

**THE CITY OF KEY WEST
PLANNING BOARD
Staff Report**



To: Chairman and Planning Board Members

Through: Kevin Bond, AICP, LEED Green Associate, Acting Planning Director

From: Carlene Smith, LEED Green Associate, Planner II

Meeting Date: February 4, 2015

Agenda Item: **Exception for Outdoor Merchandise Display – 405 Fleming Street, Unit 101 (RE # 00006670-000000; AK #1006904)** - A request for exception for outdoor merchandise display on property located within the Historic Residential Office (HRO) Zoning District pursuant to Section 106-52 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: The applicant is requesting an Exception for Outdoor Merchandise Display to allow the display of merchandise sold in-store at the entrance of the business.

Applicant: Tropical Shell and Gifts, Inc. dba End of the Road

Property Owner: C&D Properties of Key West I, LLC

Location: 405 Fleming Street, Unit 101 (RE # 00006670-000000; AK #1006904)

Zoning: Historic Residential/Office (HRO)

Background:

The subject property is located on the corner of Fleming and Whitehead Street, across from the courthouse and post office. The commercial retail use is a non-conforming use in the HRO zoning district. The store currently sells souvenir items such as postcards, key chains, magnets, etc. The applicant is requesting to display a sculpture of a rooster on wheels in front of the left front window for the maximum allowed timeframe (sixty months). The sculpture's dimensions are 71" x 28" x 41". Due to the size of the sculpture, there is only one on site for sale; however, additional sculptures can be purchased inside the store. Smaller roosters are also sold in-store.



Process:

Development Review Committee Meeting:

November 21, 2014

Planning Board Meeting:

January 15, 2015 (no quorum)

Analysis – Evaluation for Compliance with the Land Development Regulations:

The outdoor display of merchandise in the historic zoning districts of the City is prohibited unless an Exception is granted by the Planning Board, as provided in Section 106-52 of the City Code. Pursuant to Section 106-51 of the City Code, merchandise shall mean any good or product or sample or likeness of any good or product offered for sale by a business. Granting or denying on a case-by-case basis a proposed Exception gives the Planning Board the discretion to approve or deny proposed displays based on the following criteria:

(1) Factors favoring the Exception are as follows:

- a. The location of the proposed Exception, while outdoors, is an interior courtyard of a building or buildings, or is a space specifically designed and permitted for use by outdoor merchants.**

The proposed Exception is not located in an interior courtyard, but is located on the exterior entranceway of the business structure. The applicant is requesting to display a sculpture of a rooster on wheels in front of the left front window, which is next to the entranceway of the business.

- b. The Exception (for either the type of merchandise or the type of display) is compatible or in visual harmony with the character of the neighborhood.**

General retail sales is expressly excluded in the HRO zoning district along with warehousing and outdoor storage pursuant to Section 122-926 of the City Code. However, the commercial retail activity is a recognized non-conforming use. That being said, the proposed exception is for a sculpture versus a merchandise rack which is more compatible with the character of the neighborhood.

- c. The Exception's visual incongruity with the historic character of the neighborhood is reduced by substantial setback from public places and rights-of-way.**

The proposed display of merchandise would be located in front of the left front window. The proposed Exception would be located visible from the public right-of-way; however, it is not located in the public right-of-way.

(2) Factors disfavoring the Exception are as follows:

- a. Architecture contributing to the historical fabric or visual character of the neighborhood is obscured by the Exception.**

When reviewing this specific request, the Planning Department coordinated with the City's Historic Preservation Planner, and determined that the proposed Exception should not obscure architectural elements of the building or the historic character of the neighborhood. The applicant has proposed to display a sculpture

of a rooster on wheels in front of the left front window, which limits obscuring the front façade of the structure.

- b. The location of the proposed Exception abuts, with minimal setback, a street of the historic district, thus the Exception is visible from heavily used public places and rights-of-way.**

The location of where the merchandise is proposed to be displayed is minimally setback from the street. The Exception will be visible from public areas and the right-of-way.

- c. The Exception presents a hazard to public safety.**
The Fire Marshall has determined that the proposed Exception does not present a hazard to public safety as long as ingress and egress are maintained.

- (3) Exceptions to Section 106-51 granted by the Planning Board shall be for a term of no more than 60 consecutive months, and may be granted subject to terms and conditions specified by the Board in order to protect the architectural heritage and visual character of the district. Applications for Exceptions shall be accompanied by a nonrefundable fee of \$100.00 to cover the costs to the City of processing the application and investigating the applicant.**

Exceptions for Outdoor Merchandise Display do not run with the land, but instead, have very specific terms of expiration established upon approval by the Planning Board. The applicant has requested an Exception for Outdoor Merchandise Display for the maximum amount of time allowed under the Code for Exceptions to Outdoor Merchandise Display, or for sixty (60) consecutive months. It is important to note that the Planning Board has the authority to choose to approve the proposed Exception for a lesser term than the maximum amount of time that has been requested.

- (4) Exceptions to Section 106-51 may be revoked by the Planning Board after notice and hearing on grounds that:**
 - a. The applicant has failed to comply with terms and conditions specified pursuant to the grant of an Exception in this section;**
 - b. The Exception was granted pursuant to mistaken or misleading information; or**
 - c. The Exception is not compatible, or in visual harmony, with development of the neighborhood occurring subsequent to grant of this Exception.**

If the Exception for an Outdoor Display is approved by the Planning Board, and if at any time during the display of merchandise the applicant is out of compliance with any conditions of approval, the approval can be revoked by the Planning Board under Section 106-52(4) of the City Code.

- (5) The City Manager or the Planning Board upon written petition by any City resident may cause issuance of a notice of hearing on revocation of an Exception, which notice shall be issued by the City Clerk.**

RECOMMENDATION:

Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for Exception to the Outdoor Merchandise Display at 405 Fleming Street, Unit 101 (RE # 00006670-000000; AK #1006904) be **approved** per the proposed plan with the following conditions:

General Condition:

1. The Exception is specific to the current tenant, Tropical Shell and Gifts, Inc. (dba End of the Road, 405 Fleming Street #1) and granted for 60 months.
2. The Exception is only for the sculpture of a rooster on wheels and is limited to the area as shown on the site plan and on the proposed photo dated January 6, 2015 and shall not be placed in the city right-of-way. The sculpture's dimensions are 71"x 28" x 41".
3. The wheels on the sculpture must be locked at all times.
4. The Exception will only be present during hours of operation.
5. The sculpture of the rooster shall also be for sale inside the building.
6. The Exception will provide clear access for ADA and fire accessibility, with a minimum pathway of thirty-six (36) inches, for entry into the store and passage along sidewalk.

Draft Resolution

**PLANNING BOARD
RESOLUTION No. 2015-__**

A RESOLUTION OF THE KEY WEST PLANNING BOARD GRANTING AN EXCEPTION FOR OUTDOOR MERCHANDISE DISPLAY TO ALLOW THE DISPLAY OF MERCHANDISE SOLD IN-STORE IN THE HRO ZONING DISTRICT PER SECTION 106-52 OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES FOR PROPERTY LOCATED AT 405 FLEMING STREET, UNIT 101 (RE# 00006670-000000; AK# 1006904), KEY WEST FLORIDA; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the subject property is located in the Historic Residential/Office (HRO) District; and

WHEREAS, Section 106-51 of the City Code of Ordinances imposes certain conditions on the display of merchandise where visible from any public place, right-of-way, street or sidewalk; and

WHEREAS, Section 106-52 of the City Code of Ordinances provides that exceptions to the general prohibition may be granted upon application to the Planning Board; and

WHEREAS, a request was submitted for Planning Board consideration to clarify that merchandise can be displayed within the approved Exception area; and

WHEREAS, the Planning Board met on February 4, 2015 to consider factors favoring and disfavoring the Exception pursuant to Chapter 106-52 of the Land Development Regulations; and

NOW THEREFORE BE IT RESOLVED by the Planning Board of the City of Key

_____Chairman

_____Planning Director

West, Florida:

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

Section 2. That an Exception for Outdoor Display under the Code of Ordinances of the City of Key West, Florida, is hereby granted for the outdoor display of a sculpture of a rooster on wheels in front of the left front window located at 405 Fleming Street, Unit 101 (RE # 00006670-000000; AK #1006904), with the following conditions:

General Condition:

1. The Exception is specific to the current tenant, Tropical Shell and Gifts, Inc. (dba End of the Road) and granted for 60 months.
2. The Exception is only for the sculpture of a rooster on wheels and is limited to the area as shown on the site plan and on the proposed photo dated January 6, 2015 and shall not be placed in the city right-of-way. The sculpture's dimensions are 71"x 28" x 41".
3. The wheels on the sculpture must be locked at all times.
4. The Exception will only be present during hours of operation.
5. The sculpture of the rooster shall also be for sale inside the building.
6. The Exception will provide clear access for ADA and fire accessibility, with a minimum pathway of thirty-six (36) inches, for entry into the store and passage along sidewalk.

Section 3. Exceptions to 106-51 may be revoked by the Planning Board after notice and hearing on grounds:

- a. The applicant has failed to comply with terms and conditions specified pursuant to the grant of an Exception in this section.
- b. The Exception was granted pursuant to mistaken or misleading information;
or
- c. The Exception is not compatible, or in visual harmony, with development of

_____Chairman

_____Planning Director

the neighborhood occurring subsequent to grant of the Exception.

Section 4. The City Manager or the Planning Board, upon any written petition by any city resident, may cause issuance of a notice of hearing on revocation of an Exception, which notice shall be issued by the City Clerk.

Section 5. This Exception for Outdoor Display does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of applicant's assertion of legal authority respecting the property.

Section 6. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Section 7. This Resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit or development order will be rendered to the Florida Department of Economic Opportunity. Pursuant to Chapter 73C-44, F.A.C., this permit or development order is not effective for forty five (45) days after it has been properly rendered to the DEO with all exhibits and applications attached to or incorporated by reference in this approval; that within the forty five (45) day review period, the DEO can appeal the permit or development order to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement or order.

Read and passed on first reading at a regularly scheduled meeting held this 4th day of February 2015.

_____ Chairman

_____ Planning Director

Authenticated by the Chairman of the Planning Board and the Acting Planning Director;

Richard Klitenick, Planning Board Chairman Date

Attest:

Kevin Bond, AICP, LEED Green Associate, Acting Planning Director Date

Filed with the Clerk:

Cheryl Smith, City Clerk Date
Date

_____ Chairman

_____ Planning Director

Application

Application for Exception for Outdoor Merchandise Display
City of Key West Planning Department
3140 Flagler Avenue, Key West, FL 33040
(305) 809-3720



OCT 30 2014

Please completely fill out this application and attach all necessary documents. This will help our staff to process your request quickly and obtain necessary information without delay. If you have any questions please call 305-809-3720 to schedule an appointment with a Planner. This application is pursuant to Section 106-51 & 52 City of Key West Land Development Regulations.

Applicant's Name Tropical Shell and Gifts, Inc. d/b/a End of the Road
Address of Proposed Display 405 Fleming Street #1
RE# of Property 1006904
Business Name Tropical Shell and Gifts, Inc. d/b/a End of the Road
Business Address 405 Fleming Street #1
Applicant's Mailing Address 201 Front Street, Suite 224
Telephone 305-294-4142 Email hcasas@historictours.com
Name of Property Owner C & D Properties of Key West 1, LLC
Mailing Address 405 Fleming Street, Ste #2
Telephone _____ Email _____

Located in or on:

- a porch, patio, or other attached portion of an adjacent permanent structure.
 an arcade, gazebo, or other temporary structure.
 a cart or movable booth. (Must have received or obtained HARC approval)
 a portable table, rack, or other non-permanent equipment.

Describe the specific merchandise to be displayed and business conducted.

End of the Road is a retail store. Equipment to be displayed is a sculpture of a rooster on wheels (picture attached)

X

Application for Exception for Outdoor Merchandise Display
City of Key West Planning Department
3140 Flagler Avenue, Key West, FL 33040
(305) 809-3720



Describe the structure and equipment used in the display in detail, including any seating.

The equipment is a sculpture of a rooster.
The sculptures dimensions are 71 inches (H) 28 inches (W)
41 inches (L). (See attached pictures)

How far is the display from the street? 10 to 12 ft
How far is the display from the sidewalk? 5 ft
Length of time exception will be needed (no more than 60 months) 60 months

PLEASE PROVIDE THE FOLLOWING TO COMPLETE YOUR APPLICATION:

1. Provide fee of \$100.00. There are additional fees of \$50.00 for fire department review and \$100.00 for advertising and noticing. For a total of \$250.00. Please, make check payable to the City of Key West.
2. **Photographs** of the existing area and proposed display
3. A **site sketch** showing general lay out and location of the display relative to visibility from the public right-of-way
4. Copy of the **Warranty Deed**
5. Completed **Authorization and Verification** forms as necessary.
6. Recent Property Boundary **Survey**
7. **Property Appraisers** information (www.mcpafl.org)

The information furnished above is true and accurate to the best of my knowledge.

Signature [Signature] Date _____

Application for Exception for Outdoor Merchandise Display
City of Key West Planning Department
3140 Flagler Avenue, Key West, FL 33040
(305) 809-3720



Sec. 106-51. - Prohibited.

The outdoor display of merchandise in the historic zoning districts of the city is prohibited unless an exception is granted by the planning board, as provided in section 106-52. Merchandise shall mean any good or product or sample or likeness of any good or product offered for sale by a business. Outdoor display shall mean the placement of merchandise on the exterior of a business structure, including a wall, roof, overhang, entranceway or window, or within a required setback area. For a cart, booth or arcade, outdoor display shall mean the placement of merchandise, either freestanding or by draping it, on the exterior or beyond the vertical plane of the cart, booth or arcade. In no event shall outdoor display be permitted in the public right-of-way. The prohibitions of this section shall not apply to automotive, bicycle and moped rentals and sales and to plant sales and shall not apply to art festivals or other special events duly permitted by the city commission.

(Ord. No. 97-10, § 1(3-16.1(C)(1)), 7-3-1997; Ord. No. 08-04, § 16, 5-20-2008)

Sec. 106-52. - Exceptions.

Exceptions to section 106-51 may be granted by the Planning Board as follows:

(1) Factors favoring the exception are as follows:

- a. The location of the proposed exception, while outdoors, is an interior courtyard of a building or buildings, or is a space specifically designed and permitted for use by outdoor merchants.
- b. The exception (for either the type of merchandise or the type of display) is compatible or in visual harmony with the character of the neighborhood.
- c. The exception's visual incongruity with the historic character of the neighborhood is reduced by substantial setback from public places and rights-of-way.

(2) Factors disfavoring the exception are as follows:

- a. Architecture contributing to the historical fabric or visual character of the neighborhood is obscured by the exception.
- b. The location of the proposed exception abuts, with minimal setback, a street of the historic district, thus the exception is visible from heavily used public places and rights-of-way.
- c. The exception presents a hazard to public safety.

(3) Exceptions to section 106-51 granted by the Planning Board shall be for a term of no more than 60 consecutive months and may be granted subject to terms and conditions

Application for Exception for Outdoor Merchandise Display
City of Key West Planning Department
3140 Flagler Avenue, Key West, FL 33040
(305) 809-3720



specified by the board in order to protect the architectural heritage and visual character of the district. Applications for exceptions shall be accompanied by a nonrefundable fee of \$100.00 to cover the costs to the city of processing the application and investigating the applicant.

(4) Exceptions to section 106-51 may be revoked by the Planning Board after notice and hearing on grounds that:

- a. The applicant has failed to comply with terms and conditions specified pursuant to the grant of an exception in this section;
- b. The exception was granted pursuant to mistaken or misleading information; or
- c. The exception is not compatible, or in visual harmony, with development of the neighborhood occurring subsequent to grant of the exception.

(5) The city manager or the planning board, upon written petition by any city resident, may cause issuance of a notice of hearing on revocation of an exception, which notice shall be issued by the city clerk.

(Ord. No. 97-10, § 1(3-16.1(C)(2)), 7-3-1997; Ord. No. 06-09, § 1, 5-2-2006; Ord. No. 08-04, § 17, 5-20-2008)

Verification

**City of Key West
Planning Department**



Verification Form

(Where Authorized Representative is an entity)

I, Benjamin McPherson, in my capacity as Treasurer/C.F.O.
(print name) *(print position; president, managing member)*
of Tropical Shell and Gifts, Inc.
(print name of entity serving as Authorized Representative)

being duly sworn, depose and say that I am the Authorized Representative of the Owner (as appears on the deed), for the following property identified as the subject matter of this application:

405 Fleming Street #1
Street Address of subject property

All of the answers to the above questions, drawings, plans and any other attached data which make up the application, are true and correct to the best of my knowledge and belief. In the event the City or the Planning Department relies on any representation herein which proves to be untrue or incorrect, any action or approval based on said representation shall be subject to revocation.

Signature of Authorized Representative

Subscribed and sworn to (or affirmed) before me on this 12/9/2014 by
Benjamin N. McPherson
Name of Authorized Representative
date

He/She is personally known to me or has presented _____ as identification.

Notary's Signature and Seal

Name of Acknowledger typed, printed or stamped



Commission Number, if any

City of Key West
Planning Department



Verification Form

(Where Authorized Representative is an entity)

I, CAROLYN BLACKWELL in my capacity as PRESIDENT/BOARD MEMBER
(print name) (print position; president/managing member)

of CHD PROPERTIES OF KEY WEST I LLC
(print name of entity serving as Authorized Representative)

being duly sworn, depose and say that I am the Authorized Representative of the Owner (as appears on the deed), for the following property identified as the subject matter of this application:

405 FLEMING ST, KEY WEST, FL
Street Address of subject property

All of the answers to the above questions, drawings, plans and any other attached data which make up the application, are true and correct to the best of my knowledge and belief. In the event the City or the Planning Department relies on any representation herein which proves to be untrue or incorrect, any action or approval based on said representation shall be subject to revocation.

[Signature]
Signature of Authorized Representative

Subscribed and sworn to (or affirmed) before me on this 12/9/14 by
date

Name of Authorized Representative

He/She is personally known to me or has presented _____ as identification.

[Signature]
Notary's Signature and Seal



Name of Acknowledger typed, printed or stamped

Commission Number, if any

Authorization

**City of Key West
Planning Department**



Authorization Form
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, Carolyn A. Blackwell as
Please Print Name of person with authority to execute documents on behalf of entity

Managing Member of C+D properties of Key West I, L
Name of office (President, Managing Member) *Name of owner from deed*

authorize Ben McPherson
Please Print Name of Representative

to be the representative for this application and act on my/our behalf before the City of Key West.

Carolyn A. Blackwell
Signature of person with authority to execute documents on behalf on entity owner

Subscribed and sworn to (or affirmed) before me on this 12/9/14 by
/date

Ben McPherson
Name of Authorized Representative

He/She is personally known to me or has presented _____ as identification.

Stephanie Monsalvatge
Notary's Signature and Seal



Name of Acknowledger typed, printed or stamped

Commission Number, if any

Deed

This instrument prepared by:
Karleen A. Grant, Esq.
1033 Flagler Avenue
Key West, Florida 33040

Parcel I.D. No: See Ex. A

Doc# 1872292 02/29/2012 11:26AM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE

02/29/2012 11:26AM
DEED DOC STAMP CL: DS

\$0.70

Doc# 1872292
Bk# 2557 Pg# 1725

(Space reserved for recording)

QUIT CLAIM DEED

THIS INDENTURE

Wherever used herein, the term "party" shall include the heirs, personal representatives, successors and/or assigns of the respective parties hereto; the use of the singular numbers shall include the plural, and the plural, the singular, the use of any gender; and, if used, the term "note" shall include all the notes herein described if more than one.

Made this 30 day of December, 2011

CAROLYN A. BLACKWELL, a single woman, and **DIANE A. CROCKETT**, a married woman, whose addresses are, respectively, 21 Cypress Avenue, and 3320 Riviera Drive, Key West, Monroe County, Florida 33040, party of the first part, and **C & D PROPERTIES OF KEY WEST I, LLC**, a Wyoming Limited Liability Company which has an address of P.O. BOX 4125, Key West, Monroe County, Florida 33041, party of the second part.

WITNESSETH

That the said party of the first part, for and in consideration of **Ten and No/100 (\$10.00) Dollars**, and other good and valuable consideration, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has remised, released and quitclaimed, and by these presents does remise, release and quitclaim unto the said party of the second part all the right, title, interest, claim and demand which the said party of the first part has in and to the following described lots, pieces or parcels of land, situate lying and being in the County of Monroe, State of Florida, to wit:

**SEE EXHIBIT "A" ATTACHED HERETO AND
INCORPORATED HEREIN BY REFERENCE**

The purpose of this deed is to vest the entire ownership in the above-referenced properties to the Grantee.

This property is not the Homestead of Grantors, nor does it abut their constitutional homesteads which are located at the addresses shown above.

This document was prepared without benefit of title search or abstract examination and is based solely on facts provided by either of the parties or his agent.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances thereunto

belonging or in anywise appertaining, and all the estate, right, title, interest and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part.

In Witness Whereof, the said party of the first part have hereunto set their hand and seal the day and year first above written.

WITNESSES:

[Signature]
Print Name: DAWN THORNBUROGH

[Signature]
CAROLYN A. BLACKWELL

[Signature]
Print Name: KARLEEN A GRANT

[Signature] [Signature]
Print Name: DAWN THORNBUROGH DIANE A. CROCKETT

[Signature]
Print Name: KARLEEN A GRANT

Doc# 1872292
Bk# 2557 Pg# 1726

STATE OF FLORIDA)
)
COUNTY OF MONROE)

The foregoing Quit Claim Deed was acknowledged before me this 30 day of December, 2011, by CAROLYN A. BLACKWELL, who is personally known to me or produced _____ as identification.

My Commission Expires:

KARLEEN A. GRANT
MY COMMISSION # DD 976310
EXPIRES: April 29, 2014
Bonded thru Budget Notary Service.

[Signature]
NOTARY PUBLIC - State of Florida
KARLEEN A GRANT
Print Name

STATE OF FLORIDA)
)
COUNTY OF MONROE)

The foregoing Quit Claim Deed was acknowledged before me this 30 day of December, 2011, by DIANE A. CROCKETT, who is personally known to me or produced _____ as identification.

My Commission Expires:

KARLEEN A. GRANT
MY COMMISSION # DD 976310
EXPIRES: April 29, 2014
Bonded thru Budget Notary Service.

[Signature]
NOTARY PUBLIC - State of Florida
KARLEEN A GRANT

Exhibit "A"

On the Island of Key West, and known on William A. Whitehead's map of said Island, delineated in February, A.D., 1829, as part of Lot 3 in Square Fifteen (15).

COMMENCING at a point Sixty-One (61) feet form the corner of Greene and New Streets, and running thence along Greene Street in a Southwesterly direction Thirty-Four (34) feet; thence at right angles in a Southeasterly direction One Hundred and Thirty Four (134) feet; thence at right angles in a Northeasterly direction Thirty-Four (34) feet; thence at right angles in a Northeasterly direction thirty-four (34) feet; thence at right angles in a Northwesterly direction One hundred and Thirty Four (134) feet to the Place of Beginning.

Commonly known as 408 Greene Street
Alt Key: 1001554

Doc# 1872292
Bk# 2557 Pg# 1727

AND

In the City of Key West, situated at the corner of Whitehead and Fleming Streets, being Part of Lot Four (4) in Square Thirty Eight (38) according to the Map or Plan of said City by Wm. A Whitehead, delineated in February 1928. Said piece of land having a front on Whitehead Street of Fifty-Two (52) feet and a front on Fleming Street of Sixty-Five (65) feet and Eleven (11) inches, more or less.

Commonly known as 405 Fleming Street
Alt. Key: 1006904

AND

(Old Sears Roebuck store) On the Island of Key West, Monroe County, Florida, and known on Wm. A. Whitehead's Map of said Island delineated in February, A.D. 1829, as a part of Lot Four (4) in Square Thirty-Six (36).

Commencing at the corner of Simonton and Fleming Streets and running thence along the Northeast side of Simonton Street in a Northwesterly direction 45 feet; thence at right angles in a Northeasterly direction 80 feet; thence at right angles in a Southeasterly direction 45 feet out to Fleming Street; thence at right angles along the line of Fleming Street in a Southwesterly direction 80 feet to the Place of Beginning. Together with building and improvements thereon.

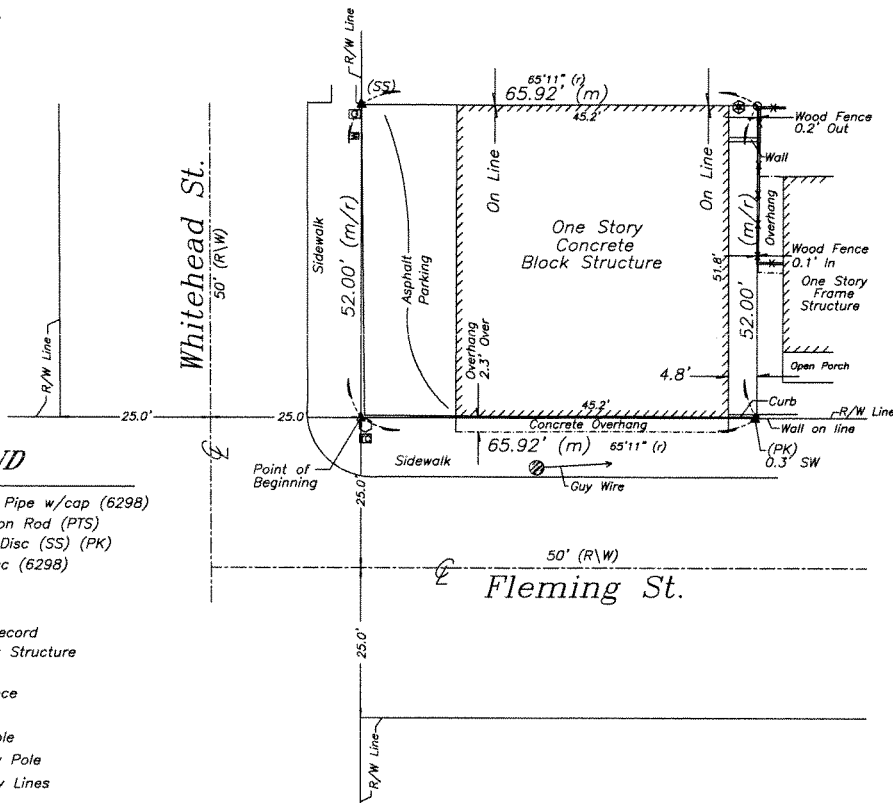
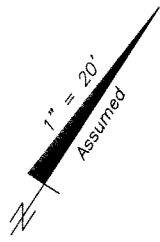
LESS:

On the Island of Key West, Monroe County, Florida, and known on William A. Whitehead's Map of said Island, delineated in February, A.D. 1829, as a part of Lot Four in Square Thirty-Six. Commencing on Fleming Street distant Forty-three feet from the corner of Simonton and Fleming Streets thence Thirty-six feet and 21 inches in a Northeast direction, thence in a Northwesterly direction Forty-five feet, thence in a Southwesterly direction Thirty-six feet and 21 inches, thence along a common wall Southeasterly Forty-five feet to the point of beginning.

Commonly known as 601 Fleming Street
Alt. Key: 1006572

Survey

Boundary Survey Map of Part of Lot 4, Square 38 Island of Key West, Florida



LEGEND

- Set 3/4" Iron Pipe w/cap (6298)
- Found 1/2" Iron Rod (PTS)
- ▲ Found Nail & Disc (SS) (PK)
- △ Set Nail & Disc (6298)
- (M) Measured
- (R) Record
- (M/R) Measured & Record
- C.B.S. Concrete Block Structure
- R\W Right of Way
- CLF Chain Link Fence
- ⊕ Centerline
- ⊗ Wood Utility Pole
- ⊗ Concrete Utility Pole
- P- Overhead Utility Lines
- ⊠ Sewer Cleanout
- ⊠ Water Meter
- ⊠ Traffic Control Lid
- ⊠ Light Post
- Traffic Light Post

NOTES:

1. The legal description shown hereon was furnished by the client or their agent.
2. Underground foundations and utilities were not located.
3. All angles are 90° (Measured & Record) unless otherwise noted.
4. Street address: 405 Fleming Street, Key West, FL.
5. This survey is not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.
6. Lands shown hereon were not abstracted for rights-of-way, easements, ownership, or other instruments of record.
7. North Arrow is assumed and based on the legal description.
8. Date of field work: March 13, 2014.
9. Ownership of fences is undeterminable, unless otherwise noted.
10. Adjoiners are not furnished.

BOUNDARY SURVEY OF: In the City of Key West, situated at the corner of Whitehead and Fleming Streets, being Part of Lot Four (4) in Square Thirty-Eight (38) according to the Map or Plan of said City by Wm. A Whitehead, delineated in February 1928. Said piece of land having a front on Whitehead Street of Fifty-Two (52) feet and a front on Fleming Street of Sixty-Five (65) feet and Eleven (11) inches, more or less.

BOUNDARY SURVEY FOR: C & D Properties of Key West, LLC.

J. LYNN O'FLYNN, INC.

J. Lynn O'Flynn, PSM
Florida Reg. #6298

March 14, 2014

THIS SURVEY
IS NOT
ASSIGNABLE

J. LYNN O'FLYNN, Inc.



Professional Surveyor & Mapper
PSM #6298

3430 Duck Ave., Key West, FL 33040
(305) 296-7422 FAX (305) 296-2244

Site Plans

DRAWING LIST	
A-1	SITE - FLOOR PLAN
A-2	ELEVATIONS
A-3	SECTION AND SCHEDULES
A-4	SPECIFICATIONS
A-5	SPECIFICATIONS
S-1	STRUCTURAL
ME-1	MECHANICAL AND ELECTRICAL

SCOPE OF WORK

PROVIDE LEASE IMPROVEMENTS TO UNFINISHED LEASE AREA "A" CONSISTING OF 720 NET SQ.FT. WITHIN AN EXISTING BUILDING. PROVIDE NEW STOREFRONT TOTALING 13'-4" ALONG FLEMING STREET AND 18'-4" ALONG WHITEHEAD STREET. EXTERIOR IMPROVEMENTS INCLUDE APPROX. 800 SQ.FT. OF SAND SET BRICK PAVING OF THE EXISTING ASPHALT AREA, ADDITION OF A CANVAS AWNING ABOVE THE WHITEHEAD STREET NEW AND EXISTING STOREFRONT, ADDITION OF A 20'-0" ALUM. FLAG POLE, SIGNAGE AND LIGHTING PER DRAWINGS AND PAINTING OF THE BUILDING EXTERIOR STREET FACADES. INTERIOR IMPROVEMENTS INCLUDE NEW WALL, FLOOR AND CEILING FINISHES, AIR CONDITIONING, LIGHTING AND ELECTRICAL DISTRIBUTION PER THE DRAWINGS. ALL WORK TO BE DONE IN A WORKMAN LIKE MANNER IN COMPLIANCE WITH APPLICABLE CODES AND SHALL RESULT IN A SAFE AND HABITABLE FINISH PROJECT.

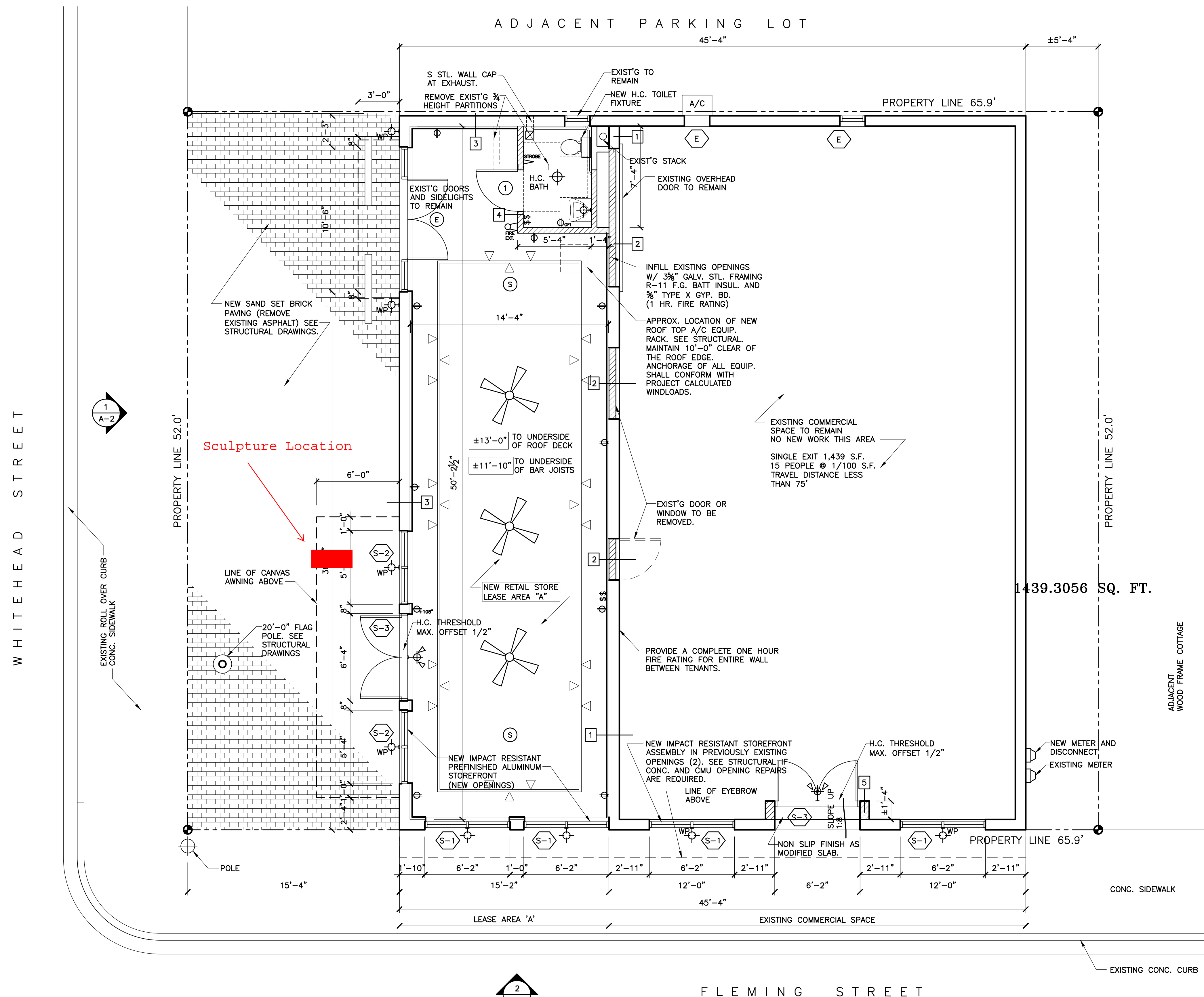
PROVIDE IMPROVEMENTS TO THE EXISTING COMMERCIAL SPACE WHICH SHALL CONSIST OF TWO NEW S-1 TYPE STORE FRONT WINDOW ASSEMBLIES AND ONE S-3 ENTRY ASSEMBLY RECESSED TO ALLOW HANDICAPPED ACCESS.

WALL TYPES

- 1 - EXISTING CMU INTERIOR WALL. PROVIDE 1 1/2" @ 16" O.C. FURRING, RIGID INSULATION BD. (1/2", R7 MIN.) AND NEW 5/8" GYP. BD WALL FINISH. MAINTAIN 1HR FIRE RATING.
- 2 - INFILL EXISTING WINDOW AND DOOR OPENINGS IN EXISTING WALL TYPE 1. PROVIDE 1 LAYER 5/8" TYPE X GYP. BD. EACH SIDE 3/8", 20 GA. GALV. MTL. FRAMING AT 16" O.C. W/ R-11 FIBERGLASS BATT INSUL. FOR A 1 HR. FIRE RATING FOR SEPARATION OF THE TWO TENANTS. PAINTED.
- NOTE: ALL PENETRATIONS, NEW OR EXISTING, OF WALL TYPE 1 SEPARATING THE TENANTS SHALL BE TREATED WITH DAMPERS, FIRE SEALS OR BLOCKING SUITABLE TO MAINTAIN THE 1 HR FIRE SEPARATION REQUIRED.
- 3 - EXISTING CMU EXTERIOR WALL. PROVIDE 1 1/2" GALV. MTL. FURRING AT 16" O.C. W/ 1/2" RIGID INSULATION, R7 MIN., AND NEW 5/8" GYP. BD. WALL FINISH. PAINTED.
- 4 - NEW INTERIOR PARTITIONS - 5/8" GYP BD. EA. SIDE 20 GA. 3/8" GALV. MTL. FRAMING @16" O.C.. PAINTED.
- 5 - NEW 8" CMU WALL CONST. W/ PAINTED STUCCO EXTERIOR FINISH AND 3/4" GALV. MTL. FURRING, W/ 3/4" RIGID INSULATION AND 5/8" GYP. BD. INTERIOR FINISH.

ELECTRICAL LEGEND - SEE SHEET ME-1

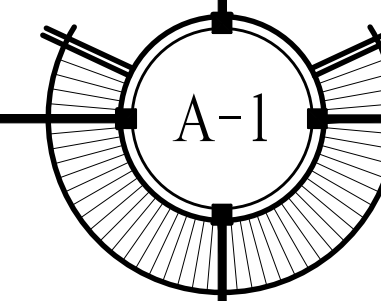
- TRACK LIGHTING ON SUSPENSION RODS
- WALL FIXTURES
- CEILING FIXTURE
- EXHAUST FAN
- STROBE- ACTIVATED BY SMOKE DETECTORS
- HARDWIRED SMOKE DETECTOR
- DUPLEX OUTLET
- WALL SWITCH
- SPECIALTY OUTLET
- EXIT LIGHT W/ BATTERY BACK UP EMERGENCY LIGHTING
- 52" CEILING FAN W/ SCHOOL HOUSE LIGHT FIXTURE
- FIRE EXTINGUISHER 10 LB. ABC TYPE PER SPECS.
- GFI GROUND FAULT INTERRUPTER



PROPOSED SITE PLAN - FLOOR PLAN

SCALE : 1/4" = 1'-0"

END OF THE ROAD
KEY WEST, FLORIDA





Display Stands 77" high by 43" wide.
It is based 28" from the building.

MILE 0 **END OF THE ROAD** 1
Gifts • Souvenirs • Conch Republic Gear

RESERVED
PARKING
←



2015/01/06 12:44



MILE 0 END OF THE ROAD Gift • Souvenirs • Conch Republic Gear

2015/01/06 12:48





Additional Information



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

Dispute and Appeal Resolution, 405 Fleming Street

November 18, 2013

Issue: The Land Development Regulations of the City of Key West do not allow commercial retail activity at properties located within the HRO zoning district. The owner of 405 Fleming Street asserts that their business has historically had a commercial retail component and is thus "grandfathered" to that end.

Introduction: The owner was informed in writing (attached) that it was the Department's position that there was no existing retail activity on site. During conversations with the property owner and their counsel, it was revealed through licensing and business tax records that there had been a commercial retail component in the form of a gift shop. The property owner was then asked to complete a traffic impact study to demonstrate that the reintroduction of the shop would not have a significant impact on traffic patterns and trip generation. The study indicated that there would be minimal to no increase in automobile traffic. The results are included in the packet attached to this letter.

Initially, the property owner sought to lease a portion of the property to a local guided tour company for a trolley stop and associated souvenir sales. To accommodate the trolley stop, the existing parking area would need to be vacated. Further, the addition of the trolley stop would be an increase in the intensity of commercial use. Based on the traffic study and past commercial use, it is the Department Head's determination that the retail use can resume. Therefore, while the Planning Department is willing to recognize the historical existence of commercial retail activity, the increase in intensity of that use cannot be expanded or intensified as it is no longer a permitted use.


Determination: The Planning Department recognizes that commercial retail sales shall continue to be allowed at 405 Fleming Street with the following conditions:

1. The site shall not serve as a trolley or entertainment vehicle drop-off and pick-up, including pedicabs or other vehicles-for-hire;
2. Moped, electric car or other such vehicle rentals are prohibited;
3. The site plan is subject to Fire Department review and approval;
4. The retail sales is subject to the existing level of intensity.* The property owner's existing businesses, Florida Keys Offset Printing & Publishing, Inc., Florida Keys Wholesales, Inc. and the Blackwell Family property management offices may continue at their current location;
5. Any proposed sale of food or alcoholic beverages shall be subject to an application for a change of Non-Conforming Use;

6. All exterior improvements are subject to HARC review and approval;
7. There shall be no more than three parking spaces to be located within the parking lot on the west side of the building. So long as a separate and distinct tenant rents the Whitehead Street side of the subject property, the entrance on the Whitehead Street side of the property, closest to the Fleming Street, shall remain fully accessible and unimpeded by any parking space. In the event that all of the tenants of the subject property have their own ingress and egress on the Fleming Street side of the property, all of the parking spaces on the Whitehead Street side of the property may be utilized;
8. This project must comply with all other applicable Sections of the Code of Ordinances.
9. None of the conditions contained herein shall prohibit a permitted or conditional use of the subject property, subject to applicable approvals pursuant to the City of Key West Code of Ordinances.

*Subject to the traffic study

Authority: Section 90-301(b) of the City of Key West Land Development Regulations provides the Planning Director the administrative responsibility to interpret the land development regulations.



11-15-13
Donald Leland Craig, AICP
Director of Community Development Services



11-18-13
Gregory S. Oropeza, Esq.
Smith Oropeza, P.L.

COMMERCIAL LEASE

CB

November 20th, 2013

This lease agreement made and entered on ~~April 15th, 2013~~ and between C & D Properties of Key West I, LLC, LANDLORD and Tropical Shell and Gift, Inc TENANT and Edwin Swift II, and Chris Belland, individual Guarantors. LANDLORD hereby leases to TENANT and TENANT agrees to rent the premises situated in the City of Key West, Monroe County, State of Florida, located at 405 #1 Fleming Street, the unit described as approximately 725 sq/ft and located closest to Whitehead Street and extending down Fleming Street. In addition the lease includes One half of the parking lot closest to the corner of Fleming and Whitehead Street approximately 388 sq/ft. (hereinafter referred to as the "premises" or "demised premises") for the term hereinafter stated, for the rents hereinafter reserved, and upon and subject to the terms, conditions and covenants hereinafter provided:

1. LEASE TERM

The Lease term shall be for a period of Two (2) years plus 120 days from possession or after the date Tenant opens for business, whichever is sooner. A "Lease Year" shall constitute a twelve (12) month period commencing on the beginning date of this lease and ending twelve (12) months thereafter. If the "Commencement Date" is other than the 1st day of a calendar month, the 1st Lease Year shall be the period of time from said Date to the end of that month plus the following twelve (12) calendar months. If the "Commencement Date" is other than the 1st day of a calendar month, Base Rent and Sales Tax for the initial month will be pro-rated according to the number of days in the month and the number of days remaining in the month. All obligations of the parties shall be enforceable upon execution of this Lease Agreement, unless specifically set forth to the contrary.

1.1 Possession Date

November 20th, 2013 CB

Tenant shall be entitled to possession to the premises ~~April 15th, 2013~~ or the Commencement date, whichever is sooner.

2. RENT

All rentals provided for herein shall be payable in advance on the first day of each and every month of the term hereof in full.

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

Base rent of \$36,000.00 per year, which shall be payable in equal monthly installments of \$3,000.00. Tenant shall also pay any tax assessed by the State, County or municipality in which the premises are located that are applicable to rentals or charges specified in this lease. Current Sales Tax is 7.5% for a total of \$225.00 per month. Said tax payment

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shall be paid to LANDLORD with and when applicable rental or charge is due. The monthly rent including the sales tax shall be \$3,225.00 due on or before the first day of each and every calendar month during the term of this Lease. Checks should be made payable to C & D Properties of Key West I, LLC and delivered by mail to P.O. Box 4125, Key West, Florida 33041 or by person 405 #2-3 Fleming Street, Key West, Florida 33040.

2.1 Said Base Rent shall increase on the 1st day of each "Lease Year" by the amount of Four percent (4%) plus any increase in sales tax. TENANT shall pay a late payment charge of Five percent (5%) of the rental payment due as to any rental payment not received within three (3) days of its due date, and another five (5%) percent for every five days thereafter that said payment is overdue remains unpaid.

2.2 During the term of this lease, TENANT shall pay to LANDLORD their percentage of any increases in real property taxes and insurance over and above the amount now being paid by LANDLORD. The Real Property Tax for 2012 was \$6,919.26. The TENANT'S percentage for Real Estate Tax is 37%. The Commercial General Liability Coverage for 2012-2013 was \$3497.00; The Windstorm Coverage for 2012-2013 was \$847.00 The TENANT'S percentage for wind and liability insurance is 32%. TENANT hereby acknowledges receipt of a statement of the current taxes paid by LANDLORD and the current insurance premiums paid by LANDLORD. Said tax and insurance premium increases shall be paid by TENANT to LANDLORD within ten (10) days of the date of delivery by LANDLORD to TENANT of an invoice. TENANT shall not be responsible for paying any increase in insurance solely due to a voluntary increase in coverage by LANDLORD. TENANT at its own expense may challenge any increase in real property taxes and/or insurance premiums, LANDLORD shall cooperate fully with TENANT. TENANT shall pay a late payment charge of Five percent (5%) as to any payment not paid within three (3) days of its due date.

3. OPTION TO RENEW

The TENANT is hereby granted an option to renew/extend this Lease for an additional Eight (8) year term under the same terms and conditions as the Lease herein, commencing at the expiration of the initial term hereof provided, however, TENANT'S right to exercise this option is contingent upon TENANT'S full and faithful compliance with the terms of this lease as well as the following terms and provisions throughout the initial term hereof:

- i. To exercise the option, the TENANT shall give 60 days written notice prior to the expiration date of this Lease of its intention to renew. In the absence of such timely notification, the option to renew shall be null and void without written consent of the LANDLORD.

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TENANT INITIAL

- ii. TENANT must not be in default of any of the conditions or covenants of this lease.
- iii. The rental for the Initial Year of the option period shall be \$3,244.80 plus sales tax due on or before the first day of each and every calendar month during the term of this Lease.

4. SECURITY

LANDLORD will not collect or hold Security Deposits or Last Month's Rent during the initial 2 year term. If the option for eight years is exercised then a \$5,000 Security Deposit will be required. The Security Deposit will be held in a non-Interest bearing escrow account at the Banking Institution known as Wells Fargo. The Security Deposit shall be returned to TENANT without interest, after TENANT has vacated the Premises and upon the full performance of the provisions of this Lease. TENANT shall not use the security as rent. LANDLORD may apply the security deposit to rents, legal fees and costs due LANDLORD at expiration or earlier termination of this lease, or to damages or both. The security deposit or such part thereof not applied to rents, legal fees, costs and damages due LANDLORD shall be refunded to TENANT within thirty (30) days of TENANT vacating the Premises in order to provide LANDLORD sufficient time to inspect the premises and assess damages. LANDLORD will not collect a Last Month's Rent.

5. TENANT'S BUSINESS OPERATION

5.1 USE-The TENANT will use and occupy the premises for sale of retail merchandise and for no other use provided that the TENANT must comply with applicable governmental laws and the requirements of the LANDLORD'S insurer. Since the LANDLORD has no knowledge as to the specifics of how the TENANT operates its business the LANDLORD does not make any representations or warranties that the TENANT'S intended use complies with the applicable laws or the LANDLORD'S insurer's requirements, and accordingly the TENANT assumes all risks and liabilities of compliance and shall comply with the requirements of the applicable governmental authorities, the LANDLORD'S insurer's requirements as well as with all provisions of this Lease

5.2 TENANT shall conduct business under the name of End of the Road.

5.3 TENANT shall use and occupy the premises for the purpose of retail space and should operate its business pursuant to the highest reasonable standards, maintaining a substantial stock of merchandise on display, with sufficient staff/personnel to service its trade. TENANT acknowledges that it is LANDLORD'S intent to operate the Property in a manner consistent with the highest standards of decency and morals prevailing in the community which it serves. Tenant agrees that it will not sell, distribute, display or offer for sale any item which, in Landlord's good faith judgment, is inconsistent with

LANDLORD INITIAL EB

TENANT INITIAL [Signature]

the quality of operation of the Premises or may tend to injure or detract from the moral character or image of the Premises within such community.

5.4 The premises should be uninterruptedly open for business from no earlier than 7:00 a.m. to 10:00 p.m. TENANT shall operate minimum 6 days per week having the right to elect which one day off per week, unless prevented from doing so by fire, casualty or other causes out of TENANTS control.

5.5 Display of banners, pennants, window signs, balloons, and any other temporary advertising should be in compliance with applicable governmental laws and requirements of The City of Key West Code, HARC and LANDLORD approval.

5.6 Not to use or operate any machinery that, in LANDLORD'S determination, is harmful to the building or disturbing to other TENANT in the Property nor shall TENANT use any loud speakers, televisions, phonographs, radios or other devices in a manner so as to be heard or seen outside of the Premises.

5.7 TENANT agrees to keep its display windows, including window or shadow boxes, in the Premises dressed and illuminated and its signs and exterior lights well lighted every day and night during the term of this Lease.

5.8 LANDLORD provides NO parking on the premises.

5.9 LANDLORD restricts pets with exception of trained dogs used by the blind, deaf, physically or mentally disabled. No animals, birds, reptiles or other pets are permitted to be kept on or brought into or on to the premises.

5.10 All garbage, refuse and rubbish shall be deposited in the proper containers supplied by Waste Management and shall be placed outside of the Premises prepared for collection in the manner and at the times and places specified by Waste Management. TENANT shall pay the cost of removal of any of TENANT'S refuse and rubbish. At LANDLORD'S discretion, TENANT is required to contract for its own trash removal at its expense. TENANT shall be responsible for the breaking down of all boxes and all loose trash which shall be placed in enclosed garbage bags before being deposited into the appropriate containers. If it is necessary for LANDLORD to clean areas because of TENANT'S negligence, LANDLORD may charge TENANT for the cost of same.

6. ASSIGNMENT

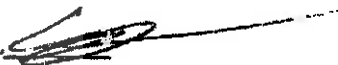
Without the written consent of LANDLORD, first obtained in each case, TENANT shall not assign, sublet, transfer, mortgage, pledge or otherwise encumber or dispose of this Lease during the term hereof, or underlet the demised premises or any part thereof or permit the premises to be occupied by any other persons or entities.

LANDLORD INITIAL



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TENANT INITIAL



Anything to the contrary notwithstanding, where the consent of the LANDLORD is necessary to a proposed assignment or subletting, TENANT agrees to notify LANDLORD in writing of the name, address, terms of the proposed sublease or assignment, the proposed use and such other data concerning the assignee or sublessor as TENANT shall have obtained and/or which LANDLORD may request. LANDLORD shall have thirty (30) days from such notice within which to (a) acquiesce to such assignment or sublease with TENANT remaining fully liable for its obligations under the Lease, (b) acquiesce to such assignment or sublease, but terminate TENANT'S obligations under the Lease (provided LANDLORD and assignee or sublessee enter into a new Lease upon the same terms as set forth in the proposed assignment or sublease) or (c) withhold its consent to the proposed assignment or subletting in accordance with the applicable provisions of this lease (to-wit: for good cause only). Notwithstanding the foregoing, in the event that the TENANT receives any rental or consideration from the sublessee or assignee then the TENANT shall be affirmatively obligated to immediately pay to LANDLORD Thirty percent (30%) of the total amount of rent collected in addition to TENANT obligations in paragraph 2.

Notwithstanding anything contained to the contrary in this Lease, in the event that the TENANT wishes to assign or sublease it must reimburse the LANDLORD for reasonable legal fees incurred associated with the process described herein.

7. CONSTRUCTION, APPLICABLE LAW

The words "LANDLORD" and "TENANT" as used herein shall include the plural as well as the singular. Words used in masculine gender include the feminine and neuter. If there be more than one LANDLORD or TENANT, the obligations imposed hereunder upon the LANDLORD or TENANT shall be joint or several. The section headings or titles in this Lease are not a part hereof and shall have no effect upon the construction or interpretation of any part hereof. This Lease shall be construed and enforced under the laws of the State of Florida. Venue for any legal proceedings shall be in Key West, Monroe County, Florida. Should any provisions of this Lease be illegal or unenforceable under such laws, it or they shall be considered severable and this Lease and its conditions shall remain in force and be binding upon the parties hereto just as though the illegal or unenforceable provisions had never been included herein.

8. PREPARATION OF THE PREMISES

TENANT acknowledges and agrees that it has examined the Premises and knows the present condition thereof and accepts the Premises in an "AS IS" condition subject only to completion of the TENANT'S improvements, if any listed hereto, and that no representations as to the condition or repair of said Premises were made by LANDLORD, or anyone on LANDLORD'S behalf at any time prior to the execution of this lease.

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TENANT INITIAL

9. MAINTENANCE

The TENANT will, at TENANT'S sole cost and expense, keep the demised premises in good repair and tenantable condition during the term of this Lease. By way of example and not by limitation, the TENANT shall replace, at its expense, all broken or scratched glass in and about the premises; the TENANT is responsible for the maintenance of the air conditioning, plumbing, electrical, repair of all doors and exterminating services. As well as the maintenance of the exterior of the building adjacent to the demised premises, the patio/parking lot, any flag poles, kiosks, place carts, counters and other outdoor displays. TENANT is responsible for acquiring and keeping in good condition hand-held fire extinguishers and smoke detectors in the Premises. The TENANT will, at the termination of this Lease by lapse of time or otherwise, return the premises to the LANDLORD in as good condition as when received, ordinary wear and tear excepted.

9.1 The plumbing facilities shall not be used for any other purpose than that for which they are constructed, and no toxic or hazardous waste, or foreign substance of any kind. At the TENANT'S expenses any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant.

9.2 In the event there is a storm or hurricane, TENANT is responsible for shuttering windows, doors and securing any and all items that are on the patio area.

9.3 The tenant accepts the building in "as is condition" however should the roof leak or the building fail structurally then the landlord would be responsible for repair of same. Should the tenant by their action or the action of their tradesmen cause a roof or structural failure then in this instance the tenant agrees to repair the damage caused by them and is responsible for damage caused by their action.

10. ALTERATIONS AND IMPROVEMENTS

10.1 TENANT shall make no alterations, additions installations, substitutions, improvements or decorations in or to the premises without the written consent of LANDLORD, which consent shall not be unreasonably withheld and shall be subject to and upon such terms and conditions as LANDLORD may require including without limitation, (a) physical and spatial limitations, (b) governmental approvals (c) payment, (d) bonding to guarantee the payment of contractors' fees, (e) indemnification, (f) absence of liens, (g) designation of approved contractors and subcontractors, and (h) aesthetic considerations. This clause shall not be construed to mean that the LANDLORD shall allow any mechanics' liens upon the premises based upon work ordered by the TENANT.

10.2 In the event that the TENANT desires to make any modifications, additions or alterations to the premises the following provisions shall apply, in addition to any other provision of this Lease. Prior to TENANT'S commencing any work upon the demised

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premises which requires a City of Key West building permit, it must first obtain the LANDLORD'S written approval of the plans and specifications and otherwise comply with the following and/or produce the following documents for LANDLORD'S prior approval:

- A. A full set of sealed "Permit Ready" plans;
- B. A copy of the building permit issued by the appropriate governmental body having jurisdiction thereof;
- C. A copy of the TENANT'S Contractor's license evidencing the fact that it is licensed to do business and to act as a General Contractor in this geographical area;
- D. A Hold Harmless and Indemnification Agreement in favor of the LANDLORD executed by the TENANT and its General Contractor;
- E. A certificate of insurance in a form and in amounts acceptable to LANDLORD reflecting liability insurance in favor of the LANDLORD issued by the insurer of the Contractor together with a workman's compensation policy if required by law;
- F. A certificate of insurance in a form and in amounts acceptable to LANDLORD reflecting liability insurance in favor of the LANDLORD issued by the insurer of the TENANT;
- G. A copy of the contract for construction between the TENANT and its General Contractor.
- H. See Exhibit 1, Construction Agreement

10.3 The LANDLORD during the various phases of construction by TENANT shall be entitled through LANDLORD'S agent to examine the work as it progresses. Accordingly, the TENANT will cure any defective work brought to its attention by the LANDLORD.

In the event that TENANT fails to comply with any provisions of this entire Section TEN (10) then the LANDLORD may enter upon the premises and make all necessary repairs, modifications and corrective work at TENANT'S cost and expense, the same to be added to and payable at the earlier of the date that the next installment of rent is due or five days after the date the bill is received, such sums shall bear interest at the highest rate allowed by law from the date LANDLORD expended such sums to the date that they are repaid.

11. DELAY OF POSSESSION

If the LANDLORD is unable to give possession of the demised premises on or before the date stipulated in Paragraph 1 hereof as the commencement of the term hereof an abatement or diminution of the rent to be paid hereunder shall be allowed TENANT,

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TENANT INITIAL 

but nothing herein shall operate to extend the term of this Lease beyond the expiration date; and said abatement in rent shall be the full extent of LANDLORD'S liability to TENANT for any loss or damage to TENANT on account of said delay in obtaining possession of the premises

12. DESTRUCTION OR DAMAGE

In the event that the demised premises shall be destroyed or damaged by fire or other casualty during the term of this Lease, whereby all or a part thereof shall be rendered untenable, then the LANDLORD shall have the right, to be exercised by notice to TENANT within thirty (30) days after casualty, to render such premises tenantable by repairs within 120 days therefrom subject to extension for delays faced by LANDLORD due to adjustment of insurance proceeds, labor trouble, governmental controls, so-called acts of God, or any other cause beyond LANDLORD'S reasonable control. If said premises are not rendered tenantable within said time, it shall be optional with either party hereto to cancel this Lease, by written notice to the other, and in the event of such cancellation the rent shall be paid only to the date of such fire or casualty and paid rent refunded. During any time that the demised premises are untenable due to a cause set forth in this paragraph, the rent or a just and fair proportion thereof shall be abated.

No damages, compensation or claim shall be payable by LANDLORD for inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the demised premises or of the building pursuant to this paragraph. If LANDLORD exercises its rights to restore premises, then LANDLORD shall use its best efforts to effect such repair or restoration promptly and in such manner as not unreasonably to interfere with TENANT'S use and occupancy.

Notwithstanding any of the foregoing provisions of this paragraph, if LANDLORD, or the lessor of any superior lease or the holder of any superior mortgage, as defined hereinafter, is unable to collect all of the insurance proceeds (including rent insurance proceeds) applicable to damage or destruction of the demised premises or the building by fire or other cause, by reason of some action or inaction on the part of TENANT or any of its employees, agents, contractors, then without prejudice to any other remedies which may be available against TENANT, there shall be no abatement of TENANT'S rents, but the total amount of such rents not abated (which would otherwise have been abated) shall not exceed the amount of the uncollected insurance proceeds.

LANDLORD will not carry separate insurance of any kind on TENANT'S property and, except as provided by law or by reason of its fault or its breach of any of its obligations hereunder, shall not be obligated to repair any damage thereto or replace the same; to the extent that TENANT shall maintain insurance on TENANT'S property, LANDLORD shall not be obligated to make repairs thereto or replace the same. In the event that it is determined that the cause of the fire or other casualty was the fault of TENANT, its

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agents, employees or its equipment, then TENANT shall be responsible at its sole cost and expense to restore the premises to its condition prior to the fire or other casualty and rent shall not be abated for any period from the date of the fire or of the casualty to the date of restoration of the premises.

13. COMPLIANCE WITH LAWS, INSURANCE

TENANT shall, during the entire term of this Lease, comply with all statutes, ordinances, rules, orders, regulations, and requirements of the Federal, State, County and City Government, and of any and all their Departments and Bureaus, applicable to said premises, and shall also comply with all rules, orders and regulations of the LANDLORD'S insurer, for the prevention of fires and prevention of accidents as well as damage to property, all at TENANT'S own cost and expense. Landlord shall furnish a copy of their insurance policy and rider to Tenant prior to closing. If by reason of any failure of TENANT to comply with the provisions of this paragraph, the rate of fire insurance with extended coverage on the building or equipment or other property of LANDLORD or liability insurance shall be higher than it otherwise would be, TENANT shall reimburse LANDLORD, on demand, for the part of the premiums for fire insurance and extended coverage and liability insurance paid by LANDLORD because of such failure on the part of TENANT. TENANT also agrees not to use the premises for any purpose which would increase the cost of liability insurance or fire and extended coverage insurance on the building in which the building in which the leased premises are located over that which applies to normal retail space at the lowest rate. Any use of the premises which would increase such rate must be approved by the LANDLORD before TENANT may use the premises for such purposes. In the event the use to which the premises occupied by TENANT are used increases the insurance rates, then TENANT shall pay to the LANDLORD, as premiums are paid by LANDLORD, amounts equal to the increase caused by TENANT'S use. TENANT'S use and occupancy may not vitiate the insurance contract. The TENANT shall carry and fully pay for plate glass insurance coverage and public liability insurance in the amount of 1 million in respect to injuries to any one person and 3 million in respect to any one accident or disaster with companies and on forms acceptable to LANDLORD naming both LANDLORD and TENANT as parties insured thereby, insuring the parties against any such claim. All such policies of insurance shall provide 30 days notice to landlord as a condition precedent to any cancellation. Such policy shall be delivered to LANDLORD. TENANT shall provide the LANDLORD with evidence of payment of renewal premiums or replacement policies not later than 30 days prior to the expiration of any such policy. The public liability policy shall include premises and operations coverage.

14. EVENTS OF DEFAULT

The occurrence of any of the following shall constitute an event of default hereunder:

- A. Discontinuance by TENANT of the conduct of its business in the Demised Premises.

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- B. The filing of a petition by or against TENANT for adjudication as a bankrupt or insolvent, or for its reorganization or for the appointment of a receiver or trustee of TENANT'S property; any organization or proceedings under Chapter X and/or Chapter XI of the Federal Bankruptcy Law; an assignment by TENANT for the benefit of creditors; or the taking possession of the property of TENANT by any governmental officer, court appointed receiver or agency pursuant to statutory authority for the dissolution or liquidation of TENANT.
- C. Failure of TENANT to pay when due any installment of rent hereunder or any other sum herein required to be paid by TENANT.
- D. Vacation or desertion of the Demised Premises or permitting the same to be empty and unoccupied for a period of ten consecutive days without notice to LANDLORD. This shall not apply to periods of mandatory evacuations.
- E. TENANT'S failure to perform any non-monetary covenant or condition of this Lease within Five (5) days of notice to cure shall constitute an event of default.

15. RIGHTS OF LANDLORD UPON DEFAULT BY TENANT

If the TENANT is in default as defined in sub-paragraphs C of Paragraph 14 and if the same is not cured by the TENANT within three (3) days after written notice to the TENANT; or if the TENANT is in default pursuant of the provisions of sub-paragraph E of Paragraph 14 then the LANDLORD, in addition to all rights and remedies granted under the laws of the State of Florida as the same exist or as may be amended, shall have any or all of the following rights:

- i. To re-enter and remove all persons and property from the Demised Premises, and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of TENANT, all without service of notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby.
- ii. Terminate the Lease and relet the premises for account of the LANDLORD or within the sole discretion of LANDLORD, the premises may be relet for the account of the TENANT.

If any part of the rent shall remain due and unpaid after the expiration of the three (3) day period for curing defaults hereinabove provided for, LANDLORD shall have the option of declaring the balance of the entire rent for the entire rental term of this lease to be immediately due and payable, and LANDLORD may then proceed immediately to collect all of the unpaid rent called for by this Lease by distress or otherwise, or terminate this Lease should TENANT fail to pay the balance of the entire

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rent for the entire rental term.

TENANT agrees to pay all costs and expenses of collection, any required fees for posting of a bond, and all attorneys' fees for any part of said rental that may be collected by an attorney, suit, distress or foreclosure together with interest on all such amounts at the highest rate allowed by law; and further, in the event that TENANT fails to promptly and fully perform and comply with each and every condition, covenant or obligation hereunder and the matter is turned over to LANDLORD'S attorney, TENANT shall pay LANDLORD its attorney's fees together with LANDLORD'S administrative costs, whether suit is instituted or not. In the event TENANT goes into default hereunder and LANDLORD'S attorney writes a notice to TENANT of TENANT'S default, TENANT agrees that TENANT will pay to LANDLORD a minimum sum of Two Hundred Fifty Dollars (\$250.00) to cover the LANDLORD'S administrative costs and attorney's fees.

The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of the LANDLORD and TENANT, TENANT'S use or occupancy of the Demised Premises, and/or any claim of injury or damage. In the event LANDLORD commences any proceedings for non-payment of rent or additional rent, TENANT will not interpose any counter-claim of any nature or description in any such proceedings. This shall not, however, be construed as a waiver of the TENANT'S right to assert such claims in any separate action or actions brought by the TENANT.

TENANT hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of TENANT being evicted or dispossessed for any cause, or in the event of LANDLORD obtaining possession of the Demised Premises, by reason of violation by TENANT of any of the covenants or conditions of this Lease, or otherwise. The remedies herein provided are cumulative in nature and accordingly no court shall determine that the LANDLORD has elected one remedy as the exclusive remedy over any other remedy provided for pursuant to this Lease.

16. UTILITIES

In addition to the Base Rent and adjustments thereto, TENANT shall pay all utilities associated with the use of the premises including, without limitation, electric, sewer, garbage, water, heat, protection or security services, telephone service, pest extermination, and any other charges, costs and expenses which arise from the occupancy or use of the Parcel. The water, electric, sewer and garbage accounts shall be put into TENANT'S name, with a copy of each statement to the LANDLORD. LANDLORD may, with ten (10) day notice to Tenant or without notice in the case of an emergency, cut off and discontinue gas, water, electricity and any or all other utilities whenever such discontinuance is necessary in order to make repairs or alterations. No such action by Landlord shall be construed as an eviction or

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disturbance of possession or an election by Landlord to terminate this Lease, nor shall Landlord be in any way responsible or liable for such action.

17. SUBORDINATION

This lease, and all rights of TENANT hereunder, are and shall be subject and subordinate to all mortgages which may now or hereafter affect the demised premises and to each and every advance made or hereafter to be made under such mortgages, and to all renewals, modifications, replacements and extensions of such mortgages and spreaders and consolidations of such mortgages (which mortgages are sometimes collectively referred to herein for convenience as the "superior mortgage"). 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.

- A. TENANT agrees that in the event of any act or omission by the LANDLORD which would give TENANT the right to terminate this Lease, or to claim a partial or total eviction, TENANT shall not exercise any such right until he has notified the LANDLORD in writing of said acts or omissions and provided LANDLORD a reasonable time to correct the act or omission complained of.
- B. If the lessor of any such ground lease or the holder of any such mortgage shall succeed to the rights of LANDLORD under this Lease, then at the request of such party so succeeding to 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, or 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 except that the successor landlord shall not (i) be liable for any previous act or omission of LANDLORD under this Lease; (ii) be subject to any offset, not expressly provided for in this Lease, which shall have theretofore accrued to TENANT against LANDLORD; and (iii) be bound by any previous modification of this Lease, not expressly provided for in this Lease, or by any previous prepayment of more than one (1) month's fixed rent unless such modification or prepayment shall have been expressly approved in writing by such LANDLORD or such holder through or by reason of which the successor LANDLORD shall have succeeded to the rights of LANDLORD under this lease.
- C. The TENANT agrees that this lease shall at all times be subject and subordinate to the lien of any mortgage (which term shall include all security instruments) that may be placed on the demised premises by the LANDLORD; and TENANT agrees, upon demand, without cost, to execute any instrument (in a form reasonably acceptable to TENANT) as may be required to effectuate such subordination; provided, however, as a condition to this subordination provision, and provided that TENANT has attorned to

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and recognized such successor as TENANT'S LANDLORD under this lease without change in the terms, and provisions of this lease, the LANDLORD shall obtain from any such mortgagee an agreement in writing, which shall be delivered to TENANT, providing in substance that, so long as TENANT shall faithfully discharge the obligations on its part to be kept and performed under the terms of this lease, its tenancy shall not be disturbed, nor shall this lease be affected by any default under such mortgage, and in the event of foreclosure or any enforcement of any such mortgage, the purchaser at such foreclosure sale shall be bound to TENANT for the term of this lease, the rights of TENANT hereunder shall expressly survive, and this lease shall in all respects continue in full force and effect, provided, however, that TENANT fully performs all of its obligations hereunder.

18. INDEMNIFICATION

Neither LANDLORD nor any agent or employee of LANDLORD shall be liable to TENANT for any injury or damage to TENANT or to any other person or for any damage to, or loss (by theft or otherwise) of; any property of TENANT or of any other person, irrespective of the cause of such injury, damage or loss, unless caused by or due to the negligence of LANDLORD, its agents or employees without contributory negligence on the part of TENANT, it being understood that no property, other than such as might normally be brought upon or kept in the premises as an incident to the reasonable use of the premises for the purposes herein permitted, will be brought upon or be kept in the premises.

In consideration of ten dollars (\$10.00) the receipt of which is hereby acknowledged, the TENANT shall indemnify and save harmless LANDLORD and its agents against and from (a) any and all claims (i) arising from (x) the conduct or management of the demised premises or of any business therein; or (y) any work or thing whatsoever done, or any condition created or permitted to exist (other than by LANDLORD for LANDLORD'S or TENANT'S account) in or about the demised premises during the term of this Lease, or during the period of time, if any, prior to the commencement of the term hereof that TENANT may have been given access to the demised premises, or (ii) arising from any negligent or otherwise wrongful act or omission of TENANT or any of its subtenants or its or their employees, agents or contractors; and (b) all costs, expenses and liabilities incurred in or in connection with each such claim or action or proceeding brought thereon. In case any action or proceeding be brought against LANDLORD by reason of any such claim, TENANT, upon notice from LANDLORD, shall resist and defend such action or proceeding at its own cost.

19. WAIVER

The failure of either the LANDLORD or TENANT to insist in any one or more instances upon the strict performance of any one or more of the obligations of this Lease, or to exercise any rights or election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such or more obligations of this

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Lease or of the right to exercise such election, but the same shall both continue and remain in full force and effect with respect to any subsequent breach, act or omission.

20. NOTICES

Any notice, statement, demand or other communication required or permitted to be given or made by either party to the other, pursuant to this Lease or pursuant to any applicable law, shall be in writing and shall be deemed to have been properly given and made if sent by registered or certified mail, return receipt requested, addressed to the other party at the following addresses to **LANDLORD** at P.O. Box 4125, Key West, Florida 33041 or 405 #2-#3 Fleming Street, Key West, Florida 33040 and to **TENANT**, 405 #1 Fleming Street, Key West, Florida 33040.

21. LIENS

TENANT further agrees that TENANT will pay all of TENANT'S contractors, subcontractors, mechanics, laborers, materialmen and all others, and will indemnify LANDLORD against all legal costs and charges, bond premiums for release of liens, and counsel fees reasonably incurred in the commencement of defense of any suit by the LANDLORD to discharge any liens, judgments, or encumbrances against the premises caused or suffered by TENANT. It is understood and agreed between the parties hereto that the costs and charges above referred to shall be considered as rent due under this Lease payable upon demand.

The TENANT herein shall not have any authority to create any liens for labor or material on the LANDLORD'S interest in the above-described property, and all persons contracting with the TENANT for the doing of any work or the furnishing of any materials on or to the premises, and all material men, contractors, mechanics and laborers, are hereby charged with notice that they must look to the TENANT only to secure the payment of any bill for work done or materials furnished during the term of this Lease.

22. TRANSFER BY LANDLORD

In the event that the interest or estate of LANDLORD in the premises shall terminate by operation of law or by bona fide sale of the premises or by execution or foreclosure sale, or for any other reason, then and in any such event LANDLORD shall be released and relieved from all liability and responsibility as to obligations to be performed by LANDLORD hereunder or otherwise. In such event LANDLORD'S successor, by acceptance of rent from TENANT hereunder, shall become liable and responsible to TENANT in respect to all obligations of LANDLORD under this Lease.

This Lease may be assigned by the LANDLORD, in which case, the TENANT, upon request by the LANDLORD, shall issue a letter stating that the Lease is in full force and effect and that there are no set-offs or claims or other defenses to rent.

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23. CONDEMNATION

In the event any portion of demised premises is taken by any condemnation or eminent domain proceeding or should a portion of the demised premises be conveyed in lieu of such taking and this Lease continues in force as to any part of the demised premises remaining, as hereinafter provided, the base monthly rental herein specified to be paid shall be ratably reduced according to the area of the demised premises which is actually taken, as of the date of such taking, and TENANT shall be entitled to no other consideration by reason of such a taking and any damages whatsoever suffered by TENANT and occasioned by such taking and shall not entitle the TENANT to share to any extent in any and all income, rent, arrears or any interest therein whatsoever which may be made in connection with such a taking, and TENANT does hereby relinquish and assign to LANDLORD all TENANT'S rights and equities in and to any such income rent, awards or any interest therein.

In the event of a partial taking of the building, either condemnation, eminent domain or conveyance in lieu thereof, LANDLORD and/or TENANT may elect to terminate this Lease if the remaining area of the building shall not be reasonably sufficient for LANDLORD and/or TENANT to continue feasible and economical operation of the remaining portion of the building and rent shall be pro-rated and adjusted as of such date of termination. In the event that the LANDLORD elects to terminate the TENANT'S Lease then the rent shall be pro-rated and adjusted as of such date of termination. Should all the demised premises be so taken, this Lease shall terminate as of the date of such a taking and in the event TENANT shall be entitled to no damages or any consideration by reason of such taking, except the cancellation and termination of this Lease as of the date of said taking.

24. PEACEFUL POSSESSION

So long as TENANT pays all of the fixed rent and additional rent and charges due hereunder and performs all of TENANT'S other obligations hereunder, 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.

25. SURRENDER, HOLDING OVER

On the last day of the term of this Lease, or upon any earlier termination of this Lease, or upon any re-entry by LANDLORD upon the demised premises, TENANT shall peaceably and without notice of any sort, quit and surrender the demised premises to LANDLORD in good order, condition and repair, except for ordinary wear and tear. TENANT shall remove all of TENANT'S property at LANDLORD'S request and all alterations, additions and improvements to the premises. TENANT shall repair any damages to premises caused by such removal and restore the premises to the condition in which they were prior to installation. Any property not so removed at the expiration

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of the term of the lease shall be deemed to be abandoned by TENANT and may be retained or disposed of by LANDLORD as LANDLORD shall desire. TENANT specifically agrees that in the event TENANT retains possession and does not so quit and surrender the demised premises to LANDLORD, then TENANT shall pay to LANDLORD (i) all damages that LANDLORD may suffer on account of TENANT'S failure to so surrender and quit the demised premises, and TENANT will indemnify and save LANDLORD harmless from and against any and all claims made by succeeding tenant of the demised premises against LANDLORD on account of delay of LANDLORD in delivering possession of the demised premises to said succeeding tenant to the extent that such delay is occasioned by the failure of TENANT to so quit and surrender said premises, and (ii) rent for each month or any applicable portion of a month of such holding over at twice the amount payable for the month immediately preceding the termination of this Lease, during the time the TENANT thus remains in possession. The provisions of this paragraph do not waive any of the LANDLORD'S rights of re-entry or any other right under the terms of this Lease. If TENANT shall fail to surrender the premises as herein provided, no new tenancy shall be created and TENANT shall be guilty of unlawful detainer. No surrender of this Lease or of the premises shall be binding on the LANDLORD unless acknowledged by LANDLORD in writing.

26. KEEPING THE PREMISES CLEAN

The TENANT shall clean all areas contiguous to the demised premises to prevent the accumulation of trash and debris so that the surrounding area is always in a neat and clean fashion. Should the TENANT fail to clean its area surrounding the demised premises, then the LANDLORD may clean up the area and charge the TENANT for the cost of said clean-up which shall be paid the same as additional rent and afford the LANDLORD all remedies associated therewith.

27. SIGNS

TENANT agrees to maintain any signs, lettering, etc., as may be approved, in good condition and repair at all times. All signs placed in or on the Demised Premises shall comply with the "Sign Criteria" in accordance with the provisions of the plans available for review at LANDLORD'S office, and must meet The City of Key West and HARC'S approval. TENANT can place signage on the Whitehead Street portion of the building and on the Fleming Street portion that is dedicated to the Business the TENANT is occupying. LANDLORD reserves the right to put signage on the Fleming Street portion of the building that the LANDLORD will continue to occupy at this time. If LANDLORD decides in the future to rent any other portion of the building, that business or businesses would be entitled to put signage in the appropriate location.

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28. ENTIRE AGREEMENT

This Lease contains the entire agreement between the parties hereto and all previous negotiations leading hereto and it may be modified only by an agreement in writing signed and sealed by the LANDLORD and TENANT, IN WITNESS WHEREOF, the LANDLORD and TENANT have duly signed and executed these presents on this 20th day of November.

Signed, sealed and delivered in the presence of:

By: [Signature]
LANDLORD
CAROLYN A. BLACKWELL
C&D Properties of Key West I, LLC

By: [Signature]
Jenna V. Blackwell
WITNESS, AS TO LANDLORD

"TENANT"
TROPICAL SHELL & GIFT, INC
DBA End of the Road

By: [Signature]
PRESIDENT

By: _____
WITNESS, AS TO TENANT

RENTS PERSONALLY GUARANTEED BY,

By: [Signature]
EDWIN SWIFT, III

By: _____
WITNESS, AS TO GUARANTOR

By: _____
Chris Belland

By: _____
WITNESS, AS TO GUARANTOR

LANDLORD INTIAL [Signature]

TENANT INTIAL [Signature]

**EXHIBIT 1
CONSTRUCTION AGREEMENT
TENANTS WORK**

All Tenant's work shall conform to all applicable ,governing codes and Landlord's outline plans and specifications and shall include but not be limited to the work listed below:

1. Architectural:

- a. Interior walls, doors and windows.
- b. Any wall, ceiling and floor finishes.

2. Electrical:

- a. Any and all electrical work required by Tenant, which is not Landlord's obligation;
- b. Telephone installation.
- c. Fire and Security Alarm.
- d. Electrical service charged by Keys Energy.
- f. All Light Fixtures, Ceiling Fans
- g. Tenant shall provide all work associated with Electrical.

3. Exterior:

- a. Painting of the entire building will be the responsibility of the TENANT with LANDLORD'S approval.

3. Plumbing

- a. Tenant shall pay all water and sewer impact fees or other charges imposed by Monroe County, City of Key West, Florida, Florida Keys Aqueduct Authority or any another governing authority, whether said fees or charges have been paid by Landlord on behalf of Tenant in connection with the initial construction or charged directly to Tenant
- b. Any impact or other fees required due to the specific use made of the premises by the Tenant **SHALL BE PAID BY THE TENANT.**
- c. Tenant shall provide all work associated with Plumbing.

5. Tenant will furnish store plans with specifications to the Landlord for Landlord's approval within thirty (30) days of the signing of this Lease.

6. Tenant shall pay for any utility charges associated with the leased premises during and after construction of the leased premises.

7. Tenant will require any contractor or sub-contractor to remove and dispose of, at least once a week, all debris and rubbish caused by the work and upon completion to remove all temporary structures, debris and rubbish of whatever kind remaining on any part of the Center.

8. Tenant and/or Tenant's contractors and sub-contractors shall be required to provide, in addition to the insurance required to be maintained by Tenant, the following types of

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insurance in the following minimum amounts naming Landlord and other persons having an interest in the Center as additional insurers as their interest may appear, issued by companies approved by Landlord.

A. Workman's compensation coverage with limits of at least \$500,000.00 for the employers liability coverage thereunder.

B. Builders Risk-Completed Value fire and extended coverage covering damage to the construction and improvements to be made by Tenant in amounts at least equal to the estimated completed cost of said construction and improvements with 100% coinsurance.

C. Payment and Performance bonds for 100% of the value of work to be accomplished above \$25,000.00. All bonds shall be dual or multiple obligee bonds, insuring to the benefit of Landlord, Tenant, and other persons as Landlord shall require. Original or duplicate policies for all of the foregoing insurance shall be delivered to Landlord before Tenant's work is started and before any contractor's equipment is moved to any part of the Center. In all other respects the insurance coverage above mentions shall comply with provisions 14 of the lease.

9. All construction of the improvements may be made only by an insured contractor which has been approved, in writing, by Landlord which approval shall not be unreasonably withheld. Tenant agrees that construction of the Improvements shall be performed diligently and in good and workmanlike manner and shall be expeditiously completed in compliance with all laws, ordinances, orders, rules, regulations and requirements. All work done in connection with the Improvements shall comply with all requirements of insurance policies maintained by Landlord.

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TENANT INITIAL [Signature]

Property Appraiser Information



Scott P. Russell, CFA
Property Appraiser
Monroe County, Florida

Key West (305) 292-3420
Marathon (305) 289-2550
Plantation Key (305) 852-7130

Property Record Card -

Maps are now launching the new map application version.

Website tested on IE8,
IE9, & Firefox.
Requires Adobe Flash
10.3 or higher

Alternate Key: **1006904** Parcel ID: **00006670-000000**

Ownership Details

Mailing Address:

C & D PROPERTIES OF KEY WEST I LLC
PO BOX 4125
KEY WEST, FL 33041-4125

Property Details

PC Code: 11 - STORES ONE STORY
Millage Group: 10KW
Affordable Housing: No
Section-Township-Range: 06-68-25
Property Location: 405 FLEMING ST UNIT: 102 KEY WEST
405 FLEMING ST UNIT: 101 KEY WEST
Legal Description: KW PT LOT 4 SQR 38 G11-475 OR975-1535 OR2557-1725/27

[Click Map Image to open interactive viewer](#)



Land Details

Land Use Code	Frontage	Depth	Land Area
100D - COMMERCIAL DRY	52	66	3,428.00 SF

Building Summary

Number of Buildings: 1
 Number of Commercial Buildings: 1

Total Living Area: 2250
Year Built: 1958

Building 1 Details

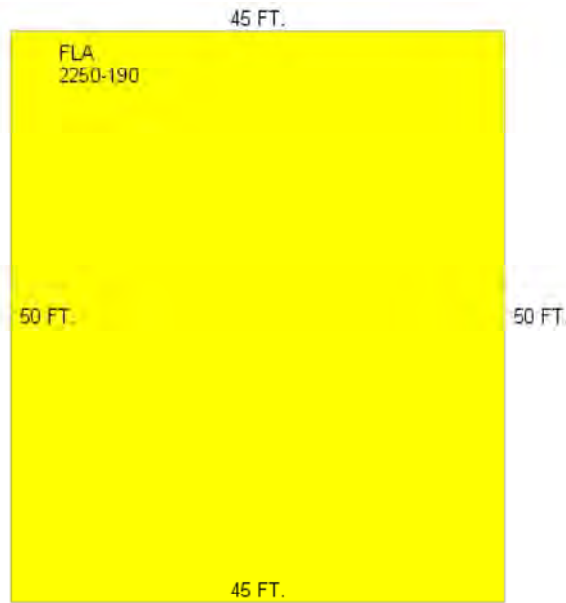
Building Type	Condition G	Quality Grade 350
Effective Age 12	Perimeter 190	Depreciation % 15
Year Built 1958	Special Arch 0	Grnd Floor Area 2,250
Functional Obs 0	Economic Obs 0	

Inclusions:

Roof Type	Roof Cover	Foundation
Heat 1	Heat 2	Bedrooms 0
Heat Src 1	Heat Src 2	

Extra Features:

2 Fix Bath 0	Vacuum 0
3 Fix Bath 1	Garbage Disposal 0
4 Fix Bath 0	Compactor 0
5 Fix Bath 0	Security 0
6 Fix Bath 0	Intercom 0
7 Fix Bath 0	Fireplaces 0
Extra Fix 0	Dishwasher 0



Sections:

Nbr	Type	Ext Wall	# Stories	Year Built	Attic	A/C	Basement %	Finished Basement %	Area
1	FLA		1	1957					2,250

Interior Finish:

Section Nbr	Interior Finish Nbr	Type	Area %	Sprinkler	A/C
	1662	1 STY STORE-B	100	Y	Y

Exterior Wall:

Interior Finish Nbr	Type	Area %
454	C.B.S.	100

Misc Improvement Details

Nbr	Type	# Units	Length	Width	Year Built	Roll Year	Grade	Life
1	PT2:BRICK PATIO	795 SF	0	0	2014	2015	3	50

Appraiser Notes

FLORIDA KEYS PRINTING

Building Permits

Bldg Number	Date Issued	Date Completed	Amount	Description	Notes
07-4158	08/31/2007	02/04/2008	14,000		REPLACE 2200SF OF SINGLE PLY ROOF
07-4576	10/02/2007	02/04/2008	800		FILL IN WINDOW WITH METAL FRAMING AND STUCCO
14-1145	04/01/2014	10/06/2014	6,000	Commercial	REPLACE EXISTING ASPHALT PARKING SPACES WITH BRICK PAVERS 795SF .
14-0936	06/12/2014	10/06/2014	0	Commercial	EXISTING BUILDING RENOVATION INCLUDING NEW STOREFRONT AND ENTRY DOORS, 2 CANVAS AWNINGS, BRICK PAVERS, EXTERIOR PAINT, AND SIGNAGE
14-1913	05/29/2014	10/06/2014	85,000	Commercial	BUILD OUT OF SPACE. INSTALL NEW STORE FRONT WINDOWS AND DOORS.
1 96-2921	07/01/1996	11/01/1996	900	Commercial	PAINTING
2 98-1323	04/23/1998	01/01/1999	1,300	Commercial	BLD PARTITION WALL
3 98-3946	12/14/1998	08/13/1999	2,000	Commercial	REPL PARAPET FLASHING
4 99-0176	01/15/1999	08/13/1999	500	Commercial	SMOKE DETECTORS
5 99-1337	04/27/1999	08/13/1999	4,000	Commercial	REPAIR SPALLING CONCRETE
6 00-2967	09/25/2000	10/09/2001	25,000	Commercial	REPAIR TIEBEAM/PAINT
7 01-2970	08/27/2001	10/09/2001	10,000	Commercial	REMODELING/ADD DOORS
8 07-1478	03/27/2007	06/06/2007	1,025	Commercial	REPLACE EXISTING CAST IRON PIPING
9 07-3912	08/15/2007	02/04/2008	4,000	Commercial	REPLACE 200 SQ FT SPALLING ON BUILDING

Parcel Value History

Certified Roll Values.

[View Taxes for this Parcel.](#)

Roll Year	Total Bldg Value	Total Misc Improvement Value	Total Land Value	Total Just (Market) Value	Total Assessed Value	School Exempt Value	School Taxable Value
2014	127,313	600	567,099	695,012	695,012	0	695,012
2013	127,313	600	543,318	671,231	671,231	0	671,231
2012	133,013	600	543,318	676,931	676,931	0	676,931
2011	133,013	600	603,686	737,299	656,157	0	737,299
2010	140,614	600	455,293	596,507	596,507	0	596,507
2009	140,614	600	470,672	611,886	611,886	0	611,886
2008	146,315	600	423,444	570,359	570,359	0	570,359
2007	92,275	600	445,640	538,515	538,515	0	538,515
2006	147,337	660	274,240	422,237	422,237	0	422,237
2005	107,245	720	233,104	341,069	341,069	0	341,069
2004	107,241	780	233,104	341,125	341,125	0	341,125
2003	122,561	840	130,264	253,665	253,665	0	253,665
2002	122,561	900	130,264	253,725	253,725	0	253,725
2001	122,561	960	130,264	253,785	253,785	0	253,785
2000	122,561	561	119,980	243,102	243,102	0	243,102
1999	107,241	594	119,980	227,815	227,815	0	227,815
1998	71,661	627	119,980	192,268	192,268	0	192,268
1997	71,661	660	109,696	182,017	182,017	0	182,017
1996	65,146	693	109,696	175,535	175,535	0	175,535
1995	65,146	726	109,696	175,568	175,568	0	175,568
1994	65,146	759	109,696	175,601	175,601	0	175,601
1993	65,146	0	109,696	174,842	174,842	0	174,842
1992	65,146	0	109,696	174,842	174,842	0	174,842
1991	65,146	0	109,696	174,842	174,842	0	174,842
1990	55,448	0	83,129	138,577	138,577	0	138,577
1989	55,448	0	82,272	137,720	137,720	0	137,720
1988	50,278	0	61,704	111,982	111,982	0	111,982
1987	59,515	0	41,993	101,508	101,508	0	101,508
1986	55,194	0	41,136	96,330	96,330	0	96,330
1985	70,588	0	19,908	90,496	90,496	0	90,496
1984	46,531	0	19,908	66,439	66,439	0	66,439
1983	46,531	0	19,908	66,439	66,439	0	66,439
1982	39,291	0	19,908	59,199	59,199	0	59,199

Parcel Sales History

NOTE: Sales do not generally show up in our computer system until about two to three months after the date of sale. If a recent sale does not show up in this list, please allow more time for the sale record to be processed. Thank you for your patience and understanding.

Sale Date	Official Records Book/Page	Price	Instrument	Qualification
12/30/2011	2557 / 1725	100	QC	11

This page has been visited 13,714 times.

Monroe County Monroe County Property Appraiser
Scott P. Russell, CFA
P.O. Box 1176 Key West, FL 33041-1176

Public Notices
(radius map & mailing list)

Public Meeting Notice

The Key West Planning Board will hold a public hearing **at 6:00 PM on January 15, 2015 at Old City Hall, 510 Greene Street**, Key West, Florida, (behind Sloppy Joe's Bar). The purpose of the hearing will be to consider a request for:

Exception for Outdoor Merchandise Display – 405 Fleming Street, Unit 101 (RE # 00006670-000000; AK #1006904) -
A request for exception for outdoor merchandise display on property located within the Historic Residential Office (HRO) Zoning District pursuant to Section 106-52 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

The public may examine the application during regular office hours, Monday through Friday between 8:00 AM and 5:00 PM, at the City of Key West Planning Department, located in Habana Plaza at 3140 Flagler Avenue. The application may also be examined online at www.keywestcity.com. Written responses must be submitted before the hearing to the contact person below.

Contact: Carlene Smith, Planner II; E-mail: cesmith@cityofkeywest-fl.gov; Phone: 305-809-3722; Fax 305-809-3978;
Mail: PO Box 1409, Key West FL 33041-1409

THIS NOTICE CANNOT BE REMOVED FROM THE SITE UNTIL AFTER PLANNING BOARD DETERMINATION.

YOU ARE A PROPERTY OWNER WITHIN 300 FEET OF THE SUBJECT PROPERTY

The City of Key West Planning Board will hold a Public Hearing to consider the following request:

Exception for Outdoor Merchandise Display -- A request for exception for outdoor merchandise display on property located within the Historic Residential Office (HRO) Zoning District pursuant to Section 106-52 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Applicant: Tropical Shell and Gifts, Inc., dba End of the Road **Owner:** C & D Properties of Key West, LLC

Location: 405 Fleming Street, Unit 101 (RE # 00006670-000000; AK #1006904)

Date of Hearing: January 15, 2015 **Time of Hearing:** 6:00 PM

Location of Hearing: Old City Hall, 510 Greene Street, City Commission Chambers

Interested parties may appear at the public hearing and be heard with respect to the application. Packets can be viewed online, the Friday before the meeting at www.keywestcity.com. Click on City Board & Committee Agendas. A copy of the corresponding application is available from the City of Key West Planning Department located at 3140 Flagler Avenue, Key West, Florida, Monday through Friday between the hours of 8:00 am and 5:00 pm.

Please provide written comments to: Carlene Smith, Planner II; **E-mail:** cesmith@cityofkeywest-fl.gov;
Phone: 305-809-3722; Fax 305-809-3978; Mail: PO Box 1409, Key West FL 33041-1409

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the Planning Commission or the City Commission with respect to any matter considered at such hearing or meeting, one will need a record of the proceedings and for such purpose that person may need to ensure that a verbatim record of the proceedings is made; such record includes the testimony and evidence upon which the appeal is to be based.

ADA Assistance: It is the policy of the City of Key West to comply with all requirements of the Americans with Disabilities Act (ADA). Please call the TTY number at 305-809-1000 or the ADA Coordinator at 305-809-3731 at least five business days in advance for sign language interpreters, assistive listening devices, or materials in accessible format.

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NAME	ADDRESS	UNIT	CITY	STATE	ZIP	COUNTRY
1 333 FLEMING STREET LC		333 FLEMI	KEY WEST	FL	33040	
2 400 DUVAL RETAIL LLC		1119 VONI	KEY WEST	FL	33040-4831	
3 420 FLEMING LLC		2650 AIRP	NAPLES	FL	34112-4886	
4 505-507 WHITEHEAD STREET LLC		507 WHITE	KEY WEST	FL	33040-6546	
5 ARANPEE INC		323 FLEMI	KEY WEST	FL	33040	
6 C & D PROPERTIES OF KEY WEST I LLC		PO BOX 4	KEY WEST	FL	33041-4125	
7 CARRRELLO ANTHONY G		PO BOX 5	MERRICK	NY	11566-0588	
8 FIRST STATE BANK OF THE FLORIDA KEYS	C/O ACCOUNTS PAYABLE	3406 N RC	KEY WEST	FL	33040-4266	
9 GIRONET HELENE		408 EATOI	KEY WEST	FL	33040-6512	
10 JJJD INC		410 FLEMI	KEY WEST	FL	33040-6529	
11 KEY WEST PROFESSIONAL OFFICES INC		422 FLEMI	KEY WEST	FL	33040-6529	
12 MITCHELL PAUL J		PO BOX 4	KEY WEST	FL	33041-4930	
13 MONROE COUNTY		500 WHITE	KEY WEST	FL	33040-6581	
14 OLD KRESS BUILDING COMPANY INC	C/O THE FERBER COMPANY	151 SAWG	PONTE VEDRA BI	FL	32082-3579	
15 REPUBLIC OF CUBA		7300 NW 3	MIAMI	FL	33122-1241	
16 RODEL CHARITABLE FOUNDATION - FLORIDA LLC		PO BOX 4	KEY WEST	FL	33041-4014	
17 ROSE MARCI L		810 THOM	KEY WEST	FL	33040-7337	
18 SAWYER WILLIAM R AND BARBARA K		1412 18TH	KEY WEST	FL	33040-4613	
19 SKII INC		500 FLEMI	KEY WEST	FL	33040-6891	
20 SPOTTSWOOD PARTNERS II LTD		500 FLEMI	KEY WEST	FL	33040-6891	
21 SSRAFFERTY LLC		PO BOX 1	KEY WEST	FL	33041-1007	
22 STROMBUS CORPORATION		1073 BUTI	SUMMERLAND KI	FL	33042-3660	
23 WALTERS CHARLES D		615 ELIZAI	KEY WEST	FL	33040-6822	
24 WHITEHEAD PROPERTIES II LLC	C/O BLANCHETTE KIMBERLY L	1312 REYI	KEY WEST	FL	33040-4709	
25 WHITEHEAD TRUST LLC		307 NE 1S	MIAMI	FL	33132-2505	
26 WIDENER ROBERT L		409 FLEMI	KEY WEST	FL	33040-6528	
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