

Return to: (Enclose self addressed stamped envelope)

Name: STONES & CARDENAS

Address: 221 Simonton Street
Key West, FL 33040

Doc# 1746002 06/11/2009 11:15AM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE

This Instrument Prepared By: STONES & CARDENAS
221 Simonton Street
Key West, FL 33040
(305) 294-0252

06/11/2009 11:15AM
INTANGIBLE TAX CL: TRINA \$1,100.00
MORTGAGE DOC STAMP CL: TRINA \$1,925.00

THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY IS \$550,000.00, TOGETHER WITH ALL ACCRUED INTEREST, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE.

THIS MORTGAGE DEED

Executed the 30th day of April, 2009, by SOUTHERNMOST CABANA RESORT, LLC, a Florida limited liability company, hereinafter called the Mortgagor, to KIMBERLY A. PARKER, hereinafter called the Mortgagee,

WITNESSETH, that for divers good and valuable consideration, and also in consideration of the aggregate sum named in the promissory note of even date herewith, hereinafter described, the said Mortgagor, does grant, bargain, sell, alien, remise, release, convey and confirm unto the said Mortgagee, in fee simple, all that certain tract of land of which the said Mortgagor is now seized and possessed, and in actual possession, situate in Monroe County, State of Florida, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE

Parcel Identification No.: 00027070-000000

Doc# 1746002
Bk# 2417 Pg# 265

Street Address: 1015-1027 Simonton Street, Key West, Florida

SUBJECT TO: Taxes and assessments for the year 2009 and subsequent years.

SUBJECT TO: Limitations, conditions, restrictions and easements of record, if any.

SUBJECT TO: First mortgage from Southernmost Cabana Resort, LLC to Archdiocese of Miami Inc., dated April 30, 2009, and recorded on May 20, 2009, at O.R. Book 2413, Page 1504, in the original principal amount of \$ 1,920,000.00.

TO HAVE AND TO HOLD the same, together with the tenements, hereditaments and

appurtenances, unto the said Mortgagee in fee simple.

AND said Mortgagor does covenant with said Mortgagee that said Mortgagor is indefeasibly seized of said land in fee simple; that the said Mortgagor has full power and lawful right to convey said land in fee simple as aforesaid; that it shall be lawful for said Mortgagee at all times peaceably and quietly to enter upon, hold, occupy and enjoy said land; that said land is free from all encumbrances; that said Mortgagor will make such further assurances to perfect the fee simple title to said land in said Mortgagee as may reasonably be required; and that said Mortgagor does hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever.

PROVIDED ALWAYS, that if said Mortgagor shall pay unto the said Mortgagee the certain promissory note, of which the following in words and figures is a true copy, to wit:

(See Promissory Note Attached Hereto)

and shall perform, comply with and abide by each and every of the stipulations, agreements, conditions and covenants of said promissory note (the "Note") and of this mortgage deed, then this mortgage deed and the estate hereby created shall cease and be null and void.

AND the said Mortgagor hereby covenants and agrees:

1. To pay all and singular the principal and interest and other sums of money payable by virtue of said promissory note and this mortgage deed, or either, promptly, on the days respectively the same severally come due.
2. To pay all and singular the taxes, assessments, levies, liabilities, obligations, and encumbrances of every nature, including the first mortgage in favor of Archdiocese of Miami Inc its successors and/or assigns, as their interest may appear, on said described property, and if the same be not promptly paid the said Mortgagee, may at any time pay the same without waiving or affecting the option to foreclose, or any right hereunder, and every payment so made shall bear interest from the date thereof at the maximum rate permissible under Florida law, payable on demand.
3. To pay all and singular the costs, charges and expenses, including lawyer's fees, reasonably incurred or paid at any time by said Mortgagee, because of the failure on the part of the said Mortgagor to perform, comply with and abide by each and every of the stipulations, agreements, conditions and covenants of said promissory note and this mortgage deed, or either, and every such payment shall bear interest from the date thereof at the maximum rate permissible under Florida law, payable on demand.
4. To permit, commit, or suffer no waste and to maintain the improvements at all times in a state of good repair and condition; and to do or permit to be done to said premises, nothing that will alter or change the use and character of the property or in any way impair or weaken the

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security of the mortgage. In case of the refusal, neglect or inability of the Mortgagor to repair and maintain the property, the Mortgagee may, at its option, make such repairs or cause the same to be made and advance monies in that behalf which sums shall be secured by the lien hereof and bear interest at the maximum rate permissible under Florida law, payable on demand.

5. To perform, comply with and abide by each and every of the stipulations, agreements, conditions and covenants in said promissory note and in this mortgage deed as set forth.

6. If the Mortgagor shall fail for a period of thirty (30) days, to fully and promptly pay the amounts required to be paid by the promissory note hereby secured, or the interest therein specified, or otherwise promptly to perform, each of the covenants of this mortgage, the promissory note hereby secured, and/or the loan agreement, if any, then, without notice or demand, the aggregate sum mentioned in said promissory note, less previous payments, if any, and any and all sums mentioned herein or secured hereby, shall become due and payable forthwith at the option of the Mortgagee as fully, and completely, as if said aggregate sums were originally stipulated to be paid at such time, and the Mortgagee shall be entitled thereupon without notice or demand to institute suit to enforce the rights of the Mortgagee hereunder, or under said promissory note. In the event of any default or breach on the part of the Mortgagor hereunder, or under said promissory note, the Mortgagee shall have the option to enforce payment of all sums secured hereby either by suit upon the promissory note, or by foreclosure of the mortgage, and one action shall not be a bar to, or waiver of, the Mortgagee's right to institute or maintain the other, provided said Mortgagee shall have only one payment of the indebtedness.

7. The Mortgagee may, at any time while a suit is pending to foreclose or to reform this mortgage, or to enforce any claims arising hereunder, apply to the court having jurisdiction thereof for the appointment of a receiver, and such court shall forthwith appoint a receiver of the premises and all other property covered hereby, including all and singular the income, profits, rents, issues and revenues from whatever source derived, and such receiver shall have all the broad and effective functions and powers in anywise entrusted by a court to a receiver and such appointment shall be made by such court as an admitted equity, and a matter of absolute right to said Mortgagee, and without preference to the adequacy or inadequacy of the value of the property mortgaged, or to the solvency or insolvency of said Mortgagor, or the defendants, and such income, profits, rents, issues and revenues shall be applied by such receiver according to the lien of this mortgage, and the practice of such court.

8. Failure by the Mortgagee to exercise any of the rights or options herein provided shall not constitute a waiver of any rights or options under said promissory note, or this mortgage, accrued or thereafter accruing.

9. In the event of a transfer or conveyance of the mortgaged property, or any interest therein, payment of the entire indebtedness secured by the mortgage shall be accelerated and become payable in full, unless the Mortgagee has, by prior written agreement, waived acceleration. Any written waiver of acceleration may be conditioned upon the payment of a transfer fee or a change in loan charges and payment terms, but Mortgagee shall be under no

obligation to agree to such a waiver. Mortgage payments received and applied by Mortgagee following a transfer or conveyance without its knowledge and written consent shall not estop it from accelerating the indebtedness when it learns of the unapproved transfer.

10. Mortgagor agrees, at Mortgagor's expense, to keep the building(s) now or hereafter on the encumbered property insured against loss or damage by fire, windstorm, theft, vandalism and other perils, in a sum not less than the full insurable value, in a company or companies approved by Mortgagee. The Mortgagor shall also maintain: (i) flood insurance in the maximum amount available as required by banking regulations; (ii) prudent and sufficient public liability insurance in an amount acceptable to Mortgagee and, (iii) if the mortgaged property is leased, rental loss insurance in an amount equal to six months gross rental income. All insurance policies shall have affixed a standard mortgage clause, making all insurance proceeds payable to the Mortgagee, and the policies shall be delivered to and held by the Mortgagee. The Mortgagee shall have the option to receive and apply all such proceeds against the indebtedness secured hereunder, or to permit the Mortgagor to receive and use the proceeds, or a portion thereof, for purposes of repair. In the event the Mortgagor fails to maintain and pay for any insurance required by this paragraph, the Mortgagee at its option may purchase and pay for the insurance, and any payment so made shall bear interest at the highest rate permitted by law, and both the payment(s) and interest thereon shall be secured by this Mortgage. Purchase of insurance by the Mortgagee shall not constitute a waiver of the default by the Mortgagor's failure to comply with this paragraph. In the event of foreclosure of this mortgage or other transfer of title or assignment of the mortgaged premises in extinguishment, in whole or in part of the debt secured hereby, all right, title, and interest of the Mortgagor in and to all policies of insurance required by this mortgage shall inure to the benefit of and pass to the Mortgagee or other successor in interest to the Mortgagor, or the purchaser or grantee of the mortgaged premises.

11. In order to accelerate the maturity of the indebtedness hereby secured because of the failure of the Mortgagor to pay any tax, assessment, liability, obligation, or encumbrance upon said property as herein provided, it shall not be necessary, nor requisite that the Mortgagee shall first pay the same.

12. The Mortgagee, or any person authorized by the Mortgagee, shall have the right to enter upon and inspect the mortgaged premises at all reasonable times.

13. The Mortgagor will, on the request of the Mortgagee, furnish a written statement of the amount owing on the obligation which this mortgage secures, and therein state whether or not Mortgagor claims any defenses or offsets thereto.

14. It is agreed that nothing in this mortgage, or the promissory note which is secures, shall operate to require the Mortgagor to pay interest at a rate greater than the maximum lawful rate of interest allowable from time to time under the laws of the State of Florida, or the United States of America, whichever is higher, or unlimited, or to make any payment or to do any act contrary to law. If any clauses or provisions herein would operate to invalidate this mortgage or the promissory note, in whole, or in part, such clause or provision only shall be considered

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invalid, and the remainder of the mortgage shall remain operative and in full force and effect.

15. If all or any part of the mortgaged property shall be damaged or taken through condemnation (which term when used in this mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall, at the option of the Mortgagee, become immediately due and payable. The Mortgagee shall be entitled to all compensation awards, and other payments or relief therefrom and is hereby authorized, at its option, to commence, appear in and prosecute, in its own, or the Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation is hereby assigned by the Mortgagor to the Mortgagee, who, after deducting therefrom all its expenses, including attorney's fees, may release any monies so received by it without affecting the lien of the mortgage, or may apply the same in such manner as the Mortgagee shall determine, to the reduction of the sums secured hereby, and any balance of such monies then remaining shall be paid to Mortgagor. The Mortgagor agrees to execute such further assignments of any compensation, awards, damages, claims, rights of action and proceeds as the Mortgagee may require.

16. Mortgagor hereby assigns to Mortgagee all of Mortgagor's rights and interest as lessor in any leases now or hereafter existing and affecting the real property described herein, together with all rents, income and profits due and becoming due therefrom, which leases shall be subject and subordinate to this mortgage in all respects. In the event of any default occasioning acceleration under this mortgage or the promissory note which it secures, Mortgagor authorizes Mortgagee to demand and to collect all rents accruing from the mortgaged property, and apply the same to the outstanding indebtedness, and any payments thus made and applied shall not cure any default nor impair the Mortgagee's right to proceed with any legal action to collect its entire mortgage debt. Mortgagor hereby authorized Mortgagee to give notice in writing of this assignment at any time to any tenant whose lease is assigned to Mortgagee by virtue of this provision. Prior to default, Mortgagor shall have the right to collect said rents, provided, however, that even before a default occurs, no rent for more than two (2) months in advance shall be collected. Mortgagor further agrees to take no other act which would impair or destroy the rights and benefits of Mortgagee under this assignment.

17. Mortgagor covenants that it shall perform and fulfill promptly, all covenants contained in superior or inferior encumbrances on any and all of the mortgaged property. If Mortgagor shall fail to do so, Mortgagee may, at its election, perform or fulfill such covenant, without waiving or affecting the option to foreclose or any other right hereunder, and the cost thereof, together with interest from the date of payment at the maximum interest rate permissible by the law, shall be secured hereby. The failure or Mortgagor to pay said superior or inferior mortgages when due, and in accordance with its terms, or failure by Mortgagor to abide by the terms of said superior or inferior mortgages, shall be deemed a breach of this mortgage, and the Mortgagee, at its option, may immediately or thereafter declare this mortgage and all indebtedness hereby secured to be due and payable. Mortgagor shall not apply for, accept, or cause to be made, future advances under any superior or inferior mortgage so long as this

mortgage to Mortgagee encumbering the property described herein remains in force. Mortgagor acknowledges and agrees that in the event it breaches this covenant, same shall be an event of default under this mortgage and in such event, Mortgagee shall have the right to exercise those remedies provided for herein.

18. The principal sum secured hereby shall, at the option of the holder of this mortgage, immediately become due and payable, without notice if Mortgagor, or any subsequent owner of the mortgaged premises, makes a mortgage, or modifies or increases, by way of future advance or otherwise, the lien of any superior mortgages, or otherwise creates a lien, of any nature, on the mortgaged premises, whether subordinate, or otherwise, without the prior written consent of Mortgagee.

19. Mortgagor and Mortgagee hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with this agreement, and any agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statement (whether verbal or written) or actions of either party. This provision is a material inducement for the Mortgagee to enter into this agreement.

20. Mortgagor will provide to Mortgagee proof of payment of all real estate taxes due during the term of this Mortgage within fifteen (15) days of their due date.

THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY IS \$550,000.00, TOGETHER WITH ALL ACCRUED INTEREST, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE.

THIS IS A SECOND MORTGAGE. A breach of the first mortgage shall constitute a breach of this mortgage, and shall entitle the Mortgagee to make the payment on the first mortgage, and in such event, the Mortgagee, at its option, may immediately or thereafter declare this mortgage, and all indebtedness hereby secured to be due and payable, and Mortgagee shall have the right to exercise those remedies provided for herein.

IN WITNESS WHEREOF, the said Mortgagor hereunto set his/her/its hand and seal the day and year first above written.

Signed, Sealed and Delivered in Presence of:

SOUTHERNMOST CABANA RESORT,
LLC, a Florida limited liability company

Adele V Stone
Signature of Witness
Adele V. Stone
Printed Name of Witness

By: Joseph D. Cleghorn, Jr.
Joseph D. Cleghorn, Jr.
Managing Member

J.C.

Cindy Sawyer
Signature of Witness

Cindy Sawyer
Printed Name of Witness

Doc# 1746002
Bk# 2417 Pg# 271

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 acknowledgments, SOUTHERNMOST CABANA RESORT, LLC, a Florida limited liability company, by and through JOSEPH D. CLEGHORN, JR., its Managing Member, personally known to me to be the person described in and who executed the foregoing instrument or produced personally known as identification, and he acknowledged before me that he executed the same freely and voluntarily for the purposes therein expressed.

WITNESS my hand and official seal at Key West, County of Monroe and State of Florida, this 30th day of April, 2009.

Cindy Sawyer
Printed Name of Notary

Cindy Sawyer
NOTARY PUBLIC - State of Florida

My Commission Expires:



J.C.

EXHIBIT "A"
Legal Description

On the Island of Key West and being part of Tract 11 according to Wm. A. Whitehead's map of said Island, but better described as Part of Lot 1 of Square 1 in said Tract 11, according to C.W. Tift's map or plan of the Island of Key West delineated July, 1874, the lands hereby leased being more particularly described by metes and bounds as follows:

Beginning at a point on the Northeasterly side of Simonton Street, said point being 198.33 feet Southeasterly from the Easterly corner of the intersection of Division and Simonton Street, run thence in a Southeasterly direction along the Northeasterly side of Simonton street 168.33 feet, more or less to Virginia Street; thence at right angles in a Northeasterly direction along Virginia Street 248 feet; thence at right angles in a Northwesterly direction 168.33 feet, more or less; thence at right angles in a Southwesterly direction 248 feet to the point of beginning on Simonton Street.

And

Beginning at a point on the Northeasterly side of Simonton Street, said point being 183.33 feet Southeasterly from the Easterly corner of the intersection of Division and Simonton Streets, run thence in a Southeasterly direction along the Northeasterly side of Simonton Street 15 feet, thence at right angles in a Northeasterly direction 248 feet; thence at right angles in a Northwesterly direction 15 feet; thence at right angles in a Southwesterly direction 248 feet to the point of beginning on Simonton Street.

Less and Except:

A parcel of land on the Island of Key West, Monroe County, Florida and known on William A. Whitehead's Map of said Island, delineated in February A.D. 1829, as part of Tract 11 and designated on Charles W. Tift's Plan or Map of the Island of Key West delineated in July 1874 as Lot 2 in square 1 in Subdivision of Tract 11, known as Simonton's Addition to Key West and being more particularly described as follows: Commence at the intersection of the Southeasterly right-of-way line of Truman Avenue and the Northeasterly right-of-way line of Simonton Street; thence in a Southeasterly direction along said Northeasterly right-of-way line of Simonton Street 183.33 feet to the Point of Beginning; thence continue in a Southeasterly direction along the said Northeasterly right-of-way line of Simonton Street for 7.55 feet; thence at an angle of 90° 13' 57'' to the right and in a Westerly direction for 113.00 feet; thence at an angle of 89° 46' 03'' to the right and in a Northwesterly direction for 8.00 feet; thence at a right angle and in a Southwesterly direction for 113.00 feet to the said Northeasterly right-of-way line of Simonton Street and the Point of Beginning

PROMISSORY NOTE

\$550,000.00

Key West, Florida
April 30, 2009

FOR VALUE RECEIVED, the undersigned, SOUTHERNMOST CABANA RESORT, LLC, a Florida limited liability company, ("Borrower") promises to pay to the order of KIMBERLY A. PARKER, ("Lender") at 53 Coral Way, Key West, FL 33040, or at such other place as the LENDER hereof may designate in writing, the principal sum of FIVE HUNDRED FIFTY THOUSAND AND 00/100THS DOLLARS (\$550,000.00), with interest at the rate of Five Percent (5%) per annum from April 29, 2009, payable as follows:

Interest only payments in the sum of \$2,291.67 shall be due and payable in monthly installments on the 1st day of each and every month beginning with the first payment due June 1, 2009, continuing each month thereafter. Interest shall be paid in arrears, calculated at five percent (5%).

The right is reserved to the Borrower to prepay all or any part of the principal indebtedness, with corresponding abatement of interest, without penalty.

On May 1, 2011, or upon sale of the property located at 1015-1027 Simonton Street, Key West, Florida, whichever shall occur first, the principal balance of \$550,000.00 with accrued interest shall become due and payable.

Any monthly installment not made within fifteen (15) days from the date it is due shall be subject to a late fee in the amount of five (5%) percent of the overdue payment of interest. Failure to remit interest and penalty prior to the expiration of thirty (30) days from the date it is due shall constitute a default under the terms of this Note.

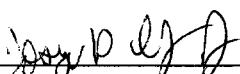
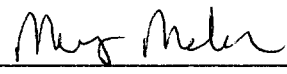
In the event of default for a period of thirty (30) days in the payment of any installment, the holder of this note may, at her option, elect to declare the entire balance of principal then remaining unpaid as immediately due and payable, and thereupon the right of the Borrower to pay the same in installment payments shall immediately cease. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of subsequent default.

The Borrower and endorser of this Note hereby agrees to waive demand, notice of nonpayment and protest, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Any installment not made when due shall be subject to interest at the rate of 18% per annum payable on demand.

This promissory note is secured by the lien of a second mortgage deed upon real estate situated in the State of Florida, and it together with the mortgage deed securing same, is to be construed in accordance with the laws of the State of Florida.

**MONROE COUNTY
OFFICIAL RECORDS**

SOUTHERNMOST CABANA RESORT, LLC,
a Florida limited liability company, Borrower

By:  
Joseph D. Cleghorn, Jr., Managing Member

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