

RESOLUTION NO. 99-433

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED LEASE BETWEEN THE CITY AND TROPICAL SHELL & GIFTS, INC. FOR AQUARIUM PREMISES MODIFICATION; 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 the City and Tropical Shell & Gifts, Inc. is hereby approved, subject to final negotiations by the City Manager and the City Attorney.

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 16TH day of NOVEMBER, 1999.

Authenticated by the presiding officer and Clerk of the Commission on NOVEMBER 23, 1999.

Filed with the Clerk November 23, 1999.

ATTEST:

Cheryl Smith  
CHERYL SMITH, CITY CLERK

Jimmy Weekley  
JIMMY WEEKLEY, MAYOR

99-433

## LEASE AGREEMENT

THIS LEASE is entered into this day of 11-23-99, 1999, by and between the City of Key West, Florida, a municipal corporation ("Lessor") and Tropical Shell and Gifts, Inc., a Florida corporation ("Lessee").

## WITNESSETH

WHEREAS, Lessor and Lessee entered into a lease, known as the "Cable House Lease" on July 10, 1995; and

WHEREAS, the Cable House Lease is distinguished from a separate, existing lease of City property which the Lessee also holds and which is known as the "Aquarium Lease"; and

WHEREAS, the Cable House Lease involves City property that is related to and abutting the Aquarium; and

WHEREAS, as part of the Aquarium Lease, Lessee has access to and use of a portion of the bay bottom which is critical to the operation of the Aquarium; and

WHEREAS, Lessor desires to protect the Aquarium's water source; and

WHEREAS, the Aquarium is the City's oldest tourist attraction, dating from 1934, and as such its expansion, as set forth herein, would enable it to continue being a valuable asset to the citizens of Key West; and

WHEREAS, the parties desire to rescind the existing Cable House Lease and replace it with a lease that modifies the premises, the respective responsibilities of the parties, and the lease term; and

NOW THEREFORE, in consideration of the benefits accruing to the parties through performance of the terms of this Lease Agreement, Lessor and Lessee agree as follows:

1. Premises.

Subject to the terms and conditions hereof, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor those premises and interests depicted in Exhibit "A", attached hereto and made a part of this Lease, and which premises and interests (collectively, the "Leased Premises") are more particularly described as: (a) a cable house and its underlying parcel; (b) a dock that abuts Mallory Square and lies seaward of the footbridge between the pier ("Hilton Hotel Pier") owned by Tannex Development Corp., a Florida corporation ("Tannex") and the pier ("Mallory Square Pier") owned by the Lessor; (c) certain submerged land between the rear of the Aquarium premises and the footbridge (the "Submerged Land"); (d) a walkway from the landward edge of the footbridge to the rear of the Aquarium; and (e) an area approximately 54' x 26' north of the footbridge and identified on Exhibit "A" as "the Grassy Area" with the specific mutual understanding that this area is to remain free and clear for pedestrian traffic at all times.

2. Term.

The term of this Lease shall be ten (10) years. The Lease term for property being leased hereunder shall commence upon the Lessor fulfilling the conditions set forth in paragraph 4(f) hereof with respect to the drainage outfall. At such time, the Lessor's City Manager shall issue a Notice of Lease Commencement to Lessee which shall identify the date of commencement. This Lease shall commence no later than June 1, 2000. Until such time as this Lease commences, the Cable House Lease shall remain in full force and effect, but all other obligations of the parties herein shall be enforceable upon execution of this Lease Agreement.

Drainage  
outfall  
pipe

Per Annalise 2/12/09  
outfall pipe not  
extended or eliminated.  
Will be at least 6mo  
longer.



**3. Rent.**

Lessee agrees to pay Lessor rental for the Leased Premises as follows:

(a) For the cable house and its underlying parcel, and other abutting premises as depicted on Exhibit "A", a rental of \$6,048.00 per annum, payable in equal monthly installments of \$504.00 per month (this rental amount is in addition to all rents paid to the City of Key West under the Aquarium Lease); and

(b) For the Submerged Land, the amount of \$2,400.00 per annum payable in equal monthly installments of \$200.00 per month.

The total of subsections 3(a) and 3(b) shall be the annual rental due to the Lessor by the Lessee. All monthly rental installments are payable in advance on the first of each month, and shall be made to the Finance Department of the Lessor. Any monthly rental not received by the tenth day of the month shall bear simple interest at 8% per annum from such tenth day until 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 the late payment.

**4. Covenants of Lessor**

The Lessor agrees as follows:

(a) Lessor warrants that the footbridge between the Hilton Hotel Pier and Mallory Square Pier will connect to the Mallory Square Pier flush to the wooden dockage at the outer edge of the existing dock planking.

(b) The proposed footbridge may be installed. Lessor, however, shall, within 30 days of the date the footbridge is installed, complete construction of a wooden dock (and stairs) outside of the footbridge and abutting Mallory Square Pier, as shown on Exhibit A. If Lessor does not complete construction of this wooden dockage (and stairs) within 45 days

of the date the footbridge is installed, then Tannex and Lessor shall, at their expense remove the footbridge until such construction has been completed. Until the completion of the dock by Lessor, Tannex shall permit vessels to dock at Tannex dockage as such vessels need to dock for Aquarium purposes. The dock shall be at least 20 feet long by 6 feet wide. This dock will be for the exclusive use of Lessor's emergency and enforcement vessels and Lessee's vessels related to Aquarium uses. Lessor hereby grants Lessee a non-exclusive easement to traverse Lessor's property directly between this dock and the Aquarium for fish-delivery purposes limited to the unloading and delivery of specimen from vessels to the Aquarium, and for other Aquarium-related uses. See Paragraph 5(a) hereof.

(c) At Lessor's expense, one span of the footbridge (not including the piling) shall be removed temporarily, on an as-needed basis, upon the mutual agreement of the parties, for the sole purpose of dredging the Submerged Land, repairing docks and seawalls, and to construct facilities. The parties shall furnish to each other written notice of any proposed removal of the footbridge not fewer than thirty (30) days prior to the date of the proposed removal. The notice shall state the estimated period of time of removal of the footbridge. Any party may furnish written notice of objection to such removal to the other parties within ten (10) days of receipt of the parties' removal notice. The notice of objection shall set forth the basis for objection and provide three (3) alternate dates for footbridge removal, the latest of which alternate date must occur not later than thirty (30) days following the parties' proposed date for removal. The Lessor, Lessee and Tannex agree to act reasonably and in good faith to accommodate one another's scheduling requests. The costs of such dredging shall be shared equally by Lessor and Lessee. A dredging shall occur prior to the first anniversary of the date of the execution of this Lease Agreement. The parties shall use best efforts in connection with

dredging the Submerged Land, repairing docks and seawalls, and constructing facilities to conduct all activities to the maximum extent possible within the upland area.

(d) The City agrees to lease to Lessee the Submerged Land as identified in Exhibit A, subject to approval of a sublease of Submerged Land by the Board of Trustees of the Internal Improvement Trust Fund. Lessee shall not develop or use the Submerged Land without first obtaining from the City of Key West (and all other necessary governmental agencies) all regulatory approvals and permits for development of the Submerged Land, such approved site plan which shall then be appended to this Lease as an amendment. The Lessor and Tannex shall in good faith support all permit applications to other governmental agencies for the proposed expansion of the Aquarium upon the Submerged Land so long as Lessee has demonstrated an ability to satisfy all applicable regulations of all applicable government authorities, including, without limitation, those of the Lessor and so long as such expansion fully complies with the terms and provisions of this Lease, and so long as Lessee does not use amplified sound heard beyond the Lease Premises after 7 p.m. and before 9 a.m. (except for rare special events). For Lessee's Aquarium expansion, Lessee agrees not to place any signage facing the Hilton Hotel, and agrees to a height limit as that of the parapet atop the roof of the cable house leased to the Lessee hereunder as of November 16, 1999. Furthermore, Lessee agrees that no railing will be installed at the rooftop of any structure in the expanded Lease Premises which involves or permits the presence of persons upon any rooftop.

(e) Lessor agrees that at Lessee's option Lessee may deliver fish to the rear of the Aquarium by use of a small boat capable of traversing underneath the footbridge and docking at the Aquarium leasehold.

(f) Lessor agrees that it shall either eliminate the drainage outfall pipe or extend the drainage outfall pipe at least ten (10) feet beyond the footbridge so that the pipe emits effluent beyond the channel.

(g) Subject to Paragraph 5(b), Lessor agrees to allow Lessee to indicate by signage and entranceway an access to the rear of the Aquarium near the footbridge as shown on Exhibit A.

(h) Lessor and Tannex understand and agree that Lessor may temporarily control access from the footbridge to Mallory Square during special events. This shall mean special events only when Mallory Square may not be accessed by the public without a paid ticket.

**5. Covenants of Lessee.**

(a) Lessee agrees that its use of the dock outside of the footbridge shall be intermittent, and shall yield to the Lessor's emergency needs. Lessee understands that because a dockage fee is not being charged by the terms of this Lease, no vessel of Lessee's or of Lessee's agents shall remain at the dock any longer than necessary for Aquarium purposes, and not overnight. In no event shall a vessel be docked at this location during the "Sunset Celebration" at Mallory Square Pier conducted by the Cultural Preservation Society, unless necessary and urgent for an Aquarium delivery. Nor shall vessels of Lessee or Lessee's agents interfere with the mooring of a cruise ship or other vessel at Mallory Square Pier and/or the Hilton Hotel Pier.

(b) Lessee agrees that it shall obtain all necessary regulatory approvals for its proposed controlled entrance to the rear of the Aquarium, including but not limited to HARC approval. Lessee further agrees that its employees or agents will not solicit, either verbally or with handbills, visitors to Mallory Square and its Pier or users of the footbridge. Lessee shall not employ any amplified sound for solicitations at this rear entrance.

(c) Lessee agrees not to use the Submerged Land leased hereunder in any fashion, except navigational and/or dockage purposes, until the proposed site plan for its use is approved in all respects by the City of Key West. Nothing in this paragraph 5(c) is intended to prevent the parties from dredging or cleaning the channel.

(d) The parties understand and agree that Lessee may increase the price of entrance fees to the Aquarium, and the parties agree that Lessor, by virtue of the Aquarium Lease, shall be entitled to Lessor's agreed share of any increase by virtue of that Aquarium Lease.

(e) Lessee agrees that any use of the Submerged Land, either before, during or after the proposed Aquarium expansion, will not interfere in any manner with the navigational rights of the neighboring submerged landowners, Tannex, and its affiliates. The parties and Tannex also agree not to use their respective properties to interfere with the other's navigational rights. For purposes of illustration and not limitation, Lessee agrees to join Lessor in making best efforts to cooperate in any effort of Tannex to bring a barge or other vessel into the channel to perform maintenance and repairs to the Hilton Hotel Pier and all of its understructures and support systems.

(f) Lessee agrees to use the Leased Premises for Aquarium uses and for no other purposes.

**6. Mechanics Lien**

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 Leased 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 Leased 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 Leased 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.

7. **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 Leased Premises, or the building or improvements now on or hereafter constructed or placed on the Leased Premises, nor any portion thereof, for any purpose calculated to injure the reputation of the Leased 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 any building which may be 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 applicable ordinances or laws. Lessee agrees to keep and save Lessor 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 Lessor, 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 Lease. Lessee shall defend Lessor, and shall pay all

reasonable expenses incurred by Lessor in defending itself, with regard to all damages and penalties Lessor may legally be required to pay as a result of the 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

**8. Insurance.**

Lessee agrees to provide at its expense comprehensive liability insurance insuring itself and Lessor against all claims of damages or injury to persons or property arising for any reason out of Lessee's tenancy or use of the Leased 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 \$1,000,000.00 coverage per occurrence combined single limit and property damage. The policy shall show Lessor as an additional insured, and shall provide that it cannot be canceled or revoked except after a minimum of thirty (30) days written notice to Lessor. A true copy of the insurance contract shall be filed with the City Clerk within twenty (20) 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 Lessor 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 Lessor, or from any obligation to indemnify Lessor 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 Lessor 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.

**9. Rules and Regulations.**

The Lessee agrees to execute, comply with and abide by all applicable laws, codes, ordinances, rules, regulations, and directives 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. Lessee's unreasonable failure or refusal to comply with the provisions of this Paragraph 9 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.

**10. Personal Property.**

All personal property placed or moved in or on the Leased 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.

**11. Safety, Correction, Etc.**

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

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

**12. Default; Termination.**

The prompt payment of the rent for the Leased Premises upon the terms named, and the faithful observance of the terms of this Lease, as well as 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 reasonable 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 Agreement, and such default shall continue for thirty (30) days after notice is given in writing by Lessor, Lessor may, at its option, forthwith declare this Lease terminated and immediately re-enter and repossess the Leased 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 Leased 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 Leased 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.



**13. Condition of Premises.**

The Lessor shall deliver the Leased Premises to the Lessee in good, safe, clean tenable, condition. Lessee hereby accepts the Leased Premises in the condition they were in at the beginning of this Lease Agreement, and agrees to maintain the Leased 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 any approved development, 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.

**14. Assignment, Sale, or Sublease.**

Lessee shall not sell or assign this Lease or sublet the Leased Premises in whole or in part with all rights thereunder, without the consent by Resolution of the Key West City Commission. Such consent by Lessor 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 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.

Notwithstanding the foregoing, Lessee may, in conjunction with financing for Lessee or an affiliate or parent of Lessee, encumber this Lease, and, in the event of such encumbrance, Lessor agrees to cooperate with all reasonable requests for information by Lessee's lender.

**15. 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 Agreement shall be construed to be a waiver of any succeeding breach of the same covenant.

**16. Binding Upon Successors, Etc.**

This Lease Agreement and all of 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.

**17. Fire or Other Casualty.**

Should the Leased Premises or any part thereof be damaged or destroyed by fire or other casualty covered by insurance policies applicable to the Leased Premises, Lessor shall, except as otherwise provided herein, and only to the extent it recovers proceeds from such insurance, repair and/or rebuild the same with reasonable diligence. Lessor's obligation to rebuild or repair shall be limited to the condition originally provided by Lessor at the time of term commencement. Lessor shall not be obligated to repair, rebuild, or replace any property belonging to Lessee or any improvements to the Leased Premises furnished by or for Lessee. If there should be a substantial interference with the operation of Lessee's business in the Leased Premises as a result of such damage or destruction which requires Lessee to temporarily and/or partially close its business to the public, the rental shall abate to the extent of interference. Unless this Lease is terminated by Lessor as hereinafter provided, Lessee shall repair, redecorate and re-fixture the Leased Premises and restock the contents thereof in a manner and to at least a condition equal to that existing prior to such damage or destruction, and the proceeds of all insurance carried by Lessee on its property

decorations, improvements, fixtures and contents in the Leased Premises shall be held in trust by Lessee for such purpose.

Notwithstanding anything to the contrary contained in this Lease, Lessor, at its option, may terminate this Lease on a 30-day notice to Lessee, given within 120 days after the occurrence of any damage or destruction if: (a) the Leased Premises are damaged or destroyed as a result of a risk which is not covered by Lessor's insurance; (b) the Leased Premises are damaged and the cost to repair the same shall exceed 25% of the then replacement cost of the premises; (c) the Leased Premises are damaged during the last 2 years of the term; (d) the building of which the Leased Premises is a part shall be damaged to the extent of 25% or more of the replacement cost thereof (whether the Leased Premises be damaged or not); or (e) if Lessor is not permitted to rebuild by the terms of any applicable zoning or other law, regulation or order.

**18. Additional Rent; Utilities**

Should any taxes be imposed upon the Leased Premises or upon the Lessor, Lessee, occupant or whomsoever, from any source whatsoever, including but not limited to sales tax and, **ad valorem tax**, 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 Leased 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 Leased Premises including, but not limited to, water, electricity, sewer, solid waste and gas (if applicable).

**19. 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 bankrupt or insolvent, 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 to be canceled and terminated, without thereby releasing Lessee; and upon such termination Lessor shall have the immediate right to re-enter the Leased 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 Leased Premises or to remain in the possession thereof. Upon the termination of this Lease Agreement, 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.

**20. Radon Gas.**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present a health risk to persons who are exposed to it over time. Levels of radon that exceed federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. This notice is given pursuant to Section 404.056(8), Florida Statutes.

**21. Hazardous Substances.**

The term "Hazardous Substances", as used in this Lease, shall include, without limitation, flammables, radioactive materials, asbestos, toxicities, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority.

Lessee shall not cause or permit to occur: (i) Any violation of any federal, State or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions on, under or about the Leased Premises or arising from Lessee's use or occupancy of the Leased Premises, including , but not limited to, soil and ground water conditions; or (ii) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any

Hazardous Substance without Lessor's prior written consent, which consent may be withdrawn, conditioned or modified by Lessor in its sole and absolute discretion in order to ensure compliance with all applicable laws, as such laws may be enacted or amended from time to time.

With respect to any environmental clean-up activities:

(a) Lessee shall, at Lessee's own expense: (i) comply with all laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances; and (ii) make all submissions to, provide all information required by, and comply with all requirements of, all governmental authorities under such laws.

(b) Should any governmental authority or any third party demand that a cleanup plan be prepared and a cleanup be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances that occurs during the term of this Lease, at or from the Leased Premises or which arises at any time from Lessee's use or occupancy of the Leased Premises, then Lessee shall, at Lessee's own expense, prepare and submit the required plans and all related bonds and other financial assurances and Lessee shall carry out all such clean-up plans.

(c) Lessee shall promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances that is requested by Lessor. If Lessee fails to fulfill any duty imposed under this Paragraph 21(c) within thirty (30) days following its request, Lessor may proceed with such efforts and in such case, Lessee shall cooperate with Lessor in order to prepare all documents Lessor deems necessary or appropriate to determine the applicability of the laws to the Leased Premises and Lessee's use thereof and for compliance therewith and Lessee shall execute all documents promptly upon Lessor's request and any expenses incurred by Lessor shall be payable by Lessee as additional rent. No such action by

Lessor and no attempt made by Lessor to mitigate damages under any law shall constitute a waiver of any of Lessee's obligations under this Paragraph.

(d) Lessee's obligations and liabilities under the Paragraph 21 shall survive the expiration of this Lease.

Lessee shall indemnify, defend and hold harmless Lessor, its respective officers, directors, beneficiaries, shareholders, partners, agents, and employees from all fines, suits, procedures, claims, and actions of every kind and all costs associated therewith, including attorneys' and consultants' fees, arising out of, or in any way connected with Lessee's placement of any Hazardous Substances on the Leased Premises.

**22. Severability.**

If any term or provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**23. 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:           President  
                          Tropical Shell & Gift, Inc.  
                          201 Front Street  
                          Key West, FL 33040

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.

**24.   Governing Law.**

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

**25.   Entire Agreement; Revocation of Previous Lease.**

This Lease sets forth the entire agreement of the parties concerning the Leased Premises. No amendment shall be made to this Lease Agreement except in a writing signed by both parties; provided, however, that if the parties desire to amend paragraphs 4 or 5 of this Lease Agreement in a manner that involves the rights of Tannex, this amendment shall be subject to Tannex's consent and signature.

Upon its commencement pursuant to Paragraph 2 hereof, this Lease shall also constitute a complete revocation of the certain Cable House Lease executed by the parties on July 10, 1995.

**26.   Settlement of Case.**

The parties agree that upon their mutual execution of this Lease, they shall file the appropriate pleadings in the Circuit Court of the Sixteenth Judicial Circuit holding Case No. 99-99-CA-18 in abeyance until the Board of Trustees of the Internal Improvement Fund consents to the Submerged Land sublease as set forth in Paragraph 4(d) hereof. Upon such consent, the parties shall file the appropriate pleadings dismissing the case with prejudice.



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

**CITY OF KEY WEST, FLORIDA**

**TROPICAL SHELL & GIFTS, INC.**

BY: 

Julio Avel, City Manager

BY: 

President

ATTEST:

  
Cheryl Smith

City Clerk

ATTEST:

  
Secretary

Secretary

**LIMITED JOINDER AGREEMENT**

Tannex Development Corp. ("Tannex") joins in the foregoing Lease Agreement for the limited purpose of Acknowledging and agreeing that all parties, including Tannex, and their respective heirs, successors and assigns shall be bound by each of the stipulations in paragraphs 4(b), 4(c), 4(d), 4(h), 5(a), and 5(e). The address for Tannex for any notices hereunder shall be:

Tannex Development Corporation  
1100 Linton Blvd. C-9  
Delray Beach, Florida 33444

**TANNEX DEVELOPMENT CORP.**

By: 

\_\_\_\_\_  
President

Attest:

  
\_\_\_\_\_  
Secretary

# Exhibit A

