BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

MEETING DATE: FEBRUARY 19, 2003 DIVISION: COMMUNITY SERVICES

BULK ITEM: YES DEPARTMENT: LIBRARY

AGENDA ITEM WORDING: Approval of lease between the Monroe County Board of Commissioners and MHW Properties, Inc., for additional space in the Big Pine Key Shopping Center for the Big Pine Key Branch Library expansion.

ITEM BACKGROUND: The Gallery in the space adjacent to the Library has agreed to move into the next space, making their current site available for use by the Library. The shopping center owner has agreed to this move.

PREVIOUS RELEVANT BOCC ACTION: The BOCC approved the Lease Buy Out Agreement with the Lower Keys Artists Network, Inc., at their meeting on December 18, 2002, to facilitate this move.

CONTRACT/AGREEMENT CHANGES: N.A.

STAFF RECOMMENDATION: Approval

TOTAL COST: $ 12,987.92 for the balance of FY2003 BUDGETED: No

COST TO COUNTY: $ 0 Moneys to come from the State Aid to Libraries Grant already awarded

REVENUE PRODUCING: AMOUNT PER MONTH /YEAR:

APPROVED BY: County Attorney XXX OMB/Purchasing XXX Risk Management XXX

DIVISION DIRECTOR APPROVAL JMalloch
JAMES E. MALLOCH, Division Director

DOCUMENTATION: Included XXX To Follow Not Required

AGENDA ITEM # D6

DISPOSITION: _____

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: MHW Properties, Inc. Contract #_____

Effective Date: _____

Expiration Date: _____

Contract Purpose/Description:

Approval of lease between the Monroe County Board of Commissioners and MHW Properties, Inc., for additional space in the Big Pine Key Shopping Center for the Big Pine Key Branch Library expansion.

Contract Manager: Jim Malloch (Name) 4500 (Ext.) Community Services / #1 (Department/Stop #)

for BOCC meeting on 2/19/03 Agenda Deadline: 2/5/03

CONTRACT COSTS

Total Dollar Value of Contract: $ _____ Current Year Portion: $ 12,987.92

Budgeted? Yes☐ No☒ Account Codes: 125-62019-530490-GP0300-530490 SR

Grant: $ State Aid to Libraries Grant

County Match: $ -0-

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	2/13/03	Yes☐ No☑	J. Malloch by [illegible]	2/13/03
Risk Management	2/13/03	Yes☐ No☑	W. Grunhan	2/13/03
O.M.B./Purchasing	2/13/03	Yes☑ No☐	[illegible]	2/14/03
County Attorney	2/11/03	Yes☐ No☑	Suzanne Hutton - See att.	2/11/03

Comments: OMB: Stacey - needs non-appropriation clause and ethics statement. SR also needs Public Entity Crime Statement SR

Done - OK [illegible] 2/14/03

OMB Form Revised 2/27/01 MCP #2

RETAIL

SHOPPING CENTER LEASE AGREEMENT

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RETAIL

SHOPPING CENTER LEASE AGREEMENT

THIS LEASE, made and entered into this _____ day of _____, 2003, by and between MICHAEL H. WEISSER d/b/a Big Pine Key Shopping Plaza (``Landlord'') and MONROE COUNTY (``Tenant''), having its principal offices at

_____

WITNESSETH:

That for and in consideration of the rent to be paid, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged by the parties, Landlord hereby demises and rents unto Tenant, and Tenant hereby leases from Landlord, certain premises located in the Landlord's Shopping Center known as Big Pine Key Shopping Center (hereinafter referred to as ``Shopping Center'' or ``Center'') all upon the terms, covenants, and conditions hereinafter contained.

ARTICLE I - FUNDAMENTAL LEASE PROVISIONS AND EXHIBITS

1. Fundamental Lease Provisions

A. NAME OF PROJECT: Big Pine Key Plaza

B. LANDLORD: MICHAEL H. WEISSER d/b/a Big Pine Key Plaza

C. TENANT: MONROE COUNTY

D. TENANT'S TRADE NAME: Monroe County Library

E. PERMITTED USAGE: Library

F. SQUARE FOOTAGE: 1200 square feet

G. PRIMARY LEASE TERM: Five years

H. FIXED MINIMUM ANNUAL RENT: 24,000.00 with annual 4% increases, based upon the rent of the year preceding the recomputation, and subject to lease amendment should the common area costs demonstrably increase more than 4% but less than 10%; County shall not withhold approval of any reasonable amendment to address economic changes. Tenant's obligation to pay under this agreement is conditioned upon the annual appropriation of funds.

I. COMMENCEMENT DATE: March 1, 2003.

J. PERCENTAGE RENT RATE: N/A

K. PASS THRUS TO TENANT: Computations of those common area expenses normally passed through to tenants has been applied to the premises and included in the monthly rent of $2,000.00.

L. OPTIONS: One three year option

M. INITIAL MONTH'S RENT, INCLUDING PASS THRUS: $2,000.00.

N. CONSIDERATION FOR ALTERATION: $2,000.00. Party-wall opening. Tenant has requested from Landlord the right to open a party wall existing between Tenant's existing space and the space being rented herein. As consideration for the Landlord granting Tenant the right to make openings in said wall, which cost shall be solely paid by Tenant, Tenant agrees to remit to Landlord the sum of $2,000.00 as a payment for Landlord's consent. Tenant agrees that at the termination of the Lease if requested by Landlord, Tenant shall restore the premises and shall restore the party wall to its original condition, all to be done at Tenant's sole expense. The payment enumerated herein shall be made on or before March 1, 2003 or when the Tenant commences to pay rent hereunder.

2. Effect of Reference to a Fundamental Lease Provision. Each reference in this Lease to any of the Fundamental Lease Provisions in Section 1 shall be construed to incorporate substantially all of the terms provided under such Fundamental Lease Provision as hereinafter amplified, but such amplified provision shall prevail in the event of any ambiguity.

3. Exhibits. The exhibits in this section and attached to this Lease are incorporated in this Lease by reference as though set forth fully herein and are to be construed as a part

hereof.

ARTICLE II - LEASED PREMISES AND TERM

4. Location and Size. The Leased Premises are located in the County of Monroe and State of Florida and known and described as the Big Pine Key Shopping Center. More particularly, the Leased Premises consist of approximately 1200 square feet (the area of the Demised Premises is measured by including the exterior faces of the exterior walls and the centers of any party walls), as outlined in red on the attached Site Plan (Exhibit A), and contained within the site plan, outlined in green on said Exhibit A; provided, however, that Landlord shall have the right to alter, in whole or in part, said Site Plan, but such alterations shall not materially interfere with Tenant's occupancy, use, or its access to the Demised Premises. Landlord shall also have the sole right to relocate any Tenant to a comparable space in the Shopping Center, at Landlord's expense, upon giving Tenant ninety (90) days' prior written notice. Nothing contained in this Lease shall constitute a consent by Landlord to occupancy of all or any part of the Premises by a subtenant, licensee or concessionaire, unless such consent shall be in writing. The Tenant shall not use any of the Demised Premises for any mechanical or vending machine device, either within or outside of their Premises without the express written permission of Landlord.

5. A. Commencement Date. The ``Commencement Date'' of this Lease shall be March 1, 2003.

B. Initial Term. The initial term of this Lease shall be for a period of five years.

ARTICLE III - RENT

6. A. Fixed Minimum Annual Rent. See Article I, Paragraph H.

B. If the term hereof shall begin and/or end on any day other than the first day of a calendar month, the fixed minimum rent for such partial month shall be apportioned on a per diem basis, calculated on the basis of a thirty (30) day month.

C. Tenant shall pay a consideration in the amount of $2,000.00 for the permission to alter the wall which is common to the adjacent unit owned by Tenant by placing a doorway in said wall.

D. DELINQUENCY CHARGES - Tenant is a local government entity and subject to the Florida Prompt Payment Act, Section 218.70, F.S. et. seq. Landlord has remedies available under said Act for any payment which is delinquent under said Act.

7. Percentage Rent. N/A

8. Definition of Gross Sales. N/A

9. Records. Both parties shall retain records regarding this agreement for a period of three years following the termination of this agreement. Upon receipt of reasonable notice, both parties shall allow each other or their designated representatives, during regular working hours, to review the other's records which pertain to this lease.

10. Reports. N/A

11. Rental for Fractional Periods. Both the guaranteed rental and/or the percentage rental (if any) for fractional periods at the beginning and end of the term of this Lease, or resulting from an authorized abatement of rent or a change of Tenant's fiscal year, shall be equitably prorated on the basis of the guaranteed rental installments or of the annual percentage rental, as the case may be.

ARTICLE IV - COMMON AREA MAINTENANCE

12. Deleted.

ARTICLE V - TAXES

13. Deleted.

ARTICLE VI - INSURANCE

14. Deleted.

15. Deleted.

ARTICLE VII - PRORATED CHARGES

16. Prorated Charges. If the term of the Lease shall begin or end on a date other than the first or last day of a calendar year, the first and/or final annual charges to Tenant with respect to all assessments herein, including but not limited to, common area maintenance charges, taxes, and insurance, shall be prorated on a daily basis of a 360 year day.

ARTICLE VIII - UTILITY SERVICES

17. A. Utilities. Tenant shall promptly pay for all public utilities rendered or furnished to the Leased Premises from and after the date Tenant assumes possession of said Premises, including but not limited to, water, sewer, gas, electricity, heat and air conditioning. Landlord shall not be liable in damages or otherwise for any interruption in the supply of any utility to the Demised Premises nor shall any such interruption constitute any ground for an abatement of any of the rents reserved hereunder. Tenant shall not at any time overburden or exceed the capacity of the mains, feeders, ducts, conduits or other facilities by which such utilities are supplied to, distributed in, or serve the Demised Premises. If Tenant desires to install any equipment which shall require additional utility facilities or utility facilities of a greater capacity than the facilities to be provided by Landlord, such installation shall be subject to Landlord's prior written approval of Tenant's plans and specifications therefor. If approved by Landlord, Tenant agrees to pay Landlord, on demand, the cost for providing such additional utility facilities or utility facilities of greater capacity.

B. Except as otherwise provided in this Section, Landlord shall not be responsible for providing any meters or other devices for the measurement of utilities supplied to the Demised Premises. Tenant shall make application for and arrange for the installation of all such meters or other devices and Tenant shall be solely responsible for and promptly pay, as and when the same become due and payable, all charges for water, sewer, electricity, gas, telephone and any other utility used or consumed in the Demised Premises.

C. Should Landlord elect or be required to supply any

utility services used or consumed in the Demised Premises, Tenant agrees to pay as additional rent an amount not to exceed that which the utility company would have charged Tenant for furnishing such utilities. If Landlord is furnishing Tenant any utility or utilities hereunder, Landlord, at any time, at Landlord's option and upon not less than thirty (30) days prior notice to Tenant, may discontinue such furnishing of any such utility to the Demised Premises, and in such case, Tenant shall contract with the public service company supplying such utility service for the purchase and obtaining by Tenant of such utility directly from such public service company.

D. Dumpster and/or trash compactor locations will be determined by the Landlord, and dumpsters shall be rented by the tenants to accommodate their trash removal. In the event Landlord implements an in-house trash removal program, Tenant agrees to participate.

ARTICLE IX - COMMON AREAS

18. Use of Common Areas. Tenant and its employees and invitees shall have the non-exclusive right, in common with Landlord and all others to whom Landlord has or may hereafter grant rights, to use the common areas as well as, where applicable, common corridors, courts and arcades, together with facilities such as washrooms, comfort rooms, lounges, drinking fountains and toilets, subject to such reasonable rules and regulations as Landlord may from time to time impose, including the designation of specific areas in which cars owned by Tenant and its employees must be parked. Tenant agrees after notice thereof to abide by such rules and regulations and to use its best efforts to cause its employees and invitees to conform thereto. Landlord may at any time close or restrict for a reasonable period, any common area to make repairs, to prevent the acquisition of public rights in such areas, or to discourage non-customer parking; and Landlord may do such other acts in and to the common areas as in its judgment may be desirable to improve the convenience thereof. Neither Tenant nor Tenant's employees shall solicit business in the common areas or distribute any handbills or other advertising matter in such areas or place any such handbills or advertising matter in or on any automobiles parked therein without Landlord's written consent.

ARTICLE X - NORMAL OPERATION AND USE OF PREMISES

19. Permitted Usage. Tenant covenants and agrees to use the Leased Premises only for the permitted uses set forth in Section 1.D and for no other purpose without written consent of the Landlord.

20. Noise, Obstructions and Nuisances. Tenant covenants that it will not: (a) place or maintain any signs or merchandise in any of the common areas, (b) create or maintain loud noises, sound effects, offensive odors, and smoke or dust in or about the Premises, and (c) commit any waste. Tenant shall not permit any loitering in or about its Premises, and shall take all reasonable affirmative steps to prevent and abate the same.

21. Rules and Regulations. Landlord shall have the right to establish, modify and/or rescind reasonable rules and regulations governing the use of parking areas, walks, driveways, passageways, signs, exteriors of building, lighting, matters affecting other Tenants, and the general management of the Shopping Center.

22. Signs, Awnings and Canopies. Tenant will not place or suffer to be placed or maintained on any exterior door, wall, or window of the Leased Premises any sign, awning, or canopy, or advertising matter or other things of any kind, and will not place or maintain any decoration, lettering or advertising matter on the exterior glass of any window or door of the Leased Premises without first obtaining Landlord's written approval and consent. Tenant further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or other things as may be approved by Landlord, in good condition and repair at all times.

23. Normal Operation and Use of Premises. Tenant shall operate 100% of the Leased Premises during the entire term of this Lease under the name(s) set forth in Section 1.C hereof, or such other name as Landlord shall approve in writing, with due diligence and efficiency so as to produce all of the gross sales which may be produced by such manner of operation, unless prevented from doing so by causes beyond Tenant's control. Subject to inability by reason of strikes or labor or disputes, Tenant shall carry at all times in said Premises a stock of merchandise of such size, character and quality as shall be reasonably designed to produce the maximum return to Landlord and Tenant. Tenant shall conduct its business in the Leased Premises during the regular customary days and hours for such type of business in the city or trade area in which

the Shopping Center is located. Tenant shall keep the display windows and signs, if any, in the Leased Premises well lighted during the hours from sundown to 9:00 p.m., unless prevented from doing so by events beyond the control of Tenant. Tenant shall use, occupy, operate and maintain the Premises throughout the term for the purposes stated in this Lease and in a manner which shall not detract from the character, appearance or dignity of the Shopping Center and for no other purpose. Tenant further agrees to discontinue immediately, after demand by Landlord, and as often as such demand shall be made, the exhibition, display (window or otherwise), or advertisement in or with respect to the Premises or any part thereof, of any article or material or the manner of exhibition, display or advertisement of same to which Landlord shall reasonably object and to remove from the Premises immediately after demand by Landlord, and as often as such demand shall be made, any sign, advertisement, poster, exhibit or display (window or otherwise), to which Landlord reasonably shall object (but nothing contained herein shall be deemed to grant to Tenant any right to install or maintain any such sign, advertisement, poster, exhibit or display). Any matter or object visible from the street and/or exterior of the Leased Premises deemed objectionable by Landlord shall be corrected or removed as required by Landlord, to Landlord's satisfaction. All window displays shall be kept neat, orderly and fresh in appearance. All windows and exterior elements of the Premises, including, without limitation, the storefront area of the Leased Premises, the window areas of the Leased Premises and all metal work adjacent to and above said windows shall be maintained (including, without limitation, frequent cleaning as directed by Landlord) by Tenant at Tenant's sole expense. Blinds or draperies or other window coverings shall be approved by Landlord and positioned in such a fashion as may be approved by Landlord from time to time. Tenant further agrees not to (a) conduct or permit any fire, auction, going-out-of-business or bankruptcy sale in the Leased Premises, (b) use or operate the Premises as a so-called ▒ discount house▒ or for ``cut rate'' or ``discount'' type of business, (c) use or permit to be used the sidewalks or other space outside the Leased Premises for any display, sale or similar undertaking or storage, (d) use or permit to be used any loudspeaker, phonograph or other sound system or advertising device which may be heard outside the Leased Premises, or (e) distribute or permit to be distributed handbills or other matter to customers outside the Leased Premises. Tenant covenants and agrees to remain open and fully lighted during the entire Lease term during all business hours on all business days, which business hours and days are those set by the County for

the Big Pine Library. Tenant acknowledges that Landlord's damages resulting from any breach of the provisions of this Section are difficult, if not impossible, to ascertain and concedes that, among other remedies for such breach permitted by law or the provisions of this Lease, Landlord shall be entitled to enjoin Tenant from any violation of said provisions.

24. Deleted.

ARTICLE XI - REPAIRS

25. Tenant Repairs. Except as provided herein with respect to the specific repair obligations of Landlord, Tenant will at its own expense, maintain in good order, condition and repair, the Leased Premises and every part thereof and any and all appurtenances thereto wherever located, including without limitation, all doors, automatic doors, windows, plate glass, store front, all plumbing and sewage facilities serving the Leased Premises, including free flow up to the trunk line where Tenant's service lines connect all electrical fixtures and replace light bulbs and ballasts and other fixtures, heating, ventilating and air conditioning and electrical systems, walls and ceilings and all installations made by Tenant under the terms of the Lease. Landlord shall assign to Tenant all warranties on the heating, ventilating and/or air conditioning equipment serving the Leased Premises and Tenant shall be responsible for maintaining and replacing said equipment. Tenant shall keep and maintain the Leased Premises in a clean, sanitary and safe condition and in accordance with all directions, rules and regulations of proper officials of the governmental agencies having jurisdiction over the Shopping Center, and Tenant shall comply with all requirements of the law by Statute, ordinance or otherwise affecting the Leased Premises and all appurtenances thereto. When vacating the Leased Premises, Tenant will surrender same to Landlord in as good condition as received except for ordinary wear and tear.

26. Tenant Maintenance. Tenant shall maintain the exterior walkway in front of their premises free from debris, snow, ice or any other obstructions and shall keep the premises on the interior painted and attractive in nature.

27. Landlord Repairs. Landlord shall make all necessary repairs to the structure of the building of which the Leased Premises are a part, including but not limited to roof, foundations and

exterior walls (but excluding glass, plate glass and the exterior of the frames surrounding all windows, doors, plate glass, non-structural store fronts, and signs), and Tenant will be required to make any repairs where same were caused or occasioned by any act of omission or negligence of Tenant, its employees, agents, invitees, licensees, visitors and contractors. Tenant will permit Landlord, or its officers, agents and representatives, the right to enter into and upon all parts of the Leased Premises, at all reasonable hours to inspect same, clean, or make repairs, alterations, or additions as Landlord may deem necessary, and Tenant shall not be entitled to any abatement or reduction of rent by reason thereof. In the event of an emergency, Tenant hereby grants to Landlord the right to enter the Leased Premises at any time. In addition, Tenant shall permit Landlord or Landlord's agent and any other person authorized by the same to enter the Leased Premises during the last six months of the Lease term for the purpose of exhibiting the Leased Premises to prospective Tenants.

28. Ice and Snow. Landlord agrees to use reasonable diligence to keep the parking and public areas free from ice and snow, and at all times to keep said areas free of trash, litter or obstructions of any kind.

ARTICLE XII - CONSTRUCTION/IMPROVEMENTS

29. A. All additions or alterations by Tenant now or in the future shall be performed in accordance with accepted building practices so as not to affect the building in which the Premises are situated.

B. Prior to construction of any addition or alteration, Tenant shall submit to Landlord for approval a written description of the intended changes including, when necessary, detailed plans and specifications prepared by a registered architect. Tenant shall be responsible for obtaining all applicable governmental approvals.

C. Tenant is exempt from mechanics liens, but by execution of this Lease agreement hereby warrants that no liens shall attached to the Leased Premises as a result of any act or omission by Tenant, and that should such lien be filed contrary to this warranty, Tenant shall defend against same.

D. Tenant's taking possession of the Leased Premises shall be conclusive evidence of Tenant's acceptance thereof and that

the Leased Premises are in good order and satisfactory condition. Tenant agrees that no representations respecting the condition of the Leased Premises and no promises to decorate, alter, repair or improve the Leased Premises either before or after the execution hereof, have been made by Landlord or its agents to Tenant unless the same are contained herein or made a part hereof.

30. Kiosks. In addition to the rights set out above, Landlord shall further have the right to construct and lease free-standing buildings in the common areas, including but not limited to ``Foto Mat.''

31. Mechanic's Liens. If by reason of any alteration, repair, labor performed or materials furnished to the Premises for or on behalf of Tenant, any mechanic's or other liens shall be filed, claimed, perfected, or otherwise established as provided by law against the Premises, Tenant shall discharge or remove the same lien by bonding or otherwise, within thirty (30) days after notice from Landlord to Tenant of the filing of same.

32. Trade Fixtures. Tenant shall not remove any plumbing or electrical fixtures or equipment, heating or air conditioning equipment, floor coverings (including wall-to-wall carpeting) glued or fastened to the floors, or any paneling, tile or other materials fastened or attached to the walls or ceilings, all of which shall be deemed to constitute a part of the freehold, and, as a matter of course, shall not have the right to remove any improvements or machinery that were furnished or paid for by the Landlord, unless agreed to in writing by Landlord. All structural fixtures, alterations, decorations, additions and improvements made or installed by Tenant shall remain the property of Landlord. Buildings shall be left in a broom clean condition, reasonable wear and tear excluded. If Tenant shall fail to remove its non-structural trade fixtures or other property at the termination of this Lease or within thirty (30) days thereafter, such fixtures and other property not removed by Tenant shall, at the option of Landlord, be deemed abandoned by Tenant, and shall become the property of Landlord.

ARTICLE XIII - DAMAGE, DESTRUCTION OR CONDEMNATION OF THE LEASED PREMISES

33. A. Damages, Destruction or Condemnation of the Leased Premises. In the event that Tenant's building shall be totally destroyed or damaged to any extent by fire or other casualty, Landlord agrees to proceed to repair the damage and to restore

the Premises to the same condition as existed prior to such damages. In the event that Landlord shall fail within a ninety (90) day period to proceed with and within eight months to complete the repairs and to restore the Premises, Tenant may, at its option, terminate this Lease by giving to Landlord written notice thereof. If failure to commence or complete said repairs within the stipulated time shall be due to strikes, war, material shortages, weather conditions, delays by its insurer or similar happenings beyond its control, and provided further, the repairs are completed with all due diligence commensurate with such delay, such option to terminate shall not arise.

B. If damages to Tenant's building in excess of fifty (50%) percent of the value thereof shall occur within the last three years of the initial term or any of the option extension periods provided for herein, the obligation of the Landlord to restore the Premises shall not arise unless Tenant shall give notice to Landlord within ten (10) days after such damage of its desire to extend the Lease for an additional period so as to expire not less than five years from the date of such damage, and on the same conditions and for the same rentals as provided in the Lease Agreement. The Lease shall continue and the remaining option periods, if any, shall be construed to follow upon the end of such extended term. Failing such notice to extend, Landlord at its option shall have the right to terminate this Lease or to restore the Premises, in which latter event this Lease shall continue for the remainder of the primary Lease term.

C. Tenant shall be entitled to an abatement of a fair and just portion of the rent, based upon the unusable space, from the date of such damages, until said Premises are reinstated or restored.

34. Loss or Damage to Tenant's Property. Landlord shall not be liable for any damage to property of Tenant or of others located on the Leased Premises, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise. Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling walls or ceilings, steam, gas, electricity, water, rain, snow, or leaks from any part of the Leased Premises or from the pipes, appliances, plumbing works, or from the roof, street, subsurface, or from any other place, by dampness, or by any other cause of whatsoever nature. Landlord shall not be liable for any such damaged caused by other Tenants or persons in the Leased Premises, occupants of property adjacent to the Shopping Center or the public, or for damage caused by operations in construction of any private, public, or quasi-public work. All property of Tenant, kept or stored on the Leased Premises, shall be at

Tenant's risk, and Tenant shall hold Landlord harmless from all claims arising out of damage to same, including subrogation claims by Tenant's insurance carriers, unless such damage shall be caused by the willful act or gross neglect of Landlord.

35. Effect of Condemnation. In the event that during the term of this Lease, or any extension or renewal thereof, the Leased Premises, or as much as fifty (50%) percent thereof, are taken by governmental or quasi-governmental authority by exercise of the power of eminent domain, this Lease shall terminate by reason of such taking at the time possession must be surrendered to such authority. Prepaid or unearned rent shall be adjusted between the parties as of such date. In the event that less than fifty (50%) percent of the Leased Premises is acquired by such authority, the monthly rental payments from the date of such acquisition to the end of the original or any extended term hereof shall be reduced in proportion to the resulting loss of use by said Premises by Tenant. In the event of such partial acquisition and reduction in rent, Landlord agrees to make promptly, at its expense, all necessary alterations and repairs which shall be required because of such partial acquisition by eminent domain to restore the Premises to a safe and usable condition.

36. Waiver. In the event of such condemnation, Tenant hereby waives in favor of Landlord any and all claims it may have by reason of the taking of any portion of the Leased Premises. Tenant, however, reserves any rights or claims it may have in this regard respecting its own personal property.

ARTICLE XIV - REMEDIES

37. DELETED.

38. DELETED

39. Inspection. Landlord or its representatives shall have the right to enter the Leased Premises at reasonable hours of any business day during the Lease term to ascertain if the Premises are in proper repair and condition.

40. A. Landlord's Right on Default. If Tenant's rights under this Lease shall have terminated as provided for herein, Landlord may immediately, or at any time thereafter, re-enter the Premises and remove all persons and all or any property therefrom, by any suitable action or proceeding at law, or by force or otherwise, without being liable for any prosecution therefor or damages

therefrom, and repossess and enjoy the Premises, together with all additions, alterations and improvements, and Landlord may, at its option, repair, alter, remodel and/or change the character of the Premises as it may deem fit, and shall make a good faith effort to re-let the Premises for the remaining term thereof. The exercise by Landlord of any rights granted in the sentence immediately preceding shall not relieve Tenant from the obligations to make all payments, and to fulfill all other covenants required by this Lease, at the time and in the manner provided herein. Landlord when attempting to re-let the Premises hereunder, shall be the sole judge as to whether or not a proposed tenant is suitable and acceptable.

B. In the event of a breach by Tenant of any of the covenants or provisions hereof, Landlord shall have, in addition to any other remedies which it may have, the right to invoke any remedy allowed at law or in equity to enforce Landlord's rights, as if re-entry and other remedies were not herein provided.

41. Non-Waiver Provisions. The failure of either Party to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed to be a waiver of any rights or remedies that such Party may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained except as may be expressly waived in writing. The maintenance of any action or proceedings to recover possession of the Premises, or any installment of rent or any other monies that may be due or become due from Tenant to Landlord, shall not preclude Landlord from thereafter instituting and maintaining subsequent actions or proceedings for the recovery of possession of the Premises or of any other monies that may be due or become due from Tenant. Any entry or re-entry by Landlord shall not be deemed to absolve or discharge Tenant from liability hereunder.

42. Inability to Perform. If either Party is delayed or prevented from performing any of its obligations under this Lease by reason of strike or labor troubles or any outside cause whatsoever beyond such Party's reasonable control, the period of such delay or such prevention shall be deemed added to the time herein provided for the performance of any such obligation.

43. Tenant and Landlord Expenses. If either Party shall at any time be in default hereunder, such defaulting Party will reimburse injured Party for the reasonable expenses incurred to enforce said rights, including but not limited to court costs and reasonable attorneys' fees. If Tenant's rights hereunder are not terminated, the amount of such expenses shall be deemed to be additional rent hereunder and shall forthwith be due and payable by Tenant to Landlord; otherwise, such expense shall be a part of the costs referred to above.

ARTICLE XV - MORTGAGE FINANCING AND SUBORDINATION

44. A. Subordination. This Lease is and shall be, without further act by Landlord or Tenant, subordinate to any mortgage or mortgages now or hereafter placed upon Landlord's interest in the Shopping Center or future additions thereto; and to all advances made or to be made thereunder, and to any renewals, modifications, extensions, and renewals thereof; it being expressly understood and agreed that no further instrument shall be required to effect the subordination provided for herein; provided, however, said subordination shall be upon the express condition that this Lease shall be recognized by the mortgages and that the rights of Tenant shall remain in full force and effect and undisturbed during the term of this Lease and all extensions hereof, notwithstanding any default by Landlord with respect to the mortgage or any foreclosure thereof, so long as Tenant shall perform all of the covenants and conditions of this Lease. Upon any foreclosure or sale pursuant thereto or transfer in lieu thereof, Tenant shall attorn to the Mortgagee, Purchaser, or Transferee as Landlord herein, and this Lease shall continue in full force and effect as a direct Lease between Tenant and such entity as the case may be; provided, however, that neither Lender nor any other entity acquiring ownership of the Premises under any of the circumstances provided in this paragraph shall be obligated to complete any construction work required to be done by Landlord pursuant to the provisions of this Lease or to reimburse Tenant for any construction work done by Tenant, or be obligated to make any capital improvements to the Shopping Center or Tenant's space which Landlord may have agreed to make, but had not completed.

B. Notwithstanding any other provision herein, in the event any Mortgage Lender shall require any further instrument to evidence or document the subordination and attainment provided for herein, Tenant hereby appoints Landlord as its

Attorney-in-Fact to execute such instrument on behalf of Tenant in recordable form; provided that the terms of such instrument shall be generally consistent with those provided in this Section.

45. Notice to Mortgagees of Landlord's Default. Tenant shall give prompt written notice to Landlord of each mortgagee of record known to Tenant of any default of Landlord hereunder, and Tenant shall allow such mortgagee a reasonable length of time (in any event, not less than sixty (60) days from the date of such notice) in which to cure any such default. Any such notice shall be sent to the Mortgage Loan Department of any such mortgagee at its home office address.

ARTICLE XVI - MERCHANTS ASSOCIATION

46. N/A.

ARTICLE XVII - OTHER PROVISIONS

47. Indemnity. Subject to the provisions of Section 768.28 F.S., and the insurance requirements under this Lease, The Tenant during the term hereof shall indemnify and save harmless the Landlord from and against any and all claims and demands whether for injuries to persons or loss of life, or damage to property, occurring within the Premises and immediately adjoining the Premises, and arising out of the use and occupancy of the Premises by Tenant, or occasioned wholly or in part by any act or omission by Tenant, its agents or employees, excepting however, such claims and demands, whether for injuries to persons or loss of life, or damage to property, caused by acts or omissions of the Landlord.

48. Definition and Liability of Landlord. The term ``Landlord'' as used in this Lease means only the owner of the mortgagee in possession for the time being of the Premises described in Exhibit ``A'', or the owner of a leasehold interest in said Premises and/or the land thereunder so that in the event of a sale of said Premises or an assignment of this Lease, or a demise of said Premises and/or land, Landlord shall be and hereby is entirely freed and relieved of all obligations of Landlord hereunder and it shall be deemed without further agreement between the parties and such purchaser(s), assignee(s), or lessee(s) that the purchaser, assignee, or lessee has assumed and agreed to observe and perform all obligations of Landlord hereunder. It is specifically understood and agreed that there shall be no personal liability on Landlord with respect to any of

the covenants, conditions, or provisions of this Lease; and in the event of a breach or default by Landlord of any of its obligations under this Lease, Tenant shall look solely to the equity of Landlord in the Shopping Center for the satisfaction of Tenant's remedies.

49. A. Notices. All notices required to be given to Landlord hereunder shall be sent by certified or registered mail to:

c/o Michael H. Weisser
801 N.E. 167th Street, 2nd Floor
No. Miami Beach, Florida 33162

All rental payments shall be sent to Landlord at:

c/o Michael H. Weisser
801 N.E. 167th Street, 2nd Floor
No. Miami Beach, Florida 33162

or to such other address as Landlord may direct.

B. All notices required to be given to Tenant shall be sent by registered or certified mail to Tenant at:

NORMA KULA 101485 Overseas Highway Key Largo, FL 33037	JAMES MALLOCH 1100 Simonton Street Key West, Fl 33040

C. Date of service of any notice by mail shall be the date on which such notice is mailed.

50. A. Statement. After the Commencement Date and expiration date of the Lease term shall have been determined, Tenant, at Landlord's request, shall from time to time execute, acknowledge and deliver written statements in recordable form: (1) ratifying this Lease; (2) specifying the commencement and expiration dates of the Lease term; (3) certifying that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended (except by such writings as shall be stated); (4) that all conditions under this Lease to be performed by Landlord have been satisfied or stating those not performed; (5) that there are no defenses or offsets against the enforcement of this Lease by the Landlord; (6) the date on which rental has been paid; (7) the actual number of square feet of floor space in the Leased Premises as certified by Landlord's architect; and (8) that no rental has been paid more than thirty (30) days in advance.