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VDF LAW, PLLC

Van D. Fischer, Esquire

626 Josephine Parker Drive
Suite 205, Mail Box 7
Key West, Florida 33040

May 13, 2019

Cheri Smith, City Clerk
City of Key West City Hall
1300 White Street
Key West, Florida 33040

RE: Notice of Administrative Appeal of the May 7, 2019 Administrative Determination made by the City of Key West Planning Director which referred the Mallory Square Major Development Plan submitted by Tropical Soup Corporation back to the Planning Board for consideration.

Dear Ms. Smith:

I represent the interests of Tropical Soup Corporation, with respect to the Major Development plan for Mallory Square involving parcels with RE # 00072082-001100, 00072082-001400, and 0072082-003700. This Major Development Plan was scheduled for hearing at the May 7, 2019, City of Key West ("City") Commission meeting but the hearing was postponed because of the May 7, 2019, Administrative Determination by the City Planning Director referring the Development Plan back to the Planning Board. I am submitting this Notice of Appeal pursuant to sections 90-426, 90-430, and 90-431, City Code, together with the required fee of One Thousand and 00/100 Dollars (\$1,000.00) for purposes of appealing the May 7, 2019, Administrative Determination made by the City Planning Director, Patrick Wright. A true and correct copy of the Administrative Determination is attached hereto and incorporated herein as Exhibit A.

The Planning Director improperly issued the Administrative Determination referring the Major Development Plan back to the Planning Board because there were no "significant material changes" made to the proposed site plan as claimed in the Administrative Determination. The site plan has complied with all of the requisite approvals and has been reviewed in its current version since it was submitted to the City in 2017. In fact, the current version of the proposed Major Development Plan and site plan was approved by the City Manager, Jim Scholl by notarized signature dated March 19, 2017. A true and correct copy of the City Manager's approval is attached hereto and incorporated herein as Exhibit B. The City Manager's approval occurred after the 300 square foot kitchen area was removed from the Planning Board approved site plan and substituted with a 150 square foot kitchen area included as part of the bar area. It appears that the omission of the word "kitchen" on the current version of the site plan may have caused the erroneous Administrative Determination.

Background

This project has a long and complex history which began in 2010 which is briefly summarized by the timeline of events associated with this Major Development Plan attached hereto and incorporated herein as Exhibit C. As evidenced by the timeline, the project has undergone many revisions and amendments which were the direct result of numerous City decisions. The various actions taken were in direct reliance on representations made by the City. The project as proposed for the May 7, 2019, City Commission meeting embodied all of said City decisions and required changes. A true and correct copy of the Major Development Plan site plan is attached hereto and incorporated herein as Exhibit D.

Basis of Appeal

The Administrative Determination by the Planning Director was invalid for several reasons. As illustrated by the attached timeline of the project, there have been numerous approvals granted by the City, including several approvals directly related to the current version of the proposed Development Plan. At the May 7, 2019, City Commission meeting, the Planning Director testified that his Administrative Determination was predicated on the apparent removal of the 300 square foot kitchen area which was approved by the Planning Board by Resolution 2016-51 dated October 27, 2016. A true and correct copy of Resolution 2016-51 is attached hereto and incorporated herein as Exhibit E. According to the Planning Director, this constituted the “significant material changes” made to the site plan of the proposed Development Plan and was the basis of his Administrative Determination.

The issue of the kitchen change was never raised by the City, nor a concern of the City, until an opposition memorandum was submitted to the City Commission regarding the Development Plan’s apparent lack of a kitchen. The City never contacted Tropical Soup or its agents to ask about the apparent removal of the 300 square foot kitchen. While it is true that the 300 square foot kitchen area was removed because of HARC objections, it is not true that there is no kitchen. Rather, the kitchen area was reduced to 150 square feet and integrated with the bar area. The word “kitchen” was inadvertently omitted on the current version of the site plan which appears to have caused the confusion resulting in the erroneous Administrative Determination. A simple inquiry to Tropical Soup as to the apparent lack of a kitchen could have been readily explained and the issuance of the Administrative Determination avoided. Importantly, the Administrative Determination should not have been issued because of the fact that the current version of the site plan was thoroughly reviewed by the Planning Department and approved by the City Manager in March 2017, and has not changed since then. The reduction of the kitchen area by 150 square feet in order to avoid any demolition of the historic cable tank structure was not a “significant material change” as claimed by the Planning Director, and in fact, was approved by the Planning Director as a non-significant change to the site plan in 2017. As such, the Administrative Determination was erroneous and should be dismissed.

Exceptional circumstances exist regarding the Administrative Determination and the doctrine of equitable estoppel applies against the City. See Castro v. Miami-Dade County Code, 967 So.2d 230, 233 (Fla. 3d DCA 2007)(explaining “The doctrine of equitable estoppel, however, may only be applied against a governmental entity under exceptional circumstances. Monroe

County v. Hemisphere Equity Realty, Inc., 634 So.2d 745, 747 (Fla. 3d DCA 1994)”). Equitable estoppel against the government may be invoked where it is shown there is “1) a representation as to a material fact that is contrary to a later-asserted position; 2) reliance on that representation; and 3) a change in position detrimental to the party claiming estoppel, caused by the representation and reliance thereon.” State Dept. of Revenue v. Anderson, 403 So.2d 397 (Fla., 1981); see also Monroe County, 634 So.2d at 747 (“To sustain a claim of estoppel against the state or one of its subdivisions, there must be (1) a representation as to some material fact by the party estopped to the party claiming estoppel; (2) reliance upon the representation by the party claiming estoppel; and (3) a change in such party's position caused by his reliance on the representation to his detriment.”). In addition, “the act on which the aggrieved party relied must be one on which he had a right to rely.” Monroe County, 634 So.2d at 747. With regard to exceptional circumstances, “a party seeking to invoke estoppel against the government must establish affirmative conduct by the government going beyond mere negligence...” Alachua County v. Cheshire, 603 So.2d 1334 (Fla. 1st DCA 1992).

Here, the City represented back in March 2017 that the current version of the site plan was approved by Planning and the City Manager thereby allowing it to be reviewed by HARC.¹ The Administrative Determination raised a later-asserted position contrary to these representations. Tropical Soup relied on, and had a right to rely on, the March 2017 representations by the City and proceeded with obtaining approvals from HARC and the Tree Commission. Tropical Soup successfully obtained said approvals, and at no time did the City raise any issues or concerns related to the apparent removal of the 300 square foot kitchen from the site plan. As confirmed by the Planning Director at the May 7, 2019, City Commission meeting, the City Code does not require a restaurant to have an on-site kitchen, so it follows that the apparent lack of a kitchen on the site plan was immaterial concern. Tropical Soup has suffered a detrimental change in position caused by reliance on the City's representations and the Administrative Determination which was contrary to the earlier representations.

“The doctrine of equitable estoppel is based fundamentally on the rules of fair play.” Castro, 967 So.2d at 234 (citation omitted). As explained by the Florida Third District Court of Appeals:

Stripped of the legal jargon which lawyers and judges have obfuscated it with, the theory of estoppel amounts to nothing more than an application of the rules of fair play. One party will not be permitted to invite another onto a welcome mat and then be permitted to snatch the mat away to the detriment of the party induced or permitted to stand thereon. A citizen is entitled to rely on the assurances or commitments of a zoning authority and if he does, the zoning authority is bound by its representations, whether they be in the form of words or deeds. . . .(citation omitted)

Id. Here, the City invited Tropical Soup to apply for and operate a restaurant on the Mallory Square site pursuant to the RFP and selection of Tropical Soup's proposal. Tropical Soup has relied upon the assurances and commitments of the City throughout the entire application and approval process. It is fundamentally unfair for the City to now snatch away the invitation for

¹ The normal procedure as established by the City is that Planning approval is required before HARC review.

Tropical Soup to apply for and operate a restaurant. The City is bound by its representations and commitments and cannot claim, at the proverbial 11th hour, that the apparent removal of the 300 square foot kitchen was a material change to the site plan. The rules of fair play must not and cannot be ignored by the City at this stage of the application and approval process, because to do so would be the epitome of an unjust action. The Administrative Determination violates the rules of fair play and should be dismissed on the grounds of equitable estoppel, in addition to the fact that the current site plan was approved multiple times by the City.

Section 108-91(C)(1)(a), City Code, provides that Administrative Modifications may be approved by the Planning Director for "Reduction of building size." The modification of the site plan for the Development Plan only involved the removal of the 300 square foot kitchen area which was relocated to a 150 square foot kitchen area in the bar area of the site plan. As stated, the removal of the 300 square foot kitchen was to avoid any demolition of the historic cable tank structure and required by HARC. Said kitchen removal constituted nothing more than a "reduction in building size" which only required approval by the Planning Director. This was done in March 2017 and signed off on by the City Manager. The May 7, 2019, Administrative Determination improperly treats the kitchen removal as "major modification" which is unsupported by the available evidence. The removal of the 300 square foot kitchen area was a reduction of building size which is an administrative modification pursuant to City Code. Therefore, the Administrative Determination should be dismissed.

The City Code and Comprehensive Plan do not control the logistics involved with the operation of a restaurant including the preparation, delivery, and service of food and beverages. Under section 108-196, the Major Development Plan review and approval is limited to the "specific development review criteria contained in the land development regulations." Tropical Soup's Major Development Plan received all required reviews and approvals in order to get the proposed project to the final City Commission review. Food service logistics is not a development review criteria under the City Code, and improper as a basis for the Administrative Determination as the Planning Director testified at the May 7, 2019, City Commission meeting. As explained, the removal of the 300 square foot kitchen was an administrative modification of the Development Plan that was simply a reduction of building size necessary to comply with HARC requirements.

For the reasons described, the Administrative Determination was invalid. The apparent removal of the 300 square foot kitchen was not a "significant material change" to the site plan. Rather, the removal of said kitchen was done at the direction of the City in order to protect the historic cable tank structure, and was substituted with a 150 square foot kitchen area which will be part of the bar area. This was simply a reduction of building size which is treated as an administrative modification under the City Code. Unfortunately, the word "kitchen" was inadvertently omitted from the current site plan which apparently led to the erroneous Administrative Determination. Regardless, a full kitchen is not a Code requirement for a restaurant and the logistics of operating a restaurant, including food preparation and service, is outside the scope of the City Code. As such, the Administrative Determination was issued in error and should be dismissed.

We respectfully request this appeal be scheduled pursuant to section 90-431(2) for the next regularly scheduled meeting of the city commission or board of adjustment, as the case may be,

for purposes of presentation of this appeal. If you should have any questions regarding this request, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Van D. Fischer". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Van D. Fischer, Esq.
Attorney for Tropical Soup Corporation

Attachments (5)



**PATRICK WRIGHT,
PLANNING DIRECTOR**

**THE CITY OF KEY WEST
PLANNING DEPARTMENT
P.O. BOX 1409
KEY WEST, FL 33041-1409
www.cityofkeywest-fl.gov**

**CITY HALL
1300 WHITE STREET
KEY WEST, FL 33040
(305) 809-3764**

May 7, 2019

RE: Mallory Square Major Development Item #35

Madame Mayor and Commissioners,

In light of the significant material changes made to the site plan for the proposed Mallory Square Major Development Plan on this evenings agenda, I am hereby making an Administrative Determination per Section 108-91 D 1. & 2. to refer this matter back to the Planning Board for its consideration prior to review of the City Commission. These material changes were made subsequent to the site plan approval by the Planning Board.

This determination was made given the complexity of the development, impacts on the demand for City services, and the potential for adverse impacts on neighboring areas.

Sincerely,

A handwritten signature in blue ink, appearing to read "Patrick Wright".

Patrick Wright,
Planning Director

Key to the Caribbean – Average yearly temperature 77° F.

EXHIBIT A

COMBINATION APPLICATION: FLOODPLAIN, CONSTRUCTION AND HARC

\$50.00 APPLICATION FEE NON-REFUNDABLE



City of Key West

3140 FLAGLER AVENUE
KEY WEST, FLORIDA 33040

Phone: 305.809.3956

www.cityofkeywest-fl.gov

HARC PERMIT NUMBER 17-00300008		BUILDING PERMIT NUMBER	INITIAL & DATE
FLOODPLAIN PERMIT			REVISION #
FLOOD ZONE	PANEL #	ELEV. L. FL.	SUBSTANTIAL IMPROVEMENT ___ YES ___ NO ___ %

ADDRESS OF PROPOSED PROJECT:

RE # OR ALTERNATE KEY:

NAME ON DEED:

OWNER'S MAILING ADDRESS:

CONTRACTOR COMPANY NAME:

CONTRACTOR'S CONTACT PERSON:

ARCHITECT / ENGINEER'S NAME:

ARCHITECT / ENGINEER'S ADDRESS:

MALLORY SQUARE		# OF UNITS
RE# 00072082-001100, 00072082-001400, 0072082-003700		
CITY OF KEY WEST	PHONE NUMBER	
7300 WHITE STREET	EMAIL	
KEY WEST, FL 33040		
	PHONE NUMBER	MAR 24 2017
	EMAIL	
PIKE ARCHITECTS - SETH NEAL	PHONE NUMBER 305-296-1692	
471 US HWY 1 SUITE 101	EMAIL seth@pikearchitects.com	
KEY WEST, FL 33040		

HARC: PROJECT LOCATED IN HISTORIC DISTRICT OR IS CONTRIBUTING: YES NO (SEE PART C FOR HARC APPLICATION.)

CONTRACT PRICE FOR PROJECT OR ESTIMATED TOTAL FOR MAT'L., LABOR & PROFIT:

FLORIDA STATUTE 837.06: WHOEVER KNOWINGLY MAKES A FALSE STATEMENT IN WRITING AND WITH THE INTENT TO MISLEAD A PUBLIC SERVANT IN THE PERFORMANCE OF HIS OR HER OFFICIAL DUTY SHALL BE GUILTY OF A MISDEMEANOR OF THE SECOND DEGREE PUNISHABLE PER SECTION 775.082 OR 775.083.

PROJECT TYPE: ONE OR TWO FAMILY MULTI-FAMILY COMMERCIAL NEW REMODEL
 CHANGE OF USE / OCCUPANCY ADDITION SIGNAGE WITHIN FLOOD ZONE **AE10**
 DEMOLITION SITE WORK INTERIOR EXTERIOR AFTER-THE-FACT

DETAILED PROJECT DESCRIPTION INCLUDING QUANTITIES, SQUARE FOOTAGE ETC., **A NEW RESTAURANT CONSISTING OF 1 NEW PAVILION & REFURBISH THE EXISTING CABLE HUT. NEW PAVILION IS 1,100 S.F. & CABLE HUT IS 685 S.F. BOTH STRUCTURES WILL HAVE FLAT ROOFS. NEW PAVILION WILL BE STEEL FRAME WITH WOOD CLAD COLUMNS & CLG.**

REMOVE EX. NON HISTORIC MANSARD ROOF AT CABLE HUT & REPAIR EX. STRUCTURE AS REQUIRED.

I'VE OBTAINED ALL NECESSARY APPROVALS FROM ASSOCIATIONS, GOVT AGENCIES AND OTHER PARTIES AS APPLICABLE TO COMPLETE THE DESCRIBED PROJECT.	
OWNER PRINT NAME: J. K. Scholl	QUALIFIER PRINT NAME:
OWNER SIGNATURE: <i>J. K. Scholl</i>	QUALIFIER SIGNATURE:
Notary Signature as to owner:	Notary Signature as to qualifier:
STATE OF FLORIDA; COUNTY OF MONROE, SWORN TO AND SCRIBED BEFORE ME THIS 17th DAY OF MAY 20 17	STATE OF FLORIDA; COUNTY OF MONROE, SWORN TO AND SCRIBED BEFORE ME THIS _____ DAY OF _____, 20____
 Personally known or produced	as identification. Personally known or produced as identification.

8100-9657-01c

PART B: SUPPLEMENTARY PROJECT DETAILS TO AVOID DELAYS / CALL-BACKS

PROPERTY STRUCTURES AFFECTED BY PROJECT: MAIN STRUCTURE ACCESSORY STRUCTURE SITE

ACCESSORY STRUCTURES: GARAGE / CARPORT DECK FENCE OUTBUILDING / SHED

FENCE STRUCTURES: 4 FT. 6 FT. SOLID 6 FT. / TOP 2 FT. 50% OPEN

POOLS: INGROUND ABOVE GROUND SPA / HOT TUB PRIVATE PUBLIC
 PUBLIC POOLS REQUIRE BD. OF HEALTH LICENSE APPLICATION AT TIME OF CITY APPLICATION.
 PUBLIC POOLS REQUIRE BD. OF HEALTH LICENSE PRIOR TO RECEIVING THE CITY CERTIFICATE OF OCCUPANCY.

ROOFING: NEW ROOF-OVER TEAR-OFF REPAIR AWNING
 5 V METAL ASPLT. SHGLS. METAL SHGLS. BLT. UP TPO OTHER

FLORIDA ACCESSIBILITY CODE: 20% OF PROJECT FUNDS INVESTED IN ACCESSIBILITY FEATURES.

SIGNAGE: # OF SINGLE FACE # OF DOUBLE FACE REPLACE SKIN ONLY BOULEVARD ZONE
 POLE WALL PROJECTING AWNING HANGING WINDOW
 SQ. FT. OF EACH SIGN FACE: 10

SUBCONTRACTORS / SPECIALTY CONTRACTORS SUPPLEMENTARY INFORMATION:

MECHANICAL: DUCTWORK COMMERCIAL EXH. HOOD INTAKE / EXH. FANS LPG TANKS
 A/C: COMPLETE SYSTEM AIR HANDLER CONDENSER MINI-SPLIT

ELECTRICAL: LIGHTING RECEPTACLES HOOK-UP EQUIPMENT LOW VOLTAGE
 SERVICE: OVERHEAD UNDERGROUND 1 PHASE 3 PHASE AMPS

PLUMBING: ONE SEWER LATERAL PER BLDG. INGROUND GREASE INTCPTRS. LPG TANKS
 RESTROOMS: MEN'S WOMEN'S UNISEX ACCESSIBLE

PART C: HARC APPLICATION FOR A CERTIFICATE OF APPROPRIATENESS

APPLICATION FEES: PAINTING SINGLE FAMILY: \$10 STAFF APPROVAL: \$50 COMMISSION REVIEW \$100

PLEASE ATTACH APPROPRIATE VARIANCES / RESOLUTIONS FROM HARC, PLANNING BOARD OR TREE COMMISSION.

ATTENTION: NO BUILDING PERMITS WILL BE ISSUED PRIOR TO HARC APPROVAL.

PLEASE SEND ELECTRONIC SUBMISSIONS TO: harc@cityofkeywest-fl.gov

INDICATE TYPE OF CERTIFICATE. OF APPROPRIATENESS: GENERAL DEMOLITION SIGN PAINTING OTHER

ADDITIONAL INFORMATION: _____

PROJECT SPECIFICATIONS: PLEASE PROVIDE PHOTOS OF EXISTING CONDITIONS, PLANS, PRODUCT SAMPLES, TECHNICAL DATA

ARCHITECTURAL FEATURES TO BE ALTERED:	ORIGINAL MATERIAL:	PROPOSED MATERIAL:

DEMOLITION: PLEASE FILL OUT THE HARC APPENDIX FOR PROPOSED DEMOLITION.

DEMOLITION OF HISTORIC STRUCTURES IS NOT ENCOURAGED BY THE HISTORIC ARCHITECTURAL REVIEW COMMISSION.

SIGNAGE: (SEE PART B) BUSINESS SIGN BRAND SIGN OTHER: _____

BUSINESS LICENSE # _____ IF FAÇADE MOUNTED, SQ. FT. OF FAÇADE _____

SIGN SPECIFICATIONS		
SIGN COPY:	PROPOSED MATERIALS:	SIGNS WITH ILLUMINATION:
		TYPE OF LTG.:
		LTG. LINEAL FTG.:
MAX. HGT. OF FONTS:		COLOR AND TOTAL LUMENS:
IF USING LIGHT FIXTURES PLEASE INDICATE HOW MANY:		INCLUDE SPEC. SHEET WITH LOCATIONS AND COLORS.

OFFICIAL USE ONLY:		HARC STAFF OR COMMISSION REVIEW	
<input type="checkbox"/> APPROVED	<input checked="" type="checkbox"/> NOT APPROVED	<input type="checkbox"/> DEFERRED FOR FUTURE CONSIDERATION	<input type="checkbox"/> TABLED FOR ADD'L. INFO.
HARC MEETING DATE:	05/23/2017	HARC MEETING DATE:	
REASONS OR CONDITIONS: SECRETARY OF INTERIOR STANDARDS I+II			
STAFF REVIEW COMMENTS:			
HARC PLANNER SIGNATURE AND DATE:		HARC CHAIRPERSON SIGNATURE AND DATE:	

PART D: STATE OF FLORIDA OFFICIAL NOTIFICATIONS AND WARNINGS

FLORIDA STATUTE 713.135: WARNING TO OWNER: YOUR FAILURE TO RECORD A 'NOTICE OF COMMENCEMENT' MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED WITH THE COUNTY RECORDER AND A COPY POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING A NOTICE.

FLORIDA STATUTE 469: ABESTOS ABATEMENT. AS OWNER / CONTRACTOR / AGENT OF RECORD FOR THE CONSTRUCTION APPLIED FOR IN THIS APPLICATION, I AGREE THAT I WILL COMPLY WITH THE PROVISIONS F. S. 469.003 AND TO NOTIFY THE FLORIDA D. E. P. OF MY INTENT TO DEMOLISH / REMOVE ASBESTOS. IN ADDITION TO THE REQUIREMENTS OF THIS PERMIT APPLICATION, THERE MAY BE DEED RESTRICTIONS AND / OR ADDITIONAL RESTRICTIONS APPLICABLE TO THIS PROPERTY THAT MAY BE FOUND IN THE PUBLIC RECORDS OF MONROE COUNTY AND THERE MAY BE ADDITIONAL PERMITS REQUIRED FROM OTHER GOVERNMENT ENTITIES SUCH AS AQUADUCT AUTHORITY, FLORIDA DEP OR OTHER STATE AGENCIES; ARMY CORPS OF ENGINEERS OR OTHER FEDERAL AGENCIES.

FEDERAL LAW REQUIRES LEAD PAINT ABATEMENT PER THE STANDARDS OF THE USEP ON STRUCTURES BUILT PRIOR TO 1978.

OFFICIAL USE ONLY BY PLANS EXAMINER OR CHIEF BUILDING OFFICIAL:				CBO OR PL. EXAM. APPROVAL:
HARC FEES:	BLDG. FEES:	FIRE MARSHAL FEE:	IMPACT FEES:	
				DATE:

CITY OF KEY WEST
CERTIFICATE OF APPROPRIATENESS
APENDIX FOR DEMOLITIONS
APPLICATION NUMBER H- _____



This document applies only to those properties located within the City of Key West Historic Zoning Districts, properties outside the historic zoning districts which are listed as contributing in the Historic Architectural Survey and or properties listed in the National Register of Historic Places.

Applications must meet or exceed the requirements outlined by the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitation and the Key West's Historic Architectural Guidelines. Once submitted, the application shall be reviewed by staff for completeness and scheduled for presentation to the Historic Architectural Review Commission for the next available meeting, unless the demolition request is for a *bona fide* Code Compliance case, in which case staff may review and approve the demolition request. **The applicant must be present at this meeting. Any person that makes changes to an approved Certificate of Appropriateness must submit a new application with such modifications.**

The filing of this application does not ensure approval as submitted. Applications that do not possess the required submittals or documentation will be considered incomplete and will not be reviewed for approval.

CRITERIA FOR DEMOLITIONS

Before any Certificate of Appropriateness may be issued for a demolition request, the Historic Architectural Review Commission must find that the following requirements are met (please review and comment on each criterion that applies):

- (1) If the subject of the application is a contributing or historic building or structure, then it should not be demolished unless its condition is irrevocably compromised by extreme deterioration or it does not meet any of the following criteria:

- (a) The existing condition of the building or structure is irrevocably compromised by extreme deterioration.

THE PROPOSED REMOVAL IS FOR NON
HISTORIC ELEMENTS, SEE PAGE 3

OR THAT THE BUILDING OR STRUCTURE;

- (a) Embodies no distinctive characteristics of a type, period, or method of construction of aesthetic or historic significance in the city and is not a significant and distinguishable building entity whose components may lack individual distinction.

NA

- (b) Is not specifically associated with events that have made a significant contribution to local, state, or national history.

NA

- (c) Has no significant character, interest, or value as part of the development, heritage, or cultural characteristics of the city, state or nation, and is not associated with the life of a person significant in the past.

NA

- (d) Is not the site of a historic event with a significant effect upon society.

NA

- (e) Does not exemplify the cultural, political, economic, social, or historic heritage of the city.

NA

- (f) Does not portray the environment in an era of history characterized by a distinctive architectural style.

NA

- (g) If a part of or related to a square, park, or other distinctive area, nevertheless should not be developed or preserved according to a plan based on the area's historic, cultural, natural, or architectural motif.

NA

- (h) Does not have a unique location or singular physical characteristic which represents an established and familiar visual feature of its neighborhood or of the city, and does not exemplify the best remaining architectural type in a neighborhood.

NA

- (i) Has not yielded, and is not likely to yield, information important in history.

NA

**CITY OF KEY WEST
 CERTIFICATE OF APPROPRIATENESS
 APENDIX FOR DEMOLITIONS
 APPLICATION NUMBER H- _____**



(2) For a contributing historic or noncontributing building or structure, a complete construction plan for the site is approved by the Historic Architectural Review Commission.

(a) A complete construction plan for the site is included in this application

_____ Yes Number of pages and date on plans _____

_____ No Reason _____

The following criteria will also be reviewed by the Historic Architectural Review Commission for proposed demolitions. The Commission shall not issue a Certificate of Appropriateness that would result in the following conditions (please review and comment on each criterion that applies);

(1) Removing buildings or structures that are important in defining the overall historic character of a district or neighborhood so that the character is diminished.

REMOVING THE NON-HISTORIC ELEMENTS ON THE REAR SIDE & INTERIOR OF THE EXISTING CABLE HUT. REPAIRING & REPLACING THE EXISTING DETERIORATED ROOF. NON HISTORIC ELEMENTS: METAL ROOFING, DOORS, KITCHEN APPLIANCES, SHEETROCK, LOW WALLS. ADDED CONCRETE WALL & ROOF, ELECTRICAL, DETERIORATED FLOORING, ETC.

(2) Removing historic buildings or structures and thus destroying the historic relationship between buildings or structures and open space; and

RELATION SHIPS BETWEEN THE 2 CABLE HUTS WILL REMAIN, THEREFOR NOT DESTROYING THIS HISTORIC RELATIONSHIP

AND

(3) Removing an historic building or structure in a complex; or removing a building facade; or removing a significant later addition that is important in defining the historic character of a site or the surrounding district or neighborhood.

THE EXISTING WALLS AND CONCRETE TANK WALLS WILL REMAIN & BE REPAIRED AS NEEDED. EXISTING TIMBER BEAMS & COLUMNS WILL REMAIN & BE REPAIRED AS NEEDED. KEEPING & REPAIRING MAJORITY OF THE EXISTING CABLE HUT

(4) Removing buildings or structures that would otherwise qualify as contributing.

NA

Nothing in this application is intended to alter the authority of the Building Official to condemn for demolition dangerous buildings, as provided in Section 102-218 of the Land Development Regulations and Chapter 14 of the Code of Ordinances.

*I hereby certify I am the owner of record and that the work shall conform to all applicable laws of this jurisdiction. By receiving a Certificate of Appropriateness, I realize that this project will require a Building Permit, approval **PRIOR** to proceeding with the work outlined above and that there will be a final inspection required under this application. I also understand that any changes to an approved Certificate of Appropriateness must be submitted for review.*

PROPERTY OWNER'S SIGNATURE: _____	DATE AND PRINT NAME: _____
-----------------------------------	----------------------------

OFFICE USE ONLY

BUILDING DESCRIPTION:				
___ Contributing	Year built _____	Style _____	Listed in the NRHP _____	Year _____
___ Not listed	Year built _____	Comments _____		

___ Reviewed by Staff on _____ ___ Notice of hearing posted _____ First reading meeting date _____ Second Reading meeting date _____ TWO YEAR EXPIRATION DATE _____	Staff Comments
--	----------------

TIMELINE OF TROPICAL SOUP'S MALLORY SQUARE PROPOSED RESTAURANT

January 24, 2010 City of Key West (City) issues RFP for Cable Hut and Hospitality House (Exhibit A)

January 29, 2010 Sixteen prospective bidders including Tropical Soup tour the property and the existing restaurant for the mandatory pre-bid meeting.

March 3, 2010 The City receives two proposals. One from Tropical Soup, (Exhibit B) the other, from the partners of El Meson de Pepe restaurant.

May 18, 2010 City awards RFP to tropical Soup Corporation pursuant to Res. No. 10-167 (Exhibit C) Approved preliminary design is for a two story restaurant.

June/July/August/September 2010 Tropical Soup and its architect meet with planning staff and HARC staff to discuss its plan.

August 3, 2010 Engineer's Report produced by Seatech Inc

September 14, 2010 HARC meeting approval of demolition. Approval from the board with request to reduce height of roof.

September 28, 2010 HARC meeting approved demolition and design. (Exhibit E)

October 4, 2010 Tropical Soup makes application to the City for a Major Conditional Use Approval

November 1, 2010 City Planner (Kimball-Murley) requests that Tropical Soup delay its project due to concerns from Tannex Development Corp. (Westin Hotel and Marina)

November and December 2010 Tropical Soup has meetings with lawyers, consultants and owners of the Westin marina to discuss their concerns. (Exhibit D)

December 10, 2010 City Chief Building Official condemns Westernmost Cable Tank due to compromised structural integrity and FEMA requirements.

December 16, 2010 Planning Board meeting cancelled. No quorum

January 20, 2011 City Planning Board recommends the approval of the Major Development Plan to the City commission pursuant to Res. No. 2011-002 (Significant opposition from attorneys and consultants representing the Westin Hotel and Marina)

April 21, 2011 City Planning Board hears variance request and tables request due to the failure of the City to provide an independent Structural Analysis of the West Cable tank.

May 2011 Tropical Soup and its architects modify plans to avoid the immediate need for the City to pay for a new structural reports and to reduce the size of the project.

June 14, 2011 After consulting with City staff and addressing neighbor concerns, new HARC application to reduce the size of the structure to fit within the side-yard set-back

June 16, 2011 Planning board meeting. Board unanimously approves variances for Coastal Control Line, Impervious Surface coverage and lot coverage.

June 20, 2011 Litigation and appeal of the planning board Decision Filed by Tannex Corporation Appeal of variances, allegation of an increase in the non-conforming use and coastal control line. (Westin Hotel)

August 2011 City of Key West declares West cable tank to be historic. This contradicts earlier analysis. (Exhibits F and G)

July 2011 Project set for City Commission approval of development plan.

August 2, 2011 City Commission delays approvals and actions pending the outcome of the litigation filed by the Westin.

August 29, 2011 Structural Condition Assessment report created for the City by Chen Moore and Associates. (Findings similar to Sea-tech report)

August to November 2011 City of Key West Legal staff and Tropical Soup Corporation prepare pleadings and filings defending the City of Key West's planning board decisions against the lawsuit filed by Westin.

February 13, 2012 Order from Circuit Court upholding decision of Planning Board. City and Tropical Soup win. (Exhibit H)

March 2012 Request for writ of Certiorari by Tannex Corporation (Westin) requesting Third District Court of Appeals review of Circuit Court decision.

September 2011 to March 2012 conducted numerous meetings with City staff to eliminate or reduce the need for variances, particularly the height variance.

March 28, 2012 At request of City, submitted new architectural design to HARC reducing roof height by 8'6". Board stated that they preferred the previously approved (larger) design that required a height variance. (Exhibit I)

March- November 2012 City of Key West Legal Staff and Intervenor Tropical Soup Corporation Legal Team prepare appeals pleadings and filings defending the City of Key West's planning board decisions and the Circuit Court's ruling upholding those decisions.

January and February 2013, Tropical Soup meets with the CPS board to discuss challenges at Mallory Square and design and business concerns.

February 9, 2013 Appeal of Circuit Court Ruling is denied by the 3rd District Court of Appeals. City of Key West and Tropical Soup win again.

February 20, 2013 Despite the project's similarity to the design proposed in its RFP, City Commission denies Major Development Plan application based on architectural design concerns.

March 2013. The denial by the City forces Tropical Soup to try to redevelop Mallory Square with a much more difficult economic model.

April 2013- August 2013

City of Key West and Tropical Soup Corporation begin meeting to identify objectionable issues related to the first design proposal. The City Staff identify the proposal of a two story structure as a key problem. Tropical Soup Corporation points out that under current code (V flood zone) and the approved

RFP, the structure must be two stories. City staff inform Tropical Soup that they won't approve a two story structure.

October 5, 2013 Without consulting Tropical Soup, the City of Key West demolishes frame structures that make up the existing restaurant seating and bar area. This demolition also damages the roof, tearing the front mansard off, and damages the concrete walls. This damage is never repaired, and still exists today. (photo exhibit J)

August 2013-June 2014

At the request of the City, Tropical Soup again redesigns the project pursuant to comments of the City Commission and meetings with City staff. Despite Tropical Soup's original RFP design being a two story structure and the parcel's location in a "V" flood zone, and that structures on the "ground" are prohibited in a "V" zone. Tropical Soup, its architects and engineers conduct studies and designs to determine the feasibility of seeking a FEMA LOMR and subsequently constructing a single story restaurant

June 4, 2014

Tropical Soup applies for a FEMA flood map revision to analyze the flood zone. The goal being to change the flood zone to allow the structure to be built on the ground thereby reducing the mass and scale.

Fall 2014 Large concrete masonry panel on rear of the structure falls off, exposing the glass French doors added to the masonry utility structure around 1970.

February 26, 2015 FEMA issues a Letter of Map Revision converting the property from a "V"-zone to an "A"-zone, thereby permitting a proposed structure to be built on ground level. Effective date of LOMR: 2/26/15 (exhibit K)

April 1, 2015 Tropical Soup makes application to the City for Major Conditional Use approval based on new flood maps and reduced mass and scale

April 2015 City of Key West signs authorization forms for Tropical Soup to pursue major development plan. (Exhibit N)

April 23, 2015 DRC meeting for new Tropical Soup Mallory Square project. Tropical Soup works diligently to minimize impacts to neighbors.

April 29, 2015 Tropical Soup initiates correspondence with City Manager updating him on the status of the project and requesting assistance with the City's slow pace. No response.

May 5, 2015

DRC meeting notes produced for re-designed Tropical Soup project. HARC and Building Departments both express the need to "save the cable hut". Tropical Soup points out that the structures at Mallory Square were built as storage "tanks", that the terminology for a "cable hut" describes the type of historic structure adjacent to the Southernmost Point, where functioning cable connections and communication was made. The second tank is a commercial kitchen, with an exhaust hood, sinks, fire suppression equipment and a walk-in cooler.

May/June 2015 Landscape Plans updated. Reviewed with Urban Forestry Program Manager Discussions about replacing the large trees at Mallory Square that were cut down fifteen years ago.

June 1, 2015 Draft lease discussions between the City and Tropical Soup continue.

June 9, 2015 Preliminary Tree Commission Approval granted

June 29, 2015 Emails to City manager discussing Tropical Soup's ongoing efforts to re-develop blighted Mallory square and to clarify its continuation of the non-conforming use. No response

July/August/September 2015 Civil engineering and site work analysis of modified development plan

July/August/September/October/November/December 2015 Numerous discussions with City staff regarding political and other business' opposition to the redevelopment of Mallory Square, the difficult politics and the City's lack of fortitude.

November 10, 2015 Clarification meeting with City Planner regarding the process for moving forward including meeting schedules and the applicability of previous project approvals. City Planner clarifies that he wants Tropical Soup to re-submit plans to the DRC.

December 2015- Historic Structures Report created by Bender and Associates.

December 2015 In response to information requests City produces documents indicating 80 seats at the restaurant on Mallory Square (Exhibit Q)

April 28, 2016 City staff adopts the work of paid opponents of the project as a requirement for Tropical Soup to meet.

April 28, 2016 DRC meeting. Tropical Soup points out that there are ongoing significant negative financial, and reputational damages to the City and Mallory Square with the existing blighted area and continuing deterioration of historic properties.

May/June 2016 Discussions and site visits between Tropical Soup's landscape architect and the City's Urban Forestry Program Manager.

June 9, 2015 Tree Commission Board meeting. Preliminary approval of landscape Plan.

July 2016 Planning Board Scheduled. Delayed at the request of the City

June/July August 2016 After consultation with City staff, alternate Plans developed to eliminate all variances including the need for the previously granted Coastal Control Line variance.

August 18, 2016 Project noticed for Planning Board meeting: Major Development Plan and Variances. After meeting with Planning Staff and their concerns about variances Tropical Soup requests postponement until September.

August/September 2016 Tropical Soup meets with various City Commissioners updating them on progress of the redevelopment of Mallory Square.

September 2016 City of Key West changes its HARC guidelines and demands that Tropical Soup meet the new guidelines.

September 15, 2016 Planning Board Meeting. Major Development Plan postponed at request of City.

October 16, 2016 Conference call City attorney, City planner, Tropical Soup, Tropical Soup's Planner and Tropical Soup's attorney

October 20, 2016 Planning Board Meeting Major Development Plan approved.

December 12, 2016 Tropical Soup, its architects and artist make Art in Public Places conceptual proposal.

December 14, 2016 HARC meeting. Demolition Plan denied. Major Development Plan not heard due to denial of demolition. No suggestions made. Bender engineering report cited used as evidence and cited as reason for denial. Bender recuses himself from vote, but testifies against the project.

January 2017 Discussions between Tropical Soup and the City's Senior Property Manager regarding the status of the project and the lease.

January/February 2017- Multiple meetings with HARC staff, City FEMA coordinator and CBO. Discussions relating to the City's interpretation of historic features of the West Cable Tank and the applicability of FEMA regulations to its restoration.

March 2017 Discussion with City Leasing agent regarding the expected approvals of the new minimalist HARC design and the already approved development plan, These discussions covered definitions of demised premises construction schedules and lease commencement date as well as compensation for the City's change in the scope of the project. City Property manager argues for fidelity to the RFP despite the City's changes.

March 2017 Application including plan for restoration of the West Cable Tank timely submitted to HARC staff for the April meeting.

April 2017 Answered questions from City Planning department explaining that the only differences in the HARC application from the approved development plan were architectural and reductions in Floor area ratios and reductions in lot coverage.

April 2017 Added Design details modifying height of terraces at restaurant and detailing West Cable Tank and Hospitality House restoration work

April 2017 Tropical Soup proposal set for May HARC meeting.

May 2, 2017 Despite a Planning board approval and pending HARC application, proposal placed on City Commission to "cease negotiations" with Tropical Soup. After a call from a reporter alerting it to the agenda item Tropical Soup's legal counsel strenuously objects. Item withdrawn. (exhibit P)

May 23, 2017 Design denied by HARC. New design rehabilitates and adaptively re-uses existing restaurant kitchen. Design rehabilitates Hospitality House and minimizes obstructions and impediments to the Key west harbor and sunset view. No suggestions made about how the project could comply with the board's interpretation of the guidelines.

May 31, 2017 Tropical Soup appeals the HARC ruling to Special Magistrate.

June, July 2017 Tropical Soup continues its efforts to minimize impacts-. Adding bike racks, recycling areas, moving utilities to the least visible locations. Its engineers produce the concept video, showcasing current design.

August 30, 2017 Appeal argued before Special Magistrate. Special Magistrate decides in Tropical Soup's favor.

September 10 2017 Hurricane Irma landfall. Roofs and structures of properties further damaged. No effort at repair or mitigation of further damage to structures made to date.

October 18, 2017 Special Magistrate signs order finding that HARC decision improperly denied the project and was in error.

November 15, 2017 Almost unbelievably, rather than taking the opportunity to accept the Magistrate's decision and allowing Tropical Soup to begin to repair the blight at Mallory- The City seeks a clarification and narrowing in scope of Special Magistrate decision. City seeks a clarification and narrowing in scope of Special Magistrate decision.

November 17, 2017 City legal staff files writ of Certiorari requesting Circuit Court review of Special magistrate decision.

November 20, 2017 Tropical Soup applies with updated landscape plans for the December 12 Tree Commission agenda.

November 28, 2017 City files a 22 page appeal of the Special Magistrate's order, requesting review by the Circuit Court and litigating against the project.

November 28 City legal staff informs City urban forest manager that project has been stayed due to the City's appeal, and the item should not be placed on an agenda.

December, 2018 Tropical Soup points out that there has been no court ordered stay of the proceedings the landscape plan is unrelated to the HARC dispute, and should move forward.

January 2018 City requests Circuit Court relinquish jurisdiction back to Special magistrate so that he may re-hear the case.

February 28, 2018 City requested re-hearing and clarification of the Special Master's decision of August 2017. Special Master finds the same facts.

March 5, 2018 Special Magistrate signs order affirming his previous decision of August 30, 2017 and his previous order of October 18, 2017 that a Certificate of Appropriateness be issued. (Exhibit L)

March 13,2018 Final landscape plan approved by City tree Commission.

April, May, June 2018 Tropical Soup pushes to be on City Commission agenda.

August 27, 2018 City files a motion requesting reinstatement of jurisdiction with the Circuit Court, effectively appealing again after a six month delay.

September 5, 2018 Development Plan approval on City Commission agenda. Postponed at request of the City Attorney.

October 2, 2018 Development Plan approval on City Commission agenda. Postponed at request of the City Attorney.

October 11, 2018 Tropical Soup appeals to City manager to stop litigating against the project and to let the revitalization plan for Mallory square be heard. (exhibit M)

October 12, 2018 City Manager responds with- have your attorney call my attorney..

October 16, 2018 Development Plan approval on City Commission agenda. Postponed at request of the City Attorney.

December 4, 2018 Development Plan approval on City Commission agenda. Postponed at request of the City Attorney.

December 6, 2018 Circuit Court hearing on City's appeal

January 15, 2019 Development Plan approval on City Commission agenda. Postponed at request of the City Attorney.

February 20, 2019 Development Plan approval on City Commission agenda. Postponed at request of the City Attorney.

March 4, 2019 Circuit Court issues order denying City appeal. Special Magistrate order and HARC approval stand.

March 21, 2019 Tropical Soup sends draft 8 of the proposed lease back to the City's Senior property manager for final review by City legal staff

April 26 2019 City staff sends lease sent back to Tropical Soup after City legal staff review.

May 7, 2019 Development Plan approval on City Commission agenda. Postponed because of the Administrative Decision by the City Planning Director referring the project back to Planning Board.

PROJECT # 04-23017
 SHEET #

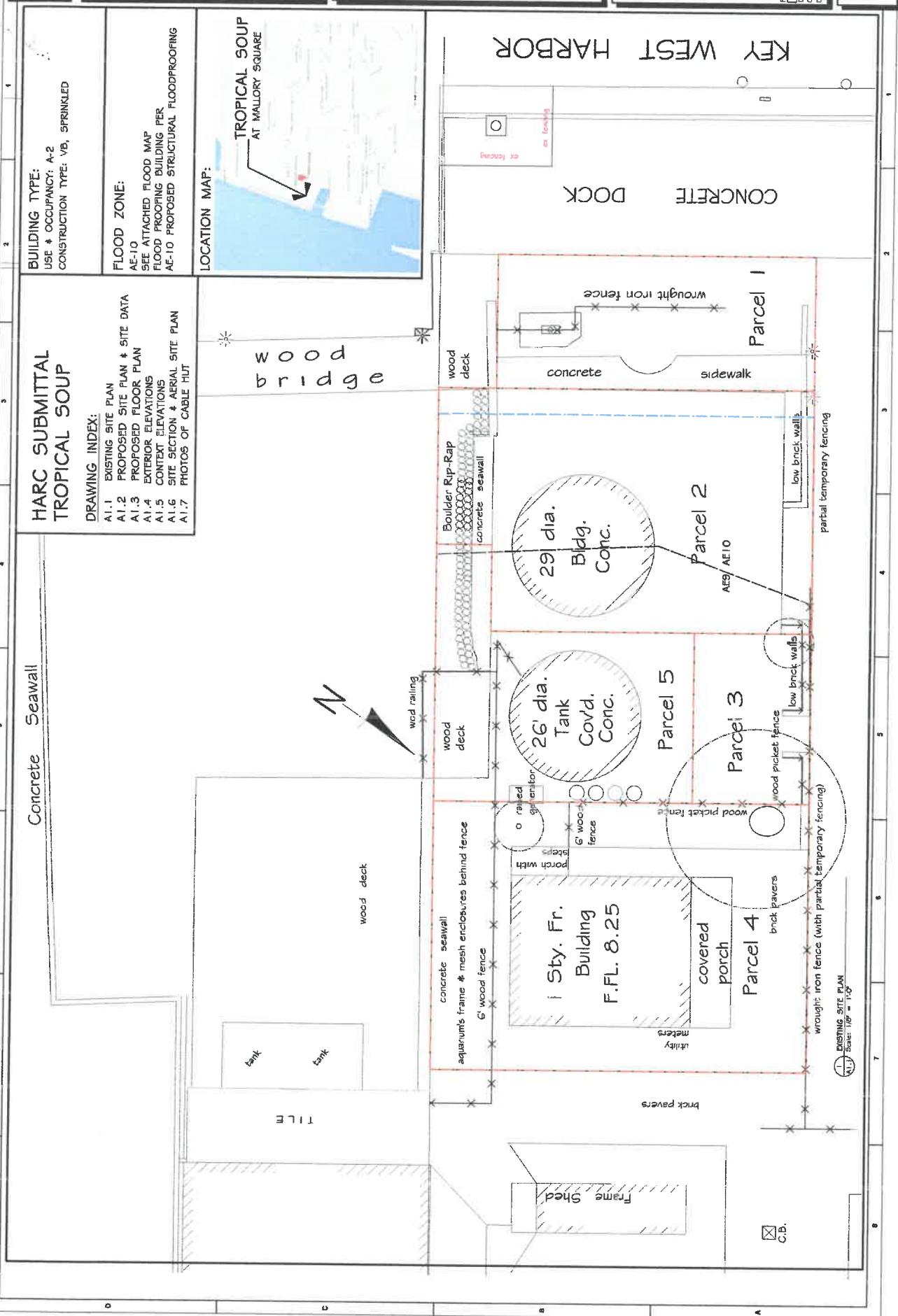


471 U.S. HIGHWAY 1
 SUITE 101
 KEY WEST, FL 33040
 305-296-1692

PROJECT: TROPICAL SOUP
 MALLORY SQUARE
 KEY WEST, FL 33040

DRAWING TITLE: EXISTING SITE
 PROJECT NUMBER: 04-23017
 DRAWN: M. LESTER
 CHECKED: M. LESTER
 DATE: 03/07/2017

SHEET #
A1.1



**HARC SUBMITTAL
 TROPICAL SOUP**

DRAWING INDEX:
 A1.1 EXISTING SITE PLAN
 A1.2 PROPOSED SITE PLAN & SITE DATA
 A1.3 PROPOSED FLOOR PLAN
 A1.4 EXTERIOR ELEVATIONS
 A1.5 CONTEXT ELEVATIONS
 A1.6 SITE SECTION & AERIAL SITE PLAN
 A1.7 PHOTOS OF CABLE HUT

BUILDING TYPE:
 USE & OCCUPANCY: A-2
 CONSTRUCTION TYPE: VB, SPRINKLED

FLOOD ZONE:
 AE-10
 SEE ATTACHED FLOOD MAP
 FLOOD PROOFING BUILDING PER
 AE-10 PROPOSED STRUCTURAL FLOODPROOFING

LOCATION MAP:
 TROPICAL SOUP
 AT MALLORY SQUARE

PETER M. PIKE, FLA. REGISTRATION # ARO015198

EXHIBIT D

PROJECT: TROPICAL SOUP
 MALORY SQUARE
 KEY WEST, FL 33040

DRAWING TITLE: PROPOSED SITE PLAN
 PROJECT NUMBER: 14.17
 DRAWN: LUTBEN
 CHECKED: [blank]
 DATE: 03/07/2017

SHEET # A1.2

REGISTERED PROFESSIONAL ARCHITECT
 PETER M. PIKE
 471 U.S. HIGHWAY 1
 SUITE 101
 KEY WEST, FL 33040
 305-296-1692

BUILDING TYPE: USE & OCCUPANCY: A-2
 CONSTRUCTION TYPE: VB, SPRINKLED
 FLOOD ZONE: AE-10
 SEE ATTACHED FLOOD MAP
 FLOOD PROOFING BUILDING PER
 AE-10 PROPOSED STRUCTURAL FLOODPROOFING
 LOCATION MAP:
 TROPICAL SOUP
 AT MALORY SQUARE

"Tropical Soup" PROPOSED RESTAURANT - AT MALORY SQUARE -

ARCHITECTS: PETER PIKE & ASSOCIATES
 471 U.S. HIGHWAY 1, KEY WEST, FLORIDA 33029-1692

Site Data Table:	Permitted	Conditions
Site Area	154,883 s.f.	No Change
Zone	MS	No Change
Use	MS	MS
Max Height	35'	35'
Building Coverage	67%	67%
Landmark Area	90,855 s.f.	90,855 s.f.
Urban Building Area	3,116 s.f.	3,116 s.f.
Consumption Area	2,344 s.f.	2,344 s.f.
Setback:		
Front	30'	30'
Side	11.5'	11.5'
Rear	15'	15'
North Side	15'	15'
South Side	15'	15'
East	450'	450'
West	240'	240'
Other	N/A	N/A
Other	240'	240'
Other	N/A	N/A

1. All setbacks are based on the ground level.
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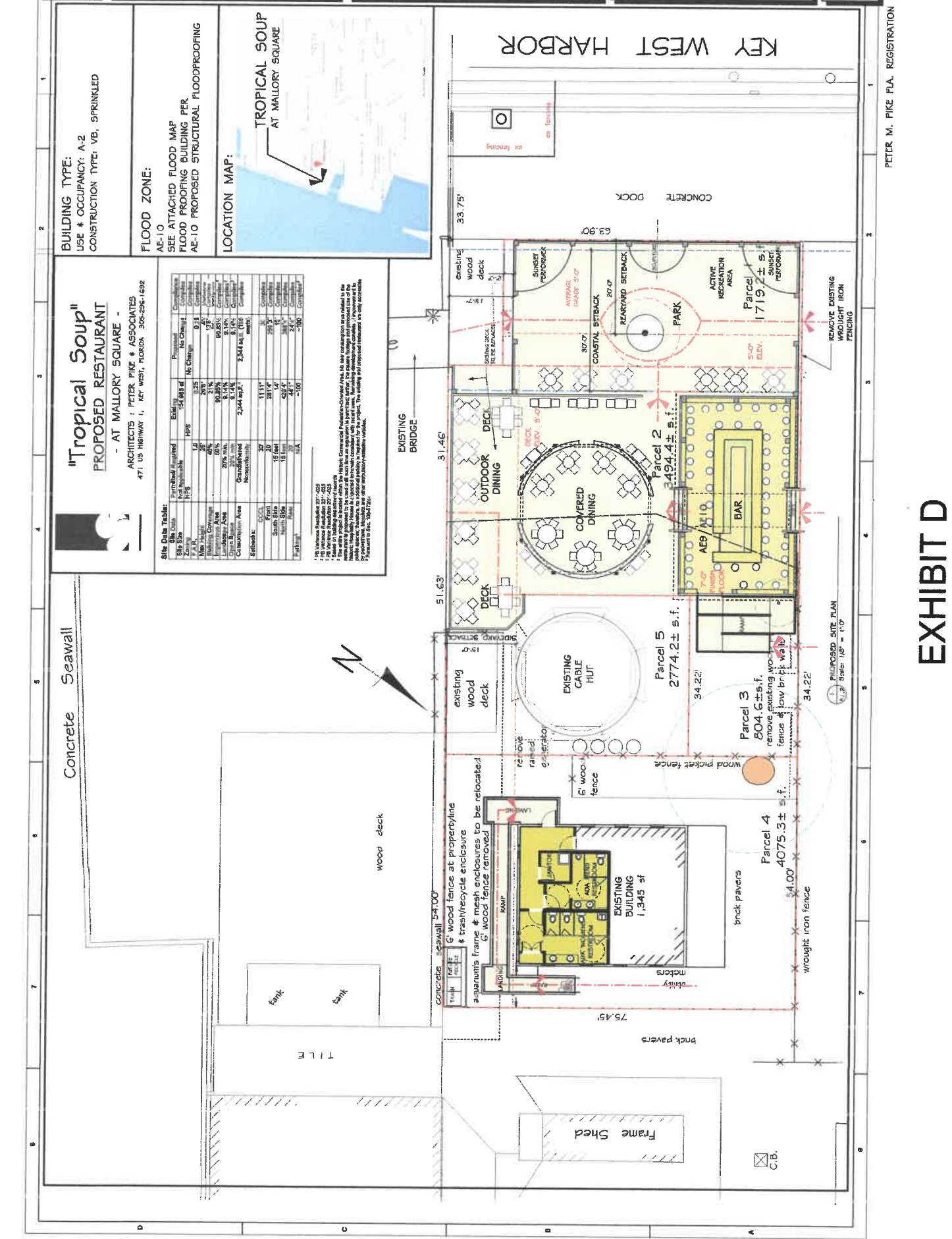


EXHIBIT D

PETER M. PIKE P.L.A. REGISTRATION # AR0015199

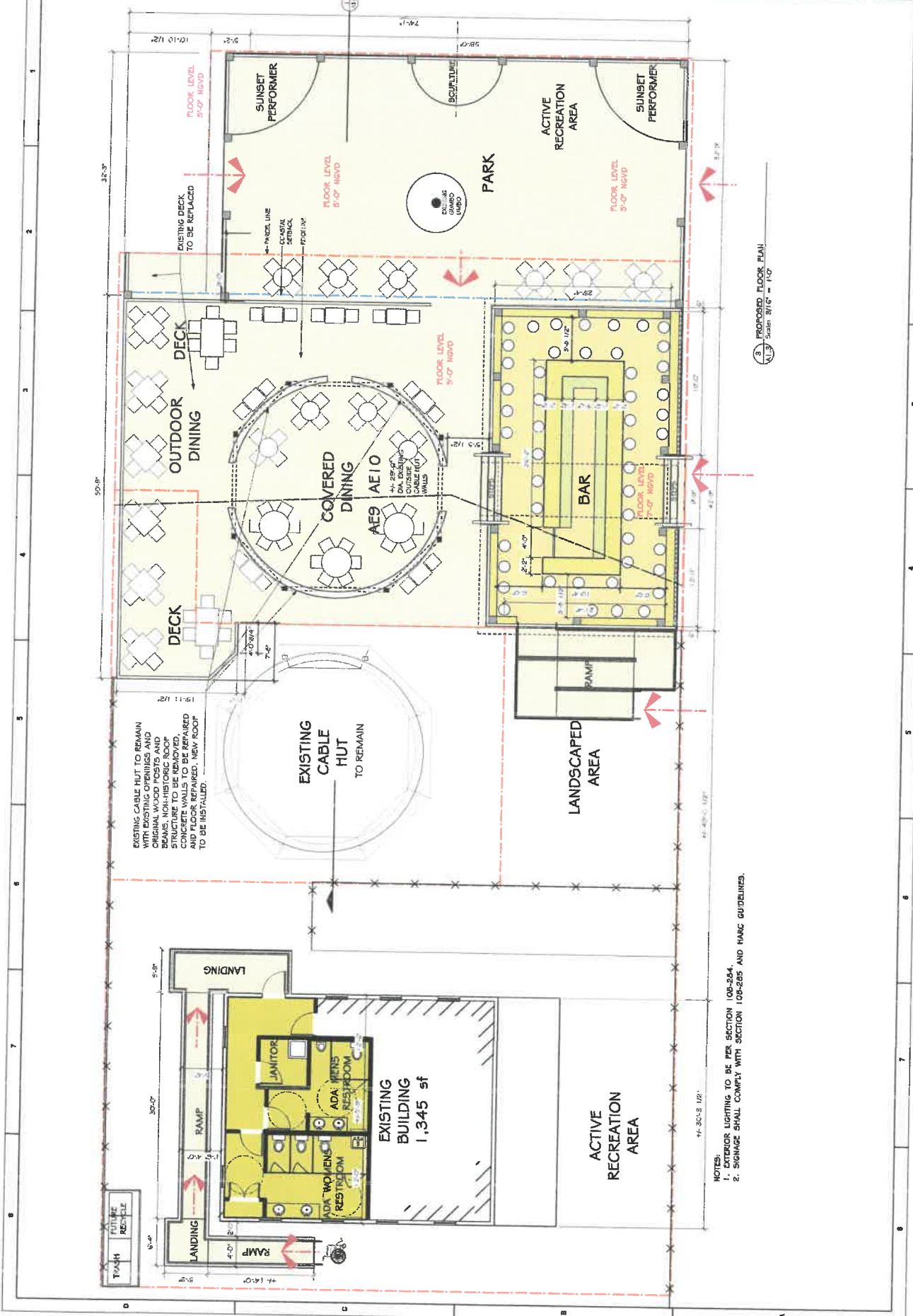
PROJECT # 04262017
 DATE 03/07/2017

ARCHITECTS
 471 U.S. HIGHWAY 1
 SUITE 101
 KEY WEST, FL 33040
 305-296-1692

PROJECT: TROPICAL SOUP
 MAJORA SQUARE
 KEY WEST, FL 33040

DRAWING TITLE: PROPOSED FLOOR PLAN
 PROJECT NUMBER: 04262017
 DRAWN BY: LST/BN
 CHECKED BY: LST/BN
 DATE: 03/07/2017

SHEET #
A1.3



EXISTING CABLE HUT TO REMAIN WITH EXISTING OPENINGS AND BEAMS. NON-HISTORIC ROOF TO BE REMOVED AND NEW CONCRETE WALLS AND FLOOR REPAIRED. NEW ROOF TO BE INSTALLED.

- NOTES:
 1. EXTERIOR LIGHTING TO BE PER SECTION 105-254.
 2. SIGNAGE SHALL COMPLY WITH SECTION 105-255 AND IMBC GUIDELINES.

PROPOSED FLOOR PLAN
 Scale: 3/16" = 1'-0"

PETER M. PIKE FLA. REGISTRATION # AR0015198

EXHIBIT D

VERSION # / DATE
 01 / 04.25.2017



471 U.S. HIGHWAY 1
 SUITE 101
 KEY WEST, FL 33040
 305-296-1592

PROJECT:
 TROPICAL SOUP
 MALLORY SQUARE
 KEY WEST, FL 33040

DRAWING TITLE:
 ELEVATIONS

PROJECT NUMBER:
 14.17
 DRAWING: EXTERIOR
 DATE: 03.07.2017

SHEET #
A14

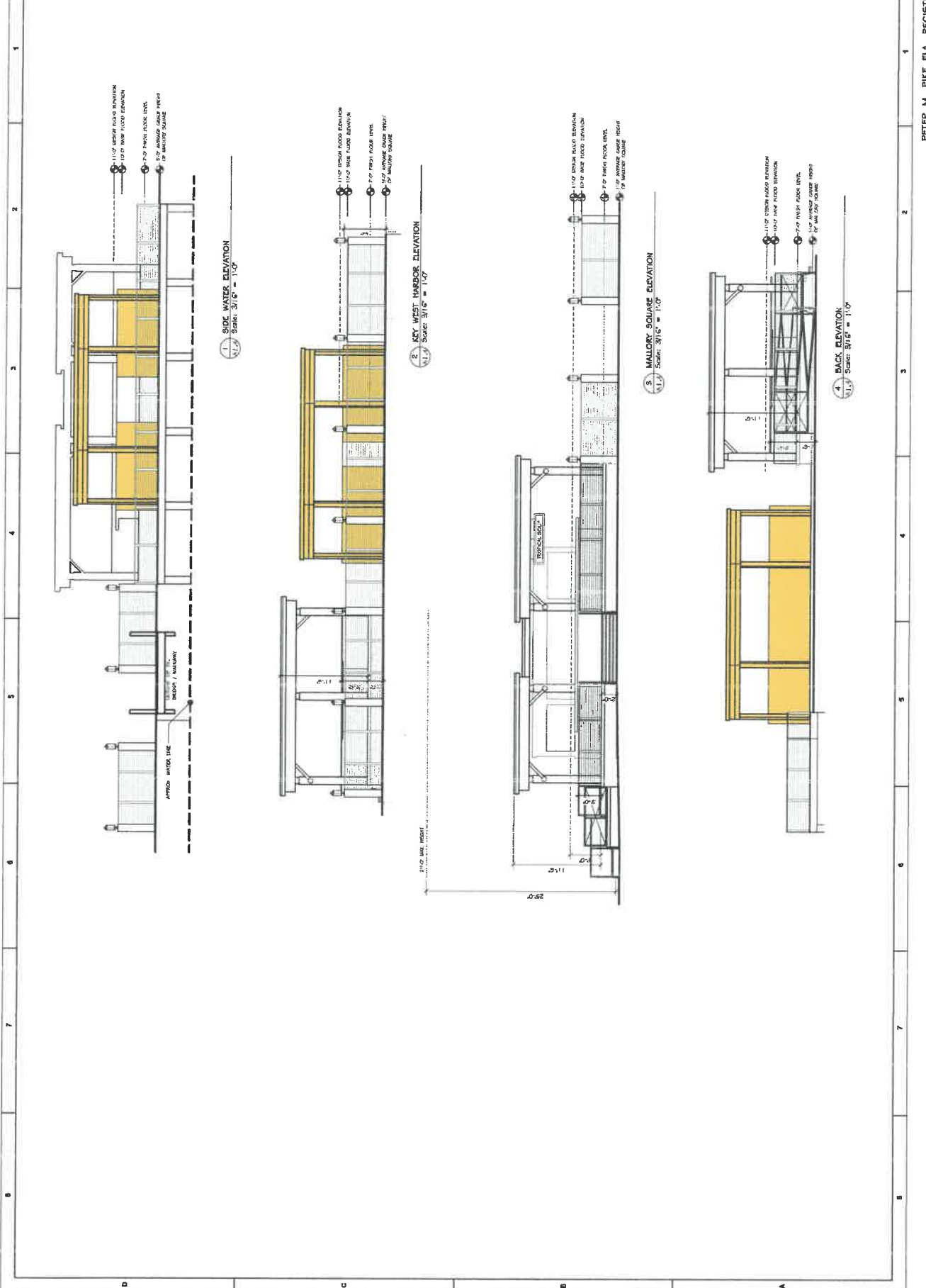


EXHIBIT D

DIVISION # SITE PLAN
 DATE: 02/20/17
 DRAWN BY: J. J. O'BRIEN
 CHECKED BY: J. J. O'BRIEN



471 U.S. HIGHWAY 1
 KEY WEST, FL 33040
 305-296-1692
 P. I. K. E.
 ARCHITECTS

PROJECT: TROPICAL SOUP
 MALLORY SQUARE
 KEY WEST, FL 33040
 SITE ID: 101

DRAWING TITLE: AERIAL SITE PLAN
 SITE SECTION &
 PROJECT NUMBER: 101
 DRAWN BY: J. O'BRIEN
 CHECKED BY: J. O'BRIEN
 DATE: 02/20/2017

SHEET #
A1.6

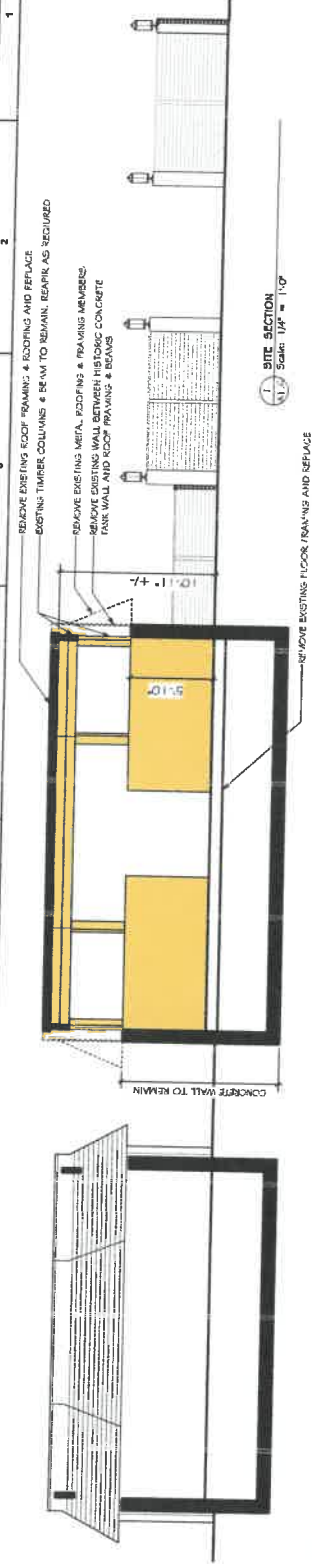


EXHIBIT D

PROJECT #	DATE
17	04/20/17



PIKZ ARCHITECTS
 471 U.S. HIGHWAY 1
 SUITE 101
 KEY WEST, FL 33040
 305-296-1592

PROJECT:
TROPICAL SOUP
 MALLORY SQUARE
 KEY WEST, FL 33040

DRAWING TITLE:
PHOTOS OF CABLE HUT
 PROJECT NUMBER:
 DRAWING DATE:
 CHECKED: LUTHER
 DATE: 04/20/2017

SHEET #
A1.7

<p>8 7 6 5 4</p>	<p>PHOTO A</p>  <p>REMOVE EXISTING METAL ROOFING, FRAMING DETERIORATED SOFFIT & DOORS</p>	<p>PHOTO B</p>  <p>REMOVE EXISTING METAL ROOFING, ROOF FRAMING AND DETERIORATED SOFFIT</p>	<p>PHOTO A</p>  <p>INTERIOR REMOVE DETERIORATED FLOORING AND REPLACE</p>	<p>PHOTO B</p>  <p>REMOVE ALL EXISTING DOORS AND ROOFING. REPAIR ALL CONCRETE SPALLING AT WALLS</p>	<p>PHOTO A</p>  <p>EXISTING CABLE HUT</p>	 <p>REMOVE ALL EXISTING DOORS AND ROOFING. ALL HISTORIC TIMBERS COLUMNS & BEAMS TO REMAIN AND REPAIRED AS REQUIRED</p>	 <p>EXISTING CABLE HUT INTERIOR REMOVE ALL INTERIOR NON HISTORIC MATERIALS AT WALLS AND ROOF</p>	 <p>EXISTING CABLE HUT INTERIOR REMOVE ALL INTERIOR KITCHEN EQUIPMENT & NON HISTORIC MATERIALS</p>	<p>9 8 7 6 5 4 3 2 1</p>
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EXHIBIT D

**PLANNING BOARD
RESOLUTION NO. 2016-51**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD
GRANTING A MAJOR DEVELOPMENT PLAN PURSUANT
TO SECTION 108-91.A.2. (b) OF THE LAND DEVELOPMENT
REGULATIONS OF THE CODE OF ORDINANCES OF THE
CITY OF KEY WEST, FLORIDA FOR REDEVELOPMENT
OF A RESTAURANT AND ADJACENT PROPERTY ON
PROPERTY LOCATED AT MALLORY SQUARE (RE #
00072082-001100, 00072082-001400, 0072082-003700) WITHIN
THE HISTORIC PUBLIC AND SEMIPUBLIC SERVICES
(HPS) ZONING DISTRICT; PROVIDING FOR AN
EFFECTIVE DATE**

WHEREAS, Section 108-91 of the Code of Ordinances (the "Code") of the City of Key West, Florida (the "City") provides that, a Major Development Plan is required for the addition of nonresidential floor area addition or reconstruction of equal to or greater than 5,000 square feet of gross floor area; and

WHEREAS, Code Sections 108-196(a) the Planning Board to review and approve, with conditions or deny the proposed Major Development Plan in an advisory capacity to the City Commission; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on October 20, 2016; and

WHEREAS, the granting of a Major Development Plan is consistent with the criteria of the Code of Ordinances; and

WHEREAS, the Planning Board finds that the granting of a Major Development is in harmony with the general purpose and intent of the Land Development Regulations, and will not be

Page 1 of 6
Resolution No. 2016-51

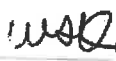


Chairman

Planning Director

EXHIBIT E

injurious to the neighborhood, or otherwise detrimental to the public welfare.

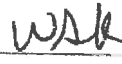

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. The Major Development Plan for the redevelopment of a restaurant and adjacent property containing 2,344 square feet of consumption area at Mallory Square (RE # 00072082-001100, 00072082-001400, 0072082-003700) within the within the Historic Public and Semipublic Services (HPS) zoning district pursuant to Sections 108-91.A.2.(b) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida, as shown in the attached plans, is hereby approved with the following conditions:

General conditions:

1. A total of 2,344 square feet of restaurant consumption area which equates to 156 seats is allowed within the lease hold area. The location of the consumption area within the restaurant may be modified in consultation with the City relative to final determinations regarding the cable hut located within the parcel. Alcohol sales are permitted as accessory to the principal restaurant business. The sale of food, dessert, and non-alcoholic beverages must constitute 51% or more of business and the sale of food must occur during the time in which service is being provided to the public.
2. During all phases of demolition and construction, temporary fencing and

 Chairman
 Planning Director

erosion barriers shall be installed and maintained. All adjacent City streets and sidewalks shall be kept clean and clear of construction debris.

3. That a variance request to height requirements for non-habitable space is approved by the Board of Adjustment. The Planning Boards approval of the Major Development Plan does not require the construction of the tower.

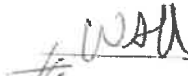

4. The project will comply with green building standards established by Chapter 255.2575(2), F.S., and will also provide for recycling of solid waste and meet "dark sky" lighting standards.

5. The proposed structures will be included in the final leasehold area determined by the City at the City's discretion.

6. Public access to plazas and public access ways along Mallory Dock and the bridge to the Westin Marina shall remain unimpeded in perpetuity by the applicant. The city reserves the right to address access for public safety purposes.

7. The applicant will abide by Port Security requirements as required by the Port Facility Security Officer, including requirements deriving from the United States Navy when military vessels are berthed at this location.

8. Restaurant seating shall not exceed 156 seats on the site.

 Chairman
 Planning Director

9. 60% or more of the existing cable hut shall be retained into the new design.

Conditions prior to the City Commission hearing:

10. The applicant shall obtain final landscape plan approval from the Tree Commission.

Conditions prior to issuance of a building permit:

11. Stormwater plans must be approved by the Utilities Department prior to Building Permit issuance.

12. Approval of a Public Art Plan shall be obtained from the AIPP Board, pursuant to City Code Section 2-487, and may include payment of an in-lieu fee.

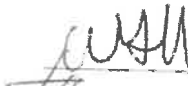

Conditions prior to issuance of a certificate of occupancy:

13. On-site artwork shall be installed and inspected by the City pursuant to Code Section 2-487.

Section 3. Full, complete and final application for all permits required for which this resolution is wholly or partly necessary, shall be submitted in its entirety within 12 months after the date hereof.

Section 4. This Major Development Plan application approval by the Planning Board does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of the applicant's assertion of legal authority respecting the property.

Section 5. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Board.

 Chairman
 Planning Director

Section 6. This resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit or development order shall be rendered to the Florida Department of Economic Opportunity. Pursuant to Chapter 73C-44, F.A.C., this permit or development order is not effective for 45 days after it has been properly rendered to the DEO with all exhibits and applications attached to or incorporated by reference in this approval; that within the 45-day review period, the DEO can appeal the permit or development order to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement or order.

Read and passed on first reading at a regularly scheduled meeting held this 20th day of October, 2016.

Authenticated by the Chairman of the Planning Board and the Planning Director.



Sam Holland, Planning Board Chairman

10/27/16
Date


Attest:




Thaddeus Cohen, Planning Director

10/27/2016
Date

Filed with the Clerk:



Chairman


Planning Director

Cheryl Smith, City Clerk

Date

Page 6 of 6
Resolution No. 2016-51




Chairman

Planning Director

EXHIBIT E

10/20/17
 MRM
 [Signature]

ALBION ENGINEERING
 10101 ALBION DRIVE, SUITE 100
 MIAMI, FL 33157
 (305) 555-1111
 WWW.ALBIONENGINEERING.COM

NO.	DESCRIPTION
1	CONCEPTUAL DRAINAGE PLAN

TROPICAL SOUP RESTAURANT
 MALLOY SQUARE
 KEY WEST, FL 33040

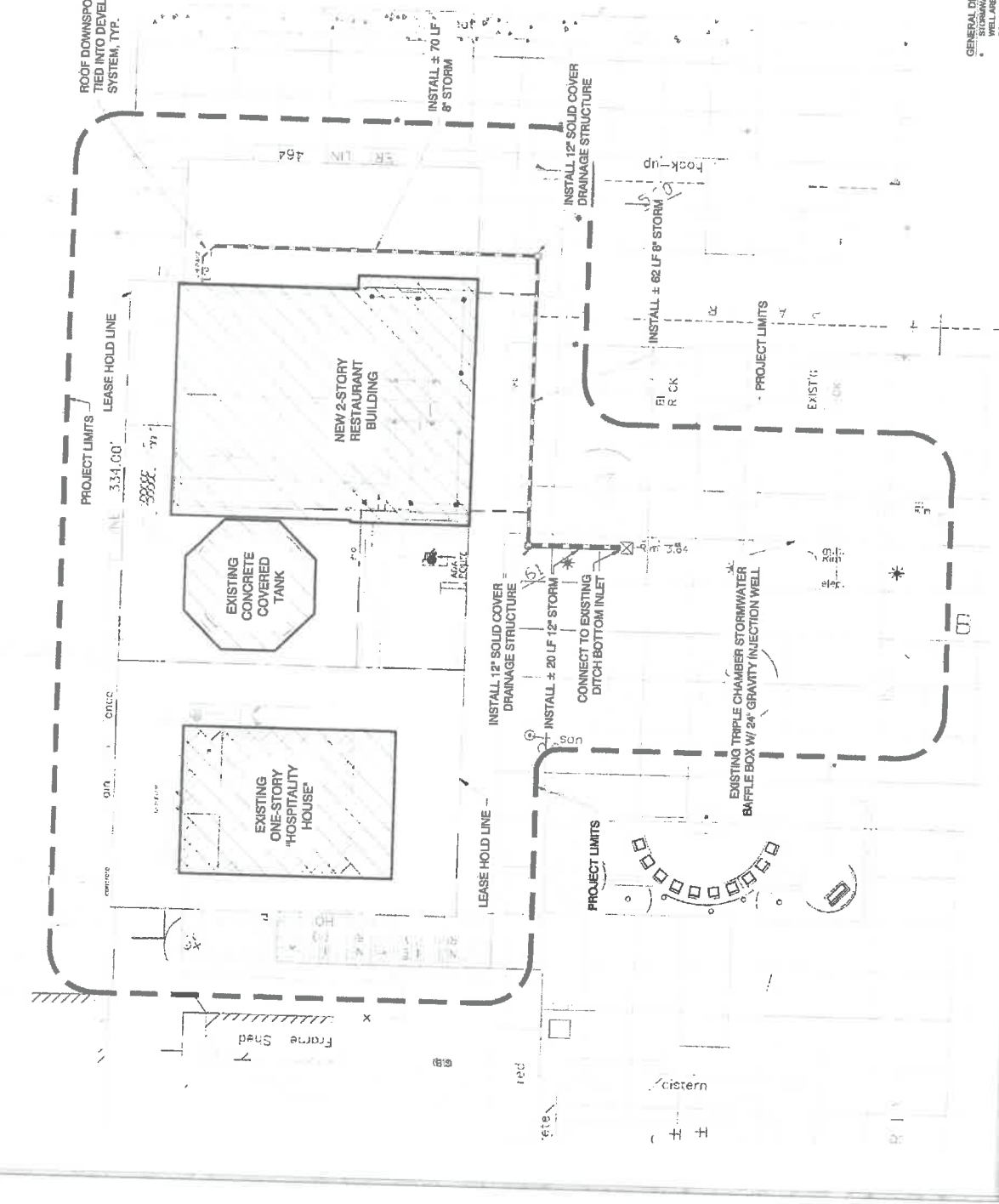
DATE	BY	CHKD
10/20/17	MRM	[Signature]
DATE	BY	CHKD

C-1

SCALE: 1" = 10'
 ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE
 THIS PLAN IS TO BE USED FOR PERMITS ONLY AND DOES NOT CONSTITUTE A CONTRACT

ROOF DOWNSPOUTS TO BE TIED INTO DEVELOPED STORMWATER SYSTEM, TYP.

KEY WEST BIGHT



LEGEND

- PROJECT LIMITS
- LEASE HOLD LINE
- ROOF AREA
- EXISTING CHAMBER
- EXISTING DITCH BOTTOM INLET
- EXISTING STORM PIPE
- STORMWATER PIPE
- STORMWATER INLET PRODUPT
- STORMWATER MANHOLE
- STORMWATER MANHOLE

GENERAL DRAINAGE NOTES

- STORMWATER FLOW TESTS ON EXISTING GRAVITY INJECTION SYSTEMS SHALL BE CONDUCTED BY THE CONTRACTOR PRIOR TO CONSTRUCTION.
- "HOSPITALITY HOUSE" EXISTING GUTTER & DOWNSPOUT SYSTEMS TO BE REPAIRED AS REQUIRED.

EXHIBITE

1/10/2011
 10/10/11
 WLL

REVISIONS	DATE
01	08-23-2011
02	08-23-2011
03	09-02

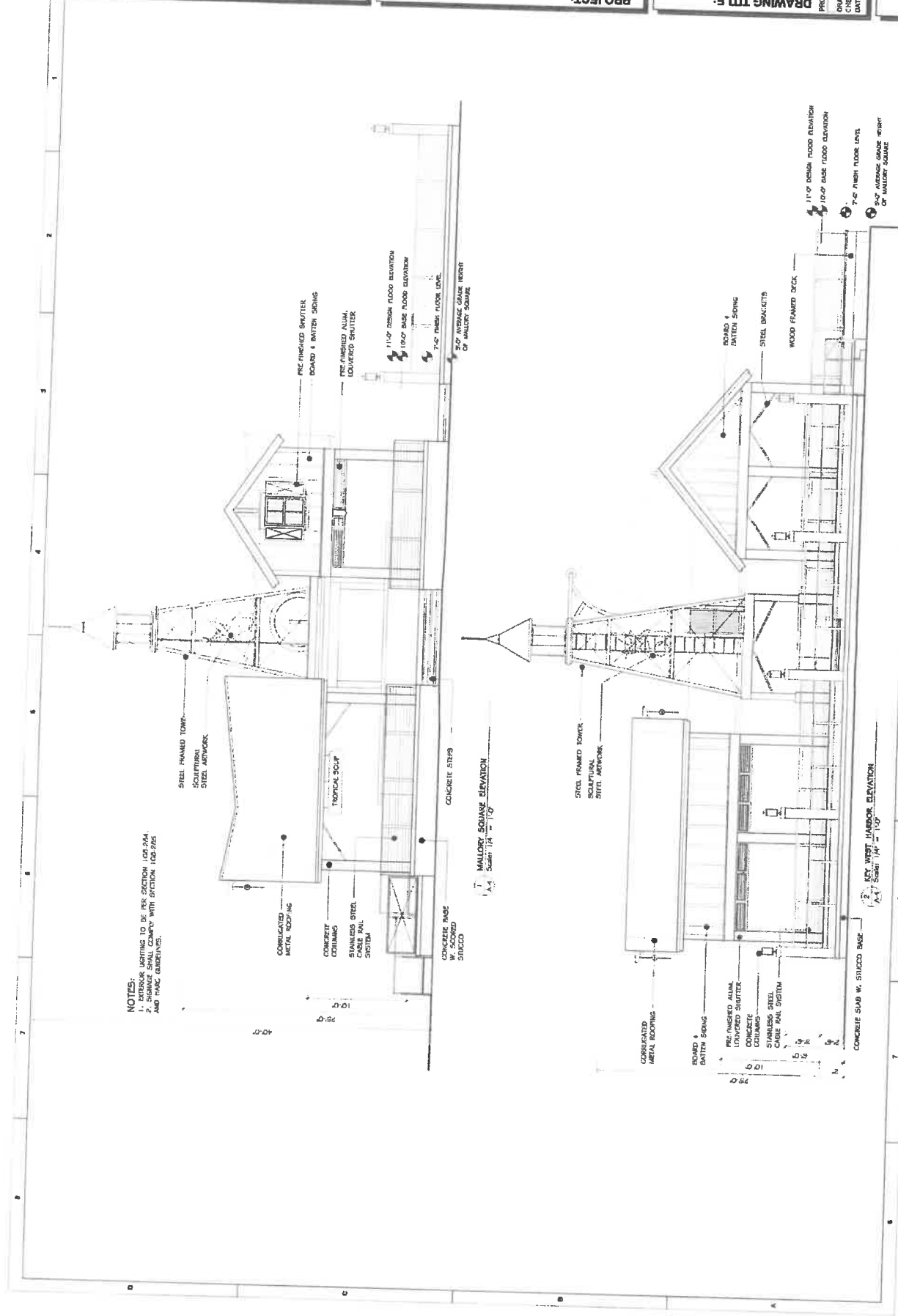
PETER PIKE ARCHITECT
 471 U.S. HIGHWAY 1
 SUITE 101
 KEY WEST, FL 33040
 305-292-1822

PROJECT:
TROPICAL SOUP
 MALLORY SQUARE
 KEY WEST, FL 33040

DRAWING TITLE:
ELEVATIONS

PROJECT NUMBER:
 DRAWN BY: TP
 CHECKED:
 DATE: 09/03/10

SHEET #
A-4



NOTES:
 1. FINISH ELEVATIONS TO BE PER SECTION 102.504
 2. FINISH ELEVATIONS TO BE PER SECTION 102.505
 AND FINISH GRADIENTS.

EXHIBIT E

PETER M. PIKE FLA. REGISTRATION # AR0015195

W.P. 10/20/18
10/20/18

REVISIONS DATE
 NO. 01
 08.03.2018
 02.02.2018

PETER PIKE ARCHITECT
 471 U.S. HIGHWAY 1
 KEY WEST, FL 33840
 305-296-1682

PROJECT:
TROPICAL SOUP
 MALLORY SQUARE
 KEY WEST, FL 33040

DRAWING TITLE:
ELEVATIONS
 PROJECT NUMBER:
 DRAWN BY: T.M.
 CHECKED: T.M.
 DATE: 08.03.2018

SHEET #
A-3

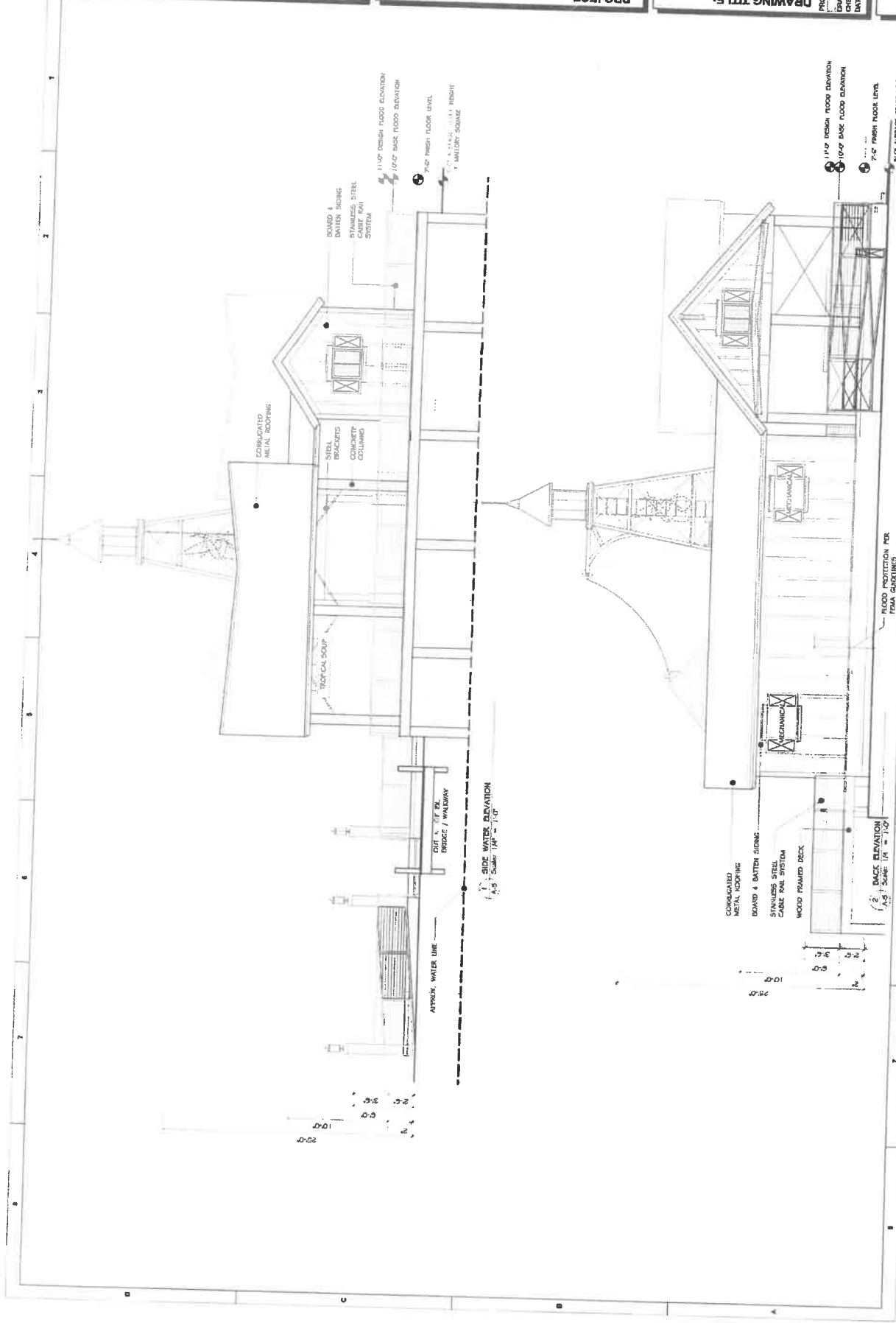


EXHIBIT É

PETER M. PIKE FLA. REGISTRATION # AR0019198

10/20/14
WLL
10/20/14

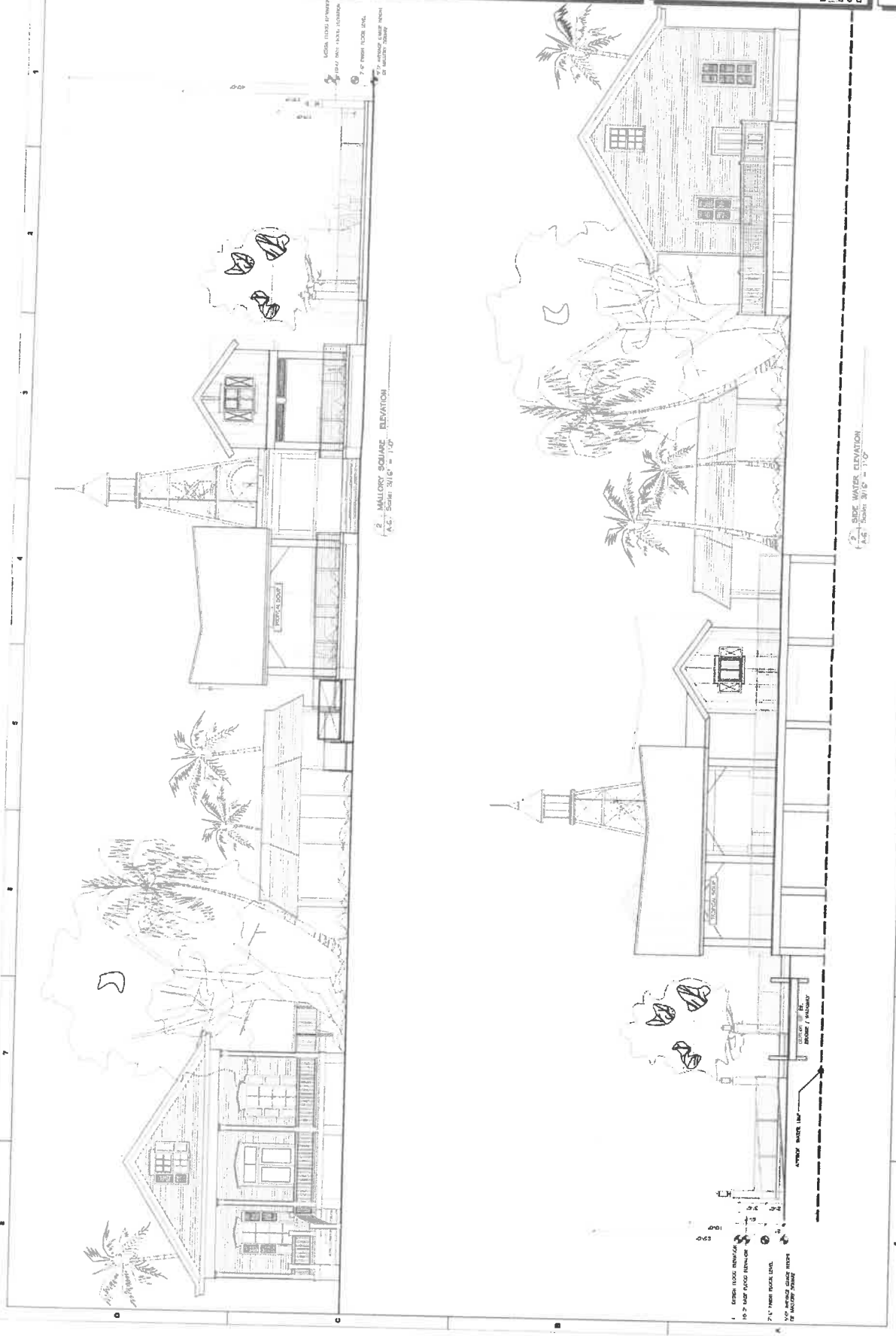
REVISIONS: DATE
06.29.2014
06.26.2014
06.26.2014
06.26.2014

PETER PIKE ARCHITECT
473 U.S. HIGHWAY 1
SUITE 101
KEY WEST, FL 33040
305-296-1892

PROJECT:
TROPICAL SOUP
MALLORY SQUARE
KEY WEST, FL 33040

DRAWING TITLE:
ELEVATIONS
PROJECT NUMBER:
DRAWN: [blank]
CHECKED: [blank]
DATE: 06.06.2014

SHEET #
A-6



2. MALLORY SQUARE ELEVATION
A.C. Scale: 3/16" = 1'-0"

3. SIDE WATER ELEVATION
A.C. Scale: 3/16" = 1'-0"

- 1. 0'-0" TO 1'-0" FINISH LINE
- 2. 1'-0" TO 2'-0" FINISH LINE
- 3. 2'-0" TO 3'-0" FINISH LINE
- 4. 3'-0" TO 4'-0" FINISH LINE
- 5. 4'-0" TO 5'-0" FINISH LINE
- 6. 5'-0" TO 6'-0" FINISH LINE
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- 100. 99'-0" TO 100'-0" FINISH LINE

EXHIBIT É

PROJECTS DATE: 05/24/2015
 05/24/2015
 05/24/2015

PETER PIKE ARCHITECT
 471 U.S. HIGHWAY 1
 SUITE 101
 KEY WEST, FL 33040
 305-296-1882

PROJECT: TROPICAL SOUP
 MALLORY SQUARE
 KEY WEST, FL 33040

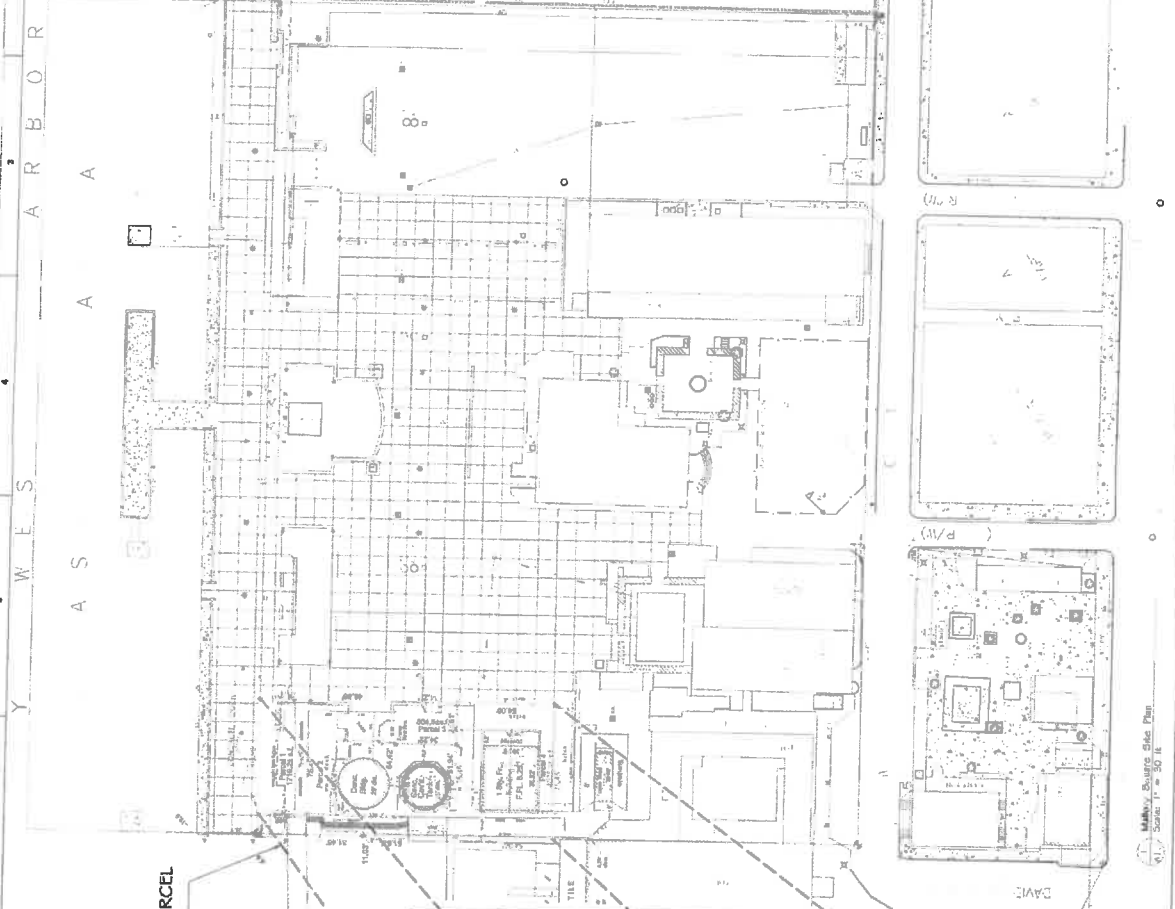
DRAWING TITLE: MALLORY SQUARE SITE PLAN

SHEET # A-8

"Tropical Soup" PROPOSED RESTAURANT - AT MALLORY SQUARE
 ARCHITECTS - PETER PIKE ARCHITECTS
 471 U.S. HIGHWAY 1, SUITE 101, KEY WEST, FLORIDA 33040

NO.	DESCRIPTION	AMOUNT
1	Site Plan	150.00
2	Site Plan	150.00
3	Site Plan	150.00
4	Site Plan	150.00
5	Site Plan	150.00
6	Site Plan	150.00
7	Site Plan	150.00
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47	Site Plan	150.00
48	Site Plan	150.00
49	Site Plan	150.00
50	Site Plan	150.00

PREPARED BY: PETER PIKE ARCHITECTS
 DATE: 05/24/2015
 PROJECT: TROPICAL SOUP
 DRAWING TITLE: MALLORY SQUARE SITE PLAN
 SHEET # A-8



REFERENCE PARCEL CORNERS

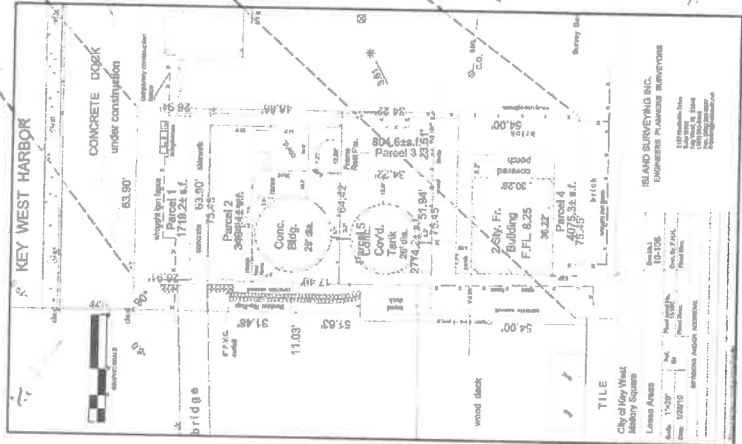


EXHIBIT E

PETER W. PIKE FLA. REGISTRATION # AR0016188

VDF LAW, PLLC
626 JOSEPHINE PARKER DRIVE
SUITE 205, MAIL BOX 7
KEY WEST, FLORIDA 33040


1068
67-446/539 SC
1723

PAY TO THE
ORDER OF

Key West City Clerk

DATE May 13, 2019

\$ 1,000.00

DOLLARS  Security
Details on
back

One thousand and 00/100

Bank of America 

ACH R/T 053904483

FOR Notice of Appeal Tropical Sup



⑈ 4379 1010 6788 ⑈ 2008 05 13 ⑈ 1000 00 ⑈