

Exhibit C

SPOTTSWOOD, SPOTTSWOOD AND SPOTTSWOOD, PLLC
ATTORNEYS AND COUNSELORS AT LAW
500 FLEMING STREET
KEY WEST, FLORIDA 33040

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OF COUNSEL:

JOHN M. SPOTTSWOOD (1920 – 1975)
ROBERT A. SPOTTSWOOD (of Counsel)

October 10, 2016

SENT VIA U.S. MAIL AND EMAIL

Scott Woolam
Senior Program Analyst
Division of State Lands
3900 Commonwealth Boulevard, Mail Station 100
Tallahassee, FL 32399-3000
Scott.Woolam@dep.state.fl.us

RE: Garrison Bight Reverter

Dear Mr. Woolam:

I am writing in regard to property located at Garrison Bight in Key West, Florida, specifically 711-717 Eisenhower Drive, Key West, Florida ("Property"). I represent Island Tranquility, Inc. ("Owner"), the owner of the Property. We have performed a title search for the Property, which has revealed that we will need a deed from the City of Key West ("City") for a portion of the upland area located on said Property, said upland area is more particularly shown on the attached Exhibit A ("Filled Area"). The City disclaimed any interest in the Filled Area in Paragraph 8 of that certain submerged lands lease between the Owner and the City, which is attached hereto as Exhibit B ("Lease"). However, the City is concerned that a deed for the Filled Area may trigger the reverter provision in favor of the State of Florida, which is more particularly described below.

As you know, in 1947, pursuant to Deed No. 19259, the Trustees of the Internal Improvement Fund of the State of Florida deeded 91.3 acres of property in Key West to the City of Key West, which was inclusive of Garrison Bight. In July 1965, Deed No. 19259 was amended by Deed No. 19259-A to add deed restrictions and a reverter provision. The Corrective Deed No. 19259-A ("Corrective Deed") provided that the City could not sell, convey or lease the lands which were the subject of said deed to any private party. The Filled Area is part of the lands which were conveyed pursuant to the Corrective Deed. The City is concerned about triggering the reverter provision in the event the City deeds the Filled Area to the Owner in order to cure this title defect. We are requesting that the State confirm that the set of facts provided herein would not trigger the reverter provision; therefore, a waiver of the reverter would not be required and the City of Key

West could proceed with executing a deed for the Filled Area in order to cure the title issue with the Filled Area.

The facts are as follows:

- The subject land was filled by the Owner's predecessors in title sometime before 1968, which can be confirmed by the aerial of the property attached as **Exhibit C**. Unfortunately, we have been unable to locate aerials between 1964 and 1968; therefore, it is quite possible that the Filled Area was filled in 1964 or 1965 (prior to the Corrective Deed).
- Although it is also possible that the filling of the land was done after the Filled Area was conveyed to the City by the State of Florida, **Florida Statute 253.12(9)** provides:

"All of the state's right, title, and interest to all tidally influenced land or tidally influenced islands bordering or being on sovereignty land, which have been permanently extended, filled, added to existing lands, or created before July 1, 1975, by fill, and might be owned by the state, is hereby granted to the landowner having record or other title to all or a portion thereof or to the lands immediately upland thereof and its successors in interest. Thereafter, such lands shall be considered private property, and the state, its political subdivisions, agencies, and all persons claiming by, through, or under any of them, shall be barred from asserting that any such lands are publicly owned sovereignty lands. The foregoing provisions shall act to transfer title only to so much of such extended or added land as was permanently exposed, extended, or added to before July 1, 1975...."

- Title to the Filled Area has not been judicially adjudicated nor has it been the subject of litigation that was pending on January 1, 1994. Additionally, the Filled Area was not maintained as state or local recreation areas or shore protection structures. Therefore, the exceptions provided in **Florida Statute 253.12(10)** are not applicable. I have obtained two (2) affidavits in regard to the issue related to the Filled Area being used as state or local recreation areas, please see attached **Exhibit D**.
- The Owner has been paying real property taxes on the Filled Area, as shown on the photo and information provided from the Monroe County Property Appraiser's website, which is attached hereto as **Exhibit E**.
- The Lease provides that the City "*acknowledges and agrees that the fuel dock and all uplands, buildings, and improvements inside the survey line which marks the boundary of the submerged lands lease as shown on Attachment A are the sole property of the Lessee.*"

As a result of the above facts and the provisions of **Florida Statute 253.12(9)**, the State and the City (as a political subdivision of the State) would be barred from asserting that any such lands are publicly owned. Therefore, although the City of Key West obtained a deed for the Filled Area, which may give them certain rights as a result of *River Place Condominium Association At Ellenton, Inc. v. Irving J. Benzing, Jr. and Anita B. Benzing*, 890 So.2d 386 and *L.A.M.A. Land Management, L.C. v. Jose L. Ferro and Martha Lopez*, 964 So.2d 699; said cases are inapplicable because said cases involved private individuals/parties, not the State and a political subdivision of the State. Furthermore, the State cannot use the reverter provision in the Corrective Deed to obtain title to land that the State would otherwise not be entitled to as a result of **Florida Statute 253.12(9)**.

In conclusion, we request the State to acknowledge that the reverter would not apply due to the above reasons and **Florida Statute 253.12(9)** provides that lands filled prior to July 1, 1975 shall be private lands and the State or its political subdivision (the City) shall be barred from asserting that such lands are public lands. As a result, we would request that you inform the City that executing a deed in favor of the Owner for the Filled Area under these factual conditions will not trigger the reverter provision in the Corrective Deed.

Thank you in advance for your consideration and cooperation.

Sincerely,

ERICA H. STERLING

EHS/ drc
Enclosures

RESOLUTION NO. 14-251

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "SUBMERGED LANDS LEASE" FOR CITY-OWNED SUBMERGED LANDS IN GARRISON BIGHT ADJACENT TO 711-717 EISENHOWER DRIVE BETWEEN THE CITY AND ISLAND TRANQUILITY, INC.; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Department of Environmental Protection requires the City to make certain corrective procedural changes related to Deed 19259-A, B and C, including the collection of revenue from private structures under private lease agreements.

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

Section 1: That the attached Submerged Lands Lease for property adjacent to 711-717 Eisenhower Drive between the City and Island Tranquility, Inc. 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 3rd day of September, 2014.

Authenticated by the Presiding Officer and Clerk of the Commission on 4th day of September, 2014.

Filed with the Clerk on September 4, 2014.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Absent</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>

ATTEST:


CHERYL SMITH, CITY CLERK


CRAIG CATES, MAYOR

This Instrument Prepared By:
Larry R. Erskine
Office of the City Attorney
P.O. Box 1409
Key West, FL 33041

Doc# 2032057
Bk# 2744 Pg# 1158

CITY OF KEY WEST, FLORIDA

SUBMERGED LANDS LEASE

THIS LEASE is hereby issued by the City of Key West, Florida, a municipal corporation, hereinafter referred to as the Lessor.

WITNESSETH: That for and in consideration of payment of the annual lease fees hereinafter provided and the faithful and timely performance of and compliance with all terms and conditions stated herein, the Lessor does hereby lease to Island Tranquility, Inc., whose riparian upland property is located at 711-717 Eisenhower Drive Key West, Florida 33040 hereinafter referred to as the Lessee, the submerged lands described as follows:

A parcel of submerged land in Section 33,
Township 67 South, Range 25 East, in Monroe County,
Containing approximately 15,740 square feet,
more particularly described and shown on Attachment A
which is attached hereto and incorporated herein.
It is acknowledged and understood that a portion of the fuel
dock is built upon land that was filled prior to the building of the
dock. Therefore the fuel dock and improvements as shown on the attached sketch are the
property of the Lessee and not part of the leased premises.

TO HAVE THE USE OF the hereinabove described premises for a period of five (5) years from September 3, 2014, the effective date of this lease. The terms and conditions on and for which this lease is granted are as follows:

1. **USE OF PROPERTY:** The Lessee is hereby authorized to operate a commercial docking facility with rental of wet slips, rental of recreational pleasure craft, loading/offloading passengers for charter/tour boats, to be used exclusively in conjunction with the upland use, with fueling facilities, with a sewage pumpout facility (only if a pumpout facility is required by a Governmental agency, the parties acknowledge that the present use does not require a pumpout facility) if it meets the regulatory requirements of the State of Florida Department of Environmental Protection or State of Florida Department of Health, or City of Key West Ordinance whichever agency has jurisdiction, and without liveaboards as defined in paragraph 26 hereof.

2. **LEASE FEES:** The Lessee hereby agrees to pay to the Lessor an initial annual lease fee of \$.166469 per square foot and 25 percent surcharge, plus sales tax pursuant to Section 212.031, Florida Statutes, if applicable, within 30 days of receipt of this fully executed lease. The annual fee for the remaining years of this lease shall be adjusted pursuant to provisions of Rule 18-21.011, Florida Administrative Code. The Lessor will notify the Lessee in writing of the amount and the due date of each subsequent annual lease payment during the remaining term of this lease. All lease fees due hereunder shall be remitted to the Lessor. The initial annual lease fee without the supplemental payment is as follows:

15,740 SF X \$0.166469	\$2,620.22
Surcharge 25%	\$655.06
Sales Tax	\$245.65
Total	\$3,520.92

3. WET SLIP RENTAL CERTIFICATION/SUPPLEMENTAL PAYMENT: (A) The Lessee shall provide upon request by the Lessor any and all information in a certified form needed to calculate the lease fee specified in paragraph two (2) above, including the income, as defined in subsection 18-21.003(31), Florida Administrative Code, derived directly from the lease of wet slips over submerged lands on an annual basis. Without limiting the foregoing it is acknowledged that the revenue derived from the sale of gasoline, food, beverage, bait, tackle or other items sold from the facility on the fuel dock shall not constitute income for the purposes of rent under this Lease. When six percent (6%) of said annual income exceeds the base fee or minimum annual fee established pursuant to Rule 18-21.011, Florida Administrative Code, for any lease year during the term of this lease, the Lessor shall send the Lessee a supplemental invoice for the difference in the amounts for that lease year. (B) The instrument or agreement used by the Lessee to transfer or assign the right to use a wet slip at the docking facility to a third party shall include a provision that clearly notifies the wet slip renter/user/holder that if the wet slip renter/user/holder subsequently transfers his right to use said wet slip to another party, the instrument or agreement used to transfer said wet slip shall contain a provision that requires six percent (6%) of the annual gross income derived from said instrument or agreement for the use of said wet slip be paid to the Lessee who, upon receipt, shall report and transmit said amount to the Lessor. The instrument or agreement used by the Lessee to transfer a wet slip shall also include a provision that clearly notifies the wet slip renter/user/holder that no interest in said wet slip may be further transferred unless a substantially similar provision to the one contained in the preceding sentence is placed in each succeeding instrument or agreement used to transfer said wet slip to each new wet slip renter/user/holder. (C) The Lessee shall submit to the Lessor each instrument or agreement used by the Lessee to transfer or assign the right to use a wet slip at the docking facility to a third party annually at the same time the Lessee submits the required Annual Wet Slip Revenue Report to the Lessor.

4. LATE FEE ASSESSMENTS: The Lessee shall pay a late payment assessment for lease fees or other charges due under this lease which are not paid within 30 days after the due date. This assessment shall be computed at the rate of twelve percent (12%) per annum, calculated on a daily basis for every day the payment is late.

5. EXAMINATION OF LESSEE'S RECORDS: For purposes of this lease, the Lessor is hereby specifically authorized and empowered to examine, for the term of this lease including any extensions thereto plus three (3) additional years, at all reasonable hours, the books, records, contracts, and other documents confirming and pertaining to the computation of annual lease payments as specified in paragraph two (2) above.

6. MAINTENANCE OF LESSEE'S RECORDS: The Lessee shall maintain separate accounting records for: (i) the gross revenue derived directly from the use of wet slips on the leased premises. The Lessee shall secure, maintain and keep all records for the entire term of this lease plus three (3) additional years. This period shall be extended for an additional two (2) years upon request for examination of all records and accounts for lease verification purposes by the Lessor.

7. AGREEMENT TO EXTENT OF USE: This lease is given to the Lessee to use or occupy the leased premises only for those activities specified herein and as conditioned by the Lessor. The Lessee shall not (i) change or add to the approved use of the leased premises as defined herein; (ii) change activities in any manner that may have an environmental impact; or (iii) change the type of use of the riparian uplands or as permitted by the Lessee's interest in the riparian upland property that is more particularly described as the street address shown in Attachment A without first obtaining the Lessor's written authorization, which authorization shall not be unreasonably withheld, in the form of a modified lease, the payment of additional fees, if applicable, and, if applicable, the removal of any structures which may no longer qualify for authorization under the modified lease.

8. **PROPERTY RIGHTS:** The Lessee shall make no claim of title or interest to said lands hereinbefore described by reason of the occupancy or use thereof, and all title and interest to said land hereinbefore described is vested in the Lessor. The Lessee is prohibited from including, or making any claim that purports to include, said lands described or the Lessee's leasehold interest in said lands into any form of private ownership, including but not limited to any form of condominium or cooperative ownership. The Lessee is further prohibited from making any claim, including any advertisement, that said land, or the use thereof, may be purchased, sold, or re-sold. Lessor acknowledges and agrees that the fuel dock and all uplands, buildings, and improvements inside the survey line which marks the boundary of the submerged land lease as shown on Attachment A are the sole property of the Lessee.

9. **INTEREST IN RIPARIAN UPLAND PROPERTY:** During the term of this lease, the Lessee shall maintain satisfactory evidence of sufficient upland interest as required by paragraph 18-21.004(3)(b), Florida Administrative Code, in the riparian upland property that is more particularly described as the street address shown in Attachment A and by reference made a part hereof together with the riparian rights appurtenant thereto. If such interest is terminated or the Lessor determines that such interest did not exist on the effective date of this lease, this lease may be terminated at the option of the Lessor. If the Lessor terminates this lease, the Lessee agrees not to assert a claim or defense against the Lessor arising out of this lease. Prior to sale and/or termination of the Lessee's interest in the riparian upland property, the Lessee shall inform any potential buyer or transferee of the Lessee's interest in the riparian upland property and the existence of this lease and all its terms and conditions and shall complete and execute any documents required by the Lessor to effect an assignment of this lease, if consented to by the Lessor, which consent shall not be unreasonably withheld by the Lessor. Failure to do so will not relieve the Lessee from responsibility for full compliance with the terms and conditions of this lease which include, but are not limited to, payment of all fees and/or penalty assessments incurred prior to such act.

10. **ASSIGNMENT OF LEASE:** This lease shall not be assigned or otherwise transferred without prior written consent of the Lessor, which consent shall not be unreasonably withheld. Such assignment or other transfer shall be subject to the terms, conditions and provisions of this lease, current management standards and applicable laws, rules and regulations in effect at that time. Any assignment or other transfer without prior written consent of the Lessor shall be null and void and without legal effect.

11. **INDEMNIFICATION AND INSURANCE:** To the fullest extent permitted by law, Lessee expressly agrees to indemnify and hold harmless the City of Key West and 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 Lessee or its subcontractors, material men, or agents of any tier or their employees, arising out of this Lease 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 Lessee or its subcontractors, material men, or agents of any tier or their respective employees.

The indemnification obligations under this Lease shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Lessee 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 Lessee or of any third party to whom Lessee may subcontract work. This indemnification shall continue beyond the date of termination of the Agreement.

Lessee agrees that Lessor is not in any way an insurer of Lessee's vessel(s), property, family, invitees, employees, agents, passengers or guests. Lessee hereby agrees to maintain and pay for a marine insurance policy providing such protection and indemnity throughout the term of this Agreement. Said policy of protection and indemnity shall protect Lessor and Lessee from all liability for injury to any persons or property

which may arise in connection with the operation of or conduct of Lessee or its vessel(s), equipment, agents, invitees, passengers, guests or employees.

Lessee hereby agrees to maintain and pay for, and provide current Certificate of Insurance at all times evidencing the following coverages:

- Protection & Indemnity limits of a minimum of \$1,000,000 Per Occurrence.
- Removal of Wreck coverage included in Protection & Indemnity limit
- Vessel Pollution Coverage included in a minimum amount of \$800,000
- Crew coverage as required by the Federal Jones Act as applicable
- Any other insurance coverage as required by law
- Lessor as certificate holder for purposes of notification of cancellation, termination, or renewal.
- Lessor listed as Additional Insured.

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Bk# 2744 Pg# 1159

12. NOTICES/COMPLIANCE/TERMINATION: The Lessee binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Lessee, its successors and assigns. In the event the Lessee fails or refuses to comply with the provisions and conditions herein set forth, or in the event the Lessee violates any of the provisions and conditions herein set forth, and the Lessee fails or refuses to comply with any of said provisions or conditions within twenty (20) days of receipt of the Lessor's notice to correct, this lease may be terminated by the Lessor upon thirty (30) days written notice to the Lessee. If canceled, all of the above-described parcel of land shall revert to the Lessor. All notices required to be given to the Lessee by this Lease or applicable law or administrative rules shall be sufficient if sent by Certified U.S. Mail to the following address: 711 Eisenhower Dr. Key West, Fl. 33040

The Lessee shall notify the Lessor by certified mail of any change to this address at least ten (10) days before the change is effective.

13. TAXES AND ASSESSMENTS: The Lessee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this lease.

14. NUISANCES OR ILLEGAL OPERATIONS: The Lessee shall not permit the leased premises or any part thereof to be used or occupied for any purpose or business other than herein specified unless such proposed use and occupancy are consented to by the Lessor and the lease is modified accordingly, nor shall Lessee knowingly permit or suffer any nuisances or illegal operations of any kind on the leased premises.

15. MAINTENANCE OF FACILITY/RIGHT TO INSPECT: The Lessee shall maintain the leased premises in good condition, keeping the structures and equipment located thereon in a good state of repair in the interests of public health, safety and welfare. No dock or pier shall be constructed in any manner that would cause harm to wildlife. The leased premises shall be subject to inspection by the Lessor or its designated agent at any reasonable time.

16. NON-DISCRIMINATION: The Lessee shall not discriminate against any individual because of that individual's race, color, religion, sex, national origin, age, handicap, or marital status with respect to any activity occurring within the area subject to this lease or upon lands adjacent to and used as an adjunct of the leased area.

17. ENFORCEMENT OF PROVISIONS: No failure, or successive failures, on the part of the Lessor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Lessor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

18. PERMISSION GRANTED: Upon expiration or cancellation of this lease all permission granted hereunder shall cease and terminate.

19. RENEWAL PROVISIONS: Renewal of this lease shall be subject to the City consent, which consent shall not be unreasonably withheld. Such renewal shall be subject to the terms, conditions and provisions of management standards and applicable laws, rules and regulations in effect at that time. In the event that the Lessee is in full compliance with the terms of this lease, the Lessor will begin the renewal process. The term of any renewal granted by the Lessor shall commence on the last day of the previous lease term. In the event the Lessor does not grant a renewal, the Lessee shall vacate the leased premises and remove all structures and equipment occupying and erected thereon at its expense. The obligation to remove all structures authorized herein upon termination of this lease shall constitute an affirmative covenant upon the Lessee's interest in the riparian upland property more particularly described as the street address shown in Attachment A, which shall run with the title to the Lessee's interest in said riparian upland property and shall be binding upon the Lessee and the Lessor's successors in title or successors in interest.

20. REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES: If the Lessee does not remove said structures and equipment occupying and erected upon the leased premises after expiration or cancellation of this lease, such structures and equipment will be deemed forfeited to the Lessor, and the Lessor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Lessee at the address specified in Paragraph 12 or at such address on record as provided to the Lessor by the Lessee. However, such remedy shall be in addition to all other remedies available to the Lessor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

21. REMOVAL COSTS/LIEN ON RIPARIAN UPLAND PROPERTY: Subject to the noticing provisions of Paragraph 20 of this lease, any costs incurred by the Lessor in removal of any structures and equipment constructed or maintained on state lands shall be paid by Lessee and any unpaid costs and expenses shall constitute a lien upon the Lessee's interest in the riparian upland property that is more particularly described as the street address shown in Attachment A. This lien on the Lessee's interest in the riparian upland property shall be enforceable in summary proceedings as provided by law.

22. RIPARIAN RIGHTS/FINAL ADJUDICATION: In the event that any part of any structure authorized hereunder is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent riparian rights, Lessee agrees to either obtain written consent for the offending structure from the affected riparian owner or to remove the interference or encroachment within 60 days from the date of the adjudication. Failure to comply with this paragraph shall constitute a material breach of this lease agreement and shall be grounds for immediate termination of this lease agreement at the option of the Lessor.

23. AMENDMENTS/MODIFICATIONS: This Lease is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this lease must be in writing, must be accepted, acknowledged and executed by the Lessee and Lessor, and must comply with the rules and statutes in existence at the time of the execution of the modification or amendment. Notwithstanding the provisions of this paragraph, if mooring is authorized by this lease, the Lessee may install boatlifts within the leased premises without formal modification of the lease provided that (a) the Lessee obtains any state or local regulatory permit that may be required; and (b) the location or size of the lift does not increase the mooring capacity of the docking facility.

24. ADVERTISEMENT/SIGNS/NON-WATER DEPENDENT ACTIVITIES/ADDITIONAL ACTIVITIES/MINOR STRUCTURAL REPAIRS: No permanent or temporary signs directed to the boating public advertising the sale of alcoholic beverages shall be erected or placed within the leased premises. No restaurant or dining activities are to occur within the leased premises. The Lessee shall ensure that no permanent, temporary or floating structures, fences, docks, pilings or any structures whose use is not water-dependent shall be erected or conducted over submerged lands without prior written consent from the Lessor, which consent may be withheld by Lessor in Lessor's sole discretion. No additional structures and/or activities

including dredging, relocation/realignment or major repairs or renovations to authorized structures, shall be erected or conducted on or over the submerged lands without prior written consent from the Lessor, which consent may be withheld by Lessor in Lessor's sole discretion. Unless specifically authorized in writing by the Lessor, such activities or structures shall be considered unauthorized and a breach of this Lease. This condition does not apply to minor structural repairs required to maintain the authorized structures in a good state of repair in the interests of public health, safety or welfare; provided, however, that such activities shall not exceed the activities authorized by this Lease. Notwithstanding the foregoing the Lessor acknowledges that the existing usage as a Marina and Restaurant, including but not limited to the sale of alcoholic beverages, food, signage, on the Lessees upland property are allowed under the terms of this Lease.

25. COMPLIANCE WITH FLORIDA LAWS: On or in conjunction with the use of the leased premises, the Lessee shall at all times comply with all Florida Statutes and all administrative rules promulgated thereunder. Any unlawful activity which occurs on the leased premises or in conjunction with the use of the leased premises shall be grounds for the termination of this Lease by the Lessor.

26. LIVEBOARDS: The term "liveboard" is defined as a vessel docked at the facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within a thirty (30) day period. If liveboards are authorized by paragraph one (1) of this lease, in no event shall such "liveboard" status exceed six (6) months within any twelve (12) month period, nor shall any such vessel constitute a legal or primary residence.

27. GAMBLING VESSELS: During the term of this Lease and any renewals, extensions, modifications or assignments thereof, Lessee shall prohibit the operation of or entry onto the leased premises of gambling cruise ships, or vessels that are used principally for the purpose of gambling, when these vessels are engaged in "cruises to nowhere," where the ships leave and return to the state of Florida without an intervening stop within another state or foreign country or waters within the jurisdiction of another state or foreign country, and any watercraft used to carry passengers to and from such gambling cruise ships.

28. FINANCIAL CAPABILITY: To assure the Lessor that the Lessee has the financial capability to undertake and operate the project authorized by this lease, the Lessee certifies to the Lessor as follows: (i) the Lessee is not the subject of a pending bankruptcy proceeding; (ii) the Lessee has no unsatisfied judgments entered against it; (iii) the Lessee has satisfied all state and local taxes for which it is responsible; and (iv) no other matters are pending or threatened against or affecting the Lessee or the Lessee's interest in the riparian upland property that would impair the Lessee's financial capability to undertake and operate the project authorized by this lease. Any breach of this lease condition shall constitute a default under this lease.

30. SPECIAL LEASE CONDITION(S):

Doc# 2032857
Bk# 2744 P# 1161

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

LESSOR: CITY OF KEY WEST, FLORIDA

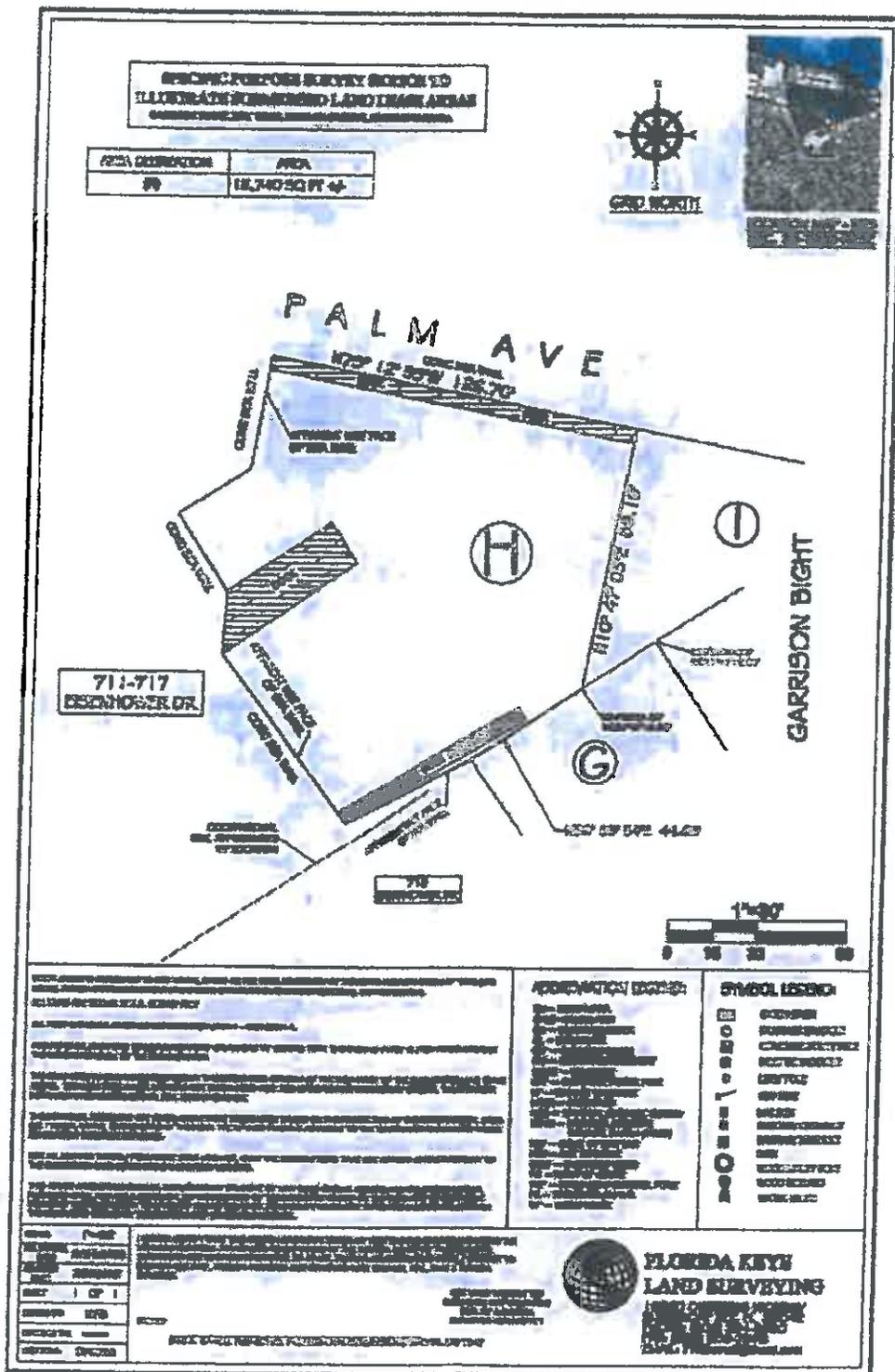
ATTEST:  Cheryl Smith
By: Craig Cates
Craig Cates, Mayor
Date: 9-4-14
Date: 9-3-14

LESSEE: ISLAND TRANQUILITY, INC.

ATTEST: Frank Bervaldi
By: Frank Bervaldi
Frank Bervaldi, President
Date: 8/15/14
Date: 8/13/14

Attachment "A"
Submerged Land Survey with
Riparian Upland Property Street Address

Doc# 2032057
Bk# 2744 Pg# 1163



Filled Area



Exhibit C

Affidavit

Before me, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared the undersigned ("Affiant"), who, after being by me first duly sworn, depose(s) and say(s) that:

1. My name is Frank V. Bervaldi.
2. I was born on May 20, 1937 at 1109 Stump Lane, Key West, Florida.
3. 1109 Stump Lane is a few blocks from the property more particularly described in described in Exhibit A herein and now commonly referred to as Garrison Bight Marina, 711 Eisenhower Drive, Key West, Florida 33040 ("Property").
4. I grew up near the Property; therefore, I am familiar with the history of the Property. As a child, the area surrounding the Property was my neighborhood.
5. In the early 1950's I delivered the Miami Herald and my paper route was from White Street to Eisenhower Drive and from Division Street (Truman Avenue) to Peary Court. I passed the Property while delivering newspapers on a daily basis.
6. Sometime in the mid 1960's Henry Munro began operating a commercial boat repair yard called Munro's Boat Yard and Marina ("Boat Yard").
7. In September, 1968, I purchased a 1/3 interest in the Boat Yard. Over a period of years, I obtained the remainder interest in the Property and Boat Yard; therefore, I (through a Florida corporation) am currently an 88.5% owner of the Property and Boat Yard. The name of the business has changed and is currently operating under the name of Garrison Bight Marina.
8. The property has been utilized as a commercial working marina from the 1960's to the present day.
9. I hereby represent and confirm that this Property has always been industrial or used for boat repair. The Property was never used for recreational purposes.

DoubleTime®

Exhibit D

Under penalties of perjury, I declare that I have read the foregoing Affidavit and that the facts stated in it are true.

Frank V. Bernaldi
FRANK V. BERVALDI,

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was sworn to and subscribed before me this 22nd day of September, 2016 by FRANK V. BERVALDI, who is personally known or has produced _____ identification.

[Notary Seal]

Danyel Clynes
Notary Public

Printed Name: Danyel Clynes

My Commission Expires: 11/03/2019

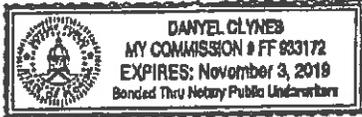


EXHIBIT A

Lots 1, 2, and 3, Tract 7, all according to Estate of Benjamin Albury's Subdivision of part of Tract 7, according to the Plat thereof recorded in Plat Book 1 Page 3 in the Public Records of Monroe County, Florida, being more particularly described as follows:

Beginning at a point where the Northeasterly extension of the Southeasterly line of Angela Street intersects the Northeasterly line of Salt Pond or Bay Road; thence Southeasterly along the Northeasterly line of Salt Pond or Bay Road a distance of 209 feet; thence Northeasterly and parallel to the Southeasterly line of Angela Street extended Northeasterly a distance of 189 feet, more or less, intersecting the existing bulkhead line in Garrison Bight, if extended; thence Northwesterly and parallel to the Northeasterly line of Salt Pond or Bay Road a distance of 209 feet, more or less, to a point where the N.E.'ly extension of the S.E.'ly line of Angela Street intersects the said existing bulkhead if extended N.W.'ly; thence S.W.'ly along the N.E.'ly extension of the S.W.'ly line of Angela Street a distance of 189 feet, more or less, to the point of beginning.

AND ALSO:

In the City of Key West, said County and State, and is part of Tract 7, said Land hereby conveyed commencing at a point on the North East side of the Salt Pond or Bay Road 209 feet from the

corner of Salt Pond or Bay Road and Angela Street continued, and running thence in a Southeast direction along the North East side of said Salt Pond or Bay Road 84 feet, 6 inches and extending back at right angles with this line in a North East direction at each end thereof, into the waters of the Gulf, and the riparian rights belonging to said land. Said land being more fully described,

reference being had to a map of the City of Key West, recopied and diagramed from Plats of Record by George W. Reynolds, County Clerk, in December A.D. 1900; as Part of Tract 7 commencing at the Northeast corner of Salt Pond or Bay Road and Rawson Street continued, (on the North East side of said Salt Pond or Bay Road) and running thence along said North East side of Salt Pond or Bay Road in a South Easterly direction 84 feet and 6 inches, and extends back at right angles with said North East side of Salt Pond or Bay Road in a North East direction, at each end thereof, into the waters of the Gulf.

LESS the following described parcels of land:

Fuel docking facilities parcel:

A parcel of land in or adjacent to Benjamin Albury's Subdivision as recorded in Plat Book 1 at page 3, of the Public Records of Monroe County, Florida; said parcel of land being described as follows: Commence at a point where the Northeasterly extension of the Southeasterly right of way line of Salt Pond Road and run thence S 34° 04' 23" E along the said Salt Pond Road for a distance of 30 feet; thence run N 53° 46' 37" E and parallel with the said Angela Street for a distance of 129.59 feet; thence S 81° 25' 35" E for a distance of 40.56 feet; thence S 08° 46' 37" W for a distance of 14.86 feet; thence S 81° 13' 23" E for a distance of 49.33 feet; thence S 08° 46' 37" W for a distance of 21.80 feet; thence S 35° 47' 50" E for a distance of 14.29 feet; thence S 81° 13' 23" E for a distance of 53.61 feet; thence S 53° 46' 37" W for a distance of 13.21 feet; thence S 36° 13' 23" E for a distance of 50.10 feet; thence S 53° 46' 37" W for a distance of 11.03 feet to the Point of Beginning of the parcel of land being described herein; thence at right angles Northwesterly for a distance of 16 feet; thence at right angles Northeasterly for a distance of 53 feet; thence at right angles Southeasterly for a distance of 16 feet; thence at right angles Southwesterly for a distance of 53 feet to the Point of Beginning of the parcel of land described herein.

AND ALSO: A parcel of land on the Island of Key West, Monroe County, Florida, and being described as follows: Commence at the intersection of the centerline of Newton Street (extended Northwesterly) and the Northerly right-of-way line of Eisenhower Drive and run thence North 34° 04' 23" West along said right-of-way for a distance of 189.02 feet; thence run North 53° 46' 37" East for a distance of 98.23 feet; thence run South 81° 26' 23" East for a distance of 83.70 feet to the Point of Beginning of the parcel of land being described herein; thence continue South 81° 26' 23" East for a distance of 115.10 feet; thence run South 08° 33' 37" West for a distance of 43.63 feet; thence run North 81° 26' 23" West for a distance of 52.80 feet; thence run North 08° 33' 37" East for a distance of 21.30 feet; thence run North 81° 26' 23" W for a distance of 13.70 feet; thence run North 08° 33' 37" East for a distance of 9.70 feet; thence run North 81° 26' 23" West for a distance of 48.60 feet; thence run North 08° 33' 37" East for a distance of 12.60 feet back to the Point of Beginning.

Any and all interest Mortgagor may have in the following described property:
A triangular piece of land in part of Lots 1 and 2 of Estate of Benjamin Albury Subdivision of part of Tract 7, recorded in Plat Book 1, Page 3, described as follows:
Commencing at the intersection of the centerline of Pearl Street and Newton Street, bear North 53 degrees 46 minutes and 37 seconds East for a distance of 250.44 feet to a point; thence bear North 34 degrees 04 minutes and 23 seconds West for a distance of 189.02 feet to a point; thence bear North 53 degrees 46 minutes and 37 seconds East for a distance of 98.23 feet to the Point of Beginning of the triangular piece of property hereinafter described; from said point of beginning continue bearing North 53 degrees 47 minutes and 37 seconds East for a distance of 90.77 feet to a point; thence bear South 34 degrees 04 minutes 23 seconds East for a distance of 86.91 feet to a point; thence bear North 81 degrees 26 minutes and 23 seconds West for a distance of 123.29 feet to the Point of Beginning.

AND

A 30 foot strip of land in a part of Lot 1 of Estate of Benjamin Albury Subdivision of part of Tract 7, recorded in Plat Book 1, Page 3, described as follows:
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Affidavit

Before me, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared the undersigned ("Affiant"), who, after being by me first duly sworn, depose(s) and say(s) that:

1. My name is Ron E. Saunders.
2. I lived at 801 Eisenhower Street, Key West, Florida.
3. 801 Eisenhower Street is a few blocks from the property more particularly described in described in Exhibit A herein and now commonly referred to as Garrison Bight Marina, 711 Eisenhower Drive, Key West, Florida 33040 ("Property").
4. I grew up near the Property; therefore, I am familiar with the history of the Property.
5. The property has been utilized as a commercial working marina from the 1960's to the present day.
6. I hereby represent and confirm that this Property has always been industrial or used for boat repair. The Property was never used by the City of Key West for a local recreational area.

DoubleTime®

Exhibit D

Under penalties of perjury, I declare that I have read the foregoing Affidavit and that the facts stated in it are true.

RES
RON E. SAUNDERS

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was sworn to and subscribed before me this 7th day of October, 2016 by Ron E. Saunders who is personally known or has produced _____ identification.

[Notary Seal]

Danyel Clynes
Notary Public

Printed Name: Danyel Clynes

My Commission Expires: 11/3/2019

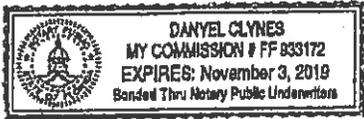


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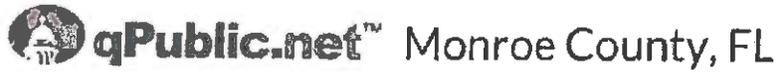
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Summary

Parcel ID 00023130-000000
Alternate Key 1023922
Property Address 711 EISENHOWER DR
Key Name KEY WEST
Sec/Twp/Rng 32-67-25
Legal Description KW BENJ ALBURYS SUBD PB1-3 PT LOT 1 & 2 & ALL LOT 3 OF TR 7 II FUND DEED NO 19754 G47-151-153 OR38-2 20/23 OR42D-712/714 OR648-114 OR818-132Q/C OR1488- (Note: Not to be used on legal documents or any document to be recorded)
Neighborhood 31040
Subdivision
Millage Group 10KW
Affordable Housing No
Class 2000 - AIRPORTS, MARINAS, BUS TERM

Owner

Primary Owner
 Island Tranquility Inc
 711 Eisenhower Dr
 Key West, FL 33040-7000

Map



Valuation

	2016	2015	2014	2013	2012
+ Building Value	\$777,980	\$798,518	\$814,259	\$802,060	\$823,049
+ Misc Improvement Value	\$34,876	\$29,822	\$27,224	\$27,339	\$27,455
+ Land Value	\$1,867,319	\$1,757,282	\$1,757,282	\$1,757,282	\$1,171,521
= Just (Market) Value	\$3,911,153	\$3,911,153	\$2,400,000	\$2,400,000	\$2,400,000
= Assessed Value	\$2,617,390	\$2,379,446	\$2,163,133	\$1,966,485	\$1,787,714

Exhibit E

	2016	2015	2014	2013	2012
- School Exempt Value	\$0	\$0	\$0	\$0	\$0
= School Taxable Value	\$3,911,153	\$3,911,153	\$2,400,000	\$2,400,000	\$2,400,000

Land

Land Use Code	Frontage	Depth	Land Area
COMMERCIAL WATERFRON (100W)	180	0	37200SF

Building Summary

Number of Buildings	4
Number of Commercial Buildings	4
Total Living Area	17556
Year Built	1968

Buildings