

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: 9/9/08 [X] Consent [] Regular
[] Workshop [] Public Hearing
Department:
Submitted By: Engineering and Public Works
Submitted For: Right-of-Way Acquisition Section/Traffic Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: An Encroachment and Removal Agreement (Agreement) with KRG/Atlantic Delray Beach, LLC (KRG), to allow lessee owned improvements to remain in effect, until removal date.

SUMMARY: This Agreement will allow the lessee to remain as a tenant until July 31, 2009, on property owned by KRG, that is to be deeded to Palm Beach County for West Atlantic Avenue.

District 5 (PK)

Background and Justification: KRG purchased property from Helena Chemical Company (Helena) in July, 2006. Part of the purchase agreement stated that Helena would be allowed to remain on the property as a tenant until July 31, 2009.

A portion of that property is needed for West Atlantic Avenue. KRG has agreed to donate the property required, identified as Parcel 24A, however, the rights of Helena will remain in effect.

In order to complete the donation of the property, it is necessary to approve the Agreement with KRG to allow the improvements owned by Helena to remain until the removal date of July 31, 2009. The improvement shall be removed at KRG's expense within 90 days after the removal date. There will be no cost to the County.

Attachments:

- 1. Location Map
- 2. Encroachment and Removal Agreement with Exhibit "A"

Recommended by: [Signature] Date: 7/25/08
Division Director

Approved by: [Signature] Date: 7/31/08
County Engineer

KAT *[initials]*

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | <u>2008</u> | <u>2009</u> | <u>2010</u> | <u>2011</u> | <u>2012</u> |
|--|-------------|-------------|-------------|-------------|-------------|
| Capital Expenditures | -0- | -0- | -0- | -0- | -0- |
| Operating Costs | -0- | -0- | -0- | -0- | -0- |
| External Revenues | -0- | -0- | -0- | -0- | -0- |
| Program Income (County) | -0- | -0- | -0- | -0- | -0- |
| In-Kind Match (County) | -0- | -0- | -0- | -0- | -0- |
| NET FISCAL IMPACT | -0- | -0- | -0- | -0- | -0- |
| ADDITIONAL FTE POSITIONS (Cumulative) | -0- | -0- | -0- | -0- | -0- |

Is Item Included In Current Budget? Yes _____ No x
 _Budget Account No.: Fund ___ Agency ___ Org. ___ Object ___
 Reporting Category

B. Recommended Sources of Funds/Summary of Fiscal Impact:

THIS ITEM HAS NO FISCAL IMPACT

C. Departmental Fiscal Review: *Cruff*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Atwillhite 8.6.08
 OFMB *UP 8/6/08 SN 8/5/08 CW 8/1/08*

Dr. J. Jacoby 8/6/08
 Contract Dev. and Control

B. Legal Sufficiency:

Paul F. J. 8/7/08
 Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

Location Map

07

R41
L

See pg 101

R42
K

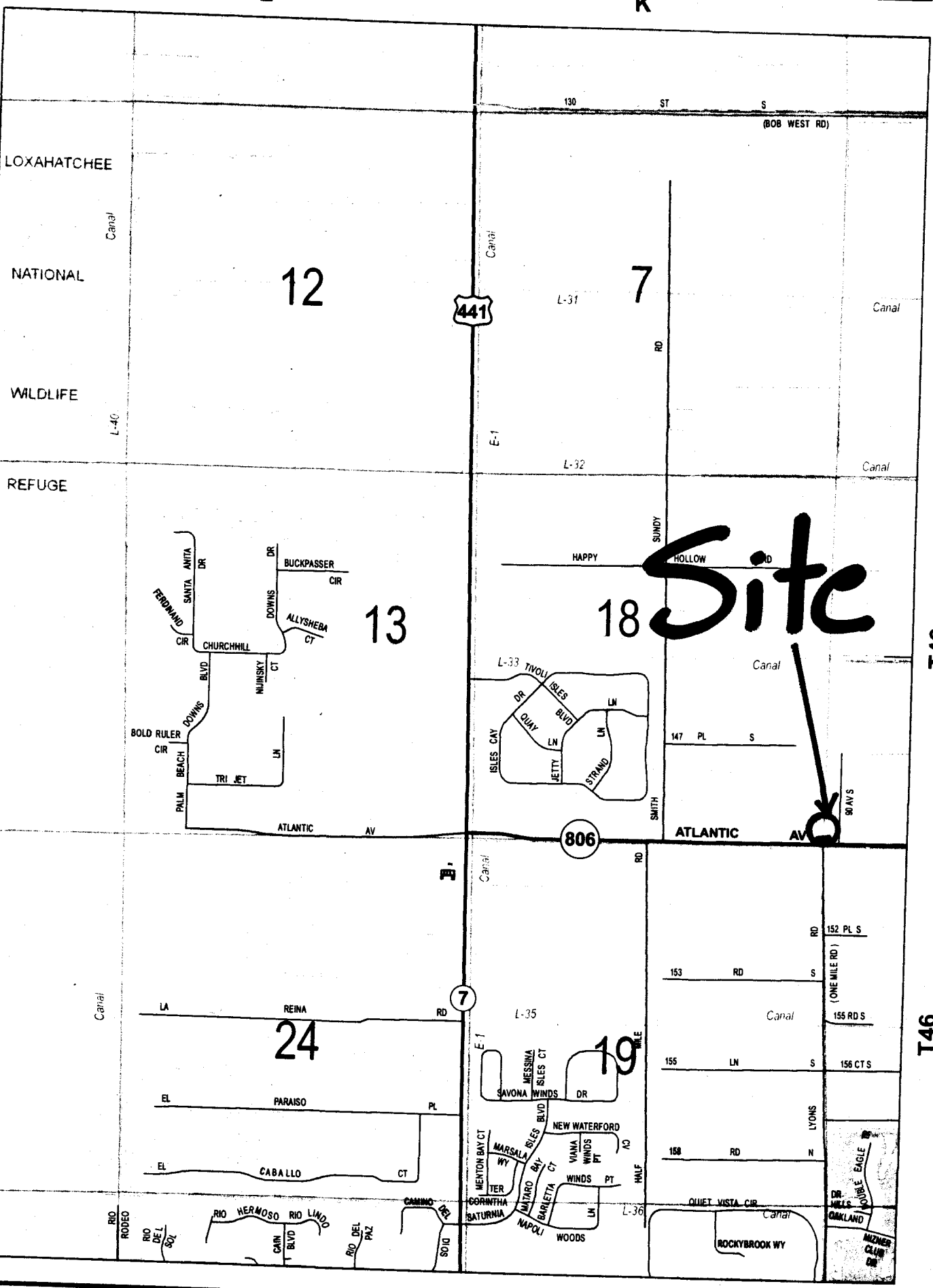
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T46

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L

See pg 114

K

**PALM BEACH COUNTY ENCROACHMENT
AND REMOVAL AGREEMENT**

WHEREAS, KRG/Atlantic Delray Beach, LLC, a Florida limited liability company, is the fee simple owner(s), hereinafter "owner", of a parcel of real property, hereinafter "property", located in Palm Beach County, Florida, more particularly described on Exhibit A attached hereto and made a part hereof.

WHEREAS, a building and related improvements, hereinafter "structure", are currently located on the property and will need to remain located on the property through July 31, 2009, the "removal date"; and

WHEREAS, the owner covenants that he is the fee simple owner of the property and that there is at present no mortgage encumbering the property.

NOW, THEREFORE, in consideration of one dollar (\$1.00), the County not immediately enforcing its rights or the rights of any others now existing, or which may in the future exist, and other good and valuable consideration, the receipt of which is hereby acknowledged, the owner hereby agrees with Palm Beach County, the "County", to remove at no expense to the County, the structure from the property within ninety days after the removal date. The owner agrees that no other improvements or other fixtures shall be constructed and installed on the property at any time after the date hereof. The County agrees to allow owner to continue using the property and the structures for any lawful purpose until the removal date and to enter upon and possess the property after the removal date until the structure is removed as contemplated herein. For and in consideration of an additional one dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, owner hereby agrees to indemnify, defend, and save County harmless against and from any and all claims, demands, actions, suits, proceedings, judgments, liabilities, losses and damage to property (including wrongful death and impairment of any property interest), or for any other matter or thing arising out of or in any manner connected with this Agreement or any act or omission of Owner, its agents, employees, and contractors. In the event that the owner fails to remove any structure located on the property within ninety days after the removal date as set forth herein, County may enter the property and remove the structure(s) upon not less than fifteen days notice, and the owner shall be responsible for the County's reasonable direct and indirect costs of removal. The County may record, and such costs of removal shall be, a lien against the property.

It is agreed by the owner, its successors, and assigns hereto, that this Agreement will be recorded in the Official Records of Palm Beach County, Florida, and that this Agreement

shall be a covenant running with the land and be binding upon the owner, his heirs, personal representatives, grantees, assigns and successors in interest of the owners.

SIGNED, SEALED, EXECUTED AND ACKNOWLEDGED on this 16th day of May, 2008.

KRG/Atlantic Delray Beach, LLC, a Florida limited liability company

WITNESSES:

Janice Stevanovic / Janice Stevanovic
John Ellison / John Ellison

By: [Signature]
Thomas K. McGowan, Chief Operating Officer ES/JS

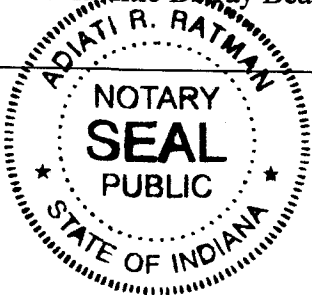
Palm Beach County

WITNESSES:

By: _____
Printed: Addie L. Greene
Title: Chairperson

STATE OF INDIANA
COUNTY OF MARION

The foregoing instrument was acknowledged before me this 16th day of May, 2008, by Thomas K. McGowan, the Chief Operating Officer of KRG/Atlantic Delray Beach, LLC, who is personally know to me or who has produced _____ as identification and who did/did not take an oath.



[Signature]
(Signature of Notary)
Adrati Ratman
(Typed, Printed or Stamped Name of Notary)

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____ who is personally know to me or who has produced _____ as identification and who did/did not take an oath.

Approved as to form and legal sufficiency

By: [Signature]

(Signature of Notary)

Approved as to terms and conditions

By: [Signature]

(Typed, Printed or Stamped Name of Notary)

DESCRIPTION & SKETCH
 PREPARED FOR:
 PALM BEACH COUNTY, FLORIDA

PARCEL 24A
ATLANTIC AVENUE (SR 806) BETWEEN HALF MILE ROAD & 90TH AVENUE SOUTH
PALM BEACH COUNTY, FLORIDA

LEGEND

- | | |
|---|--|
| DB = DEED BOOK | POB = POINT OF BEGINNING |
| FDOT = FLORIDA DEPARTMENT OF TRANSPORTATION | POC = POINT OF COMMENCEMENT |
| LWDD = LAKE WORTH DRAINAGE DISTRICT | R/W = RIGHT-OF-WAY |
| ORB = OFFICIAL RECORD BOOK | SEC. = SECTION |
| PBC = PALM BEACH COUNTY | SF = SQUARE FEET |
| PB = PLAT BOOK | SFWM = SOUTH FLORIDA WATER MANAGEMENT DISTRICT |
| PG. = PAGE | SR = STATE ROAD |

LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN SECTIONS 17 AND 18, TOWNSHIP 46 SOUTH, RANGE 42 EAST, BEING A PORTION OF TRACT 128, BLOCK 18 OF THE PALM BEACH FARMS COMPANY PLAT NO. 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 26 THROUGH 28 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

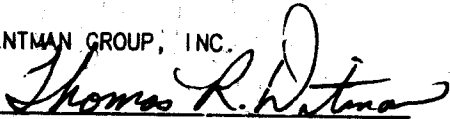
COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 18; THENCE SOUTH 89°32'49" WEST, ALONG THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 100.35 FEET TO A POINT ON THE PROLONGATION OF THE WEST LINE OF TRACT 128 OF SAID THE PALM BEACH FARMS COMPANY PLAT NO. 1; THENCE NORTH 01°02'51" WEST, ALONG SAID WEST LINE, A DISTANCE OF 102.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID WEST LINE NORTH 01°02'51" WEST, A DISTANCE OF 26.92 FEET; THENCE NORTH 89°00'55" EAST, A DISTANCE OF 214.08 FEET; THENCE SOUTH 44°29'01" WEST, A DISTANCE OF 41.80 FEET; THENCE NORTH 89°58'59" WEST, ALONG A LINE 102.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SECTION 17, A DISTANCE OF 82.45 FEET; THENCE SOUTH 89°32'49" WEST ALONG A LINE 102.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SECTION 18, A DISTANCE OF 101.83 FEET TO THE POINT OF BEGINNING.

CONTAINING 5583 SQUARE FEET OR 0.13 ACRES.

SURVEYOR'S NOTES

1. THIS DRAWING IS NOT A SURVEY.
2. NO SEARCH OF THE PUBLIC RECORDS HAS BEEN MADE BY THIS OFFICE.
3. THE DESCRIPTION SKETCH AND THE DESCRIPTION TEXT COMPRISE THE COMPLETE LEGAL DESCRIPTION. THE LEGAL DESCRIPTION IS NOT VALID UNLESS BOTH ACCOMPANY EACH OTHER.
4. THIS LEGAL DESCRIPTION IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER EMPLOYED BY WANTMAN GROUP, INC.
5. THE BEARINGS SHOWN HEREON ARE BASED ON THE SOUTH LINE OF THE SOUTHEAST ONE-QUARTER OF SECTION 18, TOWNSHIP 46 SOUTH, RANGE 42 EAST, WHICH BEARS SOUTH 89°32'49" WEST.

WANTMAN GROUP, INC.



THOMAS R. DITMAN
 PROFESSIONAL SURVEYOR AND MAPPER
 FLORIDA CERTIFICATE NUMBER 5763

Exhibit A

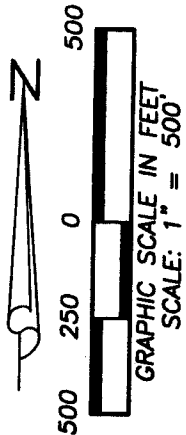


Wantman Group, Inc.
Engineering ♦ Surveying ♦ Mapping
 2035 VISTA PARKWAY, SUITE 100
 WEST PALM BEACH, FL 33411
 (561) 687-2220 phone
 (561) 687-1110 fax
 CERTIFICATION NUMBER 6091
 LICENSED BUSINESS NUMBER 7055

| | |
|--|---------------|
| CAD T:\478 Atlantic Ave Design\Leg & Sketch\DWG\478-24ASY.DWG | |
| REFERENCE | |
| FIELD | JOB 204478.00 |
| DRAWN BY DPK | DATE 12/19/07 |
| CHECKED BY TRD | SHEET 1 OF 3 |

DESCRIPTION & SKETCH
 PREPARED FOR:
 PALM BEACH COUNTY, FLORIDA

PARCEL 24A
 ATLANTIC AVENUE (SR 806) BETWEEN HALF MILE ROAD & 90TH AVENUE SOUTH
 PALM BEACH COUNTY, FLORIDA



THE PALM BEACH FARMS COMPANY PLAT NO. 1
 (PB 2, PG. 26-28)

PARCEL 24A

HALF MILE ROAD

THE PALM BEACH FARMS
 COMPANY PLAT NO. 1
 (PB 2, PG. 26-28)

ATLANTIC PARK
 (PB 14, PG. 1)

THE PALM BEACH FARMS COMPANY PLAT NO.
 (PB 2, PG. 26-28)

90TH AVENUE SOUTH

1ST STREET



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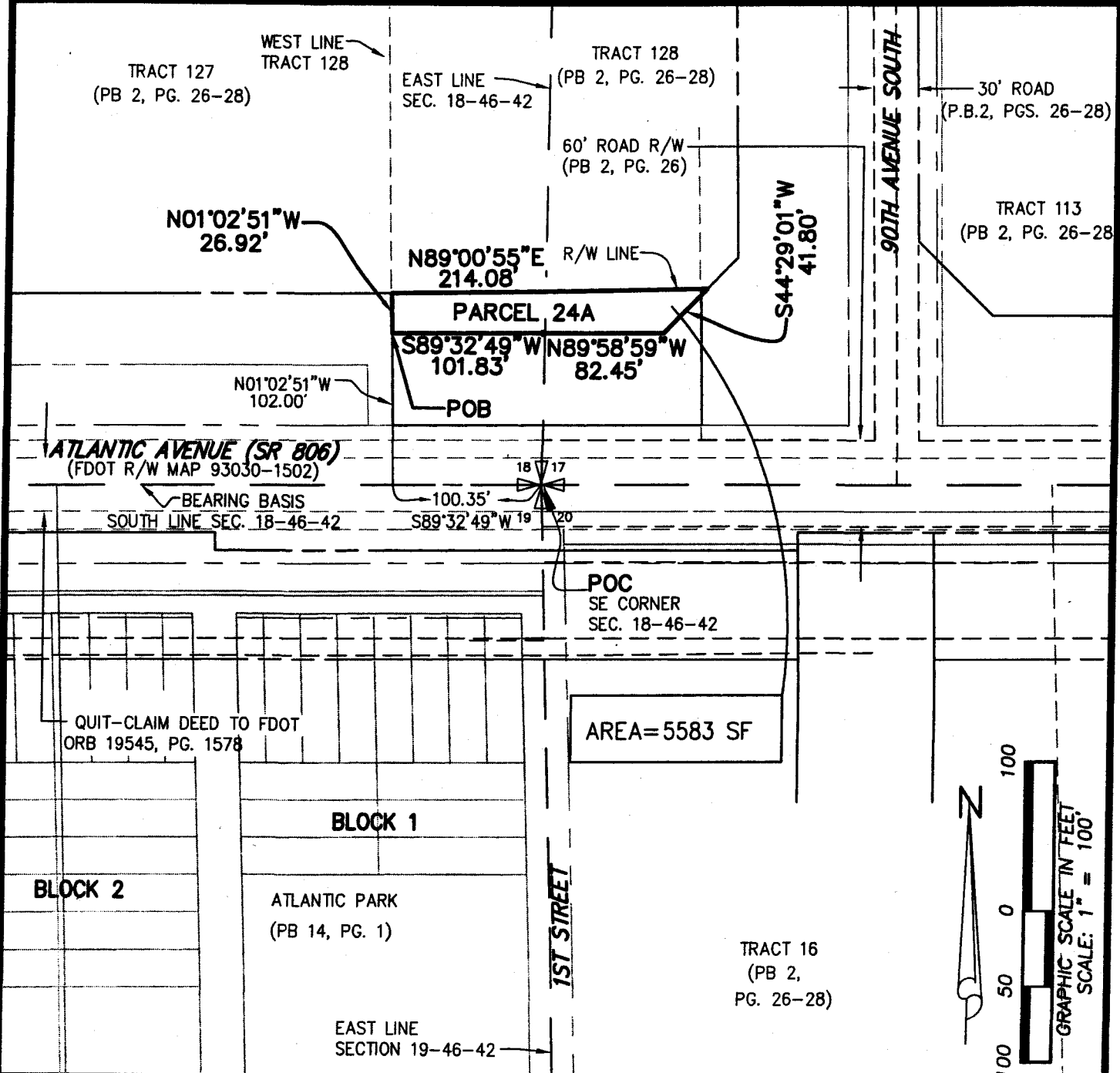
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| CHECKED BY TRD | SHEET 3 OF 3 |