

**THE CITY OF KEY WEST
PLANNING BOARD
Staff Report**



To: Chair and Planning Board Members

Through: Thaddeus Cohen, Planning Director

From: Ginny Haller, Planner II

Meeting Date: December 15, 2016

Agenda Item: **Future Land Use Amendment – 281, 291, 301 Front Street (RE# 00000200-000102; RE# 00000200-000101; RE# 00072082-001800); 200 Greene Street (RE# 00001630-000300). 402, & 420 Wall Street (RE# 00072082-001300; RE# 00000170-000000; RE# 00072082-001200); 1 Whitehead Street (RE# 00072082-001900); and other parcels with unassigned addresses (RE# 00072082-001400; RE# 00072082-001100; RE# 00072082-003700; RE# 00072082-001300) -** A request to amend the comprehensive plan future land use map (FLUM) from Historic Residential to Historic Public & Semipublic (HPS) on the above properties pursuant to Chapter 90, Article VI, Division 2 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: A site-specific amendment to the comprehensive plan future land use map from Historic Residential to Historic Public & Semipublic (HPS).

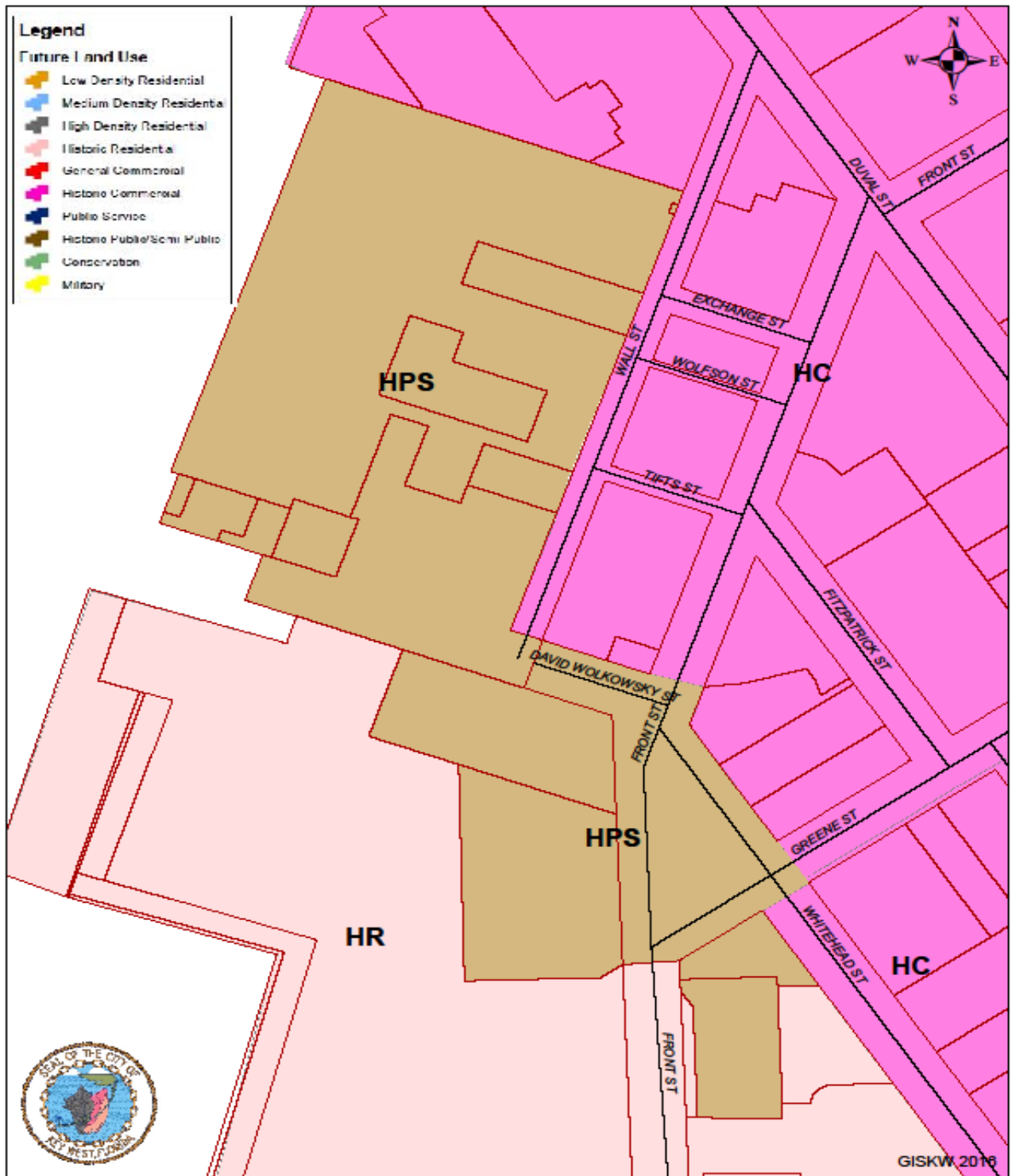
**Applicant/
Property Owner:** City of Key West

Location: 281, 291, 301 Front Street (RE# 00000200-000102; RE# 00000200-000101; RE# 00072082-001800); 200 Greene Street (RE# 00001630-000300). 402, & 420 Wall Street (RE# 00072082-001300; RE# 00000170-000000; RE# 00072082-001200); 1 Whitehead Street (RE# 00072082-001900); and other parcels with unassigned addresses (RE# 00072082-001400; RE# 00072082-001100; RE# 00072082-003700; RE# 00072082-001300).

CURRENT FUTURE LAND USE MAP



PROPOSED FUTURE LAND USE MAP



Background:

The subject properties include Mallory Square, Clinton Market, the Customs House and the Mel Fisher Museum and are located within the Public Service (PS) and the Historic Planned Redevelopment and Development (HPRD) Zoning Districts.

A text amendment to rezone 200 Greene Street, the Mel Fisher Museum, from HRPD to HRCC-1, and to amend the FLUM from HR to HC was on the July 2016 Planning Board meeting. After discussion, the Planning Board postponed the item to the November Planning Board meeting and staff was directed to meet with the applicants about the inclusion of Mel Fisher Museum in the rezoning of Mallory Square. The planning director and staff met with representatives of Clinton Market and Mel Fisher Museum on November 3, 2016 to discuss the proposed Historic Mallory Square Arts and Cultural zoning district. The response was positive and staff responded to their suggestions as to the intent and uses of the proposed Historic Mallory Square Arts and Cultural Zoning District.

Request / Proposed Map Amendment:

The applicant is requesting an amendment to the City’s Official Future Land Use Map (FLUM) for the subject properties. The current zoning of Mallory Square is Historic Public Service (HPS), and the zoning of Clinton Market, Custom House and Mel Fisher Museum is Historic Planned Redevelopment and Development (HPRD). The proposed zoning for the properties is Historic Mallory Square Arts and Cultural District (HMSAC). Concurrent with the Zoning Map Amendment, the applicant is also requesting an amendment to the City’s Comprehensive Plan Future Land Use Map (FLUM) for the subject property. The current FLUM category is Public Service (PS) and Historic Residential (HR). The proposed FLUM category is for the properties to be Public Service (HPS).

Surrounding FLUM and Uses:

- North:** HRCC-1 & HC
- South:** HRRD & HR
- East:** HRCC-1 & HC
- West:** Waterfront

Future Land Use Map Amendment Process:

Planning Board:	November 17, 2016
If denied, then appeal may be filed within 10 calendar days.	
City Commission (1st Reading)	TBD
City Commission (2nd Reading)	After DEO review of FLUM amendment
Local Appeal Period:	30 days
Render to DEO	10 working days
DEO Review:	Up to 45 days
DEO Notice of Intent (NOI)	Effective when NOI posted to DEO website

Analysis:

The purpose of Chapter 90, Article VI, Division 2 of the Land Development Regulations (the “LDRs”) of the Code of Ordinances (the “Code”) of the City of Key West, Florida (the “City”) is to provide a means for amending the Land Development Regulations and changing the

boundaries of the Official Zoning Map. It is not intended to relieve particular hardships nor to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the City Commission shall consider, in addition to the factors set forth in this subdivision, the consistency of the proposed amendment with the intent of the Comprehensive Plan.

Pursuant to Code Section 90-522(a), the Planning Board, regardless of the source of the proposed change in the LDRs, shall hold a public hearing thereon with due public notice. The Planning Board shall consider recommendations of the City Planner, City Attorney, Building Official and other information submitted at the scheduled public hearing. The Planning Board shall transmit a written report and recommendation concerning the proposed change of zoning to the City Commission for official action. In its deliberations, the Planning Board shall consider the criteria in Code Section 90-521 and 90-522.

In the Comprehensive Plan add to Goal 1-1 Land Use, Objective 1-1.1 Future Land Use Map, Table 1-1.1.5: Historic Public & Semipublic Future Land Use District shall be amended to include Historic Mallory Square Arts and Cultural District (HMSAC) designation, and shall have a maximum floor nonresidential Floor Area Ratio of 1.0, excepting large scale regional facilities, which require a community impact statement. The latter projects may have a higher floor area ratio if approved by city commission. However, prior to approving a floor area ratio in excess of 1.0, the city commission must render a finding that the proposed public facility requires a higher floor area ratio in order to accommodate a regional service necessary to the general health, safety, and welfare of the city and/or county. Furthermore, the finding must indicate that the regional facility as proposed shall comply with all other qualitative and quantitative criteria of the comprehensive plan and land development regulations, including but not limited to the adopted concurrency management policies, and N/A density, and see Policy 1-1.1.10 for allowed uses.

In the Comprehensive Plan add to Policy 1-1.1.10: Allowed Uses in Historic Public and Semipublic:

The areas of Mallory Square (existing as HPS on the FLUM map) and Clinton Market, Key West Customs House and Mel Fisher Museum, shall be amended to include a wide range of restaurant, limited scale retail sales, artist studios, galleries, and arts and craft uses. It is intended to facilitate the adaptation of existing structures for a vital mixture of uses, while conserving the exterior architectural quality of an area with cultural and historical significance, and to further facilitate the development of new structures in a manner compatible with existing structures.

Sec. 90-522. Planning Board review of proposed changes in land development regulations.

(a) The planning board, regardless of the source of the proposed change in the land development regulations, shall hold a public hearing thereon with due public notice. The planning board shall consider recommendations of the city planner, city attorney, building official and other information submitted at the scheduled public hearing. The planning board shall transmit a written report and recommendation concerning the proposed change of zoning to the city commission for official action. In its deliberations the planning board shall consider the criteria stated in section 90-521.

The City Planner has worked closely with city staff to research and review the proposed Land Development Regulations for the new zoning district HMSAC. The Planning Board will hold a public meeting on November 17, 2016 in order to review proposed changes to the Land Development Regulations.

Criteria for Approving Amendments to Official Zoning Map pursuant to Code Section 90-521. In evaluating proposed changes to the Official Zoning Map, the City shall consider the following criteria:

(1) *Consistency with plan. Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.*

Consistency with the overall purpose of the Comprehensive Plan

The City's Comprehensive Plan (the "Plan") was developed in response to the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, and Florida Statutes). The Plan and its updates are consistent with the State, Regional and County plans; and serves as the basis for all land development decisions within the City of Key West. In addition to fulfilling legislative requirements, the City's Plan:

- Protects and maintains its natural resources;
- Preserves its community character and quality of life;
- Ensures public safety, and;
- Directs development and redevelopment in an appropriate manner.

The proposed FLUM amendment would not be inconsistent with the overall purpose of the Plan.

Consistency with relevant policies within the Comprehensive Plan

The proposed FLUM amendment would be consistent with the following relevant policies within the Comprehensive Plan:

- Policy 1-1.1.1: Planning Horizons.
- Policy 1-1.1.6: Historic Preservation Areas.
- Policy 1-1.1.10: Allowed Uses in Historic Public and Semi-Public.
- Policy 1-1.2.2: Promote Orderly Land Use Transition.

Consistent with the adopted infrastructure minimum LOS standards and concurrency

The projected impacts of the land uses allowed by the proposed FLUM amendment are not anticipated to generate public facility needs that would trigger capital improvements.

(2) *Conformance with requirements. Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.*

The conformity of the proposed FLUM and zoning map amendments with all applicable requirements of the City Code is being evaluated herein. The application contains all of the information requirement by Code Section 90-520 for map amendments.

(3) *Changed conditions. Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed rezoning.*

The existing LDRs were adopted on July 3, 1997 through Ordinance No. 97-10 following adoption of the 1994 Comprehensive Plan. Over the last 18 years, the Comprehensive Plan and LDRs were amended from time-to-time. More recently, a new Comprehensive Plan was adopted on March 5, 2013 and became effective on May 2, 2013. Since the adoption of the new Comprehensive Plan, the LDRs and the Official Zoning Map have not been significantly amended, with the exception of the new Building Permit Allocation System (BPAS) ordinance. Although an overhaul of the LDRs is planned for the next year, the current LDRs and zoning map originate from the 1994 Comprehensive Plan.

Mallory Square has been located with the HPS Zoning District and Mel Fisher Museum, Clinton Market and the Customs House has been located in the HPRD zoning since the 1994 Comprehensive Plan and the 1997 Land Development Regulations. Before that Mallory Square was zoned M-1 (Military) and the other properties in 1985 were zoning in the proposed PRD district. While land use and development conditions have not changed since the effective date of the 2013 Comprehensive Plan, the Plan does have policies that support historic preservation and the expansion of opportunities for a range of allowed uses in the HPS district.

(4) *Land use compatibility. Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.*

Mallory Square has been located with the HPS Zoning District and Mel Fisher Museum, Clinton Market and the Customs House has been located in the HPRD zoning since the 1994 Comprehensive Plan and the 1997 Land Development Regulations. Before that Mallory Square was zoned M-1 (Military) and the other properties in 1985 were zoning in the proposed PRD district. While land use and development conditions have not changed since the effective date of the 2013 Comprehensive Plan, the Plan does have policies that support historic preservation and the expansion of opportunities for a range of allowed uses in the HPS district.

Allowed uses within the proposed HPS Zoning District are listed in Code Sections 122-957 and 122-958; HPRD are listed in Code Sections 122-987 and 122-988. The following table summarizes the differences in allowed uses between the current HPS and HPRD and the proposed HMSAC Zoning Districts. P = Permitted; C = Conditional Use; A = Accessory Use.

	Existing HPS	Existing HPRD	Proposed HMSAC
<i>Residential Uses</i>			
Single-family and two-family residential dwellings		P	
Multiple-family residential dwellings		P	
Group homes with less than or equal to six residents		P	
<i>Community Facilities</i>			
Art and tourism uses			P

	Existing HPS	Existing HPRD	Proposed HMSAC
Alcohol sales conducted within the community and cultural facilities			A
Bicycle tours			A
Book or stationery store			P
Business and professional offices	P	C	A
Places of worship	P	C	
Public and private utilities	C	C	
Hotels, motels, and transient lodging		C	
Community centers, clubs and lodges	P	C	P
Commercial retail low, medium, high intensity		C	
Commercial retail low and medium intensity			P
Commercial retail high intensity			C
Commercial amusement, except for adult entertainment establishments			C
Civic activities			P
Cultural activities, museums, theaters and performance venues, public performances			P
Dockage at the Mallory Pier			P
Educational institutions and day care facilities	P	C	
Educational institutions			P
Gift shop			P
Hospitals and extensive care	P		
Restaurants, including but not limited, with outdoor seating, outdoor entertainment and alcohol sales, excluding drive-through			P
Nursing homes, rest homes and convalescent homes	P	C	
Outdoor display of art and merchandise			C
Parks and recreation, active and passive	P	C	P
Protective services	C	C	C
Medical services	P	C	
Parking lots and vehicular storage facilities	P	C	P
Special events			C
Veterinary medical services without outside kennels		C	
Cemeteries	P & C		
Funeral homes		C	
Cultural and civic activities, inclusive of museums, theatres	C	C	
Marinas.	C		

- (5) ***Adequate public facilities.*** Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency

services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to Code Chapter 94.

The projected impacts of the land uses allowed by the proposed FLUM amendment are not anticipated to generate public facility needs that would trigger capital improvements. Any new development proposed after adoption of the LDRs must demonstrate concurrency by analysis prior to any construction approval.

- (6) ***Natural environment. Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.***

The property does not contain any wetlands or groundwater aquifers. Any impacts on vegetative communities would be reviewed and mitigated at the time of a proposed development. The proposed zoning map amendment is not expected to result in adverse impacts on the natural environment.

- (7) ***Economic effects. Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.***

The new LDRs and Comprehensive Plan designation will have a significant and positive effect by increasing the assessed value subject to City, School and Special District and County taxation levies. The property is regulated by the policies and LDRs which limit density and prevent transient uses, hence the effects on surrounding property values will be positive.

- (8) ***Orderly development. Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.***

The proposed future land use map amendment would create a new future land use map and zoning district and would result in an orderly and compatible land use pattern.

- (9) ***Public interest; enabling act. Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.***

The proposed future land use map and zoning map amendment would not be in conflict with the public interest, and would be in harmony with the purpose and interest of the comprehensive plan and the LDRs.

- (10) ***Other matters. Other matters which the planning board and the city commission may deem appropriate.***

The main result of the proposed zoning map amendment and the related FLUM amendment would be to accommodate the mixed use district that allows for a wide range of restaurant, limited scale retail sales, artist studios, galleries, and arts and craft uses while conserving the architectural quality of the area with cultural and historic significance, and to further facilitate the development of new structures in a manner compatible with existing structures.

In summary, the proposed HMSAC zoning regulations contained in the proposed Ordinance are as follows:

Density	Not applicable
FAR	Maximum floor area ratio: The maximum floor area ratio for the HMSAC area shall be 1.0, excepting large scale regional facilities, which require a community impact statement. The latter projects may have a higher floor area ratio if approved by city commission. However, prior to approving a floor area ratio in excess of 1.0, the city commission must render a finding that the proposed public facility requires a higher floor area ratio in order to accommodate a regional service necessary to the general health, safety, and welfare of the city and/or county. Furthermore, the finding must indicate that the regional facility as proposed shall comply with all other qualitative and quantitative criteria of the comprehensive plan and land development regulations, including but not limited to the adopted concurrency management policies.
Height	25 feet
Permitted Uses	Art and tourism uses: Antique shop, Architect studio or office, Art gallery, Artist materials and supply sales, Art school, Artists' studios and artists offices, Arts, crafts and handicrafts creation, fabrication, manufacture, display and sale, including but not limited to ceramics, clothing, toys, glass blowers, which may include the use of kilns fired by electricity. Commercial retail low and medium intensity, Community centers, clubs and lodges. Civic activities. Cultural activities: Museums, including light processing and metal fabrication, assembly and distribution functions, electronics, research and development and similar uses. Theaters and performance venues, Public performances. Dockage at the Mallory Pier. Educational institutions. Parking lots and facilities. Parks and recreation, active and passive. Restaurants including, but not limited to outdoor seating, outdoor entertainment and alcohol sales, excluding drive-through. Gift shop. Book or stationery store.
Conditional Uses	Outdoor festivals and special events; commercial amusement, except for adult entertainment establishments; commercial retail high intensity, protective services; Outdoor display of art and merchandise for sale or otherwise with carts, booths and kiosks subject to the criteria of Sec. 106-52
Setbacks	Front: 20 feet Side: greater of 5 feet or 10 percent of lot width to a maximum of 15 feet Rear: 20 feet or 15 feet if abutting an alley Street Side: 10 feet
Lot Coverage	Building Coverage: 40% Impervious surface: 50%
Lot Size	1 acre

	Depth: 50 feet Width: 100 feet
--	-----------------------------------

RECOMMENDATION:

Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends to the Planning Board that the request to amend the Future Land Use Map be **APPROVED**.

Verification

**City of Key West
Planning Department**



Verification Form

(Where Authorized Representative is an entity)

I, Gini Scholl, in my capacity as City Manager
(print name) (print position; president, managing member)
of City of Key West
(print name of entity serving as Authorized Representative)

being duly sworn, depose and say that I am the Authorized Representative of the Owner (as appears on the deed), for the following property identified as the subject matter of this application:

Malloy Square
Street Address of subject property

All of the answers to the above questions, drawings, plans and any other attached data which make up the application, are true and correct to the best of my knowledge and belief. In the event the City or the Planning Department relies on any representation herein which proves to be untrue or incorrect, any action or approval based on said representation shall be subject to revocation.

Gini Scholl
Signature of Authorized Representative

Subscribed and sworn to (or affirmed) before me on this 11/10/16 by
Gini Scholl
Name of Authorized Representative
date

He/She is personally known to me or has presented _____ as identification.
Vertia G. Navarro
Notary's Signature and Seal

Name of Acknowledger typed or stamped

Commission Number

Deed



THIS INDENTURE, Made this 30th day of August, A. D. 1952,
between GULF ATLANTIC TRANSPORTATION CO., a corporation existing
under the laws of the State of Florida, having its principal place of business
in the County of Duval and State of Florida, party of the first part, and The
City of Key West, Florida, a municipal corporation organized and existing
under the laws of the State of Florida, party of the second part,

WITNESSETH, That the said party of the first part, for and in
consideration of the sum of One Hundred Fifty Thousand Dollars, to it in
hand paid, the receipt whereof is hereby acknowledged, has granted,
bargained, sold, aliened, remised, released, conveyed and confirmed, and
by these presents doth grant, bargain, sell, alien, remise, release, convey
and confirm unto the said party of the second part, its successors and assigns
forever. all that certain parcel of land lying and being in the County of
Monroe and State of Florida, more particularly described, as follows:

On the Island of Key West, Florida, and known as part of
Lots 2, 3, 4, and 5 in Square 3, as shown on William A.
Whitehead's Map of said City, delineated in February, 1829,
being described by metes and bounds as follows:

Beginning at the Northerly corner of Wall and Whitehead
Streets, and running thence in a Northerly direction along
the Westerly side of Wall Street 464 feet to a point; thence
at right angles and in a Westerly direction 362.2 feet to the
waters of the harbor of said City; thence meander along the
waters of the harbor in a Southerly direction to the Northerly
side of Whitehead Street, if extended; thence along said
Northerly side of Whitehead Street, if extended, back to the
point of beginning.

TOGETHER with all the tenements, hereditaments and appurtenances,
with every privilege, right, title, interest and estate, reversion, remainder
and easement thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

And the said party of the first part doth covenant with the said
party of the second part that it is lawfully seized of the said premises that
they are free of all incumbrances, and that it has good right and lawful
authority to sell the same; and the said party of the first part does hereby



fully warrant the title to said land, and will defend the same against: the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed in its name by its President, and its corporate seal to be affixed, attested by its Assistant Secretary, the day and year above written.

Signed, Sealed and Delivered in Our Presence:

J. J. Johnson
Adie E. Foster

GULF ATLANTIC TRANSPORTATION CO.

By H. G. Williams (SEAL)
President

ATTEST:
By Edna B. Wallace (SEAL)
Assistant Secretary

STATE OF FLORIDA)
COUNTY OF DUVAL)

State of Florida, County of Monroe
This instrument was filed for record the 3rd day of Sept.
1952 at 11:35 P. M. and duly recorded in Book
Book 0-6 on Page 275/275 File No. 29005
MARI E. ADAMS, Clerk Circuit Court

I HEREBY CERTIFY, That on this 3rd day of August, A. D. 1952, before me personally appeared H. G. Williams and Edna B. Wallace, President and Assistant Secretary, respectively, of GULF ATLANTIC TRANSPORTATION CO., a corporation under the laws of the State of Florida, to me known to be the persons described in and who executed the foregoing conveyance to The City of Key West, Florida, and severally acknowledged the execution thereof to be their free act and deed as such officers, for the uses and purposes therein mentioned; and that they affixed thereto the official seal of said corporation, and the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal at Jacksonville, in the County of Duval and State of Florida, the day and year last aforesaid.

Lawrence R. Owen
Notary Public, State of Florida at Large.



CONSENT TO LEASE IN ORDER TO ALIGN VMS W/
RIPARIAN RIGHTS

Doc# 1493547
Bk# 2888 Pg# 948

WHEREAS Ocean Key House Associates, a Pennsylvania Limited Partnership, owns riparian rights which include free and unobstructed view regarding the area designated as Parcel "B," on the attached survey, and

WHEREAS the City of Key West, a municipality, is desirous of leasing Parcel "B" from the Florida Board of Trustees of the Internal Improvement Trust Fund, and

WHEREAS Ocean Key House Associates acknowledges that periodically some cruise ships docked at the Mallory Square Cruise Ship Dock, (Parcel "A" as indicated on the attached survey) may encroach upon the riparian area of Parcel "B", and

WHEREAS Ocean Key House Associates recognizes the economic desirability of facilitating cruise ship operations by the lease of the submerged land from the Florida Board of Trustees of the Internal Improvement Trust Fund.



BE IT THEREFORE RESOLVED that Ocean Key House Associates waives any objections to and consents to the Florida Board of Trustees of the Internal Improvement Trust Fund leasing to the City of Key West, the area designated Parcel "B" as shown on the certified sealed survey performed by Joe M. Trice, dated March 19th, 1984. This consent is only for the purpose of allowing the cruise ships to overhang the navigable waters above the submerged lands defined as Parcel "B" and specifically, the submerged land lease is for the use of the adjacent Key West cruise ship dock. In no circumstances will this consent to lease be construed to allow any construction of any kind on the submerged land of Parcel "B".

BE IT FURTHER RESOLVED, that this consent to lease is for the full term of the submerged lands Lease by Florida's Trustees of the Internal Improvement Trust Fund to the City of Key West, including renewals of that lease.

IN WITNESS WHEREOF the said corporation has caused this document to be executed in its name and duly authorized this day of April, 1989.

Francis P. Cozer
Cathrina Toppa
Witnesses

[Signature]
BRIEL ALTMAN, General Partner
Ocean Key House Associates,
Partnership

STATE OF }
COUNTY OF } ss.

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared BRIEL ALTMAN Ocean Key House Associates, and that he acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested.

WITNESS my hand and official seal in the County and date last aforesaid this 5 day of May, 1989.

[Signature]
Notary Public
State of Florida

This Instrument Prepared By:
Glen Teal
Recurring Revenue Section
Bureau of Public Land Administration
3900 Commonwealth Boulevard
Mail Station No. 125
Tallahassee, Florida 32399

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
OF THE STATE OF FLORIDA

SOVEREIGNTY SUBMERGED LANDS RENEWAL

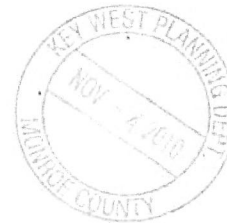
No. 440769265
PA No. : 44-0142062-002-ES

THIS LEASE is hereby issued by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, hereinafter referred to as the Lessor.

WITNESSETH: That for and in consideration of payment of the annual lease fees hereinafter provided and the faithful and timely performance of and compliance with all terms and conditions stated herein, the Lessor does hereby lease to City of Key West, Florida, hereinafter referred to as the Lessee, the sovereign lands described

as follows:

A parcel of sovereign submerged land in Section 31,
Township 67 South, Range 25 East, Section 06,
Township 68 South, Range 25 East, in Key West Harbor,
Monroe County, containing 115,663 square feet, more
or less, as is more particularly described and shown on
Attachment A, dated August 10, 2000.



TO HAVE THE USE OF the hereinabove described premises from August 8, 2004, the effective date of this modified lease, through August 8, 2009, the expiration date of this modified lease. The terms and conditions on and for which this lease is granted are as follows:

1. USE OF PROPERTY: The Lessee is hereby authorized to construct and operate a port facility, recreational area, and one commercial dock, exclusively to be used for temporary mooring of commercial vessels for delivery of exhibits to the city aquarium used in conjunction with an upland city port, without fueling facilities, with a sewage pumpout facility if it meets the regulatory requirements of the Department of Environmental Protection or local authority, whichever entity applies the more stringent criteria, and without liveaboards as defined in paragraph 24, as shown and conditioned in Attachment A, and the Department of Environmental Protection, consolidated Environmental Resources Permit No. 44-0142062-002-ES, dated November 20, 2000, incorporated herein and made a part of this lease by reference. All of the foregoing subject to the remaining conditions of this Lease.

2. AGREEMENT TO EXTENT OF USE: This lease is given to the Lessee to use or occupy the leased premises only for those activities specified herein. The Lessee shall not change or add to the approved use of the leased premises as defined herein (e.g., from commercial to multi-family residential, from temporary mooring to rental of wet slips, from rental of wet slips to contractual agreement with third party for docking of cruise ships, from rental of recreational pleasure craft to rental or temporary mooring of charter/tour boats, from loading/offloading commercial to rental of wet slips, etc.), shall not change activities in any manner that may have an environmental impact that was not considered in the original authorization, or shall not change the type of use of the riparian uplands without first obtaining a regulatory permit/modified permit, if applicable, and the Lessor's written authorization in the form of a modified lease, the payment of additional fees, if applicable, and, if applicable, the removal of any structures which may no longer qualify for authorization under the modified lease.

3. **PROPERTY RIGHTS:** The Lessee shall make no claim of title or interest to said lands hereinbefore described by reason of the occupancy or use thereof, and all title and interest to said land hereinbefore described is vested in the Lessor. The Lessee is prohibited from including, or making any claim that purports to include, said lands described or the Lessee's leasehold interest in said lands into any form of private ownership, including but not limited to any form of condominium or cooperative ownership. The Lessee is further prohibited from making any claim, including any advertisement, that said land, or the use thereof, may be purchased, sold, or re-sold.

4. **INTEREST IN RIPARIAN UPLAND PROPERTY:** During the term of this lease, the Lessee shall maintain a leasehold or fee simple title interest in the riparian upland property and if such interest is terminated, the lease may be terminated at the option of the Lessor. Prior to sale and/or termination of the Lessee's leasehold or fee simple title interest in the upland property, Lessee shall inform any potential buyer or transferee of the Lessee's upland property interest of the existence of this lease and all its terms and conditions and shall complete and execute any documents required by the Lessor to effect an assignment of this lease, if consented to by the Lessor. Failure to do so will not relieve the Lessee from responsibility for full compliance with the terms and conditions of this lease which include, but are not limited to, payment of all fees and/or penalty assessments incurred prior to such act.

5. **ASSIGNMENT OF LEASE:** This lease shall not be assigned or otherwise transferred without prior written consent of the Lessor or its duly authorized agent. Such assignment or other transfer shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. Any assignment or other transfer without prior written consent of the Lessor shall be null and void and without legal effect.

6. **INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS:** The Lessee shall investigate all claims of every nature at its expense. Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by any party hereto, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims.

7. **VENUE:** Lessee waives venue as to any litigation arising from matters relating to this lease and any such litigation between Lessor and Lessee shall be initiated and maintained only in Leon County, Florida.

8. **NOTICES/COMPLIANCE/TERMINATION:** The Lessee binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Lessee, its successors and assigns. In the event the Lessee fails or refuses to comply with the provisions and conditions herein, or fails or refuses to comply with the provisions and conditions herein set forth within 20 days of receipt of the Lessor's notice to correct, this lease may be terminated by the Lessor upon thirty (30) days written notice to Lessee. If canceled, all of the above-described parcel of land shall revert to the Lessor. All costs and attorneys' fees incurred by the Lessor to enforce the provisions of this lease shall be paid by the Lessee. All notices required to be given to the Lessee by this lease or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

City of Key West
City Manger: Julio Avasel
P. O. Box 1409
Key West, FL 33040

The Lessee shall notify the Lessor by certified mail of any change to this address at least ten (10) days before the change is effective.

9. **TAXES AND ASSESSMENTS:** The Lessee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this lease.

10. **NUISANCES OR ILLEGAL OPERATIONS:** The Lessee shall not permit the leased premises or any part thereof to be used or occupied for any purpose or business other than herein specified unless such proposed use and occupancy are consented to by the Lessor and the lease is modified accordingly, nor shall Lessee knowingly permit or suffer any nuisances or illegal operations of any kind on the leased premises.



11. **MAINTENANCE OF FACILITY /RIGHT TO INSPECT:** The Lessee shall maintain the leased premises in good condition, keeping the structures and equipment located thereon in a good state of repair in the interests of public health, safety and welfare. No dock or pier shall be constructed in any manner that would cause harm to wildlife. The leased premises shall be subject to inspection by the Lessor or its designated agent at any reasonable time.

12. **NON-DISCRIMINATION:** The Lessee shall not discriminate against any individual because of that individual's race, color, religion, sex, national origin, age, handicap, or marital status with respect to any activity occurring within the area subject to this lease or upon lands adjacent to and used as an adjunct of the leased area. During the lease term, the Lessee shall post and maintain the placard furnished to the Lessee by the Lessor in a prominent and visible location on the leased premises or adjacent business office of the Lessee. It shall be the responsibility of the Lessee to post the placard in a manner which will provide protection from the elements, and, in the event that said placard becomes illegible at any time during the term of this lease (including any extensions thereof), to notify the Lessor in writing, so that a replacement may be provided.

13. **ENFORCEMENT OF PROVISIONS:** No failure, or successive failures, on the part of the Lessor to enforce any provision; nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Lessor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

14. **PERMISSION GRANTED:** Upon expiration or cancellation of this lease all permission granted hereunder shall cease and terminate.

15. **RENEWAL PROVISIONS:** Renewal of this lease shall be at the sole option of the Lessor. Such renewal shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. In the event that Lessee is in full compliance with the terms of this lease, the Lessee may apply in writing for a renewal. Such application for renewal must be received by Lessor no sooner than 120 days and no later than 30 days prior to the expiration date of the original or current term hereof. The term of any renewal granted by the Lessor shall commence on the last day of the previous lease term. If the Lessee fails to timely apply for a renewal, or in the event the Lessor does not grant a renewal, the Lessee shall vacate the leased premises and remove all structures and equipment occupying and erected thereon at its expense. The obligation to remove all structures authorized herein upon termination of this lease shall constitute an affirmative covenant upon the riparian upland property more specifically described in Attachment B, which shall run with the title to said riparian upland property, and shall be binding upon Lessee and Lessee's successors in title or successors in interest.

16. **REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES:** If the Lessee does not remove said structures and equipment occupying and erected upon the leased premises after expiration or cancellation of this lease, such structures and equipment will be deemed forfeited to the Lessor, and the Lessor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Lessee at the address specified in Paragraph 13 or at such address on record as provided to the Lessor by the Lessee. However, such remedy shall be in addition to all other remedies available to the Lessor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

17. **REMOVAL COSTS/LIEN ON RIPARIAN UPLAND PROPERTY:** Any costs incurred by the Lessor in removal of any structures and equipment constructed or maintained on state lands shall be paid by Lessee and any unpaid costs and expenses shall constitute a lien upon the interest of the Lessee in its uplands enforceable in summary proceedings as provided by law.

18. **RECORDATION OF LEASE:** The Lessee, at its own expense, shall record this fully executed lease in its entirety in the public records of the county within which the lease site is located within fourteen (14) days after receipt, and shall provide to the Lessor within ten (10) days following the recordation a copy of the recorded lease in its entirety which contains the O.R. Book and pages at which the lease is recorded.

19. **RIPARIAN RIGHTS/FINAL ADJUDICATION:** In the event that any part of any structure authorized hereunder is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent riparian rights, Lessee agrees to either obtain written consent for the offending structure from the affected riparian owner or to remove the interference or encroachment within 60 days from the date of the adjudication. Failure to comply with this paragraph shall constitute a material breach of this lease agreement and shall be grounds for immediate termination of this lease agreement at the option of the Lessor.



20. **AMENDMENTS/MODIFICATIONS:** This lease is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this lease must be in writing, must be accepted, acknowledged and executed by the Lessee and Lessor, and must comply with the rules and statutes in existence at the time of the execution of the modification or amendment. Notwithstanding the provisions of this paragraph, if mooring is authorized by this lease, the Lessee may install boatlifts within the leased premises without formal modification of the lease provided that (a) the Lessee obtains any state or local regulatory permit that may be required; and (b) the location or size of the lift does not increase the mooring capacity of the facility.

21. **ADVERTISEMENT/SIGNS/NON-WATER DEPENDENT ACTIVITIES/ADDITIONAL ACTIVITIES/MINOR STRUCTURAL REPAIRS:** No permanent or temporary signs directed to the boating public advertising the sale of alcoholic beverages shall be erected or placed within the leased area. No restaurant or dining activities are to occur within the leased area. The Lessee shall ensure that no permanent, temporary or floating structures, fences, docks, pilings or any structures whose use is not water-dependent shall be erected or conducted over sovereignty submerged lands without prior written consent from the Lessor. No additional structures and/or activities including dredging, relocation/realignment or major repairs or renovations to authorized structures, shall be erected or conducted on or over sovereignty, submerged lands without prior written consent from the Lessor. Unless specifically authorized in writing by the Lessor, such activities or structures shall be considered unauthorized and a violation of Chapter 253, Florida Statutes, and shall subject the Lessee to administrative fines under Chapter 18-14, Florida Administrative Code. This condition does not apply to minor structural repairs required to maintain the authorized structures in a good state of repair in the interests of public health, safety or welfare; provided, however, that such activities shall not exceed the activities authorized by this agreement.

22. **ACOE AUTHORIZATION:** Prior to commencement of construction and/or activities authorized herein, the Lessee shall obtain the U.S. Army Corps of Engineers (ACOE) permit if it is required by the ACOE. Any modifications to the construction and/or activities authorized herein that may be required by the ACOE shall require consideration by and the prior written approval of the Lessor prior to the commencement of construction and/or any activities on sovereign, submerged lands.

23. **COMPLIANCE WITH FLORIDA LAWS:** On or in conjunction with the use of the leased premises, the Lessee shall at all times comply with all Florida Statutes and all administrative rules promulgated thereunder. Any unlawful activity which occurs on the leased premises or in conjunction with the use of the leased premises shall be grounds for the termination of this lease by the Lessor.

24. **LIVEABOARDS:** The term "liveaboard" is defined as a vessel docked at the facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within a thirty (30) day period. If liveaboards are authorized by paragraph one (1) of this lease, in no event shall such "liveaboard" status exceed six (6) months within any twelve (12) month period, nor shall any such vessel constitute a legal or primary residence.

25. **GAMBLING VESSELS:** During the term of this lease and any renewals, extensions, modifications or assignments thereof, Lessee shall prohibit the operation of or entry onto the leased premises of gambling cruise ships, or vessels that are used principally for the purpose of gambling, when these vessels are engaged in "cruises to nowhere," where the ships leave and return to the state of Florida without an intervening stop within another state or foreign country or waters within the jurisdiction of another state or foreign country, and any watercraft used to carry passengers to and from such gambling cruise ships.

30. **SPECIAL LEASE CONDITIONS:**

A. Lessee shall maintain for the term of this lease and any subsequent renewal periods the manatee informational display and manatee awareness signs.

B. All ships shall be moored within the boundaries of the lease area.

C. The city shall supply a list of all ships to be docked at the facility and their lengths.

D. The Lessee shall ensure that (a) no vessel shall be moored at the dock 45 minutes before or 45 minutes after daily estimated time of sunset as stipulated by the Dock Master; (b) no vessel using the lease facility shall operate in any manner which infringes upon the view of the horizon within this time period; (c) the Sunset Celebration activities on the Mallory dock shall be allowed to continue until and unless an agreement has been reached to move the Sunset Celebration activities to a mutually agreement site, with said agreement subject to approval from the Lessor; and (d) no more than 12 one-night variances per calendar year are allowed. With 14 days after each variance, the Lessee shall provide the Lessor's authorized agent an affidavit signed by the Lessee's authorized agent documenting the date of the occurrence of the variance. The affidavit shall be provided to the Division of State Lands, Florida Key Office, 2796 Overseas Highway, Suite 221, Marathon, FL 33050-4276 (305-289-2310).

E. The Lessor hereby agrees to the special provision of this lease which allows the subleasing of the leased structures for ancillary community sponsored cultural functions such as the "Sunset Celebration", and sports activities. However, the Lessee shall ensure that no ancillary activity will be conducted for a continuous period of time longer than 24 hours and that no super structures will be erected on the lease structure on either a permanent or temporary basis without the prior written consent of the Lessor's authorized agent.



WITNESSES:

Edith Green
Original Signature

Edith Green
Print/Type Name of Witness

Fredrica Jones
Original Signature

Fredrica Jones
Print/Type Name of Witness

BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE STATE
OF FLORIDA

BY: [Signature] (SEAL)

* Dale Adams, Operations and Management Consultant-
Manager, Bureau of Public Land Administration,
Division of State Lands, Department of Environmental
Protection, as agent for and on behalf of the Board of Trustees of
the Internal Improvement Trust Fund of the State of Florida
* Scott E. Woolam, Bureau Chief.

"LESSOR"

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 26th day of August, 2004, by
* Dale Adams, Operations and Management Consultant-Manager, Bureau of Public Land Administration, Division of State Lands,
Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust
Fund of the State of Florida. He is personally known to me.

APPROVED AS TO FORM AND LEGALITY:

[Signature]
DEP Attorney

Florence L. Davis
Notary Public, State of Florida

Printed, Typed or Stamped Name

My Commission Expires:



Florence L. Davis
MY COMMISSION # CC774560 EXPIRES
October 11, 2004
BOWERS TRUSTEES FARM INSURANCE, INC.

Commission/Serial No. _____



WITNESSES:

Deborah J. Dole
Original Signature

Deborah J. Dole
Typed/Printed Name of Witness

Tracy A. Decker
Original Signature

Tracy A. Decker
Typed/Printed Name of Witness

City of Key West, Florida (SEAL)

BY: [Signature]
Original Signature of Executing Authority

Julio Avel
Typed/Printed Name of Executing Authority

City Manager
Title of Executing Authority

"LESSEE"

STATE OF Florida
COUNTY OF Monroe

The foregoing instrument was acknowledged before me this 2nd day of August, 2004, by
Julio Avel as City Manager for and on behalf of the City of Key West, Florida. He is personally known to me or who has
produced _____, as identification.

My Commission Expires:

March 22, 2007

Commission/Serial No. DD134360



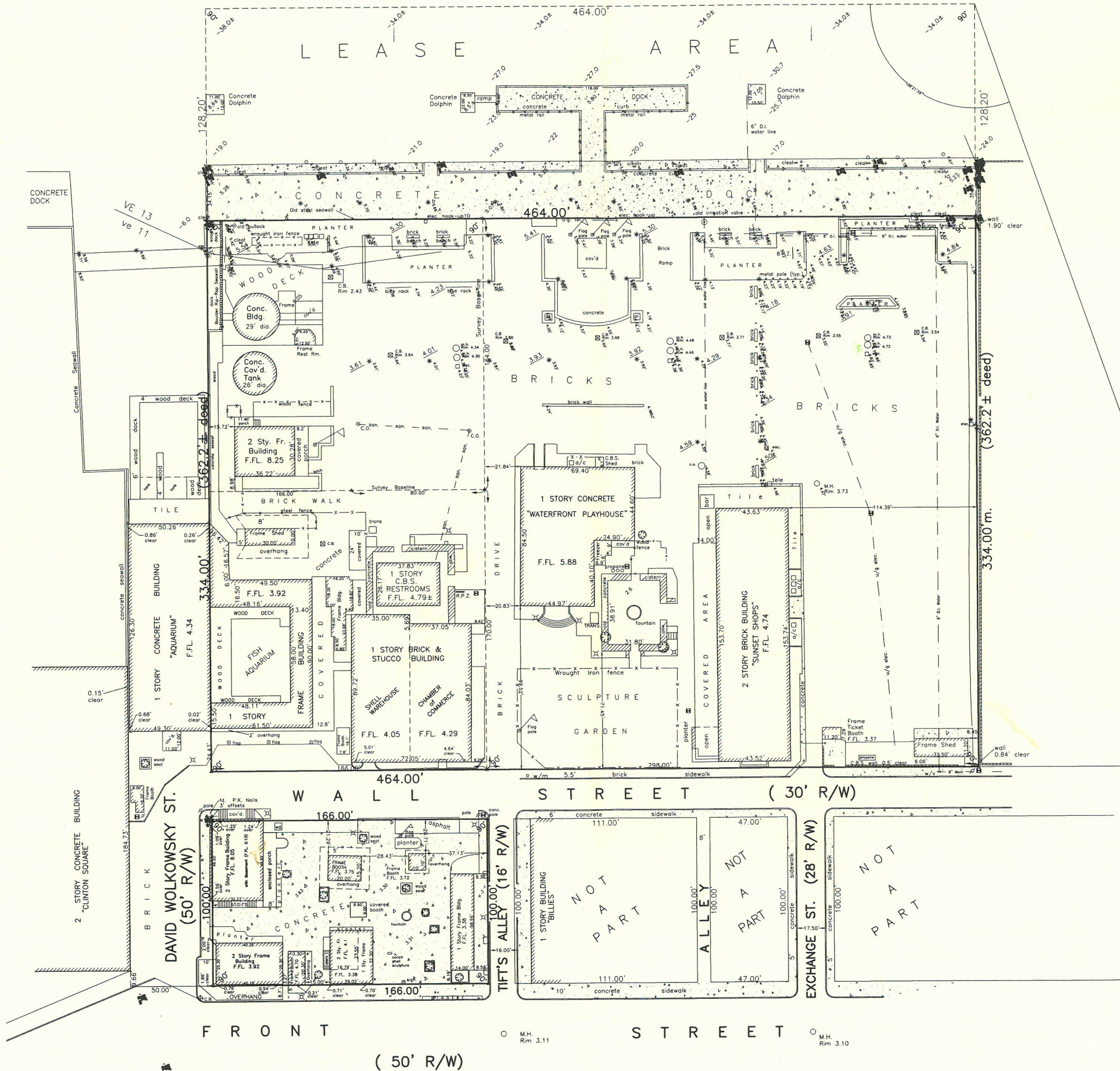
Maria G. Ratchiff
Notary Signature

Notary Public, State of Florida

Maria G. Ratchiff
Printed, Typed or Stamped Name

K E Y W E S T B I G H T

L E A S E A R E A



FRONT STREET

(50' R/W)

STREET

M.H. Rim 3.11

M.H. Rim 3.10

2 STORY CONCRETE BUILDING "CLINTON SQUARE"

BRICK

DAVID WOLKOWSKY ST. (50' R/W)

TIFT'S ALLEY (16' R/W)

1 STORY BUILDING "BILLIE'S"

ALLEY

EXCHANGE ST. (28' R/W)

NOT PART

NOT A PART

NOT PART

(362.2 ± deed) 334.00 m.