

**CITY OF MARATHON, FLORIDA
RESOLUTION 2008-157**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A GROUND LEASE AGREEMENT BETWEEN THE CITY OF MARATHON AND JO JO'S OF THE FLORIDA KEYS, LLC FOR POST STORM STAGING AND DEBRIS STORAGE FOR PROPERTY LOCATED AT JO JO'S ON GRASSY KEY; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE LEASE AGREEMENT; AUTHORIZING THE MANAGER TO EXECUTE THE LEASE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is in the public interest of the City to acquire access and lease terms for properties to be utilized as potential temporary debris storage and recovery sites in the event of a hurricane; and

WHEREAS, Jo Jo's of the Florida Keys, LLC. is willing to lease property identified as Jo Jo's on Grassy Key for the purposes of storm debris staging and storage;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, that:

Section 1. The above recitals are true and correct and incorporated herein by this reference.

Section 2. The City Council hereby approves the lease agreement between the City and JoJo's of the Florida Keys for post storm staging and debris storage, a copy of which is attached hereto as Exhibit "A"; together with such non-substantial changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney. The City Manager is hereby authorized to sign the Agreement on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 23rd day of September, 2008.

THE CITY OF MARATHON, FLORIDA



Edward P. Worthington, Mayor

AYES: Bull, Cinque, Tempest, Vasil, Worthington
NOES: None
ABSENT: None
ABSTAIN: None

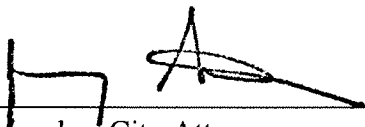
ATTEST:



Diane Clavier, City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



Jimmy Morales, City Attorney

GROUND LEASE

Post Storm Staging and Debris Storage Site

JoJo's of the Florida Keys, LLC
a Florida limited liability company

Landlord

TO

The City of Marathon, a Florida municipal corporation

Tenant

Dated: September 23, 2008

GROUND LEASE

Post Storm Staging and Debris Storage Site

- (i) Primary Premises: 00100110-00101
- (ii) Secondary Premises: 00100110-000000

THIS LEASE (the "Lease") is made as of the 23 day of September, 2008 (the "Effective Date") by and between The City of Marathon, a Florida municipal corporation (the "City") having an office at 9805 Overseas Highway, Marathon, Florida 33050, Attention: Clyde Burnett, the City Manager, and JoJo's of the Florida Keys, LLC, a Florida limited liability company (the "Landlord"), having an office at c/o Tobin Properties, Inc., 1101 Ben Tobin Drive, Hollywood, Florida 33021, Attention: Herbert A. Tobin, its President.

ARTICLE 1. LEASE AND USE OF PREMISES.

1.1 Landlord does hereby lease to Tenant, and Tenant does hereby take and hire from Landlord, upon and subject to the terms and conditions hereinafter expressed, the following leased premises generally referred to as:

(a) Flea Market Site on Grassy Key (the "Primary Premises") with RE Number of 00100110-000101 as described on Exhibit "A-1" attached hereto and made a material part hereof, together with all right and interest, if any, of Landlord to any easement appurtenant to said Primary Premises; and

(b) JoJo's Site on Grassy Key (the "Secondary Premises") with an RE Number of 00100110-000000 as described on Exhibit "A-2" attached hereto and made a material part hereof, together with all right and interest, if any, of Landlord to any easement appurtenant to said Secondary Premises.

(c) The parties acknowledge that certain easements of record encumber the Primary Premises and the Secondary Premises, as more specifically identified on the survey attached hereto as Exhibit "A-3". Tenant agrees that it shall not cause such easements to be blocked or impeded during the term hereof. Notwithstanding the foregoing, the easement area identified in Exhibit "A-3" and noted at the bottom of the survey and in OR 927, PG 1141, need not be maintained as part of this Agreement.

1.2 The Primary Premises and the Secondary Premises may hereinafter collectively be referred to as the "Leased Premises". The Leased Premises shall not include any structures existing on the Leased Premises as of the date hereof.

1.3 Use of Leased Premises. Upon the City being affected by tropical cyclone which requires the City to use the Leased Premises, the City hereby agrees that it shall first use the Primary Premises as a staging and debris storage site including but not by limitation, any equipment used to collect, sort, mulch and remove said debris and shall continue to only use the Primary Premises until the Primary Premises, in the City's sole and absolute discretion has reached functional capacity as a

storage site. Upon the City's determination that the Primary Premises has reached functional capacity, the City shall automatically have the right to commence the use of the Secondary Premises.

1.4 The City acknowledges that there are four residential homes located on parcels south of the Leased Premises, and that these homes are accessible by private roads or rights-of-way that run across and/or adjacent to the Leased Premises. The City agrees that during any Occupancy Term or Extended Occupancy Term (as defined below), the City will not cause access to said homes to be blocked or impeded.

ARTICLE 2. TERM.

The term of this Lease shall commence on the Effective Date and terminate November 30, 2008 (the "Leased Term"). However, the City shall only have the right to commence occupancy of either the Primary Premises or the Secondary Premises until one (1) day following the City having been affected by a tropical cyclone and requires the use of the Leased Premises to place debris arising from a tropical cyclone (each such first day following a tropical cyclone shall be referred to as "Occupancy Date"), and each said Occupancy Date shall end ninety (90) days following the Occupancy Date (the "Event Occupancy Termination Date"). Each such occupancy by the City shall hereinafter be referred to as "Occupancy Term." The City shall use reasonable efforts to provide Landlord advanced notice of the Occupancy Term, but the failure to deliver such notice shall not affect the City's right to occupy the Leased Premises pursuant to this Lease. Notwithstanding the foregoing, the City shall have the option to extend the Occupancy Term one time for an additional term of ninety (90) days (the "Extended Occupancy Term") should the City need additional time to remove the debris from the Leased Premises. The Occupancy Date of this Lease shall be each such day the City is impacted by a tropical cyclone and needs the Leased Premises for the purposes set forth herein. During the Leased Term, the Landlord agrees that it shall not make any improvements or alterations to the Leased Premises or in any way alter the Leased Premises which would adversely affect the City's use of the Leased Premises during any Occupancy Term. Either party shall have the right to terminate this Lease upon ninety (90) days prior written notice to the other party; provided that termination shall not occur within any Occupancy Term or Extended Occupancy Term.

ARTICLE 3. SURRENDER OF THE DEMISED PREMISES.

The City shall, on the last day of the Term surrender and deliver up the Leased Premises to the Landlord in good order and the general condition the Leased Premises were on the Effective Date, normal wear and tear and acts of God (such as, but not limited to, tropical cyclones, tornados, floods and earthquakes) excepted. Photos of the Primary Premises and Secondary Premises showing the condition as of the Effective Date are attached hereto as Composite Exhibit "B".

ARTICLE 4. RENT.

4.1 Tenant shall pay to Landlord concurrently with the execution of this Lease, rent of Ten Dollars (\$10.00) ("Rent") for the Leased Premises for the Lease Term.

4.2 All Rent shall be paid by Tenant to Landlord in lawful money of the United States of America which as at the time of payment shall be legal tender for the payment of public and private debts.

ARTICLE 5. INDEMNITY AND INSURANCE REQUIREMENTS.

The City hereby indemnifies and holds the Landlord harmless from any and all actions, causes of action, claims, liabilities, demands and losses of any kind whatsoever which may be filed or made against the Landlord by reason of the City's use of the Leased Premises. The City shall maintain a policy of general liability coverage in an amount not less than One Million Dollars (\$1,000,000.00) and name the Landlord as a certificate holder under the policy.

ARTICLE 6. DAMAGE OR DESTRUCTION BY FIRE OR OTHER CASUALTY.

In the event of any damage or loss by fire or other casualty during the term of this Lease, the Lease shall continue in full force and effect.

ARTICLE 7. ASSIGNMENTS AND TRANSFERS OF TENANT'S INTEREST PROHIBITED.

The City shall have no right to assign this Lease to any third person.

ARTICLE 8. INVALIDITY OF PARTICULAR PROVISIONS.

If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE 9. NOTICES.

All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this Article collectively called "Notices") shall be in writing and shall be sent by either certified mail, return receipt requested, postage prepaid or by hand delivery or by a nationally recognized overnight courier, such as FedEx, addressed to the party to receive such Notice at its address first above set forth. Either party may, by Notice given as aforesaid, change its address for all subsequent Notices. Notice shall be deemed given upon receipt or refusal of delivery.



ARTICLE 10. QUIET ENJOYMENT.

Landlord covenants that the City, upon paying the Rent and observing and keeping all covenants, agreements and conditions of this Lease on its part to be observed and kept, shall have the right to enjoy the Leased Premises during the term of this Lease, without hindrance or molestation by anyone claiming by, through or under Landlord.

ARTICLE 11. CAPTIONS.

The captions and table of contents, if any, in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit, enlarge or describe the scope or intent of this Lease nor in any way shall affect this Lease or the construction of any provision hereof.

ARTICLE 12. ORAL CHANGE OR TERMINATION.

This Lease contains the entire agreement between the parties and may not be changed, modified or discharged, in whole or in part, unless such change, modification or discharge is in writing and is signed by the party against whom enforcement of the change, modification or discharge is sought. This Lease cannot be changed or terminated orally.

ARTICLE 13. GOVERNING LAW.

This Lease shall be interpreted in accordance with the internal laws of the State of Florida both substantive and remedial regardless of the domicile of any party.

ARTICLE 14. ENTIRE AGREEMENT.

This Lease sets forth the entire agreement between the Landlord and Tenant relating to the Lease, all subject matter herein and supersedes all prior and conversations, negotiations, understandings and agreements, written or oral, between the parties and there are no agreements, understandings, warranties, representations among the parties except as otherwise set forth herein.

ARTICLE 15. DEFAULTS AND REMEDIES.

15.1 Defaults: The following shall constitute an event of default hereunder:

(i) failure of the City to pay any Rent or charge due hereunder and such default continues for ten (10) days after written notice from Landlord; or

(ii) failure of either party (other than a City default to pay rent) to comply with the material terms, conditions or covenants of this Lease which a party is required to observe or perform and such default continues for a period of thirty (30) days after written notice from the non-defaulting party, unless greater time is required to cure the default, in which event, as long as the defaulting party has commenced to cure the default within fifteen (15) days of notice from the non-defaulting party and continues to work to cure said default, then the time to cure shall be extended for the reasonable amount of time necessary to complete the cure.

(iii) Notwithstanding the foregoing, in the event the City fails to vacate the Premises upon termination of the term of the Lease either at maturity or earlier as set forth in this Agreement upon appropriate notice given by the Landlord, Landlord shall have the immediate right, upon the giving of three (3) days notice, to begin appropriate proceedings to evict the City and to regain possession of the Premises. In the event such proceedings are instituted Landlord shall be entitled to an award of cost and attorney's fees.

15.2 Remedies: The parties hereto shall have those remedies as are allowed by law and as provided in this Lease, in the event of a default. In the event of a City default that is not cured by the expiration of any allowed cure period, Landlord may institute actions for eviction, compensatory damages (but excluding any punitive damages), and for injunctive relief in a court of competent jurisdiction in Monroe County, Florida, to terminate the Lease, to collect damages, or to compel performance of the defaulting party's obligations.

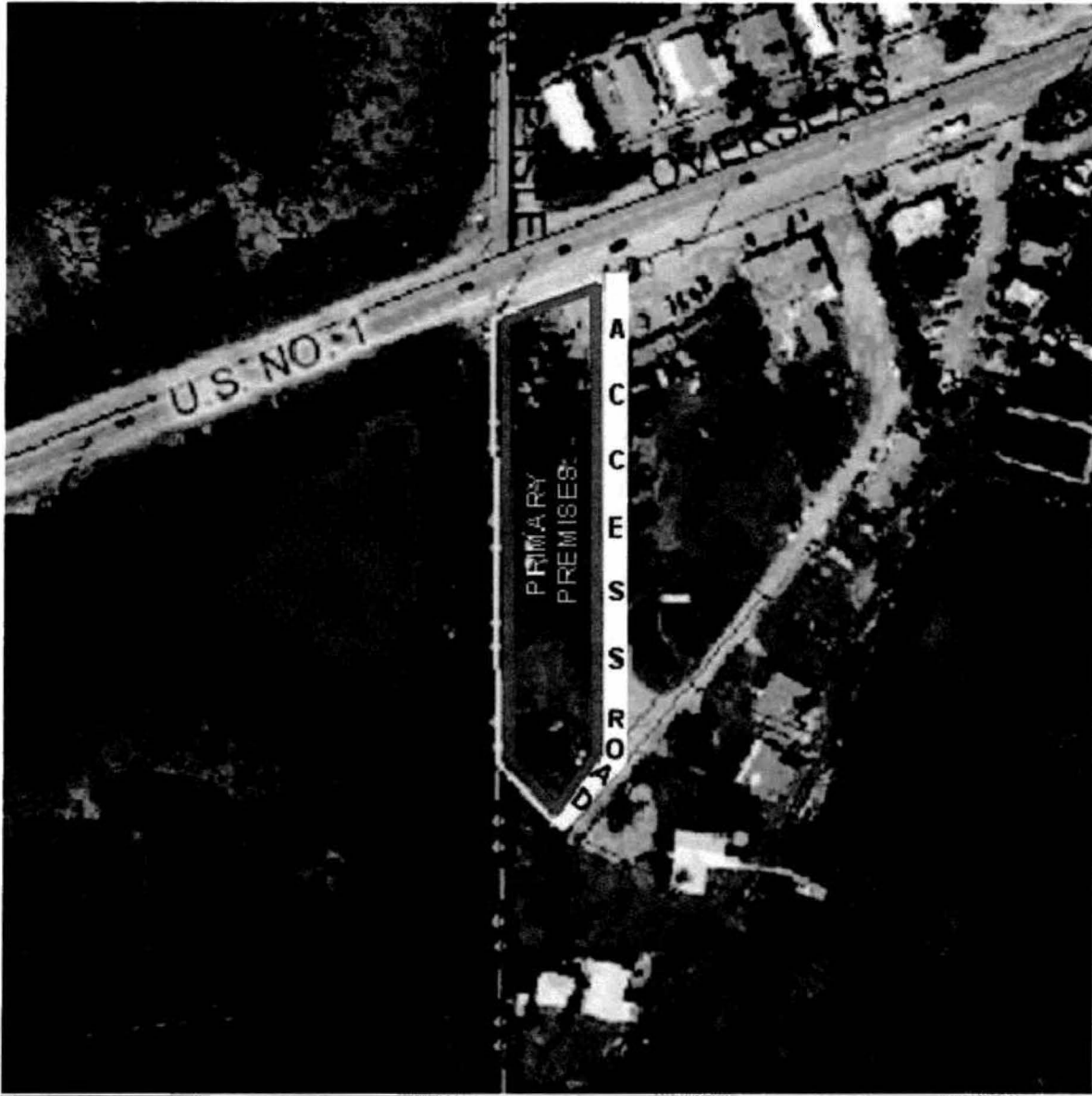
ARTICLE 16. WAIVER OF TRIAL BY JURY.

Landlord and the City hereby knowingly, irrevocably, voluntarily and intentionally waive any rights to a trial by jury in respect to any action, proceeding or counterclaim based on this Lease or arising out of, under or in connection with this Lease or any course of conduct, course of dealing, statements (whether verbal or written) or action of any party hereto. This provision is a material inducement for Landlord and the City entering into this Lease.

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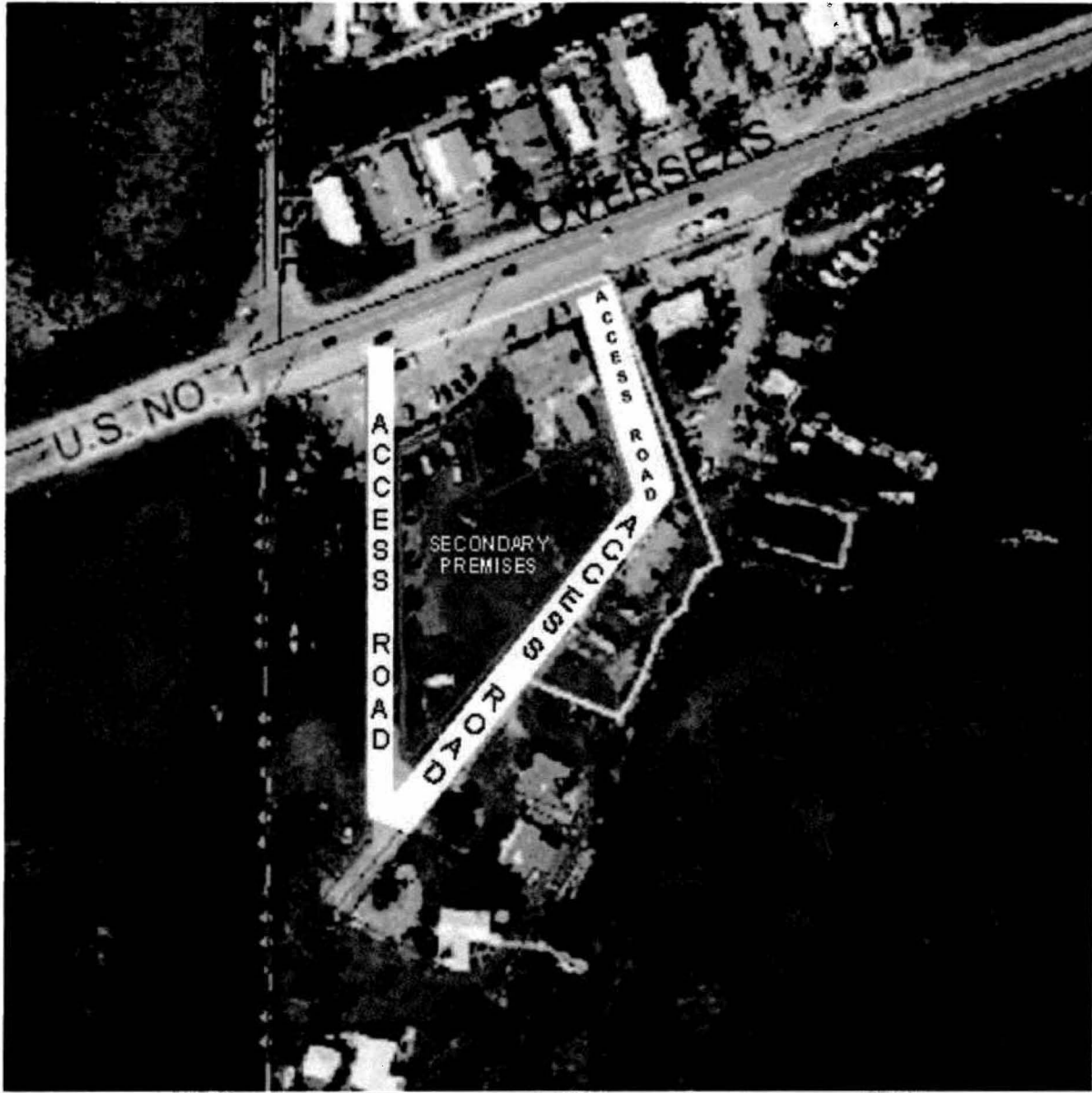


EXHIBIT "A-1"
Primary Premises



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EXHIBIT "A-2"
Secondary Premises



AA

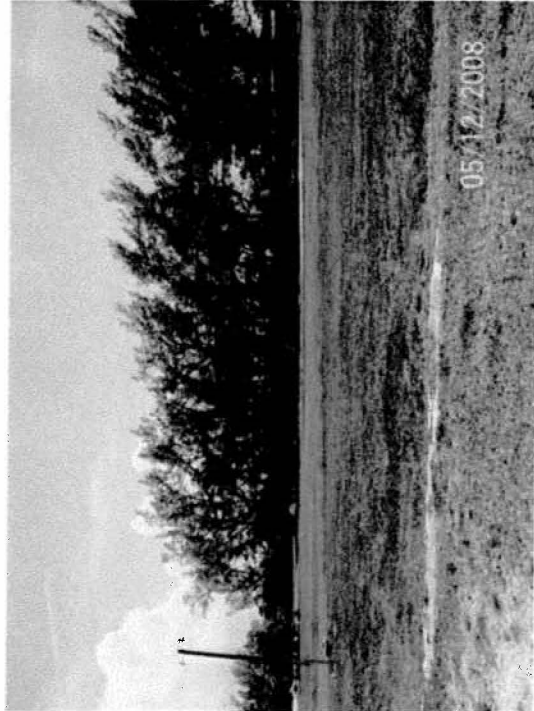
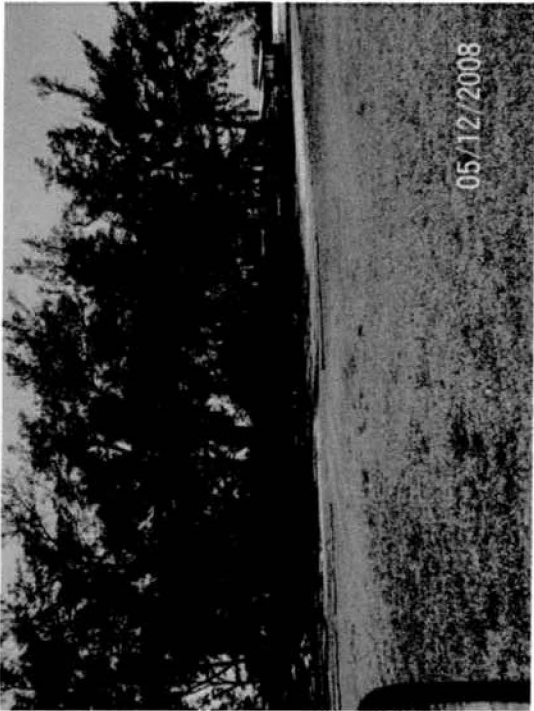
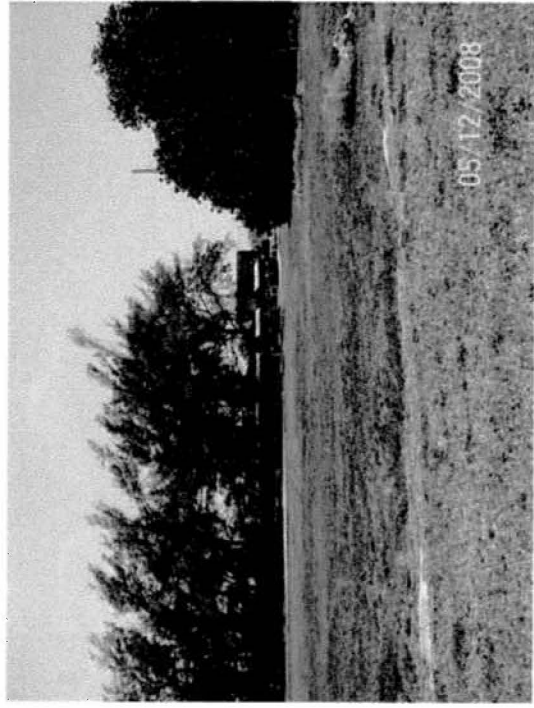
**Composite
EXHIBIT "B"**

Photos

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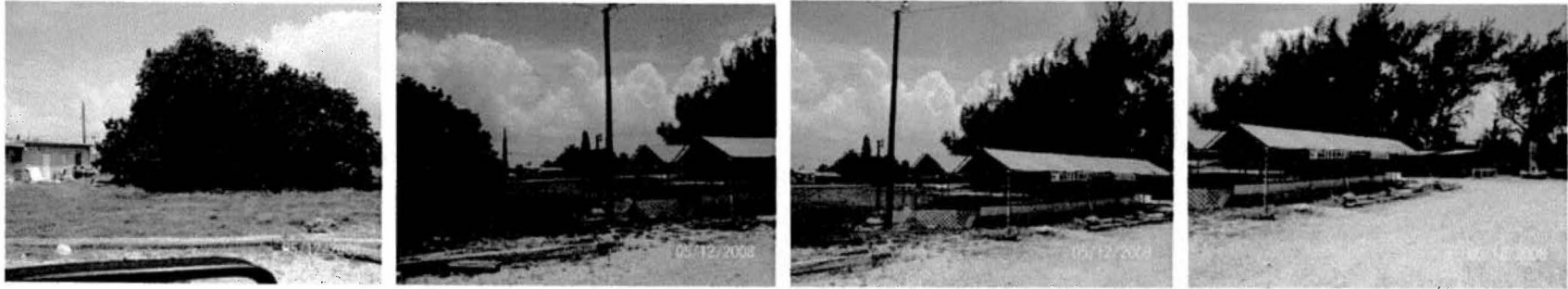
ASB

Primary Site

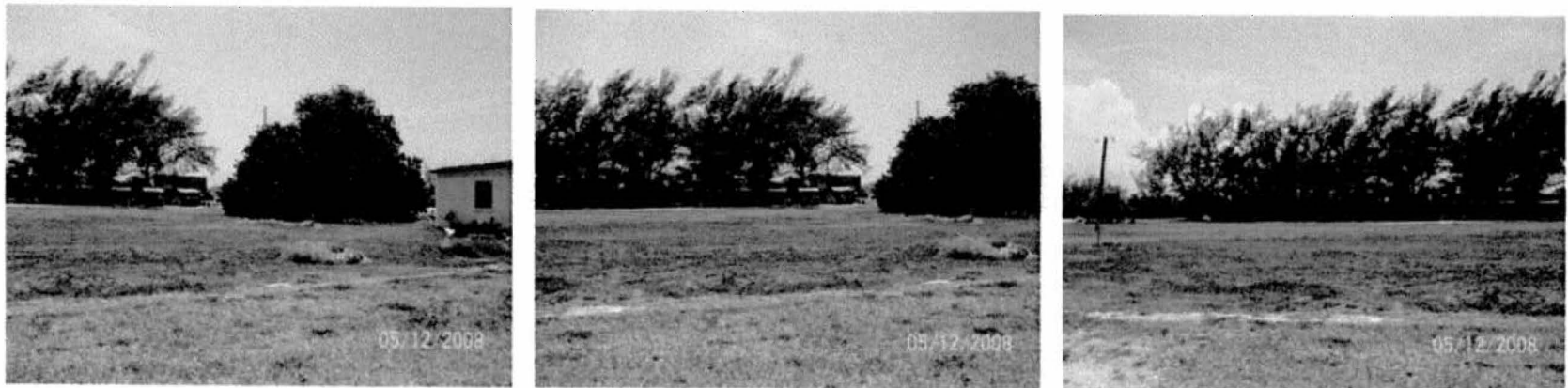


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Secondary Site



U. S. 1 Looking Southward



From Behind Jo Jo's scanning property from north to west

A handwritten signature or set of initials in black ink, located in the bottom left corner of the page.