

RESOLUTION NO. 19-346

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA), APPROVING THE ATTACHED "USE AGREEMENT" BETWEEN THE CITY AND YANKEE FREEDOM III, LLC; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Yankee Freedom III, LLC, is a long-standing tenant that provides passenger ferry service to the Dry Tortugas from the Key West Ferry Terminal; and

WHEREAS, at its meeting of October 9, 2019, the Key West Bight Management District Board recommended approval of the attached "User Agreement"; and

WHEREAS, this User Agreement will replace the Commercial Dockage Agreement approved in Resolution 12-239; and

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

Section 1: That the attached "User Agreement" between the CRA and "Yankee Freedom III, LLC, for dockage at the Ferry Terminal is hereby approved.

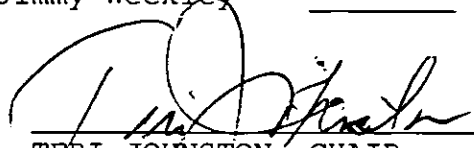
Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Agency.

Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 6th day of November, 2019.

Authenticated by the presiding officer and Clerk of the Agency on November 6, 2019.

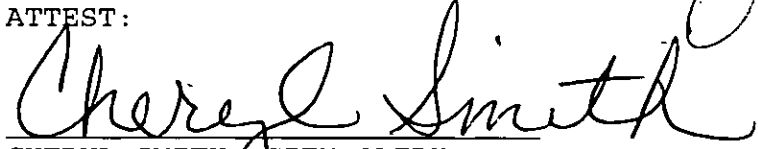
Filed with the Clerk November 7, 2019.

Chair Teri Johnston	<u>Yes</u>
Vice Chair Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Absent</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>



TERI JOHNSTON, CHAIR

ATTEST:



CHERYL SMITH, CITY CLERK

Executive Summary

TO: Key West Bight Board
Community Redevelopment Agency

CC: Greg Veliz
Doug Bradshaw

FR: Marilyn Wilbarger, RPA, CCIM

DT: October 1, 2019

RE: Yankee Freedom Use Agreement Extension at the Key West Bight Ferry Terminal



ACTION STATEMENT

This is a request to approve an extension of the Yankee Freedom III, LLC Use Agreement for dockage at the Key West Bight Ferry Terminal.

HISTORY

The Yankee Freedom operates the ferry to the Dry Tortugas National Park and in 2012 the ferry was re-located from the dock adjacent to the Thompsons Fish House building to the Ferry Terminal due to the deterioration of the fish house building. The Yankee Freedom now wishes extend the use agreement for an additional ten years based upon the following terms:

- Use:** Dockage of the Yankee Freedom III, LLC ferry passenger vessel
- Term:** Ten-year period commencing October 1, 2019
- Dockage Rate:** \$38.92 per foot with annual CPI increases thereafter
- Embarkation Fees:** \$1.29 per passenger trip with annual CPI increases consistent with the dockage rate increases
- Port Security/ Facility Charges:** Estimated at \$.14 per passenger with actual costs reconciled and reimbursed annually
- Fuel Services:** The CRA will sell Yankee Freedom fuel at the greater \$0.25 per gallon or 9% over the delivered cost Yankee Freedom agrees to exclusively purchase all fuel from the Key West Bight Ferry Terminal.
- Utilities:** Yankee Freedom shall pay for the actual metered or prorated costs of utilities including electricity, water and solid waste
- Pump Out:** In the interest of the environment and sustainable business practices the CRA will provide sewage pump out at no additional cost.
- Agreement Termination:** In the event that the Yankee Freedom shall cease to be the sole commercial provider of ferry service to the Dry Tortugas National Park then either party may terminate this agreement.

FINANCIAL STATEMENT:

This is the current rate for dockage at the Ferry Terminal. The fueling agreement, embarkation fees, and passenger facility fees are new reimbursements that are consistent with the Key West Express agreement and will be increased annually based upon the Consumers Price Index. The Yankee Freedom is current with all accounts and has an excellent payment history.

CONCLUSION;

The Yankee Freedom Dry Tortugas Ferry is such an interesting and enjoyable trip for visitors and locals alike that is operated in a professional and friendly manner. Staff recommends approval of the proposed use agreement to enable them to continue to provide this valuable service and attraction.

ATTACHMENTS:

Proposed Use Agreement

Current Use Agreement

Corporate Filings

USE AGREEMENT

This Use Agreement (the "Agreement") is made on this 1 day of November, 2019 ("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 Yankee Freedom III LLC, a Florida limited liability company (hereinafter described as "Yankee Freedom"). This Use Agreement shall replace and terminate the prior Key West Bight Marina Commercial Dockage Agreement approved pursuant to Resolution 12-239

1. Yankee Freedom Identification

The Yankee Freedom is identified as follows:

Name: Yankee Freedom III LLC.

Address: 201 Front Street, Suite 224, Key West, FL 33040

Corporate Officer or Managing Partner: Edwin O. Swift, III

Telephone Numbers: (305) 292-8914

This Use Agreement is applicable to the ferry passenger vessel operated by Yankee Freedom. It being understood and agreed that there may be vessels substituted on a temporary basis to accommodate repairs to the scheduled vessel. The CRA shall assign docking times and locations that will meet the arrival and departure times per the scheduled route. The CRA acknowledges that the times may vary daily and will accommodate fluctuations in the vessel docking times that best serve the overall operation of the Yankee Freedom schedule and the Facility.

2. Use of Facility

Yankee Freedom agrees to use the Key West Bight Ferry Terminal ("the Facility") to dock the ferry passenger vessel operated by Yankee Freedom and operating in Key West for the purpose of transporting passengers between Key West and Dry Tortugas National Park. The CRA acknowledges that from time to time the Owner may 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 the Yankee Freedom vessel to operate out of the Facility. In the event that Yankee Freedom wants to use the Facility to operate other routes, an amended agreement must be entered into that may be subject to different terms and conditions. CRA reserves the right from time to time with good cause, upon at least sixty (60) days advance written notice to relocate Yankee Freedom to other docking facilities, prior to or during the term of this Use Agreement; provided however that Yankee Freedom shall have the right at its sole option and as its sole remedy, to terminate the Use Agreement upon sixty (60) days advance written notice which right must be exercised, if at all, within fifteen (15) days after receipt of CRA'S relocation notice, which relocation notice may be withdrawn by CRA within ten (10) days after CRA'S receipt of Yankee Freedom's termination notice, in which event Yankee Freedom's attempted termination shall be null and void and the Use Agreement shall continue in full force and effect in accordance with its terms.

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CRA shall repair and maintain the Facility at its sole cost and expense except for damage attributable to Yankee Freedom 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 Yankee Freedom'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.

Yankee Freedom expressly agrees to pump out all vessels during every port call and the CRA will provide the pump out system at no additional cost to Yankee Freedom.

Yankee Freedom will not use the facility or permit the same to be used in any manner which violates any law, ordinance including but not limited to;

Ordinance 19-03 amending Chapter 26, Section 223 of the Code of Ordinances entitled "Sale of Sunscreen";

Ordinance 19-22 amending Chapter 26, Sections 312-315 entitled "Plastics" to prohibit the distribution or sale of plastic straws or stirrers;

Resolution 19-174 that restricts the use of polystyrene

or constitutes a nuisance; for lodging purposes; that may injure the reputation of the facility or annoy, inconvenience or damage its patrons or other tenants; or that would constitute an extra-hazardous use or violate any insurance policy of the Yankee Freedom or CRA or any other tenant in the Property or increase the cost thereof.

Yankee Freedom expressly agrees not to sell or distribute plastic straws or stirrers, utilize any single use polystyrene, or sell or distribute any SPF sunscreen protection personal care products that contain oxybenzone or octinoxate, or both, without a medically licensed prescription

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

3. 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, Yankee Freedom 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. Yankee Freedom 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 Yankee Freedom shall be submitted in writing to CRA, and (except with respect to a sale or other transfer of interests in Yankee Freedom between the persons or entities who own interests in Yankee Freedom 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 Yankee Freedom (except with respect to a sale or other transfer of interests in Yankee Freedom between the persons or entities who own interests in Yankee Freedom 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. If Yankee Freedom is leasing or otherwise operating the vessel, proof of authority to lease or operate the vessel shall be provided to CRA.

4. Changes in Information

Yankee Freedom agrees to deliver to CRA written notice of any change in any of the information furnished by the Yankee Freedom in this Agreement within fifteen (15) days of the change.

5. Ferry Terminal Dock

Docking of the Yankee Freedom's vessel at the Facility shall be for the embarkation and disembarkation of passengers, for obtaining fuel, and for overnight docking. Yankee Freedom acknowledges that there will be times when the 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.

6. Term

The term of this Agreement shall be for ten (10) years beginning October 1, 2019.

7. Monthly Rates for Dockage

Yankee Freedom shall pay to the CRA a monthly dockage rate of \$38.92 per foot, plus sales tax, per month for reserved dockage, which fee shall be based upon the overall length of the vessel which docks at the Facility.

The rates set forth in this paragraph shall be adjusted annually by increasing the previous year's rate 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 anniversary date.

8. Other Charges

Yankee Freedom shall pay a per passenger trip fee, which is defined as each one-way passenger embarkation/ disembarkation, in the amount of \$1.29 per passenger. Yankee Freedom's passenger trip fee is based upon morning use only of the Ferry Terminal. In the event that Yankee Freedom requests twice daily usage of the Terminal the fee will be increased to the per trip fees. Yankee Freedom shall fax or otherwise provide a copy of the daily Coast Guard passenger manifest to the CRA Port and Marine Services office within 24-hours. The passenger fee revenues shall be due at the end of each month within fifteen days of that month's end.

The rates set forth in this paragraph shall be adjusted annually by increasing the previous year rate 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

Yankee Freedom will be liable for and collect per 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 Yankee Freedom and applied towards the calculation of the fees for the subsequent period. The estimated facility/security fees as of the Effective Date of this Agreement are identified in Addendum A, attached hereto and made a part hereof.

The facility/security expenses will be allocated on a per passenger trip basis.

9. Deposit

Yankee Freedom 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 Yankee Freedom by CRA only after deposit funds have been applied to any outstanding balance owed by Yankee Freedom to CRA.

10. Payments Due

Rental payments due under this Agreement are due on the first day of each calendar month and shall be paid to City of Key West, c/o Key West Bight, 201 William Street, Key West, Florida 33040.

11. Late Payments

Any payment not received by the CRA by 5:00 p.m. on the 5th day of the month is subject to a fifteen (15%) percent late fee.

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: City of Key West
Director of Port and Marine Services
City of Key West
1300 White Street
PO Box 1409
Key West, FL 33041-1409

To: Yankee Freedom III LLC.
201 Front Street, Suite 224,
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

Yankee Freedom shall pay for the actual metered or prorated cost of utilities including electricity, water and solid waste. The CRA will provide for sewage pump out at no additional cost to Yankee Freedom.

14. Fuel

The CRA agrees to sell Yankee Freedom fuel at the greater of \$0.25 per gallon or 9% over delivered cost. Yankee Freedom agrees to exclusively purchase all fuel from the Key West Bight Ferry Terminal.


15. CRA Advertising

Yankee Freedom agrees to show a video/DVD provided by CRA 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 Yankee Freedom. If Yankee Freedom's vessel is using the Facility and fails to vacate the dockage space as scheduled or if this Agreement is terminated and Yankee Freedom's vessel remains at the Facility without permission of CRA. CRA, with written notice to Yankee Freedom, shall have the right at its option:

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- 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 Yankee Freedom 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 Yankee Freedom 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. Yankee Freedom hereby releases and relieves CRA and its designee(s) from loss or damages occurring during such removal. Yankee Freedom 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 Yankee Freedom 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. Yankee Freedom 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 Yankee Freedom or the vessel.

18. Sanitation Device

Yankee Freedom'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 Yankee Freedom'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

Yankee Freedom'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

Yankee Freedom 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 Yankee Freedom, 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.

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Yankee Freedom 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 Yankee Freedom's vessel or Yankee Freedom, his/its agents, servants and employees, whether caused by negligence or not, and further to hold CRA harmless for any of the foregoing. Further, Yankee Freedom agrees to be responsible for damages that Yankee Freedom or Yankee Freedom's vessel may cause to other vessels. Yankee Freedom further agrees to indemnify CRA for all damages or losses caused by or arising from fault of Yankee Freedom'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, Yankee Freedom shall, upon written notice from the CRA, resist and defend such action or proceeding by counsel satisfactory to the CRA. The Yankee Freedom 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 Yankee Freedom, or by persons employed or used by Yankee Freedom. The Yankee Freedom'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 Yankee Freedom'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 Yankee Freedom. Unless caused by the negligence, recklessness or intentional wrongful misconduct of the CRA, its employees or agents, Yankee Freedom 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 Yankee Freedom'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, Yankee Freedom 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 Yankee Freedom'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 Yankee Freedom'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 Yankee Freedom and/or its guests, passengers and invitees.

22. Insurance

The Yankee Freedom 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 Yankee Freedom or of any of its employees, agents, or subcontractors, with \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.

Yankee Freedom agrees that CRA is not in any way an insurer of Yankee Freedom's vessel(s), property, family, invitees, employees, agents, passengers or guests. Yankee Freedom's policy (ies) shall protect CRA and Yankee Freedom from all liability for injury to any persons or property

which may arise in connection with the operation of or conduct of Yankee Freedom 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. Yankee Freedom 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

Yankee Freedom 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

Yankee Freedom agrees that any emergency involving a vessel subject to this Agreement will be handled at the CRA's discretion, and the Yankee Freedom shall bear all expenses and risks of such an emergency. In the event of an emergency and inability to contact Yankee Freedom 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 Yankee Freedom and shall constitute a lien upon the subject vessel until paid in full.

25. Peaceable Use

Yankee Freedom 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. Yankee Freedom 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. Yankee Freedom's Inspection

Yankee Freedom 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. Yankee Freedom 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

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

28. Yankee Freedom's Insolvency

If Yankee Freedom 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 Yankee Freedom 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 Yankee Freedom and Yankee Freedom 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 Yankee Freedom to comply with the stipulations, agreements, conditions and covenants contained herein with which Yankee Freedom must comply, if such failure is not cured within fifteen (15) days from and after the date that Yankee Freedom 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 Rates (Paragraph 8) or Other Charges (Paragraph 9), or to maintain proper insurance limits (Paragraph 22); or
3. The failure of the Yankee Freedom 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. *Except during haulout periods as required by the Coast Guard (CS)*
4. In the event that the Yankee Freedom shall cease to be the sole commercial provider of ferry service to the Dry Tortugas National Park.

Yankee Freedom 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. Yankee Freedom shall be entitled to furnish a Termination Notice only upon the occurrence of the following events:

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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 the Yankee Freedom shall cease to be the sole commercial provider of ferry service to the Dry Tortugas National Park.

35. Homeland Security

Yankee Freedom 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 Yankee Freedom, as determined by CRA.

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

Yankee Freedom III, LLC, a Florida
Limited Liability Company

Chris Seidel
Witness

[Signature] 11/1/2019
Signature Date

Edwin O. Swift, III
Manager Member

Chris Beland
Chris Beland
Member

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

Melinda Stewart
Witness

[Signature] 11/7/19
Teri Johnston, Chairwoman Date

Addendum A

Estimated Security/Facility Passenger Fees 2019/2020

SECURITY EXPENSES	<u>Hours Daily</u>	<u>Days Per Year</u>	<u>Total Hours</u>	<u>Total Cost</u>
Security Guard (1)	3	303	910	\$18,655.00
Contracted Hourly Rate:	\$20.50			
Smiths Detection Annual Service Agreement				<u>\$2,600.00</u>
Total Security Charge				\$21,255.00

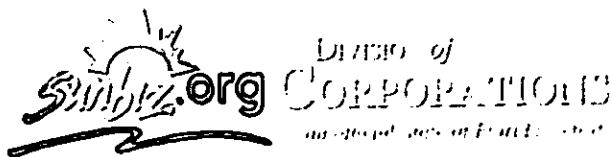
FACILITY EXPENSES	
General Liability	
Property	
Pollution	
Wharfinger	
Marina	
Total Facility Charge	<u>\$12,946.78</u>

TOTAL ESTIMATED SECURITY/FACILITY EXPENSES **\$34,201.78**

Key West Express 191,933
 Yankee Freedom 54,756

Estimated Total All Passenger Trips 246,689

Security/Facility Fee Per Trip **\$0.14**



Department of State / Division of Corporations / Search Records / Detail By Document Number /

Detail by Entity Name

Florida Limited Liability Company

YANKEE FREEDOM III, LLC

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Principal Address

201 FRONT ST
STE 224
KEY WEST, FL 33040

Changed: 02/18/2010

Mailing Address

201 FRONT ST
SUITE 224
KEY WEST, FL 33040

Changed: 04/07/2019

Registered Agent Name & Address

SWIFT, EDWIN O., III
201 FRONT STREET
SUITE 224
KEY WEST, FL 33040

Name Changed: 03/06/2013

Address Changed: 04/14/2009

Authorized Person(s) Detail

Name & Address

Title MGR

HILL, CAROL L
 31 BOUNDARY LANE
 KEY WEST, FL 33040

Title MGR

BELLAND, CHRISTOPHER C
 201 FRONT ST - STE 224
 KEY WEST, FL 33040

Annual Reports

Report Year	Filed Date
2018	03/02/2018
2019	04/07/2019
2019	08/20/2019

Document Images

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2

2019 FLORIDA LIMITED LIABILITY COMPANY AMENDED ANNUAL REPORT

DOCUMENT# L08000067605

Entity Name: YANKEE FREEDOM III, LLC

Current Principal Place of Business:

201 FRONT ST
STE 224
KEY WEST, FL 33040

Current Mailing Address:

201 FRONT ST
SUITE 224
KEY WEST, FL 33040 US

FEI Number: 26-2979924

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

SWIFT, EDWIN O. III
201 FRONT STREET
SUITE 224
KEY WEST, FL 33040 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: EDWIN O. SWIFT, III

08/20/2019

Electronic Signature of Registered Agent

Date

Authorized Person(s) Detail :

Title MGR
Name HILL, CAROL
Address 201 FRONT ST - STE 224
City-State-Zip: KEY WEST FL 33040

Title MGR
Name BELLAND, CHRISTOPHER C
Address 201 FRONT ST - STE 224
City-State-Zip: KEY WEST FL 33040

Title MGR
Name SWIFT, EDWIN O. III
Address 201 FRONT ST - STE 224
City-State-Zip: KEY WEST FL 33040

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: EDWIN O. SWIFT, III

MANAGER

08/20/2019

Electronic Signature of Signing Authorized Person(s) Detail

Date