

December 5, 2017

Mayor and Commissioners:

Submitted -

*Attached: Pages 3, 4, 7, 10, 16, 19, 20, 21, 24
of current Bahia Mar lease.*

The **lease in effect** between the city and Rahn Bahia Mar consistently characterizes **Bahia Mar** as a **hotel, hotel-complex, and/or marina**, with references including, but not limited to:

Article 1 Defined Terms

Page 4 "hotel promotions and complimentary services"
"hotel and marine guests"

Article 4.1 Hazardous Substances

Page 7 "operation of a hotel and marina"
Page 10 "operation of a hotel and marina"
Page 16 "operating the hotel and marina"
"operator of the hotel and marina"

Article 17 Personal Property

Page 19 "furnishings in the hotel rooms"
"operation of a full-service, chain-affiliated, mid-market hotel"

Article 19 Use of Premises

Page 20 "the lessee agrees that the leased premises shall be used as a first-class hotel-marina and resort complex"

Page 21 "the hotel complex will be maintained and operated in accordance with the standards of a chain-affiliated, full-service mid-market hotel"

Page 21 "the lessee shall maintain the character of Bahia Mar as marina"

Article 25 Title to Property

Page 24 "all hotel, motel, meeting and convention room revenues"
"dockage of private or commercial marine vessels"

At the Planning and Zoning meeting, Mr. Lochrie pointed out that "apartments" may be included within the premises ("restaurant, cocktail lounge, liquor package store, yacht club, motel, hotel, convention hall, retail stores, marine service station, charter boat and sightseeing boat facility, offices, apartments, and other kindred and similar businesses") and that this justified **651 apartments** being the **primary use of the developer's proposal**. At **1,163,000 square feet of residential** and only **235,000 square feet of hotel/commercial**

*Regular Meeting
12/5/2017
R-4 Provided by
Nancy Thomas*

(a ratio of 5 to 1), their site plan is hardly consistent with the intent evident throughout the lease.

While there is reference to not unreasonably restricting the use of the leased property by the lessee, that reference is not a distinct clause under Use of Premises. Rather, it is included in such a way that it implies "other uses" are meant to be within the context of the constant reference to Bahia Mar as a "first-class hotel and marina complex."

Among so many other good reasons to reject or defer this Site Plan approval brought by concerned citizens of Fort Lauderdale, who own the property, please don't let defensible ambiguities in the lease prevent you from rejecting or deferring for further analysis what is a dense and cumbersome **residential complex** squeezed onto a priceless, vulnerable piece of barrier island that is meant to be, per the lease, a **first-class hotel-marina resort complex**. Insist that Rahn Bahia Mar either respect and abide by, rather than violate, the intended character of the property or sell the lease to an organization that will.

There are good alternatives!
Nancy K. Thomas
1924 SE 24 Avenue
Fort Lauderdale, FL 33316

How about more hotel rooms instead? Fewer cars + our occupancy rates are good.

(i) any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified Person;

(ii) any Person that is an officer of, partner in, or trustee of, or serves in a similar capacity with respect to the specified Person or of which the specified person is an officer, partner, or trustee, or with respect to which the specified Person serves in a similar capacity;

(iii) any Person that, directly or indirectly, is the beneficial owner of 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest (10% or more) in the specified Person, or of which the specified Person is directly or indirectly the owner of 10% or more of any class of equity securities, or in which the specified Person has a substantial beneficial interest (10% or more); and

(iv) any relative or spouse of the specified Person.

(b) Allowances means and refers to rebates and overcharges of revenue not known at the time of sale, but adjusted at a subsequent date. Allowances also include revenue foregone as a result of hotel promotions or complimentary services, and the write-off of uncollectible accounts receivable.

(c) Beneficial Owner means any Person who, directly or indirectly, owns or holds 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest (10% or more) in the specified Person, or of which the specified Person is directly or indirectly the owner of 10% or more of any class of equity securities, or in which the specified Person has a substantial beneficial interest (10% or more).

(d) Capital Improvements means those items deemed to be capital improvements pursuant to Generally Accepted Accounting Principles for hotel accounting.

(e) Concessions means and refers to minor or incidental sales of goods and services to hotel and marina guests provided by third party Non-Affiliated Persons. The sources of revenue referred to in Article 26.0, Subsection 3. A. (5) shall not be deemed to constitute Concessions.

(f) Environmental Agency means a governmental agency at any level of government having jurisdiction over Hazardous Substances and Hazardous Substances Laws and the term as used herein shall also include a court of competent jurisdiction when used as a forum for enforcement or interpretation of Hazardous Substances Laws.

(g) Hazardous Substances means any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) as now in effect or as same may be

ARTICLE 4.1

Hazardous Substances

LESSEE covenants and agrees to the following terms and conditions relating to Hazardous Substances and the use of the demised premises:

Section 1. LESSOR'S Consent Required. LESSEE covenants and agrees that in the use of the demised premises no Hazardous Substances shall be brought upon or kept or used in or about the demised premises by any Person whomsoever, unless LESSEE first obtains the written consent of LESSOR. LESSOR does hereby consent to the use of those Hazardous Substances reasonably and normally used for the purposes of the operation of a hotel and marina. LESSOR hereby waives the requirement for its consent as to other uses for existing subtenants for the remainder of their present lease terms.

Section 2. Compliance with Environmental Laws. During the Lease term as extended, LESSEE shall have absolute responsibility to ensure that the demised premises are used at all times and all operations or activities conducted thereupon are in compliance with all local, state and federal laws, ordinances, regulations and orders (collectively, "Hazardous Substances Laws"), as same may now exist or may from time to time be amended, relating to industrial hygiene, environmental protection and/or regulation, or the use, analysis, generation, manufacture, storage, disposal or transportation of any Hazardous Substances. Any LESSEE shall be absolutely liable to LESSOR for any violation of Hazardous Substances Law during the term of that respective LESSEE'S leasehold interest in the demised premises. Notwithstanding the foregoing, LESSOR acknowledges that LESSEE shall not be responsible to the LESSOR for any violation of Hazardous Substances Laws which occurred prior to the current LESSEE'S assumption of the leasehold interest in the demised premises. In connection therewith, LESSEE has provided those environmental reports described in Exhibit "B" hereto ("Environmental Baseline"), which Environmental Baseline should be deemed to describe the status of the Property as of the date Rahn Bahia Mar, Ltd. assumed the Lease and which such Environmental Baseline is on file in the City of Fort Lauderdale's Office of City Engineer.

Section 3. Hazardous Substances Handling. LESSEE covenants and agrees that it is responsible to the LESSOR to ensure that any and all activities conducted upon the demised premises by a Person (other than the LESSOR) be conducted only in compliance with all Hazardous Substances Laws and all conditions of any and all permits, licenses and other Environmental Agency approvals required for any such activity conducted upon the demised premises. LESSEE covenants that any and all Hazardous Substances removed from the demised premises shall be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposition of such Hazardous Substances and wastes and only in accordance with Hazardous Substances Laws and consistent with all conditions of any and all permits, licenses and other Environmental Agency approvals required for such removal and transportation. LESSEE covenants that

the reasonable satisfaction of the LESSOR, that either (i) it has the experience and capability of operating the hotel and marina; or (ii) it has the financial stability to operate the hotel and marina by an entity qualified to do so, within one hundred twenty (120) days of the effective date of the assignment to the Leasehold Mortgagee Assignee as set forth herein. The standards to be applied by the LESSOR in approving the Leasehold Mortgagee (or its Leasehold Mortgagee Assignee) or the operator of the hotel and marina shall be those which govern the LESSOR'S consent to an assignment of the Lease.

Section 9. Within thirty (30) days after written request by LESSEE or by LESSEE'S Leasehold Mortgagee, or in the event that upon any sale, assignment or mortgaging of LESSEE'S leasehold interest herein by LESSEE or LESSEE'S Leasehold Mortgagee, an Estoppel Certificate shall be required from the LESSOR, the LESSOR agrees to deliver in recordable form such Estoppel Certificate to any proposed Leasehold Mortgagee, purchaser, assignee or to LESSEE certifying (if such be the case) (i) the amount of rent and additional rent due under the Lease, if any, and the date to which rents due under the Lease, if any, and the date to which rents have been paid; (ii) that this Lease is in full force and effect; (iii) that the LESSOR has no knowledge of any default under this Lease, or if any default exists, specifying the nature of the default; and (iv) that there are no defenses or offsets which are known and may be asserted by the LESSOR against LESSEE in respect of obligations pursuant to the Lease.

Section 10. Reference in this Lease to acquisition of the LESSEE'S leasehold interest herein by the Leasehold Mortgagee shall be deemed to refer, where circumstances require, to acquisition of the LESSEE'S leasehold interest herein by any purchaser at a sale on foreclosure of the Leasehold Mortgagee, provided such purchaser is a Non-Affiliated Person. Provisions applicable to the Leasehold Mortgagee in such instance or instances shall also be applicable to such purchaser, provided such purchaser is a Non-Affiliated Person.

Section 11. Except as may be expressly provided herein to the contrary, so long as the LESSEE'S leasehold interest herein shall be mortgaged to a Leasehold Mortgagee, the parties agree for the benefit of such Leasehold Mortgagee that the LESSOR shall not sell, grant or convey to the LESSEE all or any portion of the LESSOR'S fee simple title to the leased premises without the prior written consent of such Leasehold Mortgagee. In the event of any such sale, grant or conveyance by the LESSOR to the LESSEE, the LESSOR and the LESSEE agree that no such sale, grant or conveyance shall create a merger of this Lease into a fee simple title to the leased premises. This Section shall not be construed to prevent a sale, grant or conveyance of the LESSOR'S fee simple title by the LESSOR to any Person, firm or corporation other than the LESSEE, its successors, legal representatives and assigns.

Section 12. So long as the LESSEE'S interest in this Lease shall be mortgaged to a Leasehold Mortgagee, the parties agree for the benefit of such Leasehold Mortgagee, that they shall not surrender or terminate, or accept a surrender or termination of this Lease or any part of it, nor shall they modify this Lease or accept prepayments of installments of rent to become due, without the prior written consent of such Leasehold Mortgagee in each instance.

ARTICLE 16.0

Repairs and Maintenance

Section 1. The LESSEE agrees at his expense to keep and maintain the leased premises, including but not limited to, grounds, buildings, furnishings, fixtures and personal property, in good state of repair and first class condition.

Section 2. The LESSEE agrees at his expense to make all repairs to the leased premises including but not limited to, buildings, improvements, including electrical, plumbing, sewer, sewer connections, structural and all other repairs that may be required to be made on the leased premises, and may change or re-locate any roads thereon, provided reasonable access is maintained for sub-lessees, tenants, or boatmen.

Section 3. The LESSEE at his expense will keep all the buildings, both interior and exterior, including roof, in good state of repair and in first class condition, and at all times well painted.

Section 4. The LESSEE at its expense agrees to deliver to the LESSOR upon the termination of this Lease the entire leased premises including buildings, improvements, in good state of repair and in good usable condition, ordinary wear and tear excepted.

ARTICLE 17.0

Personal Property

This Lease also includes personal property of the LESSOR itemized on the sheets designated as Exhibit "2-A" and "2-B" of the original Lease dated September 1, 1962, with such Exhibits being recorded at Official Records Book 2870, Pages 556 through 573 of the Public Records of Broward County, Florida, and the LESSEE shall have right to exchange or sell same from time to time provided that same shall be replaced with equipment of equal or better quality and title to such replacements shall at all times remain in the LESSOR and upon the termination of this lease shall be delivered to the LESSOR in good condition.

All furnishings in the hotel rooms which are owned by the LESSEE, including, but not limited to beds, chairs, sofas, tables, desks, credenzas, televisions, dressers, lamps and the like shall become the property of the LESSOR at the end of the Lease term and shall be surrendered to the LESSOR simultaneously with the return of possession of the Property. The LESSEE agrees that during the last five (5) years of this lease, none of the foregoing shall be removed from the Property, except in a manner consistent with the normal, ongoing operation of a hotel. Nothing in Article 17.0 shall create any interest in favor of the LESSOR in any personal property leased by the LESSEE from Non-Affiliated Persons or otherwise owned by Non-Affiliated Persons.

ARTICLE 18.0

Insurance

Section 1. The LESSEE at its expense shall provide fire and extended coverage insurance or all risk or D.I.C. coverage on the real property herein described and all improvements situated thereon and contents contained therein or thereupon for the benefit of the LESSOR and the LESSEE. Insurance coverage shall be at least 90% of the insurable value of said real property and improvements (including buildings and contents). A certificate of insurance evidencing said coverage shall be provided to LESSOR.

Section 2. The LESSEE at its expense shall provide commercial general liability insurance for the benefit of the LESSOR and the LESSEE with minimum limits of coverage of not less than \$2.0 million covering bodily injury and property damage. The minimum limits of coverage herein shall be adjusted every five (5) years, on the anniversary date of the lease year, in accordance with the increase or decrease in the Consumer Price Index for "All Urban Consumers, U.S. City Average (1982 - 1984 = 100)" (hereinafter, CPI) published by the Bureau of Labor Statistics of the United States Department of Labor, or any comparable successor or substitute index designated by Lessor. For the purposes of this section, the beginning CPI figures shall be the most recently published index figures in effect on the beginning of the 1994/95 lease year. On the date(s) of adjustment, the adjusting figures shall be the most recently published figures in effect on the subject adjustment date(s).

Section 3. In the event of destruction or damage of any of the property covered by insurance, the funds payable in pursuance of said insurance policies shall be deposited in Sun Bank/South Florida, N.A. or any successor institute which serves as the depository for the City of Fort Lauderdale, as an interest bearing trust fund for the benefit of LESSOR and LESSEE, and said funds shall be used for the purpose of reconstruction or repair, as the case may be, of any of the buildings, improvements or personal property so damaged or destroyed. Such reconstruction and repair work shall be done in strict conformity with all applicable building and zoning codes. Should the cost of reconstruction or repair exceed the amount of funds available from the proceeds of such insurance policy, then and in such event, such funds shall be used as far as the same will permit in paying the cost of said reconstruction or repair, and any difference shall be made up by the LESSEE.

ARTICLE 19.0

Use of Premises

Section 1. Except as stated below, the LESSEE agrees that the leased premises shall be used as a first-class hotel-marina and resort complex, which may include uses such as restaurant, cocktail lounge, liquor package store, yacht club, motel, hotel, convention hall, retail stores, marine stores, marine service station, charter

boat and sightseeing boat facility, offices, apartments, and other kindred and similar businesses. It is not the intention of the parties that the LESSEE shall be unreasonably restricted in the use of the leased premises other than the LESSEE is required to conduct a legitimate business or businesses on the leased premises in keeping with the purpose for which the improvements thereon were constructed. LESSEE agrees that the hotel complex will be maintained and operated in accordance with the standards of a chain-affiliated, full-service, mid-market hotel. Such standards are intended to provide high quality accommodations and service to guests and visitors. These standards are generally described as being at a level higher than that found in the economy hotel market, but are lower than those found in the luxury hotel market.

Section 2. The LESSEE shall maintain the character of Bahia Mar as a marina.

Section 3. The LESSEE agrees that it will diligently, efficiently and skillfully conduct his business on the leased premises so as to make the same yield the greatest revenue possible.

Section 4. The LESSEE agrees that at no time will it directly or indirectly permit the leased premises or any portion thereof to be used for any illegal purpose.

ARTICLE 20.0

Assignment and Subleasing

The LESSEE may from time to time sublease certain portions of the marina without prior approval of the CITY; however, any total assignment or sale of the leasehold interest described herein shall require the approval of the CITY Commission, which shall have the right to determine financial stability of the prospective purchaser, yet such consent shall not be unreasonably withheld.

It is understood by and between the parties hereto that any sublease shall be for a rental consistent with rates prevailing in this locality at the time of the sublease.

In the event that the parties cannot agree with a minimum rental, then the subject shall be set for arbitration with the LESSOR and LESSEE, each of them choosing one arbitrator, whereupon the two arbitrators so chosen shall select a third and the three so selected arbitrators shall then make a decision as to a reasonable rental which shall be binding upon the parties. The fact of arbitration shall not act as a breach of this lease.

ARTICLE 21.0

Name

The name "BAHIA MAR" shall be preserved by the LESSEE. LESSOR retains the right to use the name "BAHIA MAR" in its advertising as a publicly-owned facility.

operating revenues.

(2) For the years of the Lease commencing October 1, 1985 and ending September 30, 2012, the annual percentage rental due from the LESSEE to the LESSOR shall be 4.0% of the annual gross operating revenues.

(3) For the years of the Lease commencing October 1, 2012 and ending September 30, 2037, the date of the termination of this Lease, as amended, the annual percentage rental due from the LESSEE to the LESSOR shall be 4.25% of the annual gross operating revenues.

(4) The LESSEE shall pay annual percentage rent for the Second Extended Term described above at the rate of 4.25% of the annual gross operating revenue ("Gross Operating Revenue" or "GOR"), as hereinafter defined.

(5) Any and all sums received by the LESSOR from the LESSEE in payment of minimum annual rental shall be fully credited against the annual percentage rentals due from the LESSEE to the LESSOR as provided herein.

(6) For purposes of this Lease, as amended, the lease year shall be deemed to commence on October 1 and end on September 30 of each year under the term of this Lease.

Section 3. As of the effective date of this Amended and Restated Lease through and including September 30, 1995, Section 3 of this Article shall read as follows:

A. Annual gross operating revenues from only the following uses or functions of the leased premises shall be used in calculating the annual percentage rental due from the Lessee to the Lessor regardless of whether the lessee or a sublessee, affiliate or other entity related to lessee operates and controls said use or function:

(1) All hotel, motel, meeting and convention room revenues.

(2) All food and beverage sales made on the leased premises, exclusive of grocery sales and liquor package store sales.

(3) All rentals received for dockage of private or commercial marine vessels.

(4) All parking revenues.

B. Revenues produced from the following uses or functions are specifically excluded from computation within gross operating revenue:

(1) Telephone revenue.

(2) Fuel dock sales.