

RESOLUTION NO. 22-037

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED ASSIGNMENT OF LEASE AND CONSENT OF LESSOR FROM GARRISON BIGHT MARINA, INC. (ASSIGNOR) TO GARRISON BIGHT SMI, LLC, A SUBSIDIARY OF SUNTEX MARINA INVESTORS (ASSIGNEE/GUARANTOR) FOR A PARCEL ALONG BULKHEAD AND SIDEWALK (PARCEL "I") ALONG ANGELFISH PIER LOCATED AT 711-717 EISENHOWER DRIVE, AS DESCRIBED IN THE LEASE APPROVED IN RESOLUTION 20-061; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission approved the original Lease Agreement with Garrison Bight Marina, Inc. for Upland Property located at 711-717 Eisenhower Drive in Resolution 20-061; and

WHEREAS, the current owner has requested an assignment of the Lease, as permitted in Section 10 of the lease to accompany an agreement to sell their business.

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" from Garrison Bight Marina, Inc. to Garrison Bight SMI, LLC, a subsidiary of Suntex Marina Investors for upland property along bulkhead and sidewalk along Angelfish

Pier (Parcel "I"), located at 711-717 Eisenhower Drive 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 1st day of February, 2021.

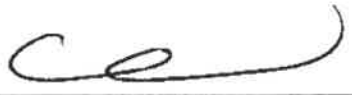
Authenticated by the Presiding Officer and Clerk of the Commission on 2nd day of February, 2021.

Filed with the Clerk on February 2, 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
Ron Ramsingh

FR: Michael Henriquez Jr, Senior Property Manager

DT: December 7, 2021

RE: Angelfish Pier Upland Lease Assignment

ACTION STATEMENT

This is a request to approve a lease assignment from Garrison Bight Marina, Inc, (Assignor) to Garrison Bight SMI, LLC (Assignee) for the upland property located 711-717 Eisenhower Drive.

BACKGROUND

The City entered into a lease renewal agreement pursuant to Resolution 20-061 for the Angelfish Pier Upland Leased area on Palm Avenue. The City proposed a one, three year lease renewal after which time the City intends to redevelop this area to expand the Public City Marina.

Demised Premises:	As per Exhibit "A", 820 square feet comprised of the bulkhead and a portion of the sidewalk area, approximately 4 feet wide by 205 feet long.
Use:	Providing gated access to the boat slips along the pier with one dock box per slip permitted. Additionally, the Tenant shall maintain the landscaping and remove the trash from this area.
Term:	3 Years, Effective June 1, 2020
Base Rent:	\$11,261.53 annually as of June 1, 2021
Rent Increases:	CPI annually
Additional Rent:	Tenant shall pay real estate taxes, sales, use or excise taxes

Utilities: Tenant shall pay for all utility usage.

The lease may be assigned with the consent of the Landlord pursuant to Section 10, excerpted here for your reference, as follows:

10. ASSIGNMENT AND HYPOTHECATION - This Lease is not transferable or assignable and may not be hypothecated nor sublet without the prior written consent of the LANDLORD which may be withheld and shall be at the sole discretion of the LANDLORD.

Any assignment or sub-letting, even with LANDLORD'S consent shall not relieve TENANT from liability for payment of Rent or from the obligation to keep and be bound by the agreements of this Lease. The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease or to be consent to the assignment for the benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior consent of LANDLORD. In the event TENANT wishes to assign this Lease and LANDLORD consents to such assignment, LANDLORD may charge a reasonable fee, not to exceed \$500.00 to help offset any costs LANDLORD may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same. Any assignment, transfer, hypothecation, mortgage, or subletting without LANDLORD'S written consent shall give LANDLORD the right to terminate this Lease and to re-enter and repossess the Demised Premises and the LANDLORD'S right to damages shall survive.

If the TENANT is a corporation, then a sale or transfer of a controlling interest in the corporation by sale of stock or otherwise shall constitute an assignment for purposes of this provision.

FINANCIAL: The rental rates will continue according to the terms of the lease. The Assignee will post a performance bond equal to six month's rent totaling \$5,630.76. In addition, pursuant to current management standards, a \$500.00 transfer fee will be charged to offset the Landlord's costs associated with the preparation of the assignment necessary to effectuate same.

STRATEGIC PLAN: This lease is consistent with Goal Number 5 'Cleanliness', numbers 6 & 7: Lease Agreements and Clean Marinas.

CONCLUSION: The use remains unchanged and will continue to be used only for Marina purposes.

ATTACHMENTS:

Current Lease

Exhibit A

Tenant request for Assignment

Assignment of Lease and Consent of Lessor

Performance Bond

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ASSIGNMENT LEASE AGREEMENT AND CONSENT OF LESSOR

THIS ASSIGNMENT is made this 2nd day of February, 2022, by and between James Figuerado, Jr, as assignor, and Garrison Bight SMI, LLC, a Delaware Limited Liability Company, 17330 Preston Road, Suite 220A Dallas, TX, 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 April 14, 2020, per Resolution 20-061, a copy of which is attached hereto as Exhibit "A" and incorporated by reference, that pertains to the Angelfish Pier Upland located at 711 – 717 Eisenhower Drive, Key West, in Monroe County, Florida, and more particularly described on Attachment "A" of the Lease;

WHEREAS, Assignor desires to assign all of its right, title and interest in the Lease to Assignee, Assignee desires to accept and assume the same, and Landlord is willing to consent to the proposed Assignment, all on the terms and conditions 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 performance bond 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 performance bond 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 711 – 717 Eisenhower Drive. 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 711 – 717 Eisenhower Drive.


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. 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).


9. Lessor's consent to the lease assignment is further conditioned upon the Assignee securing a lease with the Lessor for the parcel attached as Exhibit B (more commonly referred to as the corner parcel at Palm Avenue and Eisenhower Drive) at a newly established rental rate within 2 months of the date of this assignment.

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

ASSIGNOR:
Garrison Bight Marina, Inc.



Witness to Assignor
Zulma Rodriguez

By: 

Name: James Figuerado, Jr
Title: President

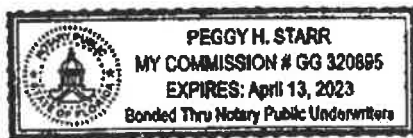
State of Florida }
County of Monroe } Lee

Subscribed and sworn to (or affirmed) before me, by means of ☒ physical presence or
☐ online notarization, on 12-2-2021 (date) by
James Figuerado (name of affiant). He/She is personally known to me or has
produced Florida Drivers License (type of
identification) as identification.



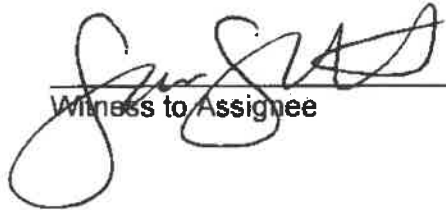
NOTARY PUBLIC

My Commission Expires:



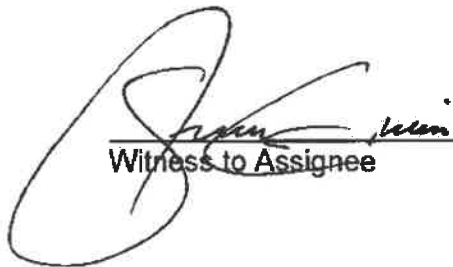
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ASSIGNEES:
Garrison Bight SMI, LLC



Witness to Assignee

By: SMI PROPCO HOLDINGCO, LLC, a
Delaware Limited Liability Company



Witness to Assignee

Its sole member

By: 

Name: David Miller
Title: Manager Member

State of Florida }
County of Monroe }

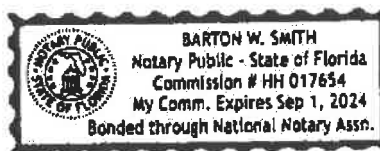
Subscribed and sworn to (or affirmed) before me, by means of ☒ physical presence or
☐ online notarization, on 1-19-2022 (date) by

(name of affiant). He/She is personally known to me or has
produced _____ (type of
identification) as identification.



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 effective April 14, 2020, per Resolution 20-061, 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 Angelfish Pier upland Premises known as 711 – 717 Eisenhower Drive is completed within two weeks 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 Garrison Bight SMI, LLC, alone.

LANDLORD/LESSOR:

City of Key West

By: 

Teri Johnston, Mayor


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 February 2, 2022 (date) by Teri Johnston (name of affiant). n/a He/She is personally known to me or has produced (type of identification) as identification.


NOTARY PUBLIC

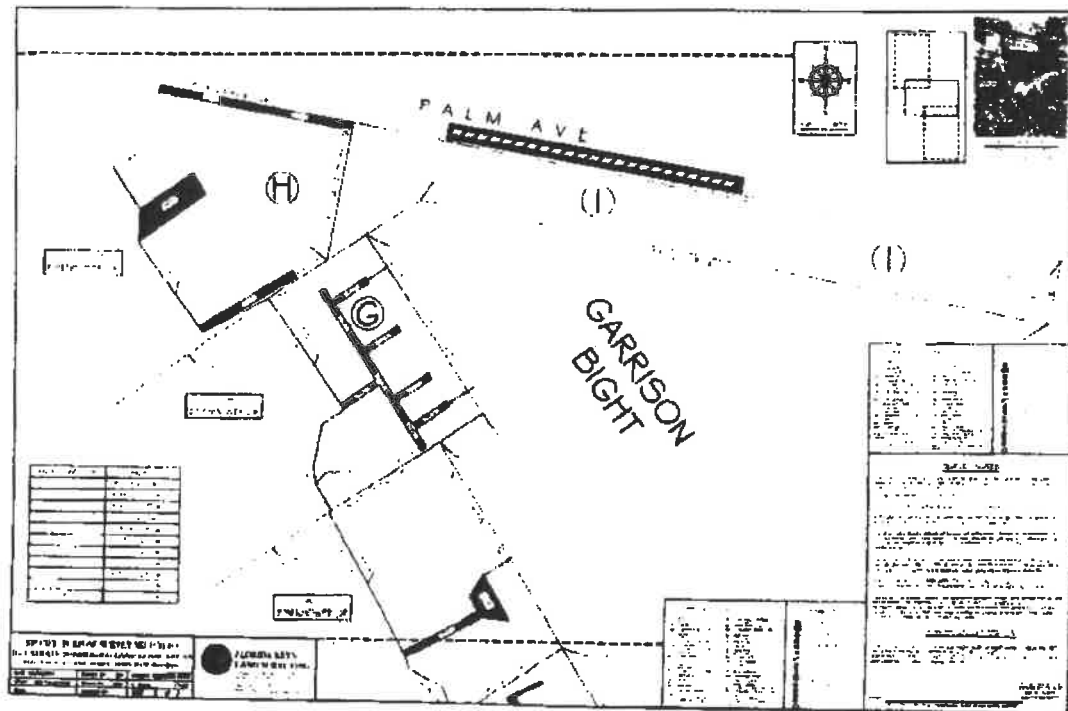
My Commission Expires:



EXHIBIT "A"
LEASE AGREEMENT

Exhibit "A"

Angelfish Pier Upland Demised Area
Approximately 4' X 205' - 820 Square Feet



CITY OF KEY WEST

Exhibit B Rent Schedule

Tenant: Garrison Bight Marina, Inc.
Location: Angelfish Pier

Term: 3 years effective June 1, 2020

YEAR #	Period Beginning	June CPI Increase	Base Rent		Sales Tax (7.0%) Monthly	Total Rent With Tax Monthly	TOTAL ANNUAL RENT
			Annual	Monthly			
1	June 1, 2020		\$10,684.56	\$890.38	\$62.33	\$952.71	\$11,432.52
2	June 1, 2021	5.4%	\$11,261.53	\$938.46	\$65.69	\$1,004.15	\$12,049.80
3	June 1, 2022	TBD					



OROPEZA
STONES
CARDENAS

ATTORNEYS AT LAW

GREGORY S. OROPEZA | ADELE VIRGINIA STONES | SUSAN M. CARDENAS

VIA HAND DELIVERY AND ELECTRONIC MAIL
MICHAEL.HENRIQUEZ@CITYOFKEYWEST-FL.GOV

November 8, 2021

Michael Henriquez, Jr.
Senior Property Manager
The City of Key West
Post Office Cox 1409
Key West, Florida 33041-1409

RE: Request for Assignment of upland and submerged land leases at 711-717 Eisenhower Drive, Key West, Florida 33040:

Dear Mr. Henriquez,

The undersigned represents the interests of Garrison Bight Marina, Inc., a Florida corporation ("Garrison Bight Marina") with respect to a proposed sale of the real property located at 711-717 Eisenhower Drive, Key West, Florida 33040 (collectively the "Property"). There are four leases between Garrison Bight Marina and the City of Key West ("City") – (1) Angelfish Pier Upland Lease, (2) Parcel H Submerged Land Lease, (3) Parcel I Submerged Land Lease, and (4) Upland Lease at the corner of Eisenhower Drive and Palm Avenue (collectively the "Leases"). True and correct copies of the Leases are attached hereto and incorporated herein.

Garrison Bight Marina respectfully requests the assignment of the Leases to Garrison Bight SMI, LLC, the purchaser of the Property. By way of brief background, Garrison Bight SMI, LLC is a subsidiary of Suntex Marina Investors, which engages in the ownership and management of marina properties across the United States. The executive officers at Suntex have over 100 years combined experience investing in, acquiring, and managing marinas. Suntex prides itself on a growing reputation in the marina industry for its commitment to superior customer service, experienced marina managers and staff, conscious contributions to marina communities and expansive enthusiasm for creating memorable experiences on the water. The Suntex portfolio of marinas are located in California, Florida, Georgia, Iowa, Kentucky, Maryland, New Jersey, Oklahoma, Texas, Tennessee and Virginia.

If you should require any additional information, please do not hesitate to contact me.

Very Truly Yours,

Gregory S. Oropeza

Enc.

LEASE BOND
Annually Renewable Form

Travelers Casualty and Surety Company of America
One Tower Square, Hartford, CT 06183

Bond No. 107569764

KNOW ALL BY THESE PRESENTS, that we Garrison Bight SMI, LLC, as Principal, and Travelers Casualty and Surety Company of America, of Hartford, Connecticut, authorized to do business in the FL, as Surety, are held and firmly bound unto City of Key West, Florida, as Obligatee, in the sum of Five Thousand Six Hundred Thirty and 76/100 Dollars (\$ 5,630.76), lawful money of the United States of America, for which payment well and truly to be made we bind ourselves, our heirs, executors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Lease Agreement with the Obligatee, effective the 1st day of February, 2022, and terminating the 1st day of June, 2023, for Angelfish Pier Upland Lease Pursuant to Lease #20-061 and more fully described in said Lease Agreement, said Lease Agreement is hereby referred to and made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that if the above named Principal, its successors and assigns, shall well and truly perform its obligations as set forth in the above mentioned Lease Agreement, then this Bond shall be void; otherwise to remain in full force and effect pursuant to its terms.

Notwithstanding anything to the contrary in the Lease Agreement, the Bond is subject to the following express conditions:

1. Whereas, the Obligatee has agreed to accept this Bond, this Bond shall be effective 2/1/2022, and shall remain in full force and effect thereafter for a period of one year and will automatically extend for additional one year periods from the expiry date hereof, or any future expiration date, unless the Surety provides to the Obligatee not less than Sixty (60) days advance written notice of its intent not to renew this Bond or unless the Bond is earlier canceled pursuant to the following. This Bond may be canceled at any time upon thirty (30) days advance written notice from the Surety to the Obligatee.
2. Neither (a) the Surety's decision not to renew this Bond, nor (b) the failure or inability of the Principal to file a replacement bond or other security in the event the Surety exercises its right to not renew this Bond, shall itself constitute a loss to the Obligatee recoverable under this Bond or any extension thereof.
3. Regardless of the number of years this Bond is in force, this Bond shall have a final and definite expiration date of 6/1/2023, unless earlier nonrenewed or canceled pursuant to paragraph 1 above.
4. No claim, action, suit or proceeding, except as hereinafter set forth, shall be had or maintained against the Surety on this instrument unless such claim, action, suit or proceeding is brought or instituted upon the Surety within one year from termination or expiration of the bond term.
5. Regardless of the number of years this Bond is in force the liability of the Surety shall not be cumulative in amounts from period to period and shall in no event exceed the amount set forth above, or as amended by rider.
6. Any notice, demand, certification or request for payment, made under this Bond shall be made in writing to the Surety at the address specified below. Any demand or request for payment must be made prior to the expiry date of this Bond.

Surety Address: Travelers Casualty and Surety Company of America
One Tower Square, 4PB
Hartford, CT 06183
Attn: Bond Claim

7. If any conflict or inconsistency exists between the Surety's obligations or undertakings as described in this Bond and as described in the underlying Contract, then the terms of this Bond shall prevail.

SIGNED, SEALED AND DATED this 21st day of January, 2022.

Garrison Bight SMI, LLC
By: [Signature]
Principal

Travelers Casualty and Surety Company of America
By: [Signature]
Kristin Darling, Attorney-in-Fact



Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Kristin Darling** of **HOUSTON, Texas**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 21st day of April, 2021.



State of Connecticut

City of Hartford ss.

By: _____

Robert L. Raney
 Robert L. Raney, Senior Vice President

On this the 21st day of April, 2021, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2026



Anna P. Nowik
 Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary, or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 21st day of January, 2022.



Kevin E. Hughes
 Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3680.
 Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.