

CITY OF CLEAR LAKE SHORES
WATERFRONT LEASE AGREEMENT
2013

THE STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

WHEREAS, the “Park” shoreline of the Clear Lake Shores subdivision is within the boundaries of the City of Clear Lake Shores, Texas, and in 1963 was deeded by the Clear Lake Shores Property Owners Association to the City; and

WHEREAS, in 1963 the voters of the City of Clear Lake Shores, Texas elected to accept and adopt the terms of the leases and licenses then existing between the Clear Lake Shores Property Owners Association and its various shoreline “Park” lessees and licensees, and further authorized the future leasing of such parkland; and

WHEREAS, such parkland is a scenic attribute to the community and helps preserve open vistas of the adjacent public waters and accordingly, to help defray the costs of preserving same, such parkland has been leased or licensed from 1963 to the present time and the City finds that the continued leasing of such parkland is even more beneficial to the public and in the public interest today than ever before.

WHEREAS, the City of Clear Lake Shores, Texas as LESSOR, and the party named below as LESSEE, previously entered into a written agreement for the leasing of certain waterfront property within the City (“Lease”), and said Lease is expiring, and

WHEREAS, the parties to said Lease wish to renew the lease arrangement under the same basic terms but to amend the language of the Lease to allow certain previously prohibited items to remain and/or be placed upon the leased area;

NOW, therefore, the City of Clear Lake Shores, Texas and the party named below as LESSEE agree the following terms and conditions shall govern unless and until otherwise modified by official action of the City Council of the City effective on any successive renewal date of this agreement.

This Lease is made by the CITY OF CLEAR LAKE SHORES, TEXAS, its successors and assigns, as lessor, hereinafter called “CITY” or “LESSOR”, **CHARLES & HEATHER LAVENDER**, as lessee, hereinafter called “LESSEE”, for the consideration stated, and on the following terms and conditions:

1. Documents Constituting Lease

b. LESSEE shall have an option to renew or extend this Lease for successive ten year periods for such rental as may be determined by LESSOR, provided that LESSEE notifies LESSOR in writing of LESSEE's desire to exercise such option at least six (6) months before the end of the then current term. LESSOR shall then notify LESSEE in writing of the amount of the rental for the renewal term and any modifications of the terms, conditions, or covenants for the renewal term. LESSEE may then exercise said option by giving written notice to LESSOR of its acceptance of the new terms and rent within thirty (30) days of LESSOR's mailing said notice of terms and rent to LESSEE. The Lease shall automatically terminate at the end of the term under which LESSEE is then occupying the PREMISES unless LESSEE has successfully exercised its option to renew as provided herein.

c. LESSEE's right to exercise any option described herein is dependent upon LESSEE not then being in default of this Lease, including any one or more of the conditions hereto, all of which shall be deemed to be conditions precedent to a further continuation of this Lease. Time is deemed of the essence hereof.

d. If for any reason this Lease or LESSOR'S authority or power to enter into same shall be declared unconstitutional or an invalid exercise of its municipal powers and authority by a court of competent jurisdiction, then this Lease shall terminate and all rights granted to LESSEE extinguished as of the date of entry of judgment without any right or reimbursement for the unexpired term of said Lease.

5. Hold Harmless

LESSEE releases LESSOR from and agrees to indemnify, defend and hold LESSOR harmless against any claims, demands, costs, and expenses, including reasonable attorney's fees for defending the claims and demands, for injury or damage to the person or property of LESSEE or any other party arising out of any use or occupancy of the PREMISES, INCLUDING CLAIMS OR DEMANDS BASED ON THE NEGLIGENCE OF THE LESSOR, OR THE LESSOR'S AGENTS, EMPLOYEES, OR CONTRACTORS, as well as claims based on the conduct of the LESSEE, the LESSEE's agents, contractors, employees. If any action or proceeding is brought against LESSOR by reason of any such claim, LESSEE, on notice from LESSOR, will defend the action or proceeding at LESSEE's cost and by counsel acceptable to LESSOR.

6. Tax Liability

If LESSEE's interest in the PREMISES, or improvements, is or becomes subject to ad-valorem taxation or other governmental assessment or levy, LESSEE shall

The occurrence of any of the following shall constitute an event of default (herein "Event of Default") under this Lease:

- a. LESSEE fails to pay in full the annual lease payment by August 1 of the year when due, or any other amounts due under this Lease, time being of the essence.
- b. Said Lease shall automatically terminate at such time as LESSEE is no longer the record owner (or beneficial owner resulting from a trust or estate) of at least a one-half (1/2) interest in any **building lot** within the subdivision of Clear Lake Shores. LESSEE acknowledges that maintenance of an ownership interest in a **building lot** as described above is a condition of this Lease.
- c. LESSEE fails to satisfy and/or perform any of the obligations, responsibilities, or conditions imposed on LESSEE by the terms, conditions, covenants, or promises of this Lease. The City Council to be sole judge of the adequacy of LESSEE's satisfaction and performance of said obligations, responsibilities, or conditions.
- d. Any leaseholder who wishes to transfer their lease must submit a notice including the lease holders name and phone number for a minimum of 30 days to the City Secretary at City Hall indicating this intent. The lease holder must consider all legitimate inquiries meeting the ownership requirements given in the above paragraph. A lease holder who owns a residence with a lease attached to it may transfer the lease along with the residence when it is sold. In this case the requirement to submit the notice as described above is waived. LESSOR shall, to the extent permitted by law, protect personal phone numbers from public disclosure.

10. Remedies in Event of Default

At any time after an Event of Default has occurred, LESSOR may, without obligation or liability, do any one or more of the following:

- (a) Proceed by appropriate court action or actions, to enforce performance by LESSEE of the applicable conditions and/or covenants of this Lease, to recover damages for the breach thereof, and/or to evict LESSEE from the PREMISES and recover attorney's fees.
- (b) Give at least ten days written notice of the default to LESSEE and give notice to LESSEE that LESSOR will hold a public hearing at a regularly scheduled City Council meeting to hear evidence and public comment regarding the Event of Default. After the public hearing, the City Council may take action including, but not limited to, terminating this Lease, whereupon all rights of LESSEE to use of the PREMISES shall absolutely cease, but LESSEE shall remain liable for any unpaid rents as hereunder provided. Thereupon, LESSOR will thenceforth hold the PREMISES free from any right of LESSEE to use the PREMISES for any

all rights granted to LESSEE shall be extinguished as of the date of entry of judgment, without right of reimbursement for the unexpired term of said Lease or damages for termination.

15. Entire Lease

This executed Lease (as defined in Section 1 hereof) constitutes the entire agreement among the parties and may be modified only by written amendment signed by both parties.

16. Notices

Notices pertaining to this lease, other than revocation of the lease which will be mailed certified, are required to be made in writing via the U.S. Postal Service and/or via e-mail or by telephone. Notices must be addressed to the respective party in accordance with the addresses set forth below:

For Notices to LESSEE:

Charles & Heather Lavender
906 Dogwood
Clear Lake Shores, TX 77565

email: feld948@yahoo.com
phone: 281-851-9921

For Notices to CITY/LESSOR:

City of Clear Lake Shores
Attn: City Secretary
1006 South Shore Drive
Clear Lake Shores, Texas 77565

LESSEE is responsible for updating their address with the LESSOR to which notices are to be sent by sending written notice of the new address to the LESSOR in accordance with the provisions of this Paragraph.

WITNESS the execution hereof, this 22 day of October, 2014.



CITY OF CLEAR LAKE SHORES, LESSOR

BY: [Signature]
Mayor

ATTEST:
[Signature]
City Secretary

[Signature]
LESSEE - Charles Lavender

[Signature]
LESSEE - Heather Lavender

EXHIBIT "B"

ADDITIONAL TERMS AND CONDITIONS

1. Additional responsibilities of LESSEE:
 - A. CITY, in granting LESSEE exclusive right to the PREMISES, prohibits use of the PREMISES for commercial, business, or residential purposes (including any overnight lodging), or for living quarters of any kind. LESSEE specifically agrees to only use the PREMISES for pleasure and social purposes. LESSEE may not charge a fee of any type for use of the PREMISES. This prohibition extends to, and includes the Adjacent Public Waters.
 - B. All bulkheads must be installed, replaced, improved, maintained only by contractors certified via the Building Official (i.e. no self-work).
 - C. If any bulkhead, pier, landing, or any other structure is placed on the PREMISES, or on/in the Adjacent Public Waters, LESSEE shall comply with all laws and regulations relative thereto. LESSEE shall not place, install, build, remove, destroy, alter, or change any such structure without CITY's prior written consent and/or a building permit issued by CITY. This prohibition extends to and includes "dock" boxes or other equipment storage containers.
 - D.
 1. Except as provided for in Paragraph "C" (2) below and in Section 8 of the LEASE, if the PREMISES or Adjacent Public Waters presently contain a Non-Conforming Structure, LESSEE shall immediately remove such Structure.
 2. Subject to the provisions of Section 8 of the LEASE, and Paragraph "E" of Exhibit "B" of the Lease, if the PREMISES or Adjacent Public Waters presently contain a boathouse, deck or roof above a pier, or a boatlift that utilizes overhead horizontal beams or supports, LESSEE may retain such Structure until such time the LESSOR determines the Structure to be in need of repair costing more than fifty (50%) percent of its then current value. Such determination is made at the sole discretion of the LESSOR. Upon written notice by the LESSOR of such determination, LESSEE shall cause such Structure to be removed within ninety (90) days.
 - E. If the PREMISES or Adjacent Public Waters presently contain any piling that exceeds the height limitation noted in Exhibit "C", LESSEE shall, within thirty (30) days of the commencement date of this Lease, cut or lower such pilings so as to comply.

deemed delivered **when deposited by certified mail** to the last known address of the LESSEE.

- J. LESSEE shall be allowed to park no more than two private vehicles on the PREMISES, for any more than a total of forty-eight (48) hours per week. No other vehicles, including boats/boat trailers, shall be permitted to be parked or stored on the PREMISES. Small portable boats such as kayaks, canoes, inflatables can also be kept on premises for no more than forty-eight (48) hours per week. These watercrafts must be secured in place to prevent floating away or wind blowing them away.
- K. LESSEE may place tables, chairs, benches, and barbeque pits upon the PREMISES and upon any piers or docks located within the Adjacent Public Waters so long as said items are secured to withstand displacement from wind and rising water.”
- L. LESSEE, upon obtaining the proper building permits and design approval from the CITY, may construct a boatlift within and upon the Adjacent Public Waters so long as no portion of the Structure exceeds four (4) feet in height above the crown of the PREMISES’ adjacent roadway. Boatlifts utilizing overhead horizontal beams or supports are prohibited.
- M. LESSEE may install distance street markers (e.g. ornate rocks, bundled tree stumps, etc.) as long as approved by the City, in a line six (6) feet from the pavement of the PREMISES’ adjacent roadway. Such markers shall be placed eight feet apart as measured from the center of each marker. Once installed, the LESSEE shall be responsible for maintaining such markers and shall remove or replace any damaged or deteriorated markers. Boundary demarcations from roadway to waterfront are not allowed.

A well maintained garden may be planted as long as it does not obstruct the public's view of the water or create a boundary.

LESSEE agrees that the “Hold Harmless” and Indemnification provisions of Paragraph 5 of the LEASE extend to and include claims and demands arising out of the placement and maintenance of such aforementioned posts.

Any items not specifically allowed by paragraphs A thru M above are not allowed on the premises on any lease.

- 2. City Council approval is necessary for any deviation from the above additional terms and conditions. Such approval shall not be granted without notification of all leaseholders and a public hearing. City Council may refer LESSEE’s request for deviation to the Clear Lake Shores Waterfront Compliance Committee for its recommendation.

and non-eroded condition. Installation of an approved GEO textile filter fabric behind all bulkhead improvements is required.

- G. Any reduction of the PREMISES area, by creation of an indented anchorage or mooring area is expressly prohibited.
2. The following specifications shall apply to all new improvements or to replacement of present existing improvements.
- A. All improvements (including bulkheads) shall be constructed only after receipt of a CITY building permit.
 - B. LESSEE is notified that any structure located in the Adjacent Public Waters may also require a Texas General Land Office Coastal Easement or other registration.
 - C. The piling height for mooring pilings shall be limited to a maximum of twelve feet (12.33') above Mean Low Water. Mooring pilings shall be limited to a maximum of six (6) pilings for the first slip with an additional three (3) pilings allowed for each additional slip.
 - D. It is the intention of LESSOR that the PREMISES be maintained by LESSEE as an open-space scenic area. Landscaping shall be of drought resistant native plants and grasses. CITY retains a drainage easement through all leased PREMISES for the drainage of rainwater to the Adjacent Public Waters.
 - E. Improvement of the PREMISES for vehicle parking shall be limited to fifty percent (50%) of the PREMISES' area, or 500 square feet, whichever is less. Paving materials must be permeable so as to allow grass to grow over the majority of the parking area.
 - F. Lighting of the PREMISES and Adjacent Public Waters shall be limited to a total of 100 watts, fixtures shall be mounted on a pier piling, and shielded so as to generally direct the light downward.
 - G. Improvements shall be clearly marked at the beginning and ending of the PREMISES and on bulkheads.
3. City Council approval is necessary for any deviation from the above specifications. Such approval shall not be granted without notification of all leaseholders by publication in the official newspaper of the CITY, and a public hearing. City Council may submit any request for deviation to the Clear Lake Shores Waterfront Review Board for its input and recommendation.