

RESOLUTION NO. 00-43

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED AGREEMENT BETWEEN THE CITY AND THE TRIUMAN ANNEX MASTER PROPERTY OWNERS' ASSOCIATIONN (TAMPOA); PROVIDING FOR AN EFFECTIVE DATE

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

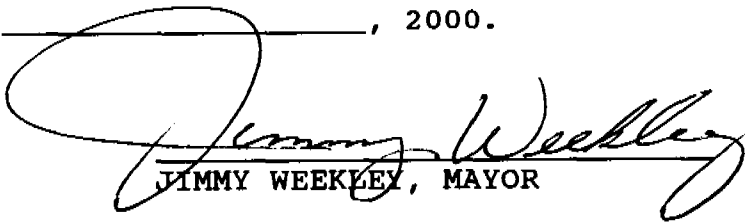
Section 1: That the attached Agreement between the City and TAMPOA is hereby approved.

Section 2: 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 20TH day of JANUARY, 2000.

Authenticated by the presiding officer and Clerk of the Commission on JANUARY 21, 2000.

Filed with the Clerk _____, 2000.


JIMMY WEEKLEY, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

AGREEMENT

THIS AGREEMENT ("Agreement") is binding on the "effective date" as set forth herein, between the City of Key West ("City"), as a political subdivision of the State of Florida, and the Truman Annex Master Property Owners' Association ("TAMPOA"), as the legal or equitable owner and/or developer of certain properties in Florida, its successors and assigns.

WITNESSETH:

WHEREAS, TAMPOA is the property owners' association which represents the owners of real property within the residential portions of the Truman Planned Residential Development, with the exception of the Shipyard's Condominium Association, which is located in the City of Key West, and whose function and powers are described in bylaws filed and recorded with the Monroe County Clerk;

WHEREAS, the City of Key West is a chartered city within the State of Florida empowered to enter into agreements to protect the general health, safety and welfare of its citizens;

WHEREAS, the City has adopted a Naval Properties Base Reuse Plan ("Plan") for the Truman Annex Waterfront Area ("Waterfront"), and other Navy-owned properties as provided by Florida Statute § 288.975;

WHEREAS, the City Comprehensive Plan and Land Development Regulations for Truman Annex Waterfront area together with the data and analysis documents supporting the proposed amendments recognizes that access to and from the Waterfront will pass through property owned by members of TAMPOA and has the possibility of negatively impacting their properties;

WHEREAS, TAMPOA has filed two petitions challenging the Plan pursuant to its concerns for possible impacts on the properties of its members, including the City's proposed method of

access to the Waterfront and the method of mitigating the impacts therefrom;

WHEREAS, TAMPOA desires to affirm its commitment to allowing public access to its properties pursuant to the terms of the Twelfth Amended Development Agreement;

WHEREAS, both the City and TAMPOA wish to avoid further conflict and litigation regarding the City's right to access and the impacts of the access on the TAMPOA properties; and

WHEREAS, the City finds that this Agreement furthers the purposes of the City's Comprehensive Plan and is authorized to enter this Agreement by City Code of Ordinances.

NOW THEREFORE, the parties do hereby agree as follows:

I. Recitations of Facts and Mutual Commitments

The above recitations and representations are true and correct and are incorporated herein by this reference.

II Duration of Agreement

This Agreement shall remain in effect until such time as the City ceases to provide access to the Waterfront through properties owned or managed by the members of TAMPOA, its successors and assigns or until such time as amended by both parties in writing.

III. Requirements for and Limitations on Access to the Waterfront

For the duration of this Agreement, the Parties agree that any and all of the access to the Waterfront approved by the City shall adhere to and conform to this Agreement.

1. Within two (2) years of the City acquiring the Waterfront property, the City shall create and fully implement the following vehicular, pedestrian and bicycle access points to the Waterfront property:

- A. The City shall provide ingress and egress by way of Fort Street through Olivia Street;
- B. The City shall provide ingress through Petronia Street; and
- C. The City shall provide ingress and egress by way of Truman Avenue to Fort Street.

Additionally, the City shall erect signage directing vehicular traffic to use Truman Avenue, Petronia Street, and Olivia Street for ingress and egress to and from the Waterfront property.

- 2. TAMPOA will convert its section of Southard Street to a one-way egress only from the Waterfront property upon the completion of any development other than infrastructure having traffic impact on TAMPOA's property (i.e. retail, commercial or residential units on the Waterfront property) or after 5 years of the City acquiring the Waterfront property, which ever occurs first. TAMPOA's residents shall continue to have the right of ingress on the section of Southard Street owned by TAMPOA through controlled gates. Emergency vehicles shall have the right of ingress on the section of Southard Street owned by TAMPOA for the duration of this Agreement. The trains and trolleys owned by Historic Tours of America, Inc. or its subsidiaries, or its successors, shall have the right of ingress on the section of Southard Street owned by TAMPOA. No other vehicles will have the right of ingress on the section of Southard Street owned by TAMPOA after the conversion described in this paragraph.
- 3. TAMPOA will have the option of using Eaton Street as a vehicular entrance and/or

exit to and from TAMPOA exclusively for its homeowners. The City will be provided emergency access on Eaton Street from Whitehead Street to Front Street and down Front Street between Eaton and Southard Streets. Access for pedestrian and bicycle traffic also will be permitted along Eaton Street between Whitehead Street and Front Street. Under no circumstances will the Eaton Street right of way beyond Front Street be used as any type of public or emergency ingress or egress to and from the Waterfront property.

4. Construction vehicles shall have access to the section of Southard Street owned by TAMPOA only between the hours of 7:00 a.m. and 6:00 p.m. Access by construction vehicles on the said section of Southard Street shall be subject to all other provisions of this Agreement.
5. Within two (2) years of the City acquiring the Waterfront property, TAMPOA shall have the right to prohibit any access, including but not limited to vehicular, pedestrian and bicycle traffic, to the section of Southard Street owned by TAMPOA from 11:00 p.m. to 7:00 a.m., except for a reasonable number of scheduled special events and except for emergency vehicles.

IV. Public Health, Safety and Welfare

Exclusive of any others, except those imposed by law, the following additional conditions, terms, restrictions, or other requirements are also determined by the City of Key West to be necessary for the public health, safety, or welfare of its citizens:

1. Breach of Agreement and Cure Provisions

Upon a party's material breach of the terms and conditions of this

Agreement, the non-breaching party may serve written notice on the breaching party via certified mail, return receipt requested, and shall provide the breaching party the opportunity, within sixty (60) days of receipt of notice, to cure the breach. In the event the breaching party fails to cure the material breach within sixty (60) days, the non-breaching party may seek injunctive relief and any other damages to which it is entitled by filing an action in the Circuit Court of Monroe County to enforce the terms of this Agreement.

2. Amendment of Agreement

The parties hereto shall at all times adhere to the terms and conditions of this Agreement. It is further agreed that no modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document approved and executed by the parties.

3. State and Federal Law

If state or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, this Agreement shall be modified as is necessary to comply with the relevant state or federal laws; however, this Agreement shall not be construed to waive or supersede any contention under law that TAMPOA has acquired vested rights under prior law.

V. Additional Provisions

A. Recording

The City of Key West shall record this Agreement with the Clerk of the

Circuit Court of Monroe County within fourteen (14) days following signature by all parties. Recording fees shall be paid by the City.

B. Entire Agreement

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in or incorporated into this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

C. Severability

If any part of this Agreement is contrary to, prohibited by, or deemed invalid under any applicable law or regulation, such provisions shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid; however, the remainder here shall not be invalidated thereby and shall be given full force and effect.

D. Governing Law

This Agreement shall be construed and interpreted under the laws of the State of Florida.

E. Successors and Assigns

This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives.

F. Notices

All notices, demands, requests, or replies provided for or permitted by this Agreement shall be in writing and shall be delivered by deposit with the United States Postal Service as certified mail, return receipt requested, postage prepaid, to the addresses stated below. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the United States Postal Service. For purposes of notice, demand, request, or replies, the address of the City of Key West shall be:

City Manager
City of Key West
525 Angela Street
Key West, Florida 33040

The address of TAMPOA shall be:

Truman Annex Master Property Owner's Association, Inc.
President
201 Front Street, Suite 103
Key West, Florida 33040

G. Titles and Captions

All article and section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

H. Pronouns

All pronouns and variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or

persons may require.

I. Further Action

The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of the Agreement.

J. Counterparts

This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

K. Agreement Shall Not be Construed Against Any Party

This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

L. Third Party Beneficiaries

Nothing herein shall be construed to be for the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

M. Effective Date

The effective date of this Agreement shall be the date the Agreement is approved by the City of Key West City Commission and the Board of Directors of Truman Annex Master Property Owners' Association.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below written.

Signed, sealed, and delivered in the presence of:

Witnesses:

TAMPOA

(FLORIDA)

STERLING J. CHRISTIAN
Printed Name

[Signature]
Signature

By:

[Signature]
President

DAVID J. PFEUT
Printed Name

Bertrice Christensen
Printed Name

Dated: 1/20/00

[Signature]
Signature

STATE OF FLORIDA

COUNTY OF MONROE

The foregoing instrument was acknowledged before me on this 20th day of January, 2000, by David J. Pfeut, the President of TAMPOA, on behalf of the Association. He is personally known to me and did not take an oath.

[Signature]
Notary Public

Joy Delgado
Printed Name

My commission expires:

APPROVAL OF THE CITY OF KEY WEST

On the 20 day of January, 2000, the City of Key West Commission approved this Agreement by Resolution No. 00-43.

ATTEST

CITY OF KEY WEST, FLORIDA

Cheryl Smith
Cheryl Smith, City Clerk

By: Jimmy Weekley
Jimmy Weekley, Mayor

MEDIATION SETTLEMENT AGREEMENT

THIS MEDIATION SETTLEMENT AGREEMENT (hereinafter referred to as the "Agreement") between the City of Key West (hereinafter referred to as "CITY"), a municipal corporation of the State of Florida, and the Truman Annex Master Property Owners' Association, Inc., a Florida corporation (hereinafter referred to as "TAMPOA"), a legal or equitable owner and/or representative of certain properties located in the City of Key West, Florida (both "City" and "TAMPOA" shall be hereinafter referred to collectively as the "Parties" and may individually be referred to as a "party"), as well as each of the Parties' successors and assigns.

R E C I T A L S

WHEREAS, TAMPOA is the property owners' association which represents the owners of real property within the Truman Planned Residential Development (hereinafter referred to as "TRUMAN ANNEX") with the exception of the Shipyard's Condominium Association, and whose function and powers are described in those bylaws of TAMPOA filed and recorded in the public records of Monroe County, Florida;

WHEREAS, the CITY is a municipality organized and existing under the laws of the State of Florida and, among other things, is empowered to enter into agreements to settle the litigation described herein and to protect the public health, safety and welfare of its citizens;

WHEREAS, TAMPOA has filed an action for damages, specific performance and other relief against the CITY which is styled *Truman Annex Master Property Owners' Association vs. City of Key West* (Case No. 44-2006-CA-55-K) in the Sixteenth Judicial Circuit, Monroe County, Florida; and has also filed a separate action styled *Truman Annex Master Property Owners' Association v. City of Key West and United States of America* (Case No. 07-10033-CIV-MOORE) in the United

States District Court, Southern District of Florida (hereinafter collectively referred to as the "Lawsuits");

WHEREAS, true and correct copies of those pending complaints in both of the LAWSUITS are attached hereto and incorporated herein as "Exhibit A" and "Exhibit B" respectively for reference;

WHEREAS, by entering into this Agreement, the CITY and TAMPOA wish to fully and finally resolve all pending issues between the CITY and TAMPOA with regard to the Lawsuits.

WHEREAS, all times set forth herein shall be local time.

WHEREAS, unless otherwise specifically stated, this Agreement contains the entirety of the terms of the Agreement by and between the Parties with regard to the subject matter of the Agreement.

NOW THEREFORE, the parties do hereby agree as follows:

I. Recitations of Facts and Mutual Commitments

The above recitations and representations are true and correct and are incorporated herein by reference.

II. Southard Street Access

TAMPOA agrees to execute an access easement in favor of the CITY to provide ingress and egress over the portion of Southard Street described in "Exhibit C" (hereinafter referred to simply as "Southard Street") according to the terms, more fully set forth below:

A. During the hours of 6:00 a.m. and 10:00 p.m., there shall be unrestricted access by the public over and across Southard Street for purposes of ingress and egress to and from the Waterfront property described in "Exhibit D" (hereinafter referred to simply as Waterfront)

B. Nothing in this Agreement shall be construed to allow, authorize or permit any non-residents of TAMPOA to have access to the remaining properties of TAMPOA. Instead, this Agreement is specifically intended to allow, authorize and permit persons to have access to and utilize an easement over and across Southard Street to provide ingress and egress to properties beyond TAMPOA including the Waterfront, the United States Navy Base, and Fort Zachary Taylor Historic State Park.

C. During the hours of 10:00 p.m. and 6:00 a.m., only the following persons shall be allowed access over and across Southard Street for purposes of ingress and egress to and from the Waterfront:

- (1) City employees;
- (2) Marina guests;
- (3) Residents, guests, and employees of approved developments located within the Waterfront;
- (4) Employees and guests of the NOAA facility; and
- (5) Persons attending CITY approved special events at the Waterfront.

D. TAMPOA shall have the right, at its option and at its sole expense, to construct, maintain and man gates and/or guard booths at either or both ends of Southard Street. Each such gate(s) and/or guard booth(s) will be manned during any hours between 10:00 p.m. and 6:00 a.m. that the gates are closed to ensure access to those persons listed in Paragraph C. The gates and/or guard booths will not be manned between 6:00 a.m. and 10:00 p.m. except for the purpose of providing information to motorists and pedestrians who request information.

E. Regardless of TAMPOA's rights to construct, maintain and man such gates and/or guard booths, TAMPOA shall be required to comply with the requirements of allowing ingress and egress by authorized persons as defined herein.

F. As used in this Agreement "unrestricted access" shall mean that any gates constructed, maintained and manned by TAMPOA on Southard Street shall be in the open position and ingress and egress over and across Southard Street shall be permitted to all persons. However, during restricted times between 10:00 p.m. (EST) and 6:00 a.m. (EST), TAMPOA shall be permitted to have such gates in the closed position, to have the gates and/or guard houses manned with personnel paid for by TAMPOA, to make reasonable inquiry of those persons utilizing the easement to ensure that such persons are within the category of persons authorized to have such access, to deny access to any persons who do not fall within the categories of authorized persons as specifically set forth herein, and to engage in all actions reasonably necessary to accomplish the terms of this Agreement.

G. In consideration of this Agreement and in light of the traffic that will utilize the easement over and across Southard Street, CITY hereby agrees to be solely responsible for the maintenance of Southard Street, excepting only the gates and/or guards houses to be constructed, maintained and/or manned by TAMPOA. For purposes of establishing a standard by which maintenance shall be required, the parties acknowledge that the CITY shall be required to maintain Southard Street in the same manner as Southard Street is currently maintained including the same materials as currently exist on Southard Street (by way of example and not as an exhaustive reference, CITY shall use brick pavers of same quality, color and appearance). All maintenance shall be performed in a prompt manner to ensure that the structure and appearance of Southard Street is

properly maintained. CITY's responsibility for maintenance and repair shall also include, but shall not be limited in any way to, repair/replacement of underground utilities of any kind, repair/replacement of brick pavers, repair/replacement of all asphalted areas of Southard Street, repair/replacement of all concrete areas of Southard Street, and all other maintenance, repairs and replacement measures that may be required to keep Southard Street in the same condition it exists as of the Effective Date of this Agreement. TAMPOA will be responsible for the maintenance, staffing and repair of any gates and/or guard houses constructed at any location along Southard Street. The "Access Easement " to be executed by TAMPOA is attached as Exhibit "E".

III. "Waterfront" Property Traffic Ways Plan

The CITY agrees to provide at a minimum one road with ingress and one road with egress to and from the "waterfront" property, in addition to the ingress and egress provided by TAMPOA on Southard through its' easement not later than 180 days from date this Agreement is executed by the CITY.

IV. Settlement of the Lawsuits

CITY and TAMPOA shall execute Stipulations for the entry of Final Orders of Dismissal as to each other, which will provide for the Courts' approval for this Agreement and which will further provide that the Courts retain jurisdiction to enforce the terms of the Agreement. If either party to this Agreement shall be required to incur attorney's fees and/or costs in enforcing this Agreement, the prevailing party in any action to so enforce this Agreement shall be entitled to an award of attorney's fees and costs, in addition to any and all other remedies awarded. All disputes regarding enforcement as to the meaning of terms within the agreement shall be resolved by expedited binding arbitration. The Parties shall mutually agree upon an arbitrator and, if unable to agree, shall each

select an arbitrator of their own choice and such arbitrators shall then mutually agree upon a third person to act as arbitrator. This arbitrator will be a standing arbitrator and available to hear arguments on issues of dispute and issue an opinion on issues of enforcement of this agreement within one week. For purposes of proceeding with arbitration, the parties shall initially be required to equally divide any and fees and costs of the arbitrator in conducting the proceedings; however, the prevailing party at any arbitration shall be entitled to reimbursement of any and all such fees and costs, in addition to any other award. With regard to attorney's fees and costs incurred to date and through the administration and implementation of this Agreement, and conditioned upon this Agreement being actually approved and implemented, each party shall bear its own attorney's fees and costs to date. The Stipulations for Final Order of Dismissal and proposed Final Order of Dismissal are attached hereto as "Exhibit F" through "Exhibit H" respectively. The Parties also acknowledge and agree that there may remain disputes by and between TAMPOA and the United States of America and/or United States Navy regarding Southard Street and/or other issues. CITY and TAMPOA specifically acknowledge and agree that the existence of any dispute by and between TAMPOA and the United States of America and/or United States Navy shall not have any affect on this Agreement, its enforcement or the relationship between TAMPOA and City as provided herein.

V. Easement For Southard Street

As part of this Agreement, TAMPOA shall execute an easement in favor of CITY over and across Southard Street, which said easement shall comport with the terms of this Agreement. A copy of the easement executed by TAMPOA and to be recorded is attached hereto as "Exhibit I".

VI. Entire Agreement

The CITY and TAMPOA specifically acknowledge that they have the right and power to enter into this agreement. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in or incorporated into this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

VII. Severability

The provisions of this Agreement are declared to be severable, and if any portion, clause or phrase of this Agreement is held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions, sentences, clauses, and phrases of this Agreement, but they shall remain in effect, if the intent of the parties that disagreement shall stand notwithstanding the invalidity of any part.

VIII. Governing Law

This Agreement shall be construed and interpreted under the laws of the State of Florida.

IX. Successors and Assigns

This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns and personal representatives.

X. Attorney's Fees and Costs

As set forth herein, attorney's fees and costs shall be paid to the prevailing party in the event of legal action to enforce any of the provisions of this Agreement.

XI. Notices

All notices, demands, requests, or replies provided for or permitted by this Agreement shall be in writing and shall be delivered by deposit with the United States Postal Service with postage prepaid, to the addresses stated below. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the United States Postal Service. For purposes of notice, demand, request, or replies, the address of the CITY shall be:

City Manager
City of Key West
525 Angela Street
Key West, Florida 33040

The address of TAMPOA shall be:

Truman Annex Master Property Owners' Association, Inc.
President
201 Front Street, Suite 103
Key West, Florida 33040

XII. Titles and Captions

All article and section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

XIII. Pronouns

All pronouns and variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.

XIV. Further Action

The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purpose of the Agreement.

XV. Counterparts

This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

XVI. Agreement Shall Not be Construed Against Any Party

This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

XVII. Third Party Beneficiaries

Nothing herein shall be construed to be for the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

XVIII. Time Is Of The Essence

With regard to the provisions of this Agreement, the parties acknowledge and agree that time is of the essence.

XIX. Effective Date

The Effective Date of this Agreement shall be the date the Agreement is approved by the City of Key West City Commission and the Board of Directors of Truman Annex Master Property Owners' Associations.

City of Key West:

By: [Signature]
Its: _____

3/4/08
Date

**Truman Annex Master Property Owners'
Association, Inc., a Florida corporation:**

[Signature]
By: THOMAS B. TRIMET
Its: PRESIDENT

2/18/08
Date