

RESOLUTION NO. 19-246

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, AUTHORIZING EXECUTION OF A THIRD AMENDMENT TO GROUND LEASE AGREEMENT BETWEEN THE CITY OF FORT LAUDERDALE, AS LESSOR, AND LAS OLAS SMI, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS LESSEE, FOR THE PROPERTY LOCATED AT 201 SOUTH BIRCH ROAD AND 240 E. LAS OLAS CIRCLE, FORT LAUDERDALE, FLORIDA; REPEALING ANY AND ALL RESOLUTIONS IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Lessor is the owner in fee simple of certain uplands located at 201 South Birch Road in the City of Fort Lauderdale, Broward County, Florida and the leasehold owner of certain submerged sovereign land located at 240 E. Las Olas Circle in the City of Fort Lauderdale, Broward County, Florida (collectively, the "Existing Marina Premises"); and

WHEREAS, Lessor and Lessee executed that certain Ground Lease Agreement with an Effective Date of April 30, 2018 (the "Lease") whereby Lessor leased to Lessee the Existing Marina Premises pursuant to Resolution 17-154; and

WHEREAS, the First Amendment to the Lease, pursuant to Resolution No. 19-69, authorized the Lessee to extend the Predevelopment Period from May 3, 2019 to December 31, 2019, to complete its due diligence; and

WHEREAS, the Second Amendment to the Lease, pursuant to Resolution No. 19-141, authorized revision of the definition of Plans set forth in Section 8.1 thereof to replace the Site Plan rendering previously approved by the Commission under Resolution No. 16-180, and

WHEREAS, the Lessee has requested that Lessor approve a Third Amendment to the Lease, attached hereto and made a part hereof as Attachment "A";

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.

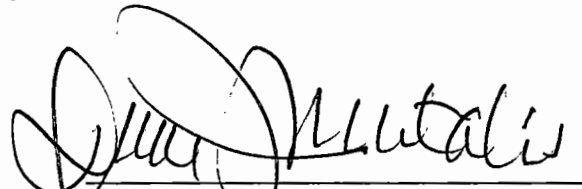
SECTION 2. That the City Commission hereby authorizes execution of the Third Amendment to Ground Lease as amended, with Las Olas SMI, LLC, by the Mayor and City Manager in substantially the form attached hereto, subject to final review and approval by the City Attorney's office.

SECTION 3. That the City Attorney shall review and approve as to form the terms and conditions of the Third Amendment to Lease Agreement, as amended, prior to execution thereof by the proper City Officials.

SECTION 4. That any and all Resolutions, or parts thereof, in conflict herewith are hereby repealed.

SECTION 5. That this Resolution shall take effect upon final passage.

ADOPTED this the 3rd day of December, 2019.



Mayor
DEAN J. TRANTALIS

ATTEST:



City Clerk
JEFFREY A. MODARELLI

Attachment A

THIRD AMENDMENT TO GROUND LEASE AGREEMENT

THIS THIRD AMENDMENT TO GROUND LEASE AGREEMENT (this "**Third Amendment**") is made to be effective as of the ____ day of _____, 2019 (the "**Effective Date**"), by and between the City of Fort Lauderdale, a Florida municipal corporation ("**Lessor**"), and Las Olas SMI, LLC, a Delaware limited liability company ("**Lessee**").

WITNESSETH:

WHEREAS, the Lessor is the owner in fee simple of certain uplands located at 201 South Birch Road in the City of Fort Lauderdale, Broward County, Florida and the leasehold owner of certain submerged sovereign land located at 240 E. Las Olas Circle in the City of Fort Lauderdale, Broward County, Florida (collectively, the "**Existing Marina Premises**").

WHEREAS, Lessor and Lessee executed that certain Ground Lease Agreement dated April 30, 2018, (Resolution No. 17-154) which was amended on or around April 2, 2019 by that certain First Amendment to Ground Lease Agreement (Resolution No. 19-69), and as further amended on August 2, 2019, by that certain Second Amendment to Ground Lease Agreement [(Resolution No. 19-141) collectively the "**Lease**"] whereby Lessor leased to Lessee the Existing Marina Premises.

WHEREAS, in accordance with Section 8.09 of the City Charter, a Public Hearing was held before the City Commission during a Regular Meeting of the City Commission held on December 3, 2019 for the purpose of permitting citizens and taxpayers the opportunity to review this proposed Third Amendment and object to the execution, form or conditions of this proposed Third Amendment; and

WHEREAS, by approval of the City Commission, proper City officials were authorized, empowered and directed to execute this Third Amendment by adoption of Resolution No. _____ during a Public Hearing at its Regular Meeting held on December 3, 2019.

WHEREAS, Lessor and Lessee desire to modify the responsibilities of Lessee during the Pre-Development Period as defined in the Lease as defined in the Lease, and to make such other changes as may be provided herein.

NOW, THEREFORE, in consideration of the foregoing, and for good and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee (collectively, the "**Parties**"), intending to be legally bound, hereby agree as follows:

1. Recitals; Defined Terms. The above Recitals are true and correct and are incorporated into

this Third Amendment. Capitalized terms used in this Third Amendment and not defined herein shall have the meanings ascribed to them in the Lease. All references in the Lease to "the Lease" or "this Lease" or similar references shall be references to the Lease as amended from time to time, including by this Third Amendment.

2. Amendments to the Lease.

Commencement Date: The first sentence of the definition of Commencement Date as set forth in the Lease shall be deleted in its entirety and the following shall be inserted in lieu thereof:

"The date that Possession of the Demised Premises is tendered to Lessee after all due diligence set forth in Section 5.2 and Predevelopment Approvals set forth in Section 5.3 and Section 5.5 are completed to the satisfaction of both parties and all final approvals from the State of Florida and any other Applicable Authorities as necessary to authorize the Lessor's execution of this Lease."

Section 5.2 (b) Title Commitment. Section 5.2 (b) shall be deleted in its entirety and the following inserted in lieu thereof:

"(b) **Title Commitment.** As soon as reasonably possible, and in any event within twenty (20) business days after the Effective Date, Lessee shall, at Lessee's expense, deliver or cause to be delivered to Lessor: (1) a title commitment (the "**Title Commitment**") covering the Demised Premises binding any title company chosen by Lessee (the "**Title Company**") to issue a ALTA Leasehold Policy of Title Insurance (the "**Title Policy**"), and (2) true and legible copies of all recorded instruments affecting the Demised Premises and recited as exceptions in the Title Commitment (collectively, the "**Title Documents**"). The Title Policy shall be delivered to Lessor on or before expiration of the Construction Approvals Period ("**Title Policy Delivery Date**"), in the full amount of the value associated with the Demised Premises after the construction of the Improvements, insuring Lessee's leasehold title to the Demised Premises to be good and indefeasible, subject only to the Permitted Exceptions defined as any item in the Title Commitment, Title Documents or Survey which is not removed prior to the Title Policy Delivery Date."

Section 5.3. Pre-Development Period. On the Effective date of this Third Amendment, the first sentence of Section 5.3 of the Lease is hereby amended by replacing the Pre-Development Period date December 31, 2019 with April 1, 2020:

Section 5.3. Pre-Development Period Approvals, of the Lease is further amended as follows: On or before the expiration of the Pre-Development Period, Lessor and/or Lessee, as applicable, shall complete the following (collectively the "Pre-Development Approvals"):

- (a) Both parties shall approve and execute a mutually acceptable Parking Agreement for use of the Parking Garage;
- (b) Execution and Delivery of a long term financial agreement (of at least 25 years) with Marine Industries Association of South Florida, Inc., and Yachting Promotions, Inc. regarding the Boat Show so long as the Marine Industries Association of South Florida, Inc. and Yachting Promotions Inc. is amenable to such a long term financial agreement, the agreement takes into consideration all of the factors set forth in Section 7.2(e) and the financial agreement does not violate the terms and conditions of the Sovereign Submerged Lands Lease as determined by TITF.
- (c) Commission and delivery of the ESA (defined below) to Lessor; and
- (d) Title commitment evidencing holder of fee and leasehold title to that portion of the Existing Parking Lot being leased to Lessee for redevelopment;
- (e) Delivery by Lessee of a Written Schedule of Values and approval by the City Manager; Schedule of Values is defined as a written schedule setting forth the detailed and itemized cost breakdown, inclusive of labor, materials, permitting fees, and taxes of all elements comprising the Initial Improvements and Minimum Contribution Amount as set forth in Section 8.2 of Article VIII;
- (f) Completion of a Survey as defined in Section 5.2 (a), at Lessee's expense, of the Demised Premises which survey shall incorporate a legal description of the Demised Premises mutually acceptable to both parties which shall replace the legal description in Exhibit A, subject to adjustment upon the approval of any Approved Legal Description Modification as set forth in this Lease.
- (g) Receipt by the Lessor of a General Release executed by CBRE, Inc. in form and content acceptable to Lessor and its City Attorney relating to any and all commissions or fees owed to CBRE, Inc. arising from this transaction.”

Section 5.5 Additional Approvals. The following section shall be added as Section 5.5 to the Lease as follows:

“**Section 5.5 Additional Approvals.** On or before the expiration of the Construction Approvals Period, Lessor and/or Lessee, as applicable, shall complete the following:

- (a) Execute a mutually acceptable Subordination, Nondisturbance and Attornment Agreements

in favor of a Leasehold Mortgagee but only to the extent requested by a Leasehold Mortgagee, otherwise the Subordination, Nondisturbance and Attornment Agreements shall be executed in the ordinary course during the Lease Term as set forth in Section 14.6 upon request of the Leasehold Mortgagee;

(b) Execution of an Agreement between Lessor and Lessee in which Lessee agrees to assume all liability and obligations under the grants in favor of FIND and Broward County as referenced in the RFP or agree to repay the outstanding amounts under the grants. The Lessor's Authorized Representative is authorized to execute the Assignment and Assumption Agreement without further action by Lessor's City Commission;

(c) Secure approval from TITF of a sublease in favor of Lessee pursuant to Section 9 of the Submerged Lands Lease, it being agreed that this Lease shall be deemed a sublease under the Sovereignty Submerged Land Lease;

If the conditions in Section 5.5 are not resolved to the mutual and reasonable satisfaction of both parties, either party may terminate this Lease by delivering a written notice to the other on or before the last day of the Construction Approvals Period. In the event that either party terminates this Lease, then neither party shall have any further rights or obligations under this Lease (except for those that accrue on or before the date this Lease, is terminated in writing or which may expressly survive the termination of this Lease). If this Lease is terminated and if Lessee has possession of the Demised Premises, then upon demand of Lessor, Lessee shall restore the Demised Premises to the condition existing prior to its possession.”

3. Ratification. Other than with respect to the amendments to the Lease contained or referred to in this Third Amendment, which shall supersede any contrary or inconsistent terms of the Lease, this Third Amendment does not modify, change or amend the Lease, and such Lease shall, as so amended, reinstated, and ratified, remain in full force and effect as amended hereby and the Lease shall be interpreted and construed accordingly.

4. Counterpart Execution. This Third Amendment may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one instrument, but, in making proof of this instrument, it shall not be necessary to produce or account for more than one such counterpart.

(Signature pages to follow)

EXECUTED as of the day, month and year first written above.

WITNESSES:

Signature

Print Name

Signature

Print Name

(SEAL)

CITY OF FORT LAUDERDALE,
a municipal corporation of the State of Florida

By _____
Dean J. Trantalis, Mayor

By _____
Christopher J. Lagerbloom, City Manager

ATTEST:

Jeffrey A. Modarelli, City Clerk

APPROVED AS TO FORM:
Alain E. Boileau, City Attorney

By _____
James Brako, Assistant City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Dean J. Trantalis, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida.

(SEAL)

Signature: Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

Personally Known

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Christopher J. Lagerbloom, City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida.

(SEAL)

Signature: Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

Personally Known

WITNESSES:

LAS OLAS SMI, LLC,
a Delaware limited liability company

Signature

Print Name

Signature

Print Name
(SEAL)

By _____
Name: _____
Title _____

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, in his capacity as _____ of Las Olas SMI, a Delaware limited liability company.
(SEAL)

Signature: Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped