



MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT/LEASE SUMMARY			
Contract/Lease with	<u>Tropical Watersports, LLC</u>	Contract # _____	Effective Date: <u>Upon approval</u>
		Expiration Date: _____	
Contract/Lease Purpose/Description: <u>Agreement to increase the lease term and provide additional watersports and equipment rental concessions at Higgs Beach, Key West.</u>			
Contract Manager:	<u>Jo B. Walters</u> (Name)	<u>4549</u> (Ext.)	<u>Facilities Maint/Stop #4</u> (Department/Stop #)
for BOCC meeting on <u>10/19/11</u> Agenda Deadline: <u>10/04/11</u>			

CONTRACT/LEASE COSTS / REVENUE			
Total Dollar Value of Contract: \$	<b>REVENUE</b>	Current Year Portion:	<u>\$21,600/yr or 10% of gross proceeds</u>
Budgeted? Yes <input type="checkbox"/> No <input type="checkbox"/>	Account Codes: <u>001 - 362001</u>	SG	<u>- - - -</u>
Grant: \$ <u>N/A</u>			<u>- - - -</u>
County Match: \$ <u>N/A</u>			<u>- - - -</u>
			<u>- - - -</u>
ADDITIONAL COSTS			
Estimated Ongoing Costs: \$ _____/yr	For: _____	(eg. maintenance, utilities, janitorial, salaries, etc.)	
(Not included in dollar value above)			

CONTRACT/LEASE REVIEW				
	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>10/11/11</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>3 Sets</u>	<u>10/11/11</u>
Risk Management	<u>10/11/11</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>M. Slued</u>	<u>10-11-11</u>
O.M.B./Purchasing	<u>10/11/11</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Penny Lipp</u>	<u>10-11-11</u>
County Attorney	_____	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Kate J. Menon</u>	<u>11/11/11</u>
Comments: _____				
_____				
_____				
_____				

**LEASE RENEWAL AGREEMENT**  
**HIGGS BEACH CONCESSION**  
**TROPICAL WATERSPORTS, LLC**

This Agreement is made and entered into on the 19th day of October, 2011, by and between MONROE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY or LESSOR", whose address is 1100 Simonton Street, Key West, Florida, 33040, and TROPICAL WATERSPORTS, LLC., hereinafter referred to as "LESSEE" or "TENANT" whose address is 3635 Seaside Dr. #301, Key West, Florida 33040.

WHEREAS, on the 15th day of April, 2009, the parties entered into an agreement for the use of property more particularly described in exhibit "A", hereafter original agreement. A copy of the original agreement is attached to this renewal agreement and made a part of it; and

WHEREAS, on the 21<sup>st</sup> day of October, 2009, the parties entered into the first amendment to the agreement for purposes of providing additional booth areas for LESSEE and amending exhibit "A" which depicted the leased areas: and

WHEREAS, LESSEE no longer needs the additional booth areas and the parties have agreed to reduce and relocate LESSEE's leased areas and amend exhibit "A"; and

WHEREAS, the original agreement was for a term of three years with two (1) year renewal options, however the parties desire to renew the original agreement for 6 years; now, therefore,

IN CONSIDERATION of the mutual promises and covenants set forth below, the parties agree as follows:

1. Exhibit A of the original agreement is hereby replaced with the attached Exhibit A dated September 27, 2011.
2. Paragraph 1 of the original agreement is amended to read:
  1. **Premises.** The COUNTY does hereby lease to LESSEE, and LESSEE does hereby lease from COUNTY a portion of Clarence S. Higgs Memorial Beach, Key West, Florida as evidenced by the areas numbered 1, 2 and 3 on the drawing marked "EXHIBIT A" dated 9/27/2010, which is attached hereto and made a part hereof.
3. Paragraph 2 of the original agreement is amended to read:
  2. **Term.** The initial term of this renewal agreement is for three (3) years beginning on April 15, 2012. LESSEE may exercise an option to renew this agreement for one (1) additional three (3) year period with the written approval of the Board of County Commissioners. LESSEE shall submit a request in writing, at least 60 days prior to the current term, to the Board of County Commissioners requesting the renewal.
4. Paragraph 3 of the original agreement is amended to read:
  3. **Rental and Fees.** In return for the privilege of using the designated portions of Clarence S. Higgs Memorial Beach, LESSEE shall make monthly payments of rent to LESSOR as follows:

- a. 10% of its total gross proceeds or \$1,000.00 per month plus tax, whichever is greater, for the beach chair and umbrella rentals; and
- b. 10% of its total gross proceeds or \$1,000.00 per month plus tax, whichever is greater, for the kayak, sailboat, daysailer, snorkel equipment, longboard, aqua ball, paddle board, paddle board and other water related equipment rentals; and
- c. 10% of its total gross proceeds or \$100.00 per month plus tax, whichever is greater, of the locker rental proceeds.
- d. Rental and fees for the initial term of 3 years shall be as set forth in subparagraphs 3a., 3b. and 3c. above thereafter rental and fees shall be adjusted annually in an amount equal to the CPI-U for the preceding 12 months.

Payments shall be made on or before the fifteenth day of the month following the month payment is due. Payment should be directed to the Monroe County Finance Dept., P.O. Box 1980, Key West, Florida 33040.

5. Subparagraph 5f. of the original agreement is deleted in its entirety.

6. Subparagraph 5j. of the original agreement is amended to read:

J. This agreement is limited to rentals of beach chairs, umbrellas, kayaks, 14 and 16 foot sailboats, sunfish daysailers, snorkel equipment, longboards, aqua balls, paddle boards, paddle boats and such other water related equipment. LESSEE may also offer concierge services and sell local art, t-shirts and other similar souvenirs. NO OTHER SERVICE MAY BE PROVIDED WITHOUT THE WRITTEN CONSENT OF THE COUNTY.

7. Subparagraph 6d. is deleted in its entirety.

Except as set forth in paragraphs one, two, three, four, five, six and seven of this Lease Renewal Agreement, in all other respects, the terms and conditions of the original agreement remain in full force and effect.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative.

(SEAL)  
 ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS  
 OF MONROE COUNTY, FLORIDA

\_\_\_\_\_  
 Mayor/Chairman

WITNESSES

*Candice Blum*

Tropical Watersports, LLC

*[Signature]*

MONROE COUNTY ATTORNEY Title MGRM  
 APPROVED AS TO FORM

*[Signature]*

PEDRO J. MERCADO  
 ASSISTANT COUNTY ATTORNEY

Date 10/11/11

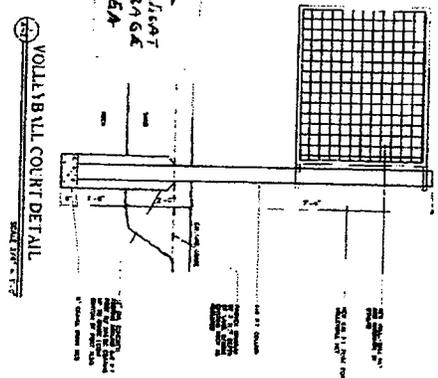
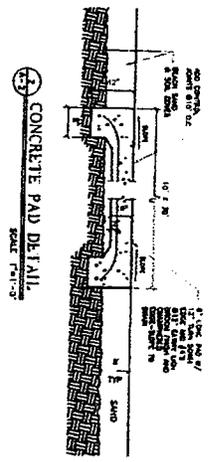
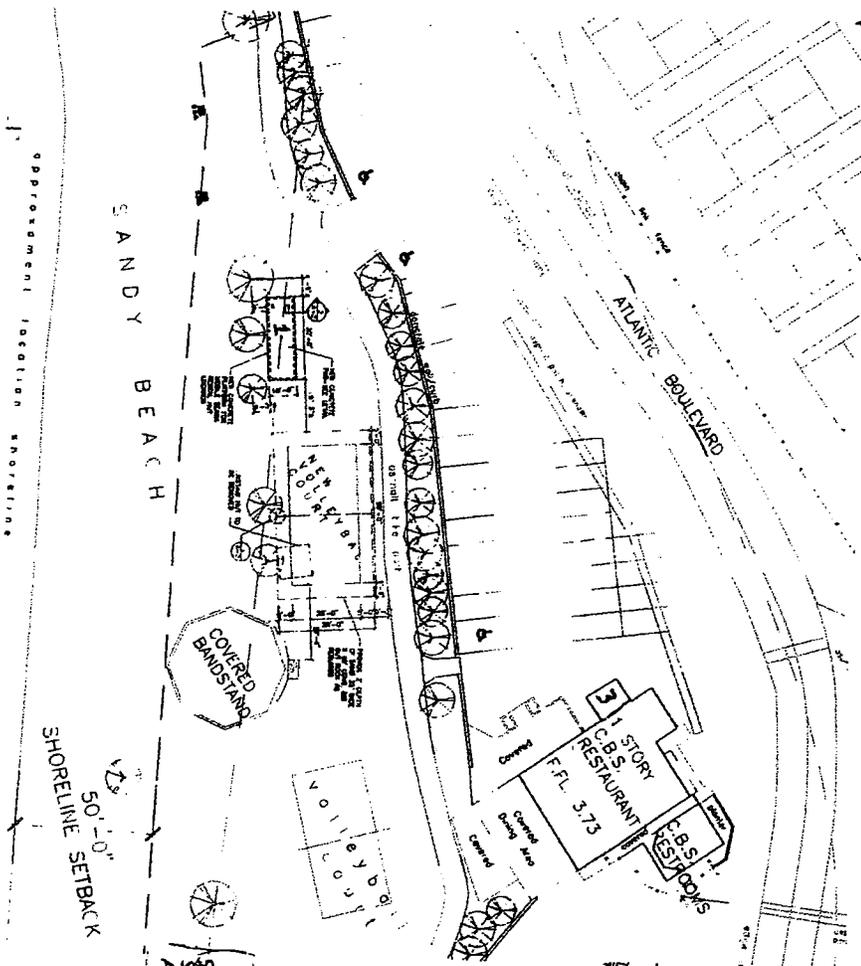
APPROXIMATE LOCATION SKETCHING

**PARTIAL SITE PLAN** SCALE: 1/8" = 1'-0"

NOT FOR CONSTRUCTION. THIS PLAN IS FOR INFORMATION ONLY AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.

CLARENCE HIGGS BEACH VOLLEYBALL COURT & HLT SLAB LOCATION

EXHIBIT 1/27/00



NO.	REVISION	DATE
1	ISSUED FOR PERMIT	1/27/00
2	REVISED PER COMMENTS	2/1/00
3	REVISED PER COMMENTS	2/15/00
4	REVISED PER COMMENTS	2/22/00
5	REVISED PER COMMENTS	3/1/00
6	REVISED PER COMMENTS	3/15/00
7	REVISED PER COMMENTS	3/22/00
8	REVISED PER COMMENTS	4/5/00
9	REVISED PER COMMENTS	4/12/00
10	REVISED PER COMMENTS	4/19/00
11	REVISED PER COMMENTS	4/26/00
12	REVISED PER COMMENTS	5/3/00
13	REVISED PER COMMENTS	5/10/00
14	REVISED PER COMMENTS	5/17/00
15	REVISED PER COMMENTS	5/24/00
16	REVISED PER COMMENTS	5/31/00
17	REVISED PER COMMENTS	6/7/00
18	REVISED PER COMMENTS	6/14/00
19	REVISED PER COMMENTS	6/21/00
20	REVISED PER COMMENTS	6/28/00
21	REVISED PER COMMENTS	7/5/00
22	REVISED PER COMMENTS	7/12/00
23	REVISED PER COMMENTS	7/19/00
24	REVISED PER COMMENTS	7/26/00
25	REVISED PER COMMENTS	8/2/00
26	REVISED PER COMMENTS	8/9/00
27	REVISED PER COMMENTS	8/16/00
28	REVISED PER COMMENTS	8/23/00
29	REVISED PER COMMENTS	8/30/00
30	REVISED PER COMMENTS	9/6/00
31	REVISED PER COMMENTS	9/13/00
32	REVISED PER COMMENTS	9/20/00
33	REVISED PER COMMENTS	9/27/00
34	REVISED PER COMMENTS	10/4/00
35	REVISED PER COMMENTS	10/11/00
36	REVISED PER COMMENTS	10/18/00
37	REVISED PER COMMENTS	10/25/00
38	REVISED PER COMMENTS	11/1/00
39	REVISED PER COMMENTS	11/8/00
40	REVISED PER COMMENTS	11/15/00
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42	REVISED PER COMMENTS	11/29/00
43	REVISED PER COMMENTS	12/6/00
44	REVISED PER COMMENTS	12/13/00
45	REVISED PER COMMENTS	12/20/00
46	REVISED PER COMMENTS	12/27/00
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93	REVISED PER COMMENTS	11/20/01
94	REVISED PER COMMENTS	11/27/01
95	REVISED PER COMMENTS	12/4/01
96	REVISED PER COMMENTS	12/11/01
97	REVISED PER COMMENTS	12/18/01
98	REVISED PER COMMENTS	12/25/01
99	REVISED PER COMMENTS	1/1/02
100	REVISED PER COMMENTS	1/8/02



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
1/5/2011

PRODUCER (305) 294-4494 FAX: (305) 743-0582  
Keys Insurance Services, Inc.  
805 Peacock Plaza

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

Key West FL 33040  
INSURED

Tropical Watersports, LLC  
13 Whistling Duck Lane

Key West FL 33040

RECEIVED  
JAN 5 2011  
MONROE COUNTY  
FLORIDA DEPARTMENT OF  
REVENUE

INSURERS AFFORDING COVERAGE  
INSURER A: Landmark American Ins. Co  
INSURER B:  
INSURER C:  
INSURER D:  
INSURER E:  
NAIC #

### COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY				EACH OCCURRENCE \$ 500,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	LBA104708-00	1/22/2011	1/22/2012	MED EXP (Any one person) \$ 5,000
					PERSONAL & ADV INJURY \$ 500,000
					GENERAL AGGREGATE \$ 500,000
					PRODUCTS - COMP/OP AGG \$ 500,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				
	<input checked="" type="checkbox"/> POLICY	<input type="checkbox"/> PRO-JECT	<input type="checkbox"/> LOC		
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident) \$
	ANY AUTO				BODILY INJURY (Per person) \$
	ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
	HIRED AUTOS				
	NON-OWNED AUTOS				
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	ANY AUTO				OTHER THAN AUTO ONLY EA ACC \$
					AGG \$
	EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE \$
	OCCUR CLAIMS MADE				AGGREGATE \$
	DEDUCTIBLE				\$
	RETENTION \$				\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N			E.L. EACH ACCIDENT \$
	If yes, describe under SPECIAL PROVISIONS below	<input type="checkbox"/>			E.L. DISEASE - EA EMPLOYEE \$
	OTHER				E.L. DISEASE - POLICY LIMIT \$

*M. Stued*  
1-14-11  
*cc: Jib*  
*To Walter*

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
Certificate holder is also added as an additional insured.  
*cc: Finance*

<b>CERTIFICATE HOLDER</b> (305) 295-3179 Monroe County Board of County Commssioner 1100 Simonton Street Key West, FL 33040	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE F. Hager/DAK
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**FIRST LEASE AMENDMENT  
HIGGS BEACH CONCESSIONS  
TROPICAL WATERSPORTS, LLC**

THIS FIRST LEASE AMENDMENT (hereinafter "Amendment") is made and entered into by and between **MONROE COUNTY**, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040, hereinafter referred to as "COUNTY" or "LESSOR" and **TROPICAL WATERSPORTS, LLC.**, whose address is 1002 Fleming Street, Key West, Florida, 33040 hereinafter referred to as "TENANT" or "LESSEE".

WHEREAS, the parties hereto did on April 15, 2009 enter into a Lease Agreement for Higgs Beach Concessions; and

WHEREAS, the LESSEE wishes to add booths to areas #2 and #5 necessitating clarification on the drawing evidencing areas 1, 2, 3, 4, 5 and 6, the designated areas of use, on "Exhibit A", and

WHEREAS, the parties have found the original Lease Agreement to be mutually beneficial: and

WHEREAS, both parties desire to amend the original Lease Agreement,

NOW, THEREFORE, in consideration of the premises and of the mutual covenants set forth below, the parties agree as follows:

FILED FOR RECORD  
2010 JAN 29 AM 11:48  
DANNY L. KOLHAGE  
CLERK  
MONROE COUNTY, FLORIDA

**Section 1.** Paragraph 1, Premises, of the original lease is amended to read as follows:

**Premises.** The COUNTY does hereby lease to LESSEE, and LESSEE does hereby lease from the COUNTY a portion of Clarence S. Higgs Memorial Beach, Key West, Florida as evidenced by the areas numbered 1, 2, 3, 4, 5 and 6 on the drawing marked "Exhibit A Amended", which is attached hereto and made a part hereof.

**Section 2.** In all other respects, the original Lease Agreement dated April 15, 2009 remains in full force and effect.

IN WITNESS WHEREOF, the parties have caused this lease to be executed this 21<sup>st</sup> day of October, 2009.

(SEAL)  
ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By Isabel C. Desantis  
Deputy Clerk

By George E. Neugent  
Mayor George Neugent

WITNESSES:

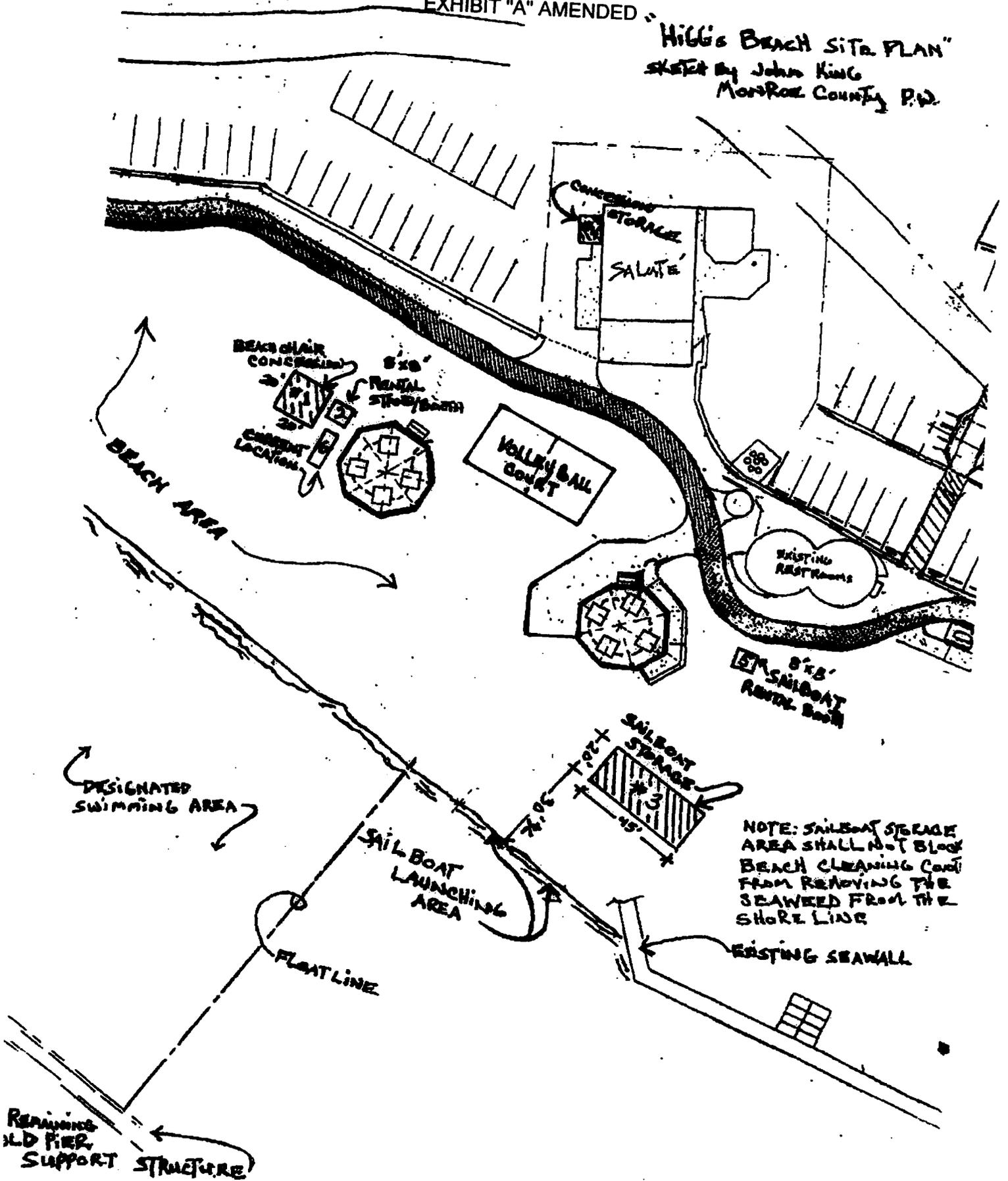
Ken Chatters  
Helen Rodon

Rocio Mercado  
ROCIO MERCADO  
COUNTY ATTORNEY  
TROPICAL WATERSPORTS, LLC.



EXHIBIT "A" AMENDED

HIGG'S BEACH SITE PLAN  
sketch by John King  
Monroe County P.D.



**LEASE AGREEMENT  
HIGGS BEACH CONCESSIONS  
TROPICAL WATERSPORTS, LLC**

**THIS CONTRACT OF LEASE** is made and entered into by and between **MONROE COUNTY**, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040, hereinafter referred to as "COUNTY" or "LESSOR" and **TROPICAL WATERSPORTS, LLC.**, whose address is 1002 Fleming Street, Key West, Florida, 33040 hereinafter referred to as "TENANT" or "LESSEE" this 15<sup>th</sup> day of April, 2009.

WHEREAS, the LESSOR desires to grant to LESSEE a non-exclusive right to maintain and operate a concession on the beach for purposes of renting beach chairs, umbrellas, kayaks, sailboats, and daysailers; and

WHEREAS, the LESSOR and LESSEE desire, in connection with said operations, to provide for the leasing by LESSOR to LESSEE of certain space at Clarence S. Higgs Memorial Beach;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, and other valuable considerations, COUNTY does hereby grant and lease unto LESSEE and LESSEE does hereby lease from COUNTY, certain premises, rights and privileges as follows, to wit:

1. **Premises.** The COUNTY does hereby lease to LESSEE, and LESSEE does hereby lease from the COUNTY a portion of Clarence S. Higgs Memorial Beach, Key West, Florida as evidenced by the areas numbered 1, 2, 3, 4, 5 and 6 on the drawing marked "Exhibit A", which is attached hereto and made a part hereof.
2. **Term.** The term of this lease is for three (3) years beginning on April 15, 2009. LESSEE may exercise an option to renew this lease for two (2) additional one (1) year periods with the written approval of the Board of County Commissioners. LESSEE shall submit a request in writing, at least 60 days prior to expiration of the then current term, to the Board of County Commissioners requesting the renewal.
3. **Rental and Fees.** In return for the privilege of using the designated portions of Clarence S. Higgs Memorial Beach, LESSEE shall make monthly payments of rent to LESSOR as follows:
  - a. 10% of its total gross proceeds or \$500.00 per month, whichever is greater, for the beach chair and umbrella rentals; and
  - b. 10% of its total gross proceeds or \$1,000.00 per month, whichever is greater, for the kayak, sailboat, and daysailer rentals.Payment shall be made on or before the fifteenth day of the month following the month payment is due. Payment should be directed to the Monroe County Finance Dept., P.O. Box

1980, Key West, Florida. 33040. The first payment shall be due May 15, 2009. Rent shall be paid in equal monthly installments, all of which shall be due and payable on or before the fifteenth day of each calendar month during which this lease is in effect. Upon the failure of LESSEE to pay any installments when due, the LEESOR will be entitled to charge and collect, and LESSEE will be obligated to pay, a late fee of two percent (2%) of any such amount, if paid within thirty (30) days of the date due, and five percent (5%) of any such amount, not paid within thirty (30) days of the date due. Such late fees will be in addition to the amount of rent due. The acceptance by the COUNTY of the overdue rental installment plus applicable late fees shall cure what would otherwise constitute a default by LESSEE under the terms of this lease. The COUNTY, at its option, however, may refuse a proffered overdue rental installment and late fees, declare a default, and proceed according to paragraph 4 of this lease. In the event that any check, draft, or negotiable instrument by which LESSEE has tendered any rent payment is returned to the COUNTY and not honored, whether for insufficient funds or other reason, the COUNTY will be entitled to charge and collect, in addition to any applicable late payment fees as provided above, a fee of Twenty-five Dollars (\$25.00) for such dishonored instrument. Such penalty fee shall also be in addition to the amount of rent due. The acceptance by the COUNTY of the rental payment plus any applicable late fee and penalties following the receipt of a dishonored instrument shall cure what would otherwise constitute a default under the terms of this lease. The COUNTY, at its option, however, may refuse any proffered rental installment and applicable late fees and penalties, declare a default, and proceed according to paragraph 4 of this lease.

**4. Termination.** This Agreement may be terminated at the discretion of the LESSOR in the following circumstances:

- a. LESSEE fails to pay the rent when due;
- b. LESSEE fails to obtain the insurance required under this lease or allows the required insurance coverage to lapse or fall below the minimum required;
- c. LESSEE otherwise breaches the terms of this lease.

Unless the LESSOR has accepted in writing a delay in performance of duties, the failure to perform said duties shall constitute a default under the terms of this agreement. In the case of default/breach, the County's Director of Facilities Maintenance shall first give the LESSEE a written notification stating the default/breach and that Lessee has 10 days to correct the default/breach. If the LESSEE has not commenced correction of the default/breach at the end of the 10 days, then the LESSOR may terminate the lease in its discretion. If it shall be necessary to employ the services of an attorney in order to enforce its rights under this Agreement, the LESSOR shall be entitled to reasonable attorney's fees. Waiver of a default in any particular month shall not bind the LESSOR to forego the provisions of this paragraph and any subsequent default shall be grounds for termination.

**5. LESSEE'S OBLIGATION:** LESSEE covenants and agrees:

- a. To pay the LESSOR the rent at the times and in the manner provided by this lease.
- b. To continue to maintain current City and County Occupational Licenses, as required, during the period of the lease.

- c. That LESSEE's concession will not interfere with beach cleaning.
- d. LESSEE will conduct its operations in a businesslike manner at all times, and will keep the leased premises free of trash and debris left in the area of the concession by the public.
- e. All rental equipment will be maintained in good working condition.
- f. Lessee agrees to recondition and maintain the line of floats which extends from near the beach to the ocean end of Reynolds Street Pier to keep the sailboats and sailboards separated from the swimming area for the period of this lease.
- g. To make no improper or offensive use of said premises, and to permit the LESSOR or its agents to inspect the leased premises at all reasonable times for the purpose of viewing the condition thereof.
- h. Beach hours are from 6:00 a.m. until 11:00 p.m. Business hours to be determined by agreement between LESSOR'S DIRECTOR OF FACILITIES MAINTENANCE and LESSEE.
- i. Premises, as a portion of Higgs Beach, are as evidenced by the attached drawing marked Exhibit A and numbered 1, 2, 3, 4, 5 and 6 which is attached hereto and made a part thereof in the Lease Agreement.
- j. This agreement is limited to rentals of beach chairs, umbrellas, kayaks, 14 and 16 foot sailboats, sunfish daysailers, snorkel equipment, longboards, and such other water related equipment. Lessee may also offer concierge services and sell local art, t-shirts and other similar souvenirs. NO OTHER SERVICE MAY BE PROVIDED WITHOUT THE WRITTEN CONSENT OF THE COUNTY.
- k. LESSEE shall procure and maintain Commercial General Liability insurance. Coverage must include \$500,000 combined single limit. Monroe County Board of County Commissioners must be specifically included as an additional insured and certificate holder.
- l. LESSEE shall obtain Worker's Compensation insurance with limits sufficient to respond to Florida Statute 440 or provide documentation to the County evidencing LESSEE's exemption.
- m. To comply with LESSOR's reasonable requests as to deployment and/or removal of LESSEE'S rental offerings.

6. **LESSOR'S OBLIGATIONS:** LESSOR covenants and agrees:

- a. LESSEE shall be permitted to maintain the rental booths for operation of the concession as depicted in Exhibit A numbers 2 and 5. Upon termination of this lease, LESSEE shall remove said structures and return the premises to the condition at the beginning of the lease term. Should LESSEE fail to remove the structures within thirty (30) days of lease termination, LESSOR shall have the right to remove said structures and charge LESSEE for the costs of removal, or to retain said structures for its own use.
- b. LESSOR is the lawful owner of the property demised hereby, that it has lawful possession thereof, and has good and lawful authority to execute this lease; and

- c. Throughout the term hereof, LESSEE may have, hold and enjoy peaceful and uninterrupted possession of the premises and rights herein leased and granted, subject to performance by LESSOR or its obligation herein.
- d. To perform the initial installation of the line of floats which extends from near the beach to the ocean end of Reynold's street pier.

7. **Books, Records and Documents.** LESSEE shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement.

8. **Governing Law, Venue, Interpretation.** Governing Law, Venue, Interpretation, Costs, and Fees: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State.

In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the LESSOR and LESSEE agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

The LESSOR and LESSEE agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.

9. **Severability.** If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The LESSOR and LESSEE agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

10. **Attorney's Fees and Costs.** The LESSOR and LESSEE agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

- 11. Binding Effect.** The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the LESSOR and LESSEE and their respective legal representatives, successors, and assigns.
- 12. Authority.** Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.
- 13. Claims for Federal or State Aid.** LESSOR and LESSEE agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.
- 14. Adjudication of Disputes or Disagreements.** LESSOR and LESSEE agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.
- 15. Cooperation.** In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, LESSOR and LESSEE agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. LESSOR and LESSEE specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.
- 16. Nondiscrimination.** LESSEE agrees that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. LESSEE agrees to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss.1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as

amended, relating to confidentiality of alcohol and drug abuse patent records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

**17. Covenant of No Interest.** LESSOR and LESSEE covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

**18. Code of Ethics.** LESSOR agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

**19. No Solicitation/Payment.** The LESSOR and LESSEE warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the LESSEE agrees that the LESSOR shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

**20. Public Access.** The LESSOR and LESSEE shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the LESSOR and LESSEE in conjunction with this Agreement; and the LESSOR shall have the right to unilaterally cancel this Agreement upon violation of this provision by LESSOR.

**21. Assignment and Subletting:** It is agreed by the parties hereto that Lessee may elect to sub-lease or assign this Lease Agreement only upon written consent of the Monroe County Board of County Commissioners, which shall not be unreasonably withheld. All terms of this Lease Agreement shall be binding on the heirs, executors, administrators, sub-lessees and assigns of Lessee.

**22. Non-Waiver of Immunity.** Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the LESSOR and the LESSEE in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability

coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.

**23. Privileges and Immunities.** All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.

**24. Notices:** Any notice of communication from either party to the other pursuant to this agreement is sufficiently given or communicated if sent by Certified Mail, with proper postage fees prepaid, addressed to the party for whom intended, at the following address:

LESSOR: Monroe County Administrator  
1100 Simonton Street  
Key West, Florida 33040

LESSEE: Tropical Watersports, LLC  
c/o Francis Gonzon  
1002 Fleming Street  
Key West, Florida 33040

**25. Legal Obligations and Responsibilities:** Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.

**26. Non-Reliance by Non-Parties.** No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the LESSOR and the LESSEE agree that neither the LESSOR nor the LESSEE or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

**27. Attestations.** LESSEE agrees to execute such documents as the LESSOR may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

28. **No Personal Liability.** No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

29. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

30. **Section Headings.** Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

31. **Federal, State and Local Law.** The company shall comply with all federal, state, county and local laws, ordinances, rules and regulations now and hereafter in force which may be applicable to the operation of its business at the Clarence S. Higgs Memorial Beach, including the minimum standards for fixed base operators, as amended from time to time.

32. **Mutual Review.** This agreement has been carefully reviewed by LESSEE and LESSOR, therefore this agreement is not to be construed against either party on the basis of authorship.

33. **Indemnification/Hold Harmless.** Notwithstanding any minimum insurance requirements prescribed elsewhere in this agreement, LESSEE shall defend, indemnify and hold the LESSOR and the LESSOR's elected and appointed officers and employees harmless from and against (i) any claims, actions or causes of action, and (ii) any litigation, administrative proceedings, appellate proceedings, or other proceedings relating to any type of injury (including death), loss, damage, fine, penalty or business interruption, that may be asserted against, initiated with respect to, or sustained by, any indemnified party by reason of, or in connection with, (A) any activity of LESSEE or any of its employees, agents, contractors or other invitees during the term of this Agreement, (B) the negligence or willful misconduct of LESSEE or any of its employees, agents, contractors or other invitees, or (C) LESSEE's default in respect of any of the obligations that it undertakes under the terms of this lease, except to the extent the claims, actions, causes of action, litigation, proceedings, costs or expenses arise from the intentional or sole negligent acts or omissions of the LESSOR or any of its employees, agents, contractors or invitees (other than LESSEE). Insofar as the claims, actions, causes of action, litigation, proceedings, costs or expenses relate to events or circumstances that occur during the term of this lease, this section will survive the expiration of the term of this lease or any earlier termination of this lease

**IN WITNESS WHEREOF**, the parties have caused this lease to be executed this 15th day of April, 2009.



WITNESSED BY: DANNY L. KOLHAGE, CLERK  
*Danny L. Kolhage*  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By: *George R. Neugebaur*  
Mayor/Chairperson

TROPICAL WATERSPORTS, LLC.

WITNESSES:  
*Patricia Gables*  
*Darlene S. [Signature]*

By: *[Signature]*  
Title: *Manager*

Telephone: 302.542.7885

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
*[Signature]*  
PEDRO J. MENDOZA  
ASSISTANT COUNTY CLERK  
Date: 4/8/09

FILED FOR RECORD  
2009 APR 16 AM 10:49  
DANNY L. KOLHAGE  
CLERK CIR. CT.  
MONROE COUNTY, FL

"HIGGS BEACH SITE PLAN"  
 SKETCH BY JOHN KING  
 MONROE COUNTY, P.L.

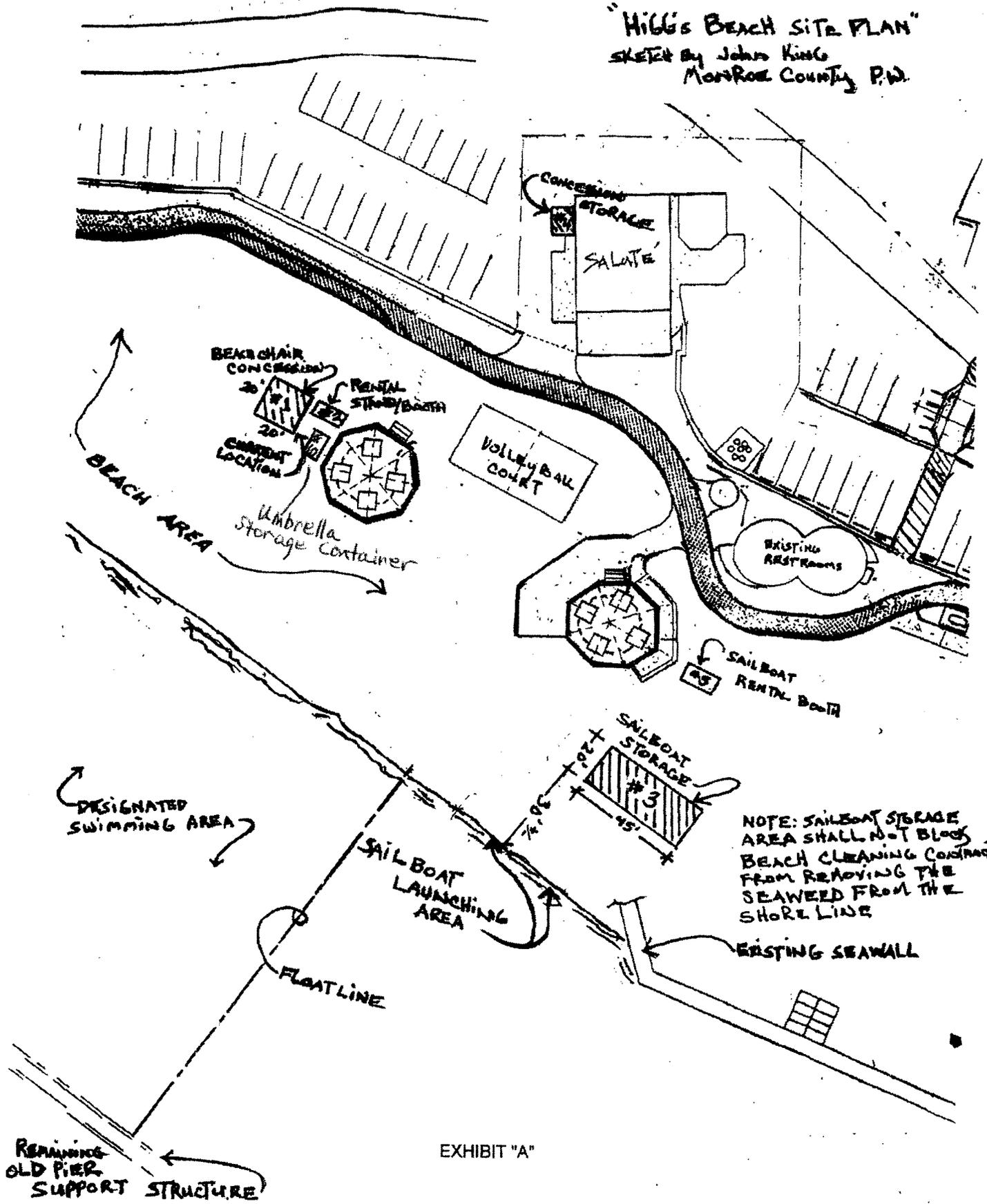


EXHIBIT "A"