

**FOURTH AMENDMENT TO GROUND LEASE
AGREEMENT**

THIS FOURTH AMENDMENT TO GROUND LEASE AGREEMENT (this “**Fourth Amendment**”) is made to be effective as of the ____ day of _____, 2021 (the “**Effective Date**” of this Fourth Amendment), by and between the City of Fort Lauderdale, a Florida municipal corporation (“**Lessor**”), and Las Olas SMI, LLC, a Delaware limited liability company (“**Lessee**”).

WITNESSETH:

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

WHEREAS, Lessor and Lessee executed that certain Ground Lease Agreement dated April 30, 2018, (Resolution No. 17-154) which was amended on or around April 2, 2019 by that certain First Amendment to Ground Lease Agreement (Resolution No. 19-69), and as further amended on August 2, 2019, by that certain Second Amendment to Ground Lease Agreement (Resolution No. 19-141), and as further amended on December 23, 2019, by that certain Third Amendment to Ground Lease Agreement (Resolution No. 19-246) (collectively referred to herein as the “**Lease**”) whereby Lessor leased to Lessee a portion of the Existing Marina Premises defined in the Lease as the Demised Premises.

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

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

WHEREAS, the Submerged Lands Lease is currently in place between Lessor and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (the “**TIITF**”), and Lessee has successfully sought the approval by TIITF of a new Submerged Lands Lease (the “**New SLL**”) which TIITF requires to be between Lessee and TIITF.

WHEREAS, TIITF has conditioned the issuance of the New SLL upon an amendment to the Lease clarifying that Lessor only has the right to lease the upland portion of the Existing Marina Premises which Lessor owns in fee, but that a conveyance of the applicable uplands absent reservation of a riparian easement also conveys its inherent riparian rights as the adjacent upland fee owner to use the adjacent submerged lands as defined in statute and common law, and that as such, Lessee gains the right to obtain a New SLL from TIITF upon execution of the Lease.

WHEREAS, Lessor and Lessee desire to modify the Lease to clarify the legal rights of Lessor being conveyed to Lessee under the Lease and that Lessee shall be in privity with the TIITF under the New SLL as long as the Lease remains in effect.

WHEREAS, Lessor and Lessee seek to clarify that notwithstanding the lack of privity with TIITF, the rents, revenue and additional rent owed to Lessor under this Lease shall not be diminished or reduced, it being acknowledged that conveyance of riparian rights to the Lessee is sufficient consideration, in part, for entering into this Lease.

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

1. Recitals; Defined Terms. The above Recitals are true and correct and are incorporated into this Fourth Amendment. Capitalized terms used in this Fourth Amendment and not defined herein shall have the meanings ascribed to them in the Lease. All references in the Lease to "the Lease" or "this Lease" or similar references shall be references to the Lease as amended from time to time, including by this Fourth Amendment.

2. Amendments to the Lease.

Demised Premises: The definition of Demised Premises in the Lease shall be deleted in its entirety and the following shall be inserted in lieu thereof:

“A portion of the Existing Parking Lot owned in fee by Lessor (the “**Lot**”) consisting of the 7.64 acres of uplands gifted to the City in fee simple by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (the “**TIITF**”). The Lot includes only (i) the existing improvements, and all rights, privileges, easements, and appurtenances belonging to or in any way appertaining to the Lot, and (ii) the proposed Lessee Improvements (defined below), each as more particularly depicted in the Site Plan as defined in Section 8.1 of the Lease as Alternate Proposal Site D and approved by the City in Resolution No. 19-141 to be redeveloped by Lessee in accordance with the Permitted Use which contains certain portions of the surface parking area to be excavated and dredged as necessary for additional dockage within the Lot and may be adjusted in accordance with the Adjustments to the Demised Premises as defined herein. For avoidance of doubt, the Lessor also grants any and all rights of use and/or privileges to the use of the submerged area adjacent to the Lot that Lessor holds until such time as the Lease is no longer in effect which submerged area is more particularly described in the Submerged Land Lease Field Survey dated January 2, 2020 including the dredging easement areas depicted thereon (collectively the “**Adjacent State Submerged Area**”). The Lot and the Adjacent State Submerged Area to which Lessee has rights and privileges to use under the New SLL, if and as leased from TIITF by Lessee pursuant to the New SLL or granted to Lessee pursuant to any related dredging easement, and the proposed Lessee Improvements constructed on the Lot or the Adjacent State Submerged Area, shall be collectively be referred to as the “**Demised Premises**”, provided however, it is understood between the parties that the interest in the Adjacent State Submerged Area must be directly leased from TIITF by Lessee (or otherwise conveyed by TIITF via easement) in order to activate the right or privilege to use the Adjacent State Submerged Area and that Lessor has no right to directly lease the Adjacent State Submerged Area to a third-party.

Any reference to the Submerged Lands Lease in this Lease shall be deemed to include the New SLL, as it may be amended in accordance with this Lease, and any reference to the Demised Premises in this Lease for purposes of defining the rights and obligations of Lessor and Lessee between each other shall include the Adjacent State Submerged Area as long as the New SLL remains in effect. Lessor and Lessee acknowledge that Demised Premises shall not include the existing parking garage, park space, public right of ways, certain portions of the bulkhead, seawall and public easements within the Demised Premises except that Lessee shall have sufficient non-exclusive easement rights in the entire bulkhead, seawall and public easements contained within the Lot which are directly abutting the Adjacent State Submerged Area as necessary to constitute a sufficient upland interest as required under paragraph 18-21.004(3)b, Florida Administrative Code. Notwithstanding, Lessee acknowledges Lessor has no obligation to construct any improvements lying within the Demised Premises, including without limitation, the promenade, bulkhead or that portion of the seawall lying within the Demised Premises. Additionally, Lessee acknowledges that the area of the Demised Premises directly abutting the Parking Garage intended to be utilized as a valet parking loading/unloading area by Lessee (the “**Valet Loading Area**”) shall be subject to an ongoing maintenance and operations easement in favor of Lessor which shall permit Lessor to close the Valet Loading Area for purposes of performing maintenance and resolving operating concerns arising from management of the Parking Garage, at which time Lessee, at its expense, shall make alternative arrangements for valet loading/unloading.”

Lease Term. The definition of Lease Term in the Lease shall be deleted in its entirety and the following shall be inserted in lieu thereof:

“Commencing on the Commencement Date and continuing for fifty (50) years, plus such length of time, not to exceed five (5) years from the Commencement Date to complete construction of Lessee Improvements for the Demised Premises (the “**Expiration Date**”) unless terminated earlier by Lessor in the exercise of Lessor’s default remedies expressly provided in the Lease and subject to execution and renewal of the New SLL. The term of this Lease shall run coterminous with the term of the New SLL, as periodically extended. A termination or failure to renew the New SLL as evidenced by written notice from TIITF, or any successor entity to the TIITF, after the expiration of any applicable cure period triggered by notice to Lessee and Lessor (as such cure period may be extended or the expiration date stayed by judicial order from a court of competent jurisdiction), shall be deemed a termination of this Lease. “Notwithstanding any Force Majeure, the Initial Improvements must be completed within five (5) years from the Commencement Date pursuant to Section 8.09 of the City Charter, it being agreed that a failure to timely complete by Lessee shall result in a day for day reduction in the Lease Term but shall not otherwise be considered an Event of Default for each day of delay caused by Force Majeure.”

Permitted Use. Subsection (iv) of the definition of Permitted Use shall be deleted in its entirety and the following shall be inserted in lieu thereof:

“(iv) existing slips and docks located on the Demised Premises which, subject to approval by the Applicable Authorities, shall, be expanded to include additional slips with dockage of no less than 5,500 linear feet in total on the Demised Premises (after excavating and dredging a portion of the existing surface parking on the upland areas as more specifically designated on

Exhibit B), all at Lessee's expense," In all other respects, the definition of Demised Premises remains unchanged.

Lessee Improvements. The reference to "to approximately 7,000 linear feet" in the definition of Lessee Improvements shall be deleted and replaced with "no less than 5,500 linear feet".

Wayfinding Signage. The following definition shall be added to the Lease as follows:

"Wayfinding Signage means three (3) dynamic monument wayfinding signs at mutually determined locations that are within, adjacent to, or in close proximity of the Demised Premises on property owned by the Lessor, which may be utilized to display real-time variable messaging technology for public purpose reasons such as to promote awareness of events, general messaging, parking availability, and destination awareness and shall also include, on the monument portion of the signage only, references to the marina thereon. The wayfinding signage shall have an operating software that can integrate with an open application programming interface (API), remote management access, and shall otherwise be commercially reasonable based on the size and scale of operations at the Demised Premise. The Lessor will be responsible for the integration of the City's data sources, through an open API, with the wayfinding signage system. Lessee is not required to install a "hard line" from the dynamic monument wayfinding signs to a remote location."

Article IV, Term is deleted in its entirety and replaced with the following:

"TERM

Section 4.1. Primary. The term hereof shall commence on the Commencement Date and continue in full force and effect until the Expiration Date, subject to earlier termination as provided herein. When all conditions for delivery of possession have occurred, both parties agree to execute in a letter, signed by both parties, which conclusively establishes, the Effective Date of the Lease, the Commencement Date, Possession Date, anticipated Expiration Date (assuming no events of default or early termination date) Initial Base Rent Period and Subsequent Base Rent Period which shall be deemed an Amendment to this Lease."

Section 5.5 Additional Approvals. Sections 5.5 (b), (c) and the ending paragraph of Section 5.5 shall be deleted in their entirety and the following inserted in lieu thereof:

"(b) Intentionally omitted.

(c) Secure approval from TIITF of the issuance of a Submerged Lands Lease directly to Lessee."

Additionally, Lessee agrees to assume all liability and obligations under any grants by FIND and Broward County as referenced in the RFP which relate to the Demised Premises, if any, and shall indemnify Lessor against claims made by FIND or Broward County against City in connection with

any applicable grants as referenced in the RFP.

Section 6.3 Percentage Rent. Sections 6.3 (b) and (c) shall be deleted in their entirety and the following inserted in lieu thereof:

“(b) Gross Sales, but not Excluded Revenue, from Ship store operations or other internally operated uses by Lessee or its affiliates under common control or ownership of Lessee, whether marine, retail or restaurant, including sale of goods and services directly by same including, without limitation, merchandise and carry-out food and beverage and other goods specifically sold out of the ship store or other locations within the Demised Premises (but not described in sub-item (a)) and services sold to marina customers like boat tender services (collectively the “Ship Store Revenue”): Four Percent (4%);

(c) Gross Sales from Restaurants and Ancillary Retail Shops and other operations on the Demised Premises including recreational activity sales, boat rental sales which are subleased by Lessee which are not revenue described in sub-items (a) and (b) below (collectively “Ancillary Operations Revenue”) but only during the Subsequent Base Rent Period and not before: Fifteen Percent (15%).”

Additionally, the following sentences shall be added at the end of Section 6.3 of the Lease:

“For avoidance of doubt, Lessee shall not seek to avoid or raise as a defense to a claim for and Base Rent, Subsequent Base Rent or Percentage Rent or any Additional Rent to Lessor simply because the Gross Sales relate to revenue earned on the Adjacent State Submerged Area outside of the Lot. Lessee waives all rights to assert that Lessor is not entitled to receive Base Rent, Subsequent Base Rent, Percentage Rent or Additional Rent simply because the Gross Sales relate to revenue earned on the Adjacent State Submerged Area outside of the Lot.

Anything herein to the contrary notwithstanding, Percentage Rent owed to the City in connection with Slip Revenue earned on the north side of Pier B and the entire Pier A (the “**Portofino Offset Area**”) in accordance with this Section 6.3 shall be subject to a dollar for dollar reduction on an annual basis, provided in calculating annual Percentage Rent owed to Lessor for Slip Revenue without including payments to Portofino (defined below), the Percentage Rent of Slip Revenue is greater than the total annual consideration to PORTOFINO-ON-THE-INTRACOASTAL CONDOMINIUM ASSOCIATION, INC., a Florida not for profit corporation (the “**Portofino**”) as consideration for the agreed adjustment of the riparian line separating the Demised Premises from the riparian property rights owned by Portofino which allowed for the increase in the Adjacent State Submerged Area, it being agreed that the annual consideration owed to Portofino shall include an amortized portion of the initial \$100,000.00 owed to the Portofino to be calculated on a five (5) year straight-line basis during the first five (5) years in which Percentage Rent is owed Lessor. It is the intent of both parties that the Lessor’s Percentage Rent for Slip Revenue is only reduced if the amount owed to the City, without offset, is greater than the amount owed to Portofino in the applicable calendar year (including the amortized portion permitted herein). For example, if Lessee owes \$100,000 to Portofino and the Percentage Rent of Slip Revenue owed to Lessor is \$90,000, without offset, then the Lessor shall receive the full \$90,000 with no reduction for payments owed to Portofino for the Portofino Offset Area. If, however, the Percentage Rent of Slip Revenue owed to Lessor is \$140,000, without offset, and the payment

owed to Portofino is \$100,000, then the Lessee may reduce the payment owed to Lessor by \$100,000 and the City will receive a payment of \$40,000.00.

All other sections of Article 6 remain unchanged and in full force and effect.

Section 6.4 TIITF Rents & New SLL Consideration. Section 6.4 of the Lease shall be deleted in its entirety and replaced with the following as Section 6.4 of the Lease:

“Lessee shall also be solely responsible for all rents, fees, costs and expenses owed by Lessor to TIITF, without setoff, credit or reduction in rents, fees or costs owed to Lessor, during the Term of this Lease under the New SLL (as it may be amended, revised or restated in accordance with this Lease) and as it relates to operations of Lessee on the Demised Premises pursuant to the Release of Deed Restriction and Reverter dated October 24, 1989, Deed No. 90047196, recorded in the Official Records Book 17136, Page 645 of the Public Records of Broward County, Florida and any amendments, revisions or restatement thereof, including, without limitation, the Amended and Restated Release of Deed Restrictions and Reverter Agreement (collectively the “**Uplands Deed**”). Lessor agrees that it shall not, without first obtaining Lessee’s consent, modify the Uplands Deed or the New SLL during the Term of this Lease in a manner that would alter the obligations of Lessee to TIITF in a manner detrimental to Lessee’s rental obligations set forth herein. Lessee acknowledges that it must comply with Section 253.0346, Florida Statutes, in order to receive the “First Come, First Serve” rental discount and the clean marina, clean boatyard or clean marine retailer discount on the annual lease fee to TIITF. Upon written request from Lessor, Lessee shall provide to Lessor reasonably satisfactory proof of payment to TIITF pursuant to the New SLL and Uplands Deed. Lessor shall have the right to request proof of payment and notice of default from TIITF. Anything herein to the contrary notwithstanding, Lessor agrees that the Base Annual Rental shall be deemed consideration paid to Lessor for the right and privilege to use the submerged area adjacent to the Lot which shall be leased by Lessee from TIITF under the New SLL. Both parties acknowledge that pursuant to relevant state law, Lessee will hold the sufficient upland interest necessary to obtain the New SLL but that Lessee’s sufficient upland interest necessary to obtain the New SLL or any subsequent renewal thereof, granted in this Lease, shall be forfeited if this Lease is no longer in effect and/or if the New SLL is expressly terminated or a renewal expressly rejected by TIITF (subject to all applicable appeal and cure periods available to Lessee having expired), and upon such occurrence, this Lease shall also be deemed terminated and Lessee shall have no further right, title or interest in the Demised Premises. Further, Lessee shall provide reasonable access to the representatives of TIITF to the books, records and account of Lessee relating to covenants, terms, conditions and revenue described in the Uplands Deed.

Section 8.1 Construction of Improvements. The following shall be added to Section 8.1 of the Lease:

Both parties acknowledge that to facilitate construction of Lessee Initial Improvements and to enhance the marina experience for marina invitees, Lessor shall allow Lessee to permanently remove nine (9) for pay parking spaces within the Birch road right of way and such a removal results in a significant loss of parking revenue for the Lessor. In exchange, Lessee shall use commercially reasonable efforts to construct the Wayfinding Signage according to the reasonable standards, criteria and specifications of Lessor. If Lessee fails to use commercially reasonable efforts, as provided herein, then Lessee shall

pay a parking mitigation fee of \$300,000.00. As a condition of the final building permit sign-off (BLD-CPAV-20020010), Lessee shall use commercially reasonable efforts to design, furnish, and install the Wayfinding Signage which shall not be deemed part of the Lessee Improvements unless such improvements are within the Demised Premises. Provided Lessee complies with the Lessor's sign criteria and specifications, and its rules, laws, ordinances and regulations under its regulatory capacity, the Lessor shall not unreasonably withhold or delay approval of the proposed Wayfinding Signage prior to installation which shall be evidenced by a building permit for such signage improvements. After complete installation and testing of the Wayfinding Signage the City will assume ownership, including the programming, repair and maintenance, of the Wayfinding Signage and Lessee shall have no continuing responsibility for programming, repair or maintenance of the Wayfinding Signage even if located within the Demised Premises. For avoidance of doubt, the parties agree that if Lessee has used commercially reasonable efforts to design, furnish and install the Wayfinding Signage, but Lessee is being prohibited from completing the Wayfinding Signage by Lessor or the failure of regulatory approvals of any kind which are required then Lessee shall not owe a \$300,000.00 parking mitigation payment as a condition to issuing the certificate of occupancy for the Premises. In such case, the parties shall work together in good faith to identify alternative public improvement requirements that Lessee can complete in lieu of the Wayfinding Signage and the Lessee will provide up to \$300,000 towards the mutually determined public improvements less any actual costs incurred by Lessee in designing, furnishing and installing the Wayfinding Signage prior to the Wayfinding Signage being rejected by Lessor or the applicable regulators.

Section 16.1. Default. Section 16.1 (3) and (4) shall be deleted in their entirety and the following inserted in lieu thereof:

(3) Failure by Lessee to pay the rent under the New SLL, as amended, or revenue under the Uplands Deed as amended or failure to perform or observe any of the terms, covenants, conditions agreements or provisions of either of these documents or as imposed by the State of Florida or TIITF if such failure shall continue for a period of thirty (30) days after written notice thereof has been delivered to Lessee (with a copy of said notice to any Leasehold Mortgagee or trustee as provided by Article XIV hereof) or if TIITF provides notice of its intent not to renew the New SLL (unless the expiration date is stayed by judicial order from a court of competent jurisdiction).

(4) Any termination of the New SLL by TIITF shall be deemed a termination of this Lease unless the cause of such termination is cured by the Lessee (or Leasehold Mortgagee) within thirty (30) days of termination or waived by TIITF (as such cure period may be extended or the expiration date stayed by judicial order). Further, if the New SLL is terminated or not renewed then Lessee agrees to terminate the private easement as well and Lessor shall be entitled to exercise any and all legal remedies to achieve such termination as such an easement would impair the Lessor access to the marina and the intracoastal waterway.

All other sections of 16.1 remain unchanged and in full force and effect.

Section 16.3. Limited Right of Offset. The following shall be added as Section 16.3 of the Lease as follows:

“Upon written approval from Lessor (such approval not to be unreasonably withheld), the Lessee may elect to cure Lessor's failure to maintain Wayfinding Signage, which is not

cured by Lessor within the applicable cure period, and offset all, or part, of Lessee's reasonably incurred costs, using a commercially reasonable standard to calculate such costs, in connection with such cure (which cure may include the replacement of the Wayfinding Signage with signage selected by Lessee if approved by Lessor) against Lessee's rental obligations (or other monetary obligations) owing to City under this Lease.

Additionally, provided Lessee is not in default under this Lease or the Development Agreement (defined below) upon a failure by City to reimburse Lessee or pay any amounts or monetary obligations due and owing to Lessee under that certain development agreement relating to the upgrade of that certain existing City of Fort Lauderdale D-31 Pump Station (the "**Development Agreement**") executed as of the Effective Date which is not cured within thirty (30) days following receipt of written notice specifying such default, Lessee may, in its sole discretion, elect to offset all, or part of, Lessee's or rental obligations (or other monetary obligations) owing to City under the Lease, and such election shall not be deemed an event of default under the Lease by City nor shall such election prevent or prohibit Lessee from seeking any and all other remedies to which it may be entitled to in equity or at law, provided, however, that Lessee cannot have a double recovery and shall only be entitled to recover the actual unreimbursed monetary obligations due and owing to Lessee under the Development Agreements." Lessee shall not be entitled to recover consequential, incidental, speculative or punitive damages against the City related to failure to receive payments under the Development Agreement.

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

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

(Signature pages to follow)

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

WITNESSES:

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

Signature

By _____
Dean J. Trantalis, Mayor

Print Name

Signature
Manager

By _____
Christopher J. Lagerbloom, ICMA-RC, City

Print Name

(SEAL)

ATTEST:

Jeffrey A. Modarelli, City Clerk

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

By _____
Lynn Solomon, Assistant City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2021, by Dean J. Trantalis, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida who is personally known to me or has produced _____ (type of identification) as identification.

(SEAL)

Signature: Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

☒ Personally Known

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of __, 2021, by Christopher J. Lagerbloom, City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida who is personally known to me or has produced _____ (type of identification) as identification. (SEAL)

Signature: Notary Public, State of Florida

Name of Notary Typed, Printed or Stamped

☒ Personally Known

WITNESSES:

LAS OLAS SMI, LLC,
a Delaware limited liability company

Signature

Print Name

Signature

Print Name

By _____

Name: _____

Title _____

STATE OF

_____:

COUNTY OF

_____:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2021, by _____, in his capacity as _____ of Las Olas SMI, a Delaware limited liability company who is personally known to me or has produced _____ (type of identification) as identification. (SEAL)

Signature: Notary Public, State of Texas

Name of Notary Typed, Printed or Stamped