

RESOLUTION NO. 95-419

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, DETERMINING THAT TROPICAL SHELL & GIFT, INC. HAS MET THE CONDITIONS PRECEDENT TO AN OPTION TO RENEW AS SET FORTH IN PARAGRAPH TWENTY-FOURTH OF ITS AMENDMENT TO LEASE ; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Tropical Shell & Gift, Inc. ("Lessee") entered into a lease with the City on July 3, 1978, for certain premises; and

WHEREAS, by an Amendment to Lease pursuant to Resolution 81 - 92, the City granted the Lessee a potential option to renew the lease upon Lessee's meeting certain terms and conditions set forth in Paragraph Twenty-Fourth of the Amendment to Lease; and

WHEREAS, upon the advice of City Administrative Staff, the City Commission finds that Lessee has met the conditions precedent for lease renewal;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the conditions precedent for lease renewal as set forth in Paragraph Twenty-Fourth of the Addendum to Lease between the City and Tropical Shell & Gift, Inc. are hereby determined to have been met;

95-419

Section 2: That this Resolution shall go into effective 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 7th day of November, 1995.

Authenticated by the presiding officer and Clerk of the Commission on November 7, 1995.

Filed with the Clerk November 8, 1995.

ATTEST:

  
JOSEPHINE PARKER, CITY CLERK

  
DENNIS J. WARDLOW, MAYOR

RECEIVED OCT 24 1995

M641  
PJC:cs

RECEIVED OCT 24 1995

## MEMORANDUM

TO: DIANE COVAN, ACTING CITY ATTORNEY  
FROM: PAUL J. CATES, ASSISTANT CITY MANAGER *PJC/cs*  
SUBJ: TROPICAL SHELL & GIFT, INC.  
DATE: OCTOBER 24, 1995

Please review the attached proposal for Tropical Shell & Gift, Inc. If it meets with your approval please prepare a resolution for City Commission approval.

Should you have any questions or wish to discuss this further, please do not hesitate to contact my office.



DATE: October 24, 1995

TO: Paul Cates, Assistant City Manager

FROM: John Castro, Chief Building Official J.C.

RE: Tropical Shell & Gift, Inc.

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After reviewing the proposals and invoices for the Aquarium, it is my opinion that the cost of construction associated with the project is acceptable by the industry standards for this type of renovation.

*Chau*

*Please send to legal for  
final review and to prepare  
a resolution for CC approval*

M627  
PIC:cs

## MEMORANDUM

TO: JOHN CASTRO, BUILDING OFFICIAL  
FROM: PAUL J. CATES, ASSISTANT CITY MANAGER *PJC*  
DATE: SEPTEMBER 15, 1995  
SUBJ: TROPICAL SHELL & GIFT, INC.

Please review the correspondence from Mark Finigan and the attached documents.

At this time I would like you to review and give your opinion of the construction costs as they may relate to good industry workmanship and/or value. Should you have to visit the sites to confirm, please do so.

Should you have any questions or wish to discuss this further, please do not hesitate to contact my office.

c: G. Felix Cooper, City Manager  
Mark Finigan, Budget/Risk Management Director

MEMORANDUM


M-224

DATE: SEPTEMBER 15, 1995

TO: PAUL J. CATES  
ASSISTANT CITY MANAGER

FROM: MARK Z. FINIGAN  
DIRECTOR OF BUDGET & RISK MANAGEMENT

SUBJECT: LEASE RENEWAL/TROPICAL SHELL & GIFTS, INC.



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In your August 18, 1995 memorandum, same subject, you requested an audit of the documents provided by the lessee regarding certain improvements made as a condition of lease renewal/extension. Such documentation was submitted by Mr. Mosher, Tropical Shell & Gifts, Inc. to Mr. Cooper in a July 1995 letter. In addition to myself, Mr. Roger D. Wittenberg, Finance Director, has reviewed the submitted documentation. Like the Finance Director, I agree that a complete financial "cycle", proposal-invoice-check, has occurred for the improvements enumerated as conditions of "Section Twenty-Fourth: Option to Renew", City of Key West Resolution 81-92. Though this office can attest to the completeness and accuracy of said improvements as they relate to payments made, Roger and I cannot certify that amounts paid were representative of good industry workmanship or value. Perhaps the Building Department could assist in this regard.

Additionally, I recommend the City Attorney's office review the issue concerning Old Town Key West Development, Ltd. acquiring the loan on behalf of Tropical Shell & Gifts, lessee under current lease arrangement. I don't see any real problem since Old Town owned Tropical Shell; however, a legal opinion may be in order. Furthermore, Roger and I have not reviewed conditions that may exist under the original lease and still apply under the amendment.

Should you need further information, please do not hesitate to call me.

Thank you.

MZF/a

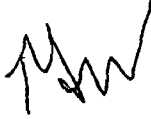
c.c.

Felix Cooper, City Manager  
Roger D. Wittenberg, Director of Finance  
Diane Covan, City Attorney

Attachment

**MEMORANDUM**

**TO: MARK Z. FINIGAN  
BUDGET & RISK MANAGEMENT DIRECTOR**

**FROM: ROGER D. WITTENBERG**   
**FINANCE DIRECTOR**

**RE: TROPICAL SHELL & GIFT, CONDITION OF LEASE**

**DATE: SEPTEMBER 6, 1995**

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In accordance with Resolution No. 81-92, paragraph twenty-four, the leasee is required to spend \$150,000 to upgrade the aquarium.

I have reviewed documentation supporting the payments made in accordance with the conditions of the lease, and found everything to be in good order. The documentation supports expenditures in excess of \$150,000.

Let me know if you require additional information.

RDW/tmt/M-2892

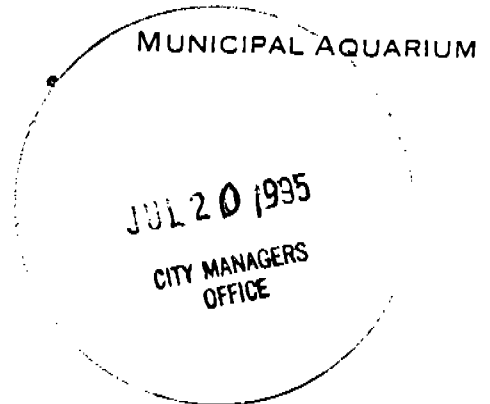
# TROPICAL SHELL & GIFTS, INC.

SHELL WAREHOUSE

KEY WEST & FLORIDA CITY  
P. O. BOX 1237  
KEY WEST, FLORIDA 33040  
PHONE (305) 296-2051

Felix Cooper  
City Manager  
City of Key West  
525 Angela St  
Key West, Florida 33040

July 19, 1995



RE: RENEWAL OF LEASE BETWEEN CITY OF KEY WEST AND TROPICAL SHELL AND GIFTS, INC

Dear Mr. Cooper,

As a followup to your letter of August 31, 1994 regarding our OPTION TO RENEW our lease as provided by RESOLUTION 78-87 as amended by RESOLUTION 81-92, we submit in accordance with PARAGRAPH TWENTY-FOURTH of RESOLUTION 81-92 the following:

- I. I specifically note that OLD TOWN KEY WEST DEVELOPMENT, LTD owned TROPICAL SHELL & GIFTS, INC. Thus you will note that OLD TOWN KEY WEST DEVELOPMENT, LTD appears in documents as they acquired the loan in behalf of TROPICAL SHELL & GIFTS, INC. as well as assisted in getting the work accomplished.
- II. Confirmation of our written notice of our exercise of option to renew the existing lease with the City in accordance with RESOLUTION 81-92
- III. Written proof that we acquired a loan (Exhibit A hereto) - for purpose of expending funds on items listed in Schedule A of RESOLUTION 81-92 . I note the following:
  - a) that a loan was obtained from Southeast Bank, N.A. in the amount of \$450,000 (only \$150,000.00 required by RESOLUTION) for leasehold improvements to Mallory Market Square (which the Aquarium is part of - Tropical Shell and Gifts, Inc.)
  - b) that I have enclosed only pages 1 thru 4 of the loan agreement with Southeast Bank, N.A dated May 1983 along with the first and last page of the mortgage relating thereto dated May 13, 1983 that was recorded evidencing the loan.
- IV. Written proof of funds being used on items enumerated in Priority #1; with any remaining funds used on items enumerated in Priority #2 items of RESOLUTION 81-92:



**PRIORITY #1:**

- |    |   |               |                            |
|----|---|---------------|----------------------------|
| 1) | Roof Replacement  | - EXHIBIT B - | \$ 43,662.17               |
| 2) | Basic Graphics  | - EXHIBIT C - | \$ 23,761.70               |
| 3) | Additional Plumbing (\$1,577.54)<br>and Electric(\$18,516.46) | - EXHIBIT D - | \$ 20,094.00               |
| 4) | New Guard Rails<br>throughout Exhibit Area                    | - EXHIBIT E - | \$ 1,225.00                |
|    |   | <b>TOTAL</b>  | <b><u>\$ 88,742.87</u></b> |

**PRIORITY #2**

- |    |  |               |                           |
|----|--|---------------|---------------------------|
| 1) | Replacement or repair<br>of all interior tanks | - EXHIBIT F - | \$27,335.85               |
| 2) | Public Space Remodeling-                       | EXHIBIT G -   | \$40,805.78               |
| 3) | Glass Bottom Exhibits                          |               |                           |
| 4) | Additional Graphics                            |               |                           |
| 5) | Shark Exhibit                                  | - EXHIBIT H - | \$31,386.95               |
|    |  | <b>TOTAL</b>  | <b><u>\$99,528.58</u></b> |

Thus the above establishes a total EXPENDITURE of \$188,271.45.

Please review the enclosed and confirm that RESOLUTION 81-92 conditions have been completed. Then have the City Commission respond by Resolution citing compliance or if not please have the Commission specifically cite the items of noncompliance, specifically enumerating the requirements which need be fulfilled as a condition precedent to an affirmative response so that we can implement in accordance with RESOLUTION 81-92.

For your further use we enclose 35 photographs evidencing the work that has been done for your information and use. I would note that we have been unable to locate the negatives so these are the only copies. We would appreciate return of same when you are completed with your review

We would further note that additional major improvements were made as I am sure you are aware just from visiting the Aquarium but we have not unpack our archives to present same as only \$150,000.00 is required to be expended to meet the requirements of the RESOLUTION 81-92.

If you require additional information before submittal to the

City Commission please advise and we will respond accordingly.

Sincerely,



Gerald R. Mosher <sup>AMS</sup>  
Vice President

cc: ed

ts&g\leaseren.ltr

FILE  
TS&G  
City File  
Rent

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO 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 Amendment to 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 be and he is hereby authorized, empowered, and directed to execute the said Amendment to Lease on behalf of the City of Key West, and the City Clerk of said City be and she is hereby authorized, empowered, and directed to attest the signature of the said Mayor on the said Amendment to Lease and affix the Seal of the City thereto. The execution of said Amendment to 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 signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 8th day of September, 1981.

CHARLES MCCOY, MAYOR

ATTEST:

JOSEPHINE PARKER, CITY CLERK

AMENDMENT TO LEASE

THIS AGREEMENT entered into by the parties of that certain lease better described as made the 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 as "Lessor"; and TROPICAL SHELL & GIFT, INC., a corporation organized and existing under the laws of the State of Florida, hereinafter referred to as "Lessee", so that said Lease shall be amended as follows:

The following provisions are hereby added after paragraph numbered Twenty-Second:

TWENTY-THIRD: INVESTMENT CREDIT - Expenses incurred by the Lessee in any one lease year but before July 14, 1991 for repairs or improvements, as defined herein, to the leased premises not to exceed \$500,000.00 or monies paid on a loan of monies to a lending institution licensed under the laws of the United States or the State of Florida expended for said purpose may be used by the Lessee as an investment credit toward reduction of the rent due the Lessor in the following lease year or subsequent lease \* years. Said investment credit shall only be applied toward the reduction of rental due over and above the minimal rental of \$25,000.00, which minimal rental shall be paid each and every year notwithstanding this or any other provisions in the Lease. The repairs and improvements for which an investment credit shall be allowed herein shall be limited to those repairs, improvements or additions of supporting or containment structures, floors, roofs, permanent display fixtures, and electrical and plumbing work or for structural additions when the repair or improvement contributes to an increase in the value of the city's property or to a preservation of the city's property. Competitive bidding shall be sought on said repairs and improvements.

TWENTY-FOURTH: OPTION TO RENEW - The Lessor grants an option to renew this Lease for a period of an additional twenty-five years after the expiration of the present lease term, on the same terms as this Lease. Lessee shall give Lessor written notice of his intention to renew at least one hundred and eighty (180) days prior to the expiration of this Lease. This the Twenty-Fourth paragraph shall not be effective until the Lessee has complied with

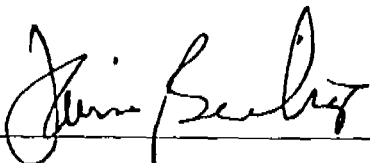
the conditions enumerated below and has submitted written proof thereof to the City Commission. The City Commission shall respond by resolution to Lessee citing whether or not said conditions have been completed. If the City Commission responds in the affirmative, this paragraph shall then be automatically in full force and effect. If the City Commission responds in the negative, the City Commission shall specifically cite the items of noncompliance and specifically enumerate the requirements which need be fulfilled as a condition precedent to an affirmative response. The City Commission's response shall not be unreasonably withheld either in terms of time or substance.

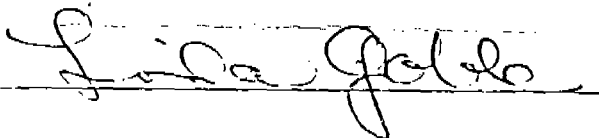
CONDITIONS

The Lessee shall acquire a loan in the amount of \$150,000.00 for the purpose of expending said funds on the items listed in Schedule A according to the specifications stated in Schedule B, both of said schedules are attached hereto, by reference incorporated herein and made a part hereof. The said funds shall first be expended on items enumerated in Priority #1; any remaining funds shall then be expended on items enumerated in Priority #2.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 9th day of September, 1981.

Signed, Sealed and Delivered  
in Our Presence:

  
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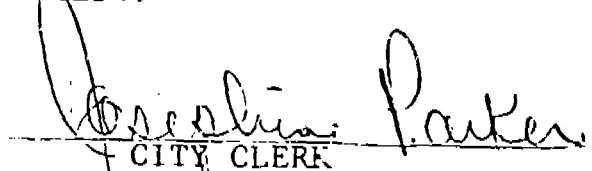
  
\_\_\_\_\_

(SEAL)

THE CITY OF KEY WEST, FLORIDA

BY:   
\_\_\_\_\_ MAYOR CHARLES MCCOY

ATTEST:

  
\_\_\_\_\_ CITY CLERK