



City Council Chamber
735 Eighth Street South
Naples, Florida 34102

City Council Special Workshop Meeting – April 16, 2007 – 7:00 p.m.

Mayor Barnett called the meeting to order and presided.

ROLL CALLITEM 1

Present:

Bill Barnett, Mayor
Johnny Nocera, Vice Mayor

Council Members:

William MacIlvaine
Gary Price, II
John Sorey, III
Penny Taylor (arrived 7:02 p.m.)
William Willkomm, III

Also Present:

Robert Lee, City Manager
Robert Pritt, City Attorney
Tara Norman, City Clerk
David Lykins, Community Services Director
Michael Klein, Waterfront Operations Manager
Vicki Smith, Technical Writing Specialist
Faron Richards
Tom Marvel
Byron Thomas

William Haley
Phil Haley
Doug Finlay
Albert Katz
Lois Selfon
Marlena Brackebusch
Alexandra Engelsted

Other interested citizens and visitors.

CITY DOCK LEASE EXPIRATIONS.....ITEM 2

Although Mayor Barnett proposed that the Council first hear public comment, various registered speakers indicated a desire to first hear discussion on the matter.

In making his presentation, City Attorney Robert Pritt referred to his memorandum of March 28, in which he had provided an overview of issues involved in the Naples Municipal Dock Commercial Lease amendment (Attachment 1). He reminded Council of a federal court decision that the 1999 leases were void from their inception even though the local court differed significantly, having found that the 1999 document was in fact a five-year lease, expanded for an additional term of two years to deal with various waiver issues involved. Even then, he said, the leases with this judicially imposed expiration will not be in effect after July and those, which were to expire before the new lease form is acted upon, were extended for 30 days. Leases signed by various current tenants in 2001 are also due to expire within the year. Therefore, Council is being presented with a revised lease form and also being asked to determine the course of action with reference to the aforementioned expiring leases. He then referred to a draft

lease (Attachment 2) and a memorandum conveying an analysis prepared by an associate attorney showing the rationale behind each of the changes made (Attachment 3).

Mr. Pritt then cited improvements in language and referred to questions presented in Attachment 1 explaining that the lease for the vessel Alabama owned by Allen Walburn was judicially determined to end that month and subsequent to a proposal to sell the business, the City has received a request to enter into a new five-year lease with the purchaser of the business.

In continuing review of the lease, Mr. Pritt outlined the various considerations and options stating that with regard to Option 1, both (a) and (b) could be the City's choice. He also pointed out a listing provided showing other area docks and marinas along with comparative information pertaining to Option 2. Council would also determine the extent to which the lease would be structured, whether private enterprise or through subsidizing the existing tenants. He clarified that such considerations were however policy matters and not legal in nature. Additionally, City Attorney Pritt stated that another consideration was allowing either transfers or transfer fees.

Council Member Sorey stated that he supported a viable charter boat entity at the City Dock; therefore, a five-year lease was advisable. He also recommended charter boat entities be allowed to sell and, providing the owner and purchaser meet City established criteria, they be allowed a new five-year lease. He stated that staff process should include:

- A system of recourse and an appeal to Council if staff denies a lease; and
- Reasonable notice to renew or not to renew a lease.

Council Member Sorey also pointed out that some of the new language may discourage future sales due to liability issues.

Community Services Director David Lykins stated that an audit of the waiting list for commercial vessels indicated 24 including sailing, sightseeing and fishing operations. Council Member Sorey supported the option of a lease renewal for conscientious tenants based on staff assessments. City Attorney Pritt suggested that an equitable manner to establish the value of remaining lease-terms would be to incorporate a prorating system that corresponds with the percentage of time remaining on a lease.

In response to Council Member Price, City Attorney Pritt explained that there were also concerns with a practice called "dock brokering" in which existing lessees act as slip brokers. To discourage the practice, a compromise in the form of a slip transfer fee was recommended. Council Member Price suggested that, rather than deal with transfer fees, the issue be addressed directly with those participating in the activity. Council Member MacIlvaine said he however favored a transfer fee payable to the City as compensation for the value provided via City property and location. Nevertheless, Council Member Price expressed reservations with reference to this concept.

In a discussion of sale of charter boat businesses, Mayor Barnett clarified that the system and transfer fee would require that the City approve the buyer. City Attorney Pritt confirmed that the transfer fee and City approval would apply whether the buyer was assuming the remainder of the lease term or involved in a new lease. The City would have the opportunity to approve the use of the lease by a new buyer with the same criteria applicable to the former owner, he added.

In response to Council Member Taylor, City Attorney Pritt clarified that larger boats occasionally appear to be over the survey line with regard to submerged land lease diagrams and therefore urged caution in this regard, recommending that the City retain the sole right and responsibility for relocating a vessel to another slip if necessary. City Attorney Pritt however concurred with Miss Taylor that some slips were more ideally located for charter operations than others and that it may be possible to reflect this factor in the rental fee. Mayor Barnett suggested the new verbiage allow the Dock Master to move vessels at his discretion according to specific criteria, and approach Council with concerns regarding assignments of dock spaces if needed. Vice Mayor Nocera noted the importance of establishing a minimum five-year lease to ensure the owners have a viable business plan.

After further Council discussion, Mayor Barnett recommended establishing a standard of a five-year lease with the option of renewal, no imposition of transfer fees, and assignment or reassignment of vessel locations at the Dock Master's discretion according to certain criteria.

Council Member Price referred to recommendations emailed that day by Waterfront Operations Manager Mike Klein regarding changes to the lease. Mr. Klein apologized for the lateness of his communication, but indicated that he had just recently reviewed the lease document. He recommended retaining the five-year period to facilitate business plans for the individual operators and assured Council that the lease adequately provided for determination of whether an operator would be offered a renewal based on a history of compliance or non-compliance with dock rules and regulations. He also recommended retention of the 180-day notification period for renewal of the lease (deleted Section 2.4) and that, also as shown in Section 2.4, the 90-day termination clause of the prior lease agreement be restored. He confirmed that he did not favor transfer fees for the sale of a business and noted that sales of businesses within a five-year lease period were very infrequent.

Public Comment: (7:59 p.m.) **Marlena Brackebusch, 900 Broad Avenue South**, stated that she objected to transfer fees or inflexible leases while supporting an owner's ability to sell a business when appropriate. **Byron Thomas, City Dock**, stated that he owned Ambush Charters and had been in litigation with the City. He also stated that he had been a good tenant from 1995-2001 and requested another lease be granted. He said that he however, opposed allowing the City to relocate vessels among slips. **Alexandra Engelsted, 225 Cove Lane**, of Sailboats Unlimited, stated that she had been working from a commercial slip at the City Dock since 1985. She said she did not believe it was feasible to implement a transfer fee, in part, because of the wide variation in values of the boats and other business considerations. In addition she said she believed that the guidelines in place were effective in preventing vessel sales that are not in the best interest of dock operations, but said that relocating vessels among slips should be avoided. If this is to be done, she added, those with seniority at the facility should be given preference. **Albert Katz, 3100 Gulf Shore Boulevard North**, stated that commercial fishing captains have been part of the fabric of the Naples community since the inception of the City and expressed the need for commercial boating to continue to be viable and profitable. He therefore emphasized the importance of maintaining the current fleet. **Lois Selfon, 12th Avenue South**, stated that she appreciated Waterfront Operations Manager Klein's comments and said that she understands the challenges of operating a charter fleet. Therefore, every opportunity should be pursued for the boats to remain in place she said. **Tom Marvel, City Dock**, concurred with Mr. Katz, stating that the commercial fleet and the City Dock represent the last vestige of the community's origin. He cited loss of business due to redevelopment, adding that commercial fishing was worth

subsidizing although he did not believe that the commercial boating business was as valued as it once was. **Faron Richards, 1089 Nottingham Drive**, concurred with the prior speaker, adding that larger boats pay higher rents than smaller vessels on the inner row of the City Dock. **Doug Finlay, 3430 Gulf Shore Boulevard**, stressed the importance of the City maintaining a healthy, viable charter boat industry, that one way to accomplish this is through granting five-year leases, which would provide time to invest and to build a business. He said he also favored the purchaser of a charter boat business signing a new lease and urged the City to compare prices and practices with other marinas. He stated that 180-day notice for lease expiration is appropriate. **William Haley, 2654 Riverview Drive**, stated that he did not favor a transfer fee for the sale of a commercial boating business. He further stated that his slip lease expired at the end of July, and that he wished to renew. **Philip Haley, 1441 13th Street South**, expressed dismay with the concept of paying a transfer fee to the City due to his having spent 11 years building his business and clientele.

City Attorney Pritt stressed that his recommendation was that the lease contain language that clarifies that renewing of a lease is not a right, adding that this had been removed from the lease in 2001. While Council can choose to provide an appeal process for those who are denied, he said he nevertheless recommended that the lease clearly state that there is no legal right for a renter to renew, but that an existing renter has priority over an individual on the waiting list. City Manager Robert Lee advised that he and the Dock Master would decide whether to renew a lease and if they do not renew, the renter would have the option of an appeal to City Council.

Council Member Sorey recommended that the City require the same 180-day notice of renters intending to terminate their leases as is required of the City with reference to lease expirations. He also said that he did not favor imposing a transfer fee, however, City Attorney Pritt recommended a fee be charged to cover the cost of staff review in conjunction with the lease signing process at an amount to be determined by staff. He also pointed out that Section 5.2 Page 5 allows for the City to require that the transferor of a charter boat business be responsible for the remainder of the lease. Council Member Price pointed out that Mr. Klein had made specific recommendations that were contrary to the City Attorney changes to the document; specifically Section 2.3 which indicates there is no renewal option and Section 2.4 pertaining to notification for termination.

Council Member Sorey recommended that City Attorney Pritt and City Manager Lee return to Council on April 18 for final action on the lease document.

In response to Council Member Taylor, Mr. Klein stated that there was no reason to move the vessels to other assigned locations, but if there are vacancies a boat operator may, based on seniority and discussions with Community Services Director Lykins, be allowed to relocate. Council Member Taylor stated that while there was no question that the Dock Master had the jurisdiction, she would prefer there be protection for the tenant as well. However, Council Member Sorey stated that objections could be addressed by Council if the renter so desires. City Attorney Pritt also offered to re-insert the 180-day mutual notification as Section 2.4.

Council Member Willkomm emphasized that charter captains at the City Dock had clarified the importance of the commercial fleet and requested that Council continue to examine whether further adjustments should be made to assist in rental of these spaces. Naples was a fishing community and the value of this asset to the City was noted as more than rental income, he said.

City Council Special Workshop Meeting – April 16, 2007 – 7:00 p.m.

However, Dock Master Klein advised that, while the offer was generous, rents were not perceived by charter captains as exorbitant. Council Member Nocera also suggested addition of slips be considered due to the shortage of docks and marinas in the area; therefore, the City should address this in the interest of maintaining the commercial boating industry. While various Council Members indicated that this could be something to consider in the future, Council Member Price indicated that the lease should be focused upon. He also said he believed that the Council had a better understanding of the entire matter and commended the process undertaken with reference to the leases. Mayor Barnett expressed appreciation for the input of charter boat operators who he characterized as a family group.

ADJOURN
8:56 p.m.

Bill Barnett, Mayor

Tara A. Norman, City Clerk

Minutes prepared by:

Susan Cairns, Technical Writing Specialist

Vicki L. Smith, Technical Writing Specialist

Minutes Approved: 5/16/07

239.261.3659 FAX

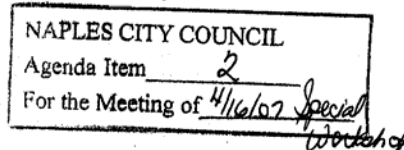
MEMORANDUM

TO: Hon. Bill Barnett, Mayor &
Naples City Council

FROM: Robert D. Pritt, City Attorney *RDP*
James D. Fox, Esq.

DATE: March 28, 2007

RE: City Dock Commercial Lease Issues – Workshop Agenda Item #7



Background:

In 2001, the City Council established a new five-year lease and new policies for commercial tenants at the City Dock. Over the course of the next two years every then current tenant signed the 2001 Council-approved lease, with the exception of three tenants¹ who sued the City under the 1999 lease. The litigated tenancies and the 2001 leases are all about to come to an end. The 2001 Council-approved leases are for five (5) years.

No commercial dock tenant has the legal right to force the City to renew their existing lease.

However the City Council has not expressly established a policy with respect to the interaction between the City's waiting list for commercial slips and renewals by existing tenants, or the interaction between the waiting list and the transfer or sale of businesses that have leases at the City dock.

Questions Presented:

1. Should the City allow persons with existing leases to enter into new leases with the City once their current lease expires, without first getting on the City's waiting list?
2. What should the City's policy be with respect to the transfer or sale of a business or boat that has a lease with the City?
 - a. Should the City only allow the purchaser to assume the remaining time on the lease; or

¹ A&B Charters (Allen Walburn), Jeffrey Player, and Byron Thomas.

MEMORANDUM

(PAGE 2 OF 6)

- b. Should the City allow the purchaser to enter into a new lease for an additional term?
3. What should the City do with respect to three specific cases currently before it?
 - a. Capt. Alan Walburn proposes to sell his boat, the Alabama, to Capt. Craig Dafcik. He wants Capt. Dafcik to get a new lease in the existing slip, currently leased to A&B Charters, without getting on, and advancing to top of, the waiting list. The question is whether the City should grant a new lease to Capt. Dafcik even though he is not at the top of the waiting list?² The A&B Lease expires by judicial order on April 20.
 - b. Capt. Jeffrey Player has formally requested that the City allow him to enter into a new lease. Capt. Player's lease expires by judicial order on July 27.
 - c. Capt. Debbie Weber has requested that the City allow her to enter into a new lease. Capt. Weber's lease expires at the end of April. Other leases will expire at various times later this year.
4. What changes, if any, should be authorized by Council to be made to the existing lease forms?

Options (not necessarily exhaustive):

1. With respect to new leases, the City Council may:
 - a) Option 1: Waiting List Prevails – Adopt a policy that, upon expiration of a tenant's current lease, the next person on the waiting list will be offered a lease at the dock until that list is exhausted; or
 - b) Option 2: Existing Tenants Prevail – Adopt a policy that allows existing good tenants with stable businesses to be permitted to enter into a new lease of their commercial dock slip before considering the next person(s) on the waiting list, at the City's option.
2. With respect to transfers of a boat or business, the City Council may:
 - a) Option 1: Waiting List Prevails – Adopt a policy that every commercial dock tenant may assign his or her lease, as part of the sale or transfer of a boat or business, but that purchaser may only get what time is left on the lease (no new lease will be given) and then the next person on the waiting list will be offered a lease at the dock; or

² The Alabama currently docks in slip No. 78 at the City Dock pursuant to a lease between the City and A&B Charters, Inc. (the "A&B Lease"). City Dock records list Capt. Kraig Dafcik as the Captain of the Alabama.²

MEMORANDUM

(PAGE 3 OF 6)

b) Option 2: Existing Tenants Prevail – Adopt a policy that every commercial dock tenant may assign his or her lease, as part of the transfer of a boat or business, and that purchaser may, at the City's option, be given a new lease before considering the next person(s) on the waiting list.

3. If the City's decision is that all current leases are for a maximum of five years only (Option 1), and that all new tenants must first be on the waiting list before they will get a new lease, then the decision in the three specific cases has been made: The City is not giving any current tenant a new lease, nor is the City going to allow persons to circumvent the waiting list by purchasing a business with an existing lease at the City Dock.

If the City's decision is to allow existing tenants to obtain a new lease (Option 2), and to grant new leases upon assignment, then the three specific cases above must be decided on a case-by-case basis, involving other existing City policies and considerations.

4. Regardless of which option is chosen, a new lease form is recommended. The current lease form was approved by Council under contentious circumstances. At that time, commercial tenants were contending that they had a perpetual right to a slip at the dock. Subsequent litigation has dispelled that notion, but has been very expensive. A simple commercial lease is recommended. Such a lease may be better and should be used for all new lease situations. If so, this will be the first time that all commercial dock tenants would be on one Council-approved lease.

Extended Discussion:

In January of 1994, the City Council adopted a commercial dock lease form, by Resolution 94-7108, that expressly prevented a tenant from assigning or transferring his slip. The form lease said:

The Tenant shall not assign or encumber the Lease, nor assign or transfer in any way, interest in the Tenant's business, nor sublet the Premises, or any part thereof, nor use or permit the use of the premises for any purpose other than above provided.

The City Council implicitly abrogated this non-assignment provision one month later when it passed City Ordinance 94-7134 (Rules and Regulations pertaining City Dock). That ordinance refers to a City policy of requiring persons to get on a waiting list to obtain a slip at the City dock.³ It further grants an exception to the waiting list requirement, saying that "the waiting list process is waived" "[i]n the event of a sale or transfer of the charter business." It states in full:

³ Ordinance 94-7134, Section (1)(27).

MEMORANDUM

(PAGE 4 OF 6)

negotiate same with the City. In such cases, the waiting list process is waived. The applicant must submit as part of the application personal and business references, a credit check, and personal references.

This provision in part was greatly decried by many on City council because it allowed people, such as Capt. Player, to essentially purchase a company's lease interest to avoid the City's waiting list.

In 1999 a number of lessees entered into a lease with a former City Manager that included an addendum allowing assignment of slips.

In 2000 the City Council became increasingly aware of issues created by the changes made in 1999 without Council authorization to the City's lease. So, on December 12, 2001, the City Council adopted by resolution a new form lease. That lease, in pertinent part, (1) made it clear that no tenant had the legal right to force the City to renew its lease, and (2) required a purchaser to be given a new lease, which lease could be for up to a five year period:

Lessee shall be permitted to sell Lessee's business and assign the Lease rights and obligations to a new tenant. In such case, the new tenant (purchaser) shall be restricted to operate the purchased business and Lessee's Vessel. This provision authorizes only a bona fide sale of the business. Lessor reserves the right to review documents related to the sale to verify that the sale is bona fide. The transfer fee will be equivalent to 3 year's base rent in effect at the time of the transfer. *The Lessor will execute a new lease not to exceed 5 years with the new Lessee at the then current rental rates.* (emphasis added.)

Resolution 01-9445 at Ex. A, Sect. 5.3:

Ordinance 94-7134 §(1)(27), which allowed assignments, was explicitly abolished by City Ordinance 01-9442, in December 2001. The new ordinance states: "The council will adopt rules and regulations and amendments thereto for the operation and use of the municipal dock by resolution."⁴ Council then adopted new rules and regulations for the City Dock.⁵ Those rules and regulations state in pertinent part that they City will maintain a waiting list for slips at the dock and the process for the assignment of slips. It reads as follows:

B. Slip issuance. A chronological waiting list for both recreational and commercial slip assignments will be maintained and available for public inspection. The department of community services administrative policies and procedures concerning waiting lists are applicable. Any changes or additions to a previously approved and posted waiting list will be submitted to the city council

⁴ Ordinance 01-9442, was codified in Section 78-82(4), City of Naples Code of Ordinances (1994 as amended) and now appears unchanged in Section 42-82(d), City of Naples Code of Ordinances (2006).

⁵ Resolution 01-9443.

MEMORANDUM

(PAGE 5 OF 6)

and the city manager for information purposes, with exception of new names added to the list in the order in which they are received.

1. When a slip becomes available in the Municipal Dock it will be offered first to that person highest on the waiting list for that size slip, and if refused, in sequence to the person next on the list. The person highest on the waiting list will be offered any available slip providing the vessel size will not be more or less than allowed for the size of the slip. A formal waiting list selection process has been established by city council, is kept on file with the city clerk and will be utilized as detailed within all applicable Municipal Dock operational policies. Acceptance of a slip must be indicated within 10 days of notification by payment of rent and execution of a lease agreement.

Resolution 01-9443 at Ex. "A", Rules and Regulations for the Municipal Dock and Adjacent Mooring Areas, Section (2)(B) and (2)(B)(1).⁶

Resolution 01-9443 also says the "department of community services administrative policies and procedures concerning waiting lists are applicable." It further states that the "formal waiting list selection process has been established by city council, is kept on file with the city clerk and will be utilized as detailed within all applicable Municipal Dock operational policies."

At that time the City of Naples Community Services Department had in place Policy #0012 (Approved Standard Operating Procedure for Maintaining Waiting List for Municipal Dock Commercial Boat Slip Rentals) (April 14, 2000).⁷ Policy #0012 currently states that the City will maintain a waiting list for commercial slips and does not allow the transfer of a position on the waiting list, stating in pertinent part that:

- If the first available applicant is unable to accept the next available slip, then the first available subsequent applicant will be offered the slip.
- An applicants [sic] position on the waiting list is non transferable to any person or party for any reason.

On January 1, 2003, the City entered into a new submerged land lease for the land under the City Dock. That lease requires, in Section 30(b), that a "minimum of 90 percent of the slips at the marina shall be made available for rent to the public maintained on a 'first-come, first served' basis."⁸ There are 84 slips at the City dock, of which about 46 are recreational slips and 17 are commercial slips. The remaining slips are for a mix of government, law enforcement vessels and transient vessels. For the last 19 years, the City's residential slips have been on

⁶ Resolution 01-9443 was amended in March 2003 by Resolution 03-9994, but no change was made to Section (2).

⁷ That policy has been subsequently amended four times, the most recent amendment being on August 25, 2004, though no change has been made to the waiting list provisions.

⁸ Resolution 03-9981. The language is required by Fla. Adm. Code § 18-21.008(2). Nothing in the Administrative Code, Chapter 253 authorizing the code section, administrative hearings, or Florida case law further defines what is meant by "first-come, first-served."

MEMORANDUM

(PAGE 6 OF 6)

month-to-month leases. Existing tenants have been able to renew each month, and when a tenant does not renew, that slip is made available to the next person on the residential waiting list. This policy has to-date fulfilled the “first-come, first-served” requirement of the submerged land lease.

Most recently, the City’s policy regarding the waiting list was argued strongly to the federal court (in litigation the City won) that a lease term should be construed in light of a policy that everyone should have an equal opportunity to obtain new commercial slips as they come open. *Walburn v. City of Naples*, No. 2:04-CV-194-FTM33 DNF (Mid.Dist. Fla. 9/22/2005).

Recommendations:

1. That Council schedule the issues contained herein as a public hearing and action item as soon as the April 18 meeting. If the matters at hand cannot be determined by that time, the two tenancies expiring can be extended for a month.
2. That the Council consider the policy issues described above regarding the waiting list vs. existing tenants.
3. That the City’s existing lease be revised into a new lease to reflect the policies of the City.
4. That the new lease reflect Council’s policy decision as to the commercial aspects of the new leases/tenancies with regard to amount of money and length of term.

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NAPLES MUNICIPAL DOCK COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT ("Lease") is entered into this ____ day of _____, 20__, between the City of Naples, a Florida municipal corporation (hereinafter referred to as both "LESSOR" and "CITY"), the address of which is 735 Eighth Street South, Naples, Florida 34102, and _____ ("LESSEE"), whose address is _____.

For valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the parties hereby agree as follows:

1. SLIP/ LESSEE'S VESSEL

1.1 Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, Slip # _____ (the "Slip"), located at the City of Naples Municipal Dock, 880 Twelfth Avenue South, Naples, Florida, 34102 (the "Municipal Dock") which includes the right to use the Slip and the right to use, in common with other lessees at the Municipal Dock, and the public, its piers, wharves and loading platforms and the improvements constructed on them.

1.2 Nothing contained herein shall be deemed to grant an ownership right to Lessee in the Slip or in the Municipal Dock.

1.3 Lessee Information

NAME: _____ Tax/ID: _____
 ADDRESS: _____
 CITY: _____ STATE: _____ ZIP: _____
 HOME PHONE: (____) _____ BUS. PHONE: (____) _____
 FAX: (____) _____ EMAIL: _____
 EMERGENCY CONTACT: _____ PHONE: _____

1.4 Lessee's Vessel. The following vessel shall be hereinafter referred to herein as "Lessee's Vessel":

VESSEL NAME: _____ FL. REG. DOC. # _____
 MANUFACTURER: _____ YEAR: _____
 LENGTH: _____ BEAM: _____ DRAFT: _____
 INSURANCE CARRIER: _____ EXP. DATE: _____
 HULL SERIAL # _____

CIRCLE TYPE OF OWNERSHIP: Individual Partnership Corporation LLC Other _____

Vessel _____ Slip # _____

CIRCLE TYPE OF VESSEL: Fishing boat Sailboat Other _____
Lessee must own a controlling interest (greater than 50%) in the Lessee's Vessel. Lessee must provide an affidavit of ownership interest in the Lessee's Vessel and the business prior to entering into a Lease, upon any change of ownership of the business or of the Lessee's Vessel, and any time requested by Lessor.

OTHER OWNERS: _____ (____%) _____ (____%).

1.5 Notwithstanding anything to the contrary contained in this Lease, Lessor reserves the right (in Lessor's sole and absolute discretion) to reassign Lessee to another slip within the Municipal Dock that is of equal or greater size to the Slip leased hereunder, upon ten (10) days notice to Lessee. Lessee agrees to acknowledge in writing the reassignment of the Slip if requested by Lessor within ten (10) days of Lessor's request.

2. AUTHORITY/TERM

2.1 Lessor's City Manager or designee shall be authorized to execute, administer and provide for notification of termination of this Lease.

2.2 The term of this Lease shall not exceed _____ () year(s). The term shall begin on the _____ day of _____, 20____ (the "Commencement Date") and shall end on the _____ day of _____, 20____ (the "Termination Date"), unless sooner terminated in accordance with, and pursuant to, the terms and conditions of this Lease, the Code of Ordinances of the City of Naples, or the duly adopted rules and regulations for the Municipal Dock and any other local, state or federal laws.

2.3 Lessee acknowledges that Lessee has no renewal option under this Lease and that upon the expiration or sooner termination of this Lease, Lessee shall immediately deliver possession of the Slip to Lessor.

3. RENT/SECURITY DEPOSIT

3.1 Upon signing of the Lease, Lessee must pay the first month's rent, last month's rent and a security deposit equal to one (1) month's rent ("Security Deposit").

3.2 Subject to adjustment as set forth in subparagraph 3.3 below, the "rent" for the Slip shall consist of the following:

Annual rent:

Annual base rent \$ _____; plus

Applicable sales tax (six percent (6%)
of all rent due and payable subject to change as
set forth in subparagraph 3.3 below) \$ _____

Total yearly rent due \$ _____

Rent shall be payable monthly as follows:

Monthly installments of base rent \$ _____, plus

Monthly sales tax \$ _____

Total monthly rent due \$ _____

- 3.3** If this Lease is for a term of greater than one (1) year, then as of October 1 of the first and each succeeding lease year, the base rent for each succeeding lease year shall be recalculated. Increases in base rent will be as described in the following sentence and shall be automatically applied to the Lease as of October 1st of each year. The annual base rent shall increase by the greater of: (a) four percent (4%); or (b) the percentage, if any, by which the then most recently published CPI (as hereinafter defined) figure shall have increased over the CPI figure for the for the month occurring one (1) year prior to the most recently published CPI figure. For purposes of this Lease, the term "CPI" shall refer to the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI-U), 1982-84=100) U.S. City Average. Any increase in sales taxes, whenever occurring, will be paid by Lessee regardless of whether the term of this Lease is for a term greater than one (1) year.
- 3.4** All payments shall be made without demand at the City of Naples Department of Finance, 735 Eighth Street South, Naples, Florida 34102, or at such other place and to such other person as the Lessor may from time to time designate in writing and shall be received by Lessor no later than the 10th day of each month. Any and all monies due an payable under this Lease shall be considered rent.
- 3.5** When the Lease begins on a date other than the first day of the month, the first month's rent shall be prorated.
- 3.6** A charge of five percent (5%) of the total monthly amount that is not paid when past due shall be assessed each month. In addition, Lessor shall be able to place a lien against Lessee's Vessel, or any vessel hereafter moored by Lessee at the Slip, including the appurtenances and contents thereof, in the event of any unpaid sums due for the use of the docking facilities or other services or for damages or injuries caused or contributed to by Lessee or any vessel owned by Lessee to any docks or property of Lessor or to any other property or persons at the Municipal Dock.
- 3.7** Lessor shall not be required to keep the Security Deposit separate from its general funds or in an interest bearing account and Lessor shall not be obligated to pay any interest to Lessee that may be collected on the Security Deposit. If Lessee defaults with respect to any provision of this Lease, including without limitation, the payment of rent, Lessor may use, apply or retain all or any part of the Security Deposit for the payment of any rent, or to compensate Lessor for any other loss, cost or damage which Lessor may suffer by reason of Lessee's default. If any of the Security Deposit is so used or applied, Lessee shall, within five (5) days after notice thereof, deposit cash with Lessor in an amount sufficient to restore the Security Deposit to its original amount.

4. POSSESSION

- 4.1** In return for Lessee's proper performance of all obligations under this Lease, Lessor shall provide to Lessee lawful possession of the Slip in reasonably good condition, and without unreasonable disturbance.

5. ASSIGNMENT

- 5.1** Except as provided herein, Lessee shall not assign or encumber this Lease, nor assign or transfer in any way, an interest in Lessee's business, nor use or permit the use of the Slip for any purpose other than provided by the terms of this Lease, except that individuals or partners may cause their vessels and this Lease to be assigned to a corporation, limited liability company or trust so long as the percentage of ownership interest in the new entity is held in the same proportions by the same individuals as was the previous vessel ownership and Lease as determined by Lessor, in Lessor's sole discretion. Lessee shall not sublet the Slip, or any part thereof. For the purposes of this Lease, an "assignment" prohibited by this section shall be deemed to include the following: if Lessee is a partnership, a withdrawal or change (voluntary, involuntary, by operation of law or otherwise) of any of the partners thereof, or the dissolution of the partnership except in the event the partnership continues operation by the remaining partners upon the death of a partner; or, if Lessee consists of more than one person, a purported assignment, transfer, mortgage or encumbrance (voluntary, involuntary, by operation of law or otherwise) from one thereof unto any other party; or, if Lessee is a corporation or limited liability company, any dissolution, merger, consolidation or other reorganization of Lessee, or any change in the ownership (voluntary, involuntary, by operation of law or otherwise) of its capital stock or membership interests (as the case may be) from the ownership existing on the date of execution hereof.

- 5.2** Notwithstanding the provisions set forth in Section 5.1 above, Lessor may (but shall not be obligated too), in Lessor's sole and absolute discretion, permit an assignment or subletting of this Lease by Lessee. Any proposed assignee or sublessee, prior to execution of any permitted assignment or permitted sublease, shall submit for review, an application to Lessor, which contains personal and business financial statements with financial and business references, a credit check, prior related commercial chartering or business experience, insurance policy, criminal record, current business licenses, personal references and any other items that may be requested by Lessor as part of said application. Lessee shall give authorization (or cause such proposed assignee or sublessee to give authorization) to Lessor to obtain the credit check and Lessee shall pay for the cost of the credit check. Lessor reserves the right to reject any application for any reason including, without limitation, an application based on false or misleading information, prior or current criminal conviction, bad credit history or incomplete or inaccurate application information. In the event Lessor permits an assignment or subletting of this Lease: (i) any such permitted assignment or sublease shall be in a written form and substance acceptable to Lessor (in Lessor's sole discretion) and executed by Lessor; (ii) the term of any such permitted assignment or permitted sublease shall not exceed the remainder of the term of this Lease; (iii) no such permitted assignment or sublease shall affect the continuing primary liability of Lessee (which, following assignment or subletting, shall be joint and several with the assignee or sublessee, as the case may be), and Lessee shall not be released from performing any of the terms, covenants and conditions of this Lease; and (iv) Lessee shall pay to Lessor a non-refundable transfer fee at the time of such assignment or sublease equal to sixty

percent (60%) of the remaining base rent due and owing under this Lease.

6. USE

- 6.1** The Slip is to be used for docking or mooring space for commercial charter vessel purposes only, and only for Lessee's Vessel. Lessee's Vessel shall not carry more than six (6) passengers. Any exceptions may be considered and extended at the sole discretion of Lessor's City Council on an individual and case-by-case request. Any other use of the Slip by Lessee is not permitted without the written consent of Lessor which consent may be withheld in Lessor's sole and exclusive discretion.
- 6.2** The Slip is to be used at the sole risk of Lessee, and Lessor shall not be liable for the care, protection or security of Lessee's Vessel, Lessee's Vessel's appurtenances or contents, or for any loss or damage of any kind or nature to the Lessee's Vessel, Lessee's Vessel's appurtenances or contents, due to fire, theft, vandalism, collision, equipment failure, windstorm, hurricane, rains, other casualties or any other reason. There is no warranty of any kind as to the condition of the piers, walks, gangways, ramps, mooring gear, electrical and water services and Lessor shall not be responsible for any injuries to persons or property occurring upon the Municipal Dock for any reason.
- 6.3** Lessee shall not deposit or allow garbage or trash to be deposited at the Slip. All garbage must be properly deposited and contained within the appropriate containers supplied by Lessor and Lessee must comply with any and all laws relative to proper storage, removal or disposal of refuse.
- 6.4** Lessee shall not create or cause a nuisance (as determined by Lessor, in Lessor's sole discretion) to occur or continue at the Slip.
- 6.5** Lessee shall not conduct or engage in illegal activity at the Slip, on the Municipal Dock or upon Lessee's Vessel.
- 6.6** Lessee, in the use and occupancy of the Slip, shall promptly comply with all statutes, ordinances, rules, orders, regulations, and requirements of any governmental agency with authority over the Municipal Dock. Lessee acknowledges this Lease is subject to a Sovereignty Submerged Land Lease (as may be further amended or renewed) executed between Lessor and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("Sovereign Lease"). Lessee agrees to abide by all the provisions of the Sovereign Lease and notwithstanding the term set forth in Section 2.2 above, in the event the Sovereign Lease is terminated or expires, this Lease, at the sole option of Lessor, may be terminated by Lessor and this Lease shall be deemed to expire as of the date the Sovereign Lease is terminated or expires, as the case may be.
- 6.7** Lessee shall not do or permit any act which will conflict with provisions of any insurance policies covering the Municipal Dock.
- 6.8** A maximum of one (1) lease for one (1) Slip will be entered into and be in effect with any lessee, whether an individual, corporation, limited liability company, firm, partnership, trust or other entity, or to any affiliate of same, at any time. "Affiliate" shall mean any individual or business that directly owns or controls, is owned or controlled by or is under common ownership or control with, another individual or business entity. "Own" shall mean to

possess an equity interest or equivalent in a vessel. Any lessee in possession of a fully executed and authorized lease issued by the City will be prohibited from having any financial investment or ownership of any kind in any other charter business or vessel, or recreational vessel operating or moored at the Municipal Dock, or within any designated mooring area managed by the Lessor.

- 6.9 The mooring of vessels and the operation of a business at the Municipal Dock are subject to the ordinances, rules and regulations of the City of Naples (as may be amended from time to time), and the terms of this Lease, and do not create any other rights in Lessee.

7. UTILITIES

- 7.1 If utility charges are deemed necessary (as determined by Lessor's sole discretion) at some future date, utility charges (including any and all taxes) shall be added to Lessee's monthly rent bill without further negotiation.
- 7.2 In the event utility charges are due pursuant to Section 7.1, Lessee shall be responsible for the timely payment of all utility charges, including, without limitation, charges for electricity, water, cable, and telephone, if any.
- 7.3 In the event utility charges are due pursuant to Section 7.1 and Lessee fails to make timely payments on utility charges, Lessor may require the amounts due to be paid as additional rent on the date the next rent payment is due.

8. REPAIRS AND MAINTENANCE

- 8.1 Lessor agrees to operate and maintain dockage and mooring facilities at the Municipal Dock in a reasonably clean, sanitary, and safe condition and comply with federal, state, and local law and the terms and conditions of federal, state, and local permits regarding the operation and maintenance of the Municipal Dock.
- 8.2 Lessor shall be responsible for the repair, maintenance and reconstruction, if and when the need arises (as determined by Lessor in Lessor's sole discretion), of the Slip and the Municipal Dock in a good, tenantable, and structurally sound condition, unless needed repairs and reconstruction are caused by the negligence, the wrongful acts or other acts of Lessee, Lessee's Vessel, Lessee's employees, guests, agents, visitors or invitees.
- 8.3 Lessee shall keep the Slip in a clean, sanitary, and safe condition in accordance with any rules, codes or regulations of any governmental agencies having proper jurisdiction. Lessor will have the authority to make such determination in Lessor's sole discretion.
- 8.4 Lessee shall not make any improvements or alterations to the Slip without prior written approval of Lessor, which approval may be withheld in Lessor's sole and exclusive discretion.
- 8.5 If the Slip is destroyed or so damaged by fire or other casualty during the term of the Lease so as to become not tenantable (as determined by Lessor in Lessor's sole discretion), Lessor shall have the right (but not the obligation) to render said Slip tenantable by repairs within one hundred and twenty (120) days therefrom, and Lessee shall not be obligated to pay any

rent only during the period of time that the Slip is not tenantable. In the event of such casualty, Lessor shall not be required to make any repairs or replacement of any improvements, nor shall Lessor be responsible for the replacement of Lessee's Vessel or personal property. If the Slip is not rendered tenantable within such one hundred and twenty (120) day period, either party then shall have the option to cancel the Lease, and if the Lease is so canceled, the rent shall be paid only to the date of such casualty. The cancellation herein contemplated shall be effected by written notice directed to the other party.

9. RIGHT OF ENTRY

9.1 Lessor has the right, at all reasonable times, to enter upon the Slip to inspect, maintain, repair, or to make reasonable alterations to the Slip. Lessor may not unreasonably interfere with Lessee's business.

10. SIGNS

10.1 Lessor shall provide Lessee with one (1) sign and Lessor shall designate the location, dimensions and design. The Lessee shall be responsible to pay for name and personal information to be placed on the sign. One separate sign or board announcing space availability for charter trips will also be authorized by Lessor.

10.2 All signage must be approved by Lessor in writing prior to being installed. Lessor shall be the sole judge as to the acceptability and location of any sign erected at the Slip or on the Municipal Dock.

11. INSURANCE

11.1 Lessee, at Lessee's own cost and expense, shall at all times during the term of this Lease maintain with an insurance company, acceptable to Lessor, a Public Liability and Property Damage policy to include fuel and oil spill liability with limits of not less than five hundred and no/100 dollars (\$500,000.00), per occurrence, naming the City of Naples as an additional insured.

11.2 Lessee shall provide the City with a copy of the insurance policy evidencing coverage upon execution of this Lease and no later than thirty (30) days prior to expiration of a policy, evidence of the renewal of the policy.

11.3 Any contractors employed by Lessee shall register at the Municipal Dock office prior to beginning work, providing a valid occupational license and proof of insurance naming the City of Naples as additional insured in compliance with the terms set forth herein and as designated by the office of risk management of Lessor with limits of not less than one million and no/100 dollars (\$1,000,000.00), annual aggregate and comply with all laws.

11.4 Lessee shall provide Lessor with proof of workers' compensation coverage for the conduct of Lessee's business, or with proof of exemption from coverage requirements.

12. INDEMNIFICATION

12.1 It is expressly agreed by the parties that Lessor shall not be liable for any damage, injury or death, which may be sustained by Lessee, its agents, servants, employees, customers and

invitees, or other person, resulting from the intentional acts, carelessness, negligence or improper conduct on the part of any other lessees (or such lessees, servants, employees, agents, or invitees) or any other person utilizing the Municipal Dock, or by reason of the breakage, leakage, or obstruction of the water, sewer or other pipes, or other leakage or condition, or action of whatever nature or cause, in or about the Slip and Municipal Dock.

12.2 Lessee agrees to hold harmless and to indemnify Lessor from any loss, damage, liability, claims, causes of action and suits imposed by reason of any acts or omissions (including, without limitation, violation of any laws) on the part of Lessee, or Lessee's agents, employees, invitees or guests in the use of the Slip or Municipal Dock.

12.3 The indemnification provided herein shall include, but not be limited to, all costs and expenses incurred by Lessor in any action based on the foregoing, including, but not limited to, any action brought by Lessee, or Lessee's invitees, guests, customers, employees, agents, heirs, assigns or subrogees.

12.4 Lessor and Lessee acknowledge that good, sufficient, fair and independent consideration has been given for the indemnifications set forth in this Lease and but for said indemnifications, Lessor would not have entered into this Lease.

13. RELEASE OF LIABILITY UPON SALE, LEASE, RENOVATION OR REPLACEMENT

13.1 In the event of: (i) any sale, or sales of the Slip or the Municipal Dock by Lessor; (ii) the assignment of this Lease by the Lessor; and/or (iii) any renovation, replacement or removal of the Slip or Municipal Dock by Lessor, Lessor shall have (at Lessor's sole option) the right (but not the obligation) to terminate this Lease upon sixty (60) days notice to Lessee. The City's obligations under this Lease shall be binding upon the City only for the period of time that the City is the Lessor under this Lease and upon an assignment of this Lease by the City, Lessee shall look solely to the City's assignee under this Lease for the satisfaction of each and every obligation of Lessor hereunder.

14. RULES AND REGULATIONS

14.1 Lessor reserves the right from time to time to adopt and to amend ordinances, rules and regulations applicable to the Slip and the Municipal Dock. Lessor will provide at least ten (10) days notice of such ordinances, rules and regulations, prior to adoption by the City Council, to be posted at the Municipal Dock.

14.2 Lessee acknowledges that with the signing of this Lease, the Lessee has received a copy of the current ordinances, rules, regulations and policies and agrees to abide by such ordinances, rules, regulations, and policies; and further agrees to abide by such ordinances, rules, regulations and policies as may in the future be adopted or amended; and further agrees to abide by all applicable federal, state and local laws and regulations.

15. DEFAULT BY LESSEE

15.1 Recognizing the importance to Lessor of maintaining a first-class image and operation of the Municipal Dock, Lessee shall maintain at all times a professional relationship with Lessor, with other tenants and with other persons visiting and using the Municipal Dock. Upon

conviction of Lessee for any felonious activity, Lessee shall be in default, and must vacate the slip within ten (10) days.

15.2 In addition to any other default as so defined by the Lease or by law, the following events shall be deemed to be events of default by the Lessee under the Lease:

- (a) Lessee's failure to pay any installment of rent when such failure continues for a period of ten (10) days after the due date, or the Lessee's failure to pay any other expense as herein provided when such failure continues for a period of ten (10) days after written demand by Lessor;
- (b) Lessee's failure to comply with any term, provision or covenant of this Lease, other than the payment of rent or expenses;
- (c) harassment, intimidation, retribution, or verbal, physical or emotional abuse directed by any person to any other person;
- (d) desertion or vacation of the Slip. Actual removal of Lessee's Vessel for more than thirty (30) consecutive days, together with the failure to pay rent as required herein, will constitute desertion or vacation. Vessels removed from the facility for emergency or major vessel repairs will not be considered desertion as described herein, provided the Lessor is notified of such repairs; or
- (e) Lessee's failure to maintain a sufficient level of activity from charter business equal to at least fifty two (52) charter trips or eighteen thousand seven hundred and twenty and no/100 dollars (\$18,720) annually in gross income from the charter business (the "Charter Business Activity"). It shall be the express obligation of Lessee (and not of Lessor) to maintain adequate records to evidence such Charter Business Activity (as determined by Lessor in its reasonable discretion) and Lessee shall provide evidence of the same to Lessor: (i) annually on October 1 of each year of this Lease; and (ii) upon ten (10) days request by Lessor to Lessee.

15.3 In the event of any default by Lessee under the Lease, Lessor may, at its option and without limiting any other right or remedy:

- (a) Recover possession of the slip on behalf of Lessee and lease the Slip to another tenant. Lessee shall remain liable for and shall pay to Lessor all rent accrued to date of default, plus any accrued interest, costs and damages. Further, Lessee shall be liable for any rent and other monies due and owing under this Lease accruing after the event of default (including the difference between the rent and other charges stipulated to be paid hereunder and what Lessor is able to recover from reletting the Slip). In the event Lessor leases the Slip to another tenant, Lessee shall not be relieved of its obligations under this Lease, including, without limitation, the payment of rent hereunder;
- (b) Terminate the Lease and re-enter and take possession of the Slip for the exclusive use of Lessor and bring an action for accrued rent and costs; or
- (c) Pursue any other remedy provided under law or equity including, without limitation, those set forth in Section 15.6 below.

- 15.4 Failure by Lessor to provide written notice of default shall not constitute a waiver of any rights of Lessor.
 - 15.5 Unless otherwise prohibited by law, if Lessee becomes insolvent or if bankruptcy proceedings are instituted by or against Lessee before the end of the term of the Lease, Lessor is hereby irrevocably authorized, at its option, to cancel the Lease, as for default.
 - 15.6 The remedies provided in Section 328.17, Florida Statutes, for the non-judicial sale of a vessel for non-payment of dockage are specifically included and incorporated into this Lease as an additional remedy available for Lessor, and Lessee agrees to be notified at the above address specified for Lessee in connection with the notice required under Section 328.17, Florida Statutes.
 - 15.7 If Lessee fails to vacate the dock or mooring space within ten (10) days after receipt of Notice of Termination by Lessor, Lessee hereby grants Lessor permission to board the Lessee's Vessel and move it under its own power or place it in tow and remove the Lessee's Vessel from its dockage or mooring space to a location to be chosen by the Lessor at its sole discretion, at Lessee's expense, and to take possession of the docking space. If it becomes necessary to move Lessee's Vessel, for safety purposes or otherwise, and Lessee's Vessel is unattended, Lessor is authorized to effect the necessary move at Lessee's expense, which costs shall become a part of the rent for docking and mooring of Lessee's Vessel. This is in addition to any remedies available to Lessors provided by law or other provisions of this Lease.
 - 15.8 For violations of rules and regulations other than non-payment of rent or other monies due and owing under this Lease, Lessor will provide notice and opportunity to cure or to challenge action taken, as set forth in the rules and regulations adopted by Lessor's city council, as they may be amended from time to time.
16. **DISHONORED CHECKS**
- 16.1 All Checks returned for insufficient funds shall be subject to a service charge equal to the greatest amount the City may charge pursuant to Section 166.251, Florida Statutes (as may be amended from time to time).
17. **MISCELLANEOUS / NOTICE**
- 17.1 Time is of the essence as to all the terms of the Lease.
 - 17.2 Written notice, mailed or delivered to the address for the Lessee listed in Section 1 shall constitute sufficient notice to Lessee and written notice mailed or delivered to the office of Lessor's City Manager shall constitute sufficient notice to Lessor, as to all instances herein contemplating notice. Any such notice shall be deemed given when so mailed or delivered. Any notice given by mail shall be by registered or certified mail, return receipt requested, except as otherwise provided herein.
 - 17.3 The rights of the parties shall be cumulative. The failure of either party to insist on a strict performance of any provision herein is not a waiver of such provision in any other instance.

- 17.4 Lessee shall be responsible for and shall promptly, upon demand, reimburse Lessor for any and all costs necessary to repair any damage caused to the Slip and/or Municipal Dock by Lessee, Lessee's Vessel or Lessee's employees, guests, agents, visitors or invitees. Lessee, shall in and around the Municipal Dock, comply with all laws, rules and regulations concerning the protection of the environment and with all directions and orders of the City's Dockmaster. Lessee shall comply with the provisions of the *Florida Clean Marina Program*. Lessee shall reimburse the Lessor for any damage, expense or liability incurred by the Lessor due to Lessee, Lessee's Vessel or Lessee's agents failure to comply with such laws and regulations or due to any pollution created by, or contributed to the Lessee.
- 17.5 Lessee shall not release or permit to be released, by action or inaction, any hazardous waste or environmentally objectionable substances (as determined by Lessor in Lessor's sole discretion), including, without limitation, oil, gasoline or treated or untreated sewage ("Hazardous Substances") into the waters or land of the City, State of Florida or the Municipal Dock. Lessee shall immediately notify Lessor of any such spill and/or release. Lessor may take any action it deems appropriate to clean up any such spill and/or release at Lessee's sole expense. The costs for which Lessee and Lessee's Vessel shall be responsible include, but are not limited to, the costs of any booms, absorbent pads, disposal of the Hazardous Substance, cleanup by oversight of governmental agencies and City personnel and/or use of outside contractors. This provision is in addition to, and not in lieu of, the indemnity provisions set forth in this Lease. Lessee shall comply with Lessor's Waste Recovery Ordinance as may be amended from time to time.
- 17.6 The commercial charter boat business shall be operated in a businesslike manner, and Lessee shall be solely and individually responsible for promoting and running advertised charters on a regular and consistent basis.
- 17.7 Venue for all claims brought pursuant to this Lease shall be in Collier County, Florida.
- 17.8 Both parties hereby agree to waive trial by jury.
- 17.9 If any clause or provision of this Lease is or becomes illegal or unenforceable because of present or future laws, ordinances, or any rule or regulation of any governmental body or entity the remaining parts of the Lease shall not be affected thereby.
- 17.10 Lessee shall not record a copy of this Lease with the Collier County Clerk of Courts.
18. **GOOD FAITH**
- 18.1 All duties and obligations under the Lease, and all attempts to enforce rights under the Lease, shall be governed by reasonable commercial standards of good faith.
19. **ENTIRE LEASE**
- 19.1 The Lease constitutes the entire agreement between the parties. No representations, warranties or promises pertaining to the Lease or any property affected by the Lease have been made by, or shall be binding on, either of the parties, except as expressly stated in the Lease. The Lease cannot be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any such change is sought.

In Witness whereof, the parties to this Lease have hereunto set their hands at Naples, Collier County, Florida effective the date first above written:

WITNESSES

"LESSEE":

(Print Name: _____)

By: _____

Name: _____

(Print Name: _____)

Title: _____

STATE OF FLORIDA)
) ss:
COUNTY OF COLLIER)

The foregoing instrument was acknowledged before me this _____ day of _____, 200_, by _____, as _____ of _____, a _____, on behalf of the _____, who () is personally known to me or () has produced _____ as identification.

(SEAL)

NOTARY PUBLIC
Notary Name: _____
My Commission Expires: _____

"LESSOR":

(Print name _____)

City of Naples

(Print name _____)

Attest: _____
City Clerk

By: _____

Name: _____

Title: _____

MEMORANDUM

TO: Hon. Bill Barnett, Mayor
City Council

CC: Dr. Robert E. Lee, City Manager
David Lykins, Community Services Director

FROM: Robert D. Pritt, City Attorney
Braden J. Montierth, Esq.

DATE: April 11, 2007

RE: Overview of changes to Naples Municipal Dock Commercial Lease Agreement (the "Lease")¹

Lease Section	Lease change	Rationale behind change
Throughout the Lease	Definitional changes and other minor grammatical updates.	To utilize consistent definitions and terms throughout the Lease.
1.5	New section provides for the right to reassign a Tenant to a different slip within the City Dock.	Provides the City flexibility as boat slips become available or the needs of Tenants and/or the City change.
2.3/2.4	Sections relative to any inference to renewal of the Lease have been removed. New Section 2.3 provides that Tenant acknowledges no right to renew.	If the City elects to renew a Lease with a Tenant, the City may do so by entering into a new lease agreement. By inferring a potential right to renew the Lease, this opens the door for potential disputes with Tenants. Thus, the removal of the language attempts to close out this potential argument by Tenants.

¹ Note this Memorandum is intended only as an overview of the changes in the Lease. Please refer to the redline version of the Lease which sets forth all the proposed changes.

3.2	The commercial surcharge has been removed from the Lease. The language pertaining to annual and monthly amounts of rent due and owing under the Lease has been tightened.	Any commercial surcharges can be incorporated into the base rent due and owing under the Lease.
3.3	This Section has been tightened to clarify the base rent increase. Further, the base rent increase has been raised to the greater of 4% or CPI.	The current base rent increase appears to be substantially below other increases for commercial leases in the Naples area.
3.4	Provides that any monies due and owing under the Lease are considered rent.	This provides the City protection in collection of monies due and owing under the Lease pursuant to Florida law.
New 3.7	New provisions added regarding the holding and use of the security deposit have been added.	Provides clearer guidelines to what the City can do with the security deposit in an event of default by the Tenant.
5.2/5.3	Sections deleted.	By leaving these Sections in the Lease, it effectively undermines the prohibition on assignment or subletting set forth in Section 5.1.
5.4 (New section 5.2)	This Section now provides that the City may, but is not obligated too, permit an assignment or sublease of the Lease. In the event the City permits an assignment or sublease, certain items need to be complied with, including, without limitation: (i) the payment of a transfer fee equal to sixty (60%) of the remaining base rent due and owing under the Lease; and (ii) that an original Tenant, upon assignment or sublease, is still obligated to make sure the terms of the Lease are complied with, including, the payment of rent.	In the event the City elects to allow an assignment or subletting of an existing Lease, this section sets forth certain obligations to be adhered to in connection with such assignment or subletting to provide protections to the City. Note the sixty percent (60%) transfer fee was based upon the fact that the previous version of the Lease called for three (3) years base rent out of a five (5) year lease term (i.e. 3/5 = 60%).
6.2	Expanded the scope of damage that could occur to Tenant's Vessel and Tenant's property for which the City is disclaiming responsibility.	Provides a general catch all phrase for other types of damage to the Tenant's Vessel not specifically set forth in the Lease.
6.6	Added provision provides that Tenant acknowledges and agrees to abide by the terms of underlying Sovereign Submerged Land Lease between the City and the State of Florida ("Sovereign Lease"). Further, provides that in the event the underlying Sovereign Lease is terminated (or expires as the case may be), the City shall have the option of terminating the respective Leases with Tenants.	Provides protection to the City in the event the Sovereign Lease is terminated and the City no longer has the right to lease boat slips at the City Dock.

City Council Special Workshop Meeting – April 16, 2007 – 7:00 p.m.

Attachment 3 / Page 3 of 4

6.9	Added the fact that the rules and regulations of the City of Naples may be “amended from time to time.”	Provides that the Lease is subject to any further changes in the rules and regulations of the City of Naples.
8.2	Provides that the City, in its sole discretion, can determine when a need arises for repairs and reconstruction at the dock.	Provides the City flexibility to determine when repairs and reconstruction should occur.
8.3	Removed the word “reasonably”.	Tightens up the responsibility of Tenants to keep the Slip in a clean, sanitary and safe condition.
8.5	Provides that the City has the option of repairing the Slip and Municipal Dock in the event of casualty.	Provides the City more flexibility in the event the City decides not to rebuild the Municipal dock in the event of casualty.
11.3	Removed the word “substantially”.	Tightens up the requirements regarding the insurance naming the City as additional insured to be obtained by the contractor’s of the Tenant.
12.4	Acknowledgement that specific consideration has been given for the indemnities in the Lease.	Addresses potential argument that specific consideration must be given for indemnification provisions to be held valid.
13.1	Further clarified the City’s rights pertaining to the sale of the Municipal Dock, assignment of the lease by Lessor and renovation/ replacement of the Slip or Municipal Dock. Provides for a release of the City of obligations under the Lease in the event the City assigns its rights as Lessor to another entity.	Relieves the City of continuing liability under the Lease in the event the Lease is assigned to another entity.
15.2(e)	The obligation to keep records indicating that Tenant is maintaining a sufficient level of activity from the charter business has been placed on Tenant.	This removes the onus from the City employees to maintain such records and places the obligation on the Tenant.
15.3(a), (b), and (c)	The default remedies have been refined.	Clarifies the rights of the City upon an event of default by a Tenant.
16.1	Deleted Section.	Removes the City’s liability for attorney’s fees when not the prevailing party.
16.2 (New Section 16.1)	The maximum service fee permitted to be charged for dishonored checks has been tied into Section 166.251, Florida Statutes (as may be amended from time to time).	The amount that may be charged by the City for dishonored checks may change pursuant to statute. Thus, this revision ties such changes into the Lease.
17.5	Tightened up the language relative to spills and discharge of Hazardous Substances in and around the Slip and Municipal Dock.	Provides the City more flexibility in dealing with spills and discharge of Hazardous Substances.

City Council Special Workshop Meeting – April 16, 2007 – 7:00 p.m.

Attachment 3 / Page 4 of 4

17.9	Severability clause has been added.	Provides that if any portion of the lease is found invalid, the remaining portions of the Lease shall remain in full force and effect.
17.10	Provides that the Lease shall not be recorded with the Collier County Clerk of Courts.	This limits the obligation of the City to have to keep track and maintain what is recorded with the Collier County Clerk of Courts.