

RESOLUTION NO. 21-250

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED ASSIGNMENT OF LEASE AND CONSENT OF LESSOR FROM A-1 BOAT SERVICES, LLC d/b/a SPENCER'S BOATYARD (ASSIGNOR) TO SBY KEY WEST, LLC (ASSIGNEE/GUARANTOR) FOR THE (UPLAND) PROPERTY LOCATED AT 701 PALM AVENUE, AS DESCRIBED IN THE LEASE APPROVED IN RESOLUTION 16-343; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE ANY NECESSARY DOCUMENTS UPON CONSENT OF THE CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission approved the original Lease Agreement with A-1 Boat Services, LLC in Resolution 16-343; and

WHEREAS, the business owner has requested an assignment of the Lease Agreement to SBY Key West, LLC, pursuant to Section 10 of the Lease; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA AS FOLLOWS:

Section 1: That the attached "Assignment of Lease Agreement and Consent of Lessor" from A-1 Boat Services, LLC to SBY Key West, LLC for the (upland) property located at 701 Palm Avenue, is hereby approved.

Section 2: That the City Manager or designee is authorized to execute any necessary documents upon advice and consent of the City Attorney.

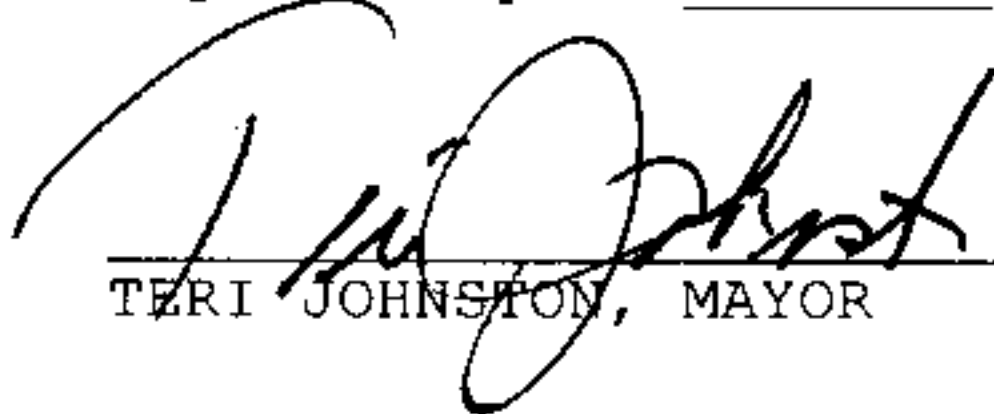
Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 16th day of November, 2021.


Authenticated by the Presiding Officer and Clerk of the Commission on 17th day of November, 2021.

Filed with the Clerk on November 17, 2021.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>

  
TERI JOHNSTON, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK

# EXECUTIVE SUMMARY



**TO: City Commission**

**CC: Patti McLauchlin  
Todd Stoughton  
Nathalia Mellies**

**FR: Michael Henriquez Jr, Senior Property Manager**

**DT: November 16, 2021**

**RE: 701 Palm Ave Lease Assignment**

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## **ACTION STATEMENT**

This is a request to approve a lease assignment from A-1 Boat Services, LLC, also known as Spencer's Boatyard (Assignor) to SBY Key West, LLC (Assignee) for the property located 701 Palm Avenue.

## **BACKGROUND**

The City entered into a lease agreement dated \_\_\_\_\_ per Resolution \_\_\_\_\_, and subsequent renewal dated November 15, 2016, pursuant to Resolution 16-343 for the upland area located at 701 Palm Avenue.

The current tenant provides boat maintenance and repair services to the public as well as essential services to important infrastructure support groups such as the Florida Keys Marine Sanctuary and the State of Florida Department of Fish and Wildlife. The tenant also provides maintenance and repairs for Key West tourism based businesses enabling ferrying of hotel guests, water sports activities, fishing and diving, and boat rentals. The tenant has entered into an agreement to sell the business and desires to assign the lease. The terms of the lease will not be changed and are as follows:

<b>Demised Premises:</b>	701 Palm Avenue
<b>Term:</b>	Ten Years, Effective May 1, 2017
<b>Base Rent:</b>	\$67,523.28 as of May 1, 2021
<b>Rent Increases:</b>	CPI annually
<b>Additional Rent:</b>	Tenant shall pay real estate taxes, insurance, sales, use or excise taxes

**Rent Concession:** Up to 15% of the annual rental for repairs to the existing structures that would increase or preserve the value of the City's property.

**Utilities:** Tenant shall pay for all utility usage.

The lease may be assigned with the consent of the Landlord pursuant to Section 10, excerpted here for your reference, as follows:

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

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

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

**FINANCIAL:** The rental rates will continue according to the terms of the lease. The Assignee will post a letter of credit equal to six month's rent and will also provide a personal guaranty. In addition, pursuant to current management standards, a \$500.00 transfer fee will be charged to offset the Landlord's costs associated with the preparation of the assignment necessary to effectuate same.

**CONCLUSION:** The use remains unchanged and is important to maintain essential waterside services in Key West. This use is also reflective of the City's desire to support traditional maritime services as a vital part of the culture of our community. The rent is at a market rate and the Tenant has a very good rental history as shown on the attached payment history. The lease assignment requested meets the requirements of the lease terms and conditions.

**ATTACHMENTS:**

Rent Payment History

Current Lease

Tenant request for Assignment

Assignment of Lease and Consent of Lessor

Assignee Corporate Documents

Assignees Personal Guaranty

**ASSIGNMENT AND MINOR MODIFICATION OF LEASE AGREEMENT  
AND CONSENT OF LESSOR**

THIS ASSIGNMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by and between A-1 Boat Services, LLC, as assignor, and SBY Key West, LLC, a Florida Limited Liability Company, 500 Fleming Street, Key West, Florida, as assignee.

WHEREAS, the Assignor, in consideration of the covenants and agreements contained herein, assigns and transfers to Assignee the lease agreement (hereinafter "Agreement"), dated November 15, 2016, per Resolution 16-343, executed by Rick Spencer as Managing Member of A-1 Boat Services, as Lessee and by City of Key West, , as Lessor. The Agreement pertains to real property located at 701 Palm Avenue, Key West, in Monroe County, Florida, and more particularly described on Exhibit "A", which is attached hereto and incorporated by reference;

WHEREAS, Assignor desires to assign all of its right, title and interest in the Lease to Assignee, Assignee desires to accept and assume the same, and Landlord is willing to consent to the proposed Assignment, all on the terms and conditions thereof.

1. The Assignor assigns and transfers unto the Assignee all of its right, title, and interest in and to the Agreement and amendment thereof, and premises, subject to all the conditions and terms contained in the Agreement and this Assignment. Copies of the Agreement are attached hereto, incorporated by reference, and more particularly described as Exhibit "B".

2. The Assignor herein expressly agrees and covenants that it is the lawful and sole owner of the interest assigned herein; that this interest is free from all encumbrances; and that it has performed all duties and obligations and made all payments required under the terms and conditions of the lease agreement.

3. Assignor herein expressly acknowledges that this Assignment shall not relieve Assignor from liability for payment of rent or from the obligation to keep and be bound by the terms, conditions, and covenants contained in the Lease, provided, however, no such liability shall extend beyond the expiration of the current Lease Term which is April 30, 2027.

4. In the event of a default of any of the terms, conditions and covenants of the Lease by the Assignee the Assignor shall have the right to re-enter and assume the Lease.

5. Assignee herein expressly agrees to assume, perform and be liable for all of the duties and obligations of "Tenant" required by and under the terms of the Lease, including but not limited to, the obligation to pay all rent due thereunder from and after the effective date of this Assignment and the obligations in Section 17. of said Lease.

6. The Assignee herein expressly agrees to provide to the Lessor throughout the current term of the Agreement, a letter of credit from a federally insured bank in favor of lessor as security for the faithful performance by assignee of the terms, conditions and covenants of the

Agreement. The amount of the letter of credit shall be equal to six months of the total rent pursuant to the Agreement.

7. The Assignee herein expressly agrees herein to be liable for all the duties and obligations required by the terms of the lease agreement. The Assignee expressly agrees herein to pay all rent due after the effective date of this agreement, and to assume and perform all duties and obligations required by the terms of the lease agreement.

8. This assignment is contingent upon the completion of the sale between the assignor and assignee of the business conducted on the subject premises. References herein to the "effective date" shall mean the date of the closing of the aforementioned sale transaction.

9. No later than the effective date of this Assignment, Assignee herein expressly agrees to pay Landlord \$500.00 to help offset any costs Landlord may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same.


10. No later than the effective date of this Assignment, Assignee herein expressly agrees to execute a personal guaranty and to provide to Landlord a security deposit in the amount of one month's rent per section 1.7 of the lease, for the faithful performance by Assignee of the terms, conditions and covenants of the Lease.

11. In the event assignee files any form of bankruptcy, lessor shall be entitled to immediate termination of the automatic stay provisions of 11 U.S.C. §362, granting the lessor complete relief and allowing the lessor to exercise all of its legal and equitable rights and remedies, including, without limitation, the right to terminate this lease and dispossess assignee from the demised premises in accordance with Florida law. Additionally, assignee agrees not to directly or indirectly oppose or otherwise defend against the lessor's effort to gain relief from any automatic stay. The lessor shall be entitled as aforesaid to the lifting of the automatic stay without the necessity of an evidentiary hearing and without the necessity or requirement of the lessor to establish or prove the value of the leasehold, the lack of adequate protection of his interest in the leasehold, or the lack of equity in the same. Assignee specifically agrees and acknowledges that the lifting of the automatic stay hereunder by the appropriate bankruptcy court shall be deemed to be "for cause" pursuant to section 362(d)(1).

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURES ON FOLLOWING PAGES]**

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first above written.

ASSIGNOR:  
A-1 Boat Services, LLC dba Spencer's Boat Yard

  
\_\_\_\_\_  
Witness to Assignor

By   
\_\_\_\_\_  
Name: Richard Spencer  
Title: Manager Member

State of Florida }  
County of Monroe }

Subscribed and sworn to (or affirmed) before me, by means of  physical presence or  online notarization, on November 5, 2021 (date) by Richard Spencer (name of affiant). He/She is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:



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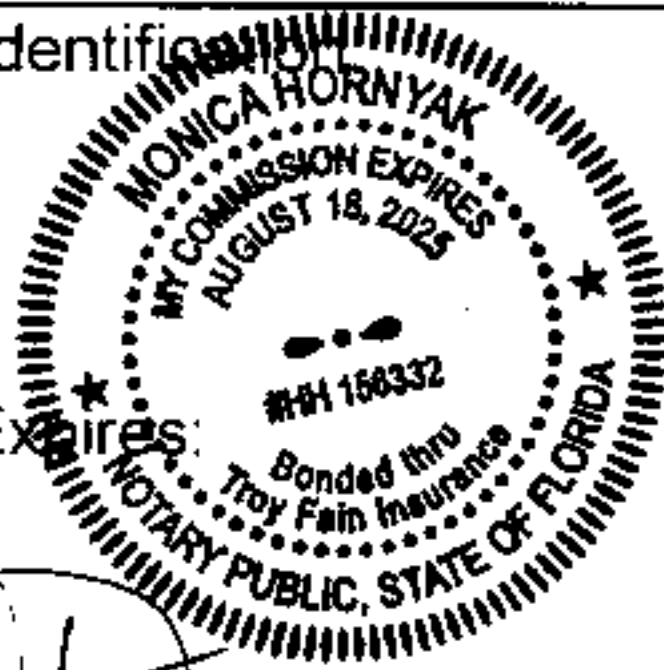
**ASSIGNEES:**  
SBY Key West, LLC

[Signature]  
Witness to Assignee

By: [Signature]  
Name: Richard McChesney  
Title: Manager Member

State of Florida }  
County of Monroe }

Subscribed and sworn to (or affirmed) before me, by means of  physical presence or  online notarization, on November 5, 2021 (date) by Richard McChesney (name of affiant). He/She is personally known to me (type of identification) as identification.



[Signature]  
NOTARY PUBLIC

My Commission Expires: [Signature]  
Witness to Assignee

By: [Signature]  
Name: Felix Wiggins  
Title: Manager Member

State of Florida }  
County of Monroe }

Subscribed and sworn to (or affirmed) before me, by means of  physical presence or  online notarization, on November 5, 2021 (date) by Felix Wiggins (name of affiant). He/She is personally known to me (type of identification) as identification.



[Signature]  
NOTARY PUBLIC

My Commission Expires: [Signature]

**CONSENT OF LESSOR**

I, Teri Johnston, Mayor of the City of Key West, the Lessor named in the above assignment of that lease agreement executed by the City of Key West on November 15, 2016, per Resolution 16-343, herein expressly consent to that assignment so long as the sale between Assignor and Assignee of the business which is conducted on and from the Premises is completed on or before the date of this assignment, failing which this Consent shall be deemed null and void, of no force or effect and withdrawn.

I also consent to the agreement by the Assignee to assume, after the effective date of the Assignment, the payment of rent and the performance of all duties and obligations as set forth in the lease and accept Assignees as tenant in the place of A-1 Boat Services, LLC, alone.

**LANDLORD/LESSOR:**

City of Key West

By: Teri Johnston  
Teri Johnston, Mayor

[Signature]  
Witness as to Landlord/Lessor

State of Florida }  
County of Monroe }

Subscribed and sworn to (or affirmed) before me, by means of  physical presence or  online notarization, on November 17, 2021 (date) by Teri Johnston (name of affiant). N/A He/She is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

[Signature]  
NOTARY PUBLIC

My Commission Expires:



1

**EXHIBIT "A" DEMISED PREMISES**

A Parcel of land and bay bottom laying Northeasterly of Palm Ave, and Southeasterly of a 80 foot Access Easement and adjacent to Garrison Bight, in the City of Key West, Monroe County, Florida, and being more particularly described as follows:

Commencing at the intersection of the said Northeasterly Right-of-Way Line of Palm Avenue and the extended Southeasterly Line of Eaton Street, said point being marked by an iron bar in concrete; thence  $71^{\circ}41'53''$  E along the said Northeasterly Right-of-Way Line of Palm Avenue for 1640.75 feet to the Southeast corner of the City of Key West Garage, or the City sewage plant property; thence continue S  $71^{\circ}41'53''$  E along the said Northeasterly Right-of-Way Line of Palm Avenue for 80.00 feet to the Point of beginning; thence continue S  $71^{\circ}41'53''$  E along the said Northeasterly Right-of-Way Line of Palm Avenue for 94.30 feet; thence  $63^{\circ}10'31''$  E for 106.06 feet; thence S  $71^{\circ}45'24''$  E for 49.75 feet; thence N  $14^{\circ}35'31''$  E for 153.79 feet; thence N  $80^{\circ}45'06''$  W for 200.16 feet to the Southeasterly line of a 80 foot Easement; thence  $18^{\circ}18'07''$  W along the said Southeasterly line of the 80 foot easement for 197.17 feet to the Point of Beginning. Containing 37,893.66 square feet or .87 Acres more or less.

**EXHIBIT "B"**  
**LEASE AGREEMENT**

## GUARANTY

This Guaranty is made this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, in accordance with the Assignment and Modification of Lease Agreement (hereinafter Agreement) dated \_\_\_\_\_, 2021 by and between the City of Key West (hereinafter City), A-1 Boat Services, LLC (Assignor), and SBY Key West, LLC (hereinafter Assignee/Tenant) and Richard McChesney and Felix Wiggins (hereinafter Guarantors) for the Demised Premises (hereinafter Premises) located at 701 Palm Avenue, Key West, Florida.

In consideration of granting the use of the Premises to Tenant, and other good and valuable consideration, Guarantors do hereby covenant and agree that:

- (a) The Guarantors do hereby absolutely, unconditionally and irrevocably guarantee to the City the full and complete performance of all of Tenant's covenants and obligations under the Agreement and full payment by Tenant of all rentals, additional charges and other charges and amounts required to be paid hereunder during the entire term. Guarantors' obligations hereunder shall be primary and not secondary and are independent of the obligations of the Tenant.
- (b) A separate action or actions may be brought and prosecuted against Guarantors, whether or not action is brought against Tenant or whether Tenant shall be joined in any such action or actions. At the City's option, the Guarantors may be joined in any action or proceeding commenced by the City against Tenant in connection with and based upon any covenants and obligations under the Agreement, and the Guarantors hereby waive any demand by City and/or prior action by City of any nature whatsoever against Tenant.
- (c) The Guarantors consent to forbearance, indulgences and extensions of time on the part of the City being afforded to Tenant, the waiver from time to time by City of any right or remedy on its part as against Tenant. The Guarantors hereby agree that no act or omission on the part of the City shall affect or modify the obligation and liability of the Guarantors hereunder.
- (d) This Guaranty shall remain and continue in full force and effect, notwithstanding (i) any alteration of the Agreement by parties thereto, whether prior or subsequent to the execution hereof, (ii) any renewal, extension, modification or amendment of the Agreement, (iii) any subletting of the Demised Premises or assignment of Tenant's interest in the Agreement.
- (e) The Guarantors' obligations hereunder shall remain fully binding although City may have waived one or more defaults by Tenant, extended the time of performance by Tenant, released, returned, or misapplied other collateral given later as additional security (including other guarantees) and released Tenant from the performance of its obligations under the Agreement.

(f) In the event any action or proceeding be brought by City to enforce this Guaranty, or City appears in any action or proceeding in any way connected with or growing out of this Guaranty, then and in any such event, the Guarantors shall pay to City reasonable attorney's fees, but only if City is the prevailing party. The Guarantors in any suit brought under this Guaranty do hereby submit to the jurisdiction of the courts of the State of Florida and to the venue in the circuit court of Monroe County, Florida. Nothing herein waives

(g) This Guaranty shall remain in full force and effect notwithstanding the institution by or against Tenant or bankruptcy, reorganization, readjustment, receivership or insolvency proceedings of any nature, or in the disaffirmance of the Agreement an any such proceedings or otherwise.

(h) This Guaranty shall be applicable to and binding upon the heirs, representatives, successors and assigns of City, Tenant and the Guarantors.

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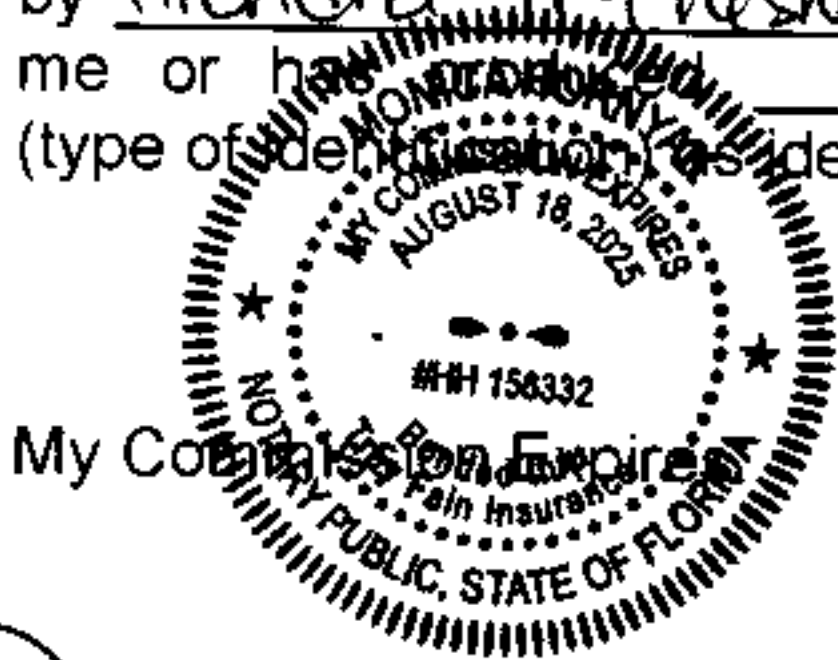
IN WITNESS WHEREOF, the Guarantors have caused the foregoing Guaranty to be executed on this 5<sup>th</sup> day of November 2021.

[Signature]  
Witness

Guarantor:  
By: [Signature]  
Name: Richard McChesney

State of Florida }  
County of Monroe }

Subscribed and sworn to (or affirmed) before me, by means of  physical presence or  online notarization, on November 5, 2021 (date) by Richard McChesney (name of affiant). He/She is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.



[Signature]  
NOTARY PUBLIC

[Signature]  
Witness

Guarantor:  
By: [Signature]  
Name: Felix Wiggins

State of Florida }  
County of Monroe }

Subscribed and sworn to (or affirmed) before me, by means of  physical presence or  online notarization, on November 5, 2021 (date) by Felix Wiggins (name of affiant). He/She is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.



[Signature]  
NOTARY PUBLIC

**CITY OF KEY WEST**

**Exhibit "B" Rent Schedule**

Tenant: A-1 Boat Services, LLC  
 Location: 701 Palm Avenue  
 Contact: Rick Spencer

Term: 10 years effective May 1, 2017

YEAR #	Period Beginning	May CPI	Base Rent Monthly (CPI Increases)	Base Rent Annual (CPI Increases)	Sales Tax Monthly	Total Rent With Tax Monthly	TOTAL RENT ANNUAL
1	May 1, 2017		\$5,115.73	\$61,388.76	\$373.45	\$5,489.18	\$65,870.16
2	May 1, 2018	2.8%	\$5,258.97	\$63,107.64	\$378.85	\$5,637.62	\$67,651.44
3	May 1, 2019	1.8%	\$5,353.63	\$64,243.58	\$374.75	\$5,728.38	\$68,740.55
4	May 1, 2020	0.1%	\$5,358.99	\$64,307.85	\$375.13	\$5,734.12	\$68,809.49
5	May 1, 2021	5.0%	\$5,626.94	\$67,523.28	\$393.89	\$6,020.83	\$72,249.96
6	May 1, 2022		CPI	CPI	\$0.00	\$0.00	\$0.00
7	May 1, 2023		CPI	CPI	\$0.00	\$0.00	\$0.00
8	May 1, 2024		CPI	CPI	\$0.00	\$0.00	\$0.00
9	May 1, 2025		CPI	CPI	\$0.00	\$0.00	\$0.00
10	May 1, 2026		CPI	CPI	\$0.00	\$0.00	\$0.00

Tenant pays Taxes and Insurance expenses directly.



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**Lease Agreement**

between

**CITY OF KEY WEST**

as Landlord

and

**A-1 Boat Services, LLC**

as Tenant

Dated November 15, 2016

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THIS LEASE is made as of the 15th day of November, 2016 by and between the LANDLORD and TENANT identified below:

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

1.1 LANDLORD'S NAME & MAILING ADDRESS:  
CITY OF KEY WEST  
P.O. BOX 1409  
KEY WEST, FL 33040

1.2 TENANT'S NAME & MAILING ADDRESS:  
A-1 BOAT SERVICES, LLC  
701 PALM AVENUE  
KEY WEST, FL 33040

TENANT'S TRADE NAME: **SPENCER'S BOAT YARD**

1.3 GUARANTOR (S) AND ADDRESS:

1.4 DEMISED PREMISES (Section 2): **as per EXHIBIT "A"** located at 701 Palm Avenue, Key West, FL (hereinafter referred to as the "Property").

EXPANSION/RIGHT OF FIRST REFUSAL: N/A

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

1.5.1 COMMENCEMENT DATE: May 1, 2017 as acknowledged by TENANT'S written statement

1.5.2 RIGHT TO TERMINATE: N/A

1.5.3 RIGHT TO RENEW: The Lease may be renewed upon rent and terms to be negotiated by the parties in accordance with the City of Key West Code of Ordinances Sec.2-941 Leases or as amended

1.6 MINIMUM RENT FOR TERM (Section 4): The base rent and base rent increases for the term and any renewals thereof as **per EXHIBIT "B"** attached hereto and incorporated herein. Every year thereafter throughout the term of the lease the minimum base rent shall be adjusted annually on the anniversary date of the lease by the increase in Consumer Price Index for all Urban Consumers as published by the United States Department of Labor. In no event shall the minimum base rent be decreased.

1.6.1 ADDITIONAL RENT: Tenant shall pay Real Estate taxes, insurance, sales, use or excise taxes and any and all other sums of money or charges required to be paid by TENANT pursuant to the provisions of this lease.

1.6.2 RENT PAYMENT DUE DATE: Payable in advance on the first (1<sup>st</sup>) of each and every month of the term hereof.

1.6.3 LATE CHARGE: 15% of the amount in arrears if received after the fifth day of each and

every month together with an administrative fee of \$50.00 for processing late payments.

- 1.6.4 PERCENTAGE RENT: N/A
- 1.6.5 HOLD OVER RENT: 150% of the Minimum Base rent during the last year of the expiring term.
- 1.6.6 RENT CONCESSIONS: The LANDLORD and TENANT agree that LANDLORD will allow a credit to TENANT'S rent no more than 15% of the rental each year, which would take into consideration repairs to the existing structures and permanent improvements that would increase or preserve the value of the City's property at the TENANT'S expense, unless a greater amount is approved by resolution of the City Commission. The said credit shall not be cumulative from year to year.
- 1.7 SECURITY DEPOSIT (Section 5): Equal to one month's base rent
- 1.8 PERMITTED USE (Section 6): Maritime business or other marine accessory uses that may include a full service boat yard, a marine store for purposes of providing marine hardware, new or used boat gear, supplies and other goods such as food, beverages, snacks.
- 1.9 INSURANCE: (Section 9) \$2,000,000.00 aggregate and \$1,000,000.00 per occurrence commercial liability minimum
- 1.10 ASSIGNMENT OR SUBLETTING: (Section 10) This Lease is not transferable or assignable and may not be hypothecated nor sublet except dockage without the prior written consent of the LANDLORD
- 1.11 UTILITIES: (Section 17) TENANT shall pay for all utilities

INITIALS: LANDLORD \_\_\_\_\_ TENANT \_\_\_\_\_

WITNESSETH:

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

2. **DEMISED PREMISES** - Upon the terms and conditions hereinafter set forth, and in consideration of the payment from time to time by the TENANT of the rents hereinafter set forth, and in consideration of the performance continuously by the TENANT of each and every one of the covenants and agreements hereinafter contained by the TENANT to be kept and performed, the LANDLORD does hereby lease, let, and demise unto the TENANT, and the TENANT does hereby lease of and from the LANDLORD, the Demised Premises situated, lying, and being in Monroe County, Florida as stated in the legal description on Exhibit "A" attached hereto and incorporated herein. Additionally, Tenant shall have the right to utilize the parking spaces located on the adjacent pier between the Demised Premises and the mooring field bath house on a non-exclusive basis. TENANT accepts the Demised Premises in an "as is", "where is" condition and acknowledges that LANDLORD has no obligations for any construction or improvements in connection with TENANT'S occupancy of the Demised Premises.

Expansion/Right of First Refusal – N/A

3. **TERM** - The term of this Lease shall be for ten (10) years which shall commence on May 1, 2017 and shall end at midnight April 30, 2027 unless sooner terminated as provided for herein. Upon occupancy TENANT shall furnish LANDLORD a written statement stating the TENANT has accepted the Demised Premises for occupancy and setting forth the actual commencement and expiration dates of the Lease. TENANT'S written statement shall become attached to and incorporated into this lease Exhibit "D". In the absence of TENANT'S written statement the lease term shall remain as stated above A Lease Year is the twelve-month period beginning on the commencement date of each year and ending at the conclusion of the same date one year later. If possession of the Demised Premises shall for any reason not be delivered to Tenant on the Commencement Date, this Lease shall nevertheless continue in full force and effect, and no liability whatsoever shall arise against LANDLORD out of any delay other than the abatement of rent.

Right to Terminate –N/A

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

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

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

4.2 **Interest on Rent.** Rent and additional rent not paid within fifteen (15) days of when due shall bear interest from the date due until paid at the highest rate permitted by law.

4.3 **Obligation to Survive.** TENANT'S obligation to pay rent that is accrued and unpaid hereunder shall survive the expiration or termination of the Lease.

4.4 The rent reserved under this Lease for the term hereof shall be and consist of:

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

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

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

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

Initial here if applicable

LANDLORD \_\_\_\_\_ TENANT \_\_\_\_\_

(c) Common area charges are intentionally deleted

(d) Percentage rent is not applicable and is intentionally deleted

(e) **Additional Rent.** Any and all other sums of money or charges required to be paid by Tenant pursuant to the provisions of this Lease, whether or not the same be so designated, shall be considered as "Additional Rent", and shall be payable and recoverable in the same manner as Rent. However, such Additional Rent shall be due upon demand and failure to pay such additional rent within seven (7) days shall be deemed a material breach of this lease. If Landlord shall make any expenditure for which Tenant is liable under this Lease and for which Tenant has not paid, the amount thereof shall be deemed Additional Rent due and payable by as indicated above. In addition

to the foregoing rent, all other payments to be made by TENANT shall be deemed to be and shall become additional rent hereunder whether or not the same be designated as such and it shall be due and payable upon demand together with interest thereon at the highest rate permissible by law from their due date until the date it is paid. The LANDLORD shall have the same remedies for TENANT's failure to pay said additional rental the same as for non-payment of rent. LANDLORD, at its election, shall have the right to pay or do any act which requires the expenditure of any sums of money by reason of the failure or neglect of TENANT to perform any of the provisions of this Lease, and in the event LANDLORD shall, at its election, pay such sums or do such acts requiring the expenditure of monies, TENANT agrees to pay LANDLORD, upon demand, all such sums, and the sums so paid by LANDLORD and any expenses incurred by LANDLORD in the payment of such sums together with interest thereon at the highest rate permitted by law from their due date through the date they are paid by TENANT shall be deemed additional rent and shall be payable and collectible as such. Rent shall be made payable to the LANDLORD as stated in Section 1.1 hereof.

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

(g) **Rent Concessions.** The LANDLORD and TENANT agree that LANDLORD will allow a credit to TENANT'S rent no more than 15% of the rental each year, which would take into consideration repairs to the existing structures and permanent improvements that would increase or preserve the value of the City's property at the TENANT'S expense, unless a greater amount is approved by resolution of the City Commission. The said credit shall not be cumulative from year to year.

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



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

Maritime business or other marine accessory uses that may include a full service boat yard, a marine store for purposes of providing marine hardware, new or used boat gear, supplies and other goods such as food, beverages, snacks.

TENANT further agrees:

- (a) To operate 100% of the Demised Premises for a minimum of eight (8) hours per day, seven days per week for the entire term of this lease pursuant to the highest reasonable standards of its Business category, maintaining a substantial stock of appropriate merchandise on display, with sufficient personnel to service its trade.
- (b) With respect to the Property, not to display any merchandise, solicit business or distribute advertising material beyond the Demised Premises.
- (c) Not to display any banners, pennants, searchlights, window signs, balloons, or similar temporary advertising media on the exterior of the Demised Premises.
- (d) Not to commit waste in the Demised Premises or Common Areas and to keep the Demised Premises and immediate adjacent areas including, without limitation, adjacent sidewalks, in a safe, neat, clean and orderly condition and to maintain and repair any lighting or signs under any canopy immediately in front of the Demised Premises.
- (e) Not to use the Demised Premises or permit the same to be used in any manner which violates any law, ordinance or constitutes a nuisance; for lodging purposes; that may injure the reputation of the Property or annoy, inconvenience or damage its patrons or other TENANT'S; or that would constitute an extra-hazardous use or violate any insurance policy of TENANT, LANDLORD or any other TENANT in the Property or increase the cost thereof.
- (f) To keep all garbage, refuse and solid waste inside the Demised Premises in the kind of containers specified by LANDLORD, or to place the same outside the Demised Premises, prepared for collection, in the manner and at the times and places designated by LANDLORD or the appropriate disposal company. TENANT agrees not to burn or permit any burning of garbage or refuse on the Demised Premises or any part of the Property. TENANT further agrees that, upon LANDLORD's instruction, TENANT shall separate garbage for recycling and deposit the separate garbage in the receptacle designated by LANDLORD. TENANT further agrees to make every effort to recycle all glass, metal, paper and plastic refuse and solid waste.
- (g) TENANT shall contract directly with the pertinent governmental authority or disposal company and shall be responsible for all fees and costs of removal and disposal of solid waste, garbage, and refuse including but not limited to, impact fees and dumpster rental with the exception of seaweed and beach debris. TENANT shall indemnify, save harmless and defend LANDLORD from and against any loss, claim, injury, damage or expense arising out of or related to the generation, storage, or removal or disposal of TENANT's garbage, refuse or solid waste.
- (h) Delivery hours are not applicable and intentionally deleted
- (i) To take no action that would: (i) violate LANDLORD's contracts if any, affecting the Property or (ii) cause any work stoppage, picketing or cause any manner or interference with LANDLORD or, occupants, customers or any person lawfully in and upon the Property.

(j) Not to use amplified music or any other noise making machinery or devices that are in violation of the City of Key West Noise ordinance.

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

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

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

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

**8. INDEMNIFICATION** - To the fullest extent permitted by law, the TENANT expressly agrees to indemnify and hold harmless the City of Key West, their respective officers, directors, agents and employees (herein called the "indemnitees") from any and all liability for damages, including, if allowed by law, reasonable attorney's fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property, caused in whole or in part by any act, omission, or default by TENANT or its subcontractors, material men, or agents of any tier or their employees, arising out of this agreement or its performance, including any such damages caused in whole or in part by any act, omission or default of any indemnitee, but specifically excluding any claims of, or damages against an indemnitee resulting from such indemnitee's gross negligence, or the willful, wanton or intentional misconduct of such indemnitee or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the TENANT or its subcontractors, material men or agents of any tier or their respective employees.

The indemnification obligations under this Agreement shall not be restricted in any way by any



limitation on the amount or type of damages, compensation, or benefits payable by or for the TENANT under Workers' Compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the TENANT or of any third party to whom TENANT may subcontract a work. This indemnification shall continue beyond the date of termination of the Agreement.

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

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

TENANT shall also procure the following insurance coverage:

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

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

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

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

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

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

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

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

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

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

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

If the holder of any such security instrument shall succeed to the rights of LANDLORD under this Lease, then at the request of such party so succeeding to the LANDLORD'S rights and upon such successor LANDLORD'S written agreement to accept TENANT'S attornment, TENANT

shall attorn to such successor LANDLORD and will execute such instruments as may be necessary or appropriate to evidence such attornment. Upon such attornment, this Lease shall continue in full force and effect as if it were a direct Lease between the successor LANDLORD and TENANT upon all the terms, conditions, and covenants as are set forth in this Lease and shall be applicable after such attornment.

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

## **12. CONDEMNATION**

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

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

## **13. TENANT'S DEFAULT**

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

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

(c) BANKRUPTCY OF TENANT. IN THE EVENT TENANT FILES ANY FORM OF BANKRUPTCY, LANDLORD SHALL BE ENTITLED TO IMMEDIATE TERMINATION OF THE AUTOMATIC STAY PROVISIONS OF 11 U.S.C. §362, GRANTING THE LANDLORD COMPLETE RELIEF AND ALLOWING THE LANDLORD TO EXERCISE ALL OF HIS LEGAL AND EQUITABLE RIGHTS AND REMEDIES, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO TERMINATE THIS LEASE AND DISPOSSESS TENANT FROM THE DEMISED PREMISES IN ACCORDANCE WITH FLORIDA LAW. ADDITIONALLY, TENANT AGREES NOT TO DIRECTLY OR INDIRECTLY OPPOSE OR OTHERWISE DEFEND AGAINST THE LANDLORD'S EFFORT TO GAIN RELIEF FROM ANY AUTOMATIC STAY. THE LANDLORD SHALL BE ENTITLED AS AFORESAID TO THE LIFTING OF THE AUTOMATIC STAY WITHOUT THE NECESSITY OF AN EVIDENTIARY HEARING AND WITHOUT THE NECESSITY OR REQUIREMENT OF THE LANDLORD TO ESTABLISH OR PROVE THE VALUE OF THE LEASEHOLD, THE LACK OF ADEQUATE PROTECTION OF HIS INTEREST IN THE LEASEHOLD, OR THE LACK OF EQUITY IN THE SAME. TENANT SPECIFICALLY AGREES AND ACKNOWLEDGES THAT THE LIFTING OF THE AUTOMATIC STAY HEREUNDER BY THE APPROPRIATE BANKRUPTCY COURT SHALL BE DEEMED TO BE "FOR CAUSE" PURSUANT TO SECTION 362(D) (1).

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

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

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

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

(h) If at any time, by reason of the failure of the TENANT to keep and perform any covenant or agreement which, under the terms of this Lease, the TENANT is bound and obligated to keep and perform, it becomes necessary for LANDLORD to employ an attorney to protect the rights and interests of the LANDLORD in the property demised or to enforce the Lease or proceed under it in any particular, then in any of such events, the TENANT will owe and will pay unto LANDLORD all costs of Court and reasonable attorney's fees incurred or expended by the LANDLORD in taking such actions, including actions taken in all trial and appellate courts.

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

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

#### **15. ALTERATIONS**

TENANT may erect additional buildings, structures, docks or other marine use facilities on the Demised Premises in addition to the existing buildings or structures located on the Demised Premises as it may deem necessary for carrying on its business.

TENANT shall not make any alterations, additions or improvements to the Demised Premises (whether or not the same may be structural in nature) without LANDLORD'S prior written consent. All alterations, additions, or improvements made to the Demised Premises, except movable furniture and equipment installed at TENANT'S expense, shall be the property of the



LANDLORD and remain upon and be surrendered with the Demised Premises at the expiration of the term of this Lease; provided, however, that LANDLORD may require TENANT to remove any additions made at TENANT'S request to the Demised Premises and to repair any damage caused by such removal, and provide further, that if TENANT has not removed its property and equipment within ten (10) days after the expiration or termination of this Lease, LANDLORD may elect to retain the same as abandoned property.

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

#### **16. EQUIPMENT, FIXTURES AND SIGNS**

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

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

#### **17. ADDITIONAL COVENANTS OF THE TENANT**

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

(b) The TENANT covenants and agrees with the LANDLORD that no damage or destruction to

any building or improvement by fire, windstorm, or any other casualty shall be deemed to entitle the TENANT to surrender possession of the Demised Premises or to terminate this Lease or to violate any of its provisions or to cause any abatement or rebate in the rent then due or thereafter becoming due under the terms hereof, unless otherwise specifically provided for herein. If the Lease be canceled for the TENANT's default at any time while there remains outstanding any obligation from any insurance company to pay for the damage or any part thereof, then the claim against the insurance company shall, upon the cancellation of the Lease, be deemed immediately to become absolute and unconditional property of the LANDLORD. In the event of destruction to the Demised Premises by casualty or hazard, LANDLORD will have the option of canceling the Lease, or repairing the building, and in the event that the LANDLORD elects to repair the building, an appropriate abatement of rent will occur.

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

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

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

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

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

(h) TENANT understands and agrees that the local public utility, City Electric System (CES) has an easement across a portion of the Demised Premises for overhead transmission lines. TENANT agrees that the placement of any building, structure or boat on the Demised Premises which is located beneath or adjacent to CES's overhead facilities must conform to a minimum clearance, as provided in the National Electric Safety Code, as adopted by the Florida Public Service Commission. TENANT further agrees to enter into an indemnification agreement with CES regarding the provisions of this paragraph, such agreement which shall become an attachment of this Lease.

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

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

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

- (a) That no waiver of a breach of any of the covenants in this Lease contained shall be construed to be a waiver of all succeeding breach of the same covenant.
- (b) That time is of the essence in every particular and particularly where the obligation to pay money is involved.
- (c) That all arrearages in the payment of rent or in the repayment to the LANDLORD of any sums which the LANDLORD may have paid in order to cure a default of the TENANT (as elsewhere herein provided for), shall bear interest from the date when due and payable at the highest rate permitted by law until paid.
- (d) That no modification, release, discharge, or waiver of any provision hereof shall be of any force, effect, or value unless in writing and signed by the persons who are then LANDLORD and TENANT.
- (e) That all covenants, promises, conditions, and obligations contained herein or implied by law, or covenants running with the land, shall attach to and be binding upon the heirs, executors, administrators, successors, legal representatives, and assigns of each of the parties to this Lease.
- (f) That this instrument contains the entire agreement between the parties as of this date, and that the execution hereof has not been induced by either of the parties by representations, promises or understandings not expressed herein, and that there are not collateral agreements, stipulations, promises, or understandings whatsoever between the respective parties in any way touching the subject matter of this instrument which are not expressly contained in this instrument.
- (g) That when either of the parties desire to give notice to the other or others in connection with and according to the terms of this Lease, such notice shall be deemed given when it shall have been deposited in the U.S. Registered or Certified mail with sufficient postage pre-paid thereon to carry it to its addressed destination. Said notice shall be addressed as follows:

AS TO LANDLORD: PROPERTY MANAGEMENT  
CITY OF KEY WEST  
P.O. BOX 1409  
KEY WEST, FL 33040

AS TO TENANT: RICK SPENCER  
A-1 BOAT SERVICE  
701 PALM AVENUE  
KEY WEST, FL 33040

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

- (h) This Lease and the provisions thereof shall be governed by and construed and enforced in accordance with the laws of the State of Florida.
- (i) If the TENANT or TENANTS are signing in a capacity other than as individuals, then the LANDLORD may require personal guarantees from individuals as the LANDLORD deems



necessary.

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

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



ATTEST: [Signature]  
Clerk  
Date: 11-2016

LANDLORD City of Key West

[Signature]  
By: Craig Oates, Mayor

Date: 11-15-2016

TENANT A-1 Boat Services, LLC

[Signature]  
WITNESS

Date: 11/14/16

By: [Signature]  
Rick Spencer, Manager Member

Date: 11/14/16

**EXHIBIT "A" DEMISED PREMISES**

A Parcel of land and bay bottom laying Northeasterly of Palm Ave, and Southeasterly of a 80 foot Access Easement and adjacent to Garrison Bight, in the City of Key West, Monroe County, Florida, and being more particularly described as follows:

Commencing at the intersection of the said Northeasterly Right-of-Way Line of Palm Avenue and the extended Southeasterly Line of Eaton Street, said point being marked by an iron bar in concrete; thence  $71^{\circ}41'53''$  E along the said Northeasterly Right-of-Way Line of Palm Avenue for 1640.75 feet to the Southeast corner of the City of Key West Garage, or the City sewage plant property; thence continue S  $71^{\circ}41'53''$  E along the said Northeasterly Right-of-Way Line of Palm Avenue for 80.00 feet to the Point of beginning; thence continue S  $71^{\circ}41'53''$  E along the said Northeasterly Right-of-Way Line of Palm Avenue for 94.30 feet; thence  $63^{\circ}10'31''$  E for 106.06 feet; thence S  $71^{\circ}45'24''$  E for 49.75 feet; thence N  $14^{\circ}35'31''$  E for 153.79 feet; thence N  $80^{\circ}45'06''$  W for 200.16 feet to the Southeasterly line of a 80 foot Easement; thence  $18^{\circ}18'07''$  W along the said Southeasterly line of the 80 foot easement for 197.17 feet to the Point of Beginning. Containing 37,893.66 square feet or .87 Acres more or less.



**EXHIBIT "C" Rules and Regulations**

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

**EXHIBIT "D"**

TENANT'S written notice of acceptance of the Demised Premises and setting forth the commencement and expiration dates of the lease.

RESOLUTION NO. 12-160

A RESOLUTION OF THE CAROLINE STREET CORRIDOR AND BAHAMA VILLAGE COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING A 3% INCREASE ON BASE RENT FOR THE KEY WEST BIGHT UPLAND LEASES FOR THE CURRENT YEAR; AUTHORIZING FUTURE RENT ADJUSTMENTS OF A MINIMUM INCREASE OF 0% OR THE ANNUAL CPI; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on March 14, 2012, the Key West Bight Management District Board approved a 3% adjustment to base rent for the current year, and further moved to amend all Key West Bight upland leases with regard to future rent adjustments;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That upland leases at the Key West Bight shall reflect a 3% increase on the base rent for the current year and moving forward to amend all lease rates to reflect a minimum increase of 0% or the annual CPI.

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

Passed and adopted by the Caroline Street Corridor and Bahama Village Community Redevelopment Agency at a meeting held this 1st day of May, 2012.

Authenticated by the presiding officer and Clerk of the Agency on May 2, 2012.

Filed with the Clerk May 2, 2012.

  
\_\_\_\_\_  
CRAIG CATES, CHAIRMAN

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

MEMORANDUM

## EXECUTIVE SUMMARY

**To:** Community Redevelopment Agency  
**CC:** Jim Scholl, David Fernandez  
**From:** Marilyn Wilbarger, RPA, CCIM  
**Date:** March 20, 2012  
**Reference:** Key West Bight Upland Rent Escalation Amendment

**ACTION:**

Per the Bight Boards recommendation this action item is to approve amending rent escalations for the upland leases at the Key West Bight. The action taken at the March 14, 2012 Bight Board meeting, excerpted here from the minutes of the meeting, is as follows:

It was moved by Ms. Ovide and seconded by Mr. Probert to approve the rent increases to reflect a 3% increase on the base rent for the current year and moving forward to amend all leases to a ~~minimum~~ increase of 0% or the annual CPI.

**BACKGROUND:**

**RENT ESCALATION**

In 2006 the rental rates were adjusted to market rates for the Key West Bight leases and were based upon the comparative data available at that time. The annual percentage increases in rent had been previously established pursuant to the original financial investment pro-forma prepared by Goodkin Research that was done in conjunction with the acquisition of the property.

In multiple year leases it is not unusual for a landlord to require the tenant to pay a higher rent by adjusting the base rent on a pre-agreed method, annually. The three most common types of adjustments are:

**Stepped Method:** This method is used when the tenant desires to keep the rents lower at the outset and agrees to higher increase throughout the term to achieve both the Landlord and Tenant's respective goals. The loss to the landlord by using this

*Key to the Caribbean – average yearly temperature 77 ° Fahrenheit.*





## THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

# MEMORANDUM

method is in present value however this loss is offset by higher rent values in the later years of the term.

**Consumer Price Index (CPI) Method:** The CPI is published monthly by the United States Department of Labor and cites the change in the cost of living which is determined by measuring the change in the cost of purchasing goods and services during the month. The CPI acts as a price indexing scale for landlords to measure the gain or loss of the dollar and therefore, by utilizing the index, to adjust rents so that the landlord can be assured that the net rent is not eroding during the term of the lease.

**Fixed Percentage Increase:** This method is utilized to establish fixed increases in rent that provide both pre-determined revenue to the Landlord and known or fixed expenses to the Tenant. The basis for determining the percentage increase can be specific to a particular investment or investors and much like stepped or indexed increases it is utilized to prevent the erosion of the value of the dollar.

### **Additional Rent**

Most commercial leases are structured as Triple Net which means the tenants are required to pay their share of the maintenance, property taxes and the insurance for the property as additional rent. Due to the mixed uses at the Key West Bight an arbitrary methodology was established by the Maximus study that does not fully allocate the operating expenses further eroding the financial return. In 2011, the CRA contributed \$402,944 in property tax, repairs and maintenance that would typically be paid by the tenants.

### **CONCLUSION:**

The Board has elected to recommend amending the leases as stated above with the following vote:

**Yeas:** Board Members Ashby, Ovide, Probert, Wilson and Chairman Knowles

**Nays:** None

**Recused:** Board Member McGrail

**Absent:** Board Member Jimmy Lane

*Key to the Caribbean – average yearly temperature 77 ° Fahrenheit.*

GL Organization Key	GL Object	Transaction Date	Transaction Description	Credit	Debit
0010000	3620400	Oct 29, 2008	A-1 BOATYARD KEYWCXH 10/14/	\$4,095.00	\$0.00
0010000	3620400	Nov 14, 2008	A-1 BOATYARD KEYWCXH 11/12/	\$4,095.00	\$0.00
0010000	3620400	Jan 20, 2009	A-1 BAOTYARD KEYWCXA 01/12/	\$4,095.00	\$0.00
0010000	3620400	Jan 21, 2009	A-1 BOATYARD KEYWCXA 01/14/	\$4,095.00	\$0.00
0010000	3620400	Feb 25, 2009	A-1 BOATYARD KEYWVSB 02/13/	\$4,095.00	\$0.00
0010000	3620400	Mar 31, 2009	A-1 BOATYARD KEYWCXA 03/18/	\$4,095.00	\$0.00
0010000	3620400	Apr 30, 2009	A1 BOATYARD LEASE PYT KEYWVSB	\$4,095.00	\$0.00
0010000	3620400	May 19, 2009	A1 BOATYARD KEYWVSB 05/11/0	\$4,095.00	\$0.00
0010000	3620400	Jun 18, 2009	A1 BOATYARD KEYWCLH 06/11/0	\$4,095.00	\$0.00
0010000	3620400	Jul 21, 2009	A1 BOAT SERVICES INC KEYWCLH	\$4,095.00	\$0.00
0010000	3620400	Aug 12, 2009	LEASE - AUG 09 - A1 BOAT KEYWM	\$4,095.00	\$0.00
0010000	3620400	Sep 23, 2009	A-1 BOATYARD KEYWMEK2 09/18/	\$4,095.00	\$0.00
0010000	3620400	Nov 9, 2009	A 1 BOATYARD KEYWMGM 11/04/	\$4,095.00	\$0.00
0010000	3620400	Nov 13, 2009	LEASE NOVEMBER KEYWMGM 11/0	\$4,095.00	\$0.00
0010000	3620400	Dec 29, 2009	A-1 BOATYARD LEASE KEYWMEK2	\$4,095.00	\$0.00
0010000	3620400	Feb 18, 2010	A-1 BOATYARD KEYWMEK2 02/11/	\$8,190.01	\$0.00
0010000	3620400	Mar 18, 2010	A-1 BOATYARD LEASE - MAR. KEYW	\$4,095.00	\$0.00
0010000	3620400	Apr 9, 2010	A-1 BOATYARD KEYWMEK2 04/08/	\$4,095.00	\$0.00
0010000	3620400	Jun 14, 2010	A1 BOAT YARD/SPENCER'S LE KEYW	\$4,095.00	\$0.00
0010000	3620400	Jun 29, 2010	A-1 BOATYARD LEASE JUNE 2 KEYW	\$4,095.00	\$0.00
0010000	3620400	Jul 31, 2010	A-1 BOATYARD LEASE JULY 2 KEYW	\$4,095.00	\$0.00
0010000	3620400	Aug 31, 2010	A-1 BOATYARD LEASE AUG 20 KEYW	\$4,095.00	\$0.00
0010000	3620400	Sep 30, 2010	RCD OTHER AR FY10	\$4,095.00	\$0.00
0010000	3620400	Oct 13, 2010	A-1 BOATYARD LEASE KEYWMGM	\$4,095.00	\$0.00
0010000	3620400	Oct 31, 2010	REV FY10 AR	\$0.00	\$4,095.00
0010000	3620400	Nov 12, 2010	A-1 BOATYARD KEYWMGM 11/05/	\$4,095.00	\$0.00
0010000	3620400	Dec 7, 2010	A-1 BOATYARD LEASE NOV 20 KEYW	\$4,095.00	\$0.00
0010000	3620400	Dec 31, 2010	A-1 BOATYARD LEASE DEC 20 KEYW	\$4,095.00	\$0.00
0010000	3620400	Jan 11, 2011	A1 BOATYARED LEASE JAN 20 KEYW	\$4,095.00	\$0.00
0010000	3620400	Feb 4, 2011	A-1 BOATYARD KEYWVSB 02/03/	\$4,095.00	\$0.00
0010000	3620400	Mar 7, 2011	A-1 BOATYARD LEASE MARCH KEYWM	\$4,095.00	\$0.00
0010000	3620400	Apr 8, 2011	A-1 BOATYARD LEASE 04/201 KEYW	\$4,095.00	\$0.00
0010000	3620400	May 19, 2011	A-1 BOATYARD LEASE 05/201 KEYW	\$4,095.00	\$0.00
0010000	3620400	Jun 8, 2011	A-1 BOATYARD LEASE JUNE 2 KEYW	\$4,095.00	\$0.00
0010000	3620400	Jul 12, 2011	A-1 BOATYARD LEASE 07/201 KEYW	\$4,095.00	\$0.00
0010000	3620400	Aug 9, 2011	A1 BOAT YARD SERVICES KEYWMGM	\$5,385.94	\$0.00
0010000	3620400	Sep 13, 2011	A-1 BOATYARD LEASE 2011 KEYWMG	\$5,385.94	\$0.00
0010000	3620400	Oct 24, 2011	A-1 BOATYEARD SEPT LATE P KEYW	\$5,385.94	\$0.00
0010000	3620400	Nov 8, 2011	A-1 BOATYARD KEYWVXC 11/07/	\$5,160.20	\$0.00
0010000	3620400	Dec 8, 2011	A-1 BOATYARD LEASE 12/201 KEYW	\$5,160.20	\$0.00
0010000	3620400	Jan 17, 2012	A-1 BOATYARD LEASE PAYMEN KEYW	\$5,160.20	\$0.00
0010000	3620400	Feb 10, 2012	A-1 BOATYARD LEASE FEB 20 KEYW	\$5,160.20	\$0.00
0010000	3620400	Mar 6, 2012	A1 BOATYARD LATE PYT FEB KEYWV	\$5,160.20	\$0.00
0010000	3620400	Apr 9, 2012	A-1 BOATYARD KEYWVXC 04/05/	\$5,160.20	\$0.00
0010000	3620400	May 10, 2012	A-1 BOATYARD KEYWVXC 05/09/	\$5,397.23	\$0.00
0010000	3620400	Jun 7, 2012	A-1 BOATYARD KEYWVXC 06/06/	\$5,397.23	\$0.00
0010000	3620400	Jul 6, 2012	A-1 BOATYARD KEYWVXC 07/05/	\$5,397.23	\$0.00
0010000	3620400	Aug 6, 2012	A-1 BOATYARD LEASE AUG 20 KEYW	\$5,397.23	\$0.00
0010000	3620400	Sep 11, 2012	DETAIL KEYWMGM 09/06/12 45	\$5,397.23	\$0.00
0010000	3620400	Oct 5, 2012	A-1 BOATYARD LEASE KEYWMGM	\$5,397.23	\$0.00
0010000	3620400	Nov 6, 2012	A-1 BOATYARD LEASE NOV 20 KEYW	\$5,182.24	\$0.00

0010000	3620400	Dec 10, 2012 A-1 BOATYARD KEYWVXC 12/07/	\$5,182.24	\$0.00
0010000	3620400	Jan 18, 2013 LEASE BOAT 1 KEYWALW 01/17/	\$5,182.24	\$0.00
0010000	3620400	Feb 7, 2013 A-1 BOATYARD LEASE FEB 20 KEYW	\$5,182.24	\$0.00
0010000	3620400	Mar 26, 2013 A-1 BOATYARD LEASE MARCH KEYWM	\$5,182.24	\$0.00
0010000	3620400	Apr 23, 2013 DETAIL KEYWVSB 04/22/13 45	\$5,182.24	\$0.00
0010000	3620400	May 8, 2013 A-1 BOAT YARD MAY 2013 KEYWMGM	\$5,431.11	\$0.00
0010000	3620400	Jun 12, 2013 A1BOAT SERVICE INC LEASE KEYWA	\$5,431.11	\$0.00
0010000	3620400	Jun 26, 2013 A-1 BOATYARD LEASE JULY 2 KEYW	\$5,431.11	\$0.00
0010000	3620400	Aug 9, 2013 A-1 BOATYARD AUG 2013 KEYWMGM	\$5,431.11	\$0.00
0010000	3620400	Sep 11, 2013 A-1 BOATYARD LEASE SEPT 2 KEYW	\$5,431.11	\$0.00
0010000	3620400	Oct 4, 2013 A1 BOATYARD LEASE PYT OCT KEYW	\$5,431.11	\$0.00
0010000	3620400	Nov 14, 2013 DETAIL KEYWALW 11/12/13 45	\$5,226.37	\$0.00
0010000	3620400	Feb 21, 2014 A1 BOAT SERVICE INC KEYWALW	\$5,226.37	\$0.00
0010000	3620400	Mar 10, 2014 A1 BOAT YARD KEYWALW 03/06/	\$5,226.37	\$0.00
0010000	3620400	May 15, 2014 LEASE MAY 2014 KEYWALW 05/1	\$5,683.07	\$0.00
0010000	3620400	May 28, 2014 LEASE APRIL 2014 KEYWALW 05	\$5,226.37	\$0.00
0010000	3620400	Jun 5, 2014 A1 BOAT SERVICES INC DBA KEYWA	\$5,682.32	\$0.00
0010000	3620400	Jul 15, 2014 A-1 BOATYARD LEASE - 7/20 KEYW	\$5,487.69	\$0.00
0010000	3620400	Aug 5, 2014 A-1 BOAT YARD KEYWALW 08/01	\$5,487.69	\$0.00
0010000	3620400	Sep 26, 2014 LEASE - SEPTEMBER 2014 KEYWSJS	\$5,487.69	\$0.00
0010000	3620400	Oct 3, 2014 A1 BOATYARD KEYWALW 10/02/1	\$5,487.69	\$0.00
0010000	3620400	Nov 10, 2014 A-1 BOATYARD 11/14 LEASE KEYWS	\$5,487.69	\$0.00
0010000	3620400	Dec 15, 2014 A-1 BOATYARD LEASE 12/201 KEYW	\$5,487.69	\$0.00
0010000	3620400	Jan 21, 2015 A 1 BOAT SERVICE INC KEYWALW	\$5,487.69	\$0.00
0010000	3620400	Feb 9, 2015 A-1 BOATYARD LEASE 2/2015 KEYW	\$5,487.69	\$0.00
0010000	3620400	Mar 11, 2015 A 1 BOATYARD KEYWALW 03/09/	\$5,487.69	\$0.00
0010000	3620400	Apr 13, 2015 A-1 BOATYARD LEASE - 4/20 KEYW	\$5,487.69	\$0.00
0010000	3620400	May 19, 2015 A1 BOATYARD KEYWALW 05/08/1	\$5,762.09	\$0.00
0010000	3620400	Jun 8, 2015 A-1 BOATYARD LEASE JUNE 2 KEYW	\$5,762.09	\$0.00
0010000	3620400	Jul 13, 2015 A-1 BOATYARD KEYWSJS2 07/07/	\$5,762.07	\$0.00
0010000	3620400	Aug 26, 2015 DETAIL KEYWSJS2 08/06/15 45	\$5,762.09	\$0.00
0010000	3620400	Sep 23, 2015 A-1 BOATYARD LEASE 9/2015	\$5,762.09	\$0.00
0010000	3620400	Oct 16, 2015 Miscellaneous receipts	\$5,762.09	\$0.00
0010000	3620400	Nov 18, 2015 A-1 BOATYARD LEASES NOVEMBER	\$5,762.09	\$0.00
0010000	3620400	Dec 16, 2015 A1 BOAT SERVICE INC /DBA SPEN	\$5,762.09	\$0.00
0010000	3620400	Jan 20, 2016 A-1 BOATYARD	\$5,762.09	\$0.00
0010000	3620400	Mar 8, 2016 A-1 BOATYARD LEASE (FEB)	\$5,762.09	\$0.00
0010000	3620400	Mar 31, 2016 A-1 BOATYARD SERVICE (SPENCER	\$5,762.09	\$0.00
0010000	3620400	Apr 12, 2016 A1 BOAT SERVICE INC	\$5,762.09	\$0.00
0010000	3620400	May 20, 2016 A1 BOATYARD (MAY)2016	\$5,763.02	\$0.00
0010000	3620400	Jun 10, 2016 A-1 BOAT SERVICE (JUNE)	\$5,763.02	\$0.00
0010000	3620400	Jul 15, 2016 A-1 BOATYARD	\$5,763.02	\$0.00
0010000	3620400	Aug 9, 2016 A-1 BOATYARD (JULY)	\$5,763.02	\$0.00
0010000	3620400	Sep 14, 2016 A1 BOAT SERVICE INC	\$7,198.79	\$0.00
0010000	3620400	Oct 12, 2016 A-1 BOATYARD (SEPT)	\$5,763.02	\$0.00

**EXHIBIT "A" DEMISED PREMISES**

A Parcel of land and bay bottom laying Northeasterly of Palm Ave, and Southeasterly of a 80 foot Access Easement and adjacent to Garrison Bight, in the City of Key West, Monroe County, Florida, and being more particularly described as follows:

Commencing at the intersection of the said Northeasterly Right-of-Way Line of Palm Avenue and the extended Southeasterly Line of Eaton Street, said point being marked by an iron bar in concrete; thence S 71°41'53" E along the said Northeasterly Right-of-Way Line of Palm Avenue for 1640.75 feet to the Southeast corner of the City of Key West Garage, or the City sewage plant property; thence continue S 71°41'53" E along the said Northeasterly Right-of-Way Line of Palm Avenue for 80.00 feet to the Point of beginning; thence continue S 71 °41 '53" E along the said Northeasterly Right-of-Way Line of Palm Avenue for 94.30 feet; thence N 63° 10'31" E for 106.06 feet; thence S 71 ° 45'24" E for 49.75feet; thence N 14°35'31" E for 153. 79 feet; thence N 80°45'06" W for 200.16 feet to the Southeasterly line of a 80 foot Easement; thence S 18°18'07" W along the said Southeasterly line of the 80 foot easement for 197 .17 feet to the Point of Beginning.

Containing 37,893.66 square feet or .87 Acres more or less.

**From:** Richard McChesney  
**To:** Nathalia Mellies  
**Cc:** Michael J. Henriquez; Shawn D. Smith  
**Subject:** [EXTERNAL] RE: [EXTERNAL] Assignment of Lease - Spencers Boatyard  
**Date:** Thursday, October 28, 2021 9:56:27 AM

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Ok great. Let me know. Is that something you guys prepare or do I just mock up a letter requesting the assignment? I just want to make sure I provide what you guys need. Also, in providing the request, can that come from me or does it need to come from the current tenant?

**Richard J. McChesney, Esq.**

Spottswood, Spottswood, Spottswood & Sterling

500 Fleming Street

Key West, FL 33040

(305) 294-9556 - Office

(305) 504-2696 - Fax

[richard@spottswoodlaw.com](mailto:richard@spottswoodlaw.com)



**GOVERNOR**

*Florida Bar Young Lawyers Division  
Board of Governors*

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**From:** Nathalia Mellies <nathalia.mellies@cityofkeywest-fl.gov>  
**Sent:** Thursday, October 28, 2021 9:53 AM  
**To:** Richard McChesney <richard@spottswoodlaw.com>  
**Cc:** Michael J. Henriquez <michael.henriquez@cityofkeywest-fl.gov>; Shawn D. Smith <sdsmith@cityofkeywest-fl.gov>  
**Subject:** RE: [EXTERNAL] Assignment of Lease - Spencers Boatyard

Good morning Rich,

I have to get with Michael. I believe we need a formal request for assignment to upload to the agenda, the articles, and I will need a new personal guaranty from the new assignee. I will let you know if we need anything else.

Respectfully,

Nathalia A. Mellies  
Assistant City Attorney  
THE CITY OF KEY WEST  
Post Office Box 1409  
Key West, FL 33041-1409  
(305) 809-3872



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**From:** Richard McChesney <richard@spottswoodlaw.com>  
**Sent:** Thursday, October 28, 2021 9:43 AM  
**To:** Nathalia Mellies <nathalia.mellies@cityofkeywest-fl.gov>  
**Subject:** [EXTERNAL] Assignment of Lease - Spencers Boatyard

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Hey Nathalia,

What documentation do you need for the assignment? I have the entity formed and can send you the articles. Let me know what else is needed and I'll get it over to you.

Thank you,

**Richard J. McChesney, Esq.**

Spottswood, Spottswood, Spottswood & Sterling

500 Fleming Street

Key West, FL 33040

(305) 294-9556 - Office

(305) 504-2696 - Fax

[richard@spottswoodlaw.com](mailto:richard@spottswoodlaw.com)



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**periods; therefore, urgent matters should be brought to the attorneys' attention through means other than email.**

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# EXHIBIT B

RESOLUTION NO. 16-343

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED LEASE BETWEEN THE CITY OF KEY WEST AND A-1 BOAT SERVICES, LLC, DBA SPENCER'S BOAT YARD, FOR PREMISES LOCATED AT 701 PALM AVENUE; PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached lease between the City and A-1 Boat Services, LLC is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 15th day of November, 2016.

Authenticated by the Presiding Officer and Clerk of the Commission  
on 16th day of November, 2016.

Filed with the Clerk on November 16, 2016.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Clayton Lopez	<u>Yes</u>
Commissioner Sam Kaufman	<u>Yes</u>
Commissioner Richard Payne	<u>Yes</u>
Commissioner Margaret Romero	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>

  
\_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK

# EXECUTIVE SUMMARY



**TO:** City Commission

**CC:** Jim Scholl

**FR:** Marilyn Wilbarger, RPA, CCIM

**DT:** October 26, 2016

**RE:** Lease Renewal for A-1 Boat Services, LLC

---

## **ACTION STATEMENT**

This is a request to approve a lease renewal for A-1 Boat Services, LLC also known as Spencer's Boat Yard at 701 Palm Avenue.

## **BACKGROUND**

The tenant provides boat maintenance and repair services to the general public as well as essential services to important infrastructure support groups such as the Florida Keys Marine Sanctuary and the State of Florida Department of Fish and Wildlife. The tenant also provides maintenance and repairs for Key West tourism based businesses enabling ferrying of hotel guests, water sports activities, fishing and diving, and boat rentals. The basic terms of the lease renewal are as follows:

<b>Demised Premises:</b>	701 Palm Avenue
<b>Term:</b>	Ten Years, Effective May 1, 2017
<b>Base Rent:</b>	\$61,388.76 for year one
<b>Rent Increases:</b>	CPI annually
<b>Additional Rent:</b>	Tenant shall pay real estate taxes, insurance, sales, use or excise taxes
<b>Rent Concession:</b>	Up to 15% of the annual rental for repairs to the existing structures that would increase or preserve the value of the City's property.
<b>Utilities:</b>	Tenant shall pay for all utility usage.

**FINANCIAL STATEMENT:**

The rental rate proposed represents the 2011 base rent with a 3% increase in 2012 followed by Consumer Price index (CPI) increases thereafter to present. The adjustment to the rate based upon CPI instead of a fixed 5% annual increase is consistent with the adjustment made to other city leases at that time per City Resolution 12-160. The cumulative CPI increases amount to a 7.7% increase over this period while the fixed increases reflected a 25% increase over the same period during a time of little or no inflation.

The Tenant has not requested any retroactive decreases or rent credits for this five year period but has requested that the rate going forward be based upon the rate plus CPI increases as noted above. The net financial affect is a \$3,231.75 decrease in revenue for the period beginning in May of 2017 until the end of the fiscal year.

The CPI is published monthly by the United States Department of Labor and cites the change in the cost of living which is determined by measuring the change in the cost of purchasing goods and services during the month. The CPI acts as a price indexing scale for landlords to measure the gain or loss of the dollar and therefore, by utilizing the index, to adjust rents so that the landlord can be assured that the net rent is not eroding during the term of the lease.

**CONCLUSION:**

The use remains unchanged and is important to maintain essential waterside services in Key West. This use is also reflective of the City's desire to support traditional maritime services as a vital part of the culture of our community. The rent is at a market rate and the Tenant has a very good rental history as shown on the attached payment history

**ATTACHMENTS:**

Lease  
Tenant request for renewal  
Resolution 12-160  
Rent payment history