

RESOLUTION NO. 13-012

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING THE ATTACHED LEASE BETWEEN THE CRA AND WATERFRONT BREWERY, LLC FOR PREMISES AT 201 WILLIAM STREET; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in September 2012, the Key West Bight Management District Board accepted the lease proposal and all necessary approvals for development of the Waterfront Brewery from the Development Review Committee, HARC, the Planning Board and the CRA Major Development Plan, and recommended approval of the lease agreement by the CRA; and

WHEREAS, in December 2012, the Key West Bight Management District Board approved the proposed lease with modification and recommends approval of the lease agreement by the CRA; and

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

Section 1: That the attached Lease between the CRA and Waterfront Brewery, LLC, 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 8th day of January, 2013.

Authenticated by the presiding officer and Clerk of the Agency on January 9, 2013.

Filed with the Clerk January 9, 2013.



CRAIG CATES, CHAIRMAN

ATTEST:



CHERYL SMITH, CITY CLERK

Executive Summary



TO: Community Redevelopment Agency

FR: Bogdan Vitas

DT: December 26, 2012

RE: Waterfront Brewery LLC Lease for 201 William Street

ACTION STATEMENT:

This is a request to approve the proposed lease with Waterfront Brewery, LLC for the vacant space at 201 William Street that was approved by the Bight Board in September 2012 and approved with modification in December 2012.

BACKGROUND:

The property was marketed for a period of approximately five months prior to public notice which was first published on January 20, 2011 in accordance with Florida Statute Sec. 163.380 and no responsive letters of interest were received. It was re-published for the next three weeks on March 13, 20, 27th, 2011.

One responsive letter of interest was received. It was submitted by the Waterfront Brewery LLC which proposed a Micro-Brewery, Dining & Pub with a retail component as well. In May 2011, the Bight Board elected to accept the proposal. Subsequently the proposed tenant invested great deal of time, money, and effort that now has produced all of the necessary approvals from the Development Review Committee, HARC, the Planning Board on May 17, 2012 and CRA Major Development Plan on July 17, 2012.

The terms of the lease are as follows:

Use: Operation of a working light industrial beer plant, restaurant with alcohol sales, retail area for logo apparel, gifts, beer souvenirs, private functions, live entertainment, rooftop deck consumption area in compliance with City Resolution 12-228

Demised Premises: 18,942 Square Feet comprised of:

Upstairs Unit A	2,273
Ground Level Unit D	991
Ground Level Unit F	11,178
Rooftop Deck	4,500

Term: PROVIDED THAT THE MINIMUM INVESTMENT THRESHOLD OF \$250,000 IN THE REAL PROPERTY is met before the commencement date, subject to the provisions contained in Section 15 of the lease, the term of this Lease shall be for twenty (20) years. In the event that the investment threshold is not met before the commencement date the term of the lease shall be ten

years.

Commencement: The term shall commence upon the earlier of completion of construction and receipt of a certificate of occupancy or at the end of the construction period which shall be 90 days from approval of the CRA for construction drawings and permitting plus 180 additional days after issuance of the building permit to facilitate construction of the Tenant's improvements.

Rent: The base rent for year one shall be calculated at an annualized rate of Twenty One Dollars (\$21.00) per Net Usable Square Foot. Every year thereafter throughout the term of the lease the minimum base rent shall be adjusted annually on the anniversary date of the lease by the increase in Consumer Price Index for all Urban Consumers as published by the United States Department of Labor. In no event shall the minimum base rent be decreased.

Percentage Rent: 6% over the break point

Impact Fees: Tenant shall pay all impact fees imposed for the specific utilization of the demised premises as provided for in the approved major development plan in Resolution 12-228 of the City of Key West and receive a rent credit divided over the first twenty four months of the lease in the total amount of the additional impact fees as calculated by the City of Key West.

Building Improvements: The Tenant will complete the construction of, and pay for, all building improvements pursuant to the approved major development plan. These are necessary improvements to the building that will improve the property and bring it up to a level that will meet code requirements for occupancy, such as; ADA bathrooms, ADA ingress/egress, entrances and ramp, stairways, an elevator, the rooftop deck. These improvements will accrue to the benefit of the City and would be usable by other leaseholders. *For your reference, attached are photos of the existing interior conditions of the building that clearly indicate the need for extensive improvements.*

Tenant Improvements: In addition to the building improvements the Tenant will invest all funds necessary and complete the construction of the improvements specific to their business and all furniture, fixtures, and equipment estimated between \$800,000 and \$1,000,000.00. The Tenant has agreed that these improvements will also accrue to the benefit of the city.

Building Improvement Reimbursement: The Tenant agrees to reimburse the Landlord for the initial building improvements referred to in Section 15 of the lease as follows:

- (a) An amount not to exceed \$2,000,000.00, as determined by final competitive bidding for building improvements only, pursuant the construction drawings approved by LANDLORD and in accordance with the approved major development plan.
- (b) The LANDLORD'S basic building work will be separate and reimbursed to the TENANT as determined in Section 15 of the lease.
- (c) The final approved amount will be reimbursed on a monthly basis over the term of the lease and TENANT agrees to reimburse LANDLORD for the full amount plus interest calculated at the prime rate as determined by LIBOR plus 100 basis points (1%) which will be adjusted annually at the beginning of each lease year.
- (d) Furniture, fixtures or equipment or improvements specific to the operation of the TENANT'S business may not be included in the reimbursable amount.
- (e) LANDLORD will release payments pursuant to the construction contract, which TENANT agrees will meet the City of Key West general contract conditions, in accordance with procurement policy, attached hereto and incorporated as Exhibit "E" and will include performance/payment bonds in the minimum amount of the reimbursable building improvements provided by LANDLORD.
- (f) TENANT'S reimbursement of building improvements shall be considered additional rent and subject to the provisions in Section 4.4(e) of the lease.

Basic Building Repairs:

The LANDLORD will agree to provide basic building repairs, subject to confirmation of TENANT'S receipt of no less than three competitive bids, the LANDLORD will reimburse TENANT for all costs and expenses to complete the following basic building work per current building codes for commercial buildings:

- a. Floor leveling and drainage
- b. Functional fire suppression system
- c. Electrical system
- d. Loading dock per development plan design
- e. Overhead loading dock door

Security:

Security for the payment of rent and the additional rent will be in the form of personal guarantees from the members of Waterfront Brewery, LLC and an irrevocable letter of credit in the amount equal to six (6) months of rent.

Additionally, pursuant to Sec. 2-871 of the Key West Code of Ordinances the award of a lease of city-owned property with annual rentals that will exceed \$100,000.00 and all extensions or renewals

thereof will require a background check of persons awarded a lease. If any such person is found by the police department to have been convicted of a felony within the past five years or found to have been convicted of a public entity crime and is then listed on the convicted vendor list, as established in F.S. § 287.133, the proposed lease or sublease, concession or franchise agreement or any extension or renewal thereof with such person shall not be executed by the city or, if it has been executed, it shall be subject to revocation and be voidable by the city commission after notice and hearing.

Also, every person applying for a lease, a lease renewal or a sublease of city-owned property or a concession or franchise agreement shall submit to the city, together with the application, a sworn disclosure statement that contains the following financial information for the immediately prior two calendar years: a statement attesting to the applicant's net worth, assets and liabilities, annual gross income, and primary source of such income. In addition to such disclosures, any business entity shall submit a copy of its organizational documents, together with a list of all current principals.

The city shall consider financial information for each applicant as a factor in making its award determination. The respective lease, sublease, concession or franchise agreement of any person who intentionally or knowingly supplies false or misleading information or who omits material information on the disclosure form under this section shall be subject to revocation and shall be voidable by the city commission after notice and a hearing.

Assignment: Any change to the majority membership of the Waterfront Brewery, LLC as of the date of the lease shall constitute an assignment for purposes of this provision. In the event of such an assignment the LANDLORD may elect to require full reimbursement of the unamortized building improvements provided by LANLDORD.

FINANCIAL IMPACT:

The base rent proposed is \$21.00 per square foot in year one of the lease before any percentage rents, if the breakpoint is achieved, and will be increased annually based upon the Consumer Price Index. Reimbursement of operating expenses in year one of the lease are based on current estimates and are reconciled annually.

The building improvement costs will be reimbursed over the lease term with interest at the prime rate plus 1% thus providing a financial return on the funds invested in the building improvements.

The building improvement funding will be transferred from the unrestricted reserves of Fund 405 which are approximately \$7,927,990.00 as of FY 12 year end.

The rent credits for additional impact fees will be calculated by the City and divided over the first twenty four months of the lease.

	Year One	
Waterfront Brewery		
Square Feet	18,942	
Base Rent	\$21.00	PSF
Year One*	\$397,782	Annual
Additional Rent		
Tax, Insurance, CAM	\$4.05	PSF
	\$67,481	
Reimbursement**		Annual
Building Improvement	\$7.85	
Reimbursement***	\$148,616	Annual
TOTAL RENT	\$32.41	PSF
Year One	\$613,879	Total

* per accepted proposal

**estimated @16,692 sf

***assumes maximum @4.25%

Impact Fee Credit

Year One of two (\$80,489)

For comparison purposes, the Key West Bight Anchor Tenant's Rents are as follows:

Conch Republic Seafood	14,500 sf	\$36.97 PSF
Schooner Wharf	8,872 sf	\$35.89 PSF
Half Shell Raw Bar	9,212 sf	\$29.67 PSF
Turtle Kraals	9,630 sf	\$24.44 PSF

CONCLUSION:

The building cannot be leased/occupied in its current condition for any purposes.

The tenant has agreed make the building improvements at their cost and the CRA will provide for reimbursement of the building improvements over the lease term, which is mutually beneficial.

The CRA retains control through approval of the exact building improvements/cost and the building can be occupied, open and generating revenue within a year.

The rent with reimbursement is at a market rate

The security provided for in the lease minimizes the financial risk to the CRA.

The building improvements are permanent and would be desirable/transferrable to other lessees.

The members of the Waterfront Brewery LLC have the demonstrated experience and proven track record of operating successful businesses in Key West. They are Joseph Walsh and Christopher Shultz who own and operate numerous Key West restaurants including Fogarty's, Caroline's, Jack Flats, Red Fish Blue Fish, Mangos, The Porch, and Two Cents.

The Key West Bight is within a redevelopment area and there have been several leaseholders that have received financial support from the CRA, some of which were in the form of rent credits, or reimbursement of the improvements to the real property. The Waterfront Brewery LLC has not requested credits for the building improvements but rather will pay for the building improvements over the term of the lease. They will invest in their specific improvements and will assign them to the CRA in the event of a future default.

When reviewing the original intent of the city's acquisition of the Key West Bight it was noted that the purpose for the buying the property was to preserve the public access to the waterfront, preserve the historic maritime character while making sure that the property produces sufficient income, all of which have been successful to date. The redevelopment of the Key West Bight has been a slow progression over two decades that continues to serve its public purpose. The majority of the redevelopment has been accomplished through CRA participation in the improvements to the real property utilizing rent credits and reimbursement for tenant improvements in various scenarios. The strength of the current retained earnings and the reinvestment in the building improvements will continue to meet that original intent.

The views of the harbor from the rooftop deck will expand and enhance the experience for everyone. The Waterfront Brewery will produce what is sure to become an iconic product, create new jobs and bring more patrons to the waterfront thus becoming a destination anchor tenant and economic driver for all of the businesses located in the Key West Bight.

OPTIONS:

1. The CRA can elect to approve the lease as proposed
2. The CRA can elect to deny the lease, conclude negotiations and re-advertise the space for lease.
3. The CRA can elect to deny the lease, make the building improvements at the CRA'S cost, then re-advertise the space for lease.

Lease Agreement

between

**Caroline Street Corridor and Bahama Village Community
Redevelopment Agency**

as Landlord

and

Waterfront Brewery, LLC

as Tenant

Dated January 8, 2013

THIS LEASE is made as of the 8th day of January, 2013 by and between the LANDLORD and TENANT identified below:

1. INFORMATION PROVISIONS: Information provisions in this section are intended to provide a summary of the corresponding sections of this lease and are in no way inclusive of the complete terms and conditions of this lease.

1.1 LANDLORD'S NAME & MAILING ADDRESS:

Caroline Street Corridor and
Bahama Village Community
Redevelopment Agency,
P.O. BOX 1409
KEY WEST, FL 33040

1.2 TENANT'S NAME & MAILING ADDRESS:

Waterfront Brewery, LLC
429 Caroline Street #2
Key West, FL 33040

TENANT'S TRADE NAME: Waterfront Brewery

1.3 GUARANTOR (S) AND ADDRESS: Security for the payment of rent will be in the form of personal guarantees from all members of Waterfront Brewery, LLC and an irrevocable letter of credit in the amount equal to six (6) months of rent.

1.4 DEMISED PREMISES (Section 2): as per EXHIBIT "A" located at 201 William Street in the KEY WEST BIGHT (hereinafter referred to as the "Property").

18,942 NET USABLE SQUARE FEET COMPRISED OF:

Upstairs Unit A	2,273
Ground Level Unit D	991
Ground Level Unit F	11,178
Rooftop Deck	4,500

PROPORTIONATE SHARE OF THE TOTAL NET USABLE SQUARE FEET:

TENANT'S Proportionate Share is based upon TENANT'S Net Usable Square Feet as it relates to the Total Net Usable Square Feet of the Property

Common Area Maintenance charges will be based upon the square feet as described in the Maximus CAM report which provides that additional outdoor areas be factored at 50%. This includes (1) consumption area (2) area that is available for exclusive use of the tenant and (3) generates revenue therefore CAM square footage is:

Buildings	14,442 SF
Outdoor @50%	<u>2,250 SF</u>
Total CAM Square Feet	16,692 SF

- 1.4.1 EXPANSION/RIGHT OF FIRST REFUSAL: N/A
- 1.5 TERM (Section 3.): PROVIDED THAT THE MINIMUM INVESTMENT THRESHOLD OF \$250,000 IN THE REAL PROPERTY is met prior to the Commencement Date, and pursuant to the provisions contained in Section 15 below, the term of this Lease shall be for twenty (20) years. In the event that the investment threshold is not met prior to the Commencement Date and pursuant to Section 15 below, the term of the lease shall be ten years.
- 1.5.1 COMMENCEMENT DATE: The term shall commence upon the earlier of completion of construction and receipt of a certificate of occupancy or at the end of the construction period which shall be 90 days from lease approval by the CRA for submission of construction drawings to the City for permitting plus 180 additional days after issuance of the building permit by the City to facilitate construction of the Tenant's improvements, unless sooner terminated as provided for herein.
- 1.5.2 RIGHT TO TERMINATE: LANDLORD shall have the right to terminate this lease in the event that TENANT no longer operates a working brewery in the Demised Premises.
- 1.5.3 RIGHT TO RENEW: This Lease may be renewed upon rent and terms to be negotiated by the parties and in accordance with the City of Key West Code of Ordinances.
- 1.6 MINIMUM RENT FOR TERM (Section 4): **The base rent for year one shall be calculated at an annualized rate of Twenty One Dollars (\$21.00) per Net Usable Square Foot.** Every year thereafter throughout the term of the lease the minimum base rent shall be adjusted annually on the anniversary date of the lease by the increase in Consumer Price Index for all Urban Consumers as published by the United States Department of Labor. In no event shall the minimum base rent be decreased.
- 1.6.1 ADDITIONAL RENT: Tenant shall pay its Proportionate share of CAM, Real Estate Taxes, Insurance, Sales, Use or Excise Taxes together with Management and Administrative fees and any and all other sums of money or charges required to be paid by TENANT pursuant to the provisions of this lease.
- 1.6.2 RENT PAYMENT DUE DATE: Payable in advance on the first (1st) of each and every month of the term hereof.
- 1.6.3 LATE CHARGE: 15% of the amount in arrears if received after the fifth day of each and every month together with an administrative fee of \$50.00 for processing late payments.
- 1.6.4 PERCENTAGE RENT: Six Percent (6%) of TENANT'S Gross Sales in excess of the "Percentage Rent Base Amount".
- 1.6.5 HOLD OVER RENT: 150% of the Minimum Base rent during the last year of the expiring term.
- 1.6.6 RENT CONCESSIONS: Landlord shall provide rent abatement for 90 days from approval of the CRA for construction drawings and permitting plus 180 additional days to facilitate construction of the Tenant's improvements.

1.6.7 REMBURSEMENT OF BUILDING IMPROVEMENTS (Section 4.5): The LANDLORD agrees to provide the initial building improvement funding as follows:

Amount not to exceed \$2,000,000 as determined by final competitive bidding for building improvements as approved by LANDLORD

Final amount will be reimbursed over the term of the lease and TENANT agrees to reimburse LANDLORD the full amount plus interest calculated at the prime rate plus 1% which will be adjusted annually at the beginning of each lease year.

1.7 SECURITY DEPOSIT (Section 5): Tenant shall maintain an irrevocable letter of credit in the amount equal to six months' rent throughout the term of this lease and until such time as the tenant has vacated the Demise Premises and the LANDLORD has determined that the TENANT has no outstanding amounts due under this lease.

1.8 PERMITTED USE (Section 6): Operation of a working light industrial beer plant, restaurant with alcohol sales, retail area for logo apparel, gifts, beer souvenirs, private functions, live entertainment, rooftop deck consumption area.

Further, permitted use shall be in accordance with the conditions of the major development plan approved by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency in Resolution 12-228, attached hereto and incorporated herein as "Exhibit D".

Notwithstanding anything in the Lease or conditions to the contrary, the Tenant shall be permitted to have amplified music in the premises so long as the volume of the amplified music does not unreasonably disturb or interfere with neighboring tenants or property owners.

Hours of operation are from 8:00 AM to 10:00 PM outside and from 8:00 AM to 4:00 AM inside and must in compliance with all applicable statutes, laws and ordinances governing hours of operation.

TENANT further agrees to provide adequate on-site security personnel to ensure the orderly conduct of its patrons. TENANT will utilize the parking lot entry as the principle means of ingress/egress for all functions and the Harborwalk entry for a second means of ingress/egress for any functions dispersing after 11:00PM.

1.9 INSURANCE: (Section 9) \$1,000,000.00 commercial liability minimum per occurrence.

1.10 ASSIGNMENT OR SUBLETTING: (Section 10) Allowed with LANDLORD'S approval.

1.11 UTILITIES: (Section 17) The TENANT shall pay for all utilities associated with the use of the Demised Premises.

INITIALS: LANDLORD LC

TENANT [Signature]

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 consideration 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:

2. DEMISED PREMISES - 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 Demised Premises situated, lying, and being in Monroe County, Florida: That portion of the Property outlined and/or crosshatched on Exhibit "A" which depicts the Net Usable Square Feet of the Demised Premises. The Net Usable Square Feet is defined as all interior floor space, any second floor space, storage, covered dining areas and commercially used outdoor areas or any other area set aside for the exclusive use and economic benefit of the Tenant and containing the approximate dimensions and area measured in accordance with the published BOMA/ANSI standard for calculating net usable floor area. It is agreed that the Net Usable Square Feet for the purpose of any calculations which are based on Net Usable Square Feet is as stated in Section 1.4. It is agreed that TENANT'S Proportionate Share is based upon TENANT'S Net Usable Square Feet as it relates to the Total Net Usable Square Feet of the Property. LANDLORD reserves the right to re-measure the Demised Premises from time to time and to adjust the TENANT'S Net Usable Square Feet and the rent or rental rate applied to the square footage as determined by any re-measurement or change in use. TENANT accepts the Demised Premises in an "as is", "where is" condition and acknowledges that LANDLORD has no obligations for any construction or improvements in connection with TENANT'S occupancy of the Demised Premises except for repairs detailed as Landlord's work in Section 15 hereof.

Re-location language is intentionally deleted

Expansion/Right of First Refusal -none

3. TERM - PROVIDED THAT THE MINIMUM INVESTMENT THRESHOLD OF \$250,000 IN THE REAL PROPERTY IS MET prior to the Commencement Date and pursuant to the provisions contained in Section 15 below, the term of this Lease shall be for twenty (20) years. In the event that the investment threshold is not met prior to the Commencement Date and pursuant to the provisions contained in Section 15 below, the term of the lease shall be ten years.

The term shall commence upon the earlier of completion of construction and receipt of a certificate of occupancy or at the end of the construction period which shall be 90 days from lease approval by the CRA for submission of construction drawings to the City for permitting plus 180 additional days after issuance of the building permit by the City to facilitate construction of the Tenant's improvements ("Commencement Date"), unless sooner terminated as provided for herein. Upon occupancy TENANT shall furnish LANDLORD a written statement stating the TENANT has accepted the Demised Premises for occupancy and setting forth the actual commencement and expiration dates of the Lease. TENANT'S written statement shall become attached to and incorporated into this lease as Exhibit "C". In the absence of TENANT'S written statement the lease term shall remain as stated above. A Lease Year is the twelve-month period beginning on the commencement date of each year and ending at the conclusion of the same date one year later. If possession of the Demised Premises shall for any reason not be delivered to Tenant on the Commencement Date, this Lease shall nevertheless continue in full force and effect, and no liability whatsoever shall arise against LANDLORD out of any delay other than the abatement of rent.

- 3.1 **Right to Terminate** – LANDLORD shall have the right to terminate this lease in the event that TENANT no longer operates a working brewery in the Demised Premises.
- 3.2 **Right to Renew** – This Lease may be renewed upon rent and terms to be negotiated by the parties in accordance with the City of Key West Code of Ordinances. The rent and terms of the renewal term must be acceptable to both the LANDLORD and the TENANT in their absolute discretion and must be set forth in written addendum to this Lease. If the parties fail for any reason whatsoever to agree upon and enter into such addendum at least 120 days prior to the end of the initial term of this Lease, then any obligations that the parties may have pursuant to this section to negotiate renewal terms shall cease and LANDLORD shall be free to lease the Demised Premises to the general public upon such rent and terms as it deems appropriate.
4. **RENT** - All rentals provided for herein shall be payable in advance, without prior demand therefore and without deductions or setoffs for any reason whatsoever on the first day of each and every month of the term hereof.
- 4.1 **Late Charges.** Any monthly rental not received by the fifth day of the month shall incur a late fee equal to fifteen percent 15% of the amount in arrears. 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. LANDLORD shall have no obligation to accept less than the full amount of all installments of rental, additional rental or other amounts due hereunder and interest thereon which are due and owing by TENANT to LANDLORD. If LANDLORD accepts less than the full amount owing, LANDLORD may apply the sums received toward such TENANT'S obligations, as LANDLORD shall determine in its sole discretion, without waiving LANDLORD'S remedies for default.
- 4.2 **Interest on Rent.** Rent and additional rent not paid within fifteen (15) days of when due shall bear interest from the date due until paid at the highest rate permitted by law.
- 4.3 **Obligation to Survive.** TENANT'S obligation to pay rent that is accrued and unpaid hereunder shall survive the expiration or termination of the Lease.
- 4.4 The rent reserved under this Lease for the term hereof shall be and consist of:

- (a) Beginning with the commencement date and throughout the term of this Lease, TENANT agrees to pay to the LANDLORD as and for minimum rent for the Demised Premises the annual amount, in equal monthly installments, in advance, on the first day of each and every calendar month.

The base rent for year one shall be calculated at an annualized rate of Twenty One Dollars (\$21.00) per Net Usable square foot as stated in Section 1.4.

Every year thereafter throughout the term of the lease the minimum base rent shall be adjusted annually on the anniversary date of the lease by the increase in Consumer Price Index for all Urban Consumers as published by the United States Department of Labor. In no event shall the minimum base rent be decreased.

In the event the rent commencement date is other than the first day of a calendar month, the rent for the partial first calendar month of the term will be prorated on a daily basis and payable on the commencement date.

- (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 in substitution for any such tax which is presently imposed.
- (c) Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT'S Proportionate Share, as stated in Section 1.4, of Common Area Maintenance Charges in Monthly Installments as specified herein. The Common Area Maintenance Charges are estimated based upon the most recent actual costs. The TENANT shall be responsible for all Common Area Maintenance Charges actually incurred on a pro rata assessment basis. Any increase in the common area charges shall result in an increase in the TENANT'S Common Area Maintenance Charges. Common Area Maintenance Charges for controllable expenses assessed after the base year shall not increase in any given year by more than 5% of the previous year's common area assessment for controllable expenses. The base year for the purpose of limiting increases in Common Area Maintenance Charges shall be the first year of the term of this lease. This limitation shall apply only to those services included in the base year's common area charges. Any services charged for that are not included in the base year's charges shall not be limited by this 5% cap nor shall they be included for determining this 5% cap.

Common Area Maintenance Charges shall include any and all expenses reasonably incurred in the operation and maintenance of the Property Common Area including but not limited to management and administrative fees, salaries and compensation paid in connection with operations, maintenance and administration, amortization (including interest) of equipment and facilities acquired and used for maintenance, to reduce energy usage, to otherwise reduce operating costs or common area seasonal decorating or redecorating. Major capital improvements will not be included in Common Area Maintenance Charges unless those improvements reduce expenses and if so the improvements will be amortized over the useful life of the equipment as determined by the manufacturer's specifications or IRS depreciation regulations.

Monthly installments shall be due and payable on the 1st day of each calendar month during the Term. The installments set forth herein represent TENANT'S Proportionate Share of the estimated Common Area Maintenance Charges at the Commencement Date. Thereafter, LANDLORD shall, prior to the beginning of each calendar year, estimate the expected Common Area Maintenance Charges for the coming calendar year and TENANT'S Proportionate Share thereof, 1/12th of which shall constitute the Monthly Installments for such year; provided such installments shall never be lower than the installments specified herein. Within 90 days after the end of each year, LANDLORD shall calculate the actual Common Area Maintenance Charges paid or payable during the prior calendar 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 is 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 against TENANT'S next succeeding installments. 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 Maintenance 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 TENANT, TENANT'S chief financial officer, or a CPA selected by TENANT; shall not be made more often than once during each calendar year; and shall be limited to the preceding calendar 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.

Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT'S Proportionate Share as stated in Section 1.4 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 Property against the land, buildings, store rooms, Common Areas and all other improvements within the Upland Property (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. 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 as part of the Common Area Charges provided for herein. The 5% cap limitation provided for in Section 4.4(c) shall not be applicable to this particular common area charge.

Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT'S Proportionate Share as stated in Section 1.4, of the Insurance Expenses which shall include all insurance premiums incurred by the LANDLORD in insuring the Property including hazard and liability insurance for any and/or all buildings, improvements and common areas.

TENANT'S Proportionate 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 4.4(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 or franchise tax) 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, 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. Substitute taxes as referred to above in this Section shall include, without limitation, any surtax on parking spaces.

Initial here if applicable

LANDLORD



TENANT



(d) In addition to the foregoing rent, TENANT agrees to pay LANDLORD as Percentage Rent a sum equal to 6% multiplied by an annual Gross Sales per Lease Year in excess of the Percentage Rent Base Amount. The Percentage Rent Base Amount is calculated by dividing the current annual Base Rent by six percent (6%). Within twenty (20) days following the end of each month of each Lease Year, TENANT shall forward to LANDLORD a statement of Gross Sales together 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 Receipts from the Demised Premises during the previous month. The statement of Gross Sales must be in affidavit form. 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 month. Failure of Tenant to timely submit any monthly report shall entitle LANDLORD to estimate Gross Sales based upon available data (with a reconciliation upon receipt of the final report), and TENANT shall be obligated to pay percentage rent on such estimated Gross Sales. If by the end of any such preceding month the Gross Sales in the Demised Premises during such Lease Year shall exceed the Percentage Base Rent Amount, 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 Rent Base Amount, less the Percentage Rent, if any, previously paid by TENANT to LANDLORD during that Lease Year. TENANT shall also furnish to LANDLORD within thirty (30) days after the expiration of each full Lease Year, a complete statement, certified by an independent certified public accountant, showing in all reasonable detail the amount of Gross Sales made by TENANT from the Demised Premises during the preceding Lease Year.

"Gross Sales" shall mean the amount of sales of all merchandise or services sold or rendered at or derived from the use of the Demised Premises by TENANT or any sub-TENANT, licensee, etc. TENANT may deduct from Gross Sales: (i) any refunds to customers, provided they have been included in Gross Sales; and (ii) the amount of any sales tax levied upon retail sales and payable over to the appropriate governmental authority. 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 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.

Pursuant to City Ordinance Section 2-872, In addition to other periodic reviews, all city leases, franchises, concessions and other agreements wherein percentage revenues are collected shall be audited at least once every three years by an external certified public accountant utilizing generally accepted accounting principles (GAAP) and in such a manner as directed by the city manager. All city leases, franchises, concessions and agreements entered into after the effective date of this ordinance shall provide for such audits without cost or expenses to the city.

If any audit shows that the amount of Gross Sales on the 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 audit within ten (10) days after TENANT'S receipt of LANDLORD'S invoice. If such understatement is willful and/or fraudulent, LANDLORD shall have the option, upon ten (10) days notice to TENANT, to terminate this Lease on the date specified in such notice and Tenant shall remain liable for all rent and other charges under this lease for the full term hereof.

(e) **Additional Rent.** Any and all other sums of money or charges required to be paid by Tenant pursuant to the provisions of this Lease, whether or not the same be so designated, shall be considered as "Additional Rent", and shall be payable and recoverable in the same manner as Rent. However, such Additional Rent shall be due upon demand and failure to pay such additional rent within seven (7) days shall be deemed a material breach of this lease. If Landlord shall make any expenditure for which Tenant is liable under this Lease and for which Tenant has not paid, the amount thereof shall be deemed Additional Rent due and payable by as indicated above. 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 upon demand together with interest thereon at the highest rate permissible by law from their due date until the date it is paid. The LANDLORD shall have the same remedies for TENANT'S failure to pay said additional rental the same as for non-payment of rent. LANDLORD, at its election, 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, 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 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 LANDLORD as stated in Section 1.1 hereof.

(f) **Holding Over.** It is agreed that in the event of TENANT holding over after the termination of this lease, thereafter the tenancy shall be from month to month in the absence of a written agreement to the contrary; the TENANT shall pay to LANDLORD a monthly occupancy charge equal to One Hundred Fifty (150%) Percent of the monthly rental for the last lease year for each month from the termination or expiration of this Lease until the Demised Premises are delivered to the LANDLORD in the condition required herein, and LANDLORD'S right to

damages for such illegal occupancy shall survive. In addition, TENANT shall pay all other charges payable by TENANT under this Lease

- (g) Rent Concessions. Landlord shall provide rent abatement for 90 days from approval of the CRA for construction drawings and permitting plus 180 additional days to facilitate construction of the Tenant's improvements.
- (h) Impact Fees: Tenant shall pay all impact fees imposed for the specific utilization of the demised premises as provided for in Resolution 12-228 of the City of Key West and receive a rent credit divided over the first twenty four months of the lease in the total amount of the additional impact fees as calculated by the City of Key West.

4.5 Reimbursement of Building Improvement Costs: The LANDLORD agrees to provide the initial building improvement funding for the alterations referred to in Section 15 below as follows:

- (a) An amount not to exceed \$2,000,000.00 as determined by final competitive bidding for building improvements only pursuant the construction drawings approved by LANDLORD and in accordance with the approved major development plan.
- (b) The LANDLORD'S basic building work will be separate and reimbursed to the TENANT as determined in Section 15 hereof.
- (c) The final approved amount will be reimbursed on a monthly basis over the term of the lease and TENANT agrees to reimburse LANDLORD for the full amount plus interest calculated at the prime rate as determined by LIBOR plus 100 basis points (1%) which will be adjusted annually at the beginning of each lease year.
- (d) Furniture, fixtures, equipment or improvements specific to the operation of the TENANT'S business may not be included in the reimbursable building improvements.
- (e) LANDLORD will release payments pursuant to the construction contract which TENANT agrees will meet the City of Key West general contract conditions, in accordance with procurement policy, attached hereto and incorporated as Exhibit "E" and will include performance/payment bonds in the minimum amount of the reimbursable building improvements provided by the LANDLORD.
- (f) TENANT'S reimbursement of the building improvements shall be considered additional rent and subject to the provisions in Section 4.4(e) herein.

5. SECURITY - TENANT simultaneously with the execution and delivery of this Lease, Tenant shall maintain an irrevocable letter of credit in the amount equal to six months rent throughout the term of this lease and until such time as the tenant has vacated the Demised Premises and the LANDLORD has determined that the TENANT has no outstanding amounts due under this lease as stated in Section 1.7 hereof, the receipt of which is hereby acknowledged 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. 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 covenant 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. TENANT shall deposit with LANDLORD such additional sums which may be necessary to replace any amounts expended there from by LANDLORD pursuant 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.

6. USE OF THE DEMISED PREMISES -TENANT shall use the Demised Premises for the purposes of:

Operation of a working light industrial beer plant, restaurant with alcohol sales, retail area for logo apparel, gifts, beer souvenirs, private functions, live entertainment, and rooftop deck consumption area. Further, permitted use shall be in accordance with the Conditions approved by the Community Redevelopment Agency in Resolution 12-228 attached hereto and incorporated herein.

Notwithstanding anything in the Lease or Conditions to the contrary, the Tenant shall be permitted to have amplified music in the premises so long as the volume of the amplified music does not unreasonably disturb or interfere with neighboring tenants or property owners.

Hours of operation are from 8:00 AM to 10:00 PM outside and from 8:00 AM to 4:00 AM inside and must in compliance with all applicable statutes, laws and ordinances governing hours of operation.

TENANT further agrees to provide adequate on-site security personnel to ensure the orderly conduct of its patrons. TENANT will utilize the parking lot entry as the principle means of ingress/egress for all functions and the Harborwalk entry for a second means of ingress/egress for any functions dispersing after 11:00PM.

TENANT further agrees:

- (a) To operate 100% of the Demised Premises for the entire term of this lease pursuant to the highest 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 Property, not to display any merchandise, solicit business or distribute advertising material beyond the Demised 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) Not to display any banners, pennants, searchlights, window signs, balloons, or similar temporary advertising media on the exterior of the Demised Premises.
- (d) Not to commit waste in the Demised Premises or Common Areas and to keep the

Demised Premises and immediate adjacent areas including, without limitation, 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 Demised Premises.

- (e) Not to use the Demised Premises or permit the same to be used in any manner which violates any law, ordinance or constitutes a nuisance; for lodging purposes; that may injure the reputation of the Property 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 Property or increase the cost thereof.
- (f) To keep all garbage, refuse and solid waste inside the Demised Premises in the kind of containers specified by LANDLORD, or to place the same outside the Demised Premises, prepared for collection, in the manner and at the times and places designated by LANDLORD or the appropriate disposal company. TENANT agrees not to burn or permit any burning of garbage or refuse on the Demised Premises or any part of the Property. TENANT further agrees that, upon LANDLORD'S instruction, TENANT shall separate garbage for recycling and deposit the separate garbage in the receptacle designated by LANDLORD. TENANT further agrees to make every effort to recycle all glass, metal, paper and plastic refuse and solid waste.
- (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. 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 Demised Premises to load and unload from the hours of 7:00 a.m. to 11:00 a.m. and not to permit such trucks to service through the front entrance of the Demised Premises except when no other entrance is available.
- (i) To take no action that would: (i) violate LANDLORD'S contracts if any, affecting the Property (including without limitation the use restrictions contained in LANDLORD'S leases with its Anchor Tenants, which restrictions have been explained to TENANT); or (ii) cause any work stoppage, picketing or cause any manner or interference with LANDLORD or other Tenants, occupants, customers or any person lawfully in and upon the Property.
- (j) Not to use amplified music or any other noise making machinery or devices that in LANDLORD'S determination is harmful to the building or disturbing to other Tenants. **Tenant shall not violate the noise ordinance of the City of Key West.**
- (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 Property and it's Common Areas. Rules and regulation are attached and incorporated herein as **EXHIBIT "B"**.

- (l) Not to conduct any auction, fire, bankruptcy or selling-out sale on or about the Demised Premises except in strict compliance with City Code Chapter 18.
- (m) To pay its proportionate share of any and all maintenance contracts wherein LANDLORD elects to purchase goods and services for the benefit of the entire Property including but not limited to LANDLORD directing all pest extermination at such intervals and service levels that LANDLORD deems appropriate.
- (n) TENANT shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials which TENANT or its agents brought onto the Property. TENANT shall not allow storage or use of such materials or substances in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Demised Premises or the Property any such materials or substances except to use in the ordinary course of TENANT'S business, and then only after written notice is given to LANDLORD of the identity of such substances or materials. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any applicable state or local law and the regulations adopted under these acts. In addition, TENANT shall execute affidavits, representations and the like from time to time at LANDLORD'S request concerning TENANT'S best knowledge and belief regarding the presence of hazardous substances or materials in the Demised Premises. In all events, TENANT shall indemnify LANDLORD in the manner elsewhere provided for in this Lease against any liability resulting from any release of hazardous substances or materials in the Demised Premises or Property by TENANT or its agents, while TENANT is in possession or caused by TENANT or persons acting under TENANT which is due to hazardous substances that TENANT or its agents brought onto the Demised Premises or Property.

6.1 **Use of the Common Areas** -TENANT has the non-exclusive right to use the common areas solely for the purposes for which they were designed. The common areas may also be used by anyone else LANDLORD has or hereinafter in its sole discretion grants the right to use them.

7. **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.

8. **INDEMNIFICATION** - TENANT agrees to protect, defend, indemnify, save and hold harmless the LANDLORD, the City of Key West, all of its Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss of destruction of any property which may occur or in any way grow out of any act or omission of the TENANT, its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the LANDLORD as a result of any claim, demands, and/or causes of action associated therewith except of those claims, demands, and/or causes of action arising out of the

negligence of the LANDLORD, the City of Key West, all its Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees. The TENANT agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent. Nothing in this indemnification is intended to act as a waiver of the City's sovereign immunity rights, including those provided under section 768.28, Florida Statutes. This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the LANDLORD by reason of such claim or demand, TENANT shall, upon written notice from the LANDLORD, resist and defend such action or proceeding by counsel satisfactory to the LANDLORD. The TENANT shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the LANDLORD's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the LANDLORD whether performed by TENANT, or by persons employed or used by TENANT

9. TENANT'S INSURANCE - TENANT covenants and agrees with LANDLORD that TENANT shall:

(a) At TENANTS sole cost and expense, during the entire Term hereof, procure, pay for and keep in full force and effect; (i) an occurrence form commercial general liability policy, covering the Demised Premises and the operations of Tenant and any person conducting business in, on or about the Demised Premises in which the limits with respect to liability and property damage shall not be less than One Million (\$1,000,00.00) Dollars per occurrence (ii) all risk property insurance, including theft coverage, written at replacement cost value and a replacement cost endorsement insuring TENANT'S improvements and betterments, fixtures, furnishings, equipment and any other property belonging to TENANT; and (iii) workers compensation coverage as required by the provisions of Florida statute. 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. From time to time during this Lease, at LANDLORD'S request, TENANT shall (i) procure, pay for and keep in full force and effect such other insurance as LANDLORD shall require and (ii) increase the limits of such insurance as LANDLORD may reasonably require.

(b) All policies of insurance required to be carried by TENANT pursuant to this lease shall be written by responsible insurance companies authorized to do business in Florida with an AM Best rating of A-VI or better. Any such insurance required to be carried by TENANT hereunder may be furnished by TENANT under any blanket policy carried by it or under a separate policy therefore. A copy of each paid up policy evidencing such insurance or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required by this Lease and containing provisions specified herein, shall be delivered to LANDLORD prior to the commencement of the Term of this Lease and, upon renewals, but not less than sixty (60) days prior to the expiration of such coverage. In the event TENANT shall

fail to procure such insurance, LANDLORD may, at its option, procure the same for the account of TENANT, and the cost thereof shall be paid to LANDLORD as an additional charge upon receipt by TENANT of bills therefore, together with an administrative fee equal to fifteen (15%) percent to cover the cost of the LANDLORD'S efforts to procure such policy.

- (c) Each policy evidencing insurance required to be carried by TENANT pursuant to this Lease shall contain the following provisions and/or clauses: (i) a provision that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by LANDLORD; (ii) a provision naming LANDLORD and any other parties in interest as designated by LANDLORD as an additional insured (except with respect to worker's compensation insurance); and (iii) a provision that the insurer will not cancel, materially change or fail to renew the coverage provided by such policy without first giving LANDLORD thirty (30) days prior written notice.

Any general liability or other policy insuring the LANDLORD does not provide any contributing or excess coverage for TENANT. The policies TENANT procures for TENANT'S exposure are the only coverage available to TENANT.

10. ASSIGNMENT AND HYPOTHECATION - This Lease is not transferable or assignable and may not be hypothecated nor sublet without the prior written consent of the LANDLORD which may be withheld and shall be at the sole discretion of the LANDLORD.

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 reasonable fee, not to exceed \$500.00 to help offset any costs LANDLORD may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same. Any assignment, transfer, hypothecation, mortgage, or subletting without LANDLORD'S written consent shall give LANDLORD the right to terminate this Lease and to re-enter and repossess the Demised Premises and the LANDLORD'S right to damages shall survive.

Any change to the majority membership of the Waterfront Brewery, LLC as of the date of this lease shall constitute an assignment for purposes of this provision. In the event of such an assignment the LANDLORD may elect to require full reimbursement of the unamortized structural improvement funding provided by LANDLORD.

11. 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 instrument (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 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 stopped from asserting any defaults known to TENANT at that time.

12. CONDEMNATION

- (a) It is further understood and agreed that if at any time during the continuance of this Lease the legal title to the Demised real estate or the improvements 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 Demised Premises be wholly taken by condemnation, or if the portion taken will prevent the Demised Premises from being used for the purpose the TENANT intends, this Lease shall be canceled.
- (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, and/or improvements.

13. TENANT'S DEFAULT

- (a) 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 the Demised Premises or any part thereof during the 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 the Demised 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, except in the event of non-payment of rent, upon ten (10) business days written notice, within which the TENANT may cure, and upon its failure to cure, it shall and may be lawful for the LANDLORD, at its election, to declare the demised term ended and to re-enter upon said Demised Premises, building, and improvements situated thereon, or any part hereof, either with or without process of law, the TENANT hereby waiving any demand for possession of the Demised Premises and any and all buildings and improvements then situated thereon. In the event of nonpayment of rent, LANDLORD may assert its right of notice and eviction pursuant to Chapter 83, Florida Statutes.

- (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 Demised 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 shall hold the Demised Premises or any part thereof, one (1) day after the same should be surrendered according to the terms of this Lease, it shall be deemed guilty of forcible detainer of the Demised Premises under the statute and shall be subject to eviction or removal, forcibly or otherwise, with or without process of law.
- (c) BANKRUPTCY OF TENANT. IN THE EVENT TENANT FILES ANY FORM OF BANKRUPTCY, LANDLORD SHALL BE ENTITLED TO IMMEDIATE TERMINATION OF THE AUTOMATIC STAY PROVISIONS OF 11 U.S.C. §362, GRANTING THE LANDLORD COMPLETE RELIEF AND ALLOWING THE LANDLORD TO EXERCISE ALL OF HIS LEGAL AND EQUITABLE RIGHTS AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO TERMINATE THIS LEASE AND DISPOSSESS TENANT FROM THE DEMISED PREMISES IN ACCORDANCE WITH FLORIDA LAW. ADDITIONALLY, TENANT AGREES NOT TO DIRECTLY OR INDIRECTLY OPPOSE OR OTHERWISE DEFEND AGAINST THE LANDLORD'S EFFORT TO GAIN RELIEF FROM ANY AUTOMATIC STAY. THE 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 THE 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. TENANT 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).
- (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 Demised 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.

14. TENANT'S REPAIRS - The TENANT covenants and agrees with the LANDLORD that during the continuance of this Lease, the TENANT shall be solely responsible for maintaining the Demised Premises in a clean, sanitary and safe condition in accordance with the laws of the State of Florida and in accordance with all directions, rules and regulations of all inspectors, governmental departments and agencies having jurisdiction over the Demised Premises to ensure a good state of repair of the Demised Premises and all furnishings, including any special equipment brought, placed, or installed upon the Demised Premises by TENANT; nor will the TENANT suffer or permit any strip, waste, or neglect of any building or such personal property to be committed; and the TENANT will repair, replace, and renovate the said real and personal property as often as it may be necessary in order to keep the building or buildings and the personal property which is subject to the LANDLORD'S lien, in good repair and condition. In the event that improvements or repairs are

contemplated prior to or at the beginning of or during TENANT'S occupancy, then this provision shall apply to the condition of the property as of the last repair, improvement or renovation.

In the event that LANDLORD shall deem it necessary or be required by any governmental authority to repair, alter, remove, reconstruct or improve any part of the Demised Premises or of the property (unless the same result from TENANT'S act, neglect, default or mode of operation, in which event LANDLORD shall make all such repairs, alterations or improvements at TENANT'S sole cost and expense), then the same shall be made by LANDLORD with reasonable dispatch, and should the making of such repairs, alterations and improvements cause any interference with TENANT'S use of the Demised Premises, such interference shall not relieve TENANT from the performance of its obligations hereunder nor shall such interference be deemed an actual or constructive eviction or partial eviction or result in abatement of rental.

15. ALTERATIONS

Tenant agrees to make the following alterations and additions at TENANT'S sole cost and expense, prior to the commencement date:

All improvements necessary to complete the construction of the premises pursuant to the approved major development plan, which is attached hereto and incorporated herein as Exhibit "D" and all interior improvements necessary to facilitate the operation of TENANT'S business as described in Section 6 hereof. TENANT specifically agrees to provide historic panels incorporated into the building entries depicting the maritime history of the Key West Bight.

Building alterations that TENANT is required to complete pursuant this section and any additional real property alterations or building improvements that TENANT completes no later than the commencement date of the lease will be considered toward a cumulative investment of not less than \$250,000.00 which is the minimum threshold to provide for a twenty year lease term. Specific building improvements include but are not limited to the rooftop deck, two stairways to deck, 4 new lavatories, a commercial kitchen and elevator. TENANT shall provide to LANDLORD a full accounting, including receipts that demonstrate conclusively the amounts expended for all work performed to be considered for the \$250,000.00 investment, within 90 days of the completion of the improvements or alterations.

TENANT shall not make any alterations, additions or improvements to the Demised Premises (whether or not the same may be structural in nature) without LANDLORD'S prior written consent. All alterations, additions, or improvements made to the Demised Premises, except movable furniture and equipment installed at TENANT'S expense, shall be the property of the LANDLORD and remain upon and be surrendered with the Demised Premises at the expiration of the term of this Lease; provided, however, that LANDLORD may require TENANT to remove any additions made at TENANT'S request to the Demised Premises and to repair any damage caused by such removal, and provide further, that if TENANT has not removed its property and equipment within ten (10) days after the expiration or termination of this Lease, LANDLORD may elect to retain the same as abandoned property.

In the event TENANT shall request LANDLORD'S permission, and LANDLORD shall permit TENANT to perform any alterations, additions, improvements or repairs to the Demised Premises, TENANT shall (i) submit its plans and specifications to LANDLORD for its approval prior to the commencement of any construction, (ii) obtain all necessary permits prior to the commencement of any construction, (iii) only use contractors approved by LANDLORD, (iv) not permit any

construction liens to be placed or remain on the Demised Premises. In the event a construction lien shall be filed against the Demised Premises as a result of work undertaken by TENANT, TENANT shall within ten (10) days of receiving notice of such lien, discharge the lien of record either by payment of the indebtedness to the lien claimant or by filing a bond as security therefore. All such work made by or on behalf of TENANT shall be performed in such manner as LANDLORD may designate and in accordance with all applicable laws and regulations of governmental authorities having jurisdiction over the same. All such work by TENANT or its contractors shall not interfere with, impede or delay any work by LANDLORD or its contractors, tenants or TENANT'S contractors. All contractors engaged by TENANT shall be bondable, licensed contractors, possessing good labor relations, and capable of performing quality workmanship.

LANDLORD'S Basic Building Work

Subject to LANDLORD'S confirmation of TENANT'S receipt of no less than three competitive bids, LANDLORD will reimburse TENANT for all costs and expenses to complete the following LANDLORD'S basic building work per current building codes for commercial buildings:

- a. Floor leveling and drainage
- b. Functional fire suppression system
- c. Electrical system
- d. Loading dock per development plan design
- e. Overhead loading dock door

LANDLORD will amortize the building improvement costs over the term of the lease as per Section 4.5 hereof.

16. EQUIPMENT, FIXTURES AND SIGNS

- (a) All furnishings, fixtures, trade fixtures, equipment, and signs used on the Demised Premises by TENANT but provided by LANDLORD, will, at all times, be, and remain, the property of LANDLORD. 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 Demised 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 Demised Premises, and provided further, that TENANT will pay or reimburse LANDLORD for the reasonable expense of repairing damage caused by such removal.
- (b) All TENANT signs shall be approved by the LANDLORD and must meet all applicable codes. The exact location, style, text, and color(s) of the sign shall be agreed upon by the LANDLORD, in writing, prior to TENANT'S installation. LANDLORD'S approval shall not be unreasonably withheld or delayed.

17. 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 a calculation of the ratio of the square footage of the Demised Premises and the total

square footage of the Premises covered by that particular utility bill. In the event that the TENANT shall be billed for a pro-rated share, the LANDLORD shall provide TENANT a utility bill each month and TENANT shall pay the amount due to LANDLORD within ten (10) days of its receipt.

- (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 Demised Premises or to terminate this Lease or to violate any of its provisions or to cause any abatement or rebate in the rent then due or thereafter becoming due under the terms hereof, unless otherwise specifically provided for herein. If the Lease be canceled for the TENANT'S default at any time while there remains outstanding any obligation from any 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 Demised Premises by casualty or hazard, LANDLORD will have the option of canceling the Lease, or repairing the building, and in the event that the LANDLORD elects to repair the building, an appropriate abatement of rent will occur.
- (c) The TENANT shall be responsible for the HVAC and all air conditioning systems together with the plumbing and electrical system.
- (d) The TENANT shall be responsible for maintaining the roof and exterior of the building
- (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 Demised Premises and all buildings and improvements located thereon, as well as the TENANT'S interest in all fixtures and equipment appertaining thereto.
- (g) The TENANT agrees not to make any internal changes or exterior changes or alterations without written approval of the LANDLORD. This provision does not apply to TENANT'S trade fixtures and/or other non-permanent fixtures on the interior of the Demised Premises.

18. LANDLORD'S RIGHT OF ENTRY - The LANDLORD or its agents shall have the right to enter upon the Demised 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 Demised Premises. If the said Demised Premises are damaged by fire, windstorm, or by any other casualty which caused the Demised Premises to be exposed to the elements, then the LANDLORD may enter upon the Demised Premises to make emergency repairs. LANDLORD may enter upon the Demised 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.

19. **TENANT'S ACCEPTANCE** - The TENANT accepts the Demised Premises and improvements thereon in an as is condition and all improvements and additions shall be at the sole expense of the TENANT except as may be otherwise provided for in this Lease.

20. **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 deposited in the U.S. Registered or Certified mail with sufficient postage pre-paid thereon to carry it to its addressed destination. Said notice shall be addressed as follows:

AS TO LANDLORD:

City of Key West
P.O. Box 6434
Key West, FL 33040
Att: Property Management

AS TO TENANT:

Waterfront Brewery, LLC
429 Caroline Street #2
Key West, FL 33040

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) If the TENANT or TENANTS are signing in a capacity other than as individuals, then the LANDLORD may require personal guarantees from individuals as the LANDLORD deems necessary.
- (j) LANDLORD may delegate its decision-making authority regarding any provision of this Lease to an Advisory Board.

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



Amy Smith
Amy Smith, City Clerk
Date: 1-9-13

ATTEST
LANDLORD: Caroline Street Corridor and
Bahama Village Community Redevelopment
Agency

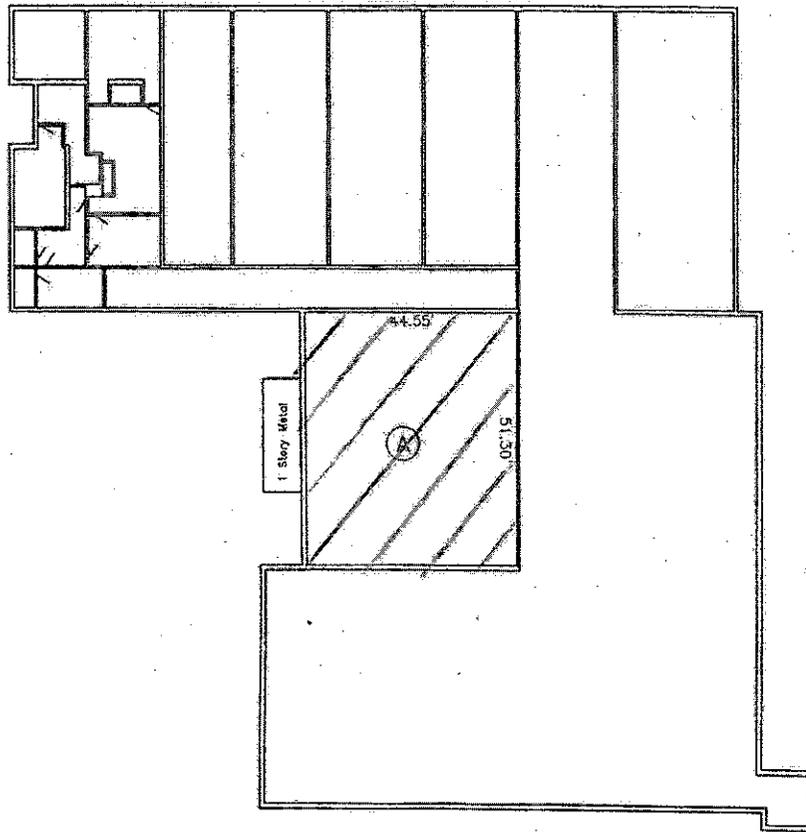
Craig Cates
Craig Cates, Chairman
Date: 1-8-13

Angela Berube
WITNESS
Date: 1/11/13

TENANT: Waterfront Brewery, LLC.
Joseph H. Walsh
By: Joseph H. Walsh Manager Member
Date: January 11, 2013

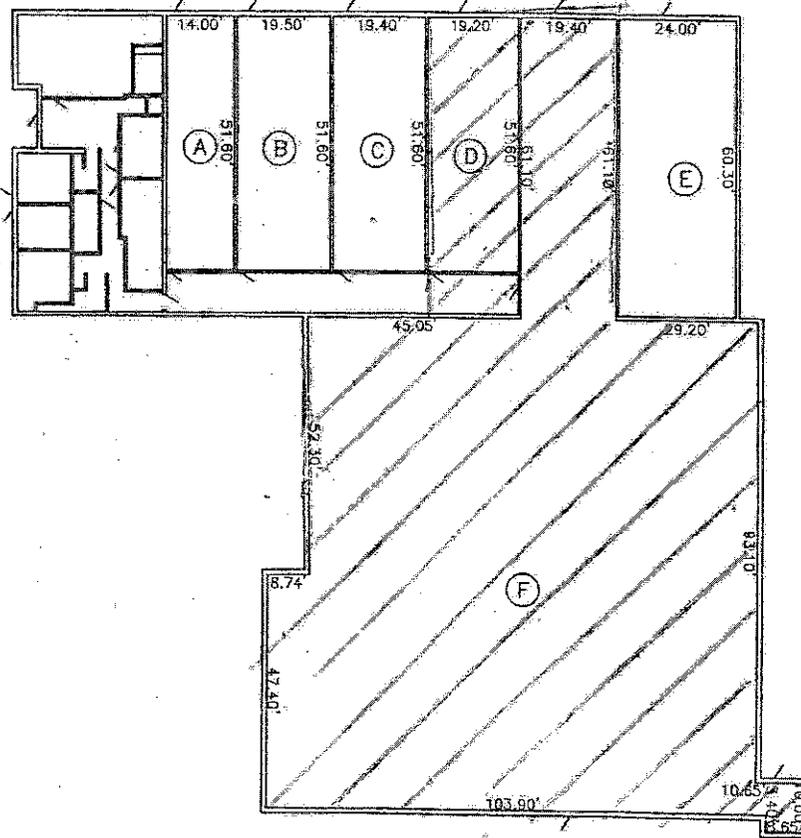
EXHIBIT "A" Demised Premises, Site Plan

CITY OF KEY WEST WATERFRONT BUILDING UPSTAIRS UNITS LAYOUT



<u>Unit</u>	<u>Unit Calculations:</u>	<u>Square Footage</u>
A		2273

CITY OF KEY WEST WATERFRONT BUILDING GROUND LEVEL UNITS LAYOUT



Unit Calculations:

Unit	Square Footage
A	722
B	1006
C	1001
D	991
E	1447
F	11178

Note: Unit F includes metal shed.

CITY OF KEY WEST WATERFRONT BUILDING BOUNDARY SURVEY

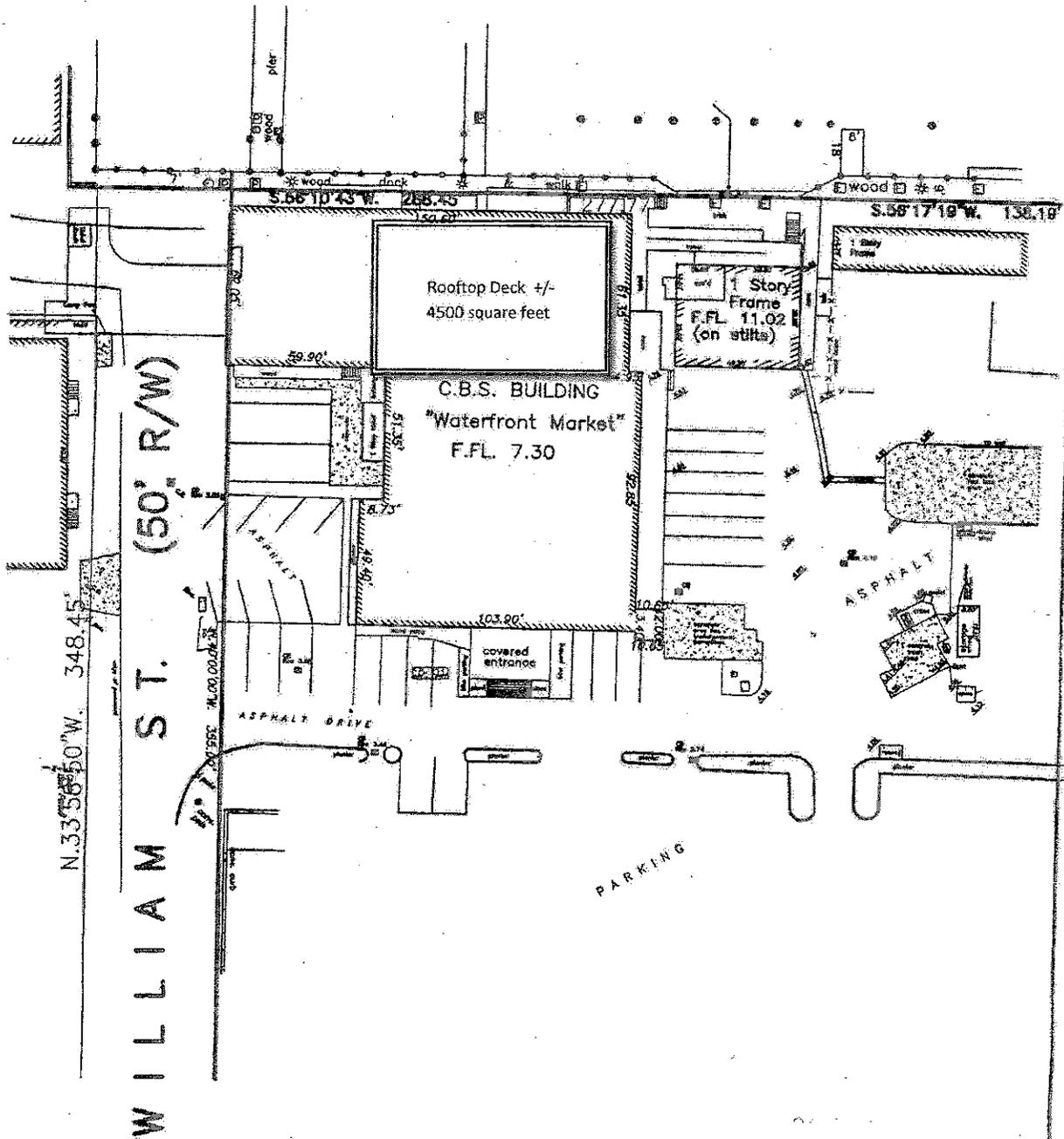


EXHIBIT "B" Rules and Regulations

1. TENANT shall not use any area outside of the demised premises as shown on Exhibit A or any portion of any common area or any parking areas for or any other purpose whatsoever including but not limited to the storage of goods, inventory, equipment, materials, whether or not said area is inside a building or outdoors.

EXHIBIT "C"

TENANT'S written notice of acceptance of the Demised Premises and setting forth the commencement and expiration dates of the lease.

EXHIBIT "D"

City of Key West Resolution 12-228
Major Development Plan, Waterfront Brewery

EXHIBIT "E"

City of Key West General Contract Conditions

RESOLUTION NO. 12-228

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, GRANTING A MAJOR DEVELOPMENT PLAN FOR REDEVELOPMENT OF THE WATERFRONT MARKET BUILDING FOR USE AS A RESTAURANT AND MICROBREWERY WITH WAREHOUSING AND DISTRIBUTION ABILITY FOR PROPERTY LOCATED AT 201 WILLIAM STREET (RE#00072082-004200) IN THE HRCC-2 ZONING DISTRICT, KEY WEST FLORIDA; PROVIDING CONDITIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 108-91 of the Code of Ordinances provides that within the HRCC-2 Zoning District the addition of outdoor activity consisting of restaurant seating equal or greater than 2,500 square feet or other similar activities requires a Major Development Plan approval; and

WHEREAS, the applicant requested a Major Development Plan approval for a restaurant and micro-brewery with new outdoor seating, an allowed use, for city-owned property located in the HRCC-2 zoning district; and

WHEREAS, this matter came before the Planning Board at duly noticed public hearings on March 15, 2012, April 19, 2012, and May 31, 2012, resulting in Planning Board Resolution No. 2012-25; and

WHEREAS, pursuant to Section 108-198, the City Commission shall review and act upon Major Development Plan proposals; and

WHEREAS, the granting of the Major Development Plan will be in harmony with the general purpose and intent of the Land Development Regulations, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare; and

NOW THEREFORE BE IT RESOLVED by the City Commission of the City of Key West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. That the City Commission grants approval of the application for Major Development Plan, per Section 108-91 of the Code of Ordinances of the City of Key West, Florida, to redevelop the Waterfront Market building for the addition of outdoor commercial activity for a new restaurant and brewery with a total of 300 seats (150 on each floor) located at 201 William Street (RE# 00072082-004200) in the HRCC-2 zoning district, as shown in the attached plans stamped March 2, 2012, with the conditions provided in Planning Board Resolution No. 2012-25 and as specified as follows: (1) hours of operation (excluding City-approved special events) for the rooftop Waterfront Brewery Café are limited to 8:00 a.m. to 10:00 p.m., and any outdoor performance or entertainment activity, whether amplified or otherwise shall end by 10:00 p.m.; (2) The applicant shall obtain a Conditional Approval Permit, pursuant to 18-610.; (3) The applicant shall recycle materials accepted by the city's waste handling contractor; (4) New lighting shall be designed to "Dark Sky" lighting standards; (5) The upstairs turf area shall not be used for table placement or be considered consumption area; (6) The applicant shall renew the Conditional Approval permit issued by the City on an annual basis. The renewal is due on May 31st of every year; (7) The applicant

will install and maintain a programmable distributive sound system to assure compliance with the "unreasonable noise" definition of Section 26-191 of the Code of Ordinances, and shall include a computerized sound monitoring system with real time monitoring access provided to the City for the outdoor rooftop café area only; (8) any outdoor televisions will not be wired through the distributive sound system or any surround system; (9) the applicant shall point any speakers or any sound amplification device on the rooftop Waterfront Brewery Café away from neighboring and/or surrounding transient and residential properties; (10) the restaurant use is consistent with the October 21, 2008 Administrative Interpretation defining Bar/Lounge and Restaurant Uses attached herein; (11) the beer produced by the applicant on-site shall be entirely processed on-site in a continuous process, no part of which shall take place off-site.

Section 3. Full, complete, and final application for all permits required for which this resolution is wholly or partly necessary, shall be submitted in its entirety within 12 months after the date hereof.

Section 4. This Major Development Plan does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of applicant's assertion of legal authority respecting the property.

Section 5. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Section 6. This Resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit will be rendered to the Florida Department of Community Affairs. Pursuant to Chapter 9J-1, F.A.C., this permit is not effective for forty five (45) days after it has been properly rendered to the DCA with all exhibits and applications attached to or incorporated by reference in this approval; that within the forty five (45) day review period the DCA can appeal the permit to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement or order.

Passed and adopted by the City Commission at a meeting held this 17 day of July, 2012.

Authenticated by the presiding officer and Clerk of the Commission on July 18, 2012.

Filed with the Clerk July 18, 2012.



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH CITY CLERK



EXECUTIVE SUMMARY

To: Jim Scholl, City Manager
Through: Donald Leland Craig, AICP, Planning Director
From: Nicole Malo, Planner II
Date: July 17, 2012
RE: **Major Development Plan - 201 William Street (RE# 00072082-004200)** A Major Development Plan for the addition of outdoor commercial activity for a new restaurant in the HRCC-2 zoning district per Section 108-91A(2)c. of the Land Development Regulations of the Code of Ordinances of the City of Key West.

ACTION STATEMENT:

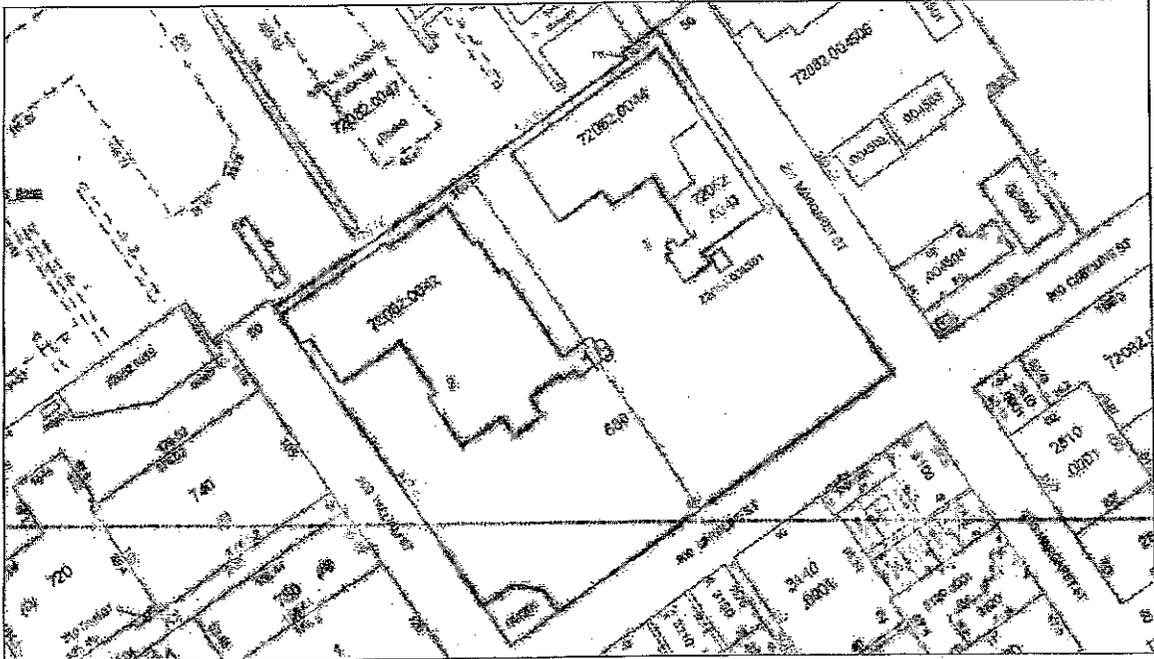
Request: To redevelop a portion of the City owned Key West Bight District property known as the Waterfront Market warehouse building and associated outdoor café area, loading docks, parking and landscaping, to be used as a restaurant with a brewery, events space and retail area, which are allowed uses in the HRCC-2 zoning district. Warehousing and distribution is an existing use on the site, previously associated with the market that may be continued as accessory to the principal use.

Location: 201 William Street, RE# 00072082-004200

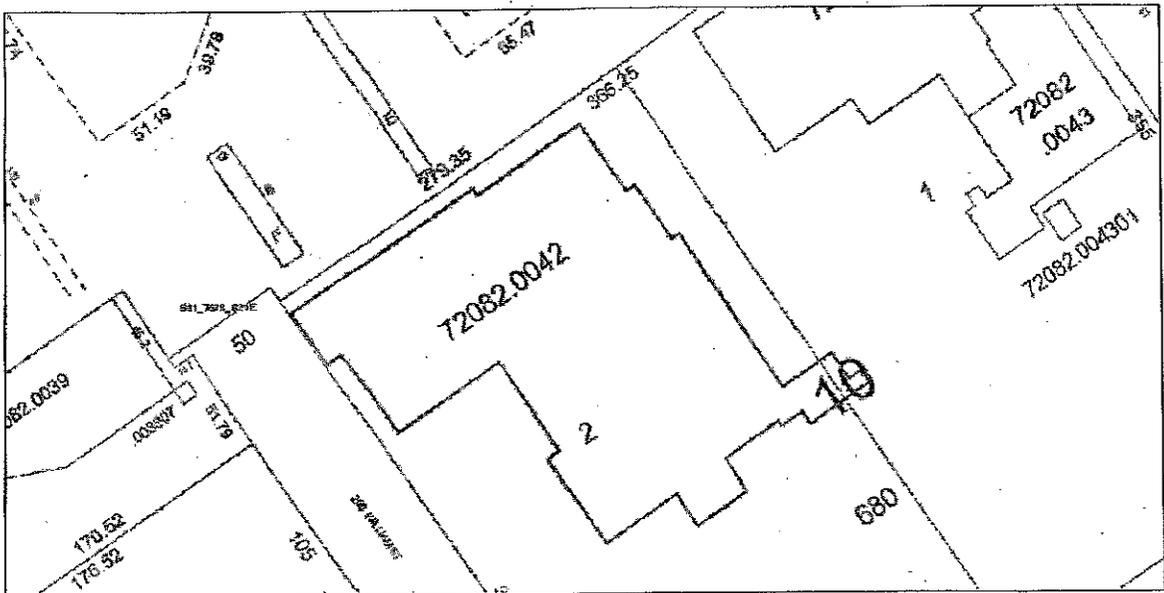
Zoning: Historic Residential Commercial Core – Key West Bight District (HRCC-2)

Previous City Actions:

Development Review Committee Meeting:	December 16, 2011
HARC Meetings:	January 25, 2012
	December 14, 2011
	#H12-01-49
	#H12-01-50
Tree Commission Meetings:	February 28, 2012
	April 12, 2012
Planning Board Meetings:	May 31, 2012 - Resolution 2012-25
	May 17, 2012 – No quorum
	April 19, 2012 – Postponed by Board
	March 15, 2012 – Postponed by applicant
City Commission Meeting:	July 17, 2012



Map 1 - Parcel of Record - RE#0000680-000000
142,000 square feet



Map 2 - Leasehold Area - RE# 00072082-004200
25,140 square feet

Planning Staff Analysis:

This request for a Major Development Plan for a restaurant and brewery is triggered by the applicants request for a new outdoor restaurant cafe area only. The proposed uses and redevelopment of the existing commercial floor area is allowed as of right. Section 108-91 A(1)b of the City of Key West Land Development Regulations requires that any proposed plan within the historic district including the addition of outdoor commercial activity consisting of restaurant seating equal to or greater than 2,500 square feet shall require a Major Development Plan. On May 31, 2012 the Planning Board approved a recommendation for the proposed development plan to the City Commission through Resolution 2012-25 with eleven conditions (see below).

Prior to the Planning Board approval date the applicants met with neighboring interest groups and individuals several times to review the proposed project based on concerns about the potential noise that may generate from the outdoor rooftop café. On the evening of April 12, 2012 the applicant held a community meeting in order to demonstrate the impacts of the potential noise generation from the second story rooftop area on the neighboring properties. The test was run between 5:30-7:30 p.m at a time when there were numerous other sources of background noise; however, the music was played at levels higher than City Ordinance 26-191 allows for demonstration purposes, and there was common agreement that the noise was minimally audible from the ground around the sides and back of the building. Staff coordinated with the potential hotel developer of the nearest second story residential property immediately to the west of the project site, and the applicant in order to craft the proposed conditions of approval. Further, the applicant has relocated the proposed performance area in response to the neighbors' request (see Site Plan, A-4) and has agreed to point the speakers away from adjacent transient and residential properties as a condition of approval. It is the departments understanding that with these conditions in place, issues related to the closest residential neighbor are mostly resolved. The hearing of this application was postponed at the Planning Board once by the applicant and once by the Board in order for the applicant and the neighbors to continue to work through their concerns. Therefore, the Planning Board recommendation of approval with conditions has been carefully crafted in order to balance the needs of a mixed use district using operational restrictions to protect the neighborhood from potential noise, and to allow viable use of the commercial property. The proposed eleven conditions are based on a land use analysis inclusive of the neighborhood concerns regarding amplified music, the existing restrictions of Code Section 26-191 for Unreasonable Noise (see Attached Code Excerpts) and comparing the existing hours of operation for the surrounding business. The proposed land use controls agreed upon by the applicant as part of this Major Development Plan request are more restrictive than on any other restaurant in the Bight District and throughout the City. With the proposed conditions it is staffs understanding that the neighbors' concerns have been met to the best extent practicable. The proposed conditions are as follows:

General Conditions:

1. Hours of operation (excluding City approved special events) for the rooftop Waterfront Brewery Café are limited to 8 a.m. to 10 p.m. and any outdoor performance or entertainment activity whether amplified or otherwise shall end by 10 p.m.

2. The applicant shall obtain a Conditional Approval Permit, pursuant to Section 18-610.
3. The applicant shall recycle materials accepted by the city's waste handling contractor.
4. New lighting shall be designed to "Dark Sky" lighting standards.
5. The upstairs turf area shall not be used for table placement or be considered consumption area.
6. Prior to City Commission review of the project the applicant shall submit a site plan with location and direction of proposed speakers to the Planning Department for review and approval that will be attached to the Commission Review Package.

In order to ensure compliance, the following conditions are subject to the Conditional Approval Permit, per Ordinance 10-22 and subject to an associated annual inspection:

7. The applicant shall renew the Conditional Approval Permit issued by the City on an annual basis. The renewal is due on May 31st of every year.
8. The applicant will install and maintain a programmable distributive sound system to assure compliance with the "unreasonable noise" definition of Section 26-191 of the Code of Ordinances, and shall include a computerized sound monitoring system with real time monitoring access provided to the City.
9. Any outdoor televisions will not be wired through the distributive sound system or any surround sound system.
10. The applicant shall point any speakers or any sound amplification device on the rooftop Waterfront Brewery Café, away from neighboring and/or surrounding transient and residential properties.
11. The restaurant use is consistent with the October 21, 2008 Administrative Interpretation defining Bar/Lounge and Restaurant Uses attached herein.

Background Information:

The area proposed for redevelopment is part of the larger City owned Key West Bight district property and is also located within the boundaries of the Caroline Street Corridor Community Redevelopment Area. The leasehold area shown in Map 2 above is part of the larger parcel of record shown on Map 1 above. The area shown in Map 2 is known as the Waterfront Market building, located at the north end of William Street. The building is split into approximately eight units that are currently leased out separately for retail, office and restaurant uses. The proposed use will occupy a large portion of the building and the existing ongoing leaseholds will remain. The building was constructed around 1970 and was originally used as a shrimp processing facility; although, since the City acquired the property in 1993 it has been used primarily for restaurant, retail, wholesale food market, manufacturing (sailing equipment), distribution, and office space in accordance with the 1994 Bight Master Plan (see attached Bight Master Plan).

Most recently the building was a retail market, deli, and bakery with warehousing and distribution uses allowed for the packaging and delivery of produce to restaurants and markets throughout Key West. Warehousing and distribution are identified as Light Industrial uses in the Land Development Regulations (LDR's) and allowed conditionally within the HRCC-2 zoning

district; although, no conditional use approval from the city has been identified. These uses are also identified in the most recent 2007 Waterfront Market lease agreement (see attached). These uses are not considered abandoned pursuant to the definition of "Abandoned" pursuant to Code Section 86-9, and are therefore retains the status of existing non-conforming uses.

The uses identified in the Bight Master Plan (BMP) are examples of the limited Water-related uses intended to be allowed from 30' to 100' of the mean high water line within the HRCC-2 zoning district:

Water-related uses means activities which are not directly dependent upon access to a water body, but which provide goods and services that are directly associated with water-dependent or waterway uses and/or provide supportive services to persons using a duly permitted marina. (Section 86-9)

Although the historic and existing uses of the Waterfront Market building are compatible with the intent of the BMP and LDR's, the HRCC-2 zoning district regulations further limit new development by requiring land uses within 30' of the mean high water line be water-dependent:

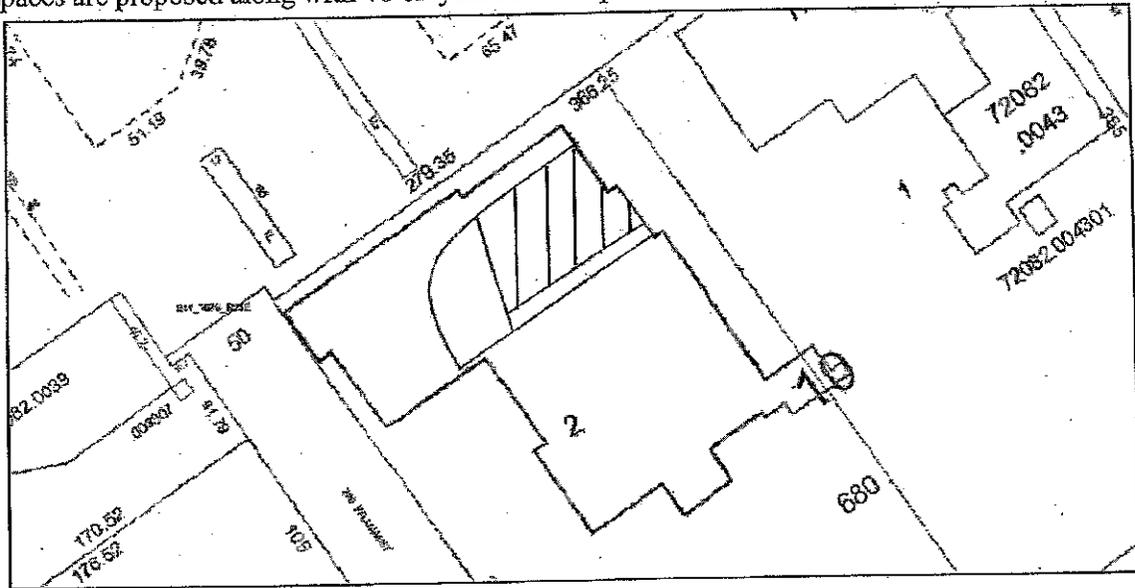
Water-dependent uses means activities which can be carried out only on, in or immediately adjacent to water areas because the use requires access to the water body for: waterborne transportation, including ports or marinas; recreation; electrical generating facilities; or water supply. (Section 86-9)

The Waterfront Market building is located approximately 15' feet from the mean high water line therefore the structure and its associated uses are historically and legally non-conforming to the HRCC-2 setback regulation. The structure is also legally non-conforming to dimensional requirements for the coastal construction control line setback, building setbacks, and water dependent uses setbacks, none of which shall be resolved without demolishing and relocating the structure. The parcel is part of the larger Key West Bight property and stormwater management requirements, landscaping, impervious surface, open space, the waste handling area and parking requirements are provided throughout the greater Bight District. The proposed updates to the Bight Master Plan being considered by the City and it's consultant at this time contemplate additional compliance with the LDR's for the Bight District as a whole.

The portion of the Waterfront Market building proposed for redevelopment is typical of a warehouse with two story ceiling throughout most of the space, and a total floor area of 18,692 square feet including three mezzanines most recently used for offices, storage, and consumption area for a juice bar and café. The portions of this building proposed for redevelopment is accessed from the harborwalk and from the parking lot that abuts Caroline Street in the front. There are multiple bays for loading and truck deliveries on each side of the building. Approximately fifteen conforming parking spaces were associated with the Waterfront Market and subsequent license holders; although, none of the parking spaces were officially dedicated to the building or its uses. Further, the Key West Bight Master Plan contemplated that the parking lots located at the end of Margaret and Caroline Streets and the Park and Ride on Grinnell Street were to accommodate the Bight uses.

Request and Analysis of Proposed Use:

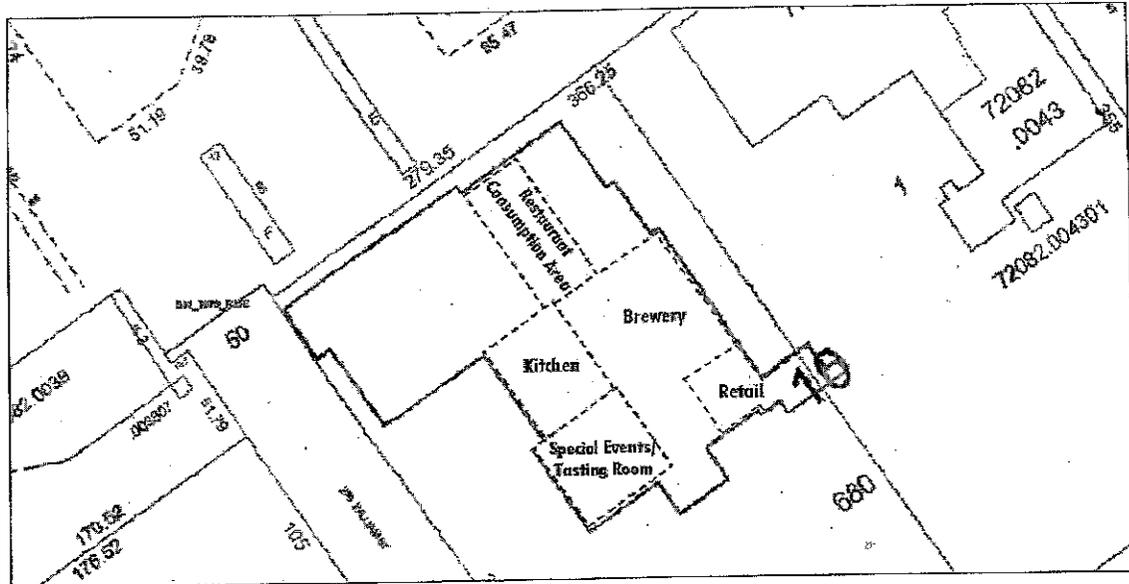
This Development Plan application is for the renovation of portions of the Waterfront Market building as a restaurant and micro-brewery with retail and special events areas of approximately 18,000 square feet of floor area. In addition, site improvements to the building façade, landscaping, parking and loading areas within the demised lease area are proposed. The uses proposed are permitted uses in the zoning district and the structure has a longstanding history of food and beverage sales for consumption on site and for distribution as described above. The development plan approval is triggered by the applicants request to add outdoor commercial activity consisting of 150 restaurant seats or 2,250 square feet of consumption area to the first floor roof top area overlooking the Bight. The proposed rooftop consumption area is shown in crosshatch in the plan below. 2,307 square feet of floor area associated with the new outdoor consumption area is proposed to be relocated from the removal of mezzanines existing within the building; therefore, no additional parking is required for the use located within the Historic Commercial Pedestrian Oriented Area pursuant to Section 108-573(c)1. However 18 parking spaces are proposed along with 40 bicycle/scooter spaces.



Proposed Roof Top Consumption Area

The interior uses located on the first floor of the building both accessible from the waterfront and from the front entrance include a second restaurant consumption area and the main kitchen that services both restaurant areas, ADA accessible bathrooms, the brewing area available for tours, a multi-use tasting and events area and a retail area (see Proposed First Floor Plan below). The proposed interior consumption area is approximately 3,500 square feet, but is limited to 150 seats. A stairway and ADA compliant lift access to the second storey from inside the main floor. To accommodate the proposed design the removal of three interior mezzanines (see Proposed Site Plan A-3 and A-4 for Building Data Table) is proposed. The second storey interior space will be limited to a storage area, a service kitchen and bathrooms. The outdoor area will consist of consumption area limited to 150 seats and 2,250 square feet. Amenities include a turf play area, a rooftop garden and a small performance area designed to direct noise away from nearby transient residential uses. The area is also buffered by the north third storey wall of the

warehouse portion of the building that should provide additional sound containment mitigation. The applicant has agreed to the installation of a distributive sound system, the redirection of speakers away from the proposed adjacent hotel, and limited hours of operation and entertainment to reduce potential noise impacts.



Proposed First Floor Plan

Overall improvements as part of this development plan include interior renovations, new entryway design, improved access, ADA accessibility, code compliant parking, increased landscaping, open space and a net reduction of impervious surface. The area proposed as part of this development plan is part of a larger parcel of record as described above; therefore, the site dimensions are related to the entire site of 142,000 s.f. No variances or waivers are required.

Approximately fifteen complaint parking spaces were associated with the Waterfront Market use and previous license holders; however, the spaces were not dedicated. The proposed plan maintains the fifteen parking spaces on the site and adds a new area to accommodate scooter and bicycle parking (40 spaces). The existing mural that covers the rear and side of the building will be maintained. Structural improvements to the façade of the building include a new concrete galvanized metal and glass entry feature that displays public art and surrounds the new stairway at the west side of the building. An exterior access door is also provided to the events room. An additional stairway is proposed on the east side of the structure as a secondary access for the outdoor restaurant. HARC granted a Certificate of Appropriateness for the proposed design and signage and a copy of the HARC staff report is attached to this package. Additional visual and repair improvements are proposed including the supportive uses relocations the air condenser units and machinery to the roof of the building.

The proposed development plan for existing and permitted land uses is compatible the BMP is that it anticipated an outdoor cafe "with views of the Harbor," the CRA Plan that encourages improvements to blighted conditions, specifically the Waterfront Market building. No increase in net floor area is proposed and mitigative techniques are proposed to reduce noise impacts.

Further, the applicant has provided a concurrency analysis that shows that the proposed mixed use facility will not intensify the use of the premises by increasing required parking facilities or vehicular traffic (see attached Concurrency Management Report), and will not negatively affect any other concurrency standard.

Options / Advantages / Disadvantages:

Option 1. To approve the proposed Major Development Plan with the eleven conditions as proposed by the Planning Board in Resolution 2012-25 (see below):

1. **Consistency with the City's Strategic Plan, Vision and Mission:**
The City's Vision, Mission and Strategic Plan in which Economic Growth and Diversification that Sustains a Healthy Economy is supported.
2. **Financial Impact:** The City will not be responsible for the reconstruction and improvements of the City's property. The improvements should increase the value of the city's property and add to the CRA TIFF. Further, if the development plan is approved the lease agreement negotiation should provide revenues over \$30,000 a month to the city.

Option 2. To deny the proposed Major Development Plan

1. **Consistency with the City's Strategic Plan, Vision and Mission:** Denial of the proposed development plan is not consistent with the City's Strategic Plan, Vision, and Mission.
2. **Financial Impact:** The city will continue to lose over \$30,000 in monthly lease revenue for the unused property. The site has been vacant for over two years. In addition, although modest in expenditure the City has used resources for project management including staff time and the time of the various Boards for required for lease negotiation and development plan approvals.

RECOMMENDATION:

Staff and the Planning Board, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends Option 1, that the request for Major Development Plan be **approved** with the following conditions:

General Conditions:

1. Hours of operation (excluding City approved special events) for the rooftop Waterfront Brewery Café are limited to 8 a.m. to 10 p.m. and any outdoor performance or entertainment activity whether amplified or otherwise shall end by 10 p.m.
2. The applicant shall obtain a Conditional Approval Permit, pursuant to Section 18-610.
3. The applicant shall recycle materials accepted by the city's waste handling contractor.
4. New lighting shall be designed to "Dark Sky" lighting standards.

5. The upstairs turf area shall not be used for table placement or be considered consumption area.
6. Prior to City Commission review of the project the applicant shall submit a site plan with location and direction of proposed speakers to the Planning Department for review and approval that will be attached to the Commission Review Package.

Conditions subject to a Conditional Approval Permit, per Ordinance 10-22 and subject to an associated annual inspection:

7. The applicant shall renew the Conditional Approval Permit issued by the City on an annual basis. The renewal is due on May 31st of every year.
8. The applicant will install and maintain a programmable distributive sound system to assure compliance with the "unreasonable noise" definition of Section 26-191 of the Code of Ordinances, and shall include a computerized sound monitoring system with real time monitoring access provided to the City.
9. Any outdoor televisions will not be wired through the distributive sound system or any surround sound system.
10. The applicant shall point any speakers or any sound amplification device on the rooftop Waterfront Brewery Café, away from neighboring and/or surrounding transient and residential properties.
11. The restaurant use is consistent with the October 21, 2008 Administrative Interpretation defining Bar/Lounge and Restaurant Uses attached herein.

**PLANNING BOARD
RESOLUTION No. 2012-25**

**A RESOLUTION OF THE KEY WEST
PLANNING BOARD GRANTING MAJOR
DEVELOPMENT PLAN APPROVAL PER
SECTIONS 108-91 AND 108-96 THROUGH 108-
957 FOR RECONSTRUCTION OF THE
WATERFRONT MARKET BUILDING TO BE
USED AS A RESTAURANT AND MICRO-
BREWERY WITH WAREHOUSING AND
DISTRIBUTION ABILITY FOR PROPERTY
LOCATED AT 201 WILLIAM STREET
(RE#00072082-004200) IN THE HRCC-2
ZONING DISTRICT, KEY WEST FLORIDA;
PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, Section 108-91 of the Code of Ordinances provides that within the Historic District a Major Development Plan is required for the addition of outdoor activity consisting of restaurant seating equal or greater than 2,500 square feet or other similar activities; and

WHEREAS, the applicant proposed a development plan for a restaurant and micro-brewery with new outdoor seating, an allowed use, for city owned property located in the HRCC-2 zoning districts; and

WHEREAS, Section 108-196(a) requires the Planning Board to review and approve, approve with conditions, or deny the proposed Major Development Plan; and

Page 1 of 5
Resolution Number 2012-25



Chairman


Planning Director

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on March 15, 2012 and April 19, 2012 and was postponed to work out issues with the neighbors; and

WHEREAS, this matter came back before the Planning Board at a special meeting on May 31, 2012; and

WHEREAS, the granting of a Major Development Plan application is consistent with the criteria of the Code of Ordinances; and

WHEREAS, the Planning Board finds that the granting of a Major Development application is in harmony with the general purpose and intent of the Land Development Regulations, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare; and

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. The Major Development Plan for the redevelopment of the Waterfront Market building for the addition of outdoor commercial activity for a new restaurant and brewery with a total of 300 seats (150 on each floor) located at 201 William Street (RE# 00072082-004200) in the HRCC-2 zoning district per Section 108-91A(2)c. of the Land Development Regulations of the Code of Ordinances of the City of Key West, as shown in the attached plans stamped March 2, 2012, is



Chairman



Planning Director

hereby approved with the following conditions of approval:

General Conditions:

1. Hours of operation (excluding City approved special events) for the rooftop Waterfront Brewery Café are limited to 8 a.m. to 10 p.m. and any outdoor performance or entertainment activity whether amplified or otherwise shall end by 10 p.m.
2. The applicant shall obtain a Conditional Approval Permit, pursuant to Section 18-610.
3. The applicant shall recycle materials accepted by the city's waste handling contractor.
4. New lighting shall be designed to "Dark Sky" lighting standards.
5. The upstairs turf area shall not be used for table placement or be considered consumption area.
6. Prior to City Commission review of the project the applicant shall submit a site plan with location and direction of proposed speakers to the Planning Department for review and approval that will be attached to the Commission Review Package.

Conditions subject to a Conditional Approval Permit, per Ordinance 10-22 and subject to an associated annual inspection:

7. The applicant shall renew the Conditional Approval Permit issued by the City on an annual basis. The renewal is due on May 31st of every year.
8. The applicant will install and maintain a programmable distributive sound system to assure compliance with the "unreasonable noise" definition of Section 26-191 of the Code of


Chairman

Planning Director

Ordinances, and shall include a computerized sound monitoring system with real time monitoring access provided to the City for the outdoor rooftop café area only.

9. Any outdoor televisions will not be wired through the distributive sound system or any surround sound system.
10. The applicant shall point any speakers or any sound amplification device on the rooftop Waterfront Brewery Café, away from neighboring and/or surrounding transient and residential properties.
11. The restaurant use is consistent with the October 21, 2008 Administrative Interpretation defining Bar/Lounge and Restaurant Uses attached herein.

Section 3. Full, complete, and final application for all permits required for which this resolution is wholly or partly necessary, shall be submitted in its entirety within 12 months after the date hereof.

Section 4. This Major Development Plan application approval by the Planning Board does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of the applicant's assertion of legal authority respecting the property.

Section 5. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Section 6. This resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has

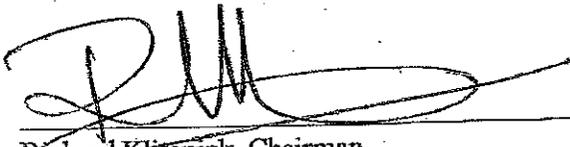

Chairman

Planning Director

expired, this permit or development order will be rendered to the Florida Department of Community Affairs. Pursuant to Chapter 9J-1, F.A.C., this permit or development order is not effective for forty five (45) days after it has been properly rendered to the DCA with all exhibits and applications attached to or incorporated by reference in this approval; that within the forty five (45) day review period the DCA can appeal the permit or development order to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement or order.

Read and passed on first reading at a special meeting held this 31st day of May, 2012.

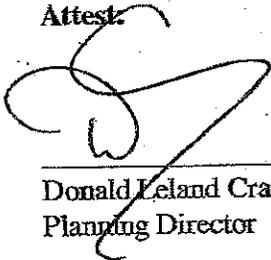
Authenticated by the Chairman of the Planning Board and the Planning Director.



Richard Klitenick, Chairman
Key West Planning Board

6/6/2012
Date

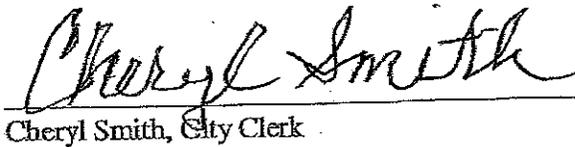
Attest:



Donald Leland Craig, AICP
Planning Director

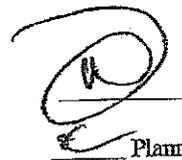
6-5-12
Date

Filed with the Clerk:



Cheryl Smith, City Clerk

6-6-12
Date



Chairman
Planning Director

Index of Site Plans

- A-1 PROPOSED SITE PLAN - ROOF PLAN**
- A-2 PROPOSED SITE PLAN - ROOF PLAN**
- A-3 PROPOSED 1ST. FLOOR PLAN**
- A-4 PROPOSED 2ND. FLOOR PLAN AND
CONSUMPTION AREA**
- A-5 PROPOSED ELEVATIONS**
- A-6 PROPOSED ELEVATIONS**
- A-7 PERSPECTIVES**
- A-8 PERSPECTIVES AND AERIALS**
- A-9 PERSPECTIVES AND AERIALS**
- L-1 PROPOSED LANDSCAPE PLAN**
- EX-1 EXISTING SITE PLAN**
- EX-2 EXISTING SITE PLAN - ROOF PLAN**
- EX-3 EXISTING 1ST. FLOOR PLAN**
- EX-4 EXISTING 2ND. FLOOR PLAN**
- EX-5 EXISTING ELEVATIONS**

D

RECEIVED
 PROJECT, P.A.
 WILLIAM STUBBS
 ARCHITECT, P.A.
 1000 N. W. 10th St.
 Ft. Lauderdale, FL 33304
 (305) 555-1111

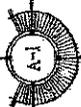
PROJECT NO.
 DATE
 SHEET NO.

WATERFRONT BREWERY
 201 WILLIAM STREET
 KEY WEST, FLORIDA

DATE
 PROJECT NO.
 SHEET NO.

SCALE

DATE
 PROJECT NO.
 SHEET NO.



SITE DATA

FOR THE PROPOSED WATERFRONT BREWERY, 201 WILLIAM STREET, KEY WEST, FLORIDA

PREPARED BY: WILLIAM STUBBS ARCHITECT, P.A.

DATE: 10/15/00

PROJECT NO.: 00-0000

SHEET NO.: 00-0000

SCALE: AS SHOWN

PROJECT LOCATION: 201 WILLIAM STREET, KEY WEST, FLORIDA

OWNER: WATERFRONT BREWERY, 201 WILLIAM STREET, KEY WEST, FLORIDA

DESIGNER: WILLIAM STUBBS ARCHITECT, P.A., 1000 N. W. 10th St., Ft. Lauderdale, FL 33304

DATE OF DESIGN: 10/15/00

DATE OF PLOTTING: 10/15/00

DATE OF PRINTING: 10/15/00

PROJECT NO.: 00-0000

SHEET NO.: 00-0000

SCALE: AS SHOWN

PROJECT LOCATION: 201 WILLIAM STREET, KEY WEST, FLORIDA

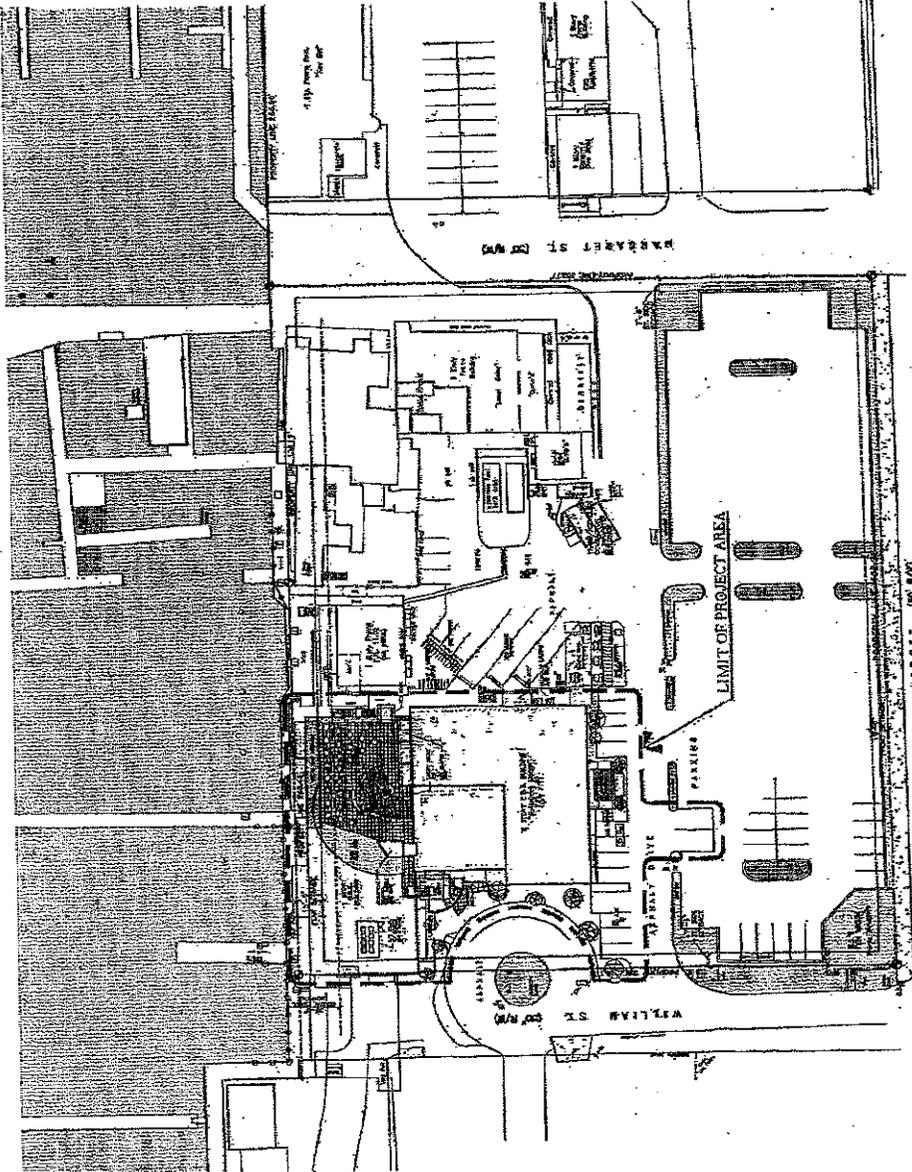
OWNER: WATERFRONT BREWERY, 201 WILLIAM STREET, KEY WEST, FLORIDA

DESIGNER: WILLIAM STUBBS ARCHITECT, P.A., 1000 N. W. 10th St., Ft. Lauderdale, FL 33304

DATE OF DESIGN: 10/15/00

DATE OF PLOTTING: 10/15/00

DATE OF PRINTING: 10/15/00



PROPOSED SITE PLAN - ROOF PLAN
 SCALE: 1" = 30'-0"
 PREPARED BY: WILLIAM STUBBS ARCHITECT, P.A.
 DATE: 10/15/00

WATERFRONT BREWERY
 201 WILLIAM STREET
 KEY WEST, FLORIDA



RECEIVED
 NASSAU, FLA.
 MAY 15 1961



WILLIAM B. KVETTER
 ARCHITECT P.A.
 1001 N. W. 10th Street
 Miami, Florida

WATERFRONT ENGINEER
 1001 N. W. 10th Street
 Miami, Florida

SCALE

DATE
 11-11-58
 1-20-61 DMC

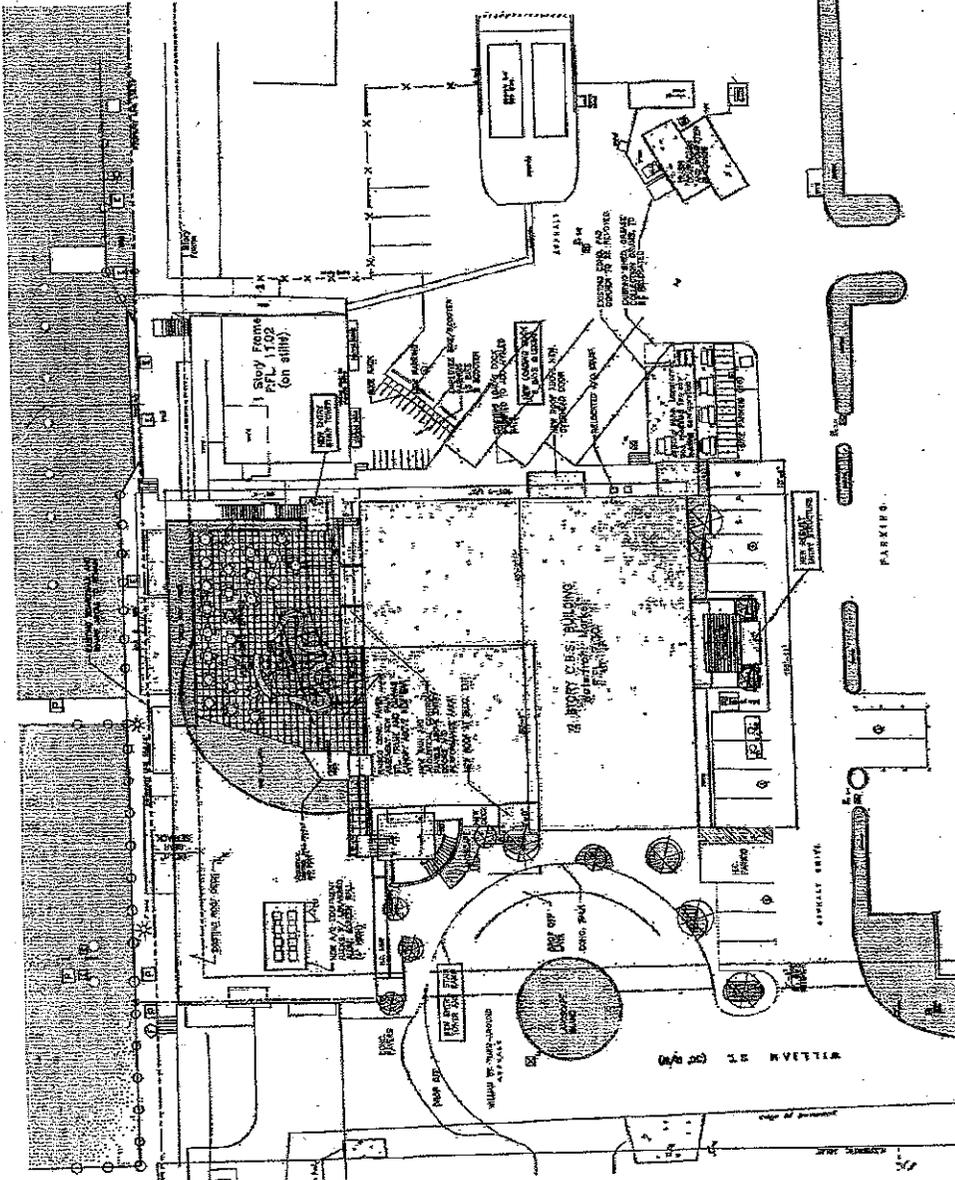
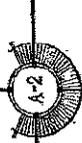
PLANNING

ENGINEER

NO. 12477

STATE OF FLORIDA

PROFESSIONAL ENGINEER



PROPOSED SITE PLAN - ROOF PLAN
 SCALE: 1/8" = 1'-0"
 SEE PLAN FOR INFORMATION
 OF LAND FROM WHICH PROPERTY
 SURVEY MADE ON 02-27-58

WATERFRONT BREWERY
 201 WILLIAM STREET
 KEY WESE BIGHT, FLORIDA



WILLIAMS HOON
ARCHITECT, P.C.
1400 Broadway
New York, N.Y. 10018
Tel. (212) 691-1000
Fax (212) 691-1001

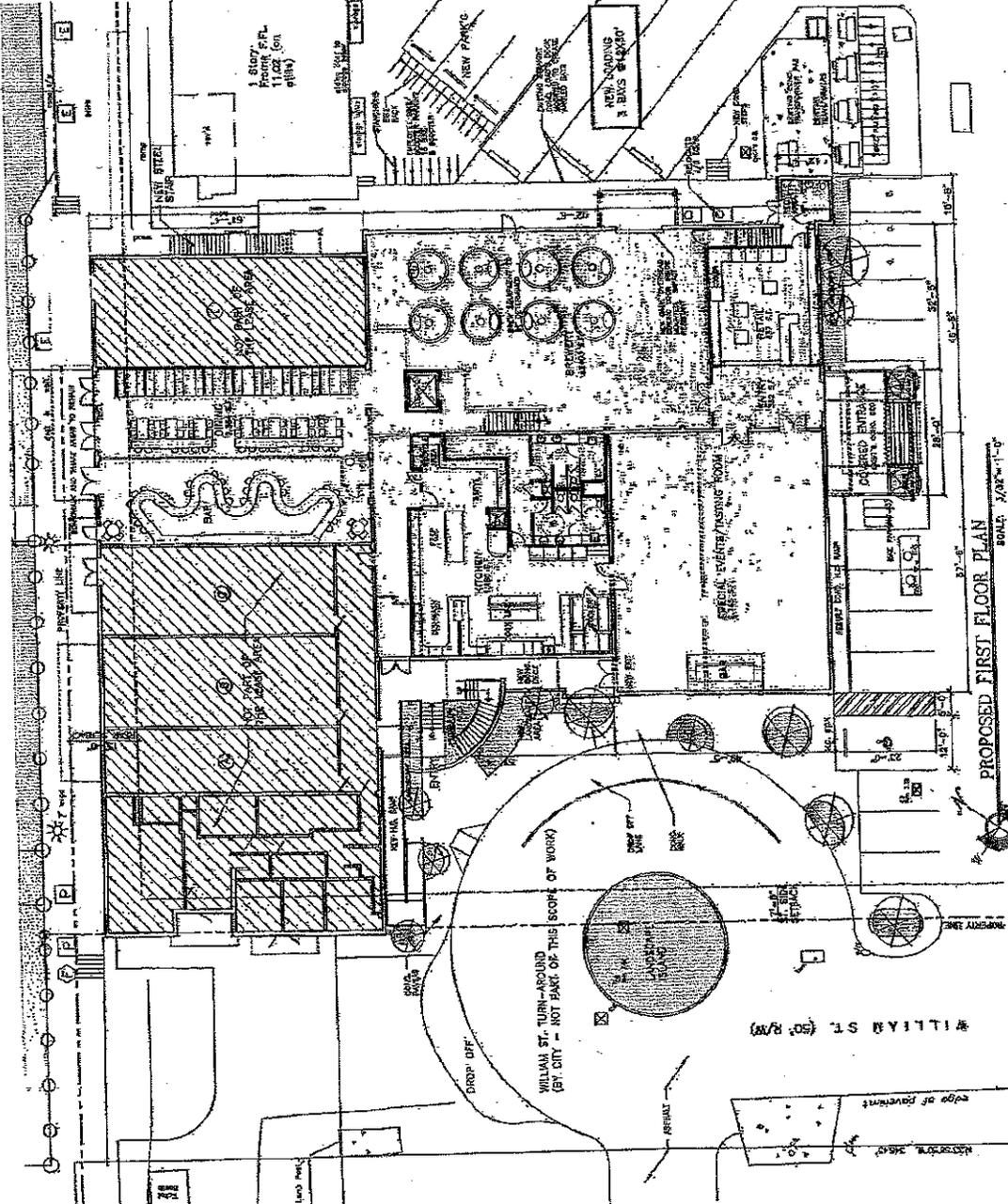


WALL LEGEND

---	CONCRETE
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---	GLASS
---	WOOD
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EXISTING BUILDING DATA (LEASE AREA)

NO.	DESCRIPTION	AREA (SQ. FT.)	DATE
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PROPOSED FIRST FLOOR PLAN
SCALE: 1/8" = 1'-0"

WATERFRONT BREWERY
201 WILLIAM STREET
NEW YORK, NY 10014



DATE: 10/11/11
PROJECT: WATERFRONT BREWERY

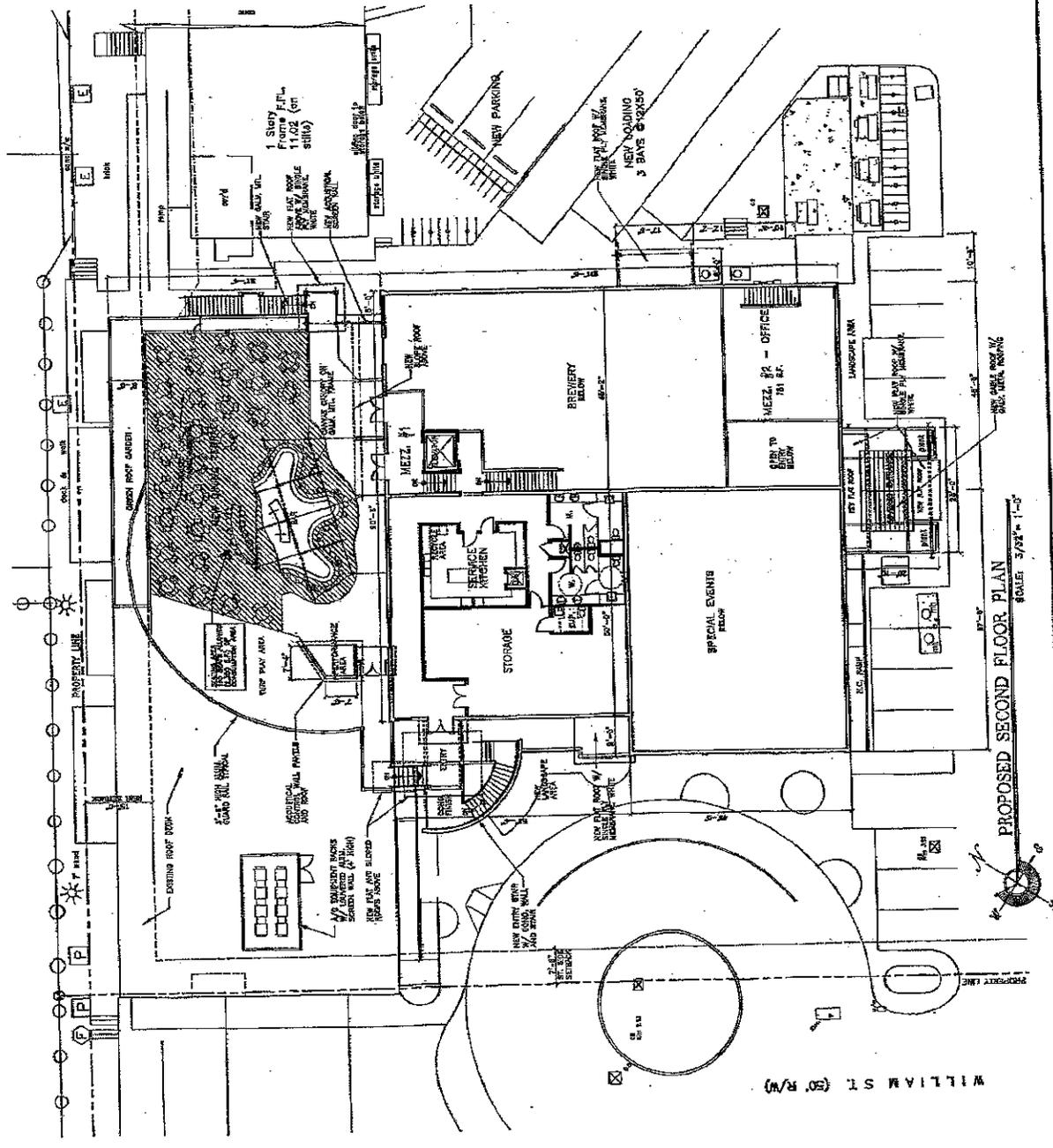
DESIGNED BY: WILLIAMS HOON
DRAWN BY: [Name]
CHECKED BY: [Name]
APPROVED BY: [Name]

WALL LEGEND

-----	EXISTING WALL
-----	NEW WALL
-----	ROOFING TO BE REMOVED

BUILDING DATA

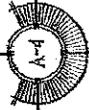
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PERMITS	1433 SF
ROOF AREA	1433 SF
MEZZ #	0
MEZZ AREA	0 SF
TOTAL FLOOR AREA	1433 SF
EXISTING AREA TO BE REMOVED	
AREA	0 SF
PERMITS	0 SF
ROOF AREA	0 SF
MEZZ #	0
MEZZ AREA	0 SF
TOTAL FLOOR AREA	0 SF
PROPOSED BUILDING DATA	
AREA	1433 SF
PERMITS	1433 SF
ROOF AREA	1433 SF
MEZZ #	0
MEZZ AREA	0 SF
TOTAL FLOOR AREA	1433 SF
NEW ROOFING REQUIRED AREA = 1433 SF	
NEW ROOFING REQUIRED PERMITS = 1433 SF	
NEW ROOFING REQUIRED ROOF AREA = 1433 SF	
NEW ROOFING REQUIRED MEZZ AREA = 0 SF	
NEW ROOFING REQUIRED TOTAL AREA = 1433 SF	
NEW ROOFING REQUIRED TOTAL PERMITS = 1433 SF	
NEW ROOFING REQUIRED TOTAL ROOF AREA = 1433 SF	
NEW ROOFING REQUIRED TOTAL MEZZ AREA = 0 SF	
NEW ROOFING REQUIRED TOTAL FLOOR AREA = 1433 SF	



PROPOSED SECOND FLOOR PLAN
SCALE: 3/32" = 1'-0"

WATERFRONT BREWERY
201 WILLIAMS STREET
KEY WEST, FLORIDA

WILLIAM ST (50' R/W)



WILLIAM HAYES
ARCHITECT, P.A.

DESIGNED BY
WILLIAM HAYES
ARCHITECT, P.A.

FOR THE BOARD OF
PUBLIC WORKS
KEY WEST, FLORIDA

WATERFRONT BREWERY
KEY WEST, FLORIDA

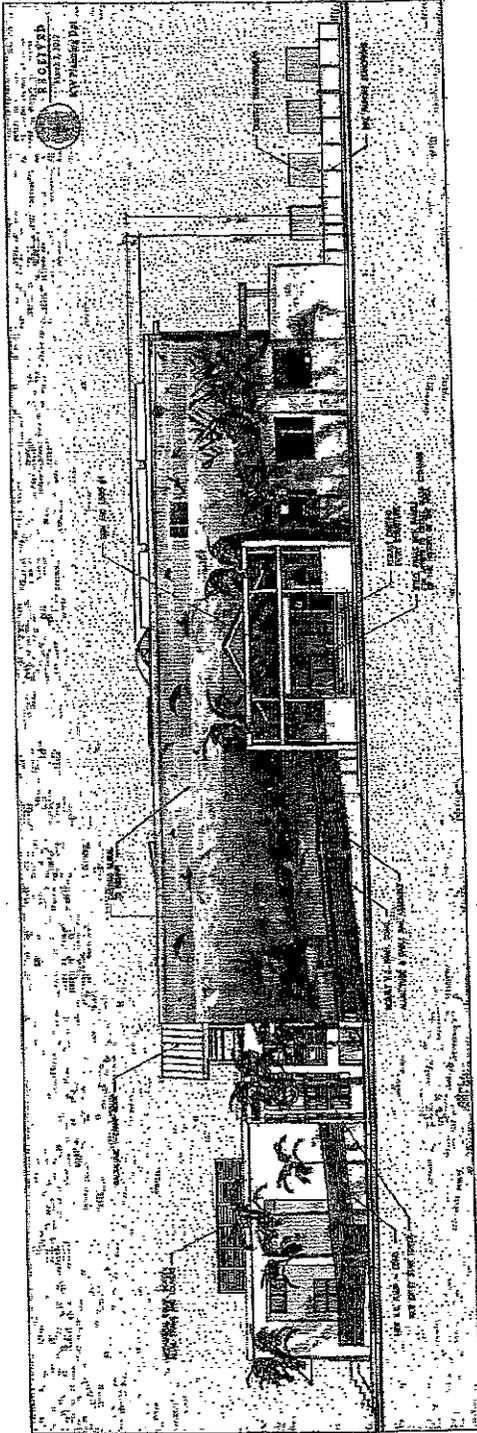
SCALE

DATE OF PREPARATION
ARCHITECTURE
PLANS

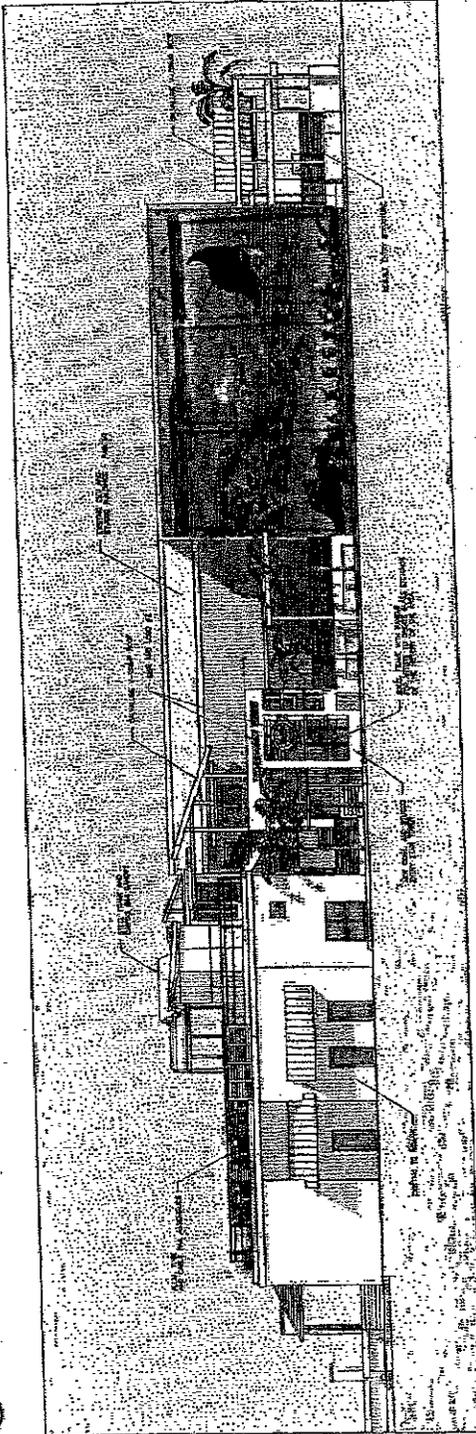
DATE OF ISSUE
1934-11-10

REVISIONS

DRAWN BY
W. HAYES
CHECKED BY
W. HAYES



1 ELEVATION - ENTRANCE I
SCALE 1/8" = 1'-0"



2 ELEVATION - ENTRANCE II
SCALE 1/8" = 1'-0"

WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST, FLORIDA

Handwritten signature or initials.

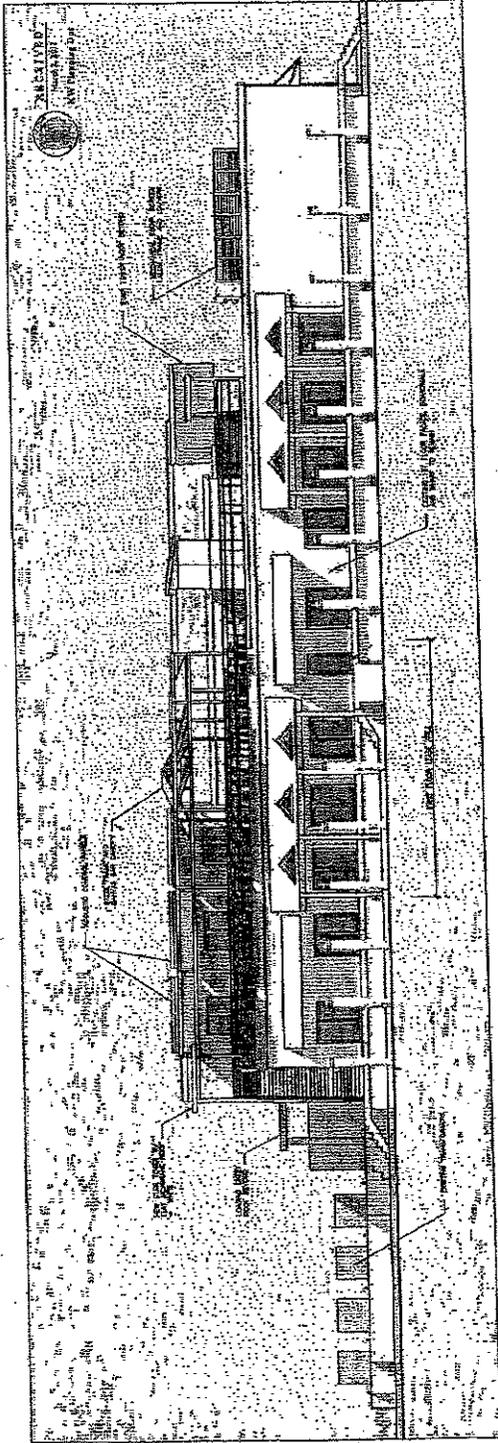
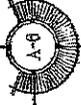
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ARCHITECTS, P.A.
1001 N.W. 10TH AVENUE
MIAMI, FLORIDA 33136
TEL: 305-371-1111
FAX: 305-371-1112

WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST, FLORIDA

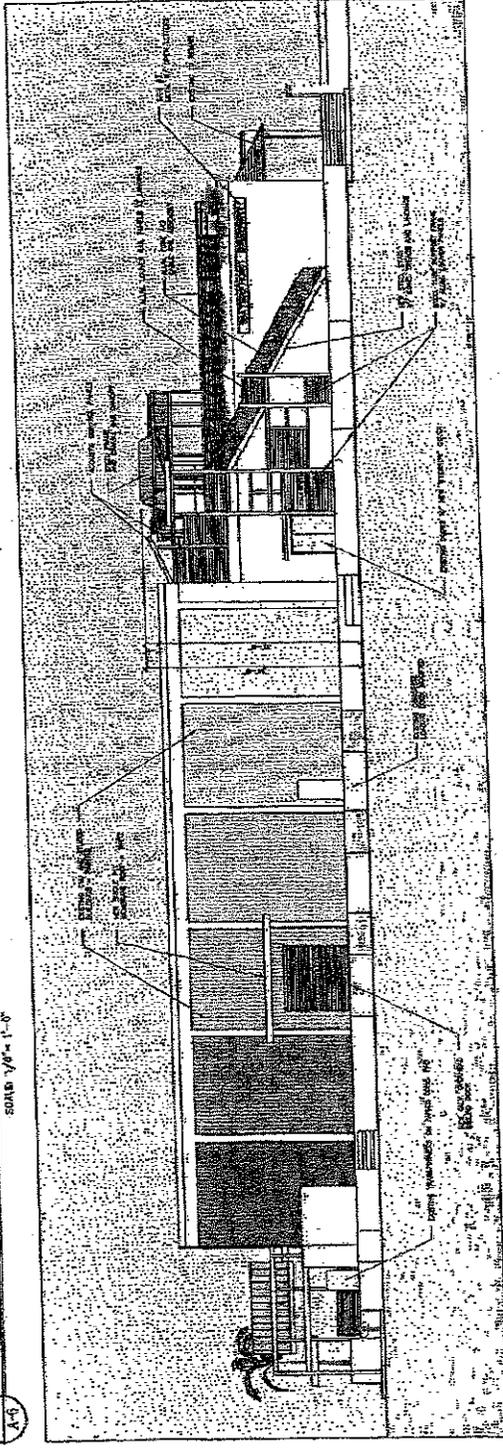
DATE: 10-11-04
PROJECT NO: 04-01-04

REVISIONS:

DESIGNED BY:
DRAWN BY:
CHECKED BY:
DATE:



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A-6
ELEVATION - WATERFRONT
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2
A-6
ELEVATION - LOADING DOCK
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WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST, FLORIDA

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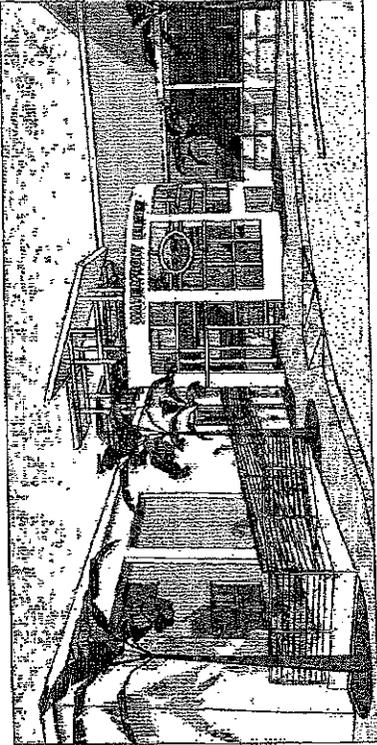
WILLIAM P. HORN
ARCHITECT, P.A.
WILSON ST
STEEVES
TAMPA
33606
Tel. (813) 281-1999
FAX (813) 281-1997
www.williamhorn.com

WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST, FLORIDA

DATE: 11-11-11
BY: JPH/DRG

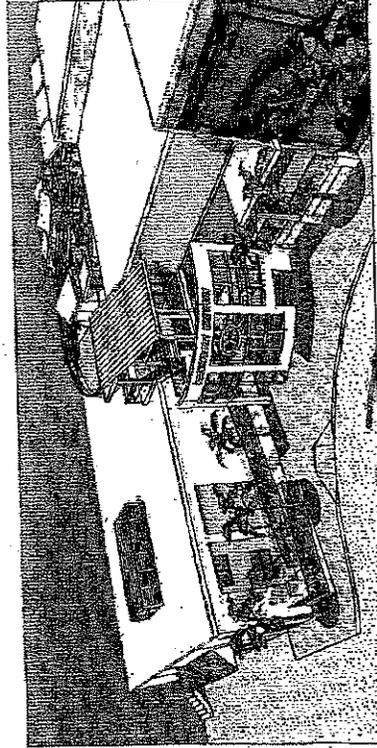
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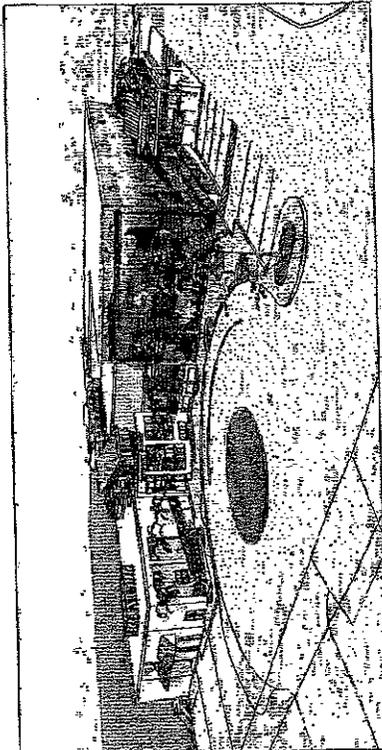
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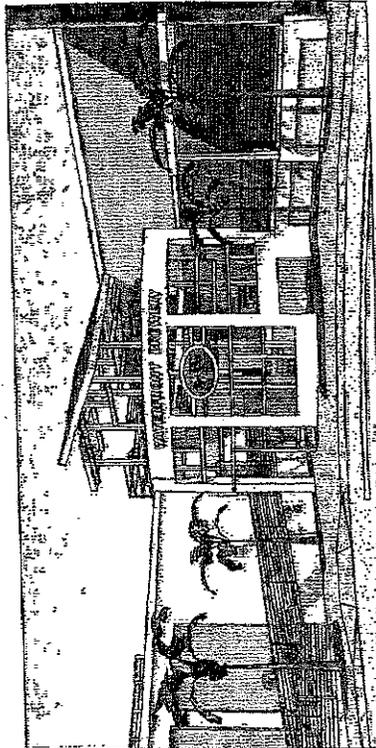
ENTRANCE II - AERIAL VIEW

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A-7



ENTRANCE II - PERSPECTIVE VIEW

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A-7



ENTRANCE II - PERSPECTIVE VIEW

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A-7

WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST, FLORIDA

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WILLIAMS
ARCHITECT, P.A.

PROJECT:
ADDRESS:
DATE:
DESIGNER:
LICENSE NO.
11/19/88

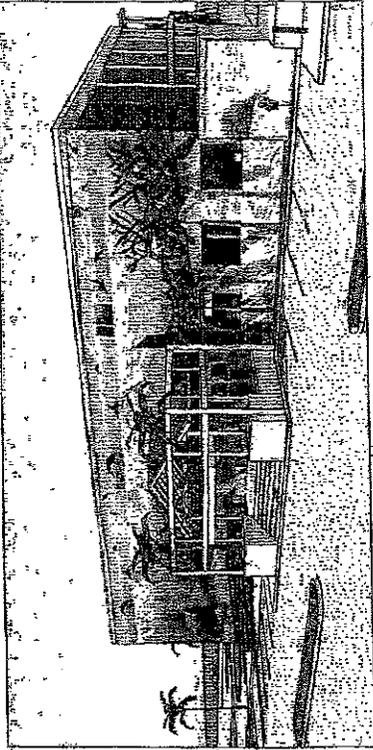
WATERFRONT BREWERY
155 WEST BIGHT, FLORIDA

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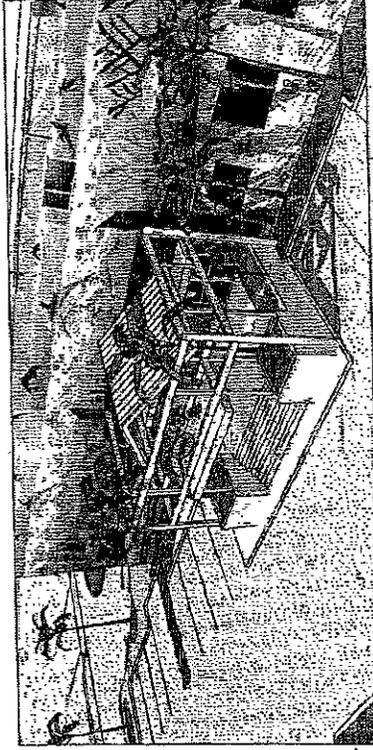
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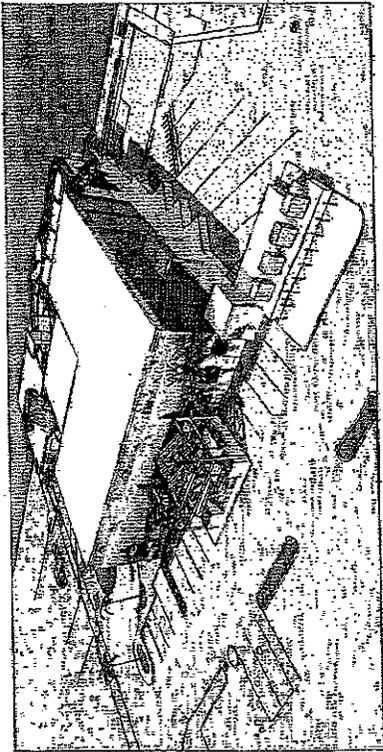
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BY: [Signature]



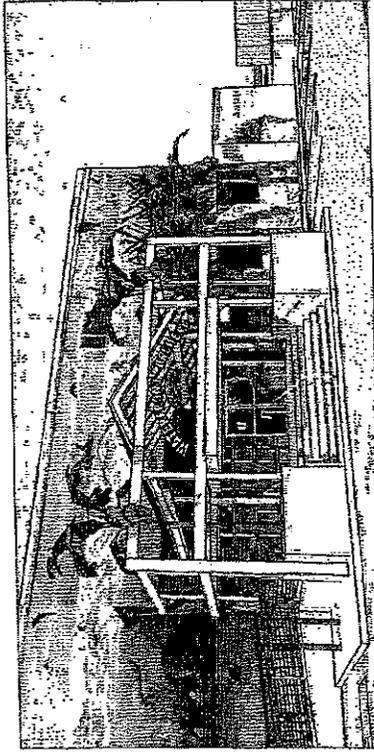
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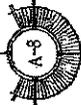
ENTRANCE I - AERIAL VIEW



ENTRANCE I - AERIAL VIEW



ENTRANCE I - PERSPECTIVE VIEW



WATERFRONT BREWERY
155 WEST BIGHT, FLORIDA

99 (A)

WILLIAM HORN
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WATERFRONT BREWERY
100 WILLIAMSBURGH
KEY WEST, FLORIDA 34290

DESIGNED BY
WILLIAM HORN ARCHITECT, P.A.

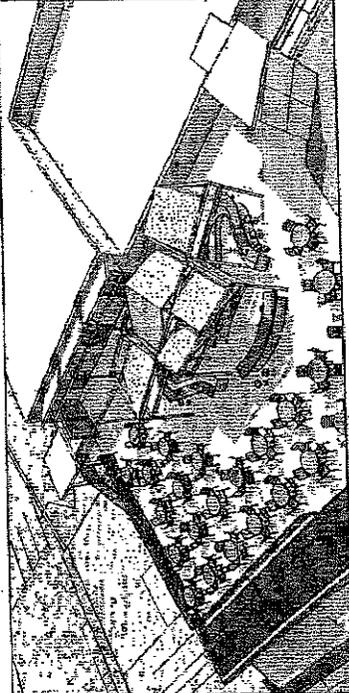
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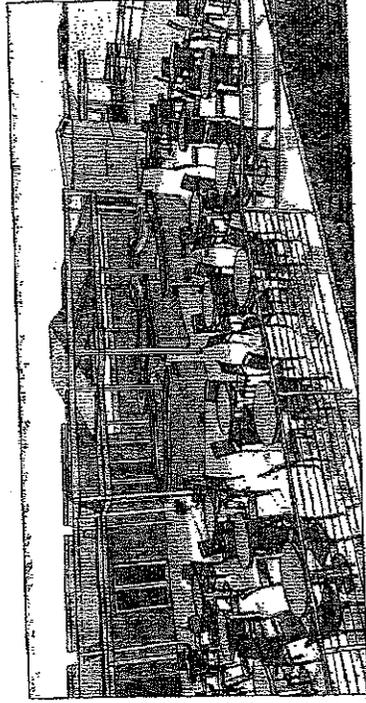
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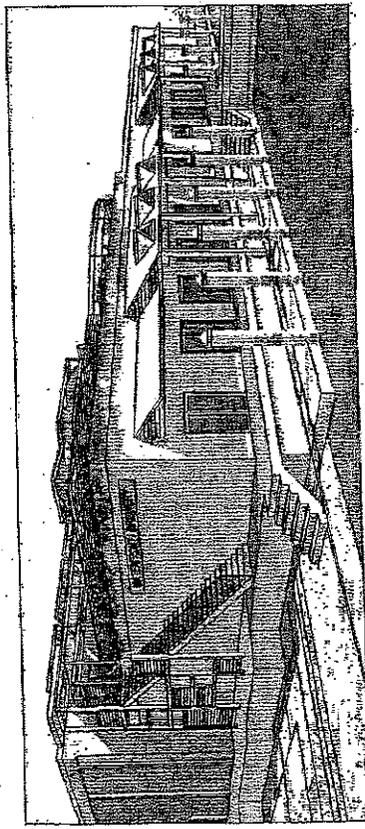
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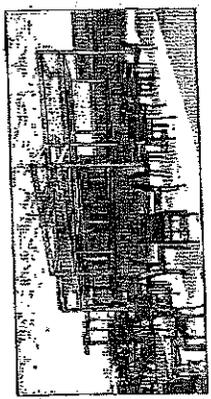
2 ROOF DECK - AERIAL VIEW



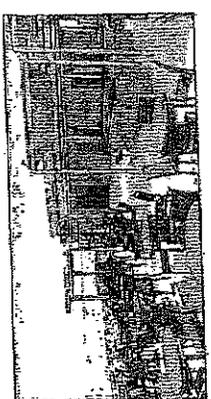
6 ROOF DECK - PERSPECTIVE VIEW



1 PERSPECTIVE VIEW

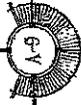


4 PERSPECTIVE VIEW



3 PERSPECTIVE VIEW

WATERFRONT BREWERY
100 WILLIAMSBURGH
KEY WEST, FLORIDA



9 (7)

WILLIAM WERN
ARCHITECTURAL

300 WEST
FLORIDA
264

THE WERN
FIRM INCORPORATED
MEMPHIS
TENNESSEE

ELIZABETH
NEWLAND

LANDSCAPE
ARCHITECTS, LLC

1000 SOUTH
WILSON
MEMPHIS
TENNESSEE

WATERFRONT BREWERY

301 WILLIAM STREET
MEMPHIS, TENNESSEE

SCALE

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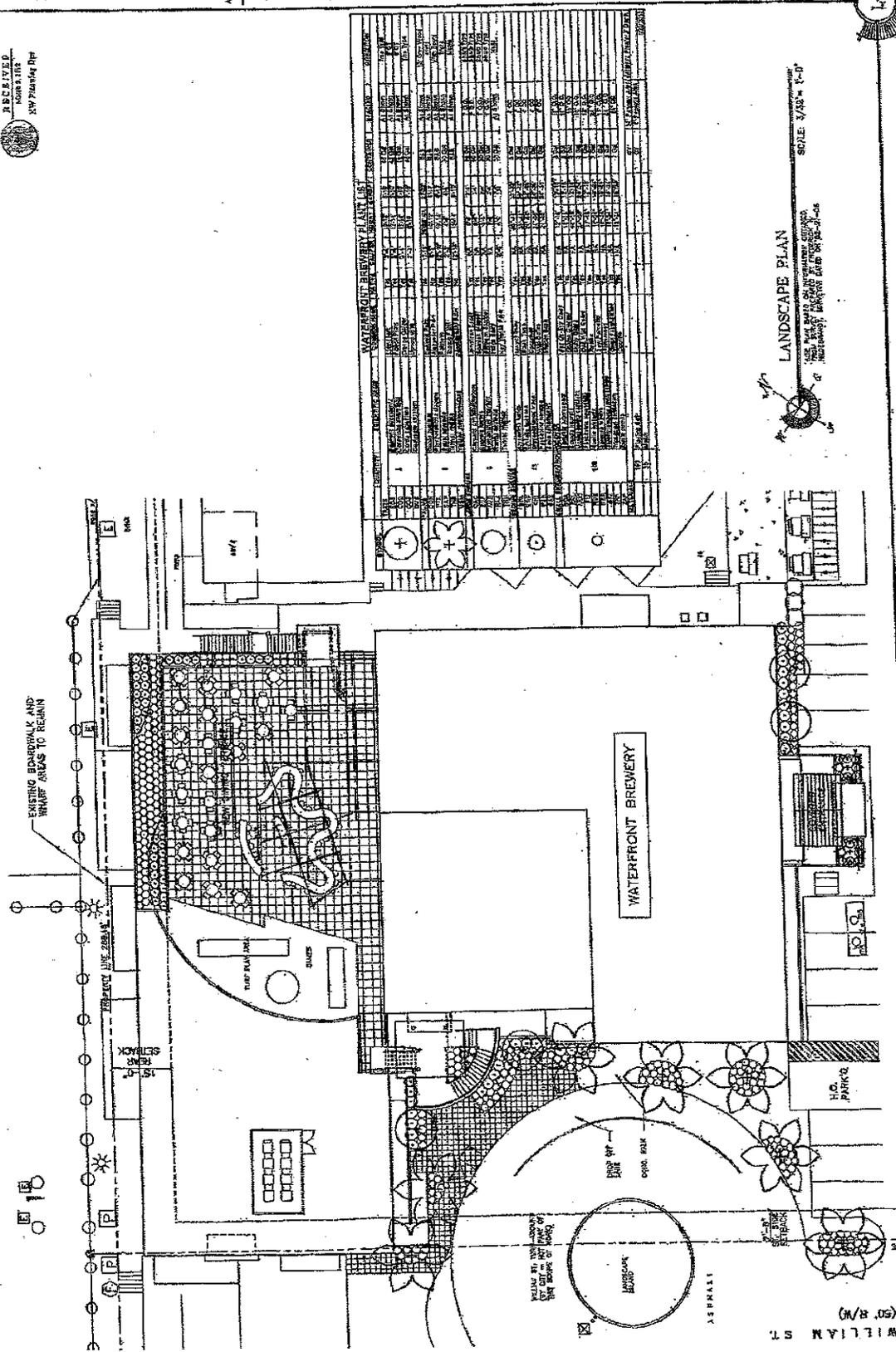
REVISIONS

DRAWN BY
EVA
CHECKED BY
EVA
DATE
11-11-11

11



ELIZABETH NEWLAND
LANDSCAPE ARCHITECT
NO. 2152
STATE OF TENNESSEE



WATERFRONT BREWERY
301 WILLIAM STREET
MEMPHIS, TENNESSEE

WILLIAM ST
(S/N) .05

11

RECEIVED
CITY OF KEY WEST

2008 NOV 13 PM 4:43 Administrative Interpretation

CITY OF KEY WEST
KEY WEST, FLORIDA
Bar/Lounge and Restaurant Uses

October 21, 2008

Issue: How does the City distinguish between restaurant and lounge/bar uses and ensure that facilities licensed as either are operating consistently with the definitions in the Land Development Regulations?

Introduction: The City of Key West Land Development Regulations define bar and lounge uses separately from restaurant uses. Further, the Land Development Regulations distinguish between these uses within individual zoning districts. In general, restaurants have less impact than lounges and bars, and the City's code reflects this by allowing restaurants as permitted uses and bars and lounges as conditional uses in the City's more intense commercial districts. New uses in the City of Key West must conform to the zoning district regulations.

Definitions for these uses, per Section 86-9, Definition of terms, Land use classifications, (3) Commercial activities, is as follows:

b. *Bar and lounge* mean a commercial establishment selling and dispensing for the drinking on the premises of liquor, malt, wine or other alcoholic beverages. This shall not include the sale of alcoholic beverages accessory to and within a restaurant use.

1. *Restaurant*, excluding drive-through, means any establishment, which is not a drive-through service establishment, where the principal business is the sale of food, desserts and beverages to the customer in a ready-to-consume state. This includes service within the building as well as takeout or carryout service. For the purpose of this subpart B and impact fee assessments, a takeout or carryout restaurant shall be limited to no more than five chairs or bench seats without tables or counter tops.

The City of Key West Building Department issues separate licenses for restaurants and bars/lounges based on the requested use made by the applicant, so long as the use is allowed within the applicable zoning district (or through an associated approval process, such as a Conditional Use). However, the City has not historically monitored licensed restaurant or bar/lounge uses to ensure that the facility is operating within the definitional parameters established in the Land Development Regulations, and thereby supporting the public purposes underlying the City's regulation of land use. The purpose of this interpretation is to establish guidelines for City staff to use in their determination if a facility is operating, or is proposed to operate, as a restaurant or as a bar.

Determination:

Although many bars and lounges sell food and many restaurants serve alcoholic beverages, the "principal business" of each facility defines the specific use under the Code. In other matters the City has determined that a "principal business" generates 51% or more of the revenue associated with a facility. Because the code clearly differentiates between the sale of alcoholic and other beverages, 51% of restaurant sales cannot include alcohol. Further, in the case of a restaurant, we have determined that sale of food (including dessert) must occur at all times the facility is open for business. In the event of a compliance concern, a given facility can be required to demonstrate that these criteria are being met. Although Florida Department of Revenue Sales Tax

Remittance and related documentation may be the best way to demonstrate compliance, other sources may be acceptable to the City and can be examined on a case by case basis.

In summary, the use of a facility as a restaurant can be demonstrated through the following two criteria:

1. The sale of food, desert and non-alcoholic beverages constitutes 51% or more of business; and,
2. The sale of food must occur during the time in which service is being provided to the public.

The use of a facility as a lounge or bar can be demonstrated through the following:

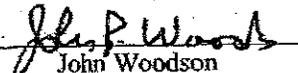
1. The sale of alcoholic beverages constitutes 51% or more of business.

Authority:

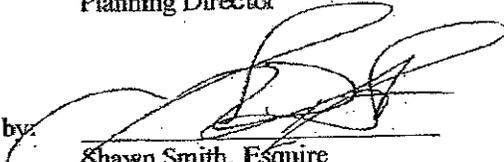
Section 90-301 (b) of the City of Key West Land Development Regulations provides the Planning Director the administrative responsibility to interpret the land development regulations. Section 90-301(a) requires that the Chief Building Official administer the land development regulations. Because the Building Official is also administratively responsible for Code Compliance within the City, this determination has been drafted in conjunction with him and includes his signature as well.

Signed by:


Amy Kimball-Murley, AICP
Planning Director


John Woodson
Building Official

Attested by:


Shawn Smith, Esquire
City Attorney



**THE CITY OF KEY WEST
PLANNING BOARD
Staff Report**



To: Chairman and Planning Board Members

From: Nicole Malo, Planner II

Through: Donald Leland Craig, AICP, Planning Director

Meeting Date: May 31, 2012 – Special Meeting
May 17, 2012 – No quorum
April 19, 2012 – Postponed by Board
March 15, 2012 – Postponed by applicant

Agenda Item: **Major Development Plan - 201 William Street (RE# 00072082-004200)**
A Major Development Plan for the addition of outdoor commercial activity for a new restaurant in the HRCC-2 zoning district per Section 108-91A(2)c. of the Land Development Regulations of the Code of Ordinances of the City of Key West.

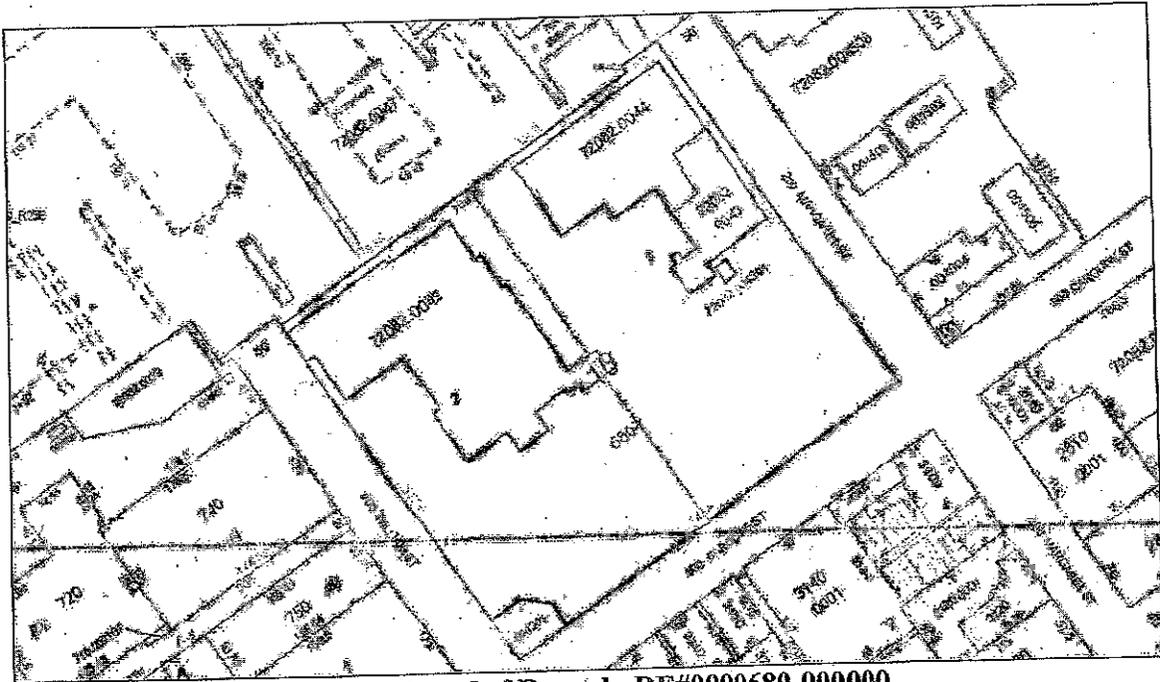
Request: To redevelop a portion of the City owned Key West Bight District property known as the Waterfront Market warehouse building and associated loading docks, parking and landscaping, to be used as a restaurant with a brewery, events space and retail area, which are allowed uses in the HRCC-2 zoning district. Warehousing and distribution is an existing use on the site, previously associated with the market that may be continued as accessory to the principal use.

Applicant: Owen Trepanier and Associates, Inc on behalf of Waterfront Brewery, LLC

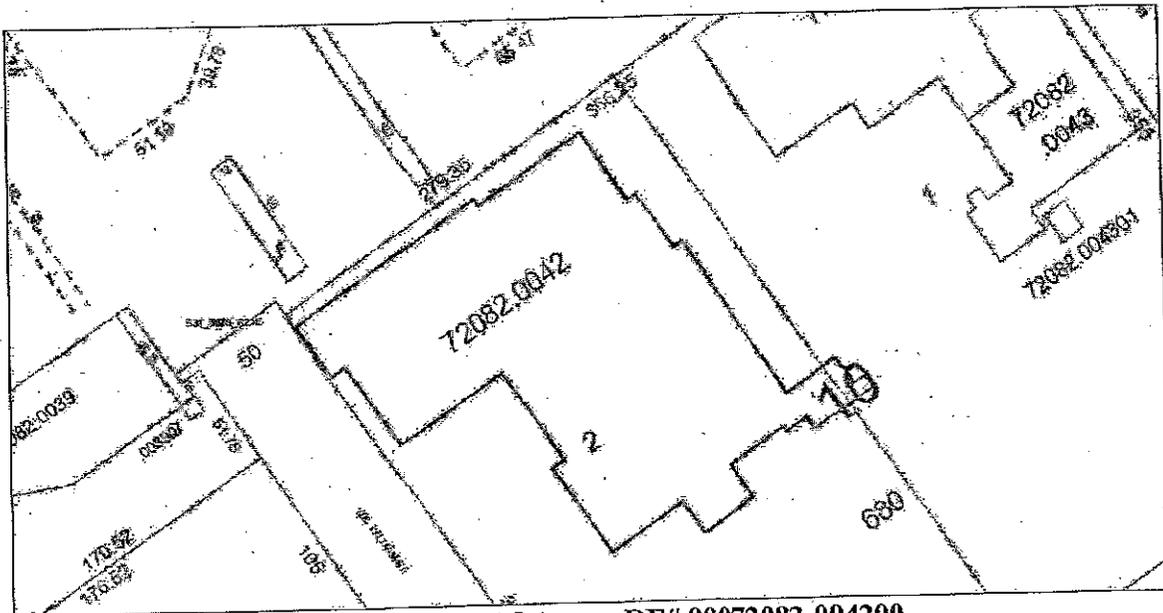
Property Owner: City of Key West

Location: 201 William Street
Leasehold Area - RE# 00072082-004200

Zoning: Historic Residential Commercial Core – Key West Bight District (HRCC-2)



Map 1 - Parcel of Record - RE#0000680-000000
142,000 square feet



Map 2 - Leasehold Area - RE# 00072082-004200
25,140 square feet

Project Information Update:

At the April 19, 2012 Planning Board hearing the Board instructed the applicants to once again meet with the neighbors to agree upon the final issue of how a condition related to noise concerns was going to be written. The applicants were instructed to coordinate and submit proposed noise conditions to Planning Staff and the City's legal department to confirm the City's ability to support and enforce the proposed restrictions and in a timely manner to provide review time.

On May 3, 2012 the department received a proposed condition by the applicant that staff determined to be insupportable by the Code. Subsequently the neighbor also replied that the condition was inadequate because it did not address their primary concern that the proposed restaurant may turn into a bar or lounge due to the perception that the proposed hours of operation (open until 12am) were more conducive to bar activities. In response, the applicant and the neighbor have agreed to limit hours of operation to 10 p.m for the outdoor rooftop cafe; although, in order to fully support the project the elimination of the outdoor televisions were also requested by the neighbor, and the applicant did not agree to this condition.

In response staff has come up with the following revised conditions that are enforceable using the existing Code requirements and amenable to the applicant. New information is underlined below. Condition number one reflects the agreed upon hours of operation; condition number eight includes language that limits the television amplification capability; and condition number ten provides a mechanism for measuring that the facility continues to operate as a restaurant and not a bar. Further, these conditions are subject to the annual Conditional Approval Permit Review (Ordinance 10-22). However, staff is aware that the neighbor of the proposed hotel is not in support of the project even with the conditions in place. Proposed conditions are as follows:

General Conditions:

1. Hours of operation (excluding City approved special events) for the rooftop Waterfront Brewery Café are limited to 8 a.m. to 10 p.m. and any outdoor performance or entertainment activity whether amplified or otherwise shall end by 10 p.m.

Conditions subject to a Conditional Approval Permit, per Ordinance 10-22 and subject to an associated annual inspection:

9. Any outdoor televisions will not be wired through the distributive sound system or any surround sound system.
10. The restaurant use is consistent with the October 21, 2008 Administrative Interpretation defining Bar/Lounge and Restaurant Uses attached herein.

Please see the end of the report for all recommended conditions.

April 19, 2012 Update:

This development plan application was originally scheduled to be heard on March 15, 2012 by the Planning Board; however the applicant requested postponement in order to work with the neighbors. The department is aware that the neighbors are concerned about the potential noise that may generate from amplified music on the second-storey outdoor rooftop consumption area. The evening of April 12, 2012 the applicant held a community meeting in order to demonstrate

the impacts of the potential noise generation from the second storey rooftop area on the neighboring properties. The test was run between 5:30-7:30 p.m. at a time when there were numerous other sources of background noise; however, the music was played at levels higher than City Ordinance 26-191 allows for demonstration purposes, and there was common agreement that the noise was minimally audible from the ground around the sides and back of the building. Staff is aware that the nearest second storey residential neighbor, the proposed hotel immediately to the west of the project site, may be more adversely affected by amplified music at the same elevation and staff has coordinated with the owner of the property and the applicant in order to craft the proposed conditions of approval. Based on the verbal agreement by the applicant and the proposed hotel property owner, the department is recommending that outdoor performance and/or entertainment activity, whether amplified or otherwise, shall end by 10 p.m. as a condition of approval. Please note that at the time this report was published, the neighboring (proposed) hotel property owner and the applicant were engaged in ongoing negotiations for agreeable noise controls for ambient music allowance after 10 p.m. Further, the applicant has relocated the proposed performance area in response to the neighbors' request (see Site Plan, A-4) and has agreed to point the speakers away from adjacent transient and residential properties as a condition of approval. Based on a land use analysis inclusive of the neighborhood concerns regarding amplified music, the existing restrictions of Code Section 26-191 for Unreasonable Noise (see Attached Code Excerpts) and comparing the existing hours of operation for the surrounding businesses, the department finds that the proposed conditions are reasonable and is recommending hours of operation that limit the outdoor business from 8 a.m. to 10 p.m. It is the departments understanding that with these conditions in place issues related to the closest residential neighbor are mostly resolved.

Attached to this report please find the Code excerpts from Chapter 26 related to disturbing and unreasonable noise and enforcement. At this time staff is unaware of any additional concerns regarding the proposed project.

Background Information:

The area proposed for redevelopment is part of the larger City owned Key West Bight district property and is also located within the boundaries of the Caroline Street Corridor Community Redevelopment Area. The leasehold area shown in Map 2 above is part of the larger parcel of record shown on Map 1 above. The area shown in Map 2 is known as the Waterfront Market building, located at the north end of William Street. The building is split into approximately eight units that are currently leased out separately for retail, office and restaurant uses. The proposed use will occupy a large portion of the building and the existing ongoing leaseholds will remain. The building was constructed around 1970 and was originally used as a shrimp processing facility; although, since the City acquired the property in 1993 it has been used primarily for restaurant, retail, wholesale food market, manufacturing (sailing equipment), distribution, and office space in accordance with the 1994 Bight Master Plan (see attached Bight Master Plan).

Most recently the building was a retail market, deli, and bakery with warehousing and distribution uses allowed for the packaging and delivery of produce to restaurants and markets throughout Key West. Warehousing and distribution are identified as Light Industrial uses in the Land Development Regulations (LDR's) and allowed conditionally within the HRCC-2

zoning district; although, no conditional use approval from the city has been identified. These uses are also identified in the most recent 2007 Waterfront Market lease agreement (see attached). These uses are not considered abandoned pursuant to the definition of "Abandoned" pursuant to Code Section 86-9, and are therefore retains the status of existing non-conforming uses.

The uses identified in the Bight Master Plan (BMP) are examples of the limited Water-related uses intended to be allowed from 30' to 100' of the mean high water line within the HRCC-2 zoning district:

Water-related uses means activities which are not directly dependent upon access to a water body, but which provide goods and services that are directly associated with water-dependent or waterway uses and/or provide supportive services to persons using a duly permitted marina. (Section 86-9)

Although the historic and existing uses of the Waterfront Market building are compatible with the intent of the BMP and LDR's, the HRCC-2 zoning district regulations further limit new development by requiring land uses within 30' of the mean high water line be water-dependant:

Water-dependent uses means activities which can be carried out only on, in or immediately adjacent to water areas because the use requires access to the water body for: waterborne transportation, including ports or marinas; recreation; electrical generating facilities; or water supply. (Section 86-9)

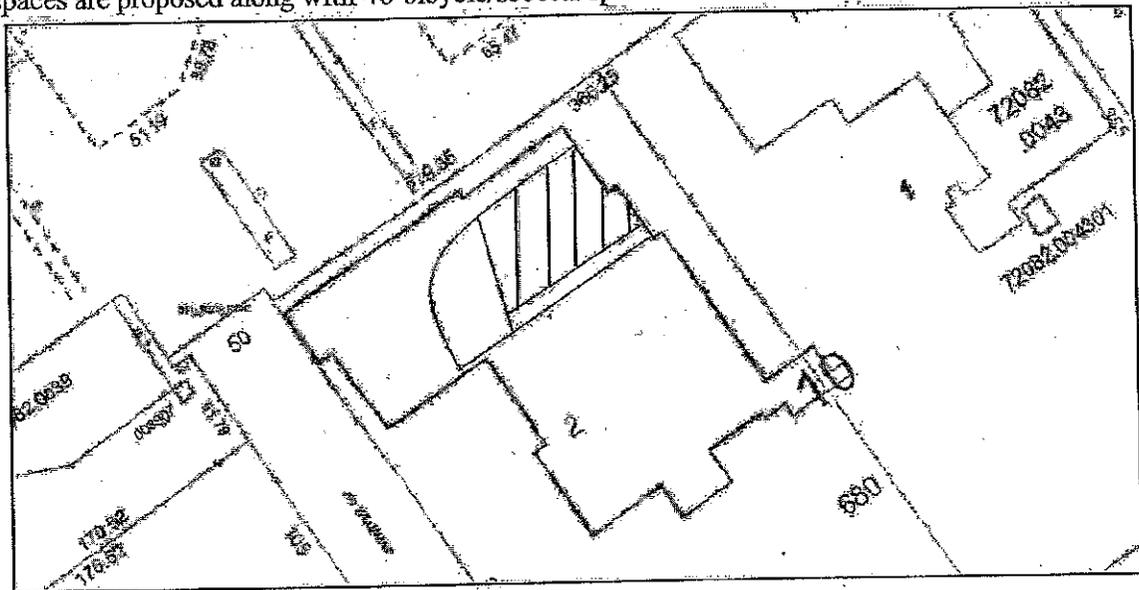
The Waterfront Market building is located approximately 15' feet from the mean high water line therefore the structure and its associated uses are historically and legally non-conforming to the HRCC-2 setback regulation. The structure is also legally non-conforming to dimensional requirements for the coastal construction control line setback, building setbacks, and water dependent uses setbacks, none of which shall be resolved without demolishing and relocating the structure. The parcel is part of the larger Key West Bight property and stormwater management requirements, landscaping, impervious surface, open space, the waste handling area and parking requirements are provided throughout the greater Bight District. The proposed updates to the Bight Master Plan being considered by the City and it's consultant at this time contemplate additional compliance with the LDR's for the Bight District as a whole.

The portion of the Waterfront Market building proposed for redevelopment is typical of a warehouse with two storey ceiling throughout most of the space, and a total floor area of 18,692 square feet including three mezzanines most recently used for offices, storage, and consumption area for a juice bar and café. The portions of this building proposed for redevelopment is accessed from the harborwalk and from the parking lot that abuts Caroline Street in the front. There are multiple bays for loading and truck deliveries on each side of the building. Approximately fifteen conforming parking spaces were associated with the Waterfront Market and subsequent license holders; although, none of the parking spaces were officially dedicated to the building or its uses. Further, the Key West Bight Master Plan contemplated that the parking

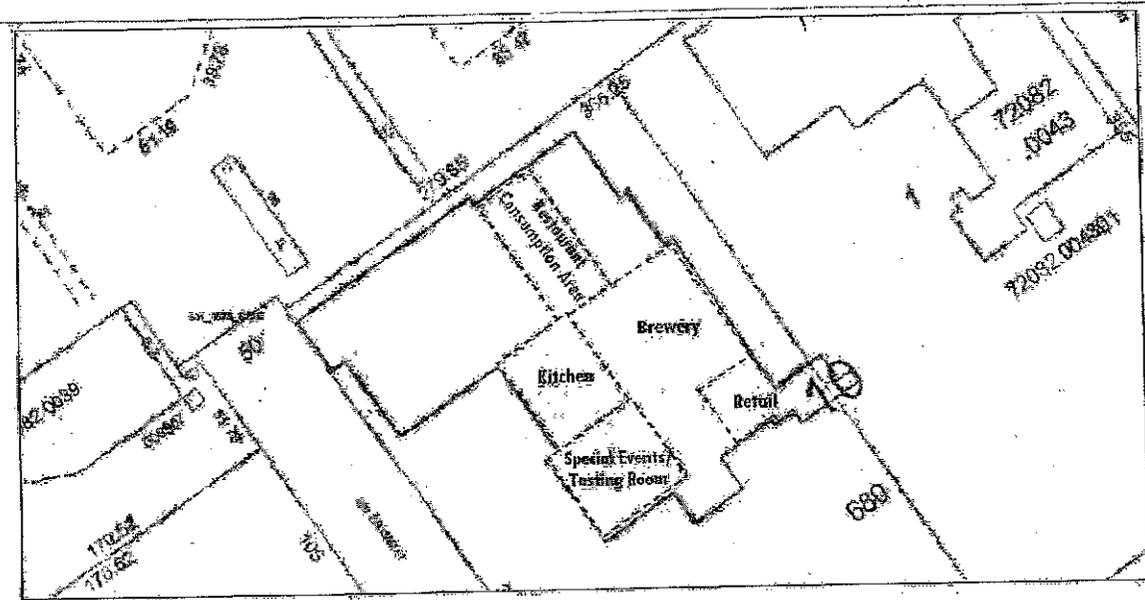
lots located at the end of Margaret and Caroline Streets and the Park and Ride on Grinnell Street were to accommodate the Bight uses.

Request and Analysis of Proposed Use:

This Development Plan application is for the renovation of portions of the Waterfront Market building as a restaurant and micro-brewery with retail and special events areas of approximately 18,000 square feet of floor area. In addition, site improvements to the building façade, landscaping, parking and loading areas within the demised lease area are proposed. The uses proposed are permitted uses in the zoning district and the structure has a longstanding history of food and beverage sales for consumption on site and for distribution as described above. The development plan approval is triggered by the applicants request to add outdoor commercial activity consisting of 150 restaurant seats or 2,250 square feet of consumption area to the first floor roof top area overlooking the Bight. The proposed rooftop consumption area is shown in crosshatch in the plan below. 2,307 square feet of floor area associated with the new outdoor consumption area is proposed to be relocated from the removal of mezzanines existing within the building; therefore, no additional parking is required for the use located within the Historic Commercial Pedestrian Oriented Area pursuant to Section 108-573(c)1. However 18 parking spaces are proposed along with 40 bicycle/scooter spaces.



of consumption area limited to 150 seats and 2,250 square feet. Amenities include a turf play area, a rooftop garden and a small performance area designed to direct noise away from nearby transient residential uses. The area is also buffered by the north third storey wall of the warehouse portion of the building that should provide additional sound containment mitigation. The applicant has agreed to the installation of a distributive sound system, the redirection of speakers away from the proposed adjacent hotel, and limited hours of operation and entertainment to reduce potential noise impacts.



Proposed First Floor Plan

Overall improvements as part of this development plan include interior renovations, new entryway design, improved access, ADA accessibility, code compliant parking, increased landscaping, open space and a net reduction of impervious surface. The area proposed as part of this development plan is part of a larger parcel of record as described above; therefore, the site dimensions are related to the entire site of 142,000 s.f. No variances or waivers are required.

Approximately fifteen complaint parking spaces were associated with the Waterfront Market use and previous license holders; however, the spaces were not dedicated. The proposed plan maintains the fifteen parking spaces on the site and adds a new area to accommodate scooter and bicycle parking (40 spaces). The existing mural that covers the rear and side of the building will be maintained. Structural improvements to the façade of the building include a new concrete galvanized metal and glass entry feature that displays public art and surrounds the new stairway at the west side of the building. An exterior access door is also provided to the events room. An additional stairway is proposed on the east side of the structure as a secondary access for the outdoor restaurant. HARC granted a Certificate of Appropriateness for the proposed design and signage and a copy of the HARC staff report is attached to this package. Additional visual and repair improvements are proposed including the supportive uses relocations the air condenser units and machinery to the roof of the building.

The proposed development plan for existing and permitted land uses is compatible the BMP is that it anticipated an outdoor cafe "with views of the Harbor," the CRA Plan that encourages improvements to blighted conditions, specifically the Waterfront Market building. No increase in net floor area is proposed and mitigative techniques are proposed to reduce noise impacts. Further, the applicant has provided a concurrency analysis that shows that the proposed mixed use facility will not intensify the use of the premises by increasing required parking facilities or vehicular traffic (see attached Concurrency Management Report), and will not negatively affect any other concurrency standard.

Surrounding Zoning and Uses:

North: C-OW: Key West Bight
South: HRCC-2: Restaurants, retail and parking lots
East: HRCC-2: Restaurants and parking lots
West: HRCC-1: Restaurants

Uses Permitted in the HRCC-2 Zoning District Per Section 122-717, Code of Ordinances:

In the HRCC-2 Key West Bight district, only water-dependent uses shall be located within the first 30 feet landward of the mean high water (MHW) or the bulkhead. Similarly, only water-related uses shall be located between the 30-foot setback and the 100-foot setback from the mean high water or the bulkhead. No permanent residential use shall be located within 100 feet of the mean high water, and no transient residential uses shall be allowed within any portion of the HRCC-2 district. Permitted uses include the following:

- (1) Single-family and two-family residential dwellings.
- (2) Multiple-family residential dwellings.
- (3) Group homes with less than or equal to six residents as provided in Section 122-1246
- (4) Places of worship.
- (5) Business and professional offices.
- (6) Commercial retail low and medium intensity less than or equal to 5,000 square feet as provided in division 11 of article V of this chapter.
- (7) Medical services.
- (8) Parking lots and facilities.
- (9) Restaurants, excluding drive-through.
- (10) Veterinary medical services without outside kennels.

Conditional Uses in the HRCC-2 Zoning District Per Section 122-718, Code of Ordinances:

- (1) Group homes with seven to 14 residents as provided in Section 122-1246
- (2) Community centers, clubs, and lodges.
- (3) Cultural and civic activities.
- (4) Educational institutions and day care.
- (5) Nursing homes, rest homes and convalescent homes.
- (6) Parks and recreation, active and passive.
- (7) Protective services.
- (8) Public and private utilities.
- (9) Bars and lounges.
- (10) Boat sales and service.

- (11) Commercial retail low and medium intensity greater than 5,000 square feet as provided in division 11 of article V of this chapter.
- (12) Commercial retail high intensity as provided in division 11 of article V of this chapter.
- (13) Funeral homes.
- (14) Light industrial.
- (15) Marinas.
- (16) Small recreational power-driven equipment rentals.

Process:

Development Review Committee Meeting:

December 16, 2011

HARC Meeting:

January 25, 2012

December 14, 2011

H12-01-49

H12-01-50

Tree Commission Meeting:

February 28, 2012

April 12, 2012

Planning Board Meeting:

May 31, 2012

May 17, 2012

April 19, 2012

March 15, 2012

City Commission Meeting:

To be determined

Evaluation for Compliance With The Land Development Regulations:

Section 108-91 A(2)c of the City of Key West Land Development Regulations requires that any proposed plan within the historic district including the addition of outdoor commercial activity consisting of restaurant seating equal to or greater than 2,500 square feet shall require a Major Development Plan. Section 108-196(a) of the Land Development Regulations states that "after reviewing a Major Development Plan for a property and staff recommendations, the Planning Board shall act by resolution to approve, approve with conditions, or disapprove it based on specific development review criteria contained in the Land Development Regulations and the intent of the Land Development Regulations and Comprehensive Plan."

Planning staff, as required by Chapter 108 of the City Code of Ordinances, has reviewed the proposed plan for compliance with the following Land Development Regulations and Comprehensive Plan criteria:

Project Data				
	Required/ Allowed	Existing	Proposed	Variance Request
Zoning	HRCC-2			
Flood Zone	VE-10			
Size of Site	142,000 s.f			
Lease Area	25,140			
Enclosed Floor Area of Unit	N/A	18,692 s.f	16,385 s.f	N/A

Front Setback Caroline St	10'	Over 100' from Caroline Street property line	No Change, none required	
East Side Setbacks	7.5'	Over 100' from property line		
Street Side Setback	7.5'	0.0'		
Rear Setback	15'	15'		
CCCL Setback	30'	7'		
Height	35'	32'	34' (Bar canopy)	None required
F.A.R	1.0 (70,030 s.f)	0.34 (47,620 s.f)	.032 (45,938 s.f)	
Consumption Area	N/A	1,260 s.f 84 seats	limited to 300 seats or 5,781 s.f	
Building Coverage	50% (70,030 s.f)	30% (42,018 s.f)	30.5% (42,701 s.f)	
Impervious Surface	60% (84,035 s.f)	94% (131,624 s.f)	93% (130,300 s.f)	Net reduction proposed, none required
Parking	Parking Waiver Zone. None required.	15 code compliant spaces	18 code compliant spaces	None required
Bicycle Parking		21	40	
Open Space	50% (70,030 s.f)	6% (8,435 s.f)	7% (9,758 s.f)	Net increase proposed, none required

Concurrency Facilities and Other Utilities or Services (Section 108-233)

The City's Comprehensive Plan Objective 9-1.5 directs the City to ensure that facilities and services needed to support development are available concurrent with the impacts of new development. The analysis considers potable water, sanitary sewer, solid waste, drainage, vehicle trip generation and recreation. Section 94-36 requires a concurrency determination to be made concerning proposed development. The applicant provided a concurrency analysis as part of this application. Staff has reviewed the provided concurrency analysis report and following criteria in Section 94-36 and determined that the proposed project meets the City's requirements for concurrency management. This portion of the report shall serve as the required written determination of compliance.

1. The anticipated public facility impacts of the proposed development:

The applicant has provided a Concurrency Management analysis. The proposed development is not anticipated to generate any public facility impacts.

2. The ability of existing facilities to accommodate the proposed development at the adopted level of service standards:

The Concurrency Management analysis concluded that the existing facilities are expected to accommodate the proposed redevelopment project at the adopted level of service standards.

3. **Any existing facility deficiencies that will need to be corrected prior to the completion of the proposed development:**

The Concurrency Management analysis found that there are no existing facility deficiencies which will need to be corrected prior to the completion of the proposed development.

4. **The facility improvements or additions necessary to accommodate the impact of the proposed development at the adopted level of service standards and the entities responsible for the design and installation of all required facility improvements or additions; and**

There are no facility improvements or additions that are necessary to accommodate the impact of the proposed redevelopment other than stormwater improvements contained in the site plan package.

5. **The date such facility improvements or additions will need to be completed to be concurrent with the impacts on such facilities created by the proposed development:**

This criterion is not applicable, as there are no known facility improvements or additions that will need to be completed for the redevelopment project other than stormwater improvements that have been incorporated into the plans.

Fire Protection (Section 108-233 (8))

The Fire Marshall determined at the DRC meeting that that the proposed sprinkler system is adequate and meets fire protection requirements.

Other Public Facilities (Section 108-233 (10)):

Based on comments received at the DRC meeting, and based on the information in the concurrency analysis, the proposed Major Development Plan is not anticipated to increase adverse effects upon public facilities.

Appearance, Design and Compatibility (Section 108-234):

1. **Compliance with Chapter 102; Articles 111, IV and V:**
The Waterfront Market building was built in 1970 and is not listed as contributing on the City's Historic Structures Survey; although, it is located within the historic district and changes to the exterior of the building are subject to HARC review. The City's Historic Architectural Review commission issued a Certificate of Appropriateness on January 26, 2012 for the proposed design and signage, and determined that the project is in compliance with Articles III, IV, and V of Chapter 102 of the City Code. Please see the attached HARC staff reports for additional details and information related to the proposed design features.
2. **Compliance with Section 108-956:**
The applicant has demonstrated that there is access to potable water and to wastewater disposal systems in the concurrency management report.
3. **Compliance with Chapter 110; Article II:**

If any archeologically significant resources are discovered during the development of the site, the applicant will be required to comply with this article of the Land Development Regulations.

Site Location and Character of Use (Section 108-235):

The project site is located in the HRCC-2 zoning district that is characterized by water-dependant and water related uses: marinas, ferry terminal, restaurants, commercial retail, manufacturing, office, light industrial and transient and permanent residential uses. The adjacent land uses along the Bight consist primarily of open-air restaurants to the east and west that play amplified live music and typically close before midnight. Immediately adjacent is a vacant lot that is proposed for redevelopment as a hotel. Restaurants are a permitted use in this zoning district.

The project is designed to allow compatible operation of the property with the existing land use activities in the immediate vicinity with the proposed conditions related to music attenuation and limited hours of outdoor music and entertainment and including the installation of a distributive sound system. The outdoor area faces the waterfront with the north wall of the second storey warehouse that extends 11 vertical feet behind it that serves to redirect noise away from the residential neighborhood behind the building, across Caroline Street. Please see the New Project Information analysis above for additional information regarding sound attenuation concerns and accommodations.

Based on the design elements and operational plans proposed the Major Development Plan appears compatible with the intent and criteria of the Key West Bight zoning district.

1. Appearance of site and structures (Section 108-236):

The development plan exhibits harmonious overall design characteristics, and is in compliance with the performance standards stipulated in Sections 108-278 of the City Code. The site is legally non-conforming to several of the Code requirements as discussed. The proposed new entry features appear to have harmonious massing and scale as has been determined by H.A.R.C.

2. Appearance of site and structures (Section 108-278):

The site appears to be in overall compliance with Chapter 108-278 of the City Code. The site improvements have been approved by H.A.R.C. New façade features include two new entry ways, improvements to loading docks and stairs and various structural improvements.

3. Location and screening of mechanical equipment, utility hardware and waste storage areas (Section 108-279):

The development and uses on site will utilize the existing waste and recycling handling center for the Bight, located to the east of the structure. It is enclosed from view by an existing wood frame structure and meets the requirements as set forth in the above Section. Temporary storage of solid waste will be kept in designated areas on the interior of the restaurant.

All mechanical equipment, condenser units and utility hardware areas are proposed to be located on the rooftop and will be in compliance with Section 108-279 of the Code.

4. **Utility lines (Section 108-282):**
No new construction is proposed that requires the placement of underground utility lines and existing electric lines will be used. Keys Energy has been notified and has not provided an objection for this property.
5. **Commercial and manufacturing activities conducted in enclosed buildings (Section 108-283):**
All commercial activities will take place within the enclosed building with the exception of the rooftop restaurant seating area. No outdoor storage or display has been applied for or approved.
6. **Exterior Lighting (Section 108-284):**
Per Section 108-284, all proposed lighting shall be shielded designed to meet "Dark Sky" standards to eliminate glare from roadways and streets and shall direct light away from other properties. Shielding of lighting elements shall be accomplished by using directional fixtures or opaque shades.
7. **Signs (Section 108-285):**
Proposed signage is harmonious with the urban design theme of the project, it is aesthetically pleasing and reinforces good principles and practices of streetscape design and has been approved by HARC as part of the Certificate of Appropriateness.
8. **Pedestrian sidewalks (Section 108-286):**
Improvements to existing pedestrian sidewalks are proposed to link the site to the City's pedestrian circulation system.
9. **Loading docks (Section 108-287):**
Loading docks currently exist on the site east side of the building. The applicant is proposing to reconfigure the East loading area with three angled truck parking spaces to provide easier ingress and egress and to eliminate three bays to convert the area into a bicycle and scooter parking area (see proposed site plans).
10. **Storage Areas (Section 108-288):**
The waste and recycling service area is considered an exterior storage area. The development and other uses on site will utilize the existing waste and recycling handling center for the Bight, located to the east of the structure. It is enclosed from view by an existing wood frame structure and meets the requirements as set forth above.

On-Site and Off-Site Parking and Vehicular, Bicycle, and Pedestrian Circulation (Section 108-244):

This building containing the proposed use is located within the historic commercial pedestrian oriented area. Although new outdoor consumption area is proposed, the applicant is reducing the

overall floor area from within the building by removing 2,307 square feet of mezzanines and relocating 2,250 square feet of floor area on to the roof top deck for consumption area. Therefore, no new floor area is proposed and no additional parking is required with this development proposal. Fifteen parking spaces proposed for the Waterfront Brewery, in front of the building to service the use as shown in the site plans. Eight to ten non-conforming parking spaces are currently located along the west side of the building will be removed in order to accommodate the roundabout proposed as part of the Bight Master Plan approved by the City Commission. The roundabout is not part of this proposed project. The applicant is proposing to provide a total of 40 bicycle parking spaces to be located at the front of the building and behind the loading dock area. Further, the property is part of the greater Key West Bight property and Master Plan and several adjacent parking lots associated with the Bight development and uses are utilized to meet the current parking demand. One ADA parking space is proposed closest to the ADA ramp in the front of the building.

The existing loading docks on the West side of the structure have been removed by the city and the non-compliant loading docks to the east of the building will be reduced to three and brought into compliance.

To further enhance the vehicular circulation and accessibility the city is proposing a roundabout at the West entrance that shall be wide enough to accommodate passenger pickup, truck loading for other Bight uses and a bus loading zone. Sidewalks and safe pedestrian circulation have been contemplated in the City's design.

Housing (Section 108-245):

No housing is proposed as part of the Major Development Plan.

Economic resources (Section 108-246):

This provision of the City Code is not applicable to the proposed Major Development Plan.

Special Conditions (Section 108-247):

The proposed development site is located within the greater City owned Bight District property, which is currently non-conforming to impervious surface, open space and landscaping. The proposed development is a permitted use and is proposed within a legally non-conforming structure. It is not in conflict with the intent of the HRCC-2 zoning district, and is not anticipated to negatively impact existing public facilities. No changes are proposed that affect public access to the waterfront along the Bight boardwalk. As a condition of approval, the applicant is required to recycle all applicable material and the restaurant is proposed to be designed with energy saving devices such as green roof technology, insulation standards, water saving devices, built-in recycling areas, and bike-scooter parking. The City's proposed traffic circle in front of this project area will be accommodated by the plan and will encourage and accommodate bus, taxi, trolley and shuttle bus ridership.

This property is located within the Caroline Street Corridor Community Redevelopment Area and deteriorating portions of the building are specifically documented in the City's 2009 Updated Finding of Necessity demonstrating blighted conditions. The improvements proposed to the structure are supported by the 2010 Community Redevelopment Plan to alleviate blight in the

district. Further, improvements to the structure that increase the property value will have a positive financial impact on the Tax Increment Finance Fund for the district.

Construction Management Plan and Inspection Schedule (Section 108-248):

The proposed development is not phased. The applicant will commence construction as soon as upon final approval and is anticipated to be in operation by the end of 2012.

Open Space, Screening, Buffers and Landscaping (Article V and VI) of Chapter 108:

As part of the Major Development Plan application, the applicant has obtained Tree Commission approval for the Landscape plan and Tree Removals on February 28, 2012 and on April 12, 2012 (see DRC Member Comments and Minutes). Because this project is part of a larger overall site, the screening, buffer, and landscaping requirements are coordinated in relation to the entire Bight. The proposed plan increases landscaping to the maximum extent practicable. There is minimal open space available on the site and surrounding land to add landscaping. Because the majority of the property and adjacent areas are paved, the Urban Forestry Manager has requested that the applicant coordinate with the proposed Bight Master Plan currently being designed, see attached. The plans will reduce impervious surface on the site by 1,324 sq. ft. in addition to the creation of a 630 sq. ft. green roof.

According to the Landscape Architect the narrow area available creates pedestrian circulation and planting constraints. The landscape design is related to the curvilinear nature of the round-about and the curvilinear entrance facade on the building and an urban streetscape is the most appropriate design. Tree canopy to provide shade is proposed that will also provide immediate scale to the building and not interfere with pedestrian line of sight for Brewery signage. This use of large palms will also mirror the landscape to be provided at the hotel on the other side of the round about.

Off-street Parking and Loading (Article VII) of Chapter 108:

The proposed Major Development Plan is located within the City's Historic Commercial Pedestrian-Oriented Area, and because the applicant is not adding new floor area associated with the consumption area and no additional parking is required. However, the applicant is providing parking for 40 bicycles and providing 15 code compliant parking spaces. This portion of the project has been previously addressed in this report.

Stormwater and Surface Water Management (Article VIII):

Currently the site includes stormwater management that it is part of the overall stormwater management by the city. The site lies in the VE-10 flood zone and is susceptible to flooding. No changes to the existing stormwater and surface water management other than a modest reduction to impervious surface and the utilization of green-roof technology are proposed.

Flood Hazard Areas (Division 4 - Sections 108-821 through 108-927):

The proposed development is located in the VE-10 and the finished floor is 7.3 feet above sea level. FEMA regulations require that structures improving more than 50% of the appraised value of the property must meet flood prevention requirements. Please see the attached memo from the City's FEMA Coordinator and DRC Minutes.

The structure is located approximately 15 feet from the mean high water line and no change is proposed to the existing structure. Therefore, regulations for the Coastal Construction Control Line, and special height constraints for portions of the HRCC-2 zoning district within 100 feet of the mean high water line are not applicable.

Utilities (Article IX):

FKAA reviewed the plan and requested a set of plans for review to determine meter requirements although the existing 8" water main located on William Street will continue to service the facility. Keys Energy Services requested that the applicant submit project review form to verify existing electrical facilities (see DRC Member Comments and Minutes). The proposed development project will use existing utility mains for potable and sewer water as shown in the concurrency management report. Landscaping will consist of native species as shown on the proposed landscape plan.

RECOMMENDATION:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends the request for Major Development Plan be approved with the following conditions:

General Conditions:

1. Hours of operation (excluding City approved special events) for the rooftop Waterfront Brewery Café are limited to 8 a.m. to 10 p.m. and any outdoor performance or entertainment activity whether amplified or otherwise shall end by 10 p.m.
2. The applicant shall obtain a Conditional Approval Permit, pursuant to Section 18-610.
3. The applicant shall recycle materials accepted by the city's waste handling contractor.
4. New lighting shall be designed to "Dark Sky" lighting standards.
5. The upstairs turf area shall not be used for table placement or be considered consumption area.
6. Prior to City Commission review of the project the applicant shall submit a site plan with location and direction of proposed speakers to the Planning Department for review and approval that will be attached to the Commission Review Package.

Conditions subject to a Conditional Approval Permit, per Ordinance 10-22 and subject to an associated annual inspection:

7. The applicant shall renew the Conditional Approval Permit issued by the City on an annual basis. The renewal is due on May 31st of every year.
8. The applicant will install and maintain a programmable distributive sound system to assure compliance with the "unreasonable noise" definition of Section 26-191 of the Code of Ordinances, and shall include a computerized sound monitoring system with real time monitoring access provided to the City.
9. Any outdoor televisions will not be wired through the distributive sound system or any surround sound system.

10. The applicant shall point any speakers or any sound amplification device on the rooftop Waterfront Brewery Café, away from neighboring and/or surrounding transient and residential properties.
11. The restaurant use is consistent with the October 21, 2008 Administrative Interpretation defining Bar/Lounge and Restaurant Uses attached herein.

**Administrative Determination: Bars/Lounges
and Restaurant Uses
October 21, 2008**

RECEIVED
2008 NOV 13 PM 4:43 Administrative Interpretation
Bar/Lounge and Restaurant Uses

CITY OF KEY WEST
KEY WEST, FLORIDA

October 21, 2008

Issue: How does the City distinguish between restaurant and lounge/bar uses and ensure that facilities licensed as either are operating consistently with the definitions in the Land Development Regulations?

Introduction: The City of Key West Land Development Regulations define bar and lounge uses separately from restaurant uses. Further, the Land Development Regulations distinguish between these uses within individual zoning districts. In general, restaurants have less impact than lounges and bars, and the City's code reflects this by allowing restaurants as permitted uses and bars and lounges as conditional uses in the City's more intense commercial districts. New uses in the City of Key West must conform to the zoning district regulations.

Definitions for these uses, per Section 86-9, Definition of terms, Land use classifications, (3) Commercial activities, is as follows:

b. *Bar and lounge* mean a commercial establishment selling and dispensing for the drinking on the premises of liquor, malt, wine or other alcoholic beverages. This shall not include the sale of alcoholic beverages accessory to and within a restaurant use.

l. *Restaurant*, excluding drive-through, means any establishment, which is not a drive-through service establishment, where the principal business is the sale of food, desserts and beverages to the customer in a ready-to-consume state. This includes service within the building as well as takeout or carryout service. For the purpose of this subpart B and impact fee assessments, a takeout or carryout restaurant shall be limited to no more than five chairs or bench seats without tables or counter tops.

The City of Key West Building Department issues separate licenses for restaurants and bars/lounges based on the requested use made by the applicant, so long as the use is allowed within the applicable zoning district (or through an associated approval process, such as a Conditional Use). However, the City has not historically monitored licensed restaurant or bar/lounge uses to ensure that the facility is operating within the definitional parameters established in the Land Development Regulations, and thereby supporting the public purposes underlying the City's regulation of land use. The purpose of this interpretation is to establish guidelines for City staff to use in their determination if a facility is operating, or is proposed to operate, as a restaurant or as a bar.

Determination:

Although many bars and lounges sell food and many restaurants serve alcoholic beverages, the "principal business" of each facility defines the specific use under the Code. In other matters the City has determined that a "principal business" generates 51% or more of the revenue associated with a facility. Because the code clearly differentiates between the sale of alcoholic and other beverages, 51% of restaurant sales cannot include alcohol. Further, in the case of a restaurant, we have determined that sale of food (including dessert) must occur at all times the facility is open for business. In the event of a compliance concern, a given facility can be required to demonstrate that these criteria are being met. Although Florida Department of Revenue Sales Tax

Remittance and related documentation may be the best way to demonstrate compliance, other sources may be acceptable to the City and can be examined on a case by case basis.

In summary, the use of a facility as a restaurant can be demonstrated through the following two criteria:

1. The sale of food, desert and non-alcoholic beverages constitutes 51% or more of business; and,
2. The sale of food must occur during the time in which service is being provided to the public.

The use of a facility as a lounge or bar can be demonstrated through the following:

1. The sale of alcoholic beverages constitutes 51% or more of business.

Authority:

Section 90-301 (b) of the City of Key West Land Development Regulations provides the Planning Director the administrative responsibility to interpret the land development regulations. Section 90-301(a) requires that the Chief Building Official administer the land development regulations. Because the Building Official is also administratively responsible for Code Compliance within the City, this determination has been drafted in conjunction with him and includes his signature as well.

Signed by:


Amy Kimball-Murley, AICP
Planning Director

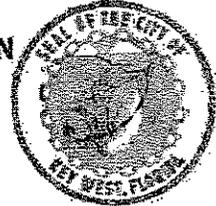

John Woodson
Building Official

Attested by:


Shawn Smith, Esquire
City Attorney

Application

DEVELOPMENT PLAN AND CONDITIONAL USE APPLICATION
City of Key West Planning Department
604 Simonton Street, Key West, FL 33040
(305) 809-3720



Development Plan & Conditional Use Application

Applications will not be accepted until they are complete

<u>Development Plan</u>	<u>Conditional Use</u>	<u>Historic District</u>
Major <u>X</u>	_____	Yes <u>X</u>
Minor _____		No _____

Please print or type and call the Planning Department if you have any questions.

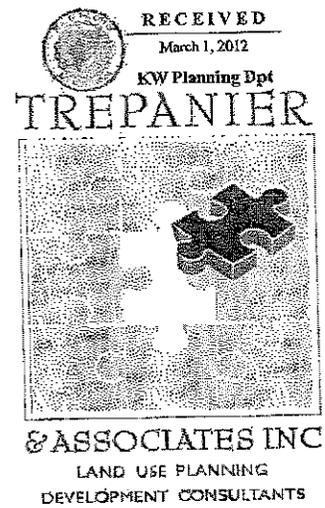
- 1) Site Address 201 William Street
- 2) Name of Applicant Trepanier & Associates, Inc., on behalf of Waterfront Brewery, LLC.
- 3) Applicant is: Owner _____ Authorized Representative X
(attached Authorization Form must be completed)
- 4) Address of Applicant 402 Appelrouth Lane, P.O. Box 2155, Key West, FL 33045-2155
- 5) Applicant's Phone #: (305) 293-8983 Fax: (305) 293-8748
- 6) Email Address: Owen@OwenTrepanier.com
- 7) Name of Owner, if different than above: City of Key West
- 8) Address of Owner: 3132 Flagler Avenue
- 9) Owner Phone #: (305) 809-3888 Email: mfinigan@keywestcity.com
- 10) Zoning District & RE No. of Parcel: HRCC-2 RE: 00072082-0004200
- 11) Is Subject Property located within the Historic District? Yes X No _____
If Yes: Date of Approval _____ HARC Approval Number _____
OR: Date of Meeting: 12/12/2011
- 12) Description of Proposed Development and Use. Please be specific. List existing and proposed buildings and uses, number of dwelling units, parking, restaurant seats, vehicles proposed, etc. If there is more than one use, describe in detail the nature of each use. (Give concise description here and use a separate sheet if necessary)

This application seeks approval for the redevelopment of the old Waterfront Market building into a microbrew pub.



MEMORANDUM

Date: 03/01/12
To: Ms. Nicole Malo, Planner
From: Owen Trepanier
Re: **Waterfront Market – Major Development Plan
Project Analysis**



Background:

This property was part of a larger acquisition and protection action taken by the State of Florida and the City of Key West to acquire the Key West Bight. The area is part of the Caroline Street Corridor Community Redevelopment Area and it is included in the TIF district. The project includes only a portion of the existing Waterfront Market as depicted on the plans.

The structure was historically a shrimp house but since the City acquired the property it has been used primarily for restaurant, retail, wholesale, manufacturing, distribution, and office.

Request:

This Development Plan Application seeks to renovate a portion of the "Waterfront Market" building as a restaurant and micro-brewery. Improvements will include the façade, parking, landscaping, roofing, interior renovations, reduction of impervious surface and ADA accessibility. The project is proposed in a manner that will allow the continued compatible operation of the property without burdening the land use activities in the immediate vicinity, including community infrastructure, with adverse impacts detrimental to the general public health, safety and welfare.

Process:

Development Review Committee Meeting:
HARC Meeting:
Tree Commission Meeting:
Planning Board Meeting:
City Commission Meeting:

Date:

12/16/2011
12/14/2011
02/13/2012
03/17/2012
To be determined

Analysis – Evaluation for Compliance with the Land Development Regulations

Concurrency Facilities and Other Utilities or Services (Section 108-233)

1. The anticipated public facility impacts of the proposed development:

A concurrency analysis demonstrated all anticipated development impacts to public facilities can be accommodated within current capacities.

2. **The ability of existing facilities to accommodate the proposed development at the adopted level of service standards:**
A concurrency analysis demonstrated all anticipated development impacts to existing facilities can be accommodated within current capacities and adopted levels of service.
3. **Any existing facility deficiencies that will need to be corrected prior to the completion of the proposed development:**
There are no existing facility deficiencies that will need to be corrected prior to completion of the proposed development.
4. **The facility improvements or additions necessary to accommodate the impact of the proposed development at the adopted level of service standards and the entities responsible for the design and installation of all required facility improvements or additions:**
There are no facility improvements or additions necessary to accommodate the impact of the proposed development at the adopted level of service standards.
5. **The date such facility improvements or additions will need to be completed to be:**
NA – No improvements required.

Fire Protection (Section 108-233 (8))

Per DRC coordination the Key West Fire Department stated the building meets fire protection requirements and has no objection to the project.

Site Location and Character of Use (Section 108-235):

The project site is located in the HRCC-2 zoning district. HRCC-2 is the Historic Residential Commercial Core. The district is characterized by water-dependant and water related uses: marinas, ferry terminal, restaurants, commercial retail, manufacturing, office, light industrial and residential uses. Restaurants are a permitted use in this zoning district. Based on the surrounding zoning and land uses, the proposed Development Plan is compatible with neighboring properties.

1. **Location and screening of mechanical equipment, utility hardware and waste storage areas (Section 108-279):**
All new mechanical equipment will be located on the roof of the existing structure and screened per HARC approval in compliance with Section 108-279.
2. **Utility lines (Section 108-282):**
No new construction is proposed that requires the placement of underground utility lines. Keys Energy has provided a letter of no objection for this property and existing electric lines will be used.
3. **Commercial and manufacturing activities conducted in enclosed buildings (Section 108-283):**
All commercial-retail and manufacturing activities will take place within the enclosed building. No outdoor storage or display has been applied for or approved.

- 4. Exterior Lighting (Section 108-284):**
Per Section 108-284, all proposed lighting shall be shielded and arranged lighting sources to eliminate glare from roadways and streets and shall direct light away from properties lying outside the district. Shielding of lighting elements shall be accomplished by using directional fixtures or opaque shades. Within the project limits, street lighting shall be installed on all internal and perimeter streets, within parking areas, and along pedestrian walkways as required.
- 5. Signs (Section 108-285):**
Proposed signage is harmonious with the urban design theme of the project, it is aesthetically pleasing and reinforces good principles and practices of streetscape design as demonstrated by the unanimous HARC approval.
- 6. Pedestrian sidewalks (Section 108-286):**
All proposed sidewalks, within the project limits, shall be constructed to link major activity centers and will also link vehicle use areas including parking areas with all principal buildings. The pedestrian circulation system includes marked pedestrian crossings, as required, in order to separate vehicular and pedestrian traffic.
- 7. Loading docks (Section 108-287):**
Loading docks are existing. The plan accommodates proposed changes by the City of Key West. The docks are located at the side/rear of the structure as required by Section 108-287 and are located more than 100 feet from any residentially zoned property and more than 40 feet from any property line adjacent to a nonresidential zoning district.
- 8. Storage Areas (Section 108-288):**
No outdoor storage areas are proposed. Waste and recycling handling will occur within the designated areas on the interior of the restaurant and within the existing shared facility adjacent to the market.

On-Site and Off-Site Parking and Vehicular, Bicycle, and Pedestrian Circulation (Section 108-244):

The proposed development plan satisfies on- and off-site vehicular and bicycle circulation, and parking requirements of Articles IV and VII of Chapter 108. The proposed market currently has 15 parking spaces associated with it. Approximately half of the existing parking spaces are nonconforming with regard to the dimensional requirements of the code. The proposed reconfiguration will retain 15 spaces, all conforming, and allow for 3 additional spaces to be created within the proposed City changes to the loading dock area. This site is located within the Historic Commercial Pedestrian-Oriented Area; no additional parking is required. The large William-Caroline-Margaret Street parking lot is located on the project's parent parcel. The proposed plan also incorporates the City's proposed traffic circle which enhances and encourages bus, taxi, and trolley ridership.

The project accommodates the City's planned redesign of the existing loading zone which allows for increased maneuverability, the creation of three new automobile parking spaces and twenty-one new bike-scooter spaces. Existing bike and scooter parking will remain at the Caroline Street entrance. The plan will result in a net reduction of 57 sq. ft. of floor area.

Housing (Section 108-245):

No housing is proposed as part of this Development Plan.

Economic resources (Section 108-246):

Trepanier & Associates, Inc. contacted the Monroe County Property Appraiser's office to seek assistance in estimating the average ad valorem tax yield from the proposed project however, because several important factors (lease length, approved rights, etc.), have yet to be defined, the appraiser was unable to assist in the estimation of average ad valorem tax yield.

The project is proposed as a single phase and the construction cost is estimated at \$1,500,000. The entire project will be constructed in the City of Key West and the majority of the expenditure will transact within the City.

Special Conditions (Section 108-247):

As mentioned above, the proposed plan accommodates the City's working draft master plan. The proposal complies with the goals, objectives and policies of the comprehensive plan and as demonstrated by the concurrency analysis there are no conflicts with the existing public facilities, such as wastewater treatment and transportation.

The project is located within the Caroline Street Redevelopment Area and complies with the intent of the plan.

The project is adjacent to the Key West Bight. There is no impact on the unincorporated portion of the county. The public access way between the project and Bight will not be adversely impacted as a result of the plan and will remain open to the public. In addition, the plans will open the second story roof deck for restaurant use.

The City's proposed traffic circle in front of this project area will be accommodated by the plan and will encourage and accommodate bus, taxi, trolley and shuttle bus ridership.

The restaurant will be designed with energy saving devices such as green roof technology, insulation standards, water saving devices, built-in recycling areas, and bike-scooter parking.

Coordination with applicable agencies was performed through the DRC process. No coordination with DEP or USACE is required.

Construction Management Plan and Inspection Schedule (Section 108-248):

The proposed development is not phased. The applicant would like to commence construction as soon as possible.

Open Space, Screening, Buffers and Landscaping (Article V and VI) of Chapter 108:

The plans will reduce impervious surface on the site by 1,324 sq. ft. in addition to the creation of a 630 sq. ft. green roof. The landscape plan has been approved by the Tree Commission.

Off-street Parking and Loading (Article VII) of Chapter 108:

As stated above - The proposed development plan satisfies on-and off-site vehicular and bicycle circulation, and parking requirements of Articles IV and VII of Chapter 108.

Stormwater and Surface Water Management (Article VIII):

No changes to the existing stormwater and surface water management other than a modest reduction to impervious surface and the utilization of green-roof technology.

Flood Hazard Areas (Division 4 - Sections 108-821 through 108-927):

The proposed project is located in the AE-VE flood zones¹. The first finished floor elevation of the existing structure is 7.73ft². All FEMA requirements will be met.

Utilities (Article IX):

According to information submitted to the Department, FCAA and Keys Energy Services are able to provide utilities to the site. The proposed development project will use existing utility mains for potable and sewer water as shown in the concurrency management report. Landscaping will consist of native and permitted species as shown on the proposed landscape plan.

Nonconformities (Article II):

Within HRCC-2, land uses within 30ft of mean high water are intended to be water-dependant³, from 30 to 100ft the land uses are intended to be water-related⁴. The Key West Bight Master Plan identified the then existing and proposed land uses of the Waterfront Market Building as retail, deli, bakery, offices, storage, trucking and deliveries. The plan did not identify the manufacturing uses existing in the Waterfront Market, but there has been the historic use as the manufacturing of sailing equipment. The adopted plan anticipated a cafe "with views of the Harbor" on the second floor of the market building.

The existing nonconforming mix of uses is clearly water-related as defined in the Code⁵. The uses identified in the plan as existing and proposed in 1994 are the very same land uses that are existing and proposed today. There is no existing or proposed deviation to the identified land use classifications in the adopted plan. Notwithstanding, the proposed alteration of the relative proportions of the mix of uses within the existing classifications will result in a decrease of both actual and potential intensity⁶ as indicated by the associated site plans and concurrency analysis.

The proposed project is equally or more appropriate to the zoning district as evidenced by the fact that there is no change in the overall land use classifications of the site; the land uses are permitted in the district; the land uses have been demonstrated to be compatible under the adopted Plan; and the proposed project will reduce both actual and potential intensity.

The associated site plans and concurrency analysis demonstrate the proposed mix of uses will not intensify the use of the premises by increasing required parking facilities⁷ or vehicular traffic

¹ Panel 1516K

² According to the Hildebrandt Survey dated 02/27/06

³ Sec. 86-9 "Water-dependent uses means activities which can be carried out only on, in or immediately adjacent to water..."

⁴ Sec. 86-9 "Water-related uses means activities which are not directly dependent upon access to a water body, but which provide goods and...supportive services to persons using a duly permitted marina."

⁵ Water-related uses include accessory uses. Sec. 86-9 "Accessory use means a use that is clearly incidental to the principal use, that is subordinate in area, extent or purpose to the principal use and that contributes to the comfort, convenience or necessity of the principal use..."

⁶ In terms of FAR & trip generation

⁷ The site is located within the Historic Commercial Pedestrian Oriented Area. No increase in parking facilities is required for the proposed renovation and change in the relative proportions of the existing mix of uses.

to the neighborhood⁸. All restaurant preparation and brewery activities shall occur indoors to prevent any increase to noise, dust, fumes, or other environmental hazards. There is an overall reduction in impervious surface which will reduce existing drainage impacts.

⁸ The Concurrency Analysis demonstrates an overall reduction in potential trip generation by an average of 236 daily trips.

03/08/2012

Mr. Donald Craig, AICP, Planning Director
 City of Key West
 3140 Flagler Avenue
 Key West, FL 33040

Re: **201 William Street (RE No.00072082-0004200)**
Major Development Plan Application



Dear Mr. Craig,

Attached herewith is an application, and the associated fee, for major development plan approval for the redevelopment and adaptive reuse of the historic industrial/ commercial "Waterfront Market" building at the Key West Bight. Waterfront Brewery, LLC proposes to renovate and adapt the Waterfront Market building into restaurant and micro-brewery use. Improvements will be made to the site including parking, landscaping, storm water management, and ADA access. The adaptive reuse is proposed in a manner that will allow the compatible operation of the property without burdening the land use activities in the immediate vicinity, including community infrastructure, with adverse impacts detrimental to the general public health, safety and welfare.

Per application requirements, the attached 24" x 36" scaled plan set includes surveys and site plans showing the existing and proposed conditions, including:

- Existing vegetation;
- Storm water features;
- Adjacent land uses, buildings, and driveways;
- Proposed buildings, setbacks, parking, driveway dimensions and materials, location of utility lines and location of garbage and recycling; and
- Proposed building elevations, drainage plan and landscape plan.

The existing and proposed site data is as follows:

Issue	Permitted/ Required	Existing	Proposed	Compliance
Zoning	HRCC-2	HRCC-2	No Change	Complies
Site Size	5,000 sq. ft.	140,049 sq. ft.	No Change	Complies
FAR	0.5 (70,030 sq. ft.)	0.34 (47,620 sq. ft.)	0.32 (45,938 sq. ft.)	Complies
Open Space within 100ft of MHWL	50% (70,030 sq. ft.)	2.9% (1,170 sq. ft.)	3.28% (1,320 sq. ft.)	Complies*
Open Space	20% (28,012 sq. ft.)	6% (8,435 sq. ft.)	7% (10,388 sq. ft.)	Complies*
Residential Units	5 units	0	0	Complies
Consumption Area	70,030 sq. ft.	1,260 sq. ft.	4,500 sq. ft.	Complies
Impervious Surface	(60%) 84,035 sq. ft.	(94%) 131,624 sq. ft.	(93%) 130,300 sq. ft.	Complies*
Set Backs				
Front	10'	10'	10'	Complies
Side 1	7.5'	7.5'	7.5'	Complies
Side 2	7.5'	0'	0'	Complies*
Rear	15'	0'	0'	Complies*

* Existing nonconformity

Key Individuals and entities involved in this project are as follows:

Key Individuals and Entities	
Property Owner	City of Key West
Applicant	Waterfront Brewery, LLC
Applicant's Agent	Trepanier & Associates, Inc.
Architect	William P. Horn, P.A.
Landscape Architect	Elizabeth Newland Landscape Architecture, LLC
Surveyor	Fredrick H. Hildebrandt, Engineer Planner Surveyor

Other Project Information required per City's application:

Issue	Applicant Response
Proposed stages or phases of development	Single Phase
Target dates for each phase	Commencement expected immediately following the development approval
Expected date of completion	Steady and continuous progress is proposed and expected with completion by the end of 2012
Proposed development plan for the site	Attached
Planned unit developments	No planned unit development is proposed
Buildings and siting specifications which shall be utilized to reduce damage potential and to comply with federal flood insurance	All FEMA requirements will be observed
Protection against encroachment together with proposed mitigation measures to be employed within environmentally sensitive areas	No development is proposed within environmentally sensitive areas.

Intergovernmental Coordination:

Agency	Coordination
South Florida Regional Planning Council	Not applicable
City Electric Systems	Per Development Review Committee
State Department of Environmental protection	Not applicable
Army Corps of Engineers	Not applicable
South Florida Water Management District	Not applicable
State department of transportation	Not applicable
State department of community affairs	Per rendering requirements of the MOU
Florida Keys Aqueduct Authority	Per Development Review Committee
State fish and wildlife conservation commission	Not applicable
Monroe County	Not applicable

Verification Form

DEVELOPMENT PLAN AND CONDITIONAL USE APPLICATION
City of Key West Planning Department
604 Simonton Street, Key West, FL 33040
(305) 809-3720



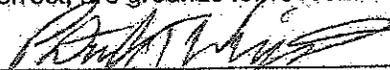
- 12) Has subject Property received any variance(s)? Yes ___ No ___
- 13) Are there any easements, deed restrictions or other encumbrances on the subject property?
Yes ___ No ___ If Yes, describe and attach relevant documents.
- 14) A. For Conditional Uses and Development Plans, provide the information requested on the attached

Please note, development plan and conditional use approvals are quasi-judicial hearings and it is improper to speak to a Planning Board member or City Commissioner about the project outside of the hearing.

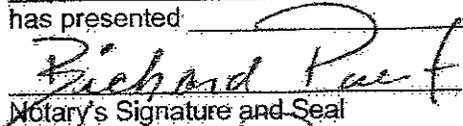
Verification

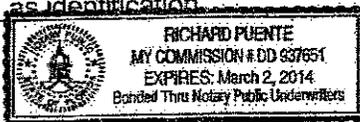
I, Trepanier & Associates, Inc. (please print), being duly sworn, depose and say

Name of Applicant
that I am (check one) the owner ___ / owner(s) legal representative of the property which is the subject matter of this application. All of the answers to the above questions, drawings, plans and any other attached data to this application, are true and correct to the best of my knowledge and belief and that if not true or correct, are grounds for revocation of any action reliant on said information.

 for Trepanier & Associates, Inc.
Signature of Applicant

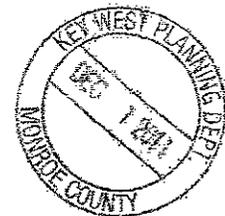
Subscribed and sworn to (or affirmed) before me on Dec 1, 2011 (date) by
(name of affiant, deponent or other signer). He/She is personally known to me or
has presented _____ as identification.


Notary's Signature and Seal



Richard Puente Name of Acknowledger typed, printed or stamped

Notary Title or Rank DD 937651 Commission Number



Authorization Form

City of Key West
Planning Department



Authorization Form
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Jim Scholl as
Please Print Name of person with authority to execute documents on behalf of entity

City Manager of City of Key West
Name of office (President, Managing Member) *Name of owner from deed*

authorize Waterfront Brewery, LLC
Please Print Name of Representative

to be the representative for this application and act on my/our behalf before the City of Key West.

[Signature]
Signature of person with authority to execute documents on behalf on entity owner

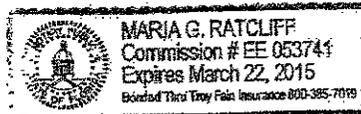
Subscribed and sworn to (or affirmed) before me on this 6th DEC, 11 by
date

Jim Scholl
Name of Authorized Representative

He/She is personally known to me or has presented _____ as identification.

[Signature]
Notary's Signature and Seal

Maria G. Ratcliff
Name of Acknowledger typed, printed or stamped



4 March 22, 2015
Commission Number, if any

City of Key West
Planning Department



Authorization Form
(Where Owner is a Business Entity)

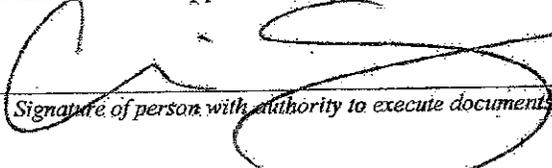
Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Chris Shultz as
Please Print Name of person with authority to execute documents on behalf of entity

Managing Member of Waterfront Brewery, LLC
Name of office (President, Managing Member) *Name of owner from deed*

authorize Trepanier & Associates Inc.
Please Print Name of Representative

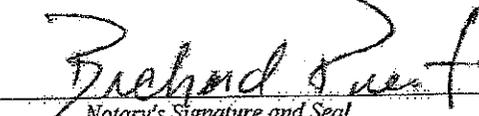
to be the representative for this application and act on my/our behalf before the City of Key West.

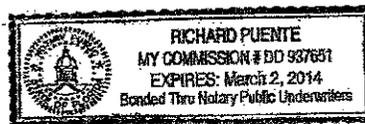

Signature of person with authority to execute documents on behalf on entity owner

Subscribed and sworn to (or affirmed) before me on this Dec 1, 2011 by
date

Agent
Name of Authorized Representative

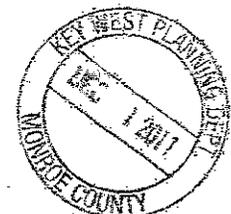
He/She as personally known to me or has presented _____ as identification.


Notary's Signature and Seal



Richard Puente
Name of Acknowledger typed, printed or stamped

DD 937 651
Commission Number, if any



**Electronic Articles of Organization
For
Florida Limited Liability Company**

L11000040225
FILED 8:00 AM
April 04, 2011
Sec. Of State
jbryan

Article I

The name of the Limited Liability Company is:
WATERFRONT BREWERY, LLC

Article II

The street address of the principal office of the Limited Liability Company is:
429 CAROLINE STREET
#2
KEY WEST, FL. US 33040

The mailing address of the Limited Liability Company is:
915 SOUTHARD STREET
#2
KEY WEST, FL. US 33040

Article III

The purpose for which this Limited Liability Company is organized is:
ANY AND ALL LAWFUL BUSINESS.

Article IV

The name and Florida street address of the registered agent is:
CHRISTOPHER SHULTZ
429 CAROLINE STREET
#2
KEY WEST, FL. 33040

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature: CHRISTOPHER SHULTZ

Article V

The name and address of managing members/managers are:

Title: MGRM
J. TODD MANUEL
915 SOUTHARD ST., #2
KEY WEST, FL. 33040 US

Title: MGRM
CHRISTOPHER SHULTZ
1025 ROBERTS LANE
KEY WEST, FL. 33040 US

L11000040225
FILED 8:00 AM
April 04, 2011
Sec. Of State
jbryan

Article VI

The effective date for this Limited Liability Company shall be:

04/04/2011

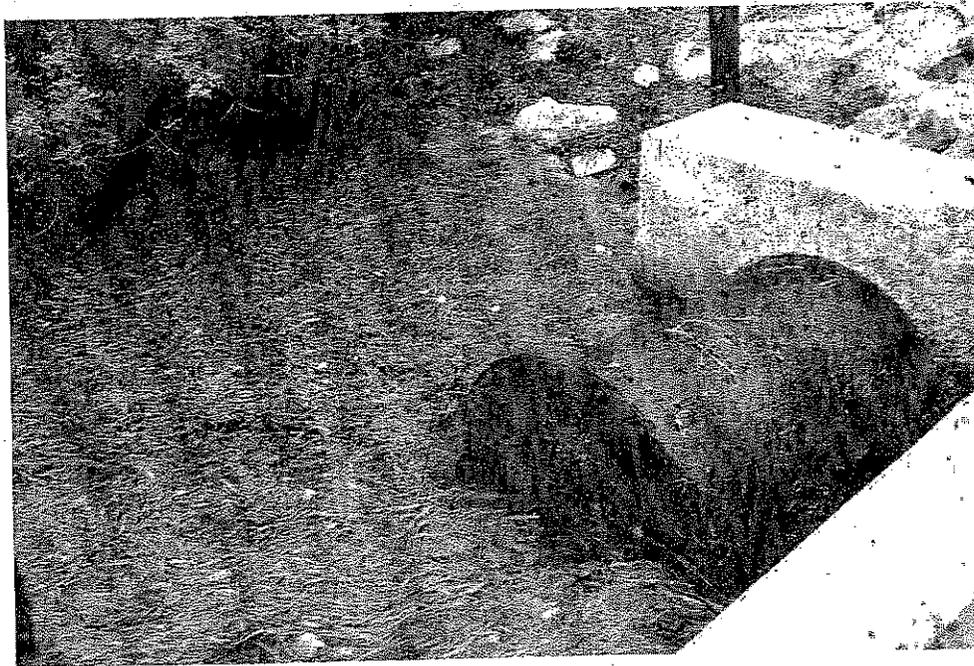
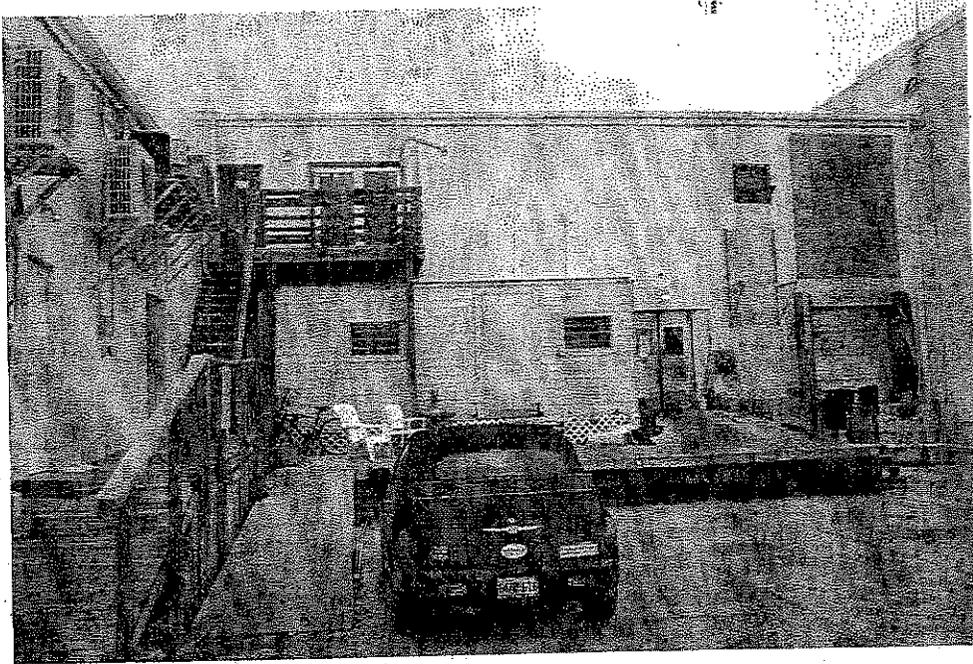
Signature of member or an authorized representative of a member

Electronic Signature: JAMES A. BYRNE

I am the member or authorized representative submitting these Articles of Organization and affirm that the facts stated herein are true. I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S. I understand the requirement to file an annual report between January 1st and May 1st in the calendar year following formation of the LLC and every year thereafter to maintain "active" status.

**Community Redevelopment Plan,
Finding of Necessity, 2009.
Excerpts**

SECTION I – KEY WEST BIGHT AREA



Top Photograph: Loading Dock, Key West Bight area (Source: City of Key West, 2009);
Bottom Photograph: Infrastructure, Key West Bight area (Source: City of Key West, 2009)

HARC Staff Report

7

Major Development Plan - Renovate building into a restaurant and brewery. New loading dock, new entries and stairs. Second floor rooftop dining area. Non historic building - #201 William Street- William Horn/ City of Key West Marilyn Wilbarger (H11-01-1519)

The building located on #201 William Street is not listed in the surveys. According to the 1962 Sanborn map the site where the building stands today was vacant. In the Property Appraiser's records the year of construction of the two story cbs structure was 1970. The proposed plans include renovations of the structure in order to reuse it as a restaurant and brewery. Two new entryways are proposed in the plans, both to give access to the rooftop, where a dining area, and a bar are proposed. The plans also include site modifications, including a new loading dock, relocation of air conditioning equipment and new design of the existing main entrance. As a proposed major development plan in the historic district the property a public notice was posted on November 30th, 2011, at least 14 days prior to the HARC meeting.

One of the proposed entrances, facing west, will be a screen wall, semicircular in footprint, will glass that will contain a staircase to access the rooftop. The staircases will be covered with a combination of flat and shed roofs covered with metal v-crimp panels. The semicircular wall will have metal frames that will support glass panels. Some of the glass panels will have etched art work depicting the Bight's history. On the east side of the building a new steel staircase, parallel to the façade, will give also access to the rooftop. The existing entrance, facing the parking lot, will be renovated; new roofs and railings will give access to the building's first floor.

A new dining terrace with a bar and a small performance area is proposed on the roof deck. On the north and west side of the rooftop a strip of green garden is proposed. Three feet six inches height cable railings are proposed for security purposes. These railings will be setback from the edge of the building. The proposed performance area will be located on the east side of the roof. Three acoustic panels will be attached to the north wall and acoustic louvers are proposed at the new landing area or the new staircase. A canvas awning supported with a metal frame is proposed over a new bar. The proposed awning will extend two feet over the actual roof and up to 34' from the ground. Concrete tiles will be the finish material for the floor. A turf play area is also proposed on the roof deck. All air conditioning equipment will be relocated on the roof and screened with a proposed with 4' high aluminum louvered panels.

New parking and loading areas is proposed on the east side of the building. A new fenestration is proposed on the east façade to accommodate a galvanized overhead coiling door for service purposes. A flat roof will be covering this new proposed service area.

Guidelines that should be reviewed for this application:

Additions; alterations and new construction (pages 36-38):

- (1) A structure shall not be altered and/or expanded in such a manner that its essential character defining features are disguised or concealed.
- (2) Additions and alterations may be reviewed more liberally on non-contributing buildings, which lack architectural distinction.
- (3) Addition design should be compatible with the characteristics of the original structure, neighboring buildings and streetscapes.
- (4) Additions should be constructed with a scale, height and mass that is appropriate to the original building and its neighbors.
- (5) Additions should be attached to less publicly visible secondary elevations of an historic structure.
- (6) Additions should not alter the balance and symmetry of an historic structure.
- (7) No existing structure shall be enlarged so that its proportions are out of scale with its surroundings.

The structure is located in the HRCCS zoning district which has the following zoning restrictions:

Front yard- 10 feet
Side yard- 5 feet
Backyard- 15 feet
Maximum height- 35 feet

The new design, as proposed, will not require setback variances.

Section 102-6 of the LDR's, Other regulations applicable to all development proposal, states that:

Development activities shall include precautions necessary to prevent the following adverse impacts to historic or archaeological sites of significance:

- (3) Introduction of visible, audible, or atmospheric elements that are out of character with the property or significantly alter its setting;

7

Major Development Plan -Revisions to previously approved plans, alternate 1 minor revision to rooftop performance area (relocate to work with neighbor) and color scheme - #201 William Street- William Horn/ City of Key West Marilyn Wilbarger (H12-01-49)

On December 14, 2011 the Commission approved a Certificate of Appropriateness for a Major Development Plan for renovations to #201 William Street in order to reuse part of the building as a brewery and restaurant. The Commission requested on that meeting that they wanted to review a new color scheme as well as proposed signage. During that meeting the applicant mentioned that a modification to the rooftop performance area was in the works after he met with a neighbor. This staff report is for the review of the proposed changes to the rooftop performance area as well as the new color scheme for the building.

The building located on #201 William Street is not listed in the surveys. According to the 1962 Sanborn map the site where the building stands today was vacant. In the Property Appraiser's records the year of construction of the two story cbs structure was 1970.

The proposed change on the rooftop includes a new location of the performing area. This new area will consist of a new structure that will have acoustic wall panels. A new roof is proposed between the new stage and the existing building.

The plans also include a new color scheme. The main color is blue with degradations of tones. The applicant selected a color that will complement the existing murals located on the south and west side of the building. The applicant included in his submittal photos of the original mural that was painted in the west wall dated 1993. A sample of a yellow stripe canvas proposed for the rooftop was also provided.

Guidelines that should be reviewed for this application;

Additions, alterations and new construction (pages 36-38a);

- (1) A structure shall not be altered and/or expanded in such a manner that its essential character defining features are disguised or concealed.
- (2) Additions and alterations may be reviewed more liberally on non-contributing buildings which lack architectural distinction.
- (3) Addition design should be compatible with the characteristics of the original structure, neighboring buildings and streetscapes.

- (4) Additions should be constructed with a scale, height and mass that is appropriate to the original building and its neighbors.
- (5) Additions should be attached to less publicly visible secondary elevations of an historic structure.
- (6) Additions should not alter the balance and symmetry of an historic structure.
- (7) No existing structure shall be enlarged so that its proportions are out of scale with its surroundings.

The structure is located in the HRCC2 zoning district which has the following zoning restrictions:

Front yard- 10 feet
Side yard- 5 feet
Backyard- 15 feet
Maximum height- 35 feet

The new design, as proposed, will not require setback variances.

Section 102-6 of the LDR's, other regulations applicable to all development proposals, states that:

Development activities shall include precautions necessary to prevent the following adverse impacts to historic or archaeological sites of significance:

- (3) *Introduction of visible, audible, or atmospheric elements that are out of character with the property or significantly alter its setting;*

It is staff's opinion that the original submitted plans included architectural elements that will mitigate and reduce possible noise from the proposed performance area. Acoustic elements will surround the area from the side as well as at the roof level. Moreover the applicant is proposing a sound system that will allow each table to have a speaker. This alternate design will also be in compliance with the guidelines.

It is staff understanding that the proposed color scheme is in keeping with the character of the building and surrounding urban context and will harmonize with the two existing murals. The use of degradation of blue tones will lower the mass and scale of the east side wall, which is almost a solid one with few fenestrations. As a Major Development Plan this project will require Planning Board and City Commission review and approvals. The Planning Board will be reviewing specific criteria codified in the Land Development Regulations.

Major Development Plan- Installation of three wall signs - #201 William Street - William Horn/ City of Key West Marilyn Wilbarger (H12-01-50)

This staff report is for the review of a Certificate of Appropriateness for a request to install three wall signs. The signs copy will be Waterfront Brewery Key West. On December 14, 2011 the Commission approved a Certificate of Appropriateness for a Major Development Plan for renovations to #201 William Street in order to reuse part of the building as a brewery and restaurant. The Commission requested on that meeting that they wanted to review, among other things, the proposed signage.

The building located on #201 William Street is not listed in the surveys. According to the 1962 Sanborn map the site where the building stands today was vacant. In the Property Appraiser's records the year of construction of the two story cbs structure was 1970. The building is located on a corner lot.

One of the proposed signs will be located on the south facade, where the old main entrance to the market used to be. This sign will be free standing brushed stainless steel letters, 12" tall, set on an arch way with an oval translucent panel with 10" tall applied stainless steel letters with copy Key West. This sign will be illuminated with back floor flood lights.

A second sign will be located on the new proposed entrance facing William Street. The 12" tall free standing brushed stainless steel letter will be attached to a new proposed curved wall. The letters will be back light with LED lights, creating a halo effect. Under the Waterfront Brewery letters an oval translucent panel with 10" tall applied stainless steel letters with copy Key West.

A third sign will be located in east side wall. This wall sign will be a brush aluminum panel with 12" tall cut out letters with copy Waterfront Brewery. The back of the sign will be lighted with a continuous LED strip light.

Staff understands that the following guidelines can be applied when reviewing this application:

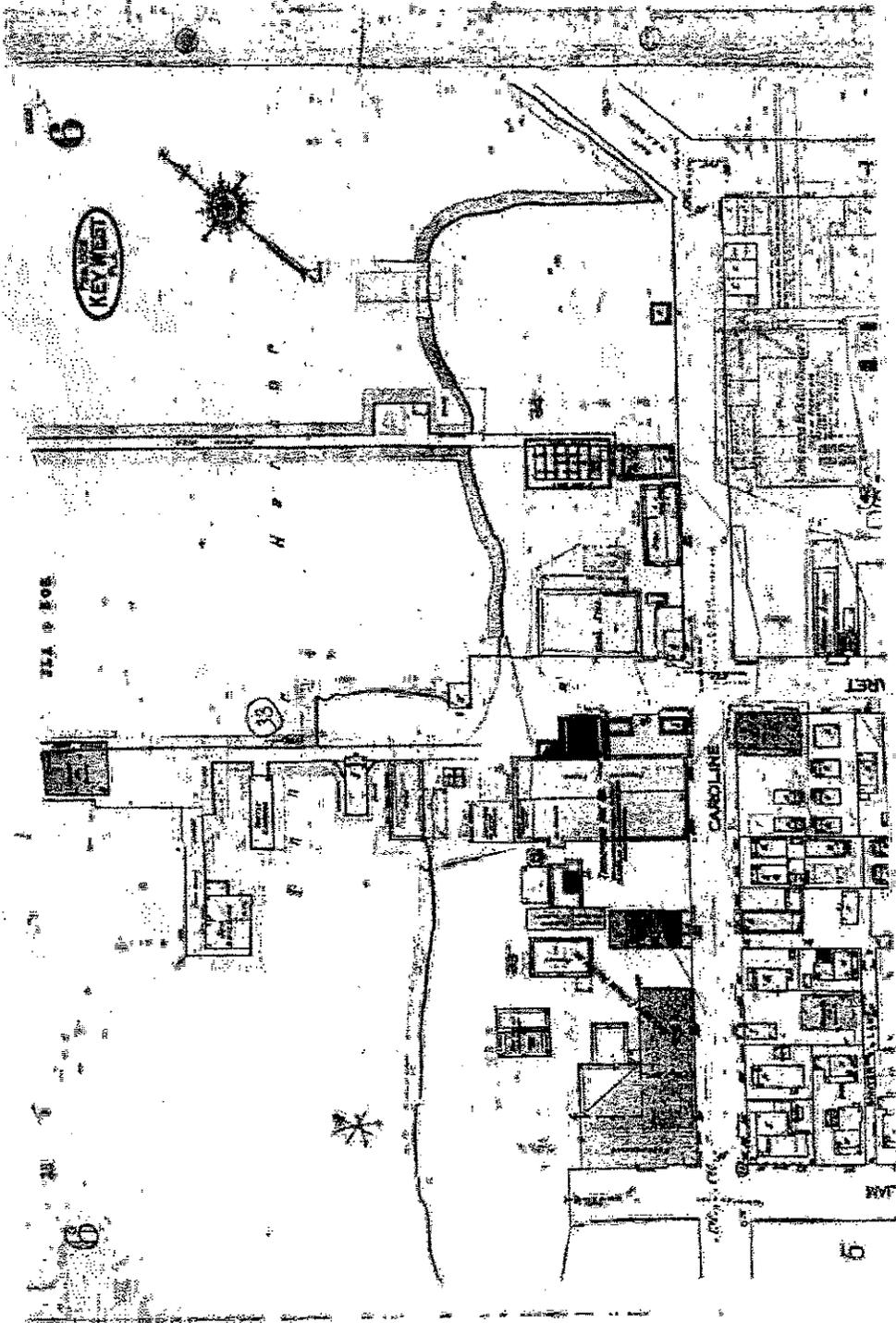
Banners, flags, signage and lighting (pages 49-51):

(2) Flat and facade signs shall be restricted to ten percent of the front building facade or less and shall not project more than four inches from the facade of the building.

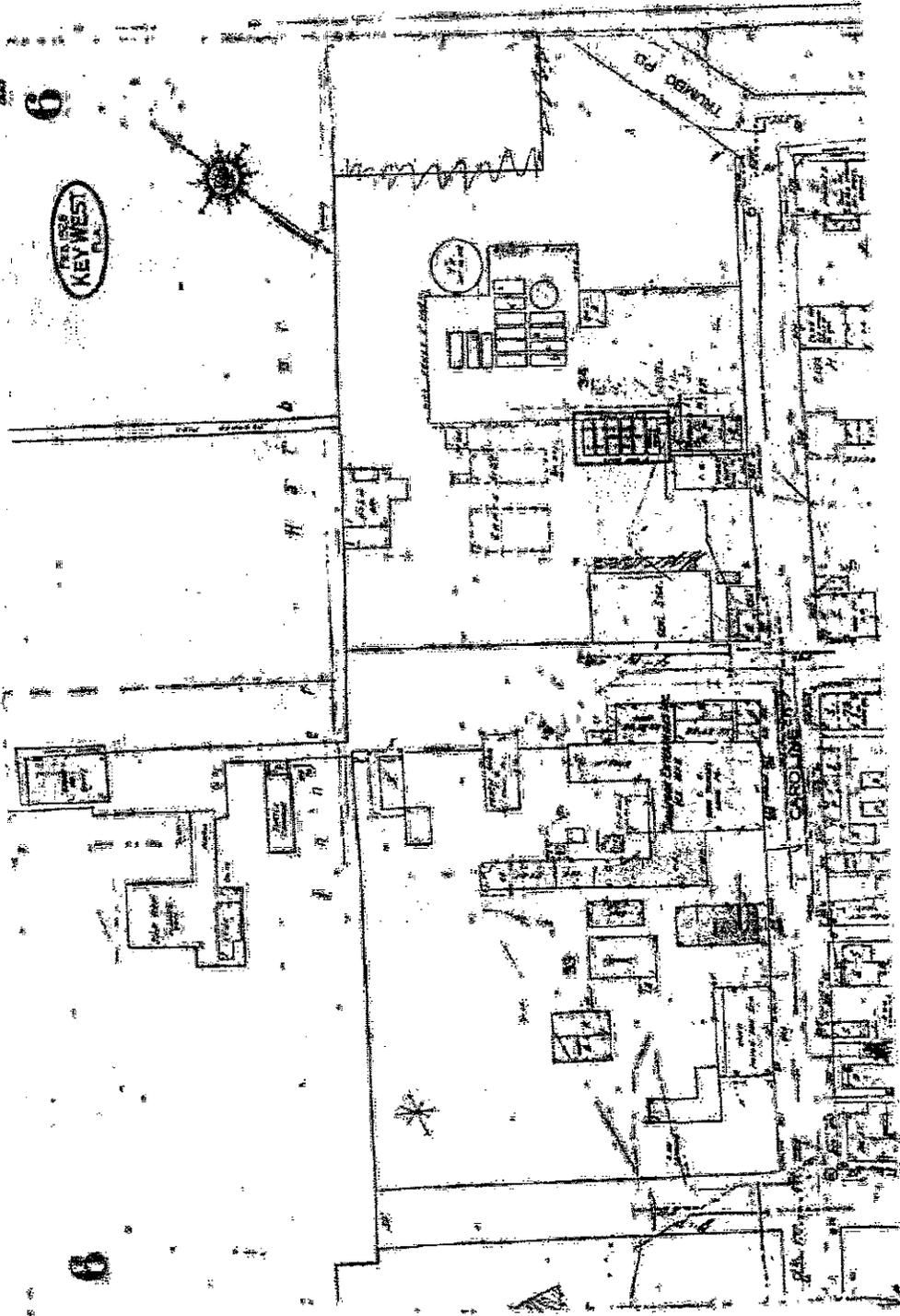
(6) A business shall not have more than two permitted signs, a primary and a secondary sign, unless located on a corner, in which each case three signs are allowed, provided that all other sign guidelines for historical zones are met.

It is staff's opinion that the proposed signs design is consistent with the guidelines and the LDR. The proposed signs will be detached from the walls no more than 4". This design proposes 3 signs which is the maximum number allowed in the historic district as per the guidelines and the LDR's. Staff understands that the use of new technology LED lighting systems will not detract from the urban character the bight possesses.

Sanborn Maps



#201 William Street Waterfront market Sanborn map 1948 Copy



KEY WEST

#201 William Street Waterfront Market Sanborn map 1962

DRC Member Comments and Minutes

**Minutes of the Development Review Committee of the City of Key West
December 16, 2011**

DRAFT

Page 1 of 3

Call Meeting To Order

Don Craig, City Planning Department Director, called the City of Key West Development Review Committee (DRC) Meeting of December 16, 2011 to order at **10:04 am** at Old City Hall, in the antechamber at 510 Greene Street, Key West.

Pledge of Allegiance to the Flag

Roll Call

DRC Member or Designated Staff	DRC Representative	Present	Absent
ADA Coordinator	Diane Nicklaus	X	
Building Official	John Woodson/John Cruz		X
Community Housing	Omar Garcia		X
Department of Transportation	Myra Wittenberg/Carolyn Haia		X
Fire Chief	Alan Averette	X	
Florida Keys Aqueduct Authority	Ed Nicolle/Jolynn Reynolds		X
General Services/Engineering Director	Elizabeth Ignoffo	X	
HARC Planner	Enid Torregrosa	X	
Keys Energy	Matthew Alfonso/Dale Finigan		X
Landscaping Coordinator	Karen DeMaria	X	
Planning Director	Don Craig	X	
Police Chief	Steve Torrence		X
Public Works	Greg Veliz		X

Also present:

Agency / Department	Name	Present	Absent
Planning Department	Ashley Monnier		
Planning Department	Brendon Cunningham	X	
Planning Department	Nicole Malo	X	
Planning Department/Recording Secretary	Jo Bennett	X	

7

Major Development Plan - 201 William Street (00072082-004200) - A Major Development Plan for addition of outdoor commercial activity at the Waterfront Market in the HRCC-2 zoning district per Section 108-91A(2)c of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida

Staff Report:

Nicole Malo presented the project, which is for a major development at the old Waterfront Market building. Ms. Malo stated the proposal is for a micro brewery, restaurant, and bar which has already been reviewed and approved by HARC. Ms. Malo requested the applicant to provide a summary of the proposed removal and addition of any floor area. Ms. Malo also requested that the applicant include demolition plans. Ms. Malo stated she spoke with the FEMA Coordinator who has supplied a letter stating he saw no issue with this plan. Ms. Malo concluded that she has already coordinated with the project planners concerning Section 108 needing to be addressed and written statements are needed.

Applicant:

Bill Horn along with Chris Schultz presented a PowerPoint presentation for the project. Mr. Horn stated that there will some changes to the roof top area to accommodate a request

Minutes of the Development Review Committee of the City of Key West

December 16, 2011

DRAFT

Page 2 of 3

from Pritam Singh to move the potential of any noise away from the direction of his proposed new project location. Mr. Horn and Marilyn Wilbarger remained available to respond to any questions.

DRC Member Comments:

Engineering – Ms. Ignoffo requested parking plans, stating that the head-on parking needs to be addressed. Ms. Ignoffo stated that the Fire Zone Access needs to be maintained. Ms. Ignoffo mentioned the access way to the Public Restrooms needs to be maintained. Ms. Ignoffo also mentioned that the transformer pads need to be screened if at all possible. Ms. Wilbarger responded that the Keys Energy transformers will need to remain but potentially landscape around them.

Landscaping - Ms. DeMaria reviewed the vegetation currently on the site. Ms. DeMaria stated that the Thatch palms will need a permit to be removed or relocated. All other landscaping does not need permits.

HARC – Ms. Torregrosa stated that the correct HARC number and correct HARC application date needs to be corrected on the application. Mr. Torregrosa stated that she will be supplying a HARC letter of approval to be included in the package going forward.

ADA – Ms. Nicklaus stated she would withhold ADA review until such time as permitting plan review takes place. Ms. Nicklaus inquired concerning additional ADA baths to accommodate future expansion and different hours of operation for the main building and the roof top may impact access to the ADA restrooms.

Fire – Mr. Averette stated that the sprinkler system satisfies his concerns and that he only other concern is with the turn-a-round which is not part of this project.

Planning - Mr. Craig asked the applicant to clarify the interaction of the two restaurant areas including hours of operation, kitchen use and ADA access. Mr. Craig also requested clarity of the number of seats in each area of the establishment. Mr. Craig inquired concerning the use and hours of the upper restaurant. Mr. Craig stated that the apparent small size of the kitchen could lead people to question the intended use (bar or restaurant). Mr. Craig stated that the applicant should address future expansion and different hours of operation for the main building and the roof top may impact access to the ADA restrooms.

Mr. Craig read the following comments from Marnie Walterson of Florida Keys Aqueduct Authority and from Matthew Alfonso of Keys Energy submitted into the record:

Florida Keys Aqueduct Authority – *"This site is presently being served by multiple FCAA Location #s. There is an 8" water main located on William Street. A complete set of plans will be required for review to determine meter requirements and any System Development Charges."*

Keys Energy – *"Customer will need to submit project review form. Keys will need to verify existing electrical facilities."*

There were no additional Committee member comments for the record.

Public Comments:

There were no public comments.

Adjournment

Actions/Motions:



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-1700

To: Nicole Malo, Development Review Planner

From: Paul Williams, Urban Forestry Manager *PW*

Date: February 22, 2012

Reference: Waterfront Brewery Landscape Plan

Nicole,

After review of the proposed landscape plan, research on the history of the property and a filed inspection of the current condition of the site, it is my recommendation that the plan meets the requirements of the City Code as it relates to Landscaping and Tree Protection.

As the subject building and surrounding property are owned by the City, the overall property should be considered as on parcel and have one master landscape plan for parking areas, sidewalks, buildings, open space and waterfront.

The proposed landscape plan for the Waterfront Brewery should be considered as a part of the master plan and not be subject to the full extent of Chapter 108 of the City Code.

Therefore, no landscape waivers are required in my opinion and I recommend approval of the proposed plan submitted by the Landscape Architect, Elizabeth Newland.

MEMORANDUM



CITY OF KEY WEST

TREE PERMIT

Permit# 5927 Date Issued 02/16/2012

Address 201 William Street

This it to certify that Waterfront Brewery or Liz Newland

has permission to Remove (1) Thatch palm. Replace with (1) native palm of choice, 4' minimum, FL #1, to be planted on site. Replacements shall be planted in the six months from the approval date as described here in. All plants shall be planted according to current 'Best Management Practices'. Call landscape office for tree replacement inspection.

as per application approved 02/13/2012

The person accepting this permit shall conform to the terms of the application on file in the office of the Tree Commission of Key West. All work shall conform to the requirements of the Code of Ordinances of the City of Key West, Chapter 110-Article VI. Tree Protection.

This Tree Permit is effective for 6 months from the date issued.

IMPORTANT NOTICE

This card must be posted in a location clearly visible from the street and in a protected covering.

APPROVED BY



Niels Weise-Chairperson

City of Key West
Tree Commission
PO Box 1409
Key West, FL 33040
Phone: (305)809-3764



City Of Key West
Planning Department
3140 Flagler Avenue
Key West, Florida 33040

December 22, 2011

Arch. William Horn
915 Eaton Street
Key West, Florida 33040

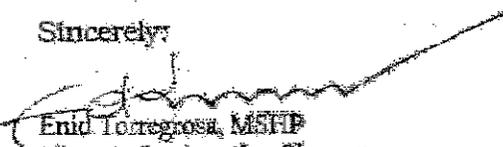
RE: MAJOR DEVELOPMENT PLAN-RENOVATE BUILDING INTO A
RESTAURANT AND BREWERY, NEW LOADING DOCK, NEW ENTRIES
AND STAIRS, SECOND FLOOR ROOFTOP DINING AREA, NON
HISTORIC BUILDING
FOR: #201 WILLIAM STREET - HARC APPLICATION # E11-01-1519
KEY WEST HISTORIC DISTRICT

Dear Architect Horn:

This letter is to notify you that the Key West Historic Architecture Review Commission approved the proposed design and the first reading for the above mentioned project on the public hearing held on Wednesday, December 14, 2011. The Commissioners motioned to approve your application based on the submitted plans and your presentation. During the meeting the Commission requested that the proposed new color scheme and new signage should be presented to them in a future. Please be advised that any changes to the approved plans will require a 14 day period for public notice on site prior to a meeting.

You may now apply for the necessary permits and approvals. Should you have any questions, please do not hesitate to contact me at your convenience. On behalf of the Historic Architectural Review Commission of our City, thank you for your interest in the preservation of Key West's historic heritage.

Sincerely,


Enid Torresosa, MSHP
Historic Preservation Planner
City of Key West
3140 Flagler Avenue
Key West, Florida 33040

305.809.3973

etorres@keywestcity.com

Co. Marilyn Wilbarger - Senior Property Manager



City Of Key West
Planning Department
3140 Flagler Avenue
Key West, Florida 33040

January 26, 2012

Arch. William P. Horn
#915 Baton Street
Key West, Florida 33040

RE: MAJOR DEVELOPMENT PLAN INSTALLATION OF THREE
SIGNS WATERFRONT BREWERY KEY WEST
FOR: #201 WILLIAM STREET - NARC APPLICATION # H12-01-50
KEY WEST HISTORIC DISTRICT

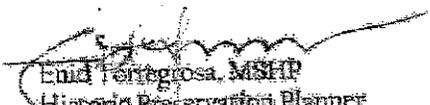
Dear Architect Horn:

This letter is to notify you that the Key West Historic Architectural Review Commission approved your request for the above mentioned project at the public hearing held on Wednesday, January 25, 2012. The Commissioners motioned to approve your application based on the submitted documents and your presentation.

You may now apply for the necessary permits and approvals. Should you have any questions, please do not hesitate to contact me at your convenience.

On behalf of the Historic Architectural Review Commission of our City, thank you for your interest in the preservation of Key West's historic heritage.

Sincerely,


Enid Fortegrosa, MSHP
Historic Preservation Planner
City of Key West
3140 Flagler Avenue
Key West, Florida 33040

305.809.3973

ctorregr@keywestcity.com

cc. Marilyn Wilbarger- Senior Property Manager



City Of Key West
Planning Department
3140 Flagler Avenue
Key West, Florida 33040

January 26, 2012

Arch. William P. Horn
#915 Eaton Street
Key West, Florida 33040

RE: MAJOR DEVELOPMENT PLAN REVISIONS TO PREVIOUSLY
APPROVED PLANS. ALTERNATE 1 MINOR REVISION TO
ROOFTOP PERFORMANCE AREA (RELOCATE TO WORK WITH
NEIGHBOR) AND COLOR SCHEME
FOR: #201 WILLIAM STREET - HARC APPLICATION # H12-01-49
KEY WEST HISTORIC DISTRICT

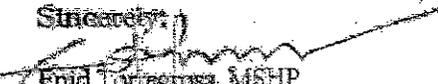
Dear Architect Horn:

This letter is to notify you that the Key West Historic Architectural Review Commission approved your request for the above mentioned project on the public hearing held on Wednesday, January 25, 2012. The Commissioners motioned to approve your application based on the submitted documents and your presentation.

You may now apply for the necessary permits and approvals. Should you have any questions, please do not hesitate to contact me at your convenience.

On behalf of the Historic Architectural Review Commission of our City, thank you for your interest in the preservation of Key West's historic heritage.

Sincerely,


Enid Tortagnona, MSHP
Historic Preservation Planner
City of Key West
3140 Flagler Avenue
Key West, Florida 33040

305.809.3973

etortagr@keywestcity.com

cc. Marilyn Wilbarger- Senior Property Manager

From: Scott Fraser
Sent: Thursday, December 15, 2011 4:42 PM
To: Nicole Malo
Subject: 201 William St.

Follow Up Flag: Follow up
Flag Status: Red

Attachments: sub_improvement_brochure_2011-08-11.pdf
Nicole,

Regarding the major development proposal for 201 William St.

Substantial Improvement floodplain requirements are triggered when proposed improvements (cumulative during the past five years) equal 50% or more of a building's value.

Currently, the Property Appraiser's Office values this structure at \$4,256,193. Therefore, absent a new appraisal, the 50% threshold would be \$2,128,097.

Attached, you'll find a quick reference brochure outlining what is and isn't taken into consideration when calculating the value of improvements for a Substantial Improvement determination.

A much more detailed reference can be found online at FEMA.gov Publication No. "P-758" *Substantial Improvement/Substantial Damage Desk Reference*

[<http://www.fema.gov/library/viewRecord.do?fromSearch=fromsearch&id=4160>]

Scott
Scott Fraser
FEMA Coordinator/Floodplain Administrator
305-809-3810 o.
305-923-4964 c.
sfraser@keywestcity.com

**Relevant Code Excerpts -
Chapter 26, Article IV
Sound Control**

Sec. 26-191. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commercial district means the HRO, HRCC-1, HRCC-2, HRCC-3, HNC-1, HNC-2, HCT, HPS (Mallory Square only), CL, CG, CT and A zoning districts.

Decibel means a measure of a unit of sound pressure. Sound waves having the same decibel level "sound" louder or softer to the human ear depending upon the frequency of the sound wave in cycles per second (i.e., whether the pitch of the sound is high or low). Thus, an A-weighted filter, constructed in accordance with the specifications of the American National Standards Institute, which automatically takes account of the varying effect on the human ear of different pitches shall be used on any sound level measurements required by this article. Accordingly, all measurements are expressed in dBA to reflect the use of this A-weighted filter.

Disturbing noise means an uninvited or disruptive level of noise that is unreasonably loud or that is raucous and jarring, due to volume, character, or duration, and that causes an actual interference with a person's ability to enjoy peacefully his residence or place of business.

Property boundary means the imaginary line along the surface, and its vertical plane extension, which separates the real property owned, rented, or leased by one person from that owned, rented, or leased by another person.

Public right-of-way means any street, avenue, boulevard, lane, highway, sidewalk, alley, or similar place normally accessible to the public which is owned or controlled by a governmental entity or which has been dedicated to use or access for the benefit of the public or adjacent property owners.

Unreasonable noise means: (1) Any noise in or emanating from a commercial district which equals or exceeds a measured sound level of 75 dBA (maximum permitted sound level in decibels) collectively for more than 30 seconds of any measurement period which shall not be less than five minutes. (Code 1986, § 55.01)

Sec. 26-192. - Prohibition against unreasonable noise.

No person shall make, continue, or cause to be made any unreasonable noise or disturbing noise. (Code 1986, § 55.02(a))

Sec. 26-193. - Exceptions. The prohibitions contained in this article shall not apply to the following:

(5) *Public events.* Sound levels from public events and celebrations sponsored by the city or approved by resolution of the city commission, but only during the hours designated by the resolution.

(10) *Industrial equipment.* Noise levels for industrial equipment, including but not limited to air conditioners, generators, and pool pumps, must be set to reasonable industry standards for properly maintained equipment. (Code 1986, § 55.03)

Sec. 26-194. - Citation procedure.

(a) Except as provided in subsection (e) of this section, all citations for violations issued under this article shall be based on a complaint to the city. The complainant shall be identified by name and address, the sound source shall be identified, and the investigating officer shall verify all information provided by the complainant. The investigating officer shall provide the complainant with a copy of the complaint form which may serve as a record of complaints relating to a property.

(b) A decibel meter shall be used for a complaint of unreasonable noise made at or within 100 feet of the property line of the sound source. The decibel reading shall be made at the location of the complaint. The investigating officer shall issue a citation for unreasonable noise, unless in his judgment a warning is sufficient to cease the violation. There shall be no more than a total of one warning per offending person or establishment.

(c) A complaint of disturbing noise may be made when the location of the complaint is beyond 100 feet of the property line of a commercial property sound source. Additionally, a complaint of disturbing noise may be made when the location of the complaint is a residential property and the location of the sound source is a residential property or a commercial property that was a residential property as of September 1, 2000, at any distance from each other. A decibel meter measurement is not required to determine disturbing noise. The investigating officer shall issue a citation if the complainant suffers disturbing noise within the boundaries of his property. The investigating officer may issue a warning if in his judgment a warning is sufficient to cease the violation. There shall be no more than a total of one warning per offending person or establishment.

(d) If a complaint arises of unreasonable noise emanating from a multistory structure, the determination of whether such sound constitutes unreasonable noise shall be made from a story height equal to that of the sound source or from the nearest accessible point on the ground floor.

(e) Upon the authorization of the city manager, the city may act as the complainant of unreasonable noise when a commercial establishment from which alleged unreasonable noise is emanating holds an entertainment license pursuant to division 2 of article II of chapter 18. A code enforcement officer shall conduct the decibel reading at any point beyond the property line of the sound source. In addition to its being subject to citation

for unreasonable noise, the establishment shall also be subject to the further penalties set forth in division 2 of article II of chapter 18

(f) Citations issued for unreasonable noise or disturbing noise under this article shall be of a content-neutral character.

(g) Either a police officer or a code enforcement officer may issue a citation to an offender under this article.

(h) Notwithstanding the provisions of paragraphs (b) and (c) above, a complaint of disturbing noise may be made at any distance from a commercial or residential property when the location of the sound source is a public right-of-way. The investigating officer shall issue a citation if the complainant suffers disturbing noise within the boundaries of his or her property. The investigating officer may issue a warning if in his or her judgment a warning is sufficient to cease the violation. There shall be no more than a total of one warning issued during any 12-month period.

(Code 1986, §§ 55.02(b)—(g), 55.07(b); Ord. No. 10-21, § 1, 10-5-2010)

Sec. 26-195. - Liability; citizen suit.

(a) *Liability.* The maker or creator of unreasonable noise or disturbing noise and the operator and/or owner of the premises that are its sound source shall each be subject to liability for violations of this article. If prosecuted jointly, each shall be jointly and severally liable for any fines imposed pursuant to this article. The sponsor of a special event shall not be liable for unreasonable noise or disturbing noise unless conditions placed upon the sponsor in the special event permit are violated.

(b) *Citizen suit.* In addition to any other remedy available to the city, including code enforcement, the city or any other adversely affected party may enforce the terms of this article in law or equity. Any citizen of the city may seek injunctive relief and damages in a court of competent jurisdiction to prevent a violation of this article. No section of this article shall be interpreted to prevent any person from commencing a civil action on his own behalf against any person who is alleged to be in violation of any section of this article. Attorney's fees and costs incurred in an action to enforce this article may be awarded to a substantially prevailing party in the discretion of the court.

(c) *Mediation services.* Upon request of parties to a residential noise dispute, the city manager shall provide mediation services.

Property Appraiser Information

Karl D. Borglum
Property Appraiser
Monroe County, Florida

office (305) 292-3420
 fax (305) 292-3501
 Website tested on Internet Explorer

----- GIS Mapping requires Adobe Flash 10.3 or higher. -----

Property Record View

Alternate Key: 8818602 Parcel ID: 00072082-004200

Ownership Details

Mailing Address:
 CITY OF KEY WEST
 PO BOX 1409
 KEY WEST, FL 33041-1409

Property Details

PC Code: 12 - STORE/OFF/RES OR COMBINATION
 Millage Group: 12KW
 Affordable Housing: No
 Section-Township-Range: 31-67-25
 Property Location: 201 WILLIAM ST KEY WEST
 Legal Description: KW PT LOT 2 SQR 10 (WATERFRONT BUILDING) G42-467/68 OR427-17/18 OR572-126E OR656-645/46 OR1424-992/99(LG)

Show Parcel Map - Must have Adobe Flash Player 10.3 or higher

Land Details

Land Use Code	Frontage	Depth	Land Area
10WA - COMM WATERFRONT ACRE	180	348	25,140.00 SF

Building Summary

Number of Buildings: 1
 Number of Commercial Buildings: 1
 Total Living Area: 27610
 Year Built: 1970

Building 1 Details

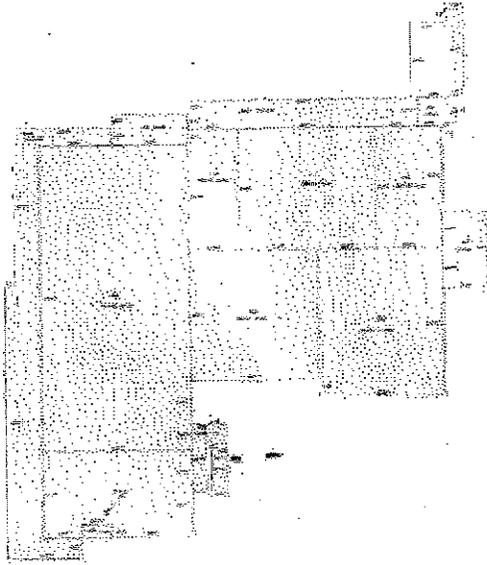
Building Type	Condition A	Quality Grade 400
Effective Age 17	Perimeter 666	Depreciation % 23
Year Built 1970	Special Arch 0	Grnd Floor Area 27,610
Functional Obs 0	Economic Obs 0	

Inclusions:	Roof Type	Roof Cover	Foundation
	Heat 1	Heat 2	Bedrooms 0
	Heat Src 1	Heat Src 2	

Extra Features:	2 Fix Bath 0	Vacuum 0
	3 Fix Bath 0	Garbage Disposal 0
	4 Fix Bath 0	Compactor 0
	5 Fix Bath 0	Security 0
	6 Fix Bath 0	Intercom 0

7 Fix Bath 0
 Extra Fix 48

Fireplaces 0
 Dishwasher 0



Sections:

Nbr	Type	Ext Wall	# Stories	Year Built	Attic	A/C	Basement %	Finished Basement %	Area
1	OPX		1	1992					60
2	FLA		2	1992					3,972
3	OPF		1	1992					135
4	OPU		1	1992					189
5	FLA		1	1992					7,316
6	FLA		2	1992					5,200
7	FLA		2	1992					1,880
8	FLA		1	1992					2,585
9	FLA		1	1992					2,850
10	FLA		3	1992					3,807
11	CLP		1	1992					570
12	SBF		1	1992					135
13	ULP		1	1992					1,703
14	ULP		1	1992					384
15	OPU		1	1994					2,418

Interior Finish:

Section Nbr	Interior Finish Nbr	Type	Area %	Sprinkler	A/C
	16454	1 STY STORE-B	100	Y	Y
	16455	OFF BLDG-1 STY-B	100	Y	Y
	16456	1 STY STORE-B	100	Y	Y
	16457	1 STY STORE-B	100	Y	Y
	16458	1 STY STORE-B	100	Y	Y
	16459	1 STY STORE-B	100	Y	Y
	16460	1 STY STORE-B	100	Y	Y

Exterior Wall:

Interior Finish Nbr	Type	Area %
5672	C.B.S.	100

Appraiser Notes

6/12/04 THIS PARCEL WAS PREVIOUSLY ASSESSED WITH B.O.'S FISH WAGON AND A PORTION OF THE CITY PARKING LOT. FOR THE 2004 TAX ROLL THIS PARCEL WILL ONLY BE FOR THE WATERFRONT BUILDING AND THE LAND WHICH IT SITS ON. LEASES ON WATERFRONT BUILDING : REEF RELIEF ELENA JONES STUDIO THE SAND DOLLAR KEY WEST ICE CREAM FACTORY GESLIN SAILS AND CANVAS WATERFRONT MARKET KEY WEST PROPERTIES ATM MACHINE/TIB BANK SCHOONER/APPLEDORE KEY WEST PACKET LINES/WOLF OFFICE SUNSET WATERSPORTS FORMERLY PART OF RE 68

Building Permits

Bldg	Number	Date Issued	Date Completed	Amount	Description	Notes
54	07-5328	12/12/2007	03/15/2011	4,575	Commercial	REMOVE ALL NON-STRUCTURAL WALL AND CEILING COVERING
	080000544	03/04/2008	03/15/2011	500	Commercial	2 NEW PROPANE TANKS WITH APPROVED SLAB
54	10-00000003	12/12/2009	03/15/2011	9,780	Commercial	TEMPORARY TENTS FOR SAILBOAT RACES
	10-00000140	01/15/2010	03/15/2011	2,000	Commercial	INSTALL TEMPORARY ELECTRIC HOOKUP FOR TWO OFFICE TRAILERS, MAIN EVENT TENT, AND VENDOR TENTS
48	03-3939	01/15/2004	12/02/2004	800	Commercial	INSTALL ROOFING
47	02-3453	01/08/2003	12/02/2004	2,000	Commercial	TEMP.TENT-30 DAYS
46	02-1630	07/01/2002	11/07/2002	3,800	Commercial	TRACK LIGHTING
45	02-1630	06/21/2002	11/07/2002	1,800	Commercial	INTERIOR RENOVATIONS
44	02-1154	05/10/2002	11/07/2002	1,000	Commercial	INSTALL HVAV EQUIP.
43	02-0844	04/30/2002	11/07/2002	1,000	Commercial	FINISH HOOD WK.
42	02-0626	03/21/2002	11/07/2002	4,000	Commercial	INSTALL TEMP.ELEC
41	02-0347	02/13/2002	11/07/2002	200	Commercial	SECURITY SYSTEM
40	02-0089	01/15/2002	11/07/2002	1,500	Commercial	EXHAUST FAN
39	01-4043	12/28/2001	11/07/2002	3,500	Commercial	INSTALL 1(2.5) TON A/C
38	01-4037	12/21/2001	11/07/2002	1,500	Commercial	AWNING LIGHT
37	0103368	10/12/2001	11/07/2002	1,000	Commercial	WALL REPAIRS
35	0101607	09/13/2001	11/29/2001	20,000	Commercial	AWNINGS
36	0102759	10/01/2001	11/29/2001	12,000	Commercial	INTERIOR REMODELING
34	0001563	06/08/2000	07/12/2000	1,800	Commercial	CHANGEOUT AC
33	0001022	04/27/2000	07/12/2000	1	Commercial	ELECTRICAL FOR PUMPOUTS
32	0001022	04/26/2000	07/12/2000	1	Commercial	INSTALL 40 BOAT PUMPOUTS
31	0000772	03/27/2000	07/12/2000	460	Commercial	ELECTRICAL
30	0000140	01/14/2000	07/12/2000	2,500	Commercial	ELECTRICAL
29	9901125	01/10/2000	07/12/2000	5,000	Commercial	ELECTRICAL
28	9800118	04/14/1998	07/02/1998	55,000	Commercial	FIRE SYSTEM
27	9704266	12/19/1997	12/31/1998	101,363	Commercial	INTERIOR RENOVATIONS
26	9704086	12/01/1997	12/01/1997	25,000	Commercial	16 REEFERS
25	9702539	12/01/1997	12/01/1997	144,540	Commercial	NEW FIRE SYSTEM
24	9703768	12/01/1997	12/01/1997	2,700	Commercial	NEW FENCE
23	9703758	11/01/1997	12/01/1997	9,000	Commercial	ELECTRICAL
22	9703067	09/01/1997	12/01/1997	4,200	Commercial	REPLACE A/C SYSTEM
21	9703304	09/01/1997	12/01/1997	1,850	Commercial	MECHANICAL
20	9703290	09/01/1997	12/01/1997	1,100	Commercial	ELECTRICAL

19	9703220	09/01/1997	12/01/1997	3,254	Commercial	ROOF
18	9702913	08/01/1997	12/01/1997	4,000	Commercial	HOOD & FANS
17	9702754	08/01/1997	12/01/1997	2,500	Commercial	REMODEL TICKET BOOTH
16	9702837	08/01/1997	12/01/1997	2,500	Commercial	STAGE
15	9702724	08/01/1997	12/01/1997	7,600	Commercial	ROOF
14	9701720	05/01/1997	12/01/1997	1,000	Commercial	ELECTRICAL
13	9701286	04/01/1997	12/01/1997	1,400	Commercial	PLUMBING
12	9701282	04/01/1997	12/01/1997	1,425	Commercial	PLUMBING
11	9701110	04/01/1997	12/01/1997	8,000	Commercial	ELECTRIC
10	9700366	02/01/1997	12/01/1997	67,943	Commercial	PLUMBING
9	9700348	02/01/1997	12/01/1997	20,000	Commercial	PLUMBING
3	9601197	03/01/1996	12/01/1996	20,000	Commercial	RENOVATIONS
8	9603488	08/01/1996	12/01/1996	4,300	Commercial	PLUMBING
7	9602367	06/01/1996	12/01/1996	5,400	Commercial	ROOF
6	9602375	06/01/1996	12/01/1996	300,000	Commercial	PLUMBING
5	9602374	06/01/1996	12/01/1996	600,000	Commercial	ELECTRIC
4	9602359	06/01/1996	12/01/1996	2,700,000	Commercial	RENOVATIONS
2	B953750	11/01/1995	12/01/1995	4,000	Commercial	INSTALL DRYWALL, DROP CEIL
1	B952970	09/01/1995	12/01/1995	45,000	Commercial	EXCAVATE/REPLCE FUEL LINE
50	05-0105	01/13/2005	12/31/2005	800	Commercial	TEMPORARY SERVICE & LIGHTS
49	04-0938	03/26/2004	12/02/2004	7,000	Commercial	MURAL LIGHTS
52	06-0141	01/11/2006	03/15/2011	2,000	Commercial	INSTALL TEMPORARY SERVICE & LIGHTS
51	05-4676	11/02/2005	12/31/2005	499	Commercial	HURRICANE WILMA DAMAGE MAINTENANCE OF ROOF
53	06-6826	12/29/2006	03/15/2011	2,000	Commercial	INSTALL TEMP., 200AMP AND LIGHTS FOR RACR WHEEL AT B.O. CHUCK WAGON

Parcel Value History

Certified Roll Values.

[View Taxes for this Parcel.](#)

Roll Year	Total Bldg Value	Total Misc Improvement Value	Total Land Value	Total Just (Market) Value	Total Assessed Value	School Exempt Value	School Taxable Value
2011	4,256,193	0	1,670,905	5,927,098	5,927,098	0	5,927,098
2010	4,256,193	0	1,682,205	5,938,398	5,938,398	0	5,938,398
2009	4,466,375	0	2,137,704	6,604,079	6,604,079	0	6,604,079
2008	4,466,375	0	4,022,400	8,488,775	8,488,775	0	8,488,775
2007	3,074,922	0	4,022,400	7,097,322	7,097,322	0	7,097,322
2006	3,147,273	0	4,022,400	7,169,673	7,169,673	0	7,169,673
2005	3,147,273	0	3,771,000	6,918,273	6,918,273	0	6,918,273
2004	2,447,882	0	2,815,680	5,263,562	5,263,562	0	5,263,562
2003	2,913,324	75,886	4,305,000	7,294,210	7,294,210	1,750,610	5,543,600
2002	2,913,296	78,830	3,042,200	6,034,326	6,034,326	1,448,238	4,586,088
2001	2,913,296	82,111	3,042,200	6,037,607	6,037,607	1,449,026	4,588,581
2000	2,132,902	47,989	1,836,800	4,017,691	4,017,691	964,246	3,053,445
1999	2,131,308	49,834	1,469,440	3,650,582	3,650,582	876,140	2,774,442
1998	1,156,201	51,432	1,469,440	2,677,073	2,677,073	642,497	2,034,576
1997	1,156,201	53,274	1,377,900	2,587,075	2,587,075	620,898	1,966,177
1996	1,051,092	29,738	1,377,600	2,458,430	2,458,430	688,360	1,770,070

1995	1,038,554	5,265	1,377,600	2,421,419	2,421,419	677,997	1,743,422
1994	1,043,245	5,392	1,377,600	2,426,237	2,426,237	679,346	1,746,891
1993	1,043,245	5,415	1,377,600	2,426,260	2,426,260	0	2,426,260

Parcel Sales History

NOTE: Sales do not generally show up in our computer system until about two to three months after the date of sale. If a recent sale does not show up in this list, please allow more time for the sale record to be processed. Thank you for your patience and understanding.

There are no sales to display for this parcel.

This page has been visited 19,376 times.

Monroe County Property Appraiser
Karl D. Borglum
P.O. Box 1176
Key West, FL 33041-1176

Karl D. Borglum
Property Appraiser
Monroe County, Florida

office (305) 292-3420
 fax (305) 292-3501
 Website tested on Internet Explorer

----- GIS Mapping requires Adobe Flash 10.3 or higher. -----

Property Record View

Alternate Key: 1000698 Parcel ID: 00000680-000000

Ownership Details

Mailing Address:
 CITY OF KEY WEST
 P O BOX 1409
 KEY WEST, FL 33041

Property Details

PC Code: 89 - MUNICIPAL OTHER THAN (PC/LIST)
 Millage Group: 12KW
 Affordable Housing: No
 Section:
 Township: 31-67-25
 Range:
 Property Location: 800 BLK CAROLINE ST KEY WEST
 Legal Description: KW LOT 1 & 2 SQR 10 (A/K/A PUBLIC PARKING LOT WITHIN KEY WEST BIGHT) G8-316 G56-22/23 OR15-444/445 OR439-421/425 OR655-395/403 OR846-2478/2479 OR889-1910/1911E OR902-283/296 OR902-877/890 OR1015-99/115 OR1068-52/62 OR1068-65/75 OR1173-1082/1101 OR466-865/6 (LEASE) OR1240-1020/8P/R OR1240-1029/36 OR1240-1037/46 OR1240-1029/36 OR1240-1037/46 OR1240-1047/63Q/C OR1240-1109/33ASSN OR1240-1134/54ASSUM OR1240-1155/62 OR1424-992/99

Show Parcel Map - Must have Adobe Flash Player 10.3 or higher

Exemptions

Exemption	Amount
15 - MUNICIPAL LANDS	5,392,983.00

Land Details

Land Use Code	Frontage	Depth	Land Area
100E - COMMERCIAL EXEMPT	0	0	95,360.00 SF

Building Summary

Number of Buildings: 1
 Number of Commercial Buildings: 1
 Total Living Area: 1588
 Year Built: 1998

Building 1 Details

Building Type	Condition <u>E</u>	Quality Grade 400
Effective Age 10	Perimeter 172	Depreciation % 13
Year Built 1998	Special Arch 0	Gnd Floor Area 1,588

Functional Obs 0

Economic Obs 0

Inclusions:

Roof Type
Heat 1
Heat Src 1

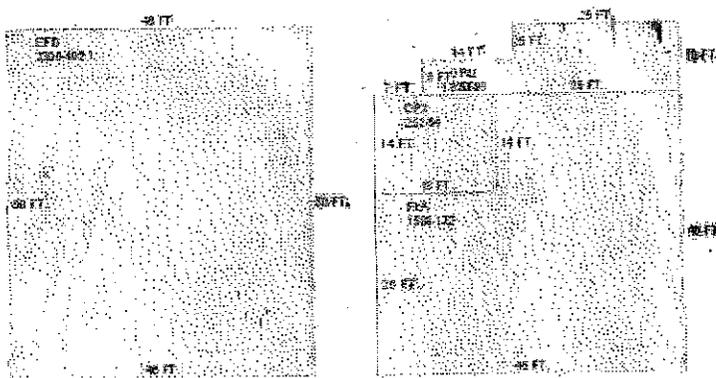
Roof Cover
Heat 2
Heat Src 2

Foundation
Bedrooms 0

Extra Features:

2 Fix Bath 0
3 Fix Bath 0
4 Fix Bath 0
5 Fix Bath 0
6 Fix Bath 0
7 Fix Bath 0
Extra Fix 32

Vacuum 0
Garbage Disposal 0
Compactor 0
Security 0
Intercom 0
Fireplaces 0
Dishwasher 0



Sections:

Nbr	Type	Ext Wall	# Stories	Year Built	Attic	A/C	Basement %	Finished Basement %	Area
1	EFD		1	1998					2,300
2	FLA		1	1998					1,588
3	OPX		1	1998					252
4	OPU		1	1998					320

Interior Finish:

Section Nbr	Interior Finish Nbr	Type	Area %	Sprinkler	A/C
	307	TOURIST ATTRAC-A-	100	N	Y

Exterior Wall:

Interior Finish Nbr	Type	Area %
107	C.B.S.	100

Misc Improvement Details

Nbr	Type	# Units	Length	Width	Year Built	Roll Year	Grade	Life
2	SW2:SEAWALL	1,920 SF	240	8	1984	1985	4	60

3	AP2:ASPHALT PAVING	3,124 SF	0	0	1994	1995	2	25
4	PT3:PATIO	2,490 SF	0	0	1973	1974	2	50
5	AP2:ASPHALT PAVING	2,592 SF	0	0	1968	1969	2	25
6	CL2:CH LINK FENCE	1,092 SF	0	0	1968	1969	1	30
7	TK2:TIKI	20 SF	4	5	1992	1993	1	40
8	PT3:PATIO	825 SF	0	0	1994	1995	2	50
9	AP2:ASPHALT PAVING	20,399 SF	0	0	1994	1995	2	25
10	UB2:UTILITY BLDG	40 SF	0	0	1994	1995	1	50
11	TK2:TIKI	128 SF	0	0	1994	1995	1	40
12	TK2:TIKI	30 SF	0	0	1994	1995	1	40
13	UB3:LC UTIL BLDG	32 SF	0	0	1994	1995	1	30
14	RW2:RETAINING WALL	488 SF	0	0	1991	1992	3	50
15	PT3:PATIO	841 SF	0	0	1991	1992	2	50
16	FN2:FENCES	610 SF	0	0	1991	1992	2	30
17	PT3:PATIO	420 SF	0	0	1968	1969	2	50
18	AP2:ASPHALT PAVING	4,250 SF	0	0	1968	1969	2	25
19	CC2:COM CANOPY	600 SF	60	10	1984	1985	2	40
20	AP2:ASPHALT PAVING	16,172 SF	0	0	1994	1995	2	25
21	AP2:ASPHALT PAVING	970 SF	0	0	1995	1996	2	25

Appraiser Notes

6/12/04 FOR THE 2004 TAX ROLL THIS PARCEL WILL NOW BE FOR ALL THE PUBLIC AREA WITHIN THE 800 BLK OF CAROLINE ST (WITHIN THE KEY WEST BIGHT) WILL ALSO INCLUDE THE PUBLIC RESTROOMS AND PUBLIC WALKWAYS AND PARKING LOT. LG

Building Permits

Bldg	Number	Date Issued	Date Completed	Amount	Description	Notes
11	07-5018	12/11/2007		396,350	Commercial	ELECTRICAL PERMIT WIRE NEW CONSTRUCTION PER PLANS 100-AMP, 20 CIRCUITS SUB PANEL, PLUMBING PERMIT INSTALL 1050 GREASE TRAP, TWO FRENCH DRAINS, ROOFING PERMIT INSTALL 1136 SF OF 5 V-CRIMP METAL ROOFING, BUILDING PERMIT BUILD TRASH COMPACTOR ENCLOSURE, FENCE PERMIT INSTALL TEMP CONST. FENCE, REVISED DRAWINGS FOUNDATION SPREAD FOOTERS
12	08-0178	01/24/2008		8,500	Commercial	REPAIR SERVICE ENTRANCE CONDUIT & WIRE AT POINT OF BREAK
	09-0683	04/01/2009		1,500	Commercial	RELOCATE 2 1/2 LINE 4 SPRINKLER'S HEADS
	09-0193	02/05/2009		125,000	Commercial	REMOVE INTERIOR WALLS TO EXPAND EXISTING LEASE SPACE, ADD ADA COMPLAINT SIDEWALK
	09-0974	04/07/2009		340,000	Commercial	REPLACE NINETY PILES, 4000 SF OF DECKING, 45 SETS OF DIAGONAL WOOD CROSS BRACING
	08-1377	04/29/2008		220,000	Commercial	ROOFING
	08-0950	04/17/2008		3,500	Commercial	REMOVE AND REPLACE 4 EXISTING WINDOWS
	08-0657	03/10/2008		12,000	Commercial	REMOVE AND REPLACE EXISTING WINDOWS AND DOORS
	08-1380	04/29/2008		15,000	Commercial	ROOFING
	08-0970	04/02/2008		1,000	Commercial	NEW LIGHT REPLACEMENT
	10-490	02/17/2010	04/12/2010	4,410	Commercial	INSTALLATION OF EXTERIOR LIGHTS
11	09-00003874	11/12/2009		5,000	Commercial	REPLACE 7 25 KW TRANSFORMERS
3	02-3039	11/14/2002	07/21/2003	1,105	Commercial	REPAIRE THE PARCH ROOF
5	03/3939	01/27/2004	12/31/2004	13,800	Commercial	PAVERS
4	03-1653	05/09/2003	07/21/2003	6,435	Commercial	REDIRECT WATERLINES
2	02-2715	10/07/2002	07/21/2003	1	Commercial	ELEC FOR TANKS

1	97-2571	07/01/1991	06/01/1997	500	Commercial	4X4 FOUNDATION
7	06-5065	09/13/2006	11/07/2006	1,000	Commercial	REMOVE/REPLACE ONE W/C,LAV,FAUCET FOR ADA BATHROOM
6	06-4372	08/23/2006	11/07/2006	18,000	Commercial	ADD A ADA BATHROOM FOR 201 WILLIAM ST
10	07-0334	01/30/2007	01/30/2007	1,500	Commercial	REARRANGE 3 SPRINKLER HEADS
8	06-6799	01/30/2007	06/21/2007	18,000	Commercial	INSTALL 600SQ FT OF SHEET ROCK,400SQ1 FT OF TILE,PAINT INTERIOR
9	06-6800	01/30/2007	06/21/2007	5,000	Commercial	INSTALL 10 LIGHTS & 12 PLUGS COMPUTER JACKS

Parcel Value History

Certified Roll Values.

[View Taxes for this Parcel.](#)

Roll Year	Total Bldg Value	Total Misc Improvement Value	Total Land Value	Total Just (Market) Value	Total Assessed Value	School Exempt Value	School Taxable Value
2011	309,687	133,926	4,956,668	5,399,281	5,399,281	5,399,281	0
2010	316,725	135,610	13,350,400	13,802,735	10,991,125	13,802,735	0
2009	323,764	141,704	9,526,464	9,991,932	9,991,932	9,991,932	0
2008	323,764	148,178	10,584,960	11,056,902	11,056,902	11,056,902	0
2007	239,740	125,404	10,584,960	10,950,104	10,950,104	10,950,104	0
2006	239,740	119,740	13,827,200	14,186,680	14,186,680	14,186,680	0
2005	244,841	124,854	13,350,400	13,720,095	13,720,095	13,720,095	0
2004	249,930	129,501	9,536,000	9,915,431	9,915,431	9,915,431	0
2003	0	60,092	826,500	886,592	886,592	407,832	478,760
2002	0	61,936	584,060	645,998	645,998	297,159	348,839
2001	0	62,984	584,060	647,044	647,044	297,640	349,404
2000	0	19,821	352,640	372,461	372,461	171,332	201,129
1999	0	20,413	352,640	373,053	373,053	171,604	201,449
1998	0	20,778	282,112	302,890	302,890	139,329	163,561
1997	0	21,371	264,480	285,851	285,851	131,491	154,360
1996	0	21,964	264,480	286,444	286,444	131,764	154,680
1995	0	18,892	264,480	283,372	283,372	130,351	153,021
1994	0	19,348	264,480	283,828	283,828	130,560	153,268
1993	0	19,803	264,480	284,283	284,283	0	284,283
1992	1,520,663	222,469	3,383,064	5,126,196	5,126,196	0	5,126,196
1991	1,520,663	228,222	3,383,064	5,131,949	5,131,949	0	5,131,949
1990	1,520,747	235,052	3,383,064	5,138,863	5,138,863	0	5,138,863
1989	1,520,747	240,279	4,228,830	5,989,856	5,989,856	0	5,989,856
1988	1,399,725	382,732	3,710,460	5,492,917	5,492,917	0	5,492,917
1987	1,362,997	390,224	2,132,087	3,885,308	3,885,308	0	3,885,308
1986	1,367,229	399,441	2,132,087	3,898,757	3,898,757	0	3,898,757
1985	1,323,783	410,470	1,654,632	3,388,885	3,388,885	0	3,388,885
1984	1,277,078	417,203	1,654,632	3,348,913	3,348,913	0	3,348,913
1983	1,275,852	475,447	1,068,898	2,820,197	2,820,197	0	2,820,197
1982	345,796	85,400	642,195	1,073,391	1,073,391	0	1,073,391

Parcel Sales History

NOTE: Sales do not generally show up in our computer system until about two to three months after the date of sale. If a recent sale does not show up in this list, please allow more time for the sale record to be processed. Thank you for your patience and

Public Notices
(radius map & mailing list)

Public Meeting Notice

The Key West Planning Board will hold a public hearing at 6:00 p.m., May 31, 2012 at Old City Hall, 510 Greene Street, Key West, Florida, (Behind Sloppy Joe's Bar). The purpose of the hearing will be to consider a request for:

Major Development Plan - 201 William Street (RE# 00072082-004200) - A request for the addition of outdoor commercial activity for a new restaurant in the HRCC-2 zoning district per Section 108-91A(2)c. of the Land Development Regulations of the Code of Ordinances of the City of Key West.

If you wish to see the application or have any questions, you may visit the Planning Department during regular office hours at 3140 Flagler Avenue call 809-3720 or visit our website at www.keywestcity.com.

YOU ARE WITHIN 300 FEET OF THE SUBJECT PROPERTY

The City of Key West Planning Board will be holding a Public Hearing:

Request: Major Development Plan - 201 William Street (RE# 00072082-004200) - A request for the addition of outdoor commercial activity for a new restaurant in the HRCC-2 zoning district per Section 108-91A(2)c. of the Land Development Regulations of the Code of Ordinances of the City of Key West.

Applicant:	Trepanier & Associates, Inc. on behalf of Waterfront Brewery, LLC.	Owner:	City of Key West
Project Location:	201 William	Date of Hearing:	Thursday, May 31, 2012
Time of Hearing:	6:00 PM	Location of Hearing:	Old City Hall, 510 Greene City Commission Chambers

Interested parties may appear at the public hearing(s) and be heard with respect to the applications. Packets can be viewed online at www.keywestcity.com. Click on City Board & Committee Agendas. A copy of the corresponding application is available from the City of Key West Planning Department located at 3140 Flagler Avenue, Key West, Florida, Monday through Friday between the hours of 8:00 am and 5:00 pm.

Please provide written comments to the Planning Department, PO Box 1409, Key West, FL 33041-1409, by FAX (305) 809-3978 or by email to Carlene Smith at cesmith@keywestcity.com.

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the Planning Commission or the City Commission with respect to any matter considered at such hearing or meeting, one will need a record of the proceedings and for such purpose that person may need to ensure that a verbatim record of the proceedings is made; such record includes the testimony and evidence upon which the appeal is to be based.

ADA Assistance: It is the policy of the City of Key West to comply with all requirements of the Americans with Disabilities Act (ADA). Please call the TTY number at 305-809-1000 or the ADA Coordinator at 305-809-3951 at least five business days in advance for sign language interpreters, assistive listening devices, or materials in accessible format.

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NAME	ADDRESS	UNIT	CITY	STATE	ZIP	COUNTRY
1 830 CAROLINE LLC	830 CAROLINE ST		KEY WEST	FL	33040	
2 CATES LINDA MARIE	309 WILLIAM ST		KEY WEST	FL	33040	
3 GARRIDO HUMBERTO J AND OFELIA E	818 CAROLINE ST		KEY WEST	FL	33040	
4 DISDIER JAMES L AND KAREN L	PO BOX 6521		KEY WEST	FL	33041-6521	
5 M AND I REGIONAL PROPERTIES LLC	309 WHITEHEAD ST		KEY WEST	FL	33040	
6 MCCALL SUSAN 1993 TR	22431 GILMORE ST		WEST HILLS	CA	91307	
7 DOE BRIAN D AND JULIE C	47 W SHORE RD		WINDHAM	NH	03087-2115	
8 ALDEN PAULETTE BATES	4900 WASHBURN AVE S		MINNEAPOLIS	MN	55410-1814	
9 MIKE LORI A	22431 GILMORE ST		WEST HILLS	CA	91307	
10 O'LOUGHLIN KEVIN F AND DIANE	308 MARGARET ST	UNIT 3	KEY WEST	FL	33040	
11 GALLETTA PROPERTY GROUP LLC	3266 PACETTI RD		SAINT AUGUSTIN	FL	32092-0486	
12 CIARDI MARGARET F TRUST 2006 11/17/2006	815 SAWYERS LN		KEY WEST	FL	33040-6901	
13 DAJULD1 LLC	1340 POTOMAC SCHOOL RD		MC LEAN	VA	22101	
14 HECK RONALD K	908-1 TERRY LN		KEY WEST	FL	33040-7333	
15 ANDERSON JACK K AND LILIANE	PO BOX 1944		KEY WEST	FL	33041-1944	
16 MILLER ALLEN K REVOCABLE LIVING TRUST	806 CAROLINE ST		KEY WEST	FL	33040-6643	
17 CONKLE WILLIAM H JR ESTATE	823 EATON ST		KEY WEST	FL	33040	
18 RED DOOR GALLERY INC	812 CAROLINE ST		KEY WEST	FL	33040-6643	
19 GILBERTSON DAVID L	17 ARNOLD PL		NEW BEDFORD	MA	02740-3634	
20 CLARKE KALO & PEDERSON KIM (H/W)	29 FRONT ST #2		MARBLEHEAD	MA	01945	

Existing Site Plans

- EX-1 EXISTING SITE PLAN**
- EX-2 EXISTING SITE PLAN – ROOF PLAN**
- EX-3 EXISTING 1ST. FLOOR PLAN**
- EX-4 EXISTING 2ND. FLOOR PLAN**
- EX-5 EXISTING ELEVATIONS**

WILLIAM B. MOON
ARCHITECT, P.A.

RECEIVED
NOV 11 11 AM '08
KEY Planning Dept

TEL: 305-393-8200
FAX: 305-393-8201
1400 S.W. 15TH AVENUE
MIAMI, FL 33135

WATERFRONT BREWERY
211 WILLIAM STREET
WEST BIGHT, FL

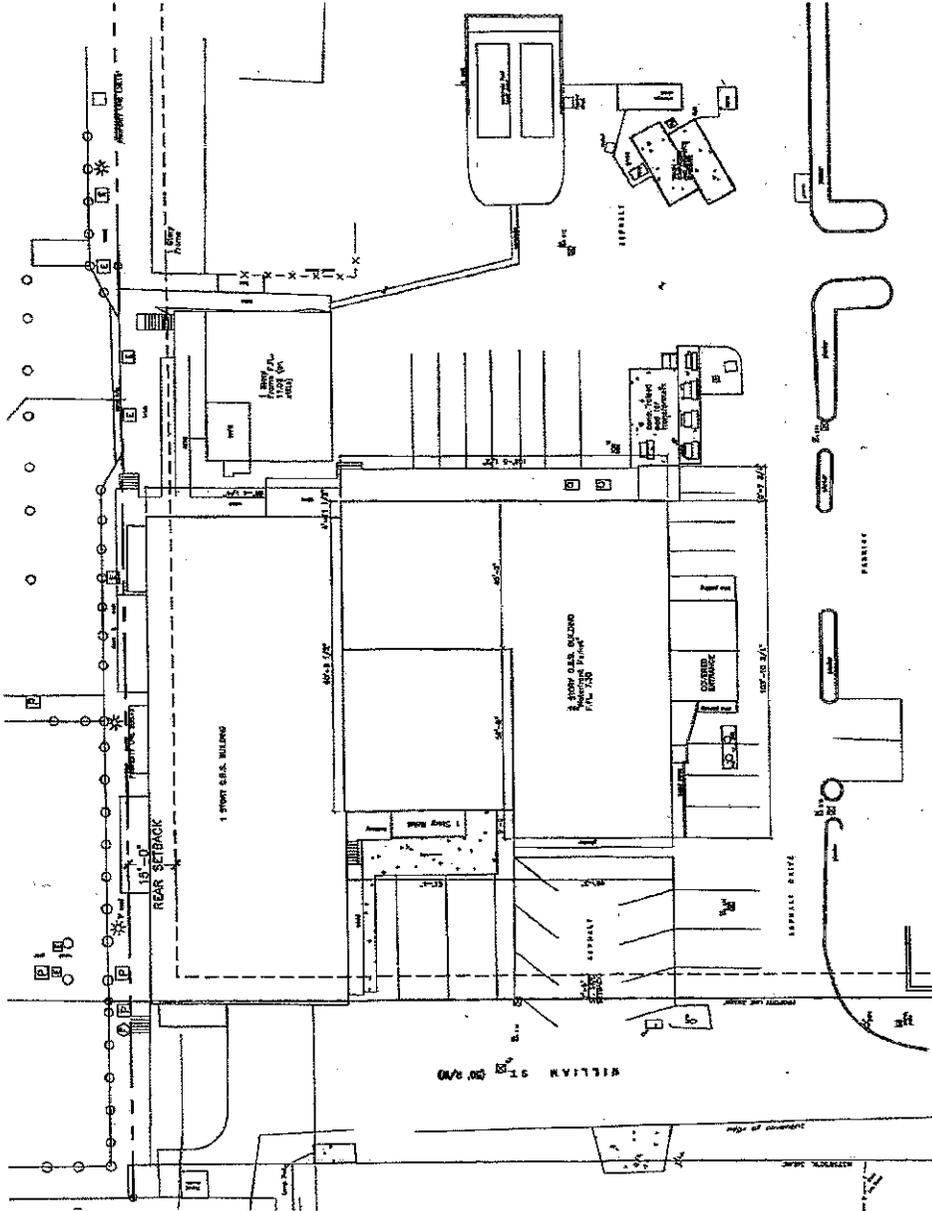
DATE: 10-14-08
10:41 AM
10-14-08

DESIGNED BY: EMA
DRAWN BY: EMA
CHECKED BY: EMA
DATE: 10-14-08

SCALE: 1/8" = 1'-0"

PROJECT: WATERFRONT BREWERY

NO. 1110



EXISTING SITE PLAN - ROOF PLAN
SCALE: 1/8" = 1'-0"
SITE PLAN BASED ON INFORMATION OBTAINED FROM SURVEY PREPARED
BY FREDERICK H. HELGERSBAND, SURVEYOR DATED ON 02-27-06



WATERFRONT BREWERY
211 WILLIAM STREET
WEST BIGHT, FLORIDA

WILLIAM P. JORDAN
ARCHITECT, P.A.



4111 PINE AVE
SUITE 100
TALLahas, FL 32309
352.241.1111

15. 307 BROADWAY
SUITE 200
TALLahas, FL 32309
352.241.1111

WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST, FLORIDA

SCALE

DATE: 11-11-11
DRAWN BY: ENA
CHECKED BY: ENA
1113

REVISIONS

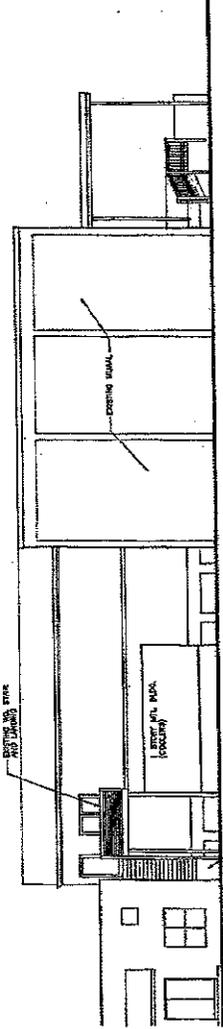
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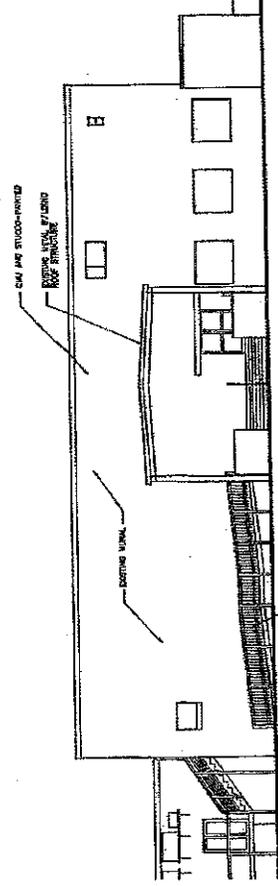
DESCRIPTION

EX-3



EXISTING SOUTHWEST ELEVATION

SCALE: 1/8" = 1'-0"

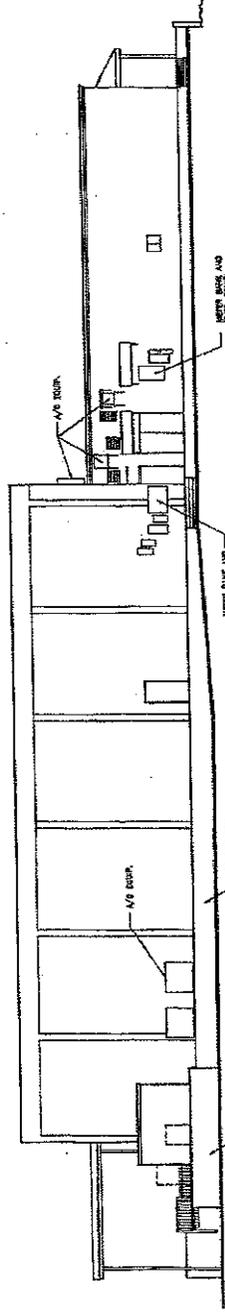


EXISTING NORTHWEST ELEVATION

SCALE: 1/8" = 1'-0"

EXISTING NORTHWEST ELEVATION (FRONT)

SCALE: 1/8" = 1'-0"



EXISTING NORTHEAST ELEVATION

SCALE: 1/8" = 1'-0"

WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST, FLORIDA

Index of Site Plans

- A-1 PROPOSED SITE PLAN - ROOF PLAN**
- A-2 PROPOSED SITE PLAN - ROOF PLAN**
- A-3 PROPOSED 1ST. FLOOR PLAN**
- A-4 PROPOSED 2ND. FLOOR PLAN AND
CONSUMPTION AREA**
- A-5 PROPOSED ELEVATIONS**
- A-6 PROPOSED ELEVATIONS**
- A-7 PERSPECTIVES**
- A-8 PERSPECTIVES AND AERIALS**
- A-9 PERSPECTIVES AND AERIALS**
- L-1 PROPOSED LANDSCAPE PLAN**
- EX-1 EXISTING SITE PLAN**
- EX-2 EXISTING SITE PLAN - ROOF PLAN**
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- EX-4 EXISTING 2ND. FLOOR PLAN**
- EX-5 EXISTING ELEVATIONS**

WILLIAMSON
ARCHITECT, P.A.

REGISTERED
PROFESSIONAL ARCHITECT
FLORIDA
1000

TEL. 305-961-1111
740 N. W. BEACH
LIVINGSTON
MIAMI, FL 33139

WATERFRONT BREWERY
201 WEST BIGHT
KEY WEST, FLORIDA

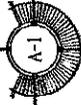
SEA

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MEANS, ELECTRONIC
OR MECHANICAL,
INCLUDING PHOTOCOPYING,
RECORDING, OR BY ANY
INFORMATION STORAGE
AND RETRIEVAL SYSTEM,
WITHOUT PERMISSION
IN WRITING FROM
WILLIAMSON ARCHITECT, P.A.

DATE
11-15-11 TRAC
10-16-11 DMC

REVISIONS

DRAWN BY
DAMA
T.H.
CHECKED BY
DAMA
T.H.



RECEIVED
MAY 15 2012
KEY WEST PLANNING DEPT



SITE DATA

SITE AREA: 10,000 SQ. FT. (241 METERS)
 LAND USE: MUB-1
 ZONING: MUB-1
 PLANNING BOARD: 11-15-11
 CITY COMMISSION: 11-15-11

PROPOSED DEVELOPMENT:

- 1. 10,000 SQ. FT. (241 METERS)
- 2. 10,000 SQ. FT. (241 METERS)
- 3. 10,000 SQ. FT. (241 METERS)
- 4. 10,000 SQ. FT. (241 METERS)
- 5. 10,000 SQ. FT. (241 METERS)
- 6. 10,000 SQ. FT. (241 METERS)
- 7. 10,000 SQ. FT. (241 METERS)
- 8. 10,000 SQ. FT. (241 METERS)
- 9. 10,000 SQ. FT. (241 METERS)
- 10. 10,000 SQ. FT. (241 METERS)

EXISTING DEVELOPMENT:

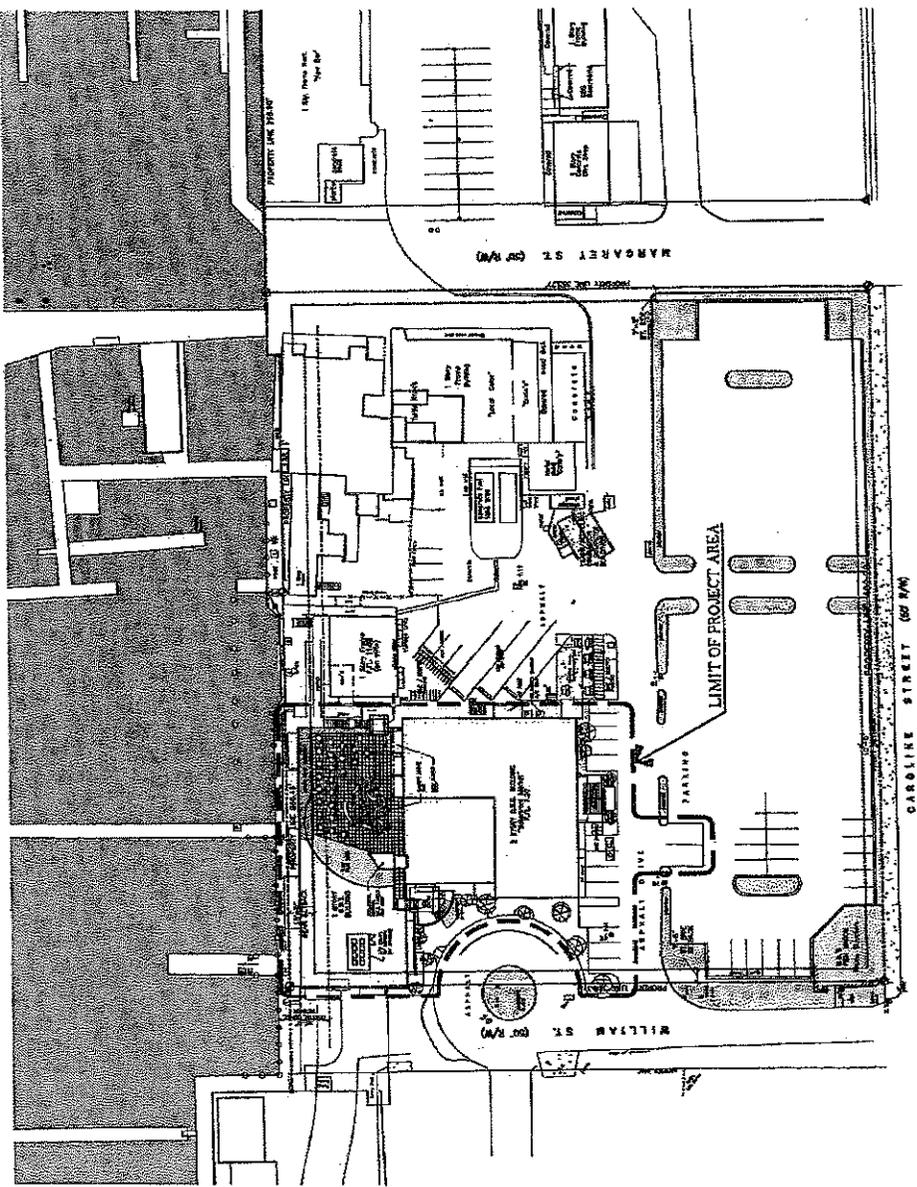
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- 2. 10,000 SQ. FT. (241 METERS)
- 3. 10,000 SQ. FT. (241 METERS)
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- 6. 10,000 SQ. FT. (241 METERS)
- 7. 10,000 SQ. FT. (241 METERS)
- 8. 10,000 SQ. FT. (241 METERS)
- 9. 10,000 SQ. FT. (241 METERS)
- 10. 10,000 SQ. FT. (241 METERS)

UTILITIES:

- 1. 10,000 SQ. FT. (241 METERS)
- 2. 10,000 SQ. FT. (241 METERS)
- 3. 10,000 SQ. FT. (241 METERS)
- 4. 10,000 SQ. FT. (241 METERS)
- 5. 10,000 SQ. FT. (241 METERS)
- 6. 10,000 SQ. FT. (241 METERS)
- 7. 10,000 SQ. FT. (241 METERS)
- 8. 10,000 SQ. FT. (241 METERS)
- 9. 10,000 SQ. FT. (241 METERS)
- 10. 10,000 SQ. FT. (241 METERS)

ADDITIONAL NOTES:

- 1. 10,000 SQ. FT. (241 METERS)
- 2. 10,000 SQ. FT. (241 METERS)
- 3. 10,000 SQ. FT. (241 METERS)
- 4. 10,000 SQ. FT. (241 METERS)
- 5. 10,000 SQ. FT. (241 METERS)
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- 7. 10,000 SQ. FT. (241 METERS)
- 8. 10,000 SQ. FT. (241 METERS)
- 9. 10,000 SQ. FT. (241 METERS)
- 10. 10,000 SQ. FT. (241 METERS)



PROPOSED SITE PLAN - ROOF PLAN

SCALE: 1" = 30'-0"

SITE PLAN BASED ON INFORMATION OBTAINED FROM SURVEY PREPARED BY FREDERICK H. HILDEBRANDT, SURVEYOR DATED ON 08-27-08

WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST BIGHT, FLORIDA

WILLIAM F. HORN
ARCHITECT, P.A.

ARCHITECT
REVISED
REVISION
DATE

THIS SET PREPARED
FOR THE ARCHITECT
BY THE ARCHITECT
DATE

WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST, FLORIDA

SEA

THIS SET SHALL BE
USED IN CONNECTION
WITH THE ARCHITECTURE
PREPARED BY
WILLIAM F. HORN

DATE
PROJECT NAME
PROJECT NO.

REVISIONS

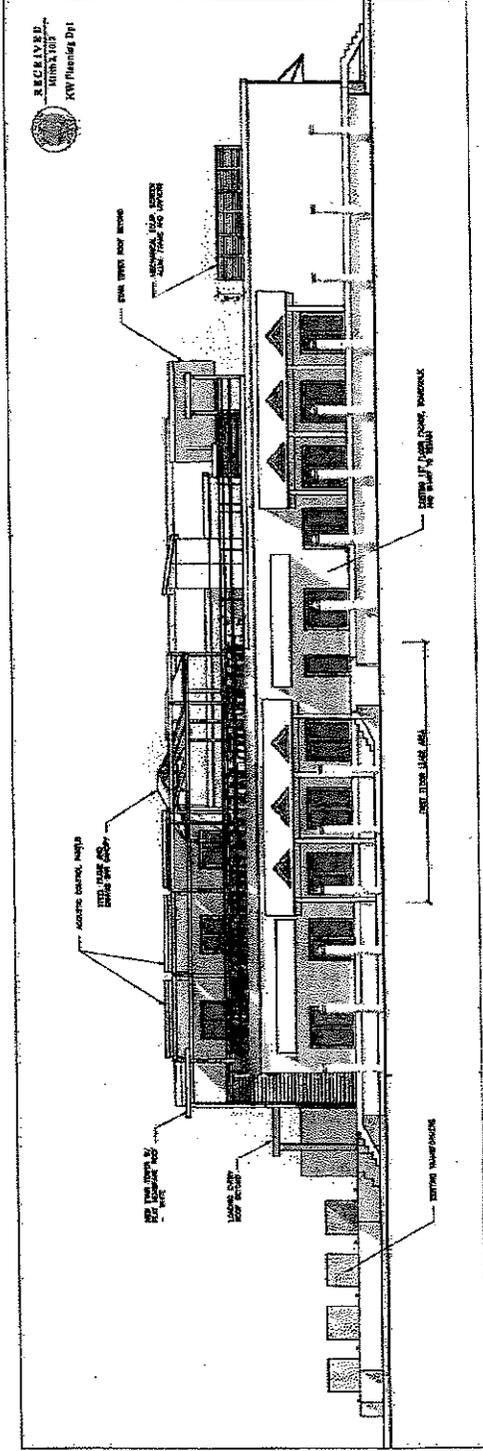
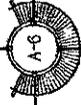
DATE

BY

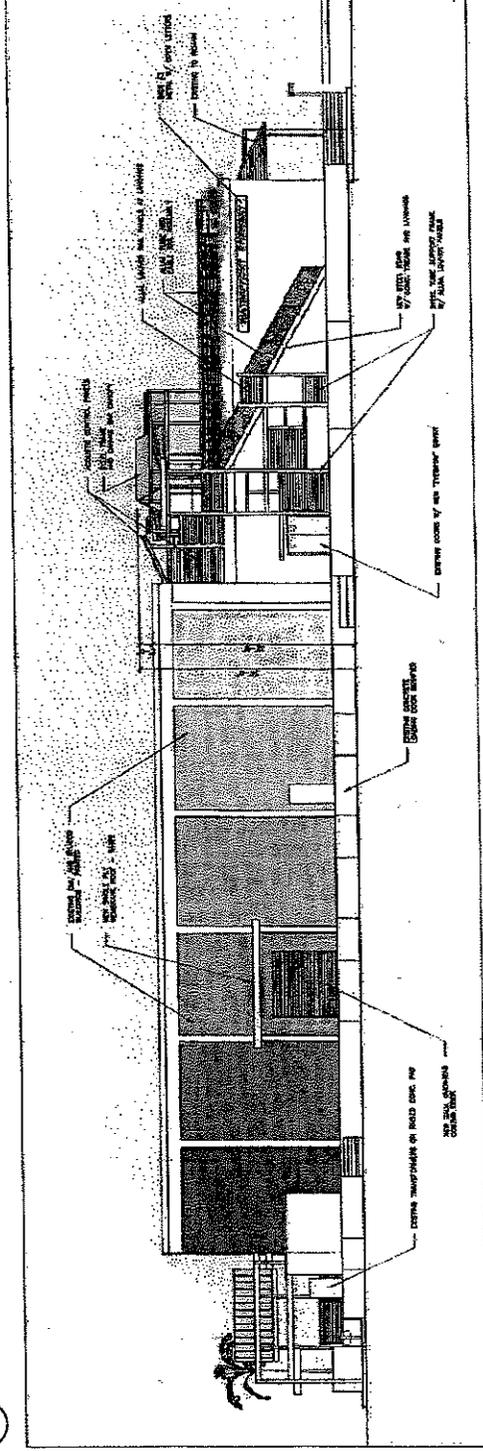
FOR

PROJECT

113



1
A-6
ELEVATION - WATERFRONT
SCALE: 1/8" = 1'-0"



2
A-6
ELEVATION - LOADING DOCK
SCALE: 1/8" = 1'-0"

WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST, FLORIDA

WILLIAM HORS
ARCHITECT P.A.

WATERFRONT
201 WILLIAM STREET
WEST BIGHT, FLORIDA

TEL: 813-944-3389
FAX: 813-944-3388
WWW.WHARCHITECT.COM

WATERFRONT BREWERY
201 WILLIAM STREET
WEST BIGHT, FL

SCALE

DATE: 11-21-11
11-21-11 DMC

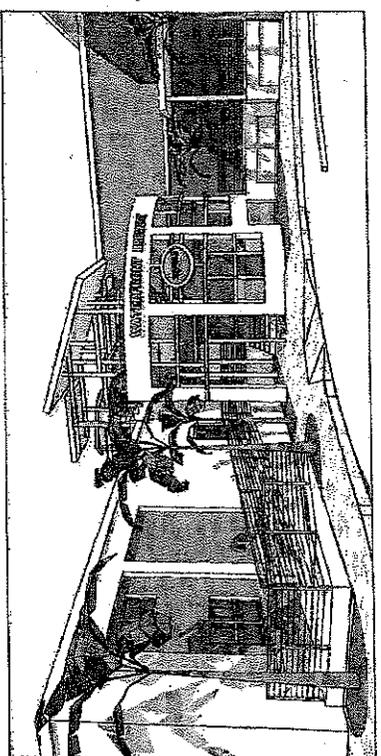
DESIGNER: JACOB
11-21-11

REVISIONS

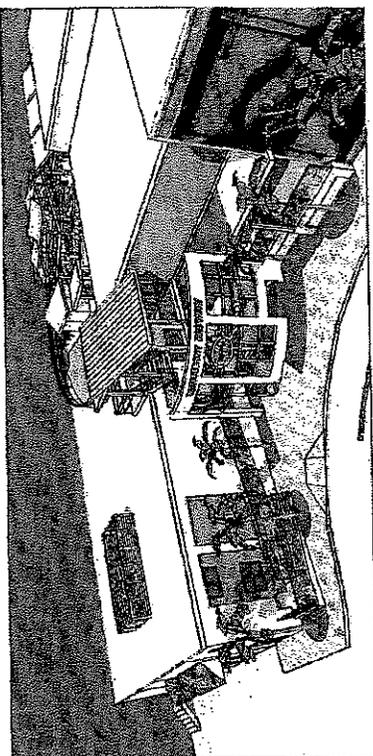
ARCHITECT: JACOB
11-21-11

PROJECT: WATERFRONT BREWERY
11/18

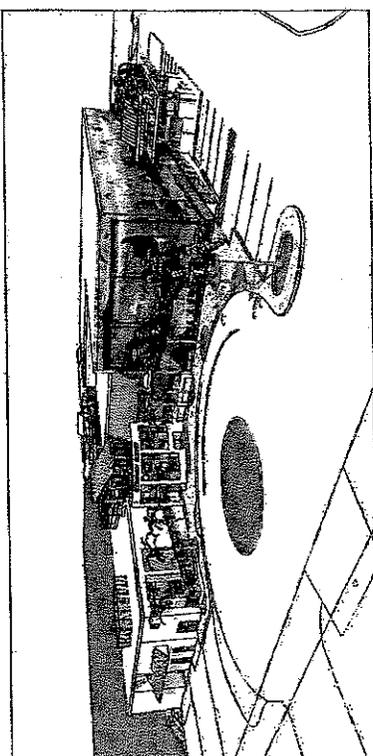
RECEIVED
November 2, 2011
AWP Planning Dept



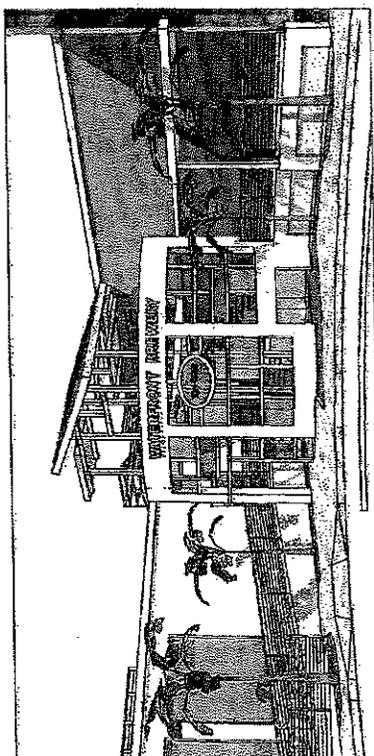
2 ENTRANCE II - PERSPECTIVE VIEW
A-7



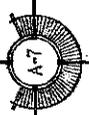
4 ENTRANCE II - AERIAL VIEW
A-7



1 ENTRANCE II - PERSPECTIVE VIEW
A-7



3 ENTRANCE II - PERSPECTIVE VIEW
A-7



WATERFRONT BREWERY
201 WILLIAM STREET
WEST BIGHT, FLORIDA

WILLIAMS ARCHITECT, P.A.

WILLIAMS ARCHITECT, P.A.
1000 N. W. 10th St.
MIAMI, FL 33136

TEL: 305-374-4477
FAX: 305-374-4477
WWW.WILLIAMSARCHITECT.COM

WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST, FLORIDA

SCALE

DATE: 10-15-10
PROJECT: WATERFRONT BREWERY

DESIGNER: WILLIAMS ARCHITECT, P.A.

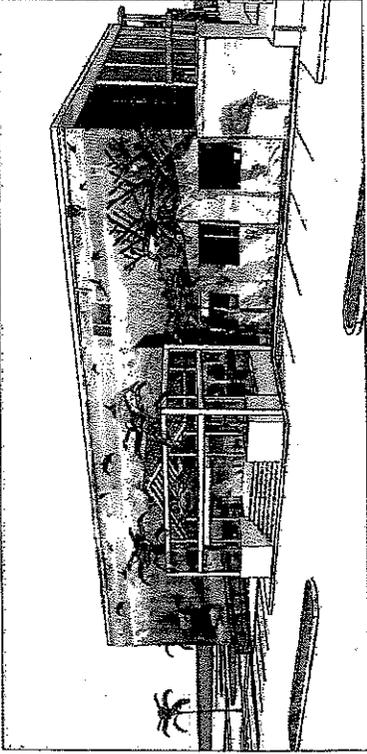
DATE: 10-15-10

DRAWN BY: J. HARRIS

CHECKED BY: J. HARRIS

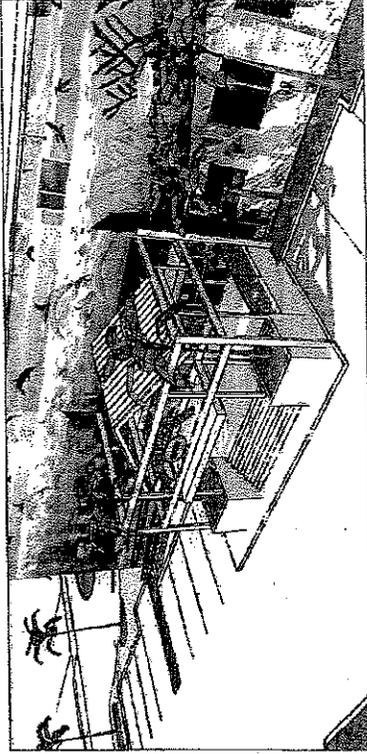
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RECEIVED
March 2, 2012
KW Hasting Ppl



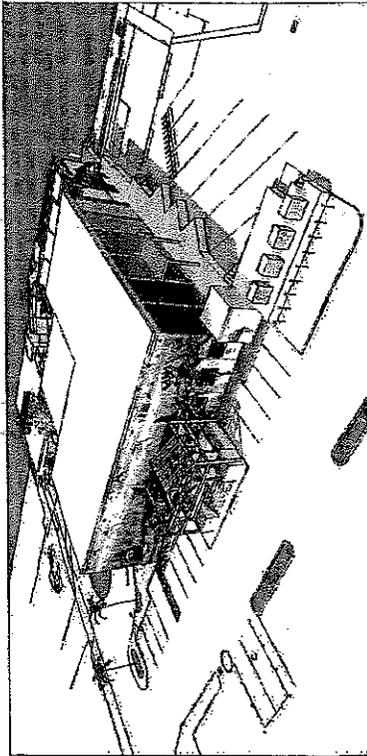
ENTRANCE I - PERSPECTIVE VIEW

2
A-8



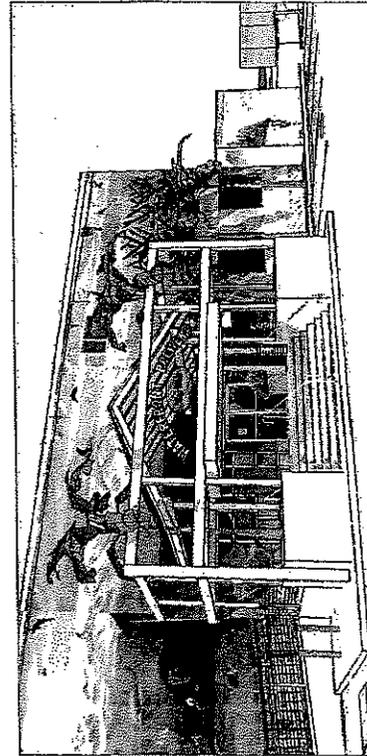
ENTRANCE I - AERIAL VIEW

4
A-8



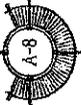
ENTRANCE I - AERIAL VIEW

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A-8



ENTRANCE I - PERSPECTIVE VIEW

3
A-8



WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST, FLORIDA

WILLIAM HORN
ARCHITECT P.A.

101 EASTWYCK
SUITE 100
LAKEWATER
FLORIDA 32750

TEL: 407-944-1111
FAX: 407-944-1111
WWW.WHORN.COM

WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST, FLORIDA

SCALE

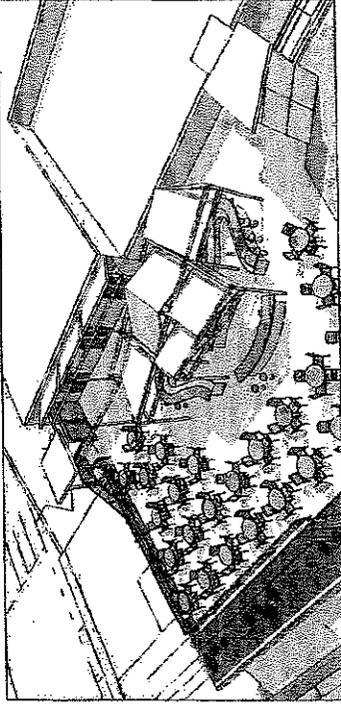
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SIGN ALL CHANGES
TO THIS DRAWING
DATE: 11-11-11
BY: [Signature]

DATE: 11-11-11
BY: [Signature]

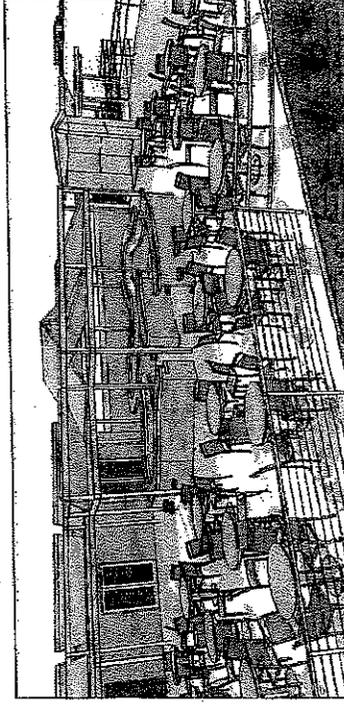
REVISIONS

SCALE BY: [Signature]
DATE: 11-11-11
BY: [Signature]

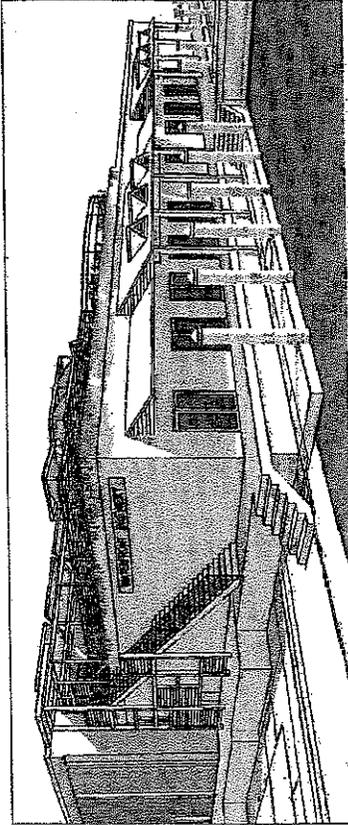
RECEIVED
MAY 15 2013
KEY WEST



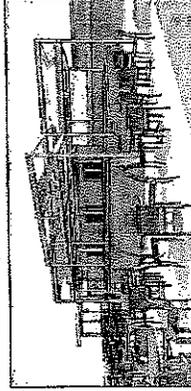
2 ROOF DECK - AERIAL VIEW



5 ROOF DECK - PERSPECTIVE VIEW



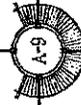
1 PERSPECTIVE VIEW



4 PERSPECTIVE VIEW



3 PERSPECTIVE VIEW



WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST, FLORIDA



WILLIAM HORN
ARCHITECT P.A.
REGISTERED ARCHITECT
FLORIDA
NO. 10000
10000
10000
10000
10000

ELIZABETH
NEWLAND
LANDSCAPE
ARCHITECTURE, LLC
REGISTERED LANDSCAPE ARCHITECT
FLORIDA
NO. 10000
10000
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WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST, FLORIDA

DATE: 11-14-11
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12:11:11

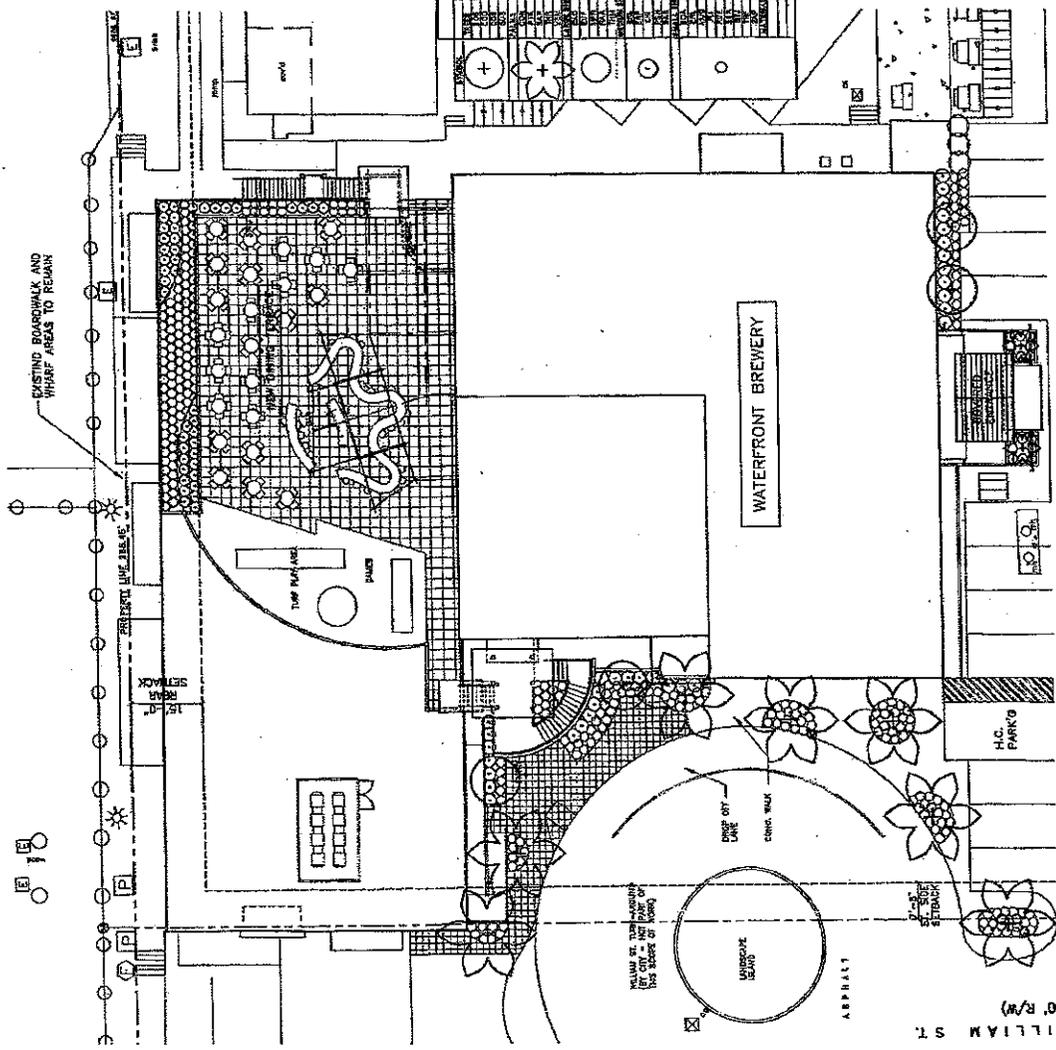
SCALE: 3/8" = 1'-0"

LANDSCAPE PLAN

THIS PLAN IS BASED ON INFORMATION SUPPLIED BY THE CLIENT AND IS NOT TO BE USED FOR ANY OTHER PROJECT WITHOUT WRITTEN PERMISSION FROM THE ARCHITECT.

WATERFRONT BREWERY PLANT LIST

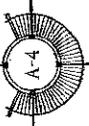
NO.	PLANT NAME	QUANTITY	PLANT SIZE	PLANT TYPE	PLANT CODE	PLANT NOTES
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WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST, FLORIDA



WILLIAM ST.
(50' R/W)



WALL LEGEND

- EXISTING W/ FRAME WALL COVER
- NEW WALL
- EXISTING TO BE REMOVED

BUILDING DATA

EXISTING BUILDING DATA (LEASE AREA)	NEW BUILDING DATA
EXISTING FLOOR AREA	1,433 SF.
NEW FLOOR AREA	149 SF.
TOTAL FLOOR AREA	1,582 SF.
EXISTING ROOF AREA	1,433 SF.
NEW ROOF AREA	149 SF.
TOTAL ROOF AREA	1,582 SF.

EXISTING AREA TO BE REMOVED

1 ST FL	(-) 124 SF.
MEZZ #1	(-) 117 SF.
MEZZ #2	(-) 110 SF.
MEZZ #3	(-) 113 SF.
TOTAL AREA TO BE REMOVED	464 SF.

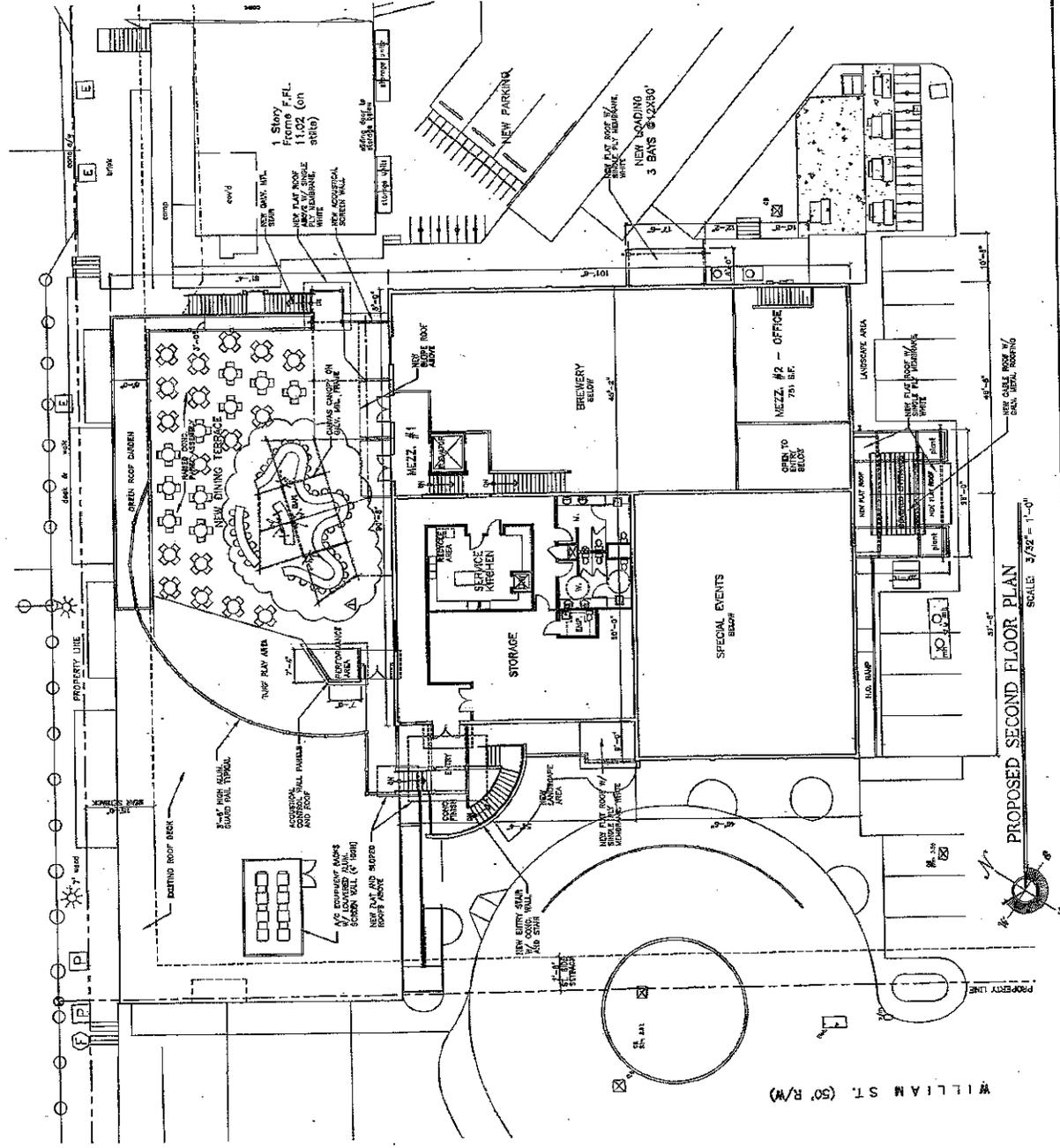
PROPOSED BUILDING DATA

1ST FLOOR	1,433 SF.
MEZZ #1	149 SF.
MEZZ #2	149 SF.
MEZZ #3	149 SF.
TOTAL PROPOSED AREA	1,880 SF.

NEW ROOFING COMPENSATION AREA = 8,000 SF. TOTAL TO BE REMOVED AREA = 8,000 SF.

NEW ROOFING COMPENSATION AREA	8,000 SF.
TOTAL TO BE REMOVED AREA	8,000 SF.

TV 42" TO 50" FLAT SCREEN TV LOCATION



WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST EIGHT, FLORIDA

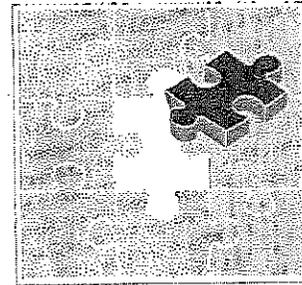
PROPOSED SECOND FLOOR PLAN
SCALE 3/32" = 1'-0"

Concurrency Analysis

MEMORANDUM

Date: 03/01/12
To: Key West Planning Department
From: Owen Trepanier
Re: **Concurrency Analysis - Waterfront Brewery**

TREPANIER



& ASSOCIATES INC
LAND USE PLANNING
DEVELOPMENT CONSULTANTS

The City's Comprehensive Plan Objective 9-1.5 directs the City to ensure that facilities and services needed to support development are available concurrent with the impacts of new development.

The following specific issues are outlined:

1. Potable Water & Sanitary Sewer
2. Recreation (for residential development only)
3. Solid Waste
4. Drainage
5. Roads/Trip Generation

The following concurrency analysis reflects the anticipated impacts resulting from the proposed renovation and adaptive reuse of the "Waterfront Market" building as a restaurant and micro-brewery.

Potable Water & Sanitary Sewer "Planned improvements in potable water and/or wastewater systems required to establish and/or maintain adopted water and wastewater levels of service. System improvements and proposed funding resources required for implementing any improvements required to establish and/or maintain adopted potable water and wastewater system level of service standards¹:"

Potable Water Sec. 94-68 sets the level of service for residential potable water at 93 gal/ capita/ day and nonresidential at 650 gal/acre/day.

- i) Existing capacity required based on site size: **2,090 gal/day**

The total capacity required for nonresidential use on **3.22 acres** is:

$$650 \text{ gal/acres/day} \times 3.22 \text{ acres} = 2,090 \text{ gal/day}$$

- ii) Proposed capacity required based on site size: **2,090 gal/day**

The total capacity required for nonresidential use on **3.22 acres** is:

$$650 \text{ gal/acres/day} \times 3.22 \text{ acres} = 2,090 \text{ gal/day}$$

¹ The City of Key West's Comprehensive Plan Policy 9-1.5.1: Resolving Concurrency Issues.

iii) Existing capacity required based on floor area: **280 gal/day**

The total capacity required for nonresidential use on **0.43 acres** is:

$$650 \text{ gal/acres/day} \times 0.43 \text{ acres} = 280 \text{ gal/day}$$

iv) Proposed capacity required based on floor area: **244 gal/day**

The total capacity required for nonresidential use on **0.38 acres** is:

$$650 \text{ gal/acres/day} \times 0.38 \text{ acres} = 244 \text{ gal/day}$$

Based on the concurrency management calculation prescribed in the Comprehensive Plan, there is no increase in the proposed capacity required by Key West Comprehensive Plan LOS standards; the Florida Keys Aqueduct Authority has the capacity to supply adequate service to this property, as demonstrated in the following:

Notwithstanding, the Florida Keys Aqueduct Authority ("FKAA") has adequate supply capacity to serve the potential development. FKAA has constructed facilities on the mainland in Florida City to expand water supply for the Florida Keys. This permitted and constructed improvement enables FKAA to provide over 23 MGD, which will provide sufficient capacity through 2022². Operational in 2011, the recent expansion of the R.O. plant will provide 6.0 MGD, which combined with the 17.0 MGD permitted withdrawal from the Biscayne Aquifer, increased available water supply to 23 MGD for the Florida Keys.

Expanded Florida City R.O. Plant. The Department of Health issued Permit # 150092-007-wc/04 (Exhibit I) on November 14, 2006 to allow for the construction of an expanded reverse osmosis (R.O.) water plant in Florida City. The expanded water plant is designed to treat blended Floridian Aquifer water as an alternative water source to the Biscayne Aquifer. The permit design capacity of the expanded R.O. plant is 6 MGD.

Revised Water Use Permit. The SFWMD issued revised Water Use Permit (WUP) #13-00005-W (Exhibit II) on March 26, 2008, which recognizes the additional blended Floridian Aquifer capacity that will be provided by the expanded R.O. plant. Interim Water Use Allocations in the WUP permit provide FKAA with an allocation of 17.00 MGD (dry season) and 17.79 GPD (wet season) which may be withdrawn from the Biscayne Aquifer and allows FKAA to utilize the Stock Island and Marathon Reverse Osmosis plants for any demands exceeding the interim withdrawal limit, pending completion of the R.O. plant in Florida City. The Stock Island and Marathon R.O. plants have a combined capacity of 3.0 MGD providing an interim WUP water supply of 20.0 MGD during the dry season if needed. Once operational in 2010, the R.O. plant will provide an additional 6.0 MGD, which when combined with the 17.0 MGD permitted withdrawal from the Biscayne Aquifer, will increase available water supply to 23 MGD for the Florida Keys.

The interim allocation of 20 MGD (7,300 MG/year) through 2010 and 23 MGD after 2010 provides ample water supply to support the adopted amendment and allocated growth well beyond 10 years. The "Monroe County 2007 Annual

² Excerpt from Analysis by Kenneth B. Metcalf, AICP, (Greenberg Traurig, P.A.), August 22, 2008.

Public Facilities Report" documents historic water use in the Florida Keys. Water demand has fluctuated significantly on an annual basis, however when evaluated over a ten-year period, the data shows an increase in water demand of more than 1 billion gallons over the last 10 years with an annual average increase of approximately 104 MG/year. This increase in demand can be shown in the following calculation:

$$1996 \text{ annual water demand} = 5,272 \text{ MG /year}$$

$$2006 \text{ annual water demand} = 6,310 \text{ MG /year}$$

$$\text{Average Annual Increase} = (6,310 \text{ MG} - 5,272\text{MG}) / 10 = 103.8 \text{ MG /year}$$

Based on the average annual increase of 103.8 MG per year, the interim allocation would be sufficient for an additional 9.5 years of growth beyond 2006 or through 2015 until demand reaches the interim permitted withdrawal of 20 MGD (7,300 MG/year). Since completion of the Florida City facilities, the 23 MGD allocation is available to support yet another 9.5 years of growth. Based on these findings, sufficient permitted water supply is available to meet the needs of the Florida Keys through 2024.

Improvements Schedule/Status. Condition 30 of the WUP provides the R.O. plant and the associated Floridian deep wells that will provide 23 MGD of capacity through 2024:

- DEP Underground Injection and Control permit was obtained on May 21, 2008.
- Construction contracts were required within 180 days or by November 21, 2008;
- Testing is required within one year and 30 days from issuance of the permit or by June 21, 2009.
- The R.O. plant construction was completed in January, 2010.

Sanitary Sewer Sec. 94-67 sets the level of service for residential sanitary sewer at 100 gal/capita/day and nonresidential sanitary sewer at 660 gal/acre/day.

- i) Existing capacity required based on site size: **2,122 gal/day**

The total capacity required for nonresidential use on **3.22 acres** is:

$$660 \text{ gal/acres/day} \times 3.22 \text{ acres} = 2,122 \text{ gal/day}$$

- ii) Proposed capacity required based on site size: **2,122 gal/day**

The total capacity required for nonresidential use on **3.22 acres** is:

$$660 \text{ gal/acres/day} \times 3.22 \text{ acres} = 2,122 \text{ gal/day}$$

- iii) Existing capacity required based on floor area: **284 gal/day**

The total capacity required for nonresidential use on **0.43 acres** is:

$$660 \text{ gal/acres/day} \times 0.43 \text{ acres} = 284 \text{ gal/day}$$

- iv) Proposed capacity required based on floor area: **248 gal/day**

The total capacity required for nonresidential use on **0.38 acres** is:

$$660 \text{ gal/acres/day} \times 0.28 \text{ acres} = 248 \text{ gal/day}$$

The current wastewater treatment plant has the potential treatment capacity of 10 million gallons per day. Only 4.8 million gallons per day of capacity are currently utilized³. The current plant has the capacity to service this project's projected needs.

Recreation "In cases where residential development is proposed, information shall be submitted describing plans for accommodating recreational demands generated by the development, including demonstrated evidence that the City's adopted level of service for recreation shall not be adversely impacted⁴:"

No Residential Development Proposed

Solid Waste- "Projected demand generated by the development on the solid waste disposal system and assurances that the City's adopted level of service for solid waste disposal shall not be adversely impacted⁵:"

Sec. 94-71 sets the level of service for residential solid waste disposal (1994-2010) at 2.66 lb/capita/day and nonresidential solid waste disposal at 6.37 lb/capita/day⁶.

- i) Existing capacity required: **172 lb/day**

The total capacity required for the nonresidential use of **27 FTE employees⁷** is:

$$6.37 \text{ lb/capita/day} \times 27 \text{ employees} = 172 \text{ lb/day}$$

- ii) Proposed capacity required: **210 lb/day**

The total capacity required for the nonresidential use of **33 FTE employees⁸** is:

$$6.37 \text{ lb/capita/day} \times 33 \text{ people} = 210 \text{ lb/day}$$

Waste Management has more than enough capacity to handle the increase⁹.

Drainage - "Conceptual plan for accommodating storm water run-off and demonstrated evidence that the proposed drainage improvements shall accommodate storm water run-off

³ Per September 3, 2010 memo from Greg Smith, project Manager for CH2M Hill OMI (Exhibit III)

⁴ The City of Key West's Comprehensive Plan Policy 9-1.5.1: Resolving Concurrency Issues.

⁵ The City of Key West's Comprehensive Plan Policy 9-1.5.1: Resolving Concurrency Issues.

⁶ For these calculations, we chose to use the number of employees to represent the "capita."

⁷ Base on employee estimates of the Planner's Estimating Guide, APA, 2004 (27 FTE employees)

⁸ Based on expectation of the operator

⁹ Per January 25, 2010 memo from Jay Gewin, City of Key West (Exhibit V)

without adversely impacting natural systems or the City's adopted level of service for storm drainage¹⁰

This site will meet the minimum requirements through best management practices as depicted on the attached storm water management plans. In addition there will be an over reduction in impervious surface along with incorporation of "green roof technology".

Roads/Trip Generation - "Estimated trips for the peak hour generated by the proposed land use(s) together with anticipated on- and off-site improvements necessitated to accommodate the traffic impacts generated by the development including, additional R/W, roadway improvements, additional paved laneage, traffic signalization, proposed methods for controlling access and egress, and other similar improvements¹¹."

For the purposes of calculating traffic generation we used the Institute of Transportation Engineer's 7th Edition Trip Generation Volumes.

ITE Category	Week Day		Saturday		Sunday	
	Existing	Proposed	Existing	Proposed	Existing	Proposed
Supermarket (ITE #850)	102.24 trips / 1k sq. ft. 956 ¹²	0	178 trips / 1k sq. ft. 1,660 ¹³	0	166 trips / 1k sq. ft. 1,556 ¹⁴	0
Specialty Retail (ITE #814)	44.32 trips / 1k sq. ft. 0	28 ¹⁵	42.04 trips / 1k sq. ft. 0	27 ¹⁶	20.43 trips / 1k sq. ft. 0	13 ¹⁷
Light Industrial (ITE #150)	6.97 trips / 1k sq. ft. 164 ¹⁸	17 ¹⁹	1.32 trips / 1k sq. ft. 31 ²⁰	3 ²¹	0.68 trips / 1k sq. ft. 16 ²²	2 ²³
Quality Restaurant (ITE #931)	2.86 trips / seat 14 ²⁴	858 ²⁵	2.85 trips / seat 14 ²⁶	855 ²⁷	2.81 trips / seat 14 ²⁸	843 ²⁹
Total	1,035	903	1,686	885	1,576	858

This site is located on Margaret Street. Margaret Street is not a constrained street according to City of Key West Code Section 94-72.

Parking - The proposed site currently has 15 parking spaces associated with it. Approximately half of the existing parking spaces are nonconforming with regard to the dimensional requirements of the code. The proposed reconfiguration will retain 15 spaces, all conforming, and allow for 3 additional spaces to be created. The site is located within the Historic Commercial Pedestrian Oriented Area and fully complies with the parking regulations of Art. VII.

¹⁰ The City of Key West's Comprehensive Plan Policy 9-1.5.1: Resolving Concurency Issues

¹¹ The City of Key West's Comprehensive Plan Policy 9-1.5.1: Resolving Concurency Issues

¹² Based on half the existing GFA (9,346 sq. ft.)

¹³ Based on half the existing GFA (9,346 sq. ft.)

¹⁴ Based on half the existing GFA (9,346 sq. ft.)

¹⁵ Based on the proposed 637 sq. ft.

¹⁶ Based on the proposed 637 sq. ft.

¹⁷ Based on the proposed 637 sq. ft.

¹⁸ Based on half the existing GFA (9,346 sq. ft.)

¹⁹ Based on the proposed 2,400 sq. ft.

²⁰ Based on half the existing GFA (9,346 sq. ft.)

²¹ Based on the proposed 2,400 sq. ft.

²² Based on half the existing GFA (9,346 sq. ft.)

²³ Based on the proposed 2,400 sq. ft.

²⁴ Based on the permitted 5 seats for take out restaurant/deli

²⁵ Based on the proposed 300 seats

²⁶ Based on the permitted 5 seats for take out restaurant/deli

²⁷ Based on the proposed 300 seats

²⁸ Based on the permitted 5 seats for take out restaurant/deli

²⁹ Based on the proposed 300 seats

Exhibits

Exhibit I – Department of Health Permit #150092-007-wc/04

Exhibit II – Water Use Permit (WUP) #13-00005-W

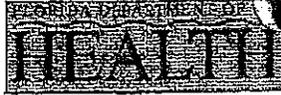
Exhibit III – September 3, 2010 Wastewater Memo

Exhibit IV – Map of the City of Key West's Existing Recreation Services

Exhibit V – January 25, 2010 Solid Waste Memo

Exhibit I

Department of Health Permit #150092-007-wc/04



Jeb Bush
Governor

M. Rony François, M.D., M.S.P.H., Ph.D.
Secretary

Lillian Rivera, RN, MSN, Administrator

PERMITTEE:

Florida Keys Aqueduct Authority (FKAA)
C/o Ray M. Shimokubo
PO BOX 1239, Kennedy Drive
Key West, Florida 33041-1239

PERMIT No: 150092-007-WC/04
DATE OF ISSUE: November 14, 2006
EXPIRATION DATE: November 13, 2011
COUNTY: MIAMI-DADE COUNTY
LAT./LONG.: 25°26'25" N / 80°30'33" W
SECTION/TOWNSHIP/RANGE:
PROJECT: Reverse Osmosis (RO) Expansion
Facility, 6.0 MGD Permeate production with
blending options at FKAA J.Robert Dean WTP
Florida City, Dade County

This permit is issued under the provisions of Chapter 403, Florida Statutes, and Florida Administrative Code Rule 62-4, 62-550, 62-555 & 62-560. The above named permittee is hereby authorized to perform the work shown on the application, technical specifications approved drawing(s), plans, and other documents attached hereto or on file with the Department and made a part hereof and specifically described as follows:

TO CONSTRUCT: A Reverse Osmosis (RO) treatment facility with a permeate capacity of up to 6 Million Gallons per Day, (MGD) produced from Phase I, consisting of three (3) 1.5 MGD trains or Phase II, consisting of an additional 1.5 MGD or four (4) 1.5 MGD trains. The RO facility will be fully integrated with the existing lime softening plant. There will be the option of bypassing a limited amount of pretreated Floridan aquifer water and blending it with RO permeate thus adding alkalinity to the product water and increasing the overall plant "net" recovery. The RO system product water (degasified permeate/blended permeate) will be combined (blended) with existing lime softening plant product and a limited amount of cartridge-filtered Biscayne Aquifer RO bypass water. The blended product water will receive chemical addition and be transferred to existing finished water storage facilities and pumped to distribution with existing high service pumps. The water treatment plant construction permit application is for 6 MGD RO permeate capacity plus up to 3 MGD cartridge filtered Biscayne Aquifer blend flow and up to 0.576 MGD (400 gpm) pretreated Floridan Aquifer feed water bypass (which blends with RO permeate), and up to 0.7 MGD Floridan Aquifer water which blends with the existing lime softening facility influent Biscayne Aquifer water. The full operation of all the above described facility units could raise the Possible Facility Output Capacity to greater than 23.8 MGD existing permissible, plus 6.0 MGD covered under this permit application.
No other facilities or new wells are part of this permit.

TO SERVE: The Florida Keys Water Distribution System, Monroe County, Florida.



Sarvir Elmir, M.S., P.E., DEE, Division Director
Miami-Dade County Health Department
Environmental Health and Engineering
1725 N. W. 167th Street, Miami, Florida 33056
Tel: (305) 623-3500 Fax: (305) 623-3502
Email: Sarvir_elmir@doh.state.fl.us
Website: www.dadehealth.org

"A"

PERMIT NO: 150092-007-WC/04

PERMIT ISSUE DATE: November 14, 2006

GENERAL CONDITIONS:

1. The terms, conditions, requirements, limitations and restrictions set forth in this permit, are "permit conditions" and are binding and enforceable pursuant to Sections 403.141, 403.727, or 403.859 through 403.861, F.S. The permittee is placed on notice that the Department will review this permit periodically and may initiate enforcement action for any violation of these conditions.

2. This permit is valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits. Any unauthorized deviation from the approved drawings, exhibits, specifications, or conditions of this permit may constitute grounds for revocation and enforcement action by the Department.

3. As provided in subsections 403.087(6) and 403.722(5), F.S., the issuance of this permit does not convey any vested rights or any exclusive privileges. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations. This permit is not a waiver of or approval of any other Department permit that may be required for other aspects of the total project which are not addressed in this permit.

4. This permit conveys no title to land or water, does not constitute State recognition or acknowledgment of title, and does not constitute authority for the use of submerged lands unless herein provided and the necessary title or leasehold interests have been obtained from the State. Only the Trustees of the Internal Improvement Trust Fund may express State opinion as to title.

5. This permit does not relieve the permittee from liability for harm or injury to human health or welfare, animal, or plant life, or property caused by the construction or operation of this permitted source, or from penalties therefore; nor does it allow the permittee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order from the Department.

6. The permittee shall properly operate and maintain the facility and systems of treatment and control (and related appurtenances) that are installed and used by the permittee to achieve compliance with the conditions of this permit, are required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by Department rules.

7. The permittee, by accepting this permit, specifically agrees to allow authorized Department personnel, upon presentation of credentials or other documents as may be required by law and at reasonable times, access to the premises where the permitted activity is located or conducted to:

- (a) Have access to and copy any records that must be kept under conditions of the permit;
- (b) Inspect the facility, equipment, practices, or operations regulated or required under this permit; and

PERMIT NO: 150092-007-WC/04

PERMIT ISSUE DATE: November 14, 2006

- (c) Sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this permit or Department rules.

Reasonable time may depend on the nature of the concern being investigated.

8. If, for any reason, the permittee does not comply with or will be unable to comply with any condition or limitation specified in this permit, the permittee shall immediately provide the Department with the following information:

- (a) A description of and cause of noncompliance; and
- (b) The period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence if the noncompliance. The permittee shall be responsible for any and all damages which may result and may be subject to enforcement action by the Department for penalties or for revocation of this permit.

9. In accepting this permit, the permittee understands and agrees that all records, notes, monitoring data, and other information relating to the construction or operation of this permitted source which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the permitted source arising under the Florida Statutes or Department rules, except where such use is prescribed by Section 403.111 and 403.73, F.S. Such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules.

10. The permittee agrees to comply with changes in Department rules and Florida Statutes after a reasonable time for compliance; provided, however, the permittee does not waive any other rights granted by Florida Statutes or Department rules.

11. This permit is transferable only upon Department approval in accordance with Rule 62-4.120 and 62-30.300, F.A.C., as applicable. The permittee shall be liable for any non-compliance of the permitted activity until the transfer is approved by the Department.

12. This permit or a copy thereof shall be kept at the work site of the permitted activity.

13. This permit also constitutes:

- (X) Determination of Best Available Control Technology (BACT)
- () Determination of Prevention of Significant Deterioration (PSD)
- () Certification of compliance with state Water Quality Standards (Section 401, PL 92-500)
- () Compliance with New Source Performance Standards

PERMIT NO: 150092-007-WC/04

PERMIT ISSUE DATE: November 14, 2006

14. When requested by the Department, the permittee shall within a reasonable time furnish any information required by law, which is needed to determine compliance with the permit. If the permittee becomes aware the relevant facts were not submitted or were incorrect in the permit application or in any report to the Department, such facts or information shall be corrected promptly.

SPECIFIC CONDITIONS:

1. The applicant is responsible for retaining the engineer of record in the application for supervision of the construction of this project and upon completion, the engineer shall inspect for complete conformity to the plans and specifications as approved.
2. All concrete coatings/admixtures, liners, grouts, hoses, tubings, and protective paints and coatings shall be listed by the National Sanitation Foundation as acceptable for contact with potable water.
3. Bacteriological points depicted on the plans may be modified with Department consent to meet convenient locations where taps would be inserted in the Main for Fire, Metering, Air Release or other connections but not less than 900 foot intervals for new mains. "Additionally, each part or system module shall be Bacteriologically cleared with 2 consecutive days of sampling before being placed in service as well as the final stream going to storage and subsequent service.
4. The Applicant or his designee shall notify The Department at the local DOEI office of the start of the study/construction for purposes of allowing Department Personnel to observe the actual process.
5. The owner or permittee is advised that approval is given to the functional aspects of this project on the basis of representation, and data furnished to this division. There may be County, Municipal or other Local Regulations to be complied with by the owner or permittee prior to construction of the facilities represented by the plans referred to above.
6. This construction permit is issued with the understanding that pipe material and appurtenances used in this installation will be in accordance with the latest applicable AWWA & NSF Standards for public water supplies.
7. The applicant Public Water System as a condition of this permit is hereby advised they shall revert to (2) two-six Month periods of standard monitoring for Lead and Copper upon issuance of Clearance to put the facilities into service. If no Lead or Copper exceedance occurs within the 2-6 Month periods, the System may return to annual monitoring.

PERMIT NO: 150092-007-WC/04

PERMIT ISSUE DATE: November 14, 2006

8. Prior to placing a system into service, the applicant shall submit to the Department, if requested, one set of record drawings of the completed project with completed form DEP 62.555.910(9) [Certification of Construction Completion and Request for a Letter of Clearance to Place a Public Drinking water facility into Service] signed by the engineer of record. Drawings are to be at the same scale and in the same sequence as those submitted and approved for permit. Deviations from the original permitted drawings are to be highlighted and/or noted for the Department's review. Include with the DEP form the bacteriological clearance data, pressure test results and backflow inspection certification (if applicable).

Issued this 30th day of November 2006

STATE OF FLORIDA
DEPARTMENT OF HEALTH

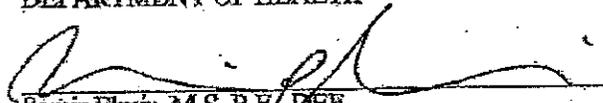

Samir Elmir, M.S., P.E., DEE,
Division Director

Exhibit II

Water Use Permit (WUP) #13-00005-W



FORM 10239
Rev. 5/03

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
WATER USE PERMIT NO. RE-ISSUE 13-00005-W
(NON - ASSIGNABLE)**

Date Issued: 13-MAR-2008

Expiration Date: March 13, 2028

Authorizing: THE CONTINUATION OF AN EXISTING USE OF GROUND WATER FROM THE BISCAYNE AQUIFER AND FLORIDAN AQUIFER SYSTEM FOR PUBLIC WATER SUPPLY USE WITH AN ANNUAL ALLOCATION OF 8750.84 MILLION GALLONS.

Located In: Miami-Dade County, S26/T5/S/R38E

Issued To: FLORIDA KEYS AQUEDUCT AUTHORITY FKA
(FLORIDA KEYS AQUEDUCT AUTHORITY)
1100 KENNEDY DR
KEY WEST, FL 33401

This Permit is issued pursuant to Application No.050329-23 , dated March 29, 2005, for the Use of Water as specified above and subject to the Special Conditions set forth below. Permittee agrees to hold and save the South Florida Water Management District and its successors harmless from any and all damages, claims or liabilities which may arise by reason of the construction, maintenance or use of activities authorized by this permit. Said application, including all plan and specifications attached thereto, is by reference made a part hereof.

Upon written notice to the permittee, this permit may be temporarily modified, or restricted under a Declaration of Water Shortage or a Declaration of Emergency due to Water Shortage in accordance with provisions of Chapter 373, Fla. Statutes, and applicable rules and regulations of the South Florida Water Management District.

This Permit may be permanently or temporarily revoked, in whole or in part, for the violation of the conditions of the permit or for the violation of any provision of the Water Resources Act and regulations thereunder.

This Permit does not convey to the permittee any property rights nor any privileges other than those specified herein, nor relieve the permittee from complying with any law, regulation, or requirement affecting the rights of other bodies or agencies.

Limiting Conditions are as follows:

SEE PAGES 2 - 7 OF 7 (35 LIMITING CONDITIONS).

South Florida Water Management
District, by its Governing Board

On March 13, 2008
By [Signature]
Deputy Clerk

LIMITING CONDITIONS

1. This permit shall expire on March 13, 2028.
2. Application for a permit modification may be made at any time.
3. Water use classification:

Public water supply

4. Source classification is:

Ground Water from:
Biscayne Aquifer
Floridan Aquifer System

5. Annual allocation shall not exceed 8751 MG.

Maximum monthly allocation shall not exceed 809.0088 MG.

The following limitations to annual withdrawals from specific sources are stipulated:
Biscayne Aquifer- 6,492 MG:

6. Pursuant to Rule 40E-1.6105, F.A.C., Notification of Transfer of Interest in Real Property, within 30 days of any transfer of interest or control of the real property at which any permitted facility, system, consumptive use, or activity is located, the permittee must notify the District, in writing, of the transfer giving the name and address of the new owner or person in control and providing a copy of the instrument effectuating the transfer, as set forth in Rule 40E-1.6107, F.A.C.

Pursuant to Rule 40E-1.6107 (4), until transfer is approved by the District, the permittee shall be liable for compliance with the permit. The permittee transferring the permit shall remain liable for all actions that are required as well as all violations of the permit which occurred prior to the transfer of the permit.

Failure to comply with this or any other condition of this permit constitutes a violation and pursuant to Rule 40E-1.609, Suspension, Revocation and Modification of Permits, the District may suspend or revoke the permit.

This Permit is issued to:

Florida Keys Aqueduct Authority
1100 Kennedy Drive
Key West, Florida 33401

7. Withdrawal facilities:

Ground Water - Existing:

- 2 - 24" X 60' X 2000 GPM Wells Cased To 35 Feet
- 3 - 24" X 56' X 2000 GPM Wells Cased To 36 Feet
- 1 - 20" X 60' X 2100 GPM Well Cased To 20 Feet
- 2 - 24" X 57' X 2000 GPM Wells Cased To 37 Feet
- 1 - 24" X 60' X 1400 GPM Well Cased To 24 Feet
- 1 - 20" X 1300' X 2000 GPM Well Cased To 880 Feet
- 1 - 24" X 60' X 1400 GPM Well Cased To 20 Feet

Ground Water - Proposed:

4 - 17" X 1300' X 2000 GPM Wells Cased To 880 Feet

8. Permittee shall mitigate interference with existing legal uses that was caused in whole or in part by the permittee's withdrawals, consistent with the approved mitigation plan. As necessary to offset the interference, mitigation will include pumpage reduction, replacement of the impacted individual's equipment, relocation of wells, change in withdrawal source, or other means.

Interference to an existing legal use is defined as an impact that occurs under hydrologic conditions equal to or less severe than a 1 in 10 year drought event that results in the:

(1) Inability to withdraw water consistent with provisions of the permit, such as when remedial structural or operational actions not materially authorized by existing permits must be taken to address the interference; or

(2) Change in the quality of water pursuant to primary State Drinking Water Standards to the extent that the water can no longer be used for its authorized purpose, or such change is imminent.

9. Permittee shall mitigate harm to existing off-site land uses caused by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify withdrawal rates or mitigate the harm. Harm caused by withdrawals, as determined through reference to the conditions for permit issuance, includes:

(1) Significant reduction in water levels on the property to the extent that the designed function of the water body and related surface water management improvements are damaged, not including aesthetic values. The designed function of a water body is identified in the original permit or other governmental authorization issued for the construction of the water body. In cases where a permit was not required, the designed function shall be determined based on the purpose for the original construction of the water body (e.g. fill for construction, mining, drainage canal, etc.)

(2) Damage to agriculture, including damage resulting from reduction in soil moisture resulting from consumptive use; or

(3) Land collapse or subsidence caused by reduction in water levels associated with consumptive use.

10. Permittee shall mitigate harm to the natural resources caused by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify withdrawal rates or mitigate the harm. Harm, as determined through reference to the conditions for permit issuance includes:

(1) Reduction in ground or surface water levels that results in harmful lateral movement of the fresh water/salt water interface,

(2) Reduction in water levels that harm the hydroperiod of wetlands,

(3) Significant reduction in water levels or hydroperiod in a naturally occurring water body such as a lake or pond,

(4) Harmful movement of contaminants in violation of state water quality standards, or

(5) Harm to the natural system including damage to habitat for rare or endangered species.

11. If any condition of the permit is violated, the permit shall be subject to review and possible modification, enforcement action, or revocation.

12. Authorized representatives of the District shall be permitted to enter, inspect, and observe the permitted system to determine compliance with special conditions.
13. The Permittee is advised that this permit does not relieve any person from the requirement to obtain all necessary federal, state, local and special district authorizations.
14. The permit does not convey any property right to the Permittee, nor any rights and privileges other than those specified in the Permit and Chapter 40E-2, Florida Administrative Code.
15. Permittee shall submit all data as required by the implementation schedule for each of the limiting conditions to: S.F.W.M.D., Supervising Hydrogeologist - Post-Permit Compliance, Water Use Regulation Dept. (4320), P.O. Box 24680, West Palm Beach, FL 33416-4680.
16. In the event of a declared water shortage, water withdrawal reductions will be ordered by the District in accordance with the Water Shortage Plan, Chapter 40E-21, F.A.C. The Permittee is advised that during a water shortage, pumpage reports shall be submitted as required by Chapter 40E-21, F.A.C.
17. Prior to the use of any proposed water withdrawal facility authorized under this permit, unless otherwise specified, the Permittee shall equip each facility with a District-approved operating water use accounting system and submit a report of calibration to the District, pursuant to Section 4.1, Basis of Review for Water Use Permit Applications.

In addition, the Permittee shall submit a report of recalibration for the water use accounting system for each water withdrawal facility (existing and proposed) authorized under this permit every five years from each previous calibration, continuing at five-year increments.

18. Monthly withdrawals for each withdrawal facility shall be submitted to the District quarterly. The water accounting method and means of calibration shall be stated on each report.
19. The Permittee shall notify the District within 30 days of any change in service area boundary. If the Permittee will not serve a new demand within the service area for which the annual allocation was calculated, the annual allocation may then be subject to modification and reduction.
20. Permittee shall implement the following wellfield operating plan:
The Biscayne Aquifer wellfield shall be operated according to the restrictions outlined in Limiting Conditions 5, 25, 26, and 27 of this permit. Upon completion and operation of the Reverse Osmosis system, pursuant to the schedule outlined in Limiting Condition 30, the Floridan Aquifer wellfield will be operated to provide the balance of the demands beyond those restrictions.
21. Permittee shall determine unaccounted-for distribution system losses. Losses shall be determined for the entire distribution system on a monthly basis. Permittee shall define the manner in which unaccounted-for losses are calculated. Data collection shall begin within six months of Permit issuance. Loss reporting shall be submitted to the District on a yearly basis from the date of Permit issuance.
22. Permittee shall maintain an accurate flow meter at the intake of the water treatment plant for the purpose of measuring daily inflow of water.
23. The Permittee shall continue to submit monitoring data in accordance with the approved saline water intrusion monitoring program for this project.
24. The Water Conservation Plan required by Section 2.6.1 of the Basis of Review for Water Use Permit Applications within the South Florida Water Management District, must be implemented in accordance with the approved implementation schedule.
25. In addition to the allocation specified in Limiting Condition 5, the permittee may apply a Special Event Peaking Factor Ratio of 1.3:1 to compensate for temporary increased demand during seasonal and Special Events up to a maximum daily withdrawal of 33.57 MG. The source limitations imposed by

Limiting Conditions 5 and 26 apply to the Special Event Peaking Factor Ratio. The permittee must notify the District in writing no less than 24 hours prior to applying this Special Event Peaking Factor Ratio and must specify the proposed duration of the use of the Special Event Peaking Factor Ratio. The use of the Special Event Peaking Factor Ratio shall be noted on the monthly pumpage reports.

26. In addition to the allocations specified in Limiting Conditions 5 and 25, during the dry season (December 1 to April 30), FCAA shall limit their average day withdrawals from the Biscayne Aquifer to 17 MGD, calculated on a monthly basis. The remaining dry season demands shall be provided by the reverse osmosis system. During the remainder of the year from May 1 to November 30, the withdrawals from the Biscayne Aquifer shall be limited to the Base Condition water use for the Biscayne Aquifer of 6,492 MG, or an average day of 17.79 MGD. Demands in excess of these volumes shall be provided by the Floridan Aquifer System wells and the emergency desalination facilities.
27. Prior to the availability of the Floridan Aquifer reverse osmosis system, dry season demand in excess of the Biscayne Aquifer pumpage limitations specified in Limiting Condition 26 shall be obtained from emergency sources pursuant to Limiting Condition 29.
28. In addition to the monthly reporting required in Limiting Condition 18, and prior to the operation of the Reverse Osmosis system, on the 15th day of each month during and immediately following the dry season extending from December 1 to April 30, FCAA shall file a written report with the District ("mid-month report") evaluating the following: 1) the daily pumpage to date during the last 30 days; and 2) any daily pumpage distribution for the remainder of the dry season as necessary to comply with the 17 MGD Biscayne Aquifer average dry season limitation. Such report shall also identify any remedial actions necessary to ensure compliance that through the remainder of the dry season the applicable Biscayne Aquifer pumpage limitations described above will be met. This report shall replace the other reports required by the Consent Agreement (including the June 15 post-dry season report and the February 15th mid-dry season additional demand report). Such mid-month report shall be evaluated by District staff and revised by the District as necessary to achieve compliance with the above. Upon completion and operation of the Reverse Osmosis system, pursuant to the schedule outlined in Limiting Condition 30, this report requirement shall cease and the monthly Biscayne Aquifer withdrawals shall be reported as required by Limiting Condition 18 of this permit.
29. In order to reduce the potential for violating the 17 MGD Biscayne Aquifer average monthly withdrawal limitation during the dry season, FCAA must to the greatest extent practical utilize the emergency desalination facilities FCAA owns and operates at Stock Island and Marathon, which are potentially capable of treating saline water at rates up to 3.0 MGD. The FCAA shall use these two emergency desalination facilities as an alternative source of water in order to assist in limiting its dry season Biscayne Aquifer withdrawals. The FCAA's ability to use, and extent of use, of these emergency desalination facilities shall be subject to not causing (i) significant adverse affects to FCAA's water treatment or distribution system; or (ii) a violation of any applicable primary or secondary drinking water standards.
30. The permittee shall adhere to the following schedule for the construction and operation of the Floridan Aquifer System reverse osmosis wellfield and treatment facility:

Florida Keys Aqueduct Authority - Schedule for Construction and Operation of Floridan Aquifer Production Well, Floridan Aquifer Reverse Osmosis Treatment Facility, and Demineralized Concentrate Disposal Well

-Reverse osmosis water treatment plant expansion
Award Contract - September 30, 2007
Complete Construction - December 31, 2009

- Deep Injection Well
 - Obtain FDEP Permit - March 31, 2008
 - Award Contract - 152 days after receiving FDEP Underground Injection Control Permit
 - Complete Drilling and Testing - 1 year and 30 days after receiving FDEP Underground Injection Control Permit
- Complete reverse osmosis water treatment plant system
 - Begin and Stabilize Operation - 2 years and 60 days after receiving FDEP Underground Injection Control Permit

31.

In the event that a milestone specified in the alternative water supply schedule and plan contained in Limiting Condition 30 is going to be missed, the permittee shall notify the Executive Director of the District in writing explaining the nature of the delay, actions taken to bring the project back on schedule and an assessment of the impact the delay would have on the rates of withdrawals from the Everglades water bodies and associated canals as defined in District CUP rules. The District will evaluate the situation and take actions as appropriate which could include: a) granting an extension of time to complete the project (if the delay is minor and doesn't affect the Everglades Waterbodies or otherwise violates permit conditions), b) take enforcement actions including consent orders and penalties, c) modify allocations contained in this permit from the Biscayne Aquifer including capping withdrawal rates until the alternative water supply project(s) are completed (in cases where the delay would result in violations of permit conditions) or d) working with the Department of Community Affairs to limit increase demands for water until the alternative water supply project is completed. In addition, Permittee shall make to the District payment of funds as identified below for non-compliance with any timeline for development of the Floridan Aquifer System production and treatment system as provided in Limiting Condition 30, as follows:

A. Reverse Osmosis Plant construction and operation timelines in Limiting Condition 30

- Award Contract - \$2,000.00 per week
- Complete Construction - \$2,000.00 per week

B. Floridan Deep Injection Well(s) Construction and Operation

- Award Contract - \$2,000.00 per week
- Complete drilling and Testing - \$2,000.00 per week
- Complete reverse Osmosis Water Treatment Plant System - \$2,000.00 per week
- Begin and Stabilize Operation - \$2,000.00 per week

32. Prior to any application to renew or modify this permit, the Permittee shall evaluate long term water supply alternatives and submit a long term water supply plan to the District. Within one year of permit issuance, the Permittee shall submit to the District an outline of the proposed plan. The assessment should include consideration of saline intrusion, wellfield protection, plans for compliance with applicable wellfield protection ordinances, expected frequencies and plans to cope with water shortages or well field failures, and conservation measures to reduce overall stresses on the aquifer.
33. For uses with an annual allocation greater than 10 MGD and a permit duration of 20 years, every five years from the date of permit issuance, the permittee shall submit a water use compliance report for review and approval by District Staff, which addresses the following:

1. The results of a water conservation audit that documents the efficiency of water use on the project site using data produced from an onsite evaluation conducted. In the event that the audit indicates additional water conservation is appropriate or the per capita use rate authorized in the permit is exceeded, the permittee shall propose and implement specific actions to reduce the water use to acceptable levels within timeframes proposed by the permittee and approved by the District.

2. A comparison of the permitted allocation and the allocation that would apply to the project based on current District allocation rules and updated population and per capita use rates. In the event the permit allocation is greater than the allocation provided for under District rule, the permittee shall apply for a letter modification to reduce the allocation consistent with District rules and the updated population and per capita use rates to the extent they are considered by the District to be indicative of long term trends in the population and per capita use rates over the permit duration. In the event that the permit allocation is less than allowable under District rule, the permittee shall apply for a modification of the permit to increase the allocation if the permittee intends to utilize an additional allocation, or modify its operation to comply with the existing conditions of the permit.

34. If at any time there is an indication that the well casing, valves, or controls leak or have become inoperative, repairs or replacement shall be made to restore the system to an operating condition. Failure to make such repairs shall be cause for filling and abandoning the well, in accordance with procedures outlined in Chapters 40E-3 and 40E-30, Florida Administrative Code.

35.

It has been determined that this project relies, in part, on the waters from the Central and Southern Florida Project, and as such is considered to be an indirect withdrawal from an MFL water body under recovery (Everglades). The 2005-2006 Lower East Coast Water Supply Plan Update (February, 2007), which is the recovery plan for the Everglades, incorporates a series of water resource development projects and operational changes that are to be completed over the duration of the permit and beyond. If the recovery plan is modified and it is determined that this project is inconsistent with the approved recovery plan, the permittee shall be required to modify the permit consistent with the provisions of Chapter 373, Florida Statutes.

Exhibit III

September 3, 2010 Wastewater Memo

Mehdi Benkhatar

To: Jay Gewin
Subject: RE: Wastewater Capacity for the City of Key West

From: Jay Gewin [mailto:jgewin@keywestcity.com]
Sent: Friday, September 03, 2010 8:27 AM
To: Mehdi Benkhatar
Cc: Owen Trepanier
Subject: RE: Wastewater Capacity for the City of Key West

The City of Key West transports its wastewater to its state of the art wastewater treatment facility located on Fleming Key. The facility is permitted to treat 10 million gallons per day (mgd), and currently the average daily influent flow is 4.8 mgd. This average daily flow can go much higher during heavy rain and flood events, up to the capacity of the plant a few times during the year.

The Wastewater Treatment Plant is of course, the final destination for wastewater after it passes through the City's collection system. The capacity of the collection system varies at different locations on the island, as the wastewater passes through a series of lift stations on its way to the Treatment Plant.

Jay Gewin
Utilities Manager
City of Key West
305-809-3902

From: Mehdi Benkhatar [mailto:mehdi@owentrepanier.com]
Sent: Thursday, September 02, 2010 4:17 PM
To: Jay Gewin
Cc: Owen Trepanier
Subject: Wastewater Capacity for the City of Key West

Good afternoon Jay,

The City is asking Trepanier & Associates for information regarding the Key West's wastewater capacity. Would you be able to provide me a short memo similar to the one below explaining the current wastewater capacity situation?

Thanks very much,

Mehdi Benkhatar
Planner/Development Specialist
Trepanier & Associates, Inc.
305-293-8983

Exhibit IV

Map of the City of Key West's Existing Recreation Services

The City of Key West's Recreation Facilities

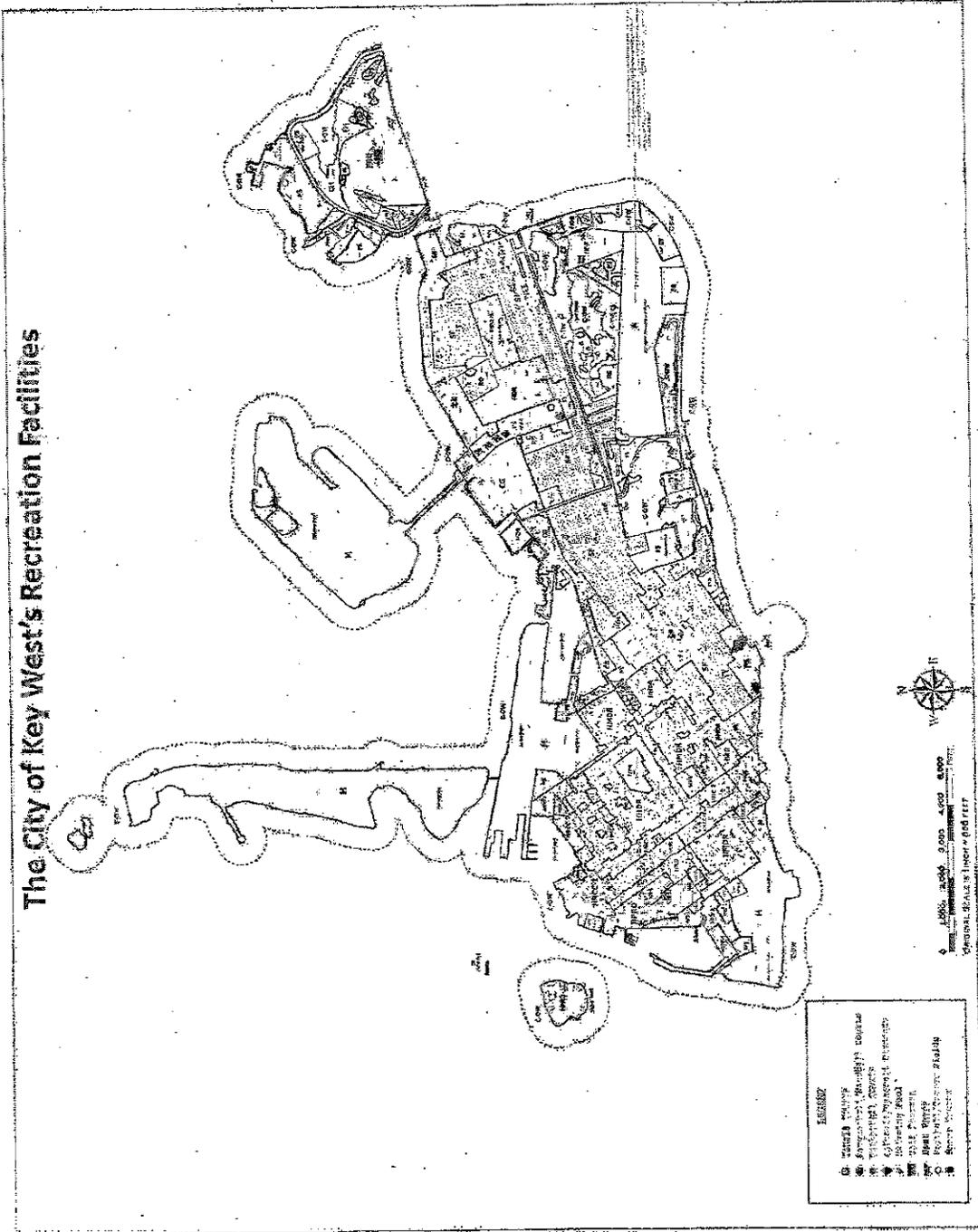


Exhibit V

January 25, 2010 Solid Waste Memo

Mehdi Benkhatar

Subject: FW: Solid Waste Capacity for the City of Key West

From: Jay Gewin [mailto:jgewin@keywestcity.com]
Sent: Monday, January 25, 2010 4:53 PM
To: Mehdi Benkhatar
Cc: Owen Trepanier
Subject: RE: Solid Waste Capacity for the City of Key West

The City of Key West ships its solid waste to one of two waste-to-energy facilities on the mainland, that are shared by other municipalities. Those facilities are capable of receiving 2,500 tons per day, and currently they are only receiving about 70% of that capacity. Our contractor, Waste Management, has informed us that we are in no danger of surpassing our capacity.

Primarily due to ROGO limitations, lack of buildable space, and economic factors; the population of Key West has stayed flat in recent years compared to the rest of Florida. Therefore we have not had to plan for continued growth in solid waste as other high-growth areas of Florida had in better economic times. We currently are generating approximately 45,000 tons of solid waste per year. In better economic times, that figure was closer to 50,000 or slightly higher. In the future, the City plans on increasing its rate of recycling which should lessen the amount of solid waste generated. Our recyclables are shipped to a single-stream recycle facility also located on the mainland.

*Jay Gewin
Utilities Manager
City of Key West
305-809-3902*

Carlene Smith

From: "Shirley Freeman" <svfkw@bellsouth.net>

Date: April 18, 2012 6:11:27 PM EDT

To: <svfkw@bellsouth.net>

Cc: "Chris Shultz" <cshultz75@yahoo.com>, "George Esbensen" <esbenseng1@bellsouth.net>

Subject: More good news - Sound Report and Planning meeting Agenda

Reply-To: <svfkw@bellsouth.net>

Sound Report &

Planning Meeting, Thursday, April 19, 6pm, Old City Hall, 510 Greene St

Dear Key West Bight Neighbors and Friends:

Our sound test last week was successful on many fronts. First of all, the sound from the roof could **not be heard** from anywhere except slightly in the street behind the Turtle Kraals.

As requested by Pritam Singh and me, the music was played much louder than they plan to play it (so loud that on the roof, it was so loud I couldn't stand to be there) and the music had a very strong bass and drum beat.

Chris and George plan to have quiet ambient music played from a distributive sound system (many little speakers placed around the room rather than a few big speakers loud enough for the entire area). They plan to have fine dining on the roof, similar to Louie's Back Yard. The music will be quiet background for normal conversation.

I am fine with that, and Pritam is fine with that, **IF** it can be enforced in case the guys change their mind or they transfer the lease to someone else.

So Pritam has hired an attorney, Bart Smith. I met this morning with attorney Bart Smith, proposed brewery owners Chris Schultz & George Esbensen, their planner Owen Trepanier, and Pritam.

Everyone at the meeting agreed that Bart and Owen are going to draft language to be added to the proposal that will define ambient music and fine dining and the use of the roof-top space so distinctly and tightly that it would stand up in court, if need be in the future.

The new language will be added to the entire application for the Major Development Plan for 201 William Street that is on the Planning Commission Agenda for tomorrow, Thursday. Date and time above.

It would be nice to have a few people from the neighborhood at the planning commission meeting.

Best wishes to all. The price of peace and quiet is eternal

vigilance. Shirley

Shirley Freeman

724 Eaton Street, Key West, FL 33040

305-294-2725, cell 305-304-1975

svfkw@bellsouth.net



Please consider the environment before printing this email

=

From: Barbara Bowers
Sent: Friday, March 09, 2012 8:40 AM
To: cesmith@keywestcity.com
Subject: Mar 15 planning meeting

Date: February 12, 2012

To: Key West Planning Board

Chairman Richard Klitenick, vice-chair Tim Root, James Gilleran , Michael Browning,
Greg Oropeza, Lisa Tennyson, Sam Holland

Don Craig, Key West City Planner

Fr: Barbara Bowers

320 Willam Street

Key West, Florida

Re: Brewery development at Key West Bight

Please read this letter into the March 15 Planning Board Meeting

As a near neighbor to the proposed brewery development at the former Waterfront Market, I am asking board members to refuse the developers the right to use amplified music on the roof of this building. Already the ground-level swell of amplified noise emanating from Duval Street and the developing Key West Bight area affects my nights; some nights the amplification is so profound, it sounds like the wet t-shirt contest is right in my backyard.

If amplified music is added to the second-floor level, I fear the noise mix in the Bight will ratchet up even more dramatically, and with no building or foliage

buffers to absorb the sound waves, it's very likely to end up in your backyards, too.

I understand the developer proposes to diffuse the amplified music by placing individual speakers at all the tables on the rooftop. My concern, though, is this solution will be short lived: Musicians—not bar owners—determine what equipment works best for their instrumentation, and it's quite possible that brewery-rooftop guests will want louder music just to overcome the noise level coming from other bars around the boardwalk.

Last fall, at a Key West Bight Neighborhood Association meeting, Mayor Cates said that he didn't want the Caroline Street corridor to become another Duval Street. I applaud this thought, but I understand that bars and restaurants are the big money-makers in this town, and this huge empty building seems well suited to a brewery, bar and restaurant. I'm not opposed to the project, in fact, I wish the developers much success. Nevertheless, I wish they would compromise by forgoing music on their rooftop, and understand how invasive open-air amplification has been to this historic residential neighborhood; how often it negatively affects the quality of life in homes like mine, which are blocks away from the source of the music.

Mind you, I don't wish Schooner Wharf to be the fueling dock it was when I moved to the Bight neighborhood in 1988. I don't miss the dusty, shell parking lot on Caroline. I like the boardwalk and the ferryboat terminal is a grand and functional improvement to what was an eyesore.

Clearly, progress at the Bight does not have to mimic the attractions—and especially not the noise level—of Duval Street. The serenity of water and docks and bobbing sailboats has a quiet charm and attraction all its own.

Please don't permit the proposed use of amplified music on the rooftop of this taxpayer-owned building, or any buildings in the Key West Bight.

Many thanks for your consideration.

KEY WEST BIGHT NEIGHBORHOOD ASSOCIATION

8 March 2012

City of Key West Planning Board

The KW Bight Neighborhood Ass. is made up of residential and commercial neighbors around the KW Bight. Most of us have owned our homes and businesses since before the Bight was owned by the City. Before there was any amplified music around the harbor.

Since the purchase of the Bight, Schooner Wharf Bar, Conch Republic Seafood Company, Turtle Kraals, and Dante's have put in outside, amplified music.

The City also issues several special events permits for each of these businesses through out the year.

Our neighborhood is now subjected to continual, loud, 'surround sound'. It is very difficult to get the police or code compliance to enforce the noise ordinance, never mind the Bight managers.

The Waterfront Brewery is now planning to put a bar and restaurant on the roof of the building w/ OPEN AIR, AMPLIFIED MUSIC. It is tough enough to contain audio in an enclosed space. Quite frankly, just the ambient noise of a roof top, 150 seat restaurant will be hard to contain.

Please do not allow amplified, open air music on the roof of the Waterfront Brewery.

**Thank you, Patricia Rogers, KWBNA representative
324 Margaret Street**

----- Forwarded message -----

From: Shirley Freeman <svfkw@bellsouth.net>

Date: Wed, Mar 14, 2012 at 9:26 AM

Subject: FW: Planning Board Meeting Thursday, March 15th, at Old City Hall at 6:00PM

To: abudde@keywestcity.com

Members of the Planning Board:

Attached please find the Petition from the Key West Bight Neighborhood Association about music from the roof top of the old Waterfront Market. We have 196 signatures from friends and neighbors that are against amplified music on the rooftop. We are not against the brewery, the restaurant, or the roof top restaurant. We are against letting them have amplified music on the rooftop. We would like the petition to be read into the minutes of the meeting of the Planning Board in their meeting on 15 March 2012.

Thank you,

Doug Bennett for

The Key West Bight Neighborhood Association.

No virus found in this incoming message.

Checked by AVG - www.avg.com

Version: 8.5.455 / Virus Database: 271.1.1/4267 - Release Date: 03/12/12

19:34:00

**Key West Bight Neighborhood Association
Petition**

Neighbors are excited about the new brewery/restaurant development taking shape in the former Waterfront Market Building. Architect Bill Horn has created an interesting redesign of the building owned by the City of Key West, which includes a rooftop restaurant with 130 seats and a bandstand there for musicians. It looks great, but Bight neighbors—many who have lived here since before Schooner Wharf became a bar—are considerably less pleased with the possibility of amplified sound on this roof. Even with just the ground-level noise swell, the quality of life in the neighborhood has deteriorated in direct proportion to invasive open-air amplification emanating from bars and restaurants that currently line the harbor Boardwalk. Adding rooftop music to this already intense cumulative mix is sure to impact far more neighborhoods than the Bight area so we are asking the City to:

1. Refuse to permit the use of amplified music on the rooftop of this tax-payer owned building, or any buildings in the Key West Bight;
2. Enforce the existing noise ordinance for all buildings with open-air music leases.

Print Name	Address	Signature	Phone/email	Date
Daniel Nona	1029 Henry St.	Daniel Nona	298-5827	3/12/12
John RUSSELL	1029 Fleming St.	J. Russell	305-942-1444	3/12/12
Maryann Jackowski	506 Grinnell St	Maryann Jackowski	305-294-7800	3/12/12
Nore Eisenberg	512 Grinnell	Nore Eisenberg	305-296-3945	3-12-12
Ronen Teicher	520 Grinnell	Ronen Teicher	305 896 4453	
Walter A. Antel	529 Grinnell St 529 Grinnell	Walter A. Antel	529 734-2239/180	3/12/12
Suzanne Kaul	529 Grinnell	Suzanne Kaul		3/12/12
Don Paul	529 Grinnell	Don Paul		3-12-12
Ivy Senior	513 Grinnell St	Ivy Senior		3/12/12

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Print Name	Address	Signature	Phone/email	Date
Joyce STAHL	727 Eaton St.	<i>Joyce Stahl</i>	205 3041 726 J.STA 41 @Bell SOUTH.FL	3/11/12
ALBINA ROMO	910 FLEMING	<i>Albina Romo</i>	226 4589	3/12/12
Paul Mansour	513 Margaret	<i>Paul Mansour</i>	570-913-6949	3/12/12
Will McGe	916 Fleming	<i>Will McGe</i>		3/12/12
PERRY COLLIER	922 Fleming St	<i>Perry Colli</i>		03-12-2012
Nantha Schuyler	11 Nassau Lane	<i>Nantha Schuyler</i>		3/12/12
Juda Wolf	1006 Fleming			3/12/12
Julie Reid	1008 Fleming			3/12/12

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Print Name	Address	Signature	Phone/email	Date
Roland Valois	1009 Eaton	<i>Roland Valois</i>	508.509.7529	3/16/12
Virginia Ward	1020 Eaton	<i>Virginia Ward</i>		3/11/12
Marsie Conley	1108 Eaden	<i>Marsie Conley</i>	302-5073649	3/11/12
Frank J. Wooten	1116 Eaton St.	FRANK F. WOOTEN	305-244-1137	
R. Street	1017 EATON ST		796-0549	
Jane Van de la	1015 Eaton St.	<i>Jane Van de la</i>		3/11/12
B. Hardman	1005 Eaton St.		292-9560	3/11/12
Michael Messina	917 Eaton St.	<i>Michael Messina</i>	305-304-9336	3/11/12
Anthony Falcone	823 Eaton St		204.8033	

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Print Name	Address	Signature	Phone/email	Date
Moody Lawrence	708 Southard	Moody Lawrence		3/10/12
JOHN ARVIN	713 SOUTHARD ST	[Signature]	loveandjake@gmail.com	
Lюдмила Немченко	701 SOUTHARD APT. E.	[Signature]		3-10-12
Lynda HALEY	918 Southard St.			3-10-12
Larry Douglas	822 Eaton St.			3/11/12
Ryan Cecil	824 Eaton St.	[Signature]		3/11/12
Lisette Cecil	824 Eaton St.	[Signature]		3/11/12
SARAH HOGANS	826 Eaton St	[Signature]		3/11/12
BROD REMMEN	4 PLEASURE LANE	[Signature]		3/11/12

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Print Name	Address	Signature	Phone/email	Date
Rich Everett	555 S. Duval St	<i>Rich Everett</i> Richard L. Everett	Richard L. Everett @ Key West Com	3/1/12
Paul R. Biel	724 EATON ST. REAR	<i>Paul R. Biel</i>		03/10
Leonard Lane	712 EATON	LEONARD LANE	294-1142	3/1/12
SUE LANE	712 EATON ST	<i>Sue Lane</i>	294-1142	3/1/12
Steve Janki	528 Elizabeth	<i>Steve Janki</i>		3/10/12
Robert Fisher	531 Elizabeth	<i>Robert Fisher</i>	295-9724	3/10/12
JOHN R MOEBIUS	707 SOUTHMAN	<i>John R Moebius</i>		3-10-12
Sandy Curtis	452 Windsor Ln	<i>Sandy Curtis</i>	404-387-2220	

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Print Name	Address	Signature	Phone/email	Date
Peter King	736 Eaton	Patti Kemp	305 294-2257	3/9/12
John King	730 Eaton	Jim Kemp	" " "	3/9/12
Tom Monahan	420 Eaton	[Signature]	215 821	3/9/12
Clarataylor	628 Fleming	Clarataylor	309 923-3942	4/6/12
Carolyn [Signature]	506 Elizabeth St		305 731-6746	
Debra Miller	514 Elizabeth St.			3-9-12
M. Skoglund	522 Elizabeth St		296-2632	3-9-12
Susan Fisher	531 Elizabeth St	S Fisher	295-9709	3-9-12
Jan Skerwood	704 Eaton St		305 797-7777	

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Print Name	Address	Signature	Phone/email	Date
Tim Glawcey	330 Elizabeth	[Signature]	305 292 0040	3/8/12
Darryl Fortmann	332 Elizabeth	[Signature]	TE/axcep@tcl 305 76-8800 DARRYL.FORTMAN @EMAIL	3/8/12
Melanie Fortmann	32 Elizabeth	[Signature]	melanie.fortmann @comcast.net	
Shirley Freeman	724 Eaton ST Key West	[Signature]	305-364-1495 s@fkw@bellhoush.net	
Harvey Server	724 Eaton St.	HARVEY SERVER	305 393 0355	
Wendy Toplunch	1208 Duval	[Signature]	294-3771 ask@archeo 5@key.com	
Ashley Kamen	716 Core Lane	[Signature]	294-3771	3/8/12

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Print Name	Address	Signature	Phone/email	Date
Loris Cruz	321 PEACOCK LA	Loris Cruz	394-0119	3/8/12
WILLIAM ROWAN MOSTLY # 2 WHICH SOUNDS LIKE WHERE SIGNATURE EVERY MORNING	321 PEACOCK LN.	William Rowan	296 5784	3/8/12
HANK SCAMITZ	316 Peacock Ln	Hank Scamitz	860-480-3898	3/8
O. Cruz	310 Peacock Lane	O. Cruz	292 8653	
HILARY HARDING	311, 313 PEACOCK LANE		305 923 4359	
Jane [Signature]	307 Peacock Ln		305-434-2000	
Willie Ben	315A ELIZABETH ST		774 251 1100	

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Print Name	Address	Signature	Phone/email	Date
RIC FESSIER	724 FLUMING	Ric Fessier	305 296-5540	
Mark Hollandsworth	719 FLEMING	Mark Hollandsworth	305 296-5540	2-7-12
L.P. Phillips	715 FLEMING	L.P. Phillips	305 296-6059	
P. O'Haire	701 Fleming ST	P. O'Haire	305 296-6386	
Leonard Nadborne LEONARD NADBORNE	713 EATON		305-296-7575	
Felicia Nadborne Felicia Nadborne	713 Eaton		305-296-7575	
Bill Veger W. G. VEGE	729 FLEMING LN		305-296-8469	

**Key West Bight Neighborhood Association
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Print Name	Address	Signature	Phone/email	Date
ED THAYER	718 EAD ST.	<i>Ed Thayer</i>	296-0888 EDTHAYER44@NETNAR.COM	3-7-12
Gabrielle O'Leary	412 ELIZABETH ST.	<i>Gabrielle O'Leary</i>	909-403-2513 gabrielle.o.oleary@gmail.com	3-7-12
Anna Thomas	420 Elizabeth St.	<i>Anna Thomas</i>	305 880 2139 anna@gardensgarden.com	
MARY CIESINSKI	417 ELIZABETH REAR	<i>Mary Ciesinski</i>	296-8075	
KEESTING GRIFFITH	717 FLEMING ST	<i>Keesting Griffith</i>	299-0144 keestingriffith@aol.com	
RICHARD GRIFFITH	DITO	<i>R.D. Griffith</i>	DITO	
SUSAN DAVIDSON	726 Fleming	<i>Susan Davidson</i>	IVIN AT THE BEACH 382 4800	

Key West Bight Neighborhood Association

Petition

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Print Name	Address	Signature	Phone/email
Sherry Read	1509 Patricia St	Sherry Read	294-2648 sherryread@ak.com
Janet Mooney	1601 Jamaica Dr	Janet Mooney	294-0156
Cynthia W. Edwards	1402 Oliviera St, #1	Cynthia W. Edwards	294-8503
Margaret Klein	324 Margaret St	Margaret Klein	744-7340
Lynne Bentley-Kemp	2382 Snapper Ln	Lynne Bentley-Kemp	745-9884
MARGARET NYGREN	918 South Beach 13109	Margaret Nygren	295-8997
Karen Contreras	405 B. Fann St. Key West	Karen Contreras	295-0062
Rosalinda Rauce	1320 ELISA ST	Rosalinda Rauce	2930302

Key West Bight Neighborhood Association

Petition

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Print Name	Address	Signature	Phone/email
<u>Seline Dow</u>	<u>1020 JAMES</u>	<u>[Signature]</u>	
<u>JEAN E. ROSE</u>	<u>1022 JAMES</u>	<u>[Signature]</u>	
<u>JOHN JONE</u>	<u>1024 JAMES</u>	<u>[Signature]</u>	
<u>G. CASONE</u>	<u>1028 JAMES</u>	<u>[Signature]</u>	
<u>McCoy</u>	<u>1027 James St</u>	<u>[Signature]</u>	
<u>Richard West</u>	<u>4 Gecks Lane</u>	<u>[Signature]</u>	
<u>Chris West</u>	<u>4 Gecks Ln</u>	<u>[Signature]</u>	
<u>[Signature]</u>	<u>3 Gecks Ln</u>	<u>[Signature]</u>	

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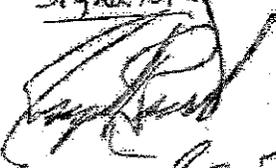
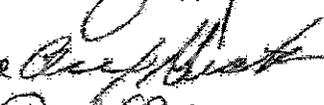
Print	Address	Signature	Phone/email
CHAROLEE MATSUMOTO	813 SAOYER'S LN	<i>Charolee Matsumoto</i>	908-207-2198 Cmats@comcast.net
DAVID GILBERTSON	813 SAOYER'S LN	<i>David Gilbertson</i>	tdg@comcast.net

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<u>Print Name</u>	<u>Address</u>	<u>Signature</u>	<u>Phone/Email</u>
JOSEPH ROBERT SAWYER	818		305-896-0841
Jim Mixer	810 Sawyer's Lane	Jim Mixer	2ammix@gmail.com
Alexis Gruber	818 Sawyer Lane		(201) 808-4119 alexis.gruber@gmail.com
PAM BARKE	806 Caroline		202-841-6009
MARNY HEINEN	620 OLIVIA ST		205 295-1349
Catherine Stentzel	526 William St.	Catherine F. Stentzel	305-304-2304

Key West Bight Neighborhood Association

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MARGARET CIARDI 815 Sawyer's Lane Margaret Ciardi ciardi@hotmail.com
 JOHN C. HOBBS 1016 Gwynell John Hobbs jchobbs@gmail.com
 LINDA CATES 309 W. William St Linda Cates 305-294-8798
 Gregory Ciardi 815 Sawyer Greg Ciardi gregciardi@gmail.com
 Gene Grattan 818 Sawyer Gene Grattan 305-896-3088
 JUDY CLIFFORD 1418 GATHANE Judy Clifford 305-296-2097
 Julie Higgins Julie Higgins 305-296-2120
 SUNDARORA RODD P.O. Box 112 Sundarora Rodd 305-600-6367
 MARK COWLES P.O. Box 132 Mark Cowles
 Chuck Roberts Chuck Roberts 305-600-8553
 Barb Roberts Barbara Roberts 305-600-8553
 Joe Sanders Joe Sanders 423-993-5500
 Jacques LEMAIRE P.O. Box K.O. 33041 Jacques Lemaire 207-6910467

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Print Name	Address	Signature	Phone/email
Marilyn Helgeson	3516 Sunrise Dr.	<i>[Signature]</i>	913-302-3942
Eloise M Prati	814 Pearl St	<i>[Signature]</i>	305 304 8686
Suzanne M Sullivan	1210 Watson	<i>[Signature]</i>	294 3362
Donald Bratt	411 Catherine St	<i>[Signature]</i>	296 6901
Rosi Wase	1400 Olivia St	<i>[Signature]</i>	292 1442
Ron Hamburg	407 A Emma St	<i>[Signature]</i>	293 6958
Maria Hamburg	407 Emma St	"	"
Jeff Wase	1400 Olivia	<i>[Signature]</i>	292-1442
Sharon MacDonald	711 William St	<i>[Signature]</i>	703 304 5060

Key West Bight Neighborhood Association

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Print Name	Address	Signature	Phone/email
PATRICIA ROGERS	324 MARGARET	<i>Patricia Rogers</i>	305-350-8548
Brenda Schiff	1405 ALBANY	<i>Brenda Schiff</i>	
JILL BENARD	412 VON PETER	<i>Jill Benard</i>	
DEB POWLEY	1407 PINE	<i>Deb Cowley</i>	
Harriet Myers	1800 ATLANTIC	<i>Harriet Myers</i>	
Marcy Kuzler	827 GUY ST.	<i>marc</i>	
Anna Dujardin	327 Margaret #3		305-293-8914
Judy Chavis	1012 James		

45
 90
 21
 42
 188

Key West Bight Neighborhood Association
 Petition

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Print Name	Address	Signature	Phone/email
Doug BENNETT	706 CAROLINE	Doug Bennett	6206 Bonaire @ ATT.NET
Jo Bennett	706 Caroline	Jo Bennett	Wenman@caroline.net
Jay Westcott	701 William St	Jay Westcott	202 2074
Stephen Chandler	1619 Truscott	Stephen Chandler	305-923-7819
JERRY HUCKER	5555 COLLEGE BL	Jerry Huck	214-489-5176
Anthony A. Anzich	202 William	Anthony Anzich	Sunnyboon@aol.com
Mark Burgin	2705 Flagler	Mark Burgin	725-509-1880
DANNY KOPPE	1214 KENNEDY	Danny Koppe	305 249 9720
BOSS STIMMONS	655 BENTLEY	Boss Stimmons	305 98 89583
BOB ATKINSON	1701 SPANISH	Bob Atkinson	305-842-0906
JIM BALLARD	832 CAROLINE	Jim Ballard	305-923-5517

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Print Name	Address	Signature	Phone/email
MICHELLE ATKINSON	1701 JAMAICA DE RD	Michelle Atkinson	305 849-0788
JANE CLOUTIER	2145 ELIZABETH	Jane Cloutier	305 413-896-3262
Mark L	1475 CATHERINE	Mark L	305-5900
Frank Stevens	704 OLIVE	Frank Stevens	846-0969
Mark L	3920 SPANISH	Mark L	879-0091
SHEILA CULLEN	124 SIMONS #202	Sheila Cullen	305 296 5464
KATHLEEN EDDINS	210 SOUTHARD #1	Kathleen Eddins	305 304-2544
CRANE FARLAND	1214 Bay St	Crane Farland	305 879-7521
STEVIE GREENBERG	925 SEMINOLE ST	Stevie Greenberg	954 592 4322
Molly Matheny	2018 Szales Ave	Molly Matheny	305 931 9850
Ken Langan	1423 Catherine St	Ken Langan	305 928 3982
Ken Carpenter	1100 Margaret St	Ken Carpenter	305-250-2806
BRUCE DOLLS	Walter Young	Bruce Dolls	305-3044182
DOMAN RILGORE	2109 WAREHOUSE	Doman Rilgore	305-904-1451
LEONARDO WERT	219 ELIZABETH S	Leonardo Wert	305-286-2978
William Kirkwood	105 Caroline	William Kirkwood	292-8639
Chuck Szymanski	611 Caroline St	Chuck Szymanski	331-338-7977
Mariella Seaman	611 Caroline St	Mariella Seaman	631-786-1178
Chris Murrell	1012 Fleming St #5	Chris Murrell	mcmurrell98@yahoo.com
Lynn Donnelly	602 Cooper St	Lynn Donnelly	238 998 7848
Mike Mauer	622 Caroline	Mike Mauer	239 910 4132
KENNETH MOLDER	511 ELIZABETH	Kenneth Molder	293-8613

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Print
Phone/email

Address

Signature

Name

EDWARD J. MOY	409 WILLIAM ST	[Signature]
MARIA B. MOY	409 WILLIAM ST	[Signature]
DEAN HOWER	405 WILLIAM ST	[Signature]
MISAL HOWER	405 WILLIAM ST	[Signature]
SARA HIGGINS	801 EDSON ST	[Signature]
CARLY BALKENISK	801 EDSON ST	[Signature]
BARB A. HUMAN	421 WILLIAM ST	[Signature]

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PAUL V TAGLIAPIETRA	315 Elizabeth	Paul V Tagliapietra	293 8613
Phyllis K. Shaw	327 Elizabeth	Phyllis K. Shaw	306-0592
Richard G. Curry	630 Caroline St	Richard G. Curry	294-4529
William Thomas	804 CAROLINE ST	William Thomas	766-0456
Patty O'Connor	804 CAROLINE ST	Patty O'Connor	766-0457
David J. Jay	812 CAROLINE ST	David J. Jay	96-662
Robert A. Juv	832 CAROLINE ST	Robert A. Juv	305-294-8744
Donna	800 Caroline	Donna	305 766 1976 Kustals@gmail
CHRISTINE STANLEY	833 CAROLINE ST	Christine Stanley	294-9596 ART KEYWEST.COM
TONY GREEN	820 CAROLINE ST	Tony Green	294-7131 ATTACKTESTMALL
Shelley	804 Caroline	Shelley	294-7192
ROBIN MILLER	813 Caroline	Robin Miller	787 841845

M & I REGIONAL PROPERTIES
309 WHITEHEAD ST
KEY WEST, FL 33040
C/O JOSEPH ALBURY ESQ
CONKLE WILLIAM H JR ESTATE
823 EATON ST
KEY WEST, FL 33040

DISDIER JAMES L & KAREN L
PO BOX 6521
KEY WEST, FL 33041-6521

ALDEN PAULETTE BATES
4900 WASHBURN AVE S
MINNEAPOLIS, MN 55410-1814

OLOUGHLIN KEVIN F & DIANE
308 MARGARET ST UNIT 3
KEY WEST, FL 33040

GARRIDO HUMBERTO J & OFELIA E
818 CAROLINE ST
KEY WEST, FL 32092

GILBERTSON DAVID L
17 ARNOLD PL
NEW BEDFORD, MA 02740-3634

ANDERSON JACK K & LILIANE
PO BOX 1944
KEY WEST, FL 33041-1944

HECK RONALD K
908-1 TERRY LN
KEY WEST, FL 33040-7333

RED DOOR GALLERY INC
812 CAROLINE ST
KEY WEST, FL 33040-6643

MCCALL SUSAN 1993 TR
22431 GILMORE ST
WEST HILLS, CA 91307

CLARKE KALO & PEDERSON KIM
(H/W)
29 FRONT ST #2
MARBLEHEAD, MA 1945

GILBERTSON DAVID L
17 ARNOLD PL
NEW BEDFORD, MA 02740-3634

MILLER ALLEN K REVOCABLE
LIVING TRUST
806 CAROLINE ST
KEY WEST, FL 33040-6643

830 CAROLINE LLC
830 CAROLINE ST
KEY WEST, FL 33040

CATES LINDA MARIE
309 WILLIAM ST
KEY WEST, FL 33040

DOYLE SHARON
110 FAWN DR
NEWFIELD, NJ 08344-9567

MIKE LORI A
22431 GILMORE ST
WEST HILLS, CA 91307

DOE BRIAN D & JULIE C
47 W SHORE RD
WINDHAM, NH 03087-2115

**GENERAL CONDITIONS
TABLE OF CONTENTS**

Article

DEFINITIONS

1. AS APPROVED
2. AS SHOWN, AND AS INDICATED
3. BIDDER
4. CONTRACT DOCUMENTS
5. CONTRACTOR
6. CONTRACT COMPLETION
7. DAYS
8. DRAWINGS
9. ENGINEER
10. NOTICE
11. OR EQUAL
12. OWNER
13. PLANS
14. SPECIFICATIONS
15. NOTICE TO PROCEED
16. SUBSTANTIAL COMPLETION
17. WORK

CONTRACT DOCUMENTS

18. INTENT OF CONTRACT DOCUMENTS
19. DISCREPANCIES & OMISSIONS
20. CHANGES IN THE WORK
21. EXAMINATIONS AND VERIFICATION OF CONTRACT DOCUMENTS
22. DOCUMENTS TO BE KEPT ON THE JOBSITE
23. ADDITIONAL CONTRACT DOCUMENTS
24. OWNERSHIP OF CONTRACT DOCUMENTS

THE ENGINEER

25. AUTHORITY OF THE ENGINEER
26. DUTIES & RESPONSIBILITIES OF THE ENGINEER
27. LIMITATIONS ON ENGINEER'S RESPONSIBILITIES
28. REJECTED WORK
29. LINES AND GRADES
30. SUBMITTALS
31. DETAIL DRAWINGS AND

Article

INSTRUCTIONS

THE CONTRACTOR & HIS EMPLOYEES

32. CONTRACTOR, AN INDEPENDENT AGENT
- 32 (a). ASSIGNMENT OF CONTRACT
33. SUBCONTRACTING
34. INSURANCE AND LIABILITY
 - A. GENERAL
 - B. CONTRACTOR & SUBCONTRACTOR INSURANCE
 - C. COMPENSATION & EMPLOYER'S LIABILITY INSURANCE
 - D. GENERAL LIABILITY INSURANCE (INCLUDING AUTOMOBILE)
 - E. BUILDERS RISK ALL RISK INSURANCE
 - F. NO PERSONAL LIABILITY OF PUBLIC OFFICIALS
 - G. SURETY AND INSURER QUALIFICATIONS
35. INDEMNITY
36. EXCLUSION OF CONTRACTOR CLAIMS
37. TAXES AND CHARGES
38. REQUIREMENTS OF STATE LAW FOR PUBLIC WORKS PROJECTS
39. CODES, ORDINANCES, PERMITS, AND LICENSES
40. SUPERINTENDENCE
- 40(a). CONTRACTOR'S RESPONSIBILITIES
41. RECEPTION OF ENGINEER'S COMMUNICATIONS
42. SAFETY
43. PROTECTION OF WORK AND PROPERTY
- 43(a). HISTORIC PRESERVATION
44. RESPONSIBILITY OF CONTRACTOR TO ACT IN AN EMERGENCY
45. MATERIALS AND APPLIANCES
46. CONTRACTORS' AND MANUFACTURERS' COMPLIANCE WITH STATE SAFETY, OSHA, AND OTHER CODE REQUIREMENTS
47. SUBSTITUTION OF MATERIALS
48. TESTS, SAMPLES, AND OBSERVATIONS
49. ROYALTIES AND PATENTS
50. CONTRACTOR'S RIGHT TO TERMINATE CONTRACT
51. CORRECTION OF DEFECTIVE WORK DURING WARRANTY PERIOD

Article

PROGRESS OF THE WORK

- 52. BEGINNING OF THE WORK
- 53. SCHEDULES AND PROGRESS REPORTS
- 54. PROSECUTION OF THE WORK
- 55. OWNER'S RIGHT TO RETAIN IMPERFECT WORK
- 55(a). OWNER'S RIGHT TO STOP WORK
- 56. OWNER'S RIGHT TO DO WORK
- 57. OWNER'S RIGHT TO TRANSFER EMPLOYMENT
- 58. DELAYS AND EXTENSIONS OF TIME
- 59. DIFFERING SITE CONDITION
- 60. LIQUIDATED DAMAGES
- 61. OTHER CONTRACTS
- 62. USE OF PREMISES
- 63. SUBSTANTIAL COMPLETION DATE
- 64. PERFORMANCE TESTING
- 65. OWNER'S USE OF PORTION OF THE WORK
- 66. CUTTING AND PATCHING
- 67. CLEANING UP

Article

PAYMENT

- 68. PAYMENT FOR CHANGE ORDERS
 - A. UNIT PRICE
 - B. LUMP SUM
 - C. COST REIMBURSEMENT WORK
- 69. PARTIAL PAYMENTS
 - A. GENERAL
 - B. ESTIMATE
 - C. DEDUCTION FROM ESTIMATE
 - D. QUALIFICATIONS FOR PARTIAL PAYMENT FOR MATERIALS DELIVERED
 - E. PAYMENT
- 70. CLAIMS FOR EXTRA WORK
- 71. RELEASE OF LIENS OR CLAIMS
- 72. FINAL PAYMENT
- 73. NO WAIVER OF RIGHTS
- 74. ACCEPTANCE OF FINAL PAYMENT

DEFINITIONS

Whenever in the Contract Documents the following terms are used, the intent and meaning shall be interpreted as follows:

1. AS APPROVED

The words "as approved", unless otherwise qualified, shall be understood to be followed by the words "by the Engineer for conformance with the Contract Document".

2. AS SHOWN, AND AS INDICATED

The words "as shown" and "as Indicated" shall be understood to be followed by the words "on the Drawings".

3. BIDDER

The person or persons, partnership, firm, or corporation submitting a Bid for the work contemplated.

4. CONTRACT DOCUMENTS

The "Contract Documents" consist of the Bid Requirements, Contract Forms, Conditions of the Contract, Specifications, Drawings, all modifications thereof incorporated into the Documents before their execution, Change Orders, and all other requirements incorporated by specific reference thereto. These form the Contract.

5. CONTRACTOR

The person or persons, partnership, firm, or corporation who enters into the Contract awarded him by the Owner.

6. CONTRACT COMPLETION

The "Contract Completion" is the date the Owner accepts the entire work as being in compliance with the Contract Documents, or formally waives nonconforming work to extent of nonconformity, and issues the final payment in accordance with the requirements set forth in Article, "Final Payment" of these General Conditions.

7. DAYS

Unless otherwise specifically stated, the term "days" will be understood to mean calendar days. Business day or working day means any day other than Saturday, Sunday, or legal holiday.

8. DRAWINGS

The term "Drawings" refers to the official Drawings, profiles, cross sections, elevations, details, and other working drawings and supplementary drawings, or reproductions thereof which shows the location, character, dimensions, and details of the work to be performed.

9. ENGINEER

The person or organization identified as such in the Contract Documents. The Term "Engineer" means the Owner's Engineer, Owner's contracted Engineer, or its authorized representative.

9(a). PROJECT MANAGER

The person or organization identified as such in the Contract Documents. The Term "Project Manager" means the Owner's authorized representative overseeing the project for the City.

10. NOTICE

The term "notice" or the requirement to notify, as used in the Contract Documents or applicable state or federal statutes, shall signify a written communication delivered in person or by registered mail to the individual, or to a member of the firm, or to an officer of the corporation for whom it is intended. Certified or registered mail shall be addressed to the last business address known to him who gives the notice.

11. OR EQUAL

The term "or equal" shall be understood to indicate that the "equal" product is equivalent to or better than the product named in function, performance, reliability, quality, and general configuration. The Engineer will make determination of equality in reference to the project design requirements. Such equal products shall not be purchased or installed by the Contractor without written authorization.

12. OWNER

The person, organization, or public body identified as such in the Contract Documents.

Wherever in these Documents the word "Owner" appears, it shall be understood to mean the City of Key West whose address is 3126 Flagler Ave., P.O. Box 1409, Key West, Florida 33041-1409.

13. PLANS (See Drawings)

14. SPECIFICATIONS

The term "Specifications" refers to those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the work and certain administrative details applicable thereto. Where standard specifications, such as those of ASTM, AASHTO, etc., have been referred to, the applicable portions of such standard specifications shall become a part of these Contract Documents. If referenced specifications conflict with specifications contained herein, the requirements contained herein shall prevail.

FEDERAL, STATE, COUNTY, AND LOCAL STANDARD SPECIFICATIONS

Where portions of the work traverse or cross federal, state, county, or local highways, roads, or streets, and the agency in control of such property has established standard specifications governing items of work that differ from these Specifications, the most stringent requirements shall apply.

The Contractor shall comply with all regulations and requirements of the State Highway Department and the County Road Department wherever the work traverses or crosses state or county highways.

15. NOTICE TO PROCEED

A written notice given by the Owner to the Contractor (with a copy to the Engineer) fixing the date on which the Contract time will commence to run and on which the Contractor shall start to perform his obligation under the Contract Documents. The Owner will give the Notice to Proceed within thirty (30) calendar days following the execution of the Contract.

16. SUBSTANTIAL COMPLETION

"Substantial Completion" shall be that degree of completion of the project or a defined portion of the project, as evidenced by the Engineer's written notice of Substantial Completion, sufficient to provide the Owner, at his discretion, the full-time use of the project or defined portion of the project for the purposes for which it was intended. "Substantial Completion" of an operating facility shall be that degree of completion that has provided a minimum of seven (7) continuous days of successful, trouble-free, operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the Engineer. All equipment contained in the work, plus all other components necessary to enable the Owner to operate the facility in a manner that was intended, shall be complete on the substantial completion date.

17. WORK

The word "work" within these Contract Documents shall include all material, labor, tools, and all appliances, machinery, transportation, and appurtenances necessary to perform and complete the Contract, and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated and as required by good practice to provide a complete and satisfactory system or structure. As used herein, "provide" shall be understood to mean, "furnish and install, complete in-place"

CONTRACT DOCUMENTS

18. INTENT OF CONTRACT DOCUMENTS

The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intent of the Documents is to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any work, materials, or equipment that may reasonably be inferred from the Contract Documents, as being required to produce the intended result shall be supplied

whether or not specifically called for. When words, which have a well-known technical or trade meaning, are used to describe work, materials, or equipment, such words shall be interpreted in accordance with that meaning.

Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect on the first published date of the Invitation to Bid, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of Owner, Contractor, or Engineer, or any of their consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Engineer, or any Engineer's consultants, agents, or employees, any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility contrary to the provisions of Article LIMITATIONS ON ENGINEER'S RESPONSIBILITIES.

19. DISCREPANCIES AND OMISSIONS

Any discrepancies or omissions found in the Contract Documents shall be reported to the Engineer immediately. The Engineer will clarify discrepancies or omissions, in writing, within a reasonable time.

In resolving inconsistencies among two or more sections of the Contract Documents, precedence shall be given in the following order:

- A. CONTRACT
- B. BID
- C. CRITERION FOR KEY WEST BIGHT HARBOR WALK/DOCK AND PLAZA BOARD REPLACEMENT/INSTALLATION
- D. SPECIAL CONDITIONS
- E. SUPPLEMENTARY CONDITIONS
- F. REQUEST FOR BIDS
- G. INSTRUCTIONS TO BIDDERS
- H. GENERAL CONDITIONS
- I. SPECIFICATIONS
- J. DRAWINGS

Addenda shall take precedence over all sections referenced therein. Figure dimensions on Drawings shall take precedence over scale dimensions. Detailed Drawings shall take precedence over general Drawings.

20. CHANGES IN THE WORK

The Owner, without notice to the Sureties and without invalidating the Contract, may order changes in the work within the general scope of the Contract by altering, adding to, or deducting from the work, the Contract being adjusted accordingly. All such work shall be executed under the conditions of the original Contract, except as specifically adjusted at the time of ordering such change.

In giving instructions, the Engineer may order minor changes in the work not involving extra cost and not inconsistent with the purposes of the project, but otherwise, except in an emergency endangering life and property, additions or deductions from the work shall be performed only in pursuance of an approved Change Order from the Owner, countersigned by the Engineer.

If the work is reduced by alterations, such action shall not constitute a claim for damages based on loss of anticipated profits.

21. EXAMINATIONS AND VERIFICATION OF CONTRACT DOCUMENTS

The Contractor shall thoroughly examine and become familiar with all of the various parts of these Contract Documents and determine the nature and location of the work, the general and local conditions, and all other matters, which can in any way affect the work under this Contract. Failure to make an examination necessary for this determination shall not release the Contractor from the obligations of this Contract. No verbal agreement or conversation with any officer, agent, or employee of the Owner, or with the Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

22. DOCUMENTS TO BE KEPT ON THE JOBSITE

The Contractor shall keep one copy of the Contract Documents on the job- site, in good order, available to the Engineer and to his/her representatives.

The Contractor shall maintain on a daily basis at the jobsite, and make available to the Engineer on request, one current record set of the Drawings which have been accurately marked to indicate all modifications in the completed work that differ from the design information shown on the Drawings. Upon Substantial completion of the work, the Contractor shall give the Engineer one (1) complete set of these marked up record Drawings.

23. ADDITIONAL CONTRACT DOCUMENTS

Copies of Contract Documents or Drawings may be obtained on request from the Engineer and by paying the actual cost of reproducing the Contract Documents or Drawings.

24. OWNERSHIP OF CONTRACT DOCUMENTS

All portions of the Contract Documents, and copies thereof furnished by the Engineer are instruments of service for this project. They are not to be used on other work and are to be returned to the Engineer on request at the completion of the work. Any reuse of these materials without specific written verification or adaptation by the Engineer will be at the risk of the user and without liability or legal expense to the Engineer. Such user shall hold

the Engineer harmless from any and all damages, including reasonable attorneys' fees, from any and all claims arising from any such reuse. Any such verification and adaptation shall entitle the Engineer to further compensation at rates to be agreed upon by the user and the Engineer.

THE ENGINEER

25. AUTHORITY OF THE ENGINEER

The Engineer will be the Owner's representative during the construction period. His/her authority and responsibility will be limited to the provisions set forth in these Contract Documents. The Engineer will have the Authority to reject work that does not conform to the Contract Documents. However, neither the Engineer's authority to act under this provision, nor any decision made by him/her in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Engineer to the Contractor, any Subcontractor, their respective Sureties, any of their agents or employees, or any other person performing any of the work.

26. DUTIES AND RESPONSIBILITIES OF THE ENGINEER

The Engineer will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the work and to determine, in general, if the work is proceeding in accordance with the intent of the Contract Documents. He/she will not make comprehensive or continuous review or observation to check quality or quantity of the work, and he/she will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. Visits and observations made by the Engineer shall not relieve the Contractor of his/her obligation to conduct comprehensive inspections of the work and to furnish materials and perform acceptable work, and to provide adequate safety precautions, in conformance with the intent of the Contract.

The Engineer will make recommendations to the Owner, in writing, on all claims of the Owner or the Contractor arising from interpretation or execution of the Contract Documents. Such recommendations will be of factual and/or technical nature, and will not include the legal interpretation of the Contract Documents. The Owner will make any necessary legal interpretation of the Contract Document. Such recommendation shall be necessary before the Contractor can receive additional money under the terms of the Contract. Changes in work ordered by the Engineer shall be made in compliance with Article CHANGES IN THE WORK.

One or more project representatives may be assigned to observe the work. It is understood that such project representatives shall have the authority to issue notice of nonconformance and make decisions within the limitations of the authority of the Engineer. The Contractor shall furnish all reasonable assistance required by the Engineer or project representatives for proper observation of the work. The above-mentioned project representatives shall not relieve the Contractor of his/her obligations to conduct comprehensive inspections of the work and to furnish materials and perform acceptable work, and to provide adequate safety precautions, in conformance with the intent of the Contract.

27. LIMITATIONS ON ENGINEER'S RESPONSIBILITIES

Engineer will not be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, and Engineer will not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.

Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work.

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved", or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory", or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of Engineer as to the work, it is intended that such requirement, direction, review, or judgment will be solely to evaluate the work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility contrary to the provisions of this Article.

28. REJECTED WORK

Any defective work or nonconforming materials or equipment that may be discovered at any time prior to expiration of the warranty period shall be removed and replaced by work which shall conform to the provisions of the Contract Documents. Any material condemned or rejected shall be removed at once from the project site.

Failure on the part of the Engineer to condemn or reject bad or inferior work or to note nonconforming materials or equipment on Contractor submittals shall not be construed to imply acceptance of such work. The Owner shall reserve and retain all of its rights and remedies at law against the Contractor and its Surety for correction of any and all latent defects discovered after the guarantee period.

29. LINES AND GRADES

Lines and grades shall be established as provided in the supplementary conditions. All stakes, marks, and other reference information shall be carefully preserved by the Contractor, and in case of their careless or unnecessary destruction or removal by him/her or his/her employees, such stakes, marks, and other information shall be replaced at the Contractor's expense.

It will be the Contractor's responsibility to layout the work and to transfer elevations from benchmarks. Where new construction connects to existing facilities, the Contractor shall check and establish the exact location prior to construction of the facilities.

The Contractor shall furnish all surveys, labor, and equipment, including setting all alignment and gradient, grade stakes, batter boards, and everything necessary to lay out his/her work. The Contractor shall be responsible for maintaining and re-establishing at

his expense, all control points. After completion of his construction, he shall reset all permanent monuments at their original locations and elevations.

The Engineer may check all layout work, and the Contractor shall furnish all necessary labor, equipment, and materials, and shall cooperate and assist the Engineer in making such checks.

The dimensions for lines and elevations for grades of the fuel system structures, appurtenances, and utilities will be shown on Drawings produced by the Contractor for the issuance of all required permits, together with other pertinent information required for laying out the work. If site conditions vary from those indicated, the Contractor shall notify the Engineer immediately, who will make any minor adjustments as required.

30. SUBMITTALS

After checking and verifying all field measurements and after complying with applicable procedures specified in Division I, GENERAL REQUIREMENTS, Contractor shall submit to Engineer, in accordance with the schedule for submittals for review, shop drawings, electrical diagrams, and catalog cuts for fabricated items and manufactured items (including mechanical and electrical equipment), which shall bear a stamp or specific written indication that Contractor has satisfied Contractor's responsibilities under the Contract Documents with respect to the review of the submittal. All submittals shall be identified as Engineer may require. The data shown shall be complete with respect to quantities, dimensions specified, performance and design criteria, materials, and similar data to enable Engineer to review the information. Contractor shall also submit to Engineer for review, with such promptness as to cause no delay in work, all samples required by the Contract Documents. All samples shall have been checked by and accompanied by a specific written indication that Contractor has satisfied Contractor's responsibilities under the Contract Documents with respect to the review of the submission and shall be identified clearly as to material, supplier, pertinent data such as catalog numbers and the use for which intended.

Before submission of each submittal, Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed or coordinated each submittal with other submittals and with the requirements of the work and the Contract Documents.

At the time of each submission, Contractor shall give Engineer specific written notice of each variation that the submittal may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each shop drawing submitted to Engineer for review and approval of each variation.

Engineer will review submittals with reasonable promptness, but Engineer's review will be only for conformance with the design concept of the project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences, or procedures of construction (except where a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item

functions. Contractor shall make corrections required by Engineer, and shall return the required number of corrected copies of shop drawings and submit as required new samples for review. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

Engineer's review of submittals shall not relieve Contractor from the responsibility for any variation from the requirements of the Contract Documents unless Contractor has in writing called Engineer's attention to each such variation at the time of submission and Engineer has given written approval of each such variation by a specific written notation thereof incorporated therein or accompanying the shop drawing or sample approval; nor will any approval by Engineer relieve Contractor from responsibility for errors or omissions in the shop drawings or from responsibility for having complied with the provisions herein.

Where a shop drawing or sample is required by the specifications, any related work performed prior to Engineer's review and approval of the pertinent submission shall be at the sole expense and responsibility of the Contractor.

31. DETAIL DRAWINGS AND INSTRUCTIONS

The Engineer will furnish, with reasonable promptness, additional instructions by means of Drawings or otherwise, if, in the Engineer's opinion, such are required for the proper execution of the work. All such Drawings and instructions will be consistent with the Contract Documents, true developments thereof, and reasonably inferable there from.

THE CONTRACTOR AND HIS EMPLOYEES

32. CONTRACTOR, AN INDEPENDENT AGENT

The Contractor shall independently perform all work under this Contract and shall not be considered as an agent of the Owner or of the Engineer, nor shall the Contractor's Subcontractors or employees be subagents of the Owner or of the Engineer.

32. (a) ASSIGNMENT OF CONTRACT

Assignment of any part or the whole of this Contract shall be subject to review and approval of the City Commission.

33. SUBCONTRACTING

Unless modified in the Supplementary Conditions, within ten (10) calendar days after the execution of the Contract, the Contractor shall submit to the Engineer the names of all Subcontractors proposed for the work, including the names of any Subcontractors that were submitted with the Bid. The Contractor shall not employ any subcontractors to which the Owner may object to as lacking capability to properly perform work of the type and scope anticipated.

The Contractor is as fully responsible to the Owner for the acts and omissions of his Subcontractors and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the Owner or Engineer.

34. INSURANCE AND LIABILITY

A. GENERAL

The Contractor shall provide (from insurance companies acceptable to the Owner) the insurance coverage designated hereinafter and pay all costs.

Before commencing work under this Contract, Contractor shall furnish the Owner with certificates of insurance specified herein showing the type, amount class of operations covered, effective dates, and date of expiration of policies, and containing substantially the following statement:

"The insurance covered by this certificate shall not be canceled or materially altered, except after 30 days' written notice has been received by the Owner."

In case of the breach of any provision of this Article, the Owner, at his option, may take out and maintain, at the expense of the Contractor, such insurance as the Owner may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Contractor under this Contract.

B. CONTRACTOR AND SUBCONTRACTOR INSURANCE

The Contractor shall not commence work under this Contract until he has obtained all the insurance required hereunder and such insurance has been reviewed by the Owner, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until insurance specified below has been obtained. Review of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

C. COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

The Contractor shall maintain during the life of this Contract the statutory amount of Workmen's Compensation Insurance, in addition, Employer's Liability Insurance in an amount as specified in the Supplementary Conditions, for each occurrence, for all of his employees to be engaged in work on the project under this Contract. In case any such work is subcontracted, the Contractor shall require the Subcontractor to provide similar Workmen's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees to be engaged in such work.

D. GENERAL LIABILITY INSURANCE (INCLUDING AUTOMOBILE)

The Contractor shall maintain during the life of this Contract such general liability, completed operations and products liability, and automobile liability insurance as will provide coverage for claims for damages for personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from performance of the work under this Contract. The

general liability policy shall include contractual liability assumed by the Contractor under Article **INDEMNITY**. Coverage for property damage shall be on a "broad form" basis with no exclusions for "X, C & U". The amount of insurance to be provided shall be as specified in the Supplementary Conditions.

In the event a Subcontractor performs any work under this Contract, the Contractor shall be responsible for any liability directly or indirectly arising out of the work performed by the Subcontractor to the extent such liability is not covered by the Subcontractor's insurance.

The Owner and Engineer, their officers, agents, and employees shall be named as Additional Insureds on the Contractor's and any Subcontractor's general liability and automobile liability insurance policies for any claims arising out of work performed under this Contract.

E. BUILDERS RISK ALL RISK INSURANCE

Unless otherwise modified in the Supplementary Conditions, the Contractor shall secure and maintain during the life of this Contract, Builders Risk All Risk Insurance Coverage in an amount equal to the full value of the facilities under construction. Deductible shall be no greater than \$5,000. Such insurance shall include coverage for earthquake, landslide, flood, collapse, loss due to the result of faulty workmanship or design, and all other normally covered risks, and shall provide losses to be paid to the Contractor, Owner, and Engineer as their interests may appear.

The Owner and Engineer, their officers, agents, and employees shall be named as additional insureds on the Contractor's and any subcontractors Builders Risk All Risk insurance policies for any claims arising out of work performed under this Contract.

This insurance shall include a waiver of subrogation as to the Engineer, the Owner, the Contractor, and their respective officers, agents, employees, and subcontractors.

F. NO PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions hereof in exercising any authority granted by the Contract, there will be no personal liability upon any public official.

G. SURETY AND INSURER QUALIFICATIONS

All bonds, insurance contracts, and certificates of insurance shall be either executed by or countersigned by a licensed resident agent of the Surety or insurance company, having his place of business in the State of Florida, and in all ways complying with the insurance laws of the State of Florida. Further, the said Surety or insurance company shall be duly licensed and qualified to do business in the State of Florida. If requested, Contractor shall provide proof of Florida Licensure for all insurance companies.

35. INDEMNITY

- A. CONTRACTOR agrees to protect, defend, indemnify, save and hold harmless The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expense and liability arising out of injury or death to any person or the damage, loss of destruction of any property which may occur or in any way grow out of any act or omission of the CONTRACTOR, its agents, servants, and employees, or any and all costs, expense and/or attorney fees incurred by the City as a result of any claim, demands, and/or causes of action except of those claims, demands, and/or causes of action arising out of the negligence of The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees. The CONTRACTOR agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent.

Nothing in this indemnification is intended to act as a waiver of the City's sovereign immunity rights, including those provided under section 768.28, Florida Statutes

- B. This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the CITY by reason of such claim or demand, CONTRACTOR shall, upon written notice from the CITY, resist and defend such action or proceeding by counsel satisfactory to the CITY. The CONTRACTOR shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the CITY's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the CITY whether performed by CONTRACTOR, or by persons employed or used by CONTRACTOR.

36. EXCLUSION OF CONTRACTOR CLAIMS

In performing its obligations, the Engineer and its consultants may cause expense for the Contractor or its subcontractors and equipment or material suppliers. However, those parties and their sureties shall maintain no direct action against the Engineer, its officers, employees, agents, and consultants for any claim arising out of, in connection with, or resulting from the engineering services performed or required to be performed.

37. TAXES AND CHARGES

The Contractor shall withhold and pay any and all sales and use taxes and all withholding taxes, whether State or Federal, and pay all Social Security charges and also all State Unemployment Compensation charges, and pay or cause to be withheld, as the case may be, any and all taxes, charges, or fees or sums whatsoever, which are now or may hereafter be required to be paid or withheld under any laws.

38. REQUIREMENTS OF STATE LAW FOR PUBLIC WORKS PROJECTS

When the Contract Documents concern public works of the state or any county, municipality, or political subdivision created by its laws, the applicable statutes shall apply. All parties to this Contract shall determine the contents of all applicable statutes and comply with their provisions throughout the performance of the Contract.

39. CODES, ORDINANCES, PERMITS, AND LICENSES

The Contractor shall keep himself fully informed of all local codes and ordinances, as well as state and federal laws, which in any manner affect the work herein specified. The Contractor shall at all times comply with said codes and ordinances, laws, and regulations, and protect and indemnify the Owner, the Engineer and their respective employees, and its officers and agents against any claim or liability arising from or based on the violation of any such laws, ordinances, or regulations. All permits, licenses and inspection fees necessary for prosecution and completion of the work shall be secured and paid for by the Contractor, unless otherwise specified.

A. PERMIT FOR WORK WITHIN LOCAL RIGHTS-OF-WAY

The Contractor shall obtain from the City of Key West the necessary permits for work within the rights-of-way. The Contractor shall abide by all regulations and conditions, including maintenance of traffic, FDOT Standard.

B. NOISE ORDINANCE

The Contractor shall comply with the City of Key West Noise Ordinance.

C. LICENSES

BIDDER must represent that he holds all applicable state, county, and City of Key West licenses and permits required to do business as a contractor with respect to the work described in the Contract Documents before he may Bid on the project.

The following licenses and certificates are required as a minimum:

- A. All licenses or certificates required by federal, state or local statutes or regulations.
- B. A valid Business Tax Receipt issued by the City of Key West, if required.
- C. A valid Certificate of Competency issued by the Building Official of the City of Key West which shall remain valid throughout the time period of the Contract, if required.

Further, the successful BIDDER must, within ten (10) calendar days of Notice of Award, furnish documentation showing that, as a minimum, he has complied with the provisions of Chapter 91 of the Code of Ordinances of the City of Key West

in order to enter into the Agreement contained in the Contract Documents.

40. SUPERINTENDENCE

The Contractor shall keep at the project site, competent supervisory personnel. The Contractor shall designate, in writing, before starting work, a project superintendent who shall be an employee of the Contractor and shall have complete authority to represent and to act for the Contractor. Engineer shall be notified in writing prior to any change in superintendent assignment. The Contractor shall give efficient supervision to the work, using his best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, and procedures, and for providing adequate safety precautions and coordinating all portions of the work under the Contract. It is specifically understood and agreed that the Engineer, its employees and agents, shall not have control or charge of and shall not be responsible for the construction means, methods, techniques, procedures, or for providing adequate safety precautions in connection with the work under Contract.

40(a). CONTRACTOR'S RESPONSIBILITIES:

- A. The Contractor shall employ such superintendents, foremen, and workmen as are careful and competent. Whenever the Engineer shall determine that any person employed by the Contractor is in his opinion, incompetent, unfaithful, disorderly or insubordinate, such person shall, upon notice, be discharged from the work and shall not again be employed on it except with the written consent of the Engineer. Should the Contractor fail to remove such person or persons, or fail to furnish suitable or sufficient machinery, equipment or force for the proper prosecution of the work the Engineer may withhold all estimates which are, or may become due, or may suspend the work until such orders are complied with.
- B. The Contractor shall provide qualified personnel to assist the Engineer in making field checks, measurements, asbuilt checks, inspection, test runs, and the necessary quality check work related to the project work. An english speaking superintendent or foreman shall be onsite at all times.
- C. The Contractor shall provide and maintain at his own expense, in a sanitary condition, such accommodations for the use of his employees as is necessary to comply with the requirements and regulations of the State and County Boards of Health. He shall commit no public nuisance.
- D. The Contractor shall conduct the work so as to insure the least obstruction to traffic practicable, and shall provide for the convenience of the general public and of the residents along and adjacent to the work in a manner satisfactory to the Engineer. Materials and equipment stored on the work site shall be placed so as to cause as little obstruction to the public as possible and shall be lighted and barricaded as hereinafter provided. Keep driveways and entrances serving the premises clear and available to the Owner and the Owner's employees at all times. Do not use these areas for parking or storage of materials and equipment on site.
- E. Unless otherwise expressly stipulated herein, the use of explosives is not

contemplated in the prosecution of the Contract, and in no case will their use be permitted within a municipality without the written permission of the City Engineer and a permit issued by the Chief of the Fire Department. Where such permission for the use of explosives is obtained, the Contractor shall use the utmost care so as not to endanger life or property, and whenever directed the size and number of charges shall be reduced. All explosives shall be stored in a secure manner, and all such storage places shall be marked clearly, "DANGEROUS EXPLOSIVES", and shall be in care of competent watchmen

41. RECEPTION OF ENGINEER'S COMMUNICATIONS

The superintendent shall receive for the Contractor all communications from the Engineer. Communications of major importance will be confirmed in writing upon request from the Contractor.

The Engineer may schedule project meetings for the purposes of discussing and resolving matters concerning the various elements of the work. The Engineer shall determine the time and place for these meetings, and the names of persons required being present. The Contractor shall comply with these attendance requirements and shall also require his/her Subcontractors to comply.

42. SAFETY

The Contractor shall be solely and completely responsible for conditions of the jobsite, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to U.S. Department of Labor (OSHA), and all other applicable federal, state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize himself/herself with the aforementioned safety provisions shall not relieve him from compliance with the obligations and penalties set forth therein.

The Contractor shall develop and maintain for the duration of this Contract, a safety program that will effectively incorporate and implement all required safety provisions. The Contractor shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program.

The duty of the Engineer to conduct construction review of the work does not include review or approval of the adequacy of the Contractor's safety program, safety supervisor, or any safety measures taken in, on, or near the construction site.

The Contractor, as a part of his safety program, shall maintain at hi/hers office or other well-known place at the jobsite, safety equipment applicable to the work as prescribed by the aforementioned authorities, all articles necessary for giving first-aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a doctor's care of persons (including employees) who may be injured on the jobsite.

If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the Engineer and the Owner. In addition,

the Contractor must promptly report in writing to the Engineer all accidents whatsoever arising out of, or in connection with, the performance of the work whether on, or adjacent to, the site, giving full details and statements of witnesses.

If a claim is made by anyone against the Contractor or any Subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Engineer, giving full details of the claim.

A. OWNER'S RIGHT TO STOP WORK

If the Contractor or Subcontractor fails to provide adequate safety provisions as required by the Contract Documents the Owner has the right to stop all construction work at the location with inadequate safety provisions until adequate provisions are in place. The Owner shall not be liable for any delays caused by the Contractor's failure to provide and maintain required safety provisions.

B. CLEANUP PROCEDURES FOR HURRICANE WARNINGS AND HURRICANE WATCH

In the event the National Oceanographic and Atmospheric Administration (NOAA) issues a Tropical Storm Watch or a Hurricane Watch for the Keys the Engineer will contact the Contractor informing him that the Watch has been established. Within four (4) hours of the notice the Contractor shall provide the Engineer with a written plan and schedule describing how and when the Contractor will remove all unnecessary items from the work area and tie down all necessary supplies and barricades in the event a Tropical Storm Warning or a Hurricane Warning is issued. The Contractor shall remove all unnecessary items from work areas and shall tie down all movable objects (under 200 lbs.) The Engineer will determine "necessary" items. The Owner shall not be liable for any financial hardship or delays caused as a result of demobilization or remobilization of work due to the above.

C. OCCUPATIONAL SAFETY AND HEALTH

The Contractor shall observe and comply with all applicable local, state, and federal occupational safety and health regulations during the prosecution of work under this Contract. In addition, full compliance by the Contractor with the U.S. Department of Labor's Occupational Safety and Health Standards, as established in Public Law 91-596, will be required under the terms of this Contract.

43. PROTECTION OF WORK AND PROPERTY

The Contractor shall at all times safely guard and protect from damage the Owner's property, adjacent property, and his/her own work from injury or loss in connection with this Contract. All facilities required for protection by federal, state, or municipal laws and regulations and local conditions must be provided and maintained.

The Contractor shall protect his/her work and materials from damage due to the nature of the work, the elements, carelessness of other contractors, or from any cause whatever until the completion and acceptance of the work. All loss or damages arising out of the nature of

the work to be done under these Contract Documents, or from any unforeseen obstruction or defects which may be encountered in the prosecution of the work, or from the action of the elements, shall be sustained by the Contractor.

43(a). HISTORIC PRESERVATION

The Contractor shall comply with Florida Historical Resources Act (Florida Statutes, Chapter 267) and the regulations of the local historic preservation board as applicable and protect against the potential loss or destruction of significant historical or archaeological data, sites, and properties in connection with the project.

44. RESPONSIBILITY OF CONTRACTOR TO ACT IN AN EMERGENCY

In case of an emergency that threatens loss or injury of property, and/or safety of life, the Contractor shall act, without previous instructions from the Owner or Engineer, as the situation may warrant. The Contractor shall notify the Engineer thereof immediately thereafter. Any claim for compensation by the Contractor, together with substantiating documents in regard to expense, shall be submitted to the Owner through the Engineer and the amount of compensation shall be determined by agreement.

45. MATERIALS AND APPLIANCES

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, heat, light, fuel, power, transportation, construction equipment and machinery, appliances, telephone, sanitary facilities, temporary facilities and other facilities and incidentals necessary for the execution and completion of the work.

Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

In selecting and/or approving equipment for installation in the project, the Owner and Engineer assume no responsibility for injury or claims resulting from failure of the equipment to comply with applicable federal, state, and local safety codes or requirements, or the safety requirements of a recognized agency, or failure due to faulty design concepts, or defective workmanship and materials.

46. CONTRACTORS' AND MANUFACTURERS' COMPLIANCE WITH STATE SAFETY, OSHA, AND OTHER CODE REQUIREMENTS

The completed work shall include all necessary permanent safety devices, such as machinery guards and similar ordinary safety items required by the state and federal (OSHA) industrial authorities and applicable local and national codes. Further, any features of the work subject to such safety regulations shall be fabricated, furnished, and installed (including Owner-furnished equipment) in compliance with these requirements. Contractors and manufacturers of equipment shall be held responsible for compliance with the requirements included herein. Contractors shall notify all equipment suppliers and Subcontractors of the provisions of this Article.

47. SUBSTITUTION OF MATERIALS

Except for Owner-selected equipment items, and items where no substitution is clearly specified, whenever any material, article, device, product, fixture, form, type of construction, or process is indicated or specified by patent or proprietary name, by name of manufacturer, or by catalog number, such specifications shall be deemed to be used for the purpose of establishing a standard of quality and facilitating the description of the material or process desired. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers where fully suitable in design, and shall be deemed to be followed by the words "or equal". The Contractor may, in such cases, submit complete data to the Engineer for consideration of another material, type, or process, which shall be substantially equal in every respect to that so indicated or specified. Substitute materials shall not be used unless approved in writing. The Engineer will be the sole judge of the substituted article or material.

48. TESTS, SAMPLES, AND OBSERVATIONS

The Contractor shall furnish, without extra charge, the necessary test pieces and samples, including facilities and labor for obtaining the same, as requested by the Engineer. When required, the Contractor shall furnish certificates of tests of materials and equipment made at the point of manufacture by a recognized testing laboratory.

The Owner, Engineer, and authorized government agents, and their representatives shall at all times be provided safe access to the work wherever it is in preparation or progress, and the Contractor shall provide facilities for such access and for observations, including maintenance of temporary and permanent access.

If the Specifications, laws, ordinances, or any public authority require any work, to be specially tested or approved, the Contractor shall give timely notice of its readiness for observations. If any work should be covered up without approval or consent of the Engineer, it shall, if required by the Engineer, be uncovered for examination at the Contractor's expense.

The Engineer may order re-examination of questioned work, and, if so ordered, the Contractor shall uncover the work. If such work is found to be in accordance with the Contract Documents, the Owner will pay the cost of uncovering, exposure, observation, inspection, testing and reconstruction. If such work is found to be not in accordance with the Contract Documents, the Contractor shall correct the defective work, and the cost of reexamination and correction of the defective work shall be paid by the Contractor.

49. ROYALTIES AND PATENTS

The Contractor shall pay all royalty and licenses fees, unless otherwise specified. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the Owner and the Engineer harmless from any and all loss, including reasonable attorneys' fees, on account thereof.

50. CONTRACTOR'S RIGHT TO TERMINATE CONTRACT

If the work should be stopped under an order of any court or other public authority for a period of more than three (3) months, through no act or fault of the Contractor, its

Subcontractors, or respective employees or if the Engineer should fail to make recommendation for payment to the Owner or return payment request to Contractor for revision within thirty (30) calendar days after it is due, or if the Owner should fail to pay the Contractor within thirty (30) calendar days after time specified in Article PARTIAL PAYMENTS, any sum recommended by the Engineer, then the Contractor may, upon 15 days' written notice to the Owner and the Engineer, stop work or terminate this Contract and recover from the Owner payment for all acceptable work performed and reasonable termination expenses, unless said default has been remedied.

51. CORRECTION OF DEFECTIVE WORK DURING WARRANTY PERIOD

The Contractor hereby agrees to make, at his own expense, all repairs or replacements necessitated by defects in materials or workmanship, provided under terms of this Contract, and pay for any damage to other works resulting from such defects, which become evident within two (2) year after the date of final acceptance of the work or within two (2) year after the date of substantial completion established by the Engineer for specified items of equipment, or within such longer period as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. Un-remedied defects identified for correction during the warranty period but remaining after its expiration shall be considered as part of the obligations of the warranty. Defects in material, workmanship, or equipment, which are remedied as a result of obligations of the warranty, shall subject the remedied portion of the work to an extended warranty period of two (2) year after the defect has been remedied.

The Contractor further assumes responsibility for a similar guarantee for all work and materials provided by Subcontractors or manufacturers of packaged equipment components. The effective date for the start of the guarantee or warranty period for equipment qualifying as substantially complete is defined in Article SUBSTANTIAL COMPLETION, AND Article SUBSTANTIAL COMPLETION DATE, in these General Conditions.

The Contractor also agrees to hold the Owner and the Engineer harmless from liability of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written order for same from the Owner. If the Contractor fails to make the repairs and replacements promptly, or in an emergency where delay would cause serious risk, or loss, or damage, the Owner may have the defective work corrected or the rejected work removed and replaced, and the Contractor and his Surety shall be liable for the cost thereof.

PROGRESS OF THE WORK

52. BEGINNING OF THE WORK

Following execution of the Contract, the Contractor shall meet with the Owner and Engineer relative to his arrangements for prosecuting the work.

53. SCHEDULES AND PROGRESS REPORTS

Prior to starting the construction, the Contractor shall prepare and submit to the Engineer, a

progress schedule showing the dates on which each part or division of the work is expected to be started and finished, and a preliminary schedule for submittals. The progress schedule for submittals shall be brought up to date and submitted to the Engineer at the end of each month or at such other times the Engineer may request.

The Contractor shall forward to the Engineer, at the end of each month, an itemized report of the delivery status of major and critical items of purchased equipment and material, including shop drawings and the status of shop and field fabricated work. These progress reports shall indicate the date of the purchase order, the current percentage of completion, estimated delivery, and cause of delay, if any.

If the completion of any part of the work or the delivery of materials is behind the submitted progress schedule, the Contractor shall submit in writing a plan acceptable to the Owner and Engineer for bringing the work up to schedule.

The Owner shall have the right to withhold progress payments for the work if the Contractor fails to update and submit the progress schedule and reports as specified.

Unless specifically authorized by the Engineer, work shall not be performed during the Goombay Festival, Fantasy Fest, Thanksgiving, or Christmas.

54. PROSECUTION OF THE WORK

It is expressly understood and agreed that the time of beginning, rate of progress, and time of completion of the work are the essence of this Contract. The work shall be prosecuted at such time, and in or on such part or parts of the project as may be required, to complete the project as contemplated in the Contract Documents and the progress schedule.

If the Contractor desires to carry on work at night or outside the regular hours, he shall give timely notice to the Engineer to allow satisfactory arrangements to be made for observing the work in progress.

55. OWNER'S RIGHT TO RETAIN IMPERFECT WORK

If any part or portion of the work completed under this Contract shall prove defective and not in accordance with the Drawings and Specifications, and if the imperfection in the same shall not be of sufficient magnitude or importance as to make the work dangerous or unsuitable, or if the removal of such work will create conditions which are dangerous or undesirable, the Owner shall have the right and authority to retain such work but will make such deductions in the final payment therefore as may be just and reasonable.

55(a). OWNER'S RIGHT TO STOP WORK

If the Contractor or any subcontractor should fail to provide adequate safety provisions required by the Contract Documents, including but not limited to maintenance of traffic, trench safety devices and procedures, safety fencing, barricading, signage or unsafe work practices, the Owner has the right to issue a Stop Work Notice and stop all construction work at the location with the inadequate safety provisions until such time that adequate safety provisions are in place. The Owner shall not be liable for delays caused by the Contractor's failure to provide and maintain required safety provisions. No extension of

time will be granted to the Contractor for delays occurring due to a Stop Work Notice.

56. OWNER'S RIGHT TO DO WORK

Should the Contractor neglect to prosecute the work in conformance with the Contract Documents or neglect or refuse at his own cost to remove and replace work rejected by the Engineer, then the Owner may notify the Surety of the condition, and after ten (10) calendar days' written notice to the Contractor and the Surety, or without notice if an emergency or danger to the work or public exists, and without prejudice to any other right which the Owner may have under Contract, or otherwise, take over that portion of the work which has been improperly or non timely executed, and make good the deficiencies and deduct the cost thereof from the payments then or thereafter due the Contractor.

57. OWNER'S RIGHT TO TRANSFER EMPLOYMENT

If the Contractor should abandon the work or if he should persistently or repeatedly refuse or should fail to make prompt payment to Subcontractors for material or labor, or to persistently disregard laws, ordinances, or to prosecute the work in conformance with the Contract Documents, or otherwise be guilty of a substantial violation of any provision of the Contract or any laws or ordinance, then the Owner may, without prejudice to any other right or remedy, and after giving the Contractor and Surety 10 days' written notice, transfer the employment for said work from the Contractor to the Surety. Upon receipt of such notice, such Surety shall enter upon the premises and take possession of all materials, tools, and appliances thereon for the purpose of completing the work included under this Contract and employ by Contract or otherwise, any qualified person or persons to finish the work and provide the materials therefore, in accordance with the Contract Documents, without termination of the continuing full force and effect of this Contract. In case of such transfer of employment to such Surety, the Surety shall be paid in its own name on estimates according to the terms hereof without any right of the Contractor to make any claim for the same or any part thereof.

If, after the furnishing of said written notice to the Surety, the Contractor and the Surety still fail to make reasonable progress on the performance of the work, the Owner may terminate the employment of the Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may deem expedient and charge the cost thereof to the Contractor and the Surety. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the expense of completing the Contract, including compensation for additional managerial and administrative services, shall exceed such unpaid balance, the Contractor and the Surety shall pay the difference to the Owner.

58. DELAYS AND EXTENSION OF TIME

If the Contractor is delayed in the progress of the work by any act or neglect of the Owner or the Engineer, or by any separate Contractor employed by the Owner, or by strikes, lockouts, fire, adverse weather conditions not reasonably anticipated, or acts of Nature, and if the Contractor, within forty-eight (48) hours of the start of the occurrence, gives written notice to the Owner of the cause of the potential delay and estimate of the possible time extension involved, and within ten (10) calendar days after the cause of the delay has been remedied, the Contractor gives written notice to the Owner of any actual time extension requested as a result of the aforementioned occurrence, then the Contract time may be

extended by change order for such reasonable time as the Engineer determines. It is agreed that no claim shall be made or allowed for any damages, loss, or expense which may arise out of any delay caused by the above referenced acts or occurrences other than claims for the appropriate extension of time.

No extension of time will be granted to the Contractor for delays occurring to parts of the work that have no measurable impact on the completion of the total work under this Contract. No extension of time will be considered for weather conditions reasonably anticipated for the area in which the work is being performed. Reasonably anticipated weather conditions will be based on official records of monthly precipitation and other historical data. Adverse weather conditions, if determined to be of a severity that would impact progress of the work, may be considered as cause for an extension of Contract completion time.

Delays in delivery of equipment or material purchased by the Contractor or his Subcontractors, including Owner-selected equipment shall not be considered as a just cause for delay, unless the Owner determines that for good cause the delay is beyond the control of the Contractor. The Contractor shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials.

Within a reasonable period after the Contractor submits to the Owner a written request for an extension of time, the Engineer will present his written opinion to the Owner as to whether an extension of time is justified, and, if so, his recommendation as to the number of days for time extension. The Owner will make the final decision on all requests for extension of time.

59. DIFFERING SITE CONDITIONS

The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Owner and Engineer of:

- A. Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract,
- B. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

The Engineer will investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this Contract, whether or not changed as a result of the conditions, and equitable adjustment shall be made under this Article and the Contract modified in writing accordingly.

No request by the Contractor for an equitable adjustment to the Contract under this Article will be allowed, unless the Contractor has given the written notice required, provided that the time prescribed above for giving written notice may be extended by the Owner.

No request by the Contractor for an equitable adjustment to the Contract for differing site conditions will be allowed if made after final payment under this Contract.

60. LIQUIDATED DAMAGES

Should the Contractor fail to complete the work, or any part thereof in the time agreed upon in each Work Order or within such extra time as may have been allowed for delays by extensions granted as provided in the Contract, the Contractor shall reimburse the Owner for the additional expense and damage for each calendar day, Sundays, and legal holidays included, that project outlined in each Work Order remains uncompleted after the Work Order completion date. Liquidated damages shall be assessed individually against each Work Order. It is agreed that the amount of such additional expense and damage incurred by reason of failure to complete the work is the per diem rate, as stipulated in the Bid. The said amount is hereby agreed upon as a reasonable estimate of the costs that may be accrued by the Owner after the expiration of the time of completion. It is expressly understood and agreed that this amount is not to be considered in the nature of a penalty, but as liquidated damages that have accrued against the Contractor. The Owner shall have the right to deduct such damages from any amount due, or that may become due the Contractor, or the amount of such damages shall be due and collectible from the Contractor or Surety.

61. OTHER CONTRACTS

The Owner reserves the right to let other Contracts in connection with the work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.

If any part of the work under this Contract depends for proper execution or results upon the work of any other Contractor, utility service company or Owner, the Contractor shall inspect and promptly report to the Engineer in writing any patent or apparent defects to deficiencies in such work that render it unsuitable for such proper execution and results. The Contractor's failure to so report shall constitute acceptance of the work by others as being fit and proper for integration with work under this Contract, except for latent or non apparent defects and deficiencies in the work.

62. USE OF PREMISES

The Contractor shall confine his equipment, the storage of materials and the operation of his workers to limits shown on the Drawings or indicated by law, ordinances, permits, or directions of the Engineer, and shall not unreasonably encumber the premises with his materials. The Contractor shall provide, at his own expense, the necessary rights-of-way, and access to the work, which may be required outside the limits of the Owner's property and shall furnish the Engineer copies of permits and agreements for use of the property outside that provided by the Owner.

The Contractor shall not load nor permit any part of the structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the work or adjacent property to stresses or pressures that will endanger it.

63. SUBSTANTIAL COMPLETION DATE

The Engineer may issue a written notice of substantial completion for the purpose of establishing the starting date for specific equipment guarantees, and to establish the date

that the Owner will assume the responsibility for the cost of operating such equipment. Said notice shall not be considered as final acceptance of any portion of the work or relieve the Contractor from completing the remaining work within the specified time and in full compliance with the Contract Documents. See SUBSTANTIAL COMPLETION under DEFINITIONS of these General Conditions.

64. PERFORMANCE TESTING

Operating equipment and systems shall be performance tested in the presence of the Engineer to demonstrate compliance with the specified requirements. Performance testing shall be conducted under the specified design operating conditions or under such simulated operating conditions as recommended or approved by the Engineer. Such testing will be scheduled with the Engineer at least one week in advance of the planned date for testing.

65. OWNER'S USE OF PORTIONS OF THE WORK

Following issuance of the written notice of Substantial Completion, the Owner may initiate operation of the facility. Such use shall not be considered as final acceptance of any portion of the work, nor shall such use be considered as cause for an extension of the Contract completion time, unless authorized by a Change Order issued by the Owner.

66. CUTTING AND PATCHING

The Contractor shall do all cutting, fitting, or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other Contractors shown upon or reasonably implied by the Drawings.

67. CLEANING UP

The Contractor shall, at all times, keep property on which work is in progress and the adjacent property free from accumulations of waste material or rubbish caused by employees or by the work. Upon completion of the construction, the Contractor shall remove all temporary structures, rubbish, and waste materials resulting from his operations.

PAYMENT

68. PAYMENT FOR CHANGE ORDERS

The Owner's request for quotations on alterations to the work shall not be considered authorization to proceed with the work prior to the issuance of a formal Change Order, nor shall such request justify any delay in existing work. Quotations for alterations to the work shall include substantiating documentation with an itemized breakdown of Contractor and Subcontractor costs, including labor, material, rentals, approved services, overhead, and profit. Owner may require detailed cost data in order to substantiate the reasonableness of the proposed costs.

Any compensation paid in conjunction with the terms of a Change Order shall comprise total compensation due the Contractor for the work or alteration defined in the Change Order. By signing the Change Order, the Contractor acknowledges that the stipulated compensation includes payment for the work or alteration plus all payment for the

interruption of schedules, extended overhead, delay, or any other impact claim or ripple effect, and by such signing specifically waives any reservation or claim for additional compensation in respect to the subject Change Order.

At the Owner's option, payment or credit for any alterations covered by a Change Order shall be determined by one or a combination of the methods set forth in A, B, or C below, as applicable:

A. UNIT PRICES

Those unit prices stipulated in the Bid shall be utilized where they are applicable. In the event the Change Order results in a change in the original quantity that is materially and significantly different from the original Bid quantity, a new unit price shall be negotiated upon demand of either party. Unit prices for new items included in the Change Order shall be negotiated and mutually agreed upon.

B. LUMP SUM

A total lump sum for the work negotiated and mutually acceptable to the Contractor and the Owner.

Lump sum quotations for modifications to the work shall include substantiating documentation with an itemized breakdown of Contractor and Subcontractor costs, including labor, material, rentals, approved services, overhead, and profit, all calculated as specified under "C" below.

C. COST REIMBURSEMENT WORK

The term "cost reimbursement" shall be understood to mean that payment for the work will be made on a time and expense basis, that is, on an accounting of the Contractor's forces, materials, equipment, and other items of cost as required and used to do the work.

If the method of payment cannot be agreed upon prior to the beginning of the work, and the Owner directs by written Change Order that the work be done on a cost reimbursement basis, then the Contractor shall furnish labor, and furnish and install equipment and materials necessary to complete the work in a satisfactory manner and within a reasonable period of time. For the work performed, payment will be made for the documented actual cost of the following:

1. Labor including foremen for those hours they are assigned and participating in the cost reimbursement work (actual payroll cost, including wages, fringe benefits as established by negotiated labor agreements, labor insurance, and labor taxes as established by law). No other fixed labor burdens will be considered, unless approved in writing by the Owner.
2. Material delivered and used on the designated work, including sales tax, if paid by the Contractor or his Subcontractor.
3. Rental, or equivalent rental cost of equipment, including necessary transportation for items having a value in excess of one hundred (100) dollars.

Rental or equivalent rental cost will be allowed for only those days or hours

during which the equipment is in actual use. Rental and transportation allowances shall not exceed the current rental rates prevailing in the locality. The rentals allowed for equipment will, in all cases, be understood to cover all fuel, supplies, repairs, and renewals, and no further allowances will be made for those items, unless specific agreement to that effect is made.

4. Additional bond, as required and approved by the owner.
5. Additional insurance (other than labor insurance) as required and approved by the Owner.

In addition to items 1 through 5 above, an added fixed fee for general overhead and profit shall be negotiated and allowed for the Contractor (or approved Subcontractor) actually executing the Cost Reimbursement work.

An additional fixed fee shall be negotiated and allowed the Contractor for the administrative handling of portions of the work that are executed by an approved Subcontractor. No additional fixed fee will be allowed for the administrative handling of work executed by a Subcontractor of a Subcontractor, unless by written permission from the Owner.

The added fixed fees shall be considered to be full compensation, covering the cost of general supervision, overhead, profit, and any other general expense. The Contractor's records shall make clear distinction between the direct costs of work paid for on a cost reimbursement basis and the costs of other work. The Contractor shall furnish the Engineer report sheets in duplicate of each day's cost reimbursement work no later than the working day following the performance of said work. The daily report sheets shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, Subcontractor or other forces. The daily report sheets shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type, and identification number of equipment and hours operated.

Valid copies of vendors' invoices shall substantiate material charges. Such invoices shall be submitted with the daily report sheets, or, if not available, they shall be submitted with subsequent daily report sheets. Said daily report sheets shall be signed by the Contractor or his authorized agent.

The Owner reserves the right to furnish such materials and equipment as he deems expedient and the Contractor shall have no claim for profit or added fees on the cost of such materials and equipment. To receive partial payments and final payment for cost reimbursement work, the Contractor shall submit to the Engineer, detailed and complete documented verification of the Contractor's and any of his Subcontractors' actual costs involved in the cost reimbursement work. Such costs shall be submitted within 30 days after said work has been performed.

69. PARTIAL PAYMENTS

A. GENERAL

Nothing in this Article shall be construed to affect the right, hereby reserved, to reject the whole or any part of the aforesaid work, should such work be later found not to comply with the provisions of the Contract Documents. All estimated quantities of work for which partial payments have been made are subject to review and correction on the final estimate. Payment by the Owner and acceptance by the Contractor of partial payments based on periodic estimates of quantities of work performed shall not, in any way, constitute acceptance of the estimated quantities used as a basis for computing the amounts of the partial payments.

B. ESTIMATE

No more than once each month, the Contractor shall submit to the Engineer a detailed estimate of the amount earned during the preceding month for the separate portions of the work, and request payment. As used in this Article, the words "amount earned" means the value, on the date of the estimate for partial payment, of the work completed in accordance with the Contract Documents, and the value of approved materials delivered to the project site suitably stored and protected prior to incorporation into the work.

The Owner will make payment to the Contractor within forty five (45) calendar days upon receipt of the written recommendation of payment from the Engineer.

The Engineer will, within seven (7) calendar days after receipt of each request for payment, both indicate in writing a recommendation of payment and present the request to Owner, or return the request to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may, within seven (7) calendar days, make the necessary corrections and resubmit the request.

Engineer may refuse to recommend the whole or any part of any payment if, in his opinion, it would be incorrect to make such representations to Owner. Engineer may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended to such an extent as may be necessary in Engineer's opinion to protect the Owner from loss because:

1. The work is defective, or completed work has been damaged requiring correction or replacement.
2. Written claims have been made against Owner or Liens have been filed in connection with the work.
3. The Contract Price has been reduced because of Change Orders.
4. Owner has been required to correct defective work or complete the work in accordance with Article OWNER'S RIGHT TO DO WORK;
5. Of Contractor's unsatisfactory prosecution of the work in accordance with the Contract Documents; or

6. Contractor's failure to make payment to Subcontractors or for labor, materials, or equipment.

C. DEDUCTION FROM ESTIMATE

Unless modified in the Supplementary Conditions, deductions from the estimate will be as described below:

1. The Owner will deduct from the estimate, and retain as part security, ten (10) percent of the amount earned for work satisfactorily completed. A deduction and retainage of ten (10) percent will be made on the estimated amount earned for approved items of material delivered to and properly stored at the jobsite but not incorporated into the work. When the work is fifty (50) percent complete, the Owner may reduce the retainage to five (5) percent of the dollar value of all work satisfactorily completed to date provided the Contractor is making satisfactory progress and there is no specific cause for a greater retainage. The Owner may reinstate the retainage up to ten (10) percent if the Owner determines, at his discretion, that the Contractor is not making satisfactory progress or where there is other specific cause for such withholding.

D. QUALIFICATION FOR PARTIAL PAYMENT FOR MATERIALS DELIVERED

Unless modified in the Supplementary Conditions, qualification for partial payment for materials delivered but not yet incorporated into the work shall be as described below:

1. Materials, as used herein, shall be considered to be those items that are fabricated and manufactured material and equipment. No consideration shall be given to individual purchases of less than two hundred (200) dollars for any one item.
2. To receive partial payment for materials delivered to the site, but not incorporated in the work, it shall be necessary for the Contractor to include a list of such materials on the Partial Payment Request. At his sole discretion, the Engineer may approve items for which partial payment is to be made. Partial payment shall be based on the Contractor's actual cost for the materials as evidenced by invoices from the supplier. Proper storage and protection shall be provided by the Contractor, and as approved by the Engineer. Final payment shall be made only for materials actually incorporated in the work and, upon acceptance of the work, all materials remaining for which advance payments had been made shall revert to the Contractor, unless otherwise agreed, and partial payments made for these items shall be deducted from the final payment for the work.
3. Contractor warrants and guarantees that title to all work, materials, and equipment covered by any Application for Payment, whether incorporated in the project or not, will pass to Owner at the time of payment free and clear of all liens, claims, security interests, and encumbrances.

4. If requested by the Engineer, the Contractor shall provide, with subsequent pay requests, invoices received by the supplier showing payment in full has been made.

E. PAYMENT

After deducting the retainage and the amount of all previous partial payments made to the Contractor from the amount earned, the amount due will be made payable to the Contractor. Recommendations for payment received by the Owner less than forty five (45) calendar days prior to the scheduled day for payment will not be processed or paid until the following month.

70. CLAIMS FOR EXTRA WORK

In any case where the Contractor deems additional time or compensation will become due him under this Contract for circumstances other than those defined in Article DELAYS AND EXTENSION OF TIME, the Contractor shall notify the Engineer, in writing, of his intention to make claim for such time or compensation before he begins the work on which he bases the claim, in order that such matters may be settled, if possible, or other appropriate action taken. The notice of claim shall be in duplicate, in writing, and shall state the circumstances and the reasons for the claim, but need not state the amount. If such notification is not given, or if the Engineer is not afforded proper facilities by the Contractor for keeping strict account of actual costs, then the Contractor hereby agrees to waive the claim for such additional time or compensation. Such notice by the Contractor, and fact that the Engineer has kept account of the cost as aforesaid, shall not in any way be construed as proving the validity of the claim.

No extension of time will be granted to the Contractor for delays resulting from extra work that have no measurable impact on the completion of the total Work under this Contract. Claims for additional time or compensation shall be made in itemized detail and submitted, in writing, to the Owner and Engineer within ten (10) calendar days following completion of that portion of the work for which the Contractor bases his claim. Failure to make the claim for additional compensation in the manner and within the time specified above shall constitute waiver of that claim. In case the claim is found to be just, it shall be allowed and paid for as provided in Article PAYMENT FOR CHANGE ORDERS.

71. RELEASE OF LIENS OR CLAIMS

The Contractor shall indemnify and hold harmless the Owner from all claims for labor and materials furnished under this Contract. Prior to the final payment, the Contractor shall furnish to the Owner, as part of his final payment request, a certification that all of the Contractor's obligations on the project have been satisfied and that all monetary claims and indebtedness have been paid. The Contractor shall furnish complete and legal effective releases or waivers, satisfactory to the Owner, of all liens arising out of or filed in connection with the work.

72. FINAL PAYMENT

Upon completion of the work, the Contractor shall notify the Engineer, in writing, that he

has completed it and shall request final payment for that Work Performed. The Contractor shall be responsible for keeping an accurate and detailed record of his actual construction. Upon completion of construction and before final acceptance and payment, the Contractor shall furnish the Engineer record drawings (if applicable) of his construction. Upon receipt of a request for final payment and the record drawings, the Engineer will inspect and, if acceptable, submit to the Owner his recommendation as to acceptance of the completed work and as to the final estimate of the amount due the Contractor. Upon approval of this final estimate by the Owner and compliance by the Contractor with provisions in Article 71. RELEASE OF LIENS OR CLAIMS, and other provisions as may be applicable, the Owner shall pay to the Contractor all monies due him under the provisions of these Contract Documents.

73. NO WAIVER OF RIGHTS

Neither the inspection by the Owner, through the Engineer or any of his employees, nor any order by the Owner for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the Owner or Engineer, nor any extension of time, nor any possession taken by the owner or its employees, shall operate as a waiver of any provision of this Contract, or any power herein reserved to the Owner, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach. Acceptance or final payment shall not be final and conclusive with regards to latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Owner's rights under the warranty.

74. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by the Contractor of the final payment shall release the Owner and the Engineer, as representatives of the Owner, from all claims and all liability to the Contractor for all things done or furnished in connection with the work, and every act of the Owner and others relating to or arising out of the work except claims previously made in writing and still unsettled. No payment, however, final or otherwise, shall operate to release the Contractor or his Sureties from obligations under this Contract and the Performance Bond, Payment Bond, and other bonds and warranties, as herein provided.

SUPPLEMENTARY CONDITIONS

REVISIONS AND ADDITIONS TO THE GENERAL CONDITIONS

The General Conditions are hereby revised as follows:

ARTICLE 9 "ENGINEER"

Add the following:

Wherever in these Documents the word "Engineer" appears, it shall be understood to mean the Owner's representative overseeing the project for the City.

ARTICLE 34 INSURANCE & INDEMNIFICATION:

Before commencing work as specified in the contract Contractor shall obtain at its own cost and expense the following insurance in insurance companies authorized in the State of Florida, with an A.M. Best rating of A-VI or higher and shall provide evidence of such insurance to the City. The policies or certificates shall provide thirty (30) days prior to cancellation notices of same shall be given to the City by registered mail, return receipt requested, for all of the required insurance policies stated below. All notices shall name the Contractor and identify the agreement or contract number. The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees are to be added as "Additional Insured" as respects liability arising out of activities performed by or on behalf of the Contractor.

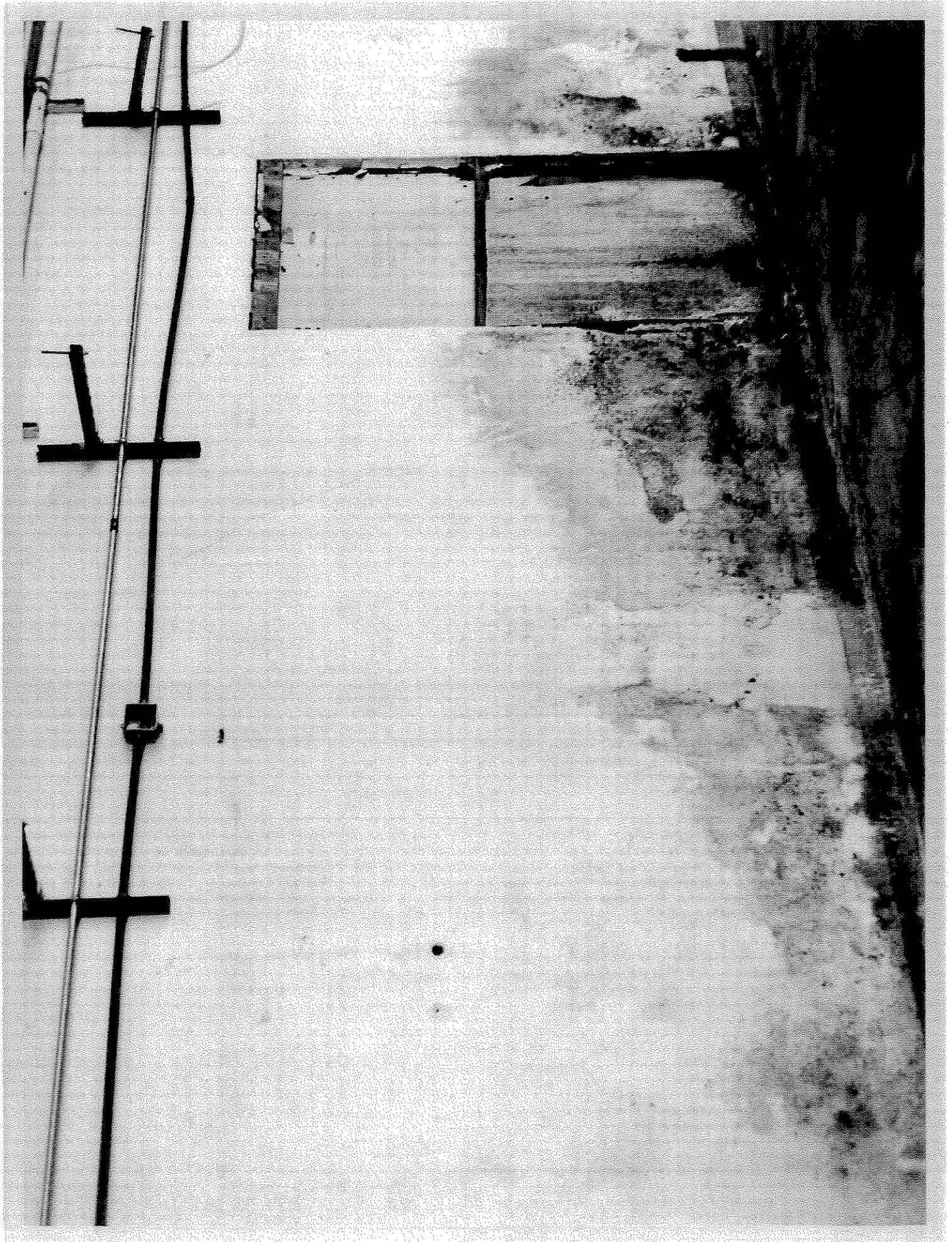
Contractor shall maintain limits no less than those stated below:

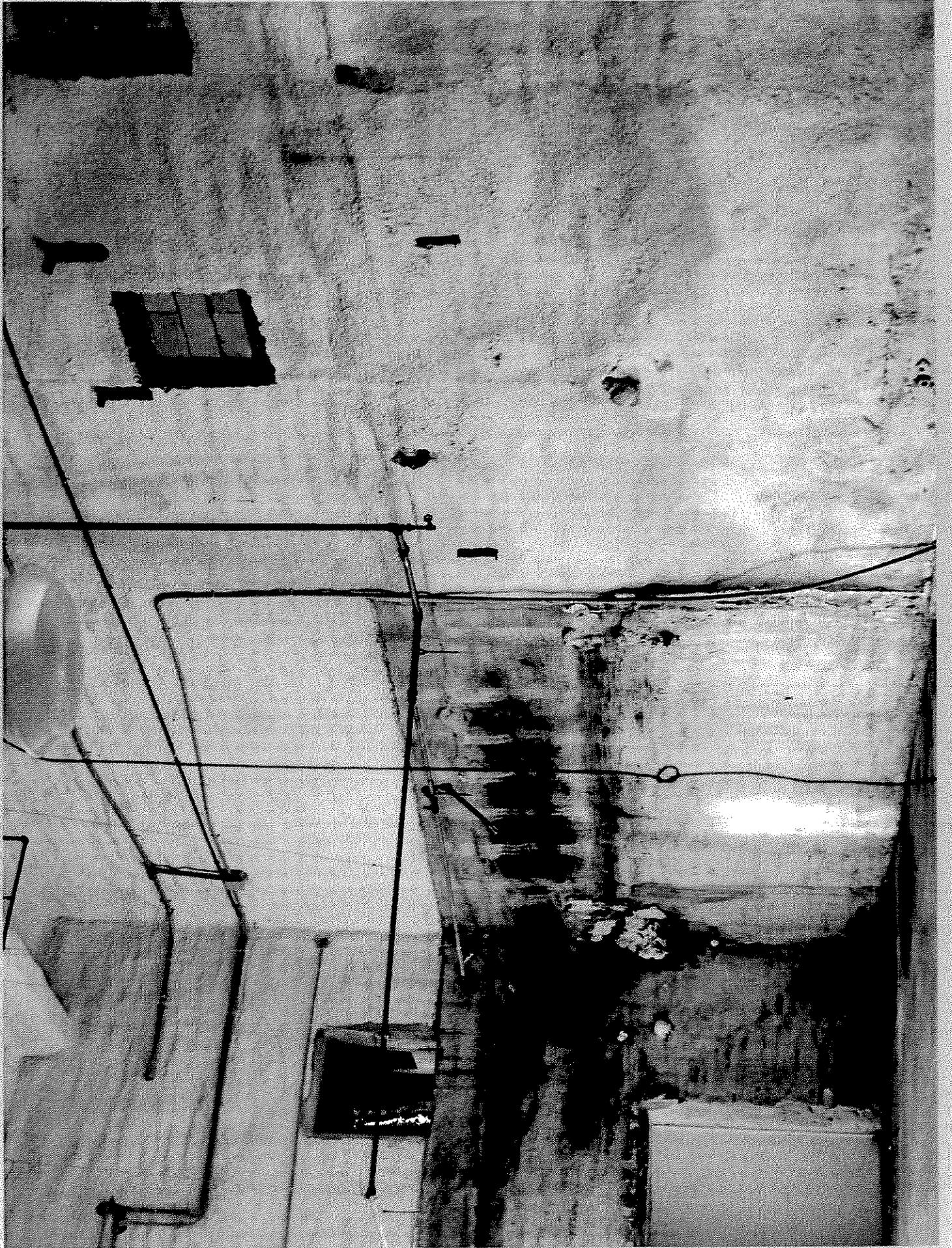
- A. **Worker's Compensation:** Statutory – in compliance with the Workers' Compensation law of the State of Florida. The coverage must include Employer's Liability with a limit of \$1,000,000 each accident.
- B. **Commercial General Liability:** Insurance with a minimum limit of liability per occurrence of One Million (\$1,000,000.00) Dollars including but not limited to bodily injury, property damage, contractual liability, products and completed operations (without limitation) premises-operations and personal injury liability.
- C. **Business Automobile Liability:** Insurance with a minimum limit of liability per occurrence of One Million (\$1,000,000.00) Dollars for bodily injury and property damage. This insurance shall include for bodily injury and property damage the following coverage:
 - Owned automobiles
 - Hired automobiles
 - Non-owned automobiles

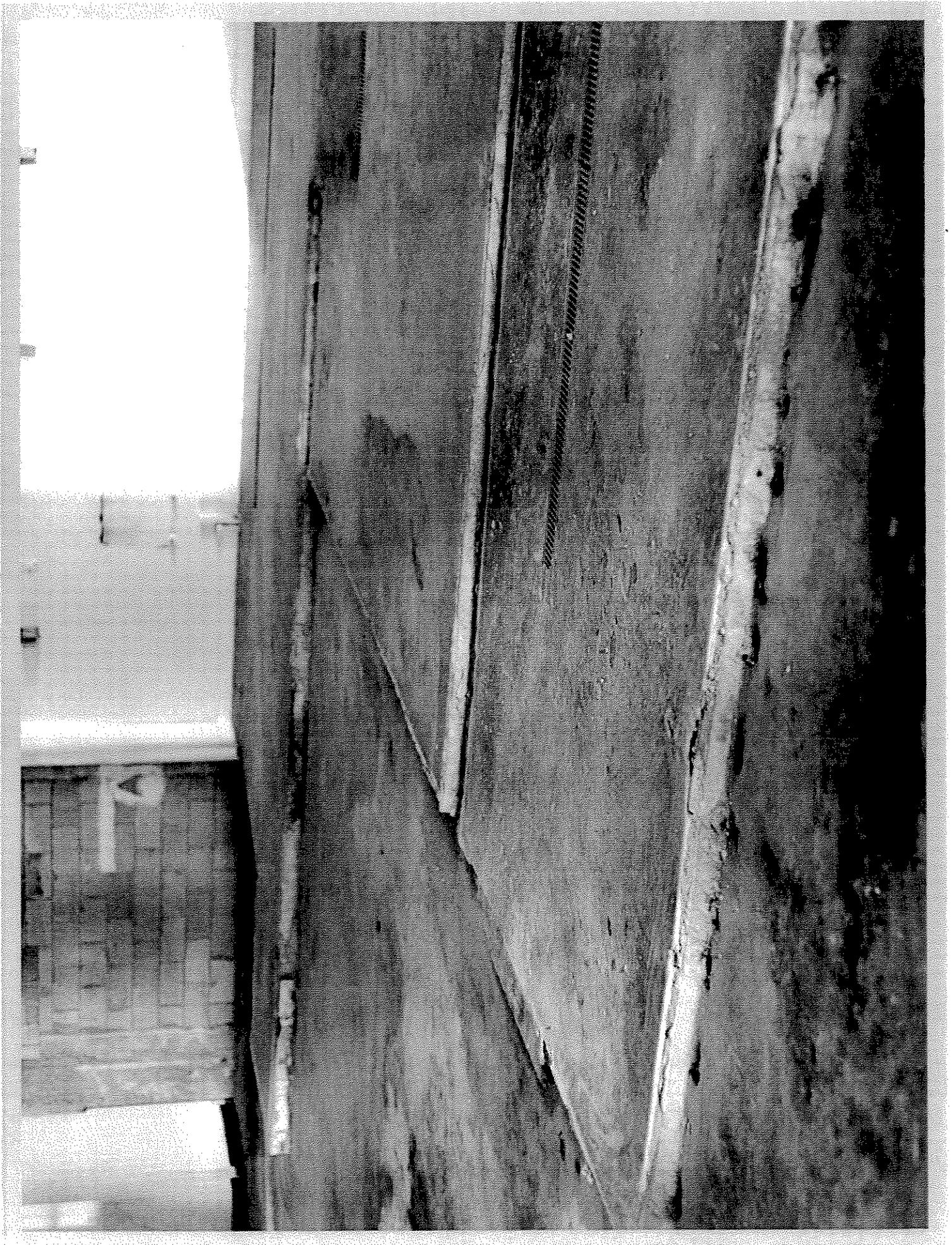
Location of operation shall be "All Locations."

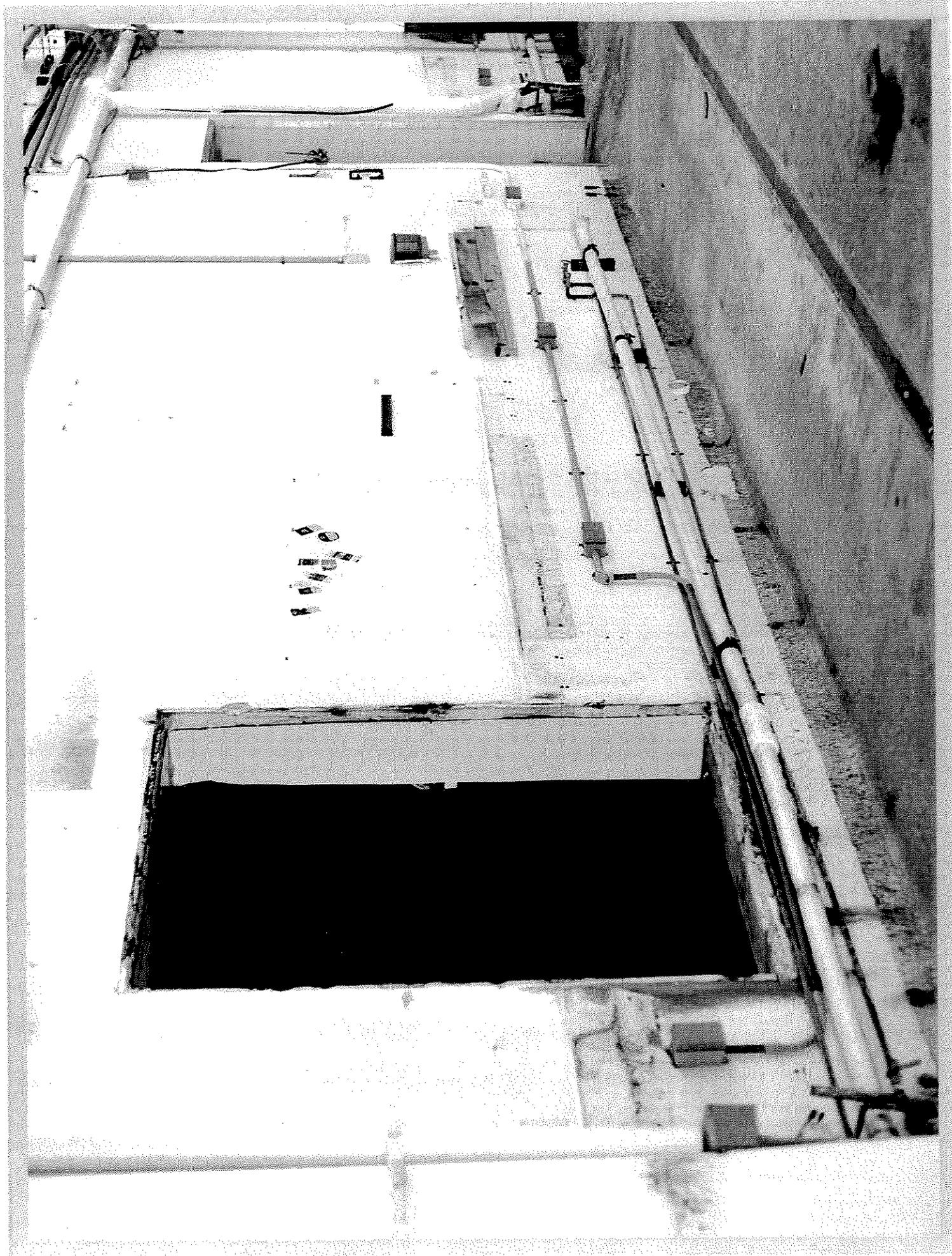
- D. **Builder's Risk Insurance:** Builder's Risk Insurance is not required as part of this contract.

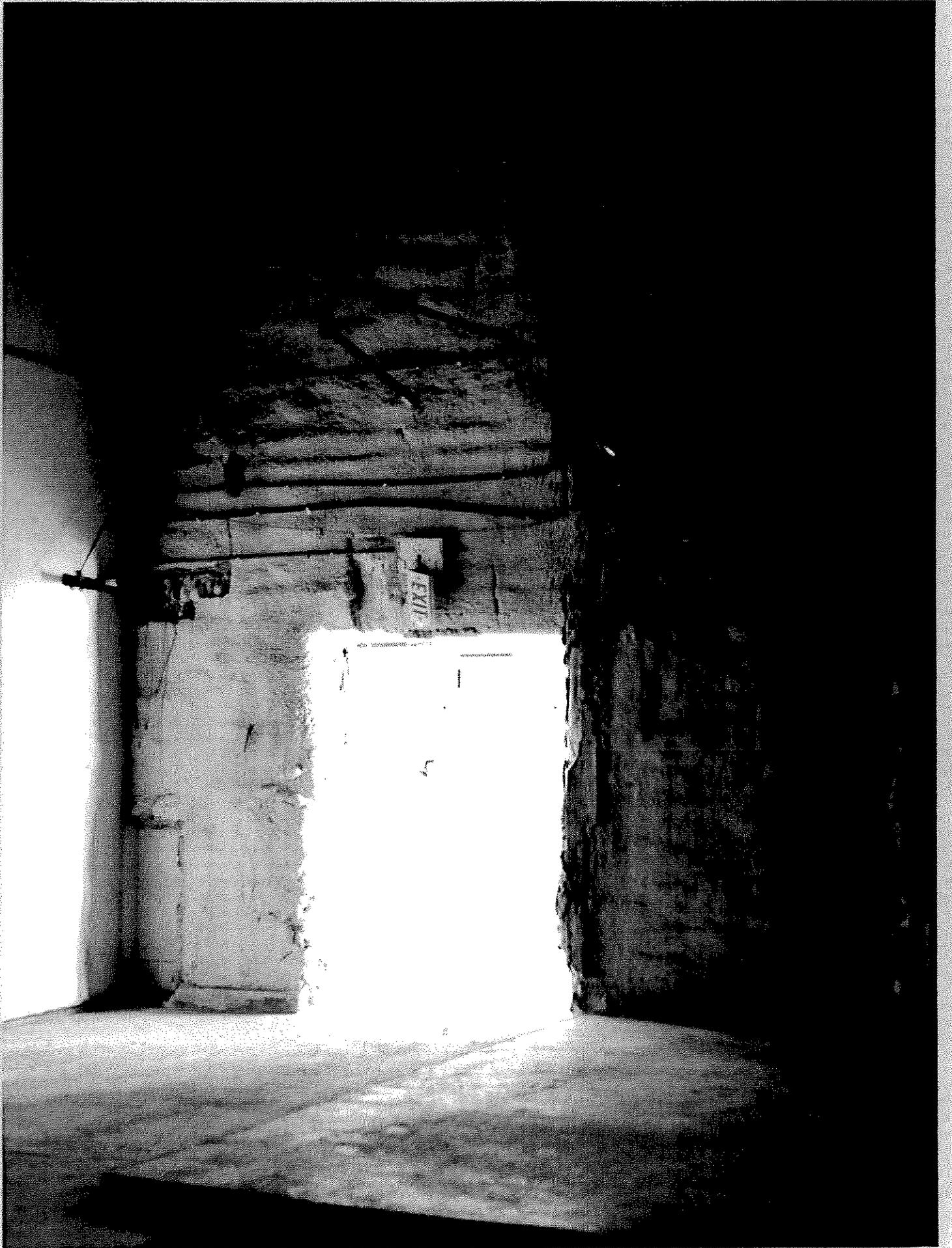
- E. All insurance required by this contract shall include a waiver of subrogation as to the Owner, Consultant, Contractor and their respective officers, agents, employees and sub-contractors.
- F. It shall be the responsibility of the Contractor to ensure that all subcontractors comply with the same insurance requirements as is required of Contractor.
- G. Certificates of Insurance meeting the required insurance provisions include in Article 34; Supplementary Conditions, shall be forwarded to Engineer, Owner's and Risk Management.

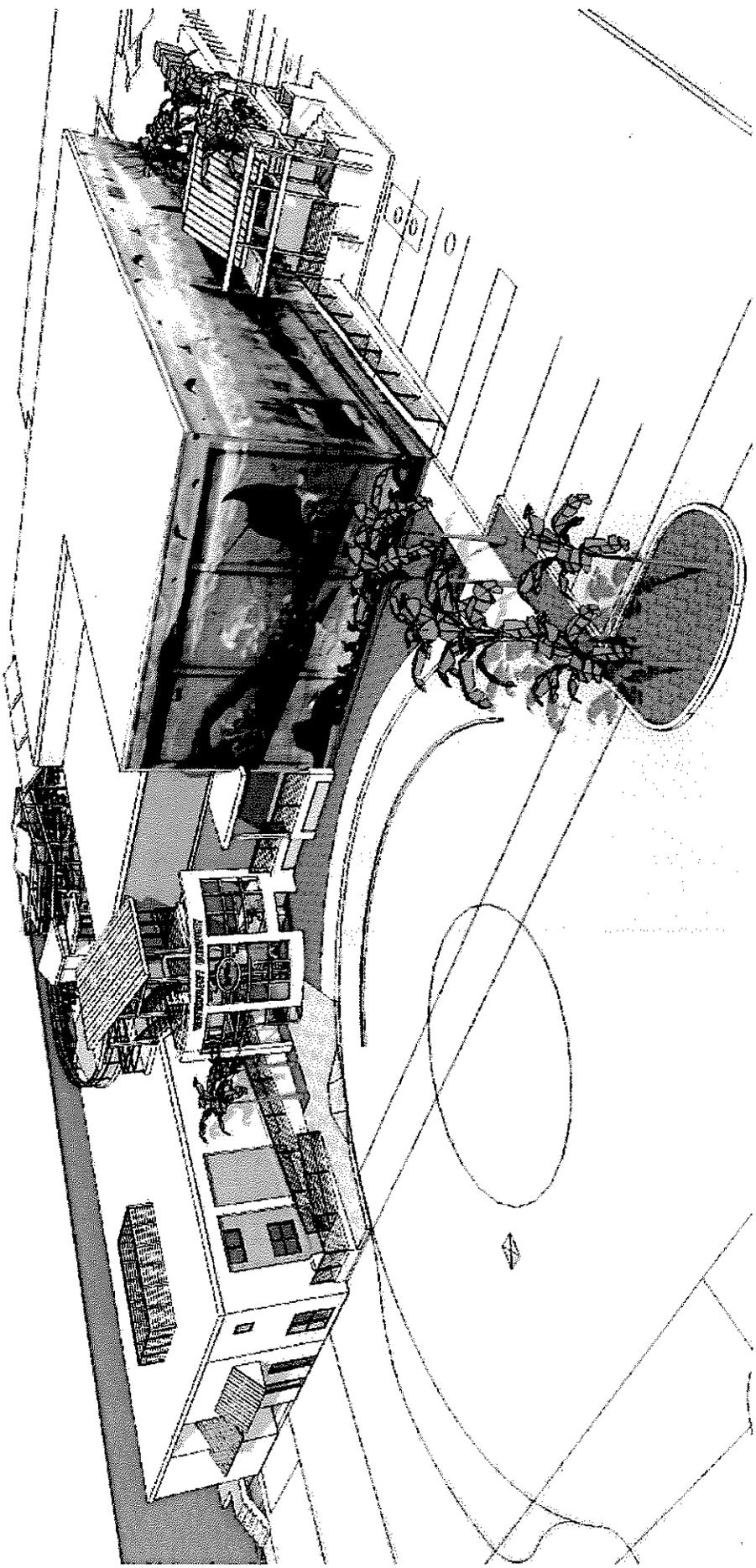


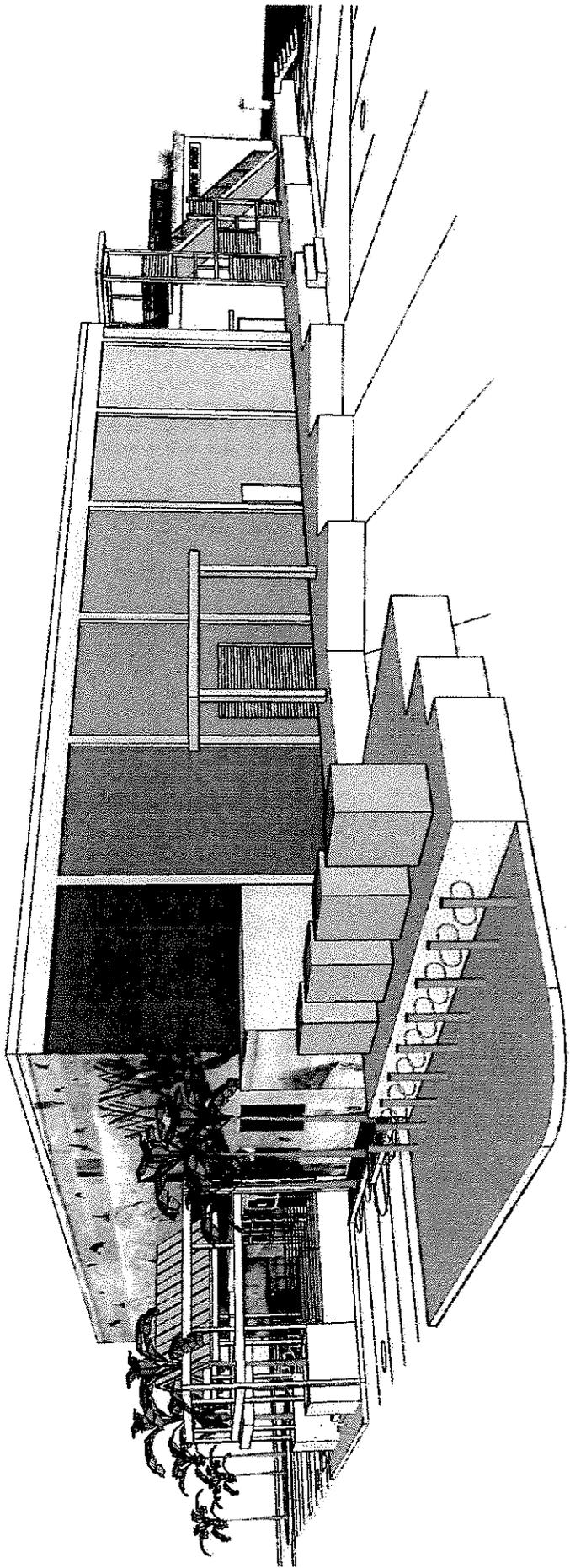


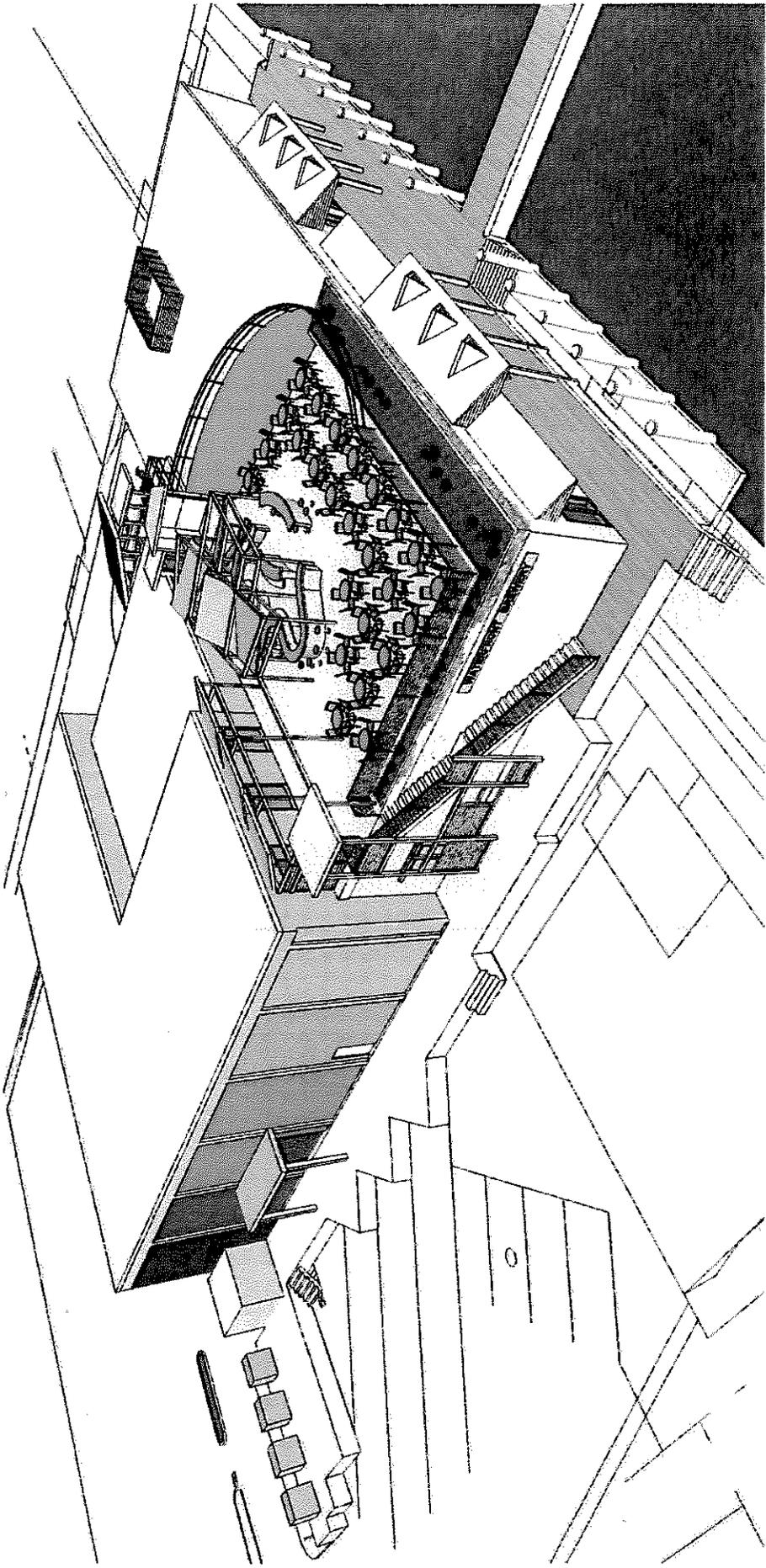












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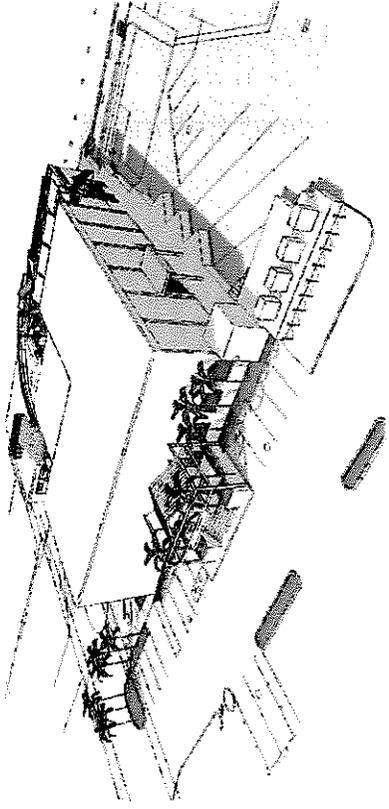
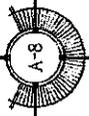
WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST, FLORIDA

SCALE

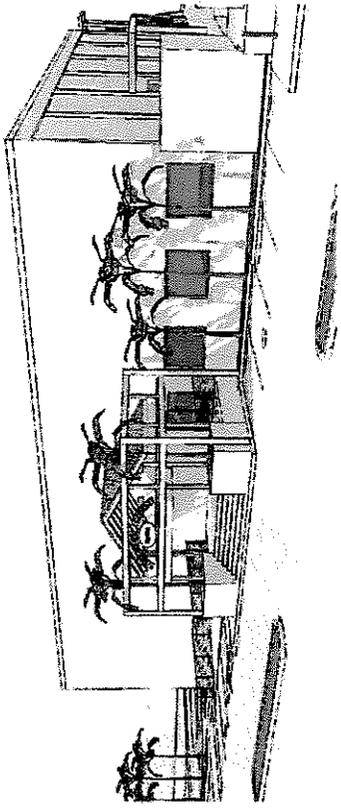
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REVISIONS

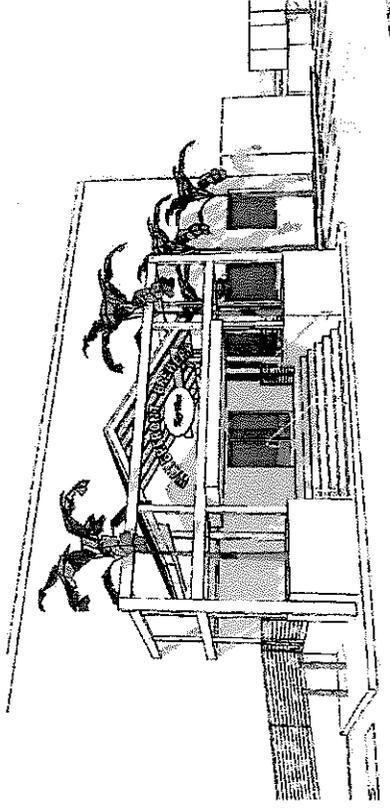
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ARCHITECTURE
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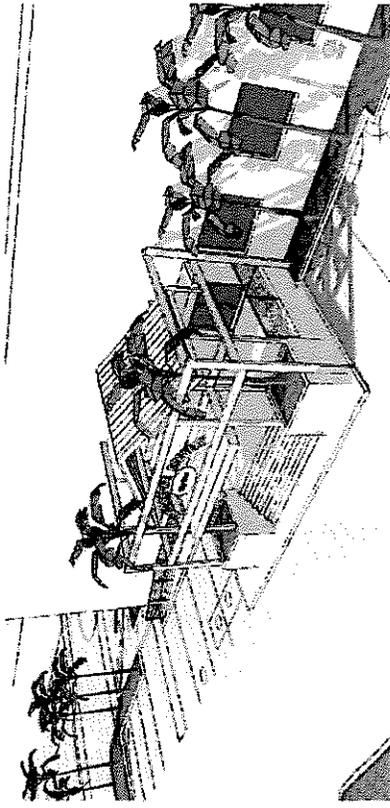
1
A-8
ENTRANCE I - AERIAL VIEW



2
A-8
ENTRANCE I - PERSPECTIVE VIEW



3
A-8
ENTRANCE I - PERSPECTIVE VIEW



4
A-8
ENTRANCE I - AERIAL VIEW

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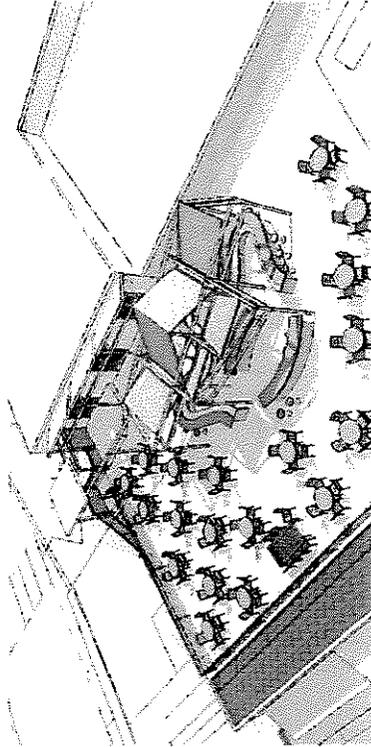
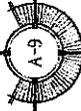
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DATE: 10/11/11
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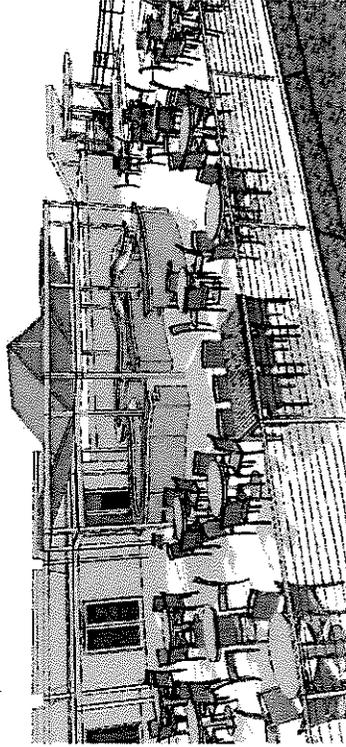
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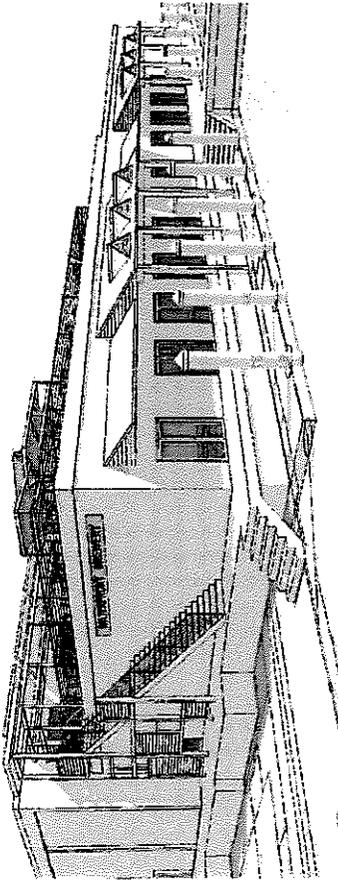
2 ROOF DECK - AERIAL VIEW

2
A-9



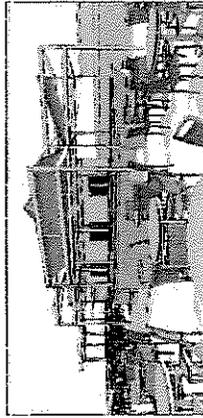
5 ROOF DECK - PERSPECTIVE VIEW

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A-9



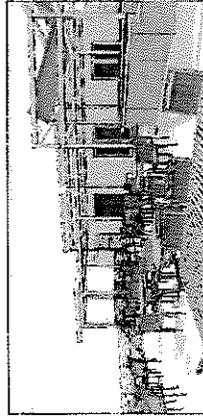
1 PERSPECTIVE VIEW

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A-9



4 PERSPECTIVE VIEW

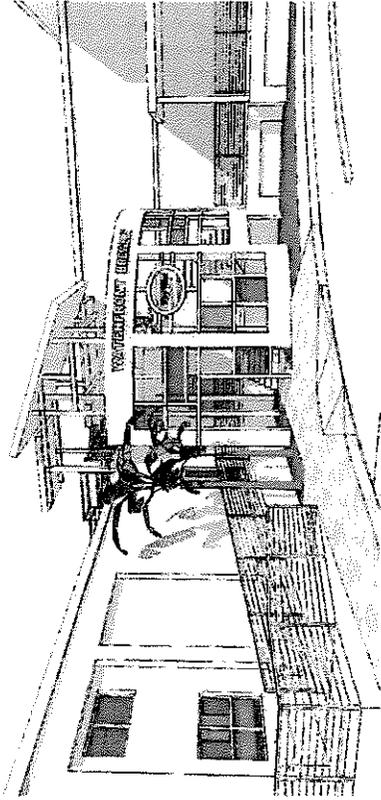
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A-9



3 PERSPECTIVE VIEW

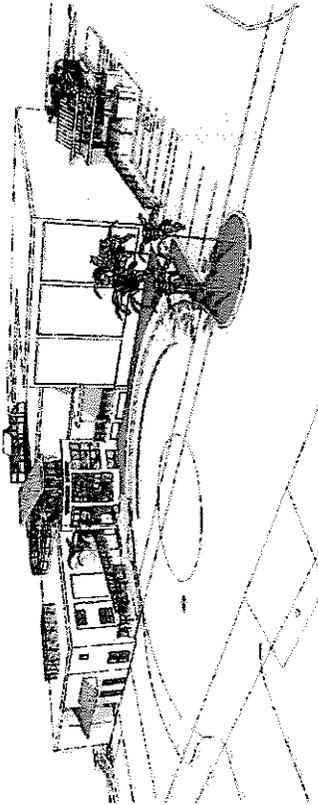
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A-9

WATERFRONT BREWERY
201 WILLIAM STREET
KEY WEST EIGHT, FLORIDA



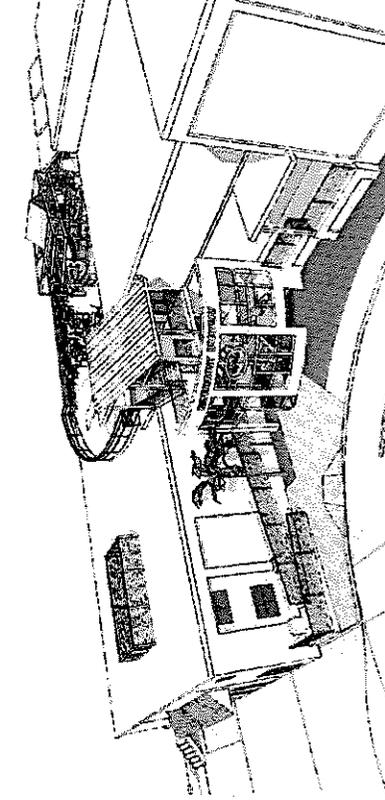
ENTRANCE II - PERSPECTIVE VIEW

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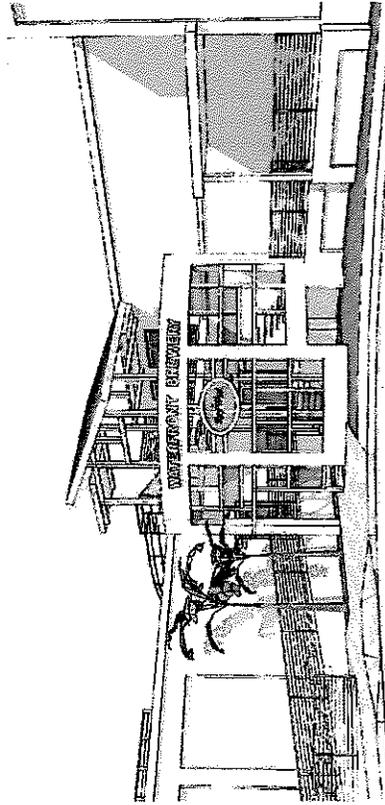
ENTRANCE II - PERSPECTIVE VIEW

1
A-7



ENTRANCE II - AERIAL VIEW

4
A-7



ENTRANCE II - PERSPECTIVE VIEW

3
A-7

