

RESOLUTION NO. 98-414

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED LEASE BETWEEN ISLAND ADVENTURES OF KEY WEST, INC. AND THE CITY; AUTHORIZING THE SETTLEMENT OF THE CASE OF ISLAND ADVENTURES OF KEY WEST, INC. V. CITY OF KEY WEST; PROVIDING FOR AN EFFECTIVE DATE

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

Section 1: That the attached lease between Island Adventures of Key West, Inc. and the City is hereby approved.

Section 2: That settlement of the case of Island Adventures of Key West, Inc. v. City of Key West is hereby authorized.

Section 3: That the City Manager is hereby authorized to complete lease negotiations and to execute the attached lease on behalf of the City.

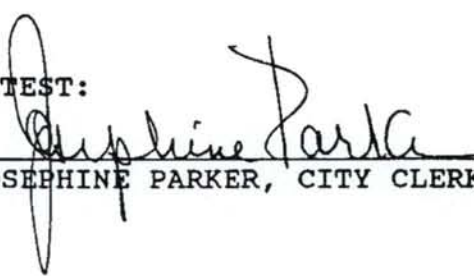
Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this _____ 1st _____ day of _____ DECEMBER _____, 1998.

Authenticated by the presiding officer and Clerk of the Commission on _____ DECEMBER 2, _____, 1998.

Filed with the Clerk _____ DECEMBER 2, _____, 1998.

ATTEST:


JOSEPHINE PARKER, CITY CLERK

STATE OF FLORIDA
COUNTY OF MONROE
CITY OF KEY WEST


SHEILA K. MULLINS, MAYOR

THIS COPY IS A TRUE COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.
WITNESS MY HAND AND OFFICIAL SEAL
this 14 day of December, 1998.

JOSEPHINE PARKER, CMC
CITY CLERK

By 

LEASE AGREEMENT

THIS AGREEMENT is entered into this 3rd day of January, 1999, between the City of Key West, Florida, a municipal corporation organized and existing under the laws of the State of Florida, (hereinafter, "City" or "Lessor") as Lessor, and Island Adventures of Key West, Inc., a Florida corporation (hereinafter, "Lessee") as Lessee.

WITNESSETH

Whereas, Lessee has heretofore leased from City through its Port and Transit Authority, and made substantial improvements to, certain property located on Mallory Square, known as the "Cable House" (the "Premises" as more specifically described herein), and

Whereas, litigation was instituted between City and Lessee concerning Lessee's rights as tenant of the Premises, and the parties desire to settle that litigation by entering into this Lease, thereby extinguishing their prior rights, duties and claims under the prior lease between the parties; and

Whereas, City wishes to lease to Lessee the Premises hereinafter described, and the parties desire a written agreement between them providing terms and conditions of a lease;

NOW THEREFORE, in mutual consideration of the benefits accruing to the parties through performance of the terms of this agreement, City and Lessee agree as follows:

1. Leased Premises.

Subject to the terms and conditions hereof, City hereby leases to Lessee and Lessee leases from City the real property located at Mallory Square, Key West, Monroe County, Florida, having a frontage of approximately 56 feet and a depth of 42.8 feet, previously occupied by Lessee and known as the "Cable House" property as depicted on Exhibit "A" hereto, less the seawall and any

riparian rights thereto. The enclosed areas within the Premises comprise approximately 639 sq. ft. consisting of "Cable House", 531 sq. ft.; and bathrooms, 108 sq. ft.; additionally, there is a covered unenclosed space consisting of a canopied entranceway, covering approximately 331.25 sq.ft.

2. Lease Term.

The term of this Lease will be five (5) years, commencing on the first day of January, 1999 (the "lease term"). At Lessor's election, the commencement date of the lease term may be delayed in order to accommodate relocation of the City office currently occupying the premises. Lessor may exercise this right by notifying Lessee, no later than December 1, 1998, of its election to delay the commencement date to February 1, 1999, and may further extend the commencement date to March 1, 1999 by giving notice to Lessee no later than January 1, 1999. Lessee shall have full access to the Premises for the sixty (60) day period preceding commencement of the lease term for the purposes of allowing an orderly removal of furnishings and equipment from the Premises, of making repairs and improvements allowed under Paragraph 3 below, and to prepare for opening of business. Provided the Lessee is not in default, it shall have the option to renew this lease for an additional five (5) year term (the "renewal term") upon no less than three months prior written notice to Lessor. At the conclusion of the Renewal term, Lessee will have the right of first negotiation for a second lease term. Absent mutual written agreement between the parties within the time provided above, this Lease will expire at the conclusion of its term and Lessee shall have no further rights hereunder. If the parties have not come to agreement by the expiration of the renewal term, as to the terms of a lease for a second term, Lessor shall have the right to explore, negotiate and execute alternatives to this lease including, without limitation, a lease of the premises to third parties.

3. **Construction; Improvements; Mechanics' Liens.**

Lessee may repair, replace and improve the buildings or structures now located on the Premises as it may deem necessary for carrying on its business. Prior to undertaking any external improvements or any additional construction, Lessee shall submit to the City Manager, and to HARC, for design approval, plans in sufficient detail to enable Lessor to determine the design, style, and character of the proposed structures. Lessee shall then submit copies of all subsequent plans and specifications to Lessor for its approval prior to implementation of the plans or specifications, and such final proposed plans shall be made a part of the Lease as an attachment to the Lease. All work shall be properly permitted and constructed in accordance with applicable building codes with ordinary and periodic inspections by the City Building Department.

Lessee shall not have any authority to create any liens for labor or material against Lessor's fee interest, and all persons contracting with Lessee for the destruction or removal of any facilities or erection and installation of improvements to and alteration or repair of the premises and all materialmen, contractors, mechanics and laborers are hereby charged with notice that they must look only to the Lessee's interest in the leased premises to secure the payment of any bill for work done or material furnished during the rental period created by this Lease. Lessor shall not be liable for, nor shall the Lessor's fee interest in the Premises be subject to, any mechanic's, materialmen's, laborer's or other liens arising out of the work performed or ordered by Lessee, and Lessee shall keep the Premises free from any such liens and shall indemnify Lessor against and pay and satisfy or bond off any such liens which may be obtained because of the acts of Lessee. Prior to taking occupancy, Lessee shall execute a memorandum of this Lease for recordation in the public records of Monroe County, putting potential lienors on notice of the prohibition against liens on

Lessor's fee interest.

4. **Use of Facilities.** The Premises may be used for retail sales/rental, marketing of real estate or attractions, snack shop/bistro, or such other use as may be permitted by Lessor. The premises may not be utilized as a bar, i.e., no hard liquor may be sold or served, and beer/wine may be served only in conjunction with the service of food. No alcoholic beverages may be sold or served except for consumption on the premises. For safety and to ensure compliance with this restriction, Lessee shall not provide any customer an alcoholic beverage in a bottle, shall ensure that all alcoholic beverages are served in glass or reusable hard plastic (i.e., not disposable) glasses, and shall prohibit the removal from the premises of any alcoholic beverage once it has been provided to a customer. The premises may not be utilized as a T-shirt shop; any sale of T-shirts must be secondary and subordinate to Lessee's primary business, and in no case may T-shirts comprise more than 30% of the Lessee's inventory. Lessee shall not utilize the decked (non-covered) areas of the Premises for sale or service of customers except in connection with food and beverage operations, in which case Lessee shall pay percentage rent (as provided in Paragraph 15b) in addition to fixed rent. The entranceway may be utilized for exterior merchandise display (but not sale) on a limited basis, i.e., no more than two display cases may be placed in the entranceway, and no merchandise may be displayed outside of a display case. This provision is in lieu of review and approval under §3-16.1 of the LDRs.

Lessee hereby further covenants and agrees:

- (a) To pay all utilities, including garbage, electricity, gas, water and sewer, consumed on the premises.
- (b) To pay all ad valorem tax, sales tax, or any other tax which may become due and payable during the lease term arising from Lessee's use of the Premises.

- (c) To maintain and keep in repair any buildings or structures located on the Premises.
- (d) To remodel and refurbish the existing building and or structures during the lease term, subject to Lessor's prior approval of the proposed scope of exterior work.
- (e) To keep the entire Premises clean and free of debris.

5. Use of Premises; Indemnification.

It is expressly covenanted between the parties that Lessee will not use or suffer or permit any person to use in any manner whatsoever the Premises, or the building or improvements now on or hereafter constructed or placed on the Premises, nor any portion thereof, for any purpose calculated to injure the reputation of the Premises or of the neighboring property, nor for any purpose or use in violation of federal, state, or local law. Lessee will, at its own cost, keep the building situated on the property and all the appurtenances thereto, and any walk or steps in a good, safe and secure condition and will conform to all municipal ordinances or laws. Lessee agrees to keep and save City forever harmless from any penalty or damage or charges imposed for any violation of any of such laws, resulting from Lessee's negligence. Lessee further agrees to indemnify and save and keep harmless City, its officers, employees, and agents from all actions, claims, penalties, and judgments for damages at law or equity of any nature whatsoever arising, or alleged to arise out of Lessee's negligence while in the course of the operation of its business or in the exercise of rights or obligations conferred by this Agreement. Lessee shall defend City, and shall pay all reasonable expenses incurred by City in defending itself, with regard to all damages and penalties City may legally be required to pay as a result of the negligence of Lessee as aforesaid. Expenses shall include all incidental reasonable expenses including attorney fees, and shall include a reasonable value of any services rendered by the Office of the City Attorney.

6. **Insurance.**

Lessee agrees to provide at its expense comprehensive liability insurance insuring itself and City against all claims of damages or injury to persons or property arising for any reason out of Lessee's tenancy or use of the Premises, or arising out of its activities related to the lease use, or otherwise arising from its exercise of rights or failure to perform obligations pursuant to this Lease. The insurance policy shall be written by a solvent insurance company in good standing and fully licensed to do business in Florida and shall provide a minimum of \$1,000,000 coverage per occurrence combined single limit and property damage. The policy shall show City as an additional named insured, and shall provide that it cannot be canceled or revoked except after a minimum of thirty (30) days written notice to City. A true copy of the insurance contract shall be filed with the City Clerk within sixty (60) days after execution of this Lease, and shall be maintained on file throughout the lease term. Lessee's failure to maintain the insurance policy in full force and effect at any time during the lease term shall be a default hereunder, and upon such default Lessee shall immediately suspend all lease use and shall provide to City written notice of default.

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

If Lessee falls under the State of Florida Workers' Compensation Law, workers' compensation coverage shall be provided for all employees where the Lessee is obligated to do so by operation of law. The coverage shall be for Statutory Limits in compliance with the applicable

state and federal laws.

7. Rules and Regulations.

The Lessee agrees to execute, comply with and abide by all applicable laws, codes, ordinances, rules, and regulations of the Lessor as existing and as may be promulgated by Lessor during the term hereof, and it shall be the duty of the Lessee to become and remain informed and familiar with the same as and when promulgated, which laws, ordinances, rules, regulations and directives are incorporated herein by reference and made a part hereof. Failure or refusal to comply with the provisions of this article shall be a default of the terms hereof and cause for termination of this Lease. The Lessor shall give the Lessee fifteen (15) days notice prior to the adoption of any changes or amendments to its rules and regulations that are applicable to this Lease. Lessor may regulate vendor and supplier deliveries to the Premises, provided that access to the Premises for such deliveries is not unreasonably impaired and the Lessee enjoys the right of delivery access no more restrictive than enjoyed by Lessor's other Mallory Square tenants.

8. Personal Property.

All personal property placed or moved in or on the Premises shall be at the risk of the Lessee, the owner thereof, or the person or entity responsible as a matter of law and fact, and the Lessor shall not be liable for any damage or loss to personal property for any act or negligence of any co-lessee, sub-tenant, invitee, guest, occupant, or of any other person whomsoever.

9. Safety, Correction, Etc.

The Lessee shall promptly execute and comply with all statutes, ordinances, rules, regulations, and requirements of the Federal, State, County and City Government and of any and all of their departments and bureaus, applicable to the Premises for safety and correction, prevention

and abatement of nuisances or other grievances in, upon, or connected with the Premises and its operation. Lessee shall obtain and maintain all licenses, permits, and other approvals necessary to operate its business.

10. Default; Termination.

The prompt payment of the rent for the Premises upon the terms named, and the faithful observance of the rules, regulations and directives which are by reference made a part hereof, are the conditions upon which the Lease is made and accepted, and any failure on the part of the Lessee to comply with the terms of this Lease or any of the rules and regulations or directives now in existence or which may hereafter be made may, at the option of the Lessor, result in a termination of this Lease as hereinafter provided. It is further covenanted and agreed between the parties that in case of default by Lessee in the payment of any rent herein provided for upon the day the same becomes due or payable or in the failure to perform any of the covenants of this Lease, and such default shall continue for thirty (30) days after notice is given in writing by City, City may, at its option, forthwith declare this Lease terminated and immediately re-enter and repossess the Premises.

The non-prevailing party agrees to pay all costs and expenses and a reasonable attorney's fee in the event legal action is taken by either party because of any violation of the terms of this Lease or of any code section, ordinance, regulation or rule applicable to the Lessee's use of the Premises, including but not limited to those governing the payment of rent.

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

11. Condition of Premises.

The City shall deliver the premises to the Lessee in good, safe, clean, tenantable, condition which shall include basic and safe electrical and plumbing. Lessee hereby accepts the premises in the condition they were in at the beginning of this Lease, subject to the provisions of Paragraph 17 with regard to Hazardous Materials on the Premises, and agrees to maintain the Premises in the same condition, order and repair as they are at the commencement of this term, excepting only reasonable wear and tear arising from the use thereof under this Lease, and to make good to the Lessor immediately upon demand any damage caused by any act or neglect of the Lessee, or of any invitee, employee, agent, guest, or person under the direction and control of the Lessee.

12. Assignment, Sale, or Sublease.

Lessee shall not sell or assign this Lease or sublet the Premises without the Lessor's consent, which shall not be unreasonably withheld. Any sale, assignment, or sublease must be in writing and only for the operation of any business activity which Lessee would be entitled to operate pursuant to Paragraph 4 of this Lease. Any purchaser, assignee or sublessee shall be subject to all the terms and conditions of this Lease, unless the parties mutually agree to new or amended term and conditions. No such sale, assignment or sublease shall relieve Lessee of its obligations to Lessor hereunder.

13. Waiver of Breach Not Continuing Waiver.

It is mutually covenanted and agreed between the parties that no waiver of a breach of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same covenant.

14. **Binding Upon Successors, Etc.**

This Lease and all its terms and conditions shall apply to and be binding upon and inure to the benefit of the heirs, executors, successors, administrators and assigns (where assignment has been permitted) of the parties where the context so requires or admits.

15. **Rental.**

(a). **Fixed Rent.** Lessee agrees to pay to Lessor as rent for the Premises the sum of \$22,867.44 per annum, payable in equal monthly installments of \$1,905.62 each and every calendar month during the first five years of the initial lease term. This rent was calculated on the basis of \$28.42 per square foot of enclosed area and \$14.21 per square foot of covered unenclosed area. All monthly rental installments are payable in advance on the first of each month beginning with the commencement date, and shall be made to Finance Department of the City. Any monthly rental not received by the tenth day of the month shall bear simple interest at 10% per annum from such sixth day until the date it is received. 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. At the ^{10/1/04} ~~end of the fifth year of the lease term,~~ fixed rent shall be increased for the period before the next scheduled adjustment of the rental by multiplying the monthly rental by a fraction, the numerator of which shall be the Consumer Price Index (All Cities, All Items 1984-85 = 100) for the beginning month of the lease year for which the adjustment is to be made and the denominator of which is Consumer Price Index for the same month at the beginning of the lease term. The resulting figure shall be added to the amount of monthly installment payable for the month of the adjustment, which total amount shall be the new minimum monthly rent. Fixed rent shall only be increased and never decreased. "Lease Year" shall mean the 12-month period beginning with the commencement date

of this Lease as heretofore described and each successive 12-month period thereafter during the term of this Lease.

The City Manager may approve certain capital and other improvements on the Premises, which capital improvements would become the exclusive property of the City at the end of the lease term or renewal thereof. The City and Lessee agree that Lessor will allow to Lessee a credit on Lessee's rent no more than 15% of the rental each year, which would take into consideration repairs to the existing structures and permanent improvements that would increase or preserve the value of the City's property at Lessee's expense, unless a greater amount is approved by resolution of the City Commission. The said credit shall not be cumulative from year to year.

(b). Percentage Rent : Food and Beverage Receipts. In addition to subsection (a) above, Lessee agrees to pay Lessor as percentage rent a sum equal to five percent (5%) of any annual Gross Sales of food and beverage in excess of \$275,000. Within thirty (30) days following the end of each Lease Year of the lease, Lessee shall provide Lessor with an accurate and complete copy of the State of Florida Department of Revenue, Sale and Use Return Form DR-15 (or such forms as the State of Florida shall hereafter substitute for this form) showing the full amount of Lessee's food and beverage Gross Sales from the Premises during the immediately preceding lease year and a certification from the Lessee or sub-lessee's CPA that all deductions from Gross Sales are true and accurate and comply with the terms of this Lease. Lessee's payment of percentage rent shall be due Lessor no later than thirty (30) days from the expiration of each Lease Year. Lessee is subject to a Fifty Dollar (\$50.00) late submission penalty should Lessee not furnish to Lessor copies of Form DR-15 by the twentieth (20th) day of each new Lease Year. If by the end of any such preceding year of the Lease, the Gross Sales in the Premises during such Lease Year exceeded the

amounts set forth herein, Lessee shall pay to Lessor, at the time of delivery of this statement, an amount equal to the percentage rent times the Gross Sales exceeding the amounts set forth above. The term "Lease Year" shall mean the period of time from January 1 to December 31 of each calendar year.

"Gross Sales" shall mean the amount of sales of all food and beverages sold on site from the Premises by Lessee, or any sub-lessee or licensee. Lessee may deduct from Gross Sales: (i) any refunds to customers, or discounts to customers or employees provided they have been included in Gross Sales, (ii) the amount of any sales tax levied upon sales and payable over to the appropriate governmental authority, (iii) Off-Premises sales or catering of food and beverages including, without limitation, foodstuffs sold at festivals, or Off-Premises generally. Lessee shall be permitted to deduct catering and Off-Premises sales from Gross Sales to the extent the same in the aggregate do not exceed ten percent (10%) of annual Gross Sales sold at the Premises. All Gross Sales relating to mail-order, catering and Off-Premises sales in excess of ten percent (10%) of annual Gross Sales shall be included in the definition of Gross Sales for purposes of determining Lessee's percentage rent. "Off-Premises" shall mean sales derived from events located outside of the premises described in Paragraph 1.

16. Security Deposit

Lessee hereby deposits the sum of Two Thousand Five Hundred NO/100 Dollars (\$2,500.00) for the full and faithful performance by the Lessee of each and every term, covenant and condition of this Lease. In the event Lessee defaults in respect to any of the terms, provisions, covenants and conditions of the Lease, including, but not limited to, payment of any rentals, the Lessor may use, apply or retain the whole or any part of the security so deposited to the payment of any such rents

in default or for any other sum which the Lessor may expend or be required to expend by reason of the Lessee's default, including any damages or deficiency in reletting the Premises, whether such damages or deficiency may accrue before or after summary proceedings or other re-entry by the Lessor and in such event Lessee shall forthwith upon demand restore the security deposit to the original sum deposited. In the event Lessee shall fully and faithfully comply with all the terms, provisions, covenants and conditions of this Lease, the security deposit or any balance thereof shall be returned to the Lessee after the time fixed as the expiration of this Lease. The Lessee shall not be entitled to any interest on the security deposit. Furthermore, the Lessee shall not be entitled to any return of the security deposit until after the keys have been returned to the Lessor and the Lessor has had the opportunity to inspect the Premises and to determine that said Premises have been left in good, tenantable condition, normal wear and tear excepted.

17. Additional Rent; Utilities

Should any taxes be imposed upon the Premises or upon the Lessor, Lessee, occupant or whomsoever, from any source whatsoever, including but not limited to sales tax, ad valorem tax, and submerged land lease fees, such tax or fee shall be the responsibility of the Lessee and the Lessee shall pay same promptly when due as additional rent hereunder. Ad valorem real property taxes for the Premises for each calendar year hereunder shall be paid by the Lessee in the month of November of that calendar year, and proof of payment of same shall be delivered to Lessor promptly after payment

Lessee shall pay for all utilities associated with the use of the Premises including, but not limited to , water, electricity, sewer, solid waste and gas (if applicable).

18. Bankruptcy - Insolvency

If at any time after the date of Lease (whether prior to the commencement date of or during the Lease Term): (a) any proceedings in bankruptcy, insolvency or reorganization shall be instituted against Lessee pursuant to any Federal or State law now or hereafter enacted or any receiver or trustee shall be appointed for all of any portion of Lessee's business or property or any execution or attachment shall issue against Lessee or Lessee's business or property or against the leasehold created hereby and any of such proceedings, process or appointment not be discharged and dismissed within sixty (60) days from the date of such filing, appointment or issuance; or (b) Lessee shall be adjudged a bankrupt or insolvent or Lessee shall file a voluntary petition in bankruptcy or petitions for (or enters into) an arrangement or for reorganization, composition or any other arrangements with Lessee's creditors under any Federal or State law now or hereafter enacted or this Lease or the estate of Lessee shall herein pass to or devolve upon, by operation of law or otherwise, anyone other than Lessee (except as herein provided), the occurrence of any one of such contingencies shall be deemed to constitute and shall be construed as a repudiation by Lessee of Lessee's obligations hereunder and shall cause this Lease, ipso facto, to be canceled and terminated, without thereby releasing Lessee; and upon such termination Lessor shall have the immediate right to re-enter the Premises and to remove all persons and property therefrom and this Lease shall not be treated as an asset of the Lessee's estate and neither the Lessee nor anyone claiming by, through or under Lessee by virtue of any law or any order of any court shall be entitled to the possession of the Premises or to remain in the possession thereof. Upon the termination of this Lease, as aforesaid, Lessor shall have the right to retain as partial damages and not as penalty, any prepaid rents and the security deposit hereunder and Lessor shall also be entitled to exercise such rights and remedies to recover from Lessee, as

damages, such amounts as are specified herein, unless any statute or rule of law governing the proceedings which such damages are to be proved shall lawfully limit the amount of such claims capable of being so proved, in which case Lessor shall be entitled to recover, as and for liquidated damages, the maximum amount which may be allowed under any such statute or rule of law. As used in this Paragraph, the term "Lessee" shall be deemed to include and shall apply to Lessee and its successors or assigns, if any, of the Lessee's obligations under this Lease.

19. Hazardous Material; Environmental Conditions.

Neither Lessee nor Lessee's agents shall cause or permit any Hazardous Materials to be released into the environment, or disposed of, on, in, under or about the leased premises without the prior written consent of Lessor, which consent Lessor may withhold in its reasonable discretion; provided, however, that this provision shall not preclude the use of common household solvents, cleaners, paint, batteries and like materials. On the expiration or earlier termination of this Lease, Lessee covenants to restore the Premises by removing, at its sole cost and expense any and all Hazardous Materials brought on, stored, used, generated, or released into the environment by Lessee or Lessee's agents.

To the fullest extent permitted by law, Lessee hereby agrees to indemnify, defend, protect, and hold harmless Lessor and Lessor's agents, and its respective successors and assigns, from any and all claims, judgments, damages, penalties, fines, costs, liabilities, and losses that arise during the lease term directly from the presence of Hazardous Materials caused or resulting solely from the placing of hazardous materials on the Premises by Lessee or Lessee's agents. This indemnification by Lessee of Lessor and Lessor's representatives includes any and all reasonable costs incurred resulting from any cleanup, remedial, removal, or restoration work required by any federal, state, or

local governmental agency or political subdivision because of the presence of such Hazardous Materials. Lessee shall promptly notify Lessor of any release of Hazardous Materials in, on, or about the Premises that Lessee becomes aware of during the term of this Lease, whether caused by Lessee, Lessee's agents, or any other persons or entities.

As used in this Lease, the term "Hazardous Materials" shall mean and include any hazardous or toxic materials, substances, or wastes including (i) hazardous substances in Florida Statutes §403.703 as more specifically listed in Section 17-730.030 Florida Administration Code, (ii) any materials, substances, or wastes that are toxic, corrosive, or reactive and that are regulated by any local governmental authority, any agency of the State of Florida, or any agency of the United States Government, (iii) friable asbestos, (iv) urea formaldehyde foam insulation, (v) polychlorinated biphenyl ("PCB's"), (vi) Freon and other chlorofluorocarbons, (vii) those designated as hazardous wastes pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 USC Section 6903 as more specifically listed in 40 C.F.R. Part 261 and (viii) those designated as hazardous substances pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Recovery Act, 42 U.S.C.S. Sec. 9601 et. seq.

20. Notice.

All notices, demands, or other writings in this Lease provided to be given or made or sent, or which may be given or made or sent, by either party to this Lease to the other, shall be deemed to have been fully given or made or sent when made in writing and received by hand delivery or Certified mail with sufficient postage pre-paid thereon to carry it to its addressed destination and addressed as follows:

TO LESSOR: City Manager
525 Angela Street
Key West, FL 33040

TO LESSEE: Island Adventures of Key West, Inc.
Attn: Larry or Barbara Griffith
P.O. Box 1117
Key West, FL 33041

The address to which any notice, demand, or other writing may be given or made or sent to any party mentioned above may be changed by written notice given by the party mentioned above.

21. Captions.

Headings labeling any provisions herein are for convenience only, and shall not in any way be construed as affecting, limiting, expanding, or stating the contents, meaning, or intent of the Lease.

22. Governing Law.


It is agreed that this Lease shall be governed by, construed, and enforced in accordance with the laws of the State of Florida.

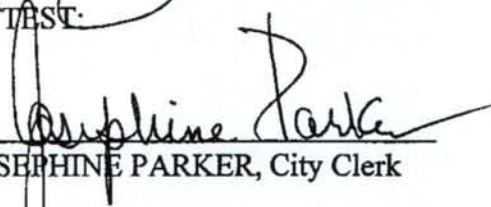
23. Entire Agreement.

This Lease sets forth all the covenants, promises, agreements, and understandings between City and Lessee concerning the leased Premises. No subsequent alteration, amendment, change, or addition to this Lease shall be binding upon City or Lessee unless reduced to writing and duly executed by both parties.

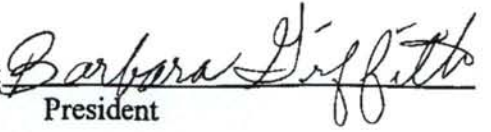
IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

CITY OF KEY WEST, FLORIDA

BY: 
Julio Avel, City Manager

ATTEST:

JOSEPHINE PARKER, City Clerk

ISLAND ADVENTURES OF KEY WEST, INC.

BY: 
President

ATTEST:

Secretary

NORTH

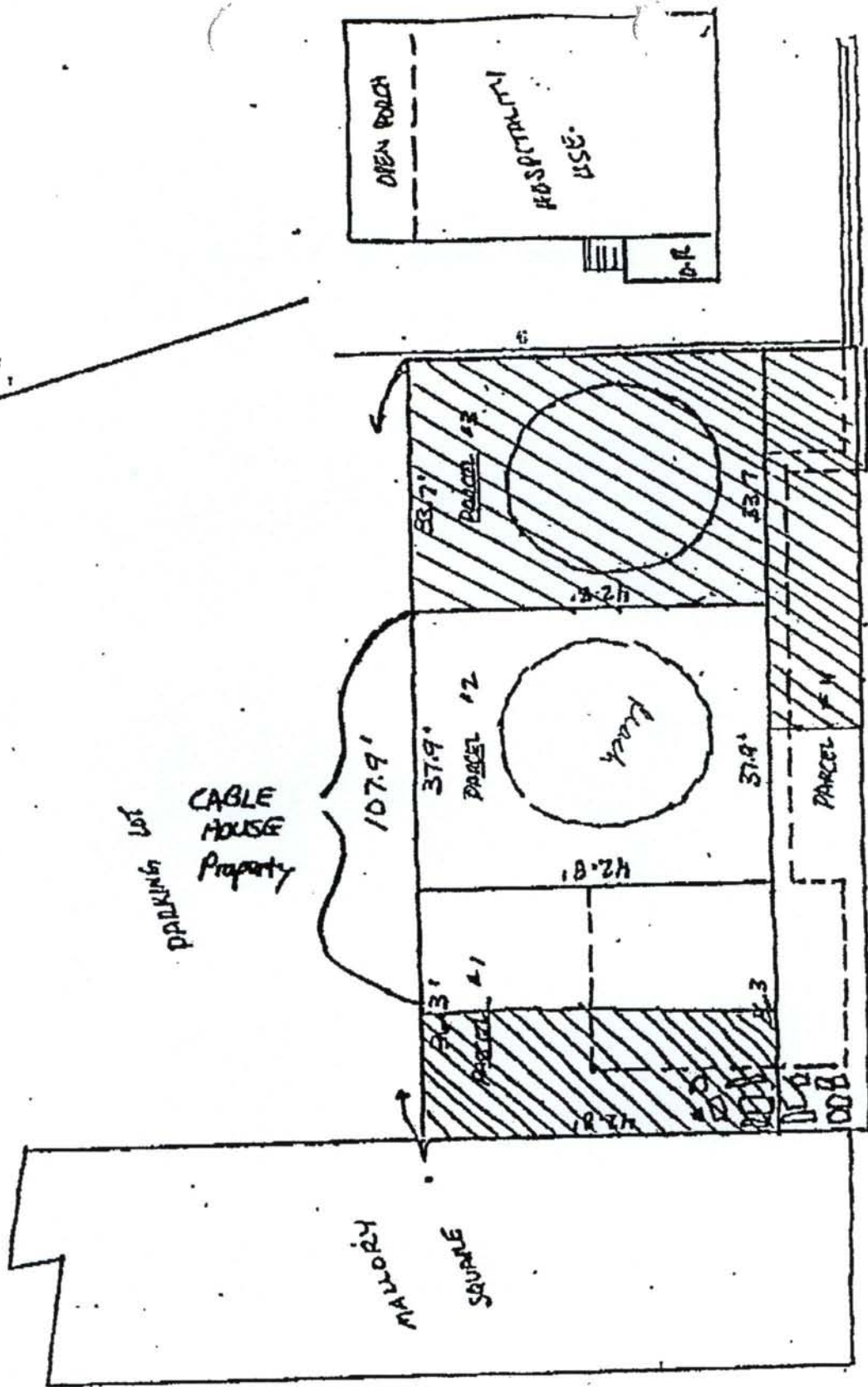


EXHIBIT A