RESOLUTION NO. 09-168

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING THE ATTACHED LEASE AGREEMENT BETWEEN THE CRA AND ERIC SINDONE D/B/A CUBAN COFFEE QUEEN FOR THE PROPERTY LOCATED AT 284 MARGARET STREET IN THE KEY WEST BIGHT; PROVIDING FOR AN EFFECTIVE DATE

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

Section 1: That the attached lease is hereby approved.

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

Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 7th day of July, 2009.

Authenticated by the presiding officer and Clerk of the Agency on July 8, 2009.

Filed with the Clerk July 8, 2009.

MORGAN MCPHERSON, CHAIRMAN

ATTEST:

CHERYL SMITH, CITY CLERK

EXECUTIVE SUMMARY

TO: **Community Redevelopment Agency**

CC: **Jim Scholl, Mark Finigan**

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

DT: **June 19, 2009**

RE: **Lease for 284 Margaret Street – Eric Sindone DBA the Cuban Coffee Queen**

ACTION: This is a request to approve a lease with Eric Sindone for the vacant building adjacent to Macs Sea Garden This lease was approved by the Key West Bight Board on May 20, 2009

HISTORY:
This space was previously occupied by Stars N Stripes and is currently vacant. We have advertised this space for lease in accordance with the ordinance governing the CRA and have drafted a lease proposal based upon the following terms:

Demised Premises:	218 square feet
Term:	Five Years, effective September1, 2009
Rate:	$725.00 per month with 5% annual increases
Additional Rent:	Tenant shall pay its pro-rate share of CAM, taxes, and insurance
Percentage Rent:	6% in excess of the breaking point
Use:	Operation of a Cuban Coffee and sandwich shop with take-out only service
Utilities:	Tenant shall pay for all utility usage as pro-rated by the Landlord until separate meters are installed.

ADVANTAGES:
This coffee shop will be operated by two experienced, local restaurant professionals. The use is will add to the historic feel of this area as well as providing traditional Cuban fare and handmade soft drinks which will be welcome by the trolley stop passengers waiting next door. There is no seating and this will strictly be a carry out shop.

DISADVANTAGES:
Perceived added competition by other Bight tenants however there are no other Cuban specialty food shops in the Bight.

FINANCIAL:
The proposed tenant has a credit score of 734, will provide a personal guarantee and post a two month security deposit. The tenant will make improvements at their cost.

RECOMMENDATION:
Staff recommends that we proceed with a lease with Eric Sindone for the Cuban Coffee Queen.

ATTACHMENTS:
Draft Lease
Personal Guarantee

Lease Agreement

between

Caroline Street Corridor and
Bahama Village Community
Redevelopment Agency

as Landlord

and

Eric Sindone

as Tenant

Dated July 8, 2009

THIS LEASE is made as of the 8th day of July, 200_ by and between the LANDLORD and TENANT identified below:

1. INFORMATION PROVISIONS: Information provisions in this section are intended to provide a summary of the corresponding sections of this lease and are in no way inclusive of the complete terms and conditions of this lease.

1.1 LANDLORD'S NAME & MAILING ADDRESS:
Caroline Street Corridor and
Bahama Village Community
Redevelopment Agency,
P.O. BOX 6434
KEY WEST, FL 33040

1.2 TENANT'S NAME & MAILING ADDRESS:
Eric Sindone
1122 Stump Lane
Key West, FL 33040

TENANT'S TRADE NAME: **Cuban Coffee Queen**

1.3 GUARANTOR (S) AND ADDRESS: Eric Sindone, 1122 Stump Lane, Key West, FL

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

208 NET USABLE SQUARE FEET

PROPORTIONATE SHARE OF THE TOTAL NET USABLE SQUARE FEET:

TENANT'S Proportionate Share is based upon TENANT"S Net Usable Square Feet as it relates to the Total Net Usable Square Feet of the Property

1.4.1 EXPANSION/RIGHT OF FIRST REFUSAL: None

1.5 TERM (Section 3.): Five (5) YEARS

1.5.1 COMMENCEMENT DATE: September 1, 2009 as acknowledged by TENANT'S written statement

1.5.2 RIGHT TO TERMINATE: None

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

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

1.6.1 ADDITIONAL RENT: Tenant shall pay its Proportionate share of CAM, Real Estate Taxes, Insurance, Sales, Use or Excise Taxes together with Management and Administrative fees estimated as per **EXHIBIT "B"** and any and all other sums of money or charges required to be paid by TENANT pursuant to the provisions of this lease.

1.6.2 RENT PAYMENT DUE DATE: Payable in advance on the first (1st) of each and every month of the term hereof.

1.6.3 LATE CHARGE: 15% of the amount in arrears if received after the fifth day of each and every month together with an administrative fee of $50.00 for processing late payments.

1.6.4 PERCENTAGE RENT: Six (6%) percent of TENANT'S Gross Sales in excess of the "Percentage Rent Base Amount" **as per EXHIBIT "B".**

1.6.5 HOLD OVER RENT: 150% of the Minimum Base rent during the last year of the expiring term.

1.6.6 RENT CONCESSIONS: None

1.7 SECURITY DEPOSIT (Section 5): Equal to two month's base rent.

1.8 PERMITTED USE (Section 6): Operation of a Cuban coffee and sandwich shop with take out only service only

1.9 INSURANCE: (Section 9) $1,000,000.00 commercial liability minimum per occurrence

1.10 ASSIGNMENT OR SUBLETTING: (Section 10) Allowed with LANDLORD'S approval

1.11 UTILITIES: (Section 17) The TENANT shall pay for all utilities associated with the use of the Demised Premises.

INITIALS: LANDLORD _____ TENANT _____

WITNESSETH:

That the LANDLORD and the TENANT, for and in consideration of the keeping by the parties of their respective obligations hereinafter contained, as well as for one dollar ($1.00) and other good and valuable consideration by each of the parties unto the other, in hand paid simultaneously with the execution and delivery of these presents, the receipt of which is hereby acknowledged, have agreed as follows:

2. DEMISED PREMISES - Upon the terms and conditions hereinafter set forth, and in consideration of the payment from time to time by the TENANT of the rents hereinafter set forth, and in consideration of the performance continuously by the TENANT of each and every one of the covenants and agreements hereinafter contained by the TENANT to be kept and performed, the LANDLORD does hereby lease, let, and demise unto the TENANT, and the TENANT does hereby lease of and from the LANDLORD, the following Demised Premises situated, lying, and being in Monroe County, Florida: That portion of the Property outlined and/or crosshatched on

Exhibit "A" which depicts the Net Usable Square Feet of the Demised Premises. The Net Usable Square Feet is defined as all interior floor space, any second floor space, storage, covered dining areas and commercially used outdoor areas or any other area set aside for the exclusive use and economic benefit of the Tenant and containing the approximate dimensions and area measured in accordance with the published BOMA/ANSI standard for calculating net usable floor area for stores. It is agreed that the Net Usable Square Feet for the purpose of any calculations which are based on Net Usable Square Feet is as stated in Section 1.4. It is agreed that TENANT'S Proportionate Share is based upon TENANT"S Net Usable Square Feet as it relates to the Total Net Usable Square Feet of the Property. LANDLORD reserves the right to re-measure the Demised Premises from time to time and to adjust the TENANT'S Net Usable Square Feet and the rent or rental rate applied to the square footage as determined by any re-measurement or change in use. TENANT accepts the Demised Premises in an "as is", "where is" condition and acknowledges that LANDLORD has no obligations for any construction or improvements in connection with TENANT'S occupancy of the Demised Premises except as stated in Section 15 Alterations; LANDLORD will install water line and sewer line and a water deduct meter up to the rear exterior of the building at :LANDLORD'S expense.

LANDLORD reserves the right from time to time with good cause, upon at least sixty (60) days advance written notice to relocate TENANT to other Demised Premises within the Property, prior to or during the term of this Lease, so long as usable area so substituted equals or exceeds the usable area of the Demised Premises; provided however that TENANT shall have the right at its sole option and as its sole remedy, to terminate the Lease upon sixty (60) days advance written notice which right must be exercised, if at all, within fifteen (15) days after receipt of LANDLORD'S relocation notice, which relocation notice may be withdrawn by LANDLORD within ten (10) days after LANDLORD'S receipt of TENANT'S termination notice, in which event TENANT'S attempted termination shall be null and void and the lease shall continue in full force and effect in accordance with its terms. In the event LANDLORD shall relocate TENANT to other space within the Property, LANDLORD shall pay the reasonable relocation costs of TENANT in connection therewith, but LANDLORD shall not have any other liability with respect to any such relocation.

Expansion/Right of First Refusal – none

3. TERM - The term of this Lease shall be for five (5) years which shall commence on September 1, 2009 and shall end at midnight on June 30, 2014 unless sooner terminated as provided for herein. Upon occupancy TENANT shall furnish LANDLORD a written statement stating the TENANT has accepted the Demised Premises for occupancy and setting forth the actual commencement and expiration dates of the Lease. TENANT'S written statement shall become attached to and incorporated into this lease as Exhibit "D". In the absence of TENANT'S written statement the lease term shall remain as stated above. A Lease Year is the twelve-month period beginning on the commencement date of each year and ending at the conclusion of the same date one year later. If possession of the Demised Premises shall for any reason not be delivered to Tenant on the Commencement Date, this Lease shall nevertheless continue in full force and effect, and no liability whatsoever shall arise against LANDLORD out of any delay other than the abatement of rent.

3.1 **Right to Terminate** –none

3.2 **Right to Renew** – This Lease may be renewed upon rent and terms to be negotiated by the parties in accordance with the City of Key West Code of Ordinances. The rent and terms of the renewal term must be acceptable to both the LANDLORD and the TENANT in their absolute discretion and must be set forth in written addendum to this Lease. If the parties fail for any

reason whatsoever to agree upon and enter into such addendum at least 120 days prior to the end of the initial term of this Lease, then any obligations that the parties may have pursuant to this section to negotiate renewal terms shall cease and LANDLORD shall be free to lease the Demised Premises to the general public upon such rent and terms as it deems appropriate.

4. **RENT** - All rentals provided for herein shall be payable in advance, without prior demand therefore and without deductions or setoffs for any reason whatsoever on the first day of each and every month of the term hereof.

4.1 **Late Charges.** Any monthly rental not received by the fifth day of the month shall incur a late fee equal to fifteen percent 15% of the amount in arrears. In addition, all payments received after the due date shall incur a **$50.00** administrative fee to cover the costs of collecting and processing late payments. LANDLORD shall have no obligation to accept less than the full amount of all installments of rental, additional rental or other amounts due hereunder and interest thereon which are due and owing by TENANT to LANDLORD. If LANDLORD accepts less than the full amount owing, LANDLORD may apply the sums received toward such TENANT'S obligations, as LANDLORD shall determine in its sole discretion, without waiving LANDLORD'S remedies for default.

4.2 **Interest on Rent.** Rent and additional rent not paid within fifteen (15) days of when due shall bear interest from the date due until paid at the highest rate permitted by law.

4.3 **Obligation to Survive.** TENANT'S obligation to pay rent that is accrued and unpaid hereunder shall survive the expiration or termination of the Lease.

4.4 The rent reserved under this Lease for the term hereof shall be and consist of:

(a) Beginning with the commencement date and throughout the term of this Lease, TENANT agrees to pay to the LANDLORD as and for minimum rent for the Demised Premises the annual amount, in equal monthly installments, in advance, on the first day of each and every calendar month, as per **EXHIBIT"B".** In the event the rent commencement date is other than the first day of a calendar month, the rent for the partial first calendar month of the term will be prorated on a daily basis and payable on the commencement date.

(b) Simultaneously with each such payment, TENANT agrees to pay to LANDLORD any sales, use or excise tax imposed or levied against rent or any other charge or payment required hereunder to be made by TENANT which tax has been imposed or levied by any governmental agency having jurisdiction thereof, this shall include any new taxes imposed during the term of this Lease which are in addition to or in substitution for any such tax which is presently imposed.

(c) Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT'S Proportionate Share, as stated in Section 1.4, of Common Area Maintenance Charges in Monthly Installments as specified herein.

The Common Area Maintenance Charges are based on the Estimated Common Area Maintenance Charges attached hereto as **EXHIBIT "B"** These charges are only estimates. The TENANT shall be responsible for all Common Area Maintenance Charges actually incurred on a pro rata assessment basis. Any increase in the common area charges shall result in an increase in the TENANT'S Common Area Maintenance

Charges. Common Area Maintenance Charges for controllable expenses assessed after the base year shall not increase in any given year by more than 5% of the previous year's common area assessment for controllable expenses. The base year for the purpose of limiting increases in Common Area Maintenance Charges shall be the first year of the term of this lease. This limitation shall apply only to those services included in the base year's common area charges. Any services charged for that are not included in the base year's charges shall not be limited by this 5% cap nor shall they be included for determining this 5% cap.

Common Area Maintenance Charges shall include any and all expenses reasonably incurred in the operation and maintenance of the Property Common Area including but not limited to management and administrative fees, salaries and compensation paid in connection with operations, maintenance and administration, amortization (including interest) of equipment and facilities acquired and used for maintenance, to reduce energy usage, to otherwise reduce operating costs or common area seasonal decorating or redecorating. Major capital improvements will not be included in Common Area Maintenance Charges unless those improvements reduce expenses and if so the improvements will be amortized over the useful life of the equipment as determined by the manufacturers specifications or IRS depreciation regulations.

Monthly installments shall be due and payable on the 1st day of each calendar month during the Term. The installments set forth herein represent TENANT'S Proportionate Share of the estimated Common Area Maintenance Charges at the Commencement Date. Thereafter, LANDLORD shall, prior to the beginning of each calendar year, estimate the expected Common Area Maintenance Charges for the coming calendar year and TENANT'S Proportionate Share thereof, 1/12th of which shall constitute the Monthly Installments for such year; provided such installments shall never be lower than the installments specified herein. Within 90 days after the end of each year, LANDLORD shall calculate the actual Common Area Maintenance Charges paid or payable during the prior calendar year, and there shall be an adjustment between LANDLORD and TENANT so that LANDLORD shall receive the actual amount of TENANT'S annual Proportionate Share for said year. If TENANT'S Proportionate Share is less than the amount paid by TENANT during the prior year, LANDLORD shall, at its option, pay TENANT the difference between the amount received and the amount actually due, or credit such difference against TENANT'S next succeeding installments. If TENANT''S Proportionate Share is greater than the amount paid by TENANT during the prior year, TENANT shall pay LANDLORD the difference between the amount paid by TENANT and the amount actually due upon LANDLORD billing TENANT for same. LANDLORD agrees to keep, at its principal office, records relating to said Common Area Maintenance Charges. TENANT shall have the right to audit said records for the sole purpose of ascertaining the correctness of said Charges. Such audit shall be made during normal business hours; not unreasonably interfere with LANDLORD'S office operations; shall be performed by TENANT, TENANT'S chief financial officer, or a CPA selected by TENANT; shall not be made more often than once during each calendar year; and shall be limited to the preceding calendar year. If TENANT desires to audit said records as aforesaid, TENANT shall notify LANDLORD 30 days in advance thereof, commence said audit within 60 days of said notice, and once commenced, diligently complete the same. If any such audit shows the amount of such charges to TENANT was overstated, LANDLORD shall refund any such overcharge.

Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT''S Proportionate Share as stated in Section 1.4 of the Real

Estate Tax Expense which shall include all real estate taxes and assessments both general and special imposed by federal, state or local governmental authority or any other taxing authority having jurisdiction over the Property against the land, buildings, store rooms, Common Areas and all other improvements within the Upland Property (excluding any public area which will not be taxed and excluding the Marina), together with any and all expenses incurred by LANDLORD in negotiations, appealing or contesting such taxes and assessments. Real Estate Tax Expense shall not include any additional charges or penalties incurred by LANDLORD due to late payment of Real Estate Taxes. In the event that any of the public area excluded later becomes taxable or is determined to be taxable then it shall be included for purposes of determining TENANT'S proportionate share.

TENANT'S Proportionate Share of Real Estate Taxes shall be paid as part of the Common Area Charges provided for herein. The 5% cap limitation provided for in Section 3(c) shall not be applicable to this particular common area charge.

Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT'S Proportionate Share as stated in Section 1.4, of the Insurance Expenses which shall include all insurance premiums incurred by the LANDLORD in insuring the Property including hazard and liability insurance for any and/or all buildings, improvements and common areas.

TENANT'S Proportionate Share of Insurance expenses shall be paid as part of the Common Area Charges provided for herein. The 5% cap limitation provided for in Section 3(c) shall not be applicable to this particular common area charge.

Should any governmental taxing authority acting under any present or future law, ordinance or regulation, levy, assess or impose a tax, excise and/or assessment (other than an income or franchise tax) upon or against the rentals payable by TENANT to LANDLORD, whether by way of substitution for, or in addition to, any existing tax on land and buildings or otherwise, or any other substitute tax, the proceeds of which are to be used to fund the same governmental functions as were funded by ad valorem taxes, TENANT shall be responsible for and reimburse LANDLORD for the amount thereof, as the case may be, as additional rent, 7 days before the date that any penalty or interest would be added thereto for non-payment or, at the option of LANDLORD, the same shall be payable in the manner provided for in the preceding paragraph. Substitute taxes as referred to above in this Section shall include, without limitation, any surtax on parking spaces.

Initial here if applicable

TENANT_____ LANDLORD_____

(d)In addition to the foregoing rent, TENANT agrees to pay LANDLORD as Percentage Rent a sum equal to 6% multiplied by an annual Gross Sales per Lease Year in excess of the Percentage Rent Base Amount. The Percentage Rent Base Amount is calculated by dividing the current annual Base Rent by six percent (6%). Within twenty (20) days following the end of each month of each Lease Year, TENANT shall forward to LANDLORD a statement of Gross Sales together with an accurate and complete copy of the State of Florida Department of Revenue, Sales and Use Return Form DR-15 (or such forms as the State of Florida shall hereafter substitute for said form) showing the full amount of TENANT'S Gross Receipts from the Demised Premises during the previous

month. The statement of Gross Sales must be in affidavit form. TENANT is subject to a fifty-dollar ($50.00) late submission penalty should TENANT not furnish to LANDLORD copies of Form DR-15 by the twentieth (20th) day of each month. Failure of Tenant to timely submit any monthly report shall entitle LANDLORD to estimate Gross Sales based upon available data (with a reconciliation upon receipt of the final report), and TENANT shall be obligated to pay percentage rent on such estimated Gross Sales. If by the end of any such preceding month the Gross Sales in the Demised Premises during such Lease Year shall exceed the Percentage Base Rent Amount, TENANT shall pay to LANDLORD, at the time of delivery of said Statement, an amount equal to the Percentage Rent times the Gross Sales exceeding the Percentage Rent Base Amount, less the Percentage Rent, if any, previously paid by TENANT to LANDLORD during that Lease Year. TENANT shall also furnish to LANDLORD within thirty (30) days after the expiration of each full Lease Year, a complete statement, certified by an independent certified public accountant, showing in all reasonable detail the amount of Gross Sales made by TENANT from the Demised Premises during the preceding Lease Year.

"Gross Sales" shall mean the amount of sales of all merchandise or services sold or rendered at or from the Demised Premises by TENANT or any sub-TENANT, licensee, etc. TENANT may deduct from Gross Sales: (i) any refunds to customers, provided they have been included in Gross Sales; and (ii) the amount of any sales tax levied upon retail sales and payable over to the appropriate governmental authority. TENANT agrees to keep, at its principal office, records in accordance with generally accepted accounting practices, in which said Gross Sales shall be recorded. Such records shall be open for inspection by LANDLORD or its agents, including accountants retained for that purpose, during reasonable business hours for the Term and for at least 3 years thereafter. If any audit shows that the amount of Gross Sales on the statement was understated by more than 1% for any year, then TENANT (in addition to paying the Percentage Rent due for such understatement) shall pay to LANDLORD the reasonable cost of the audit within ten (10) days after TENANT'S receipt of LANDLORD'S invoice. If such understatement is willful and/or fraudulent, LANDLORD shall have the option, upon ten (10) days notice to TENANT, to terminate this Lease on the date specified in such notice and Tenant shall remain liable for all rent and other charges under this lease for the full term hereof.

(e) **Additional Rent**. Any and all other sums of money or charges required to be paid by Tenant pursuant to the provisions of this Lease, whether or not the same be so designated, shall be considered as "Additional Rent", and shall be payable and recoverable in the same manner as Rent. However, such Additional Rent shall be due upon demand and failure to pay such additional rent within seven (7) days shall be deemed a material breach of this lease. If Landlord shall make any expenditure for which Tenant is liable under this Lease and for which Tenant has not paid, the amount thereof shall be deemed Additional Rent due and payable by as indicated above. In addition to the foregoing rent, all other payments to be made by TENANT shall be deemed to be and shall become additional rent hereunder whether or not the same be designated as such and it shall be due and payable upon demand together with interest thereon at the highest rate permissible by law from their due date until the date it is paid. The LANDLORD shall have the same remedies for TENANT'S failure to pay said additional rental the same as for non-payment of rent. LANDLORD, at its election, shall have the right to pay or do any act which requires the expenditure of any sums of money by reason of the failure or neglect of TENANT to perform any of the provisions of this Lease, and in the event

LANDLORD shall, at its election, pay such sums or do such acts requiring the expenditure of monies, TENANT agrees to pay LANDLORD, upon demand, all such sums, and the sums so paid by LANDLORD and any expenses incurred by LANDLORD in the payment of such sums together with interest thereon at the highest rate permitted by law from their due date through the date they are paid by TENANT shall be deemed additional rent and shall be payable and collectible as such. Rent shall be made payable to the LANDLORD as stated in Section 1.1 hereof.

(f) Holding Over. It is agreed that in the event of TENANT holding over after the termination of this lease, thereafter the tenancy shall be from month to month in the absence of a written agreement to the contrary; the TENANT shall pay to LANDLORD a monthly occupancy charge equal to One Hundred Fifty (150%) Percent of the monthly rental for the last lease year for each month from the termination or expiration of this Lease until the Demised Premises are delivered to the LANDLORD in the condition required herein, and LANDLORD'S right to damages for such illegal occupancy shall survive. In addition, TENANT shall pay all other charges payable by TENANT under this Lease

(g) Rent Concessions. None

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

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

Operation of a Cuban coffee and sandwich shop for take out service only.

TENANT further agrees:

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

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

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

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

(e) Not to use the Demised Premises or permit the same to be used in any manner which violates any law, ordinance or constitutes a nuisance; for lodging purposes; that may injure the reputation of the Property or annoy, inconvenience or damage its patrons or other TENANT'S; or that would constitute an extra-hazardous use or violate any insurance policy of TENANT, LANDLORD or any other TENANT in the Property or increase the cost thereof.

(f) To keep all garbage, refuse and solid waste inside the Demised Premises in the kind of containers specified by LANDLORD, or to place the same outside the Demised Premises, prepared for collection, in the manner and at the times and places designated by LANDLORD or the appropriate disposal company. TENANT agrees not to burn or permit any burning of garbage or refuse on the Demised Premises or any part of the Property. TENANT further agrees that, upon LANDLORD'S instruction, TENANT shall separate garbage for recycling and deposit the separate garbage in the receptacle designated by LANDLORD. TENANT further agrees to make every effort to recycle all glass, metal, paper and plastic refuse and solid waste. Sort glass by colors and metal and paper by type and deposit in the appropriate recycling containers provided by the LANDLORD.

(g) TENANT shall contract directly with the pertinent governmental authority or disposal company and shall be responsible for all fees and costs of removal and disposal of solid waste, garbage, and refuse, including but not limited to, impact fees and dumpster rental. TENANT shall indemnify, save harmless and defend LANDLORD from and against any loss, claim, injury, damage or expense arising out of or related to the generation, storage, or removal or disposal of TENANT'S garbage, refuse or solid waste.

(h) To use its best efforts to cause all trucks serving the Demised Premises to load and unload from the hours of 7:00 a.m. to 11:00 a.m. and not to permit such trucks to service through the front entrance of the Demised Premises except when no other entrance is available.

(i) To take no action that would: (i) violate LANDLORD'S contracts if any, affecting the Property (including without limitation the use restrictions contained in LANDLORD'S leases with its Anchor Tenants, which restrictions have been explained to TENANT); or (ii) cause any work stoppage, picketing or cause any manner or interference with LANDLORD or other Tenants, occupants, customers or any person lawfully in and upon the Property.

(j) Not to use amplified music or any other noise making machinery or devices that in LANDLORD'S determination is harmful to the building or disturbing to other Tenants.

(k) To abide by and observe all reasonable rules and regulations established from time to time by LANDLORD and LANDLORD'S insurance carrier with respect to the operation of the Property and it's Common Areas. Rules and regulation are attached and incorporated herein as **EXHIBIT "C".**

(l) Not to conduct any auction, fire, bankruptcy or selling-out sale on or about the Demised Premises except in strict compliance with City Code Chapter 18.

(m) To pay its proportionate share of any and all maintenance contracts wherein LANDLORD elects to purchases goods and services for the benefit of the entire Property including but not limited to LANDLORD directing all pest extermination at such intervals and service levels that LANDLORD deems appropriate.

(n) TENANT shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials which TENANT or it agents brought onto the Property. TENANT shall not allow storage or use of such materials or substances in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Demised Premised or the Property any such materials or substances except to use in the ordinary course of TENANT'S business, and then only after written notice is given to LANDLORD of the identity of such substances or materials. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any applicable state or local law and the regulations adopted under these acts. In addition, TENANT shall execute affidavits, representations and the like from time to time at LANDLORD'S request concerning TENANT'S best knowledge and belief regarding the presence of hazardous substances or materials in the Demised Premises. In all events, TENANT shall indemnify LANDLORD in the manner elsewhere provided for in this Lease against any liability resulting from any release of hazardous substances or materials in the Demised Premises or Property by TENANT or it agents, while TENANT is in possession or caused by TENANT or persons acting under TENANT which is due to hazardous substances that TENANT or its agents brought onto the Demised Premises or Property.

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

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

8. INDEMNIFICATION - TENANT does hereby agree to indemnify, defend and save

LANDLORD harmless from and against any and all liability for any injury to or death of any person or persons or damage to property (including adjoining property for environmental damage) in any way arising out of or connected with the conditions, use or occupancy of the Demised Premises, or in any way arising out of the activities of TENANT, its agents, employees, licensees or invitees on the Demised Premises and/or the building and from reasonable attorney's fees, incurred by LANDLORD in connection therewith, excepting, however, liability caused by LANDLORD'S gross negligence in it's failure to perform any of LANDLORD'S covenants, obligations or agreements of this Lease.

9. TENANT'S INSURANCE - TENANT covenants and agrees with LANDLORD that TENANT shall:

(a) At TENANTS sole cost and expense, during the entire Term hereof, procure, pay for and keep in full force and effect; (i) an occurrence form commercial general liability policy, covering the Demised Premises and the operations of Tenant and any person conducting business in, on or about the Demised Premises in which the limits with respect to liability and property damage shall not be less than One Million ($1,000,00.00) Dollars per occurrence (ii) all risk property insurance, including theft coverage, written at replacement cost value and a replacement cost endorsement insuring TENANT'S improvements and betterments, fixtures, furnishings, equipment and any other property belonging to TENANT; and (iii) workers compensation coverage as required by the provisions of Florida statute. Any consignment agreement used by TENANT must provide that consignor acknowledge that the LANDLORD does not have any liability whatsoever for any damage which may be done to items left in the Demised Premises on consignment. The TENANT must provide the LANDLORD with a copy of any consignment agreement used by TENANT regarding Demised Premises. LANDLORD shall not be responsible for damage to any property belonging to TENANT or consignor. TENANT completely indemnifies the LANDLORD with regard to any claims made by any consignor for any reason. From time to time during this Lease, at LANDLORD'S request, TENANT shall (i) procure, pay for and keep in full force and effect such other insurance as LANDLORD shall require and (ii) increase the limits of such insurance as LANDLORD may reasonably require.

(b) All policies of insurance required to be carried by TENANT pursuant to this lease shall be written by responsible insurance companies authorized to do business in Florida with an AM Best rating of A-VI or better. Any such insurance required to be carried by TENANT hereunder may be furnished by TENANT under any blanket policy carried by it or under a separate policy therefore. A copy of each paid up policy evidencing such insurance or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required by this Lease and containing provisions specified herein, shall be delivered to LANDLORD prior to the commencement of the Term of this Lease and, upon renewals, but not less than sixty (60) days prior to the expiration of such coverage. In the event TENANT shall fail to procure such insurance, LANDLORD may, at its option, procure the same for the account of TENANT, and the cost thereof shall be paid to LANDLORD as an additional charge upon receipt by TENANT of bills therefore, together with an administrative fee equal to fifteen (15%) percent to cover the cost of the LANDLORD'S efforts to procure such policy.

(c) Each policy evidencing insurance required to be carried by TENANT pursuant to this Lease shall contain the following provisions and/or clauses: (i) a provision that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by LANDLORD; (ii) a provision naming LANDLORD

and any other parties in interest as designated by LANDLORD as an additional insured (except with respect to worker's compensation insurance); and (iii) a provision that the insurer will not cancel, materially change or fail to renew the coverage provided by such policy without first giving LANDLORD thirty (30) days prior written notice.

Any general liability or other policy insuring the LANDLORD does not provide any contributing or excess coverage for TENANT. The policies TENANT procures for TENANT'S exposure are the only coverage available to TENANT.

10. ASSIGNMENT AND HYPOTHECATION - This Lease is not transferable or assignable and may not be hypothecated nor sublet without the prior written consent of the LANDLORD which may be withheld and shall be at the sole discretion of the LANDLORD.

Any assignment or sub-letting, even with LANDLORD'S consent shall not relieve TENANT from liability for payment of Rent or from the obligation to keep and be bound by the agreements of this Lease. The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease or to be consent to the assignment for the benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior consent of LANDLORD. In the event TENANT wishes to assign this Lease and LANDLORD consents to such assignment, LANDLORD may charge a reasonable fee, not to exceed **$500.00** to help offset any costs LANDLORD may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same. Any assignment, transfer, hypothecation, mortgage, or subletting without LANDLORD'S written consent shall give LANDLORD the right to terminate this Lease and to re-enter and repossess the Demised Premises and the LANDLORD'S right to damages shall survive.

If the TENANT is a corporation, then a sale or transfer of a controlling interest in the corporation by sale of stock or otherwise shall constitute an assignment for purposes of this provision.

11. SUBORDINATION - This Lease, and all rights of TENANT hereunder, are and shall be subject and subordinate to all mortgages, bond indentures and any other financing instrument (hereinafter referred to as security agreements) which may now or hereafter affect the Demised Premises and to each and every advance made or hereafter to be made under such security agreements and to all renewals, modifications, replacements and extensions of such security agreements and spreaders and consolidations of such security agreements. This paragraph shall be self operative and no further instrument of subordination shall be required to make it effective, however, TENANT shall promptly execute and deliver any instrument reasonably requested to evidence such subordination.

If the holder of any such security instrument shall succeed to the rights of LANDLORD under this Lease, then at the request of such party so succeeding to the LANDLORD'S rights and upon such successor LANDLORD'S written agreement to accept TENANT'S attornment, TENANT shall attorn to such successor LANDLORD and will execute such instruments as may be necessary or appropriate to evidence such attornment. Upon such attornment, this Lease shall continue in full force and effect as if it were a direct Lease between the successor LANDLORD and TENANT upon all the terms, conditions, and covenants as are set forth in this Lease and shall be applicable after such attornment.

TENANT shall deliver to LANDLORD or the holder of any such security instrument or auditors, or prospective purchaser or the owner of the fee, when requested by LANDLORD, a certificate to the effect that this Lease is in full force and that LANDLORD is not in default therein, or stating

specifically any exceptions thereto. Failure to give such a certificate within ten business days after written request shall be conclusive evidence that the Lease is in full force and effect and LANDLORD is not in default and in such event, TENANT shall be stopped from asserting any defaults known to TENANT at that time.

12. CONDEMNATION

(a) It is further understood and agreed that if at any time during the continuance of this Lease the legal title to the Demised real estate or the improvements or buildings located thereon or any portion thereof be taken or appropriated or condemned by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings and such abatement of the fixed rent and other adjustments made as shall be just and equitable under the circumstances. If the LANDLORD and the TENANT are unable to agree upon what division of the condemnation award, abatement of fixed rent, or other adjustments are just and equitable within thirty (30) days after such award has been made, then the matters in dispute shall, by appropriate proceedings, be submitted to a court having jurisdiction of the subject matter of such controversy for its decision and determination of the matters in dispute. If the legal title to the entire Demised Premises be wholly taken by condemnation, or if the portion taken will prevent the Demised Premises from being used for the purpose the TENANT intends, this Lease shall be canceled.

(b) In general, it is the intent and agreement of the parties that upon condemnation, the parties hereto shall share in the condemnation award to the extent that they would be entitled to receive compensation and damages under the Florida law for the depreciation, damage, or destruction of their interests by the exercise of the right of eminent domain. In no event shall TENANT be permitted to receive a share based on the value of the land or buildings, and/or improvements.

13. TENANT'S DEFAULT

(a) If the TENANT shall fail to pay any of the taxes or assessments herein provided for; or in case of the sale of or forfeiture of the Demised Premises or any part thereof during the demised term for non-payment of any tax or assessment; or in case the TENANT shall fail to keep insured the building or improvements which are now or which may at any time hereafter be upon the Demised Premises, as herein provided for; or shall fail to spend insurance money, as herein provided for; or if the TENANT shall fail to perform any of the covenants of this Lease by it to be kept and performed; then, in any of such events, except in the event of non payment of rent, upon ten (10) business days written notice, within which the TENANT may cure, and upon its failure to cure, it shall and may be lawful for the LANDLORD, at its election, to declare the demised term ended and to re-enter upon said Demised Premises, building, and improvements situated thereon, or any part hereof, either with or without process of law, the TENANT hereby waiving any demand for possession of the Demised Premises and any and all buildings and improvements then situated thereon. In the event of nonpayment of rent, LANDLORD may assert its right of notice and eviction pursuant to Chapter 83, Florida Statutes.

(b) Or, the LANDLORD may have such other remedies as the law and this instrument afford, and the TENANT covenants and agrees that upon the termination of said demised term, at such election of the said LANDLORD, or in any other way, TENANT will surrender and deliver up the Demised Premises and property (real and

personal) peaceably to the LANDLORD, its agent, or attorneys, immediately upon the termination of the said demised term. If the TENANT, its agents, attorneys, or shall hold the Demised Premises or any part thereof, one (1) day after the same should be surrendered according to the terms of this Lease, it shall be deemed guilty of forcible detainer of the Demised Premises under the statute and shall be subject to eviction or removal, forcibly or otherwise, with or without process of law.

(c) BANKRUPTCY OF TENANT. IN THE EVENT TENANT FILES ANY FORM OF BANKRUPTCY, LANDLORD SHALL BE ENTITLED TO IMMEDIATE TERMINATION OF THE AUTOMATIC STAY PROVISIONS OF 11 U.S.C. §362, GRANTING THE LANDLORD COMPLETE RELIEF AND ALLOWING THE LANDLORD TO EXERCISE ALL OF HIS LEGAL AND EQUITABLE RIGHTS AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO TERMINATE THIS LEASE AND DISPOSSESS TENANT FROM THE DEMISED PREMISES IN ACCORDANCE WITH FLORIDA LAW. ADDITIONALLY, TENANT AGREES NOT TO DIRECTLY OR INDIRECTLY OPPOSE OR OTHERWISE DEFEND AGAINST THE LANDLORD'S EFFORT TO GAIN RELIEF FROM ANY AUTOMATIC STAY. THE LANDLORD SHALL BE ENTITLED AS AFORESAID TO THE LIFTING OF THE AUTOMATIC STAY WITHOUT THE NECESSITY OF AN EVIDENTIARY HEARING AND WITHOUT THE NECESSITY OR REQUIREMENT OF THE LANDLORD TO ESTABLISH OR PROVE THE VALUE OF THE LEASEHOLD, THE LACK OF ADEQUATE PROTECTION OF HIS INTEREST IN THE LEASEHOLD, OR THE LACK OF EQUITY IN THE SAME. TENANT SPECIFICALLY AGREES AND ACKNOWLEDGES THAT THE LIFTING OF THE AUTOMATIC STAY HEREUNDER BY THE APPROPRIATE BANKRUPTCY COURT SHALL BE DEEMED TO BE "FOR CAUSE" PURSUANT TO SECTION 362(D)(1).

(d) Where the alleged default consists of some alleged violation of any term of this Lease, other than the payments of money, including rent, the LANDLORD may not declare this Lease in default until such violation shall have continued for ten (10) days after the LANDLORD shall have given the TENANT written notice of such violation, and TENANT shall not have undertaken, during said ten (10) day notice period, to cure said violation by vigorous and affirmative action, provided, however, that nothing herein contained shall be construed as precluding the LANDLORD from having such remedy as may be and become necessary in order to preserve the LANDLORD'S right and interest of the LANDLORD in the Demised Premises and in this Lease, even before the expiration of the grace or notice periods provided for in this paragraph, if, under particular circumstances then existing, the allowance of such grace or the giving of such notice would prejudice or endanger the rights and estate of the LANDLORD in this Lease and in the Demised Premises. With respect to the payment of the insurance premiums, the same must be paid at least fifteen (15) days prior to the time when the policies would lapse for the failure to pay premiums thereon, and evidence of such payment given to the LANDLORD without any written notice being required to be served upon the TENANT in connection therewith.

(e) All default and grace periods shall be deemed to run concurrently and not consecutively.

(f) It is mutually covenanted and agreed that the various rights, powers, options, elections, privileges, and remedies of the LANDLORD contained in this Lease shall be

construed as cumulative and no one of them shall be construed as being exclusive of the other or exclusive of any rights or priorities allowed by law.

(g) It is further covenanted and agreed by and between the parties hereto that the right given to the LANDLORD in this Lease to collect the rent that may be due under the terms of this Lease by any proceeding under same, or the right to collect any additional rent, money, or payments due under the terms of this Lease by any proceedings under same, or the right given the LANDLORD to enforce any of the terms and provisions of this Lease shall not in any way affect the right of such LANDLORD to declare this Lease void and the terms ended hereby, as herein provided, when default is made in the payment of said rent or when default is made by the TENANT in any of the terms and provisions of this Lease.

(h) If at any time, by reason of the failure of the TENANT to keep and perform any covenant or agreement which, under the terms of this Lease, the TENANT is bound and obligated to keep and perform, it becomes necessary for LANDLORD to employ an attorney to protect the rights and interests of the LANDLORD in the property demised or to enforce the Lease or proceed under it in any particular, then in any of such events, the TENANT will owe and will pay unto LANDLORD all costs of Court and reasonable attorneys fees incurred or expended by the LANDLORD in taking such actions, including actions taken in all trial and appellate courts.

14. TENANT'S REPAIRS - The TENANT covenants and agrees with the LANDLORD that during the continuance of this Lease, the TENANT shall be solely responsible for maintaining the Demised Premises in a clean, sanitary and safe condition in accordance with the laws of the State of Florida and in accordance with all directions, rules and regulations of all inspectors, governmental departments and agencies having jurisdiction over the Demised Premises to ensure a good state of repair of the Demised Premises and all furnishings, including any special equipment brought, placed, or installed upon the Demised Premises by TENANT; nor will the TENANT suffer or permit any strip, waste, or neglect of any building or such personal property to be committed; and the TENANT will repair, replace, and renovate the said real and personal property as often as it may be necessary in order to keep the building or buildings and the personal property which is subject to the LANDLORD'S lien, in good repair and condition. In the event that improvements or repairs are contemplated prior to or at the beginning of or during TENANT'S occupancy, then this provision shall apply to the condition of the property as of the last repair, improvement or renovation.

In the event that LANDLORD shall deem it necessary or be required by any governmental authority to repair, alter, remove, reconstruct or improve any part of the Demised Premises or of the property (unless the same result from TENANT'S act, neglect, default or mode of operation, in which event LANDLORD shall make all such repairs, alterations or improvements at TENANT'S sole cost and expense), then the same shall be made by LANDLORD with reasonable dispatch, and should the making of such repairs, alterations and improvements cause any interference with TENANT'S use of the Demised Premises, such interference shall not relieve TENANT from the performance of its obligations hereunder nor shall such interference be deemed an actual or constructive eviction or partial eviction or result in abatement of rental.

15. ALTERATIONS

TENANT shall not make any alterations, additions or improvements to the Demised Premises (whether or not the same may be structural in nature) without LANDLORD'S prior written consent. All alterations, additions, or improvements made to the Demised Premises, except

movable furniture and equipment installed at TENANT'S expense, shall be the property of the LANDLORD and remain upon and be surrendered with the Demised Premises at the expiration of the term of this Lease; provided, however, that LANDLORD may require TENANT to remove any additions made at TENANT'S request to the Demised Premises and to repair any damage caused by such removal, and provide further, that if TENANT has not removed its property and equipment within ten (10) days after the expiration or termination of this Lease, LANDLORD may elect to retain the same as abandoned property.

In the event TENANT shall request LANDLORD'S permission, and LANDLORD shall permit TENANT to perform any alterations, additions, improvements or repairs to the Demised Premises, TENANT shall (i) submit its plans and specifications to LANDLORD for its approval prior to the commencement of any construction, (ii) obtain all necessary permits prior to the commencement of any construction, (iii) only use contractors approved by LANDLORD, (iv) not permit any construction liens to be placed or remain on the Demised Premises. In the event a construction lien shall be filed against the Demised Premises as a result of work undertaken by TENANT, TENANT shall within ten (10) days of receiving notice of such lien, discharge the lien of record either by payment of the indebtedness to the lien claimant or by filing a bond as security therefore. All such work made by or on behalf of TENANT shall be performed in such manner as LANDLORD may designate and in accordance with all applicable laws and regulations of governmental authorities having jurisdiction over the same. All such work by TENANT or its contractors shall not interfere with, impede or delay any work by LANDLORD or its contractors, tenants or TENANT'S contractors. All contractors engaged by TENANT shall be bondable, licensed contractors, possessing good labor relations, and capable of performing quality workmanship.

LANDLORD will install water line and sewer line and water deduct meter up to the rear exterior of the building at LANDLORD'S expense.

TENANT may affix an exterior fan to the building with LANDLORD'S approval of the type, size and location.

16. EQUIPMENT, FIXTURES AND SIGNS

(a) All furnishings, fixtures, trade fixtures, equipment, and signs used on the Demised Premises by TENANT but provided by LANDLORD, will, at all times, be, and remain, the property of LANDLORD. Provided that this Lease is in good standing and subject to the LANDLORD'S lien for rent, TENANT will have the right to remove any furniture or fixtures provided by TENANT, or any part thereof, from the Demised Premises during the term of this Lease, at the expiration thereof, or within a reasonable time thereafter, provided, however, that TENANT, in so doing, does not cause any irreparable damage to the Demised Premises, and provided further, that TENANT will pay or reimburse LANDLORD for the reasonable expense of repairing damage caused by such removal.

(b) All TENANT signs shall be approved by the LANDLORD and must meet all applicable codes. The exact location, style, text, and color(s) of the sign shall be agreed upon by the LANDLORD, in writing, prior to TENANT'S installation. LANDLORD'S approval shall not be unreasonably withheld or delayed.

17. ADDITIONAL COVENANTS OF THE TENANT

(a) The TENANT shall pay for all utilities associated with the use of the Demised

Premises including, but not limited to, water, electricity, sewer, gas and waste, (if applicable). In the event that a separate bill for the Demised Premises is not available for one or more of the utility services required by the Demised Premises, then the TENANT shall pay a pro-rated share of that particular utility bill based on a calculation of the ratio of the square footage of the Demised Premises and the total square footage of the Premises covered by that particular utility bill. In the event that the TENANT shall be billed for a pro-rated share, the LANDLORD shall provide TENANT a utility bill each month and TENANT shall pay the amount due to LANDLORD within ten (10) days of its receipt.

(b) The TENANT covenants and agrees with the LANDLORD that no damage or destruction to any building or improvement by fire, windstorm, or any other casualty shall be deemed to entitle the TENANT to surrender possession of the Demised Premises or to terminate this Lease or to violate any of its provisions or to cause any abatement or rebate in the rent then due or thereafter becoming due under the terms hereof, unless otherwise specifically provided for herein. If the Lease be canceled for the TENANT'S default at any time while there remains outstanding any obligation from any insurance company to pay for the damage or any part thereof, then the claim against the insurance company shall, upon the cancellation of the within-Lease, be deemed immediately to become absolute and unconditional property of the LANDLORD. In the event of destruction to the Demised Premises by casualty or hazard, LANDLORD will have the option of canceling the Lease, or repairing the building, and in the event that the LANDLORD elects to repair the building, an appropriate abatement of rent will occur.

(c) The TENANT shall be responsible for the HVAC and all air conditioning systems together with the plumbing and electrical system.

(d) The TENANT shall be responsible for maintaining the roof and exterior of the building

(e) The TENANT covenants and agrees with the LANDLORD that nothing in this Lease contained shall ever be construed as empowering the TENANT to encumber or cause the LANDLORD to encumber the title or interest of the LANDLORD.

(f) The TENANT covenants and agrees with the LANDLORD that, at the termination of this Lease, the TENANT will peaceably and quietly deliver unto the LANDLORD, possession of the Demised Premises and all buildings and improvements located thereon, as well as the TENANT'S interest in all fixtures and equipment appertaining thereto.

(g) The TENANT agrees not to make any internal changes or exterior changes or alterations without written approval of the LANDLORD. This provision does not apply to TENANT'S trade fixtures and/or other non-permanent fixtures on the interior of the Demised Premises.

18. LANDLORD'S RIGHT OF ENTRY - The LANDLORD or its agents shall have the right to enter upon the Demised Premises at all reasonable times to examine the condition and use thereof, provided only that such right shall be exercised in such manner as not to interfere with the TENANT in the conduct of the TENANT'S business on said Demised Premises. If the said Demised Premises are damaged by fire, windstorm, or by any other casualty which caused the Demised Premises to be exposed to the elements, then the LANDLORD may enter upon the Demised Premises to make emergency repairs. LANDLORD may enter upon the Demised

Premises to make renovations and repairs of a non-emergency nature by giving reasonable notice to the TENANT, and in such a manner as to minimize any inconvenience to both parties.

19. TENANT'S ACCEPTANCE - The TENANT accepts the Demised Premises and improvements thereon in an as is condition and all improvements and additions shall be at the sole expense of the TENANT except as may be otherwise provided for in this Lease.

20. MISCELLANEOUS PROVISIONS - It is mutually covenanted and agreed by and between the parties as follows:

(a) That no waiver of a breach of any of the covenants in this Lease contained shall be construed to be a waiver of all succeeding breach of the same covenant.

(b) That time is of the essence in every particular and particularly where the obligation to pay money is involved.

(c) That all arrearages in the payment of rent or in the repayment to the LANDLORD of any sums which the LANDLORD may have paid in order to cure a default of the TENANT (as elsewhere herein provided for), shall bear interest from the date when due and payable at the highest rate permitted by law until paid.

(d) That no modification, release, discharge, or waiver of any provision hereof shall be of any force, effect, or value unless in writing and signed by the persons who are then LANDLORD and TENANT.

(e) That all covenants, promises, conditions, and obligations contained herein or implied by law, or covenants running with the land, shall attach to and be binding upon the heirs, executors, administrators, successors, legal representatives, and assigns of each of the parties to this Lease.

(f) That this instrument contains the entire agreement between the parties as of this date, and that the execution hereof has not been induced by either of the parties by representations, promises or understandings not expressed herein, and that there are not collateral agreements, stipulations, promises, or understandings whatsoever between the respective parties in any way touching the subject matter of this instrument which are not expressly contained in this instrument.

(g) That when either of the parties desire to give notice to the other or others in connection with and according to the terms of this Lease, such notice shall be deemed given when it shall have been deposited in the U.S. Registered or Certified mail with sufficient postage pre-paid thereon to carry it to its addressed destination. Said notice shall be addressed as follows:

AS TO LANDLORD: PROPERTY MANAGEMENT
CITY OF KEY WEST
P.O. BOX 6434
KEY WEST, FL 33040

AS TO TENANT: ERIC SINDONE
1122 STUMP LANE
KEY WEST, FK 33040

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

(h) This Lease and the provisions thereof shall be governed by and construed and enforced in accordance with the laws of the State of Florida.

(i) If the TENANT or TENANTS are signing in a capacity other than as individuals, then the LANDLORD may require personal guarantees from individuals as the LANDLORD deems necessary.

(j) LANDLORD may delegate its decision-making authority regarding any provision of this Lease to an Advisory Board.

IN WITNESS WHEREOF, the parties hereto have caused the foregoing Lease to be executed on the day and year first above written.

ATTEST

Cheryl Smith, City Clerk

Date: 7-8-09

LANDLORD

Morgan McPherson, Chairman
Caroline Street Corridor and Bahama Village
Community Redevelopment Agency

Date: 7/8/09

WITNESS

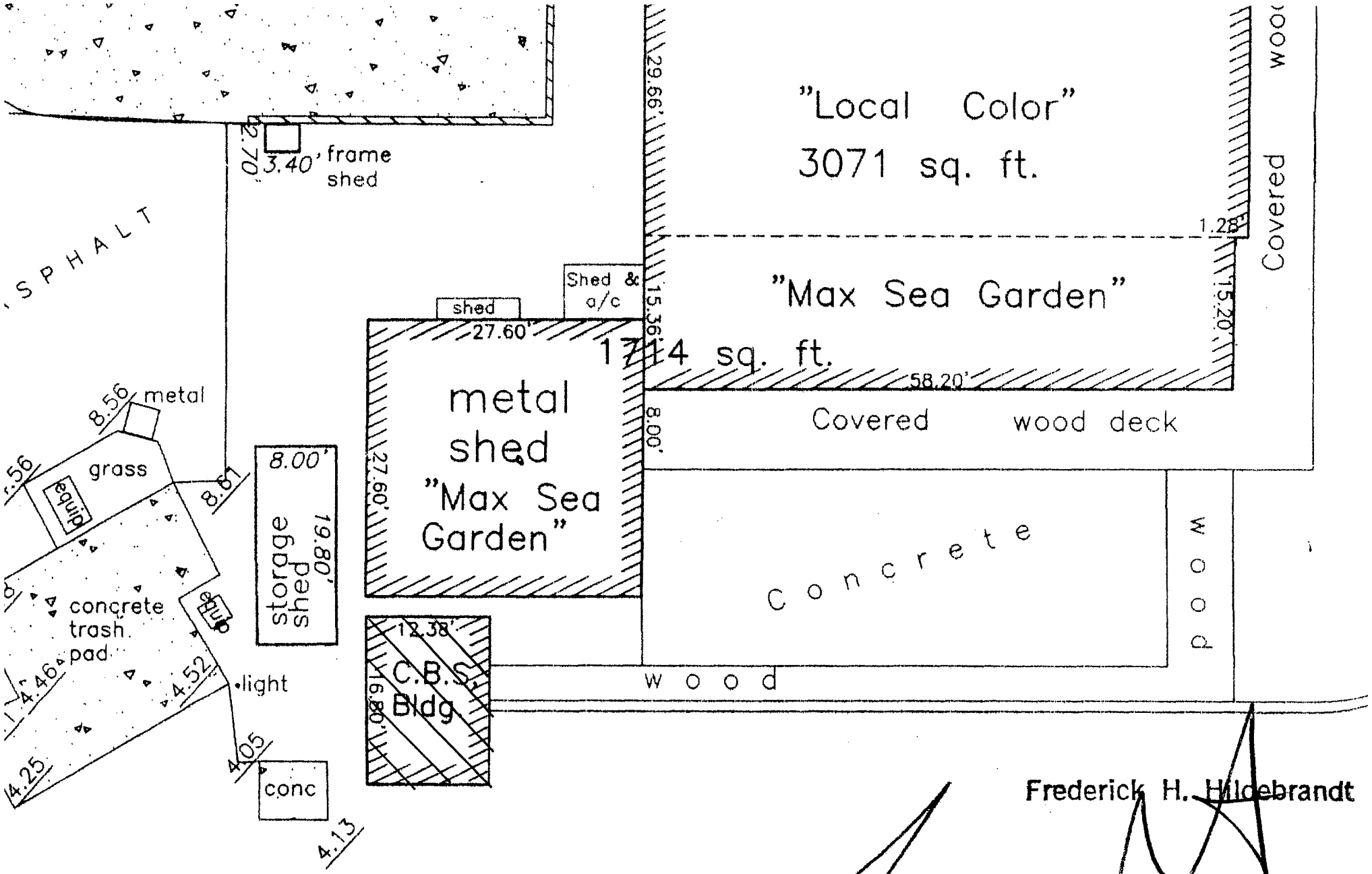
Date: 6-22-09

TENANT

By: _____
Eric Sindone

Date: 6/22/09

EXHIBIT "A" Demised Premises, Site Plan



Frederick H. Hildebrandt

Professional Engineer No. 36810
Professional Land Surveyor No. 2
State of Florida

Date: 10/17/07

EXHIBIT "B" Rent Schedule

KEY WEST BIGHT

EXHIBIT "B"

Tenant Trade Name: **Cuban Coffee Queen**

Location: **284 Margaret**

Contact: **Eric Sindone**

Square Feet **208** CAM

Square Feet **208** BASE RENT

Term 5 years

YEAR #	Period Beginning	Base Rent per sq. ft. 5% Increase	Base Rent Annual	Base Rent Monthly	Tax, Ins., CAM $4.85 Annual	Tax, Ins., CAM Monthly	Total Rent Before Sales Tax Monthly	Sales Tax Monthly	Total Rent With Tax Monthly	TOTAL RENT ANNUAL	Percentage Rent Base Amount
1	September 1, 2009	$41.83	$8,700.00	$725.00	$1,008.80	$84.07	$809.07	$60.68	$869.75	$10,436.95	$144,999.92
2	September 1, 2010	$43.92	$9,134.99	$761.25	$1,059.24	$88.27	$849.52	$63.71	$913.23	$10,958.80	$152,249.92
3	September 1, 2011	$46.11	$9,591.74	$799.31	$1,112.20	$92.68	$892.00	$66.90	$958.90	$11,506.74	$159,862.41
4	September 1, 2012	$48.42	$10,071.33	$839.28	$1,167.81	$97.32	$936.60	$70.24	$1,006.84	$12,082.08	$167,855.53
5	September 1, 2013	$50.84	$10,574.90	$881.24	$1,226.20	$102.18	$983.43	$73.76	$1,057.18	$12,686.18	$176,248.31

Tax, Insurance and CAM are **estimated** based upon most recent actual costs and adjusted 5% annually

Tenant shall deposit **$1,450.00** at the commencement of this lease as a security deposit in accordance with Section 5 of this lease

EXHIBIT "C" Rules and Regulations

1. TENANT shall not use any area outside of the demised premises as shown on Exhibit A or any portion of any common area or any parking areas for or any other purpose whatsoever including but not limited to the storage of goods, inventory, equipment, materials, whether or not said area is inside a building or outdoors.

EXHIBIT "D"

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

GUARANTY

This Guaranty is made this 22 day of June, 2009 in accordance with the Lease Agreement (hereinafter Agreement) dated July 8, 200_ by and between the Caroline Street Corridor and Bahama Village Community Redevelopment Agency of the City of Key West (hereinafter City) and Eric Sindone (hereinafter Tenant) and Eric SIndone (hereinafter Guarantor) for the Demised Premises (hereinafter Premises) located at 284 Margaret Street, Florida.

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

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

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

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

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

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

(f) In the event any action or proceeding be brought by City to enforce this Guaranty, or City appears in any action or proceeding in any way connected with or growing out of

this Guaranty, then and in any such event, the Guarantor shall pay to City reasonable attorney's fees, but only if City is the prevailing party. The Guarantor in any suit brought under this Guaranty does hereby submit to the jurisdiction of the courts of the State of Florida and to the venue in the circuit court of Monroe County, Florida.

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

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

IN WITNESS WHEREOF, the Guarantor has caused the foregoing Guaranty to be executed on this 22 day of June 2009

Witness:

By: _____

Name: M. Williams

Date: 7/22/09

Guarantor:

By: _____

Name: Eric Sintone

Date: 6/22/09

State of Florida }
County of Monroe }

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 22 day of June, 200_.

Maria G. Ratcliff
Notary Public, State of Florida

My Commission Expires:

MARIA G. RATCLIFF
MY COMMISSION EXPIRES
March 22, 2011
#DD 642616
Bonded thru
Troy Fain-Insurance
NOTARY PUBLIC, STATE OF FLORIDA