

## SUB LEASE

**THIS SUBLEASE** (herein "Sublease") made and entered on this \_\_\_\_ day of \_\_\_\_\_, 2012 ("Sublease Date") by and between, Conch Tour Train, Inc. as TENANT/SUBLESSOR and Valsin A Marmillion & Juan Cruz Pisani, as SUBLESSEE, in consideration of their mutual covenants herein set forth, do hereby agree as follows:

**WHEREAS** Caroline Street Corridor and Bahama Village Community Redevelopment Agency (herein "LANDLORD") and Conch Tour Train, Inc. (herein "SUBLESSOR") entered into a ten (10) year lease on June 7, 1996 for the rental of the real property and common area of the Key West Bight as more particularly described below (herein "Lease"); and

**WHEREAS** Caroline Street Corridor and Bahama Village Community Redevelopment Agency and Conch Tour Train, Inc. entered into the Lease Addendum Extending Duration to Twenty Years dated January 22, 1997, extending the duration of the term of the Lease from ten (10) years to twenty (20) years with the Lease commencing March 1 S, 1999 and ending March 14, 2019 (herein "First Amendment"); and

**WHEREAS** Caroline Street Corridor and Bahama Village Community Redevelopment Agency and Conch Tour Train, Inc. entered into the Lease Amendment for Flagler Station dated September 22, 2000, amending the terms of the Lease and First Amendment to define the "footprint" area of leased Property, define "non-footprint" area that Conch Tour Train, Inc. controls and maintains, clarify CAM charges, adjust percentage rent trigger, determine rent credit due to Conch Tour Train, Inc., clarify commencement date and clarify the rent commencement date (herein "Second Amendment"); and

**WHEREAS** Caroline Street Corridor and Bahama Village Community Redevelopment Agency and Conch Tour Train, Inc. as LANDLORD and SUBLESSOR respectively, agree to modify the terms and conditions of the Lease by allowing SUBLESSOR to sublease a portion of the Property to SUBLESSEE under the terms and conditions of this Sublease;

**NOW THEREFORE**, in consideration of the mutual covenants and obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals:** The above Recitals are true and correct and are hereby incorporated herein by reference.
2. **Consideration:** Each Party hereto warrants that this Sublease and all terms and Conditions contained herein, is supported by adequate consideration.

3. **Lease:** The Lease, First Amendment and Second Amendment shall be collectively referred to herein as the "Lease". The Lease is attached and incorporated collectively herein as composite Exhibit "A". The LANDLORD and SUBLESSOR agree that the obligations of SUBLESSOR and LANDLORD under the Lease to each other shall remain in full force and effect unless specifically provided otherwise herein, including the continuing payment of rent by SUBLESSOR to LANDLORD. SUBLESSEE acknowledges and agrees that this Sublease is subject to the terms and conditions of the Lease and as such, SUBLESSEE agrees to said terms and conditions as modified herein. SUBLESSEE agrees not to take any action which would cause a violation of SUBLESSOR's obligations under the terms of the Lease. Any such action shall be grounds for immediate termination of this Sublease.

4. **Parties:**

<p>Conch Tour Train, Inc          201 Front Street          Suite #310          Key West, Florida 33040          Phone: 305.294.3225          Herein called "SUBLESSOR."</p>	<p>The Little Red at Flagler Station          Valsin A. Marmillion &amp; Juan Cruz Pisani  <hr/>         Key West, FL 33040          202-352-1669 &amp; 954-560-3125          Herein called "SUBLESSEE"</p>
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5. **SUBLESSOR's Agent:** SUBLESSEE is hereby notified that Historic Properties Management, Inc. (also referred to herein as "HPM") shall serve as Agent for the SUBLESSOR. All notices to SUBLESSOR and all payments of funds due under this Sublease must be sent to SUBLESSOR, care of SUBLESSOR's Agent at 201 Front Street, Suite 310, Key West, Florida 33040, unless SUBLESSOR gives SUBLESSEE written notice of change. SUBLESSOR's Agent(s), by its officer, director, employee, an HPM agent, or its lawyer, may perform inspections on behalf of SUBLESSOR as provided in this Sublease or provided under law and to take and perform any action necessary or required to enforce the terms of this Sublease; however, no terms of the Sublease may be modified or waived without SUBLESSOR'S written signature.

6. **Property:** Conch Tour Train, Inc. presently leases 901 Caroline Street, approximately 4,096 square feet of "footprint" area and 4176 square feet of non-footprint area (notwithstanding any actual measurements which may be taken) at the corner of Caroline Street and Margaret Street in Key West, Florida from the Caroline Street Corridor and Bahama Village Community Redevelopment Agency under the terms of the Lease. The "footprint" area consists of four principal portions; retail space with connected outside porch/platform, a railroad car, the Maggie Attwell House, and located to the southwest of the retail space is a ticket depot. The "non-footprint" area is the area directly surrounding the "footprint" area and consists of landscape area, driveway and walkways. The "footprint" and "non-footprint" area shall be collectively referred to herein as "the Property" and are crosshatched on the Site Plan attached hereto and incorporated herein as Exhibit "B"

7. **Bight:** The Property is located within a larger area known as the "Key West Bight" which contains various retail shops, stores, marina(s) restaurants, and other tourist attractions and parking (herein "Bight"). See Exhibit "C" which shows the area of waterfront property more commonly referred to as the Bight.

**8. Premises and Common Area:**

A. **Premises:** Upon the terms and conditions hereinafter set forth, and in consideration of the payment from time to time by the SUBLESSEE of the rents hereinafter set forth, and in consideration of the performance continuously by the SUBLESSEE of each and every one of the covenants and agreements hereinafter contained by the SUBLESSEE to be kept and performed, the SUBLESSOR does hereby Sublease, let, and demise unto the SUBLESSEE, and the SUBLESSEE does hereby Sublease of and from the SUBLESSOR, the following described Premises situated, lying, and being in Monroe County, Florida: A portion of the Property outlined and/or crosshatched on Exhibit "D" containing the approximate dimensions and area of 2,730 sq. ft. of space, (notwithstanding any actual measurements which may be taken) containing one (1) of the four principal portions of the Property: the retail shop along with the porches in the front and immediate rear of the retail space and any improvements thereto and the Rail Road Platform in between the Retail Shop and the Rail Car Museum. Any portion of the Property not specifically subleased as the Premises herein shall remain under the possession of the SUBLESSOR who shall have control and use subject to the terms of the Lease as modified under this Sublease. (herein "the Premises") The Premises shall specifically exclude the use of the railroad car, the Maggie Attwell House, and the ticket depot.

B. **Common Area:** SUBLESSOR grants to SUBLESSEE, its invitees and customers, together with and subject to the Lease, the same rights granted from time to time to other Tenants of the Bight, the right, as a co- Tenant, to use any Common areas of the Bight. The Common Area includes the "non-footprint" area which is not crosshatched on the attached Exhibit "D".

C. **Reservation:** SUBLESSOR reserves and shall be entitled, along with its customers, employees, agents, and invitees to use the ADA compliant bathroom inside the Premises, to have unobstructed access to the side entrance from the Rail Car Platform to the Rail Car Museum by way of the handicap ramp and use the Premise's entrance to access the Property in the rear of the Premises retained by SUBLESSOR under the terms of the Lease, during SUBLESSEE'S hours of operation. SUBLESSOR also reserves use of including without limited to the walls, floors, roof and the space immediately around and under the roof, walls, ceiling, and decks so that SUBLESSOR may install, maintain, use, repair, and replace pipes, ducts, conduits and wires, and any other action in order to keep the Premises, Property and common area in any needed repair or maintenance or in order to protect the safety and welfare of the Premises, Property and common area and comply with the terms of the Lease. The SUBLESSOR will make every effort to not intentionally interfere with SUBLESSEE's use of the Premises in any action taken pursuant to this section. Said repair, maintenance or construction may require the temporary discontinuance of water, electricity and any or all other utilities, which shall occur whenever such discontinuance is necessary in order to make repairs or alterations to the Premises, Property and Common Area. No such action by SUBLESSOR shall be construed as an eviction, constructive eviction, disturbance of possession, any right to the abatement of rent or an election by SUBLESSOR to terminate this Sublease, nor shall SUBLESSOR be in any way responsible or liable to SUBLESSEE in any manner for such action.

9. **Contingency:** not applicable

10. **Possession Date:** The SUBLESSEE shall take possession of the Premises upon consent and approval of the City of Key West and Landlord (herein "Possession Date").

11. **Commencement Date:** This Sublease shall commence thirty (30) days following the date the LANDLORD, by Resolution, consents and approves of this Sublease (herein "Commencement Date"). SUBLESSEE shall, no later than the Commencement Date, at SUBLESSEE's sole cost and expense, improve, fixture, equip, stock and decorate the Premises; to the end that the Premises and SUBLESSEE's Business therein will be a first class facility in SUBLESSEE's business category, and open for business to the public.

12. **Sublease Term:** The Sublease Term shall be three (3) years beginning on the Commencement Date; however SUBLESSEE shall be subject to all the terms and conditions of this Sublease on the Possession Date, excluding the payment of Rent. If the Commencement Date is other than the 1<sup>st</sup> day of a calendar month, the 1<sup>st</sup> Lease Year shall be the period of time from said Commencement Date to the end of the month in which said Commencement Date shall fall plus the following 12 calendar months. Each Sublease Year thereafter shall be a successive period of 12 calendar months.

13. **Rent\*:** Total Monthly Rent shall be due and payable to the SUBLESSOR from SUBLESSEE beginning on the Commencement Date. If the Commencement Date is other than the 1<sup>st</sup> day of a calendar month, Rent for the initial partial month will be pro-rated according to the number of days from the Commencement Date and the number of days remaining in that calendar month. The following payment of monthly rent shall be due and payable in advance on the first business day of next calendar month, and continue each calendar month thereafter during the Sublease Term. Rent payments and other money payable under this Sublease to SUBLESSOR shall be made payable to Conch Tour Train, Inc., and delivered by post, private carrier, or in person to: 201 Front St., Suite 310, Key West, Florida 33040. The monthly rent amount due from SUBLESSEE to SUBLESSOR shall be according to the table set forth below.

Sublease Year	Yearly Rent Amount	Monthly Base Rent Payment	Total Monthly Rent Amount (includes current sales tax)
Sublease 1	\$60,000.	\$5,000.	\$5,375.
Sublease 2	\$62,400.	\$5,200.	\$5,590.
Sublease 3	\$64,896.	\$5,408.	\$5,814.

\*In addition, SUBLESSEE is responsible for 85% proportionate share of monthly electric bill and 50% proportionate share of the City of Key West Sewer bill and 50% proportionate share of the Florida Keys Aqueduct Authority bill (sales tax not applicable).

14. **Late Fee:** SUBLESSEE agrees to pay a late charge, deemed additional rent, of \$100.00 if any Rents or other Monthly Charges are not paid when due, on the first (1<sup>st</sup>) business day of each calendar month. Any payment of Rent paid after the first (1<sup>st</sup>) business day of the calendar month shall include the payment of the late fee, additional rent, in the amount of \$100.00 with no notice being required to be given to SUBLESSEE by SUBLESSOR.

15. **Taxes:** SUBLESSEE shall pay any tax assessed by the State, County or municipality in which the Premises are located that are applicable to rentals or charges specified in this Sublease Premises. Said tax payment shall be paid to SUBLESSOR with and when the applicable rental or charge is due: Said tax shall be at the legally prevailing rate. Current sales tax is 7.5%. This tax shall be paid by SUBLESSEE, due on the first business day of each calendar month, as additional rent, in addition to the above Sublease charges. Should any governmental taxing authority acting under any present or future law, ordinance or regulation, levy, assess or impose a tax, excise and/or assessment (other than an income or franchise tax) upon or against the rentals payable by SUBLESSEE to SUBLESSOR, whether by way of substitution for, or in addition to, any existing tax on the Premises, land and buildings or otherwise, or any other substitute tax, the proceeds of which are to be used to fund the same governmental functions as were funded by ad valorem taxes, SUBLESSEE shall be responsible for and reimburse SUBLESSOR for the amount thereof, as the case may be, as additional rent, five (5) days from the date notice is provided to SUBLESSEE. Substitute taxes as referred to above in this Section shall include, without limitation, any surtax on parking spaces.

16. **Additional Rent:** In addition to the foregoing rent, all other payments to be made by SUBLESSEE under this Sublease shall be deemed to be and shall become additional rent hereunder whether or not the same be designated as such and it shall be due and payable upon demand together with interest, deemed additional rent, thereon at the highest rate permissible by law from their due date until the date it is paid. The SUBLESSOR shall have the same remedies for SUBLESSEE's failure to pay said additional rental as for non-payment of rent. SUBLESSOR, at its election, shall have the right to pay or do any act which requires the expenditure of any sums of money by reason of the failure or neglect of SUBLESSEE to perform any of the provisions of this Sublease, and in the event SUBLESSOR shall, at its election, pay such sums or do such acts requiring the expenditure of monies, SUBLESSEE agrees to pay SUBLESSOR, upon demand, all such sums, and the sums so paid by SUBLESSOR and any expenses incurred by SUBLESSOR in the payment of such sums together with interest thereon at the highest rate permitted by law from their due date through the date they are paid by SUBLESSEE and shall be deemed additional rent and shall be payable and collectible as such.

17. **Gross Sales Report and Percentage Rent:** In the event that SUBLESSOR and SUBLESSEE's combined gross sales exceed \$489,889 in a Lease Year SUBLESSEE shall be subject to additional rent in the amount of 6% of SUBLESSEE's Gross Sales for that Lease Year as calculated below. SUBLESSEE shall provided to SUBLESSOR a Statement of Gross Sales together with an accurate and complete copy of the State of Florida Department of Revenue, Sales and Use Return Form DR-15 (or such forms as the State of Florida shall hereafter substitute for said form) showing the full amount of SUBLESSEE's Gross Receipts from the Premises during the previous calendar month. The Statement of Gross Sales must be in affidavit form. SUBLESSEE is subject to a ONE HUNDRED dollar (\$100.00) late submission penalty should SUBLESSEE not furnish to SUBLESSOR copies of Form DR-IS (or such forms as the State of Florida shall hereafter substitute for said form) by the tenth (10th) day of each calendar month. In any Lease Year, if at any time the total combined Gross Sales of SUBLESSOR and SUBLESSEE exceeds \$489,889, then in addition to the Rent due hereunder, SUBLESSEE shall pay to SUBLESSOR additional rent as SUBLESSEE's Percentage Rent. SUBLESSEE's percentage rent due shall be calculated by taking the sum of the Lease Year combined Gross Sales of SUBLESSOR and SUBLESSEE, less \$489,889, less the amount of SUBLESSOR's Gross Sales in that Lease Year, multiplied by six (6%) percent, less the sum of SUBLESSEE's Percentage Rent, if any,

previously paid by SUBLESSEE to SUBLESSOR during that Lease Year. Each Lease Year shall be the time from March 15<sup>th</sup> of a year through March 14th of the subsequent year, regardless of the Sublease Term. If by the end of any such preceding month it is determined that SUBLESSOR's and SUBLESSEE's combined Gross Sales during such Lease Year shall exceed the Percentage Base of \$489,889, SUBLESSEE shall pay to SUBLESSOR, at the time of delivery of said Statement of Gross Sales, an amount equal to SUBLESSOR's Percentage Rent as calculated above.

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

Percentage rent shall not apply to ticket sales for Conch Tour Trains sold at "Ticket Depot".

SUBLESSEE agrees to keep, at its principal office, records in accordance with generally accepted accounting practices, in which said Gross Sales shall be recorded. Such records shall be open for inspection by SUBLESSOR, LANDLORD or their agents, including accountants retained for that purpose, during reasonable business hours for the Sublease Term and for at least 3 years thereafter. If any audit shows that the amount of Gross Sales on SUBLESSEE's Statement of Gross Sales was understated by more than 1 % for any year; then SUBLESSEE (in Addition to paying the Percentage Rent due for such understatement) shall pay to SUBLESSOR and/or LANDLORD the reasonable cost of the audit.

18. **Security Deposit:** Upon execution of this Sublease, SUBLESSEE shall deposit with SUBLESSOR the Security Deposit in the amount of **FIVE THOUSAND (\$5,000.00)** DOLLARS as security for the performance by SUBLESSEE of all its obligations and covenants set forth in this Sublease. SUBLESSOR shall not be required to pay SUBLESSEE any interest on said Security Deposit and may co-mingle same with other funds of the SUBLESSOR. SUBLESSEE shall not transfer or encumber its interest in said funds and any such act shall not be binding on SUBLESSOR. If SUBLESSEE defaults in the payment of Rent, or other monies due under this Sublease, SUBLESSOR may without prejudice to other SUBLESSOR remedies, apply as much of said Security Deposit as may be necessary to compensate SUBLESSOR toward payment of Rent, monies due, or other loss or damage to SUBLESSOR arising from such default and SUBLESSEE shall immediately, upon one (1) day Notice from SUBLESSOR, restore the Security Deposit to the original sum. The Security Deposits shall, in no event, be construed to be liquidated damages. The Security Deposit for the Premises, less any amount expended as aforesaid, shall be returned to SUBLESSEE at the end of the Sublease Term pursuant to Florida Statutes. In the event SUBLESSEE fails to fulfill the full Sublease term or otherwise fails to comply with the terms, covenants and agreements herein contained, then upon such occurrence SUBLESSEE automatically forfeits all rights and interest to this Security Deposit on the Premises with no Notice required to be given to SUBLESSEE, provided that in no event shall this Security Deposit on Premises or such automatic forfeiture thereof be deemed to limit SUBLESSEE's liability and obligation for payment to SUBLESSOR for damage, injury or defacement of the Premises, common grounds under Florida Statutes, or failure on the part of SUBLESSEE to fulfill the terms of this Sublease. Further, in no event shall this Security Deposit on Premises at any time during the term hereof be applied by SUBLESSEE as a set-off against

any portion of the rent or other charges hereunder due and payable to SUBLESSOR. In the event this Security Deposit shall not be utilized for any of the above purposes by SUBLESSOR, then such Security Deposit shall be returned by SUBLESSOR to SUBLESSEE subject to Florida Statutes within sixty five (65) days after the expiration of this Sublease.

19. **Mortgage or Sale of Property:** SUBLESSEE agrees that the holder of any mortgage covering the Premises shall not, under any circumstances, be liable for such Rent, Security Deposit or other monies due hereunder. In the event of a sale of the Property, or any portion thereof, SUBLESSEE shall deliver said Security Deposit funds to the purchaser and thereupon SUBLESSOR shall be discharged from any further liability with respect to such Security Deposit funds and the purchaser shall retain said funds as SUBLESSOR under this Sublease.

20. **Use of Premises:**

A. **Business:** SUBLESSEE shall be entitled to use the Premises as a **General Store, including but not limited to greeting cards, beverages, gifts, pet and people toys, gizmos, gadgets, local art & crafts, newspapers, magazines, candy, mints, gum, quick snacks, health goods, vitamins, costumes, hats, candles, coffee table books, kitchen utilities, novelties, and essential items like soaps, creams, sun blocks, hair spray, toiletries, the sale of specialty foods, gourmet spreads or appetizer treats.** In addition the Little Red will offer discount wine varietals and micro brews, however the sale of alcohol items shall not exceed 10% of the total inventory of general store, and for no other purpose, subject to applicable law (herein "Business"). Since the SUBLESSOR has no knowledge as to the specifics of how the SUBLESSEE operates its Business, the SUBLESSOR does not make any representations or warranties that the SUBLESSEE'S intended use of the Premises complies with the applicable laws or the SUBLESSOR'S insurer's requirements and accordingly the SUBLESSEE assumes all risks and liabilities of compliance and shall comply with the requirements of the applicable governmental authorities, law, the SUBLESSOR'S insurer's requirements along with the obtaining of all licenses, permits and approvals necessary to operate its Business.

B. **Hours of Operation:** SUBLESSEE shall be open for business seven (7) days per week from a minimum of 10:00am to 5:00pm, including holidays. It is noted that these hours of operation are needed so that SUBLESSOR shall have access to the ADA accessible restrooms during SUBLESSEE's hours of operation.

C. **SUBLESSEE further agrees:**

i. To allow unobstructed access to the ADA compliant restroom and access to the Property through the Premises to customers, invitees, employees and agents of SUBLESSOR during SUBLESSEE's hours of operation and to keep the handicap/side access entrance to the Rail Car Museum unobstructed at all times.

ii. To operate its Business pursuant to the highest reasonable standards of its Business category, maintaining a substantial stock of appropriate merchandise on display, with sufficient personnel to service its trade.

iii. Not to display any merchandise, solicit business or distribute advertising material beyond the Premises, nor in any manner use any part of the Bight, Property, and common areas for purposes other than for their intended common use and not to obstruct any part thereof

iv. Not to display any banner, pennants, search lights, window signs, balloons, or similar temporary advertising media on the exterior of the Premises excepting as may be provided by the Rule governing the Bight properties.

v. Existing Signage. SUBLESSOR agrees that the existing signage on the Premises is for use by SUBLESSOR AND SUBLESSEE.

vi. Additional Signage. SUBLESSOR agrees that SUBLESSEE shall be allowed to place such additional signage to the Premises provided, however, that all such signage shall have prior written consent of SUBLESSOR regarding the size, style and placement, which consent shall not be unreasonable withheld and shall be approved and comply with all Key West Bight rules and City of Key West and HARC guidelines.

vii. Not to commit waste in the Premises, Property, Bight or common areas and to keep the Premises and immediate adjacent areas including, without limitation, adjacent sidewalks, handicap ramps, porches, and stairs, in a safe, neat, clean and orderly condition and to maintain and repair any lighting and signs on walkways, under any canopy, adjacent roof or overhang immediately surrounding of the Premises. SUBLESSEE agrees to keep the adjacent handicap accessible ramp servicing the Premises and Property free and clear of obstacles. SUBLESSEE shall take reasonable steps to ensure that invitees and customers shall not block the City of Key West sidewalks on either Caroline Street or Margaret Street.

viii. Not to use the Premises or permit the same to be used in any manner which violates any law, ordinance or constitutes a nuisance; for lodging purposes; that may injure the reputation of the LANDLORD, the SUBLESSOR, or annoy, inconvenience or damage its patrons or other Tenant's; or that would constitute an extra-hazardous use or violate any insurance policy of SUBLESSEE, SUBLESSOR, LANDLORD or any other Tenant in the Bight or increase the cost thereof.

ix. To keep all garbage, refuse and solid waste inside the Premises in a neat and clean manner, or to place the same outside the Premises, prepared for collection, in the manner and at the times and places specified by SUBLESSOR or the appropriate disposal company. SUBLESSEE agrees not to burn or permit any burning of garbage or refuse on the Premises or any part of the Bight or Property. SUBLESSEE further agrees that, upon SUBLESSOR's instruction, SUBLESSEE shall separate garbage for recycling and deposit the separate garbage in the receptacle designated by SUBLESSOR. In the event the LANDLORD or SUBLESSEE installs a trash compactor to service the Bight, SUBLESSEE shall pay its Proportionate Share of the cost of installing and maintaining such trash compactor.

x. SUBLESSEE shall contract directly with the pertinent governmental authority or disposal company and shall be responsible for all fees and costs of removal and disposal of solid waste, garbage, and refuse, including but not limited to, impact fees and dumpster rental. SUBLESSEE shall indemnify, save harmless and defend SUBLESSOR and LANDLORD from and against any loss, claim, injury, damage or expense arising out of or related to the generation, storage, or removal or disposal of SUBLESSEE's garbage, refuse or solid waste.

xi. To use its best efforts to cause all trucks serving the Premises to load and unload from through the side of the Premises.

xii. To take no action that would: (i) violate LANDLORD and SUBLESSOR's contracts if any, affecting the Bight (including without the limitation the use restrictions contained in LANDLORD's other leases with its Major Tenants, which restrictions have been explained to SUBLESSEE); or (ii) cause any work stoppage, picketing or cause any manner interference with LANDLORD, SUBLESSOR or other Tenants, occupants, customers or any person lawfully in and upon the Bight; or (iii) Violate SUBLESSOR's Lease with LANDLORD, or (iv) effect SUBLESSOR's insurance on the Property.

xiii. Not to use amplified music or any other noise making machinery or devices that

can be heard outside the Premises or in LANDLORD or SUBLESSOR's sole determination is harmful to the Premises, Property, building or is disturbing to SUBLESSOR, LANDLORD, or LANDLORD'S other Tenants.

xiv. To abide by and observe all reasonable rules and regulations established from time to time by LANDLORD, SUBLESSOR and LANDLORD and SUBLESSOR's insurance carrier with respect to the operation of the Premises, Property, Bight and its Common Areas.

xv. Not to conduct any auction, fire, bankruptcy or selling-out sale on or about the Premises except in strict compliance with City of Key West Code.

xvi. In the event of conflict in any term of condition of this Sublease with any ordinance in the City of Key West Code of Ordinance; the City Ordinance shall take precedence.

xvii. SUBLESSEE shall not engage in any display or Business use of the "non-footprint" area, Property and Key West Bight. No sale or giving of clothing, T-shirts or ticket sales for attractions or vessels, shall be allowed on the Premises except for those that have to do with and refer to the Business of SUBLESSEE.

21. **"AS IS" Acceptance by SUBLESSEE:**

A. **Improvements upon expiration/termination:** Any and all alterations/improvements erected or made on and to the Premises shall on the expiration or sooner termination of this Sublease belong to SUBLESSOR, without compensation to SUBLESSEE, provided however, that SUBLESSOR shall have the option to be exercised on expiration or sooner termination of this Sublease, to require SUBLESSEE to remove any or all such improvements/alterations at their sole cost and expense, including repairing of any damage due to said removal. The SUBLESSOR and SUBLESSEE agree personal property shall not become a permanent improvement and shall remain the property of the SUBLESSEE.

B. **Construction Hold Harmless Agreement:** Prior to the start of any construction by SUBLESSEE on the Premises, SUBLESSEE shall execute a Hold Harmless and Indemnity Agreement with the SUBLESSOR and/or LANDLORD in which SUBLESSEE shall agree to hold harmless the SUBLESSOR and LANDLORD for any injuries to person or property that might arise during or result from construction performed by SUBLESSEE on the Premises.

22. **Repair and Maintenance:**

A. **SUBLESSEE** - The SUBLESSEE covenants and agrees with the SUBLESSOR that during the continuance of this Sublease, the SUBLESSEE shall, at its sole cost and expense, keep in good state of repair and in current and good condition the Premises, including but not limited to the walls, doors, windows, floors, decks, stairs, ADA compliant bathroom, railings, H-VAC with all portions of the central air condition system (changing the filter once every month), the electrical system and parts servicing the Premises, plumbing systems and parts servicing the Premises, landscape/common areas crosshatched on Exhibit "D-1", and all furnishings brought or placed upon the Premises by SUBLESSEE. The SUBLESSEE shall not suffer or permit any removal, waste, or neglect of any portion of the Premises, Property, common area or such personal property to be committed; and the SUBLESSEE will repair, replace, and renovate the Premises and personal property as often as it may be necessary in order to keep the Premises and the personal property which is subject to the SUBLESSOR's lien, in good repair and condition, including all improvements made thereto. The SUBLESSEE shall be responsible for repair and maintenance to the intercom system for the handicap accessible ramp which services the Premises and Property in compliance with the American with Disabilities Act and the law. SUBLESSEE agrees to keep the adjacent handicap accessible ramp and sidewalks adjacent to the handicap accessible ramp servicing the Premises and Property free

and clear of obstacles. SUBLESSEE further agrees to keep the handicap access entrance to the Rail Car Museum unobstructed at all times. SUBLESSEE, as opposed to SUBLESSOR, shall maintain all of the Premises and its surrounding landscaping area within the "non-footprint" area labeled "planter" on Exhibit "D-1", however, should the "planter"(s) require additional plants, said type, quantity and number of plants shall be subject to SUBLESSOR's prior approval.

B. **SUBLESSOR:** The "non-footprint" common area not crosshatched on Exhibit "D-1" shall be repaired and maintained by SUBLESSOR, including the handicap accessible ramp. In addition, the SUBLESSOR shall be solely responsible for the repair and maintenance to the roof, exterior facade and any structural portion of the Premises, subject to the terms of the Lease.

C. **Continuing Obligation:** During the term, SUBLESSEE shall, at SUBLESSEE's cost, make any changes or alterations in the Premises that may be necessary to cause said Premises to conform to all governmental and insurance requirements adopted after the Lease date.

D. **SUBLESSEE Refusal or Neglect:** If SUBLESSEE refuses or neglects to commence and complete any of the foregoing in Section 22 promptly, adequately, and professionally, SUBLESSOR may, but shall not be required, to make or complete said repairs and alterations including a reasonable administrative fee, and SUBLESSEE shall pay the cost thereof to SUBLESSOR upon SUBLESSOR billing SUBLESSEE for same, said costs being deemed "additional rent" for all purposes.

23. **Utilities:** At the time of execution of this Sublease, the cost for SUBLESSEE's electric, water, and sewer utilities supplied to the Premises are jointly computed with the Property occupied by SUBLESSOR on one meter per utility. SUBLESSOR will contract for and supply the following utility services to Premises for SUBLESSEE, AT A COST TO BE PAID SOLELY BY SUBLESSEE and subject to the terms set forth herein: ELECTRIC, WATER, and SEWER. SUBLESSEE shall upon execution of this Sublease, provide payment of the Security Deposit set forth in Section 18 to SUBLESSOR for, in addition to those items in Section 18, security for the payment of the utilities services provided to the Premises by SUBLESSOR to SUBLESSEE as set forth in this Section. SUBLESSOR will track each monthly utility cost, based upon service period and not billing period, to determine the total actual utility cost allocated to the Premises, each calendar month. SUBLESSOR and SUBLESSEE agree that the SUBLESSEE's allocation for each utility is determined based upon the following percentage attributable to the Premises in relation Property for the total amount due on the bill for that utility: Electric (85%); Water (50%); Sewer (50%). SUBLESSOR will, within three (3) business days of receipt, send the SUBLESSEE the Utility bill and the calculations of SUBLESSEE's proportionate share. SUBLESSEE shall no later than three (3) days from the date of delivery, excluding the date of delivery, of said invoice pay to SUBLESSOR the total additional amount due according to the invoice as additional rent. The SUBLESSEE shall pay, in addition to any amounts due under the invoice, a late fee in the amount of \$5.00 per day as additional rent, for each calendar day the SUBLESSEE fails to pay the total outstanding amount due set forth in the invoice to SUBLESSOR within (3) days from the date of delivery excluding the date of delivery of said invoice, with no additional notice or invoicing required. If SUBLESSEE fails to pay to SUBLESSOR the total amount due, within three (3) days from the date of delivery of said invoice, SUBLESSEE shall be in default of this Sublease and SUBLESSOR may terminate this Sublease as set forth herein, and SUBLESSOR shall be entitled immediately, without notice and without prejudice to other SUBLESSOR remedies, apply as much of the Security Deposit as may be necessary to compensate SUBLESSOR for payment of total invoice amount due and other loss or damage to SUBLESSOR arising from such default (including any late fees by the utility Company for late payment). SUBLESSEE shall restore the Security Deposit to the original sum of \$5,000.00, as more fully set forth herein. Failure to return the deposit to its original sum shall be deemed a material breach and default of this Sublease and SUBLESSOR may terminate this Sublease as set forth herein. The Security Deposit shall, in no event, be construed to be liquidated damages. SUBLESSOR SHALL NOT BE OBLIGATED OR

RESPONSIBLE TO PAY ELECTRIC, WATER, OR SEWER charges or bills for said services provided to the Premises UNLESS and UNTIL the SUBLESSEE has paid in full, including any late fees, SUBLESSOR's invoice. All sums due SUBLESSOR under this section shall be deemed "additional rent" for all purposes. SUBLESSEE shall contract for, in its own name, and shall pay before delinquency, any other utility or other service, required for lawful use of the Premises for the Business which is not provided by SUBLESSOR, or separately metered, together with all taxes, impact fees, assessments levied and/or other charges for such utilities.

24. **Discontinuance of Utilities for Failure of SUBLESSEE to Pay:** In the event that SUBLESSEE fails to timely pay the invoice set forth above, and the same results the utilities being cut off for failure to pay the balance due to the utility company by SUBLESSOR, no such action by SUBLESSOR shall be construed as an eviction or disturbance of possession or an election by SUBLESSOR to terminate this Lease, nor shall SUBLESSOR be in any way responsible or liable for such action to SUBLESSEE, its guests or invitees. SUBLESSEE agrees to indemnify and hold SUBLESSOR harmless for any damage caused to SUBLESSEE, or SUBLESSEE's, guest's, consignor's or invitee's property, due to the cutoff of utilities for the failure of SUBLESSOR to pay an invoice timely as provided above.

25. **Temporary Discontinuance for Repairs or Alterations:** SUBLESSOR may, with one (1) hour notice to SUBLESSEE, or without notice in the case of an emergency, cut off and discontinue gas, water, electricity and any or all other utilities whenever such discontinuance is necessary in order to make repairs or alterations. No such action by SUBLESSOR shall be construed as an eviction or disturbance of possession or an election by SUBLESSOR to terminate this Lease, nor shall SUBLESSOR be in any way responsible or liable for such action or required to give SUBLESSEE abatement in rent payments.

26. **Overloading and Additional Utilities:** SUBLESSEE's use of the Premises shall not extend or in any way overload any of the utility services furnished to the Premises or the Property. In the event SUBLESSEE requires addition utility services than that provided in this Sublease, SUBLESSEE, at SUBLESSEE's sole cost and expense, shall submit plans and specifications, prepared by a licensed Florida contractor, to SUBLESSOR for SUBLESSOR's review and consent, which consent may be arbitrarily withheld. In the event SUBLESSOR approves SUBLESSEE's proposed construction to increase utility capacity, SUBLESSEE shall obtain any and all required governmental permits necessary to install such increased utility service to the Premises, and make copies of said permits available to SUBLESSOR. SUBLESSEE shall be responsible for all costs of installation, including any impact fees charged. SUBLESSOR and SUBLESSEE agree that the SUBLESSEE's allocation for each utility attributable to the Premises in relation to the total amount due on the particular utility bill will be adjusted based upon use and the installation of any additional utility equipment and/or improvements to the Premises associated therewith. Any alterations/improvements erected or made on the Premises shall on the expiration or sooner termination of this Sublease belong to SUBLESSOR without compensation to SUBLESSEE. Any alterations/improvements in violation of this section shall entitle the SUBLESSOR to double the amount of damages or expensed incurred by the SUBLESSOR due to the violation. This clause shall survive the expiration, termination or cancellation of this Sublease.

27. **Damage to Premises:** The SUBLESSEE covenants and agrees with the SUBLESSOR that no damage or destruction to the Premises, Property, any building or improvement by fire, windstorm, or any other casualty shall be deemed to entitle the SUBLESSEE to surrender possession of the Premises or to terminate this Sublease or to violate any of its provisions or to cause any abatement or rebate in the rent then due or thereafter becoming due under the terms hereof, unless otherwise specifically provided for

herein. If the Sublease be canceled for the SUBLESSEE's default at any time while there remains outstanding any obligation from any insurance company to pay for the damage or any part thereof, then the claim against the insurance company shall, upon the cancellation of this Sublease, be deemed immediately to become absolute and unconditional property of and belong to the SUBLESSOR. In the event of destruction to the Premises by casualty or hazard, SUBLESSOR will have the option of canceling the Sublease, or repairing the building, at its sole discretion. In the event that the SUBLESSOR elects to repair the building, an appropriate abatement of rent will occur. If the Sublease elects to cancel this Sublease, the Sublease will terminate immediately, with the turnover of the Premises to SUBLESSOR forthwith, and should there remain any obligation from any insurance company to pay for the damage or any part thereof of the Premises, then the claim against the insurance company shall, upon the cancellation of this Sublease, be deemed immediately to become absolute and unconditional property and belong to the SUBLESSOR.

**28. Miscellaneous Provisions:**

A. **Un-encumbrance of title:** The SUBLESSEE covenants and agrees with the SUBLESSOR that nothing in this Sublease contained shall ever be construed as empowering the SUBLESSEE to encumber or cause the SUBLESSEE to encumber the title or interest of the SUBLESSOR or LANDLORD in the Premises and Property.

B. **Quiet Enjoyment:** The SUBLESSEE covenants and agrees with the SUBLESSOR that, at the earlier termination or expiration of this Sublease, the SUBLESSEE will peaceably and quietly deliver unto the SUBLESSOR, possession of the Premises and all buildings and improvements located thereon, as well as the SUBLESSEE's interest in all fixtures and equipment, appertaining thereto as more particularly described herein.

C. **SUBLESSOR'S Right of Entry-** The SUBLESSOR, or its agent(s), shall have the right to enter upon the Premises at all reasonable times when SUBLESSEE is open for business or upon SUBLESSOR providing three (3) hours prior written or verbal notice to SUBLESSEE, (which written notice may be posted on the Premises and verbal notice may be by leaving a message on voicemail system) whether SUBLESSEE is on Premises or not, to examine the same or to make such repairs, additions, or alterations as may be deemed necessary for the safety, comfort or preservation thereof of the Premises and the Property or to exhibit said Premises to future tenants and to put or keep upon the doors, windows or exterior thereof a notice that the Premises are for rent, at any time within ninety (90) days before the expiration or earlier termination of the Sublease Term of this Sublease. This right will be exercised in such manner as not to try not to interfere with the SUBLESSEE in the conduct of the SUBLESSEE's Business on said Premises. If the said Premises are damaged by fire, windstorm, or by any other casualty causing the Premises to be exposed to the elements, then the SUBLESSOR may enter upon the Premises to make emergency repairs, no notice required. SUBLESSOR may enter upon the Premises to make renovations and repairs of a non-emergency nature by giving three (3) hours notice (which written notice may be posted on the Premises and verbal notice may be by leaving a message on voicemail system) whether SUBLESSEE is on Premises or not, to the SUBLESSEE, and will be done in such a manner as to minimize inconvenience to all parties.

**29. Equipment, Fixtures, and Signs:** All furnishings, fixtures, trade fixtures, equipment, and signs used on the Premises by SUBLESSEE which have been provided by and belong to SUBLESSOR, will, at all times, be, and remain, the property of SUBLESSOR. SUBLESSEE agrees to repair and maintain said items and return the same in substantially the same form as SUBLESSOR provided to SUBLESSEE; example of items being provided include signage on side and front of Premises, film screen, benches, decorative wagon wheels, wood boxes, and display counter/racks. Provided that this Sublease is in good standing and subject to

the SUBLESSOR's lien for rent, and subject to prior written approval of SUBLESSOR, SUBLESSEE may remove any furniture, equipment, fixtures, etc .... provided by SUBLESSEE to the Premises during the term of this Sublease, or any part thereof, at their sole cost however, that SUBLESSEE, in so doing, does not cause any irreparable damage to the Premises, Property and/or common areas, and provided further, that SUBLESSEE shall pay or reimburse SUBLESSOR for the reasonable expense of repairing damage caused by such removal. The SUBLESSOR and SUBLESSEE agree personal property brought to the Premises by SUBLESSEE shall not become a permanent improvement and shall remain the personal property of the SUBLESSEE.

30. **Covenant of Quiet Possession:** So long as SUBLESSEE pays all of the rent, monies due and charges due herein, and abides by the terms and conditions of this Sublease and Ground Lease, SUBLESSEE shall peaceably and quietly have, hold, and enjoy the Premises throughout the Sublease Term without interference or hindrance by SUBLESSOR or any person claiming by, through, or under SUBLESSOR.

31. **SUBLESSEE'S Insurance:** SUBLESSEE shall keep in force during the Sublease Term, comprehensive, general and motor vehicle liability insurance including, without limitation, bodily, personal and property damage relating to the Premises on an occurrence basis in the amount of \$ 1,000,000/\$1,000,000.00, and adequate fire, extended coverage and all risk insurance on SUBLESSEE's personal property. SUBLESSEE shall be required to carry insurance covering all inventory, furniture, fixtures or any other personal property belonging to SUBLESSEE or that may be consigned on the Premises by consignor(s). SUBLESSEE agrees to deliver to SUBLESSOR no later than 15 days after the Possession Date of this Sublease, showing the effective date as being the Possession Date, thereafter at least 15 days prior to the expiration of any such policy, either a duplicate original or a certified true copy of all policies procured and additionally before SUBLESSEE undertakes any work to alter or renovate the Premises. Insurance shall be written by one or more responsible insurance companies authorized to do business in the state of Florida (such insurance may be carried under a blanket policy covering the Premises and any other of SUBLESSEE's location(s) and shall name SUBLESSEE, LANDLORD and SUBLESSOR as insured, as their interest may appear, and shall contain endorsements that: (a) such insurance may not be canceled or amended with respect to SUBLESSOR and LANDLORD (or its designee(s)), except upon 15 days prior written Notice to SUBLESSOR (and such designee(s)) by the insurance company; (b) expressly waive any rights to subrogation by SUBLESSEE and SUBLESSEE's insurance company against SUBLESSOR; and (c) include fire, legal, and contractual liability (including consignments) and plate glass coverage. Any consignment agreement used by SUBLESSEE shall provide that consignor acknowledges that the SUBLESSOR and LANDLORD do not have any liability whatsoever for any damage which may be done or for any money due to consignor for items left in the Premises on consignment. The SUBLESSEE shall, prior to entering into any consignment agreements, provide for approval by the SUBLESSOR, an consignment agreement(s) which SUBLESSEE intends to use for consignments on the Premises, which agreement shall include hold harmless language in substantially the same as that set forth below. SUBLESSOR shall not be responsible for damage to any item belonging to SUBLESSEE. SUBLESSEE completely indemnifies and holds SUBLESSEOR and LANDLORD harmless from any loss, liability, expense, claim, injury, or damage (including without limitation reasonable attorneys' fees) caused and/or arising out of the use or occupancy of the Premises or any other part of the Premises, common areas, Bight, or Property by SUBLESSEE or consignor, including without limitation, their agents, contractors, employees, invitees, customers, etc.... The provisions of this Section shall survive expiration or earlier termination of this Sublease ("consignment agreement").

32. **SUBLEESSEE Taxes:** SUBLESSEE agrees to pay, when due, all taxes assessed against SUBLESSEE's personal property. SUBLESSOR shall remain responsible for all real estate taxes levied on the real property, if any. SUBLESSEE shall pay for all license fees, occupational taxes, secretary of state fees, and other governmental charges assessed by reason of SUBLESSEE's use or occupancy of the Premises, including, without limitation, any rental or occupancy taxes and any other taxes arising out of the operation of SUBLESSEE's Business or occupancy of the Premises. SUBLESSEE shall provide proof to SUBLESSOR of the same no later than five (5) days from receipt of a request by SUBLESSOR.

33. **Assignment and Hypothecation** This Sublease is not transferable or assignable and may not be hypothecated nor sublet without the prior written consent of the SUBLESSOR and LANDLORD which consent may be arbitrarily withheld EXCEPT for the sole and limited purpose of collateralizing a loan of SUBLESSEE from a financial institution. Any assignment or sub-letting, even with SUBLESSOR's and LANDLORD's consent shall not relieve SUBLESSEE from liability for payment of Rent or from the obligation to keep and be bound by the agreements of this Sublease. The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the agreements of this Sublease or to be consent to the assignment for the benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior consent of SUBLESSOR and LANDLORD. In the event SUBLESSEE wishes to assign this Sublease and SUBLESSOR and LANDLORD consents to such assignment, SUBLESSOR and LANDLORD may each charge a reasonable fee, to help offset any costs SUBLESSOR and LANDLORD may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same. If the SUBLESSEE is a corporation, then a sale or transfer of a controlling interest in the corporation by sale of stock or otherwise, shall constitute an assignment for purposes of this provision, requiring prior consent.

34.. **Subordination:** This Sublease, and all rights of SUBLESSEE hereunder, are and shall be subject and subordinate to the Lease and all mortgages, bond indentures and any other financing instrument (hereinafter referred to as security agreements) which may now or hereafter affect the Premises and to each and every advance made or hereafter to be made under such security agreements and to all renewals, modifications, replacements and extensions of such security agreements and spreaders and consolidations of such security agreements. This Section shall be self operative and no further instrument of subordination shall be required to make it effective, however, SUBLESSEE shall promptly execute and deliver any instrument reasonably requested to evidence such subordination. SUBLESSEE shall attorn to such successor SUBLESSOR and will execute such instruments as may be necessary or appropriate to evidence such attornment. Upon such attornment, this Sublease shall continue in full force and effect as if it were a direct Sublease between the successor SUBLESSOR and SUBLESSEE upon all the terms, conditions, and covenants as are set forth in this Sublease and shall be applicable after such attornment. SUBLESSEE shall deliver to SUBLESSOR or the holder of any such security instrument or auditors, or prospective purchaser or the owner of the fee, when requested by SUBLESSOR, a certificate to the effect that this Sublease is in full force and that SUBLESSEE is not in default therein, or stating specifically any exceptions thereto. Failure to give such a certificate within five (5) business days after written request shall be conclusive evidence that the Sublease is in full force and effect and SUBLESSEE is not in default and in such event, SUBLESSEE shall be estopped from asserting any defaults known to SUBLESSEE at that time.

35. **Condemnation Clause:** It is further understood and agreed that if at any time during the Sublease Term the legal title to the Property or the improvements or buildings located thereon or any portion

thereof be taken or appropriated or condemned by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings and such abatement of the rent and other adjustments made as shall be just and equitable under the circumstances. If the SUBLESSOR and the SUBLESSEE are unable to agree upon what division of the condemnation award, abatement of fixed rent, or other adjustments are just and equitable within thirty (30) days after such award has been made, then the matters in dispute shall, by appropriate proceedings, be submitted to a court having jurisdiction of the subject matter of such controversy for its decision and determination of the matters in dispute. If the legal title to the entire Premises be wholly taken by condemnation, or if the portion taken will prevent the Premises from being used for the Business the SUBLESSEE intends, this Sublease shall be canceled. In general, it is the intent and agreement of the parties that upon condemnation, the parties hereto shall share in the condemnation award to the extent that they would be entitled to receive compensation and damages under the Florida law for the depreciation, damage, or destruction of their interests by the exercise of the right of eminent domain. In no event shall SUBLESSEE be permitted to receive a share based on the value of the land or buildings, and/or improvements.

36. **SUBLESSEE's Default. Waiver**

A. **Additional Rent, other charges and Billing:**

Except as specifically provided otherwise herein, all additional money, billings and invoices referred to and due under this Sublease, shall be paid to the SUBLESSOR within three (3) days of receipt by SUBLESSEE of such notice, invoice or such billing and shall be deemed "additional rent" for all purposes. All sums due under this Sublease, in addition to the Rent due to SUBLESSOR, shall be deemed "rent" and "additional rent" for all purposes.

B. **Interest and Late Charges:**

In addition to any additional late fee or charges specifically provided for in a section herein, should SUBLESSEE fail to pay any such Rents, additional rent or other monetary obligations when due, the in addition to late fees, interest shall accrue from the due date at the rate of 18% per annum, together with a late charge of \$100.00 to offset SUBLESSOR's administrative expenses and/or other costs incurred by SUBLESSOR associated with SUBLESSEE's default said amounts deemed "additional rent" for all purposes. All rights and remedies of SUBLESSOR specified in this Sublease are cumulative and none shall exclude any other rights or remedies allowed by law or equity.

C. **Default Events:**

Any of the following events shall be a default under this Sublease:

I. **Failure To Pay Rent**

SUBLESSEE fails or refuses to pay any Rent, additional rent, other charges, or other monies payable as Rent when due under this Sublease, at the specified time and place; or

II. **Failure To Keep Agreements**

SUBLESSEE fails or refuses to keep and perform any non-monetary covenant or condition in this Sublease and such default continues more than five (5) days after notice thereof by SUBLESSOR to SUBLESSEE (provided, however, if the cause of such default involves matters reasonably requiring more than five (5) days to correct or cure, SUBLESSEE will be deemed in compliance with the notice so long as SUBLESSEE has commenced appropriate corrective action and continues to diligently pursue such action until completion thereof); or

III. **Repeated Late Payments/Dishonored/Returned Checks/Repeated non-monetary violations in Sublease:**

SUBLESSEE shall pay to SUBLESSOR all costs incurred by SUBLESSOR covering checks which are checks which are dishonored/returned PLUS an administrative fee of \$100.00 for administrative costs incurred by SUBLESSOR, said monies being deemed additional rent for all purposes. This is in addition to other fees/costs provided for herein. SUBLESSEE's being repeatedly late in the payment of Rent or other sums or charges due SUBLESSOR under this Sublease on two (2) separate occasions, or having presented for payment checks which were dishonored or returned by the bank when presented for payment on two (2) separate occasions, or repeatedly defaulting in the keeping, observing, or performing of other covenants or agreements herein contained to be kept, observed or performed by SUBLESSEE on two (2) separate occasions (provided notice of such non-payment, dishonored/returned checks or other defaults shall have been given to SUBLESSEE, but irrespective of whether or not SUBLESSEE shall have timely cured any such payment or other defaults of which notice was given) shall result in SUBLESSOR having the option of providing notice of default and no opportunity to cure, and allow SUBLESSOR to terminate this Sublease. In the event of default of any payment due under this Sublease as set forth herein, SUBLESSOR reserves the right in to demand that payment to cure the default be in cash, cashier's check, certified check or money order and thereafter a tender of money by SUBLESSEE to cure the default which is not in the form provided in the Notice by SUBLESSOR shall be deemed a failure to cure the default.

**D. Remedies**

In the event of a default under this Sublease, SUBLESSOR may in addition to all other remedies available under Florida law:

(i) Terminate the Sublease, re-enter and remove all persons and property from the Premises and take possession of the Premises, assert its statutory lien over and to such of SUBLESSEE's personal property as is located therein, and store the same at SUBLESSEE's expense; SUBLESSEE waives any additional rights to notice regarding said personal property;

(ii) Terminate the Sublease and re-let the Premises or any part thereof on such terms, conditions and rentals as SUBLESSOR may deem proper; and apply the proceeds that may be obtained from said re-letting, after deduction of all re-letting costs, including without limitation, charges for said removal and storage, remodeling and repairs, leasing commissions and legal fees, to the Rents reserved hereunder which may remain unpaid; SUBLESSEE waives any additional rights to notice regarding said personal property;

(iii) If this Sublease is terminated by SUBLESSOR or if SUBLESSOR re-enters the Premises pursuant to this Section, SUBLESSEE shall, nevertheless, remain liable for any Rent or other sums or charges which, but for such termination or re-entry, would have become due during the remainder of the Sublease Term, and all reasonable costs, fees and expenses incurred by SUBLESSOR in pursuit of the collection of the aforementioned (including without limitation, attorneys fees) and SUBLESSOR is hereby empowered by SUBLESSEE to institute a proceeding against SUBLESSEE for the entire amount of unpaid Rent that is due and payable over the balance of the Sublease Term.

37. **Abandonment/Termination:** In addition to any other right to cancel this Sublease under Section 36, the SUBLESSOR reserves the right to cancel and terminate this Sublease as provided herein or if the Premises be abandoned or deserted for a period of seven (7) consecutive days, or the Sublease Term thereof be transferred or passes to or devolved upon an person, firm, officer or corporation or other party other than SUBLESSEE, then the SUBLESSOR in accordance with the covenants, terms and condition of this Sublease. In any such event, SUBLESSOR, at SUBLESSOR's sole option, may terminate/cancel this Sublease as set forth under Section 36 above Sublease shall end. SUBLESSEE agrees immediately to then quit and surrender said Premises to SUBLESSOR; but this shall not impair or affect SUBLESSOR's right to maintain summary proceedings for the recovery of the possession of the Premises

or collection rental due or other billings or changes in all cases provided by law. If the term of this Sublease shall be so terminated, SUBLESSOR may immediately or at any time thereafter re-enter or repossess the Premises and remove all persons and property there from without being liable for trespass or damages in any manner.

38. **No Waiver:** No waiver of any agreement of this Sublease or of the breach thereof shall be taken to constitute a waiver of any subsequent breach of such agreement, nor to justify or authorize the non-observance of any other occasion of the same or any other agreement hereof; nor shall the acceptance of Rent by SUBLESSOR at any time when SUBLESSEE is in default be construed as a waiver of such default or of SUBLESSOR's right to terminate this Sublease on account of such default; nor shall any waiver or indulgence granted by SUBLESSOR to SUBLESSEE be taken as an estoppel against SUBLESSOR. It being expressly understood that if at any time SUBLESSEE shall be in default hereunder, an acceptance by SUBLESSOR of rent during the continuance of such default, or the failure on the part of SUBLESSOR promptly to avail itself of such other rights or remedies as SUBLESSOR may have, shall not be construed as a waiver of such default, but SUBLESSOR may at any time thereafter, if such default continues, terminate this Sublease on account of such default in the manner herein provided. It is mutually covenanted and agreed that the various rights, powers, options, elections, privileges, and remedies of the SUBLESSOR contained in this Sublease shall be construed as cumulative and no one of them shall be construed as being exclusive of the other or exclusive of any rights or priorities allowed by law.

30. **Attorney's Fees and Court Action:** If at any time, by reason of the failure of the SUBLESSEE to keep and perform any covenant or agreement which, under the terms of this Sublease, the SUBLESSEE is bound and obligated to keep and perform, including nonpayment, it becomes necessary for SUBLESSOR to employ an attorney to protect the rights and interests of the SUBLESSOR in the Premises, or to enforce this Sublease and/or Lease, or proceed under it in any particular manner, then in any of such events the SUBLESSEE shall owe and shall pay unto SUBLESSOR all reasonable attorneys fees and costs incurred or expended by the SUBLESSOR in taking such actions, whether or not the matter is taken to Court, including actions taken in all trial and appellate courts, all monies deemed additional rent for all purposes, the same being due by SUBLESSEE to SUBLESSOR five (5) days from the date of delivery of notice thereby. In the event court action relating to this Sublease is brought by SUBLESSOR or SUBLESSEE, the prevailing or substantially prevailing party shall be entitled to recover reasonable attorney's fees and costs incurred in such action and in any appear or related proceedings, the amount thereof to be fixed by the court agreed to by the parties. SUBLESSOR, AND SUBLESSEE HEREBY KNOWINGLY, VOLUNTRILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIL BY JURY IN RESPECT AND OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS SUBLEASE, LEASE OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR SUBLESSOR ENTERING INTO THIS LEASE WITH SUBLESSEE.

40. **Bankruptcy or Insolvency:** If at any time during the term hereof proceedings in bankruptcy shall be instituted against SUBLESSEE and which proceedings have not been dismissed within a reasonable time period, and which bankruptcy results in an adjudication of bankruptcy; or if any creditor of SUBLESSEE shall file any petition under Chapter X of the Bankruptcy Act of the United States of America, as it is now in force or may hereafter be amended; and SUBLESSEE be adjudicated bankrupt, or SUBLESSEE makes an assignment for the benefit of creditors; or Sheriff, Marshall, or constable take possession thereof by virtue of any attachment or execution proceedings and offer same for sale publicly, and such taking and

offer for sale is not rescinded, revoked, or set aside within (10 days thereafter, then SUBLESSOR may, at its option, in any of such events, immediately take possession of the premises and terminate this Sublease. Upon such termination, all installments of rent earned to the date of termination and unpaid, shall at once become due and payable; and in addition thereto, SUBLESSOR shall have all rights provided by said bankruptcy laws relative to the proof of claims on an anticipatory breach of an executory contract. The grace period for the curing of default shall not apply to this event of default.

41. **Notice:** Any Notice that either party may desire or be required to give under this Sublease shall be effective if in writing and delivered personally, sent by express guaranteed courier (i.e. Federal Express) or by registered or certified mail of the United States Postal Service, addressed to the party, or to the Agent for the part, as specified below (or such other address or person as either Party may, by written notice to the other). Unless otherwise specified, notices shall be deemed delivered when received; but if delivery is not accepted on the day attempt was made to deliver to the party; then the notice shall be deemed delivered on the third day after the same was deposited with such courier or United States Postal Service. All notices to SUBLESSEE, including corporate/company notice, may also be delivered by posting said notice at the Premises or by delivery of the notice to any person or employee of SUBLESSEE or officer, director, or agent of SUBLESSEE, at the Premises. Notice shall be deemed delivered to SUBLESSEE on the day of posting, or delivery of the notice to any person or employee of SUBLESSEE or officer, director, or agent of SUBLESSEE, at the Premises with notice being deemed given to all SUBLESSEE's of this Sublease, corporate or otherwise, without the need of giving each SUBLESSEE a separate notice. Said notice shall be addressed as follows:

LANDLORD	Caroline Street Corridor and Bahama Village Community Redevelopment Agency 201 William Street Key West, Florida 33040
SUBLESSOR	Conch Tour Train, Inc. 201 Front Street, Ste. 310 Key West, Florida 33040
SUBLESSEE	Valsin A. Marmillion & Juan Cruz Pisani The Little Red at Flagler Station _____ Key West, FL 33040

The parties agree to provide any change of address to the other as provided above.

42. **Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities may present 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.

43. **Hazardous Substance:**

A. **Definition**

The term "Hazardous Substances", as used in this Lease, shall include, without limitation, flammables, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, 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.

**B. Violation Of Law & SUBLESSOR's Consent**

SUBLESSEE 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 Premises or arising from SUBLESSEE's use or occupancy of the 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 SUBLESSOR's prior written consent, which consent may be withdrawn, conditioned or modified by SUBLESSOR in its sole and absolute discretion in order to insure compliance with all applicable Laws (hereinafter defined), as such Laws may be enacted or amended from time to time.

**C. Clean-up**

With respect to any environmental clean-up activities:

**I. Comply With Laws**

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

**II. Clean-up Plan**

Should any 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 Premises or which arises at any time from SUBLESSEE's use or occupancy of the Premises, then SUBLESSEE shall, at SUBLESSEE's own expense, prepare and submit the required plans and all related bonds and other financial assurances and SUBLESSEE shall carry out all such clean-up plans.

**III. Provide Information**

SUBLESSEE shall promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances that is requested by SUBLESSOR. If SUBLESSEE fails to fulfill any duty imposed under this Sub-section 34.3 within thirty (30) days following its request, SUBLESSOR may proceed with such efforts and in such case, SUBLESSEE shall cooperate with SUBLESSOR in order to prepare all documents SUBLESSOR deems necessary or appropriate to determine the applicability of the Laws to the Premises and SUBLESSEE's use thereof and for the compliance therewith and SUBLESSEE shall execute all documents promptly upon SUBLESSOR's request and any expenses incurred SUBLESSOR shall be payable by SUBLESSEE as Additional Rent. No such action by SUBLESSOR and no attempt made by SUBLESSOR to mitigate damages under any Law shall constitute a waiver of any of SUBLESSEE'S obligations under this Sub-section.

**D. Survivability of SUBLESSEE Obligations**

SUBLESSEE's obligations and liabilities under Sub-Section shall survive the expiration of this Lease.

**E. SUBLESSEE Indemnifies SUBLESSOR**

SUBLESSEE shall indemnify, defend and hold harmless SUBLESSOR, 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 any Hazardous Substances on the Premises or any failure by SUBLESSEE to perform its obligations

hereunder.

44. **Miscellaneous Provisions:** It is mutually covenanted and agreed by and between the parties as follows:

A. That no waiver of a breach of any of the covenants in this Sublease contained shall be construed to be a waiver of all succeeding breach of the same covenant.

B. That no modification, re-lease, discharge, or waiver of any provision hereof shall be of any force, effect, or value unless in writing and signed by the persons who are then SUBLESSOR and SUBLESSEE.

C. That all covenants, promises, conditions, and obligations contained herein or implied by law, or covenants running with the land, shall attach to and be binding upon the heirs, executors, administrators, successors, legal representative, and assigns of each of the parties to this Sublease.

D. That this instrument contains the entire agreement between the parties as of this Sublease Date, and that the execution hereof has not been induced by any party by representations, promises or understandings not expressed herein, and that there are not collateral agreement, stipulations, promises, or understandings whatsoever between the perspective parties in any way touch the subject matter of this instrument which are not expressly contained in this instrument.

E. Time is of the essence with respect to the performance of each of SUBLESSOR and SUBLESSEE's covenants of this Lease and the strict performance of each shall be a condition precedent to SUBLESSEE's rights to remain in possession of the Premises or to have this Lease continue in effect.

F. Consent In Writing: Whenever this Sublease specifies that an action requires consent of SUBLESSOR, SUBLESSEE, said consent shall be effective only if in writing and signed by the consenting party and SUBLESSOR's consent may be arbitrarily withheld.

G. Parties: Relationship & Definition- No Construed Relationship: Nothing in this Sublease shall be deemed or construed so as to create the relationship of principal and agent, partnership, joint venture or of any association between the Parties, it being agreed that neither the computation of Rent nor any other Sublease provision nor any act of the Premises shall be deemed to create any relationship between the Parties.

H. Construction: This Sublease and the provisions thereof shall be governed by and construed and enforced in accordance with the laws of the State of Florida.

I. If the SUBLESSEE or SUBLESSEE's are signing in a capacity other than as individuals, then the SUBLESSOR may require personal guarantees from individuals as the SUBLESSOR deems necessary.

J. SUBLESSOR may delegate its decision making authority regarding any provision of this Sublease to the SUBLESSOR, LANDLORD and/or an Advisory Board, at SUBLESSORS sole determination.

45. **Exhibits:** The following Exhibits are attached and incorporated into this Sublease and made a part thereof:

- Exhibit "A": Lease
- Exhibit "B": Property
- Exhibit "C": Bight
- Exhibit "D": Premises
- Exhibit "D-1" Common Area

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

\_\_\_\_\_  
WITNESS AS TO SUBLESSOR

\_\_\_\_\_  
BY: Conch Tour Train, Inc.  
SUBLESSOR

\_\_\_\_\_  
WITNESS AS TO SUBLESSOR

\_\_\_\_\_  
WITNESS AS TO SUBLESSEE

\_\_\_\_\_  
BY: **THE LITTLE RED** at Flagler Station  
Valsin A.Marmillion & Juan Cruz Pisane  
SUBLESSEE

\_\_\_\_\_  
WITNESS AS TO SUBLESSEE

# Exhibit "A"

Land Lease Area



Train Depot

as shown by franchise

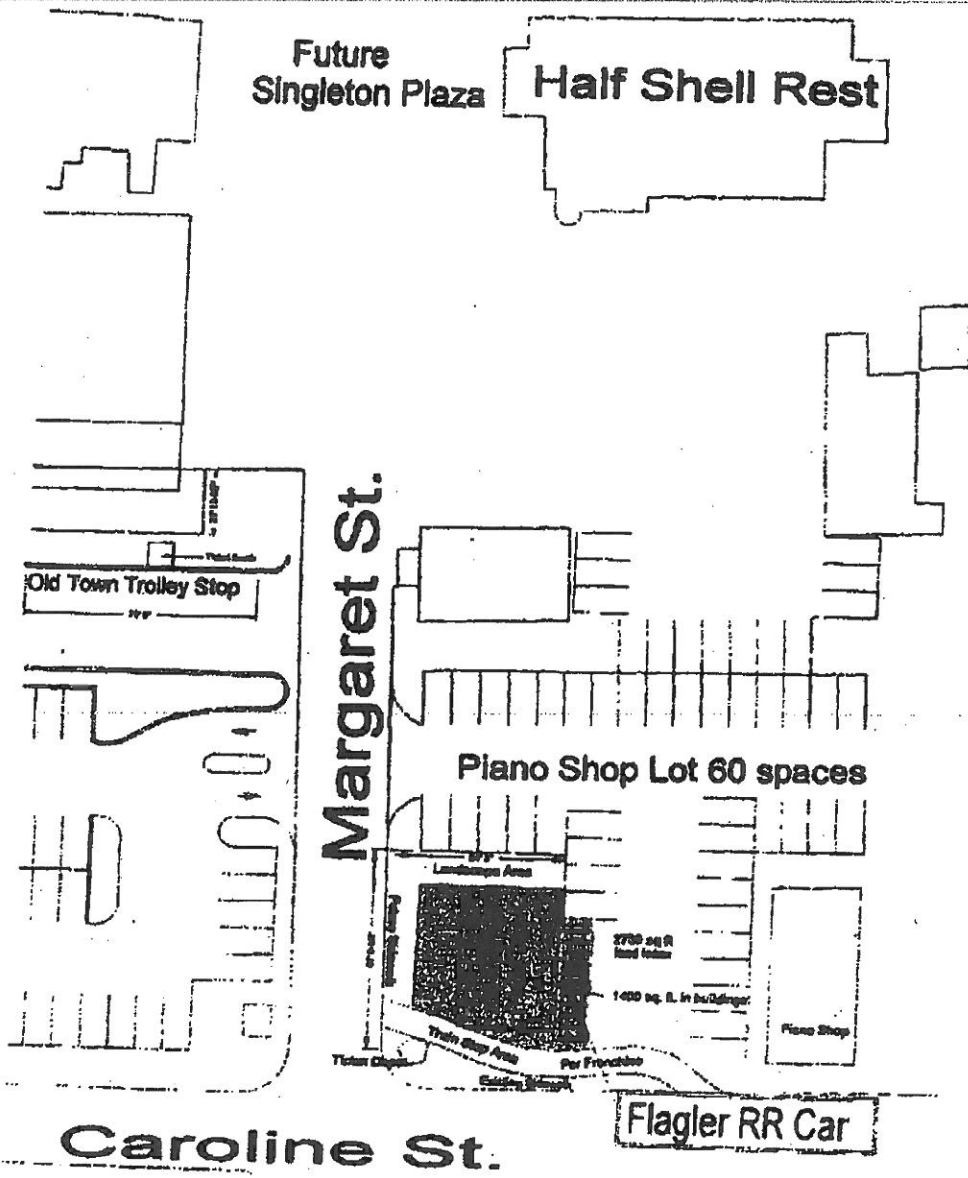
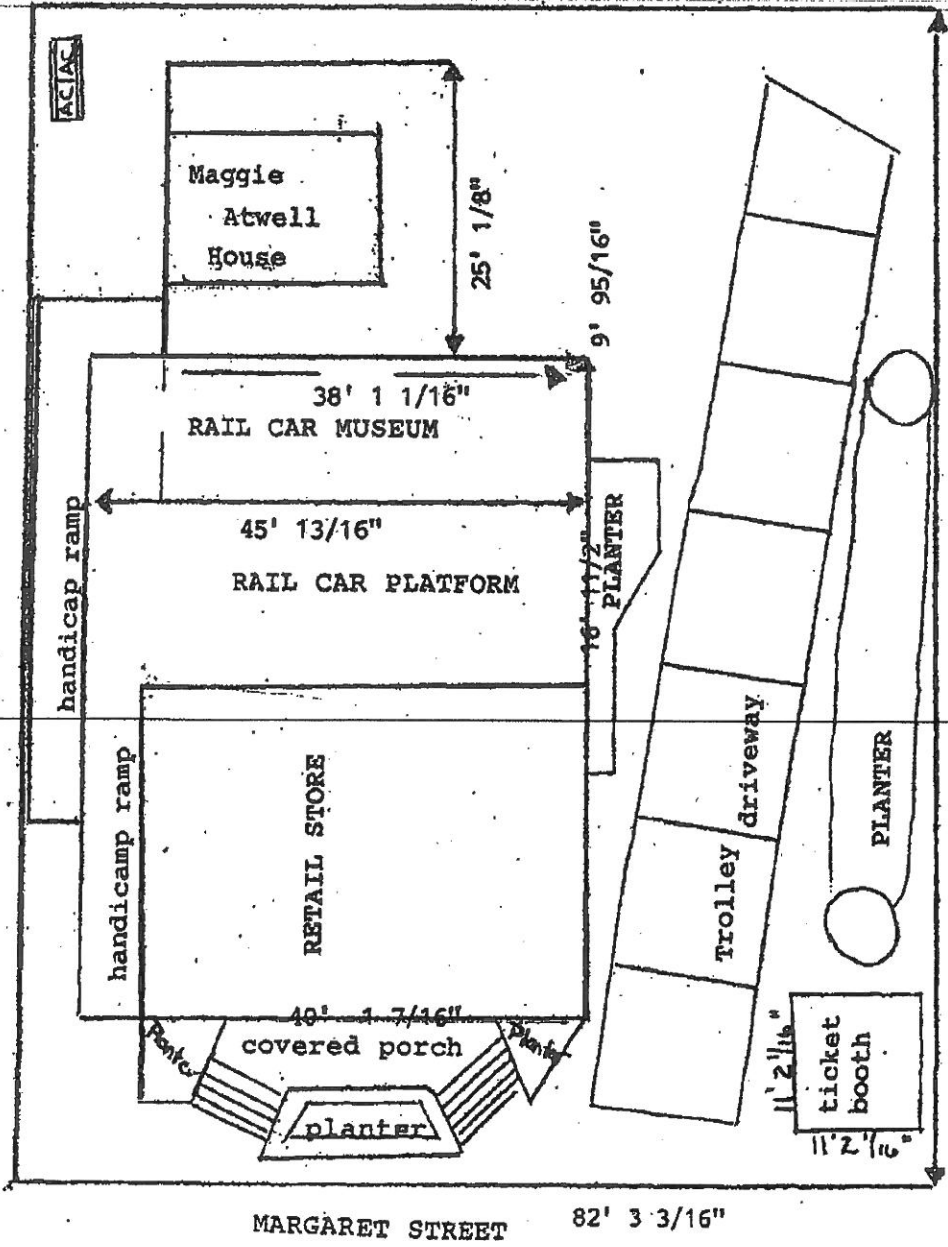


Exhibit "B" to Sublease  
 "The Property"  
 which includes "footprint" area and "non-footprint" area

All dimensions are  
 approximate 8272 sq ft



FLAGLER STATION SITE PLAN















MARGARET STREET 82' 3 3/16"

103' 1 1/16"  
 CAROLINE STREET



Sublease

# Exhibit "C" -

- Legend**
-  Highlighted Feature
  -  Real Estate Number
  -  Parcel Lot Text
  -  Block Text
  -  Hooks/Leads
  -  Lot Lines
  -  Easements
  -  Road Centerlines
  -  Water Names
  -  Parcels
  -  Shoreline
  -  Section Lines

"Key West Bight"

PALMIS

Mouroe County Property Appraiser  
500 Whitehead Street  
Key West, FL

**DISCLAIMER:** The Mouroe County Property Appraiser's office maintains data on property within the County solely for the purpose of fulfilling its responsibility to secure a just valuation for ad valorem tax purposes of all property within the County. The Mouroe County Property Appraiser's office cannot guarantee its accuracy for any other purpose. Likewise, data provided regarding one tax year may not be applicable in prior or subsequent years. By requesting such data, you hereby understand and agree that the data is intended for *ad valorem tax purposes only* and should not be relied on for any other purpose.

Date Created: February 29, 2008 1:03 PM

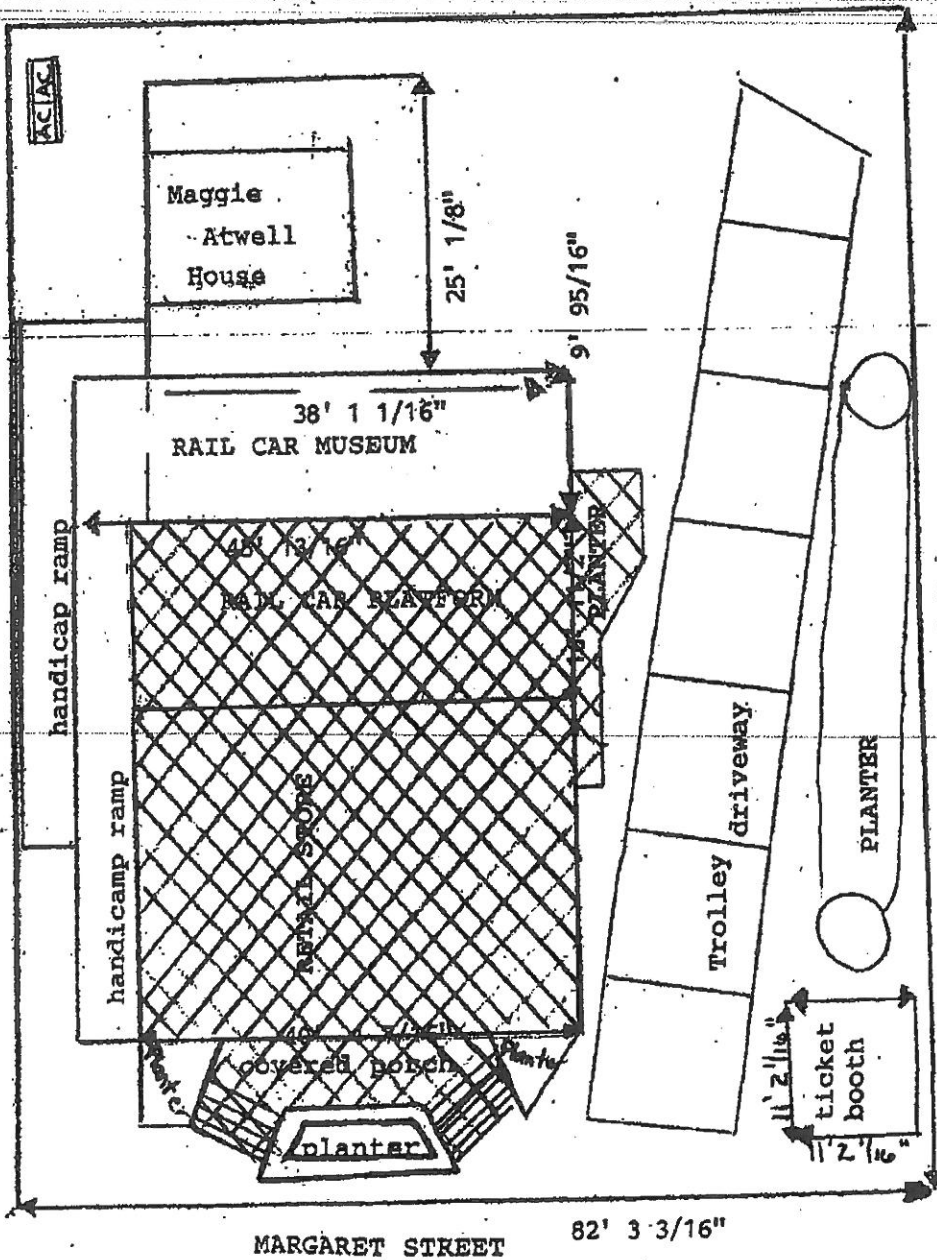


Exhibit "D" to Sublease  
 "The Premises",  
 crosshatched portion of "footprint" area

All dimensions are  
 approximate



FLAGLER STATION SITE PLAN



CAROLINE STREET

MARGARET STREET

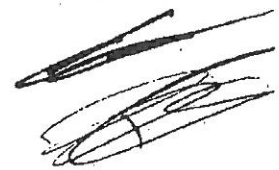


Exhibit "D-1" to Sublease  
Common Area  
crosshatched "footprint" area and "non-footprint" area



All dimensions are  
approximate

FLAGLER STATION SITE PLAN

