

**City Marina at Garrison Bight  
Commercial Dockage Agreement**

This Agreement is made between the City of Key West City Marina (hereinafter referred to as "Lessor", which term as used throughout this Agreement shall mean and include the City of Key West and the below named Lessee.

**Lessee is identified as follows:**

Lessee's Name: Chianyai, LLC

Home Address: 170 Golf Club Drive or PO Box 2697

City and State: Key West, Florida

Business Name: Thai Life Floating Restaurant

E-mail: Thailifekeywest@yahoo.com

Business Occupational License # City: \_\_\_\_\_

Business Address: 1801 N Roosevelt Blvd

Phone: (305) 296-9907 cell: (305) 394-2277

City, State, zip: Key West, FL 33040

Name of Lessee's Representative: Michael Lowe

Address: 5294 Suncrest Rd, 44 A

City, State, zip: Key West, FL 33040

Home Phone: N/A cell: (305) 394-2277

**Vessel/Structures hereinafter referred to as "vessel" are identified as follows**

**Vessel:** Storage

Overall Length: 15 Beam: \_\_\_\_\_ Draft: \_\_\_\_\_ Pass. Cap. \_\_\_\_\_

Registration Country & number: \_\_\_\_\_

Primary propulsion: diesel \_\_\_\_\_ gasoline \_\_\_\_\_ sail \_\_\_\_\_

**Structure:** Kitchen

Overall Length: 43 Beam: \_\_\_\_\_ Draft: \_\_\_\_\_ Pass. Cap. \_\_\_\_\_

Structure: Restaurant

Overall Length: 36 Beam: \_\_\_\_\_ Draft: \_\_\_\_\_ Pass. Cap. 41

Carrier of Insurance on Vessel: Scottsdale Insurance Company

Insurance policy #: CPS1698900

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 Owner, 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 a Floating Restaurant with 41 licensed seats. Lessor must approve any change in use.

**2. Dockage Space**

The certain dockage space to be used by Owner is identified as berth C 01 in the City Marina at Garrison Bight. 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 Lessor. 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 Owner'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.

**3. Term**

This agreement is effective commencing the 1st day of January 2014, and unless terminated as otherwise specified herein, shall extend through the 30<sup>th</sup> day of March, 2024 ("Lease Term").

**4. Third Party Use – Intentionally deleted**

**5. Rental Rate: Changes**

(a)The monthly rental rate is \$1,739.94 per month, plus \$1 per foot for a capital improvement assessment (\$94.00), plus applicable sales tax of \$130.50, plus \$87.42 in Advertising Fees for a total of \$2,051.86. 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 including solid waste. The non-payment of any correctly billed utility shall be considered a material breach and grounds for termination. Lessee agrees that the rental rate shall be adjusted, at the commencement of each fiscal year for the City of Key West by increasing the base rent by any change in the U.S. Department of Commerce Consumer Price Index (CPI) for All Urban Consumers, as

reported by the Bureau of Labor Statistics or at the minimum rate of 3%, whichever is greater.

(b) In addition to sub-section (a) above, Lessee agrees to pay Lessor as percentage rent a sum equal to six percent (6%) of any annual Gross Sales in excess of the percentage rent base amount which shall be \$337,836 in year one of the lease. Thereafter the percentage rent base amount shall be calculated by dividing the current annual base rent by six percent (6%). Within thirty (30) days following the end of each Lease Year of the lease, Less shall provide Lessor with an accurate and complete copy of the State of Florida Department of Revenue, Sale and Use Return Form DR-15 (or such forms as the State of Florida shall hereafter substitute for this form) showing the full amount of Lessee's food and beverage Gross Sales from the Premises during the immediately preceding lease year and a certification from the Lessee or sub-lessee's CPA that all deductions from Gross Sales are true and accurate and comply with the terms of this Lease. Lessee's payment of percentage rent shall be due Lessor no later than thirty (30) days from the expiration of each Lease Year. Lessee is subject to a fifty dollar (\$50.00) late submission penalty should Lessee not furnish to Lessor copies of Form DR-15 by the twentieth (20th) day of each new Lease Year. If by the end of any such preceding year of the Lease the Gross Sales in the Premises during such Lease Year exceeded the amounts set herein, Lessee shall pay to Lessor, at the time of delivery of this statement, an amount equal to the percentage rent times the Gross Sales exceeding the amounts set forth above. The term "Lease Year" shall mean the period of time from October 1 to September 30 of each calendar year.

"Gross Sales" shall mean the amount of sales of all food and beverages sold on site from the Premises by Lessee, or any sub-lessee or licensee. Lessee may deduct from Gross Sales: (I) any refunds to customers, or discounts to customers or employees provided they have been included in Gross Sales, (ii) the amount of any sales tax levied upon sales and payable over to the appropriate governmental authority, (iii) Off-Premises sales or catering of food and beverages including, without limitation, foodstuffs sold at festivals, or Off-Premises generally. Lessee shall be permitted to deduct catering and Off- Premises sales from Gross Sales to the extent the same in the aggregate do not exceed ten percent (10%) of annual Gross Sales sold at the Premises. All Gross Sales relating to mail-order, catering and Off-Premises sales in excess of ten percent (10%) of annual Gross Sales shall be included in the definition of Gross Sales for purposes of determining Lessee's percentage rent. "Off-Premises" shall mean sales derived from events located outside of the premises described in Paragraph 1.

#### **6. Deposit**

Lessor hereby acknowledges receipt from Lessee of two month's base rent as a security deposit, forfeitable to Lessor as partial payment for any damages caused by Lessee's failure faithfully to observe and perform the terms and obligations of this Agreement, 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 at 1801 N Roosevelt Blvd or mailed to City of Key West revenue PO Box 1409 Key West Fl. 33040.

**8. Late Payments**

Any rental payment not received by Lessor by 5:00 p.m., the 5<sup>th</sup> 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:

\_\_\_\_\_  
Michael Lowe  
\_\_\_\_\_  
5294 Suncrest Rd, 44A  
\_\_\_\_\_  
Key West, Florida 33040  
\_\_\_\_\_

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: 1801 N Roosevelt Blvd. 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, hereby releases and agrees to hold Lessor harmless from all liability to same for personal injury, loss of life, property damage beyond normal wear and tear. 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, unless such loss or damage is due to the acts of negligence of the Lessor or any agents, employee, or person under the control of the Lessor. There is no warranty of any kind as to the condition of the docks, 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 coverage's:*

- \* *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 8 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. 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.

**22. 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.

**23. 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. City

acknowledges and approves of the permitted signs that are currently being used by the Lessee so long as it is demonstrated by the Lessee that said signs have been approved by Lessor in writing. Lessee is exempt from the advertisement fee in the amount of two hundred fifty and 00/100 dollars.

#### **24. 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.

#### **25. 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.

#### **26. 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.

#### **27. 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.



### **28. 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.

### **29. 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 City Marina at Garrison Bight, 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.

### **30. 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 Lessor. 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 Lessor 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 of Lessor.

### **31. Parking**

City shall provide Three (3) parking spaces for exclusive use by the restaurant.

### **32. 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.

### **33. 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.

**34. 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.

**35. Garbage / Recycle**

Lessee shall contract directly with the pertinent governmental authority or disposal company and shall be responsible for all fees and costs of removal and disposal of solid waste, garbage, and refuse, including but not limited to, impact fees and dumpster rental. TENANT shall indemnify, save harmless and defend LANDLORD from and against any loss, claim, injury, damage or expense arising out of or related to the generation, storage, or removal or disposal of TENANT'S garbage, refuse or solid waste.

LESSEE:  
CHIANYAI, LLC, a Florida limited liability company

LESSOR:  
CITY OF KEY WEST

*Michael Lowe*

By: Michael Lowe  
As: Managing Member

By:  
As:

*Richard McChesney*

Witness: Richard McChesney

Witness:

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

Owner: *Michael Lowe*

Date: *6/26/14*

**STATE OF FLORIDA  
COUNTY OF MONROE**

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of June, 2014, by Michael Lowe, as managing member of Chianyai, LLC, Lessee, who is personally known to me or has produced \_\_\_\_\_ as Identification and who did/did not take an oath.



*Madison Fallon*  
Notary Public  
State of Florida at Large  
My commission expires: