

RESOLUTION NO. 21-76

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, APPROVING THE AMENDED AND RESTATED RELEASE OF DEED RESTRICTION AND REVERTER AGREEMENT WITH THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA IN CONNECTION WITH DEVELOPMENT OF THE LAS OLAS MARINA; REPEALING ANY AND ALL RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Fort Lauderdale, Florida ("Lessor" or "City") and Las Olas SMI, LLC ("Lessee") executed that certain Ground Lease Agreement with an Effective Date of April 30, 2018 (the "Lease") whereby Lessor leased to Lessee the Existing Marina Premises pursuant to Resolution No. 17-154 for a 50-year term plus 5 years for construction of improvements; and

WHEREAS, the uplands portion of the Existing Marina Premises is encumbered by a Release of Deed Restrictions and Reverter Agreement between the City and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("Trustees") dated October 24, 1989 and recorded in Official Records Book 17136, Page 0645 of the Public Records of Broward County, Florida ("Original Agreement"); and

WHEREAS, under the Original Agreement, the City is required to pay to the Trustees fifty percent (50%) of the **net profits** from a lease of the uplands portion of the Existing Marina Premises for the first thirty years of the lease and thereafter fifty percent (50%) of the **gross revenue** received by the City "less fifty percent (50%) of the normal repair and maintenance expenses incurred by the City", in perpetuity; and

WHEREAS, the Lessor and Lessee have requested a reduction in the percentage of revenue and the Trustees have agreed to a reasonable reduction in the revenue sharing arrangement equal to the greater of \$110,000 or fifteen percent (15%) of net revenues received by the City plus six percent (6%) of all revenues received from the lease of wet slips, subject to execution of the Amended and Restated Release of Deed Restriction and Reverter Agreement;

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

SECTION 1. The Recitals are true and correct and incorporated herein by reference.

SECTION 2. That the City Commission of the City of Fort Lauderdale, Florida hereby approves the Amended and Restated Release of Deed Restriction and Reverter Agreement, in substantially the form attached hereto as Attachment "A", with the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and authorizes execution by the proper City Officials.

SECTION 3. That the City Attorney shall review and approve as to form the Amended and Restated Release of Deed Restriction and Reverter Agreement with the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida prior to execution thereof by the proper City Officials.

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

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

ADOPTED this 20th day of April, 2021.



Mayor
DEAN J. TRANTALIS

ATTEST:



City Clerk
JEFFREY A. MODARELLI

**AMENDED AND RESTATED
RELEASE OF DEED RESTRICTION AND REVERTER AGREEMENT**

THIS AMENDED AND RESTATED RELEASE OF DEED RESTRICTION AND REVERTER AGREEMENT ("AGREEMENT") made and entered into this _____, 20___, by and between the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA ("TRUSTEES") and the CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida ("CITY");

WHEREAS the TRUSTEES conveyed to the CITY certain lands more particularly described in Deed No. 21846, recorded in the Official Records Book 1275, Page 403, in the Public Records of Broward County, a copy of which is attached hereto as Exhibit "A" and made a part hereof; and

WHEREAS, the above-described deed contains certain restrictions, as set forth herein, regarding the use and development of such lands; and

WHEREAS, the above-described lands are included within an area sometimes known as the Birch/Las Olas parking lot ("LOT") which is more particularly described in Exhibit "B" attached hereto and made a part hereof; and

WHEREAS, the CITY proposed to lease the LOT to a private developer to initiate the redevelopment of the central beach area; and

WHEREAS, in order for the property described in Exhibit "A" to be leased to a private party it was necessary that aforementioned deed restrictions be released; and

WHEREAS, the parties previously agreed to release, assign, transfer, and quitclaim to the CITY all of the TRUSTEES' interest in the restrictions and reverter contained in that certain Deed from the TRUSTEES in favor of the CITY, dated July 17, 1958, and recorded in the Official Records Book 1275, Page 403 of the Public Records of Broward County, Florida; and equitably compensate the TRUSTEES for the release of the aforementioned deed restrictions, and in connection therewith executed that certain Release of Deed Restriction and Reverter dated October 24, 1989, and recorded in the Official Records Book 7136, Page 0645 of the Public Records of Broward County, Florida (the "ORIGINAL AGREEMENT"); and

WHEREAS, the previous redevelopment plans contemplated a hospitality focused resort property with several high-rise buildings, resort amenities, and conference center spaces but the plan ultimately did not obtain necessary public support; and

WHEREAS, Las Olas SMI, LLC (the "CURRENT DEVELOPER") currently intends to develop a public waterfront promenade, approximately _____ linear feet of dock space, a marina operations and marine services building, waterfront restaurants, and a public water taxi stop as part of the Las Olas Marina expansion (the "MARINA REDEVELOPMENT"); and

WHEREAS, it is a state policy to encourage downtown redevelopment and assist local government in redevelopment efforts; and

WHEREAS, after a culmination of ten (10) years of stakeholder input, design changes, and meetings with the public, the Marina Redevelopment was unanimously approved by the CITY's Board of Commissioners on July 9, 2019;

WHEREAS, in an effort to accommodate the Marina Redevelopment, the CITY and TRUSTEES now desire to amend and restate the Original Agreement in its entirety with the rights and obligations set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree that the Original Agreement is restated and replaced in its entirety as follows:

1. The TRUSTEES hereby release, assign, transfer, and quitclaim to the CITY all of the TRUSTEES' interest in the restrictions and reverter contained in that certain Deed from the TRUSTEES in favor of the CITY, dated July 17, 1958, and recorded in the Official Records Book 1275, Page 403 of the Public Records of Broward County, Florida, to wit:

That the property conveyed hereby when filled will be used by the grantee exclusively for public municipal purposes and cannot be sold or leased for private purposes.

That the CITY shall provide and maintain at all times screening, landscaping and planting of the perimeter of the fill adjacent to the river adequate to prevent vehicular lights from projecting from the fill area across said river.

That no fill will be made or permitted in New River Sound which extends any greater distance than 270 feet from the existing east bulkhead westward into the waters of said New River Sound, for the contemplated construction of an off-street parking lot, or any other purpose, nor will any fill be made or permitted beyond the bulkhead line established by Ordinance No. C-1421 of the CITY OF FORT LAUDERDALE, passed on June 3, 1958.

It is expressly covenanted and agreed by the grantee hereunder for itself, its successors and assigns that the three express covenants and conditions set forth above shall run with the said described land and any breach or violation of said covenants and conditions shall automatically cause the title to said lands to revert to grantors, their successors and assigns.

2. Neither the fee title to the real property deeded to the CITY by Deed in No. 21846, nor the fee title to any other real property comprising the LOT shall ever be sold or conveyed, but shall be leased for fair value, as defined in Chapter 163, Part III, F. S., and under reasonable market terms for redevelopment purposes.

3. Commencing upon the execution of this Agreement and continuing in perpetuity, the CITY shall pay to the TRUSTEES the following respective percentages of revenues received by the CITY from the lease of the LOT on an annual basis: (i) fifteen percent (15%) of net revenues received by the CITY from the lease of the uplands portion of the LOT; and (ii) six percent (6%) of all revenues received by the CITY from the lease of wet slips located within the LOT, but only to the extent the wet slips are located within the portion of the LOT excavated as part of the Marina

Redevelopment. In the event any wet slips are located on both the LOT and the abutting submerged land, the revenues will be allocated to whichever area contains the majority of the slip's square footage, but in no event both areas. For avoidance of doubt, any revenues received by CITY for the right to use any submerged lands area directly abutting the Lot pursuant to a submerged lands lease between the TRUSTEES and the CITY or the lessee of the LOT (the "SLL"), shall not be included in any rent calculation relating to the LOT under this Agreement. "Net revenues" shall mean gross revenues less the normal repair and maintenance expenses incurred by the CITY or incurred (consistent with generally accepted accounting principles and practices) for the maintenance and repair of the structures and facilities on the LOT. The CITY shall annually provide to the TRUSTEES a certified statement accounting for the gross revenues and normal repair and maintenance expenses incurred by the CITY and attributable to leasing of the LOT. Additionally, the CITY shall allow the TRUSTEES or its agents to audit the books and records of the CITY on at least an annual basis to assure proper classification of accounts, propriety of records, and accuracy of payments.

4. Anything herein to the contrary notwithstanding, the Trustees shall always receive a minimum of \$110,000.00 per calendar year (the "MINIMUM TRUSTEES PROCEEDS") when calculating the fifteen percent (15%) of net revenues received by the CITY from the lease of the uplands portion of the LOT plus the six percent (6%) of all revenues received by the CITY from the lease of wet slips located within the LOT as set forth in Section 3. The Minimum Trustee Proceeds shall only be due and payable in the first calendar year following the final certificate of occupancy for the Marina Redevelopment (the "MINIMUM PROCEEDS COMMENCEMENT DATE") and for each calendar year thereafter. For avoidance of doubt, the MINIMUM TRUSTEES PROCEEDS shall be deemed a minimum rent amount but shall not be paid in addition to or as a supplement to the consideration set forth in Section 3 of this AGREEMENT if the consideration received by the TRUSTEES relating to the LOT exceeds the MINIMUM TRUSTEES PROCEEDS (and/or once the supplemental consideration paid under this Section 4 combined with the amounts paid under Section 3 in connection with the LOT exceeds the MINIMUM TRUSTEES PROCEEDS).

5. In the event the CITY refuses or fails to perform any agreement or covenant contained herein, the TRUSTEES shall be entitled to enforce the provisions of this Agreement against the CITY by any proceedings at law or in equity including, but not limited to, an action for specific performance, mandamus, injunction, damages, or otherwise as may be appropriate. In any litigation between the CITY and the TRUSTEES arising from this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.

IN WITNESS WHEREOF, the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA and the City of Fort Lauderdale have hereunto subscribed their hands and affixed their seals on the day and year first hereinabove written.

WITNESSES:

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA

Original Signature

(SEAL)

Print/Type Name of Witness

BY: _____
Callie DeHaven, Director, Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida

Original Signature

Print/Type Name of Witness

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me by means of physical presence this _____ day of _____, 20____, by Callie DeHaven, Director, Division of State Lands, State of Florida Department of Environmental Protection for, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. She is personally known to me.

Notary Public, State of Florida

Printed, Typed or Stamped Name

My Commission Expires:

Commission/Serial No.

Approved subject to proper execution

By: _____
DEP Attorney Date

THE CITY OF FORT LAUDERDALE

Witness

By: _____
Dean J. Trantalis, Mayor

Print/Type Name of Witness

By: _____
Christopher J. Lagerbloom, ICMA-CM,
City Manager

Witness

ATTEST:

Print/Type Name of Witness

Jeffrey A. Modarelli, City Clerk

Approved as to form:
Alain E. Boileau, City Attorney

By: _____
Lynn Solomon, Asst. City Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Dean J. Trantalis - Mayor, Christopher J. Lagerbloom, ICMA -CM - City Manager and Jeffrey A, Modarelli - City Clerk, respectively, of the City of Fort Lauderdale, Florida, a municipal corporation of Florida, and acknowledged that he executed the foregoing instrument as the proper officials of the City of Fort Lauderdale, and the same is the act indeed of the City of Fort Lauderdale.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at Fort Lauderdale, in the State and County aforesaid on _____, 20__

[S E A L]

Notary Public, State of Florida

My Commission Expires: _____

Printed Name of Notary