

RESOLUTION NO. 11-042

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED FIRST AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY AND ISLAND TRANQUILITY, INC. FOR PROPERTY IN THE 700 BLOCK OF EISENHOWER DRIVE, AS DESCRIBED WITHIN THE FIRST AMENDMENT TO LEASE AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, 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 Commission.

Passed and adopted by the City Commission at a meeting held this 1st day of February, 2011.

Authenticated by the presiding officer and Clerk of the Commission on February 2, 2011.

Filed with the Clerk February 2, 2011.

  
\_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:

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

# EXECUTIVE SUMMARY



**TO:** City Commission

**CC:** Jim Scholl

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

**DT:** January 13, 2011

**RE:** Lease Amendment for Island Tranquility, Inc.

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**ACTION:** This is a request to approval a lease amendment to adjust the area of the parcel leased to Island Tranquility Inc. at 711 Eisenhower Drive.

## **BACKGROUND:**

Pursuant to the original lease for this parcel there was language in Section 20 that stated that there was a title problem with the State of Florida and that it may be determined at a further date that the City is not the owner of the property which is the subject of the lease.

We have now received a survey that shows the portion of the leased premises which is denoted as a portion of Parcel ID 72082-0034 on Exhibit "A" of the current lease is included in the States ownership. Staff has confirmed the area of the parcels with the Monroe County Property Appraisers office and therefore have prepared this lease amendment to properly reflect the demised area that is owned by the city and leased to Island Tranquility as follows:

Current Leased Area	7360 square feet	\$1653.75 Current monthly rent
Amended Leased Area	3393 square feet	\$762.39 Amended monthly rent

## **FINANCIAL:**

The lease amendment adjusts the square footage and therefore the rent payable based upon the same per square foot rate as applied to the decreased area for the remainder of the term. This amendment was not anticipated in the current budget year and therefore will create a decrease in actual revenue for the 8 months remaining in this fiscal year of approximately \$7,130.88

## **RECOMMENDATION:**

Based upon the documentation and survey provided by the state staff recommends approval of the lease amendment

## **ATTACHMENTS:**

- Lease Amendment
- Original Lease
- Current Lease
- State Lease and Survey

FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement is entered into this 1<sup>st</sup> day of February, 2011, by and between the City of Key West hereinafter ("LANDLORD") and Island Tranquility, Inc. (hereinafter "TENANT").

WITNESSETH

WHEREAS, LANDLORD and TENANT entered into a Lease Agreement on the 7th day of August, 2007, (the "Lease Agreement"), pertaining to the premises located at 700 Block of Eisenhower Dive in the Key West, Florida

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:

- 1. The reference to "7360 net usable square feet" in paragraph 1.4 of the Lease Agreement, pertaining to Demised Premises, is deleted and replaced with "3393" net usable square feet."
- 2. The document attached to the Lease Agreement and referred to as "Exhibit A" in paragraph 1.4 and paragraph 2 of the Lease Agreement is hereby deleted in its entirety and replaced with "Exhibit A-1", which is attached hereto and incorporated by reference.
- 3. The document attached to the Lease Agreement and referred to as "Exhibit B" in paragraph 1.6, paragraph 4.4(a), and paragraph 4.4(c), of the Lease Agreement is hereby deleted in its entirety and replaced with "Exhibit B-1", which is attached hereto and incorporated by reference.
- 4. 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*

Cheryl Smith, Clerk

By:

*Craig Cates*

Craig Cates, Mayor

City of Key West

Island Tranquility, Inc.

Matthew Hughes  
Witness

Frank Bervaldi  
Frank Bervaldi, President

Cynthia Ware  
Witness

The foregoing First Amendment to Lease Agreement was acknowledged before me this 1<sup>st</sup> day of FEBRUARY, 2011, by FRANK BERVALDI, who is personally known to me, or who [ ] produced \_\_\_\_\_ as identification.

Matthew Hughes  
Notary Public

STATE OF FLORIDA  
COUNTY OF MONROE  
My commission expires: 01/29/12

Print name: MATTHEW HUGHES

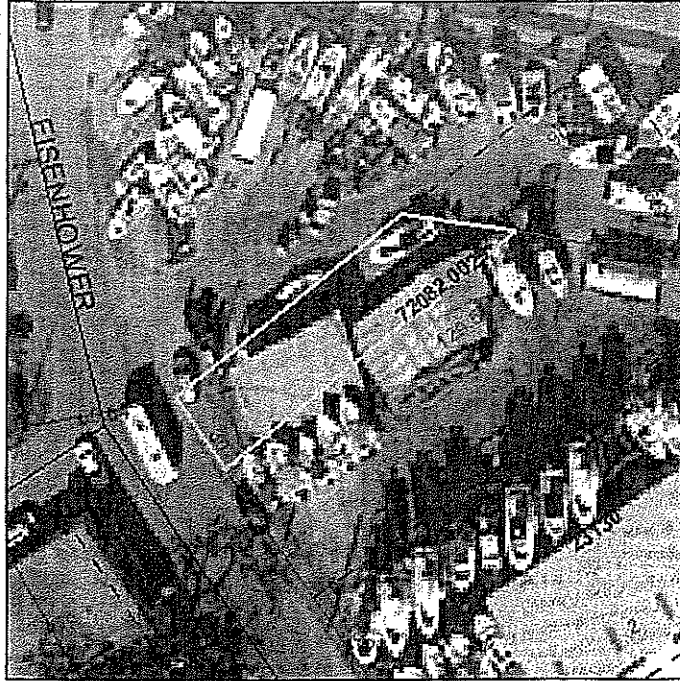
NOTARY PUBLIC-STATE OF FLORIDA  
Matthew Hughes  
Commission # DD753156  
Expires: JAN. 29, 2012  
BONDED THRU ATLANTIC BONDING CO., INC.

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

**Exhibit "A-1"**

**Updated Parcel**

**3393 Net Usable Square Feet**



**Land Details**

Land Use Code	Frontage	Depth	Land Area
100D - COMMERCIAL DRY	0	0	3,393.00 SF

**Exhibit A-1**

**Exhibit "B-1"**

**Amended Rent Schedule**



CITY OF KEY WEST

EXHIBIT "B-1"

Tenant: Island Tranquility, Inc.  
 Location: 711 Eisenhower Drive  
 Contact: Frank Bervaldi

YEAR #	Period Beginning	Base Rent monthly 5% Increase	Base Rent Annual 5% Increase	Sales Tax Monthly	Total Rent With Tax Monthly	TOTAL RENT ANNUAL
1	February 1, 2011	\$762.39	\$9,148.68	\$57.18	\$819.57	\$9,834.83
2	December 1, 2012	\$800.51	\$9,606.11	\$60.04	\$860.55	\$10,326.57

Tenant pays Taxes and Insurance expenses directly.

## GUARANTY

This Guaranty is made this 18<sup>th</sup> day of Feb, 2011 in accordance with the Lease Agreement (hereinafter Agreement) dated December 2, 2008 by and between the City of Key West (hereinafter City) and Island Tranquility, Inc. (hereinafter Tenant) and Frank V Bervaldi (hereinafter Guarantor) for the Demised Premises (hereinafter Premises) located in the 700 block of Eisenhower Drive, Key West, Florida.

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

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

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

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

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

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

(f) In the event any action or proceeding be brought by City to enforce this Guaranty, or City appears in any action or proceeding in any way connected with or growing out of this Guaranty, then and in any such event, the Guarantor shall pay to City reasonable

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

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

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

IN WITNESS WHEREOF, the Guarantor has caused the foregoing Guaranty to be executed on this 1<sup>st</sup> day of FEB 2011.

Witness:

Guarantor:

By: Matthew Hughes  
Name: MATTHEW HUGHES  
Date: 02/01/11

By: Frank V. Bervaldi  
Name: Frank V. Bervaldi  
Date: 2/1/11

State of Florida        }  
County of Monroe     }

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 1<sup>ST</sup> day of FEBRUARY, 2011

Matthew Hughes  
Notary Public, State of Florida

My Commission Expires: 01/29/12

NOTARY PUBLIC-STATE OF FLORIDA  
Matthew Hughes  
Commission #DD753156  
Expires: JAN. 29, 2012  
BONDED THRU ATLANTIC BONDING CO., INC.

RESOLUTION NO. 08-324

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED LEASE AGREEMENT BETWEEN THE CITY AND ISLAND TRANQUILITY, INC. FOR REAL PROPERTY LOCATED IN THE 700 BLOCK OF EISENHOWER DRIVE; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:


Section 1: That the attached Lease Agreement between the City and Island Tranquility, Inc. 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 Commission.

Passed and adopted by the City Commission at a meeting held this 2nd day of December, 2008.

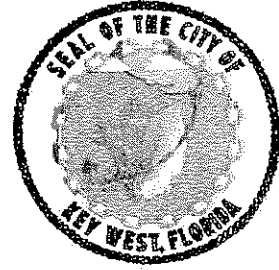
Authenticated by the presiding officer and Clerk of the Commission on December 3, 2008.

Filed with the Clerk December 3, 2008.

  
MORGAN MCPHERSON, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK



# Executive Summary

**TO:** Jim Scholl  
City Commission

**CC:** Mark Finigan  
Raymond Archer

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

**DT:** November 17, 2008

**RE:** Garrison Bight Marina Parcel Lease Renewal

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## ACTION STATEMENT

This is a request to consider a lease renewal for Island Tranquility, Inc. DBA Garrison Bight Marina.

## HISTORY

The City of Key West owns a small portion of the area of land occupied by Garrison Bight Marina and their lease expires in November 2008. The proposed rents for the renewal term are as follows:

**Demised Premises:** Approximately 7360 square feet

**Use:** Marina purposes only

**Term:** Five years effective December 1, 2008

**Rent:** \$1,500 monthly

**Increases:** 5% annually

**Additional Rent:** Tenant shall pay any and all taxes including ad valorem tax

**Utilities:** Tenant shall pay for all utility usage.

## FINANCIAL STATEMENT:

The proposed rent is reflective of a market rate for commercial ground leases.. A comparative analysis was performed utilizing marine related uses and the median rent was applied. A local licensed real estate appraiser provided the information for the analysis. This rate represents an annual increase of \$5000 for the first year of the renewal and will increase 5% annually thereafter. The tenant is in good financial standing in the payment of rents owed under the current lease.

**RECOMMENDATION:**

Staff recommends approval of the lease renewal as proposed.

**ATTACHMENTS:**

Lease executed by the tenant

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**Lease Agreement**

between

**CITY OF KEY WEST**

as Landlord

and

**Island Tranquility, Inc.**

as Tenant

Dated December 2, 2008

THIS LEASE is made as of the 2nd day of December, 2008 by and between the LANDLORD and TENANT identified below:

**1. INFORMATION PROVISIONS:**

1.1 LANDLORD'S NAME & MAILING ADDRESS:

CITY OF KEY WEST  
525 ANGELA STREET  
KEY WEST, FL 33040

1.2 TENANT'S NAME & MAILING ADDRESS:

ISLAND TRANQUILITY, INC.  
711 EISENHOWER DRIVE  
KEY WEST, FL 33040

TENANT'S TRADE NAME: **Garrison Bight Marina**

1.3 GUARANTOR (S) AND ADDRESS: Frank V Bervaldi

1.4 DEMISED PREMISES (Section 2): **as per EXHIBIT "A"** located in the 700 block of Eisenhower Drive (hereinafter referred to as the "Property").

APPROXIMATELY 7360 NET USABLE SQUARE FEET

EXPANSION/RIGHT OF FIRST REFUSAL: None

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

1.5.1 COMMENCEMENT DATE: December 1, 2008 as acknowledged by TENANT'S written statement

1.5.2 RIGHT TO TERMINATE: None

1.5.3 RIGHT TO RENEW: This Lease may be renewed for an additional Five (5) years upon rent and terms to be negotiated by the parties and in accordance with the City of Key West Code of Ordinances.

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

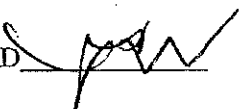

1.6.1 ADDITIONAL RENT: Tenant shall pay Real Estate Taxes, Insurance, Sales, Use or Excise Taxes together with any Management and/or Administrative fees

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

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



- 1.6.4 PERCENTAGE RENT: N/A
- 1.6.5 HOLD OVER RENT: 150% of the Minimum Base rent during the last year of the expiring term.
- 1.6.6 RENT CONCESSIONS: None
- 1.7 SECURITY DEPOSIT (Section 5): Equal to one month base rent
- 1.8 PERMITTED USE (Section 6): Marina purposes only
- 1.9 INSURANCE: (Section 9) \$1,000,000.00 commercial liability minimum per occurrence
- 1.10 ASSIGNMENT OR SUBLETTING: (Section 10) Allowed with LANDLORD'S approval
- 1.11 UTILITIES: (Section 17) The TENANT shall pay for all utilities associated with the use of the Demised Premises.

INITIALS: LANDLORD  TENANT 

WITNESSETH:

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

**2. DEMISED PREMISES** - Upon the terms and conditions hereinafter set forth, and in consideration of the payment from time to time by the TENANT of the rents hereinafter set forth, and in consideration of the performance continuously by the TENANT of each and every one of the covenants and agreements hereinafter contained by the TENANT to be kept and performed, the LANDLORD does hereby lease, let, and demise unto the TENANT, and the TENANT does hereby lease of and from the LANDLORD, the following Demised Premises situated, lying, and being in Monroe County, Florida: That portion of the Property outlined and/or crosshatched on Exhibit "A" which depicts the Net Usable Square Feet of the Demised Premises. The Net Usable Square Feet is defined as all interior floor space, any second floor space, storage, covered dining areas and commercially used outdoor areas or any other area set aside for the exclusive use and economic benefit of the Tenant and containing the approximate dimensions and area: It is agreed that the Net Usable Square Feet for the purpose of any calculations which are based on Net Usable Square Feet is as stated in Section 1.4. LANDLORD reserves the right to re-measure the Demised Premises from time to time and to adjust the TENANT'S Net Usable Square Feet and the rent or rental rate applied to the square footage as determined by any re-measurement or change in use. TENANT accepts the Demised Premises in an "as is", "where is" condition and acknowledges that LANDLORD has no obligations for any construction or improvements in connection with TENANT'S occupancy of the Demised Premises.

LANDLORD reserves the right from time to time with good cause, upon at least sixty (60) days  
 Rev. 9.07 3

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

Expansion/Right of First Refusal – none

3. **TERM** - The term of this Lease shall be for five (5) years which shall commence on December 1, 2008 and shall end at midnight on November 30, 2013 unless sooner terminated as provided for herein. Upon occupancy TENANT shall furnish LANDLORD a written statement stating the TENANT has accepted the Demised Premises for occupancy and setting forth the actual commencement and expiration dates of the Lease. TENANT'S written statement shall become attached to and incorporated into this lease Exhibit "D". In the absence of TENANT'S written statement the lease term shall remain as stated above A Lease Year is the twelve-month period beginning on the commencement date of each year and ending at the conclusion of the same date one year later. If possession of the Demised Premises shall for any reason not be delivered to Tenant on the Commencement Date, this Lease shall nevertheless continue in full force and effect, and no liability whatsoever shall arise against LANDLORD out of any delay other than the abatement of rent.

Right to Terminate – None

Right to Renew – This Lease may be renewed for an additional term of five (5) years upon rent and terms to be negotiated by the parties in accordance with the City of Key West Code of Ordinances. The rent and terms of the renewal term must be acceptable to both the LANDLORD and the TENANT in their absolute discretion and must be set forth in written addendum to this Lease. If the parties fail for any reason whatsoever to agree upon and enter into such addendum at least 120 days prior to the end of the initial term of this Lease, then any obligations that the parties may have pursuant to this section to negotiate renewal terms shall cease and LANDLORD shall be free to lease the Demised Premises to the general public upon such rent and terms as it deems appropriate.

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

4.1 **Late Charges.** Any monthly rental not received by the fifth day of the month shall incur a late fee equal to fifteen percent 15% of the amount in arrears. In addition, all payments received after the due date shall incur a \$50.00 administrative fee to cover the costs of collecting and processing late payments. LANDLORD shall have no obligation to accept less than the full amount of all installments of rental, additional rental or other amounts due hereunder and interest thereon which are due and owing by TENANT to LANDLORD. If LANDLORD accepts less than the full amount owing, LANDLORD

may apply the sums received toward such TENANT'S obligations, as LANDLORD shall determine in its sole discretion, without waiving LANDLORD'S remedies for default.

- 4.2 **Interest on Rent.** Rent and additional rent not paid within fifteen (15) days of when due shall bear interest from the date due until paid at the highest rate permitted by law.
- 4.3 **Obligation to Survive.** TENANT'S obligation to pay rent that is accrued and unpaid hereunder shall survive the expiration or termination of the Lease.
- 4.4 The rent reserved under this Lease for the term hereof shall be and consist of:
- (a) Beginning with the commencement date and throughout the term of this Lease, TENANT agrees to pay to the LANDLORD as and for minimum rent for the Demised Premises the annual amount, in equal monthly installments, in advance, on the first day of each and every calendar month, as per **EXHIBIT "B"**. In the event the rent commencement date is other than the first day of a calendar month, the rent for the partial first calendar month of the term will be prorated on a daily basis and payable on the commencement date.
- (b) Simultaneously with each such payment, TENANT agrees to pay to LANDLORD any sales, use or excise tax imposed or levied against rent or any other charge or payment required hereunder to be made by TENANT which tax has been imposed or levied by any governmental agency having jurisdiction thereof, this shall include any new taxes imposed during the term of this Lease which are in addition to or in substitution for any such tax which is presently imposed.

Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, 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, and all other improvements 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.

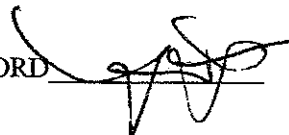
Should any governmental taxing authority acting under any present or future law, ordinance or regulation, levy, assess or impose a tax, excise and/or assessment (other than an income or franchise tax) upon or against the rentals payable by TENANT to LANDLORD, whether by way of substitution for, or in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

(e) In addition to the foregoing rent, all other payments to be made by TENANT shall be deemed to be and shall become additional rent hereunder whether or not the same be designated as such and it shall be due and payable upon demand together with interest thereon at the highest rate permissible by law from their due date until the date it is paid. The LANDLORD shall have the same remedies for TENANT's failure to pay said additional rental the same as for non-payment of rent. LANDLORD, at its election, shall have the right to pay or do any act which requires the expenditure of any sums of money by reason of the failure or neglect of TENANT to perform any of the provisions of this Lease, and in the event LANDLORD shall, at its election, pay such sums or do such acts requiring the expenditure of monies, TENANT agrees to pay LANDLORD, upon demand, all such sums, and the sums so paid by LANDLORD and any expenses incurred by LANDLORD in the payment of such sums together with interest thereon at the highest rate permitted by law from their due date through the date they are paid by TENANT shall be deemed additional rent and shall be payable and collectible as such. Rent shall be made payable to the LANDLORD as stated in Section 1.1 hereof.

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

(g) **Rent Concessions.** None

5. **SECURITY** - TENANT simultaneously with the execution and delivery of this Lease, has deposited with the LANDLORD the sum equal to 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: The operation of a marina and for 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 or (ii) cause any work stoppage, picketing or cause any manner or interference with LANDLORD or, 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

(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) 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.

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

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

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

A. At 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.

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

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

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

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

TENANT shall deliver to LANDLORD or the holder of any such security instrument or auditors, or prospective purchaser or the owner of the fee, when requested by LANDLORD, a certificate to the effect that this Lease is in full force and that LANDLORD is not in default therein, or stating specifically any exceptions thereto. Failure to give such a certificate within ten business days after written request shall be conclusive evidence that the Lease is in full force and effect and LANDLORD is not in default and in such event, TENANT shall be stopped from asserting any defaults known to TENANT at that time.

## **12. CONDEMNATION**

(a) It is further understood and agreed that if at any time during the continuance of this Lease the legal title to the Demised real estate or the improvements or buildings located thereon or any portion thereof be taken or appropriated or condemned by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings and such



abatement of the fixed rent and other adjustments made as shall be just and equitable under the circumstances. If the LANDLORD and the TENANT are unable to agree upon what division of the condemnation award, abatement of fixed rent, or other adjustments are just and equitable within thirty (30) days after such award has been made, then the matters in dispute shall, by appropriate proceedings, be submitted to a court having jurisdiction of the subject matter of such controversy for its decision and determination of the matters in dispute. If the legal title to the entire Demised Premises be wholly taken by condemnation, or if the portion taken will prevent the Demised Premises from being used for the purpose the TENANT intends, this Lease shall be canceled.

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

### 13. TENANT'S DEFAULT

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

(b) Or, the LANDLORD may have such other remedies as the law and this instrument afford, and the TENANT covenants and agrees that upon the termination of said demised term, at such election of the said LANDLORD, or in any other way, TENANT will surrender and deliver up the Demised Premises and property (real and personal) peaceably to the LANDLORD, its agent, or attorneys, immediately upon the termination of the said demised term. If the TENANT, its agents, attorneys, or shall hold the Demised Premises or any part thereof, one (1) day after the same should be surrendered according to the terms of this Lease, it shall be deemed guilty of forcible detainer of the Demised Premises under the statute and shall be subject to eviction or removal, forcibly or otherwise, with or without process of law.

**(c) BANKRUPTCY OF TENANT. IN THE EVENT TENANT FILES ANY FORM OF BANKRUPTCY, LANDLORD SHALL BE ENTITLED TO IMMEDIATE TERMINATION OF THE AUTOMATIC STAY PROVISIONS OF 11 U.S.C. §362, GRANTING THE LANDLORD COMPLETE RELIEF AND ALLOWING THE LANDLORD TO EXERCISE ALL OF HIS LEGAL AND EQUITABLE RIGHTS AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO TERMINATE THIS LEASE AND DISPOSSESS TENANT FROM THE DEMISED PREMISES IN ACCORDANCE WITH FLORIDA LAW. ADDITIONALLY, TENANT AGREES NOT TO DIRECTLY OR**

**INDIRECTLY OPPOSE OR OTHERWISE DEFEND AGAINST THE LANDLORD'S EFFORT TO GAIN RELIEF FROM ANY AUTOMATIC STAY. THE LANDLORD SHALL BE ENTITLED AS AFORESAID TO THE LIFTING OF THE AUTOMATIC STAY WITHOUT THE NECESSITY OF AN EVIDENTIARY HEARING AND WITHOUT THE NECESSITY OR REQUIREMENT OF THE LANDLORD TO ESTABLISH OR PROVE THE VALUE OF THE LEASEHOLD, THE LACK OF ADEQUATE PROTECTION OF HIS INTEREST IN THE LEASEHOLD, OR THE LACK OF EQUITY IN THE SAME. TENANT SPECIFICALLY AGREES AND ACKNOWLEDGES THAT THE LIFTING OF THE AUTOMATIC STAY HEREUNDER BY THE APPROPRIATE BANKRUPTCY COURT SHALL BE DEEMED TO BE "FOR CAUSE" PURSUANT TO SECTION 362(D)(1).**

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

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

(f) It is mutually covenanted and agreed that the various rights, powers, options, elections, privileges, and remedies of the LANDLORD contained in this Lease shall be construed as cumulative and no one of them shall be construed as being exclusive of the other or exclusive of any rights or priorities allowed by law.

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

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

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

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

#### **15. ALTERATIONS**

TENANT shall not make any alterations, additions or improvements to the Demised Premises (whether or not the same may be structural in nature) without LANDLORD'S prior written consent. All alterations, additions, or improvements made to the Demised Premises, except movable furniture and equipment installed at TENANT'S expense, shall be the property of the LANDLORD and remain upon and be surrendered with the Demised Premises at the expiration of the term of this Lease; provided, however, that LANDLORD may require TENANT to remove any additions made at TENANT'S request to the Demised Premises and to repair any damage caused by such removal, and provide further, that if TENANT has not removed its property and equipment within ten (10) days after the expiration or termination of this Lease, LANDLORD may elect to retain the same as abandoned property.

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

tenants or tenant's contractors. All contractors engaged by TENANT shall be bondable, licensed contractors, possessing good labor relations, and capable of performing quality workmanship.

#### **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 area covered by that particular utility expense. In the event that the TENANT shall be billed for a pro-rated share, the LANDLORD shall provide TENANT a utility bill each month and TENANT shall pay the amount due to LANDLORD within ten (10) days of its receipt.

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

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

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

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

LANDLORD to encumber the title or interest of the LANDLORD.

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

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

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

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

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

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

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

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

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

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

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

instrument.

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

AS TO LANDLORD: PROPERTY MANAGEMENT  
CITY OF KEY WEST  
100 GRINNELL  
KEY WEST, FL 33040

AS TO TENANT: FRANK BERVALDI  
ISLAND TRANQUILITY, INC.  
711 EISENHOWER DRIVE  
KEY WEST, FL 33040

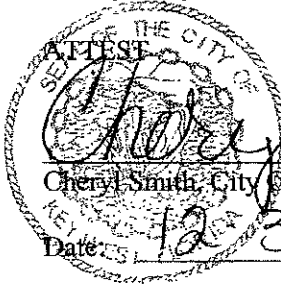
When the parties on either side (LANDLORD or TENANT) consists of more than one person, notice or default by one of the persons on that side shall constitute notice or default by all of the persons on that side.

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

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

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

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



Cheryl Smith  
Cheryl Smith, City Clerk

Date: 12-3-08

LANDLORD: City of Key West

Morgan McPherson  
Morgan McPherson, Mayor

Date: 12-2-08

TENANT: Island Tranquility, Inc

Susan P. Harrison  
WITNESS

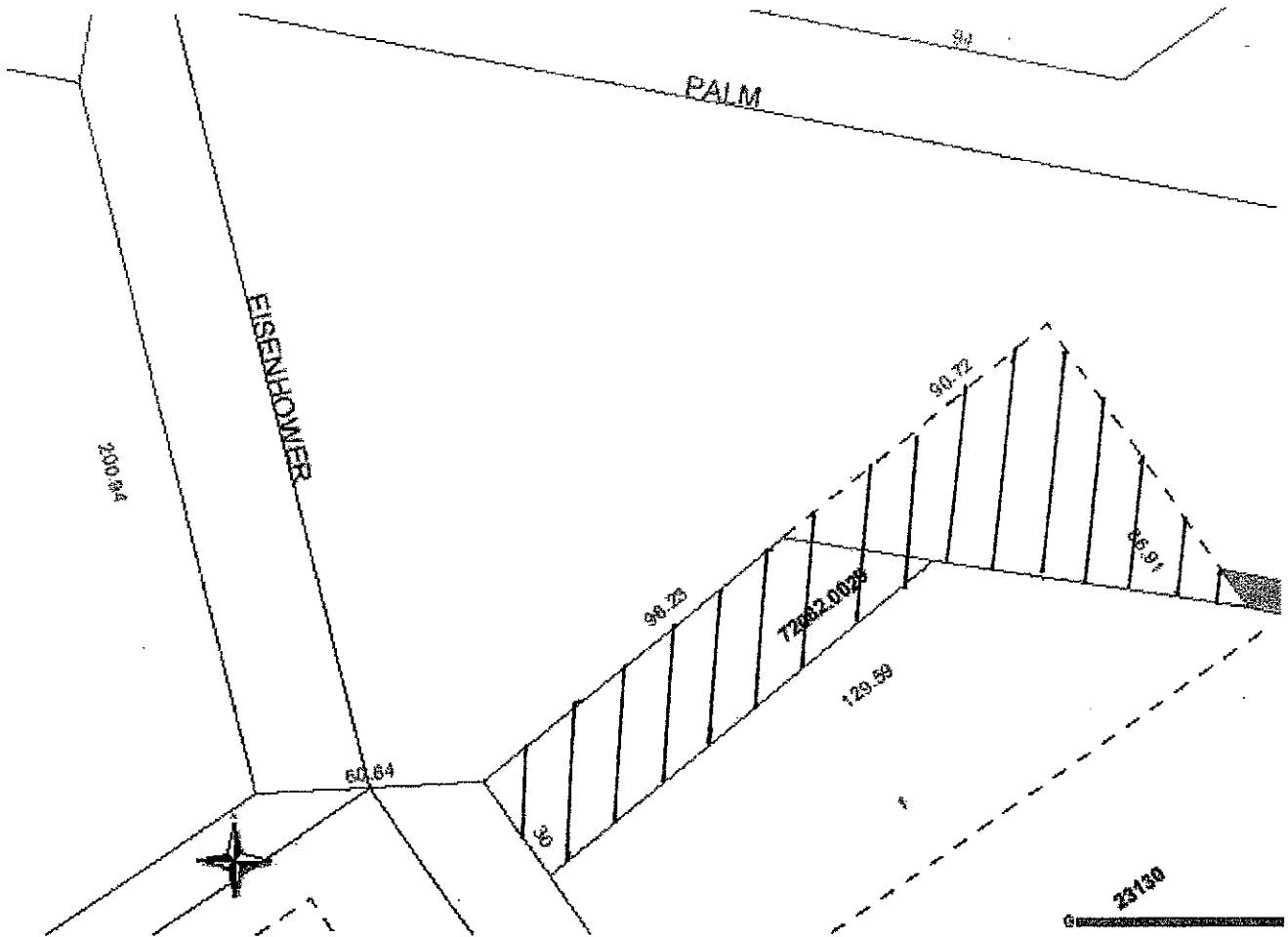
Date: Dec. 5, 2008

Frank Bervaldi  
Frank Bervaldi, President

Date: 12/5/08

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





**EXHIBIT A  
DEMISED PREMISES**

PARCEL ID – 720.82-.0029 AND A PORTION OF PARCEL ID 72082.-0034  
CONTAINING APPROXIMATELY 7360 SQUARE FEET AS CROSSHATCHED

**EXHIBIT "B" Rent Schedule**

CITY OF KEY WEST

EXHIBIT "B"

Tenant: Island Tranquility, Inc.  
 Location: 711 Eisenhower Drive  
 Contact: Frank Bervaldi

YEAR #	Period Beginning	Base Rent	Base Rent	Sales Tax	Total Rent	TOTAL RENT
		Monthly	Annual		With Tax	ANNUAL
1	December 1, 2008	\$1,500.00 5% Increase	\$18,000.00	Monthly \$112.50	Monthly \$1,612.50	\$19,350.00
2	December 2, 2009	\$1,575.00	\$18,900.00	\$118.13	\$1,693.13	\$20,317.50
3	December 2, 2010	\$1,653.75	\$19,845.00	\$124.03	\$1,777.78	\$21,333.38
4	December 2, 2011	\$1,736.44	\$20,837.25	\$130.23	\$1,866.67	\$22,400.04
5	December 1, 2012	\$1,823.26	\$21,879.11	\$136.74	\$1,960.00	\$23,520.05

Tenant pays Taxes and Insurance expenses directly.

**EXHIBIT "C" Rules and Regulations**

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

**EXHIBIT "D"**

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

RESOLUTION NO. 98-401

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED LEASE AGREEMENT BETWEEN THE CITY AND ISLAND TRANQUILITY, INC.; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the Lease Agreement between Island Tranquility, Inc. and the City is hereby approved, and the City Manager is hereby authorized to execute it on behalf of the City.

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 Commission.

Passed and adopted by the City Commission at a meeting held this 17th day of NOVEMBER, 1998.

Authenticated by the presiding officer and Clerk of the Commission on NOVEMBER 20, 1998.

Filed with the Clerk NOVEMBER 20, 1998.

Sheila K. Mullins  
SHEILA K. MULLINS, MAYOR

ATTEST:

Josephine Parker  
JOSEPHINE PARKER, CITY CLERK

STATE OF FLORIDA)  
COUNTY OF MONROE)  
CITY OF KEY WEST)

This copy is a true copy of the original on file in this office. Witness my hand and official seal this 30 day of NOV., 1998.

JOSEPHINE PARKER, CMC  
CITY CLERK

By Josephine Parker

## Lease Agreement

**THIS AGREEMENT** is entered into this \_\_\_\_\_ First \_\_\_\_\_ day of \_\_\_\_\_ October \_\_\_\_\_, 1998, between the City of Key West, Florida, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter "City"), whose address is Post Office Box 1409, Key West, Florida 33041, and Island Tranquility Inc. dba, Garrison Bight Marina, a Florida corporation (hereinafter "Marina"), whose address is 711 Eisenhower Drive, Key West, Florida 33040.

### **WITNESSETH:**

City wishes to lease to Marina a parcel of real property hereinafter described, and the parties desire a written agreement between them providing terms and conditions for said lease;

**NOW, THEREFORE**, in mutual consideration of the benefits accruing to the parties through performance of the terms of this agreement and other good and valuable consideration, City and Marina agree as follows:

#### **1. Leased Premises.**

Subject to the terms and conditions hereof, City hereby leases to Marina all the following described real property located in Monroe County, Florida (hereinafter "Leased Premises") Attached as Exhibit "A".

#### **2. Lease Term.**

City leases the Leased Premises to Marina for a period of five years, commencing on October 1, 1998, and ending November 30, 2003, unless sooner terminated as herein described. Marina is hereby granted an option to renew/extend this lease for an additional five year term commencing on December 1, 2003 thru November 30, 2008, subject to the terms of this lease, to exercise this option, Marina shall give 60 days written notice prior to the termination date of this lease of its intention to renew.

#### **3. Rent.**

Marina covenants and agrees to pay City as rent for the Leased Premises the sum of \$860.00 per month, or portion thereof, plus applicable sales tax, payable in advance in monthly installments to City at its address set forth above. A annual increase equal to CPI will commence on the Agreement Anniversary Date.

#### **4. Improvements, Mechanics' Liens, improvements Property of City.**

No improvements, including construction or installation of additional boat slips on or adjacent to the Leased Premises, shall be made without prior written consent of the City. Any improvements so authorized shall be constructed under the supervision of the City Building

Department and the City Engineer.

It is hereby covenanted between the parties that there shall, during the lease term, be no mechanics' liens upon any buildings or improvements which may at any time be put upon or be upon said demised property, and that in case of any mechanics' lines, Marina must pay off the same; and that if default in payment thereof shall continue for thirty (30) days after written notice, City shall have the right and privilege, at its option, to pay off the same or any portion of the same, and the amount so paid, including expenses, shall, at the option of City, be so much additional rent due from Marina at the next rental payment due date, with interest thereon at the rate of eighteen (18) percent per annum.

It is fully understood and agreed by and between the parties hereto that it is a condition of this Agreement that any permanent improvements to the premises at the expiration of the Lease Term, or upon sooner termination as provided herein, shall upon said expiration or termination become the exclusive property of City without the necessity of any instrument of conveyance.

5. Utilities, Taxes, Use of Premises, Maintenance.

Marina hereby further covenants and agrees:

- (a) To pay all utilities including, but not limited to, garbage, electricity, gas, water, and sewer.
- (b) To pay any and all taxes which may be or become due upon the Leased Premises during the Lease Term, including but not limited to sales tax and ad valorem tax.
- © To use the Leased Premises for marina purposes only, consistent with the long-range development plans of the City.
- (d) To provide the necessary care and maintenance for said premises.

6. Use of Premises, Indemnification.

It is expressly covenanted between the parties that Marina will not use or suffer or permit any person to use in any manner whatsoever the Leased Premises, or any improvements now on or hereafter constructed or placed on said premises, nor any portion thereof, for any purpose calculated to injure the reputation of the premises or of the neighboring property, nor for any purpose or use in violation of Federal, State, or local law, and that Marina will, at its own cost, obtain and maintain all necessary permits and approvals relating to the lease use and maintain the premises in a good, safe, and secure condition and will conform to all municipal ordinances or laws, and that it will keep and save City forever harmless from any penalty of damage or charges imposed for any violation of any of said laws, whether or not occasioned by neglect of Marina, and that Marina will indemnify and save and keep harmless City, its officers, employees, and agents from all actions claims, penalties, and judgements for damages at law or equity of any nature whatsoever arising, or alleged to arise, out of (i) the act of City in granting this lease, or out of (ii) the acts or omissions of Marina, its employees, agents, independent contractors, licensees, customers, or invitees, or out of (iii) Marina's operation of its business or exercise of rights conferred by this agreement. Marina shall defend City, and shall pay all reasonable expenses



incurred by City in defending itself, with regard to all damages and penalties City may legally be required to pay as a result of the rights granted hereunder. Expenses shall include all incidental expenses including attorney fees, and shall include a reasonable value of any services rendered by the Office of the City Attorney.

Marina's obligations hereunder shall not in any way be limited by the amounts of insurance expressly required by paragraph 7. below.

In all instances where Marina may be required to indemnify City, City shall give Marina prompt and timely notification of any claims. Marina shall have the right to select counsel and to direct the conduct of the legal action. City shall not enter into any settlement agreement or otherwise terminate the action without the consent of, and at its option, participation by Marina or its legal representative.

#### 7. Insurance

Marina agrees to provide at its expense comprehensive liability insurance insuring itself and City against all claims of damages or injury to persons or property arising for any reason out of Marina's use of Leased Premises, or arising out of its activities related to the lease use, or otherwise arising from its exercise of rights or failure to perform obligations pursuant to this Agreement. The insurance policy shall be written by a solvent insurance company in good standing and fully licensed to do business in Florida and shall provide a minimum of \$1,000,000 coverage for bodily injury arising out of one accident and \$300,000 coverage for property damage. The policy shall show City as named insured, and shall provide that it cannot be canceled or revoked except after a minimum of thirty (30) days written notice to City. A true copy of the insurance contract shall be filed with the City Clerk within ten (10) days after execution of this Agreement, and shall be maintained on file throughout the Lease Term. Marina's failure to maintain the insurance policy in full force and effect at any time during the Lease Term shall be a default hereunder, and upon such default Marina shall immediately suspend all lease use and shall provide to City written notice of default.

The insurance amounts here provided shall not in any way operate to limit or release, or be constructed to limit or release, Marina from any liability to City, or from any obligation to indemnify City as provided herein. Said insurance amounts are minimum requirements, and shall be supplemented by Marina as necessary to meet its obligations, had to fully indemnify the City, as provided in this Agreement.

#### 8. Assignment of Sublease

Excepting slip rentals and commercial fishing boats not for hire, Marina shall not assign or sublease the Leased Premises, or any portion thereof, without prior written consent of City. Provided however that commercial fishing boats for hire may sublease one or more boat slips but may not conduct business or pickup passengers from the leased premises.

#### 9. Peaceable Possession, Etc.

City covenants with Marina that, conditioned on Marina's performance and observance of its covenants herein, it shall have the quiet title and peaceable possession of the premises during

the term of this Agreement.

10. Access to Premises

Marina covenants and agrees to provide City access to the premises for inspection and related purpose upon notice reasonable under the circumstances.

11. Personal Property

All personal property placed or moved within or upon the Leased Premises shall be at risk of Marina or the owner thereof, and City shall not be liable for any damage to said personal property.

12. Compliance with Laws

Marina shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations, and requirements of Federal, State, and City government and of any and all their Departments and Bureaus applicable to said premises or for the corrections, prevention, and abatement of nuisances or other grievances, in, upon, or connected with said premises during said term, and shall also promptly execute and comply with all rules, orders, and regulations of the Southeastern Underwriters Association for the prevention of fires, at its own cost and expense.

13. Default, Termination

It is further covenanted and agreed between the parties that in case of default by Marina in the payment of any rent herein provided for upon the day the same becomes due or payable or in the failure to perform any of the covenants of this Agreement, and such default of payment shall continue for thirty (30) days after notice thereof is given in writing by City, or failure to correct any violation shall continue for ten (10) days after notice thereof is given in writing by City, City may, at its option, forthwith declare this Agreement terminated and may immediately reenter and repossess said Leased Premises. It is understood and agreed between the parties hereto that written notice by certified or registered mail shall constitute sufficient notice to either party to comply with the terms of this Agreement.

14. Waiver of Breach Not Continuing Waiver

It is further mutually covenanted and agreed between the parties that no waiver of a breach of any of the covenants of this Agreement shall be construed to be a waiver of any succeeding breach of the same covenants.

15. Attorneys' Fees, Costs

In the event of any legal proceedings arising out of the terms of this Agreement, prevailing party shall be entitled to reasonable attorneys' fees and costs.

16. Construction of Agreement

This Agreement shall be construed in accordance with the laws of the State of Florida.

17. Damage or Destruction to Premises, Improvements

In the event of substantial damage or destruction to the Leased Premises or any improvements, which are such that the premises may not be substantially used for the purpose of

this Agreement, and neither party rebuild, restores, or repairs the premises or improvements, then either party may cancel this Agreement, such cancellation to be effective upon the other parties' receipt of written notice thereof.

18. Agreement Subject to Dead Provisions.

The parties agree that this Agreement shall be subject to any applicable terms contained in Deed Nos. 19259-A Corrective and 19259-B of the Board of Trustees of the Internal Improvement Trust Fund (granting certain property to the City of Key West), Deed No. 23564-A of the Board of Trustees of the Internal Improvement Trust Fund (granting certain property to the United States), and any other applicable deeds, particularly and public purposes restriction contained therein.

19. Binding Upon Successors, etc.

This Agreement and all its terms and conditions shall apply to and be binding upon and inure to the benefit of the heirs, executors, successors, administrators and assigns, where assignment has been permitted, of the parties where the content so requires or admits.

20. Ownership of Real Property

*sh/c*  
Marina acknowledges that the premises being leased are subject to a title problem with the State of Florida and further that it may be determined at a further date that City is not the owner of the property which is the subject of this Lease. Marina agrees to release and hold City harmless from any and all liability and claims which it would otherwise have against City as a result of City's not owning the property being leased. In the event it is determined that City is not the owner of the leased property, then Marina agrees to negotiate with the owner of the property as determined by attorney title opinion or by a court of competent jurisdiction.

21. Captions.

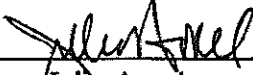
Headings labeling any provisions herein are for convenience only, and shall not in any way be construed as affecting, limiting, expanding, or stating the contents, meaning, or intent of this Agreement.

22. Entire Agreement.

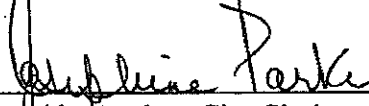
This Agreement sets forth all the covenants, promises, agreements, and understanding between City and Marina concerning the Leased Premises. No subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon City of Marina unless reduced to writing and duly executed by both parties.

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

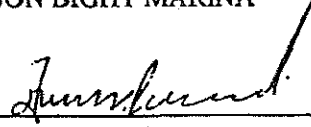
CITY OF KEY WEST, FLORIDA

By:   
Julio Avel  
City Manager

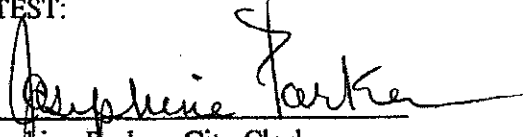
ATTEST:

  
Josephine Parker, City Clerk  
(SEAL)

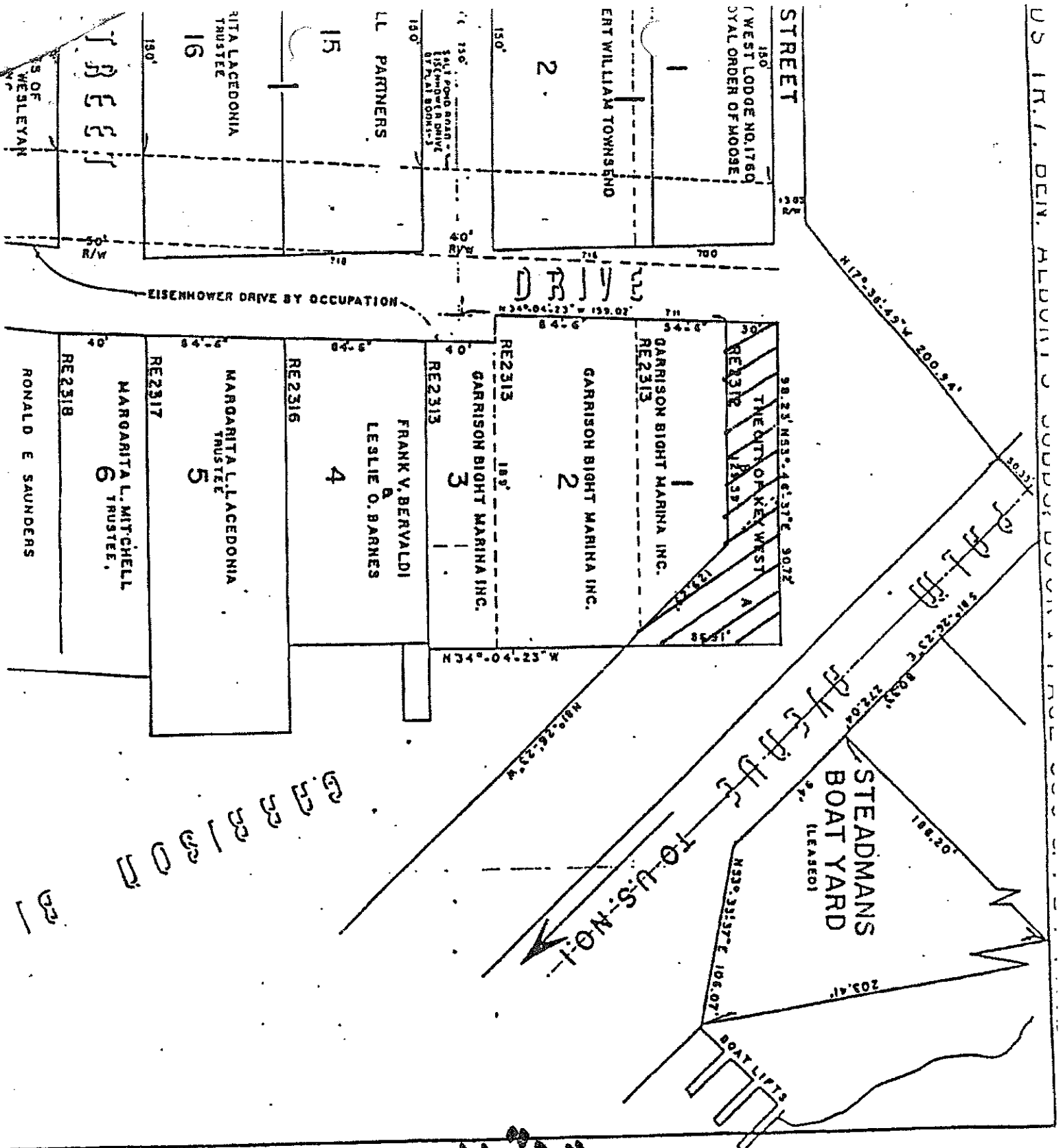
ISLAND TRANQUILITY, INC. dba  
GARRISON BIGHT MARINA

By:   
President

ATTEST:

  
Josephine Parker, City Clerk  
(CORPORATE SEAL)

U.S. INT. DEV. BANK, ALBUQUERQUE, NEW MEXICO



# EXHIBIT "A"



LEASED AREA



*Florida Department of Transportation*

CHARLIE CRIST  
GOVERNOR

1000 NW 111 Avenue  
Miami, Florida 33172-5800

STEPHANIE C. KOPELOUSOS  
SECRETARY

December 6, 2010

Mr. Frank Bervaldi  
Garrison Bight Marina  
711 Eisenhower Drive  
Key West, Florida 33040

**SUBJECT: Executed Lease Agreement**

Applicant	: Island Tranquility, Inc.
FM No.	: 4152302
Sect./Job No.	: 90500-2604
County	: Monroe
Parcel No.	: 4364

Dear Mr. Bervaldi:

Enclosed please find for your records a fully executed copy of the Lease Agreement between the Florida Department of Transportation and Island Tranquility, Inc.

Your next monthly lease payment is due January 1, 2011. Please be informed that payments are due on the 1<sup>st</sup> of the month, it is the lessee's ultimate responsibility to send the payment by due date.

If you have any questions, please do not hesitate to contact me at (305) 470-5472. Thank you once again for your interest in leasing FDOT property.

Sincerely,

Marlene Fadrugas  
Property Management

Enc.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
LEASE AGREEMENT

575-060-33  
RIGHT OF WAY  
OGC - 0809

ITEM/SEGMENT NO.: 4152302  
MANAGING DISTRICT: Six  
F.A.P. NO.: N/A  
STATE ROAD NO.: Garrison Bight (Key West  
- COUNTY.: Monroe  
PARCEL NO.: 4364

THIS AGREEMENT, made this 6<sup>th</sup> day of December, 2010, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, (hereinafter called the Lessor), and Island Tranquility, Inc., 711 Eisenhower Drive, Key West, Florida 33040 (hereinafter called the Lessee.)

**WITNESSETH:**

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Property and Term. Lessor does hereby lease unto Lessee the property described in Exhibit "A", attached and made a part hereof, for a term of five (5) years beginning 10/1/2010 and ending 9/30/2015. This Lease may be renewed for an additional five (5) years term at Lessee's option, subject to the rent adjustment as provided in Paragraph 3 below. Lessee shall provide Lessor ninety (90) days advanced written notice of its exercise of the renewal option.

If Lessee holds over and remains in possession of the property after the expiration of the term specified in this Lease, or any renewals of such term, Lessee's tenancy shall be considered a tenancy at sufferance, subject to the same terms and conditions as herein contained in this Lease.

This Lease is subject to all utilities in place and to the maintenance thereof as well as any other covenants, easements, or restrictions of record.

This Lease shall be construed as a lease of only the interest, if any, of Lessor, and no warranty of title shall be deemed to be given herewith.

2. Use. The leased property shall be used solely for the purpose of boat and boat trailer storage. If the property is used for any other purpose, Lessor shall have the option of immediately terminating this Lease. Lessee shall not permit any use of the property in any manner that would obstruct or interfere with any transportation facilities.

Lessee will further use and occupy the leased property in a careful and proper manner, and not commit any waste thereon. Lessee will not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the property. Lessee will not use or occupy said property for any unlawful purpose and will, at Lessee's sole cost and expense, conform to and obey any present or future ordinances and/or rules, regulations, requirements, and orders of governmental authorities or agencies respecting the use and occupation of the leased property.

Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations, or as those terms are understood in common usage, are specifically prohibited. The use of petroleum products, pollutants, and other hazardous materials on the leased property is prohibited. Lessee shall be held responsible for the performance of and payment for any environmental remediation that may be necessary, as determined by the Lessor, within the leased property. If any contamination either spread to or was released onto adjoining property as a result of Lessee's use of the leased property, the Lessee shall be held similarly responsible. The Lessee shall indemnify, defend, and hold harmless the Lessor from any claim, loss, damage, costs, charge, or expense arising out of any such contamination.

3. Rent. Lessee shall pay to Lessor as rent, on or before the first day of each rent payment period, the sum of \$2,241.63 (+ \$168.12 in taxes)=\$2409.75 TTL plus applicable tax, for each month of the term. If this Lease is terminated prior to the end of any rent payment period, the unearned portion of any rent payment, less any other amounts that may be owed to Lessor, shall be refunded to Lessee. Lessee shall pay any and all state, county, city, and local taxes that may be due during the term hereof, including any real property taxes. Rent payments shall be made payable to the Florida Department of Transportation and shall be sent to R/W Administration, 1000 NW 111 Avenue, Rm. 6105-B, Miami, Florida 33172 Attn.: Property Management

Lessor reserves the right to review and adjust the rental fee biennially and at renewal to reflect market conditions. Any installment of rent not received within ten (10) days after the date due

shall bear interest at the highest rate allowed by law from the due date thereof, per Section 55.03(1), Florida Statutes. This provision shall not obligate Lessor to accept late rent payments or provide Lessee a grace period.

4. Improvements. No structures or improvements of any kind shall be placed upon the property without the prior written approval of the District Secretary for District Six of Lessor. Any such structures or improvements shall be constructed in a good and workmanlike manner at Lessee's sole cost and expense. Subject to any landlord lien, any structures or improvements constructed by Lessee shall be removed by Lessee, at Lessee's sole cost and expense, by midnight on the day of termination of this Lease and the leased property restored as nearly as practical to its condition at the time this Lease is executed. Portable or temporary advertising signs are prohibited.

Lessee shall perform, at the sole expense of Lessee, all work required in the preparation of the leased property for occupancy by Lessee, in the absence of any special provision herein contained to the contrary, and Lessee does hereby accept the leased property as now being in fit and tenable condition for all purposes of Lessee.

Lessor reserves the right to inspect the property and to require whatever adjustment to structures or improvements as Lessor, in its sole discretion, deems necessary. Any adjustments shall be done at Lessee's sole cost and expense.

5. Maintenance. Lessee shall keep and maintain the leased property and any building or other structure, now or hereafter erected thereon, in good and safe condition and repair at Lessee's own expense during the existence of this Lease, and shall keep the same free and clear of any and all grass, weeds, brush, and debris of any kind, so as to prevent the same from becoming dangerous, inflammable, or objectionable. Lessor shall have no duty to inspect or maintain any of the leased property or buildings, and other structures thereon, during the term of this Lease; however, Lessor shall have the right, upon twenty-four (24) hours notice to Lessee, to enter the leased property for purposes of inspection, including conducting an environmental assessment. Such assessment may include: surveying; sampling of building materials, soil, and groundwater; monitoring well installations; soil excavation; groundwater remediation; emergency asbestos abatement; operation and maintenance inspections; and, any other actions which may be reasonable and necessary. Lessor's right of entry shall not obligate inspection of the property by Lessor, nor shall it relieve the Lessee of its duty to maintain the leased property. In the event of emergency due to a release or suspected release of hazardous waste on the property, Lessor shall have the right of immediate inspection, and the right, but not the obligation, to engage in remedial action, without notice, the sole cost and expense of which shall be the responsibility of the Lessee.

6. Indemnification. Lessee shall indemnify, defend, save, and hold harmless Lessor, its agent, officers, and employees, from any losses, fines, penalties, costs, damages, claims, demands, suits, and liabilities of any nature, including attorney's fees, (including regulatory and appellate fees), arising out of or because of any acts, action, neglect, or omission by Lessee, or due to any accident, happening, or occurrence on the leased property or arising in any manner from the exercise or attempted exercise of Lessee's rights hereunder whether the same regards person or property of any nature whatsoever, regardless of the apportionment of negligence, unless due to the sole negligence of Lessor.

Lessee's obligation to indemnify, defend and pay for the defenses or at Lessor's option, to participate, and to associate with the Lessor in the defense and trial of any claim and any related settlement negotiations, shall be triggered by the Lessor's notice of claim for indemnification to Lessee. Lessee's inability to evaluate liability or its evaluation of liability shall not excuse Lessee's duty to defend and indemnify within seven days after such notice by the Lessor is given by registered mail. Only an adjudication or judgement after the highest appeal is exhausted specifically finding the Lessor solely negligent shall excuse performance of this provision by Lessee. Lessee shall pay all costs and fees related to this obligation and its enforcement by Lessor. Lessor's failure to notify Lessee of claim shall not release Lessee of the above duty to defend.

7. Insurance. Lessee at its expense, shall maintain at all times during the term of this Lease, public liability insurance protecting Lessor and Lessee against any and all claims for injury and damage to persons and property, and for the loss of life or property occurring in, on, or about the property arising out of the act, negligence, omission, nonfeasance, or malfeasance of Lessee, its employees, agents, contractors, customers, licensees, and invitees. Such insurance shall be carried in a minimum amount of not less than one million dollars (\$ 1,000,000.00 ) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than one million dollars (\$ 1,000,000.00 ) for property damage, or a combined coverage of not less than two million dollars (\$ 2,000,000.00 ). All such policies shall be issued by companies licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless Lessor is given at least sixty (60) days prior written notice of such cancellation or modification. Lessee shall provide Lessor certificates showing such insurance to be in place and showing Lessor as additional insured under the policies. If self-insured or under a risk management program, Lessee represents that such minimum coverage for liability will be provided for the leased property.



Lessor may require the amount of any public liability insurance to be maintained by Lessee be increased so that the amount thereof adequately protects Lessor's interest. Lessee further agrees that it shall during the full term of this Lease and at its own expense keep the leased property and any improvements thereon fully insured against loss or damage by fire and other casualty. Lessee also agrees that it shall during the full term of this Lease and at its own expense keep the contents and personal property located on the leased property fully insured against loss or damage by fire or other casualty and does hereby release and waive on behalf of itself and its insurer, by subrogation or otherwise, all claims against Lessor arising out of any fire or other casualty whether or not such fire or other casualty shall have resulted in whole or in part from the negligence of the Lessor.

8. Eminent Domain. Lessee acknowledges and agrees that its relationship with Lessor under this Lease is one of landlord and tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Lease. Termination of this Lease for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Lease, including any residual interest in the Lease, or any other facts or circumstances arising out of or in connection with this Lease.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from Lessee's loss of occupancy of the leased property, or any such rights, claims, or damages flowing from adjacent properties owned or leased by Lessee as a result of Lessee's loss of occupancy of the leased property. Lessee also hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort as set out above, as a result of Lessee's loss of occupancy of the leased property, when any or all adjacent properties owned or leased by Lessee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Lease is still in existence on the date of taking or sale; or has been terminated prior thereto.

9. Miscellaneous.

a. This Lease may be terminated by Lessor immediately, without prior notice, upon default by Lessee hereunder, and may be terminated by either party, without cause upon thirty ( 30 ) days prior written notice to the other party.

b. In addition to, or in lieu of, the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.

c. Lessee acknowledges that it has reviewed this Lease, is familiar with its terms, and has had adequate opportunity to review this Lease with legal counsel of Lessee's choosing. Lessee has entered into this Lease freely and voluntarily. This Lease contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and the previous owner of the leased property and landlord of Lessee are merged in this Lease, which alone, fully and completely expresses the agreement between Lessee and Lessor with respect to the subject matter hereof. No modification, waiver, or amendment of this Lease or any of its conditions or provisions shall be binding upon Lessor or Lessee unless in writing and signed by both parties.

d. Lessee shall not sublet the property or any part thereof, nor assign this Lease, without the prior consent in writing of the Lessor; this Lease is being executed by Lessor upon the credit and reputation of Lessee. Acceptance by Lessor of rental from a third party shall not be considered as an assignment or sublease, nor shall it be deemed as constituting consent of Lessor to such an assignment or sublease.

e. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, and telegraph services, or any other utility or service used on the property.

f. This Lease shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

g. All notices to Lessor shall be sent to the address for rent payments and all notices to Lessee shall be sent to: Frank V. Bervaldi, Garrison Bight Marina, 711 Eisenhower Drive, Key West, Florida 33040

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

Island Tranquility, Inc.  
Lessee (Company Name, if applicable)  
By: [Signature]

Frank V. Bervaldi  
Print Name

Title: President

Attest: [Signature] (SEAL)

H. Richard Bervaldi  
Print Name

Title: Secretary

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

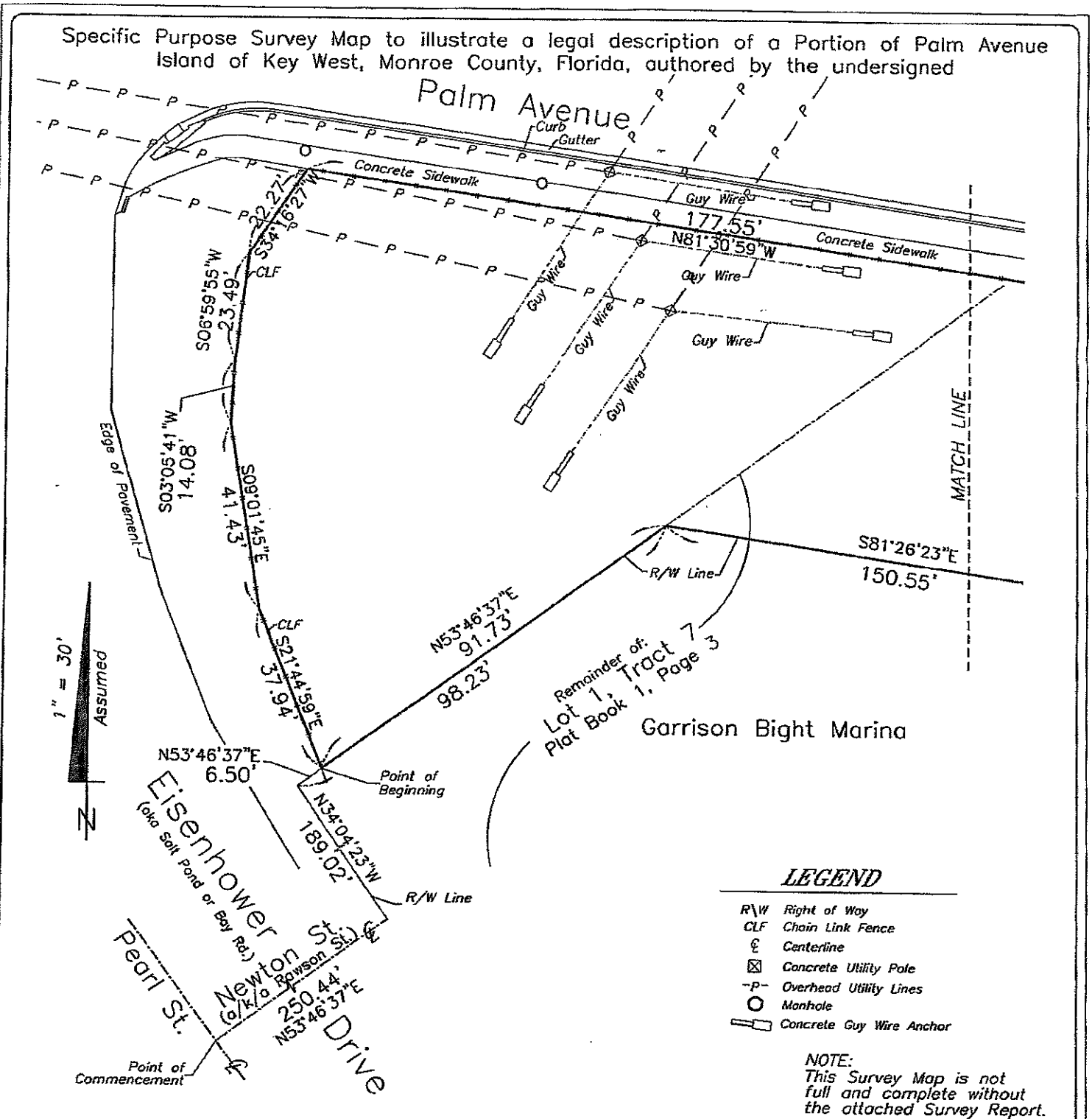
By: [Signature]  
District Secretary  
Gus Pego, P.E.  
Print Name

Attest: [Signature]  
Name/Title: Margaret Higgins, Exec. Secretary

LEGAL REVIEW:

[Signature]  
District Counsel  
Alicia Trujillo, Esq.  
Print Name

Specific Purpose Survey Map to illustrate a legal description of a Portion of Palm Avenue  
Island of Key West, Monroe County, Florida, authored by the undersigned



**J. LYNN O'FLYNN, Inc.**



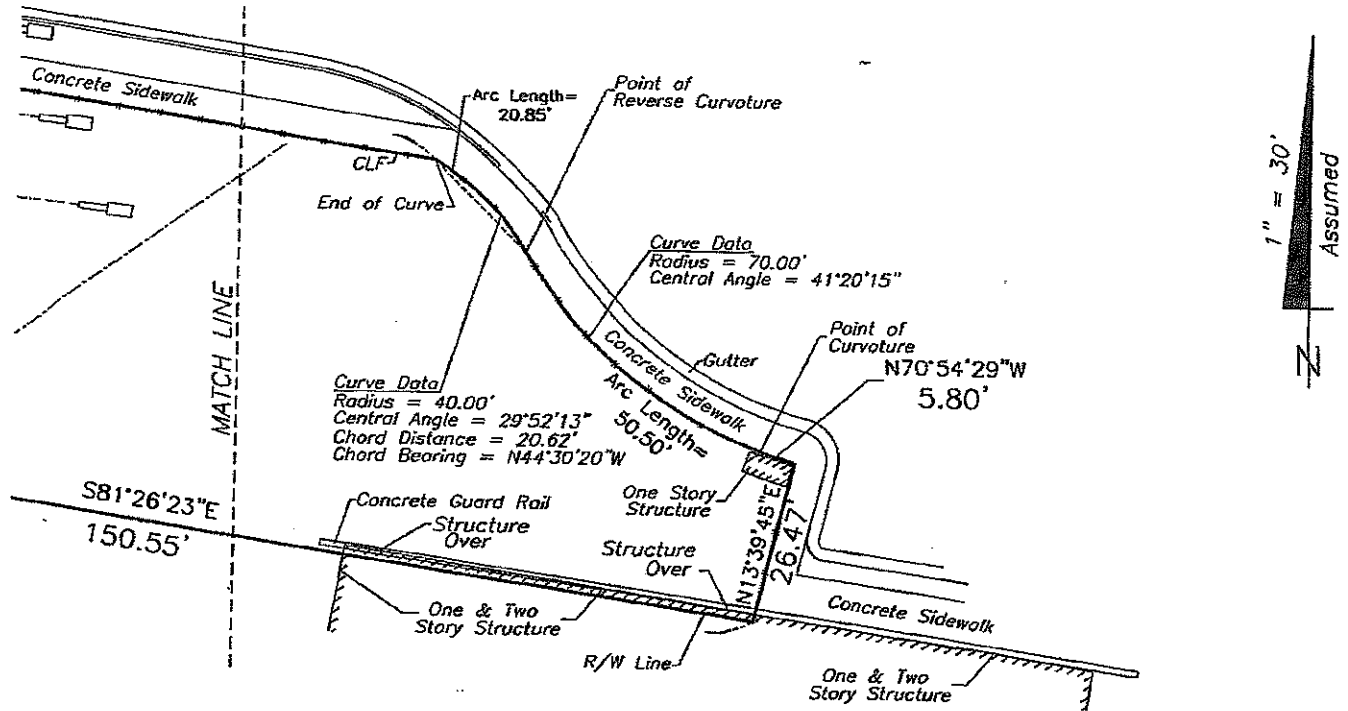
Professional Surveyor & Mapper  
PSM #6298

3430 Duck Ave., Key West, FL 33040  
(305) 296-7422 FAX (305) 296-2244

Not valid without the signature and original raised seal of a Florida licensed Surveyor and Mapper.

Florida Department of Transportation  
District VI  
Item/Segment No.: 4152302  
Sect./Job No.: 90500-2604  
F.A.P. No.: N/A  
SR No.: Garrison Bight  
County: Monroe  
Parcel No.: 4364  
Sheet 1 of 3 Sheets

Specific Purpose Survey Map to illustrate a legal description of a Portion of Palm Avenue, Island of Key West, Monroe County, Florida, authored by the undersigned



t Marina Garrison Bight Marina

**Notes:**

1. The legal description shown hereon was authored by the undersigned.
2. Underground foundations and utilities were not located.
3. All angles are 90° (Measured & Record) unless otherwise noted.
4. This Sketch is not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.
5. Lands shown hereon were not abstracted for rights-of-way, easements, ownership, or other instruments of record.
6. Bearings are assumed and based on the Florida DOT Map titled "Road No. 90500-2604", Sheet 2, whereas the SE'y R/W of Palm Avenue is N 53°46'37" E.
7. This survey is not assignable.
8. Date of field work: March 13, 2010.
9. Ownership of fences is undeterminable, unless otherwise noted.
10. This Specific Purpose Sketch does not represent a field boundary survey.

NOTE:  
This Survey Map is not full and complete without the attached Survey Report.

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Item/Segment No.: 4152302  
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Sheet 2 of 3 Sheets

Specific Purpose Survey Report to illustrate a legal description of a Portion of Palm Avenue, Island of Key West, Monroe County, Florida, authored by the undersigned

**LEGAL DESCRIPTION:** A parcel of land on the Island of Key West, Monroe County, Florida, and known as a portion of Palm Avenue as shown on Florida DOT Map titled "Road No. 90500-2604" Sheet Number 2, said parcel being more particularly described by metes and bounds as follows:

**COMMENCE** at the intersection of the centerlines of Pearl Street and Newton Street (also known as Rawson Street), according to the plat of the Estate of Benjamin Albury's Subdivision of Part of Tract 7, as recorded in Plat Book 1, Page 3, of the Public Records of Monroe County, Florida; thence bear N53°46'37"E along the centerline of said Newton Street and Northeasterly extension thereof for a distance of 250.44 feet to the Northeasterly right of way line of Eisenhower Drive (as constructed), said right of way line also known as Salt Pond or Bay Road; thence N34°04'23"W and along the said Northeasterly right of way line of Eisenhower Drive (as constructed) for a distance of 189.02 feet to the Southeasterly right of way line of Palm Avenue; thence N53°46'37"E and along the said Southeasterly right of way line of Palm Avenue for a distance of 6.50 feet to the Point of Beginning; thence continue N53°46'37"E and along the said Southeasterly right of way line of Palm Avenue for a distance of 91.73 feet; thence S81°26'23"E along the Southerly right of way line of the said Palm Avenue for a distance of 150.55 feet; thence N13°39'45"E for a distance of 26.47 feet; thence N70°54'29"W for a distance of 5.80 feet to a curve, concave to the Northeast and having for its elements a radius of 70.00 feet and a central angle of 41°20'15"; thence Northwesterly along the arc of said curve for a distance of 50.50 feet to a point of reverse curvature with a curve concave to the Southwest and having for its elements a radius of 40.00 feet, a central angle of 29°52'13", a Chord distance of 20.62 feet, and a Chord Bearing of N44°30'20"W; thence Northwesterly along the arc of said curve for a distance of 20.85 feet to the end of said curve; thence N81°30'59"W for a distance of 177.55 feet; thence S34°16'27"W for a distance of 22.27 feet; thence S06°59'55"W for a distance of 23.49 feet; thence S03°05'41"W for a distance of 14.08 feet; thence S09°01'45"E for a distance of 41.43 feet; thence S21°44'59"E for a distance of 37.94 feet back to the said Southeasterly right of way line of Palm Avenue and the Point of Beginning, containing 17,933 square feet, more or less.

**SPECIFIC PURPOSE SURVEY FOR:** Garrison Bight Marina;

J. LYNN O'FLYNN, INC.

J. Lynn O'Flynn, PSM  
Florida Reg. #6298

March 18, 2010

June 30, 2010 -- Revised

October 29, 2010 -- Revised

**NOTE:**

This Survey Report is not full and complete without the attached Survey Map.

J. LYNN O'FLYNN, Inc.



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PSM #6298

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Florida Department of Transportation  
District VI  
Item/Segment No.: 4152302  
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Sheet 3 of 3 Sheets