

RESOLUTION NO. 97-426

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED LEASE AGREEMENT BETWEEN THE CITY AND GRM, INC; PROVIDING FOR AN EFFECTIVE DATE

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

Section 1: That the attached Lease Agreement between the City and GRM, 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 Commission.

Passed and adopted by the City Commission at a meeting held this 9th day of October, 1997.

Authenticated by the presiding officer and Clerk of the Commission on November 5, 1997.

Filed with the Clerk November 5, 1997.


DENNIS J. WARDLOW, MAYOR

ATTEST:


JOSEPHINE PARKER, CITY CLERK

LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into this 17th day of November, 1997, by and between **THE CITY OF KEY WEST, FLORIDA**, a municipal corporation of the State of Florida, (the "Lessor") and **GRM ENTERPRISES, INC.**, a Florida corporation, (the "Lessee").

WITNESSETH:

The Lessor hereby leases that certain space at the north end of Duval Street, City of Key West, more specifically described in Exhibit "A" attached hereto ("Premises") for the exclusive purpose of mooring and docking a maximum of two sightseeing boats, ("Vessels") subject to the following terms, conditions and limitations:

1. **TERM.** The period of this lease shall be for ten (10) years to commence on the date of execution of this Lease Agreement. Unless the Lessor is required by law or Resolution of the City Commission to put this lease out for competitive bid upon its expiration, the Lessee shall have a first right to enter into negotiations for a new Lease Agreement, and a right of first refusal in the event that negotiations are unsuccessful. Lessee shall notify the Lessor of its desire for a new lease not later than ninety (90) days prior to the expiration of this Lease Agreement. Absent such mutual written agreement between the parties, this Lease Agreement shall expire at the conclusion of its ten-year term and Lessee shall have no further rights hereunder.

2. **RENTAL.** Subject to increases as provided below, Lessee shall pay Lessor as rent the sum of \$2,500.00 per month, or five percent (5%) of Gross Receipts, whichever is greater, plus applicable sales tax, payable in advance on the first of each month during the term hereof. Specifically, Lessee's gross receipts shall include revenues from all vessels and all other incidental revenues received by Lessee, from the use of operation of the premises and tour and sightseeing operations emanating therefrom. Within twenty (20) days following the end of each month of the term hereof, Lessee shall forward to Lessor an accurate and complete copy of Lessee's 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 Lessee's Gross Receipts from the use or operation of the premises and tour and sightseeing operations emanating therefrom, together with the operation of all sublessees or assignees arising out of the use of the premises or generation of income therefrom under Lessee, during the previous month. Lessee shall pay to Lessor a Fifty-Dollar (\$50.00) late submission fee as additional rent hereunder should Lessee not furnish to Lessor copies of Form DR-15 by the thirtieth (30th) day of any month. If by the end of any such preceding month the Gross Receipts in the premises shall exceed five percent (5%) of \$2,500.00, Lessee shall pay to Lessor, at the time of delivery of the Statement, the amount by which five percent (5%) of such Gross Receipts exceeds the \$2,500.00, previously paid in respect of the previous month's rent, together with applicable sales tax thereon. "Gross Receipts" shall mean the

amount of sales of all merchandise or services sold or rendered at or from the premises by Lessee and all sub-lessees or licensees. Lessee may exclude from definition Gross Receipts the amount of any sales tax levied upon retail sales and payable over to the appropriate governmental authority.

Lessee agrees to keep, at its principal office, records in accordance with generally accepted accounting practices, in which Gross Receipts shall be recorded. Such records shall be open for inspection by Lessor or its agents, including accountant retained for that purpose, during reasonable business hours for the term of this Lease and for at least three (3) years thereafter. If any audit shows that the amount of Gross Receipts on Lessee's statement was understated by more than one percent (1%) for any year, then Lessee (in addition to paying the Percentage Rent due for such understatement) shall pay to Lessor the reasonable cost of the audit.

Any rental payment not received within five (5) days from the due date shall bear interest at the highest rate permitted by law from the sixth day after the due date until the date it is received by the Lessor. In addition, all payments received after the due date shall incur a \$50.00 administrative fee to cover the costs of collecting and processing late payments.

The minimum rent and percentage rent payable by Lessee to Lessor hereunder shall be increased annually for each succeeding calendar year on January 1 of each year during the term hereof commencing January 1, 1999, by a factor equal to the percentage increase, if any, in the Consumer Price Index, All Cities, All Items, from the month of November of calendar years preceding each January 1 adjustment date to the month of October of the calendar year preceding said January 1 adjustment date.

3. **RULES AND REGULATIONS.** The Lessee agrees to strictly execute, comply with and abide by all applicable laws, codes ordinances, rules, regulations, and directives of the Lessor as presently existing and as may be promulgated by Lessor during the term hereof, and it shall be the duty of the Lessee to become and remain informed and familiar with the same as and when promulgated, which laws, ordinances, rules, regulations, and directives are incorporated herein by reference made a part hereof. Failure or refusal to comply with the provisions of this article shall be a default of the terms hereof and cause for termination of this Lease. The Lessor shall give the Lessee fifteen (15) days, notice prior to the adoption of any changes or amendments to its rules and regulations.

4. **PERSONAL PROPERTY.** All personal property placed or moved in or on the Premises above described shall be at the risk of the Lessee or owner thereof, and the Lessor shall not be liable for any damage to or loss of personal property for any act of negligence of any Sub-Lessee or occupant, or of any other person whomsoever.

5. **SAFETY, CORRECTION, ETC.** The Lessee shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations, directives and requirements of the Federal, State, County and City Government and of any and all of

their departments and bureaus, applicable to said Premises for safety and correction, prevention and abatement of nuisances or other grievances, in upon or connected with said Premises and its operation. Lessee shall obtain and maintain all licenses, permits and other approvals necessary to operate its business.

6. **DEFAULT.** The prompt payment of the rent for the Premises upon the terms named, and the faithful observance of the rules, regulations and directives which are by reference made a part hereof, are the conditions upon which the lease is made and accepted, and any failure on the part of the Lessee to comply with the terms of this Lease, or any of said rules and regulations or directives, now in existence or which may hereafter be made shall, at the option of the Lessor, work a forfeiture of the contract, and all of the rights of the Lessee hereunder, and thereupon the Lessor, its agents or employees shall have the right to enter said Premises, and remove all persons and property, if desired, therefrom forcibly or otherwise, and the Lessee hereby expressly waives any and all notice required by the law to terminate tenancy, and also waives any and all legal proceeding to recover possession of said Premises, and expressly agrees that in the event of a violation of any of the terms of this Lease, or rules, regulations or directives, now in existence, or which may hereafter be made, the Lessor, its agents or employees may immediately re-enter the premises and may, if desired, remove all persons and property therefrom in accordance with the law.

7. **COST AND ATTORNEY'S FEES.** Lessee agrees to pay all costs and expenses and a reasonable attorney's fee in the event legal action is taken by the Lessor because of any violation of the terms of this Lease or of any Code section, Ordinance, regulation or rule applicable to the Lessee's use of the Premises including but not limited to those governing the payment of rent.

8. **FIXTURES.** Lessee hereby pledges and assigns to the Lessor the fixtures, and goods and chattels of the Lessee, which shall or may be brought or placed on the premises as security for the payment of the rent herein reserved, and the Lessee agrees that the lien may be enforced by distress foreclosure or otherwise at the election of the Lessor, and does hereby agree to pay all costs and charges therefor incurred by the Lessor.

9. **ENTRY.** The Lessor, or any of its agents, shall have the right to enter the Premises during all reasonable hours, to examine the same as may be deemed necessary for the safety, comfort or preservation thereof, and to determine if Lessee is in compliance with all of the aforementioned rules, regulations, directives and otherwise.

10. **CONDITION OF PREMISES.** Lessee hereby accepts the Premises in the condition they are in at the beginning of this Lease and agrees to maintain said Premises in the same condition, order and repair as they are at the commencement of this term, excepting only reasonable wear and tear arising from the use thereof under this Lease Agreement, and to make good to said Lessor immediately upon demand any damage caused by an act of neglect of the Lessee, or of any agent, guest, passenger or person under the control of the Lessee, and the Lessee shall be liable to the Lessor and

shall forever hold harmless the Lessor from any and all such damage or loss occasioned to the Premises or any of the Lessor's docks, or any of its other properties caused by the acts of negligence of the Lessee or any agents, employee, guest, passenger or person under the control of the Lessee. This Agreement is for the use of the berth space only, such space to be used at the sole risk of the Lessee, and the Lessor shall not be liable for the care or protection of the Vessels, there appurtenances or contents, unless such loss or damage is due to the gross negligence of the Lessor or any agents, employee, or person under the control of the Lessor. There is no warranty of any kind as to the condition of the docks, walks, gangways, ramps or mooring gear nor shall the Lessor be responsible for the injuries to persons or property occurring upon the Lessor's property for any reason.

11. **LIABILITY; INDEMNIFICATION; RELEASE.** It is expressly agreed and understood by and between the parties to this Agreement, that the Lessor shall not be liable for any damage, loss or injury which may be sustained by the Lessee or other persons for any other damage, loss or injury resulting from the carelessness, negligence or improper conduct on the part of Lessee or any agents or employees in or on or about the docks and Premises. Lessee agrees to indemnify, defend and hold harmless Lessor, its officers, employees, and agents from and against any and all liability, actions, claims, costs, expenses, penalties and judgments for damages of law or equity of any nature whatsoever arising, or alleged to arise, out of the use of the contractors, licensees, customers, or invitees, or out of Lessee's or its Sub-Lessee's operation of business or exercise of right conferred by this Lease Agreement. Lessee shall defend Lessor and shall pay all reasonable expenses incurred by Lessor in defending itself, with regard to all damages and penalties Lessor may legally be required to pay as a result of the rights granted hereunder. Expenses shall include all incidental expenses including attorney fees, and shall include a reasonable value of any services rendered by the Office of the City Attorney. The Lessee does hereby forever release and discharge the Lessor, its departments, agencies, agents and authorized personnel from any and all liability that has or may result from or be suffered by the Lessee arising out of or in connection with this Lease.

12. **CLAIMS.** The Lessee shall defend, pay or settle any and all liability, demands and claims by or in favor of any third person including, but not limited to, the Lessee's agents, servants or employees, against the Lessor, its departments, agencies and authorized personnel from any such liabilities, demands or claims asserted by any of the aforesaid, including cost of suit, attorney's fees and any other expenses in connection therewith, and to pay or settle any claims for the injury, loss or damage to personnel or property of or under the control of the Lessor arising out of this contract or the Lessee's operation hereunder.

13. **INSURANCE.** The Lessee shall carry and provide during the term of this contract at Lessee's expense, insurance coverage which will protect the legal liability of Lessor and Lessee to pay of claims for personal injury or death resulting therefrom, on account of injury to persons or property and accidents to third parties or the

public, which might arise out of, or in connection with the conduct of Lessee or Lessee's agents, Sub-Lessees, assignees, invitees or employees. The minimum limits of such policy shall be One Million Dollars (\$1,000,000.00), combined single limit coverage for bodily injury for any person, and One Hundred Thousand Dollars (\$100,000.00), for property damage. Such policy or policies shall carry an endorsement stating that in any suit or action by Lessee's servants, agents or employees, brought against Lessor, which might arise out of the operations and conduct of the business by the Lessee on said Premises, such agents or employees shall be considered members of the public. The insurance policy shall be written by a solvent insurance company in good standing and fully licensed to do business in Florida. The policy shall show the Lessor as a named insured, and shall provide that it cannot be canceled or revoked except after a minimum of thirty (30) days, written notice to Lessor. A true copy of the insurance contract shall be filed with the City Clerk within ten (10) days after execution of this Lease Agreement, and shall be maintained on file throughout the term of this Lease. Lessee's failure to maintain the insurance policy in full force and effect at any time during the Lease Term shall be a default hereunder, and upon such default Lessee shall immediately suspend all lease use and shall provide to Lessor written notice of the default.

The insurance amounts here provided shall not in any way operate to limit or release, or be construed to limit or release, Lessee from any liability to Lessor, or from any obligation to indemnify Lessor as provided herein. Said insurance amounts are minimum requirements, and shall be supplemented by Lessee as necessary to meet its obligations, and to fully indemnify Lessor, as provided in this Lease Agreement.

14. INSOLVENCY. If the Lessee shall become insolvent or if bankruptcy proceedings shall be begun by or against the Lessee before the end of said Term, the lessor is hereby irrevocably authorized at its option to forthwith cancel this Lease, as for a default. Lessee may elect to accept rent from such receiver, trustee or other judicial officer during the term of their occupancy in their fiduciary capacity without affecting Lessor's rights as contained in this contract, but no receiver, trustee or other judicial officer shall ever have any right, title or interest in or to the above described property by virtue of this contract.

15. HEIRS AND ASSIGNS. This contract shall bind the Lessor and its assigns or successors, and their heirs, assigns, administrators, legal representatives, executors or successors as the case may be, of the Lessee.

16. TIME OF THE ESSENCE. It is understood and agreed between the parties hereto that time is of the essence of this contract and this also applies to all terms and conditions contained herein.

17. RIGHTS. The rights of the Lessor under this Lease shall be cumulative and failure on the part of the Lessor to exercise promptly any rights given hereunder shall not operate to forfeit any of the said rights.

18. **SIGNS AND ADVERTISING.** It is hereby understood and agreed that any signs or advertising to be used in connection with the Premises leased hereunder, including any ticket booth, shall be first submitted to the Lessor and any of its Boards, for approval before installation of the same.

19. **ADDITIONAL RENT: TAXES AND OTHER CHARGES.** Should any taxes be imposed upon the Premises involved in this Lease, or upon the owner, Lessor, Lessee, occupant or whomsoever, from any source whatsoever, including but not limited to sales tax, ad valorem tax, and submerged land lease fees the same shall be the responsibility of the Lessee and the Lessee shall pay same promptly when due as additional rent hereunder. Ad valorem real property taxes for the Premises for each calendar year shall be paid by the Lessee in the month of November of the calendar year, and proof of payment of same shall be delivered to Lessor promptly after payment.

20. **MAINTENANCE OF DOCKS.**

- (a) The Lessee agrees to keep the docks clean and free and clear of debris, including the sidewalk area adjacent to the dock.
- (b) The Lessee agrees not to construct anything on or adjacent to the dock, except a ticket booth.
- (c) All improvements to the docks shall remain on the Premises and become property of the Lessor.

21. **LIEN.** The Lessee agrees for itself and any Sub-Lessees and assignees and invitees that the Lessor shall have a lien against the above referenced Vessels, their appurtenances and contents for unpaid sums due or to become due for wharfage, rental, the use of the dock facilities and the provision of necessities or services by Lessor and as security for any damage caused to any docks or property of the Lessor arising out of the use or occupancy of the Premises by the Lessee and all persons claiming rightful use of the Premises by, under or through the Lessee.

22. **ASSIGNMENT.** Lessee shall have the qualified right to assign its interest under this Lease or sublet all or any portion of the Premises; provided however, the Lessee shall not assign this Lease or sublet any portion of the Premises or any manner transfer this lease, or suffer or permit any assignment thereof by operation of law, without the prior written consent of Lessor first having been obtained. Lessor may grant or withhold consent in its complete discretion.

23. **STOCK SALE/TRANSFER.** Lessee represents that no issuance or transfer of stock can be accomplished without unanimous approval of the Board of Directors of Lessee. Lessee further represents that the corporation is authorized to issue one hundred (100) shares of stock; that only fifty (50) shares have been issued, that the fifty (50) shares issued and outstanding are owned jointly by **NORMAN D. ARTMAN and SYLVIA G. ARTMAN.**

24. **PARKING.** City shall allow Lessee to count parking spaces located in City's parking lot at Mallory Square to meet the offstreet parking requirements contained in City Code section 35.06 or its successor ordinance.

25. **ONE VESSEL PRESENT AT DOCK.** Only one sight-seeing boat shall dock at the Premises at any one time. Only one such boat shall remain docked at the premises overnight. The size of the Vessel shall be suitable for the dock.

26. **PREVIOUS LEASE AGREEMENT CANCELED.** The previous Lease Agreement between the parties dated January 11, 1995 and other Lease Agreements in effect between the parties are hereby canceled and shall be of no further force or effect.

IN WITNESS WHEREOF, the undersigned have set their hands and seals as of the date first above written.

CITY OF KEY WEST, FLORIDA

BY:



JULIO AVAEL
CITY MANAGER

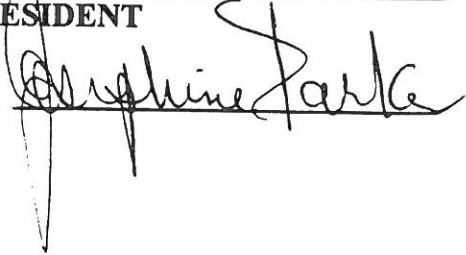
GRM ENTERPRISES, INC.

BY:




PRESIDENT

ATTEST:



WITNESSETH:






Exhibit "A"

THAT CERTAIN space at the North end of Duval Street, City of Key West,
Florida.