

RESOLUTION NO. 22-291

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED FIRST AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY OF KEY WEST AND SOUTHERNMOST HOUSE, LTD. FOR PROPERTY LOCATED IN THE 1400 BLOCK OF DUVAL STREET; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution 18-255, the City Commission approved a Lease between the City and the tenant, conditioned upon a minor development plan, including a substantial capital investment by the tenant capital to renovate the city street into a pocket park and pedestrian area; and

WHEREAS, City staff recommends approval of the attached First Amendment to Lease Agreement, which permits the placement of seating approved for certain leased, but unusable, consumption area in the pocket park to the property adjacent thereto at 1400 Duval Street; and

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

Section 1: That the attached First Amendment to Lease Agreement between the City and Southernmost House, Ltd. is hereby approved.

Section 2: That the City Manager or designee is authorized to execute the First Amendment to Lease Agreement upon advice and consent of the City Attorney.

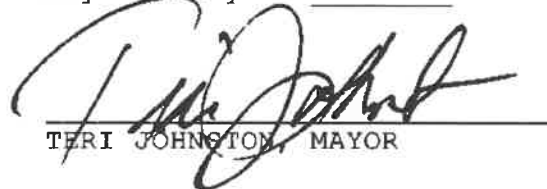
Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 6th day of December, 2022.

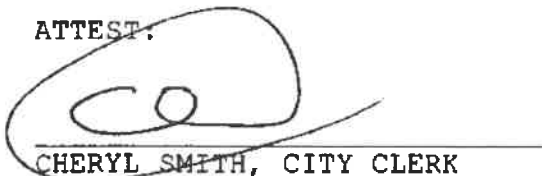
Authenticated by the Presiding Officer and Clerk of the Commission on 7th day of December, 2022.

Filed with the Clerk on December 7, 2022.

Mayor Teri Johnston	<u>No</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Lissette Carey	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>No</u>


TERI JOHNSTON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement is entered into this 6TH day of December, 2022 by and between the City of Key West, Florida, a municipal corporation, (hereinafter "CITY") and Southernmost House, Ltd. A Florida limited Partnership, (hereinafter "SOUTHERNMOST").

WITNESSETH

WHEREAS, CITY and SOUTHERNMOST entered into a Lease Agreement dated the 19th day of November, 2018; and

WHEREAS, SOUTHERNMOST invested a large sum of money in developing the "pocket park" at the end of Duval Street adjacent to the ocean in accordance with plans it submitted to various Boards & Commissions of CITY; and

WHEREAS, CITY and SOUTHERNMOST agreed SOUTHERNMOST could place up to 116 seats in the pocket park in exchange for its development; and

WHEREAS, through no fault of its own, SOUTHERNMOST has been unable to utilize seats in the pocket park; and

WHEREAS, CITY and SOUTHERNMOST desire to amend their Lease Agreement in order to modify the terms and conditions;

NOW, THEREFORE, in mutual consideration of the benefits conferred upon the parties by the terms of this Amendment, CITY and SOUTHERNMOST agree as follows:

Section 1: That CITY and SOUTHERNMOST agree that SOUTHERNMOST shall be permitted to place the 116 seats based upon consumption area that were intended for the park into the property adjacent thereto at 1400 Duval Street, which were fully earned upon completion of the park.

Section 2: That SOUTHERNMOST shall continue to be responsible for the maintenance of the park specified by the Lease Agreement and except as modified herein, the Lease Agreement as amended shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have made this First Amendment to Lease Agreement on the date first written above.



CITY CLERK

CITY OF KEY WEST, FLORIDA

Patti McLaughlin

Patti McLaughlin, City Manager

Michael Halpern

Michael Halpern, as Guarantor and on behalf of Southernmost House, Ltd.

Shawn D. Smith

From: mhpa@bellsouth.net
Sent: Tuesday, November 15, 2022 1:51 PM
To: Shawn D. Smith
Subject: [EXTERNAL]

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.

Dear City Attorney,

Southernmost House Ltd would like to amend it's lease with the City of Key West for the Pocket Park located at 1400 Duval Street Key West, FL.

Approximately four years ago, my client was granted a leasehold upon 15% of the Pocket Park in return for building the park and maintenance of the landscaping in the park. Southernmost House and the Southernmost Beach Café each received restaurant seating in return for building the park. The Southernmost Beach Café received 50 seats which the City approved moving from the park to its existing location adjacent to the park. The Southernmost House received 115 seats to be divided between two leased locations in the park.

Upon the opening of the park, the City took possession of one of the two leased spaces to be used as an area for bicycle racks and garbage cans. The Southernmost House attempted to open café seating on the remaining area which became impossible due to ocean water and seaweed flooding the area on a regular basis. The ocean water and seaweed flood in over the seawall, which is too low to block the water, and from the entrance to the City pier.

Southernmost House moved its seating onto its property, just as the Southernmost Beach Café had done previously. The net result was a beautiful park for the city enjoyed by tens of thousands of visitors and locals without commercial activity in the park. The overwhelming response by the public to leaving the park free of commercial activity has been positive and appreciative. We have received no response in four years that the park would be better off with alcohol and food sold in the park.

Southernmost House and Southernmost Beach Café have each invested in excess of \$400,000 to make a once blighted area a public park that the community is proud of. Prior to the building of the park, the street was a filthy eyesore that contained a giant dumpster and eight illegal parking spaces. Those parking spaces created a serious risk to human safety as the cars were required to back into two lanes of oncoming traffic to exit. The liability to the City was immeasurable. Today, the park is a model of what government and private enterprise can accomplish working together.

An unintended benefit of moving the seating onto the private property of the Southernmost House is that the seating replaced the event space formally used by the Southernmost House for weddings and big events. Prior to moving the seating onto its property, the weddings held at the Southernmost House were a source of conflict with the neighbor. The Southernmost House stopped accepting wedding bookings upon the opening of the café seating on its property. The Southernmost House went from holding forty-seven weddings a year to none in the last three years. This has allowed us to end the conflict with our neighbor over music played at the weddings.

If this requested amendment is approved, the Southernmost House would continue under the lease to maintain the landscaping in the park. The two leased spaces would be returned to the City and the City would then have exclusive possession of 100% of the park. Please place this request on the next agenda.

Sincerely,
Michael Halpern
Attorney for the Southernmost House