

RESOLUTION NO. 12-344

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA), APPROVING THE ATTACHED ASSIGNMENT OF LEASE FROM SMITHBURG, INC. (ASSIGNOR) TO MORO MANAGEMENT, LLC (ASSIGNEE) FOR TURTLE KRAALS RESTAURANT IN THE KEY WEST BIGHT; AUTHORIZING THE LESSOR'S CONSENT; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY, AS FOLLOWS:

Section 1: That Lessor hereby consents to the assignment of the leasehold at Turtle Kraals Restaurant in the Key West Bight, as provided in the attached Assignment of Lease Agreement.


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 Agency.

Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 20 day of November, 2012.

Authenticated by the presiding officer and Clerk of the Agency on November 20, 2012.

Filed with the Clerk November 21, 2012.

ATTEST:


CHERYL SMITH, CITY CLERK


CRAIG CATES, CHAIRMAN

Executive Summary



TO: Community Redevelopment Agency

CC: David Fernandez

FR: Marilyn Wilbarger, RPA, CCIM

DT: November 20, 2012

RE: Lease Assignments for Turtle Kraals and the Half Shell Raw Bar

ACTION STATEMENT

This is a request to approve lease assignments from the Smithburg, Inc. to Moro Management, a Limited Liability Company whose sole principal is Pat Croce. The Key West Bight Management District Board approved the assignments and elected to waive the transfer fees of \$25,436 at the meeting held on November 14, 2012.

HISTORY

The CRA entered into a twenty-year lease for both restaurants that will expire on March 31, 2016. The current tenant, Smithburg, Inc. is requesting a simple assignment meaning that no terms or conditions of the lease change for the remainder of the lease term.

The leases provide for the assignments as described in Section 8 and state that the Tenant shall have the right to assign the leases with the written consent of the Landlord only to a qualified tenant that meets specific requirements excerpted here, as follows:

8. ASSIGNMENT AND HYPOTHECATION - TENANT shall have the right to assign the Lease only to a qualified tenant and with the written consent of the LANDLORD, which consent shall be based upon consideration of the proposed tenant's background, current financial statements, and expertise in the restaurant business. In the event of such an assignment by the Tenant to a qualified tenant, the annual Base Rent for the assignee shall be increased to an amount equal to five percent (5%) of the prior year's Gross Sales. TENANT may not sublet the Premises or any part thereof.

Any assignment or sub-letting, even with LANDLORD's consent shall not relieve TENANT from liability for payment of Rent or from the obligation to keep and be bound by the agreements of this Lease. The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease or to be consent to the assignment for the benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior consent of LANDLORD. In the event TENANT wishes to assign this Lease and LANDLORD consents to such assignment, LANDLORD may charge a fee in the amount of 5% of the current Annual Base Rent.

To facilitate this request and ensure that the city retains a viable tenant there have been changes incorporated into the lease assignments as follows:

1. The assignee will provide letters of credit equal to six months total rent for each lease that must be valid throughout the term of the lease.
2. The bankruptcy language adopted by the city has been added.
3. The lease assignment re-states the terms of the current lease wherein the current tenant is not released from obligations for rent should the assignee default.
4. The Personal Guaranty of Pat Croce

FINANCIAL STATEMENT:

The current tenant has met all of the financial obligations of the leases and the rents will continue pursuant to the existing leases. The additional financial safeguards in the lease assignments will provide additional security to ensure that rent will be paid for an adequate period of time to regain possession in the event of a default. Also, as excerpted from the lease and restated above, the transfer triggers fees and adjustments as follows:

1. In the event of such an assignment by the tenant to a qualified tenant, the annual Base Rent for the assignee shall be increased to an amount equal to five percent (5%) of the prior year's Gross Sales.
2. The Landlord may charge an assignment fee in the amount equal to 5% of the current annual base rent.

CONCLUSION:

Pat Croce has stated that he is currently the majority stock holder in The Green Parrot Bar, The Rum Barrel, Island Dogs, and Charlie Macs providing the requisite expertise in the restaurant business. Staff has not received financial statements other than a letter stating the amount of his current liquid assets and the associated disclosure statement as required by city ordinance. In the case of lease assignments the current tenant is not relieved from liability if the assignee defaults in its obligations under the terms of the lease therefore the financial risk is minimized.

ATTACHMENTS:

Leases: City resolutions 97-344, 97-345

Lease modifications: City resolutions 03-088, 03-089

Settlement Agreement dated September 2, 2011

Lease Assignments

Email from Smithburg, Inc. requesting the lease assignments

Email from Moro Management Inc.

Disclosure Statement Moro Management

Personal Guarantee of Pat Croce, Chairman, Moro Management, LLC

ASSIGNMENT OF LEASE AGREEMENT AND CONSENT OF LESSOR

THIS ASSIGNMENT (this "Assignment") is made this 20 day of November, 2012, by and between SMITHBURG, INC., a Louisiana corporation (doing business as Turtle Kraals Raw Bar) ("Assignor") and MORO MANAGEMENT, INC., a Pennsylvania corporation ("Assignee").

A. Assignor's predecessor in interest, as tenant and Caroline Street Corridor and Bahama Village Community Redevelopment Agency, as landlord ("Landlord") have previously entered into that certain lease dated August 25, 1997 per Resolution 97-345, as modified and assigned to Assignor on March 4, 2003 per Resolution 03-088 and as further modified pursuant to Resolution 11-283 and the related Mediated Settlement Agreement attached thereto (collectively, the "Lease"), a copy of which is attached hereto as Exhibit A. The Lease pertains to real property located at 231 Margaret Street, in Monroe County, Florida, and more particularly described on Exhibit B, which is attached hereto and incorporated by reference.

B. Assignor desires to assign all of its right, title and interest in the Lease to Assignee, Assignee desires to accept and assume the same, and Landlord is willing to consent to the proposed Assignment, all on the terms and conditions hereof.

NOW THEREFORE, in consideration of the mutual terms and conditions herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Assignor hereby assigns and transfers unto Assignee all of its right, title, and interest in and to the Lease, subject to all the conditions and terms contained therein.

2. Assignor herein expressly represents and warrants that (a) it is the lawful and sole owner of the lessee's interest assigned herein, (b) Assignor's interest in the Lease is free from all encumbrances, and (c) Assignor has not received any written notice from Landlord that Assignor has failed to perform all the duties and obligations or failed to make any payments required under the Lease.

3. Assignor herein expressly acknowledges, pursuant to paragraph 8 of the Lease, that this Assignment shall not relieve Assignor from liability for payment of rent or from the obligation to keep and be bound by the terms, conditions, and covenants contained in the Lease, provided, however, no such liability shall extend beyond the expiration of the current expiration date of the initial Term (as defined in the Lease) which is March 31, 2016.

4. Assignee herein expressly agrees to assume, perform and be liable for all of the duties and obligations of "Tenant" required by and under the terms of the Lease, including but not limited to, the obligation to pay all rent due thereunder from and after the effective date of this Assignment.

5. This Assignment is contingent upon the completion of the sale between Assignor and Assignee of the business known as "Turtle Kraals" and conducted on and from the Premises. References herein to the "effective date" shall mean the date of the closing of the aforementioned sale transaction.

6. Assignee agrees to remove any and all dumpsters and to utilize the centralized trash collection point as directed by Landlord for the remainder of the Term.

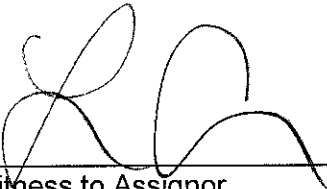
7. Assignee agrees to indemnify, defend and hold Assignor and its legal representatives, successors and assigns harmless from and against any and all losses, damages, claims, demands, suits, judgments, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs), suffered or incurred by any of said indemnitees under or in connection with the Lease arising on or after the effective date hereof. Assignor agrees to indemnify, defend and hold Assignee and its legal representatives, successors and assigns harmless from and against any and all losses, damages, claims, demands, suits, judgments, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs), suffered or incurred by any of said indemnitees under or in connection with the Lease and arising prior to the effective date hereof.

8. No later than the effective date of this Assignment, Assignee herein expressly agrees to provide to Landlord a letter of credit from a federally insured bank in favor of Landlord as security for the faithful performance by Assignee of the terms, conditions and covenants of the Lease. The amount of the letter of credit shall be equal to six months of the total rent pursuant to paragraph 3 of the Lease.

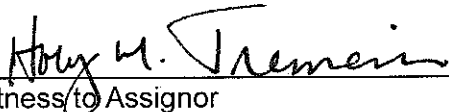
9. In the event Assignee files any form of bankruptcy, Landlord shall be entitled to immediate termination of the automatic stay provisions of 11 U.S.C. §362, granting Landlord complete relief and allowing Landlord to exercise all of its legal and equitable rights and remedies, including, without limitation, the right to terminate the Lease and dispossess Assignee from the Premises in accordance with Florida law. Additionally, Assignee agrees not to directly or indirectly oppose or otherwise defend against Landlord's effort to gain relief from any automatic stay. Landlord shall be entitled as aforesaid to the lifting of the automatic stay without the necessity of an evidentiary hearing and without the necessity or requirement of Landlord to establish or prove the value of the leasehold, the lack of adequate protection of his interest in the leasehold, or the lack of equity in the same. Assignee specifically agrees and acknowledges that the lifting of the automatic stay hereunder by the appropriate bankruptcy court shall be deemed to be "for cause" pursuant to section 362(d)(1).

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first above written.



Witness to Assignor



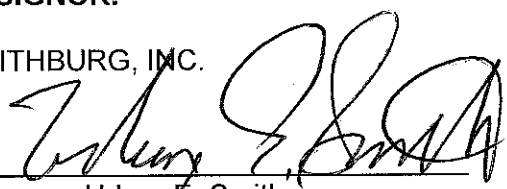
Witness to Assignor

Witness to Assignor

Witness to Assignor

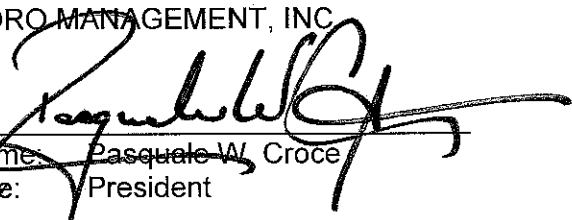
ASSIGNOR:

SMITHBURG, INC.

By: 
Name: Urban E. Smith
Title: President

ASSIGNEE:

MORO MANAGEMENT, INC

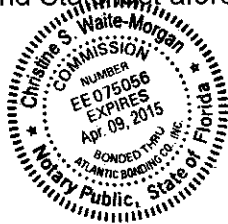
By: 
Name: Pasquale W. Croce
Title: President

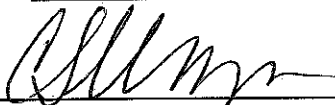
ASSIGNOR ACKNOWLEDGMENT

State of Florida }
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Urban E. Smith to me personally known or who provided _____ as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 16 day of NOVEMBER, 2012.





Notary Public, State of Florida
My Commission Expires:

ASSIGNEE ACKNOWLEDGMENT

State of Florida }
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Pasquale W. Croce to me personally known or who provided _____ as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this ____ day of _____, 2012.

Notary Public, State of Florida
My Commission Expires:

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first above written.

ASSIGNOR:

SMITHBURG, INC.

Witness to Assignor

Witness to Assignor

By: _____

Name: Urban E. Smith

Title: President


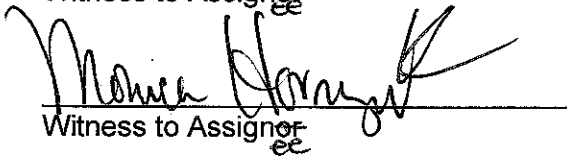
ASSIGNEE:

MORO MANAGEMENT, INC.

By: _____

Name: Pasquale W. Croce

Title: President


Witness to Assignor

Witness to Assignor

ASSIGNOR ACKNOWLEDGMENT

State of Florida }
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Urban E. Smith to me personally known or who provided _____ as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this ____ day of _____, 2012.

Notary Public, State of Florida
My Commission Expires:

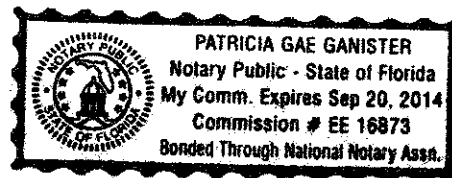
ASSIGNEE ACKNOWLEDGMENT

State of Florida }
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Pasquale W. Croce to me personally known or who provided _____ as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 20 day of November, 2012.

Patricia Gae Ganister
Notary Public, State of Florida
My Commission Expires:



CONSENT OF LANDLORD

I, Craig Cates as Chairman of the Caroline Street Corridor and Bahama Village Redevelopment Agency, the landlord named in that certain lease dated August 25, 1997 per Resolution 97-345, as modified and assigned to Assignor on April 15, 2003 per Resolution 03-088 and as further modified pursuant to Resolution 11-283 and the related Mediated Settlement Agreement attached thereto, herein expressly consent to the Assignment so long as the sale between Assignor and Assignee of the business known as "Turtle Kraals" which is conducted on and from the Premises is completed on or before December 31, 2012, failing which this Consent shall be deemed null and void, of no force or effect and withdrawn.

I also consent to the agreement by Assignee to assume, after the effective date of the Assignment, the payment of rent and the performance of all duties and obligations as set forth in the Lease and accept Assignee as tenant in the place of Smithburg, Inc. alone. Landlord hereby agrees that (i) any security deposit delivered by Assignor to Landlord in connection with the Lease will be returned to Assignor within 15 days following the effective date of the Assignment and (ii) no fee will be charged by Landlord in connection with the Assignment and Landlord's consent thereto.

Defined terms used in this Consent of Landlord shall have the meanings ascribed to such terms in the Assignment of Lease by and between Smithburg, Inc., as assignor and Moro Management, Inc., as assignee, to which this Consent of Landlord is attached.

LANDLORD:

Caroline Street Corridor and Bahama Village
Community Redevelopment Agency

Cheryl Smith

Witness as to Landlord

Vivian Grey

Witness as to Landlord

Craig Cates
Craig Cates, Chairman

State of Florida }
County of Monroe }



I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Craig Cates to me personally known or who provided _____ as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 30 day of November, 2012.

Angela Budde
Notary Public, State of Florida

My Commission Expires:

RESOLUTION NO. 97-344

A RESOLUTION OF THE CAROLINE STREET CORRIDOR
AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT
AGENCY, APPROVING THE ATTACHED 20-YEAR LEASE
BETWEEN THE CRA AND HALF SHELL RAW BAR, INC.;
PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CAROLINE STREET CORRIDOR AND BAHAMA
VILLAGE COMMUNITY REDEVELOPMENT AGENCY, AS FOLLOWS:

Section 1: That the attached 20-year lease between the CRA and
Half Shell Raw Bar, Inc. 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 Agency.

Passed and adopted by the Caroline Street Corridor and Bahama
Village Community Redevelopment Agency at a meeting held this ____
10th day of August, 1997.

Authenticated by the presiding officer and Clerk of the Agency
on August 25, 1997.

Filed with the Clerk August 25, 1997.


DENNIS J. WARDLOW, CHAIRMAN

ATTEST:


JOSEPHINE PARKER, CITY CLERK

Half Shell Raw Bar & Turtle Kraals Restaurants

Paul Tripp 20 yr. Leases

Executive Summary

- Paul Tripp is a major tenant at the Key West Bight. In comparison to typical mall operations he would be considered the "Anchor Tenant." Paul's restaurants have been faithful performers under their leases with the City and are a valuable asset to the project.
- This is the first of the original tenants to request rewriting their lease to a 20-year term since the referendum was passed last November. These leases involve significant changes in the terms thus the existing leases will be terminated and the new lease terms will take effect.
- The Key West Bight Management District Board approved this lease on July 16, 1997. Some of the board members expressed concerns over the precedence we might be setting with this lease with respect to the \$250,000 guideline for capital improvements set by the Commission.

Major Terms

1. **Term** to be 20 years from April 1, 1997 to March 31, 2016.
2. **Base Rent** for the first eight years stays the same as rent is currently, thereafter it adjusts annually to reflect CPI adjustments.
3. **Percentage Rent** to stay at 5% of gross sales, breakpoint will be adjusted annually to reflect the increase in base rent.
4. **Assignment and Hypothecation** changes to allow assignment of the lease with the consent of the Landlord (KWBMDB & CRA). The criteria for granting or denying such consent is the prospective tenant's experience, background and financial ability. This differs from the original lease which allowed the Landlord to deny assignment without cause.
5. **Improvements to meet the Commission's \$250,000 guideline.** No return of any previous rent credits for improvements made to date. Tenants will make additional improvements to the Turtle Kraals in the form of the rebuilding of the outside seating area to increase seating capacity. For the Half Shell the tenant will build a new structure to relocate the fish market and to include public bathrooms for the Lands End Village plaza. Breakpoint for percentage rent will be increased to reflect the land lease value of the footprint of the new Fish Market area.

While these two improvements together reflect a total value of more than \$250,000 individually they do not. This does not technically meet the Commission guideline however, the tenant has made substantial improvements under the present lease over and

above the amount of rent credits he has received. When these current improvements are added to the proposed improvements, I believe the threshold is satisfied.

Impact if Lease Denied

- Paul Tripp currently has permits to construct a new seating area adjacent to the Turtle Kraals Restaurant. I believe if we deny this longer term lease he will not build the new seating area. With recent changes in the FEMA office regarding acceptable appraisals we probably would not be able to permit this construction in the future. If this permit is allowed to expire the cost in reduced potential for percentage rents would be far greater than the \$250,000 improvement threshold, over the term of the lease.
- Tenant would not build new area for the fish market if denied and we would lose the rent on the space currently occupied by the fish market. We have an adjacent tenant, Local Color, who is waiting to expand their clothing store into this area. The additional rent we would realize from their expansion is more than \$30,000 annually, again far exceeding the \$250,000 threshold over the 20-year term of the lease.

Staff Comments

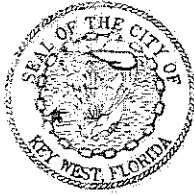
These two restaurants are a very important anchor tenant for the Bight project. They have already exceeded their percentage break points and this year paid \$78,609.00 above their base rent in the form of percentage rents. Their obvious honesty in reporting their gross receipts gives me the confidence that they will continue to be productive tenants for the Bight project.

While there is some danger in setting a precedence with this lease (ie. \$250,000 improvement threshold) we must also look at the overall effect and impact a successful anchor tenant provides to a developing area such as the Key West Bight.

For fiscal year 96/97 this tenant will have paid the following amounts for rent:

	Base Rent	Percentage Rent	Triple Net	Total
Turtle Kraals	\$ 97,467	\$41,018	\$18,223	\$156,708
Half Shell Raw Bar	\$210,000	\$37,591	\$38,859	<u>\$286,450</u> \$443,158

In negotiating this lease staff was looking for two major items; pay back of rent credits and indexed percentage rents. I was not able to achieve this, however we were able to compromise in other areas (TK's expansion, re-location of fish market and public bathrooms), with this in mind and the impact of this anchor tenant on the entire project I believe we have reached a reasonable compromise.



Key West Bight Lease

THIS LEASE IS MADE AS OF THE 25 DAY OF August, 1997 BY AND BETWEEN THE LANDLORD AND TENANT IDENTIFIED BELOW:

I. INFORMATION PROVISIONS AND DEFINITIONS:

I.1 LANDLORD'S NAME & MAILING ADDRESS: Caroline Street Corridor and Bahama Village Community
Redevelopment Agency, City of Key West
KEY WEST BIGHT
201 WILLIAM ST.
KEY WEST, FL 33040

I.2 TENANT'S NAME & MAILING ADDRESS:
HALF SHELL RAW BAR, INC.
231 MARGARET ST.
KEY WEST, FL 33040

TENANT'S TRADE NAME:

I.3 GUARANTOR(S) AND ADDRESS:

I.4 LOCATION WITHIN KEY WEST BIGHT LANDS END VILLAGE

I.5 DEMISED PREMISES (PAR. 1): AS PER EXHIBIT "A"

SPACE NO: _____

LEASABLE AREA (APPROX.)

SQUARE FEET: 9122

ESTIMATED PERCENTAGE OF LEASABLE AREA OF BIGHT (APPROX.) 12.9 %

I.6 TERM (PAR. 2)

I.6.1 ESTIMATED COMMENCEMENT DATE: APRIL 1, 1997

I.6.2 TERM (PAR. 2) TWENTY (20)

day of the month shall bear interest at the highest rate permitted by law from the such first day that payment was due until the date it is received. In addition, all payments received after day that payment was due until the date it is received. In addition, all payments received after the due date shall incur a Fifty Dollar (\$50.00) administrative fee to cover the costs of collecting and processing late payments.

The rent reserved under this Lease for the term hereof shall be and consist of:

- (a) **TENANT agrees to pay to the LANDLORD as and for rent (the "Base Rent") for the Demised Premises for the first eight (8) years of the Term of the Lease the total sum of ONE MILLION SIX HUNDRED EIGHTY THOUSAND DOLLARS (\$1,680,000.00) payable in equal monthly installments of Seventeen Thousand Five Hundred Dollars (\$17,500.00), in advance, on the first day of each and every calendar month during the first eight (8) years of the term of this Lease. Commencing as of April 1, 2004, the Base Rent determined under this paragraph for the last twelve (12) years of the Term of this Lease shall be adjusted annually in an amount equal to the change in the cost of living as reflected in the "All Items" Consumer Price Index published by the Bureau of Labor Statistics, U.S. Government, Washington, D. C., or its successor index (the "CPI). The Base Rent subject to such adjustment shall be adjusted annually, commencing on April 1 of each year, and the adjustments shall be equal to the annual percentage change determined from the CPI for the year ending on the immediately preceding March 31 after comparing it to the CPI ending on March 31 of the next preceding year; except that the first such annual adjustment shall be equal to the percentage change determined from the CPI for the year ending on March 31, 1997 after comparing it to the CPI ending on March 31, 2004. TENANT has deposited the sum of Fourteen Thousand Dollars (\$14,000.00) as security for the performance of the terms of this Lease, which Security Deposit shall be governed by the terms of Paragraph 4 of this Lease.**
- (b) Simultaneously with each such payment, TENANT agrees to pay to LANDLORD any sales, use or excise tax imposed or levied against rent or any other charge or payment required hereunder to be made by TENANT which tax has been imposed or levied by any governmental agency having jurisdiction thereof, this shall include any new taxes imposed during the term of this Lease which are in addition to or (except for additional taxes assessed or imposed solely against or, on, the Bight by the City of Key West, Florida) in substitution for any such tax which is presently imposed.
- (c) The estimated Common Area Charges for the first Lease Year are \$16,397.36 payable in advance, in Monthly Installments of \$1,366.45 each month together with TENANT's monthly remittances of Base Rent. Actual Common Area Charges will be determined, and necessary adjustments will be made at the expiration of each Fiscal Year of LANDLORD in accordance with this Section.

LEASE

THIS LEASE, made and entered into at Key West, Monroe County, Florida, this 25 day of August, 1997 by and between **Caroline Street Corridor and Bahama Village Community Redevelopment Agency**, hereinafter called LANDLORD, and **HALF SHELL RAW BAR, INC.** hereinafter called TENANT.

WITNESSETH:

That the LANDLORD and the TENANT, for and in consideration of the keeping by the parties of their respective obligations hereinafter contained, as well as for one dollar (\$1.00) and other good and valuable considerations by each of the parties unto the other, in hand paid simultaneously with the execution and delivery of these presents, the receipt of which is hereby acknowledged, have agreed as follows:

1. **DEMISE** - Upon the terms and conditions hereinafter set forth, and in consideration of the payment from time to time by the TENANT of the rents hereinafter set forth, and in consideration of the performance continuously by the TENANT of each and every one of the covenants and agreements hereinafter contained by the TENANT to be kept and performed, the LANDLORD does hereby lease, let, and demise unto the TENANT, and the TENANT does hereby lease of and from the LANDLORD, the following described Premises situated, lying, and being in Monroe County, Florida: That portion of the Key West Bight Property legally described on Exhibit "A" attached hereto and made a part hereof (the "Premises" or "Demised Premises"). The term "Premises" or "Demised Premises," shall be deemed to include the property known as the "Fish Market," which property is cross-hatched on Exhibit "A" until such time as the Fish Market is physically incorporated into the Premises. It is agreed that the square footage for the purpose of any calculations which are based on square footage is 9,212 (the "Leased Floor Area"), notwithstanding any actual measurements which may be taken, provided however, that if and when the Fish Market is incorporated into the physical area of the Premises, TENANT's floor area shall be reduced to 7,488 square feet and upon such reincorporation all charges pursuant to this Lease that are calculated based upon Leased Floor Area, including, without limitation, Common Area Charges, shall be calculated on the Leased Floor Area amount of 7,488 square feet. The gross leasable area of the Key West Bight Property shall be defined as the "Bight" for purposes of this Lease and the parties hereby stipulate that such gross leasable area is as shown initially on Exhibit "A-1" subject to change as otherwise provided herein. The portion of the Bight commonly known as "Lands End Village" is cross-hatched on Exhibit "A-1."

2. **TERM** - The term of this Lease shall be for twenty (20) years (the "Term") which shall commence on April 1, 1997, and shall end at midnight on March 31, 2004.

3. **RENT** - All rentals provided for herein shall be payable in advance on the first day of each and every month of the term hereof. Any monthly rental not received by the fifth (5th)

As used aforesaid, the term "Common Area Charges" generally means costs incurred for on-going day-to-day maintenance and ordinary repair of the Common Areas.

In no event will Common Area Charges include Capital Expenditures and Capital Equipment. As used aforesaid, the term Capital Expenditures and Capital Equipment shall mean those expenditures which, in accordance with governmental accounting standards, are not fully chargeable to current account in the year the expenditure is incurred and any improvements or items of equipment which, in accordance with generally accepted accounting principles, may be deemed to be capital improvements or items of capital equipment, as the case may be.

"Common Areas" means all exterior areas, equipment, signs and facilities in the Bight, (excluding out lots and parking facilities or lots, not located in the Bight as of the date hereof), as provided by LANDLORD for the common use and benefit of occupants of the Bight. The Common Areas are depicted on Exhibit "B" attached hereto and made a part hereof.

These charges are only estimates. The TENANT shall be responsible for all Common Area Charges actually incurred on a pro rata assessment basis ("TENANT's Proportionate Share") determined as a fraction, the numerator of which shall be the leased Floor Area of the Demised Premises initially, 9,212 square feet, and the denominator of which shall be the total gross leasable area comprising the Key West Bight Property, initially 70,800 square feet. Any increase in the Common Area Charges shall result in an increase in the TENANT's share of the Common Area Charges. In the event the total gross leasable area of the Bight or the Common Areas of the Bight are increased, TENANT's Proportionate Share (not necessarily the dollar amount owed) shall be reduced effective the date of such increase. In the event the Common Areas or total gross leasable area are decreased, Tenant's Proportionate Share (not necessarily the dollar amount owed) shall be increased effective as of the date of decrease. Common Area Charges, assessed after the base year shall not increase in any given year by more than 5% of the previous year's Common Area Charges by account category as established Schedule "A," however, TENANT's Proportionate Share of Real Estate Taxes and Insurance Premiums shall not be capped as provided for Common Area Charges. The base year for the purpose of limiting increases in Common Area Charges shall be October 1, 1995 to September 30, 1996 ("base year"). This limitation shall apply only to those categories of services included in the base year's Common Area Charges; provided, however, that additional categories for common area maintenance that were not included in the base year must be unforeseen, and extraordinary; any categories charged for, that are not included in the base year's charges shall not be

limited by the five percent (5%) cap in the initial year in which they are charged but thereafter such additional categories of charges shall be subject to the cap limitations. LANDLORD's Fiscal Year shall be defined as the Fiscal Year for the City of Key West, Florida. As to LANDLORD's successor's or assigns, the term "Fiscal Year" may be re-defined to mean the calendar year.

Common Area Charges shall include any and all expenses reasonably incurred in the operation and maintenance of the Bight property Common Area including management and administrative fees. The Common Area Charges are based on the Estimated Schedule of Common Area Charges attached hereto as Schedule "A".

Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT's Proportionate Share of Common Area Charges, in monthly installments as specified herein. Such installments shall be due and payable on the 1st day of each calendar month during the Term. The installment set forth herein represents TENANT's Proportionate Share of the estimated Common Area Charges at the Commencement Date. Thereafter, LANDLORD shall, prior to the beginning of each Fiscal Year, estimate the expected Common Area Charges for the coming Fiscal Year and TENANT's Proportionate Share thereof, 1/12th of which shall constitute the Monthly Installments for such year; except that TENANT's Proportionate Share of such expenses shall be reduced if the gross leasable area of the Bight is increased. Within 90 days after the end of each Fiscal Year, LANDLORD shall calculate the actual Common Area Charges paid or payable during the prior Fiscal Year, and there shall be an adjustment between LANDLORD and TENANT so that LANDLORD shall receive the actual amount of TENANT's annual Proportionate Share for said year. If TENANT's Proportionate Share was less than the amount paid by TENANT during the prior year, LANDLORD shall, at its option, pay TENANT the difference between the amount received and the amount actually due, or credit such difference until paid in full against TENANT's next succeeding installments (except if TENANT's Lease is to expire in the ensuing Lease Year, LANDLORD shall refund TENANT the over payment). If TENANT's Proportionate Share is greater than the amount paid by TENANT during the prior year, TENANT shall pay LANDLORD the difference between the amount paid by TENANT and the amount actually due upon LANDLORD billing TENANT for same. LANDLORD agrees to keep, at its principal office, records relating to said Common Area Charges. TENANT shall have the right to audit said records for the sole purpose of ascertaining the correctness of said Charges. Such audit shall be made during normal business hours; not unreasonably interfere with LANDLORD's office operations; shall be performed by an individual CPA or CPA firm designated by TENANT, shall not be made more often than once during each Fiscal Year; and shall be limited to the preceding Fiscal Year. If

TENANT desires to audit said records as aforesaid, TENANT shall notify LANDLORD 30 days in advance thereof, commence said audit within 60 days of said notice, and once commenced, diligently complete the same. If any such audit shows the amount of such charges to TENANT was overstated, LANDLORD shall refund any such overcharge and pay for the audit if TENANT was overcharged by five percent (5%) or more.

In addition to Common Area Charges, TENANT shall pay TENANT's Proportionate Share of the Real Estate Tax Expense, which shall include all real estate taxes and assessments both general and special imposed by federal, state or local governmental authority or any other taxing authority having jurisdiction over the Bight Property against the land, buildings, store rooms, Common Areas and all other improvements within the Upland Bight Property (as shown on Exhibit "C") (excluding any Public Area which will not be taxed and excluding the Marina), together with any and all expenses incurred by LANDLORD in negotiations, appealing or contesting such taxes and assessments provided such expenses shall be reasonable and actually paid to third parties not associated with LANDLORD. If, by virtue of any application or proceeding brought by or in behalf of LANDLORD, there shall be a reduction of the assessed valuation of the land and/or buildings comprising the Bight or for any Fiscal Year which affects the Real Estate Taxes, or part thereof, for which Additional Rent has been paid by TENANT pursuant to this Paragraph, such Additional Rent payment shall be recomputed on the basis of any such reduction and LANDLORD will refund to TENANT any sums paid by TENANT in excess of the recomputed amounts, less a sum equal to TENANT's proportionate share of all reasonable costs, expenses, and fees, including, but not limited to, reasonable appraisers' and attorneys' fees incurred by LANDLORD in connection with such application or proceeding.

Such refund will be made within ninety (90) days after receipt by LANDLORD of a tax refund.

Real Estate Tax Expense shall not include any additional charges or penalties incurred by LANDLORD due to late payment of Real Estate Taxes. In the event that any of the public area excluded later becomes taxable or is determined to be taxable then it shall be included for purposes of determining TENANT's proportionate share.

TENANT's Proportionate Share of Real Estate Taxes shall be paid in monthly installments together with TENANT's remittances of the Common Area Charges provided for herein. The 5% cap limitation provided for in Section 3(c) shall not be applicable to this particular common area charge. Real Estate taxes shall not include any taxes based on increases in assessed value due to:

- (i) capital improvements made by LANDLORD to the Public Areas and the Marina;

TENANT shall pay TENANT's Proportionate Share of LANDLORD's Insurance Expenses which shall include all reasonable and customary insurance premiums incurred by the LANDLORD in insuring the Upland Bight Property including hazard and liability insurance for any and all buildings, improvements and common areas. Landlord's insurance for the Bight is and shall remain, throughout the term at least, what is described on Schedule A attached hereto and made a part hereof.

TENANT's prorated share of Insurance expenses shall be paid as part of the Common Area Charges provided for herein. The 5% cap limitation provided for in Section 3(c) shall not be applicable to this particular common area charge.

Should any governmental taxing authority acting under any present or future law, ordinance or regulation, levy, assess or impose a tax, excise and/or assessment (other than an income, inheritance, or franchise tax for which TENANT shall not be responsible) upon or against the rentals payable by TENANT to LANDLORD, whether by way of substitution for, or in addition to, any existing tax on land and buildings or otherwise, or any other substitute tax, the proceeds of which are to be used to fund the same governmental functions as were funded by ad valorem taxes, TENANT shall be responsible for and reimburse LANDLORD for the amount thereof as the case may be, as Additional Rent, seven (7) days before the date that any penalty or interest would be added thereto for non-payment or, at the option of LANDLORD, the same shall be payable in the manner provided for in the preceding paragraph.

- (d) In addition to the foregoing rent, TENANT agrees to pay LANDLORD as Percentage Rent a sum equal to five percent (5%) multiplied by an annual Gross Sales per calendar year in excess of **an amount to be calculated annually by dividing the then current Annual Base Rent by .05 (the "Percentage Base")**. Within twenty (20) days following the end of each Lease Year of the Lease, TENANT shall provide LANDLORD with an accurate and complete copy of the State of Florida Department of Revenue, Sales and Use Return Form DR-15 (or such forms as the State of Florida shall hereafter substitute for said form) showing the full amount of TENANT's Gross Sales from the Premises during the immediately preceding Lease Year and a certification from TENANT's CPA that all deductions from Gross Sales are true and accurate and comply with the terms of this Lease. Tenant's payment of Percentage Rent shall be due Landlord no later than thirty (30) days from the expiration of each Lease Year. TENANT is subject to a Fifty Dollar (\$50.00) late submission penalty should TENANT not furnish to LANDLORD copies of Form DR-15 by the twentieth (20th) day of each new

Lease Year. If by the end of any such preceding year of the Lease, the Gross Sales in the Premises during such Lease Year exceeded the Percentage Base, TENANT shall pay to LANDLORD, at the time of delivery of said statement, an amount equal to the percentage rent times the Gross Sales exceeding the Percentage Base. The term "Lease Year" shall mean the period of time from April 1 to March 31 of each calendar year.

- (e) "Gross Sales" shall mean the amount of sales of all food, beverage and merchandise sold on site from the Premises by TENANT or any sub-tenant, or licensee. TENANT may deduct from Gross Sales: (i) any refunds to customers, or discounts to customers or employees provided they have been included in Gross Sales; (ii) the amount of any sales tax levied upon sales and payable over to the appropriate governmental authority; and (iii) sales of mail-order products in accordance with the terms of this paragraph. Sales of mail-order products shall be defined as a sale of goods or food made through a catalogue, or by telephone, or accomplished solely through the U.S. Postal Service or any mail, express mail or delivery service; (iv) off-Premises sales or catering of goods including, without limitation, goods or foodstuffs sold at festivals, or off-Premises generally. Tenant shall be permitted to deduct mail-order products, catering and off-premises sales from Gross Sales to the extent the same in the aggregate do not exceed ten percent (10%) of annual Gross Sales sold at the Premises. All Gross Sales relating to mail-order, catering and off-premises sales in excess of ten percent (10%) of annual Gross Sales shall be included in the definition of Gross Sales for purposes of determining Tenants Percentage Rent. As used aforesaid, the term "off-premises," shall be defined as sales derived from events or occurrences located outside the Bight.

TENANT agrees to keep, at its principal office, records in accordance with generally accepted accounting practices, in which said Gross Sales shall be recorded. Such records shall be open for inspection during business hours with the prior written request of LANDLORD, by a certified public accountant engaged by LANDLORD or at LANDLORD's option, LANDLORD's Finance Director, who may if desired by LANDLORD review TENANT's records of Gross Sales and certify to LANDLORD as to the accuracy of TENANT's reported amount of Gross Sales from the Premises. Such CPA shall not be entitled and the LANDLORD shall not be entitled to remove or copy TENANT's records of Gross Sales from the Premises. LANDLORD and TENANT shall abide by the same procedure and time constraints governing of LANDLORD's Common Area Charges for LANDLORD's CPA to certify the accuracy and completeness of TENANT's Percentage Rent remittances. TENANT's records shall be open for inspection by LANDLORD or its agents, including accountants retained for that purpose, during reasonable business hours for the Term and for at least 3 years thereafter. To audit TENANT's books to verify Gross Sales for any Lease Year, LANDLORD must notify TENANT in writing of its intention to audit

TENANT's records for such Lease Year, no more than ninety (90) days after the expiration of the Lease Year in question, or waive its right to audit for that Lease Year. In the event that TENANT is audited by a governmental agency, LANDLORD will have the right to audit TENANT's books to verify Gross Sales for the same time period that is the subject of the governmental audit. If any audit shows that the amount of Gross Sales on TENANT's statement was understated by more than 1% for any year, then TENANT (in addition to paying the percentage rent due for such understatement) shall pay to LANDLORD the reasonable cost of the LANDLORD's audit. In the event of litigation and solely in connection with such litigation, LANDLORD may photocopy TENANT's records of gross sales.

- (f) In addition to the foregoing rent, all other payments to be made by TENANT shall be deemed to be and shall become Additional Rent hereunder whether or not the same be designated as such and it shall be due and payable within ten (10) days of written demand and itemization of the charges due together with interest thereon at the highest rate permissible by law from due date until the date it is paid. The LANDLORD shall have the same remedies for TENANT's failure to pay said Additional Rental as for non-payment of rent. LANDLORD at its election, but not without prior written notice of its intention to act for the account of TENANT, which notice shall provide TENANT fifteen (15) days in which to cure the alleged failure to perform or failure to pay money (except in cases of emergency, where no prior notice is required, and except for non-payment of Base Rent which shall be governed by Paragraph 11 hereof) shall have the right to pay or do any act which requires the expenditure of any sums of money by reason of the failure or neglect of TENANT to perform any of the provisions of this Lease, and in the event LANDLORD shall, at its election, and after notice as provided aforesaid, pay such sums or do such acts requiring the expenditure of monies, TENANT agrees to pay LANDLORD, upon demand, all such sums, and the sums so paid by LANDLORD and any reasonable expenses incurred by LANDLORD in the payment of such sums together with interest thereon at the highest rate permitted by law from their due date through the date they are paid by TENANT shall be deemed additional rent and shall be payable and collectible as such. Rent shall be made payable to: The City of Key West, c/o Key West Bight Property Manager, 201 William Street, Key West, Florida 33040.

4. **SECURITY** - TENANT has deposited previously with the LANDLORD the sum of FOURTEEN THOUSAND DOLLARS (\$14,000.00) the receipt of which is hereby acknowledged, which sum shall be retained by LANDLORD as security for the payment by TENANT of the rents herein agreed to be paid by TENANT and for the faithful performance by TENANT of the terms, conditions and covenants of this Lease. Tenant may, if it so elects, provide Landlord with a Certificate of Deposit conditionally assigned to Landlord as security from a federally insured bank in the amount of the Security Deposit to be held by Landlord in

accordance with the terms of this Paragraph whereupon Landlord shall refund the amount of \$14,000.00 held as a cash security deposit. It is agreed that LANDLORD, at LANDLORD's option, may at any time apply said sum or any part thereof toward the payment of the rents and any other sum payable by TENANT under this Lease, and/or toward the performance of each and every TENANT's covenants under this Lease, but such covenants and TENANT's liability under this Lease shall thereby be discharged only pro tanto; that TENANT shall remain liable for any amounts that such sum shall be insufficient to pay; that LANDLORD may exhaust any or all rights and remedies against TENANT before resorting to said sum, but nothing herein contained shall require or be deemed to require LANDLORD to do so; that, in the event this deposit shall not be utilized for any of such purposes, then such deposit shall be returned by LANDLORD to TENANT within sixty (60) days after the expiration of the term of this Lease except as provided otherwise below. TENANT shall deposit with LANDLORD such additional sums which may be necessary to replace any amounts expended therefrom by LANDLORD pursuant to the provision hereof, so that there shall always be a security deposit in the sum first set forth above. The Security deposit provided for herein shall be held by the LANDLORD in a non-interest bearing account and may be co-mingled by the LANDLORD at the LANDLORD's sole discretion.

5. **USE OF THE PREMISES** - TENANT shall be entitled to use the Premises for a restaurant and bar and fish market.

TENANT further agrees:

- A. To operate its Business pursuant to the reasonable standards of its Business category, maintaining a substantial stock of appropriate merchandise on display, with sufficient personnel to service its trade.
- B. With respect to the Bight, not to display any merchandise, solicit business or distribute advertising material beyond the Premises nor in any manner use any part of the Common Areas for purposes other than for their intended common use and not to obstruct any part thereof.
- C. Except as contemplated under Paragraph A above and consistent with the Use provision of this Lease, not to display any banners, pennants, window signs, balloons, or similar temporary advertising media on the exterior of the Premises.
- D. Not to commit waste in the Premises and to keep the Premises and immediate adjacent areas including, without limitations, adjacent sidewalks, in a safe, neat, clean and orderly condition and to maintain and repair any lighting or signs under any canopy immediately in front of the Premises except that TENANT shall have no obligation to maintain or "police" the Common Areas.
- E. Not to use the Premises or permit business to be conducted in any manner

which violates any law, ordinance or constitutes a nuisance; for lodging purposes; that may injure the reputation of the Bight or annoy, inconvenience or damage its patrons or other TENANT's; or that would constitute an extra-hazardous use or violate any insurance policy of TENANT, LANDLORD or any other TENANT in the Bight or increase the cost thereof.

F. To keep all garbage, refuse and solid waste in the Dumpster Area as shown on Exhibit "A" which shall consist of no less than three (3) five (5) yard commercial dumpsters. As of the Lease Commencement Date, the Dumpster Area shall be reserved for the exclusive use of TENANT. No other TENANT or the Marina shall have any right to use the Dumpster Area for disposal of garbage. TENANT may, if it becomes necessary in TENANT's sole opinion, lock access or otherwise close off the Dumpster Area to prevent unauthorized use by others. LANDLORD shall provide TENANT with exclusive use of the Dumpster Area without additional rent or charge therefor. TENANT agrees not to burn or permit any burning of garbage or refuse on the Premises or any part of the Bight.

G. TENANT shall contract directly with the pertinent governmental authority or disposal company and shall be responsible for all fees and costs of removal and disposal of solid waste, garbage, and refuse, including but not limited to, impact fees and dumpster rental as pertains to TENANT's Dumpster Area as shown on Exhibit "A". TENANT shall indemnify, save harmless and defend LANDLORD from and against any loss, claim, injury, damage or expense arising out of or related to the generation, storage, or removal or disposal of TENANT's garbage, refuse or solid waste.

H. To use its best efforts to cause all trucks serving the Premises to load and unload from the hours of 12:00 a.m. to 11:00 a.m. and not to permit such trucks to service through the front entrance of the Premises except when no other entrance is available.

I. To take no action that would: (i) violate LANDLORD's contracts if any, affecting the Bight of which LANDLORD has provided TENANT written notice; or (ii) cause any work stoppage, picketing (or cause any manner or interference with LANDLORD or other TENANT's, occupants, customers or any person lawfully in and upon the Bight).

J. Not to use amplified music or any other noise making machinery or devices that in LANDLORD's reasonable determination is harmful to the building or disturbing to other tenants. Nor shall TENANT unreasonably use any loud speakers televisions or other devises in a manner so as to be inconsistent with the character of the Bight, except in accordance with the Amplified Music Rider attached hereto and made a part hereof.

K. To abide by and observe all reasonable rules and regulations established from time to time by LANDLORD and LANDLORD's insurance carrier with respect to the operation of the Bight and its Common Areas.

L. Not to conduct any auction, fire, bankruptcy or selling-out sale on or about the Premises except in strict compliance with City Code, Chapter 105.

LANDLORD further agrees that:

(1) All utilities necessary for TENANT's business operations at the Premises shall be brought to the perimeter of the Premises at LANDLORD's sole cost in a timely manner so as not to delay unreasonably Tenant's improvements as contemplated by the terms of Paragraph 18 of this Lease.

(2) TENANT's patrons shall be entitled to have the same parking rights and privileges with respect to "validated" parking as extended to other tenants or occupants of the Bight.

(3) Throughout the Term, except in cases of emergency or other extenuating circumstances beyond LANDLORD's control, or as otherwise provided herein LANDLORD will not cause or unreasonably permit an interruption of convenient vehicular and pedestrian traffic flow between the Premises and the Common Areas.

(4) Subject to Landlord's sole discretion, TENANT may use the plaza area for twelve (12) events during a calendar year, which plaza is shown on the Wilson Miller Master Plan situated between the Lost Reef Dive Shop and Net Shop and as shown in the cross-hatched area depicted on Exhibit "A", attached hereto and made a part thereof, without additional rent or charge (other than the Rent and percentage Rent imposed by this Lease) for certain special events sponsored or conducted by TENANT, provided TENANT abides by LANDLORD's reasonable regulations in connection therewith, complies with applicable local ordinances. Revenue generated from such events shall be included in the definition of Gross Sales for purposes of determining Percentage Rent.

(5) That the development of the Marina, and the waterfront behind the Premises will be accomplished in such a manner so as not to provide for dockage which would block the view of the waterfront from the existing dining room, nor will LANDLORD permit or suffer the use of the waterfront behind the Premises to impair TENANT'S view of the water from the existing dining room. Landlord shall permit TENANT to use on a non-exclusive basis the existing dock free of additional charge or additional rent (other than the Rent and Percentage Rent imposed by this Lease) immediately behind the Premises to be used for free short-term occupancy for customers and patrons of TENANT. Subsequent to the construction of a new dock behind the Premises, any remaining dock behind the Premises not used by LANDLORD for dockage, shall remain for TENANT'S non-exclusive use without additional charge therefor.

(6) During the term hereof, LANDLORD, shall not permit the use or operation of any space in Lands End Village other than the space leased to TENANT to be used or operated as a stand-up seafood restaurant, a take-out seafood service, a kiosk, wagon or cart

serving seafood or a snack bar or other free-standing concession or kiosk when seafood generally comprises the menu offerings of any of the foregoing by twenty-five percent (25%) or more and the square footage of the operator is five hundred (500) feet or less.

6. **COVENANT OF QUIET POSSESSION** - So long as TENANT pays all of the rent and charges due herein, TENANT shall peaceably and quietly have, hold, and enjoy the Demised Premises throughout the term of this Lease without interference or hindrance by LANDLORD or any person claiming by, through, or under LANDLORD.

7. **TENANT'S DUTY TO PAY INSURANCE PREMIUMS** - TENANT covenants and agrees with LANDLORD that TENANT will pay the premiums for all insurance policies which TENANT is obligated to carry under the terms of this Lease and will deliver the said policies or certificates in respect of same and the evidence of payment to the LANDLORD. TENANT shall carry liability insurance in amounts of \$1,000,000.00/\$1,000,000.00. TENANT shall carry liability insurance which provides coverage for any incidents arising out of TENANT's use of the Demised Premises. TENANT shall be required to carry insurance covering any property whether it be inventory or furniture and fixtures or any other Property belonging to TENANT. Any consignment agreement used by TENANT must provide that consignor acknowledge that the LANDLORD does not have any liability whatsoever for any damage which may be done to items left in the Demised Premises on consignment. The TENANT must provide the LANDLORD with a copy of any consignment agreement used by TENANT regarding Demised Premises. LANDLORD shall not be responsible for damage to any property belonging to TENANT or consignor. TENANT completely indemnifies the LANDLORD with regard to any claims made by any consignor for any reason. TENANT shall name LANDLORD as an additional insured under the policies it is required to carry pursuant to the terms of this Lease.

8. **ASSIGNMENT AND HYPOTHECATION** - TENANT shall have the right to assign the Lease only to a qualified tenant and with the written consent of the LANDLORD, which consent shall be based upon consideration of the proposed tenant's background, current financial statements, and expertise in the restaurant business. In the event of such an assignment by the Tenant to a qualified tenant, the annual Base Rent for the assignee shall be increased to an amount equal to five percent (5%) of the prior year's Gross Sales. TENANT may not sublet the Premises or any part thereof.

Any assignment or sub-letting, even with LANDLORD's consent shall not relieve TENANT from liability for payment of Rent or from the obligation to keep and be bound by the agreements of this Lease. The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease or to be consent to the assignment for the benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior consent of LANDLORD. In the event TENANT wishes to assign this Lease and LANDLORD consents to such assignment, LANDLORD may charge a fee in the amount of 5% of the current Annual Base Rent.

If TENANT is a corporation, then a sale or transfer of a controlling interest in the corporation by sale of stock or otherwise, shall constitute an assignment for purposes of this provision; provided however, that a transfer of shares in the Tenant's corporation resulting from, or in connection with, death or incapacity shall not be deemed to constitute an assignment of this Lease.

9. **SUBORDINATION** - This Lease, and all rights of TENANT hereunder, are and shall be subject and subordinate to all mortgages, bond indentures and any other financing instruments (hereinafter referred to as security agreements) which may now or hereafter affect the Demised Premises and to each and every advance made or hereafter to be made under such security agreements and to all renewals, modifications, replacements and extensions of such security agreements and spreaders and consolidations of such security agreements. This paragraph shall be self operative and no further instrument of subordination shall be required to make it effective, however, TENANT shall promptly execute and deliver any instrument reasonably requested to evidence such subordination.

If the holder of any such security instrument shall succeed to the rights of LANDLORD under this Lease, then at the request of such party so succeeding to the LANDLORD's rights and upon such successor LANDLORD's written agreement to accept TENANT's attornment, TENANT shall attorn to such successor LANDLORD and will execute such instruments as may be necessary or appropriate to evidence such attornment. Upon such attornment, this Lease shall continue in full force and effect as if it were a direct Lease between the successor LANDLORD and TENANT upon all the terms, conditions, and covenants as are set forth in this Lease and shall be applicable after such attornment.

TENANT shall deliver to LANDLORD or the holder of any such security instrument or auditors, or prospective purchaser or the owner of the fee, when requested by LANDLORD, a certificate to the effect that this Lease is in full force and that LANDLORD is not in default therein, or stating specifically any exceptions thereto. Failure to give such a certificate within ten (10) business days after written request shall be conclusive evidence that the Lease is in full force and effect and LANDLORD is not in default and in such event, TENANT shall be estopped from asserting any defaults known to TENANT at that time.

LANDLORD shall deliver to TENANT a Non Disturbance Agreement within ten (10) days of full execution of this Lease and within ten (10) days of further encumbrances of the Premises. The Non-Disturbance Agreement shall apply to all mortgages now or hereafter placed against the Premises or Bight and to all renewals, modifications, replacements, and extensions thereof.

10. **CONDEMNATION CLAUSE**

A. It is further understood and agreed that if at any time during the

continuance of this Lease the legal or equitable title to the demised real estate or the improvements of building or buildings located thereon or any portion thereof be taken or appropriated or condemned by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings and such abatement of the fixed rent and other adjustments made as shall be just and equitable under the circumstances. If the LANDLORD and the TENANT are unable to agree upon what division of the condemnation award, abatement of fixed rent, or other adjustments are just and equitable within thirty (30) days after such award has been made, then the matters in dispute shall, by appropriate proceedings, be submitted to a court having jurisdiction of the subject matter of such controversy for its decision and determination of the matters in dispute. If the legal title to the entire Premises be wholly taken by condemnation, or if the portion taken will prevent the Premises from being used for the purpose the TENANT intends, this Lease shall be canceled without effecting TENANT'S equitable entitlement to the award.

B. In general, it is the intent and agreement of the parties that upon condemnation, the parties hereto shall share in the condemnation award to the extent that they would be entitled to receive compensation and damages under the Florida law for the depreciation, damage, or destruction of their interests by the exercise of the right of eminent domain. In no event shall TENANT be permitted to receive a share based on the value of the land or buildings except if TENANT has expended its own funds in connection with any of the improvements made to the land or buildings.

11. DEFAULT CLAUSE

A. It is further covenanted and agreed by and between the parties hereto that in case at any time default shall be made by the TENANT in the payment of any of the rent herein provided for within ten days (10) of the day the same becomes due and payable; or if the TENANT shall fail to pay any of the taxes or assessments herein provided for; or in case of the sale of or forfeiture of said Demised Premises or any part thereof during said demised term for non-payment of any tax or assessment; or in case the TENANT shall fail to keep insured the building or improvements which are now or which may at any time hereafter be upon said Premises, as herein provided for; or shall fail to spend insurance money, as herein provided for; or if the TENANT shall fail to perform any of the covenants of this Lease by it to be kept and performed; then, in any of such events, and its failure to cure, it shall and may be lawful for the LANDLORD, at its election, to declare said demised term ended and to re-enter upon said Premises, building, and improvements situated thereon, or any part hereof, with process of law.

B. OR, the LANDLORD may have such other remedies as the law and this instrument afford, and the TENANT covenants and agrees that upon the termination of said demised term, at such election of the said LANDLORD, or in any other way, TENANT will surrender and deliver up the Premises and property (real and personal) peaceably, to the LANDLORD, its agent, or attorneys, immediately upon the termination of the said demised term. If the TENANT, its agents, attorneys, or TENANTS shall hold the said Premises or any part

thereof, one (1) day after the same should be surrendered according to the terms of this Lease, it may be deemed liable for forcible detainer of said Premises under the statute and shall be subject to eviction or removal, forcibly or otherwise, with process of law.

C. Bankruptcy or Insolvency - If at any time during the term hereof proceedings in bankruptcy shall be instituted against TENANT and which proceedings have not been dismissed within a reasonable time period, and which bankruptcy results in an adjudication of bankruptcy; or if any creditor of TENANT shall file any petition under Chapter X of the Bankruptcy Act of the United States of America, as it is now in force or may hereafter be amended; and TENANT be adjudicated bankrupt, or TENANT makes an assignment for the benefit of creditors; or sheriff, marshal, or constable take possession thereof by virtue of any attachment or execution proceedings and offer same for sale publicly, and such taking and offer for sale is not rescinded, revoked, or set aside within ten (10) days thereafter, then LANDLORD may, at its option, in either of such events, immediately take possession of the Premises and terminate this Lease. Upon such termination, all installments of rent earned to the date of termination and unpaid, shall at once become due and payable; and in addition thereto, LANDLORD shall have all rights provided by said bankruptcy laws relative to the proof of claims on an anticipatory breach of an executory contract. The grace period for the curing of default shall not apply to this event of default.

D. Where the alleged default consists of some alleged violation of any term of this Lease, other than the payments of money, including rent, the LANDLORD may not declare this Lease in default until such violation shall have continued for ten (10) days after the LANDLORD shall have given the TENANT written notice of such violation, and TENANT shall not have undertaken, during said ten (10) day notice period, to cure said violation by vigorous and affirmative action, provided, however, that nothing herein contained shall be construed as precluding the LANDLORD from having such remedy as may be and become necessary in order to preserve the LANDLORD's right and interest of the LANDLORD in the Premises and in this Lease, even before the expiration of the grace or notice periods provided for in this paragraph, if, under particular circumstances then existing, the allowance of such grace or the giving of such notice would prejudice or endanger the rights and estate of the LANDLORD in this Lease and in the Demised Premises. With respect to the payment of the insurance premiums, the same must be paid at least fifteen (15) days prior to the time when the policies would lapse for the failure to pay premiums thereon, and evidence of such payment given to the LANDLORD without any written notice being required to be served upon the TENANT in connection therewith.

E. All default and grace periods shall be deemed to run concurrently and not consecutively.

F. It is mutually covenanted and agreed that the various rights, powers, options, elections, privileges, and remedies of the LANDLORD contained in this Lease shall be construed as cumulative and no one of them shall be construed as being exclusive of the other or exclusive of any rights or priorities allowed by law.

G. It is further covenanted and agreed by and between the parties hereto that the right given to the LANDLORD in this Lease to collect the rent that may be due under the terms of this Lease by any proceeding under same, or the right to collect any additional rent, money, or payments due under the terms of this Lease by any proceedings under same, or the right given the LANDLORD to enforce any of the terms and provisions of this Lease shall not in any way affect the right of such LANDLORD to declare this Lease void and the terms ended hereby, as herein provided, when default is made in the payment of said rent or when default is made by the TENANT in any of the terms and provisions of this Lease.

H. If at any time, by reason of the failure of the TENANT to keep and perform any covenant or agreement which, under the terms of this lease, the TENANT is bound and obligated to keep and perform, it becomes necessary for LANDLORD to employ an attorney to protect the rights and interests of the LANDLORD in the property demised or to enforce the lease or proceed under it in any particular, then in any of such events, the TENANT will owe and will pay unto LANDLORD all costs of Court and reasonable attorneys fees incurred or expended by the LANDLORD in taking such actions, including actions taken in all trial and appellate courts.

In any action or proceeding arising under or in connection with this Lease, the party prevailing in such action or proceeding shall be entitled to payment from the non-prevailing party of its legal fees and costs at all tribunal levels.

12. **TENANT'S DUTY TO KEEP PREMISES IN GOOD REPAIR** - The TENANT covenants and agrees with the LANDLORD that during the continuance of this Lease, the TENANT will keep the Demised Premises and all furnishings brought or placed upon the Demised Premises by TENANT in the condition they were in at the commencement of the term, ordinary wear and tear accepted by Landlord, and as to improvements to the Demised Premises, TENANT shall maintain such improvements in a good condition, ordinary wear and tear excepted. The TENANT will not suffer or permit any strip, waste, or neglect of any building or such personal property to be committed.

13. **ADDITIONAL COVENANTS OF THE TENANT**

A. The TENANT shall pay for all utilities associated, with the use of the Demised Premises including, but not limited to, water, electricity, sewer, gas and waste, (if applicable). In the event that a separate bill for the Demised Premises is not available for one or more of the utility services required by the Demised Premises, then the TENANT shall pay a pro-rated share of that particular utility bill based on the square footage of the Demised Premises. If on the Lease Commencement Date LANDLORD has not provided TENANT with a separate account for electric charges, TENANT shall pay \$ 3,420.00 per month for electrical charges until such time as LANDLORD has dedicated a separate account for TENANT's electric consumption.

B. The TENANT covenants and agrees with the LANDLORD that no

damage or destruction to any building or improvement by fire, windstorm, or any other casualty shall be deemed to entitle the TENANT to surrender possession of the premises or to terminate this Lease or to violate any of its provisions or to cause and abatement or rebate in the rent then due or thereafter becoming due under the terms hereof, unless and to the extent that TENANT cannot reasonably conduct business operations in the Premises in which case TENANT's rent obligation shall be limited to Percentage Rent. Tenant shall be responsible to pay Landlord Base Rent and other charges upon the sooner to occur of (i) substantial completion of interior restoration and achievement of monthly Gross Sales equal to one hundred percent (100%) of Gross Sales for the same month which is twelve (12) months prior to the month of substantial completion of the interior restoration, or (ii) twelve (12) months from the date of substantial completion of the restoration. In the event of casualty, Landlord shall restore, with due speed and diligence, the structure of the Premises and the systems serving the building, including, without limitation, the roof, foundation, walls and the plumbing, sewer, and electrical systems. Tenant shall restore the interior of the Premises to its condition prior to the casualty. Both parties shall use best efforts to perform their respective obligations within a reasonable amount of time from the date of casualty and shall complete all work in a good and workmanlike manner.

If the Lease be canceled for the TENANT's material, uncured default at any time while there remains outstanding any obligation from an insurance company to pay for the damage or any part thereof, then the claim against the insurance company shall, upon the cancellation of the within-lease, be deemed immediately to become absolute and unconditional property of the LANDLORD. In the event of destruction to the Premises by casualty or hazard, LANDLORD will restore the structural portions at the Premises, including without limitation, the roof, walls, building systems and foundation to their condition prior to the casualty and shall bring utilities to the perimeter of the Premises at LANDLORD's expense or from insurance proceeds, as LANDLORD may elect; provided, however, that only the City of Key West, Florida, as LANDLORD, shall have the right to self-insure.

C. The TENANT shall be responsible for the H-VAC and all air conditioning systems, if any, together with the plumbing and electrical system solely within Demised Premises. With respect to the plumbing, TENANT's obligation shall extend from the interior of the Demised Premises, to the nearest manhole outside the Premises. The LANDLORD is obligated to construct utility lines or upgrade existing utility lines to service the Demised Premises.

D. The Landlord shall be responsible for maintaining in good repair and condition the structure of the building, including the walls, foundation and exterior of the building. **TENANT shall be responsible for maintaining the roof of the building in good repair and condition and shall have the obligation of replacing the roof in whole or in part as needed.**

E. The TENANT covenants and agrees with the LANDLORD that nothing in this Lease contained shall ever be construed as empowering the TENANT to encumber or cause the LANDLORD to encumber the title or interest of the LANDLORD.

F. The TENANT covenants and agrees with the LANDLORD that, at the termination of this Lease, the TENANT will peaceably and quietly deliver unto the LANDLORD, possession of the Premises and all buildings and improvements located thereon, except for trade fixtures (bar equipment, seating) and all other personalty and equipment, and other personal property owned by TENANT. TENANT shall repair any damage caused to the Premises as a result of the removal of its personal property from the Premises.

G. The TENANT agrees not to make any exterior material, changes or alterations without written approval of the LANDLORD which approval shall not be unreasonably withheld or delayed. Interior alterations which are structural shall require LANDLORD's prior consent, which shall not be unreasonably withheld or delayed. Interior non-structural alterations shall not require Landlord's consent.

14. **LANDLORD'S RIGHT OF ENTRY** - The LANDLORD or its agents shall have the right to enter upon the Premises at all reasonable times to examine the condition and use thereof, provided only that such right shall be exercised in such manner as not to interfere with the TENANT in the conduct of the TENANT's business on said Premises. If the said Premises are damaged by fire, windstorm, or by any other casualty which caused the Premises to be exposed to the elements, then the LANDLORD may enter upon the Premises to make emergency repairs. LANDLORD may enter upon the Premises to make renovations and repairs of a non-emergency nature by giving reasonable notice to the TENANT, and in such a manner as to minimize any inconvenience to both parties.

15. **EQUIPMENT, FIXTURES AND SIGNS** - All furnishings, fixtures, trade fixtures, equipment, and signs used on the Premises by TENANT but provided by LANDLORD, at LANDLORD's expense will, at all times, be, and remain, the property of LANDLORD. All furnishings, fixtures, trade fixtures, equipment and signs used on the Premises by TENANT and provided by TENANT, at TENANT's expense will, at all times, be, and remain, the property of TENANT. In addition, all furnishings, fixtures, trade fixtures, equipment, and signs existing on the Premises as of the commencement date of this Lease, are, and shall remain, the Property of TENANT. Provided that this Lease is in good standing and subject to the LANDLORD's lien for rent, TENANT will have the right to remove any furniture or fixtures provided by TENANT, or any part thereof, from the Premises during the term of this Lease, at the expiration thereof, or within a reasonable time thereafter, provided, however, that TENANT, in so doing, does not cause any irreparable damage to the Premises, and provided further, that TENANT will pay or reimburse LANDLORD for the reasonable expense of repairing damage caused by such removal.

16. The TENANT accepts the Premises and improvements thereon in an as is condition and all improvements and additions shall be at the sole expense of the TENANT subject to LANDLORD's obligation to improve the Bight and Lands End Village generally in accordance with the Wilson Miller Master Plan, as more particularly described in Paragraph 18 of this Lease.

17. **MISCELLANEOUS PROVISIONS** - It is mutually covenanted and agreed by and between the parties as follows:

A. That no waiver of a breach of any of the covenants in this Lease contained shall be construed to be a waiver of all succeeding breach of the same covenant.

B. That time is of the essence in every particular and particularly where the obligation to pay money is involved.

C. That all arrearages in the payment of rent or in the repayment to the LANDLORD of any sums which the LANDLORD may have paid in order to cure a default of the TENANT (as elsewhere herein provided for), shall bear interest from the date when due and payable at the highest rate permitted by law until paid.

D. That no modification, release, discharge, or waiver of any provision hereof shall be of any force, effect, or value unless in writing and signed by the persons who are then LANDLORD and TENANT.

E. That all covenants, promises, conditions, and obligations contained herein or implied by law, or covenants running with the land, shall attach to and be binding upon the heirs, executors, administrators, successors, legal representatives, and assigns of each of the parties to this Lease.

F. That this instrument contains the entire agreement between the parties as of this date, and that the execution hereof has not been induced by either of the parties by representations, promises or understandings not expressed herein, and that there are not collateral agreements, stipulations, promises, or understandings whatsoever between the respective parties in any way touching the subject matter of this instrument which are not expressly contained in this instrument.

G. That when either of the parties desire to give notice to the other or others in connection with and according to the terms of this Lease, such notice shall be deemed given when it shall have been received by Certified mail or hand delivery signed with sufficient postage pre-paid thereon to carry it to its addressed destination as to LANDLORD by the City Manager, and as to TENANT by an officer. Said notice shall be addressed as follows:

AS TO LANDLORD: 201 Williams Street
Key West, Florida 33040

AS TO TENANT: 231 Margaret Street
Key West, Florida 33040

Attn: Paul Tripp

When the parties on either side (LANDLORD or TENANT) consists of more than one person, notice or default by one of the persons on that side shall constitute notice or default by all of the persons on that side.

H. This Lease and the provisions thereof shall be governed by and construed and enforced in accordance with the laws of the State of Florida.

I. LANDLORD may delegate its decision making authority regarding any provision of this Lease to an Advisory Board.

18. **FISH MARKET**

A. TENANT shall vacate the fish market presently in the "Local Color" building no later than April 15, 1998. TENANT shall have the right to; at their own expense construct an addition, not to exceed 1000 sq. ft., to the Lost Reef Dive Shop building as depicted in the Master Plan and CIAS, for the purpose of re-locating the fish market. Any wholesale or retail sales of seafood generated directly from the Fish Market shall be excluded from the definition of Gross Sales as set forth in Paragraph 3(e) above.

B. TENANT shall build public restrooms as an addition to the Lost Reef Dive Shop. These restrooms shall include at least two (2) unisex (one door, one WC) type facilities with stall shower. These restrooms shall be constructed no later than April 15, 1998 regardless of whether or not TENANT elects to build the new fish market as described in Paragraph 18 A. above. See attached drawing as exhibit

C. TENANT shall be responsible for acquiring all applicable permits and approvals including but not limited to Historic Architectural Review Committee, Planning Board, City Commission and City Building Department. The LANDLORD shall be responsible for building permit fees, the tenant shall be responsible for any impact fees due on the Fish Market only.

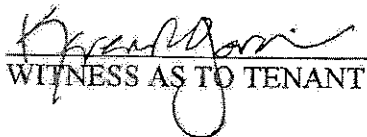
D. The Percentage Base, as described in Paragraph 3(d) shall, upon completion of the Fish Market, be increased by an amount equal to the following formula: $[(\text{sq. ft of Fish Market excluding bathrooms}) \times \$8.00] \div .05$. This provision shall not apply if the TENANT uses the Fish Market for any purpose other than support of TENANT'S own restaurants (Turtle Kraals & Half Shell Raw Bar).

19. **AUTHORITY** - The party signing this Lease on behalf of the LANDLORD hereby represents and warrants that he is fully empowered by the City of Key West to execute this Lease.

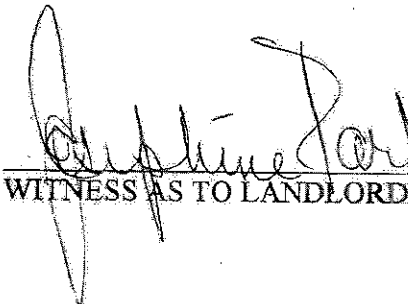
The party signing this Agreement on behalf of the Tenant hereby represents and warrants that he is fully empowered by the Tenant to execute this Lease and to bind the Tenant hereby.

IN WITNESS WHEREOF, the parties hereto have caused the foregoing Lease to be executed on the day and year first above written.

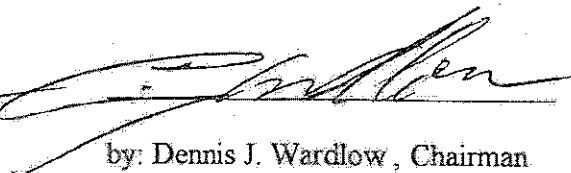
TURTLE KRAALS, INC.


WITNESS AS TO TENANT

BY: 
PAUL TRIPP, PRESIDENT


WITNESS AS TO LANDLORD

THE CITY OF KEY WEST

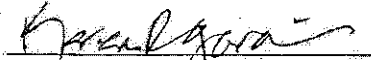

by: Dennis J. Wardlow, Chairman
Caroline Street Corridor and Bahama Village
Community Redevelopment Agency

AMPLIFIED MUSIC RIDER

Notwithstanding anything in the Lease to the contrary, the TENANT shall be permitted to have amplified music in the Premises so long as the use of the amplified music complies with the municipal ordinance regulating the use of such music and does not unreasonably disturb or interfere with neighboring TENANT's.


Executed this 25 day of August, 1998.

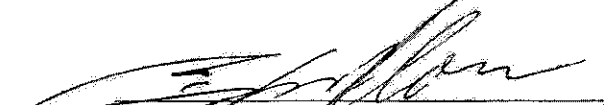
HALF SHELL RAW BAR, INC.

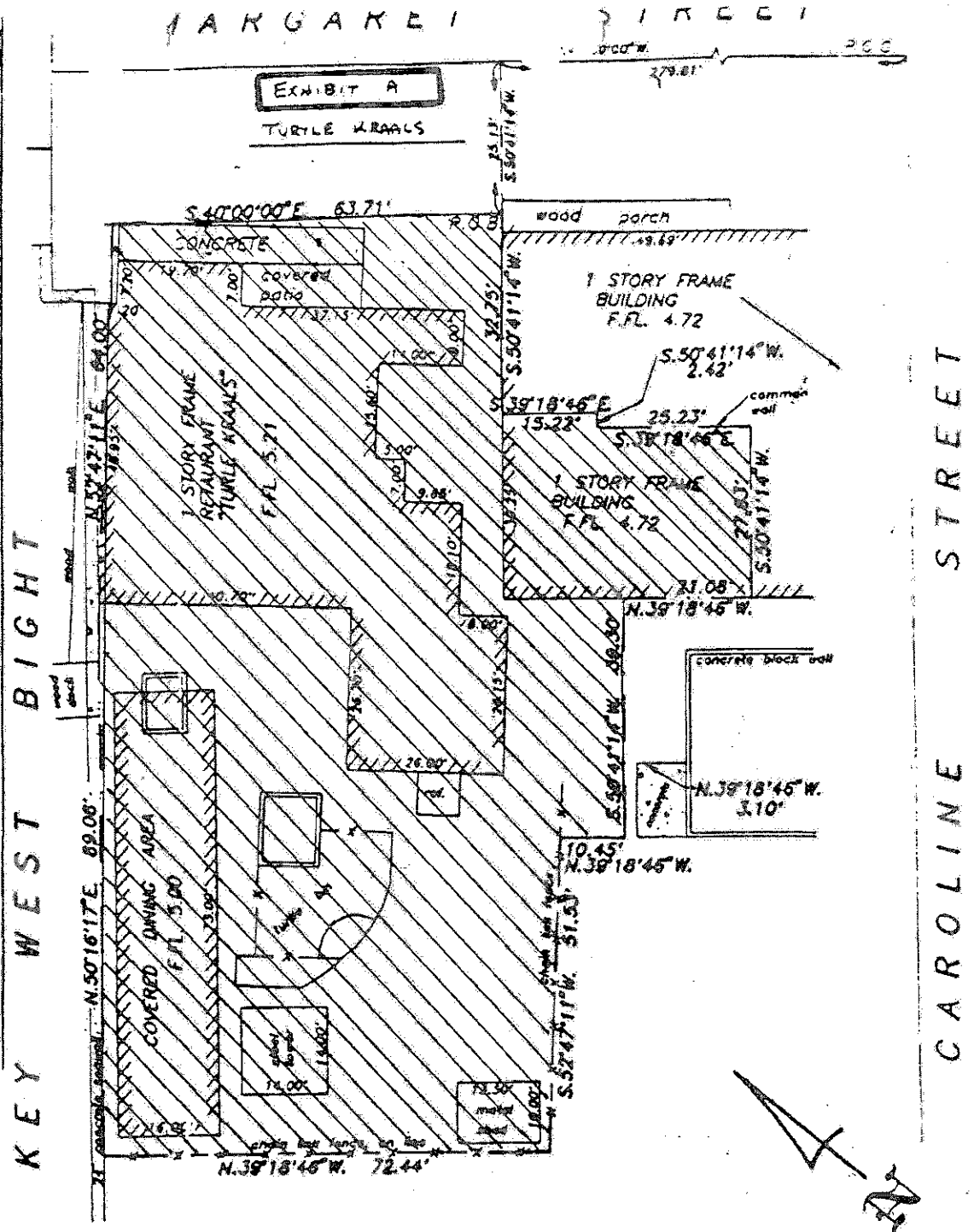

WITNESS AS TO TENANT

BY: 
PAUL TRIPP, PRESIDENT

THE CITY OF KEY WEST


WITNESS AS TO LANDLORD


by: Dennis J. Wardlow, Chairman
Caroline Street Corridor and Bahama Village
Community Rede



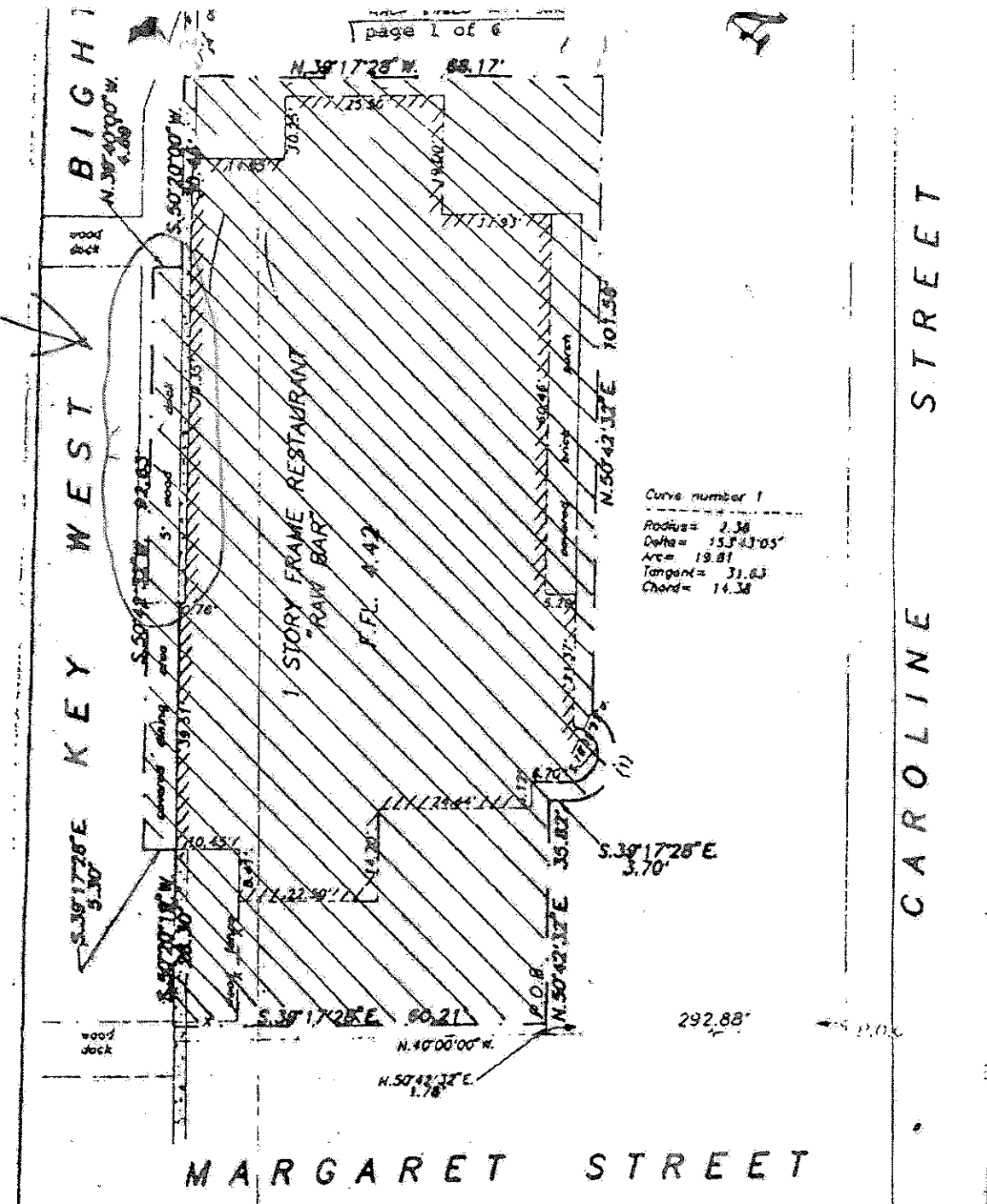
Sheet 1 of 2

Turtle Kraals Margaret Street, Key West, FL. 33040			
Sketch to accompany Legal Description Lease Area			Draw No.: 94-384-02
Scale: 1"=20'	Ref. No.	Flood panel No.	Drawn By: F.H.M.
Date: 10/26/94		Flood Zone:	Flood Elev.
REVISIONS AND/OR ADDITIONS			
11/3/94: Revised lease area			

FREDERICK H. HILDEBRANDT
ENGINEER PLANNER SURVEYOR

3150 Northside Drive
Suite 101
Key West, FL. 33040
(305) 293-0488
Fax (305) 293-0237

Handwritten signature/initials



Curve number 1
 Radius = 2.38
 Delta = 153° 43' 05"
 Arc = 19.81
 Tangent = 33.63
 Chord = 14.38

Half Shell Raw Bar Margaret Street, Key West, Fl. 33040			
Sketch to Accompany legal Description Lease Area			Dep. No.: 94-384-01
Scale: 1"=20'	Rel. File	Flood panel No. 1718 G	Own. By F.H.M.
Date: 10/26/94		Flood Zone:	Flood Elev.
REVISIONS AND/OR ADDITIONS			

FREDERICK H. HILDEBRANDT
 ENGINEER PLANNER SURVEYOR

3150 Northside Drive
 Suite 101
 Key West, Fl. 33040
 (305) 293-0466
 Fax (305) 293-0211

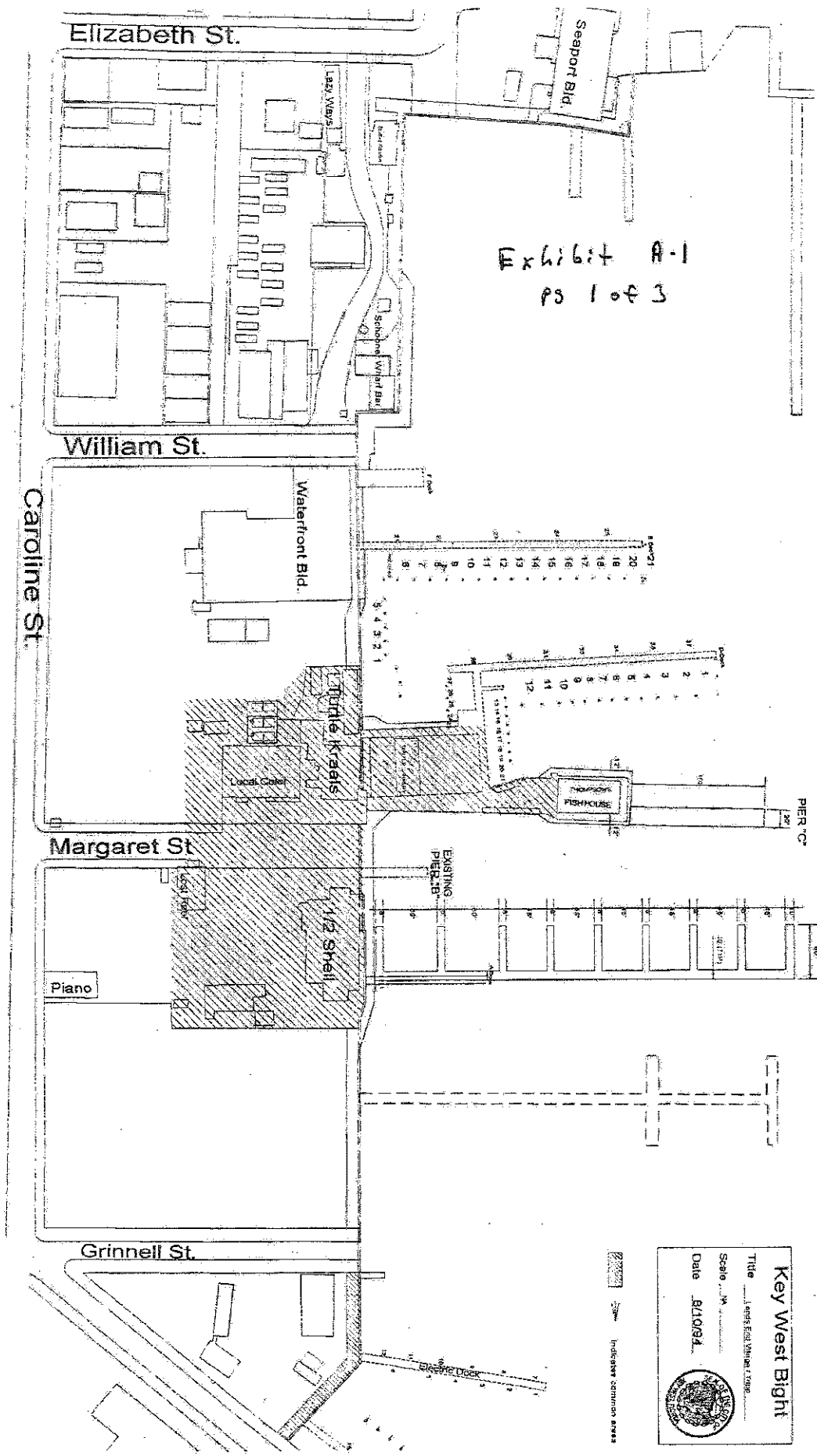



Exhibit A-1
 PS 1 of 3

Key West Bight

Title: Key West Bight, Florida

Scale: 1" = 100'

Date: 8/10/84



INDICATES SCENTINER AREAS

Handwritten mark resembling a stylized 'A' or '4'.

1.7 TENANT PAYMENTS (PAR. 3):

1.7.1 MINIMUM RENT FOR TERM: (PAR. 3):

<u>LEASE YEAR(S)</u>	<u>BASE RENT</u> <u>PER SQ FT</u>	<u>BASE RENT</u>	<u>EST. INITIAL TAXES,</u> <u>INS. COMMON AREAS</u>	<u>EST. TOTAL RENT</u> <u>BEFORE SALES TAX</u>
			CAM 16,237.16	
			INS 9,486.88	
			TAX 13,135.68	
1-8	23.02	210,000	38,859.72	\$248,859.72
Monthly Payments		17,500	3,238.31	\$ 20,738.31
9 - 20	Annual CPI adjustments to Base Rent			

1.7.2 PERCENTAGE RENT (PAR. 3) 5 % OF TENANT'S GROSS SALES IN EXCESS OF THE FOLLOWING "BASE AMOUNT" \$4,200,000 (adjusted pursuant to Par. 3(d) & 18 (d) of lease)

1.8 SECURITY DEPOSIT (PAR. 4): \$ 14,000

1.9 PERMITTED USE (PAR. 5): RESTAURANT & BAR

NOTES: INSURANCE \$1,000,000

INITIALS LANDLORD JS TENANT DN

RESOLUTION NO. 03-088

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA), CONSENTING TO AND APPROVING AN ASSIGNMENT OF THE LEASE FOR THE TURTLE KRAALS RESTAURANT TO SMITHBURG, INC; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Paragraph 8 of the Lease between the CRA and Turtle Kraals, Inc. provides the terms of assignment; and

WHEREAS, on February 19, 2003, the Key West Bight Management District Board voted its consent to the proposed assignment.

NOW THEREFORE, BE IT RESOLVED BY THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY, AS FOLLOWS:

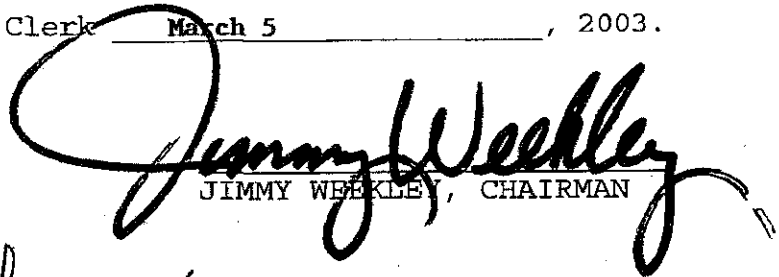
Section 1: That an assignment of the Lease for the Turtle Kraals restaurant is hereby consented to and approved.

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 Agency.

Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 4 day of March, 2003.

Authenticated by the presiding officer and Clerk of the Agency on March 5, 2003.

Filed with the Clerk March 5, 2003.


JIMMY WEEKLEY, CHAIRMAN

ATTEST:


CHERYL SMITH, CITY CLERK

MODIFICATION OF LEASE AGREEMENT

15th THIS MODIFICATION OF LEASE AGREEMENT ("Agreement") is made as of the day of April, 2003 by and between Smithburg, Inc., a Florida corporation ("Assignee-Lessee"), having an address at 6 Allamanda Terrace, Key West, FL 33040, and the Caroline Street Corridor and Bahama Village Community Redevelopment Agency ("Lessor"), having an address at 525 Angela Street, Key West, FL 33040.

WHEREAS, Turtle Kraals, Inc. executed a twenty-year lease (the "Lease") with the Lessor on August 25, 1997; and

WHEREAS, Paragraph 8 of the Lease provides for assignment upon the Lessor's consent; and

WHEREAS, Lessor consented in City of Key West Resolution No. 03-088 to an assignment of the Lease to the Assignee-Lessee; and

WHEREAS, the parties desire to formalize the new tenancy and modify the Lease, as provided herein.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. The Assignee-Lessee agrees to assume the performance of all of the terms, covenants, conditions, and obligations imposed under the Lease.

2. Assignee-Lessee and Lessor agree that from and after the date of this Agreement, the Lease shall be modified as follows:

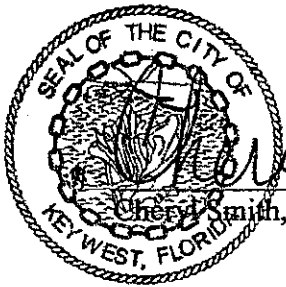
(a) Rent for the current year of the Lease shall be \$19,138.19 per month, including applicable sales tax commencing upon the effective date of this Agreement. The term shall expire on March 31, 2016.

(b) Except as specifically modified by above, the Lease shall remain unmodified and in full force and effect.

3. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. This Agreement shall be governed by the laws of the State of Florida.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first set forth above.

Signed, sealed and delivered
in the presence of:



Cheryl Smith
Cheryl Smith, City Clerk

LESSOR: Caroline Street Corridor
and Bahama Village Community
Redevelopment Agency

By: Jimmy Weekley
Jimmy Weekley
Chairman

ASSIGNEE-LESSEE: Smithburg, Inc.

Vivian Perez
Witness

By: Urban F. Smith
Name: URBAN F. SMITH
Title: PRES
U Smith 15 Apr 03



Executive Summary

To: Julio Avel, City Manager
From: Raymond Archer, Port Director
Date: 2/24/2003
Re: Turtle Kraals and Half Shell Raw bar

PROJECT ISSUE

The Lessee (Paul Tripp) of Turtle Kraals and Half Shell Raw Bar has requested the assignment of the leases of each restaurant to Smithbury, Inc. (Gene and Sue Smith). The Key West Bight Board approved the assignment at their February meeting. There are no changes or deletions to the current lease and Mr. Smith has stated he fully intends to comply with the terms and conditions of the lease.

Mr. Tripp's lease provides for the assignment of the lease to a qualified tenant. To qualify a potential tenant must provide information pertaining to his background, current financial statements and his expertise in the restaurant business. Mr. Smith has provided the information and, as well as met with Roger Wittenburg and myself, we feel he is to be considered qualified and recommend approval.

The lease states that the City can charge a fee for the transfer of the lease and Mr. Tripp has requested we waive the fee. The Key West Bight Board has denied the waiver.

OPTIONS

The first option is to approve and the second option is to disapprove.

ADVANTAGES/DISADVANTAGES

The potential tenant is qualified and currently has businesses in the bight area. With this experience it should make for a smooth transition to a new tenant.

FINANCIAL ISSUES

Each assignment clause (see paragraph 8 of the lease) provide that: (1) the annual base rent of the assignee shall be increased to an amount equal to five percent (5%) of the prior year's gross sales; and (2) a fee may be charged by the landlord in the amount of five percent (5%) of the current annual base rent. The Lessee has requested waiver of the latter but the KWBB has denied the waiver.

The Half Shell Raw Bar- The new base rent will be **\$18,196.75** and the transfer fee will be **\$10,500.00**.

The Turtle Kraals- The new base rent will be **\$15,288.90** and the transfer fee will be **\$4,873.36**.

RECOMMENDATION

We recommend approval.

Raymond Archer
Bight Manger
City of Key West

February 4th 2003

Dear Raymond,

As you may know by now I have decided to sell my entire restaurant business to Gene and Sue Smith. Please accept this letter as my formal request to assign the leases for the Half Shell Raw Bar and Turtle Kraals to Smithburg Inc. I've attached section 8 from my original lease between Half Shell Raw Bar Inc and Caroline Street Corridor and Bahama Village Community Redevelopment Agency which shows the provision for this assignment.

In this assignment we are asking only that the name of the tenant be changed at the time of transfer. The term is to stay the same along with all other provisions of the original lease. Only the base rent for the new tenant will need modification so as to be increased as stated in the lease and brought up to equal 5% of the previous years gross sales.

I am requesting that this assignment take place and be dated April 2nd 2003. If possible I would like to be placed on the agenda for Bight Board meeting Feb 19th and for final approval by the City Commission March 4th.

Sue and Gene Smith are the owners of Smithburg Inc. Gene's qualifications and expertise in the Restaurant business are as follows:

- Thirty years experience as a restaurant owner
- Owned a total of 39 McDonalds restaurants in Texas, Louisiana, Michigan, and Indiana
- 13 McDonalds owned at one time generating 20 million in annual sales
- Employed 1000 people

Gene and Sue are also the owners of the A&B Marina which is the landlord of the A&B Lobster House.

Gene is a graduate of North Western State University with a degree in History and Economics. He served 10 years in the Military as a Navy pilot.

Thank you for you consideration,



Paul Tripp

TURTLE
KRAALS



Tripp Restaurant Group
231 Margaret Street
Key West, Florida 33040
Executive offices:
Phone: 305.294.4902
Fax: 305.292.3180
www.tripprestaurantgroup.com

A&B
Lobster House
700 Front Street
Key West, FL 33040
Restaurant: 305.294.5880
Office: 305.294.6647
Fax: 305.294.6871

Alonzo's
OYSTER BAR
700 Front Street
Key West, FL 33040
Restaurant: 305.294.5880
Office: 305.294.6647
Fax: 305.294.6871

BERLIN'S
COCKTAIL & CIGAR BAR
700 Front Street
Key West, FL 33040
Restaurant: 305.294.5880
Office: 305.294.6647
Fax: 305.294.6871

Half
Shell
Raw Bar
231 Margaret Street
Key West, FL 33040
305.294.7496
Fax: 305.296.4650

Turtle Kraals
Restaurant & Bar
1 Land's End Village
Key West, FL 33040
305.294.2640

RESOLUTION NO. 97-345

A RESOLUTION OF THE CAROLINE STREET CORRIDOR
AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT
AGENCY, APPROVING THE ATTACHED 20-YEAR LEASE
BETWEEN THE CRA AND TURTLE KRAALS INC.;
PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CAROLINE STREET CORRIDOR AND BAHAMA
VILLAGE COMMUNITY REDEVELOPMENT AGENCY, AS FOLLOWS:

Section 1: That the attached 20-year lease between the CRA and
Turtle Kraals Inc. 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 Agency.

Passed and adopted by the Caroline Street Corridor and Bahama
Village Community Redevelopment Agency at a meeting held this ____
____ 19th day of August, 1997.

Authenticated by the presiding officer and Clerk of the Agency
on August 25, 1997.

Filed with the Clerk August 25, 1997.


DENNIS J. WARDLOW, CHAIRMAN

ATTEST:


JOSEPHINE PARKER, CITY CLERK

Half Shell Raw Bar & Turtle Kraals Restaurants

Paul Tripp 20 yr. Leases

Executive Summary

- Paul Tripp is a major tenant at the Key West Bight. In comparison to typical mall operations he would be considered the "Anchor Tenant." Paul's restaurants have been faithful performers under their leases with the City and are a valuable asset to the project.
- This is the first of the original tenants to request rewriting their lease to a 20-year term since the referendum was passed last November. These leases involve significant changes in the terms thus the existing leases will be terminated and the new lease terms will take effect.
- The Key West Bight Management District Board approved this lease on July 16, 1997. Some of the board members expressed concerns over the precedence we might be setting with this lease with respect to the \$250,000 guideline for capital improvements set by the Commission.

Major Terms

1. **Term** to be 20 years from April 1, 1997 to March 31, 2016.
2. **Base Rent** for the first eight years stays the same as rent is currently, thereafter it adjusts annually to reflect CPI adjustments.
3. **Percentage Rent** to stay at 5% of gross sales, breakpoint will be adjusted annually to reflect the increase in base rent.
4. **Assignment and Hypothecation** changes to allow assignment of the lease with the consent of the Landlord (KWBMDB & CRA). The criteria for granting or denying such consent is the prospective tenant's experience, background and financial ability. This differs from the original lease which allowed the Landlord to deny assignment without cause.
5. **Improvements to meet the Commission's \$250,000 guideline.** No return of any previous rent credits for improvements made to date. Tenants will make additional improvements to the Turtle Kraals in the form of the rebuilding of the outside seating area to increase seating capacity. For the Half Shell the tenant will build a new structure to relocate the fish market and to include public bathrooms for the Lands End Village plaza. Breakpoint for percentage rent will be increased to reflect the land lease value of the footprint of the new Fish Market area.

While these two improvements together reflect a total value of more than \$250,000 individually they do not. This does not technically meet the Commission guideline however, the tenant has made substantial improvements under the present lease over and

above the amount of rent credits he has received. When these current improvements are added to the proposed improvements, I believe the threshold is satisfied.

Impact if Lease Denied

- Paul Tripp currently has permits to construct a new seating area adjacent to the Turtle Kraals Restaurant. I believe if we deny this longer term lease he will not build the new seating area. With recent changes in the FEMA office regarding acceptable appraisals we probably would not be able to permit this construction in the future. If this permit is allowed to expire the cost in reduced potential for percentage rents would be far greater than the \$250,000 improvement threshold, over the term of the lease.
- Tenant would not build new area for the fish market if denied and we would lose the rent on the space currently occupied by the fish market. We have an adjacent tenant, Local Color, who is waiting to expand their clothing store into this area. The additional rent we would realize from their expansion is more than \$30,000 annually, again far exceeding the \$250,000 threshold over the 20-year term of the lease.

Staff Comments

These two restaurants are a very important anchor tenant for the Bight project. They have already exceeded their percentage break points and this year paid \$78,609.00 above their base rent in the form of percentage rents. Their obvious honesty in reporting their gross receipts gives me the confidence that they will continue to be productive tenants for the Bight project.

While there is some danger in setting a precedence with this lease (ie. \$250,000 improvement threshold) we must also look at the overall effect and impact a successful anchor tenant provides to a developing area such as the Key West Bight.

For fiscal year 96/97 this tenant will have paid the following amounts for rent:

	Base Rent	Percentage Rent	Triple Net	Total
Turtle Kraals	\$ 97,467	\$41,018	\$18,223	\$156,708
Half Shell Raw Bar	\$210,000	\$37,591	\$38,859	<u>\$286,450</u>
				\$443,158

In negotiating this lease staff was looking for two major items; pay back of rent credits and indexed percentage rents. I was not able to achieve this, however we were able to compromise in other areas (TK's expansion, re-location of fish market and public bathrooms), with this in mind and the impact of this anchor tenant on the entire project I believe we have reached a reasonable compromise.



Key West Bight Lease

THIS LEASE IS MADE AS OF THE 25 DAY OF August, 1997, BY AND BETWEEN THE LANDLORD AND TENANT IDENTIFIED BELOW:

1. INFORMATION PROVISIONS AND DEFINITIONS:

1.1 LANDLORD'S NAME & MAILING ADDRESS: Caroline Street Corridor and Bahama Village Community
Redevelopment Agency, City of Key West
KEY WEST BIGHT
201 WILLIAM ST.
KEY WEST, FL 33040

1.2 TENANT'S NAME & MAILING ADDRESS:
TURTLE KRAALS, INC.
231 MARGARET ST.
KEY WEST, FL 33040

TENANT'S TRADE NAME:

1.3 GUARANTOR(S) AND ADDRESS:

1.4 LOCATION WITHIN KEY WEST BIGHT LANDS END VILLAGE

1.5 DEMISED PREMISES (PAR. 1.1): AS PER EXHIBIT "A"

SPACE NO: _____

LEASABLE AREA (APPROX.)

SQUARE FEET: 4,278

ESTIMATED PERCENTAGE OF LEASABLE AREA OF BIGHT (APPROX.) 6.04 %

1.6 TERM (PAR. 2)

1.6.1 ESTIMATED COMMENCEMENT DATE: APRIL 1, 1997

1.6.2 TERM (PAR. 2) TWENTY (20) YEARS

77

1.7 TENANT PAYMENTS (PAR. 3):

1.7.1 MINIMUM RENT FOR TERM: (PAR. 3):

<u>LEASE YEAR(S)</u>	<u>BASE RENT</u> <u>PER SQ FT</u>	<u>BASE RENT</u>	<u>EST. INITIAL TAXES</u> <u>INS. COMMON AREAS</u>	<u>EST. TOTAL RENT</u> <u>BEFORE SALES TAX</u>
			CAM 7,614 INS 6,160 TAX 4,449	
1-8	\$21.04	97,467.36	18,223	115,690.36
Monthly Payments		8,122.28	1,518.58	\$9,640.86
Years 9-20	Annual CPI adjustments to base rent			

1.7.2 PERCENTAGE RENT (PAR. 3) 5 % OF TENANT'S GROSS SALES IN EXCESS OF THE FOLLOWING "BASE AMOUNT" \$1,949,347.00 adjusted pursuant to Par. 3(d)

1.8 SECURITY DEPOSIT (PAR. 4): \$ 6,000.00

1.9 PERMITTED USE (PAR. 5): RESTAURANT & BAR

NOTES: INSURANCE \$1,000,000

INITIALS LANDLORD JW TENANT PA

LEASE

THIS LEASE, made and entered into at Key West, Monroe County, Florida, this 25 day of August, 1997 by and between **Caroline Street Corridor and Bahama Village Community Redevelopment Agency**, hereinafter called LANDLORD, and **TURTLE KRAALS, INC.** hereinafter called TENANT.

WITNESSETH:

That the LANDLORD and the TENANT, for and in consideration of the keeping by the parties of their respective obligations hereinafter contained, as well as for one dollar (\$1.00) and other good and valuable considerations by each of the parties unto the other, in hand paid simultaneously with the execution and delivery of these presents, the receipt of which is hereby acknowledged, have agreed as follows:

1. **DEMISE** - Upon the terms and conditions hereinafter set forth, and in consideration of the payment from time to time by the TENANT of the rents hereinafter set forth, and in consideration of the performance continuously by the TENANT of each and every one of the covenants and agreements hereinafter contained by the TENANT to be kept and performed, the LANDLORD does hereby lease, let, and demise unto the TENANT, and the TENANT does hereby lease of and from the LANDLORD, the following described Premises situated, lying, and being in Monroe County, Florida: That portion of the Key West Bight Property legally described on Exhibit "A" attached hereto and made a part hereof (the "Premises" or "Demised Premises"). It is agreed that the square footage for the purpose of any calculations which are based on square footage is 4,278 (the "Leased Floor Area"), notwithstanding any actual measurements which may be taken. The gross leasable area of the Key West Bight Property shall be defined as the "Bight" for purposes of this Lease and the parties hereby stipulate that such gross leasable area is as shown initially on Exhibit "A-1" subject to change as otherwise provided herein. The portion of the Bight commonly known as "Lands End Village" is cross-hatched on Exhibit "A-1."

2. **TERM** - The term of this Lease shall be for twenty (20) years (the "Term") which shall commence on April 1, 1997, and shall end at midnight on March 31, 2016.

3. **RENT** - All rentals provided for herein shall be payable in advance on the first day of each and every month of the term hereof. Any monthly rental not received by the fifth (5th) day of the month shall bear interest at the highest rate permitted by law from the such first day that payment was due until the date it is received. In addition, all payments received after the due date shall incur a Fifty Dollar (\$50.00) administrative fee to cover the costs of collecting and processing late payments.

The rent reserved under this Lease for the term hereof shall be and consist of:

- (a) TENANT agrees to pay to the LANDLORD as and for rent (the "Base Rent") for the Demised Premises for the first eight (8) years of the Term of the Lease the total sum of Seven Hundred Seventy Nine Thousand Seven Hundred Thirty Eight Dollars and Eighty Eight Cents (\$779,738.88) in equal monthly installments of Eight Thousand One Hundred Twenty Two Dollars and Twenty Eight Cents (\$8,122.28), in advance, on the first day of each and every calendar month during the first eight (8) years of the Term of this Lease. Commencing as of April 1, 2004, the Base Rent determined under this paragraph for the last twelve (12) years of the Term of this Lease shall be adjusted annually in an amount equal to the change in the cost of living as reflected in the "All Items" Consumer Price Index published by the Bureau of Labor Statistics, U.S. Government, Washington, D. C., or its successor index (the "CPI). The Base Rent subject to such adjustment shall be adjusted annually, commencing on April 1 of each year, and the adjustments shall be equal to the annual percentage change determined from the CPI for the year ending on the immediately preceding March 31 after comparing it to the CPI ending on March 31 of the next preceding year; except that the first such annual adjustment shall be equal to the percentage change determined from the CPI for the year ending on March 31, 1997 after comparing it to the CPI ending on March 31, 2004. TENANT has deposited the sum of Six Thousand Dollars (\$6,000.00) as security for the performance of the terms of this Lease, which Security Deposit shall be governed by the terms of Paragraph 4 of this Lease.
- (b) Simultaneously with each such payment, TENANT agrees to pay to LANDLORD any sales, use or excise tax imposed or levied against rent or any other charge or payment required hereunder to be made by TENANT which tax has been imposed or levied by any governmental agency having jurisdiction thereof, this shall include any new taxes imposed during the term of this Lease which are in addition to or (except for additional taxes assessed or imposed solely against or, on, the Bight by the City of Key West, Florida) in substitution for any such tax which is presently imposed.
- (c) The estimated Common Area Charges for the first Lease Year are \$7,614.84 payable in advance, in Monthly Installments of \$634.57 each month together with TENANT's monthly remittances of Base Rent. Actual Common Area Charges will be determined, and necessary adjustments will be made at the expiration of each Fiscal Year of LANDLORD in accordance with this Section. As used aforesaid, the term "Common Area Charges" generally means costs incurred for on-going day-to-day maintenance and ordinary repair of the Common Areas.

In no event will Common Area Charges include Capital Expenditures and Capital Equipment. As used aforesaid, the term Capital Expenditures and Capital Equipment shall mean those expenditures which, in accordance with

governmental accounting standards, are not fully chargeable to current account in the year the expenditure is incurred and any improvements or items of equipment which, in accordance with generally accepted accounting principles, may be deemed to be capital improvements or items of capital equipment, as the case may be.

"Common Areas" means all exterior areas, equipment, signs and facilities in the Bight, (excluding out lots and parking facilities or lots, not located in the Bight as of the date hereof), as provided by LANDLORD for the common use and benefit of occupants of the Bight. The Common Areas are depicted on Exhibit "B" attached hereto and made a part hereof.

These charges are only estimates. The TENANT shall be responsible for all Common Area Charges actually incurred on a pro rata assessment basis ("TENANT's Proportionate Share") determined as a fraction, the numerator of which shall be the leased Floor Area of the Demised Premises initially, 9,212 square feet, and the denominator of which shall be the total gross leasable area comprising the Key West Bight Property, initially 64,970 square feet. Any increase in the Common Area Charges shall result in an increase in the TENANT's share of the Common Area Charges. In the event the total gross leasable area of the Bight or the Common Areas of the Bight are increased, TENANT's Proportionate Share (not necessarily the dollar amount owed) shall be reduced effective the date of such increase. In the event the Common Areas or total gross leasable area are decreased, Tenant's Proportionate Share (not necessarily the dollar amount owed) shall be increased effective as of the date of decrease. Common Area Charges, assessed after the base year shall not increase in any given year by more than 5% of the previous year's Common Area Charges by account category as established Schedule "A," however, TENANT's Proportionate Share of Real Estate Taxes and Insurance Premiums shall not be capped as provided for Common Area Charges. The base year for the purpose of limiting increases in Common Area Charges shall be October 1, 1995 to September 30, 1996 ("base year"). This limitation shall apply only to those categories of services included in the base year's Common Area Charges; provided, however, that additional categories for common area maintenance that were not included in the base year must be unforeseen, and; any categories charged for, that are not included in the base year's charges shall not be limited by the five percent (5%) cap in the initial year in which they are charged but thereafter such additional categories of charges shall be subject to the cap limitations. LANDLORD's Fiscal Year shall be defined as the Fiscal Year for the City of Key West, Florida. As to LANDLORD's successor's or assigns, the term "Fiscal Year" may be re-defined to mean the calendar year.

Common Area Charges shall include any and all expenses reasonably incurred in the operation and maintenance of the Bight property Common Area including management and administrative fees. The Common Area Charges are based on

the Estimated Schedule of Common Area Charges attached hereto as Schedule "A".

Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT's Proportionate Share of Common Area Charges, in monthly installments as specified herein. Such installments shall be due and payable on the 1st day of each calendar month during the Term. The installment set forth herein represents TENANT's Proportionate Share of the estimated Common Area Charges at the Commencement Date. Thereafter, LANDLORD shall, prior to the beginning of each Fiscal Year, estimate the expected Common Area Charges for the coming Fiscal Year and TENANT's Proportionate Share thereof, 1/12th of which shall constitute the Monthly Installments for such year; except that TENANT's Proportionate Share of such expenses shall be reduced if the gross leasable area of the Bight is increased. Within 90 days after the end of each Fiscal Year, LANDLORD shall calculate the actual Common Area Charges paid or payable during the prior Fiscal Year, and there shall be an adjustment between LANDLORD and TENANT so that LANDLORD shall receive the actual amount of TENANT's annual Proportionate Share for said year. If TENANT's Proportionate Share was less than the amount paid by TENANT during the prior year, LANDLORD shall, at its option, pay TENANT the difference between the amount received and the amount actually due, or credit such difference until paid in full against TENANT's next succeeding installments (except if TENANT's Lease is to expire in the ensuing Lease Year, in which case LANDLORD shall refund TENANT the over payment). If TENANT's Proportionate Share is greater than the amount paid by TENANT during the prior year, TENANT shall pay LANDLORD the difference between the amount paid by TENANT and the amount actually due upon LANDLORD billing TENANT for same. LANDLORD agrees to keep, at its principal office, records relating to said Common Area Charges. TENANT shall have the right to audit said records for the sole purpose of ascertaining the correctness of said Charges. Such audit shall be made during normal business hours; not unreasonably interfere with LANDLORD's office operations; shall be performed by an individual CPA or CPA firm designated by TENANT, shall not be made more often than once during each Fiscal Year, and shall be limited to the preceding Fiscal Year. If TENANT desires to audit said records as aforesaid, TENANT shall notify LANDLORD 30 days in advance thereof, commence said audit within 60 days of said notice, and once commenced, diligently complete the same. If any such audit shows the amount of such charges to TENANT was overstated, LANDLORD shall refund any such overcharge and pay for the audit if TENANT was overcharged by five percent (5%) or more.

In addition to Common Area Charges, TENANT shall pay TENANT's Proportionate Share of the Real Estate Tax Expense, which shall include all real estate taxes and assessments both general and special imposed by federal, state or local governmental authority or any other taxing authority having jurisdiction

over the Bight Property against the land, buildings, store rooms, Common Areas and all other improvements within the Bight Property (as shown on Exhibit "C") (excluding any Public Area which will not be taxed and excluding the Marina), together with any and all expenses incurred by LANDLORD in negotiations, appealing or contesting such taxes and assessments provided such expenses shall be reasonable and actually paid to third parties not associated with LANDLORD. If, by virtue of any application or proceeding brought by or in behalf of LANDLORD, there shall be a reduction of the assessed valuation of the land and/or buildings comprising the Bight or for any Fiscal Year which affects the Real Estate Taxes, or part thereof, for which Additional Rent has been paid by TENANT pursuant to this Paragraph, such Additional Rent payment shall be recomputed on the basis of any such reduction and LANDLORD will refund to TENANT any sums paid by TENANT in excess of the recomputed amounts, less a sum equal to TENANT's proportionate share of all reasonable costs, expenses, and fees, including, but not limited to, reasonable appraisers' and attorneys' fees incurred by LANDLORD in connection with such application or proceeding. Such refund will be made within ninety (90) days after receipt by LANDLORD of a tax refund.

Real Estate Tax Expense shall not include any additional charges or penalties incurred by LANDLORD due to late payment of Real Estate Taxes. In the event that any of the public area excluded later becomes taxable or is determined to be taxable then it shall be included for purposes of determining TENANT's proportionate share.

TENANT's Proportionate Share of Real Estate Taxes shall be paid in monthly installments together with TENANT's remittances of the Common Area Charges provided for herein. The 5% cap limitation provided for in Section 3(c) shall not be applicable to this particular common area charge. Real Estate taxes shall not include any taxes based on increases in assessed value due to:

- (i) capital improvements made by LANDLORD to the Public Areas and the Marina;

TENANT shall pay TENANT's Proportionate Share of LANDLORD's Insurance Expenses which shall include all reasonable and customary insurance premiums incurred by the LANDLORD in insuring the Upland Bight Property including hazard and liability insurance for any and all buildings, improvements and common areas. Landlord's insurance for the Bight is and shall remain, throughout the term at least, what is described on Schedule A attached hereto and made a part hereof.

TENANT's prorated share of Insurance expenses shall be paid as part of the Common Area Charges provided for herein. The 5% cap limitation provided for in Section 3(c) shall not be applicable to this particular common area charge.

Should any governmental taxing authority acting under any present or future law, ordinance or regulation, levy, assess or impose a tax, excise and/or assessment (other than an income, inheritance, or franchise tax for which TENANT shall not be responsible) upon or against the rentals payable by TENANT to LANDLORD, whether by way of substitution for, or in addition to, any existing tax on land and buildings or otherwise, or any other substitute tax, the proceeds of which are to be used to fund the same governmental functions as were funded by ad valorem taxes, TENANT shall be responsible for and reimburse LANDLORD for the amount thereof as the case may be, as Additional Rent, seven (7) days before the date that any penalty or interest would be added thereto for non-payment or, at the option of LANDLORD, the same shall be payable in the manner provided for in the preceding paragraph.

- (d) In addition to the foregoing rent, TENANT agrees to pay LANDLORD as Percentage Rent a sum equal to five percent (5%) multiplied by an annual Gross Sales per calendar year in excess of an amount to be calculated annually by dividing the then current Annual Base Rent by .05 (the "Percentage Base"). Within twenty (20) days following the end of each Lease Year of the Lease, TENANT shall provide LANDLORD with an accurate and complete copy of the State of Florida Department of Revenue, Sales and Use Return Form DR-15 (or such forms as the State of Florida shall hereafter substitute for said form) showing the full amount of TENANT's Gross Sales from the Premises during the immediately preceding Lease Year and a certification from TENANT's CPA that all deductions from Gross Sales are true and accurate and comply with the terms of this Lease. Tenant's payment of Percentage Rent shall be due Landlord no later than thirty (30) days from the expiration of each Lease Year. TENANT is subject to a Fifty Dollar (\$50.00) late submission penalty should TENANT not furnish to LANDLORD copies of Form DR-15 by the twentieth (20th) day of each new Lease Year. If by the end of any such preceding year of the Lease, the Gross Sales in the Premises during such Lease Year exceeded the Percentage Base, TENANT shall pay to LANDLORD, at the time of delivery of said statement, an amount equal to the percentage rent times the Gross Sales exceeding the Percentage Base. The term "Lease Year" shall mean the period of time from April 1 to March 31 of each calendar year.
- (e) "Gross Sales" shall mean the amount of sales of all food, beverage and merchandise sold on site from the Premises by TENANT or any sub-tenant, or licensee. TENANT may deduct from Gross Sales: (i) any refunds to customers, or discounts to customers or employees provided they have been included in Gross Sales; (ii) the amount of any sales tax levied upon sales and payable over to the appropriate governmental authority; and (iii) sales of mail-order products in accordance with the terms of this paragraph. Sales of mail-order products shall be defined as a sale of goods or food made through a catalogue, or by telephone, or accomplished solely through the U.S. Postal

Service or any mail, express mail or delivery service; (iv) off-Premises sales or catering of goods including, without limitation, goods or foodstuffs sold at festivals, or off-Premises generally. Tenant shall be permitted to deduct mail-order products, catering and off-premises sales from Gross Sales to the extent the same in the aggregate do not exceed ten percent (10%) of annual Gross Sales sold at the Premises. All Gross Sales relating to mail-order, catering and off-premises sales in excess of ten percent (10%) of annual Gross Sales shall be included in the definition of Gross Sales for purposes of determining Tenants Percentage Rent. As used aforesaid, the term "off-premises," shall be defined as sales derived from events or occurrences located outside the Bight.

TENANT agrees to keep, at its principal office, records in accordance with generally accepted accounting practices, in which said Gross Sales shall be recorded. Such records shall be open for inspection during business hours with the prior written request of LANDLORD, by a certified public accountant engaged by LANDLORD or at LANDLORD's option, LANDLORD's Finance Director, who may if desired by LANDLORD review TENANT's records of Gross Sales and certify to LANDLORD as to the accuracy of TENANT's reported amount of Gross Sales from the Premises. Such CPA shall not be entitled and the LANDLORD shall not be entitled to remove or copy TENANT's records of Gross Sales from the Premises. LANDLORD and TENANT shall abide by the same procedure and time constraints governing of LANDLORD's Common Area Charges for LANDLORD's CPA to certify the accuracy and completeness of TENANT's Percentage Rent remittances. TENANT's records shall be open for inspection by LANDLORD or its agents, including accountants retained for that purpose, during reasonable business hours for the Term and for at least 3 years thereafter. To audit TENANT's books to verify Gross Sales for any Lease Year, LANDLORD must notify TENANT in writing of its intention to audit TENANT's records for such Lease Year, no more than ninety (90) days after the expiration of the Lease Year in question, or waive its right to audit for that Lease Year. In the event that TENANT is audited by a governmental agency, LANDLORD will have the right to audit TENANT's books to verify Gross Sales for the same time period that is the subject of the governmental audit. If any audit shows that the amount of Gross Sales on TENANT's statement was understated by more than 1% for any year, then TENANT (in addition to paying the percentage rent due for such understatement) shall pay to LANDLORD the reasonable cost of the LANDLORD's audit. In the event of litigation and solely in connection with such litigation, LANDLORD may photocopy TENANT's records of gross sales.

- (f) In addition to the foregoing rent, all other payments to be made by TENANT shall be deemed to be and shall become Additional Rent hereunder whether or not the same be designated as such and it shall be due and payable within ten (10) days of written demand and itemization of the charges due together with interest thereon at the highest rate permissible by law from due date until the date it is paid. The

LANDLORD shall have the same remedies for TENANT's failure to pay said Additional Rental as for non-payment of rent. LANDLORD at its election, but not without prior written notice of its intention to act for the account of TENANT, which notice shall provide TENANT fifteen (15) days in which to cure the alleged failure to perform or failure to pay money (except in cases of emergency, where no prior notice is required, and except for non-payment of Base Rent which shall be governed by Paragraph 11 hereof) shall have the right to pay or do any act which requires the expenditure of any sums of money by reason of the failure or neglect of TENANT to perform any of the provisions of this Lease, and in the event LANDLORD shall, at its election, and after notice as provided aforesaid, pay such sums or do such acts requiring the expenditure of monies, TENANT agrees to pay LANDLORD, upon demand, all such sums, and the sums so paid by LANDLORD and any reasonable expenses incurred by LANDLORD in the payment of such sums together with interest thereon at the highest rate permitted by law from their due date through the date they are paid by TENANT shall be deemed additional rent and shall be payable and collectible as such. Rent shall be made payable to: The City of Key West, c/o Key West Bight Property Manager, 201 William Street, Key West, Florida 33040.

4. **SECURITY** - TENANT has deposited previously with the LANDLORD the sum of SIX THOUSAND DOLLARS (\$6,000.00) the receipt of which is hereby acknowledged, which sum shall be retained by LANDLORD as security for the payment by TENANT of the rents herein agreed to be paid by TENANT and for the faithful performance by TENANT of the terms, conditions and covenants of this Lease. Tenant may, if it so elects, provide Landlord with a Certificate of Deposit conditionally assigned to Landlord as security from a federally insured bank in the amount of the Security Deposit to be held by Landlord in accordance with the terms of this Paragraph whereupon Landlord shall refund the amount of \$6,000.00 held as a cash security deposit to Tenant. It is agreed that LANDLORD, at LANDLORD's option, may at any time apply said sum or any part thereof toward the payment of the rents and any other sum payable by TENANT under this Lease, and/or toward the performance of each and every TENANT's covenants under this Lease, but such covenants and TENANT's liability under this Lease shall thereby be discharged only pro tanto; that TENANT shall remain liable for any amounts that such sum shall be insufficient to pay; that LANDLORD may exhaust any or all rights and remedies against TENANT before resorting to said sum, but nothing herein contained shall require or be deemed to require LANDLORD to do so; that, in the event this deposit shall not be utilized for any of such purposes, then such deposit shall be returned by LANDLORD to TENANT within sixty (60) days after the expiration of the term of this Lease except as provided otherwise below. TENANT shall deposit with LANDLORD such additional sums which may be necessary to replace any amounts expended therefrom by LANDLORD pursuant to the provision hereof, so that there shall always be a security deposit in the sum first set forth above. The Security deposit provided for herein shall be held by the LANDLORD in a non-interest bearing account and may be co-mingled by the LANDLORD at the LANDLORD's sole discretion.

5. **USE OF THE PREMISES** - TENANT shall be entitled to use the Premises for a lifestyle restaurant and bar.

TENANT further agrees:

A. To operate its Business pursuant to the reasonable standards of its Business category, maintaining a substantial stock of appropriate merchandise on display, with sufficient personnel to service its trade.

B. With respect to the Bight, not to display any merchandise, solicit business or distribute advertising material beyond the Premises nor in any manner use any part of the Common Areas for purposes other than for their intended common use and not to obstruct any part thereof.

C. Except as contemplated under Paragraph A above and consistent with the Use provision of this Lease, not to display any banners, pennants, window signs, balloons, or similar temporary advertising media on the exterior of the Premises.

D. Not to commit waste in the Premises and to keep the Premises and immediate adjacent areas including, without limitations, adjacent sidewalks, in a safe, neat, clean and orderly condition and to maintain and repair any lighting or signs under any canopy immediately in front of the Premises except that TENANT shall have no obligation to maintain or "police" the Common Areas.

E. Not to use the Premises or permit business to be conducted in any manner which violates any law, ordinance or constitutes a nuisance; for lodging purposes; that may injure the reputation of the Bight or annoy, inconvenience or damage its patrons or other TENANT's; or that would constitute an extra-hazardous use or violate any insurance policy of TENANT, LANDLORD or any other TENANT in the Bight or increase the cost thereof.

F. To keep all garbage, refuse and solid waste in the Dumpster Area as shown on Exhibit "A", which shall consist of three (3) five (5) yard commercial dumpsters. As of the Lease Commencement Date, the Dumpster Area shall be reserved for the exclusive use of TENANT. No other TENANT or the Marina shall have any right to use the Dumpster Area for disposal of garbage. TENANT may, if it becomes necessary in TENANT's sole opinion, lock access or otherwise close off the Dumpster Area to prevent unauthorized use by others. LANDLORD shall provide TENANT with exclusive use of the Dumpster Area without additional rent or charge therefor. TENANT agrees not to burn or permit any burning of garbage or refuse on the Premises or any part of the Bight.

G. TENANT shall contract directly with the pertinent governmental authority or disposal company and shall be responsible for all fees and costs of removal and disposal of solid waste, garbage, and refuse, including but not limited to, impact fees and dumpster rental as pertains to TENANT's Dumpster Area as shown on Exhibit "A". TENANT shall indemnify, save harmless and defend LANDLORD from and against any loss, claim, injury, damage or expense arising out of or related to the generation, storage, or removal or disposal of TENANT's garbage, refuse or solid waste.

H. To use its best efforts to cause all trucks serving the Premises to load and unload from the hours of 12:00 a.m. to 11:00 a.m. and not to permit such trucks to service through the front entrance of the Premises except when no other entrance is available.

I. To take no action that would: (i) violate LANDLORD's contracts if any, affecting the Bight of which LANDLORD has provided TENANT written notice; or (ii) cause any work stoppage, picketing (or cause any manner or interference with LANDLORD or other TENANT's, occupants, customers or any person lawfully in and upon the Bight).

J. Not to use amplified music or any other noise making machinery or devices that in LANDLORD's reasonable determination is harmful to the building or disturbing to other TENANTS. Nor shall TENANT unreasonably use any loud speakers televisions or other devises in a manner so as to be inconsistent with the character of the Bight, except in accordance with the Amplified Music Rider attached hereto and made a part hereof.

K. To abide by and observe all reasonable rules and regulations established from time to time by LANDLORD and LANDLORD's insurance carrier with respect to the operation of the Bight and its Common Areas.


L. Not to conduct any auction, fire, bankruptcy or selling-out sale on or about the Premises except in strict compliance with City Code, Chapter 105.

LANDLORD further agrees that:

(1) All utilities necessary for TENANT's business operations at the Premises shall be brought to the perimeter of the Premises at LANDLORD's sole cost in a timely manner so as not to delay unreasonably Tenant's improvements as contemplated by the terms of Paragraph 18 of this Lease.

(2) TENANT's patrons shall be entitled to have the same parking rights and privileges with respect to "validated" parking as extended to other tenants or occupants of the Bight.

(3) Throughout the Term, except in cases of emergency or other extenuating circumstances beyond LANDLORD's control, or as otherwise provided herein LANDLORD will not cause or unreasonably permit an interruption of convenient vehicular and pedestrian traffic flow between the Premises and the Common Areas.

 (4) Subject to LANDLORD's sole discretion, TENANT may use the plaza area for twelve (12) events during a calendar year which plaza is shown on the Wilson Miller Master Plan situated between the Lost Reef Dive Shop and Net Shop and as shown in the cross-hatched area depicted on Exhibit "A," attached hereto and made a part thereof, without additional rent or charge (other than the Rent and percentage Rent imposed by this Lease) for certain special events sponsored or conducted by TENANT; provided TENANT abides by LANDLORD's reasonable regulations in connection therewith, complies with applicable local

ordinances and obtains prior consent from LANDLORD. Revenue generated from such events shall be included in the definition of Gross Sales for purposes of determining Percentage Rent.

(5) That development of the waterfront immediately behind TENANT's premises will not be used by LANDLORD or permitted or suffered to be used by LANDLORD for live-aboard or commercial vessels or water sports operators, including, without limitation, jet ski or other water sport operations. LANDLORD shall not permit or suffer the use of the structure presently known as the Turtle Cannery as shown on Exhibit A, to be used for any commercial activity which would interfere with TENANT's operation, or which would diminish enjoyment by TENANT's invitees or guests by creating loud noise or offensive smells or sights, or otherwise constitute a nuisance.

(6) TENANT has no obligation to provide public access through the Premises except for its own customer use; notwithstanding and prior practices.

(7) During the term hereof, LANDLORD, shall not permit the use or operation of any space in Lands End Village other than the space leased to TENANT to be used or operated as a stand-up seafood restaurant, a take-out seafood service, a kiosk, wagon or cart serving seafood or a snack bar or other free-standing concession or kiosk when seafood generally comprises the menu offerings of any of the foregoing by twenty-five percent (25%) or more and the square footage of the operator is five hundred (500) feet or less.

6. **COVENANT OF QUIET POSSESSION** - So long as TENANT pays all of the rent and charges due herein, TENANT shall peaceably and quietly have, hold, and enjoy the Demised Premises throughout the term of this Lease without interference or hindrance by LANDLORD or any person claiming by, through, or under LANDLORD.

7. **TENANT'S DUTY TO PAY INSURANCE PREMIUMS** - TENANT covenants and agrees with LANDLORD that TENANT will pay the premiums for all insurance policies which TENANT is obligated to carry under the terms of this Lease and will deliver the said policies or certificates in respect of same and the evidence of payment to the LANDLORD. TENANT shall carry liability insurance in amounts of \$1,000,000.00/\$1,000,000.00. TENANT shall carry liability insurance which provides coverage for any incidents arising out of TENANT's use of the Demised Premises. TENANT shall be required to carry insurance covering any property whether it be inventory or furniture and fixtures or any other Property belonging to TENANT. Any consignment agreement used by TENANT must provide that consignor acknowledge that the LANDLORD does not have any liability whatsoever for any damage which may be done to items left in the Demised Premises on consignment. The TENANT must provide the LANDLORD with a copy of any consignment agreement used by TENANT regarding Demised Premises. LANDLORD shall not be responsible for damage to any property belonging to TENANT or consignor. TENANT completely indemnifies the LANDLORD with regard to any claims made by any consignor for any reason. TENANT shall name LANDLORD as an additional insured under the policies it is required to carry pursuant to the terms of this Lease.

8. **ASSIGNMENT AND HYPOTHECATION** - TENANT shall have the right to assign the Lease only to a qualified tenant and with the written consent of the LANDLORD, which consent shall be based upon consideration of the proposed tenant's background, current financial statements, and expertise in the restaurant business. In the event of such an assignment by the Tenant to a qualified tenant, the annual Base Rent for the assignee shall be increased to an amount equal to five percent (5%) of the prior year's Gross Sales. TENANT may not sublet the Premises or any part thereof.

Any assignment or sub-letting, even with LANDLORD's consent shall not relieve TENANT from liability for payment of Rent or from the obligation to keep and be bound by the agreements of this Lease. The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease or to be consent to the assignment for the benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior consent of LANDLORD. In the event TENANT wishes to assign this Lease and LANDLORD consents to such assignment, LANDLORD may charge a fee in the amount of 5% of the current Annual Base Rent

If TENANT is a corporation, then a sale or transfer of a controlling interest in the corporation by sale of stock or otherwise, shall constitute an assignment for purposes of this provision; provided however, that a transfer of shares in the Tenant's corporation resulting from, or in connection with, death or incapacity shall not be deemed to constitute an assignment of this Lease.

9. **SUBORDINATION** - This Lease, and all rights of TENANT hereunder, are and shall be subject and subordinate to all mortgages, bond indentures and any other financing instruments (hereinafter referred to as security agreements) which may now or hereafter affect the Demised Premises and to each and every advance made or hereafter to be made under such security agreements and to all renewals, modifications, replacements and extensions of such security agreements and spreaders and consolidations of such security agreements. This paragraph shall be self operative and no further instrument of subordination shall be required to make it effective, however, TENANT shall promptly execute and deliver any instrument reasonably requested to evidence such subordination.

If the holder of any such security instrument shall succeed to the rights of LANDLORD under this Lease, then at the request of such party so succeeding to the LANDLORD's rights and upon such successor LANDLORD's written agreement to accept TENANT's attornment, TENANT shall attorn to such successor LANDLORD and will execute such instruments as may be necessary or appropriate to evidence such attornment. Upon such attornment, this Lease shall continue in full force and effect as if it were a direct Lease between the successor LANDLORD and TENANT upon all the terms, conditions, and covenants as are set forth in this Lease and shall be applicable after such attornment.

TENANT shall deliver to LANDLORD or the holder of any such security instrument or auditors, or prospective purchaser or the owner of the fee, when requested by LANDLORD, a certificate to the effect that this Lease is in full force and that LANDLORD is not in default

therein, or stating specifically any exceptions thereto. Failure to give such a certificate within ten (10) business days after written request shall be conclusive evidence that the Lease is in full force and effect and LANDLORD is not in default and in such event, TENANT shall be estopped from asserting any defaults known to TENANT at that time.

LANDLORD shall deliver to TENANT a Non Disturbance Agreement within ten (10) days of full execution of this Lease and within ten (10) days of further encumbrances of the Premises. The Non-Disturbance Agreement shall apply to all mortgages now or hereafter placed against the Premises or Bight and to all renewals, modifications, replacements, and extensions thereof.

10. **CONDEMNATION CLAUSE**

A. It is further understood and agreed that if at any time during the continuance of this Lease the legal or equitable title to the demised real estate or the improvements of building or buildings located thereon or any portion thereof be taken or appropriated or condemned by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings and such abatement of the fixed rent and other adjustments made as shall be just and equitable under the circumstances. If the LANDLORD and the TENANT are unable to agree upon what division of the condemnation award, abatement of fixed rent, or other adjustments are just and equitable within thirty (30) days after such award has been made, then the matters in dispute shall, by appropriate proceedings, be submitted to a court having jurisdiction of the subject matter of such controversy for its decision and determination of the matters in dispute. If the legal title to the entire Premises be wholly taken by condemnation, or if the portion taken will prevent the Premises from being used for the purpose the TENANT intends, this Lease shall be canceled without effecting Tenant's equitable entitlement to the award.

B. In general, it is the intent and agreement of the parties that upon condemnation, the parties hereto shall share in the condemnation award to the extent that they would be entitled to receive compensation and damages under the Florida law for the depreciation, damage, or destruction of their interests by the exercise of the right of eminent domain. In no event shall TENANT be permitted to receive a share based on the value of the land or buildings except if TENANT has expended its own funds in connection with any of the improvements made to the land or buildings.

11. **DEFAULT CLAUSE**

A. It is further covenanted and agreed by and between the parties hereto that in case at any time default shall be made by the TENANT in the payment of any of the rent herein provided for within ten days (10) of the day the same becomes due and payable; or if the TENANT shall fail to pay any of the taxes or assessments herein provided for; or in case of the sale of or forfeiture of said Demised Premises or any part thereof during said demised term for

non-payment of any tax or assessment; or in case the TENANT shall fail to keep insured the building or improvements which are now or which may at any time hereafter be upon said Premises, as herein provided for; or shall fail to spend insurance money, as herein provided for; or if the TENANT shall fail to perform any of the covenants of this Lease by it to be kept and performed; then, in any of such events, and its failure to cure, it shall and may be lawful for the LANDLORD, at its election, to declare said demised term ended and to re-enter upon said Premises, building, and improvements situated thereon, or any part hereof, with process of law.

B. OR, the LANDLORD may have such other remedies as the law and this instrument afford, and the TENANT covenants and agrees that upon the termination of said demised term, at such election of the said LANDLORD, or in any other way, TENANT will surrender and deliver up the Premises and property (real and personal) peaceably, to the LANDLORD, its agent, or attorneys, immediately upon the termination of the said demised term. If the TENANT, its agents, attorneys, or TENANTS shall hold the said Premises or any part thereof, one (1) day after the same should be surrendered according to the terms of this Lease, it may be deemed liable for forcible detainer of said Premises under the statute and shall be subject to eviction or removal, forcibly or otherwise, with process of law.

C. Bankruptcy or Insolvency - If at any time during the term hereof proceedings in bankruptcy shall be instituted against TENANT and which proceedings have not been dismissed within a reasonable time period, and which bankruptcy results in an adjudication of bankruptcy; or if any creditor of TENANT shall file any petition under Chapter X of the Bankruptcy Act of the United States of America, as it is now in force or may hereafter be amended; and TENANT be adjudicated bankrupt, or TENANT makes an assignment for the benefit of creditors; of sheriff, marshal, or constable take possession thereof by virtue of any attachment or execution proceedings and offer same for sale publicly, and such taking and offer for sale is not rescinded, revoked, or set aside within ten (10) days thereafter, then LANDLORD may, at its option, in either of such events, immediately take possession of the Premises and terminate this Lease. Upon such termination, all installments of rent earned to the date of termination and unpaid, shall at once become due and payable; and in addition thereto, LANDLORD shall have all rights provided by said bankruptcy laws relative to the proof of claims on an anticipatory breach of an executory contract. The grace period for the curing of default shall not apply to this event of default.

D. Where the alleged default consists of some alleged violation of any term of this Lease, other than the payments of money, including rent, the LANDLORD may not declare this Lease in default until such violation shall have continued for ten (10) days after the LANDLORD shall have given the TENANT written notice of such violation, and TENANT shall not have undertaken, during said ten (10) day notice period, to cure said violation by vigorous and affirmative action, provided, however, that nothing herein contained shall be construed as precluding the LANDLORD from having such remedy as may be and become necessary in order to preserve the LANDLORD's right and interest of the LANDLORD in the Premises and in this

Lease, even before the expiration of the grace or notice periods provided for in this paragraph, if, under particular circumstances then existing, the allowance of such grace or the giving of such notice would prejudice or endanger the rights and estate of the LANDLORD in this Lease and in the Demised Premises. With respect to the payment of the insurance premiums, the same must be paid at least fifteen (15) days prior to the time when the policies would lapse for the failure to pay premiums thereon, and evidence of such payment given to the LANDLORD without any written notice being required to be served upon the TENANT in connection therewith.

E. All default and grace periods shall be deemed to run concurrently and not consecutively.

F. It is mutually covenanted and agreed that the various rights, powers, options, elections, privileges, and remedies of the LANDLORD contained in this Lease shall be construed as cumulative and no one of them shall be construed as being exclusive of the other or exclusive of any rights or priorities allowed by law.

G. It is further covenanted and agreed by and between the parties hereto that the right given to the LANDLORD in this Lease to collect the rent that may be due under the terms of this Lease by any proceeding under same, or the right to collect any additional rent, money, or payments due under the terms of this Lease by any proceedings under same, or the right given the LANDLORD to enforce any of the terms and provisions of this Lease shall not in any way affect the right of such LANDLORD to declare this Lease void and the terms ended hereby, as herein provided, when default is made in the payment of said rent or when default is made by the TENANT in any of the terms and provisions of this Lease.

H. If at any time, by reason of the failure of the TENANT to keep and perform any covenant or agreement which, under the terms of this lease, the TENANT is bound and obligated to keep and perform, it becomes necessary for LANDLORD to employ an attorney to protect the rights and interests of the LANDLORD in the property demised or to enforce the lease or proceed under it in any particular, then in any of such events, the TENANT will owe and will pay unto LANDLORD all costs of Court and reasonable attorneys fees incurred or expended by the LANDLORD in taking such actions, including actions taken in all trial and appellate courts.

In any action or proceeding arising under or in connection with this Lease, the party prevailing in such action or proceeding shall be entitled to payment from the non-prevailing party of its legal fees and costs at all tribunal levels.

12. **TENANT'S DUTY TO KEEP PREMISES IN GOOD REPAIR** - The TENANT covenants and agrees with the LANDLORD that during the continuance of this Lease, the TENANT will keep the Demised Premises and all furnishings brought or placed upon the Demised Premises by TENANT in the condition they were in at the commencement of the term,

ordinary wear and tear accepted by Landlord, and as to improvements to the Demised Premises, TENANT shall maintain such improvements in a good condition, ordinary wear and tear excepted. The TENANT will not suffer or permit any strip, waste, or neglect of any building or such personal property to be committed.

13. **ADDITIONAL COVENANTS OF THE TENANT**

A. The TENANT shall pay for all utilities associated, with the use of the Demised Premises including, but not limited to, water, electricity, sewer, gas and waste, (if applicable). If on the Lease Commencement Date LANDLORD has not provided TENANT with a separate account for electric charges, TENANT shall pay \$2,280.00 per month for electrical charges until such time as LANDLORD has dedicated a separate account for TENANT's electric consumption.

B. The TENANT covenants and agrees with the LANDLORD that no damage or destruction to any building or improvement by fire, windstorm, or any other casualty shall be deemed to entitle the TENANT to surrender possession of the premises or to terminate this Lease or to violate any of its provisions or to cause and abatement or rebate in the rent then due or thereafter becoming due under the terms hereof, unless and to the extent that TENANT cannot reasonably conduct business operations in the Premises in which case TENANT's rent obligation shall be limited to Percentage Rent. Tenant shall be responsible to pay Landlord Base Rent and other charges upon the sooner to occur of (i) substantial completion of interior restoration and achievement of monthly Gross Sales equal to one hundred percent (100%) of monthly Gross Sales for the same month which is twelve (12) months prior to the month of substantial completion of the interior restoration, or (ii) twelve (12) months from the date of substantial completion of the restoration. In the event of casualty, Landlord shall restore, with due speed and diligence, the structure of the Premises and the systems serving the building, including, without limitation, the roof, foundation, walls and the plumbing, sewer, and electrical systems. Tenant shall restore the interior of the Premises to its condition prior to the casualty. Both parties shall use best efforts to perform their respective obligations within a reasonable amount of time from the date of casualty and shall complete all work in a good and workmanlike manner.

If the Lease be canceled for the TENANT's material, uncured default at any time while there remains outstanding any obligation from an insurance company to pay for the damage or any part thereof, then the claim against the insurance company shall, upon the cancellation of the within-lease, be deemed immediately to become absolute and unconditional property of the LANDLORD. In the event of destruction to the Premises by casualty or hazard, LANDLORD will restore the structural portions at the Premises, including without limitation, the roof, walls, building systems and foundation to their condition prior to the casualty and shall bring utilities to the perimeter of the Premises at LANDLORD's expense or from insurance proceeds, as

LANDLORD may elect, provided, however, that only the City of Key West, Florida, as LANDLORD, shall have the right to self-insure.

C. The TENANT shall be responsible for the H-VAC and all air conditioning systems, if any, together with the plumbing and electrical system solely within Demised Premises. With respect to the plumbing, TENANT's obligation shall extend from the interior of the Demised Premises, to the nearest manhole outside the Premises. The LANDLORD is obligated to construct utility lines or upgrade existing utility lines to service the Demised Premises at Landlord's sole expense.

D. The Landlord shall be responsible for maintaining in good repair and condition the structure of the building, including the walls, foundation and exterior of the building. **TENANT shall be responsible for maintaining the roof of the building in good repair and condition and shall have the obligation of replacing the roof in whole or in part as needed.**

E. The TENANT covenants and agrees with the LANDLORD that nothing in this Lease contained shall ever be construed as empowering the TENANT to encumber or cause the LANDLORD to encumber the title or interest of the LANDLORD.

F. The TENANT covenants and agrees with the LANDLORD that, at the termination of this Lease, the TENANT will peaceably and quietly deliver unto the LANDLORD, possession of the Premises and all buildings and improvements located thereon, except for trade fixtures (bar equipment, seating) and all other personalty and equipment, and other personal property owned by TENANT. TENANT shall repair any damage caused to the Premises as a result of the removal of its personal property from the Premises.

G. The TENANT agrees not to make any exterior material, changes or alterations without written approval of the LANDLORD which approval shall not be unreasonably withheld or delayed. Interior alterations which are structural shall require LANDLORD's prior consent, which shall not be unreasonably withheld or delayed. Interior non-structural alterations shall not require Landlord's consent.

14. **LANDLORD'S RIGHT OF ENTRY** - The LANDLORD or its agents shall have the right to enter upon the Premises at all reasonable times to examine the condition and use thereof, provided only that such right shall be exercised in such manner as not to interfere with the TENANT in the conduct of the TENANT's business on said Premises. If the said Premises are damaged by fire, windstorm, or by any other casualty which caused the Premises to be exposed to the elements, then the LANDLORD may enter upon the Premises to make emergency repairs. LANDLORD may enter upon the Premises to make renovations and repairs of a non-emergency nature by giving reasonable notice to the TENANT, and in such a manner as to minimize any inconvenience to both parties.

15. **EQUIPMENT, FIXTURES AND SIGNS** - All furnishings, fixtures, trade fixtures, equipment, and signs used on the Premises by TENANT but provided by LANDLORD, at LANDLORD's expense will, at all times, be, and remain, the property of LANDLORD. All furnishings, fixtures, trade fixtures, equipment and signs used on the Premises by TENANT and provided by TENANT, at TENANT's expense will, at all times, be, and remain, the property of TENANT. In addition, all furnishings, fixtures, trade fixtures, equipment, and signs existing on the Premises as of the commencement date of this Lease, are, and shall remain, the Property of TENANT. Provided that this Lease is in good standing and subject to the LANDLORD's lien for rent, TENANT will have the right to remove any furniture or fixtures provided by TENANT, or any part thereof, from the Premises during the term of this Lease, at the expiration thereof, or within a reasonable time thereafter, provided, however, that TENANT, in so doing, does not cause any irreparable damage to the Premises, and provided further, that TENANT will pay or reimburse LANDLORD for the reasonable expense of repairing damage caused by such removal.

16. The TENANT accepts the Premises and improvements thereon in an as is condition and all improvements and additions shall be at the sole expense of the TENANT subject to LANDLORD's obligation to improve the Bight and Lands End Village generally in accordance with the Wilson Miller Master Plan, as more particularly described in Paragraph 18 of this Lease.

17. **MISCELLANEOUS PROVISIONS** - It is mutually covenanted and agreed by and between the parties as follows:

A. That no waiver of a breach of any of the covenants in this Lease contained shall be construed to be a waiver of all succeeding breach of the same covenant.

B. That time is of the essence in every particular and particularly where the obligation to pay money is involved.

C. That all arrearages in the payment of rent or in the repayment to the LANDLORD of any sums which the LANDLORD may have paid in order to cure a default of the TENANT (as elsewhere herein provided for), shall bear interest from the date when due and payable at the highest rate permitted by law until paid.

D. That no modification, release, discharge, or waiver of any provision hereof shall be of any force, effect, or value unless in writing and signed by the persons who are then LANDLORD and TENANT.

E. That all covenants, promises, conditions, and obligations contained herein or implied by law, or covenants running with the land, shall attach to and be binding upon the heirs, executors, administrators, successors, legal representatives, and assigns of each of the parties to this Lease.

F. That this instrument contains the entire agreement between the parties as of this date, and that the execution hereof has not been induced by either of the parties by representations, promises or understandings not expressed herein, and that there are not collateral agreements, stipulations, promises, or understandings whatsoever between the respective parties in any way touching the subject matter of this instrument which are not expressly contained in this instrument.

G. That when either of the parties desire to give notice to the other or others in connection with and according to the terms of this Lease, such notice shall be deemed given when it shall have been received by Certified mail or hand delivery signed with sufficient postage pre-paid thereon to carry it to its addressed destination as to LANDLORD by the City Manager, and as to TENANT by an officer. Said notice shall be addressed as follows:

AS TO LANDLORD: 201 Williams Street
Key West, Florida 33040

AS TO TENANT: 231 Margaret Street
Key West, Florida 33040
Attn: Mr. Paul Tripp

When the parties on either side (LANDLORD or TENANT) consists of more than one person, notice or default by one of the persons on that side shall constitute notice or default by all of the persons on that side.

H. This Lease and the provisions thereof shall be governed by and construed and enforced in accordance with the laws of the State of Florida.

I. LANDLORD may delegate its decision making authority regarding any provision of this Lease to an Advisory Board.

18. **Rent Credits & Improvements**

(a) Rent credits in the amount of \$2,489.13 per month shall be applied to the TENANTS account thru March 1, 1999 in accordance with the previous lease conditions as amended and approved August 8, 1996 by the Community Redevelopment Authority. The total amount of these credits shall be \$59,739.72, corresponding to the impact fees paid by the TENANT for expansion of the restaurant seating area.

(b) TENANT shall complete, at their own expense, no later than April 1, 1999 the expansion of the outside seating area as presented and approved by the Key West Bight Management District Board March 20, 1996. TENANT shall be responsible for acquiring

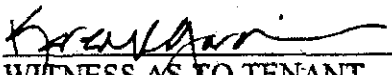
all applicable permits and approvals including but not limited to Historic Architectural Review Committee, Planning Board, City Commission and City Building Department.

19. **AUTHORITY** - The party signing this Lease on behalf of the LANDLORD hereby represents and warrants that he is fully empowered by the City of Key West to execute this Lease.

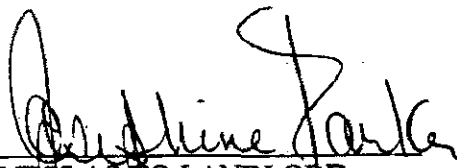
The party signing this Agreement on behalf of the Tenant hereby represents and warrants that he is fully empowered by the Tenant to execute this Lease and to bind the Tenant hereby.

IN WITNESS WHEREOF, the parties hereto have caused the foregoing Lease to be executed on the day and year first above written.

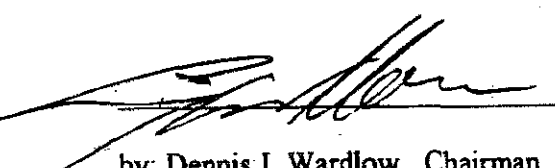
TURTLE KRAALS, INC.


WITNESS AS TO TENANT

BY: 
PAUL TRIPP, PRESIDENT


WITNESS AS TO LANDLORD

THE CITY OF KEY WEST



by: Dennis J. Wardlow, Chairman
Caroline Street Corridor and Bahama
Village Community Redevelopment
Agency

AMPLIFIED MUSIC RIDER

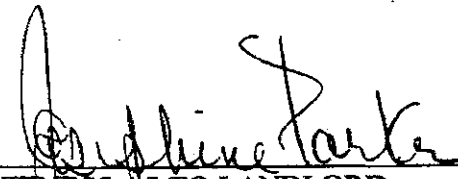
Notwithstanding anything in the Lease to the contrary, the TENANT shall be permitted to have amplified music in the Premises so long as the use of the amplified music complies with the municipal ordinance regulating the use of such music and does not unreasonably disturb or interfere with neighboring TENANT's.

Executed this 25 day of Aug., 1996.

TURTLE KRAALS, INC.


WITNESS AS TO TENANT

BY: 
PAUL TRIPP, PRESIDENT


WITNESS AS TO LANDLORD

THE CITY OF KEY WEST

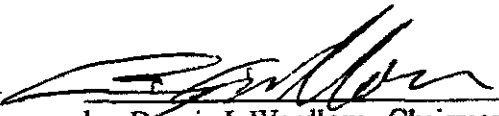
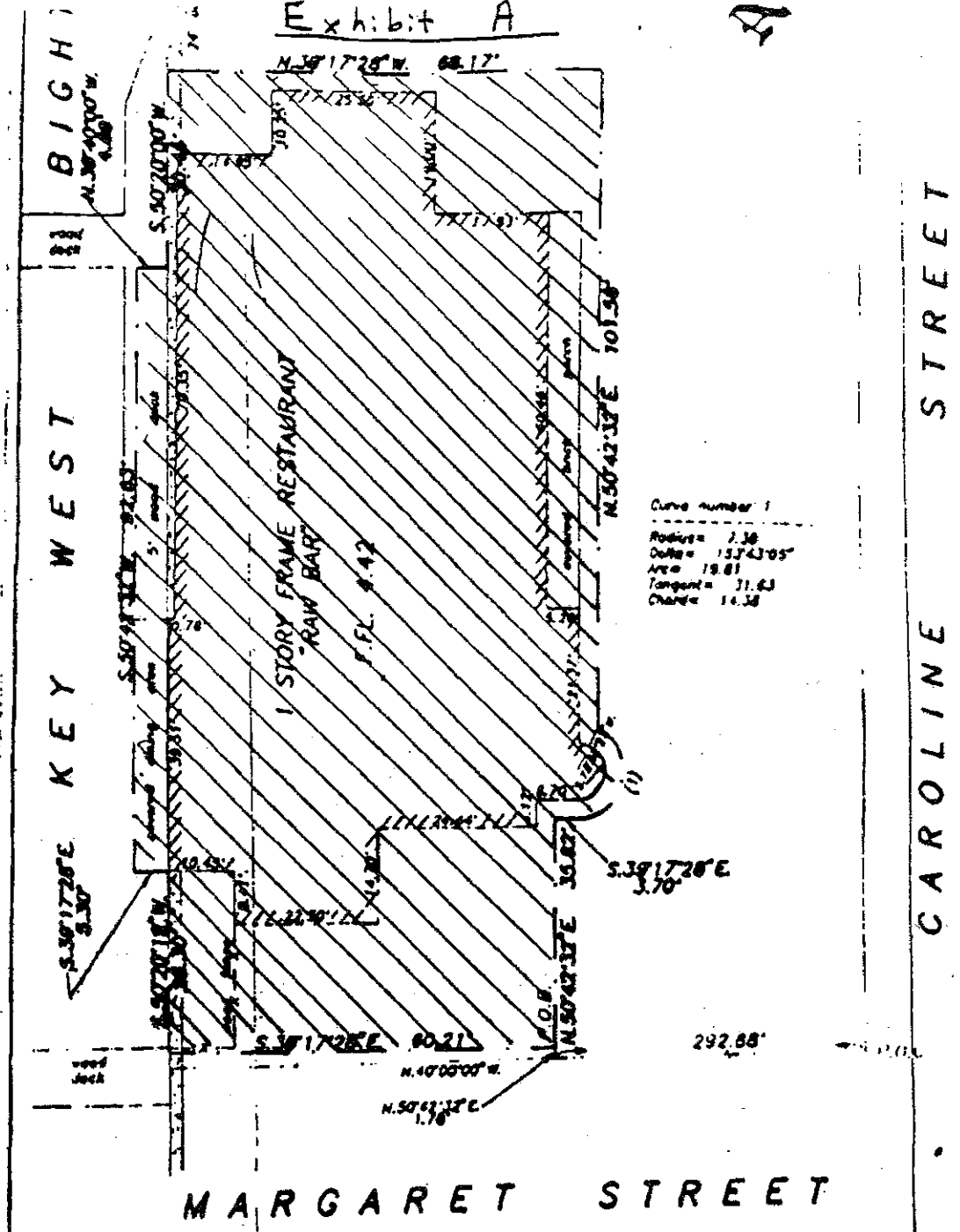

by: Dennis J. Wardlow, Chairman
Caroline Street Corridor and Bahama Village
Community Redevelopment Agency

Exhibit A



Curve number 1
 Radius = 7.38
 Delta = 153° 43' 05"
 Area = 19.81
 Tangent = 31.63
 Chord = 14.38

Sheet 1 of 2

Half Shell Raw Bar Margaret Street, Key West, FL 33040			
Sketch to Accompany legal Description Lease Area		Our No.: 94-384-01	
Scale: 1"=20'	Rel. No.	Flood panel No. 1718 G	Own. By: F.H.M.
Date: 10/26/94		Flood Zone:	Flood Elev.
REVISIONS AND/OR NOTICES			

FREDERICK H. HILDEBRANDT
 ENGINEER PLANNER SURVEYOR

3150 Northside Drive
 Suite 101
 Key West, FL 33040
 (305) 293-0448
 Fax (305) 293-0211

[Handwritten signature]

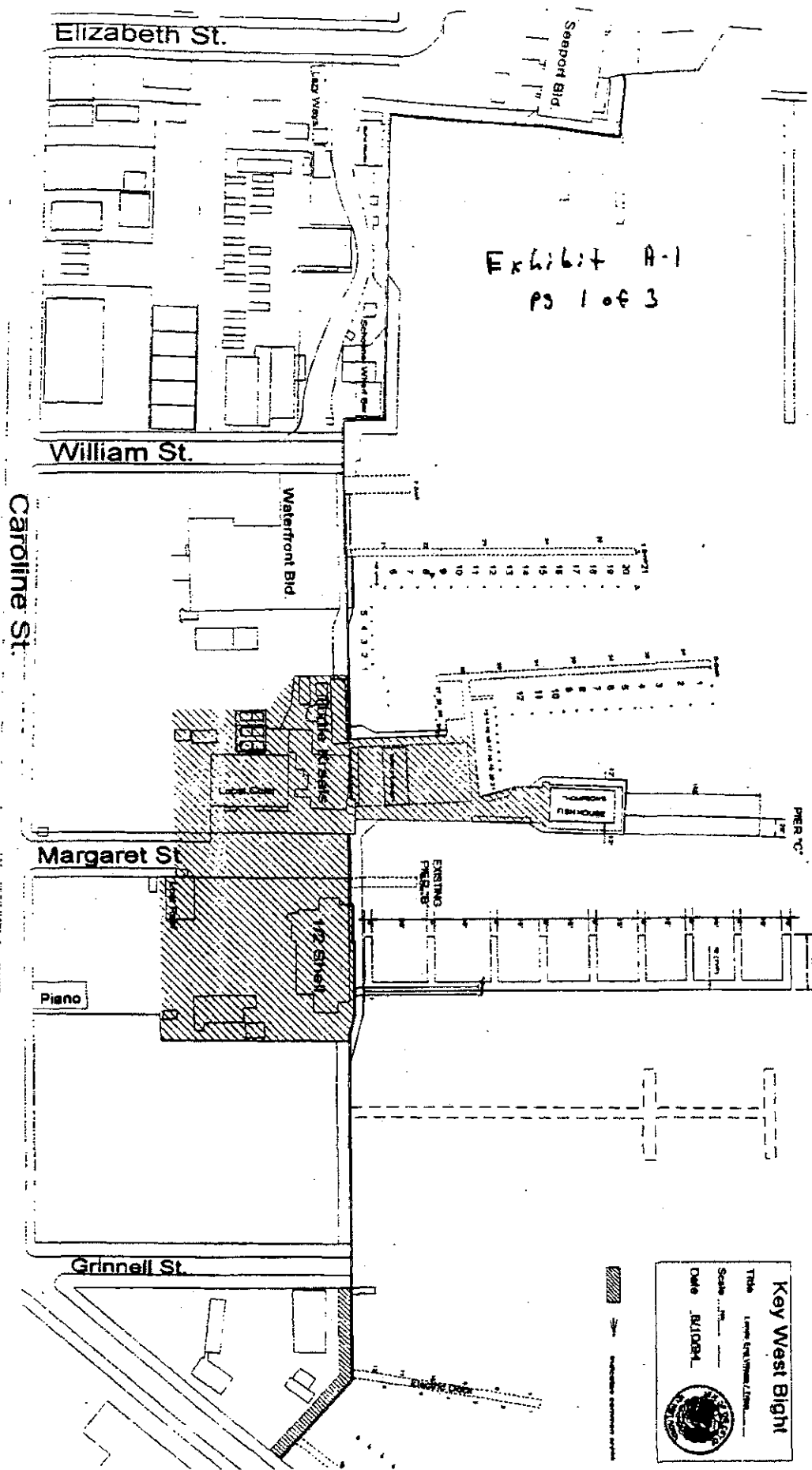


Exhibit A-1
 PS 1 of 3

Handwritten signature or initials.

RESOLUTION NO. 11-283

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA) AUTHORIZING THE SETTLEMENT OF SMITHBURG, INC. V. CAROLINE STREET AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA), CASE NO. 2010-CA-1092-K; AUTHORIZING THE CHAIRMAN OF THE CRA AND CITY MANAGER TO EXECUTE SETTLEMENT DOCUMENTS; PROVIDING FOR AN EFFECTIVE DATE

NOW, THEREFORE, BE IT RESOLVED BY THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY, AS FOLLOWS:

Section 1: That the attached Settlement Agreement is hereby approved, and the Chairman and City Manager are authorized to execute the final settlement documents.

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 Agency.

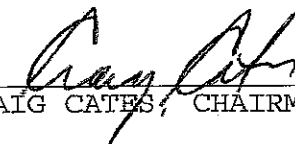
Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 5th day of October, 2011.

Authenticated by the presiding officer and Clerk of the Agency on October 6, 2011.

Filed with the Clerk October 6, 2011.

ATTEST:


CHERYL SMITH, CITY CLERK


CRAIG CATES, CHAIRMAN



OFFICE OF THE CITY ATTORNEY

SHAWN D. SMITH
LARRY ERSKINE
RON RAMSINGH

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

Memorandum

TO: Mayor & Commissioners sitting as the CRA
FROM: Shawn D. Smith, City Attorney
RE: Smithburg V. CRA proposed settlement
DATE: September 21, 2011

Mayor and Commissioners

As you are aware, Smithburg, Inc is the CRA's current tenant at the Turtle Kraals property in the Key West Bight. We have been in litigation with them over common area maintenance (CAM) charges due under their lease agreement. You may recall this issue arose after they were requested to pay, and did pay, a retroactive CAM amount based upon a revised square footage calculation. We agreed that Smithburg would place the difference in the amount between what they claimed was due and what we claimed was due in CAM charges into the registry of the Court pending outcome of the litigation.

We reached a tentative agreement at mediation, subject to your review. The agreement recognizes the validity of the additional CAM charges, less a small reduction in space based upon square footage they lost as a result of changes to the submerged land lease with the State (some space used for tables over the water was involuntarily eliminated). The agreement does provide a rent credit derived in part from the retroactive CAM charge. The rent credit would be taken on a monthly basis through the remainder of the lease term. This rent credit would be offset by additional income the CRA will receive from an amendment to the lease which would allow the CRA to utilize the area behind the restraint for commercial purposes. Right now, the lease prohibits the use of this space for such purposes. The anticipated revenue is nearly identical to the proposed credit. Additionally, upon execution of the agreement, the CRA will receive all monies paid by Smithburg into the Court registry. This amount is currently \$40,000.00.

I recommend you approve the mediated settlement agreement. I'm available to answer any question you may have at your convenience.

Thank you for your time and consideration.

A handwritten signature of Shawn D. Smith in black ink.

Shawn D. Smith

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

SMITHBURG, INC.,
A Louisiana corporation,

CASE NO.: 2010-CA-1092-K

Plaintiff,

v.

**CAROLINE STREET and
BAHAMA VILLAGE COMMUNITY
REDEVELOPMENT AGENCY**, an agency
of the City of Key West, Florida,

Defendant(s).

_____/

MEDIATED SETTLEMENT AGREEMENT

This Mediated Settlement Agreement by and between Smithburg, Inc., a Louisiana corporation ("Smithburg") and Caroline Street and Bahama Village Community Redevelopment Agency, a public body corporate ("CRA") dated this 2nd day of **September 2011**. The parties wish to resolve and fully settle their disputes relating to the Lease and the Litigation. Therefore, in consideration of the mutual covenants herein the parties agree as follows:

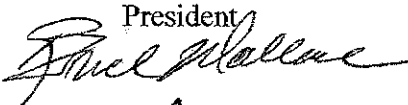
1. All funds presently in the Registry of Court shall be released to Defendant, which currently are approximately \$40,000.00.
2. Defendant shall be entitled to retain all rent and CAM funds paid by Plaintiff to date subject to the terms of this Agreement.
3. Beginning October 1, 2011 Plaintiff's base rent shall be reduced by an amount equal to a reduction in square footage in the leased property caused by elimination of approximately 216 square feet of outside table space.
4. The parties agree that the CAM amount to be paid under the lease shall be based on a square footage figure of 9846 square feet less a credit for a reduction in square footage in the leased property caused by elimination of approximately 216 square feet of outside table space.

5. Plaintiff shall be entitled to receive a credit of \$78,000 (representing a portion of disputed funds paid by plaintiff between 2006 and 2010), to be paid on a pro-rated basis against each month's rent over the remainder of the lease term.
6. Notwithstanding any provision in the lease to the contrary, Defendant may allow the dockage of vessels adjacent to the leased property.
7. The parties stipulate to entry of an order of dismissal with prejudice, each party to bear its own attorney's fees and costs.
8. This Agreement is contingent upon approval of this Agreement by the City Commission of the City of Key West sitting as the Caroline Street and Bahama Village Community Redevelopment Agency.

SMITHBURG, INC.

By: 

President




CAROLINE STREET AND
BAHAMA VILLAGE COMMUNITY
REDEVELOPMENT AGENCY, an agency
of the City of Key West, Florida

By: 

JAMES SCHOLL,
City Manager

Attest: 

City Clerk

2 Sept 2011
Date

October 5, 2011
Date

By: 

SHAWN SMITH,
City Attorney

By: _____

DAVID KIRWAN, Mediator

VIEW, Oct 17, 2012 at 12:28 PM

Oct. 17, 2012

To: Marilyn Wibarger / Key West Bight Board

From: Smithburg, Inc. / Gene Smith

Subj: Transfer of Lease

I have recently been approached by Moro Management, Inc., (Pat Croce) and entered into a contract to purchase Half Shell Raw Bar, LLC and Turtle Kraals, LLC, provided it is approved by the Key West Bight Board and the City Council. Having reviewed the required conditions to assume the leases, I believe Mr. Croce meets all the requirements set by the lease.

It is requested that the Key West Bight Board approve change of ownership.

Thank You,


Gene Smith

Marilyn Wilbarger

From: Pat Croce
Sent: Monday, October 29, 2012 2:19 PM
To: Marilyn Wilbarger
Cc: Tim Broadt; pbatty@spottswood.com Batty; Spottswood Erica Hughes Sterling; a2zgene@gmail.com
Subject: Re: Lease requirements
Attachments: Croce Letter 09-09-11.doc

Marilyn,

Thanks for the insight and information regarding the necessary information to appear before the Bight Board as the assignee to Gene Smith's leases on Turtle Kraals and Half Shell.

My company, Moro Management, which is the entity on the purchase agreement, is a holding company with very little assets.

Therefore, the Disclosure Statement would not be too exciting. However, I am the sole principal of the company and I would personally guarantee the leases. I have attached a letter from my financial manager at Smith Barney that was created to demonstrate to Gene that I had the wherewithal to fulfill my obligation on the purchase agreement prior to his releasing the property's financials.

I hope this personal data is acceptable to you and the city of Key West.

In addition, my ability to operate the two properties of interest can be supported by my F&B operations in Key West. I am the majority shareholder in the Green Parrot Bar, Rum Barrel, Island Dogs, and the newly created Charlie Mac's, and I keep a firm finger on the pulse of management, marketing, and operations.

If you or the city's counsel has any questions, please feel free to contact me. PC

On Oct 29, 2012, at 12:00 PM, Marilyn Wilbarger wrote:

> Hi Pat,

>

> Here is the information we spoke about this morning.

>

> Marilyn D. Wilbarger, RPA, CCIM

>

> City of Key West

> Ph.305-809-3794

> mwilbarg@keywestcity.com

> <Resolution 92-22 20 yr lease CRA.pdf><ORD BACKGROUND CHECK.pdf><DISCLOSURE STATEMENT.doc Lease Renew Ordinance.doc 10.11.doc>