

## SECOND AMENDMENT TO LEASE AGREEMENT

This Second Amendment to Lease Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Key West hereinafter (“LANDLORD”) and Island Tranquility, Inc. (hereinafter “TENANT”).

### WITNESSETH

WHEREAS, LANDLORD and TENANT entered into a Lease Agreement on the 2<sup>nd</sup> day of December, 2008, (the “Lease Agreement”), and the First Amendment thereto on February 1, 2011 pertaining to the premises located at 700 Block of Eisenhower Dive in the Key West, Florida.

WHEREAS, the LANDLORD and TENANT now desire to further amend their Lease Agreement and First Amendment thereto which are attached hereto as Exhibit “A”,

NOW, THEREFORE, in mutual consideration of the benefits conferred upon the parties by the terms of this Amendment, LANDLORD and TENANT agree as follows:

1. Section 1.5 and Section 3 shall be amended to state that the term of the lease will be five years effective December 1, 2013 and expiring November 30, 2018.
2. Section 8 Indemnification shall be deleted in its entirety and replaced with the following:

**INDEMNIFICATION** - TENANT does hereby agree to indemnify, defend, and save LANDLORD, its respective officers, directors, agents and employees harmless from and against any and all liability for any injury to or death of any person or persons or damage to property (including adjoining property for environmental damage) in any way arising out of or connected with the conditions, use or occupancy of the Demised Premises, or in any way arising out of the activities of TENANT, its agents, employees, licensees or invitees on the Demised Premises and/or the building, including reasonable attorney’s fees and court costs incurred by LANDLORD in connection therewith, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, excepting, however, only liability caused by LANDLORD’S gross negligence in its failure to perform any of LANDLORD’S covenants, obligations or agreements of this Lease. Nothing herein is intended to waive the sovereign immunity afforded to City pursuant to Florida law, including section 768.28, Florida Statutes.

The indemnification obligations under this Section shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for TENANT under Workers’ Compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of TENANT or of any third party to whom TENANT may subcontract work. This indemnification shall continue beyond the date of termination of the Agreement.

3. Section 1.9 and section 9 Insurance shall be deleted in entirety and replaced with the following:

**TENANT’S INSURANCE** - At TENANT’S sole cost and expense, TENANT will secure, pay for, and file with the LANDLORD, during the entire Term hereof, an occurrence form commercial general liability policy, covering the Demised Premises and the operations of TENANT and any person conducting business in, on or about the Demised Premises in a at least the following minimum amounts with specification amounts to prevail if greater than minimum

amount indicated. Notwithstanding any other provision of this Lease, TENANT shall provide the minimum limits of liability coverage as follows:

Commercial General Liability	\$2,000,000	Aggregate
	\$2,000,000	Products Aggregate
	\$1,000,000	Any One Occurrence
	\$1,000,000	Personal Injury
	\$300,000	Fire Damage/Legal

TENANT shall also procure the following insurance coverage:

- (i) "All risk" property insurance, including theft coverage, written at replacement cost value and a replacement cost endorsement insuring TENANT'S improvements and betterments, fixtures, furnishings, equipment and any other property belonging to TENANT.
- (ii) Workers compensation coverage as required by the provisions of Florida statute.

Any consignment agreement used by TENANT must provide that consignor acknowledge that the LANDLORD does not have any liability whatsoever for any damage which may be done to items left in the Demised Premises on consignment. The TENANT must provide the LANDLORD with a copy of any consignment agreement used by TENANT regarding Demised Premises. LANDLORD shall not be responsible for damage to any property belonging to TENANT or consignor. TENANT completely indemnifies the LANDLORD with regard to any claims made by any consignor for any reason. From time to time during this Lease, at LANDLORD'S request, TENANT shall (i) procure, pay for and keep in full force and effect such other insurance as LANDLORD shall require and (ii) increase the limits of such insurance as LANDLORD may reasonably require.

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

TENANT shall furnish an original Certificate of Insurance indicating, and such policy providing coverage, to LANDLORD named as "Additional Insured" on a PRIMARY and NON CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its equivalent, INCLUDING A "Waiver of Subrogation" clause in favor of LANDLORD on all policies. TENANT will maintain the General Liability coverage summarized above with coverage continuing in full force including the "additional insured" endorsement until at least 3 years beyond the termination of this Lease.

TENANT's insurance policies shall be endorsed to give 30 days written notice to LANDLORD in the event of cancellation or material change, using form CG 02 24, or its equivalent.

All policies of insurance required to be carried by TENANT pursuant to this Lease shall be written by responsible insurance companies authorized to do business in Florida with an AM Best rating of A-VI or better. Any such insurance required to be carried by TENANT hereunder may be furnished by TENANT under any blanket policy carried by it or under a separate policy therefore. Certificates shall be delivered to LANDLORD prior to the commencement of the Term of this Lease and, upon renewals, but not less than sixty (60) days prior to the expiration of such coverage. In the event TENANT shall fail to procure such insurance, LANDLORD may, at its option, procure the same for the account of TENANT, and the cost thereof shall be paid to LANDLORD as an additional charge upon receipt by TENANT of bills therefore, together with an administrative fee equal to fifteen (15%) percent to cover the cost of the LANDLORD'S efforts to procure such policy.

Certificates of Insurance submitted to LANDLORD will not be accepted without copies of the endorsements being requested. This includes additional insured endorsements,

cancellation/material change notice endorsements, and waivers of subrogation. Copies of USL&H Act and Jones Act endorsements will also be required if necessary. **PLEASE ADVISE YOUR INSURANCE AGENT ACCORDINGLY.**

4. The document attached to the Lease Agreement and referred to as "Exhibit B" in paragraph 1.6, paragraph 4.4(a), and paragraph 4.4(c), of the Lease Agreement and as "Exhibit B-1" in the First Amendment are hereby deleted in their entirety and replaced with "Exhibit B-2", which is attached hereto and incorporated by reference.
5. Except as modified herein, the Lease Agreement as amended shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have made this First Amendment to Lease Agreement on the date first written above.

**Landlord: City of Key West**

ATTEST:

\_\_\_\_\_  
Cheryl Smith, City clerk

By: \_\_\_\_\_  
Craig Cates, Mayor

**Tenant: Island Tranquility, Inc.**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Frank Bervaldi, President

\_\_\_\_\_  
Witness

The foregoing Second Amendment to Lease Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, who is personally known to me, or who [ ] produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

My commission expires:

Print name: \_\_\_\_\_

**Exhibit "A"**

**Lease Agreement Resolution 08-324  
First Amendment Resolution 11-042**

**Exhibit "B-2"**

**Amended Rent Schedule**

CITY OF KEY WEST

EXHIBIT "B-2"

Tenant: Island Tranquility, Inc.  
 Location: 711 Eisenhower Drive  
 Contact: Frank Bervaldi

YEAR #	Period Beginning	Base Rent monthly	Base Rent Annual	Sales Tax	Total Rent With Tax	TOTAL RENT ANNUAL
1	December 1, 2013	\$816.00	\$9,792.00	Monthly \$61.20	Monthly \$877.20	\$10,526.40
2	December 1, 2014	CPI				
	December 1, 2015	CPI				
	December 1, 2016	CPI				
	December 1, 2017	CPI				

Tenant pays Taxes and Insurance expenses directly.