

LICENSE AGREEMENT

This LICENSE AGREEMENT (the "Agreement"), made as of the date signed by the last party ("Effective Date"), is by and between the **City of Fort Lauderdale**, a municipal corporation of the State of Florida ("LICENSOR" or "CITY"), having its principal place of business at 100 North Andrews Avenue, Fort Lauderdale, FL 33301 and **Las Olas SMI, LLC**, a Delaware limited liability company ("LICENSEE"), having its principal place of business at 17330 Preston Road, Suite 220A, Dallas, Tx 75252.

RECITALS

WHEREAS, Licensee intends to lease, design, redevelop, operate and manage the Las Olas Marina located at 201 South Birch Road and 230 E. Las Olas Circle, Fort Lauderdale, Broward County, Florida (the "Project") and in connection with its redevelopment plans, the Licensee has requested the use of a trailer located on a park south of the Las Olas Bridge.

WHEREAS, the Licensee intends to occupy the trailer (the "Premises") to support its construction activities related to the Project.

WHEREAS, in consideration of the benefit to the City, it agrees to grant a temporary license to use the trailer subject to the terms and conditions stated herein.

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

1. RECITALS

The foregoing recitals are true and correct and incorporated herein by this reference.

2. LICENSE

A. Grant of License:

Licensor hereby grants Licensee an exclusive license to use all of the Premises for occupancy by construction staff, consultants, employees, agents and other personnel retained or hired to work on the Project.

B. Licensee's Obligations:

During the Term, Licensee shall pay when due all of the following referred to collectively as "Impositions" and individually as an "Imposition":

- (i) All real estate taxes, assessments, water and sewer charges, gas, electric, other utilities, waste disposal, imposed against the Premises or the underlying real estate, any personal property thereon or any rent or license fees;

(ii) All sales, use, excise and similar taxes which at any time may be levied, assessed or payable on account of the license or use of the Premises or the underlying real estate; and

(iii) All charges for utilities and communications services rendered to or used on the Premises or underlying real estate, if any.

Should any assessments be payable in installments, Licensee may pay same in installments and shall be obligated for only those installments which are due and payable within the period of the Term.

C. Insurance:

At all times during the term of this License Agreement, Licensee, at its expense, shall keep or cause to be kept in effect the following insurance coverage:

(i) A general liability insurance policy, in standard form, insuring Licensee and Licensors as an additional insured, against any and all liability for bodily injury or property damage arising out of or in connection with this License and the license granted herein with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) general aggregate and shall name the Licensors as an additional insured. All such policies shall cover the activities and the possession, use, occupancy and maintenance of the Premises. This policy shall not be affected by any other insurance carried by Licensors.

(ii) Workers' Compensation Insurance to apply to all Licensee's employees and employees of contractors retained by Licensee for the Project, said coverage to be in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) shall include Employers Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) for each accident.

(iii) Business Automobile Liability for all vehicles owned by Licensee and Licensee's contractors and vendors that are involved in the development of the Project and use of the Property with limits of Three Hundred Thousand Dollars (\$300,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.

(iv) All of the policies of insurance provided for in this License:

- (a) shall be in the form and substance approved by the Department of Insurance of the State of Florida ("DOI"),
- (b) shall be issued only by companies licensed by DOI,
- (c) Certificates of Insurance pertaining to same shall be delivered to Licensors, at least fourteen (14) days prior to the commencement of the License Term,

- (d) shall be with a carrier having an A Best's Rating of not less than A, Class VII,
 - (e) shall bear endorsements showing the receipt by the respective companies of the premiums thereon or shall be accompanied by other evidence of payment of such premiums to the insurance companies, including evidence of current annual payment, if on any installment payment basis, and
 - (f) shall provide that they may not be canceled by the insurer for thirty (30) days after service of notice of the proposed cancellation upon Licensor and shall not be invalidated as to the interest of Licensor by any act, omission or neglect of Licensee.
- (v) A duplicate original of each policy shall be delivered to Licensor. All insurance policies shall be renewed by Licensee, and certificates evidencing such renewals, bearing endorsements or accompanied by other evidence of the receipt by the respective insurance companies of the premiums thereon, shall be delivered to Licensor, at least twenty (20) days prior to their respective expiration dates.

Licensor does not in any way represent that the types and amounts of insurance required hereunder are sufficient or adequate to protect Licensee, contractor or vendor interests or liabilities but are merely minimum requirements established by Licensor. Licensor reserves the right to require other insurance coverage that Licensor deems necessary depending upon the risk of loss and exposure to liability.

D. No Possessory Rights:

Notwithstanding anything contained herein to the contrary, the parties acknowledge and agree that no provision of the Agreement shall in any way be construed as creating: (i) any property rights of any kind for Licensee in the Premises; or (ii) any landlord-tenant relationship or leasehold interest of any kind or any possessory rights for Licensee with respect to the Premises. Licensee specifically acknowledges and agrees that the Agreement grants Licensee only a license to use the Premises and Licensee waives any and all claims to a possessory interest in the Premises.

E. Condition of Premises, Alterations and Maintenance:

Except as authorized herein, Licensee shall have no right whatsoever to make any alterations, additions or improvements to all or any portion of the Premises or underlying real estate without Licensor's prior written approval, in its sole discretion. Licensee shall maintain the Premises in good and clean condition, and Licensee shall promptly remove all waste from the Premises that was placed or brought to the Premises by Licensee, its employees, agents, or invitees (collectively, the "Licensee Parties"). Licensee specifically agrees to remove, at its sole cost and expense, any toxic, hazardous or petroleum products that may be discharged or deposited onto the Premises or underlying real estate in connection with Licensee's activities hereunder.

Licensor makes no representation or warranties that the Premises or underlying real estate is zoned for the proposed use, is fit for a particular purpose or regarding the condition of the Premises or

underlying real estate. Licensee has performed the necessary inspections of the Premises or underlying real estate and has determined whether it is suitable for the purposes intended. Further, Licensee accepts the Premises “as-is” “where-is” and “with all faults”.

3. **TERM**

A. Term & Termination:

The initial term of this Agreement shall commence on the date Licensor delivers possession of the Premises to Licensee (the “Commencement Date”) and continue for twenty-four (24) months thereafter unless sooner terminated as provided for herein (the “Term”). Licensee may terminate this Agreement, effective immediately, if, within the ninety (90) days following the Commencement Date, Licensee does not obtain all applicable governmental permits or approvals for Licensee’s development of the Project or Licensee determines that the Premises is not suitable for Licensee’s intended use, and in the event that Licensee timely exercises such termination right then Licensee shall have no obligation to Licensor, monetary or otherwise, except for a pro-rated portion of the Licensee Fee, Impositions, if any, and other expenses owed under this License for the time elapsed from the Commencement Date through the date Licensee vacates the Premises.

B. Surrender of Premise:

Upon termination or expiration of this Agreement, Licensee, at its sole cost and expense, if so directed by City, shall be responsible for the **End of Agreement Improvements** as agreed to by Licensor and Licensee as set forth herein and to be completed on or before the ninetieth (90th) day after the expiration or earlier termination of the Agreement. Licensee, at its expense, shall disconnect, remove, and dispose the trailer and landscape and restore hardscape to the Premises and underlying real estate of such quality of materials and standards in accordance with this Section 3 B. which Licensor and Licensee shall in good faith stipulate in cost-efficient manner using commercially reasonable standards. Licensee's personal property, removable fixtures, equipment and alterations from the Premises shall also be removed from the site and Licensee shall surrender the Premises to the City with all required improvements completed and the remainder of the site in the same condition the Premises were in as of the date of occupancy by the Licensee, reasonable wear and tear excepted. Licensee shall be responsible for the disconnection of any and all utilities that Licensee connected to the trailer at the time it is removed from the property. On or before the ninetieth (90th) day after the Commencement Date if the Agreement is still in effect, Licensee shall be required to provide a payment and performance bond for \$25,000 to cover the required End of Agreement Improvements as identified in Exhibit A. The Bond shall be released when the End of Agreements have been completed, all regulatory agencies have approved final inspections and all submittals required hereunder have been delivered including copies of all transferable warranties.

C. License Fee:

Licensee shall pay City an annual net license fee of One Thousand Two Hundred and No/100 Dollars (\$1,200) (the "Rent"). The Annual license fee payable for such month shall be prorated and paid on a per diem basis using a thirty (30) day month. The fee shall be made payable to the City of Fort Lauderdale and shall be delivered to the **City of Fort Lauderdale**, Finance Department, 100 North Andrews Avenue, Fort Lauderdale, FL 33301, Attn: Finance Director. Both parties understand that City shall receive its fee hereunder free and clear of any and all impositions, taxes, liens, charges, and expense of any nature whatsoever relating to ownership, occupancy or operation of the Premises, including without limitation those relating to taxes, if any, insurance, repair, maintenance, use, care, or operation.

D. Option to Extend:

Licensor hereby grants to Licensee, so long as Licensee shall not be in default of any term, covenant, condition or payment of its license fee under this Agreement, the right and option to extend the term of this license for one (1) successive period of one (1) year under the same terms and conditions of this License and commencing upon the expiration of the initial term of this License or any extension thereof. Licensee shall exercise its option to extend, if at all, by written notice to the City which must be received by the City on or before 90 days prior to the expiration of the initial term of this License or any extension thereof.

E. Survivals:

Any provision of this Agreement that by its context or nature is to survive the Term or any other termination of the Agreement, shall survive the Term or such other termination.

4. DEFAULT AND REMEDIES

A. Default and Remedies:

In the event Licensee fails to comply with any monetary provision of this Agreement (including, without limitation, payment of license fee and such failure has not been cured within ten (10) business days after receipt of written notice of a failure to pay an Imposition or other fee or charge after, then Licensee shall be in default and a late charge shall be imposed in an amount equal to five percent (5%) of the unpaid license fee, Imposition or other charge and Licensor shall have the right, but not the obligation, to terminate this Agreement upon fifteen (15) days' prior written notice to Licensee (but only if default remains uncured) and Licensee shall forfeit the payment and performance bond.

5. MISCELLANEOUS

A. No Offer:

This Agreement shall not be effective and shall not be relied upon by either party unless and until such time as it has been executed by Licensee and Licensor, and a copy of the Agreement, which has been fully executed by Licensee and Licensor, has been delivered by one party to the other.

B. Notice:

All notices required or provided for under this Agreement shall be in writing and (i) delivered by Federal Express or other nationally recognized overnight air courier; or (ii) sent by registered or certified mail return receipt requested, to the addresses set forth above or such other persons or places as either party may from time to time designate by written notice. Notices given in such manner shall be deemed effective upon receipt or refusal.

C. Successor and Assigns:

The Agreement shall be binding and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.

D. Indemnity:

Licensee shall protect, defend, indemnify and hold harmless the Licensor, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including attorney's fees or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of Licensee under this License, conditions contained therein, the location, maintenance, use or occupancy of the Premises, or the breach or default by Licensee of any covenant or provision of this License, the use, storage or release of hazardous substances on the Premises and any and all claims made by contractors, subcontractors, materialman or laborers related to any alterations, repairs or other improvements made to the Premises, except for any occurrence arising out of or resulting from the intentional torts or gross negligence of the Licensor, its officers, agents and employees acting within the course and scope of their employment. Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation, operation, maintenance, repair or restoration of the Property, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity.

Licensee further agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the Licensor, Licensee shall assume and defend not only itself but also the Licensor in connection with any claims and any such defense shall be at no cost or expense whatsoever to Licensor, provided that the Licensor shall retain the right to select counsel of its own choosing. The indemnification obligations set forth herein shall survive termination of this License for a period coincident with the statute of limitations period applicable to the offending act, omission or default and is not limited by Licensee's insurance coverage.

E. Signage:

Upon obtaining all necessary licenses and permits, Licensee shall have the right to place its customary signage on and within the Premises, and Licensee shall assume all responsibility for the

condition, upkeep, and safety. All signage must meet any and all local and municipal code and signage requirements.

F. Liability Disclaimer and Waiver:

Licensor disclaims any liability for damage to any Licensee's vehicle, equipment, containers, signage, employee, agent, or property, except in the event that such damage is caused or contributed to by the gross negligence or willful misconduct of Licensor, its agents, or affiliates acting within the course and scope of their employment.

G. Force Majeure:

Neither party shall be responsible for delays or failures in performance resulting from acts beyond the reasonable control of such party (a "Force Majeure" event), including, without limitation, acts of God, nature, strikes, lockouts, riots, acts of war, epidemics, fire, earthquakes, catastrophic equipment failures, or other disasters. The party whose performance is impaired because of the occurrence of an event of Force Majeure must notify the other party of the situation in writing as soon as reasonably practical. Without penalty to either party, the time for performance under the Agreement shall then be extended for a period equal to the delay; provided, that if the Force Majeure event lasts longer than 30 consecutive days or 60 days in total, either party shall have the right to terminate the Agreement.

H. Waiver:

A failure of any party to insist upon or enforce any term or provision or to exercise any right, option, or remedy of the Agreement, or to require at any time performance of any provision hereof, shall not be construed as a waiver of any such terms or provision. No waiver by any party of any term or provision hereof shall be binding unless made in writing and signed by both parties.

I. Severability:

If any provision of the Agreement or the application of a provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Agreement and the application of the invalid or unenforceable provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected, and the remainder of the Agreement shall otherwise remain in full force and effect. Moreover, the invalid or unenforceable provision shall be reformed, if possible, so as to accomplish most closely the intent of the parties consistent with applicable law.

J. Construction of Language:

The Agreement has been negotiated "at arm's length" by and between Licensor and Licensee, each having had the opportunity to be represented by legal counsel of its choice and to negotiate the form and substance of this Agreement. Therefore, the Agreement shall not be more strictly construed against any party by reason of the fact that one party may have drafted any or all of the provisions of the Agreement.

K. Entire Agreement and Amendments:

The Agreement contains the complete understanding of the parties, superseding any prior agreements or writings (whether written or verbal) with respect to the subject matter hereof and may not be changed or modified other than by an agreement in writing signed by both Licensor and Licensee. The Agreement may be executed in counterparts, each of which shall be deemed an original; and such counterparts when together shall constitute but one agreement. Licensor and Licensee agree that facsimile and electronic signatures shall be deemed, and shall constitute, originals for all purposes.

L. Governing Law and Jurisdiction:

The Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to principles of conflicts of laws. If any dispute arises out of or relates to this Agreement or the breach hereof, and if either party shall obtain legal counsel or bring an action against the other to enforce or interpret any provision of the Agreement, including the collection of past due monies owed hereunder, the non-prevailing party shall pay to the prevailing party all costs and expenses associated with therewith, including, without limitation, reasonable attorneys' fees and costs and those on any appeal, all of which shall be payable whether or not any action is prosecuted to judgment. Any sums owed by one party to another, which are not paid within the period required under the Agreement, shall accrue interest at the maximum rate allowable under applicable law. The parties agree that jurisdiction to adjudicate any case or controversy involving the Agreement shall exclusively be in the state courts located in Broward County, Florida.

M. Waiver of Jury Trial:

THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH, THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT AND ANY CLAIMS OR DEFENSES ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE); THIS WAIVER BEING A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THE AGREEMENT.

N. Sovereign Immunity:

Nothing herein shall be construed as a waiver of Licensor's sovereign immunity.

O. Mechanic's Liens:

Licensee shall have no power or authority to incur any indebtedness giving a right to a lien of any kind or character upon the right, title or interest of Licensor in and to the Premises or the underlying real estate, and no person shall ever be entitled to any lien, directly or indirectly derived through or under the Licensee, or its agents, servants, employees, contractors or officers or on account of any act or omission of said Licensee as to Licensor's right, title or interest in and to the Premises and the underlying real estate. All persons contracting with the Licensee, or furnishing materials, labor or services to said Licensee, or to its agents or servants, as well as all persons shall be bound by this provision of this agreement. Should any such lien be filed, Licensee shall discharge the

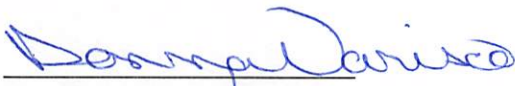
same within thirty (30) days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. Licensee shall not be deemed to be the agent of Licensor, so as to confer upon a laborer bestowing labor upon or within the Premises or upon materialmen who furnish material incorporated in the construction and improvements upon the foregoing, a construction lien pursuant to Chapter 713, Florida Statutes or an equitable lien upon the Licensee's right, title or interest in and to the Premises and the underlying real estate. These provisions shall be deemed a notice under Section 713.10(1), Florida Statutes of the "non-liability" of the Licensor.

IN WITNESS WHEREOF, each of the parties hereto has caused the Agreement to be executed on its behalf as a duly authorized individual or officer the day and year written below.

LICENSOR:

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

WITNESS:




Donna Varisco
[Witness print or type name]

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


Date: May 25, 201

(SEAL)

ATTEST:


Jeffrey A. Modarelli, City Clerk


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

By: 
Lynn Solomon, Assistant City Attorney



WITNESSES

LICENSEE:

LAS OLAS SMI LLC, a Delaware limited liability company

Eric Metz
Printed Name: ERIC METZ

Judith Stern
Printed Name: JUDITH STERN

By: David Filler

Name: DAVID FILLER

Title: MANAGER

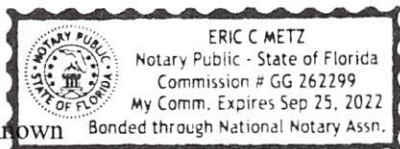
Date: 4/26/21

STATE OF FLORIDA :
COUNTY OF BROWARD :

The foregoing instrument was acknowledged before me, the undersigned authority, by means of ☒ physical presence or ☐ online notarization this 26th day of April, 2021, by DAVID FILLER, its MANAGER Las Olas SMI LLC, a Delaware limited liability company. He is personally known to me or has produced _____ as identification and did not (did) take an oath.

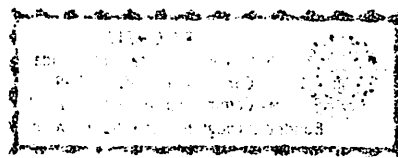
(SEAL)

☒ Personally Known



Eric Metz
Signature: Notary Public, State of Florida

ERIC METZ
Name of Notary Typed, Printed or Stamped





COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM
Today's Date: 5/26/2021

2L 5/27/2021

DOCUMENT TITLE: License Agreement with Las Olas SMI, LLC for Property (Trailer) located at 201 S. Birch Road and 230 E. Las Olas Circle, Fort Lauderdale

COMM. MTG. DATE: 4/20/21 CAM #: 21-0184 ITEM #: M-2 CAM attached: ☒ YES ☐ NO

Routing Origin: CAO Router Name/Ext: Sonia x5598 Action Summary attached: ☒ YES ☐ NO

CIP FUNDED: ☐ YES ☐ NO

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

1) Dept: TAM Router Name/Ext: Gina X 3764 # of originals routed: 2 Date to CAO: 5/25/21

2) City Attorney's Office: Documents to be signed/routed? ☒ YES ☐ NO # of originals attached: 2

Is attached Granicus document Final? ☒ YES ☐ NO Approved as to Form: ☒ YES ☐ NO

Date to CCO: 5/26

Lynn Solomon
Attorney's Name

[Signature]
Initials

3) City Clerk's Office: # of originals: 2 Routed to: Donna V./Aimee L./CMO Date: 5/26/2021

4) City Manager's Office: CMO LOG #: May 6 Document received from: _____

Assigned to: CHRIS LAGERBLOOM ☐ TARLESHA SMITH ☐ GREG CHAVARRIA ☐
CHRIS LAGERBLOOM as CRA Executive Director ☐

☐ APPROVED FOR C. LAGERBLOOM'S SIGNATURE ☐ N/A FOR C. LAGERBLOOM TO SIGN

PER ACM: T. Smith _____ (Initial/Date) PER ACM: G. Chavarria _____ (Initial/Date)

☐ PENDING APPROVAL (See comments below)

Comments/Questions: _____

Forward _____ originals to ☐ Mayor ☐ CCO Date: 5/25/21

5) Mayor/CRA Chairman: Please sign as indicated. Forward _____ originals to CCO for attestation/City seal (as applicable) Date: _____

6) City Clerk: Forward 2 originals to CAO for FINAL APPROVAL Date: 5/27/2021

7) CAO forwards _____ originals to CCO Date: _____

8) City Clerk: Scan original and forwards 2 originals to: Gina Rizzuti-Smith/ TAM/ X 3764

Attach _____ certified Reso # _____ ☐ YES ☒ NO

Original Route form to Sonia S