

SECOND AMENDMENT TO LEASE AGREEMENT

This Second Amendment to Lease Agreement (this “Second Amendment”) is made and entered into this ____ day of _____, 2026, by and between the **CITY OF KEY WEST, FLORIDA**, a municipal corporation of the State of Florida (hereinafter “Lessor” or “City”), and **SBY KEY WEST, LLC**, a Florida limited liability company, whose riparian upland interest is located at 701 Palm Avenue, Key West, FL 33040 (hereinafter “Lessee”) (Lessor and Lessee, collectively, the “Parties”).

WITNESSETH

WHEREAS, the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (“Board of Trustees”) conveyed approximately 91.3 acres of sovereignty submerged lands in Garrison Bight, Monroe County, Florida, to the City by Deed No. 19259, dated April 11, 1947, which was corrected by Deed No. 19259-A Corrective, recorded in Official Records Book 354, Page 106, Public Records of Monroe County, Florida (“Deed No. 19259-A”), and thereafter modified by Deed No. 19259-B, recorded in Official Records Book 357, Page 489, and Deed No. 19259-C, recorded as Document No. 1612510, Official Records Book 2251, Page 1343, Public Records of Monroe County, Florida (collectively, the “Deed”); and

WHEREAS, the Deed contains certain restrictions limiting the use of the submerged lands conveyed thereby to public purposes, together with a reverter in favor of the Board of Trustees in the event of a violation of said restrictions (the “Deed Restrictions”); and

WHEREAS, the City, as Lessor, and Lessee are parties to that certain Submerged Lands Lease for a parcel of submerged land located in Section 33, Township 67 South, Range 25 East, Monroe County, Florida, containing approximately 25,021 square feet, more or less, adjacent to the upland property located at 701 Palm Avenue, Key West, Florida, approved by Resolution No. 24-171 and executed by the Parties on or about August 8, 2024 (the “Original Lease”); and

WHEREAS, the Original Lease was previously amended by that certain First Amendment to Submerged Lands Lease dated August 14, 2025, which extended the term of the lease for five (5) years to August 21, 2030, (the “First Amendment,” and together with the Original Lease, the “Lease”); and

WHEREAS, Lessee has requested, and City staff has recommended, (i) a mechanism by which the leased submerged lands may potentially be expanded in the future, subject to all necessary approvals and a determination that such expansion would not violate the Deed Restrictions; (ii) authorization for one (1) liveaboard vessel to be used exclusively as affordable housing for an employee of Lessee; and (iii) a change to the authorized use of the leased premises to permit fueling facilities, where the Lease previously prohibited fueling facilities; and

WHEREAS, the LANDLORD and TENANT now desire to amend their Submerged Land Lease Agreement, which is attached hereto,

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.

2. **AMENDMENT TO SECTION 1 (USE OF PROPERTY)**: Section 1 of the Lease, entitled “USE OF PROPERTY,” is hereby deleted in its entirety and replaced with the following:

“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, with 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 with one (1) liveaboard vessel as authorized in, and subject to the conditions of, Section 26 hereof, to be used exclusively as affordable housing for a bona fide employee of the Lessee, and otherwise without liveaboards as defined in paragraph 26 hereof.”

3. **AMENDMENT TO SECTION 26 (LIVEABOARDS)**: Section 26 of the Lease, entitled “LIVEABOARDS,” is hereby deleted in its entirety and replaced with the following:

“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. Notwithstanding the foregoing, or any other provision of this Lease, one (1) liveaboard vessel is hereby authorized under this Lease, subject to the following conditions:

(a) the vessel shall be occupied solely by a bona fide, current employee of the Lessee, as a form of affordable housing provided in connection with such employment, and for no other purpose;

(b) the vessel and its use as employee housing shall at all times comply with the City of Key West Code of Ordinances applicable to affordable and/or employee housing, including without limitation any eligibility, income, deed restriction, monitoring, and reporting requirements administered by the City;

(c) the Lessee and the occupant shall at all times comply with all applicable provisions of the City of Key West Code of Ordinances, all requirements applicable to the City of Key West’s Area of Critical State Concern under Chapter 380, Florida Statutes, and Administrative Code 28-36, and the City’s implementing land development regulations, and any other applicable federal, state, or local law;

(d) the Lessee shall obtain and maintain any permits, approvals, agreements, deed restrictions, or other requisites necessary to establish and maintain the vessel as the occupant’s residence for purposes of the City’s affordable/employee housing requirements, and shall provide copies of the same to the Lessor upon request, together with documentation reasonably satisfactory to the Lessor confirming the identity and current employment status of the occupant;

(e) provided the conditions of this paragraph are satisfied, the liveaboard vessel authorized hereunder shall not be required to leave or vacate the marina, and the occupant may reside aboard the vessel three hundred sixty-five (365) days per year;

(f) occupancy of the vessel as a liveaboard shall cease no later than thirty (30) days after the occupant's employment with the Lessee ends for any reason, unless the vessel is promptly re-occupied by another bona fide employee of the Lessee meeting the conditions of this paragraph; and

(g) except for the one (1) liveaboard vessel expressly authorized in this paragraph, no other liveaboard status shall be permitted at the leased premises, and in no event shall the number of liveaboard vessels authorized hereunder exceed one (1).

4. **POTENTIAL EXPANSION OF LEASED PREMISES:** A new Section 31 is hereby added to the Lease, to read as follows:

“31. **POTENTIAL EXPANSION OF LEASED PREMISES:** The Parties acknowledge that Lessee may, during the term of this Lease, request an expansion of the submerged lands leased hereunder, not to exceed **12,000 square feet** (the “Expansion Area”). Any such expansion is subject to, and shall not be effective unless and until, all of the following have occurred:

(a) Lessee submits a written request to the Lessor describing the proposed additional submerged lands within the Expansion Area and the proposed use thereof, together with a survey of the proposed boundary of the Expansion Area, prepared by a Florida licensed surveyor and mapper, in form and substance acceptable to the Lessor;

(b) the Lessor, in consultation with the Office of the City Attorney and, as necessary, the Florida Department of Environmental Protection and/or the Board of Trustees, determines that the proposed expansion would not violate, and would not cause a reversion of any lands under, the Deed Restrictions applicable to the submerged lands conveyed to the City by the Deed;

(c) Lessee obtains all other approvals and permits required by applicable law, which may include, without limitation, permits or authorizations from the Florida Department of Environmental Protection, the U.S. Army Corps of Engineers, and the City of Key West; and

(d) the Lessor has received and reviewed the survey of the proposed boundary of the Expansion Area described in subsection (a) above, following which Lessee may elect to proceed with the expansion by written amendment to this Lease describing the additional submerged lands, the authorized use thereof, and any additional lease fees or other terms applicable thereto.

Nothing in this Section shall be construed as a present grant of any expanded premises, a determination that any future expansion complies with the Deed Restrictions, an obligation of the Lessor to approve any proposed expansion, or a waiver of the Lessor's sole discretion regarding any modification of this Lease pursuant to Section 23 hereof.”

5. **USE IN VIOLATION OF DEED RESTRICTIONS:** A new Section 32 is hereby added to the Lease, to read as follows:

“32. **USE IN VIOLATION OF DEED RESTRICTIONS:** Notwithstanding any provision of this Lease, if it is determined at any time, by the Lessor, the Florida Department of

Environmental Protection, the Board of Trustees, or a court or agency of competent jurisdiction, that any use of the submerged lands by Lessee, whether within the originally leased premises or any Expansion Area, violates the Deed Restrictions, then any provision of this Lease allowing or granting that specific use shall automatically become void and of no further force or effect, and Lessee shall immediately cease that use and all operations related thereto upon written notice from the Lessor. Such cessation shall not relieve Lessee of any other obligations under this Lease, including without limitation the obligation to pay lease fees, and shall not be deemed a termination of this Lease as to any use or portion of the premises not affected by such violation, unless otherwise elected by the Lessor.”

6. Except as expressly amended by this Second Amendment, all other terms, conditions, and provisions of the Lease shall remain unchanged and in full force and effect, and are hereby ratified and confirmed by the Parties. In the event of any conflict between the terms of this Second Amendment and the Lease, the terms of this Second Amendment shall control.

IN WITNESS WHEREOF, the Parties hereto have caused this Second Amendment to be executed as of the day and year first above written.

ATTEST:

City of Key West
A Municipal Corporation

Keri O’Brien, City Clerk

By: _____
Danise Henriquez, Mayor

SBY Key West, LLC

Witness

By: _____
Felix Wiggins, Manager