

## FIRST AMENDMENT TO USE AGREEMENT

This First Amendment to Use Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between Caroline Street Corridor and Bahama Village Community Redevelopment Agency of the City of Key West hereinafter (“CRA”) and Key West Express, LLC, a Florida limited liability company (hereinafter “KWE”).

### WITNESSETH

WHEREAS, CRA and KWE entered into a Use Agreement on the 3rd day of February 2015 for the Key West Ferry Terminal, (“the Facility”), 100 Grinnell Street, Key West, FL,

WHEREAS, the CRA and KWE now desire to amend their Use Agreement which is attached hereto as Exhibit “A”,

NOW, THEREFORE, in mutual consideration of the benefits conferred upon the parties by the terms of this Amendment, CRA and KWE agree as follows:

1. Paragraph 7. “Term” of the Use Agreement shall be amended allowing KWE to extend the agreement for an additional Ten (10) year term beginning the first day of March 2025 and expiring on the last day of February 2035.
2. Paragraph 8 “Monthly Rates for Dockage and Storage”. At commencement of extended term monthly rates for dockage and storage shall be increased by 3% over the amount being paid at the expiration of the present term. Additionally, the paragraph stating “*The rates set forth in this paragraph shall be increased annually pursuant to the immediately prior calendar year end annual increase in the United States Department of Labor Statistics, Miami – Ft. Lauderdale Consumers Price Index for All Urban Consumers*” shall be struck and replaced as follows:

*“The rates set forth in this paragraph shall be adjusted annually on the anniversary date of the lease by the annual increase in the CPI, as calculated in accordance with this provision. For the purposes herein, “CPI” means the CONSUMER PRICE INDEX for all Urban Consumers (All Items, Miami – Ft. Lauderdale index 1982–84 equals 100), published by the Bureau of Labor Statistics, United States Department of Labor. For the purposes of determining the annual increase in the CPI, subtract 1 from the fraction whose denominator is the bi-monthly CPI number published at calendar year end of each lease anniversary date and including on the lease commencement date, and whose numerator is the corresponding bi-monthly CPI number for the month of the calendar year in which the determination of the annual increase in the CPI is being made. Thereafter, the annual increase in the CPI for each 12-month period of this Lease will be computed in a like manner and calculated cumulatively. If the monthly CPI number is not available during any calendar month required for determination of the annual increase, then the base rent will be increased three percent (3.0%), as set forth herein, until the appropriate monthly CPI becomes available, at which time the increase above three percent (3.0%), if any, will be retroactive to the beginning of the period and be immediately due and payable to CRA as rent. In the event the CPI is terminated or unavailable for any reason, the calculation will be made by using the successor index or the one most nearly*

*comparable to it. In no event will the annual base rent increase be less than three percent (3%)”.*

3. Paragraph 9 “Other Charges”. At the commencement of the extended term, other charges shall be increased by 3% over the amount being paid at the expiration of the present term. The paragraph stating *“The passenger embarkation/disembarkation set forth in this paragraph shall be increased annually pursuant to the immediately prior calendar year end annual increase in the United States Department of Labor Statistics, Miami – Ft. Lauderdale Consumers Price Index for All Urban Consumers”* shall be struck and amended as follows:

*“The rates set forth in this paragraph shall be adjusted annually on the anniversary date of the lease by the annual increase in the CPI, as calculated in accordance with this provision. For the purposes herein, “CPI” means the CONSUMER PRICE INDEX for all Urban Consumers (All Items, Miami – Ft. Lauderdale index 1982–84 equals 100), published by the Bureau of Labor Statistics, United States Department of Labor. For the purposes of determining the annual increase in the CPI, subtract 1 from the fraction whose denominator is the bi-monthly CPI number published at calendar year end of each lease anniversary date and including on the lease commencement date, and whose numerator is the corresponding bi-monthly CPI number for the month of the calendar year in which the determination of the annual increase in the CPI is being made. Thereafter, the annual increase in the CPI for each 12-month period of this Use Agreement will be computed in a like manner and calculated cumulatively. If the monthly CPI number is not available during any calendar month required for determination of the annual increase, then the base rent will be increased three percent (3.0%), as set forth herein, until the appropriate monthly CPI becomes available, at which time the increase above three percent (3.0%), if any, will be retroactive to the beginning of the period and be immediately due and payable to CRA as rent. In the event the CPI is terminated or unavailable for any reason, the calculation will be made by using the successor index or the one most nearly comparable to it. In no event will the annual base rent increase be less than three percent (3%)”.*

4. Except as modified herein, the Use Agreement as amended shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have made this First Amendment to Use Agreement on the date first written above.

Caroline Street Corridor and Bahama  
Village Community Redevelopment Agency

ATTEST:

\_\_\_\_\_  
Cheryl Smith, City clerk

By: \_\_\_\_\_  
Teri Johnston, Chair

Key West Express, LLC

By: \_\_\_\_\_  
George Hilton, Manager Member

\_\_\_\_\_  
Witness

**Key West Express, LLC**

The foregoing First Amendment to Use Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, who is personally known to me, or who [ ] produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

My commission expires:

Print name: \_\_\_\_\_

**CRA**

The foregoing First Amendment to Use Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, who is personally known to me, or who [ ] produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

My commission expires:

Print name: \_\_\_\_\_

**Exhibit "A"**  
**Lease Agreement**