

RESOLUTION NO. 18-247

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED SECOND AMENDMENT TO LEASE BETWEEN THE CITY OF KEY WEST AND TROPICAL SHELL AND GIFTS, INC. FOR THE KEY WEST AQUARIUM PROPERTY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, tenant has met the conditions contained in newly revised Key West Code of Ordinances section 2-941(b);

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

Section 1: That the attached Second Amendment to Lease between the City and Tropical Shell and Gifts, Inc. for the Key West Aquarium Property is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this
21st day of August, 2018.

Authenticated by the Presiding Officer and Clerk of the Commission
on 22nd day of August, 2018.

Filed with the Clerk on August 22, 2018.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Clayton Lopez	<u>Yes</u>
Commissioner Sam Kaufman	<u>Yes</u>
Commissioner Richard Payne	<u>Yes</u>
Commissioner Margaret Romero	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE entered into this 28 day of August, 2018, among THE CITY OF KEY WEST, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida (the “Lessor”), and TROPICAL SHELL & GIFT, INC., a Florida corporation, (the “Lessee”). Lessor and Lessee are sometimes hereinafter referred to as the “Parties” collectively or a “Party” individually.

RECITALS

WHEREAS, Lessor and Lessee entered into a Lease dated July 3, 1978, as confirmed by City of Key West Resolution No. 78-87 (the “Original Lease”); and

WHEREAS, Lessor and Lessee entered into an Amendment to Lease dated September 9, 1981, which amendment provided for an Investment Credit, and an Option to Renew the Original Lease for an additional twenty-five years after the expiration of the Original Lease, beginning July 15, 2003 and ending July 14, 2028, as confirmed by City of Key West Resolution No. 81-92 and City of Key West Resolution No. 95-419 (the “First Amendment”).

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and other valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. Recitals. That the recitals contained herein are true and correct and incorporated herein by reference.
2. Option to Renew. Lessee is hereby granted an option to renew its tenancy for one (1) additional ten (10) year renewal term beginning July 15, 2028 and ending July 14, 2038 (the “Second Renewal Term”), subject to the following terms and conditions:
 - (a) Lessee shall give written notice to Lessor at least one hundred eighty (180) days before expiration of the prior term, of Lessee’s exercise of the option to renew its tenancy.
 - (b) Lessee must not be in default of any of the conditions or covenants of this Lease, and the Lease must not have been otherwise terminated by Lessor.
3. Improvements. As a condition of this Second Amendment:
 - (a) Lessee represents and warrants that the improvements shown on the attached **Exhibit A** have been completed within the timeframes set forth on such schedule.
 - (b) Lessee agrees to make the improvements shown on the attached **Exhibit B**, or an equal dollar amount of improvements that would be approved by the City of Key West (such approval shall not be unreasonably withheld), within twenty-four (24) months from the date of this Second Amendment.
4. Authority. Each person executing this Second Amendment on behalf of a Party represents and warrants that it/he/she is has the full power, authority, and legal right to execute and deliver this Second Amendment on behalf of such Party and that this Second Amendment

constitutes the legal, valid and binding obligations of such Party, its heirs, representatives, successors and assigns, enforceable against such Party or Parties in accordance with its terms. Lessor hereby represents and warrants that it has obtained all necessary approvals and consents required for this Second Amendment.

5. Counterparts. To facilitate execution of this Second Amendment, this Second Amendment may be executed in one or more counterparts as may be convenient or required, and an executed copy of this Second Amendment delivered electronically by facsimile or e-mail shall have the effect of an original, executed instrument. All counterparts of this Second Amendment shall collectively constitute a single instrument; but, in making proof of this Second Amendment it shall not be necessary to produce or account for more than one such counterpart executed by each Party hereto, or that the signature of all persons required to bind any such Party appear on each counterpart of this Second Amendment.

6. Brokers. Each Party represents and warrants to the other that no broker, agent or finder negotiated or was instrumental in negotiating or consummating this Second Amendment.

7. No Further Modification. Except as set forth in this Second Amendment, all of the terms and provisions of the Original Lease and First Amendment (collectively "Lease") shall remain unmodified, in full force and effect, ratified and confirmed. In the event of a conflict between the Lease and this Second Amendment, this Second Amendment shall control. Effective as of the date hereof, all references to the "Lease" shall refer to the Lease as amended by this Second Amendment.

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Signed, sealed and delivered
in the presence of:

TROPICAL SHELL & GIFTS, INC.

Susan P. Harrison
Witness

By: [Signature]

[Signature]
Witness

Date: 8-28-18

CITY OF KEY WEST, FLORIDA

Heely Walker
Witness

By: [Signature]

Angie Biddle
Witness

Date: 8-21-18



Attest:

City Clerk

Cheryl Smith

Tropical Shell and Gifts, Inc.
 Mark In Progress Summary
 1 Whitehead Street
 Key West Mallory Square Leasehold Improvements for period June 1, 2016 through June 30, 2018

Exhibit A

Posted G/L Date	Vendor Name	Aquarium Injection Wells	Roof	Aquarium Improvements Lighting	Tanks	A/C	Stairs & Walkways	Fire Sprinkler / Suppression System	Solar Panels	Generator	Other
6/14/2016	WATER SCIENCE ASSOCIATES	9,605.00									
6/27/2016	CHARLEY TOPPINO & SONS, INC	110,318.25			2,009.40						
7/29/2016	SUNBLOCK & TILE, INC				8,005.14						
7/28/2016	M.C. WELDING										
8/6/2016	DELOACH INDUSTRIES, INC.	47,762.50									
8/11/2016	CHARLEY TOPPINO & SONS, INC	14,645.46									
8/11/2016	CHARLEY TOPPINO & SONS, INC	18,008.33									
9/1/2016	WATER SCIENCE ASSOCIATES	13,615.00									
9/1/2016	WATER SCIENCE ASSOCIATES	6,585.00									
9/1/2016	CHARLEY TOPPINO & SONS, INC	10,853.79									
9/9/2016	SUNBLOCK & TILE, INC										
9/13/2016	DELOACH INDUSTRIES, INC.	47,575.00									
9/14/2016	WATER SCIENCE ASSOCIATES	5,480.00									
10/6/2016	CITY OF KEY WEST - LICENSE	1,392.98									
10/18/2016	FOUR STAR RENTALS, INC	705.36									
10/21/2016	FMH BUILDERS, INC			6,225.38							
11/10/2016	LIGHTHOUSE ELECTRIC			2,549.00							
12/13/2016	DOWLING HOLDINGS OF FLORIDA LL										6,000.00
1/1/2017	DOWLING HOLDINGS OF FLORIDA LL										21,783.00
1/1/2017	DOWLING HOLDINGS OF FLORIDA LL										15,961.00
1/30/2017	DOWLING HOLDINGS OF FLORIDA LL										3,150.00
2/1/2017	ISLAND REFRIGERATION & AC, INC										
2/1/2017	LIGHTHOUSE ELECTRIC			3,372.89							
2/15/2017	CHARLEY TOPPINO & SONS, INC	1,750.00									
2/16/2017	CHARLEY TOPPINO & SONS, INC	500.00									
2/20/2017	DELOACH INDUSTRIES, INC.	109,019.25									
3/2/2017	DOWLING HOLDINGS OF FLORIDA LL										
3/16/2017	DOWLING HOLDINGS OF FLORIDA LL				2,100.00						
3/20/2017	DELOACH INDUSTRIES, INC.				9,409.00						
3/20/2017	DELOACH INDUSTRIES, INC.	8,915.76									
3/21/2017	DOWLING HOLDINGS OF FLORIDA LL	27,419.97									
3/31/2017	ISLAND REFRIGERATION & AC, INC					12,202.58					19,650.00

Tropical Shell and Gifts, Inc.
 Work in Progress Summary
 1 Whitehead Street
 Key West Mallory Square Leasehold Improvements for period June 1, 2016 through June 30, 2018

Posted G/L Date	Vendor Name	Aquarium Injection Wells	Roof	Aquarium Improvements Lighting	Tanks	A/C	Stairs & Walkways	Fire Sprinkler / Suppression System	Solar Panels	Generator	Other
3/31/2017	G. Gerwin AMEX - Ichabod Crane Service					1,212.50					
4/3/2017	ISLAND REFRIGERATION & AC, INC			20,339.01		504					
4/17/2017	A-PLUS ROOFING		8,300.00								
4/27/2017	KEYS ENERGY SERVICES - TSG										2,250.00
5/16/2017	DELOACH INDUSTRIES, INC.		6,255.00								
5/25/2017	LIGHTHOUSE ELECTRIC			51,650.00							
5/31/2017	AMEX C. Curry 4-29-17										1,035.78
5/31/2017	ISLAND REFRIGERATION & AC, INC					750					
6/5/2017	FOUR STAR RENTAL INC										
6/6/2017	FOUR STAR RENTAL INC										422.14
6/7/2017	CHARLEY TOPPINO & SONS, INC										467.21
6/12/2017	DELOACH INDUSTRIES, INC.	9,560.41								7,155.60	218.55
6/15/2017	DELOACH INDUSTRIES, INC.										
7/1/2017	DELOACH INDUSTRIES, INC.			42,100.00						27,186.32	
7/24/2017	LIGHTHOUSE ELECTRIC			2,490.00							218.55
7/26/2017	CHECK ELECTRIC LLC										
7/31/2017	AMEX G. Gerwin 6-28-17				5,500.00						
7/31/2017	AMEX G. Gerwin 6-28-17				8,900.00						184
7/31/2017	MIKE MONSALVATGE				5,000.00						
8/9/2017	MIKE MONSALVATGE				8,900.00						
8/10/2017	CHECK ELECTRIC LLC										2,490.00
8/16/2017	MIKE MONSALVATGE				5,000.00					22,120.86	
8/18/2017	DELOACH INDUSTRIES, INC.									18,975.55	
8/18/2017	DELOACH INDUSTRIES, INC.										
8/24/2017	MIKE MONSALVATGE				7,500.00						
8/29/2017	CHECK ELECTRIC LLC									910	
9/1/2017	ISLAND REFRIGERATION & AC, INC					12,202.57					
9/1/2017	ISLAND REFRIGERATION & AC, INC					8,802.00					
9/18/2017	DOWLING HOLDINGS OF FLORIDA LL									7,380.00	
9/30/2017	AMEX G. Gerwin 8-28-17			87.92							
9/30/2017	AMEX G. Gerwin 8-28-17			660.56							
9/30/2017	AMEX G. Gerwin 8-28-17			747.56							

Tropical Shell and Gifts, Inc.
 Work in Progress Summary
 1 Whitehead Street
 Key West Mallory Square Leasehold Improvements for period June 1, 2016 through June 30, 2018

Posted G/L Date	Vendor Name	Aquarium Injection Wells	Roof	Aquarium Improvements Lighting	Tanks	A/C	Stairs & Walkways	Fire Sprinkler / Suppression System	Solar Panels	Generator	Other
	861,521.44	443,712.06	20,458.01	156,655.22	38,423.54	11,268.50	66,544.00	-	7,155.60	77,209.53	40,094.98

EXHIBIT B

\$75,000.00	New Maintenance and Laboratory Structure and Equipment
\$25,000.00	Door System Front and Rear (now that the building is air conditioned)
\$50,000.00	Reconfiguration of the Front of the Aquarium (pending successful negotiations on permitting)
\$150,000.00	Extension of shark tank piling system, walkways and reef exhibit with rip rap
\$30,000.00	Graphics
\$20,000.00	Acrylic Tank Replacement
\$25,000.00	Displays
\$98,900.00	Fire Sprinkler System --Shell Warehouse
<u>\$86,000.00</u>	Fire Sprinkler System --Shipwreck Museum

\$559,900.00

RESOLUTION NO. 78-87

A RESOLUTION AUTHORIZING THE EXECUTION
OF A LEASE BETWEEN THE CITY OF KEY WEST,
FLORIDA, AND TROPICAL SHELL & GIFT, INC.

BE IT RESOLVED by the City Commission of the City of
Key West, Florida, as follows:

That the attached Lease between the City of Key West,
Florida, and Tropical Shell & Gift, Inc., be and the same is
hereby approved, and the Mayor of the City of Key West, Florida,
be and he is hereby authorized, empowered and directed to execute
the said Lease for and on behalf of the City of Key West, and the
City Clerk of said City be and he is hereby authorized, empowered
and directed to attest the signature of the said Mayor on the said
Lease and affix the Seal of the City thereto. The execution of
said Lease is hereby directed to be made in as many counterparts
as may be desired or necessary.

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.

Passed and adopted by the City Commission at a meeting
held this 3rd day of July, A.D., 1978.



Charles McCoy, Mayor.

ATTEST:



City Clerk.

L E A S E

THIS LEASE, made this 3rd day of July, 1978, by and between THE CITY OF KEY WEST, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to sometimes as "Lessor"; and TROPICAL SHELL & GIFT, INC., a corporation organized and existing under the laws of the State of Florida, hereinafter referred to sometimes as "Lessee".

W I T N E S S E T H:

FIRST: Lessor leases to Lessee, the premises described in Exhibit A.

This demised premises shall not include the east half of Warehouse #4 described on Exhibit A and now occupied as the "Chamber of Commerce Building"; also the corner building on Front and Whitehead Streets known as "Key West Art Center".

TO HAVE AND TO HOLD the said premises unto the Lessee for and during the term of twenty-five (25) years, commencing on the 15th day of July, 1978, and ending on the 14th day of July, 2003.

SECOND: In consideration of the leasing of the premises aforesaid, Lessee agrees to pay rental to the Lessor as rent Ten Per Cent (10%) of all gross receipts realized from admissions to the Aquarium and from the sale of gifts, wares and merchandise on the above leased premises, including sales by any concessionaires. Said rental or percentage of gross admission receipts and gross receipts from the sale of gifts, wares and merchandise shall be computed for each calendar month during each year of the original term of this Lease or any renewal term thereof, and to be paid to the Lessor monthly within thirty (30) days after the end of each calendar month. The

minimum rental (percentage) on the premises shall be Twenty Thousand Dollars (\$20,000.00) per annum, or Ten Per Cent (10%) of gross receipts, whichever is greater. The Lessor shall have the right at any and all times, through its duly authorized representatives, to audit the books and accounts of the Lessee, sub-lessee, or any concessionaires.

It is understood that the Lessor may examine sales tax reports filed by the Lessee, sub-lessee or any concessionaires, in the local State Sales Tax Office.

The Lessee shall during the term of this Lease construct a new Aquarium building on the property adjacent to, and southwest of, the present building. Said building shall have a minimum floor space of 1,500 square feet and shall have tanks with a minimum holding capacity of 6,000 gallons. Said building shall meet all city building codes and regulations and all regulations of the Old Island Restoration Commission or its successor.

All present parking areas at the demised premises shall remain parking areas until such time as construction shall commence on the new building. At such time Lessee may use up to Fifty Per Cent (50%) of the parking area for the building location. All construction, alteration, or repair plans shall require the written approval of the Lessor which may not be unreasonably withheld. Approval or disapproval shall be delivered in writing to Lessee within thirty (30) days of the written request by Lessee.

At such time that Lessee commences construction of the new building, Lessor shall pledge Twenty-five Per Cent (25%) of the rental received under this Lease to the payment of any obligation on the leasehold estate of Lessee. Lessee shall promptly notify the Lessor of the name and address of any lender or obligee holding an interest in the Lease as security for a loan for the construction of said premises. All payments

made by Lessor shall be made directly to the lender after receipt of the rentals by Lessor from Lessee.

THIRD: It is mutually understood and agreed between the parties to this Lease as follows:

a. Lessee shall be solely responsible for the collection of admission taxes.

b. Lessee shall pay all costs and expenses of operating the Aquarium.

c. The Aquarium shall be kept open daily for visitation by the public between the hours of 8:00 A.M. and 6:00 P.M., seven (7) days a week; however, the Aquarium may be kept open for longer hours at the option of the Lessee.

d. Lessee, at its own expense, will keep the leased premises in good condition, including all machinery, tanks and equipment and will keep the grounds adjacent to the leased premises, including the driveway to the entrance of the Aquarium, in a clean, presentable and sanitary condition.

e. That there shall, during the said demised term, be no mechanics' liens upon any building or improvements which may at any time be put upon or be upon said demised property, and that in case of any mechanics' liens the Lessee must pay off the same; and that if default in payment thereof shall continue for thirty (30) days after written notice, said Lessor shall have the right and privilege, at its option, to pay off the same or any portion of the same, and the amount so paid, including expenses, shall, at the option of the said Lessor, be so much additional rent due from said Lessee at the next rent due after such payment, with interest thereon at the rate of Six Per Cent (6%) per annum. Any contract entered into by the Lessee for the improvement of the demised premises shall contain a provision requiring a penal bond as described in Section 255.05, Florida Statutes, for the payment of all persons supplying labor, materials and supplies. Furthermore,

the Lessee shall otherwise comply with all provisions of said Section 255.05, Florida Statutes, and said contract shall provide that the Lessor shall be due copies of all notices which are provided to the Lessee by any laborer, materialmen or supplier.

FOURTH: It is further understood and agreed that improvements and repairs made shall become the property of the Lessor at the time same are made. Upon termination of the term of this Lease, the Lessee will return the leased premises to the Lessor in good condition, except for normal wear and tear and such damage as may occur through act of God, or fire.

FIFTH: It is expressly covenanted between the parties hereto that the Lessee will not use or suffer nor permit any person to use in any manner whatsoever the said demised property, or the building or improvements hereafter constructed or placed on said leased property, 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 the laws of the United States, or of the State of Florida, or of the Ordinances of the City of Key West, Florida, and that said Lessee will, at its own proper costs and changes, keep the building on said property and all the appurtenances thereto belonging in a good, safe and secure condition and will conform to all municipal ordinances or laws, and that it will keep and save the Lessor forever harmless from any penalty or damage or changes imposed for any violation of any of said laws, whether occasioned by neglect of Lessee, and that said Lessee will indemnify and save and keep harmless the Lessor against and from any loss, cost, damage and expense arising out of any accident or other occurrence, causing injury to any person or property whomsoever or whatsoever, and due directly or indirectly to the use of the premises, or any part thereof, by Lessee.

SIXTH: The Lessee shall secure at its own expense, from an improved insurance company, and furnish to the Lessor evidence of such insurance, the following described insurance coverage:

a. Coverage which will protect the legal liability of Lessor and Lessee to pay off claims for personal injury or death resulting therefrom, on account of accidents to third parties or the public, which might arise out of, or in connection with any act or acts of Lessee's agents, invitees or employees. The minimum limits of such policy or policies shall be \$100,000.00 for any one person, or \$300,000.00 for more than one person, arising out of one accident.

b. Fire, windstorm and flood insurance covering the improvements on the demised premises for the full insurable amount.

SEVENTH: It is further understood and agreed that the Lessee may operate an Aquarium, concession stands, museums, and craft and gift shops under this Lease.

EIGHTH: The Lessee shall have the right to sub-lease concession and/or gift shops under this Lease. Lessee must however have the approval of the Lessor. The Lessor shall have twenty (20) days in which to respond to the sub-lease agreement. If no response is given by Lessor within the twenty-day period, the sub-lease shall be considered approved by Lessor. The Lessor may not unreasonably withhold its approval.

NINTH: The Lessee shall have the right of first option on any new lease on this property at the end of the term of this Lease, and further, the parties agree that this Lease shall not and is not an extension or renewal of the existing Lease dated the 1st day of December, 1965, but shall be considered and is considered a new and separate contract arrangement between the parties. Further, the parties agree that any existing sub-leases on the property shall be

allowed to continue until the 30th day of November,
1985, or until there is a default by the sub-lessee.

TENTH: Lessee shall not allow any waste or nuisance on the premises, or use or allow the premises to be used for any unlawful purpose.

ELEVENTH: Lessee shall arrange and pay for all utilities furnished to the premises for the term of this Lease; including electricity, gas, water, sewer, and telephone service.

TWELFTH: Lessor shall pay all county and city real estate taxes and maintain fire insurance on said premises.

THIRTEENTH: Lessee shall maintain the premises and keep them in good repair at its expense.

FOURTEENTH: Lessor reserves the right to enter on the premises at reasonable times to inspect, perform required maintenance and repairs, or make additions, alterations, or modifications to any part of the building in which the premises are located, and Lessee shall permit Lessor to do so. Lessor may erect scaffolding, fences, and similar structures, post relevant notices, and place moveable equipment in connection with making alterations, additions, or repairs, all without incurring liability to Lessee for disturbance of quiet enjoyment of the premises, or loss of occupation thereof.

FIFTEENTH: Lessor shall not be liable for liability or damage claims for injury to persons or property from any cause relating to the occupancy of the premises by Lessee, including those arising out of damages or losses occurring on sidewalks and other areas adjacent to the leased premises during the term of this Lease or any extension thereof. Lessee shall indemnify Lessor from all liability, loss, or other damage claims or obligations resulting from any injuries or losses of this nature.

SIXTEENTH: The appointment of a receiver to take possession of the assets of Lessee, a general assignment for the benefit of the creditors of Lessee, any action taken or allowed to be

taken by Lessee under any bankruptcy act, or the failure of Lessee to comply with each and every term and condition of this Lease shall constitute a breach of this Lease. Lessee shall have fifteen (15) days after receipt of written notice from Lessor of any breach to correct the conditions specified in the notice, or if the corrections cannot be made within the fifteen (15) day period, Lessee shall have a reasonable time to correct the default if action is commenced by Lessee within fifteen (15) days after receipt of the notice.

SEVENTEENTH: Lessor shall have the following remedies in addition to its other rights and remedies in the event Lessee breaches this Lease agreement and fails to make corrections as set forth in Section Sixteenth:

1. Lessor may re-enter the premises immediately and remove the property and personnel of Lessee, store the property in a public warehouse or at a place selected by Lessor, at the expense of Lessee.

2. After re-entry Lessor may terminate the Lease on giving fifteen (15) days written notice of termination to Lessee. Without such notice, re-entry will not terminate the Lease. On termination Lessor may recover from Lessee all damages proximately resulting from the breach, including the cost of recovering the premises and the worth of the balance of this Lease over the reasonable rental value of the premises for the remainder of the lease term, which sum shall be immediately due Lessor from Lessee.

3. After re-entering, Lessor may relet the premises or any part thereof for any term without terminating the Lease, at such rent and on such terms as it may choose. Lessor may make alterations and repairs to the premises. The duties and liabilities of the parties if the premises are relet as provided herein shall be as follows:

(a) In addition to Lessee's liability to Lessor for breach of the Lease, Lessee shall be liable for all expenses of the reletting, for the alterations and repairs made, and for the difference between the rent received by Lessor under the new Lease agreement and the rent installments that are due for the same period of this Lease.

(b) Lessor at its option shall have the right to apply the rent received from reletting the premises (1) to reduce Lessee's indebtedness to Lessor under the Lease, not including indebtedness for rent, (2) to expenses of the reletting and alterations and repairs made, (3) to rent due under this Lease, or (4) to payment of future rent under this Lease as it becomes due.

If the new Lessee does not pay a rent installment promptly to Lessor, and the rent installment has been credited in advance of payment to the indebtedness of Lessee other than rent, or if rentals from the new Lessee have been otherwise applied by Lessor as provided for herein, and during any rent installment period, are less than the rent payable for the corresponding separately for each rent installment deficiency period, and before the end of that period. Lessor may at any time after such reletting terminate the Lease for the breach on which Lessor based the re-entry and relet the premises.

4. After re-entry, Lessor may procure the appointment of a receiver to take possession and collect rents and profits of the business of Lessee, and if necessary, to collect the rents and profits the receiver may carry on the business of Lessee and take possession of the personal property used in the business of Lessee, including inventory, trade fixtures, and furnishings and use them in the business without compensating Lessee. Proceedings for appointment of a receiver by Lessor, or the appointment of a receiver and the conduct of the business of Lessee by the receiver, shall not terminate and forfeit this

Lease unless Lessor has given written notice of termination to Lessee as provided herein.

EIGHTEENTH: If Lessor files an action to enforce any agreement contained in this Lease, or for breach of any covenant or condition, Lessee shall pay Lessor reasonable attorney's fees for the services of Lessor's attorney in the action, all fees to be fixed by the Court.

NINETEENTH: In consideration of mutual benefits, the parties to this Lease hereby cancel the existing Leases.

TWENTIETH: All bookkeeping on the property shall be kept separate from the bookkeeping of any other business leased by Lessee from Lessor.

TWENTY-FIRST: No building shall traverse the property line of the property and any other property sub-leased by Lessee from the Lessor.

TWENTY-SECOND: If Lessee does not construct the building described on Exhibit B attached hereto, within a period of six and one-half (6-1/2) years commencing from the date of this Lease, then the property shall revert back to the Lessor and all agreements, terms and conditions set forth in the Lease shall be cancelled forthwith.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

Signed, Sealed and Delivered
In Our Presence:

Estela M. Garcia
Josephine Parker
(SEAL)

THE CITY OF KEY WEST, FLORIDA

BY: Charles McCoy
MAYOR CHARLES McCOY

Attest:

Jack F. Mathew
CITY CLERK

Signed, Sealed and Delivered
In Our Presence:

Gregory A. Curry

Gregory A. Curry

TROPICAL SHELL & GIFT, INC.

By: Gerald R. Mosher
Gerald R. Mosher, President.

ATTEST:

By: Christopher C. Belland
Christopher C. Belland
Secretary-Treasurer.

(CORPORATE SEAL)

EXHIBIT A

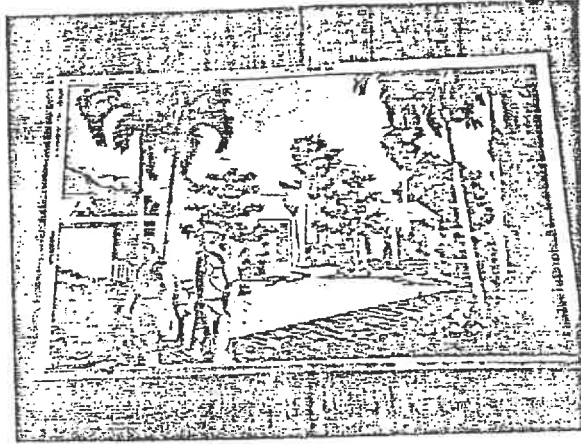
On the Island of Key West, known on William A. Whitehead's Map delineated in February A.D. 1829, as all of Lot 5 and part of Lot 4 in Square 3, and all of the property located at the end of Whitehead Street, and more particularly described as follows:

BEGINNING at the southeast corner of Square 3, thence run northeasterly along Front Street a distance of one hundred sixty-six (166) feet; thence northwesterly a distance of three hundred (300) feet along Tift's Alley; thence southwesterly and parallel with Front Street a distance of one hundred fifty (150) feet; thence northwesterly a distance of fifty-three and seven tenths (53.7) feet; thence southwesterly and parallel with Front Street a distance of sixteen (16) feet; thence southeasterly and parallel with Tift's Alley a distance of three hundred fifty-three and seven tenths (353.7) feet back to the point of beginning, including all improvements and buildings thereon and all necessary and existing ingress and egress thereto, EXCEPTING therefrom:

- a) that thirty (30) feet public right of way known as Wall Street;
- b) the area and building located at the southeast corner of Square 3 on which the building presently known as Key West Art Center is located; and
- c) the north one-half (1/2) of Warehouse Number Four, which is presently being occupied by the Key West Chamber of Commerce.

ALSO

On the Island of Key West, known on William A. Whitehead's Map, delineated in February A.D. 1829 as that area beginning at the southeasterly corner of Wall Street and Whitehead Street; thence run northwesterly and parallel with Tift's Alley a distance of two hundred fifty-three and seven tenths (253.7) feet; thence southwesterly a distance of fifty (50) feet; thence southeasterly and parallel with Tift's Alley a distance of two hundred fifty-three and seven tenths (253.7) feet; thence northeasterly a distance of fifty (50) feet back to the point of beginning, including the Aquarium building located in Key West, Florida, and all fixtures, machinery, piping, electric wiring and equipment used in connection therewith, including the filtering apparatus, all "as is", together with the concession stands as same are now located outside of the Aquarium building.



Tropical Shell & Gift will build a new Aquarium building next to the present Aquarium building and extending out into the lot between the present structure and Tift's Ice House. The new building will be a minimum of 1500 square feet and will house an additional 6,000 gallons of tank space. 400 square feet of the building space will be devoted to laboratory and holding tanks. The building will meet O.I.R.F. standards.

Attached please find a photograph of an artist concept of the proposed building and surrounding area.

EXHIBIT B

RESOLUTION NO. 81-92


A RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO LEASE BETWEEN THE CITY OF KEY WEST, FLORIDA, AND TROPICAL SHELL & GIFT, INC.

BE IT RESOLVED by the City Commission of the City of Key West, Florida, as follows:

That the attached Amendment to Lease between the City of Key West, Florida, and Tropical Shell & Gift, Inc., be and the same is hereby approved, and the Mayor of the City of Key West be and he is hereby authorized, empowered, and directed to execute the said Amendment to Lease on behalf of the City of Key West, and the City Clerk of said City be and she is hereby authorized, empowered, and directed to attest the signature of the said Mayor on the said Amendment to Lease and affix the Seal of the City thereto. The execution of said Amendment to Lease is hereby directed to be made in as many counterparts as may be desired or necessary.

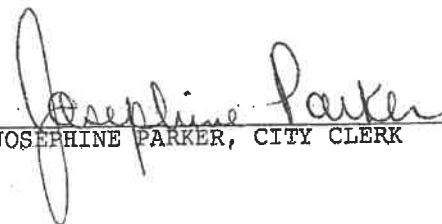
This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 8th day of September, 1981.



CHARLES McCOY, MAYOR

ATTEST:



JOSEPHINE PARKER, CITY CLERK

AMENDMENT TO LEASE

THIS AGREEMENT entered into by the parties of that certain lease better described as made the 3rd day of July, 1978, by and between THE CITY OF KEY WEST, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as "Lessor"; and TROPICAL SHELL & GIFT, INC., a corporation organized and existing under the laws of the State of Florida, hereinafter referred to as "Lessee", so that said Lease shall be amended as follows:

The following provisions are hereby added after paragraph numbered Twenty-Second:

TWENTY-THIRD: INVESTMENT CREDIT - Expenses incurred by the Lessee in any one lease year but before July 14, 1991 for repairs or improvements, as defined herein, to the leased premises not to exceed \$500,000.00 or monies paid on a loan of monies to a lending institution licensed under the laws of the United States or the State of Florida expended for said purpose may be used by the Lessee as an investment credit toward reduction of the rent due the Lessor in the following lease year or subsequent lease years. Said investment credit shall only be applied toward the reduction of rental due over and above the minimal rental of \$25,000.00, which minimal rental shall be paid each and every year notwithstanding this or any other provisions in the Lease. The repairs and improvements for which an investment credit shall be allowed herein shall be limited to those repairs, improvements or additions of supporting or containment structures, floors, roofs, permanent display fixtures, and electrical and plumbing work or for structural additions when the repair or improvement contributes to an increase in the value of the city's property or to a preservation of the city's property. Competitive bidding shall be sought on said repairs and improvements.

TWENTY-FOURTH: OPTION TO RENEW - The Lessor grants an option to renew this Lease for a period of an additional twenty-five years after the expiration of the present lease term, on the same terms as this Lease. Lessee shall give Lessor written notice of his intention to renew at least one hundred and eighty (180) days prior to the expiration of this Lease. This the Twenty-Fourth paragraph shall not be effective until the Lessee has complied with

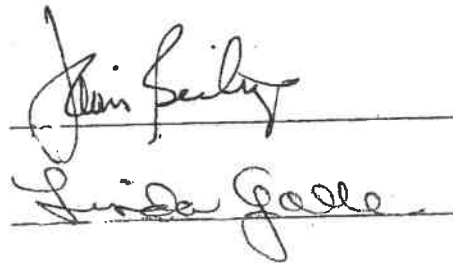
the conditions enumerated below and has submitted written proof thereof to the City Commission. The City Commission shall respond by resolution to Lessee citing whether or not said conditions have been completed. If the City Commission responds in the affirmative, this paragraph shall then be automatically in full force and effect. If the City Commission responds in the negative, the City Commission shall specifically cite the items of noncompliance and specifically enumerate the requirements which need be fulfilled as a condition precedent to an affirmative response. The City Commission's response shall not be unreasonably withheld either in terms of time or substance.

CONDITIONS

The Lessee shall acquire a loan in the amount of \$150,000.00 for the purpose of expending said funds on the items listed in Schedule A according to the specifications stated in Schedule B, both of said schedules are attached hereto, by reference incorporated herein and made a part hereof. The said funds shall first be expended on items enumerated in Priority #1; any remaining funds shall then be expended on items enumerated in Priority #2.


IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 9th day of September, 1981.

Signed, Sealed and Delivered
in Our Presence:

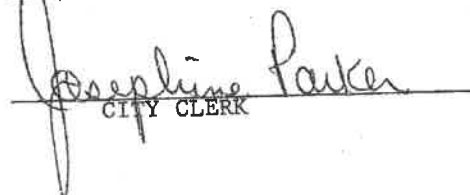


(SEAL)

THE CITY OF KEY WEST, FLORIDA

BY: 
_____ MAYOR CHARLES MCCOY

ATTEST:


_____ CITY CLERK

SCHEDULE A

PRIORITY 1

1. Roof Replacement
2. Basic Graphics
3. Additional Plumbing and Electric
4. New Guard Rails throughout Exhibit Area

PRIORITY 2

1. Replacement or repair of all interior tanks
2. Public Space Remodeling
3. Glass Bottom Exhibits
4. Additional Graphics
5. Shark Exhibit
 - a. Railing
 - b. Floating Deck
 - c. Underwater Barriers
 - d. Miscellaneous Equipment
 - e. Roof for Dock Area

SCHEDULE B

All of the items listed herein become City of Key West property at the end of the lease term.

PRIORITY 1

1. Roof Replacement

In 1934 the Aquarium was open-air (no roof). In approximately 1960, in an effort to control the excessive algae growth, the Aquarium was roofed over. This roof is now in need of replacement, repair and major modification.

Because the roof structure is free standing (not attached to the building) this work then requires major structural work.

- a. Termite and water damaged rafters.
- b. Replacement of all sheet metal material and the installation of 24 sky lights to insure natural lighting where necessary to maintain the necessary level of algae and plant growth.
- c. The addition of 8" closable wooden shutters to enable the Aquarium to be closed and sealed against the intrusion of rain water and cold wind. As it is now, the Aquarium is virtually open to the elements and with any severe weather (rain or cold) the stability of our animals is threatened many times, resulting in premature death and weakening of valuable sea life.
- d. Walls. Renovation of supporting walls and columns and replacement of tie-rods.

ESTIMATE BREAKDOWN

Support columns (concrete) material and labor	\$ 1,500
Tin Roofing - material and labor	8,400
Skylights - material and labor	5,900
Rafters and tie beams - material and labor	10,000
Shutters - material and labor	14,000
Walls - material and labor	<u>13,000</u>
Total	<u>\$52,800</u>

2. Graphics

The need for explanatory graphics is probably the most necessary addition for the visitors' full enjoyment at the Key West Aquarium. Although our guided tour is very well received and gives the visitor an excellent education in local sea life and ecology, there is a great deal in the Aquarium that cannot be absorbed during the tour. By having the educational graphics by the displays, it would add greatly to the educational possibilities of the Aquarium.

The aquatic and zoological graphic exhibit design team of Kirk Krentzig and Beverly Serrell has been chosen by our board of directors to produce the graphics for the Key West Aquarium.

Their estimate, submitted on July 10 of this year is as follows:

a. Initial team visit - including on-sight work, travel expense, lodging, etc.	\$ 3,500.00
b. Formulation of specific prototype construction material and graphic visual formats	3,860.00
c. Installation, construction and research of all graphics and units	<u>24,000.00</u>
Total	<u>\$31,360.00</u>

3. Additional Plumbing and Electric

- a. The old Aquarium building needs to be fully rewired and a new, modern lighting system installed.
 - b. The plumbing would be a continuation of the new water system in our new building.
- Estimated cost \$18,000

4. New Guard rails

The new guard rails are a security precaution.

Estimated cost \$5,000

PRIORITY 2

1. Tank Replacement

The replacement of all the cement tanks with fiberglass tanks is necessary because of the following:

- a. The present tanks are crumbling.
- b. It would allow us to take stress off the old structure.
- c. The cement tanks harbor disease and resist all efforts to keep their exhibits healthy.

Three prototype tanks (one large, two small) have been built and installed at the cost of \$6,000. They are excellent and are now in service at the Aquarium.

20 remaining large tanks at \$3,650.00 each \$73,000.00

2. Public Space Remodeling

All areas open to the public.

ESTIMATE BREAKDOWN:

Floor material throughout - brick	\$17,200.00
Replace or repair original woodwork (Including the arched ceilings)	14,000.00
Sandblast all painted surfaces - exterior and interior - patch, seal and repaint.	9,800.00
Remodel Exterior Shark Pools	<u>13,000.00</u>
Total	<u>\$54,000.00</u>

3. Glass Bottom Exhibit

Freestanding all glass highlight exhibits \$6,000.00

4. Additional Graphics

The development of murals depicting the life cycles of sea life and the world of the living reef.

Estimated cost \$10,000.00

5. Educational Materials

The funds would be used to research and photograph and layout a first class educational guide book to local marine life especially those found in the Aquarium. Book and pamphlets are to be written by our own Marine Biologists and Ectologists on local marine life and distributed on request to schools and to students in Key West free of charge, subject to availability.

Estimated cost \$10,000.00

6. Shark Exhibit

This exhibit would be placed in back of the Aquarium and would house the larger free swimming sharks that we cannot handle at this time.

RESOLUTION NO. 95-419

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, DETERMINING THAT TROPICAL SHELL & GIFT, INC. HAS MET THE CONDITIONS PRECEDENT TO AN OPTION TO RENEW AS SET FORTH IN PARAGRAPH TWENTY-FOURTH OF ITS AMENDMENT TO LEASE ; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Tropical Shell & Gift, Inc. ("Lessee") entered into a lease with the City on July 3, 1978, for certain premises; and

WHEREAS, by an Amendment to Lease pursuant to Resolution 81 - 92, the City granted the Lessee a potential option to renew the lease upon Lessee's meeting certain terms and conditions set forth in Paragraph Twenty-Fourth of the Amendment to Lease; and

WHEREAS, upon the advice of City Administrative Staff, the City Commission finds that Lessee has met the conditions precedent for lease renewal;

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

Section 1: That the conditions precedent for lease renewal as set forth in Paragraph Twenty-Fourth of the Addendum to Lease between the City and Tropical Shell & Gift, Inc. are hereby determined to have been met;

95-419

Section 2: That this Resolution shall go into effective immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 7th day of November, 1995.

Authenticated by the presiding officer and Clerk of the Commission on November 7, 1995.

Filed with the Clerk November 8, 1995.

ATTEST:


JOSEPHINE PARKER, CITY CLERK


DENNIS J. WARDLOW, MAYOR

RECEIVED OCT 24 1995

M641
PJC:cb

RECEIVED OCT 24 1995

MEMORANDUM

TO: DIANE COVAN, ACTING CITY ATTORNEY
FROM: PAUL J. CATES, ASSISTANT CITY MANAGER *PJC/cb*
SUBJ: TROPICAL SHELL & GIFT, INC.
DATE: OCTOBER 24, 1995

Please review the attached proposal for Tropical Shell & Gift, Inc. If it meets with your approval please prepare a resolution for City Commission approval.

Should you have any questions or wish to discuss this further, please do not hesitate to contact my office.



DATE: October 24, 1995

TO: Paul Cates, Assistant City Manager

FROM: John Castro, Chief Building Official J.C.

RE: Tropical Shell & Gift, Inc.

After reviewing the proposals and invoices for the Aquarium, it is my opinion that the cost of construction associated with the project is acceptable by the industry standards for this type of renovation.

Chen

*Please send to legal for
final review and to prepare
a resolution for CC approval*

M627
PIC:cs

MEMORANDUM

TO: JOHN CASTRO, BUILDING OFFICIAL
FROM: PAUL I. GATES, ASSISTANT CITY MANAGER *PK*
DATE: SEPTEMBER 15, 1995
SUBJ: TROPICAL SHELL & GIFT, INC.

Please review the correspondence from Mark Finigan and the attached documents.

At this time I would like you to review and give your opinion of the construction costs as they may relate to good industry workmanship and/or value. Should you have to visit the sites to confirm, please do so.

Should you have any questions or wish to discuss this further, please do not hesitate to contact my office.

c: G. Felix Cooper, City Manager
Mark Finigan, Budget/Risk Management Director

MEMORANDUM

M-224

DATE: SEPTEMBER 15, 1995

TO: PAUL J. CATES
ASSISTANT CITY MANAGER

FROM: MARK Z. FINIGAN
DIRECTOR OF BUDGET & RISK MANAGEMENT

SUBJECT: LEASE RENEWAL/TROPICAL SHELL & GIFTS, INC.

In your August 18, 1995 memorandum, same subject, you requested an audit of the documents provided by the lessee regarding certain improvements made as a condition of lease renewal/extension. Such documentation was submitted by Mr. Mosher, Tropical Shell & Gifts, Inc. to Mr. Cooper in a July 1995 letter. In addition to myself, Mr. Roger D. Wittenberg, Finance Director, has reviewed the submitted documentation. Like the Finance Director, I agree that a complete financial "cycle", proposal-invoice-check, has occurred for the improvements enumerated as conditions of "Section Twenty-Fourth: Option to Renew", City of Key West Resolution 81-92. Though this office can attest to the completeness and accuracy of said improvements as they relate to payments made, Roger and I cannot certify that amounts paid were representative of good industry workmanship or value. Perhaps the Building Department could assist in this regard.

Additionally, I recommend the City Attorney's office review the issue concerning Old Town Key West Development, Ltd. acquiring the loan on behalf of Tropical Shell & Gifts, lessee under current lease arrangement. I don't see any real problem since Old Town owned Tropical Shell; however, a legal opinion may be in order. Furthermore, Roger and I have not reviewed conditions that may exist under the original lease and still apply under the amendment.

Should you need further information, please do not hesitate to call me.

Thank you.

MZF/a

c.c.

Felix Cooper, City Manager


Roger D. Wittenberg, Director of Finance

Diane Covan, City Attorney

Attachment

MEMORANDUM

**TO: MARK Z. FINIGAN
BUDGET & RISK MANAGEMENT DIRECTOR**

**FROM: ROGER D. WITTENBERG 
FINANCE DIRECTOR**

RE: TROPICAL SHELL & GIFT, CONDITION OF LEASE

DATE: SEPTEMBER 6, 1995

In accordance with Resolution No. 81-92, paragraph twenty-four, the leasee is required to spend \$150,000 to upgrade the aquarium.

I have reviewed documentation supporting the payments made in accordance with the conditions of the lease, and found everything to be in good order. The documentation supports expenditures in excess of \$150,000.

Let me know if you require additional information.

RDW/tmt/M-2892

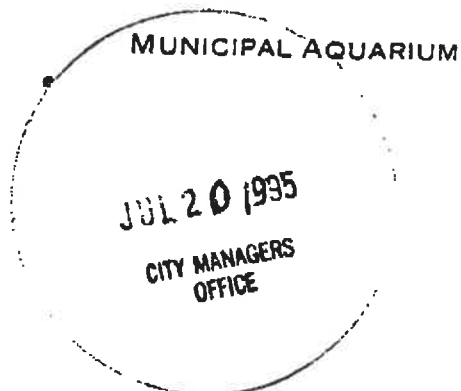
TROPICAL SHELL & GIFTS, INC.

SHELL WAREHOUSE

KEY WEST & FLORIDA CITY
P. O. BOX 1237
KEY WEST, FLORIDA 33040
PHONE (305) 296-2051

Felix Cooper
City Manager
City of Key West
525 Angela St
Key West, Florida 33040

July 19, 1995



RE: RENEWAL OF LEASE BETWEEN CITY OF KEY WEST AND TROPICAL SHELL AND GIFTS, INC

Dear Mr. Cooper,

As a followup to your letter of August 31, 1994 regarding our OPTION TO RENEW our lease as provided by RESOLUTION 78-87 as amended by RESOLUTION 81-92, we submit in accordance with PARAGRAPH TWENTY-FOURTH of RESOLUTION 81-92 the following:

- I. I specifically note that OLD TOWN KEY WEST DEVELOPMENT, LTD owned TROPICAL SHELL & GIFTS, INC. Thus you will note that OLD TOWN KEY WEST DEVELOPMENT, LTD appears in documents as they acquired the loan in behalf of TROPICAL SHELL & GIFTS, INC. as well as assisted in getting the work accomplished.
- II. Confirmation of our written notice of our exercise of option to renew the existing lease with the City in accordance with RESOLUTION 81-92
- III. Written proof that we acquired a loan (Exhibit A hereto) - for purpose of expending funds on items listed in Schedule A of RESOLUTION 81-92 . I note the following:
 - a) that a loan was obtained from Southeast Bank, N.A. in the amount of \$450,000 (only \$150,000.00 required by RESOLUTION) for leasehold improvements to Mallory Market Square (which the Aquarium is part of - Tropical Shell and Gifts, Inc.)
 - b) that I have enclosed only pages 1 thru 4 of the loan agreement with Southeast Bank, N.A dated May 1983 along with the first and last page of the mortgage relating thereto dated May 13, 1983 that was recorded evidencing the loan.
- IV. Written proof of funds being used on items enumerated in Priority #1; with any remaining funds used on items enumerated in Priority #2 items of RESOLUTION 81-92:

PRIORITY #1:

1)	Roof Replacement	- EXHIBIT B -	\$ 43,662.17
2)	Basic Graphics	- EXHIBIT C -	\$ 23,761.70
3)	Additional Plumbing (\$1,577.54) and Electric(\$18,516.46)	- EXHIBIT D -	\$ 20,094.00
4)	New Guard Rails throughout Exhibit Area	- EXHIBIT E -	\$ 1,225.00
		TOTAL	<u>\$ 88,742.87</u>

PRIORITY #2

1)	Replacement or repair of all interior tanks	- EXHIBIT F -	\$27,335.85
2)	Public Space Remodeling-	EXHIBIT G -	\$40,805.78
3)	Glass Bottom Exhibits		
4)	Additional Graphics		
5)	Shark Exhibit	- EXHIBIT H -	\$31,386.95
		TOTAL	<u>\$99,528.58</u>

Thus the above establishes a total EXPENDITURE of \$188,271.45.

Please review the enclosed and confirm that RESOLUTION 81-92 conditions have been completed. Then have the City Commission respond by Resolution citing compliance or if not please have the Commission specifically cite the items of noncompliance, specifically enumerating the requirements which need be fulfilled as a condition precedent to an affirmative response so that we can implement in accordance with RESOLUTION 81-92.

For your further use we enclose 35 photographs evidencing the work that has been done for your information and use. I would note that we have been unable to locate the negatives so these are the only copies. We would appreciate return of same when you are completed with your review

We would further note that additional major improvements were made as I am sure you are aware just from visiting the Aquarium but we have not unpack our archives to present same as only \$150,000.00 is required to be expended to meet the requirements of the RESOLUTION 81-92.

If you require additional information before submittal to the

City Commission please advise and we will respond accordingly.

Sincerely,


Gerald R. Mosher ^{AMC}
Vice President

cc: ed

ts4g\leaseren.ltr