

RESOLUTION NO. 17-238

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED ASSIGNMENT OF LEASE AND CONSENT OF LESSOR FROM ISLAND TRANQUILITY, INC. (ASSIGNOR) TO GARRISON BIGHT MARINA, INC. (ASSIGNEE/GUARANTOR) FOR SUBMERGED LANDS AT 711-717 EISENHOWER DRIVE, AS DESCRIBED IN THE LEASE APPROVED IN RESOLUTION 14-251; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission approved the original Lease Agreement with Island Tranquility, Inc. in Resolution 14-251; and

WHEREAS, the current owner has requested an assignment of the submerged lands lease at 711-717 Eisenhower Drive, as permitted in Section 10 of the lease, to accompany an agreement to sell their upland property.

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" for submerged lands at 711-717 Eisenhower Dr. from Island Tranquility, Inc. to Garrison Bight Marina, 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 October, 2017.

Authenticated by the Presiding Officer and Clerk of the Commission on 4th day of October, 2017.

Filed with the Clerk on October 4, 2017.

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:** August 28, 2017

**RE:** Assignment of Submerged Lands Lease for 711-717 Eisenhower

**ACTION:** This a request to approve an assignment of the submerged lands lease for the submerged land located at 711-717 Eisenhower Drive.

**HISTORY:** In September of 2014 the City entered into the submerged lands lease with the riparian property owner, Island Tranquility, Inc. that is currently utilizing a portion of the submerged land area that is owned by the City of Key West pursuant to the Internal Improvement Fund, State of Florida Deed 19529 A, B, C.

The current owner has entered in to an agreement to sell the upland property and has requested an assignment of the submerged lands lease with that sale. The submerged lands lease does include the right to assign the lease with the Landlord's approval as excerpted below:

10. ASSIGNMENT OF LEASE: This lease shall not be assigned or otherwise transferred without prior written consent of the Lessor, which consent may be withheld in the sole discretion of the Lessor. 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.

There is no change of use requested and the submerged lands will continue to be utilized exclusively as a commercial docking facility in conjunction with the upland ownership. The assignee may not change or add to the approved use of the leased premises without the Landlord's approval pursuant to Section 7 of the Lease, as follows:

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 may be withheld in

the sole discretion of the Lessor, 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.

**FINANCIAL:** The lease rates charged will remain unchanged and are consistent with the fees charged under F.A.C. 18-21.011 (b) to include the lease fees, supplemental payments, discounts, surcharges and other payments as may be required. In addition, pursuant to current management standards, a \$500 transfer fee will be charged to offset the Landlord's costs associated with the preparation of the assignment necessary to effectuate the same.

**CONCLUSION:** The requested lease assignment meets the requirements of the submerged lands lease terms and conditions.

**ATTACHMENTS:**

Lease Assignment and Consent of Lessor  
Submerged Lands Lease

## ASSIGNMENT OF LEASE AGREEMENT AND CONSENT OF LESSOR

THIS ASSIGNMENT ("Assignment") is made this 3rd day of October, 2017, by and between Island Tranquility, Inc., a Florida corporation ("Assignor") and Garrison Bight Marina, Inc. a Florida corporation ("Assignee").

Whereas, Assignor, as tenant and City of Key West, as landlord ("Landlord") have previously entered into that certain submerged lands lease ("Lease") dated September 3, 2014 per Resolution 14-251, a copy of which is attached hereto as Exhibit "A" and incorporated by reference, that pertains to submerged land located at 711-717 Eisenhower Drive, Key West, in Monroe County, Florida, and more particularly described on Attachment "A" of the Lease;

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 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 represents and warrants that (a) it is the lawful and sole owner of the lessee's interest assigned herein, (b) Assignor's interest in the Lease is free from all encumbrances, and (c) 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 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 current term which is September 2, 2019.
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 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.
6. This Assignment is contingent upon the completion of the sale between Assignor and Assignee of the upland riparian property at 711-717 Eisenhower Drive. References herein to the "effective date" shall mean the date of the closing of the aforementioned sale transaction.
7. Assignee agrees to indemnify, defend and hold Assignor and its legal representatives, successors and assigns harmless from and against any and all losses,

damages, claims, demands, suits, judgments, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs), suffered or incurred by any of said indemnitees under or in connection with the Lease arising on or after the effective date hereof. Assignor agrees to indemnify, defend and hold Assignee and its legal representatives, successors and assigns harmless from and against any and all losses, damages, claims, demands, suits, judgments, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs), suffered or incurred by any of said indemnitees under or in connection with the Lease and arising prior to the effective date hereof.

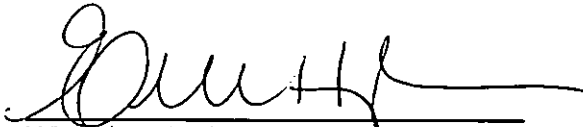
8. No later than the effective date of this Assignment, Assignee herein expressly agrees to pay Landlord \$500.00 to help offset any costs Landlord may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate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

9. No later than the effective date of this Assignment, Assignee herein expressly agrees to execute a personal guaranty and to provide the Landlord a Letter of Credit from a federally insured bank in favor of Landlord as security for the faithful performance by Assignee of the terms, conditions, covenants of the Lease. The amount of the letter of credit shall be equal to six months Lease Fees.

10. 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.



Witness to Assignor

Witness to Assignor

**ASSIGNOR: Island Tranquility Inc., a Florida corporation**

By: 

Name: Frank Bervaldi  
Title: President



Witness to Assignee



Witness to Assignee

**ASSIGNEE: Garrison Bight Marina, Inc., a Florida Corporation**

By: 

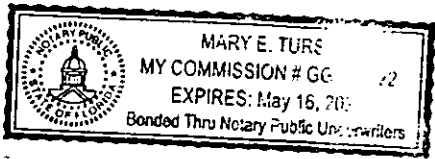
Name: James Figuerado, Jr.  
Title: President

**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, Frank Bernaldi 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 20th day of September, 2017.



Mary E. Ture  
Notary Public, State of Florida  
My Commission Expires: 5/16/20

**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, James Figuerado, Jr. to me personally known or who provided personally known 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 28th day of September, 2017.

Susan M. Cardenas  
Notary Public, State of Florida  
My Commission Expires:  
  
Bonded thru  
Notary Public Underwriters  
NOTARY PUBLIC, STATE OF FLORIDA



**CONSENT OF LANDLORD**

I, Craig Cates, Mayor of the City of Key West, the landlord named in that certain lease dated September 3, 2014 per Resolution 14-251, herein expressly consent to the Assignment so long as the sale between Assignor and Assignee of the real property known as 711-717 Eisenhower Drive 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 Island Tranquility, Inc. alone.

Defined terms used in this Consent of Landlord shall have the meanings ascribed to such terms in the Assignment of Lease by and between Island Tranquility, Inc. as assignor and Garrison Bight Marina, Inc., as assignee, to which this Consent of Landlord is attached.

**LANDLORD: City of Key West**

Susan P. Harrison  
Witness to Landlord

Craig Cates  
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 4<sup>th</sup> day of October, 2017.

Susan P. Harrison  
Notary Public, State of Florida  
My Commission Expires: 4-8-19



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>

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

ATTEST:

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