
From: George Wallace
Sent: Monday, March 29, 2021 10:40 AM
To: Claire Hurd
Subject: FW: Lease Agreement - Instrument #440026265, Action ID #43344: City of Key West
Attachments: A AID 43344 Renewal 440026265 OGC signed cw 1.pdf

I guess we could add this to the package

From: no-reply@dep.state.fl.us <no-reply@dep.state.fl.us>
Sent: Wednesday, March 17, 2021 4:02 PM
To: George Wallace <gwallace@cityofkeywest-fl.gov>; Celeda.Wallace@dep.state.fl.us
Cc: James.Kipp@dep.state.fl.us; Brad.Richardson@FloridaDEP.gov; Michele.Stevens@FloridaDEP.gov; Wanda.Mitchell@Floridadep.gov; Christopher.Crenshaw@FloridaDEP.gov
Subject: Lease Agreement - Instrument #440026265, Action ID #43344: City of Key West



FLORIDA DEPARTMENT OF Environmental Protection

Carr Building
3800 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

Mailout Request Notification

2021-03-17

City of Key West

Good Afternoon George:

Attached is the Submerged Lands Instrument for BOT No. 440026265. The instrument requires acceptance by Gregory W. Veliz's notarized signature of (designated signatory) (two witnesses required). Pursuant to Chapter 693, Florida Statutes, the name(s) of the person(s) executing the instrument, the two witnesses, and the notary public must be legibly printed or typewritten directly below the signatures. The original instrument should be returned to our office for final departmental execution. An original fully executed instrument will be provided to you.

Also, a processing fee invoice will be sent to you after Departmental execution of the lease.

In an effort to provide a more efficient service, the Florida Department of Environmental Protections Division of State Lands is forwarding the attached document to you by electronic correspondence in lieu of a hard copy through the USPS.

The attached document is in pdf format and will require Adobe Reader 6, or later, to open properly. Contact www.adobe.com/products/acrobat/readstep2_allversions.html to download a free copy. Please note that our

documents are sent virus free. However, if you use Norton Anti-virus software, a warning may appear when attempting to open the document. Please disregard this warning.

Please mail the original signed instrument within 30 days to the following address

Department of Environmental Protection
Attn: Submerged Closing Agent
3900 Commonwealth Boulevard
Mail Station 125
Tallahassee, Florida 32399

Please confirm receipt of the lease instrument by emailing me at Celeda.Wallace@FloridaDEP.gov. Should you have any questions about the attached instrument, please contact me at (850) 245-2753 or Celeda.Wallace@FloridaDEP.gov.

Thank You
Celeda Wallace



This Instrument Prepared By:
Celeda Wallace
Action No. 43344
Bureau of Public Land Administration
3900 Commonwealth Boulevard
Mail Station No. 125
Tallahassee, Florida 32399

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

SOVEREIGNTY SUBMERGED LANDS LEASE RENEWAL

BOT FILE NO. 440026265

THIS LEASE is hereby issued by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, hereinafter referred to as the Lessor.

WITNESSETH: That for and in consideration of payment of the annual lease fees hereinafter provided and the faithful and timely performance of and compliance with all terms and conditions stated herein, the Lessor does hereby lease to City of Key West, Florida, hereinafter referred to as the Lessee, the sovereignty lands described as defined in 18-21.003, Florida Administrative Code, contained within the following legal description:

A parcel of sovereignty submerged land in Section 31, Township 67 South, Range 25 West, in Key West Harbor, Monroe County, Florida, containing 4,498 square feet, more or less, as is more particularly described and shown on Attachment A, dated May 5, 2010.

TO HAVE THE USE OF the hereinabove described premises from February 1, 2021, the effective date of this lease renewal, through February 1, 2026, the expiration date of this lease renewal. The terms and conditions on and for which this lease is granted are as follows:

1. **USE OF PROPERTY:** The Lessee is hereby authorized to operate a 1-slip docking facility to be used exclusively for mooring of a commercial site-seeing/tour vessel in conjunction with an upland tour boat operation, without fueling facilities, with a sewage pumpout facility if it meets the regulatory requirements of the State of Florida Department of Environmental Protection or State of Florida Department of Health, whichever agency has jurisdiction, and without liveaboards as defined in paragraph 27, as shown and conditioned in Attachment A. All of the foregoing subject to the remaining conditions of this lease.

2. **LEASE FEES:** The Lessee hereby agrees to pay to the Lessor an initial annual lease fee of \$821.78, plus sales tax pursuant to Section 212.031, Florida Statutes, if applicable, within 30 days of receipt of this fully executed lease. The annual fee for the remaining years of this lease shall be adjusted pursuant to provisions of Rule 18-21.011, Florida Administrative Code. The State of Florida Department of Environmental Protection, Division of State Lands (the "Division") will notify the Lessee in writing of the amount and the due date of each subsequent annual lease payment during the remaining term of this lease. All lease fees due hereunder shall be remitted to the Division, as agent for the Lessor.

3. WET SLIP RENTAL CERTIFICATION/SUPPLEMENTAL PAYMENT: (A) The Lessee shall provide upon request by the Lessor any and all information in a certified form needed to calculate the lease fee specified in paragraph two (2) above, including the income, as defined in subsection 18-21.003(31), Florida Administrative Code, derived directly or indirectly from the use of sovereignty submerged lands on an annual basis. When six percent (6%) of said annual income exceeds the base fee or minimum annual fee established pursuant to Rule 18-21.011, Florida Administrative Code, for any lease year during the term of this lease, the Lessor shall send the Lessee a supplemental invoice for the difference in the amounts for that lease year. (B) The instrument or agreement used by the Lessee to transfer or assign the right to use a wet slip at the docking facility to a third party shall include a provision that clearly notifies the wet slip renter/user/holder that if the wet slip renter/user/holder subsequently transfers his right to use said wet slip to another party, the instrument or agreement used to transfer said wet slip shall contain a provision that requires six percent (6%) of the annual gross income derived from said instrument or agreement for the use of said wet slip be paid to the Lessee who, upon receipt, shall report and transmit said amount to the Lessor. The instrument or agreement used by the Lessee to transfer a wet slip shall also include a provision that clearly notifies the wet slip renter/user/holder that no interest in said wet slip may be further transferred unless a substantially similar provision to the one contained in the preceding sentence is placed in each succeeding instrument or agreement used to transfer said wet slip to each new wet slip renter/user/holder. (C) The Lessee shall submit to the Lessor each instrument or agreement used by the Lessee to transfer or assign the right to use a wet slip at the docking facility to a third party annually at the same time the Lessee submits the required Annual Wet Slip Revenue Report to the Lessor. Any breach of this lease condition shall constitute a default under this lease.

4. LATE FEE ASSESSMENTS: The Lessee shall pay a late payment assessment for lease fees or other charges due under this lease which are not paid within 30 days after the due date. This assessment shall be computed at the rate of twelve percent (12%) per annum, calculated on a daily basis for every day the payment is late.

5. EXAMINATION OF LESSEE'S RECORDS: For purposes of this lease, the Lessor is hereby specifically authorized and empowered to examine, for the term of this lease including any extensions thereto plus three (3) additional years, at all reasonable hours, the books, records, contracts, and other documents confirming and pertaining to the computation of annual lease payments as specified in paragraph two (2) above.

6. MAINTENANCE OF LESSEE'S RECORDS: The Lessee shall maintain separate accounting records for: (i) the gross revenue derived directly from the use of the leased premises, (ii) the gross revenue derived indirectly from the use of the leased premises, and (iii) all other gross revenue derived from the Lessee's operations on the riparian upland property. The Lessee shall secure, maintain and keep all records for the entire term of this lease plus three (3) additional years. This period shall be extended for an additional two (2) years upon request for examination of all records and accounts for lease verification purposes by the Lessor.

7. AGREEMENT TO EXTENT OF USE: This lease is given to the Lessee to use or occupy the leased premises only for those activities specified herein. The Lessee shall not (i) change or add to the approved use of the leased premises as defined herein (e.g., from commercial to multi-family residential, from temporary mooring to rental of wet slips, from rental of wet slips to contractual agreement with third party for docking of cruise ships, from rental of recreational pleasure craft to rental or temporary mooring of charter/tour boats, from loading/offloading commercial to rental of wet slips, etc.); (ii) change activities in any manner that may have an environmental impact that was not considered in the original authorization or regulatory permit; or (iii) change the type of use of the riparian uplands or as permitted by the Lessee's interest in the riparian upland property that is more particularly described in Attachment B without first obtaining a regulatory permit/modified permit, if applicable, the Lessor's written authorization in the form of a modified lease, the payment of additional fees, if applicable, and, if applicable, the removal of any structures which may no longer qualify for authorization under the modified lease.

8. PROPERTY RIGHTS: The Lessee shall make no claim of title or interest to said lands hereinbefore described by reason of the occupancy or use thereof, and all title and interest to said land hereinbefore described is vested in the Lessor. The Lessee is prohibited from including, or making any claim that purports to include, said lands described or the Lessee's leasehold interest in said lands into any form of private ownership, including but not limited to any form of condominium or cooperative ownership. The Lessee is further prohibited from making any claim, including any advertisement, that said land, or the use thereof, may be purchased, sold, or re-sold.

9. INTEREST IN RIPARIAN UPLAND PROPERTY: During the term of this lease, the Lessee shall maintain satisfactory evidence of sufficient upland interest as required by paragraph 18-21.004(3)(b), Florida Administrative Code, in the riparian upland property that is more particularly described in Attachment B and by reference made a part hereof together with the riparian rights appurtenant thereto. If such interest is terminated or the Lessor determines that such interest did not exist on the effective date of this lease, this lease may be terminated at the option of the Lessor. If the Lessor terminates this lease, the Lessee agrees not to assert a claim or defense against the Lessor arising out of this lease. Prior to sale and/or termination of the Lessee's interest in the riparian upland property, the Lessee shall inform any potential buyer or transferee of the Lessee's interest in the riparian upland property and the existence of this lease and all its terms and conditions and shall complete and execute any documents required by the Lessor to effect an assignment of this lease, if consented to by the Lessor. Failure to do so will not relieve the Lessee from responsibility for full compliance with the terms and conditions of this lease which include, but are not limited to, payment of all fees and/or penalty assessments incurred prior to such act.

10. ASSIGNMENT OF LEASE: This lease shall not be assigned or otherwise transferred without prior written consent of the Lessor or its duly authorized agent. Such assignment or other transfer shall be subject to the terms, conditions and provisions of this lease, current management standards and applicable laws, rules and regulations in effect at that time. Any assignment or other transfer without prior written consent of the Lessor shall be null and void and without legal effect.

11. LIABILITY/INVESTIGATION OF ALL CLAIMS: The Lessee shall investigate all claims of every nature at its expense. Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by any party hereto, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims.

12. NOTICES/COMPLIANCE/TERMINATION: The Lessee binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Lessee, its successors and assigns. In the event the Lessee fails or refuses to comply with the provisions and conditions herein set forth, or in the event the Lessee violates any of the provisions and conditions herein set forth, and the Lessee fails or refuses to comply with any of said provisions or conditions within twenty (20) days of receipt of the Lessor's notice to correct, this lease may be terminated by the Lessor upon thirty (30) days written notice to the Lessee. If canceled, all of the above-described parcel of land shall revert to the Lessor. All notices required to be given to the Lessee by this lease or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

City of Key West, Florida
Post Office Box 1409
Key West, FL 33040

The Lessee shall notify the Lessor by certified mail of any change to this address at least ten (10) days before the change is effective.

13. TAXES AND ASSESSMENTS: The Lessee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this lease.

14. NUISANCES OR ILLEGAL OPERATIONS: The Lessee shall not permit the leased premises or any part thereof to be used or occupied for any purpose or business other than herein specified unless such proposed use and occupancy are consented to by the Lessor and the lease is modified accordingly, nor shall Lessee knowingly permit or suffer any nuisances or illegal operations of any kind on the leased premises.

15. MAINTENANCE OF FACILITY/RIGHT TO INSPECT: The Lessee shall maintain the leased premises in good condition, keeping the structures and equipment located thereon in a good state of repair in the interests of public health, safety and welfare. No dock or pier shall be constructed in any manner that would cause harm to wildlife. The leased premises shall be subject to inspection by the Lessor or its designated agent at any reasonable time.

16. NON-DISCRIMINATION: The Lessee shall not 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 area subject to this lease or upon lands adjacent to and used as an adjunct of the leased area.

17. ENFORCEMENT OF PROVISIONS: No failure, or successive failures, on the part of the Lessor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Lessor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

18. PERMISSION GRANTED: Upon expiration or cancellation of this lease all permission granted hereunder shall cease and terminate.

19. RENEWAL PROVISIONS: Renewal of this lease shall be at the sole option of the Lessor. Such renewal shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. In the event that the Lessee is in full compliance with the terms of this lease, the Lessor will begin the renewal process. The term of any renewal granted by the Lessor shall commence on the last day of the previous lease term. In the event the Lessor does not grant a renewal, the Lessee shall vacate the leased premises and remove all structures and equipment occupying and erected thereon at its expense. The obligation to remove all structures authorized herein upon termination of this lease shall constitute an affirmative covenant upon the Lessee's interest in the riparian upland property more particularly described in Attachment B which shall run with the title to the Lessee's interest in said riparian upland property and shall be binding upon the Lessee and the Lessee's successors in title or successors in interest.

20. REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES: If the Lessee does not remove said structures and equipment occupying and erected upon the leased premises after expiration or cancellation of this lease, such structures and equipment will be deemed forfeited to the Lessor, and the Lessor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Lessee at the address specified in Paragraph 12 or at such address on record as provided to the Lessor by the Lessee. However, such remedy shall be in addition to all other remedies available to the Lessor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

21. REMOVAL COSTS/LIEN ON RIPARIAN UPLAND PROPERTY: Subject to the noticing provisions of Paragraph 20 of this lease, any costs incurred by the Lessor in removal of any structures and equipment constructed or maintained on state lands shall be paid by Lessee and any unpaid costs and expenses shall constitute a lien upon the Lessee's interest in the riparian upland property that is more particularly described in Attachment B. This lien on the Lessee's interest in the riparian upland property shall be enforceable in summary proceedings as provided by law.

22. RIPARIAN RIGHTS/FINAL ADJUDICATION: In the event that any part of any structure authorized hereunder is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent riparian rights, Lessee agrees to either obtain written consent for the offending structure from the affected riparian owner or to remove the interference or encroachment within 60 days from the date of the adjudication. Failure to comply with this paragraph shall constitute a material breach of this lease agreement and shall be grounds for immediate termination of this lease agreement at the option of the Lessor.

23. AMENDMENTS/MODIFICATIONS: This lease is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this lease must be in writing, must be accepted, acknowledged and executed by the Lessee and Lessor, and must comply with the rules and statutes in existence at the time of the execution of the modification or amendment. Notwithstanding the provisions of this paragraph, if mooring is authorized by this lease, the Lessee may install boatlifts within the leased premises without formal modification of the lease provided that (a) the Lessee obtains any state or local regulatory permit that may be required; and (b) the location or size of the lift does not increase the mooring capacity of the docking facility.

24. ADVERTISEMENT/SIGNS/NON-WATER DEPENDENT ACTIVITIES/ADDITIONAL ACTIVITIES/MINOR STRUCTURAL REPAIRS: No permanent or temporary signs directed to the boating public advertising the sale of alcoholic beverages shall be erected or placed within the leased premises. No restaurant or dining activities are to occur within the leased premises. The Lessee shall ensure that no permanent, temporary or floating structures, fences, docks, pilings or any structures whose use is not water-dependent shall be erected or conducted over sovereignty submerged lands without prior written consent from the Lessor. No additional structures and/or activities including dredging, relocation/realignment or major repairs or renovations to authorized structures, shall be erected or conducted on or over sovereignty, submerged lands without prior written consent from the Lessor. Unless specifically authorized in writing by the Lessor, such activities or structures shall be considered unauthorized and a violation of Chapter 253, Florida Statutes, and shall subject the Lessee to administrative fines under Chapter 18-14, Florida Administrative Code. This condition does not apply to minor structural repairs required to maintain the authorized structures in a good state of repair in the interests of public health, safety or welfare; provided, however, that such activities shall not exceed the activities authorized by this lease.

25. USACE AUTHORIZATION: Prior to commencement of construction and/or activities authorized herein, the Lessee shall obtain the U.S. Army Corps of Engineers (USACE) permit if it is required by the USACE. Any modifications to the construction and/or activities authorized herein that may be required by the USACE shall require consideration by and the prior written approval of the Lessor prior to the commencement of construction and/or any activities on sovereign, submerged lands.

26. COMPLIANCE WITH FLORIDA LAWS: On or in conjunction with the use of the leased premises, the Lessee shall at all times comply with all Florida Statutes and all administrative rules promulgated thereunder. Any unlawful activity which occurs on the leased premises or in conjunction with the use of the leased premises shall be grounds for the termination of this lease by the Lessor.

27. LIVEBOARDS: The term "liveaboard" is defined as a vessel docked at the facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within a thirty (30) day period. If liveboards are authorized by paragraph one (1) of this lease, in no event shall such "liveaboard" status exceed six (6) months within any twelve (12) month period, nor shall any such vessel constitute a legal or primary residence.

28. GAMBLING VESSELS: During the term of this lease and any renewals, extensions, modifications or assignments thereof, Lessee shall prohibit the operation of or entry onto the leased premises of gambling cruise ships, or vessels that are used principally for the purpose of gambling, when these vessels are engaged in "cruises to nowhere," where the ships leave and return to the state of Florida without an intervening stop within another state or foreign country or waters within the jurisdiction of another state or foreign country, and any watercraft used to carry passengers to and from such gambling cruise ships.

[Remainder of page intentionally left blank; Signature page follows]

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this instrument on the day and year first above written.

WITNESSES:

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

Original Signature

(SEAL)

Print/Type Name of Witness

BY:

Brad Richardson, Chief, Bureau of Public Land Administration,
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.

Original Signature

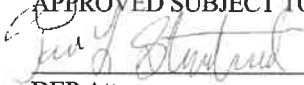
Print/Type Name of Witness

"LESSOR"

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me by means of physical presence this _____ day of _____, 20____, by Brad Richardson, Chief, Bureau of Public Land Administration, 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. He is personally known to me.

APPROVED SUBJECT TO PROPER EXECUTION:



3/16/2021

DEP Attorney

Date

Notary Public, State of Florida

Printed, Typed or Stamped Name

My Commission Expires:

Commission/Serial No. _____

WITNESSES:

City of Key West, Florida (SEAL)

Original Signature

BY: _____
Original Signature of Executing Authority

Typed/Printed Name of Witness

Gregory W. Veliz

Typed/Printed Name of Executing Authority

Original Signature

City Manager

Title of Executing Authority

Typed/Printed Name of Witness

“LESSEE”

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of __ physical presence or __online notarization this _____ day of _____, 20____, by Gregory W. Veliz as City Manager, for and on behalf of City of Key West, Florida. He is personally known to me or who has produced _____, as identification.

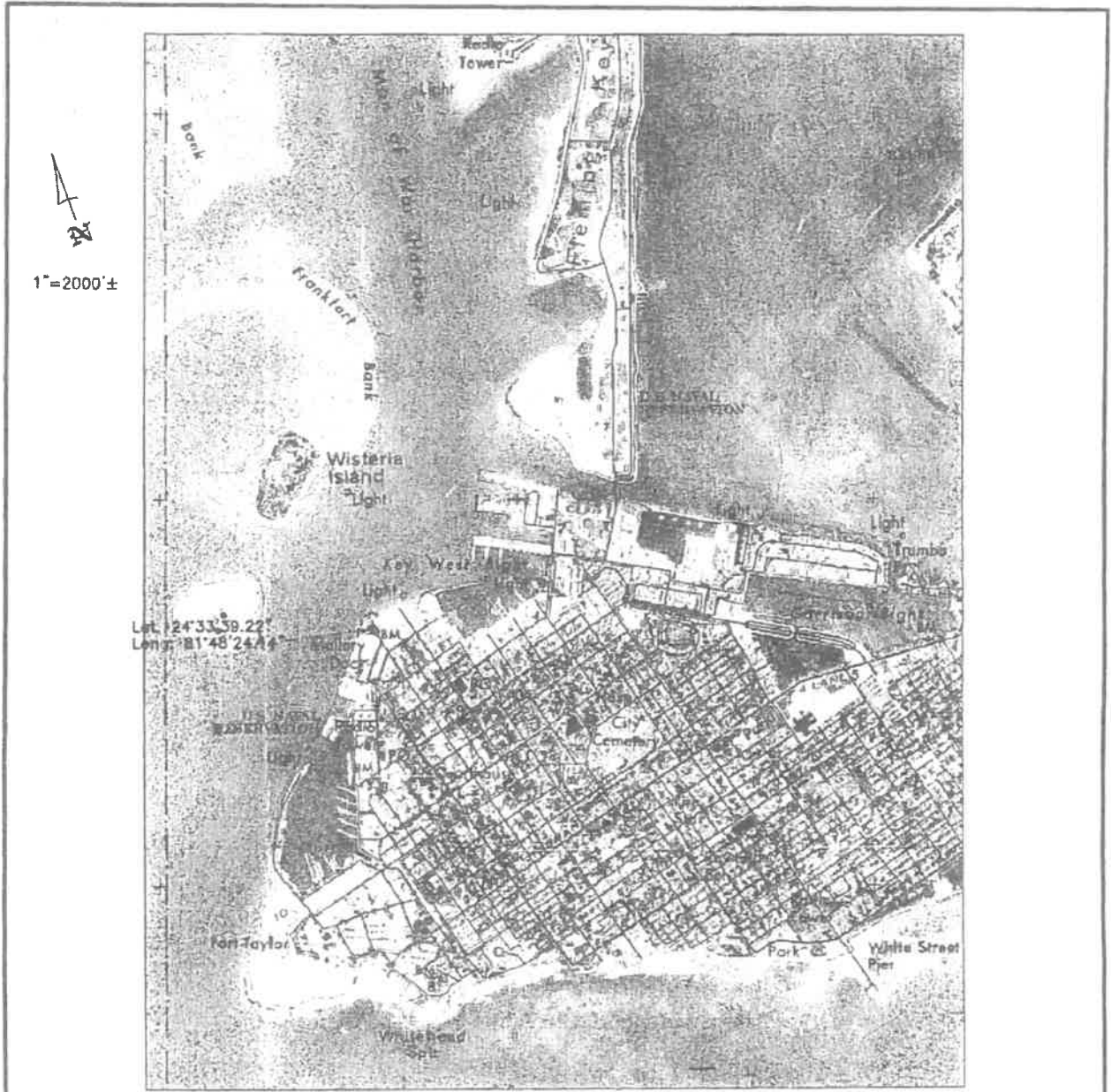
My Commission Expires:

Signature of Notary Public

Notary Public, State of _____

Commission/Serial No. _____

Printed, Typed or Stamped Name



U.S.G.S. Quad: KEY WEST

Sheet 1 of 4

City of Key West North End of Duval Street, Key West, Fl. 33040			
Specific Purpose Survey Submerged Land Lease			Dwn No.: 10-160
Scale: 1"=40'	Ref. file	Flood panel No. 1516 K	Dwn. By: F.H.H.
Date: 3/26/10		Flood Zone: AF-VI	Flood Elev. 8-13'
REVISIONS AND/OR ADDITIONS			
5/5/10: Revise lease area			
D.E.P. Marathon			
dwg/city of keywest/sub.landlease			



ISLAND SURVEYING INC.

ENGINEERS PLANNERS SURVEYORS

3152 Northside Drive
Suite 201
Key West, Fl. 33040

(305) 293-0466
Fax. (305) 293-0237
fhildeb1@bellsouth.net
I.B. No. 7700

LEGAL DESCRIPTION: EXISTING SUBMERGERED LAND LEASE::

Prepared by undersigned:

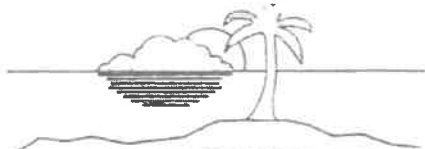
A parcel of submerged land in Key West Harbor, abutting and fronting the Northwesternly end of Duval Street, Key West, Monroe County, Florida) (said submerged land lying in Section 31, Township 67 South, Range 25 East, Monroe County, Florida) being more particularly described as follows:

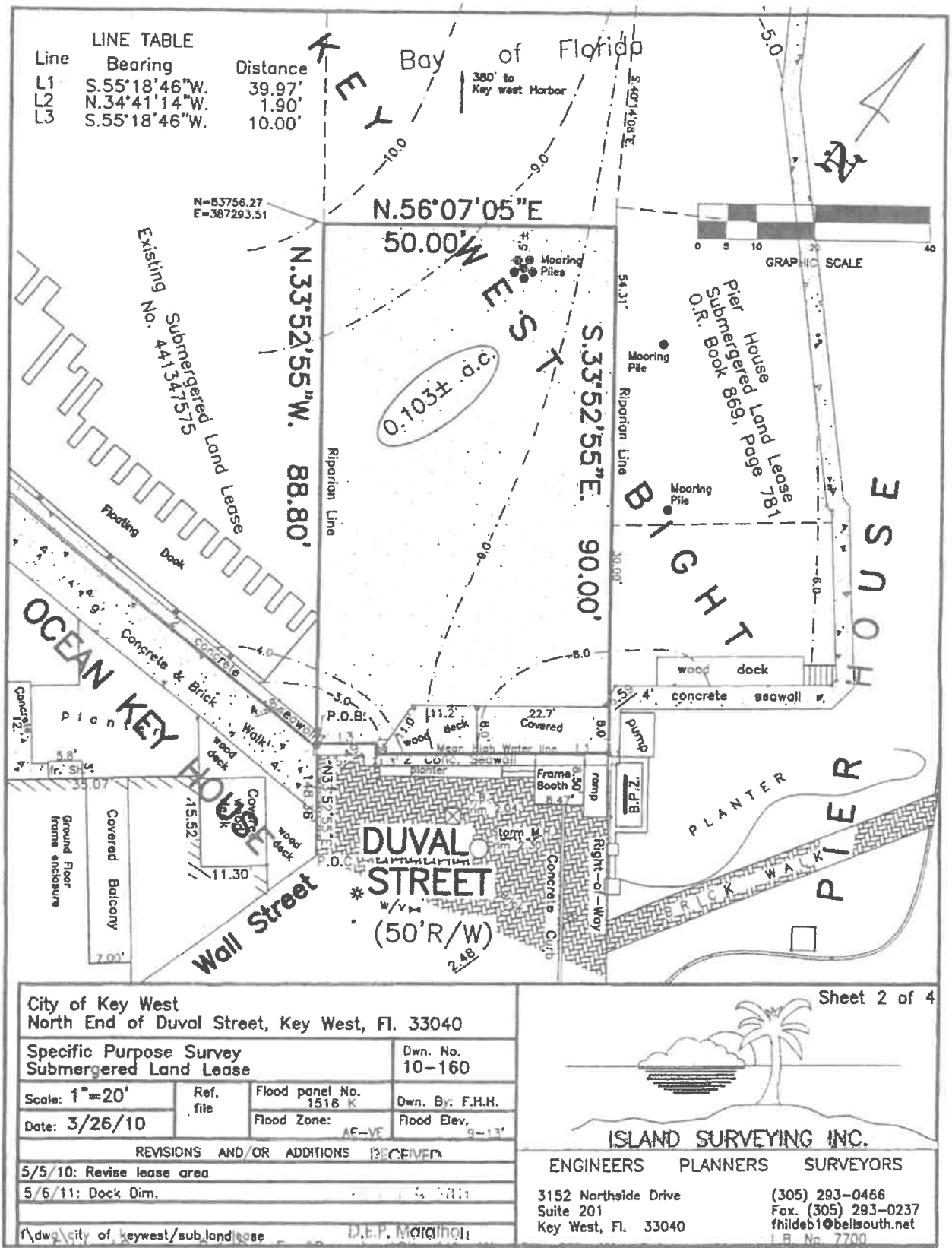
COMMENCE at the intersection of the Northwesternly right-of-way line of Wall Street with the Southwesternly Right-of-Way line of Duval Street, thence North 33°52'55" West along said Southwesternly Right-of-Way line of Duval Street a distance of 148.36 feet to the waterward edge of an existing concrete seawall and the Point of Beginning; thence continue N 33°52'55" W along the extension of the Southwesternly Right-of-Way line of Duval Street for a distance of 88.80 feet; thence N 56°07'05" E for a distance of 50.00 feet to the extension of the Northeastery Right-of-Way line of Duval Street; thence S 33°52'55" E along the extension of the said Northeastery Right-of-Way Line of Duval Street for 90.00 feet to the waterward side of a concrete seawall; thence meander the said seawall for the following three (3) metes and bounds; thence (1) S 55°18'46" W for a distance of 39.97 feet; thence (2) N 34°41'14" W for a distance of 1.90 feet; thence (3) S 55°18'46" W for a distance of 10.00 feet to the Point of Beginning.

Containing 4,498.49 square feet or 0.1033 acres, more or less.

Doc# 1850078
Bk# 2532 Pg# 2192

Sheet 3 of 4

City of Key West North End of Duval Street, Key West, Fl. 33040				 ISLAND SURVEYING, INC. ENGINEERS PLANNERS SURVEYORS	
Specific Purpose Survey Submerged Land Lease		Dwn No.: 10-160			
Scale: 1"=40'	Ref. file	Flood panel No. 1516 K	Dwn. By: F.H.H.		
Date: 3/26/10		Flood Zone: AF-VF	Flood Elev. 9-13'		
REVISIONS AND/OR ADDITIONS RECEIVED					
5/5/10: Revise lease area					
\\dwg\city of key west\sub.landlease				L.E.P. Marathou	
3152 Northside Drive Suite 201 Key West, Fl. 33040		(305) 293-0466 Fax. (305) 293-0237 fhildeb1@bellsouth.net L.S. No. 7700			



City of Key West
 North End of Duval Street, Key West, Fl. 33040

Specific Purpose Survey
 Submerged Land Lease

Scale: 1"=20'	Ref. file	Flood panel No. 1516 K	Dwn. No. 10-160
Date: 3/26/10		Flood Zone: AF-VE	Dwn. By: F.H.H.
			Flood Elev. 9-13'

REVISIONS AND/OR ADDITIONS RECEIVED

5/5/10: Revise lease area

5/6/11: Dock Dim.

f:\dwg\city of keywest\sub land lease D.E.P. Marshall

Sheet 2 of 4

ISLAND SURVEYING INC.

ENGINEERS PLANNERS SURVEYORS

3152 Northside Drive
 Suite 201
 Key West, Fl. 33040

(305) 293-0466
 Fax. (305) 293-0237
 fhildeb1@bellsouth.net
 I.R. No. 7700

SURVEYOR'S NOTES:

North arrow based on Fl. East Zone Coor.
 Reference Bearing: Previous Deed
 3/4" denotes existing elevation

Monumentation:

▲ = Set P.K. Nail, P.L.S. No. 2749

Elevations based on N.G.V.D. 1929 Datum
 Bench Mark No.: Tidal Elevation: 5.29 (corner of Duval & Front St.)
 Coordinates: Fla. East Zone 1983

Abbreviations:

Sty. = Story
 R/W = Right-of-Way
 p. = Plat
 m. = Measured
 d. = Deed
 M.H.W. = Mean High Water
 Sec. = Section
 Twp. = Township
 Rge. = Range
 N.T.S. = Not to Scale
 C = Centerline
 Elev. = Elevation
 B.M. = Bench Mark
 □ = Concrete Utility Pole
 ○ = Wood utility Pole
 ← ○ = Wood Utility Pole

o/h = Overhead
 u/g = Underground
 F.F.L. = Finish Floor Elevation
 conc. = concrete
 C.B.S. = Concrete Block Stucco
 cov'd. = Covered
 wd. = Wood
 A/C = Air Conditioner
 P.O.C. = Point of Commence
 P.O.B. = Point of Beginning
 P.B. = Plat Book
 * = Light

--20.0-- Denotes depth of
 Water at Mean
 Low Water
 Mean Low Water (-) 0.4
 Mean High Water 0.90
 This is a field survey

Field Work performed on: 3/22/10

50L.F. Lies along State Owned Lands

Shoreline: 1000' Easterly & Northerly: Concrete seawall, Sandy beach & Boulder Rip-Rap
 1000' Westerly, Concrete Seawall

Certified to the Board of Trustees of the Internal Improvement trust Fund of the State of Florida.


CERTIFICATION:

I HEREBY CERTIFY that the attached Specific Purpose Survey, Submerged Land lease is true and correct to the best of my knowledge and belief; that it meets the minimum technical standards adopted by the Florida Board of Land Surveyors, Chapter 61G17-6, Florida Statute Section 472.027, and the American Land Title Association, and that there are no visible encroachments unless shown hereon.

FREDERICK H. HILDEBRANDT
 Professional Land Surveyor & Mapper No. 2749
 Professional Engineer No. 36810
 State of Florida

NOT VALID UNLESS EMBOSSED WITH RAISED SEAL & SIGNATURE

City of Key West North End of Duval Street, Key West, Fl. 33040		Sheet 4 of 4	
Specific Purpose Survey Bay Bottom Lease		Dwn No.: 10-160	
Scale: 1"=40'	Ref. file	Flood panel No. 1516 K	Own. By: F.H.H.
Date: 3/26/10		Flood Zone: AF-VF	Flood Elev. 8-13'
REVISIONS AND/OR ADDITIONS			
5/5/10: Revise lease area			
D & P MATCH			
\\dwc\city of keywest\sub\land\lease			



ISLAND SURVEYING INC.
 ENGINEERS PLANNERS SURVEYORS

3152 Northside Drive (305) 293-0466
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December 3, 2010

Adriana Sanchez-Gomez
Environmental Specialist II
Florida Department of Environmental Protection
Environmental Resource Permitting & Submerged Lands
South Branch District Office
2796 Overseas Highway, Suite 221
Marathon, FL 33050

Re: City of Key West

Dear Ms. Sanchez-Gomez:

Following up on your recent communications with Marilyn Wilbarger, I am forwarding my comments regarding the status of the title to the property adjacent to the submerged land which is the subject of the pending submerged land lease. By way of background, please be advised that the handling of real estate transactions has been a significant element of my practice since 1985. In the last 25 years, I have closed thousands of transactions wherein I issued title policies. In addition, I have served as legal counsel to the Monroe County Land Authority since its inception in 1987, and have closed approximately 1100 Land Authority acquisitions requiring the issuance of title policies. Gary Heiser may recall that my firm in Big Pine Key closed numerous transactions for DEP as part of its Coupon Bight acquisition program.

Although it appears there is no conveyance of record vesting title to the subject property in the City, I am of the firm opinion that the City of Key West holds fee simple title to the subject property. The pending submerged land lease pertains to the submerged land adjacent to the area where Duval Street intersects with the Atlantic Ocean. Although never formally recorded as a plat, William Whitehead's 1829 Map of the City of Key West, a copy of which is attached, forms the basis for the legal descriptions of many of the properties in Key West, including the parcels in the vicinity of the subject property. You will note that Whitehead's Map depicts Duval Street as extending to the Atlantic Ocean.

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In addition to the foregoing, it is my firm position that section 95.361(1)(b), Florida Statutes, a copy of which is attached, serves to vest title in the City. This statute provides that, irrespective of whether there is a recorded conveyance or dedication, title to a road constructed by a municipality which has been maintained for 4 years by the municipality shall vest in the municipality if it is a municipal street or road. There is no dispute that the area in question has been maintained by the City for many years as a part of Duval Street. Even if we assume that Duval Street has been extended seaward beyond that which is depicted on Whitehead's Map, the result is the same. There is no indication whatsoever of an intervening ownership between the end of Duval Street and the Atlantic Ocean. Further, there is no indication in the Public Records that the City has abandoned any portion of Duval Street in the subject area.

The records of the Tax Collector and the Property Appraiser of Monroe County support the conclusion that ownership of the subject property is vested in the City. I am attaching documents from the websites of both agencies. The area in question is clearly depicted on the map and aerial photograph contained in the Property Appraiser's records. Kindly note that this record confirms that ad valorem taxes have been assessed for this property at least as far back as 1989. The City's payment of ad valorem taxes for this period of time is a significant indication of ownership. From the Tax Collector's website, I am attaching a copy of the 2009 ad valorem tax bill indicating payment on December 30, 2009, in the amount of \$918.83. Finally, a copy of the 2010 bill is attached.

Based on the foregoing, I have no hesitation whatsoever in rendering my opinion that the City of Key West holds fee simple title to the area adjacent to the submerged land which is the subject of the pending application for a submerged land lease. In the event you have questions or concerns, do not hesitate to contact me.

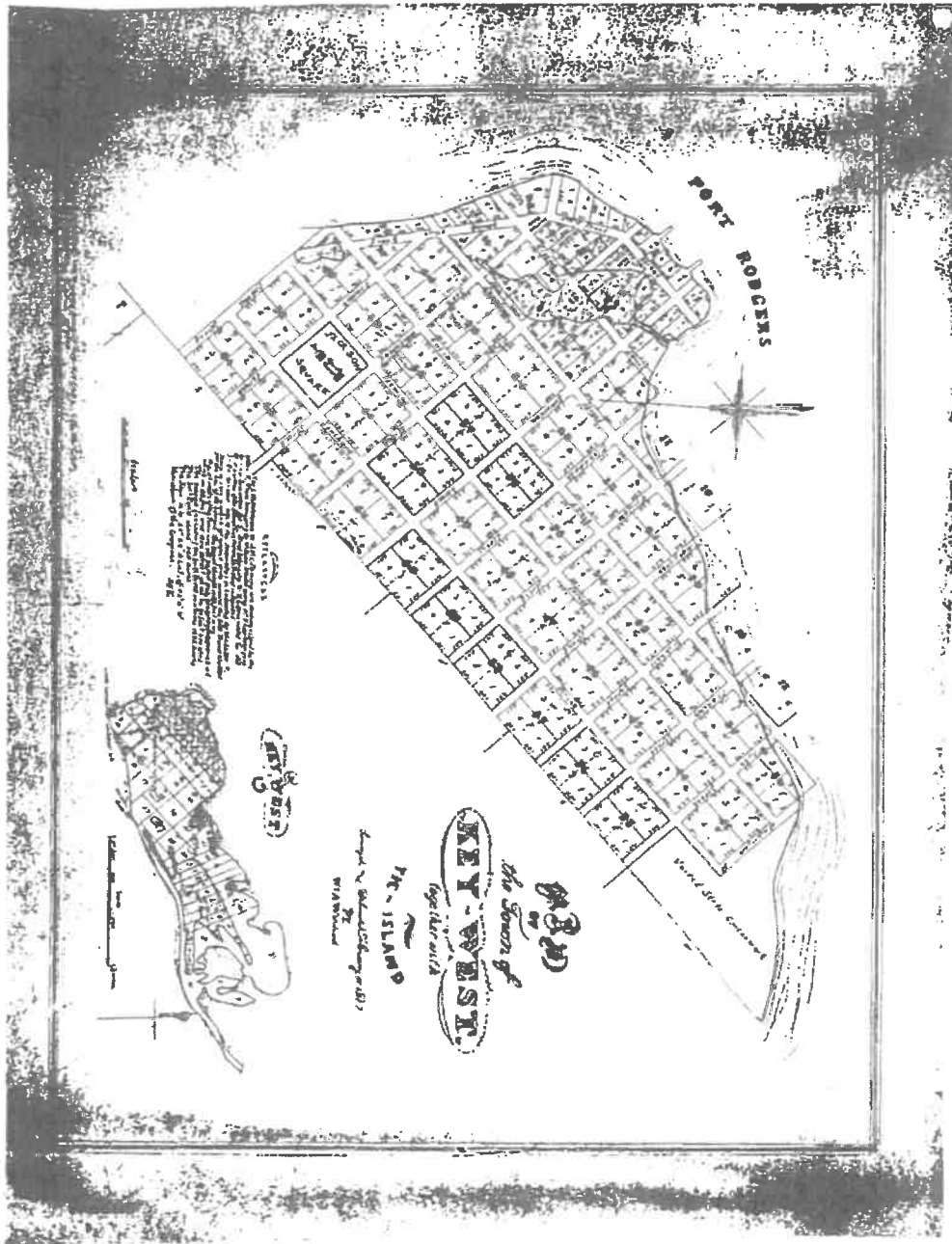
Sincerely,



Larry R. Erskine
Chief Assistant City Attorney
enc.

cc: Shawn D. Smith
Marilyn Wilbarger

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Select Year: 2010

The 2010 Florida Statutes

[Title VIII](#)
LIMITATIONS[Chapter 95](#)[View Entire Chapter](#)

LIMITATIONS OF ACTIONS; ADVERSE POSSESSION

95.361 Roads presumed to be dedicated.—

(1) When a road, constructed by a county, a municipality, or the Department of Transportation, has been maintained or repaired continuously and uninterrupted for 4 years by the county, municipality, or the Department of Transportation, jointly or severally, the road shall be deemed to be dedicated to the public to the extent in width that has been actually maintained for the prescribed period, whether or not the road has been formally established as a public highway. The dedication shall vest all right, title, easement, and appurtenances in and to the road in:

- (a) The county, if it is a county road;
- (b) The municipality, if it is a municipal street or road; or
- (c) The state, if it is a road in the State Highway System or State Park Road System,

whether or not there is a record of a conveyance, dedication, or appropriation to the public use.

(2) In those instances where a road has been constructed by a nongovernmental entity, or where the road was not constructed by the entity currently maintaining or repairing it, or where it cannot be determined who constructed the road, and when such road has been regularly maintained or repaired for the immediate past 7 years by a county, a municipality, or the Department of Transportation, whether jointly or severally, such road shall be deemed to be dedicated to the public to the extent of the width that actually has been maintained or repaired for the prescribed period, whether or not the road has been formally established as a public highway. This subsection shall not apply to an electric utility, as defined in s. 366.02(2). The dedication shall vest all rights, title, easement, and appurtenances in and to the road in:

- (a) The county, if it is a county road;
- (b) The municipality, if it is a municipal street or road; or
- (c) The state, if it is a road in the State Highway System or State Park Road System,

whether or not there is a record of conveyance, dedication, or appropriation to the public use.

(3) The filing of a map in the office of the clerk of the circuit court of the county where the road is located showing the lands and reciting on it that the road has vested in the state, a county, or a municipality in accordance with subsection (1) or subsection (2) or by any other means of acquisition, duly certified by:

- (a) The secretary of the Department of Transportation, or the secretary's designee, if the road is a road in the State Highway System or State Park Road System;
- (b) The chair and clerk of the board of county commissioners of the county, if the road is a county road; or
- (c) The mayor and clerk of the municipality, if the road is a municipal road or street,

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shall be prima facie evidence of ownership of the land by the state, county, or municipality, as the case may be.

(4) Any person, firm, corporation, or entity having or claiming any interest in and to any of the property affected by subsection (2) shall have and is hereby allowed a period of 1 year after the effective date of this subsection, or a period of 7 years after the initial date of regular maintenance or repair of the road, whichever period is greater, to file a claim in equity or with a court of law against the particular governing authority assuming jurisdiction over such property to cause a cessation of the maintenance and occupation of the property. Such timely filed and adjudicated claim shall prevent the dedication of the road to the public pursuant to subsection (2).

(5) This section does not apply to any facility of an electric utility which is located on property otherwise subject to this section.

History.— s. 110, ch. 29965, 1955; ss. 23, 35, ch. 69-106; s. 23, ch. 74-382; s. 1, ch. 77-174; s. 3, ch. 88-168; s. 529, ch. 95-147; s. 54, ch. 2003-286; s. 14, ch. 2004-366.

Note.— Former s. 337.31.

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