

# CUL Cover Sheet

DM ID \_\_\_\_\_

**Document Type:** Current Uplands Leases

**Instrument:**  Parent Lease  Amendment to Lease  Assignment of Lease  
 Release  Partial Release  Easement  Use Agreement  Sublease  
 Amendment to Sublease  Release of Sublease  Other

**Lease Number:** 003496

**Document Date:** 06-06-1989

**Original County:** MONROE

**Section:** 5

**Township:** 685

**Range:** 25E

**Total Area / Area Unit:** 1.22 (A) Acreage (S) Square Feet

**County Book / Page / Type:** \_\_\_\_\_ / B \_\_\_\_\_ / P \_\_\_\_\_ / \_\_\_\_\_

**Instrument Number:** \_\_\_\_\_

**Comments:**  
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The information on this page was collected during the prep phase of scanning and is an aide for data entry. Please refer to the document for actual information.

(7) 3496

Sublease No: 3496-01

THIS SUBLEASE AGREEMENT is made and entered into this 7<sup>TH</sup> day of June, 1989, between the Department of Natural Resources of the State of Florida hereinafter referred to as "SUBLESSOR", and City of Key West hereinafter referred to as "SUBLESSEE" and consented to by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida hereinafter referred to as the "TRUSTEES". SUBLESSOR, for and in consideration of mutual covenants and agreements hereinafter contained, does hereby sublease to said SUBLESSEE, the lands described in Paragraph 2 below together with the improvements thereon, and subject to the following terms and conditions:

1. ACKNOWLEDGEMENTS: The parties acknowledge that:
  - a. The TRUSTEES hold title to certain property identified as the Key West Rest Park for use by the State of Florida for public purposes and
  - b. SUBLESSOR manages the property in order to provide for the conservation and protection of natural resources and public outdoor recreation, and is subleasing the property to City of Key West for environmental protection and compatible outdoor recreation.

2. DESCRIPTION OF PREMISES: The property subject to this sublease, is situated in the County of Monroe, State of Florida and more particularly described in Exhibit A attached hereto and hereinafter called the "subleased premises".

3. SUBLEASE TERM: The term of this sublease shall be for a period of thirty (30) years commencing on June 7, 1989, and ending on June 6, 2019.

4. PURPOSE: SUBLESSEE agrees that the purpose of this sublease shall be for the conservation and protection of natural resources and compatible public outdoor recreation along with other allowable uses which are designated in the Management Plan to be developed and approved for the subleased premises as provided by paragraph (7) of this sublease.

5. CONFORMITY: This sublease shall conform to all terms and conditions of that certain lease between the TRUSTEES and SUBLESSOR dated June 11, 1987, a copy of which is attached hereto as Exhibit B, and SUBLESSEE shall through its agents and employees prevent the unauthorized use of the property or any use thereof not in conformance with this sublease.

6. QUIET ENJOYMENT AND RIGHT OF USE: SUBLESSEE shall have the right of ingress and egress to, from and upon the subleased premises for all purposes necessary to the full quiet enjoyment by said SUBLESSEE of the rights conveyed herein.

7. MANAGEMENT PLAN: A Management Plan for the subleased premises shall be prepared by SUBLESSEE, in accordance with Section 253.034, Florida Statutes, and Section 18-2.005 and Chapter 18-4, Florida Administrative Code, within twelve (12) months of the execution date of this sublease and shall be submitted to the TRUSTEES for approval through SUBLESSOR and the Division of State Lands. The subleased premises shall not be developed or physically altered in any way other than what is necessary for security and maintenance of the subleased premises until the Management Plan is approved, without the prior written approval of the TRUSTEES and SUBLESSOR. SUBLESSEE shall provide SUBLESSOR with an opportunity to participate in all phases of preparing the development and Management Plan for the subleased premises. The Management Plan shall be submitted to SUBLESSOR in draft form for review and comments within ten (10) months of the execution date of this sublease. SUBLESSEE shall give SUBLESSOR reasonable notice of the application for and receipt of any state, federal or local permits as well as any public hearings or meetings relating to the development or use of the subleased premises. SUBLESSEE shall not proceed with development of said subleased premises including, but not limited to, funding permit application, design or building contracts, until the Management Plan required herein has been submitted and approved. Any financial commitments made by SUBLESSEE which are not in compliance with the terms of this sublease shall be done at SUBLESSEE'S own risk. The Management Plan shall emphasize the original management concept as approved by

the TRUSTEES at the time of acquisition which established the primary purpose for which the subleased premises were acquired. The approved Management Plan shall provide the basic guidance for all management activities and shall be reviewed jointly by SUBLESSEE, SUBLESSOR and the TRUSTEES at least every five (5) years. SUBLESSEE shall not use or alter the property except as provided for in the approved Management Plan without the advance written approval of the TRUSTEES and SUBLESSOR. The Management Plan prepared under this sublease shall identify management strategies for exotic species, if present. The introduction of exotic species is prohibited, except when specifically authorized by the approved Management Plan.

8. ASSIGNMENT: This sublease shall not be assigned in whole or in part without the prior written approval of the TRUSTEES and SUBLESSOR. Any assignment granted either in whole or in part without the prior written approval of the TRUSTEES and SUBLESSOR shall be void and without legal effect.

9. RIGHT OF INSPECTION: The TRUSTEES and SUBLESSOR or their duly authorized agents, representatives or employees shall have the right at any and all times to inspect the subleased premises and the works and operations of SUBLESSEE in any matter pertaining to this sublease, following coordination with SUBLESSEE herein.

10. PLACEMENT AND REMOVAL OF IMPROVEMENTS: All buildings, structures and improvements shall be constructed in accordance with plans prepared by professional designers and shall require the prior written approval of SUBLESSOR as to purpose, location and design. Further, no trees other than non-native species shall be removed or major land alterations done by SUBLESSEE without the prior written approval of SUBLESSOR. Removable equipment and removable improvements placed on the premises by SUBLESSEE and which do not become part of the subleased premises will remain the property of the SUBLESSEE and may be removed by SUBLESSEE upon termination of this sublease.

11. INSURANCE REQUIREMENTS: During the term of this sublease SUBLESSEE shall procure and maintain policies of fire,

extended risk and liability insurance coverage. The extended risk and fire insurance coverage shall be in an amount equal to the full insurable replacement value of any improvements or fixtures located on the subleased premises. The liability insurance coverage shall be in amounts not less than (\$100,000.00) per occurrence and (\$200,000.00) per accident for personal injury, death, and property damage on the subleased premises. Such policies of insurance shall name SUBLESSEE, the TRUSTEES, SUBLESSOR and the State of Florida as co-insureds. SUBLESSEE shall submit written evidence of having procured all insurance policies required herein prior to the effective date of this sublease and shall submit annually thereafter, written evidence of maintaining all insurance policies required herein to SUBLESSOR and the Bureau of Uplands Management, Division of State Lands, Department of Natural Resources, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000. SUBLESSEE shall purchase all policies of insurance from a financially-responsible insurer duly authorized to do business in the State of Florida. Any certificate of self-insurance shall be issued or approved by the Insurance Commissioner, State of Florida. The certificate of insurance shall provide for casualty and liability coverage. SUBLESSEE further agrees to immediately notify SUBLESSOR and the insurance agent of any erection or removal of any structure or other fixed improvement on the subleased premises and any changes affecting the value of any improvements and to request said agent to make adequate changes in the coverage to reflect the changes in value. SUBLESSEE shall be financially responsible for any loss due to failure to obtain adequate insurance coverage, and failure to maintain such policies in the amounts set forth shall constitute a breach of this sublease.

12. INDEMNITY: SUBLESSEE hereby covenants and agrees to investigate all claims of every nature at its own expense, and to indemnify, protect, defend, hold and save harmless the State of Florida, the TRUSTEES and SUBLESSOR from any and all claims, actions, lawsuits and demands of any kind or nature arising out of this sublease to the extent provided by law.

13. SECURITY: SUBLESSEE shall provide security and protection as necessary and keep the subleased premises secure and protected at all times.

14. PAYMENT OF TAXES AND ASSESSMENTS: SUBLESSEE agrees to assume all responsibility for liabilities that accrue to the subleased premises or to the improvements thereon, including any and all drainage and special assessments or taxes of every kind and all mechanic's or materialman's liens which may be hereafter lawfully assessed and levied against the subleased premises during the effective period of this sublease.

15. PERMANENT IMPROVEMENTS: All permanent improvements located on the subleased premises shall, at the termination of this sublease, become the property of the State of Florida.

16. SIGNS: SUBLESSEE shall insure that the subleased premises are identified as being publicly owned and operated as a public outdoor recreation facility in all signs, literature and advertising and shall erect signs identifying the facility as being open to the public. Within 90 days from the date of this sublease, SUBLESSEE shall erect temporary sign(s) on the site identifying the park name and stating that the property was provided by the State of Florida, Department of Natural Resources. The temporary sign(s) shall remain on the subleased premises until construction completion at which time a permanent sign, bearing the same information, shall be placed at the site. Photographs of the temporary and permanent signs shall be sent to the SUBLESSOR upon their installation. If federal or state grants or funds are used by SUBLESSEE for any project on the subleased premises, SUBLESSEE shall erect signs identifying the subleased premises as a federally or state assisted project.

17. NO WAIVER OF BREACH: The failure of SUBLESSOR to insist in any one or more instances upon strict performance of any one or more of the covenants, terms and conditions of this sublease shall not be construed as a waiver of such covenants, terms and conditions, but the same shall continue in full force and effect, and no waiver of the SUBLESSOR of any of the provisions hereof

shall in any event be deemed to have been made unless the waiver is set forth in writing, signed by the SUBLESSOR.

18. TIME: Time is expressly declared to be the essence of this sublease.

19. NON-DISCRIMINATION: As a condition of obtaining this sublease, the SUBLESSEE hereby agrees not to discriminate against any individual because of that individual's race, color, religion, sex, national origin, age, handicap, or marital status with respect to any activity occurring within the subleased premises or upon lands adjacent to and used as an adjunct of the subleased premises.

20. UTILITY FEES: SUBLESSOR shall not be required to furnish SUBLESSEE any services of any kind during the term of this sublease. SUBLESSEE shall pay all charges for the furnishing of gas, electricity, water and other public utilities to the subleased premises.

21. RIGHT OF AUDIT: SUBLESSEE shall make available to the SUBLESSOR all financial records relating to this sublease, and SUBLESSOR shall have the right to either audit such records at any reasonable time or require the submittal of an independent audit by a Certified Public Accountant. This right shall be continuous throughout the term of this sublease and exercised without unreasonably interfering with the operation of SUBLESSEE'S facilities. This sublease may be terminated by SUBLESSOR should SUBLESSEE fail to allow public access to all documents, papers, letters or other materials made or received in conjunction with this sublease agreement, pursuant to the provisions of Chapter 119, Florida Statutes.

22. MINERAL RIGHTS: This sublease does not cover petroleum or petroleum products or minerals and does not give right to SUBLESSEE to drill for or develop the same.

23. CONDITION OF PROPERTY: SUBLESSOR assumes no liability or obligation to SUBLESSEE with reference to the conditions of the subleased premises or the suitability of the subleased premises for any improvements. The subleased premises herein are Subleased by SUBLESSOR to SUBLESSEE in an "as is" condition, with SUBLESSOR assuming no responsibility for planning, bidding, contracting,

permitting, restoration, construction, and the use, care, repair, maintenance or improvement of the subleased premises for the benefit of SUBLESSEE.

24. NOTICES: All notices given under this sublease must be in writing and shall be served by certified mail including, but not limited to, notice of any violation served pursuant to Section 253.04, Florida Statutes, to the last address of the party to whom notice is to be given, as designated by such party in writing. SUBLESSOR and SUBLESSEE hereby designate their address as follows:

SUBLESSOR:	SUBLESSEE:
<u>Director</u>	<u>City Manager</u>
<u>Division of Recreation and Parks</u>	<u>City of Key West</u>
<u>Department of Natural Resources</u>	<u>Post Office 1409</u>
<u>3900 Commonwealth Boulevard</u>	<u>Key West, Florida 33041</u>
<u>Tallahassee, Florida 32399-3000</u>	

25. BREACH OF COVENANTS TERMS, OR CONDITIONS: Should SUBLESSEE breach any of the covenants, terms, or conditions of this sublease, SUBLESSOR shall give written notice to SUBLESSEE to remedy such breach within sixty (60) days. In the event SUBLESSEE fails to remedy the breach to the satisfaction of SUBLESSOR within the time period specified, SUBLESSOR may terminate all of SUBLESSEE'S rights hereunder and recover from SUBLESSEE all damages it may incur by reason of the breach including costs and attorneys' fees.

26. DAMAGES: SUBLESSEE agrees that it will not do, or suffer to be done, in, on, or upon the subleased premises or as affecting said subleased premises, any act which may result in damage or depreciation of value to the subleased premises, or any part thereof. SUBLESSEE agrees that SUBLESSOR may take any remedy available to SUBLESSOR as a result of such failure by SUBLESSEE.

27. SURRENDER OF PREMISES: Upon termination or expiration of this sublease, SUBLESSEE shall surrender subleased premises to SUBLESSOR. In the event no further use of this parcel or any part thereof is needed, SUBLESSEE shall give written notification to SUBLESSOR at least six (6) months prior to the release of any or all of the premises. Notification shall include a legal



description, the sublease number and explanation of the release. The release shall only be valid if approved by SUBLESSOR through execution of a release of sublease instrument with the same formality as this sublease. Upon termination of this sublease, all improvements shall automatically become the property of the State of Florida, unless SUBLESSOR, at its option, should require immediate removal at SUBLESSEE'S expense of any or all such improvements upon written notice to SUBLESSEE. Any improvements to remain on the property upon termination of this sublease shall be at SUBLESSOR'S sole discretion. SUBLESSEE shall meet the following conditions upon termination of this sublease:

(a) The structures or fixed improvements on the subleased premises shall meet all building and safety codes in the location situated;

(b) SUBLESSEE shall properly dispose of paying any utility fees, including having all the utilities turned off;

(c) SUBLESSEE shall not commit waste; fair wear and tear is acceptable;

(d) Prior to formal release SUBLESSOR shall perform an on-site inspection and the keys to any building on the subleased premises shall be turned over to SUBLESSOR. If the subleased premises do not meet all conditions agreed upon, SUBLESSEE shall reimburse TRUSTEES and SUBLESSOR for any expenses incurred in meeting the prescribed conditions. Any structures or fixed improvements remaining on the subleased premises shall inure to the benefit of the State of Florida.

28. BEST MANAGEMENT PRACTICES: SUBLESSEE agrees to implement applicable Best Management Practices for all activities conducted under this sublease in compliance with paragraph 18-2.004(1)(d), Florida Administrative Code, which have been selected, developed, or approved by SUBLESSOR, TRUSTEES or other land managing agencies which will protect and enhance the subleased premises.

29. DUPLICATE ORIGINALS: This sublease is executed in duplicate originals each of which for all purposes shall be considered an original.

30. SOVEREIGNTY & MERGED LANDS: This sublease does not authorize the use of any lands located waterward of the mean or ordinary high water line of any lake, river, stream, creek, bay, estuary, or other water body or the waters above such lands or the air space there above.

31. PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES: SUBLESSEE hereby covenants and agrees that fee title to the subleased premises is owned by the TRUSTEES and that SUBLESSEE shall not do or permit anything to be done which purports to create a lien or encumbrance of any nature against the real property contained in the subleased premises including, but not limited to, mortgages or construction liens against the subleased premises or against any interest of SUBLESSEE therein.

32. CONDITIONS AND COVENANTS: All of the provisions of this sublease shall be deemed covenants running with the land included in the subleased premises, and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

33. PARTIAL INVALIDITY: If any term, covenant, condition or provision of this sublease shall be ruled by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

34. ENTIRE UNDERSTANDING: This sublease agreement sets forth the entire understanding between the parties. It shall not be changed or terminated orally. The provisions of this sublease are not severable. This sublease shall not be amended without the prior written approval of the TRUSTEES and SUBLESSOR. Any amendment not formally approved in writing by the TRUSTEES and SUBLESSOR and executed with the same formality as this sublease shall be void and without legal effect.

35. EASEMENTS: All easements including, but not limited to utility easements are expressly prohibited without the prior written approval of the TRUSTEES and SUBLESSOR. Any easement not

approved in writing by the TRUSTEES and SUBLESSOR shall be void and without legal effect.

36. SUBLEASE: This sublease agreement is for the purposes specified herein and subleases of any nature are prohibited, without the prior written approval of the TRUSTEES and SUBLESSOR. Any sublease not approved in writing by the TRUSTEES and SUBLESSOR shall be void and without legal effect.

37. MAINTENANCE OF IMPROVEMENTS: SUBLESSEE hereby covenants and agrees to maintain the real property contained within the subleased premises and any improvements located thereon, in a state of good condition and repair, including but not limited to, keeping the subleased premises free of trash or litter, maintaining any and all existing roads, canals, ditches, culverts, risers and the like in as good condition as the same may be at the date of this sublease, provided; however, that any removal, closure, etc., of the above improvements shall be acceptable when the proposed activity is consistent with the goals of conservation, protection, and enhancement of the natural resources within the subleased premises and with the approved Management Plan.

38. COMPLIANCE WITH LAWS: The SUBLESSEE agrees that this sublease is contingent upon and subject to SUBLESSEE obtaining all applicable permits and complying with all applicable permits, regulations, ordinances, rules, and laws of the State of Florida, the United States or of any political subdivision or agency thereof.

39. ARCHAEOLOGICAL AND HISTORICAL SITES: Execution of this sublease in no way affects any of the parties' obligations pursuant to Chapter 267, Florida Statutes. The collection of artifacts or the disturbance of archaeological and historical sites on state-owned lands is prohibited unless prior authorization has been obtained from the Division of Historical Resources of the Department of State. The Management Plan prepared pursuant to Section 253.034, Florida Statutes, shall be reviewed by the Division of Historical Resources to insure that adequate measures

have been planned to locate, identify, protect and preserve the archaeological and historic sites and properties on the subleased premises.

40. ASSENT TO SUBLEASE AGREEMENT TERMS AND CONDITIONS: The SUBLESSEE joins in this sublease for the purpose of indicating its assent to all terms and conditions hereof, and to be bound hereby.

41. GOVERNING LAW: This sublease shall be governed by and interpreted according to the laws of the State of Florida.

42. SPECIAL CONDITIONS: The following special conditions shall apply to this sublease agreement.

(A) DEVELOPMENT TIME FRAME: The SUBLESSEE shall at its sole cost and expense make available to the public, within three (3) years from the effective date of this sublease, all planned site improvements on the property for public recreational use and protection of the natural resources. If development is to be phased, Phase 1 improvements shall be completed and made available to the public by the SUBLESSEE at its sole cost and expense within five (5) years from the effective date of this sublease. This provision shall be in accordance with the approved management plan, described in paragraph 7, which shall set out all additional phases of site improvements. Such later phased site improvements shall be included within SUBLESSEE'S capital improvement plan.

(B) SITE PLAN: The SUBLESSEE shall submit a final site plan to the SUBLESSOR for review and approval prior to construction of any new facilities. A site plan of existing and proposed facilities shall be included in the management plan.

(C) USER FEES: Should the SUBLESSEE elect to implement a user fee system for the subleased premises or for any recreational facilities within its boundaries, the SUBLESSEE shall impose such fees uniformly upon all users without regard to age, sex, race, other condition, or the political subdivision in which the user may reside. If requested by the SUBLESSEE and authorized by the SUBLESSOR, special allowances may be made for certain classes or groups of users.

IN WITNESS WHEREOF, the parties have caused this sublease to be executed on the day and year first above written.

STATE OF FLORIDA DEPARTMENT OF NATURAL RESOURCES

Joseph J. Knoll  
Witness  
David Stevens  
Witness

By: Joseph J. Knoll (SEAL)  
Its: Acting Director  
Division of Recreation and Parks

STATE OF FLORIDA  
COUNTY OF LEON

"SUBLESSOR"

The foregoing instrument was acknowledged before me this 7th day of June, 1989, by Joseph J. Knoll, as Acting Director, Division of Recreation and Parks, as

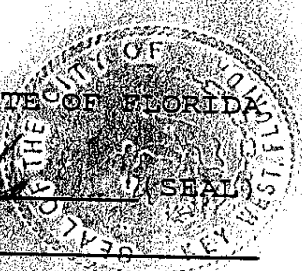
Janis M. Oswald (SEAL)  
NOTARY PUBLIC

My Commission Expires:

Notary Public, State of Florida  
My Commission Expires April 13, 1990  
Bonded thru Texas Fidelity Insurance Inc.

Josephine Parker  
Witness  
Steve Smith, City Atty.  
Witness

CITY OF KEY WEST, STATE OF FLORIDA  
By: Richard H. Witker (SEAL)  
Its: City Manager



STATE OF FLORIDA  
COUNTY OF MONROE

"SUBLESSEE"

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC (SEAL)

My Commission Expires:

Consented to by the TRUSTEES on 4th day of June, 1989.

Paul M. Miller  
Director, Division of State Lands,  
Department of Natural Resources

Approved as to Form and  
Legality

By: Patricia E. Davenport  
DNR Attorney

EXHIBIT "A"

On the Island of Key West, Monroe County, Florida and known on William A. Whitehead's Map of said Island delineated in February A.D., 1829 as part of Tract 31 and being more particularly described by metes and bounds as follows;

Commence at the point of intersection of the Easterly right-of-way line on White Street and the Southerly right-of-way line of Atlantic Boulevard; said point being the Point of Beginning of the parcel of land herein being described; thence bear South 33 degrees, 56 minutes, 35 seconds East a distance of 64.20 feet to a point on the Mean High Water Line of the Atlantic Ocean; thence along said line North 56 degrees, 02 minutes, 05 seconds East 62.80 feet to a point; thence continue along said line North 61 degrees, 06 minutes, 55 seconds East 60.39 feet to a point; thence continue along said line North 55 degrees, 44 minutes, 35 seconds East 84.25 feet to a point; thence continue along said line North 57 degrees, 24 minutes, 25 seconds East 65.41 feet to a point; thence continue along said line North 56 degrees, 13 minutes, 05 seconds East 63.39 feet to a point; thence continue along said line North 60 degrees 00 minutes, 45 seconds East 82.98 feet to a point; thence continue along said line North 66 degrees, 22 minutes, 35 seconds East 104.48 feet to a point; thence continue along said line North 61 degrees, 58 minutes, 20 seconds East 56.25 feet to a point; thence continue along said line North 59 degrees, 56 minutes, 15 seconds East 58.85 feet to a point; thence continue along said line North 67 degrees, 53 minutes, 50 seconds East 35.03 feet to a point; thence North 33 degrees, 56 minutes, 35 seconds West 112.07 feet to a point on the said right-of-way line of Atlantic Boulevard; said point being North 56 degrees, 03 minutes, 25 seconds East and 670.43 feet from the Point of Beginning; thence South 56 degrees, 03 minutes, 25 seconds West along the said right-of-way line of Atlantic boulevard 670.43 feet to a point on the said right-of-way line of White Street and the Point of Beginning. Containing 1.22 acres, more or less.