RESOLUTION NO. 08-074

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED SETTLEMENT AGREEMENT BETWEEN THE CITY OF KEY WEST AND THE TRUMAN ANNEX MASTER PROPERTY OWNERS ASSOCIATION (TAMPOA); PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Settlement Agreement between the City and the TAMPOA is hereby 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 Commission.

Passed and adopted by the City Commission at a meeting held this 4th day of March, 2008.

Authenticated by the presiding officer and Clerk of the Commission on March 5, 2008.

Filed with the Clerk March 5, 2008.

MORGAN McPHERSON, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

CITY OF KEY WEST
OFFICE OF THE CITY ATTORNEY
PO BOX 1409
KEY WEST, FL 33041
(305) 809-3770 [Phone]
(305) 809-3771 [Fax]

MEMORANDUM

TO: Mayor and Members of the City Commission

FROM: Shawn D. Smith
City Attorney

DATE: February 26, 2008

SUBJ: **TAMPOA Settlement Agreement**

Attached to this memo you will find a mediation settlement agreement ("Mediation Agreement") executed by the Board of Directors of the Truman Annex Master Property Owners Association (TAMPOA) on February 18, 2008. This Mediation Agreement was sent to TAMPOA on behalf of the City by me and our outside counsel Michael Burke. The terms and conditions are consistent with the closed session we had on this matter, as well as the mediation session conducted in November, which was attended by the Mayor.

I. Mediation Settlement Terms

In short, the Mediation Agreement provides unlimited public access through Southard Street from 6 a.m. until 10 p.m. From 10 p.m. until 6 a.m. guests, employees and residents of all City approved developments on the Truman Waterfront property ("Waterfront") will have access through Southard Street. Individuals attending special events at the Waterfront, City employees and persons utilizing the NOAA facility will also have access during this period of time. The agreement regarding the use of Southard Street would be memorialized by an easement. Under the Mediation Agreement, the City would permit TAMPOA to erect gates for use between the hours of 10 p.m. and 6 a.m. to limit access to the permitted individuals listed above. (While the City agrees to such gates, the Navy has consistently maintained that they will not allow gates to be erected which would impede their unrestricted access easement agreement.) The City would be responsible for maintaining Southard Street in the same manner as it exists today, including utilities, brick pavers and asphalt. To balance the traffic flow to the Waterfront, the City would choose two other streets to provide access to and from the property. One street would provide

ingress, while the other would offer an additional egress point. In addition to the provisions regarding use of Southard Street, the Mediation Agreement provides for settlement of the pending lawsuits. Both lawsuits would be dismissed with prejudice, with each side being responsible for their own attorneys' fees and cost.

One goal in this process was to insure the agreement was signed by TAMPOA before bringing it before the Commission. At this point, approval by the Commission will result in a binding agreement and resolution of the issue. It is my recommendation, and that of Michael Burke, that the City resolve this dispute in accordance with the terms and conditions of the Mediation Settlement Agreement.

The remainder of this brief memo is intended to summarize some of the key historical issues in the on-going litigation with TAMPOA and the dispute over Southard Street. It is not the intent of this summary to provide any sort of detailed legal strategy or explanation (which was the point of the closed session). If the Commission does not approve this settlement, I do not want statements in this document used against the City in any fashion at a subsequent point in time.

HISTORY:

On January 20, 2000 a prior City Commission passed resolution 00-43, which approved an Agreement between the City and TAMPOA ("Prior Agreement"). The Prior Agreement attempted to establish limited access routes for the public to the Waterfront property that the City was in the process of acquiring from the Navy. The Prior Agreement was entered into as a result of a challenge by TAMPOA to the Navy's conveyance to the City. The Prior Agreement required the City to take certain actions with respect to pedestrian, vehicle and bicycle flow to the Waterfront within two years of the date of the Prior Agreement. Specifically, the Prior Agreement required that the City provide:
Ingress and Egress by Fort Street through Olivia Street;
Ingress and Egress through Petronia Street;
Ingress and egress via Truman Avenue through Fort Street.
In exchange for the City utilizing the above mentioned streets for ingress and egress to the Waterfront, TAMPOA agreed to convert "its section of Southard Street" to a one way exit point from the Waterfront within five years of the agreement or the completion of any development on the Waterfront. Additionally, the City was required to erect signs directing all vehicles to utilize Truman, Olivia and Petronia to enter and exit the Waterfront.

Former City manager Avael requested and received an extension of the time in which to implement the traffic plan from TAMPOA. On January 11, 2006 a City Commission comprised of six entirely new members from the body who had approved the Prior Agreement voted not to implement the traffic plan as outlined in the Prior Agreement. (While former Vice Mayor Bethel was on the Commission that voted to approve the Prior Agreement, he was absent and therefore did not vote at the meeting the Prior Agreement was approved.) The vote at the January 11th meeting was unanimous in declining to implement the proposed traffic plan.

Following the City's refusal to implement the traffic plan as specified in the Prior Agreement,

TAMPOA sued the City on January 17, 2006 in State Circuit Court seeking relief in a variety of forms for the City's alleged failure to adhere to the Prior Agreement. The City responded by denying the majority of allegations in the Complaint and alleging the Prior Agreement was invalid. Subsequent to the State lawsuit, TAMPOA initiated a Federal Court lawsuit against the City and the United States Navy in an attempt to gain exclusive control over Southard Street. The Federal suit seeks a host of remedies against the Navy and the City. Many of the Federal claims against the City were duplicative of the State claim and were dismissed by the Court on that basis. However, the City remains a party to that Federal litigation today, in addition to the State Court matter.

At the heart of the matter has always been the use and ownership of Southard Street. While the information contained in this memo is by necessity not as detailed as that provided in special session regarding our legal posture on the case, I believe it is important to note that there is presently no document that establishes the City's ownership of the disputed area of Southard Street. TAMPOA, on the other hand, can point to its transfer documents for their claim of ownership. Incidentally, but certainly not in any way conclusive, during the litigation it was revealed that TAMPOA was able to acquire a title policy over the disputed area of Southard Street at the time they received the property. The strongest point the City may have for continued access is under the Navy's easement and historic use of the property. The Navy has consistently reiterated its belief in the City's ability to utilize that easement. However, the Navy's continued use of Southard Street via that easement is one of the main issues in the Federal Court litigation.

A great number of depositions were taken in the State Court matter and volumes of documents have been obtained and exchanged between the parties. Additionally, both formal and informal settlement discussions have been held. Commission Lopez initially led the City's mediation team. Commissioner Bill Verge followed, and most recently Mayor McPherson represented the City.

The most recent settlement proposal prior to the document presently before the Commission illustrates how far we have come in attempting to secure a just settlement for the City. TAMPOA's prior offer included a five year license agreement with a renewal period for five years. The city was asked to pay a fee of $30,000.00 per year (with a yearly CPI increase) for the license. The license would have allowed access between 7 a.m. and 10 p.m. only, with an exception granted for special events. The City would not have been permitted to utilize City buses or similar public transportation across the disputed area of Southard Street at any time. The prior proposed agreement also attempted to limit the times City owned streets were open to provide access to the Waterfront. This offer was rejected by me and Commission Verge informally and later formally by the City Commission in closed session. I address this issue as a reminder of the last agreement TAMPOA presented to the City. That document, as well as the numerous files on this matter, is available for your continued review prior to the meeting if you so desire.

Thank you for the amount of diligent time and energy each of you has invested in this issue. I am available to you prior to the meeting to address any questions, concerns or comments you may have.

Doc# 1709971 08/29/2008 2:43PM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE

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Prepared by ~~and return to~~:

The Andersen Firm, P.C.
William E. Andersen, Esq.
1010 Kennedy Drive, Suite 201
Key West, Florida 33040-4019

RETURN TO:
OFFICE of CITY ATTORNEY
525 ANGELA ST.
KEY WEST, FL. 33040

GRANT OF EASEMENT

~~February~~ March THIS GRANT OF EASEMENT made and entered into this 4th day of 2008, by and between TRUMAN ANNEX MASTER PROPERTY OWNERS' ASSOCIATION, INC., a Florida corporation, (Grantor); and the CITY OF KEY WEST (Grantee).

WHEREAS, Grantor is seized in fee simple and in possession of lands lying in Monroe County, Florida, generally described as those portions of real property referred to as Southard Street lying between Thomas Street and the "Waterfront Property" defined herein, which said property is more particularly described as:

COMMENCE AT THE NATIONAL OCEAN SURVEY TRIANGULATION STATION PIER A, BEING A BRASS DISC SET IN A CONCRETE DOCK, THE STANDARD PLANE RECTANGULAR COORDINATES FOR THE EAST ZONE OF FLORIDA FOR SAID POINT BEING X = 231,252.58, Y = 82,419.91; THENCE RUN S 71° 48' 12" E, MERCATOR, FOR A DISTANCE OF 315.91 FEET; THENCE RUN N 10° 46' 21" E FOR A DISTANCE OF 220.01 FEET; THENCE RUN S 70° 30' 03" E FOR A DISTANCE OF 220.99 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF FRONT STREET; THENCE RUN S 01° 50' 07" E ALONG THE WEST RIGHT OF WAY LINE OF FRONT STREET FOR A DISTANCE OF 136.75 FEET; THENCE RUN N 88° 36' 32" E FOR A DISTANCE OF 50.00 FEET TO A POINT ON THE SOUTEASTERLY RIGHT OF WAY LINE OF GREENE STREET; THENCE RUN N 55° 51' 21" E ALONG THE SOUTHEASTERLY RIGHT OF WAY LINE OF GREENE STREET FOR A DISTANCE OF 86.04 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHWESTERLY RIGHT OF WAY LINE OF WHITEHEAD STREET; THENCE RUN S 34° 03' 43" E ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE OF WHITEHEAD STREET FOR A DISTANCE OF 962.22 FEET TO THE SOUTHEASTERLY RIGHT OF WAY LINE OF EATON STREET, BEING THE NORTHWESTERLY PROPERTY

"EXHIBIT E"

LINE OF THE U.S. POSTAL SERVICE PROPERTY; THENCE RUN S 56° 04' 17" W ALONG THE NORTHWESTERLY BOUNDARY LINE OF THE U.S. POSTAL SERVICE PROPERTY FOR A DISTANCE OF 495.18 FEET TO AN ALUMINUM DISC IN CONCRETE MARKING THE WESTERNMOST CORNER OF THE U.S. POSTAL SERVICE PROPERTY; THENCE RUN S 34° 10' 22" E ALONG THE SOUTHWESTERLY BOUNDARY OF THE U.S. POSTAL SERVICE PROPERTY FOR A DISTANCE OF 355.18 FEET TO AN ALUMINUM DISC IN CONCRETE THENCE RUN N 55° 56' 53" E ALONG THE SOUTHEASTERLY BOUNDARY OF THE U.S. POSTAL SERVICE PROPERTY FOR A DISTANCE OF 42.90 FEET TO THE POINT OF INTERSECTION WITH THE SOUTHWESTERLY RIGHT OF WAY LINE OF THOMAS STREET; THENCE RUN S 33° 59' 23" E ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE OF THOMAS STREET FOR A DISTANCE OF 549.34 FEET TO THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED PARCEL OF LAND; THENCE RUN S 55° 54' 32" W FOR A DISTANCE OF 108.29 FEET; THENCE RUN S 79° 57' 12" W FOR A DISTANCE OF 15.45 FEET; THENCE RUN S 55° 41' 40" W FOR A DISTANCE OF 545.18 FEET TO THE POINT OF INTERSECTION WITH PROPOSED BOUNDARY LINE OF THE KEY WEST NAVAL AIR STATION TRUMAN ANNEX, BEING THE NORTHWESTERLY PROLONGATION OF A LINE THAT IS 3.00 FEET NORTHEASTERLY OF AND PARALLEL WITH THE NORTHEASTERLY BACK OF CURB OF AN UNNAMED STREET IN THE KEY WEST NAVAL AIR STATION TRUMAN ANNEX; THENCE RUN N 33° 57' 06" W ALONG SAID LINE THAT IS 3.00 FEET NORTHEASTERLY OF AND PARALLEL WITH THE NORTHEASTERLY BACK OF CURB OF AN UNNAMED STREET IN THE KEY WEST NAVAL AIR STATION TRUMAN ANNEX FOR A DISTANCE OF 33.06 FEET; THENCE RUN N 56° 05' 50" E FOR A DISTANCE OF 118.12 FEET; THENCE RUN N 48° 30' 54" E FOR A DISTANCE OF 61.95 FEET; THENCE RUN N 55° 54' 32" E FOR A DISTANCE OF 488.02 FEET TO THE POINT OF INTERSECTION WITH THE AFORESAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF THOMAS STREET; THENCE RUN S 33° 59' 23" E, ALONG THE SAID SOUTHWESTERLY RIGHT-

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OF-WAY LINE OF THOMAS STREET, FOR A DISTANCE OF 44.90 FEET TO THE POINT OF BEGINNING.

THE COORDINATES AND BEARINGS CONTAINED HEREIN ARE BASED ON THE NATIONAL OCEAN SURVEY TRIANGULATION SYSTEM ADJUSTMENT IN EFFECT IN DECEMBER, 1982, AND REFER TO THE STANDARD PLANE RECTANGULAR COORDINATE SYSTEM FOR EAST ZONE OF FLORIDA.

SAID SUBJECT PARCEL BEING DEPICTED IN THE ATTACHED SURVEY DRAWING ATTACHED HERETO AND INCORPORATED HEREIN AS "EXHIBIT 1" TO THIS GRANT OF EASEMENT.

(hereinafter referred to as the "Southard Street Easement").

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WHEREAS, Grantee has certain rights and/or interests with regard to certain properties located adjacent to the Southard Street Easement property owned by Grantor, which said properties are commonly referred to as the "Waterfront," the "Marina," the "United States Navy Base," and "Fort Zachery Taylor Historic State Park" (hereinafter collectively referred to collectively as the "Waterfront Property").

NOW, THIS INDENTURE WITNESSETH:

That, in consideration of the sum of Ten ($10.00) Dollars, the receipt of which is hereby acknowledged, and other good and valuable consideration which is described herein, the Grantor does hereby grant unto the Grantee an access easement over and across the Southard Street Easement property. Said access easement will be used by Grantee, as well as Grantee's employees and agents; Marina guests; residents, guests and employees of approved developments located within the Waterfront; employees and guests of the NOAA facility; and persons attending City of Key West approved special events at the Waterfront (all of which are hereinafter referred to collectively as "Authorized Persons"), forever, for ingress and egress only, an easement over and across the Southard Street Easement, subject to those terms and conditions herein described.

TO HAVE AND TO HOLD the above said easement hereby unto the Grantee and those other Authorized Persons only. Said easement is not intended to run appurtenant to any particular land. The above said easement is intended to be a grant of easement in perpetuity only to Grantee and those Authorized Persons indicated herein.

It is expressly understood that this Grant of Access Easement is granted specifically upon the following express terms and conditions:

During the hours of 6:00 a.m. and 10:00 p.m., there shall be unrestricted access to the general public over and across Southard Street for purposes of ingress and egress to and from the Waterfront Property.

Nothing herein shall be considered to allow, authorize or permit any non-residents of Grantor to have access to the remaining properties of Grantor. Instead, this Grant of Access Easement is specifically intended to allow, authorize and permit persons to have access to utilize an easement over and across the Southard Street Easement to the Waterfront Properties.

During the hours of 10:00 p.m. and 6:00 a.m., only the Authorized Persons shall be allowed access over and across the Southard Street Easement for purposes of ingress and egress to and from the Waterfront Property.

Grantor shall have the right, at its option and at its sole expense, to construct, maintain and man gates and/or guard booths at either or both ends of Southard Street. Each such gate(s) and/or guard booth(s) will be manned during any hours between 10:00 p.m. and 6:00 a.m. that the gates are closed to ensure access to Authorized Persons. The gate(s) and/or guard booth(s) will not be manned between 6:00 a.m. and 10:00 p.m. except for the purpose of providing information to motorists and pedestrians who request information.

Regardless of Grantor's rights to construct, maintain and man such gates and/or guard booths, Grantor shall be required to comply with the requirements of allowing ingress and egress by the Authorized Persons.

As used in this Grant of Easement "unrestricted access" shall mean that any gates constructed, maintained and manned by Grantor on Southard Street shall be in the open position and ingress and egress over and across the Southard Street Easement shall be permitted to all persons. However, during restricted times between 10:00 p.m. (EST) and 6:00 a.m. (EST), Grantor shall be permitted to have such gates in the closed position, to have the gates and/or guard houses manned with personnel paid for by Grantor, to make reasonable inquiry of those persons utilizing the easement to ensure that such persons are within the category of persons authorized to have such access, to deny access to any persons who do not fall within the categories of authorized persons as specifically set forth herein, and to engage in all actions reasonably necessary to accomplish the terms of this Grant of Easement.

In consideration of this Grant of Access Easement by Grantor to Grantee, and in light of the traffic that will utilize the easement over and across the Southard Street Easement, Grantee hereby agrees to be solely responsible for the maintenance of Southard Street, excepting only the gates and/or guards houses to be constructed, maintained and/or manned by Grantor. For purposes of establishing a standard by which maintenance shall be required, the parties acknowledge that the Grantee shall be required to maintain Southard Street in the same manner as Southard Street is current maintained including the same materials as currently exist on Southard Street (by way of example

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and not as an exhaustive reference, the Grantee shall use brick pavers of same quality, color and appearance). All maintenance shall be performed in a prompt manner to ensure that the structure and appearance of Southard Street is properly maintained. The Grantee's responsibility for maintenance and repair shall also include, but shall not be limited in any way to, repair/replacement of underground utilities of any kind, repair/replacement of brick pavers, repair/replacement of all asphalted areas of Southard Street, repair/replacement of all concrete areas of Southard Street, and all other maintenance, repairs and replacement measures that may be required to keep Southard Street in the same condition it exists as of the date of this Grant of Easement. Grantor will be responsible for the maintenance, staffing and repair of any gates and/or guard houses and/or other control devices constructed at any location along Southard Street.

IN WITNESS WHERE OF Grantor has set their hands and seals on the day and year first above written.

Witness

Truman Annex Property Owners' Association, Inc., a Florida corporation, as Grantor
By: THOMAS B. TURLEY
Its: PRESIDENT

Witness

STATE OF FLORIDA,
COUNTY OF ~~ST. JOHNS~~ Monroe

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared Thomas B. Turley, to me known to be the persons described in and who executed the foregoing instrument, or who produced N/A for identification purposes, and acknowledged before me the execution of same.

WITNESS my hand and official seal in the County and State last aforesaid this 4th day of ~~February~~ March 2008.

Notary Public—State of Florida
Printed Name:
My Commission Expires:

William E Andersen
Expires
06/15/2010
NOTARY PUBLIC
Commission #
DD564314
STATE OF FLORIDA

IN WITNESS WHERE OF Grantee has set their hands and seals on the day and year first above written.

Witness RON RAMSINGH

City of Key West, as Grantee
By: MORGAN McPHERSON
Its: MAYOR

Witness SHAWN SMITH

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STATE OF FLORIDA,
COUNTY OF ~~ST. JOHNS~~ MONROE

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared MORGAN McPHERSON, to me known to be the persons described in and who executed the foregoing instrument, ~~or who produced _____ for identification purposes~~, and acknowledged before me the execution of same.

WITNESS my hand and official seal in the County and State last aforesaid this 5th day of ~~February~~ MARCH 2008.

Notary Public—State of Florida
Printed Name: VIVIAN PEREZ
My Commission Expires: April 9, 2009

VIVIAN PEREZ MY COMMISSION EXPIRES April 9, 2009 #DD483446 NOTARY PUBLIC, STATE OF FLORIDA

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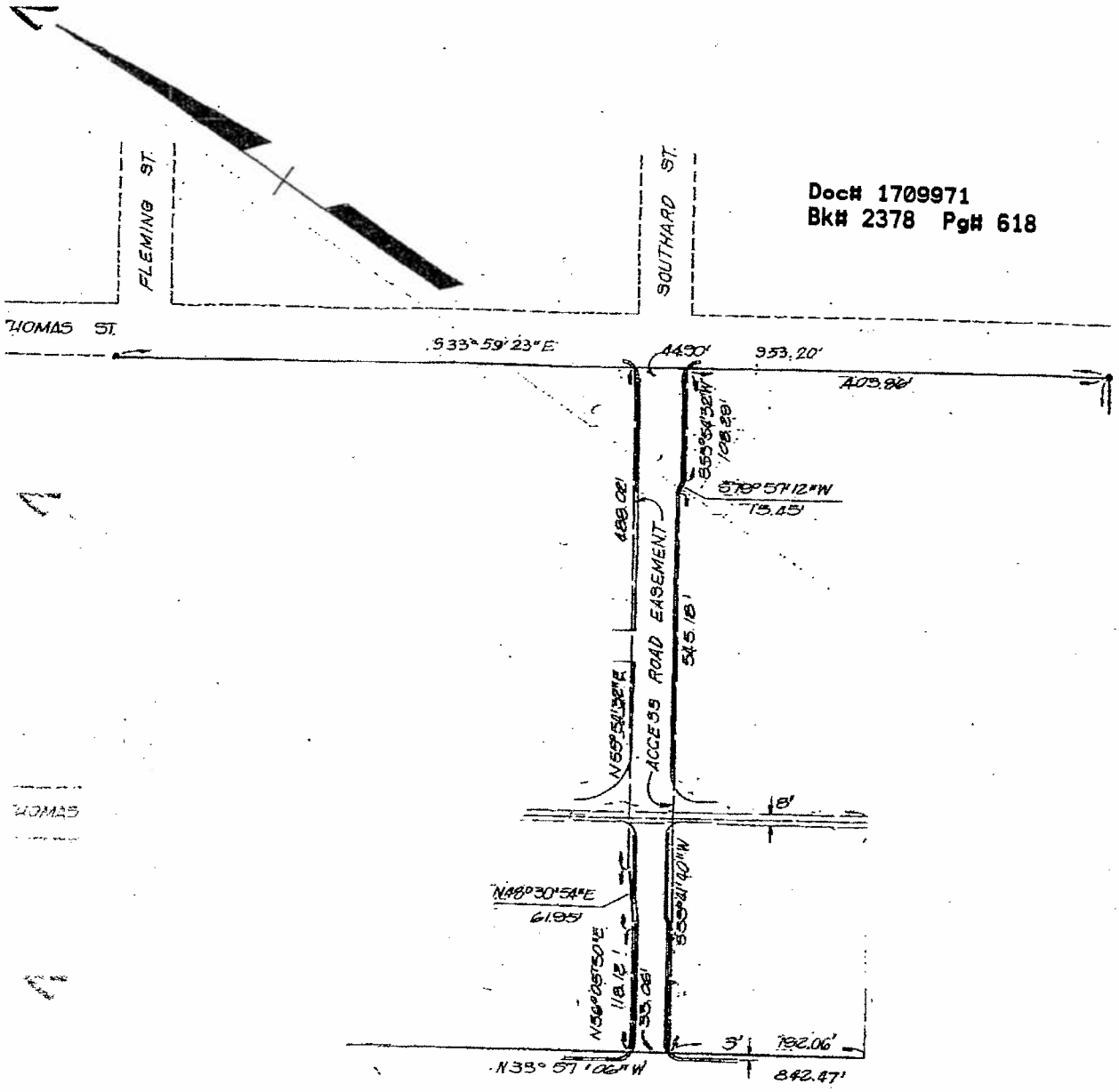


MONROE COUNTY
OFFICIAL RECORDS

EXHIBIT 1

MEDIATION SETTLEMENT AGREEMENT

THIS MEDIATION SETTLEMENT AGREEMENT (hereinafter referred to as the "Agreement") between the City of Key West (hereinafter referred to as "CITY"), a municipal corporation of the State of Florida, and the Truman Annex Master Property Owners' Association, Inc., a Florida corporation (hereinafter referred to as "TAMPOA"), a legal or equitable owner and/or representative of certain properties located in the City of Key West, Florida (both "City" and "TAMPOA" shall be hereinafter referred to collectively as the "Parties" and may individually be referred to as a "party"), as well as each of the Parties' successors and assigns.

RECITALS

WHEREAS, TAMPOA is the property owners' association which represents the owners of real property within the Truman Planned Residential Development (hereinafter referred to as "TRUMAN ANNEX") with the exception of the Shipyard's Condominium Association, and whose function and powers are described in those bylaws of TAMPOA filed and recorded in the public records of Monroe County, Florida;

WHEREAS, the CITY is a municipality organized and existing under the laws of the State of Florida and, among other things, is empowered to enter into agreements to settle the litigation described herein and to protect the public health, safety and welfare of its citizens;

WHEREAS, TAMPOA has filed an action for damages, specific performance and other relief against the CITY which is styled *Truman Annex Master Property Owners' Association vs. City of Key West* (Case No. 44-2006-CA-55-K) in the Sixteenth Judicial Circuit, Monroe County, Florida; and has also filed a separate action styled *Truman Annex Master Property Owners' Association v. City of Key West and United States of America* (Case No. 07-10033-CIV-MOORE) in the United

States District Court, Southern District of Florida (hereinafter collectively referred to as the "Lawsuits");

WHEREAS, true and correct copies of those pending complaints in both of the LAWSUITS are attached hereto and incorporated herein as "Exhibit "A" and "Exhibit B" respectively for reference;

WHEREAS, by entering into this Agreement, the CITY and TAMPOA wish to fully and finally resolve all pending issues between the CITY and TAMPOA with regard to the Lawsuits.

WHEREAS, all times set forth herein shall be local time.

WHEREAS, unless otherwise specifically stated, this Agreement contains the entirety of the terms of the Agreement by and between the Parties with regard to the subject matter of the Agreement.

NOW THEREFORE, the parties do hereby agree as follows:

I. Recitations of Facts and Mutual Commitments

The above recitations and representations are true and correct and are incorporated herein by reference.

II. Southard Street Access

TAMPOA agrees to execute an access easement in favor of the CITY to provide ingress and egress over the portion of Southard Street described in "Exhibit C" (hereinafter referred to simply as "Southard Street") according to the terms, more fully set forth below:

A. During the hours of 6:00 a.m. and 10:00 p.m., there shall be unrestricted access by the public over and across Southard Street for purposes of ingress and egress to and from the Waterfront property described in "Exhibit D" (hereinafter referred to simply as Waterfront)

B. Nothing in this Agreement shall be construed to allow, authorize or permit any non-residents of TAMPOA to have access to the remaining properties of TAMPOA. Instead, this Agreement is specifically intended to allow, authorize and permit persons to have access to and utilize an easement over and across Southard Street to provide ingress and egress to properties beyond TAMPOA including the Waterfront, the United States Navy Base, and Fort Zachary Taylor Historic State Park.

C. During the hours of 10:00 p.m. and 6:00 a.m., only the following persons shall be allowed access over and across Southard Street for purposes of ingress and egress to and from the Waterfront:

(1) City employees;

(2) Marina guests;

(3) Residents, guests, and employees of approved developments located within the Waterfront;

(4) Employees and guests of the NOAA facility; and

(5) Persons attending CITY approved special events at the Waterfront.

D. TAMPOA shall have the right, at its option and at its sole expense, to construct, maintain and man gates and/or guard booths at either or both ends of Southard Street. Each such gate(s) and/or guard booth(s) will be manned during any hours between 10:00 p.m. and 6:00 a.m. that the gates are closed to ensure access to those persons listed in Paragraph C. The gates and/or guard booths will not be manned between 6:00 a.m. and 10:00 p.m. except for the purpose of providing information to motorists and pedestrians who request information.

E. Regardless of TAMPOA's rights to construct, maintain and man such gates and/or guard booths, TAMPOA shall be required to comply with the requirements of allowing ingress and egress by authorized persons as defined herein.

F. As used in this Agreement "unrestricted access" shall mean that any gates constructed, maintained and manned by TAMPOA on Southard Street shall be in the open position and ingress and egress over and across Southard Street shall be permitted to all persons. However, during restricted times between 10:00 p.m. (EST) and 6:00 a.m. (EST), TAMPOA shall be permitted to have such gates in the closed position, to have the gates and/or guard houses manned with personnel paid for by TAMPOA, to make reasonable inquiry of those persons utilizing the easement to ensure that such persons are within the category of persons authorized to have such access, to deny access to any persons who do not fall within the categories of authorized persons as specifically set forth herein, and to engage in all actions reasonably necessary to accomplish the terms of this Agreement.

G. In consideration of this Agreement and in light of the traffic that will utilize the easement over and across Southard Street, CITY hereby agrees to be solely responsible for the maintenance of Southard Street, excepting only the gates and/or guards houses to be constructed, maintained and/or manned by TAMPOA. For purposes of establishing a standard by which maintenance shall be required, the parties acknowledge that the CITY shall be required to maintain Southard Street in the same manner as Southard Street is currently maintained including the same materials as currently exist on Southard Street (by way of example and not as an exhaustive reference, CITY shall use brick pavers of same quality, color and appearance). All maintenance shall be performed in a prompt manner to ensure that the structure and appearance of Southard Street is

properly maintained. CITY's responsibility for maintenance and repair shall also include, but shall not be limited in any way to, repair/replacement of underground utilities of any kind, repair/replacement of brick pavers, repair/replacement of all asphalted areas of Southard Street, repair/replacement of all concrete areas of Southard Street, and all other maintenance, repairs and replacement measures that may be required to keep Southard Street in the same condition it exists as of the Effective Date of this Agreement. TAMPOA will be responsible for the maintenance, staffing and repair of any gates and/or guard houses constructed at any location along Southard Street. The "Access Easement " to be executed by TAMPOA is attached as Exhibit "E".

III. "Waterfront" Property Traffic Ways Plan

The CITY agrees to provide at a minimum one road with ingress and one road with egress to and from the "waterfront" property, in addition to the ingress and egress provided by TAMPOA on Southard through its' easement not later than 180 days from date this Agreement is executed by the CITY.

IV. Settlement of the Lawsuits

CITY and TAMPOA shall execute Stipulations for the entry of Final Orders of Dismissal as to each other, which will provide for the Courts' approval for this Agreement and which will further provide that the Courts retain jurisdiction to enforce the terms of the Agreement. If either party to this Agreement shall be required to incur attorney's fees and/or costs in enforcing this Agreement, the prevailing party in any action to so enforce this Agreement shall be entitled to an award of attorney's fees and costs, in addition to any and all other remedies awarded. All disputes regarding enforcement as to the meaning of terms within the agreement shall be resolved by expedited binding arbitration. The Parties shall mutually agree upon an arbitrator and, if unable to agree, shall each

select an arbitrator of their own choice and such arbitrators shall then mutually agree upon a third person to act as arbitrator. This arbitrator will be a standing arbitrator and available to hear arguments on issues of dispute and issue an opinion on issues of enforcement of this agreement within one week. For purposes of proceeding with arbitration, the parties shall initially be required to equally divide any and fees and costs of the arbitrator in conducting the proceedings; however, the prevailing party at any arbitration shall be entitled to reimbursement of any and all such fees and costs, in addition to any other award. With regard to attorney's fees and costs incurred to date and through the administration and implementation of this Agreement, and conditioned upon this Agreement being actually approved and implemented, each party shall bear its own attorney's fees and costs to date. The Stipulations for Final Order of Dismissal and proposed Final Order of Dismissal are attached hereto as "Exhibit F" through "Exhibit "H" respectively. The Parties also acknowledge and agree that there may remain disputes by and between TAMPOA and the United States of America and/or United States Navy regarding Southard Street and/or other issues. CITY and TAMPOA specifically acknowledge and agree that the existence of any dispute by and between TAMPOA and the United States of America and/or United States Navy shall not have any affect on this Agreement, its enforcement or the relationship between TAMPOA and City as provided herein.

V. Easement For Southard Street

As part of this Agreement, TAMPOA shall execute an easement in favor of CITY over and across Southard Street, which said easement shall comport with the terms of this Agreement. A copy of the easement executed by TAMPOA and to be recorded is attached hereto as "Exhibit I".

VI. Entire Agreement

The CITY and TAMPOA specifically acknowledge that they have the right and power to enter into this agreement. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in or incorporated into this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

VII. Severability

The provisions of this Agreement are declared to be severable, and if any portion, clause or phrase of this Agreement is held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions, sentences, clauses, and phrases of this Agreement, but they shall remaining in effect, if the intent of the parties that disagreement shall stand not withstanding the invalidity of any part.

VIII. Governing Law

This Agreement shall be construed and interpreted under the laws of the State of Florida.

IX. Successors and Assigns

This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns and personal representatives.

X. Attorney's Fees and Costs

As set forth herein, attorney's fees and costs shall be paid to the prevailing party in the event of legal action to enforce any of the provisions of this Agreement.

XI. Notices

All notices, demands, requests, or replies provided for or permitted by this Agreement shall be in writing and shall be delivered by deposit with the United States Postal Service with postage prepaid, to the addresses stated below. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the United States Postal Service. For purposes of notice, demand, request, or replies, the address of the CITY shall be:

City Manager
City of Key West
525 Angela Street
Key West, Florida 33040

The address of TAMPOA shall be:

Truman Annex Master Property Owners' Association, Inc.
President
201 Front Street, Suite 103
Key West, Florida 33040

XII. Titles and Captions

All article and section titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

XIII. Pronouns

All pronouns and variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.

XIV. Further Action

The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purpose of the Agreement.

XV. Counterparts

This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

XVI. Agreement Shall Not be Construed Against Any Party

This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

XVII. Third Party Beneficiaries

Nothing herein shall be construed to be for the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

XVIII. Time Is Of The Essence

With regard to the provisions of this Agreement, the parties acknowledge and agree that time is of the essence.

XIX. Effective Date

The Effective Date of this Agreement shall be the date the Agreement is approved by the City of Key West City Commission and the Board of Directors of Truman Annex Master Property Owners' Associations.

City of Key West:

_____ _____

Date

By: _____

Its: _____

Truman Annex Master Property Owners' Association, Inc., a Florida corporation:

_____ _____

Date

By: _____

Its: _____

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

TRUMAN ANNEX MASTER PROPERTY OWNERS' ASSOCIATION, individually and on behalf of the owners of property located within the Truman Annex Residential Development,

Plaintiff,

vs. **CASE NO: 44-2006-CA-55 K**

CITY OF KEY WEST, an incorporated City of the State of Florida,

Defendant.

_____/

AMENDED COMPLAINT

COMES NOW Plaintiff, THE TRUMAN ANNEX MASTER PROPERTY OWNERS' ASSOCIATION, INC. (hereafter "TAMPOA"), by and through the undersigned counsel, and hereby sues Defendant, the CITY OF KEY WEST (hereafter the "CITY"), and alleges:

1. This is an action for declaratory relief, specific performance, injunctive relief and damages that exceed Fifteen Thousand Dollars ($15,000.00), exclusive of interest, costs, and attorney's fees.

2. At all material times, Plaintiff TAMPOA has been the property owners' association which represents the owners of all real property located within the residential portions of the Truman Planned Residential Development in Key West, Florida, with the exception of the Shipyard's Condominium Association (hereafter the "Truman Annex"), which consists of 266 single family homes, Building 21, Building 45, and The Little White House.

3. Defendant CITY is a chartered city within the State of Florida and is empowered, *inter alia,* to enter into contractual agreements in the interest and welfare of its citizens, including, without limitation, those citizens who own property in the Truman Annex.

"EXHIBIT A"

4. At all material times, TAMPOA has owned all of the streets within the Truman Annex, including, but not limited to, Southard Street. In addition, all property within the boundary lines of the Truman Annex, including, but not limited to, Southard Street, is enclosed by a fence and all entry points into said property, including through Southard Street, are gated.

5. At all material times, TAMPOA has maintained and repaired all streets within the Truman Annex, including, but not limited to, Southard Street, and has paid for hurricane cleanup of said streets, as well as for the general maintenance of same. In addition, TAMPOA established and enforces speed limits on all such streets, including that portion of Southard Street it owns.

6. In May of 1998, the CITY was working with the United States Navy to obtain ownership of the Truman Annex Waterfront Area (hereafter the "Waterfront Property") from the Navy under the Base Reuse Plan. Said Waterfront Property is located immediately adjacent to the real property owned by TAMPOA and its members and is located between the western and southwestern edges of said property and the Gulf of Mexico.

7. In January of 1999, TAMPOA, on behalf of itself and the property owners it represents, expressed concern to the CITY that the CITY's proposed acquisition and redevelopment of the Waterfront Property would have a negative impact on the rights, quiet enjoyment and safety of TAMPOA and the property owners it represents.

8. Beginning in January of 1999, TAMPOA began working with City Commissioners and CITY staff in an effort to resolve theses concerns, which would allow the CITY to acquire the Waterfront Property for the benefit of the CITY and all of its residents while at the same time protecting TAMPOA and its members.

9. Meetings and communications between TAMPOA and the CITY continued throughout 1999, but came to an impasse in September of 1999.

10. On October 28, 1999, TAMPOA filed two petitions with the Florida Department of Community Affairs challenging the Base Reuse Plan with fourteen specific objections, many relating to public ingress and egress to and from the Waterfront Property through TAMPOA's streets, including, but not limited to, Southard Street. On December 20, 1999, the Department of Community Affairs referred both petitions to the Division of Administrative Hearings for a formal hearing under Chapter 120, Florida Statutes.

11. Due to the serious nature of TAMPOA's objections and the risk they would be upheld, thereby preventing the CITY from acquiring the Waterfront Property, the CITY proposed entering into formal mediation with TAMPOA, to which TAMPOA agreed.

12. The CITY and TAMPOA mutually selected Edwin Scales, an experienced attorney and mediator, to serve as mediator.

13. The mediation was convened at City Hall, with the CITY represented by the City Manager, City Planner, City Attorney, and City Land Redevelopment Authority Director; and TAMPOA represented by its President, Property Manager, attorney, and a land-use consultant.

14. The mediation proved successful and a written agreement was reached between the CITY and TAMPOA regarding how the CITY would provide for ingress and egress to and from the Waterfront Property if it acquired same, subject to approval by TAMPOA's Board of Directors and the City Commission.

15. TAMPOA's Board of Directors subsequently approved said agreement.

16. On January 20, 2000, a special meeting of the City Commission was held for the purpose of receiving the mediator's report and to vote on whether to approve the written agreement reached between the CITY and TAMPOA at said mediation.

17. During that special meeting, the City Commissioners received an overview from LRA Director Bill Harrison and attorney Steven Pfeiffer, representing the CITY, who explained

the Chapter 288 Military Base Reuse Plan and process. City Attorney Bob Tischenkel then presented the agreement reached between the CITY and TAMPOA at mediation to the City Commissioner for approval.

18. Following a discussion of said agreement, including the provisions relating to ingress and egress to and from the Waterfront Property via Southard Street, Commissioner Turner, the Commissioner for Bahama Village, made a motion, which was seconded by Commissioner McCoy, that the City Commission approve said agreement. *See* the relevant portions of the minutes of said meeting attached hereto as Exhibit "A".

19. The Mayor requested the clerk to call the roll with the following results:

a. Yeas: Commissioners Anthony, Bethel, Curry, McCoy, Oosterhoudt, Turner, and Mayor Weekley.

b. Nays: None.

See Exhibit "A".

20. On January 20, 2000, after such vote by the City Commissioners, TAMPOA and the CITY formally entered into the Agreement attached hereto and incorporated herein by reference as Exhibit "B" (hereafter the "Agreement").

21. On January 20, 2000, the Agreement was approved by the City Commission pursuant to Resolution No. 00-43, which is attached and incorporated herein by reference as Exhibit "C" and became binding on the CITY on that date.

22. The provisions of the Agreement relating to ingress and egress to and from the Waterfront Property via Southard Street were incorporated into the Truman Waterfront Reuse Plan under Section 6 titled "Multiple Ingress/egress points into the Truman Waterfront Property", a copy of which is attached and incorporated by reference as Exhibit "D".

23. On May 30, 2000, TAMPOA, in reliance on the terms and conditions of the Agreement, voluntarily dismissed its petitions with the Department of Community Affairs, thereby clearing the way for the CITY to acquire the Waterfront Property from the Navy.

24. On July 6, 2000, the CITY adopted the ingress and egress portions of the Agreement as a portion of its Comprehensive Plan and/or Land Use Regulations pursuant to Ordinance No. 00-14. See the Department of Community Affairs Final Order of Dismissal attached hereto and incorporated by reference as Exhibit "E".

25. On August 30, 2000, the Department of Community Affairs issued DCA Final Order No. DCA00-OR-274, which approved Ordinance No.00-14. See Exhibit "E".

26. There were no challenges to the Department's Final Order, so said Final Order took effect in September of 2000. See Exhibit "E".

27. On September 12, 2000, the Division of Administrative Hearings closed its files and the Department of Community Affairs dismissed TAMPOA's petitions on February 26, 2001. See Exhibit "E".

28. As a result of the CITY and TAMPOA entering into the Agreement and TAMPOA's subsequent dismissal of its petitions with the Department of Community Affairs, the CITY acquired the Waterfront Property from the Navy under the Base Reuse Plan on or about November 21, 2002.

29. The transfer documents from the Department of Navy expressly required the CITY to fully implement those portions of the Agreement, *inter alia*, regarding ingress and egress to and from the Waterfront Property via Southard Street by November 22, 2004.

30. Under Section III, paragraph 2 of the Agreement, the CITY and TAMPOA agreed, among other things, that those portions of Southard Street owned by TAMPOA would be converted to a one-way egress only from the Waterfront Property upon the completion of any

development of the Waterfront Property, other than infrastructure, having traffic impact on TAMPOA's property or after five years of the City acquiring the Waterfront Property, whichever occurred first. In addition, the CITY and TAMPOA agreed that: a) TAMPOA's residents would continue to have the right of ingress on the section of Southard Street owned by TAMPOA through controlled gates; b) emergency vehicles would have the right of ingress on the section of Southard Street owned by TAMPOA for the duration of the Agreement; c) the trains and trolleys owned by Historic Tours of America, Inc. or its subsidiaries or successors would have the right of ingress on the section of Southard Street owned by TAMPOA; and that d) "no other vehicles will have the right of ingress on the section of Southard Street owned by TAMPOA."

31. Under Section III, paragraph 3 of the Agreement, the CITY and TAMPOA agreed that "TAMPOA will have the option of using Eaton Street as a vehicular entrance and/or exit to and from TAMPOA exclusively for its homeowners. The City will be provided emergency access on Eaton Street from Whitehead Street to Front Street and down Front Street between Eaton and Southard Streets. Access for pedestrian and bicycle traffic also will be permitted along Eaton Street between Whitehead and Front Street. Under no circumstances will the Eaton Street right of way beyond Front Street be used as any type of public or emergency ingress or egress to and from the Waterfront."

32. Under Section III, paragraph 4 of the Agreement, the CITY and TAMPOA agreed that "Construction vehicles shall have access to the section of Southard Street owned by TAMPOA only between the hours of 7:00 a.m. and 6:00 pm. Access by construction vehicles on said section of Southard Street shall be subject to all other provisions of this Agreement."

33. Finally, under Section III, paragraph 5 of the Agreement, the CITY and TAMPOA agreed that within two (2) years of the CITY acquiring the Waterfront Property, "TAMPOA shall have the right to prohibit any access, including but not limited to vehicular,

pedestrian, and bicycle traffic, to the section of Southard Street owned by TAMPOA from 11pm to 7am, except for a reasonable number of scheduled special events and ...emergency vehicles."

34. In the months leading up to the November 22, 2004 deadline for the CITY to comply with those portions of the Agreement governing ingress and egress to the Waterfront Property via Southard Street, the CITY failed or refused to comply with same despite repeated requests by TAMPOA. By early June of 2004, it was clear the CITY did not intend to comply with Section III, paragraphs 2-5 of the Agreement by the November 2004 deadline.

35. On June 15, 2004, the City Commission held a meeting, at which the CITY staff discussed the CITY's obligations under, *inter alia,* Section III, paragraphs 2-5 of the Agreement.

36. On June 30, 2004, TAMPOA received the letter from the CITY attached hereto as Exhibit "F", which was signed by the City Manager and confirmed, *inter alia*, that the CITY had until November 22, 2004 to comply with Section III, paragraphs 2-5 of the Agreement. However, said letter requested TAMPOA to extend said deadline by one year, but reaffirmed that "[a]ll other provisions of the Agreement will remain in effect."

37. After discussion and debate, TAMPOA agreed to grant the CITY the one-year extension in a good faith effort to give the CITY more time to comply.

38. On July 6, 2005, the City Commission approved the internal Conceptual Master Plan for the Waterfront Property under resolution #05-242. By approving said plan, the City Commission provided the CITY with a roadmap for all future development of such property.

39. However, and contrary to the recommendations of CITY consultants and staff, the City Commission, at the request of Commissioner Turner, refused to approve the external ingress/egress plan for the Waterfront Property, which included Section III, paragraphs 2-5 of the Agreement relating to ingress and egress to the Waterfront Property via Southard Street.

40. On August 4, 2005, Commissioner Tuner held a Bahama Village workshop, at which time the residents of Bahama Village urged the CITY to abrogate the Agreement, including the provisions of Section III, paragraphs 2-5 thereof, and to initiate the process of taking Southard Street from TAMPOA by eminent domain.

41. The Conceptual Master Plan presented by the consultants for ingress and egress to and from the Waterfront Property via, *inter alia*, Southard Street was consistent with and met the requirements of the Agreement and the Base Reuse Plan that had been approved by the City Commission, the Navy, and the Department of Community Affairs.

42. Indeed, the CITY had received input regarding the Conceptual Master Plan from citizens by a series of seven public meetings between September and November of 2004.

43. In fact, in a memorandum from Raymond Archer, Port Director, and Doug Bradshaw, LRA Project Manager, the CITY staff reported that the ingress/egress plan in the Conceptual Master Plan for, *inter alia*, Southard Street was the only plan that would satisfy all agreements and guiding documents.

44. CITY elections were scheduled to be held in November 2005, however, and the Agreement, including Section III, paragraphs 2-5 thereof, and the Conceptual Master Plan became significant political issues, with certain candidates seeking election to the City Commission making promises during the campaign that, if elected, they would have the CITY abrogate its obligations under Section III, paragraphs 2-5 of the Agreement for ingress or egress to the Waterfront Property via Southard Street.

45. Votes of the City Commission on the consultant's Conceptual Master Plan, including ingress/egress to the Waterfront Property via Southard Street, were scheduled and postponed on four occasions on September 7, 2005, October 18, 2005, November 2, 2005 and December 6, 2005.

46. On January 11, 2006, the City Commission, which now consisted of a virtually new slate of Commissioners elected at the November 2005 election, finally convened a special meeting to consider the CITY staff's recommendation to approve the Conceptual Master Plan, which included, *inter alia*, the requirements of Section III, paragraphs 2-5 of the Agreement governing ingress/egress to the Waterfront Property via Southard Street. In its public Executive Summary, the City Commission indicated the CITY was prepared to implement said provisions.

47. However, during the special meeting, which lasted over four hours and was emotionally charged, the Mayor and new City Commission lashed out at TAMPOA and allowed or participated in race-based comments (TAMPOA needs to take "Master" out of Truman Annex Master Property Owners Association); class-based comments (comparison of cost of homes in the Truman Annex); length of residency comments (newcomers versus multigenerational conchs, tired of people who love Key West, move to Key West and try to change it, we would do anything to get that property); dismissive comments (while letters from Bahama Village were read into the record, when the President of TAMPOA presented eighty emails in support of maintaining the contract with TAMPOA, some Commissioners indicated that they were not worth reading); and incorrect historical-based comments (this property was taken from our ancestors, we lost a prime piece of property in the 80s, we will not lose it again), and totally ignored the Agreement (Southard is a public street no matter what the Agreement says). Multiple City Commissioners also physically applauded residents from the dais as speakers encouraged the CITY to abrogate Section III, paragraphs 2-5 of the Agreement governing ingress and egress to and from the Waterfront Property via Southard Street, and multiple City Commissioners threatened to abrogate TAMPOA's ownership and control of the private streets within the boundaries of the Truman Annex.

48. Certain Commissioners also chastised members of TAMPOA for requesting the CITY to comply with Section III, paragraphs 2-5 of the Agreement, indicated they did not agree with such provisions, and stated they were not going to implement them, contrary to a multiplicity of staff and consultant recommendations to do so.

49. Following said commentary, the City Commission voted unanimously to permanently table the resolution to approve the ingress/egress provisions in the Conceptual Master Plan, and with loud applause and congratulations to each other, instructed CITY staff to renegotiate the Agreement with TAMPOA.

50. TAMPOA and the CITY subsequently attempted to resolve their differences over Section III, paragraphs 2-5 of the Agreement and even held a second mediation, which resulted in a tentative agreement to resolve this dispute. Once again, however, the City Commission unanimously rejected the tentative agreement in June of 2006 and it is now clear that the CITY does not intend to negotiate with TAMPOA in good faith or honor the provisions of Section III, paragraphs 2-5 of the Agreement.

51. During the aforementioned Special Meeting of the City Commission, several City Commissioners also discussed the prospect of taking that portion of Southard Street owned by TAMPOA by eminent domain. However, after certain members of the Commission expressed doubt that TAMPOA owned that portion of Southard Street within its gates, the City Commission apparently commissioned a team of "volunteer" attorneys to investigate.

52. In the meantime, and as of the date of this Amended Complaint, the CITY has failed and refused to comply with the provisions of Section III, paragraphs 2-5 of the Agreement and has not acknowledged or reaffirmed that TAMPOA owns that portion of Southard Street within its gates even though the CITY repeatedly acknowledged this fact in the Agreement.

53. The CITY's bad faith failure and refusal to comply with Section III, paragraphs 2-5 of the Agreement governing ingress and egress to and from the Waterfront Property via Southard Street constitutes a material breach of the Agreement and has caused, or will cause, TAMPOA and the property owners it represents, irreparable harm, including, *inter alia,* substantial reductions in their property values, lessened enjoyment of their property rights, heightened risk of criminal activity on or near said property, dangerous traffic congestion and a general impairment of their health, safety, and welfare, which is ongoing, will continue in the future and will worsen over time as the CITY continues to develop the Waterfront Property.

54. As such damages are incapable of calculation, TAMPOA and the property owners of Truman Annex do not have an adequate remedy of law. In addition, unless the CITY is enjoined from breaching Section III, paragraph 2-5 of the Agreement, TAMPOA and the property owners it represents will continue to suffer such irreparable harm.

55. That the CITY's material breach of the Agreement constitutes bad faith is evidenced by the above paragraphs and by the following facts:

a. The unanimous vote of the City Commission on or about January 20, 2000 to enter into the Agreement, thereby assuring that the CITY would acquire the Waterfront Property from the Navy, and its subsequent unanimous vote on January 11, 2006 to abrogate and reject the Agreement's provisions regarding ingress and egress toand from the Waterfront Property via Southard Street, after having received turnover of said property from the Navy.

b. The CITY's elected officials refusing on January 11, 2006 to heed the advice of the City Manager and City Attorney who oversaw the Agreement.

c. Refusing to recognize that Southard Street is owned by TAMPOA despite repeatedly acknowledging this fact in the Agreement;

d. A complete reversal of previous Mayor Weekley's commitment at the TAMPOA annual meeting that the CITY would comply with said Agreement.

e. A complete reversal of Commissioner Oosterhoudt's commitment at the TAMPOA annual meeting that the CITY would comply with said Agreement.

f. A complete reversal of City Manager Avael's commitment both verbally and in writing that the CITY would comply with said Agreement.

g. A complete reversal from the CITY's commitment in the summer of 2004 that it would comply with said Agreement.

h. A complete reversal of the consultant's presentations to TAMPOA's Board of Directors in 2005 by the City Manager, City Attorney, Port Director, and Land Redevelopment Authority Director that Section III, paragraphs 2-5 of the Agreement are consistent with the provisions for ingress and egress to and from the Waterfront Property.

i. Written communications from the City Manager reiterating the CITY's commitment to comply with the Agreement when asking for a one-year extension.

j. The CITY's request for TAMPOA's permission to permit courthouse employees to use Southard Street for ingress and egress to CITY parking during the time they were displaced from their regular parking area.

k. Commissioner Verge's recorded statement prior to the January 11, 2006 meeting that "the city and TAMPOA have entered into an agreement...[which] is legal and stands" and his vote to abrogate the agreement at the January 11, 2006 meeting.

l. Commissioner Bethel's statement on the Agreement, "we went through hell and high water to get it (Waterfront Property), so we agreed to [the Agreement's provisions regarding ingress and egress to said property via Southard Street]; bad for us," prior to voting to abrogate the Agreement.

56. The reckless and bad faith conduct of the CITY through its City Commission has shown that the individual property owners and residents of the Truman Annex and members of TAMPOA cannot rely on the CITY to abide by Section III, paragraph 2-5 of the Agreement governing ingress and egress to and from the Truman Waterfront Property via Southard Street, and must now turn to the Court for protection to enforce said provisions.

57. All conditions precedent to the filing of this lawsuit, including, *inter alia,* adequate notice to the CITY, have occurred, been performed, or have been waived.

58. Under Section IV, paragraph 1 of the Agreement, TAMPOA and the property owners it represents are entitled to injunctive relief, as a result of the CITY's material breach of said provisions of the Agreement and also are entitled to recover all damages they have or may suffer as a result of same.

59. The provisions of Section III, paragraphs 2-5 of the Agreement are valid and enforceable, notwithstanding the validity or enforceability of any other provisions of the Agreement, as Section V, paragraph C of the Agreement expressly provides: "[i]f any part of this Agreement is contrary to, prohibited by, or deemed invalid under any applicable law or regulation, such provisions shall be inapplicable and deemed omitted to the extent so contrary, prohibited, or invalid; however, the remainder hereof shall not be invalidated thereby and shall be given full force and effect."

60. TAMPOA has been forced by the CITY's material breaches of said provisions of the Agreement to retain the undersigned counsel to protect its rights and interests under the Agreement and has agreed to pay said counsel a reasonable attorney's fee.

COUNT I – DECLARATORY JUDGMENT

61. This is an action for declaratory relief.

62. TAMPOA realleges and incorporates Paragraphs 1-60 as if fully set forth herein.

63. Various members of the City Commission have publicly stated in recent weeks that TAMPOA does not own that portion of Southard Street within its gates.

64. TAMPOA denies this contention and adamantly maintains that it owns that portion of Southard Street located within the boundaries of the Truman Annex.

65. However, because the operation and enforceability of the Agreement and TAMPOA's rights, privileges, and immunities thereunder are dependant, in whole or in part, on whether TAMPOA owns that portion of Southard Street within the boundaries of the Truman Annex, a bona fide, actual, present, and practical need exists for the Court to declare whether or not TAMPOA owns that portion of Southard Street within the boundaries of the Truman Annex.

66. The declaration that TAMPOA seeks in this count concerns a present, ascertained or ascertainable state of facts or present controversy as to a state of facts.

67. The CITY and TAMPOA have an actual, present, adverse and antagonistic interest in the resolution of whether TAMPOA owns that portion of Southard Street within the boundaries of the Truman Annex and the interests of the CITY and TAMPOA regarding this issue are all before the Court by proper process or class representation.

68. The relief sought by this count is not merely the giving of legal advice or the answer to questions propounded for curiosity. Rather, the relief TAMPOA seeks is central to whether the provisions of Section III, paragraphs 2-5 of the Agreement are enforceable.

WHEREFORE, on behalf of itself and the property owners of the Truman Annex it represents, TAMPOA respectfully requests the Court to enter a declaration that TAMPOA owns that portion of Southard Street located within the boundaries of the Truman Annex and all other streets located within the residential portions of the Truman Annex and granting TAMPOA any other relief the Court deems just and proper.

COUNT II – BREACH OF CONTRACT

69. This is an action for breach of contract and damages.

70. TAMPOA realleges and incorporates Paragraphs 1-60 as if fully set forth herein.

71. The CITY had a contractual duty to comply with and implement Section III paragraphs 2-5 of the Agreement governing ingress and egress to and from the Waterfront Property by way of Southard Street by November 22, 2005.

72. The CITY has failed and refused to do so.

73. Said failure and refusal by the CITY constitutes a material breach of the Agreement.

74. Said material breach of the Agreement by the CITY has caused, or will cause, substantial harm to TAMPOA and the property owners of the Truman Annex it represents, including, without limitation, the harm alleged in paragraph 53 above.

WHEREFORE, on behalf of itself and the property owners of the Truman Annex it represents, TAMPOA demands judgment against the CITY for breach of Section III, paragraphs 2-5 of the Agreement governing ingress and egress to and from the Truman Waterfront Property via Southard Street and all damages said breach has caused TAMPOA and its members to suffer, and any other relief the Court deems just and proper under the circumstances of this case.

COUNT III – SPECIFIC PERFORMANCE

75. This is an action for Specific Performance of Section III, paragraphs 2-5 of the Agreement.

76. TAMPOA realleges and incorporates Paragraphs 1-60 as if fully set forth herein.

77. Under the Agreement and the subsequent agreement extending the CITY's deadline for compliance therewith, the CITY had until November 22, 2005, to comply with Section III, paragraphs 2-5 of the Agreement concerning ingress and egress to and from the

Waterfront Property via TAMPOA's privately owned property, including Southard Street.

78. The CITY has failed and refused to comply with and implement said provisions of the Agreement in material breach of same.

WHEREFORE, on behalf of itself and the property owners of the Truman Annex it represents, TAMPOA demands judgment that the CITY be required to comply with and implement Section III, paragraphs 2-5 of the Agreement and granting any other relief the Court deems just and proper under the circumstances of this case.

COUNT IV – INJUNCTIVE RELIEF

79. This is an action for injunctive relief.

80. TAMPOA realleges and incorporates Paragraphs 1-60 as if fully set forth herein.

81. Section IV, paragraph 1 of the Agreement provides that "upon a party's material breach of the terms and conditions of this Agreement...the non-breaching party may seek injunctive relief...in the Circuit Court of Monroe County to enforce the terms of this Agreement."

82. The CITY has failed and refused to comply with the Agreement by failing and refusing to comply with and implement the provisions of Section III, paragraphs 2-5 of the Agreement governing ingress and egress to and from the Waterfront Property via TAMPOA's privately owned property, including Southard Street.

83. If the CITY is not restrained from further breach of the Agreement and/or is not required by the Court to comply with and implement said provisions of the Agreement, the CITY's actions will ripen into a prescriptive taking of TAMPOA's right to the exclusive use and control of its property, including Southard Street, as well as the private property rights of the property owners and citizens of the Truman Annex its represents.

84. Such breach by the CITY has and will continue to cause irreparable harm to TAMPOA and the property owners it represents, including, without limitation, loss of

TAMPOA's property rights in Southard Street, a significant reduction in the value of their property, increased risk of criminal activity, dangerous traffic congestion, and a general decline in the health, safety, and welfare of TAMPOA and the property owners it represents.

85. The reckless and bad faith conduct of the City Commission has shown that the individual property owners and residents of the Truman Annex and TAMPOA cannot rely on the CITY to abide by such provisions of the Agreement and must turn to this Court for protection.

86. TAMPOA and the property owners of Truman Annex it represents do not have an adequate remedy at law and, therefore, injunctive relief is necessary and warranted. Alternatively, even if TAMPOA and the property owners it represents have an adequate remedy at law, TAMPOA is entitled to injunctive relief under the express terms of the Agreement, regardless of whether an alternative remedy at law exists.

WHEREFORE, on behalf of itself and the property owners of the Truman Annex it represents, TAMPOA demands judgment for a temporary and permanent injunction: a) compelling the CITY to comply with and implement the mandates of the Section III, paragraphs 2-5 of the Agreement; b) restraining the CITY from any further development of the Waterfront Property, unless and until it fully complies with said provisions of the Agreement, and c) awarding any other relief the Court deems just and proper.

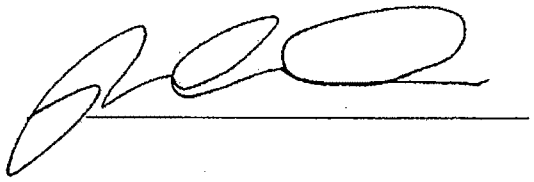
Respectfully submitted,

656739
WILLIAM E. ANDERSEN, ESQ.
Fla. Bar No. 96849
THE ANDERSEN FIRM
A Professional Corporation
1010 Kennedy Drive, Suite 201
Key West, FL 33040-4019
Telephone: (305) 296-8480
Facsimile: (305) 293-7825
COUNSEL FOR TAMPOA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express this 27th day of July, 2006 to:

Robert Tischenkel, Esq.
525 Angela Street
Key West, Florida 33040

Michael T. Burke, Esq.
2455 East Sunrise Boulevard, Suite 1000
Fort Lauderdale, Florida 33304

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