

GOLDEN BEACH, FLORIDA

RESOLUTION NO. 1719.05

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, APPROVING A DOCKAGE AGREEMENT BETWEEN FHR TB, LLC (D/B/A THE FAIRMONT TURNBERRY ISLE RESORT AND CLUB) AND THE TOWN OF GOLDEN BEACH, FLORIDA; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND THE TOWN MANAGER TO TAKE ALL ACTION NECESSARY TO IMPLEMENT THE AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Golden Beach, Florida (the "Town") owns and operates a police boat; and

WHEREAS, the Town desires to dock the Town police boat at the Fairmont Turnberry Isle Resort and Club Marina, owned and operated by FHR TB, LLC (d/b/a The Fairmont Turnberry Isle Resort and Club) (the "Club"); and

WHEREAS, the Club has agreed to donate dockage accommodations at no charge to the Town for docking and storage of the Town police boat; and

WHEREAS, the Town and Club desire to enter into an agreement recognizing the rights and liabilities of each party associated with the dockage accommodations; and

WHEREAS, the Town Council finds that the approval of the dockage agreement between the Club and the Town (the "Agreement") is in the best interest of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, AS FOLLOWS:

Section 1. The foregoing Recitals are true and correct and incorporated herein by this

reference.

Section 2. That the Agreement, in substantially the form attached hereto, is hereby approved, and the Mayor is hereby authorized to execute said Agreement on behalf of the Town.

Section 3. That the Town Manager is authorized to execute all documents, and to take any and all action necessary to implement and enforce the Agreement on behalf of the Town.

Section 4. This resolution upon adoption shall be become effective retroactive to June 1, 2005.

The Motion to adopt the foregoing Resolution was offered by Councilmember Iglesias, seconded by Vice Mayor Lusskin and on roll call the following vote ensued:

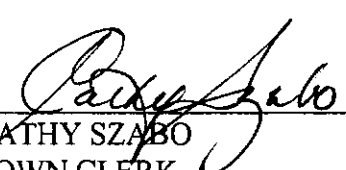
Mayor Singer	<u>Aye</u>
Vice Mayor Lusskin	<u>Aye</u>
Councilmember Einstein	<u>Aye</u>
Councilmember Iglesias	<u>Aye</u>
Councilmember Parusas	<u>Aye</u>

PASSED AND ADOPTED by the Town Council of the Town of Golden Beach, Florida, this 21st day of June, 2005.



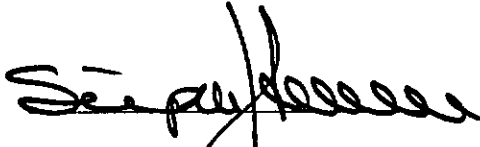
MAYOR GLENN SINGER

ATTEST:



CATHY SZABO
TOWN CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

A handwritten signature in black ink, appearing to read "Stephen J. Helfman", written over a horizontal line.

STEPHEN J. HELFMAN
TOWN ATTORNEY

THE FAIRMONT TURNBERRY ISLE RESORT & CLUB
19735 Turnberry Way
Aventura, Florida 33180
(305) 933-6934

DOCKAGE AGREEMENT

On this 21 day of June 2005, Turnberry Country Club, a Florida Partnership (d/b/a The Fairmont Turnberry Isle Resort and Club) (the "CLUB"), agrees to donate dockage accommodation for a vessel not to exceed 35 feet in length (the "Vessel") to the Town of Golden Beach, a Florida municipal corporation (the "TOWN") for a period of four months commencing June 1, 2005 and continuing through September 30, 2005. At the end of this period, the agreement shall be subject to review.

IT IS UNDERSTOOD AND AGREED BY ALL PARTIES HERETO THAT:

1. The CLUB hereby donates the above identified dock space in THE FAIRMONT TURNBERRY ISLE RESORT AND CLUB MARINA to the TOWN at no charge and hereto by these presents only creates a license for use of said boat slip and for such access thereto over the dock and marina facilities of the CLUB as may be necessary to the proper usage of said boat slip, with the CLUB as licensor and the TOWN as licensee.
2. This license confers no interest whatsoever in property and is recoverable anytime by the CLUB upon notice. No alterations or modifications are to be made to the dock space.
3. Use of all property and marina facilities is at the sole risk of the TOWN. Subject to the limitations of Section 768.28, Florida Statutes, the TOWN agrees to be responsible to, indemnify and hold harmless the CLUB for any loss, damage, legal action or claim occasioned by the TOWN'S use of all property and facilities at the CLUB, WHETHER OR NOT LOSS OR DAMAGE IS TO PROPERTY OWNED/LEASED BY THE CLUB, OR ANY OTHER PERSON, AND INCLUDING PROPERTY OF OTHERS IN THE CARE, CUSTODY OR CONTROL OF THE CLUB.
4. In the event that the boat slip, or any of the docks or other property of the CLUB shall be in any manner damaged by/through the use of the TOWN Vessel, or by the representatives of the TOWN, the TOWN shall indemnify the CLUB and reimburse the CLUB all sums which may be incurred to repair, reconstruct, and/or replace the damaged facilities or property, subject to the limitations of Section 768.28, Florida Statutes.
5. It is understood and agreed that this agreement does not constitute a bailment. The TOWN retains and has exclusive care, custody, control and access to the Vessel and its contents at all times.
6. No modifications to this agreement shall be enforceable unless in writing and signed by an authorized agent of the CLUB and the TOWN.

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7. **THE FAIRMONT TURNBERRY ISLE RESORT AND CLUB MARINA** is generally regarded as a reasonably safe storm harbor. Undertaking to move or evacuate vessels shall not be deemed an assumption of responsibility for the safety, security and care of any vessel by the **CLUB**, nor shall the **CLUB** be deemed a bailee of any vessel. The **CLUB** may, in its sole discretion permit the **TOWN** Vessel to remain in the marina during a pending emergency, in which event the Town shall agree to the following:
- A. To reimburse the **CLUB** upon demand for any identified costs incurred by the **CLUB** in repairing, replacing, and/or reconstructing the **CLUB'S** facilities, damaged in any manner as a result of the continued presence of said Vessel during an emergency.
 - B. To the extent permitted under Section 768.28, Florida Statutes, the Town shall indemnify and hold harmless the **CLUB**, its partners, employees and agents, from any and every loss, claim, liability and suit of any kind, including costs of litigation and reasonable attorney's fees, arising out of any and all damage done to property of others as a result of the continued presence of said Vessel during an emergency.
8. The **TOWN** shall pay all costs, including reasonable attorney's fees incurred by the **CLUB**, in judicial and non-judicial proceedings and appeals therefrom to enforce any and all provisions of this agreement and effect collections of any sums due to the **CLUB** hereunder. In the event the **CLUB** sues or is sued in tort or contract, or otherwise, in any action arising out of or in relation to this agreement and the **CLUB** is the prevailing party by means of judgment, dismissal, or otherwise, whether or not such action presented a justifiable issue of law or fact, or whether or not the **CLUB** was a plaintiff or defendant in said action, the **CLUB** shall recover its costs and expenses directly incurred because of any said action, including its reasonable attorney's fees, whether taxable or not, from the losing party, subject to the limitations of Section 768.28, Florida Statutes.
9. In the event any portion of this agreement shall be deemed to be in violation of any law of the United States or any law of the State of Florida, said portion and said portion only, shall be deemed null and void. This agreement shall be interpreted in accordance with the laws of the United States and the State of Florida.
10. The statute of limitations for enforcement of either party's rights under this agreement shall be the applicable statute of limitations of the State of Florida and any laches defense raised by either party shall be construed to always be within the period of said applicable statute of limitations.

EXECUTED THIS 21 DAY OF June, 2005.

TOWN OF GOLDEN BEACH, FLORIDA

Turnberry Country Club, a Florida Partnership (d/b/a THE FAIRMONT TURNBERRY ISLE RESORT & CLUB)

BY:


 Authorized Signatory

Glenn Singer
 Print Name

Mayor


 Authorized Signatory

b. [Signature]
 Witness

Vessel Registration No. *FL65 10MW*