BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: June 15, 2005 Division: Public Works

Bulk Item: Yes X No ___ Department: Facilities Maintenance JK

AGENDA ITEM WORDING: Approval to enter into a new lease with Tropical Sailboats, Inc. to operate and maintain a concession for an amount of Three Hundred and Five Dollars ($305.00) per month or Ten Percent (10%) of monthly gross proceeds, whichever is greater.

ITEM BACKGROUND: On July 15, 2005, our current lease with Tropical Sailboats, Inc. for Beach Chairs and Umbrellas Rentals will expire with no additional options to renew. On April 19, 2005, a bid opening was conducted for Beach Chair and Umbrella Rentals at Higgs Beach with Tropical Sailboats, Inc. submitting the most significant amount of monthly proceeds to Monroe County.

PREVIOUS RELEVANT BOCC ACTION: N/A

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Approval as stated above.

TOTAL COST: N/A **BUDGETED:** Yes N/A No ___

COST TO COUNTY: N/A **SOURCE OF FUNDS:** Revenue

REVENUE PRODUCING: Yes X No _____ **AMOUNT PER MONTH** $305.00 or 10% whichever is greater. **Year** ____

APPROVED BY: County Atty ___ OMB/Purchasing ____ Risk Management ____

DIVISION DIRECTOR APPROVAL: 5/19/05
Dent Pierce, Director Public Works

DOCUMENTATION: Included _____ To Follow_____ Not Required_____

DISPOSITION:_____ **AGENDA ITEM #**_____

Revised 1/03

ADMINISTRATIVE SERVICES DEPARTMENT

PURCHASING OFFICE

TABULATION SHEET

OPEN DATE: AT 11:00 AM April 19, 2005

TITLE: BEACH CHAIRS & UMBRELLA RENTALS AT HIGGS BEACH

RESPONDENT	BID BOND	TOTAL PRICE
Tropical sailboats, inc	N/A	10% of Total Gross or $ 305.00 Per Month Whitchever is Greater

Bid Committee Present: Carlos Victores - Purchasing Office

Members of the Public Present: None

I hereby certify that this is a true and correct copy of said bid opening and that all bidders listed above have been checked against the State of Florida Convicted & Suspended Vendor listings. All bids listed above were received by the date and time specified.

Bid Opened By: Carlos Victores - senior buyer

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: Tropical Sailboats, Inc. Contract #_____

Effective Date: July 15, 2005

Expiration Date: July 14, 2006

Contract Purpose/Description:
Lease Agreement to operate and maintain a concession on Higgs Beach for the purpose of renting beach chairs and umbrellas.

Contract Manager: Miguel Carbonell (Name) 4385 (Ext.) Facilities Maint/Parks & Rec. #4 (Department/Stop #)

for BOCC meeting on June 15, 2005 Agenda Deadline: May 31, 2005

CONTRACT COSTS

Total Dollar Value of Contract: $ Revenue-producing Current Year Portion: $

Budgeted? Yes ☐ No ☐ Account Codes: ____-____-____-____-____

Grant: $ _____ ____-____-____-____-____

County Match: $ _____ ____-____-____-____-____

____-____-____-____-____

ADDITIONAL COSTS

Estimated Ongoing Costs: $_____/yr For: _____
(Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director		Yes ☐ No ☐		5/19/05
Risk Management	4-21-05	Yes ☐ No ☑	M. Slavik	4-21-05
O.M.B./Purchasing	4/21/05	Yes ☐ No ☑	Salvatore Spadola	4/22/05
County Attorney	4/22/05	Yes ☐ No ☑		4/22/05

Comments: _____

SECTION THREE

Lease agreement

This Lease Agreement ("Lease") is made and entered into this 15th. day of June, 2005, between Monroe County, a political subdivision of the State of Florida, hereby referred to as LESSOR whose address is1100 Simonton Street, Key West, FL. 33040, and Tropical Sailboats, Inc., hereinafter referred to as LESSEE, whose address is 1414 Von Phister St. Key West, Florida, which expression shall include the heirs, executors, administrators and assigns of the LESSEE when the context so admits.

WHEREAS, the LESSOR desires to grant to LESSEE a non-exclusive right to maintain and operate a concession on the beach for the purpose of renting beach chairs and umbrellas to the public; 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 mutual covenants, promises and premises herein contained, the parties hereto agree as follows:

1. **DEMISE AND PREMISES:** The Lessor of these premises leases unto the Lessee a portion of Clarence S. Higgs Memorial Beach, Key West, Florida as evidenced by area marked "Premises" on the attached drawing marked "Exhibit A", which is attached hereto and made a part hereof.

2. **TERM:** This agreement is for a renewal term of ONE (1) year, commencing July 15, 2005 and expiring on July 14, 2006, unless earlier terminated pursuant to provisions of this agreement or operation of law. Additionally, the Lessee may exercise an option to renew this lease for TWO (2) ADDITIONAL ONE-YEAR PERIODS, CONTINGENT UPON APPROVAL and with written consent of the Board of County Commissioners, by giving Lessor written notice of their intention to exercise said option within sixty (60) days previous to the expiration of the current Lease Agreement.

3. **RENTAL AND FEES:** In return for the privilege of using the designated portion of Clarence S. Higgs Memorial Beach, Lessee will make monthly payments of rent to Lessor equal to 10% of its total gross proceeds or $305.00 per month, whichever is greater. Payment shall be made on or before the fifteenth day of each month following the month for which

payment is due. Payments should be directed to the Monroe County Finance Dept., P.O. Box 1980, Key West, Florida, 33040.

4. **ACCOUNTING PROCEDURES:** 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. If an auditor employed by the County or Clerk determines that monies paid to Lessee pursuant to this Agreement were spent for purposes not authorized by this Agreement, the Lessee shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were paid to Lessee.

5. **OTHER DEVELOPMENT:** Lessor reserves the right to further develop or improve Clarence S. Higgs Memorial Beach as it sees fit, regardless of the desirers or views of the Lessee.

6. **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) To make no improper or offensive use of said premises, and to permit the Lessor or its agents to inspect the eased premises at all reasonable times for the purpose of viewing the condition thereof.
(g) 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 Lessee.

- Beach hours are: 6:00 a.m. until 11:00 p.m. Business hours to be determined by agreement between LESSOR and LESSEE.

- Premises, as a portion of Higgs Beach, are as evidenced by the attached drawing marked Exhibit A, which is attached hereto and made a part thereof in the Lease Agreement.
- Rentals of beach chairs and umbrellas, ONLY.

7. **LESSOR'S OBLIGATIONS:** Lessor covenants and agrees:

a) Lessee shall be permitted to use a portable rental stand or maintain a booth 6x8 feet for operation of the concession only if Lessee obtains, prior to placement or erection, written approval from Lessor's Director of Public Works for the structure to be so placed or erected. Lessor's Director shall consider nearby structures, beach access, public safety, and usefulness for concession purposes in determining whether to permit the structure to be placed or erected on the premises. Upon termination of this lease, or an extension hereof, Lessee shall remove said structure and return the premises to the condition at the beginning of the lease term. Should Lessee fail to remove the structure within thirty (30) days of lease termination, Lessor shall have the right to remove said structure and charge Lessee for the costs of removal, or to retain said structure 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) Non-Waiver of Immunity. Notwithstanding he 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 Lessor be required to contain any provision for waiver.

e) 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 Lessor, when performing their respective functions under this Agreement within the territorial limits of the Lessor 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 Lessor.

8. **INDEMNIFICATION/HOLD HARMLESS/INSURANCE:**

(a) The Lessee agrees to indemnify and hold the Lessor free and harmless from any and all claims, suits, loss or damage, or injury to persons or property (including property owned by Lessor) and any other losses, damages, and expenses, including attorney's fees, which arise out of, in connection with, or by reason of the Lessee utilizing the property governed by the lease agreement. The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

(b) The Lessee shall procure and maintain Commercial General Liability-Coverage must include:

(1) $500,000 combined single limit.

(2) Additional Insured – Monroe County Board of County Commissioners is to be specifically included as an additional insured and Certificate Holder.

9. NONDISCRIMINATION

Lessor and Lessee agree 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. Lessor or Lessee agree 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) Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the basis of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; and 11) any other nondiscrimination provisions in any Federal

or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

10. **TERMINATION:** Either party may terminate this lease, with or without cause, upon giving the other party written notice of termination at least sixty (60) days prior to the effective date of termination.

11. **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.

12. **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.

13. **ASSIGNMENT AND SUBLETTING:** Lessee shall not assign or sublet this agreement without prior written consent of Lessor, nor permit any transfer by operation of law of Lessee's interest. All terms of this agreement shall bind any assignees or subleases.

14. **OTHER USE:** Lessee shall not use or permit the use of the demised premises or any part thereof for any purpose or use other than as authorized by this agreement.

15. **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.

16. **ATTORNEYS 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.

17. **BINDING EFFECTS:** 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.

18. **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.

19. **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.

20. **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.

21. **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.

22. **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.

23.. **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.

24. **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.

25. **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.

26. **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.

27. **EXECUTION OF 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 singing any such counterpart.

28. **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.

29. **CODE OF ETHICS:** Lessor agrees that officers and employees of the Lessor 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.

30. **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:

For Lessor: Monroe County Public Works Division
Facilities Maintenance Department
3583 South Roosevelt Boulevard
Key West, Florida 33040

For Lessee: Tropical Sailboats, Inc.
1414 Von Phister Street
Key West, Florida 33040

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

(SEAL)
Attest: DANNY L. KOLHAGE, Clerk

By_____
Deputy Clerk

_____
Witness

_____
Witness

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

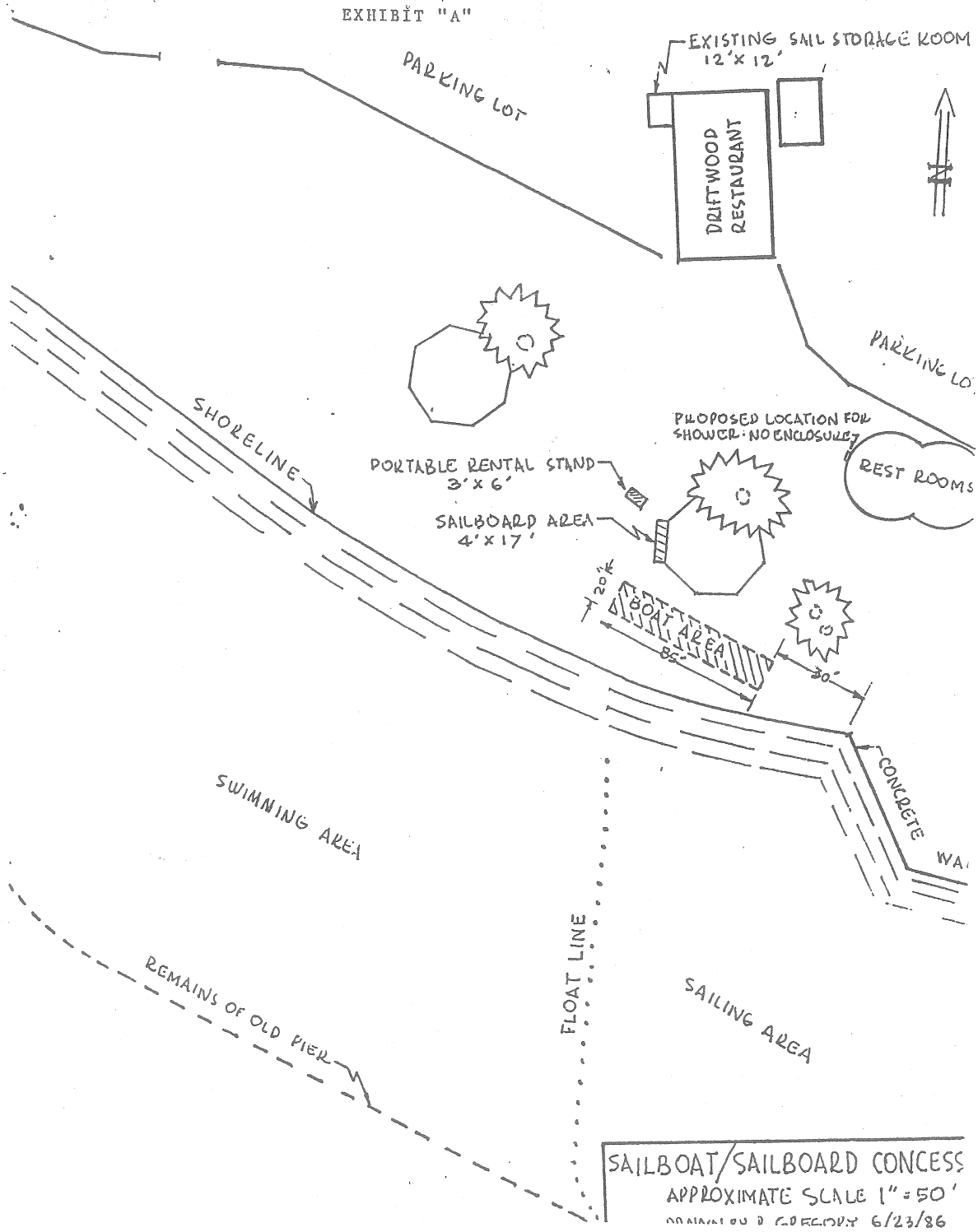
By_____
Mayor/Chairman

Tropical Sailboats, Inc.

By: Joan Gregory

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 4/22/05

EXHIBIT "A"



SAILBOAT/SAILBOARD CONCESS

APPROXIMATE SCALE 1" = 50'

DRAWN BY D. GREGORY 6/23/86