12/5/2017
Regular Meeting
R-4 Provided for the Record by Mary Fertig

MEMORANDUM

To: The Honorable Mayor and Members of the Fort Lauderdale City Commission

From: Lynn Solomon, Assistant City Attorney

Donald J. Lunny, Jr., City Special Counsel

Date: December 11, 2015

Re: Resolution Approving New Master Lease and Conceptual Plan for Property Known as the Bahia Mar

Copy: Cynthia A. Everett, City Attorney
Lee R. Feldman, City Manager
John Herbst, City Auditor
Jeffrey A. Modarelli, City Clerk

Please find attached a Resolution approving a new Master Lease and Conceptual Plan for property known as the Bahia Mar, where the City Commission will be taking this action as a Landlord. The proposed development will remain subject to all of the City's regulatory review and approvals, regardless of the Landlord's approval of the matters explained below.

Background

Pursuant to Section 8.06 of the City Charter of the City of Fort Lauderdale, the City Commission is authorized to negotiate and approve leases for property known as the Bahia Mar without the necessity of public bid, provided that the initial term of each lease is not longer than fifty (50) years, and provided that any extension thereof will not result in an extension term in excess of fifty (50) years. Therefore, the maximum amount of time authorized for any one lease pursuant to this Charter provision is one hundred (100) years.

The existing lease for the Bahia Mar Property ("Existing Lease") was signed on September 30, 1962. In 1995, the term was extended so that the Existing Lease expires on August 31, 2062, which is approximately 47 years from now. The Existing Lease does not allow the Bahia Mar Property to be used for condominium, multi-family residential uses as principal, independent uses. Under the Condominium Act, a residential condominium cannot be created in a leasehold having a remaining term less than fifty (50) years; therefore, if the City Commission desires to allow for the redevelopment of the Bahia Mar by allowing residential condominium uses to be located on the property, a new lease will be necessary.

At the present time, the City's Lessee has asked to terminate the Existing Lease and enter into new leases so as to obtain future leasehold rights to the property for fifty (50) years, with extension privileges for another fifty (50) years, so that the property known as the Bahia Mar will be leased for one hundred (100) years.

While City Charter Section 8.06 authorizes the City Commission to negotiate the Leases contemplated by such Section, as a practical matter, preliminary negotiations are conducted under the overall supervision of the Office of the City Manager, and then presented to the City Commission for review and consideration, and any additional action the Commission may desire. As in any area where lawyers for one side or the other are "at odds", executive personnel need to resolve the disagreement to allow negotiations to continue. During these negotiations, Mr. Feldman resolved differences with respect to significant City issues.

Legal Considerations

The significant legal considerations for this matter are as follows:

1. The Bahia Mar Property will no longer be subject to one lease. Presently, the Bahia Mar Property is under one lease, such that if the Lessee defaults and the Existing Lease is terminated, the entire Bahia Mar Property returns to the City and the City may sell or re-lease all or any portion of it. The proposed new arrangement contemplates not only a Master Lease, but also, three (3) additional, independent leases for the condominium buildings (Phase 1B, Phase II, and Phase III).[1] This means that the Bahia Mar Property will be subject to four (4) independent leases which are not cross-defaulted. Therefore, if one lease is terminated while the others remain being performed, then only the portion of the Bahia Mar Property associated with the terminated lease will be returned to the City, and the City will have only such affected portion of the Bahia Mar Property to sell or re-lease. In a sense, the leasing of the Bahia Mar Property will be fractionalized. The City requested during its negotiations that the Bahia Mar Property remain subject to one Master Lease, and that the condominiums be constructed on subleased parcels; however, this request was rejected because the Lessee expressed concerns that the market conditions in this area of the City would not be conducive to sub-leasehold condominiums for the type of luxury condominiums being proposed, and because some of the investors in the development entities in the condominium portions of the proposed development may be different than the investors in the portion of the project subject to the Master Lease. If having more than one (1) lease for the Bahia Mar Property is acceptable to the City Commission, it will be important that regulatory requirements for the development entitlements associated with each lease be effectively allocated, and this should be addressed as part of the City's zoning and land development regulatory review.

2. The new lease contemplates residential condominiums as an independent, principal use. Once the residential condominiums are built, the City will then be dealing with its residents vis-à-vis default, breach, remedies, and rent collection, because when the developer turns over the condominium to each responsible condominium association, each association will become the City's Lessee. Generally, municipal corporations are not enthusiastic about enforcing transaction requirements against citizens who have a "block voice" or "block

[1] These will be finalized once the Master Lease is approved (as these leases will contain many of the Master Lease's provisions) and will be presented to the City Commission in January 2016. At one point, thirteen (13) leases were proposed.

vote", and this may limit the City's willingness to pursue available legal remedies in the future under the lease structure contemplated for the residential condominiums.

3. The leases do not terminate if the improvements are not built within a specific time period. Once the new Master Lease and contemplated condominium leases are executed, there is some risk the Lessees may not complete all of the proposed improvements, and if this happens, these leases will not terminate. Thus, even if the zoning entitlements expire, each Lessee's rights under each lease would continue. The City requested during negotiations that if the proposed improvements were not built, the affected lease would terminate and the property would return to the City so that the City could keep it, negotiate a new lease with a different tenant, or sell it. This proposal was refused. The City then proposed that if the buildings were not built, the new lease would expire after fifty (50) years (which is only a few years after the date the current lease expires). This proposal was also rejected. Currently, the proposed Master Lease requires that the Promenade be completed before the Lessee can extend the term for another fifty (50) years, and requires the rent paid to the City to be increased if the development is delayed.

   From a legal perspective, the continuing lease (and extension rights) will materially and practically affect the City's ability to obtain significant value in any subsequent sale of its underlying title to the property, because generally, entitlements to a one hundred (100) year lease is viewed as the "legal equivalent" of fee simple ownership, and thus the land would not have much "residual value."

4. The Boat Show. The Existing Lease does not contain any provisions about the Boat Show; however, the proposed Master Lease does. The Lessee's obligation with respect to the Boat Show in the proposed Master Lease are contained in Article 36. Generally, this provision contains a lot of "forward looking" statements concerning the Boat Show, all contingent upon the Lessee renegotiating its obligations with the Boat Show operator - - which has not yet been finalized. If, and when these arrangements are finalized, the Lessee made a concession in negotiations that if the Boat Show leaves the Bahia Mar (as distinguished from leaving Fort Lauderdale) the Lessee will pay the City a $1,000,000 penalty. The City is aware that the representatives of the Boat Show and representatives of the Lessee have been heavily engaged in negotiations for some time. Additionally, the City Manager facilitated a meeting at City Hall to allow such representatives an opportunity to continue to work on this matter. Unfortunately, the negotiations have not been completed. The following is recommended at this time:

   a. The Master Lease will not become effective until either: (i) a new twenty (20) year Boat Show arrangement comes into effect between the Lessee and the Boat Show or (ii) the City Commission adopts a Resolution removing this requirement. This will allow the parties to continue to negotiate and if such negotiations are not fruitful, allow the City Commission to consider the efforts of its Lessee and the Boat Show representatives in determining whether the requirement should be deleted.

b. The Development Agreement (which will be required as part of the City's regulatory review of this matter) will provide that no building permit will be issued for a residential condominium building until either:

(1) The Existing Lease is amended to include residential condominiums as a primary and independent use; or

(2) The City Commission removes the contingency in the Master Lease that the Boat Show arrangement become finalized before the Master Lease is effective.

5. Non-monetary Default. The City has no right to terminate the Existing Lease for a default which is "non-monetary" (meaning, something other than payment of rent, taxes, and insurance). The City requested in its negotiations the right to terminate the lease for a non-monetary default, and this request was denied. Being unable to terminate a lease for a non-monetary default is legally disadvantageous. The following provisions, however, have been added to the proposed Master Lease to help offset this continued negative consideration:

a. Provisions in the proposed Master Lease have been improved to increase the likelihood that the City would be able to obtain a Decree of Specific Performance (a Court Order) to compel the Lessee's correction of a non-monetary default; and

b. Provisions concerning the City's right to recover damages for the Lessee's default have been improved; and

c. Provisions have been added to the Master Lease to the effect that if the City cures a non-monetary default, the City's reasonable costs and expenses incurred would be "additional rent", due within thirty (30) days of invoice (which, if not paid, would allow the City to terminate for "non-payment of rent"); and

d. The Existing Lease's rent acceleration clause has been retained in the proposed Master Lease.

6. Development "Quality". The Existing Lease requires that the Bahia Mar be a "first class hotel marina and resort complex". What may have met this standard long ago when the Bahia Mar was built is different than what might meet the standard today. In order to use a "quality standard" that may be more comprehensive, industry specific, and fluid, the City proposed that the Hotel meet the Forbes Four (4) Star Rating and the American Automobile Association (AAA) Four (4) Diamond Rating. The Lessee's existing business arrangements are such that it was unable to agree to this standard, and the proposed Master Lease requires the hotel to maintain a Forbes Three (3) Star Rating or AAA Three (3) Diamond Rating. However, a number of new provisions have been added to the Master Lease to address "quality" of development concerns:

a. The new lease provides the City with much more extensive control over the Bahia Mar property as a Landlord. As the Mayor, Commissioners, and Manager know, the scope

and extent of the municipal regulatory authority over development will likely continue to change during the upcoming one hundred (100) year lease period.[2] Therefore, it is very important that the City have control over the Property as a Landlord. In this respect:

(1) The City Commission will review and approve a detailed Conceptual Plan for the Site (as is proposed when the Master Lease is approved). The "Conceptual Plan" is defined in the Master Lease to be very specific. Exhibit "C" to the Master Lease incorporates all of the plans and renderings comprising the Conceptual Plan which, because of its number of pages, is being delivered separately. If material changes to the Conceptual Plan are proposed by the Lessee and they are reviewed by the City Commission before regulatory approvals are finalized, the proposed Conceptual Plan changes will be approved or not approved in the City Commission's reasonable discretion as a Landlord considering:

i. Nature of the proposed change;

ii. The advice of the Manager;

iii. Public comment;

iv. The needs of the Lessee; and

v. The best interests of the City of Fort Lauderdale.

(2) Many other "landlord decisions" will require the reasonable review of the City, which has the ability to approve or deny such requests in the exercise of reasonable discretion.

(3) Regardless of approval by the City as a Landlord, the Lessee will still be required to obtain all required regulatory approvals. By the same token, regardless of City approvals in its regulatory capacity, the City will still need to approve matters as a Landlord.[3]

---

[2] Indeed, in the last fifty (50) years: (i) Florida's Local Government Comprehensive Planning Acts were enacted which limit municipal discretion to approve or deny development (as now such actions – and third party suits concerning same - must be consistent with a Comprehensive Plan (which in turn must be consistent with the Plans of superior governing entities); (ii) Broward County's Charter was changed giving the County certain pre-emptive rights over municipal land use and subdivision (platting) law, and (iii) Florida's jurisprudence concerning site specific rezoning, use approvals, and other regulatory specific "policy application" decisions was changed to make these regulatory decisions "quasi-judicial" and subject to increased judicial scrutiny (and thus less municipal discretion).

[3] To avoid multiple approvals by the City Commission, the proposed Master Lease provides that the City Manager may review material changes to the Conceptual Plan which have received the City Commission's prior regulatory approval; however, the Commission retains the prerogative of always approving these matters as Landlord, or making these decisions on a case-by-case basis.

Thus, if all of the City's land development regulatory authority is eroded over the next one hundred (100) years, the City's control over the quality of the development (as reflected in the Conceptual Plan approved when the Master Lease is approved) will remain and will be substantial.

b. Extensive provisions concerning "appearance" and "maintenance" of the site and buildings have been added to the proposed Master Lease, with the proviso that if such standards are not maintained and the City cures any deficiencies, the reasonable costs incurred by the City will become "additional rent." These provisions can be found in Article 18 (for the land and building aspects of the property) and in Exhibit "I" for the Marina.

7. Rent. The amount, method, and manner of how "rent" is determined paid is primarily a "business consideration" as distinguished from a "legal consideration". However, the following should be noted:

   a. The proposed Master Lease will contain provisions for fixed base rent, and provisions that may cause such fixed rent to be increased based on the development's performance in terms of generating "gross revenues". While the proposed Master Lease has extensive provisions as to what constitutes "gross revenues", it generally indicates that whenever the Lessee subleases space, the rent it receives will be the "gross revenue" instead of the revenues generated from actual operations. This is not the case with the sublease of the Marina however, where the gross revenues will be based on operations even if the Marina is subleased.

   b. The Lessee can sublease to affiliates. In order to be able to ensure that rent in these cases is "fair market," the City has the right to go through a determination process to have MA1 - Appraisers evaluate the matter. While this is a practical way to address affiliate subleasing, having provisions of this type cause rent contributions to the Lease performances formula to be uncertain until the process is complete. The process could be cumbersome if a significant number of affiliate subleases come into being.

8. General Comment on Business Considerations. Given the ability of the Broward County Office of Inspector General to investigate business decisions made by municipalities, the City Manager was advised to seek independent business advice concerning the business aspects of this transaction. Working drafts of certain lease provisions concerning rent were shared with the City's Auditor.

9. Hazardous Materials. The provisions concerning Hazardous Materials have been improved from a practical perspective. Under the Existing Lease, the City was responsible to remediate any Hazardous Substances violations which could be traced by to have occurred prior to 1995.[4]

[4] The City is aware of a fuel discharge prior to 1995; however, the Lessee maintains that this issue was resolved.

Under the proposed Master Lease, the Lessee is now responsible to remove all Hazardous Substances that exceed the limits as may be allowed under the Hazardous Substance laws whenever the Master Lease expires or is terminated, and regardless of when the Hazardous Substances release occurred. This would exclude, of course, Hazardous Substances that are released by the City and its employees and agents (the City will have rights to use two (2) boat slips at the Marina and stores some of its beach maintenance vehicles and equipment on the Bahia Mar property) or which migrates to the Bahia Mar property from the City Fire Station (located South of Bahia Mar).

Conclusion

The Resolution proposed approves the proposed Master Lease "Final Draft" and authorizes the document to be finalized by the Office of the City Manager and City Attorney and Special Counsel prior to being executed. Some of the legal forms referenced in the Master Lease are being finalized. While every effort was made to review electronic edits to the document that were occasioned by final business considerations, the Final Draft will likely have a few typos, or misspellings, or provisions that need further and final revisions.

One "hallmark" of a well-negotiated transaction is that neither side gets everything it requests, and certainly, such has been the case in this proposed transaction. Whether the overall development being proposed is desirable or undesirable is a policy decision for the City Commission and whether the terms of the proposed Master Lease are acceptable is also a City Commission decision.

To conclude, we would like to particularly thank Mr. Feldman, Mr. Tate and Mr. Somerstein for their efforts in connection with this matter, and we would like to particularly recognize Mr. Somerstein's assistant Susan, who exerted great efforts in trying to accurately incorporate all comments on the prior drafts of the Master Lease proposed - - often after business hours, and sometimes late at night and on weekends.

The Master Lease and Conceptual Plan are now ready for the City Commission's consideration.

Sec. 47-12.5. - District requirements and limitations.

A. *Planned Resort (PRD) District.*

1. *Setbacks.* No structure shall be constructed, remodeled or reconstructed so that any part of the structure is located within twenty (20) feet of the proposed public right-of-way along A-1-A as shown in the revitalization plan, and within twenty (20) feet of any other public right-of-way, unless the development or redevelopment of the structure is approved as if it were a development of significant impact. In addition, those yards fronting on People Streets must meet the requirements of Section 47-12.4.C.

2. *Height.* No structure shall be constructed, remodeled or redeveloped so that any part of the structure exceeds the following height standards:

   a. Within twenty (20) feet of the proposed public right-of-way along A-1-A as shown in the revitalization plan and along any other public right-of-way, thirty-five (35) feet.

   b. No portion of a structure in excess of thirty-five (35) feet in height shall exceed the height limitations provided in Section 47-23.6, Beach Shadow Restrictions.

   c. No structure shall exceed two hundred (200) feet in height, except a beach development permit may be issued that exceeds the height limitations set out herein if it meets the criteria provided in Section 47-12.5.B.2.b.

3. *Density.* Residential: forty-eight (48) dwelling units per acre.

4. *Minimum lot size.* No development or redevelopment shall be carried out nor shall any land be used in the PRD district on a parcel of land that is smaller than ten (10) acres, unless the development, redevelopment or use is consistent with a community redevelopment plan for the entire PRD district.

5. *Floor area ratio.* No structure shall be developed or redeveloped on a parcel so that the floor area ratio is greater than six (6).

6. *List of permitted uses—PRD district.*

   a. Site Plan Level IV Development.

      i. Hotels and suite hotels.

      ii. Conference centers and other public meeting or performance facilities or tourist attractions.

      iii. Commercial retail uses offering services or goods for sale to tourists and visitors such as gifts, souvenirs, clothes and other tourist commodities, including restaurants as a part of a hotel, a conference center complex or a shopping arcade or mall with at least fifty thousand (50,000) square feet of gross floor area.

      iv. Residential.

      v. Parking structures.

      vi. Other uses catering to tourists as approved by the planning and zoning board.

      vii. Marinas as a conditional use. See Section 47-24.3.

      viii. Moped/scooter rental as a conditional use. See Section 47-24.3.

   b. Site Plan Level III Development. Parking lots and temporary parking lots.

   c. Site Plan Level I Development.

      i. Accessory buildings and structures.

      ii. Improvements outside of the principal structure including but not limited to fences, walls, landscaping, parking, signs and nonstructural alterations to the exterior of structures located on a parcel.

      iii. Expansion or change of a permitted use within an existing structure.

      iv. Automobile rental limited to twelve (12) cars per development site as an accessory to a hotel or marina and Section 47-18.3 shall not be applicable.

      v. Active and Passive Park, see Section 47-18.44.

7. *Minimum distance between buildings.* The minimum distance between buildings on a development site shall be twenty (20) feet or twenty (20) percent of the tallest building whichever is greater. For purposes of this subsection, a parking garage shall be considered a building.

8. *Length and width.* The maximum length of a structure shall be two hundred (200) feet and the maximum width of a

structure shall be two hundred (200) feet. The maximum width, length or both may be greater if a Site Plan Level IV development permit is approved. Modification of the length or width of a structure pursuant to this subsection shall not an approval of a reduction of yards. If a reduction of yards is required, it must be approved separately in accordance with the provisions of Section 47-12 of the ULDR.

B. *A-1-A Beachfront Area (ABA) District.*

1. *Setbacks.*

a. No structure shall be constructed, remodeled or reconstructed so that any part of the structure is located within twenty (20) feet of the proposed public right-of-way along A-1-A as shown in the revitalization plan, and within twenty (20) feet of any other public right-of-way, unless the development or redevelopment of the structure is approved as if it were a development of significant impact. In addition, those yards fronting on People Streets must meet the requirements of Section 47-12.4.C.

b. Yards not abutting a public right-of-way.

i. Side yard: ten (10) feet.

ii. Rear yard: twenty (20) feet.

c. The side and rear yard setbacks are the minimum requirements. Unless otherwise approved as a development of significant impact, in no case shall the yard setback requirements be less than an amount equal to one-half the height of the building when this is greater than the above minimums.

2. *Height.*

a. Except as expressly provided for in subsection B.2.b, no structure shall be constructed, remodeled or redeveloped so that any part of the structure exceeds the following height standards:

i. Within twenty (20) feet of the proposed public right-of-way along A-1-A as shown in the revitalization plan and along any other public right-of-way, thirty-five (35) feet;

ii. No structure shall exceed two hundred (200) feet in height.

b. Notwithstanding the height limitation set out in subsection B.2.a, a beach development permit may be issued that exceeds the height limitations set out therein according to the following provisions:

i. An increase in the maximum height on any parcel of land proposed for development of five percent (5%) if the proposed development has a rating of at least a five (5) on the design compatibility and community character scale in subsection B.6.

ii. An increase in the maximum height on any parcel of land proposed for development of ten percent (10%) if the proposed development has a rating of at least a seven (7) on the design compatibility and community character scale in subsection B.6.

iii. An increase in the maximum height on any parcel of land proposed for development of twenty percent (20%) if the proposed development has a rating of at least nine (9) on the design compatibility and community character scale in subsection B.6.

c. No structure shall exceed two hundred forty (240) feet in height.

d. No portion of a structure in excess of thirty-five (35) feet in height shall exceed the height limitations provided in Section 47-23.6, Beach Shadow Restrictions.

3. *Floor area ratio.*

a. Except as expressly provided in subsections B.3.b, no structure shall be developed or redeveloped so that the floor area ratio is more than four (4).

b. Notwithstanding the floor area ratio limitations of subsection B.3.a, a beach development permit may be issued for development that exceeds the floor area ratios set out herein according to the following provisions:

i. An increase in the floor area ratio on any parcel of land proposed for development of five percent (5%) if the proposed development has a rating of at least a five (5) on the design compatibility and community character scale in subsection B.6 of this district.

ii. An increase in the floor area ratio on any parcel of land proposed for development of ten percent (10%) if the proposed development has a rating of at least a seven (7) on the design compatibility and community

character scale in subsection B.6 of this district.

iii. An increase in the floor area ratio on any parcel of land proposed for development of twenty percent (20%) if the proposed development has a rating of at least a nine (9) on the design compatibility and community character scale in subsection B.6 of this district.

4. *Required parking.* Except as expressly provided in Section 47-20, Parking and Loading Requirements, no structure shall be developed or redeveloped so that the off-street parking available to service the parcel proposed for development is less than that required pursuant to Section 47-20, Parking and Loading Requirements.

5. *List of permitted uses—ABA district.*

a. Site Plan Level IV Development.

i. Hotels and suite hotels.

ii. Restaurants.

iii. Moped/scooter rental as a conditional use. See Section 47-24.3.

b. Site Plan Level III Development.

i. Commercial retail uses offering services or goods for sale to tourists and visitors such as gifts, souvenirs, clothes and other tourist commodities.

ii. Parking garages.

iii. Other uses catering to tourists as approved by the planning and zoning board.

iv. Residential units, in association with multifamily use, alone or together with non-residential uses subject to the following:

a) A development with residential units shall have on the side of the building facing the street at street level architectural detail and uses such as residential, restaurant, cultural or recreational uses that attract interaction with the public and minimize visual exposure of parking facilities.

b) A development with residential units abutting Fort Lauderdale Beach Boulevard (A-1-A) must have on the ground floor facing A-1-A non-residential uses that offer goods or services to residents and tourists seeking, restaurant, entertainment, cultural or commercial recreation destinations.

c) In addition to meeting the requirements of a) and b), development with residential units that exceeds 200 feet in height by meeting the provisions of Section 47-12.5.B.6. must include hotel units comprising a minimum of sixty percent (60%) of the total number of units.

c. Site Plan Level II Development with City Commission Request for Review subject to Section 47-26.A.2.

i. In that portion of the ABA district located within the North Beach Area as defined in Section 47-12.3, Definitions,

a) uses provided in Section 47-12.5.1.

d. Site Plan Level I Development with City Commission approval.

i. In that portion of the ABA district within the North Beach Area as defined in Section 47-12.3, Definitions, see Section 47-12.10, North Beach for permitted uses.

e. Site Plan Level I Development.

i. Parking lots.

ii. Accessory buildings and structures; improvements outside of the principal structure including but not limited to fences, walls, landscaping, parking, signs and nonstructural alterations to the exterior of structures located on a parcel; and expansion or change of a permitted use within an existing structure.

iii. Automobile rental limited to twelve (12) cars per development site as an accessory to a hotel or marina and Section 47-18.3 shall not be applicable.

iv. Active and Passive Park, see Section 47-18.44.

6. *Design compatibility and community character scale—ABA district.*

a. In the event the developer of a parcel of land in the ABA district desires to deviate from the maximum requirements of this district, for height or FAR the developer may submit the design of the proposed

development for rating according to the following design compatibility and community scale:

i. Distinctive design that reflects positively on the overall character of the city: one (1) point;

ii. Architectural character that reflects a particular sensitivity to the history and culture of south Florida: one (1) point;

iii. Color and composition that reflects the natural colors and composition of south Florida: one (1) point;

iv. Architectural design that represents a deviation from "sameness": one (1) point;

v. Building orientation that relieves the monotony of building massing and scale along A-1-A: one (1) point;

vi. Accessible pedestrian spaces that are integrated into public pedestrian spaces and corridors along A-1-A: one (1) to three (3) points depending on the area of the pedestrian area according to the following:

a) Up to five thousand (5,000) square feet of pedestrian area: one (1) point; and

b) Greater than five thousand (5,000) square feet of pedestrian area: one-tenth (0.1) point for each additional two thousand (2,000) square feet of pedestrian area above five thousand (5,000) square feet up to a maximum of two (2) points;

vii. Distinctive public facilities that contribute to the destination resort character of the central beach area including plazas, courtyards and parks: one-tenth (0.1) point for each one thousand (1,000) square feet of distinctive public facilities up to a maximum of two (2) points;

viii. Lot aggregation: one-tenth (0.1) point for each one thousand (1,000) square feet of land area proposed for development above twenty-five thousand (25,000) square feet up to a maximum of two (2) points; and

ix. Consolidation of previously parcelized land: five-tenths (0.5) point for each five thousand (5,000) square feet of land that is assembled into the parcel of land proposed for development up to a maximum of two (2) points.

b. The determination of a design compatibility and community character rating shall be available only as a part of a beach development permit for a development of significant impact.

7. *Minimum distance between buildings.* The minimum distance between buildings on a development site shall be twenty (20) feet or twenty (20) percent of the tallest building, whichever is greater. For purposes of this subsection, a parking garage shall be considered a building.

8. *Length and width.* The maximum length of a structure shall be two hundred (200) feet and the maximum width of a structure shall be two hundred (200) feet. However, on the east and west side of a hotel structure an unenclosed balcony not exceeding an eight (8) foot extension into the setback area is permitted. A greater dimension of a structure in the east/west direction only for the portion of a structure up to fifty-five (55) feet in height may be approved pursuant to Site Plan Level IV development permit only if the structure does not exceed two hundred fifty (250) feet in height. Modification of the length or width of a structure pursuant to this subsection shall not be an approval of a reduction of yards. If a reduction of yards is required, it must be approved separately in accordance with the provisions of Section 47-12 of the ULDR.

C. *Sunrise Lane (SLA) District.*

1. *Setbacks.*

a. Front yard:

i. Twenty (20) feet; or

ii. Ten (10) feet if:

a) Shade trees are planted along the right-of-way where the reduction is granted; and

b) Any building on the development site is set back at least twenty (20) feet from the edge of the vehicular travel lane closest to the development; and

c) The development is east of Breakers Avenue; and

d) Site Plan Level IV approval.

iii. Zero (0) feet if:

a) The development parcel is on State Road A-1-A, N.E. 9th Street or Sunrise Lane; and

b) The development is east of Breakers Avenue; and

c) Site Plan Level IV approval.

iv. Zero (0) feet if:

a) The development is on Sunrise Boulevard; and

b) The development lies west of Breakers Avenue; and

c) The maximum building height is eighty (80) feet; and

d) The yard is on a right-of-way. If the right-of-way is a People Street the development must meet the requirements of Section 47-12.4.C; and

e) Site Plan Level IV approval.

b. Side yard:

i. Ten (10) feet; or

ii. Zero (0) feet if a building on an abutting parcel is built to the front property line, and the side property line is shared with the proposed development, and if the front line of the proposed building continues the same line as the front line of the abutting building or deviates from the front line of the abutting building by no more than ten (10) feet and the development lies east of Breakers Avenue.

iii. Zero (0) feet if:

a) The development is on Sunrise Boulevard; and

b) The development lies west of Breakers Avenue; and

c) The maximum building height is eighty (80) feet; and

d) The yard is on a right-of-way. If the right-of-way is a People Street the development must meet the requirements of Section 47-12.4.C.

c. Rear yard:

i. Twenty (20) feet; or

ii. Zero (0) feet if:

a) A building on an abutting parcel is built to the rear property line, and the side property line is shared with the proposed development, and if the rear line of the proposed building continues the same line as the rear line of the abutting building or deviates from the rear line of the abutting building by no more than ten (10) feet; or

b) The modification of rear yard is required to accommodate a parking garage with ninety (90) degree parking spaces on both sides of drive aisles in the garage; and

c) In either ii. or iii., the development lies east of Breakers Avenue; or

iii. Zero (0) feet if:

a) The development is on Sunrise Boulevard; and

b) The development lies west of Breakers Avenue; and

c) The maximum building height is eighty (80) feet; and

d) The yard is on a right-of-way. If the right-of-way is a People Street the development must meet the requirements of Section 47-12.4.C.

d. The side and rear yard setbacks are the minimum requirements. Unless otherwise approved as a Site Plan Level IV development, in no case shall the yard setback requirements be less than an amount equal to one-half the height of the building when this is greater than the above minimums. In no instance shall yard modifications below the twenty (20) foot front yard, ten (10) foot side yard or twenty (20) foot rear yard be permitted for properties that do not meet the conditions for modification of yards below these minimums as provided herein.

e. If a development is located on Sunrise Boulevard, any yard on such development site abutting a street may be reduced to zero (0) if approved as a Site Plan Level IV. If the yard to be modified is on a People Street, it must also meet the requirements of Section 47-12.4.C. Except as provided herein, in no instance shall yard

modifications below the twenty (20) foot front yard, ten (10) foot side yard or twenty (20) foot rear yard be permitted for properties lying west of the centerline of Breakers Avenue.

f. Length and width. The maximum length and width of a structure shall be two hundred (200) feet.

g. Minimum distance between buildings. The minimum distance between buildings on a development site shall be twenty (20) feet or twenty (20) percent of the tallest building, whichever is greater. For purposes of this subsection, a parking garage shall be considered a building.

2. *Height.* No structure shall exceed one hundred twenty (120) feet.

3. *Density.*

a. Residential: forty-eight (48) dwelling units per acre.

b. Hotels: ninety (90) rooms per acre.

c. Commercial retail: floor area ratio of two (2).

4. *List of permitted uses—SLA district.*

a. Site Plan Level IV Development.

i. Residential.

ii. Hotels, suite hotels.

iii. Parking garages.

iv. Moped/scooter rental as a conditional use. See Section 47-24.3.

b. Site Plan Level III Development.

i. Commercial retail uses offering services or goods for sale to tourists and visitors such as gifts, souvenirs, clothes and other tourist commodities.

ii. Restaurants, provided that any restaurant located on a parcel abutting the Intracoastal Waterway shall have no outdoor service of food or beverage on the Intracoastal Waterway side of the parcel.

c. Site Plan Level I Development.

i. Parking lots.

ii. Accessory buildings and structures; improvements outside of the principal structure including but not limited to fences, walls, landscaping, parking, signs and nonstructural alterations to the exterior of structures located on a parcel; and expansion or change of a permitted use within an existing structure.

iii. Automobile rental limited to twelve (12) cars per development site as an accessory to a hotel or marina and Section 47-18.3 shall not be applicable.

iv. Active and Passive Park, see Section 47-18.44.

D. *Intracoastal Overlook Area (IOA) District.*

1. *Setbacks.*

a. Front yard: twenty (20) feet.

b. Side yard: one-half (½) the height of the building.

c. Rear yard: one-half (½) the height of the building.

d. If a development is approved as a development of significant impact, the side and rear yard requirements may be reduced as follows:

i. Side yard. For structures greater than one hundred fifteen (115) feet in height: forty (40) feet; for structures greater than seventy-five (75) feet in height: thirty (30) feet; for structures greater than thirty-five (35) feet in height: twenty (20) feet; for structures up to thirty-five (35) feet in height: ten (10) feet.

ii. Rear yard: twenty (20) feet.

e. The final reviewing authority may permit the minimum side yard setbacks to be reduced to ten (10) feet when the side of the property where the setback is proposed to be reduced is adjacent to a waterway or dedicated open space and it is found that allowing a reduction is compatible with the Design and Community Compatibility Criteria provided in Section 47-12.7.

2. *Height.* No structure shall exceed one hundred twenty (120) feet.

3. *Density.*
   a. Residential: forty-eight (48) dwelling units per acre.
   b. Hotels: ninety (90) rooms per acre.
   c. The density permitted herein may be transferred to development in the NBRA zoning district as provided in Section 47-12.5.E.3.
4. *List of permitted uses—IOA district.*
   a. Site Plan Level IV Development.
      i. Restaurants located within a residential high-rise structure or hotel provided there is no outdoor service of food or beverage.
      ii. Freestanding restaurants permitted only in the portion of the IOA district south of Bayshore Drive provided there is:
         a) No outdoor dockage;
         b) No outdoor service of food or beverage;
         c) Notice of public hearings of the city commission to consider an ADP for such use shall be as for a Rezoning, as provided in Section 47-27, Notice Procedures for Public Hearings.
      iii. Hotels and suite hotels.
      iv. Motels.
   b. Site Plan Level III Development.
      i. Residential.
      ii. Parking lots.
      iii. Commercial retail uses offering services or goods for sale to tourists and visitors such as gifts, souvenirs, clothes and other tourist commodities, as a part of a hotel or high rise residential structure.
   c. Site Plan Level I Development.
      i. Accessory buildings and structures; improvements outside of the principal structure including but not limited to fences, walls, landscaping, parking, signs and nonstructural alterations to the exterior of structures located on a parcel; and expansion or change of a permitted use within an existing structure.
      ii. Active and Passive Park, see Section 47-18.44.
   d. Site Plan Level I Development with City Commission approval.
      i. In that portion of the IOA district within the North Beach Area defined in Section 47-12.3, Definitions, see Section 47-12.10, North Beach for permitted uses.
5. *Length and width.* The maximum length and width of a structure shall be two hundred (200) feet.
6. *Minimum distance between buildings.* The minimum distance between buildings on a development site shall be twenty (20) feet or twenty (20) percent of the tallest building, whichever is greater. For purposes of this subsection, a parking garage shall be considered a building.

E. *North Beach Residential Area (NBRA) District.*

1. *Setbacks.*
   a. Front yard: twenty (20) feet.
   b. Side yard: one-half (½) the height of the building.
   c. Rear yard: one-half (½) the height of the building.
   d. If a development is approved as a development of significant impact, the side and rear yard requirements may be reduced as follows:
      i. Side yard. For structures greater than one hundred fifteen (115) feet in height: forty (40) feet; for structures greater than seventy-five (75) feet in height: thirty (30) feet; for structures greater than thirty-five (35) feet in height: twenty (20) feet; for structures up to thirty-five (35) feet in height: ten (10) feet.
      ii. Rear yard: twenty (20) feet.
   e. The final reviewing authority may permit the minimum side yard setbacks to be reduced to ten (10) feet when

the side of the property where the setback is proposed to be reduced is adjacent to a waterway or dedicated open space and it is found that allowing a reduction is compatible with the Design and Community Compatibility Criteria provided in Section 47-12.7.

2. *Height.* No structure shall exceed one hundred twenty (120) feet.

3. *Density.*

   a. Residential: thirty-two (32) dwelling units per acre.

   b. Hotels: fifty (50) rooms per acre.

   c. An increase in the maximum density may be permitted if approved as part of a Site Plan Level IV development permit if the following conditions are met:

      i. The increased units are transferred from property zoned IOA; and

      ii. The IOA property is within three hundred (300) feet of the parcel in NBRA proposed for development; and

      iii. A single development plan is submitted for development of the IOA and NBRA parcels; and

      iv. The transfer of density from IOA to NBRA will result in protection of the view from and to the Intracoastal Waterway.

      v. A document executed by the department is recorded in the Public Records of Broward County evidencing the revised density limitations for both development sites.

4. *List of permitted uses—NBRA district.*

   a. Site Plan Level IV Development.

      i. Hotels, suite hotels.

      ii. Motels.

      iii. Restaurants located within a residential high rise structure or hotel .

   b. Site Plan Level III Development.

      i. Residential.

      ii. Accessory commercial retail uses fully confined in a building.

   c. Site Plan Level II Development with City Commission Request for Review pursuant to Section 47-26.A.2.

      i. Uses provided in Section 47-12.5.1.

   d. Site Plan Level I Development.

      i. Accessory buildings and structures; improvements outside of the principal structure including but not limited to fences, walls, landscaping, parking, signs and nonstructural alterations to the exterior of structures located on a parcel; and expansion or change of a permitted use within an existing structure.

      ii. Active and Passive Park, see Section 47-18.44.

5. *Length and width.* The maximum length and width of a structure shall be two hundred (200) feet.

6. *Minimum distance between buildings.* The minimum distance between buildings on a development site shall be twenty (20) feet or twenty (20) percent of the tallest building, whichever is greater. For purposes of this subsection, a parking garage shall be considered a building.

F. *South Beach Marina and Hotel Area (SBMHA) District.*

1. *Setback requirements.*

   a. No structure shall be constructed, remodeled or reconstructed so that any part of the structure is located within twenty (20) feet of the proposed public right-of-way along Seabreeze Boulevard or State Road A-1-A unless otherwise approved as a development of significant impact. In addition, those yards fronting on People Streets must meet the requirements of Section 47-12.4.C.

   b. Yards not abutting A-1-A or Seabreeze Boulevard:

      i. Side yard: ten (10) feet.

      ii. Rear yard: twenty (20) feet.

   c. The side and rear yard setbacks are the minimum requirements. Unless otherwise approved as a

development of significant impact in no case shall the yard setback requirements be less than an amount equal to one-half the height of the building when this is greater than the above minimums.

2. *Height.* No structure shall be constructed, remodeled or redeveloped so that any part of the structure exceeds one hundred twenty (120) feet.

3. *Density:* Residential: forty-eight (48) dwelling units per acre.

4. *Floor area ratio.* No structure shall be developed or redeveloped so that the floor area ratio is greater than five (5).

5. *List of permitted uses—SBMHA district.*

   a. Site Plan Level IV Development.

      i. Hotels and suite hotels.

      ii. Multiple-family dwellings and apartments.

      iii. Marinas as a conditional use. See Section 47-24.3.

      iv. Museums.

      v. Swimming pools.

      vi. Parking garages.

      vii. Amphitheaters.

      viii. Restaurants.

      ix. Moped/scooter rental as a conditional use.

   b. Site Plan Level III Development.

      i. Commercial retail uses offering services or goods for sale to tourists and visitors such as gifts, souvenirs, clothes and other tourist commodities.

   c. Site Plan Level I Development.

      i. Parking lots.

      ii. Accessory buildings and structures; improvements outside of the principal structure including but not limited to fences, walls, landscaping, parking, signs and nonstructural alterations to the exterior of structures located on a parcel; and expansion or change of a permitted use within an existing structure.

      iii. Automobile rental limited to twelve (12) cars per development site as an accessory to a hotel or marina and Section 47-18.3 shall not be applicable.

      iv. Active and Passive Park, see Section 47-18.44.

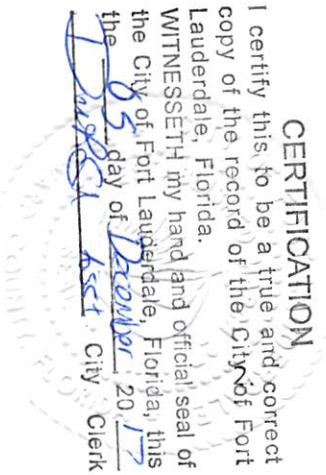
6. *Length and width.* The maximum length and width of a structure shall be two hundred (200) feet.

7. *Minimum distance between buildings.* The minimum distance between buildings on a development site shall be twenty (20) feet or twenty (20) percent of the tallest building, whichever is greater. For purposes of this subsection, a parking garage shall be considered a building.

(Ord. No. C-97-19, § 1(47-12.5), 6-18-97; Ord. No. C-99-31, § 1, 5-4-99; Ord. No. C-00-26, §§ 2, 3, 6-6-00; Ord. No. C-01-10, § 1, 4-5-01; Ord. No. C-04-10, § 1, 4-7-04; Ord. No. C-11-40, § 2, 12-20-11; Ord. No. C-11-41, § 1, 12-20-11; Ord. No. C-15-36, § 8, 10-20-15; Ord. No. C-15-44, § 1, 1-5-16)

Sec. 47-12.2. - Intent and purpose of each district.

A. *Applicability.* The provisions of this section shall apply to all development and reuse of land in the central beach area, except for painting, cleaning and other activities incidental to ordinary maintenance.



1. *PRD - Planned Resort Development District* is established for the purpose of promoting the development and redevelopment of the area immediately north of Las Olas Boulevard, generally between the Atlantic Ocean and the Intracoastal Waterway, as a high quality, public and private mixed use area that is the focal point of the central beach as a destination resort and county-wide asset. The district is intended to permit and facilitate the redevelopment of the area as a world-class resort that is commensurate with the character and value of the Atlantic Ocean and the city's long-time reputation as a tourist destination.

ABA - A-1-A Beachfront Area District is established for the purpose of promoting high quality destination resort uses that reflect the desired character and quality of the Fort Lauderdale beach and improvements along A-1-A. The district is intended as a means of providing incentives for quality development and redevelopment along a segment of A-1-A and to ensure that such development is responsive to the character, design and planned improvements as described in the revitalization plan.

3. *SLA - Sunrise Lane Area District* is established for the purpose of encouraging the preservation, maintenance and revitalization of existing structures and uses that make up the distinct neighborhood south of Sunrise Boulevard. Existing residential and commercial uses and transient accommodations represent a substantial resource of this central beach area to be protected, preserved and enhanced.

4. *IOA - Intracoastal Overlook Area District* is established for the purpose of encouraging the preservation, maintenance and revitalization of existing structures and uses that front on the eastern Intracoastal Waterway. Existing residential uses and transient accommodations represent a substantial element of the central beach housing stock to be protected, preserved and enhanced.

5. *NBRA - North Beach Residential Area District* is established for the purpose of encouraging the preservation, maintenance and revitalization of existing structures and uses that make up the distinct neighborhood that occurs in the center of the north beach area. Existing residential and transient accommodations represent a substantial resource of the central beach area to be protected, preserved and enhanced.

6. *SBMHA - South Beach Marina and Hotel Area District* is established for the purpose of promoting high quality destination resort uses including the Swimming Hall of Fame that reflect the character and quality of the Fort Lauderdale Beach, the

Intracoastal Waterway and the marinas that have been developed to the north and south of Bahia Mar. The district is intended as a means of providing incentives for quality development and redevelopment along the Intracoastal Waterway and to preserve, protect and enhance the existing character, design and scale of the area along A-1-A.

(Ord. No. C-97-19, § 1(47-12.2), 6-18-97)

Sec. 47-23.6. - Beach shadow restrictions.

A. Any portion of a structure in excess of thirty-five (35) feet in height shall provide a setback of at least one (1) foot per one (1) foot of height beginning the measurement at ground level of the western right-of-way line of State Road A-1-A (Fort Lauderdale Beach Boulevard) in the area between Seabreeze Boulevard and N.E. 18th Street. The foregoing is a minimum setback and if in conflict with provisions of other sections of the ULDR requiring greater setback, said other provisions of the other sections shall control.

B. From the north boundary line of Holiday Beach, P.B. 27, p. 39, public records of the county, to the Port Everglades Inlet, any portion of a building in excess of thirty-five (35) feet in height shall provide a setback of one (1) foot per one (1) foot of height from the beach building restriction line one hundred (100) feet west of the mean high water line of the Atlantic Ocean as defined in Section 47-2, Measurements.

(Ord. No. C-97-19, § 1(47-23.6), 6-18-97; Ord. No. C-00-26, § 4, 6-6-00)

CERTIFICATION
I certify this to be a true and correct copy of the record of the City of Fort Lauderdale, Florida.
WITNESSETH my hand and official seal of the City of Fort Lauderdale, Florida, this the 04 day of December 2017
Asst. City Clerk

RAHN PROPERTIES
1512 E. BROWARD BLVD
(301)
FT. LAUD, FL.
33301

95-079437 T#001
02-23-95 02:46PM

AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT is made and entered into at Fort Lauderdale, Broward County, Florida, this 4th day of January, 1995, by and between:

CITY OF FORT LAUDERDALE, a municipal corporation of Florida, hereinafter referred to and identified as the LESSOR, or the CITY,

and

RAHN BAHIA MAR, LTD., a Florida Limited Partnership, hereinafter referred to and identified as the LESSEE

(The use herein of the plural shall include the singular, and the use of the singular shall include the plural; the use of the masculine gender shall include all genders, and the use of the neuter gender shall include all genders; the use of the words "LESSOR" and "LESSEE" shall include their heirs, representatives, successors, grantees and assigns.)

BK23168PG0347

CERTIFICATION
I certify this to be a true and correct copy of the record of the City of Fort Lauderdale, Florida.
WITNESSETH my hand and official seal of the City of Fort Lauderdale, Florida, this the 22nd day of December 2017
Jeffrey A. Modarelli, Asst. City Clerk

PREAMBLE

WHEREAS, the City of Fort Lauderdale, as LESSOR, and Fort Lauderdale Candlelight Corporation, as predecessor in interest to the current LESSEE, entered into that certain Lease dated September 1, 1962, recorded in Official Records Book 2870, at Pages 530-581 of the Public Records of Broward County, Florida, as amended by instrument dated September 8, 1964, recorded in Official Records Book 2870, at Pages 582 to 583 of the Public Records of Broward County, Florida; as amended by an instrument entitled Modification of Lease Agreement dated December 7, 1971, recorded in Official Records Book 5080, at Pages 845 to 849 of the Public Records of Broward County, Florida; and further amended by that certain Amendment to Lease dated April 22, 1980, recorded in Official Records Book 8958, at Pages 334 to 338 of the Public Records of Broward County, Florida; and as assigned by that certain Assignment of Lease dated August 14, 1980, recorded in Official Records Book 9066, at Page 472 of the Public Records of Broward County, Florida; and further assigned by that certain Assignment of Lease dated May 12, 1982, recorded in Official Records Book 10204, Page 761 to 764 of the Public Records of Broward County, Florida; and further assigned to the current LESSEE in that certain Consent to Assignment of Leasehold Interest and Assignment and

(49) PRC

Assumption of Leasehold Interest dated as of June 30, 1994, and recorded of even date herewith among the Public Records of Broward County, Florida (all of which are referred to herein as the "Lease") and which Lease is for the Property described in Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, the parties desire to amend certain provisions of the Lease as set forth herein and provide for certain improvements to the leased premises; and

WHEREAS, such improvements, if constructed, should increase the gross revenues generated on the leased property, thereby affording additional revenues to the Lessor under the terms of the Lease during the balance of the leasehold term; and

WHEREAS, LESSOR and LESSEE by this amendment are desirous of consolidating all prior and present amendments to the Lease in one document by establishing an Amended and Restated Lease Agreement without terminating the aforementioned Lease; and

WHEREAS, by Resolution No. 95-1, adopted at its meeting of January 4, 1995, the City Commission of LESSOR authorized the construction of the improvements, pursuant to the terms hereof, and the execution of this Amended and Restated Lease Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and TEN DOLLARS ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree that by virtue of the representations herein made, and not otherwise, the LESSOR does hereby lease and let to the LESSEE the Property described in Exhibit "A" attached hereto and the parties agree that the terms, conditions covenants and agreements of this Amended and Restated Lease Agreement are as follows:

ARTICLE 1.0

Mutual Representations and Warranties

The parties hereto mutually represent, warrant and disclose to each other the following:

Section 1. The LESSOR is a municipal corporation organized and existing pursuant to Chapter 57-1322, Special Acts of 1957, Vol. II, Part I, at page 1043 (effective May 6, 1957) as of September 1, 1962 (hereinafter, Statutory Charter). The Statutory Charter was repealed by operation of City of Fort Lauderdale Ordinance No. C-84-87, adopted on second reading on October 2, 1984 and by a referendum vote of the electorate on November 11, 1984 (hereinafter, Charter).

Section 2. On August 29, 1947, there was executed and delivered to the LESSOR by the United States of America a deed conveying to the LESSOR certain lands situated within the territorial limits of the CITY, known as Coast Guard Base No. 6, which deed of conveyance is recorded in Deed Book 604, Page 529, of

BK23168PG0348

the public records of Broward County, Florida. The Property embraced in this lease, as shown on Exhibit "A" hereto attached, constitutes a portion of the said property thus acquired by the LESSOR. The said Property was acquired and is held by the LESSOR in its proprietary capacity.

Section 3. On November 1, 1948, the LESSOR adopted Resolution No. 3471 (hereinafter called the Bond Resolution), authorizing the issuance of $2,500,000 Municipal Recreation Revenue Bonds (hereinafter called Revenue Bonds), to be dated September 1, 1948. On November 1, 1948, proceedings were brought by the CITY in the Circuit Court in and for Broward County, Florida, to validate said Revenue Bonds (Chancery Cause No. 13,999). On November 22, 1948, a decree of validation was affirmed by the Supreme Court of the State of Florida on December 21, 1948 (Schmeller vs. City of Fort Lauderdale, 38 So.2d 36).

Section 4. Out of the proceeds of the sale of the said Revenue Bonds, there was constructed upon said property thus acquired by the CITY certain improvements, and the said property ever since December 1, 1949, has been devoted by the CITY to the purposes described in said Bond Resolution. Various problems relating to said undertakings were in issue and concluded by decrees rendered in Chancery Cause No. 15,108, Broward County, Florida, and the decision of the Supreme Court of Florida, reported in 51 So. 2d 429.

Section 5. All steps, acts and conditions required by the Charter of the CITY to be done as a condition precedent to the execution of the Lease and this Amended and Restated Lease Agreement (which collectively shall hereinafter be referred to as the "Lease"), have been done, and the CITY has full authority to enter into this Lease.

Section 6. The LESSEE represents and warrants unto the LESSOR that it has adequate financial capacity and technical and business skill and ability to perform all obligations herein imposed upon the LESSEE to diligently, skillfully and successfully operate the lease premises in order that the same may be operated in its greatest potential revenue producing capacity.

Section 7. The parties hereto mutually represent and warrant unto each other that this indenture constitutes the final repository of all agreements of the parties relating hereto, and that there are no other verbal representations, warranties or agreements or conditions.

ARTICLE 1.1

Defined Terms

The following terms, as used and referred to herein, shall have the meaning as set forth below:

(a) Affiliate or Affiliated Person means, when used with reference to a specified Person:

(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

amended from time to time, or such substances, materials and wastes which are now or hereafter become regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated byphenyls, (iv) radon, (v) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251, et. seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317), (vi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq. (42 U.S.C. Section 6903), (vii) defined as "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et. seq. (42 U.S.C. Section 9601), or (viii) designated as a "hazardous substance" as defined in Chapter 403 (Part IV) of the Florida Statutes.

(h) Leasehold Mortgagee means a Federal or State bank, savings bank, association, savings and loan association, trust company, family estate or foundation, insurance company, pension fund, or similar institution authorized to make mortgage loans in the State of Florida.

(i) Leasehold Mortgagee Assignee means the assignee of a Leasehold Mortgagee as to the leasehold interest represented by the Lease following the acquisition of such leasehold interest by the Leasehold Mortgagee by virtue of a foreclosure action or deed-in-lieu of foreclosure or similar proceeding or transaction.

(j) Limitation on Net Income Rule means that where Annual Gross Operating Revenues are predicated on a "net income formula" for any given function, that the allowable deductible expenses under such formula shall in no event exceed the gross revenues from that function and that no deficit of expenses over gross revenues shall be carried over from one lease year to another.

(k) Non-Affiliated Person means a Person who is neither an Affiliate of Lessee, nor an Affiliate of any Beneficial Owner in Lessee, nor an Affiliate of any Leasehold Mortgagee nor an Affiliate of any Beneficial Owner of a Leasehold Mortgagee.

(l) Person means any individual, firm, partnership (general or limited), corporation, company, association, joint venture, joint stock association, estate, trust, business trust, cooperative, limited liability corporation, limited liability partnership, limited liability company or association, or body politic, including any heir, executor, administrator, trustee, receiver, successor or assignee or other person acting in a similar representative capacity for or on behalf of such Person.

(m) Property means that real estate described in Exhibit A attached hereto, including any portion thereof.

(n) Renovation Period means the period from July 1, 1994 through February 28, 1995.

(o) Second Extended Term means the extension of the lease

term by, through and under this Amendment and Restatement, with such extended term being from October 1, 2037 through August 31, 2062 as more particularly set forth in this Amendment and Restatement of Article 2.0 of the Lease.

ARTICLE 2.0

Term

Section 1. This Lease shall begin at twelve o'clock noon, Eastern Standard Time, on the 1st day of September, 1962, and continue for a period of fifty (50) years thereafter, unless sooner terminated, whereupon said premises shall be returned to LESSOR free of any encumbrances or obligations hereinafter incurred.

Section 2. The term of this Lease is hereby extended until midnight, September 30, 2037 (a period of twenty-five (25) years and thirty (30) days in addition to the original term), unless the Lease is sooner terminated pursuant to the provisions of the Lease and its amendments.

Section 3. The term of this Lease is hereby extended for an additional period commencing October 1, 2037 through and including August 31, 2062 ("Second Extended Term"), unless the Lease is sooner terminated pursuant to the provisions of this Lease.

Section 4. In all events, at termination the leased premises shall be returned to LESSOR free of any encumbrances or obligations hereinafter incurred.

ARTICLE 3.0

Possession

Delivery of possession of the leased premises to the LESSEE shall be made as of this date in order to permit the LESSEE to make improvements and rehabilitate the demised premises so that the LESSEE may carry on and conduct its business.

ARTICLE 4.0

Compliance with Regulations of Public Bodies

The LESSEE covenants and agrees that it will, at its own cost, make such improvements on the premises and perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over said Property, in order to comply with sanitary requirements, fire hazard requirements, zoning requirements, setback requirements, environmental requirements and other similar requirements designed to protect the public.

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

in any and all activities conducted upon the demised premises by any Person whomsoever that Hazardous Substances shall be handled, treated, dealt with and managed in conformity with all applicable Hazardous Substances Laws and prudent industry practices regarding management of such Hazardous Substances. Upon expiration or earlier termination of the term of the Lease, each LESSEE shall cause all Hazardous Substances which are brought upon the demised premises by any Person whomsoever (other than LESSOR) during the term of that respective LESSEE'S leasehold interest in the demised premises, from and after the date of this Amendment and Restatement, to be removed from the demised premises and to be transported for use, storage or disposal in accordance and compliance with all applicable Hazardous Substances Laws; provided, however, that LESSEE shall not take any remedial action in response to the presence of Hazardous Substances in or about the demised premises, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Substances Laws in any way connected with the demised premises, without first notifying LESSOR of LESSEE'S intention to do so and affording LESSOR reasonable opportunity to appear, intervene, or otherwise appropriately assert and protect LESSOR'S interest with respect thereto.

Section 4. Notices. If at any time LESSEE shall become aware, or have reasonable cause to believe, that any Hazardous Substance has come to be located on or beneath the demised premises, LESSEE shall immediately upon discovering such presence or suspected presence of the Hazardous Substance give written notice of that condition to LESSOR. In addition, LESSEE shall immediately notify LESSOR in writing of (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed, or threatened pursuant to any Hazardous Substances Laws, (ii) any written claim made or threatened by any Person against LESSEE, the demised premises or improvements located thereon relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Substances, and (iii) any reports made to any Environmental Agency arising out of or in connection with any Hazardous Substances in or removed from the demised premises or any improvements located thereon, including any complaints, notices, warnings or asserted violations in connection therewith. LESSEE shall also supply to LESSOR as promptly as possible, and in any event, within five (5) business days after LESSEE first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the demised premises or improvements located thereon or LESSEE'S use thereof.

Section 5. Reports and Test Results Supplied to LESSOR. LESSEE agrees to provide a copy of all environmental and Hazardous Substance reports and test results dealing with the demised premises to the LESSOR within a reasonable time following LESSEE'S receipt of same.

Section 6. Hazardous Substances Indemnification of LESSOR. LESSEE shall indemnify, defend, and hold LESSOR harmless of and from all claims, demands, fines, penalties, causes of action, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees and experts' fees), which LESSOR may sustain, (unless any of the foregoing was caused by LESSOR'S negligence or willful

misconduct or that of LESSOR'S agents, employees, contractors, subcontractors or licensees), occurring during the term of that LESSEE'S leasehold interest in the demised premises. This indemnification shall survive the termination of this Lease.

(a) In addition, and not in limitation of the foregoing, LESSEE shall indemnify, defend and hold LESSOR harmless from and against any all claims, demands, suits, losses, damages, assessments, fines, penalties, costs or other expenses (including attorney's fees, experts' fees and court costs) arising from or in any way related to, damage to the environment, costs of investigation charged by Environmental Agencies, personal injury or debt, or damage to property, due to a release of Hazardous Substances on or under the demised premises or in the surface or groundwater located on or under the demised premises, or gaseous emissions (excluding methane, radon, and other naturally occurring gases) from the demised premises or any other condition existing on the demised premises, resulting from Hazardous Substances where any of the foregoing occurred during the term of that Lessee's leasehold interest in the demised premises. LESSEE further agrees that its indemnification obligations shall include, but are not limited to, liability for damages resulting from the personal injury or death of an employee of the LESSEE, regardless of whether LESSEE has paid the employee under the Worker's Compensation laws of the State of Florida, or other similar federal or state legislation for the protection of employees. The term "property damage" as used in this Article includes, but is not limited to, damage to the property of the LESSEE, LESSOR, and of any third parties caused by LESSEE and shall include any remedial activities performed by a government agency (including LESSOR), or by LESSEE pursuant to directives from a government agency or court order.

(b) Further, LESSEE shall indemnify, defend and hold LESSOR harmless from and against all liability, including, but not limited to, all damages directly arising out of the use, generation, storage or disposal of Hazardous Substances which occurred during the term of that LESSEE'S leasehold interest in the demised premises, including, without limitation, the cost of any required or necessary inspection, required by law, audit, clean up required by law, or detoxification required by law and the preparation of any closure or other required plans, consent orders, license applications, or the like, whether such action is required by law or not, to the full extent that such action is attributable to the use, generation, storage or disposal of Hazardous Substances on the Property during the term of that LESSEE'S leasehold interest in the demised premises, and all fines and penalties associated with any of the foregoing.

(c) LESSEE agrees that its foregoing obligation to indemnify, defend and hold LESSOR harmless extends to and includes all reasonable attorney's fees, experts' fees and costs incurred in the defense of any of the foregoing claims or demands as well as indemnifying LESSOR for any and all reasonable attorneys' fees, experts' fees and costs incurred by LESSOR in LESSOR'S enforcement of the provision of this Article respecting Hazardous Substances. The indemnifications provided in this Lease shall survive the termination of this Lease, but shall end, with respect to any claim or cause of action, with the expiration of any applicable statute of limitations for such claim or cause of action.

Section 7. LESSOR'S Right of Entry for Testing. At any time during the term of the Lease, the LESSOR may, upon reasonable prior written notice to the LESSEE (taking into account the potential for disruption of the operation of the hotel and marina, particularly during the tourist season), enter upon the demised premises for the purpose of conducting environmental tests ("LESSOR'S Tests") to determine the presence and extent of contamination by Hazardous Substances on or under the demised premises. The LESSOR shall not be entitled to conduct the LESSOR'S Tests unless: (1) a governmental entity (other than the LESSOR) shall have issued a notice of violation to the LESSEE with respect to Hazardous Substances on, within, or under the demised premises); or (2) the LESSOR has probable cause to believe that the LESSEE has violated Hazardous Substances Laws relating to the LESSEE'S use of the demised premises. Notwithstanding the limitations set forth in number (1) and number (2) above, the LESSOR may conduct LESSOR'S tests no less often than every five years without being subject to the limitations set forth as (1) and (2) above.

(a) The LESSOR'S Tests shall be at the sole cost of the LESSOR. The cost and expenses relating to the LESSOR'S Tests shall not be included in the scope of any indemnification provided in favor of the LESSOR in this Lease. No LESSOR Tests shall be conducted until the LESSOR has provided to the LESSEE the name of the testing contractor (which shall be fully licensed to conduct the LESSOR Tests) and a certificate of insurance with limits reasonably acceptable to the LESSEE confirming that the LESSEE is an additional insured and that coverage exists for property damage, personal injury and business interruption which may result from the LESSOR'S Tests. The LESSOR agrees to indemnify and hold the LESSEE harmless with respect to any loss, claim or damage (including attorney's fees and expenses) which the LESSEE shall suffer as the result of the conduct of the LESSOR'S Tests.

Section 8. Petroleum Liability and Restoration Insurance Program. During the term of this Lease, the LESSEE shall, so long as coverage is available and the State of Florida maintains the Petroleum Liability and Restoration Insurance Program and the Inland Protection Trust Fund, maintain in effect the Petroleum Liability and Restoration Insurance Program Coverage for Third Party Liability for Contamination described on Exhibit "C" attached hereto.

Section 9. Environmental Assessments; Consent to Assignment. Any provision herein to the contrary notwithstanding, LESSEE, LESSEE'S proposed assignee, Leasehold Mortgagee or Leasehold Mortgagee Assignee, whichever the case may be, shall, at its own cost and expense, furnish to LESSOR a complete Phase I & Phase II Environmental Assessment of the Property, performed by environmental experts reasonably found qualified by LESSOR, as a condition precedent to LESSOR'S consent to an assignment of the leasehold interest. The Environmental Assessment shall include a qualitative and quantitative analysis of the presence of Hazardous Substances on, within or below the Property. LESSOR may withhold consent to the assignment of the Leasehold interest until security is posted with LESSOR which is reasonably deemed by Lessor to be adequate to cover the costs of any legally required clean-up, detoxification or remediation of the

Property from the presence of Hazardous Substances in excess of the Environmental Baseline upon, within or below the Property and any and all fines or penalties associated therewith. The foregoing is collectively referred to as the "Environmental Procedure."

Section 10. Periodic Environmental Procedure. In addition to the requirement in Section 9 of this Article, for the Environmental Procedure to be performed as a condition precedent to the LESSOR'S consent to any assignment of this Lease, the LESSEE shall, periodically, as set forth herein, perform the Environmental Procedure for the benefit of the LESSOR as follows: (i) 15 years prior to the termination of the Lease (August 31, 2047); (ii) 9 years prior to the termination of the Lease (August 31, 2053); and (iii) 2 years prior to the termination of the Lease (August 31, 2060). The foregoing are referred to as the "Periodic Environmental Procedure". In each case, the Periodic Environmental Procedure shall be completed, such that the Phase I & Phase II Environmental Assessments are delivered to the LESSOR not later than 45 days subsequent to the due date for each Periodic Environmental Procedure. At the time of each Periodic Environmental Procedure, the LESSEE shall comply with the remediation, clean-up and security requirements as set forth in the Environmental Procedure.

ARTICLE 5.0

Indemnity Against Costs and Charges

The LESSEE shall be liable to the LESSOR for all costs, expenses, attorneys' fees and damages which may be incurred or sustained by the LESSOR by reason of the LESSEE'S breach of any of the provisions of this indenture. Any sums due the LESSOR under the provisions of this Article shall constitute a lien against the interest of the LESSEE in the leased premises and all his property situated thereon to the same extent and on the same condition as delinquent rent would constitute a lien on said premises and property.

ARTICLE 6.0

Indemnification Against Claims

The LESSEE shall indemnify and save harmless the LESSOR from and against any and all claims, arising during the term of this Lease, for any personal injury, loss of life and damage to property sustained in, or about, the demised premises, or to the buildings; and improvements, and improvements placed thereon, or the appurtenances thereto or upon the adjacent sidewalks or streets, and from and against all costs, counsel fees, expenses and liabilities incurred in and about any such claim, the investigation thereof, or the defense of any action, or proceeding, brought thereon; and from and against any orders, judgments and decrees, which may be entered therein.

ARTICLE 7.0

Inspection

The LESSOR or its agents shall have the right to enter the leased premises and the buildings and improvements constructed thereon, at all reasonable hours for the purpose of inspecting the same, or for any other purposes not inconsistent with the terms or spirit of this Lease.

ARTICLE 8.0

Acceleration

If any of the sums of money herein required to be paid by the LESSEE to the LESSOR shall remain unpaid for a period of sixty days, then written notice in accordance with Article 30.0, Notices, to the LESSEE, with copies to the appropriate mortgagee or mortgagees, shall be given allowing thirty days from the date of said notice to correct default, and if not so corrected then the LESSOR shall have the option and privilege as follows:

Section 1. To accelerate the maturity of the rent installments for the balance of the term. This option shall be exercised by an instrument in writing signed by the LESSOR, or its agents, and transmitted to the LESSEE notifying him of the intention of the LESSOR to declare all unmatured rent installments as presently due and payable.

Section 2. In lieu of the option in Section 1, the LESSOR may in like manner declare as presently due and payable the unpaid rent installments for such a period of years as may be fixed in the LESSOR'S said notice to the LESSEE. The exercise of this option shall not be construed as a splitting of a cause of action, nor shall it alter or affect the obligations of the LESSEE to pay rent under the terms of this lease for the period unaffected by said notice.

Section 3. In addition to the options herein granted (Sections 1 and 2 above), the LESSOR may exercise any or all other options available to it hereunder, which options may be exercised concurrently or separately with the exercise of the options contained in Sections 1 and 2 of this Article.

ARTICLE 9.0

No Liens Created by Lessee

The LESSEE covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of the LESSOR in and to the Property covered by this Lease, and that no Person shall ever be entitled to any lien, directly or indirectly derived through or under the LESSEE, or his agents or servants, or on account of any act or omission of said LESSEE, which lien shall be superior to the

lien of this lease reserved to the LESSOR upon the leased premises. All Persons contracting with the LESSEE, or furnishing materials or labor to said LESSEE, or to his agents or servants, as well as all Persons whomsoever, shall be bound by this provision of this Lease. Should any such lien be filed, the LESSEE shall discharge the same within ninety days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. The LESSEE shall not be deemed to be the agent of the LESSOR, so as to confer upon a laborer bestowing labor upon the leased premises, or upon a materialman who furnishes material incorporated in the construction of improvements upon the leased premises, a mechanic's lien pursuant to Chapter 713, Florida Statutes or an equitable lien upon the LESSOR'S estate. This provisions hall be deemed a notice under Section 713.10 (1), Florida Statutes of the "non-liability" of the LESSOR.

ARTICLE 10.0

Operating Costs

Section 1. The LESSEE agrees to promptly pay when due all operating, maintenance and servicing charges and costs, including telephone, gas, electricity, water, sewer, sewer connections, and all other expenses incurred in the use and operation of the leased premises.

Section 2. The LESSEE agrees to obtain at its expense all permits and licenses which may be required by any governmental unit.

Section 3. Upon the LESSOR'S request, the LESSEE shall promptly furnish to the LESSOR evidence, satisfactory to the LESSOR, showing LESSEE'S compliance with its obligations under this Article.

ARTICLE 11.0

Nonwaiver

Failure of the LESSOR to insist upon the strict performance of any of the covenants, conditions and agreements of this Lease in any one or more instances, shall not be construed as a waiver or relinquishment in the future of any such covenants, conditions or agreements. The LESSEE covenants that no surrender or abandonment of the demised premises or of the remainder of the term herein shall be valid unless accepted by the LESSOR in writing. The LESSOR shall be under no duty to relet the said premises in the event of an abandonment or surrender or attempted surrender or attempted abandonment of the leased premises by the LESSEE. Upon the LESSEE'S abandonment or surrender or attempted abandonment or attempted surrender of the leased premises, the LESSOR shall have the right to retake possession of the leased premises or any part thereof, and such retaking of possession shall not constitute an acceptance of the LESSEE'S abandonment or surrender thereof.

ARTICLE 12.0

Bankruptcy of LESSEE

Should the LESSEE, at any time during the term of this lease, suffer or permit an involuntary, or voluntary, petition in bankruptcy to be filed against him, or institute an arrangement proceeding under Chapter XI of the Chandler Act, or any amendments thereto, or should the LESSEE'S leasehold interest be levied on and the lien thereof not discharged within ninety days after said levy has been made, or should the LESSEE fail to promptly comply with all governmental regulations, other than regulations of the City of Fort Lauderdale both State and Federal, then, in such event, and upon the happening of either or any of said events, the LESSOR shall have the right, at its election, to consider the same a material default on the part of the LESSEE of the terms and provisions hereof, and, in the event of such default not being cured by the LESSEE within a period of ninety days from the date of the giving by the LESSOR of written notice to the LESSEE and mortgagees of the existence of such default, the LESSOR shall have the option of declaring this lease terminated and the interest of the LESSEE forfeited, or the LESSOR may exercise any other options herein conferred upon him. The pendency of bankruptcy proceedings, or arrangement proceedings, to which the LESSEE shall be a party shall not preclude the LESSOR from exercising the option herein conferred upon him.

ARTICLE 13.0

Leasehold Mortgagee

Section 1. The LESSEE shall have the right to mortgage LESSEE'S interest under this Lease to any Leasehold Mortgagee (as defined above), without obtaining the prior consent of the LESSOR; subject, however, to the other terms and conditions of this Lease, to the extent applicable.

Section 2. If the LESSEE shall mortgage its leasehold interest and if the holder of the mortgage or pledge shall forward to the LESSOR a copy of the recorded mortgage certified as a true copy by the Office of Official Records of Broward County, Florida, together with a written notice setting forth the name and address of the Leasehold Mortgagee, then, until the time that the leasehold mortgage shall be satisfied of record, the provisions of this paragraph shall apply.

Section 3. When giving notice to the LESSEE with respect to any default under the provisions of this Lease, the LESSOR will also serve a copy of such notice upon the Leasehold Mortgagee. No such notice to the Lessee shall be deemed to have been given unless a copy of such notice has been mailed to such Leasehold Mortgagee, which notice must specify the nature of such default.

Section 4. In case the LESSEE shall default under any of the provisions of this Lease, the Leasehold Mortgagee shall have the right to cure such default, whether the same consists of the failure to pay rent or the failure to perform any other matter or thing which the LESSEE is required to do or perform and the LESSOR shall accept such performance on the part of the Leasehold Mortgagee as though the

same had been done or performed by the LESSEE. The Leasehold Mortgagee, upon the date of mailing by LESSOR of the notice referred to in this Article, shall have, in addition to any period of grace extended to the LESSEE under the terms and conditions of this Lease for a non-monetary default, a period of not less than sixty (60) days within which to cure any non-monetary default or cause the same to be cured or to commence to cure such default with diligence and continuity; provided, however, that as to any default of the LESSEE for failure to pay rent, or failure to pay any amount otherwise required under the terms of this Lease (e.g., including, but not limited to, taxes or assessments), the Leasehold Mortgagee shall have thirty (30) days from the date the notice of default was mailed to the Leasehold Mortgagee within which to cure such default.

Section 5. Upon the happening of any default and upon receipt of notice of default from the LESSOR, the LESSEE agrees to notify the Leasehold Mortgagee promptly in writing of such occurrence and shall state in the notice what action has been or will be taken by the LESSEE to cure the default. A copy of such notice shall be simultaneously furnished to LESSOR.

Section 6. The Leasehold Mortgagee may become the legal owner and holder of the LESSEE'S leasehold interest under this Lease by foreclosure of its mortgage or as a result of the assignment of LESSEE'S leasehold interest in lieu of foreclosure, whereupon such Leasehold Mortgagee shall immediately become and remain liable under this Lease as provided in this Article, except that such Leasehold Mortgagee may assign its acquired leasehold interest one time without the LESSOR'S prior written consent to a Leasehold Mortgagee Assignee at any time provided such Leasehold Mortgagee Assignee is a Non-Affiliated Person and qualifies according to the terms and conditions set forth below within the time so specified. Once an assignment of the acquired leasehold interest as set forth above in this Article is consummated, then any subsequent assignments of the leasehold interest shall be subject to the prior written consent of the LESSOR as otherwise provided for in this Lease.

Section 7. In the event that a Leasehold Mortgagee shall become the owner or holder of the LESSEE'S leasehold interest by foreclosure of its mortgage or by assignment of the LESSEE'S leasehold interest in lieu of foreclosure or otherwise, except as may be explicitly provided otherwise herein, the term "LESSEE" as used in this Article shall mean the owner or holder of the LESSEE'S leasehold interest only for that period that the Leasehold Mortgagee is seized of the LESSEE'S leasehold interest so that, in the event of a sale, transfer, assignment or other disposition of the leasehold interest herein by the Leasehold Mortgagee, then, provided such sale, transfer, assignment or other disposition is to a Non-Affiliated Person, such Leasehold Mortgagee shall be deemed and construed, without further agreement between the LESSOR and the Leasehold Mortgagee or between the LESSOR, the Leasehold Mortgagee and the Leasehold Mortgagee Assignee that the Leasehold Mortgagee Assignee has assumed and agreed to carry out any and all covenants and obligations of the LESSEE under this Lease.

Section 8. Notwithstanding the foregoing, the Leasehold Mortgagee (or its Leasehold Mortgagee Assignee) must demonstrate to

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 from 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 14.0

Forfeiture

Section 1. If the LESSEE shall fail to keep and perform any of the covenants, conditions and agreements herein provided to be performed by said LESSEE, and such default shall continue for a period of thirty days from the date of LESSOR'S notice of the existence of such breach, said notice to be provided in the Article hereof entitled "Notices" to the LESSEE and appropriate mortgagee or mortgagees directing that the said default be corrected within thirty days of the date of said notice, the LESSOR shall have the right to treat such default as intentional, inexcusable and material, and thereupon the LESSOR, by notice in writing transmitted to the LESSEE, as provided in the Article hereof entitled "Notices", may at its option declare this lease ended and without further force and effect. Thereupon, the LESSOR is authorized to re-enter and repossess the leased premises and the buildings, improvements and personal property thereon, either with or without legal process, and the LESSEE does in such event hereby waive any demand for possession of said property, and agrees to surrender and deliver up said leased premises and property peaceably to said LESSOR. In the event of such forfeiture, the LESSEE shall have no claim whatsoever against the LESSOR by reason of improvements made upon the premises, rents paid, or from any other cause whatsoever. In the event of such forfeiture, the title and right of possession to all personal property of the LESSOR or replacements thereof, usually situated on the leased premises shall automatically vest in the LESSOR, free and clear of any right or interest therein by the LESSEE. The provision of this Article shall not be construed so as to divest the LESSOR, in the event of such default, of any legal right and remedy which it may have by statutory or common law, enforceable at law, or in equity, it being intended that the provision of this Article shall afford to the LESSOR a cumulative remedy, in addition to such other remedy or remedies as the law affords a lessor when the terms of a lease have been broken by the lessee.

Section 2. In the event that a default occurs which cannot be corrected by reasonable diligence within thirty (30) days of receipt of notice to do so as aforesaid, and if the LESSEE commences correction of said default within such thirty (30) days' period and proceeds with diligence to completion, then such default shall be considered excusable. This provision shall extend to any mortgagee of all or any part of the leased Property in the event such mortgagee elects to exercise its option to cure such default. Should correction of such default be beyond the control of such mortgagee, such as matters which could be accomplished exclusively by LESSEE, then reasonable diligence on the part of the mortgagee in attempting to cure the default shall render such default excusable.

Section 3. LESSOR hereby agrees that, notwithstanding any other provision of the Lease, (a) there will be no cancellation or termination of the Lease or acceleration of payment of rent so long as rent and taxes are paid when due and (b) LESSOR will not by reason of the nonpayment of rent or taxes exercise its right to cancel or terminate the lease or to accelerate the payment of rent thereunder

BK23168PG0363

prior to expiration of the 60-day notice period set forth in Section 1 of this Article.

ARTICLE 15.0

Capital Improvement Reserve Account

Commencing with the October 1, 1995 lease year and continuing annually for the remaining term of the Lease, LESSEE shall monthly, on December 20th, set aside funds into a Capital Improvement Reserve Account. The amount funded into the Capital Improvement Reserve Account ("CIRA") shall be an amount equal to one-twelfth (1/12) of three percent (3%) of the annual Gross Operating Revenue (as that term is defined in Article 26.0 hereof) for the preceding lease year ("Reserve"). The CIRA balance, from time to time, shall include interest earned, if any, on all funds in the CIRA. Expenditures shall be made from the CIRA only for Capital Improvements to the Property. All expenditures from the CIRA shall be in an amount not greater than that generally recognized in the community for good faith arm's length transactions for the purchase or construction of such Capital Improvements. LESSEE shall, at LESSEE'S expense, furnish to LESSOR, on or before April 30th of each year during the term of the Lease, report prepared by an independent certified public accountant, licensed by the State of Florida, showing the balance of the CIRA as of December 31st of the preceding calendar year, together with a schedule describing the expenditures from said CIRA and a statement that the funds so disbursed were for Capital Improvements.

If, during any lease year, Capital Improvement expenditures are made in excess of the amount of the Reserve ("Excess Capital Improvements") required to be deposited in the CIRA, then Lessee shall receive a credit for such Excess Capital Improvements as against subsequent Reserve required to be deposited into the CIRA.

Any amounts in the CIRA not expended during a lease year ("Unexpended Reserve") shall be carried forward to the following lease year. Unexpended Reserve amounts may, at any time, be used for Capital Improvements, but shall not affect the amount which the Lessee is required to deposit as the Reserve into the CIRA for any given lease year.

During the Renovation Period, Lessee shall invest and expend not less than $6,000,000.00 in improvements to the leased premises to perform the Renovation Work as more particularly described in the budget set forth in Exhibit "D" attached hereto and made a part hereof ("Renovation Work"). The $6,000,000.00 referred to in this Article shall not be deemed to be a credit against the obligations of the LESSEE with respect to the CIRA.

Lessee shall obtain all required building permits for the Renovation Work from all governmental and quasi-governmental agencies having jurisdiction over the Property and the Renovation Work.

The parties agree that all improvements constructed pursuant hereto and any undisbursed balance in the CIRA shall revert to the CITY in their entirety upon expiration of the leasehold term.

BK23168PG0364

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 chain-affiliated, full-service, mid-market hotel as described in Article 19.0 of this Lease. 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.

ARTICLE 22.0

Proration

(This Article is intentionally deleted.)

ARTICLE 23.0

Subordination

The LESSOR shall never be obligated to subordinate its fee title interest.

ARTICLE 24.0

Alterations and Additions

The LESSEE agrees to make no major alterations, changes or additions to the leased premises, without first obtaining the written consent of the LESSOR given in pursuance of appropriate municipal action taken at a lawful meeting of the CITY Commission of said CITY. However, both parties hereto being desirous of LESSEE conducting its business in and upon the demised premises so as to provide the greatest volume of business, the LESSOR agrees hereby to not unreasonably withhold its consent to changes and alterations that may be desired and proposed by the LESSEE, nor to exact or change any consideration for giving any consent.

ARTICLE 25.0

Title to Property

LESSOR hereby covenants and agrees with LESSEE that LESSEE shall quietly and peaceably hold, possess and enjoy the said demised premises for the full term of this Lease without any let, hindrance or molestation from LESSOR, or any persons claiming by, through or under it, or any Person or Persons whomsoever, and said LESSOR hereby covenants and agrees with LESSEE that it is seized of the demised premises in fee simple free and clear of all encumbrances, except as set forth in Article 1.0. LESSOR will defend the title to the leased premises and the use and occupation of same by LESSEE during the term of this Lease against the claims of any and all person, or persons whomsoever, and will, at its own cost, perfect or defend any and all legal proceedings or suits which may be instituted by any Person or Persons whomsoever, directly or indirectly attacking LESSOR'S full ownership of the premises.

ARTICLE 26.0

Rent

Section 1. The purposes of this section are (a) to establish the rentals due annually from the LESSEE to the LESSOR and (b) to define those revenues which are to be used or included as gross operating revenues for the calculation of annual percentage rentals due from the LESSEE to the LESSOR.

Section 2. The LESSOR shall receive and the LESSEE shall pay as rent the following:

A. A minimum annual rental of One Hundred Fifty Thousand and no/100 Dollars ($150,000.00), which shall be payable in equal quarterly installments of Thirty Seven Thousand Five Hundred and no/100 Dollars ($37,500.00) each on October 1, January 1, April 1 and July 1 of each lease year. Effective October 1, 1995, the minimum annual rental shall be Three Hundred Thousand and 00/100 Dollars ($300,000.00) payable in quarterly installments as above aforesaid.

B. During the Second Extended Term, the minimum annual rental shall be the greater of:

(1) Three Hundred Thousand and 00/100 Dollars ($300,000.00); or

(2) Eighty percent (80%) of the average annual rent payable during the three lease years immediately preceding the lease year for which the minimum annual rental herein is being calculated.

C. During the Second Extended Term, such minimum annual rental shall continue to be paid in quarterly installments on October 1, January 1, April 1 and July 1. If the minimum annual rental for any lease year is governed by subsection 2. B. (2) above and the calculations under subsection 2. B. (2) are not known by October 1, then, until such time as the calculations under subsection 2. B. (2) above are known, the quarterly installment payable October 1 shall be in the same amount as the preceding July 1 installment, subject to later adjustment as hereinafter set forth. To the extent any adjustments are necessary from the October 1 quarterly installment of minimum annual rent based on the formula set forth in subsection 2. B. (2) above, then such adjustments which would have otherwise been due with the October 1 quarterly installment shall be paid to LESSOR no later than January 1.

D. In addition to the forgoing minimum annual rental, the LESSEE shall pay to the LESSOR a rental equal to an annual percentage (hereinafter set forth) of gross operating revenues for those functions or uses specified hereinafter, reduced in all events by the amount of the minimum annual rental paid in accordance with subsections 2. A., B. and C., above.

E. The annual percentages of gross operating revenues which the LESSEE shall pay as rent to the LESSOR are as follows:

(1) For the years of the Lease ending September 30, 1980 through September 30, 1985, the annual percentage rental due from the LESSEE to the LESSOR shall be 3.5% of gross

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.

(3) Inter-company revenues, the exclusion of which shall not reduce gross operating revenues under paragraph 3A above.

(4) Commissions not related to the uses or functions described in paragraph 3A above.

Section 3. Commencing October 1, 1995 and thereafter, Section 3 of this Article shall read as follows:

A. Annual Gross Operating Revenue ("GOR") shall mean and refer to the total of all revenues, rents, income and receipts received from or by any Person(s) whomsoever (less any refunds to Non-Affiliated Persons) of every kind derived directly or indirectly from the operation of the Property, including, without limitation, income (from both cash and credit transactions and before commissions) from:

(1) the rental of rooms, convention and meeting room facilities, banquet or other facilities (including facilities for "The Boat Show" which is annually held on the premises), exhibits, sales displays or advertising space of every kind, provided that as to the rental of convention, meeting and banquet room facilities and facilities for "The Boat Show", where such facilities are rented to Non-Affiliated Persons, where such Non-Affiliated Persons also conduct sales in conjunction with the rental of the aforementioned facilities, the GOR shall be limited to the rental fee paid for the rental of the aforementioned facilities and shall not include the sales of such Non-Affiliated Persons renting the aforementioned facilities.

(2) boat slips and dockage fees, together with all revenues ancillary thereto, except fuel, which shall be included as set forth below;

(3) food, beverage (including alcoholic beverages sold by the drink or bottle), convention and banquet sales, including room service, provided that in room mini-bars shall be calculated on a net basis, wherein net mini-bar revenues shall be defined as gross mini-bar revenue, less any lease payment made by the Lessee to a Non-Affiliated Person, with such net basis being subject to the Limitation on Net Income Rule;

(4) net income received from Concessions, if any, subject to the Limitation on Net Income Rule;

(5) net income, if any, from telephone and telecommunications services, and movie rentals, such net income being subject to Limitation on Net Income Rule; and gross revenues from cable television services, laundry services, personal services, audio-visual services and parking;

(i) "net income from telephone and telecommunications services" shall mean gross revenues therefrom LESS direct expenses paid to long distance providers for guest usage, where such providers are

Non-Affiliated Persons;

(6) wholesale and/or retail sales of goods or services, including merchandise or fuel (provided that the percentage of annual GOR shall be calculated only against "net fuel sales" which shall be the gross fuel sales, less the cost of fuel and applicable taxes on such fuel, where the cost of fuel is no greater than the cost in a good faith arm's length purchase from a wholesale distributor and where such "net fuel sales" formula shall be subject to the Limitations on Net Income Rule set forth above);

(7) proceeds, if any, from business interruption or other loss of income insurance;

(8) net casino gambling income, (if any) which is defined as: gross casino gambling revenues (handle) less: (a) gambling winnings paid to bettors; (b) state, local and federal gaming taxes, but not including income taxes paid by businesses not involved in gambling; and (c) less such other items as Lessor and Lessee may subsequently agree upon, such net casino gambling income being subject to the Limitation on Net Income Rule;

(9) LESSEE'S portion of any eminent domain awards which has not been reinvested in the Property within one (1) year of the date the award is received by LESSEE;

(10) commissions from fuel vendors coming upon the Property to fuel vessels.

B. GOR shall not include:

(1) gratuities received by employees;

(2) Allowances, as defined above;

(3) federal, state or municipal excise, sales, use, occupancy or similar taxes collected directly from patrons or guests, provided such taxes are separately stated;

(4) insurance proceeds (other than business interruption or other loss of income insurance);

(5) proceeds from the disposition of personal property (such as furniture, fixtures and equipment related to the operation of the hotel and restaurant) no longer necessary for the operation of the property;

(6) interest income, if any.

C. Any subletting of the functions described in above subsection 3. A. shall require the prior written approval of the LESSOR as to the proposed sublessee, which approval shall not be unreasonably withheld considering the financial responsibility and business capability of the proposed sublessee. Upon written notification by LESSEE to LESSOR of the identity of said proposed sublessee and the submission to LESSOR of data reflecting the financial responsibility and business capability of said proposed

BK23168PG0372

sublessee, the LESSOR shall within thirty (30) days after receipt thereof notify LESSEE of its acceptance or rejection of the proposed sublessee, and failure of the LESSOR to so respond within said thirty (30) days shall be deemed to constitute approval by the LESSOR of said sublessee. For the purposes of this subsection C., LESSOR'S City Manager shall have the authority to grant or deny approval in accordance with the above standards.

D. In addition to the foregoing, all rentals received by LESSEE from subtenants numbered 1 through 14 on the attached Exhibit E (site plan sketches of the subtenant space denominated in Exhibit E is on file in the City of Fort Lauderdale's Office of the City Clerk, such site plan sketches being denominated as Exhibit D-1 to 1994 Amended and Restated Lease/Bahia Mar) or their successors, (hereinafter, Existing Subtenant Space) shall be included in gross operating revenues for calculation of the annual percentage rental due the LESSOR. Subject to the provisions of Article 20.0, Assignment and Subletting, LESSEE may continue to sublet to legitimate businesses Existing Subtenant Space without prior approval of the LESSOR. Any functions or uses of the leased premises which are set forth in subsection 3. A. in this Article which are hereinafter sublet shall in no way affect the fact that the gross operating revenues derived from said functions and uses shall be included in the annual gross operating revenue figure upon which the annual percentage rental due from the LESSEE to the LESSOR is calculated. Further, if LESSEE hereinafter- acquires for its own use any of the Existing Subtenant Space, then gross operating revenues derived by the LESSEE thereafter from Existing Subtenant Space shall be and shall become part of the gross operating revenues for calculation of annual percentage rentals due from the LESSEE to the LESSOR, until such space shall be subsequently sublet at which time only rental income from such subletting shall be included in gross operating revenues.

E. In the event that additional or new revenue-producing space is created upon the leased premises or in the event that the LESSEE, directly or indirectly, subsequently converts any space from the functions set forth in subsection 3. A., above, to other legitimate business functions, then and in those events the gross operating revenues derived from such space or uses shall be included in the gross operating revenues for calculation of the annual percentage rent; provided, however, that the LESSEE may in said instances seek prior approval from the LESSOR to sublet such space and have only the rentals received from such subletting included in gross operating revenues for calculation of the annual percentage rents due from LESSEE to LESSOR. Approval of subletting in such instances shall be at the discretion of LESSOR, which discretion shall not be unreasonably exercised considering the financial result or impact to the LESSOR. For the purposes of this subsection E., LESSOR'S City Manager shall have the authority to grant or deny approval in accordance with the above standards.

F. Except as set forth herein there shall be no other rent due from LESSEE to LESSOR for the use of the leased premises and it is expressly understood that there shall be no rental charge for so-called "non-revenue producing space" as was provided in Article XXVI, Subsection (c) of the original Lease.

Section 4. Within ninety (90) days after the end of each Lease year, the LESSEE shall pay to LESSOR a sum equal to the annual percentage rental required by Section 2 and 3 of this Article, less those amounts of minimum annual rental previously paid during the Lease year, and shall further deliver to the LESSOR at said time a detailed statement duly signed by a certified public accountant setting forth an itemization of all "gross operating revenues" for the preceding lease year, which statement shall further show and indicate the gross operating revenues for each of the classifications set forth in Section 3 of this Article.

Section 5. The LESSEE shall also keep and maintain accurate records and complete books and records of account indicating all of the LESSEE'S gross operating revenues as described in Section 3 of this Article, together with any sublessee's gross operating revenues in those instances under the terms hereof where the gross operating revenues of the sublessee are to be included in the calculation of the annual percentage rentals due from LESSEE to LESSOR. Said records and statements of gross operating revenues shall be kept and maintained by the LESSEE and appropriate ublessees in accordance with generally accepted accounting principles and shall be available to be examined by the LESSOR or its agents, servants, employees or representatives, and said records shall be kept and maintained, or a true and accurate copy thereof, in and upon the leased premises. In the event that the LESSEE has intentionally, willfully and with the intent to defraud made any reports to the LESSOR showing less gross operating revenues than actually received, such conduct and action on the part of the LESSEES shall constitute a material breach of the covenants of this Lease Agreement by the LESSEE.

ARTICLE 27.0

War

(This Article is intentionally deleted.)

ARTICLE 28.0

Financial Statement

The LESSEE herein shall furnish to the LESSOR within one hundred twenty (120) days of LESSEE'S fiscal year end an audited financial report performed by a certified public accountant licensed to practice in the State of Florida, said financial report reflecting the results of operations and the financial condition of the LESSEE during such fiscal year.

ARTICLE 29.0

Improvements to be Made by LESSEE

The LESSEE shall furnish statutory payment and performance

bonds pursuant to Chapter 713, Florida Statutes written by a Corporate Surety company on the U.S. Department of Treasury current approved list of acceptable sureties on Federal Bonds, as found in the U.S. Department of Treasury Circular No. 570, as same may be updated from time to time, in the full amount of any contract entered into by LESSEE for any major capital improvement, with said bonds being executed and issued by a Resident Agent licensed by and having offices in the the State of Florida representing such Corporate Surety at the time such capital improvements are constructed, conditioned upon full and faithful performance by LESSEE of such contract, and full payment to all laborers and materialmen supplying labor or materials for such improvements.

ARTICLE 30.0

Notices

All notices required by law and by this Lease to be given by one party to the other shall be in writing, and the same shall only be deemed given if forwarded as follows:

(a) By certified mail, return receipt requested, to the following addressees:

LESSOR: City of Fort Lauderdale
City Manager
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

with a copy to:

Finance Director,
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

LESSEE: Rahn Bahia Mar, Ltd.
1512 East Broward Boulevard, Suite 301
Fort Lauderdale, Florida 33301

LEASEHOLD MORTGAGEE: Citicorp Real Estate, Inc.
400 Perimeter Center Terrace
Suite 600
Atlanta, GA 30346

or to such other addressees as the parties may by writing designate to the other party.

(b) The notice may also be served by personal delivery to LESSOR or LESSEE, or to the agent of LESSEE in charge of the leased premises.

(c) The notice to any Leasehold Mortgagee, as provided in Article 13.0, Leasehold Mortgagee, will only be provided if such

Leasehold Mortgagee has complied with the provisions of such Article 13.0.

ARTICLE 31.0

Taxes

During the term of the Lease, as extended, the LESSEE will be required to pay all taxes lawfully imposed or levied against the demised premises or personalty situated thereon, whether such taxes are levied against the land, improvements located thereon or personalty situated thereon. In the event that as a result of legislation or judicial precedent or decree subsequent to July 1, 1994 any tax, which prior to July 1, 1994 was lawfully levied or imposed against the demised premises or personalty situated thereon as aforesaid, ceases to be a lawful levy, then, in that event, Lessee agrees to continue to pay to City a "Payment In Lieu of Taxes" in an amount equal to the amount LESSOR would have realized from the imposition, levy and payment of such taxes, had the continued imposition or levy of such taxes remained lawful. At the time any such imposition or levy ceases to be lawful, the Base Assessed Value of the object of the tax shall initially be determined in accordance with the assessed value on the tax rolls for the preceding year. Thereafter the assessed value of such object shall be adjusted by the overall change in the City's overall assessment roll, excluding changes due to new construction and annexation. Such "Payments In Lieu of Taxes" shall be in accordance with the millage rates adopted by the taxing authorities in each successive year of the lease term. The "Payment in Lieu of Taxes" herein shall be payable in the same manner and within the same time frames as ad valorem taxes.

ARTICLE 32.0

Filling

(This Article is intentionally deleted.)

ARTICLE 33.0

Existing Obligations

Section 1. It is understood by and between the LESSOR and the LESSEE that this lease is subject to any and all existing leases, contracts and easements affecting the leased property. All such leases are hereby assigned to the LESSEE while this lease is in effect.

Section 2. LESSOR shall have the responsibility of operating and maintaining the pumping station and force main located on the leased premises, and LESSEE agrees that LESSOR shall have reasonable right of entry and access to the aforesaid facility to perform any necessary maintenance, and shall further be permitted to

make any additional underground connections to the aforesaid pumping station consistent with its operation. LESSEE further agrees to allow no improvements which would prevent the aforesaid construction and maintenance.

ARTICLE 34.0

Annual Report

(This Article is intentionally deleted.)

ARTICLE 35.0

Effective Date

The execution of this Lease by the LESSOR is in pursuance of a Resolution, approved at a regular meeting of the City Commission of the City of Fort Lauderdale. The effective date of this Amendment and Restatement shall be the last date on which the LESSOR or LESSEE executes the Amendment and Restatement, provided that the authority of the property officials of LESSOR to execute this Amendment and Restatement shall expire within sixty (60) days of adoption of the Resolution so authorizing execution.

ARTICLE 36.0

Miscellaneous Provisions

It is further mutually covenanted and agreed by and between both of the parties hereto as follows:

(a) That this lease agreement shall be interpreted and governed by and construed in accordance with the laws of or applicable to the State of Florida.

(c) That the LESSOR shall not be required to give the LESSEE notice for the payment of any rent or other charges or assessments or payments to be made by the LESSEE under the terms and conditions as may be required by this lease agreement except as hereinbefore provided.

(d) Both of the parties to this lease agreement intend and therefore understand and agree that the LESSOR retains the right to negotiate sale of the entire Bahia Mar Yacht Basin, but in the event of any sale or other disposition of said Bahia Mar Yacht Basin by the LESSOR, the same shall be subject to this lease agreement, all of its terms and conditions and the rights of the LESSEE therein as provided for by this lease agreement.

(e) The full amount of the last year's rental under this lease agreement shall be paid at or before the time of execution and delivery hereof. In lieu thereof and as security therefor, receipt is hereby acknowledged of a note in the amount of the last year's rent, payable on demand and personally endorsed by Patricia Murphy

Kiernan.

(f) Interest Penalties; Late Payments. Late payments under this Lease shall accrue interest at the rate of twelve (12.0%) per cent per annum, provided, however, that no interest penalty shall apply to any payment which is received within fifteen (15) days of the date upon which it is otherwise due, but that any payment received more than fifteen (15) days after the date upon which it is due shall accrue interest penalties as stated above from the date such payment was first due.

(g) FDOT Project. There is currently in the planning stages a project for the realignment of State Road A1A and Seabreeze Boulevard ("FDOT Project") for certain lands abutting the demised premises on the East and to the North of the existing pedestrian overpass (said FDOT Project being currently designated as Project WPA No. 4110736, Job No. 86050 3540). In consideration of LESSOR's obligations set forth below, the LESSEE waives any right to compensation as a result of any eminent domain proceedings for the acquisition of a portion of the demised premises for such project (to the extent that such acquisition shall not exceed a total of 24,950 square feet or exceed a depth of 55 feet at its maximum and to the extent such lands are necessary for the completion of the FDOT Project), such portion of the demised premises as referenced above being hereinafter designated the "Taking Parcel," a site plan sketch of which has been exchanged between the parties. LESSEE hereby agrees to join LESSOR in the conveyance of the Taking Parcel, including LESSEE'S leasehold interest therein. To the extent the acquisition exceeds 24,950 square feet, LESSEE may seek compensation in the eminent domain proceedings.

LESSOR agrees, in consideration of the foregoing, that in the event the Taking Parcel is conveyed as aforesaid that LESSOR shall be obligated to replace and restore all paving, landscaping and other improvements destroyed or damaged as part of such taking or conveyance, and in addition thereto, LESSOR further agrees that as a material consideration for the LESSEE agreeing to the foregoing, the LESSOR shall be obligated, with respect to its consideration of future development approvals requested by LESSEE for the demised premises, to consider any development application as though the Taking Parcel which has been conveyed was still a part of the demised premises. The foregoing includes, but is not limited to, present or future ordinances that deal with parking, set-backs (other than sight triangles and line of site requirements for public safety), square foot requirements, height limitations, density, intensity of use, buffering, landscaping, floor area ratios and any and all other parcel size-based criteria.

Notwithstanding anything in the Lease or any amendment thereto to the contrary, the LESSOR agrees with the LESSEE that the LESSEE shall not be required to convey the Taking Parcel unless and until all other parcels needed to complete the FDOT Project have been acquired.

Further, prior to any taking or conveyance of the Taking Parcel, the LESSEE may commence improvement or construction of any part of or all of the demised premises including the Taking Parcel.

If construction is commenced on the Taking Parcel or any portion of the demised premises that affect the Taking Parcel, this subsection (g) shall terminate, be deemed null and void ab initio with the LESSEE not being obligated to convey unless normal statutory eminent domain proceedings are commenced and brought to fruition, in which event nothing in this subsection (g) shall limit any claim in any eminent domain proceedings which LESSEE may bring with respect to its leasehold interest.

The current Leasehold Mortgagee is Citicorp Real Estate, Inc. pursuant to that leasehold mortgage described in Exhibit "F" attached hereto. The Maturity Date of that current leasehold mortgage is June 30, 1988. LESSOR and LESSEE acknowledge and agree that the provisions of this subsection (g) are not binding upon Citicorp Real Estate, Inc., the holder of the existing leasehold mortgage referred to above without their joinder and consent to the provisions of this subsection (g), prior to the Maturity Date, except in the event an extension, renewal or modification of that mortgage is executed after the effective date of this Amended and Restated Lease. LESSOR and LESSEE acknowledge and agree, however, that as to the current Leasehold Mortgagee, Citicorp Real Estate, Inc., and except as stated above, that from and after the Maturity Date, or upon an earlier execution of an extension, renewal or modification of that leasehold mortgage after the effective date of this Amended and Restated Lease, the provisions of this subsection (g) shall be binding upon the current Leasehold Mortgagee, whether by extension, renewal, modification of the existing leasehold mortgage or otherwise, and shall thereafter, be fully binding upon any Leasehold Mortgagee which acquires the existing leasehold mortgage after the Maturity Date, or after an earlier execution of an extension, renewal or modification of the current leasehold mortgage after the effective date of this Amended and Restated Lease or places a new mortgage upon the LESSEE's leasehold interest after the effective date of this Amended and Restated Lease. An extension, renewal, or modification of the existing leasehold mortgage or execution of a new mortgage upon the LESSEE'S leasehold interest after the above events shall constitute an agreement by the Leasehold Mortgagee to execute a partial release of mortgage as to the Taking Parcel, without any compensation therefor, but only under circumstances where the LESSEE is obligated to convey the Taking Parcel without any compensation in accordance with this subsection (g). Notwithstanding the foregoing, LESSEE shall not execute any extension, renewal or modification of the existing leasehold mortgage, without the joinder and consent of the existing Leasehold Mortgagee, Citicorp Real Estate, Inc. as to the provisions of this subsection (g) and which joinder and consent shall obligate the Leasehold Mortgagee to execute a partial release of mortgage lien on the Taking Parcel at the time of the conveyance of the Taking Parcel, without compensation therefor, so that that Taking Parcel is conveyed free of the mortgage lien, but only under the circumstances where LESSEE is obligated to convey the Taking Parcel without compensation in accordance with this subsection (g). Nothing herein shall be deemed to affect in any way, any obligation the LESSEE may have to a Leasehold Mortgagee with respect to the division or application of any proceeds of condemnation to which the LESSEE may be entitled with respect to the Taking Parcel or the demised premises or any part thereof. In addition to the foregoing, the LESSEE agrees to use its best efforts (without being obligated to provide monetary or

other consideration) to obtain the joinder and consent of Citicorp Real Estate, Inc. to the provisions of this subsection (g), prior to execution of any extension, renewal or modification of the current leasehold mortgage.

(h) RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

ARTICLE 37.0

Merger & Conflict

The prior lease from the LESSOR to the LESSEE, dated the 1st day of September, 1959, pertaining to Bahia Mar restaurant and bar is hereby canceled and terminated by mutual consent of the parties hereto, provided, however, that any sums due thereunder to September 1, 1962, from LESSEE to LESSOR shall be promptly prorated and paid.

In the event and to the extent that there is any conflict between the terms and conditions of the Lease, as previously amended, and the terms and conditions of this Amended and Restated Lease, then the terms and conditions of this Amended and Restated Lease shall supersede and prevail over any such conflicting terms or conditions in the underlying Lease, as previously amended.

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

WITNESSES:

CITY OF FORT LAUDERDALE

By _____
Mayor

By _____
City Manager

(CORPORATE SEAL)

ATTEST:

_____
City Clerk

BK23168PG0380

Approved as to form:

Dennis E. Lyles
City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this February 13, 1995, by JIM NAUGLE, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

Patsey H. Adams
Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

OFFICIAL NOTARY SEAL
PATSEY H. ADAMS
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC 179873
MY COMMISSION EXP. MAR. 2,1996

Patsey H. Adams
Name of Notary Typed, Printed or Stamped

My Commission Expires: 3/2/96

179873
Commission Number

BK23168PG0381

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this February 14, 1995, by GEORGE L. HANBURY, II, City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

"OFFICIAL NOTARY SEAL"
DOROTHY O'LEARY
MY COMM. EXP. 3/5/95

Dorothy O'Leary
Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

DOROTHY O'LEARY
Name of Notary Typed, Printed or Stamped

My Commission Expires: 3-5-95

CC 088831
Commission Number

BK23168PG0382

WITNESSES:

RAHN BAHIA MAR, LTD.,
a Florida limited partnership

By: RAHN BAHIA MAR, G.P., LTD., a Florida limited partnership, its sole general partner

By: RAHN BAHIA MAR, INC., a Florida corporation, its sole general partner

Robert J. Stirk

Robert J. Stirk
[Witness type/print name]

By: _____
By: Peter H. Roberts
Vice President

Carol J. Gardina

CAROL J. GARDINA
[Witness type/print name]

1512 E. Broward Blvd. Suite 301
Fort Lauderdale, Florida 33301

BK23168PG0383

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 24th day of January, 1995, by Peter H. Roberts, Vice President of RAHN BAHIA MAR, INC., a Florida corporation, as sole general partner of RAHN BAHIA MAR, G.P., LTD., a Florida limited partnership, as sole general partner of RAHN BAHIA MAR, LTD., a Florida limited partnership, on behalf of the partnership. He is personally known to me ~~or has produced~~ as identification.

(SEAL)

Notary Public
My Commission Expires:
SUSAN L. ROSS

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. APR. 6, 1998
BONDED THRU GENERAL INS. UND.

RBD/BMarCons3 121594 1645

EXHIBIT "A"

All that part of BAHIA-MAR, according to the plat thereof recorded in Plat Book 35, Page 39 of the Public Records of Broward County, Florida, lying west of the west right-of-way line of Seabreeze Boulevard, EXCEPTING therefrom Parcel 1; also EXCEPTING therefrom the North eighty (80) feet of Parcel 34.

EXHIBIT "B"

ENVIRONMENTAL DISCLOSURE TO
CITY OF FORT LAUDERDALE

SUBMITTED BY RAHN BAHIA, LTD. ON

OCTOBER 12, 1994

C & I - COMMERCE AND INDUSTRY INSURANCE COMPANY
70 Pine Street, New York, N.Y. 10270

A Capital Stock Company
(herein called the "Company")

FLORIDA STORAGE TANK THIRD-PARTY LIABILITY AND CORRECTIVE ACTION POLICY DECLARATIONS

This is a Claims-Made and Reported Policy - It includes these Declarations and the attached Application - Please Read Carefully.

POLICY NUMBER : PDL3876473

Item 1: NAMED INSURED: RAIN BAHIA MAR, LTD

ADDRESS: 601 SEABREEZE BLVD
FT LAUDERDALE, FL 33316

Item 2: POLICY PERIOD: From JUN 30,1994 To JUN 30,1995 12:01 AM Standard Time at the address of the NAMED INSURED shown above.

Item 3: LIMIT OF LIABILITY: UP TO $ 1,000,000 Each Incident
$ 2,000,000 Aggregate

Item 4: DEDUCTIBLE: IPTP :

	ELIGIBLE	INELIGIBLE
Coverage A. Third-Party Liab	$ 500	$ N/A
Coverage B. Corrective Action	$ 100,000	$ N/A

Item 5: COVERED STORAGE TANK SYSTEM(S) See Attached ENDORSEMENT #1

Item 6: RETROACTIVE DATE:

Coverage A. Third-Party Liab	JUN 30,1994
Coverage B. Corrective Action	JUN 30,1994

Item 7: POLICY PREMIUM $ 876

BROKER: Florida Petroleum Liability Insurance Program Administrators, Inc.
317 Riveredge Blvd, P O Box 1947, Cocoa, Florida, 32923

DATE: DEC 8,1994 BY: Authorized Representative

57612 (6/93)

BK23168PG0386

EXHIBIT "C"

201589 ENDORSEMENT #1 Page 1

BAHN BAHIA MAR, LTD VPL5876475

It is hereby understood and agreed that Item #5 of the Declarations, Covered Storage System(s), shall include only the following :

LOC# 1 BAHIA MAR YACHTING CENTER (068501589) 801 SEABREEZE BLVD FORT LAUDERDALE FL 333161629

UNIT#	GROUND INDIC	CAPACITY ($ GALS)	TANK CONTENTS	INSTALL DATE	I.P.T.P. ELIGIBLE
1	UNDER	8,000	VEHICLE DIESEL	1981	YES
2	UNDER	8,000	UNLEADED GAS	1981	YES
3	UNDER	8,000	VEHICLE DIESEL	1981	YES

BK23168PG0387

EXHIBIT 'C'

EXHIBIT "D"

CAPITAL IMPROVEMENTS

1.	Exterior and sitework	$ 359,000
2.	Docks	292,000
3.	Marina Building	35,000
4.	Retail Pool Building	75,000
5.	Tower - Back of House	75,000
6.	Waterfront Guestrooms	70,000
7.	Ballroom & Restrooms	603,000
8.	Lobby and Meeting Rooms	125,000
9.	Tower Elevators	220,000
10.	Restaurant	207,000
11.	Tower Guestrooms	185,000
12.	Mechanical Building	690,000
13.	Lease Space Improvements	25,000
14.	General Contractor	100,000
15.	Communication Equipment	473,000
16.	Laundry and Kitchen Equipment	250,000
17.	Room Supplies	150,000
18.	FF&E Rooms & Food & Beverage	1,346,000
19.	Architect and Engineer Fees	595,000
		$6,000,000

BK23168PG0388

RADISSON BAHIA MAR BEACH RESORT

1. Exterior & Sitework

The entry of the resort will be reconfigured to create a circular plaza and drop-off area with the paid parking entrance moving west of the hotel front door. Additionally, a wall system for signage will flank the revised entry. A pedestrian plaza will be constructed to entice the pedestrian traffic along Seabreeze Boulevard to enter the site and use the resort amenities.

A signage program will be developed in order to identify the Radisson Bahia Mar Beach Resort and general pedestrian and vehicular directional signage will be added.

2. Docks

The 350 slip marina shall receive upgrading of facilities to include utility upgrades and distribution. Electrical, cable t.v., telephone and water systems shall be evaluated and repaired or upgraded as needed. Additionally, the structural condition of the docks shall be determined, and repaired as necessary, to include pilings, decks and finger piers.

3. Marina Building

The administration area of the Bahia Mar Marina shall be renovated to consolidate the functions of marina check-in, fuel dock and marina administration into a concise area providing the marina guest with an efficient location for marina activities.

4. Retail / Pool Building

The renovation shall include the marina service functions such as marina coin laundry and marina showers. Additionally, the employee cafeteria shall be reconfigured and expanded along with a fitting out of additional meeting space in what is currently the General Store.

5. Tower - Back Of House

The employee service area and support space shall be renovated to provide better facilities.

EXHIBIT "D"

6. Waterfront Guestrooms

The 115 Marina Wing guestrooms shall be renovated to include new plumbing and air conditioning equipment for each room & corridors. The guestroom baths shall receive new tile, wall surface applied using a duraplex coating and painting of all trim. All new carpet, furniture and lighting fixtures for the rooms and corridors shall be provided.

7. Ballroom & Restrooms

This work will involve the upgrade of lighting, wall finishes, doors and hardware in the main ballroom. Additionally, the two large sets of restrooms will be renovated and equipped to provide an ADA accessible and equipped bathroom.

8. Lobby & Meeting Rooms

A lobby redo will be accomplished to include upgrade of all finishes and lighting along with new furniture. The lobby front desk will be reconfigured to allow for three terminal locations for check-in / check-out. A major element will be the removal of the lowest level bridge system to open up the lobby and increase efficiency in circulation. A second floor meeting room shall be created by renovating the Harbor Lights Lounge into a meeting and catering room suitable for receptions, conferences or audio / visual presentations.

9. Tower Elevators

The program will be to replace the generator equipment with current state of the art solid state microprocessor equipment for the two tower passenger cars. Additionally, one swing car will be designated as a service car with elimination of all front door openings. The elevators will be modernized to include the ADA required equipment and locations.

EXHIBIT "D"

10. Restaurant Redo

The Seaview Restaurant will be renovated to create a +/- 130 seat restaurant and +/- 50 seat bar/lounge. The existing kitchen will serve the renovated dining room. Additionally, a buffet line will be added to the restaurant to allow for buffet style dining to be offered. A new circulation stair shall be constructed to allow the public to circulate from the newly created pedestrian plaza up to the second floor restaurant.

11. Tower Guestrooms

A similar program to the Marina Wing Guestrooms will be undertaken in the 183 Tower Rooms. New thru wall A/C units, new plumbing fixtures, vanities, lighting, wall finishes along with a complete new furniture, fixture and equipment package will be installed.

12. Mechanical

Upgrades to mechanical equipment will be performed in order to obtain the maximum efficiency out of each piece of equipment.

13. Lease Space Improvements

The retail space on the property will be renovated to create a logo shop with normal resort sundries in addition to logo type apparel. Also, the retail corridor of the main building will be improved to create a retail arcade to showcase the existing resort retail in addition to attracting new tenants.

14. General Contractor

This item of the budget is to cover the cost of general conditions, overhead and fee for the general contractor for the project. We expect to engage two (2) major general contractors which shall divide the major work into site and public space versus the guestroom renovation.

EXHIBIT "D"

15. Communication Equipment

This budget category includes the upgraded telephone switch, new phone sets, relocation of PBX to front desk area, Property Management System, Point of Sale system and the interior signage and graphics package.

16. Laundry & Kitchen Equipment

The replacement and purchase of new equipment along with the repair, adjustment, calibration and cleaning of the existing kitchen equipment makes up the majority of this budget item.

The laundry equipment will be evaluated and replaced as necessary.

17. Room Supplies

The equipping of the guestrooms and front office supplies are included in this item. Purchases such as linen, hangers, printed material, guest amenities, in-room supplies are all a part of the guestroom supplies.

The cost for front office forms, folios and the like are also part of this budget item.

18. Furniture, Fixtures & Equipment Rooms & Food & Beverage

All of the new furnishings to include complete guestroom package of case goods, seating, lighting, carpet, t.v.'s, clock radios and luggage racks make up this item.

In the food, beverage and the lobby areas, the FF&E shall include seating, tables and bases, banquettes, artwork, planters, plants and artifacts.

EXHIBIT "3"

19. Architectural & Engineering Fees

The entire cost of design of the renovated facilities is carried in this line item. Additionally, the project management cost to administer the project is included.

Some of the design discipline are architect, structural engineer, civil engineer, mechanical engineer, electrical engineer, geotechnical engineer, vertical transportation study, survey, interior design, landscape architect, environmental engineer, site signage survey and lenders inspection.

20. Contingency

This budget item is included to cover the cost of unforeseen conditions in the work. The contingency could also be used to upgrade an area which due to market analysis, we may want to add to the scope of the renovations.

EXHIBIT "J"

RADISSON BAHIA MAR BEACH RESORT

Legend	Current Tenant	Sq. Ft.	Annual Rent
1	Carrassa, Inc.	1,796	$ 61,064
2	Yeadship America, Inc.	1,959	58,776
3	Frank Gordon Yacht Sales, Inc.	936	18,720
4	Charles P. Irwin Yacht Brokers, Inc.	2,503	55,748
5	Prof. Diving Charters of Florida, Inc. & Prof. Diving Schools of Florida, Inc.	2,460	54,120
6	Deep Sea Charters, Inc. D/B/A Windridge Yacht Charters	2,472	59,328
8	Richard Bertram, Inc.	3,557	64,026
9	Curtlin Corporation (Arella Salon)	730	12,000
10	Yachting Bliss	360	6,300
11	Water Taxi of Fort Lauderdale, Inc.	3,250	90,000
13	Jangles, Inc.	345	12,075
14	Omni Properties, Inc.	493	17,255
		20,861	$ 509,412

BK23168PG0394

EXHIBIT "E"

EXHIBIT "y"

Mortgage executed by Bahia Mar Hotel and Yachting Center, Inc., a Delaware corporation, to Citibank, N.A., dated August 11, 1980, recorded August 14, 1980 at Official Records Book 9066, Page 490, as modified by Future Advance Agreement dated as of June 30, 1981, and recorded in Official Records Book 9827, Page 256; Future Advance Agreement dated May 12, 1982 and recorded in Official Records Book 10239, Page 129; Mortgage Modification Agreement dated as of March 9, 1992 and recorded in Official Records Book 19380, Page 878; Mortgage Modification Agreement dated as of June 30, 1993 and recorded in Official Records Book 20932, Page 10, as affected by Agreement of Assumption recorded in Official Records Book 10209, Page 888, as affected by Transfer and Assignment by Citibank, N.A. to Citicorp Real Estate, Inc., dated June 30, 1994, recorded July 1, 1994 in Official Records Book 22333, Page 897; and as modified by Modification of Leasehold Mortgage dated June 30, 1994, recorded July 1, 1994 in Official Records Book 22333, Page 901, all of the Public Records of Broward County, Florida.

RECORDED IN THE OFFICIAL RECORDS BOOK OF BROWARD COUNTY, FLORIDA COUNTY ADMINISTRATOR

BK23168PG0395

MEMORANDUM

TO: Mary Fertig

FROM: Robert B. Dunckel

DATE: June 5, 2017

SUBJECT: Bahia Mar – Item M-4 – June 6, 2017 City Commission Regular Agenda
Analysis of interplay between Article 24.0 "Alterations and Additions" and Article 19.0, "Use of Premises"

A motion is scheduled to be entertained by the City Commission on the June 6, 2017 Regular Agenda, Item M-4, to authorize the Developer/Lessee, Rahn Bahia Mar, LLC, to file an application for a development permit for the Bahia Mar property. ULDR § 47-24.1 requires that the application for a development permit be filed by the fee simple owner of the property targeted for development. Under Item M-4, the City would be delegating its authority as fee simple owner to the Developer/Lessee to proceed with the application for a development permit for the Bahia Mar property.

In conjunction with the proposed motion to be considered by the City Commission, you have asked me to analyze the interplay under the Lease between Article 24.0, "Alteration and Additions" and Article 19.0, "Use of Premises."

Article 24.0, "Alterations and Additions" provides:

Article 24.0
Alterations and Additions

> The LESSEE agrees to make no major alterations, changes or additions to the leased premises, without first obtaining the written consent of the LESSOR given in pursuance of appropriate municipal action taken at a lawful meeting of the City Commission of said city. However, both parties hereto being desirous of LESSEE conducting its business in and upon the demised premises to as to provide the greatest volume of business, the Lessor agrees hereby to not unreasonably withhold its consent to change and alterations that may be desired and proposed by the LESSEE, nor to exact or change any consideration for giving any consent.

Article 24.0 requires that the LESSEE shall make no alterations, changes or additions to the Leased Premises without first obtaining written consent of the LESSOR. Thereafter certain guidelines are set out with regard to the latitude or discretion the LESSOR has in granting written consent to the proposed improvements:

- In recognition of the principle that both parties are desirous of the LESSEE conducting its business as to provide the greatest volume of business, LESSOR may not unreasonably withhold its consent
- LESSOR may not exact or change any consideration for giving any consent.

While under the terms of the Lease and under the law, the Lessor may not arbitrarily or capricious withhold consent to go forward with proposed alterations and additions, it is nonetheless my opinion that Article 24.0 is by no means the end of the inquiry as to the scope of discretion the LESSOR has under the Lease and the law in entertaining the question of whether to grant its written consent to the proposed improvements. In my opinion, Article 19.0, "Use of Premises"

Article 19.0, "Use of Premises" provides:

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, marina 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 services 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.

In my opinion, a LESSOR that withholds its written consent to the LESSEE's proposed improvements is operating within the four corners of the lease where the proposed improvements are incompatible or inconsistent with the primary purpose of the use of the premises, i.e. *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, apartment and other kindred and similar businesses.*

Within the parameters of the Lease it becomes a legitimate inquiry as to whether the proposed development is consistent or compatible with the use of the premises is to be that of *a first-class hotel-marina and retort complex* where the proposed development contains 651 multi-family residential units, spread out over five (5) buildings 120 feet in height. In my opinion, the 651 multi-family residential units so overwhelm the development as to verge on being a secondary principal use of the property thereby significantly diminishing the primary use of the premises as a *first-class hotel-marina and resort complex.* It is conceded that the term "apartments" is

among the uses identified in Article 19.0, but to remain consistent with the primary goal of the property being a *first-class hotel-marina and resort complex,* the magnitude of the residential units relative to the other uses must be relatively minor or accessory in scope.

If the multi-family residential units composed a very small, minor component of the overall development as an accessory to the marina use or resort complex use, in my opinion such a proposal would be much more in harmony with the primary use of the premises. It is up to the "fact finders" to determine what threshold of multi-family residential units is in harmony with the primary use of the premises. What is the precise number of residential units for this development proposal that would be compatible with and within the parameters of *a first-class hotel-marina and resort complex* is a proposition over which reasonable minds may differ. However, as currently presented, it is my opinion that 651 multi-family residential units drastically alters the primary use of the premises to the extent that residential units become a secondary principle use not envisioned within the terms of the lease contrary to the intent of the Lease.

Given the factors evaluated above, I would advocate "tabling" consideration of the motion to permit the Lessee to file an application for a development permit. In the interim I would advocate Commission consideration, under Article 19.0, "Alterations and Additions," of whether the current proposal is in harmony with the principle use of Bahia Mar as *a first-class hotel-marina and resort complex* and therefore is deserving of the written consent of the Commission to go forward with the development proposal attached as an exhibit on the Commission's Agenda. Such consideration should require in-depth due diligence review by staff with input from the public.

In my opinion, it is to the public's advantage for the Commission to first consider the Landlord's issue of consent to this proposed development scheme. Once the development application has left the gate, it will be reviewed under criteria that would allow a host and level of uses not in keeping with the Article 19.0 "Use of Premises" principles, making it more difficult at a later date to carefully mold this development proposal more in line with *a first-class hotel-marina and resort complex.*

It was not my intention to delve into other areas of consideration relative to the Lessor's consideration of whether this development proposal merits the Landlord's written consent to proceed with this proposal. There may very well be many other meritorious arguments that address the "consent" issue. It was merely my intention to demonstrate that the strictures and hurdles of evaluating a consent under Article 24.0, "Alterations and Additions" is not the sole factor by which the consideration should be judged.

One must give serious pause to entertain the question of whether this development proposal which overwhelms the site with 651 multi-family residential units is consistent with maintaining *the character of Bahia Mar as a marina,* as set forth in Section 2 of Article 19.0.

I remain available to respond to any further questions or clarifications that you might have.

RESOLUTION NO.3471

A RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF $2,500,000.00 MUNICIPAL RECREATION REVENUE BONDS OF CITY OF FORT LAUDERDALE, FLORIDA, FOR THE PURPOSE OF REPAYING CERTAIN HOLDERS OF DEPOSIT RECEIPTS WHO ADVANCED MONEY ON ACCOUNT OF THE PURCHASE OF COAST GUARD BASE SIX PROPERTY, AND FOR THE PURPOSE OF PAYING THE COST OF CONSTRUCTING A MUNICIPAL RECREATION CENTER ON SUCH PROPERTY AND PLEDGING THE INCOME AND REVENUE FROM SUCH MUNICIPAL RECREATION CENTER FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON SUCH BONDS, TOGETHER WITH THE NET PROCEEDS OF THE UTILITIES SERVICES TAXES RECEIVED BY THE CITY OF FORT LAUDERDALE UNDER THE PROVISIONS OF ORDINANCE C-534 ADOPTED SEPTEMBER 22, 1948 AND CHAPTER 22829 LAWS OF FLORIDA, GENERAL ACTS OF 1945, AND FOR OTHER PURPOSES.

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

ARTICLE 1

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

SECTION 1: AUTHORITY OF THIS RESOLUTION. This resolution is adopted pursuant to the provisions of Chapter 24514, Special Acts of the Legislature of Florida for the year 1947, being the Charter of the City of Fort Lauderdale, and other applicable provisions of law.

It is hereby found and determined as follows:

(A) That the City of Fort Lauderdale is now the owner of the land and premises in said City commonly known and referred to as the "Coast Guard Base 6 Property", the same being the land acquired by the City of Fort Lauderdale from the United States of America by a quitclaim deed dated September 15, 1947, filed for record October 30, 1947, and duly recorded in Deed Book 604, page 529 of the public records of Broward County, Florida.

That the purchase and acquisition of said land and premises was financed by the City by subscriptions

thereto by the citizens of said City in the amount of $627,000; that receipts were duly issued to such subscribers by the City for such moneys in which receipts the City agreed to issue to such subscribers in exchange for such receipts negotiable revenue obligations payable solely from revenues to be derived by the City from the operation of municipal recreational facilities.

That the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Broward County, by a decree rendered on the 13th day of May, 1948, in the case of H. C. Holden, Frank Seaman and W. O. Hundley, plaintiffs vs. City of Fort Lauderdale, et al., defendants, held and decreed that such receipts constitute both moral and legal obligations of the City, and that the City should make available to the holders of such receipts either negotiable revenue bonds in exchange therefor or cash in lieu thereof, together with interest from November 1, 1947.

(B) That the City heretofore under date of September 13, 1948, after due public advertisement, accepted the proposal of the Universal Construction Company, a corporation duly created and organized under the laws of the State of Florida in which proposal said corporation agreed as follows:

(1) To purchase $2,500,000 revenue obligations bearing interest at four per centum per annum, maturing on or before 30 years after the date thereof, and to pay therefor 97.5% of their par value, together with accrued interest; delivery of said obligations to be made not later than January 20, 1949; and said revenue obligations to be payable from the lease moneys or other revenues derived from said municipal recreational facilities, and from such portion of the 10% utilities services taxes as may be necessary to pay the debt service thereon.

(2) To construct municipal recreational facilities at said Coast Guard Base No. 6 property, consisting, but not being limited to, dredging, bulkheading, piers, catwalks, paving, drainage, channel clearing, water distribution, electrical, buildings and landscaping, complete in place and ready for use in accordance with the plans and specifications prepared by J. H. Philpott and F. V. Ackerman, Consulting Engineers and now on file in the office of the City Clerk, for the sum of $1,710,500.00.

(3) To execute an operation lease with the City for said municipal recreational facilities in accordance with the details set forth in said plans and specifications and to pay therefor to the City an annual rental of the sum of $160,000 or six per centum of the gross receipts derived by such lessee from the operation of said municipal recreational facilities, whichever is larger.

That contracts for said construction work, and said lease, have been duly executed by and between the City and said corporation.

(c) That pursuant to Chapter 22829, General Laws Of Florida, 1945, the City Commission of said City did by an Ordinance No. C-534 enacted September 22nd, 1948, levy utilities services taxes in the manner provided in said statute, said Ordinance being Section 279.01 to 279.09, inclusive, of the "Code of Ordinances of City of Fort Lauderdale"; that said Ordinance further pledged the proceeds of said utilities services taxes to the payment of the principal of and interest on the $2,500,000 Municipal Recreation Revenue Bonds to be issued pursuant to this Resolution, and for reserves therefor.

(D) That the construction of said municipal recreational facilities, as provided for in said contracts with

said Universal Construction Company is for a proper municipal purpose, and it is imperative in order to preserve the public health and provide proper recreational facilities for the inhabitants of the City of Fort Lauderdale that said municipal recreational facilities shall be constructed in accordance with the contract with said Universal Construction Company and in accordance with the provisions of this Resolution.

(E) That the revenues from said municipal recreational facilities of the City of Fort Lauderdale, together with the net proceeds of the utilities services taxes received by the City and pledged to the payment of the principal of and interest on the revenue bonds authorized pursuant to this Resolution, will be sufficient to pay the principal of and interest on all of the revenue bonds issued pursuant to this Resolution and to make all reserve, sinking fund and other payments provided for in this Resolution, and to pay the necessary cost of operating and maintaining said municipal recreational facilities.

(F) That the principal of and interest on the revenue bonds to be issued pursuant to this Resolution and all of the reserve, sinking fund and other payments provided for in this Resolution, will be paid solely from the revenues derived by the City of Fort Lauderdale from the operation of said municipal recreational facilities, and the net proceeds of said utilities services taxes, and it will never be necessary or authorized to use the ad valorem taxing power or any other funds of said City to pay the principalof and interest on the revenue bonds to be issued pursuant to this Resolution, or to make any of the reserve, sinking fund or other payments provided for in this Resolution, and the revenue bonds issued pursuant to this Resolution

shall not constitute a lien upon any of the properties of said municipal recreational facilities or upon any other property whatsoever of the City of Fort Lauderdale.

(G) That construction of said municipal recreational facilities shall be completed in accordance with said contracts with said Universal Construction Company, at an estimated cost (including the amount necessary to pay or refund receipts heretofore issued to acquire said Coast Guard Base No. 6 property) of $2,457,500. Such cost shall be deemed to include the cost of the construction of said municipal recreational facilities pursuant to said contracts with said Universal Construction Company, which said contracts are hereby in all respects ratified, approved and confirmed: interest upon bonds issued pursuant to this Resolution prior to, and during and for six months after the completion and placing in operation of said municipal recreational facilities if necessary; engineering and legal expenses; expenses for estimates of cost and of revenues; expenses for plans, specifications and surveys and such other expenses as may be necessary or incident to the financing authorized by this Resolution, and the construction of such municipal recreational facilities and the placing of same in operation.

SECTION 2: RESOLUTION TO CONSTITUTE CONTRACT. In consideration of the acceptance of the bonds authorized to be issued hereunder by those who shall hold the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the City of Fort Lauderdale, Florida, and such bondholders, and the covenants and agreements herein set forth to be performed by said City shall be for the equal benefit, protection and security of the

legal holders of any and all of such bonds and the coupons attached thereto, all of which shall be of equal rank and without preference, priority or distinction of any of the bonds or coupons over any other thereof except as expressly provided therein and herein.

SECTION 3: DEFINITIONS: The following terms shall have the following meanings in this resolution unless the text otherwise expressly requires.

(a) "City" shall mean the City of Fort Lauderdale, Florida.

(b) "Act" shall mean the Charter of the City of Fort Lauderdale constituting Chapter 69814, Special Acts of the Legislature for the year 1947.

(c) "Bonds" shall mean the $2,500,000 Municipal Recreation Revenue Bonds originally authorized to be issued pursuant to this resolution and the interest coupons attached to said bonds, and shall also be deemed to include any bonds, and the interest coupons attached thereto, subsequently issued pursuant to and within the limitations of this resolution providing for the creation of additional obligations payable from the revenues of said municipal recreational facilities and said utilities services taxes, and ranking pari passu as to lien and source and security for payment from said revenues and said utilities services taxes with the $2,500,000 bonds originally authorized by this Resolution.

(d) "Holder of Bonds" or "bondholder", or any similar term, shall mean any person who shall be the bearer or owner of any outstanding Bond or Bonds registered to bearer or not registered, or the registered owner of any outstanding Bond or Bonds which shall at the time be registered other than to bearer, or of any coupons representing interest accrued or to accrue on said bonds.

(e) "Municipal Recreational Facilities" shall mean the complete municipal recreational facilities of the City of Fort Lauderdale on said lands known as Coast Guard Base No. 6, including any facilities now on said lands, and the recreational facilities to be constructed thereto pursuant to this Resolution, and any recreational facilities hereafter constructed or placed on said lands from any other sources, and including the lands known as said Coast Guard Base No. 6, together with all buildings, fixtures, equipment and all property, real or personal, tangible or intangible, now or hereafter owned or used in connection with such recreational facilities.

(f) "Revenues" or "gross revenues" shall mean all rates, fees, charges or other income received by the City, or accrued to the City, or any Board or agency thereof in control of the management and operation of said municipal recreational facilities, and all parts thereof, from the operation of said municipal recreational facilities all as calculated in accordance with sound accounting practice. Revenues, or gross revenues, shall be specifically deemed to include, without being limited to, all rental payments received from said Universal Construction Company pursuant to said lease heretofore executed by and between said City and said corporation, and also any rentals or other payments to be received by the City from any other lessees, licensees, or other persons for said municipal recreational facilities.

(g) "Operating Expenses" shall mean the current expenses, paid or accrued, of operation, maintenance and repair of said municipal recreational facilities and shall

include, without limiting the generality of the foregoing, insurance premiums, and the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred in accordance with sound accounting practices. "Operating expenses" shall not include any allowance for depreciation except to the extent expressly herein provided; provided, however, that whenever and wherever the City shall lease or license any of said recreational facilities under terms providing for the payment of net rentals to the City and whereby the lessee or licensee pays part or all of the costs of operation and maintenance paid by such lessee or licensee shall not be included under the term "Operating Expenses" as used in this subsection (g).

(h) "Net Revenues" shall mean the gross revenues, as defined in subsection (f) above, remaining after deduction only of operating expenses, as defined in subsection (g) above.

(i) "Net proceeds of utilities services taxes" shall mean all collections of such taxes less only the necessary expenses of levying and collecting such taxes.

(j) Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

ARTICLE II

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUE OF BONDS.

SECTION 4: AUTHORIZATION OF BONDS. Subject and pursuant to the provisions of this resolution Bonds of the City of Fort Lauderdale to be known as "Municipal Recreation Revenue Bonds" are hereby authorized to be issued in the

aggregate principal amount of not exceeding two million five hundred thousand dollars ($2,500,000).

SECTION 5. DESCRIPTION OF BONDS. The bonds shall be dated September 1, 1949, shall be in the denomination of $1,000, shall be numbered from 1 to 2,500, inclusive, shall bear interest at the rate of four per centum per annum, payable semi-annually on March 1 and September 1 of each year, and shall mature serially in numerical order, lowest numbers first, on September 1 of each year, in the years and amounts as follows:

AMOUNT	YEAR
$50,000	1950
52,000	1951
52,000	1952
53,000	1953
54,000	1954
57,000	1955
60,000	1956
63,000	1957
65,000	1958
67,000	1959
69,000	1960
72,000	1961
76,000	1962
79,000	1963
82,000	1964
86,000	1965
89,000	1966
92,000	1967
96,000	1968
100,000	1969
104,000	1970
108,000	1971
113,000	1972
117,000	1973
122,000	1974
127,000	1975
130,000	1976
130,000	1977
135,000	1978

The bonds maturing in the years 1950 to 1953, both inclusive, shall not be redeemable prior to their stated dates of maturity. The bonds maturing in the years 1954 to 1978, both inclusive, shall be redeemable prior to their stated dates of maturity, in whole or in part, but in inverse numerical order if less than all, at the option

of the City on September 1, 1958, or on any interest payment date thereafter, at the price of par and accrued interest, plus the following premiums if redeemed in the following years:

4% in 1958 to 1961, inclusive	2% in 1969
3 3/4% in 1962	1 3/4% in 1970
3 1/2% in 1963	1 1/2% in 1971
3 1/4% in 1964	1 1/4% in 1972
3% in 1965	1% in 1973
2 3/4% in 1966	3/4% in 1974
2 1/2% in 1967	1/2% in 1975
2 1/4% in 1968	1/4% in 1976; and

without premium if redeemed in the years 1977 or 1978.

A notice of such redemption shall be published by the City at least once at least thirty days prior to the redemption date in a financial paper published in the City of New York.

Said bonds shall be issued in coupon form, shall be payable with respect to both principal and interest at the office of the City Auditor and Clerk of the Borrower in the City of Fort Lauderdale, Florida, or, at the option of the holder, at Chemical Bank and Trust Company, New York City, New York, in lawful money of the United States of America, and shall bear interest from their date, payable in accordance with and upon surrender of the appurtenant interest coupons as they severally mature.

SECTION 6: EXECUTION OF BONDS AND COUPONS. Said bonds shall be executed in the name of the City signed by its Mayor-Commissioner and City Manager and countersigned by the City Auditor and Clerk and its corporate seal shall be affixed thereto. In case any one or more of the officers who shall have signed or sealed any of the bonds shall cease to be such officer of the City before the bonds so signed and sealed shall have been actually sold and delivered, such bonds may nevertheless be sold and

delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bond may be signed and sealed on behalf of the City by such person as at the actual time of the execution of such Bonds shall hold the proper office in the City, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

The coupons to be attached to the Bonds shall be authenticated with the facsimile signatures of the present or any future Mayor-Commissioner, City Manager, and City Auditor and Clerk of said City, and the City may adopt and use for that purpose the fac simile signature of any person who shall have been such Mayor-Commissioner, City Manager, or City Auditor and Clerk at any time on or after the date of the Bonds, notwithstanding that he may have ceased to be such Mayor-Commissioner, City Manager, or City Auditor andClerk at the time when said Bonds shall be actually sold anddelivered.

SECTION 7: NEGOTIABILITY AND REGISTRATION. The Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the law merchant and the Negotiable Instruments Law of the State of Florida, and each successive holder, in accepting any of said Bonds or the coupons appertaining thereto, shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the law merchant and the Negotiable Instruments Law of the State of Florida, and each successive holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value in the manner provided hereinafter in the form of said Bonds.

The Bonds may be registered at the option of the holder as to principal only, at the office of the City Auditor and Clerk of the City, such registration to be noted on the back of said Bonds in the space provided therefor. After such registration as to principal only, no transfer of the Bonds shall be valid unless made at said office by the registered owner, or by his duly authorized agent or representative and similarly noted on the Bonds, but the Bonds may be discharged from registration by being in like manner transferred to bearer and thereupon transferability by delivery shall be restored. At the option of the holder the Bonds may thereafter again from time to time be registered or transferred to bearer as before. Such registration as to principal only shall not affect the negotiability of the coupons which shall continue to pass by delivery.

SECTION 8: Bonds MUTILATED, DESTROYED, STOLEN OR LOST. In case any Bond shall become mutilated or be destroyed, stolen or lost, the City may in its discretion issue and deliver a new Bond with all unmatured coupons attached of like tenor as the Bond and attached coupons, if any, so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond and attached coupons, if any, or in lieu of and substitution for the Bond and attached coupons, if any, destroyed, stolen or lost, and upon the holder furnishing the City proof of his ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur. All Bonds and coupons so surrendered shall be cancelled by the City Auditor and Clerk and

held for the account of the City. If any such Bond or coupon shall have matured or be about to mature, instead of issuing a substituted bond or coupon the City may pay the same, upon being indemnified as aforesaid, and if such Bond or Coupon be lost, stolen or destroyed, without surrender thereof.

Any such duplicate bonds and coupons issued pursuant to this section shall constitute original, additional contractual obligations on the part of the City, whether or not the lost, stolen or destroyed bonds or coupons be at any time found by any one, and such duplicate bonds and coupons shall be entitled to equal and proportionate benefits and rights as to lien and source and security for payment from the revenues of the recreational facilities with all other bonds and coupons issued hereunder.

SECTION 9: FORM OF BONDS AND COUPONS. The text of the bonds and coupons shall be of substantially the following tenor, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Resolution, or any subsequent Resolution adopted prior to the issuance thereof:

No. $1,000

UNITED STATES OF AMERICA
STATE OF FLORIDA
CITY OF FORT LAUDERDALE
MUNICIPAL RECREATION REVENUE BONDS

KNOW ALL MEN BY THESE PRESENTS that the City of Fort Lauderdale, in Broward County, Florida, for value received, hereby promises to pay to the bearer, or if this Bond be registered, to the registered holder as herein provided, on the first day of September, 19 , from the revenues hereinafter mentioned, the principal sum of

ONE THOUSAND DOLLARS

with interest thereon at the rate of four per centum per

annum, payable semi-annually on the 1st day of March and the 1st day of September of each year upon the presentation and surrender of the annexed coupons as they severally fall due. Both principal of and interest on this bond are payable at the office of the City Auditor and Clerk of the Borrower in the City of Fort Lauderdale, Florida, or at the option of the holder, at Chemical Bank and Trust Company, New York City, New York in lawful money of the United States of America.

This bond is one of an authorized issue of bonds in the aggregate principal amount of $2,500,000 of like date, tenor and effect, except as to number and date of maturity, issued to finance the cost of acquisition of land and the construction of municipal recreational facilities thereon, under the authority of and in full compliance with the Constitution and Statutes of the State of Florida, including Chapter 24614, Special Acts of the Legislature of Florida for the year 1947, and other applicable statutes, and Resolution No. 3471, duly adopted by theCity Commission of said City on November 1st, 1948, and is subject to all the terms and conditions of said Resolution.

This bond and the coupons appertaining thereto are payable solely from and secured by a lien upon and pledge of the gross revenues derived from the operation of the municipal recreational facilities of the City of Fort Lauderdale, as defined in said Resolution, and the net proceeds of utilities services taxes received by the City in the manner provided in the Resolution authorizing this issue of Bonds. This Bond does not constitute an indebtedness of the City of Fort Lauderdale within the meaning of any constitutional statutory or charter provision or limitation, and it is expressly agreed by the holders of this bond and the

coupons appertaining thereto but such holders shall never have the right to require or compel the exercise of the ad valorem taxing power of said City, or the taxation of real estate in said City, for the payment of the principal of and interest on this bond or the making of any sinking fund, reserve or other payments provided for in the Resolution authorizing this issue of bonds.

It is further agreed between the City of Fort Lauderdale and the holder of this bond that this bond and the obligation evidenced thereby shall not constitute a lien upon the City's municipal recreational facilities, or any part thereof, or on any other property of or in the City of Fort Lauderdale, but shall constitute a lien only on the gross revenues derived from the operation of said municipal recreational facilities, and the net proceeds of utilities services taxes received by the City in the manner provided in said Resolution.

The City in said Resolution has covenanted and agreed with the holders of the bonds of this issue to fix and establish and maintain such rates and collect such fees, rentals or other charges for said municipal recreational facilities and to revise the same from time to time whenever necessary (subject to the provisions of any contracts with lessees or licensees of such facilities), as will always, together with the net proceeds of utilities services taxes received by the City and available for the purposes hereinafter set forth, provide revenues sufficient to pay, and out of said revenues shall pay, as the same shall become due, the principal of and interest on the Bonds of this issue, all reserve or sinking funds or other payments provided for in said Resolution, the necessary

expenses of operating and maintaining said municipal recreational facilities and all other obligations payable out of the revenues of said municipal recreational facilities, and that such rates, fees, rentals or other charges shall not be reduced so as to be insufficient to provide revenues for such purposes, and said City has entered into certain further covenants with the holders of the Bonds of this issue for the terms of which reference is made to saidResolution.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond, exist, have happened and have been performed in regular and due form and time as required by the Laws and Constitution of the State of Florida applicable thereto, and that the issuance of this Bond, and of the issue of Bonds of which this Bond is one, does not violate any constitutional, statutory or charter limitation.

This Bond, and the coupons appertaining thereto, is, and has all the qualities and incidents of, a negotiable instrument under the law merchant and the Negotiable Instruments Law of the State of Florida, and the original holder and each successive holder of this Bond, or of the coupons appertaining thereto, shall be conclusively deemed by his acceptance thereof to have agreed that this Bond and the coupons appertaining thereto shall be and have all the qualities and incidents of negotiable instruments under the law merchant and the Negotiable Instruments Law of the State of Florida. The original holder and each successive holder of this Bond, and of the coupons appertaining hereto, shall be conclusively deemed to have agreed

and consented to the following terms and conditions:

(a) Title to this Bond, unless registered as herein provided, and to the annexed interest coupons, may be transferred by delivery in the manner provided for negotiable instruments payable to bearer in the law merchant and the Negotiable Instruments Law of the State of Florida.

(b) Any person in possession of this Bond, unless registered as herein provided, or of the interest coupons hereunto appertaining, regardless of the manner in which he shall have acquired possession, is hereby authorized to represent himself as the absolute owner hereof, and is hereby granted power to transfer absolute title hereto by delivery hereof to a bona fide purchaser, that is, to any one who shall purchase the same for value (present or antecedent) without notice of prior defenses or equities or claims of ownership enforceable against his transferror; every prior taker or owner of this Bond, unless registered as herein provided, and of the annexed interest coupons, waives and renounces all of his equities and rights herein in favor of every such bona fide purchaser, and everysuch bona fide purchaser shall acquire absolute title hereto and to all rights represented hereby; and

(c) The City of Fort Lauderdale, Florida, may treat the bearer of this Bond, unless registered as herein provided, or of the interest coupons hereunto appertaining, as the absolute owner hereof for all purposes without being affected by any notice to the contrary.

This Bond may be registered as to principal only, in accordance with the provisions endorsed hereon.

17

IN WITNESS WHEREOF said City of Fort Lauderdale, Florida, has issued this bond and has caused the same to be signed by its Mayor-Commissioner and City Manager and countersigned by its City Auditor and Clerk, and the corporate seal of said City to be affixed hereto, and has caused the interest coupons hereto attached to be executed with the fac simile signature of the said Mayor-Commissioner, City Manager and City Auditor and Clerk, all as of the first day of September, 1948.

CITY OF FORT LAUDERDALE, FLORIDA

By_____
Mayor-Commissioner

By_____
City Manager

Countersigned:

_____
City Auditor and Clerk

(To be inserted in callable Bonds only: "This Bond is redeemable at the option of the City on September 1, 1953 or on any interest payment date thereafter, at par and accrued interest, together with the following premiums if redeemed in the following years:

4% in 1953 to 1961, inclusive	2% in 1969
3 3/4% in 1962	1 3/4% in 1970
3 1/2% in 1963	1 1/2% in 1971
3 1/4% in 1964	1 1/4% in 1972
3% in 1965	1% in 1973
2 3/4% in 1966	3/4% in 1974
2 1/2% in 1967	1/2% in 1975
2 1/4% in 1968	1/4% in 1976; and

wit
without premium if redeemed in the years 1977 or 1978; provided, however, that a notice of such redemption shall have been published at least once at least thirty days prior to the redemption date in a financial paper published in the City of New York).

(FORM OF COUPON)

No. $20.00

On the day of , 19 , City of Fort Lauderdale, Florida, will pay to the bearer at the office of the City Auditor and Clerk of the borrower in the City of Fort Lauderdale, Florida, or at the option of the holder,

at Chemical Bank and Trust Company, New York City, New York, in lawful money of the United States of America from the revenues and special funds described in the bond to which this coupon is attached, the sum of Twenty Dollars ($20.00), upon presentation and surrender of this coupon, being six months interest then due on its Municipal Recreation Revenue Bond, dated September 1, 1948, No. .

CITY OF FORT LAUDERDALE, FLORIDA,

By _____
Mayor-Commissioner

By _____
City Manager

Countersigned:

_____
City Auditor and Clerk

(To be inserted in coupons maturing after callable date: "unless the Bond to which this coupon is attached has been previously duly called for prior redemption and payment thereof duly provided for".)

(Form of Validation Certificate)

Validated and confirmed by decree of the Circuit Court of the Fifteenth Judicial Circuit of Floirda, in and for Broward County, rendered on the day of , 19 .

_____
Clerk of the Circuit Court of Broward County, Florida.

PROVISION FOR REGISTRATION

This Bond may be registered in the name of the holder on the books to be kept by the City Auditor and Clerk as Registrar, or such other Registrar as may hereafter be duly appointed, as to principal only, such registration being noted hereon by such Registrar in the registration blank below, after which no transfer shall be valid unless made on said books by the registered holder or attorney duly authorized and similarly noted in the registration blank below, but it may be discharged from registration by being transferred to bearer, after which it shall be transferable by delivery, but it may

this Bond as to principal shall not restrain the negotiability of the coupons by delivery merely.

DATE OF REGISTRATION	IN WHOSE NAME REGISTERED	MANNER OF REGISTRATION	SIGNATURE OF REGISTRAR

ARTICLE III

REVENUES AND APPLICATION THEREOF.

SECTION 10: BONDS NOT TO BE INDEBTEDNESS OF THE CITY OF FORT LAUDERDALE. Neither the Bonds nor coupons shall be or constitute an indebtedness of the City of Fort Lauderdale, but shall be payable solely from the revenues of said recreational facilities, and utilities services taxes, as herein provided. No holder or holders of any Bond issued hereunder, or of any coupon appertaining thereto, shall ever have the right to compel the exercise of the ad valorem taxing power of the City to pay said Bonds or the interest thereon, or to be entitled to payment of such principal and interest from any other funds of the City except the revenues of said recreational facilities and utilities services taxes, as provided herein.

SECTION 11: BONDS SECURED BY PLEDGE OF REVENUES AND SPECIAL FUNDS. (A) The payment of the debt service of all of the Bonds issued hereunder shall be secured forthwith equally and ratably by a lien on the gross revenues derived from said recreational facilities. The gross revenues derived from said recreational facilities in an amount sufficient to pay the principal of and interest on the Bonds herein authorized, and to make the payments into the reserve and sinking funds and all other payments provided for in this Resolution, are hereby irrevocably pledged to the payment of the principal of and interest

on the Bonds herein authorized as the same become due.

(B) the payment of the debt service on all the Bonds issued hereunder shall also be further secured forthwith equally and ratably by a lien on the net proceeds received by the City from utilities services taxes collected pursuant to Chapter 22829, Public Acts of 1945, and the Ordinance No. C-534, adopted on September 22nd, 1948, and the City does hereby irrevocably pledge such net proceeds of such utilities services taxes to the payment of the principal of and interest on the Bonds issued pursuant to this Resolution and to the creation andmaintenance of the reserves therefor provided in this Resolution. Such net proceeds of such utilities services taxes shall be deposited in a trust account by the City, and used only in the manner provided herein. On the first day of February of each year, beginning February 1, 1950, such trust fund shall be used, to the extent necessary, for the deposit with a bank or trust company in the State of Florida, which is eligible to receive deposits of State and Municipal funds, as Trustee, into the Sinking Fund hereafter created of the amount necessary, together with the revenues available therefor, for the payment of interest to become due on the next March 1st on Bonds issued pursuant to this Resolution, and on the first day of August of each year, such trust fund shall be used, to the extent necessary, for the deposit with said Trustee into the Sinking Fund of the amount necessary for payment of principal of and interest on Bonds issued pursuant to this Resolution becoming due on the next September 1st, beginning September 1, 1950. Such trust fund shall also be used, to the extent necessary, on each February 1 and August 1 in each year, to the extent necessary, for deposit with said Trustee of any payments provided for

in this Resolution for the Reserve Account in said Sinking Fund. No monies in said trust fund, and none of the net proceeds from said utilities services taxes shall be used for any other purpose whatsoever by the City except on August 1 of each year, and only then to the extent that such net proceeds of such utilities services taxes are not needed for the payments provided for above.

The pledge made herein of saud utilities services taxes shall not take effect until October 1, 1949, and the holders of Bonds issued pursuant to this Resolution shall have no lien on or rights in or to any utilities services taxes collected prior to October 1, 1949.

The City does further covenant and agree that as long as any of the Bonds are outstanding and unpaid, as to either principal or interest, accrued or to accrue, or unless payment thereof has been duly provided for, it will not repeal said non-emergency Ordinance Ordinance No.C-534, adopted September 22nd, 1948, levying such utilities services taxes, and will not amend or modify said Crdinance in any manner so as to materially impair or adversely affect the pledge of such utilities services taxes made herein, or the rights of the holder of the Bonds, or the rate or amount of such utilities services taxes. This provision shall not, however, prevent immaterial rate revisions for said utilities services taxes as long as the aggregate amount of collections under such revised rates will not be less than the aggregate amount of collections made prior to such revisions.

The City further expressly represents that it has legal and valid power to continue the levy ahd collection

of said utilities services taxes in the manner provided therein until all the principal of and interest on said Bonds has been fully paid, notwithstanding that the legislative authority contained in said Chapter 22829, General Laws of Florida, 1945, may be repealed, amended or modified by the Legislature of Florida prior to such time; and said City further represents that the covenant entered into between the City and holder of Bonds issued pursuant to this Section 11(B) constitutes a valid and legally binding contract between the City and such Bondholders not subject to repeal, impairment or modification by the City or the legislature of the State of Florida.

The City further covenants and agrees that in the event it shall ever becomes necessary in order to to pay the principal of and interest on said Bonds as the same mature and become due, or to make reserve payments as required by this Resolution as the same become due, it will increase the rates of said utilities services taxes provided in said non-emergency Ordinance No.C-534 adopted September 22nd, 1948, to the full ten per centum now permitted by said Chapter 22829, Public Acts of 1945, and will be irrevocably obligated, as long as any of said Bonds, and the interest thereon, are outstanding and unpaid, to levy and collect such utilities services taxes at such full ten per centum rates whenever necessary for such debt service and reserve purposes, notwithstanding that said Chapter 22829 may be hereafter repealed, amended or modified.

The City further expressly represents that it now has legal and valid power to covenant to, and will hereafter have legal and valid power to, raise said utilities services taxes rates to said full ten per centum

provided for in said Chapter 22829, Public Acts of 1945, notwithstanding that prior thereto said Chapter 22829, may prior thereto be repealed, amended or modified, and further represents that the Legislature of Florida will not have power hereafter to repeal, amend or modify said Chapter 22829, Public Acts of 1945, so as to impair, take away, or modify the power of the City to hereafter, as long as any of said Bonds, and the interest thereon, are outstanding and unpaid, to levy and collect utilities services taxes to the full ten per centum now provided for in said Chapter 22829, Public Acts of 1945.

SECTION 12: APPLICATION OF BOND PROCEEDS. All moneys received from the sale of any or all of the $2,500,000 Bonds originally authorized and issued pursuant to this Resolution shall be deposited by the City of Fort Lauderdale in a special account, to be known as the Construction Fund, and shall be used for and applied by the City solely to the payment of the cost of the construction of said recreational facilities and other purposes provided in this Resolution, and for no other purpose whatsoever. Said Construction Fund shall be maintained in banks or trust companies in the State of Florida which are eligible to receive deposits of State and Municipal Funds, under an agreement to be known as the "Construction Fund Trust Agreement" which shall be in such form as shall be hereafter determined by Resolution, and shall provide, among other things, that payments from said Construction Fund, except for the payment of legal, engineering and other expenses and payments to the holders of receipts referred to in Section 1(A) hereof, shall only be made upon the certificate of the City Engineer that such payments are due and are for the purposes provided in this Resolution. If for any

reason such proceeds, or any part thereof, are not necessary for, or are not applied to, such purposes, then such unapplied proceeds shall be deposited by the City in the Reserve Account in the Sinking Fund to be established pursuant to subsection D of Section 13 of this Resolution and shall be used as provided therein. All such proceeds shall be and constitute a trust fund for such purposes and there is hereby created a lien upon such money, until so applied, in favor of the holders of the Bonds.

All funds in said Construction Fund shall at all times be fully secured in the manner provided in Section 13, paragraph D(6) of this Resolution.

SECTION 13: COVENANTS OF THE CITY. So long as any of the Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Sinking Fund herein established a sum sufficient to pay, when due, the entire principal of the indebtedness evidenced by the Bonds remaining unpaid, together with interest accrued and to accrue thereon, the City covenants with the holders f any and all of the Bonds issued pursuant to this Resolution as follows:

A. RATES: That the City will fix, establish and maintain such rates and collect such fees or other charges for the services and facilities of said recreational facilities (subject to the terms of any valid leases or licenses then in force), and revise same from time to time whenever necessary, as will always provide revenues, together with said utilities services taxes, sufficient to pay, in the manner sped fied in Section 13 of this Resolution, the principal of and interest on the Bonds, all reserve or sinking funds or other payments provided for in this Resolution,

the necessary expenses of operating and maintaining such recreational facilities, and all other obligations and indebtedness payable out of the revenues of such recreational facilities, and that such rates, fees, rentals and other charges shall not be reduced so as to be insufficient to provide revenues for such purposes.

B. REVENUE FUND. That the entire gross revenues derived from the operation of said recreational facilities shall be deposited in a special fund in a bank or trust company satisfactory to the original purchaser of the Bonds from the City; or in the event of the sale of allof said Bonds by the original purchaser, then in a bank or trust company in the State of Florida which is eligible under the state laws to receive deposits of state and municipal funds, which fund is hereby designed as the "recreation Revenue Fund". Said Recreation Revenue Fund shall constitute a trust fund for the purposes provided in this Resolution and shall be kept separate and distinct from all other funds of the City andused only for the purposes and in the manner provided in subsection D of this Section 13.

Said City has heretofore entered into a lease with Universal Construction Company for the operation of said municipal recreational facilities under the terms referred to in Section 1 (B) (3) hereof. The City shall pay all rentals received from said lease, or other leases, licenses or other agreements into said Recreation Revenue Fund, and such rental shall be deemed revenues derived from said recreational facilities the same as all other revenues derived therefrom.

C. OPERATION AND MAINTENANCE. That it will maintain in good condition said recreational facilities and will

operate the same either directly or through lessees or licensees in an efficient and economical manner, making such expenditure for equipment and for renewal, repair and replacement as may be necessary for thee economical operation and maintenance thereof from the Recreation Revenue Fund.

D. DISPOSITION OF REVENUES. That all revenues at any time remaining on deposit in the Recreation Revenue Fund shall be disposed of in the following manner and order of priority:

(1) Revenues shall first be used for deposit into a fund to be known as the "sinking Fund", which is hereby created, and the City shall not later than the first day of February and the first day of August in each year, beginning with August 1, 1950, apportion and set apart out of the Recreation Revenue Fund and deposit in said Sinking Fund, such sums as will be sufficient together with the amount of utilities services taxes available therefor, to pay one-half of all theprincipal and interest on the Bonds issued hereunder which shall mature and become due within such year.

The City shall also from the Recreation Revenue Fund deposit in a Reserve Account in said Sinking Fund on the first day of February and the first day of August of each year an amount equal to twenty percentum of all amounts required to be paid for maturing principal and interest into said Sinking Fund, as provided in the above paragraph, on said dates; provided, however, that no further payments shall be required to be made into saidReserve Account when there shall have been deposited therein, and as long as there shall remain therein, an amount equal to the largest amount which will be required for the payment of maturing principal of and interest on the

Bonds then outstanding in any succeeding year.

Moneys in the Reserve Account shall be used only for the purpose of the payment of maturing principal of or interest on the Bonds when the other moneys in the Sinking Fund are insufficient therefor, and for no other purpose.

In the event any withdrawals are made from said Reserve Account, such withdrawals shall be restored to said Reserve Account from the first revenues, or net proceeds of utilities services taxes which are available after all payments have been made for principal of and interest on the Bonds.

The City shall not be required to make any further payment into said Sinking Fund or into the Reserve Account in said Sinking Fund when the aggregate amount of funds in both said Sinking Fund and said Reserve Account are at least equal to the aggregate principal amount of Bonds issued pursuant to this Resolution then outstanding, plus the amount of interest then due or thereafter to become due on said Bonds then outstanding.

Said Sinking Fund, and the Reserve Account therein, shall be deposited and maintained with a bank or trust company in the State of Florida, which is eligible to receive deposits of State and Municipal funds, as Trustee under an agreement to be hereafter executed between the City and said bank or trust company, such agreement to be in such form as shall be hereafter determined by Resolution. The moneys in said Sinking Fund, and the Reserve Account therein, shall be continuously secured in the manner provided by law for securing deposits of State and municipal funds.

(2) Thereafter, revenues shall next be used for the payment of the cost of the operation and maintenance of said recreational facilities as defined in Section 3 (e) hereof,

to the extent that the same are not paid by lessees or licensees.

(3) Thereafter, revenues shall be used to establish and set up a Renewal and Replacement Fund and the City shall pay into said fund from the Recreation Revenue Fund on the first day of February of each year beginning with February 1, 1951, an amount which shall be equal to five per centum of the gross revenues actually received and collected for the services and facilities of said recreational facilities during the preceding year. The funds in such Renewal and Replacement Fund shall be used only for the purpose of paying the cost of extensions, improvements or additions to, or the replacement of capital assets of said recreational facilities or any part thereof; provided, however, that upon the certificate of a qualified and independent engineer that the moneys in said fund, or any part thereof, are not needed for extensions, improvements or additions to, or the replacement of capital assets of said recreational facilities, then said moneys, or any part thereof, may be used to redeem prior to maturity last maturing Bonds, or to purchase such last maturing Bonds at not more than the then redemption price of such Bonds.

(4) If on any semi-annual payment date the revenues are insufficient to place the required amount in any of the funds as hereinbefore provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the Funds on the subsequent payment dates.

(5) Thereafter, the balance of any revenues remaining after all other required payments into the funds provided above have been made, may be used by the City in any manner provided

30

by law; provided, however, that none of said revenues, or of said net proceeds of said utilities services taxes, shall ever be used for any other purpose except the purposes provided in this Resolution unless all the payments provided for in this Resolution have been fully made, and unless the City shall have complied fully with all the covenants and agreements contained in this Resolution.

(6) The Recreation Revenue Fund and the Renewal and Replacement Fund, and all other special funds set up and created by this Resolution shall constitute trust funds for the purpose provided herein for such funds. The Recreation Revenue Fund and the Renewal and Replacement Fund shall be maintained in banks or trust companies in the State of Florida which are eligible to receive deposits of state and municipal funds. Such funds shall be continuously secured in the same manner as state and municipal deposits of funds are required to be secured by the laws of the State of Florida.

The moneys in the Recreation Revenue Fund and the Sinking Fund shall not be invested at any time. The moneys in the Reserve Account in the Sinking Fund and in the Renewal and Replacement Fund may be invested and reinvested in direct obligations of the United States of America. The moneys in the Construction Fund, if not needed immediately for the purposes provided in this Resolution may be invested and reinvested in direct obligations of the United States of America maturing not later than twelve months after the date of purchase thereof.

E. SALE OF THE RECREATIONAL FACILITIES. That said recreational facilities may be sold, mortgaged, or otherwise disposed of only as a whole or substantially as a whole, and only if the net proceeds to be realized shall be sufficient

fully to retire all of the bonds issued pursuant to this Resolution and all interest thereon to their respective dates of maturity. The proceeds from such sale, mortgage, or other disposition of said recreational facilities shall immediately be deposited in the Sinking Fund and shall be used only for the purpose of paying the principal of and interest on the Bonds issued pursuant to this Resolution as the same shall become due, or the redemption of callable Bonds, or the purchase of Bonds at a price not greater than par and accrued interest for non-callable Bonds or the then redemption price for callable Bonds.

The foregoing provision notwithstanding, the City shall have and hereby reserves the right to sell or otherwise dispose of any of the property comprising a part of said recreational facilities hereafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale or other disposition of said property, if the amount to be received therefor is not in excess of twenty-five thousand dollars ($25,000), the general manager or other duly authorized officer in charge of said recreational facilities shall make a finding in writing determing that such property comprising a part of said recreational facilities is no longer necessary, useful or profitable in the operation thereof, and such proceeds shall be deposited in the Renewal and Replacement Fund and used only as provided herein for such fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of twenty-five thousand dollars ($25,000) but not in excess of one hundred thousand dollars ($100,000), the general manager or other

duly authorized officer in charge of such recreational facilities shall first make a finding in writing determining that such property comprising a part of such recreational facilities is no longer necessary, useful or profitable in the operation thereof, and the governing body of said City shall, by resolution duly adopted, approve and concur in the finding of the general manager or other duly authorized officer, and authorize such sale or other disposition of said property. The proceeds derived from any such sale, or other disposition of said property, in excess of twenty-five thousand dollars ($25,000), and not in excess of one hundred thousand dollars ($100,000) shall be placed in the Sinking Fund provided for in this Resolution, and shall be used only for the redemption of Bonds of the last maturities then outstanding which are callable prior to maturity, or for the purchase of such callable Bonds at a price not greater than the then redemption price; or, if no callable Bonds are outstanding, the purchase, at not more than par and accrued interest, of the non-callable Bonds of the longest maturity then outstanding. Such payment of such proceeds into the Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said Funds by other provisions of this Resolution.

No sale, or other disposition of the properties of said recreational facilities shall be made by the City if the proceeds to be derived therefrom shall be in excess of one hundred thousand dollars ($100,000) and insufficient to pay all of the principal of Bonds then outstanding and all interest thereon to their respective dates of maturity, without the prior approval and consent, in writing, of

the holders or their duly authorized representatives, of sixty-six and two-thirds per centum (66 2/3%) in amount of Bonds then outstanding. The City shall prepare the form of such approval and consent for execution by Bondholders, or their duly authorized representatives, which form shall provide for the disposition of the proceeds of such sale, or other disposition of such properties of such recreational facilities.

The City has heretofore entered into a lease of said recreational facilities with Universal Construction Company, and the lease of said recreational facilities, or the leasing or licensing of parts thereof, shall not be deemed to be a sale or disposition of such recreational facilities as long as the City receives reasonable and fair rentals or income under such leases and licenses and the same are payable into the Recreation Revenue Fund. Each holder of Bonds issued pursuant to this Resolution, in accepting the same, conclusively agrees that the rentals to be paid by Universal Construction Company constitute reasonable and fair rentals, and the City does hereby grant to the holders of Bonds issued pursuant to this Resolution a lien on all rentals paid under said lease by said Universal Construction Company, in addition to all other rentals hereafter at any time paid by any other lessees or licensees.

F. ISSUANCE OF OTHER OBLIGATIONS PAYABLE OUT OF REVENUES: That the City will not issue any other obligations, except upon the conditions and in the manner provided herein payable from the revenues derived from the operation of said recreational facilities or from said utilities services taxes, nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or any other charge, having priority to or being on a parity with the lien of the Bonds

issued pursuant to this Resolution and the interest thereon, upon any of the income and revenues of said recreational facilities or said utilities services taxes pledged as security therefor in this Resolution. Any other obligations issued by the City in addition to the Bonds authorized by this Resolution (and pari passu obligations hereafter provided for) shall contain an express statement that such obligations are junior and subordinate in all respects to the Bonds issued pursuant to this Resolution as to lien and source and security for payment from the revenues of said recreational facilities and said utilities services taxes.

G. INSURANCE. That the City will carry such insurance, and in such amounts, as is ordinarily carried by private corporations owning and operating similar recreational facilities with a reputable insurance carrier or carriers against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. In time of war, the City shall also carry in said amount such insurance as may be available against loss or damage by the risks and hazards of war.

H. BOOKS AND RECORDS. That the City will keep books and records of said recreational facilities, which shall be separate and apart from all other books, records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to said recreational facilities, and any holder of a Bond or Bonds issued pursuant to this Resolution shall have the right at all reasonable times to inspect said recreational facilities and all parts thereof, and all records, accounts and data of the City relating thereto.

The City shall, at least once a year, cause the books, records and accounts of said recreational facilities to be properly audited by a competent auditor, and shall mail, upon request, and make available, the report of said auditor at all reasonable times to any holder or holders of Bonds issued pursuant to this Resolution.

I. SERVICES RENDERED TO THE CITY OF FORT LAUDERDALE. That the City of Fort Lauderdale will not render or cause to be rendered any free services of any nature by said recreational facilities nor will any preferential rates be established for users of the same class; and in the event the City of Fort Lauderdale, or any department, agency, instrumentality, officer or employee thereof, shall avail itself or themselves of and use such recreational facilities, or any part, thereof, the same rates, fees or charges applicable to other customers using like facilities under similar circumstances shall be charged the City and any such department, agency, instrumentality, officer or employee. The City shall require any lessee or licensee to observe and enforce the provisions of this subsection I.

J. ANNUAL BUDGETS. That the City shall annually, at least forty-five days preceding each of its fiscal years, prepare and adopt by resolution of its governing body a detailed budget of the estimated expenditures for operation and maintenance of such recreational facilities during such succeeding fiscal year. No expenditures for the operation and maintenance of such recreational facilities shall be made in any fiscal year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the general manager of such recreational facilities or other duly authorized officer in charge thereof, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the

operation and maintenance of such recreational facilities, and no such increased expenditures shall be made until the governing body of said City shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of ten per centum of the amounts provided for in such budget shall be made without the further certificate of a nationally recognized and independent engineer that such increased expenditures are necessary for the continued operation and maintenance of said recreational facilities. The City shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to any holder or holders of Bonds who shall file his address with the City and request in writing that copies of all such budgets and resolutions be furnished him or them, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of such recreational facilities at all reasonable times to any holder or holders of Bonds issued pursuant to this Resolution, or any one acting for and in behalf of such Bondholder or Bondholders.

K. ISSUANCE OF ADDITIONAL PARI PASSU BONDS. That no additional pari passu obligations, as in this subsection defined, payable out of the Recreation Revenue Fund, or said utilities services taxes, shall be created after the issuance of any Bonds pursuant to this Resolution, except under the conditions and in the manner herein provided.

No such additional pari passu obligations shall be created unless the net revenues, as defined herein but excluding any utilities services taxes, of such recreational facilities during each of the preceding three years, shall have equalled two hundred percentum (200%) of the aggregate

amount of principal and interest which will become due in the succeeding year on the bonds issued pursuant to this Resolution then outstanding, including any additional pari passu Bonds theretofore issued, and the Bonds proposed to be issued.

"Net Revenues", as used in this subsection, shall not include any utilities services taxes which have been pledged or used for any of the purposes provided for in this Resolution. The original pledge of utilities services taxes made in this Resolution shall, however, be for the equal benefit and security of the holders of Bonds originally authorized by this Resolution, and any additional pari passu Bonds hereafter issued in conformity with the terms, limitations and restrictions of this subsection K.

The term "additional pari passu obligations" as used in this subsection shall be deemed to mean additional obligations evidenced by Bonds issued under the provisions and within the limitations of this subsection payable from the Recreation Revenue Fund, and said utilities services taxes, pari passu with Bonds originally authorized and issued pursuant to this Resolution. Such Bonds shall be deemed to have been issued pursuant to this Resolution the same as the Bonds originally authorized and issued pursuant to this Resolution, and all of the covenants and other provisions of this Resolution (except as to details of such Bonds evidencing such additional obligations inconsistent therewith), shall be for the equal benefit, protection and security of the holders of any Bonds originally authorized and issued pursuant to this Resolution and the holders of any Bonds evidencing additional pari passu obligations subsequently created within the limitations of and in compliance with this subsection.

All of such Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of such recreational facilities, and the said utilities services taxes, and their sources and security for payment from said revenues, and said utilities services taxes, without preference of any Bond, or coupon over any other.

The term "additional pari passu obligations" as used in this subsection shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of such recreational facilities, or on such utilities services taxes, is subject to the prior and superior lien on such revenues and utilities services taxes of Bonds issued pursuant to this Resolution, and the City shall not issued any obligations whatsoever payable from the revenues of said recreational facilities, or said utilities services taxes, which rank equally as to lien and source an security for payment from such revenues, or utilities services taxes, wity Bonds issued pursuant to this Resolution except in the manner and under the conditions provided in this subsection.

No additional obligations, as in this subsection defined, shall be created at any time, however, unless all of the payments into the respective funds provided for in this Resolution on Bonds then outstanding, and all other reserve or sinking funds, or other payments provided for in this Resolution shall have been made in full, and the City shall have fully complied with all the covenants, agreements and terms of this Resolution.

L. REMEDIES. Any holder of Bonds or of any coupons pertaining thereto, issued under the provisions of this Resolution, or any Trustee acting for such Bondholders

in the manner hereinafter provided, may, either at law or in equity, by suit, action, mandamus or other proceeding in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State of Florida, or granted and contained in this Resolution, and may enforce and compel the performance of all duties required by this Resolution or by any applicable statutes to be performed by the City or by any officer thereof, including the fixing, charging and collecting of rates, fees and charges for said recreational facilities, subject to the provisions of any valid leases or licenses of said recreational facilities.

In the event that default shall be made in the payment of the interest on or the principal of any of the Bonds issued pursuant to this Resolution as the same shall become due, or in the making of the payments into any reserve or sinking fund or any other payments required to be made by this Resolution, or in the event that the City or any officer, agent or employee thereof shall fail or refuse to comply with the provisions of this Resolution, or shall default in any convenant made herein, and in the further event that any such default shall continue for a period of thirty days, any holder of such Bonds, or any Trustee appointed to represent bondholders as hereinafter provided, shall be entitled as of right to the appointment of a receiver of such recreational facilities in an appropriate judicial proceeding in a court of competent jurisdiction whether or not such holders or Trustee is also seeking or shall have sought to enforce any other right or exercise any other remedy in connection with Bonds issued pursuant to this Resolution.

The Receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of such recreational facilities and each and every part thereof, subject, however, to the rights of any lessees or licensees, and in the name of the City shall exercise all the rights and powers of the City with respect to such recreational facilities as the City itself might do. Such receiver shall collect and receive all revenues and utilities services taxes, and maintain such recreational facilities in the manner provided in this Resolution and comply under the jurisdiction of the Court appointing such Receiver, with all of the provisions of this Resolution.

Whenever all that is due upon Bonds issued pursuant to this Resolution, and interest thereon, and under any covenants of this Resolution for reserve, sinking or other funds, and upon any other obligations and interest thereon, having a charge, lien or encumbrance upon the revenues of said recreational facilities, shall have been paid and made good, and all defaults under the provisions of this Resolution shall have been cured and made good, possession of such recreational facilities shall be surrendered to the City upon the entry of an Order of the court to that effect. Upon any subsequent default, any holder of Bonds issued pursuant to this Resolution, or any Trustee appointed for Bondholders as hereinafter provided, shall have the same right to secure the further appointment of a Receiver upon any such subsequent default.

Such receiver shall in the performance of the powers hereinabove conferred upon him be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor

Receiver appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the Receiver of any function specifically set forth herein.

Any Receiver appointed as provided herein shall hold such recreational facilities in the name of the City and for the joint protection and benefit of the City and holders of Bonds issued pursuant to this Resolution. Such Receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to such recreational facilities, but the authority of such Receiver shall be limited to the possession, operation and maintenance of such recreational facilities subject to the rights of any lessees or licensees for the sole purpose of the protection of both the City and Bondholders, and the curing and making good of any default under the provisions of this Resolution, and the title to and ownership of such recreational facilities shall remain in the City of Fort Lauderdale, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such Receiver to sell, mortgage or otherwise dispose of any assets of such recreational facilities, except as provided in this Resolution.

The holder or holders of Bonds in an aggregate principal amount of not less than twenty-five per centum of Bonds issued under this Resolution then outstanding may by a duly executed certificate in writing appoint a Trustee for holders of Bonds issued pursuant to this Resolution with authority to represent such Bondholders in any legal

proceeding for the enforcement and protection of the rights of such bondholders. Such certificate shall be executed by such Bondholders or their duly authorized attorneys or representatives, and shall be filed in the office of the City Auditor and Clerk.

M. ENFORCEMENT OF COLLECTIONS. That the City will diligently enforce and collect all fees, rentals, rates or other charges for said recreational facilities and such utilities services taxes, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals, rates or other charges which shall become delinquent to the full extent permitted or authorized by the charter of said City and by the laws of the State of Florida.

SECTION 14: MODIFICATION OR AMENDMENT. No material modification or amendment of this Resolution or of any Resolution amendatory hereof or supplemental hereto, may be made without the consent in writing of the holders of two-thirds or more in principal amount of the Bonds then outstanding, providing, however, that no modification or amendment shall permit a change in the maturity of such Bonds or a reduction in the rate of interest thereon, or in the amount of the principal obligation or affecting the unconditional promise of the City to pay the principal of and interest on the Bonds as the same shall become due from the revenues of such recreational facilities and said utilities services taxes, without the consent of the holder of such Bonds.

SECTION 15: SALE AND EXCHANGE OF BONDS. That the sale of the $2,500,000 Bonds authorized by this Resolution to Universal Construction Company, as provided in Resolution No. 3442, adopted September 22, 1948, be and

the same is hereby in all respects ratified, approved and confirmed; provided, however, that the Bonds of the aggregate principal amount of $627,000, bearing such maturities as shall be determined by the City Auditor and Clerk, shall first be offered in exchange, par for par, for the receipts referred to in Section 1(A) hereof. The City Auditor and Clerk is hereby authorized to publish a notice of such exchange, in addition to notifying by registered mail the holders of such receipts whose name and addresses shall be on file with theCity, in a newspaper published in the City. Such notice shall provide that unless such holders of such receipts shall present such receipts for exchange and accept the Bonds offered in exchange by the City Auditor and Clerk, within 20 days after the first publication of such notice, or the mailing of such notice, as the case may be, then such holders shall be deemed to have waived their right to exchange such receipts for Bonds, and shall be paid in cash in lieu of such exchange, with proper accrued interest.

All accrued interest due on said receipts whether said receipts are exchanged for bonds or are paid in cash, shall be paid by the City from funds other than the proceeds of the Bonds, and from funds not raised by general ad valorem taxation in said City or from taxes of any kind or nature on lands or real estate or property in said City. The holders of any of such receipts exchanging the same for Bonds as authorized herein shall pay to the City any accrued interest on the Bonds, and such payments of accrued interest shall be immediately deposited by the City in the Sinking Fund.

43

After the expiration of such 20 day period all of said $627,000 Bonds which have not been so exchanged, together with the remaining $1,873,000 Bonds shall be delivered to the said Universal Construction Company, at the price and in accordance with said proposal of said company accepted by Resolution No. 3442 of this Commission adopted September 22, 1948.

SECTION 16: REPEALING CLAUSE. That all resolutions heretofore adopted by the City authorizing the issuance of revenue obligations for the purposes provided in this Resolution be and they are hereby repealed, revoked and rescinded.

SECTION 17: SEVERABILITY OF INVALID PROVISION. If any one or more of the covenants, agreements or provisions of this Resolution should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions, and in no way affect the validity of all the other provisions of this Resolution or of the Bonds or coupons issued thereunder.

SECTION 18: TIME OF TAKING EFFECT. That it is necessary for the immediate preservation of property, health and safety of the City of Fort Lauderdale and its inhabitants that the construction of said recreational facilities herein authorized be made with the least possible delay and this Resolution is hereby declared to be an emergency measure and shall take effect immediately upon its passage.

ADOPTED this first day of November, A.D. 1948.

Dodd A. Bryan

ATTEST:

J. M. Marshall
City Auditor and Clerk

3471

ORDINANCE NO. C-918

AN ORDINANCE DESIGNATING AND ESTABLISHING BLOCK "A" OF BAHIA-MAR (A PART OF THE FORMER COAST GUARD BASE NO. 6) AS A PUBLIC BEACH AND PARK TO BE MAINTAINED AND OPERATED UNDER THE JURISDICTION OF THE CITY OF FORT LAUDERDALE, FLORIDA, UNDER CERTAIN TERMS AND CONDITIONS.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That the area of the Bahia-Mar property (formerly United States Coast Guard Base No. 6) lying East of the existing center line of Seabreeze Avenue extended, shown as Block "A" on the attached map or plat, be and the same is hereby established and designated as a public beach and park for the use and benefit of the residents of the City of Fort Lauderdale, Florida.

SECTION 2. That the above described area shall forever be under the jurisdiction of the City of Fort Lauderdale as a public beach and park, and that no part thereof shall ever be sold, and no part of said property shall be leased, or any franchise or concessions granted to any private interest for a period in excess of three (3) years.

SECTION 3. That on that part of the property commonly known as "beach", and as hereinafter defined in this Section, it shall not be used for any other purpose other than such purposes as the other public beaches in the City of Fort Lauderdale, under the jurisdiction of the City of Fort Lauderdale, are now used; PROVIDED, HOWEVER, that nothing herein contained shall be construed so as to prohibit the construction or operation of a fishing pier on any part of the premises dedicated herein as public beach and park. "Beach", as used in this Section, shall mean that area East of mean high-water mark, together with that area one hundred feet (100) West of said mean high-water mark.

SECTION 4. That the determination of a recreational facility for which the beach and park may be used, and upon which part of said property any improvement is to be located, shall be under the jurisdiction of the City

Commission of the City of Fort Lauderdale, and such use or permit shall be granted only by Ordinance of the City of Fort Lauderdale passed at three separate regular meetings of the City Commission. Nothing in this Ordinance shall prohibit the City from using any part of the premises, excepting that area above defined in Section 3 as "beach", as a municipal parking area operated under the jurisdiction of the City, which can be free or for charge; PROVIDED, HOWEVER, that nothing herein contained shall be construed so as to prohibit the construction or operation of a fishing pier on any part of the premises dedicated herein as public beach and park.

SECTION 5. The adoption of this Ordinance and the dedication of the lands described in this Ordinance as a public beach and park shall not be deemed in any way to impair the rights of the holders of the $2,500,000.00 Municipal Recreational Revenue Bonds of the City of Fort Lauderdale, dated September 1, 1948, and as long as any of said Bonds or the interest thereon are outstanding and unpaid the City shall comply fully with all of the covenants of the Resolution which authorized the issuance of said Bonds with respect to the lands dedicated as a public beach and park by this Ordinance, and any and all revenues derived by the City from said public beach and park, being a part of the recreational facilities described in the Resolution authorizing the issuance of said $2,500,000.00 Municipal Recreational Revenue Bonds, shall be deposited in the Revenue Fund created in Section 13(B) of said Resolution, and applied only in the manner provided in Section 13 of said Resolution.

SECTION 6. That this Ordinance shall be effective only upon its being approved by a majority of the electors at the biennial municipal primary election to be held on April 20th, 1953, (or, in the event no such primary election is held, then on April 27th, 1953, at the regular biennial municipal election).

SECTION 7. That, thereafter, if this Ordinance is thus approved by the

electors, as aforesaid, it shall not be amended or repealed except upon the vote of a majority of the electors at any regular biennial municipal primary election or at any special election called pursuant to Section 5 of Article 2 of Part VII of the Charter of the City of Fort Lauderdale.

PASSED FIRST READING this, the 23rd day of February, A.D. 1953.
PASSED SECOND READING this, the 2nd day of March , A. D. 1953.
PASSED THIRD READING this, the 9th day of March , A. D. 1953.

Mayor-Commissioner

ATTEST:

City Auditor and Clerk