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CITY MANAGER

DOCUMENT ROUTING FORM

2015 AUG 20 PM 3: 41

NAME OF DOCUMENT:

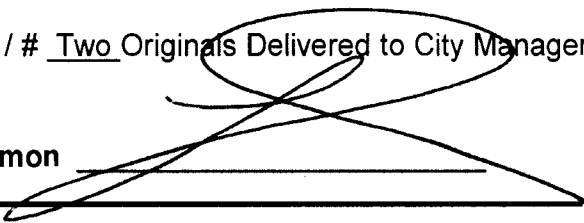
Second Amendment to Brickell License Agreement

Approved Comm. Mtg. on: 08/18/15 CAM #: 15-1056 ITEM #: CM-11

Routing Origin: CAO Also attached: copy of CAM Original Document

1) **City Attorney's Office:** Approved as to Form / # Two Originals Delivered to City Manager on August 20, 2015.

Lynn S. Solomon



CIP FUNDED YES NO
Capital Investment / Community Improvement Projects

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, real.

2) **City Manager:** Please sign as indicated and forward Two originals to Mayor.

3) **Mayor:** Please sign as indicated and forward Two originals to Clerk for attestation and City seal.

INSTRUCTIONS TO CLERK'S OFFICE

4) **City Clerk:** Please return Two originals to Laura Comer, CAO.

Original Route form to Laura Comer, CAO, Extension 5036

**SECOND AMENDMENT
TO
BRICKELL LICENSE AGREEMENT**

THIS SECOND AMENDMENT (the "Second Amendment") entered into this 24th day of August, 2015 to the BRICKELL LICENSE AGREEMENT (the "License Agreement") dated March 5, 1992 is by and between:

LAS OLAS RIVERFRONT, LP, a Delaware limited partnership, 300 SW 1st Avenue, Suite 133, Fort Lauderdale, FL, 33301 (hereinafter, "Developer")

and

CITY OF FORT LAUDERDALE, a municipal corporation, its successors and assigns, 100 North Andrews Avenue, Fort Lauderdale, FL, 33301 (hereinafter, "City")

WHEREAS, Las Olas Riverfront, LP is the successor in interest to Historic Brickell, Ltd. under the License Agreement; and

WHEREAS, Developer is the owner of Brickell Avenue Property as of May 17, 2011; and

WHEREAS, the Developer (or its predecessor) has failed to pay the Licensing Fees since May 17, 2011 and is therefore in default under the License Agreement; and

WHEREAS, on July 10, 2012, Developer requested an accommodation regarding past due licensing fees and the City, subject to certain conditions, is willing to make some accommodation;

WHEREAS, execution of this Second Amendment was authorized by adoption of a motion by the City of Fort Lauderdale City Commission at their Regular Meeting held on August 18, 2015; and

WHEREAS, the License Agreement grants Developer the right to use approximately four hundred sixty (460) linear feet of dock space along the Las Olas Riverfront Waterfront, f/k/a the Brickell Avenue Waterfront, in downtown Fort Lauderdale, Florida pursuant to the License Agreement, as amended, and the City seeks a modification of these rights.

WHEREAS, Developer and City desire to amend the License Agreement as set forth herein.

NOW, THEREFORE, and in consideration of the foregoing, and the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency are hereby acknowledged, Developer and City agree as follows:

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

2. The Effective Date of this Agreement is May __, 2014.
3. The following is added to Paragraph 9 of the License Agreement:

In lieu of remitting the delinquent amounts owed, the City agrees to accept the following payments:

<u>License Fee</u>	<u>Amount</u>
Year 2011.....	22,897.00
Year 2012.....	11,316.17
Year 2013.....	<u>8,325.00</u>
Total Amount \$42,538.17	

The City acknowledges receipt of \$42,538.17 in settlement of delinquent licensing fees.. An accommodation regarding past due payments shall not be deemed or construed as an obligation of the City to make any accommodation in the future for subsequent payments.

4. The first paragraph of Paragraph 9 is deleted and replaced with the following:

Commencing on May 15, 2014 and on each anniversary date thereafter, the Developer shall pay a License Fee to the City for the License granted herein to Developer. The Annual Base License Fee rate shall be \$49.08 per year, as adjusted, for the remainder of the License term. The fee shall be determined by multiplying the rate (\$ 49.08) by the linear foot of dockage parallel to the seawall adjacent to the Brickell Riverwalk Section. The License Fee shall be paid in advance by the Developer and shall be due and payable whether dock space is utilized by Developer or not.

All other sections of paragraph 9 remain unchanged.

5. Paragraph 11 is deleted and replaced with the following:

License Fee. The DEVELOPER shall pay CITY a license fee for the License granted to DEVELOPER herein which fee shall be payable to CITY annually. The Annual Base License Fee rate shall be Forty Nine and 08/100 (\$49.08) dollars per year for the License term (based on a rate of four and 09/100 dollars (\$4.09) per month) for each linear foot of usable dockage parallel to the seawall adjacent to the Brickell Riverwalk Section commencing on May 15, 2014 and on each anniversary date thereafter.

For the purposes of ascertaining the amount of dockage fees collected by DEVELOPER as provided in Paragraph 11 of this Agreement, DEVELOPER agrees to keep copies of all records of dockage fees collected by DEVELOPER for at least three (3) years and CITY shall have the right but not the obligation to examine same upon CITY request at a time agreeable to DEVELOPER.

- (a) Both parties acknowledge that from May 15, 1998 until May 15, 2011, the “base linear foot License Fee” of \$36.00, as adjusted, multiplied by 460 linear feet of usable dockage parallel to the seawall adjacent to the Brickell Riverwalk Section was paid by DEVELOPER to City.
- (b) Thereafter, the annual License Fee payments to be paid in advance, on the anniversary of the Commencement Date shall be adjusted as follows:

CITY and DEVELOPER herein covenant and agree that the License Fee payments for the remainder of the term of the License Agreement shall be adjusted at one year intervals, higher or lower, but in no event shall said License Fee be less than \$49.08 per year of Linear foot of day dockage parallel to the seawall adjacent to the Brickell/Riverwalk Section, with such adjustments based upon the cost of living index as hereinafter defined and provided for in this paragraph commencing on May 15, 2014, and continuing at each one-year interval throughout the remainder of the term of this License. The annual adjustment to the License Fee to be made and, therefore, the annual License Fee for each annual interval shall be determined by multiplying the “base linear foot License Fee” of \$49.08 as provided for in this Second Amendment by a fraction, the numerator of which shall be the index figure indicated for the month of January of the year of adjustment, said figure to be shown by the Consumer Price Index, the United States City Average All Items and Commodity Groups, issued by the Bureau of Labor Statistics of the United States Department of Labor, and the denominator of which shall be the basic standard index figure of such price index for the month and year upon which the License commences. The product of such multiplication shall be the amount of the “monthly base linear foot rental fee” which shall be used to determine the monthly rental fee to be made hereunder for the next succeeding period until the next computation provided for hereunder shall be made. In no event shall the adjustment to the License Fee exceed three percent (3%) for any adjustment. If the adjustment exceeds the percentage for any adjustment period, then the excess shall be carried forward and applied to the subsequent period or periods. If the adjustment for such subsequent adjustment period or periods is less than the percentage mentioned above, then the carryover mentioned herein shall be added and applied to the adjustment period.

The CITY upon determining the License Fee adjustment for the applicable period as provided in this paragraph, shall advise the DEVELOPER of the new monthly License Fee for the applicable period(s). It is further understood and agreed that if the License Fee adjustment is not immediately determined at the time an adjustment is required, the previous License Fee then being paid shall continue until an adjustment can be made and said adjustment shall be retroactive to the adjustment date and the sum constituting such adjustment for the month of the period which has passed prior to the

determination of the amount of the adjustment shall be due and payable within thirty (30) days after such determination.

6. Paragraph 13 of the License Agreement is deleted in its entirety and replaced with the following:

Developer is hereby granted the non-exclusive right to use 160 linear feet of dock space (as shown on Exhibit " C " attached hereto) parallel to the seawall adjacent to the Brickell Riverwalk for day dockage in exchange for payment of fees set forth in this Second Amendment and License Agreement. Said space shall be available to the public on a first come first serve basis. Developer shall not be entitled to collect fees from the public for use of the dock space. The Developer may request but the City shall not be obligated to provide additional dock space for daily use. All commercial dock space within Brickell Waterfront now known as Las Olas Waterfront shall be retained and managed by the City. Developer shall have no right to manage or collect fees from the commercial areas. In the event the City receives a bona fide written offer from a prospective tenant to lease all or a portion of the commercial dock space, then Developer shall have a right of first refusal to lease the same space on the same terms and pricing as the offer by the prospective tenant. Said right must be exercised in writing by the Developer within thirty (30) days after receiving written notice of the offer from the City. If the Developer does not exercise its right then the City may enter into an agreement with the proposed tenant free and clear of any rights of the Developer. The City shall not enter into a lease of all or a portion of the commercial space for a term which exceed 180 consecutive days. Notwithstanding, the Developer shall have to right to Petition the City Commission seeking to terminate a lease of dock space within the commercial area if the current use of the commercial dock space is of a continuing and recurring nature which poses a significant and substantial harm to the business operations of Las Olas Riverfront LP as determined by the City Commission. Notwithstanding any other language contained in the License Agreement, as amended, including without limitation paragraph 15, the right to use the dock space for day dockage is not an exclusive right.

7. Paragraph 16 of the License Agreement is amended as follows:

Notices to Developer shall be sent to:

Dev R. Motwani
Las Olas Riverfront, LP
300 SW First Avenue
Suite 106
Fort Lauderdale, FL 33301

With a copy to:

8. In the event and to the extent of any conflict between the terms and conditions of this Amendment and the terms and conditions of the License Agreement, then, to the extent of such conflict, the terms and conditions of this Second Amendment shall supersede and prevail over any conflicting terms and conditions set forth in the License Agreement.

9. Developer represents and warrants that it is compliance with all terms and conditions of the License Agreement and other than the delinquent payments, Developer is not in violation of the terms and conditions of the License Agreement. Further, Developer represents and warrants there are no gaps or hiatuses between the Brickell Avenue Property and Brickell Riverwalk Section.

10. Unless modified herein, all other terms and conditions of the License Agreement, and any amendments thereto, shall remain in full force and effect.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

WITNESSES:

Jeannette A. Johnson

Jeannette A. Johnson

[Witness type or print name]

Anna S. Penick

Anna S. Penick

[Witness type or print name]

CITY OF FORT LAUDERDALE

By [Signature]
John P. "Jack" Seiler, Mayor

By [Signature]
Lee R. Feldman, City Manager

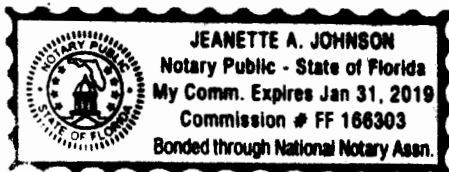
ATTEST: [Signature]
City Clerk

Approved as to form: [Signature]
Lynn Solomon, Assistant City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 24th day of August, 2015, by John P. "Jack" Seiler, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me or has produced _____ (state) driver's license or _____ as identification.

(SEAL)



Jeannette A. Johnson
Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

Jeannette A. Johnson
Name of Notary Typed, Printed or Stamped

My Commission Expires: 1/31/19

Commission Number FF 166303

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 24th day of August, 2015, by Lee R. Feldman, City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me or has produced _____ (state) driver's license or _____ as identification.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

Carla Foster

Name of Notary Typed, Printed or
Stamped

My Commission Expires: March 16, 2016
MY COMMISSION # EE 180757
Bonded Thru Budget Notary Services

Commission Number

DEVELOPER

WITNESSES:

LAS OLAS RIVERFRONT, LP a
Delaware Limited Partnership

JEFF LONGO

Print Name

KEVIN CAREY

Print Name

By _____

Name/Title: Dev Motwani / Manager

STATE OF FLORIDA:
COUNTY OF BROWARD :

The foregoing instrument was acknowledged before me this 26 day of MARCH, 2015, by DEV MOTWANI, as MBR of the Las Olas Riverfront LP, a Delaware limited partnership, who is personally known to me or has produced FL (state) driver's license or _____ as identification.

(SEAL)



[Handwritten Signature]

Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

KEVIN CAREY

Name of Notary Typed, Printed or Stamped

My Commission Expires: 5/27/17
FF 021615

Commission Number

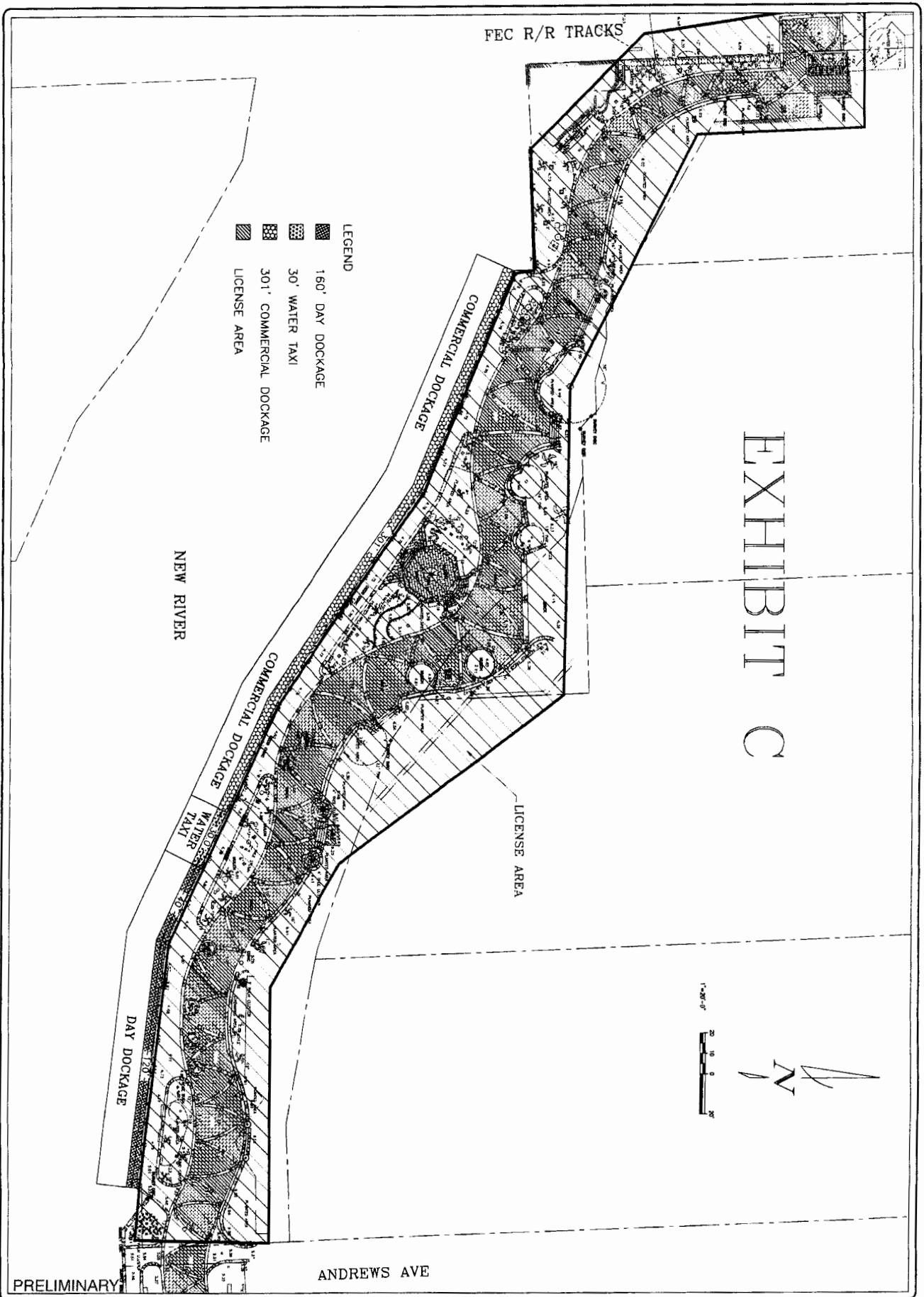


EXHIBIT C

PRELIMINARY

PROJECT # P-22222
 EXHIBIT C
 160' DOCK SPACE
 BETWEEN R/R TRACKS AND ANDREWS AVE
 RIVERWALK

REVISIONS				
NO.	DATE	BY	CHKD	DESCRIPTION

CITY OF FORT LAUDERDALE
 PUBLIC WORKS DEPARTMENT
 ENGINEERING & ARCHITECTURE
 100 North Andrews Avenue, Fort Lauderdale, Florida 33301

DESIGN BY:	CH	DATE:	8/12/2014
DRAWN BY:	CH	SCALE:	1"=20'
CHECKED BY:	WD	FIELD BOOK:	