

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.

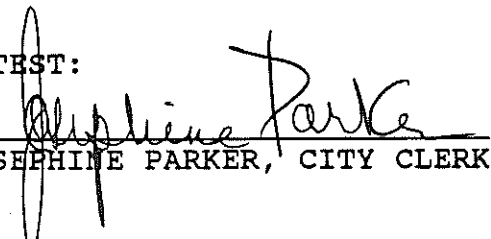
Passed and adopted by the City Commission at a meeting held this 17th day of NOVEMBER, 1998.

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

Filed with the Clerk NOVEMBER 20, 1998.

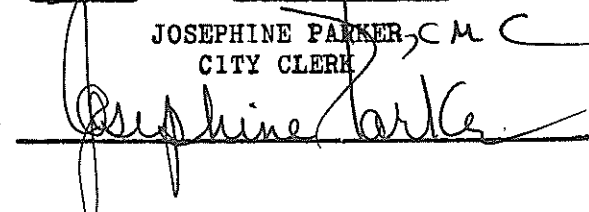

SHEILA K. MULLINS, MAYOR

ATTEST:


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, CM C
CITY CLERK
By 

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 by 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

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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.

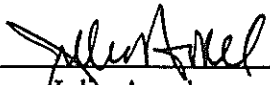
Headings labeling any provisions herein are for convenience only, and shall not in any way be construed as affecting, limiting, expanding, or stating the contents, meaning, or intent of this Agreement.

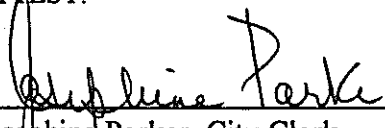
22. Entire Agreement.

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.

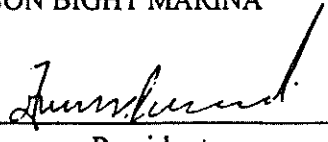
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

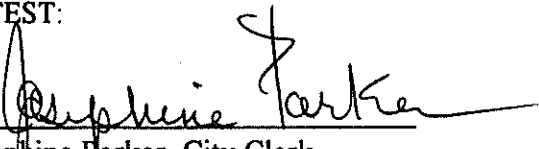
CITY OF KEY WEST, FLORIDA

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)

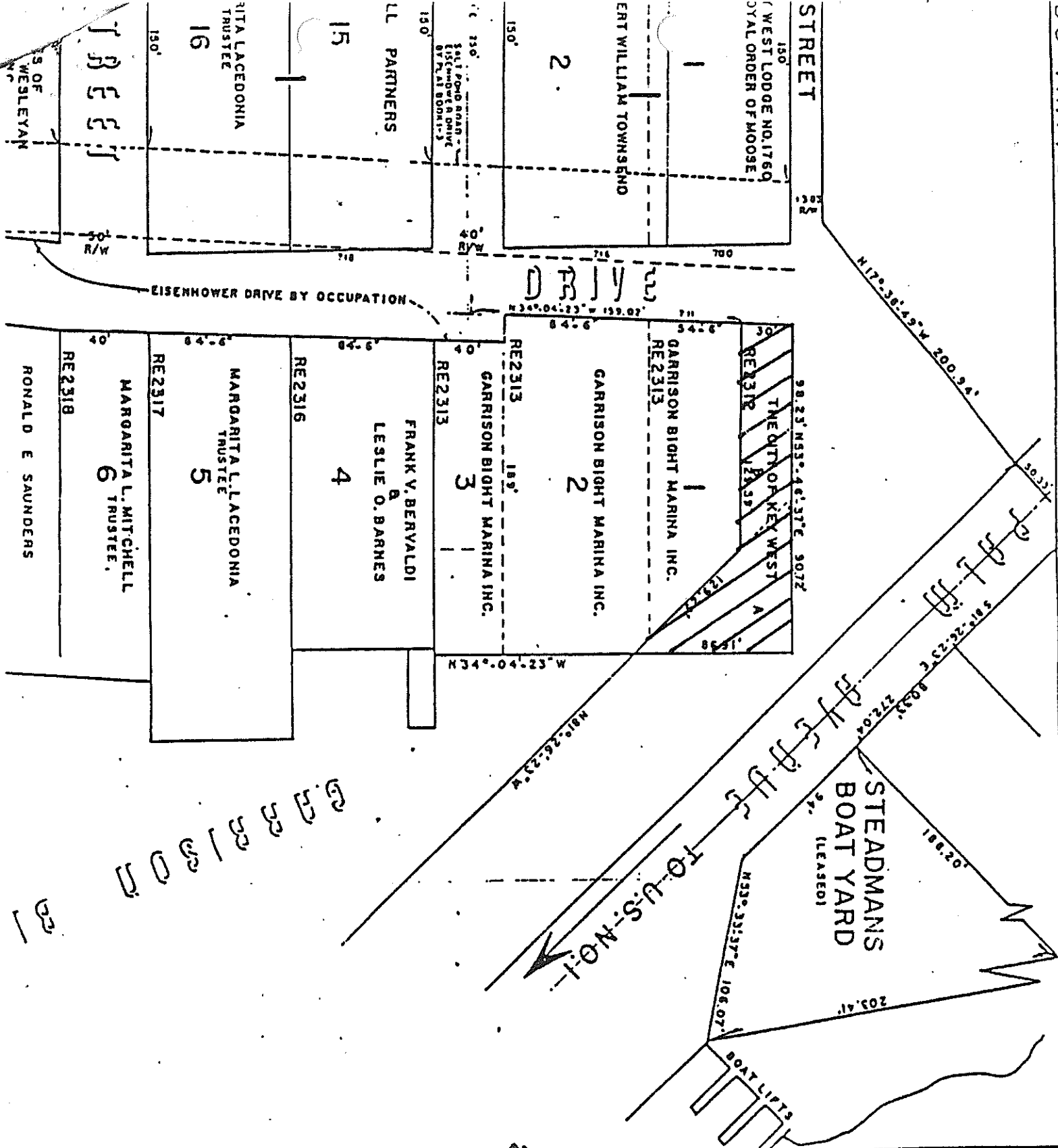
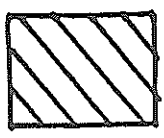


Exhibit A



LEASED AREA