

RESOLUTION NO. 15-051

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

WHEREAS, in Resolution No. 07-133, and the Resolution No. 10-139, the CRA entered into a 10-year use agreement for dockage at the Ferry Terminal; and

WHEREAS, in Resolution No. 10-091 the CRA entered into a co-terminus lease for a ticket counter area inside the building; and

WHEREAS, the tenant requested to extend both the use agreement and the ticket counter lease, to become effective upon the five-year anniversary of the lease, in March 2015.

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

Section 1: That the attached Lease Agreement (ticket counter) is hereby approved.

Section 2: That the attached "Use Agreement" (dockage) is hereby approved.

Section 3: 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 Commission.

Passed and adopted by the City Commission at a meeting held this 3rd day of February, 2015.

Authenticated by the Presiding Officer and Clerk of the Commission on 4th day of February, 2015.

Filed with the Clerk on February 4, 2015.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Yes</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>



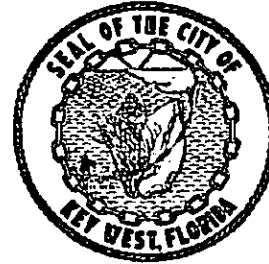
CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK

Executive Summary



TO: Key West Bight Board
Community Redevelopment Agency

CC: Jim Scholl

FR: Doug Bradshaw
Mark Tait
Marilyn Wilbarger, RPA, CCIM

DT: January 5, 2015

RE: Key West Express Use Agreement Extension and Lease Agreement Renewal

ACTION STATEMENT

This is a request to approve an extension of the Key West Express Use Agreement for dockage and a renewal of the Lease Agreement for the Key West Express Ticket Counter space in the Key West Bight Ferry Terminal.

HISTORY

In 2010, the Community Redevelopment Agency (CRA) and Key West Express (KWE) entered into a ten year use agreement for dockage at the Ferry Terminal and a co-terminus lease for a counter area inside the building that facilitates passenger check-in and boarding functions. The City recently received a request from KWE to extend both agreements for another five years effective on the five year anniversary in March 2015 to establish another ten year term. The request is predicated on their business plan which calls for; an expansion of service for the Marco Island routes in July and August whereas currently the Marco Island boat only runs from Dec 26 through April, potential upgrade/replacement of one or more of the vessels, and a longer term to support their financing arrangements.

Use Agreement

Staff has proposed a use agreement extension that includes the following terms:

Use:	No changes in the current use provisions
Term:	Extend for a ten year period commencing March 1, 2015
Dockage Rate:	\$35.54 per foot which reflects a 2% increase with annual CPI increases thereafter
Embarkation Fees:	\$1.18 per passenger which reflects a 2% increase with new annual CPI increases consistent with the dockage rate increases
Port Security/ Facility Charges:	No changes - actual costs will continue to be reimbursed
Storage:	New - \$16.00 per square foot annually for the 350 square foot area occupied by the two storage trailers located under the building which equals \$466.67 monthly with annual CPI increases consistent with storage rates in the Historic Seaport

- Fuel Services:** New - The CRA will sell Key West Express fuel at \$0.25 per gallon over the delivered cost for the first five years of the term of the agreement. Beginning with year six of the agreement the CRA will sell Key West Express fuel at the greater of \$0.25 per gallon or 9% over delivered cost. Key West Express agrees to exclusively purchase all fuel for the Marco Island Ferry on a daily basis, estimated at 2,000 gallons per day from the Key West Bight Ferry Terminal. Additionally any and all fuel purchased in Key West for all other Key West Express vessels will be purchased from the Key West Bight Ferry Terminal under the same terms.
- Utilities:** KWE shall pay for the actual metered or prorated costs of utilities including electricity, water and solid waste
- Pump Out:** New - In the interest of the environment and sustainable business practices KWE agrees to utilize the system to pump out all vessels during every port call at no additional charge.

Lease Agreement

The ticket counter lease agreement enables Key West Express to expedite the boarding process in a professional and organized manner. The renewal is proposed based upon the following terms:

- Demised Premises:** Re-located and reduced from 240 to 170 square feet
- Term:** Concurrent with the Key West Express Use Agreement
- Rate:** \$38.76 per square foot which reflects a 2% increase
- Increases:** CPI annual increases
- Additional Rent:** Tenant shall pay its pro-rate share of CAM, taxes, and insurance
- Utilities:** Tenant shall pay its pro-rated share of the electricity costs

FINANCIAL STATEMENT:

This is a market rate for dockage and lease space in the Ferry Terminal. The fueling agreement and storage rents will provide new revenue to the CRA. In addition, the embarkation fees will be increased annually and will also increase as KWE expands its services bringing more passengers to Key West.

RECOMMENDATION:

Staff recommends approval of the proposed Use Agreement and Lease Agreement

ATTACHMENTS:

Proposed Use Agreement - effective March 2015
Proposed Lease Agreement - effective March 2015
Current Use Agreement
Current Lease Agreement
Public Notice for Lease Negotiation

USE AGREEMENT

This Use Agreement (the "Agreement") is made on this 3rd day of February, 2015 ("the Effective Date") between the Caroline Street Corridor and Bahama Village Community Redevelopment Agency of the City of Key West (hereinafter referred to as "CRA") and Key West Express LLC, a Florida limited liability company (hereinafter described as "KWE").

1. KWE Identification

The KWE is identified as follows:

Name: Key West Express, LLC

Address: 54 Merrimac Street, Newburyport, MA 01950

Corporate Officer or Managing Partner: George Hilton / Joe Miller

Telephone Numbers: 978-465-1626 / 1-888-539-2628 978-420-2862

KWE's Representative: Eric Crawford and Linda Miller

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

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

In case of emergency contact: Eric Crawford / Joe Miller

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

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

2. Use of Facility

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

Facility to operate international routes, an amended agreement must be entered into that may be subject to different terms and conditions.

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

KWE 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 KWE.

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

3. Right of First Refusal

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

4. Proof of Ownership; Change in Ownership

Prior to exercising any rights whatsoever pursuant to the terms of this Agreement, and at such times during the term of this Agreement as CRA may request, KWE shall furnish to CRA for its review an original or certified copy of proof of ownership of the vessel. This proof shall consist of an original or certified copy of either a state-registered title to the vessel or documentation by the U.S. Coast Guard or foreign sovereign. KWE agrees to give CRA prior written notification of any change of ownership of the vessel during the term of this Agreement. The names of all persons owning an interest in KWE shall be submitted in writing to CRA, and (except with respect to a sale or other transfer of interests in KWE between the persons or entities who own interests in KWE on the Effective Date) any sale or transfer of any such interests without prior notice to CRA



shall constitute a material breach of this Agreement. The sale or transfer of a controlling interest in KWE (except with respect to a sale or other transfer of interests in KWE between the persons or entities who own interests in KWE on the Effective Date) to another individual, partnership or corporation shall constitute an assignment of this Agreement requiring approval by the Key West Bight Management District Board of the CRA. If KWE is leasing or otherwise operating the vessel, proof of authority to lease or operate the vessel shall be provided to CRA.

5. Changes in Information

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

6. Ferry Terminal Dock

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

7. Term

The term of this Agreement shall be for ten (10) years beginning March 1, 2015 and ending on the last day of February 2025. This Agreement may be renewed in accordance with the City of Key West Code of Ordinances governing the CRA.

8. Monthly Rates for Dockage and Storage

KWE shall pay to the CRA a monthly dockage rate of \$35.54 per foot, plus sales tax, for reserved dockage during the months the vessels operate from the Facility, which fee shall be based upon the length of the vessel(s) which makes a port call at the Facility. In the event that KWE operates more than one vessel on the same day from a departure location that makes a port call at the Facility, KWE agrees to pay a daily dockage fee for such additional vessel(s) of \$1.18 per foot per port call subject to future annual Consumers Price Index increases as herein provided for. This amount shall be paid on the first of the month each and every month. Port call is defined as the per occurrence dockage of any of the KWE vessels. There will be no dockage fees charged for those vessels during the months they are re-located to other seasonal ports however dockage fees will not be pro-rated for partial month usage.

KWE agrees to pay the CRA a monthly storage rate of \$16.00 per square foot for the 350 square foot area occupied by the two storage trailers under the building.

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The rates set forth in this paragraph shall be increased annually pursuant to the immediately prior calendar year end annual increase in the United States Department of Labor, Bureau of Labor Statistics, Miami - Ft. Lauderdale Consumers Price Index for All Urban Consumers.

9. Other Charges

KWE shall pay a disembarkation fee in the amount of \$1.18 per passenger and an embarkation fee of \$1.18 per passenger. KWE agrees to pay the CRA a guaranteed minimum of One Hundred Thousand Dollars (\$100,000.00) annually in passenger disembarkation and embarkation fees, combined. KWE shall fax or otherwise provide a copy of the daily Coast Guard passenger manifest to the CRA Port and Marine Services office prior to each arrival and departure of the vessel to and from Key West. The disembarkation and embarkation fee revenues shall be due at the end of each month within fifteen days of that month's end. The number of passengers described in this paragraph shall include the total number of passengers embarking to and disembarking from the Facility on all vessels of the KWE. The passenger embarkation/disembarkation set forth in this paragraph shall be increased annually pursuant to the immediately prior calendar year end annual increase in the United States Department of Labor, Bureau of Labor Statistics, Miami - Ft. Lauderdale Consumers Price Index for All Urban Consumers.

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

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

10. Deposit

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

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be paid to KWE by CRA only after deposit funds have been applied to any outstanding balance owed by KWE to CRA.

11. Payment

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

12. Notices

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

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

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

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

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

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

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

13. Utilities

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

14. Fuel

The CRA agrees to sell KWE fuel at \$0.25 per gallon over the delivered cost for the first five years of the term of the agreement. Beginning with year six of the agreement the CRA will sell Key West Express fuel at the greater of \$0.25 per gallon or 9% over delivered cost. Key West Express agrees to exclusively purchase all fuel for the Marco

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Island Ferry on a daily basis, estimated at 2,000 gallons per day from the Key West Bight Ferry Terminal. Additionally any and all fuel purchased in Key West for all other Key West Express vessels will be purchased from the Key West Bight Ferry Terminal under the same terms.

15. CRA Advertising

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

16. Remedies

16.01 CRA Remedies

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

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

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

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

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

16.02 KWE Remedies

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

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

17. Lien, Attorneys Fees

In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder. KWE agrees that CRA shall have a lien against the vessel, its appurtenances and contents, for such unpaid sums, or for any damage to docks, other vessels or property, or to invitees of CRA caused by KWE or the vessel.

18. Sanitation Device

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

19. Assignment

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

20. Indemnification

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

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

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

21. Release

This Agreement is for temporary berthing space only, and such space is to be used at the sole risk of KWE. Unless caused by the negligence, recklessness or intentional wrongful misconduct of the CRA, its employees or agents, KWE hereby agrees that CRA shall not be liable for the care, protection or security of the vessel, its appurtenances or contents, or of any of KWE's personal property, guests, passengers or invitees, or for any loss or damage of any kind to the same due to fire, theft, vandalism, collision, equipment failure, windstorm, hurricane, rains or other calamities. Subject to the CRA's obligations hereunder, including without limitation, the maintenance obligations of the CRA contained in paragraph 2 above, KWE agrees that there is no warranty of any kind as to the condition of the seawall, docks, piers, walks, gangways, ramps, mooring gear or electrical and water services, and that CRA is not responsible for injuries to persons or property occurring on CRA's property. This release shall include, but not be limited to: (1) acts in connection with KWE's vessel, motors and accessories while it is on or near CRA's property including the rented space, or while it is being moved, or docked; (2) loss or damage to KWE's vessel, motors and accessories and contents or other personal property due to fire, theft, vandalism, collision, equipment failure, windstorm, rain or hurricane or any other casualty loss; and (3) causes of action arising out of the use of any adjacent pier or docking facilities or walkways giving access thereto by KWE and/or its guests, passengers and invitees.

22. Insurance

The KWE shall maintain throughout this Agreement the following insurance:

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



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

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

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

24. Emergencies

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

25. Peaceable Use

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

26. KWE's Inspection

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

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27. CRA Inspection

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

28. KWE's Insolvency

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

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

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

30. Jurisdiction

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

31. Headings Not Part of Agreement

CRA and KWE agree that any heading which, labels any paragraph herein is for convenience only, and shall not in any way be construed as affecting, limiting, expanding, or stating the contents, meaning, or intent of the paragraph or of this Agreement.

32. Severability and Survival

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

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33. Person Signing

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

34. Termination

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

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

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

- (1) a failure of CRA to comply with the stipulations, agreements, conditions and covenants contained herein with which CRA must comply, if such failure is not cured within fifteen (15) days from and after the date that CRA receives (or is deemed to have received) written notice of such failure (which written notice must be furnished prior to and in addition to and as a pre-condition to the furnishing of, the Termination Notice; or
- (2) in the event that any cost, charge or expense payable by KWE hereunder is adjusted upward to reflect the compounded increase in the United States Department of Labor, Bureau of Labor Statistics Miami —Ft. Lauderdale

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Consumers Price Index for All Urban Consumers if such compounded increase for any compounding period shall factor in an annual increase in excess of three percent (3.00%); or

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

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

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

35. Homeland Security

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

36. Force Majeure

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

A handwritten signature in black ink, appearing to be 'GON' or similar, located in the bottom right corner of the page.

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

Key West Express LLC, a Florida Limited Liability Company

Witness

Bruce Lloyd

Witness

Signature

George D. Hilton

Date

12/20/2014

George D. Hilton
Manager Member

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

Witness

Angela Biddle, CMC

Craig Cates, Chairman

Date

2-3-15

Cates

Addendum A
Schedule of Key West Express Vessels

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



Addendum B
Estimated Security/Facility Passenger Fees 2014/15

SECURITY EXPENSES				
	<u>Hours Daily</u>	<u>Days Per Year</u>	<u>Total Hours</u>	<u>Total Cost</u>
Security Guard (1)	3	297	891	\$16,038.00
Contracted Hourly Rate: \$18.00				
Smith Detection Annual Service Agreement				<u>\$2,200.00</u>
Total Security Charge				\$18,238.00

FACILITY EXPENSES	
General Liability	
Property	
Pollution	
Wharfinger	
Marina	
Total Facility Charge	<u>\$10,883.73</u>

ESTIMATED SECURITY/FACILITY EXPENSES	\$29,121.73
Ending Balance 02-28-14	<u>\$0.00</u>
Total Estimated Security/Facility Expenses	\$29,121.73

Three year average passenger trips	154,560
Security/Facility Fee Per Trip	\$0.19

March 2011 - Feb 2012 Days Operated	319	<u>Three Yr.</u>
March 2012 - Feb 2013 Days Operated	271	<u>Average</u>
March 2013 - Feb 2014 Days Operated	<u>302</u>	
	892	297
March 2011 - Feb 2012 Passenger Trips	161,612	
March 2012 - Feb 2013 Passenger Trips	143,059	
March 2013 - Feb 2014 Passenger Trips	<u>159,008</u>	
	463,679	154,560

Lease Agreement

between

**Caroline Street Corridor and Bahama Village Community
Redevelopment Agency**

as

Landlord

and

KEY WEST EXPRESS, LLC

as Tenant

Dated February 3, 2015

THIS LEASE is made as of the 3rd day of February, 2015 by and between the LANDLORD and TENANT identified below:

1. INFORMATION PROVISIONS: Information provisions in this section are intended to provide a summary of the corresponding sections of this lease and are in no way inclusive of the complete terms and conditions of this lease.

1.1 LANDLORD'S NAME & MAILING ADDRESS:

Caroline Street Corridor and
Bahama Village Community
Redevelopment Agency,
P.O. BOX 6434
KEY WEST, FL 33040

1.2 TENANT'S NAME & MAILING ADDRESS:

KEY WEST EXPRESS, LLC
P.O. BOX 2460
FORT MEYERS BEACH, FL 33932-2460

TENANT'S TRADE NAME: KEY WEST EXPRESS

1.3 GUARANTOR (S) AND ADDRESS:

1.4 DEMISED PREMISES (Section 2): as per EXHIBIT "A" located at 100 Grinnell Street in the Historic Seaport (hereinafter referred to as the "Property") containing:

172 NET USABLE SQUARE FEET

PROPORTIONATE SHARE OF THE TOTAL NET USABLE SQUARE FEET:

TENANT'S Proportionate Share is based upon TENANT'S Net Usable Square Feet as it relates to the Total Net Usable Square Feet of the Property

Property Common Area is defined as all facilities furnished by the LANDLORD and designated for the general use in common, with other occupants of the Property, including TENANT, their officers, agents, employees and customers, and the general public, including but not limited to any of the following which may have been furnished by LANDLORD: lavatories, parking areas, driveways, entrances, and exits thereto, pedestrian sidewalks and ramps, landscapes areas, and other similar facilities, and all areas which are located within the Property and which are not leased to tenants.

1.4.1 EXPANSION/RIGHT OF FIRST REFUSAL: None

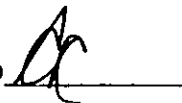
1.5 TERM (Section 3.): TEN (10) YEARS

1.5.1 COMMENCEMENT DATE: March 1, 2015 as acknowledged by TENANT'S written statement



- 1.5.2 RIGHT TO TERMINATE: None
- 1.5.3 RIGHT TO RENEW: This Lease may be renewed upon rent and terms to be negotiated by the parties and in accordance with the City of Key West Code of Ordinances.
- 1.6 MINIMUM RENT FOR TERM (Section 4): The base rent and base rent increases for the term and any renewals thereof as per **EXHIBIT "B"** attached hereto and incorporated herein. Every year thereafter throughout the term of the lease the minimum base rent shall be adjusted annually on the anniversary date of the lease by the increase in Consumer Price Index for all Urban Consumers as published by the United States Department of Labor. In no event shall the minimum base rent be decreased.
- 1.6.1 ADDITIONAL RENT: Tenant shall pay its Proportionate share of CAM, Real Estate Taxes, Insurance, Sales, Use or Excise Taxes together with Management and Administrative fees estimated as per **EXHIBIT "B"**, and any and all other sums of money or charges required to be paid by TENANT pursuant to the provisions of this lease.
- 1.6.2 RENT PAYMENT DUE DATE: Payable in advance on the first (1st) of each and every month of the term hereof.
- 1.6.3 LATE CHARGE: 15% of the amount in arrears if received after the fifth day of each and every month together with an administrative fee of \$50.00 for processing late payments.
- 1.6.4 PERCENTAGE RENT: Intentionally deleted
- 1.6.5 HOLD OVER RENT: 150% of the Minimum Base rent during the last year of the expiring term.
- 1.6.6 RENT CONCESSIONS: None
- 1.7 SECURITY DEPOSIT (Section 5): Equal to one month's base rent.
- 1.8 PERMITTED USE (Section 6): Passenger ticketing and check for Key West Express passengers and no other purpose
- 1.9 INSURANCE: (Section 9) \$2,000,000 aggregate and \$1,000,000 per occurrence commercial liability minimum
- 1.10 ASSIGNMENT OR SUBLETTING: (Section 10) Allowed with LANDLORD'S approval
- 1.11 UTILITIES: (Section 17) The TENANT shall pay for its pro-rated share of the Ferry Terminal utilities associated with the use of the Demised Premises.

INITIALS: LANDLORD



TENANT



3



WITNESSETH:

That the LANDLORD and the TENANT, for and in consideration of the keeping by the parties of their respective obligations hereinafter contained, as well as for one dollar (\$1.00) and other good and valuable consideration by each of the parties unto the other, in hand paid simultaneously with the execution and delivery of these presents, the receipt of which is hereby acknowledged, have agreed as follows:

2. DEMISED PREMISES - Upon the terms and conditions hereinafter set forth, and in consideration of the payment from time to time by the TENANT of the rents hereinafter set forth, and in consideration of the performance continuously by the TENANT of each and every one of the covenants and agreements hereinafter contained by the TENANT to be kept and performed, the LANDLORD does hereby lease, let, and demise unto the TENANT, and the TENANT does hereby lease of and from the LANDLORD, the following Demised Premises situated, lying, and being in Monroe County, Florida: That portion of the Property outlined and/or crosshatched on Exhibit "A" which depicts the Net Usable Square Feet of the Demised Premises. The Net Usable Square Feet is defined as all interior floor space, any second floor space, storage, covered dining areas and commercially used outdoor areas or any other area set aside for the exclusive use and economic benefit of the Tenant and containing the approximate dimensions and area measured in accordance with the published BOMA/ANSI standard for calculating net usable floor area for stores. It is agreed that the Net Usable Square Feet for the purpose of any calculations which are based on Net Usable Square Feet is as stated in Section 1.4. It is agreed that TENANT'S Proportionate Share is based upon TENANT'S Net Usable Square Feet as it relates to the Total Net Usable Square Feet of the Property. LANDLORD reserves the right to re-measure the Demised Premises from time to time and to adjust the TENANT'S Net Usable Square Feet and the rent or rental rate applied to the square footage as determined by any re-measurement or change in use. TENANT accepts the Demised Premises in an "as is", "where is" condition and acknowledges that LANDLORD has no obligations for any construction or improvements in connection with TENANT'S occupancy of the Demised Premises.

LANDLORD reserves the right from time to time with good cause, upon at least sixty (60) days advance written notice to relocate TENANT to other Demised Premises within the Property, prior to or during the term of this Lease, so long as usable area so substituted equals or exceeds the usable area of the Demised Premises; provided however that TENANT shall have the right at its sole option and as its sole remedy, to terminate the Lease upon sixty (60) days advance written notice which right must be exercised, if at all, within fifteen (15) days after receipt of LANDLORD'S relocation notice, which relocation notice may be withdrawn by LANDLORD within ten (10) days after LANDLORD'S receipt of TENANT'S termination notice, in which event TENANT'S attempted termination shall be null and void and the lease shall continue in full force and effect in accordance with its terms. In the event LANDLORD shall relocate TENANT to other space within the Property, LANDLORD shall pay the reasonable relocation costs of TENANT in connection therewith, but LANDLORD shall not have any other liability with respect to any such relocation.

Property Common Area is defined as all facilities furnished by the LANDLORD and designated for the general use in common, with other occupants of the Property, including TENANT, their officers, agents, employees and customers, and the general public, including but not limited to any of the following which may have been furnished by LANDLORD: lavatories, parking areas,



driveways, entrances, and exits thereto, pedestrian sidewalks and ramps, landscapes areas, and other similar facilities, and all areas which are located within the Property and which are not leased to tenants.

Expansion/Right of First Refusal – None

3. TERM - The term of this Lease shall be for ten years which shall commence on March 1, 2015 and shall end at midnight on the last day of February 2025 unless sooner terminated as provided for herein. Upon occupancy TENANT shall furnish LANDLORD a written statement stating the TENANT has accepted the Demised Premises for occupancy and setting forth the actual commencement and expiration dates of the Lease. TENANT'S written statement shall become attached to and incorporated into this lease as Exhibit "D". In the absence of TENANT'S written statement the lease term shall remain as stated above. A Lease Year is the twelve-month period beginning on the commencement date of each year and ending at the conclusion of the same date one year later. If possession of the Demised Premises shall for any reason not be delivered to Tenant on the Commencement Date, this Lease shall nevertheless continue in full force and effect, and no liability whatsoever shall arise against LANDLORD out of any delay other than the abatement of rent.

3.1 Right to Terminate – None

3.2 Right to Renew – This Lease may be renewed upon rent and terms to be negotiated by the parties in accordance with the City of Key West Code of Ordinances. The rent and terms of the renewal term must be acceptable to both the LANDLORD and the TENANT in their absolute discretion and must be set forth in written addendum to this Lease. If the parties fail for any reason whatsoever to agree upon and enter into such addendum at least 120 days prior to the end of the initial term of this Lease, then any obligations that the parties may have pursuant to this section to negotiate renewal terms shall cease and LANDLORD shall be free to lease the Demised Premises to the general public upon such rent and terms as it deems appropriate.

4. RENT - The base rent and base rent increases for the term and any renewals thereof as per EXHIBIT "B" attached hereto and incorporated herein. Every year thereafter throughout the term of the lease the minimum base rent shall be adjusted annually on the anniversary date of the lease by the increase in Consumer Price Index for all Urban Consumers as published by the United States Department of Labor. In no event shall the minimum base rent be decreased. All rentals provided for herein shall be payable in advance, without prior demand therefore and without deductions or setoffs for any reason whatsoever on the first day of each and every month of the term hereof.

4.1 Late Charges. Any monthly rental not received by the fifth day of the month shall incur a late fee equal to fifteen percent 15% of the amount in arrears. In addition, all payments received after the due date shall incur a \$50.00 administrative fee to cover the costs of collecting and processing late payments. LANDLORD shall have no obligation to accept less than the full amount of all installments of rental, additional rental or other amounts due hereunder and interest thereon which are due and owing by TENANT to LANDLORD. If LANDLORD accepts less than the full amount owing, LANDLORD may apply the sums received toward such TENANT'S obligations, as LANDLORD shall determine in its sole discretion, without waiving LANDLORD'S remedies for default.

- 4.2 **Interest on Rent.** Rent and additional rent not paid within fifteen (15) days of when due shall bear interest from the date due until paid at the highest rate permitted by law.
- 4.3 **Obligation to Survive.** TENANT'S obligation to pay rent that is accrued and unpaid hereunder shall survive the expiration or termination of the Lease.
- 4.4 The rent reserved under this Lease for the term hereof shall be and consist of:

(a) Beginning with the commencement date and throughout the term of this Lease, TENANT agrees to pay to the LANDLORD as and for minimum rent for the Demised Premises the annual amount, in equal monthly installments, in advance, on the first day of each and every calendar month, as per **EXHIBIT "B"**. In the event the rent commencement date is other than the first day of a calendar month, the rent for the partial first calendar month of the term will be prorated on a daily basis and payable on the commencement date.

(b) Simultaneously with each such payment, TENANT agrees to pay to LANDLORD any sales, use or excise tax imposed or levied against rent or any other charge or payment required hereunder to be made by TENANT which tax has been imposed or levied by any governmental agency having jurisdiction thereof, this shall include any new taxes imposed during the term of this Lease which are in addition to or in substitution for any such tax which is presently imposed.

(c) Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT'S Proportionate Share, as stated in Section 1.4, of Common Area Maintenance Charges in Monthly Installments as specified herein.

The Common Area Maintenance Charges are based on the Estimated Common Area Maintenance Charges attached hereto as **EXHIBIT "B"**. These charges are only estimates. The TENANT shall be responsible for all Common Area Maintenance Charges actually incurred on a pro rata assessment basis. Any increase in the common area charges shall result in an increase in the TENANT'S Common Area Maintenance Charges. Common Area Maintenance Charges for controllable expenses assessed after the base year shall not increase in any given year by more than 5% of the previous year's common area assessment for controllable expenses. The base year for the purpose of limiting increases in Common Area Maintenance Charges shall be the first year of the term of this lease. This limitation shall apply only to those services included in the base year's common area charges. Any services charged for that are not included in the base year's charges shall not be limited by this 5% cap nor shall they be included for determining this 5% cap.

Common Area Maintenance Charges shall include any and all expenses reasonably incurred in the operation and maintenance of the Property Common Area including but not limited to management and administrative fees, salaries and compensation paid in connection with operations, maintenance and administration, amortization (including interest) of equipment and facilities acquired and used for maintenance, to reduce energy usage, to otherwise reduce operating costs or common area seasonal decorating or redecorating. Major capital improvements will not be included in Common Area Maintenance Charges unless those improvements reduce expenses and if so the



improvements will be amortized over the useful life of the equipment as determined by the manufacturers' specifications or IRS depreciation regulations.

Monthly installments shall be due and payable on the 1st day of each calendar month during the Term. The installments set forth herein represent TENANT'S Proportionate Share of the estimated Common Area Maintenance Charges at the Commencement Date. Thereafter, LANDLORD shall, prior to the beginning of each calendar year, estimate the expected Common Area Maintenance Charges for the coming calendar year and TENANT'S Proportionate Share thereof, 1/12th of which shall constitute the Monthly Installments for such year; provided such installments shall never be lower than the installments specified herein. Within 90 days after the end of each year, LANDLORD shall calculate the actual Common Area Maintenance Charges paid or payable during the prior calendar year, and there shall be an adjustment between LANDLORD and TENANT so that LANDLORD shall receive the actual amount of TENANT'S annual Proportionate Share for said year. If TENANT'S Proportionate Share is less than the amount paid by TENANT during the prior year, LANDLORD shall, at its option, pay TENANT the difference between the amount received and the amount actually due, or credit such difference against TENANT'S next succeeding installments. If TENANT'S Proportionate Share is greater than the amount paid by TENANT during the prior year, TENANT shall pay LANDLORD the difference between the amount paid by TENANT and the amount actually due upon LANDLORD billing TENANT for same. LANDLORD agrees to keep, at its principal office, records relating to said Common Area Maintenance Charges. TENANT shall have the right to audit said records for the sole purpose of ascertaining the correctness of said Charges. Such audit shall be made during normal business hours; not unreasonably interfere with LANDLORD'S office operations; shall be performed by TENANT, TENANT'S chief financial officer, or a CPA selected by TENANT; shall not be made more often than once during each calendar year; and shall be limited to the preceding calendar year. If TENANT desires to audit said records as aforesaid, TENANT shall notify LANDLORD 30 days in advance thereof, commence said audit within 60 days of said notice, and once commenced, diligently complete the same. If any such audit shows the amount of such charges to TENANT was overstated, LANDLORD shall refund any such overcharge.

Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT'S Proportionate Share as stated in Section 1.4 of the Real Estate Tax Expense which shall include all real estate taxes and assessments both general and special imposed by federal, state or local governmental authority or any other taxing authority having jurisdiction over the Property against the land, buildings, store rooms, Common Areas and all other improvements within the Upland Property (excluding any public area which will not be taxed and excluding the Marina), together with any and all expenses incurred by LANDLORD in negotiations, appealing or contesting such taxes and assessments. Real Estate Tax Expense shall not include any additional charges or penalties incurred by LANDLORD due to late payment of Real Estate Taxes. In the event that any of the public area excluded later becomes taxable or is determined to be taxable then it shall be included for purposes of determining TENANT'S proportionate share.

TENANT'S Proportionate Share of Real Estate Taxes shall be paid as part of the Common Area Charges provided for herein. The 5% cap limitation provided for in Section 3(c) shall not be applicable to this particular common area charge.

Commencing with the 1st day of the Term, TENANT agrees to pay to LANDLORD, as Additional Rent, TENANT'S Proportionate Share as stated in Section 1.4. of the Insurance Expenses which shall include all insurance premiums incurred by the LANDLORD in insuring the Property including hazard and liability insurance for any and/or all buildings, improvements and common areas.

TENANT'S Proportionate Share of Insurance expenses shall be paid as part of the Common Area Charges provided for herein. The 5% cap limitation provided for in Section 3(c) shall not be applicable to this particular common area charge.

Should any governmental taxing authority acting under any present or future law, ordinance or regulation, levy, assess or impose a tax, excise and/or assessment (other than an income or franchise tax) upon or against the rentals payable by TENANT to LANDLORD, whether by way of substitution for, or in addition to, any existing tax on land and buildings or otherwise, or any other substitute tax, the proceeds of which are to be used to fund the same governmental functions as were funded by ad valorem taxes, TENANT shall be responsible for and reimburse LANDLORD for the amount thereof, as the case may be, as additional rent, 7 days before the date that any penalty or interest would be added thereto for non-payment or, at the option of LANDLORD, the same shall be payable in the manner provided for in the preceding paragraph. Substitute taxes as referred to above in this Section shall include, without limitation, any surtax on parking spaces.

Initial here if applicable

LANDLORD



TENANT

(d) Percentage Rent - Intentionally deleted.

(e) **Additional Rent.** Any and all other sums of money or charges required to be paid by Tenant pursuant to the provisions of this Lease, whether or not the same be so designated, shall be considered as "Additional Rent", and shall be payable and recoverable in the same manner as Rent. However, such Additional Rent shall be due upon demand and failure to pay such additional rent within seven (7) days shall be deemed a material breach of this lease. If Landlord shall make any expenditure for which Tenant is liable under this Lease and for which Tenant has not paid, the amount thereof shall be deemed Additional Rent due and payable by as indicated above. In addition to the foregoing rent, all other payments to be made by TENANT shall be deemed to be and shall become additional rent hereunder whether or not the same be designated as such and it shall be due and payable upon demand together with interest thereon at the highest rate permissible by law from their due date until the date it is paid. The LANDLORD shall have the same remedies for TENANT'S failure to pay said additional rental the same as for non-payment of rent. LANDLORD, at its election, shall have the right to pay or do any act which requires the expenditure of any sums of money by reason of the failure or neglect of TENANT to perform any of the provisions of this Lease, and in the event LANDLORD shall, at its election, pay such sums or do such acts requiring the expenditure of monies, TENANT agrees to pay LANDLORD, upon demand, all such sums, and the sums so paid by LANDLORD and any expenses incurred by LANDLORD in the payment of such sums together with interest thereon at the highest rate permitted by law from their due date through the date they are paid by TENANT shall be deemed



additional rent and shall be payable and collectible as such. Rent shall be made payable to the LANDLORD as stated in Section 1.1 hereof.

(f) **Holding Over.** It is agreed that in the event of TENANT holding over after the termination of this lease, thereafter the tenancy shall be from month to month in the absence of a written agreement to the contrary; the TENANT shall pay to LANDLORD a monthly occupancy charge equal to One Hundred Fifty (150%) Percent of the monthly rental for the last lease year for each month from the termination or expiration of this Lease until the Demised Premises are delivered to the LANDLORD in the condition required herein, and LANDLORD'S right to damages for such illegal occupancy shall survive. In addition, TENANT shall pay all other charges payable by TENANT under this Lease

(g) **Rent Concessions - None**

5. **SECURITY** - TENANT simultaneously with the execution and delivery of this Lease, will deposit with the LANDLORD the sum equal to one month's current minimum rent as per **EXHIBIT "B"** and as stated in Section 1.7 hereof, which sum shall be retained by LANDLORD as security for the payment by TENANT of the rents herein agreed to be paid by TENANT and for the faithful performance by TENANT of the terms, conditions and covenants of this Lease. It is agreed that LANDLORD, at LANDLORD'S option, may at any time apply said sum or any part thereof toward the payment of the rents and any other sum payable by TENANT under this Lease, and/or toward the performance of each and every covenant under this Lease, but such covenants and TENANT'S liability under this Lease shall thereby be discharged only pro tanto; that TENANT shall remain liable for any amounts that such sum shall be insufficient to pay; that LANDLORD may exhaust any or all rights and remedies against TENANT before resorting to said sum, but nothing herein contained shall require or be deemed to require LANDLORD to do so; that, in the event this deposit shall not be utilized for any of such purposes, then such deposit shall be returned by LANDLORD to TENANT within sixty (60) days after the expiration of the term of this Lease. TENANT shall deposit with LANDLORD such additional sums which may be necessary to replace any amounts expended there from by LANDLORD pursuant hereof, so that there shall always be a security deposit in the sum first set forth above. The Security deposit provided for herein shall be held by the LANDLORD in a non-interest bearing account and may be co-mingled by the LANDLORD at the LANDLORD'S sole discretion.

6. **USE OF THE DEMISED PREMISES** -TENANT shall use the Demised Premises for the purposes of:

Passenger ticketing and check in for Key West Express passengers and no other purpose

TENANT further agrees:

(a) To operate 100% of the Demised Premises for the entire term of this lease during all reasonable hours established by LANDLORD, pursuant to the highest reasonable standards of its Business category, maintaining a substantial stock of appropriate merchandise on display, with sufficient personnel to service its trade.

(b) With respect to the Property, not to display any merchandise, solicit business or distribute advertising material beyond the Demised Premises, nor in any manner use any part of the Common Areas for purposes other than for their intended common use and not to obstruct any part thereof.



(c) Not to display any banners, pennants, searchlights, window signs, balloons, or similar temporary advertising media on the exterior of the Demised Premises.

(d) Not to commit waste in the Demised Premises or Common Areas and to keep the Demised Premises and immediate adjacent areas including, without limitation, adjacent sidewalks, in a safe, neat, clean and orderly condition and to maintain and repair any lighting or signs under any canopy immediately in front of the Demised Premises.

(e) Not to use the Demised Premises or permit the same to be used in any manner which violates any law, ordinance or constitutes a nuisance; for lodging purposes; that may injure the reputation of the Property or annoy, inconvenience or damage its patrons or other TENANT'S; or that would constitute an extra-hazardous use or violate any insurance policy of TENANT, LANDLORD or any other TENANT in the Property or increase the cost thereof.

(f) To keep all garbage, refuse and solid waste inside the Demised Premises in the kind of containers specified by LANDLORD, or to place the same outside the Demised Premises, prepared for collection, in the manner and at the times and places designated ~~by~~ by LANDLORD or the appropriate disposal company. TENANT agrees not to burn or permit any burning of garbage or refuse on the Demised Premises or any part of the Property. TENANT further agrees that, upon LANDLORD'S instruction, TENANT shall separate garbage for recycling and deposit the separate garbage in the receptacle designated by LANDLORD. TENANT further agrees to make every effort to recycle all glass, metal, paper and plastic refuse and solid waste. Sort glass by colors and metal and paper by type and deposit in the appropriate recycling containers provided by the LANDLORD.

(g) TENANT shall contract directly with the pertinent governmental authority or a disposal company and shall be responsible for all fees and costs of removal and disposal of solid waste, ~~garbage~~ 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.

(h) To use its best efforts to cause all trucks serving the Demised Premises to load and unload from the hours of 7:00 a.m. to 11:00 a.m. and not to permit such trucks to service through the front entrance of the Demised Premises except when no other entrance is available.

(i) To take no action that would: (i) violate LANDLORD'S contracts if any, affecting the Property (including without limitation the use restrictions contained in LANDLORD'S leases with its Anchor Tenants, which restrictions have been explained to TENANT); or (ii) cause any work stoppage, picketing or cause any manner or interference with LANDLORD or other Tenants, occupants, customers or any person lawfully in and upon the Property.

(j) Not to use amplified music or any other noise making machinery or devices that in LANDLORD'S determination is harmful to the building or disturbing to other



Tenants.

(k) To abide by and observe all reasonable rules and regulations established from time to time by LANDLORD and LANDLORD'S insurance carrier with respect to the operation of the Property and its Common Areas. Rules and regulation are attached and incorporated herein as **EXHIBIT "C"**.

(l) Not to conduct any auction, fire, bankruptcy or selling-out sale on or about the Demised Premises except in strict compliance with City Code Chapter 18.

(m) To pay its proportionate share of any and all maintenance contracts wherein LANDLORD elects to purchases goods and services for the benefit of the entire Property including but not limited to LANDLORD directing all pest extermination at such intervals and service levels that LANDLORD deems appropriate.

(n) TENANT shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials which TENANT or its agents brought onto the Property. TENANT shall not allow storage or use of such materials or substances in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Demised Premises or the Property any such materials or substances except to use in the ordinary course of TENANT'S business, and then only after written notice is given to LANDLORD of the identity of such substances or materials. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any applicable state or local law and the regulations adopted under these acts. In addition, TENANT shall execute affidavits, representations and the like from time to time at LANDLORD'S request concerning TENANT'S best knowledge and belief regarding the presence of hazardous substances or materials in the Demised Premises. In all events, TENANT shall indemnify LANDLORD in the manner elsewhere provided for in this Lease against any liability resulting from any release of hazardous substances or materials in the Demised Premises or Property by TENANT or its agents, while TENANT is in possession or caused by TENANT or persons acting under TENANT which is due to hazardous substances that TENANT or its agents brought onto the Demised Premises or Property.

6.1 **Use of the Common Areas** -TENANT has the non-exclusive right to use the common areas solely for the purposes for which they were designed. The common areas may also be used by anyone else LANDLORD has or hereinafter in its sole discretion grants the right to use them.

7. **COVENANT OF QUIET POSSESSION** - So long as TENANT pays all of the rent and charges due herein, TENANT shall peaceably and quietly have, hold, and enjoy the Demised Premises throughout the term of this Lease without interference or hindrance by LANDLORD or any person claiming by, through, or under LANDLORD.

8. **INDEMNIFICATION** - TENANT does hereby agree to indemnify, defend, and save LANDLORD, its respective officers, directors, agents and employees harmless from and against

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any and all liability for any injury to or death of any person or persons or damage to property (including adjoining property for environmental damage) in any way arising out of or connected with the conditions, use or occupancy of the Demised Premises, or in any way arising out of the activities of TENANT, its agents, employees, licensees or invitees on the Demised Premises and/or the building, including reasonable attorney's fees and court costs incurred by LANDLORD in connection therewith, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, excepting, however, only liability caused by LANDLORD'S gross negligence in its failure to perform any of LANDLORD'S covenants, obligations or agreements of this Lease. Nothing herein is intended to waive the sovereign immunity afforded to City pursuant to Florida law, including section 768.28, Florida Statutes.

The indemnification obligations under this Section shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for TENANT under Workers' Compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of TENANT or of any third party to whom TENANT may subcontract work. This indemnification shall continue beyond the date of termination of the Agreement.

9. TENANT'S INSURANCE - At TENANT'S sole cost and expense, TENANT is to secure, pay for, and file with the LANDLORD, during the entire Term hereof, an occurrence form commercial general liability policy, covering the Demised Premises and the operations of TENANT and any person conducting business in, on or about the Demised Premises in a at least the following minimum amounts with specification amounts to prevail if greater than minimum amount indicated. Notwithstanding any other provision of this Lease, TENANT shall provide the minimum limits of liability coverage as follows:

Commercial General Liability	\$2,000,000	Aggregate
	\$2,000,000	Products Aggregate
	\$1,000,000	Any One Occurrence
	\$1,000,000	Personal Injury
	\$300,000	Fire Damage/Legal

TENANT shall also procure the following insurance coverage:

- (i) "All risk" property insurance, including theft coverage, written at replacement cost value and a replacement cost endorsement insuring TENANT'S improvements and betterments, fixtures, furnishings, equipment and any other property belonging to TENANT.
- (ii) Workers compensation coverage as required by the provisions of Florida statute.

Any consignment agreement used by TENANT must provide that consignor acknowledge that the LANDLORD does not have any liability whatsoever for any damage which may be done to items left in the Demised Premises on consignment. The TENANT must provide the LANDLORD with a copy of any consignment agreement used by TENANT regarding Demised Premises. LANDLORD shall not be responsible for damage to any property belonging to TENANT or consignor. TENANT completely indemnifies the LANDLORD with regard to any claims made by any consignor for any reason. From time to time during this Lease, at LANDLORD'S request, TENANT shall (i) procure, pay for and keep in full force and effect such other insurance as



LANDLORD shall require and (ii) increase the limits of such insurance as LANDLORD may reasonably require.

Any general liability or other policy insuring the LANDLORD does not provide any contributing or excess coverage for TENANT. The policies TENANT procures for TENANT'S exposure are the only coverage available to TENANT.

TENANT shall furnish an original Certificate of Insurance indicating, and such policy providing coverage, to LANDLORD named as "Additional Insured" on a PRIMARY and NON CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its equivalent, INCLUDING A "Waiver of Subrogation" clause in favor of LANDLORD on all policies. TENANT will maintain the General Liability coverage summarized above with coverage continuing in full force including the "additional insured" endorsement until at least 3 years beyond the termination of this Lease.

TENANT's insurance policies shall be endorsed to give 30 days written notice to LANDLORD in the event of cancellation or material change, using form CG 02 24, or its equivalent.

All policies of insurance required to be carried by TENANT pursuant to this Lease shall be written by responsible insurance companies authorized to do business in Florida with an AM Best rating of A-VI or better. Any such insurance required to be carried by TENANT hereunder may be furnished by TENANT under any blanket policy carried by it or under a separate policy therefore. Certificates shall be delivered to LANDLORD prior to the commencement of the Term of this Lease and, upon renewals, but not less than sixty (60) days prior to the expiration of such coverage. In the event TENANT shall fail to procure such insurance, LANDLORD may, at its option, procure the same for the account of TENANT, and the cost thereof shall be paid to LANDLORD as an additional charge upon receipt by TENANT of bills therefore, together with an administrative fee equal to fifteen (15%) percent to cover the cost of the LANDLORD'S efforts to procure such policy.

Certificates of Insurance submitted to LANDLORD will not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation/material change notice endorsements, and waivers of subrogation. Copies of USL&H Act and Jones Act endorsements will also be required if necessary. **PLEASE ADVISE YOUR INSURANCE AGENT ACCORDINGLY.**

10. ASSIGNMENT AND HYPOTHECATION - This Lease is not transferable or assignable and may not be hypothecated nor sublet without the prior written consent of the LANDLORD which may be withheld and shall be at the sole discretion of the LANDLORD.

Any assignment or sub-letting, even with LANDLORD'S consent shall not relieve TENANT from liability for payment of Rent or from the obligation to keep and be bound by the agreements of this Lease. The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease or to be consent to the assignment for the benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior consent of LANDLORD. In the event TENANT wishes to assign this Lease and LANDLORD consents to such assignment, LANDLORD may charge a reasonable fee, not to exceed \$500.00 to help offset any costs LANDLORD may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same. Any assignment, transfer, hypothecation, mortgage, or subletting without



LANDLORD'S written consent shall give LANDLORD the right to terminate this Lease and to re-enter and repossess the Demised Premises and the LANDLORD'S right to damages shall survive.

If the TENANT is a corporation, then a sale or transfer of a controlling interest in the corporation by sale of stock or otherwise shall constitute an assignment for purposes of this provision.

11. SUBORDINATION - This Lease, and all rights of TENANT hereunder, are and shall be subject and subordinate to all mortgages, bond indentures and any other financing instrument (hereinafter referred to as security agreements) which may now or hereafter affect the Demised Premises and to each and every advance made or hereafter to be made under such security agreements and to all renewals, modifications, replacements and extensions of such security agreements and spreaders and consolidations of such security agreements. This paragraph shall be self operative and no further instrument of subordination shall be required to make it effective, however, TENANT shall promptly execute and deliver any instrument reasonably requested to evidence such subordination.

If the holder of any such security instrument shall succeed to the rights of LANDLORD under this Lease, then at the request of such party so succeeding to the LANDLORD'S rights and upon such successor LANDLORD'S written agreement to accept TENANT'S attornment, TENANT shall attorn to such successor LANDLORD and will execute such instruments as may be necessary or appropriate to evidence such attornment. Upon such attornment, this Lease shall continue in full force and effect as if it were a direct Lease between the successor LANDLORD and TENANT upon all the terms, conditions, and covenants as are set forth in this Lease and shall be applicable after such attornment.

TENANT shall deliver to LANDLORD or the holder of any such security instrument or auditors, or prospective purchaser or the owner of the fee, when requested by LANDLORD, a certificate to the effect that this Lease is in full force and that LANDLORD is not in default therein, or stating specifically any exceptions thereto. Failure to give such a certificate within ten business days after written request shall be conclusive evidence that the Lease is in full force and effect and LANDLORD is not in default and in such event, TENANT shall be stopped from asserting any defaults known to TENANT at that time.

12. CONDEMNATION

(a) It is further understood and agreed that if at any time during the continuance of this Lease the legal title to the Demised real estate or the improvements or buildings located thereon or any portion thereof be taken or appropriated or condemned by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings and such abatement of the fixed rent and other adjustments made as shall be just and equitable under the circumstances. If the LANDLORD and the TENANT are unable to agree upon what division of the condemnation award, abatement of fixed rent, or other adjustments are just and equitable within thirty (30) days after such award has been made, then the matters in dispute shall, by appropriate proceedings, be submitted to a court having jurisdiction of the subject matter of such controversy for its decision and determination of the matters in dispute. If the legal title to the entire Demised Premises be wholly taken by condemnation, or if the portion taken will prevent the Demised Premises from being used for the purpose the TENANT intends, this Lease shall be canceled.

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(b) In general, it is the intent and agreement of the parties that upon condemnation, the parties hereto shall share in the condemnation award to the extent that they would be entitled to receive compensation and damages under the Florida law for the depreciation, damage, or destruction of their interests by the exercise of the right of eminent domain. In no event shall TENANT be permitted to receive a share based on the value of the land or buildings, and/or improvements.

13. TENANT'S DEFAULT -

(a) If the TENANT shall fail to pay any of the taxes or assessments herein provided for; or in case of the sale of or forfeiture of the Demised Premises or any part thereof during the demised term for non-payment of any tax or assessment; or in case the TENANT shall fail to keep insured the building or improvements which are now or which may at any time hereafter be upon the Demised Premises, as herein provided for; or shall fail to spend insurance money, as herein provided for; or if the TENANT shall fail to perform any of the covenants of this Lease by it to be kept and performed; then, in any of such events, except in the event of non payment of rent, upon ten (10) business days written notice, within which the TENANT may cure, and upon its failure to cure, it shall and may be lawful for the LANDLORD, at its election, to declare the demised term ended and to re-enter upon said Demised Premises, building, and improvements situated thereon, or any part hereof, either with or without process of law, the TENANT hereby waiving any demand for possession of the Demised Premises and any and all buildings and improvements then situated thereon. In the event of nonpayment of rent, LANDLORD may assert its right of notice and eviction pursuant to Chapter 83, Florida Statutes.

(b) Or, the LANDLORD may have such other remedies as the law and this instrument afford, and the TENANT covenants and agrees that upon the termination of said demised term, at such election of the said LANDLORD, or in any other way, TENANT will surrender and deliver up the Demised Premises and property (real and personal) peaceably to the LANDLORD, its agent, or attorneys, immediately upon the termination of the said demised term. If the TENANT, its agents, attorneys, or shall hold the Demised Premises or any part thereof, one (1) day after the same should be surrendered according to the terms of this Lease, it shall be deemed guilty of forcible detainer of the Demised Premises under the statute and shall be subject to eviction or removal, forcibly or otherwise, with or without process of law.

(c) BANKRUPTCY OF TENANT. IN THE EVENT TENANT FILES ANY FORM OF BANKRUPTCY, LANDLORD SHALL BE ENTITLED TO IMMEDIATE TERMINATION OF THE AUTOMATIC STAY PROVISIONS OF 11 U.S.C. §362, GRANTING THE LANDLORD COMPLETE RELIEF AND ALLOWING THE LANDLORD TO EXERCISE ALL OF HIS LEGAL AND EQUITABLE RIGHTS AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO TERMINATE THIS LEASE AND DISPOSSESS TENANT FROM THE DEMISED PREMISES IN ACCORDANCE WITH FLORIDA LAW. ADDITIONALLY, TENANT AGREES NOT TO DIRECTLY OR INDIRECTLY OPPOSE OR OTHERWISE DEFEND AGAINST THE LANDLORD'S EFFORT TO GAIN RELIEF FROM ANY AUTOMATIC STAY. THE LANDLORD SHALL BE ENTITLED AS AFORESAID TO THE LIFTING OF

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THE AUTOMATIC STAY WITHOUT THE NECESSITY OF AN EVIDENTIARY HEARING AND WITHOUT THE NECESSITY OR REQUIREMENT OF THE LANDLORD TO ESTABLISH OR PROVE THE VALUE OF THE LEASEHOLD, THE LACK OF ADEQUATE PROTECTION OF HIS INTEREST IN THE LEASEHOLD, OR THE LACK OF EQUITY IN THE SAME. TENANT SPECIFICALLY AGREES AND ACKNOWLEDGES THAT THE LIFTING OF THE AUTOMATIC STAY HEREUNDER BY THE APPROPRIATE BANKRUPTCY COURT SHALL BE DEEMED TO BE "FOR CAUSE" PURSUANT TO SECTION 362(D)(1).

(d) Where the alleged default consists of some alleged violation of any term of this Lease, other than the payments of money, including rent, the LANDLORD may not declare this Lease in default until such violation shall have continued for ten (10) days after the LANDLORD shall have given the TENANT written notice of such violation, and TENANT shall not have undertaken, during said ten (10) day notice period, to cure said violation by vigorous and affirmative action, provided, however, that nothing herein contained shall be construed as precluding the LANDLORD from having such remedy as may be and become necessary in order to preserve the LANDLORD'S right and interest of the LANDLORD in the Demised Premises and in this Lease, even before the expiration of the grace or notice periods provided for in this paragraph, if, under particular circumstances then existing, the allowance of such grace or the giving of such notice would prejudice or endanger the rights and estate of the LANDLORD in this Lease and in the Demised Premises. With respect to the payment of the insurance premiums, the same must be paid at least fifteen (15) days prior to the time when the policies would lapse for the failure to pay premiums thereon, and evidence of such payment given to the LANDLORD without any written notice being required to be served upon the TENANT in connection therewith.

(e) All default and grace periods shall be deemed to run concurrently and not consecutively.

(f) It is mutually covenanted and agreed that the various rights, powers, options, elections, privileges, and remedies of the LANDLORD contained in this Lease shall be construed as cumulative and no one of them shall be construed as being exclusive of the other or exclusive of any rights or priorities allowed by law.

(g) It is further covenanted and agreed by and between the parties hereto that the right given to the LANDLORD in this Lease to collect the rent that may be due under the terms of this Lease by any proceeding under same, or the right to collect any additional rent, money, or payments due under the terms of this Lease by any proceedings under same, or the right given the LANDLORD to enforce any of the terms and provisions of this Lease shall not in any way affect the right of such LANDLORD to declare this Lease void and the terms ended hereby, as herein provided, when default is made in the payment of said rent or when default is made by the TENANT in any of the terms and provisions of this Lease.

(h) In the event of litigation in connection with this Lease, the prevailing party shall be entitled to recover from the losing party as part of an order, judgment, or award that may be rendered, all of the prevailing party's costs and expenses of such litigation, including without limitation reasonable attorney's fees and costs, through and including

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all trial and appellate levels and post-judgment proceedings.

14. TENANT'S REPAIRS - The TENANT covenants and agrees with the LANDLORD that during the continuance of this Lease, the TENANT shall be solely responsible for maintaining the Demised Premises in a clean, sanitary and safe condition in accordance with the laws of the State of Florida and in accordance with all directions, rules and regulations of all inspectors, governmental departments and agencies having jurisdiction over the Demised Premises to ensure a good state of repair of the Demised Premises and all furnishings, including any special equipment brought, placed, or installed upon the Demised Premises by TENANT; nor will the TENANT suffer or permit any strip, waste, or neglect of any building or such personal property to be committed; and the TENANT will repair, replace, and renovate the said real and personal property as often as it may be necessary in order to keep the building or buildings and the personal property which is subject to the LANDLORD'S lien, in good repair and condition. In the event that improvements or repairs are contemplated prior to or at the beginning of or during TENANT'S occupancy, then this provision shall apply to the condition of the property as of the last repair, improvement or renovation.

In the event that LANDLORD shall deem it necessary or be required by any governmental authority to repair, alter, remove, reconstruct or improve any part of the Demised Premises or of the property (unless the same result from TENANT'S act, neglect, default or mode of operation, in which event LANDLORD shall make all such repairs, alterations or improvements at TENANT'S sole cost and expense), then the same shall be made by LANDLORD with reasonable dispatch, and should the making of such repairs, alterations and improvements cause any interference with TENANT'S use of the Demised Premises, such interference shall not relieve TENANT from the performance of its obligations hereunder nor shall such interference be deemed an actual or constructive eviction or partial eviction or result in abatement of rental.

15. ALTERATIONS - TENANT shall not make any alterations, additions or improvements to the Demised Premises (whether or not the same may be structural in nature) without LANDLORD'S prior written consent. All alterations, additions, or improvements made to the Demised Premises, except movable furniture and equipment installed at TENANT'S expense, shall be the property of the LANDLORD and remain upon and be surrendered with the Demised Premises at the expiration of the term of this Lease; provided, however, that LANDLORD may require TENANT to remove any additions made at TENANT'S request to the Demised Premises and to repair any damage caused by such removal, and provide further, that if TENANT has not removed its property and equipment within ten (10) days after the expiration or termination of this Lease, LANDLORD may elect to retain the same as abandoned property.

In the event TENANT shall request LANDLORD'S permission, and LANDLORD shall permit TENANT to perform any alterations, additions, improvements or repairs to the Demised Premises, TENANT shall (i) submit its plans and specifications to LANDLORD for its approval prior to the commencement of any construction, (ii) obtain all necessary permits prior to the commencement of any construction, (iii) only use contractors approved by LANDLORD, (iv) not permit any construction liens to be placed or remain on the Demised Premises. In the event a construction lien shall be filed against the Demised Premises as a result of work undertaken by TENANT, TENANT shall within ten (10) days of receiving notice of such lien, discharge the lien of record either by payment of the indebtedness to the lien claimant or by filing a bond as security therefore. All such work made by or on behalf of TENANT shall be performed in such manner as LANDLORD may designate and in accordance with all applicable laws and regulations of



governmental authorities having jurisdiction over the same. All such work by TENANT or its contractors shall not interfere with, impede or delay any work by LANDLORD or its contractors, tenants or TENANT'S contractors. All contractors engaged by TENANT shall be bondable, licensed contractors, possessing good labor relations, and capable of performing quality workmanship.

16. EQUIPMENT, FIXTURES AND SIGNS

(a) All furnishings, fixtures, trade fixtures, equipment, and signs used on the Demised Premises by TENANT but provided by LANDLORD, will, at all times, be, and remain, the property of LANDLORD. Provided that this Lease is in good standing and subject to the LANDLORD'S lien for rent, TENANT will have the right to remove any furniture or fixtures provided by TENANT, or any part thereof, from the Demised Premises during the term of this Lease, at the expiration thereof, or within a reasonable time thereafter, provided, however, that TENANT, in so doing, does not cause any irreparable damage to the Demised Premises, and provided further, that TENANT will pay or reimburse LANDLORD for the reasonable expense of repairing damage caused by such removal.

(b) All TENANT signs shall be approved by the LANDLORD and must meet all applicable codes. The exact location, style, text, and color(s) of the sign shall be agreed upon by the LANDLORD, in writing, prior to TENANT'S installation. LANDLORD'S approval shall not be unreasonably withheld or delayed.

17. ADDITIONAL COVENANTS OF THE TENANT

(a) The TENANT shall pay for all utilities associated with the use of the Demised Premises including, but not limited to, water, electricity, sewer, gas and waste, (if applicable). In the event that a separate bill for the Demised Premises is not available for one or more of the utility services required by the Demised Premises, then the TENANT shall pay a pro-rated share of that particular utility bill based on a calculation of the ratio of the square footage of the Demised Premises and the total square footage of the Premises covered by that particular utility bill. In the event that the TENANT shall be billed for a pro-rated share, the LANDLORD shall provide TENANT a utility bill each month and TENANT shall pay the amount due to LANDLORD within ten (10) days of its receipt.

(b) The TENANT covenants and agrees with the LANDLORD that no damage or destruction to any building or improvement by fire, windstorm, or any other casualty shall be deemed to entitle the TENANT to surrender possession of the Demised Premises or to terminate this Lease or to violate any of its provisions or to cause any abatement or rebate in the rent then due or thereafter becoming due under the terms hereof, unless otherwise specifically provided for herein. If the Lease be canceled for the TENANT'S default at any time while there remains outstanding any obligation from any insurance company to pay for the damage or any part thereof, then the claim against the insurance company shall, upon the cancellation of the within-Lease, be deemed immediately to become absolute and unconditional property of the LANDLORD. In the event of destruction to the Demised Premises by casualty or hazard, LANDLORD will have the



option of canceling the Lease, or repairing the building, and in the event that the LANDLORD elects to repair the building, an appropriate abatement of rent will occur.

(c) The TENANT shall be responsible for the HVAC and all air conditioning systems together with the plumbing and electrical system.

(d) The TENANT shall be responsible for maintaining the roof and exterior of the building

(e) The TENANT covenants and agrees with the LANDLORD that nothing in this Lease contained shall ever be construed as empowering the TENANT to encumber or cause the LANDLORD to encumber the title or interest of the LANDLORD.

(f) The TENANT covenants and agrees with the LANDLORD that, at the termination of this Lease, the TENANT will peaceably and quietly deliver unto the LANDLORD, possession of the Demised Premises and all buildings and improvements located thereon, as well as the TENANT'S interest in all fixtures and equipment appertaining thereto.

(g) The TENANT agrees not to make any internal changes or exterior changes or alterations without written approval of the LANDLORD. This provision does not apply to TENANT'S trade fixtures and/or other non-permanent fixtures on the interior of the Demised Premises.

18. LANDLORD'S RIGHT OF ENTRY - The LANDLORD or its agents shall have the right to enter upon the Demised Premises at all reasonable times to examine the condition and use thereof, provided only that such right shall be exercised in such manner as not to interfere with the TENANT in the conduct of the TENANT'S business on said Demised Premises. If the said Demised Premises are damaged by fire, windstorm, or by any other casualty which caused the Demised Premises to be exposed to the elements, then the LANDLORD may enter upon the Demised Premises to make emergency repairs. LANDLORD may enter upon the Demised Premises to make renovations and repairs of a non-emergency nature by giving reasonable notice to the TENANT, and in such a manner as to minimize any inconvenience to both parties.

19. TENANT'S ACCEPTANCE - The TENANT accepts the Demised Premises and improvements thereon in an as is condition and all improvements and additions shall be at the sole expense of the TENANT except as may be otherwise provided for in this Lease.

20. MISCELLANEOUS PROVISIONS - It is mutually covenanted and agreed by and between the parties as follows:

(a) That no waiver of a breach of any of the covenants in this Lease contained shall be construed to be a waiver of all succeeding breach of the same covenant.

(b) That time is of the essence in every particular and particularly where the obligation to pay money is involved.

(c) That all arrearages in the payment of rent or in the repayment to the LANDLORD of any sums which the LANDLORD may have paid in order to cure a default of the TENANT (as elsewhere herein provided for), shall bear interest from the



date when due and payable at the highest rate permitted by law until paid.

(d) That no modification, release, discharge, or waiver of any provision hereof shall be of any force, effect, or value unless in writing and signed by the persons who are then LANDLORD and TENANT.

(e) That all covenants, promises, conditions, and obligations contained herein or implied by law, or covenants running with the land, shall attach to and be binding upon the heirs, executors, administrators, successors, legal representatives, and assigns of each of the parties to this Lease.

(f) That this instrument contains the entire agreement between the parties as of this date, and that the execution hereof has not been induced by either of the parties by representations, promises or understandings not expressed herein, and that there are not collateral agreements, stipulations, promises, or understandings whatsoever between the respective parties in any way touching the subject matter of this instrument which are not expressly contained in this instrument.

(g) That when either of the parties desire to give notice to the other or others in connection with and according to the terms of this Lease, such notice shall be deemed given when it shall have been deposited in the U.S. Registered or Certified mail with sufficient postage pre-paid thereon to carry it to its addressed destination. Said notice shall be addressed as follows:

AS TO LANDLORD: PROPERTY MANAGEMENT
CITY OF KEY WEST
P.O. BOX 6434
KEY WEST, FL 33040

AS TO TENANT: KEY WEST EXPRESS, LLC
P.O. BOX 2460
FORT MEYERS BEACH, FL 33932-2460

When the parties on either side (LANDLORD or TENANT) consists of more than one person, notice or default by one of the persons on that side shall constitute notice or default by all of the persons on that side.

(h) This Lease and the provisions thereof shall be governed by and construed and enforced in accordance with the laws of the State of Florida.

(i) If the TENANT or TENANTS are signing in a capacity other than as individuals, then the LANDLORD may require personal guarantees from individuals as the LANDLORD deems necessary.

(j) LANDLORD may delegate its decision-making authority regarding any provision of this Lease to an Advisory Board.

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IN WITNESS WHEREOF, the parties hereto have caused the foregoing Lease to be executed on the day and year first above written.

ATTEST

LANDLORD: Caroline Street Corridor and
Bahama Village Community Redevelopment
Agency

Cheryl Smith
Cheryl Smith, City Clerk

Date: 2-3-15

Craig Cates
Craig Cates, Chairman

Date: 2-3-15

Bonnie Vogel
WITNESS

Date: 12/20/2014

TENANT: Key West Express, LLC

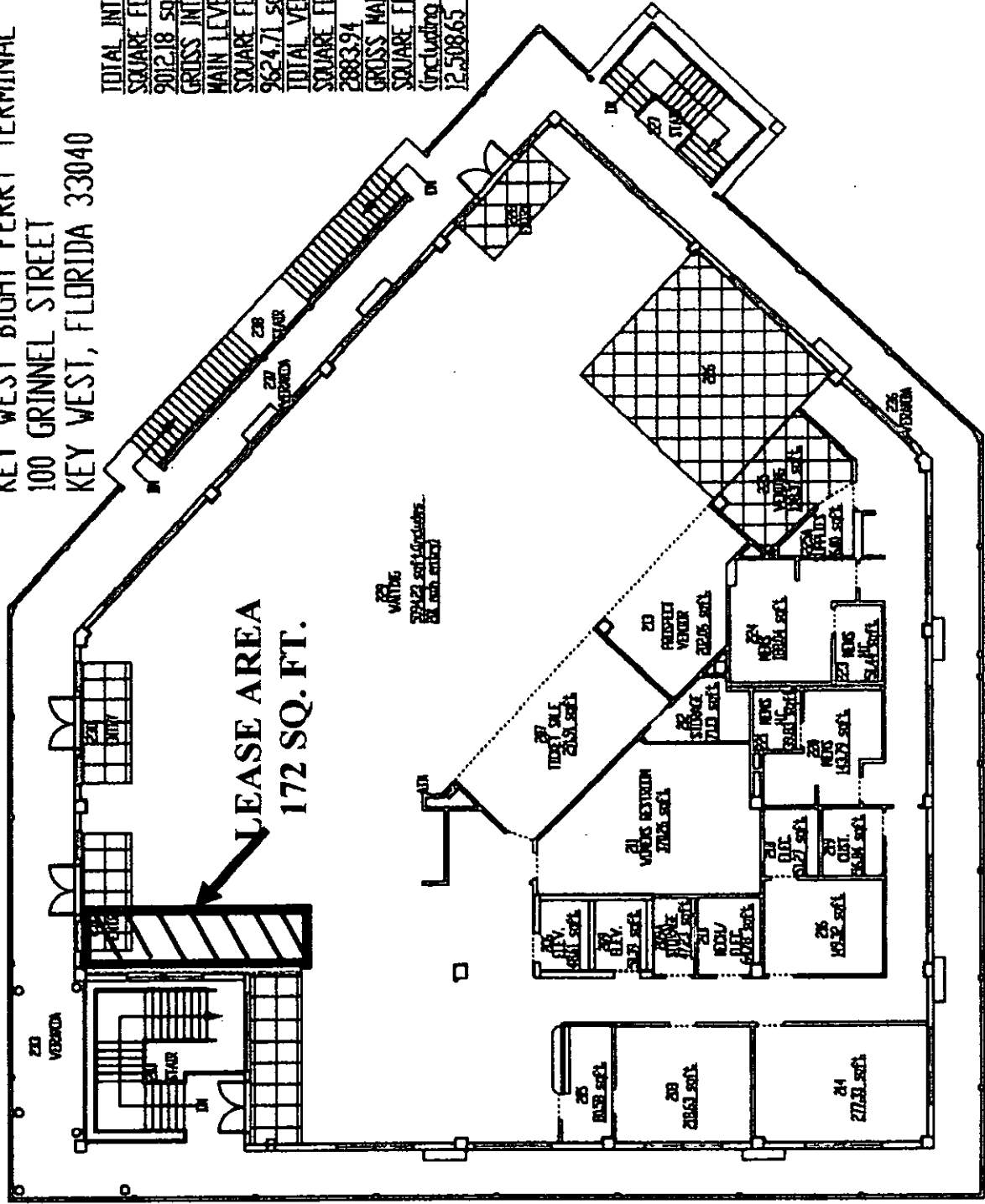
George D. Hilton
George D. Hilton, Manager Member

Date: 12/20/2014

EXHIBIT "A" Demised Premises, Site Plan

EXHIBIT A: KEY WEST EXPRESS COUNTER LEASE AREA

KEY WEST BIGHT FERRY TERMINAL
100 GRINNELL STREET
KEY WEST, FLORIDA 33040



TOTAL INTERIOR
SQUARE FOOTAGE:
9012.18 sq. ft.
GROSS INTERIOR
MAIN LEVEL
SQUARE FOOTAGE:
9624.71 sq. ft.
TOTAL VERANDA
SQUARE FOOTAGE:
2883.94
GROSS MAIN LEVEL
SQUARE FOOTAGE
(including verandas):
12,508.65 sq. ft.

[Handwritten signature]

EXHIBIT "B" Rent Schedule

Historic Seaport

EXHIBIT "B"

Tenant: Key West Express, LLC
 Location: Ferry Terminal Ticket Counter
 Contact: George Hilton

Square Feet 172 CAM
 Square Feet 172 BASE RENT
 Term 10 years

\$4.05 PER SQ. FT.

YEAR #	Period Beginning	Base Rent per sq. ft. CPI Increases	Base Rent Annual	Base Rent Monthly	Tax, Ins., CAM Annual	Tax, Ins., CAM Monthly	Total Rent Before Sales Tax Monthly	Sales Tax Monthly	Total Rent With Tax Monthly	TOTAL RENT ANNUAL
1	March 1, 2015	\$38.76	\$6,666.72	\$555.56	\$698.60	\$58.05	\$613.61	\$48.02	\$659.63	\$7,915.57
2	March 1, 2016									
3	March 1, 2017									
4	March 1, 2018									
5	March 1, 2019									
6	March 1, 2020									
7	March 1, 2021									
8	March 1, 2022									
9	March 1, 2023									
10	March 1, 2024									

Tax, Insurance and CAM are estimated. Estimates are based upon most recent actual costs

EXHIBIT "C" Rules and Regulations

TENANT shall not use any area outside of the demised premises as shown on Exhibit A or any portion of any common area or any parking areas for or any other purpose whatsoever including but not limited to the storage of goods, inventory, equipment, materials, whether or not said area is inside a building or outdoors.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a cursive representation of a name.

EXHIBIT "D"

TENANT'S written statement setting forth the actual commencement and expiration dates of the Lease.

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, located in the bottom right corner of the page.

RESOLUTION NO. 10-091

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

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

Section 1: That the attached Use Agreement is hereby
approved.

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

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

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

Filed with the Clerk March 3, 2010.



CRAIG CATES, CHAIRMAN

ATTEST:



CHERYL SMITH, CITY CLERK

RESOLUTION NO. 10-139

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

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

Section 1: That the attached First Amendment to Lease Agreement is hereby approved.

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

Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 6th day of April, 2010.

Authenticated by the presiding officer and Clerk of the Agency on April 7, 2010.

Filed with the Clerk April 7, 2010.


CRAIG CATES, CHAIRMAN

ATTEST:


CHERYL SMITH, CITY CLERK

PUBLIC NOTICE

Lease Renewal Negotiations – Key West Express, LLC

Pursuant to Section 2-941 of the Code of Ordinances of the City of Key West, Florida, notice is hereby given that the Community Redevelopment Agency (CRA) of the City of Key West shall commence lease negotiations for the renewal of the existing lease dated April 11, 2007 and the use agreement dated March 2, 2010 by and between the (CRA) of the City of Key West as Landlord and Key West Express, LLC as tenant, pertaining to the property located at 100 Grinnell Street. Any request for information shall be directed to M. Wilbarger at the City of Key West, P.O. Box 1409, Key West, FL, 33040, or via email to mwilbarger@cityofkeywest-fl.gov

Published this 4th day of January, 2015

By: James Scholl, City Manager, City of Key West

Publish: Sunday January 4, 2015