

RESOLUTION NO. 17-015

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA), APPROVING THE ATTACHED ASSIGNMENT OF LEASE AND CONSENT OF LESSOR FROM SCHOONER EXPLORATION ASSOCIATES LTD (ASSIGNOR) TO SCHOONER EXPLORATION ASSOCIATES OF MAINE, LLC (ASSIGNEE) FOR THE SCHOONER APPLIEDORE TICKET BOOTH LOCATED AT WILLIAM STREET PLAZA; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 16-204 the CRA approved the original Lease Agreement with Schooner Exploration Associates LTD; and

WHEREAS, City staff recommends approval of an assignment of lease from Schooner Exploration Associates LTD to Schooner Exploration Associates of Maine, LLC; and

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

Section 1: That the attached Assignment of Lease Agreement and Consent of Lessor from Schooner Exploration Associates LTD to Schooner Exploration Associates of Maine, LLC for the Schooner Appledore Ticket Booth located at William Street Plaza is hereby approved.

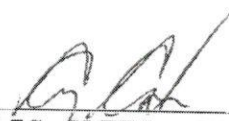
Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Agency.

Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 4th day of January, 2017.

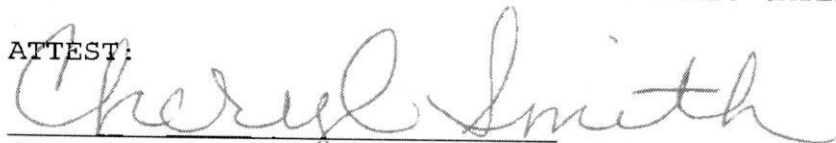
Authenticated by the presiding officer and Clerk of the Agency on January 5, 2017.

Filed with the Clerk January 5, 2017.

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

  
CRAIG CATES, CHAIRMAN

ATTEST:

  
CHERYL SMITH, CITY CLERK

# Executive Summary



**TO:** Key West Bight Board  
Community Redevelopment Agency

**CC:** Doug Bradshaw  
Jim Scholl

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

**DT:** November 21, 2016

**RE:** Lease Assignment for Schooner Exploration ticket and check in booth

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## ACTION STATEMENT

This is a request received from the tenant to approve a lease assignment from Schooner Exploration Assoc. LTD to Schooner Exploration Associates of Maine, LLC for the Schooner Appledore ticket booth located at William Street Plaza.

## HISTORY

The lease agreement is dated June 22, 2016 and the term is for five years. The Assignor has entered into an agreement to sell his majority position in the business which necessitates a lease assignment. The Assignee will be Schooner Exploration Associates of Maine, LLC, the owner of the Schooner Appledore and its affiliated assets. This company is 49% owned by Schooner Exploration Assoc. LTD (the current tenant), and 51% Appledore Marine Leasing LLC whose members also own and operate Sebago Watersports. The terms of the lease will not be changed and are as follows:

<b>Demised Premises:</b>	Booth containing 30 square feet
<b>Use:</b>	Ticket sales and check-in for the patrons of the Schooner Appledore and the sale of tickets for businesses conducted by Landlords other tenants within the Historic Seaport
<b>Term:</b>	5 years, effective January 1, 2016
<b>Rent:</b>	\$625.00 monthly base rent
<b>Increase:</b>	Increase in base rent annually based upon the Consumers Price Index
<b>Additional Rent:</b>	Tenant shall pay its pro-rate share of common area maintenance, taxes, and insurance
<b>Percentage Rent:</b>	None
<b>Utilities:</b>	Tenant shall pay for all utility usage.

**FINANCIAL STATEMENT:**

There is no financial impact created by the lease assignment.

**CONCLUSION:** The lease may be assigned with the consent of the Landlord pursuant to Section 10, excerpted here for your reference, as follows:

**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.

**ATTACHMENTS:**

Assignment of Lease and Consent of Lessor  
Lease  
Assignee corporate filing



## ASSIGNMENT OF LEASE AGREEMENT AND CONSENT OF LESSOR

THIS ASSIGNMENT (this "Assignment") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Schooner Exploration Associates, LTD, Inc. a corporation organized under the laws of the State of Delaware as ("Assignor") and Schooner Exploration Associates of Maine, LLC a Maine Limited Liability Company as ("Assignee").

A. Assignor, as tenant and Caroline Street Corridor and Bahama Village Community Redevelopment Agency, as landlord ("Landlord") have previously entered into that certain lease dated June 22, 2016 per Resolution 16-204, ("Lease"), a copy of which is attached hereto as Exhibit A. The Lease pertains to real property located at Northeast corner William Street Plaza, in Monroe County, Florida, and more particularly described on Exhibit B, which is attached hereto and incorporated by reference.

B. Assignor desires to assign all of its right, title and interest in the Lease to Assignee, Assignee desires to accept and assume the same, and Landlord is willing to consent to the proposed Assignment, all on the terms and conditions hereof.

**NOW THEREFORE**, in consideration of the mutual terms and conditions herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Assignor hereby assigns and transfers unto Assignee all of its right, title, and interest in and to the Lease, subject to all the conditions and terms contained therein.

2. Assignor herein expressly represents and warrants that (a) it is the lawful and sole owner of the lessee's interest assigned herein, (b) Assignor's interest in the Lease is free from all encumbrances, and (c) Assignor has not received any written notice from Landlord that Assignor has failed to perform all the duties and obligations or failed to make any payments required under the Lease.

3. Assignor herein expressly acknowledges, pursuant to paragraph 8 of the Lease, that this Assignment shall not relieve Assignor from liability for payment of rent or from the obligation to keep and be bound by the terms, conditions, and covenants contained in the Lease, provided, however, no such liability shall extend beyond the expiration of the current expiration date of the initial Term (as defined in the Lease) which is December 31, 2020.

4. Assignee herein expressly agrees to assume, perform and be liable for all of the duties and obligations of "Tenant" required by and under the terms of the Lease, including but not limited to, the obligation to pay all rent due thereunder from and after the effective date of this Assignment.

5. This Assignment is predicated upon the sale between Assignor and Assignee of the business known as "Schooner Appledore Ticket Booth" and conducted on and from the Premises. References herein to the "effective date" shall mean the date of the closing of the aforementioned sale transaction.

6. Assignee agrees to indemnify, defend and hold Assignor and its legal representatives, successors and assigns harmless from and against any and all losses, damages, claims, demands, suits, judgments, liabilities, costs and expenses (including, without

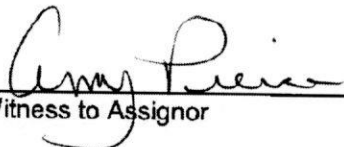
limitation, reasonable attorneys' fees and court costs), suffered or incurred by any of said indemnitees under or in connection with the Lease arising on or after the effective date hereof. Assignor agrees to indemnify, defend and hold Assignee and its legal representatives, successors and assigns harmless from and against any and all losses, damages, claims, demands, suits, judgments, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs), suffered or incurred by any of said indemnitees under or in connection with the Lease and arising prior to the effective date hereof.

7. Assignor herein expressly agrees to transfer the security deposit currently held by the Landlord to the Assignee as security for the faithful performance by Assignee of the terms, conditions and covenants of the Lease.

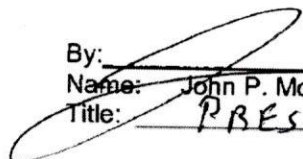
8. In the event Assignee files any form of bankruptcy, Landlord shall be entitled to immediate termination of the automatic stay provisions of 11 U.S.C. §362, granting Landlord complete relief and allowing Landlord to exercise all of its legal and equitable rights and remedies, including, without limitation, the right to terminate the Lease and dispossess Assignee from the Premises in accordance with Florida law. Additionally, Assignee agrees not to directly or indirectly oppose or otherwise defend against Landlord's effort to gain relief from any automatic stay. 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 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. Assignee 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).

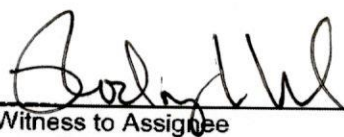
**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties have executed this Assignment of Lease Agreement as of the date first above written.

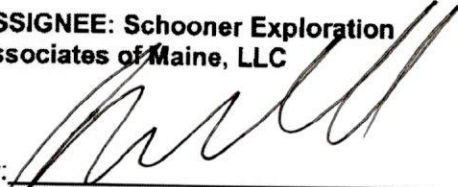
  
\_\_\_\_\_  
Witness to Assignor


**ASSIGNOR: Schooner Exploration  
Associates, LTD, Inc.**

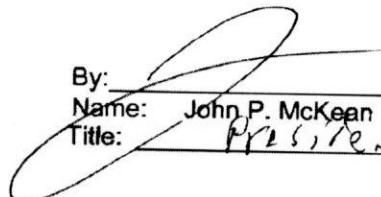
By:   
Name: John P. McKean  
Title: PRESIDENT

  
\_\_\_\_\_  
Witness to Assignee

**ASSIGNEE: Schooner Exploration  
Associates of Maine, LLC**

By:   
Name: Paul H. Mc Grail  
Title: \_\_\_\_\_

  
\_\_\_\_\_  
Witness to Assignee

By:   
Name: John P. McKean  
Title: PRESIDENT

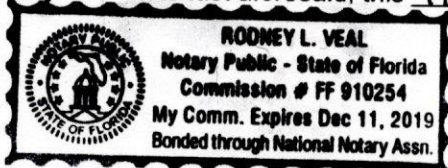


### ASSIGNOR ACKNOWLEDGMENT

State of Florida       }  
County of Monroe     }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Paul McNeal to me personally known or who provided \_\_\_\_\_ as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 17<sup>th</sup> day of JANUARY, 2017.



[Signature]  
Notary Public, State of Florida  
My Commission Expires:

### ASSIGNEE ACKNOWLEDGMENT

State of Florida       }  
County of Monroe     }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, \_\_\_\_\_ to me personally known or who provided \_\_\_\_\_ as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of Florida  
My Commission Expires:

### ASSIGNEE ACKNOWLEDGMENT

State of Florida       }  
County of Monroe     }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, \_\_\_\_\_ to me

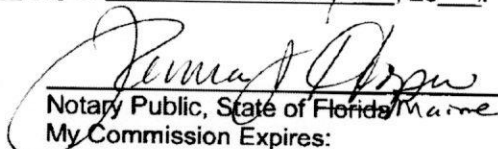


### ASSIGNOR ACKNOWLEDGMENT

Maine  
State of ~~Florida~~ Knox }  
County of ~~Monroe~~ }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, John P. McKeen to me personally known or who provided \_\_\_\_\_ as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 11 day of January, 2017.

  
Notary Public, State of ~~Florida~~ Maine  
My Commission Expires:

TAMRA J. HOOPER  
NOTARY PUBLIC, STATE OF MAINE  
MY COMMISSION EXPIRES MARCH 2, 2017

### ASSIGNEE ACKNOWLEDGMENT

State of Florida }  
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, \_\_\_\_\_ to me personally known or who provided \_\_\_\_\_ as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of Florida  
My Commission Expires:

### ASSIGNEE ACKNOWLEDGMENT

State of Florida }  
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, \_\_\_\_\_ to me

personally known or who provided \_\_\_\_\_ as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of Florida  
My Commission Expires:

### CONSENT OF LANDLORD

I, Craig Cates, Chairman of the Caroline Street Corridor and Bahama Village Community Redevelopment Agency, the Landlord named in that certain lease dated June 22, 2016 per Resolution 16-204 herein expressly consent to the Assignment of the Lease Agreement between Assignor and Assignee of the business known as "Schooner Appledore Ticket Booth" which is conducted on and from the Premises.

I also consent to the agreement by Assignee to assume, after the effective date of the Assignment, the payment of rent and the performance of all duties and obligations as set forth in the Lease and accept Assignee as tenant in the place of Assignor alone. Landlord hereby agrees that (i) any security deposit delivered by Assignor to Landlord in connection with the Lease will be returned to Assignor within 15 days following the effective date of the Assignment and (ii) no fee will be charged by Landlord in connection with the Assignment and Landlord's consent thereto.

Defined terms used in this Consent of Landlord shall have the meanings ascribed to such terms in the Assignment of Lease by and between Schooner Exploration Associates, LTD ("Assignor") and Schooner Exploration Associates of Maine, LLC "Assignee") to which this Consent of Landlord is attached.

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

*Cheryl Smith*

Witness as to Landlord

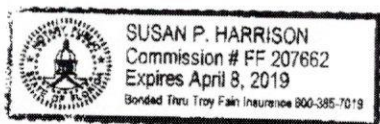
*Craig Cates*

Craig Cates, Chairmen

State of Florida       }  
County of Monroe     }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Craig Cates to me personally known or who provided \_\_\_\_\_ as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 5<sup>th</sup> day of JANUARY, 2017.



*Susan P. Harrison*  
Notary Public, State of Florida  
My Commission Expires: 4-8-19