

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT is entered into on this _____ day of _____, 2018, by and between:

CITY OF POMPANO BEACH, FLORIDA, a municipal corporation of the State of Florida, 100 W. Atlantic Blvd., Pompano Beach, Florida 33060, hereinafter referred to as "CITY,"

and

HILLSBORO INLET FISHING CENTER, INC., a Florida corporation, having its principal address at 2705 N. Riverside Drive, Pompano Beach, Florida 33062, hereinafter referred to as "LESSEE."

WHEREAS, the parties entered into a Lease Agreement for premises delineated as City of Pompano Beach Hillsboro Inlet Property, ("Lease"), a copy of which is attached hereto and made a part hereof, and approved by City Ordinance No. 2014-44; and

WHEREAS, the Parties entered into a First Amendment to that Lease on April 29, 2016, a copy of which is attached hereto and made a part hereof, and approved by City Resolution No. 2016-59; and

WHEREAS, the Parties now desire to amend certain terms and conditions within the Lease, as amended, to include additional uses, increased rental payments, and required capital improvements, and to clarify various provisions of the Lease, as amended.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, the parties agree as follows:

1. Each "WHEREAS" clause set forth above is true and correct and incorporated by this reference.

2. The Lease shall remain in full force and effect, except as specifically amended in this Second Amendment.

3. Section 2, PURPOSE, is amended to read as follows:

2. **PURPOSE USES.** The premises shall be used as a marina for a charter fleet ~~which may comprised of~~ drift boats, dive boats, charter boats, party boats, cruise (sightseeing and dinner) boats, and other seagoing vessels of similar or complementary nature, ~~and uses related thereto (including sale of live bait in support of said uses,~~ emergency and rescue vessels and supporting vessels), ~~and other related uses,~~ to be operated under LESSEE's supervision and to the extent permitted by the covenants of the non-tax bond issue. However, LESSEE shall not sell nor allow the sale of petroleum fuels and motor oils ~~to third parties~~ on the Premises; provided however, this limitation does not preclude the delivery of fuel and petroleum products by non-occupant third parties to the charter fleet (owners and operators docked at the marina as subtenants or licensees) ("occupants") on the Premises. Neither LESSEE nor its occupants may permit the following activities on the Premises: gambling, in or out of port; serving food on dinner cruises and party boats (excluding snacks); commercial activities involving paying passengers, except to the extent that such activities are necessary for preparation, embarking, disembarking, or related to such activities). Notwithstanding, LESSEE may host promotional events where food may be served. For purposes of this section, the term "third parties" does not include owners or operators of commercial vessels docked at the marina as subtenants or licensees. LESSEE will otherwise comply with all covenants and conditions of the Internal Improvement Trust Fund lease, ~~and the provisions of the Hillsboro Inlet Marina Waterways Assistance Grant from the Florida Inland Navigation District and any other contractual obligation impacting the CITY's property.~~ LESSEE and its occupants may operate a wholesale or retail business ~~and/or retail outlet~~ for the sale of any seafood and other marine produce, if, and to the extent, permitted by the State of Florida, and if such sale complies with all applicable statutes, ordinances and regulations. LESSEE; ~~subtenants and licensees~~ and its occupants may prepare (for consumption except for cooking) seafood and other marine produce for their respective customers, subject to the requirement that the premises are cleaned and kept sanitary. LESSEE's sale of live bait is considered a permitted use and may be conducted in the live bait retention area to be developed by LESSEE, as approved by CITY.

4. Section 4, NO LIENS CREATED, is amended and clarified to read as follows:

4. **NO LIENS CREATED.** LESSEE covenants and agrees that LESSEE has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title or interest of CITY in and to the Premises, without the specific written consent of CITY. Should any such lien be filed against CITY without CITY's expressed consent, LESSEE shall discharge the same within thirty (30) days thereafter by

paying the same or by filing a bond, or otherwise as permitted by law, unless CITY shall agree otherwise. LESSEE shall not be deemed to be the agent of CITY under any term, paragraph, condition or covenant of this Agreement.

5. Section 5, OPERATING COSTS, is amended and clarified to take into account existing conditions and shall read as follows:

5. OPERATING COSTS.

...

C. CITY shall provide connections for municipal water service, electricity, sanitary sewer service, cable television (CATV) and telephone for LESSEE and its occupants. LESSEE or its ~~licensees and subtenants~~ (“occupants”) shall pay directly for telephone and CATV services, if where such services are desired, and for electric service to individual slips and to the ~~office~~ Marina Office Building. Specifically, the connections shall consist of the following, as needed: one electric meter for each slip, ~~and one~~ electric meters for the ~~office~~; Marina Office Building; one electric meter for an area to be developed for a live bait retention area; not fewer than four electric meters along the western dockage areas; one water connection for each slip; ~~plus one~~ water connections for the ~~office~~ Marina Office Building; ~~and plus one~~ water connection for irrigation purposes; one water connection for an area to be developed as a live bait retention area; not fewer than four water connections along the western dockage areas; one (1) telephone and CATV connection for each slip and docking point; a telephone and CATV connection for the ~~office~~ Marina Office Building; and plumbing fixtures and water connections for public rest room facilities.

...

6. Section 6, REPAIRS, MAINTENANCE AND SURRENDER, is amended and clarified to take into account existing and updated conditions, and shall read as follows:

6. REPAIRS, MAINTENANCE AND SURRENDER. CITY shall at its expense maintain the Premises (except as provided otherwise herein), in the same or better state of repair and condition as existed on the date of commencement of this Agreement, or better, reasonable wear and tear excepted. Such maintenance shall NOT include cleaning windows, washing and waxing floors, carpet cleaning, and repair of ice machines, all of which shall be LESSEE’s responsibility. CITY may provide a reasonable inventory of light bulbs, and toilet and washroom

supplies, and, if it does so, authorizes but does not require LESSEE to replace light bulbs and toilet and washroom supplies from that inventory. LESSEE at its expense agrees to repair any damage caused by LESSEE or by its ~~subtenants and licensees~~ (“occupants”) not covered by insurance. Upon the termination of this Agreement, the entire Premises, in the same or better state of repair and condition as existed on the date of commencement of this Agreement, shall be surrendered to CITY, reasonable wear and tear excepted. LESSEE may remove ice machines and other removable fixtures installed by LESSEE, except where objected to by CITY.

CITY shall make all exterior repairs, including repairs of the roof, sidewalks, and parking lot, as well as repairs as required because of water entering the demised premises from the roof or other parts of the building or from other causes not resulting from the negligence or intentional act of LESSEE or its occupants. CITY shall maintain the exterior of the building in good condition. CITY shall maintain the seawalls, docks, pilings, and the parking lot on the premises so as to maintain the value of the capital assets in a manner consistent with generally accepted landlord/tenant responsibilities. LESSEE shall promptly report, preferably in writing or by electronic communication (such as email), to CITY any defective or dangerous conditions known to LESSEE, and CITY shall maintain all landscaping, planted areas and grassy areas, in a same or similar fashion as at the commencement of this Agreement. Also, CITY shall maintain the installed irrigation system in good order and repair. CITY may provide a reasonable inventory of sprinkler heads and other supplies, authorizes (but does not require) LESSEE to replace defective sprinkler heads and perform other minor maintenance. LESSEE is expected to notify CITY of any required maintenance.

...

7. While the term of this Lease is scheduled to expire on June 30, 2019, the Parties have agreed to extend the Lease’s term, effective upon execution of this Lease Amendment and consistent therewith, Section 7, TERM, shall be amended as follows:

7. TERM; TERMINATION. The term of this Agreement is ~~for the period of five (5) years, commencing~~ shall commence July 1, 2014, at 12:01 a.m. and ~~ending at midnight on June 30, 2019,~~ October 31, 2028, unless sooner terminated, as provided herein. This Agreement may be extended, ~~where LESSEE is not in default,~~ upon the prior written agreement of both parties for ~~one not more than two~~ additional five (5) year terms. Notice of extension shall be given not less than 90 days or more than 180 days before the expiration of any term. This Lease may be terminated for cause, with no less than sixty (60) days prior written notice, upon LESSEE’s

failure to remedy any violation or breach of this Lease following written notice from CITY. If the termination is prompted by a matter involving a threat to public health and safety, termination requires no more than seventy-two (72) hours prior written notice.

Notwithstanding, LESSEE acknowledges, understands and agrees that this Lease is premised on CITY's continued interest as a Lessee under the 99-year Beatty Lease executed on May 1, 1974 and later assigned to CITY ("Beatty Lease") and as a Lessee under the Sovereignty Submerged Lands Lease with the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("Submerged Lands Lease"), and that such interests maybe subject to termination. Accordingly, during the term of this Lease, should CITY's interest under the Beatty Lease or Submerged Lands Lease terminate, for whatever reason or circumstance and in any event, then this Lease shall terminate without cause and each party is released from further obligations hereunder. In such instance, CITY will provide LESSEE sixty (60) days from such notice to surrender the Premises.

8. The Parties agree that, effective November 1, 2018, the base rent shall be as reflected below:

9. **BASE RENT.** The ~~initial~~ monthly base rent for the Premises shall be ~~\$1,350~~ 1,380 per Charter Slip times seven slips, plus ~~\$500~~ 510 per tow boat slip times one slip, plus ~~\$2,250~~ 2,300 per drift boat docking point times two drift boat docking points. A commercial live bait operation using a portion of the marina is allowed with an initial base rent of \$408 per month. All base rent payments shall be due on the 5th Calendar Day of each month, and shall be delinquent if not paid by the 15th Calendar Day of the due month. Rent shall be adjusted each month as follows:

...

SUMMARY:	Base Rent	Adjustments for Vacancies/Occupancies
Charter Boats	\$1,350 <u>1,380</u> x 7	85% of Base Rent per slip
Drift Boats	\$2,250 <u>2,300</u> x 2	90% of Base Rent per slip
Tow/Rescue Boats	\$ 500 <u>510</u> x 1	100% of Base Rent per slip
<u>Bait operation</u>	\$ <u>410</u> x 1	<u>100% of Base Rent</u>
<u>other types and Transients</u>	\$ <u>40</u> per day	
subject to agreement between CITY and LESSEE		

...

H. In the event there are more than four vacancies (a vacant drift/party/cruise boat docking point shall be deemed to be one and one-half vacancies) for four consecutive months, or for more than six months in any calendar year, CITY may terminate this lease upon sixty ninety days' notice.

~~I. ——— Rent shall be increased by \$400 per month for such periods that a live bait business is actively operating at the Marina. The \$400 per month shall not be subject to increases under Section 10.~~

9. Section 10, COST OF LIVING INCREASES, DELINQUENCY, is amended by deleting the Section in its entirety and replacing such Section with the following:

10. COST OF LIVING INCREASES; DELINQUENCY.

The base rent will be adjusted in an amount equal to the change in the biennial increase in the Consumer Price Index – All Urban Consumers (using 1982-84 average as equal to 100), United States average on all items and commodity groups issued by the Bureau of Labor Statistics of the United States Department of Labor, hereinafter referred as the “Index.” The first adjustment in the base rent shall occur on November 1, 2020. The July 2018 Index shall be used to calculate and impose the first adjustment in the base rent.

The base rent for each ensuing biennial period shall be determined by multiplying the then base rent by a fraction, the numerator of which shall be the new Index Figure reflected in July of that adjustment year and the denominator of which shall be the previous biennial period’s Index Figure. The base rent will be adjusted by the percentage of increase in the Index. In no event shall the base rent fall below the then current base rent amount, which shall then be the minimum rental payment to the CITY. For example, when adjusting the base rent at the end of the second biennial period (2022), the new Index Figure will be taken from the July 2022 Index (numerator) and the July 2020 Index shall act as the denominator to determine the percentage of increase in the Index.

Notwithstanding anything to the contrary in this Agreement, in no event shall the change of LESSEE’s base rent exceed five percent of the immediately preceding base rent amount.

In the event that the Index is no longer available during the term of this Agreement, the CITY shall select a replacement Index as required provided that any such replacement shall, in the best judgment of the CITY, be as nearly the same as the replaced Index.

10. Section 12, ASSIGNMENT, SUBLEASING, AND LICENSING, is amended as follow:

12. LESSEE shall not, without prior approval of ~~LESSOR CITY~~, assign or transfer this Agreement nor any share, part or interest in it, nor any of the rights or privileges granted by it, nor enter into any contract requiring or permitting the doing of anything under this agreement by an independent contractor unless otherwise expressly provided in this Agreement. LESSEE further agrees that it shall not enter into any agreement of any nature, formal or informal, concerning other business activities at the Premises, with any individual, partnership or corporation without prior approval of CITY, it being understood that the only activity that LESSEE may conduct directly or indirectly, alone or through others, on, upon or from said demised premises and facilities located there, be they demised to the others or under the control of CITY, is as authorized under the terms of this Agreement. However, and notwithstanding these limitations, LESSEE shall be permitted to sublease or license slips and docking points, for office space in the Marina Office Building, and other space within the Premises for a commercial bait retention operation, consistent with uses set forth in Section 2, USES, and as set forth below, without CITY's approval.

...

Subject to compliance with applicable statutes, ordinances and regulations, as well as the CITY's Submerged Land Lease with the State of Florida, Slip 1 (Northern Perimeter) may be licensed to for use by an oceangoing vessel configured as a business office, as an adjunct to the function of a tow or salvage boat licensed to use Slip 2, and such use shall be deemed water-dependent, for purposes of Section 2, USES. Because of the occasionally hazardous waters at the entrance to Slip 1, it may not be licensed to a vessel which accepts passengers for carriage or other non-stationary uses wherein a member of the general public becomes a passenger for compensation. It may also be licensed to a tow, salvage, or rescue boat.

...

Drift boat docking points 1 and 2 may be licensed for any commercial use by boats which are defined as oceangoing vessels capable of, and registered for carrying twenty five (25) or more passengers, plus the boat's crew, for purposes of fishing or other uses set forth in Section 2, USES. Those slips may also be configured for use by dive boats, which are defined as oceangoing vessels equipped for carrying divers with fishing gear, cameras, self-contained underwater breathing apparatus (SCUBA), or snorkels. If Intracoastal side slips are reconfigured for use by charter boats (as defined above), Intracoastal side slips may also be licensed for charter boat use.

~~For good cause shown, and at LESSEE's specific request, CITY's city manager or its public works director may grant a waiver to allow for a different~~

~~nature of commercial oceangoing vessel involving fishing or marine produce, but such approval shall have considered safety, compliance with US Coast Guard rules and regulations, probable effect on other licensees and the public, and conformance with the purposes for which this Lease is granted by CITY.~~

LESSEE may allow dockage on a transient or temporary basis to oceangoing vessel(s), provided the vessel(s) are compatible with the operation of the Property as a marina. CITY shall be entitled to rent set forth in Section 9F. LESSEE shall consider safety, compliance with US Coast Guard rules and regulations, probable effect on other licensees and the public, and conformance with the purposes for which this Lease is granted by CITY.

...

LESSEE shall maintain copies of all licenses and subleases it grants, which shall be available for inspection by the CITY's City Manager, Deputy City Manager, and Public Works Director. LESSEE need not require any dockage agreement in writing with respect to transient or temporary occupants, but shall report transient and temporary dockage in its monthly Occupancy Report.

~~LESSEE may allow the installation of concrete pedestals along the southern boundary of the Marina, within 25 feet of the Intracoastal seawall, tanks on those pedestals for keeping live bait, and associated pumps and piping into the Intracoastal Waterway. Location of pedestals is shown in Exhibit D. There shall be landscaping along the northern portion of the bait fish operation, to obscure the tanks and equipment from view from the parking lot. To the extent there is not obscuring landscaping along the southern portion of the bait fish operation (by the adjoining property owner), LESSEE shall require obscuring landscaping along that portion of the bait fish operation. Electrical service to the equipment shall be underground from the meter to the electrical equipment. All such improvements are at no cost to the CITY and subject to required city approved building permit(s). LESSEE is responsible for maintenance and operation of installed system, and all such improvements shall not be removed upon installation unless written approval from the CITY for such removal is first obtained.~~

~~LESSEE may permit signage along the finger pier (a/k/a emergency dock — on the northern portion of the Western dock) identifying the bait company, and availability of bait delivery of bait to Marina occupants, and to the general public from boats temporarily docked at the finger pier, as approved by CITY and per permits as required. "Temporarily" means for a period of 30 minutes or less, in the absence of unusual or exigent circumstances.~~

11. Section 13, DELIVERIES AND FUELING, is amended to include temporary occupants, and shall read as follows:

...

B. Except for bona fide emergencies, only LESSEE's licensees, ~~and~~ subtenants, and temporary occupants may fuel their vessels from, at, or in the vicinity of the Premises, providing the fuel is acquired from an authorized dealer of marine fuel and by an operator that is independent of licensees, ~~and~~ subtenants, and temporary occupants.

...

12. Section 21, LESSEE IMPROVEMENTS, is amended to be consistent with a new Section 36, regarding LESSEE improvements, and shall read as follows:

21. Except as provided in Section 36, CAPITAL IMPROVEMENTS, LESSEE shall not attach, affix or permit to be attached or affixed, upon the premises, or if so attached or affixed, relocate, replace, alter or modify, without the consent in writing in each instance of CITY any flags, placards, poles, wires, aerials, antennae, improvements or permanent fixtures. In connection therewith, CITY may require submission of proposed designs, floor plans, construction plans, specifications and contract documents therefor and, if then approved, may incorporate all or part thereof within this Agreement as attachments thereto. A writing signed by the CITY's Public Works Director, which shall include a statement of whether or not a Building Permit is required, shall constitute consent. CITY's approval will not constitute approval by any County, State or Federal Agency which may have jurisdiction over the proposed improvements.

...

CITY ~~shall~~ may design and install signage at the north end of the West Dock, signifying that the use of the finger pier is limited to emergency use only.

13. Consistent with Section 27, NOTICE, LESSEE has provided the following updated contact information:

27. **NOTICE.** The parties to this Agreement shall be contacted and noticed at the following addresses:

...

LESSEE: William Gamper, President
Hillsboro Inlet Fishing Center, Inc.
2705 North Riverside Drive
Pompano Beach, Florida 33062
(for coordination of maintenance, and on-site matters)

M. Ross Shulmister, Vice-President, Treasurer

Hillsboro Inlet Fishing Center, Inc.
590 SE 12 Street
Pompano Beach, FL 33060
(for all other matters)

14. The Lease is amended by creating a new Section 35, entitled SALES TAX, as follows:

35. SALES TAX. LESSEE shall collect sales tax from occupants along with dockage, as may be required by state law, and shall remit same to the Florida Department of Revenue, as required by law. LESSEE shall maintain a Florida Annual Resale Certificate for Sales Tax. LESSEE shall hold CITY harmless from any failure of LESSEE to comply with this paragraph.

15. The Lease is amended by creating a new Section 36, entitled CAPITAL IMPROVEMENTS, addressing required capital improvements and defining the nature, timing, and reporting of those improvements as follows:

36. CAPITAL IMPROVEMENTS. LESSEE shall invest not less than twenty thousand dollars (\$20,000) in the procurement and installation of capital improvements to the Marina, of which fifty percent (50%) must be expended during the first two years of this Second Amendment's execution ("Improvement Period") and the remainder of such amount, if any, shall be expended during the two years following the initial Improvement Period. The Capital Improvements shall include a remote controlled, electric gate, but may also include signage, security equipment, and CITY approved fixtures designed for long term use, that improve the value of the Marina or enhance Marina operations, as determined in the CITY's sole discretion. LESSEE shall report all capital improvements under this paragraph as they occur. Landscaping shall not be deemed a capital improvement unless authorized by the City Manager prior to being installed. Improvements which require a building permit shall comply with Section 21, LESSEE IMPROVEMENTS. Should the LESSEE fail to accomplish the required improvements within the Improvement Period and within the two years following such period, this Lease shall terminate on the fifth anniversary from this Second Amendment's execution.

16. No other amendment to the terms of the said agreement shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

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IN WITNESS WHEREOF, the parties have caused this Second Amendment to Agreement to be duly executed on the day and year first above written.

“CITY”:

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved by:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

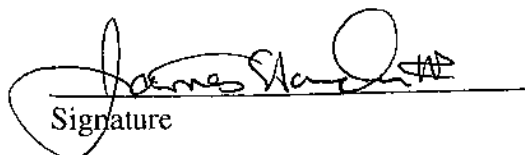
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

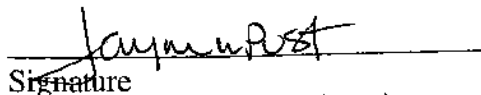
"LESSEE":

Witnesses:

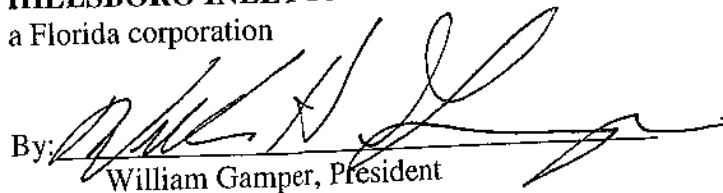
HILLSBORO INLET FISHING CENTER, INC.
a Florida corporation


Signature

James Sanders III
Print Name


Signature

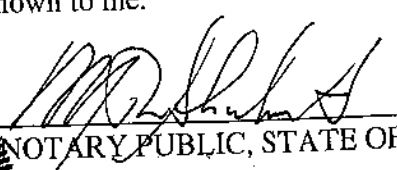
Jayne M Post
Print Name

By: 
William Gamper, President

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 18th day of October, 2018 by William Gamper, as President of Hillsboro Inlet Fishing Center, Inc., on behalf of the corporation. He is personally known to me.




NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger – Typed, Printed or Stamped)

Commission Number

JES:jrm:jmz
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