

RESOLUTION NO. 16-062

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED FORM OF "CHARTERBOAT DOCKAGE AGREEMENT - CITY MARINA AT GARRISON BIGHT" (FIVE-YEAR TERM); APPROVING AN ANNUAL RENT ADJUSTMENT OF CPI; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, City staff engaged in negotiations with the Charter Boat Association (CBA) to establish mutually beneficial terms and conditions included in the "Charterboat Dockage Agreement - City Marina at Garrison Bight;" and

WHEREAS, City staff recommends approval by the City Commission of the attached form of lease, including an annual rate increase of CPI.

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 "Charterboat Dockage Agreement - City Marina at Garrison Bight," for a term of five years, is hereby approved.

Section 2: That the Charterboat Dockage Agreement shall include an annual rate adjustment of CPI.

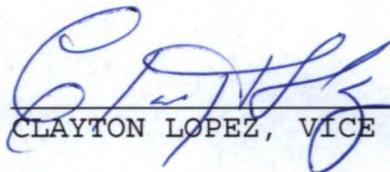
Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 17 day of February, 2016.

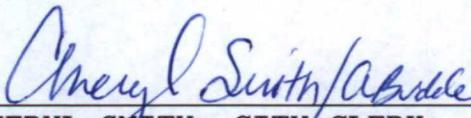
Authenticated by the Presiding Officer and Clerk of the Commission on 18 day of February, 2016.

Filed with the Clerk on February 18, 2016.

Mayor Craig Cates	<u>Absent</u>
Vice Mayor Clayton Lopez	<u>Yes</u>
Commissioner Sam Kaufman	<u>Yes</u>
Commissioner Richard Payne	<u>Yes</u>
Commissioner Margaret Romero	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Absent</u>

  
\_\_\_\_\_  
CLAYTON LOPEZ, VICE MAYOR

ATTEST:

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



## THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

### EXECUTIVE SUMMARY

**TO:** Jim Scholl, City Manager

**FROM:** Doug Bradshaw, Port and Marine Services Director

**CC:** Sarah Spurlock, Assistant City Manager  
Greg Veliz, Assistant City Manager

**DATE:** February 11, 2016

**SUBJECT:** Approval of a five (5) year Charterboat Dockage Agreement at City Marina at Garrison Bight

**ACTION STATEMENT:**

Approval of a five (5) year Charterboat Dockage Agreement at City Marina at Garrison Bight

**BACKGROUND:**

In August 2015, the City began working with the Charter Boat Association (CBA) along with their attorney Cara Higgins on a new five (5) year Charterboat Dockage Agreement between the City of Key West and the 34 charter boats at City Marina at Garrison Bight. There is a mixture of charter boat sizes with a majority being off shore boats averaging 35 feet, two (2) head boats averaging 60 feet, and seven (7) light tackle boats averaging 28 feet. The current agreement expired on September 30, 2015 and the City and the charter boats are operating on a month-to-month lease. The new lease addresses several concerns that both the City and the CBA had with the previous lease. Major concerns that were addressed include rate increase, collection of advertising fee, maintenance of docks, dock storage, signage, and charter booking.

Major Provisions of the lease:

- Proposed start date: March 1, 2016 with a base rate increase of 0.2% (CPI) to \$19.11 per foot. Current rate is \$19.07 per foot
- Five (5) year lease
- Annual Rate Increase by the average change in the U.S. Department of Commerce Consumer Price Index (CPI) for All Urban Consumers
- \$1 per foot capital improvement assessment
- \$50 per month advertising fee (paid back to CBA quarterly for use in promoting the charterboats)
- Allowance of fish racks and rod storage lockers at each slip
- Allowance of prorated dockage fee if docks become unusable
- A violation section that allows City Manager to impose fines for charterboats that consistently violate the lease

*Key to the Caribbean – Average yearly temperature 77° F.*

WZTHWUWS 306LW03K3

**PURPOSE & JUSTIFICATION:**

The purpose is to approve a five (5) year dockage agreement between the City and charterboats at City Marina at Garrison Bight. This allows not only the City to be able to set their budget annually based on expected revenue but also allows the charterboats to set their budgets based on known expenses.

**OPTIONS:**

1. The City Commission can approve the lease.
2. The City Commission can approve an amended lease.
3. The City Commission can disapprove the lease.

**FINANCIAL IMPACT:**

Currently the marina collects approximately \$300,000 in gross revenue from the Charterboat dockage fee. There will be an increase in the revenue annually of CPI. The annual amount collected for capital improvements is \$13,000. The marina collects \$21,150 in advertising fees but this is paid back quarterly directly to the Charter Boat Association.

**RECOMMENDATION:**

City Staff recommends that the City Commission approve the lease.



CHARTERBOAT DOCKAGE AGREEMENT  
City Marina at Garrison Bight  
1801 North Roosevelt Blvd, Key West, FL 33040  
Telephone: (305) 809-3981  
Email: keywestcitymarina@keywestcity.com

This is a DOCKAGE AGREEMENT between City of Key West ("LESSOR"), 3132 Flagler Ave, Key West, FL 33040, and \_\_\_\_\_ ("LESSEE"), for the dockage of the described vessel on the terms and conditions as hereinafter provided, at City Marina.

**LESSEE:**

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Email: \_\_\_\_\_

**BUSINESS:**

Name: \_\_\_\_\_

Primary Address: \_\_\_\_\_  
Street City, State, Zip

Billing Address: \_\_\_\_\_  
Street City, State, Zip

Business Occupational License #s

City: \_\_\_\_\_ County: \_\_\_\_\_ Other: \_\_\_\_\_

**VESSEL**

Name: \_\_\_\_\_ Make: \_\_\_\_\_ Year: \_\_\_\_\_

Registration Number: \_\_\_\_\_ Color \_\_\_\_\_

Length \_\_\_\_\_ Beam \_\_\_\_\_ Inboard \_\_\_\_\_ Outboard \_\_\_\_\_ Diesel \_\_\_\_\_ Gas \_\_\_\_\_

Draft \_\_\_\_\_ Power \_\_\_\_\_ Sail \_\_\_\_\_ Coast Guard approved head Yes \_\_\_\_\_ No \_\_\_\_\_

**LESSEE'S REPRESENTATIVE: (If Any)**

Name(s): \_\_\_\_\_  
First MI Last Primary Phone



## TERMS & CONDITIONS

**1. Purpose**

In return for rent payments and other valuable consideration and covenants as set out below, LESSOR wishes to provide certain dockage space for the temporary use of LESSEE, who wishes to purchase the right to temporary use of such space through regular rental payments and through faithful performance of the covenants and stipulations herein. The permitted use of said vessel is limited to commercial operations, specifically described as \_\_\_\_\_ and any change in use must be approved by the LESSOR.

**2. Dockage Space**

Said berth is leased for the exclusive purpose of docking the above named vessel and conducting the above-referenced business only. LESSOR reserves the right to relocate Owner's vessel in extraordinary circumstances such as dock maintenance, construction and/or health and safety issues to an alternate location within the Marina at its sole discretion; draft, beam, (width), and overall length will be the determining factors for slip assignments of commercial vessels.

**3. Vessel Substitution**

LESSEE may replace the vessel, subject to the terms and conditions of paragraph 14 of this lease agreement. Such substitution without approval by LESSOR is grounds for immediate lease termination.

**4. Term**

LESSEE'S lease period should be for five (5) years beginning on \_\_\_\_\_, 20\_\_\_\_ and ending on \_\_\_\_\_, 20\_\_\_\_.

**5. Rate Increases**

The base rent is \$\_\_\_\_\_ per foot. LESSEE agrees that the base rental rate shall be adjusted, at the commencement of each fiscal year for the City of Key West by increasing the previous fiscal year rent by the average change in the U.S. Department of Commerce Consumer Price Index (CPI) for All Urban Consumers, as reported by the Bureau of Labor Statistics for the 12 months prior to the renewal date.

**6. Advertising**

LESSEE shall maintain active membership in the Key West Charter Boatmen's Association, Inc. LESSOR will collect \$50 as advertising fees on a monthly basis. LESSOR, on a quarterly basis, will disburse the balance of the funds to the Key West Charter Boatmen's Association, Inc. The Key West Charter Boatmen's Association, Inc. shall provide LESSOR quarterly reports providing an accounting of all advertising fees.

**7. Payments**

Payments are due on the first day of each calendar month. Any lease payment not received by LESSOR by 5:00 p.m. on the 5<sup>th</sup> day of the month will be assessed a fifteen (15) percent penalty charge. Dishonored checks will be assessed a service fee up to the maximum amount provided in section 832.08(5), Florida Statutes, of 5% of the face amount of the check,

whichever is greater. Payment may be made at the City Marina Office, 1801 North Roosevelt Ave Key West Florida, between the hours of 8:00 a.m. and 5:00 p.m. Monday thru Friday, holidays excluded. Payments may be mailed to City Marina at Garrison Bight, P.O. 1409, Key West, Florida, 33041-1409.

**8. Deposit**

LESSOR hereby acknowledges receipt from LESSEE of two month's base rent as a security deposit, forfeitable to LESSOR as partial payment for any damages caused by LESSEE's failure faithfully to observe and perform the terms and obligations of this Agreement. Said deposit shall otherwise be returned without interest to LESSEE upon lawful termination of this Agreement.

**9. Notice to LESSEE**

Written notice mailed or delivered to the premises assigned hereunder or to LESSEE's Business address as shown above shall constitute sufficient notice to LESSEE and written notice mailed or delivered to the Marina Manager/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.

**10. Lien, Attorney's Fees**

LESSEE agrees to pay all costs and expenses, including reasonable attorney's fees, incurred by LESSOR in the collection of any unpaid sums due under this Agreement or by LESSEE's default in performance of any of the conditions or covenants stated herein or in the Key West City Marina Regulations governing the dockage space and adjacent premises. LESSEE agrees that the LESSOR shall have a lien against the vessel, its appurtenances and contents, for such unpaid sums, or for any damage to docks, other vessels or property, or to invitees of the LESSOR caused by LESSEE or the vessel.

**11. Release, Indemnity**

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, storms or other calamities. LESSEE agrees that there is no warranty of any kind as to the condition of the seawall, docks, piers, walks, gangways, ramps, mooring gear or utility services, and that LESSOR is not responsible for injuries to persons or property occurring on LESSOR's property. LESSEE, personally and for its family, heirs, and assigns, and other parties in interest, hereby releases and agrees to hold LESSOR harmless from all liability to them for personal injury, loss of life, and property damage. LESSEE, personally and for its family, heirs and assigns, and other parties in interest agrees to indemnify LESSOR for all liability for personal injury, loss of life, and property damage to LESSEE, family, heirs, assigns, agents, employees, invitees and guests caused by fault of LESSEE, including other guests and vessel/floating homes in the marina. 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 property, including the rented space, or while it is being moved or docked; (2) loss or damage to LESSEE's vessel, motors and accessories and contents or other personal property due to fire, theft, vandalism, collision, equipment failure, windstorm, rain or hurricane or any other casualty loss; and (3) causes of action arising out of the use of any adjacent pier or docking facilities or walkways giving access thereto. 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, including other guests and vessel in the marina. The indemnification provided herein shall include, but not be limited to all costs, expenses and reasonable attorney's fees, including appellate attorney's fees, reasonably incurred by LESSOR; provided, however that LESSOR shall give LESSEE written notice of any such claim within time to reasonably allow LESSEE to appear and defend or pay and discharge such claim. At its option, LESSOR may defend against such claims and by doing so, shall not waive or discharge LESSEE from its obligations to defend and indemnify as herein contained.

#### **12. Condition of Premises**

LESSEE hereby accepts the premises in the condition, order and repair as they are at the commencement of this term, excepting only reasonable wear and tear arising from the use hereof under this Agreement, and to make good to said LESSOR immediately upon demand for damage caused by any act or neglect of the LESSEE, or of any agent, guest, passenger or person under the control of the LESSEE, and the LESSEE shall be liable to the LESSOR and shall forever hold harmless the LESSOR from any and all such damage or loss occasioned to the premises or any of the LESSOR's docks, or any of its properties caused by the acts or negligence of the LESSEE or any agents, employee, guest, passenger or person under the control of the LESSEE. LESSOR agrees to maintain all docks, seawalls and LESSOR owned signs.

#### **13. Vessel Insurance**

Lessee agrees that Lessor is not in any way an insurer of Lessee's vessel, property, family, invitees, employees, agents, passengers or guest. Lessee hereby agrees to maintain and pay for a marine insurance policy providing such protection and indemnity throughout the term of this Agreement. Said policy of protection and indemnity shall protect Lessor and Lessee from all liability for injury to any persons or property which may arise in connection with the operation of or conduct of Lessee or its vessel, equipment, agents, invitees, passengers, guests or employees.

- Lessee hereby agrees to maintain and pay for, and provide current Certificate of Insurance at all times evidencing the following coverages:
- Protection & Indemnity limits of a minimum of \$1,000,000 Per Occurrence. Removal of Wreck coverage included in Protection & Indemnity limit
- Vessel Pollution Coverage included in a minimum amount of \$800,000
- Crew coverage as required by the Federal Jones Act as applicable
- Any other insurance coverage as required by law

- Lessor listed as certificate holder for purposes of notification of cancellation, termination or renewal.
- Lessor listed as Additional Insured.

**14. Proof of Ownership; Change in Ownership**

Prior to exercising any rights whatsoever pursuant to the terms of this Agreement, and at such times during the term of this Agreement as LESSOR may request, LESSEE shall furnish to LESSOR for its review an original or certified copy of proof of its ownership of the above vessel; said proof shall consist of an original or certified copy of either a state registered title to the vessel or documentation by the U.S. Coast Guard of foreign sovereign. LESSEE warrants that it owns the above vessel, or will own same at time of berthing in slip, and will allow inspection by LESSOR prior to placement; in the event the vessel is not satisfactory to the LESSOR, it may not be berthed and another vessel must be located. LESSOR shall have prior inspection and approval rights for any other vessel to be berthed, and shall have prior inspection and approval rights regarding any change of vessel.

**15. Person Signing**

The person signing below does hereby certify that the description of the above vessel is correct and that he/she is the registered, lawful owner of the vessel, and is authorized to subject the vessel to all provisions of this Agreement, including but not limited to those providing for liens against it.

**16. Dockage to Signer and Particular Vessel Only**

LESSEE agrees that LESSOR is under no obligation to furnish dockage space to any party other than the original signer of this Agreement, or to any vessel other than that described herein.

**17. Maximum Slip Leases**

LESSEE is not permitted to lease more than two boat slips. Corporate ownership will be imputed to the shareholders, officers and directors in order to comply with the two boat restriction.

**18. Government Laws and Marina Regulations**

LESSEE agrees to strictly 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 or boating, specifically including United States Coast Guard (USCG) regulations concerning pre-employment and random drug testing, USCG regulations pertaining to the number of passengers for hire and all federal and state fisheries regulations. LESSEE agrees that LESSOR may contact the USCG and request an inspection of LESSEE's vessel to determine whether LESSEE is in full compliance with all applicable laws and regulations.

**19. City Marina Rules and Regulations**

LESSEE further agrees to strictly comply with all Key West City Marina, Charterboat Marina Rules and Regulations which are hereby incorporated into, and by reference made a part of this Agreement. City Manager has the authority to implement or change rules and regulations for the marina and uplands. LESSEE further agrees to abide by all amendments to said

regulations duly enacted by LESSOR during the term of this Agreement; provided, however, that LESSOR shall afford LESSEE 15 days written notice, delivered in accordance with Paragraph 9 above, prior to implementing any such duly-enacted amendments.

**20. Peaceable Use**

LESSEE agrees to use peaceably the dockage space assigned hereby, and agrees not to do or allow, either individually or with others, any act which has the effect, in the sole judgment of LESSOR, of disturbing the peace or of disturbing, inconveniencing or subjecting to physical jeopardy the marina premises, other persons, or other vessels. LESSEE further agrees to do no act which impedes or disrupts the orderly operation of the marina or any portion of it, including but not limited to marina management, operation and revenues.

**21. Use of Space**

This Agreement is for the use of berth space only, such space to be used at the sole risk of the LESSEE, and the LESSOR shall not be liable for the care or protection of the vessel, her appurtenances or contents, or for any loss or damage of any kind or nature to the vessel, her appurtenances or contents, unless such loss or damage is due to the acts or negligence of the LESSOR or any agents, employee, or person under the control of the LESSOR. There is no warranty of any kind as to the condition of the docks, walls, gangways, ramps or mooring gear, nor shall the LESSOR be responsible for the injuries to persons or property occurring upon the LESSOR's property for any reason.

**22. LESSEE's Insolvency**

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

**23. Sale of Business**

In the event that both the above-referenced business and the above-referenced vessel are sold by LESSEE to a single purchaser, as evidenced by appropriate proof of sale such as transfer of City and County occupational licenses in addition to transfer of title to the vessel, and provided that said purchaser meets all qualifications required under this Lease, said purchaser shall have the option of entering into a new lease for the subject berth upon the same terms and conditions as are being offered at the time by LESSOR to other LESSEES of Charter Boat Row dockage spaces. However, the term of the new lease shall be for a term of not more than the period remaining on the existing lease. Said option is non-assignable, and must be exercised within thirty (30) days of the business sale. LESSEE may obtain preliminary approval of the purchaser by applying to the LESSOR prior to such sale to the purchaser. LESSOR shall provide preliminary approval or denial of the purchaser not later than forty-five (45) days from the receipt of the application from LESSEE. LESSEE shall provide such information and documents as may be needed to determine the fitness of the purchaser. Upon change of ownership as described herein, Owner shall pay to the LESSOR a transfer fee of \$400.

**24. Sublease**

LESSEE shall not sublease said berth or conduct or allow to be conducted any other business operation from said berth

**25. Assignment Limited**

Except as provided herein, this Agreement shall not be assigned. In the event of the death of the LESSEE, this Agreement shall remain in the estate or pass to the heir(s) only until the expiration of the Agreement term. 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 a Consent to Assignment to another party which must be approved by the City Manager. If one of the heirs, acting in his or her sole capacity, qualifies for the tenancy, and desires to become the owner of the vessel and business under the same terms and conditions as the LESSEE, he/she shall apply for a Consent to Assignment. If the heir is granted tenancy, the transfer fee may be waived in the sole discretion of the City Manager. LESSOR shall not unreasonably withhold consent.

**26. Stock Sale/Transfer:**

In the event LESSEE is a corporation, limited liability company, partnership or other business entity, then a sale or transfer of a controlling interest in the entity by sale of stock or otherwise shall constitute an assignment for purposes of this Agreement, which assignment shall be prohibited.

**27. Taxes**

Should any ad valorem or other taxes be imposed upon the premises involved in this lease, or upon the LESSEE, LESSOR, occupant or whomsoever, from any source whatsoever, the same shall be the responsibility of the LESSEE and the LESSEE shall pay the same promptly.

**28. Lien**

The LESSEE agrees that the LESSOR shall have a lien against the above-described vessel, her appurtenances and contents for unpaid sums due or to become due for the use of dock facilities or services or damage caused to any docks or property of the LESSOR.

**29. Hurricane/Tropical Storms**

LESSEE IS HEREBY PLACED ON NOTICE, PURSUANT TO SECTION 327.59, FLORIDA STATUTES, that in the event Lessee fails to remove Lessee's vessel from City Marina within two (2) days after the issuance of a tropical storm or hurricane watch for Monroe County, Florida, under Florida law, Lessor, its employees and agents are authorized to remove Lessee's vessel, if reasonable, from its slip or take any and all other reasonable actions deemed appropriate by the Lessor in order to better secure Lessee's vessel and to protect Marina property, private property, and the environment. Lessor shall be entitled to charge Lessee a reasonable fee for any such action. LESSOR shall not be liable for any damage to LESSEE's vessel resulting from storms or hurricanes

**30. Default/Violations by LESSOR**

Strict observance of the conditions, covenants, rules and regulations made a part hereof, are essential conditions upon which this Agreement is made and accepted. Violation of any of LESSOR's Terms and Conditions or Rules and Regulations by LESSEE, shall constitute a

default. Any LESSEE that receives three (3) notices of default for any reason within a one (1) year period will be required to attend a hearing before the Key West City Manager who may impose a monetary fine in an amount not to exceed \$500. LESSEE shall have the right to receive notice of hearing and opportunity to be heard at said hearing.

**31. Vessel Removal**

If LESSEE fails to vacate the dockage space within seven (7) days after delivery of said notice as provided in Paragraph 8, LESSOR shall have the right, at its option, to pursue any or all of the following remedies:

- a. To board the vessel and, by its own power or by placing it in tow, remove from the dockage space and from all property of LESSOR both the vessel and any other personal property of LESSEE found in or adjacent to the dockage space. Said vessel and personal property shall be removed to dockage or mooring chosen at discretion of LESSOR and LESSEE hereby designates LESSOR as its attorney-in-fact for the purpose of acting in its place for purposes of such removal and relocation, and agrees that LESSOR and its designee (s) shall be required to exercise ordinary and reasonable care in such purposes. LESSEE hereby releases and relieves LESSOR and its designee (s) from loss or damages occurring during such removal performed in the exercise of ordinary and reasonable care. LESSEE further agrees to pay all costs incurred by LESSOR in the removing, relocation and/or storage of the vessel and personal property, including but not limited to wages, insurance premiums, towing and storage costs, all of which shall become a lien upon vessel; and
- b. To pursue any remedy provided by state or federal law; and
- c. If nonpayment of rent continues for six (6) months, to sell the vessel at a nonjudicial sale after a 30-day notice to LESSEE as provided in Paragraph 8 above. The remedies provided in Florida Statutes Section 328.17 for such nonjudicial sale of a vessel are hereby specifically included and incorporated in this Agreement as an additional remedy available to LESSOR.

**32. Termination by LESSEE**

This Agreement may be terminated by LESSEE upon any one of the following conditions:

- a. LESSEE shall have the right to terminate this Lease, provided that the LESSEE shall give written notice to LESSOR not less than two (2) months prior to the date LESSEE intends to terminate.
- b. By the dock becoming unusable for any reason; provided that LESSOR shall repair the dock within a reasonable time period, and further provided that during such repairs LESSEE shall have a right of first refusal of available dockage space on an equal basis with other similarly-situated LESSEES. In the event the dock is unusable for more than 72 hours LESSOR shall prorate the dockage fee. In order to calculate the prorated dockage fee amount total dockage fee due will be divide by the number of days in the month to determine a daily dockage fee amount. The daily dockage fee amount will be

multiplied by the number of days the LESSEE is able to occupying the slip to generate the prorated dockage fee amount for the partial month.

- c. By sale or transfer of ownership or control of the vessel identified herein.

**33. Utilities**

LESSEE shall arrange for electrical power, water and sewer 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 violation of this Agreement.

**34. No Live Aboards**

LESSEE agrees that the vessel shall not be used or rented for purposes of domicile or overnight residence while moored in the dockage space.

**35. Sanitation Device**

All "six-pack" vessels or larger shall contain a marine sanitation device with current U.S. Coast Guard approval for marine use. Said device shall be properly installed, properly functioning, and used for all waste while the vessel is at dock. Failure to strictly comply with the provisions of this Paragraph shall be a violation under this Agreement.

**36. Charter Booking**

When the vessel is not at berth, only one person, who is legally listed as an owner or lease holder, may occupy the area behind the boat for booking charters. Corporations must submit legal paperwork listing the names of all corporate members with a 10% vested interest relating to the leased charter boat business berthed at City Marina at Garrison Bight. Only one of those members at a time may be present at the dock for the purposes of booking the vessel. At no time will any person be hired or compensated to solicit charters behind the boat or while the boat is not in the slip.

**37. Signs; Advertisements**

LESSEE agrees that no signs or advertisements will be placed in or about the leased dockage space without LESSOR's prior written approval.

**38. Personal Property**

All personal property placed in or moved on the premises above described shall be at the risk of the LESSEE and the LESSOR shall not be liable for any damage or loss to said personal property for any act of negligence of any co-LESSEE or occupant, or of any other person whomsoever.

**39. Prior Agreements Terminated**

Execution of this Agreement by the signatures of LESSEE and LESSOR shall operate to terminate any and all prior agreements, contracts and leases between the parties hereto.

**40. LESSOR's Rights Cumulative**

This Agreement 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 Agreement shall be construed to be a waiver of any succeeding breach. Time is of the essence with respect to all particulars of this Agreement. If any provision of this Agreement is determined by a court of law to be unenforceable, the remaining provisions shall not be impaired thereby, and this Agreement shall be interpreted, as near as possible, to achieve its intent. This Agreement shall be governed by the laws of the State of Florida.

**41. Headings Not Part of Agreement**

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

## CHARTERBOAT DOCK RULES AND REGULATIONS

### **1. Dock Boxes**

Dock boxes are intended for storage and to cover freezers and as protection/security for phones and credit card machines. In general, dock boxes used for freezer covers shall be purchased and installed by LESSOR. All electrical and plumbing installations by LESSEE shall be governed by City Building Code and be properly permitted.

On Amberjack Pier, one (1) dock box per LESSEE is permitted. Boxes shall not be placed on the sidewalk. All boxes will be located on the composite dock and positioned and fastened down by LESSOR.

On Bonefish and Bonita Piers, one (1) dock box per LESSEE is permitted. Boxes may be placed on the sidewalk. They shall not be placed on the covered portion of the walkway. Boxes shall not impede pedestrian's traffic from the parking lot to the sidewalk. All boxes will be positioned and fastened down by LESSOR.

### **2. Ice Machine/Rod Lockers**

LESSEE is allowed one ice machine per slip. Size must be consistent with existing ice machines and must be approved by LESSOR prior to installation. All ice machines shall be enclosed in a cover. The ice machine cover may be enlarged to allow for storage of rods and tackle. LESSEES that do not have the need for an ice machine may construct or install a small vertical storage unit for rods and tackles. Guidelines for dimensions must be obtained from the dock master's office.

### **3. Signs**

Each LESSEE may display a sign, not to exceed 2'(H) X 6'(L), attached to the street side rafter of the covered walkway. This sign shall be attached directly to the top most portion of the rafter and may also have the vessel name on its dock side. In addition to this sign, a second sign may be installed on the vessel. This sign shall not exceed 3' X 3' and must remain on vessel at all times. Signs shall not advertise any business other than the one occupying the slip on which the sign is displayed.

### **4. Covered walkway**

Except as noted in these rules, nothing may be attached to or hung from the covered walkway or its supports.

### **5. Fish Mounts**

Existing fish mounts shall be allowed to remain in place unless removal or change in location and/or number is agreed to by the LESSOR and the Key West Charter Boatmen's Association.

### **6. Rack Card Display**

Each LESSEE may have One (1) rack card / business card display on the I-beam at their slip. This display shall not be more than one card in width and height and one business card slot. Combination rack card / business card display will be provided by LESSOR. Rack

cards shall not advertise any business other than the one occupying the slip on which the rack cards are displayed.

**7. Slip Light**

A light to illuminate the slip will be provided by the LESSOR. The LESSEE will be responsible for providing electricity to the light. All installations shall conform to City Electrical Code and be properly permitted.

**8. Fish Racks**

LESSEE is allowed one fish rack per slip that will be provided by LESSOR. Currently installed fish racks will be allowed to remain in place as long as they do not present a hazard. LESSEE may attach business sign to the rack that shall not exceed 2'(H) x 3'(L) unless approved by the Marina Manager.

**9. Dock Furniture, Loose Gear**

With the exception of furniture provided by LESSOR, no tables or benches may be placed on the dock. LESSEE may have two (2) chairs, approved by the LESSOR provided that they are well maintained and properly secured when not in use. Chairs must remain on composite or wood decking at all times and not in the public walkway. With the exception of ice chest (coolers), loose gear, fish cages, and all other items that will not fit into dock boxes are not permitted at any time. LESSEE is allowed one cooler on the composite or wood decking.

**10. Maintenance of Docks**

- a. The LESSEE agrees to keep the docks clean and free of debris, including the sidewalk area adjacent to the dock.
- b. The LESSEE agrees not to construct anything on or adjacent to the dock, unless approved by LESSOR.
- c. All improvements to the docks shall remain on the premises and become property of the LESSOR.
- d. LESSEE must receive approval from LESSOR for placement on dock or sidewalk all non-permanent structures, furniture, etc

**11. Consumption of Alcohol**

Consumption of alcoholic beverages on City property is a violation of City Ordinance and subject to all penalties associated therewith.

**12. Storage of Hazardous Materials**

No hazardous materials shall be stored on or adjacent to any dock at City Marina. These products include, but are not limited to; gasoline, diesel fuel, paint, thinner, engine oil and grease.

**13. Fueling**

LESSEE shall be allowed to fuel vessel from a land side fuel truck. LESSEE will be required to acknowledge and sign the LESSOR fueling procedure manual provided by LESSOR.

**14. Vessel Cleaning**

Cleaning products containing bleach, phosphates or petroleum products shall not be used on City Marina property. City Marina is a designated "Clean Marina" and all vessel cleaning methods will conform to the marina's environmental policy.

**15. Parking**

The LESSOR shall designate parking areas for use by LESSEE and LESSEE's employees, invitees, or independent contractors. All parking spaces adjacent to slips shall remain open for customer parking at all times. No individual parking spaces shall be assigned, reserved, or blocked off in any manor for LESSEE or LESSEE'S guest.

**16. No Wake Zone**

All navigational waters in Garrison Bight are a no wake zone.

**17. Solid Waste/Fish Carcasses Removal**

Each LESSEE will carry their solid waste and fish carcasses to one of two enclosed areas located in the parking lot across from Amberjack Pier. Discarding fish carcasses in the waters of Key West is prohibited by City of Key West Ordinance Sec 58-34.

**18. Recycling**

LESSEE will comply with recycling programs and procedures established by the LESSOR in support of sustainable environmental practices.

