

RESOLUTION NO. 17-154

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, AUTHORIZING EXECUTION OF A LEASE BETWEEN THE CITY OF FORT LAUDERDALE, AS LESSOR, AND LAS OLAS SMI, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSEE, FOR THE LEASE OF PROPERTY LOCATED AT 201 SOUTH BIRCH ROAD AND 240 E. LAS OLAS CIRCLE, FORT LAUDERDALE, FLORIDA FOR A LEASE TERM OF FIFTY (50) YEARS; REPEALING ANY AND ALL RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Fort Lauderdale is the owner in fee simple of certain uplands located at 201 South Birch Road in the City of Fort Lauderdale, Broward County, Florida (referred to herein as the "**Existing Parking Lot**") and leasehold owner of certain submerged sovereign land located at 240 E. Las Olas Circle in the City of Fort Lauderdale, Broward County, Florida ("**Existing Submerged Area**" and together with the Existing Parking Lot collectively referred to as the "**Existing Marina Premises**") as further described by metes and bounds on Resolution 16-102 attached hereto as Exhibit A; and

WHEREAS, the City Commission, pursuant to Section 8.09 of the City Charter adopted Resolution No. 16-102 on June 21, 2016 declaring its intent to lease the Existing Marina Premises for a term not to exceed fifty (50) years plus such length of time (not to exceed five (5) years) to complete construction of the required improvements; and

WHEREAS, the City Commission finds that the Existing Marina Premises are no longer needed for a governmental purpose; and

WHEREAS, pursuant to Section 8.09 of the City Charter, the City Commission determined that it is in the best interest of the citizens to seek bid to Lease the Existing Marina Premises from interested persons in accordance with a request for proposal approved by the City Commission; and

WHEREAS, in response to the City's Lease, Management & Development for the Las Olas Marina Request for Proposal #264-11791 (the "**RFP**"), Suntex Marina Investors LLC in partnership with Edgewater Resources LLC, or their subsidiary ("**Suntex**") submitted a proposal to the City, which was approved by the City Commission (the "**City Commission**") on October 5, 2016 as revised on October 18, 2016 by Resolutions No. 16-175 and No. 16-180 (the "**Resolutions**") for the lease and redevelopment of the Existing Marina Premises as hereafter defined; and

WHEREAS, Resolution 16-175 authorized the negotiation of this Lease subject to the approval of the terms and conditions by the City Commission; and

WHEREAS, in accordance with Section 8.09 of the City Charter, a Public Hearing was held before the City Commission during a Regular Meeting on July 11, 2017 for the purpose of permitting citizens and taxpayers the opportunity to review the proposed Lease and object to the execution, form or conditions of the proposed Lease; and

WHEREAS, during the public meeting, the City Commission directed staff to add certain terms and conditions to the Lease as set forth below; and

WHEREAS, by unanimous approval of the City Commission, proper City officials were authorized, empowered and directed to execute this Lease, as amended, by adoption of this Resolution No.17-154 during a Public Hearing at its Regular Meeting held on July 11, 2017; and

WHEREAS, it is the mutual desire of the City Commission and Suntex that the Demised Premises (defined below) be leased and demised by the City Commission to Suntex for the purposes set forth in this Lease, subject to and upon the express terms and conditions contained herein;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. The Recitals are true and correct and incorporated herein by reference.

SECTION 2. That the following provisions shall be added to the Lease:

2.1. Notwithstanding the provisions of the Lease, the requirement to secure a release from CBRE, Inc. shall not be waived by the City Commission.

2.2. A provision shall be added to the Lease requiring the Board of Trustees of the Internal Improvement Trust Fund ("TIITF") to send written notice of default to the City of Fort Lauderdale under the Modified Sovereignty Submerged Land Lease (the "Sovereignty Lease") dated October 3, 1996, or any renewals thereof and the Deed (the "Uplands Deed") dated October 24, 1989 in Official Records Book 17136, Page 645 of the Public Records of Broward County, Florida and the Lessee shall provide proof of payments to TIITF under the Sovereignty Lease and Uplands Deed.

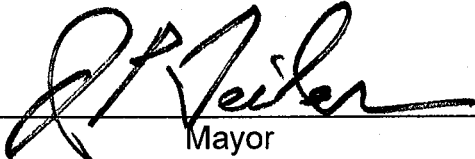
SECTION 3. That the proper City Officials are hereby authorized to execute the Lease, in substantially the form attached hereto, of the Existing Marina Premises.

SECTION 4. That the City Attorney shall review and approve as to form the terms and conditions of the Lease prior to execution thereof by the proper City Officials.

SECTION 5. That any all Resolutions, or parts thereof, in conflict herewith are hereby repealed.

SECTION 6. That this Resolution shall take effect upon final passage.

ADOPTED this the 11th day of July, 2017.



Mayor
JOHN P. "JACK" SEILER

ATTEST:



City Clerk
JEFFREY A. MODARELLI

RESOLUTION NO. 16-102

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, DECLARING THAT A PORTION OF CERTAIN LAND AND IMPROVEMENTS SITUATED THEREON, OWNED BY THE CITY OF FORT LAUDERDALE, LOCATED AT 201 SOUTH BIRCH ROAD AND KNOWN AS LAS OLAS-INTRACOASTAL PARKING LOT AND CERTAIN LANDS AND IMPROVEMENTS LEASED BY THE CITY OF FORT LAUDERDALE FROM THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, LOCATED AT 240 E. LAS OLAS CIRCLE AND KNOWN AS LAS OLAS MARINA, BOTH OF WHICH ARE NOT NEEDED FOR PUBLIC OR GOVERNMENTAL PURPOSES, AND DECLARING THE INTENTION OF THE CITY COMMISSION TO LEASE SUCH LANDS AND IMPROVEMENTS THEREON PURSUANT TO SECTION 8.09 OF THE CITY CHARTER, SUCH LANDS AND IMPROVEMENTS BEING MORE PARTICULARLY DESCRIBED BELOW; SETTING FORTH GENERAL TERMS AND CONDITIONS FOR THE LEASE; REQUIRING PUBLICATION OF NOTICE AS TO WHEN THE CITY COMMISSION WILL EVALUATE BIDS; REPEALING ALL RESOLUTIONS OR PARTS THEREOF IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Fort Lauderdale leases certain land and improvements described herein, located at 240 E. Las Olas Circle from the Board of Trustees of the Internal Improvement Fund of the State of Florida (hereinafter referred to as the "Las Olas Marina"); and

WHEREAS, the Las Olas Marina has been used as a public marina since on or around February 13, 1996; and

WHEREAS, the City owns the Las Olas-Intracoastal Parking Lot located at 201 South Birch Road (hereinafter referred to as the "Parking Lot"); and

WHEREAS, the Parking Lot has been used by the City for public municipal purposes including a surface parking area for the public since on or around July, 1958; and

EXHIBIT A

WHEREAS, the City Commission finds that the Las Olas Marina and a portion of the Parking Lot are no longer needed for a public or governmental purpose and deems it in the best interest of the City that the Las Olas Marina and a portion of the Parking Lot be advertised for lease under the provisions of Section 8.09 of the City Charter, subject to certain conditions, limitations and restrictions; and

WHEREAS, the City Commission, pursuant to the terms and conditions set forth in section 8.09 of the City Charter deems it in the best interest of the citizens to seek bids from interested persons in accordance with a request for proposals approved by the City, for a lease of the Las Olas Marina and a portion of the Parking Lot, subject to approval by the Board of Trustees of the Internal Improvement Fund of the State of Florida;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That the Recitals set forth above are true and correct and incorporated herein by this reference.

SECTION 2. That the City of Fort Lauderdale does hereby declare and determine its intention to lease, upon the terms and conditions prescribed below and in the request for proposal, the Las Olas Marina, which lands lie within Fort Lauderdale, Broward County, Florida, to wit:

See Exhibit "A" attached hereto

SECTION 3. That the City of Fort Lauderdale does hereby declare and determine its intention to lease, upon the terms and conditions prescribed below and in the request for proposal, a portion of the Parking Lot, which lands lie within Fort Lauderdale, Broward County, Florida, to wit:

See Exhibit "B" attached hereto

less that portion of the Parking Lot reserved for construction of a parking garage and *less* that portion of the Parking Lot which shall remain as open space/park/parking lot.

SECTION 4. That the City Commission declares that the reasons for offering such lands and improvements for lease are that these lands and the improvements thereon are not needed for governmental or public purposes.

SECTION 5. That the Las Olas Marina and a portion of the Parking Lot and improvements shall be leased upon the terms and conditions specified in this Resolution, and as set forth in the Request for Proposal #264-11791 ("RFP") reviewed by the City Commission in connection with the adoption of this Resolution calling for proposals for the leasing of the Las Olas Marina and a portion of the Parking Lot. Notwithstanding, the term of the Lease shall not exceed fifty (50) years plus such length of time, not to exceed five years, as determined by the City Commission to be reasonably necessary to complete construction of the proposed improvements. The terms and conditions of the Lease may include, but not limited, to the following subject matter areas:

- Duration
- Rent
- Escalation Clause
- Use
- Termination of Lease
- No Subordination or encumbrance of City interest
- Operation of Lands and Improvements
- Termination for Failure to Commence Operations
- Leasehold Improvements – Generally
- Leasehold Improvements – Specifically
- Leasehold Improvements – Minimum Investment
- Period for completion of Leasehold Improvements
- Commencement of Rent Obligation
- Capital Replacement Reserve Account
- Off Street parking
- Indemnification and Hold Harmless
- Insurance
- Easements
- Taxes and Utilities
- Maintenance, Repairs and Upkeep
- Substitution of Personnel
- Subcontractors
- Payment and Performance Bond
- Force Majeure
- Damage to Public or Private Property
- Safety
- Building and Site in "AS IS" Condition
- Assignment and Subleases
- Triple Net Lease
- Compliance with Codes and Regulations
- Other terms and conditions
- Approval of City Attorney

SECTION 6. That all bids shall be delivered in a sealed envelope no later than 2:00 p.m. on **August 23, 2016** to City of Fort Lauderdale Procurement Services, 100 N. Andrews Avenue, #619, Fort Lauderdale, FL 33301. Attn: James Hemphill. The sealed bids must be accompanied by cash, cashier's check or certified check in an amount equal to ten (10%) percent of the average annual rental payments to the City.

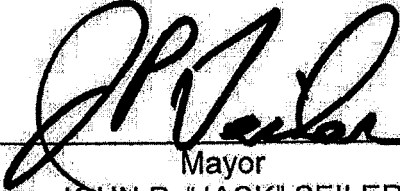
SECTION 7. That the City Commission will meet on **October 4, 2016** at 6:00 p.m., or as soon thereafter as can be heard, in City Hall at 100 North Andrews Avenue, Fort Lauderdale, Florida for the purpose of reviewing all bids and determining the best proposal submitted. The City may reject any and all bids at any time. The City Commission may waive any minor irregularities contained in any proposal.

SECTION 8. That the City Clerk shall publish a notice in the official newspaper of the City for two (2) issues prior to the date set forth above for receiving bids; the first publication to be not less than ten (10) days before said date of receiving bids, and the second publication to be one week following the first publication.

SECTION 9. That any and all Resolutions or parts thereof in conflict herewith are hereby repealed.

SECTION 10. That the Effective Date of this Resolution is June 21, 2016 and is deemed adopted as of June 21, 2016.

ADOPTED this the 21st day of June, 2016.



Mayor
JOHN P. "JACK" SEILER

ATTEST:



City Clerk
JEFFREY A. MODARELLI

EXHIBIT "A"

LEGAL DESCRIPTION

SUBMERGED LAND LEASE BIRCH/LAS GLAS NEW DOCKS CITY OF FORT LAUDERDALE, BROWARD COUNTY, FLORIDA

A portion of submerged land lying in New River Sound in Section 12, Township 50 South, Range 42 East, and being West of Parcels A and B, LAS GLAS DEL MAR I, according to the plat thereof, recorded in Plat Book 147, Page 20, of the public records of Broward County, Florida, and being all more fully described as follows:

Commencing No. 1 at the Southwest corner of said Parcel "A"; thence North $78^{\circ}24'38''$ West, on the North right-of-way line of Las Glas Boulevard a distance of 9.44 feet to the Point of Beginning No. 1; thence North $79^{\circ}14'12''$ West, on the said North right-of-way line, a distance of 152.09 feet to a point, said point bearing North $40^{\circ}11'30''$ West, a distance of 38.73 feet from Monument (NW-120, as shown on U.S. Army Engineer District Map, Intracoastal Waterway Map, Sheet 16 of 24, File No. 85-24,258, last dated July 17, 1963; thence North $08^{\circ}25'51''$ East, a distance of 120.94 feet; thence North $00^{\circ}31'29''$ West, a distance of 450.66 feet; thence North $10^{\circ}45'46''$ East, a distance of 202.04 feet; thence South $79^{\circ}11'42''$ East, a distance of 272.34 feet; thence South $16^{\circ}44'43''$ East, a distance of 25.57 feet to a point on curve and a point on the wet face of an existing bulkhead; thence Southwesterly on a curve to the left, whose tangent is perpendicular to the last mentioned course and on the said wet face of an existing bulkhead, with a radius of 110.00 feet and a central angle of $64^{\circ}45'34''$, an arc distance of 124.38 feet to a point of tangency, said point of tangency bearing North $75^{\circ}05'08''$ West, a distance of 5.07 feet from the offset Permanent Reference Monument marking the Westerly point of curvature on the West boundary of said Parcel "A"; thence South $08^{\circ}28'38''$ West, on the said wet face, a distance of 640.27 feet; thence South $28^{\circ}42'22''$ West, on the said wet face, a distance of 10.84 feet to the Point of Beginning No. 1.

TOGETHER WITH:

Commencing No. 2 at the Northwest corner of said Parcel B; thence North $09^{\circ}04'25''$ West, a distance of 19.21 feet to the Point of Beginning No. 2; thence North $17^{\circ}26'18''$ West, on the wet face of an existing bulkhead, a distance of 12.19; thence North $79^{\circ}18'20''$ West, a distance of 182.61 feet to a point, said point bearing South $30^{\circ}25'53''$ West, a distance of 82.70 feet from said Monument (NW-120); thence South $08^{\circ}46'53''$ West, a distance of 63.08 feet; thence South $10^{\circ}40'38''$ East, a distance of 264.42 feet; thence North $58^{\circ}28'31''$ East, a distance of 131.32 feet, to a point on a curve, and to a point on the wet face of an existing bulkhead; thence Northwesterly on a curve to the right and on said wet face, whose tangent bears North $53^{\circ}12'54''$ West, with a radius of 111.14 feet and a central angle of $80^{\circ}57'29''$, an arc distance of 118.25 feet to a point, said point bearing North $55^{\circ}52'42''$ West, from the Permanent Reference Monument marking the point of curvature on the west line of said Parcel "B"; thence North $08^{\circ}31'08''$ East, on the said wet face, a distance of 178.02 feet to the Point of Beginning No. 2.

Said lands situate, lying and being in the City of Fort Lauderdale, Broward County, Florida and containing 193,772 square feet or 4.4484 acres more or less.

EXHIBIT "B"

DESCRIPTION:

Portions of those certain lands of the New River Sound together with a portion of the AMENDED PLAT OF LAS OLAS BY THE SEA SUBDIVISION, according to the plat thereof, as recorded in Plat Book 1, Page 6 of the Public Records of Broward County, Florida, lying in Section 12, Township 60 South, Range 42 East, Broward County, Florida, being described as follows:

COMMENCE at the Northeast corner of Lot 6, Block 12, LAUDER DEL MAR, according to the plat thereof, as recorded in Plat Book 7, Page 30 of said Public Records; thence South $89^{\circ}02'35''$ West, along the North line of said Lot 6, and its Western extension, a distance of 236.93 feet to the POINT OF BEGINNING; thence South $05^{\circ}45'51''$ East, a distance of 190.17 feet; thence South $05^{\circ}23'36''$ East, a distance of 10.78 feet; thence South $02^{\circ}43'00''$ East, a distance of 63.17 feet; thence South $07^{\circ}21'24''$ East, a distance of 154.66 feet; thence South $04^{\circ}35'18''$ West, a distance of 19.69 feet; thence South $07^{\circ}25'12''$ West, a distance of 20.61 feet; thence South $07^{\circ}25'31''$ West, a distance of 52.66 feet; thence South $07^{\circ}09'00''$ West, a distance of 214.39 feet to an intersection with the arc of a curve concave to the Northwest and whose radius point bears North $48^{\circ}02'29''$ West from the last described point; thence Southwesterly and Westerly along the arc of said curve having a radius of 18.00 feet, a central angle of $82^{\circ}53'35''$, an arc distance of 16.68 feet to the point of tangency; thence North $76^{\circ}02'33''$ West, along the North right-of-way line of East Las Olas Boulevard, as described in Official Records Book 3465, Page 622 of said Public Records, a distance of 347.35 feet; thence North $05^{\circ}12'14''$ East, along the existing bulkhead line as described in City of Fort Lauderdale Ordinance No. C-1421, and recorded in Official Records Book 1282, Page 182 of said Public Records, a distance of 650.66 feet to a point of curvature of a curve concave to the Southeast; thence Northerly and Easterly along the arc of said curve and said bulkhead line, said curve having a radius of 110.00 feet, a central angle of $80^{\circ}50'21''$, an arc distance of 156.20 feet to a point of tangency; thence North $85^{\circ}02'35''$ East, and continuing along said bulkhead line, a distance of 161.31 feet to the POINT OF BEGINNING.

TOGETHER WITH:

BEGINNING at the Northwest corner of the "RESUBDIVISION OF LOTS 5, 7, 8, 9, 10, 11 and 12, MOONEY POINT" according to the Plat thereof, as recorded in Plat Book 85, Page 27 of said Public Records; thence South $85^{\circ}02'35''$ West, along the existing bulkhead line as described in said City of Fort Lauderdale Ordinance C-1421, a distance of 156.69 feet to a point of curvature of a curve concave to the Northeast; thence Westerly and Northerly along the arc of said curve and said bulkhead line, said curve having a radius of 110.00 feet, a central angle of $89^{\circ}09'35''$, an arc distance of 190.38 feet to a point of tangency; thence North $05^{\circ}12'14''$ East, and continuing along said bulkhead line, a distance of 162.70 feet; thence South $75^{\circ}08'25''$ East, along the South right-of-way line of East Las Olas Boulevard as described in said Official Records Book 3465, Page 622, a distance of 266.02 feet to an intersection with a line being the Northerly extension of the face of the bulkhead line as it existed on May 5, 1939 and shown on the City of Fort Lauderdale's Engineering plan entitled "Bulkhead Line and Fill Plan - Birch - Las Olas Parking Lot and Adjoining Area"; thence South $09^{\circ}05'17''$ West, along said bulkhead line and its Northerly extension, a distance of 257.42 feet to the POINT OF BEGINNING.

Subject to all easements, rights-of-way, and reservations of record.

Containing 7.64 acres, more or less.

Bearings described herein are relative to the Transverse Mercator Projection, Florida East Zone, Grid North.