

RESOLUTION NO. 03-362

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED FORM OF LEASE FOR THE LIVEBOARD TENANTS OF THE CITY MARINA AT GARRISON BIGHT; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Key West Port Advisory Board reviewed and approved a revision to the Garrison Bight liveboard lease at its meeting of September 10, 2003.

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

Section 1: That the attached form of lease for the liveboard tenants of the City Marina at Garrison Bight is hereby approved.

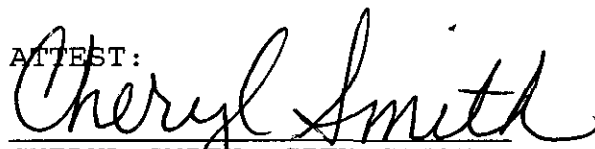
Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 21 day of October, 2003.

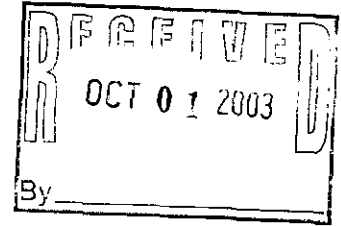
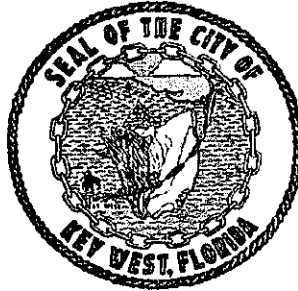
Authenticated by the presiding officer and Clerk of the Commission on October 22, 2003.

Filed with the Clerk October 22, 2003.

ATTEST:


CHERYL SMITH, CITY CLERK


JIMMY WEEKLEY MAYOR



Executive Summary

To: Julio Avel, City Manager
From: Alan D. Cradick, City Marina Supervisor *ADC*
Date: September 19, 2003
Subject: Proposed changes to Key West City Marina Liveaboard Dockage Agreement

Project Issue

In order to better protect the interests of the City of Key West and the liveaboard tenants of Key West City Marina at Garrison Bight, the following amendments to the live aboard dockage agreement are proposed. Tenants of the marina and Port Operations staff proposed these changes jointly. The City Attorney has reviewed the proposed changes and this amended document has been reviewed and approved by the Port Advisory Board at their September 10, 2003 meeting.

Paragraph 14 – Language added, “LESSEE also understands and agrees that the vessel shall be owner occupied for a period of two years before a transfer of this Agreement can occur, unless there is a hardship as determined by the City Manager or his designee when LESSEE applies for Consent to Assignment.” The intent of this addition is to restrict speculative buying of homes in City Marina. The quick turn around of homes has artificially inflated home values and is changing the nature of this neighborhood. This compromise allows for owners to realize some increase in the value of their homes while keeping City Marina an affordable place for the Citizens of Key West to live.

Paragraph 14 – Language added, “If consent from LESSOR through its City Manager or his designee is not obtained prior to transfer of vessel or floating structure, LESSEE is still obligated under this Agreement and LESSOR is not obligated to consent to assign or transfer the leased space. The granting of a power of attorney by LESSEE or transfer to a trust, corporation, guardianship, or other similar entity by LESSEE shall be considered a sale.” This provision will allow the City to review prospective tenants to assure that anyone moving into City Marina will have the resources to pay dockage and does not have any properties in City Marina

That would violate the terms and conditions of the dockage agreement. The stipulation that a power of attorney shall be considered a sale protects the City from absentee ownership and the renting of these homes, which is prohibited by the dockage agreement.

Paragraph 15 – The change from “Dockmaster” to “Marina Supervisor” is intended to ensure that all correspondence regarding the terms and conditions of the lease are handled promptly and any action taken regarding the lease properly documented.

Paragraph 20 – “Regulations and ordinances” has been added to reflect recent City Ordinances enacted to prevent the dumping of sewage into the waters of the City of Key West.

Paragraph 22 – “Unless the heir(s) is an original co-signer of this Lease, the heir(s) shall not be entitled to renew the tenancy or take advantage of the terms of Paragraph 14 hereof, and the slip shall revert to the public,” has been stricken from the document and in its place, “In the event of the death of the LESSEE, this Lease shall remain in the estate or pass to the heir(s) only until the expiration of the Lease term or for six (6) months, whichever is longer. Payment terms and all other terms of the Agreement will remain in effect. During this time period, the estate or the heir(s) may apply for Consent to Assignment to another party according to paragraph 14 of this Agreement. If one of the heirs, acting in his or her sole capacity, qualifies for the tenancy, and desires to become the owner and occupant of the boat under the same terms and conditions as the LESSEE, he/she shall apply for Consent to Assignment under Paragraph 14. Group, timeshare, or corporate ownership with multiple occupants, tenants, users or transient use shall not be allowed,” has been inserted. This provision allows a reasonable time for the heir(s) to advertise and sell the home, or, if qualified, a single heir may apply for Consent to Assignment and the City may enter into a lease with the heir. No use, which violates any portion of this lease, will be permitted.

Options

Make no changes to the Liveaboard Dockage Agreement.

Accept all or any portion of the changes proposed jointly by the liveaboard tenants and Port Operations staff.

Advantages/Disadvantages

Advantages

- Slows gentrification/profitteering in one of the City's remaining affordable neighborhoods.
- Guarantees fair treatment of heirs in the event of the death of lease holder.
- Requires Consent to Assignment prior to sale.
- Consent to Assignment provides City with assurance that incoming lessee has the resources to maintain the home and lease.
- Prevents the assignment of lease to a third party, who may violate provisions of the lease.

Disadvantages

- Consent to Assignment may add to administrative task to City.

Financial Issues


None, these changes do not affect the dockage rates or add to fees charged to City Marina liveaboard tenants.

Recommendation

It is recommended that the proposed changes be enacted. These changes will benefit the City and the liveaboard tenants of City Marina.

**CITY OF KEY WEST
OFFICE OF THE CITY ATTORNEY**

MEMORANDUM

To: Julio Avel, CityManager
From: Susan Grimsley, Assistant City Attorney 
Date: October 8, 2003
Re: Change to Paragraph 7 Garrison Bight Liveaboard Lease

Section 328.17 of the Florida Statutes, governing the non-judicial sales of vessels for unpaid storage charges and repairs was changed, effective July 2003. The procedures and notice need not be in the lease or storage agreement, nor do they have to be in bold print as formerly required by statute.

Although there is no longer any requirement to put this provision in the lease, the new Paragraph 7 puts tenants on notice of the statute.

The major change in the statute is that a possessory lien attaches at the time the services are provided, which is different from the former six (6) month waiting period for the lien process to begin. However, there is a 120 day notice period in which the owner may pay the costs and retain ownership of the vessel. This is still a complex procedure requiring notice to owners, first lien holders, giving proper notice of the sale and specific requirements for the sale itself.

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Key West

City Marina

AT GARRISON BIGHT

Liveaboard Dockage Agreement

THIS LEASE AGREEMENT made and entered into this ____ day of _____, 200__, by and between CITY OF KEY WEST, ("LESSOR") whose address is 525 Angela Street, Key West, FL 33040-1409, and XXX whose address is XXX ("LESSEE"). In consideration of the premises hereinafter contained, and other good and valuable consideration, it is mutually agreed as follows:

1. This Lease is for a term of ____ months [Dockmaster shall insert term of one year or period of months not to exceed one year.] The LESSEE agrees to pay the LESSOR for pier slip space, at offices of LESSOR, as rental for:

Slip Number(s): XXX Pier: XXX Name of vessel: XXX

Doc./Reg./Number: XXX

Overall Length: XXX Beam: XXX Draft: XXX Gas or Diesel: XXX

Vessel Type: XXX Builder: XXX Year: XXX

Lien Holder: XXX Address: XXX

Insurance Carrier/ Policy No.: XXX Address: XXX Phone: XXX

Owner: XXX Additional Owner: XXX

Additional Mailing Address other than above: XXX

Phone: XXX Cell Phone: XXX Business Phone/Other: XXX

Military Status of Lessee: XXX Place of Employment: XXX

Person/Tel. No. to contact in case of emergency if Lessee is unavailable: XXX

LESSEE agrees to provide written notice of any change in any of the information furnished

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by LESSEE in this Agreement prior to, but no later than 10 days of the change.

2. LESSEE'S rental shall be \$XXX per month, plus applicable sales tax of \$XXX for a total of \$XXX. The rental amount includes the following utilities: **Sewer/solid waste removal.** Payments are due on the first day of each calendar month. LESSOR shall charge a fifteen percent (15%) penalty for late payment or proceed to eviction as provided in paragraph 8. Excessive late payments, which shall be defined to mean more than three (3) in one (1) lease year, shall be cause for non-renewal of the Agreement as a material breach in accordance with paragraph 8 below. LESSOR may charge additional sums for unpaid rental or proceed to eviction as provided in paragraph 8 hereof. Returned checks will be assessed the amount provided in Florida Statutes Section 166.251. In the event this Lease is renewed, and as long as this Lease shall remain in effect, the annual rental payment for each successive year shall be adjusted, at the commencement of each such lease year, by increasing the base annual rent by any change in the U.S. Department of Commerce Consumer Price Index (CPI) for All Urban Consumers as reported by the Bureau of Labor Statistics.
3. LESSEE acknowledges that he or she has inspected the berthing space described herein and satisfied himself or herself that the berthing space is adequate for safe mooring and/or storage of his/her vessel. This contract is not a bailment of the boat owner's boat but a lease of berthing space, and LESSOR liability is limited to supervision and maintenance of LESSOR'S property. LESSOR's employees will make reasonable efforts to contact boat owner and notify him or her of dangerous conditions requiring his attention. LESSOR assumes no responsibility for tending mooring lines or moving boats from the berths to which they are assigned. Furthermore, the LESSEE may dock a second boat or dinghy in the slip so long as: (1) this second vessel is less than twelve (12) feet in length; and (2) in the opinion of the Dockmaster the slip can safely accommodate this second vessel.
4. LESSEE shall arrange for electrical power and water from the appropriate utility. LESSEE agrees to pay for utility service in accordance with the schedule of charges set by each utility. Nonpayment of any correctly billed utility charge shall be considered a material breach of this Agreement and shall be grounds for termination and eviction pursuant to paragraph 8.
5. LESSEE shall not do any repair work on LESSEE's vessel while at berth other than routine maintenance; provided however, that such maintenance repairs shall not result in damage to floats, piers and adjacent vessels. All such repair work shall conform to the City Building Code as it pertains to floating structures, including use of Building Permits, where applicable. LESSEE shall clean up all rubbish and litter resulting from such repairs. LESSEE and his/her guests shall also refrain from any noise or disorderly conduct or any conduct which shall be annoying or disturbing to the other boat owners at

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- the LESSOR's Marina premises. No work shall be done on dock, nor shall materials be stored on dock.
6. Any moneys owed LESSOR shall be a direct lien against the vessel and continuing lien wherever the vessel is located. If the person signing this agreement has directed billing for charges hereunder to be transmitted to another person, firm or organization which, upon so being billed, has failed to make payment, then the person so signing shall, upon demand, promptly pay the charges.
7. ~~FLORIDA STATUTES SECTION 328.17: IN THE EVENT THE LESSEE FAILS TO PAY THE AGREED RENTAL STATED ABOVE, AND NON-PAYMENT CONTINUES FOR A PERIOD OF SIX (6) MONTHS, LESSOR SHALL BE AUTHORIZED TO SELL THE VESSEL AT A NON-JUDICIAL SALE AND SHALL COMPLY WITH THE FOLLOWING CONDITIONS:~~
- ~~A. LESSOR SHALL, BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, SEND NOTICE OF SALE TO LESSEE AND ANY RECORDED LIEN HOLDER REGISTERED WITH THE STATE OF FLORIDA AT THE ADDRESS LISTED ABOVE, AT LEAST THIRTY (30) DAYS PRIOR TO THE PROPOSED SALE DATE.~~
- ~~B. LESSOR SHALL PUBLISH NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY AT LEAST TEN (10) DAYS PRIOR TO THE SALE WHICH INDICATES THE TIME AND PLACE OF THE SALE, DESCRIPTION OF THE BOAT OR VESSEL AND AN ANNOUNCEMENT THAT THE SALE WILL BE A PUBLIC SALE AT AUCTION TO THE HIGHEST BIDDER.~~
- ~~C. THE BOAT OR VESSEL MAY BE SOLD AT ABSOLUTE AUCTION.~~
- ~~D. LESSOR SHALL DEPOSIT BOAT SALE PROCEEDS WITHIN 72 HOURS OF THE SALE WITH THE CLERK OF THE CIRCUIT COURT FOR MONROE COUNTY IN CONFORMANCE WITH SECTION 328.17(5), FLORIDA STATUTES.~~
7. LESSOR shall be entitled to exercise its rights under Section 328.17 of the Florida Statutes in regard to a possessory lien and the non-judicial sale of vessels which may be held for unpaid costs, storage charges, dockage fees, and any other fees allowed by law.
8. This Agreement shall be governed by Chapter 83 of the Florida Statutes, the Landlord and Tenant Law. LESSOR shall be entitled to a right of possession of its slip in the event of a failure to make all payments due hereunder in a timely manner, or for a material

breach of any of the covenants or provisions of this Lease. In the event of such default and termination, LESSOR shall provide LESSEE with notice as set forth in Chapter 83. In addition, LESSOR may terminate the lease upon thirty (30) days' notice (or sooner in the case of emergency) in the event that the dock or mooring facility becomes unserviceable for any reason. In the event LESSOR otherwise determines not to renew the tenancy, it shall provide LESSEE both thirty (30) days' notice and the option of a hearing before the Port Advisory Board.

9. If it is necessary for LESSOR to collect any charges or fees under this Agreement through an attorney, or enforce any obligations owed hereunder through an attorney, LESSEE agrees to pay all costs of collection or enforcement, including reasonable attorney's fees.
10. LESSEE agrees to be responsible to LESSOR and pay for any and all loss or damages to piers, floats or other City facilities caused by LESSEE, his or her agents, servants and/or employees whether caused by negligence or not, and further to defend and hold LESSOR, its agents and employees, harmless for any of the foregoing. This indemnification shall survive the expiration or termination of this Lease.
11. This Agreement is for berthing space only, and such space is to be used at the sole risk of LESSEE. LESSEE hereby agrees that LESSOR shall not be liable for the care, protection or security of the vessel, its appurtenances or contents, or of any of LESSEE'S personal property, guests, passengers or invitees, or for any loss or damage of any kind to the same due to fire, theft, vandalism, collision, equipment failure, windstorm, hurricane, rains or other calamities. LESSEE agrees that there is no warranty of any kind as to the condition of the docks, piers, walks, gangways, ramps, mooring gear or electrical and water services, and that LESSOR is not responsible for injuries to persons or property occurring on LESSOR's property. LESSEE, personally and for his or her family, heirs, and assigns, hereby releases and agrees to hold LESSOR harmless from all liability to same for personal injury, loss of life, and property damage beyond normal wear and tear. LESSEE, personally and for his or her family, heirs, and assigns agrees to indemnify LESSOR for all liability to LESSEE, its family, heirs, assigns, agents, employees, invitees and guests caused by fault of LESSEE. This release and indemnification shall include, but not be limited to (1) acts in connection with LESSEE's vessel, motors and accessories while it is on or near LESSOR's property including the rent space, or while it is being moved, docked, hauled or launched; (2) accessories and contents or other personal property due to fire, theft, vandalism, collision, equipment failure, windstorm, rain or hurricane or any other casualty loss; and (3) causes of action arising out of the use of any adjacent pier or docking facilities or walkways giving access thereto. LESSEE further agrees to indemnify LESSOR for all damages or losses caused by or arising from fault of LESSEE'S vessel and appurtenances, personal property, guests, passengers, family or invitees. The indemnification provided herein shall include, but not be limited to all costs, expenses

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and attorney's fees, including appellate attorney's fees, reasonably incurred by LESSOR based on the foregoing; provided, however, that LESSOR shall give LESSEE written notice of any such claim within time reasonably to allow LESSEE to appear and defend or pay and discharge such claim. At its option, LESSOR may defend against such claims and by so doing shall not waive or discharge LESSEE from its obligations to defend and indemnify as herein contained. This indemnity shall survive the termination of LESSEE's leasehold.

12. Except as provided herein, LESSEE shall purchase and maintain, at a minimum, a \$300,000 liability policy on LESSEE's boat or vessel described herein. LESSEE understands and agrees that LESSOR is in no way liable for any of the foregoing and the purpose of this clause is to insure that LESSEE carries his or her own insurance. LESSEE shall name the LESSOR as an additional insured on the insurance policy for the vessel for the purposes of notification only. In lieu of providing the insurance coverages as set forth herein, LESSEE may execute a personal guarantee of self-insurance, on a form provided by LESSOR.
13. LESSOR shall be entitled to a lien for unpaid sums due for the use of dock facilities or services or for damages caused to any docks or property of LESSOR, and for any labor or services of any kind, on, to or for the use or benefit of, the boat or vessel of LESSEE described herein, its appurtenances and contents, and LESSEE expressly grants LESSOR a lien therefor in addition to other remedies and liens provided by Florida Statutes, and/or common law admiralty.
14. Except as provided herein, this Agreement shall not be assigned and the slip shall not be sublet or rented by LESSEE to a third party. LESSEE understands and agrees that his or her vessel shall be owner-occupied. LESSEE also understands and agrees that the vessel shall be owner-occupied for a period of two years before a transfer of this Agreement may occur, unless a hardship is determined by the City Manager or his designee upon application for a Consent to Assignment. In the event of a proposed sale of the vessel, the LESSEE ~~may~~ shall apply to the LESSOR's City Manager for a Consent to Assignment. In such event, LESSEE shall provide LESSOR a copy of the proposed sales contract. If consent from LESSOR through its City Manager or his designee is not obtained prior to transfer of vessel or floating structure, LESSEE is still obligated under this Agreement and LESSOR is not obligated to consent to assign or transfer the leased space. The granting of a power of attorney by LESSEE or transfer to a trust, corporation, guardianship, or other similar entity by LESSEE shall be considered a sale. In consideration of the value of the LESSOR's slip under this Lease, the LESSEE or the prospective new owner shall pay to the LESSOR the sum of \$5,000.00 in order to reserve the slip for the continued use of the vessel. The check or money order shall be made payable to "The City of Key West" and be paid simultaneously with the execution of a

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new Lease Agreement for the new owner. The LESSOR makes the following reservation of rights: (1) the right to evict the vessel if the terms of this Paragraph ~~15~~—14 are not fulfilled; (2) the right to evict the vessel if the new owner assumes tenancy prior to executing a new Lease; and (3) the right to refuse continued use of the slip by a vessel if its proposed new owner has been evicted by the LESSOR either at the City Marina or at the Key West Bight Marina.

15. Written notice mailed or delivered to the premises assigned hereunder or to LESSEE's address as shown above or posted either on the vessel or dockside adjacent to the vessel shall constitute sufficient notice to LESSEE and written notice mailed or delivered to the ~~Dockmaster~~ Marina Supervisor shall constitute sufficient notice to LESSOR concerning the terms of this Agreement. LESSEE agrees that delivery of notice hereunder shall be considered accomplished regardless of whether delivery to LESSEE's address given herein is accepted and regardless of the identity of any person accepting delivery.
16. **LESSEE agrees to comply with all federal, state and local laws pertinent to any subject matter of this Agreement, including but not limited to those pertaining to marinas and boating; and to comply with all City Marina rules and regulations, including those attached hereto, which are by reference made a part hereof.** LESSEE further agrees to comply with changes, additions, or deletions to City Ordinances and Marina rules and regulations as adopted at public hearing during the term of this Lease. Upon failure of LESSEE to comply with any such laws, rules or regulations, or to pay the rental herein above provided, this Agreement may be terminated, and LESSOR may remove the vessel from her mooring space at LESSEE's risk and expense and may take possession of the space, as a penalty. LESSOR has the right to remove a vessel from the Marina during any emergency situation or catastrophe.
17. LESSEE agrees to advise the LESSOR of any legal change of ownership of the above described vessel, while subject to this Lease; and of any change in any of the information furnished by LESSEE in this Lease, prior to, but no later than 10 days of such change; provided, however, that a change of ownership arising from an arm's length sale of the vessel is subject to the conditions of Paragraph 14. The person signing below does hereby certify that he/she is the lawful Owner of the vessel herein above described or is authorized to subject such vessel to provisions of this Lease.
18. No refuse or garbage shall be thrown overboard. All garbage and trash shall be placed in the dumpsters and recycling bins provided.
19. Where applicable, LESSEE shall comply with the City's Floating Home Code, Section 14-181 *et seq.* of the Key West Code of Ordinances, and other City regulations relating to safety of structures.

20. The LESSEE shall not dump sewage in marina waters under penalty of immediate eviction and prosecution in a court of law. LESSEE shall comply with Chapter 82 of the Code of Ordinances regarding the operation of the No Discharge Zone of the City of Key West's jurisdictional waters. LESSOR may decline to rent a slip or renew a lease for a slip to any person who has been convicted of a violation of the No Discharge Zone regulations or ordinances; provided, however, that such person shall be entitled, upon request, to a hearing before the Port Advisory Board to review LESSOR's decision.

21. In the event any portion of this Lease shall be deemed to be in violation of any law of the United States or any law of the State of Florida, that portion, and that portion only, shall be deemed null and void, and the balance of this Lease shall remain in full force and effect. This Lease shall be interpreted in accordance with the laws of the State of Florida and the laws of the United States.

22. LESSEE agrees that part ownership of the vessel does not in any way create for LESSOR any obligation to furnish dockage space to any partner other than the original signer of this Lease, or to any vessel other than that described herein, whether or not the partnership is dissolved for any reason whatsoever. In the event of dissolution of a partnership, or the withdrawal of a part-owner, until notice to LESSOR is given thereof, all parties shall be bound by the terms of this Lease and be obligated for the payment of all sums due, and for the strict performance of all its covenants and conditions. In the event of the death of the LESSEE, this Lease shall remain in the estate or pass to the heir(s) only until the expiration of the Lease term or for six (6) months, whichever is longer. Payment terms and all other terms of the Agreement will remain in effect. Unless the heir(s) is an original co-signer of this Lease, the heir(s) shall not be entitled to renew the tenancy or take advantage of the terms of Paragraph 15 hereof, and the slip shall revert to the public. During this time period, the estate or the heir(s) may apply for a Consent to Assignment to another party according to paragraph 14 of this Agreement. If one of the heirs, acting in his or her sole capacity, qualifies for the tenancy, and desires to become the owner and occupant of the boat under the same terms and conditions as the LESSEE, he/she shall apply for a Consent to Assignment under Paragraph 14. Group, timeshare, or corporate ownership with multiple occupants, tenants, users or transient use shall not be allowed.

23. Prior to exercising any rights whatsoever pursuant to the terms of this Lease, LESSEE shall furnish to LESSOR for its review an original or certified copy of proof of ownership of the vessel. This proof shall consist of either a state-registered title to the vessel or documentation by the U.S. Coast Guard or foreign sovereign. In the case of a floating home, LESSEE shall provide LESSOR with a personal property tax receipt in order to show proof of ownership.

24. The person signing below as LESSEE does hereby certify that the description of the above vessel is correct and that he/she is the registered, lawful owner of the vessel, or authorized to subject the

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vessel to all provisions of this Lease, including but not limited to those providing for liens against it. The person signing on behalf of the LESSOR is duly authorized to execute this Lease by the City Manager of the City of Key West.

25 This Lease shall constitute the entire agreement between the parties. No amendment or modification of any terms or conditions contained herein shall be effective unless in writing signed by the parties. No waiver of a breach of any of the covenants contained in this Lease shall be construed to be a waiver of any succeeding breach. Time is of the essence with respect to all particulars of this Lease. If any provision of this Lease is determined by a court of law to be unenforceable, the remaining provisions shall not be impaired thereby, and this Lease shall be interpreted, as near as possible, to achieve its intent. This Lease shall be governed by the laws of the State of Florida.

Executed this _____ day of _____, 200__..

LESSEE

LESSEE (print name)

Signature & Date

LESSEE (print name)

Signature & Date

WITNESS(print name)

Signature & Date

LESSOR

Raymond Archer
Director/ Port Operations
Date: _____

Account Number: XXX

Received the sum of \$XXX

*Two month deposit: \$ XXX *Refundable with interest at termination of Agreement, (less any applicable deductions for damages and unpaid rent).

Dockage Code: B275 Amount: \$ XXX

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Utility Code: U275 Amount: \$ 25.63

Sewer Code: SWR Amount: \$ 19.53

7.5% tax: ST 413 Amount: \$ XXX

TOTAL MONTHLY BILLING \$ XXX

Marina Supervisor

Slip No. XXX is XXX feet Long.

City Marina Liveaboard Dockage Agreement 10/01/2003