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Via Email to:

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Dear Commissioners, Mayor, City Manager, City Attorney, and City Port Director:

We represent Pier B Development Corp. (“PBDC”). We are writing to provide you with information that is relevant and crucial to the City’s expected vote on how to proceed with respect to PBDC’s request (“Request”) to modify its Sovereignty Submerged Lands Lease No. 440020075 (SLL) with the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.

The Request includes a twenty-five-year term and a 42-foot increase in length, which is only a 4% increase over the length in the existing sovereignty submerged lands lease, and is already included in PBDC’s current Temporary Use Agreement.

The unique operational constraints compelling a twenty-five-year term include the development, operations and scheduling of cruise ships which berth at the Pier B facility. The availability of the berthing area is crucial in order to do long term planning. There is significant long-term planning, maintenance and construction work required to keep a cruise port operational and safe for the general public which requires a substantial long-term financial commitment. It is also important to the cruise industry to know there are long-term commitments in order to approve, design, and finance the building of billion-dollar ships which could call on Pier B.

The request to use the 25 feet of setback within our own SLL has no impact on the City and should be supported. Please take note that the City is already using their 25 feet of setback at Mallory Square and should not object to something it is already doing.

As to width, the Request is for 160 feet and is only 15 feet wider than the width of the City's sovereignty submerged lands lease for Mallory Square which is 145 feet. The requested width will have no impact upon the City or navigation.

In 2007 and 2020, the City ordered and the City Commission reviewed, reports authored by Dr. Philip A. Frank of Terramar Environmental Services, Inc., attesting to the health and vitality of the City's coral relocation sites as well as coral in and around cruise ship docking areas. The City Commission was also provided a Power Point and has received an opinion from William F. Precht, an internationally recognized coral scientist, explaining how cruise ship-generated turbidity is having no impact on coral at the barrier reefs and patch reefs in Key West, or the coral and benthic resources under and around Pier B and in the harbor and shipping channel. This report and other information provided by Mr. Precht provided pictures showing the health of this coral, including the health and vitality of coral recognized by federal agencies.

On April 5, 2022, the City heard a presentation by Dr. Michael Crosby of Mote Marine Laboratory, Inc. opining that cruise ship turbidity did not cause a detrimental impact to reefs in and around Key West. Furthermore, the coral reef growth has thrived for decades in the presence of cruise ship traffic as documented in your reports from Terramar Environmental Services, Inc. and William F. Precht.

Our position is that opposing the Request is a violation of Florida Statutes § 311.25 as there would be no objective reason to oppose the Request other than the City indirectly attempting to enforce the referenda.

Please be further advised that our client would consider any opposition to the Renewal a breach of the 1994 Declaration of Covenants, Conditions and Restrictions ("Declaration") between PBDC's predecessor and the City. The Declaration created obligations and restrictions for the owner of Pier B, including the requirement to use best efforts to solicit and book cruise ships so as to maximize disembarkation fee revenue from which the City economically benefits.

We believe that opposition by the City is actionable as a breach of the Declaration because it prevents, hinders, frustrates and interferes with PBDC's performance of its duties under the Declaration. Moreover, opposition could cause the City to lose millions of dollars in revenue and could expose the City to liability for millions of dollars in damages for PBDC's loss of revenue from disembarkation fees.

It should be noted that for many years the City has authorized such operation and accepted the benefit of same without complaint. These acts effectively ratify and approve the current operation of Pier B. To ensure the future of Pier B and the benefits it brings to the City of Key West, PBDC requires a 25-year sovereignty submerged lands lease that incorporates the temporary use area which only serves to continue cruise port operations in a manner consistent with its historical use.

We ask that you take this information into consideration when evaluating the Request.

Sincerely,

Shutts & Bowen LLP



Frank A. Zacherl