

RESOLUTION NO. 20-100

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA), APPROVING THE ATTACHED ASSIGNMENT OF LEASE FROM MORO MANAGEMENT, INC. (ASSIGNOR) TO BOAT HOUSE KEY WEST, LLC (ASSIGNEE) FOR TURTLE KRAALS RESTAURANT IN THE KEY WEST BIGHT AND AUTHORIZING THE LESSOR'S CONSENT; AUTHORIZING RELEASE AND REPLACEMENT OF PERSONAL GUARANTEE; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 16-261 the CRA approved the original Lease Agreement with Moro Management, Inc. d/b/a Turtle Kraals; and

WHEREAS, City staff recommends approval of an assignment of lease from Moro Management, Inc. to Boat House Key West, LLC; and

NOW, THEREFORE, BE IT RESOLVED BY THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY, AS FOLLOWS:

Section 1: That Lessor hereby consents to the assignment of the leasehold at Turtle Kraals Restaurant in the Key West Bight, from Assignor Moro Management, Inc. to Assignee Boat House Key West, LLC, as provided in the attached Assignment of Lease Agreement and Consent of Lessor.

Section 2: That the Personal Guarantee of Pasquale Croce is authorized to be released, conditioned upon its replacement with a personal guarantee from new owners Roderick Gill and Timothy Ryan.

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Agency.

Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 2nd day of June, 2020.

Authenticated by the presiding officer and Clerk of the Agency on June 3, 2020.

Filed with the Clerk June 3, 2020.

Chair Teri Johnston	<u>Yes</u>
Vice Chair Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>

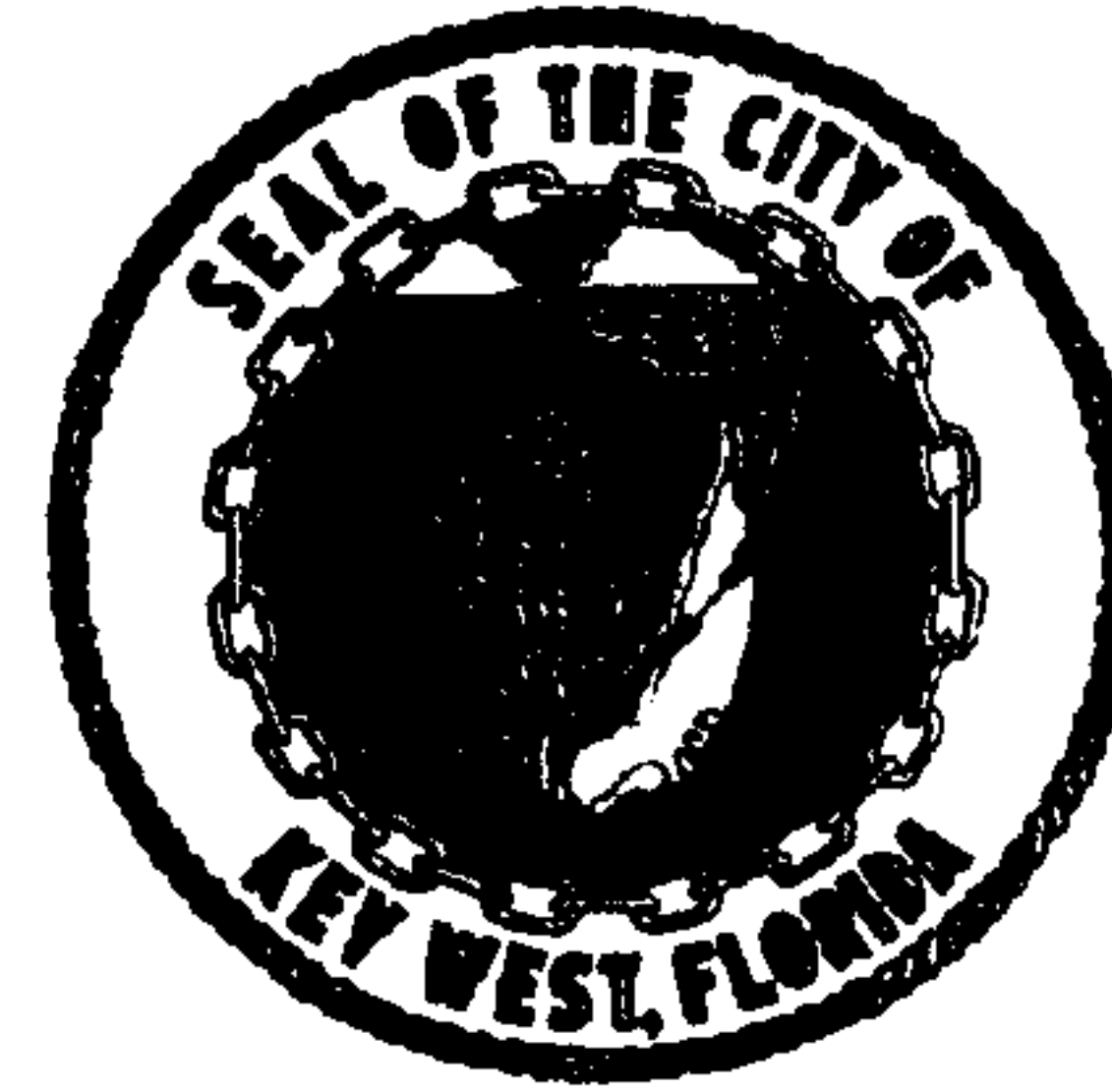
  
TERI JOHNSTON, CHAIR

ATTEST:

  
CHERYL SMITH, CITY CLERK



# Executive Summary



**TO: Community Redevelopment Agency**

**CC: Gregory W. Veliz**

**FR: George B. Wallace,  
Assistant City Attorney**

**DT: May 15, 2020**

**RE: Lease Assignment for Turtle Kraals**

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## **ACTION STATEMENT**

This is a request to approve a lease assignment from Moro Management, Inc. to Boat House Key West, LLC a Florida limited liability company whose principals are Timothy Ryan and Roderick Gill. The Key West Bight Management District Board has not considered this assignment request in light of the pandemic and the cancellation of its meetings.

## **HISTORY**

The CRA entered into a ten-year lease for the restaurant that will expire on March 31, 2026. The current tenant, Moro Management Inc. is requesting an assignment with few terms or conditions of the lease changed for the remainder of the lease term. Moro Management Inc. is also requesting the release of the personal guaranty of Pasqual Croce in exchange for personal guaranties from Timothy Ryan and Roderick Gill.

The lease provides for the assignment as described in Section 10 and states that the Tenant shall have the right to assign the leases with the written consent of the Landlord only to a qualified tenant that meets specific requirements excerpted here, as follows:

10. **ASSIGNMENT AND HYPOTHECATION** – This Lease is not transferable or assignable and may not be hypothecated or sublet without the prior written consent of the LANDLORD, which may not be unreasonably withheld. TENANT shall have the right to assign the Lease only to a qualified tenant and with the written consent of the LANDLORD, which consent shall be based upon consideration of the proposed tenant's background, current financial statements, and expertise in the restaurant business.

Any assignment or sub-lettering, even with LANDLORD'S consent shall not relieve TENANT from liability for payment of Rent or from the obligation to keep and be bound by the agreements of this Lease. Notwithstanding the foregoing, in the event that the LANDLORD determines in its sole discretion, that the proposed assignee has satisfactory financial statements and sufficient expertise in the restaurant business, LANDLORD may release the guarantor from the obligations of this Lease. Additionally, upon such assignment, LANDLORD shall require the letter of credit described in paragraph 5 from the proposed assignee and LANDLORD shall release TENANT's letter of credit. The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease 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 LANDLORD. In the event TENANT wishes to assign this Lease and LANDLORD consents to such assignment, LANDLORD may charge a reasonable fee, not to exceed **\$500.00** to help offset any costs LANDLORD may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same. Any assignment, transfer, hypothecation, mortgage, or subletting without LANDLORD'S written consent shall give LANDLORD the right to terminate this Lease and to

re-enter and repossess the Demised Premises and the LANDLORD'S right to damages shall survive.

**LANDLORD acknowledges the existing sub-lease between the TENANT and the Yankee Freedom for the ticket booth which is hereby approved. However, in the event that the existing sub-lease is terminated or not renewed any new sub-lease or sub-lessee must be approved by the LANDLORD.**

To facilitate this request and ensure that the city retains a viable tenant there have been changes incorporated into the lease assignment as follows:

1. The assignee will provide a letter of credit equal to six months total rent for the lease that must be valid throughout the term of the lease.
2. The lease assignment provides that the assignor shall maintain its 6 month rent letter of credit with the CRA for the remaining life of the lease.
3. The Personal Guaranties of Timothy Ryan and Roderick Gill are included.
4. The Assignment modifies the lease to delete reference to an assignment by assignor to a family member reflected in the last paragraph of paragraph 10 of the Lease Agreement.
5. The Assignment provides that the assignee acknowledges that all Landlord repairs required by the lease have been completed.

**FINANCIAL STATEMENT:**

The current tenant has met all of the financial obligations of the lease and the rents will continue pursuant to the existing lease. The additional financial safeguards in the lease assignment will provide additional security to ensure that rent will be paid for an adequate period of time to regain possession in the event of a default. Also, as excerpted from the lease and restated above, the transfer triggers fees and adjustments as follows:

1. In the event of an assignment the City may charge a reasonable fee of \$500.00 to help offset Landlord's costs in preparing the necessary assignment related documents.

**CONCLUSION:**

Timothy Ryan and Roderick Gill has state that they are currently the owners of Duffy's Steak & Lobster House, Abbondanza and Commodore restaurants providing the requisite expertise in the restaurant business. Staff has not received financial statements other than the associated disclosure statement required by city ordinance. Staff has conducted the required background checks of the principals. Due to the unique circumstances of these times and in the case of this lease assignment the current tenant is being relieved from the personal guaranty of its principal. The assignees' personal guarantees will be substituted.

**ATTACHMENTS:**



**Leases: City resolution 16-9967**

**Lease Assignment and Modification Agreement**

**Email from Moro Management Inc. requesting the lease assignment**

**Email from Boat House Key West LLC.**

**Disclosure Statements from Tim Ryan and Roderick Gill**

**Personal Guaranties of Tim Ryan and Roderick Gill members Boat House Key West, LLC**

## Claire Hurd

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**From:** George Wallace  
**Sent:** Monday, May 18, 2020 9:03 AM  
**To:** Claire Hurd  
**Subject:** FW: Turtle Kraal lease

For legistar item.  
Peace!

-----Original Message-----

From: Pat Croce <pc@piratesoul.com>  
Sent: Monday, May 18, 2020 4:05 AM  
To: George Wallace <gwallace@cityofkeywest-fl.gov>  
Cc: Jeffrey Sorg <jrsorg@piratesoul.com>; Michael Croce <mike@piratesoul.com>  
Subject: Turtle Kraal lease

George,

I'm writing to confirm the desire of Moro Management, Inc. to assign the Turtle Kraals lease to Boathouse Key West LLC. Further, I am requesting that I, Pasquale W. Croce, be released from the personal guarantee obligation of the lease.

Thank you for your expertise and assistance with this time-sensitive matter. Peace.

Pat Croce  
President of Moro Management, Inc.

福光 Blissful Light



**ASSIGNMENT AND MINOR MODIFICATION OF LEASE AGREEMENT AND  
CONSENT OF LESSOR**

THIS ASSIGNMENT is made this 2nd day of June, 20 20 by and between Moro Management, Inc., as assignor, to Boat House Key West, LLC, a Florida Limited Liability Company, 700 Front Street, Key West, Florida, as assignee.

The assignor, in consideration of the covenants and agreements contained herein, assigns and transfers to assignee that certain lease agreement (hereinafter "Agreement"), dated September 8, 2016, executed by Pasquale W. Croce, as Lessee and by Craig Cates, Chairman of the Caroline Street Corridor and Bahama Village Community Redevelopment Agency, as Lessor. The Agreement pertains to real property located at 231 Margaret Street, Key West, in Monroe County, Florida, and more particularly described in Exhibit "A", which is attached hereto and incorporated by reference.

1. The assignor assigns and transfers unto the assignee all of its right, title, and interest in and to the Agreement and premises, subject to all the conditions and terms contained in the Agreement. Copies of the Agreement are attached hereto, incorporated by reference, and more particularly described as Exhibit "A".

2. The assignor herein expressly agrees and covenants that it is the lawful and sole owner of the interest assigned herein; that this interest is free from all encumbrances; and that it has performed all duties and obligations and made all payments required under the terms and conditions of the lease agreement.

3. The assignor herein expressly agrees to continue to provide to the lessor throughout the current term of the Agreement, a letter of credit from a federally insured bank in favor of lessor as security for the faithful performance by assignee of the terms, conditions and covenants of the Agreement. The amount of the letter of credit shall be equal to six months of the total rent pursuant to the Agreement.

4. The assignee herein expressly agrees herein to be liable for all the duties and obligations required by the terms of the lease agreement. The assignee expressly agrees herein to pay all rent due after the effective date of this agreement, and to assume and perform all duties and obligations required by the terms of the lease agreement.

5. This assignment is contingent upon the completion of the sale between the assignor and assignee of the business conducted on the subject premises.

6. No later than the effective date of this assignment, the assignee herein expressly agrees to provide to the lessor a letter of credit from a federally insured bank in favor of lessor as security for the faithful performance by assignee of the terms, conditions and covenants of the Agreement. The amount of the letter of credit shall be equal to six months of the total rent pursuant to the Agreement.

7. Assignee acknowledges that Landlord has completed all repairs described in paragraph 14.1 of the Lease Agreement.

8. The last paragraph of paragraph 10 of the lease relating to Assignor's family is hereby deleted.

9. In the event assignee files any form of bankruptcy, lessor shall be entitled to immediate termination of the automatic stay provisions of 11 U.S.C. §362, granting the lessor complete relief and allowing the lessor to exercise all of its legal and equitable rights and remedies, including, without limitation, the right to terminate this lease and dispossess assignee from the demised premises in accordance with Florida law. Additionally, assignee agrees not to directly or indirectly oppose or otherwise defend against the lessor's effort to gain relief from any automatic stay. The lessor shall be entitled as aforesaid to the lifting of the automatic stay without the necessity of an evidentiary hearing and without the necessity or requirement of the lessor to establish or prove the value of the leasehold, the lack of adequate protection of his interest in the leasehold, or the lack of equity in the same. Assignee specifically agrees and acknowledges that the lifting of the automatic stay hereunder by the appropriate bankruptcy court shall be deemed to be "for cause" pursuant to section 362(d)(1).

ASSIGNOR: Moro Management, Inc.

\_\_\_\_\_  
Witness as to Assignor

\_\_\_\_\_  
Pasquale W. Croce, President

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Pasquale W. Croce, to me personally known or who provided \_\_\_\_\_ as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

My Commission Expires:

**Signatures Continue on Next Page**



ASSIGNEES: Boat House Key West, LLC

\_\_\_\_\_  
Witness as to Assignee

\_\_\_\_\_  
Timothy Ryan, Manager

\_\_\_\_\_  
Witness as to Assignee

\_\_\_\_\_  
Roderick Gill, Manager

State of Florida     }  
County of Monroe    }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Timothy Ryan, to me personally known or who provided \_\_\_\_\_ as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he/she executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public, State of Florida

My Commission Expires:

State of Florida     }  
County of Monroe    }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Roderick Gill, to me personally known or who provided \_\_\_\_\_ as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he/she executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public, State of Florida

My Commission Expires:

## CONSENT OF LESSOR

I, Teri Johnston, Chair, the Lessor named in the above assignment of that lease agreement executed by us on September 8, 2016, herein expressly consent to that assignment.

I also consent to the agreement by the assignee to assume, after the effective date of the assignment, the payment of rent and the performance of all duties and obligations as set forth in the lease and accept assignees as tenant in the place of Moro Management, Inc.

LESSOR: Caroline Street Corridor and  
Bahama Village Community  
Redevelopment Agency

Cheryl Smith  
Witness as to Lessor

Teri Johnston  
Teri Johnston, Chair

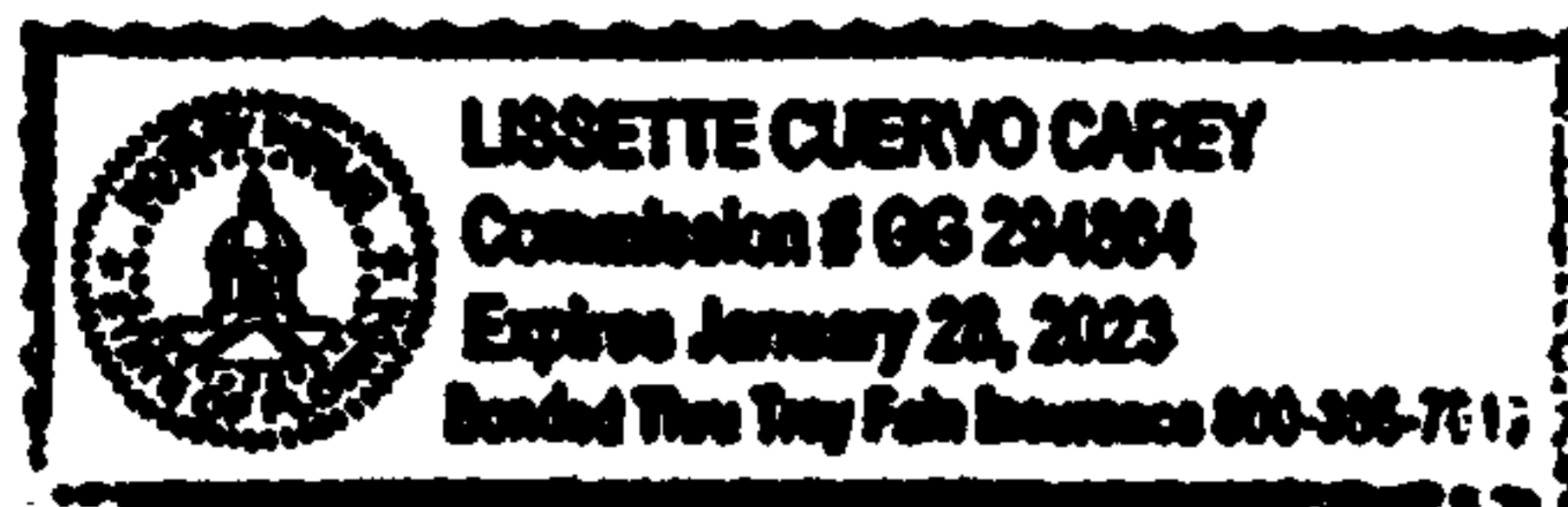
State of Florida     }  
County of Monroe   }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Teri Johnston, to me personally known or who provided \_\_\_\_\_ as photo identification, and who executed the foregoing instrument and she acknowledged before me that she executed the same for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 3rd day of June, 2020.

My Commission Expires:

Lisette Cuervo Carey  
Notary Public, State of Florida





## Exhibit "A" Agreement

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**Lease Agreement**

between

**Caroline Street Corridor and Bahama Village Community  
Redevelopment Agency**

as Landlord

and

**Moro Management, Inc., DBA Turtle Kraals**

as Tenant

Dated 8/8/16



THIS LEASE is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the LANDLORD and TENANT identified below:

**1. INFORMATION PROVISIONS:** Information provisions in this section are intended to provide a summary of the corresponding sections of this lease and are in no way inclusive of the complete terms and conditions of this lease.

**1.1 LANDLORD'S NAME & MAILING ADDRESS:**

Caroline Street Corridor and  
Bahama Village Community  
Redevelopment Agency,  
P.O. BOX 6434  
KEY WEST, FL 33040

**1.2 TENANT'S NAME & MAILING ADDRESS:**

Moro Management, Inc.  
P.O. Box 520A  
Villanova, Pennsylvania 19085

TENANT'S TRADE NAME: Turtle Kraals

**1.3 GUARANTOR (S) AND ADDRESS:** Pasquale W. Croce  
706 Canterbury Lane, Villanova, PA 19085

**1.4 DEMISED PREMISES (Section 2): as per the Survey depicted on EXHIBIT "A"**  
located at 231 #1 Margaret Street (hereinafter referred to as the "Demised Premises") in  
the Historic Seaport (hereinafter referred to as the "Property")

**12,387 NET USABLE SQUARE FEET COMPRISED OF THE AREAS SHOWN ON  
THE SURVEY IDENTIFIED AS FOLLOWS:**

Main building areas A,C,D,E,F,G  
Covered dining, 2<sup>nd</sup> floor dining areas - H,O  
Covered waiting, entry areas B, N  
Open air dining - Area I  
Storage, courtyard, waiting, entry Areas - J,K,L,M,

**PROPORTIONATE SHARE OF THE TOTAL NET USABLE SQUARE FEET:**

TENANT'S Proportionate Share is based upon TENANT'S Net Usable Square Feet as it relates to the Total Net Usable Square Feet of the Property and will be adjusted by the factor described in Maximus CAM Report for the purposes of calculating property Common Area Maintenance charges.

Property Common Area is defined as all facilities furnished by the LANDLORD and designated for the general use in common, with other occupants of the Property, including TENANT, their officers, agents, employees and customers, and the general public, including but not limited to any of the following which may have been furnished by LANDLORD: lavatories, parking areas, driveways, entrances, and exits thereto, pedestrian sidewalks and ramps, landscapes areas, and other similar facilities, and all areas which are located within the Property and which are not leased to tenants.

Common Area Maintenance (CAM) charges will be based upon the square feet as described in the Maximus CAM report which provides that additional outdoor areas be

factored at 50%. This includes (1) consumption area (2) area that is available for exclusive use of the tenant or (3) generates revenue therefore CAM square footage is:

Main building areas A,C,D,E,F,G  
Outdoor Covered dining, 2<sup>nd</sup> floor dining areas - H,O @50%  
Covered waiting, entry areas B, N  
Open air dining - Area I @50%  
Storage, courtyard, walkways - J,K,L,M @50%

**Total CAM Square Feet      9,732**

1.4.1 EXPANSION/RIGHT OF FIRST REFUSAL: None

1.5 TERM (Section 3.): TEN (10) YEARS

1.5.1 COMMENCEMENT DATE: April 1, 2016 as acknowledged by TENANT'S written statement

1.5.2 RIGHT TO TERMINATE: None

1.5.3 RIGHT TO RENEW: This Lease may be renewed upon rent and terms to be negotiated by the parties and in accordance with the City of Key West Code of Ordinances.

1.6 MINIMUM RENT FOR TERM (Section 4): The base rent and base rent increases for the term and any renewals thereof as **per EXHIBIT "B"** attached hereto and incorporated herein. Every year thereafter throughout the term of the lease the minimum base rent shall be adjusted annually on the anniversary date of the lease by the increase in Consumer Price Index for all Urban Consumers as published by the United States Department of Labor. In no event shall the minimum base rent be decreased. **The base rent for year one shall be calculated at an annualized rate of Thirty and 00/100 Dollars (\$30.00) per Net Usable Square Foot.** The base rent for year one of the lease is a blended rate comprised of:

\$33.84 square foot for the main building, covered outdoor, 2<sup>nd</sup> floor dining areas - A,C,D,E,F,G,H,O  
\$26.40 per square foot for the open air dining area - I  
\$16.20 per square foot for the storage, courtyard, waiting, entry areas - B,J,K,L,M,N

1.6.1 ADDITIONAL RENT: Tenant shall pay its Proportionate share of CAM, Real Estate Taxes, Insurance, Sales, Use or Excise Taxes together with Management and Administrative fees estimated as **per EXHIBIT "B"**, and any and all other sums of money or charges required to be paid by TENANT pursuant to the provisions of this lease.

1.6.2 RENT PAYMENT DUE DATE: Payable in advance on the first (1<sup>st</sup>) of each and every month of the term hereof.

1.6.3 LATE CHARGE: 15% of the amount in arrears if received after the fifth day of each and every month together with an administrative fee of \$50.00 for processing late payments.

1.6.4 PERCENTAGE RENT: Six Percent (6%) of TENANT'S Gross Sales in excess of the "Percentage Rent Base Amount" as **per EXHIBIT "B"**.

1.6.5 HOLD OVER RENT: 150% of the Minimum Base rent during the last year of the expiring term.



1.6.6 RENT CONCESSIONS: None

- 1.7 SECURITY DEPOSIT (Section 5): Tenant shall maintain an irrevocable letter of credit in the amount equal to six months' rent throughout the term of this lease and until such time as the tenant has vacated the Demise Premises and the LANDLORD has determined that the TENANT has no outstanding amounts due under this lease.
- 1.8 PERMITTED USE (Section 6): Operation of restaurant containing 191 licensed seats with alcohol sales, retail area for logo apparel, gifts, souvenirs, retail sales of alcohol and beer, sale of tickets and check in for businesses conducted by LANDLORD'S other tenants within the Historic Seaport and no other purpose.
- 1.9 INSURANCE: (Section 9) \$2,000,000.00 commercial liability minimum aggregate, \$1,000,000.00 per occurrence
- 1.10 ASSIGNMENT OR SUBLETTING: (Section 10) TENANT shall have the right to assign the Lease only to a qualified tenant and with the written consent of the LANDLORD, which consent shall be based upon consideration of the proposed tenant's background, current financial statements, and expertise in the restaurant business.
- 1.11 UTILITIES: (Section 17) The TENANT shall pay for all utilities associated with the use of the Demised Premises.

INITIALS: LANDLORD \_\_\_\_\_

TENANT 

WITNESSETH:

That the LANDLORD and the TENANT, for and in consideration of the keeping by the parties of their respective obligations hereinafter contained, as well as for one dollar (\$1.00) and other good and valuable consideration by each of the parties unto the other, in hand paid simultaneously with the execution and delivery of these presents, the receipt of which is hereby acknowledged, have agreed as follows:

2. DEMISED PREMISES - Upon the terms and conditions hereinafter set forth, and in consideration of the payment from time to time by the TENANT of the rents hereinafter set forth, and in consideration of the performance continuously by the TENANT of each and every one of the covenants and agreements hereinafter contained by the TENANT to be kept and performed, the LANDLORD does hereby lease, let, and demise unto the TENANT, and the TENANT does hereby lease of and from the LANDLORD, the following Demised Premises situated, lying, and being in Monroe County, Florida: That portion of the Property outlined and/or crosshatched on Exhibit "A" which depicts the Net Usable Square Feet of the Demised Premises. The Net Usable Square Feet is defined as all interior floor space, any second floor space, storage, covered dining areas and commercially used outdoor areas or any other area set aside for the exclusive use and economic benefit of the Tenant and containing the approximate dimensions and area measured in accordance with the published BOMA/ANSI standard for calculating net usable floor area for stores. It is agreed that the Net Usable Square Feet for the purpose of any calculations which are based on Net Usable Square Feet is as stated in Section 1.4. It is agreed that TENANT'S Proportionate Share is based upon TENANT'S Net Usable Square Feet as it relates to the Total Net Usable Square Feet of the Property. LANDLORD reserves the right to re-measure the Demised Premises from time to time and to adjust the TENANT'S Net Usable Square Feet and the rent or rental rate applied to the square footage as determined by any re-measurement or change in use. TENANT accepts the



Demised Premises in an "as is", "where is" condition and acknowledges that LANDLORD has no obligations for any construction or improvements in connection with TENANT'S occupancy of the Demised Premises except for the Landlord Repairs as stated in Section 14.1 and Landlord Alterations as stated in Section 15.1 hereof.

Property Common Area is defined as all facilities furnished by the LANDLORD and designated for the general use in common, with other occupants of the Property, including TENANT, their officers, agents, employees and customers, and the general public, including but not limited to any of the following which may have been furnished by LANDLORD: lavatories, parking areas, driveways, entrances, and exits thereto, pedestrian sidewalks and ramps, landscapes areas, and other similar facilities, and all areas which are located within the Property and which are not leased to tenants.

**Expansion/Right of First Refusal – None**

3. **TERM** - The term of this Lease shall be for ten years which shall commence on April 1, 2016 and shall end at midnight on March 31, 2026 unless sooner terminated as provided for herein. Upon occupancy TENANT shall furnish LANDLORD a written statement stating the TENANT has accepted the Demised Premises for occupancy and setting forth the actual commencement and expiration dates of the Lease. TENANT'S written statement shall become attached to and incorporated into this lease as Exhibit "D". In the absence of TENANT'S written statement the lease term shall remain as stated above. A Lease Year is the twelve-month period beginning on the commencement date of each year and ending at the conclusion of the same date one year later. If possession of the Demised Premises shall for any reason not be delivered to Tenant on the Commencement Date, this Lease shall nevertheless continue in full force and effect, and no liability whatsoever shall arise against LANDLORD out of any delay other than the abatement of rent.

3.1 **Right to Terminate – None**

3.2 **Right to Renew** – This Lease may be renewed upon rent and terms to be negotiated by the parties in accordance with the City of Key West Code of Ordinances. The rent and terms of the renewal term must be acceptable to both the LANDLORD and the TENANT in their absolute discretion and must be set forth in written addendum to this Lease. If the parties fail for any reason whatsoever to agree upon and enter into such addendum at least 120 days prior to the end of the initial term of this Lease, then any obligations that the parties may have pursuant to this section to negotiate renewal terms shall cease and LANDLORD shall be free to lease the Demised Premises to the general public upon such rent and terms as it deems appropriate.

4. **RENT** - The base rent and base rent increases for the term and any renewals thereof as per **EXHIBIT "B"** attached hereto and incorporated herein. Every year thereafter throughout the term of the lease the minimum base rent shall be adjusted annually on the anniversary date of the lease by the increase in Consumer Price Index for all Urban Consumers as published by the United States Department of Labor. In no event shall the minimum base rent be decreased. All rentals provided for herein shall be payable in advance, without prior demand therefore and without deductions or setoffs for any reason whatsoever on the first day of each and every month of the term hereof.

4.1 **Late Charges.** Any monthly rental not received by the fifth day of the month shall incur a late fee equal to fifteen percent 15% of the amount in arrears. In addition, all payments received after the due date shall incur a **\$50.00** administrative fee to cover the costs of collecting and processing late payments. LANDLORD shall have no obligation to accept less than the full amount of all installments of rental, additional rental or other amounts due hereunder and interest thereon which are due and owing by TENANT to LANDLORD. If LANDLORD accepts less than the full amount owing, LANDLORD may apply the sums



received toward such TENANT'S obligations, as LANDLORD shall determine in its sole discretion, without waiving LANDLORD'S remedies for default.

4.2 **Interest on Rent.** Rent and additional rent not paid within fifteen (15) days of when due shall bear interest from the date due until paid at the highest rate permitted by law.

4.3 **Obligation to Survive.** TENANT'S obligation to pay rent that is accrued and unpaid hereunder shall survive the expiration or termination of the Lease.

4.4 The rent reserved under this Lease for the term hereof shall be and consist of:

(a) Beginning with the commencement date and throughout the term of this Lease, TENANT agrees to pay to the LANDLORD as and for minimum rent for the Demised Premises the annual amount, in equal monthly installments, in advance, on the first day of each and every calendar month, as per **EXHIBIT "B"**. In the event the rent commencement date is other than the first day of a calendar month, the rent for the partial first calendar month of the term will be prorated on a daily basis and payable on the commencement date.

(b) Simultaneously with each such payment, TENANT agrees to pay to LANDLORD any sales, use or excise tax imposed or levied against rent or any other charge or payment required hereunder to be made by TENANT which tax has been imposed or levied by any governmental agency having jurisdiction thereof, this shall include any new taxes imposed during the term of this Lease which are in addition to or in substitution for any such tax which is presently imposed.

(c) Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT'S Proportionate Share, as stated in Section 1.4, of Common Area Maintenance Charges in Monthly Installments as specified herein.

The Common Area Maintenance Charges are based on the Estimated Common Area Maintenance Charges attached hereto as **EXHIBIT "B"**. These charges are only estimates. The TENANT shall be responsible for its proportionate share of all Common Area Maintenance Charges actually incurred. Any increase in the common area charges shall result in an increase in the TENANT'S Common Area Maintenance Charges. Except for TENANT'S proportionate share of Real Estate Taxes and Insurance Premiums, Common Area Maintenance Charges for expenses assessed after the base year shall not increase in any given year by more than 5% of the previous year's common area assessment for expenses. The base year for the purpose of limiting increases in Common Area Maintenance Charges shall be the first year of the term of this lease. This limitation shall apply only to those services included in the base year's common area charges. Any services charged for that are not included in the base year's charges shall not be limited by this 5% cap nor shall they be included for determining this 5% cap.

Common Area Maintenance Charges shall include any and all expenses reasonably incurred in the operation and maintenance of the Property Common Area including but not limited to management and administrative fees, salaries and compensation paid in connection with operations, maintenance and administration, amortization (including interest) of equipment and facilities acquired and used for maintenance, to reduce energy usage, to otherwise reduce operating costs or common area seasonal decorating or redecorating. Major capital improvements will not be included in Common Area Maintenance Charges unless those improvements reduce expenses and if so the improvements will be amortized over the useful life of the equipment as determined by the manufacturers' specifications or IRS depreciation regulations. Additionally, notwithstanding anything contained herein to the contrary, Common Area Maintenance



Charges will not include any expenses incurred in the City Common Area Enhancement Plan Project No. KB-1103.

Monthly installments shall be due and payable on the 1st day of each calendar month during the Term. The installments set forth herein represent TENANT'S Proportionate Share of the estimated Common Area Maintenance Charges at the Commencement Date. Thereafter, LANDLORD shall, prior to the beginning of each calendar year, estimate the expected Common Area Maintenance Charges for the coming calendar year and TENANT'S Proportionate Share thereof, 1/12th of which shall constitute the Monthly Installments for such year; provided such installments shall never be lower than the installments specified herein. Within 90 days after the end of each year, LANDLORD shall calculate the actual Common Area Maintenance Charges paid or payable during the prior calendar year, and there shall be an adjustment between LANDLORD and TENANT so that LANDLORD shall receive the actual amount of TENANT'S annual Proportionate Share for said year. If TENANT'S Proportionate Share is less than the amount paid by TENANT during the prior year, LANDLORD shall, at its option, pay TENANT the difference between the amount received and the amount actually due, or credit such difference against TENANT'S next succeeding installments. If TENANT'S Proportionate Share is greater than the amount paid by TENANT during the prior year, TENANT shall pay LANDLORD the difference between the amount paid by TENANT and the amount actually due upon LANDLORD billing TENANT for same. LANDLORD agrees to keep, at its principal office, records relating to said Common Area Maintenance Charges. TENANT shall have the right to audit said records for the sole purpose of ascertaining the correctness of said Charges. Such audit shall be made during normal business hours; not unreasonably interfere with LANDLORD'S office operations; shall be performed by TENANT, TENANT'S chief financial officer, or a CPA selected by TENANT; shall not be made more often than once during each calendar year; and shall be limited to the preceding calendar year. If TENANT desires to audit said records as aforesaid, TENANT shall notify LANDLORD 30 days in advance thereof, commence said audit within 60 days of said notice, and once commenced, diligently complete the same. If any such audit shows the amount of such charges to TENANT was overstated, LANDLORD shall refund any such overcharge.

Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT'S Proportionate Share as stated in Section 1.4 of the Real Estate Tax Expense which shall include all real estate taxes and assessments both general and special imposed by federal, state or local governmental authority or any other taxing authority having jurisdiction over the Property against the land, buildings, store rooms, Common Areas and all other improvements within the Upland Property (excluding any public area which will not be taxed and excluding the Marina), together with any and all expenses incurred by LANDLORD in negotiations, appealing or contesting such taxes and assessments. Real Estate Tax Expense shall not include any additional charges or penalties incurred by LANDLORD due to late payment of Real Estate Taxes. In the event that any of the public area excluded later becomes taxable or is determined to be taxable then it shall be included for purposes of determining TENANT'S proportionate share.

TENANT'S Proportionate Share of Real Estate Taxes shall be paid as part of the Common Area Charges provided for herein. The 5% cap limitation provided for in Section 4.4(c) shall not be applicable to this particular common area charge.

Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT'S Proportionate Share as stated in Section 1.4, of the Insurance Expenses which shall include all insurance premiums incurred by the LANDLORD in insuring the Property including hazard and liability insurance for any and/or all buildings,



improvements and common areas.

TENANT'S Proportionate Share of Insurance expenses shall be paid as part of the Common Area Charges provided for herein. The 5% cap limitation provided for in Section 4.4(c) shall not be applicable to this particular common area charge.

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 TENANT to LANDLORD, whether by way of substitution for, or in addition to, any existing tax on 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, TENANT shall be responsible for and reimburse LANDLORD for the amount thereof, as the case may be, as additional rent, 7 days before the date that any penalty or interest would be added thereto for non-payment or, at the option of LANDLORD, the same shall be payable in the manner provided for in the preceding paragraph. Substitute taxes as referred to above in this Section shall include, without limitation, any surtax on parking spaces.

Initial here if applicable

LANDLORD \_\_\_\_\_

TENANT \_\_\_\_\_



(d) In addition to the foregoing rent, TENANT agrees to pay LANDLORD as Percentage Rent a sum equal to 6% multiplied by an annual Gross Sales per Lease Year in excess of the Percentage Rent Base Amount. The Percentage Rent Base Amount is calculated by dividing the current annual Base Rent by six percent (6%). Within twenty (20) days following the end of each month of each Lease Year, TENANT shall forward to LANDLORD 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 Tenant's Gross Receipts from the Demised Premises during the previous month. The statement of Gross Sales must be in affidavit form. TENANT is subject to a fifty-dollar (\$50.00) late submission penalty should TENANT not furnish to LANDLORD copies of Form DR-15 by the twentieth (20th) day of each month. Failure of Tenant to timely submit any monthly report shall entitle LANDLORD to estimate Gross Sales based upon available data (with a reconciliation upon receipt of the final report), and TENANT shall be obligated to pay percentage rent on such estimated Gross Sales. If by the end of any such preceding month the Gross Sales in the Demised Premises during such Lease Year shall exceed the Percentage Base Rent Amount, TENANT shall pay to LANDLORD, at the time of delivery of said Statement, an amount equal to the Percentage Rent times the Gross Sales exceeding the Percentage Rent Base Amount, less the Percentage Rent, if any, previously paid by TENANT to LANDLORD during that Lease Year. TENANT shall also furnish to LANDLORD within thirty (30) days after the expiration of each full Lease Year, a complete statement showing in all reasonable detail the amount of Gross Sales made by TENANT from the Demised Premises during the preceding Lease Year.

"Gross Sales" shall mean the amount of sales of all merchandise or services sold or rendered at or derived from the use of the Demised Premises by TENANT or any sub-TENANT, licensee, etc. TENANT may deduct from Gross Sales: (i) any refunds to customers or discounts to customers or discounts to employees, provided they have been included in Gross Sales; (ii) the amount of any sales tax levied upon retail sales and payable over to the appropriate governmental authority (iii) wholesale sale of fish market products to restaurants in which Pat Croce or members of his immediate family have a controlling interest. TENANT 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 LANDLORD or its agents, including accountants retained for that purpose, during reasonable business hours for the Term and for at least 3 years thereafter.

Pursuant to City Ordinance Section 2-872, In addition to other periodic reviews, all city leases, franchises, concessions and other agreements wherein percentage revenues are collected shall be audited at least once every three years by an external certified public accountant utilizing generally accepted accounting principles (GAAP) and in such a manner as directed by the city manager. All city leases, franchises, concessions and agreements entered into after the effective date of this ordinance shall provide for such audits without cost or expenses to the city.

If any audit shows that the amount of Gross Sales on the statement was understated by more than 1% for any year, then shall pay the Percentage Rent due for such understatement within ten (10) days after TENANT'S receipt of LANDLORD'S invoice. If such understatement is willful and/or fraudulent, LANDLORD shall have the option, upon ten (10) days notice to TENANT, to terminate this Lease on the date specified in such notice and Tenant shall remain liable for all rent and other charges under this lease for the full term hereof.

(e) **Additional Rent.** Any and all other sums of money or charges required to be paid by Tenant pursuant to the provisions of this Lease, whether or not the same be so designated, shall be considered as "Additional Rent", and shall be payable and recoverable in the same manner as Rent. However, such Additional Rent shall be due upon demand and failure to pay such additional rent within seven (7) days shall be deemed a material breach of this lease. If Landlord shall make any expenditure for which Tenant is liable under this Lease and for which Tenant has not paid, the amount thereof shall be deemed Additional Rent due and payable by as indicated above. In addition to the foregoing rent, all other payments to be made by TENANT 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 thereon at the highest rate permissible by law from their due date until the date it is paid. The LANDLORD shall have the same remedies for TENANT'S failure to pay said additional rental the same as for non-payment of rent. LANDLORD, 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 TENANT to perform any of the provisions of this Lease, and in the event LANDLORD shall, at its election, pay such sums or do such acts requiring the expenditure of monies, TENANT agrees to pay LANDLORD, upon demand, all such sums, and the sums so paid by LANDLORD and any expenses incurred by LANDLORD 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 TENANT shall be deemed additional rent and shall be payable and collectible as such. Rent shall be made payable to the LANDLORD as stated in Section 1.1 hereof.

(f) **Holding Over.** It is agreed that in the event of TENANT holding over after the termination of this lease, thereafter the tenancy shall be from month to month in the absence of a written agreement to the contrary; the TENANT shall pay to LANDLORD a monthly occupancy charge equal to One Hundred Fifty (150%) Percent of the monthly rental for the last lease year for each month from the termination or expiration of this Lease until the Demised Premises are delivered to the LANDLORD in the condition required herein, and LANDLORD'S right to damages for such illegal occupancy shall survive. In addition, TENANT shall pay all other charges payable by TENANT under this Lease

(g) **Rent Concessions - None**



**5. SECURITY** – TENANT simultaneously with the execution and delivery of this Lease, Tenant shall maintain an irrevocable letter of credit in the amount equal to six months rent throughout the term of this lease and until such time as the tenant has vacated the Demised Premises and the LANDLORD has determined that the TENANT has no outstanding amounts due under this lease as stated in Section 1.7 hereof, the receipt of which is hereby acknowledged as security for the payment by TENANT of the rents herein agreed to be paid by TENANT and for the faithful performance by TENANT of the terms, conditions and covenants of this Lease. It is agreed that LANDLORD, at LANDLORD'S option, may at any time apply said sum or any part thereof toward the payment of the rents and any other sum payable by TENANT under this Lease, and/or toward the performance of each and every covenant under this Lease, but such covenants and TENANT'S liability under this Lease shall thereby be discharged only pro tanto; that TENANT shall remain liable for any amounts that such sum shall be insufficient to pay; that LANDLORD may exhaust any or all rights and remedies against TENANT before resorting to said sum, but nothing herein contained shall require or be deemed to require LANDLORD to do so; that, in the event this deposit shall not be utilized for any of such purposes, then such deposit shall be returned by LANDLORD to TENANT within sixty (60) days after the expiration of the term of this Lease. TENANT shall deposit with LANDLORD such additional sums which may be necessary to replace any amounts expended there from by LANDLORD pursuant hereof, so that there shall always be a security deposit in the sum first set forth above. The Security deposit provided for herein shall be held by the LANDLORD in a non-interest bearing account and may be co-mingled by the LANDLORD at the LANDLORD'S sole discretion.

**6. USE OF THE DEMISED PREMISES** -TENANT shall use the Demised Premises for the purposes of:

Operation of restaurant containing 191 licensed seats with alcohol sales, retail area for logo apparel, gifts, souvenirs, retail sales of alcohol and beer, sale of tickets and check in for businesses conducted by LANDLORD'S other tenants within the Historic Seaport and no other purpose.

TENANT further agrees:

(a) To operate 100% of the Demised Premises for the entire term of this lease during all reasonable hours established by LANDLORD, 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.

(b) With respect to the Property, not to display any merchandise, solicit business or distribute advertising material beyond the Demised Premises, nor in any manner use any art of the Common Areas for purposes other than for their intended common use and not to obstruct any part thereof.

(c) Not to display any banners, pennants, searchlights, window signs, balloons, or similar temporary advertising media on the exterior of the Demised Premises.

(d) Not to commit waste in the Demised Premises or Common Areas and to keep the Demised Premises and immediate adjacent areas including, without limitation, adjacent sidewalks, in a safe, neat, clean and orderly condition and to maintain and repair any lighting or signs under any canopy immediately in front of the Demised Premises.

(e) Not to use the Demised 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 Property 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 TENANT, LANDLORD or any other TENANT in the Property or increase the cost thereof.

(f) To keep all garbage, refuse and solid waste inside the Demised Premises in the kind of containers specified by LANDLORD, or to place the same outside the Demised Premises, prepared for collection, in the manner and at the times and places designated by LANDLORD or the appropriate disposal company. TENANT agrees not to burn or permit any burning of garbage or refuse on the Demised Premises or any part of the Property. TENANT further agrees that, upon LANDLORD'S instruction, TENANT shall separate garbage for recycling and deposit the separate garbage in the receptacle designated by LANDLORD. TENANT further agrees to make every effort to recycle all glass, metal, paper and plastic refuse and solid waste. Sort glass by colors and metal and paper by type and deposit in the appropriate recycling containers provided by the LANDLORD.

(g) TENANT 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. TENANT shall indemnify, save harmless and defend 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 TENANT'S garbage, refuse or solid waste.

(h) To use its best efforts to cause all trucks serving the Demised Premises to load and unload from the hours of 7:00 a.m. to 11:00 a.m. and not to permit such trucks to service through the front entrance of the Demised Premises except when no other entrance is available.

(i) To take no action that would: (i) violate LANDLORD'S contracts if any, affecting the Property (including without limitation the use restrictions contained in LANDLORD'S leases with its Anchor Tenants, which restrictions have been explained to TENANT); or (ii) cause any work stoppage, picketing or cause any manner or interference with LANDLORD or other Tenants, occupants, customers or any person lawfully in and upon the Property.

(j) Not to use amplified music or any other noise making machinery or devices that in LANDLORD'S determination is harmful to the building or disturbing to other Tenants

(k) To abide by and observe all reasonable rules and regulations established from time to time by LANDLORD and LANDLORD'S insurance carrier with respect to the operation of the Property and it's Common Areas. Rules and regulation are attached and incorporated herein as **EXHIBIT "C"**.

(l) Not to conduct any auction, fire, bankruptcy or selling-out sale on or about the Demised Premises except in strict compliance with City Code Chapter 18.

(m) To pay its proportionate share of any and all maintenance contracts wherein LANDLORD elects to purchases goods and services for the benefit of the entire Property including but not limited to LANDLORD directing all pest extermination at such intervals and service levels that LANDLORD deems appropriate.

(n) TENANT shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials which TENANT or it agents brought onto the Property. TENANT shall not allow storage or use of such materials or substances in any manner not sanctioned by law



or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Demised Premises or the Property any such materials or substances except to use in the ordinary course of TENANT'S business, and then only after written notice is given to LANDLORD of the identity of such substances or materials. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any applicable state or local law and the regulations adopted under these acts. In addition, TENANT shall execute affidavits, representations and the like from time to time at LANDLORD'S request concerning TENANT'S best knowledge and belief regarding the presence of hazardous substances or materials in the Demised Premises. In all events, TENANT shall indemnify LANDLORD in the manner elsewhere provided for in this Lease against any liability resulting from any release of hazardous substances or materials in the Demised Premises or Property by TENANT or its agents, while TENANT is in possession or caused by TENANT or persons acting under TENANT which is due to hazardous substances that TENANT or its agents brought onto the Demised Premises or Property.

- 6.1 Use of the Property Common Area** -TENANT has the non-exclusive right to use the Property Common Areas solely for the purposes for which they were designed. The Property Common Area may also be used by anyone else LANDLORD has or hereinafter in its sole discretion grants the right to use them.

Subject to the LANDLORD'S sole discretion, TENANT shall have the right to use the Plaza area adjacent to the Demised Premises up to **six (6) times per calendar year** without an additional usage fee therefor however any revenue generated by the TENANT'S use shall be included in the definition of TENANT'S Gross Sales for the purposes of determining Percentage Rent.

In the event that the TENANT'S use requires a special events permit the TENANT shall be responsible for obtaining the permit. Use of the plaza that does not require special events permit must be approved in writing by the LANDLORD and the TENANT'S request must include a description of all activities to occur during the event, schedule of the activities and map showing how plaza will be used. The events must not close down the small parking lot adjacent to the Demised Premises.

- 7. COVENANT OF QUIET POSSESSION** - So long as TENANT pays all of the rent and charges due herein, TENANT shall peaceably and quietly have, hold, and enjoy the Demised Premises throughout the term of this Lease without interference or hindrance by LANDLORD or any person claiming by, through, or under LANDLORD.

- 8. INDEMNIFICATION** - TENANT does hereby agree to indemnify, defend, and save LANDLORD, its respective officers, directors, agents and employees harmless from and against any and all liability for any injury to or death of any person or persons or damage to property (including adjoining property for environmental damage) in any way arising out of or connected with the conditions, use or occupancy of the Demised Premises, or in any way arising out of the activities of TENANT, its agents, employees, licensees or invitees on the Demised Premises and/or the building, including reasonable attorney's fees and court costs incurred by LANDLORD in connection therewith, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, excepting, however, only liability caused by LANDLORD'S gross negligence or willful misconduct, or the gross negligence or willful misconduct of any of LANDLORD's employees, officers, directors or agents in its failure to



perform any of LANDLORD'S covenants, obligations or agreements of this Lease. Nothing herein is intended to waive the sovereign immunity afforded to City pursuant to Florida law, including section 768.28, Florida Statutes.

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

**9. TENANT'S INSURANCE** - At TENANT'S sole cost and expense, TENANT is to secure, pay for, and file with the LANDLORD, during the entire Term hereof, an occurrence form commercial general liability policy, covering the Demised Premises and the operations of TENANT and any person conducting business in, on or about the Demised Premises in a at least the following minimum amounts with specification amounts to prevail if greater than minimum amount indicated. Notwithstanding any other provision of this Lease, TENANT shall provide the minimum limits of liability coverage as follows:

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

TENANT shall also procure the following insurance coverage:

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

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

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

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



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

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

Certificates of Insurance submitted to LANDLORD will not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation/material change notice endorsements, and waivers of subrogation. Copies of USL&H Act and Jones Act endorsements will also be required if necessary. **PLEASE ADVISE YOUR INSURANCE AGENT ACCORDINGLY.**

**10. ASSIGNMENT AND HYPOTHECATION** - This Lease is not transferable or assignable and may not be hypothecated or sublet without the prior written consent of the LANDLORD, which may not be unreasonably withheld. TENANT shall have the right to assign the Lease only to a qualified tenant and with the written consent of the LANDLORD, which consent shall be based upon consideration of the proposed tenant's background, current financial statements, and expertise in the restaurant business.

Any assignment or sub-letting, even with LANDLORD'S consent shall not relieve TENANT from liability for payment of Rent or from the obligation to keep and be bound by the agreements of this Lease. Notwithstanding the foregoing, in the event that the LANDLORD determines, in its sole discretion, that the proposed assignee has satisfactory financial statements and sufficient expertise in the restaurant business, LANDLORD may release the guarantor from the obligations of this Lease. Additionally, upon such assignment, LANDLORD shall require the letter of credit described in paragraph 5 from the proposed assignee and LANDLORD shall release TENANT'S letter of credit. The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease 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 LANDLORD. In the event TENANT wishes to assign this Lease and LANDLORD consents to such assignment, LANDLORD may charge a reasonable fee, not to exceed \$500.00 to help offset any costs LANDLORD may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same. Any assignment, transfer, hypothecation, mortgage, or subletting without LANDLORD'S written consent shall give LANDLORD the right to terminate this Lease and to re-enter and repossess the Demised Premises and the LANDLORD'S right to damages shall survive.

**LANDLORD acknowledges the existing sub-lease between the TENANT and the Yankee Freedom for the ticket booth which is hereby approved. However in the event that the existing sub-lease is terminated or not renewed any new sub-lease or sub-lessee must be approved by the LANDLORD.**

If the TENANT 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.



The provisions of this Section shall not apply to a transfer of the tenant entity (i) to Pasquale Croce's spouse, children, parents, siblings, descendants or spouses of such natural persons (collectively "Family Members"), (ii) to a trust, corporation, partnership, or limited liability company which is solely owned by Pasquale Croce or his Family Members, or (iii) by will or intestate succession.

11. **SUBORDINATION** - This Lease, and all rights of TENANT hereunder, are and shall be subject and subordinate to all mortgages, bond indentures and any other financing instrument (hereinafter referred to as security agreements) which may now or hereafter affect the Demised 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 paragraph shall be self-operative and no further instrument of subordination shall be required to make it effective, however, TENANT shall promptly execute and deliver any instrument reasonably requested to evidence such subordination; provided however, TENANT's duty to subordinate to LANDLORD's mortgagees is conditioned upon receipt by TENANT of a Non-Disturbance Agreement from said mortgagees in customary form and one which obligates the mortgagee in the event the mortgagee would take possession of the Demised Premises to be bound and to perform all of the LANDLORD's affirmative obligations as set forth in this Lease. The Agreement will also provide that in the event the mortgagee would take possession, this Lease would continue to be valid and honored by mortgagee as long as TENANT is not in default.

If the holder of any such security instrument shall succeed to the rights of LANDLORD under this Lease, then at the request of such party so succeeding to the LANDLORD'S rights and upon such successor LANDLORD'S written agreement to accept TENANT'S attornment, TENANT shall attorn to such successor LANDLORD and will execute such instruments as may be necessary or appropriate to evidence such attornment. Upon such attornment, this Lease shall continue in full force and effect as if it were a direct Lease between the successor LANDLORD and TENANT upon all the terms, conditions, and covenants as are set forth in this Lease and shall be applicable after such attornment.

TENANT shall deliver to LANDLORD or the holder of any such security instrument or auditors, or prospective purchaser or the owner of the fee, when requested by LANDLORD, a certificate to the effect that this Lease is in full force and that LANDLORD is not in default therein, or stating specifically any exceptions thereto. Failure to give such a certificate within ten business days after written request shall be conclusive evidence that the Lease is in full force and effect and LANDLORD is not in default and in such event, TENANT shall be stopped from asserting any defaults known to TENANT at that time.

12. **CONDEMNATION**

(a) It is further understood and agreed that if at any time during the continuance of this Lease the legal title to the Demised real estate 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 fixed rent and other adjustments made as shall be just and equitable under the circumstances. If the LANDLORD and the TENANT 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 Demised Premises be wholly taken by condemnation, or if the portion taken will prevent the Demised Premises from being used for the purpose the TENANT intends, this Lease shall be canceled.

(b) 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 TENANT be permitted to receive a share based on the value of the land or buildings, and/or improvements.

### **13. TENANT'S DEFAULT**

(a) If the TENANT shall fail to pay any of the taxes or assessments herein provided for; or in case of the sale of or forfeiture of the Demised Premises or any part thereof during the demised term for non-payment of any tax or assessment; or in case the TENANT shall fail to keep insured the building or improvements which are now or which may at any time hereafter be upon the Demised Premises, as herein provided for; or shall fail to spend insurance money, as herein provided for; or if the TENANT shall fail to perform any of the covenants of this Lease by it to be kept and performed; then, in any of such events, except in the event of nonpayment of rent, upon ten (10) business days written notice, within which the TENANT may cure, and upon its failure to cure, it shall and may be lawful for the LANDLORD, at its election, to declare the demised term ended and to re-enter upon said Demised Premises, building, and improvements situated thereon, or any part hereof, either with or without process of law, the TENANT hereby waiving any demand for possession of the Demised Premises and any and all buildings and improvements then situated thereon. In the event of nonpayment of rent, LANDLORD may assert its right of notice and eviction pursuant to Chapter 83, Florida Statutes.

(b) Or, the LANDLORD may have such other remedies as the law and this instrument afford, and the TENANT covenants and agrees that upon the termination of said demised term, at such election of the said LANDLORD, or in any other way, TENANT will surrender and deliver up the Demised Premises and property (real and personal) peaceably to the LANDLORD, its agent, or attorneys, immediately upon the termination of the said demised term. If the TENANT, its agents, attorneys, or shall hold the Demised Premises or any part thereof, one (1) day after the same should be surrendered according to the terms of this Lease, it shall be deemed guilty of forcible detainer of the Demised Premises under the statute and shall be subject to eviction or removal, forcibly or otherwise, with or without process of law.

(c) **BANKRUPTCY OF TENANT.** IN THE EVENT TENANT FILES ANY FORM OF BANKRUPTCY, LANDLORD SHALL BE ENTITLED TO IMMEDIATE TERMINATION OF THE AUTOMATIC STAY PROVISIONS OF 11 U.S.C. §362, GRANTING THE LANDLORD COMPLETE RELIEF AND ALLOWING THE LANDLORD TO EXERCISE ALL OF HIS LEGAL AND EQUITABLE RIGHTS AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO TERMINATE THIS LEASE AND DISPOSSESS TENANT FROM THE DEMISED PREMISES IN ACCORDANCE WITH FLORIDA LAW. ADDITIONALLY, TENANT AGREES NOT TO DIRECTLY OR INDIRECTLY OPPOSE OR OTHERWISE DEFEND AGAINST THE LANDLORD'S EFFORT TO GAIN RELIEF FROM ANY AUTOMATIC STAY. THE LANDLORD SHALL BE ENTITLED AS AFORESAID TO THE LIFTING OF THE AUTOMATIC STAY WITHOUT THE NECESSITY OF AN EVIDENTIARY HEARING AND WITHOUT THE NECESSITY OR REQUIREMENT OF THE LANDLORD TO ESTABLISH OR PROVE THE VALUE OF THE LEASEHOLD, THE LACK OF



ADEQUATE PROTECTION OF HIS INTEREST IN THE LEASEHOLD, OR THE LACK OF EQUITY IN THE SAME. TENANT SPECIFICALLY AGREES AND ACKNOWLEDGES THAT THE LIFTING OF THE AUTOMATIC STAY HEREUNDER BY THE APPROPRIATE BANKRUPTCY COURT SHALL BE DEEMED TO BE "FOR CAUSE" PURSUANT TO SECTION 362(D) (1).

(d) Where the alleged default consists of some alleged violation of any term of this Lease, other than the payments of money, including rent, the LANDLORD may not declare this Lease in default until such violation shall have continued for ten (10) days after the LANDLORD shall have given the TENANT written notice of such violation, and TENANT shall not have undertaken, during said ten (10) day notice period, to cure said violation by vigorous and affirmative action, provided, however, that nothing herein contained shall be construed as precluding the LANDLORD from having such remedy as may be and become necessary in order to preserve the LANDLORD'S right and interest of the LANDLORD in the Demised Premises and in this Lease, even before the expiration of the grace or notice periods provided for in this paragraph, if, under particular circumstances then existing, the allowance of such grace or the giving of such notice would prejudice or endanger the rights and estate of the LANDLORD in this Lease and in the Demised Premises. With respect to the payment of the insurance premiums, the same must be paid at least fifteen (15) days prior to the time when the policies would lapse for the failure to pay premiums thereon, and evidence of such payment given to the LANDLORD without any written notice being required to be served upon the TENANT in connection therewith. Notwithstanding the foregoing, in the event the non-monetary default cannot be reasonably cured within ten (10) days, then TENANT shall not be in default of the Lease provided that TENANT continues to proceed in good faith and in a timely manner to cure the default.

(e) All default and grace periods shall be deemed to run concurrently and not consecutively.

(f) It is mutually covenanted and agreed that the various rights, powers, options, elections, privileges, and remedies of the LANDLORD contained in this Lease 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.

(g) It is further covenanted and agreed by and between the parties hereto that the right given to the LANDLORD in this Lease to collect the rent that may be due under the terms of this Lease by any proceeding under same, or the right to collect any additional rent, money, or payments due under the terms of this Lease by any proceedings under same, or the right given the LANDLORD to enforce any of the terms and provisions of this Lease shall not in any way affect the right of such LANDLORD to declare this Lease void and the terms ended hereby, as herein provided, when default is made in the payment of said rent or when default is made by the TENANT in any of the terms and provisions of this Lease.

(h) In the event of litigation in connection with this Lease, the prevailing party shall be entitled to recover from the losing party as part of an order, judgment, or award that may be rendered, all of the prevailing party's costs and expenses of such litigation, including without limitation reasonable attorney's fees and costs, through and including all trial and appellate levels and post-judgment proceedings.

**14. TENANT'S REPAIRS** - The TENANT covenants and agrees with the LANDLORD that during the continuance of this Lease, the TENANT shall be solely responsible for maintaining the Demised Premises in a clean, sanitary and safe condition in accordance with the laws of the State of Florida and in accordance with all directions, rules and regulations of all inspectors,



governmental departments and agencies having jurisdiction over the Demised Premises to ensure a good state of repair of the Demised Premises and all furnishings, including any special equipment brought, placed, or installed upon the Demised Premises by TENANT; nor will the TENANT suffer or permit any strip, waste, or neglect of any building or such personal property to be committed; and the TENANT will repair, replace, and renovate the said real and personal property as often as it may be necessary in order to keep the building or buildings and the personal property which is subject to the LANDLORD'S lien, in good repair and condition. In the event that improvements or repairs are contemplated prior to or at the beginning of or during TENANT'S occupancy, then this provision shall apply to the condition of the property as of the last repair, improvement or renovation. TENANT shall be responsible for repair or replacement of the HVAC and all air conditioning systems together with the plumbing and electrical system solely within the Demised Premises. With respect to plumbing, TENANT's obligation shall extend from the interior of the Demised Premises to the nearest manhole outside of the Premises. TENANT shall be responsible for repairing and replacing the roof throughout the term of the Lease, and no later than October 31, 2016 shall replace the Tower Bar flat roof/flooring as called for in the Structural Engineering Report Recommendation C, which is attached hereto and incorporated herein as Exhibit "E".

TENANT shall be responsible for non-structural repairs to the building and entry areas, storage areas, all dining, kitchen, lavatories and any other areas that comprise the Demised Premises. In addition to the foregoing, with the exception of the LANDLORD repairs identified herein, TENANT agrees to make all non-structural repairs including but not limited to those identified in the Building Inspection Report, attached hereto and incorporated herein as Exhibit "F", at TENANT'S sole cost and expense and without unnecessary delay. Repairs will be made according to the schedule and time frame established therefore and all TENANT repairs set forth in Exhibit "F" will be completed within 270 days of the commencement of the lease term, unless such items are related to the roof, in which case such repairs will be completed during the roof replacement.

In the event that any unnecessary delay results in additional damage or repairs that become necessary due to the delay, whether or not the repairs become structural in nature, the TENANT shall be responsible for completing the additional repairs at TENANT'S sole cost and expense and without any further delay.

#### **14.1 Landlord Repairs**

Notwithstanding anything contained herein to the contrary, LANDLORD shall be responsible for the repair and replacement of the structure of the building, including the walls, foundation, floor, support columns, and exterior of the building, as well as the seawall. LANDLORD agrees to make repairs that may be necessary, as identified in Section IV. Recommendations, of the Structural Engineering Report as set forth in Exhibit "E" within 270 days of the commencement of the lease term.

Additionally, LANDLORD agrees to make the following structural repairs identified in the Building Inspection Report as set forth in Exhibit "F" at LANDLORD'S sole cost and expense, within 270 days of the commencement of the lease term based upon a mutually agreed upon schedule therefor:

- a. Exterior door replacements
- b. Tower Bar stairs and stairwell railings
- c. Exterior deck railings
- d. Rotted wood siding and window frames
- e. Exterior fence
- f. Interior bar floor

In the event that LANDLORD shall deem it reasonably necessary or be required by any governmental authority to repair, alter, remove, reconstruct or improve any part of the



Demised Premises or of the property including the repairs as described herein above (unless the same result from TENANT'S act, neglect, default or mode of operation, in which event LANDLORD shall make all such repairs, alterations or improvements at TENANT'S sole cost and expense), then the same shall be made by LANDLORD, at LANDLORD'S sole cost and expense, with reasonable dispatch, and should the making of such repairs, alterations and improvements cause any interference with TENANT'S use of the Demised Premises, such interference shall not relieve TENANT from the performance of its obligations hereunder. TENANT hereby agrees that LANDLORD shall not be liable for any damage, loss, liability or any other claim related to the Landlord Repairs, unless caused by negligence or willful misconduct of LANDLORD.

Any changes, additions or alterations to the Premises, the Property, the Building or the Shopping Center shall not (a) unreasonably impair access to, visibility of or frontage of the Premises; (b) materially affect the conduct of Tenant's customary business therein; or (c) unreasonably detract from Tenant's signage, create confusion regarding the business conducted in the Premises, or adversely affect the presentation of Tenant's exterior signage and storefront in a material way.

In the event of any such unreasonable interference that results in full or partial closure of TENANT'S business, loss of sales, inventory losses, employee layoffs and employers unemployment obligations due to closure, advertising losses, re-opening expenses in addition to Tenant's other rights and remedies under applicable law and this Lease, the Base Rent shall be equitably abated based on the degree of interference with Tenant's business. Additionally, consideration for rent abatement will include the length of notice period, public meetings, or other communication received from the LANDLORD to enable the TENANT to minimize losses due to the disruption.

#### **15. ALTERATIONS**

TENANT agrees to replace the roof on the Demised Premises at TENANT'S sole cost and expense. TENANT hereby agrees that such work shall be completed promptly, efficiently, competently and in a good and workmanlike manner by duly qualified or license persons or entities. TENANT hereby agrees that LANDLORD shall not be liable for any damage, loss, liability or any other claim related to the roof replacement. Further, with the exception of providing a handicapped lift, LANDLORD shall not be required to make any additional alterations to the second floor to meet the requirements of the Americans with Disabilities Act. If applicable, TENANT shall be responsible for meeting the requirements of the Americans with Disabilities Act in regard to the second floor space at TENANT'S sole cost and expense (except for the handicapped lift); however, TENANT shall not be considered in default as a result of this provision until such time as TENANT has failed to meet the requirements after written notice and reasonable opportunity and time to cure

Except for those items described in Exhibit F, TENANT shall not make any alterations, additions or improvements to the Demised Premises (whether or not the same may be structural in nature) without LANDLORD'S prior written consent. All alterations, additions, or improvements made to the Demised Premises, except movable furniture and equipment installed at TENANT'S expense, shall be the property of the LANDLORD and remain upon and be surrendered with the Demised Premises at the expiration of the term of this Lease; provided, however, that LANDLORD may require TENANT to remove any additions made at TENANT'S request to the Demised Premises and to repair any damage caused by such removal, and provide further, that if TENANT has not removed its property and equipment within ten (10) days after the expiration or termination of this Lease, LANDLORD may elect to retain the same as abandoned property.

In the event TENANT shall request LANDLORD'S permission, and LANDLORD shall permit TENANT to perform any alterations, additions, improvements or repairs to the Demised Premises,



TENANT shall (i) submit its plans and specifications to LANDLORD for its approval prior to the commencement of any construction, (ii) obtain all necessary permits prior to the commencement of any construction, (iii) only use contractors approved by LANDLORD, (iv) not permit any construction liens to be placed or remain on the Demised Premises. In the event a construction lien shall be filed against the Demised Premises as a result of work undertaken by TENANT, TENANT shall within ten (10) days of receiving notice of such lien, discharge the lien of record either by payment of the indebtedness to the lien claimant or by filing a bond as security therefore. All such work made by or on behalf of TENANT shall be performed in such manner as LANDLORD may designate and in accordance with all applicable laws and regulations of governmental authorities having jurisdiction over the same. All such work by TENANT or its contractors shall not interfere with, impede or delay any work by LANDLORD or its contractors, tenants or TENANT'S contractors. All contractors engaged by TENANT shall be licensed contractors, possessing good labor relations, and capable of performing quality workmanship.

**15.1 Landlord Alterations.** LANDLORD agrees to construct, at its sole cost and expense, the partition to divide the LANDLORD'S maintenance shop shown as Area P and TENANT'S liquor storage area shown as Area F on the attached Exhibit "A".

Further LANDLORD agrees to provide one handicapped lift to the second floor in accordance with the requirements of the Americans with Disabilities Act within 270 days of the commencement of the lease term.

#### **16. EQUIPMENT, FIXTURES AND SIGNS**

(a) All furnishings, fixtures, trade fixtures, equipment, and signs used on the Demised Premises by TENANT but provided by LANDLORD, will, at all times, be, and remain, the property of LANDLORD. Provided that this Lease is in good standing and subject to the LANDLORD'S lien for rent, TENANT will have the right to remove any furniture or fixtures provided by TENANT, or any part thereof, from the Demised Premises during the term of this Lease, at the expiration thereof, or within a reasonable time thereafter, provided, however, that TENANT, in so doing, does not cause any irreparable damage to the Demised Premises, and provided further, that TENANT will pay or reimburse LANDLORD for the reasonable expense of repairing damage caused by such removal.

(b) All TENANT signs shall be approved by the LANDLORD and must meet all applicable codes. The exact location, style, text, and color(s) of the sign shall be agreed upon by the LANDLORD, in writing, prior to TENANT'S installation. LANDLORD'S approval shall not be unreasonably withheld or delayed.

#### **17. ADDITIONAL COVENANTS OF THE TENANT**

(a) The TENANT shall pay for all utilities associated with the use of the Demised Premises including, but not limited to, water, electricity, sewer, gas and waste, (if applicable). In the event that a separate bill for the Demised Premises is not available for one or more of the utility services required by the Demised Premises, then the TENANT shall pay a pro-rated share of that particular utility bill based on a calculation of the ratio of the square footage of the Demised Premises and the total square footage of the Premises covered by that particular utility bill. In the event that the TENANT shall be billed for a pro-rated share, the LANDLORD shall provide TENANT a utility bill each month and TENANT shall pay the amount due to LANDLORD within ten (10) days of its receipt.

(b) The TENANT covenants and agrees with the LANDLORD that no damage or destruction to any building or improvement by fire, windstorm, or any other casualty shall be deemed to entitle the TENANT to surrender possession of the Demised Premises or to

terminate this Lease 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 Lease be canceled for the TENANT'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 the within-Lease, be deemed immediately to become absolute and unconditional property of the LANDLORD. In the event of destruction to the Demised Premises by casualty or hazard, LANDLORD will have the option of canceling the Lease, or repairing the building, and in the event that the LANDLORD elects to repair the building, an appropriate abatement of rent will occur.

(c) The TENANT shall be responsible for maintaining the HVAC and all air conditioning systems together with the plumbing and electrical system solely within the Demised Premises. With respect to the plumbing, TENANT'S obligation shall extend from the interior of the Demised Premises to the nearest manhole outside the Premises.

(d) The TENANT shall be responsible for maintaining the roof, storage areas and outdoor dining areas that comprise the Demised Premises as well as painting and cleaning the exterior of the building.

(e) The TENANT covenants and agrees with the LANDLORD that nothing in this Lease contained shall ever be construed as empowering the TENANT to encumber or cause the LANDLORD to encumber the title or interest of the LANDLORD.

(f) The TENANT covenants and agrees with the LANDLORD that, at the termination of this Lease, the TENANT will peaceably and quietly deliver unto the LANDLORD, possession of the Demised Premises and all buildings and improvements located thereon. Notwithstanding the foregoing, TENANT shall be authorized to remove any equipment and trade fixtures so long as TENANT repairs any damage caused by such removal. However any fixtures or equipment that are permanently attached to the building including but not limited to hood exhaust/suppression systems, walk in coolers, freezers etc. shall remain unless the LANDLORD agrees, in writing, to the removal thereof.

(g) The TENANT agrees not to make any internal changes or exterior changes or alterations without written approval of the LANDLORD. This provision does not apply to TENANT'S trade fixtures and/or other non-permanent fixtures on the interior of the Demised Premises.

**18. LANDLORD'S RIGHT OF ENTRY** - The LANDLORD or its agents shall have the right to enter upon the Demised Premises at all reasonable times to examine the condition and use thereof, provided only that such right shall be exercised in such manner as not to interfere with the TENANT in the conduct of the TENANT'S business on said Demised Premises. If the said Demised Premises are damaged by fire, windstorm, or by any other casualty which caused the Demised Premises to be exposed to the elements, then the LANDLORD may enter upon the Demised Premises to make emergency repairs. LANDLORD may enter upon the Demised Premises to make renovations and repairs of a non-emergency nature by giving reasonable notice to the TENANT, and in such a manner as to minimize any inconvenience to both parties.

**19. TENANT'S ACCEPTANCE** - The TENANT accepts the Demised Premises and improvements thereon in an as is condition and all improvements and additions shall be at the sole expense of the TENANT except as may be otherwise provided for in this Lease.

**20. 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 Lease contained shall be construed to be a waiver of all succeeding breach of the same covenant.

(b) That time is of the essence in every particular and particularly where the obligation to pay money is involved.

(c) That all arrearages in the payment of rent or in the repayment to the LANDLORD of any sums which the LANDLORD may have paid in order to cure a default of the TENANT (as elsewhere herein provided for), shall bear interest from the date when due and payable at the highest rate permitted by law until paid.

(d) That no modification, release, 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 LANDLORD and TENANT.

(e) 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 representatives, and assigns of each of the parties to this Lease.

(f) That this instrument supersedes any previous agreements and contains the entire agreement between the parties as of this date, and that the execution hereof has not been induced by either of the parties by representations, promises or understandings not expressed herein, and that there are not collateral agreements, stipulations, promises, or understandings whatsoever between the respective parties in any way touching the subject matter of this instrument which are not expressly contained in this instrument.

(g) That when either of the parties desire to give notice to the other or others in connection with and according to the terms of this Lease, such notice shall be deemed given when it shall have been deposited in the U.S. Registered or Certified mail with sufficient postage pre-paid thereon to carry it to its addressed destination. Said notice shall be addressed as follows:

AS TO LANDLORD: PROPERTY MANAGEMENT  
CITY OF KEY WEST  
P.O. BOX 6434  
KEY WEST, FL 33040

AS TO TENANT: MORO MANAGEMENT, INC.  
P.O. BOX 520A  
VILLANOVA, PA 19085

When the parties on either side (LANDLORD or TENANT) consists of more than one person, notice or default by one of the persons on that side shall constitute notice or default by all of the persons on that side.

(h) This Lease 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 TENANT or TENANTS are signing in a capacity other than as individuals, then the LANDLORD may require personal guarantees from individuals as the LANDLORD deems necessary.

(j) LANDLORD may delegate its decision-making authority regarding any provision of this Lease to an Advisory Board.

(k) LANDLORD will not permit any development or use of the waterfront directly behind the Demised Premises that would block the view of the water from the existing dining area.

(l) LANDLORD will provide for short term docking for customers and patrons of the Property at the dock behind the Demised Premises if the area is navigable and suitable for such purposes.

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

ATTEST

LANDLORD: Caroline Street Corridor and  
Bahama Village Community Redevelopment  
Agency

\_\_\_\_\_  
Cheryl Smith, City Clerk

\_\_\_\_\_  
Craig Cates, Chairman

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*Wm Barbacid*  
WITNESS

Date: 8/8/16

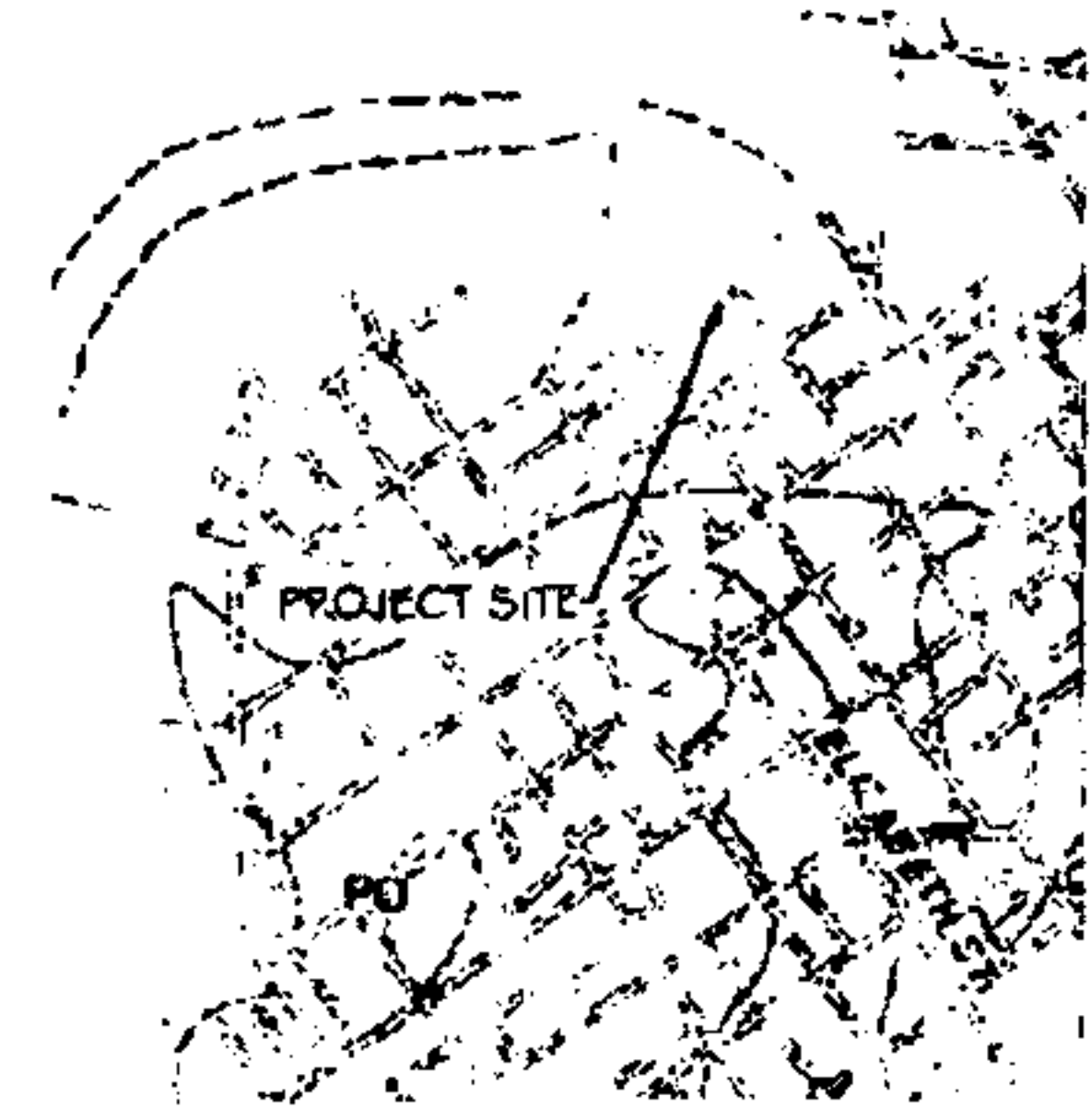
TENANT: Moro Management, Inc.  
*Pasquale W. Grace*  
Pasquale W. Grace, President

Date: 8/8/16

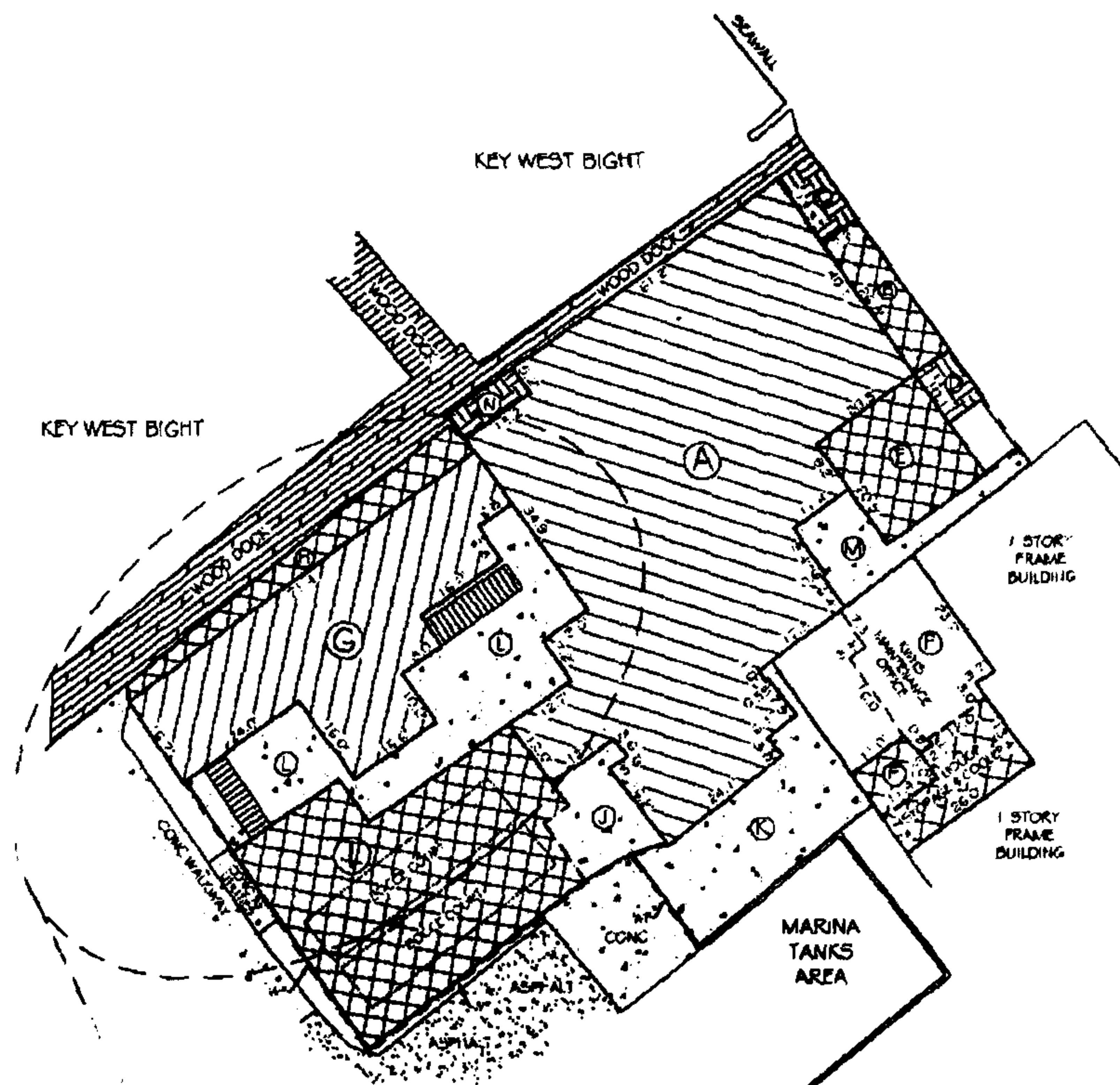


**EXHIBIT "A" Demised Premises, Site Plan**

NET USABLE SQ FT OF THE DIMENSIONED PREMISES ON TURTLE KRAALS RESTAURANT & BAR  
231 MARGARET STREET, KEY WEST, MONROE COUNTY, STATE OF FLORIDA

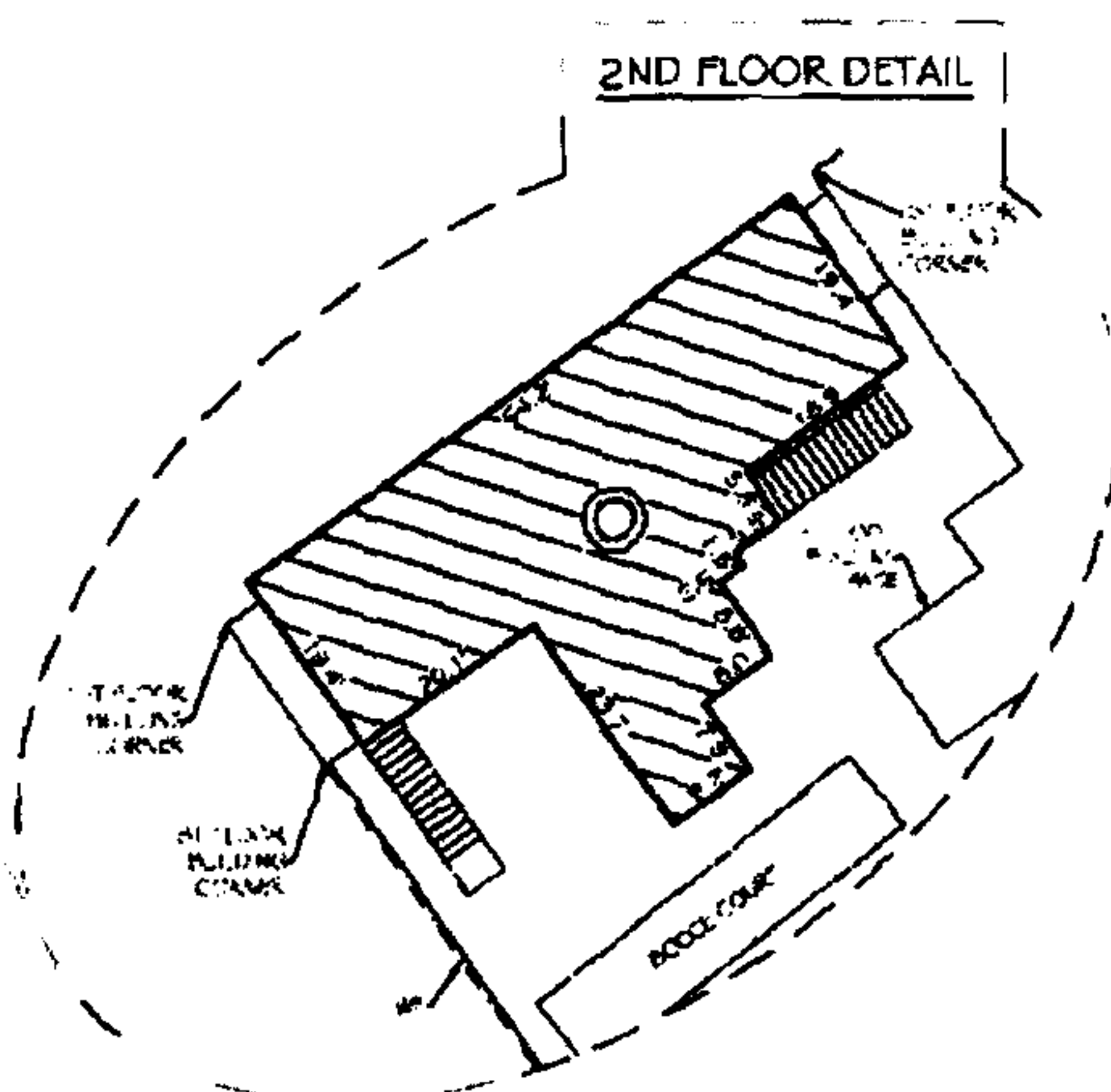


LOCATION MAP - NTS  
SEC. 31-T675-R25E



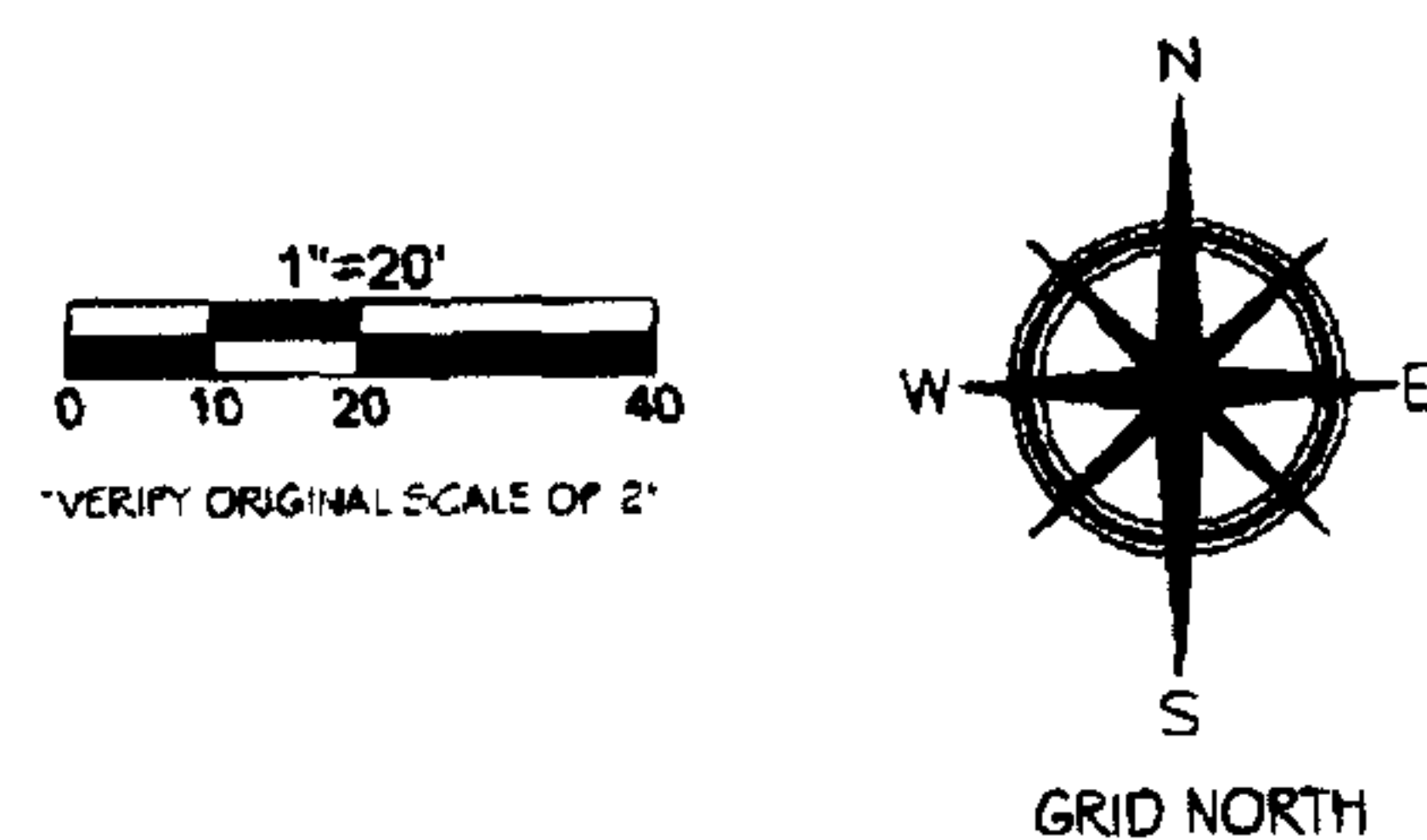
AREA DELINEATION / DESCRIPTION	AREA
(A) = MAIN BUILDING INCLUDING DINING AREA, BAR, KITCHEN & STORAGE	4,410.7 SQ FT +/-
(B) = COVERED AREA	193.0 SQ FT +/-
(C) = FERRY OFFICE / BOOTH	96.0 SQ FT +/-
(D) = ATM AREA	72.7 SQ FT +/-
(E) = BATHROOMS	416.2 SQ FT +/-
(F) = STORAGE & COOLER	333.0 SQ FT +/-
(G) = DINING AREA	1,487.3 SQ FT +/-
(H) = OUTDOOR COVERED DINING AREA	1,49.5 SQ FT +/-
(I) = OUTDOOR BOCCIE COURT AREA	1,621.2 SQ FT +/-
(J) = OUTDOOR CONCRETE STORAGE AREA	237.7 SQ FT +/-
(K) = OUTDOOR CONCRETE STORAGE AREA (50% LESSEE = 392.1 SQ FT +/-)	664.2 SQ FT +/-
(L) = OUTDOOR CONCRETE COURTYARD AREA (INCLUDING STAIRS)	1,046.0 SQ FT +/-
(M) = OUTDOOR WALKWAY AREA	278.4 SQ FT +/-
(N) = OUTDOOR COVERED AREA	68.6 SQ FT +/-
(O) = 2ND FLOOR DINING & BAR AREA	1,644.9 SQ FT +/-

\*\*TOTAL LEASE AREA OCCUPIED = 12,387.35 SQ FT +/-



AREA Delineation / Description	Area
(P) = KEY WEST HISTORIC SEAPORT (KWH)S MAINTENANCE OFFICE AREA	842.4 SQ FT +/-








\*\*TOTAL AREA OCCUPIED = 842.4 SQ FT +/-  
(NOT A PART OF LEASE AREA)



REVISION (1) - 04/08/2016 - REVISED AREA DIMENSIONS  
REVISION (1) - 04/19/2016 - REVISED AREA DELINEATIONS

1. THE POLYMERIZATION OF VINYL MONOMERS  
 a. Free Radical Polymerization  
 i. Initiation  
 ii. Propagation  
 iii. Termination  
 iv. Chain Transfer  
 v. Branching  
 vi. Autoacceleration  
 b. Anionic Polymerization  
 i. Initiation  
 ii. Propagation  
 iii. Termination  
 iv. Chain Transfer  
 v. Branching  
 vi. Autoacceleration  
 c. Cationic Polymerization  
 i. Initiation  
 ii. Propagation  
 iii. Termination  
 iv. Chain Transfer  
 v. Branching  
 vi. Autoacceleration  
 d. Coordination Polymerization  
 i. Initiation  
 ii. Propagation  
 iii. Termination  
 iv. Chain Transfer  
 v. Branching  
 vi. Autoacceleration  
 e. Ring-Opening Polymerization  
 i. Initiation  
 ii. Propagation  
 iii. Termination  
 iv. Chain Transfer  
 v. Branching  
 vi. Autoacceleration  
 f. Other Polymerization Mechanisms  
 i. Initiation  
 ii. Propagation  
 iii. Termination  
 iv. Chain Transfer  
 v. Branching  
 vi. Autoacceleration

SYMBOL LEGEND:

	WATER METER
	SPRINKLER HEAD
	CAFETERIA BASIN
	DRAINAGE MANHOLE
	CONCRETE UTILITY POLE
	ELECTRIC BOX
	LIGHT POLE

1. NAME  
 2. GRADE  
 3. DANCING CLASS  
 4. SANTIAGO MARCH  
 5. SGT.  
 6. NO. OF DANCE

SURVEYOR NOTES

THIS IS NOT A BOUNDARY SURVEY. ANY BOUNDARY OR RIGHT OF WAY LINES SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY, AND ARE A GRAPHICAL REPRESENTATION OF THE BOUNDARY BASED ON THE RECOVERY OF SUFFICIENT BOUNDARY MONUMENTATION, TO SPATIALLY DEFINE THE BOUNDARY LINES. NO ATTEMPT WAS MADE TO RESOLVE CONFLICTS BETWEEN THE RECOVERED BOUNDARY INFORMATION AND THE OCCUPATIONAL LINES.

NORTH ARROW IS REFERENCED TO GRID NORTH, BASED ON THE 2011 ADJUSTMENT OF THE NORTH AMERICAN DATUM OF 1983 (NAD 82/2011), OF THE FLORIDA STATE PLANE COORDINATE SYSTEM (TRANSVERSE MERCATOR PROJECTION), EAST ZONE (0801)

ADDITIONS OR DELETIONS TO SURVEY MAP OR REPORT BY OTHERS THAN THE SIGNING PARTY  
IS PROHIBITED WITHOUT THE WRITTEN CONSENT OF THE SIGNING PARTY.

STREET ADDRESS: 231 MARGARET STREET, KEY WEST, FL 33040

ALL UNITS ARE SHOWN IN U.S. SURVEY FEET

ALL FIELD DATA WAS ACQUIRED BETWEEN 04/20/2015 & 05/31/2015

[illegible]

**FLORIDA KEYS  
LAND SURVEYING**  
1996 OVERSEAS HIGHWAY  
SUGARLOAF KEY, FL 33042  
PHONE (305) 394-3690  
EMAIL: HLSurvey@gmail.com



**EXHIBIT "B" Rent Schedule**

**EXHIBIT "B"**

Tenant:	<u>Moro Mgt Inc. DBA Turtle Kraals</u>	Square Feet:	<u>9732</u>	<u>CAM</u>
Location:	<u>Margaret Street</u>	Square Feet:	<u>12367</u>	<u>BASE RENT</u>
Contact:	<u>Pasquale Croce</u>	Term:	<u>10 years Effective April 1, 2016</u>	
	<u>\$4.28 PER SQ. FT.</u>			

	Period Beginning	Base Rent per sq. ft.	Base Rent Annual	Base Rent Monthly	Tax, Ins., CAM Annual	Tax, Ins., CAM Monthly	Total Rent Before Sales Tax Monthly	Sales Tax Monthly	Total Rent With Tax Monthly	TOTAL RENT ANNUAL	Percentage Rent Base Amount
YEAR #											
1	April 1, 2016	\$30.00	\$371,610.00	\$30,967.50	\$41,652.96	\$3,471.08	\$34,438.58	\$2,582.89	\$37,021.47	\$444,257.68	\$6,193,500.00
2	April 1, 2017	CPI									
3	April 1, 2018	CPI									
4	April 1, 2019	CPI									
5	April 1, 2020	CPI									
6	April 1, 2021	CPI									
7	April 1, 2022	CPI									
8	April 1, 2023	CPI									
9	April 1, 2024	CPI									
10	April 1, 2025	CPI									

Tax, Insurance and CAM are estimated



### **EXHIBIT "C" Rules and Regulations**

1. TENANT shall not use any area outside of the demised premises as shown on Exhibit A or any portion of any common area or any parking areas for or any other purpose whatsoever including but not limited to the storage of goods, inventory, equipment, materials, whether or not said area is inside a building or outdoors.

**EXHIBIT "D"**

**Tenant's written statement occupancy commencement**



**Exhibit “E”**

**Structural Engineering Report**

**Exhibit "F"**

**Building Inspection Report**



**DISCLOSURE STATEMENT**

STATE OF FLORIDA  
COUNTY OF MONROE

Personally appeared before me, Timothy Ryan, who after being duly sworn and cautioned, did depose and state as follows:

1. I am Timothy Ryan, Registered Agent and (title) Member of (entity) Boat House Regatta. I make this affidavit regarding the present financial information of (entity) SELF as the Registered Agent and (title) \_\_\_\_\_ of (entity) \_\_\_\_\_ in accordance with City Ordinance, Article VIII. City Property. Division 1. Generally, Section 2-871 (d)

2. I herein expressly certify and affirm the following information.


2018

Applicant's net worth: \$,000,000 +  
Assets \$,000,000 Liabilities 0  
Annual Gross Income 1,000,000 +  
Primary Source of Income Restaurants Ownership

2019

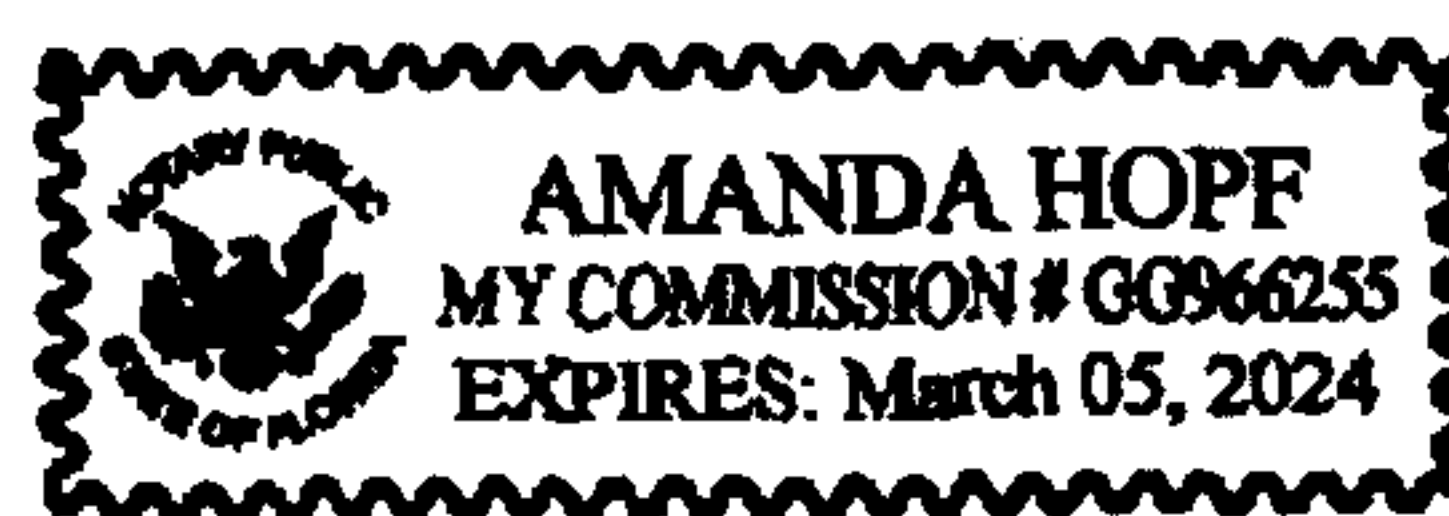
Applicant's net worth: \$,000,000 +  
Assets \$,000,000 Liabilities 0  
Annual Gross Income 1,000,000 +  
Primary Source of Income RESTAURANT Ownership

Sworn to and subscribed before me this 13 day of May, 2020

  
\_\_\_\_\_  
Notary Public - State of Florida

My commission expires:  
MARCH 05, 2024

FIRST STATE BANK



**DISCLOSURE STATEMENT**

STATE OF FLORIDA  
COUNTY OF MONROE

Personally appeared before me, RODERICK GILL, who after being duly sworn and cautioned, did depose and state as follows:

1. I am RODERICK GILL, ~~Registered Agent and~~ (title) MEMBER of (entity) BOAT HOUSE KEY WEST LLC I make this affidavit regarding the present financial information of (entity) SELF as the ~~Registered Agent and~~ (title) MEMBER of (entity) BOAT HOUSE KW LLC in accordance with City Ordinance, Article VIII. City Property. Division 1. Generally, Section 2-871 (d)

2. I herein expressly certify and affirm the following information.

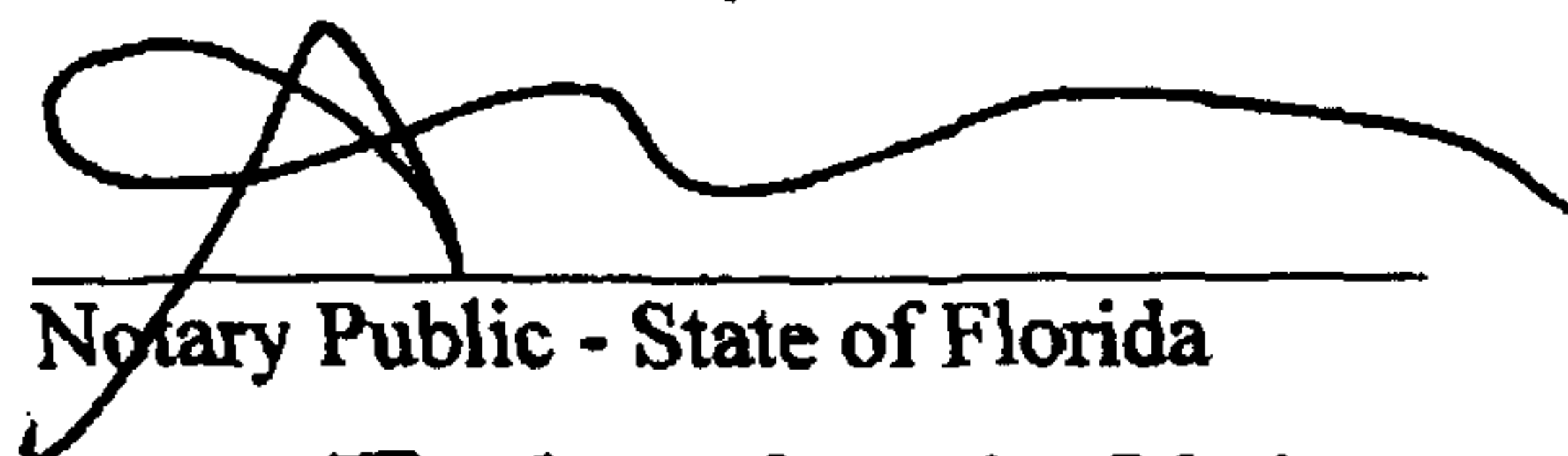
2018

Applicant's net worth: \$1.2 M  
Assets \$1.2 M Liabilities 0  
Annual Gross Income \$228,000  
Primary Source of Income RESTAURANTS OWNERSHIP

2019

Applicant's net worth: \$1.3 M  
Assets \$1.3 M Liabilities 0  
Annual Gross Income \$195,000  
Primary Source of Income RESTAURANTS OWNERSHIP

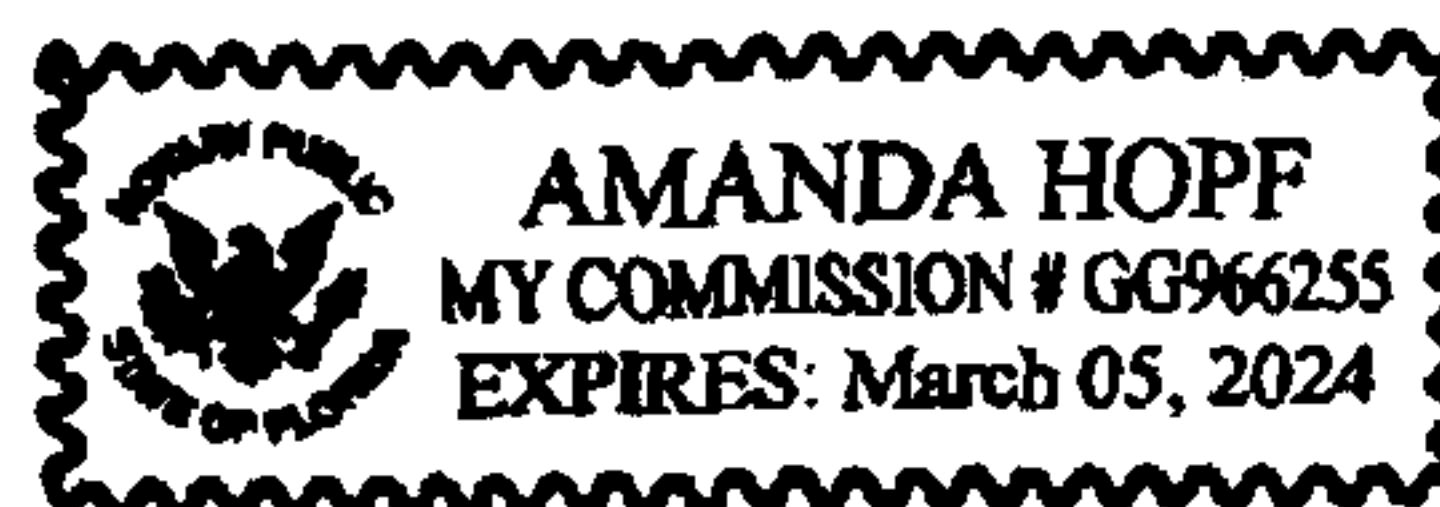
Sworn to and subscribed before me this 13 day of MAY, 2020

  
Notary Public - State of Florida

FIRST STATE BANK

My commission expires:

MARCH 05, 2024





## **Evaluation Report for Turtle Kraals**

Stantec Project Number 215613030



Prepared for:

The City of Key West

Prepared by:

---

Santiago Aranegui, P.E.  
Florida Registered Engineer No. 48106

December 21, 2015

# Evaluation Report for the Turtle Kraals Tower Bar Structure at 231 Margaret Street

---

Key West, Florida

**Santiago Aranegui P.E.**  
**6431 Marlin Drive**  
**Coral Gables, Florida 33158**

**November 20, 2015**

**Santiago Aranegui P.E.**  
**Structural Engineer #48106**



## **I. INTRODUCTION**

The following is a structural condition report for the existing Turtle Kraals Tower Bar structure as a result of visual observations performed on all the visible/exposed building structural elements in order to identify any structural deficiencies or weakness in the tower bar structure. The following report summarizes the findings observed during a visual inspection of the building structure performed on November 16, 2015.

This investigation has been performed by means of visual observation of all exposed building structural elements, and the derived conclusions are to the best of my knowledge, belief and professional judgment.

## **II. DESCRIPTION OF STRUCTURE**

The building structure is a wood frame structure built in 1974, consisting of wood column posts and wood beam support configuration as the main support system, supporting a wood framed second floor/roof structure. The ground floor roof structure also serves as a floor deck for the upstairs bar. The roof/floor framing consists of two bays of 2x12 wood joists spaced at 12" o.c., supported by built up wood beams and wood columns. The roof/floor deck consists of plywood panels. The upstairs bar is a gazebo type free standing structure consisting of wood column posts supporting wood beams and a wood framed hip roof.

## **III. VISUAL OBSERVATIONS**

### **A. Wood Columns:**

The majority of the wood columns were observed to be generally in good condition. Several column posts displayed an inadequate bearing configuration, where a gap exists between the bottom of the column and the concrete support, relying solely on the connecting metal bracket and bolts to sustain full gravity loads (See Pic.6). Several column base support brackets were observed to possess some level of corrosion, from mild to severe, due to exposure to moisture.

### **B. Wood Beams:**

The wood support beams were observed to be in good condition, displaying no visible signs of distress or deterioration. The beams were observed to possess adequate support for both gravity and wind uplift loads (See Pics.2&3).

### **C. Flat Roof/Roof Deck:**

Large areas of the 2"x12" flat roof/roof deck floor joists and plywood deck appeared weathered, displaying discoloration due to moisture intrusion from a deteriorated roofing (See Pic. 4). At the time of inspection, a large area of the roof framing was still wet from a recent rainfall (See Pic. 5). No sagging or excessive deflections were observed.. The roof framing was observed to possess adequate support for both gravity and wind uplift loads.

**D. Gazebo Structure (2<sup>nd</sup> Level Bar)**

The upstairs bar building structure consists of wood column posts supporting perimeter wood beams, supporting a wood framed hip roof structure (See Pic.9). The free standing gazebo structure: column posts, beams, roof framing, and roof sheathing appear to be in good condition. The roof rafters do not appear to possess adequate lateral and uplift load connections to the wood beams, at least not visible (See Pic. 12). Also no rafters to ridge connections were visible. One wood beam to column post connections was observed to be insufficient since the connection was placed at the beam end, possessing no edge distance (See Pic.10). The wood lateral bracing was observed to be in good condition, however at one corner bracing, the bottom connecting bolts is missing (See Pic.11).

**E. Secondary Structures:**

Secondary structures such as the roof canopy structure at the walkway at the rear of the building, was observed to possess deficiencies.

- i) Roof Canopy at the rear covered walkway: Both beam end supports were observed to possess inadequate, possessing insufficient gravity and wind uplift support capacity, thus requiring new support columns (See Pics.7&8).
- ii) Exterior Cladding: an area of the exterior wood cladding at the building's north west corner was observed to have rot due to water intrusion (See Pic.1).

**IV. RECOMMENDATIONS**

**A. Wood Columns:**

At the locations where the wood columns possess gaps at their base, wood shim plates should be placed within the gap space in order to create full bearing. Where the base plates/metal connectors have corroded, the plates should be replaced.

**B. Wood Beams: No action at this time.**

**C. Flat Roof/Floor Framing:**

In its current condition, the roof/floor wood framing does not pose a structural concern. However, the roofing should be repaired/replaced as soon as possible to eliminate the moisture intrusion into the roof/floor framing which will result eventually in the deterioration and weakening of the floor structure. In our opinion, the Durable plywood deck waterproofing system by Dura-dek will be the best suitable deck waterproofing system for this application.

**D. Gazebo Structure (2<sup>nd</sup> level bar):**

The roof framing requires further investigation to assure that their connectors are not hidden, exploratory investigation will be required. In the event that no connectors are found, new connectors are to be installed. The new connections are to be designed to resist a combination of uplift and lateral loads due to wind. This may require the use of metal clip angles and metal straps at each wood rafters. The inadequate wood beam to post connection shown in pic.10 requires to be redesigned to achieve a connection possessing adequate edge distance; This may



require the replacement of the entire wood beam at that location. The missing bracing bolt shown in pic.11 requires to be installed.

**E. Secondary Structures:**

Rear walkway roof canopy: Beam end support columns are required to properly support the wood beams (See Pics. 7&8). The new wood columns should possess the same configuration as the existing remaining canopy support columns.

Exterior Cladding: The areas deteriorated wood cladding/siding requires replacement (See Pic 1).

**V. ENGINEER'S OPINION OF COST**

F. Wood Columns: \$1500.00

G. Wood Beams: N/A

H. Flat Roof/Floor (Roofing): \$10,000.00

I. Gazebo Structure (2<sup>nd</sup> level bar): \$5500.00

**J. Secondary Structures:**

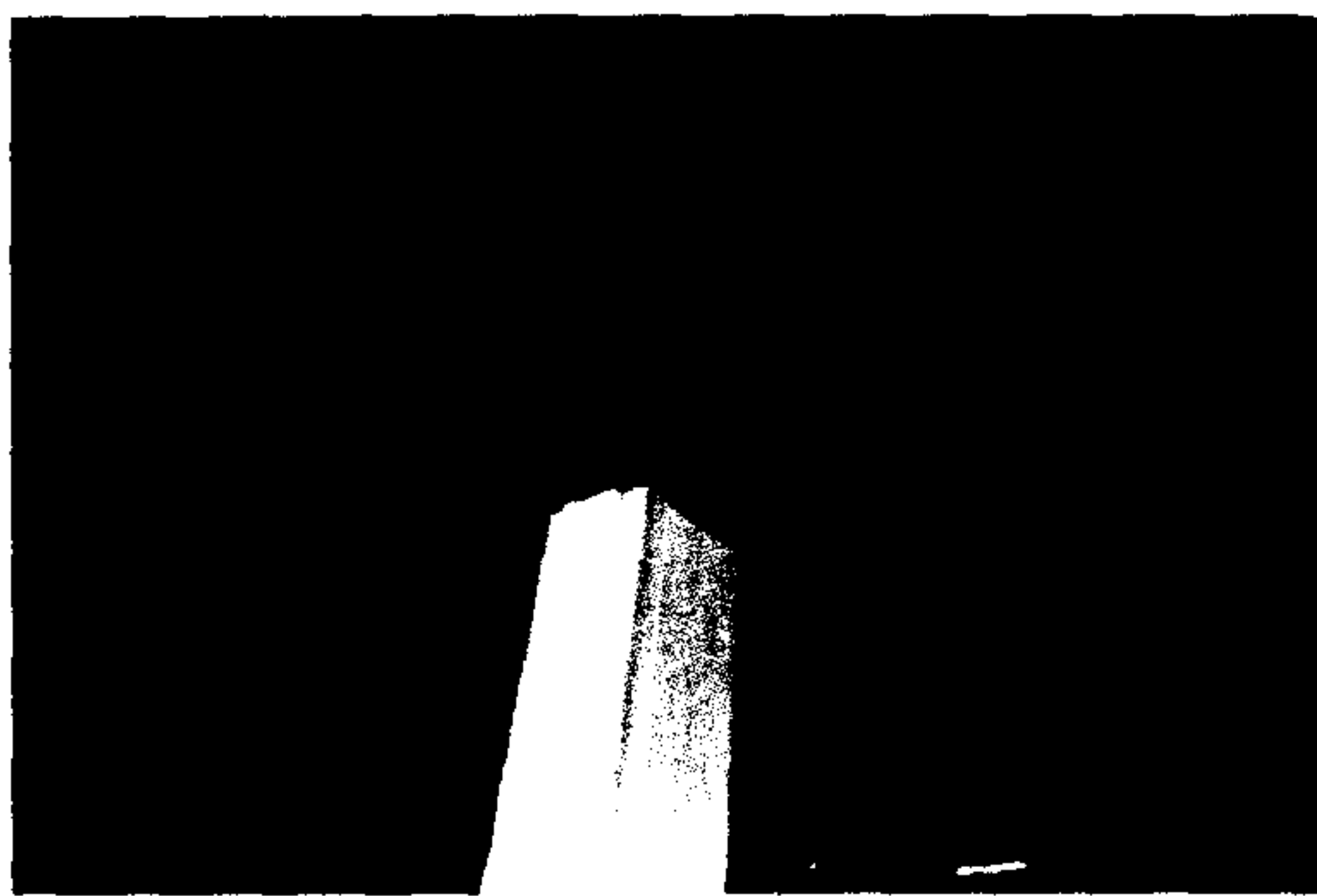
Rear walkway roof canopy: \$2000.00

Exterior Cladding: \$750.00

## VI. PICTURES



(Pic. 1) Exterior cladding  
(Deterioration from moisture)



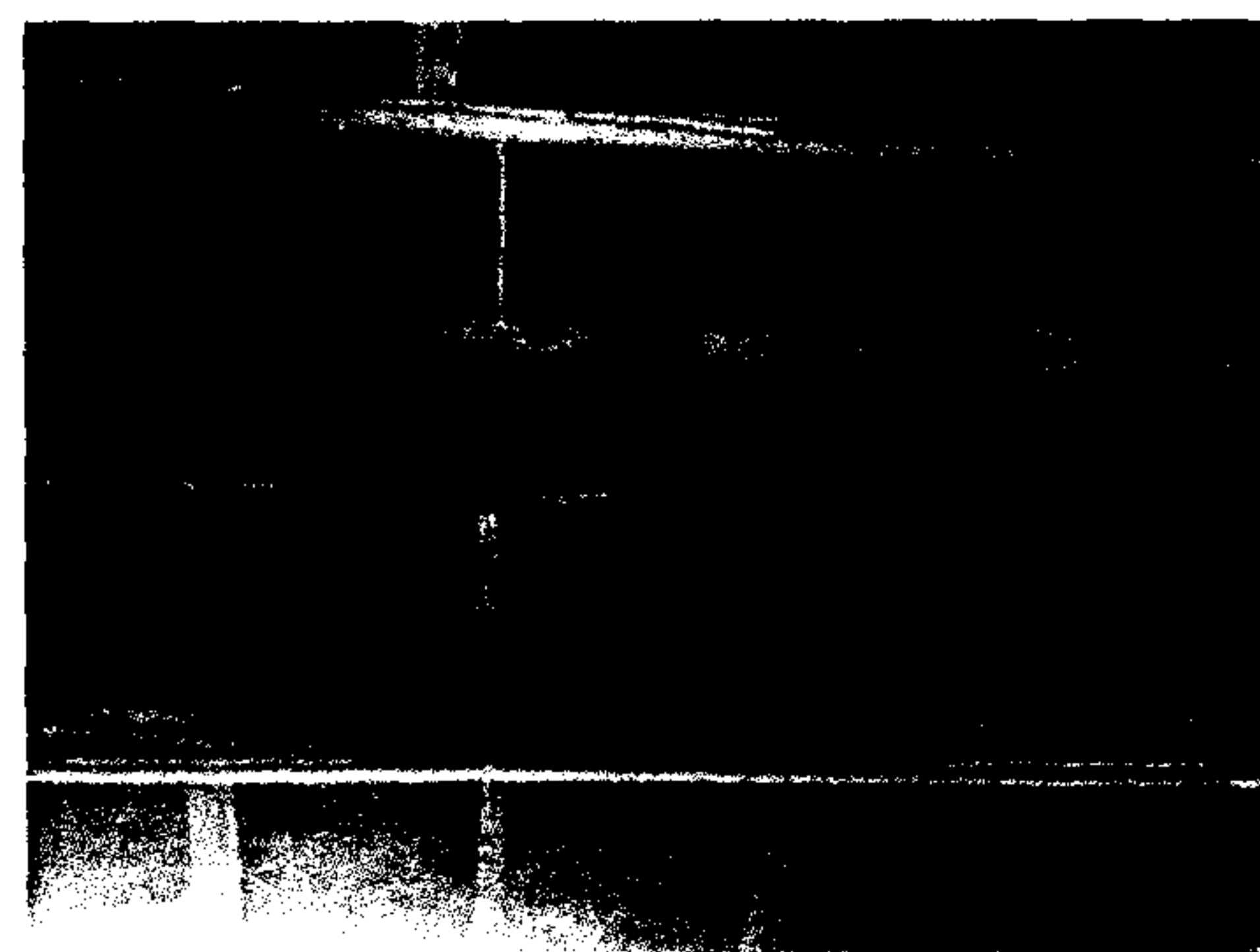
(Pic.2) Typical Interior Roof  
Framing and Support



(Pic.3) Typical Perimeter Roof  
Support

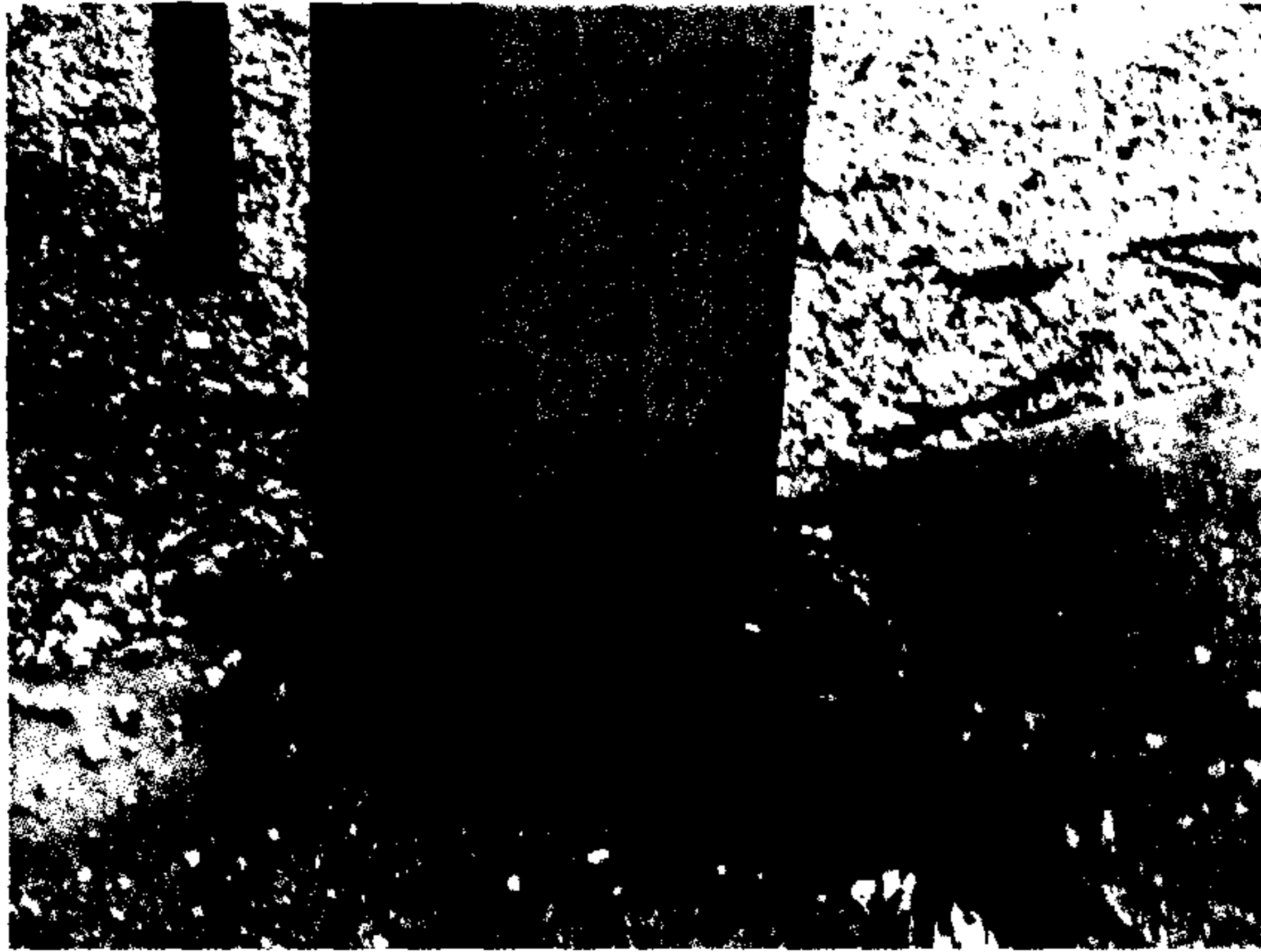


(Pic.4) Typical Roof Framing  
(2x12 spaced at 12" o.c.)

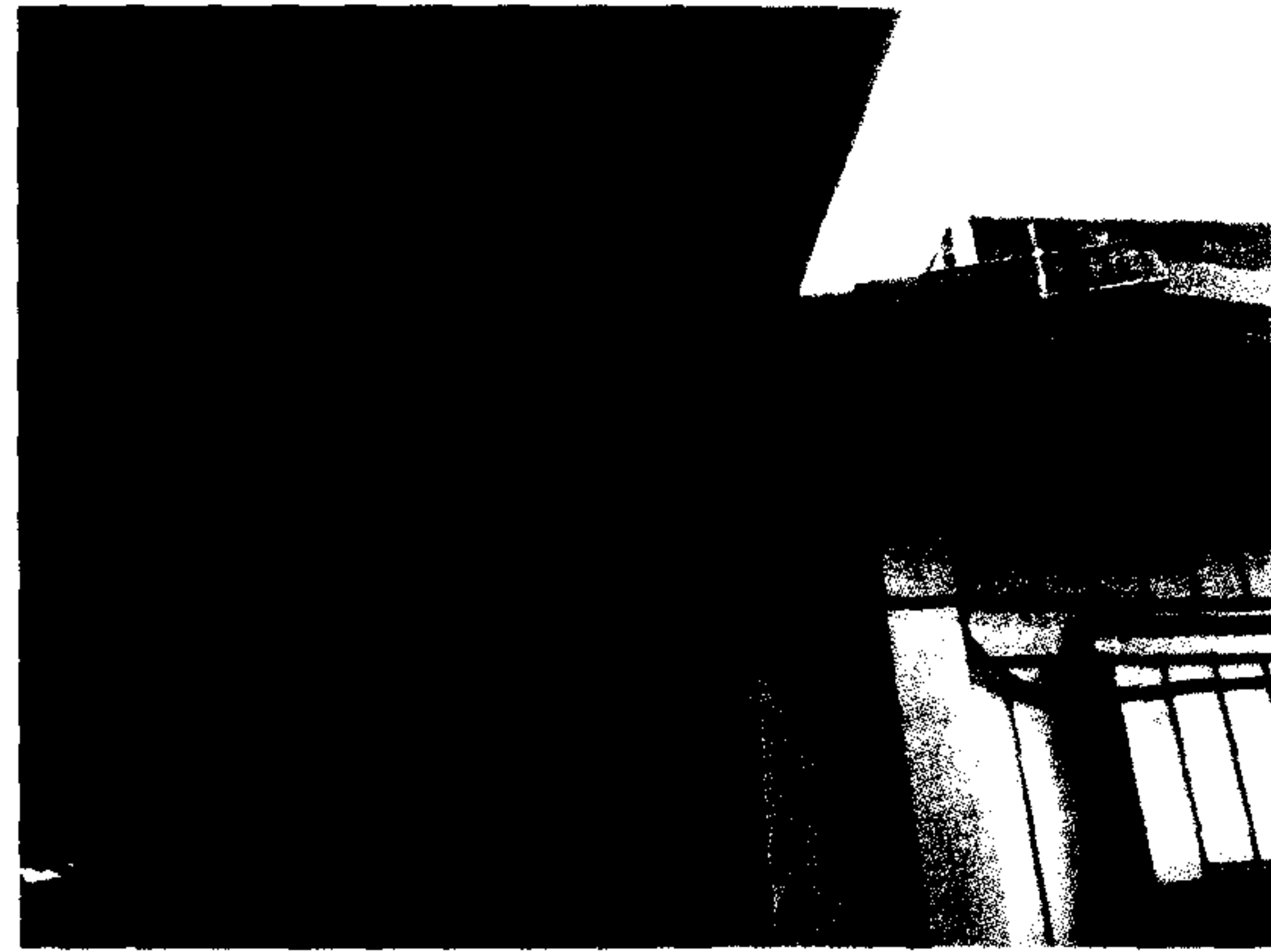


(Pic.5) Typical Roof Framing  
Weathered & Wet from Moisture  
Intrusion





(Pic.6) Wood column post at covered walkway (Gap at base)



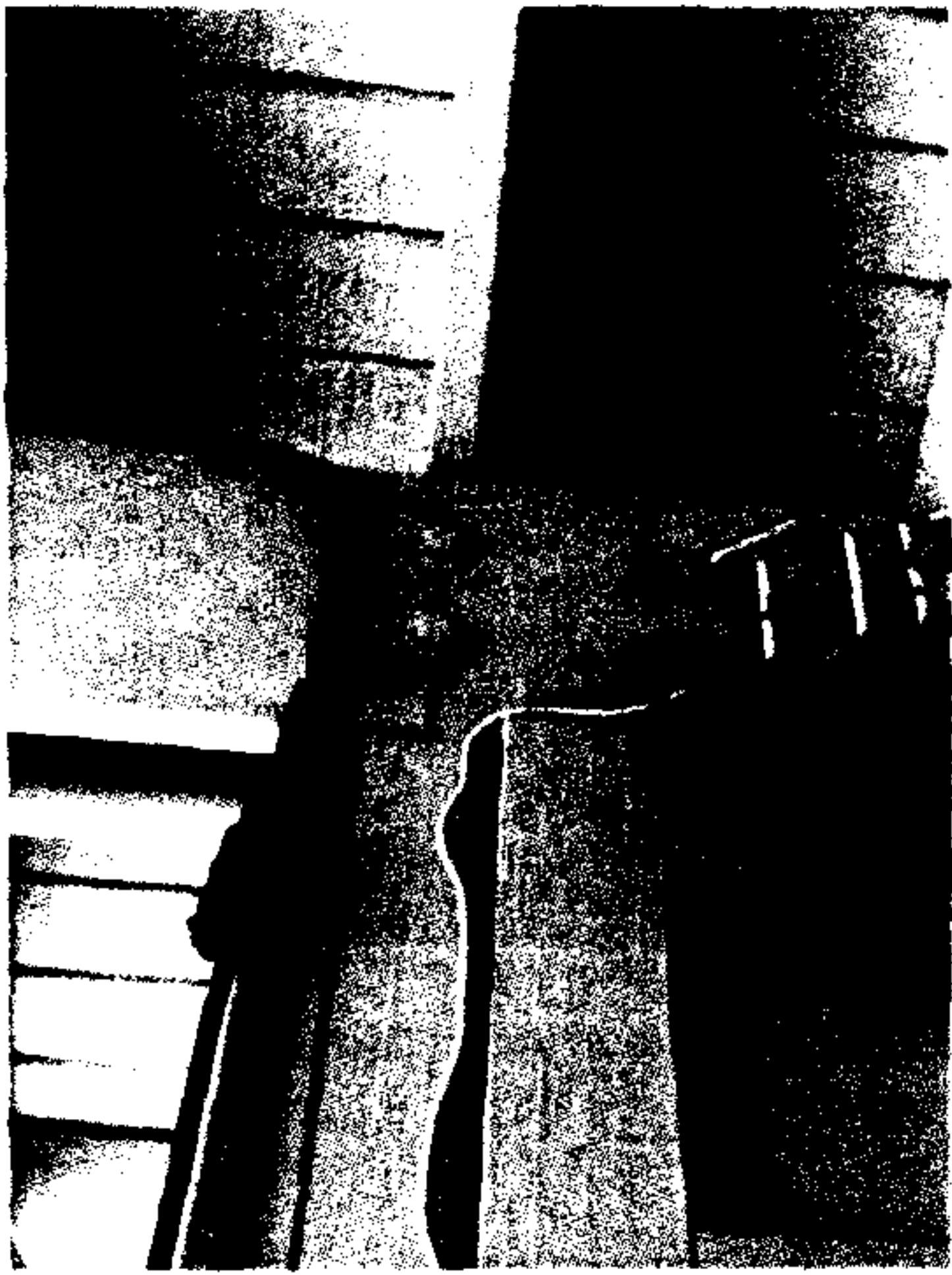
(Pic.7) Inadequate beam support at walkway canopy structure



(Pic.8) Inadequate beam support at walkway canopy structure



(Pic.9) Upstairs bar roof structure (no visible roof rafter uplift connections)



(Pic. 10) Upstairs bar wood beam (Inadequate connection)



(Pic. 11) Upstairs bar wood bracing (Missing bolt connector)



(Pic.12) Upstairs bar roof rafters (No visible roof uplift connections)



MEMO TO CHERI SMITH JUNE 18, 2020

CHERI, PLEASE PUT THE ATTACHED ASSIGNMENT AND MINOR MODIFICATION OF LEASE AGREEMENT  
AND CONSENT OF LESSOR

PERSONAL GUARANTY SIGNED BY TIMOTHY J. RYAN AND RODERICKI STUART GILL

LETTER OF CREDIT NO. 1500612 WITH RESOLUTION 20-100 FOR SAFE KEEPING.

GEORGE WALLACE.

---



IRREVOCABLE LETTER OF CREDIT NO. 1500612

June 12, 2020

**Applicant:** Boat House Key West, LLC  
1007 Simonton Street,  
Key West, FL. 33040  
Telephone (305) 294-1269

**Beneficiary:** Caroline Street Corridor and Bahama Village Redevelopment Agency  
of the City of Key West  
1300 White Street  
Key West, FL 33040  
Attention: City Manager  
Telephone (305) 809-3879

**Amount:** \$238,319.46 USD **Expiration Date:** June 12, 2021

Dear Beneficiary:

We hereby establish our Irrevocable Letter of Credit No. 1500612 ("Letter of Credit") in your favor for the account of the Caroline Street Corridor and Bahama Village Redevelopment Agency of the City of Key West in the amount of two hundred thirty-eight thousand three hundred nineteen and 46/100 U.S. Dollars (\$238,319.46) available at First State Bank of the Florida Keys. Your drafts will be accepted upon compliance of all terms below.

- a) Each draft must bear on its face clause "Drawn Under Letter of Credit No. 1500612 dated June 12, 2020 of First State Bank of the Florida Keys.
- b) The original of this Irrevocable Letter of Credit must accompany any draft.
- c) Partial drawings are allowed hereunder.

We hereby agree with the Beneficiary, drawers, endorsers and bona fide holders of all drafts under an in accordance with the terms of this Letter of Credit that they shall be honored on presentation in accordance with the terms of the Letter of Credit. Requests for payments must be directed to First State Bank of the Florida Keys, 1201 Simonton Street, Key West, Florida 33040, ATTN: Loan Servicing between the hours of 9:00 a.m. and 4:00 p.m. Eastern Standard Time on or before June 12, 2021. This Irrevocable Letter of Credit it not assignable or transferable.

It is a condition of the Letter of Credit that it shall be deemed to be automatically extended without amendment for additional periods of one (1) year from the expiration date hereof and any future expiration date unless at least ninety (90) days prior to any expiration date, we notify you by registered mail or by any other receipted means that we elect not to consider this Letter of Credit renewed for any such additional period, whereupon you may draw for the available amount under this letter of credit by means of your sight draft(s), drawn upon us, mentioning our Letter of Credit number.

This Letter of Credit sets forth the full terms of our undertaking, and such undertaking shall not in any way be modified or amended by reference to any other document whatsoever.

This Letter of Credit is governed by the laws of the State of Florida. Except so far as otherwise expressly stated, and is subject to the Rules on International Standby Practices – ISP 98, International Chamber of Commerce Publication No. 590 ("ISP98"), and to the extent not inconsistent with ISP98, the Uniform Customs and Practice for Documentary Credits (1995 Revision), International Chamber of Commerce, Publication No. 600.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kurt Lewin', written over a horizontal line.

Kurt Lewin

Senior Vice President, Senior Lender Officer



## GUARANTY

This Guaranty is made this 10<sup>th</sup> day of June 2020 in accordance with the Assignment and Modification of Lease Agreement (hereinafter Agreement) dated June 12, 2020 by and between the City of Key West Caroline Street Corridor and Bahama Village Community Redevelopment Agency (hereinafter City) Moro Management Inc. (Assignor) and Boat House Key West, LLC (hereinafter Tenant) and Roderick Stuart Gill and Timothy J. Ryan (hereinafter Guarantors) for the Demised Premises (hereinafter Premises) located at 231 #1 Margaret Street, Key West, Florida.

In consideration of granting the use of the Premises to Tenant, and other good and valuable consideration, Guarantors does hereby covenant and agree that:

- (a) The Guarantors do hereby absolutely, unconditionally and irrevocably guarantee to the City the full and complete performance of all of Tenant's covenants and obligations under the Agreement and full payment by Tenant of all rentals, additional charges and other charges and amounts required to be paid hereunder during the entire term. Guarantors' obligations hereunder shall be primary and not secondary and are independent of the obligations of the Tenant.
- (b) A separate action or actions may be brought and prosecuted against Guarantors, whether or not action is brought against Tenant or whether Tenant shall be joined in any such action or actions. At the City's option, the Guarantors may be joined in any action or proceeding commenced by the City against Tenant in connection with and based upon any covenants and obligations under the Agreement, and the Guarantors hereby waive any demand by City and/or prior action by City of any nature whatsoever against Tenant.
- (c) The Guarantors consent to forbearance, indulgences and extensions of time on the part of the City being afforded to Tenant, the waiver from time to time by City of any right or remedy on its part as against Tenant. The Guarantors hereby agree that no act or omission on the part of the City shall affect or modify the obligation and liability of the Guarantors hereunder.
- (d) This Guaranty shall remain and continue in full force and effect, notwithstanding (i) any alteration of the Agreement by parties thereto, whether prior or subsequent to the execution hereof, (ii) any renewal, extension, modification or amendment of the Agreement, (iii) any subletting of the Demised Premises or assignment of Tenant's interest in the Agreement.
- (e) The Guarantors' obligations hereunder shall remain fully binding although City may have waived one or more defaults by Tenant, extended the time of performance by Tenant, released, returned, or misapplied other collateral given later as additional security (including other guarantees) and released Tenant from the performance of its obligations under the Agreement.
- (f) In the event any action or proceeding be brought by City to enforce this Guaranty, or City appears in any action or proceeding in any way connected with or growing out of this Guaranty, then and in any such event, the Guarantors shall pay to City reasonable

attorney's fees, but only if City is the prevailing party. The Guarantors in any suit brought under this Guaranty do hereby submit to the jurisdiction of the courts of the State of Florida and to the venue in the circuit court of Monroe County, Florida.

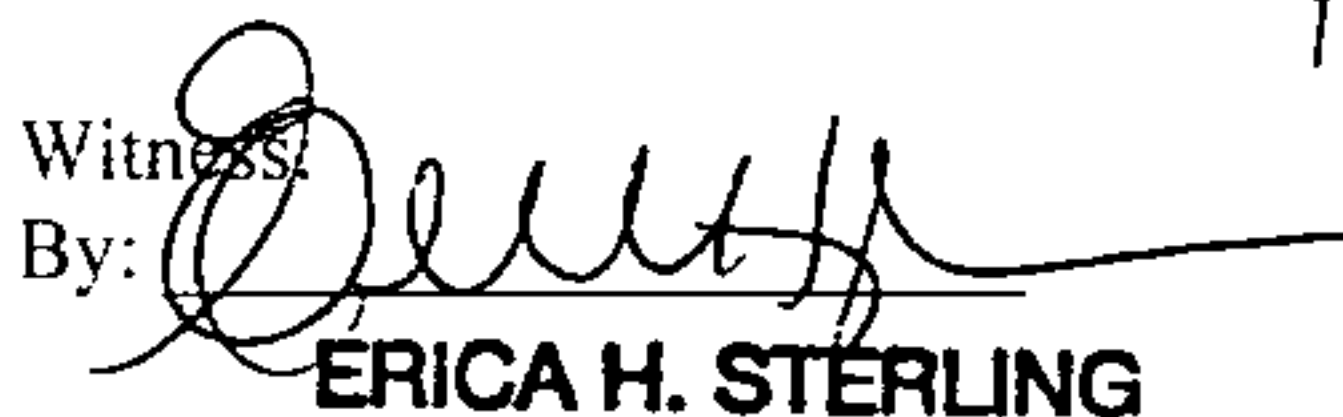
(g) This Guaranty shall remain in full force and effect notwithstanding the institution by or against Tenant or bankruptcy, reorganization, readjustment, receivership or insolvency proceedings of any nature, or in the disaffirmance of the Agreement an any such proceedings or otherwise.

(h) This Guaranty shall be applicable to and binding upon the heirs, representatives, successors and assigns of City, Tenant and the Guarantors.

IN WITNESS WHEREOF, the Guarantors have caused the foregoing Guaranty to be executed on this 12th day of June 2020.

Witness:

By:

  
**ERICA H. STERLING**

Name:

Date: June 12, 2020

Guarantor:

by:



Name: Roderick Stuart Gill

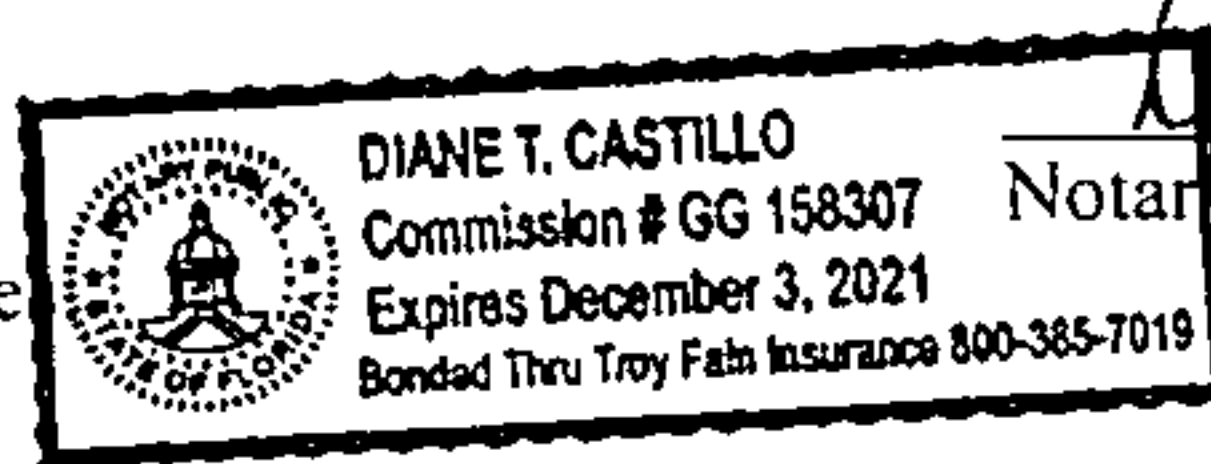
Date: June 12th, 2020

State of Florida       }  
County of Monroe     }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Roderick Stuart Gill, to me personally known or who provided FL Driver License as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he/she executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 12th day of June, 2020

My Commission Expires



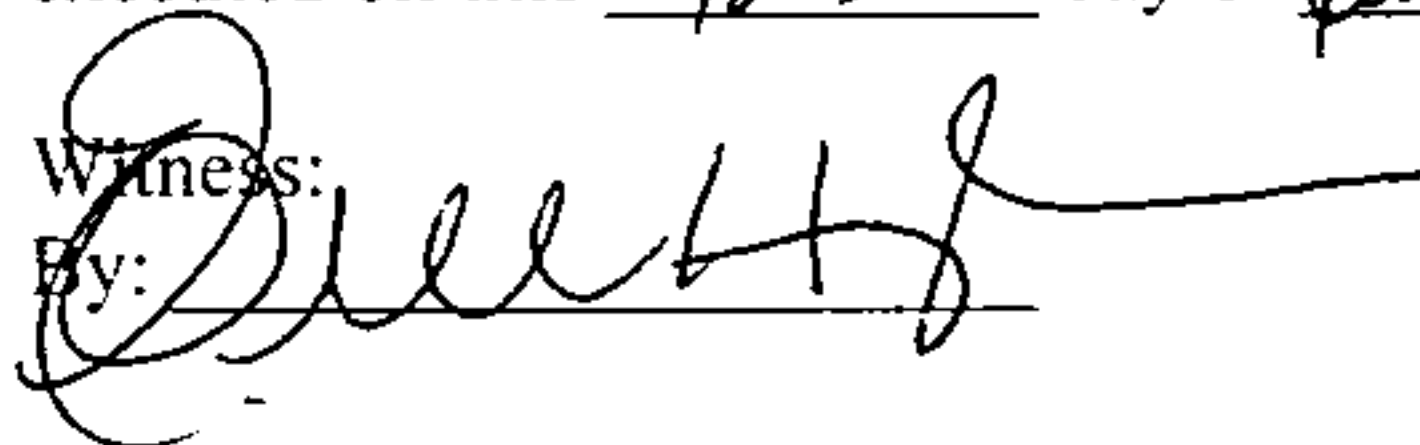
  
Notary Public, State of Florida

Diane T. Castillo

IN WITNESS WHEREOF, the Guarantors have caused the foregoing Guaranty to be executed on this 12th day of June 2020.

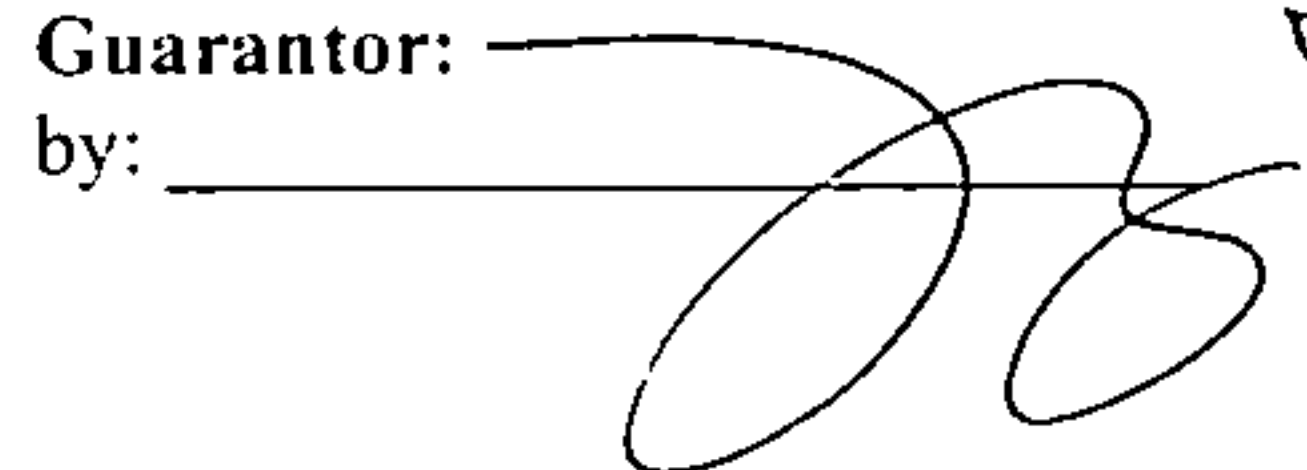
Witness:

By:



Guarantor:

by:





**ERICA H. STERLING**

Name: \_\_\_\_\_

Date: June 12, 2020

State of Florida       }  
County of Monroe     }

Name: Timothy J. Ryan

Date: June 12, 2020

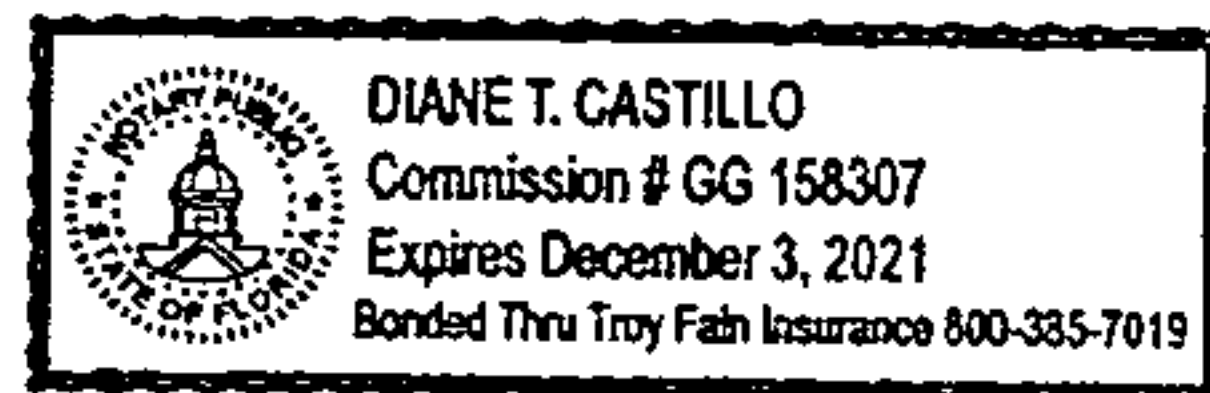
I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Timothy J. Ryan, to me personally known or who provided FL Driver License as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he/she executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 12th day of June, 2020

Diane T. Castillo  
Notary Public, State of Florida

My Commission Expires:

Diane T. Castillo



**ASSIGNMENT AND MINOR MODIFICATION OF LEASE AGREEMENT AND  
CONSENT OF LESSOR**

THIS ASSIGNMENT is made this 2nd day of June, 20 20 by and between Moro Management, Inc., as assignor, to Boat House Key West, LLC, a Florida Limited Liability Company, 700 Front Street, Key West, Florida, as assignee.

The assignor, in consideration of the covenants and agreements contained herein, assigns and transfers to assignee that certain lease agreement (hereinafter "Agreement"), dated September 8, 2016, executed by Pasquale W. Croce, as Lessee and by Craig Cates, Chairman of the Caroline Street Corridor and Bahama Village Community Redevelopment Agency, as Lessor. The Agreement pertains to real property located at 231 Margaret Street, Key West, in Monroe County, Florida, and more particularly described in Exhibit "A", which is attached hereto and incorporated by reference.

1. The assignor assigns and transfers unto the assignee all of its right, title, and interest in and to the Agreement and premises, subject to all the conditions and terms contained in the Agreement. Copies of the Agreement are attached hereto, incorporated by reference, and more particularly described as Exhibit "A".

2. The assignor herein expressly agrees and covenants that it is the lawful and sole owner of the interest assigned herein; that this interest is free from all encumbrances; and that it has performed all duties and obligations and made all payments required under the terms and conditions of the lease agreement.

3. The assignor herein expressly agrees to continue to provide to the lessor throughout the current term of the Agreement, a letter of credit from a federally insured bank in favor of lessor as security for the faithful performance by assignee of the terms, conditions and covenants of the Agreement. The amount of the letter of credit shall be equal to six months of the total rent pursuant to the Agreement.

4. The assignee herein expressly agrees herein to be liable for all the duties and obligations required by the terms of the lease agreement. The assignee expressly agrees herein to pay all rent due after the effective date of this agreement, and to assume and perform all duties and obligations required by the terms of the lease agreement.

5. This assignment is contingent upon the completion of the sale between the assignor and assignee of the business conducted on the subject premises.

6. No later than the effective date of this assignment, the assignee herein expressly agrees to provide to the lessor a letter of credit from a federally insured bank in favor of lessor as security for the faithful performance by assignee of the terms, conditions and covenants of the Agreement. The amount of the letter of credit shall be equal to six months of the total rent pursuant to the Agreement.

7. Assignee acknowledges that Landlord has completed all repairs described in paragraph 14.1 of the Lease Agreement.



8. The last paragraph of paragraph 10 of the lease relating to Assignor's family is hereby deleted.

9. In the event assignee files any form of bankruptcy, lessor shall be entitled to immediate termination of the automatic stay provisions of 11 U.S.C. §362, granting the lessor complete relief and allowing the lessor to exercise all of its legal and equitable rights and remedies, including, without limitation, the right to terminate this lease and dispossess assignee from the demised premises in accordance with Florida law. Additionally, assignee agrees not to directly or indirectly oppose or otherwise defend against the lessor's effort to gain relief from any automatic stay. The lessor shall be entitled as aforesaid to the lifting of the automatic stay without the necessity of an evidentiary hearing and without the necessity or requirement of the lessor to establish or prove the value of the leasehold, the lack of adequate protection of his interest in the leasehold, or the lack of equity in the same. Assignee specifically agrees and acknowledges that the lifting of the automatic stay hereunder by the appropriate bankruptcy court shall be deemed to be "for cause" pursuant to section 362(d)(1).

ASSIGNOR: Moro Management, Inc.

Susan Brubaker  
Witness as to Assignor

Pasquale W. Croce  
Pasquale W. Croce, President

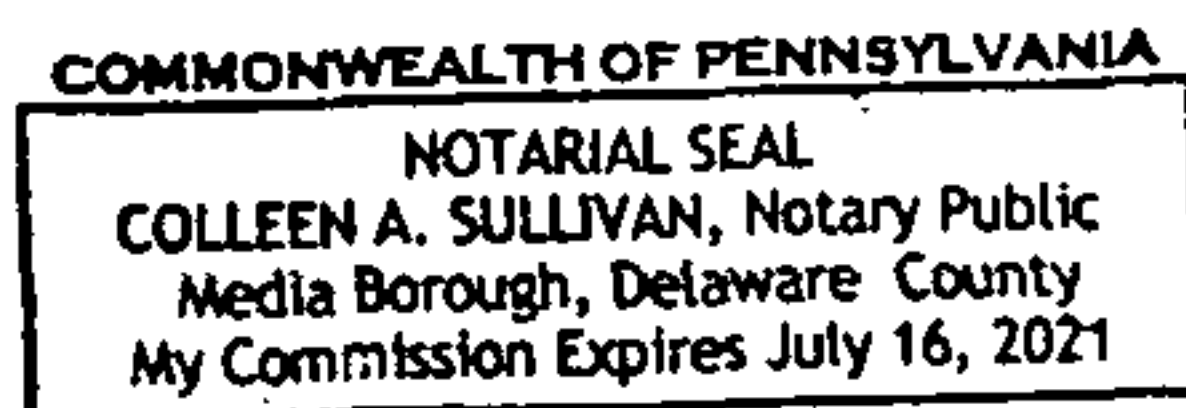
State of Pennsylvania  
County of DELAWARE

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Pasquale W. Croce, to me personally known or who provided PA DL as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 2nd day of June, 2020.

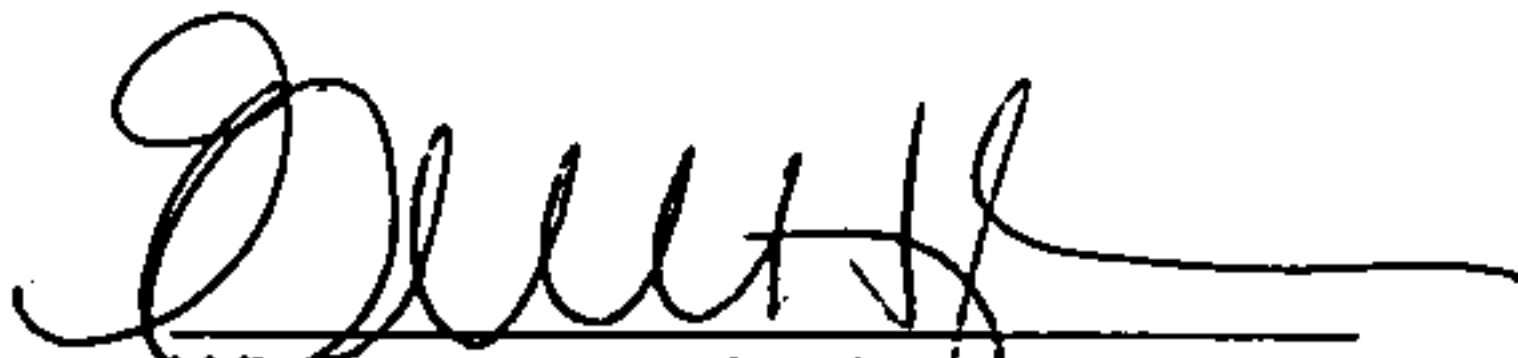
Colleen A. Sullivan  
Notary Public

My Commission Expires:

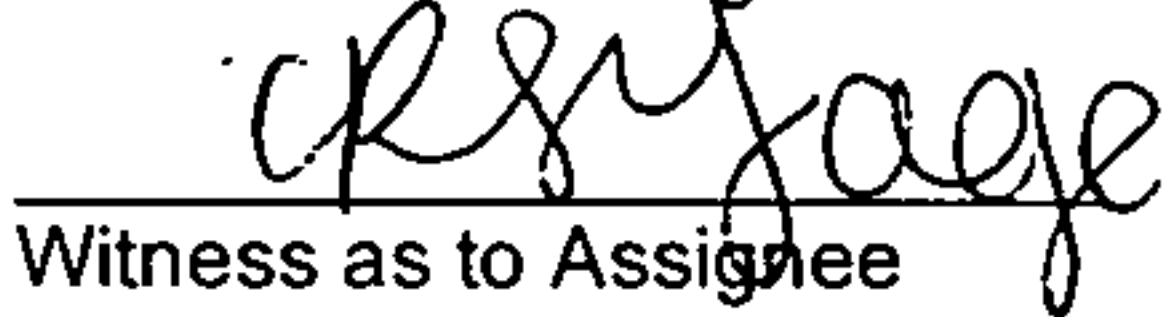


Signatures Continue on Next Page

ASSIGNEES: Boat House Key West, LLC



Witness as to Assignee



Witness as to Assignee

  
Timothy Ryan, Manager

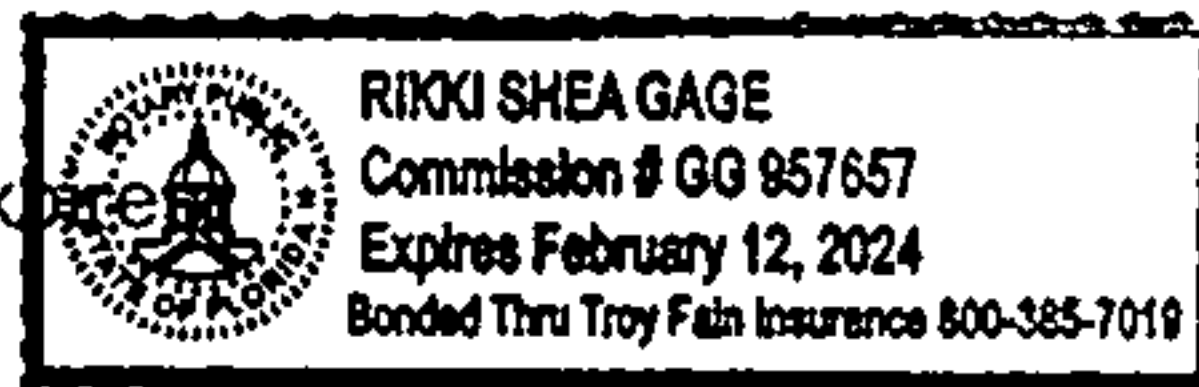
  
Roderick Gill, Manager

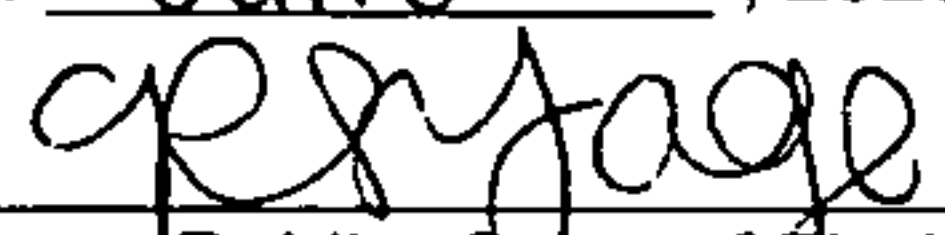
State of Florida }  
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Timothy Ryan, to me personally known or who provided FL drivers license as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he/she executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 12th day of June, 2020.

My Commission Expires:



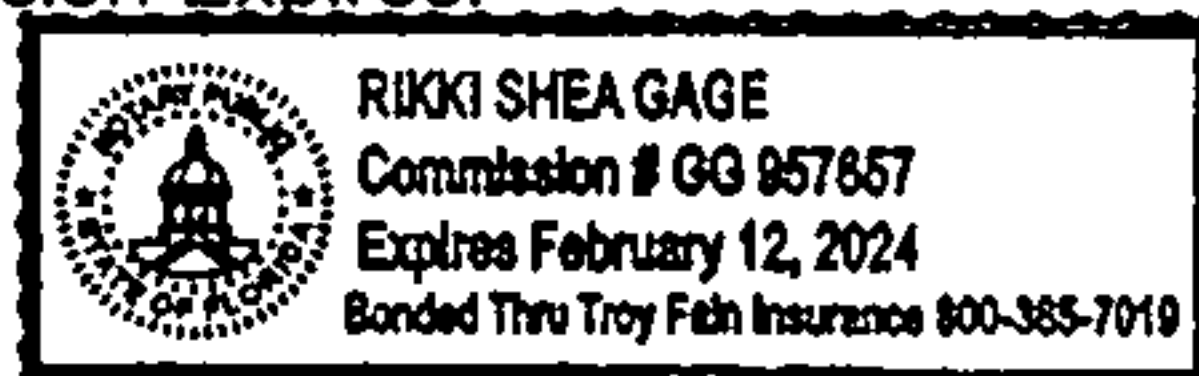
  
Notary Public, State of Florida

State of Florida }  
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Roderick Gill, to me personally known or who provided FL drivers license as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he/she executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 12th day of June, 2020.

My Commission Expires:



  
Notary Public, State of Florida

### CONSENT OF LESSOR

I, Teri Johnston, Chair, the Lessor named in the above assignment of that lease agreement executed by us on September 8, 2016, herein expressly consent to that assignment.

I also consent to the agreement by the assignee to assume, after the effective date of the assignment, the payment of rent and the performance of all duties and obligations as set forth in the lease and accept assignees as tenant in the place of Moro Management, Inc.

LESSOR: Caroline Street Corridor and  
Bahama Village Community  
Redevelopment Agency

Cheryl Smith  
Witness as to Lessor

Teri Johnston  
Teri Johnston, Chair

State of Florida     }  
County of Monroe    }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Teri Johnston, to me personally known or who provided \_\_\_\_\_ as photo identification, and who executed the foregoing instrument and she acknowledged before me that she executed the same for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 3rd day of June, 2020.

My Commission Expires:

[Signature]  
Notary Public, State of Florida

