

**Richard G. Payne**  
**Commissioner**  
**District IV**



3126 Flagler Avenue  
(305) 809-3844  
rpayne@cityofkeywest-fl.gov

## **THE CITY OF KEY WEST**

P.O. BOX 1409  
KEY WEST, FL 33041-1409

### **KEY WEST TO HAVANA FERRY**

Paper in Support of Resolution Seeking Access to Property

The relationship between the United States and Cuba is thawing and even more contact between the citizens of each country is being permitted. The countries have been authorized over 110 flights a day to Cuba. Soon Cuban ports will be opening to cruise ships and ferries. What impact this will have on the City of Key West is difficult to forecast. Will cruise ships presently coming to Key West continue to do so, or will they elect instead to visit a Cuban port?

It is certain however, that if Key West has a Key West to Havana ferry in operation, our city will be in a much better position than if we do not. While other Florida cities may offer a ferry operation to Cuba, Key West will be in a much better position to do so. We are only 90 miles away from Havana and will be able to offer a 1 day trip, departing and returning the same day. This is something that others will not be able to do.

Key West without a ferry in operation we will lose significant tourism dollars. The reason being that many travelers who take a ferry from another Florida location will upon returning from Cuba to that locale, elect not to drive south to the Florida Keys or Key West as they have already been to the Caribbean. For those travelers (and we do not know how many there will be), the Florida Keys and Key West will be out of the loop. Key West must start getting its house in order if we are to establish a Key West to Havana ferry operation and remain in the loop.

### **1<sup>st</sup> KEY WEST MUST END CLOSURE OF TRUMAN HARBOR BY THE NAVY**

The purpose of this paper is to show why this is so important and why it must be accomplished and how it can be done.

In order to establish a Key West to Havana ferry operation the City of Key West must begin by taking preliminary steps to free up access to its East Quay in Truman Harbor or risk losing the opportunity to do so with serious adverse economic consequences for years to come. This will jeopardize the ability of the city to raise the necessary annual revenue needed to fund its Truman Waterfront Recreational Park as well as adversely affect future tourism dollars for our community. This will be more fully discussed in this paper.

This paper was prepared by me after careful study of hundreds of pages of legal documents which led up to the transfer of the Truman Waterfront properties to the City of Key West in 2002, as well as review of the federal regulations in effect having relevance on this matter and the laws of the State of Florida which govern the sanctity of contracts between individuals as well as contracts between municipalities and our beloved country.

Respectfully submitted,

*Key to the Caribbean – Average yearly temperature 77° F.*

The City contemplates soliciting private ferry carriers to bid on leasing use of the City's facilities located at the Truman Waterfront to conduct a ferry operation, ferrying passengers from Key West to Havana, Cuba and back. The lessee would have exclusive use of the City's 711 foot East Quay berthing area located just inside of the Truman Harbor. In addition, the 32 acre Truman Waterfront which is owned by the City, also contains a 14,000 square foot, two story building within easy walking distance to the East Quay berthing area which the City will have renovated to become a ferry passenger ticketing and passenger screening area by U.S. Customs. There is also ample room for U.S. Coast Guard offices in that building, known as building 103. This building is surrounded by over 31 acres of open land suitable for parking ferry passengers' vehicles.

The City of Key West wishes to be at the forefront of establishing a Key West to Havana ferry service as soon as the same may become approved by our government and the country of Cuba.

In 1995, the United States Navy began the process of transferring back to the City of Key West a 50 acre tract of waterfront properties no longer deemed needed by the Navy. This land is located on the southeastern shoreline of Key West, just inside of the Main Ships Channel leading into Key West. The property is commonly known as the Truman Waterfront. The transfer occurred 7 years later in 2002, through the Base Realignment and Closure process. The City acted as the legislative body called the Naval Properties Land Redevelopment Agency (LRA), and the United States Navy, acting on behalf of the United States of America. The parties entered into a Memorandum of Understanding (MOU) and later a Memorandum of Agreement (MOA) and finally in 2002 the City was deeded 32.31 acres of upland and the 711 foot East Quay Berthing Area, located just inside of the Truman Harbor. The City was also deeded development rights to another approximate 900 feet by 300 feet area in the Truman Harbor lying next to the East Quay extending approximately 900 feet eastward along the Truman Harbor sea wall and extending out into Truman Harbor 300 feet, known as the Truman Harbor Area Development Zone, originally planned to be a mega-yacht marina. The Truman Harbor itself is created by the Mole Pier, having both an outer mole and an inner mole. This harbor is adjacent to Key West's main harbor from the Atlantic Ocean [sketch of Truman Harbor attached, Exhibit A].

#### TRUMAN WATERFRONT RECREATIONAL PARK

The City of Key West is presently embarked on a Truman Waterfront development plan which when fully implemented will cost the City over 58 million dollars. Contemplated is: a 24,300 square foot Community Recreation Center with indoor gym, industrial sized kitchen and classrooms, a restaurant, a museum, a 500 fixed seat amphitheater with 15,000 square foot lawn, police horse stables, two children's playground facilities with an interactive water feature, a multi-use sports field, extensive recreational exercise pathways and public gardens, safe sidewalks with designated bicycle lanes, small commercial shops selling Bahamian & Cuban goods, extensive parking for automobiles and bicycles and public restrooms.

During the BRAC process, various goals to be achieved were discussed as well as agreements made concerning the government's and the City's respective rights after the transfer of the surplus property and how future relations with each other with respect to the transferred property would be conducted was commemorates in a Memorandum of Understanding and in a Memorandum of Agreement.

#### GOVERNMENT GUARANTEE OF RIGHT OF ACCESS

For instance, the Memorandum of Agreement signed December 23, 2002 expressly recognized that the property deeded to the City December 3, 2002 located within Truman Harbor, consisting of the 711 foot East Quay berthing wall and the harbor, consisting of the 711 foot East Quay berthing wall and the right to construct improvements within the Truman Harbor Development Zone agreeing that the City would not be denied access to these properties as follows:

“Section 7.09

b. The LRA shall cooperate with the Government’s efforts to establish/clarify restricted areas in the Truman Harbor pursuant to 33 CFR Part 334: the Government recognizes the LRA’s requirement for access to and berthing in the Truman Harbor Area Development Zone and the East Quay Wall Area set forth in EXHIBIT “N” [Exhibit A of this paper]. “

Notwithstanding the agreement of Section 7.09b. shown above, the United States Navy, 11 years later in 2013, unilaterally, and without consultation with the City of Key West (the LRA) reneged on its promise to the City to respect its right of access to its valuable Truman Harbor properties and employed the use of the 33 CFR Part 334 to declare not just a portion of Truman Harbor a restricted area but to declare the entire harbor to be off limits to all non-government vessels thus taking away from the City of Key West the valuable properties given to them in Truman Harbor: the 711 foot East Quay and the adjacent sea wall of 900 feet long Truman Harbor Area Development Zone (shown on page 9 of this paper Exhibit A).

#### AGREED COOPERATION RE: TRUMAN HARBOR

Earlier, on October 23, 2002 in a Memorandum of Understanding (MOU) two months before delivery of the Quit Claim Deed, the parties in essence agreed to joint use of Truman Harbor to the extent that the City in exercising its rights to use its Easy Quay and to develop in the development zone would have access to Truman Harbor as would the United States Navy in retaining the Mole Pier and using the harbor for its purposes, agreed as follows:

“3. Parties to this MOU intend to coordinate and cooperate, with maximum flexibility for use of the Truman Annex, to facilitate Government and City use of the Truman Annex Mole Pier and Harbor. Contingent upon compliance with the National Environmental Policy.”

#### CLOSURE OF TRUMAN HARBOR BY NAVY

However, notwithstanding the Government’s express written assurances to the contrary the United States Navy in 2013 closed all access to Truman Harbor by all non-government owned vessels by invoking the provisions of 33 CFR Part 334.610 which regulation was in effect prior to the transfer of property to the City and was the reason it sought and got written assurances on December 23,2002 that the City would not be denied access to its property in Truman Harbor deeded to it 20 days before.

FEDERAL REGULATION 33CFR Part 334.610(b)(3) reads:

“Stopping or landing by any person and/or vessel, other than government-owned vessels and specifically authorized private craft in any of the restricted areas of danger zones described in paragraph (a) of this section is prohibited.” Emphasis added

Therefore the United States Navy can specifically authorize the City of Key West private ferry craft to enter into any restricted area.

The action closure was contrary to several previously written assurances given to the City of Key West leading up to and after transfer of the properties and development rights.

The provisions violated are:

1. The Government's agreement contained in the Memorandum of Agreement dated December 23, 2002 recognizing the City's requirement for access to and berthing in its Truman Harbor East Quay.
2. The agreement to coordinate and cooperate, with "maximum flexibility" the use of Truman Harbor contained in the Memorandum of Understanding of October 23, 2002.
3. The express language within the Quit Claim Deed of December 3, 2002 which the Navy reserved the right to "implement appropriate security procedures for Truman Harbor to satisfy required Anti-Terrorism Force Protection Conditions as dictated by National Security demands".

Therefore, the language contained in the Quit Claim Deed expressly stated that access to the East Quay and to the Truman Harbor might be restricted due to reasons of national security and may temporarily curtail use of the City's property located within-thus implying that national security would be the only reason for temporary closure of the harbor. The written assurances that the government recognizes the City's need for access to Truman Harbor and the East Quay and the development zone given 20 days after the transfer assured the City that the provisions of 33CFR Part 334.610 would not be invoked to deny access absent a national security basis for such a closure. However, the closure in 2013 to the present time was not based upon necessary national security grounds, or Anti-Terrorism Force Protection Conditions nor was it dictated by national security demands which have continued to the present day, as no Navy ship or personnel are quartered or berthed in or near said harbor, nor has there been any announced national terrorism alert during the last three (3) years of Navy closure of the Truman Harbor. The city is aware that the Harbor is only occasionally used by the Navy for underwater training of swimmers and divers.

FEDERAL REGULATION 33CFR Part 334.610(b)(3) reads:

Since 2013 the United States Navy has apparently invoked the provisions of 33 CFR Part 334.610(b)(3) to prohibit all access to Truman Harbor by any non-government vessel. This law reads:

"Stopping or landing by any person and/or vessel, other than Government-owned vessels and specifically authorized private craft in any of the restricted area or danger zones described in paragraph (a) of this section is prohibited."

## AMENDMENT V OF THE UNITED STATES CONSTITUTION

*No person shall be held to answer for a capital, or otherwise infamous crime, unless on a Presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal case to be a witness against himself, nor be deprived of life, or property, without due process of law; **nor shall private property be taken for public use, without just compensation.***

The Truman Waterfront property deeded to the City of Key West on December 3, 2002 cannot be taken from the City without just compensation. If after transferring the property to the City of Key West, the U.S. Navy decided that it should not have given up the property in the Truman Harbor. The Government was required by the above cited United States Constitution to buy the property back from the City by payment or just compensation. If the City would be unwilling to sell the property, the federal government would have had to institute Eminent Domain legal proceedings in a Florida State court to regain the property. In such a proceeding a 12 person jury of citizens would determine the amount of compensation to be awarded to the City while a judge would determine if the acquisition would be for a valid public purpose.

This constitutional requirement may not be circumvented or avoided by the simple expedient of invoking of a regulation declaring the harbor a “restricted area” in which only government-owned vessels may access thus regaining for the Navy sole use of the harbor while simultaneously taking away from the City all use of its East Quay and adjacent development zone properties. I am reasonably confident that some, if not all legal scholars would find the government’s action in this regard to be contrary to the requirement that private property may not be taken by the government for public use without just compensation.

With all non-governmental ships being denied access to Truman Harbor since 2013 the City of Key West has been denied the ability to derive income in the form of quayage, the traditional fee charged for use of a quay for the berthing of and off-loading and loading of ships for the last three (3) years and continuing.

The City of Key West has attempted to discuss the denial of access to Truman Harbor with the United States Navy and its commanding officer at NAS Boca Chica Naval Air Station but has been unable to do so. The citation to 33 Code of Federal Regulation Part 334.610(b)(3) was taken from a newspaper article wherein a “spokesman” for the Navy allegedly cited that regulation as justification for closure of the harbor and denial of access to the City’s East Quay and Development Zone located therein.

The City of Key West has a 193 year history of working cooperatively with the United States Navy and clearly understands and respects the right of the Navy to invoke the provisions of the above regulation for reasons of national security, however, invoking this provision for reasons that the harbor is used for occasional training with no mooring of active military vessels therein is not proper when prior agreements preclude such action. Such closure and denial of access is contrary to the government’s expressed agreement not to deny access to Truman Harbor and the City’s property the East Quay or right to develop and/or construct in the Development Zone.

Training of personnel is an important mission of the Navy but it is not an activity that should preclude the City from using its quay. Instead, underwater training is an activity covered by the parties joint use agreement which requires the parties to “cooperate and coordinate and exercise with maximum flexibility” to accommodate the needs of the others in Truman Harbor so that each party’s activities have the least impact on the other as enunciated in the parties MOU document previously cited in this paper.

Ferry boats operate under fixed schedules as do airlines and cruise ships. They come and go at scheduled times that are reasonably predictable. When they are gone from Truman Harbor there will be no one there to interfere with training. If more time is needed for a particular training, a ferry can be detained or temporarily moored elsewhere pending conclusion of the training. It could also be moored at the East Quay and quickly emptied of passengers and crew and the training commenced.

The City of Key West must be about establishing a Key West to Havana Ferry Service by making arrangements for interested ferry carriers to be able to bid on use of the City of Key West’s facilities which are currently being denied access to by the United States Navy. At this very moment other cities in Florida are going about the business of establishing ferries to Cuba in anticipation of this opening opportunity.

It is very likely that some would be established soon. It is reasonable to assume that tourists traveling in Florida wishing to visit Cuba by ferry will use other ferry systems to do so, particularly if no such ferry is in operation in Key West. It is reasonable to assume that many of these tourists upon return from Cuba to that locale will decide not to travel further south to the Florida Keys or Key West as they would have already then seen the Caribbean. This will result in a loss of tourist revenue to our city. As matters sit today, we will likely be unable to establish such an operation because the city cannot guarantee a berthing place for a ferry as the City itself is forbidden to access the Truman Harbor and its 711 foot East Quay property. Sadly, without a ferry system in operation at this location the waterfront restaurant, small native shops and museum will not have enough customers to thrive or survive in that location. The City must take immediate steps to gain access to its properties or much will be lost in the failure to do so.

Without a viable ferry system in operation the City of Key West will be without an economic engine large enough to generate the revenue needed for the annual up-keep of its 58 million dollar Truman Waterfront Recreational Park. Said park will become a severe annual economic drain upon the property taxpayers of the City.

In the City’s BRAC economic justification paper the City showed a large portion of the revenue from the park would come from the large mega-yacht marina planned for Truman Harbor in the Truman Harbor Area Development Zone with lesser income estimated to come from the restaurant, museum, small shops and amphitheater, the combined total rental of which was deemed sufficient to support the activities and annual maintenance needed for the 32 acres waterfront park.

In December 2002, the properties were transferred to the City of Key West. However in 2013, the United States Navy imposed the closure provisions of 33 CFR Part 334.610 to prohibit the City and private developers from constructing a large marina for mega-yachts in the Truman Harbor and closed Truman Harbor to all non-government vessels. The marina was planned as the major revenue producer for the City producing an estimated 2 million dollars a year. This loss of

significant revenue seriously jeopardizes the continued development by the City of its 58 million dollar development at the Truman Waterfront, which is now in its first phase with expenditures of 17 million contracted out. Closure of the Truman Harbor effectively erases all possibility for use of the valuable properties within the harbor which were conveyed under strict BRAC guidelines to the City with the intentions to assist our local economy by return of surplus property no longer needed by the Government.

With a ferry operation working the Truman Waterfront, shops selling Bahamian, Cuban and Conch wares, as well as restaurants and a museum will all thrive. This will create jobs and opportunity for the descendants of the families who originally gave up this land to their government. Without a ferry operation with passengers, coming and going from this location, the small business in the park, being off pedestrian/tourist path will find it exceedingly difficult to make a go of it.

### CONCLUSION

In conclusion, continued denial of access to Truman Harbor and to the City's East Quay and the adjacent Truman Harbor Area Development Zone for reasons other than National security is not warranted or justified and constitutes a failure to honor the promises and commitments made to the City of Key West. If allowed to continue this will have a long term adverse monetary impact upon the citizens and taxpayers of Key West for generations to come. It is an act which today jeopardizes the continued development of the Truman Waterfront Park and the establishment of a Key West to Havana Ferry operation at a time when other cities are in the process of establishing their own ferry operations with a view of travel to Cuba.

Unable to access and use the City's 711 foot East Quay will mean that the City may not offer its use to any company deciding whether or not to establish their ferry operation in Key West leasing the use of the City's facilities for the conduct of its operation, companies which are also weighing the establishing of operations in other locales. Today a ferry carrier interested in operating a ferry system in Key West would have to locate a site large enough to moor an ocean going ferry said site being near a ferry terminal building, large enough for U.S. Customs and Homeland Security officials to screen 200 or more passengers. They would also have to locate nearby parking for hundreds of vehicles. Such a property in Key West or environs may not exist or be too expensive to acquire causing them to elect to go elsewhere than Key West. The City of Key West would lose a valuable enterprise and the revenue that use of its property would bring producing income and jobs.

### ADVERSE ECONOMIC REPERCUSSIONS

Without further cooperation and good faith discussions with the U.S. Navy, the City of Key West will not be in a position to offer a potential ferry boat carrier companies use of the East Quay for the berthing of ferries and regrettably there is no other site in Key West environs having the necessary combination of land, building and ocean access than the East Quay and Building 103 and the 31 acres surrounding Building 103. Here there is land, large enough to accommodate hundreds of parked automobiles; a building large enough (14,000 square feet -2 stories) to accommodate hundreds of ferry passengers who will be sold tickets and screened by United States Customs before boarding or after disembarking from the ferry and ocean access within a short walking distance to the awaiting ferry moored at the 711 foot East Quay, all being owned by the City of Key West, for which the City will be paid significant revenue.

## NO VIABLE ECONOMIC ENGINE FOR PARK

In closing off the harbor in the 2013 and preventing the contemplated construction of a mega-yacht marina in the Truman Harbor Development Zone the United States Navy took away from the City, its primary planned source of revenue needed to sustain the upkeep of the 32 acre waterfront parcel.

Closure of the harbor and access to the East Quay has now removed from the City the opportunity to derive income from ferry and cruise ship usage, the City's last significant source of income from the park sufficient to sustain the annual maintenance of the park, thereby shifting the tax burden of maintenance to ad valorem taxpayers rather than from revenue producing operations within the waterfront.

The United States Navy should honor its promises and agreements made to the City of Key West and to its people. Property taken from the people of Key West, many of who were displaced from their homes in the process only to have their property returned to them for the slated purpose that it would be used by the city for a proper benefit for its citizens, only to find that the property may not be accessed or used after all, is a true injustice and hollow gesture.

The City of Key West was obviously aware on December 23, 2002 that there existed a federal regulation (33 CFR Part 334. 610) which could be invoked to declare Truman Harbor an off limits, restricted area for all non-government owned vessels and therefore took the additional step to have the government put in writing in the parties Memorandum of Agreement (signed December 23, 2002) recognizing the City's need for access to berthing in East Quay and right of construction in the harbor's development zone.

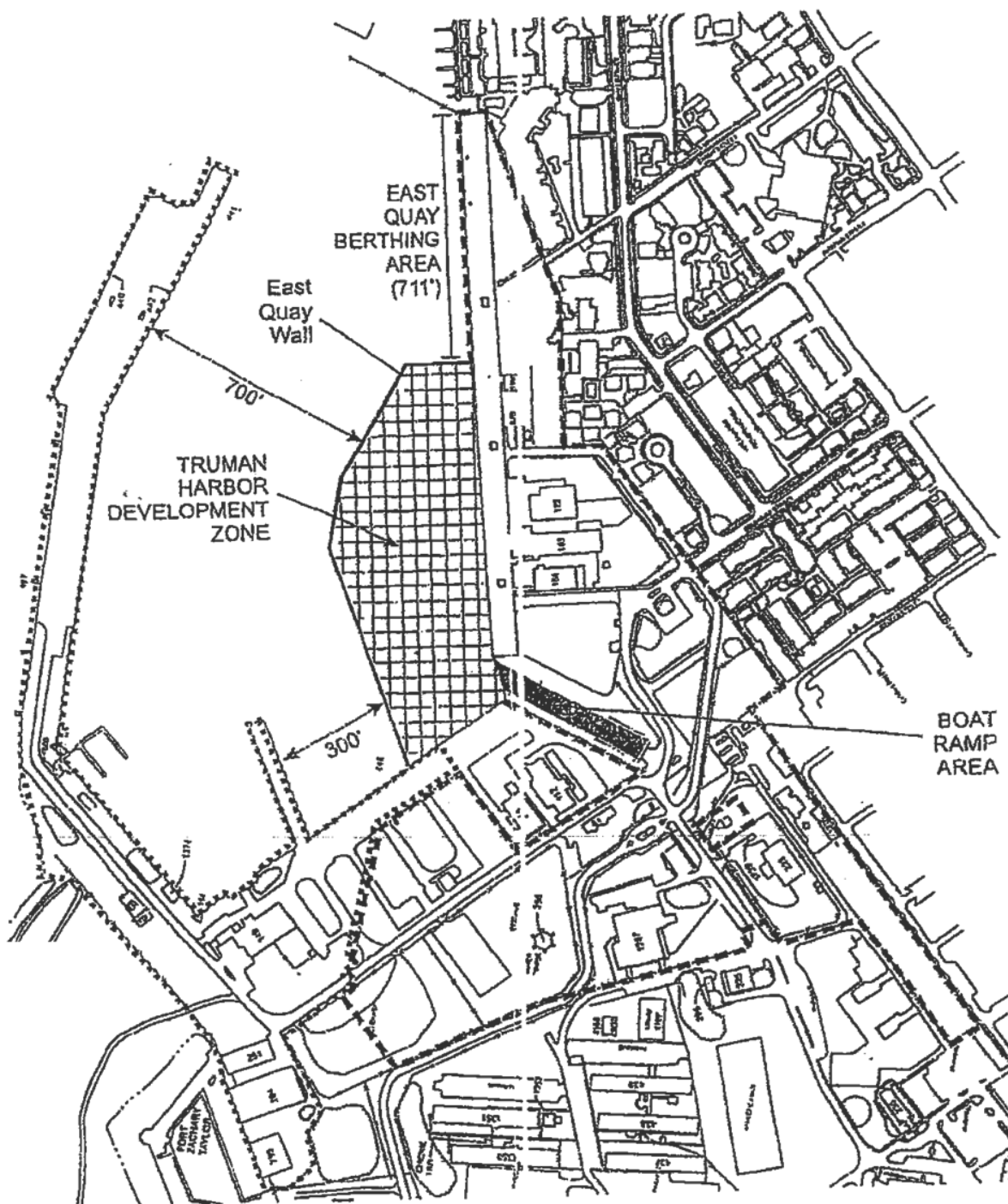
## WHAT IS NEEDED NOW

THE CITY OF KEY WEST MUST BE ALLOWED ACCESS AND USE OF ITS PROPERTIES IN TRUMAN HARBOR. THIS WILL REQUIRE THE ASSISTANCE OF OUR CONGRESSIONAL DELEGATION TO DEAL DIRECTLY WITH THE HIGHEST LEVELS OF THE UNITED STATES NAVY AND THE DEPARTMENT OF DEFENSE TO REMOVE THE DESIGNATION OF TRUMAN HARBOR AS A RESTRICTED AREA UNDER 33CFR PART 334.610 FOR WHICH ONLY GOVERNMENT OWNED VESSELS MAY ENTER, AND THAT THE CITY OF KEY WEST SHALL HAVE FULL AND COMPLETE PROPERTY RIGHTS TO ALL PROPERTY TRANSFERRED TO IT.



FILE  
BK# 1

PG#



LEGEND  
Proposed Economic Development Conveyance  
(EDC) Boundary  
Area Deferred by Navy for Conveyance  
Truman Harbor Development Zone  
Boat Ramp Area  
East Quay Wall Berthing Area

Exhibit A  
MEMORANDUM OF AGREEMENT  
East Quay Berthing Area, Boat Ramp Area and  
Truman Harbor Development Zone

Exhibit "N"

