

In Re: Slip #1, Bonita Pier,
Garrison Bight Marina;
The City of Key West & Chianya, LLC
June , 2014

SETTLEMENT AGREEMENT

THIS AGREEMENT, entered into by and between The City of Key West, hereinafter (CITY), as property owners of Slip #1, Bonita Pier, Garrison Bight Marina in Key West, Florida, hereinafter (PROPERTY) and Chianyai, LLC, hereinafter (TENANT), regarding the issuance of a commercial dockage agreement at the referenced PROPERTY, in consideration of forbearance of rights and remedies of CITY and TENANT regarding the potential claims including, but not limited to: eviction, tenancy at will or tenancy at sufferance, and in lieu of proceeding in the aforementioned potential causes of action and defenses, the parties enter into the following settlement agreement to be considered and approved by The City Commission for the City of Key West:

RECITALS

WHEREAS, City and Harvey Johnson entered into a dockage agreement for PROPERTY in 1998 for a term of ten years, and;

WHEREAS, TENANT entered into a purchase and sale agreement with Johnson for floating structures and other good and valuable consideration as a restaurant without first obtaining the requisite approvals from CITY for an assignment, and;

WHEREAS, the parties recognize that major improvements have been made to the aforementioned goodwill; now being operated as "Thai Life Floating Restaurant" to the detriment and assumed risk of TENANT without said legally sufficient assignment, and;

WHEREAS, CITY has expended many hours of staff time in numerous meetings and research concerning the unpermitted assignment, and;

WHEREAS, CITY has the discretion and ability to award a commercial dockage agreement to TENANT pursuant to Section 2-941(c) of the Code of Ordinances for the City of Key West, if, upon recommendation of the city manager, it is determined that doing so would be in the best financial interests of the City of Key West to waive the bidding process for PROPERTY, and;

WHEREAS, in furtherance of this declaration pursuant to Section 2-941(c), CITY determines that PROPERTY is best used as a berth for a floating commercial structure due to its navigational constraints on the south side of slip #1, and;

WHEREAS, in furtherance of this declaration pursuant to Section 2-941(c), CITY recognizes the significant improvement made to the Garrison Bight Marina overall by the contribution that Thai Life Floating Restaurant makes to the commercial fabric of Garrison Bight, and;

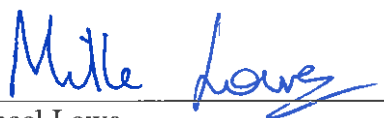
WHEREAS, Chianyai, LLC, recognizes that CITY asserts it has a valid recorded lien to the benefit of CITY regarding code compliance violations against the prior tenant at slip #1; Harvey Johnson, totaling approximately \$1,136,550.00. The parties understand that the aforementioned lien will be prosecuted to the fullest extent of the law pertaining to said prior tenant, for which CITY will not waive or reduce.

NOW, THEREFORE, in consideration of the mutually negotiated promises, covenants, and obligations in this Settlement Agreement, the parties reach a final settlement as set forth below:

AGREEMENTS

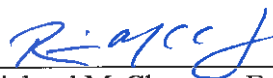
1. CITY stipulates to the city manager's findings, pursuant to Sec. 2-941(c), that slip #1 at Bonita Pier, Garrison Bight Marina is so uniquely situated so as to render it substantially unnavigable for commercial charter vessels typical of Garrison Bight.
2. CITY agrees to offer TENANT a ten-year Commercial Dockage Agreement attached hereto as Exhibit 1 for slip #1, Bonita Pier, Garrison Bight as permanently moored floating structures.
3. TENANT agrees to reimburse CITY of all costs incurred in negotiating this lease as good and valuable consideration, as well as partial reimbursement of the litigation costs incurred in circuit court case number CA-K-06-740 in the amount of Ten Thousand Dollars (\$10,000.00). Payment shall be made within 10 days of the signature of the city manager below.
4. CITY does not waive its rights under law to the aforementioned lien.
5. Each of the Parties to this Settlement Agreement shall bear its own attorney's fees and costs, not otherwise reimbursed by TENANT herein, including the preparation and performance of this Settlement Agreement.
6. Failure by any Party to enforce any provision of this Settlement Agreement shall not be construed as a waiver by such Party of any provision, nor in any way affect the validity of this Settlement Agreement or any part thereof. If any provision of this Settlement Agreement is determined to be invalid or unenforceable for any reason by a court of competent jurisdiction, then such provision shall be treated as severed from the remainder of this Settlement Agreement and shall not affect the validity and enforceability of all the other provisions of this Settlement Agreement as long as such severance does not materially change the Parties' rights and obligations.

7. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute the same agreement.
8. Pursuant to Resolution No.: _____, The City Commission for the City of Key West authorizes the city manager to execute all documents consistent with this settlement agreement with the advice and consent of the city attorney.



Michael Lowe
Individually, and on behalf of Chianyai, LLC

Date: 6/26/14



Richard McChesney, Esq.
Attorney for Michael Lowe/ Chianyai, LLC

Date: 6/26/14

James K. Scholl
City Manager
The City of Key West

Date: _____

Ronald J. Ramsingh, Esq.
Assistant City Attorney
The City of Key West

Date: _____