attached hereto and incorporated

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herein as Exhibit "F" (the "Management Plan"), to produce a natural community consisting of trees, shrubs, understory vegetation, and other herbaceous vegetation with the land left undisturbed.

Section 2. It is the purpose and intent of these restrictive covenants to allow the Department to periodically inundate the portion of the Conservation Area identified as wetlands or floodplain on the attached Exhibit "G" map with surface waters and flood waters as each may occur.

Section 3. It is the purpose and intent of these restrictive covenants to ensure that the portions of the Conservation Area identified as wetlands on the attached Exhibit "G" map will be retained and maintained forever in their existing, natural, vegetative, and hydrologic condition.

ARTICLE III
Prohibited Activities

Section 1. Prohibited Activities. Except for any activities as authorized in the Management Plan, the following activities are prohibited on the Conservation Area:

- a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on, under, or above the ground; provided, however, that the following shall be allowed: bicycle and pedestrian trails, trail markers, and informational signs or kiosks, but not in or within fifty (50) feet of the wetlands without Department approval;
- b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
- c. Removal or destruction of trees, shrubs, groundcover or other vegetation, with the exception of noxious or invasive plants, such as poison ivy, briars, thorny vines, etc., and as may be required to maintain the Conservation Area in accordance with its management plan;
- d. Excavation, dredging, or removing loam, peat, gravel, soil, rock, or other material substance in such manner as to affect or disturb the surface of the ground;
- e. Surface use except for purposes that permit the land or water area to remain in its natural condition;

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f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation; and

g. Acts or uses detrimental to the preservation of any features or aspects of the Conservation Area having historical or archaeological significance.

**ARTICLE IV
General Provisions**

Section 1. Effective Date. These restrictive covenants shall take effect immediately upon declaration and shall run with the land in perpetuity. These restrictive covenants shall be deemed to survive unity of title. Declarants shall take no action to rescind, revoke, or otherwise nullify these restrictive covenants without the written consent of the Department.

Section 2. Reservation of Use. The Declarants reserve to themselves, their successors, and assigns all rights as either an Owner of the Conservation Area or as may be granted and reserved pursuant to the Parks and Recreation Agreement, including the right use the Conservation Area for the purpose of providing bicycle trails to the public for recreational use, and the right to engage in all uses of the Conservation Area that are not expressly prohibited herein and are not inconsistent with the purpose and intent of these restrictive covenants.

Section 3. No Public Access. No right of access by the general public to any portion of the Conservation Area is conveyed by this Declaration of Restrictive Covenants.

Section 4. Costs of Maintenance and Upkeep. The responsibility for all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Conservation Area shall be as set forth in the Parks and Recreation Agreement, as may be amended from time to time, or as may be otherwise agreed upon by the Declarants.

Section 5. Property Taxes. The Owner agrees to pay any real property taxes and assessments levied by competent authority on the Conservation Area.

Section 6. Costs of Enforcement. The Declarants intend that any costs incurred by the Department in enforcing, judicially or otherwise, the terms and restrictions of these restrictive covenants against the Declarants, their successors or assigns, including without limitation, costs of suit, attorneys' fees and any costs of restoration necessitated by the violation of the terms of these restrictive covenants by the Declarants, their successors or assigns, be borne by and recoverable against the Declarants, their successors or assigns; provided, however, that in the event that the Declarants are obligated to pay any such costs, such obligation shall be limited to the extent of protection afforded the Declarants by virtue of Section 768.28, Florida Statutes, and any other such applicable state or federal law. This paragraph shall not be deemed as a

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waiver of the Declarants' right and protection to sovereign immunity. For such time that the City manages Section Two Part "A" under the Parks and Recreation Agreement, as may be amended from time to time, or as may be otherwise agreed upon, the County shall not be responsible for the costs of enforcement, unless such costs were as a result of County activities.

Section 7. Rights of Enforcement. The Declarants intend that the enforcement of the terms and provisions of these restrictive covenants shall be at the discretion of the Department and that any forbearance on behalf of the Department to exercise its rights hereunder in the event of any violation hereof by the Declarants, their heirs, successors, personal representatives or assigns, shall not be deemed or construed to be a waiver of the Department's rights hereunder in the event of any subsequent violation.

Section 8. Assignment of Rights and Obligations. The Declarants agree that they will hold the Conservation Area exclusively for conservation purposes in accordance with these restrictive covenants and that they will not assign their rights and obligations under these restrictive covenants except to another organization qualified to hold such interests under the applicable state and federal laws and committed to holding the Conservation Area for conservation purposes.

Section 9. Severability. If any provision of these restrictive covenants or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of these restrictive covenants 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.

Section 10. Notices. All notices, consents, approvals, or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

Section 11. Recordation of Terms. The Declarants agree that the terms, conditions, restrictions, and purposes of this Declaration of Restrictive Covenants shall be recorded in the Official Records of Leon County, Florida, and shall be included in any subsequent deed or other legal instrument by which the Declarants divest themselves of any interest in the Conservation Area; and shall run with the land and be binding on the Declarants, their successors and assigns.

Section 12. Amendments. These restrictive covenants shall not be amended, waived, or discharged except by instrument in writing executed by the Declarants, the Owner, and the Department (or their respective successors and assigns), and which written document shall be recorded in the Official Records of Leon County, Florida.

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Section 13. Method of Enforcement. The Department, pursuant to the Environmental Management Ordinance and other applicable provisions of the City Code and Florida Statutes, shall enforce the terms of this Declaration of Restrictive Covenants.

TO HAVE AND TO HOLD unto the Department, its successors and assigns forever. The covenants, terms conditions, restrictions, and purposes imposed by these restrictive covenants shall be binding not only upon the Declarants but also on their agents, personal representatives, heirs, assigns, and all other successors to them in interest and shall continue as a servitude running in perpetuity with the Conservation Area.

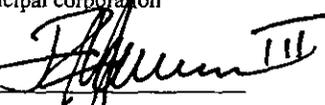
Signed, sealed and delivered in the presence of:

LEON COUNTY, FLORIDA

By: 

BRYAN DESLOGE, Chairman
Board of County Commissioners

CITY OF TALLAHASSEE, a Florida
municipal corporation

By: 

JOHN R. MARKS, III
Mayor

ATTESTED TO:

By: 

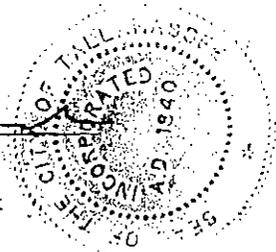
ROBERT B. INZER
Clerk, Leon County, Florida



ATTESTED TO:

By: 

GARY HERNDON,
City Treasurer-Clerk



APPROVED AS TO FORM:

By: 

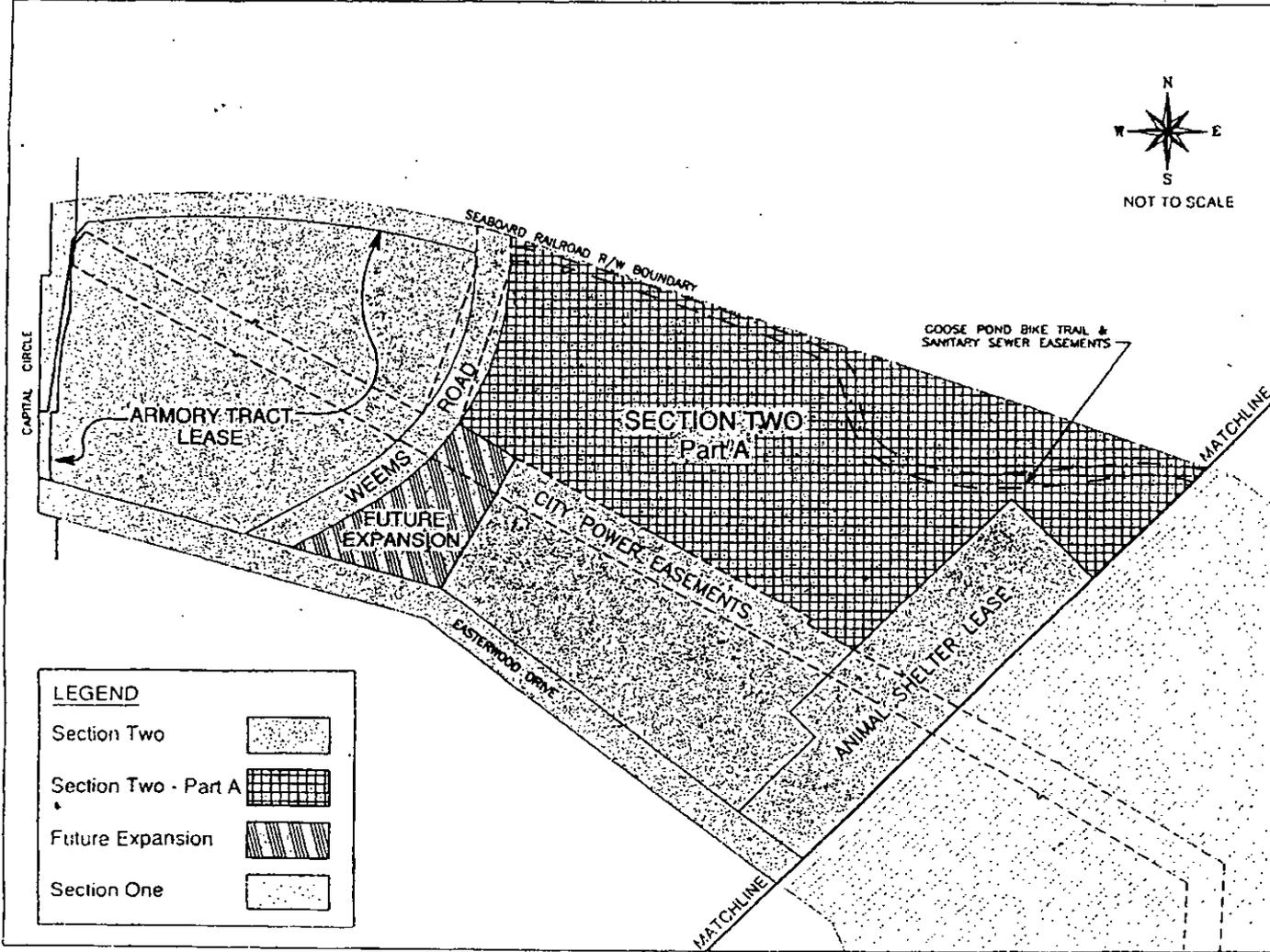
HERBERT W. A. THIELE, Esq.
County Attorney

APPROVED AS TO FORM:

By: 

JAMES R. ENGLISH, Esq.
City Attorney

EXHIBIT "A"



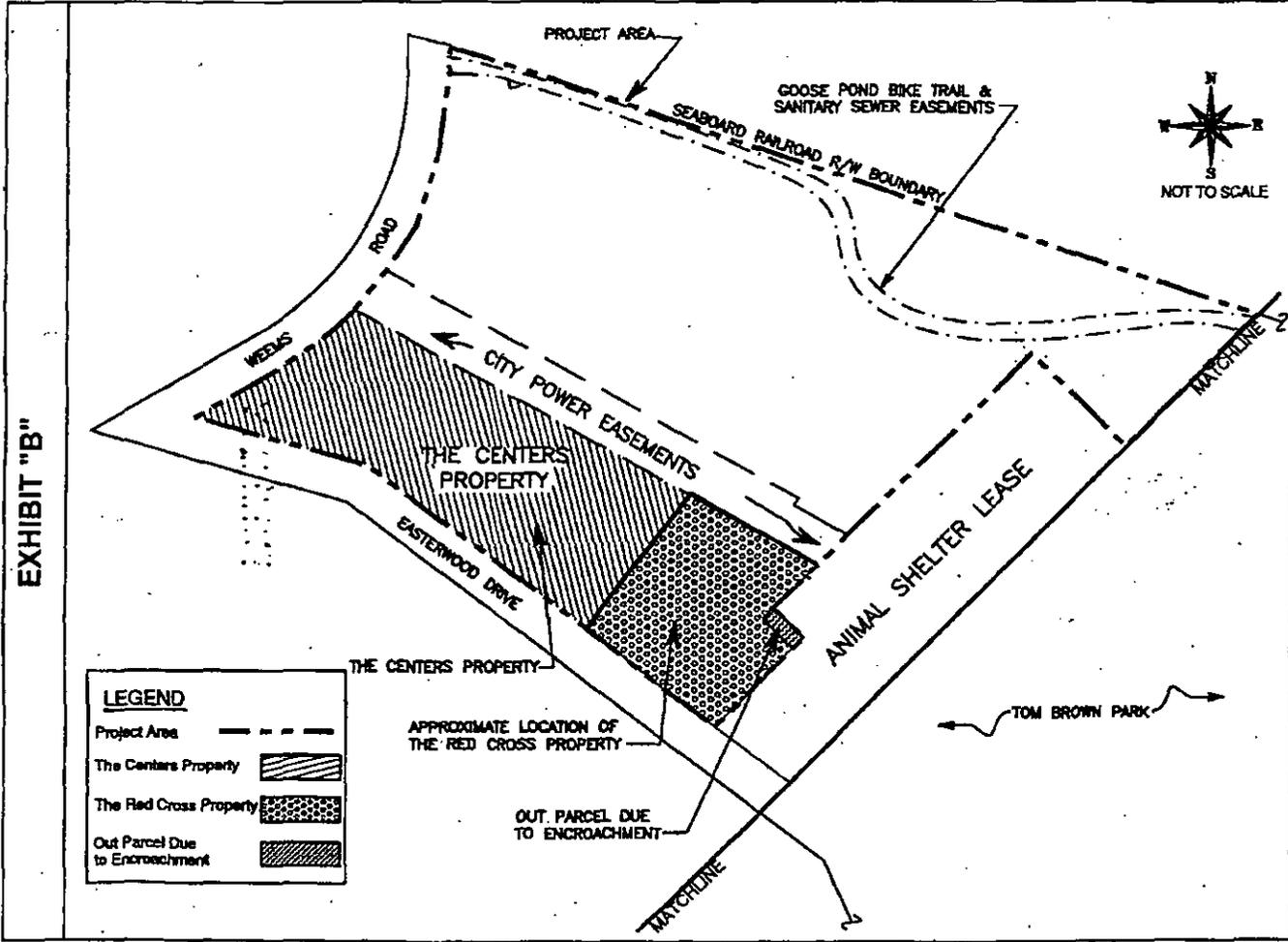
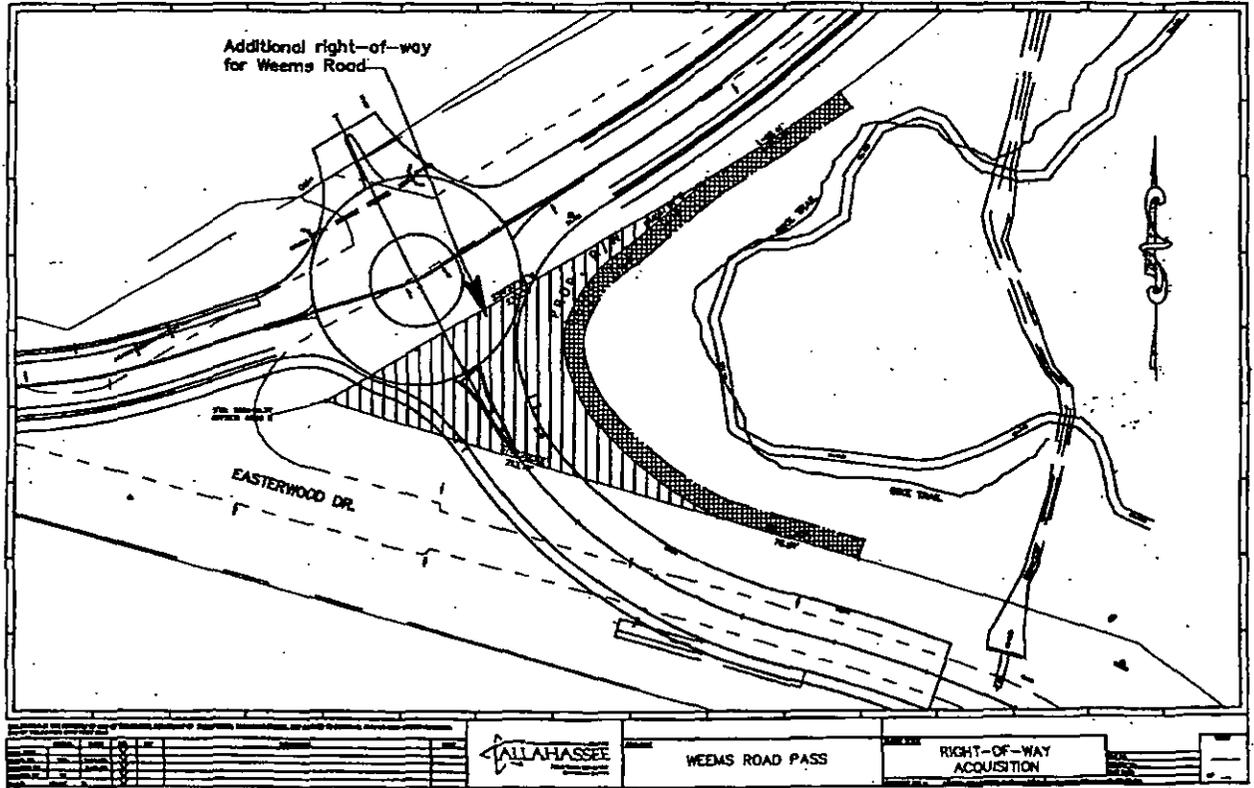
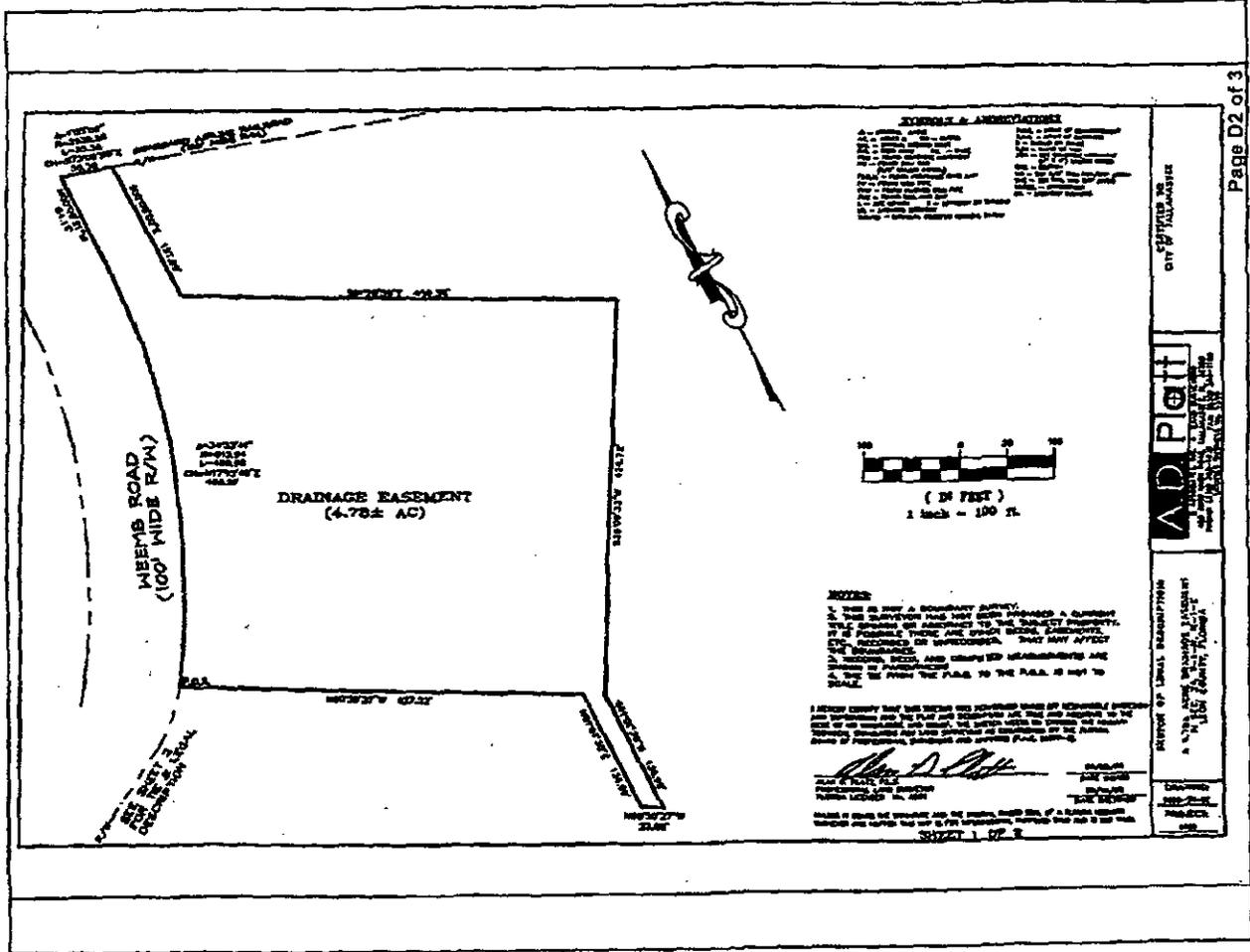
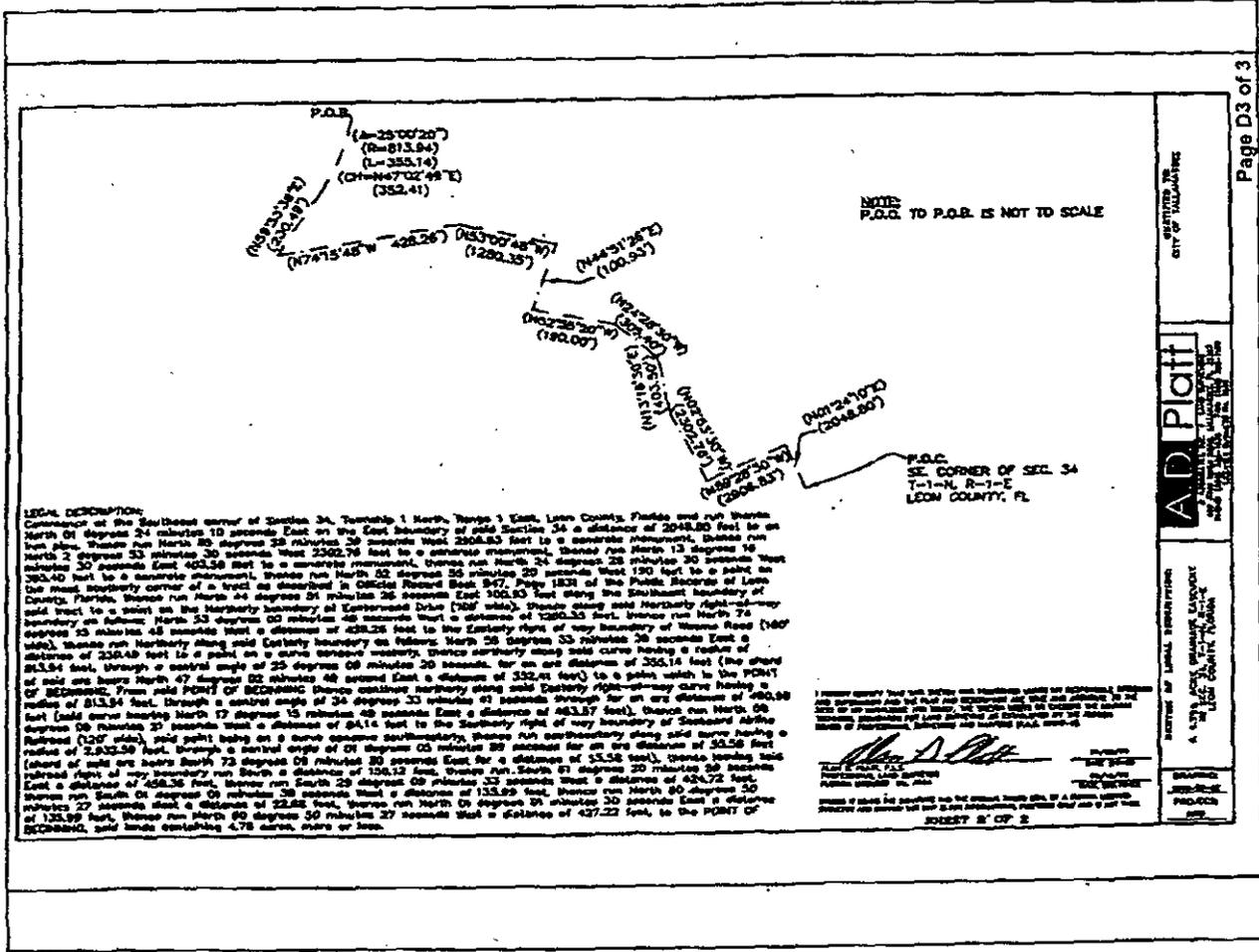


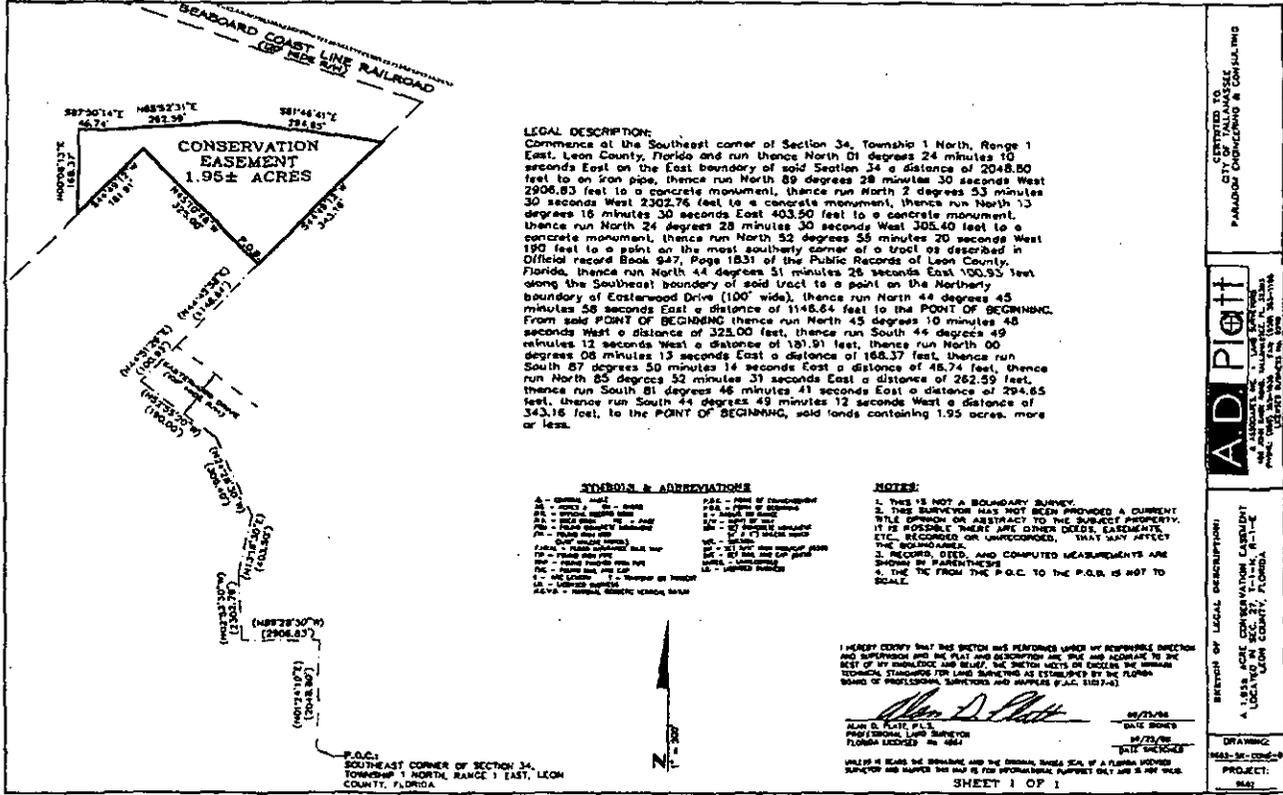
EXHIBIT "C"

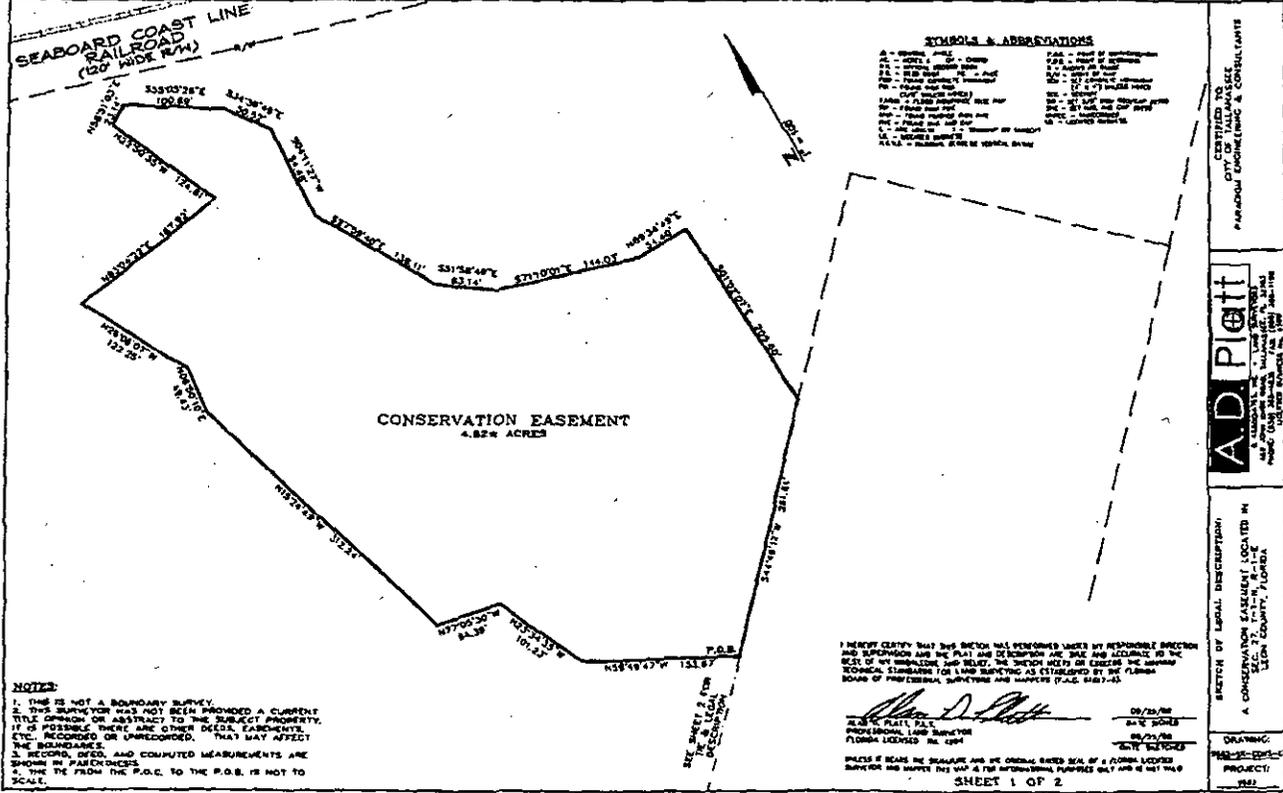




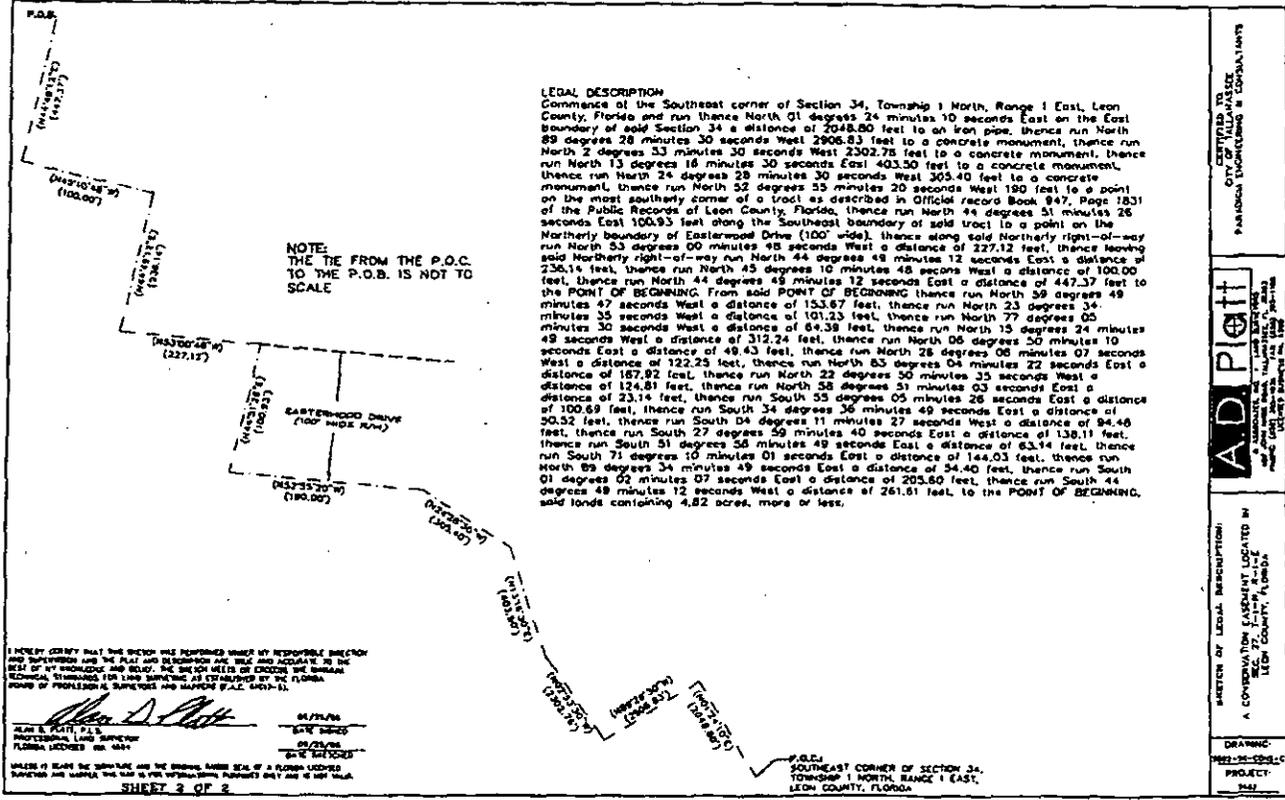


COMPOSITE EXHIBIT "E"





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EXHIBIT "F"

Conservation Area (with Management Plan) for:
American Red Cross Facility; Future City of Tallahassee Weems Road Improvements
Future Leon County/City of Tallahassee Public Safety Complex (Including Fire Station);

CONSERVATION AREA MANAGEMENT PLAN

Associated With Declaration of Restrictive Covenants
 (Reserving a Conservation Area)
 Tax Parcel ID: 11-27-20-851-0000

Applicable Projects:

American Red Cross Facility; Future City of Tallahassee Weems Road Improvements;
Future Leon County/City of Tallahassee Public Safety Complex (Including Fire Station);

1. **Conservation Area.** This Management Plan shall govern the management of that certain Conservation Area established by the making and recording of the Declaration of Restrictive Covenants by LEON COUNTY, FLORIDA, a charter county and political subdivision of the state of Florida (the "County"), and joined in by the CITY OF TALLAHASSEE, a Florida municipal corporation, (the "City") in connection with the construction of the American Red Cross Facility, the future County/City Public Safety Complex, the future City Weems Road Improvements, and any other improvements that may otherwise be constructed within the Project Area, as that term is defined therein. The terms used within this Management Plan shall have the same meaning as set forth in such Declaration of Restrictive Covenants.

2. **Vegetation Management.** The management of vegetation within the Conservation Area will include the removal of species listed as noxious per Florida Exotic Pest Plant Council's List of Invasive Species and the continuation of mowing grassed areas that have been historically mowed in the past.

3. **Vegetation Removal.** Undesirable vegetation shall be removed by manual means, string line trimmers and/or spot herbicides. Herbicides shall be applied only to the vegetation to be removed and in strict compliance with the manufacturer's instructions. Removed vegetation will be properly disposed of to prevent reintroduction in other parts of the Conservation Area. Invasive species will be removed as frequently as possible and the Conservation Area will be included in all future invasive species removal requests submitted, by City of Tallahassee Parks Recreation and Neighborhood Affairs, to the Florida Fish and Wildlife Conservation Commission.

4. **Authorized Activities.** It is anticipated that the current recreational uses being made of the Conservation Area will continue and will, therefore, be deemed to be authorized activities. Those authorized activities include off-road mountain biking, trail running, walking and similar such passive recreational activities, but not in or within fifty (50) feet of the wetlands without Department approval. Any development, construction, management, and maintenance activities necessary to support passive recreation uses will also be deemed to be authorized activities. In addition, any other specific activities as authorized by the Department will be deemed to be authorized activities.

