

RESOLUTION NO. 15-050

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA), APPROVING THE ATTACHED ASSIGNMENT OF LEASE AND CONSENT OF LESSOR FROM JAMES R. McELDERRY AND SUSAN L. LABATE TO SUSAN L. LABATE, INDIVIDUALLY, AND SUBSEQUENT ASSIGNMENT OF LEASE AND CONSENT OF LESSOR FROM SUSAN L. LABATE (ASSIGNOR) TO JAN NELSON (ASSIGNEE) FOR LAZY WAY UNIT C; APPROVING THE ATTACHED FIRST AMENDMENT TO LEASE; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the CRA approved the original Lease Agreement with James R. McElderry and Susan L. Labate in Resolution 13-101; and

WHEREAS, the tenants James R. McElderry and Susan L. Labate requested an assignment of lease to Susan L. Labate individually, and subsequently an assignment of lease to Jan Nelson; and

WHEREAS, City staff additionally recommends concurrent approval of the attached First Amendment to Lease with Jan Nelson, to amend the allowed use of the leased space;

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

Section 1: That the attached Assignment of Lease Agreement and Consent of Lessor from James R. McElderry and Susan L. Labate to Susan L. Labate individually is hereby approved.

Section 2: That the attached Assignment of Lease Agreement and Consent of Lessor from Susan L. Labate to Jan Nelson is hereby approved.

Section 3: That the attached First Amendment to Lease is hereby approved.

Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Agency.

Passed and adopted by the City Commission at a meeting held this 3rd day of February, 2015.


Authenticated by the Presiding Officer and Clerk of the Commission on 4th day of February, 2015.

Filed with the Clerk on February 4, 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

Executive Summary



TO: Key West Bight Board
Community Redevelopment Agency

CC: Doug Bradshaw
Jim Scholl

FR: Marilyn Wilbarger, RPA, CCIM

DT: December 30, 2014

RE: Lazy Way Lane Unit C Lease Assignments and Lease Amendment

ACTION STATEMENT

This is a request to approve a lease assignment from James R. Mc Elderry and Susan L. Labate to Susan L. Labate individually and a subsequent Lease Assignment and Lease Amendment from Susan L. Labate to Jan Nelson for Unit C on Lazy Way Lane.

HISTORY

The lease agreement is dated April 2, 2013 and the term is for five years. The Assignors previously separated their business interests but did not complete a lease assignment at that time to an individual tenancy in the name of Susan L. Labate alone.

Presently, Susan who is the individual Tenant has entered into an agreement to sell the business and assign the lease to Jan J. Nelson. Jan Nelson owns and operates the Key West Pretzel Company in the adjoining space she is requesting a change of use from jewelry sales to a retail gift store featuring gourmet mustards and food gift baskets. The remaining terms of the lease will not be changed and are as follows:

Demised Premises: 128 square feet

Term: Five years effective April 1, 2013

Rent: \$817.31 monthly

Percentage Rent: 6% of gross in excess of percentage rent base amount

Increases: CPI

Additional Rent: Tenant shall pay any and all taxes including ad valorem tax

Utilities: Tenant shall pay for all utility usage.

FINANCIAL STATEMENT:

Jan Nelson will provide a personal guaranty and post a six month security deposit. She has an excellent payment history and is not currently in default of any of the terms of the lease for the adjoining space.

ATTACHMENTS:

Lease Assignment from James R. Mc Elderry and Susan L. Labate to Susan L. Labate

Lease Assignment from Susan L. Labate to Jan J. Nelson

Lease Amendment for Jan J. Nelson

Personal Guaranty for Jan Nelson

Lease

ASSIGNMENT OF LEASE AGREEMENT AND CONSENT OF LESSOR

THIS ASSIGNMENT is made this 19 day of December, 2014, by and between, Susan L. Labate and James R. Mc Elderry, as assignors, to Susan L. Labate, as assignee.

The assignors in consideration of the covenants and agreements contained herein, assign and transfer to assignee the lease agreement (hereinafter "Agreement"), dated April 2, 2013 executed by Susan L. Labate and James R. Mc Elderry, as Lessee and by Craig Cates, Chairman of the Caroline Street Corridor and Bahama Village Community Redevelopment Agency, as Lessor. The Agreement pertains to real property located on Lazy Way Lane, Unit C, in Monroe County, Florida, and more particularly described on Exhibit "A" of the Agreement, which is attached hereto and incorporated by reference.

1. The assignors assign and transfer unto the assignee all of their right, title, and interest in and to the Agreement and premises, subject to all the conditions and terms contained in the Agreement. A Copy of the Agreement is attached hereto, incorporated by reference, and more particularly described as Exhibit A".

2. The assignors herein expressly agree and covenant that they are the lawful and sole owners of the interest assigned herein; that this interest is free from all encumbrances; and that they have performed all duties and obligations and made all payments required under the terms and conditions of the lease agreement.

3. The assignors herein expressly acknowledge, pursuant to paragraph 8 of the Agreement, that this assignment shall not relieve assignors from liability for payment of rent or from the obligation to keep and be bound by the terms, conditions, and covenants contained in the Agreement.

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

5. The assignee herein expressly agrees to provide a personal guaranty and to provide to the lessor a security deposit in an amount equal to six months minimum rent as security for the faithful performance by assignee of the terms, conditions and covenants of the Agreement.

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

ASSIGNORS: Susan L. Labate and James R. McElderry

[Signature]
Witness as to Assignor

[Signature]
Susan L. Labate

[Signature]
Witness as to Assignor

[Signature]
James R. McElderry

ASSIGNEE: Susan L Labate

[Signature]
Witness as to Assignee

[Signature]
By: Susan L. Labate

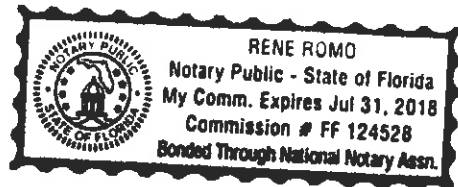
ASSIGNOR

State of Florida }
County of Monroe }

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 19 day of December, 2014

[Signature]
Notary Public, State of Florida
My Commission Expires:



ASSIGNOR

State of Florida }
County of Monroe }

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this _____ day of _____, 20__.

Notary Public, State of Florida

My Commission Expires:

ASSIGNEE

State of Florida }
County of Monroe }

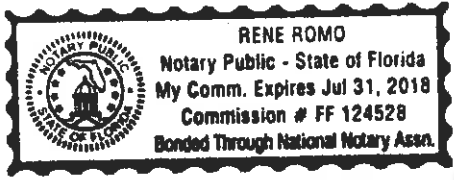
I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, James Mc Elden / Susan Cabale, to me personally known or who provided _____ as photo identification, and who executed the foregoing instrument and he/she acknowledged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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 19 day of December, 2014

Rene Romo

Notary Public, State of Florida

My Commission Expires: 7/31/18



CONSENT OF LESSOR

I, Craig Cates, the Lessor named in the above assignment of that lease agreement executed by us on April 2, 2013, herein expressly consent to that assignment.

I also consent to the agreement by the assignees to assume, after the effective date of the assignment, the payment of rent and the performance of all duties and obligations as set forth in the lease and accept assignee as tenant in the place of James R. McElderry and Susan L. Labate alone.

LESSOR:
Caroline Street Corridor and Bahama
Village Community Redevelopment Agency

Angela Berdke, cmc
Witness as to Lessor

Craig Cates
Craig Cates, Chairman

State of Florida }
County of Monroe }

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 3rd day of February, 2015.



Susan P. Harrison
Notary Public, State of Florida

My Commission Expires

ASSIGNMENT OF LEASE AGREEMENT AND CONSENT OF LESSOR

THIS ASSIGNMENT is made this 19 day of Dec., 2014 by and between, Susan L. Labate, as assignor, to Jan J. Nelson, as assignee.

The assignor in consideration of the covenants and agreements contained herein, assign and transfer to assignee the lease agreement (hereinafter "Agreement"), dated April 2, 2013 executed by Susan L. Labate and James R. Mc Elderry, as Lessee and by Craig Cates, Chairman of the Caroline Street Corridor and Bahama Village Community Redevelopment Agency, as Lessor, and as assigned to Susan L. Labate. The Agreement pertains to real property located on Lazy Way Lane, Unit C, in Monroe County, Florida, and more particularly described on Exhibit "A" of the Agreement, which is attached hereto and incorporated by reference.

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

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

3. The assignor herein expressly acknowledges, pursuant to paragraph 8 of the Agreement, that this assignment shall not relieve assignor from liability for payment of rent or from the obligation to keep and be bound by the terms, conditions, and covenants contained in the Agreement.

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

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

6. No later than the effective date of this assignment, the assignee herein expressly agrees to execute a personal guaranty and to provide to the lessor a security deposit in an amount equal to six months minimum rent as security for the faithful performance by assignee of the terms, conditions and covenants of the Agreement.

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

Cindy Churchill
Witness as to Assignor

ASSIGNOR: Susan L. Labate
Susan L. Labate
Susan L. Labate

Raquel Mee
Witness as to Assignee

ASSIGNEE: Jan J. Nelson
Jan J. Nelson
By: Jan J. Nelson

ASSIGNOR

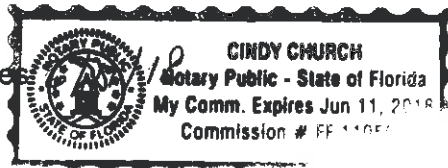
State of Florida }
County of Monroe }

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 19 day of December, 2014

Cindy Church
Notary Public, State of Florida

My Commission Expires:



ASSIGNEE

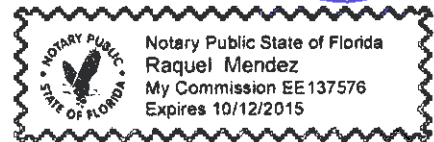
State of Florida }
County of Monroe }

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 19 day of December, 2014

Raquel Mendez
Notary Public, State of Florida

My Commission Expires: 10/12/2015



FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement is entered into this 3rd day of February, 2015 by and between Caroline Street Corridor and Bahama Village Community Redevelopment Agency hereinafter ("LANDLORD") and Jan J. Nelson, (hereinafter "TENANT").

WITNESSETH

WHEREAS, LANDLORD and TENANT entered into an Assignment of the Lease Agreement dated April 2, 2013, (the "Lease Agreement"), pertaining to the premises located at 205 Elizabeth Unit C in the Key West Bight, on the 3rd day of Feb., 2015

WHEREAS, the LANDLORD and TENANT now desire to amend their Lease Agreement which is attached hereto as Exhibit "A",

NOW, THEREFORE, in mutual consideration of the benefits conferred upon the parties by the terms of this Amendment, LANDLORD and TENANT agree as follows:

- 1. Sections 1.8 and 6, pertaining to Use of Premises, shall be amended to change the use of the premises described in the Agreement to state: TENANT shall use the Demised Premises for the purposes of the operation of a retail gourmet food gift store featuring gourmet mustards and local artisan food products and gift baskets and no other purpose.
- 2. Except as modified herein, the Lease Agreement as amended shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have made this First Amendment to Lease Agreement on the date first written above.

Caroline Street Corridor and Bahama Village Community Redevelopment Agency

ATTEST:
Cheryl Smith
Cheryl Smith, City clerk

By: Craig Cates
Craig Cates, Chairman

Jan J. Nelson

Susan Lagate
Witness
Susan Lagate
Witness

Jan J. Nelson
Jan. J. Nelson

The foregoing First Amendment to Lease Agreement was acknowledged before me this 19 day of December 2014 by Jan Nelson, who is personally known to me, or who [] produced _____ as identification.

Raquel Mendez
Notary Public

My commission expires:

10/12/2015

Print name: Raquel Mendez

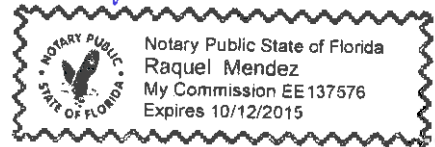


Exhibit "A"
Lease Agreement

GUARANTY

This Guaranty is made this 14 day of ~~JAN~~, 2015 in accordance with the Lease Agreement (hereinafter Agreement) dated April 2, 2013 as assigned and amended on _____, 2015 by and between the City of Key West Caroline Street Corridor and Bahama Village Community Redevelopment Agency (hereinafter City) and Jan J. Nelson (hereinafter Tenant) and Jan J. Nelson (hereinafter Guarantor) for the Demised Premises (hereinafter Premises) located at 205 Elizabeth Unit C, Key West, Florida.

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

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

under this Guaranty do hereby submit to the jurisdiction of the courts of the State of Florida and to the venue in the circuit court of Monroe County, Florida.

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

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

IN WITNESS WHEREOF, the Guarantor has caused the foregoing Guaranty to be executed on this 14th day of JAN 2015

Witness:

By: [Signature]
Name: Susan Labate
Date: 1-14-15

Guarantor:

by: [Signature]
Name: JAN J. Nelson
Date: 1-14-15

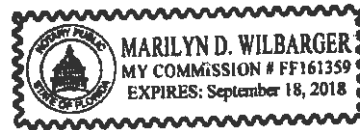
State of Florida }
County of Monroe }

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 14th day of January, 2015

[Signature]
Notary Public, State of Florida

My Commission Expires:



RESOLUTION NO. 13-101

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING THE ATTACHED LEASE BETWEEN JAMES R. McELDERRY AND SUSAN L. LABATE AND THE CRA FOR LAZY WAY UNIT C; PROVIDING FOR AN EFFECTIVE DATE

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

Section 1: That the attached lease agreement between the CRA and James R. McElderry and Susan L. Labate is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Agency.

Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 2nd day of April, 2013.

Authenticated by the presiding officer and Clerk of the Agency on April 3, 2013.

Filed with the Clerk April 3, 2013.


CRAIG CATES, CHAIRMAN

ATTEST:


CHERYL SMITH, CITY CLERK