

RESOLUTION NO. 08-114

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA), APPROVING THE ATTACHED CONSENT OF LESSOR AND ACKNOWLEDGEMENT OF LESSEE FOR THE SUBLEASE OF A PORTION OF THE PROPERTY LOCATED AT 901 CAROLINE STEET, KNOWN AS "FLAGLER STATION" BY CONCH TOUR TRAINS, INC. TO BARB GROB; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on June 7, 1996, the CRA and Conch Tour Trains, Inc. into a ten-year lease for the property located at 901 Caroline Street and known now as "Flagler Station," and modified that lease on January 22, 1997 and September 22, 2000; and

WHEREAS, the Key West Bight Board, at its meeting of March 19, 2008, recommended approval of the Consent of Lessor and Acknowledgement of Lessee;

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

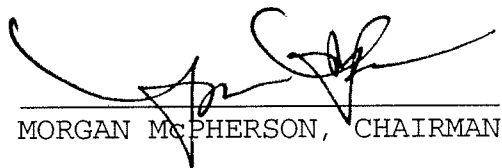
Section 1: That the attached Consent of Lessor and Acknowledgement of Lessee is hereby approved.


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

Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 1st day of April, 2008.

Authenticated by the presiding officer and Clerk of the Agency on April 2, 2008.

Filed with the Clerk April 2, 2008.


MORGAN MCPHERSON, CHAIRMAN

ATTEST:

CHERYL SMITH, CITY CLERK



Executive Summary

TO: Jim Scholl
City Commission

CC: Raymond Archer

FR: Marilyn Wilbarger, RPA, CCIM

DT: March 20, 2008

RE: Sublet Flagler Station

ACTION STATEMENT

This is a request to approve a sublease for a portion of the premises known as Flagler Station. The Sub-lessor is Conch Tour Trains and the sub-lessee is Barb Grob.

HISTORY

The CRA entered into a lease with Conch Tour Trains for the construction and operation of a train museum, gift shop, and ticket depot that was extended to twenty years and will expire on June 6 2016. Conch Tour Trains ceased to operate these approved uses in 2007 and has been seeking a sub-tenant since that time.

The proposed sub-lessee intends to operate an Art Gallery and will seek a conditional use permit to sell beer and wine.

FINANCIAL STATEMENT:

The current tenant has met all of the financial obligations of the lease and the rents will continue pursuant to the existing lease.

RECOMMENDATION:

The lease provides for the sublease as described in Section 8 and states that the Tenant shall remain liable for the payment of rent and the obligation to keep and be bound by the agreements of the lease. Based upon these facts and our understanding, staff believes that the proposed sub-lease is allowable and the use within the zoning, pending the conditional use approval.

ATTACHMENTS:

Consent of Lessor
Sub-lease and Composite Exhibit A to Sublease

CONSENT OF LESSOR AND ACKNOWLEDGMENT OF LESSEE

THIS CONSENT OF LESSOR AND ACKNOWLEDGMENT OF LESSEE is made this 15th day of ~~March~~ April, 2008, by and between the CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY, hereinafter referred to as "Lessor", and CONCH TOUR TRAIN, INC., a Florida corporation, hereinafter referred to as "Lessee".

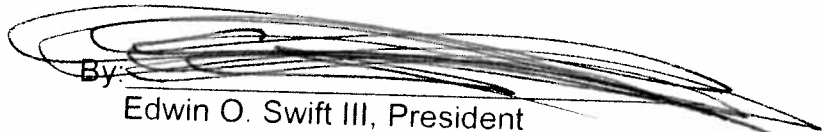
1. The Lessor, in consideration of the covenants and agreements contained herein, consents to the Lessee's Sublease of that Lease dated June 7, 1996, as modified on January 22, 1997, September 22, 2000, said Sublease dated March 10, 2008, by and between Lessee and Barb Grob, as Sublessee. The Lease and Sublease pertain to real property located at the corner of Caroline and Margaret Streets, in Monroe County, Florida.

2. The Lessee herein expressly acknowledges, pursuant to paragraph 8 of the Lease, that the Sublease referred to herein above shall not relieve Lessee from liability for payment of rent or from the obligation to keep and be bound by the terms, conditions, and covenants contained in the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Consent and Acknowledgment as of the 15th day of ~~March~~ April, 2008.

LESSEE:

CONCH TOUR TRAIN, INC.
a Florida corporation

By: 
Edwin O. Swift III, President

State of Florida }
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Edwin O. Swift, III, to me personally known or ~~who provided~~ _____ as photo

identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 15th day of April, 2008.

Susan P. Harrison
Notary Public, State of Florida

My Commission Expires:



SUSAN P. HARRISON
Commission DD 652993
Expires April 8, 2011
Bonded Thru Troy Fain Insurance 800-385-7019

LESSOR:

CAROLINE STREET CORRIDOR AND
BAHAMA VILLAGE COMMUNITY
REDEVELOPMENT AGENCY

By: [Signature]
Morgan McPherson, Chairman

State of Florida }
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Morgan McPherson, as Chairman of the Caroline Street Corridor and Bahama Village Community Redevelopment Agency. to me personally known or who provided _____ as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 2nd day of April, 2008.

Susan P. Harrison
Notary Public, State of Florida

My Commission Expires:



SUSAN P. HARRISON
Commission DD 652993
Expires April 8, 2011
Bonded Thru Troy Fain Insurance 800-385-7019

S U B L E A S E

THIS SUBLEASE (herein "Sublease") made and entered on this 10th day of March, 2008, ("Sublease Date") by and between, Conch Tour Train, Inc. as TENANT/SUBLESSOR and Barb Grob as SUBLESSEE, in consideration of their mutual covenants herein set forth, do hereby agree as follows:

WHEREAS Caroline Street Corridor and Bahama Village Community Redevelopment Agency (herein "LANDLORD") and Conch Tour Train, Inc. (herein "SUBLESSOR") entered into a ten (10) year lease on June 7, 1996 for the rental of the real property and common area of the Key West Bight as more particularly described below (herein "Lease"); and

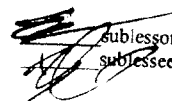
WHEREAS Caroline Street Corridor and Bahama Village Community Redevelopment Agency and Conch Tour Train, Inc. entered into the Lease Addendum Extending Duration to Twenty Years dated January 22, 1997, extending the duration of the term of the Lease from ten (10) years to twenty (20) years with the Lease commencing March 15, 1999 and ending March 14, 2019 (herein "First Amendment"); and

WHEREAS Caroline Street Corridor and Bahama Village Community Redevelopment Agency and Conch Tour Train, Inc. entered into the Lease Amendment for Flagler Station dated September 22, 2000, amending the terms of the Lease and First Amendment to define the "footprint" area of leased Property, define "non-footprint" area that Conch Tour Train, Inc. controls and maintains, clarify CAM charges, adjust percentage rent trigger, determine rent credit due to Conch Tour Train, Inc., clarify commencement date and clarify the rent commencement date (herein "Second Amendment"); and

WHEREAS Caroline Street Corridor and Bahama Village Community Redevelopment Agency and Conch Tour Train, Inc. as LANDLORD and SUBLESSOR respectively, agree to modify the terms and conditions of the Ground Lease by allowing SUBLESSOR to sublease a portion of the Property to SUBLESSEE under the terms and conditions of this Sublease;

NOW THEREFORE, in consideration of the mutual covenants and obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals:** The above Recitals are true and correct and are hereby incorporated herein by reference.
2. **Consideration:** Each Party hereto warrants that this Sublease and all terms and conditions contained herein, is supported by adequate consideration.
3. **Ground Lease:** The Lease, First Amendment and Second Amendment shall be collectively referred to herein as the "Ground Lease". The Ground Lease is attached and incorporated collectively herein as composite Exhibit "A". The LANDLORD and SUBLESSOR agree that the obligations of SUBLESSOR and LANDLORD under the Ground Lease to each other shall remain in full force and effect unless specifically provided otherwise herein, including


Sublessor
Sublessee

the continuing payment of rent by SUBLESSOR to LANDLORD. SUBLESSEE acknowledges and agrees that this Sublease is subject to the terms and conditions of the Ground Lease and as such, SUBLESSEE agrees to said terms and conditions as modified herein. SUBLESSEE agrees not to take any action which would cause a violation of SUBLESSOR's obligations under the terms of the Ground Lease. Any such action shall be grounds for immediate termination of this Sublease.

4. **Parties:**

Conch Tour Train, Inc
201 Front Street
Suite #310
Key West, Florida 33040
Phone:305-294-3225
Herein called "SUBLESSOR."

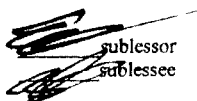
Barb Grob
1207 Florida Street
Key West, Florida 33040
Phone: 305-304-9001
SS# 489-88-0246 Herein called
"SUBLESSEE."

5. **SUBLESSOR's Agent:** SUBLESSEE is hereby notified that Historic Properties Management, Inc. (also referred to herein as "HPM") shall serve as Agent for the SUBLESSOR. All notices to SUBLESSOR and all payments of funds due under this Sublease must be sent to SUBLESSOR, care of SUBLESSOR's Agent at 201 Front Street, Suite 310, Key West, Florida 33040, unless SUBLESSOR gives SUBLESSEE written notice of change. SUBLESSOR's Agent(s), by its officer, director, employee, an HPM agent, or its lawyer, may perform inspections on behalf of SUBLESSOR as provided in this Sublease or provided under law and to take and perform any action necessary or required to enforce the terms of this Sublease; however, no terms of the Sublease may be modified or waived without SUBLESSOR'S written signature.

6. **Property:** Conch Tour Train, Inc. presently leases 901 Caroline Street, approximately 4,096 square feet of "footprint" area and 4176 square feet of non-footprint area (notwithstanding any actual measurements which may be taken) at the corner of Caroline Street and Margaret Street in Key West, Florida from the Caroline Street Corridor and Bahama Village Community Redevelopment Agency under the terms of the Ground Lease. The "footprint" area consists of four principal portions; retail space with connected outside porch/platform, a railroad car, the Maggie Attwell House, and located to the southwest of the retail space is a ticket depot. The "non-footprint" area is the area directly surrounding the "footprint" area and consists of landscape area, driveway and walkways. The "footprint" and "non-footprint" area shall be collectively referred to herein as "the Property" and are crosshatched on the Site Plan attached hereto and incorporated herein as Exhibit "B"

7. **Bight:** The Property is located within a larger area known as the "Key West Bight" which contains various retail shops, stores, marina(s) restaurants, and other tourist attractions and parking (herein "Bight"). See Exhibit "C" which shows the area of waterfront property more commonly referred to as the Bight.

8. **Premises and Common Area:**




Sublessor
Sublessee

A. Premises: Upon the terms and conditions hereinafter set forth, and in consideration of the payment from time to time by the SUBLESSEE of the rents hereinafter set forth, and in consideration of the performance continuously by the SUBLESSEE of each and every one of the covenants and agreements hereinafter contained by the SUBLESSEE to be kept and performed, the SUBLESSOR does hereby Sublease, let, and demise unto the SUBLESSEE, and the SUBLESSEE does hereby Sublease of and from the SUBLESSOR, the following described Premises situated, lying, and being in Monroe County, Florida: A portion of the Property outlined and/or crosshatched on Exhibit "D" containing the approximate dimensions and area of 2,730 sq. ft. of space, (notwithstanding any actual measurements which may be taken) containing one (1) of the four principal portions of the Property: the retail shop along with the porches in the front and immediate rear of the retail space and any improvements thereto and the Rail Road Platform in between the Retail Shop and the Rail Car Museum. Any portion of the Property not specifically subleased as the Premises herein shall remain under the possession of the SUBLESSOR who shall have control and use subject to the terms of the Ground Lease as modified under this Sublease. (herein "the Premises") The Premises shall specifically exclude the use of the railroad car, the Maggie Attwell House, and the ticket depot.

B. Common Area: SUBLESSOR grants to SUBLESSEE, its invitees and customers, together with and subject to the Ground Lease, the same rights granted from time to time to other Tenants of the Bight, the right, as a co-Tenant, to use any Common areas of the Bight. The Common Area includes the "non-footprint" area which is not crosshatched on the attached Exhibit "D".

C. Reservation: SUBLESSOR reserves and shall be entitled, along with its customers, employees, agents, and invitees to use the ADA compliant bathroom inside the Premises, to have unobstructed access to the side entrance from the Rail Car Platform to the Rail Car Museum by way of the handicap ramp and use the Premise's entrance to access the Property in the rear of the Premises retained by SUBLESSOR under the terms of the Ground Lease, during SUBLESSEE'S hours of operation. SUBLESSOR also reserves use of including without limited to the walls, floors, roof and the space immediately around and under the roof, walls, ceiling, and decks so that SUBLESSOR may install, maintain, use, repair, and replace pipes, ducts, conduits and wires, and any other action in order to keep the Premises, Property and common area in any needed repair or maintenance or in order to protect the safety and welfare of the Premises, Property and common area and comply with the terms of the Ground Lease. The SUBLESSOR will make every effort to not intentionally interfere with SUBLESSEE's use of the Premises in any action taken pursuant to this section. Said repair, maintenance or construction may require the temporary discontinuance of water, electricity and any or all other utilities, which shall occur whenever such discontinuance is necessary in order to make repairs or alterations to the Premises, Property and Common Area. No such action by SUBLESSOR shall be construed as an eviction, constructive eviction, disturbance of possession, any right to the abatement of rent or an election by SUBLESSOR to terminate this Sublease, nor shall SUBLESSOR be in any way responsible or liable to SUBLESSEE in any manner for such action.

9. **Contingency:** This Sublease is contingent on (i) SUBLESSOR obtaining written consent from the LANDLORD to sublease the Premises to SUBLESSEE and (ii) SUBLESSOR


sublessor

sublessee

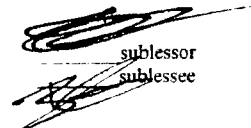
and SUBLESSEE obtaining a conditional use from the City of Key West for the sale of beer and wine on the Premises. If SUBLESSOR and SUBLESSEE are unable to obtain both of the above approvals within one hundred twenty (120) days from the Sublease Date, SUBLESSEE shall have the option to terminate this Sublease. In the event the SUBLESSEE elects to terminate this Sublease, SUBLESSEE shall notify SUBLESSOR in writing of her intent to terminate the Sublease no later than thirty (30) days following the date that the agency denies the conditional use request, then this Sublease shall terminate immediately, with the turnover of the Premises to SUBLESSOR forthwith, leaving the Premises in broom cleaned condition, SUBLESSOR shall, subject to law, return the security deposit paid by SUBLESSEE, and SUBLESSOR and SUBLESSEE shall have no further obligation to each other under this Sublease. In the event that SUBLESSEE does not exercise its option to terminate this Sublease as set forth above, then this Sublease shall continue in full force and effect.

10. **Possession Date:** The SUBLESSEE shall take possession of the Premises on the tenth (10th) day following the date the LANDLORD, by Resolution, consents and approves of this Sublease (herein "Possession Date").

11. **Commencement Date:** This Sublease shall commence thirty (30) days following the date the LANDLORD, by Resolution, consents and approves of this Sublease (herein "Commencement Date"). SUBLESSEE shall, no later than the Commencement Date, at SUBLESSEE's sole cost and expense, improve, fixture, equip, stock and decorate the Premises; to the end that the Premises and SUBLESSEE's Business therein will be a first class facility in SUBLESSEE's business category, and open for business to the public.

12. **Sublease Term:** The Sublease Term shall be five (5) years beginning on the Commencement Date; however SUBLESSEE shall be subject to all the terms and conditions of this Sublease on the Possession Date, excluding the payment of Rent. 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 Commencement Date to the end of the month in which said Commencement Date shall fall plus the following 12 calendar months. Each Sublease Year thereafter shall be a successive period of 12 calendar months

13. **Rent:** Total Monthly Rent shall be due and payable to the SUBLESSOR from SUBLESSEE beginning on the Commencement Date. If the Commencement Date is other than the 1st day of a calendar month, Rent for the initial partial month will be pro-rated according to the number of days from the Commencement Date and the number of days remaining in that calendar month. The following payment of monthly rent shall be due and payable in advance on the first business day of next calendar month, and continue each calendar month thereafter during the Sublease Term. Rent payments and other money payable under this Sublease to SUBLESSOR shall be made payable to Conch Tour Train, Inc., and delivered by post, private carrier, or in person to: 201 Front St., Suite 310, Key West, Florida 33040. The monthly rent amount due from SUBLESSEE to SUBLESSOR shall be according to the table set forth below.



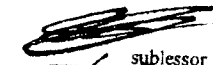
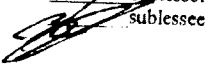
sublessor
sublessee

Sublease Year	Yearly Rent Amount	Monthly Base Rent Payment	Monthly Utility Rent payment	Total Monthly Rent Amount
Sublease 1	\$58,800.00	\$4,000.00	\$ 900.00	\$4,900.00
Sublease 2	\$70,800.00	\$5,000.00	\$ 900.00	\$5,900.00
Sublease 3	\$73,800.00	\$5,250.00	\$ 900.00	\$6,150.00
Sublease 4	\$76,950.00	\$5,512.50	\$ 900.00	\$6,412.50
Sublease 5	\$80,257.44	\$5,788.12	\$ 900.00	\$6,688.12

14. **Late Fee:** SUBLESSEE agrees to pay a late charge, deemed additional rent, of \$100.00 if any Rents or other Monthly Charges are not paid when due, on the first (1st) business day of each calendar month. Any payment of Rent paid after the first (1st) business day of the calendar month shall include the payment of the late fee, additional rent, in the amount of \$100.00 with no notice being required to be given to SUBLESSEE by SUBLESSOR.

15. **Taxes:** SUBLESSEE shall 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 Sublease Premises. Said tax payment shall be paid to SUBLESSOR with and when the applicable rental or charge is due. Said tax shall be at the legally prevailing rate. Current sales tax is 7.5%. This tax shall be paid by SUBLESSEE, due on the first business day of each calendar month, as additional rent, in addition to the above Sublease charges. Should any governmental taxing authority acting under any present or future law, ordinance or regulation, levy, assess or impose a tax, excise and/or assessment (other than an income or franchise tax) upon or against the rentals payable by SUBLESSEE to SUBLESSOR, whether by way of substitution for, or in addition to, any existing tax on the Premises, land and buildings or otherwise, or any other substitute tax, the proceeds of which are to be used to fund the same governmental functions as were funded by ad valorem taxes, SUBLESSEE shall be responsible for and reimburse SUBLESSOR for the amount thereof, as the case may be, as additional rent, five (5) days from the date notice is provided to SUBLESSEE. Substitute taxes as referred to above in this Section shall include, without limitation, any surtax on parking spaces.

16. **Additional Rent:** In addition to the foregoing rent, all other payments to be made by SUBLESSEE under this Sublease shall be deemed to be and shall become additional rent hereunder whether or not the same be designated as such and it shall be due and payable upon demand together with interest, deemed additional rent, thereon at the highest rate permissible by law from their due date until the date it is paid. The SUBLESSOR shall have the same remedies for SUBLESSEE's failure to pay said additional rental as for non-payment of rent. SUBLESSOR, at its election, shall have the right to pay or do any act which requires the expenditure of any sums of money by reason of the failure or neglect of SUBLESSEE to perform any of the provisions of this Sublease, and in the event SUBLESSOR shall, at its election, pay



 sublessor
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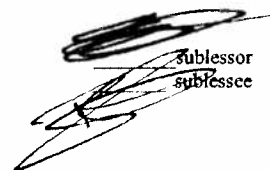
such sums or do such acts requiring the expenditure of monies, SUBLESSEE agrees to pay SUBLESSOR, upon demand, all such sums, and the sums so paid by SUBLESSOR and any expenses incurred by SUBLESSOR in the payment of such sums together with interest thereon at the highest rate permitted by law from their due date through the date they are paid by SUBLESSEE and shall be deemed additional rent and shall be payable and collectible as such.

17. **Gross Sales Report and Percentage Rent:** In the event that SUBLESSOR and SUBLESSEE's combined gross sales exceed \$411,320.00 in a Ground Lease Year SUBLESSEE shall be subject to additional rent in the amount of 6% of SUBLESSEE's Gross Sales for that Ground Lease Year as calculated below. SUBLESSEE shall provided to SUBLESSOR a Statement of Gross Sales together with an accurate and complete copy of the State of Florida Department of Revenue, Sales and Use Return Form DR-15 (or such forms as the State of Florida shall hereafter substitute for said form) showing the full amount of SUBLESSEE's Gross Receipts from the Premises during the previous calendar month. The Statement of Gross Sales must be in affidavit form. SUBLESSEE is subject to a ONE HUNDRED dollar (\$100.00) late submission penalty should SUBLESSEE not furnish to SUBLESSOR copies of Form DR-15 (or such forms as the State of Florida shall hereafter substitute for said form) by the tenth (10th) day of each calendar month. In any Ground Lease Year, if at any time the total combined Gross Sales of SUBLESSOR and SUBLESSEE exceeds \$411,320.00, then in addition to the Rent due hereunder, SUBLESSEE shall pay to SUBLESSOR additional rent as SUBLESSEE's Percentage Rent. SUBLESSEE's percentage rent due shall be calculated by taking the sum of the Ground Lease Year combined Gross Sales of SUBLESSOR and SUBLESSEE, less \$411,320.00, less the amount of SUBLESSOR's Gross Sales in that Ground Lease Year, multiplied by six (6%) percent, less the sum of SUBLESSEE's Percentage Rent, if any, previously paid by SUBLESSEE to SUBLESSOR during that Ground Lease Year. Each Ground Lease Year shall be the time from March 15th of a year through March 14th of the subsequent year, regardless of the Sublease Term. If by the end of any such preceding month it is determined that SUBLESSOR's and SUBLESSEE's combined Gross Sales during such Ground Lease Year shall exceed the Percentage Base of \$411,320.00, SUBLESSEE shall pay to SUBLESSOR, at the time of delivery of said Statement of Gross Sales, an amount equal to SUBLESSOR's Percentage Rent as calculated above.

"Gross Sales" shall mean the amount of sales of all merchandise or services sold or rendered at or from the Premises by SUBLESSEE or any sub-tenant, licensee, consignor, licensee, etc. SUBLESSEE may deduct from Gross Sales: (i) any refunds to customers, provided they have been included in Gross Sales; and (ii) the amount of any sales tax levied upon retail sales and payable over to the appropriate governmental authority.

Percentage rent shall not apply to ticket sales for Conch Tour Trains sold at "Ticket Depot".

SUBLESSEE agrees to keep, at its principal office, records in accordance with generally accepted accounting practices, in which said Gross Sales shall be recorded. Such records shall be open for inspection by SUBLESSOR, LANDLORD or their agents, including accountants retained for that purpose, during reasonable business hours for the Sublease Term and for at least 3 years thereafter. If any audit shows that the amount of Gross Sales on SUBLESSEE's Statement of Gross Sales was understated by more than 1% for any year; then SUBLESSEE (in


Sublessor
Sublessee

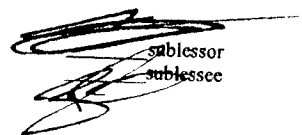
addition to paying the Percentage Rent due for such understatement) shall pay to SUBLESSOR and/or LANDLORD the reasonable cost of the audit.

18. **Security Deposit:** Upon execution of this Sublease, SUBLESSEE shall deposit with SUBLESSOR the Security Deposit in the amount of FOUR THOUSAND (\$4,900.00) DOLLARS as security for the performance by SUBLESSEE of all its obligations and covenants set forth in this Sublease. SUBLESSOR shall not be required to pay SUBLESSEE any interest on said Security Deposit and may co-mingle same with other funds of the SUBLESSOR. SUBLESSEE shall not transfer or encumber its interest in said funds and any such act shall not be binding on SUBLESSOR. If SUBLESSEE defaults in the payment of Rent, or other monies due under this Sublease, SUBLESSOR may without prejudice to other SUBLESSOR remedies, apply as much of said Security Deposit as may be necessary to compensate SUBLESSOR toward payment of Rent, monies due, or other loss or damage to SUBLESSOR arising from such default and SUBLESSEE shall immediately, upon one (1) day Notice from SUBLESSOR, restore the Security Deposit to the original sum. The Security Deposits shall, in no event, be construed to be liquidated damages. The Security Deposit for the Premises, less any amount expended as aforesaid, shall be returned to SUBLESSEE at the end of the Sublease Term pursuant to Florida Statutes. In the event SUBLESSEE fails to fulfill the full Sublease term or otherwise fails to comply with the terms, covenants and agreements herein contained, then upon such occurrence SUBLESSEE automatically forfeits all rights and interest to this Security Deposit on the Premises with no Notice required to be given to SUBLESSEE, provided that in no event shall this Security Deposit on Premises or such automatic forfeiture thereof be deemed to limit SUBLESSEE's liability and obligation for payment to SUBLESSOR for damage, injury or defacement of the Premises, common grounds under Florida Statutes, or failure on the part of SUBLESSEE to fulfill the terms of this Sublease. Further, in no event shall this Security Deposit on Premises at any time during the term hereof be applied by SUBLESSEE as a set-off against any portion of the rent or other charges hereunder due and payable to SUBLESSOR. In the event this Security Deposit shall not be utilized for any of the above purposes by SUBLESSOR, then such Security Deposit shall be returned by SUBLESSOR to SUBLESSEE subject to Florida Statutes within sixty five (65) days after the expiration of this Sublease.

19. **Mortgage or Sale of Property:** SUBLESSEE agrees that the holder of any mortgage covering the Premises shall not, under any circumstances, be liable for such Rent, Security Deposit or other monies due hereunder. In the event of a sale of the Property, or any portion thereof, SUBLESSOR shall deliver said Security Deposit funds to the purchaser and thereupon SUBLESSOR shall be discharged from any further liability with respect to such Security Deposit funds and the purchaser shall retain said funds as SUBLESSOR under this Sublease.

20. **Use of Premises:**

A. **Business:** SUBLESSEE shall be entitled to use the Premises as a Gallery with the display and sale of art along with the sale and consumption of beer and wine, and no other purpose, subject to applicable law (herein "Business"). Since the SUBLESSOR has no knowledge as to the specifics of how the SUBLESSEE operates its Business, the SUBLESSOR does not make any representations or warranties that the SUBLESSEE'S intended use of the Premises complies with the applicable laws or the SUBLESSOR'S insurer's requirements and


sublessor
sublessee

accordingly the SUBLESSEE assumes all risks and liabilities of compliance and shall comply with the requirements of the applicable governmental authorities, law, the SUBLESSOR'S insurer's requirements along with the obtaining of all licenses, permits and approvals necessary to operate its Business.

B. **Hours of Operation:** SUBLESSEE shall be open for business from a minimum of 9:00 a.m. to 5:00 p.m. Monday through Sunday, including holidays. It is noted that these hours of operation are needed so that SUBLESSOR shall have access to the ADA accessible restrooms during SUBLESSEE's hours of operation.

C. **SUBLESSEE further agrees:**

i. To allow unobstructed access to the ADA compliant restroom and access to the Property through the Premises to customers, invitees, employees and agents of SUBLESSOR during SUBLESSEE's hours of operation and to keep the handicap/side access entrance to the Rail Car Museum unobstructed at all times.

ii. To operate its Business pursuant to the highest reasonable standards of its Business category, maintaining a substantial stock of appropriate merchandise on display, with sufficient personnel to service its trade.

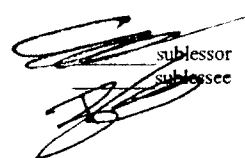
iii. Not to display any merchandise, solicit business or distribute advertising material beyond the Premises, nor in any manner use any part of the Bight, Property, and common areas for purposes other than for their intended common use and not to obstruct any part thereof.

iv. Not to display any banner, pennants, search lights, window signs, balloons, or similar temporary advertising media on the exterior of the Premises excepting as may be provided by the Rule governing the Bight properties.

v. Existing Signage. SUBLESSOR agrees that the existing signage on the Premises is for use by SUBLESSOR AND SUBLESSEE as depicted in Exhibit "B-1" attached hereto.

vi. Additional Signage. SUBLESSOR agrees that SUBLESSEE shall be allowed to place such additional signage to the Premises provided, however, that all such signage shall have prior written consent of SUBLESSOR regarding size, style and placement, which consent shall not be unreasonably withheld and shall be approved and comply with all Key West Bight rules and City of Key West and HARC guidelines.

vii. Not to commit waste in the Premises, Property, Bight or common areas and to keep the Premises and immediate adjacent areas including, without limitation, adjacent sidewalks, handicap ramps, porches, and stairs, in a safe, neat, clean and orderly condition and to maintain and repair any lighting and signs on walkways, under any canopy, adjacent roof or overhang immediately surrounding of the Premises. SUBLESSEE agrees to keep the adjacent handicap accessible ramp servicing the Premises and Property free and clear of obstacles. SUBLESSEE shall take reasonable steps to ensure that invitees and customers shall not block the City of Key West sidewalks on either Caroline Street or Margaret Street.


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viii. Not to use the Premises or permit the same to be used in any manner which violates any law, ordinance or constitutes a nuisance; for lodging purposes; that may injure the reputation of the LANDLORD, the SUBLESSOR, or annoy, inconvenience or damage its patrons or other Tenant's; or that would constitute an extra-hazardous use or violate any insurance policy of SUBLESSEE, SUBLESSOR, LANDLORD or any other Tenant in the Bight or increase the cost thereof.

ix. To keep all garbage, refuse and solid waste inside the Premises in a neat and clean manner, or to place the same outside the Premises, prepared for collection, in the manner and at the times and places specified by SUBLESSOR or the appropriate disposal company. SUBLESSEE agrees not to burn or permit any burning of garbage or refuse on the Premises or any part of the Bight or Property. SUBLESSEE further agrees that, upon SUBLESSOR's instruction, SUBLESSEE shall separate garbage for recycling and deposit the separate garbage in the receptacle designated by SUBLESSOR. In the event the LANDLORD or SUBLESSEE installs a trash compactor to service the Bight, SUBLESSEE shall pay its Proportionate Share of the cost of installing and maintaining such trash compactor.

x. SUBLESSEE shall contract directly with the pertinent governmental authority or disposal company and shall be responsible for all fees and costs of removal and disposal of solid waste, garbage, and refuse, including but not limited to, impact fees and dumpster rental. SUBLESSEE shall indemnify, save harmless and defend SUBLESSOR and LANDLORD from and against any loss, claim, injury, damage or expense arising out of or related to the generation, storage, or removal or disposal of SUBLESSEE's garbage, refuse or solid waste.

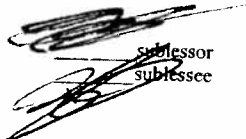
xi. To use its best efforts to cause all trucks serving the Premises to load and unload from through the side of the Premises.

xii. To take no action that would: (i) violate LANDLORD and SUBLESSOR's contracts if any, affecting the Bight (including without limitation the use restrictions contained in LANDLORD's other leases with its Major Tenants, which restrictions have been explained to SUBLESSEE); or (ii) cause any work stoppage, picketing or cause any manner interference with LANDLORD, SUBLESSOR or other Tenants, occupants, customers or any person lawfully in and upon the Bight; or (iii) Violate SUBLESSOR's Ground Lease with LANDLORD, or (iv) effect SUBLESSOR's insurance on the Property.

xiii. Not to use amplified music or any other noise making machinery or devices that can be heard outside the Premises or in LANDLORD or SUBLESSOR's sole determination is harmful to the Premises, Property, building or is disturbing to SUBLESSOR, LANDLORD, or LANDLORD'S other Tenants.

xiv. To abide by and observe all reasonable rules and regulations established from time to time by LANDLORD, SUBLESSOR and LANDLORD and SUBLESSOR's insurance carrier with respect to the operation of the Premises, Property, Bight and its Common Areas.

xv. Not to conduct any auction, fire, bankruptcy or selling-out sale on or about the


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Premises except in strict compliance with City of Key West Code.

xvi. In the event of conflict in any term of condition of this Sublease with any ordinance in the City of Key West Code of Ordinance; the City Ordinance shall take precedence.

xvii. SUBLESSEE shall not engage in any display or Business use of the “non-footprint” area, Property and Key West Bight. No sale or giving of clothing, T-shirts or ticket sales for attractions or vessels, shall be allowed on the Premises except for those that have to do with and refer to the Business of SUBLESSEE.

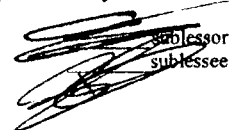
21. **“AS IS” Acceptance and Improvements by SUBLESSEE:**

A. **Acceptance:** SUBLESSOR will make any necessary repairs to the Premises stairs and railings prior to SUBLESSEE taking possession of the Premises. Prior to the Possession Date, SUBLESSEE agrees that they have inspected, or had the opportunity to have an inspection performed of the Premises, stairs and railings, and as such, beginning on the Possession Date, SUBLESSEE accepts the Premises and improvements thereon in an “AS IS” condition and all improvements and additions shall be made and maintained at the sole expense of the SUBLESSEE except as may be otherwise provided for in this Sublease.

B. **Approved Improvements:** SUBLESSOR agrees to remove and relocate the trees located in the main planter in the front of the Premises at its sole cost and expense. SUBLESSEE shall, subject to obtaining SUBLESSOR’s approval of the quantity and type, be entitled to replant the main planter and two side planters located in the front of the Premises at her sole cost and expense. SUBLESSEE shall be entitled to repaint the brown colored paint on the lower exterior front and left side of the Premises with white paint at her sole cost and expense. The brown paint on the right side of the Premises facing Caroline Street shall remain. No other paint on the exterior of the Premises shall be painted without the SUBLESSEE’s prior written consent. SUBLESSEE may perform the following additional improvements to the Premises at her sole cost and expense: upgrade electrical and install additional electrical outlets; upgrade plumbing and installation of a multiple well sink; whitewash slat wall within the Premises, however said improvements/alteration of the Premises shall not in any way overload any of the utility services furnished to the Premises or the Property. All permitting required to perform any work on the Premises shall be the sole responsibility and cost of SUBLESSEE, including any impact fees, and SUBLESSEE shall make copies of said drawings, permits and other paperwork available upon request to SUBLESSOR. All work shall be performed by a properly licensed and insured individual or company.

C. **Additional Improvements:** Any additional improvements or alterations that SUBLESSEE wants to make to the Premises not specifically agreed to above shall require prior written consent of SUBLESSOR, which consent may be arbitrarily withheld. Any alterations/improvements made in violation of this Section shall entitle the SUBLESSOR to double the amount of costs, expenses, and damages incurred, including attorney’s fees and costs, by the SUBLESSOR due to said violation. This clause shall survive the expiration, termination or cancellation of this Sublease.

D. **Improvements upon expiration/termination:** Any and all


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alterations/improvements erected or made on and to the Premises shall on the expiration or sooner termination of this Sublease belong to SUBLESSOR, without compensation to SUBLESSEE, provided however, that SUBLESSOR shall have the option to be exercised on expiration or sooner termination of this Sublease, to require SUBLESSEE to remove any or all such improvements/alterations at their sole cost and expense, including repairing of any damage due to said removal. The SUBLESSOR and SUBLESSEE agree personal property shall not become a permanent improvement and shall remain the property of the SUBLESSEE.

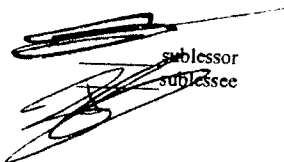
E. **Construction Hold Harmless Agreement:** Prior to the start of any construction by SUBLESSEE on the Premises, SUBLESSEE shall execute a Hold Harmless and Indemnity Agreement with the SUBLESSOR and/or LANDLORD in which SUBLESSEE shall agree to hold harmless the SUBLESSOR and LANDLORD for any injuries to person or property that might arise during or result from construction performed by SUBLESSEE on the Premises.

22. **Repair and Maintenance:**

A. **SUBLESSEE** - The SUBLESSEE covenants and agrees with the SUBLESSOR that during the continuance of this Sublease, the SUBLESSEE shall, at its sole cost and expense, keep in good state of repair and in current and good condition the Premises, including but not limited to the walls, doors, windows, floors, decks, stairs, ADA compliant bathroom, railings, H-VAC with all portions of the central air conditioning system (changing the filter once every month), the electrical system and parts servicing the Premises, plumbing systems and parts servicing the Premises, landscape/common areas crosshatched on Exhibit "D-1, and all furnishings brought or placed upon the Premises by SUBLESSEE. The SUBLESSEE shall not suffer or permit any removal, waste, or neglect of any portion of the Premises, Property, common area or such personal property to be committed; and the SUBLESSEE will repair, replace, and renovate the Premises and personal property as often as it may be necessary in order to keep the Premises and the personal property which is subject to the SUBLESSOR's lien, in good repair and condition, including all improvements made thereto. The SUBLESSEE shall be responsible for repair and maintenance to the intercom system for the handicap accessible ramp which services the Premises and Property in compliance with the American with Disabilities Act and the law. SUBLESSEE agrees to keep the adjacent handicap accessible ramp and sidewalks adjacent to the handicap accessible ramp servicing the Premises and Property free and clear of obstacles. SUBLESSEE further agrees to keep the handicap access entrance to the Rail Car Museum unobstructed at all times. SUBLESSEE, as opposed to SUBLESSOR, shall maintain all of the Premises and its surrounding landscaping area within the "non-footprint" area labeled "planter" on Exhibit "D-1", however, should the "planter"(s) require additional plants, said type, quantity and number of plants shall be subject to SUBLESSOR's prior approval.

B. **SUBLESSOR:** The "non-footprint" common area not crosshatched on Exhibit "D-1" shall be repaired and maintained by SUBLESSOR, including the handicap accessible ramp. In addition, the SUBLESSOR shall be solely responsible for the repair and maintenance to the roof, exterior facade and any structural portion of the Premises, subject to the terms of the Ground Lease.

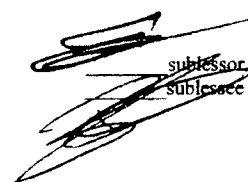
C. **Continuing Obligation:** During the term, SUBLESSEE shall, at SUBLESSEE's


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cost, make any changes or alterations in the Premises that may be necessary to cause said Premises to conform to all governmental and insurance requirements adopted after the Lease date.

D. **SUBLESSEE Refusal or Neglect:** If SUBLESSEE refuses or neglects to commence and complete any of the foregoing in Section 22 promptly, adequately, and professionally, SUBLESSOR may, but shall not be required, to make or complete said repairs and alterations including a reasonable administrative fee, and SUBLESSEE shall pay the cost thereof to SUBLESSOR upon SUBLESSOR billing SUBLESSEE for same, said costs being deemed "additional rent" for all purposes.

23. **Utilities:** At the time of execution of this Sublease, the cost for SUBLESSEE's electric, water, and sewer utilities supplied to the Premises are jointly computed with the Property occupied by SUBLESSOR on one meter per utility. SUBLESSOR will contract for and supply the following utility services to Premises for SUBLESSEE, AT A COST TO BE PAID SOLELY BY SUBLESSEE and subject to the terms set forth herein: ELECTRIC, WATER, and SEWER. SUBLESSEE shall upon execution of this Sublease, provide payment of the Security Deposit set forth in Section 18 to SUBLESSOR for, in addition to those items in Section 18, security for the payment of the utilities services provided to the Premises by SUBLESSOR to SUBLESSEE as set forth in this Section. SUBLESSEE and SUBLESSOR acknowledge that the sum of \$900.00 of the Rent payment made by SUBLESSEE to SUBLESSOR each calendar month during the Sublease Term is allocated to the payment of SUBLESSEE's utilities under this section. SUBLESSOR will track each monthly utility cost, based upon service period and not billing period, to determine the total actual utility cost allocated to the Premises, each calendar month. SUBLESSOR and SUBLESSEE agree that the SUBLESSEE's allocation for each utility is determined based upon the following percentage attributable to the Premises in relation Property for the total amount due on the bill for that utility: Electric (85%); water (50%); sewer (50%). In the event that in the monthly tracking the total actual utilities cost for electric, water, sewer and any other services provided to the Premises by SUBLESSOR to SUBLESSEE that calendar month exceeds \$900.00, the SUBLESSEE shall be responsible for payment to SUBLESSOR for the additional amount due. SUBLESSOR will provide to SUBLESSEE an invoice for the additional amount due. SUBLESSEE shall no later than three (3) days from the date of delivery, excluding the date of delivery, of said invoice pay to SUBLESSOR the total additional amount due according to the invoice as additional rent. The SUBLESSEE shall pay, in addition to any amounts due under the invoice, a late fee in the amount of \$5.00 per day as additional rent, for each calendar day the SUBLESSEE fails to pay the total outstanding amount due set forth in the invoice to SUBLESSOR within (3) days from the date of delivery excluding the date of delivery of said invoice, with no additional notice or invoicing required. If SUBLESSEE fails to pay to SUBLESSOR the total amount due, within three (3) days from the date of delivery of said invoice, SUBLESSEE shall be in default of this Sublease and SUBLESSOR may terminate this Sublease as set forth herein, and SUBLESSOR shall be entitled immediately, without notice and without prejudice to other SUBLESSOR remedies, apply as much of the Security Deposit as may be necessary to compensate SUBLESSOR for payment of total invoice amount due and other loss or damage to SUBLESSOR arising from such default (including any late fees by the utility Company for late payment). SUBLESSEE shall restore the Security Deposit to the original sum

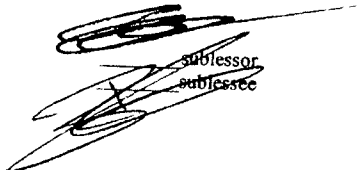

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of \$4,900.00, as more fully set forth herein. Failure to return the deposit to its original sum shall be deemed a material breach and default of this Sublease and SUBLESSOR may terminate this Sublease as set forth herein. The Security Deposit shall, in no event, be construed to be liquidated damages. SUBLESSOR SHALL NOT BE OBLIGATED OR RESPONSIBLE TO PAY ELECTRIC, WATER, OR SEWER charges or bills for said services provided to the Premises UNLESS and UNTIL the SUBLESSEE has paid in full, including any late fees, SUBLESSOR's invoice. All sums due SUBLESSOR under this section shall be deemed "additional rent" for all purposes. SUBLESSEE shall contract for, in its own name, and shall pay before delinquency, any other utility or other service, required for lawful use of the Premises for the Business which is not provided by SUBLESSOR, or separately metered, together with all taxes, impact fees, assessments levied and/or other charges for such utilities.

24. **Discontinuance of Utilities for Failure of SUBLESSEE to Pay:** In the event that SUBLESSEE fails to timely pay the invoice set forth above, and the same results the utilities being cut off for failure to pay the balance due to the utility company by SUBLESSOR, no such action by SUBLESSOR shall be construed as an eviction or disturbance of possession or an election by SUBLESSOR to terminate this Lease, nor shall SUBLESSOR be in any way responsible or liable for such action to SUBLESSEE, its guests or invitees. SUBLESSEE agrees to indemnify and hold SUBLESSOR harmless for any damage caused to SUBLESSEE, or SUBLESSEE's, guest's, consignor's or invitee's property, due to the cut off of utilities for the failure of SUBLESSOR to pay an invoice timely as provided above.

25. **Temporary Discontinuance for Repairs or Alterations:** SUBLESSOR may, with one (1) hour notice to SUBLESSEE, 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 SUBLESSOR shall be construed as an eviction or disturbance of possession or an election by SUBLESSOR to terminate this Lease, nor shall SUBLESSOR be in any way responsible or liable for such action or required to give SUBLESSEE abatement in rent payments.

26. **Overloading and Additional Utilities:** SUBLESSEE's use of the Premises shall not extend or in any way overload any of the utility services furnished to the Premises or the Property. In the event SUBLESSEE requires additional utility services than that provided in this Sublease, SUBLESSEE, at SUBLESSEE's sole cost and expense, shall submit plans and specifications, prepared by a licensed Florida contractor, to SUBLESSOR for SUBLESSOR's review and consent, which consent may be arbitrarily withheld. In the event SUBLESSOR approves SUBLESSEE's proposed construction to increase utility capacity, SUBLESSEE shall obtain any and all required governmental permits necessary to install such increased utility service to the Premises, and make copies of said permits available to SUBLESSOR. SUBLESSEE shall be responsible for all costs of installation, including any impact fees charged. SUBLESSOR and SUBLESSEE agree that the SUBLESSEE's allocation for each utility attributable to the Premises in relation to the total amount due on the particular utility bill will be adjusted based upon use and the installation of any additional utility equipment and/or improvements to the Premises associated therewith. Any alterations/improvements erected or made on the Premises shall on the expiration or sooner termination of this Sublease belong to SUBLESSOR without compensation to SUBLESSEE. Any alterations/improvements in


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violation of this section shall entitle the SUBLESSOR to double the amount of damages or expensed incurred by the SUBLESSOR due to the violation. This clause shall survive the expiration, termination or cancellation of this Sublease.

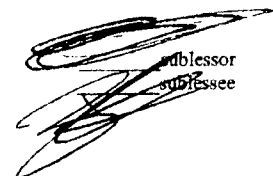
27. **Damage to Premises:** The SUBLESSEE covenants and agrees with the SUBLESSOR that no damage or destruction to the Premises, Property, any building or improvement by fire, windstorm, or any other casualty shall be deemed to entitle the SUBLESSEE to surrender possession of the Premises or to terminate this Sublease or to violate any of its provisions or to cause any abatement or rebate in the rent then due or thereafter becoming due under the terms hereof, unless otherwise specifically provided for herein. If the Sublease be canceled for the SUBLESSEE's default at any time while there remains outstanding any obligation from any insurance company to pay for the damage or any part thereof, then the claim against the insurance company shall, upon the cancellation of this Sublease, be deemed immediately to become absolute and unconditional property of and belong to the SUBLESSOR. In the event of destruction to the Premises by casualty or hazard, SUBLESSOR will have the option of canceling the Sublease, or repairing the building, at its sole discretion. In the event that the SUBLESSOR elects to repair the building, an appropriate abatement of rent will occur. If the Sublease elects to cancel this Sublease, the Sublease will terminate immediately, with the turnover of the Premises to SUBLESSOR forthwith, and should there remain any obligation from any insurance company to pay for the damage or any part thereof of the Premises, then the claim against the insurance company shall, upon the cancellation of this Sublease, be deemed immediately to become absolute and unconditional property and belong to the SUBLESSOR.

28. **Miscellaneous Provisions:**

A. **Un-encumbrance of title:** The SUBLESSEE covenants and agrees with the SUBLESSOR that nothing in this Sublease contained shall ever be construed as empowering the SUBLESSEE to encumber or cause the SUBLESSEE to encumber the title or interest of the SUBLESSOR or LANDLORD in the Premises and Property.

B. **Quiet Enjoyment:** The SUBLESSEE covenants and agrees with the SUBLESSOR that, at the earlier termination or expiration of this Sublease, the SUBLESSEE will peaceably and quietly deliver unto the SUBLESSOR, possession of the Premises and all buildings and improvements located thereon, as well as the SUBLESSEE's interest in all fixtures and equipment, appertaining thereto as more particularly described herein.

C. **SUBLESSOR'S Right of Entry -** The SUBLESSOR, or its agent(s), shall have the right to enter upon the Premises at all reasonable times when SUBLESSEE is open for business or upon SUBLESSOR providing three (3) hours prior written or verbal notice to SUBLESSEE, (which written notice may be posted on the Premises and verbal notice may be by leaving a message on voicemail system) whether SUBLESSEE is on Premises or not, to examine the same or to make such repairs, additions, or alterations as may be deemed necessary for the safety, comfort or preservation thereof of the Premises and the Property or to exhibit said Premises to future tenants and to put or keep upon the doors, windows or exterior thereof a notice that the Premises are for rent, at any time within ninety (90) days before the expiration or earlier termination of the Sublease Term of this Sublease. This right will be exercised in such



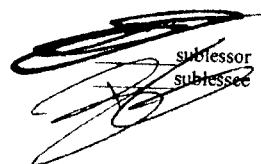
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manner as not to try not to interfere with the SUBLESSEE in the conduct of the SUBLESSEE's Business on said Premises. If the said Premises are damaged by fire, windstorm, or by any other casualty causing the Premises to be exposed to the elements, then the SUBLESSOR may enter upon the Premises to make emergency repairs, no notice required. SUBLESSOR may enter upon the Premises to make renovations and repairs of a non-emergency nature by giving three (3) hours notice (which written notice may be posted on the Premises and verbal notice may be by leaving a message on voicemail system) whether SUBLESSEE is on Premises or not, to the SUBLESSEE, and will be done in such a manner as to minimize inconvenience to all parties.

29. **Equipment, Fixtures, and Signs:** All furnishings, fixtures, trade fixtures, equipment, and signs used on the Premises by SUBLESSEE which have been provided by and belong to SUBLESSOR, will, at all times, be, and remain, the property of SUBLESSOR. SUBLESSEE agrees to repair and maintain said items and return the same in substantially the same form as SUBLESSOR provided to SUBLESSEE; example of items being provided include signage on side and front of Premises, film screen, benches, decorative wagon wheels, wood boxes, and display counter/racks. Provided that this Sublease is in good standing and subject to the SUBLESSOR's lien for rent, and subject to prior written approval of SUBLESSOR, SUBLESSEE may remove any furniture, equipment, fixtures, etc.... provided by SUBLESSEE to the Premises during the term of this Sublease, or any part thereof, at their sole cost however, that SUBLESSEE, in so doing, does not cause any irreparable damage to the Premises, Property and/or common areas, and provided further, that SUBLESSEE shall pay or reimburse SUBLESSOR for the reasonable expense of repairing damage caused by such removal. The SUBLESSOR and SUBLESSEE agree personal property brought to the Premises by SUBLESSEE shall not become a permanent improvement and shall remain the personal property of the SUBLESSEE.

30. **Covenant of Quiet Possession:** So long as SUBLESSEE pays all of the rent, monies due and charges due herein, and abides by the terms and conditions of this Sublease and Ground Lease, SUBLESSEE shall peaceably and quietly have, hold, and enjoy the Premises throughout the Sublease Term without interference or hindrance by SUBLESSOR or any person claiming by, through, or under SUBLESSOR.

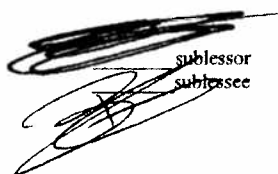
31. **SUBLESSEE'S Insurance:** SUBLESSEE shall keep in force during the Sublease Term, comprehensive, general and motor vehicle liability insurance including, without limitation, bodily, personal and property damage relating to the Premises on an occurrence basis in the amount of \$1,000,000/\$1,000,000.00, and adequate fire, extended coverage and all risk insurance on SUBLESSEE's personal property. SUBLESSEE shall be required to carry insurance covering all inventory, furniture, fixtures or any other personal property belonging to SUBLESSEE or that may be consigned on the Premises by consignor(s). SUBLESSEE agrees to deliver to SUBLESSOR no later than 15 days after the Possession Date of this Sublease, showing the effective date as being the Possession Date, thereafter at least 15 days prior to the expiration of any such policy, either a duplicate original or a certified true copy of all policies procured and additionally before SUBLESSEE undertakes any work to alter or renovate the Premises. Insurance shall be written by one or more responsible insurance companies authorized to do business in the state of Florida. (such insurance may be carried under a blanket policy covering the Premises and any other of SUBLESSEE's location(s) and shall name SUBLESSEE,


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LANDLORD and SUBLESSOR as insured, as their interest may appear, and shall contain endorsements that: (a) such insurance may not be canceled or amended with respect to SUBLESSOR and LANDLORD (or its designee(s)), except upon 15 days prior written Notice to SUBLESSOR (and such designee(s)) by the insurance company; (b) expressly waive any rights to subrogation by SUBLESSEE and SUBLESSEE's insurance company against SUBLESSOR; and (c) include fire, legal, and contractual liability (including consignments) and plate glass coverage. Any consignment agreement used by SUBLESSEE shall provide that consignor acknowledges that the SUBLESSOR and LANDLORD do not have any liability whatsoever for any damage which may be done or for any money due to consignor for items left in the Premises on consignment. The SUBLESSEE shall, prior to entering into any consignment agreements, provide for approval by the SUBLESSOR, any consignment agreement(s) which SUBLESSEE intends to use for consignments on the Premises, which agreement shall include hold harmless language in substantially the same as that set forth below. SUBLESSOR shall not be responsible for damage to any item belonging to SUBLESSEE. SUBLESSEE completely indemnifies and holds SUBLESSEOR and LANDLORD harmless from any loss, liability, expense, claim, injury, or damage (including without limitation reasonable attorneys' fees) caused and/or arising out of the use or occupancy of the Premises or any other part of the Premises, common areas, Bight, or Property by SUBLESSEE or consignor, including without limitation, their agents, contractors, employees, invitees, customers, etc.... The provisions of this Section shall survive expiration or earlier termination of this Sublease ("consignment agreement").

32. **SUBLESSEE Taxes:** SUBLESSEE agrees to pay, when due, all taxes assessed against SUBLESSEE's personal property. SUBLESSOR shall remain responsible for all real estate taxes levied on the real property, if any. SUBLESSEE shall pay for all license fees, occupational taxes, secretary of state fees, and other governmental charges assessed by reason of SUBLESSEE's use or occupancy of the Premises, including, without limitation, any rental or occupancy taxes and any other taxes arising out of the operation of SUBLESSEE's Business or occupancy of the Premises. SUBLESSEE shall provide proof to SUBELSSOR of the same no later than five (5) days from receipt of a request by SUBLESSOR.

33. **Assignment and Hypothecation** This Sublease is not transferable or assignable and may not be hypothecated nor sublet without the prior written consent of the SUBLESSOR and LANDLORD which consent may be arbitrarily withheld EXCEPT for the sole and limited purpose of collateralizing a loan of SUBLESSEE from a financial institution. Any assignment or sub-letting, even with SUBLESSOR's and LANDLORD's consent shall not relieve SUBLESSEE from liability for payment of Rent or from the obligation to keep and be bound by the agreements of this Sublease. The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the agreements of this Sublease or to be consent to the assignment for the benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior consent of SUBLESSOR and LANDLORD. In the event SUBLESSEE wishes to assign this Sublease and SUBLESSOR and LANDLROD consents to such assignment, SUBLESSOR and LANDLORD may each charge a reasonable fee, to help offset any costs SUBLESSOR and LANDLORD may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same. If the SUBLESSEE is a corporation, then a sale or transfer of a


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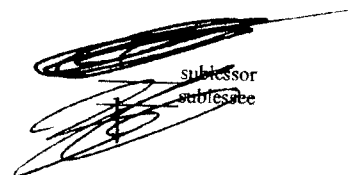
controlling interest in the corporation by sale of stock or otherwise, shall constitute an assignment for purposes of this provision, requiring prior consent.

34.. **Subordination:** This Sublease, and all rights of SUBLESSEE hereunder, are and shall be subject and subordinate to the Ground Lease and all mortgages, bond indentures and any other financing instrument (hereinafter referred to as security agreements) which may now or hereafter affect the Premises and to each and every advance made or hereafter to be made under such security agreements and to all renewals, modifications, replacements and extensions of such security agreements and spreaders and consolidations of such security agreements. This Section shall be self operative and no further instrument of subordination shall be required to make it effective, however, SUBLESSEE shall promptly execute and deliver any instrument reasonably requested to evidence such subordination. SUBLESSEE shall attorn to such successor SUBLESSOR and will execute such instruments as may be necessary or appropriate to evidence such attornment. Upon such attornment, this Sublease shall continue in full force and effect as if it were a direct Sublease between the successor SUBLESSOR and SUBLESSEE upon all the terms, conditions, and covenants as are set forth in this Sublease and shall be applicable after such attornment. SUBLESSEE shall deliver to SUBLESSOR or the holder of any such security instrument or auditors, or prospective purchaser or the owner of the fee, when requested by SUBLESSOR, a certificate to the effect that this Sublease is in full force and that SUBLESSEE is not in default therein, or stating specifically any exceptions thereto. Failure to give such a certificate within five (5) business days after written request shall be conclusive evidence that the Sublease is in full force and effect and SUBLESSEE is not in default and in such event, SUBLESSEE shall be estopped from asserting any defaults known to SUBLESSEE at that time.

35. **Condemnation Clause:** It is further understood and agreed that if at any time during the Sublease Term the legal title to the Property or the improvements or buildings located thereon or any portion thereof be taken or appropriated or condemned by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings and such abatement of the rent and other adjustments made as shall be just and equitable under the circumstances. If the SUBLESSOR and the SUBLESSEE are unable to agree upon what division of the condemnation award, abatement of fixed rent, or other adjustments are just and equitable within thirty (30) days after such award has been made, then the matters in dispute shall, by appropriate proceedings, be submitted to a court having jurisdiction of the subject matter of such controversy for its decision and determination of the matters in dispute. If the legal title to the entire Premises be wholly taken by condemnation, or if the portion taken will prevent the Premises from being used for the Business the SUBLESSEE intends, this Sublease shall be canceled. In general, it is the intent and agreement of the parties that upon condemnation, the parties hereto shall share in the condemnation award to the extent that they would be entitled to receive compensation and damages under the Florida law for the depreciation, damage, or destruction of their interests by the exercise of the right of eminent domain. In no event shall SUBLESSEE be permitted to receive a share based on the value of the land or buildings, and/or improvements.

36. **SUBLESSEE's Default, Waiver**

A. **Additional Rent, other charges and Billing**


sublessor
sublessee

Except as specifically provided otherwise herein, all additional money, billings and invoices referred to and due under this Sublease, shall be paid to the SUBLESSOR within three (3) days of receipt by SUBLESSEE of such notice, invoice or such billing and shall be deemed "additional rent" for all purposes. All sums due under this Sublease, in addition to the Rent due to SUBLESSOR, shall be deemed "rent" and "additional rent" for all purposes.

B. Interest and Late Charges

In addition to any additional late fee or charges specifically provided for in a section herein, should SUBLESSEE fail to pay any such Rents, additional rent or other monetary obligations when due, the in addition to late fees, interest shall accrue from the due date at the rate of 18% per annum, together with a late charge of \$100.00 to offset SUBLESSOR's administrative expenses and/or other costs incurred by SUBLESSOR associated with SUBLESSEE's default said amounts deemed "additional rent" for all purposes. All rights and remedies of SUBLESSOR specified in this Sublease are cumulative and none shall exclude any other rights or remedies allowed by law or equity.

C. Default Events

Any of the following events shall be a default under this Sublease:

I. Failure To Pay Rent

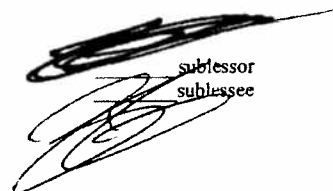
SUBLESSEE fails or refuses to pay any Rent, additional rent, other charges, or other monies payable as Rent when due under this Sublease, at the specified time and place; or

II. Failure To Keep Agreements

SUBLESSEE fails or refuses to keep and perform any non-monetary covenant or condition in this Sublease and such default continues more than five (5) days after notice thereof by SUBLESSOR to SUBLESSEE (provided, however, if the cause of such default involves matters reasonably requiring more than five (5) days to correct or cure, SUBLESSEE will be deemed in compliance with the notice so long as SUBLESSEE has commenced appropriate corrective action and continues to diligently pursue such action until completion thereof); or

III. Repeated Late Payments/ Dishonored/Returned Checks/Repeated non-monetary violations in Sublease:

SUBLESSEE shall pay to SUBLESSOR all costs incurred by SUBLESSOR covering checks which are dishonored/returned PLUS an administrative fee of \$100.00 for administrative costs incurred by SUBLESSOR, said monies being deemed additional rent for all purposes. This is in addition to other fees/costs provided for herein. SUBLESSEE's being repeatedly late in the payment of Rent or other sums or charges due SUBLESSOR under this Sublease on two (2) separate occasions, or having presented for payment checks which were dishonored or returned by the bank when presented for payment on two (2) separate occasions, or repeatedly defaulting in the keeping, observing, or performing of other covenants or agreements herein contained to be kept, observed or performed by SUBLESSEE on two (2) separate occasions (provided notice of such non-payment, dishonored/returned checks or other defaults shall have been given to SUBLESSEE, but irrespective of whether or not SUBLESSEE shall have timely cured any such payment or other defaults of which notice was given) shall result in SUBLESSOR having the option of providing notice of default and no opportunity to cure, and allow SUBLESSOR to


sublessor
sublessee

terminate this Sublease. In the event of default of any payment due under this Sublease as set forth herein, SUBLESSOR reserves the right in to demand that payment to cure the default be in cash, cashier's check, certified check or money order and thereafter a tender of money by SUBLESSEE to cure the default which is not in the form provided in the Notice by SUBLESSOR shall be deemed a failure to cure the default.

D. Remedies

In the event of a default under this Sublease, SUBLESSOR may in addition to all other remedies available under Florida law:

(i) Terminate the Sublease, re-enter and remove all persons and property from the Premises and take possession of the Premises, assert its statutory lien over and to such of SUBLESSEE's personal property as is located therein, and store the same at SUBLESSEE's expense; SUBLESSEE waives any additional rights to notice regarding said personal property;

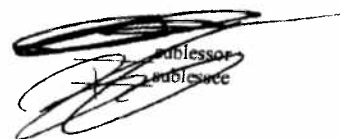
(ii) terminate the Sublease and re-let the Premises or any part thereof on such terms, conditions and rentals as SUBLESSOR may deem proper; and apply the proceeds that may be obtained from said re-letting, after deduction of all re-letting costs, including without limitation, charges for said removal and storage, remodeling and repairs, leasing commissions and legal fees, to the Rents reserved hereunder which may remain unpaid; SUBLESSEE waives any additional rights to notice regarding said personal property;

(iii) If this Sublease is terminated by SUBLESSOR or if SUBLESSOR re-enters the Premises pursuant to this Section, SUBLESSEE shall, nevertheless, remain liable for any Rent or other sums or charges which, but for such termination or re-entry, would have become due during the remainder of the Sublease Term, and all reasonable costs, fees and expenses incurred by SUBLESSOR in pursuit of the collection of the aforementioned (including without limitation, attorneys fees) and SUBLESSOR is hereby empowered by SUBLESSEE to institute a proceeding against SUBLESSEE for the entire amount of unpaid Rent that is due and payable over the balance of the Sublease Term.

37. Abandonment/Termination

In addition to any other right to cancel this Sublease under Section 36, the SUBLESSOR reserves the right to cancel and terminate this Sublease as provided herein or if the Premises be abandoned or deserted for a period of seven consecutive (7) days, or the Sublease Term thereof be transferred or passes to or devolved upon any person, firm, officer or corporation or other party other than SUBLESSEE, then the SUBLESSOR in accordance with the covenants, terms and conditions of this Sublease. In any such event, SUBLESSOR, at SUBLESSOR's sole option, may terminate/cancel this Sublease as set forth under section 36 above Sublease shall end. SUBLESSEE agrees immediately to then quit and surrender said Premises to SUBLESSOR; but this shall not impair or affect SUBLESSOR's right to maintain summary proceedings for the recovery of the possession of the Premises or collection rental due or other billings or charges in all cases provided by law. If the term of this Sublease shall be so terminated, SUBLESSOR may immediately or at any time thereafter re-enter or repossess the Premises and remove all persons and property therefrom without being liable for trespass or damages in any manner.

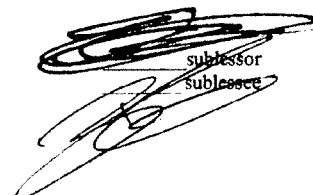
38. No Waiver: No waiver of any agreement of this Sublease or of the breach thereof shall


Sublessor
Sublessee

be taken to constitute a waiver of any subsequent breach of such agreement, nor to justify or authorize the non-observance of any other occasion of the same or any other agreement hereof; nor shall the acceptance of Rent by SUBLESSOR at any time when SUBLESSEE is in default be construed as a waiver of such default or of SUBLESSOR's right to terminate this Sublease on account of such default; nor shall any waiver or indulgence granted by SUBLESSOR to SUBLESSEE be taken as an estoppel against SUBLESSOR - it being expressly understood that if at any time SUBLESSEE shall be in default hereunder, an acceptance by SUBLESSOR of rent during the continuance of such default, or the failure on the part of SUBLESSOR promptly to avail itself or such other rights or remedies as SUBLESSOR may have, shall not be construed as a waiver of such default, but SUBLESSOR may at any time thereafter, if such default continues, terminate this Sublease on account of such default in the manner herein provided. It is mutually covenanted and agreed that the various rights, powers, options, elections, privileges, and remedies of the SUBLESSOR contained in this Sublease shall be construed as cumulative and no one of them shall be construed as being exclusive of the other or exclusive of any rights or priorities allowed by law.

39. **Attorney's Fees and Court Action:** If at any time, by reason of the failure of the SUBLESSEE to keep and perform any covenant or agreement which, under the terms of this Sublease, the SUBLESSEE is bound and obligated to keep and perform, including nonpayment, it becomes necessary for SUBLESSOR to employ an attorney to protect the rights and interests of the SUBLESSOR in the Premises, or to enforce this Sublease and/or Ground Lease, or proceed under it in any particular manner, then in any of such events the SUBLESSEE shall owe and shall pay unto SUBLESSOR all reasonable attorneys fees and costs incurred or expended by the SUBLESSOR in taking such actions, whether or not the matter is taken to Court, including actions taken in all trial and appellate courts, all monies deemed additional rent for all purposes, the same being due by SUBLESSEE to SUBLESSOR five (5) days from the date of delivery of notice thereby. In the event court action relating to this Sublease is brought by SUBLESSOR or SUBLESSEE, the prevailing or substantially prevailing party shall be entitled to recover reasonable attorney's fees and costs incurred in such action and in any appeal or related proceedings, the amount thereof to be fixed by the court or agreed to by the parties. SUBLESSOR, AND SUBLESSEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS SUBLEASE, GROUND LEASE OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR SUBLESSOR ENTERING INTO THIS LEASE WITH SUBLESSEE.

40. **Bankruptcy or Insolvency** - If at any time during the term hereof proceedings in bankruptcy shall be instituted against SUBLESSEE and which proceedings have not been dismissed within a reasonable time period, and which bankruptcy results in an adjudication of bankruptcy; or if any creditor of SUBLESSEE shall file any petition under Chapter X of the Bankruptcy Act of the United States of America, as it is now in force or may hereafter be amended; and SUBLESSEE be adjudicated bankrupt, or SUBLESSEE makes an assignment for the benefit of creditors; or Sheriff, Marshall, or constable take possession thereof by virtue of any attachment or execution proceedings and offer same for sale publicly, and such taking and



sublessor
sublessee

offer for sale is not rescinded, revoked, or set aside within (10 days thereafter, then SUBLESSOR may, at its option, in any of such events, immediately take possession of the premises and terminate this Sublease. Upon such termination, all installments of rent earned to the date of termination and unpaid, shall at once become due and payable; and in addition thereto, SUBLESSOR shall have all rights provided by said bankruptcy laws relative to the proof of claims on an anticipatory breach of an executory contract. The grace period for the curing of default shall not apply to this event of default.

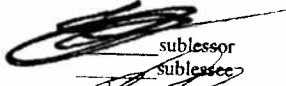

41. **Notice:** Any Notice that either party may desire or be required to give under this Sublease shall be effective if in writing and delivered personally, sent by express guaranteed courier (i.e. federal express) or by registered or certified mail of the United States Postal Service, addressed to the party, or to the Agent for party, as specified below (or such other address or person as either Party may, by written notice to the other). Unless otherwise specified, notices shall be deemed delivered when received; but if delivery is not accepted on the day attempt was made to deliver to the party; then the notice shall be deemed delivered on the third day after the same was deposited with such courier or United States Postal Service. All notices to SUBLESSEE, including corporate/company notice, may also be delivered by posting said notice at the Premises or by delivery of the notice to any person or employee of SUBLESSEE or officer, director, or agent of SUBLESSEE, at the Premises. Notice shall be deemed delivered to SUBLESSEE on the day of posting, or delivery of the notice to any person or employee of SUBLESSEE or officer, director, or agent of SUBLESSEE, at the Premises with notice being deemed given to all SUBLESSEE's of this Sublease, corporate or otherwise, without the need of giving each SUBLESSEE a separate notice. Said notice shall be addressed as follows:

LANDLORD: Caroline Street Corridor and Bahama Village Community
Redevelopment Agency
201 William Street
Key West, Florida 33040

SUBLESSOR Conch Tour Train, Inc.
201 Front Street, Ste. 310
Key West, Florida 33040
With Copy to:
Michelle Cates Deal
201 Front Street, Ste. 110
Key West, Florida 33040

SUBLESSEE Barb Grob
1207 Florida Street
Key West, Florida 33040

Copy to
Michael L. Browning
529 Whitehead Street
Key West, Florida 33040


sublessor

sublessee

The parties agree to provide any change of address to the other as provided above.

42. **Radon Gas**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities may present health risk to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. This notice is given pursuant to Section 404.056(8) Florida Statutes.

43. **Hazardous Substance**

A. Definition

The term "Hazardous Substances", as used in this Lease, shall include, without limitation, flammables, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority.

B. Violation Of Law & SUBLESSOR's Consent

SUBLESSEE shall not cause or permit to occur: (i) Any violation of any federal, state or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions on, under or about the Premises or arising from SUBLESSEE's use or occupancy of the Premises, including, but not limited to, soil and ground water conditions; or (ii) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance without SUBLESSOR's prior written consent, which consent may be withdrawn, conditioned or modified by SUBLESSOR in its sole and absolute discretion in order to insure compliance with all applicable Laws (hereinafter defined), as such Laws may be enacted or amended from time to time.

C. Clean-up

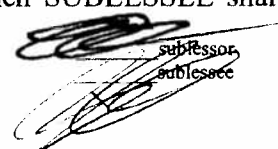
With respect to any environmental clean-up activities:

I. Comply With Laws

SUBLESSEE shall, at SUBLESSEE's own expense: (i) comply with all laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances ("Law"); and (ii) make all submissions to, provide all information required by, and comply with all requirements of, all governmental authorities (the "Authorities") under the Laws.

II. Clean-up Plan

Should any Authority or any third party demand that a cleanup plan be prepared and a cleanup be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances that occurs during the term of this Lease, at or from the Premises or which arises at any time from SUBLESSEE's use or occupancy of the Premises, then SUBLESSEE shall, at



A handwritten signature in black ink is written over a rectangular stamp. The stamp contains the words "sublessor" and "sublessee" stacked vertically. The signature is a cursive scribble that partially obscures the stamp.

SUBLESSEE's own expense, prepare and submit the required plans and all related bonds and other financial assurances and SUBLESSEE shall carry out all such clean-up plans.

III. **Provide Information**

SUBLESSEE shall promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances that is requested by SUBLESSOR. If SUBLESSEE fails to fulfill any duty imposed under this Sub-section 34.3 within thirty (30) days following its request, SUBLESSOR may proceed with such efforts and in such case, SUBLESSEE shall cooperate with SUBLESSOR in order to prepare all documents SUBLESSOR deems necessary or appropriate to determine the applicability of the Laws to the Premises and SUBLESSEE's use thereof and for compliance therewith and SUBLESSEE shall execute all documents promptly upon SUBLESSOR's request and any expenses incurred by SUBLESSOR shall be payable by SUBLESSEE as Additional Rent. No such action by SUBLESSOR and no attempt made by SUBLESSOR to mitigate damages under any Law shall constitute a waiver of any of SUBLESSEE'S obligations under this Sub-section.

D. **Survivability of SUBLESSEE Obligations**

SUBLESSEE's obligations and liabilities under Sub-Section shall survive the expiration of this Lease.

E. **SUBLESSEE Indemnifies SUBLESSOR**

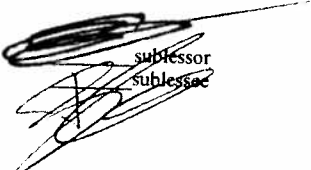
SUBLESSEE shall indemnify, defend and hold harmless SUBLESSOR, its respective officers, directors, beneficiaries, shareholders, partners, agents, and employees from all fines, suits, procedures, claims, and actions of every kind and all costs associated therewith, including attorneys' and consultants' fees, arising out of or in any way connected with any Hazardous Substances on the Premises or any failure by SUBLESSEE to perform its obligations hereunder.

44. **Miscellaneous Provisions:** It is mutually covenanted and agreed by and between the parties as follows:

A. That no waiver of a breach of any of the covenants in this Sublease contained shall be construed to be a waiver of all succeeding breach of the same covenant.

B. That no modification, re-lease, discharge, or waiver of any provision hereof shall be of any force, effect, or value unless in writing and signed by the persons who are then SUBLESSOR and SUBLESSEE.

C. That all covenants, promises, conditions, and obligations contained herein or implied by law, or covenants running with the land, shall attach to and be binding upon the heirs, executors, administrators, successors, legal representative, and assigns of each of the parties to this Sublease.


sublessor
sublessee

D. That this instrument contains the entire agreement between the parties as of this Sublease Date, and that the execution hereof has not been induced by any party by representations, promises or understandings not expressed herein, and that there are not collateral agreement, stipulations, promises, or understandings whatsoever between the perspective parties in any way touch the subject matter of this instrument which are not expressly contained in this instrument.

E. Time is of the essence with respect to the performance of each of SUBLESSOR and SUBLESSEE's covenants of this Lease and the strict performance of each shall be a condition precedent to SUBLESSEE's rights to remain in possession of the Premises or to have this Lease continue in effect.

F. Consent In Writing: Whenever this Sublease specifies that an action requires consent of SUBLESSOR, SUBLESSEE, said consent shall be effective only if in writing and signed by the consenting party and SUBLESSOR's consent may be arbitrarily withheld.

G. Parties: Relationship & Definition- No Construed Relationship: Nothing in this Sublease shall be deemed or construed so as to create the relationship of principal and agent, partnership, joint venture or of any association between the Parties, it being agreed that neither the computation of Rent nor any other Sublease provision nor any act of the Premises shall be deemed to create any relationship between the Parties.

H. Construction: This Sublease and the provisions thereof shall be governed by and construed and enforced in accordance with the laws of the State of Florida.

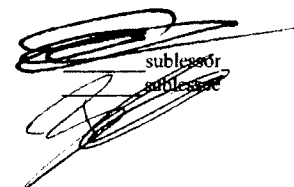
I. If the SUBLESSEE or SUBLESSEE's are signing in a capacity other than as individuals, then the SUBLESSOR may require personal guarantees from individuals as the SUBLESSOR deems necessary.

J. SUBLESSOR may delegate its decision making authority regarding any provision of this Sublease to the SUBLESSOR, LANDLORD and/or an Advisory Board, at SUBLESSORS sole determination.

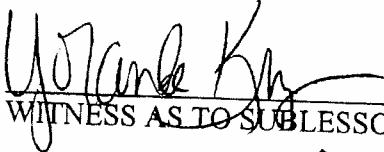
45. **Exhibits:** The following Exhibits are attached and incorporated into this Sublease and made a part thereof:

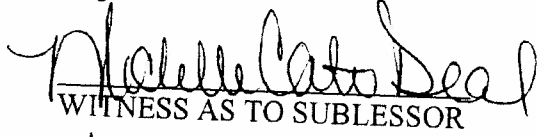
- Exhibit "A": Ground Lease
- Exhibit "B": Property
- Exhibit "B-1": Signage
- Exhibit "C": Bight
- Exhibit "D": Premises
- Exhibit "D-1": Common Area

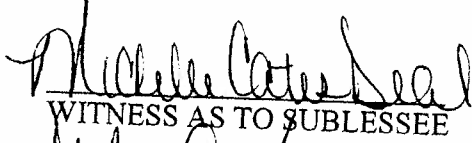
IN WITNESS WHEREOF, the parties hereto have caused the foregoing Sublease to be executed on the day and year first above written.

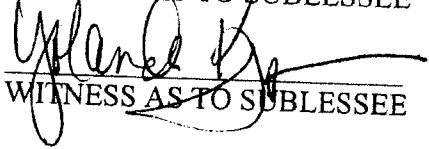


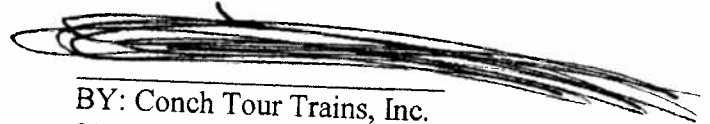
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sublessee

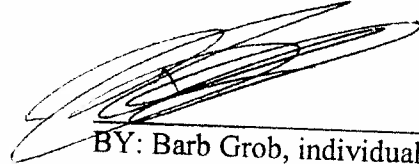

WITNESS AS TO SUBLESSOR

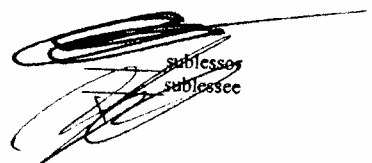

WITNESS AS TO SUBLESSOR


WITNESS AS TO SUBLESSEE


WITNESS AS TO SUBLESSEE


BY: Conch Tour Trains, Inc.
SUBLESSOR


BY: Barb Grob, individually, SUBLESSEE


sublessor
sublessee

Composite
Exhibit "A" to Sublease

RESOLUTION NO. 96-174

A RESOLUTION OF THE CITY COMMISSION OF THE
CITY OF KEY WEST, FLORIDA, ACTING AS THE
CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE
COMMUNITY REDEVELOPMENT AGENCY APPROVING THE
ATTACHED LEASE WITH CONCH TOUR TRAINS, INC.;
PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CAROLINE STREET CORRIDOR AND BAHAMA
VILLAGE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF KEY WEST,
FLORIDA AS FOLLOWS:

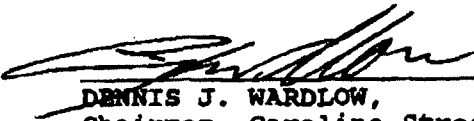
Section 1: That the attached lease with Conch Tour Trains,
Inc. is hereby approved;

Section 2: That 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 7th day of May, 1996.

Authenticated by the presiding officer and Clerk of the
Commission on May 16, 1996.


Filed with the Clerk May 16, 1996.


DENNIS J. WARDLOW,
Chairman, Caroline Street
Corridor and Bahama Village
Community Redevelopment
Agency

ATTEST:


JOSEPHINE PARKER, CITY CLERK

96-174



KEY WEST BIGHT - PROPOSED LEASE TERMS

Tenant Conch Tour Trains, Inc
~~Flagler Railroad, Inc~~ Size 2,730 sq ft
 Location Margaret St. Sq. Ft. for CAM 1,400 sq ft
 Contact Ed Swift or Mike Cates Term 10 years

Period	Base Rent	Base Rent per sq. ft.	Rent Cred	Rent Before Extras	Taxes, Ins. Common Area	Total Rent Before Sales Tax	Sales Tax	Total Rent	Percentage Rent over Sales of	Monthly Gross
1	\$21,840	8.00		21840.00	8,594	28434.00	2,133	\$30,566.55	\$384,000	\$2,547.21
2	\$22,441	8.22		22440.80	8,594	29034.80	2,178	\$31,212.20	\$374,010	\$2,601.02
3	\$23,058	8.45		23057.72	8,594	29851.72	2,224	\$31,875.80	\$384,285	\$2,656.30
4	\$23,692	8.68		23691.80	8,594	30285.80	2,271	\$32,557.24	\$384,803	\$2,713.10
5	\$24,343	8.92		24343.33	8,594	30937.33	2,320	\$33,257.63	\$406,722	\$2,771.47
6	\$25,013	9.16		25012.77	8,594	31806.77	2,371	\$33,977.28	\$418,879	\$2,831.44
7	\$25,701	9.41		25700.82	8,594	32294.82	2,422	\$34,716.72	\$428,344	\$2,893.08
8	\$26,407	9.67		26407.39	8,594	33001.39	2,475	\$35,476.49	\$440,123	\$2,956.37
9	\$27,134	9.94		27133.59	8,594	33727.59	2,530	\$36,257.16	\$452,227	\$3,021.43
10	\$27,880	10.21		27879.77	8,594	34473.77	2,586	\$37,059.30	\$464,883	\$3,088.27

Years 2 - 10 base rent increases calculated @ CPI of 2.75% for demonstration purposes only

Special Terms

1. Tenant shall have right to build at his expense train museum and depot as depicted in conceptual drawing. Permitting shall be the responsibility of the tenant.
2. If permits are unattainable within 9 months of execution of the lease said lease shall automatically terminate unless both parties agree to extend same.
3. Rent shall begin 90 days from permits being issued or when final CO is signed whichever occurs first.
4. At the term of the lease if parties do not negotiate a new lease the "Flagler Depot" (pavillion) shall remain as an improvement to the owners property; the "Flagler RR Car" and any display carts, fixtures, etc. not a physical part of the depot structure shall be the property of the tenant.
5. No part of this lease shall be in conflict with any City Ordinance and if found to be in conflict City Ordinance shall take preference.
6. Percentage rent shall not apply to ticket sales for Conch Train Depot (included in Franchise with City)
7. No display or business use of landscape areas not included in leased area (see exhibit

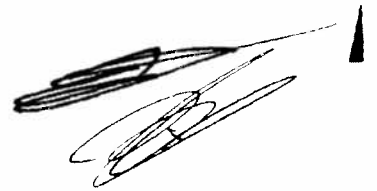


Memorandum

To: City of Key West Commission
CC:
From: Mark Summers *MCS*
Date: April 3, 1996
Subject: Key West Bight Lease with Conch Tour Trains

The Key West Bight Management District Board approved the terms for the attached lease with Conch Tour Trains, Inc. , at the February 21, 1996 meeting.

This is a land lease as identified in the Master Plan Proforma. Mr. Swift is going to build the Train Museum and Depot Gift Shop entirely at his expense. We believe this will be a major attraction at the Bight which will benefit all tenants. The tenants association has supported this lease.



"A"). No T-shirt sales will be allowed except Conch Tour Train & Flagler RR shirts, all clothing type display shall be de-minimus in comparison to overall display. Tenant shall not sell any tickets for attractions or vessels which are not tenants of the Key West Bight, from the leased area which directly compete with any other Key West Bight tenants. Any carts or other type portable display shall be operated by the tenant and may not be subleased.

8. Conch Tour Trains shall not block sidewalks on either Caroline St. or Margaret St. except when entering and leaving the "Train Stop Area" (see exhibit "A").

A large, dark, handwritten signature or scribble is located in the bottom right corner of the page. It consists of several overlapping, bold strokes that form an abstract shape, possibly representing a name or initials.

1.7.2 PERCENTAGE RENT (PAR. 3) 6 % OF TENANT'S GROSS SALES IN EXCESS OF THE FOLLOWING "BASE AMOUNT" \$364,000

1.8 SECURITY DEPOSIT (PAR. 4): \$ 2,000

1.9 PERMITTED USE (PAR. 5): TRAIN MUSEUM, TICKET DEPOT FOR TRAINS, RETAIL SALE OF SOUVENIRS, AND MARINE RELATED OR TRAIN ARTIFACTS.

NOTES: INSURANCE 1,000,000

INITIALS LANDLORD JL TENANT [Signature]

[Signature]

LEA S E

THIS LEASE, made and entered into at Key West, Monroe County, Florida, this 7th day of June, 1996 by and between the Caroline Street Corridor and Bahama Village Community Redevelopment Agency, hereinafter called LANDLORD, and Conch Tour Trains, Inc., hereinafter called TENANT.

WITNESSETH:

That the LANDLORD and the TENANT, for and in consideration of the keeping by the parties of their respective obligations hereinafter contained, as well as for one dollar (\$1.00) and other good and valuable consideration by each of the parties unto the other, in hand paid simultaneously with the execution and delivery of these presents, the receipt of which is hereby acknowledged, have agreed as follows:

1. **DEMISE** - Upon the terms and conditions hereinafter set forth, and in consideration of the payment from time to time by the TENANT of the rents hereinafter set forth, and in consideration of the performance continuously by the TENANT of each and every one of the covenants and agreements hereinafter contained by the TENANT to be kept and performed, the LANDLORD does hereby lease, let, and demise unto the TENANT, and the TENANT does hereby lease of and from the LANDLORD, the following described premises situated, lying, and being in Monroe County, Florida: That portion of the Key West Bight property outlined and/or crosshatched on Exhibit "A" containing the following approximate dimensions and area: It is agreed that the square footage for the purpose of any calculations which are based on square footage is 1400, notwithstanding any actual measurements which may be taken. The demised premises shall include the land and a structure the Tenant shall build upon the land in accordance with terms of Paragraph 5.

2. **TERM** - The term of this lease shall be for ten (10) years which shall commence on the date set forth above, subject to the provisions of Paragraph 5 and shall end at midnight on the eve of the tenth anniversary of date of commencement.

3. **RENT** - All rentals provided for herein shall be payable in advance on the first day of each and every month of the term hereof. Any monthly rental not received by the first day of the month shall bear interest at the highest rate permitted by law from such first day until the date it is received. In addition, all payments received after the due date shall incur a \$50.00 administrative fee to cover the costs of collecting and processing late payments.

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

- (a) Tenant agrees to pay to the Landlord as and for rent equal monthly installments of *\$1,820.00 in advance, on the first day of each and every calendar month during the term of this Lease except that Tenant shall pay, upon execution and delivery of this Lease by Tenant, the sum of \$1,820.00 plus sales tax, together with \$594.50 representing the first month's portion of the estimated share of expenses per Section 2c of this Lease, plus applicable sales tax, to be applied against the first installments of fixed rent becoming due under this Lease. *See Section 3(e) for changes in rent.
- (b) Simultaneously with each such payment, Tenant agrees to pay to Landlord any sales, use or excise tax imposed or levied against rent or any other charge or payment required hereunder to be made by Tenant which tax has been imposed or levied by any governmental agency having jurisdiction thereof, this shall include any new taxes imposed during the term of this Lease which are in addition to or in substitution for any such tax which is presently imposed.
- (c) The estimated Common Area Charges for the first Lease Year are \$3,024, payable in advance, in Monthly Installments of \$252.00 each. Actual Common Area Charges will be determined, and necessary adjustments will be made at the expiration of each Fiscal Year in accordance with this Section.

The Common Area Charges are based on the Estimated Schedule of Common Area Charges attached hereto as Schedule A. These charges are only estimates. The tenant shall be responsible for all Common Area Charges actually incurred on a pro rata assessment basis determined by the square footage of the demises premises. Any increase in the common area charges shall result in an increase in the Tenant's share of the Common Area Charges. Common Area Charges assessed after the base year shall not increase in any given year by more than 5% of the previous year's common area assessment. The base year for the purpose of limiting increases in Common Area Charges shall be Oct. 1, 1995 - Sept. 30, 1996 (base year). This limitation shall apply only to those services included in the base year's common area charges. Any services charged for that are not included in the base year's charges shall not be limited by this 5% cap

nor shall they be included for determining this 5% cap.

Common Area Charges shall include any and all expenses reasonably incurred in the operation and maintenance of the Bight property Common Area including management and administrative fees. Major capital improvements will not be included in Common Area Charges.

Commencing with the 1st day of the Term, Tenant agrees to pay to Landlord, as Additional Rent, Tenant's Proportionate Share of Common Area Maintenance Charges, in Monthly Installments as specified herein. Such installments shall be due and payable on the 1st day of each calendar month during the Term. The installments set forth herein represent Tenant's Proportionate Share of the estimated Common Area Maintenance Charges at the Commencement Date. Thereafter, Landlord shall, prior to the beginning of each calendar year, estimate the expected Common Area Maintenance Charges for the coming calendar year and Tenant's Proportionate Share thereof, 1/12th of which shall constitute the Monthly Installments for such year; provided such installments shall never be lower than the installments specified herein. Within 90 days after the end of each year, Landlord shall calculate the actual Common Area Maintenance Charges paid or payable during the prior calendar year, and there shall be an adjustment between Landlord and Tenant so that Landlord shall receive the actual amount of Tenant's annual Proportionate Share for said year. If Tenant's Proportionate Share is less than the amount paid by Tenant during the prior year, Landlord shall, at its option, pay Tenant the difference between the amount received and the amount actually due, or credit such difference against Tenant's next succeeding Installments. If Tenant's Proportionate Share is greater than the amount paid by Tenant during the prior year, Tenant shall pay Landlord the difference between the amount paid by Tenant and the amount actually due upon Landlord billing Tenant for same. Landlord agrees to keep, at its principal office, records relating to said Common Area Maintenance Charges. Tenant shall have the right to audit said records for the sole purpose of ascertaining the correctness of said Charges. Such audit shall be made during normal business hours; not unreasonably interfere with Landlord's office operations; shall be performed by Tenant, Tenant's chief financial officer, or a CPA selected by Tenant; shall not be made more often than once during each calendar year; and shall be limited to the preceding calendar year. If Tenant desires to

audit said records as aforesaid, Tenant shall notify Landlord 30 days in advance thereof, commence said audit within 60 days of said notice, and once commenced, diligently complete the same. If any such audit shows the amount of such charges to Tenant was overstated, Landlord shall refund any such overcharge.

Tenant shall pay Tenant's Proportionate Share of the Real Estate Tax Expense, which shall include all real estate taxes and assessments both general and special imposed by federal, state or local governmental authority or any other taxing authority having jurisdiction over the Bight Property against the land, buildings, store rooms, Common Areas and all other improvements within the Upland Bight Property (excluding any public area which will not be taxed and excluding the Marina), together with any and all expenses incurred by Landlord in negotiations, appealing or contesting such taxes and assessments. Real Estate Tax Expense shall not include any additional charges or penalties incurred by Landlord due to late payment of Real Estate Taxes. In the event that any of the public area excluded later becomes taxable or is determined to be taxable then it shall be included for purposes of determining Tenant's proportionate share.

Tenant's prorated share of Real Estate Taxes shall be paid as part of the Common Area Charges provided for herein. The 5% cap limitation provided for in Section 3(c) shall not be applicable to this particular common area charge.

Tenant shall pay Tenant's Proportionate Share of the Insurance Expenses which shall include all insurance premiums incurred by the Landlord in insuring the Upland Bight Property including hazard and liability insurance for any and/or all buildings, improvements and common areas.

Tenant's prorated share of Insurance expenses shall be paid as part of the Common Area Charges provided for herein. The 5% cap limitation provided for in Section 3(c) shall not be applicable to this particular common area charge.

Should any governmental taxing authority acting under any present or future law, ordinance or regulation, levy, assess or impose a tax, excise and/or assessment (other than an income or franchise tax) upon or against the rentals payable by Tenant to Landlord, whether by way of

substitution for, or in addition to, any existing tax on land and buildings or otherwise, or any other substitute tax, the proceeds of which are to be used to fund the same governmental functions as were funded by ad valorem taxes, Tenant shall be responsible for and reimburse Landlord for the amount thereof, as the case may be, as additional rent, 7 days before the date that any penalty or interest would be added thereto for non-payment or, at the option of Landlord, the same shall be payable in the manner provided for in the preceding paragraph. Substitute taxes as referred to above in this Section shall include, without limitation, any surtax on parking spaces.

____ check
and initial
by Landlord
and Tenant
if applicable

(d) In addition to the foregoing rent, Tenant agrees to pay Landlord as Percentage Rent a sum equal to 6% multiplied by an annual Gross Sales per Lease Year in excess of \$364,000, as adjusted pursuant to this Paragraph. Within twenty (20) days following the end of each month of each Lease Year, Tenant shall forward to Landlord a statement of Gross Sales together with an accurate and complete copy of the State of Florida Department of Revenue, Sales and Use Return Form DR-15 (or such forms as the State of Florida shall hereafter substitute for said form) showing the full amount of Tenant's Gross Receipts from the Premises during the previous month. The statement of Gross Sales must be in affidavit form. Tenant is subject to a fifty dollar (\$50.00) late submission penalty should Tenant not furnish to Landlord copies of Form DR-15 by the twentieth (20th) day of each month. If by the end of any such preceding month the Gross Sales in the Premises during such Lease Year shall exceed the Percentage Base, Tenant shall pay to Landlord, at the time of delivery of said Statement, an amount equal to the Percentage Rent times the Gross Sales exceeding the Percentage Base, less the Percentage Rent, if any, previously paid by Tenant to Landlord during that Lease Year.

"Gross Sales" shall mean the amount of sales of all merchandise or services sold or rendered at or from the Premises by Tenant or any sub-tenant, licensee, etc. Tenant may deduct from Gross Sales: (i) any refunds to customers, provided they have been included in Gross Sales; and (ii) the amount of any sales tax levied upon retail sales and payable over to the appropriate governmental authority.

Percentage rent shall not apply to ticket sales for Conch Tour Trains sold at "Ticket Depot" (see Exhibit "A")

Tenant agrees to keep, at its principal office, records in accordance with generally accepted accounting practices, in which said Gross Sales shall be recorded. Such records shall be open for inspection by Landlord or its agents, including accountants retained for that purpose, during reasonable business hours for the Term and for at least 3 years thereafter. If any audit shows that the amount of Gross Sales on Tenant's statement was understated by more than 1% for any year, then Tenant (in addition to paying the Percentage Rent due for such understatement) shall pay to Landlord the reasonable cost of the audit.

- (e) The monthly installment referred to in a) above shall be adjusted annually to reflect the preceding years increase/decrease in the Consumer Price Index - Urban (US avg.)
- (f) In addition to the foregoing rent, all other payments to be made by Tenant shall be deemed to be and shall become additional rent hereunder whether or not the same be designated as such and it shall be due and payable upon demand together with interest thereon at the highest rate permissible by law from their due date until the date it is paid. The Landlord shall have the same remedies for Tenant's failure to pay said additional rental the same as for non-payment of rent. Landlord, at its election, shall have the right to pay or do any act which requires the expenditure of any sums of money by reason of the failure or neglect of Tenant to perform any of the provisions of this Lease, and in the event Landlord shall, at its election, pay such sums or do such acts requiring the expenditure of monies, Tenant agrees to pay Landlord, upon demand, all such sums, and the sums so paid by Landlord and any expenses incurred by Landlord in the payment of such sums together with interest thereon at the highest rate permitted by law from their due date through the date they are paid by Tenant shall be deemed additional rent and shall be payable and collectible as such. Rent shall be made payable to: The City of Key West, Key West Eight, 201 William Street, Key West, FL 33040.

4. **SECURITY** - Tenant simultaneously with the execution and delivery of this Lease, has deposited with the Landlord the sum of \$2,000.00 the receipt of which is hereby acknowledged, which

sum shall be retained by Landlord as security for the payment by Tenant of the rents herein agreed to be paid by Tenant and for the faithful performance by Tenant of the terms, conditions and covenants of this Lease. It is agreed that Landlord, at Landlord's option, may at any time apply said sum or any part thereof toward the payment of the rents and any other sum payable by Tenant under this lease, and/or toward the performance of each and every covenant under this Lease, but such covenants and Tenant's liability under this Lease shall thereby be discharged only pro tanto; that Tenant shall remain liable for any amounts that such sum shall be insufficient to pay; that Landlord may exhaust any or all rights and remedies against Tenant before resorting to said sum, but nothing herein contained shall require or be deemed to require Landlord to do so; that, in the event this deposit shall not be utilized for any of such purposes, then such deposit shall be returned by Landlord to Tenant within sixty (60) days after the expiration of the term of this lease. Tenant shall deposit with Landlord such additional sums which may be necessary to replace any amounts expended therefrom by Landlord pursuant to the provision hereof, so that there shall always be a security deposit in the sum first set forth above. The Security deposit provided for herein shall be held by the Landlord in a non interest bearing account and may be co-mingled by the Landlord at the Landlord's sole discretion.

5. USE OF THE PREMISES - TENANT shall be entitled to use the premises for a Train Museum, a ticket depot for Trains, the retail sale of souvenirs and marine related or train artifacts, and no other purpose.

Tenant further agrees:

A. To operate its Business pursuant to the highest reasonable standards of its Business category, maintaining a substantial stock of appropriate merchandise on display, with sufficient personnel to service its trade.

B. With respect to the Bight, not to display any merchandise, solicit business or distribute advertising material beyond the Premises, nor in any manner use any part of the Common Areas for purposes other than for their intended common use and not to obstruct any part thereof.

C. Not to display any banners, pennants, search lights, window signs, balloons, or similar temporary advertising media on the exterior of the Premises.

D. Not to commit waste in the Premises or Common Areas

and to keep the Premises and immediate adjacent areas including, without limitation, adjacent sidewalks, in a safe, neat, clean and orderly condition and to maintain and repair any lighting or signs under any canopy immediately in front of the Premises.

E. Not to use the Premises or permit the same to be used in any manner which violates any law, ordinance or constitutes a nuisance; for lodging purposes; that may injure the reputation of the Bight or annoy, inconvenience or damage its patrons or other tenants; or that would constitute an extra-hazardous use or violate any insurance policy of Tenant, Landlord or any other tenant in the Bight or increase the cost thereof.

F. To keep all garbage, refuse and solid waste inside the Premises in the kind of containers specified by Landlord, or to place the same outside the Premises, prepared for collection, in the manner and at the times and places designated on the attached Site Plan or as otherwise specified by Landlord or the appropriate disposal company. Tenant agrees not to burn or permit any burning of garbage or refuse on the Premises or any part of the Bight. Tenant further agrees that, upon Landlord's instruction, Tenant shall separate garbage for recycling and deposit the separate garbage in the receptacle designated by Landlord. In the event Landlord installs a trash compactor to service the Bight, Tenant shall pay its Proportionate Share of the cost of installing and maintaining such trash compactor.

G. Tenant shall contract directly with the pertinent governmental authority or disposal company and shall be responsible for all fees and costs of removal and disposal of solid waste, garbage, and refuse, including but not limited to, impact fees and dumpster rental. Tenant shall indemnify, save harmless and defend Landlord from and against any loss, claim, injury, damage or expense arising out of or related to the generation, storage, or removal or disposal of Tenant's garbage, refuse or solid waste.

H. To use its best efforts to cause all trucks serving the Premises to load and unload from the hours of 12:00 a.m. to 11:00 a.m. and not to permit such trucks to service through the front entrance of the Premises except when no other entrance is available.

I. To take no action that would: (i) violate Landlord's contracts if any, affecting the Bight (including without limitation the use restrictions contained in Landlord's leases with its Major Tenants, which restrictions have been explained to Tenant); or (ii) cause any work stoppage, picketing or cause any manner or interference with Landlord or other tenants, occupants, customers or any person lawfully in and upon the Bight.

J. Not to use amplified music or any other noise making machinery or devices that in Landlord's determination is harmful to the building or disturbing to other Tenants.

K. To abide by and observe all reasonable rules and regulations established from time to time by Landlord and Landlord's insurance carrier with respect to the operation of the Bight and its Common Areas.

L. Not to conduct any auction, fire, bankruptcy or selling-out sale on or about the Premises except in strict compliance with City Code Chapter 105.

M. At Tenant's total expense, Tenant shall have the right to build Train Museum and Flagler Depot as depicted in Exhibit "A". Permitting shall be the responsibility of the Tenant. The design of all structures shall be consistent with the conceptual plan as approved by the Key West Bight Management District Board.

N. If all necessary permits are unattainable within nine (9) months of execution of this Lease, the Lease shall automatically terminate unless both parties agree to extend same. Rental payments shall begin 90 days from the date permits are issued, or when final Certificate of Occupancy is issued, whichever occurs first. Tenant's possession of the demised premise shall occur when permits are issued for the limited purpose of constructing the Train Museum and Flagler Depot.

O. Upon the expiration of this lease, the parties may negotiate a new lease for the demised premises. If no such new lease is executed, or upon the ultimate expiration of the contractual relationship between the parties, all structures constructed upon the leased land by Tenant shall be deemed permanent improvements to the land and shall be owned by the Landlord at no expense to the Landlord. Tenant shall leave the structures in good repair as provided by Paragraph 12 of this Lease. The Landlord and Tenant agree that the "Flagler Railroad Car," ~~all display carts~~, and all other personal property shall not become a permanent improvement and shall remain the property of the Tenant. This Paragraph shall take precedence over Paragraph 15 and 16 of this Lease in the event of conflict.

P. In the event of conflict no part of this lease shall be in conflict with any City Ordinance, City Ordinance shall take preference.

Q. Tenant shall not engage in any display or business use of the landscape areas of the Key West Bight not included in

leased premises (see exhibit "A"). No T-shirt sales shall be allowed on the premises except for Conch Tour Train & Flagler RR shirts. Display of clothing shall be at a minimum in relation to the display of all material on the premises. At the demised premises Tenant shall not sell any tickets for attractions or vessels that are not tenants of the Key West Bight, which would be competition for any Key West Bight Tenant. ~~Any carts or other type portable display shall be operated by the tenant and may not be subleased.~~

R. Conch Tour Trains shall not block sidewalks on either Caroline St. or Margaret St. except when entering and leaving the "Train Stop Area" (see exhibit "A").

S. Prior to the start of construction by Tenant on the land that is subject of this Lease, Tenant shall execute a Hold Harmless and Indemnity Agreement with the Landlord in which Tenant shall agree to hold harmless the City for any injuries to person or property that might arise during or result from the construction phase of the demised premises.

6. COVENANT OF QUIET POSSESSION

So long as TENANT pays all of the rent and charges due herein, TENANT shall peaceably and quietly have, hold, and enjoy the demised premises throughout the term of this lease without interference or hindrance by LANDLORD or any person claiming by, through, or under LANDLORD.

7. TENANT'S DUTY TO PAY INSURANCE PREMIUMS - TENANT covenants and agrees with LANDLORD that TENANT will pay the premiums for all insurance policies which TENANT is obligated to carry under the terms of this lease and will deliver the said policies or certificates in respect of same and the evidence of payment to the LANDLORD. TENANT shall carry liability insurance in amounts of \$1,000,000 / 1,000,000. TENANT shall carry liability insurance which provides coverage for any incidents arising out of TENANT's use of the demised premises. TENANT shall be required to carry insurance covering any property whether it be inventory or furniture and fixtures or any other property belonging to TENANT. Any consignment agreement used by TENANT must provide that consignor acknowledge that the LANDLORD does not have any liability whatsoever for any damage which may be done to items left in the demised premises on consignment. The TENANT must provide the LANDLORD with a copy of any consignment agreement used by TENANT regarding demised premises. LANDLORD shall not be responsible for damage to any property belonging to TENANT or consignor. TENANT completely indemnifies the LANDLORD with regard to any claims made by any consignor for any reason. All policies of insurance

required of the Tenant shall name the City of Key West as additional insured and copies shall be provided to the Landlord.

8. ASSIGNMENT AND HYPOTHECATION - This Lease is not transferable or assignable and may not be hypothecated nor sublet without the prior written consent of the Landlord which may be withheld and shall be at the sole discretion of the Landlord.

This Tenant may assign the Lease without the written consent of the Landlord for the sole and limited purpose of collateralizing a loan from a financial institution.

Any assignment or sub-letting, even with Landlord's consent shall not relieve Tenant from liability for payment of Rent or from the obligation to keep and be bound by the agreements of this Lease. The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease or to be consent to the assignment for the benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior consent of Landlord. In the event Tenant wishes to assign this Lease and Landlord consents to such assignment, Landlord may charge a reasonable fee, not to exceed \$500.00 to help offset any costs Landlord may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same.

If the Tenant is a corporation, then a sale or transfer of a controlling interest in the corporation by sale of stock or otherwise, shall constitute an assignment for purposes of this provision.

9. SUBORDINATION This lease, and all rights of tenant hereunder, are and shall be subject and subordinate to all mortgages, bond indentures and any other financing instrument (hereinafter referred to as security agreements) which may now or hereafter affect the demised premises and to each and every advance made or hereafter to be made under such security agreements and to all renewals, modifications, replacements and extensions of such security agreements and spreaders and consolidations of such security agreements. This paragraph shall be self operative and no further instrument of subordination shall be required to make it effective, however, tenant shall promptly execute and deliver any instrument reasonably requested to evidence such subordination.

If the holder of any such security instrument shall succeed to the rights of landlord under this lease, then at the request of such party so succeeding to the landlord's rights and upon such successor landlords written agreement to accept tenant's

attornment, tenant shall attorn to such successor landlord and will execute such instruments as may be necessary or appropriate to evidence such attornment. Upon such attornment, this lease shall continue in full force and effect as if it were a direct lease between the successor landlord and tenant upon all the terms, conditions, and covenants as are set forth in this lease and shall be applicable after such attornment.

Tenant shall deliver to landlord or the holder of any such security instrument or auditors, or prospective purchaser or the owner of the fee, when requested by landlord, a certificate to the effect that this lease is in full force and that landlord is not in default therein, or stating specifically any exceptions thereto. Failure to give such a certificate within ten business days after written request shall be conclusive evidence that the lease is in full force and effect and landlord is not in default and in such event, tenant shall be estopped from asserting any defaults known to tenant at that time.

10. CONDEMNATION CLAUSE

A. It is further understood and agreed that if at any time during the continuance of this lease the legal title to the demised real estate or the improvements or buildings located thereon or any portion thereof be taken or appropriated or condemned by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings and such abatement of the fixed rent and other adjustments made as shall be just and equitable under the circumstances. If the LANDLORD and the TENANT are unable to agree upon what division of the condemnation award, abatement of fixed rent, or other adjustments are just and equitable within thirty (30) days after such award has been made, then the matters in dispute shall, by appropriate proceedings, be submitted to a court having jurisdiction of the subject matter of such controversy for its decision and determination of the matters in dispute. If the legal title to the entire premises be wholly taken by condemnation, or if the portion taken will prevent the premises from being used for the purpose the TENANT intends, this lease shall be canceled.

B. In general, it is the intent and agreement of the parties that upon condemnation, the parties hereto shall share in the condemnation award to the extent that they would be entitled to receive compensation and damages under the Florida law for the depreciation, damage, or destruction of their interests by the exercise of the right of eminent domain. In no event shall tenant be permitted to receive a share based on the value of the land or buildings, and/or improvements.

11. DEFAULT CLAUSE

A. It is further covenanted and agreed by and between the parties hereto that in case at any time default shall be made by the TENANT in the payment of any of the rent herein provided for within ten days (10) of the day the same becomes due and payable; or if the TENANT shall fail to pay any of the taxes or assessments herein provided for; or in case of the sale of or forfeiture of said demised premises or any part thereof during said demised term for non-payment of any tax or assessment; or in case the TENANT shall fail to keep insured the building or improvements which are now or which may at any time hereafter be upon said premises, as herein provided for; or shall fail to spend insurance money, as herein provided for; or if the TENANT shall fail to perform any of the covenants of this lease by it to be kept and performed; then, in any of such events, except in the event of non payment of rent, upon ten (10) business days written notice, within which the TENANT may cure, and upon its failure to cure, it shall and may be lawful for the LANDLORD, at its election, to declare said demised term ended and to re-enter upon said premises, building, and improvements situated thereon, or any part hereof, either with or without process of law, the said TENANT hereby waiving any demand for possession of said premises and any and all buildings and improvements then situated thereon; In the event of non payment of rent, this notice shall not be required.

B. OR, the LANDLORD may have such other remedies as the law and this instrument afford, and the TENANT covenants and agrees that upon the termination of said demised term, at such election of the said LANDLORD, or in any other way, TENANT will surrender and deliver up the premises and property (real and personal) peaceably to the LANDLORD, its agent, or attorneys, immediately upon the termination of the said demised term. If the TENANT, its agents, attorneys, or tenants shall hold the said premises or any part thereof, one (1) day after the same should be surrendered according to the terms of this lease, it shall be deemed guilty of forcible detainer of said premises under the statute and shall be subject to eviction or removal, forcibly or otherwise, with or without process of law.

C. Bankruptcy or Insolvency - If at any time during the term hereof proceedings in bankruptcy shall be instituted against TENANT and which proceedings have not been dismissed within a reasonable time period, and which bankruptcy results in an adjudication of bankruptcy; or if any creditor of TENANT shall file any petition under Chapter X of the Bankruptcy Act of the United States of America, as it is now in force or may hereafter be amended; and TENANT be adjudicated bankrupt, or TENANT makes an assignment for the benefit of creditors; or sheriff, marshal, or

constable take possession thereof by virtue of any attachment or execution proceedings and offer same for sale publicly, and such taking and offer for sale is not rescinded, revoked, or set aside within ten (10) days thereafter, then LANDLORD may, at its option, in any of such events, immediately take possession of the premises and terminate this lease. Upon such termination, all installments of rent earned to the date of termination and unpaid, shall at once become due and payable; and in addition thereto, LANDLORD shall have all rights provided by said bankruptcy laws relative to the proof of claims on an anticipatory breach of an executory contract. The grace period for the curing of default shall not apply to this event of default.

D. Where the alleged default consists of some alleged violation of any term of this lease, other than the payments of money, including rent, the LANDLORD may not declare this lease in default until such violation shall have continued for ten (10) days after the LANDLORD shall have given the TENANT written notice of such violation, and TENANT shall not have undertaken, during said ten (10) day notice period, to cure said violation by vigorous and affirmative action, provided, however, that nothing herein contained shall be construed as precluding the LANDLORD from having such remedy as may be and become necessary in order to preserve the LANDLORD's right and interest of the LANDLORD in the premises and in this lease, even before the expiration of the grace or notice periods provided for in this paragraph, if, under particular circumstances then existing, the allowance of such grace or the giving of such notice would prejudice or endanger the rights and estate of the LANDLORD in this lease and in the demised premises. With respect to the payment of the insurance premiums, the same must be paid at least fifteen (15) days prior to the time when the policies would lapse for the failure to pay premiums thereon, and evidence of such payment given to the LANDLORD without any written notice being required to be served upon the TENANT in connection therewith.

E. All default and grace periods shall be deemed to run concurrently and not consecutively.

F. It is mutually covenanted and agreed that the various rights, powers, options, elections, privileges, and remedies of the LANDLORD contained in this lease shall be construed as cumulative and no one of them shall be construed as being exclusive of the other or exclusive of any rights or priorities allowed by law.

G. It is further covenanted and agreed by and between the parties hereto that the right given to the LANDLORD in this lease to collect the rent that may be due under the terms of this lease by any proceeding under same, or the right to collect any

additional rent, money, or payments due under the terms of this lease by any proceedings under same, or the right given the LANDLORD to enforce any of the terms and provisions of this lease shall not in any way affect the right of such LANDLORD to declare this lease void and the terms ended hereby, as herein provided, when default is made in the payment of said rent or when default is made by the TENANT in any of the terms and provisions of this lease.

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

12. TENANT'S DUTY TO KEEP PREMISES IN GOOD REPAIR - The TENANT covenants and agrees with the LANDLORD that during the continuance of this lease, the TENANT will keep in good state of repair and in current condition, the demised premises and all furnishings brought or placed upon the demised premises by TENANT; nor will the TENANT suffer or permit any strip, waste, or neglect of any building or such personal property to be committed; and the TENANT will repair, replace, and renovate the said real and personal property as often as it may be necessary in order to keep the building or buildings and the personal property which is subject to the LANDLORD's lien, in good repair and condition. In the event that improvements or repairs are contemplated prior to or at the beginning of or during Tenant's occupancy, then this provision shall apply to the condition of the property as of the last repair, improvement or renovation.

13. ADDITIONAL COVENANTS OF THE TENANT

A. The TENANT shall pay for all utilities associated with the use of the demised premises including, but not limited to, water, electricity, sewer, gas and waste, (if applicable). In the event that a separate bill for the demised premises is not available for one or more of the utility services required by the demised premises, then the TENANT shall pay a pro-rated share of that particular utility bill based on the square footage of the demised premises and/or the TENANT's estimated usage of that particular utility.

B. The TENANT covenants and agrees with the LANDLORD that no damage or destruction to any building or improvement by fire, windstorm, or any other casualty shall be deemed to entitle the TENANT to surrender possession of the premises or to terminate

this lease or to violate any of its provisions or to cause any abatement or rebate in the rent then due or thereafter becoming due under the terms hereof, unless otherwise specifically provided for herein. If the lease be canceled for the TENANT's default at any time while there remains outstanding any obligation from any insurance company to pay for the damage or any part thereof, then the claim against the insurance company shall, upon the cancellation of the within-lease, be deemed immediately to become absolute and unconditional property of the LANDLORD. In the event of destruction to the premises by casualty or hazard, LANDLORD will have the option of canceling the lease, or repairing the building, and in the event that the LANDLORD elects to repair the building, an appropriate abatement of rent will occur.

C. The Tenant shall be responsible for the H-VAC and all air conditioning systems together with the plumbing and electrical system.

D. The Tenant shall be responsible for maintaining the roof and exterior of the building.

E. The TENANT covenants and agrees with the LANDLORD that nothing in this lease contained shall ever be construed as empowering the TENANT to encumber or cause the LANDLORD to encumber the title or interest of the LANDLORD.

F. The TENANT covenants and agrees with the LANDLORD that, at the termination of this lease, the TENANT will peaceably and quietly deliver unto the LANDLORD, possession of the premises and all buildings and improvements located thereon, as well as the TENANT's interest in all fixtures and equipment appertaining thereto.

G. The TENANT agrees not to make any internal changes or exterior changes or alterations without written approval of the LANDLORD. This provision does not apply to tenant's trade fixtures and/or other non permanent fixtures on the interior of the demised premises.

14. LANDLORD'S RIGHT OF ENTRY - The LANDLORD or its agents shall have the right to enter upon the premises at all reasonable times to examine the condition and use thereof, provided only that such right shall be exercised in such manner as not to interfere with the TENANT in the conduct of the TENANT's business on said premises. If the said premises are damaged by fire, windstorm, or by any other casualty which caused the premises to be exposed to the elements, then the LANDLORD may enter upon the premises to make emergency repairs. LANDLORD may enter upon the premises to make renovations and repairs of a non-emergency nature by giving reasonable notice to the TENANT, and in such a manner as to minimize any inconvenience to both parties.

15. EQUIPMENT, FIXTURES AND SIGNS

All furnishings, fixtures, trade fixtures, equipment, and signs used on the premises by TENANT but provided by LANDLORD, will, at all times, be, and remain, the property of LANDLORD. Provided that this lease is in good standing and subject to the LANDLORD's lien for rent, TENANT will have the right to remove any furniture or fixtures provided by TENANT, or any part thereof, from the premises during the term of this lease, at the expiration thereof, or within a reasonable time thereafter, provided, however, that TENANT, in so doing, does not cause any irreparable damage to the premises, and provided further, that TENANT will pay or reimburse LANDLORD for the reasonable expense of repairing damage caused by such removal.

16. The TENANT accepts the premises and improvements thereon in an as is condition and all improvements and additions shall be at the sole expense of the TENANT except as may be otherwise provided for in this Lease.

17. MISCELLANEOUS PROVISIONS - It is mutually covenanted and agreed by and between the parties as follows:

A. That no waiver of a breach of any of the covenants in this lease contained shall be construed to be a waiver of all succeeding breach of the same covenant.

B. That time is of the essence in every particular and particularly where the obligation to pay money is involved.

C. That all arrearages in the payment of rent or in the repayment to the LANDLORD of any sums which the LANDLORD may have paid in order to cure a default of the TENANT (as elsewhere herein provided for), shall bear interest from the date when due and payable at the highest rate permitted by law until paid.

D. That no modification, release, discharge, or waiver of any provision hereof shall be of any force, effect, or value unless in writing and signed by the persons who are then LANDLORD and TENANT.

E. That all covenants, promises, conditions, and obligations contained herein or implied by law, or covenants running with the land, shall attach to and be binding upon the heirs, executors, administrators, successors, legal representatives, and assigns of each of the parties to this lease.

F. That this instrument contains the entire agreement between the parties as of this date, and that the execution hereof has not been induced by either of the parties by representations, promises or understandings not expressed herein, and that there are not collateral agreements, stipulations, promises, or

understandings whatsoever between the respective parties in any way touching the subject matter of this instrument which are not expressly contained in this instrument.

G. That when either of the parties desire to give notice to the other or others in connection with and according to the terms of this lease, such notice shall be deemed given when it shall have been deposited in the U.S. Registered or Certified mail with sufficient postage pre-paid thereon to carry it to its addressed destination. Said notice shall be addressed as follows:

AS TO LANDLORD: 201 William Street
Key West, FL 33040

AS TO TENANT: 601 Duval St. Suite #5
Key West, FL 33040

When the parties on either side (LANDLORD or TENANT) consists of more than one person, notice or default by one of the persons on that side shall constitute notice or default by all of the persons on that side.

H. This lease and the provisions thereof shall be governed by and construed and enforced in accordance with the laws of the State of Florida.


I. If the Tenant or Tenants are signing in a capacity other than as individuals, then the Landlord may require personal guarantees from individuals as the Landlord deems necessary.

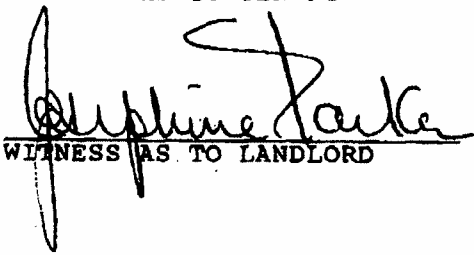
J. Landlord may delegate its decision making authority regarding any provision of this lease to an Advisory Board.

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

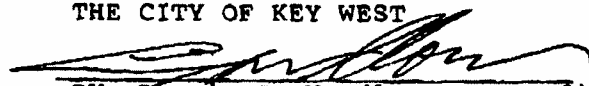
Conch Tour Trains, Inc.


WITNESS AS TO TENANT




WITNESS AS TO LANDLORD

THE CITY OF KEY WEST


BY: Dennis J. Wardlow, Mayor Chairman
Caroline Street Corridor + Bahia Village
Community Redevelopment Agency

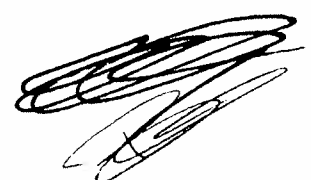


Exhibit "A"

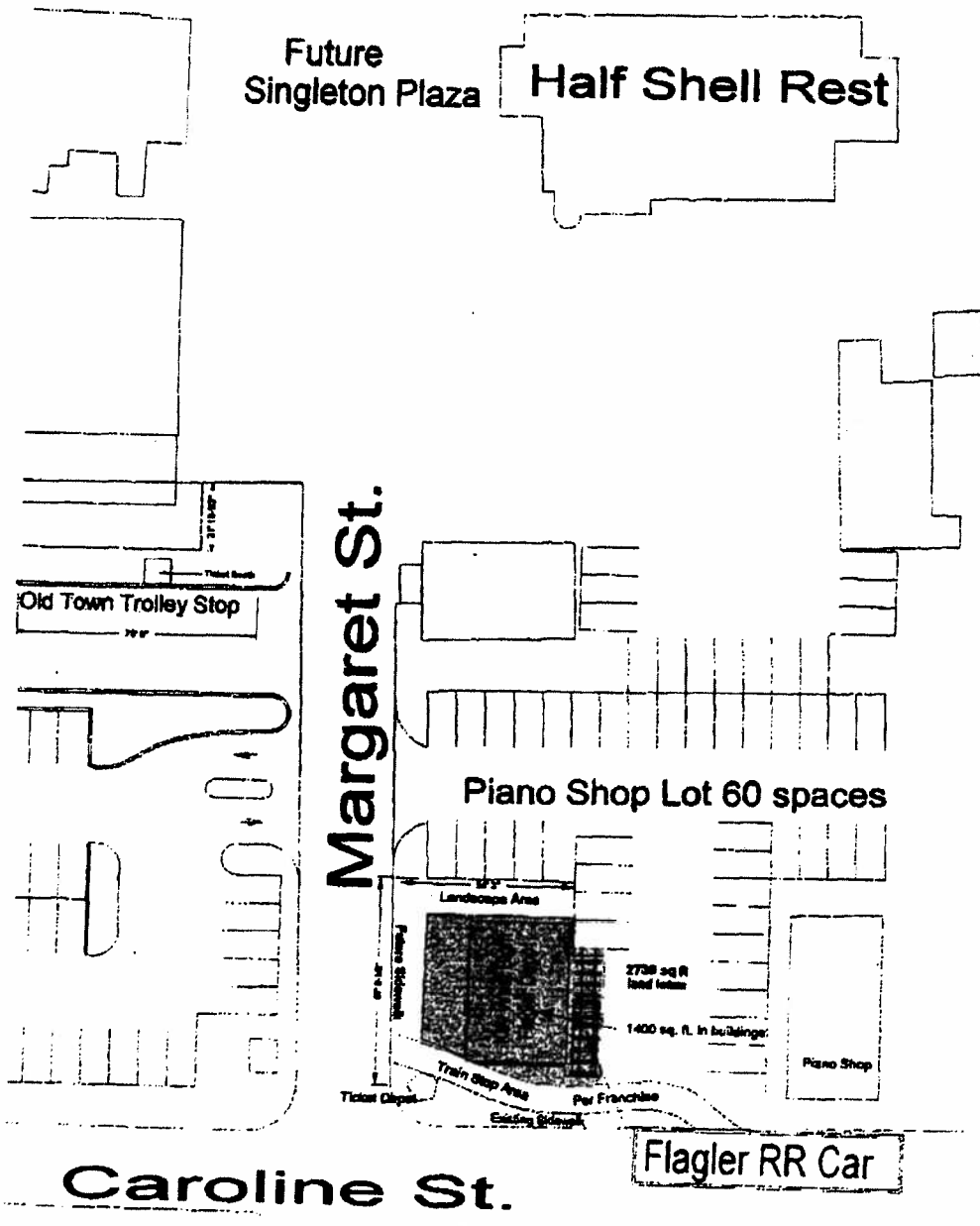
Land Lease Area

Train Depot

as allowed by franchise

Future
Singleton Plaza

Half Shell Rest



Margaret St.

Old Town Trolley Stop

Piano Shop Lot 60 spaces

Landscape Area

2738 sq ft
land lotter

1400 sq. ft. in buildings

Piano Shop

Train Stop Area

Per Franchise

Ticket Office

Existing Sidewalk

Flagler RR Car

Caroline St.

Schedule A

KEY WEST BIGHT COMMON AREA CHARGES						
		FY 96		FY 96		FY 96
Maintenance Charges		Budget		est actual		BUDGET
LABOR						
Staff - General maintenance; bathrooms & garbage, landscaping & grounds, including ice & work comp		56,000		41,020		70,000
UTILITY SERVICE						
Garbage - Plazas & Harbour walk Power, Water & Sewer Bathrooms & Harbourwalk		25,000		7,480		25,000
REPAIR & MAINTENANCE						
Electrical repair, bulb & fixture replacement		13,000		0		13,000
Landscaping materials & supplies		6,000		0		6,000
Signage repair & replacement		6,000		0		6,000
Misc. materials & supplies		2,000		0		2,000
		27,000		2,487		27,000
OPERATING SUPPLIES						
Cleaning materials & supplies for bathrooms, plazas and harbourwalk		18,000		4,866		12,000
		<u>34,000</u>		<u>18,176</u>		<u>26,000</u>
SECURITY SERVICES						
		160,000		74,029		160,000
ADMINISTRATIVE OVERHEAD 50%						
		<u>80,000</u>		<u>37,015</u>		<u>80,000</u>
		240,000		111,044		240,000
PROMOTIONAL FUND						
		<u>70,000</u>		<u>17,256</u>		<u>36,000</u>
TOTAL		310,000		128,298		275,000
50% TENANTS		155,000		64,149		137,500
50% CITY		155,000		64,149		137,500
Insurance Charges						
		FY 96		FY 96		FY 96
		Budget		est actual		BUDGET
Direct All Risk Policy		77,006		76,464		61,379
Umbrella Policy Allocation		62,036		62,036		62,036
M.O.L.L.		<u>8,600</u>		<u>28,582</u>		<u>28,582</u>
Total Insurance Cost		147,644		164,075		160,000
Insurance Applicable to Businesses						
Direct All Risk Policy		77,006		76,464		61,379
Self Insurance Allocation from Umbrella		<u>10,000</u>		<u>19,000</u>		<u>62,036</u>
		87,006		68,464		123,418
Insured Values						
Buildings	3,600,000 .86	0.66		0.66		0.66
Docks	2,800,000 .44					
	6,800,000 100					
Building Insurance		<u>48,723</u>		<u>47,864</u>		<u>69,114</u>
Building Area		66,000		66,000		66,000
Allocation Per Sq. Ft.		\$0.74		\$0.74		\$1.06
Estimated leased area sharing in common area 1994 - 1995						
		<u>66,000</u>	sq ft	<u>66,000</u>	sq ft	<u>66,000</u>
Common Area Maintenance & Promotional Fund						
Estimated Total Cost		310,000		128,298		275,000
50% Shared to Leased Area		155,000	\$2.38	64,149	\$0.99	137,600
						\$2.17
Realty Taxes						
Estimated Total Costs		160,000		149,862		149,862
Less: Marine		(43,000)	0.3	(40,372)	0.3	(40,372)
Bayside Trailer Park		<u>(10,000)</u>	0.1	<u>(9,064)</u>	0.1	<u>(9,064)</u>
Share to Leased Area		107,000	\$1.85	100,236	\$1.54	100,236
						\$1.61
Insurance						
Estimated Total Costs		147,644		164,075		150,000
Share to Leased Area		<u>48,723</u>	\$0.75	<u>47,864</u>	\$0.74	<u>69,114</u>
						\$1.04
			\$4.78		\$3.27	\$4.72

Memorandum

To: Mayor Wardlow *JW* 6/6/96
CC: Mrs. Parker, City Clerk
From: Mark Summers *MS*
Date: May 30, 1996
Subject: Swift Lease - Carts

The last sentence of Sec. 5. (Q) should be removed in order to comply with the Commissions direction to remove all references to cart(s) in this lease.

This sentence and it's reference to portable displays was inserted to strengthen Sec. 8 which deals with assignment and hypothecation. This paragraph prohibits sub-letting, removal of the last sentence of sec. 5.(Q) will not grant any authority that isn't already covered by sec. 8.



RESOLUTION NO. 97-50

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY, APPROVING THE ATTACHED LEASE ADDENDUM BETWEEN THE CRA AND CONCH TOUR TRAINS, INC. TO PROVIDE FOR A 10-YEAR LEASE EXTENSION, THEREBY ESTABLISHING A LEASE WHOSE TERM SHALL BE 20 YEARS; PROVIDING FOR ADDITIONAL IMPROVEMENTS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Conch Tour Trains, Inc. executed a 10-year lease with the CRA on June 7, 1996, for property at the Key West Bight; and

WHEREAS, the CRA has determined that Conch Tour Trains, Inc. meets the 20-year lease Guidelines set forth in Resolution 97-22;

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

Section 1: That the attached Lease Addendum between the CRA and Conch Tour Trains, Inc. to provide for a 10-year lease extension, thereby establishing a lease whose term shall be 20 years, and providing for additional improvements, is hereby



approved.

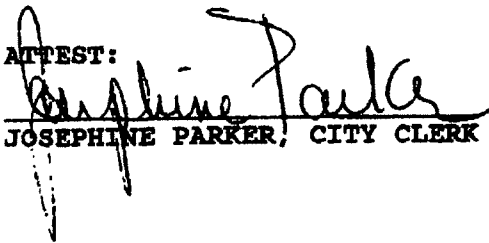
Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Agency.

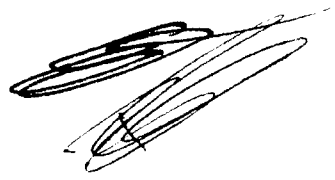
Passed and adopted by the Caroline Street Corridor and Bahana Village Community Redevelopment Agency at a meeting held this 22 day of January, 1997.

Authenticated by the presiding officer and Clerk of the Agency on January 22, 1997.

Filed with the Clerk January 23, 1997 .


DENNIS J. WARDLOW, CHAIRMAN

ATTEST:

JOSEPHINE PARKER, CITY CLERK



Memo

To: Mayor and Commissioners of City of Key West
From: Mark Summers *MS*
Subject: Conch Tour Trains Lease Addendum
Date: January 10, 1997

- This lease was previously approved (May 1996) by the Commission, however because of the restriction eliminating cart display with this Lease Mr. Swift has had to consider a fully enclosed structure built to FEMA specifications. Without the carts he would have nothing to display merchandise on in the original Pavilion design.
- Mr. Swift has already proceeded with preliminary design and has had to reassess the site plan previously approved. A new lay out is attached.
- The previous lease encompassed 2730 sq ft of land lease for exclusive use of tenant for outdoor display (carts). The new site plan while it takes up more land (8 parking spaces lost) the actual exclusive building area will be roughly the same, of course there will be no outdoor cart display.
- Because of the additional expense to build a full structure FEMA compliant, Mr. Swift has asked to extend the lease to a 20 year term. The rent has been increased to reflect the change in footprint of the leased area.
- This project will be a major attraction for the Bight and represents substantial capital investment (over \$250,000) on the tenants part.
- The terms of this lease are in line with the Master Plan Proforma for land lease parcels in this area of the Bight and were approved by the Bight Board on December 18, 1996. Staff recommends approval.



LEASE ADDENDUM EXTENDING DURATION TO TWENTY YEARS

THIS LEASE ADDENDUM, made and entered into at Key West, Monroe County, this 22 day of January, 1997, by and between **Caroline Street Corridor and Bahama Village Community Redevelopment Agency**, hereinafter called "LANDLORD," and **Conch Tour Trains, Inc.** hereinafter called "TENANT."

WITNESSETH:

That the LANDLORD and the TENANT, for and in consideration of the keeping by the parties of their respective obligations hereinafter contained, and for the purpose of extending a lease which was made on June 7, 1996, for valuable consideration by each of the parties unto the other, in hand paid, the receipt of which is acknowledged, the parties have agreed, as follows:

1. **TERM** - The term of this extension shall be for ten (10) years, which shall commence on June 6, 2006 and end on June 6, 2016.

2. **RENT** -- Tenant agrees to pay to the Landlord as and for rent amounts detailed and attached below.

3. **LEASEHOLD IMPROVEMENTS** - TENANT agrees to construct at its expense, a Train Museum and Depot as depicted in Exhibit "A-1". Permitting shall be the responsibility of the TENANT. Exhibit "A-1" attached shall replace Exhibit "A" of the Lease. At the termination of the Lease all new structures constructed upon the leased land by TENANT shall be deemed permanent improvements to the land and shall be owned by the LANDLORD at no expense to the LANDLORD. TENANT shall leave the structures in good repair as provided by Paragraph 12 of this Lease. The LANDLORD and TENANT agree that the Flagler Railroad Car, Big Pine Depot and all other personal property shall not become a permanent improvement and shall remain the property of the TENANT.

4. **ALL OTHER PROVISIONS** -- Any and all other provisions contained in the lease dated June 7, 1996, executed by the LANDLORD and TENANT shall remain in effect as part of this lease. The entirety of the terms of the above described lease are specifically incorporated herein by reference, as though fully set forth in complete form herein.

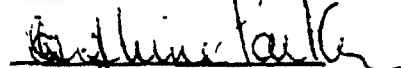
IN WITNESS WHEREOF, the parties hereto have caused the foregoing lease to be executed on the day and year first above written.

Tenant



Witness as to Tenant

Landlord



Witness as to Landlord



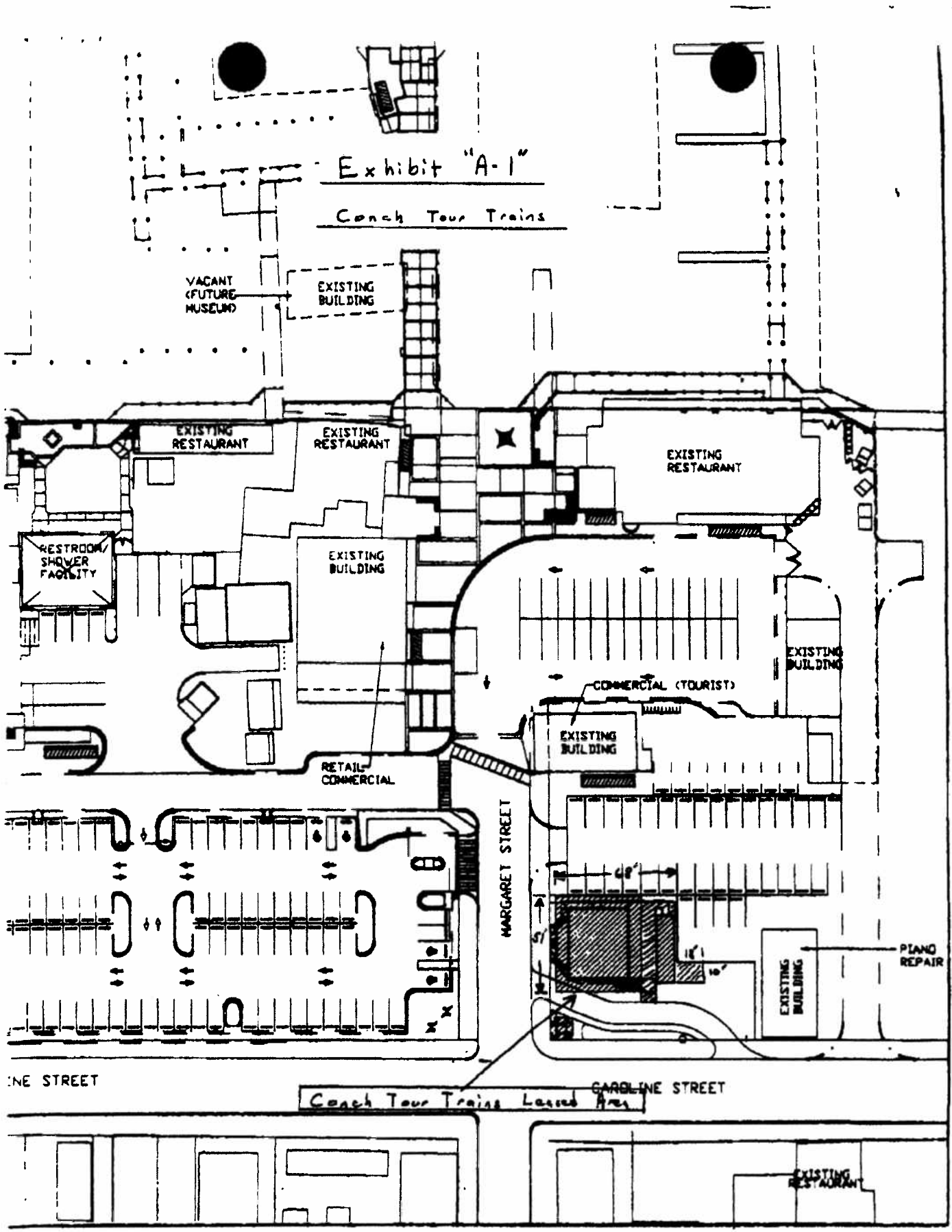


Exhibit "A-1"

Coach Tour Trains

VACANT
(FUTURE
MUSEUM)

EXISTING
BUILDING

EXISTING
RESTAURANT

EXISTING
RESTAURANT

EXISTING
RESTAURANT

RESTROOM
SHOWER
FACILITY

EXISTING
BUILDING

EXISTING
BUILDING

COMMERCIAL (TOURIST)

RETAIL
COMMERCIAL

EXISTING
BUILDING

MARGARET STREET

PIANO
REPAIR

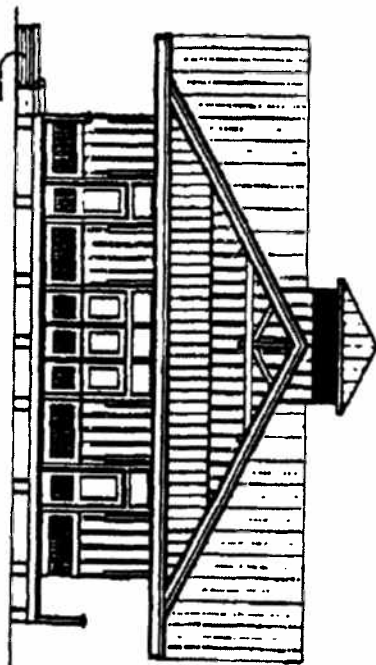
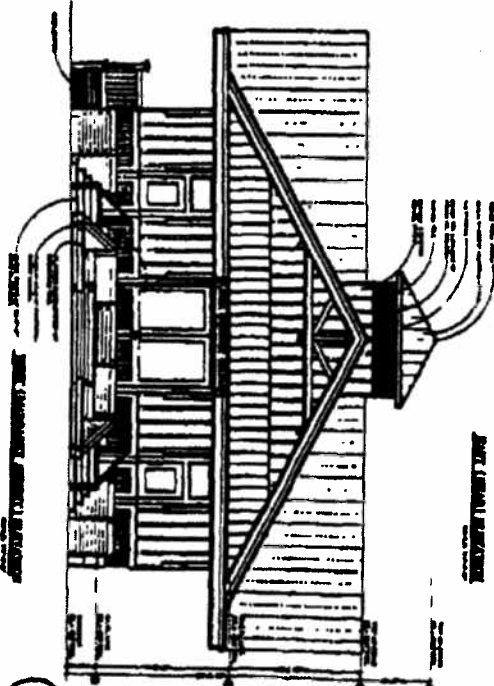
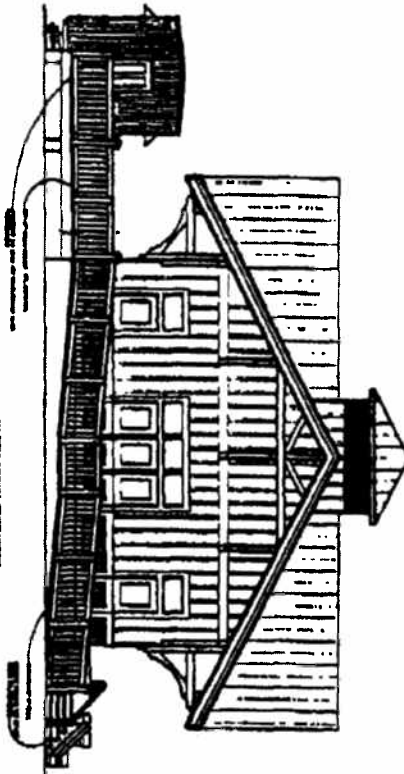
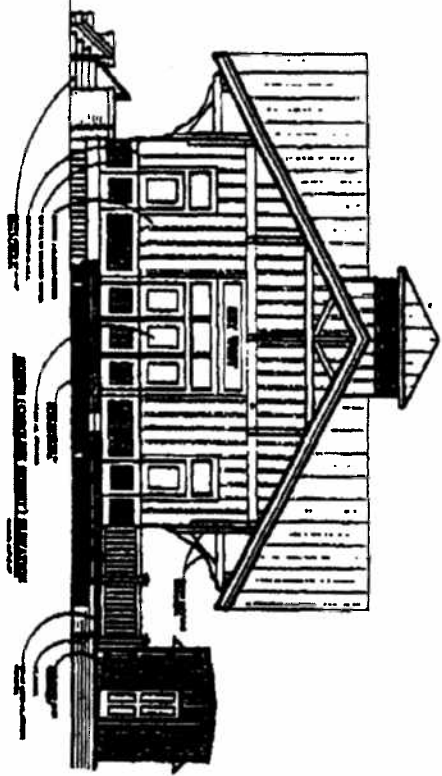
EXISTING
BUILDING

LINE STREET

Coach Tour Trains Leased Area

GARDLINE STREET

EXISTING
RESTAURANT



ELEVATIONS

CHARLES McCOT AIA



LEASE AMENDMENT FOR FLAGLER STATION

This Lease Amendment ("Amendment") is entered into this 22 day of September 2000, between the Caroline Street Corridor and Bahama Village Community Redevelopment Agency of the City of Key West ("Landlord") and Conch Tour Train, Inc. ("Tenant").

I. RECITALS

- A. On or about June 7, 1996 Landlord and Tenant entered into a certain Lease Agreement whereby Tenant would lease from Landlord approximately 2,730 sq. ft. of space at the corner of Caroline Street and Margaret Street in Key West, Florida ("the Lease"). On or about May 16, 1996, by virtue of Resolution #96-174, the Lease was approved by the City Commission of the City of Key West, acting as the Landlord. Pursuant to the Lease, the commencement date of same is to occur when permits for construction of the "Flagler Station" attraction are issued.
- B. On or about January 23, 1997, Landlord and Tenant executed a Lease Addendum ("Lease Addendum") extending the duration of the Lease to 20 years. That Lease Addendum was approved by the City of Key West by virtue of Resolution #97-50.
- C. Pursuant to the Lease, Tenant was to construct, at Tenant's expense, a retail/tourist attraction/ticket depot, more commonly referred to as "Flagler Station." Landlord issued Tenant building permits on or about August 12, 1998, but, at the request of Landlord, construction was delayed until on or about March 15, 1999. On or about January 28, 2000 the final building

permit was issued. Construction has been substantially completed. The project's grand opening occurred on January 29, 2000.

- D. Flagler Station is a significant addition to the City's Caroline Street Corridor and the Key West Bight, and the complex greatly enhances the City's real property as well as visitors' historical experience.
- E. Flagler Station consists of four principal portions: a retail space, a railroad car, the Maggie Attwell House, and, to the southwest of the retail space, the Tenant's ticket depot. The site plan of the completed Flagler Station Complex is attached hereto as Exhibit "A".
- F. The "footprint" of the Flagler Station Complex takes up 4,096-sq. ft. which is approximately 1,366-sq. ft. greater than the initial approximately 2,730-sq. ft. "footprint" identified in the Lease.
- G. The increase in "footprint" was due, *inter alia*, as a result of the inclusion of a ramp for handicap accessibility and the addition of the historic Maggie Attwell House, both of which were designed and constructed, with Landlord's consent, after the parties entered into the Lease.
- H. Landlord now desires that Tenant, as opposed to Landlord, maintain all of the "non-footprint" space of the premises surrounding the "footprint". There is 4,176-sq. ft. of "non-footprint" space as identified in Exhibit "A".
- I. On July 29, 1998 Landlord, through its agent, the Key West Bight Management District Board ("the Bight Board"), agreed to give Tenant a \$5,000.00 rent credit for infrastructure drawings which had been prepared



at Tenant's expense. On November 17, 1999, the Bight Board agreed that, Tenant's liability for rent, would not begin until the opening of the project, which occurred on January 29, 2000.

- J. The initial base rent, which the parties agree is to begin on January 29, 2000, shall be \$8.00 per sq. ft. per year for all "footprint" space, and \$1.00 per sq. ft. per year for all "non-footprint" space.
- K. Additionally, due to Tenant (and not Landlord) maintaining all "non-footprint" green space, Common Area Maintenance ("CAM") charges (i. e. all those charges outlined in Section 3(a) and Exhibit "A" of the Lease including, but not limited to, common area maintenance and promotional fund charges, real estate taxes and insurance) originally provided for in the Lease shall be paid by Tenant, but only on the "footprint" space. Also, due to the significant increase in base rent (from a projected \$28,434.00 to \$32,768.00 in year one), percentage rent charges, originally provided for in the Lease (as outlined in Lease provision 3(d)) shall be adjusted so that the threshold Gross Sales amount per lease year shall be increased (from \$364,000.00) by the same percentage as the base rent in year one will increase (i. e. 13% - - or to \$411,320.00).
- L. Pursuant to Provision 4 of the Lease, on or about June 13, 1996, Tenant paid Landlord a \$2,000.00 security deposit. On or about July 26, 1999, Tenant, after being erroneously invoiced by Landlord, erroneously paid Landlord an additional \$24,610.29, some of which has been prematurely debited from Tenant's "account" with Landlord due to confusion regarding



the commencement date of the Lease. The Lease, and subsequent agreements and extensions thereto, have caused confusion regarding both the Lease's commencement date, and the debiting of Tenant's "account" with Landlord. The parties wish to clarify this issue by fixing a specific commencement date (i. e. March 15, 1999), and by crediting Tenant for the above-referenced \$24,610.29, plus the \$5,000.00 rent credit for infrastructure drawings.

- M. The parties wish to amend the Lease to: (1) accurately define the area of the "footprint" of the building, including the Maggie Attwell House and handicap ramp, (2) include, in the leased premises, all of the "non-footprint" space which Landlord wishes for Tenant to control and maintain, (3) adjust the rent accordingly to provide for the inclusion of the "non-footprint" space, (4) clarify CAM charges so that same are assessed only to "footprint" leasehold, (5) adjust the threshold amount which triggers percentage rent charges, as the base rent has significantly increased, (6) provide Tenant a rent credit for all amounts previously paid plus the \$5,000.00 rent credit for infrastructure drawings, (7) clarify the commencement date of the Lease and set same at March 15, 1999 (the date construction commenced), and (8) clarify the rent commencement date of the Lease and set same at January 29, 2000 .

II. SQUARE FOOTAGE/RENT ADJUSTMENT FOR "FOOTPRINT" AREA

The parties agree that the "footprint" area shall consist of 4,096-sq. ft. as depicted in Exhibit "A", which area shall be leased from the Landlord to Tenant

for \$8.00 per sq. ft. for the first year (\$32,768.00 first year rent, \$2,730.67 first year monthly payments, plus applicable sales tax), and shall increase/decrease thereafter based on the Consumer Price Index/Urban (US average) as outlined provision 3(e) of the Lease.

III. SQUARE FOOTAGE/RENT ADJUSTMENT FOR "NON-FOOTPRINT" AREA

The parties agree that the "non-footprint" area shall consist of 4,176-sq. ft. as depicted in Exhibit "A", which area shall be leased from Landlord to Tenant for \$1.00 per sq. ft. for the first year (\$4,176.00 first year rent, \$348.00 first year monthly payments, plus applicable sales tax), and shall increase/decrease based on the Consumer Price Index/Urban (US average) as outlined provision 3(e) of the Lease. Tenant shall not use this "non-footprint" area for any retail use (i. e. retail carts, retail banking, etc.) except as specifically provided in the Lease.

IV. CLARIFICATION OF CAM CHARGES AND ADJUSTMENT OF PERCENTAGE RENT

Because of the foregoing, Tenant shall be responsible for CAM charges at the current rate of \$4.29/square foot/year for all "footprint" space (i. e. 4,096 x \$4.29 = \$17,571.84/year, or \$1,464.32 monthly CAM fees) CAM charges shall increase/decrease based on the schedule outlined in Provision 3(c) of the Lease. Additionally, the reference to \$364,000.00 as the Lease year Gross Sales threshold number for percentage rent charges, as referenced in Provision 3(d) of the Lease, is adjusted to \$411,320.00.

V. CREDIT FOR PREPAID AMOUNT/INFRASTRUCTURE DRAWINGS

Pursuant to the Lease, and possible erroneous interpretations and agreements regarding same, Landlord shall give Tenant a rent credit equal to \$24,610.29, which is the total amount of payments Tenant has previously made to Landlord, plus an additional \$5,000.00 rent credit for infrastructure drawings per the July 29, 1998 meeting of the Bight Board, and therefore Tenant's first rent payment hereunder shall not be due until July 29, 2000, and that payment shall be in the amount of \$2,362.35 (\$29,610.29 - total credit amount - - divided by \$4,542.99 - - total monthly base rent plus monthly CAM - - yields 6.52 months of rent credit), with subsequent payments made as outlined in Provisions II, III and IV herein.

VI. LEASE COMMENCEMENT DATE

The term of the Lease shall be 20 years commencing on March 15, 1999 and expiring on March 14, 2019.

VII. FULL FORCE OF REMAINDER LEASE AND LEASE ADDENDUM PROVISIONS

Any and all other provisions not herein amended contained in the Lease and Lease Addendum and which are not inconsistent with the changes herein shall remain in full force and effect and are specifically incorporated herein by reference as though fully set forth in complete form herein.

[SIGNATURES TO THIS LEASE AMENDMENT ON NEXT PAGE]

Handwritten signatures in black ink, appearing as two distinct scribbles or signatures in the bottom right corner of the page.

The parties hereto have caused the foregoing Amendment to be executed on the day and year first above written.

Conch Tour Train, Inc.

By: Donald R. Mashe SUP.

Its: Senior Vice Pres.

Date: 9/22/00

Caroline Street Corridor and
Bahama Village Community Redevelopment Agency

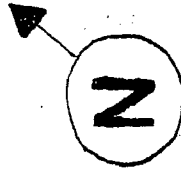
By: Jimmy Walker

Its: Mayer

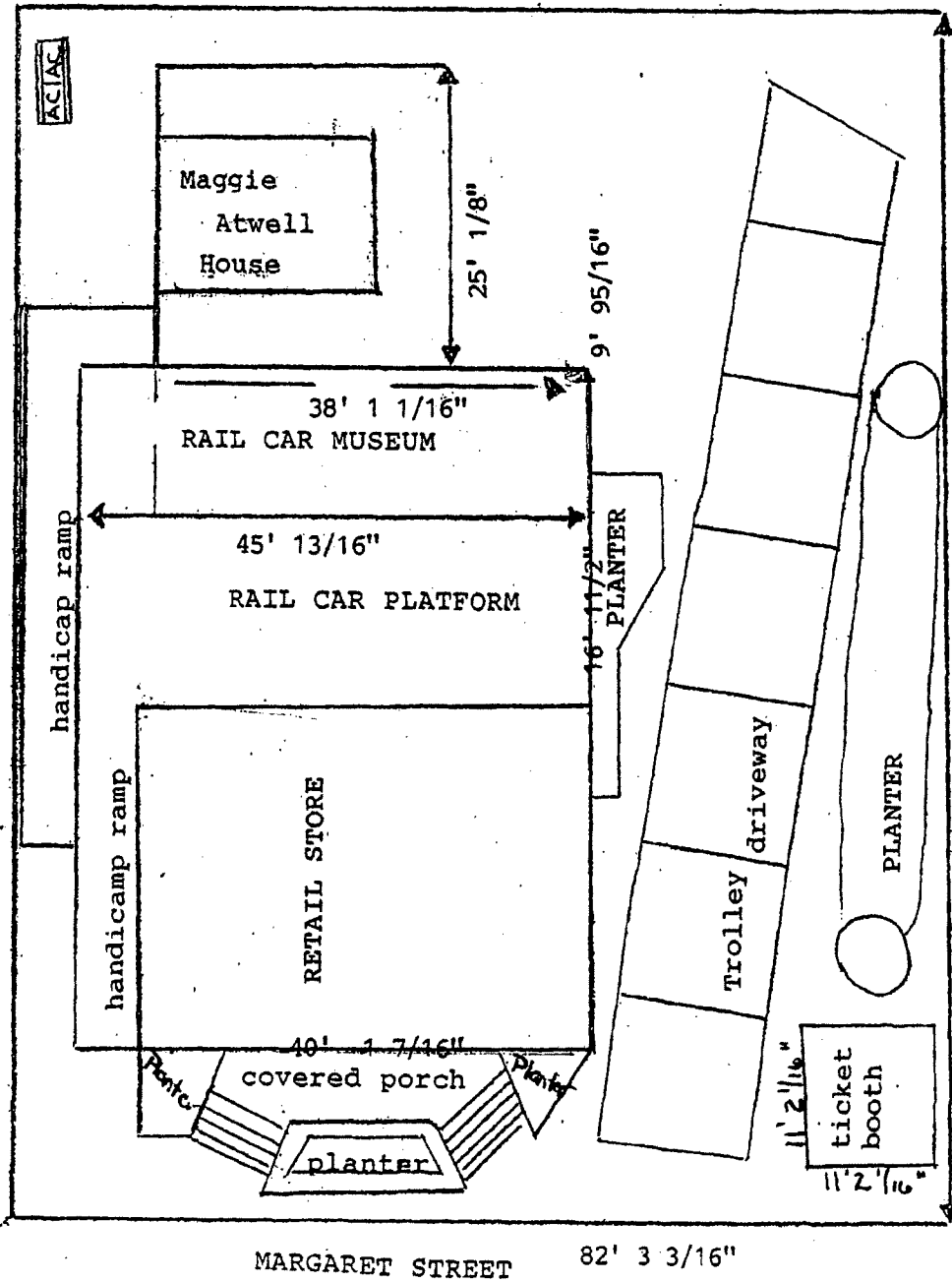
Date: 9-20-00

Exhibit "B" to Sublease
 "The Property"
 which includes "footprint" area and "non-footprint" area

All dimensions are
 approximate 8272 sq ft



FLAGLER STATION SITE PLAN



CAROLINE STREET

MARGARET STREET 82' 3 3/16"

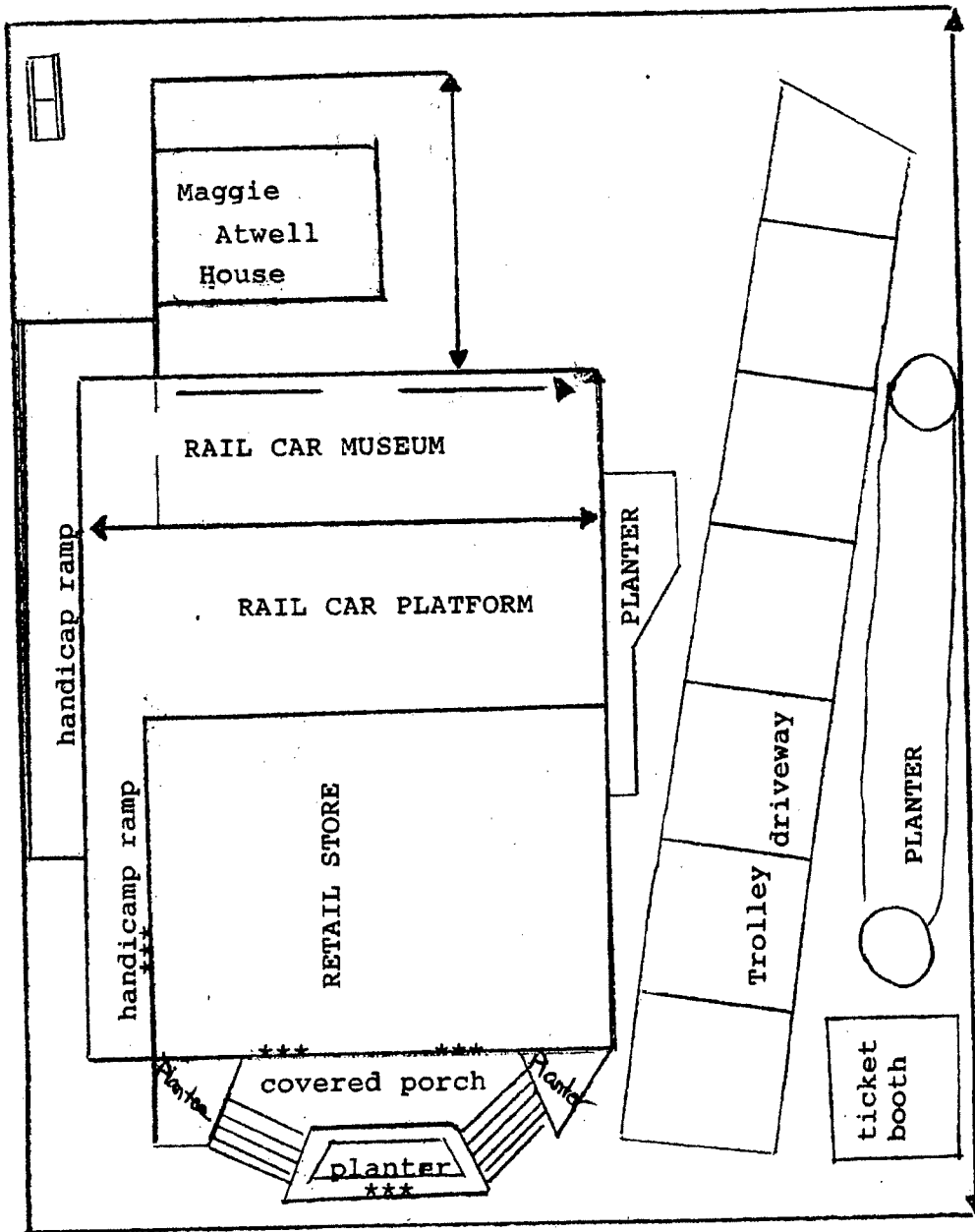


Exhibit "B-1" to Sublease

Signage
signs located in area marked with *** shall be for
SUBLESSEE's use

All dimensions are
approximate

FLAGLER STATION SUBLEASE



MARGARET STREET

CAROLINE STREET



Sublease

Exhibit "C" -

- Legend**
- Highlighted Feature
 - Real Estate Number
 - Parcel Lot Text
 - Block Text
 - Hooks/Leads
 - Lot Lines
 - Easements
 - Road Centerlines
 - Water Names
 - Parcels
 - Shoreline
 - Section Lines

"Key West Bight"

PALMIS

Monroe County Property Appraiser
 500 Whitehead Street
 Key West, FL

DISCLAIMER: The Monroe County Property Appraiser's office maintains data on property within the County solely for the purpose of fulfilling its responsibility to secure a just valuation for ad valorem tax purposes of all property within the County. The Monroe County Property Appraiser's office cannot guarantee its accuracy for any other purpose. Likewise, data provided regarding one tax year may not be applicable in prior or subsequent years. By requesting such data, you hereby understand and agree that the data is intended for *ad valorem tax purposes only* and should not be relied on for any other purpose.

Date Created: February 29, 2008 1:03 PM

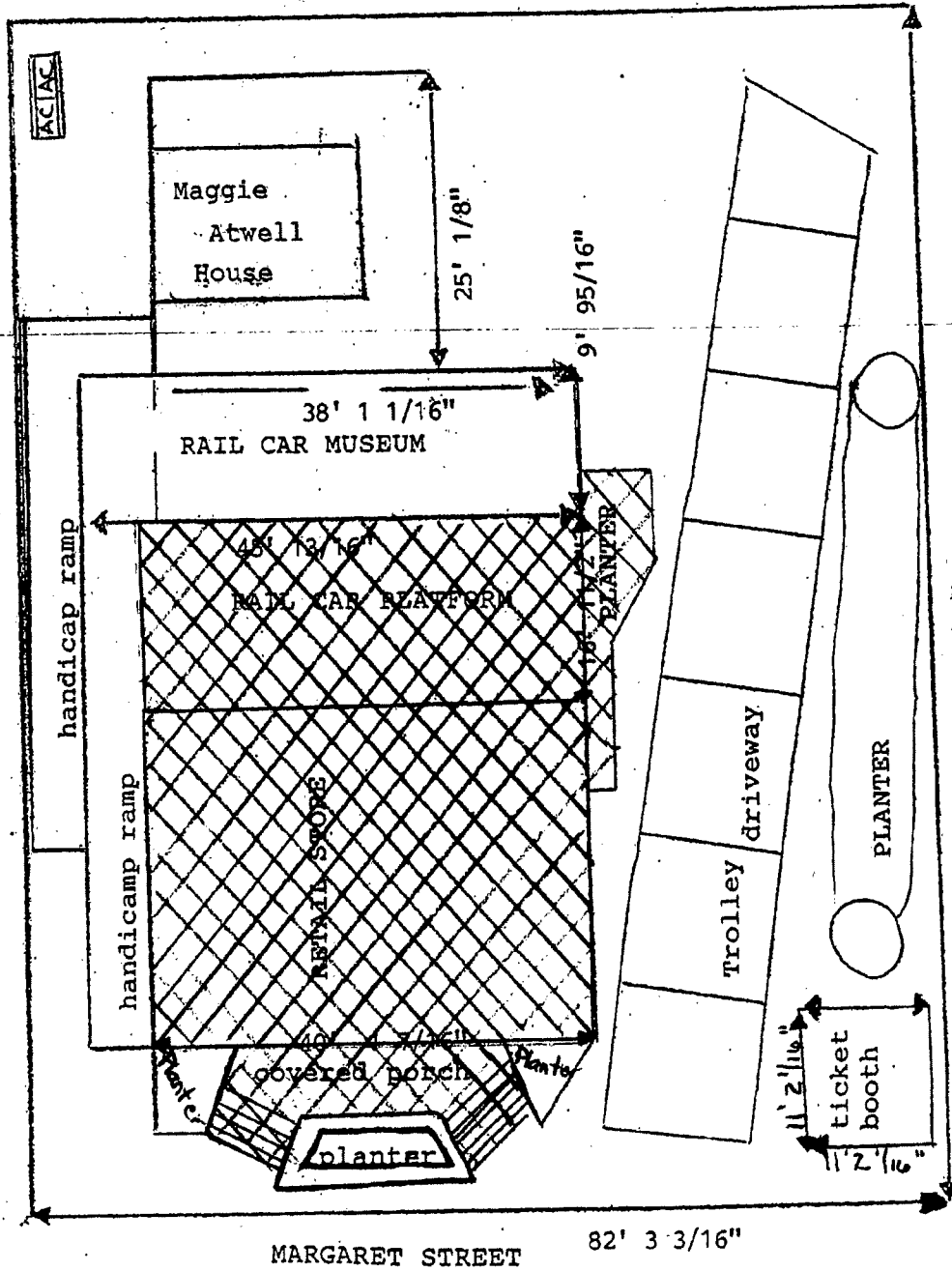


[Handwritten signature and scribbles]

Exhibit "D" to Sublease
 "The Premises",
 crosshatched portion of "footprint" area

All dimensions are
 approximate

FLAGLER STATION SITE PLAN



CAROLINE STREET

MARGARET STREET

82' 3 3/16"

103' 1 1/16"



Exhibit "D-1" to Sublease
Common Area
crosshatched "footprint" area and "non-footprint" area

All dimensions are
approximate



FLAGLER STATION SITE PLAN

