

RESOLUTION NO. 10-091

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA), APPROVING THE ATTACHED "USE AGREEMENT" BETWEEN THE CRA AND KEY WEST EXPRESS, LLC FOR THE KEY WEST BIGHT FERRY TERMINAL; PROVIDING FOR AN EFFECTIVE DATE

NOW, THEREFORE, BE IT RESOLVED BY THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY, AS FOLLOWS:


Section 1: That the attached Use 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 Agency.

Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 2nd day of March, 2010.

Authenticated by the presiding officer and Clerk of the Agency on March 3, 2010.

Filed with the Clerk March 3, 2010.

  
\_\_\_\_\_  
CRAIG CATES, CHAIRMAN

ATTEST:

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



# Executive Summary

**TO:** Community Redevelopment Agency

**CC:** Jim Scholl, Mark Finigan

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

**DT:** February 16, 2010

**RE:** Key West Express Use Agreement Renewal

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## ACTION STATEMENT

This is a request to approve a use agreement renewal for Key West Express at the Key West Bight Ferry Terminal.

## HISTORY

Key West Express entered into a five year use agreement that expired in December 2009.. We entered into negotiations in April of 2009 and we have reached a final agreement based upon the following terms:

**Use:** For the purposes of transporting passengers between Key West and domestic ports only. In the event that KWE wants to add international routes an amended agreement must be entered into that may be subject to different terms and conditions.

**Term:** 10 years, effective with the approval of the City Commission with renewal rights per the Key West Code of Ordinances

### Dockage

**Rate:** \$30.00 per foot per month with annual increases pursuant to any increase in the calendar year end Miami – Ft. Lauderdale Consumers Price Index. There will be no dockage fees charged for those vessels during the months they are re-located to other seasonal ports.

**Embarkation/  
Disembarkation  
Fees:** \$1.00 per passenger, each one way trip, regardless of passenger counts and will be increased subject to compounded CPI increases in years 4 and 7. There is a guaranteed minimum of \$100,000 per year.

### Port Security/ Facility/Charges:

Per passenger fees collected to cover estimated costs. The actual costs will be reconciled annually and any surplus will be credited to KWE. In the event that other operators utilize the terminal, and

in a manner that requires security, a system will be employed to prorate the security/facility costs in an equitable manner.

**Fuel**

**Services:**

Key West Express will have the use of the City owned fueling system at the Ferry Terminal and agrees to pay the City \$.10 per gallon of fuel dispensed to any KWE or KWE affiliated vessels. KWE may contract for fuel delivery and storage and therefore will agree to operate, maintain and repair the fueling system, excluding the tanks or capital equipment replacements. KWE agrees to keep an abundant supply of fuel available and to sell fuel to other operators at the same price being offered to other commercial boats by the City at the Key West Bight Marina fuel dock. In no event will KWE be required to sell fuel below its cost. The profit margin on fuel sales to others will be shared 50/50 between the City and KWE. The per gallon fuel surcharge will be adjusted beginning in the fourth and seventh year of the term to reflect compounded calendar year end annual increases in the South Florida CPI.

**Termination:**

Section 34 of the agreement provides for an event based termination with notice or penalty provisions

**FINANCIAL STATEMENT:**

A substantial financial gain will come from the reimbursement of the facility insurance and security costs through fees collected from the passengers utilizing the terminal. The proposed agreement also brings the dockage rate to market, and the embarkation fees are increased by virtue of the elimination of the volume discounts. KWE'S utilization of the fuel storage tanks will eliminate the CRA inventory costs and provide a reasonable surcharge to the CRA.

**RECOMMENDATION:**

Staff recommends approval of the proposed use agreement

**ATTACHMENTS:**

Comparison of Renewal and Current Agreement  
Use Agreement

**Key West Express USE AGREEMENT RENEWAL****CURRENT USE AGREEMENT**

<p><b>Use:</b></p> <p><b>Term:</b></p> <p><b>Dockage Rate:</b></p> <p><b>Other Charges:</b> Embarkation Fees</p> <p>Security/ Facility Charges</p> <p><b>Fuel:</b></p> <p><b>CRA Advertising:</b></p> <p><b>Ticket Counter</b></p> <p><b>Utilities:</b></p>	<p>For the purposes of transporting passengers between Key West and domestic ports only. In the event that KWE wants to add international routes an amended agreement must be entered into that may be subject to different terms and conditions.</p> <p>10 years, effective with CRA approval</p> <p>\$30.00 per foot with annual CPI increases No reduction for total port calls No dockage fees while vessel is re-located to other seasonal port</p> <p>\$1.00 per passenger on and off no sliding scale for volume Compounded CPI increase in yrs 4 and 7, \$100,000 minimum</p> <p>Per passenger fee collected by KWE to cover insurance and security costs. Collected based on estimate and reconciled annually. Pro-rated if additional operators utilize terminal</p> <p>KWE buys, stores and dispenses, \$.10 per gallon surcharge to CRA for KWE vessels, 50/50 profit split on outside sales Surcharge increased by compounded CPI increase in yrs 4 and 7</p> <p>KWE agrees to distribute materials provided by CRA and show video twice each incoming trip</p> <p>\$33.00 per square foot plus CAM, 5% annual increases</p> <p>KWE pays for all utilities including electric, water, solid waste and sewage pump-out</p>	<p>KWE agrees to use the Key West Bight Ferry Terminal to dock any and all ferry passenger vessels operated by KWE and operating in Key West for the purpose of transporting passengers from or to Key West.</p> <p>5 years, expires December 2009</p> <p>\$25.00 per foot with no increase \$12.50 for less than 15 calls per boat No dockage fees while vessel is re-located to other seasonal port</p> <p>\$1.00 first 50,000 passengers, \$.75 50,001 –60,000, \$.50 over 60,000 no increase in fees, \$80,000 minimum</p> <p>Not included</p> <p>CRA buys, stores and dispenses fuel \$.27 for less than 1000 gallons daily per vessel \$.16 per gallon surcharge 1000 – 2000 gallons daily per vessel \$.12 per gallon over 2000 gallons per vessel</p> <p>KWE agrees to distribute materials provided by CRA and show video twice each incoming trip</p> <p>Currently \$31.50 plus CAM with 5% annual increases</p> <p>KWE pays electric and water</p>
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## USE AGREEMENT

This Use Agreement (the "Agreement") is made on this 2nd day of March, 2010 ("the Effective Date") between the Caroline Street Corridor and Bahama Village Community Redevelopment Agency of the City of Key West (hereinafter referred to as "CRA") and Key West Express LLC, a Florida limited liability company (hereinafter described as "KWE").

### **1. KWE Identification**

The KWE is identified as follows:

Name: Key West Express, LLC

Address: 54 Merrimac Street, Newburyport, MA 01950

Corporate Officer or Managing Partner: George Hilton / Joe Miller

Telephone Numbers: 978-465-1626 / 1-888-539-2628

KWE's Representative: Eric Crawford and Linda Miller

Telephone Numbers: 1-239-253-2604 (Eric) and 1-508-958-1089 (Linda)

Fax Number for daily business contact: 1-978-465-8657

In case of emergency contact: Eric Crawford / Joe Miller

Telephone number: 1-239-253-2604 (Eric) / 1-239-825-6033 (Joe)

This Use Agreement is applicable to all ferry passenger vessels operated by KWE as set forth in Addendum A, attached; it being understood and agreed that there may be vessels substituted on a temporary basis to accommodate repairs to the scheduled vessels set forth in Addendum A. It is also understood and agreed that from time to time during the term of this agreement Addendum A may be amended to reflect any replacement vessels, or additional vessels as herein provided for, so long as the total linear footage of the scheduled vessels does not decrease. The CRA shall assign docking times and locations that will meet the arrival and departure times per the scheduled routes operated by the vessels identified in Addendum A and any substituted or replacement vessels as aforesaid. The CRA acknowledges that the times may vary daily and will accommodate fluctuations in the vessels docking times that best serve the overall operation of the KWE schedule and the Facility.

### **2. Use of Facility**

KWE agrees to use the Key West Bight Ferry Terminal ("the Facility") to dock any and all ferry passenger vessels operated by KWE and operating in Key West for the purpose of transporting passengers between Key West and domestic ports only. The CRA acknowledges that from time to time the Owner will have special charters, group excursions, etc that will require disembarkation and embarkation at other locations within Key West but both parties agree that the main intent of this agreement is for KWE vessels to operate out of the Facility. In the event that KWE wants to use the Facility to operate international routes, an amended agreement must be entered into that may be subject to different terms and conditions.

CRA shall repair and maintain the Facility at its sole cost and expense except for damage attributable to KWE use of the Facility; provided, however, that CRA's aforesaid repair and maintenance obligations shall include repairs and maintenance necessitated by normal wear and tear, whether or not caused in whole or in part by KWE's use of the Facility. All such repair and maintenance shall: (a) result in maintenance of the Facility in strict conformity with the requirements of all applicable authorities, and (b) include such repairs and maintenance (including without limitation, painting and carpet replacement) as required to maintain the exterior and interior of the Facility in an aesthetically pleasing manner

This use of dock space shall in no way constitute a tenancy and is not governed by Chapter 83 of the Florida Statutes.

### **3. Right of First Refusal**

The CRA grants KWE the right of first refusal of docking times at the Facility should another qualified ferry operator give the CRA written notice of intent to open a new ferry route. CRA shall notify KWE in writing of the other ferry operator's proposal and shall include the proposed itinerary, vessel specifications and capacity, operating schedule, business plan and commencement date. KWE shall respond in writing within sixty (60) days of CRA's notification to KWE of its intent to commence a new route. KWE'S response shall include, at a minimum, the proposed itinerary, vessel specifications and capacity, operating schedule and business plan. KWE shall commence operation of the new route and vessel on or before 120 days of the date CRA notifies KWE in writing of the other ferry operator's proposal to open a new ferry route or KWE will forfeit the right of first refusal for docking times requested in the other ferry operator's proposal.

### **4. 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 CRA may request, KWE shall furnish to CRA for its review an original or certified copy of proof of ownership of the vessel. This 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 or foreign sovereign. KWE agrees to give CRA prior written notification of any change of ownership of the vessel during the term of this Agreement. The names of all persons owning an interest in KWE shall be submitted in writing to CRA, and (except with respect to a sale or other transfer of interests in KWE between the persons or entities who own interests in KWE on the Effective Date) any sale or transfer of any such interests without prior notice to CRA shall constitute a material breach of this Agreement. The sale or transfer of a controlling interest in KWE (except with respect to a sale or other transfer of interests in KWE between the persons or entities who own interests n KWE on the Effective Date) to another individual, partnership or corporation shall constitute an assignment of this Agreement requiring approval by the Key West Bight Management District Board of the CRA. If KWE is leasing or otherwise operating the vessel, proof of authority to lease or operate the vessel shall be provided to CRA.

## **5. Changes in Information**

KWE agrees to deliver to CRA written notice of any change in any of the information furnished by the KWE in this Agreement or in Addendum A within fifteen (15) days of the change.

## **6. Ferry Terminal Dock**

Docking of the KWE's vessels at the Facility shall be only for the embarkation and disembarkation of passengers and for obtaining fuel. The vessels may lie over while waiting for passengers at the discretion of the CRA or its designated Facility manager and no additional dockage fees shall be due or payable in connection therewith. KWE acknowledges that there will be times when a vessel may be required to moor in the outside harbor while waiting its turn for passenger disembarkation or embarkation, at the discretion of the Facility manager.

## **7. Term**

The term of this Agreement shall be for ten (10) years from the Effective Date. This Agreement may be renewed in accordance with the City of Key West Code of Ordinances governing the CRA.

## **8. Monthly Rate**

KWE shall pay to the CRA a monthly rate of \$30.00 per foot, plus sales tax, for reserved dockage during the months the vessels operate from the Facility, which fee shall be based upon the length of the vessel(s) which makes a port call at the Facility. In the event that KWE operates more than one vessel on the same day from a departure location that makes a port call at the Facility, KWE agrees to pay a daily dockage fee for such additional vessel(s) of \$1.00 per foot per port call subject to future annual Consumers Price Index increases as herein provided for. This amount shall be paid on the first of the month each and every month. Port call is defined as the per occurrence dockage of any of the KWE vessels. There will be no dockage fees charged for those vessels during the months they are re-located to other seasonal ports however dockage fees will not be pro-rated for partial month usage. The rates set forth in this paragraph shall be increased annually pursuant to the immediately prior calendar year end annual increase in the United States Department of Labor, Bureau of Labor Statistics, Miami - Ft. Lauderdale Consumers Price Index for All Urban Consumers.

## **9. Other Charges**

KWE shall pay a disembarkation fee in the amount of \$1.00 per passenger and an embarkation fee of \$1.00 per passenger. KWE agrees to pay the CRA a guaranteed minimum of One Hundred Thousand Dollars (\$100,000.00) annually in passenger disembarkation and embarkation fees, combined. KWE shall fax or otherwise provide a copy of the daily Coast Guard passenger manifest to the ferry terminal manager prior to each arrival and departure of the vessel to and from Key West. The disembarkation and embarkation fee revenues shall be due at the end of each month within fifteen days of that month's end. The number of passengers described in this Paragraph shall include the total number of passengers embarking to and disembarking from the Facility on all vessels of the

KWE. The passenger embarkation/disembarkation fees will be increased at the beginning of the fourth and seventh year of the term to reflect the compounded increase, for the annual calendar year end in the United States Department of Labor Bureau of Labor Statistics Miami – Ft. Lauderdale Consumers Price Index for All Urban Consumers. The compounding periods will be calendar years 1, 2, 3 for the increase beginning in year 4 of the term and calendar years 4, 5, 6 for the increase beginning in year 7 of the term.

KWE will be liable for and collect passenger facility/security fees to cover the costs of insuring the Facility and the security thereof. These costs will include any and all costs incurred to meet the security requirements established by the United States Department of Homeland Security, United States Coast Guard, Florida Department of Law Enforcement, City of Key West or any other governmental agency that establishes applicable security requirements, as well as the costs to the City in providing per occurrence commercial general liability, per occurrence all risk insurance including property damage, hazard and theft coverage. These annual costs will be estimated based upon the prior year's actual expense and the approved budget for the current year. These costs will be reconciled annually and any surplus in fees collected will be credited to KWE and applied towards the calculation of the fees for the subsequent period. The estimated facility/security fees and the associated security staffing plan as of the Effective Date of this Agreement are indentified in Addendum B, attached hereto and made a part hereof.

In the event that other operators utilize the Facility, a system will be employed to prorate the facility/security costs in an equitable manner, excepting any operators that are exempt from security requirements pursuant to applicable law.

### **10. Deposit**

KWE shall deposit a sum equal to one month's dockage fee as security for damages, utilities, and other fees or accrued charges. The deposit shall be held by the CRA and may be commingled with other CRA funds. Any remaining balance of the deposit shall be paid to KWE by CRA only after deposit funds have been applied to any outstanding balance owed by KWE to CRA.

### **11. Payment**

All monies due under this Agreement shall be paid to City of Key West, c/o Key West Bight Ferry Terminal, 100 Grinnell Street, Key West, Florida 33041-1409.

### **12. Notices**

Notices required to be delivered pursuant to this Agreement or by law shall be sent by certified mail return receipt requested and by regular United States mail, or by nationally recognized overnight delivery service (e.g. UPS, Federal Express) as follows:

To: CRA of Key West  
Director of Port Operations  
City of Key West  
PO Box 1409  
Key West, FL 33041-1409

Copy to:  
City Manager  
City of Key West  
P.O. Box 1409  
Key West, FL 33041-1409



To: Key West Express, L.L.C.  
George Hilton or Managing Partner  
Key West Express, L.L.C.  
54 Merrimac Street  
Newburyport, Ma 01950

Copy To:  
Richard H. Critchfield  
1001 East Atlantic Avenue  
Suite 201  
Delray Beach, FL 33483

Adele Virginia Stones  
Stones & Cardenas  
221 Simonton Street  
Key West, FL 33040

Notices shall be deemed given upon actual receipt or upon the first refusal of the addressee to accept delivery.

### **13. Utilities**

KWE shall pay for the actual metered or prorated cost of all utilities including electricity, water, solid waste and sewage pump out.

### **14. Fuel**

Key West Express will have the use of the fueling system at the Ferry Terminal and agrees to pay the CRA a surcharge of \$.10 per gallon of fuel dispensed to any KWE or KWE affiliated vessels as set forth in Addendum A. KWE may contract for fuel delivery and storage and therefore will agree to operate, maintain and repair the fueling system, excluding the tanks or capital equipment replacements that become necessary due to normal wear and tear. KWE will obtain all necessary inspections and KWE employees will be trained and participate in the fuel spill response team. CRA will deliver the fueling system in compliance with all applicable requirements as of the Effective Date and thereafter KWE agrees to meet all applicable requirements that any governing agency imposes or may impose on the operations of the fueling system provided however the KWE will not be required to bear the cost of capital equipment replacements or upgrades that may be imposed by any governing agency as it relates to the tanks, fuel lines, and pumps. KWE agrees to keep an abundant supply of fuel available and to sell fuel to other operators at the same price being offered to other commercial boats by the CRA at the Key West Bight Marina fuel dock. In no event will KWE be required to sell fuel (a) below its cost including the surcharge, and/or (b) to operators whose fuel requirements during any single fueling is less than 1000 gallons unless KWE, in its sole discretion, agrees to accommodate such request for fueling. The net profit margin on fuel sales to others will be shared 50/50 between the CRA and KWE.

The fuel surcharge will be increased at the beginning of the fourth and seventh year of the term to reflect the compounded increase, for the annual calendar year end, in the United States Department of Labor, Bureau of Labor Statistics Miami – Ft. Lauderdale Consumers Price Index for All Urban Consumers. The compounding periods will be years calendar 1, 2, 3 for the increase beginning in

year 4 of the term and calendar years 4, 5, 6 for the increase beginning in year 7 of the term.

The CRA and KWE shall each have the right to terminate the fuel system usage described herein, without cause, annually, with one hundred and eighty (180) days written notice. Written notice to be provided on April 1<sup>st</sup>. If the CRA terminates the fuel system usage described herein the CRA agrees to sell fuel to KWE at the same price being offered to other commercial boats by the CRA at the Key West Bight Marina fuel dock.

CRA shall insure the fueling system during the term of this agreement. Such policy shall protect authorized KWE fueling system operators from liability for injury to any persons or property which may arise in connection with the operation of the fueling system unless such injury is due to the negligence or willful misconduct of KWE.

### **15. CRA Advertising**

KWE agrees to provide each passenger with material furnished by the CRA listing services available at the Key West Bight or at City of Key West Facilities. In addition, KWE agrees to show a video/DVD provided by CRA at least twice during the incoming trip to Key West so long as the video is up to date and accurate.

### **16. Remedies**

#### **16.01 CRA Remedies**

Without waiving any of CRA'S remedies, CRA may retain any pre-payments or security deposit to offset any charges or fees due from KWE. If KWE's vessel is using the Facility and fails to vacate the dockage space as scheduled or if this Agreement is terminated and KWE's vessel remains at the Facility without permission of CRA, CRA, with written notice to KWE, shall have the right at its option:

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 CRA both the vessel and any other personal property of KWE found in or adjacent to the dockage space. The vessel and personal property shall be removed to a dockage or mooring chosen at the discretion of CRA, and KWE hereby designates CRA as its attorney-in-fact for the purpose of acting in its place for purposes of such removal and relocation, and further agrees that CRA and its designee(s) shall be required only to exercise ordinary and reasonable care in such purposes. KWE hereby releases and relieves CRA and its designee(s) from loss or damages occurring during such removal. KWE further agrees to pay all costs incurred by CRA in the removing, relocation and/or storage of the vessel and personal property, including but not limited to wages, insurance premiums, towing fees, dockage and storage costs, all of which shall become a lien upon the vessel; and

b) To pursue any remedy provided by state or federal law; and

c) To sell the vessel at a non-judicial sale. The remedies provided in Florida Statutes Section 328.17 for such non-judicial sale of a vessel are hereby specifically included and incorporated in this Agreement as an additional remedy available to CRA.

d) To use any proceedings for documented vessels as authorized pursuant to Federal law, including but not limited to arrest of the vessel and sale pursuant to Court Order.

## **16.02 KWE Remedies**

a) To terminate this Agreement as provided for in Section 34; and

b) To pursue any remedy provided by state or federal law.

## **17. Lien, Attorneys Fees**

In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder. KWE agrees that CRA 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 CRA caused by KWE or the vessel.

## **18. Sanitation Device**

KWE's vessels shall contain a marine sanitation device with current U.S. Coast Guard approval for marine use. The device shall be properly installed, properly functioning, and used for all waste while the vessel is at dock. Failure to comply strictly with the provisions of this Paragraph shall be a default under this Agreement. CRA reserves the right to board and inspect KWE's vessel while docked at the Facility to determine compliance. Each vessel must conform to the laws of the State of Florida in regard to marine sanitation and Section 82-41 of the Key West Code of Ordinances regulating discharge of waste into waters of the City of Key West.

## **19. Assignment**

KWE's rights under this Agreement shall neither be assigned, transferred, nor sublet to another operator without the prior written consent of the CRA which consent shall not be unreasonably withheld, conditioned or delayed.

## **20. Indemnification**

KWE agrees to indemnify and hold harmless the CRA and the City of Key West, their officers and employees, from liabilities, property damage, losses, personal injuries, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of KWE, its employees or agents, in the performance of this Agreement. Nothing herein shall be intended to waive the sovereign immunity afforded to CRA pursuant to Florida law, including section 768.28, Florida Statutes.

KWE agrees to be responsible to CRA and to the City of Key West and pay for any and all loss or damages to the docks, floats or other facilities caused by KWE's vessel or KWE, his/its agents, servants and employees, whether caused by negligence or not, and further to hold CRA harmless for any of the foregoing. Further, KWE agrees to be responsible for damages that KWE or KWE's vessel may cause to other vessels. KWE further agrees to indemnify CRA for all damages or losses caused by or arising from fault of KWE's vessel and appurtenances, personal property, guests, passengers, invitees including other guests and vessels in the marina and ferry terminal area.

This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the CRA or the City of Key West by reason of such claim or demand, KWE shall, upon written notice from the CRA, resist and defend such action or proceeding by counsel satisfactory to the CRA. The KWE shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the CRA's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the CRA or the City of Key West whether performed by KWE, or by persons employed or used by KWE. The KWE's obligation under this provision shall not be limited in any way by the agreed upon rate or fee structure as shown in this Agreement, or the KWE's limit of or lack of sufficient insurance protection.

## **21. Release**

This Agreement is for temporary berthing space only, and such space is to be used at the sole risk of KWE. Unless caused by the negligence, recklessness or intentional wrongful misconduct of the CRA, its employees or agents, KWE hereby agrees that CRA shall not be liable for the care, protection or security of the vessel, its appurtenances or contents, or of any of KWE'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. Subject to the CRA's obligations hereunder, including without limitation, the maintenance obligations of the CRA contained in paragraph 2 above, KWE agrees that there is no warranty of any kind as to the condition of the seawall, docks, piers, walks, gangways, ramps, mooring gear or electrical and water services, and that CRA is not responsible for injuries to persons or property occurring on CRA's property. This release shall include, but not be limited to: (1) acts in connection with KWE's vessel, motors and accessories while it is on or near CRA's property including the rented space, or while it is being moved, or docked; (2) loss or damage to KWE'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 by KWE and/or its guests, passengers and invitees.

## **22. Insurance**

The KWE shall maintain throughout this Agreement the following insurance:

1. Worker's compensation and employer's liability insurance as required by the State of Florida and as required under the Jones Act.
2. Marine General Liability or Protection and Indemnity insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the KWE or of any of its employees, agents, or subcontractors, with \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.

KWE agrees that CRA is not in any way an insurer of KWE's vessel(s), property, family, invitees, employees, agents, passengers or guests. KWE's policy(ies) shall protect CRA and KWE from all liability for injury to any persons or property which may arise in connection with the operation of or conduct of KWE or its vessel, equipment, agents, invitees, passengers, guests or employees. The policy (ies) shall specifically provide that CRA is to be notified in the event of cancellation, termination, or renewal. KWE agrees to furnish CRA with a certificate of insurance or copy of the policy, each of which shall on its face show the foregoing information and name the CRA of Key West as a named insured under the policy.

### **23. Dockage to Signer and Particular Vessel Only; Partners Bound**

KWE agrees that ownership by partners of the vessel does not in any way create for CRA any obligation to furnish dockage space to any partner other than the original signer of this Agreement, or to any vessel other than those described on each addendum to this Agreement, whether the partnership is dissolved for any reason whatsoever. In the event of dissolution of a partnership, or the withdrawal of a part-owner, all parties shall nonetheless be bound by the terms of this Agreement and be obligated for the payment of all sums due, and for the strict performance of all its covenants and conditions.

### **24. Emergencies**

KWE agrees that any emergency involving a vessel subject to this Agreement will be handled at the CRA's discretion, and the KWE shall bear all expenses and risks of such an emergency. In the event of an emergency and inability to contact KWE or its agent, the CRA is authorized to take whatever steps are necessary to protect its Facility or any other of its facilities. Any towing charges or repair charges accrued in handling such an emergency shall be at the expense of the KWE and shall constitute a lien upon the subject vessel until paid in full.

### **25. Peaceable Use**

KWE agrees to use peaceably the dockage space assigned hereby, and agrees not to do or allow, either individually or with others, any act that has the effect, in the sole judgment of CRA, of disturbing the peace or of disturbing, inconveniencing or subjecting to physical jeopardy the marina premises, other persons, or other vessels. KWE further agrees to do no act that impedes or disrupts the orderly operation of the Facility or the Key West Bight and its surrounding waters.

### **26. KWE's Inspection**

KWE acknowledges having inspected the docking space assigned by this Agreement, and hereby accepts it in as is condition for berthing the vessel(s) described in Addendum A. KWE agrees that CRA makes no warranty, guarantee, or assertion of any kind whatsoever concerning the condition of the docks, pilings, piers, walks, gangways, ramps or berthing gear.

### **27. CRA Inspection**

KWE agrees that the CRA shall have the right to enter vessels and dockage space during reasonable hours in order to determine whether KWE is in full compliance with the terms of this Agreement and all applicable laws and regulations. The CRA shall give the KWE reasonable prior, written notice of an inspection.

### **28. KWE's Insolvency**

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

### **29. Time; CRA's Rights Cumulative; No Waiver**

Time is of the essence of this Agreement. Each party agrees that the rights of the other under this Agreement are cumulative, and that the failure to exercise any such right shall not operate to waive or forfeit same. Neither the failure nor any delay on the part of either party to this Agreement to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of any such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

### **30. Jurisdiction**

The laws of the State of Florida govern the validity of this Agreement, its interpretation and performance, and any claims related to it. The venue for mediation, arbitration or any other legal proceeding shall be Monroe County, Florida.

### **31. Headings Not Part of Agreement**

CRA and KWE 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.

### **32. Severability and Survival**

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

### **33. Person Signing**

The person signing below whether natural or corporate does hereby certify that he/she is a managing member of the limited liability company.

### **34. Termination**

CRA may terminate this Agreement by furnishing a written notice ("Termination Notice") to KWE and KWE shall have seven (7) business days to cure the subject matter of the Termination Notice, failing which cure, this Agreement shall automatically terminate. CRA shall be entitled to furnish a Termination Notice only upon the occurrence of the following events:

- 1) a failure of KWE to comply with the stipulations, agreements, conditions and covenants contained herein with which KWE must comply, if such failure is not cured within fifteen (15) days from and after the date that KWE receives (or is deemed to have received) written notice of such failure (which written notice must be furnished prior to and in addition to and as a pre-condition to the furnishing of, the Termination Notice; or
- (2) A failure to pay timely the Monthly Rate (Paragraph 8) or Other Charges (Paragraph 9), or to maintain proper insurance limits (Paragraph 22); or
- (3) the failure of the KWE to have at least one vessel use the Facility during at least five (5) days in any 30 day period during the term of this Agreement.

KWE may terminate this Agreement by furnishing a written notice ("Termination Notice") to CRA and CRA shall have seven (7) business days to cure the subject matter of the Termination Notice, failing which cure, this Agreement shall automatically terminate, except with respect to a termination for an event to which reference is made in subsections (2,3,4) herein below, which termination shall be effective six (6) months from and after the date that the Termination Notice is furnished with respect to a termination for an event to which reference is made in subsection (2,3,4) herein below. KWE shall be entitled to furnish a Termination Notice only upon the occurrence of the following events:

- (1) a failure of CRA to comply with the stipulations, agreements, conditions and covenants contained herein with which CRA must comply, if such failure is not cured within fifteen (15) days from and after the date that CRA receives (or is deemed to have received) written notice of such failure

(which written notice must be furnished prior to and in addition to and as a pre-condition to the furnishing of, the Termination Notice; or

(2) in the event that any cost, charge or expense payable by KWE hereunder is adjusted upward to reflect the compounded increase in the United States Department of Labor, Bureau of Labor Statistics Miami —Ft. Lauderdale Consumers Price Index for All Urban Consumers if such compounded increase for any compounding period shall factor in an annual increase in excess of three percent (3.00%); or

(3) in the event that any cost, charge or expense payable by KWE hereunder is not adjusted downward from time to time so that such sums as are due and payable hereunder by KWE are at all times not greater than the sums paid or payable at the Facility by any third party; or

(4) in the event that any ferry passenger vessel operated by any third party is granted the right to use the Facility for the purpose of transporting passengers between Key West and Fort Myers, Florida and/or between Key West and Marco Island, Florida.

In the event that KWE exercises the termination rights herein provided for pursuant to sub-sections 2,3,4 above KWE may elect to pay a termination fee equal to six months dockage fees for all vessels that have reserved dockage at the Facility pursuant to Addendum A, at the then current monthly rate pursuant to Section 8 hereof and discontinue operations; or in lieu of the termination fee KWE may elect to provide a written six month notice of termination while continuing full time scheduled operations of the vessels that have reserved dockage at the Facility pursuant to Addendum A, at the then current monthly rate pursuant to Section 8 hereof.

### **35. Homeland Security**

KWE understands and agrees that a term or terms of this Agreement may be superseded or altered by a rule or regulation of the Federal Department of Homeland Security, the Florida Department of Law Enforcement or the United States Coast Guard; and in such event this Agreement shall be interpreted in accordance therewith. If such rule or regulation makes this Agreement impossible to perform, then the Agreement shall terminate.

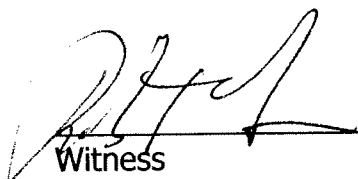
### **36. Force Majeure**

In the event the terminal and docks of the Facility owned by CRA are unusable because of an act of God or other force majeure such as epidemic, lightning, earthquake, fire, explosion, hurricane, flood or similar occurrence, strike, an act of public enemy, or blockage, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, neither party has any obligation under this Agreement until the Facility is usable by KWE, as determined by CRA.

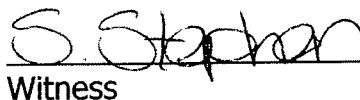


IN WITNESS WHEREOF, the parties have executed this Agreement on the dates shown below.

Key West Express LLC, a Florida limited liability company


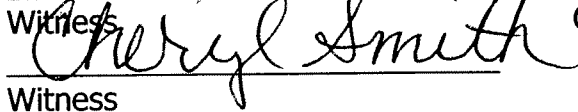
  
Witness

 2/16/2010  
Signature Date

  
Witness

By: George D. Hillman  
Print Name  
Title: Managing Member

Caroline Street Corridor and Bahama Village Community Redevelopment Agency of the City of Key West

  
Witness  
  
Witness

  
Craig Cates, Chairman 3/2/10  
Date

Addendum A  
Schedule of Key West Express Vessels

M/V Whale Watcher	Arrival – 11:30 AM – 1:30 PM Departure - 4:00PM – 5:00PM
M/V Big Cat	Arrival – 12:30 – 2:30 PM Departure – 5:00PM – 6:00PM
M/V Key West Express	Arrival – 12:30PM – 3:00PM Departure 4:30PM – 6:00PM
M/V Atlanticat -	Arrival – 12:30PM – 2:30PM Departure – 5:00PM – 6:00PM

## Addendum B

### Schedule of Estimated Security/Facility Passenger Fees

<b>Security Expenses</b>			
	Hours Daily	Days Per Yr	Total Hours
<b>Police</b>			
1 - 4PM- 6PM	2	230	460
Average Straight Time Hourly Cost	\$40.72		<b>\$18,731.20</b>
<b>Security Guards</b>			
2 Class D guards 2 hours daily	4	230	920
Contracted Hourly Cost	\$16.00		<b>\$14,720.00</b>

<b>Facility Expenses</b>	
General Liability	
Property	
Pollution	
Wharfinger	
Marina	
<b>Total Facility Charge</b>	<b>\$26,998</b>

<b>Annual Security/Facility Charges</b>	<b>\$60,449.20</b>
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<b>Three year average passenger trips</b>	170,774
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<b>Security/Facility Fee per trip</b>	<b>\$0.35</b>
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2007 Days Operated	288	Three Yr Average
2008 Days Operated	229	
2009 Days Operated	173	
	<b>690</b>	<b>230</b>
2007 Passenger Trips	193,754	170,774
2008 Passenger Trips	170,268	
2009 Passenger Trips	148,300	
	<b>512,322</b>	

Addendum B (Continued)

<b>FACILITY SECURITY STAFF SCHEDULE</b>	<b>Position Filled By</b>	<b># of Positions</b>	<b># of hours Daily</b>
<b>ARRIVAL/DISEMBARKATION</b>			
Position 1 Class D- secures restricted access areas	Facility Staff	1	2
<b>DEPARTURE/EMBARKATION</b>			
Position 1 - Class D - monitor restricted areas on Upper Level	Facility Staff	1	2
Position 2 --- Class D - X-ray machine	Contract Guard	1	2
Position 3 and 5 - Class D- load and unload baggage	KWE Crew	2	2
Position 4 - Class D - operate magnetometer	Contract Guard	1	2
Position 6 -Class D - check passenger ID	KWE Crew	1	2
Position 7-Oversee all security operations during embarkation	Uniformed Police	1	2