

RESOLUTION NO. 12-239

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING THE ATTACHED "FIRST AMENDMENT TO LEASE AGREEMENT" BETWEEN THE CRA AND YANKEE FREEDOM III, LLC; APPROVING THE ATTACHED "KEY WEST BIGHT MARINA COMMERCIAL DOCKAGE AGREEMENT" BETWEEN THE CITY AND YANKEE FREEDOM III, LLC; PROVIDING FOR AN EFFECTIVE DATE

WEHREAS, in January 2011, the CRA approved a lease of Thompson's Fish House and adjacent dockage, to Yankee Freedom III, LLC, for use as an interpretive museum, office space, storage area, and staging area for passengers waiting to board the ferry to the Dry Tortugas; and

WHEREAS, there is a necessity to re-locate the Yankee Freedom Dry Tortugas Ferry, due to the deterioration of the historic Thompson's Fish House; and

WHEREAS, City staff recommends the approval of the attached Amendment to Lease Agreement which provides for the temporary relocation of Yankee Freedom to the Ferry Terminal dock at its current dockage rates, and the attached Key West Bight Marina Commercial Dockage Agreement;

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

Section 1: That the attached "First Amendment to Lease Agreement" is hereby approved.

Section 2: That the attached "Key West Bight Marina Commercial Dockage Agreement" is hereby approved.

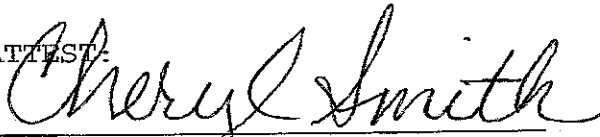
Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Agency.

Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 7th day of August, 2012.

Authenticated by the presiding officer and Clerk of the Agency on August 8, 2012.

Filed with the Clerk August 8, 2012.

  
CRAIG CATES, CHAIRMAN

ATTEST:  
  
CHERYL SMITH, CITY CLERK



## THE CITY OF KEY WEST

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

# EXECUTIVE SUMMARY

**To:** Key West Bight Board  
**CC:** David Fernandez  
**From:** Marilyn Wilbarger, RPA, CCIM  
**Date:** June 21, 2012

**Reference:** Yankee Freedom Ferry Terminal Re-Location

**ACTION:** This is a request to approve the re-location of the Yankee Freedom Dry Tortugas Ferry to the Ferry Terminal.

### BACKGROUND:

The historic Thompsons Fish House was leased to the Yankee Freedom in January of 2011 for the purposes of providing a free interpretive museum for the ecological and historical attributes of the Dry Tortugas, Fort Jefferson and the Key West Bight in addition to providing a staging area for passengers waiting to board the ferry, storage and an office.

Recently the building has experienced severe deterioration with large chunks of concrete literally falling off onto walkways. The eminent safety hazard this created has forced the closure of the museum. Temporary shoring of the building has been installed to allow time for structural engineers to analyze the building and foundation and develop a plan. The shoring is connected to the pilings forcing the re-location of the Yankee Freedom Ferry to the end of the fuel dock. This in itself has also created logistical problems for the operation of the vessel.

Staff has worked diligently and urgently with the tenant to try and put together a plan that will work for everyone. We have created two scenarios to enable flexibility in the final agreement as at this point in time there are still many unknowns, chiefly how long the re-construction will take, and the long term impact upon occupancy of the fish house structure. Therefore we have developed a plan that contemplates the proposed re-location on a temporary and permanent basis, as follows;

1. The Yankee Freedom would move its dockage to the Ferry Terminal. The rent will be at the current rate of \$28.71 and would apply for temporary re-location during renovation subject to any CPI increases as per the dockage agreement. The Ferry Terminal rate of \$33.71, based on the upgraded facility and long term agreement, will

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

MEMORANDUM



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MEMORANDUM

apply in the event that the re-location becomes permanent after the completion of the re-construction.

2. The city would install pump-out and three phase electric at their expense which the Yankee would repay if they return to their current dock space. The city has existing plans for these improvements in conjunction with the pier extension and agrees with this point however in the event that these improvements are reimbursable under the existing grant we would not seek reimbursement from the tenant in the event that they return to their current dock space.

3. The Ferry Terminal usage agreement would be for the same term that Key West Express has which is 10 years, with the option by Yankee to return to their current space after construction on the fish house is complete. If the Yankee Freedom returns to their current dock space the dockage agreement will be as it is now, month to month or up to one year.

4. The Thompson Fish House would remain open and staffed by the Tenant as a free museum for the Historic Seaport and Fort Jefferson National Park. During the time that the Yankee Freedom is re-located to the terminal the rent would be reduced by 50% and remain at that rate should the Yankee remain at the Ferry Terminal as they will have the continued expense of staffing the museum with their operations in a separate location. In the event that the tenant returns to the original space the current lease rates and terms will apply.

5. The city would provide suitable storage space for the Yankee under the Ferry Terminal building, a place for the ice machine and an office in the terminal suitable for passenger check-in. Space is available and would be at no charge during renovation re-location. In the event that the re-location becomes permanent the current rental rates will apply to both office and storage spaces.

6. There will be room at the dock for the Yankee to dock at the terminal and remain in place on bad weather days. In the unlikely event that there is also a KWE ferry in port the Yankee Freedom will be re-located to the current dock space.

### FINANCIAL:

There is a spreadsheet attached that breaks down the financial implications of both the temporary and permanent re-locations as compared to the current rates and rents. The temporary re-location does provide financial relief yet will not lower the tenant's true costs as they will staff two locations and have the costs of re-printing, publishing and marketing the re-location. The permanent re-location is a wash as described therein.

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**RECOMMENDATION:** Staff recommends approval of the proposed plan to re-locate the Yankee Freedom on a temporary basis with the option to stay permanently or return to the current dock space as outlined above.

MEMORANDUM

*Key to the Caribbean — average yearly temperature 77 ° Fahrenheit.*

# Yankee Freedom Ferry Terminal Re-Location

	Current Cost	Temporary Re-Location	Permanent Re-Location
Dockage	\$28.71	\$28.71	\$33.71
LOA	100	100	100
Monthly	\$2,871.00	\$2,871.00	\$3,371.00
Annual	\$34,452.00	\$34,452.00	\$40,452.00
Fish House Museum		50% less	
Square Feet	1728	1728	1728
Rate	\$23.10	\$11.55	\$11.55
Monthly Rent	\$3,326.40	\$1,663.20	\$1,663.20
Annual Rent	\$39,916.80	\$19,958.40	\$19,958.40
Ferry Terminal Storage			
Square Feet		0	400
Rate		0	\$12.00
Monthly Rent		0	\$400.00
Annual Rent		0	\$4,800.00
Ferry Terminal Office			
Square Feet		0	228
Rate		0	\$36.00
Monthly Rent		0	\$684.00
Annual Rent		0	\$8,208.00
<b>Facility/Dock Total</b>	<b>\$74,368.80</b>	<b>\$54,410.40</b>	<b>\$73,418.40</b>

## FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between Caroline Street Corridor and Bahama Village Community Redevelopment Agency hereinafter ("LANDLORD") and Yankee Freedom III, LLC, (hereinafter "TENANT").

### WITNESSETH

WHEREAS, LANDLORD and TENANT entered into a Lease Agreement on the 5th day of January, 2011, (the "Lease Agreement"), pertaining to the premises located on D Dock in the Key West Bight, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, the Demised Premises referred to in the Lease Agreement are in disrepair and will require extensive rehabilitation; and

WHEREAS, the LANDLORD and TENANT now desire to amend their Lease Agreement in order to accommodate the parties.

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

Section 1. The Lease Agreement is hereby amended by the addition of the following paragraph:

21. REHABILITATION OF DEMISED PREMISES - Commencing on the \_\_\_\_ day of \_\_\_\_\_, 2012, TENANT will relocate the vessel "Yankee Freedom" to the Landlord's Ferry Terminal and discontinue use of the Demised Premises as a staging area for passengers waiting to board the Yankee Freedom to Fort Jefferson. However, TENANT shall continue to staff the Demised Premises as a free museum for the Historic Seaport and Fort Jefferson National Park. Thereafter, TENANT'S base rent and the corresponding sales tax for the Demised Premises for the remaining years of the Lease will be reduced the an amount equal to 50% of the amount on indicated on Exhibit "B" of the Lease Agreement. Provided, however, in the event TENANT returns the Yankee Freedom to its original berth prior to expiration of term of the Lease, the rates for base rent and the corresponding sales tax indicated on Exhibit "B" of the Lease Agreement shall be reinstated. The rates for tax, insurance and common area maintenance indicated on Exhibit "B" of the Lease Agreement shall not be reduced during the period of time that the Yankee Freedom is located at the Landlord's Ferry Terminal remainder of the term.

Section 2. Except as modified herein, the Lease Agreement as amended shall remain in full force and effect.

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

Caroline Street Corridor and Bahama  
Village Community Redevelopment Agency

ATTEST:

Cheryl Smith  
Cheryl Smith, City Clerk

By: Craig Cates  
Craig Cates, Chairman

Yankee Freedom III, LLC

Susan P. Harrison  
Witness

Chris Belland  
Chris Belland, CEO

The foregoing First Amendment to Lease Agreement was acknowledged before me this  
10<sup>th</sup> day of August, 2012, by Chris Belland, who is personally known to me, or  
who [ ] produced \_\_\_\_\_ as identification.



My commission expires

Susan P. Harrison  
Notary Public

Print name: Susan P. Harrison



**Exhibit "A"**  
**Lease Agreement**

**Key West Bight Marina  
Commercial Dockage Agreement**

This Agreement is made between the City of Key West, Florida, a municipal corporation, acting by and through its duly authorized Key West Bight Management District Board (hereinafter referred to as "Lessor"), and the below named Lessee.

**Lessee is identified as follows:**

Lessee's Name: YANKEE FREEDOM III, LLC

Home Address: 240 Margaret Street

City and State: Key West, FLORIDA

Business Name: YANKEE FREEDOM III, LLC

E-mail: \_\_\_\_\_

Business Occupational License # City: \_\_\_\_\_

Business Address: 240 Margaret Street

Phone: 294-7009 cell: 304-4940

City, State, zip: Key West, FL. 33040

Name of Lessee's Representative: Carol Hill & Edwin Swift

Address: 201 Front St. Suites 212 & 224

City, State, zip: Key West, FL. 33040

Home Phone: 293-6982 cell: 304-4940

Name of Vessel: YANKEE FREEDOM

Overall Length: \_\_\_\_\_ Beam: \_\_\_\_\_ Draft: \_\_\_\_\_ Pass. Cap. \_\_\_\_\_

Registration Country & number: \_\_\_\_\_

Primary propulsion: diesel \_\_\_\_\_ gasoline \_\_\_\_\_ sail \_\_\_\_\_

Carrier of Insurance on Vessel: ACORD/ACE Am. Ins. Co.

Insurance policy #: HUN 00891952

In consideration of the covenants and conditions hereinafter set forth, Lessor and Lessee agree as follows:

**1. Purpose**

In return for payments and other valuable consideration and covenants as set out below, Lessor desires to provide dockage space for the temporary use of Lessee, who desires to purchase the right for temporary use of such space through regular payments and through faithful performance of the covenants and stipulations herein. The permitted use of said vessel is limited to commercial operations, specifically described as Ferry operations to the Dry Tortugas. Lessee agrees that the vessel shall not be rented for purposes of domicile or overnight residence while moored in the dockage space.

**2. Relocation From Thompson Fish House**

The Parties have entered into this Dockage Agreement for the purpose of relocating Lessee's vessel from its berth at the Thompson Fish House during extensive renovations taking place at that location. Accordingly, except as provided herein below, this Dockage Agreement shall serve to cancel and rescind that certain Dockage Agreement between the parties dated May 27, 2011, pertaining to the Fuel Dock on Pier C, adjacent to the Thompson Fish House. No later than 5 days after the completion of the renovations at the Thompson's Fish House, Lessor shall notify Lessee in writing that the renovations are complete. No later than 10 after receipt of Lessor's notice, Lessee shall notify Lessor in writing as to whether Lessee will relocate Lessee's vessel back to the Fuel Dock on Pier C.

**3. Dockage Space**

The certain dockage space to be used by Lessee is identified as berth "Ferry Terminal Pier" at the Key West Bight Ferry Terminal of the Key West Bight Management District of the City of Key West, Florida. Said berthing space is for the exclusive purpose of docking the above-named vessel only, or another vessel of similar size and use as a replacement for the vessel, subject to the approval of the Key West Bight Management Board of the City of Key West. Lessee shall not sublease said berth or conduct or allow to be conducted any other business operation from said berth without first obtaining the required approvals contained herein. Such substitution without approval is grounds for immediate lease termination. In the event the Lessee's vessel remains in place on bad weather days during the time that there is also a Key West Express ferry due in port, the Lessee's vessel will be relocated to Key West Bight Fuel Dock.

**4. Term**

The term of this agreement shall be for a period of 10 years. Provided, however, in the event Lessee elects to relocate its vessel back to Pier C as provided for in paragraph 2 above, this Dockage Agreement shall terminate upon Lessee's relocation of its vessel and the Parties will execute a Dockage Agreement pertaining to Pier C with terms and conditions identical to the Dockage Agreement dated May 27, 2011.

**5. Third Party Use**

Lessor shall have the right to grant permission to a third party to use Lessee's berth whenever Lessee's vessel is absent for more than 24 hours, and to receive revenue therefrom without accounting to Lessee. Prior to removing his/her vessel from the marina for more than 24 hours duration, Lessee shall notify the Lessor's dockmaster at least 24 hours in advance of departure And 48 hours in advance of return.

#### **6. Rental Rate: Changes**

The monthly rent will be at the rate of \$28.71 per foot during the period of time renovations are taking place at the Thompson Fish House, subject to any adjustments contained in the May 27, 2011 Dockage Agreement. In the event that Lessee does not elect to relocate back to the Thompson's Fish House pursuant to paragraph 2 above, the rate of \$33.71 per foot will commence 10 days after Lessee's receipt of Lessor's notice referred to in paragraph 2 above. In addition, during the period of time renovations are taking place at the Thompson Fish House, Lessor will provide Lessee reasonable storage space under the Ferry Terminal building and an office space in the terminal building suitable for passenger check-in at no charge to Lessee. In the event that Lessee does not elect to relocate back to the Thompson's Fish House pursuant to paragraph 2 above, the Parties shall execute a lease agreement for the storage space and office space upon the terms and conditions contained in leases existing between Lessor and ferry terminal tenants at that time.

The monthly rental rate is \$ \_\_\_\_\_ per month, plus applicable sales tax of \$ \_\_\_\_\_ for a total of \$ \_\_\_\_\_ for dockage space, plus \$1.00 per passenger the vessel is rated to carry. If the 10 year agreement remains in place Lessee agrees that the rental rate shall be adjusted, at the commencement of each fiscal year for the City of Key West by increasing the base rent by any change in the U.S. Department of Commerce Consumer Price Index (CPI) for All Urban Consumers, as reported by the Bureau of Labor Statistics or at the minimum rate of 3%, whichever is greater. Returned checks will be assessed the maximum amount provided in Florida Statutes Section §166.251. Lessee agrees to pay for utility service in accordance with the schedule of charges set by each utility. The non-payment of any correctly billed utility shall be considered a material breach and grounds for termination. The Lessor will maintain an account with Waste Management or another waste removal company if applicable to remove their Solid waste (garbage).

#### **7. Deposit**

Lessee agrees to deposit the sum equal to two months base rent as a security deposit, forfeitable to Lessor as partial payment for any damages caused by Lessee's failure faithfully to observe and perform the terms and obligations of this Agreement, including unpaid rent. Said deposit shall otherwise be returned without interest to Lessee upon lawful termination of this Agreement.

#### **8. Payments Due**

Rental payments are due and payable monthly in advance, by the first day of each calendar month. Payment may be made in person between the hours of 8:00 a.m. and 4:00 p.m. Monday thru Friday or mailed to the Key West Bight Marina Office, 201 William St. Key West, FL 33040

#### **9. Late Payments**

Any rental payment not received by Lessor by 5:00 p.m. on the 5<sup>th</sup> day of the month is subject to a fifteen (15) percent penalty charge.

#### **10. Notice to Lessee**

Lessee agrees that notice of the actions or intentions of Lessor is binding upon Lessee if delivery by certified mail is attempted at the following address:

\_\_\_\_\_

\_\_\_\_\_

Lessee further agrees that said binding delivery of notice shall be considered fully accomplished for all purposes hereunder regardless of whether delivery to the above address is accepted or regardless of the identity of any person accepting delivery. Lessee is fully and solely responsible for the receipt of notice at said address. Lessee further agrees and acknowledges that if said certified notice is returned undelivered or refused, that Notice shall be perfected by posting in compliance with Florida Statutes.

#### **11. Changes in Information**

Lessee agrees to deliver written notice of any changes in any of the information furnished by Lessee in this Agreement within 5 calendar days of the effective date of said change to: Key West Bight Marina Offices 201 William St., Key West, FL 33040

#### **12. Default, Removal, Sale**

Prompt and timely delivery of all payments due for the use of the rented dockage space and strict observance of the conditions, covenants, marina rules and regulations made a part hereof, are essential conditions upon which this Agreement is made and accepted. Any failure by Lessee to comply with each of said terms shall constitute a default by Lessee and shall give Lessor the right at its option to terminate this Agreement and any license Lessee may have hereunder. Lessor may so terminate by mailing to Lessee a notice of termination in the manner provided by Paragraph 8 above at least three (3) days prior to the effective date of termination. If Lessee fails to vacate the dockage space within seven (7) days after delivery of said notice as provided in Paragraph 8, Lessor shall have the right, at its option, to pursue any or all of the following remedies:

- a) To board the vessel and, by its own power or by placing it in tow, remove from the dockage space and from all property of Lessor both the vessel and any other personal property of Lessee found in or adjacent to the dockage space. Said vessel and personal property shall be removed to dockage or mooring chosen at discretion of Lessor and Lessee hereby designates Lessor as its attorney-in-fact for the purpose of acting in its place for purposes of such removal and relocation, and agrees that Lessor and its designee (s) shall be required to exercise ordinary and reasonable care in such purposes. Lessee hereby releases and relieves Lessor and its designee (s) from loss or damages occurring during such removal performed in the exercise of ordinary and reasonable care. Lessee further agrees to pay all costs incurred by Lessor in the removing, relocation and/or storage of the vessel and personal property, including but not limited to wages, insurance premiums, towing and storage costs, all of which shall become a lien upon vessel; and
- b) To pursue any remedy provided by state or federal law; and
- c) If nonpayment of rent continues for six (6) months, to sell the vessel at a non-judicial sale after 30 days notice to Lessee as provided in Paragraph 8 above. The remedies provided in Florida Statutes Section 328.17 for such non-judicial sale of a vessel are hereby specifically included and incorporated in this Agreement as an additional remedy available to Lessor.

#### **13. Lien, Attorney's Fees**

Lessee agrees to pay all costs and expenses, including reasonable attorney's fees, incurred by Lessor in the collection of any unpaid sums due under this Agreement or by Lessee's default in performance of any of the conditions or covenants stated herein or in the Marina Rules & Regulations governing the dockage space and adjacent premises. Lessee agrees that the Lessor

shall have a lien against the vessel, its appurtenances and contents, for such unpaid sums, or for any damage to docks, other vessels or property, or to invitees of the Lessor caused by Lessee or the vessel.

#### **14. Release, Indemnity**

This agreement is for berthing space only, and such space is to be used at the sole risk of the Lessee. Lessee hereby agrees that Lessor shall not be liable for the care, protection or security of the vessel, its appurtenances or contents, or of any of the Lessee's personal property, guests, passengers or invitees, or for any loss or damage of any kind to the same due to fire, theft, vandalism, collision, equipment failure, windstorm, hurricane, rains breach of contract, violations of any local, state or federal law or regulation, or other calamities. Lessee agrees that there is no warranty of any kind as to the condition of the seawall, docks, piers, walks, gangways, ramps, mooring gear or electrical and water services, and that Lessor is not responsible for injuries to persons or property occurring on Lessor's property. Lessee, personally and for its family, heirs, and assigns agrees to indemnify Lessor for all liability for personal injury, loss of life, and property damage to Lessee, its family, heirs, assigns, agents, employees, invitees and guests caused by fault of Lessee. This release and indemnification shall include, but not be limited to: (1) acts in connection with Lessee's vessel, motors and accessories while it is on or near Lessor's property including the rented space, or while it is being moved, docked, hauled, or launched; (2) loss or damage to Lessee's vessel, motors and accessories and contents or other personal property due to fire, theft, vandalism, collision, equipment failure, windstorm, rain or hurricane or any other casualty loss; and (3) causes of action arising out of the use of any adjacent pier or docking facilities or walkways giving access thereto. Lessee further agrees to indemnify Lessor for all damages or losses caused by or arising from fault of Lessee's vessel and appurtenances, personal property, guests, passengers, family or invitees. The indemnification provided herein shall include, but not to be limited to all costs, expenses and reasonable attorney's fees, including appellate attorney's fees, reasonably incurred by Lessor based on the foregoing; provided, however, that Lessor shall give Lessee written notice of any such claim within time to reasonably allow Lessee to appear and defend or pay and discharge such claim. At its option, Lessor may defend against such claims and by so doing shall not waive or discharge Lessee from its obligations to defend and indemnify as herein contained.

#### **15. Condition of Premises**

Lessee hereby accepts the premises in the condition, order and repair as they are at the commencement of this term, excepting only reasonable wear and tear arising from the use hereof under this Agreement, and to make good to said Lessor immediately upon demand for damage caused by any act or neglect of the Lessee, or of any agent, guest, passenger or person under the control of the Lessee, and the Lessee shall be liable to the Lessor and shall forever hold harmless the Lessor from any and all such damage or loss occasioned to the premises or any of the Lessor's docks, or any of its properties caused by the acts or negligence of the Lessee or any agents, employee, guest, passenger or person under the control of the Lessee. This Agreement is for the use of berth space only, such space to be used at the sole risk of the Lessee, and the Lessor shall not be liable for the care or protection of the vessel, her appurtenances or contents, or for any loss or damage of any kind or nature to the vessel, her appurtenances or contents. There is no warranty of any kind as to the condition of the docks, walks, gangways, ramps or mooring gear, nor shall the Lessor be responsible for the injuries to persons or property occurring upon the Lessor's property for any reason.

#### **16. Insurance**

Lessee agrees that Lessor is not in any way an insurer of Lessee's vessel, property, family, invitees, employees, agents, passengers or guest. Lessee hereby agrees to

maintain and pay for a marine insurance policy providing such protection and indemnity throughout the term of this Agreement. Said policy of protection and indemnity shall protect Lessor and Lessee from all liability for injury to any persons or property which may arise in connection with the operation of or conduct of Lessee or its vessel, equipment, agents, invitees, passengers, guests or employees.

Lessee hereby agrees to maintain and pay for, and provide current Certificate of Insurance at all times evidencing the following coverage's:

- Protection & Indemnity limits of a minimum of \$1,000,000 Per Occurrence.
- Removal of Wreck coverage included in Protection & Indemnity limit
- Vessel Pollution Coverage included in a minimum amount of \$800,000
- Crew coverage as required by the Federal Jones Act as applicable
- Any other insurance coverage as required by law
- Lessor listed as certificate holder for purposes of notification of cancellation, termination, or renewal.
- Lessor listed as Additional Insured.

#### **17. Proof of Ownership; Change in Ownership**

Prior to exercising any rights whatsoever pursuant to the terms of this Agreement, and at such times during the term of this Agreement as Lessor may request, Lessee shall furnish to Lessor for its review an original or certified copy of proof of its ownership or primary leasehold interest of the above vessel. Said proof shall consist of a lease, an original or certified copy of either a state registered title to the vessel or documentation by the U.S. Coast Guard of foreign sovereign. Lessee warrants that it owns or leases the above vessel, or will own or lease same at time of berthing in slip, and will allow inspection by Lessor prior to placement; in the event the vessel is not satisfactory to the Lessor, it may not be berthed and another vessel must be located. Lessor shall have prior inspection and approval rights for any other vessel to be berthed, and shall have prior inspection and approval rights regarding any change of vessel. Nothing in this section is intended to prevent Lessee from leasing a vessel so long as Lessee is the sole person leasing the vessel or is the principle individual in any corporate entity or leasing same.

#### **18. Person Signing**

The person signing below does hereby certify that the description of the above vessel is correct and that he/she is the registered, lawful owner of the vessel, and is authorized to subject the vessel to all provisions of this Agreement, including but not limited to those providing for liens against it.

#### **19. Dockage to Signer and Particular Vessel Only**

Lessee agrees that Lessor is under no obligation to furnish dockage space to any party other than the original signator of this Agreement, or to any vessel other than that described herein.

#### **20. Government Laws and Marina Rules & Regulations**

Lessee agrees to strictly comply with all federal, state, and local laws pertinent to any subject matter of this Agreement, including, but not limited to, those pertaining to marinas or boating, specifically including United States Coast Guard (USCG) regulations concerning pre-employment and random drug testing, USCG regulations pertaining to the number of passengers for hire and all federal and state fisheries regulations and all environmental laws and regulations including, but not limited to, the discharge of black water, grey water, chemicals and grease.

Lessee further agrees to strictly comply with all Marina Rules & Regulations which are hereby incorporated into, and by reference made a part of this Agreement. Lessee further agrees to abide by all amendments to said regulations duly enacted by Lessor during the term of this Agreement; provided, however, that Lessor shall afford Lessee fifteen (15) days written notice, delivered in accordance with Paragraph 9 above, prior to implementing any such duly-enacted amendments.

#### **21. Peaceable Use**

Lessee agrees to use peaceably the dockage space assigned hereby, and agrees not to do or allow, either individually or with others, any act which has the effect, in the sole judgment of Lessor, of disturbing the peace or of disturbing, inconveniencing or subjecting to physical jeopardy the marina premises, other persons, or other vessels. Lessee further agrees to do no act which impedes or disrupts the orderly operation of the marina or any portion of it, including but not limited to marina management, operation and revenues.

#### **22. Sanitation Device**

Lessee's vessel shall contain a marine sanitation device with current U.S. Coast Guard approval for marine use for vessels in addition to any applicable regulations for the discharge of black water or grey water, chemicals or grease. Said device shall be properly installed, properly functioning, and used for all waste while the vessel or floating structure is at dock. Failure to strictly comply with the provisions of this Paragraph shall be a default under this Agreement. Lessee acknowledges the Lessor's right to test any and all sanitation devices aboard any vessel using any accepted marina industry standards including but not limited to dye tests. Twenty Four (24) hour notice shall be given to the Lessee prior to any said inspection being performed.

#### **23. Lessee's Inspection**

Lessee acknowledges having inspected the dockage space rented by this Agreement, and hereby accepts it in "as is" condition for berthing the above-described vessel. Lessee agrees that Lessor makes no warranty, guarantee, or assertion of any kind whatsoever concerning the condition of the docks, piling, piers, walks, gangways, ramps or berthing gear, and will not be responsible for injuries of any nature or cause including Lessor's negligence, to persons or property on Lessor's property or marina premises.

#### **24. No Live-aboard**

Lessee agrees that the vessel shall not be used or rented for purposes of domicile or habitation or overnight residence while moored in the dockage space. Nothing in this section is intended to prevent habitation by legitimate crew or the Lessees provided such habitation is necessary for the actual operation of the vessel for the purpose stated on page 1. Where live-aboards are permitted, the Lessee shall be responsible for the applicable fees associated with that use.

#### **25. Inspection**

Lessee agrees that Lessor shall have the right, upon 24 hours notice, to enter the vessel and dockage space during reasonable hours in order to determine whether Lessee is in full compliance with the terms of this Agreement and all applicable laws and regulations.

#### **26. Signs; Advertisements**

Lessee agrees that no signs or advertisements will be placed in or about the leased dockage space without Lessor's prior written approval. Lessee further acknowledges that any signs erected are



to be in compliance with the Historic Architectural Review Commission's Guidelines (HARC), the code of ordinances, and the applicable Marina Rules & Regulations.

**27. Lessee's Insolvency**

If Lessee becomes insolvent or enters bankruptcy proceedings during the term of this Agreement, Lessor is hereby irrevocably authorized, at its sole option, to cancel this Agreement. Lessor may elect to accept rent from any receiver, trustee, or other judicially-appointed officer during said term without affecting Lessor's rights under this Agreement, but no such officer shall otherwise have any right, title or interest under this Agreement. Acceptance of rent from said persons or entities under this paragraph shall not hinder Lessor's efforts to terminate this Agreement in so much as this Agreement shall be considered a month-to-month tenancy under Florida Law.

**28. Assignment Limited; Option of Purchaser of Vessel or Floating Structure and Business.**

In the event that both the above-referenced business and the above-referenced vessel are sold by Lessee to a single purchaser, as evidenced by appropriate proof of sale such as transfer of City and County occupational licenses in addition to transfer of title to the vessel, and provided that said purchaser meets all qualifications required under this Lease, said purchaser shall have the ability to enter into an assignment of the existing lease for the subject berth.

Assignment as a result of sale is expressly prohibited unless the vessel referenced herein is included in the sale.

Said assignment must be exercised contemporaneously with the business sale. Lessee may obtain preliminary approval of the purchaser by applying to the Lessor prior to such sale to the purchaser. Lessor shall provide preliminary approval or denial of the purchaser not later than forty-five (45) days from the receipt of the application from Lessee. Lessee shall provide such information and documents as may be needed to determine the fitness of the purchaser. Upon change of ownership as described herein, Owner shall pay to the Lessor a transfer fee of \$500.00.

**29. Taxes**

Should any ad valorem or other taxes be imposed upon the premises involved in this lease, or upon the Lessee, Lessor, occupant or whomsoever, from any source whatsoever, the same shall be the responsibility of the Lessee and the Lessee shall pay the same promptly.

**30. Maintenance of Docks**

- a) The Lessee agrees to keep the docks clean and free and clear of debris, including the sidewalk area adjacent to the dock.
- b) The Lessee agrees not to construct or attach anything on or adjacent to the dock, unless approved by Lessor and all proper permits and approvals are obtained. In such event, all improvements made to the docks by the Lessee shall be deemed permanent fixtures and remain on the premises and become property of the Lessor.

**31. Lien**

The Lessee acknowledges that the Lessor shall have the right to pursue a lien against the above-described vessel, its appurtenances and contents for unpaid sums due or to become due for the use of dock facilities or services or damage caused to any docks or property of the Lessor.

**32. Termination**

This Agreement shall be terminated upon any one of the following conditions:

- a) By breach of any of the covenants or provisions of this Agreement, including the Key West Bight Marina, Marina Regulations as contained in this Agreement; provided, however, that Lessee shall be entitled to a single written warning of any violation of said Marina Regulations delivered as provided in Paragraph 8, and shall have 15 days after such delivery in which to cure the breach and 3 days for non-payment of rent. Subsequent violations of the same Marina Rules & Regulations shall terminate this Agreement, and Lessor shall not be required again to issue a warning.
- b) Any continuing breach for non-payment of rent is subject to removal pursuant to Ch. 83, Florida Statutes.
- c) By the dock becoming unserviceable for any reason; provided that Lessor shall repair the dock within a reasonable time period, and further provided that during such repairs Lessee shall have a right of first refusal of available dockage space on an equal basis with other similarly-situated Lessees.
- d) By sale or transfer of ownership or control of the vessel identified herein without obtaining the required approvals as contained herein.

### **33. Stock Sale/Transfer**

If Lessee is a corporation, partnership or other business entity, the names of all persons owning an interest and the percentage of ownership shall be submitted in writing to the Key West Bight Management District Board. If Lessee is a said business entity, any proposed sale or transfer of any percentage of such interest therein shall be submitted in writing to the Key West Bight Management District Board prior to the transfer. The sale or transfer of any such interest without prior notice as prescribed herein shall constitute a material breach of this Agreement. The sale of 51% or more of the stock in a corporation or the sale of 50% or more of a partnership to another individual, partnership or corporation shall constitute an assignment of this Agreement requiring approval by the Key West Bight Management District Board.

### **34. Parking**

No individual parking spaces shall be assigned or reserved for Lessee.

### **35. Personal Property**

All personal property placed in or moved on the premises above described shall be at the risk of the Lessee and the Lessor shall not be liable for any damage or loss to said personal property for any act of negligence of any co-Lessee or occupant, or of any other person whomsoever.

### **36. Time; Lessor's Rights Cumulative**

Time is of the essence of this Agreement. Lessee agrees that Lessor's rights under this Agreement are cumulative, and that Lessor's failure to exercise any such rights shall not operate to forfeit same.

### **37. Headings Not Part of Agreement**


Lessor and Lessee agree that any heading which labels any paragraph herein is for convenience only, and shall not in any way be construed as affecting, limiting, expanding, or stating the contents, meaning, or intent of the paragraph or of this Agreement.

### **38. Electric and Sewer**

The Lessor will install pump-out and three phase electric at Lessor's expense. In the event Lessee elects to relocate back to the Thompson Fish House, immediately upon relocation, Lessee shall reimburse Lessor for Lessor's costs associated with installation of the pump-out and three phase electric.

LESSEE:

LESSOR: City of Key West,  
Florida, a municipal corporation,  
acting by and through its duly  
authorized Caroline Street Corridor  
and Bahama Village Community  
Redevelopment Agency

By: 

Chris Belland  
Print Name

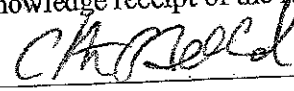
August 10, 2012  
Date

Susan P. Harrison  
Witness

August 7, 2012  
Date

Susan P. Harrison  
Witness

I hereby acknowledge receipt of the Rules and Regulations for the Marina.

Lessee: 

Date: 8/10/12

RESOLUTION NO. 11-014

A RESOLUTION OF THE CAROLINE STREET CORRIDOR  
AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT  
AGENCY (CRA) APPROVING THE ATTACHED LEASE  
BETWEEN THE CRA AND YANKEE FREEDOM III, LLC  
FOR THE "THOMPSON'S FISH HOUSE" LOCATED ON THE  
"D" DOCK PROPERTY AT 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 the attached Lease is hereby approved.

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

Passed and adopted by the Caroline Street Corridor and Bahama  
Village Community Redevelopment Agency at a meeting held this  
4th day of January, 2011.

Authenticated by the presiding officer and Clerk of the Agency  
on January 5, 2011.

Filed with the Clerk January 5, 2011.

  
CRAIG CATES, CHAIRMAN

ATTEST:

  
CHERYL SMITH, CITY CLERK

# EXECUTIVE SUMMARY



**TO:** Community Redevelopment Agency

**CC:** David Fernandez

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

**DT:** December 17, 2010

**RE:** New Lease for Thompsons Fish House

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**ACTION:** This is a request to accept a letter of interest and enter into a lease agreement for the property located in the Key West Bight known as the Thompson Fish House. This lease was approved by the Bight Board on December 15, 2010.

## BACKGROUND:

The City has advertised for letters of interest in accordance with Florida Statute Chapter 163.380 and one letter was received from the Yankee Freedom III, LLC. The terms of the proposal are summarized as follows:

### Use:

A free interpretation museum for the historical and ecological attributes of the Dry Tortugas and Fort Jefferson, a historic Key West Bight display, ticket sales for the Dry Tortugas ferry, a staging area for passengers waiting to board the ferry boat to Fort Jefferson, a storage area for goods and equipment, and for no other continuous purpose. The use shall materially comply with the type of uses included in the floor plan of the space included herein as "Exhibit A-1" and in no event shall more than 25% of the space be utilized for non-public or storage purposes.

Additional use: Tenant may utilize the building, and the adjacent pier on a non-exclusive basis, for event rental so long as it does not interfere with access to the docks or vessels. All such uses would be subject to written approval from the city and subject to allowable uses, regulations and insurance requirements.

### Demised Premises:

1728 square feet of net usable area. In the event that the Yankee Freedom Dry Tortugas Ferry is re-located by the LANDLORD or is required to be moved by any other governing authority Tenant will have the option of re-locating to a demised area near the boat that is acceptable to the TENANT and LANDLORD or TENANT may terminate this lease.

**Term:** Five years and two months to be co-terminus with the Macs Sea Garden Lease

**Rate:** \$22.00 per square foot plus 10% of any usage fees from functions

**Increases:** 5% annually

**Additional Rent:** Tenant shall pay maintenance, taxes, and insurance

**Utilities:** Tenant shall pay all utilities

**Improvements:** Tenant will accept the premises as it is and make all necessary improvements at their cost.

**FINANCIAL:**

The proposed rental rate reflects a non-retail rent and considers that a free historical attraction will be added to the Historic Seaport in furtherance of the mission to preserve the maritime history of the Key West Bight. The Yankee Freedom has operated a Dry Tortugas Ferry in the Key West Bight for many years and remains in good financial standing.

**RECOMMENDATION:**

Staff recommends approval of the proposal and lease.

**ATTACHMENTS:**

Proposal  
Draft Lease

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## **Lease Agreement**

between

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

as Landlord

and

**Yankee Freedom III, LLC**

as Tenant

Dated January 5, 2011

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THIS LEASE is made as of the 4th day of January, 2011 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:

Yankee Freedom III, LLC  
201 Front Street, Suite 212  
Key West, FL 33040

TENANT'S TRADE NAME: Yankee Freedom

1.3 GUARANTOR (S) AND ADDRESS: Carol Hill, 201 Front Street, Suite 212 Key West, FL 33040 and Edwin O. Swift 201 Front Street, Suite 224, Key West, FL 33040

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

1728 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 YEARS and TWO MONTHS to be co-terminus with the term for Macs Sea Garden which expires on the last day of February 2016.

1.5.1 COMMENCEMENT DATE: January 1, 2011 as acknowledged by TENANT'S written statement

1.5.2 RIGHT TO TERMINATE: N/A

1.5.3 RIGHT TO RENEW: This Lease may be renewed upon rent and terms to be negotiated by the parties and in accordance with the City of Key West Code of Ordinances.

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



herein.

- 1.6.1 **ADDITIONAL RENT:** Tenant shall pay its Proportionate share of CAM, Real Estate Taxes, Insurance, Sales, Use or Excise Taxes together with Management and Administrative fees estimated as per **EXHIBIT "B"** and any and all other sums of money or charges required to be paid by TENANT. TENANT also agrees to pay LANDLORD 10% of any usage fees for event rentals of the building and the pier area immediately adjacent to the building.
- 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:** N/A of TENANT'S Gross Sales in excess of the "Percentage Rent Base Amount" as per **EXHIBIT "B"**.
- 1.6.5 **HOLD OVER RENT:** 150% of the Minimum Base rent during the last year of the expiring term.
- 1.6.6 **RENT CONCESSIONS:** None
- 1.7 **SECURITY DEPOSIT (Section 5):** Equal to one month's base rent.
- 1.8 **PERMITTED USE (Section 6):** A free interpretation museum for the historical and ecological attributes of the Dry Tortugas and Fort Jefferson, a historic Key West Bight display, ticket sales for the Dry Tortugas ferry, a staging area for passengers waiting to board the ferry boat to Fort Jefferson, a storage area for goods and equipment and for no other continuous purpose. The use shall materially comply with the type of uses included in the floor plan of the space included herein as "Exhibit A-1" and in no event shall more than 25% of the space be utilized for non-public or storage purposes.
- Additional use: Tenant may utilize the building, and the adjacent pier on a non-exclusive basis, for event rental so long as it does not interfere with access to the docks or vessels. All such uses would be subject to written approval from the city and subject to allowable uses, regulations and insurance requirements.
- 1.9 **INSURANCE:** (Section 9) \$1,000,000.00 commercial liability minimum per occurrence
- 1.10 **ASSIGNMENT OR SUBLETTING:** (Section 10) Allowed with LANDLORD'S approval
- 1.11 **UTILITIES:** (Section 17) The TENANT shall pay for all utilities associated with the use of the Demised Premises.

INITIALS: LANDLORD \_\_\_\_\_

TENANT CB

WITNESSETH:

Rev. 5-21-10

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.

In the event that the Yankee Freedom Dry Tortugas Ferry is re-located by the LANDLORD or is required to be moved by any other governing authority Tenant will have the option of re-locating to a demised area near the boat that is acceptable to the TENANT and LANDLORD or TENANT may terminate this lease.

Expansion/Right of First Refusal - None

3. **TERM** - The term of this Lease shall be for Five(5) years and two (2) months which

shall commence on January 1, 2011 and shall end at midnight on the last day of February 2016 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** - TENANT simultaneously with the execution and delivery of this Lease, has deposited with the LANDLORD the sum equal to one months current minimum rent as per **EXHIBIT "B"** and as stated in Section 1.7 hereof, the receipt of which is hereby acknowledged, which sum shall be retained by LANDLORD as security for the payment by TENANT of the rents herein agreed to be paid by TENANT and for the faithful performance by TENANT of the terms, conditions and covenants of this Lease. It is agreed that LANDLORD, at LANDLORD'S option, may at any time apply said sum or any part thereof toward the payment of the rents and any other sum payable by TENANT under this Lease, and/or toward the performance of each and every covenant under this Lease, but such covenants and TENANT'S liability under this Lease shall thereby be discharged only pro tanto; that TENANT shall remain liable for any amounts that such sum shall be insufficient to pay; that LANDLORD may exhaust any or all rights and remedies against TENANT before resorting to said sum, but nothing herein contained shall require or be deemed to require LANDLORD to do so; that, in the event this deposit shall not be utilized for any of such purposes, then such deposit shall be returned by LANDLORD to TENANT within sixty (60) days after the expiration of the term of this Lease. TENANT shall deposit with LANDLORD such additional sums which may be necessary to replace any amounts expended there from by LANDLORD pursuant hereof, so that there shall always be a security deposit in the sum first set forth above. The Security deposit provided for herein shall be held by the LANDLORD in a non-interest bearing account and may be co-mingled by the LANDLORD at the LANDLORD'S sole discretion.

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

A free interpretation museum for the historical and ecological attributes of the Dry Tortugas and Fort Jefferson, a historic Key West Bight display, ticket sales for the Dry Tortugas ferry, a staging area for passengers waiting to board the ferry boat to Fort Jefferson, a storage area for goods and equipment, and for no other continuous purpose. The use shall materially comply with the type of uses included in the floor plan of the space included herein as "Exhibit A-1" and in no event shall more than 25% of the space be utilized for non-public or storage purposes.

Additional use: Tenant may utilize the building, and the adjacent pier on a non-exclusive basis, for event rental so long as it does not interfere with access to the docks or vessels. All such uses would be subject to written approval from the city and subject to allowable uses, regulations and insurance requirements.

TENANT further agrees:

(a) To operate 100% of the Demised Premises for the entire term of this lease during all reasonable hours established by LANDLORD, pursuant to the highest reasonable standards of its Business category, maintaining a substantial stock of appropriate merchandise on display, with sufficient personnel to service its trade.

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

(c) Not to display any banners, pennants, searchlights, window signs, balloons, or similar temporary advertising media on the exterior of the Demised Premises.

(d) Not to commit waste in the Demised Premises or Common Areas and to keep the Demised Premises and immediate adjacent areas including, without limitation, adjacent sidewalks, in a safe, neat, clean and orderly condition and to maintain and repair any lighting or signs under any canopy immediately in front of the Demised Premises.

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

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

7. **COVENANT OF QUIET POSSESSION** - So long as TENANT pays all of the rent and charges due herein, TENANT shall peaceably and quietly have, hold, and enjoy the Demised Premises throughout the term of this Lease without interference or hindrance by LANDLORD or any person claiming by, through, or under LANDLORD.

8. **INDEMNIFICATION** - TENANT does hereby agree to indemnify, defend and save LANDLORD harmless from and against any and all liability for any injury to or death of any person or persons or damage to property (including adjoining property for environmental damage) in any way arising out of or connected with the conditions, use or occupancy of the Demised Premises, or in any way arising out of the activities of TENANT, its agents, employees,

licensees or invitees on the Demised Premises and/or the building and from reasonable attorney's fees, incurred by LANDLORD in connection therewith, excepting, however, liability caused by LANDLORD'S gross negligence in its failure to perform any of LANDLORD'S covenants, obligations or agreements of this Lease. Nothing herein is intended to waive the sovereign immunity afforded to City pursuant to Florida law, including section 768.28, Florida Statutes.

**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 peacefully 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: YANKEE FREEDOM III, LLC  
201 FRONT STREET, SUITE 212  
KEY WEST, FL 33040

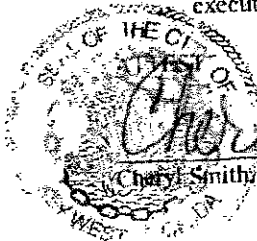
When the parties on either side (LANDLORD or TENANT) consists of more than one person, notice or default by one of the persons on that side shall constitute notice or default by all of the persons on that side.

(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.



Cheryl Smith  
Cheryl Smith, City Clerk

Date: 1-5-10

WITNESS

Date: \_\_\_\_\_

LANDLORD

Craig Cates  
Craig Cates, Chairman  
Caroline Street Corridor and Bahama Village  
Community Redevelopment Agency

Date: 1-4-11

TENANT Yankee Freedom III, LLC

Chris Belland  
Chris Belland, Chief Executive Officer

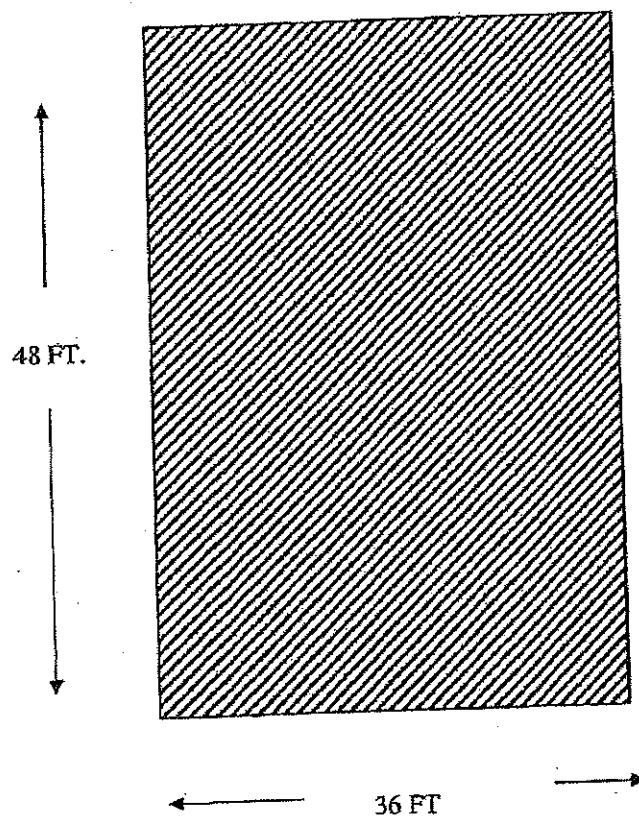
Date: 12/27/10

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

EXHIBIT "A"

1728 SQUARE FEET NET USABLE AREA

FISH HOUSE "D" DOCK



**EXHIBIT "A-1" Demised Premises, Floor Plan**

## **Interpretation Center Plan**

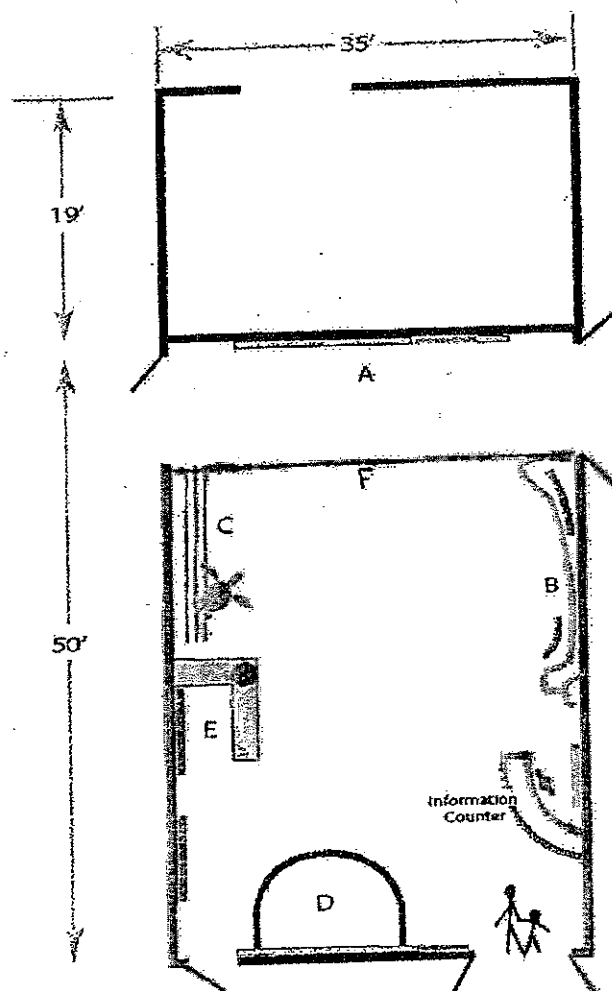
The attached is representative of exhibits and usage elements which are planned for the center.

### **Legend**

- A - Storage and ADA wheelchair lift
- B - Environmental Exhibit - Avian
- C - Environmental Exhibit - Sea Life
- D - Historical Exhibit - Fort Jefferson
- E - Junior Ranger Exhibit
- F - Historic Key West Bight Display - Wm. Whitehead Map and pin light/audio program



# Floor Plan of New Interpretive Center



Dock

EXHIBIT "B" Rent Schedule



## KEY WEST BIGHT

## EXHIBIT "B"

Tenant: YANKEE Freedom III, LLC Square Feet 1728 CAM  
 Location: KWB Fish House D Dock Square Feet 1728 BASE RENT  
 Contact: Chris Belland Term 1/1/2011 - 2/28/2016

YEAR #	Period Beginning	Base Rent per sq. ft.		Base Rent		Tax, Ins., CAM 5% Increase		Tax, Ins., CAM Monthly		Total Rent Before Sales Tax Monthly		Sales Tax Monthly		Total Rent With Tax Monthly		TOTAL RENT ANNUAL
		5% Increase	Annual	Monthly	Annual	Annual	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	
1	January 1, 2011	\$22.00	\$38,016.00	\$3,168.00	\$5,380.80	\$598.40	\$733.32	\$3,865.40	\$239.89	\$4,105.29	\$304.48	\$4,409.77	\$4,704.25	\$5,008.73	\$5,313.21	\$64,370.39
2	January 1, 2012	\$23.10	\$39,918.80	\$3,328.40	\$5,799.84	\$733.32	\$780.99	\$4,098.72	\$315.70	\$4,414.42	\$336.69	\$4,751.11	\$5,052.11	\$5,397.80	\$5,744.89	\$69,566.53
3	January 1, 2013	\$24.25	\$41,912.84	\$3,492.72	\$5,239.83	\$5,701.82	\$948.91	\$4,393.63	\$370.10	\$4,763.73	\$370.10	\$5,133.83	\$5,483.93	\$5,854.03	\$6,224.13	\$75,045.39
4	January 1, 2014	\$25.47	\$44,008.27	\$3,667.35	\$5,701.82	\$10,186.91	\$981.36	\$4,594.92	\$370.10	\$4,965.02	\$370.10	\$5,335.12	\$5,705.22	\$6,075.32	\$6,445.42	\$77,740.85
5	January 1, 2015	\$26.74	\$46,208.69	\$3,850.72	\$10,186.91	\$10,688.28	\$981.36	\$4,594.92	\$370.10	\$4,965.02	\$370.10	\$5,335.12	\$5,705.22	\$6,075.32	\$6,445.42	\$77,740.85
6	January 1, 2016	\$28.08	\$48,519.12	\$4,049.28	\$10,688.28	\$10,688.28	\$981.36	\$4,594.92	\$370.10	\$4,965.02	\$370.10	\$5,335.12	\$5,705.22	\$6,075.32	\$6,445.42	\$77,740.85

\$4.85 PER SQ. FT.

**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 unless provided for herein.

**EXHIBIT "D"**

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

## GUARANTY

This Guaranty is made this 26<sup>th</sup> day of Dec., 2010 in accordance with the Lease Agreement (hereinafter Agreement) dated 7-4, 2010 by and between the City of Key West Caroline Street Corridor and Bahama Village Community Redevelopment Agency (hereinafter City) and Yankee Freedom III, LLC (hereinafter Tenant) and Carol Hill (hereinafter Guarantor) for the Demised Premises (hereinafter Premises) located at the Fish House on D Dock in the Key West Bight, Key West, Florida.

In consideration of granting the use of the Premises to Tenant, and other good and valuable consideration, Guarantors does hereby covenant and agree that:

- (a) The Guarantors do hereby absolutely, unconditionally and irrevocably guarantee to the City the full and complete performance of all of Tenant's covenants and obligations under the Agreement and full payment by Tenant of all rentals, additional charges and other charges and amounts required to be paid hereunder during the entire term. Guarantors' obligations hereunder shall be primary and not secondary and are independent of the obligations of the Tenant.
- (b) A separate action or actions may be brought and prosecuted against Guarantors, whether or not action is brought against Tenant or whether Tenant shall be joined in any such action or actions. At the City's option, the Guarantors may be joined in any action or proceeding commenced by the City against Tenant in connection with and based upon any covenants and obligations under the Agreement, and the Guarantors hereby waive any demand by City and/or prior action by City of any nature whatsoever against Tenant.
- (c) The Guarantors consent to forbearance, indulgences and extensions of time on the part of the City being afforded to Tenant, the waiver from time to time by City of any right or remedy on its part as against Tenant. The Guarantors hereby agree that no act or omission on the part of the City shall affect or modify the obligation and liability of the Guarantors hereunder.
- (d) This Guaranty shall remain and continue in full force and effect, notwithstanding (i) any alteration of the Agreement by parties thereto, whether prior or subsequent to the execution hereof, (ii) any renewal, extension, modification or amendment of the Agreement, (iii) any subletting of the Demised Premises or assignment of Tenant's interest in the Agreement.
- (e) The Guarantors' obligations hereunder shall remain fully binding although City may have waived one or more defaults by Tenant, extended the time of performance by Tenant, released, returned, or misapplied other collateral given later as additional security (including other guarantees) and released Tenant from the performance of its obligations under the Agreement.
- (f) In the event any action or proceeding be brought by City to enforce this Guaranty, or City appears in any action or proceeding in any way connected with or growing out of this Guaranty, then and in any such event, the Guarantors shall pay to City reasonable attorney's fees, but only if City is the prevailing party. The Guarantors in any suit

brought under this Guaranty do hereby submit to the jurisdiction of the courts of the State of Florida and to the venue in the circuit court of Monroe County, Florida.

(g) This Guaranty shall remain in full force and effect notwithstanding the institution by or against Tenant or bankruptcy, reorganization, readjustment, receivership or insolvency proceedings of any nature, or in the disaffirmance of the Agreement an any such proceedings or otherwise.

(h) This Guaranty shall be applicable to and binding upon the heirs, representatives, successors and assigns of City, Tenant and the Guarantors.

IN WITNESS WHEREOF, the Guarantors have caused the foregoing Guaranty to be executed on this 28 day of December 2010.

Witness:

By: CH Hill

Guarantor:

by: Carol Hill

Name: CHILLMAN PAT AND

Name: CAROL HILL

Date: 12/28/10

Date: 12/28/10

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, CAROL HILL, to me personally known or who provided as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he/she 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 29th day of DECEMBER, 2010.



My Commission Expires

Nancy Aspinwall  
Notary Public, State of Florida

Witness:

By: Nancy Aspinwall

Name: NANCY ASPINWALL

Date: 12/28/10

Guarantor

by: Carol Hill

Name: CAROL HILL

Date: 12/28/10

State of Florida }

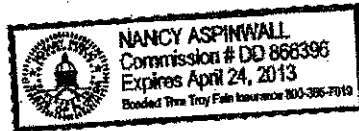
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, CAROL HILL, to me personally known or who provided \_\_\_\_\_ as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he/she 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 28th day of DECEMBER, 2010

[Signature]  
Notary Public, State of Florida

My Commission Expires:



## GUARANTY

This Guaranty is made this 4<sup>TH</sup> day of JAN, 2010 in accordance with the Lease Agreement (hereinafter Agreement) dated 1-4, 2010 by and between the City of Key West Caroline Street Corridor and Bahama Village Community Redevelopment Agency (hereinafter City) and Yankee Freedom III, LLC (hereinafter Tenant) and Edwin O. Swift III (hereinafter Guarantor) for the Demised Premises (hereinafter Premises) located at the Fish House on D Dock in the Key West Bight, Key West, Florida.

In consideration of granting the use of the Premises to Tenant, and other good and valuable consideration, Guarantors does hereby covenant and agree that:

(a) The Guarantors do hereby absolutely, unconditionally and irrevocably guarantee to the City the full and complete performance of all of Tenant's covenants and obligations under the Agreement and full payment by Tenant of all rentals, additional charges and other charges and amounts required to be paid hereunder during the entire term. Guarantors' obligations hereunder shall be primary and not secondary and are independent of the obligations of the Tenant.

(b) A separate action or actions may be brought and prosecuted against Guarantors, whether or not action is brought against Tenant or whether Tenant shall be joined in any such action or actions. At the City's option, the Guarantors may be joined in any action or proceeding commenced by the City against Tenant in connection with and based upon any covenants and obligations under the Agreement, and the Guarantors hereby waive any demand by City and/or prior action by City of any nature whatsoever against Tenant.

(c) The Guarantors consent to forbearance, indulgences and extensions of time on the part of the City being afforded to Tenant, the waiver from time to time by City of any right or remedy on its part as against Tenant. The Guarantors hereby agree that no act or omission on the part of the City shall affect or modify the obligation and liability of the Guarantors hereunder.

(d) This Guaranty shall remain and continue in full force and effect, notwithstanding (i) any alteration of the Agreement by parties thereto, whether prior or subsequent to the execution hereof, (ii) any renewal, extension, modification or amendment of the Agreement, (iii) any subletting of the Demised Premises or assignment of Tenant's interest in the Agreement.

(e) The Guarantors' obligations hereunder shall remain fully binding although City may have waived one or more defaults by Tenant, extended the time of performance by Tenant, released, returned, or misapplied other collateral given later as additional security (including other guarantees) and released Tenant from the performance of its obligations under the Agreement.

(f) In the event any action or proceeding be brought by City to enforce this Guaranty, or City appears in any action or proceeding in any way connected with or growing out of this Guaranty, then and in any such event, the Guarantors shall pay to City reasonable attorney's fees, but only if City is the prevailing party. The Guarantors in any suit

brought under this Guaranty do hereby submit to the jurisdiction of the courts of the State of Florida and to the venue in the circuit court of Monroe County, Florida.

(g) This Guaranty shall remain in full force and effect notwithstanding the institution by or against Tenant or bankruptcy, reorganization, readjustment, receivership or insolvency proceedings of any nature, or in the disaffirmance of the Agreement an any such proceedings or otherwise.

(h) This Guaranty shall be applicable to and binding upon the heirs, representatives, successors and assigns of City, Tenant and the Guarantors.

IN WITNESS WHEREOF, the Guarantors have caused the foregoing Guaranty to be executed on this 4th day of JAN 2011.

Witness:  
By: [Signature]

Name: ROBERT GREGG

Date: 1-4-11

State of Florida }  
County of Monroe }

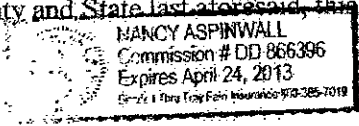
Guarantor  
by: [Signature]

Name: EDWIN O. SWIFT III

Date: 1-4-11

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, EDWIN O. SWIFT III, to me personally known or who provided as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he/she 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 4th day of JANUARY, 2011.

  
NANCY ASPINWALL  
Commission # DD 866396  
Expires April 24, 2013  
Florida's First Lady Public Notaries 904-385-7019

[Signature]  
Notary Public, State of Florida

My Commission Expires:

Witness:  
By: [Signature]

Name: ROBERT GREGG

Date: 1-4-11

State of Florida }

Guarantor  
by: [Signature]

Name: EDWIN O. SWIFT III

Date: 1-4-11



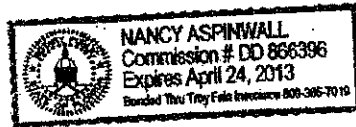
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, EDWIN O. SMITH, III, to me personally known or who provided as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he/she 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 4th day of January, 20 11

Nancy Aspinwall  
Notary Public, State of Florida

My Commission Expires:



www.yankeefreedom.com

YANKEE FREEDOM II

(800)634-0939



November 29, 2010

**BY HAND DELIVERY**

Marilyn Wilbarger  
Property Manager  
City of Key West  
P.O. Box 1409  
Key West, FL 33041

**Re: Letter of Interest For the Use of the Building Known as The Thompson Fish House Located at The Historic Seaport at Key West Bight, Key West, Florida, as advertised October 31, 2010**

Dear Ms. Wilbarger:

Pursuant to the public notice announcing that 1,728 square feet of building on C Dock, Historic Seaport at the Key West Bight is available for lease, please consider this our response and letter of interest from Yankee Freedom III, LLC.

The following proposal will address the use of the space, proposed improvements and the income to the Community Redevelopment Agency.

As you are aware, the Yankee Freedom III, LLC was recently awarded the exclusive concession to provide ferry service from Key West to the Dry Tortugas National Park. The concession agreement is for a period of ten years and calls for an interpretive center to be established in Key West to educate the public on the environmental nature of the Dry Tortugas National Park and the historic aspects of Fort Jefferson.

The Thompson Fish House is ideally suited for this purpose, both in size and location. Furthermore, as you know, the current Yankee Freedom II is docked immediately adjacent to the Thompson Fish House which has been a mutually advantageous arrangement between our company and the City of Key West in that the ferry boat is essentially gone during the daytime when the city uses the dock space for fueling operations. We see no reason to change this current arrangement.

**OFFICE: 201 Front Street • Suite 212 • Key West, FL 33040 • P: (305)292-8988 • F: (305)292-6885**  
**BOOTH: 240 Margaret Street • Key West, FL 33040 • P: (305)294-7009 • F: (305)294-3067**

We are proposing to use the Thompson Fish House as an interpretive center to explain the history of Fort Jefferson and the environmental attributes of the Dry Tortugas including, but not limited to the sea life, coral and migratory birds as well as the historical importance of Fort Jefferson. We would employ text panels and an audio visual presentation to explain the Dry Tortugas to passengers embarking from the adjacent docks.

Furthermore, during the day, we will have the facility open, at no charge to the public, to partake in a self-guided tour of the interpretive center. In addition to explaining the environmental and historical aspects of the Dry Tortugas, we would also propose that part of the interpretive facility be designed to accommodate an interpretation and educational component that will feature information on the Historic Bight and Key West. We anticipate using a show controller for this purpose that would be able to be activated by any entrants who would then hear an audio presentation and be guided through the exhibit. Finally, although not currently planned, we would reserve the right to book reservations or sell tickets from the building with written notice to you.

**Additional Use** – Because of the location on the waterfront and the large, unused pier area in front of the building, we would also propose we be granted an additional opportunity, for our mutual benefit, to lease out the building space and the adjacent pier for functions, so long as it does not interfere with access to and from the vessels docked in the adjacent area. Because we are not proposing any fee for the public's daily use of the museum, this use may give us the opportunity to offset some of the expense. In addition to the rental amount for the property, as listed below, we would propose to pay 10% of the gross rental fee for functions as additional rent. All such uses would be subject to written approval from the City. Any and all such usages would be subject to acceptable uses, regulations and insurance requirements.

#### **Proposed Improvement**

We propose to take the building in "as is" condition meaning we will make all arrangements for upgrading utilities for our stated purpose and the installation of all displays. Furthermore, we would expect to build a non-permanent partition across the back part of the building for non-hazardous material storage, the placement of our handicap access equipment and, subject to all city codes and regulations, installation of our ice machine, refrigeration and any other equipment necessary to our operation.

**Income to the Community Redevelopment Agency** – For the proposed usage we would offer to pay a rental fee of \$22 per square foot for the interior space. Furthermore, we would pay 10% of any usage fees for event rentals of the building and the pier area immediately adjacent in the front.

I am attaching a floor plan of the proposed usage.

Finally, we would request that this agreement be written to co-terminate with our current lease at the property known as Mac's Sea Garden and that this agreement could be terminated at our option if we are required to move the adjacent vessel docking to another location.

Thank you. We look forward to mutually beneficial use of this historic property to enhance the visitor experience and understanding of the history and natural environment of Key West and the Dry Tortugas.

Sincerely,

A handwritten signature in cursive script, appearing to read "C. Belland".

Chris Belland  
Chief Executive Officer

CB/na  
Enc.

# **Interpretation Center Plan**

The attached is representative of exhibits and usage elements which are planned for the center.

## **Legend**

A - Storage and ADA wheelchair lift

B - Environmental Exhibit -- Avian

C - Environmental Exhibit -- Sea Life

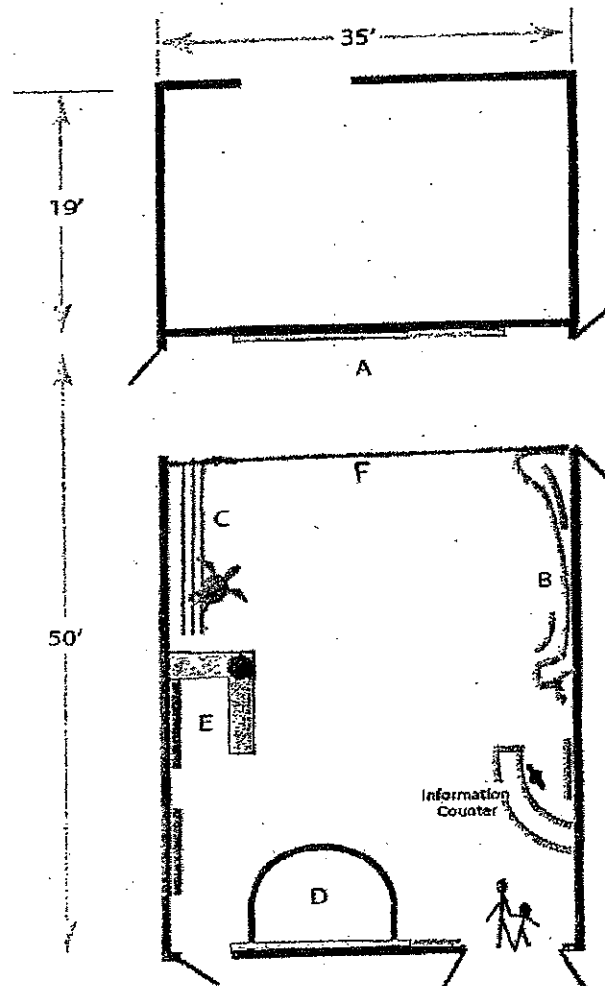
D - Historical Exhibit -- Fort Jefferson

E - Junior Ranger Exhibit

F - Historic Key West Bight Display -- Wm. Whitehead Map and pin light/audio program



# Floor Plan of New Interpretive Center



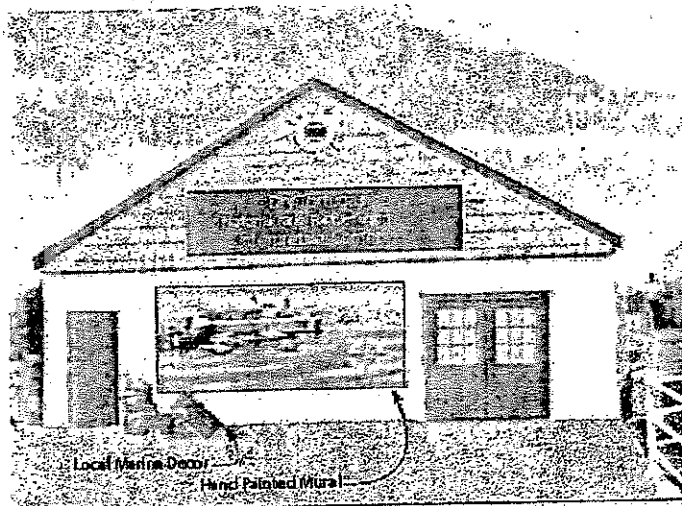
Dock



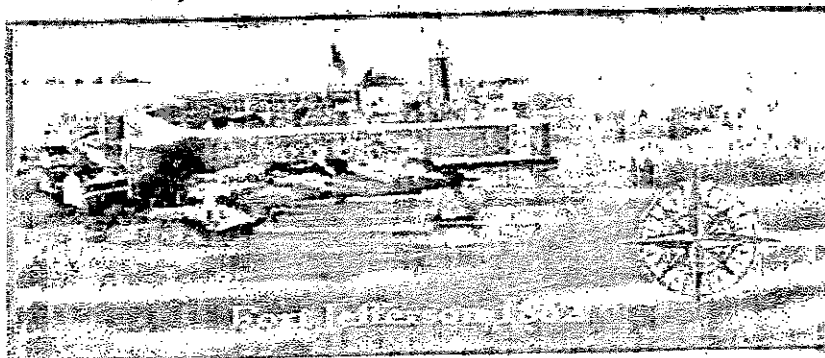
## Location

The proposed Interpretive Center will be installed in the former Thompson Fish House building in the historic Key West Blight area on the northwest side of Key West Island. The building sits on a pier foundation over water, making it most suitable as a point of inception for the Dry Tortugas National Park experience. The building measures 50 feet by 35 feet and is approximately 1,750 square feet in area, with 1,500 square feet of space dedicated for interpretation and visitor orientation. The Interpretive Center will feature multiple openings into an open-air assembly. An information counter will be positioned at the main entryway.

We have selected the historic Thompson Fish House because it is a historic structure and one that is very close and fully integrated into the flow of visitors on the dock where we have our vessel.



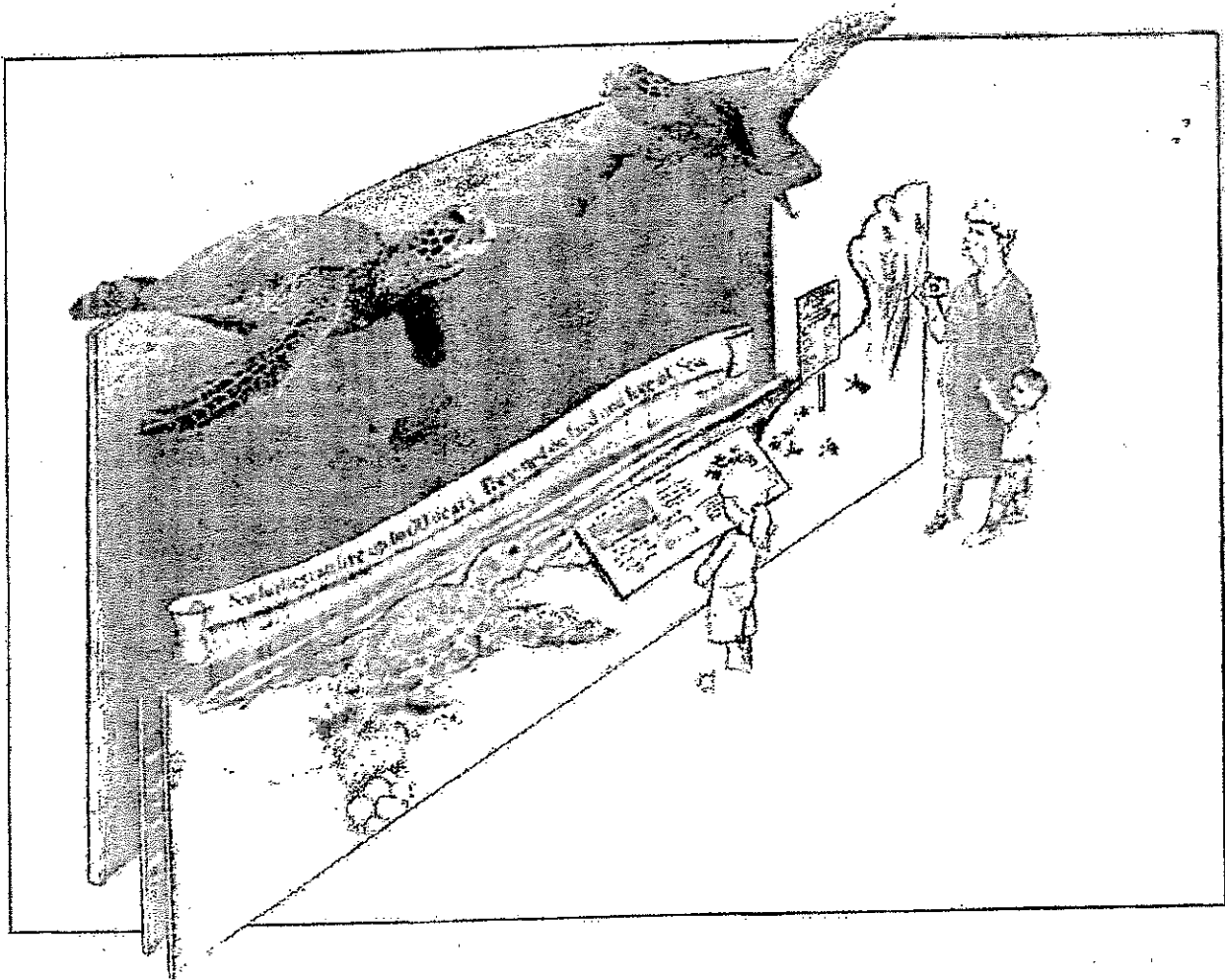
Mural Close-Up





# Kingdom of the Tortugas

Large, life-size replicas of Leatherback, Hawksbill, and Green Sea Turtles "swimming" above and around guests will attract visitors to this compelling exhibit on the Dry Tortugas' namesake and most popular sea creature. The history of the turtle from the days of discovery by Juan Ponce de Leon to modern-day conservation programs developed for these endangered animals will be explored. Appropriate biological objects used for exhibition and interpretation will be coordinated with the National Park Service and the Florida Keys National Marine Sanctuary personnel.



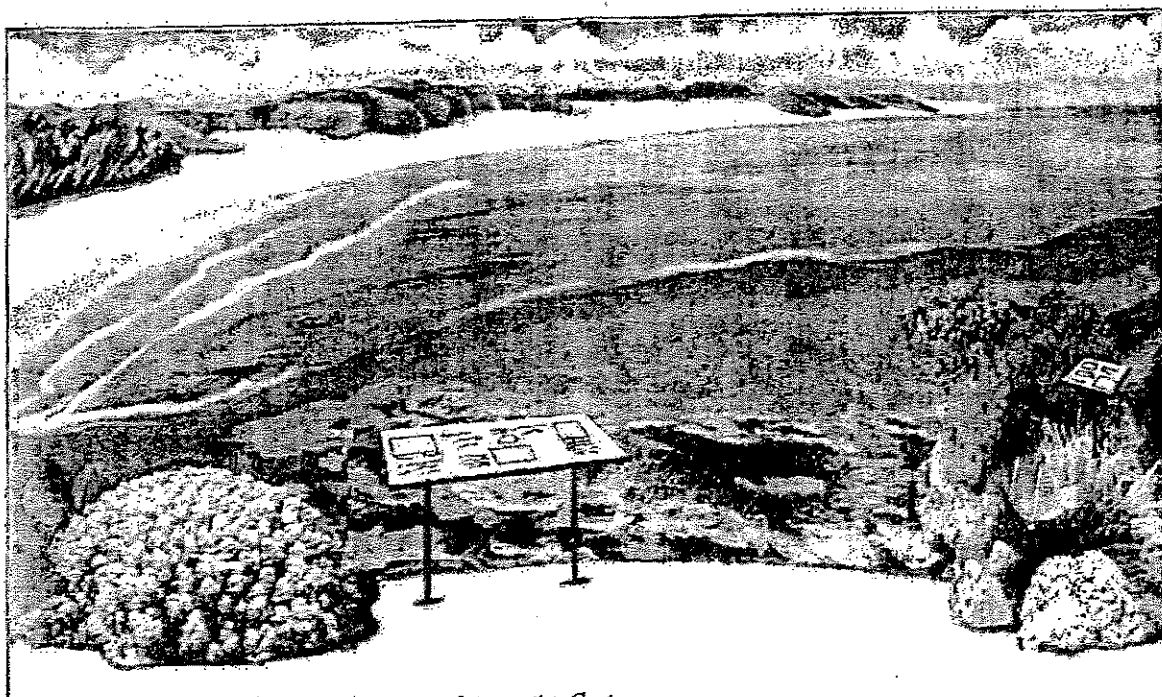
*The Kingdom of the Tortugas exhibit in the new Interpretive Center*





# The World of Coral Reefs

This principal exhibition is a direct interpretive link to the Centerpiece Aquarium Wall. The three-dimensional exhibit features real coral displays with cut-out Folia colorful images of the fauna and flora of the Dry Tortugas. The exhibit will interpret the Dry Tortugas and the Florida Keys as one of the most biologically and sociologically complex settings in North America. Exhibit themes will include the biodiversity of the Keys, water as the lifeblood, the fragile ecosystem, and the importance of natural resource conservation and preservation.

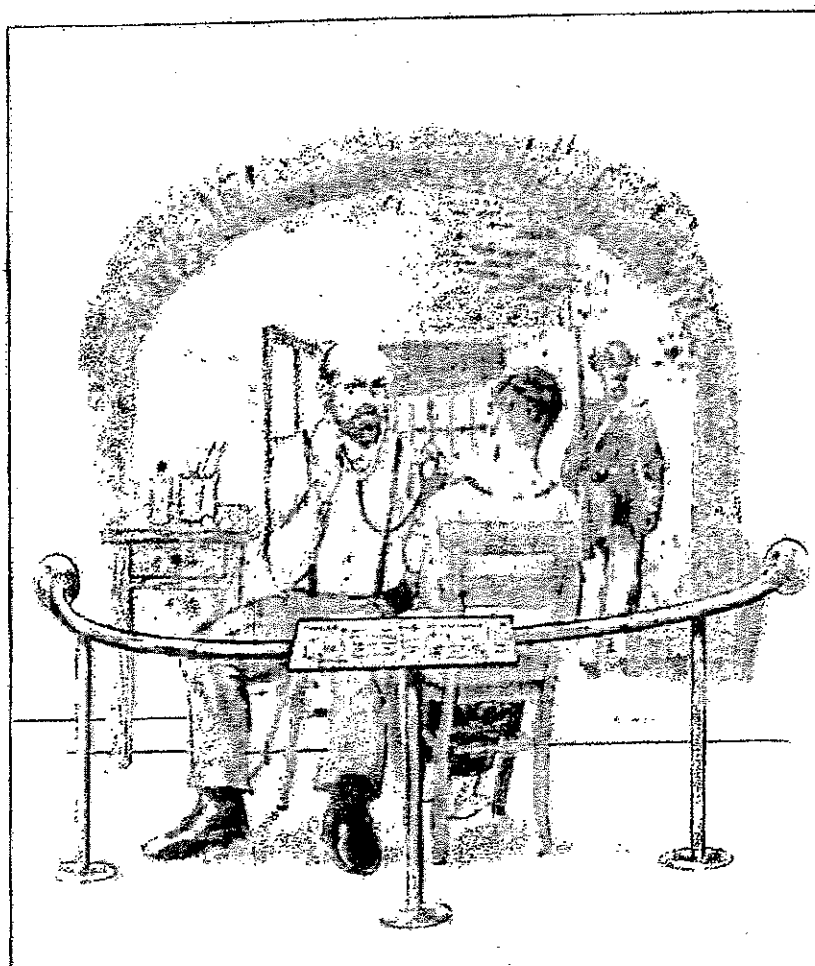


*The World of Coral Reefs exhibit in the new Interpretive Center*



# My Name Is Mudd

While the origins of the phrase is not directly related to Dr. Samuel Mudd, the story of the doctor's tenure at Fort Jefferson captures the trials and tribulations of those who lived on the "dry" island. Arguably the Fort's most famous prisoner, Dr. Mudd's life in the Dry Tortugas is one of many personal histories shaped by the challenging conditions of the island. Life at the Fort will be told from this perspective, along with a soldier's view for contrast. A life-size, full figure of Dr. Mudd in Civil War-period attire and at a makeshift medical table will be the visual attract for visitors. A scale model of Fort Jefferson, the "Guardian of the Gulf," will be exhibited under glass nearby.

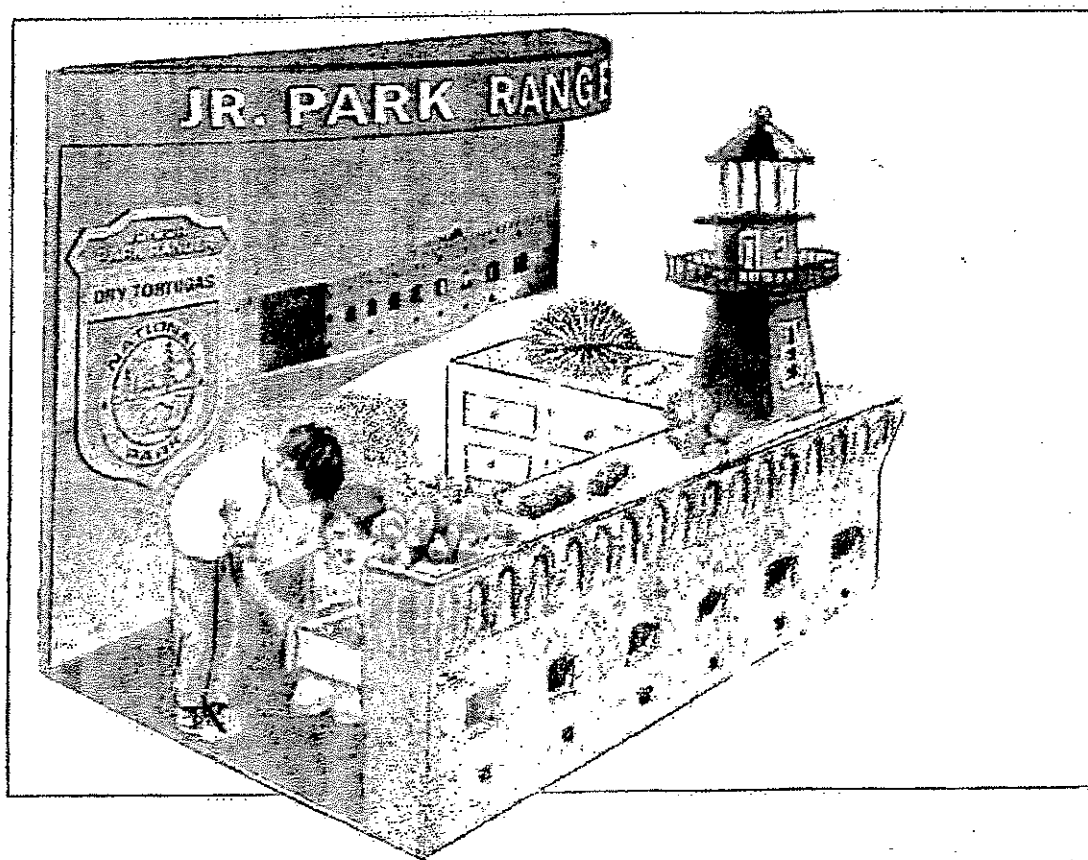


*My Name is Mudd exhibit in the new Interpretive Center*



## Hands on the Past, Eyes on the Future

This hands-on station will feature architectural materials, historic bricks, early anchors, coral, shells, and other materials that will allow visitors to touch authentic historic and natural objects during their journey to understanding the rich past of the Dry Tortugas and the future of this fragile island through conservation and preservation. Top-mounted objects on a viewing surround (counter), along with "discovery" drawers below, will allow visitors to explore the natural and historical resources of the Park. This area will also serve as the orientation station for the Dry Tortugas National Park Junior Ranger program. The exhibit could be incorporated as part of the Junior Ranger activities as outlined in the Dry Tortugas National Park Handbook. The exhibit, like the Handbook, will emphasize resource conservation and preservation.



*Hands On the Past, Eyes On The Future exhibit in the new Interpretive Center*