

**Key West Bight Marina
Commercial Dockage Agreement**

This Agreement is made between the City of Key West, Florida, a municipal corporation, acting by and through its duly authorized Key West Bight Management District Board (hereinafter referred to as "Lessor"), and the below named Lessee.

Lessee is identified as follows:

Lessee's Name: _____

Home Address: _____

City and State: _____

Business Name: _____

E-mail: _____

Business Occupational License # City: _____

Business Address: _____

Phone: _____ cell: _____

City, State, zip: _____

Name of Lessee's Representative: _____

Address: _____

City, State, zip: _____

Home Phone: _____ cell: _____

Name of Vessel: _____

Overall Length: ____ Beam: ____ Draft: ____ Pass. Cap. ____

Registration Country & number : _____

Primary propulsion: diesel ____ gasoline ____ sail ____

Carrier of Insurance on Vessel: _____

Insurance policy #: _____

In consideration of the covenants and conditions hereinafter set forth, Lessor and Lessee agree as follows:

1. Purpose

In return for payments and other valuable consideration and covenants as set out below, Lessor desires to provide dockage space for the temporary use of Lessee, who desires to purchase the right for temporary use of such space through regular 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 _____ . Lessee agrees that the vessel shall not be rented for purposes of domicile or overnight residence while moored in the dockage space. The Marina Manager of the City of Key West must approve any change in use.

2. Dockage Space

The certain dockage space to be used by Lessee is identified as berth _____ on Pier _____ in the Key West Bight Marina of the Key West Bight Management District of the City of Key West, Florida. Said berthing space is for the exclusive purpose of docking the above-named vessel only, or another vessel of similar size and use as a replacement for the vessel, subject to the approval of the Marina Manager of the City of Key West. Lessee shall not sublease said berth or conduct or allow to be conducted any other business operation from said berth without first obtaining the required approvals contained herein. Such substitution without approval is grounds for immediate lease termination. Lessor reserves the right to relocate Lessee’s vessel 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.

Lessee agrees to vacate his/her slip for special events such as Race Week, if requested to do so by Lessor.

Lessor will make best efforts to relocate the Lessee within the marina during this period. If the Lessor is unable to provide a temporary slip for the Lessee, the Lessee shall vacate the marina immediately and shall be entitled to:

- (a) A proportionate adjustment in the monthly rent; and
- (b) Return to the slip in the Marina at the conclusion of the event.

3. Term

This agreement is effective commencing the _____ day of _____, 20____, and unless terminated as otherwise specified herein, shall extend through the _____ day of _____, 20____ (“Lease Term not to exceed 1-year”).

4. Third Party Use

Lessor shall have the right to grant permission to a third party to use Lessee’s berth whenever Lessee’s vessel is absent for more than 24 hours, and to receive revenue therefrom without accounting to Lessee. Prior to removing his/her vessel from the marina for more than 24 hours duration, Lessee shall notify the Lessor’s dockmaster at least 24 hours in advance of departure And 48 hours in advance of return.

5. Rental Rate: Changes

The monthly rental rate is \$ _____ per month, plus solid waste (garbage), plus applicable sales tax of \$ _____ for a total of \$ _____ for dockage space, plus \$1.00 per passenger the vessel is rated to carry. This amount is subject to adjustment by the Lessor. Returned checks will be assessed the maximum amount provided in Florida Statutes Section §166.251. Lessee agrees to pay for utility service in accordance with the schedule of charges set by each utility. The non-payment of any correctly billed utility shall be considered a material breach and grounds for termination. Solid waste (garbage) charges will be determined by Lessor in conjunction with the City of Key West's contracted waste disposal company.

6. Deposit

Lessee agrees to deposit the sum equal to two months 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, including unpaid rent. Said deposit shall otherwise be returned without interest to Lessee upon lawful termination of this Agreement.

7. Payments Due

Rental payments are due and payable monthly in advance, by the first day of each calendar month. Payment may be made in person between the hours of 8:00 a.m. and 4:00 p.m. Monday thru Friday or mailed to the Key West Bight Marina Office, 201 William St. Key West, FL 33040

8. Late Payments

Any rental payment not received by Lessor by 5:00 p.m. on the 5th day of the month is subject to a fifteen (15) percent penalty charge.

9. Notice to Lessee

Lessee agrees that notice of the actions or intentions of Lessor is binding upon Lessee if delivery by certified mail is attempted at the following address:

Lessee further agrees that said binding delivery of notice shall be considered fully accomplished for all purposes hereunder regardless of whether delivery to the above address is accepted or regardless of the identity of any person accepting delivery. Lessee is fully and solely responsible for the receipt of notice at said address. Lessee further agrees and acknowledges that if said certified notice is returned undelivered or refused, that Notice shall be perfected by posting in compliance with Florida Statutes.

10. Changes in Information

Lessee agrees to deliver written notice of any changes in any of the information furnished by Lessee in this Agreement within 5 calendar days of the effective date of said change to: Key West Bight Marina Offices 201 William St., Key West, FL 33040

11. Default, Removal, Sale

Prompt and timely delivery of all payments due for the use of the rented dockage space and strict observance of the conditions, covenants, marina rules and regulations made a part hereof, are essential conditions upon which this Agreement is made and accepted. Any failure by Lessee to comply with each of said terms shall constitute a default by Lessee and shall give Lessor the right at its option to terminate this Agreement and any license Lessee may have hereunder.

Lessor may so terminate by mailing to Lessee a notice of termination in the manner provided by Paragraph 8 above at least three (3) days prior to the effective date of termination. 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 non-judicial sale after 30 days notice to Lessee as provided in Paragraph 8 above. 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 Lessor.

12. 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 Marina Rules & 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.

13. Release, Indemnity

This agreement is for berthing space only, and such space is to be used at the sole risk of the 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 the 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 breach of contract, violations of any local, state or federal law or regulation, 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 electrical and water services, and that Lessor is not responsible for injuries to persons or property occurring on Lessor's property. Lessee, personally and for its family, heirs, and assigns agrees to indemnify Lessor for all liability for personal injury, loss of life, and property damage to Lessee, its family, heirs, assigns, agents, employees, invitees and guests caused by fault of Lessee. This release and indemnification shall include, but not be limited to: (1) acts in connection with Lessee's vessel, motors and accessories while it is on or near Lessor's property including the rented space, or while it is being moved, docked, hauled, or launched; (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. The indemnification provided herein shall include, but not to be limited to all costs, expenses and reasonable attorney's fees, including appellate attorney's fees, reasonably incurred by Lessor based on the foregoing; provided, however, that Lessor shall give Lessee written notice of any such claim within time 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 so doing shall not waive or discharge Lessee from its obligations to defend and indemnify as herein contained.

14. 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. 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. There is no warranty of any kind as to the condition of the docks, walks, 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.

15. 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.

16. 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 or primary leasehold interest of the above vessel. Said proof shall consist of a lease, 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 or leases the above vessel, or will own or lease 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. Nothing in this section is intended to prevent Lessee from leasing a vessel so long as Lessee is the sole person leasing the vessel or is the principle individual in any corporate entity or leasing same.

17. 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.

18. 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 signator of this Agreement, or to any vessel other than that described herein.

19. Government Laws and Marina Rules & 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 and all environmental laws and regulations including, but not limited to, the discharge of black water, grey water, chemicals and grease. Lessee further agrees to strictly comply with all Marina Rules & Regulations which are hereby incorporated into, and by reference made a part of this Agreement. 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 fifteen (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. Sanitation Device

Lessee's vessel shall contain a marine sanitation device with current U.S. Coast Guard approval for marine use for vessels in addition to any applicable regulations for the discharge of black water or grey water, chemicals or grease. Said device shall be properly installed, properly functioning, and used for all waste while the vessel or floating structure is at dock. Failure to strictly comply with the provisions of this Paragraph shall

be a default under this Agreement. Lessee acknowledges the Lessor's right to test any and all sanitation devices aboard any vessel using any accepted marina industry standards including but not limited to dye tests. Twenty Four (24) hour notice shall be given to the Lessee prior to any said inspection being performed.

22. Lessee's Inspection

Lessee acknowledges having inspected the dockage space rented by this Agreement, and hereby accepts it in "as is" condition for berthing the above-described vessel. Lessee agrees that Lessor makes no warranty, guarantee, or assertion of any kind whatsoever concerning the condition of the docks, piling, piers, walks, gangways, ramps or berthing gear, and will not be responsible for injuries of any nature or cause including Lessor's negligence, to persons or property on Lessor's property or marina premises.

23. No Live-aboard

Lessee agrees that the vessel shall not be used or rented for purposes of domicile or habitation or overnight residence while moored in the dockage space. Nothing in this section is intended to prevent habitation by legitimate crew or the Lessees provided such habitation is necessary for the actual operation of the vessel for the purpose stated on page 1. Where live-aboards are permitted, the Lessee shall be responsible for the applicable fees associated with that use.

24. Inspection

Lessee agrees that Lessor shall have the right, upon 24 hours notice, to enter the vessel and dockage space during reasonable hours in order to determine whether Lessee is in full compliance with the terms of this Agreement and all applicable laws and regulations.

25. 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. Lessee further acknowledges that any signs erected are to be in compliance with the Historic Architectural Review Commission's Guidelines (HARC), the code of ordinances, and the applicable Marina Rules & Regulations.

26. 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. 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. Acceptance of rent from said persons or entities under this paragraph shall not hinder Lessor's efforts to terminate this Agreement in so much as this Agreement shall be considered a month-to-month tenancy under Florida Law.

27. Assignment Limited; Option of Purchaser of Vessel or Floating Structure and 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 ability to enter into an assignment of the existing lease for the subject berth.

Assignment as a result of sale is expressly prohibited unless the vessel referenced herein is included in the sale.

Said assignment must be exercised contemporaneously with 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 \$500.00.

28. 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.

29. Maintenance of Docks

- a) The Lessee agrees to keep the docks clean and free and clear of debris, including the sidewalk area adjacent to the dock.
- b) The Lessee agrees not to construct or attach anything on or adjacent to the dock, unless approved by Lessor and all proper permits and approvals are obtained. In such event, all improvements made to the docks by the Lessee shall be deemed permanent fixtures and remain on the premises and become property of the Lessor.

30. Lien

The Lessee acknowledges that the Lessor shall have the right to pursue a lien against the above-described vessel, its 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.

31. Termination

This Agreement shall be terminated upon any one of the following conditions:

- a) By breach of any of the covenants or provisions of this Agreement, including the Key West Bight Marina, Marina Regulations as contained in this Agreement; provided, however, that Lessee shall be entitled to a single written warning of any violation of said Marina Regulations delivered as provided in Paragraph 8, and shall have 15 days after such delivery in which to cure the breach and 3 days for non-payment of rent. Subsequent violations of the same Marina Rules & Regulations shall terminate this Agreement, and Lessor shall not be required again to issue a warning.
- b) Any continuing breach for non-payment of rent is subject to removal pursuant to Ch. 83, Florida Statutes.
- c) By the dock becoming unserviceable 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.
- d) By sale or transfer of ownership or control of the vessel identified herein without obtaining the required approvals as contained herein.

32. Stock Sale/Transfer

If Lessee is a corporation, partnership or other business entity, the names of all persons owning an interest and the percentage of ownership shall be submitted in writing to the Key West Bight Management District Board. If Lessee is a said business entity, any proposed sale or transfer of any percentage of such interest therein shall be submitted in writing to the Key West Bight Management District Board prior to the transfer. The sale or transfer of any such interest without prior notice as prescribed herein shall constitute a material breach of this Agreement. The sale of 51% or more of the stock in a corporation or the sale of 50% or more of a partnership to another

individual, partnership or corporation shall constitute an assignment of this Agreement requiring approval by the Key West Bight Management District Board.

33. Parking

No individual parking spaces shall be assigned or reserved for Lessee.

34. 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.

35. Time; Lessor's Rights Cumulative

Time is of the essence of this Agreement. Lessee agrees that Lessor's rights under this Agreement are cumulative, and that Lessor's failure to exercise any such rights shall not operate to forfeit same.

36. 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.

LESSEE:

LESSOR: City of Key West,
Florida, a municipal corporation,
acting by and through its duly
authorized Key West Bight
Management District Board

By: _____

Print Name

Date

Date

Witness

Witness

I hereby acknowledge receipt of the Rules and Regulations for the Marina.

Lessee: _____

Date: _____