



## Florida Department of Environmental Protection

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

Rick Scott  
Governor

Carlos Lopez-Cantera  
Lt. Governor

Jonathan P. Steverson  
Secretary

February 26, 2016

City Of Key West, Florida  
Attn: Nancy Kielman  
P.O. Box 1409  
Key West, FL 99999

BOT Lease No.: 440026265  
Lessee: City Of Key West, Florida

Dear Nancy Kielman,

Enclosed is a fully executed **original** lease for **your** records. The **original** lease, at the option of the Lessee, **may** be recorded in the official records of the county where the leased site is located.

If the billing agent, phone number, or fax number change, or there is a change in the lessee's tax status, please notify the BUREAU OF PUBLIC LAND ADMINISTRATION'S ACCOUNTING SECTION **in writing** within 30 days of the date of any change.

Any future correspondence or inquiries should be directed to this office, at the letterhead address above or at (850) 245-2758. Thank you for your assistance and cooperation in this matter.

Sincerely,

*Kathy C. Griffin*

Kathy C. Griffin  
Government Operations Consultant I  
Bureau of Public Land Administration  
Division of State Lands

/kcg  
Enclosure

cc: File

This Instrument Prepared By:  
Christopher Crenshaw  
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

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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 the City of Key West, Florida, hereinafter referred to as the Lessee, the sovereignty lands described as follows:

A parcel of sovereignty submerged land in Section 31,  
Township 67 South, Range 25 East, in Key West Harbor,  
Monroe County, 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, 2016, the effective date of this lease renewal, through February 1, 2021, the expiration date of this lease renewal. The terms and conditions on and for which this lease renewal 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 facility, 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 26 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 annual lease fee of \$759.99, plus sales tax pursuant to Section 212.031, Florida Statutes, if applicable, within 30 days of the date of receipt of the invoice. 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.

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 renewal, the Lessor is hereby specifically authorized and empowered to examine, for the term of this lease renewal 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) 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 renewal 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 and as conditioned by the State of Florida Department of Environmental Protection Environmental Resource Permit. 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 renewal, 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 RENEWAL: This lease renewal 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. INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS: The Lessee shall investigate all claims of every nature arising out of this lease at its expense, and shall indemnify, defend and save and hold harmless the Lessor and the State of Florida from all claims, actions, lawsuits and demands arising out of this lease renewal.

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, Florida 33041

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 renewal.

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. 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 renewal 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 renewal 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 renewal 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 renewal, 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 renewal agreement and shall be grounds for immediate termination of this lease renewal agreement at the option of the Lessor.

23. AMENDMENTS/MODIFICATIONS: This lease renewal is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this lease renewal 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 agreement.

25. **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.

26. **LIVEABOARDS:** 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 liveaboards 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.

27. **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.

28. **FINANCIAL CAPABILITY:** To assure the Lessor that the Lessee has the financial capability to undertake and operate the project authorized by this lease, the Lessee certifies to the Lessor as follows: (i) the Lessee is not the subject of a pending bankruptcy proceeding that would prohibit the Lessee from paying its lease fees, on or before the due date, with or without, as applicable, approval from the bankruptcy court or, if appointed, the bankruptcy trustee; (ii) the Lessee has no unsatisfied judgments entered against it that would impair the Lessee's financial capability to undertake and operate the project authorized by this lease; (iii) the Lessee has no delinquent state and local taxes for which it is responsible and that remain outstanding and not in dispute; and (iv) to the best of the Lessee's knowledge, there are no other matters pending or threatened against or affecting the Lessee or the Lessee's interest in the riparian upland property that would impair the Lessee's financial capability to undertake and operate the project authorized by this lease. Any breach of this lease condition shall constitute a default under this lease.

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

WITNESSES:

M. Sue Jones  
Original Signature

M. Sue Jones  
Print/Type Name of Witness

Kathy C Griffin  
Original Signature

Kathy C Griffin  
Print/Type Name of Witness

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

(SEAL)

BY: Cheryl C McCall  
Cheryl C. McCall, 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

STATE OF FLORIDA  
COUNTY OF LEON

"LESSOR"

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of February, 20 16, by Cheryl C. McCall, 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. She is personally known to me.

APPROVED SUBJECT TO PROPER EXECUTION:

Ann K. Blain 1/20/16  
DEP Attorney Date

Kathy C Griffin  
Notary Public, State of Florida

Printed, Typed or Stamped Name KATHY C GRIFFIN  
Notary Public - State of Florida  
My Commission Expires Nov 27, 2019  
Commission # FF 917725  
Bonded through National Notary Assn.  
Commission/Serial No. \_\_\_\_\_



WITNESSES:

[Handwritten Signature]  
Original Signature

Portia Navarro  
Typed/Printed Name of Witness

[Handwritten Signature]  
Original Signature

Maria G. Ratcliff  
Typed/Printed Name of Witness

STATE OF Florida

COUNTY OF Monroe

City of Key West, Florida

BY: [Handwritten Signature]  
Original Signature of Executing Authority

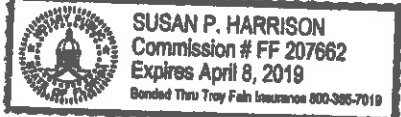
James K. Scholl  
Typed/Printed Name of Executing Authority

City Manager  
Title of Executing Authority

"LESSEE"

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of January, 2016, by James K. Scholl as City Manager, for and on behalf of the City of Key West, Florida. He is personally known to me or who has produced \_\_\_\_\_, as identification.

My Commission Expires:



Commission/Serial No. FF 207662

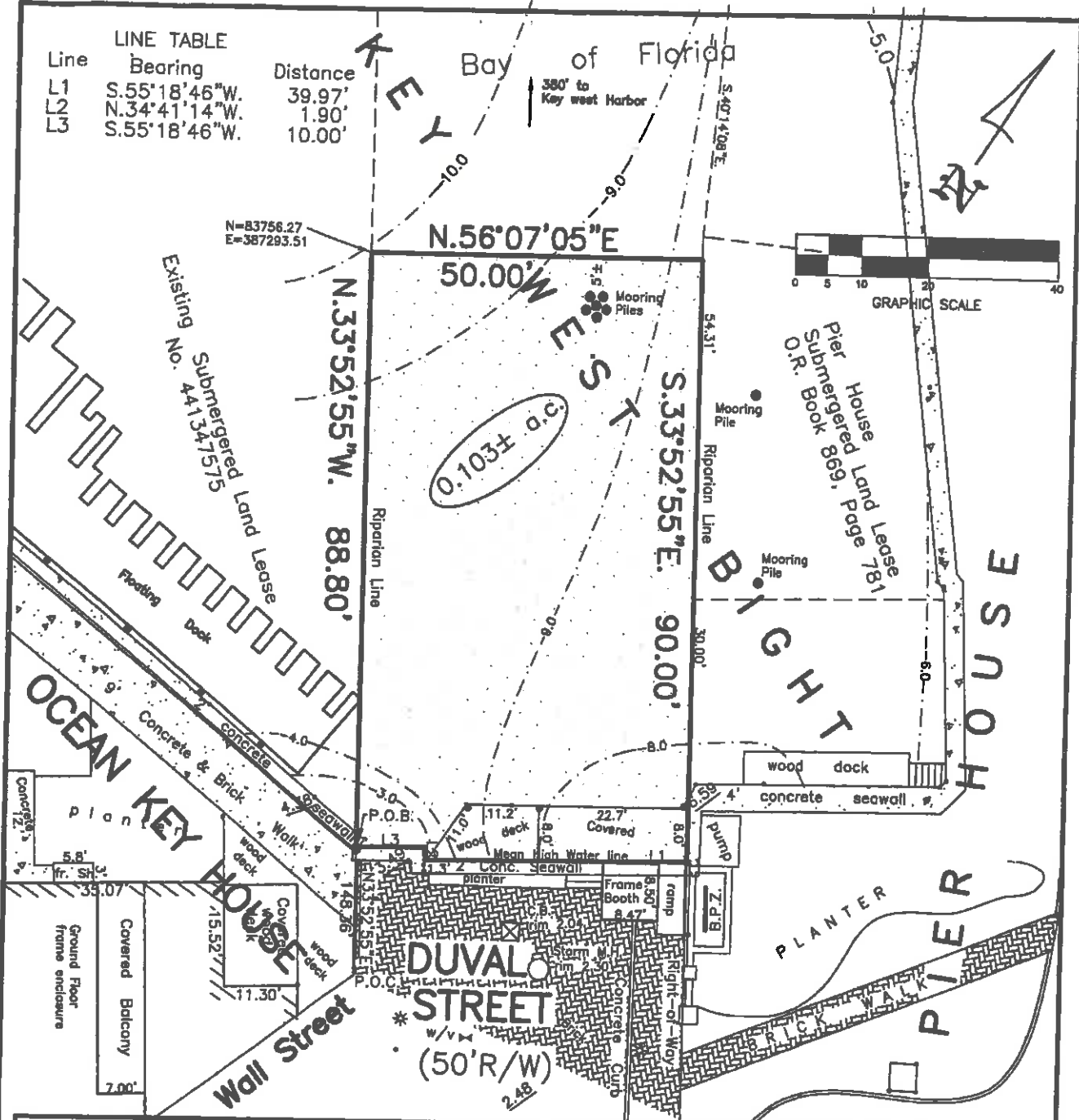
[Handwritten Signature]  
Signature of Notary Public

Notary Public, State of Florida

SUSAN P. HARRISON  
Printed, Typed or Stamped Name







City of Key West North End of Duval Street, Key West, Fl. 33040		Dwn. No. 10-160	
Specific Purpose Survey Submerged Land Lease		Dwn. By: F.H.H.	
Scale: 1"=20'	Ref. file	Flood panel No. 1516 K	Flood Elev. 9-13'
Date: 3/26/10		Flood Zone: AE-VF	
REVISIONS AND/OR ADDITIONS <b>RECEIVED</b>			
5/5/10: Revise lease area			
5/6/11: Dock Dim.			
f:\dwa\city of keywest/sublandlease		D.E.P. Maramon	

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  
L.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 Southwesterly Right-of-Way line of Duval Street, thence North 33°52'55" West along said Southwesterly 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 Southwesterly 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 Northeastly Right-of-Way line of Duval Street; thence S 33°52'55" E along the extension of the said Northeastly 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.

Sheet 3 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: AE-VE	Flood Elev. 9-13'
REVISIONS AND/OR ADDITIONS <b>RECEIVED</b>			
5/5/10: Revise lease area			
<b>D.E.P. Marainon</b>			
f:\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



OFFICE OF THE CITY ATTORNEY

SHAWN D. SMITH  
LARRY R. ERSKINE  
RON RAMSINGH



PHONE: (305) 809-3770  
FAX: (305) 809-3771  
POST OFFICE BOX 1409  
KEY WEST, FL 33041-1409

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.



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.

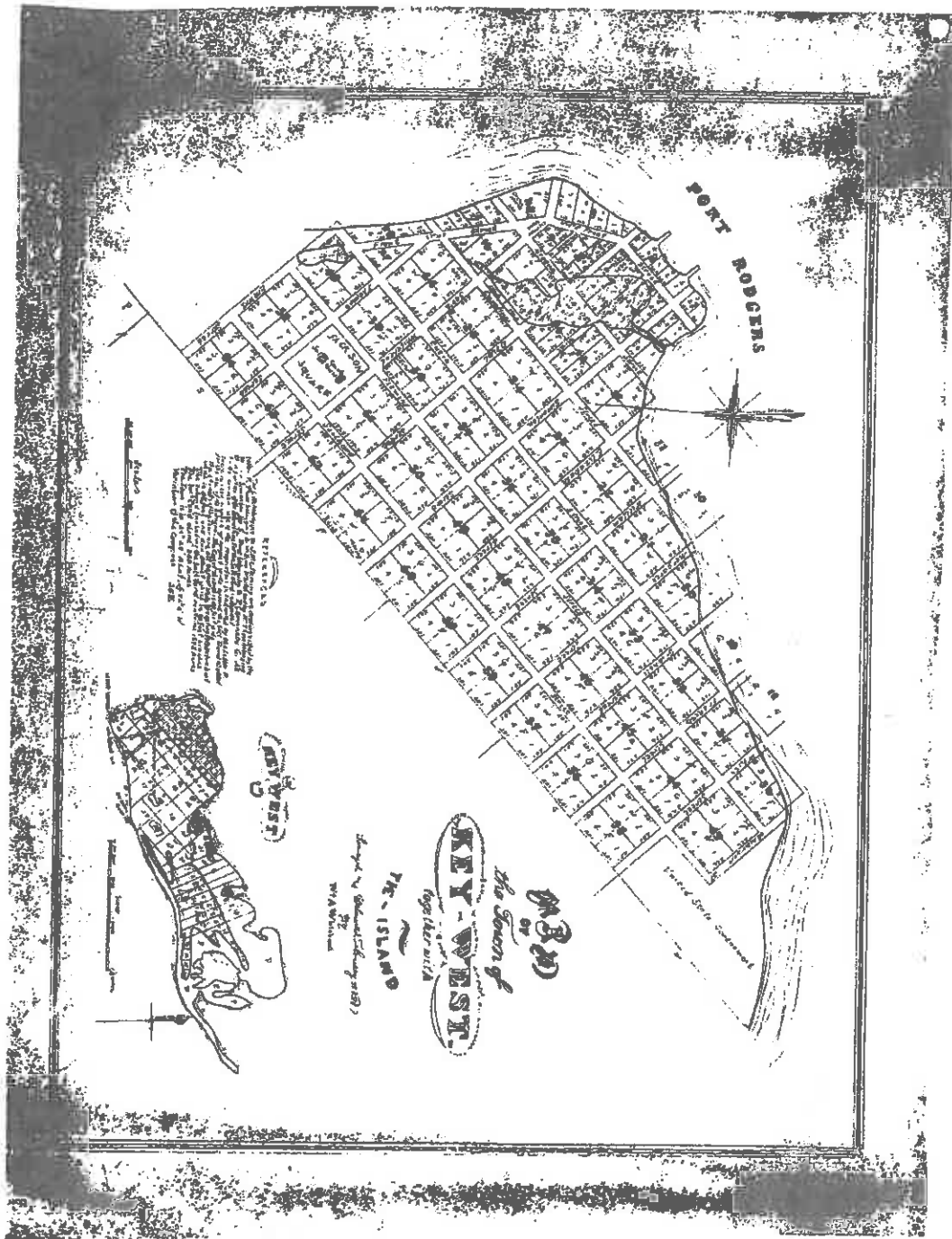
Sincerely,



Larry R. Erskine  
Chief Assistant City Attorney

enc.

cc: Shawn D. Smith  
Marilyn Wilbarger







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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