

RESOLUTION NO. 15-260

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED ASSIGNMENT OF LEASE AND CONSENT OF LESSOR FROM SIMONTON BEACH ENTERPRISES, LLC (ASSIGNOR) TO SOUTHERNMOST DELI, LLC (ASSIGNEE/GUARANTOR) FOR THE BUILDING LOCATED ON SIMONTON STREET, CURRENTLY OPERATED AS LAGERHEAD'S BEACH BAR AND WATERSPORTS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission approved the original Lease Agreement with Simonton Street Enterprises, LLC in Resolution 11-089; 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 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 18 day of August, 2015.

Authenticated by the Presiding Officer and Clerk of the
Commission on 19 day of August, 2015.

Filed with the Clerk on August 19, 2015.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Yes</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

Executive Summary



TO: City Commission

CC: Jim Scholl

FR: Marilyn Wilbarger, RPA, CCIM

DT: July 30, 2015

RE: Simonton Beach Lease Assignment

ACTION STATEMENT

This is a request to approve a lease assignment from Simonton Beach Enterprises, LLC (Assignor) to Southernmost Deli, LLC (Assignee) for the building located on Simonton Beach.

HISTORY

The City entered into a lease agreement per Resolution 11-089 for the building located on Simonton Beach which is now operated as Lagerhead's Beach Bar and Watersports. The Assignor has now entered into an agreement to sell the business and assign the lease to Southernmost Deli, LLC which was established in 2004 and whose owner is Felix Wiggins. Mr. Wiggins currently owns and operates the Southernmost Deli located on Simonton Street at South Street.

The terms of the lease will not be changed and are as follows:

Demised Premises: 252 square feet

Term: Ten years commencing on October 1, 2013

Rent: 6% of gross sales which totaled \$16,783.62 in year one and \$15,712.78 through June 2015.

Use: Operation of a concession stand and watersports activities with rentals of beach accessories such as chairs and umbrellas, paddleboards, kayaks, etc. per section six of the lease.

Increases: 5% annually

Utilities: Tenant shall pay for all utility usage.

FINANCIAL STATEMENT:

The Assignee will post a deposit in the amount of \$9,000.00 as security for the payment of rent.

CONCLUSION: 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.

There is no change of use requested, the City will receive a \$9,000.00 security deposit and the Assignee will bring his successful business experience to operate and grow this business.

ATTACHMENTS:

Tenant's Assignment Request
Assignee Corporate Documents
Assignment of Lease and Consent of Lessor
Lease
Assignee's Personal Guaranty

ASSIGNMENT OF LEASE AGREEMENT AND CONSENT OF LESSOR

THIS ASSIGNMENT (this "Assignment") is made this 20 day of August, 2015, by and between Simonton Beach Enterprises, LLC ("Assignor") and Southernmost Deli, LLC ("Assignee").

The Assignor, as tenant ("Tenant") and City of Key West, as landlord ("Landlord") have previously entered into that certain lease dated March 16, 2011 per Resolution 11-089, the ("Lease"), The Lease pertains to real property located at Simonton Street Beach, in Monroe County, Florida, and more particularly described in Exhibit A, which is attached hereto and incorporated by reference (hereinafter the "Property").

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 hereof.

NOW THEREFORE, in consideration of the mutual terms and conditions herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Assignor hereby assigns and transfers unto Assignee all of its right, title, and interest in and to the Lease, subject to all the conditions and terms contained therein.
2. Assignor herein expressly agrees and covenants that it is the lawful and sole owner of the Tenant's interest assigned herein, that Assignor's interest in the Lease is free from all encumbrances, and Assignor has not received any written notice from Landlord that Assignor has failed to perform all the duties and obligations or failed to make any payments required under the Lease.
3. Assignor herein expressly acknowledges, pursuant to paragraph 8 of the Lease, 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 expiration date of the initial Term (as defined in the Lease).
4. 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.
5. In the event Landlord retakes custody and possession of the Property from Assignee for any reason, including a default of any of the terms, conditions and covenants of the Lease by the Assignee, the Assignor shall have the option to re-enter the property and assume the remaining term of the Lease, provided that Assignor cures any and all defaults by Assignee, including the payment of past due rent.
6. This Assignment is contingent upon the completion of the sale between Assignor and Assignee of the business conducted on and from the Premises. References herein to the "effective date" shall mean the date of the closing of the aforementioned sale transaction.

7. 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 \$9,000.00 for the faithful performance by Assignee of the terms, conditions and covenants of the Lease.

8. In the event Assignee files any form of bankruptcy, Landlord shall be entitled to immediate termination of the automatic stay provisions of 11 U.S.C. §362, granting Landlord complete relief and allowing Landlord to exercise all of its legal and equitable rights and remedies, including, without limitation, the right to terminate the Lease and dispossess Assignee from the Premises in accordance with Florida law. Additionally, Assignee agrees not to directly or indirectly oppose or otherwise defend against Landlord's effort to gain relief from any automatic stay. 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 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. 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 PAGE]**

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

ASSIGNOR: Simonton Beach Enterprises, LLC




Witness to Assignor


By: 

Name: Richard Spencer
Title: Manager Member

ASSIGNEE: Southernmost Deli, LLC



Witness to Assignee

By: 

Name: Felix Wiggins
Title: Manager Member

ASSIGNOR ACKNOWLEDGMENT

State of Florida }
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Richard Spear to me personally known or who provided _____ as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 20 day of August, 2015.



Angela Budde
Notary Public, State of Florida
My Commission Expires:

ASSIGNEE ACKNOWLEDGMENT

State of Florida }
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, _____ to me personally known or who provided _____ as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 17th day of August, 2015.



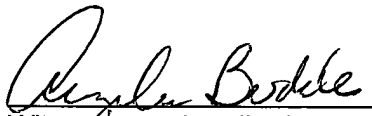
Mary E. Turso
Notary Public, State of Florida **MARY E. TURSO**
My Commission Expires: 5/16/17

CONSENT OF LANDLORD


I, Craig Cates, Mayor of the City of Key West, the Landlord named in that certain lease dated March 16, 2013 per Resolution 11-089, herein expressly consent to the 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 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 Assignee as Tenant in the place of Simonton Beach Enterprises, LLC alone.

LANDLORD:


Witness as to Landlord

City of Key West


Craig Cates, Mayor

State of Florida }
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Craig Cates to me personally known or who provided _____ as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 20 day of August, 2015.




Notary Public, State of Florida
My Commission Expires:

GUARANTY

This Guaranty is made this 17 day of ~~August~~, 2015 in accordance with the Lease Agreement (hereinafter Agreement) dated Aug. 18 2015 by and between the City of Key West (hereinafter City) and Southernmost Deli, LLC (hereinafter Tenant) and Felix Wiggins (hereinafter Guarantor) for the Demised Premises (hereinafter Premises) located at Simonton Beach, Key West, Florida.

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

- (a) The Guarantor does 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. Guarantor's 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 Guarantor, 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 Guarantor 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 Guarantor hereby waives any demand by City and/or prior action by City of any nature whatsoever against Tenant.
- (c) The Guarantor consents 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 Guarantor hereby agrees that no act or omission on the part of the City, shall affect or modify the obligation and liability of the Guarantor 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 Guarantor's 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 Guarantor shall pay to City reasonable

attorney's fees, but only if City is the prevailing party. The Guarantor in any suit brought under this Guaranty does 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.

(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 Guarantor.

IN WITNESS WHEREOF, the Guarantor has caused the foregoing Guaranty to be executed on this 17th day of August 2015.

Witness:

By: [Signature]
Name: Richard M'Chesney

Date: 8/17/15

Guarantor:

By: [Signature]
Name: Relix Wiggins

Date: 8/17/15

State of Florida }
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Drivers License, to me personally known or who provided as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he/she executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 17th day of August, 2015.

My Commission Expires: 5/16/17



[Signature]
Notary Public, State of Florida

MARY E. TURSO

FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS**Detail by Entity Name****Florida Limited Liability Company**

SOUTHERNMOST DELI, LLC

Filing Information

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FEI/EIN Number	201998222
Date Filed	12/16/2004
State	FL
Status	ACTIVE
Last Event	REINSTATEMENT
Event Date Filed	10/09/2007

Principal Address13 6TH AVENUE
KEY WEST, FL 33040**Mailing Address**13 6TH AVENUE
KEY WEST, FL 33040**Registered Agent Name & Address**WIGGINS, FELIX
13 6TH AVENUE
KEY WEST, FL 33040**Authorized Person(s) Detail****Name & Address**

Title MGR

WIGGINS, FELIX
13 6TH AVENUE
KEY WEST, FL 33040**Annual Reports**

Report Year	Filed Date
2013	02/12/2013
2014	04/02/2014
2015	04/29/2015

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DIVISION OF CORPORATION

LIMITED LIABILITY COMPANY

SOUTHERNMOST DELL, LLC

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H04-248064

ARTICLES OF ORGANIZATION FOR FLORIDA LIMITED LIABILITY COMPANY**ARTICLE I - Name of Limited Liability Company: SOUTHERNMOST DELI, LLC****ARTICLE II - Mailing Address & Street Address of Limited Liability Company:**Address: 13 6TH AVENUECity, State & Zip: KEY WEST, FL 33040**ARTICLE III - Registered Agents Name, Office Address, & Registered Agents Signature:**FELIX WIGGINS

Name

13 6TH AVENUE

Address (P.O. Box NOT Acceptable)

KEY WEST, FL 33040

City, State, Zip

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent as provided for in Chapter 608, F.S.

01-17-2004

Registered Agent's Signature

Date 12/16/2004

☒ Article IV - Management (Check box if applicable.)

The Limited Liability Company is to be managed by one manager or more managers and is, therefore, a manager - managed company. Specify name & address(es).

1. FELIX WIGGINS, 13 6TH AVENUE, KEY WEST, FL 33040

2.



Signature of a member or an authorized representative of a member.
In accordance with section 608.408 (3), Florida Statutes, the execution of this document constitutes an affirmation under the penalties of perjury that the facts stated herein are true.

FELIX WIGGINS

Typed or printed name of signee

H04-248064

Prepared By: Ace Industries 54 NW 11th Street Miami, FL 33136 Phone: (305) 358-2571