

RESOLUTION NO. 78-87

A RESOLUTION AUTHORIZING THE EXECUTION  
OF A LEASE BETWEEN THE CITY OF KEY WEST,  
FLORIDA, AND TROPICAL SHELL & GIFT, INC.

BE IT RESOLVED by the City Commission of the City of  
Key West, Florida, as follows:

That the attached Lease between the City of Key West,  
Florida, and Tropical Shell & Gift, Inc., be and the same is  
hereby approved, and the Mayor of the City of Key West, Florida,  
be and he is hereby authorized, empowered and directed to execute  
the said Lease for and on behalf of the City of Key West, and the  
City Clerk of said City be and he is hereby authorized, empowered  
and directed to attest the signature of the said Mayor on the said  
Lease and affix the Seal of the City thereto. The execution of  
said Lease is hereby directed to be made in as many counterparts  
as may be desired or necessary.

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.

Passed and adopted by the City Commission at a meeting  
held this 3rd day of July, A.D., 1978.

  
\_\_\_\_\_  
Charles McCoy, Mayor.

ATTEST:

  
\_\_\_\_\_  
City Clerk.

L E A S E

THIS LEASE, made this 3rd day of July, 1978, by and between THE CITY OF KEY WEST, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to sometimes as "Lessor"; and TROPICAL SHELL & GIFT, INC., a corporation organized and existing under the laws of the State of Florida, hereinafter referred to sometimes as "Lessee".

W I T N E S S E T H:

FIRST: Lessor leases to Lessee, the premises described in Exhibit A.

This demised premises shall not include the east half of Warehouse #4 described on Exhibit A and now occupied as the "Chamber of Commerce Building"; also the corner building on Front and Whitehead Streets known as "Key West Art Center".

TO HAVE AND TO HOLD the said premises unto the Lessee for and during the term of twenty-five (25) years, commencing on the 15th day of July, 1978, and ending on the 14th day of July, 2003.

SECOND: In consideration of the leasing of the premises aforesaid, Lessee agrees to pay rental to the Lessor as rent Ten Per Cent (10%) of all gross receipts realized from admissions to the Aquarium and from the sale of gifts, wares and merchandise on the above leased premises, including sales by any concessionaires. Said rental or percentage of gross admission receipts and gross receipts from the sale of gifts, wares and merchandise shall be computed for each calendar month during each year of the original term of this Lease or any renewal term thereof, and to be paid to the Lessor monthly within thirty (30) days after the end of each calendar month. The

minimum rental (percentage) on the premises shall be Twenty Thousand Dollars (\$20,000.00) per annum, or Ten Per Cent (10%) of gross receipts, whichever is greater. The Lessor shall have the right at any and all times, through its duly authorized representatives, to audit the books and accounts of the Lessee, sub-lessee, or any concessionaires.

It is understood that the Lessor may examine sales tax reports filed by the Lessee, sub-lessee or any concessionaires, in the local State Sales Tax Office.

The Lessee shall during the term of this Lease construct a new Aquarium building on the property adjacent to, and southwest of, the present building. Said building shall have a minimum floor space of 1,500 square feet and shall have tanks with a minimum holding capacity of 6,000 gallons. Said building shall meet all city building codes and regulations and all regulations of the Old Island Restoration Commission or its successor.

All present parking areas at the demised premises shall remain parking areas until such time as construction shall commence on the new building. At such time Lessee may use up to Fifty Per Cent (50%) of the parking area for the building location. All construction, alteration, or repair plans shall require the written approval of the Lessor which may not be unreasonably withheld. Approval or disapproval shall be delivered in writing to Lessee within thirty (30) days of the written request by Lessee.

At such time that Lessee commences construction of the new building, Lessor shall pledge Twenty-five Per Cent (25%) of the rental received under this Lease to the payment of any obligation on the leasehold estate of Lessee. Lessee shall promptly notify the Lessor of the name and address of any lender or obligee holding an interest in the Lease as security for a loan for the construction of said premises. All payments

made by Lessor shall be made directly to the lender after receipt of the rentals by Lessor from Lessee.

THIRD: It is mutually understood and agreed between the parties to this Lease as follows:

a. Lessee shall be solely responsible for the collection of admission taxes.

b. Lessee shall pay all costs and expenses of operating the Aquarium.

c. The Aquarium shall be kept open daily for visitation by the public between the hours of 8:00 A.M. and 6:00 P.M., seven (7) days a week; however, the Aquarium may be kept open for longer hours at the option of the Lessee.

d. Lessee, at its own expense, will keep the leased premises in good condition, including all machinery, tanks and equipment and will keep the grounds adjacent to the leased premises, including the driveway to the entrance of the Aquarium, in a clean, presentable and sanitary condition.

e. That there shall, during the said demised term, be no mechanics' liens upon any building or improvements which may at any time be put upon or be upon said demised property, and that in case of any mechanics' liens the Lessee must pay off the same; and that if default in payment thereof shall continue for thirty (30) days after written notice, said Lessor shall have the right and privilege, at its option, to pay off the same or any portion of the same, and the amount so paid, including expenses, shall, at the option of the said Lessor, be so much additional rent due from said Lessee at the next rent due after such payment, with interest thereon at the rate of Six Per Cent (6%) per annum. Any contract entered into by the Lessee for the improvement of the demised premises shall contain a provision requiring a penal bond as described in Section 255.05, Florida Statutes, for the payment of all persons supplying labor, materials and supplies. Furthermore,

the Lessee shall otherwise comply with all provisions of said Section 255.05, Florida Statutes, and said contract shall provide that the Lessor shall be due copies of all notices which are provided to the Lessee by any laborer, materialmen or supplier.

FOURTH: It is further understood and agreed that improvements and repairs made shall become the property of the Lessor at the time same are made. Upon termination of the term of this Lease, the Lessee will return the leased premises to the Lessor in good condition, except for normal wear and tear and such damage as may occur through act of God, or fire.

FIFTH: It is expressly covenanted between the parties hereto that the Lessee will not use or suffer nor permit any person to use in any manner whatsoever the said demised property, or the building or improvements hereafter constructed or placed on said leased property, nor any portion thereof, for any purpose calculated to injure the reputation of the premises or of the neighboring property, nor for any purpose or use in violation of the laws of the United States, or of the State of Florida, or of the Ordinances of the City of Key West, Florida, and that said Lessee will, at its own proper costs and changes, keep the building on said property and all the appurtenances thereto belonging in a good, safe and secure condition and will conform to all municipal ordinances or laws, and that it will keep and save the Lessor forever harmless from any penalty or damage or changes imposed for any violation of any of said laws, whether occasioned by neglect of Lessee, and that said Lessee will indemnify and save and keep harmless the Lessor against and from any loss, cost, damage and expense arising out of any accident or other occurrence, causing injury to any person or property whomsoever or whatsoever, and due directly or indirectly to the use of the premises, or any part thereof, by Lessee.

SIXTH: The Lessee shall secure at its own expense, from an improved insurance company, and furnish to the Lessor evidence of such insurance, the following described insurance coverage:

a. Coverage which will protect the legal liability of Lessor and Lessee to pay off claims for personal injury or death resulting therefrom, on account of accidents to third parties or the public, which might arise out of, or in connection with any act or acts of Lessee's agents, invitees or employees. The minimum limits of such policy or policies shall be \$100,000.00 for any one person, or \$300,000.00 for more than one person, arising out of one accident.

b. Fire, windstorm and flood insurance covering the improvements on the demised premises for the full insurable amount.

SEVENTH: It is further understood and agreed that the Lessee may operate an Aquarium, concession stands, museums, and craft and gift shops under this Lease.

EIGHTH: The Lessee shall have the right to sub-lease concession and/or gift shops under this Lease. Lessee must however have the approval of the Lessor. The Lessor shall have twenty (20) days in which to respond to the sub-lease agreement. If no response is given by Lessor within the twenty-day period, the sub-lease shall be considered approved by Lessor. The Lessor may not unreasonably withhold its approval.

NINTH: The Lessee shall have the right of first option on any new lease on this property at the end of the term of this Lease, and further, the parties agree that this Lease shall not and is not an extension or renewal of the existing Lease dated the 1st day of December, 1965, but shall be considered and is considered a new and separate contract arrangement between the parties. Further, the parties agree that any existing sub-leases on the property shall be

allowed to continue until the 30th day of November,  
1985, or until there is a default by the sub-lessee.

TENTH: Lessee shall not allow any waste or nuisance on the premises, or use or allow the premises to be used for any unlawful purpose.

ELEVENTH: Lessee shall arrange and pay for all utilities furnished to the premises for the term of this Lease; including electricity, gas, water, sewer, and telephone service.

TWELFTH: Lessor shall pay all county and city real estate taxes and maintain fire insurance on said premises.

THIRTEENTH: Lessee shall maintain the premises and keep them in good repair at its expense.

FOURTEENTH: Lessor reserves the right to enter on the premises at reasonable times to inspect, perform required maintenance and repairs, or make additions, alterations, or modifications to any part of the building in which the premises are located, and Lessee shall permit Lessor to do so. Lessor may erect scaffolding, fences, and similar structures, post relevant notices, and place moveable equipment in connection with making alterations, additions, or repairs, all without incurring liability to Lessee for disturbance of quiet enjoyment of the premises, or loss of occupation thereof.

FIFTEENTH: Lessor shall not be liable for liability or damage claims for injury to persons or property from any cause relating to the occupancy of the premises by Lessee, including those arising out of damages or losses occurring on sidewalks and other areas adjacent to the leased premises during the term of this Lease or any extension thereof. Lessee shall indemnify Lessor from all liability, loss, or other damage claims or obligations resulting from any injuries or losses of this nature.

SIXTEENTH: The appointment of a receiver to take possession of the assets of Lessee, a general assignment for the benefit of the creditors of Lessee, any action taken or allowed to be

taken by Lessee under any bankruptcy act, or the failure of Lessee to comply with each and every term and condition of this Lease shall constitute a breach of this Lease. Lessee shall have fifteen (15) days after receipt of written notice from Lessor of any breach to correct the conditions specified in the notice, or if the corrections cannot be made within the fifteen (15) day period, Lessee shall have a reasonable time to correct the default if action is commenced by Lessee within fifteen (15) days after receipt of the notice.

SEVENTEENTH: Lessor shall have the following remedies in addition to its other rights and remedies in the event Lessee breaches this Lease agreement and fails to make corrections as set forth in Section Sixteenth:

1. Lessor may re-enter the premises immediately and remove the property and personnel of Lessee, store the property in a public warehouse or at a place selected by Lessor, at the expense of Lessee.

2. After re-entry Lessor may terminate the Lease on giving fifteen (15) days written notice of termination to Lessee. Without such notice, re-entry will not terminate the Lease. On termination Lessor may recover from Lessee all damages proximately resulting from the breach, including the cost of recovering the premises and the worth of the balance of this Lease over the reasonable rental value of the premises for the remainder of the lease term, which sum shall be immediately due Lessor from Lessee.

3. After re-entering, Lessor may relet the premises or any part thereof for any term without terminating the Lease, at such rent and on such terms as it may choose. Lessor may make alterations and repairs to the premises. The duties and liabilities of the parties if the premises are relet as provided herein shall be as follows:



(a) In addition to Lessee's liability to Lessor for breach of the Lease, Lessee shall be liable for all expenses of the reletting, for the alterations and repairs made, and for the difference between the rent received by Lessor under the new Lease agreement and the rent installments that are due for the same period of this Lease.

(b) Lessor at its option shall have the right to apply the rent received from reletting the premises (1) to reduce Lessee's indebtedness to Lessor under the Lease, not including indebtedness for rent, (2) to expenses of the reletting and alterations and repairs made, (3) to rent due under this Lease, or (4) to payment of future rent under this Lease as it becomes due.

If the new Lessee does not pay a rent installment promptly to Lessor, and the rent installment has been credited in advance of payment to the indebtedness of Lessee other than rent, or if rentals from the new Lessee have been otherwise applied by Lessor as provided for herein, and during any rent installment period, are less than the rent payable for the corresponding separately for each rent installment deficiency period, and before the end of that period. Lessor may at any time after such reletting terminate the Lease for the breach on which Lessor based the re-entry and relet the premises.

4. After re-entry, Lessor may procure the appointment of a receiver to take possession and collect rents and profits of the business of Lessee, and if necessary, to collect the rents and profits the receiver may carry on the business of Lessee and take possession of the personal property used in the business of Lessee, including inventory, trade fixtures, and furnishings and use them in the business without compensating Lessee. Proceedings for appointment of a receiver by Lessor, or the appointment of a receiver and the conduct of the business of Lessee by the receiver, shall not terminate and forfeit this

Lease unless Lessor has given written notice of termination to Lessee as provided herein.

EIGHTEENTH: If Lessor files an action to enforce any agreement contained in this Lease, or for breach of any covenant or condition, Lessee shall pay Lessor reasonable attorney's fees for the services of Lessor's attorney in the action, all fees to be fixed by the Court.

NINETEENTH: In consideration of mutual benefits, the parties to this Lease hereby cancel the existing Leases.

TWENTIETH: All bookkeeping on the property shall be kept separate from the bookkeeping of any other business leased by Lessee from Lessor.

TWENTY-FIRST: No building shall traverse the property line of the property and any other property sub-leased by Lessee from the Lessor.

TWENTY-SECOND: If Lessee does not construct the building described on Exhibit B attached hereto, within a period of six and one-half (6-1/2) years commencing from the date of this Lease, then the property shall revert back to the Lessor and all agreements, terms and conditions set forth in the Lease shall be cancelled forthwith.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

Signed, Sealed and Delivered  
In Our Presence:

Estela M. Garcia  
Josephine Parker  
(SEAL)

THE CITY OF KEY WEST, FLORIDA

BY: [Signature]  
MAYOR CHARLES MCCOY

Attest: [Signature]  
CITY CLERK

Signed, Sealed and Delivered  
In Our Presence:

TROPICAL SHELL & GIFT, INC.

Gregory A. Curry

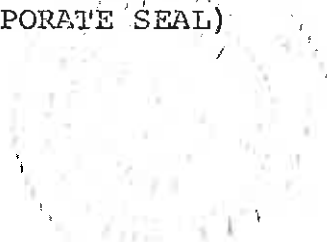
By: Gerald R. Mosher  
Gerald R. Mosher, President.

ATTEST:

Gregory A. Curry

By: Christopher C. Belland  
Christopher C. Belland  
Secretary-Treasurer.

(CORPORATE SEAL)



## EXHIBIT A

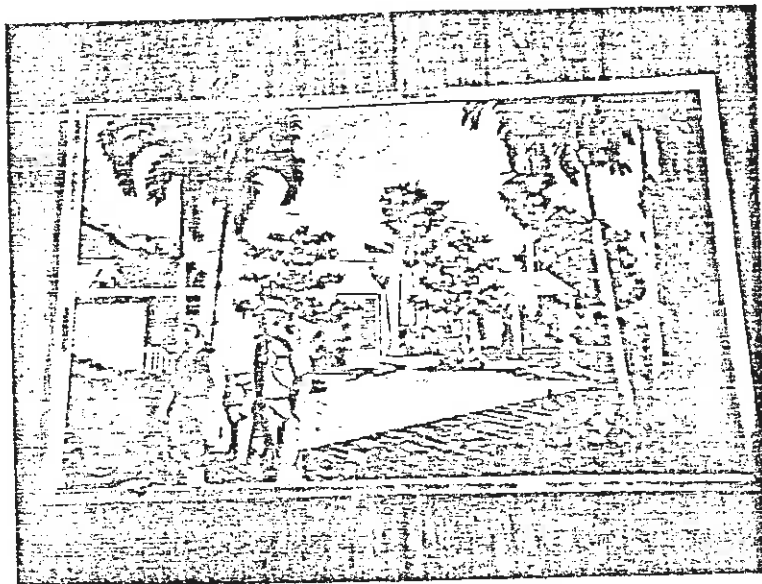
On the Island of Key West, known on William A. Whitehead's Map delineated in February A.D. 1829, as all of Lot 5 and part of Lot 4 in Square 3, and all of the property located at the end of Whitehead Street, and more particularly described as follows:

BEGINNING at the southeast corner of Square 3, thence run northeasterly along Front Street a distance of one hundred sixty-six (166) feet; thence northwesterly a distance of three hundred (300) feet along Tift's Alley; thence southwesterly and parallel with Front Street a distance of one hundred fifty (150) feet; thence northwesterly a distance of fifty-three and seven tenths (53.7) feet; thence southwesterly and parallel with Front Street a distance of sixteen (16) feet; thence southeasterly and parallel with Tift's Alley a distance of three hundred fifty-three and seven tenths (353.7) feet back to the point of beginning, including all improvements and buildings thereon and all necessary and existing ingress and egress thereto, EXCEPTING therefrom:

- a) that thirty (30) feet public right of way known as Wall Street;
- b) the area and building located at the southeast corner of Square 3 on which the building presently known as Key West Art Center is located; and
- c) the north one-half (1/2) of Warehouse Number Four, which is presently being occupied by the Key West Chamber of Commerce.

## ALSO

On the Island of Key West, known on William A. Whitehead's Map, delineated in February A.D. 1829 as that area beginning at the southeasterly corner of Wall Street and Whitehead Street; thence run northwesterly and parallel with Tift's Alley a distance of two hundred fifty-three and seven tenths (253.7) feet; thence southwesterly a distance of fifty (50) feet; thence southeasterly and parallel with Tift's Alley a distance of two hundred fifty-three and seven tenths (253.7) feet; thence northeasterly a distance of fifty (50) feet back to the point of beginning, including the Aquarium building located in Key West, Florida, and all fixtures, machinery, piping, electric wiring and equipment used in connection therewith, including the filtering apparatus, all "as is", together with the concession stands as same are now located outside of the Aquarium building.



Tropical Shell & Gift will build a new Aquarium building next to the present Aquarium building and extending out into the lot between the present structure and Tift's Ice House. The new building will be a minimum of 1500 square feet and will house an additional 6,000 gallons of tank space. 400 square feet of the building space will be devoted to laboratory and holding tanks. The building will meet O.I.R.F. standards.

Attached please find a photograph of an artist concept of the proposed building and surrounding area.

EXHIBIT B