

RESOLUTION NO. 09-147

**A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING THE ATTACHED LEASE BETWEEN THE CRA AND THE MEL FISHER MARITIME HERITAGE SOCIETY, INC. FOR THE "TURTLE CANNERY BUILDING" IN THE KEY WEST BIGHT; PROVIDING FOR AN EFFECTIVE DATE**

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

Section 1: That a public benefit has been demonstrated entitling the lessee to rent below market rate in accordance with Key West code of Ordinances section 2-941(c)

Section 2: That the attached lease is hereby approved.

Section 3: 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 16 day of June, 2009.

Authenticated by the presiding officer and Clerk of the Agency on June 22, 2009.

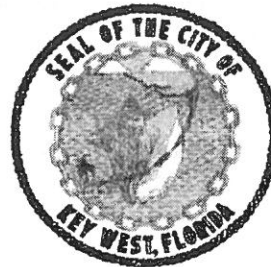
Filed with the Clerk June 22, 2009.

  
MARK ROSSI, VICE-CHAIRMAN

ATTEST:

  
CHERYL SMITH, CITY CLERK

# Executive Summary



**TO:** City Commission  
**CC:** Jim Scholl, Mark Finigan  
**FR:** Marilyn Wilbarger, RPA, CCIM  
**DT:** May 28, 2009  
**RE:** Lease for the Turtle Cannery Building

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## **ACTION STATEMENT**

This is a request to consider a lease with the Mel Fisher Maritime Museum for the operation of a public education exhibit in the turtle cannery building. This lease was approved by the Key West Bight Board on May 20, 2009.

## **HISTORY**

This property previously housed a turtle museum and is now vacant. This building was re-constructed with a historic preservation grant with a maritime museum as the intended use. An advertisement for letters of interest was published on April 19, 2009 and based upon the submittals the following lease terms are proposed:

**Demised Premises:** 1076 square feet located on the dock in Key West Bight

**Use:** Public education exhibitions representative of the history of the building, turtle industry, and historic seaport coupled with evening public programming such as lectures, events, and as a meeting place for the Historical Maritime Society

**Term:** Five years

**Rent:** \$1.00 per year plus Tenant shall pay its pro-rata share of CAM, taxes, and insurance.

**Utilities:** Tenant shall pay for all utility usage

**Insurance:** Tenant to provide general liability and contents coverage

**Security Deposit:** Waived

**Advantages:** The tenant will install a permanent exhibition on the turtle industry in addition to future changing topical exhibitions focused on the history of the Bight. They

will seek a National Register Historic Site Marker as well as making improvements to the building including upgrading electrical to provide better safety.

**Disadvantages:** This is an under market lease in an important location however the Grant funding used to re-construct the building calls for a maritime museum.

**FINANCIAL STATEMENT:**

The Mel Fisher Museum has agreed to pay their proportionate share of the common area costs for tax, insurance and maintenance. They will be marketing the museum with TDC funding which will attract more visitors to the Bight and hope to increase local participation through their additional educational programming. The lease permits a small retail area for the sale of museum mementos to offset operating costs, and will allow the tenant to seek approval of a small admission fee to offset operating costs as well.

**RECOMMENDATION:**

The quality, professionalism and accreditation of the Mel Fisher Museum, coupled with their proposed utilization, is an opportunity for an excellent collaboration. Staff believes that this use will bring renewed interest in the historic maritime uses and further the goal of retaining and promoting the authentic history of the Key West Bight.

**ATTACHMENTS:**

Draft Lease

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## Lease Agreement

between

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

as Landlord

and

**The Mel Fisher Maritime Heritage Society**

as Tenant

Dated \_\_\_\_\_



THIS LEASE is made as of the \_\_\_\_ day of \_\_\_\_\_, 200\_ by and between the LANDLORD and TENANT identified below:

**1. INFORMATION PROVISIONS:** Information provisions in this section are intended to provide a summary of the corresponding sections of this lease and are in no way inclusive of the complete terms and conditions of this lease.

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:

The Mel Fisher Maritime Heritage Society  
200 Green Street  
Key West, FL 33040

TENANT'S TRADE NAME: **Mel Fisher Maritime Museum**

1.3 GUARANTOR (S) AND ADDRESS:

1.4 DEMISED PREMISES (Section 2): **as per EXHIBIT "A"** located at Turtle Cannery Building in the KEY WEST BIGHT (hereinafter referred to as the "Property").

1076 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, 2009 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 s 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 for the term is One Dollar per year (\$1.00) in exchange for the valuable public benefit provided by permitted use of the Demised Premises.

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"**, and any and all other sums of money or charges required to be paid by TENANT pursuant to the provisions of this lease.

1.6.2 RENT PAYMENT DUE DATE: Payable in advance on the first (1<sup>st</sup>) 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: Intentionally deleted

1.6.5 HOLD OVER RENT: N/A

1.6.6 RENT CONCESSIONS: None

1.7 SECURITY DEPOSIT (Section 5): Waived

1.8 PERMITTED USE (Section 6): TENANT shall operate a permanent museum quality public education exhibit representative of the history of the building and the turtle industry featuring original artifacts, historic photographic images, maps, charts, models oral histories and interviews to provide a compelling look at the turtle fishing industry. TENANT may also present topical rotating exhibits depicting the history of the seaport TENANT may hold public programming including lectures, educational events and as a meeting place for the Key West Historical Maritime Society. TENANT may utilize up to ten percent of the usable area for the sale of turtle museum related mementos, for the primary purpose of offsetting operating costs. TENANT may charge a nominal admission fee to offset operating expenses, which must be approved by the Key West Bight Board, after TENANT has presented financial information clearly demonstrating the need and that TENANT has exhausted all other means of financial support.

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                     P                    

TENANT                     P                    

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 measured in accordance with the published BOMA/ANSI standard for calculating net usable floor area for stores. 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 – None

**3. TERM** - The term of this Lease shall be for five (5) years which shall commence on July 1, 2009 and shall end at midnight on June 30, 2014 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. TENANT'S written statement shall become attached to and incorporated into this lease as Exhibit "D". In the absence of TENANT'S written statement the lease term shall remain as stated above. 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 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, without waiving LANDLORD'S remedies for default.

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.

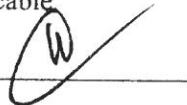
Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT'S Proportionate Share as stated in Section 1.4, of the Insurance Expenses which shall include all insurance premiums incurred by the LANDLORD in insuring the Property including hazard and liability insurance 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) Percentage Rent is intentionally deleted.
- (e) **Additional Rent.** Any and all other sums of money or charges required to be paid

by Tenant pursuant to the provisions of this Lease, whether or not the same be so designated, shall be considered as "Additional Rent", and shall be payable and recoverable in the same manner as Rent. However, such Additional Rent shall be due upon demand and failure to pay such additional rent within seven (7) days shall be deemed a material breach of this lease. If Landlord shall make any expenditure for which Tenant is liable under this Lease and for which Tenant has not paid, the amount thereof shall be deemed Additional Rent due and payable by as indicated above. 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** - LANDLORD waives the security deposit

6. **USE OF THE DEMISED PREMISES** -TENANT shall use the Demised Premises for the purposes of:

The operation of a permanent museum quality public education exhibit representative of the history of the building and the turtle industry featuring original artifacts, historic photographic images, maps, charts, models oral histories and interviews to provide a compelling look at the turtle fishing industry. TENANT may also present topical rotating exhibits depicting the history of the seaport TENANT may hold public programming including lectures, educational events and as a meeting place for the Key West Historical Maritime Society. TENANT may utilize up to ten percent of the usable area for the sale of turtle museum related mementos, for the primary purpose of offsetting operating costs. TENANT may charge a nominal admission fee to offset operating expenses, which must be approved by the Key West Bight Board, after TENANT has presented financial information clearly demonstrating the need and an affidavit stating that TENANT has exhausted all other means of financial support.

- (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 purchases 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 it 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 Premised 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 it 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 it's 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.

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 OF TENANT. IN THE EVENT TENANT FILES ANY FORM OF BANKRUPTCY, LANDLORD SHALL BE ENTITLED TO IMMEDIATE TERMINATION OF THE AUTOMATIC STAY PROVISIONS OF 11 U.S.C. §362, GRANTING THE LANDLORD COMPLETE RELIEF AND ALLOWING THE LANDLORD TO EXERCISE ALL OF HIS LEGAL AND EQUITABLE RIGHTS AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO TERMINATE THIS LEASE AND DISPOSSESS TENANT FROM THE DEMISED PREMISES IN ACCORDANCE WITH FLORIDA LAW. ADDITIONALLY, TENANT AGREES NOT TO DIRECTLY OR INDIRECTLY OPPOSE OR OTHERWISE DEFEND AGAINST THE LANDLORD'S EFFORT TO GAIN RELIEF FROM ANY AUTOMATIC STAY. THE LANDLORD SHALL BE ENTITLED AS AFORESAID TO THE LIFTING OF THE AUTOMATIC STAY WITHOUT THE NECESSITY OF AN EVIDENTIARY HEARING AND WITHOUT THE NECESSITY OR REQUIREMENT OF THE LANDLORD TO ESTABLISH OR PROVE THE VALUE OF THE LEASEHOLD, THE LACK OF ADEQUATE PROTECTION OF HIS INTEREST IN THE LEASEHOLD, OR THE LACK OF EQUITY IN THE SAME. TENANT SPECIFICALLY AGREES AND ACKNOWLEDGES THAT THE LIFTING OF THE AUTOMATIC STAY HEREUNDER BY THE APPROPRIATE BANKRUPTCY COURT SHALL BE DEEMED TO BE "FOR CAUSE" PURSUANT TO SECTION 362(D)(1).

(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:  
The Mel Fisher Maritime Heritage Society  
200 Green Street  
Key West, FL 33040

When the parties on either side (LANDLORD or TENANT) consists of more than one

person, notice or default by one of the persons on that side shall constitute notice or default by all of the persons on that side.

(h) This Lease and the provisions thereof shall be governed by and construed and enforced in accordance with the laws of the State of Florida.

(i) If the TENANT or TENANTS are signing in a capacity other than as individuals, then the LANDLORD may require personal guarantees from individuals as the LANDLORD deems necessary.

(j) LANDLORD may delegate its decision-making authority regarding any provision of this Lease to an Advisory Board.

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

ATTEST

LANDLORD Caroline Street Corridor and  
Bahama Village Community  
Redevelopment Agency

  
Cheryl Smith, City Clerk

Date: 6-22-09

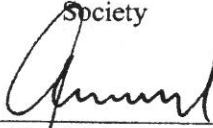
  
Mark Rossi, Vice-Chairman

Date: 6-22-09

TENANT: The Mel Fisher Maritime Heritage  
Society

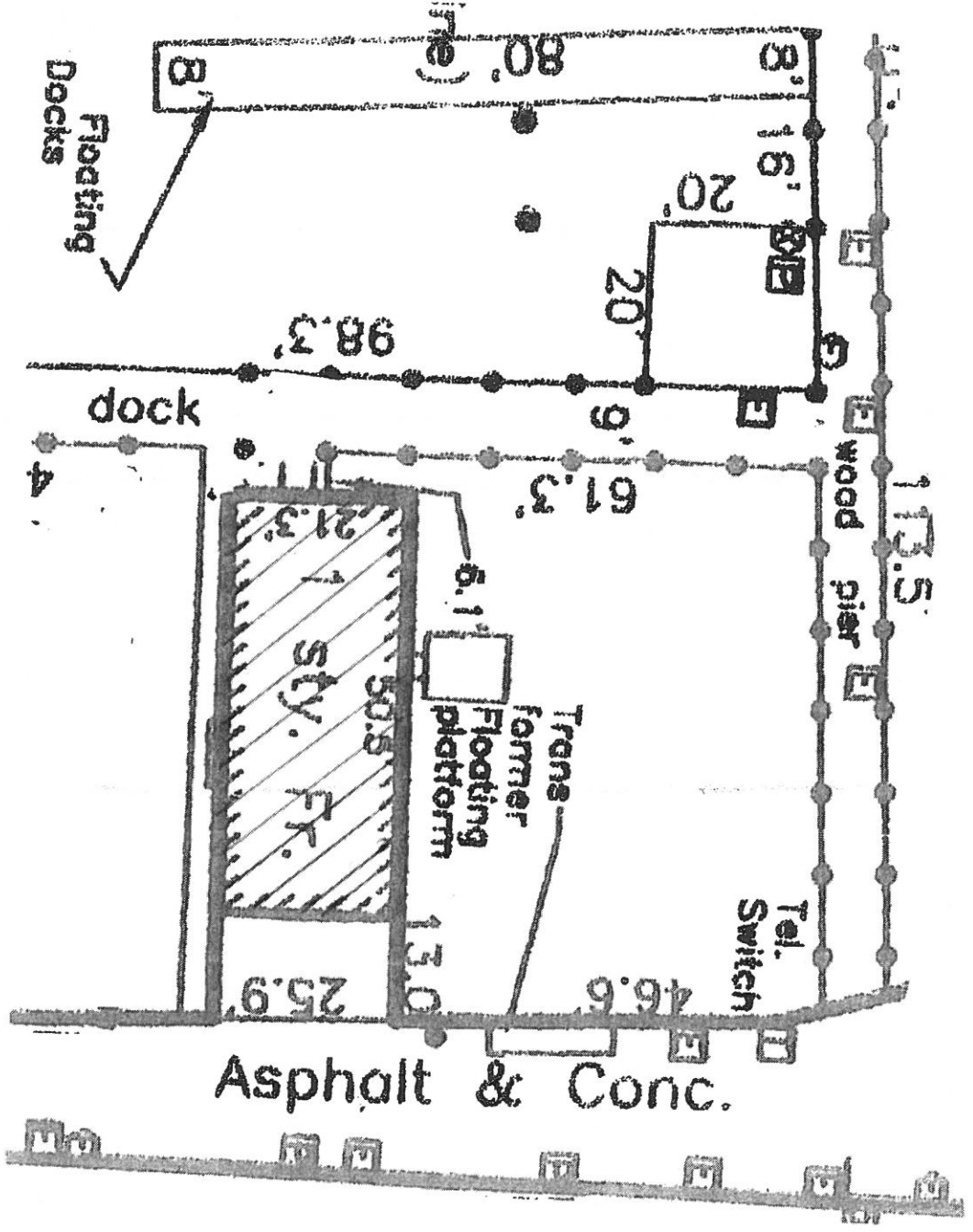
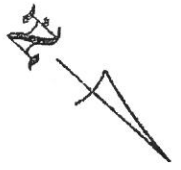
  
WITNESS

Date: 6-2-09

By:   
Melissa Kendrick, Executive Director/CEO

Date: 6/2/09

**EXHIBIT "A" Demised Premises, Site Plan**



Sheet Description:  
**TURTLE MUSEUM**

Project:  
**LEASED AREA**

**CITY OF KEY WEST**  
**KEY WEST BIGHT**  
 201 William Street, Key West, Florida 33040  
 (305) 809-5780 Fax: (305) 293-6435

Date: 06/01/08  
 Designed: DAB  
 Drawn: 1" = 20'  
 Sheet No. 1 of 1

**EXHIBIT "B" Rent Schedule**

KEY WEST BIGHT

EXHIBIT "B"

Tenant: Mel Fisher Maritime Society Square Feet 1076 CAM  
 Location: Turtle Museum Square Feet BASE RENT  
 Contact: Melissa Kendirck Term 5 years

Year #	Period Beginning	Base Rent per sq. ft.	5% Increase	Base Rent		Tax, Ins., CAM \$4.85	Tax, Ins., CAM	Total Rent Before Sales Tax		Sales Tax EXEMPT	Total Rent With Tax		TOTAL RENT
				Annual	Monthly			Annual	Monthly		Monthly	ANNUAL	
1	July 1, 2009	\$1.00		\$1.00	\$0.00	\$5,218.60	\$434.88	\$434.88	\$434.88	EXEMPT	\$434.88	\$5,218.60	
2	July 1, 2010	\$1.00		\$1.00	\$0.00	\$5,479.53	\$456.63	\$456.63	\$456.63	EXEMPT	\$456.63	\$5,479.53	
3	July 1, 2011	\$1.00		\$1.00	\$0.00	\$5,753.51	\$479.46	\$479.46	\$479.46	EXEMPT	\$479.46	\$5,753.51	
4	July 1, 2012	\$1.00		\$1.00	\$0.00	\$6,041.18	\$503.43	\$503.43	\$503.43	EXEMPT	\$503.43	\$6,041.18	
5	July 1, 2013	\$1.00		\$1.00	\$0.00	\$6,343.24	\$528.60	\$528.60	\$528.60	EXEMPT	\$528.60	\$6,343.24	

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

Tenant shall deposit **\$0.00** at the commencement of this lease as a security deposit in accordance with Section 5 of this lease

**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.



**EXHIBIT "D"**

TENANT'S written notice of acceptance of the Demised Premises and setting forth the commencement and expiration dates of the lease.

# 7583

# Executive Summary



**TO:** Key West Bight Board

**CC:** Raymond Archer

**FR:** Marilyn Wilbarger, RPA, CCIM

**DT:** May 20, 2009

**RE:** Turtle Cannery Building Proposals

*Mel Fisher's 200 Green St.*

## ACTION STATEMENT

This is a request to consider a new agreement with the Mel Fisher Maritime Museum for the operation of a public education exhibit in the turtle cannery building.

## HISTORY

This property previously housed a turtle museum operated by Captain Tina Brown and is now vacant. Advertisement for letters of interest was published on April 19, 2009 and based upon the submittals the following terms are proposed:

**Demised Premises:** 1067 square feet located on the dock on in Key West Bight

**Use:** Public education exhibitions representative of the history of the building, turtle industry, and historic seaport coupled with evening public programming such as lectures, events, and as a meeting place for the Historical Maritime Society

**Term:** Five years

**Rent:** Tenant shall pay its pro-rata share of CAM, Taxes, and insurance.

**Utilities:** Tenant shall pay for all utility usage

**Insurance:** Tenant to provide general liability and contents coverage

**Security Deposit:** Waived

**Advantages:** The tenant will install a permanent exhibition on the turtle industry in addition to future changing topical exhibitions focused on the history of the Bight. They will seek a National Register Historic Site Marker as well as making improvements to the building including upgrading electrical to provide better safety.

**Disadvantages:** There are no known disadvantages.

**FINANCIAL STATEMENT:**

The Mel Fisher Museum has agreed to pay their proportionate share of the common area costs for tax, insurance and maintenance. They will be marketing the museum with TDC funding which will attract more visitors to the Bight and hope to increase local participation through their additional educational programming.

**RECOMMENDATION:**

The quality, professionalism and accreditation of the Mel Fisher Museum, coupled with their proposed utilization, is an opportunity for an excellent collaboration. Staff believes that this use will bring renewed interest in the historic maritime uses and further the goal of retaining and promoting the history of the Key West Bight.

**ATTACHMENTS:**

Proposal

Exhibition Planning Document

# THE MEL FISHER MARITIME HERITAGE SOCIETY

200 GREENE STREET  
KEY WEST, FL 33040  
305.284.2633 ♦ FAX 305.284.6671 ♦ WWW.MELFISHER.ORG

May 18, 2009

Ms. Marilyn Wilbarger  
Historic Seaport at the Key West Bight  
PO BOX 1409  
Key West, Florida 33040-1409

Dear Ms. Wilbarger,

On behalf of the Mel Fisher Maritime Museum, I am submitting this letter of interest to the Historic Key West Bight Management Board to operate a maritime museum in the old turtle cannery building. We seek to provide an authentic interpretation of the Old Cannery Building, the Key West turtle fishing industry, and through future changing exhibitions reveal the fascinating history of the Key West waterfront and specifically the Key West Bight.

While the Mel Fisher Maritime Museum (MFMM) is renowned for its shipwreck collections, exhibitions and public programs, the basis for all of our activities is sound archaeological investigation.

It may come as a surprise to some to learn that the MFMM has had a connection to the turtle cannery since 2000. The State of Florida Division of Historical Resources (DHR) learned in early 2000 that the City of Key West had been issued a dredging permit for the old turtle kraals by the Florida Department of Environmental Protection. The kraals, being a historic site, and specifically having a National Register of Historic Places site designation, meant that DHR needed to perform an archaeological survey of the cultural materials that would be disturbed by the dredging and preside over the dredged materials.

This interagency miscommunication left DEP & DHR in a difficult position—neither had funding nor the resources to perform the required investigation. After a protracted wait to be issued the work permit, city staff was anxious to immediately begin their project. Since DHR had worked with the MFMM on prior occasions and our Key West location made us the logical and best choice for the work. MFMM dedicated its archaeological team, organized a crew of skilled volunteers, and undertook the unfunded project immediately.

The state provided some plastic bags, the museum provided everything else and the project began. The submerged cultural resources that were recovered from the kraals were both vast and impressive. As with all artifacts and materials we recover, a cleaning and conservation effort followed the fieldwork. When conservation and cataloguing of the materials were completed the museum's research staff began the five-year effort to build the historical record of the objects.

In addition to the investigation of the objects themselves, the museum staff sought print materials, historic records, contemporary images, interviews and oral histories of Key Westers who had been involved in the turtle fishing industry. Having this well developed historical record allows us to interpret the artifacts, and so planning for an exhibition began.



In 2007, the MFMM applied for exhibition funding to create a museum exhibition entitled “*The Rise and Fall of the Key West Turtle Fishing Industry*”. Funding was granted in 2008 and work began on creating the exhibition. Our original plans were to present the exhibition at MFMM in our changing galleries with an opening date of June 2009.

Upon learning of the upcoming availability of the turtle cannery building itself, MFMM staff publicly expressed an interest in presenting the exhibition within the actual historic structure. A venue change would require some technical changes to the materials used in the fabrication of the exhibition, as well as floor plan adjustments reflective of the available space within the cannery building that would better address the harsh environmental conditions of a non-climate controlled dockside space.

We cannot think of a better circumstance for the cannery and the Key West Bight than to install the interpretive exhibition at the precise location that has such a rich historic pedigree.

### ***The Mission of the Mel Fisher Maritime Museum***

The Mel Fisher Maritime Heritage Society is a 501 (c) (3) not-for-profit organization, existing for the purpose of research; accumulating and disseminating information; providing educational services to the public on maritime and colonial activity in the New World and preserving maritime cultural resources. It investigates and supports investigation into such topics as are relevant to this inquiry, including Marine Archaeology; Related Natural Resources; Conservation; Preservation and Exhibition of Artifacts; New World Coinage; Admiralty Law; and the Arts, Crafts and Trades practiced during the 16th through 18th centuries. *From MFMHS By-laws, revised and ratified by Board of Directors, September, 2001*

### ***The History of the Mel Fisher Maritime Museum***

Mel Fisher, with a group of friends, founded the Society in 1982. Education and exhibitions were always part of its mission. It began with the loan of a few objects from Mr. Fisher and the gift of a large number of photographs of the search for the 1622 Fleet. When, in 1985, Fisher found the “Main Pile” of the *Nuestra Señora de Atocha*, the Society’s museum became a world-class tourist destination. In 1986, Fisher arranged for a gift to the Society of all the artifacts that remained in his possession from his discoveries before 1985. This included cannons, gold and silver bars and bullion, rare jewelry, and everyday items. With collection additions came the need for more staff, including the first professional executive director. In 1991, the Society hired Dr. Madeleine Burnside, who added other museum professionals, including the current executive director, Melissa Kendrick.

In 1991, the Society’s archaeological team developed its first project – a survey and excavation of the *Henrietta Marie*. It was also called in as a consultant on a project now known as the St. John’s Bahamas wreck and commenced excavating that ship in 1992 – six more field seasons have been completed on that site and three more on the *Henrietta Marie*. Various publications, both print and electronic, have emerged from this fieldwork combined with extensive research, including books for all ages, archaeological field reports, and numerous articles. The Society has also performed various archaeological services for the State of Florida, including the charting of the *Wedge Wreck* (1994) as an underwater park and the excavation of the Key West Turtle Kraals (2000), as well as the ground penetrating radar survey and comprehensive research of the African Burial Ground at Higgs Beach (2002).

The Society has become known for sound archaeology, excellent research and hard-hitting exhibitions. It has gone beyond safe subjects, tackling the slave trade and the European decimation of Native cultures. In 1995, the Society’s museum launched its first major traveling exhibition, *A Slave Ship Speaks, the Wreck of the Henrietta Marie*. This exhibition, still on tour, has attracted record attendance wherever it has been shown. More than 4 million people have attended this exhibition. Other traveling exhibits followed and have been seen throughout the nation.





In 1998, the National Oceanic and Atmospheric Administration confiscated a large number of artifacts from the *1733 Fleet* and placed them under the long-term care of the Society. This was a landmark decision, marking the coming of age of the Society as a recognized, independent, archaeological institution. The origin of the collection in Spanish history and the Slave Trade has allowed the Society to carve a niche in the history of the nation. The museum makes a concentrated effort to acquire all the artifacts from its shipwrecks through gifts in order to fill out the archaeological and research record. The museum strictly adheres to the AAM/ICOM ethical guidelines for collecting materials.

1998 also marked the death of the museum's founder, Mel Fisher. Where the Society and its museum had long received national and statewide recognition for its activities, locally it was perceived as a tourist attraction. When it withstood the death of its founder, its independence was demonstrated to the community who responded by dramatically increasing the Society's resources in terms of gifts, volunteers, and overall support. In 2000, the museum was named the official maritime museum of Monroe County. The Society also bought the building in which it has always been housed; a large naval storehouse located in a historic district and built in 1908, beginning a long-term restoration effort in the heart of the historic district.

The museum board has changed from friends and family to a group including an internationally known historian, a trustee of the Institute of Nautical Archaeology, a photojournalist, a college president, businessmen and women, and retirees.

After rigorous scrutiny by a national panel of museum professionals the Mel Fisher Maritime Museum attained accreditation by the American Association of Museums (AAM) in 2003.

Since 2003, the museum has continued the conversation efforts on its many collections; advanced the relevance of its collections through primary research; and increased public engagement with the collections through a series a temporary and traveling exhibitions, public lectures, seminars and workshops; after-school and summer camp programs for children; through an intense elder hostel program offered in partnership with Barry University; and provided access to the museum's world-class personnel by hosting internships and fellowships to undergraduate and graduate students.

The museum's senior staff provide countless community service hours annually as board members of local organizations including the Chamber of Commerce, Historic Florida Keys Foundation, Harry S Truman Little White House Foundation, Florida Association of Museums, Florida Connecting to Collections Task Force, Florida Keys Community College Foundation Board, the Florida Keys National Marine Sanctuary Board, Higgs Beach African Burial Ground Memorial Association, Key West Maritime Historical Society and the Friends of Fort Taylor.

### ***Proposed Usage for the Building***

Within the turtle cannery the MFMM would fabricate and install the public education exhibition "*The Rise and Fall of the Key West Turtle Fishing Industry*". The exhibition would feature original artifacts recovered from the turtle kraals dredging project, historic photographic images, maps, charts, models, oral histories, and interviews to provide a compelling look at the turtle fishing industry from its earliest historical reference to the industry shutdown in 1971.

MFMM has worked with the Key West Maritime Historical Society and their members including Florida Room librarian Tom Hambright to identify local resources to document the story of the building.



MFMM has received the Wright Langley collection of photographs and manuscripts documenting the involvement of the *Schooner Adams* in the turtle fishing industry. The State of Florida will lend additional artifacts from their archaeological holdings. Florida Fish and Wildlife will license the exhibition of the recovered turtle bones.

Beyond the exhibition, MFMM would create, organize and present museum-based educational programs to further the public's understanding of the turtle fishing industry in general and the cannery specifically. A website would be developed to support public awareness of the overall project with links from the MFMM website that enjoys 18,000+ unique visits monthly.

Future exhibitions are envisioned to focus on the history of the Bight, commercial fishing, sponging, shrimping, historic photography, waterfront development, and the maritime trades practiced throughout time. These topical exhibitions would be added to the turtle cannery with an eye toward providing new reasons to visit the museum. A series of maritime experiences have been planned by the MFMM staff for the upcoming year. It would be desirable to present many of these public programs in the evenings and on weekends in the Bight to increase local participation. Additionally, MFMM would make the turtle cannery space available to the Key West Maritime Historical Society as a meeting place.

### ***Proposed Improvements for the Building***

MFMM would install the permanent exhibition on the turtle cannery. In order to do so, some electrical upgrades would need to be made to the main panel box to provide better safety where electricity is in such close proximity to water. Some additional electrical safety precautions would be made to the outlets that were perilously installed at eye-height to children. MFMM would install security measures to protect the collection housed within the building. MFMM, with the permission of the KW Bight Management Board and the City of Key West would like to have an official National Register Historic Site marker installed identifying the building as an authentic aspect of American history, which we feel would add to the visitor appreciation of the seaport's historic past. MFMM would develop future changing exhibitions for display at the building.

### ***Income to the Community Redevelopment Agency***

Entering into an agreement with MFMM to operate the turtle cannery as a maritime museum and educational center would economically benefit the CRA in many ways.

Initially, MFMM would fulfill at MFMM's expense, the terms and conditions of the Florida Department of State's Historic Preservation grant that provided the CRA funding to rebuild the then collapsed cannery structure under the condition that the building would be operated as a maritime museum.

The operation of the turtle cannery by MFMM would directly benefit the CRA in increased parking revenues, and increased percentages of food and beverage purchases from the adjoining KW Bight restaurants and bars. We believe that our substantial investment in the museum exhibition will require an even larger MFMM promotional and marketing effort. The traditional promotional efforts, which were long absent at the cannery, would be implemented. A brochure, website, publicity and advertising efforts would come online rather quickly. The museum currently holds a \$16,500 TDC advertising grant for turtle exhibition related promotion and those funds would be expended to attract visitors to the museum and accompanying educational programs.

MFMM enjoys considerable visitation (approximately 200,000 people annually) at its Greene Street location. Our staff would promote a trip to the turtle cannery museum as we similarly do with the



Hemingway Home Museum. This would increase foot traffic from cruise ship passengers and vehicle passengers –scooters, cyclists, and cars into and through the Bight.

MFMM's activities enjoy significant interest from news media, TV producers, and documentary filmmakers. Over the 27 year history of the museum, we have developed strong relationships at National Geographic, the Discovery Channel, the History Channel, CNN, and the major TV networks. Our publicity effort to attract coverage of the new museum would leverage those longstanding relationships to the benefit of all within and around the Bight.

With the closure of the only historic offering in the Bight, Flagler Station, the overall historic ambiance of the Historic Key West Bight has suffered. This is unfortunate for many reasons, but especially because we know that TDC Visitor surveys report that:

- **34%** of all respondents **visited museums**
- **16%** of all respondents cited the **historic** aspects of Key West played an important role in their selection of a vacation destination.
- **18.4%** of all respondents indicated **History** in their top five most satisfying features of Key West

When you consider that the museum's proposed exhibition and accompanying programs will respond to the interests of so many people, in so many ways, our attempts to illustrate the economic importance of this project to the Historic Key West Bight are magnified.

As a not-for-profit museum with a history of successfully attracting significant grant funding, we can envision a cooperative effort with the CRA and the city to initiate grant applications for future exhibitions and improvements to the turtle cannery building.

We hope that you find this proposal communicates our commitment to cultural excellence and a willingness to work in concert with the Bight Board to enhance our historic waterfront. We feel that we offer a first-class organization of not-for-profit museum professionals, as evidenced by the Mel Fisher Maritime Museum accreditation by the American Association of Museums. Since less than 5% of America's museums are accredited, we are confident we can realize the project vision. We think that having MFMM, Monroe County's official maritime museum, as a tenant at the Historic Seaport would be the beginning of an excellent collaboration.

We look forward to discussing the project with you.

Sincerely,



Melissa Kendrick  
Executive Director/CEO  
[mkendrick@melfisher.org](mailto:mkendrick@melfisher.org)

Attachments: The Key West Citizen April 7-8, 2000  
Exhibition Planning Document





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294-2633

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294-2633 X 24

K100 K300

KEY WEST BIGHT

EXHIBIT "B"

Tenant: Mel Fisher Maritime Society Square Feet 1076 CAM

Location: Turtle Museum Square Feet BASE RENT

Contact: Melissa Kendrick Term 5 years

YEAR #	Period Beginning	Base Rent per sq. ft.	5% Increase	Base Rent Annual	Base Rent Monthly	Tax, Ins., CAM Annual	Tax, Ins., CAM Monthly	Total Rent Before Sales Tax Monthly	Total Rent With Tax Monthly	Sales Tax EXEMPT Monthly	TOTAL RENT ANNUAL
1	July 1, 2009			\$1.00	\$0.00	\$5,218.60	\$434.88	\$434.88	\$434.88	EXEMPT	\$5,218.60
2	July 1, 2010			\$1.00	\$0.00	\$5,479.53	\$456.63	\$456.63	\$456.63	EXEMPT	\$5,479.53
3	July 1, 2011			\$1.00	\$0.00	\$5,753.51	\$479.46	\$479.46	\$479.46	EXEMPT	\$5,753.51
4	July 1, 2012			\$1.00	\$0.00	\$6,041.18	\$503.43	\$503.43	\$503.43	EXEMPT	\$6,041.18
5	July 1, 2013			\$1.00	\$0.00	\$6,343.24	\$528.60	\$528.60	\$528.60	EXEMPT	\$6,343.24

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

Tenant shall deposit \$0.00 at the commencement of this lease as a security deposit in accordance with Section 5 of this lease

Customer ID . . . . . : 7383

Type information, press Enter.

Primary bill to

Tax exempt . . . . . Y Y=Yes N=No  
Tax exempt number . . . . . 85-8012672187C-7  
Social security number . . . . .  
Suppress statement . . . . . -  
A=Suppress all statements  
B=Suppress zero and credit balance statements  
C=Suppress only credit balance statements  
Z=Suppress only zero balance statements  
N=Do not suppress any statements  
Blank=Use customer type  
  
Exclude penalties . . . . . - Y=Yes, N=No, Blank=Use Customer Type  
Exclude finance charges . . . . . - Y=Yes, N=No, Blank=Use Customer Type  
Location ID maintenance . . . . . - Y=Yes

F3=Exit F12=Cancel

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