

This instrument prepared by:
Bruce Franck
Florida Department of Environmental Protection
Marathon Branch Office
2796 Overseas Highway, Suite 221
Marathon, FL 33050

TEMPORARY USE AGREEMENT
BOT #440346895

This Temporary Use Agreement (hereinafter referred to as the "Agreement") is entered into this ____ day of _____, 2013, by and between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (hereinafter referred to as the "Board") and City of Key West, a Florida Municipal Corporation (hereinafter referred to as the "Applicant".)

RECITALS:

- A. The Applicant desires to enter into this Agreement for the sovereign lands (hereinafter referred to as "lands") and water column located adjacent to Fleming Key and Sigsbee Park, Key West, Sections 28, 29, 30, 31, and 32 Township 67 South, Range 25 East, in Monroe County, Florida.
- B. Applicant's Management Agreement issued by the Board authorizing Applicant's mooring field expired on December 29, 2010. The Board no longer issues Management Agreements to authorize activities on sovereign submerged lands, and the appropriate form of Board authorization is a sovereign submerged lands lease. Therefore, Applicant's mooring field needs to be authorized by a sovereign submerged lands lease.
- C. Applicant desires to obtain the consent of the Board to maintain and use the structures and mooring areas as a 149 slip mooring field to be used exclusively for the mooring of vessels located on these lands.
- D. The parties acknowledge that the application, approval and issuance of a sovereignty submerged lands lease may require a time period of several months.
- E. The Applicant desires to have the temporary use of the mooring areas as a 149 slip mooring field to be used exclusively for the mooring of vessels located on these lands during the processing and review of the Applicant's sovereignty submerged lands lease application.

The parties hereto, then, agree as follows:

- 1. The Applicant acknowledges and understands that the grant of this Agreement does not guarantee that the Board will grant the Applicant a lease or that the Department of Environmental Protection will recommend that a lease be granted.**

2. The Applicant is hereby granted the temporary exclusive use of the structures and mooring areas as a 149 slip mooring field to be used exclusively for the mooring of vessels located on these lands as depicted in Exhibit A, consisting of approximately 125 acres. This temporary exclusive use is for a term one year from the date of execution of this Agreement or until the date of execution of a sovereign lands lease between the Board and the Applicant, whichever occurs first. The Applicant shall make no claim of title to or interest in the submerged lands identified in Exhibit A solely by reason of occupancy or use thereof under this Agreement.

3. The existing structures and mooring areas can only be utilized as they were on the date of execution of this Agreement, which was as a 149 slip mooring field to be used exclusively for the mooring of vessels as depicted in Exhibit A. In the event any part of any of these mooring sites are determined by a final adjudication issued by a court of competent jurisdiction to encroach or interfere with riparian rights of the adjacent upland riparian owner, Applicant agrees to either obtain written consent for the offending structure or use from the affected adjacent upland riparian owner or 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 Agreement and be grounds for immediate termination of this Agreement at the sole option of the Board.

4. In the event that a sovereign lands lease application is not approved by the Board, or the Applicant fails to execute the lease agreement prior to the expiration or termination of this Agreement, whichever occurs first, the Applicant shall remove all structures and cease all activities referenced herein on the sovereign lands at the Applicant's sole expense. In the event that the Applicant asserts title to the sovereign lands identified in Exhibit A, and either the Applicant fails to timely submit the information concerning title as required herein, or the Board denies the Applicant's claim of title and the Applicant has not commenced an action to quiet title as specified herein, the Applicant shall remove all structures and cease all activities referenced herein on the sovereign lands at the Applicant's sole expense. In the event that the Applicant fails to complete the requirements of paragraph 6 of this Agreement, the Applicant shall remove all structures and cease all activities referenced herein on the sovereign lands at the Applicant's sole expense. The complete removal of the structures as required by this paragraph shall be accomplished within 180 days following the expiration or termination of this Agreement, whichever occurs first. The complete cessation of the activities shall occur immediately following the expiration or termination of this Agreement, whichever occurs first.

5. If the Applicant asserts title to the sovereign lands identified in Exhibit A, the Applicant must submit an application, accompanied by all evidence upon which Applicant relies for the assertion of title, to the Division of State Lands ("DSL"),

Department of Environmental Protection, within 90 days after the execution of this Agreement. DSL will review the application and accompanying evidence and give a response to Applicant as to whether the Board will assert title to the sovereign lands described in Exhibit A. If DSL responds that the Board will assert title to said sovereign lands, the Applicant must file an appropriate action in circuit court within 90 days of DSL's response to obtain a legal determination of title to the sovereign lands. If DSL, after consultation with the Board, responds that the Board does not assert title to the sovereign lands, then the Applicant shall not have to apply for a sovereign lands lease, and that portion of the consideration representing lease fees and interest shall be refunded. If DSL, after its review, responds that the Board does not assert title to a portion of the sovereign lands, any consideration for that portion representing lease fees and interest will be refunded. Failure to submit the initial application and evidence within 90 days after execution of this Agreement, or failure to file the appropriate court action within 90 days after DSL's response, shall constitute a waiver by the Applicant of all of its claim of title to the sovereign lands and an acknowledgment that the Board owns the sovereign lands.

6. Immediately following execution of this Agreement, Applicant shall record this entire Agreement including Exhibit A in **the Public Records of Monroe County** and send a copy of the recorded Agreement to the Department's South District Branch Office, SLERP Section, 2796 Overseas Hwy, Suite 221, Marathon, FL 33050 within 10 days of recording.

7. This Agreement is temporary in nature and may not be extended or modified except upon the express written agreement of the Board. No request for an extension of the Agreement shall be considered by the Board except upon a demonstration by the Applicant that the Applicant is in full compliance with the terms and conditions of this Agreement and has exercised due diligence in its efforts to procure a sovereign lands lease from the Board.

8. As a material condition of this Agreement, Applicant agrees to comply with all of the requirements of Permit No. 44-0170774-001, issued on January 23, 2001, Chapters 253, 373, 376, and 403, Florida Statutes, and the rules promulgated pursuant thereto. The Board has the right to immediately rescind this Agreement upon the failure of Applicant to comply with either the terms of this Agreement, the aforementioned Management Agreement, statutes, rules, or any permits or exemptions. Upon written notice that the Board has exercised its right to rescind under this paragraph, Applicant shall cease and desist all activity authorized by this Agreement within the timeframe specified in the notice, or within twenty days of receipt of the notice if no timeframe is specified. Notice may be given by the Board by certified mail or hand delivery to: David Hawthorne, City of Key West, 1801 North Roosevelt, Key West, FL 33040, or by posting the notice at the property described in Paragraph A.

9. The City shall be fully responsible and liable for all claims, liabilities, damages costs, actions, suits or proceedings at law or in equity which may occur as a result of the negligent acts or omissions of its officers, employees, representatives and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims. The City shall maintain a program of insurance covering its liabilities as prescribed by Section 768.28(16)(a), Florida Statutes (2012).

10. Applicant agrees that any litigation arising from matters relating to this Agreement between the Board and the Applicant shall be initiated and maintained only in Leon County, Florida.

11. This Agreement, and any rights and privileges contained herein, are for the sole benefit and use of the Applicant and shall not be assigned or transferred by the Applicant to any other party without the prior written consent of the Board, which consent shall not be unreasonably withheld.

12. The terms of this Agreement may be enforced by the Board notwithstanding that the authorization granted hereunder has expired.

Executed on the date first written above.

[This portion intentionally left blank]

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

WITNESSES:

Witness Signature

Printed/Typed Name

Witness Signature

Printed/Typed Name

By:

Jon M. Iglehart
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

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Jon M. Iglehart, Director of District Management, South District, 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.

Notary Public, State of Florida

Printed, Typed or Stamped Name

My Commission Expires: _____

Commission/Serial No.: _____

City of Key West, a Florida Municipal Corporation

WITNESSES:

Witness Signature

By: _____

Printed/Typed Name

Printed/Typed Name

Witness Signature

Title

Printed/Typed Name

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____ as _____ of City of Key West _____, a _____ Corporation, on behalf of the Corporation. He is personally known to me or has produced _____ as identification.

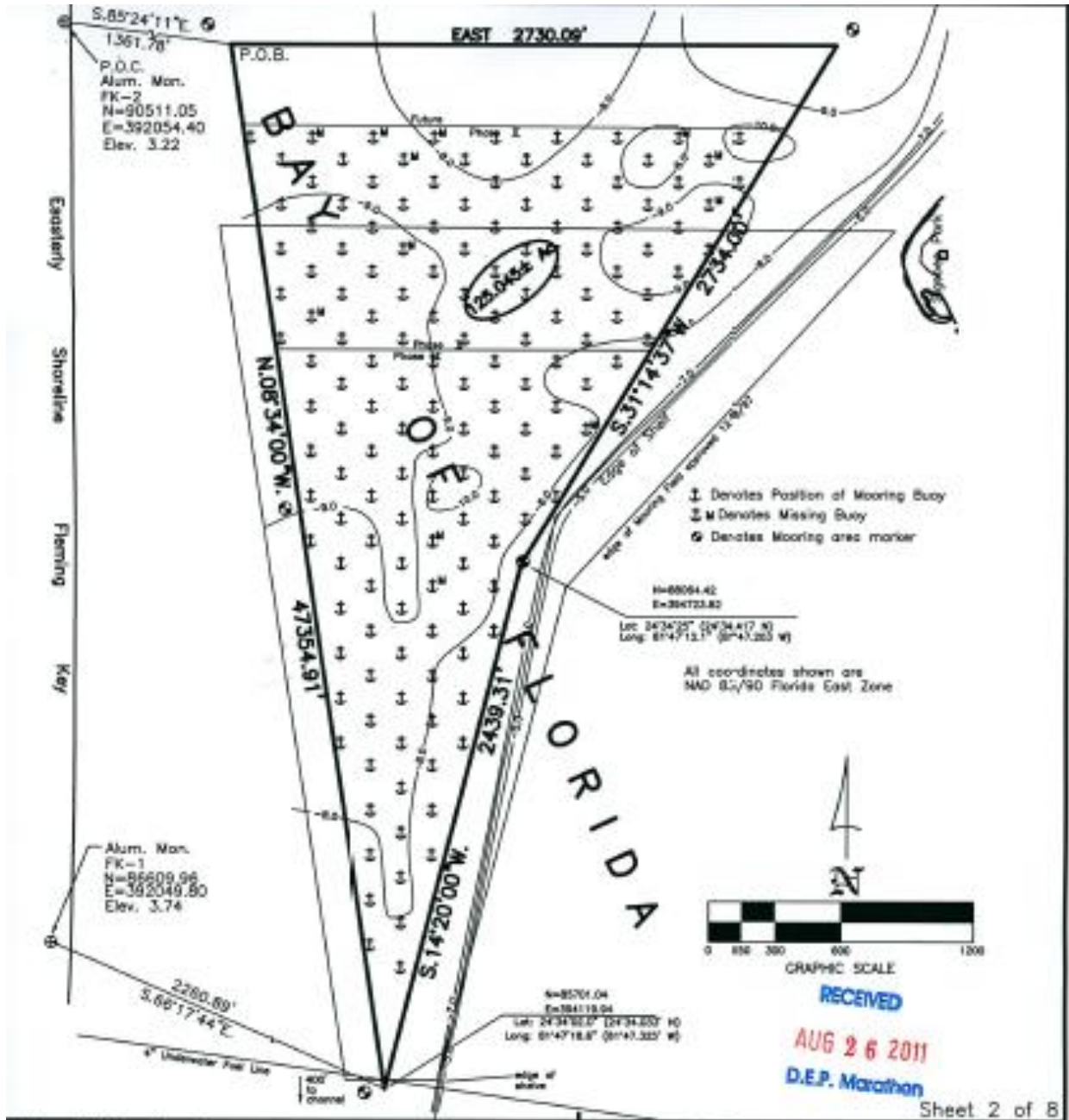
Notary Public, State of _____

Printed/Typed or Stamped

My Commission Expires: _____

Commission/Serial No.: _____

EXHIBIT A



RECEIVED
 AUG 26 2011
 D.E.P. Marathon

Sheet 2 of 8

City of Key West Bay of Florida (Mooring Field)		
Specific Purpose Survey Submerged Land Lease		Den No.: 11-150
Scale: 1"=600'	Ref. File	Flood panel No.
Date: 4/06/11		Flood Zone:
REVISIONS AND/OR ADDITIONS		
8/23/11: Revise Lease Area		

ENGINEERS PLANNERS SURVEYORS

3152 Northside Drive
 Suite 201
 Key West, FL 33040

(305) 293-0466
 Fax: (305) 293-0237
 fhildeb1@bellsouth.net
 L.B. No. 7700