

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.

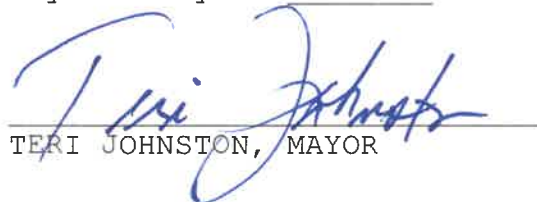
Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

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
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Sales Tax	\$80.28
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Total	\$1,227.08
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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

[Signature]
Witness to Assignee

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

State of Florida }
County of Monroe }

Subscribed and sworn to (or affirmed) before me, by means of ☒ physical presence or
☐ online notarization, on November 5, 2021 (date) by
[Signature] (name of affiant). He/She is personally known to me or has
produced _____ (type of
identification) as identification.



[Signature]
NOTARY PUBLIC

My Commission Expires _____

[Signature]
Witness to Assignee

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

State of Florida }
County of Monroe }

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



[Signature]
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). N/A He/She is personally known to me or has produced (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.

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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 as identification (type of identification).



NOTARY PUBLIC

My Commission Expires:



Witness

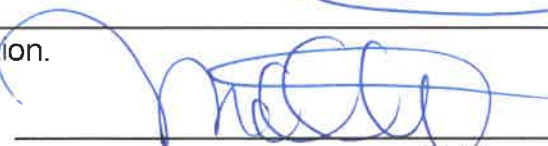
Guarantor:

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 as identification (type of identification).



NOTARY PUBLIC

My Commission Expires: 8/18/2025