

RESOLUTION NO. 24-171

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED "CITY OF KEY WEST SUBMERGED LAND LEASE" BETWEEN THE CITY OF KEY WEST (LESSOR) AND SBY KEY WEST, LLC (FORMERLY A-1 BOAT SERVICES, INC), (TENANT) FOR SUBMERGED LANDS ADJACENT TO 701 PALM AVENUE, AS DESCRIBED IN THE LEASE APPROVED IN RESOLUTION 19-311; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution 19-311 the City Commission approved a Lease Agreement with SBY Key West, LLC (Formerly A-1 Boat Services) for certain submerged lands adjacent to 701 Palm Avenue, scheduled to expire on August 31, 2024; and

WHEREAS, the current tenant (Assignee) has requested a lease renewal/extension for submerged lands, and City staff recommends an extension of up to one (1) year, so appraiser(s) can be engaged to assess fair market property value, for purposes of a longer-term lease in the future; and

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

Section 1: That the attached "Submerged Land Lease," which provides for a one-year lease upon certain terms, between the City and SBY Key West, LLC for submerged lands adjacent to 701 Palm Avenue, as described in Exhibit A to the Lease Agreement, attached, 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 8th day of August, 2024.

Authenticated by the Presiding Officer and Clerk of the Commission on 8th day of August, 2024.

Filed with the Clerk on August 8, 2024.

Mayor Teri Johnston	<u>Absent</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Lissette Carey	<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>


SAM KAUFMAN, VICE MAYOR

ATTEST:


KERI O'BRIEN, CITY CLERK



MEMORANDUM

Date: August 8, 2024

To: Honorable Mayor and Commissioners

Via: Todd Stoughton
Interim City Manager

From: Gary Moreira
Senior Property Manager

Subject: **File 24-6140 - Lease Renewal for Submerged Lands Lease - SBY Key West, LLC (formerly A-1 Boat Services, Inc.), 701 Palm Avenue in Garrison Bight**

Introduction

This is a request to approve a Lease with the SBY Key West, LLC., for the submerged lands lease at 701 Palm Avenue, Key West.

Background

On September 1, 2019, the City of Key West entered into the submerged lands lease with A-1 Boat Services, Inc., via Resolution 19-311 for the submerged property adjacent to 701 Palm Avenue. On November 17, 2021 the City of Key West approved an assignment of the lease to SBY Key West, LLC. SBY Key West, LLC is also the Assignee of the adjacent Upland Riparian Lease with the City. The five-year Submerged Lands Lease will expire on August 31, 2024. Assignee is requesting SBY Key West, LLC be named Lessee and requests a renewal of the term for an additional five years effective September 1, 2024. Historically the submerged lands lease rates at Garrison Bight have been set using rates the City is charged as Lessee for submerged land leases it has with the State as Lessor. These rates are regulated by Florida's Administrative Code. Submerged lands at Garrison Bight however were deeded to the city in 1947 and are not subject to the same regulations and rate restrictions. Staff is proposing a new one-year lease in order to engage an appraiser during Fiscal Year 24/25 to determine the fair market rates for lease renewals going forward. All submerged land lease payments for Garrison Bight are deposited into City Marina account 413-0000-362.29-00 and used toward operations at City Marina.

SBY Key West, LLC is a tenant in good standing and has promptly met all its leasehold obligations.

Procurement

Demised Premises: A Parcel of submerged land in section 33, Township 67 South Range 25 East, in Monroe County, containing approximately 25,021 square feet, more particularly described and shown on Exhibit A attached.

Term: September 1, 2024 through August 31, 2025.

Rent: \$21,267.82/year or \$0.85/s.f. paid in monthly installments of \$1,772.32.

Increases: Proposed rent represents a \$0.10/s.f. per year increase as prescribed in the current lease.

Recommendation

Staff recommends approval and execution of the one-year Lease between the City of Key West and SBY Key West, LLC.

Attachments:
Lease
Exhibit A

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

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 **SBY Key West, LLC**, whose riparian upland property is pursuant to a lease with the City of Key West located at 701 Palm Avenue, Key West, FL 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 25,021 square feet, more or less,
as is more particularly described and shown on Attachment A,
which is attached hereto and incorporated herein.

TO HAVE THE USE OF the hereinabove described premises for a period of one (1) year from September 1, 2024 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 boat yard and 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, without fueling facilities, with a sewage pump out 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 annual lease fee of \$0.85 per square foot , plus sales tax, if applicable, in monthly payments due without demand therefor on the first of each month. All lease fees due hereunder shall be remitted to the Lessor. The monthly lease fee without the supplemental payment is as follows:

Monthly Lease Fee	\$1,772.32
Sale Tax	\$ 62.03
Total Monthly Fee	\$1,834.35

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. 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 the leased premises, (ii) the gross revenue derived indirectly from the use of the leased premises, and (iii) all other gross revenue derived from the Lessee's operations on the riparian upland property. 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 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.

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.

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 may be withheld by the Lessor in Lessor's sole discretion. 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 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.

11. INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS: 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

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 U.S. Mail to the following address:

Mr. Richard McChesney
500 Fleming Street

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 at the sole option of the Lessor, which consent may be withheld in the sole discretion of the Lessor. 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 Lessee'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 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 sovereignty submerged lands without prior written consent from the Lessor, which consent may 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.

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. LIVEABOARDS: The term "liveaboard" 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 liveaboards are authorized by paragraph one (1) of this lease, in no event shall such "liveaboard" 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

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): None.

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



ATTEST: [Signature]
CITY CLERK

Date: 8/9/2024

LESSOR: CITY OF KEY WEST, FLORIDA

By: [Signature]
Teri Johnston, Mayor

Date: 8/9/2024

LESSEE: SBY Key West, LLC

ATTEST: _____

By: _____

Name & Title: _____

Date: _____

Date: _____

RR

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): None.

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: _____
CITY CLERK

By: _____
Teri Johnston, Mayor

Date: _____

Date: _____

LESSEE: SBY Key West, LLC

ATTEST: 
Monica Hornyak

By: 
Name & Title: Felix Wiggins, Manager

Date: 8/8/24

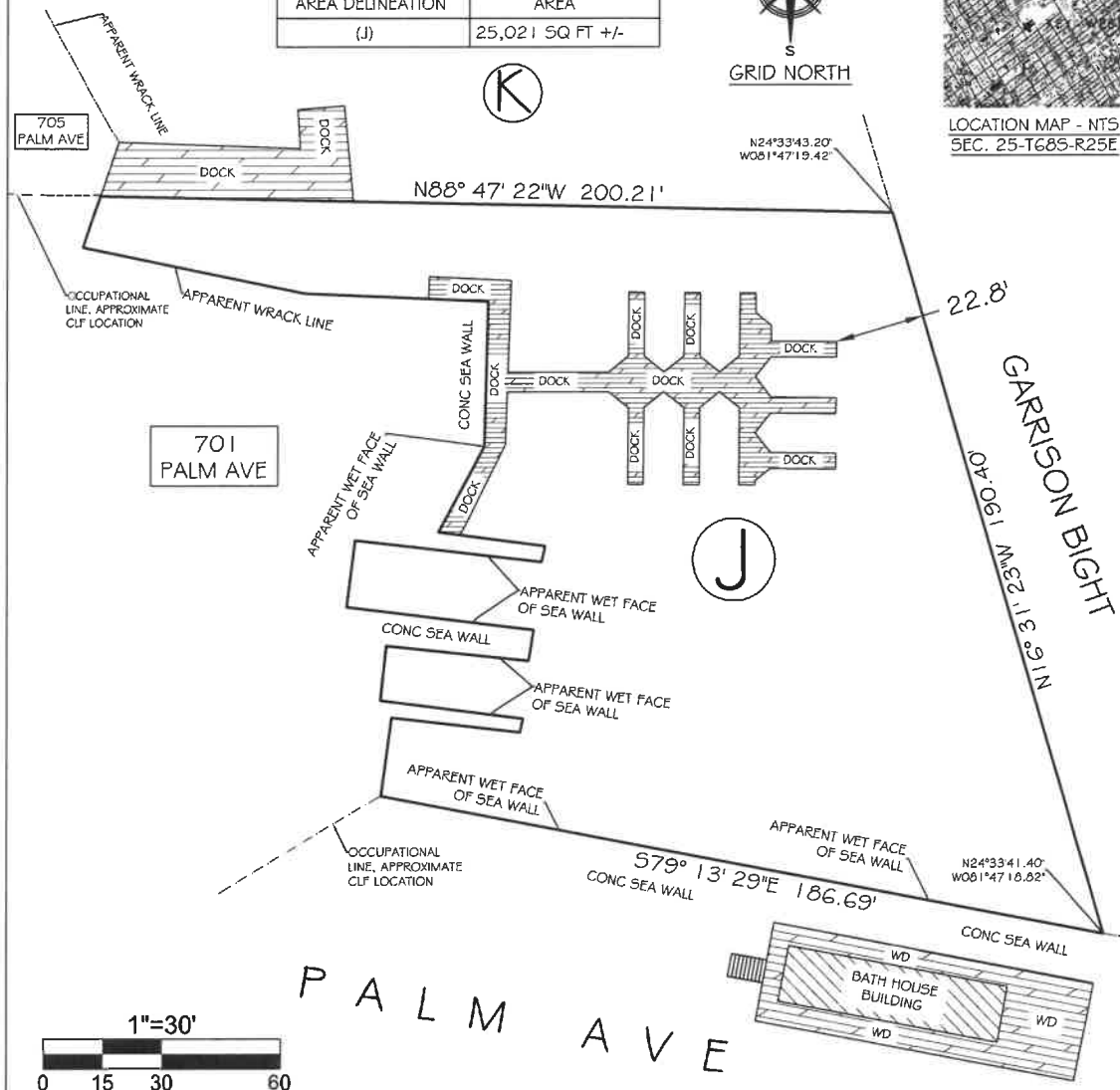
Date: 8/8/24

**SPECIFIC PURPOSE SURVEY SKETCH TO
ILLUSTRATE SUBMERGED LAND LEASE AREAS**
GARRISON BIGHT, KEY WEST, MONROE COUNTY, STATE OF FLORIDA

AREA DELINEATION	AREA
(J)	25,021 SQ FT +/-



LOCATION MAP - NTS
SEC. 25-T685-R25E



NORTH ARROW IS REFERENCED TO GRID NORTH, BASED ON THE 1990 ADJUSTMENT OF THE NORTH AMERICAN DATUM OF 1983 (NAD 83/90), FLORIDA STATE PLANE COORDINATE SYSTEM (TRANSVERSE MERCATOR PROJECTION), EAST ZONE (0901)

ALL UNITS ARE SHOWN IN U.S. SURVEY FEET

ALL FIELD DATA WAS ACQUIRED BETWEEN 05/01/2014 - 05/15/2014.

ADDITIONS OR DELETIONS TO THE SURVEY MAP OR REPORT BY OTHERS THAN THE SIGNING PARTY IS PROHIBITED WITHOUT THE WRITTEN CONSENT OF THE SIGNING PARTY.

THE BOLD LINES SHOWN HEREON REPRESENT THE SURVEYORS OPINION OF THE BOUNDARY OF THE SUBMERGED LAND LEASE AREAS. THE MEAN HIGH WATER LINE WAS NOT DETERMINED FOR THIS SPECIFIC PURPOSE SURVEY SKETCH. THE APPARENT MEAN HIGH WATER LINE IS SHOWN FOR REFERENCE ONLY.

THE INDIVIDUAL SECTIONED OFF LEASE AREAS WERE DETERMINED BASED ON THE PROJECTION OF THE OCCUPATIONAL LINES (I.E. FENCES, WALLS, ETC) LOCATED IN THE FIELD. THE UPLAND PARCELS ADJACENT TO THE ILLUSTRATED SUBMERGED LANDS LEASE AREAS WERE NOT SURVEYED.

NOT ALL EXISTING DOCKS / PIERS WERE FIELD LOCATED, ONLY THE DOCKS / PIERS THAT ARE WITHIN A CLOSE PROXIMITY TO THE SUBMERGED LAND LEASE AREAS WERE FIELD LOCATED.

THIS IS NOT A BOUNDARY SURVEY, ANY BOUNDARY OR RIGHT OF WAY LINES SHOWN HEREON ARE FOR INFORMATIONAL PURPOSES ONLY, AND ARE A GRAPHICAL REPRESENTATION OF THE BOUNDARY BASED ON THE RECOVERY OF SUFFICIENT BOUNDARY MONUMENTATION TO SPATIALLY DEFINE THE LINES. NO ATTEMPT WAS MADE TO RESOLVE CONFLICTS BETWEEN THE RECOVERED BOUNDARY INFORMATION AND OCCUPATIONAL LINES.

ABBREVIATION LEGEND:

BM = BENCHMARK
CALC = CALCULATED
CB = CONCRETE BLOCK
CL = CENTERLINE
CLP = CHAINLINK FENCE
CM = CONCRETE MONUMENT
CONC = CONCRETE
CPP = CONCRETE POWER POLE
EP = EDGE OF PAVEMENT
MEAS = MEASURED
NGS = NATIONAL GEODETIC SURVEY
NGVD = NATIONAL GEODETIC VERTICAL DATUM (1929)
RW = RIGHT OF WAY LINE
NTS = NOT TO SCALE
OHW = OVERHEAD WIRES
PC = POINT OF CURVE
PCP = PERMANENT CONTROL POINT
PK = PARKER KALON NAIL
WF = WOOD FENCE
WD = WOOD DECK

SYMBOL LEGEND:

CATCH BASIN
 DRAINAGE MANHOLE
 CONCRETE UTILITY POLE
 ELECTRIC MANHOLE
 LIGHT POLE
 GUY WIRE
 MAILBOX
 SANITARY CLEANOUT
 SANITARY MANHOLE
 SIGN
 WOOD UTILITY POLE
 WOOD BOLLARD
 WATER VALVE

SCALE: 1"=30'

FIELD WORK DATE: SEE-NOTES

REVISION DATE: XXXX/XXXX

SHEET: 1 OF 1

DRAWN BY: MPB

CHECKED BY: -----

COW PO #: 076785

I HEREBY CERTIFY THAT THIS SKETCH WAS MADE UNDER MY RESPONSIBLE CHARGE AND MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER SJ-17.05, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES AND COMPLIES WITH CHAPTER 177, PART II FLORIDA STATUTES.

SIGNED

ERIC A. ISAACS, PSM #6783, PROFESSIONAL SURVEYOR AND MAPPER, LB# 7847

NOT VALID WITHOUT THE
SIGNATURE AND THE RAISED
SEAL OF A FLORIDA
SURVEYOR AND MAPPER



**FLORIDA KEYS
LAND SURVEYING**

19960 OVERSEAS HIGHWAY
SUGARLOAF KEY, FL 33042
PHONE: (305) 394-3690
FAX: (305) 509-7373
EMAIL: FKLSeMail@gmail.com

RESOLUTION NO. 19-311

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 701 PALM AVENUE BETWEEN THE CITY AND A-1 BOAT SERVICES, INC.; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Department of Environmental Protection required 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. The attached lease is a renewal of the lease originally approved in Resolution 14-246.

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 701 Palm Avenue between the City and A-1 Boat Services, Inc. is hereby approved.

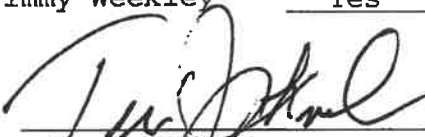
Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 2nd day of October, 2019.

Authenticated by the Presiding Officer and Clerk of the Commission on 2nd day of October, 2019.

Filed with the Clerk on October 3, 2019.

Mayor Teri Johnston	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Sam Kaufman	<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: Greg Veliz

FR: Marilyn Wilbarger, RPA, CCIM

DT: September 3, 2019

RE: Submerged Land Lease Renewal for City Owned Submerged Lands in Garrison Bight

ACTION: This a request to approve a submerged land lease renewal for 701 Palm Avenue.

HISTORY: The City of Key West entered into submerged land leases in September of 2014 in accordance with the procedural changes authorized by the State of Florida for the City owned submerged land. The leases are now expiring, and the existing tenants may renew the leases at the proposed rental rate, as follows:

Lessee: A-1 Boat Service, Inc.

Demised

Premises: 701 Palm Avenue submerged lands
Containing approximately 19,732 square feet

Term: Five (5) years from September 1, 2019, the effective date of this lease.

Use: 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, without fueling facilities.

Lease Fees: The Lessee hereby agrees to pay to the Lessor an annual lease fee rate of \$.35 per square foot plus sales tax, if applicable; on a monthly basis, as follows:

Monthly Fee	\$729.78
Sales Tax	\$52.54
Total	\$782.32

Increases: The annual fee for the remaining years of this lease shall be increased annually by .10 per square foot.

FINANCIAL: All revenues collected from the use of the submerged land in this deed will be placed back into water related activities for the general public.

CONCLUSION: There is no change of use and the rate reflects gradual increases to begin to achieve the market value of the use of the submerged land at this location. Staff recommends approval of the proposed lease renewal.

ATTACHMENTS:

2019 Lease Renewal

2014 Lease

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

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 **A-1 Boat Services, Inc.**, whose riparian upland property is pursuant to a lease with the City of Key West located at **701 Palm Avenue 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 **25,021 square feet**,
more particularly described and shown on Attachment A
which is attached hereto and incorporated herein.

TO HAVE THE USE OF the hereinabove described premises for a period of five (5) years from September 1, 2019, 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 boat yard and 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, without fueling facilities, with a sewage pump out 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 \$.35 per square foot plus sales tax, if applicable, in monthly payments due without demand therefor on the first of each month. The annual fee for the remaining years of this lease shall be increased annually by .10 per square foot. The Lessor will notify the Lessee annually in writing of the amount of each subsequent annual and monthly lease payment during the remaining term of this lease. All lease fees due hereunder shall be remitted to the Lessor. The initial monthly lease fee without the supplemental payment is as follows:

Monthly Lease Fee	\$729.78
Sales tax	\$52.54
Total Monthly Fee	\$782.32

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, derived directly from the lease of wet slips over submerged lands on an annual basis. When six percent (6%) of said annual income exceeds the base fee or minimum annual fee 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 the leased premises, (ii) the gross revenue derived indirectly from the use of the leased premises, and (iii) all other gross revenue derived from the Lessee's operations on the riparian upland property. 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 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.

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.

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 may be withheld by the Lessor in Lessor's sole discretion. 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 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.

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.

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 U.S. Mail to the following address:

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 at the sole option of the Lessor, which consent may be withheld in the sole discretion of the Lessor. 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 Lessee'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 sovereignty 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.

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. LIVEABOARDS: The term "liveaboard" 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 liveaboards are authorized by paragraph one (1) of this lease, in no event shall such "liveaboard" 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): None

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



Charles L. Smith
CITY CLERK

Teri Johnston
Mayor

Date: 10-3-19

LESSEE: A-1 Boat Services, Inc.

ATTEST: [Signature]

By: [Signature]
Richard Spencer

Date: 9/30/19

Date: 9/30/19

RESOLUTION NO. 14-246

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 701 PALM AVENUE BETWEEN THE CITY AND A-1 BOAT SERVICE, 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 701 Palm Avenue between the City and A-1 Boat Service, 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

EXECUTIVE SUMMARY



TO: City Commission

CC: Jim Scholl

FR: Marilyn Wilbarger, RPA, CCIM

DT: September 3, 2014

RE: Submerged Land Lease for City Owned Submerged Lands in Garrison Bight

ACTION: This is a request to approve a submerged land lease for the upland riparian property owner located at 701 Palm Avenue. The submerged land may only be used in conjunction with the uses occurring on the upland riparian property therefore the public notice and solicitation process called for in the City of Key West Code of Ordinances Section 2-941(c) has not been applied. The property owner 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.

HISTORY: In August, 2013 the Florida Department of Environmental Protection /Bureau of Public Land Administration conducted an internal audit of Deed 19259 (All) to confirm compliance with the restrictions and reverter in Corrective Deed No. 19259-A. The deed restrictions and reverter were included in the deed language to ensure the deed area would remain open to the general public for access to city provided water-related facilities. These restrictions have been the intent of the deed since originally deeded in 1947. With the exception of two modifications to the deed restrictions, the main portion of the deed remains subject to the restrictions in the corrective deed.

The City was found to be out of compliance with the existing deed restrictions in Corrective Deed 19259-A and B. With regard to Corrective Deed No. 19259-C it was noted that the city is not collecting revenue from the private structures under private lease agreements. Additionally, the audit report stated:

Deed modification 19259-C allows for existing private uses and subject to the additional restrictions, for which compliance was confirmed in an Audit Section report dated 10-25-2012.

- A) Existing facilities may remain as they exist as of the Board of Trustees of the Internal Improvement Fund (BOT) meeting October 3, 2006
- B) Existing facilities could only be used in conjunction with the uses occurring on the uplands on the date of the BOT meeting, October 3, 2006
- C) Any new or modified construction at the facility would be subject to 18-21.004 and 18-21.0041 Florida Administrative Code (FAC)

- D) All revenues received by the City from the private use of submerged lands describes in the modified deed 19269-C shall be solely used to fund operation of water related activities for the general public.

The city received notification of this determination in correspondence dated August 19, 2013, a copy of which is attached hereto.

Subsequently, on November 14, 2013 the city submitted Corrective Procedural Changes concerning the use of the submerged lands located with Deed 19259 A, B, and C to the Florida Department of Environmental Protection for their consideration, a copy of which is attached hereto.

On April 14, 2014 the city received confirmation from the Florida Department of Environmental Protection, Division of Lands which stated that the procedural changes outlined are consistent with the actions required by the Board of trustees in 2006 and, although the waiver did not reference the private leases that were cited in the current audit, the Board of Trustees did approve more exclusive activities than what is currently taking place. Therefore, they requested that the City make the procedural changes stipulated in the city's response letter. A copy of this confirmation is also attached.

The following actions and the timeline for implementing the procedural changes are as follows:

On April 25, 2014 a purchase order was issued for the completion of the submerged land surveys which were completed and delivered to the city by the end of May.

On June 2, 2014 notifications and surveys were mailed to each of the riparian property owners extending the offer of a submerged land lease.

On June 6, 2014 the submerged land draft lease was completed.

On June 10, 2014 the draft leases were sent to the riparian property owners that responded to the notices for their review.

As of this date, we have received an executed lease from this tenant for this parcel and it is attached.

FINANCIAL: The lease rates charged will be consistent with the fees charged under F.A.C. 18-21.011 (b) to include the base fees, discounts, surcharges and other payments as may be required. All revenues collected from the use of the submerged land in this deed will be placed back into water-related activities for the general public.

CONCLUSION: With the cooperation and collaborative efforts of the Florida Department of Environmental Protection/Division of State Lands, the city has undertaken all of the actions necessary to culminate in the execution of the submerged land lease that is presented here for your approval.

ATTACHMENTS:

Florida Department of Environmental Protection Internal Audit

Non-Compliance notification dated August 19, 2013

Corrective Procedural Changes dated November 14, 2013

Confirmation of Corrective Procedural Changes dated April 14, 2014.

Submerged Land Lease

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

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 **A-1 Boat Services, Inc.**, whose riparian upland property is pursuant to a lease with the City of Key West as approved by Resolution 07- 117 located at **701 Palm Avenue 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 **25,021 square feet**,
more particularly described and shown on Attachment A
which is attached hereto and incorporated herein.

TO HAVE THE USE OF the hereinabove described premises for a period of five (5) years from _____, 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 boat yard and 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, without fueling facilities, with a sewage 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:

25,021SF X \$0.166469	\$4,165.22
Surcharge 25%	\$1,041.31
Sales Tax	\$390.49
Total	\$5,597.02

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. 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 the leased premises, (ii) the gross revenue derived indirectly from the use of the leased premises, and (iii) all other gross revenue derived from the Lessee's operations on the riparian upland property. 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 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.

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.

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 may be withheld by the Lessor in Lessor's sole discretion. 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 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.

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.

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 U.S. Mail to the following address:

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 at the sole option of the Lessor, which consent may be withheld in the sole discretion of the Lessor. 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 Lessee'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 sovereignty 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.

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. LIVEABOARDS: The term "liveaboard" 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 liveaboards are authorized by paragraph one (1) of this lease, in no event shall such "liveaboard" 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):

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:

Date:

[Signature]

By:

Craig Cates, Mayor

Date:

9-3-14

LESSEE: A-1 Boat Services, Inc.

ATTEST:

Date:

[Signature]

By:

Ricky Spencer

Date:

[Signature]
8/14/14

Attachment "A"
Submerged Land Survey

FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF PUBLIC LAND ADMINISTRATION



BPLA/ Audit Section
Internal Audit
Of
Deed 19259 (All)
Board of Trustees of the Internal Improvement Trust Fund
and the City of Key West, Florida

SUBJECT

The subject of this audit is the review of Corrective Deed No.19259-A, deeded by the Board of Trustees "BOT" to the City of Key West "City".

SCOPE AND OBJECTIVE

The scope of this report is to confirm compliance with the restrictions and reverter in Corrective Deed No. 19259-A. The deed restrictions and reverter were included in the deed language to ensure the deed area remain open to the general public for access to City provided water-related facilities. These restrictions have been the intent of the deed since originally deeded in 1947. With the exception of two modifications to the deed restrictions, the main portion of the deed remains subject to the restrictions in the Corrective Deed No. 19259-A.

METHODOLOGY

BPLA/Audit Section conducted an interview with staff from DEP/ South District, South Florida Water Management District, City of Key West, DEP/Survey and Mapping and research was conducted using various multi-media methods in order to obtain data for the completion of the compliance audit.

Procedures included review of:

- Review of South District and South Florida Water Management District records to ensure no new permits were inadvertently issued for new or modified structures within the subject area.
- Requested site inspections within the subject area of Deed No. 19259-C to ensure no modifications or new structures were erected without authorization.
- Review of the City of Key West accounts receivable to confirm whether revenues were being received from the subject area.
- Review of the City of Key West expenditures for Garrison Bight to ensure revenues received were being placed back into general public water related activities.
- Review of the City's third party rental agreements for the use of submerged deeded lands.
- Review of the City of Key West rental agreements for the city marina areas of "Houseboat Row", "Charter Boat Row" and the public recreational vessel slips.
- Review maps provided by Bureau of Survey and mapping to ensure there have not been subsequent changes or releases.

BACKGROUND

The BOT in 1947 deeded 91.3 acres to the City which is inclusive of Garrison Bight and did not include intended restrictions or reverter language. In July 1965, Deed No. 19259 was corrected under Deed No. 19259-A to add deed restrictions with reversion language. The 1947 agenda item authorized the public purpose clause, however, language was inadvertently absent from the first deed in 1947. The addition of the restrictions and reversion language solidified the intent of the original deed. The public purpose clause was intended to restrict the lands use solely for public purpose and included language to never sale, convey or lease to any private party the submerged lands. This includes reversion language should such private activity occur.

In September 1965, the deed was modified under Deed No. 19259-B for the purpose of releasing .446 acres of the property from the restrictions and reverter. This property was filled during construction of the causeway, but located outside of the right-of-way. The consideration for this modification was \$500 and approved by the BOT on August 10, 1965.

In July 1967, the City of Key West requested a release of the restrictions and reverter for 2.41 acres that were adjacent to the .446 acres released in Deed No. 19259-B for the purpose of leasing the parcel to a tenant to fill and construct a pleasure boat dry storage facility. The request was denied. (Note: A-1 Boatworks is under lease with the City and currently located within this area)

On October 3, 2006 the BOT approved a modification of the deed under Deed No. 19259-C . This modification added restrictions for approximately 3 acres between Palm Avenue and Roosevelt Blvd, along Eisenhower Drive. Private docking facilities were located within this area since the late 1960's. This approved modification allowed these private docking structures to remain with additional restrictions. The public purpose clause remained for the area not subject to the modification.

Deed modification 19259-C allows for existing private uses and subject to the following additional restrictions for which compliance is was confirmed in an Audit Section report dated 10-25-2012.

- A) Existing facilities may remain as they exist as of the Board of Trustees of the Internal Improvement Trust Fund (BOT) meeting October 3, 2006
- B) Existing facilities could only be used in conjunction with the uses occurring on the uplands on the date of the BOT meeting, October 3, 2006.
- C) Any new or modified construction at the facility would be subject to 18-21.004 and 18-21.0041 Florida Administrative Code (FAC)
- D) All revenues received by the City from the private use of submerged lands described in the modified deed 19259-C shall be solely used to fund operation of water-related activities for the general public.

- E) Any violation of the above Restrictions shall cause land to automatically revert back to the BOT.

AUDIT SUMMARY

An audit was conducted of City of Key West Corrective Deed No. 19259-A for restriction compliance. The City of Key West was found to be out of compliance with the deed restrictions.

Formula: No facilities which are conveyed, sold or leased to a private person, firm or corporation should be located within Garrison Bight Corrective Deed No. 19259-A with the exception of those areas described in 19259-C. Within those areas modified in Deed 19259-C all revenues collected by the City of Key West for the private uses located on Eisenhower Drive between Palm Avenue and Roosevelt Boulevard shall be placed back into City provided public water-related activities.

CONCLUSION

The City of Key West is found to be out of compliance with existing deed restrictions in Corrective Deed No. 19259-A. The City has leased water-related facilities to third party private entities such as, but not limited to, A-1 Boatyard, Garrison Bight Marina and Key West Community Sailing Center. These rentals are not consistent with the restriction within the deed language to "never sell or convey or lease" the lands or parts thereof to any "private person or firm, or corporation for any private use or purpose". The facilities are renting the upland and submerged area within the deed and appear to be receiving profits from these private business ventures. The lease fees received by the City are being placed into the City's general fund (email M Wilbarger, 12-11-12).

Additionally, The City of Key West is not enforcing the sale of exclusive private uses within the area of submerged lands subject to the modification in Deed No. 19259-C. The City of Key West is not collecting revenue from the private structures under private lease agreements. A lease was issued in the late 1990's for a portion of the submerged lands. That lease expired and was never renewed.

SUGGESTED PROCEDURE

The Department of Environmental Protection, on behalf of the BOT, should begin communication with the City of Key West regarding the areas throughout the deed in violation of the deed restrictions. The communication in the form of a letter should include a reasonable time to cure and expected corrections to become compliant with deed restrictions.

There are no suggested changes to procedure for the area within modified Deed No. 19259-C. This submerged land property is in fee simple ownership of the City of Key West. No revenues were found to be collected for the private uses. The deed restriction directs revenues to be placed back into water-related activities for the public in the event revenue is collected from the private uses. In the event the restrictions in Deed Modification No. 19259-C are revised in the future, it is suggested that language be placed in the modification terms for lease fees to be collected from the private exclusive uses according to 18-21.011 F.A.C. and those collected fees placed back into water-related activities for the general public.

See Audit Report for Garrison Bight / Key West Deed 19259-C for final detailed conclusion for the portion deed area.

FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF PUBLIC LAND ADMINISTRATION



BPLA/ Audit Section
Internal Audit
Of
Deed 19259-C
Board of Trustees of the Internal Improvement Trust Fund
and the City of Key West, Florida

SUBJECT

Review of Deed No. 19259-C, deeded by the Board of Trustees "BOT" to the City of Key West "City", containing restrictions and reverter, for compliance with modified deed restriction language.

SCOPE AND OBJECTIVE

The scope of this report is to confirm compliance with the partial modification of deed restrictions and reverter in modified Deed No. 19259-C. The modified deed caused a portion of property within the original Deed No. 19259 to be modified to allow existing private docking facilities. These existing docking facilities would be subject to the following additional restrictions for which compliance is being confirmed.

- A) Existing facilities may remain as they exist as of the BOT meeting October 3, 2006.
- B) Existing facilities could only be used in conjunction with the uses occurring on the uplands on the date of the BOT meeting, October 3, 2006.
- C) Any new or modified construction at the facility would be subject to 18-21.004 and 18-21.0041 Florida Administrative Code ("FAC").
- D) All revenues received by the City from the private use of submerged lands described in the modified Deed No. 19259-C shall be solely used to fund operation of water-related activities for the general public.
- E) Any violation of the above restrictions shall cause land to automatically revert back to the BOT.

METHODOLOGY

BPLA/Audit Section conducted an interview with staff from DEP/ South District, South Florida Water Management District, City of Key West, DEP/Survey and Mapping and research was conducted using various multi-media methods.

Procedures included review of:

- Review of South District and South Florida Water Management District records to ensure no new permits were inadvertently issued for new or modified structures within the subject area.
- Requested site inspections within the subject area to ensure no modifications or new structures were erected without authorization.
- Review of the City accounts receivable to confirm whether revenues were being received from the subject area.
- Review of the City expenditures for Garrison Bight to ensure revenues received were being placed back into general public water related activities.

- Review maps provided by Bureau of Survey and mapping to ensure there have not been subsequent changes or releases.

BACKGROUND

The BOT in 1947 deeded 91.3 acres to the City which is inclusive of Garrison Bight and did not include restriction or reverter language. In July 1965, Deed No. 19259 was corrected under Deed No. 19259-A to add deed restrictions with reverter. The 1947 agenda item authorized the public purpose clause but was inadvertently absent from the first deed in 1947. The restrictions and reverter were added to solidify the intent of the original deed. The public purpose clause was intended to restrict the lands use solely for public purpose and included language to never sale, convey or lease to any private party. This includes reversion language should such private activity occur.

In September 1965, Deed No. 19259-A was modified under Deed No. 19259-B for the purpose of releasing .446 acres of the property from the restrictions and reverter. This property was filled during construction of the causeway, but outside of the right-of-way. The consideration for this modification was \$500 and approved by the BOT on August 10, 1965.

In July 1967, the City of Key West requested a release of the restrictions and reverter for 2.41 acres that were adjacent to the .446 acres released in Deed No. 19259-B for the purpose of leasing a parcel to a tenant to fill and construct a pleasure boat dry storage facility. The request was denied.

On October 3, 2006 the BOT approved a modification of Deed No. 19259-B under Deed No. 19259-C to modify the restrictions and reverter for approximately 3 acres in between Palm Avenue and Roosevelt Blvd along Eisenhower Drive, on which existing private docking facilities were located since the late 1960's. This modification included additional restrictions. The additional restrictions are listed above in the Scope portion of this report. The public purpose clause remained for the remaining area not subject to the modifications.

AUDIT SUMMARY

An audit was conducted of City of Key West modified Deed No. 19259-C for restriction compliance found no changes since 2006 and no collection of revenue by the City therefore no additional gains of public water-related facilities due to activities between Palm Avenue and Roosevelt Boulevard along Eisenhower Drive.

Formula: All revenues collected by the City of Key West for the private uses located on Eisenhower Drive between Palm Avenue and Roosevelt Boulevard shall be placed back into general public water-related activities.

CONCLUSION

A site inspection of the subject parcels under modification to Deed No. 19259-C was performed on October 12, 2012. The most southeastern structure present at the 2006 BOT approved modification is no longer present. Other than the elimination of that structure, all other structures remain the same and under the same types of uses as present on October 3, 2006.

The aforementioned satisfies the deed restrictions (A) and (B) above. Deed restriction (C) is not applicable since there were no modifications or additions to structures. Restriction (D) is not applicable, no revenue is collected. There have been no confirmed violations of the restrictions therefore (E) is not applicable.

SUGGESTED PROCEDURE CHANGES

There are no suggested changes to procedures for Department of Environmental Protection staff, since this submerged land property is in fee simple ownership of the City. No revenues were found to be collected for the private uses under the modification in Deed No. 19259-C. The City has been remiss in collecting revenues for the rental of dock slips and/or the transfer of exclusive use of docks within the modified area. The deed restrictions do not dictate that revenues be collected for the use of the deeded lands. The deed restriction only addresses upon collection of revenue, that the revenues are placed back into water-related activities for the public. In the event Deed Modification No. 19259-C is revised in the future, it is suggested that language be placed in the modification terms for lease fees to be collected according to 18-21.011 F.A.C. and those collected fees placed back into public access or activities.

See Audit Report for Garrison Bight / Key West Deed 19259 for final conclusion for the entire deed area.

Deed 19259

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Internal Improvement Fund, State of Florida

DB G-30
Pg 330

DEED NO. 12229

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, the Trustees of the Internal Improvement Fund of the State of Florida, under and by virtue of the authority of Section 253.12 Florida Statutes, 1941, and according to the provisions and procedure provided for in Section 253.13, Florida Statutes, 1941, and for and in consideration of the sum of Ten and 00/100 (\$10.00)

Dollars, to them in hand paid by THE CITY OF KEY WEST, FLORIDA

Monroe

County, Florida, receipt of which is hereby acknowledged, have granted, transferred, sold and conveyed to the said THE CITY OF KEY WEST, FLORIDA

and

its

SUCCESSORS

and assigns, forever, the following described lands, to-wit:

Beginning at a point on the center line of First Street, if extended in a Northwesterly direction and at its intersection with the outboard edge of the sea wall which forms the Northwesterly boundary of the side walk on the Northwesterly side of Roosevelt Boulevard, thence proceeding in an East Northwesterly direction at an approximate bearing of N. 73 degrees East along the outer edge of said seawall a distance of 1500 ft. more or less to a point on the radius of and opposite the point of curvature of a curve to the left in said Roosevelt Boulevard whose deflection angle is 28 degrees more or less, and thence proceeding around the edge of said seawall and parallel to said curve for a distance of 265 feet more or less to a point on the seawall on the radius of and opposite the Point of tangency of said curve. Thence proceeding a distance of 560 feet more or less in a Northeasterly direction at a bearing of N. 45 degrees East more or less to a point where said seawall intersects the southerly boundary of the fill which formerly supported the tracks and formed the property of the F. E. C. Railroad. Thence turning to the left approximately 125 degrees and proceeding in a Westerly direction along the South boundary of said property for a distance of 1050 feet more or less to a point opposite the east abutment of what formerly was a bridge over a gap in the fill at this point. Thence continuing in a Westerly direction across said gap for a distance of 80 feet more or less to a point opposite an abutment on the west side of said gap, the West abutment of a bridge over the gap. Thence continuing in an Westerly direction along the south boundary of said fill for a distance of 2400 feet more or less to a point at which the shore line turns to the left approximately 35 degrees more or less and thence proceeding in a southerly direction at a bearing of 5 degrees West more or less along the high water mark of the shore line of Garrison Right a distance of 725 feet more or less to a point where it intersects the center line of Palm Avenue, if extended in an Easterly direction. Thence proceeding in a South Southwesterly direction along the high water line a distance of 160 feet more or less to a point where it intersects the center line of Angela Street if extended in a Northeasterly direction at which point the shore line turns approximately 85 degrees more or less to the left. Thence proceeding 1150 feet more or less in a Southwesterly direction along the high water mark and around several properties on what is known as North Beach which have developed or are developing their riparian rights to a point where the shore line intersects the north edge of the seawall which forms the Northwesterly boundary of the side walk on the Northwesterly side of Roosevelt Boulevard. Thence proceeding at approximately right

(CONTINUED)

angle to the left in a Northerly direction and along the outboard edge of said seawall a distance of 100 feet more or less at a bearing of N. 51 degrees 30 minutes West more or less to a point opposite the P.O. of a curve to the right in the boulevard whose deflection angle is 21 degrees more or less. Thence proceeding along the outer edge of said seawall and parallel to said curve for a distance of 310 feet more or less to a point opposite the P. T. of said curve. Thence continue along the outer edge of said seawall in an East Northerly direction a distance of 965 feet more or less to the point or place of beginning. Lying and being in Section 33, Township 67 South, Range 20 West, Manatee County, State of Florida, and containing 21.3 acres, more or less.

TO HAVE AND TO HOLD the said above mentioned and described land and premises, and all the title and interest of the Trustees therein as granted to them by Section 252.12, Florida Statutes, 1941, unto the said

THE CITY OF KEY WEST, FLORIDA

and its
heirs and assigns, forever.
Successors

HAVING AND RESERVING unto the Trustees of the Internal Improvement Fund of Florida, and their successors, an undivided three-fourths interest in and title in and to an undivided three-fourths interest in all the phosphate, minerals and metals that are or may be in, on or under the said above described lands, and an undivided one-half interest in and title in and to an undivided one-half interest in all the petroleum that is or may be in or under the said above described land, with the privilege to mine and develop the same.

IN WITNESS WHEREOF, The Trustees of the Internal Improvement Fund of the State of Florida have hereunto subscribed their names and affixed their seals, and have caused the seal of the DEPARTMENT OF AGRICULTURE OF THE STATE OF FLORIDA, to be hereunto affixed, at the Capitol, in the City

of Tallahassee, on this the 11th day of April, A. D. Nineteen

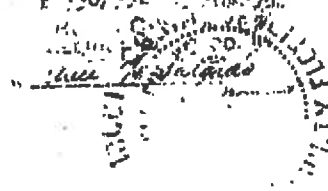
Hundred and thirty-seven



E. M. Guy (SEAL)
Governor
W. M. ... (SEAL)
Comptroller
W. M. ... (SEAL)
Treasurer
W. M. ... (SEAL)
Attorney General
W. M. ... (SEAL)
Commissioner of Agriculture

1917

RECORDED
May 28th, 1947-3:20 P.M.
Deed 3-30
120/332



TRUSTEES OF THE INTERNAL IMPROVEMENT FUND
OF THE STATE OF FLORIDA

DEED NO. 19259-A CORRECTIVE

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, the Trustees of the Internal Improvement Fund of the State of Florida, under authority of law, for and in consideration of the sum of Ten and 00/100 Dollars, (\$10.00), the amount to them in hand paid for original Deed No. 19259, receipt whereof is hereby acknowledged, have granted, bargained and sold, and do by these presents grant, bargain, sell and convey, unto the CITY OF KEY WEST, FLORIDA, a municipal corporation of the State of Florida, and its successors and assigns, forever, the following described land, to-wit:

Beginning at a point on the center line of First Street, if extended in a Northwesterly direction and at its intersection with the outboard edge of the sea wall which forms the northwesterly boundary of the side walk on the northwesterly side of Roosevelt Boulevard; thence proceeding in an east, northeasterly direction at an approximate bearing of North 73° East along the outer edge of said sea wall, a distance of 1600 feet, more or less, to a point on the radius of and opposite the point of curvature of a curve to the left in said Roosevelt Boulevard whose deflection angle is 26° more or less, and thence proceeding around the edge of said sea wall and parallel to said curve for a distance of 265 feet, more or less, to a point on the sea wall on the radius of and opposite the Point of Tangency of said curve; thence proceeding a distance of 560 feet more or less in a northeasterly direction at a bearing of North 45° East more or less to a point where said seawall intersects the southerly boundary of the fill which formerly supported the tracks and formed the property of the F. E. C. Railroad; thence turning to the left approximately 135° and proceeding in a westerly direction along the South boundary of said property for a distance of 1550 feet, more or less, to a point opposite the east abutment of what formerly was a bridge over a gap in the fill at this point; thence continuing in a westerly direction across said gap for a distance of 80 feet, more or less, to a point opposite an abutment on the West side of said gap, the west abutment of a bridge over the gap; thence continuing in a westerly direction along the South boundary of said fill for a distance of 2400 feet, more or less, to a point at which the shore line turns to the left approximately 95° more or less, and thence proceeding in a southerly direction at a bearing of 5° West, more or less, along the high water mark of the shore line of Garrison Bight, a distance of 725 feet, more or less, to a point where it intersects the center line of Palm Avenue, if

extended in an easterly direction; thence proceeding in a south, southwesterly direction along the high water line a distance of 150 feet, more or less, to a point where it intersects the center line of Angela Street if extended in a northeasterly direction, at which point the shore line turns approximately 85° more or less to the left; thence proceeding 1150 feet more or less in a southwesterly direction along the high water mark and around several properties on what is known as North Beach which have developed or are developing their riparian rights to a point where the shore line intersects the north edge of the sea wall which forms the northwesterly boundary of the side walk on the northwesterly side of Roosevelt Boulevard; thence proceeding at approximately right angles to the left in a northeasterly direction and along the outboard edge of said sea wall a distance of 100 feet, more or less, at a bearing of North 51° 30' West, more or less, to a point opposite the P. C. of a curve to the right in the boulevard whose deflection angle is 21° more or less; thence proceeding along the outer edge of said sea wall and parallel to said curve for a distance of 310 feet, more or less, to a point opposite the P. T. of said curve; thence continue along the outer edge of said sea wall in an east, northeasterly direction, a distance of 965 feet, more or less, to the Point or Place of Beginning. Lying and being in Section 33, Township 67 South, Range 25 East, Monroe County, State of Florida, and containing 91.3 acres, more or less.

*Also in Sec 32, 67 S, 25 E and
in Sec 5, 68 S, 25 E.*

PROVIDED, HOWEVER, anything herein to the contrary notwithstanding, this deed is given and granted upon the express condition subsequent that the Grantee herein or its successors and assigns shall never sell or convey or lease the above described land or any part thereof to any private person, firm or corporation for any private use or purpose, it being the intention of this restriction that the said lands shall be used solely for public purposes.

It is covenanted and agreed that the above conditions subsequent shall run with the land and any violation thereof shall render this deed null and void and the above described lands, shall, in such event, revert to the Grantors or their successors.

TO HAVE AND TO HOLD the said above granted and described premises and the appurtenances thereof, subject to the above mentioned provisions and limitations, unto the said City of Key West, Florida, and its successors and assigns, forever.

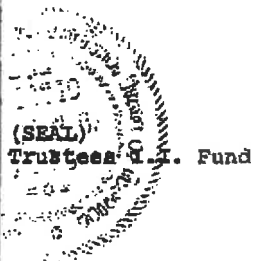
This deed corrects and supersedes a former deed numbered 19259, dated April 11, 1947, between the Trustees of the Internal Improvement Fund as grantors, and the City of Key West, Florida, as grantees, wherein the public purpose clause as authorized by said Trustees in meeting January 14, 1947, was inadvertently omitted.

SAVING AND RESERVING unto the said Trustees of the Internal Improvement Fund of the State of Florida, and their successors, title to an undivided three-fourths of all phosphate,

minerals and metals, and title to an undivided one-half of all petroleum that may be in, on or under the above described land, with the privilege to mine and develop the same.

IN TESTIMONY WHEREOF, the said Trustees of the Internal Improvement Fund of the State of Florida have hereunto subscribed their names and have caused the official seal of said Trustees to be hereunto affixed, in the City of Tallahassee, Florida, on this

the 1st day of July, A. D. 1965.



Wayne L. Dunn
Governor

Ray E. Green
Comptroller

James W. Williams
Treasurer

Earl Faircloth
Attorney General

Jack Conrad
Commissioner of Agriculture

As and Constituting the Trustees
of the Internal Improvement Fund
of the State of Florida.

BEST COPY

DEED NO. 19259-A

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, the Trustees of the Internal Improvement Fund of the State of Florida, under authority of law, for and in consideration of the sum of Ten and 00/100 Dollars, (\$10.00), the amount to them in hand paid for original Deed No. 19259, receipt whereof is hereby acknowledged, have granted, bargained and sold, and do by these presents grant, bargain, sell and convey, unto the CITY OF KEY WEST, FLORIDA, a municipal corporation of the State of Florida, and its successors and assigns, forever, the following described land, to-wit:

Beginning at a point on the center line of First Street, if extended in a Northwesterly direction and at its intersection with the outboard edge of the sea wall which forms the northwesterly boundary of the side walk on the northwesterly side of Roosevelt Boulevard; thence proceeding in an east, northeasterly direction at an approximate bearing of North 73° East along the outer edge of said sea wall, a distance of 1600 feet, more or less, to a point on the radius of and opposite the point of curvature of a curve to the left in said Roosevelt Boulevard whose deflection angle is 26° more or less, and thence proceeding around the edge of said sea wall and parallel to said curve for a distance of 265 feet, more or less, to a point on the sea wall on the radius of and opposite the Point of Tangency of said curve; thence proceeding a distance of 560 feet more or less in a northeasterly direction at a bearing of North 45° East more or less to a point where said seawall intersects the southerly boundary of the fill which formerly supported the tracks and formed the property of the F. E. C. Railroad; thence turning to the left approximately 135° and proceeding in a westerly direction along the South boundary of said property for a distance of 1550 feet, more or less, to a point opposite the east abutment of what formerly was a bridge over a gap in the fill at this point; thence continuing in a westerly direction across said gap for a distance of 80 feet, more or less, to a point opposite an abutment on the West side of said gap, the west abutment of a bridge over the gap; thence continuing in a westerly direction along the South boundary of said fill for a distance of 2400 feet, more or less, to a point at which the shore line turns to the left approximately 95° more or less, and thence proceeding in a southerly direction at a bearing of 5° West, more or less, along the high water mark of the shore line of Garrison Bight, a distance of 725 feet, more or less, to a point where it intersects the center line of Main Avenue, at

Monroe
County

OR
354

pg

106

Deed

#

19259 A

FILED FOR RECORD

1965 SEP 17 PM 4:05

BEST COPY

OR
354

Pg 107

(2nd
Pg 8
Deed)

thence intersect the shore line at a point opposite the intersection of Section 23, Township 67 South, Range 25 East, Monroe County, Florida, and containing 91.3 acres, more or less; thence proceeding 1450 feet more or less in a westerly direction along the high water mark and around several properties on what is known as North Beach which have developed or are developing their riparian rights to a point where the shore line intersects the north edge of the sea wall which forms the northwesterly boundary of the side walk on the northwesterly side of Roosevelt Boulevard, thence proceeding at approximately right angles to the left in a northeasterly direction and along the outboard edge of said sea wall a distance of 100 feet, more or less, at a bearing of North 51° 30' West, more or less, to a point opposite the P. C. of a curve to the right in the boulevard whose deflection angle is 21° more or less; thence proceeding along the outer edge of said sea wall and parallel to said curve for a distance of 310 feet, more or less, to a point opposite the P. T. of said curve; thence continue along the outer edge of said sea wall in an east, northeasterly direction, a distance of 965 feet, more or less, to the Point of Place of Beginning. Lying and being in Section 23, Township 67 South, Range 25 East, Monroe County, State of Florida, and containing 91.3 acres, more or less.

PROVIDED, HOWEVER, anything herein to the contrary notwithstanding, this deed is given and granted upon the express condition subsequent that the Grantee herein or its successors and assigns shall never sell or convey or lease the above described land or any part thereof to any private person, firm or corporation for any private use or purpose, it being the intention of this restriction that the said lands shall be used solely for public purposes.

It is covenanted and agreed that the above conditions subsequent shall run with the land and any violation thereof shall render this deed null and void and the above described lands, shall in such event, revert to the Grantors or their successors.

TO HAVE AND TO HOLD the said above granted and described premises and the appurtenances thereof, subject to the above mentioned provisions and limitations, unto the said City of Key West, Florida, and its successors and assigns, forever.

This deed corrects and supersedes a former deed numbered 19259, dated April 11, 1947, between the Trustees of the Internal Improvement Fund as grantors, and the City of Key West, Florida, as grantee, wherein the public purpose clause as authorized by said Trustees in meeting January 14, 1947, was inadvertently omitted.

SAVING AND RESERVING unto the said Trustees of the Internal Improvement Fund of the State of Florida, and their successors, title to an undivided three-fourths of all phosphate

Deed
19259A

2nd
Pg

BEST COPY

...the Trustees of the
Improvement Fund... have hereunto subscribed
the... and have caused the official seal of said Trustees to
be hereunto affixed, in the City of Tallahassee, Florida, on this

the 1st day of July, A. D. 1965.

Ray E. Green
Governor

Ray E. Green
Comptroller

Treasurer
Earl Farnsworth
Attorney General

Paul P. ...
Commissioner of Agriculture

(SEAL)
Trustees I. I. Fund

As and Constituting the Trustees
of the Internal Improvement Fund
of the State of Florida.

131001

...to ...
...
...
...

Deed
19259 A

3rd
pg

29 SEP 7 1965

DEED RECORD 357 PAGE 489

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND
OF THE STATE OF FLORIDA

132050

DEED NO. 19259-B

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, the Trustees of the Internal Improvement Fund of the State of Florida, under authority of law, for and in consideration of the sum of Five Hundred and 00/100 Dollars, (\$500.00), to them in hand paid by the CITY OF KEY WEST, FLORIDA, a municipal corporation of the State of Florida, have granted, bargained and sold, and do by these presents grant, bargain, sell and convey, unto the said CITY OF KEY WEST, FLORIDA and its successors and assigns, the following described lands, to-wit:

A parcel of sovereignty land in Garrison Bight on the Island of Key West, Florida and being more particularly described as follows:

Commence at the Southeast corner of the "City sewerage plant property", the same point being on the Northerly R/W of Palm Avenue and also on the Northerly R/W of Garrison Bight Causeway (State Job No. 90500-3604) at right angles to station 9 plus 51.50 of said State Job; run thence South 81° 26' 23" East along the Northerly R/W of said Garrison Bight Causeway, 80 feet to the Southeast corner of U. S. Navy property described in Deed Book G-12, pages 2 thru 4, of the Public Records of Monroe County, Florida, said point being the Point of Beginning of the land herein described; thence continue South 81° 26' 23" East along the Northerly R/W of Garrison Bight Causeway, 94 feet; thence run North 53° 33' 37" East along said Garrison Bight Causeway R/W, 106 feet; thence run North 47° 37' 32" West, 203.41 feet to the East boundary of U. S. Navy property referred to above; thence run South 8° 33' 37" West along the East boundary of said U. S. Navy property, 188.2 feet back to the Point of Beginning; containing 0.446 acres, more or less.

This deed is issued for the express purpose of lifting and removing the public purpose use provision as to the parcel described herein as contained in Trustees of the Internal Improvement Deed No. 19259-A Corrective, dated July 1, 1965, which deed conveys a larger tract of sovereignty land to the City of Key West, Florida, of which the parcel described herein is a part, the public purpose use limitation in said Deed No. 19259-A Corrective being described in the following words:

FILED FOR RECORD
OCT 22 1965
R. ADAMS, C.
MONROE COUNTY, FLA.

"PROVIDED, HOWEVER, anything herein to the contrary notwithstanding, this deed is given and granted upon the express condition subsequent that the Grantee herein or its successors and assigns shall never sell or convey or lease the above described land or any part thereof to any private person, firm or corporation for any private use or purpose, it being the intention of this restriction that the said lands shall be used solely for public purposes.

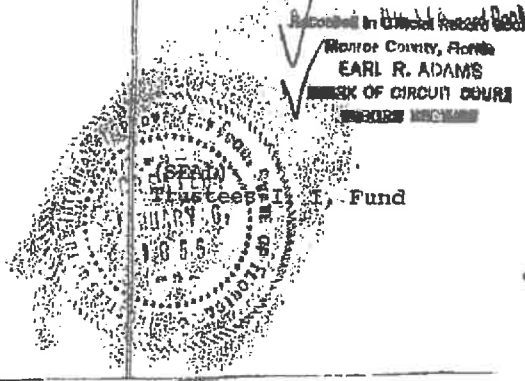
It is covenanted and agreed that the above conditions subsequent shall run with the land and any violation thereof shall render this deed null and void and the above described lands, shall, in such event, revert to the Grantors or their successors."

TO HAVE AND TO HOLD the above granted and described premises forever.

SAVING AND RESERVING unto the said Trustees of the Internal Improvement Fund of the State of Florida, and their successors, title to an undivided three-fourths of all phosphate, minerals and metals, and title to an undivided one-half of all petroleum that may be in, on or under the above described land, with the privilege to mine and develop the same.

IN TESTIMONY WHEREOF, the said Trustees of the Internal Improvement Fund of the State of Florida have hereunto subscribed their names and have caused the official seal of said Trustees to be hereunto affixed, in the City of Tallahassee, Florida, on this the 29th day of September, A. D. 1965.

132050



Noted in Circuit Court
Monitor County, Florida
EARL R. ADAMS
CLERK OF CIRCUIT COURT

Governor

Fred P. McPhee
Comptroller

Howard Williams
Treasurer

Earl Faircloth
Attorney General

Frank Conner
Commissioner of Agriculture

As and Constituting the Trustees of the Internal Improvement Fund...

NOTE:

The attached instrument is executed in the name of the Trustees of the Internal Improvement Fund, by a majority of its members. Signature of all members could not be secured by reason of absence from the United States of the member whose signature is not inscribed. Reference is made to "27 So. 2nd 524", Watson v. Caldwell in which the Supreme Court held that a majority of the Trustees may legally act for the entire Board.

Director *Robert C. Paden*
Trustees of the Internal Improvement Fund

Doc# 1612510 11/14/2006 9:04AM
Filed & Recorded in Official Records of
MONROE COUNTY DANNY L. KOLHAGE

This instrument was prepared by:
Scott Woolam, Chief
Bureau of Public Land Administration
Division of State Lands
Department of Environmental Protection
3900 Commonwealth Blvd MS35
Tallahassee, FL 32399-3000

Doc# 1612510
Bkn 2251 Pgn 1343

RECORDER'S MEMO:
LEGIBILITY OF WRITING, TYPING, OR PRINTING WAS
UNSATISFACTORY ON THIS DOCUMENT WHEN RECEIVED

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT
TRUST FUND OF THE STATE OF FLORIDA**

**PARTIAL MODIFICATION OF DEED RESTRICTION AND REVERTER
DEED NO. 19259-C**

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA ("Board of Trustees") is by Section 253.03, Florida Statutes, authorized and empowered to modify restrictive covenants and reverters previously placed on state-owned lands by the Board of Trustees at the time the Board of Trustees conveyed said lands to another party under the terms and conditions set forth herein; and,

WHEREAS, on January 14, 1947, the Board of Trustees approved the sale to the City of Key West, Florida ("City"), of approximately 91.3 acres of sovereignty submerged lands located in Garrison Bight, Monroe County, Florida (the "Property") and required that the deed to the City contain a "reversion clause in event the land should ever be used for other than public purposes;" and

WHEREAS, on April 11, 1947, by Deed No. 19259, recorded in Deed Book G-30, Page 330, Public Records of Monroe County, Florida, the Board of Trustees conveyed the Property, which is

more particularly described in Deed No. 19259 and in Exhibit "A" attached hereto and by this reference made a part hereof, to the City; and

WHEREAS, said Deed No. 19259 inadvertently omitted the public purpose deed restriction and reverter authorized by the Board of Trustees at its January 14, 1947 meeting; and

WHEREAS, on July 1, 1965, the Board of Trustees issued Deed No. 19259-A Corrective to the City, recorded in Official Records Book 354, Page 106, Public Records of Monroe County, Florida, which corrects and supersedes the former Deed No. 19259, dated April 11, 1947, to include the public purpose deed restriction ("Restriction") and reverter ("Reverter") authorized by the Board of Trustees at its January 14, 1947 meeting; and

WHEREAS, on September 29, 1965, the Board of Trustees issued Deed No. 19259-B to the City, recorded in Official Records Book 357, Page 489, Public Records of Monroe County, Florida, for the purpose of releasing 0.446 acres of the Property from the Restriction and Reverter; and

WHEREAS there appears to be existing private docking facilities on the portion of the Property that abuts uplands along Eisenhower Drive between the Palm Avenue Causeway and Roosevelt Boulevard and these private docking facilities may violate the Restriction and Reverter; and

WHEREAS, the Board of Trustees and the City wish to modify the Restriction and Reverter only for that portion of the Property on which the existing private docking facilities are located; and

WHEREAS, the City did approve this Partial Modification of Deed Restriction and Reverter on the 17th day of October, 2006; and

WHEREAS, the Board of Trustees did approve this Partial Modification of Deed Restriction and Reverter on the 3rd day of October, 2006.

NOW THEREFORE, for and in consideration of the foregoing recitals and of the mutual covenants, terms and conditions herein contained, and other good and valuable consideration, the Board of Trustees and the City hereby agree as follows:

1. For that portion of the Property lying directly below the existing private docking facilities abutting uplands along Eisenhower Drive between Palm Avenue Causeway and Roosevelt Boulevard the Restriction and Reverter contained in Deed Number 19259-A Corrective are hereby modified as follows:

(a) In addition to public purposes, that portion of the Property described in this paragraph 1. may also be used for those private docking facilities that are in existence on the date the Board of Trustees approved this Partial Modification of Deed Restriction and Reverter. Said existing private docking facilities are shown on Exhibit "B" attached hereto and by this reference made a part hereof.

(b) Said existing private docking facilities may only be used in conjunction with the uses occurring on the uplands on the date the Board of Trustees approved this Partial Modification of Deed Restriction and Reverter.

(c) Any new construction or modification to said existing private docking facilities shall be subject to the provisions of Rules 18-21.004 and 18-21.0041, Florida Administrative Code, in effect at the time of the new construction or modification.

(d) All revenues received by the City from the private use of the submerged lands described in this paragraph 1. shall be used solely to fund the operation of water-related activities for the general public. 

(e) Any violation of the restrictive covenants described in this paragraph 1. shall cause the lands described in this paragraph 1. to revert to the Board of Trustees or its successors.

2. Except as expressly modified hereby, the original terms and conditions of the Restriction and Reverter contained in Deed No. 19259-A Corrective shall remain unchanged in each and every respect for the Property, less and except that portion thereof (a) described in paragraph 1. above, and (b) described in Deed No. 19259-B, and the same are hereby ratified, approved and confirmed by the Board of Trustees and the City as of the date of this Partial Modification of Deed Restriction and Reverter.

3. The terms of this Partial Modification of Deed Restriction and Reverter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Partial Modification of Deed Restriction and Reverter to be executed the day and year last written below.

BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE
STATE OF FLORIDA

Victoria F. Thompson
Witness

Victoria F. Thompson
Print/Type Witness Name

Scott E. Woolam
Witness

Scott E. Woolam
Print/Type Witness Name

By: [Signature] (SEAL)
DEBORAH POPPELL, ASSISTANT
DIRECTOR, DIVISION OF STATE
LANDS, STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Date: 10/31/06

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 31 day of October, 2006, by Deborah Poppell, as Assistant Director, Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, who is personally known to me.

(SEAL)

Victoria F. Thompson
Notary Public, State of Florida

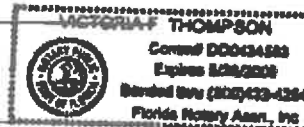
Approved as to Form and Legality

By: [Signature]
DEP Attorney

Print/Type Notary Name

Commission Number: _____

My Commission Expires: _____



Susan P. Harrison
Witness
SUSAN P. HARRISON
Print/Type Witness Name

Pamela S. DeMala
Witness
PAMELA S. DEMALA
Print/Type Witness Name

City of Key West, Florida

By: [Signature]
JOLO ARAEL
Print/Type Name

Title: CITY MANAGER
(Official Seal)

Date: 10/17/06

STATE OF FLORIDA
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 17 day of October
2006 by JOLO ARAEL, as CITY MANAGER, on behalf of the City of
Key West, Florida.

(SEAL)

[Signature]
Notary Public, State of Florida
Cheryl Smith
Printed/Typed/Stamped Name



Cheryl Smith
Commission # DD537351
Expires June 8, 2010
Bonded Title Plan - Insurance, Inc. 800-365-7010

Commission Number: _____

Commission Expires: _____

EXHIBIT "A"

Beginning at a point on the center line of First Street, if extended in a Northwesterly direction and at its intersection with the outboard edge of the sea wall which forms the northwesterly boundary of the side walk on the northwesterly side of Roosevelt Boulevard; thence proceeding in an east, northeasterly direction at an approximate bearing of North 73° East along the outer edge of said sea wall, a distance of 1500 feet, more or less, to a point on the radius of and opposite the point of curvature of a curve to the left in said Roosevelt Boulevard whose deflection angle is 26° more or less, and thence proceeding around the edge of said sea wall and parallel to said curve for a distance of 263 feet, more or less, to a point on the sea wall on the radius of and opposite the Point of Tangency of said curve; thence proceeding a distance of 560 feet more or less in a northeasterly direction at a bearing of North 45° East more or less to a point where said sea wall intersects the southerly boundary of the fill which formerly supported the tracks and formed the property of the F. N. C. Railroad; thence turning to the left approximately 135° and proceeding in a westerly direction along the South boundary of said property for a distance of 1350 feet, more or less, to a point opposite the east abutment of what formerly was a bridge over a gap in the fill at this point; thence continuing in a westerly direction across said gap for a distance of 80 feet, more or less, to a point opposite an abutment on the West side of said gap, the west abutment of a bridge over the gap; thence continuing in a westerly direction along the South boundary of said fill for a distance of 2400 feet, more or less, to a point at which the shore line turns to the left approximately 95° more or less, and thence proceeding in a southerly direction at a bearing of 5° West, more or less, along the high water mark of the shore line of Garrison Bight, a distance of 725 feet, more or less, to a point where it intersects the center line of Palm Avenue, if extended in an easterly direction; thence proceeding in a south, southwesterly direction along the high water line a distance of 130 feet, more or less, to a point where it intersects the center line of Angala Street if extended in a northeasterly direction, at which point the shore line turns approximately 85° more or less to the left; thence proceeding 1150 feet more or less in a southwesterly direction along the high water mark and around several properties on what is known as North Beach which have developed or are developing their riparian rights to a point where the shore line intersects the north edge of the sea wall which forms the northwesterly boundary of the side walk on the northwesterly side of Roosevelt Boulevard; thence proceeding at approximately right angles to the left in a northeasterly direction and along the outboard edge of said sea wall a distance of 100 feet, more or less, at a bearing of North 51° 30' West, more or less, to a point opposite the P. C. of a curve to the right in the boulevard whose deflection angle is 21° more or less; thence proceeding along the outer edge of said sea wall and parallel to said curve for a distance of 310 feet, more or less, to a point opposite the P. T. of said curve; thence continue along the outer edge of said sea wall in an east, northeasterly direction, a distance of 965 feet, more or less, to the Point of Beginning; lying and being in Section 33, Township 67 South, Range 15 East, Monroe County, State of Florida, and containing 31.3 acres, more or less.

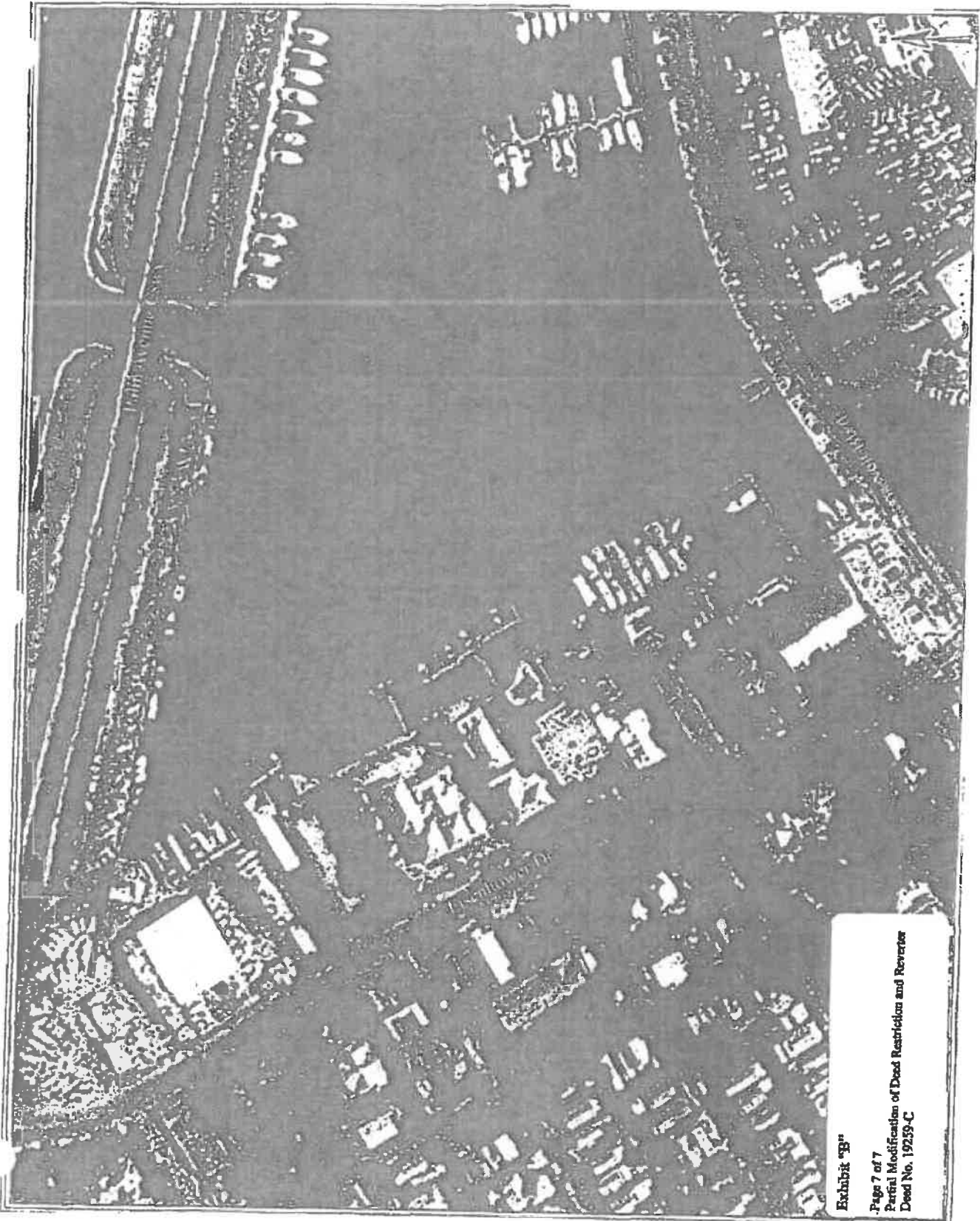


Exhibit "B"

Page 7 of 7
Partial Modification of Deed Restriction and Reverter
Deed No. 19259-C



Jeb Bush
Governor

Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Colleen M. Castille
Secretary

STATE OF FLORIDA

COUNTY OF LEON

CERTIFICATE

I, Cynthia Muir, do hereby certify that the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, met on October 3, 2006, and approved the following Item 1 on the agenda for that date.

Item 1 City of Key West Deed Restriction Modification

REQUEST: Consideration of a request for a partial modification of a deed restriction on approximately 3 acres of submerged lands contained in Board of Trustees Deed Number 19259-A to the City of Key West.

COUNTY: Monroe

APPLICANT: City of Key West (City)

LOCATION: Section 33, Township 67 South, Range 25 East

STAFF REMARKS:

Site History

On April 11, 1947, the Board of Trustees conveyed approximately 92 acres of sovereignty submerged land, known as Garrison Bight (Bight), to the City. The Board of Trustees approved the sale, subject to a reversionary clause whereby the land would revert should it ever be used for other than public purposes; however, the public purpose clause was not included when Deed Number 19259 (original deed) was issued to the City.

A series of correspondence from July 1959 shows that the City became aware of the omission and notified the Director of the Trustees of the Internal Improvement Trust Fund that the City had previously leased portions of the Bight, and intended to lease another portion of the Bight to a private entity for a public marina. Attorney General R.W. Ervin opined that the City was bound to use the property for public purposes and suggested that the City Commission should retain the authority to revoke or terminate the lease in the event that any development should occur that was not in the public's interest.

"More Protection, Less Process"

Printed on recycled paper.

Certificate for Item 1
October 3, 2006 Trustees' Agenda
Page Two

At the October 8, 1963 Board of Trustees' meeting discussion of the proposed lease, the City inquired as to whether the public purpose restrictions on the Bight would hinder the State Road Department's construction of a causeway and bridge. Attorney General Ervin suggested amending the original deed to (1) include the public purpose clause, (2) add specific reference to the road construction and marina, and (3) require that the Board of Trustees review and approve the lease terms and design for the marina. DEP staff recommended that the Attorney General, rather than the Board of Trustees, approve the lease provisions which would ensure the public purpose requirement was met. This recommendation was approved by the Board of Trustees, and Attorney General Ervin subsequently granted approval of the lease on October 22, 1963.

On July 1, 1965, the Board of Trustees issued Corrective Deed Number 19259-A (corrective deed), which superseded the original deed and added the reversionary language on the 92 acres originally conveyed. Soon after, the City requested a release of the public purpose clause from a 0.446-acre portion of the 92 acres that was partially filled during construction of the causeway, but outside of the right-of-way. The request was approved by the Board of Trustees on August 10, 1965, and Deed Number 19259-B was issued upon the City's consideration payment of \$500.

On July 18, 1967, the City requested a release of the public purpose clause on an additional 2.41 acres that are adjacent to the 0.446-acre parcel, for the purpose of leasing the parcel to a tenant to fill and construct a dry storage for pleasure boats. The City submitted \$2,892 for consideration of the release. At the October 12, 1967 Board of Trustees meeting, the Board of Trustees denied the City's request and the consideration was returned.

Current Status

Since the late 1960s, several private docks have been constructed along the western shoreline of the Bight between the Palm Avenue Causeway and Roosevelt Boulevard without consideration of the public purpose clause in the corrective deed. Of the five existing docks within the three-acre parcel, two are private multi-slip docks that exceed the 40:1 ratio, one of which was erroneously issued a Department of Environmental Protection permit in 2005 for the installation of two new finger piers for two slips. Mr. Ed Swift, the owner of the parcel located at 719 Eisenhower Drive, applied to expand his existing dock, which was constructed sometime between 1991 and 1994 prior to his ownership, but the permitting process was halted when the deed restriction was discovered.

While the City is committed to maintaining public access to the water within the Bight, it is also interested in allowing existing structures to remain to provide additional docking facilities in the area. The continuing demand for docking facilities in and around the City remains a significant issue, which was clearly demonstrated when the City and DEP relocated the liveaboards in Houseboat Row to the Bight.

Certificate for Item 1
October 3, 2006 Trustees' Agenda
Page Three

Until such time as the issue is addressed, no permits can be issued to reconfigure docks or repair dock facilities that may be damaged as a result of storms. Staff is recommending that the Board of Trustees grant the partial modification of the deed restriction on approximately 3 acres along the shoreline between the Palm Avenue Causeway and Roosevelt Boulevard. All existing structures within the 3-acre area will be allowed to remain, with any future expansion of a structure being subject to chapter 18-21, Florida Administrative Code. In addition, the City shall utilize all revenue generated through the leasing of the submerged land to fund the operation of water-related activities for the general public. This would allow the historic use to continue at those facilities that were constructed many years ago thereby maintaining the docking space currently available in the area, allowing modifications to the configuration of existing docks within the subject area and performance of necessary repairs in the case of storm damage, and finally, generating revenue that will fund activities for the general public.

A consideration of the status of the local government comprehensive plan was not made for this item. The Department of Environmental Protection has determined that the proposed action is not subject to the local government planning process.

RECOMMEND APPROVAL

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Board of Trustees of the Internal Improvement Trust Fund on this 3rd day of October A.D., 2006.




Cynthia Muir, Director
Office of Cabinet Affairs



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard, MS 110
Tallahassee, Florida 32399-3000

Rick Scott
Governor

Herschel T. Vinyard, Jr.
Secretary

August 19, 2013

Marilyn Wilbarger
City of Key West
P.O. Box 1409
Key West, FL 33041-1409

RE: Deed Restrictions and Reverter for Deed#19259-A,B and C -City of Key West

Dear Ms. Wilbarger,

An internal audit was conducted by the DEP/BPLA/Audit Section of the City of Key West Corrective Deed No. 19259-A, B and C for restriction compliance. The City of Key West is found to be out of compliance with existing deed restrictions in Corrective Deed No. 19259-A and B. The City has leased water-related facilities to third party private entities such as, but not limited to, A-1 Boatyard, Garrison Bight Marina and Key West Community Sailing Center. These rentals are not consistent with the restriction within the deed language to "never sell or convey or lease" the lands or parts thereof to any "private person or firm, or corporation for any private use or purpose". The facilities are renting the upland and submerged area within the deed and appear to be receiving profits from these private business ventures. The lease fees received by the City are being placed into the City's general fund.

With regard to Corrective Deed No. 19259-C, it appears that the City of Key West is not collecting revenue from the private structures under private lease agreements. We just wanted for you to be aware, as the agenda item indicates, that if the City ever does collect revenue that those fees collected must be placed back into water-related activities for the general public.

A copy of the audit, deeds and past agenda item have been enclosed. We look forward to working with your office in this matter and look forward to hearing from you for an amicable solution.

Page 2

Deed Restrictions and Reverter for Deed#19259-A,B and C -City of Key West

Please do not hesitate to call Jay Scott or myself if you have any questions at (850) 245-2555, or send an email to jay.f.scott@dep.state.fl.us

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Woolam". The signature is fluid and cursive, with the first name "Scott" and last name "Woolam" clearly distinguishable.

Scott Woolam
Project Manager
Division of State Lands

Cc: Cheryl McCall, Bureau of Public Lands Administration
Stephanie Leeds, Division of State Lands



THE CITY OF KEY WEST
Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

November 14, 2013

Scott Woolam
Florida Department of Environmental Protection
3900 Commonwealth Boulevard, MS110
Tallahassee, FL 32399-3000

RE: Deed 19529 A, B, C Deed Restriction Corrective Procedural Changes

Dear Mr. Woolam:

The City of Key West appreciates the opportunity to work with your department to make corrections to the procedures concerning the use of the submerged lands within the deed 19529 A, B, C.

The city will take the following immediate actions:

1. Surveys will be obtained for all submerged land areas that are currently being utilized by private owners along Eisenhower Drive and will include Garrison Bight Marina, A-1 Boatyard and the Key West Community Sailing Center to establish the square footage of each area. Once received, copies of the surveys will be forwarded to your department.
2. The surveys will then be utilized to enter into new submerged land lease agreements and to amend existing lease agreements to add submerged land use and fees.
3. The lease rates charged will be consistent with the fees charged under F.A.C. 18-21.011 (b) to include the base fees, discounts, surcharges and other payments as may be required. Copies of the fully executed lease agreements will be forwarded to your office.
4. All revenues collected from the use of the submerged land in this deed will be placed back into water-related activities for the general public. The City will provide an annual report of the use of the revenues derived from the submerged land uses herein described as may be required or requested.

It is our hope that these corrections will bring the City into compliance with the deed as we work together to insure maximum benefit and use of the submerged land for all of the citizens of Florida and would appreciate your confirmation of the same.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marilyn D. Wilbarger".

Marilyn D. Wilbarger, RPA, CCIM
Senior Property Manager
City of Key West



**FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

MARJORY STONEMAN DOUGLAS BUILDING
3900 COMMONWEALTH BOULEVARD
TALLAHASSEE, FLORIDA 32399-3000

RICK SCOTT
GOVERNOR

CARLOS COPEZ-CANTERA
DEPUTY GOVERNOR

HERSCHEL VINARD JR.
SECRETARY

April 14, 2014

RECEIVED

APR 16 2014

CITY MANAGER

Ms. Marilyn Wilbarger
City of Key West
PO. Box 1409
Key West, Florida 33041-1409

RE: Deed No. 19529 A, B, C Deed Restriction Corrective Procedural Changes

Dear Ms. Wilbarger:

Thank you for your letter dated November 14, 2013, addressing the activities within Board of Trustees' Deed No. 19529 at Garrison Bight in Key West. We appreciate your timely response addressing the non-compliance of deed restrictions noted in the Department's 2013 audit of the deed.

The Board of Trustees' approved a waiver of deed restrictions over a portion of Deed No. 19529 at its October 3, 2006 meeting. The procedural changes outlined in your letter are consistent with the actions required by the Board of Trustees in 2006 and, although the waiver did not reference the private leases that were cited in the current audit, the Board of Trustees did approve more exclusive activities than what is currently taking place. With this in mind we are requesting the City make the procedural changes stipulated in your response letter and submit documentation within 60 days to confirm the actions.

Thank you for your cooperation and assistance on this matter and contact me if you have further questions or concerns.

Sincerely,

Scott E. Woolam
Program Manager
Division of State Lands

SEW/vt

RESOLUTION NO. 21-251

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 BOAT YARD (ASSIGNOR) TO SBY KEY WEST, LLC (ASSIGNEE/GUARANTOR) FOR SUBMERGED LANDS AT 701 PALM AVENUE, AS DESCRIBED IN THE LEASE APPROVED IN RESOLUTION 19-311; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission approved the original Lease Agreement with A-1 Boat Services, LLC in Resolution 19-311; and

WHEREAS, the current owner has requested an assignment of the submerged lands lease at 701 Palm Avenue, as permitted in Section 10 of the lease, to accompany an agreement to sell their business and assign their lease of 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 701 Palm Avenue from A-1 Boat Services, LLC to SBY Key West, LLC is hereby approved.

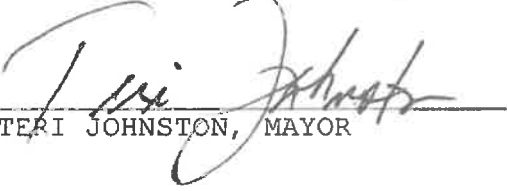
Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 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: Submerged Lands Lease Assignment 701 Palm Ave

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

HISTORY: The City of Key West entered into submerged lands leases in September of 2014 in accordance with the procedural changes authorized by the State of Florida for the City owned submerged land. The current tenant, A-1 Boat Services, LLC, also known as Spencer's Boatyard, (Assignor) has entered into an agreement to sell the business located on the upland property and has requested the assignment of the submerged lands lease with that sale to SBY Key West, LLC (Assignee) at 701 Palm Avenue.

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.

As of September 1, 2021, the proposed rental rate is as follows:

Assignor: A-1 Boat Service, Inc.

Assignee: SBY Key West, LLC

Demised

Premises: 701 Palm Avenue submerged lands
Containing approximately 25,021 square feet

Term: Five (5) years from September 1, 2019, the effective date of the lease.

Use: The current Lessee is 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, without fueling facilities.

Lease Fees: The Assignee as new Lessee hereby agrees to pay to the Lessor an annual lease fee rate of \$0.55 per square foot plus sales tax, if applicable, on a monthly basis, as follows:

Monthly Fee	\$1,146.80
Sales Tax	\$80.28
Total	\$1,227.08

Increases: The annual fee for the remaining years of this lease shall be increased annually by \$0.10 per square foot.

FINANCIAL: All revenues collected from the use of the submerged lands in this Lease will be placed back into water-related activities for the general public. 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 transfer fee will be charged to offset the Landlord's costs associated with the preparation of the assignment necessary to effectuate same.

CONCLUSION: There is no change of use and the rate reflects gradual increases to begin to achieve the market value of the use of the submerged land at this location. The requested lease assignment meets the requirements of the submerged lands lease terms and conditions.

ATTACHMENTS:

Rent Payment History

2019 Lease Renewal

2014 Lease

Tenant request for Assignment

Assignment of Lease and Consent of Lessor

Assignee Corporate Documents

Assignees Personal Guaranty

ASSIGNMENT LEASE AGREEMENT AND CONSENT OF LESSOR

THIS ASSIGNMENT is made this 17th day of November, 2021, 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"), effective September 1, 2019, per Resolution 19-311, a copy of which is attached hereto as Exhibit "A" and incorporated by reference, that pertains to submerged land located at 701 Palm Avenue, 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 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 "A".

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. 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.

4. 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.

5. 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.

6. This assignment is contingent upon the completion of the sale between the assignor and assignee of the business conducted on the upland property at 701 Palm Avenue. References

herein to the "effective date" shall mean the date of the closing of the aforementioned sale transaction. References to the upland property in this Assignment and/or the Lease refer to 701 Palm Avenue.

7. 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.

8. No later than the effective date of this Assignment, Assignee herein expressly agrees to execute a personal guaranty for the faithful performance by Assignee of the terms, conditions and covenants of the Lease.

9. 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



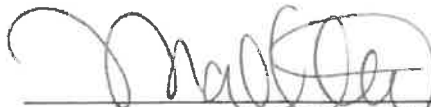
Witness to Assignor

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:



[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

ASSIGNEES:
SBY Key West, LLC

Matthew

Witness to Assignee

By: Richard McChesney

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 or has
produced _____ (type of
identification) as identification.



Matthew

NOTARY PUBLIC

My Commission Expires _____

Matthew

Witness to Assignee

By: Felix Wiggins

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 or has
produced _____ (type of
identification) as identification.



Matthew

NOTARY PUBLIC

My Commission Expires _____

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 October 3, 2019, per Resolution 19-311, 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 upland Premises known as 701 Palm Avenue 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

ce
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). He/She is personally known to me or has produced N/A (type of identification) as identification.

[Signature]
NOTARY PUBLIC

My Commission Expires:

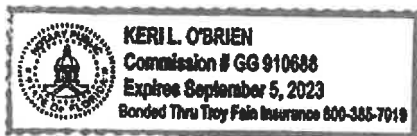


EXHIBIT "A"
SUBMERGED LAND LEASE AGREEMENT

GUARANTY

This Guaranty is made this 17th day of November, 2021, in accordance with the Assignment of Lease Agreement (hereinafter Agreement) dated November 5th, 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, specifically the submerged land located at 701 Palm Avenue, Key West, in Monroe County, Florida (hereinafter Premises).

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 City's sovereign immunity pursuant to F.S.

(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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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



Witness

Guarantor:

By: 

Name: Richard McChesney

State of Florida }
County of Monroe }

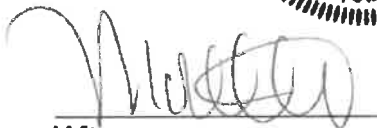
Subscribed and sworn to (or affirmed) before me, by means of ☒ physical presence or ☐ online notarization, on November 5, 2021 (date) by Richard McChesney (name of affiant). He/She is personally known to me or has produced None (type of identification) identification.

My Commission Expires





NOTARY PUBLIC



Witness

Guarantor:

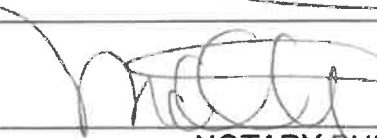
By: 

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 None (type of identification) identification.





NOTARY PUBLIC

My Commission Expires: 8/18/2025



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Florida Limited Liability Company

SBY KEY WEST, LLC

Filing Information

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Principal Address

500 FLEMING ST
KEY WEST, FL 33040

Mailing Address

500 FLEMING ST
KEY WEST, FL 33040

Registered Agent Name & Address

MCCHESNEY, RICHARD J.
500 FLEMING ST
KEY WEST, FL 33040

Name Changed: 04/06/2023

Authorized Person(s) Detail

Name & Address

Title MGR

MCCHESNEY, RICHARD J
500 FLEMING ST
KEY WEST, FL 33040

Title MGR

WIGGINS, FELIX
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KEY WEST, FL 33040

Annual Reports

Report Year	Filed Date
2022	02/16/2022
2023	04/06/2023
2024	03/28/2024

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