

City Attorney Performance Evaluation by Mayor Teri Johnston

November 1, 2022

RATING SCALE DEFINITIONS (1-5)

- Unsatisfactory (1) -** The employee's work performance is inadequate and definitely inferior to the standards of performance required for the job. Performance at this level cannot be allowed to continue.

- Improvement (2) Needed** The employee's work performance does not consistently meet the standards of the position. Serious effort is needed to improve performance.

- Meets Job (3)** The employee's work performance consistently meets the standards Standard of the position.

- Exceeds Job (4) Standard** The employee's work performance is frequently or consistently above level of a satisfactory employee.

- Outstanding (5)** The employee's work performance is consistently excellent when compared to the standards of the job.

- Not evaluated (NE)** The employee's work performance was not observed during this evaluation period.

I. Performance Evaluation and Achievements

<u>1. City Commission/ Boards Relationships</u>	<u>NE</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
A. Provides sound legal advice to the City Commission, Boards, Commissions and City staff.	___	___	___	_X_	___	___
B. Reporting to the City Commission, Boards, and City staff is timely, clear, concise and thorough.	___	___	___	_X_	___	___
C. Accepts direction/instructions in a positive manner.	___	___	_X_	___	___	___
D. Keeps the City Commission, Boards, and City staff informed of issues relevant to the requirements of the position.	___	___	___	_X_	___	___
E. Dedicates the time necessary to the responsibilities of the position and is readily available to Commissioners.	___	___	___	_X_	___	___

Comments: I continue to be concerned about the lack of action by the City Attorney on requests and direction by the Commission. By not providing the Commission requested information on ownership of land disputed in the Dinghy Beach issue, this has continued to anger residents and embarrass the Spottswood family. The Commission and Sr. Management have received 176 emails (examples attached), numerous phone calls and public conflict on this matter over the past 2 1/2 years on an issue that should have been resolved had the Commission received the information on land ownership from our City Attorney. The City Attorney has been given direction since 2009 to negotiate or take legal action to open up Admirals Cut. In June of 2015, our City Commission unanimously approved resolution 15-212- (attached) directing the City Attorney to negotiate access across Admirals Cut. To date, the only action shared with the Commission is a meeting with the Tannex Development, L.C reported by then City Manager Greg Veliz around March 3, 2020. The Commission found the proposal reasonable (attached) yet no action has been taken since March 3, 2020 even though Pier B was not impacted by any of the 3 citizen referenda on cruise ships. Enforcing the lease (attached) with the Southernmost House Ltd. for the pocket park at 1400 Duval Street continues to be ignored by the City Attorney. The Commission by a 5-2 vote on November 19, 2018 approved the lease which required rent of 6.5% of tenants gross sales. The lease also depicts a sidewalk cafe with (17) tables and chairs generating revenue which is the same depiction made to the HARC Board, Planning Board and the City Commission prior to approval. To date (4 years later) **\$0 rent has been collected by the City of Key West.** The Commission approved that lease with the knowledge that the City would be foregoing approximately \$113,000 in annual parking revenue generated by the meters located in the 1400 block of Duval. I asked the City Attorney to address this lease issue months ago with no action.

Legal Research and Review

NE 1 2 3 4 5

A. Effectively identifies legal issues and performs research and investigations. ___ ___ ___ X ___ ___

B. Effectively reviews and interprets legal instruments, reports and documents prepared by departments. ___ ___ ___ X ___ ___

Comments: None required. The addition of Assistant City Attorney Nathalia Mellies has improved the information provided to the Commission particularly in the area of lien mitigation and e-vehicles. Nathalia has provided historical data to help us make consistent decisions.

NE 1 2 3 4 5

A. Works well with other employees. ___ ___ X ___ ___ ___

B. Meeting and handling the public while recognizing ethical obligation to the City. ___ ___ X ___ ___ ___

Comments: The City Attorney appears to have been in more altercations this past year with employees and the public. I have listened to multiple concerns from our public on this aggressive, combative attitude. It is important the we as City officials (both elected and appointed) and employees conduct ourselves in a professional, respectful manner to our co-workers and the public. The City Manager, Planning Director, Strategic Planning Consultant and our newly hired Director of Housing have been consistent recipients of the City Attorney's ire. This unprofessional treatment of our employees by the City Attorney has got to stop right now. I observe the negative impacts of this behavior more than the other Commissioners since I am physically in City Hall on a daily basis although many of the Commissioners have been made aware of this situation. The legal department did not participate in our 2021 Annual Report nor is listed on our city website under departments nor under the staff directory. It is as if this department is not part of the City Hall. This is in stark contrast to the County Attorney's visibility and connectivity to the community.

We have to get our house in order in City Hall to be able to provide our residents with quality services, transparent communication and equitable, just treatment for all of our residents. That is going to require that every department in City Hall work cohesively and respectfully together to achieve our common goal of serving our public. I expect more from our highest paid city employee.

4. <u>Communication</u>	<u>NE</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
A. Oral communication is clear, concise and articulate	___	___	___	_X_	___	___
B. Written communications (e.g.) contracts, resolutions, and other legal documents are clear, concise and accurate.	___	___	___	_X_	___	___

Comments:

5. <u>Quantity/Quality</u>	<u>NE</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
A. Amount of work performed.	___	___	___	_X_	___	___
B. Completion of work on time.	___	___	_X_	___	___	___
C. Accuracy.	___	___	___	_X_	___	___
D. Thoroughness.	___	___	___	___	_X_	___

Comments: The Commission continues to receive time sensitive information at such a late date that meaningful debate and options for the Commission are not available. One example is the approval of the Bahama Village Owner-occupant lease that was presented to us for a vote at the last possible meeting on July 6th even though it had been under internal review for 3 months. Resolution 21-091 unanimously approved by the City Commission on May 4th, 2021 was held in legal for 10 months before forwarding to the Mayor for signature. This resolution

directed the City Manager to work with the principals of the Frederick Douglass Black Educators Memorial to locate an appropriate space for a museum.

6. <u>Personal Traits</u>	<u>NE</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
A. Initiative.	___	___	___	_X_	___	___
B. Judgement.	___	___	___	_X_	___	___
C. Fairness and Impartiality.	___	___	_X_	___	___	___
D. Analytical Ability.	___	___	___	___	_X_	___

Comments: All 7 of us sitting on the dais need to receive the same information from the City Attorney.

7. <u>Litigation/Administrative Proceedings</u>	<u>NE</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
A. Provides timely and effective representation of the City's interest in litigation.	___	___	___	___	_X_	___
B. Controls and monitors costs and performance of retained outside legal counsel.	___	___	___	___	_X_	___

Comments: The City Attorney and previous Assistant City Attorney George Wallace have done an excellent job of defending the City of Key West in retaining our 300 early evacuation BPAS units. The fees for retaining outside counsel during the cruise ship referendum were within expectations. The City Attorney does a very good job of handling issues within the department and has recently completed his team with the hiring of Brandon Dimando this year.

II. Summary Rating

Overall Performance Rating – Considering the results obtained against established performance standards as well as overall job performance, the following rating is provided (circle one):

Unsatisfactory Improvement Needed **Meets Job Standards** Exceeds Job Standards Outstanding

Comments: We can all do a better job serving our citizens-including the City Attorney.

III. Future Goals and Objectives

Specific goals and objectives to be achieved in the next evaluation period:

- Negotiate the opening of Admirals Cut in the next 6 months.
- Bring back a new lease with the Southernmost House Limited for the pocket park to be discussed and voted on by the Commissions with community input. Due to the Commission by January 15, 2023.
- Work collaboratively with our Planning Director, Housing Director, City Manager, Licensing, the entire Commission and the public stakeholders to develop an effective ordinance to increase available long term rental units at the price point to allow our labor staff to live in or around Key West.
- Work collaboratively, respectfully and professionally with all city staff and members of the public.

 10-31-22
MAYOR TERI JOHNSTON

SHAWN D. SMITH, CITY ATTORNEY

ATTEST:

CHERYL SMITH, CITY CLERK

Dated _____

1 of 8

1

Teri Johnston

From: Christine E. Lininger <cheliner@msn.com>
Sent: Sunday, October 30, 2022 4:14 PM
To: Mayor E-Mail
Subject: [EXTERNAL] RestoreDinghyBeach - Petition Update

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mayor Johnston,

No answer is also an answer. Your not speaking out about City Manager McLaughlin's multiple attempts to defraud the public of the public recreational area known as Dinghy Beach, and your support of her actions to date requires attention. Yours and the media's attention. So here it is below in the link. To you and the 1000+ Petitioners who have a "purpose" for Dinghy Beach and whom City Manager McLaughlin has flat-out ignored in this issue.

You I have been notified on multiple occasions - by multiple individuals - that McLaughlin has made misleading, if not fraudulent, statements in her upcoming Nov. 1st Resolution City Commission Meeting Agenda Item #22 and yet, you have taken no action. No excuses to not do something about it, unless you're going to continue to praise her and commit the fraud too and sign that document knowing it's a lie and it is meant to defraud the public to benefit Spottswood.

UPDATE: "Mayor Johnston supports lying City Mgr McLaughlin giving Dinghy Beach to Spottswood - Nov. 1st".

<https://chng.it/TtPHkGmHrH>

Tired of the City's Corruption,

Christine Lininger

Teri Johnston

From: Christine E. Lininger <chelininge@msn.com>
Sent: Monday, October 24, 2022 12:40 PM
To: Mayor E-Mail
Cc: City Clerk External E-Mail
Subject: [EXTERNAL] Dinghy Beach Resolution - Questionnaire

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mayor Johnston,

As City Manager McLaughlin, with City Atty Smith's approval, has stated false information in her Dinghy Beach Resolution, and you are both responsible for this matter and tasked with doing your due diligence in the matter so the public is served best, the following questions - addressed to Manager McLaughlin and City Atty Smith for response prior to considering any resolution in favor of giving SH5 an easement - are required. The answers to these questions that have arisen with regard to the contents of proposed resolution and easement agreement and the issue of ownership and future management of "Dinghy Beach" in general are vital to make an informed decision and not support an unethical, even corrupt, resolution based on misinformation.

1. Is it true that, contrary to paragraph eleven (11) of the proposed resolution, Avirom's surveyor Mr. Chee-A-Tow withdrew his November 2021 opinion stating that he believed SH5 owned the property and that his final opinion dated 14/16 December 2021 - after viewing the 2007 Hildebrandt survey - is that the riparian line shown in the Hildebrandt survey appears to be "equitable"?
2. Is it true:
 - A.) that the 2007 Hildebrandt survey shows that the accretions to the west of the riparian line drawn on the Hildebrandt survey, including those beneath the fence, are publicly owned and do NOT belong to SH5? And
 - B.) That SH5/Robert Spottswood has submitted to FDEP State Lands the Hildebrandt survey, as recently as 2021, as correct? And FDEP accepted the Hildebrandt survey as correct in other legal land dealings with SH5?
3. Is it true that:
 - A.) FDEP's position is that a portion of the accretions in question are attached to land that was deeded to the City by the State in 1957? And
 - B.) The City's allowing the fence to stand (as a result of FDEP's determination that the property is not environmentally protected) completely ignores both their finding/position in "A" and Florida State laws 161.55 and 161.053 (below)?
4. Is it true that FDOT's position is that the accretions in question were not deeded to FDOT in 2018 when some land in that area was conveyed to FDOT by the City?
5. Is it true that, contrary to what is stated in paragraph twelve (12) of the proposed resolution, the Reece survey does not depict ownership by SH5 of the accreted land including the land beneath the fence and that, in fact, there is no line drawn on the Reece survey that shows a riparian boundary line over of the accretions between the SH5 parcel and the adjacent publicly owned parcel?
6. Is it true that SH5's attorneys wrote their ownership opinion without reference to a riparian line at all not to the 2007 Hildebrandt survey that shows that only a portion of the accretions attach to the SH5 parcel while the rest of the accretions - those to the west of the riparian line drawn on the Hildebrandt survey including the accretions beneath the fence - are shown as attaching to the adjacent public land parcel?

7. Is it true that staff has received multiple (at least five) sworn affidavits from residents who attest to the long-term consistent public use of "Dinghy Beach" prior to SH5 erecting its unpermitted fence and going back as far as 1983?

8. Is it true that case law *Daytona v Tona-Rama*, with the received sworn affidavits, supports the public's continued use of Dinghy Beach in its 2020, pre-unpermitted-fence perimeter? And would determine, along with FDEP findings, and a bathymetric survey with riparian line property determination (unlike the Reece Survey), that the property would remain public?

9. Is it true that staff is aware that a petition to "Restore Dinghy Beach", requesting the City to reopen the beach in its 2020 pre-fence form, as supported by case law *Daytona v Tona-Rama*, to public use - has almost 1100 signatures as of this date?

10. Is it true that Florida Statute 161.55 states:

161.55 (5) PUBLIC ACCESS.—Where the public has established an accessway through private lands to lands seaward of the mean high tide or water line by prescription, prescriptive easement, or any other legal means, development or construction shall not interfere with such right of public access unless a comparable alternative accessway is provided. The developer shall have the right to improve, consolidate, or relocate such public accessways so long as the accessways provided by the developer are (a) Of substantially similar quality and convenience to the public; and Fl. Statute 161.053 states:

161.053 (1)(a) The Legislature finds...it is in the public interest to preserve and protect them (beaches) from imprudent construction...interfering with public beach access...and the preservation of public beach access.

And that you have ignored these laws since this issue began in January 2020?

11. Is it true that Key West Comprehensive Plan states:

GOAL 5-1: - COASTAL MANAGEMENT.

Restrict development activities that would damage or destroy coastal resources. Protect human life and limit public expenditures in areas subject to destruction by natural disasters, but encourage policies which attract pedestrians, increase waterfront access, and reinforce the ambiance of the waterfront.

Policy 5-1.2.2: - Limit Impacts of Development and Redevelopment Upon Water Quality and Quantity, Wildlife Habitat and Living Marine Resources and Implement Policies for Shoreline Land Uses.

(...)

7.Shoreline Access. Access to the Atlantic Ocean and Gulf of Mexico shall be required in order to maintain access ways to the shoreline of the natural and renourished beach in order to enforce the 1985 Coastal Zone Protection Act for beach and shoreline access. State assistance shall be enlisted to achieve land required to appropriately store vehicles, provide rest room facilities, and access ways designed in a manner compatible with the shoreline ecosystem.

The City shall enforce applicable public access requirements and shall analyze alternative means for increasing parking facilities for waterfront activities along the shoreline as part of the City's traffic circulation management activities.

OBJECTIVE 5-1.8: - ACCESS TO PUBLIC BEACH, SHORELINE AND SCENIC VISTAS.

Beaches as well as scenic vistas of the shoreline and tidal waters shall remain unobstructed and, to the extent lawful, no barriers shall be erected which prevent pedestrian access along the shoreline.

Monitoring Measure: Percentage of shoreline that is accessible to the public.

Policy 5-1.8.1: - Publicly Funded Ocean Front Development to Provide Beach Access.

Publicly funded projects that improve, change or in some way support shore front development shall provide for public access to the shoreline, as well as the necessary support facilities and services, such as boardwalks, beach/dune

walkovers, parking lots, restroom and refuge collection. [Has Mr. Spottswood gotten any grants for his property at the Marriott?]

Policy 5-1.8.2: - Consideration of Scenic View in Site Plans.

Land Development Regulations shall continue to enforce stipulations requiring site plans for ocean front sites to include design measures which provide, enhance and preserve scenic views of the water for the general public from public rights-of-way.

Structures along the shoreline shall be regulated through Land Development Regulations which prevent walling off of waterfront views. The site plan and building criteria shall give priority to minimizing impact on natural coastal resources. Similarly, applicants desiring to develop, establish or expand temporary or permanent structures, uses, and related activities within tidal waters extending 600 feet from the City's corporate limits shall be required to file a site plan which ensures that such activities do not encroach upon a scenic waterfront view or a scenic view of tidal waters. Development standards shall also include a coastal impact analysis consistent with provisions of Policy 5-1.1.4.

And that you have ignored this Plan since this issue began in January 2020?

12. Is it true, Manager McLaughlin, you were asked, and agreed, in a meeting with the Mayor and Ms. Lininger, to obtain a bathymetric survey from a mainland surveyor to insure the survey would list the required public/SH5 riparian line and be performed without any question of impropriety?

13. Is it true Manager McLaughlin and City Attorney Smith, as is widely held in belief, that you are refusing to engage in formal proceedings to determine - legally - the ownership of the property in question because you are beholden to SH5/Robert Spottswood and your loyalty lies with him and not, as your Oath of Office requires, with the City and those whom you represent?

14. Is it true Manager McLaughlin and City Attorney Smith that you have been notified by multiple members of the public - on at least half a dozen occasions - that your actions are in violation of Florida State laws and your Oath of Office?

Without inquiry and (honest) answers to these questions, you can not make an informed opinion in this matter and, by not asking these questions of responsible parties, you violate your Oath of Office and support defrauding both the City of valuable public waterfront property and the public of the continued use of this valued public recreational area.

RestoreDinghyBeach.

Sincerely,

Christine Lininger

Cc: City Manager McLaughlin
City Atty Smith
City Clerk Smith
Florida Commission on Ethics

Teri Johnston

From: Christine E. Lininger <chelininge@msn.com>
Sent: Monday, April 27, 2020 2:23 PM
To: Shawn D. Smith
Cc: Robin L. Nugent; Billy Wardlow; Patti McLaughlin; Troy Montero; Jim J. Young; elizabeth.jett@dot.state.fl.us; Frank Betz; Frank Blasberg; Sean Brandenburg; Teri Johnston; Madelyn L. Marrero
Subject: Re: Key West Beach Re-openings/3841 N. Roosevelt Boulevard Marriot Beachside Illegal Annexation of FL State Sovereign Property

Mr. Smith,

I am writing to you today to clarify the situation in the matter regarding 3841 N. Roosevelt Boulevard Marriott Beachside's illegal annexation of FL State Sovereign property along with addressing a couple of directly-related City issues.

Now that the City has begun re-opening public areas to the public, one area - known to locals as 'Dinghy Beach' adjacent to 3841 N. Roosevelt Boulevard Marriott Beachside - has since February remained closed to the public due to the Marriott Beachside's illegal land-grab and installation of fencing. According to KWCP Sgt. Blasberg, with whom I spoke Friday, Mar. 27, 2020, in regards to clarifying the situation arising from the Marriott Beachside's illegal annexation of FL Sovereign Property, you, the City Attorney, had immediately prior to his and my conversation, notified Marriott Beachside management, that - again- the property they knowingly illegally annexed in the past two months was, in fact, FL State property and that the fencing and landscaping purposefully set to deny public access to the submerged or upland property or FDOT property was illegal and to be removed. Is this statement true? If the statement is true, who at Marriott management was notified and did you give them a date by which they had to remove it? If a date was given, what is that date? If no date was given, I ask that you now, if legally responsible, ask them to remove the fencing and landscaping from the newly annexed property immediately or, if you are not legally able to do so, to forward the request to whomever is responsible for such a matter so that the area may be accessed to the public as soon as possible. I'd appreciate an update on this procedure, please.

The Marriott Beachside has been, during this 'Safer at Home' time, has had staff on property diligently taking care of other issues and at this time certainly has ample staff and time to tend to resolving this issue now without delay or further excuses. Please note if, and when, Marriott Beachside has stated a date which the fencing and landscaping will be removed.

Now, as far as one of the other situations referenced above: the interaction on the beach between Officer Betz and myself on 29 March 2020 - Marriott Beachside had absolutely no business calling me or anyone else out on 'trespassing' on noted property when they themselves had received citation from City Code that they had illegally placed fencing and landscaping on that property without permit and were updated that FL State Officials were also notified in the matter of Marriott illegally annexing Sovereign lands. However, at issue here is not Marriott Beachside's poor management and community-relation skills, but the how the situation was handled when the City was involved in the matter on that date.

In clarification of this matter, I would like to offer some insight here since there seemed to be some confusion on the City's behalf: On 27 March, 2020, I arrived on the beach from FLDOT property and was taking a break from shopping for provisions and waiting for my transportation to NAS Boca Chica and trying to get some social-distancing physical therapy and exercise to stay well for my 1st Responder job. Mr. Lequire, a friend and former neighbor, seen in the water at the time, was anchored off the beach and with his prop off and tools out, was clearly providing repairs to his vessel, which Maritime Law, clearly trumping some biased, discriminating City Ordinance, certainly allows him to do. So, any notations concerning anyone breaking any City Ordinances in this matter did not and do not apply. In fact, the people (Marriott Beachside management) who lied to KWPD were actually in the wrong and were ass-u-me-d to be right and not put in their place until after the fiasco was over - disgraceful.

Quite frankly, I am outraged that at this most difficult time, the KWPD would once again attempt to wrongfully arrest a citizen without asking questions, in a most professional manner, first.

Officer Betz's ass-u-me-ing that just because a business put up a fence, wolf-cried 'trespassing' and called, in bad faith, the police first, that the accused individual was the perpetrator and not the accuser.

In this situation, Officer Betz not only denied a citizen their legal rights and wrongfully threatened and attempted to wrongfully imprison a law-abiding citizen (potentially costing the City/taxpayers a great deal of money in legal fees), but also willingly put a citizen's and his own life in jeopardy because his training to properly handle an interaction like this failed miserably.

Officer Betz, in his righteousness for the Marriott 'wronged', demanded - I - show proof the property was FL State, yet requested no physical proof from Marriott Beachside Management showing, in fact that the property was theirs. Officer Betz also did not ask Marriott personnel if any disputes in the matter were at hand before he even approached me. Officer Betz did also not seriously consider at any time if he had jurisdiction over the area in question and certainly not the area where Mr. Lequire was located.

I'm not asking for an apology, although one should be forthcoming, I'm asking you to fix this situation so it doesn't happen again.

Treating ALL citizens/residents/persons equally and professionally is supposed to be the norm, not merely an ideal, as the City works for ALL citizens/residents/persons and ALL have rights.

As I stated to Officer Betz, and Sgt. Blasberg, as a former district resident and now visitor of the area, I have spent days and dollars cleaning 'Dinghy Beach' from the trash left by those who clearly don't care about the environment. I understand the problem as much as, if not more so, than police who are called on occasion to remove those individuals disrespectful to others and the area, However the Marriott Beachside's not reaching out to neighbors, Councilperson and others affected and instead closing off the beach to ALL and benefiting themselves alone, is not the solution to a problem clearly effecting the community as a whole, and quite frankly, I don't appreciate a KWPD officer knowingly supporting a person or business that willfully discriminates against others and is in violation of Codes to the detriment of law-abiding resident/citizens/taxpayers who are doing their part in keeping the environment clean and nice to use for others. I hope that KWPD will take this opportunity to review their communications policies and remind officers that their service is to ALL citizens, not just a select privileged few, and that ass-u-me-ing anything until all the facts are in is highly unprofessional and requires improvement.

It is a shame that the Marriot Beachside management has repeatedly refused to take or return my calls or emails in this matter, in addition to denying their responsibility to others in the community and simply ass-u-me-d that any complaints would quietly disappear and they could simply do as they pleased with no counter to their actions, as they would have found both a boating and land-based community that has tried and is

ready and willing to do its part in resolving the issues ALL affected face. While I hope that Marriott Beachside management and owners will take the time to now promptly socially distance their fence and isolate their ill-placed landscaping to the compost heap while they watch a few old episodes of 'Mr. Roger's Neighborhood' and pick up a few pointers from Fred in how to work together with their neighbors, the City will note this issue so that when this mess is really over, the long-standing issue that faces the area can properly be addressed - together for the benefit of ALL.

Should you, or any other City entity have questions in the matter, please feel free to contact me at your convenience at the above-listed email address. I look forward to your reply.

Sincerely,
Christine Lininger

From: Jim J. Young <jjyoung@cityofkeywest-fl.gov>
Sent: Thursday, March 12, 2020 5:18 PM
To: Christine E. Lininger <chelininge@msn.com>
Cc: Robin L. Nugent <rnugent@cityofkeywest-fl.gov>; Billy Wardlow <bwardlow@cityofkeywest-fl.gov>; Patti McLauchlin <pmclauchlin@cityofkeywest-fl.gov>; Troy Montero <tmontero@cityofkeywest-fl.gov>
Subject: RE: 3841 N. Roosevelt Boulevard

Elizabeth Jett, PE
Florida Department of Transportation
District Maintenance (District Six)
1000 NW 111th Avenue
Miami, FL 33172
Office: (305) 951-0015
Elizabeth.Jett@dot.state.fl.us

JY

From: Christine E. Lininger <chelininge@msn.com>
Sent: Thursday, March 12, 2020 4:03 PM
To: Jim J. Young <jjyoung@cityofkeywest-fl.gov>
Cc: Robin L. Nugent <rnugent@cityofkeywest-fl.gov>; Billy Wardlow <bwardlow@cityofkeywest-fl.gov>; Patti McLauchlin <pmclauchlin@cityofkeywest-fl.gov>; Troy Montero <tmontero@cityofkeywest-fl.gov>
Subject: RE: 3841 N. Roosevelt Boulevard

Mr. Young,

It's not a complicated issue.

They knowingly blocked off State
Property to the Public and are still
blocking it off

AND

there is no "after the fact" permit here in issue since they're not permitted to put it up in the first place.

Resolving the issue = removing the fence and the landscaping now.

Period. Not complicated.

No working with them necessary.

They got notice, they've got ___ days or it goes and they get the bill.

If the City is unwilling to firmly enforce the laws and protect the residents and citizens rights -

Perhaps the FDOT will be more convincing and able to assist the Marriott/Spottswoods in getting off their butts and tearing the fence down as fast as they put it up and releasing the property back to the public as fast as they stole it?

Please relay to me Mr. Montero's contact at FDOT.

Sincerely,
Christine Lininger

"Jim J. Young" <jjyoung@cityofkeywest-fl.gov> wrote:

JY

From: Christine E. Lininger <chelininge@msn.com>

Sent: Thursday, March 12, 2020 3:05 PM

To: Jim J. Young <jjyoung@cityofkeywest-fl.gov>

Cc: Robin L. Nugent <rnugent@cityofkeywest-fl.gov>; Billy Wardlow <bwardlow@cityofkeywest-fl.gov>; Patti McLauchlin <pmclauchlin@cityofkeywest-fl.gov>; Troy Montero <tmontero@cityofkeywest-fl.gov>

Subject: Re: 3841 N. Roosevelt Boulevard

Mr. Young,

Forgive me for not being more clear -

You issued notice for not having a permit - does the notice include a date by which the fence/landscaping needs to be removed?

Yes. The notice states to either remove the fence sections built without the benefit of a permit or to obtain an after the fact permit. Our mission is to work with the respondent(s) in achieving voluntary compliance.

If "Yes", when exactly is that date? And

what date is the follow-up check to

insure compliance? **Since this is a complicated issue a definitive time has not been set. As long as the respondent(s) are working on resolving the issue the City will work with them, as we do in all cases.**

If "No", when will you do so (or is the

FDOT responsible for

1 of 2



RESOLUTION NO. 15-212

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING AND DIRECTING THE CITY MANAGER AND THE CITY ATTORNEY TO NEGOTIATE FOR ACCESS ACROSS ADMIRALS CUT; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, with the development of the Truman Waterfront underway, the City Commission wants to complete a long-contemplated public access walking path between Mallory Square and the Truman Waterfront; and

WHEREAS, the lack of public access over one privately-held parcel prevents pedestrian passage around the perimeter of this sunset corner of Key West; and

WHEREAS, access across Admiral's Cut would serve an important public purpose, providing access to the waterfront history of Key West, as well as a scenic and efficient pedestrian route around the most dense commercial and residential part of town; and

Passed and adopted by the City Commission at a meeting held
this 16 day of June, 2015.

Authenticated by the presiding officer and Clerk of the
Commission on June 17, 2015.

Filed with the Clerk June 17, 2015.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Yes</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK

TANNEX DEVELOPMENT, L.C.
1001 East Atlantic Avenue
Suite 202
Delray Beach, Florida 33483

March 3, 2020

Greg Veliz
City Manager
City of Key West, Florida
1300 White Street
Key West, Florida 33040

Dear Greg:

As a follow up to our meeting, we have outlined some of the basic discussion points to be negotiated between Tannex Development, L.C. ("Tannex") and certain of its affiliates (collectively, the "Tannex-Related Entities") and the City of Key West ("City") for the joint use of an area (the "Joint Use Area") secondary access to the Admiral's Slip over and across real property owned by the Tannex-Related Entities.

- Any proposed agreement would provide for the joint use of a footbridge to connect the Truman Waterfront Park to the Joint Use Area, which footbridge would be accessed via David's Way as much as possible through signage etc. to avoid as much impact on the Margaritaville Resort & Marina (the "Resort") as possible.
- Any proposed agreement would provide for the installation of certain access control devices to limit access (or to permit access) to the Joint Use Area.
- Any proposed agreement would permit the Tannex-Related Entities and their respective affiliates to exercise lawful self-help rights to prevent access to and the use of the footbridge and the Joint Use Area by Navy Mole cruiseship passengers and any ferry passengers or people arriving by water or any other violation of any future agreement.
- Any proposed agreement would provide that the following facilities: (a) the footbridge, (b) all access control devices, systems, signage and equipment, (c) security cameras, lighting and equipment, and (d) all costs, charges and expenses incurred in connection with repairing, insuring and providing custodial services, maintenance, reserves and upkeep of the footbridge, shall be at the City's sole cost and expense.
- Any proposed agreement shall further establish a method of sharing operating costs and the relative responsibilities of the users with respect to such joint use such that Tannex will be primarily responsible for incurring the costs, charges and expenses (collectively, but excluding all reserves, maintenance and repair costs, charges and expenses

attributable to the footbridge) of the maintenance, reserves, repairs, replacement and liability and property insurance required, and any insurance losses with respect to such joint use and Tannex shall invoice the City for 50% of such costs incurred.

- Any proposed agreement would provide that the cost of utilities would be borne equally by the Tannex-Related Entities and the City.
- Any proposed agreement would provide that: (a) Tannex would supervise and coordinate all construction services required for the design, construction and installation of the all joint use facilities including, without limitation, the footbridge, (b) Tannex will furnish to the City each construction bid received by it, (c) all construction services to be performed shall be designed, inspected and reviewed by a duly licensed architect or engineer, and (d) the City shall cause to be issued all permits required to permit the construction, maintenance and operation of all such facilities.
- Any proposed agreement would provide that Tannex shall have responsibility for the operation and management of the joint use facilities at all times. Such facilities will be operated: (a) to permit pedestrian access to the footbridge and the Joint Use Area by the general public (other than any cruiseship passengers, ferry boat passengers or any people arriving by water) only during those hours between 8:00 AM (Key West time) and sunset or 8:00 PM (whichever first occurs) and such use shall be subject to rules and regulations to restrict or deny the general public access to the footbridge and the Joint Use Area for the duration of special events which (by virtue of increases in pedestrian traffic and/or by virtue of the kinds or types of activities which characterize such special event(s)) Tannex deems detrimental to the Resort, (d) or if the Resort has special resort events in the Joint Use Area which would require the closing of the access bridge to deny the general public access, and (e) except with respect to registered guests of the Resort, to deny the general public access to the Resort and its facilities.
- Any proposed agreement would provide that the City: (a) recognizes that the increase in pedestrian traffic over and across Harbor Walk when access to Joint Use Area is available to the general public may increase the need for police protection and the City will agree to provide such additional law enforcement personnel and facilities as are required to ensure that full service law enforcement personnel and facilities at or in the immediate vicinity of the Joint Use Area are adequate, and (b) agrees that when the Joint Use Area is closed or otherwise not available to the public, that it will enforce trespass laws to prevent unauthorized access.
- Any proposed agreement would provide that the sole use to be made of the Joint Use Area by the City is that the City may allow pedestrian access (and only pedestrian access) by the general public over and across the Joint Use Area on a nonexclusive basis and for no other use or purpose. "Pedestrian access" means only foot traffic and ADA approved transportation, and does not allow bicycles, scooters, carts, motorized or non-motorized vehicles or equipment on wheels, rollers, casters or otherwise, are allowed access. Similarly, no animals other than companion dogs accompanying their masters are

allowed to walk on the Joint Use Area. Nothing in the proposed Agreement shall be construed as a limitation on the right of the Tannex-Related Entities or their respective affiliates to restrict or control pedestrian access on their respective properties.

- Any proposed agreement would provide that the City assumes all risks of damage or injury to its agents, employees and/or participants and to the general public and the City assumes all liability for and the City agrees to hold harmless, defend, and indemnify the Tannex-Related Entities and their respective affiliates and their respective stockholders, members, agents, officers, managers, employees and representatives against all actions, claims, or demands for injury, death, loss, or damages regardless of fault or cause, by anyone whomsoever (except to the extent that such injury, death, loss, or damage was due solely to the gross negligence or willful acts or omissions of the Tannex-Related Entities, respective affiliates or their stockholders, members, agents, officers, managers, employees and representatives), whenever such injury, death, loss, damage, or claim is a consequence of, or arises out of, or is incidental to, the use of the Joint Use Area by the City and/or the general public.
- Any proposed agreement would provide that the City will not: (a) cause or allow the Truman Waterfront Park plans to be altered or modified or otherwise changed, and/or (b) seek to acquire the Joint Use Area by condemnation or eminent domain proceedings, and the City shall cause to be recorded in the Public Records of Monroe County, Florida such document as is required to render such no-change agreement to run with the Truman Waterfront Park in perpetuity and to render such agreement of the City to not invoke the power of condemnation or eminent domain with respect to the Joint Use Area to run with the Joint Use Area in perpetuity and such recorded document shall further provide that in the event of any violation by the City of either of such agreements the Tannex-Related Entities shall have (in addition to all other remedies available under applicable law) the right to terminate the agreement and such rights as are granted to the City under the proposed agreement shall automatically cease.
- We also propose that the City cooperate with the following request:
 1. We would like to renew our existing Key West Express lease for ten years with two five (5) year options to further extend. In the event the City ever terminates the Key West Express lease, we would like to confirm our right to operate the Key West Express from the Resort.
 2. We want to negotiate and enter into a development agreement to transfer transient building permit allocations and licenses to develop additional hotel rooms on our land at Pier Bravo.

The contents of this letter are in the nature of settlement negotiations and none of the statements made or contained herein shall be introduced or otherwise used as evidence in any civil action or otherwise used for any evidentiary purpose whatsoever.

Please review the foregoing proposed terms and advise me at your convenience of your thoughts and suggestions. We look forward to working with you.

Yours truly,
TANNEX DEVELOPMENT, L.C.

By:

A handwritten signature in black ink, appearing to read "Mark Walsh", written over a horizontal line.

Mark Walsh
Manager

1 of 21

4

Lease Agreement

between

CITY OF KEY WEST

as Landlord

and

**SOUTHERNMOST HOUSE LTD,
a Florida limited partnership**

as Tenant

Dated 11-19-18

Passed and adopted by the City Commission at a meeting held
this 21st day of August, 2018.

Authenticated by the Presiding Officer and Clerk of the
Commission on 19th day of November, 2018.

Filed with the Clerk on November 19, 2018.

Mayor Craig Cates	<u>Yes</u>
Commissioner Sam Kaufman	<u>No</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Richard Payne	<u>Yes</u>
Commissioner Margaret Romero	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>No</u>



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK

THIS LEASE is made as of the 19TH day of NOVEMBER, 2018 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:
CITY OF KEY WEST
1300 WHITE STEEET
P.O. BOX 1409
KEY WEST, FL 33040

1.2 TENANT'S NAME & MAILING ADDRESS:
SOUTHERNMOST HOUSE LTD,
a Florida limited partnership
1400 Duval Street
Key West, FL 33040

TENANT'S TRADE NAME: **Southernmost House**

1.3 GUARANTOR (S) AND ADDRESS:
MICHAEL HALPERN
209 Duval Street, Key West, FL 33040

1.4 DEMISED PREMISES (Section 2): as per EXHIBIT "A" located at 1400 Duval Street (hereinafter referred to as the "Property"),

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

1.5.1 COMMENCEMENT DATE: This Lease is effective upon execution and shall commence in accordance with paragraph 3 "TERM". Rent shall be due at such time as the park is completed and the sidewalk café contemplated herein opens for business as set forth hereunder.

1.5.2 RIGHT TO TERMINATE: Upon default as provided herein

1.5.3 RIGHT TO RENEW: Per Key West Code of Ordinances Sec.2-941 Leases or as amended

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.

1.6.1 ADDITIONAL RENT: (Section 4.4 (e)): Tenant shall pay Sales, Use or Excise Taxes 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: Rent shall be due no later than 10 days after the completion of each month.

- 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 and One-Half Percent 6.5% of TENANT'S Gross Sales as defined herein.
- 1.6.5 HOLD OVER RENT: As provided by Section 83.53 Florida Statutes, as may be amended, based upon the Minimum Base rent during the last year of the lease term.
- 1.6.6 RENT CONCESSIONS: None
- 1.7 SECURITY DEPOSIT (Section 5): In lieu of a security deposit and fixed rent, Tenant shall be required to complete the park according to plans approved by the Key West Planning Commission, Key West Tree Commission, Key West HARC, and City Commission. Tenant shall fully pay all costs of planning the park, including architectural fees, engineering fees, and landscape architecture, and shall totally pay for the construction and completion of the park pursuant to the approved plans.
- 1.8 PERMITTED USE (Section 6): Operation of a 1750 square foot sidewalk café with accessory alcohol sales.
- 1.9 INSURANCE: (Section 9) \$2,000,000 aggregate and \$1,000,000 per occurrence commercial liability minimum, all risk property insurance, including property damage, hazard and theft coverage, workers compensation and employer liability coverage as required by the provisions of Florida statute, Full liquor liability with \$1,000,000.00 minimum limit.
- 1.10 ASSIGNMENT OR SUBLETTING: (Section 10) Permitted with LANDLORD'S approval
- 1.11 UTILITIES: (Section 17) TENANT shall pay for all utilities including garbage, electricity, gas, water and sewer serving the Demised Premises.

INITIALS: LANDLORD JS

TENANT [Signature]

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 defined in Exhibit "A".

3. **TERM** - The term of this Lease shall be for ten (10) years which shall commence upon completion of the park, and occupancy by the Tenant. 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 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.

Right to Terminate – Upon default as provided herein

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** - Rent shall be 6 ½% of gross sales as defined herein. Rent shall be due monthly and shall be paid 10 days after each month ends.

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) Within 10 days after the completion of the first month of sidewalk café operation, Tenant shall pay 6 ½% of gross sales to the Landlord as rent. This payment, based upon gross sales of each previous month shall be due on the 10th day of the following month throughout the full Lease term of this Lease.

(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, as Additional Rent, 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, and all other improvements together with any and all expenses incurred by LANDLORD in negotiations, appealing or contesting such taxes and assessments Ad valorem real property taxes for each calendar year hereunder shall be paid by the TENANT directly to the taxing authority in the month of November of that calendar year and proof of payment of same shall be delivered to LANDLORD promptly after payment.

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 the amount thereof, as the case may be, as additional rent, the same shall be payable in the manner provided for in the preceding paragraphs. Substitute taxes as referred to above in this Section shall include, without limitation, any surtax on parking spaces.

Initial here:

LANDLORD  _____ TENANT  _____

(d) Within twenty (10) 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. 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, provided they have been included in Gross Sales; and (ii) the amount of any sales tax levied upon retail sales and payable over to the appropriate governmental authority. 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.

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. 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 as provided by Section 83.53 Florida Statutes, as may be amended, based upon the Minimum Base Rent during the last year of the lease term 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 - SECURITY DEPOSIT (Section 5):** In lieu of a security deposit and fixed rent, Tenant shall be required to complete the park according to plans approved by the Key West Planning Commission, Key West Tree Commission, Key West HARC, and City Commission. Tenant shall fully pay all costs of planning the park, including architectural fees, engineering fees, and landscape architecture, and shall totally pay for the construction and completion of the park pursuant to the approved plans.

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

Operation of a 1750 square foot sidewalk café with accessory alcohol sales, with the following special conditions:

(a) All park (a/k/a pedestrian mall) improvements pursuant to the plans approved by the City of Key West shall be made at the sole cost of the applicant, and when made, shall become the property of the City of Key West.

(b) No member of the public shall be required to purchase food or beverages as a condition to spend time at the park. Accordingly, a portion of the park shall be set aside and equipped with park benches, some of which shall afford an ocean view, as approved by the City Manager and HARC to accommodate members of the public not wishing to eat or drink while visiting the park.

(c) The sidewalk café contemplated hereunder shall be open from the hours of 11am to 8pm, with the first customer seated no earlier than 11am and the last customer seated no later than 8pm.

(d) Only tables, chairs and benches shall be in the park. Food cooking and preparation shall not occur in the park. All food preparation shall be restricted to the private properties adjacent to the park. All tables, chairs and benches must be approved by HARC.

(e) Out of respect to the neighbors, there shall be no music permitted to be played in the park or heard in the park originating from adjacent properties under control of the Tenant of the sidewalk café, with exception of weddings and special events.

(f) Tenant shall not use plastic straws on the demised premises. In the event Tenant uses disposable utensils, they must be recyclable.

(g) Tenant shall be responsible for the collection of seaweed that accumulates on the concrete deck and deposit in a refuse container immediately adjacent to the demised premises. Landlord shall be responsible for the cost of the disposal thereof.

(h) Tenant shall be responsible at Tenant's sole cost, of the installation and maintenance of water filtration apparatus in the catch basins installed or existing in the 1400 block of Duval Street.

(i) All signage upon the demised premises and within the park shall be approved by HARC.

(j) Tenant must apply for all construction permits within sixty (60) days of execution of this agreement.

TENANT further agrees:

(a) 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 other areas for purposes other than for their intended common use and not to obstruct any part thereof.

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

(c) 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.

(d) 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.

(e) 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. TENANT agrees to collect the seaweed and debris from the beach and deposit in a refuse container and LANDLORD will pay for the cost of the disposal thereof.

(f) 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, with the exception of seaweed and beach debris. 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.

(g) 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.

(h) To take no action that would: (i) violate LANDLORD'S contracts if any, affecting the Property or (ii) cause any work stoppage, picketing or cause any manner or interference with LANDLORD or, occupants, customers or any person lawfully in and upon the Property.

(i) Not to use amplified music or any other noise making machinery or devices that are in violation of the City of Key West Noise ordinance.

(j) 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 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.

(k) 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 its 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 Premised 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.

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. Use of any or all of the public beach or park, or other adjacent public property of the LANDLORD by the LANDLORD or any other party authorized by the LANDLORD, including but not limited to the annual Brewfest special event, shall not constitute a violation of quiet possession.

8. INDEMNIFICATION - To the fullest extent permitted by law, the TENANT expressly agrees to indemnify and hold harmless the City of Key West, their respective officers, directors, agents and employees (herein called the "indemnitees") from any and all liability for damages, including, if allowed by law, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, caused in whole or in part by any act, omission, or default by TENANT or its subcontractors, material men, or agents of any tier or their employees, arising out of this agreement or its performance, including any such damages caused in whole or in part by any act, omission or default of any indemnitee, but specifically excluding any claims of, or damages against an indemnitee resulting from such indemnitee's gross negligence, or the willful, wanton or intentional misconduct of such indemnitee or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the TENANT or its subcontractors, material men or agents of any tier or their respective employees.

The indemnification obligations under this Agreement shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the 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 the TENANT or of any third party to whom TENANT may subcontract a work. This indemnification shall continue beyond the date of termination of the Agreement.

9. TENANT'S INSURANCE - TENANT covenants and agrees with LANDLORD that TENANT shall, at TENANT'S sole cost and expense, 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 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, with minimum limits equal to the full replacement value of the structure being leased including property damage, hazard and theft coverage, and a replacement cost endorsement insuring TENANT'S improvements and betterments, fixtures, furnishings, equipment and any other property belonging to TENANT.
- (ii) Workers compensation and Employers Liability coverage as required by the provisions of Florida statute.
- (iii) Full liquor liability coverage with minimum limits of \$1,000,000.00

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'SLANDLORD'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 nor sublet without the prior written consent of the LANDLORD which may be withheld and shall be at the sole discretion of the LANDLORD.

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. 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.

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.

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.

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 non payment 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.

(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) If at any time, by reason of the failure of the TENANT to keep and perform any covenant or agreement which, under the terms of this Lease, the TENANT is bound and obligated to keep and perform, it becomes necessary for LANDLORD to employ an attorney to protect the rights and interests of the LANDLORD in the property demised or to enforce the Lease or proceed under it in any particular, then in any of such events, the TENANT will owe and will pay unto LANDLORD all costs of Court and reasonable attorneys fees incurred or expended by the LANDLORD in taking such actions, including actions taken in all trial and appellate courts.

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.

In the event that LANDLORD shall deem it 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 (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 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 nor shall such interference be deemed an actual or constructive eviction or partial eviction or result in abatement of rental.

15. ALTERATIONS - 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.

16. EQUIPMENT, FIXTURES AND SIGNS

(a) 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 area covered by that particular utility expense. 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

(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 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
1300 WHITE STREET
KEY WEST, FL 33040

AS TO TENANT: SOUTHERNMOST HOUSE LTD
1400 DUVAL STREET
KEY WEST, FL 33040

with copy to MICHAEL HALPERN, PA
209 DUVAL STREET
KEY WEST, FL 33040

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) The parties agree to waive trial by jury in any action between them arising out of or in any way connected with this lease or TENANT'S use or occupancy of the Demised Premises. The venue for any action brought under this lease shall lie in the State Court of Monroe County, Florida.

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.

(c) The TENANT shall be responsible for maintaining all plumbing and electrical systems.

(d) 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.

(e) 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, including Art in Public Places installations located thereon, as well as the TENANT'S interest in fixtures and equipment appertaining thereto. TENANT'S

(f) 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.

(g) TENANT agrees to maintain the exterior landscaping including any new landscaping installed with LANDLORD'S approval, in the park. LANDLORD agrees to include the park in its normal street cleaning and garbage collection. Tenant shall be responsible for the cleaning and maintenance of the landscaping and sculpture garden areas.

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.

EXHIBIT "A" Demised Premises, Site Plan

A new survey will be ordered

(j) 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.

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

(l) This Lease is the result of negotiations between the parties and shall not be interpreted in favor of or to the detriment of either party due to its draftsmanship.

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



LANDLORD: CITY OF KEY WEST
By: *Gregory C. Smith* *J. Schall*
City Clerk Mayor City Manager
Date: 11-19-2018

Susan P. Harrison
WITNESS

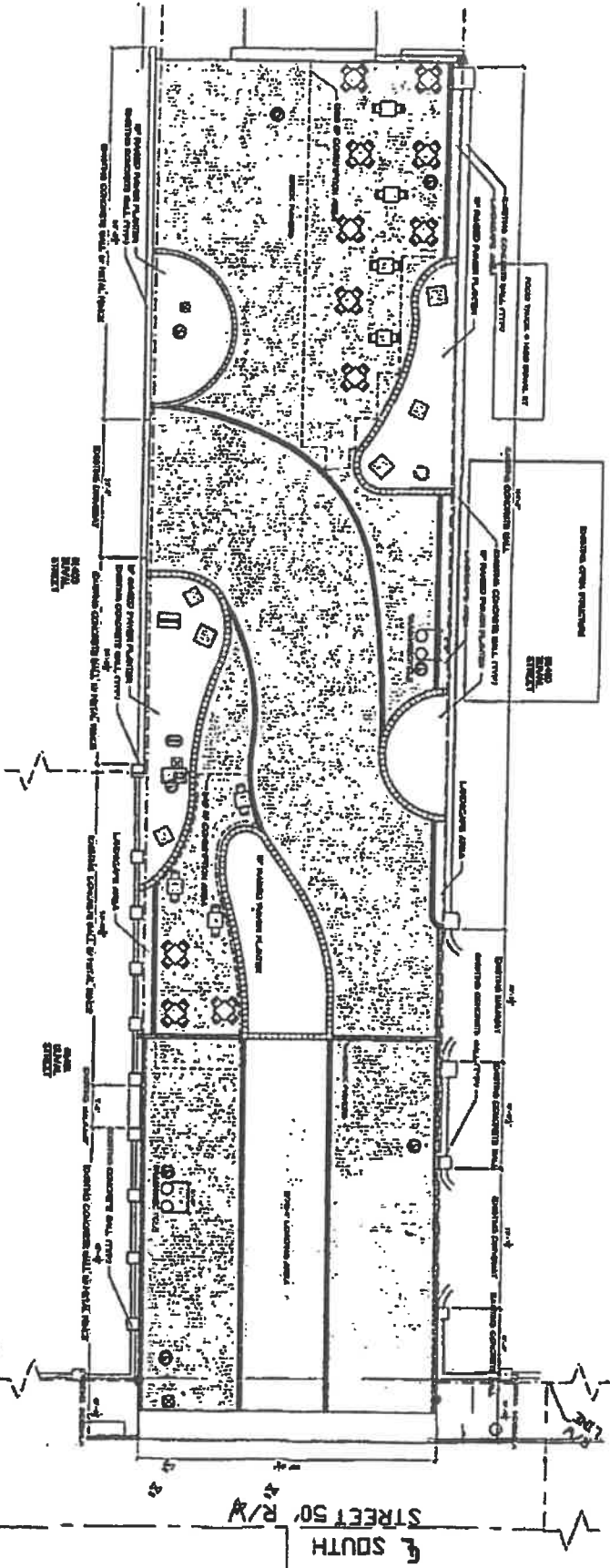
Date: 11-19-2018

TENANT: SOUTHERNMOST HOUSE LTD
By: *[Signature]*
Its: _____

Date: NOV 19TH 2018

GUARANTOR
[Signature]
Michael Halpern

- KEY SCHEDULE**
- ① Existing Light Pole
 - ② New Installation Area
 - ③ Special Features
 - ④ Special Features
 - ⑤ Existing Utility
 - ⑥ Existing Utility
 - ⑦ Mechanical



Site Plan

Item No.	Description	Quantity	Unit	Notes
1	Special Features	1	Each	
2	Special Features	1	Each	
3	Special Features	1	Each	
4	Special Features	1	Each	
5	Special Features	1	Each	
6	Special Features	1	Each	
7	Special Features	1	Each	
8	Special Features	1	Each	
9	Special Features	1	Each	
10	Special Features	1	Each	
11	Special Features	1	Each	
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41	Special Features	1	Each	
42	Special Features	1	Each	
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47	Special Features	1	Each	
48	Special Features	1	Each	
49	Special Features	1	Each	
50	Special Features	1	Each	

A0.1

THOMAS E. POPE, P.A.
POPE-SCARBROUGH-ARCHITECTS
 (305) 298 3611 610 White St. Key West FL

Duval Street Park
 1400 Block Duval St Key West, FL

