

RESOLUTION NO. 10-139

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA), APPROVING THE ATTACHED "FIRST AMENDMENT TO LEASE AGREEMENT" (TICKET COUNTER LEASE RENEWAL) BETWEEN THE CRA AND KEY WEST EXPRESS, LLC FOR THE KEY WEST BIGHT FERRY TERMINAL TICKET COUNTER; PROVIDING FOR AN EFFECTIVE DATE

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

Section 1: That the attached First Amendment to Lease Agreement 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 6th day of April, 2010.

Authenticated by the presiding officer and Clerk of the Agency on April 7, 2010.

Filed with the Clerk April 7, 2010.

  
\_\_\_\_\_  
CRAIG CATES, CHAIRMAN

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK



# Executive Summary

**TO:** Community Redevelopment Agency

**CC:** Jim Scholl

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

**DT:** March 18, 2010

**RE:** Key West Express Ticket Counter Lease Renewal

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## ACTION STATEMENT

This is a request to approve a lease renewal for the Key West Express Ticket Counter at the Key West Bight Ferry Terminal. The Key West Bight Management District Board approved this lease renewal on March 17, 2010.

## HISTORY

Key West Express entered into a ten year use agreement for dockage at the Ferry Terminal and this lease will also be renewed for ten years to coincide with the use agreement. This counter area facilitates the passenger check-in and boarding functions and enables Key West Express to expedite the boarding process in a professional and organized manner. The renewal is proposed based upon the following terms:

**Demised Premises:** 240 square feet

**Term:** Concurrent with the Key West Express contract for dockage

**Rate:** \$33.00 per square foot in year one

**Increases:** 5% fixed annual increases

**Additional Rent:** Tenant shall pay its pro-rate share of CAM, taxes, and insurance

**Utilities:** Tenant shall pay its pro-rata share of the ferry terminal electric bill.

## FINANCIAL STATEMENT:

This is a market rate for space in the Ferry Terminal and also provides for reimbursement of utilities and operating expenses.

## RECOMMENDATION:

Staff recommends approval of the proposed agreement

## ATTACHMENTS:

First Amendment to the Lease

**FIRST AMENDMENT TO LEASE AGREEMENT**

This First Amendment to Lease Agreement is entered into this 6<sup>th</sup> day of April, 2010, by and between Caroline Street Corridor and Bahama Village Community Redevelopment Agency hereinafter ("LANDLORD") and Key West Express, LLC, a Florida limited liability company (hereinafter "TENANT").

**WITNESSETH**

WHEREAS, LANDLORD and TENANT entered into a Lease Agreement on the 11th day of April, 2007, (the "Lease Agreement"), pertaining to the premises located at The Key West Bight Ferry Terminal, 100 Grinnell Street Key West, Florida; and

WHEREAS, the LANDLORD and TENANT now desire to amend their Lease Agreement which is attached hereto as Exhibit "A",

NOW, THEREFORE, in mutual consideration of the benefits conferred upon the parties by the terms of this Amendment, LANDLORD and TENANT agree as follows:

**Section 1:** Paragraph 3 of the Lease Agreement, Term, is deleted in its entirety and replaced with the following:

TERM – The term of this Lease shall commence on March 1, 2010, and expire on the last day of February, 2020. In the event that the Use Agreement dated March \_\_, 2010, by and between Caroline Street Corridor and Bahama Village Community Redevelopment Agency and Key West Express, LLC, for dockage at the subject facility is terminated, this lease shall also be terminated at the same time and subject to the same requirements for termination described in Section 34 of the said Use Agreement, a copy of which is incorporated by reference and more particularly described as Exhibit "B".

**Section 2:** Exhibit "B", referred to in Paragraphs 1.6, 1.6.1, 4.4(a), 4.4(c), and 5 of the Lease Agreement, is deleted in its entirety and replaced with Exhibit "C", which is attached hereto and incorporated by reference.

Except as modified herein, the Lease Agreement as amended shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have made this First Amendment to Lease Agreement on the date first written above.

*Cheryl Smith*  
ATTEST:  
*Brenda K...*

Caroline Street Corridor and Bahama Village Community Redevelopment Agency

By: *Craig Cates*  
Craig Cates, Chairman

Key West Express, LLC

By: *George Hilton*  
George Hilton, Managing Member

**Exhibit "A"**  
**Lease Agreement**

RESOLUTION NO. 07-133

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING THE ATTACHED LEASE AGREEMENT BETWEEN THE CRA AND KEY WEST EXPRESS, LLC FOR PREMISES (TICKET BOOTH) LOCATED AT THE KEY WEST FERRY TERMINAL; 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 Agreement 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.

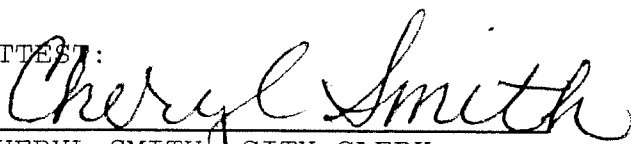
Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 3 day of April, 2007.

Authenticated by the presiding officer and Clerk of the Agency on April 4, 2007.

Filed with the Clerk April 4, 2007.

  
MORGAN MCPHERSON, CHAIRMAN

ATTEST:

  
CHERYL SMITH, CITY CLERK-

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## Lease Agreement

between

**KEY WEST BIGHT FERRY TERMINAL**

as Landlord

and

**KEY WEST EXPRESS, LLC**

as Tenant

Dated

4/11/2007

THIS LEASE is made as of the 11 day of April, 2007 by and between the LANDLORD and TENANT identified below

**1. INFORMATION PROVISIONS:**

**1.1 LANDLORD'S NAME & MAILING ADDRESS:**

KEY WEST BIGHT FERRY TERMINAL  
100 GRINNELL STREET  
KEY WEST, FL 33040

Caroline Street Corridor and  
Bahama Village Community  
Redevelopment Agency,  
City of Key West

**1.2 TENANT'S NAME & MAILING ADDRESS:**

KEY WEST EXPRESS, LLC  
P.O. Box 2460  
Ft. Meyers Beach, FL 33932-2460

Key West Express  
Business Office  
54 Merrimac  
Newburyport, MA 01950

**TENANT'S TRADE NAME: KEY WEST EXPRESS**

**1.3 GUARANTOR (S) AND ADDRESS:**

**1.4 DEMISED PREMISES (Section 2): as per EXHIBIT "A" located at KEY WEST BIGHT FERRY TERMINAL hereinafter referred to as the "Property"**

**240 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 Key West Bight.

**EXPANSION/RIGHT OF FIRST REFUSAL: None**

**1.5 TERM (Section 3.): April 11, 2007 through November 27, 2009 to be co-terminus with the Key West Express Use Agreement for the ferry Terminal.**

**1.5.1 COMMENCEMENT DATE: April 11, 2007 as acknowledged by TENANT'S written statement**

**1.5.2 RIGHT TO TERMINATE: None**

**1.5.3 RIGHT TO RENEW: Per Key West Code of Ordinances Sec.2-941. Leases**

**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"**





based upon TENANT'S Net Usable Square Feet as it relates to the Total Net Usable Square Feet of the Key West Bight. LANDLORD reserves the right to re-measure the Demised Premises from time to time and to adjust the TENANT'S Net Usable Square Feet as determined by any re-measurement. 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. TENANT shall construct a permanent ticket counter and provide all necessary utility and data connections, signage and any other improvements, substantially as shown on the attached drawing Exhibit A, at TENANT'S sole cost and expense. LANDLORD shall have the right to approve the design, material, finishes and exact size and location of the ticket counter.

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 co-terminus with the Key West Express Use Agreement for the Ferry Terminal and will commence on April \_\_, 2007 and shall end at midnight on November 27, 2009 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. 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.

Right to Terminate – None

Right to Renew – Per Key West Code of Ordinances

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 five percent 5% 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.

- 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

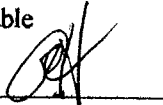
Expenses which shall include all insurance premiums incurred by the LANDLORD in insuring the Property including hazard and liability insurance for any and/or all buildings, improvements and common areas.

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.

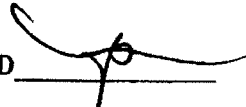
Should any governmental taxing authority acting under any present or future law, ordinance or regulation, levy, assess or impose a tax, excise and/or assessment (other than an income or franchise tax) upon or against the rentals payable by TENANT to LANDLORD, whether by way of substitution for, or in 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) Percentage Rent clause intentionally deleted.

(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 one 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:

Ferry passenger ticketing and check-in for Key West Express passengers and no other purpose.

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.

(o) TENANT understands and agrees that a term or terms of this Lease may be

superseded or altered by a rule or regulation of the federal Department of Homeland Security or the United States Coast Guard; and in such event this Lease shall be interpreted in accordance therewith. If such rule or regulation makes this Lease impossible to perform, then the Lease shall terminate.

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 or its 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 TENANT'S 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.

This TENANT may assign the Lease without the written consent of the LANDLORD for the sole and limited purpose of collateralizing a loan from a financial institution.

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 or Insolvency - If at any time during the term hereof proceedings in bankruptcy shall be instituted against TENANT and which proceedings have not been dismissed within a reasonable time period, and which bankruptcy results in an adjudication of bankruptcy; or if any creditor of TENANT shall file any petition under Chapter X of the Bankruptcy Act of the United States of America, as it is now in force or may hereafter be amended; and TENANT be adjudicated bankrupt, or TENANT makes an assignment for the benefit of creditors; or sheriff, marshal, or constable take possession thereof by virtue of any attachment or execution proceedings and offer same for sale publicly, and such taking and offer for sale is not rescinded, revoked, or set aside within ten (10) days thereafter, then LANDLORD may, at its option, in any of such events, immediately take possession of the Demised Premises and terminate this Lease. Upon such termination, all installments of rent earned to the date of termination and unpaid, shall at once become due and payable; and in addition thereto, LANDLORD shall have all rights provided by said bankruptcy laws relative to the proof of claims on an anticipatory breach of an executory contract. The grace period for the curing of default shall not apply to this event of default.

(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.

#### **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 interior of the ferry terminal. 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 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.

(d) 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.

(e) 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  
100 GRINNELL  
KEY WEST, FL 30040

AS TO TENANT:	KEY WEST EXPRESS, LLC	Key West Express, LLC
	P.O. Box 2460	Business Office
	Ft. Meyers Beach, FL 33832-2460	54 Merrimac Street
		Newburyport, MA 01950

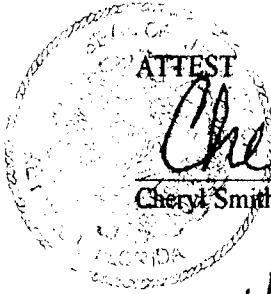
When the parties on either side (LANDLORD or TENANT) consists of more than one person, notice or default by one of the persons on that side shall constitute notice or default by all of the persons on that side.

(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*

Cheryl Smith, City Clerk

Date: 4-4-07

LANDLORD

*Morgan McPherson*

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

Date: 4-3-07

*Patricia J. Jordan*

WITNESS

Date: 4/11/07

TENANT

By: *[Signature]*

Date: 4/11/07

**KEY WEST EXPRESS LLC**

Business Office  
54 Merrimac Street  
Newburyport, MA 01950

**EXHIBIT "A" Demised Premises, Site Plan**



**EXHIBIT "B" Rent Schedule**

KEY WEST BIGHT  
FERRY TERMINAL

EXHIBIT "B"

Tenant: Key West Express      Square Feet: 240      CAM

Location: Ticket Counter in Waiting Area      Square Feet: 240      BASE RENT

Contact: Tom McMurrain      Term: April 2007 - November 2009

**\$4.86 PER SQ. FT.**

YEAR #	Period Beginning	Base Rent per sq. ft.		Base Rent		Tax, Ins., CAM 0% Increase		Tax, Ins., CAM		Total Rent Before Sales Tax		Sales Tax		Total Rent With Tax		TOTAL RENT	
		0% Increase	\$30.00	Annual	Monthly	Annual	Monthly	Annual	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly	Annual	Annual	Annual
1	April 1, 2007	\$30.00	\$7,200.00	\$600.00	\$600.00	\$1,164.00	\$97.00	\$697.00	\$697.00	\$52.26	\$749.26	\$54.89	\$786.74	\$8,991.30	\$8,991.30		
2	April 1, 2008	\$31.50	\$7,560.00	\$630.00	\$630.00	\$1,222.20	\$101.85	\$731.85	\$731.85					\$9,440.87	\$9,440.87		

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

**EXHIBIT "C" Rules and Regulations**

To be developed

**Exhibit "B"**  
**Use Agreement**

RESOLUTION NO. 10-091

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA), APPROVING THE ATTACHED "USE AGREEMENT" BETWEEN THE CRA AND KEY WEST EXPRESS, LLC FOR THE KEY WEST BIGHT FERRY TERMINAL; PROVIDING FOR AN EFFECTIVE DATE

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

Section 1: That the attached Use Agreement 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.

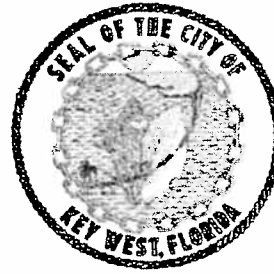
Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 2nd day of March, 2010.

Authenticated by the presiding officer and Clerk of the Agency on March 3, 2010.

Filed with the Clerk March 3, 2010.

  
\_\_\_\_\_  
CRAIG CATES, CHAIRMAN

ATTEST:  
  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK



# Executive Summary

**TO:** Community Redevelopment Agency

**CC:** Jim Scholl, Mark Finigan

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

**DT:** February 16, 2010

**RE:** Key West Express Use Agreement Renewal

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## ACTION STATEMENT

This is a request to approve a use agreement renewal for Key West Express at the Key West Bight Ferry Terminal.

## HISTORY

Key West Express entered into a five year use agreement that expired in December 2009.. We entered into negotiations in April of 2009 and we have reached a final agreement based upon the following terms:

**Use:** For the purposes of transporting passengers between Key West and domestic ports only. In the event that KWE wants to add international routes an amended agreement must be entered into that may be subject to different terms and conditions.

**Term:** 10 years, effective with the approval of the City Commission with renewal rights per the Key West Code of Ordinances

### Dockage

**Rate:** \$30.00 per foot per month with annual increases pursuant to any increase in the calendar year end Miami – Ft. Lauderdale Consumers Price Index. There will be no dockage fees charged for those vessels during the months they are re-located to other seasonal ports.

**Embarkation/  
Disembarkation  
Fees:** \$1.00 per passenger, each one way trip, regardless of passenger counts and will be increased subject to compounded CPI increases in years 4 and 7. There is a guaranteed minimum of \$100,000 per year.

### Port Security/ Facility/Charges:

Per passenger fees collected to cover estimated costs. The actual costs will be reconciled annually and any surplus will be credited to KWE. In the event that other operators utilize the terminal, and

in a manner that requires security, a system will be employed to prorate the security/facility costs in an equitable manner.

**Fuel**

**Services:**

Key West Express will have the use of the City owned fueling system at the Ferry Terminal and agrees to pay the City \$.10 per gallon of fuel dispensed to any KWE or KWE affiliated vessels. KWE may contract for fuel delivery and storage and therefore will agree to operate, maintain and repair the fueling system, excluding the tanks or capital equipment replacements. KWE agrees to keep an abundant supply of fuel available and to sell fuel to other operators at the same price being offered to other commercial boats by the City at the Key West Bight Marina fuel dock. In no event will KWE be required to sell fuel below its cost. The profit margin on fuel sales to others will be shared 50/50 between the City and KWE. The per gallon fuel surcharge will be adjusted beginning in the fourth and seventh year of the term to reflect compounded calendar year end annual increases in the South Florida CPI.

**Termination:**

Section 34 of the agreement provides for an event based termination with notice or penalty provisions

**FINANCIAL STATEMENT:**

A substantial financial gain will come from the reimbursement of the facility insurance and security costs through fees collected from the passengers utilizing the terminal. The proposed agreement also brings the dockage rate to market, and the embarkation fees are increased by virtue of the elimination of the volume discounts. KWE'S utilization of the fuel storage tanks will eliminate the CRA inventory costs and provide a reasonable surcharge to the CRA.

**RECOMMENDATION:**

Staff recommends approval of the proposed use agreement

**ATTACHMENTS:**

Comparison of Renewal and Current Agreement  
Use Agreement

Key West Express USE AGREEMENT RENEWAL	CURRENT USE AGREEMENT
<b>Use:</b>	For the purposes of transporting passengers between Key West and domestic ports only. In the event that KWE wants to add international routes an amended agreement must be entered into that may be subject to different terms and conditions.
<b>Term:</b>	KWE agrees to use the Key West Bight Ferry Terminal to dock any and all ferry passenger vessels operated by KWE and operating in Key West for the purpose of transporting passengers from or to Key West.
<b>Dockage Rate:</b>	5 years, expires December 2009
<b>Other Charges:</b>	\$25.00 per foot with no increase
Embarkation Fees	\$12.50 for less than 15 calls per boat
Security/ Facility Charges	No dockage fees while vessel is re-located to other seasonal port
<b>Fuel:</b>	\$1.00 first 50,000 passengers, \$.75 50,001 –60,000, \$.50 over 60,000 no increase in fees, \$80,000 minimum
<b>CRA Advertising:</b>	Not included
<b>Ticket Counter</b>	CRA buys, stores and dispenses fuel \$.27 for less than 1000 gallons daily per vessel \$.16 per gallon surcharge 1000 – 2000 gallons daily per vessel \$.12 per gallon over 2000 gallons per vessel
<b>Utilities:</b>	KWE agrees to distribute materials provided by CRA and show video twice each incoming trip  Currently \$31.50 plus CAM with 5% annual increases  KWE pays electric and water



## USE AGREEMENT

This Use Agreement (the "Agreement") is made on this 2nd day of March, 2010 ("the Effective Date") between the Caroline Street Corridor and Bahama Village Community Redevelopment Agency of the City of Key West (hereinafter referred to as "CRA") and Key West Express LLC, a Florida limited liability company (hereinafter described as "KWE").

### 1. KWE Identification

The KWE is identified as follows:

Name: Key West Express, LLC

Address: 54 Merrimac Street, Newburyport, MA 01950

Corporate Officer or Managing Partner: George Hilton / Joe Miller

Telephone Numbers: 978-465-1626 / 1-888-539-2628

KWE's Representative: Eric Crawford and Linda Miller

Telephone Numbers: 1-239-253-2604 (Eric) and 1-508-958-1089 (Linda)

Fax Number for daily business contact: 1-978-465-8657

In case of emergency contact: Eric Crawford / Joe Miller

Telephone number: 1-239-253-2604 (Eric) / 1-239-825-6033 (Joe)

This Use Agreement is applicable to all ferry passenger vessels operated by KWE as set forth in Addendum A, attached; it being understood and agreed that there may be vessels substituted on a temporary basis to accommodate repairs to the scheduled vessels set forth in Addendum A. It is also understood and agreed that from time to time during the term of this agreement Addendum A may be amended to reflect any replacement vessels, or additional vessels as herein provided for, so long as the total linear footage of the scheduled vessels does not decrease. The CRA shall assign docking times and locations that will meet the arrival and departure times per the scheduled routes operated by the vessels identified in Addendum A and any substituted or replacement vessels as aforesaid. The CRA acknowledges that the times may vary daily and will accommodate fluctuations in the vessels docking times that best serve the overall operation of the KWE schedule and the Facility.

### 2. Use of Facility

KWE agrees to use the Key West Bight Ferry Terminal ("the Facility") to dock any and all ferry passenger vessels operated by KWE and operating in Key West for the purpose of transporting passengers between Key West and domestic ports only. The CRA acknowledges that from time to time the Owner will have special charters, group excursions, etc that will require disembarkation and embarkation at other locations within Key West but both parties agree that the main intent of this agreement is for KWE vessels to operate out of the Facility. In the event that KWE wants to use the Facility to operate international routes, an amended agreement must be entered into that may be subject to different terms and conditions.

CRA shall repair and maintain the Facility at its sole cost and expense except for damage attributable to KWE use of the Facility; provided, however, that CRA's aforesaid repair and maintenance obligations shall include repairs and maintenance necessitated by normal wear and tear, whether or not caused in whole or in part by KWE's use of the Facility. All such repair and maintenance shall: (a) result in maintenance of the Facility in strict conformity with the requirements of all applicable authorities, and (b) include such repairs and maintenance (including without limitation, painting and carpet replacement) as required to maintain the exterior and interior of the Facility in an aesthetically pleasing manner

This use of dock space shall in no way constitute a tenancy and is not governed by Chapter 83 of the Florida Statutes.

### **3. Right of First Refusal**

The CRA grants KWE the right of first refusal of docking times at the Facility should another qualified ferry operator give the CRA written notice of intent to open a new ferry route. CRA shall notify KWE in writing of the other ferry operator's proposal and shall include the proposed itinerary, vessel specifications and capacity, operating schedule, business plan and commencement date. KWE shall respond in writing within sixty (60) days of CRA's notification to KWE of its intent to commence a new route. KWE'S response shall include, at a minimum, the proposed itinerary, vessel specifications and capacity, operating schedule and business plan. KWE shall commence operation of the new route and vessel on or before 120 days of the date CRA notifies KWE in writing of the other ferry operator's proposal to open a new ferry route or KWE will forfeit the right of first refusal for docking times requested in the other ferry operator's proposal.

### **4. Proof of Ownership; Change in Ownership**

Prior to exercising any rights whatsoever pursuant to the terms of this Agreement, and at such times during the term of this Agreement as CRA may request, KWE shall furnish to CRA for its review an original or certified copy of proof of ownership of the vessel. This proof shall consist of an original or certified copy of either a state-registered title to the vessel or documentation by the U.S. Coast Guard or foreign sovereign. KWE agrees to give CRA prior written notification of any change of ownership of the vessel during the term of this Agreement. The names of all persons owning an interest in KWE shall be submitted in writing to CRA, and (except with respect to a sale or other transfer of interests in KWE between the persons or entities who own interests in KWE on the Effective Date) any sale or transfer of any such interests without prior notice to CRA shall constitute a material breach of this Agreement. The sale or transfer of a controlling interest in KWE (except with respect to a sale or other transfer of interests in KWE between the persons or entities who own interests in KWE on the Effective Date) to another individual, partnership or corporation shall constitute an assignment of this Agreement requiring approval by the Key West Bight Management District Board of the CRA. If KWE is leasing or otherwise operating the vessel, proof of authority to lease or operate the vessel shall be provided to CRA.

## **5. Changes in Information**

KWE agrees to deliver to CRA written notice of any change in any of the information furnished by the KWE in this Agreement or in Addendum A within fifteen (15) days of the change.

## **6. Ferry Terminal Dock**

Docking of the KWE's vessels at the Facility shall be only for the embarkation and disembarkation of passengers and for obtaining fuel. The vessels may lie over while waiting for passengers at the discretion of the CRA or its designated Facility manager and no additional dockage fees shall be due or payable in connection therewith. KWE acknowledges that there will be times when a vessel may be required to moor in the outside harbor while waiting its turn for passenger disembarkation or embarkation, at the discretion of the Facility manager.

## **7. Term**

The term of this Agreement shall be for ten (10) years from the Effective Date. This Agreement may be renewed in accordance with the City of Key West Code of Ordinances governing the CRA.

## **8. Monthly Rate**

KWE shall pay to the CRA a monthly rate of \$30.00 per foot, plus sales tax, for reserved dockage during the months the vessels operate from the Facility, which fee shall be based upon the length of the vessel(s) which makes a port call at the Facility. In the event that KWE operates more than one vessel on the same day from a departure location that makes a port call at the Facility, KWE agrees to pay a daily dockage fee for such additional vessel(s) of \$1.00 per foot per port call subject to future annual Consumers Price Index increases as herein provided for. This amount shall be paid on the first of the month each and every month. Port call is defined as the per occurrence dockage of any of the KWE vessels. There will be no dockage fees charged for those vessels during the months they are re-located to other seasonal ports however dockage fees will not be pro-rated for partial month usage. The rates set forth in this paragraph shall be increased annually pursuant to the immediately prior calendar year end annual increase in the United States Department of Labor, Bureau of Labor Statistics, Miami - Ft. Lauderdale Consumers Price Index for All Urban Consumers.

## **9. Other Charges**

KWE shall pay a disembarkation fee in the amount of \$1.00 per passenger and an embarkation fee of \$1.00 per passenger. KWE agrees to pay the CRA a guaranteed minimum of One Hundred Thousand Dollars (\$100,000.00) annually in passenger disembarkation and embarkation fees, combined. KWE shall fax or otherwise provide a copy of the daily Coast Guard passenger manifest to the ferry terminal manager prior to each arrival and departure of the vessel to and from Key West. The disembarkation and embarkation fee revenues shall be due at the end of each month within fifteen days of that month's end. The number of passengers described in this Paragraph shall include the total number of passengers embarking to and disembarking from the Facility on all vessels of the

KWE. The passenger embarkation/disembarkation fees will be increased at the beginning of the fourth and seventh year of the term to reflect the compounded increase, for the annual calendar year end in the United States Department of Labor Bureau of Labor Statistics Miami – Ft. Lauderdale Consumers Price Index for All Urban Consumers. The compounding periods will be calendar years 1, 2, 3 for the increase beginning in year 4 of the term and calendar years 4, 5, 6 for the increase beginning in year 7 of the term.

KWE will be liable for and collect passenger facility/security fees to cover the costs of insuring the Facility and the security thereof. These costs will include any and all costs incurred to meet the security requirements established by the United States Department of Homeland Security, United States Coast Guard, Florida Department of Law Enforcement, City of Key West or any other governmental agency that establishes applicable security requirements, as well as the costs to the City in providing per occurrence commercial general liability, per occurrence all risk insurance including property damage, hazard and theft coverage. These annual costs will be estimated based upon the prior year's actual expense and the approved budget for the current year. These costs will be reconciled annually and any surplus in fees collected will be credited to KWE and applied towards the calculation of the fees for the subsequent period. The estimated facility/security fees and the associated security staffing plan as of the Effective Date of this Agreement are identified in Addendum B, attached hereto and made a part hereof.

In the event that other operators utilize the Facility, a system will be employed to prorate the facility/security costs in an equitable manner, excepting any operators that are exempt from security requirements pursuant to applicable law.

### **10. Deposit**

KWE shall deposit a sum equal to one month's dockage fee as security for damages, utilities, and other fees or accrued charges. The deposit shall be held by the CRA and may be commingled with other CRA funds. Any remaining balance of the deposit shall be paid to KWE by CRA only after deposit funds have been applied to any outstanding balance owed by KWE to CRA.

### **11. Payment**

All monies due under this Agreement shall be paid to City of Key West, c/o Key West Bight Ferry Terminal, 100 Grinnell Street, Key West, Florida 33041-1409.

### **12. Notices**

Notices required to be delivered pursuant to this Agreement or by law shall be sent by certified mail return receipt requested and by regular United States mail, or by nationally recognized overnight delivery service (e.g. UPS, Federal Express) as follows:

To: CRA of Key West  
Director of Port Operations  
City of Key West  
PO Box 1409  
Key West, FL 33041-1409

Copy to:  
City Manager  
City of Key West  
P.O. Box 1409  
Key West, FL 33041-1409

To: Key West Express, L.L.C.  
George Hilton or Managing Partner  
Key West Express, L.L.C.  
54 Merrimac Street  
Newburyport, Ma 01950

Copy To:  
Richard H. Critchfield  
1001 East Atlantic Avenue  
Suite 201  
Delray Beach, FL 33483

Adele Virginia Stones  
Stones & Cardenas  
221 Simonton Street  
Key West, FL 33040

Notices shall be deemed given upon actual receipt or upon the first refusal of the addressee to accept delivery.

### **13. Utilities**

KWE shall pay for the actual metered or prorated cost of all utilities including electricity, water, solid waste and sewage pump out.

### **14. Fuel**

Key West Express will have the use of the fueling system at the Ferry Terminal and agrees to pay the CRA a surcharge of \$.10 per gallon of fuel dispensed to any KWE or KWE affiliated vessels as set forth in Addendum A. KWE may contract for fuel delivery and storage and therefore will agree to operate, maintain and repair the fueling system, excluding the tanks or capital equipment replacements that become necessary due to normal wear and tear. KWE will obtain all necessary inspections and KWE employees will be trained and participate in the fuel spill response team. CRA will deliver the fueling system in compliance with all applicable requirements as of the Effective Date and thereafter KWE agrees to meet all applicable requirements that any governing agency imposes or may impose on the operations of the fueling system provided however the KWE will not be required to bear the cost of capital equipment replacements or upgrades that may be imposed by any governing agency as it relates to the tanks, fuel lines, and pumps. KWE agrees to keep an abundant supply of fuel available and to sell fuel to other operators at the same price being offered to other commercial boats by the CRA at the Key West Bight Marina fuel dock. In no event will KWE be required to sell fuel (a) below its cost including the surcharge, and/or (b) to operators whose fuel requirements during any single fueling is less than 1000 gallons unless KWE, in its sole discretion, agrees to accommodate such request for fueling. The net profit margin on fuel sales to others will be shared 50/50 between the CRA and KWE.

The fuel surcharge will be increased at the beginning of the fourth and seventh year of the term to reflect the compounded increase, for the annual calendar year end, in the United States Department of Labor, Bureau of Labor Statistics Miami – Ft. Lauderdale Consumers Price Index for All Urban Consumers. The compounding periods will be years calendar 1, 2, 3 for the increase beginning in

year 4 of the term and calendar years 4, 5, 6 for the increase beginning in year 7 of the term.

The CRA and KWE shall each have the right to terminate the fuel system usage described herein, without cause, annually, with one hundred and eighty (180) days written notice. Written notice to be provided on April 1<sup>st</sup>. If the CRA terminates the fuel system usage described herein the CRA agrees to sell fuel to KWE at the same price being offered to other commercial boats by the CRA at the Key West Bight Marina fuel dock.

CRA shall insure the fueling system during the term of this agreement. Such policy shall protect authorized KWE fueling system operators from liability for injury to any persons or property which may arise in connection with the operation of the fueling system unless such injury is due to the negligence or willful misconduct of KWE.

### **15. CRA Advertising**

KWE agrees to provide each passenger with material furnished by the CRA listing services available at the Key West Bight or at City of Key West Facilities. In addition, KWE agrees to show a video/DVD provided by CRA at least twice during the incoming trip to Key West so long as the video is up to date and accurate.

### **16. Remedies**

#### **16.01 CRA Remedies**

Without waiving any of CRA'S remedies, CRA may retain any pre-payments or security deposit to offset any charges or fees due from KWE. If KWE's vessel is using the Facility and fails to vacate the dockage space as scheduled or if this Agreement is terminated and KWE's vessel remains at the Facility without permission of CRA, CRA, with written notice to KWE, shall have the right at its option:

a) To board the vessel and, by its own power or by placing it in tow, remove from the dockage space and from all property of CRA both the vessel and any other personal property of KWE found in or adjacent to the dockage space. The vessel and personal property shall be removed to a dockage or mooring chosen at the discretion of CRA, and KWE hereby designates CRA as its attorney-in-fact for the purpose of acting in its place for purposes of such removal and relocation, and further agrees that CRA and its designee(s) shall be required only to exercise ordinary and reasonable care in such purposes. KWE hereby releases and relieves CRA and its designee(s) from loss or damages occurring during such removal. KWE further agrees to pay all costs incurred by CRA in the removing, relocation and/or storage of the vessel and personal property, including but not limited to wages, insurance premiums, towing fees, dockage and storage costs, all of which shall become a lien upon the vessel; and

b) To pursue any remedy provided by state or federal law; and

c) To sell the vessel at a non-judicial sale. The remedies provided in Florida Statutes Section 328.17 for such non-judicial sale of a vessel are hereby specifically included and incorporated in this Agreement as an additional remedy available to CRA.

d) To use any proceedings for documented vessels as authorized pursuant to Federal law, including but not limited to arrest of the vessel and sale pursuant to Court Order.

### **16.02 KWE Remedies**

a) To terminate this Agreement as provided for in Section 34; and

b) To pursue any remedy provided by state or federal law.

### **17. Lien, Attorneys Fees**

In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder. KWE agrees that CRA shall have a lien against the vessel, its appurtenances and contents, for such unpaid sums, or for any damage to docks, other vessels or property, or to invitees of CRA caused by KWE or the vessel.

### **18. Sanitation Device**

KWE's vessels shall contain a marine sanitation device with current U.S. Coast Guard approval for marine use. The device shall be properly installed, properly functioning, and used for all waste while the vessel is at dock. Failure to comply strictly with the provisions of this Paragraph shall be a default under this Agreement. CRA reserves the right to board and inspect KWE's vessel while docked at the Facility to determine compliance. Each vessel must conform to the laws of the State of Florida in regard to marine sanitation and Section 82-41 of the Key West Code of Ordinances regulating discharge of waste into waters of the City of Key West.

### **19. Assignment**

KWE's rights under this Agreement shall neither be assigned, transferred, nor sublet to another operator without the prior written consent of the CRA which consent shall not be unreasonably withheld, conditioned or delayed.

### **20. Indemnification**

KWE agrees to indemnify and hold harmless the CRA and the City of Key West, their officers and employees, from liabilities, property damage, losses, personal injuries, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of KWE, its employees or agents, in the performance of this Agreement. Nothing herein shall be intended to waive the sovereign immunity afforded to CRA pursuant to Florida law, including section 768.28, Florida Statutes.

KWE agrees to be responsible to CRA and to the City of Key West and pay for any and all loss or damages to the docks, floats or other facilities caused by KWE's vessel or KWE, his/its agents, servants and employees, whether caused by negligence or not, and further to hold CRA harmless for any of the foregoing. Further, KWE agrees to be responsible for damages that KWE or KWE's vessel may cause to other vessels. KWE further agrees to indemnify CRA for all damages or losses caused by or arising from fault of KWE's vessel and appurtenances, personal property, guests, passengers, invitees including other guests and vessels in the marina and ferry terminal area.

This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the CRA or the City of Key West by reason of such claim or demand, KWE shall, upon written notice from the CRA, resist and defend such action or proceeding by counsel satisfactory to the CRA. The KWE shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the CRA's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the CRA or the City of Key West whether performed by KWE, or by persons employed or used by KWE. The KWE's obligation under this provision shall not be limited in any way by the agreed upon rate or fee structure as shown in this Agreement, or the KWE's limit of or lack of sufficient insurance protection.

## **21. Release**

This Agreement is for temporary berthing space only, and such space is to be used at the sole risk of KWE. Unless caused by the negligence, recklessness or intentional wrongful misconduct of the CRA, its employees or agents, KWE hereby agrees that CRA shall not be liable for the care, protection or security of the vessel, its appurtenances or contents, or of any of KWE's personal property, guests, passengers or invitees, or for any loss or damage of any kind to the same due to fire, theft, vandalism, collision, equipment failure, windstorm, hurricane, rains or other calamities. Subject to the CRA's obligations hereunder, including without limitation, the maintenance obligations of the CRA contained in paragraph 2 above, KWE agrees that there is no warranty of any kind as to the condition of the seawall, docks, piers, walks, gangways, ramps, mooring gear or electrical and water services, and that CRA is not responsible for injuries to persons or property occurring on CRA's property. This release shall include, but not be limited to: (1) acts in connection with KWE's vessel, motors and accessories while it is on or near CRA's property including the rented space, or while it is being moved, or docked; (2) loss or damage to KWE's vessel, motors and accessories and contents or other personal property due to fire, theft, vandalism, collision, equipment failure, windstorm, rain or hurricane or any other casualty loss; and (3) causes of action arising out of the use of any adjacent pier or docking facilities or walkways giving access thereto by KWE and/or its guests, passengers and invitees.

## **22. Insurance**

The KWE shall maintain throughout this Agreement the following insurance:



1. Worker's compensation and employer's liability insurance as required by the State of Florida and as required under the Jones Act.
2. Marine General Liability or Protection and Indemnity insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the KWE or of any of its employees, agents, or subcontractors, with \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.

KWE agrees that CRA is not in any way an insurer of KWE's vessel(s), property, family, invitees, employees, agents, passengers or guests. KWE's policy(ies) shall protect CRA and KWE from all liability for injury to any persons or property which may arise in connection with the operation of or conduct of KWE or its vessel, equipment, agents, invitees, passengers, guests or employees. The policy (ies) shall specifically provide that CRA is to be notified in the event of cancellation, termination, or renewal. KWE agrees to furnish CRA with a certificate of insurance or copy of the policy, each of which shall on its face show the foregoing information and name the CRA of Key West as a named insured under the policy.

### **23. Dockage to Signer and Particular Vessel Only; Partners Bound**

KWE agrees that ownership by partners of the vessel does not in any way create for CRA any obligation to furnish dockage space to any partner other than the original signer of this Agreement, or to any vessel other than those described on each addendum to this Agreement, whether the partnership is dissolved for any reason whatsoever. In the event of dissolution of a partnership, or the withdrawal of a part-owner, all parties shall nonetheless be bound by the terms of this Agreement and be obligated for the payment of all sums due, and for the strict performance of all its covenants and conditions.

### **24. Emergencies**

KWE agrees that any emergency involving a vessel subject to this Agreement will be handled at the CRA's discretion, and the KWE shall bear all expenses and risks of such an emergency. In the event of an emergency and inability to contact KWE or its agent, the CRA is authorized to take whatever steps are necessary to protect its Facility or any other of its facilities. Any towing charges or repair charges accrued in handling such an emergency shall be at the expense of the KWE and shall constitute a lien upon the subject vessel until paid in full.

### **25. Peaceable Use**

KWE agrees to use peaceably the dockage space assigned hereby, and agrees not to do or allow, either individually or with others, any act that has the effect, in the sole judgment of CRA, of disturbing the peace or of disturbing, inconveniencing or subjecting to physical jeopardy the marina premises, other persons, or other vessels. KWE further agrees to do no act that impedes or disrupts the orderly operation of the Facility or the Key West Bight and its surrounding waters.

### **26. KWE's Inspection**

KWE acknowledges having inspected the docking space assigned by this Agreement, and hereby accepts it in as is condition for berthing the vessel(s) described in Addendum A. KWE agrees that CRA makes no warranty, guarantee, or assertion of any kind whatsoever concerning the condition of the docks, pilings, piers, walks, gangways, ramps or berthing gear.

### **27. CRA Inspection**

KWE agrees that the CRA shall have the right to enter vessels and dockage space during reasonable hours in order to determine whether KWE is in full compliance with the terms of this Agreement and all applicable laws and regulations. The CRA shall give the KWE reasonable prior, written notice of an inspection.

### **28. KWE's Insolvency**

If KWE becomes insolvent or enters bankruptcy proceedings during the term of this Agreement, CRA is hereby irrevocably authorized, at its sole option, to cancel this Agreement as for a default. CRA may elect to accept payment from any receiver, trustee, or other judicially-appointed officer without affecting CRA's rights under this Agreement, but no such officer shall otherwise have any right, title or interest under this Agreement.

### **29. Time; CRA's Rights Cumulative; No Waiver**

Time is of the essence of this Agreement. Each party agrees that the rights of the other under this Agreement are cumulative, and that the failure to exercise any such right shall not operate to waive or forfeit same. Neither the failure nor any delay on the part of either party to this Agreement to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of any such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

### **30. Jurisdiction**

The laws of the State of Florida govern the validity of this Agreement, its interpretation and performance, and any claims related to it. The venue for mediation, arbitration or any other legal proceeding shall be Monroe County, Florida.

### **31. Headings Not Part of Agreement**

CRA and KWE agree that any heading which, labels any paragraph herein is for convenience only, and shall not in any way be construed as affecting, limiting, expanding, or stating the contents, meaning, or intent of the paragraph or of this Agreement.

### **32. Severability and Survival**

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

### **33. Person Signing**

The person signing below whether natural or corporate does hereby certify that he/she is a managing member of the limited liability company.

### **34. Termination**

CRA may terminate this Agreement by furnishing a written notice ("Termination Notice") to KWE and KWE shall have seven (7) business days to cure the subject matter of the Termination Notice, failing which cure, this Agreement shall automatically terminate. CRA shall be entitled to furnish a Termination Notice only upon the occurrence of the following events:

- 1) a failure of KWE to comply with the stipulations, agreements, conditions and covenants contained herein with which KWE must comply, if such failure is not cured within fifteen (15) days from and after the date that KWE receives (or is deemed to have received) written notice of such failure (which written notice must be furnished prior to and in addition to and as a pre-condition to the furnishing of, the Termination Notice; or
- (2) A failure to pay timely the Monthly Rate (Paragraph 8) or Other Charges (Paragraph 9), or to maintain proper insurance limits (Paragraph 22); or
- (3) the failure of the KWE to have at least one vessel use the Facility during at least five (5) days in any 30 day period during the term of this Agreement.

KWE may terminate this Agreement by furnishing a written notice ("Termination Notice") to CRA and CRA shall have seven (7) business days to cure the subject matter of the Termination Notice, failing which cure, this Agreement shall automatically terminate, except with respect to a termination for an event to which reference is made in subsections (2,3,4) herein below, which termination shall be effective six (6) months from and after the date that the Termination Notice is furnished with respect to a termination for an event to which reference is made in subsection (2,3,4) herein below. KWE shall be entitled to furnish a Termination Notice only upon the occurrence of the following events:

- (1) a failure of CRA to comply with the stipulations, agreements, conditions and covenants contained herein with which CRA must comply, if such failure is not cured within fifteen (15) days from and after the date that CRA receives (or is deemed to have received) written notice of such failure

(which written notice must be furnished prior to and in addition to and as a pre-condition to the furnishing of, the Termination Notice; or

(2) in the event that any cost, charge or expense payable by KWE hereunder is adjusted upward to reflect the compounded increase in the United States Department of Labor, Bureau of Labor Statistics Miami —Ft. Lauderdale Consumers Price Index for All Urban Consumers if such compounded increase for any compounding period shall factor in an annual increase in excess of three percent (3.00%); or

(3) in the event that any cost, charge or expense payable by KWE hereunder is not adjusted downward from time to time so that such sums as are due and payable hereunder by KWE are at all times not greater than the sums paid or payable at the Facility by any third party; or

(4) in the event that any ferry passenger vessel operated by any third party is granted the right to use the Facility for the purpose of transporting passengers between Key West and Fort Myers, Florida and/or between Key West and Marco Island, Florida.

In the event that KWE exercises the termination rights herein provided for pursuant to sub-sections 2,3,4 above KWE may elect to pay a termination fee equal to six months dockage fees for all vessels that have reserved dockage at the Facility pursuant to Addendum A, at the then current monthly rate pursuant to Section 8 hereof and discontinue operations; or in lieu of the termination fee KWE may elect to provide a written six month notice of termination while continuing full time scheduled operations of the vessels that have reserved dockage at the Facility pursuant to Addendum A, at the then current monthly rate pursuant to Section 8 hereof.

### **35. Homeland Security**

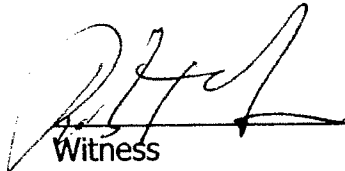
KWE understands and agrees that a term or terms of this Agreement may be superseded or altered by a rule or regulation of the Federal Department of Homeland Security, the Florida Department of Law Enforcement or the United States Coast Guard; and in such event this Agreement shall be interpreted in accordance therewith. If such rule or regulation makes this Agreement impossible to perform, then the Agreement shall terminate.

### **36. Force Majeure**

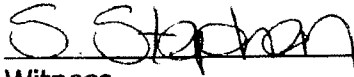
In the event the terminal and docks of the Facility owned by CRA are unusable because of an act of God or other force majeure such as epidemic, lightning, earthquake, fire, explosion, hurricane, flood or similar occurrence, strike, an act of public enemy, or blockage, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, neither party has any obligation under this Agreement until the Facility is usable by KWE, as determined by CRA.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates shown below.

Key West Express LLC, a Florida limited liability company

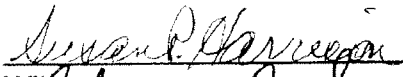
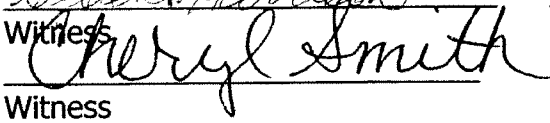
  
\_\_\_\_\_  
Witness

 2/16/2010  
Signature Date

  
\_\_\_\_\_  
Witness

By: George D. Hillman  
Print Name  
Title: Managing Member

Caroline Street Corridor and Bahama Village Community Redevelopment Agency of the City of Key West

  
\_\_\_\_\_  
Witness  
  
\_\_\_\_\_  
Witness

 3/2/10  
Craig Cates, Chairman Date

Addendum A  
Schedule of Key West Express Vessels

M/V Whale Watcher	Arrival – 11:30 AM – 1:30 PM Departure - 4:00PM – 5:00PM
M/V Big Cat	Arrival – 12:30 – 2:30 PM Departure – 5:00PM – 6:00PM
M/V Key West Express	Arrival – 12:30PM – 3:00PM Departure 4:30PM – 6:00PM
M/V Atlanticat -	Arrival – 12:30PM – 2:30PM Departure – 5:00PM – 6:00PM

## Addendum B

### Schedule of Estimated Security/Facility Passenger Fees

<b>Security Expenses</b>			
	Hours Daily	Days Per Yr	Total Hours
<b>Police</b>			
1 - 4PM- 6PM	2	230	460
Average Straight Time Hourly Cost	\$40.72		<b>\$18,731.20</b>
<b>Security Guards</b>			
2 Class D guards 2 hours daily	4	230	920
Contracted Hourly Cost	\$16.00		<b>\$14,720.00</b>

<b>Facility Expenses</b>	
General Liability	
Property	
Pollution	
Wharfinger	
Marina	
<b>Total Facility Charge</b>	<b>\$26,998</b>

<b>Annual Security/Facility Charges</b>	<b>\$60,449.20</b>
<b>Three year average passenger trips</b>	<b>170,774</b>
<b>Security/Facility Fee per trip</b>	<b>\$0.35</b>

2007 Days Operated	288	Three Yr Average
2008 Days Operated	229	
2009 Days Operated	173	
	<b>690</b>	<b>230</b>
2007 Passenger Trips	193,754	
2008 Passenger Trips	170,268	
2009 Passenger Trips	148,300	
	<b>512,322</b>	<b>170,774</b>

Addendum B (Continued)

<b>FACILITY SECURITY STAFF SCHEDULE</b>	Position Filled By	# of Positions	# of hours Daily
<b>ARRIVAL/DISEMBARKATION</b>			
Position 1 Class D- secures restricted access areas	Facility Staff	1	2
<b>DEPARTURE/EMBARKATION</b>			
Position 1 - Class D - monitor restricted areas on Upper Level	Facility Staff	1	2
Position 2 --- Class D - X-ray machine	Contract Guard	1	2
Position 3 and 5 - Class D- load and unload baggage	KWE Crew	2	2
Position 4 - Class D - operate magnetometer	Contract Guard	1	2
Position 6 -Class D - check passenger ID	KWE Crew	1	2
Position 7-Oversee all security operations during embarkation	Uniformed Police	1	2



**Exhibit "C"**  
**Rent Schedule**

**KEY WEST BIGHT**

**EXHIBIT "C"**

Tenant: Key West Express, LLC Square Feet 240 CAM  
 Location: Ferry Terminal Ticket Counter Square Feet 240 BASE RENT  
 Contact: George Hilton Term 10 years

YEAR #	Period Beginning	Base Rent per sq. ft.		Base Rent		Tax, Ins., CAM 5% Increase		Tax, Ins., CAM		Total Rent Before Sales Tax		Sales Tax		Total Rent With Tax		TOTAL RENT	
		5% Increase	Annual	Monthly	Annual	Annual	Monthly	Monthly	Annual	Monthly	Monthly	Monthly	Monthly	Monthly	ANNUAL		
1	March 1, 2010	\$33.00	\$7,920.00	\$660.00	\$1,164.00	\$97.00	\$757.00	\$56.78	\$813.78	\$56.78	\$9,765.30						
2	March 1, 2011	\$34.65	\$8,316.00	\$693.00	\$1,222.20	\$101.85	\$794.85	\$59.61	\$854.46	\$59.61	\$10,253.57						
3	March 1, 2012	\$36.38	\$8,731.80	\$727.65	\$1,283.31	\$106.94	\$834.59	\$62.59	\$897.19	\$62.59	\$10,766.24						
4	March 1, 2013	\$38.20	\$9,168.39	\$764.03	\$1,347.48	\$112.29	\$876.32	\$65.72	\$942.05	\$65.72	\$11,304.56						
5	March 1, 2014	\$40.11	\$9,626.81	\$802.23	\$1,414.85	\$117.90	\$920.14	\$69.01	\$989.15	\$69.01	\$11,869.78						
6	March 1, 2015	\$42.12	\$10,108.15	\$842.35	\$1,485.59	\$123.80	\$966.15	\$72.46	\$1,038.61	\$72.46	\$12,463.27						
7	March 1, 2016	\$44.22	\$10,613.56	\$884.46	\$1,559.87	\$129.99	\$1,014.45	\$76.08	\$1,090.54	\$76.08	\$13,086.44						
8	March 1, 2017	\$46.43	\$11,144.24	\$928.69	\$1,637.86	\$136.49	\$1,065.18	\$79.89	\$1,145.06	\$79.89	\$13,740.76						
9	March 1, 2018	\$48.76	\$11,701.45	\$975.12	\$1,719.76	\$143.31	\$1,118.43	\$83.88	\$1,202.32	\$83.88	\$14,427.80						
10	March 1, 2019	\$51.19	\$12,286.52	\$1,023.88	\$1,805.75	\$150.48	\$1,174.36	\$88.08	\$1,262.43	\$88.08	\$15,149.19						

Tax, Insurance and CAM are **estimated**. Estimates are based upon most recent actual costs adjusted 5% annually to reflect potential future increases