

RESOLUTION NO. 23-242

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING AND ACCEPTING THE ATTACHED "CONDITIONAL CONSENT TO PROPOSED SUBMERGED LAND LEASE BETWEEN THE CITY OF KEY WEST AND FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION" FROM SEABOARD ASSOCIATES LIMITED PARTNERSHIP D/B/A OCEAN KEY RESORT AND SPA FOR USE OF OVERHANG OF RIPARIAN RIGHTS AT PARCEL B; AUTHORIZING THE CITY MANAGER TO EXECUTE NECESSARY DOCUMENTS UPON CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City's Temporary Use Agreement and the anticipated Submerged Land Lease with the Florida Department of Environmental Protection for Mallory T-Pier requires consent from the Ocean Key Resort for certain access/overhang; and

WHEREAS, the Ocean Key has authorized this use in an agreement since at least 1989, and agrees to continue to authorize such use, as set forth in the attached letter; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA AS FOLLOWS:

Section 1: That the attached letter of "Conditional Consent to Proposed Submerged Land Lease between the City of Key West and Florida Department of Environmental Protection" from Seaboard

Associates Limited Partnership, d/b/a Ocean Key Resort and Spa, for upland riparian rights at Parcel B is hereby approved and accepted.

Section 2: That the City Manager is authorized to ratify and execute any related documents, upon consent of the City Attorney.

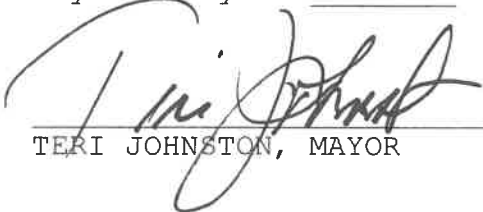
Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 14th day of September, 2023.

Authenticated by the Presiding Officer and Clerk of the Commission on 14th day of September, 2023.

Filed with the Clerk on September 14, 2023.

| | |
|------------------------------|------------|
| Mayor Teri Johnston | <u>Yes</u> |
| Vice Mayor Sam Kaufman | <u>Yes</u> |
| Commissioner Lissette Carey | <u>Yes</u> |
| Commissioner Mary Lou Hoover | <u>Yes</u> |
| Commissioner Clayton Lopez | <u>Yes</u> |
| Commissioner Billy Wardlow | <u>Yes</u> |
| Commissioner Jimmy Weekley | <u>Yes</u> |



TERI JOHNSTON, MAYOR

ATTEST:




KERI O'BRIEN, CITY CLERK



MEMORANDUM

Date: September 14, 2023

To: Honorable Mayor and Commissioners

Via: Albert P. Childress 
City Manager

From: Steve McAlearney
Director, Port & Marine Services

Subject: **Approving Agreement with Ocean Key Resort to Secure Conditional Consent for Sovereign Submerged Lands Lease for Mallory T-Pier**

Introduction

The City Manager's Office requests the ratification of the attached "Conditional Consent to Proposed Submerged Land Lease between the City of Key West and Florida Department of Environmental Protection" with Ocean Key Resort.

Background

A sovereign submerged lands lease (SLL) from the state's Board of Trustees of the Internal Improvement Trust Fund (Governor and Cabinet), administered by the Florida Department of Environmental Protection (FDEP), is required for mooring vessels in waters overlaying state-owned bay bottom. When a SLL expires without a new one in place, a typical situation, FDEP then issues a Temporary Use Agreement (TUA) until the new lease can be obtained. The TUA is normally of the same dimensions as the previous SLL, which is the case here. If a TUA needs to be extended, FDEP can issue Addendums to the TUA. The City's current Addendum expires October 7th, 2023. We intend to have a new SLL with FDEP in place by that date.

The current TUA allows use of bay bottom for a length of 664 feet, of which 150 feet overlaps the Ocean Key Resort & Spa (Ocean Key) riparian uplands. In order to secure a SLL, an owner must show that they have sufficient upland interest (SUI) in the property adjacent to the desired lease area. SUI generally runs concurrently with an owner's riparian rights, which are those adjacent to land bordering upon navigable waters. To renew our SLL in its current footprint, we require consent from Ocean Key for use of their upland riparian rights. This consent is a condition of Ocean Key's 1989 major development plan with the City, and was given in exchange for allowing Ocean Key to count parking spaces at the City's Mallory Square parking lot towards their required total.

The Mallory T-pier is the City's only asset capable of receiving a vessel of any significant size. In addition to revenue generating opportunities, this capability could prove critical during a major event isolating the City and its residents from the mainland.

Procurement

There is no cost to renew this agreement.

Recommendation

The City Manager's Office recommends the City Commission approve the ratification of the attached "Conditional Consent to Proposed Submerged Land Lease between the City of Key West and Florida Department of Environmental Protection" with Ocean Key Resort.

OCEAN KEY
RESORT & SPA
KEY WEST | A NOBLE HOUSE RESORT

SEPTEMBER 15,
August __, 2023

Albert Childress, City Manager
City of Key West
1300 White Street
Key West, FL 33040

RE: Conditional Consent to Proposed Submerged Land Lease between the City of Key West and Florida Department of Environmental Protection

Dear Mr. Childress:

On behalf of Seaboard Associates Limited Partnership d/b/a Ocean Key Resort & Spa ("Ocean Key"), please allow this letter to serve as our conditional consent ("Consent") to a proposed Submerged Land Lease ("Lease") between the Florida Department of Environmental Protection ("FDEP"), as landlord, and City of Key West ("City"), as tenant, to lease that certain submerged land (the "Premises") consistent with, and no more expansive than, the immediately prior submerged lands lease between the same parties.

As the owner of riparian rights that includes an unobstructed view of a portion of the Premises commonly known as Parcel B, including portions of Mallory Square and the T-Pier, Ocean Key's consent is conditioned upon the following, which shall be deemed accepted and agreed to by the City and FDEP by execution of the Lease:

1. Consistent with the originally provided 1989 consent from Ocean Key, no ship may extend into Ocean Key's riparian right to Parcel B at water level (extension into Ocean Key's riparian right for the purpose of allowing the ships to overhang the navigable waters above the submerged lands is acceptable).
2. No ship shall overhang the riparian line on Fridays or Saturdays. (12:01 am Friday to 11:59 pm Saturday).
3. Ships that overhang the riparian line must depart no later than 45 minutes prior to Sunset (i.e., no ship may be moored between 45 minutes prior to sunset and sunrise). No more than twelve (12) ship dockings per calendar year may be permitted to overhang into Ocean Key's riparian right (and the same ship docking twice counts as two dockings, not one).
5. No ship that overhangs the riparian line may be permitted to overnight.

6. There shall be no additional pile installations or construction within Parcel B or anywhere within Ocean Key's riparian right without the written consent of Ocean Key, which consent shall not be unreasonably withheld.

This Consent shall be in effect as of the effective date of the Lease and shall expire as of the termination or the expiration of the Lease. For the avoidance of doubt, this Consent shall not extend beyond the term of the Lease.

The contact for Ocean Key is Johan Amneus: jamneus@oceankey.com or 305.295.7022; and the backup contact is Gabe Rosenthal: nhlegal@noblehousehotels.com or 425.636.5665.


Best Regards,

OCEAN KEY RESORT & SPA
SEABOARD ASSOCIATES LIMITED PARTNERSHIP

Johan Amneus
General Manager

cc: Brian Cumbie, *Environmental Specialist II*, Florida Department of Environmental Protection
Steven McAlearney, *Director of Port & Marine Services*, City of Key West
Gabe Rosenthal, Noble House Hotels & Resorts
Jamie Colee, Noble House Hotels & Resorts

Received and agreed to by;


Name ALBERT CHILDRESS
CITY MANAGER





FLORIDA DEPARTMENT OF Environmental Protection

Southeast District Branch Office
2796 Overseas Highway, Suite 221
Marathon, FL 33050
Southeast.District@floridadep.gov

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

October 7, 2022

Mr. Steven McAlearney
Port and Marina Services Director
City of Key West
201 William St.
Key West, FL 33040
smcalearney@cityofkeywest-fl.gov

Re: Monroe County - ERP
City of Key West / Mallory Pier
BOT No. 440769265
Site No. 142061 / Project No. 389894

Dear Mr. McAlearney:

Enclosed is the fully executed Temporary Use Agreement Addendum to provide the City of Key West with continued temporary authorization for the existing structures and activities on state-owned submerged lands at the City of Key West Mallory Pier. The Temporary Use Agreement Addendum is effective through October 7, 2023.

If you have any questions regarding this matter, please contact McKenzie Fraley by phone at (305) 289-7079, or by e-mail at Mckenzie.Fraley@FloridaDEP.gov.

Thank you for your continued cooperation in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Andreotta".

Jason Andreotta
Director of District Management
Southeast District Office

Enclosure: Temporary Use Agreement Addendum

TEMPORARY USE AGREEMENT ADDENDUM
BOT # 440769265

This Temporary Use Agreement Addendum (hereinafter referred to as "Addendum") is entered into this 7th day of October, 2022, and between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (hereinafter referred to as the "Board") and the City of Key West, a Florida Municipal Corporation, (hereinafter referred to as the "Applicant"), and is hereby made a part of the Temporary-Use Agreement previously entered on April 7, 2020 and Temporary Use Agreement Addendums entered on April 20, 2021 and April 14, 2022 by and between the Board and the Applicant.

Whereas, the Temporary Use Agreement Addendum expires on October 7, 2022, and the Applicant needs additional time to complete the application made on August 29, 2022, for a sovereignty, submerged lands lease renewal and modification of the structures and activities shown on Exhibit A attached hereto.

The parties hereto, then, agree as follows:

1. The parties hereby agree to extend and continue the Temporary Use Agreement for an additional term, commencing on October 6, 2022, and expiring on October 6, 2023, or the date of execution of a sovereignty submerged lands lease renewal and modification between the Board and the Applicant, whichever occurs first.
2. Except as specifically amended by the provisions of this Addendum, all of the terms and provisions of the Temporary Use Agreement shall remain unchanged and in full force and effect and the same are hereby ratified, approved and confirmed by the parties hereto.
3. The terms and conditions of this Addendum shall be binding upon and inure to the benefit of the parties hereto and their representatives, heirs, personal representatives, successors and assigns.

Executed on the date first written above.

CITY OF KEY WEST

By: 
Original Signature

Paul McLaughlin
Printed/Typed Name

City Manager
Title

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

By: 

Jason Andreotta
Director of District Management,
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



Overview



Legend

- Centerline
- Easements
- Hooks
- Lot Lines
- Road Center
- Rights of Way
- Shoreline
- ☐ Condo Building
- ☐ Key Names
- ☐ Subdivisions
- ☐ Parcels

| | | | | | |
|-------------------------|--|---------------------|-----------|----------------------|---------------------------------|
| Parcel ID | 00000170-000000 | Alternate ID | 1000167 | Owner Address | CITY OF KEY WEST MALLORY SQUARE |
| Sec/Twp/Rng | 06/68/25 | Class | MUNICIPAL | | PO Box 1409 |
| Property Address | 402 WALL St | | | | Key West, FL 33041 |
| | KEY WEST | | | | |
| District | 10KW | | | | |
| Brief Tax | KW PT LOTS 2-3-4-5 SQR 3 G64-274-275 (CULTURAL PRESERVATION SOCIETY INC-LEASE) OR1338-417/37(II LEASE) OR1623- | | | | |
| Description | 215/229(II LEASE) OR2080-939/950(II LEASE) | | | | |
| | <i>(Note: Not to be used on legal documents)</i> | | | | |

Date created: 3/19/2020
 Last Data Uploaded: 3/19/2020 2:14:02 AM

Developed by  **Schneider**
 GEOSPATIAL

BOT No. 440769265
 Exhibit A

338
427
074709

CONSENT TO LEASE IN ORDER TO ALLOW USE OF
RIPARIAN RIGHTS

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 18th, 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 Trustee's 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. Rogers
Caterina Lopez
Witnesses

[Signature]
BEREL 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 BEREL 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 State last aforesaid this 5 day of May, 1989.

[Signature]
Notary Public
State of Florida
My Commission Expires: _____
(Seal)
[Notary Seal]

AG761522

RESOLUTION NO. 89-103

A RESOLUTION GRANTING PERMISSION TO OCEAN KEY HOUSE TO COUNT CERTAIN PARKING SPACES IN THE CITY PARKING LOT AT MALLORY SQUARE TOWARD THOSE SPACES REQUIRED BY CERTAIN REGULATORY AGENCIES; PROVIDING THAT IN CONSIDERATION THEREOF OCEAN KEY HOUSE SHALL EXECUTE A CONSENT TO LEASE FORM GRANTING THE CITY OF KEY WEST, FLORIDA PERMISSION TO APPLY FOR A LEASE OF A CERTAIN PARCEL OF SUBMERGED LAND; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Ocean Key House desires to use certain parking spaces in the City-owned parking lot at Mallory Square for purposes of calculating those spaces required by state and local regulatory bodies for its facilities; and

WHEREAS, the City of Key West, Florida desires to obtain permission of Ocean Key House to lease a certain parcel of submerged land from the Board of Trustees of the Internal Improvement Trust Fund in order that cruise ships visiting Mallory Dock shall not overhang onto said parcel; and

WHEREAS, it is contemplated that the parties agree that the above benefits be exchanged as mutual consideration, **NOW THEREFORE,**

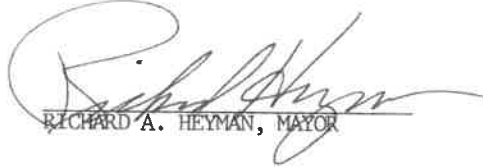
BE IT RESOLVED by the City Commission of the City of Key West, Florida as follows:

Section 1. The City Commission grants permission to Ocean Key House to count certain parking spaces in the City-owned parking lot at Mallory Square, to the extent permitted by law, for purposes of calculating those spaces required by state and local regulatory bodies for its facilities. Said permission shall become effective only upon delivery of an executed Consent to Lease form as provided below, and shall not be construed to waive lease requirements or charges for the use of such parking spaces.

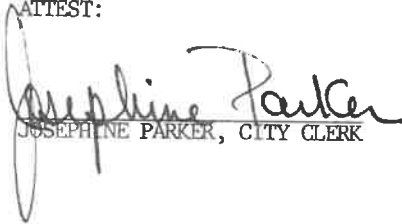
Section 2. Ocean Key House, in consideration for the above benefit, shall execute a Consent to Lease form granting the City permission to apply for a lease of a certain parcel of submerged land, designated as Lease Parcel "B" on the attached survey performed by Joe M. Trice and dated May 18, 1984.

Section 3. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 20th day of March, 1989.


RICHARD A. HEYMAN, MAYOR

ATTEST:


JOSEPHINE PARKER, CITY CLERK

DESCRIPTION OF: PARCEL "A"

LEGAL DESCRIPTION: A parcel of submerged land adjacent to Lots 2, 3, 4 and 5, Square 3, William A. Whitehead's Map or Plan of the Island of Key West, Monroe County, Florida, being more particularly described by metes and bounds as follows:

COMMENCE at the Westerly right-of-way boundary line of Wall Street with the Southerly right-of-way boundary line of Whitehead Street and run thence North 19° 32' 23" East along the said line of Wall Street 514 feet to a point on the dividing line between Lots 1 and 2 of the said Square 3; thence North 70° 27' 37" West for a distance of 333 feet to a point on the Mean High Water Line of the Gulf of Mexico, said point being the Point of Beginning of the parcel of submerged land herein described; thence continue North 70° 27' 37" West a distance of 35 feet to a point; thence South 19° 32' 23" West a distance of 25 feet to a point; thence North 70° 27' 37" West a distance of 145 feet to a point; thence South 19° 32' 23" West for a distance of 489 feet to a point bearing North 70° 27' 37" West of the aforesaid point of intersection of the Westerly right-of-way boundary line of Wall Street with the Southerly right-of-way boundary line of Whitehead Street; thence South 70° 27' 37" East a distance of 330 feet to a point on the Mean High Water Line of the Gulf of Mexico; thence North 19° 32' 23" East along the said Mean High Water Line a distance of 50 feet to a point; thence North 70° 27' 37" West along the said Mean High Water Line a distance of 150 feet to a point; thence North 19° 32' 23" East along the said Mean High Water Line a distance of 464 feet back to the Point of Beginning, containing 96,395 square feet, more or less.

DESCRIPTION OF: PARCEL "B"

LEGAL DESCRIPTION: A parcel of submerged land adjacent to Lot 1, Square 3, William A. Whitehead's Map or Plan of the Island of Key West, Monroe County, Florida, being more particularly described by metes and bounds as follows:

COMMENCE at the intersection of the Westerly right-of-way boundary line of Wall Street with the Westerly right-of-way boundary line of Duval Street and run thence along the said right-of-way line of Wall Street South 19° 32' 23" West for a distance of 133.00 feet to a point; thence North 70° 27' 37" West for a distance of 367.72 feet to a point on the Mean High Water Line of the Gulf of Mexico, said point being the Point of Beginning of the parcel of submerged land herein described; thence continue North 70° 27' 37" West for a distance of 145.00 feet to a point; thence North 19° 32' 23" East for a distance of 150.00 feet to a point; thence South 70° 27' 37" East for a distance of 145.00 feet to a point on the Mean High Water Line of the Gulf of Mexico; thence South 20° 20' 28" West along the said Mean High Water Line for a distance of 150.00 feet to the Point of Beginning, containing 21,907 square feet, more or less.

DESCRIPTION OF: PARCEL "C"

LEGAL DESCRIPTION: A parcel of submerged land adjacent to Lots 2, 3, 4 and 5, Square 3, William A. Whitehead's Map or Plan of the Island of Key West, Monroe County, Florida, being more particularly described by metes and bounds as follows:

COMMENCE at the Westerly right-of-way boundary line of Wall Street with the Southerly right-of-way boundary line of Whitehead Street and run thence North 19° 32' 23" East along the said line of Wall Street 514 feet to a point on the dividing line between Lots 1 and 2 of the said Square 3; thence North 70° 27' 37" West for a distance of 368 feet to the Point of Beginning of the parcel of land herein described; thence continue North 70° 27' 37" West a distance of 145 feet to a point; thence South 19° 32' 23" West a distance of 25 feet to a point; thence South 70° 27' 37" East a distance of 145 feet to a point; thence North 19° 32' 23" East a distance of 25 feet back to the Point of Beginning, containing 3,625 square feet.