

**AGENDA  
CITY OF KEY WEST  
TRUMAN WATERFRONT ADVISORY BOARD**

**OLD CITY HALL, 510 GREENE STREET**

**FRIDAY, OCTOBER 23, 2009 – 12:00 P.M.**

- 1. CALL MEETING TO ORDER**
- 2. ROLL CALL**
- 3. PLEDGE OF ALLEGIANCE TO THE FLAG**
- 4. APPROVAL OF AGENDA**
- 5. APPROVAL OF MINUTES:**
  - a. September 25, 2009
- 6. PRESENTATIONS**
  - a. Assisted Care Living Facility: Sandy Higgs
- 7. REPORTS:**
  - a. Coordinator Doug Bradshaw
    1. Navy/TAMPOA Settlement Agreement
  - b. Board Member update on Truman Waterfront Marina
  - c. Board Member update on Assisted Care Living Facility
  - d. Board Member update on Infrastructure/Utilities
- 8. ITEMS FOR ACTION**
  - a. ACLF lease extension
  - b. Mission Statement
- 9. BOARD COMMENTS**
- 10. PUBLIC COMMENT**
- 11. NEXT MEETING: November 6, 2009**
- 12. ADJOURNMENT**

**SEPTEMBER 25, 2009**  
**MINUTES**

**MINUTES**

**TRUMAN WATERFRONT ADVISORY BOARD MEETING**

**OLD CITY HALL, 510 GREENE STREET**

**FRIDAY, SEPTEMBER 25, 2009**

A regular meeting of the Truman Waterfront Advisory Board of the City of Key West, Florida was held in Commission Chambers, Old City Hall, 510 Greene St. on Friday, September 25, 2009.

Chairman Gilleran called the meeting to order at 12:01 p.m.

Answering roll call were Board Members Albert Sullivan, Owen Trepanier, Jerry Curtis, Vice-Chair Margaret Domanski, Chairman Gilleran and Non-voting Ex-officio Board Members Ron Demes, Navy and Sean Morton, NOAA.

Absent were Board members Ashish Soni and Kurt Lewan

Also present were city staff Port Operations Project Manager Doug Bradshaw, Clerk of the Board Martha Arencibia.

Absent was Assistant City Attorney Larry Erskine.

The pledge of allegiance to the flag of the United States of America was given by all present.

**APPROVAL OF AGENDA:**

It was moved by Mrs. Domanski and seconded by Mr. Sullivan to approve the agenda with the following change:

Add-on under Discussion Item 7 b. Set Meeting Dates

The agenda was accepted.

**APPROVAL OF MINUTES:**

- a. July 17, 2009
- b. August 7, 2009
- c. August 28, 2009
- d. September 11, 2009

It was moved by Mrs. Domanski and seconded by Mr. Sullivan to approve the July 17, 2009 Minutes with no change.

The Chairman asked for objections. Seeing none, the item was unanimously approved.

It was moved by Mrs. Domanski and seconded by Mr. Sullivan to approve the August 7, 2009 Minutes with the following corrections:

That all minutes contain page numbers. That the time of arrival be changed from p.m. to a.m. That grammatical and spelling errors be correct. That the minutes reflect that under Action Item A, motion to approve was made by Mr. Sullivan and not by Mr. Lewan. That a discussion that lead to a determination by the Board and staff regarding the Non-voting Ex-officio Board Members roll in participating on discussions be added to the minutes.

The Chairman asked for objections. Seeing none, the item was unanimously approved.

It was moved by Mr. Sullivan and seconded by Mrs. Domanski to approve the August 28, 2009, Minutes with the following amendments:

That under Board Discussion Item A, it was Mr. Sullivan who volunteered to research the Assisted Living Care Facility and report back to the Board not Mr. Trepanier.

The Chairman asked for objections. Seeing none, the item was unanimously approved.

It was moved by Mr. Sullivan and seconded by Mr. Trepanier to approve the September 11, 2009 Minutes with the following amendments:

That under Reports D Board Member update on Assisted Care Living Facility, it was Mr. Sullivan who report to the Board not Mr. Trepanier.

That Sean Morton of NOAA be noted as being absent from the meeting.

That under Board Discussion A Marina Proposals, Mr. Lewin recused himself from discussions and voting due to a conflict of interest.

That grammatical and spelling errors be correct.

The Chairman asked for objections. Seeing none, the item was unanimously approved.

## **REPORTS:**

### **a. Coordinator Doug Bradshaw**

#### **1. Master Stormwater Plan Update**

Doug Bradshaw stated that he had received an email from Allen Perez of Perez Engineering stating that they would be submitting a draft for review in October and finalizing it in November. He stated that in a month and a half they should be seeing a final report.

#### **2. Mohawk/Ingham Responsible Party if one sinks**

Doug Bradshaw stated that Commissioner Verge was present to answer any

questions the Board members might have with regards to the vessels. He also stated that in his review and discussions with Commissioner Verge, both vessels were required to carry insurances that would cover the removal.

In response to Chairman Gilleran's question regarding the Navy's Stormwater and utilities drawing plans, Mr. Bradshaw stated that he had some of the Navy's Stormwater and utilities drawing plans in his office that the public would be able to review upon request and that he could obtain more if need be.

**b. Board Member update on Truman Waterfront Marina**

Mrs. Domanski stated LRA approved moving ahead on discussions with Meisel & Spottswood Management towards the development of the marina, uplands and parklands at the Trumanwater Front. She stated that in the discussion with the representatives of MSN, it was agreed that if it did not come into fruition that the work product done would become the property of the City so that all the investigation that was done on the financing, development cost, etcetera, would come back to the City. She stated that the City could then reenter into renegotiations with Key West Harbor or other potential developers of the site.

Doug Bradshaw, in response to Mrs. Domanski's request, stated that he would notify her of any upcoming LRA meeting

**c. Board Member update on Assisted Care Living Facility**

Mr. Sullivan stated that he spoke with Sandy Higgs and was informed that the Assisted Care Living Facility individuals were preparing documentation that would go before the Planning Board on October the 15, 2009. He stated that the next step would be to go before City Commission for approval and then they planned to send out an RFP

while awaiting DCA approval of the plan. In response to Chairman Gilleran's request to review the Assisted Care Living Facility proposal before it went before the Planning Board, Mr. Sullivan agreed to contact the Assisted Care Living Facility representatives and request that they give a presentation at the next TWAB meeting prior to the Planning Board meeting on Oct 15, 2009.

**d. Board Member update on Infrastructure/Utilities**

Mr. Trepanier stated that after spending time with Commissioner Verge and Doug Bradshaw discussing the Infrastructure/Utilities on the property, he had concerns regarding the impacts the new developments would have on the utilities that ran through the property to serve the Navy facilities. He wanted to make sure that the new facilities did not negatively impact existing services. He stated that another important item that they needed to understand was the Ingress and Egress Settlement Agreement with Truman Annex Properties. He stated that there was also an issue with regards to the Storm Water Management runoff from the docks and possibly into the Outer Mole that needed to be looked into further as, well as, what issues it could cause to the city in the future. He stated that there were also concerns for the power boat and sailboat races out there that were part of the economics for the City and how would they be handled in the future. He stated that he was going to go back and gather information on these issues to bring back before the Board.

Mrs. Domanski volunteered to contact the Spottwood's group as to their plans with the power boat and sailboat races as they moved forward with the marina.

**BOARD DISCUSSION**

**a. Truman Waterfront Walking Tour Follow Up**

Mrs. Domanski stated that she had a concern as to the blockage of the water view by the vessels Mohawk and Ingram.

Commissioner Bill Verge, 329 Pecan Lane, commented on the need to review the Infrastructure/Utilities on the property as well as the possibility of finding another use for the property if the Assisted Care Living Facility did not come about. He also stated for the record that even though the City owned the property at the Truman Waterfront, the Lease Agreement with the Navy required that 710 feet on the north end of the East Quay Wall be reserved for the Navy's use.

Chairman Gilleran stated that he would like to see a tour box at the sites to laying out the design for each area.

Commission Verage stated that Tom Lambright of Key West Maritime Historic had approached the city with a proposal to provide a walking tour signage guide display of the facility.

Mr. Bradshaw stated that he had not been approached by anyone but he thought that it was a good idea and that all they would need to do is provided him with the proposal and he would bring it before the City Manager and Commission.

Mr. Trepanier stated that he recommended that they created a Mission Statement for the Board at the next meeting. He stated that it would also be beneficial to have a Board member volunteer to be the liaison for the BCCLT.

**b. Up Coming Meeting Dates**

Doug Bradshaw stated that due to inauguration, staff recommended that the TWAB meeting of October 9, 2009 be moved to October 16, 2009.

It was moved by Mr. Trepanier and seconded by Mr. Sullivan, that they continue with the set schedule and that the meeting be held at the NOAA facility on October 9, 2009.

Yeas: Mr. Sullivan, Mr. Trepanier, Mr. Curtis, Mrs. Domanski and Chairman Gilleran

Nays: None

**BOARD COMMENTS**

None

**PUBLIC COMMENTS**

None

**ADJOURNMENT**

It was moved by Mrs. Domanski and seconded by Mr. Sullivan to adjourn. There being no further business, the Chairman adjourned the meeting at 1:04 p.m.

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Martha Arencibia  
Port Operations Coordinator

**NAVY/TAMPOA  
SETTLEMENT  
AGREEMENT**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Key West Division

Case No. 09-10023-CIV-MARTINEZ/BROWN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TRUMAN ANNEX MASTER PROPERTY  
OWNERS' ASSOCIATION,

Defendant.

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**STIPULATION FOR ENTRY OF  
FINAL JUDGMENT AND PERMANENT INJUNCTION**

Plaintiff, the United States of America (“the United States” or “the Plaintiff”) and the Defendant, Truman Annex Master Property Owners’ Association (“TAMPOA” or “Defendant”), by and through their respective undersigned attorneys, hereby stipulate and agree that based on a Settlement Agreement entered into by the Parties that a judgment may be entered in favor of the Plaintiff and against the Defendant upon the following terms and conditions.

1. TAMPOA admits the jurisdiction of this Court over it and the subject matter of this action, further admits to the service upon it of a Summons and Plaintiff’s Emergency Complaint for Declaratory and Injunctive Relief (“Complaint”) (D.E. 1) and waives the filing of an Answer.

2. The Settlement Agreement entered between the Parties is attached hereto and by reference made a part of this Stipulation as Exhibit 1.

3. The parties hereby stipulate and agree that judgment may be entered in favor of the United States in conformity with the proposed Final Judgment and Permanent Injunction

attached to the Settlement Agreement as Exhibit A.

4. The parties hereby waive the entry of findings of fact and conclusions of law.

5. TAMPOA hereby waives all of its rights of appeal from the Final Judgment and Permanent Injunction in the form attached to the Settlement Agreement as Exhibit A.

6. The United States and TAMPOA agree to each bear its own costs, expenses and attorneys' fees incurred in connection with this action and its settlement.

7. The parties agree that this Stipulation and Settlement Agreement constitutes a complete and full settlement of all claims, of whatsoever nature arising out of the filing of the subject case. This Stipulation and the attached Settlement Agreement embodies the entire understanding of the parties hereto, and supersedes all prior understandings and agreements between them with respect to the subject matter hereof. The provisions of this Stipulation and the Settlement Agreement may be waived, supplemented or amended only by an instrument in writing signed by the parties. The parties further agree that the Settlement Agreement (Exhibit 1) is not intended to expand or limit any of the rights enjoyed by either party under the terms of the Southard Street Easement as more fully described in the Quitclaim Deed recorded in Official Records Book 1005, at pages 78-128 of the Public Records of Monroe County, Florida.

9. Nothing contained in this Stipulation or Settlement Agreement shall limit or waive the Plaintiff's right to enforce its rights under the Southard Street Easement for any encroachment occurring after the date TAMPOA executes this Stipulation or TAMPOA from exercising its rights regarding ownership of Southard Street and the other property owned by TAMPOA.

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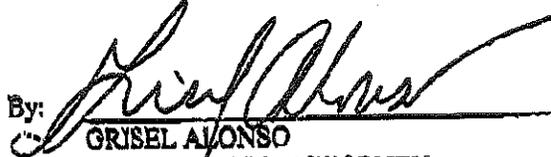
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10. The parties further agree that this Court shall retain jurisdiction of this cause for the purpose of enforcing the terms of this Stipulation and Settlement Agreement.

Dated: June 17<sup>th</sup>, 2009

JEFFREY H. SLOMAN  
ACTING UNITED STATES ATTORNEY

By: 

GRISEL ALONSO  
ASSISTANT U.S. ATTORNEY  
99 N.E. 4th Street, 3rd Floor  
Miami, Florida 33132  
Tel: (305) 961-9310  
Fax: (305) 530-7139  
Fla. Bar 702994  
Email: [grisel.alonso@usdoj.gov](mailto:grisel.alonso@usdoj.gov)

By: 

ANTHONY POGORZELSKI  
ASSISTANT U.S. ATTORNEY  
99 N.E. 4th Street, 3rd Floor  
Miami, Florida 33132  
Tel: (305) 961-9296  
Fax: (305) 530-7139  
Fla. Bar 619884  
Email: [anthony.pogorzelski@usdoj.gov](mailto:anthony.pogorzelski@usdoj.gov)

Counsel for Plaintiff, United States

and



RICHARD G. RUMRELL, ESQ.  
Rumrell, Costabel, Warrington & Brock, LLP  
9995 Gate Parkway, Suite 190  
Jacksonville, FL 32246  
Tel. No. (904) 996-1100  
Fax No. (904) 996-1120  
Fla. Bar No. 132410  
Email: [rurrell@rumrelllaw.com](mailto:rurrell@rumrelllaw.com)

Counsel for Defendant, TAMPOA

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SEAN R. SANTINI, ESQ.  
Boyd, Santini, Parker & Colonnelli, P.L.  
190 S.E. 2<sup>nd</sup> Street, 36<sup>th</sup> Floor  
Miami, FL 33131  
Tel. No. (786) 425-1045  
Fax No. (786) 425-3905  
Fla. Bar No. 832898  
Email: [ssantini@boydlawgroup.com](mailto:ssantini@boydlawgroup.com)

Counsel for Defendant, TAMPOA

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on June 18, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

*s/ Grisel Alonso*

\_\_\_\_\_  
GRISEL ALONSO

Assistant United States Attorney

**SERVICE LIST**

United States of America v. Truman Annex Master Property Owners' Association  
Case No. 09-10023-CIV-MARTINEZ/BROWN

GRISEL ALONSO

Assistant U.S. Attorney

99 N.E. 4th Street, 3rd Floor

Miami, Florida 33132

Tel: (305) 961-9310

Fax: (305) 530-7139

Email: [grisel.alonso@usdoj.gov](mailto:grisel.alonso@usdoj.gov)

Counsel for Plaintiff

ANTHONY POGORZELSKI

Assistant U.S. Attorney

99 N.E. 4th Street, 3rd Floor

Miami, Florida 33132

Tel.: (305) 961-9296

Fax: (305) 530-7139

Email: [anthony.pogorzelski@usdoj.gov](mailto:anthony.pogorzelski@usdoj.gov)

Counsel for Plaintiff

RICHARD G. RUMRELL, ESQ.

Rumrell, Costabel, Warrington & Brock, LLP

9995 Gate Parkway, Suite 190

Jacksonville, FL 32246

Tel. No. (904) 996-1100

Fax No. (904) 996-1120

Email: [rumrell@rumrelllaw.com](mailto:rumrell@rumrelllaw.com)

Counsel for Defendant, TAMPOA

SEAN R. SANTINI, ESQ.

Boyd, Santini, Parker & Colonnelli, P.L.

100 S.E. 2<sup>nd</sup> Street, 36<sup>th</sup> Floor

Miami, FL 33131

Tel. No. (786) 425-1045

Fax No. (786) 425-3905

Email: [ssantini@boydlawgroup.com](mailto:ssantini@boydlawgroup.com)

Counsel for Defendant, TAMPOA

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Key West Division

Case No. 09-10023-CIV-MARTINEZ/BROWN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TRUMAN ANNEX MASTER PROPERTY  
OWNERS' ASSOCIATION,

Defendant.

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**SETTLEMENT AGREEMENT**

**WHEREAS**, the Plaintiff, the United States of America (“United States” or “the Plaintiff”) and the Defendant, Truman Annex Master Property Owners’ Association (“TAMPOA” or “the Defendant”), desire to enter into a settlement arising out of a dispute between United States and TAMPOA regarding the use of Southard Street located on property owned by TAMPOA and with an easement in favor of the United States.

**WHEREAS**, the United States filed an action against TAMPOA which is currently pending in the U.S. District Court of Florida, Southern District in the case entitled United States of America vs. Truman Annex Master Property Owners’ Association, Case No. 09-10023-CIV-MARTINEZ/BROWN (hereinafter “the Litigation”);

**WHEREAS**, the Parties desire to resolve the Litigation and other potential disputes, and have agreed to a settlement of the Litigation upon the terms and conditions set forth below as a result of a recent settlement conference in Key West;

**NOW THEREFORE**, the Parties hereby agree as follows:

1. TAMPOA admits the jurisdiction of the U.S. District Court over it and the subject matter of this action, further admits to the service upon it of a Summons and Plaintiff's Emergency Complaint for Declaratory and Injunctive Relief ("Complaint") (D.E. 1) and waives the filing of an Answer.

2. The parties hereby stipulate and agree that a judgment may be entered in favor of the United States and against TAMPOA in conformity with the proposed Final Judgment and Permanent Injunction attached hereto as Exhibit A.

3. The parties hereby waive the entry of findings of fact and conclusions of law.

4. TAMPOA agrees to the entry of an Order permanently enjoining it from commencing, continuing, or completing any construction of gates, fences, speed bumps, guard houses, columns, bollards, and/or any other structures or taking any other actions that would obstruct, interfere or restrict in any way with the Plaintiff's rights to use its Southard Street Easement through TAMPOA's property, except as follows:

a. The parties agree that TAMPOA may install the columns, pedestrian gates, pedestrian crosswalks, and fences by affixing them to the property adjacent to Southard Street (regardless of their similarity to or construction as a gate), as depicted in the diagrams attached hereto as Exhibit B-1 and B-2. TAMPOA shall install the fences so that they remain affixed and are incapable of being closed or moved in any way unless TAMPOA secures the written consent of the United States or an order of this Court.

b. TAMPOA shall restore Southard Street from curb to curb to a surface similar to its previous condition, including the removal of the columns, bollards and other obstructions placed within or on Southard Street (i.e., within the curbs) on or about February 18, 2009.

Nothing herein shall preclude TAMPOA from improving the existing surface of the street through the installation of brick pavers or other equally durable surfaces.

c. The parties agree that the existing guard house at the east end of Southard Street will remain. It is further agreed that bollards can be installed at the four corners of the existing guard house to protect it and the TAMPOA security staff from harm. The placement of the bollards shall be within two inches of the existing roof-line of the guard house.

d. TAMPOA agrees to move the curb over at the existing guard house to provide for a 17-foot wide lane on each side as depicted in the diagram attached hereto as Exhibit C. TAMPOA shall provide a total 17-foot wide lane width from the outside edge of the bollards, if installed pursuant to paragraph 4.c. above, or from the edge of the roof overhang if no bollards are installed, to the curb in the vicinity of the existing guard house. To the extent that any portion of the 17-foot wide lanes described above falls outside of the Plaintiff's Southard Street Easement, TAMPOA agrees to allow Plaintiff the full use of the 17-foot wide lane on each side.

e. TAMPOA agrees to trim the tree canopy and other vegetation on Southard Street as to allow Plaintiff's vehicles, including, at a minimum, a standard height tractor trailer, to pass without interference through Southard Street.

f. TAMPOA agrees to allow United States Government personnel and visitors of United States Government facilities at the Truman Annex to utilize the Southard Street sidewalks after the pedestrian gates are closed and the persons have reached a point that is beyond the new pedestrian gates and columns.

g. The parties agree that TAMPOA may install a second guard house at the western end of Southard Street on its property as depicted in the diagram attached hereto as Exhibit D, as long as the proposed guard house does not encroach upon the Plaintiff's Southard Street

Easement except as depicted on Exhibit D, attached hereto. It is further agreed that bollards can be installed at the four corners of the new guard house to protect it and the TAMPOA security staff from harm. The placement of the bollards shall be placed off Southard Street (i.e., outside the curbs). TAMPOA may post a guard at both ends of Southard Street, so long as the posted guard does not interfere with the United States' access and use of Southard Street under the easement as specifically detailed in this Settlement Agreement.

h. The parties agree that all persons bound for or departing United States Government facilities, including but not limited to military personnel, government civilians, contractors or visitors, shall have access at all times through the Southard Street Easement, and the existing and proposed guard house areas. TAMPOA shall be prohibited from seeking identification (of any form) from United States Government personnel and visitors. TAMPOA agrees to install signage at or before each guard house to the satisfaction of the Plaintiff. The sign will read as follows: "United States Government personnel and persons visiting government facilities may proceed without stopping. All others must stop at the guard house."

5. TAMPOA agrees that no further encroachment on Plaintiff's Southard Street Easement will occur except as specifically agreed to herein by the parties.

6. TAMPOA hereby waives all of its rights of appeal from the Final Judgment and Permanent Injunction in the form attached hereto as Exhibit A.

7. Each party shall bear its own attorneys fees, costs and expenses associated with the Litigation or its settlement.

8. The parties agree that this Settlement Agreement is not intended to expand or limit any of the rights enjoyed by either party under the terms of the Southard Street Easement as more fully described in the Quitclaim Deed recorded in Official Records Book 1005, at pages

78-128 of the Public Records of Monroe County, Florida. Exhibit E is the March 6, 2009 survey by Island Surveying Inc. of the easement area. The parties agree that in the event of a conflict between the easement and the survey that the easement will govern. The parties agree to enter into this Settlement Agreement in order to completely and fully settle all claims, of whatsoever nature, arising out of the filing of the Litigation. This Settlement Agreement embodies the entire understanding of the parties, and supersedes all prior understandings and agreements between them, with respect to the subject matter of the Litigation. The provisions of this Settlement Agreement may be waived, supplemented or amended only by an instrument in writing signed by the parties.

9. Nothing contained in this Settlement Agreement shall limit or waive the Plaintiff's right to enforce its rights under the Southard Street Easement for any encroachment not agreed upon herein occurring after the date TAMPOA executes this Stipulation. However, the Parties agree that they will first meet and confer with each other in a cooperative manner regarding any encroachment issues or if security becomes a further issue or on any other matters that related to the Southard Street use.

10. The parties agree to work together in good faith to ensure all agreed to terms of this Settlement Agreement that require third party involvement or approval (e.g., the City of Key West)—including, but not limited to, paragraphs 4 and 5—are completed timely.

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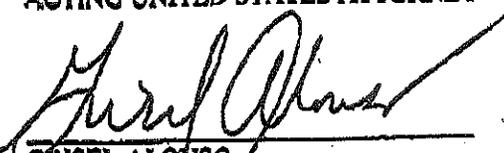
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11. The parties further agree that this Court shall retain jurisdiction of this cause for the purpose of enforcing the terms of this Settlement Agreement.

12. This Settlement Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original and all of which together shall constitute one and the same instrument.

Dated: June 17<sup>th</sup>, 2009.

JEFFREY H. SLOMAN  
ACTING UNITED STATES ATTORNEY

By: 

GRISEL ALONSO  
ASSISTANT U.S. ATTORNEY  
99 N.E. 4th Street, 3rd Floor  
Miami, Florida 33132  
Tel: (305) 961-9310  
Fax: (305) 530-7139  
Fla. Bar 702994  
Email: [grisel.alonso@usdoj.gov](mailto:grisel.alonso@usdoj.gov)

By: 

ANTHONY POGORZELSKI  
ASSISTANT U.S. ATTORNEY  
99 N.E. 4th Street, 3rd Floor  
Miami, Florida 33132  
Tel: (305) 961-9296  
Fax: (305) 530-7139  
Fla. Bar 619884  
Email: [anthony.pogorzelski@usdoj.gov](mailto:anthony.pogorzelski@usdoj.gov)

Counsel for Plaintiff, United States

JUN-17-2009 17:13

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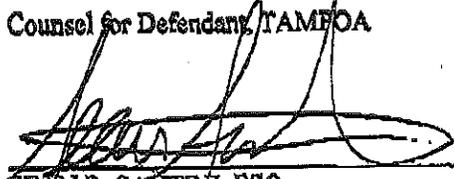
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and



**RICHARD G. RUMRELL, ESQ.**  
Rumrell, Costabel, Warrington & Brock, LLP  
9995 Gate Parkway, Suite 190  
Jacksonville, FL 32246  
Tel. No. (904) 996-1100  
Fax No. (904) 996-1120  
Fla. Bar No. 132410  
Email: [rumrell@rumrelllaw.com](mailto:rumrell@rumrelllaw.com)

Counsel for Defendant TAMFOA



**SEAN R. SANTINI, ESQ.**  
Boyd, Santini, Parker & Colonnelli, P.L.  
100 S.E. 2<sup>nd</sup> Street, 36<sup>th</sup> Floor  
Miami, FL 33131  
Tel. No. (786) 425-1045  
Fax No. (786) 425-3905  
Fla. Bar No. 832898  
Email: [ssantini@boydlawgroup.com](mailto:ssantini@boydlawgroup.com)

Counsel for Defendant, TAMPOA

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Key West Division

Case No. 09-10023-CIV-MARTINEZ/BROWN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TRUMAN ANNEX MASTER PROPERTY  
OWNERS' ASSOCIATION,

Defendant.

---

**FINAL JUDGMENT AND PERMANENT INJUNCTION**

**THIS CAUSE** came before the Court upon the Plaintiff, United States of America (“the Plaintiff or United States”) and the Defendant, Truman Annex Master Property Owners’ Association’s (“Defendant or TAMPOA”) Stipulation for Entry of Final Judgment and Permanent Injunction [D.E. 20]. The Court having considered the Stipulation and the file, and being otherwise duly advised in the premises, it is hereby

**ORDERED AND ADJUDGED that:**

1. The Settlement Agreement executed by the parties is hereby ratified and approved in all respects.
2. Judgment is hereby entered in favor of the United States and against TAMPOA. TAMPOA shall be and hereby is permanently enjoined from commencing, continuing, or completing any construction of gates, fences, speed bumps, guard houses, columns, bollards, and/or any other structures or taking any other actions that would obstruct, interfere or restrict in

any way with the Plaintiff's rights to use its Southard Street Easement through TAMPOA's property, except as follows:

a. TAMPOA may install the columns, pedestrian gates, pedestrian crosswalks, and fences by affixing them to the property adjacent to Southard Street (regardless of their similarity to or construction as a gate), as depicted in the diagrams attached to the Settlement Agreement as Exhibit B-1 and B-2. TAMPOA shall install the fences so that they remain affixed and are incapable of being closed or moved in any way unless TAMPOA secures the written consent of the United States or an order of this Court.

b. TAMPOA shall restore Southard Street from curb to curb to a surface similar to its previous condition, including the removal of the columns, bollards and other obstructions placed within or on Southard Street (i.e., within the curbs) on or about February 18, 2009. Nothing herein shall preclude TAMPOA from improving the existing surface of the street through the installation of brick pavers or other equally durable surfaces.

c. The parties agree that this Settlement Agreement is not intended to expand or limit any of the rights enjoyed by either party under the terms of the Southard Street Easement as more fully described in the Quitclaim Deed recorded in Official Records Book 1005, at pages 78-128 of the Public Records of Monroe County, Florida.

d. The existing guard house at the east end of Southard Street will remain. Bollards can be installed at the four corners of the existing guard house to protect it and the TAMPOA security staff from harm. The placement of the bollards shall be within two inches of the existing roof-line of the guard house.

e. TAMPOA shall move the curb over at the existing guard house to provide for a 17-foot wide lane on each side as depicted in the diagram attached to the Settlement Agreement

as Exhibit C. TAMPOA shall provide a total 17-foot wide lane width from the outside edge of the bollards, if installed pursuant to paragraph 4.c. above, or from the edge of the roof overhang if no bollards are installed, to the curb in the vicinity of the existing guard house. To the extent that any portion of the 17-foot wide lanes described above falls outside of the Plaintiff's Southard Street Easement, TAMPOA agrees to allow Plaintiff the full use of the 17-foot wide lane on each side.

f. TAMPOA shall trim the tree canopy and other vegetation on Southard Street as to allow Plaintiff's vehicles, including, at a minimum, a standard tractor trailer, to pass without interference through Southard Street.

g. TAMPOA shall allow United States Government personnel and visitors of United States Government facilities at the Truman Annex to utilize the Southard Street sidewalks after the pedestrian gates are closed and the persons have reached a point that is beyond the new pedestrian gates and columns.

h. TAMPOA may install a second guard house at the western end of Southard Street on its property as depicted in the diagram attached to the Settlement Agreement as Exhibit D, as long as the proposed guard house does not encroach upon the Plaintiff's Southard Street Easement except as depicted on Exhibit D, attached hereto. It is further agreed that bollards can be installed at the four corners of the new guard house to protect it and the TAMPOA security staff from harm. The placement of the bollards shall be placed off Southard Street (i.e., outside the curbs). TAMPOA may post a guard at both ends of Southard Street, so long as the posted guard does not interfere with the United States' access and use of Southard Street under the easement as specifically detailed in the Settlement Agreement.

i. All persons bound for or departing United States Government facilities, including but not limited to military personnel, government civilians, contractors or visitors, shall have access at all times through the Southard Street Easement, and the existing and proposed guard house areas. TAMPOA shall be prohibited from seeking identification (of any form) from United States Government personnel and visitors. TAMPOA shall install signage at or before each guard house to the satisfaction of the Plaintiff. The sign will read as follows: "United States Government personnel and persons visiting government facilities may proceed without stopping. All others must stop at the guard house."

3. TAMPOA is hereby enjoined from further encroachment on Plaintiff's Southard Street Easement except as set forth above in Paragraphs 2 a-i.

4. Each party shall bear its own attorneys fees, costs and expenses associated with the Litigation or its settlement.

5. The Court shall maintain jurisdiction over this action for the purpose of enforcing this Final Judgment and Permanent Injunction and the terms of the parties' Settlement Agreement.

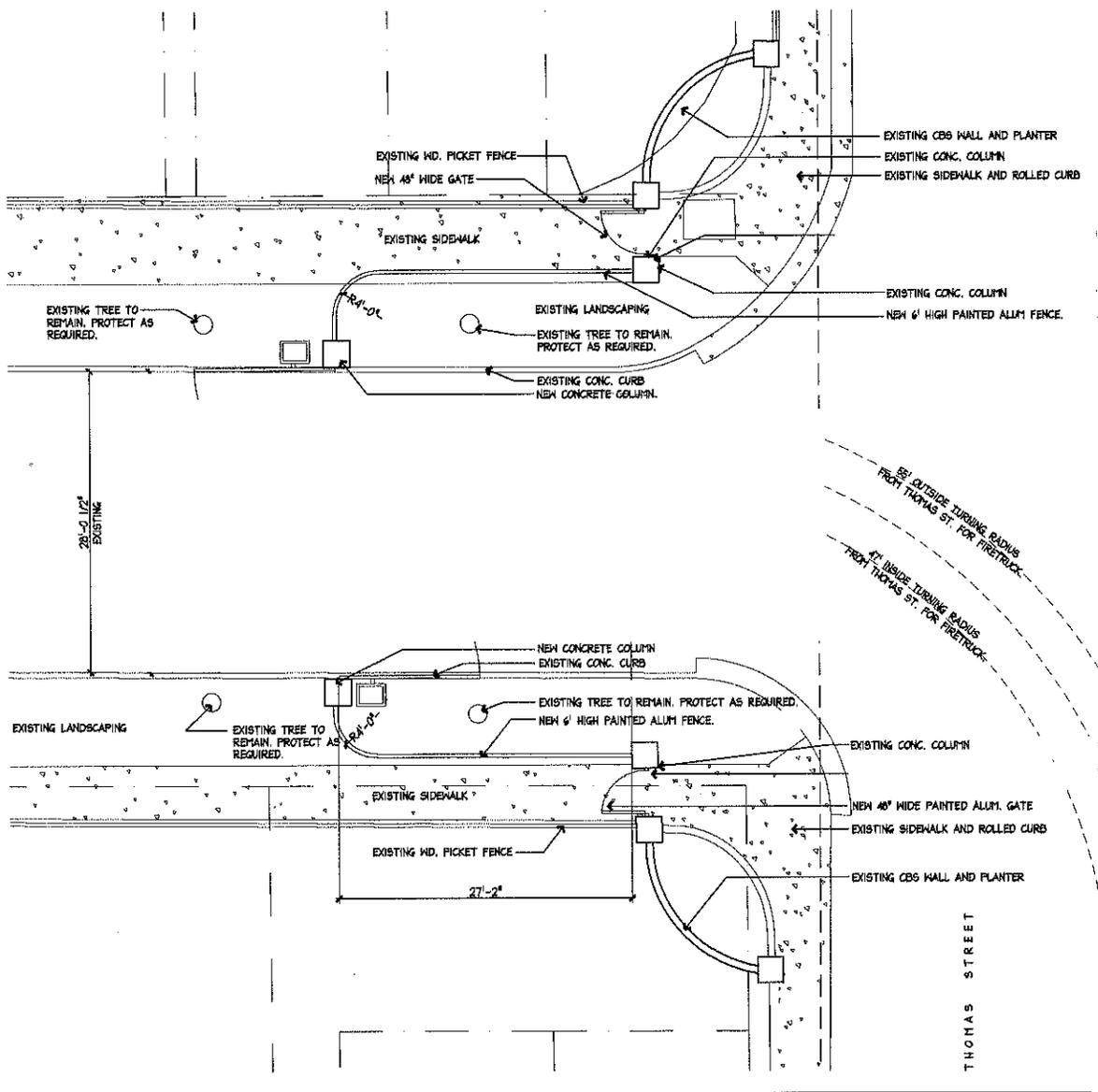
**DONE AND ORDERED** in Chambers, at Miami, Florida, this \_\_\_\_\_ day of June, 2009.

---

**JOSE E. MARTINEZ**  
**United States District Judge**

Copies furnished to:  
The Honorable Magistrate Judge Stephen T. Brown  
Counsel of Record

# **EXHIBIT B-1**



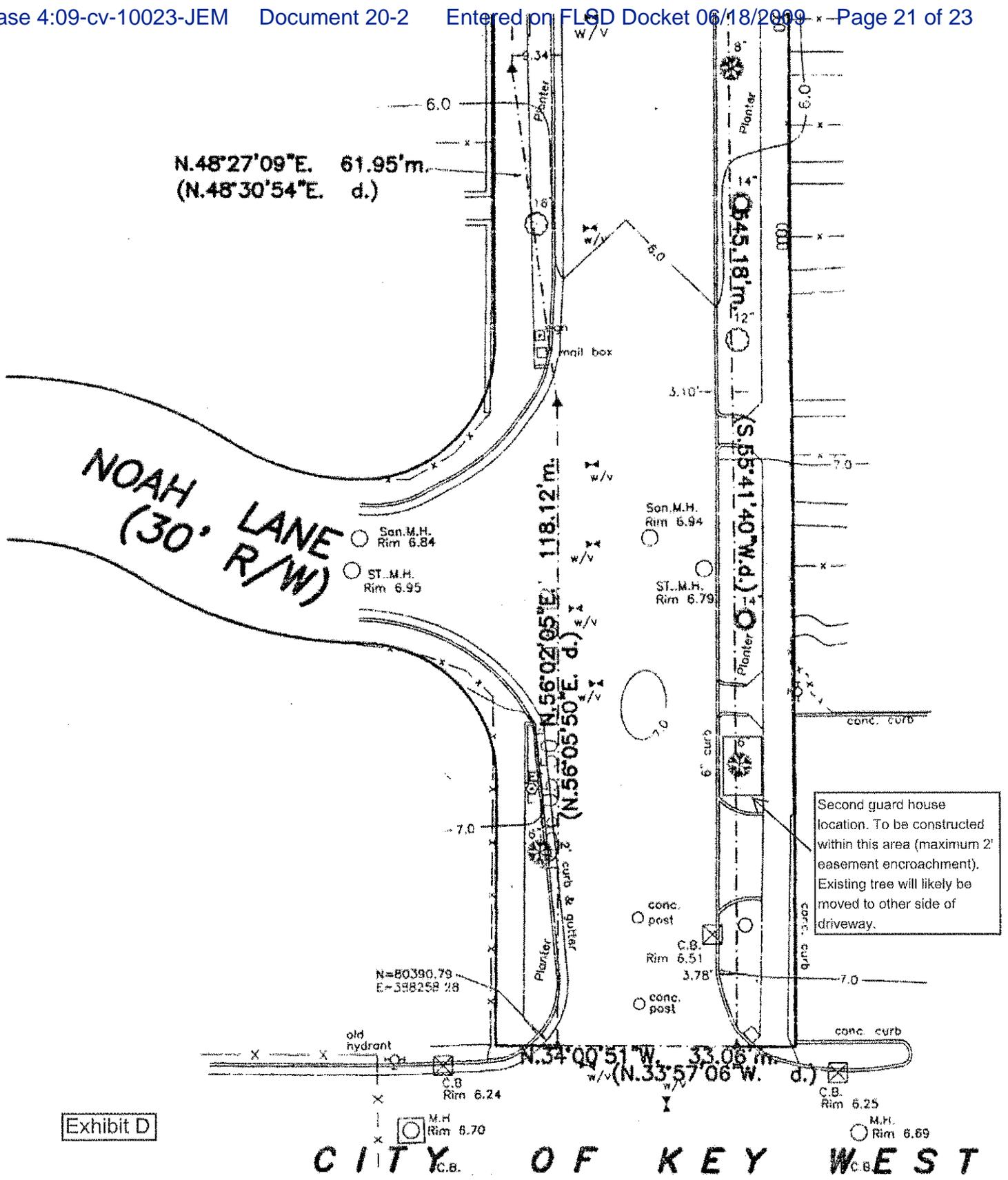


# **EXHIBIT B-2**

# **EXHIBIT C**



# **EXHIBIT D**



N.48°27'09"E. 61.95'm.  
(N.48°30'54"E. d.)

San. M.H. Rim 6.84  
ST. M.H. Rim 6.95

San. M.H. Rim 5.94  
ST. M.H. Rim 6.79

N=80390.79  
E=398258.28

N.34°00'51"W. 33.08'm.  
w/v (N.33°57'06"W. d.)

Exhibit D

C.B.

C.B.

M.H. Rim 6.69

# **EXHIBIT E**



# **ACLF LEASE EXTENSION**

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY OF THE CITY OF KEY WEST (LRA) AUTHORIZING THE FIRST AMENDMENT TO LEASE AGREEMENT ENTERED INTO WITH FLORIDA KEYS ASSISTED CARE COALITION, INC. PURSUANT TO RESOLUTION 08-279 FOR TRUMAN WATERFRONT PROPERTY TO EXTEND THE COMMENCEMENT DATE FOR A PERIOD OF ONE YEAR BY CHANGING PARAGRAPH 2.1(B) TO PROVIDE FOR A COMMENCEMENT DATE OF DECEMBER 31, 2011; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Florida Keys Assisted Care Coalition, Inc. has advised that zoning and land use staffing has taken more time than planned.

NOW THEREFORE BE IT RESOLVED BY THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY, AS FOLLOWS:

Section 1: That the first amendment to lease agreement attached hereto providing for a change in paragraph 2.1(b) to allow for a December 31, 2011 commencement date is approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Authority.

Passed and adopted by the Naval Properties Local Redevelopment Authority at a meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2009

Authenticated by the presiding officer and Clerk of the Authority on \_\_\_\_\_, 2009.

Filed with the Clerk \_\_\_\_\_, 2009.

\_\_\_\_\_  
CRAIG CATES, CHAIRMAN

ATTEST:

\_\_\_\_\_  
CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

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**EXECUTIVE SUMMARY**

**TO:** Mayor & City Commissioners

**FROM:** Jim Scholl, City Manager

**DATE:** October 9, 2009

**RE:** **Authorizing the extension of resolution 08-279 extending paragraph 2.1 to change commencement date to December 31, 2011.**

**REASON:**  
Zoning and Land use staffing has taken more time than planned. A one year extension will allow sufficient time to properly complete staffing and selection of appropriate lesee.

*Key to the Caribbean – Average yearly temperature 77° F.*

**FIRST AMENDMENT TO LEASE AGREEMENT**

This First Amendment to Lease Agreement is entered into this \_\_\_\_\_ day of October, 2009, by and between The Naval Properties Local Redevelopment Authority of the City of KeyWest, (hereinafter "LANDLORD") and Florida Keys Assisted Care Coalition, Inc., a Florida non-profit corporation, (hereinafter "TENANT").

**WITNESSETH**

WHEREAS, LANDLORD and TENANT entered into a Lease Agreement on the 7<sup>th</sup> day of October, 2008, (the "Agreement"), pertaining to the premises located on the Truman Waterfront in Key West, Florida; and

WHEREAS, the LANDLORD and TENANT now desire to amend their Lease Agreement.

NOW, THEREFORE, in mutual consideration of the benefits conferred upon the parties by the terms of this Amendment, LANDLORD and TENANT agree as follows:

**Section 1:** That the Commencement Date of December 31, 2010 referred to in paragraph 2.1(b) of the Agreement is hereby amended to reflect a date of December 31, 2011.

**Section 2:** Except as modified herein, the Lease Agreement as amended shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have made this First Amendment to Sub-Lease Agreement on the date first written above.

THE NAVAL PROPERTIES LOCAL  
REDEVELOPMENT AUTHORITY OF  
THE CITY OF KEY WEST

By: \_\_\_\_\_  
MAYOR/CHAIRMAN

ATTEST: \_\_\_\_\_  
CITY CLERK

FLORIDA KEYS ASSISTED CARE  
COALITION

By: \_\_\_\_\_  
CO-CHAIR

RESOLUTION NO. 08-279

**A RESOLUTION OF THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY OF THE CITY OF KEY WEST, FLORIDA (LRA), IMPLEMENTING REFERENDUM APPROVAL OF A 99-YEAR LEASE OF TRUMAN WATERFRONT PROPERTY FOR AN ASSISTED LIVING AND INDEPENDENT LIVING FACILITY FOR SENIOR CITIZENS; PROVIDING FOR AN EFFECTIVE DATE**

BE IT RESOLVED BY THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY OF THE CITY OF KEY WEST, FLORIDA AS FOLLOWS:

Section 1: A referendum of the electors of the City of Key West, Florida, authorized the LRA to enter into a 99-year lease to a qualified operator or management company, of approximately four acres of real property located at Truman Waterfront, as a mixed-income assisted living and independent living facility for senior citizens (Facility).

Section 2: City of Key West Ordinance 07-09 recites that "referendum approval may be followed by consideration and approval of a particular lease".

Section 3: Florida Keys Assisted Care Coalition, Inc., (Coalition) is a community-based non-profit corporation whose members are collectively identified in Ordinance 07-09 as "the citizens urging development of this assisted living facility". The Coalition's stated Vision, "Elders aging in place in a comfortable, tropical assisted living community", and its stated Mission, "To

provide a model assisted living community in harmony with the environment and fully integrated within the surrounding community" are in conformity with the referendum approval and with the objectives of the LRA.

Section 4: That pursuant to City Code of Ordinance section 2-941, the City Commission finds that the best use of the property would be achieved without resort to the bidding process and a public benefit has been illustrated on the record to justify a below market rental rate.

Section 5: That the attached lease agreement is hereby approved.

Passed and adopted by the Naval Properties Local Redevelopment Authority at a meeting held this 7th day of October, 2008.

Authenticated by the presiding officer and clerk of the Agency on October 8, 2008.

Filed with the Clerk October 8, 2008.

  
MORGAN MCPHERSON, CHAIRMAN

ATTEST:

  
CHERYL SMITH, CITY CLERK

## LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this 7<sup>th</sup> day of Oct., 2008 by and between **THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY OF THE CITY OF KEY WEST**, as Landlord, and **FLORIDA KEYS ASSISTED CARE COALITION, INC.**, a Florida non-profit corporation, as Tenant.

WHEREAS,

1. By Referendum conducted in October, 2007 ("the Referendum", herein), THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY OF THE CITY OF KEY WEST was authorized to lease real property of approximately four acres located on the Truman Waterfront for a period of 99 years for exclusive use as a mixed-income senior citizens assisted living and independent living facility; and
2. The Utility Board of the City of Key West has set aside a parcel of land (adjacent to the above-referenced land provided by the City of Key West) for future use as part of an assisted living facility in Truman Annex; and
3. FLORIDA KEYS ASSISTED CARE COALITION, INC., is a community-based non-profit organization whose Vision is "Elders aging in place in a comfortable, tropical assisted living community", and whose Mission is "To provide a model assisted living community in harmony with the environment and fully integrated within the surrounding community";

NOW, THEREFORE,

In consideration of the mutual covenants and agreements hereinafter set forth, and the rent reserved by Landlord to be paid by Tenant, Landlord hereby leases and demises unto Tenant, and Tenant hereby does lease from Landlord, the Premises, for the terms, and at the rentals, and upon the terms and conditions, hereinafter set forth:

### 1

#### DEFINITIONS

1.1 **Certain Defined Terms**. As used herein, the following capitalized terms shall have the following meanings (such meanings to be applicable to both the singular and the plural form of the terms defined):

"Attorney's Fees" shall mean reasonable attorney's fees and costs incurred by a party, including attorney's fees and cost for trial and appellate proceedings.

"Assisted Living Facility" shall have the meaning set forth in *Florida Statute* §429.02 (2007).

"Assisted and Independent Living Community" shall mean a mixed-income senior citizens assisted living and independent living facility comprised of an Assisted Living Facility and independent living units.

"Commencement Date" shall have the meaning set forth in Article 2.1.

"Governmental Regulations" shall mean all laws, ordinances, and regulations now or hereafter enacted by the State of Florida, City of Key West or by the Federal government.

"Hazardous Substances" shall mean flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any Governmental Regulations.

"Indemnify" shall mean to hold harmless from, and defend against, all claims, demands, actions, causes of action, losses, expenses, damages, liabilities, and Attorney's Fees arising out of or incurred in connection with an identified circumstance, incident, condition, relationship, time period, or other matter.

"Lease Year" shall have the meaning set forth in Article 2.2.

"Premises" means the real property, including all structures erected thereon subsequent to the execution of this Lease, described in Exhibit A hereto, located in Key West, Florida.

1.2 **Other Terms.** All capitalized terms used in this Lease that are not defined in this Article 1 shall have the meanings set forth elsewhere in this Lease.

## 2

### **TERM**

2.1 **Commencement Date.** As used herein, the "Commencement Date" shall mean the earlier of (a) the date that Tenant receives from the City of Key West approval of Tenant's sublease of the Premises to an Assisted Living Community operator, or (b) ~~December 31, 2010.~~

2.2 **Lease Year.** As used herein, the term "Lease Year" shall have the following meaning: The first Lease Year shall be the period beginning on the Commencement Date and ending on the last day of the same calendar month one year later, and successive Lease Years shall be the twelve (12) month periods immediately succeeding the end of the first Lease Year.

2.3 **Term.** The term of this Lease shall commence on the Commencement Date and shall terminate on the last day of the ninety-ninth (99th) Lease Year; provided, however, that the lease will terminate for nonperformance in the event that (1) Landord determines at a duly-noticed public meeting that Tenant has failed to meet any of the performance criteria set forth below, and (2) the noncompliance remains unremedied 60 days after such determination:

- a) Submission of an application for development plan approval with the City's planning department, within 180 days after Commencement Date.
- b) Issuance of a Planning Board resolution to approve or approve with conditions the Tenant's development plan, within 180 days following submission of the application for

development plan approval.

c) Issuance of a City Commission resolution approving or approving with conditions Tenant's development plan application, within 180 days following submission of the application for development plan approval.

d) Submission of an application for building permit for construction of the improvements authorized to be built as Phase 1 under the approved development plan, within 120 days after the effective date of development plan approval. "Effective date of development plan approval" is the date that any appeal from or DCA challenge to development plan approval is finally determined, and if no such appeal or challenge is filed, 60 days following rendition of the Resolution granting development plan approval.

e) Issuance of a building permit for construction of the improvements authorized to be built as Phase 1 under the approved development plan, within 120 days after the building permit application is deemed complete by the Building Official.

f) Issuance of a certificate of occupancy for the Phase 1 improvements, within two years following issuance of the building permit.

### 3

#### RENT

3.1 **Rent.** During the term of this Lease Tenant shall pay to Landlord, without demand, setoff, or deduction, except as expressly provided herein, annual rent equal to One Dollar (\$1.00), payable no later than the sixtieth day of each Lease Year. Tenant may prepay the rent.

#### 3.2 **Taxes, Insurance and Utilities.**

3.2.1 Tenant will pay or require payment by its subtenant of all Taxes and all hazard insurance premiums due and payable during any calendar year of the term. Landlord will prorate Tenant's share of any Taxes due and payable during the calendar year in which the Lease commences or terminates on a per diem basis based on the number of days of the term within such calendar year. Buildings constructed on the Premises shall be insured against damage by fire, windstorm, flood, and other hazards.

3.2.2 Tenant will be responsible for payment of all Utilities consumed on or charged to the Premises during the term of this Lease. The term "Utilities" shall include electricity, water, sewer, solid waste, telephone and other utility charges. Tenant will require its subtenant to open accounts in the subtenant's name for all Utilities.

3.2.3 The term "Taxes" shall mean any real estate taxes or assessments attributable to the Premises. Landlord shall deliver to Tenant any real estate tax bill or assessment upon receipt thereof. Taxes shall be paid by Tenant on or prior to due date.

### 4

#### USE

4.1 **Use.** The Premises shall be used as an Assisted and Independent Living Community as specified in the Referendum, including uses incidental or accessory thereto (which uses may include, without limitation, food service, recreation, and respite care). Tenant and its subtenant shall comply with all Governmental Regulations pertaining to use of the Premises.

4.2 **Nuisances**. Tenant and its subtenant shall not make, suffer, or permit any unlawful, improper, or offensive use of the Premises, or any part thereof, or permit any nuisance thereon. Tenant shall not permit rubbish, refuse, or garbage to accumulate, or any fire or health hazard to exist, upon or about the Premises. Tenant shall not suffer or permit any waste or mistreatment of the Premises.

4.3 **Utility lines**. Tenant shall erect no buildings or other structures directly above the existing subterranean utility lines located under the Westerly extension of Angela St. Should either the existing City sewer or Navy water line running through the Premises sustain damage resulting from construction activities on, or use of, the Premises, Tenant shall promptly repair such damage at its expense.

4.4 **Nondiscrimination**. No person or firm shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in conjunction with the awarding and performance by Tenant or its subtenant of any procurement, nor in the provision of housing on the Premises, on the basis of race, color, religion, national origin, age, sex, disability, sexual orientation, or marital status.

4.5 **Public entity conviction**. No person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may, for a period of thirty-six (36) months from the date of being placed on the convicted vendor list, submit a bid on, or be awarded a contract to perform, any of the following: provision of any goods or services to Tenant or its subtenant, the construction or repair of a building or work on the Premises, or work on the Premises as a contractor, supplier, subcontractor, or consultant in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO. Should the statutory bar against convicted vendors be amended during the term of this Lease, this paragraph shall be deemed amended to be consistent therewith, as of the effective date of such statutory amendment.

## 5

### **SURRENDER OF PREMISES**

Tenant shall, upon expiration of the term hereof, or any earlier termination of this Lease for any cause, surrender to Landlord the Premises, including, without limitation, all alterations, improvements, and other additions thereto that have been made or installed by either party in or upon the Premises, in good and clean condition and repair, ordinary wear and tear and casualty damage, if any, excepted.

## 6

### **QUIET ENJOYMENT**

Landlord covenants that so long as Tenant pays the rent reserved in this Lease and performs its agreements hereunder, Tenant shall have the right to quietly enjoy and use the Premises for the term of this Lease, subject to the provisions hereof. Landlord represents and warrants to, and covenants with, Tenant that Landlord owns fee simple title to the Premises and that the Premises shall be free from any and all liens, claims, and encumbrances that materially interfere with Tenant's intended use and enjoyment of the Premises.

### **ASSIGNMENT AND SUBLEASING**

Except as provided in this Article 7, Tenant shall not assign this Lease or any right hereunder, without first obtaining the express prior written consent of Landlord, which may be withheld for any reason. Tenant shall not sublet all or any part of the Premises without first obtaining the express prior written consent of Landlord. Landlord's consent to subleasing may be conditioned on Landlord's reasonable approval of the subtenant's proposed plan for construction and operation of an Adult Living Community on the Premises, and such consent may be withheld in Landlord's sole judgment.

The consent by Landlord to any assignment or sublease shall not constitute a waiver of the necessity for such consent to any subsequent assignment or sublease.

### **MAINTENANCE AND REPAIR**

Tenant shall be responsible, at Tenant's sole expense, to maintain the Premises in good order and to keep all buildings constructed on the Premises during the term of the Lease in good repair. At the conclusion of the lease term, whether by natural expiration or termination, any improvements to the premises shall become the property of the Landlord, or shall be removed by the Tenant at Tenant expense, at the sole discretion of the Landlord.

### **SIGNAGE**

Tenant and its subtenant shall be entitled to place signage on the Premises in connection with, and appropriate to, the permitted use of the Premises. All signage shall comply with the regulatory requirements of the City of Key West, including without limitation HARC regulations.

### **LIENS**

Tenant shall make full and prompt payment of all sums necessary to pay for the cost of all improvements or other work done by Tenant to the Premises. Tenant shall Indemnify Landlord against all such costs and liabilities incurred by Tenant, and against all construction liens arising out of any such work, which may be asserted, claimed, or charged against Landlord, the Premises, or the Building. Notwithstanding anything to the contrary in this Lease, the interest of Landlord in the Premises shall not be subject to liens for improvements made by or for Tenant, whether or not the same shall be made or done in accordance with this Lease, a sublease, or other agreement between Landlord and Tenant or its subtenant. In no event shall Landlord or the interest of Landlord in the Premises be liable for, or subjected to, any liens under the Florida Construction Lien Law for improvements or work made by or for Tenant or its subtenant. In the event any notice or claim of lien shall be asserted of record against the interest of Landlord in the Premises on account of any improvement or work done by or for Tenant or any person claiming by, through, or under Tenant, or the cost of which is the responsibility of Tenant, Tenant shall have such notice or claim of lien canceled and discharged of record as a claim against the interest of Landlord in the Premises (either by

payment and satisfaction or by removal by transfer to bond or deposit as permitted by law) within ninety (90) days after notice to Tenant by Landlord.

## 11 INSURANCE

11.1 **Tenant's Insurance Obligations.** Tenant shall obtain or require its subtenant to obtain, no later than the Commencement Date, and shall maintain in force throughout the term hereof, either by "blanket" policy or separate policies, the types of insurance coverage specified in sub-paragraphs 11.1.1-11.1.3. Neither this requirement, nor the obtaining of insurance as provided herein, shall be deemed a waiver of sovereign immunity of or by the City of Key West.

### 11.1.1 **Liability Insurance.**

Comprehensive public liability insurance covering claims for personal injury, death, and property damage arising out of Tenant's or subtenant's use or occupation of the Premises, having a combined single limit of liability of not less than \$1,000,000 arising out of any one occurrence and a limit of liability of not less than \$500,000 for property damage.

11.1.2 **Workers' Compensation.** Workers' compensation insurance for the benefit of all employees entering upon the Premises as a result of or in connection with their employment by Tenant or its subtenant.

11.1.3 **Hazard Insurance.** Insurance against damage by fire, wind, storm, and flood, insuring all buildings subsequently erected on the Premises, in such amounts as Tenant deems appropriate in the reasonable exercise of its discretion.

11.2 **Minimum Requirements.** All insurance policies required hereunder shall be issued by companies licensed and registered to operate in the State of Florida. Tenant shall provide Landlord with copies of the policies or certificates evidencing that the required insurance is in full force and effect and stating the terms thereof. All insurance policies shall name Landlord and Tenant as insureds. Nothing herein is intended to waive the sovereign immunity accorded to Landlord pursuant to Florida Statutes, including Section 768.28.

## 12 CASUALTY

If any building located on the Premises (a "Building") is damaged by fire or other casualty, then not later than ninety (90) days after the casualty occurs, Tenant or its subtenant shall commence the repair and restoration of the Building to substantially the condition thereof immediately prior to such damage, and shall thereafter use reasonably diligent efforts to complete such repair and restoration, in no event later than twelve months after the casualty event, subject to extension for force majeure events.

13

**INDEMNIFICATION**

Landlord shall not be liable for injury or damage caused to any person or property by reason of the failure of Tenant or its subtenant to perform any of its covenants or agreements hereunder. Tenant shall Indemnify Landlord against all loss, damage, claim, demand, liability or expense by reason of any damage or injury to persons (including loss of life) or property that may arise or be claimed to have arisen as a result of, in connection with, or in any way related to the occupancy or use of the Premises by Tenant or its subtenant, whether or not occurring or resulting in damage or injury within the Premises, but except to the extent caused by the acts, omissions, negligence, recklessness, or willful misconduct of Landlord or any of Landlord's employees or agents. Nothing herein is intended to waive the sovereign immunity accorded to Landlord pursuant to Florida Statutes, including Section 768.28.

14

**ENVIRONMENTAL MATTERS**

14.1 **Landlord's Disclosure.** Landlord has disclosed to Tenant, and Tenant acknowledges, that the Premises were previously part of a military base on which Hazardous Substances were kept and used. As between Landlord and Tenant, Tenant shall be responsible for any Hazardous Substances removal or remediation that may be required by any Governmental Regulation..

14.2 **Tenant's Restrictions.** Tenant shall not cause or permit to occur any of the following:

14.2.1 Any violation of Governmental Regulations related to environmental conditions on, under, or about the Premises or arising from Tenant's use or occupancy of the Premises, including, but not limited to, soil and ground water conditions.

14.2.2 The use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substances on, under, or about the Premises or the transportation to or from the Premises of any Hazardous Substances.

15

**DEFAULT**

15.1 **Event of Default.** The occurrence of any of the following events, acts, or circumstances shall constitute an "Event of Default":

15.1.1 Failure by Tenant to make any payment required hereunder when due, if such failure remains uncured thirty (30) days after written notice from Landlord.

15.1.2 Failure by Tenant or its subtenant to observe, perform, or comply with any of the terms, covenants, agreements, or conditions contained in this Lease (other than as specified in Article 15.1.1 and 15.1.8), and the continuance of such failure for sixty (60) days after Landlord has given Tenant written notice of such failure. If Tenant has

promptly commenced and diligently pursued remedial action within such 60-day period but has been unable to cure its default prior to the expiration thereof, such 60-day period shall be extended for a period reasonably required for the completion of Tenant's remedial action, provided Tenant continues to diligently pursue such remedial action, but in no case greater than an additional 90 days, unless approved by vote of the City Commission at a properly notice meeting.

15.1.3 The bankruptcy of, or appointment of a receiver or trustee for, Tenant.

15.1.4 Tenant's voluntarily petitioning for relief under, or otherwise seeking the benefit of, any bankruptcy, reorganization, or insolvency law.

15.1.5 The sale or relinquishment of Tenant's interest under this Lease by execution or other legal process.

15.1.6 Tenant's making an assignment of a material portion of its assets for the benefit of creditors.

15.1.7 Tenant's dissolution or liquidation.

15.1.8 Failure to operate an Assisted and Independent Living Community on the Premises. "Failure to operate" includes, without limitation, loss of any required State licensure for operation of an Assisted Living Facility, or failure to use the facility as an Assisted and Independent Living Community. If such failure to operate is not cured within thirty (30) days of a notice of default, this agreement shall be terminated and subject to the remedies specified herein.

15.2 **Remedies.** Upon the occurrence of an Event of Default, Tenant shall become a tenant at sufferance, and Landlord, at its option and at any time thereafter, may enter upon and take possession of the Premises, or may treat this Lease as remaining in existence, curing Tenant's default by performing or paying the obligation which Tenant has breached, whereupon all sums paid or expenses incurred by Landlord directly or indirectly in curing Tenant's default shall become immediately due and payable.

15.3 **Nonexclusive Remedies.** The remedies for which provision is made in this Article 15 shall not be exclusive, and in addition thereto, Landlord may pursue such other remedies as are provided by law upon the occurrence of an Event of Default. In any event, and irrespective of any option exercised by Landlord, Tenant shall pay to Landlord all costs and expenses incurred by Landlord, including Attorney's Fees, in connection with collection of rent or damages or enforcing other rights of Landlord under this Article 15, whether or not Landlord elects to terminate this Lease by reason of such Event of Default.

15.4 **Interest.** Any sums due under this Lease from Tenant to Landlord and not paid on the date due shall bear interest from the date due at twelve percent (12%) per annum until fully paid.

## 16

### **WAIVER; ACCORD AND SATISFACTION**

The failure of a party to insist, in any one or more instances, upon strict performance of any covenants or agreements of this Lease, or to exercise any option of such party herein contained, shall not be construed as a waiver or relinquishment of that or any right or remedy of such party hereunder and shall not be deemed a waiver of any subsequent breach or default by the other party of the covenants or conditions herein. Receipt of rent by Landlord, with knowledge of the breach of any covenant or agreement

hereof, shall not be deemed a waiver of such breach. No waiver by a party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party. With respect to Landlord, such written expression of waiver may only occur by resolution of the Key West City Commission or Naval Properties Local Redevelopment Authority of the City of Key West.

17

**NOTICES**

All notices, requests, demands, and other communications which are required or may be given under this Agreement shall be in writing and shall be served on the parties at the addresses indicated below:

To Tenant: Florida Keys Assisted Care Coalition, Inc.  
201 Front St.  
Key West, FL 33040

To Landlord: City Manager  
City Hall  
Key West, FL 333040

Any such notices shall be (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the U.S. Mail, (b) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (c) sent by telephone facsimile transmission, in which case notice shall be deemed delivered on the day of transmission of such notice and confirmation of such transmission, or (d) sent by personal delivery, in which case notice shall be deemed delivered on the day of actual delivery. The above addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

18

**ATTORNEY'S FEES**

In the event of litigation affecting the rights of either party under this Lease, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder.

19

**MISCELLANEOUS**

19.1 **Entire Agreement**. This Lease and the exhibits attached hereto constitute the sole and exclusive agreement between the parties with respect to the Premises. No

amendment, modification, or revision of this Lease shall be effective unless in writing and executed by Landlord and Tenant.

19.2 **Severability.** If any term or provision of this Lease or the application thereof to any present or future circumstances, to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Lease shall be in full force and effect, and only the provision found to be unenforceable shall be stricken from the terms hereof.

19.3 **Force Majeure.** Should a party be unable to perform any of its obligations contained in this Lease due to circumstances beyond its reasonable control, including but not limited to labor disputes; Governmental Regulations; fire or other casualty; acts of the other party or the other party's employees, agents, contractors, subcontractors, or invitees; inability to obtain material or services; strikes; or acts of nature, such party shall not be considered in default under the terms of this Lease, the time for performance by such party of the obligation shall be extended for a period of time equal to the length of the delay caused by such circumstances, and the other party shall not be excused from the obligation to pay all amounts and charges required under this Lease as the same become due except as otherwise expressly provided herein.

19.4 **Governing Law.** This Lease shall be construed according to Florida law and venue for any action relating to the terms and conditions of this Lease Agreement shall be in the Circuit Court in and for Monroe County.

19.5 **Binding Effect.** The terms and conditions of this Lease are binding upon the heirs, successors, and assigns of the parties hereto. The obligations of Tenant hereunder shall be joint and several.

19.6 **Usage.** Whenever used herein, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders. Titles of articles, paragraphs, and subparagraphs of this Lease are for convenience only and neither limit nor amplify the provisions of this Lease.

19.7 **No Third Party Rights.** The provisions of this Lease are for the exclusive benefit of Landlord and Tenant, and except for rights expressly granted to third parties by the terms hereof, no third party shall have any right or claim against Landlord or Tenant by reason of such provisions or be entitled to enforce any of such provisions against Landlord or Tenant.

19.8 **Consents and Approvals.** Except as provided in paragraph 7, whenever the Lease requires Landlord's consent or approval, Landlord will not withhold its approval or consent in bad faith, and Landlord will not unreasonably delay its response to Tenant's request for approval or consent. Landlord will be deemed to have given its consent or approval to any such request made by Tenant if Landlord does not respond to Tenant in writing within thirty (30) days (or such other time period as is expressly provided herein) after Landlord's receipt of such request. If Landlord withholds its consent or approval to any such Tenant request, Landlord shall give Tenant a written statement setting forth the basis for withholding its consent or approval. In the event Tenant shall request the consent, review, or approval of Landlord under this Lease, Tenant shall not be charged any fee for any such required consent, review, or approval, except for uniform fees

charged by the City of Key West in connection with the review and issuance of development orders.

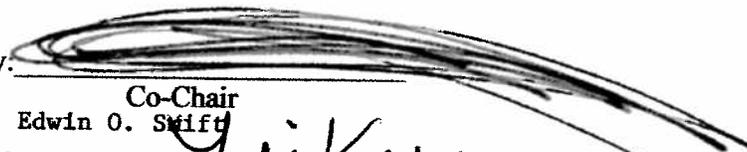
**19.9 U.S. Navy Consent.** This Lease is expressly contingent upon issuance of any consent by the U. S. Navy that may be required under the terms of the instrument of conveyance from the U.S. Navy, as grantor of the subject property, to the City of Key West. Landlord shall promptly provide the U.S. Navy a copy of the Lease, together with a request for any required consent thereto.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above mentioned.

**THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY OF THE CITY OF KEY WEST**

by:   
MAYOR/CHAIRMAN  
 ATTEST: Cheryl Smith  
CITY CLERK

**FLORIDA KEYS ASSISTED CARE COALITION, INC**

by:   
Co-Chair  
Edwin O. Swift  
ATTEST: Liz Kern  
Secretary  
Liz Kern

# **MISSION STATEMENT**

# KeyWestCity.com

## Truman Waterfront Advisory Board

The City Commission created the Truman Waterfront Advisory Board by passage of Resolution 09-051 at the City Commission Meeting held on February 18, 2009. The Board will consist of seven members appointed for three-year terms.

The Mission and duties of the Truman Waterfront Advisory Board are listed below:

- To make recommendations to the City Commission for the improvements of the Truman Waterfront.
- To promote the rehabilitation, revitalization, conservation and redevelopment of lands and structures within the Truman Waterfront.
- Advise the City Commission on projects and uses for the property which are consistent with the comprehensive plan and conveyance documents from the United States.
- Explore funding sources to offset any potential taxpayer burden.
- Study the feasibility of proposed projects and the viability of future projects.
- Facilitate productive communication and elicit opinions from all interested individuals and entities, especially the United States Navy.

The term guidelines of the Board are listed below:

- The seven positions on the Board shall be filled by each member of the City Commission, each serving three-year terms.
- There may be a non-voting ex-officio additional member of the Board appointed by the United States Navy.
- There may be a non-voting ex-officio additional member of the Board appointed by the National Oceanic and Atmospheric Administration (NOAA).

Qualifications:

- All board members shall be residents of the City of Key West.
- The Board shall consist of least one member from each of the following disciplines: legal, accounting and planning.
- One member of the Board shall be nominated by the Key West Chamber of Commerce.
- Remaining three members shall be individuals with a demonstrated interest in community service.

The appointed members are as follows:

Commissioner Gibson.....Owen Trepanier

AZ SULLIVAN Suggestion For Item 6

MISSION

Mission statement for Truman Waterfront Advisory Board

Advise the KWCC on how to use this land for the benefit of the people of Key West, first and foremost as a public park, and secondly, so that any profit produced by areas of economic development return to the citizens of Key West.

*From The Desk Of Jim Gilleran*

**Friday, October 09, 2009**

## **Truman Waterfront Advisory Board**

### **Mission Statement Draft "G1"**

- To review and ~~approve~~ prior to City Commission actions all leases, improvements and development at Truman ~~Annex~~. *Waterfront*
- To review and ~~approve~~ the rehabilitation, revitalization, conservation and redevelopment of lands and structures within the Truman Waterfront.
- Report to the City Commission on projects and uses for the property which are consistent with the comprehensive plan and conveyance documents from the United States Government.
- Study the feasibility and capacity of entities to complete proposed projects and viability of future projects.
- Facilitate the productive communication and elicit opinions from all interested individuals and entities giving special consideration to The United States Navy.
- Act as clearinghouse for all documents, maps leases etc, to best facilitate public access to the property development plans and progress.
- To act in a similar matter as the established Key West Bight Board in all actions.