

RESOLUTION NO. 18-247

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED SECOND AMENDMENT TO LEASE BETWEEN THE CITY OF KEY WEST AND TROPICAL SHELL AND GIFTS, INC. FOR THE KEY WEST AQUARIUM PROPERTY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, tenant has met the conditions contained in newly revised Key West Code of Ordinances section 2-941(b);

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

Section 1: That the attached Second Amendment to Lease between the City and Tropical Shell and Gifts, Inc. for the Key West Aquarium Property 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 Commission.

Passed and adopted by the City Commission at a meeting held this
21st day of August 22, 2018.


Authenticated by the Presiding Officer and Clerk of the Commission
on 22nd day of August, 2018.

Filed with the Clerk on August 22, 2018.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Clayton Lopez	<u>Yes</u>
Commissioner Sam Kaufman	<u>Yes</u>
Commissioner Richard Payne	<u>Yes</u>
Commissioner Margaret Romero	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE entered into this 28 day of August, 2018, among THE CITY OF KEY WEST, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida (the "**Lessor**"), and TROPICAL SHELL & GIFT, INC., a Florida corporation, (the "**Lessee**"). Lessor and Lessee are sometimes hereinafter referred to as the "**Parties**" collectively or a "**Party**" individually.

RECITALS

WHEREAS, Lessor and Lessee entered into a Lease dated July 3, 1978, as confirmed by City of Key West Resolution No. 78-87 (the "**Original Lease**"); and

WHEREAS, Lessor and Lessee entered into an Amendment to Lease dated September 9, 1981, which amendment provided for an Investment Credit, and an Option to Renew the Original Lease for an additional twenty-five years after the expiration of the Original Lease, beginning July 15, 2003 and ending July 14, 2028, as confirmed by City of Key West Resolution No. 81-92 and City of Key West Resolution No. 95-419 (the "**First Amendment**").

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and other valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. Recitals. That the recitals contained herein are true and correct and incorporated herein by reference.
2. Option to Renew. Lessee is hereby granted an option to renew its tenancy for one (1) additional ten (10) year renewal term beginning July 15, 2028 and ending July 14, 2038 (the "Second Renewal Term"), subject to the following terms and conditions:
 - (a) Lessee shall give written notice to Lessor at least one hundred eighty (180) days before expiration of the prior term, of Lessee's exercise of the option to renew its tenancy.
 - (b) Lessee must not be in default of any of the conditions or covenants of this Lease, and the Lease must not have been otherwise terminated by Lessor.
3. Improvements. As a condition of this Second Amendment:
 - (a) Lessee represents and warrants that the improvements shown on the attached **Exhibit A** have been completed within the timeframes set forth on such schedule.
 - (b) Lessee agrees to make the improvements shown on the attached **Exhibit B**, or an equal dollar amount of improvements that would be approved by the City of Key West (such approval shall not be unreasonably withheld), within twenty-four (24) months from the date of this Second Amendment.
4. Authority. Each person executing this Second Amendment on behalf of a Party represents and warrants that it/he/she is has the full power, authority, and legal right to execute and deliver this Second Amendment on behalf of such Party and that this Second Amendment

constitutes the legal, valid and binding obligations of such Party, its heirs, representatives, successors and assigns, enforceable against such Party or Parties in accordance with its terms. Lessor hereby represents and warrants that it has obtained all necessary approvals and consents required for this Second Amendment.

5. Counterparts. To facilitate execution of this Second Amendment, this Second Amendment may be executed in one or more counterparts as may be convenient or required, and an executed copy of this Second Amendment delivered electronically by facsimile or e-mail shall have the effect of an original, executed instrument. All counterparts of this Second Amendment shall collectively constitute a single instrument; but, in making proof of this Second Amendment it shall not be necessary to produce or account for more than one such counterpart executed by each Party hereto, or that the signature of all persons required to bind any such Party appear on each counterpart of this Second Amendment.

6. Brokers. Each Party represents and warrants to the other that no broker, agent or finder negotiated or was instrumental in negotiating or consummating this Second Amendment.

7. No Further Modification. Except as set forth in this Second Amendment, all of the terms and provisions of the Original Lease and First Amendment (collectively "Lease") shall remain unmodified, in full force and effect, ratified and confirmed. In the event of a conflict between the Lease and this Second Amendment, this Second Amendment shall control. Effective as of the date hereof, all references to the "Lease" shall refer to the Lease as amended by this Second Amendment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Signed, sealed and delivered
in the presence of:

TROPICAL SHELL & GIFTS, INC.

Susan P. Harrison
Witness

By: [Signature]

[Signature]
Witness

Date: 8-28-18

CITY OF KEY WEST, FLORIDA

Deely Walker
Witness

By: [Signature]

Angie Balle
Witness

Date: 8-21-18



Attest:

City Clerk

Cheryl Smith

Tropical Shell and Gifts, Inc.
Work In Progress Summary
1 Whitehead Street
Key West Mallory Square Le

1 Whitehead Street
Key West Mallory Square Leasehold Improvements for period June 1, 2016 through June 30, 2018

Posted G/L Date	Vendor Name	Aquarium Injection Wells	Roof	Aquarium Improvements Lighting	Tanks	A/C	Stairs & Walkways	Suppression System	Solar Panels	Generator	Other
6/14/2016	WATER SCIENCE ASSOCIATES	9,605.00									
6/27/2016	CHARLEY TOPPINO & SONS, INC	110,318.25			2,009.40						
7/23/2016	SUNBLOCK & TILE, INC				8,005.14						
7/28/2016	M.C. WELDING										
8/6/2016	DELOACH INDUSTRIES, INC.	47,762.50									
8/11/2016	CHARLEY TOPPINO & SONS, INC	14,645.46									
8/11/2016	CHARLEY TOPPINO & SONS, INC	18,008.33									
9/1/2016	WATER SCIENCE ASSOCIATES	13,615.00									
9/1/2016	WATER SCIENCE ASSOCIATES	6,585.00									
9/1/2016	CHARLEY TOPPINO & SONS, INC	10,853.79			(15,000.00)						
9/9/2016	SUNBLOCK & TILE, INC										
9/13/2016	DELOACH INDUSTRIES, INC.	47,575.00									
9/14/2016	WATER SCIENCE ASSOCIATES	5,480.00									
10/6/2016	CITY OF KEY WEST - LICENSE	1,392.98									
10/18/2016	FOUR STAR RENTALS, INC	705.36									
10/21/2016	FMH BUILDERS, INC			6,225.38							
11/10/2016	LIGHTHOUSE ELECTRIC			2,549.00							
12/13/2016	DOWLING HOLDINGS OF FLORIDA LL						6,000.00				
1/1/2017	DOWLING HOLDINGS OF FLORIDA LL						21,783.00				
1/1/2017	DOWLING HOLDINGS OF FLORIDA LL						15,961.00				
1/30/2017	DOWLING HOLDINGS OF FLORIDA LL						3,150.00				
2/1/2017	ISLAND REFRIGERATION & AC, INC					(24,405.15)					
2/1/2017	LIGHTHOUSE ELECTRIC			3,372.89							
2/15/2017	CHARLEY TOPPINO & SONS, INC	1,750.00									
2/16/2017	CHARLEY TOPPINO & SONS, INC	500.00									
2/20/2017	DELOACH INDUSTRIES, INC.	109,019.25			2,100.00						
3/16/2017	DOWLING HOLDINGS OF FLORIDA LL				9,409.00						
3/20/2017	DELOACH INDUSTRIES, INC.	8,915.76									
3/20/2017	DELOACH INDUSTRIES, INC.	27,419.97									
3/21/2017	DOWLING HOLDINGS OF FLORIDA LL						19,650.00				
3/31/2017	ISLAND REFRIGERATION & AC, INC					12,202.58					

1 Whitehead Street
New West Mallory Square Leasehold Improvements for period June 1, 2016 through June 30, 2018

Posted G/L Date	Vendor Name	Aquarium Injection Wells	Roof	Aquarium Improvements Lighting	Tanks	A/C	Stairs & Walkways	Fire Sprinkler / Suppression System	Solar Panels	Generator	Other
3/31/2017	G. Gerwin AMEX - Khabod Crane Service					1,212.50					
4/3/2017	ISLAND REFRIGERATION & AC, INC					504					
4/4/2017	LIGHTHOUSE ELECTRIC										
4/17/2017	A-PLUS ROOFING		8,300.00	20,339.01							2,250.00
4/27/2017	KEYS ENERGY SERVICES - TSG										
5/16/2017	DELOACH INDUSTRIES, INC.		6,255.00	51,650.00							
5/25/2017	LIGHTHOUSE ELECTRIC										
5/31/2017	AMEX C. Curry 4-29-17										1,035.78
5/31/2017	ISLAND REFRIGERATION & AC, INC					750					
6/5/2017	FOUR STAR RENTAL INC										422.14
6/6/2017	FOUR STAR RENTAL INC										467.21
6/7/2017	CHARLEY TOPPINO & SONS, INC										218.55
6/12/2017	DELOACH INDUSTRIES, INC.										
6/15/2017	DELOACH INDUSTRIES, INC.	9,560.41									
7/1/2017	DELOACH INDUSTRIES, INC.										
7/24/2017	LIGHTHOUSE ELECTRIC			42,100.00					7,155.60	27,186.32	
7/26/2017	CHECK ELECTRIC LLC			2,490.00							
7/31/2017	AMEX G. Gerwin 6-28-17										218.55
7/31/2017	AMEX G. Gerwin 6-28-17										184
7/31/2017	MIKE MONSALVATGE				5,500.00						
8/9/2017	MIKE MONSALVATGE				8,900.00						
8/10/2017	CHECK ELECTRIC LLC				5,000.00						2,490.00
8/16/2017	MIKE MONSALVATGE										
8/18/2017	DELOACH INDUSTRIES, INC.									22,120.86	
8/18/2017	DELOACH INDUSTRIES, INC.									18,975.55	
8/24/2017	MIKE MONSALVATGE				7,500.00					910	
8/29/2017	CHECK ELECTRIC LLC										
9/1/2017	ISLAND REFRIGERATION & AC, INC					12,202.57					
9/1/2017	ISLAND REFRIGERATION & AC, INC					8,802.00					
9/18/2017	DOWLING HOLDINGS OF FLORIDA LL										
9/30/2017	AMEX G. Gerwin 8-28-17			87.92							
9/30/2017	AMEX G. Gerwin 8-28-17			660.56							
9/30/2017	AMEX G. Gerwin 8-28-17			747.56						7,380.00	

1 Whitehead Street
West Wall, Malloy Square | Leasehold Improvements for period June 1, 2016 through June 30, 2018

6/30/2018 MID-ATLANTIC HURRICANE SHUTTER

Tropical Shell and Gifts, Inc.
 Work in Progress Summary
 1 Whitehead Street
 Key West Mallory Square Leasehold Improvements for period June 1, 2016 through June 30, 2018

Posted G/L Date	Vendor Name	Aquarium Injection Wells	Roof	Aquarium Improvements Lighting	Tanks	A/C	Stairs & Walkways	Fire Sprinkler / Suppression System	Solar Panels	Generator	Other
	861,521.44	443,712.06	20,458.01	156,655.22	38,423.54	11,268.50	66,544.00	-	7,155.60	77,209.53	40,094.98

EXHIBIT B

\$75,000.00	New Maintenance and Laboratory Structure and Equipment
\$25,000.00	Door System Front and Rear (now that the building is air conditioned)
\$50,000.00	Reconfiguration of the Front of the Aquarium (pending successful negotiations on permitting)
\$150,000.00	Extension of shark tank piling system, walkways and reef exhibit with rip rap
\$30,000.00	Graphics
\$20,000.00	Acrylic Tank Replacement
\$25,000.00	Displays
\$98,900.00	Fire Sprinkler System --Shell Warehouse
<u>\$86,000.00</u>	Fire Sprinkler System --Shipwreck Museum
<u>\$559,900.00</u>	