



FLORIDA DEPARTMENT OF Environmental Protection

South District Branch Office
2796 Overseas Highway, Suite 221
Marathon, FL 33050
SouthDistrict@FloridaDEP.gov

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

March 31, 2020

City of Key West, Florida
c/o Doug Bradshaw
201 William Street
Key West, FL 33040
dbradshaw@cityofkeywest-fl.gov

RE: Temporary Use Agreement
BOT File No. 440769265
DEP Site No. 142061

Dear Mr. Bradshaw:

Enclosed is the Temporary Use Agreement to provide the City of Key West, Florida with temporary authorization for an existing port facility, one commercial dock, and recreational area used exclusively for temporary mooring of commercial vessels on state-owned submerged lands adjacent to Parcel No. 00000170-000000 – 402 Wall Street, Key West, Florida 33040.

Please have the appropriate entity sign the original on page 4 and return it to this office within twenty (20) calendar days. A PDF of the signed page 4 can be emailed to Nicole Charnock of the South District – Marathon Branch office at Nicole.Charnock@FloridaDEP.gov. Please leave the date on the first page blank. After the Temporary Use Agreement has been executed by the Department, a copy will be returned to you for your records.

If you have any questions regarding this matter, please contact Nicole Charnock at Nicole.Charnock@FloridaDEP.gov or at (305) 289-7082. Your continued cooperation in this matter is appreciated.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer L. Carpenter".

Jennifer L. Carpenter
Asst. Director of District Management
Compliance Assurance Program
South District Office

ES/nc

Enclosure: Temporary Use Agreement and Exhibit A

TEMPORARY USE AGREEMENT
BOT# 440769265

This Temporary Use Agreement (hereinafter referred to as the "Agreement") is entered into this _____ day of _____, 2020, by and between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (hereinafter referred to as the "Board") and the City of Key West, Florida (hereinafter referred to as the "Applicant").

RECITALS:

- A. The Applicant desires to enter into this Agreement for the sovereign lands (hereinafter referred to as "lands") and water column located adjacent to Parcel No. 00000170-000000 - 402 Wall Street, Key West, Florida 33040.
- B. On March 5, 2015, the Board issued a five-year sovereignty submerged lands lease renewal (no. 440769265) ("Lease") authorizing an existing port facility, one commercial dock, and recreational area to be used exclusively for temporary mooring of commercial vessels for delivery of exhibits to the city aquarium in conjunction with an upland city port.
- C. The Lease expired on August 8, 2019 and has not been renewed because the Applicant is not in compliance: vessels are being moored partially outside the Lease premises. The Applicant proposes to apply for an environmental resource permit and sovereignty submerged lands lease renewal and modification to expand the existing docking structure to ensure mooring is wholly located within the Lease premises.
- D. The Applicant desires to obtain the temporary authorization of the Board to maintain and use the Lease premises as shown on Exhibit A for the structures and use authorized by the expired Lease during the processing and review of the Applicant's application for an environmental resource permit and associated sovereignty submerged lands lease renewal and modification application.
- E. The parties acknowledge that the Florida Department of Environmental Protection (hereinafter referred to as "Department"), as staff to the Board, will expeditiously process the Applicant's application for a sovereign submerged lands lease renewal and modification.

The parties hereto, then, agree as follows:

1. The Applicant acknowledges and understands that the grant of this Agreement does not guarantee that the Board will grant the Applicant a lease renewal and modification or that the Department will recommend that a lease renewal and modification be granted. **The Board will issue a lease renewal and modification if the**

Applicant meets the lease requirements of Rule 18-21, Florida Administrative Code (F.A.C.).

2. The Applicant is hereby granted the temporary exclusive use of the structures and activities located on these lands as depicted in Exhibit A, consisting of approximately 103,998 square feet. This temporary exclusive use is for a term not to exceed one year from the date of execution of this Agreement, or until the date of execution of a sovereign lands lease renewal and modification between the Board and the Applicant, whichever occurs first. The Applicant shall make no claim of title to or interest in the sovereign lands identified in Exhibit A solely by reason of occupancy or use thereof under this Agreement.

3. The existing structures and activities can only be utilized as they existed on the date of execution of this Agreement. In the event any part of any of these structures or activities are determined by a final adjudication issued by a court of competent jurisdiction to encroach or interfere with riparian rights of the adjacent upland riparian owner, Applicant agrees to either obtain written consent for the offending structure or use from the affected adjacent upland riparian owner or 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 Agreement and be grounds for immediate termination of this Agreement at the sole option of the Board.

4. In the event that a sovereign lands lease renewal and modification application is not approved by the Board, or the Applicant fails to execute the lease renewal and modification prior to the expiration or termination of this Agreement, whichever occurs first, the Applicant shall remove all structures and cease all activities referenced herein on the sovereign lands at the Applicant's sole expense. In the event that the Applicant asserts title to the sovereign lands identified in Exhibit A, and either the Applicant fails to timely submit the information concerning title as required herein, or the Board denies the Applicant's claim of title and the Applicant has not commenced an action to quiet title as specified herein, the Applicant shall remove all structures and cease all activities referenced herein on the sovereign lands at the Applicant's sole expense. If the Applicant fails to complete the requirements of paragraph 6 of this Agreement, the Applicant shall remove all structures and cease all activities referenced herein on the sovereign lands at the Applicant's sole expense. The complete removal of the structures as required by this paragraph shall be accomplished within 180 days following the expiration or termination of this Agreement, whichever occurs first. The complete cessation of the activities shall occur immediately following the expiration or termination of this Agreement, whichever occurs first.

5. If the Applicant asserts title to the sovereign lands identified in Exhibit A, the Applicant must submit an application, accompanied by all evidence upon which Applicant relies for the assertion of title, to the Department's Division of State Lands

(hereinafter referred to as "DSL"), within 90 days after the execution of this Agreement. DSL will review the application and accompanying evidence and give a response to Applicant as to whether the Board will assert title to the sovereign lands described in Exhibit A. If DSL responds that the Board will assert title to said sovereign lands, the Applicant must file an appropriate action in circuit court within 90 days of DSL's response to obtain a legal determination of title to the sovereign lands. If DSL, after consultation with the Board, responds that the Board does not assert title to the sovereign lands, then the Applicant shall not have to apply for a sovereign lands lease renewal and modification. Failure to submit the initial application and evidence within 90 days after execution of this Agreement, or failure to file the appropriate court action within 90 days after DSL's response, shall constitute a waiver by the Applicant of all of its claim of title to the sovereign lands and an acknowledgment that the Board owns the sovereign lands.

6. The Applicant shall complete the sovereign submerged lands lease renewal and modification application by no later than 180 days of the execution of this Agreement for the lands identified in Exhibit A. Completion of the application includes the following:

- A. Payment of a \$679.00 lease renewal and modification application fee;
- B. Submission of an acceptable survey and legal description meeting the Department's requirements;
- C. Submission of a completed Billing Information Form; and
- D. Submission of a completed Financial Assurance Affidavit.

7. This Agreement is temporary in nature and may not be extended or modified except upon the express written agreement of the Board. No request for an extension of the Agreement shall be considered by the Board except upon a demonstration by the Applicant that the Applicant is in full compliance with the terms and conditions of this Agreement and has exercised due diligence in its efforts to procure a sovereign lands lease renewal and modification from the Board.

8. As a material condition of this Agreement, Applicant agrees to comply with all applicable requirements of Chapters 253, 373, 376, and 403, Florida Statutes, and the rules promulgated pursuant thereto. The Board has the right to immediately rescind this Agreement upon the failure of Applicant to comply with either the terms of this Agreement, statutes, rules, or any permits or exemptions. Upon written notice that the Board has exercised its right to rescind under this paragraph, Applicant shall immediately cease and desist all activity authorized by this Agreement, or within the timeframe specified in the notice, or within twenty days of receipt of the notice if no timeframe is specified. Notice may be given by the Board by certified mail or hand delivery to: 201 William Street, Key West, Florida 33040 or by posting the notice at the property described in Paragraph A.

9. The Applicant shall save and hold harmless and indemnify the Board, Department, and the State of Florida against any and all liability, claims, judgments or costs of whatsoever kind and nature for injury to, or death of, any person or persons and for loss or damage to any property arising out of or connected with Applicant's occupation and use of these lands and the structures or activities located thereon. By execution of this Agreement, applicant waives any claim it may have against the Department concerning the submerged lands described on Exhibit A except as described in Paragraph 5 above.

10. Applicant agrees that any litigation arising from matters relating to this Agreement between the Board and the Applicant shall be initiated and maintained only in Leon County, Florida.

11. This Agreement, and any rights and privileges contained herein, are for the sole benefit and use of the Applicant and shall not be assigned or transferred by the Applicant to any other party without the prior written consent of the Board, which consent shall not be unreasonably withheld.

12. The terms of this Agreement may be enforced by the Board notwithstanding that the authorization granted hereunder has expired.

Executed on the date first written above.

City of Key West, Florida

By: _____
Original Signature

Typed/Printed Name

Title

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

By: _____

Jon. M. Iglehart
Director of District Management,
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



Overview



Legend

- Centerline
- Easements
- Hooks
- Lot Lines
- Road Center
- Rights of Way
- Shoreline
- ☐ Condo Building
- Key Names
- ☐ Subdivisions
- ☐ Parcels

Parcel ID	00000170-000000	Alternate ID	1000167	Owner Address	CITY OF KEY WEST MALLORY SQUARE
Sec/Twp/Rng	06/68/25	Class	MUNICIPAL		PO Box 1409
Property Address	402 WALL St				Key West, FL 33041
	KEY WEST				
District	10KW				
Brief Tax	KW PT LOTS 2-3-4-5 SQR 3 G64-274-275 (CULTURAL PRESERVATION SOCIETY INC -LEASE) OR1338-417/37(II LEASE) OR1623-				
Description	215/229(II LEASE) OR2080-939/950(II LEASE)				
	<i>(Note: Not to be used on legal documents)</i>				

Date created: 3/19/2020
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Developed by 

BOT No. 440769265
 Exhibit A