

FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF PUBLIC LAND ADMINISTRATION



BPLA/ Audit Section
Internal Audit
Of
Deed 19259 (All)
Board of Trustees of the Internal Improvement Trust Fund
and the City of Key West, Florida

SUBJECT

The subject of this audit is the review of Corrective Deed No.19259-A, deeded by the Board of Trustees "BOT" to the City of Key West "City".

SCOPE AND OBJECTIVE

The scope of this report is to confirm compliance with the restrictions and reverter in Corrective Deed No. 19259-A. The deed restrictions and reverter were included in the deed language to ensure the deed area remain open to the general public for access to City provided water-related facilities. These restrictions have been the intent of the deed since originally deeded in 1947. With the exception of two modifications to the deed restrictions, the main portion of the deed remains subject to the restrictions in the Corrective Deed No. 19259-A.

METHODOLOGY

BPLA/Audit Section conducted an interview with staff from DEP/ South District, South Florida Water Management District, City of Key West, DEP/Survey and Mapping and research was conducted using various multi-media methods in order to obtain data for the completion of the compliance audit.

Procedures included review of:

- Review of South District and South Florida Water Management District records to ensure no new permits were inadvertently issued for new or modified structures within the subject area.
- Requested site inspections within the subject area of Deed No. 19259-C to ensure no modifications or new structures were erected without authorization.
- Review of the City of Key West accounts receivable to confirm whether revenues were being received from the subject area.
- Review of the City of Key West expenditures for Garrison Bight to ensure revenues received were being placed back into general public water related activities.
- Review of the City's third party rental agreements for the use of submerged deeded lands.
- Review of the City of Key West rental agreements for the city marina areas of "Houseboat Row", "Charter Boat Row" and the public recreational vessel slips.
- Review maps provided by Bureau of Survey and mapping to ensure there have not been subsequent changes or releases.

BACKGROUND

The BOT in 1947 deeded 91.3 acres to the City which is inclusive of Garrison Bight and did not include intended restrictions or reverter language. In July 1965, Deed No. 19259 was corrected under Deed No. 19259-A to add deed restrictions with reversion language. The 1947 agenda item authorized the public purpose clause, however, language was inadvertently absent from the first deed in 1947. The addition of the restrictions and reversion language solidified the intent of the original deed. The public purpose clause was intended to restrict the lands use solely for public purpose and included language to never sale, convey or lease to any private party the submerged lands. This includes reversion language should such private activity occur.

In September 1965, the deed was modified under Deed No. 19259-B for the purpose of releasing .446 acres of the property from the restrictions and reverter. This property was filled during construction of the causeway, but located outside of the right-of-way. The consideration for this modification was \$500 and approved by the BOT on August 10, 1965.

In July 1967, the City of Key West requested a release of the restrictions and reverter for 2.41 acres that were adjacent to the .446 acres released in Deed No. 19259-B for the purpose of leasing the parcel to a tenant to fill and construct a pleasure boat dry storage facility. The request was denied. (Note: A-1 Boatworks is under lease with the City and currently located within this area)

On October 3, 2006 the BOT approved a modification of the deed under Deed No. 19259-C . This modification added restrictions for approximately 3 acres between Palm Avenue and Roosevelt Blvd, along Eisenhower Drive. Private docking facilities were located within this area since the late 1960's. This approved modification allowed these private docking structures to remain with additional restrictions. The public purpose clause remained for the area not subject to the modification.

Deed modification 19259-C allows for existing private uses and subject to the following additional restrictions for which compliance is was confirmed in an Audit Section report dated 10-25-2012.

- A) Existing facilities may remain as they exist as of the Board of Trustees of the Internal Improvement Trust Fund (BOT) meeting October 3, 2006
- B) Existing facilities could only be used in conjunction with the uses occurring on the uplands on the date of the BOT meeting, October 3, 2006.
- C) Any new or modified construction at the facility would be subject to 18-21.004 and 18-21.0041 Florida Administrative Code (FAC)
- D) All revenues received by the City from the private use of submerged lands described in the modified deed 19259-C shall be solely used to fund operation of water-related activities for the general public.

- E) Any violation of the above Restrictions shall cause land to automatically revert back to the BOT.

AUDIT SUMMARY

An audit was conducted of City of Key West Corrective Deed No. 19259-A for restriction compliance. The City of Key West was found to be **out of compliance** with the deed restrictions.

Formula: No facilities which are conveyed, sold or leased to a private person, firm or corporation should be located within Garrison Bight Corrective Deed No. 19259-A with the exception of those areas described in 19259-C. Within those areas modified in Deed 19259-C all revenues collected by the City of Key West for the private uses located on Eisenhower Drive between Palm Avenue and Roosevelt Boulevard shall be placed back into City provided public water-related activities.

CONCLUSION

The City of Key West is found to be **out of compliance** with existing deed restrictions in Corrective Deed No. 19259-A. The City has leased water-related facilities to third party private entities such as, but not limited to, **A-1 Boatyard, Garrison Bight Marina and Key West Community Sailing Center**. These rentals are **not consistent** with the restriction within the deed language to “never sell or convey or lease” the lands or parts thereof to any “private person or firm, or corporation **for any private use or purpose**”. The facilities are renting the upland and submerged area within the deed and appear to be receiving profits from these private business ventures. The lease fees received by the City are being placed into the City’s general fund (email M Wilbarger, 12-11-12).

Additionally, The City of Key West is **not enforcing the sale of exclusive private uses within the area of submerged lands subject to the modification in Deed No. 19259-C**. The City of Key West is not collecting revenue from the private structures under private lease agreements. A lease was issued in the late 1990’s for a portion of the submerged lands. That lease expired and was never renewed.

SUGGESTED PROCEDURE

The Department of Environmental Protection, on behalf of the BOT, should begin communication with the City of Key West regarding the areas throughout the deed in violation of the deed restrictions. **The communication in the form of a letter should include a reasonable time to cure and expected corrections to become compliant with deed restrictions.**

There are no suggested changes to procedure for the area within modified Deed No. 19259-C. This submerged land property is in fee simple ownership of the City of Key West. No revenues were found to be collected for the private uses. The deed restriction directs revenues to be placed back into water-related activities for the public in the event revenue is collected from the private uses. In the event the restrictions in Deed Modification No. 19259-C are revised in the future, it is suggested that language be placed in the modification terms for lease fees to be collected from the private exclusive uses according to 18-21.011 F.A.C. and those collected fees placed back into water-related activities for the general public.

See Audit Report for Garrison Bight / Key West Deed 19259-C for final detailed conclusion for the portion deed area.

FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF PUBLIC LAND ADMINISTRATION



BPLA/ Audit Section
Internal Audit
Of
Deed 19259-C
Board of Trustees of the Internal Improvement Trust Fund
and the City of Key West, Florida

SUBJECT

Review of Deed No. 19259-C, deeded by the Board of Trustees "BOT" to the City of Key West "City", containing restrictions and reverter, for compliance with modified deed restriction language.

SCOPE AND OBJECTIVE

The scope of this report is to confirm compliance with the partial modification of deed restrictions and reverter in modified Deed No. 19259-C. The modified deed caused a portion of property within the original Deed No. 19259 to be modified to allow existing private docking facilities. These existing docking facilities would be subject to the following additional restrictions for which compliance is being confirmed.

- A) Existing facilities may remain as they exist as of the BOT meeting October 3, 2006.
- B) Existing facilities could only be used in conjunction with the uses occurring on the uplands on the date of the BOT meeting, October 3, 2006.
- C) Any new or modified construction at the facility would be subject to 18-21.004 and 18-21.0041 Florida Administrative Code ("FAC").
- D) All revenues received by the City from the private use of submerged lands described in the modified Deed No. 19259-C shall be solely used to fund operation of water-related activities for the general public.
- E) Any violation of the above restrictions shall cause land to automatically revert back to the BOT.

METHODOLOGY

BPLA/Audit Section conducted an interview with staff from DEP/ South District, South Florida Water Management District, City of Key West, DEP/Survey and Mapping and research was conducted using various multi-media methods.

Procedures included review of:

- Review of South District and South Florida Water Management District records to ensure no new permits were inadvertently issued for new or modified structures within the subject area.
- Requested site inspections within the subject area to ensure no modifications or new structures were erected without authorization.
- Review of the City accounts receivable to confirm whether revenues were being received from the subject area.
- Review of the City expenditures for Garrison Bight to ensure revenues received were being placed back into general public water related activities.

- Review maps provided by Bureau of Survey and mapping to ensure there have not been subsequent changes or releases.

BACKGROUND

The BOT in 1947 deeded 91.3 acres to the City which is inclusive of Garrison Bight and did not include restriction or reverter language. In July 1965, Deed No. 19259 was corrected under Deed No. 19259-A to add deed restrictions with reverter. The 1947 agenda item authorized the public purpose clause but was inadvertently absent from the first deed in 1947. The restrictions and reverter were added to solidify the intent of the original deed. The public purpose clause was intended to restrict the lands use solely for public purpose and included language to never sale, convey or lease to any private party. This includes reversion language should such private activity occur.

In September 1965, Deed No. 19259-A was modified under Deed No. 19259-B for the purpose of releasing .446 acres of the property from the restrictions and reverter. This property was filled during construction of the causeway, but outside of the right-of-way. The consideration for this modification was \$500 and approved by the BOT on August 10, 1965.

In July 1967, the City of Key West requested a release of the restrictions and reverter for 2.41 acres that were adjacent to the .446 acres released in Deed No. 19259-B for the purpose of leasing a parcel to a tenant to fill and construct a pleasure boat dry storage facility. The request was denied.

On October 3, 2006 the BOT approved a modification of Deed No. 19259-B under Deed No. 19259-C to modify the restrictions and reverter for approximately 3 acres in between Palm Avenue and Roosevelt Blvd along Eisenhower Drive, on which existing private docking facilities were located since the late 1960's. This modification included additional restrictions. The additional restrictions are listed above in the Scope portion of this report. The public purpose clause remained for the remaining area not subject to the modifications.

AUDIT SUMMARY

An audit was conducted of City of Key West modified Deed No. 19259-C for restriction compliance found no changes since 2006 and no collection of revenue by the City therefore no additional gains of public water-related facilities due to activities between Palm Avenue and Roosevelt Boulevard along Eisenhower Drive.

Formula: All revenues collected by the City of Key West for the private uses located on Eisenhower Drive between Palm Avenue and Roosevelt Boulevard shall be placed back into general public water-related activities.

CONCLUSION

A site inspection of the subject parcels under modification to Deed No. 19259-C was performed on October 12, 2012. The most southeastern structure present at the 2006 BOT approved modification is no longer present. Other than the elimination of that structure, all other structures remain the same and under the same types of uses as present on October 3, 2006.

The aforementioned satisfies the deed restrictions (A) and (B) above. Deed restriction (C) is not applicable since there were no modifications or additions to structures. Restriction (D) is not applicable, no revenue is collected. There have been no confirmed violations of the restrictions therefore (E) is not applicable.

SUGGESTED PROCEDURE CHANGES

There are no suggested changes to procedures for Department of Environmental Protection staff, since this submerged land property is in fee simple ownership of the City. No revenues were found to be collected for the private uses under the modification in Deed No. 19259-C. The City has been remiss in collecting revenues for the rental of dock slips and/or the transfer of exclusive use of docks within the modified area. The deed restrictions do not dictate that revenues be collected for the use of the deeded lands. The deed restriction only addresses upon collection of revenue, that the revenues are placed back into water-related activities for the public. In the event Deed Modification No. 19259-C is revised in the future, it is suggested that language be placed in the modification terms for lease fees to be collected according to 18-21.011 F.A.C. and those collected fees placed back into public access or activities.

See Audit Report for Garrison Bight / Key West Deed 19259 for final conclusion for the entire deed area.

Deed 19259

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Pg 330

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Internal Improvement Fund, State of Florida

DEED NO. 19259

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, the Trustees of the Internal Improvement Fund of the State of Florida, under and by virtue of the authority of Section 253.12 Florida Statutes, 1941, and according to the provisions and procedure provided for in Section 253.13, Florida Statutes, 1941, and for and in consideration of the sum of Ten and 00/100 (\$10.00) Dollars, to them in hand paid by THE CITY OF KEY WEST, FLORIDA

Monroe County, Florida, receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed to the said THE CITY OF KEY WEST, FLORIDA

and its successors and assigns, forever, the following described lands, to-wit:

187/141
5/18/41
CWS

Beginning at a point on the center line of First Street, if extended in a Northwesterly direction and at its intersection with the outboard edge of the sea wall which forms the Northwesterly boundary of the side walk on the Northwesterly side of Roosevelt Boulevard, thence proceeding in an East Northwesterly direction at an approximate bearing of N. 73 degrees East along the outer edge of said seawall a distance of 1800 ft. more or less to a point on the radius of and opposite the point of curvature of a curve to the left in said Roosevelt Boulevard whose deflection angle is 26 degrees more or less, and thence proceeding around the edge of said seawall and parallel to said curve for a distance of 265 feet more or less to a point on the seawall on the radius of and opposite the Point of tangency of said curve. Thence proceeding a distance of 580 feet more or less in a Northeasterly direction at a bearing of N. 45 degrees East more or less to a point where said seawall intersects the southerly boundary of the fill which formerly supported the tracks and formed the property of the F. P. C. Railroad. Thence turning to the left approximately 135 degrees and proceeding in a Westerly direction along the South boundary of said property for a distance of 1650 feet more or less to a point opposite the east abutment of what formerly was a bridge over a gap in the fill at this point. Thence continuing in a Westerly direction across said gap for a distance of 80 feet more or less to a point opposite an abutment on the west side of said gap, the West abutment of a bridge over the gap. Thence continuing in a Westerly direction along the south boundary of said fill for a distance of 2400 feet more or less to a point at which the shore line turns to the left approximately 85 degrees more or less and thence proceeding in a southerly direction at a bearing of 8 degrees West more or less along the high water mark of the shore line of Garrison Bight a distance of 725 feet more or less to a point where it intersects the center line of Palm Avenue, if extended in an Easterly direction. Thence proceeding in a South Southwesterly direction along the high water line a distance of 160 feet more or less to a point where it intersects the center line of Angela Street if extended in a Northeasterly direction at which point the shore line turns approximately 85 degrees more or less to the left. Thence proceeding 1150 feet more or less in a Southwesterly direction along the high water mark and around several properties on what is known as North Beach which have developed or are developing their riparian rights to a point where the shore line intersects the north edge of the seawall which forms the Northwesterly boundary of the side walk on the Northwesterly side of Roosevelt Boulevard. Thence proceeding at approximately right

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angles to the left in a Northeasterly direction and along the outboard edge of said seawall a distance of 100 feet more or less at a bearing of N. 51 degrees 30 minutes West more or less to a point opposite the P. C. of a curve to the right in the boulevard whose deflection angle is 21 degrees more or less. Thence proceeding along the outer edge of said seawall and parallel to said curve for a distance of 310 feet more or less to a point opposite the P. T. of said curve. Thence continue along the outer edge of said seawall in an East Northeasterly direction a distance of 965 feet more or less to the point or place of beginning. Lying and being in Section 23, Township 67 South, Range 23 East, Monroe County, State of Florida, and containing 91.3 acres, more or less.

TO HAVE AND TO HOLD the said above mentioned and described land and premises, and all the title and interest of the Trustees therein as granted to them by Section 253.12, Florida Statutes, 1941, unto the said

THE CITY OF KEY WEST, FLORIDA

and its heirs and assigns, forever.
successors

SAVING AND RESERVING unto the Trustees of the Internal Improvement Fund of Florida, and their successors, an undivided three-fourths interest in and title in and to an undivided three-fourths interest in all the phosphate, minerals and metals that are or may be in, on or under the said above described lands, and an undivided one-half interest in and title in and to an undivided one-half interest in all the petroleum that is or may be in or under the said above described land, with the privilege to mine and develop the same.

IN WITNESS WHEREOF, The Trustees of the Internal Improvement Fund of the State of Florida have hereunto subscribed their names and affixed their seals, and have caused the seal of the DEPARTMENT OF AGRICULTURE OF THE STATE OF FLORIDA, to be hereunto affixed, at the Capitol, in the City

of Tallahassee, on this the 11th day of April, A. D. Nineteen

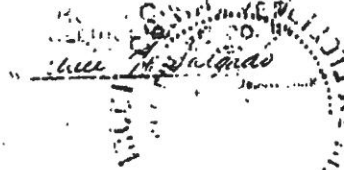
Hundred and Eighty-seven



E. M. Gay (SEAL)
Governor
W. J. ... (SEAL)
Comptroller
W. J. ... (SEAL)
Treasurer
Paul Watson (SEAL)
Attorney-General
... (SEAL)
Commissioner of Agriculture

1017

RECORDED
May 2th, 1947-3:30 P.M.
Deed 5-9-30
230/332



TRUSTEES OF THE INTERNAL IMPROVEMENT FUND
OF THE STATE OF FLORIDA

DEED NO. 19259-A CORRECTIVE

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, the Trustees of the Internal Improvement Fund of the State of Florida, under authority of law, for and in consideration of the sum of Ten and 00/100 Dollars, (\$10.00), the amount to them in hand paid for original Deed No. 19259, receipt whereof is hereby acknowledged, have granted, bargained and sold, and do by these presents grant, bargain, sell and convey, unto the CITY OF KEY WEST, FLORIDA, a municipal corporation of the State of Florida, and its successors and assigns, forever, the following described land, to-wit:

Beginning at a point on the center line of First Street, if extended in a Northwesterly direction and at its intersection with the outboard edge of the sea wall which forms the northwesterly boundary of the side walk on the northwesterly side of Roosevelt Boulevard; thence proceeding in an east, northeasterly direction at an approximate bearing of North 73° East along the outer edge of said sea wall, a distance of 1600 feet, more or less, to a point on the radius of and opposite the point of curvature of a curve to the left in said Roosevelt Boulevard whose deflection angle is 26° more or less, and thence proceeding around the edge of said sea wall and parallel to said curve for a distance of 265 feet, more or less, to a point on the sea wall on the radius of and opposite the Point of Tangency of said curve; thence proceeding a distance of 560 feet more or less in a northeasterly direction at a bearing of North 45° East more or less to a point where said seawall intersects the southerly boundary of the fill which formerly supported the tracks and formed the property of the F. E. C. Railroad; thence turning to the left approximately 135° and proceeding in a westerly direction along the South boundary of said property for a distance of 1550 feet, more or less, to a point opposite the east abutment of what formerly was a bridge over a gap in the fill at this point; thence continuing in a westerly direction across said gap for a distance of 80 feet, more or less, to a point opposite an abutment on the West side of said gap, the west abutment of a bridge over the gap; thence continuing in a westerly direction along the South boundary of said fill for a distance of 2400 feet, more or less, to a point at which the shore line turns to the left approximately 95° more or less, and thence proceeding in a southerly direction at a bearing of 5° West, more or less, along the high water mark of the shore line of Garrison Bight, a distance of 725 feet, more or less, to a point where it intersects the center line of Palm Avenue, if

extended in an easterly direction; thence proceeding in a south, southwesterly direction along the high water line a distance of 150 feet, more or less, to a point where it intersects the center line of Angela Street if extended in a northeasterly direction, at which point the shore line turns approximately 85° more or less to the left; thence proceeding 1150 feet more or less in a southwesterly direction along the high water mark and around several properties on what is known as North Beach which have developed or are developing their riparian rights to a point where the shore line intersects the north edge of the sea wall which forms the northwesterly boundary of the side walk on the northwesterly side of Roosevelt Boulevard; thence proceeding at approximately right angles to the left in a northeasterly direction and along the outboard edge of said sea wall a distance of 100 feet, more or less, at a bearing of North 51° 30' West, more or less, to a point opposite the P. C. of a curve to the right in the boulevard whose deflection angle is 21° more or less; thence proceeding along the outer edge of said sea wall and parallel to said curve for a distance of 310 feet, more or less, to a point opposite the P. T. of said curve; thence continue along the outer edge of said sea wall in an east, northeasterly direction, a distance of 965 feet, more or less, to the Point or Place of Beginning. Lying and being in Section 33, Township 67 South, Range 25 East, Monroe County, State of Florida, and containing 91.3 acres, more or less.

*Also in sec 32, 67S, 25E and
in sec 5, 68S, 25E.*

PROVIDED, HOWEVER, anything herein to the contrary notwithstanding, this deed is given and granted upon the express condition subsequent that the Grantee herein or its successors and assigns shall never sell or convey or lease the above described land or any part thereof to any private person, firm or corporation for any private use or purpose, it being the intention of this restriction that the said lands shall be used solely for public purposes.

It is covenanted and agreed that the above conditions subsequent shall run with the land and any violation thereof shall render this deed null and void and the above described lands, shall, in such event, revert to the Grantors or their successors.

TO HAVE AND TO HOLD the said above granted and described premises and the appurtenances thereof, subject to the above mentioned provisions and limitations, unto the said City of Key West, Florida, and its successors and assigns, forever.

This deed corrects and supersedes a former deed numbered 19259, dated April 11, 1947, between the Trustees of the Internal Improvement Fund as grantors, and the City of Key West, Florida, as grantee, wherein the public purpose clause as authorized by said Trustees in meeting January 14, 1947, was inadvertently omitted.

SAVING AND RESERVING unto the said Trustees of the Internal Improvement Fund of the State of Florida, and their successors, title to an undivided three-fourths of all phosphate,

minerals and metals, and title to an undivided one-half of all petroleum that may be in, on or under the above described land, with the privilege to mine and develop the same.

IN TESTIMONY WHEREOF, the said Trustees of the Internal Improvement Fund of the State of Florida have hereunto subscribed their names and have caused the official seal of said Trustees to be hereunto affixed, in the City of Tallahassee, Florida, on this

the 1st day of July, A. D. 1965.

Clayton Durr
Governor

Ray E. Green
Comptroller

Harold Williams
Treasurer

Earl Faircloth
Attorney General

Jack Conrad
Commissioner of Agriculture

As and Constituting the Trustees of the Internal Improvement Fund of the State of Florida.

(SEAL)
Trustees I.I. Fund

1965
STATE OF FLORIDA

DEED NO. 19259-A CORRECTIVE

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, the Trustees of the Internal Improvement Fund of the State of Florida, under authority of law, for and in consideration of the sum of Ten and 00/100 Dollars, (\$10.00), the amount to them in hand paid for original Deed No. 19259, receipt whereof is hereby acknowledged, have granted, bargained and sold, and do by these presents grant, bargain, sell and convey, unto the CITY OF KEY WEST, FLORIDA, a municipal corporation of the State of Florida, and its successors and assigns, forever, the following described land, to-wit:

Beginning at a point on the center line of First Street, if extended in a Northwesterly direction and at its intersection with the outboard edge of the sea wall which forms the northwesterly boundary of the side walk on the northwesterly side of Roosevelt Boulevard; thence proceeding in an east, northeasterly direction at an approximate bearing of North 73° East along the outer edge of said sea wall, a distance of 1600 feet, more or less, to a point on the radius of and opposite the point of curvature of a curve to the left in said Roosevelt Boulevard whose deflection angle is 26° more or less, and thence proceeding around the edge of said sea wall and parallel to said curve for a distance of 265 feet, more or less, to a point on the sea wall on the radius of and opposite the Point of Tangency of said curve; thence proceeding a distance of 560 feet more or less in a northeasterly direction at a bearing of North 45° East more or less to a point where said seawall intersects the southerly boundary of the fill which formerly supported the tracks and formed the property of the F. E. C. Railroad; thence turning to the left approximately 135° and proceeding in a westerly direction along the South boundary of said property for a distance of 1550 feet, more or less, to a point opposite the east abutment of what formerly was a bridge over a gap in the fill at this point; thence continuing in a westerly direction across said gap for a distance of 80 feet, more or less, to a point opposite an abutment on the West side of said gap, the west abutment of a bridge over the gap; thence continuing in a westerly direction along the South boundary of said fill for a distance of 2400 feet, more or less, to a point at which the shore line turns to the left approximately 95° more or less, and thence proceeding in a southerly direction at a bearing of 5° West, more or less, along the high water mark of the shore line of Garrison Bight, a distance of 725 feet, more or less, to a point where it intersects the center line of Palm Avenue, if

Monroe County

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extended in a westerly direction, thence proceeding in a southwesterly direction along the high water mark a distance of 150 feet, more or less, to a point where it intersects the center line of Angela Street, thence extended in a northeasterly direction, at which point the shore line turns approximately 85° more or less to the left; thence proceeding 1150 feet more or less in a southwesterly direction along the high water mark and around several properties on what is known as North Beach which have developed or are developing their riparian rights to a point where the shore line intersects the north edge of the sea wall which forms the northwesterly boundary of the side walk on the northwesterly side of Roosevelt Boulevard; thence proceeding at approximately right angles to the left in a northeasterly direction and along the out-board edge of said sea wall a distance of 100 feet, more or less, at a bearing of North 51° 30' West, more or less, to a point opposite the P. C. of a curve to the right in the boulevard whose deflection angle is 21° more or less; thence proceeding along the outer edge of said sea wall and parallel to said curve for a distance of 310 feet, more or less, to a point opposite the P. T. of said curve; thence continue along the outer edge of said sea wall in an east, northeasterly direction, a distance of 965 feet, more or less, to the Point or Place of Beginning. Lying and being in Section 33, Township 67 South, Range 25 East, Monroe County, State of Florida, and containing 91.3 acres, more or less.

PROVIDED, HOWEVER, anything herein to the contrary notwithstanding, this deed is given and granted upon the express condition subsequent that the Grantee herein or its successors and assigns shall never sell or convey or lease the above described land or any part thereof to any private person, firm or corporation for any private use or purpose, it being the intention of this restriction that the said lands shall be used solely for public purposes.

It is covenanted and agreed that the above conditions subsequent shall run with the land and any violation thereof shall render this deed null and void and the above described lands, shall in such event, revert to the Grantors or their successors.

TO HAVE AND TO HOLD the said above granted and described premises and the appurtenances thereof, subject to the above mentioned provisions and limitations, unto the said City of Key West, Florida, and its successors and assigns, forever.

This deed corrects and supersedes a former deed numbered 19259, dated April 11, 1947, between the Trustees of the Internal Improvement Fund as grantors, and the City of Key West, Florida, as grantee, wherein the public purpose clause as authorized by said Trustees in meeting January 14, 1947, was inadvertently omitted.

SAVING AND RESERVING unto the said Trustees of the Internal Improvement Fund of the State of Florida, and their successors, title to an undivided three-fourths of all phosphate

Deed
19259A

2nd
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...and ... of ...

...the said Trustees of the Internal Improvement Fund of the State of Florida have hereunto subscribed their names and have caused the official seal of said Trustees to be hereunto affixed, in the City of Tallahassee, Florida, on this

the 1st day of July A. D. 1965.

Hayden ...
Governor

Ray E. Green
Comptroller

...
Treasurer

Earl Faircloth
Attorney General

...
Commissioner of Agriculture

(SEAL)
Trustees I. I. Fund

As and Constituting the Trustees of the Internal Improvement Fund of the State of Florida.

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19259 A

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29 SEPT 1965

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA

132050

DEED NO. 19259-B

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, the Trustees of the Internal Improvement Fund of the State of Florida, under authority of law, for and in consideration of the sum of Five Hundred and 00/100 Dollars, (\$500.00), to them in hand paid by the CITY OF KEY WEST, FLORIDA, a municipal corporation of the State of Florida, have granted, bargained and sold, and do by these presents grant, bargain, sell and convey, unto the said CITY OF KEY WEST, FLORIDA and its successors and assigns, the following described lands, to-wit:

A parcel of sovereignty land in Garrison Bight on the Island of Key West, Florida and being more particularly described as follows:

Commence at the Southeast corner of the "City sewerage plant property", the same point being on the Northerly R/W of Palm Avenue and also on the Northerly R/W of Garrison Bight Causeway (State Job No. 90500-3604) at right angles to station 9 plus 51.50 of said State Job; run thence South 81° 26' 23" East along the Northerly R/W of said Garrison Bight Causeway, 80 feet to the Southeast corner of U. S. Navy property described in Deed Book G-12, pages 2 thru 4, of the Public Records of Monroe County, Florida, said point being the Point of Beginning of the land herein described; thence continue South 81° 26' 23" East along the Northerly R/W of Garrison Bight Causeway, 94 feet; thence run North 53° 33' 37" East along said Garrison Bight Causeway R/W, 106 feet; thence run North 47° 37' 32" West, 203.41 feet to the East boundary of U. S. Navy property referred to above; thence run South 8° 33' 37" West along the East boundary of said U. S. Navy property, 188.2 feet back to the Point of Beginning; containing 0.446 acres, more or less.

This deed is issued for the express purpose of lifting and removing the public purpose use provision as to the parcel described herein as contained in Trustees of the Internal Improvement Deed No. 19259-A Corrective, dated July 1, 1965, which deed conveys a larger tract of sovereignty land to the City of Key West, Florida, of which the parcel described herein is a part, the public purpose use limitation in said Deed No. 19259-A Corrective being described in the following words:

FILED FOR RECORD
OCT 22 AM 11:11
L. R. ADAMS, JR.
CLERK
MONROE COUNTY, FLORIDA

"PROVIDED, HOWEVER, anything herein to the contrary notwithstanding, this deed is given and granted upon the express condition subsequent that the Grantee herein or its successors and assigns shall never sell or convey or lease the above described land or any part thereof to any private person, firm or corporation for any private use or purpose, it being the intention of this restriction that the said lands shall be used solely for public purposes.

It is covenanted and agreed that the above conditions subsequent shall run with the land and any violation thereof shall render this deed null and void and the above described lands, shall, in such event, revert to the Grantors or their successors."

TO HAVE AND TO HOLD the above granted and described premises forever.

SAVING AND RESERVING unto the said Trustees of the Internal Improvement Fund of the State of Florida, and their successors, title to an undivided three-fourths of all phosphate, minerals and metals, and title to an undivided one-half of all petroleum that may be in, on or under the above described land, with the privilege to mine and develop the same.

IN TESTIMONY WHEREOF, the said Trustees of the Internal Improvement Fund of the State of Florida have hereunto subscribed their names and have caused the official seal of said Trustees to be hereunto affixed, in the City of Tallahassee, Florida, on this the 29th day of September, A. D. 1965.

132050



Recorded in Official Record Book
Monroe County, Florida
EARL R. ADAMS
CLERK OF CIRCUIT COURT
TALLAHASSEE, FLORIDA

Governor
Fred P. Dickinson Jr.
Comptroller
Howard Williams
Treasurer
Earl Faircloth
Attorney General
Doug Conner
Commissioner of Agriculture

As and Constituting the Trustees of the Internal Improvement Fund

NOTE:

The attached instrument is executed in the name of the Trustees of the Internal Improvement Fund, by a majority of its members. Signature of all members could not be secured by reason of absence from the United States of the member whose signature is not inscribed. Reference is made to "27 So. 2nd 524", Watson v. Caldwell in which the Supreme Court held that a majority of the Trustees may legally act for the entire Board.

Director *Robert C. Parker*
Trustees of the Internal Improvement Fund

Doc# 1612510 11/14/2006 9:04AM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE

This instrument was prepared by:
Scott Woolam, Chief
Bureau of Public Land Administration
Division of State Lands
Department of Environmental Protection
3900 Commonwealth Blvd MS35
Tallahassee, FL 32399-3000

Doc# 1612510
Bk# 2251 Pg# 1343

RECORDER'S MEMO:
LEGIBILITY OF WRITING, TYPING, OR PRINTING WAS
UNSATISFACTORY ON THIS DOCUMENT WHEN RECEIVED

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

PARTIAL MODIFICATION OF DEED RESTRICTION AND REVERTER
DEED NO. 19259-C

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA ("Board of Trustees") is by Section 253.03, Florida Statutes, authorized and empowered to modify restrictive covenants and reverters previously placed on state-owned lands by the Board of Trustees at the time the Board of Trustees conveyed said lands to another party under the terms and conditions set forth herein; and,

WHEREAS, on January 14, 1947, the Board of Trustees approved the sale to the City of Key West, Florida ("City"), of approximately 91.3 acres of sovereignty submerged lands located in Garrison Bight, Monroe County, Florida (the "Property") and required that the deed to the City contain a "reversion clause in event the land should ever be used for other than public purposes;" and

WHEREAS, on April 11, 1947, by Deed No. 19259, recorded in Deed Book G-30, Page 330, Public Records of Monroe County, Florida, the Board of Trustees conveyed the Property, which is

more particularly described in Deed No. 19259 and in Exhibit "A" attached hereto and by this reference made a part hereof, to the City; and

WHEREAS, said Deed No. 19259 inadvertently omitted the public purpose deed restriction and reverter authorized by the Board of Trustees at its January 14, 1947 meeting; and

WHEREAS, on July 1, 1965, the Board of Trustees issued Deed No. 19259-A Corrective to the City, recorded in Official Records Book 354, Page 106, Public Records of Monroe County, Florida, which corrects and supersedes the former Deed No. 19259, dated April 11, 1947, to include the public purpose deed restriction ("Restriction") and reverter ("Reverter") authorized by the Board of Trustees at its January 14, 1947 meeting; and

WHEREAS, on September 29, 1965, the Board of Trustees issued Deed No. 19259-B to the City, recorded in Official Records Book 357, Page 489, Public Records of Monroe County, Florida, for the purpose of releasing 0.446 acres of the Property from the Restriction and Reverter; and

WHEREAS there appears to be existing private docking facilities on the portion of the Property that abuts uplands along Eisenhower Drive between the Palm Avenue Causeway and Roosevelt Boulevard and these private docking facilities may violate the Restriction and Reverter; and

WHEREAS, the Board of Trustees and the City wish to modify the Restriction and Reverter only for that portion of the Property on which the existing private docking facilities are located; and

WHEREAS, the City did approve this Partial Modification of Deed Restriction and Reverter on the 17th day of October, 2006; and

WHEREAS, the Board of Trustees did approve this Partial Modification of Deed Restriction and Reverter on the 3rd day of October, 2006.


NOW THEREFORE, for and in consideration of the foregoing recitals and of the mutual covenants, terms and conditions herein contained, and other good and valuable consideration, the Board of Trustees and the City hereby agree as follows:

1. For that portion of the Property lying directly below the existing private docking facilities abutting uplands along Eisenhower Drive between Palm Avenue Causeway and Roosevelt Boulevard the Restriction and Reverter contained in Deed Number 19259-A Corrective are hereby modified as follows:

(a) In addition to public purposes, that portion of the Property described in this paragraph 1. may also be used for those private docking facilities that are in existence on the date the Board of Trustees approved this Partial Modification of Deed Restriction and Reverter. Said existing private docking facilities are shown on Exhibit "B" attached hereto and by this reference made a part hereof.

(b) Said existing private docking facilities may only be used in conjunction with the uses occurring on the uplands on the date the Board of Trustees approved this Partial Modification of Deed Restriction and Reverter.

(c) Any new construction or modification to said existing private docking facilities shall be subject to the provisions of Rules 18-21.004 and 18-21.0041, Florida Administrative Code, in effect at the time of the new construction or modification.

(d) All revenues received by the City from the private use of the submerged lands described in this paragraph 1. shall be used solely to fund the operation of water-related activities for the general public. 

(e) Any violation of the restrictive covenants described in this paragraph 1. shall cause the lands described in this paragraph 1. to revert to the Board of Trustees or its successors.

2. Except as expressly modified hereby, the original terms and conditions of the Restriction and Reverter contained in Deed No. 19259-A Corrective shall remain unchanged in each and every respect for the Property, less and except that portion thereof (a) described in paragraph 1. above, and (b) described in Deed No. 19259-B, and the same are hereby ratified, approved and confirmed by the Board of Trustees and the City as of the date of this Partial Modification of Deed Restriction and Reverter.

3. The terms of this Partial Modification of Deed Restriction and Reverter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Partial Modification of Deed Restriction and Reverter to be executed the day and year last written below.

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

Victoria F. Thompson
Witness

Victoria F. Thompson
Print/Type Witness Name

Scott E. Woolam
Witness

Scott E. Woolam
Print/Type Witness Name

By: Deborah Poppell (SEAL)
DEBORAH POPPELL, ASSISTANT
DIRECTOR, DIVISION OF STATE
LANDS, STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Date: 10/31/06

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 31 day of October, 2006, by Deborah Poppell, as Assistant Director, Division of State Lands, State of Florida 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, who is personally known to me.

(SEAL)

Victoria F. Thompson
Notary Public, State of Florida

Approved as to Form and Legality

By: Sandy L. Heiser
DEP Attorney

Print/Type Notary Name

Commission Number: _____

My Commission Expires: _____



City of Key West, Florida

Susan P. Harrison

Witness

SUSAN P. HARRISON

Print/Type Witness Name

Pamela S. DeMala

Witness

PAMELA S. DEMALA

Print/Type Witness Name

By: [Signature]

Julio Arael

Print/Type Name

Title: City Manager

(Official Seal)

Date: 10/17/06

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 17 day of October
2006 by Julio Arael, as City Manager, on behalf of the City of
Key West, Florida.

(SEAL)

[Signature]

Notary Public, State of Florida

Cheryl Smith

Printed/Typed/Stamped Name

Commission Number: _____

Commission Expires: _____



Cheryl Smith
Commission # DD537351
Expires June 6, 2010
Bonded Troy Fair - Insurance, Inc. 800-385-7019

EXHIBIT "A"

Beginning at a point on the center line of First Street, if extended in a Northwesterly direction and at its intersection with the outboard edge of the sea wall which forms the northwesterly boundary of the side walk on the northwesterly side of Roosevelt Boulevard; thence proceeding in an east, northeasterly direction at an approximate bearing of North 73° East along the outer edge of said sea wall, a distance of 1600 feet, more or less, to a point on the radius of and opposite the point of curvature of a curve to the left in said Roosevelt Boulevard whose deflection angle is 26° more or less, and thence proceeding around the edge of said sea wall and parallel to said curve for a distance of 265 feet, more or less, to a point on the sea wall on the radius of and opposite the Point of Tangency of said curve; thence proceeding a distance of 560 feet more or less in a northeasterly direction at a bearing of North 45° East more or less to a point where said seawall intersects the southerly boundary of the fill which formerly supported the tracks and formed the property of the F. S. C. Railroad; thence turning to the left approximately 135° and proceeding in a westerly direction along the South boundary of said property for a distance of 1550 feet, more or less, to a point opposite the east abutment of what formerly was a bridge over a gap in the fill at this point; thence continuing in a westerly direction across said gap for a distance of 80 feet, more or less, to a point opposite an abutment on the West side of said gap, the west abutment of a bridge over the gap; thence continuing in a westerly direction along the South boundary of said fill for a distance of 2400 feet, more or less, to a point at which the shore line turns to the left approximately 95° more or less, and thence proceeding in a southerly direction at a bearing of 5° West, more or less, along the high water mark of the shore line of Garrison Bight, a distance of 725 feet, more or less, to a point where it intersects the center line of Palm Avenue, if extended in an easterly direction; thence proceeding in a south, southwesterly direction along the high water line a distance of 150 feet, more or less, to a point where it intersects the center line of Angela Street if extended in a northeasterly direction, at which point the shore line turns approximately 85° more or less to the left; thence proceeding 1150 feet more or less in a southwesterly direction along the high water mark and around several properties on what is known as North Beach which have developed or are developing their riparian rights to a point where the shore line intersects the north edge of the sea wall which forms the northwesterly boundary of the side walk on the northwesterly side of Roosevelt Boulevard; thence proceeding at approximately right angles to the left in a northeasterly direction and along the outboard edge of said sea wall a distance of 100 feet, more or less, at a bearing of North 51° 30' West, more or less, to a point opposite the P. C. of a curve to the right in the boulevard whose deflection angle is 21° more or less; thence proceeding along the outer edge of said sea wall and parallel to said curve for a distance of 310 feet, more or less, to a point opposite the P. T. of said curve; thence continue along the outer edge of said sea wall in an east, northeasterly direction, a distance of 965 feet, more or less, to the Point of Beginning; lying and being in Section 33, Township 67 South, Range 25 East, Monroe County, State of Florida, and containing 91.3 acres, more or less.

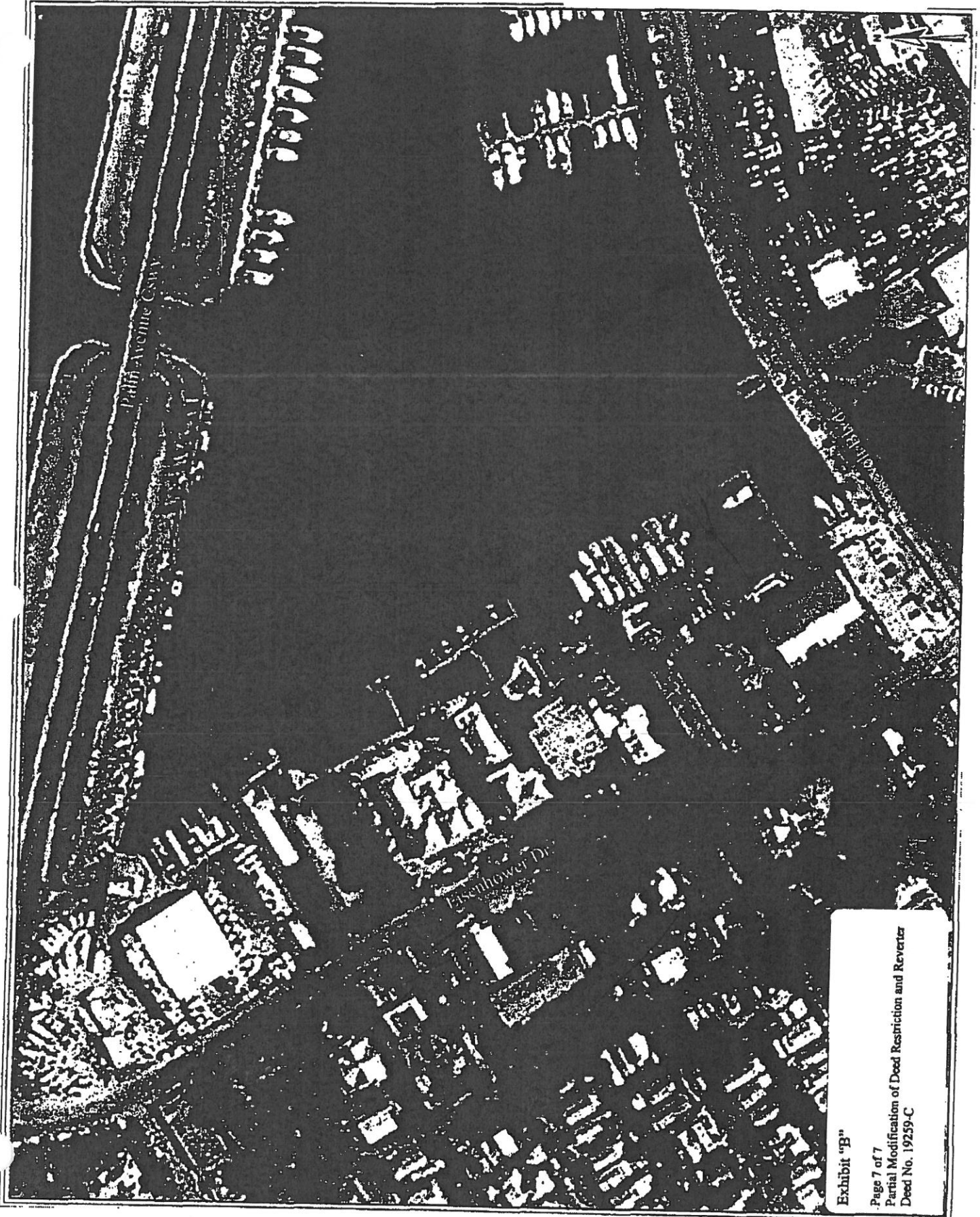


Exhibit "B"

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Partial Modification of Deed Restriction and Reverter
Deed No. 19259-C



Jeb Bush
Governor

Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Colleen M. Castille
Secretary

STATE OF FLORIDA

COUNTY OF LEON

CERTIFICATE

I, Cynthia Muir, do hereby certify that the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, met on October 3, 2006, and approved the following Item 1 on the agenda for that date.

Item 1 **City of Key West Deed Restriction Modification**

REQUEST: Consideration of a request for a partial modification of a deed restriction on approximately 3 acres of submerged lands contained in Board of Trustees Deed Number 19259-A to the City of Key West.

COUNTY: Monroe

APPLICANT: City of Key West (City)

LOCATION: Section 33, Township 67 South, Range 25 East

STAFF REMARKS:

Site History

On April 11, 1947, the Board of Trustees conveyed approximately 92 acres of sovereignty submerged land, known as Garrison Bight (Bight), to the City. The Board of Trustees approved the sale, subject to a reversionary clause whereby the land would revert should it ever be used for other than public purposes; however, the public purpose clause was not included when Deed Number 19259 (original deed) was issued to the City.

A series of correspondence from July 1959 shows that the City became aware of the omission and notified the Director of the Trustees of the Internal Improvement Trust Fund that the City had previously leased portions of the Bight, and intended to lease another portion of the Bight to a private entity for a public marina. Attorney General R.W. Ervin opined that the City was bound to use the property for public purposes and suggested that the City Commission should retain the authority to revoke or terminate the lease in the event that any development should occur that was not in the public's interest.

"More Protection, Less Process"

Printed on recycled paper.

Certificate for Item 1
October 3, 2006 Trustees' Agenda
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At the October 8, 1963 Board of Trustees' meeting discussion of the proposed lease, the City inquired as to whether the public purpose restrictions on the Bight would hinder the State Road Department's construction of a causeway and bridge. Attorney General Ervin suggested amending the original deed to (1) include the public purpose clause, (2) add specific reference to the road construction and marina, and (3) require that the Board of Trustees review and approve the lease terms and design for the marina. DEP staff recommended that the Attorney General, rather than the Board of Trustees, approve the lease provisions which would ensure the public purpose requirement was met. This recommendation was approved by the Board of Trustees, and Attorney General Ervin subsequently granted approval of the lease on October 22, 1963.

On July 1, 1965, the Board of Trustees issued Corrective Deed Number 19259-A (corrective deed), which superseded the original deed and added the reversionary language on the 92 acres originally conveyed. Soon after, the City requested a release of the public purpose clause from a 0.446-acre portion of the 92 acres that was partially filled during construction of the causeway, but outside of the right-of-way. The request was approved by the Board of Trustees on August 10, 1965, and Deed Number 19259-B was issued upon the City's consideration payment of \$500.

On July 18, 1967, the City requested a release of the public purpose clause on an additional 2.41 acres that are adjacent to the 0.446-acre parcel, for the purpose of leasing the parcel to a tenant to fill and construct a dry storage for pleasure boats. The City submitted \$2,892 for consideration of the release. At the October 12, 1967 Board of Trustees meeting, the Board of Trustees denied the City's request and the consideration was returned.

Current Status

Since the late 1960s, several private docks have been constructed along the western shoreline of the Bight between the Palm Avenue Causeway and Roosevelt Boulevard without consideration of the public purpose clause in the corrective deed. Of the five existing docks within the three-acre parcel, two are private multi-slip docks that exceed the 40:1 ratio, one of which was erroneously issued a Department of Environmental Protection permit in 2005 for the installation of two new finger piers for two slips. Mr. Ed Swift, the owner of the parcel located at 719 Eisenhower Drive, applied to expand his existing dock, which was constructed sometime between 1991 and 1994 prior to his ownership, but the permitting process was halted when the deed restriction was discovered.

While the City is committed to maintaining public access to the water within the Bight, it is also interested in allowing existing structures to remain to provide additional docking facilities in the area. The continuing demand for docking facilities in and around the City remains a significant issue, which was clearly demonstrated when the City and DEP relocated the liveaboards in Houseboat Row to the Bight.

Certificate for Item 1
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Until such time as the issue is addressed, no permits can be issued to reconfigure docks or repair dock facilities that may be damaged as a result of storms. Staff is recommending that the Board of Trustees grant the partial modification of the deed restriction on approximately 3 acres along the shoreline between the Palm Avenue Causeway and Roosevelt Boulevard. All existing structures within the 3-acre area will be allowed to remain, with any future expansion of a structure being subject to chapter 18-21, Florida Administrative Code. In addition, the City shall utilize all revenue generated through the leasing of the submerged land to fund the operation of water-related activities for the general public. This would allow the historic use to continue at those facilities that were constructed many years ago thereby maintaining the docking space currently available in the area, allowing modifications to the configuration of existing docks within the subject area and performance of necessary repairs in the case of storm damage, and finally, generating revenue that will fund activities for the general public.

A consideration of the status of the local government comprehensive plan was not made for this item. The Department of Environmental Protection has determined that the proposed action is not subject to the local government planning process.

RECOMMEND APPROVAL

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Board of Trustees of the Internal Improvement Trust Fund on this 3rd day of October A.D., 2006.




Cynthia Muir, Director
Office of Cabinet Affairs