



**VARIANCES ARE QUASI-JUDICIAL HEARINGS AND IT IS IMPROPER TO SPEAK TO A PLANNING BOARD AND/OR BOARD OF ADJUSTMENT MEMBER ABOUT THE VARIANCE OUTSIDE THE HEARING**

***Variance Application***

**City of Key West  
Planning Department**

Please print or type a response to the following:

1. Site Address Mallory Square
2. Name of Applicant Joe Walsh on behalf of Tropical Soup Corp.
3. Applicant is: Owner \_\_\_\_\_ Authorized Representative X \_\_\_\_\_  
(attached Authorization Form must be completed)
4. Address of Applicant P.O. Box 4147, Key West, FL 33041-4147
5. Phone # of Applicant 305-731-9972 Mobile# \_\_\_\_\_ Fax# \_\_\_\_\_
6. E-Mail Address jackflats509@gmail.com
7. Name of Owner, if different than above City of Key West
8. Address of Owner 525 Angela Street, Key West, FL 33040
9. Phone Number of Owner 305-809-3888 Fax# 305-809-3866
10. Email Address jscholl@keywestcity.com
11. Zoning District of Parcel HPS RE# Various- Please see next page
12. Description of Proposed Construction, Development, and Use  
Build a wholly new ADA- and FEMA-compliant structure. New structure will house 2,344 sq. ft. of existing consumption area. Non-habitable roof structure will exceed 25ft in height.
13. Required information: (application will not move forward until all information is provided)

	Required	Existing	Requested
<b>Non-Habitable Height</b>	<b>25ft</b>	<b>28.8ft</b>	<b>33.7ft<sup>3</sup></b>
		(Hospitality House)	



RECEIVED

July 14, 2011

KW Planning Dpt

**Mallory Square RE Numbers**

Mallory Square Real Estate Parcel Numbers	
RE No.	Proposed Leasehold?
00000170-000000	No
00072082-001100	Yes
00072082-001200	No
00072082-001300	No
00072082-001400	Yes
00072082-001700	No
00072082-001900	No
00072082-003500	No
00072082-003700	Yes

14. Is Subject Property located within the Historic District? Yes  No   
 If Yes, indicate date of HARC approval as well as the HARC Approval Number. Attach minutes of the meeting.

Date 09/28/10 HARC # H10-01-355

15. Are there any easements, deed restrictions or other encumbrances attached to the subject property? Yes  No  If Yes, please describe and attach relevant documents. Mallory Square has many easements, leases etc. However, it is the applicant's understanding that none of these adversely affect the proposed leasehold.

16. Will the work be within the dripline (canopy) of any tree on or off the property?  
 YES  NO   
 If yes, provide date of landscape approval, and attach a copy of such approval.

### Check List

*(to be completed by Planning Staff and Applicant at time of submittal)*

Applicant Initials	Staff Initials	The following must be included with this application
<u>JW</u>	<u>                    </u>	Copy of the most recent recorded deed showing ownership and a legal description of the subject property
<u>JW</u>	<u>                    </u>	Application Fee (to be determined according to fee schedule)
<u>JW</u>	<u>                    </u>	Site Plan (existing and proposed) as specified on Variance Application Information Sheet
<u>JW</u>	<u>                    </u>	Floor Plans of existing and proposed development (8.5 x 11)
<u>JW</u>	<u>                    </u>	Copy of the most recent survey of the subject property
<u>JW</u>	<u>                    </u>	Elevation drawings as measured from crown of road
<u>JW</u>	<u>                    </u>	Stormwater management plan
<u>JW</u>	<u>                    </u>	HARC Approval (if applicable)
<u>JW</u>	<u>                    </u>	Notarized Verification Form
<u>JW</u>	<u>                    </u>	A PDF or compatible electronic copy of the complete application on a compact disk

**Please note that all architecture or engineering designs must be prepared and sealed by a professional architect or engineer registered in the state pursuant to F.S. chs. 471 and 481, respectively. Two signed and sealed copies will be required at time of submittal.**



## Standards for Considering Variances

**Before any variance may be granted, the Planning Board and/or Board of Adjustment must find all of the following requirements are met:**

1. Existence of special conditions or circumstances. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other land, structures or buildings in the same zoning district.

Mallory Square is the Historic heart of the community's maritime industry. Significant public historic places should maintain their historic architectural integrity. This variance request for height is due to two special circumstances specifically related to Mallory Square: 1. the location of the existing consumption... - **Continued on Attached**

2. Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.

Mallory was developed long before the applicant, or even the owner, came to be involved with it. The proposed uses existed on site and the applicant seeks to build in a FEMA- and ADA-compliant manner. Most of the structures in the square are grand-fathered under FEMA, but the new structure must comply. - **Continued on Attached**

3. Special privileges not conferred. That granting the variance(s) requested will not confer upon the applicant any special privileges denied by the land development regulations to other lands, buildings or structures in the same zoning district.

No special privileges will be conferred. The granting of the proposed variances will allow the functional development of the site in an ADA, FEMA, and historically sympathetic manner. A special privilege would be the granting of a variance that permitted additional floor area (habitable space) above the height limit... - **Continued on Attached**

4. Hardship conditions exist. That literal interpretation of the provisions of the land development regulations would deprive the applicant of rights commonly enjoyed by other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.

Under a literal interpretation of the LDRs, Mallory can not be fully used to benefit the public as intended in the purchase process, the Comp Plan, or the HPS Zone under literal interpretation of the LDRs. Both the plan and the zone contemplate the continuation of non-conforming uses, and the public process under which Mallory was purchased contemplated the maximum public benefit to the people of Key West. - **Continued on Attached**

5. Only minimum variance(s) granted. That the variance(s) granted is/are the minimum variance(s) that will make possible the reasonable use of the land, building or structure.

This variance will allow an ADA- and FEMA-compliant structure that is sympathetic to, and appropriate for, the Historic District and Mallory Square. The variance will allow reasonable use of the existing publicly-owned nonconforming use. The proposed project is in keeping with the character of the closest adjacent structures and property, yet significantly less intense while at the same time reducing existing obstructions in the velocity flood zone by constructing a FEMA-compliant structure.

---

- Continued on Attached

6. Not injurious to the public welfare. That granting of the variance(s) will be in harmony with the general intent and purpose of the land development regulations and that such variances will not be injurious to the area involved or otherwise detrimental to the public interest or welfare.

The granting of this variance is not injurious to the public welfare. The proposal will be a asset to Mallory Square by providing an additional quality dining establishment which incorporates and honors the history of Key West in a public waterfront setting.

The variance will also allow the public to exercise its right...

---

- Continued on Attached

7. Existing nonconforming uses of other property shall not be considered as the basis for approval. That no other nonconforming use of neighboring lands, structures, or buildings in the same district, and that no other permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

Existing non-conforming uses of other properties are not considered as the basis for this request.

---

---

---

**The Planning Board and/or Board of Adjustment shall make factual findings regarding the following:**

- That the standards established in subsection (a) have been met by the applicant for a variance.
- That the applicant has demonstrated a "good neighbor policy" by contacting or attempting to contact all noticed property owners who have objected to the variance application, and by addressing the objections expressed by these neighbors.

## **Standards for Considering Variances – Continued**

### **1. Existence of Special Conditions or Circumstances – CONTINUED**

Mallory Square is the Historic heart of the community's maritime industry. Significant public historic places should maintain their historic architectural integrity. This variance request for height is due to two special circumstances specifically related to Mallory Square: 1. the location of the existing consumption area is a FEMA flood V-Zone, which, in this case, requires the lowest structural member of the first floor to be elevated to a height of 13ft. The existing maximum height for habitable space in the HPS zoning district is 25ft. Once a structure is elevated above the flood zone there is only 12ft of habitable height within which to build. While 12ft is enough room to build a structure, the height limitation necessitates a flat roof. The historic roof form for this area is a pitched roof. This historic character of Mallory Square is the second special circumstance, in order to create a historically appropriate roof design that maintains the integrity of the Historic District, a variance for the non-habitable portion of a pitched roof is required and requested.

### **2. Conditions not created by applicant – CONTINUED**

Mallory was developed long before the applicant, or even the owner, came to be involved with it. The proposed uses existed on site and the applicant seeks to build in a FEMA- and ADA-compliant manner. Most of the structures in the square are grand-fathered under FEMA, but the new structure must comply. The proposed design is responding to the historic and functional relationships created within Mallory over time. The proposed design is considerate of, and sympathetic to, the close proximity of historic maritime structures in this significant public space.

### **3. Special privileges not conferred – CONTINUED**

No special privileges will be conferred. The granting of the proposed variances will allow the functional development of the site in an ADA, FEMA, and historically sympathetic manner. A special privilege would be the granting of a variance that permitted additional floor area (habitable space) above the height limit that would not otherwise be permitted. In this case, all the proposed habitable space can be accommodated above the minimum FEMA flood elevation and under the prescribed height limitation. However, it is the architectural demands of this historic place that pushes the project to seek a height variance. In this case, the structure receives no advantage or special privileged since the only structure exceeding 25ft will be the architectural aspects of a pitched roof.

### **4. Hardship Exists – CONTINUED**

Under a literal interpretation of the LDRs, Mallory can not be fully used to benefit the public as intended in the purchase process, the Comp Plan, or the HPS Zone under literal interpretation of the LDRs. Both the plan and the zone contemplate the continuation of non-conforming uses, and the public process under which Mallory was purchased contemplated the maximum public benefit to the people of Key West. This proposal seeks to do just that, continue the nonconforming use of 2,344 sq. ft. of consumption area. Build in an ADA- and FEMA-compliant manner, maintain maximum



open space in the square, and to preserve and enhance the economic benefit to the community. Literal interpretation of the LDRs will render this public property either unusable or require an inappropriate architectural design to be approved contrary to the historical preservation requirements of the Comprehensive Plan and Land Development Regulations in this significantly historic public space.

#### **5. Minimum Variance Necessary – CONTINUED**

This variance will allow an ADA- and FEMA-compliant structure that is sympathetic to, and appropriate for, the Historic District and Mallory Square. The variance will allow reasonable use of the existing publicly-owned nonconforming use. The proposed project is in keeping with the character of the closest adjacent structures and property, yet significantly less intense while at the same time reducing existing obstructions in the velocity flood zone by constructing a FEMA-compliant structure.

The proposed variances maintain the above mentioned public benefits without allowing a new or expanded non-conforming use.

First, the restaurant use previously existed as evidenced by City licenses, the analysis of the Planning Department, and the determination of the Planning Board (per Sec. 122-29) at the regularly scheduled meeting of 01/20/11.

Second, there is no additional non-conforming use proposed. The only use proposed is a restaurant, which has been established as a nonconforming use. The proposal does not seek, and will not allow, a stand alone bar. In fact, the definition of a bar in Sec. 86-9 specifically excludes “the sale of alcoholic beverages accessory to and within a restaurant use”.

Third, there is no expansion of a non-conforming structure. The existing structure can not be restored under the FEMA regulations for structures in the velocity flood zone. The existing structure has been structurally compromised and deteriorated to the point that renovation or reconstruction will exceed 49% of its appraised value. As a result, it must be elevated or demolished. Given the state of deterioration and the nature of the structure, it can not be elevated, and so it must be demolished. A completely new structure will be built.

#### **6. Not Injurious to the Public Welfare – CONTINUED**

The granting of this variance is not injurious to the public welfare. The proposal will be a asset to Mallory Square by providing an additional quality dining establishment which incorporates and honors the history of Key West in a public waterfront setting.

The variance will also allow the public to exercise its right to continue an existing nonconforming use with the associated economic benefits through the construction of an environmentally friendly, ADA- and FEMA-compliant building, reductions in impervious surface, and increases in open space, landscaping, and stormwater management.

Additionally, the project is not injurious to the adjacent property owners' rights. This project is proposed under the existing comprehensive plan (adopted August 10, 1993) and Land Development Regulations. The current plan and LDRs for HPS are significantly more restrictive than the prior designations (HP-2 and M-1) in effect in 1986

when a development agreement for an adjacent property was negotiated. Therefore the proposed project is significantly less intense than what could have been developed under the zoning in effect at the time that the adjacent property's rights were under negotiation.

Additionally there will be no increase in potential intensity. Intensity of a restaurant is measured in terms of consumption area (the area in which people can consume food and drink), as demonstrated by the fact that parking requirements of the code use consumption area to determine the level of parking impact that must be accommodated. The consumption area can be occupied by a limited number of people (based on the life-safety codes), which in turn regulates the number of meals that need to be served on site. This is the real measure of intensity, not on the size of the kitchen, restrooms, elevators, stairs, or waiting area (i.e. FAR). It has been determined by the City's Planning Department and the Planning Board that the existing consumption area is equal to the proposed consumption area and therefore no expansion, extension, or increase exists.

# Verification Form



Verification Form

Please note, Conditional Use requests are quasi-judicial hearings and it is improper to speak to a Planning Board or Board of Adjustment Member about the request outside of the hearing.

This form should be completed by the applicant. Where appropriate, please indicate whether applicant is the owner or a legal representative. If a legal representative, please have the owner(s) complete the following page, "Authorization Form."

I, JAMES K. SCHOLL, being duly sworn, depose and say
Name(s) of Applicant(s)

that: I am (check one) the Owner X Owner's Legal Representative
for the property identified as the subject matter of this application:

Mallory Square Development Plan
Street Address and Commonly Used Name (if any)

All of the answers to the above questions, drawings, plans and any other attached data which make up this application, are true and correct to the best of my knowledge and belief and that if not true or correct, are grounds for revocation of any action reliant on said information.

J.K. Scholl
Signature of Owner/Legal Representative Signature of Joint/Co-owner

Subscribed and sworn to (or affirmed) before me on November 4, 2010 (date) by Jim Scholl (name). He/She is personally known to me or has presented as identification.

Portia Y. Navarro
Notary's Signature and Seal



Portia Y. Navarro Name of Acknowledger typed, printed or stamped

Public Notary Title or Rank Commission Number (if any)

# **Authorization Form**

## Authorization Form

**Please note, variances are quasi-judicial hearings and it is improper to speak to a Planning Board or Board of Adjustment Member about the variance outside of the hearing.**

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, City of Key West authorize

Please Print Name(s) of Owner(s)

Tropical Soup Corporation

Please Print Name of Representative

to be the representative for this application and act on my/our behalf before the Planning Board.

J. K. Sedall  
Signature of Owner

for City of Key West

Signature of Joint/Co-owner if applicable

Subscribed and sworn to (or affirmed) before me on October 14, 2010 (date) by

Jimi H. Schoff

Please Print Name of Affiant

He is personally known to me or has

presented \_\_\_\_\_ as identification.

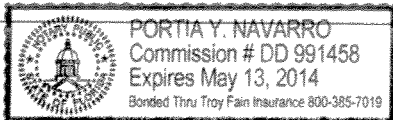
Portia Y. Navarro  
Notary's Signature and Seal

PORTIA Y. NAVARRO

Name of Acknowledger printed or stamped

NOTARY PUBLIC

Title or Rank



Commission Number (if any)





[Home](#)     
 [Contact Us](#)     
 [E-Filing Services](#)     
 [Document Searches](#)     
 [Forms](#)     
 [H](#)

[Previous on List](#)     
 [Next on List](#)     
 [Return To List](#)

Entity Nam

**No Events**     
 **No Name History**

## Detail by Entity Name

### Florida Profit Corporation

TROPICAL SOUP CORPORATION

### Filing Information

**Document Number** P10000015973  
**FEI/EIN Number** NONE  
**Date Filed** 02/22/2010  
**State** FL  
**Status** ACTIVE  
**Effective Date** 02/17/2010

### Principal Address

415 WALL STREET  
 KEY WEST FL 33040

### Mailing Address

415 WALL STREET  
 KEY WEST FL 33040

### Registered Agent Name & Address

DEMENT, C W  
 415 WALL STREET  
 KEY WEST FL 33040 US

### Officer/Director Detail

#### **Name & Address**

Title PSD

DEMENT, C W  
 415 WALL STREET  
 KEY WEST FL 33040 US

### Annual Reports

No Annual Reports Filed

### Document Images



02/22/2010 -- Domestic Profit

[View image in PDF format](#)

**Note:** This is not official record. See documents if question or conflict.

[Previous on List](#)

[Next on List](#)

[Return To List](#)

Entity Nam

**No Events**

**No Name History**

[Sub](#)

[| Home](#) | [Contact us](#) | [Document Searches](#) | [E-Filing Services](#) | [Forms](#) | [Help](#) |

Copyright © and Privacy Policies  
State of Florida, Department of State



**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



Attachment B  
Page 11 of 12 Pages  
SL No. 440769265

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. D. Johnson*  
*Sadie 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) ss.

State of Florida, County of Monroe  
This instrument was filed for record the 3rd day of Sept.  
1952 at 3:35 p.m. and duly recorded in Book  
Book 0-6 on Page 274/275 File No. 29005  
E. B. ADAMS, Clerk Circuit Court

I HEREBY CERTIFY, That on this \_\_\_\_\_ 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.

*Louise R. Owen*  
Notary Public, State of Florida at Large.

CONSENT TO LEASE IN ORDER TO ALLOW USE OF  
RIPARIAN RIGHTS

Doc# 1483547  
BKN 2888 Pgm 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 Malloy 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 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. Rogers  
Cathleen Lippner  
Witnesses


[Signature]  
BUREL 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 BUREL 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 Avel  
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. **LIVEBOARDS:** The term "liveboard" 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 liveboards are authorized by paragraph one (1) of this lease, in no event shall such "liveboard" 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 with 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 # CC974568 EXPIRES  
October 11, 2004  
BOROED THROUGH 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 Avasel  
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 26th day of August, 2004, by  
Julio Avasel 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. Bates  
Notary Signature

Notary Public, State of Florida

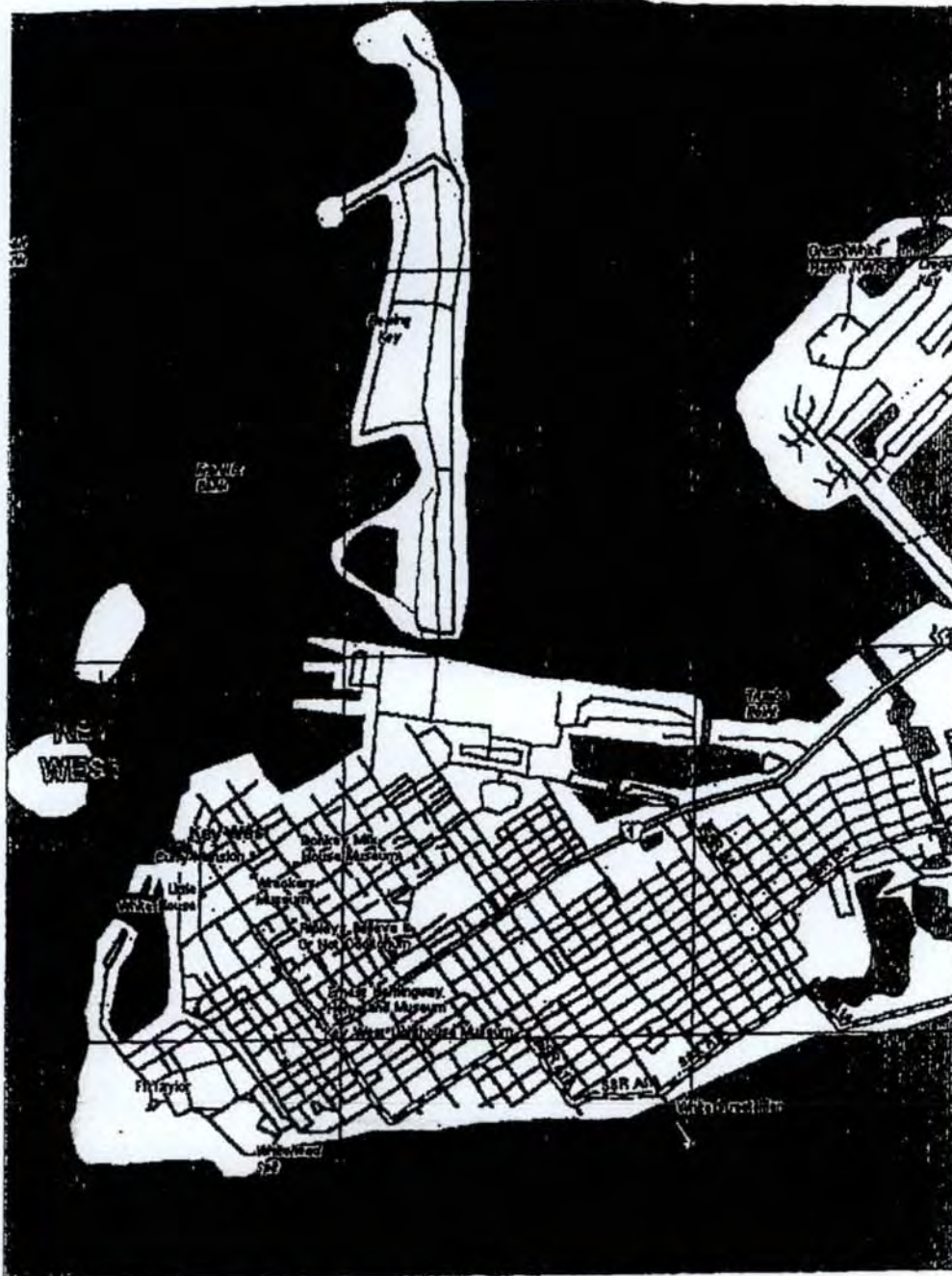
Maria G. Bates  
Printed, Typed or Stamped Name

# Survey



# LOCATION MAP

Doc# 1493547  
Bk# 2080 Pg# 944



J.S.G.S. QUAD: KEY WEST

RECEIVED  
OCT 06 2000

Sheet 1 of 3

of Key West  
West Bight

ific Purpose Survey		Dwn No. 00-356	
erged Land Lease		Dwn. By: F.H.H.	
1"=80'	Ref. file	Flood panel No. 1716 H	Flood Elev.
1/08/00		Flood Zone:	
REVISIONS AND/OR ADDITIONS			
2: revise lease area			

D.E.P. Marathon

FREDERICK H. HILDEBRANDT  
ENGINEER PLANNER SURVEYOR

315  
Sult  
Key  
(30)  
Fax

Attachment A  
Page 6 of 12 Pages  
SL No. 440769265

**LEGAL DESCRIPTION:**

A parcel of submerged land adjacent to Lots 1,2,3,4 and 5 of 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: Commencing at the intersection of the Westerly right-of-way boundary line of Wall Street with the Southerly right-of-way boundary line of Whitehead Street and running thence North 70°27'37" West along the said right-of-way line of Whitehead Street for a distance of 297.87 feet to the Point of Beginning; thence continue North 70°27'37" West for a distance of 212.13 feet; thence North 19°32'23" East for a distance of 664.0 feet; thence South 70°27'37" East for a distance of 145.0 feet to a point on the outside face of a concrete seawall and the Mean High Water line of the Gulf of Mexico; thence South 20°20'28" West along the said seawall and Mean High Water line for a distance of 150.0 feet; thence South 70°26'15" East along the said seawall and Mean High Water line for a distance of 37.09 feet; thence South 19°32'23" West along the said seawall and Mean High Water line for a distance of 464.0 feet; thence south 70° 27'37" East along the said Mean High Water line for a distance of 20.87 feet; thence South 16° 57'32" West along the said Mean High Water line for a distance of 50.05 feet back to the Point of Beginning. Contains 115,663 square feet, more or less.



**SURVEYOR'S NOTES:**

North arrow based on assumed median  
 reference Bearing: Previous Deed  
 3.4 denotes existing elevation  
 elevations based on N.G.V.D. 1929 Datum  
 Bench Mark No.: Basic Elevation: 14.324

**Monumentation:**

▲ = Found P.K. Nail, P.L.S. No. 2749

**Abbreviations:**

y. = Story  
 /W = Right-of-Way  
 = Plat  
 = Measured  
 = Deed  
 t.W. = Mean High Water  
 xc. = Section  
 tp. = Township  
 ge. = Range  
 T.S. = Not to Scale  
 = Centerline  
 lev. = Elevation  
 .M. = Bench Mark  
 □ = Concrete Utility Pole  
 ○ = Wood utility Pole  
 -○ = Wood Utility Pole

o/h = Overhead  
 u/g = Underground  
 F.F.L. = Finish Floor Elevation  
 conc. = concrete  
 C.B.S. = Concrete Block Stucco  
 cov'd. = Covered  
 wd. = Wood  
 A/C = Air Conditioner  
 P.O.C. = Point of Commence  
 P.O.B. = Point of Beginning  
 P.B. = Plat Book  
 \* = Light

-20.0 Denotes depth of  
 Water at Mean  
 Low Water  
 Mean Low Water (-) 0.4  
 Mean High Water 0.90

Doc# 1493847  
 Bkn 2888 Pg# 945

Field Work performed on: 7/1/00

Concrete Seawall +1000 feet South, 800'± North, also Riprap and sandy Beach (Pier House)  
 1/2 L.F. Lies along State Owned Lands  
 Legal Description from I.I.T.F., No. 440769265, revised 8/10/00

**CERTIFICATION:**

I HEREBY CERTIFY that the attached Specific Purpose Survey, Submerged Land lease true and correct to the best of my knowledge and belief; that it meets the minimum technical standards adopted by the Florida Board of Land Surveyors, Chapter 61G17-8, Florida Statute, Section 472.027, and the American Land Title Association, and that there are no visible encroachments unless shown hereon.

FREDERICK H. HILDEBRANDT  
 Professional Land Surveyor & Mapper No. 2749  
 Professional Engineer No. 36810  
 State of Florida

RECEIVED

NOV 06 2000

KEY WEST PLANNING DEPT.

NOT VALID UNLESS EMBOSSED WITH RAISED SEAL & SIGNATURE

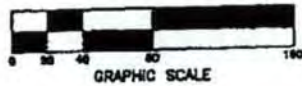
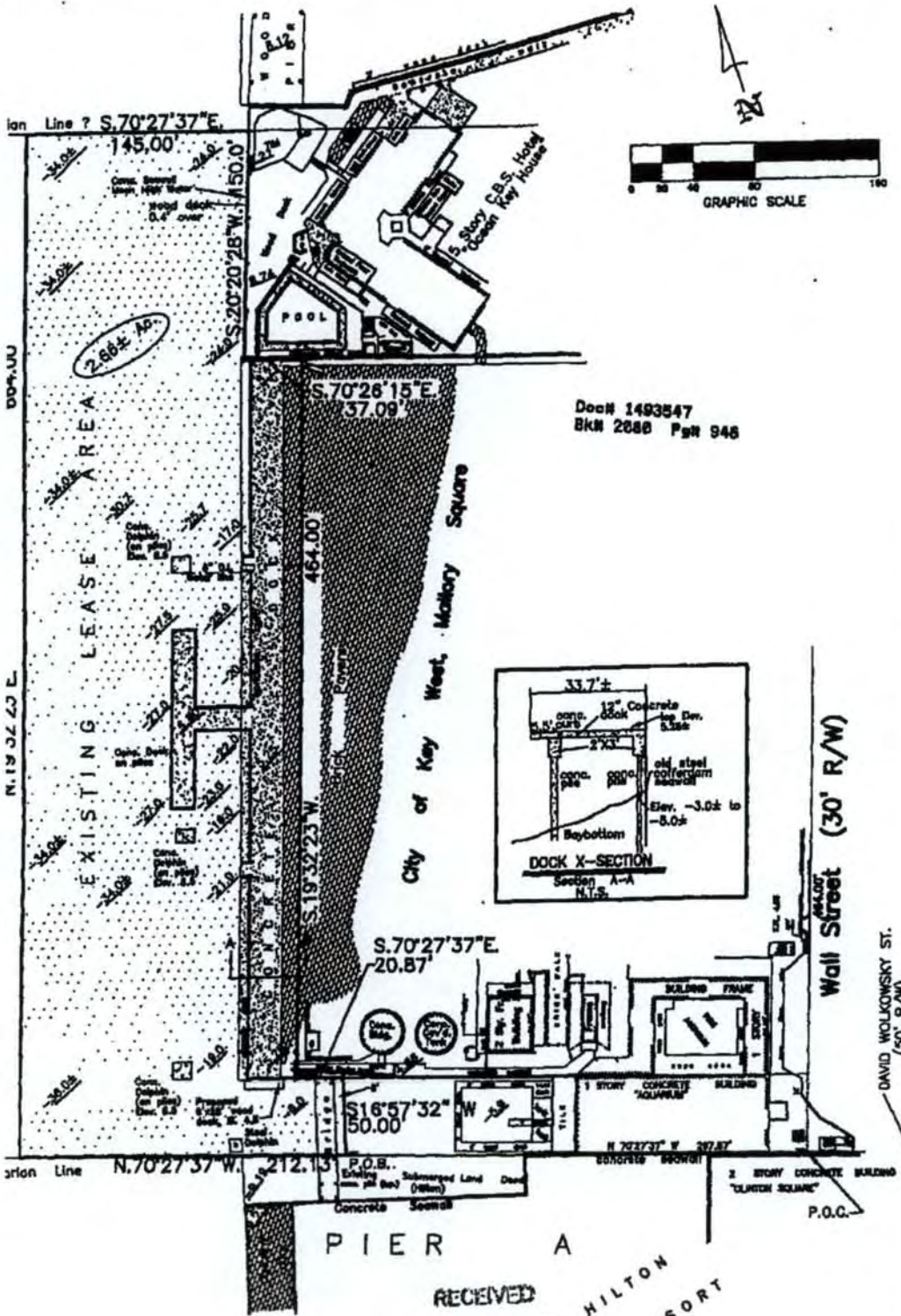
Sheet 3 of 3

of Key West of West Bight		Specific Purpose Survey Submerged Land Lease		Draw No.: 00-356
1"=80'	Ref. file	Flood panel No. 1716 H	Drawn By: F.H.H.	
3/08/00		Flood Zone:		
REVISIONS AND/OR ADDITIONS				
X: revise lease area				
of keywest/bight				

**FREDERICK H. HILDEBRANDT**  
**ENGINEER PLANNER SURVEYOR**

3150 Northside Drive  
 Jite 101  
 Key West, FL 33040  
 (305) 293-0466  
 fax. (305) 293-0237

Attachment A  
 Page 7 of 12 Pages  
 SL No. 440769265



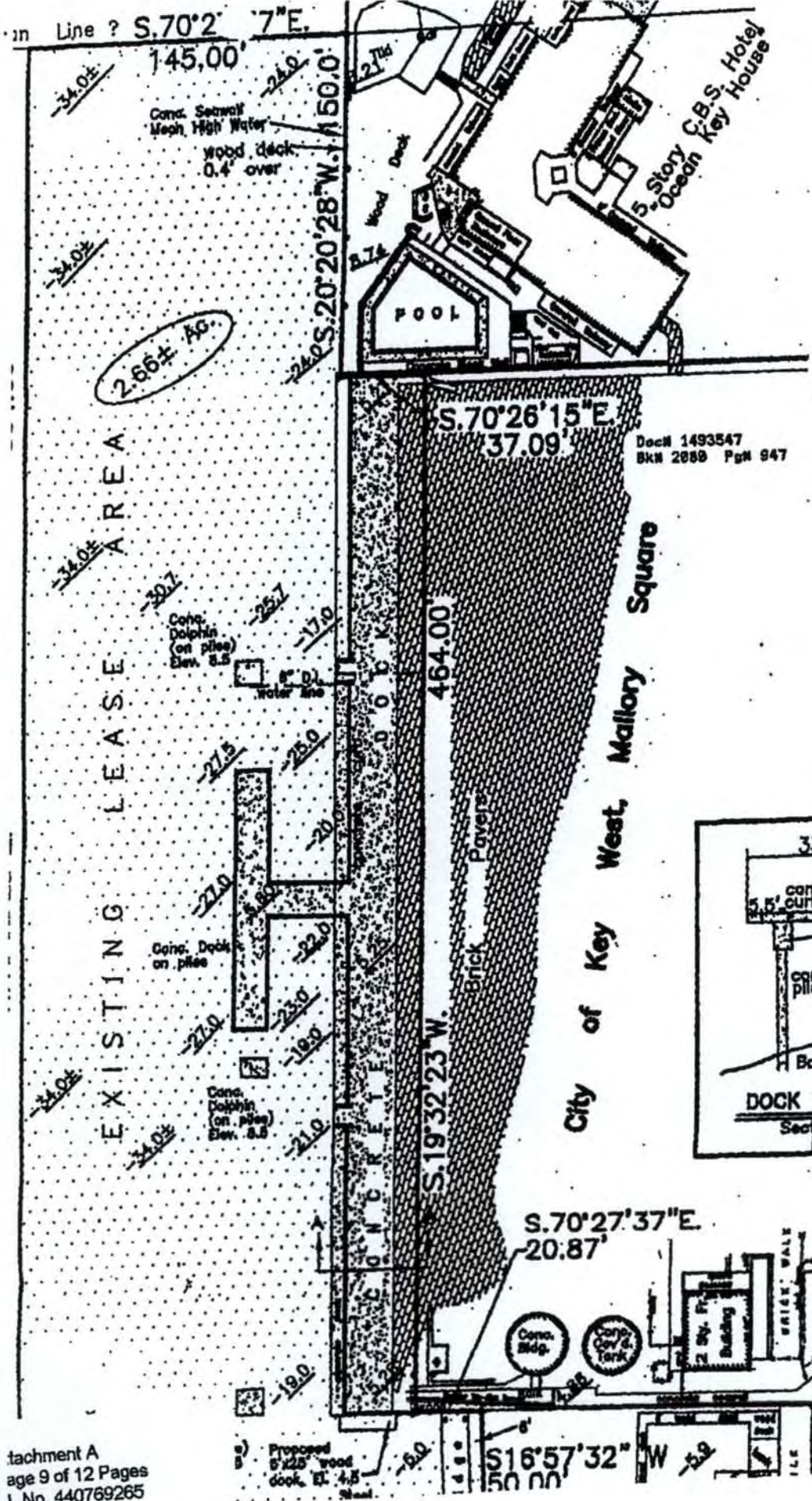
RECEIVED  
OCT 06 2009  
HILTON  
RESORT

Sheet 2 of 3

of Key West West Harbor, Mallory Square			
fic Purpose Survey arged Land Lease		Own No.: 00-356	
1"=80'	Ref. file	Flood panel No. 1716 H	Own. By: F.H.H.
7/27/00		Flood Zone:	Flood
REVISIONS AND/OR ADDITIONS			
: revise lease area			
f Key West/Mallory Lease			

**FREDERICK H. HILDEBRANDT**  
ENGINEER PLANNER SURVEYOR  
3150 Northside Drive  
11  
L. Fl. 33040  
33-0466  
5) 293-0237

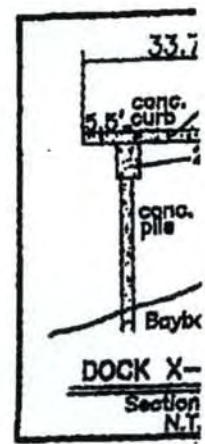
Attachment A  
Page 8 of 12 Pages  
SL No. 440769265



2.66± AC.

EXISTING LEASE AREA

Doc# 1493547  
BKN 2888 Pgn 947



Attachment A  
Page 9 of 12 Pages  
L No. 440769265

Proposed  
6'x25' wood  
dock, El. 4.5

S16°57'32" W  
150.00'