

THIRD AMENDMENT TO LEASE AGREEMENT

This Third Amendment to the Lease Agreement between the City of Key West, Florida, a municipal corporation organized and existing under the laws of the State of Florida (“Lessor”) and TROPICAL SHELL & GIFT, INC., a Florida corporation, (the “Lessee”) for the property commonly known as the Key West Aquarium property. Lessor and Lessee are jointly referred to as the “Parties”.

WITNESSETH:

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

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

WHEREAS, Lessor and Lessee entered into a Second Amendment to Lease dated August 28, 2018, confirmed by Resolution 18-247, which provided an option to renew the Original Lease for an additional ten (10) years through July 14, 2038, provided Lessee makes certain Improvements within twenty-four (24) months from the date of the Second Amendment (the “Second Amendment”); and

WHEREAS, due to impacts of the COVID-19 pandemic on tourism, labor and finances, the parties have mutually agreed to extend the time period by an additional twenty-four (24) months wherein Improvements set forth in Section 3 of the Second Amendment to Lease are to be completed by August 28, 2022;

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

1. Recitals. That the recitals contained herein are true and correct and incorporated herein by reference.
2. Improvements. As a condition of this Third Amendment:
 - (a) Lessee represents and warrants that the improvements shown on the attached **Exhibit A** have been completed within the timeframes set forth on such schedule.

(b) Lessee agrees to make the improvements shown on the attached **Exhibit B**, or an equal dollar amount of improvements that would be approved by the City of Key West (such approval shall not be unreasonably withheld, ~~within twenty four (24) months from the date of this Second Amendment.~~ by or before August 28, 2022.”

2. Authority. Each person executing this Third Amendment on behalf of a party represents and warrants that he/she has this full power, authority, and legal right to execute and deliver this Third Amendment on behalf of such Party and that this Third Amendment constitutes the legal, valid, and binding obligations of such Party, its heirs, representatives, successors, and assigns, enforceable against such Party or Parties in accordance with its terms. Lessor hereby represents and warrants that it has obtained all necessary approvals and consents required for this Second Amendment.

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

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

5. No Further Modification. Except as set forth in this Third Amendment, all the terms and provisions of the Original Lease, First Amendment and Second Amendment shall remain unmodified, in full force and effect, ratified and confirmed. In the event of a conflict between the Lease, subsequent amendments, and this Third Amendment, this Third Amendment shall control. Effective as of the date hereof, all references to the “Lease” shall refer to the Lease as amended collectively by prior Amendments and this Third Amendment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed this Third Amendment on the Lease Agreement this _____ day of _____, 2021.

ATTEST:

CITY OF KEY WEST, FLORIDA,
a municipal corporation

Cheryl Smith, City Clerk

Teri Johnston, Mayor

TROPICAL SHELL & GIFT, INC.

Witness Signature

Witness Print Name

By: _____
Name: _____
Title: _____

STATE OF FLORIDA)
COUNTY OF MONROE)

BEFORE ME, a Notary public, personally appeared _____, who did acknowledge before me that he/she/they executed the foregoing instrument for the uses and purposes therein set forth. He/She/They is personally known to me and did not take an oath.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at the county and state aforesaid, this _____ day of _____, 2021.

NOTARY PUBLIC

SEAL:

EXHIBIT "A"

Exhibit A

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

Posted G/I Date	Vendor Name	Aquarium Injection Wells	Roof	Aquarium Improvements Lighting	Tanks	A/C	Stairs & Walkways	Fire Sprinkler / Suppression System	Solar
6/14/2016	WATER SCIENCE ASSOCIATES	9,605.00							
6/27/2016	CHARLEY TOPPING & SONS, INC	110,316.25							
7/23/2016	SUNBLOCK & TILE, INC								
7/28/2016	M.C. WELDING				2,009.40				
8/6/2016	DELOACH INDUSTRIES, INC.	47,762.50			8,005.14				
8/11/2016	CHARLEY TOPPING & SONS, INC	14,645.46							
8/11/2016	CHARLEY TOPPING & SONS, INC	18,008.33							
9/1/2016	WATER SCIENCE ASSOCIATES	13,815.00							
9/1/2016	WATER SCIENCE ASSOCIATES	6,583.00							
9/1/2016	CHARLEY TOPPING & SONS, INC	10,853.79							
9/9/2016	SUNBLOCK & TILE, INC								
9/13/2016	DELOACH INDUSTRIES, INC.	47,576.00			(15,000.00)				
9/14/2016	WATER SCIENCE ASSOCIATES	5,480.00							
10/6/2016	CITY OF KEY WEST - LICENSE	1,392.98							
10/18/2016	FOUR STAR RENTALS, INC	705.36							
10/21/2016	FMH BUILDERS, INC			6,725.38					
11/10/2016	LIGHTHOUSE ELECTRIC			2,549.00					
12/13/2016	DOWLING HOLDINGS OF FLORIDA LL						6,000.00		
1/1/2017	DOWLING HOLDINGS OF FLORIDA LL						21,783.00		
1/1/2017	DOWLING HOLDINGS OF FLORIDA LL						15,961.00		
1/30/2017	DOWLING HOLDINGS OF FLORIDA LL						3,150.00		
2/1/2017	ISLAND REFRIGERATION & AC, INC					(24,405.15)			
2/1/2017	LIGHTHOUSE ELECTRIC			3,372.89					
2/15/2017	CHARLEY TOPPING & SONS, INC	1,750.00							
2/16/2017	CHARLEY TOPPING & SONS, INC	500.00							
2/20/2017	DELOACH INDUSTRIES, INC.	109,019.25							
3/2/2017	DOWLING HOLDINGS OF FLORIDA LL				2,100.00				
3/16/2017	DOWLING HOLDINGS OF FLORIDA LL				9,409.00				
3/28/2017	DELOACH INDUSTRIES, INC.	8,915.76							
3/28/2017	DELOACH INDUSTRIES, INC.	27,419.97							
3/21/2017	DOWLING HOLDINGS OF FLORIDA LL						19,650.00		
3/31/2017	ISLAND REFRIGERATION & AC, INC					12,702.58			

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

Posted G/L Date	Vendor Name	Aquarium Injection Wells	Roof	Aquarium Improvements Lighting	Tanks	A/C	Stairs & Walkways	Fire Sprinkler / Suppression System	Solar
3/31/2017	G. Gerwin AMEX - Island Crane Service								
4/3/2017	ISLAND REFRIGERATION & AC, INC					1,212.50			
4/4/2017	LIGHTHOUSE ELECTRIC					504			
4/17/2017	A-PLUS ROOFING			20,339.01					
4/27/2017	KEYS ENERGY SERVICES - TSG		8,300.00						
5/15/2017	DELOACH INDUSTRIES, INC.		6,255.00						
5/25/2017	LIGHTHOUSE ELECTRIC			51,650.00					
5/31/2017	AMEX G. Gerwin 4-29-17								
5/31/2017	ISLAND REFRIGERATION & AC, INC					750			
6/5/2017	FOUR STAR RENTAL INC								
6/6/2017	FOUR STAR RENTAL INC								
6/7/2017	CHARLEY TOPPING & SONS, INC								
6/12/2017	DELOACH INDUSTRIES, INC.	9,560.41							
6/15/2017	DELOACH INDUSTRIES, INC.								
7/1/2017	DELOACH INDUSTRIES, INC.								7
7/24/2017	LIGHTHOUSE ELECTRIC								
7/26/2017	CHECK ELECTRIC LLC			42,100.00					
7/31/2017	AMEX G. Gerwin 6-28-17			2,490.00					
7/31/2017	AMEX G. Gerwin 6-28-17								
7/31/2017	MIKE MONSALVATGE				5,500.00				
8/9/2017	MIKE MONSALVATGE				8,900.00				
8/10/2017	CHECK ELECTRIC LLC								
8/16/2017	MIKE MONSALVATGE				5,000.00				
8/18/2017	DELOACH INDUSTRIES, INC.								
8/18/2017	DELOACH INDUSTRIES, INC.								
8/24/2017	MIKE MONSALVATGE				7,500.00				
8/29/2017	CHECK ELECTRIC LLC								
9/1/2017	ISLAND REFRIGERATION & AC, INC					12,202.57			
9/1/2017	ISLAND REFRIGERATION & AC, INC					6,602.00			
9/18/2017	DOWLING HOLDINGS OF FLORIDA LL								
9/30/2017	AMEX G. Gerwin 8-28-17			87.92					
9/30/2017	AMEX G. Gerwin 8-28-17			660.56					
9/30/2017	AMEX G. Gerwin 8-28-17			747.56					

EXHIBIT "B"

EXHIBIT B

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

\$559,900.00