# RESOLUTION NO. 23-242

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

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

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

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

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

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

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

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

Passed and adopted by the City Commission at a meeting held this

14th day of September , 2023.

Authenticated by the Presiding Officer and Clerk of the Commission on <a href="Inline">14th</a> day of <a href="September">September</a>, 2023.

Filed with the Clerk on September 14 , 2023.

Mayor Teri Johnston

Vice Mayor Sam Kaufman

Commissioner Lissette Carey

Commissioner Mary Lou Hoover

Commissioner Clayton Lopez

Commissioner Billy Wardlow

Commissioner Jimmy Weekley

Yes

Yes

TERI JOHNSTON, MAYOR

ATTEST:

KERI O'BRIEN, CITY CLERK

Page 2 of 2



## **MEMORANDUM**

Date:

September 14, 2023

To:

Honorable Mayor and Commissioners

Via:

Albert P. Childress

City Manager

From:

Steve McAlearney

Director, Port & Marine Services

Subject:

Approving Agreement with Ocean Key Resort to Secure Conditional Consent for

Sovereign Submerged Lands Lease for Mallory T-Pier

### Introduction

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

### Background

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

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

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

### **Procurement**

There is no cost to renew this agreement.

### Recommendation

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



KEY WEST I A NOBLE HOUSE RESORT

August , 2023

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

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

Dear Mr. Childress:

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

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

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

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

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

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

Best Regards,

OCEAN KEY RESORT & SPA
SEABOARD ASSOCIATES LIMITED PARTNERSHIP

Johan Amneus General Manager

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

Received and agreed to by;

Name



# FLORIDA DEPARTMENT OF Environmental Protection

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

Jeanette Nuñez Lt. Governor

Shawn Hamilton Secretary

October 7, 2022

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

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

Dear Mr. McAlearney:

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

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

Thank you for your continued cooperation in this matter.

Sincerely,

Jason Andreotta

Director of District Management

Southeast District Office

Enclosure: Temporary Use Agreement Addendum

## TEMPORARY USE AGREEMENT ADDENDUM BOT # 440769265

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

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

The parties hereto, then, agree as follows:

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

Executed on the date first written above.

CITY OF KEY WEST

Original Signature

Printed/Typed Name

Title

Temporary Use Agreement Addendum BOT No. 440769265 Page 2 of 2

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

By:

Jason Andreotta

Director of District Management,
Department of Environmental Protection, as agent for and on behalf of the Board of
Trustees of the Internal Improvement Trust
Fund of the State of Florida

# **QPublic.net** Monroe County, FL



Parcel ID Sec/Twp/Rng 00000170-000000

06/68/25

Property Address 402 WALL St **KEY WEST** 

District

**10KW** 

**Brief Tax** KW PT LOTS 2-3-4-5 SQR 3 G64-274-275 (CULTURAL PRESERVATION SOCIETY INC-LEASE) OR1338-417/37(II LEASE) OR1623-

PO Box 1409

Key West, FL 33041

**MUNICIPAL** 

Description 215/229(II LEASE) OR2080-939/950(II LEASE)

(Note: Not to be used on legal documents)

Class

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

Developed by Schneider

BOT No. 440769265 Exhibit A

# CONSERT TO LEASE IN ORDER TO ALLOW USE DE RIPARIAN RIGHTS

whereas Ocean Key House Associates, a Pennsylvania limited Partnership, owns riparian rights which include free and unobstructed view regarding the area designated as parcel "B," on the attached survey, and

HHEREAS the City of Rey Mest, a municipality, is desirous of leasing Parcel "B" from the Florida Board of Trustees of the Internal Improvement Trust Fund, and

WHEREAS Open Key House Associates acknowledges that periodically some cruise ships docked at the Mallory Square Co 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 Percel "B".

Attachment A Page 11 of 21 Pages SSLL No. 440769265

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BE IT FURTHER RESOLVED, that this consent to lease is for the full term of the submerged lands Lease by Florida's Trustee's of the Internal Improvement Trust Fund to the City of Key West, including renewals of that lease.

IN WITNESS WHEREOF the said corporation has caused this document to be executed in its name and duly authorized this day of April, 1989.

BEREL ALTMAN, General Partner Ocean Key House Associates, Partnership

· STATE OF

COUNTY OF

I HERRBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take - acknowledgements, personally appeared BEREL ALTMAN Ocean Rey House Associates, and that he acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested.

WITNESS my hand and official seal in the County and State last aforesaid this s day of me, 1989.

ماجتر ومسالين Notery Public State of

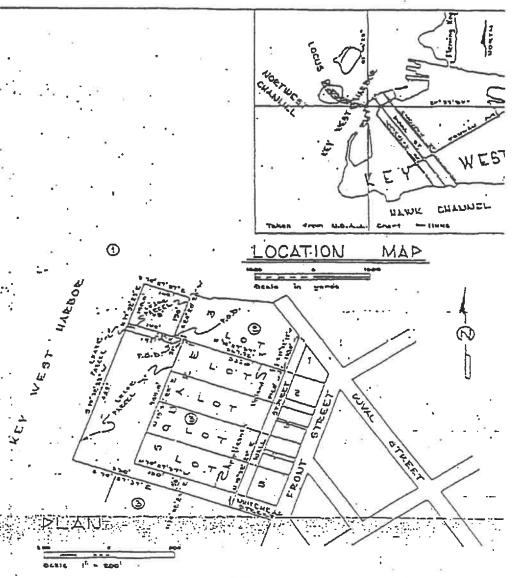
- My Commission Expires:

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AG7615BB

Attachment A Page 12 of 21 Pages SSLL No. 440769265



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ADDACENT PROPERTY ORNERS:

1. State of Florida 
1. Reflections

2. City of Key Hest

COURTY OF: Mentoe

STATE 'OF: Florida

Attachment A Page 13 of 21 Pages SSLL No. 440769265

Joe M. Trice Princesional Land Surveyor Plorida Rec. Cert. /1110

# RESOLUTION NO. 89-103

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

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

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

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

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

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

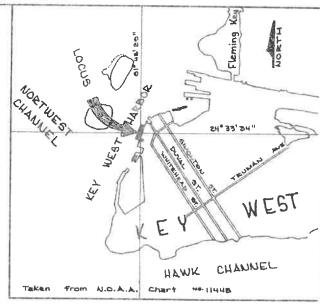
Section 2. Ocean Key House, in consideration for the above benefit, shall execute a Consent to Lease form granting the City permission to apply for a lease of a certain parcel of submerged land, designated as Lease Parcel 'B' on the attached survey performed by Joe M. Trice and dated May 18, 1984.

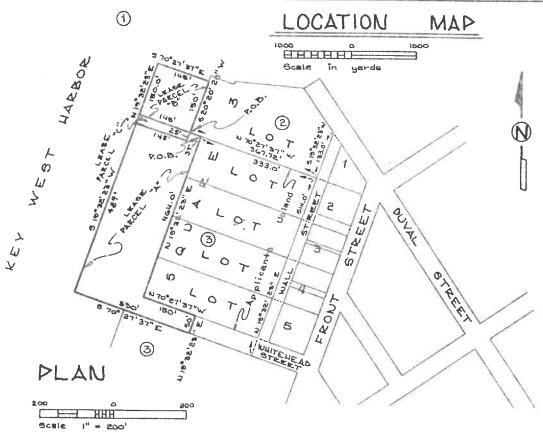
89-103

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

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

ATTEST:





Proposed leases of 121,927 square feet of submerged land. PURPOSE:

ADJACENT PROPERTY OWNERS:

- State of Florida Reflections

City of Key West

COUNTY OF: Monroe

STATE OF: Florida

August 15, 1984 Key West, Florida

Prepared by: PHILLIPS & TRICE SURVEYING, INC.

Joe M. Trice

Professional Land Surveyor Florida Reg. Cert. #2110

SHEET ONE OF TWO

DESCRIPTION OF: PARCEL "A"

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

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

#### DESCRIPTION OF: PARCEL "B"

LEGAL DESCRIPTION: A parcel of submerged land adjacent to Lot 1, Square 3, William A. Whitehead's Map or Plan of the Island of Key West, Monroe County, Florida, being more particularly described by metes and bounds as follows: COMMENCE at the intersection of the Westerly right-of-way boundary line of Wall Street with the Westerly right-of-way boundary line of Duval Street and run thence along the said right-of-way line of Wall Street South 19° 32' 23" West for a distance of 133.00 feet to a point; thence North 70° 27' 37" West for a distance of 367.72 feet to a point on the Mean High Water Line of the Gulf of Mexico, said point being the Point of Beginning of the parcel of submerged land herein described; thence continue North 70° 27' 37" West for a distance of 145.00 feet to a point; thence North 19° 32' 23" East for a distance of 150.00 feet to a point; thence South 70° 27' 37" East for a distance of 145.00 feet to a point on the Mean High Water Line of the Gulf of Mexico; thence South 20° 20' 28" West along the said Mean High Water Line for a distance of 150.00 feet to the Point of Beginning, containing 21,907 square feet, more or less.

### DESCRIPTION OF: PARCEL "C"

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

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

### Keri O'Brien

From: Arlo Haskell <arlohaskell@gmail.com>
Sent: Wednesday, July 12, 2023 1:18 PM

To: Jimmy Weekley; Billy Wardlow; Samuel Kaufman; Clayton Lopez; Teri Johnston; District IV; Mary Lou

Hoover

Cc: Albert Childress; Steven P. McAlearney; Katie P. Halloran; Keri O'Brien; David Dunn; Evan Haskell;

Willy Benson

**Subject:** [EXTERNAL] SCS comment on 3 Mallory agenda items

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Keri — please attach this comment to related agenda items 31, 35, and 44. Thank you.

### Dear Mayor & Commissioners:

We write today regarding three related items on this week's agenda: the Contract Modification for the Mallory Square Master Plan; the Time Extension Amendment for the Mallory T-Pier; and the Consent Agreement with Ocean Key House regarding submerged lands near Mallory Square.

The City has invested significantly in the Mallory Square Master Plan. Led by the Planning Department and with design services from the Sasaki firm, the process has been a model of constructive community engagement. The visual renderings emphasize the vibrant sunset and waterfront views which draw so many visitors to Mallory. This project has the potential to create something of real value for the community that will also be a draw for visitors. Expanding Sasaki's scope of services seems like a wise decision at this time.

Meanwhile, the City has also invested in designs for a major expansion of the Mallory T-Pier. This project has been led by the Ports Department with engineering services from the Jacobs firm. The intent of the T-Pier project remains unclear. As the public well knows, the expansion was designed to accommodate large cruise ships. The Ports Department has more recently stated that the expansion is needed for "disaster response" or "emergency operations." However, the public has not been advised what sort of "emergency operations" are envisioned for the T-Pier, nor whether the proposed design would actually support such use. Nor has the public been presented with renderings showing how the elevation of the new T-Pier will obstruct waterfront views from the Square.



In the image above, you can see the existing dolphin platform at left which is proposed as the base elevation for the new T-Pier. If the entire T-Pier is allowed to be built at this height, visitors standing or sitting at the water's edge will not be able to see any water in the channel and will only see the tops of the palm trees at Sunset Key.

Since the T-Pier expansion was designed in 2019, its potential uses have been limited by Commission decisions regarding cruise ship activities at Mallory. Further limitations will result from the Consent Agreement with Ocean Key, which would reduce the maximum length of vessels allowed at the T-Pier from approximately 664' to only 500'.

Why is the City still pushing a four-year-old plan designed to accommodate large cruise ships at the T-Pier when this use is no longer possible? Does the City really need a 216'-long T-Pier to serve vessels of a maximum length of 500', when for decades it accommodated much larger vessels at a much smaller T-Pier? How will this massive new T-Pier impact the views from Mallory?

In our view, if additional time is needed for the T-Pier proposal, it must be used for a wholesale revision of the design to suit the City's actual current needs.

Although these two public infrastructure projects are literally side-by-side, they are managed by separate City departments and designed by outside firms working independently of one another. We believe the City's siloed approach to Mallory Square and the T-Pier creates an unnecessary risk of incompatible outcomes. If this unwise approach continues, we may end up with a new Mallory Square that is worse than the one the City is trying to improve.

In our opinion, these projects should not be permitted to continue under separate management, when the water-side developments can and will have such a profound experience on the land-side experience at the Square. Both processes should be consolidated under the Planning Department to ensure that the designs are complementary and not contradictory.

Does the City really want the dominant feature of its new Mallory Square to be a fenced-off island of concrete that blocks the views of the water? The time is now to correct the City's course and avert this outcome.

Thank you for your attention to this matter.

# Arlo Haskell

on behalf of
Committee for Safer, Cleaner Ships
Evan Haskell, President
Capt. Will Benson, Vice President
Arlo Haskell, Treasurer
David Dunn, Secretary