

RESOLUTION NO. 13-011

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING THE ATTACHED FIRST AMENDMENT TO LEASE, GRANTING AN ABATEMENT OF RENT IN A TOTAL OF \$4,839.00 FOR THE KEY WEST ICE CREAM FACTORY, INC.; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 07-227, the CRA approved a lease agreement with the Key West Ice Cream Factory, Inc.; and

WHEREAS, during the month of June, 2012, building repairs required by the City necessitated the closing of the business for a period of five days, resulting in lost sales; and

WHEREAS, at its meeting of August 15, 2012, the Key West Bight Board unanimously recommended an abatement of rent for the lost sales revenue during the time period the business was closed;

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

Section 1: That the attached First Amendment to Lease Agreement, providing for rent abatement in the amount of \$4,839.00, 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 8th day of January, 2013.

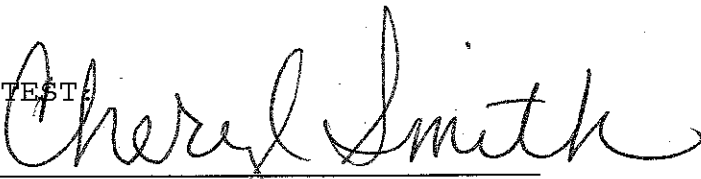
Authenticated by the presiding officer and Clerk of the Agency on January 9, 2013.

Filed with the Clerk January 9, 2013.



CRAIG CATES, CHAIRMAN

ATTEST:



CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

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

MEMORANDUM

EXECUTIVE SUMMARY

To: Community Redevelopment Agency

CC: Bogdan Vitas

From: Marilyn Wilbarger, RPA, CCIM

Date: December 18, 2012

Reference: Key West Ice Cream Factory Rent Abatement

ACTION:

This is a request to approve rent abatement for the Key West Ice Cream Factory which was approved by the Key West Bight Board due to building repairs that rendered the demised premises unusable for five day period in June.

BACKGROUND:

The upland leases in the Key West Bight include the following terms in Section 14 excerpted here as follows:

In the event that LANDLORD shall deem it necessary or be required by any governmental authority to repair, alter, remove, reconstruct or improve any part of the Demised Premises or of the property (unless the same result from TENANT'S act, neglect, default or mode of operation, in which event LANDLORD shall make all such repairs, alterations or improvements at TENANT'S sole cost and expense), then the same shall be made by LANDLORD with reasonable dispatch, and should the making of such repairs, alterations and improvements cause any interference with TENANT'S use of the Demised Premises, such interference shall not relieve TENANT from the performance of its obligations hereunder nor shall such interference be deemed an actual or constructive eviction or partial eviction or result in abatement of rental.

The lease does not provide for rent abatement during periods of repairs, alterations, removal, reconstruction or improvements therefore the matter was brought before the Bight Board for their consideration.

Pursuant to the Bight Board meeting minutes from August 15, 2012 it was moved by Ms. Ovide and seconded by Mr. Henson to approve abatement for lost sales, for the time period the business was closed, in the amount of \$4,839.00. The Board voted 6-0 in favor of the rent abatement.

Attachment:
First Amendment to Lease Agreement

Key to the Caribbean – average yearly temperature 77 ° Fahrenheit.

FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement is entered into this 8th day of January, 2013, by and between Caroline Street Corridor and Bahama Village Community Redevelopment Agency hereinafter ("LANDLORD") and Key West Ice Cream Factory, Inc., (hereinafter "TENANT").

WITNESSETH

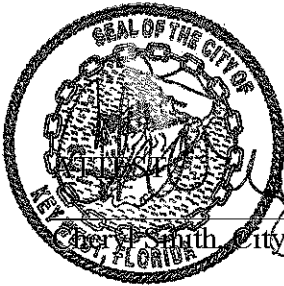
WHEREAS, LANDLORD and TENANT entered into a Lease Agreement on the 20th day of June, 2007, (the "Lease Agreement"), pertaining to the premises located at 201 William Street in the Key West Bight

WHEREAS, the LANDLORD and TENANT now desire to amend their Lease Agreement which is attached hereto as Exhibit "A",

NOW, THEREFORE, in mutual consideration of the benefits conferred upon the parties by the terms of this Amendment, LANDLORD and TENANT agree as follows:

1. Section 14 shall be amended to provide for a one time an abatement of rent for lost sales in the amount of \$4,839.00 during the five day period the business was closed due to LANDLORD repairs to the building structure from June 4 through June 8, 2012.
2. Except as modified herein, the Lease Agreement as amended shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have made this First Amendment to Lease Agreement on the date first written above.



[Signature]
City Clerk

Caroline Street Corridor and Bahama Village Community Redevelopment Agency

By: [Signature]
Craig Cates, Chairman

[Signature]
Witness

[Signature]
Witness

Key West Ice Cream Factory, Inc.

By: [Signature]
Scott Cates

The foregoing First Amendment to Lease Agreement was acknowledged before me this 17th day of January, 2013, by Scott Cates, who is personally known to me, or who produced _____ as identification.

Susan P. Harrison

Notary Public

My commission expires:



Print name: SUSAN P. HARRISON

Exhibit "A"
Lease Agreement

6492
LEU-111

RESOLUTION NO. 07-227

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING THE ATTACHED LEASE BETWEEN THE CRA AND KEY WEST ICE CREAM FACTORY, INC. FOR THE PROPERTY LOCATED AT 201 WILLIAM STREET, UNIT E; PROVIDING FOR AN EFFECTIVE DATE

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

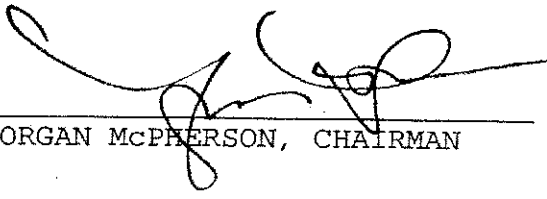
Section 1: That the attached lease is hereby approved.

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 19 day of June, 2007.

Authenticated by the presiding officer and Clerk of the Agency on June 20, 2007.

Filed with the Clerk June 20, 2007.


MORGAN MCPHERSON, CHAIRMAN

ATTEST:

CHERYL SMITH, CITY CLERK

KEY WEST
PORT OPERATIONS DEPARTMENT
MEMORANDUM



TO: City Commissioners
Julio Avel

FR: Marilyn Wilbarger, RPA, CCIM

DT: May 29, 2007

RE: Executive Summary – Lease Renewal for Key West Ice Cream Factory

ACTION STATEMENT

This is a request to approve a lease renewal for the Key West Ice Cream Factory.

HISTORY

The lease for Key West Ice Cream Factory will expire in June 2008 and at this time they have requested a lease renewal based upon the following terms:

Demised Premises: 1447square feet

Use: Retail and wholesale ice cream sales, frozen yogurt, Sorbet, candies, and soft drinks, coffee as an accessory only (no coffee bar), & other related dairy products.

Term: Five years, Effective July 1, 2008

Rent: \$28.00 per square foot

Increases: 5% annually

Additional Rent: Tenant shall pay its pro-rate share of CAM, Taxes, and insurance

Percentage Rent: 6% in excess of the percentage rent base amount

Utilities: Tenant shall pay for all utility usage.

The Tenant has also requested parking spaces and they will be addressed under a separate parking agreement that calls for:

Parking: One space in the loading dock area for tenant's delivery truck.
One space on a month-to-month basis at 908 Caroline

ADVANTAGES/DISADVANTAGES:

Advantages: A five year lease renewal will ensure that this shop on the boardwalk will continue to be occupied and will contribute to the success of the Key West Bight as a retail and entertainment destination.

Disadvantages: There are no major disadvantages to speak of.

FINANCIAL STATEMENT:

This lease reflects an increase to \$28.00 per square foot, which is the current market rate for this space and will increase annually by 5%. The tenant is not currently delinquent in rental payments or in default of the lease.

RECOMMENDATION:

Staff recommends that the Key West Bight Board approve these proposed terms.

ATTACHMENTS:

Draft Lease

Lease Agreement

between

**Caroline Street Corridor and
Bahama Village Community
Redevelopment Agency**

as Landlord

and

Key West Ice Cream Factory, Inc.

as Tenant

Dated June 25, 2007

THIS LEASE is made as of the 25th day of June, 2007 by and between the LANDLORD and TENANT identified below:

1. INFORMATION PROVISIONS:

1.1 LANDLORD'S NAME & MAILING ADDRESS:

Caroline Street Corridor and
Bahama Village Community
Redevelopment Agency,
P.O. BOX 6434
KEY WEST, FL 33040

1.2 TENANT'S NAME & MAILING ADDRESS:

Key West Ice Cream Factory, Inc.
201 William Street
P.O. Box 5466
Key West, FL 33045

TENANT'S TRADE NAME: **Key West Ice Cream Factory**

1.3 GUARANTOR (S) AND ADDRESS:

1.4 DEMISED PREMISES (Section 2): **as per EXHIBIT "A"** located at 201 William Street Unit E in the KEY WEST BIGHT (hereinafter referred to as the "Property").

1447 NET USABLE SQUARE FEET

PROPORTIONATE SHARE OF THE TOTAL NET USABLE SQUARE FEET:

TENANT'S Proportionate Share is based upon TENANT'S Net Usable Square Feet as it relates to the Total Net Usable Square Feet of the Property

1.4.1 EXPANSION/RIGHT OF FIRST REFUSAL: None

1.5 TERM (Section 3.): FIVE (5) YEARS

1.5.1 COMMENCEMENT DATE: July 1, 2008 as acknowledged by TENANT'S written statement

1.5.2 RIGHT TO TERMINATE: None

1.5.3 RIGHT TO RENEW: This Lease may be renewed for an additional Five (5) years upon rent and terms to be negotiated by the parties and in accordance with the City of Key West Code of Ordinances.

1.6 MINIMUM RENT FOR TERM (Section 4): The base rent and base rent increases for the term and any renewals thereof as **per EXHIBIT "B"** attached hereto and incorporated herein.

- 1.6.1 ADDITIONAL RENT: Tenant shall pay its Proportionate share of CAM, Real Estate Taxes, Insurance, Sales, Use or Excise Taxes together with Management and Administrative fees estimated as per EXHIBIT "B"
- 1.6.2 RENT PAYMENT DUE DATE: Payable in advance on the first (1st) of each and every month of the term hereof.
- 1.6.3 LATE CHARGE: 15% of the amount in arrears if received after the fifth day of each and every month together with an administrative fee of \$50.00 for processing late payments.
- 1.6.4 PERCENTAGE RENT: Six (6%) Percent of TENANT'S Gross Sales in excess of the "Percentage Rent Base Amount" as per EXHIBIT "B".
- 1.6.5 HOLD OVER RENT: 150% of the Minimum Base rent during the last year of the expiring term.
- 1.6.6 RENT CONCESSIONS: None
- 1.7 SECURITY DEPOSIT (Section 5): Equal to one month's base rent.
- 1.6.6 PERMITTED USE (Section 6): Retail and wholesale ice cream sales, frozen yogurt, sorbet, candies, and soft drinks, coffee as an accessory only (no coffee bar), & other related dairy products.
- 1.9 INSURANCE: (Section 9) \$1,000,000.00 commercial liability minimum per occurrence
- 1.10 ASSIGNMENT OR SUBLETTING: (Section 10) Allowed with LANDLORD'S approval
- 1.11 UTILITIES: (Section 17) The TENANT shall pay for all utilities associated with the use of the Demised Premises.

INITIALS: LANDLORD



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:

2. **DEMISED PREMISES** - 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 Demised Premises situated, lying, and being in Monroe County, Florida: That portion of the Property outlined and/or crosshatched on Exhibit "A" which depicts the Net Usable Square Feet of the Demised Premises. The Net Usable

Square Feet is defined as all interior floor space, any second floor space, storage, covered dining areas and commercially used outdoor areas or any other area set aside for the exclusive use and economic benefit of the Tenant and containing the approximate dimensions and area. It is agreed that the Net Usable Square Feet for the purpose of any calculations which are based on Net Usable Square Feet is as stated in Section 1.4. It is agreed that TENANT'S Proportionate Share is based upon TENANT'S Net Usable Square Feet as it relates to the Total Net Usable Square Feet of the Property. LANDLORD reserves the right to re-measure the Demised Premises from time to time and to adjust the TENANT'S Net Usable Square Feet and the rent or rental rate applied to the square footage as determined by any re-measurement or change in use. TENANT accepts the Demised Premises in an "as is", "where is" condition and acknowledges that LANDLORD has no obligations for any construction or improvements in connection with TENANT'S occupancy of the Demised Premises.

LANDLORD reserves the right from time to time with good cause, upon at least sixty (60) days advance written notice to relocate TENANT to other Demised Premises within the Property, prior to or during the term of this Lease, so long as usable area so substituted equals or exceeds the usable area of the Demised Premises; provided however that TENANT shall have the right at its sole option and as its sole remedy, to terminate the Lease upon sixty (60) days advance written notice which right must be exercised, if at all, within fifteen (15) days after receipt of LANDLORD'S relocation notice, which relocation notice may be withdrawn by LANDLORD within ten (10) days after LANDLORD'S receipt of TENANT'S termination notice, in which event TENANT'S attempted termination shall be null and void and the lease shall continue in full force and effect in accordance with its terms. In the event LANDLORD shall relocate TENANT to other space within the Property, LANDLORD shall pay the reasonable relocation costs of TENANT in connection therewith, but LANDLORD shall not have any other liability with respect to any such relocation.

Expansion/Right of First Refusal – add language here if applicable

3. **TERM** - The term of this Lease shall be for Five (5) years which shall commence on July 1, 2008 and shall end at midnight on June 30, 2013 unless sooner terminated as provided for herein. Upon occupancy TENANT shall furnish LANDLORD a written statement stating the TENANT has accepted the Demised Premises for occupancy and setting forth the actual commencement and expiration dates of the Lease. A Lease Year is the twelve-month period beginning on the commencement date of each year and ending at the conclusion of the same date one year later. If possession of the Demised Premises shall for any reason not be delivered to Tenant on the Commencement Date, this Lease shall nevertheless continue in full force and effect, and no liability whatsoever shall arise against LANDLORD out of any delay other than the abatement of rent.

3.1 **Right to Terminate** – None

3.2 **Right to Renew** – This Lease may be renewed for an additional term of five (5) years upon rent and terms to be negotiated by the parties in accordance with the City of Key West Code of Ordinances. The rent and terms of the renewal term must be acceptable to both the LANDLORD and the TENANT in their absolute discretion and must be set forth in written addendum to this Lease. If the parties fail for any reason whatsoever to agree upon and enter into such addendum at least 120 days prior to the end of the initial term of this Lease, then any obligations that the parties may have pursuant to this section to negotiate renewal terms shall cease and LANDLORD shall be free to lease the Demised Premises to the general public upon such rent and terms as it deems appropriate.

4. **RENT** - All rentals provided for herein shall be payable in advance, without prior demand therefore and without deductions or setoffs for any reason whatsoever on the first day of each and every month of the term hereof.

4.1 **Late Charges.** Any monthly rental not received by the fifth day of the month shall incur a late fee equal to fifteen percent 15% of the amount in arrears. 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. LANDLORD shall have no obligation to accept less than the full amount of all installments of rental, additional rental or other amounts due hereunder and interest thereon which are due and owing by TENANT to LANDLORD. If LANDLORD accepts less than the full amount owing, LANDLORD may apply the sums received toward such TENANT'S obligations, as LANDLORD shall determine in its sole discretion.

4.2 **Interest on Rent.** Rent and additional rent not paid within fifteen (15) days of when due shall bear interest from the date due until paid at the highest rate permitted by law.

4.3 **Obligation to Survive.** TENANT'S obligation to pay rent that is accrued and unpaid hereunder shall survive the expiration or termination of the Lease.

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

(a) Beginning with the commencement date and throughout the term of this Lease, TENANT agrees to pay to the LANDLORD as and for minimum rent for the Demised Premises the annual amount, in equal monthly installments, in advance, on the first day of each and every calendar month, as per **EXHIBIT "B"**. In the event the rent commencement date is other than the first day of a calendar month, the rent for the partial first calendar month of the term will be prorated on a daily basis and payable on the commencement date.

(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) Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT'S Proportionate Share, as stated in Section 1.4, of Common Area Maintenance Charges in Monthly Installments as specified herein.

The Common Area Maintenance Charges are based on the Estimated Common Area Maintenance Charges attached hereto as **EXHIBIT "B"** These charges are only estimates. The TENANT shall be responsible for all Common Area Maintenance Charges actually incurred on a pro rata assessment basis. Any increase in the common area charges shall result in an increase in the TENANT'S Common Area Maintenance Charges. Common Area Maintenance Charges for controllable expenses assessed after the base year shall not increase in any given year by more than 5% of the previous year's common area assessment for controllable expenses. The base year for the purpose of limiting increases in Common Area Maintenance Charges shall be the first year of the

term of this lease. 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 Maintenance Charges shall include any and all expenses reasonably incurred in the operation and maintenance of the Property Common Area including but not limited to management and administrative fees, salaries and compensation paid in connection with operations, maintenance and administration, amortization (including interest) of equipment and facilities acquired and used for maintenance, to reduce energy usage, to otherwise reduce operating costs or common area seasonal decorating or redecorating. Major capital improvements will not be included in Common Area Maintenance Charges unless those improvements reduce expenses and if so the improvements will be amortized over the useful life of the equipment as determined by the manufacturers specifications or IRS depreciation regulations.

Monthly 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.

Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT'S Proportionate Share as stated in Section 1.4 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 Property against the land, buildings, store rooms, Common Areas and all other improvements within the Upland 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 Proportionate 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.

Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT'S Proportionate Share as stated in Section 1.4, of the Insurance Expenses which shall include all insurance premiums incurred by the LANDLORD in insuring the Property including hazard and liability insurance for any and/or all buildings, improvements and common areas.

TENANT'S Proportionate 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.

Initial here if applicable

TENANT



LANDLORD



(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 the Percentage Rent Base Amount. The Percentage Rent Base Amount is calculated by dividing the current annual Base Rent by six percent (6%). 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 Demised 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. Failure of Tenant to timely submit any monthly report shall entitle LANDLORD to estimate

Gross Sales based upon available data (with a reconciliation upon receipt of the final report), and TENANT shall be obligated to pay percentage rent on such estimated Gross Sales. If by the end of any such preceding month the Gross Sales in the Demised Premises during such Lease Year shall exceed the Percentage Base Rent Amount, 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 Rent Base Amount, less the Percentage Rent, if any, previously paid by TENANT to LANDLORD during that Lease Year. TENANT shall also furnish to LANDLORD within thirty (30) days after the expiration of each full Lease Year, a complete statement, certified by an independent certified public accountant, showing in all reasonable detail the amount of Gross Sales made by TENANT from the Demised Premises during the preceding Lease Year.

"Gross Sales" shall mean the amount of sales of all merchandise or services sold or rendered at or from the Demised 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. 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 the 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 within ten (10) days after TENANT'S receipt of LANDLORD'S invoice. If such understatement is willful and/or fraudulent, LANDLORD shall have the option, upon ten (10) days notice to TENANT, to terminate this Lease on the date specified in such notice and Tenant shall remain liable for all rent and other charges under this lease for the full term hereof.

(e) 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 LANDLORD as stated in Section 1.1 hereof.

(f) Holding Over. It is agreed that in the event of TENANT holding over after the termination of this lease, thereafter the tenancy shall be from month to month in the absence of a written agreement to the contrary; the TENANT shall pay to LANDLORD a monthly occupancy charge equal to One Hundred Fifty (150%) Percent of the monthly rental for the last lease year for each month from the termination or expiration of this

Lease until the Demised Premises are delivered to the LANDLORD in the condition required herein, and LANDLORD'S right to damages for such illegal occupancy shall survive. In addition, TENANT shall pay all other charges payable by TENANT under this Lease

(g) Rent Concessions. None

5. **SECURITY** - TENANT simultaneously with the execution and delivery of this Lease, has deposited with the LANDLORD the sum equal to one months current minimum rent as per **EXHIBIT "B"** and as stated in Section 1.7 hereof, 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 there from by LANDLORD pursuant 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.

6. **USE OF THE DEMISED PREMISES** -TENANT shall use the Demised Premises for the purposes of: Retail and wholesale ice cream sales, frozen yogurt, sorbet, candies, and soft drinks, coffee as an accessory only (no coffee bar), & other related dairy products.

TENANT further agrees:

(a) To operate 100% of the Demised Premises for the entire term of this lease during all reasonable hours established by LANDLORD, 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 Property, not to display any merchandise, solicit business or distribute advertising material beyond the Demised 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, searchlights, window signs, balloons, or similar temporary advertising media on the exterior of the Demised Premises.

(d) Not to commit waste in the Demised Premises or Common Areas and to keep the Demised 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 Demised Premises.

- (e) Not to use the Demised 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 Property 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 TENANT, LANDLORD or any other TENANT in the Property or increase the cost thereof.
- (f) To keep all garbage, refuse and solid waste inside the Demised Premises in the kind of containers specified by LANDLORD, or to place the same outside the Demised Premises, prepared for collection, in the manner and at the times and places designated by LANDLORD or the appropriate disposal company. TENANT agrees not to burn or permit any burning of garbage or refuse on the Demised Premises or any part of the Property. 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. TENANT further agrees to make every effort to recycle all glass, metal, paper and plastic refuse and solid waste. Sort glass by colors and metal and paper by type and deposit in the appropriate recycling containers provided by the LANDLORD.
- (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 Demised Premises to load and unload from the hours of 7:00 a.m. to 11:00 a.m. and not to permit such trucks to service through the front entrance of the Demised Premises except when no other entrance is available.
- (i) To take no action that would: (i) violate LANDLORD'S contracts if any, affecting the Property (including without limitation the use restrictions contained in LANDLORD'S leases with its Anchor 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 Property.
- (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 Property and it's Common Areas. Rules and regulation are attached and incorporated herein as **EXHIBIT "C"**.
- (l) Not to conduct any auction, fire, bankruptcy or selling-out sale on or about the Demised Premises except in strict compliance with City Code Chapter 18.

(m) To pay its proportionate share of any and all maintenance contracts wherein LANDLORD elects to purchase goods and services for the benefit of the entire Property including but not limited to LANDLORD directing all pest extermination at such intervals and service levels that LANDLORD deems appropriate.

(n) TENANT shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials which TENANT or its agents brought onto the Property. TENANT shall not allow storage or use of such materials or substances in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Demised Premises or the Property any such materials or substances except to use in the ordinary course of TENANT'S business, and then only after written notice is given to LANDLORD of the identity of such substances or materials. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any applicable state or local law and the regulations adopted under these acts. In addition, TENANT shall execute affidavits, representations and the like from time to time at LANDLORD'S request concerning TENANT'S best knowledge and belief regarding the presence of hazardous substances or materials in the Demised Premises. In all events, TENANT shall indemnify LANDLORD in the manner elsewhere provided for in this Lease against any liability resulting from any release of hazardous substances or materials in the Demised Premises or Property by TENANT or its agents, while TENANT is in possession or caused by TENANT or persons acting under TENANT which is due to hazardous substances that TENANT or its agents brought onto the Demised Premises or Property.

6.1 **Use of the Common Areas** -TENANT has the non-exclusive right to use the common areas solely for the purposes for which they were designed. The common areas may also be used by anyone else LANDLORD has or hereinafter in its sole discretion grants the right to use them.

7. **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.

8. **INDEMNIFICATION** - TENANT does hereby agree to indemnify, defend and save LANDLORD harmless from and against any and all liability for any injury to or death of any person or persons or damage to property (including adjoining property for environmental damage) in any way arising out of or connected with the conditions, use or occupancy of the Demised Premises, or in any way arising out of the activities of TENANT, its agents, employees, licensees or invitees on the Demised Premises and/or the building and from reasonable attorney's fees, incurred by LANDLORD in connection therewith, excepting, however, liability caused by LANDLORD'S gross negligence in its failure to perform any of LANDLORD'S covenants, obligations or agreements of this Lease.

9. **TENANT'S INSURANCE** - TENANT covenants and agrees with LANDLORD that TENANT shall:

(a) At TENANT'S sole cost and expense, during the entire Term hereof, procure,

pay for and keep in full force and effect; (i) an occurrence form commercial general liability policy, covering the Demised Premises and the operations of Tenant and any person conducting business in, on or about the Demised Premises in which the limits with respect to liability and property damage shall not be less than One Million (\$1,000,00.00) Dollars per occurrence (ii) all risk property insurance, including theft coverage, written at replacement cost value and a replacement cost endorsement insuring TENANT'S improvements and betterments, fixtures, furnishings, equipment and any other property belonging to TENANT; and (iii) workers compensation coverage as required by the provisions of Florida statute. 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. From time to time during this Lease, at LANDLORD'S request, TENANT shall (i) procure, pay for and keep in full force and effect such other insurance as LANDLORD shall require and (ii) increase the limits of such insurance as LANDLORD may reasonably require.

(b) All policies of insurance required to be carried by TENANT pursuant to this lease shall be written by responsible insurance companies authorized to do business in Florida with an AM Best rating of A-VI or better. Any such insurance required to be carried by TENANT hereunder may be furnished by TENANT under any blanket policy carried by it or under a separate policy therefore. A copy of each paid up policy evidencing such insurance or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required by this Lease and containing provisions specified herein, shall be delivered to LANDLORD prior to the commencement of the Term of this Lease and, upon renewals, but not less than sixty (60) days prior to the expiration of such coverage. In the event TENANT shall fail to procure such insurance, LANDLORD may, at its option, procure the same for the account of TENANT, and the cost thereof shall be paid to LANDLORD as an additional charge upon receipt by TENANT of bills therefore, together with an administrative fee equal to fifteen (15%) percent to cover the cost of the LANDLORD'S efforts to procure such policy.

(c) Each policy evidencing insurance required to be carried by TENANT pursuant to this Lease shall contain the following provisions and/or clauses: (i) a provision that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by LANDLORD; (ii) a provision naming LANDLORD and any other parties in interest as designated by LANDLORD as an additional insured (except with respect to worker's compensation insurance); and (iii) a provision that the insurer will not cancel, materially change or fail to renew the coverage provided by such policy without first giving LANDLORD thirty (30) days prior written notice.

Any general liability or other policy insuring the LANDLORD does not provide any contributing or excess coverage for TENANT. The policies TENANT procures for TENANT'S exposure are the only coverage available to TENANT.

10. 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. Any assignment, transfer, hypothecation, mortgage, or subletting without LANDLORD'S written consent shall give LANDLORD the right to terminate this Lease and to re-enter and repossess the Demised Premises and the LANDLORD'S right to damages shall survive.

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.

11. 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 LANDLORD'S written agreement to accept TENANT'S attornment, TENANT shall attorn to such successor LANDLORD and will execute such instruments as may be necessary or appropriate to evidence such attornment. Upon such attornment, this Lease shall continue in full force and effect as 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 stopped from asserting any defaults known to TENANT at that time.

12. CONDEMNATION

(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 Demised Premises be wholly taken by condemnation, or if the portion taken will prevent the Demised 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.

13. TENANT'S DEFAULT

(a) 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 the Demised Premises or any part thereof during the 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 the Demised 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 the demised term ended and to re-enter upon said Demised Premises, building, and improvements situated thereon, or any part hereof, either with or without process of law, the TENANT hereby waiving any demand for possession of the Demised Premises and any and all buildings and improvements then situated thereon. In the event of nonpayment of rent, LANDLORD may assert its right of notice and eviction pursuant to Chapter 83, Florida Statutes.

(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 Demised 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 shall hold the Demised 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 the Demised 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 Demised 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 Demised 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.

14. TENANT'S REPAIRS - The TENANT covenants and agrees with the LANDLORD that during the continuance of this Lease, the TENANT shall be solely responsible for maintaining the Demised Premises in a clean, sanitary and safe condition in accordance with the laws of the State of Florida and in accordance with all directions, rules and regulations of all inspectors, governmental departments and agencies having jurisdiction over the Demised Premises to ensure a good state of repair of the Demised Premises and all furnishings, including any special equipment brought, placed, or installed 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.

In the event that LANDLORD shall deem it necessary or be required by any governmental authority to repair, alter, remove, reconstruct or improve any part of the Demised Premises or of the property (unless the same result from TENANT'S act, neglect, default or mode of operation, in which event LANDLORD shall make all such repairs, alterations or improvements at TENANT'S sole cost and expense), then the same shall be made by LANDLORD with reasonable dispatch, and should the making of such repairs, alterations and improvements cause any interference with TENANT'S use of the Demised Premises, such interference shall not relieve TENANT from the performance of its obligations hereunder nor shall such interference be deemed an actual or constructive eviction or partial eviction or result in abatement of rental.

15. ALTERATIONS

TENANT shall not make any alterations, additions or improvements to the Demised Premises (whether or not the same may be structural in nature) without LANDLORD'S prior written consent. All alterations, additions, or improvements made to the Demised Premises, except movable furniture and equipment installed at TENANT'S expense, shall be the property of the LANDLORD and remain upon and be surrendered with the Demised Premises at the expiration of the term of this Lease; provided, however, that LANDLORD may require TENANT to remove any additions made at TENANT'S request to the Demised Premises and to repair any damage caused by such removal, and provide further, that if TENANT has not removed its property and equipment within ten (10) days after the expiration or termination of this Lease, LANDLORD may elect to retain the same as abandoned property.

In the event TENANT shall request LANDLORD'S permission, and LANDLORD shall permit TENANT to perform any alterations, additions, improvements or repairs to the Demised Premises, TENANT shall (i) submit its plans and specifications to LANDLORD for its approval prior to the commencement of any construction, (ii) obtain all necessary permits prior to the commencement of any construction, (iii) only use contractors approved by LANDLORD, (iv) not permit any construction liens to be placed or remain on the Demised Premises. In the event a construction lien shall be filed against the Demised Premises as a result of work undertaken by

TENANT, TENANT shall within ten (10) days of receiving notice of such lien, discharge the lien of record either by payment of the indebtedness to the lien claimant or by filing a bond as security therefore. All such work made by or on behalf of TENANT shall be performed in such manner as LANDLORD may designate and in accordance with all applicable laws and regulations of governmental authorities having jurisdiction over the same. All such work by TENANT or its contractors shall not interfere with, impede or delay any work by LANDLORD or its contractors, tenants or TENANT'S contractors. All contractors engaged by TENANT shall be bondable, licensed contractors, possessing good labor relations, and capable of performing quality workmanship.

16. EQUIPMENT, FIXTURES AND SIGNS

(a) All furnishings, fixtures, trade fixtures, equipment, and signs used on the Demised 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 Demised 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 Demised Premises, and provided further, that TENANT will pay or reimburse LANDLORD for the reasonable expense of repairing damage caused by such removal.

(b) All TENANT signs shall be approved by the LANDLORD and must meet all applicable codes. The exact location, style, text, and color(s) of the sign shall be agreed upon by the LANDLORD, in writing, prior to TENANT'S installation. LANDLORD'S approval shall not be unreasonably withheld or delayed.

17. 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 a calculation of the ratio of the square footage of the Demised Premises and the total square footage of the Premises covered by that particular utility bill. In the event that the TENANT shall be billed for a pro-rated share, the LANDLORD shall provide TENANT a utility bill each month and TENANT shall pay the amount due to LANDLORD within ten (10) days of its receipt.

(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 Demised 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 Demised 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 HVAC 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 Demised 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.

18. LANDLORD'S RIGHT OF ENTRY - The LANDLORD or its agents shall have the right to enter upon the Demised 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 Demised Premises. If the said Demised Premises are damaged by fire, windstorm, or by any other casualty which caused the Demised Premises to be exposed to the elements, then the LANDLORD may enter upon the Demised Premises to make emergency repairs. LANDLORD may enter upon the Demised 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.

19. TENANT'S ACCEPTANCE - The TENANT accepts the Demised 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.

20. 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: PROPERTY MANAGEMENT
CITY OF KEY WEST
P.O. BOX 6434
KEY WEST, FL 33040

AS TO TENANT: Key West Ice Cream Factory, Inc.
201 William Street
P.O. Box 5466
Key West, FL 33045

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.

ATTEST

Cheryl Smith
Cheryl Smith, City Clerk

LANDLORD

[Signature]
Morgan McPherson, Chairman
Caroline Street Corridor and Bahama Village
Community Redevelopment Agency

Date: 6-20-07

Date: 6-19-07

TENANT

Susan P. Harrison
WITNESS

By: [Signature]

Date: June 25, 2007

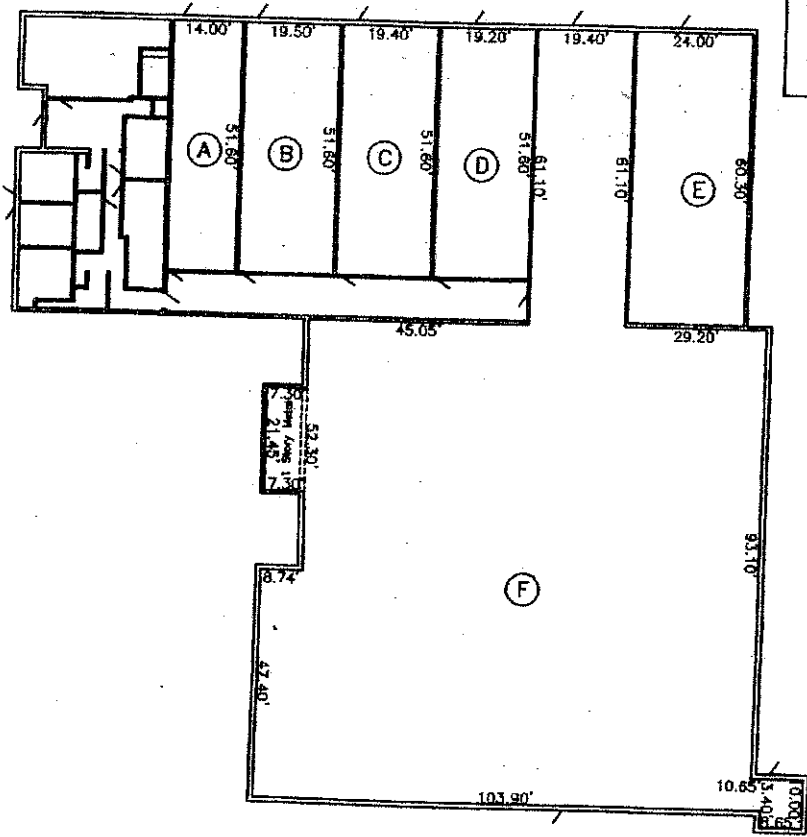
Date: 6-25-07

EXHIBIT "A" Demised Premises, Site Plan

CITY OF KEY WEST WATERFRONT BUILDING

GROUND LEVEL UNITS LAYOUT

**EXHIBIT A
KEY WEST ICE CREAM
FACTORY
UNIT E
1447 SQUARE FEET**



Unit Calculations:

Unit	Square Footage
A	722
B	1006
C	1001
D	991
E	1447
F	11178

Note: Unit F includes metal shed.

City of Key West Key West Bight, Key West, Florida 33040		
Specific Purpose Survey		Dwn No.: 06-160
Scale: 1" = 30'	Ref. file 186-18	Flood panel No. 1516 K
Date: 2/27/06	Flood Zone: AE-VE	Dwn. By: F.H.H.
REVISIONS AND/OR ADDITIONS		Flood Elev. 7'-10'
Drawings by: city of key west bight bay bottom		

FREDERICK H. HILDEBRANDT
ENGINEER PLANNER SURVEYOR

3152 Northside Drive
Suite 201
Key West, Fl. 33040
(305) 293-0466
Fax. (305) 293-0237

EXHIBIT "B" Rent Schedule

KEY WEST BIGHT

EXHIBIT "B"

#6492

Tenant: Key West Ice Cream Factory
 Location: 201 William #106
 Contact: Scott Cates

Square Feet 1447 CAM
 Square Feet 1447 BASE RENT
 Term 5 years effective 7/1/08

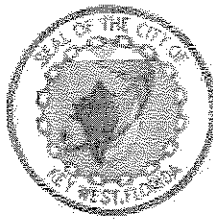
\$4.85 PER SQ. FT.

YEAR #	Period Beginning	Base Rent per sq. ft.		Base Rent Annual	Base Rent Monthly	Tax, Ins., CAM 5% Increase.		Total Rent Before Sales Tax Monthly	Sales Tax Monthly	Total Rent With Tax Monthly	TOTAL RENT ANNUAL	Percentage Rent Base Amount
		5% Increase	Annual			Annual	Monthly					
1	July 1, 2008	\$28.00	\$40,516.00	\$3,376.33	\$7,017.95	\$584.83	\$3,961.16	\$297.09	\$4,258.25	\$51,099.00	\$675,266.67	
2	July 1, 2009	\$29.40	\$42,541.80	\$3,545.15	\$7,368.85	\$614.07	\$4,159.22	\$311.94	\$4,471.16	\$53,653.95	\$709,030.00	
3	July 1, 2010	\$30.87	\$44,668.69	\$3,722.41	\$7,737.29	\$644.77	\$4,367.18	\$327.54	\$4,694.72	\$56,336.64	\$744,481.50	
4	July 1, 2011	\$32.41	\$46,902.33	\$3,908.59	\$8,124.15	\$677.01	\$4,585.54	\$343.92	\$4,929.46	\$59,153.48	\$781,705.58	
5	July 1, 2012	\$34.03	\$49,247.45	\$4,103.95	\$8,530.36	\$710.86	\$4,814.82	\$361.11	\$5,175.93	\$62,111.15	\$820,790.85	

Tax, Insurance and CAM are estimated based upon most recent actual costs and adjusted 5% annually

EXHIBIT "C" Rules and Regulations

1. TENANT shall not use any area outside of the demised premises as shown on Exhibit A or any portion of any common area or any parking areas for or any other purpose whatsoever including but not limited to the storage of goods, inventory, equipment, materials, whether or not said area is inside a building or outdoors.



THE CITY OF KEY WEST

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

MEMORANDUM

EXECUTIVE SUMMARY

To: Key West Bight Board
CC: David Fernandez
From: Marilyn Wilbarger, RPA, CCIM
Date: August 6, 2012

Reference: Key West Bight Upland Rent Abatements

ACTION:

Per the Boards Request this action item is to consider abating rent for the upland leases at the Key West Bight.

BACKGROUND:

The upland leases in the Key West Bight include the following terms in Section 14 ending paragraph as follows:

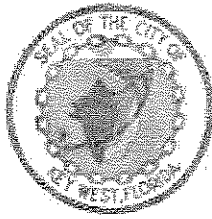
In the event that LANDLORD shall deem it necessary or be required by any governmental authority to repair, alter, remove, reconstruct or improve any part of the Demised Premises or of the property (unless the same result from TENANT'S act, neglect, default or mode of operation, in which event LANDLORD shall make all such repairs, alterations or improvements at TENANT'S sole cost and expense), then the same shall be made by LANDLORD with reasonable dispatch, and should the making of such repairs, alterations and improvements cause any interference with TENANT'S use of the Demised Premises, such interference shall not relieve TENANT from the performance of its obligations hereunder nor shall such interference be deemed an actual or constructive eviction or partial eviction or result in abatement of rental.

Therefore the lease does not provide for rent abatement during periods of repairs, alterations, removal, reconstruction or improvements.

Pursuant to the Bight Board meeting minutes from June 2012 staff has been instructed to propose a procedure to address rent abatement and to make the action retroactively applied to Mr. Cates scenario.

The Key West Bight was acquired for the purposes of re-developing a blighted area and has had many re-construction projects over the years and will continue to undergo re-development and re-construction for the foreseeable future with the

Key to the Caribbean – average yearly temperature 77 ° Fahrenheit.



THE CITY OF KEY WEST

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

MEMORANDUM

implementation of the common area enhancement plan, re-building Schooner Wharf, the Waterfront Brewery, the Discovery Shop, the Piano Shop building to name a few.

Staff has consulted with the City Management and Legal Departments and there is a consensus that it would not be in the best interest of any party to try and establish a one size fits all policy. Each tenant scenario could potentially present a multitude of variables that you may want to consider, such as, a partial abatement for a portion of the demised area that may be unusable for a period of time. As rent abatement is not called for in the lease, the procedure could be structured as a direct request for special consideration to the Bight Board with approval by the CRA based upon each tenant's specific request.

Rent abatement typically refers to just an abatement of the rent due for the period of time that the tenant cannot utilize the demised premises and does not usually apply to any loss of sales experienced by the tenant during that period. There could also be a partial abatement of rent for just the area deemed un-tenantable.

Key West Ice Cream Factory

Mr. Cates has requested an abatement for the five days in June wherein he was unable to occupy the demised area due to structural repairs. On Friday August 3rd, we received the Sales Tax information for the period ending June 30, 2012 which provided the data necessary to make the following calculations:

Rent, CAM abatement:

Current rent, Cam, Tax = $\$4025.79/30 \text{ days} \times 5 \text{ days} = \670.96

Tenant Sales June 2011 and June 2012

June 2011 = \$32, 286.16 –

June 2012 = $\$24,197.14 = \$8089.03/30 \text{ days} \times 5 \text{ days} = \$1,348.17$

CONCLUSION:

The Board may elect to employ any of these three options or any others that you deem appropriate:

1. Uphold the lease terms and not provide an abatement
2. Abate the rent, cam and tax for the 5 day period
3. Abate the loss of sales from one year to the next for the 5 day period

Attachments:

Tenants 2011 Sales

Tenant YTD 2012 Sales

Tenant June Department of Revenue Sales Report

Key to the Caribbean – average yearly temperature 77 ° Fahrenheit.

ACCT #6492

KEY WEST ICE CREAM FACTORY

PERCENTAGE NET RATE 6%

BREAKING POINT

\$744,482.00

YEAR (13)

October 2010 through September 2011

BASE RENT

\$3,722.41

MONTH	GROSS SALES	Y T D TOTALS	Percentage Rent	POSTED BILLING
OCTOBER '2010	\$18,055.96	\$18,055.96	\$0.00	
NOVEMBER	\$22,147.94	\$40,203.90	\$0.00	
DECEMBER	\$20,211.92	\$60,415.82	\$0.00	
JANUARY '2011	\$31,228.59	\$91,644.41	\$0.00	
FEBRUARY	\$36,875.91	\$128,520.32	\$0.00	
MARCH	\$49,956.78	\$178,477.10	\$0.00	
APRIL	\$41,863.79	\$220,340.89	\$0.00	
MAY	\$33,300.64	\$253,641.53	\$0.00	
JUNE	\$32,286.16	\$285,927.69	\$0.00	
JULY	\$39,256.11	\$325,183.80	\$0.00	
AUGUST	\$29,088.44	\$354,272.24	\$0.00	
SEPTEMBER	\$17,253.89	\$371,526.13	\$0.00	
TOTALS:	\$371,526.13	\$371,526.13		

6% OF YEARLY GROSS SALES	(\$22,377.35)	\$0.00
--------------------------	---------------	--------

PLEASE SUPPLY THE K.W. BIGHT OFFICE WITH THE MISSING DR 15'S IN ORDER TO AVOID THE \$50.00 ADMINISTRATIVE FEE. FOR EACH MISSING MONTH.

ACCT #6492

KEY WEST ICE CREAM FACTORY

PERCENTAGE NET RATE 6%

BREAKING POINT

\$781,706.00

YEAR (14)

October 2011 through September 2012

BASE RENT

\$3,908.53

MONTH	GROSS SALES	YTD TOTALS	Percentage Rent	POSTED BILLING
OCTOBER '2011	\$16,674.91	\$16,674.91	\$0.00	
NOVEMBER	\$27,873.89	\$44,548.80	\$0.00	
DECEMBER	\$33,757.64	\$78,306.44	\$0.00	
JANUARY '2012	\$34,341.56	\$112,648.00	\$0.00	
FEBRUARY	\$34,860.01	\$147,508.01	\$0.00	
MARCH	\$42,246.78	\$189,754.79	\$0.00	
APRIL	\$33,252.82	\$223,007.61	\$0.00	
MAY	\$31,717.33	\$254,724.94	\$0.00	
JUNE	\$24,197.14	\$278,922.08	\$0.00	
JULY	\$0.00	\$278,922.08	\$0.00	
AUGUST	\$0.00	\$278,922.08	\$0.00	
SEPTEMBER	\$0.00	\$278,922.08	\$0.00	
TOTALS:	\$278,922.08	\$278,922.08		

6% OF YEARLY GROSS SALES	(\$30,167.04)	\$0.00
--------------------------	---------------	--------

PLEASE SUPPLY THE K.W. BIGHT OFFICE WITH THE MISSING DR 15's IN ORDER TO AVOID THE \$50.00 ADMINISTRATIVE FEE FOR EACH MISSING MONTH.



State of Florida
Department of Revenue

[DOR Home](#) [e-Services Home](#) [Print Page](#) [Contacts](#) [Logout](#)
Sales Tax - [Click for Help](#)

User ID: AF1202947201
Original Return

Access Source: AF1202947201

Confirmation Number: 120719650237

DR15-EZ

Certificate Number	Collection Period	Confirm Date and Time
54-8012029472-0	06/2012	07/19/2012 3:10:58 PM ET

Location Address

201 WILLIAM ST STE 101
KEY WEST, FL 33040-6681

KEY WEST ICE CREAM FACTORY INC
PO BOX 5466
KEY WEST, FL 33045-5466

Contact Information

Name: JOANNE CATES
Phone: (305) 295 - 3011
Email: KWICECREAM@AOL.COM

Debit Date:	7/20/2012
Amount for Check:	\$1703.99
Bank Routing Number:	067009438
Bank Account Number:	7611
Bank Account Type:	Checking
Corporate/Personal:	Corporate
Name on Bank Account:	KEY WEST ICE CREAM FACTORY INC

Due to federal security requirements, we can not process international ACH transactions. If any portion of the money used in the payment you may be making today came from a financial institution located outside of the US or its territories for the purpose of funding this payment, please do not proceed and contact the Florida Department of Revenue at 1-800-352-3671 to make other payment arrangements. By continuing, you are confirming that this payment is not an international ACH transaction. If you are unsure, please contact your financial institution.

I hereby authorize the Department of Revenue to process this ACH transaction and to debit the checking account identified above. I understand there may be service charges assessed on any transactions not honored by my bank.

Signature: JOANNE CATES
Phone Number: 305-295-3011
E-Mail Address: KWICECREAM@AOL.COM

Discretionary Sales Surtax Information

1. Gross Sales (Do not include tax)	\$	24197.14
2. Exempt Sales (Include these in Gross Sales Line 1)	\$	1077.45
Taxable		
3. Sales/Purchases (Include Internet Out-of-State Purchases)	\$	23119.69

A. Taxable Sales and Purchases Not Subject to Discretionary Sales Surtax	\$	0.00
B. Total Discretionary Sales Surtax Collected	\$	345.80

4. Total Tax Collected (Include Discretionary Sales Surtax from Line B)	\$	1733.99
5. Less Lawful Deductions	\$	0.00
6. Less DOR Credit Memo	\$	0.00
7. Total Tax Due	\$	1733.99
8. a. Less (-) Collection Allowance; or if Late,	\$	30.00
8. b. Plus (+) Penalty and Interest	\$	0.00
9. Amount Due With Return	\$	1703.99

You have chosen not to donate your collection allowance to education.



City of Key West
201 William St.
Key West, FL 33040

December 11, 2012

Bob Vitas
City Manager
City of Key West

Structural Report of Concrete Repairs and Project Justification

As a follow up to prior discussion at Bight Board meetings, this report was created to explain the repairs made to the 201 William St. tie-beams and columns, specifically at the North corner of the building (currently the Key West Ice Cream Factory). It has been suggested that the reasoning and execution of the repairs were;

- a.) Unjustified
- b.) Used improper materials
- c.) Initiated only for a proposed new tenant who would have future use along and above the repair.
- d.) Without due diligence with respect to the tenant

The assumptions were made without inquiries to City staff (Operations Manager), project manager/contract engineer (Chen and Associates), or the projects engineer of record (United Engineering , previously BCC). This document and attached information qualify the repairs, as they were executed, in a manner most appropriate to the tenant, the tax payers, and the lease binding the two.

The nature of this project was one of necessity and timing. The structure had over 100 locations of spalling repair of concrete cracking identified by the structural engineer within the permit set

(attachment A) page S-3.0, cross section 2, dated September 26, 2011. The photos from the site visit attached are dated July 18, 2011 which initiated the structural repair documentation.

To refute the reasoning implied by Board members of the repair, the drawings attached show 11 separate locations of concrete delamination or spalling at the unit within question. Due to the accusation that the repairs and strengthening of the tie beam were only for the use of the proposed tenant, a zoom of Attachment A, the initial repair documents dated September 26th, 2011 is shown as well as the photos initiated July 18, 2011 that preceded the HARC drawings by William P. Horn Architect for the Waterfront Brewery dated November 11, 2011 (Attachment B) by nearly 4 months.

Also attached is an email from the structural engineer that confirms the tie-beam that was repaired runs parallel to the T-beam roof system that would support the proposed roof top deck and does not contact the roof beam(s) load point on either end. The tie-beam in question was repaired or replaced in kind, as were the columns within. They were not enlarged or expanded in any way.

There was discussion at the Bight Board meeting on Aug. 2nd that the repairs to the tie-beam were artificial and that the material used was "stucco" and not concrete. While material used was not concrete (especially considering the most common form of large aggregate and cementitious mix seen used for sidewalks or typical construction) it does in fact have a 28 day compression rating at 6,750psi compared to typical pump mix rated at 5,000psi. The product that were used, specified by the structural engineer (Attachment C), BASF LA40 Rapid Hardening Mortar is a fiber reinforced trowable mortar mix made specifically for its ability to be controlled by moisture content for workability and its great bonding strength to clean concrete as used in spalling repairs or in columns and beams overhead. These products are made for repairs/patches and contain corrosion inhibitors and curing additives. Attachment D shows a photo taken of a typical nonstructural mortar powder next to the LA40 powder. The products are nearly indistinguishable to the naked eye. Fiber reinforced materials like these do not have large aggregate, like concrete, and are made specific for areas that cannot be formed. Unless the product was in the packaging it would be almost impossible for someone to determine what type of mortar it was.

As noted above the initial field visit by the engineer was on July 18, 2011. The photos under Attachment E are all from the above date. Staff was explicitly accused of directing a repair which did not need access to the unit and without proper due diligence. Attachment F is the PDF and e-mail that was sent to the tenants of the 201 William St. building on February 23rd, 2012. This e-mail gave notice to all tenants that construction would begin as soon as building permits were issued and were given a full set of drawings. Tenants were notified to contact me with any questions regarding the project. The drawings show, in detail, the areas of needed repair. The letter also explains that due to the nature of the project that "concrete repairs are not fully known until invasive investigation is undertaken" and that "cracks on the outside that look exterior only... could certainly lead to the inside of the building."

Staff, United Engineering, and Bella started investigating the tie-beam on the north side of the Ice Cream Factory on May 2nd to determine the impact of the repair. After looking into attic area and continuous visible spall lines there was concern about the impact with the tenant. After much discussion by the engineer and contractor it was determined that replacing the tie beam at one time would be the least impactful to the tenant. A proposal was requested from Bella Construction to supply as much extra man power as could be supplied on the project to minimize down time. Attachment F shows the considerable amount of spalling that existed on the inside of the unit. These areas could not have been repaired from the exterior of the unit nor could they be repaired while keeping the store open due to safety concerns. The proposal was reviewed by Bight Staff, Engineering Staff, the City Manager's Office, and the project engineer and accepted as the timeliest solution to completion. A change order of \$2,586 for extra labor cost was approved for the repair.

**The total extra repair cost was \$10,026. The condenser units for the Ice Cream Factory had to be removed to repair the tie beam. They were relocated to the loading area of the building where there already existed electrical meters and AC condensers. HARC requested us move an AC unit at Thompsons Fish House out of view a month prior in their attempt to either conceal or locate such items collectively and out of view in the historic district, to comply we did the same with these units. They also would have been inoperable if they were to go back in the same location as the concrete repairs would have shut them down for days. This would have lost the tenant their cooled/frozen inventory.*

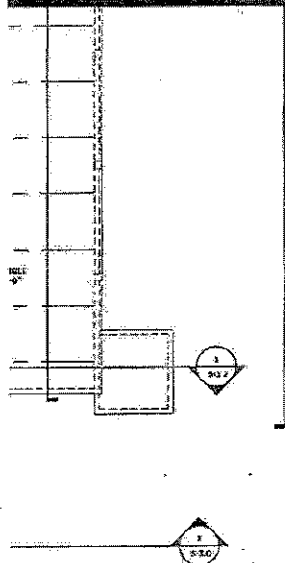
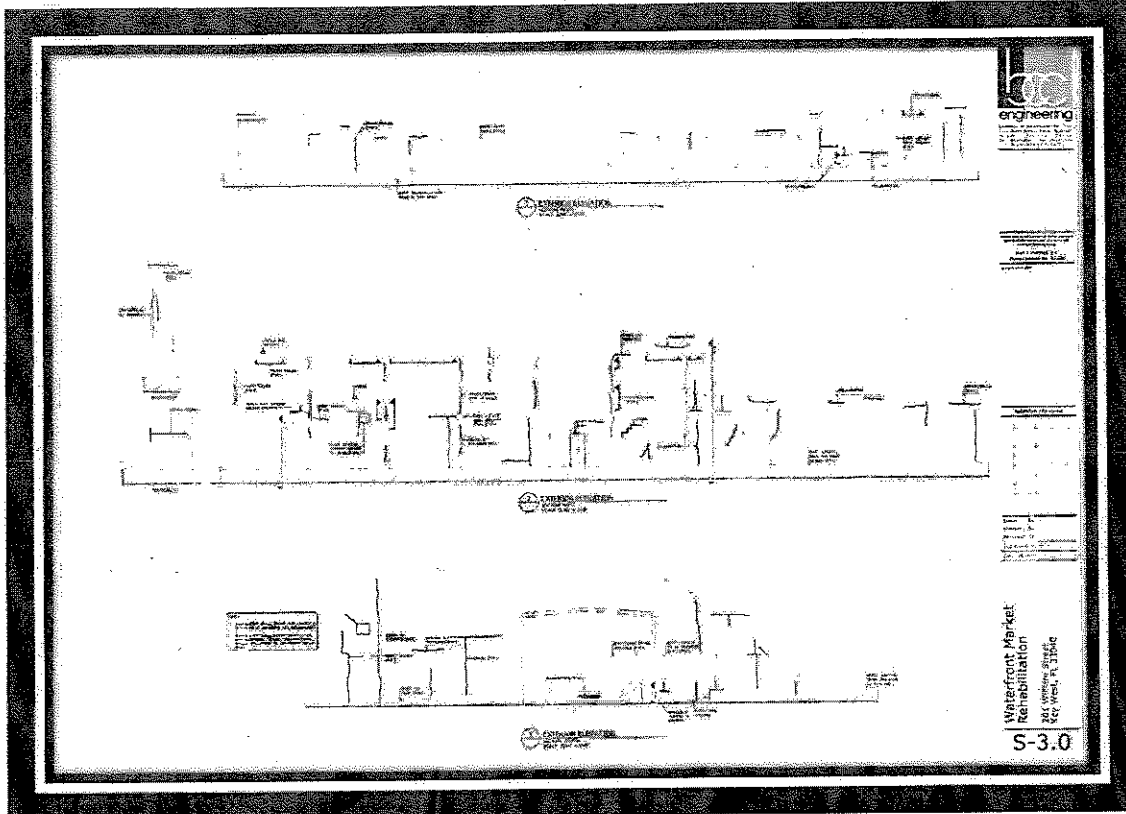
The condensers were also attached with code compliant and NOA labeled brackets. They were placed above flood and had custom enclosures made which they did not have prior. The condensers that were not in the repair area were not moved.

Attachment G is an email sent to Scott Cates, owner of the Ice Cream Factory, on May 18 giving official notice of the repairs necessary to the unit. The dates of construction proposed were June 4 – 8. Had Bella repaired the areas identified with the standard crew and pace the store would have been impacted by chipping hammers and concrete repair for the more than 15 days enduring vibration, dust, and incredibly load noise. There is no way to complete repairs of this magnitude while keeping the store open to employees or patrons.

The attachments show that Staff gave the tenant 102 days from initial notice to repair date and 18 days of notice for the closure of the unit that required approval. Discussions with the tenant started approximately 2 weeks before the notice of the closure was sent in writing.

The attached photos, product approvals, data, and correspondence were made available to give assurance that all construction projects in the Key West Bight are initiated and executed with extreme due diligence to both our tenants and the City of Key West. As part of the contract documents for these repairs, there will be a full report from both the engineer and the contractor from every location of the building. Those reports as well as any other information from this project are available in my office for those interested.

Attachment A



Drawn:	CA
Checked:	SS
Reviewed:	JSP
BCC Project No. 1 -	
Date: 09/25/11	

**Waterfront Market
Rehabilitation**
201 William Street
Key West, FL 33040

S-2.1

John Castro

From: Juan Fuentes
Sent: Tuesday, December 11, 2012 1:32 PM
To: John Castro
Cc: Oscar Bello
Subject: Re: Structural Repairs

John Paul,

The concrete tie beam that runs parallel to the precast double tees does not carry any gravity loads from the roof. We typically provide a concrete tie beam, instead of masonry, to facilitate construction and provide closure to the building envelope.

Regards,

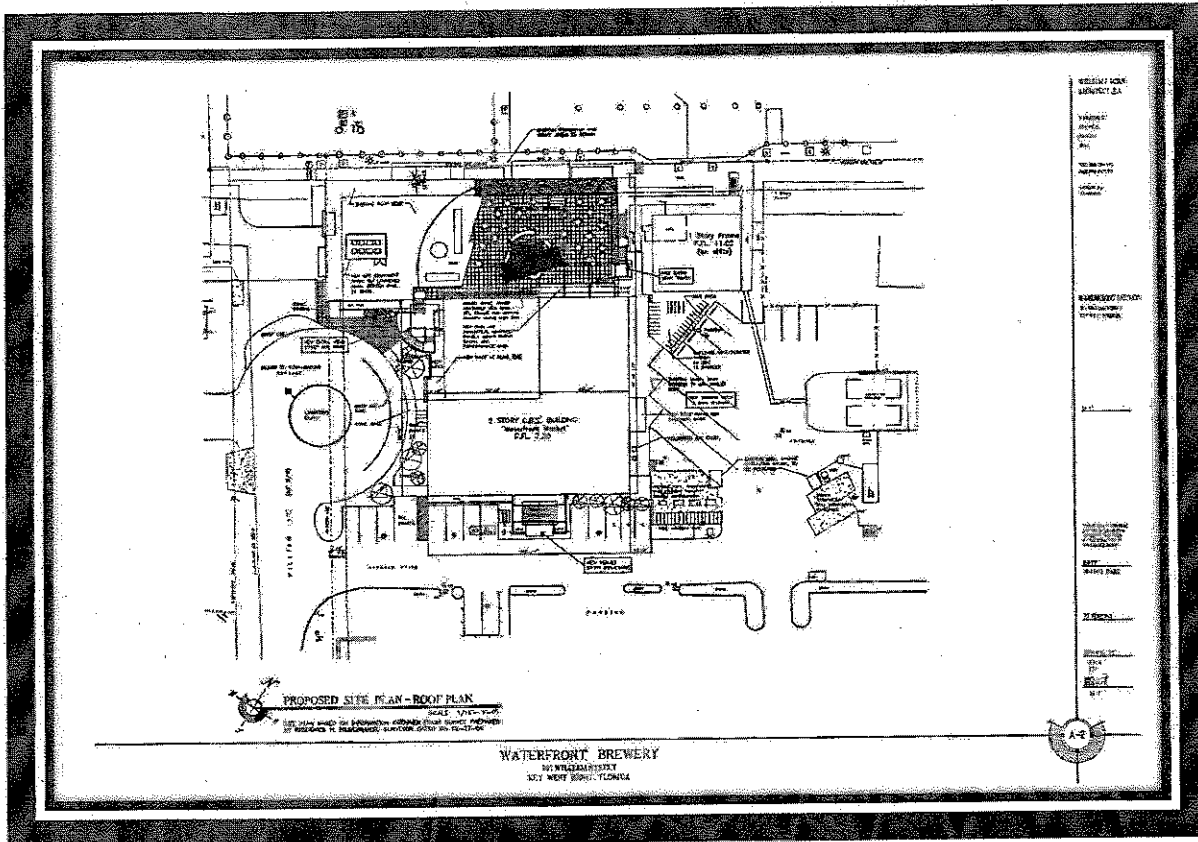
Juan J. Fuentes, P.E., S.E., LEED AP BD+C Principal

UNITED Engineering, Inc.
12595 SW 137 Ave, Suite 112
Miami, FL 33186
(T) 786.347.5250
(C) 305.724.6137

On Dec 6, 2012, at 3:16 PM, "John Castro" <jcastro@keywestcity.com> wrote:

> Juan,
>
> In regards to the tie-beam that we repaired at the ice-cream factory
> for the "201 William St. Concrete Repairs," can you give me a quick
> description of that tie-beam that runs parallel to the T- beams and
> its structural significance to that roof structure? Thank you.
>
> John Paul Castro
> Operations Manager
> Historic Seaport
> (305) 809-3803
>

Attachment B

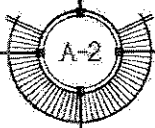


THESE DRAWINGS MAY
 NOT BE REPRODUCED
 WITHOUT WRITTEN
 AUTHORIZATION BY
 WILLEAM F. HORN

DATE _____
 11-11-11 H.A.R.C.

REVISIONS _____

DRAWN BY _____
 EMA
 F.H.
 PROJECT NUMBER _____
 1113



Attachment C



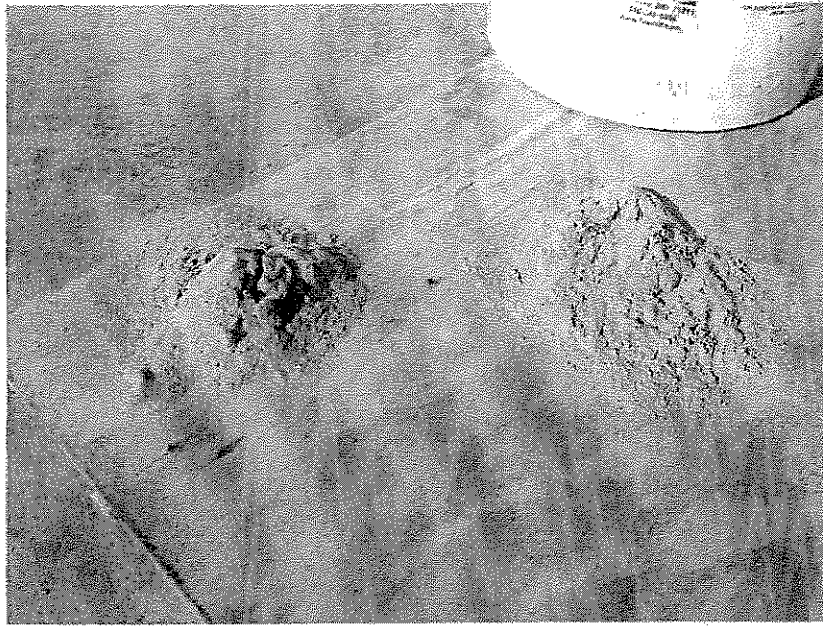
UNITED Engineering, Inc.
12595 SW 137 AVE
Suite 112
Miami, Florida 33186
t. 786.347.5250
e. info@unitedeng.pro
w. www.unitedeng.pro

PROJECT	Waterfront Market CA	PROJECT NO.	0301-03	
		SHEET NO.	1	
SCALE	N/A	BY	JJF	DATE
				04/03/12

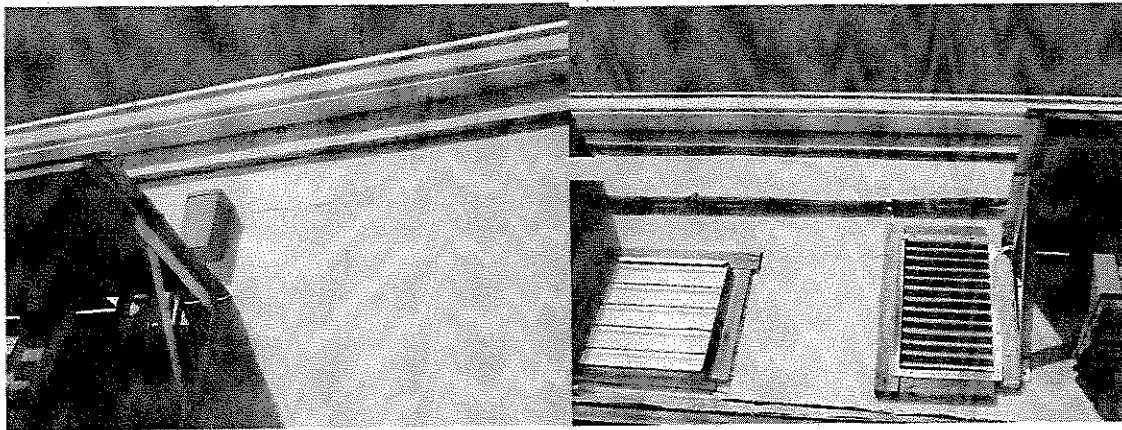
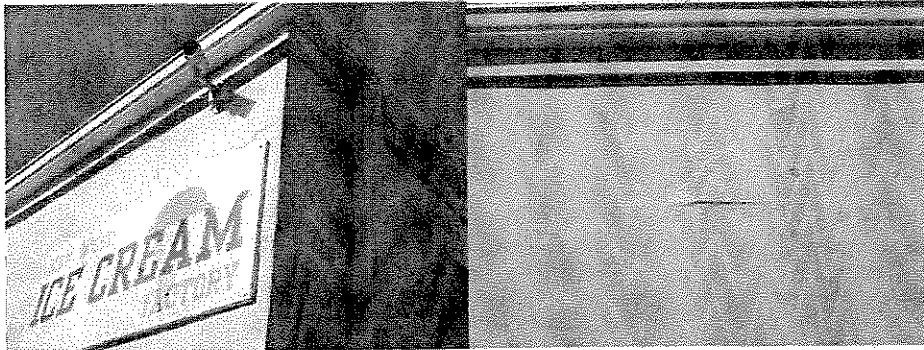
SHOP DRAWING LOG

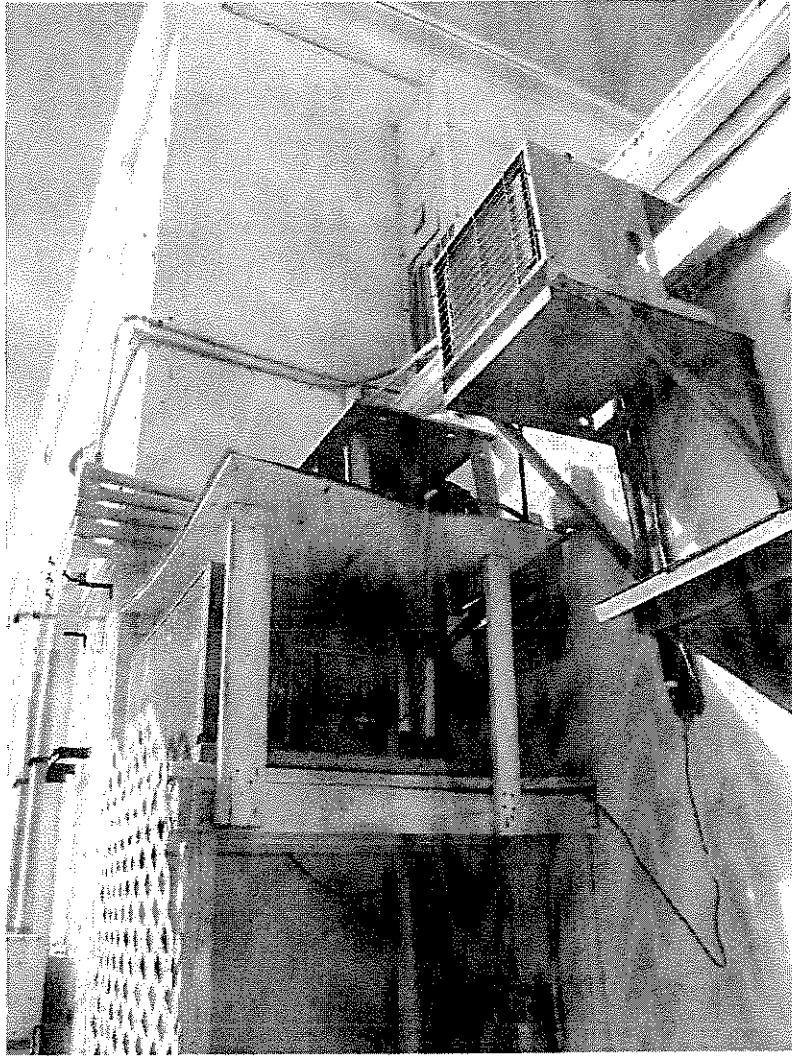
DATE	LOG NUMBER	DESCRIPTION	STATUS
04/03/12	030103-1	5000 #89 Pump Mix	No exceptions taken
04/03/12	030103-2	Arch 3000	No exceptions taken
04/03/12	030103-3	Arch Med Stile Door Impact	No exceptions taken
04/03/12	030103-4	Armatec 110	No exceptions taken
04/05/12	030103-5	Metro Mix 240AE	Substitution not approved
04/03/12	030103-6	Fox Industries FX-263	Substitution not approved
04/03/12	030103-7	BASF Gel Patch	No exceptions taken
04/03/12	030103-8	BASF Sonolastic NP1	No exceptions taken
04/03/12	030103-9	SIKA 1A	No exceptions taken
04/03/12	030103-10	Sikadur 32 Hi Mod	Substitution not approved
04/03/12	030103-11	Sikadur 35	No exceptions taken
04/03/12	030103-12	Sikacrete 11	Substitution not approved
04/03/12	030103-13	Ultrabond 2	Amend and Resubmit

Attachment D

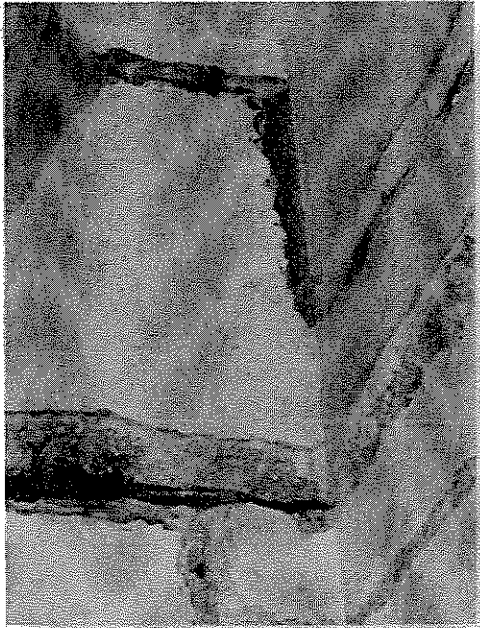


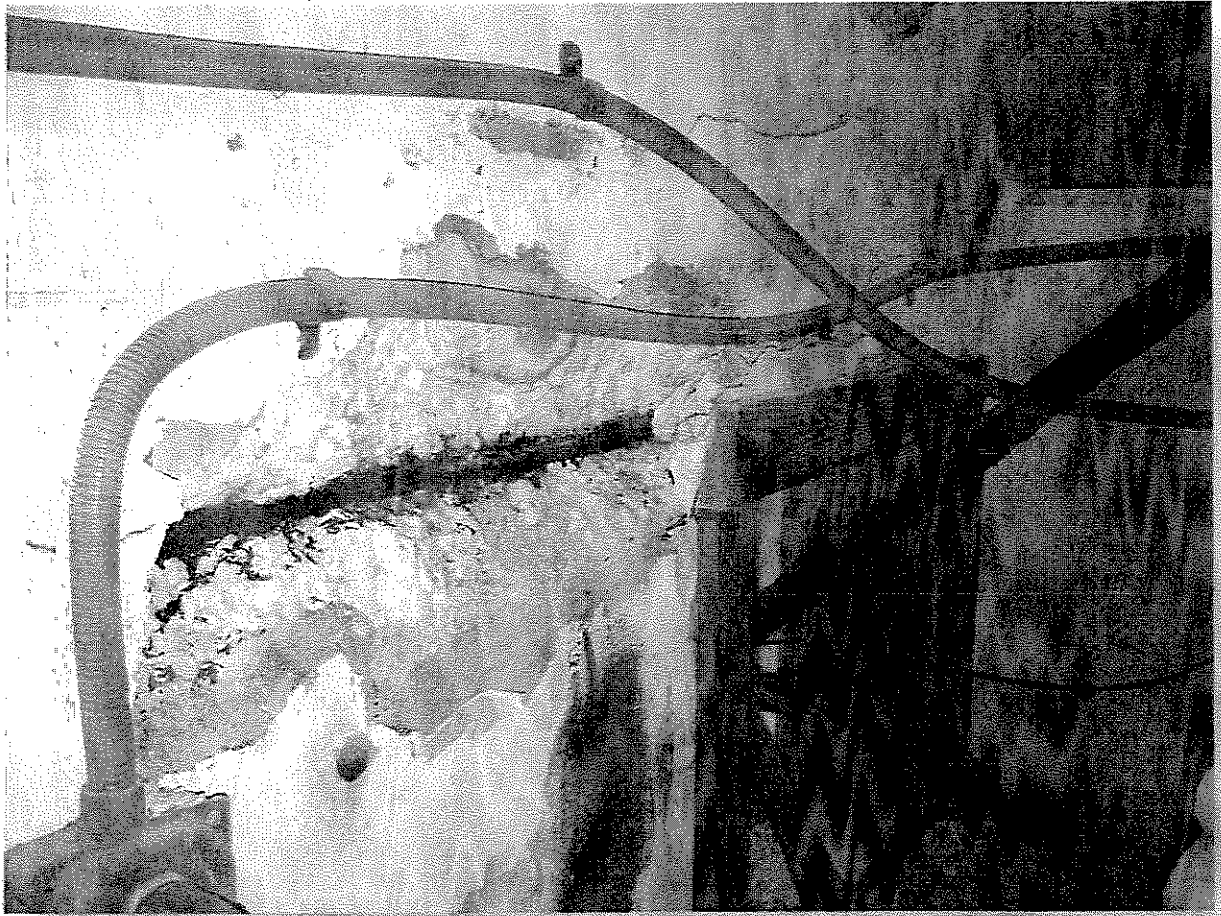
Attachment E





Attachment F







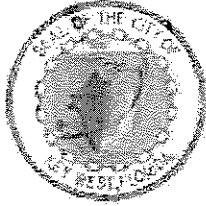
Attachment G

From: [Debra Gartenmayer](mailto:Debra.Gartenmayer)
To: kwicecream@aol.com
Cc: [John Castro](mailto:John.Castro)
Subject: NOTICE OF CONSTRUCTION
Date: Thursday, February 23, 2012 1:58:21 PM
Attachments: [Notice to Tenants.pdf](#)

Scott,

Please be advised this is a notice that concrete repairs will begin to 201 William Street within the next 30 days. The attached memo has contact info for further information. Thank you.

Debra Gartenmayer for John Paul Castro, Operations Mgr.
Secretary-Key West Bight Marina
City of Key West
201 William Street
Key West, Florida 33040
dgartenm@keywestcity.com
Phone (305) 809-3802
Fax (305) 293-8308



2/23/2012

Dear 201 William St. Tenants,

As you know the 201 William St. building is in need of repair both structurally and aesthetically. For those of you that do not follow the City projects or Bight Board meetings we have been working on awarding the improvements to the structure for some time. The project was awarded at the CRA meeting last night to Bella Construction of Key West, Inc.

The project will encompass the entire building and all structural components noted within the drawing (which have been provided). The windows and doors of the former "Waterfront Market" building will also be replaced.

Both Key West Bight Management and Bella Construction will do our best to make this renovation as quick and with as little disruption to business as possible. The project still has to go to the Building Department for permits and then will begin on the inside of the main structure. They will then move outward and around the outside of the building.

Due to the nature of the project you can expect to hear a good amount of jack hammering, chipping, and hammering during construction. Unfortunately there is no way to avoid this.

I have attached the working drawings for your information. Please look at the areas identified by the engineer to see if and how this will affect you. There will likely be some work done inside of your units. We will give as much notice as possible to these repairs but please be advised that concrete repairs are not fully known until an invasive investigation is undertaken. There could be cracks on the outside that look exterior only that could certainly lead to the inside of the building once opened up. There is no way to predict these occurrences.

If you have any questions about the construction, would like to go over the drawings, or any other questions you may have about the project please contact me to set up a meeting 809-3703.

Sincerely,
John Paul Castro
Operations Manager – Key West Bight
City of Key West.

John Castro

From: John Castro <jcastro@keywestcity.com>
Sent: Friday, May 18, 2012 10:11 AM
To: 'kwicecream@aol.com'
Cc: Marilyn Wilbarger
Subject: Notice of Construction

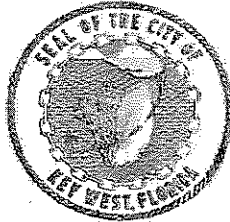
Scott,

Attached is a notice for necessary construction repairs to your unit. A copy is being hand delivered to due to timing concerns and mailed per the terms of the lease. Please let me know when we can have meeting to discuss the project with the contractor. Thank you.



Ice Cream Factory
Notice.pdf

John Paul Castro
Operations Manager
Historic Seaport
(305) 809-3803



City of Key West
201 William St.
Key West, FL 33040

May 18, 2012

Key West Ice Cream Factory
Scott Cates
201 William St.

Advance Notice of Building Repairs

Dear Mr. Cates,

As noted in a letter sent to all tenants of the 201 William St. building dated February 23, 2012 the concrete repairs to the structure have been moving forward and Bella Construction is now assessing the exterior of the building. Within terms the conditions of the lease the landlord shall give notice for repairs that are considered necessary to the structural integrity of the building and safety of the tenant and its patrons. Along with the contractor, a plan has been put together that will be complete the repairs as engineered in the shortest amount time with regards to your business.

The tie-beam along the east side of the building, which encompasses the length of your unit, is at a level of spalling delamination that will require complete replacement. This requires work to be done both inside and out, with considerable noise in an environment that can be considered construction only. The City, at additional cost, has requested the contractor to add significant labor resources to this section of the project to minimize time and disruption.

The proposed construction will require all movable, wall hung or other items not permanently attached to the floor or walls, to be removed from the east wall of the building prior to construction.

The project timeline will be 5 complete days of construction in which the only contractor crew will be permitted on site due to safety. The contractor is to take all necessary steps to protect the interior of the unit for debris and dust by partitioning wherever possible, the construction area from the remainder of the unit.

Within this construction the City has requested the contractor to move the four condensing units for your business's freezers/ice machines around to the loading dock to clear room for repairs and also install the units with covers (the units currently do not have covers in which all mechanical and electrical are exposed) permanently and up to code (not all of the units are currently strapped down or secured). This will make that side of the building more aesthetically pleasing and secure the units in an area where utilities and mechanical equipment already exist. The condensing units are to be set-up in their new location prior to disconnecting, as to have the shortest down time possible. There is to be no loss to any items frozen or cooled.

The scheduled construction dates are June 4 – 8th. The unit will be completely cleaned and shall match existing when the job is complete. We would like to have a meeting the week prior to discuss the logistics of the project details.

If you have any questions or concerns about this project please do not hesitate to call me at 809-3803. Thank you.

Sincerely,

John Paul Castro
Operations Manager
City of Key West