



County Commission Meeting  
September 20, 2017  
Agenda Item Number: N.3  
Agenda Item Summary #3271

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**BULK ITEM:** Yes

**DEPARTMENT:** County Attorney's Office

**TIME APPROXIMATE:**  
N/A

**STAFF CONTACT:** Patricia Eables (305) 292-3477

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**AGENDA ITEM WORDING:** Approval of new Right-of-Way Lease Agreement with Key Marina Development, LLC, and Consent to Assignment of Lease to Florida Keys Quality Foods, Inc., after discussion an direction by the BOCC of rental amount, for an historic encroachment upon the Second Avenue public right-of-way in Key Largo, which will operate to terminate all prior leases.

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**ITEM BACKGROUND:** Encroachments consisting of a concrete building and a frame building have existed on the County ROW on Second Avenue, Mandalay Subdivision, in Key Largo since 1944 and the early 1960's respectively. In 1996, BOCC rejected the adjoining landowner's offer to purchase the ROW area, but rather entered into a 20 year Lease on 11/12/1997 with Canalis Holding Corp. of the area of the encroachments. The adjacent property subsequently changed hands numerous times as noted below in previous BOCC action.

On 8/3/2010, a Certificate of Title was issued to Morgan Ocean Sunrise, LLC, as a result of a foreclosure action. On 07/20/2011, BOCC approved an Acknowledgement of Transfer of Title and Consent of Landlord from Ocean Sunrise to Morgan Ocean, and an Assignment of the 1997 Lease from Morgan Ocean to Florida Keys Quality Food, Inc., tenant in the restaurant, with no other changes to the original Lease terms.

On 09/21/2011, the BOCC approved an Amendment to the 1997 Lease when it was discovered during renovations of the restaurant that the encroachments actually extended further into the right-of-way beyond the original 10 foot strip leased in 1997. The amendment increased the width of the leased parcel to approximately 21 feet.

On 01/18/2017, the BOCC approved a new ROW Lease with Key Marina Development, LLC, as the Lessee, and Florida Keys Quality Foods, Inc., as the Sub-Lessee. The new Lease included a new survey and legal description of the actual leased parcel. The January 2017 Lease presented to the BOCC did not include the rental term and mistakenly had the wrong monthly rental amount, among other things. The omissions were discovered though prior to execution of the new Lease by the Mayor.

The new ROW Lease and Consent to Assignment before the BOCC now corrects the leased area, modifies the rental term to coincide with the mortgage on the property, coincides with the rental

term of the current Lease between Key Mariana and Florida Keys and makes the County Lease term retroactive to April 11, 2017, and increases the rental amount to \$50 per month rather than \$50 per year as noted in the January 2017 Lease. The rental term is for an initial seven year term with 3 additional five-year options. The Lessee has agreed to pay the full rental amount due for the entire initial seven year term in advance and will forego any claims to the advance rental payment should the Lease be terminated early. The first term will expire on April 10, 2024. If all renewal options are exercised, the Lease will expire on April 10, 2039. The rental due for any renewal period must also be paid in advance at the inception of the new rental term.

The new ROW Lease also terminates the 11/12/1997 Lease which is set to expire on November 30, 2017, and rescinds the BOCC approval on 01/18/2017 of the ROW Lease which was never executed by the Mayor.

After direction from the BOCC on 8/16/17 to obtain a market rate appraisal, an Appraisal was completed by Marr & Associates, Appraisal Company, Inc., dated September 5, 2017, which determined that the annual market rate rent for this stated parcel is \$4,875. The parties are reviewing the appraisal and if an agreed sum is reached based on the appraisal amount, a revised Lease Agreement will be presented to the BOCC at its September meeting for approval.

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**PREVIOUS RELEVANT BOCC ACTION:**

**8/16/2017 BOCC** continued to the BOCC 9/20/17 meeting for staff to obtain a market rate appraisal on the portion of County ROW to be leased under proposed ROW Lease Agreement and Consent to Assignment of Lease being presented for BOCC approval

**01/18/2017 BOCC** approved a new Right-of-Way Lease with Lessee, Key Marina Development, LLC, as successor in interest to Morgan Ocean Sunrise, LLC, and Sub-Lessee, Florida Keys Quality Foods, Inc., that included a new survey & legal description.

**09/21/2011 BOCC** – Amendment to Lease reflected increased square footage of the encroaching area.

**07/20/2011 BOCC** approved Acknowledgment of Transfer of Title from Ocean Sunrise to Morgan Ocean Sunrise, LLC, and Consent of Landlord plus an Assignment of Lease from Morgan Ocean to Florida Keys Quality Foods, Inc.

**11/14, 2007 BOCC** Resolution 493-2007 – Development Agreement with Ocean Sunrise

**08/18/2004 BOCC** Consent of Landlord to Assignment from Earthmark Companies, LLC to Ocean Sunrise Associates, LLC (Assignment/Acceptance of Lease dated 11/29/2006 from Earthmark Companies, LLC to Ocean Sunrise Associates, LLC – OR 2256/1135, Monroe County Official Records).

**02/18/2004** Consent of Landlord to Assignment/Acceptance of Lease from Canalis Holding Corp. to Earthmark Companies, LLC.

**11/12/1997** 20-year Lease Agreement with Canalis Holding Corp. – 10 ft x 125 ft County-owned ROW in Mandalay Subdivision, Key Largo.

**11/12/1996 BOCC** Public Hearing – Resolution No. 469-1996 (Rejected sale of 10 foot portion of Right-of-Way, but authorized a lease of the ROW with the encroachments.

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**CONTRACT/AGREEMENT CHANGES:**

New Right-of-Way Lease

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**STAFF RECOMMENDATION:** Approval as noted.

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**DOCUMENTATION:**

MEMORANDUM to BOCC  
Appraisal - Mandalay Lease  
Right-of-Way Lease (partially executed & legal stamped for 8-16-17)  
Certificates of Insurance (Key Marina & FL Keys Quality Foods)  
Mandalay Gound Lease 4.18.2017 (Key Marina & FL Keys Quality Foods)  
Right-of-Way Lease (1-18-17 agenda item)  
Original Mandalay Lease 11-12-1997 with Canalis Holding Corp.

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**FINANCIAL IMPACT:**

**Effective Date: Retroactive to April 11, 2017**  
**Expiration Date: If initial and all renewal lease terms are exercised, the lease will expire April 10, 2039 (total of 22 years).**

**Total Dollar Value of Contract: \$13,200 (see additional details)**  
**Total Cost to County: N/A**  
**Current Year Portion:**  
**Budgeted: N/A**  
**Source of Funds: N/A**  
**CPI: None.**  
**Indirect Costs:**  
**Estimated Ongoing Costs Not Included in above dollar amounts:**

**Revenue Producing: Yes    If yes, amount: \$50 per month (see additional details)**  
**Grant: N/A**  
**County Match: N/A**  
**Insurance Required: Yes**

**Additional Details: Lessee will pay \$50 per month for a total of \$600 annually. Lessee has agreed to pay in advance for each lease term as follows: 1<sup>st</sup> term: 7 yrs. = \$4,200 with (3) optional consecutive 5 yr. terms @ \$3,000 per 5 yr. renewal term (if exercised). If all lease terms are exercised totaling 22 years, the total rental amount received by the County will be \$13,200.**

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**REVIEWED BY:**

Patricia Eables	Completed	08/01/2017 4:47 PM
Bob Shillinger	Completed	08/01/2017 4:59 PM
Budget and Finance	Completed	08/01/2017 5:01 PM
Maria Slavik	Completed	08/01/2017 5:03 PM
Kathy Peters	Completed	08/01/2017 6:42 PM
Board of County Commissioners	Completed	08/16/2017 9:00 AM