

FIFTH AMENDMENT TO GROUND LEASE AGREEMENT

THIS FIFTH AMENDMENT TO GROUND LEASE AGREEMENT (this “**Fifth Amendment**”) is made to be effective as of the ____ day of _____, 2021 (the “**Effective Date**” of this Fifth 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), and as further amended on June 7, 2021 by that Fourth Amendment to Ground Lease Agreement (Resolution No. 21-74) (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, by approval of the City Commission, proper City officials were authorized, empowered and directed to execute this Fifth Amendment by adoption of Resolution No. _____ during its Regular Meeting held on _____.

WHEREAS, Lessor and Lessee desire to modify the Lease to confirm the date of Possession, Commencement Date and other critical dates under the 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 Fifth Amendment. Capitalized terms used in this Fifth 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 Fifth Amendment.

2. Amendments to the Lease.

Possession and Commencement Date: The date of Possession and the Commencement Date are hereby stipulated to be October 1, 2021. All conditions (i.e. Title Documents and ALTA

Survey) which have not been satisfied shall be completed on or before , October 31 2021 but no later than July 1, 2022.

Anticipated Expiration Date, Initial Base Rent Period and Subsequent Base Rent Period: Lessor and Lessee stipulate that the anticipated Expiration Date shall be a date not to exceed more than five (5) years after September 30, 2071, subject to establishment of the Initial Improvement completion date, but in no event later than September 30, 2076, it being agreed that a failure to complete the Lessee Improvements on or before September 30, 2026 by Lessee shall result in a day for day reduction in the Lease Term but shall not otherwise be considered an Event of Default or permit the Lessor the right to terminate the Lease for each day of delay caused by Force Majeure. The Initial Base Rent Period shall commence on October 1, 2021, and the Subsequent Base Rent Period shall commence on or before October 1, 2026, subject to completion of the Initial Improvements. The Letter of Possession attached hereto as Exhibit “A” reflects additional critical dates as mutually agreed to by the parties.

3. **Ratification.** Other than with respect to the amendments to the Lease contained or referred to in this Fifth Amendment, which shall supersede any contrary or inconsistent terms of the Lease, this Fifth 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 Fifth 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

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

Signature

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, ICMA-CM 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

EXHIBIT "A" TO FIFTH AMENDMENT TO GROUND LEASE

September __, 2021

City of Fort Lauderdale
Attn: City Attorney
100 North Andrews Avenue
Fort Lauderdale, FL 33301

Via E-mail and Overnight Mail

And

City of Fort Lauderdale
Attn: City Manager
100 North Andrews Avenue
Fort Lauderdale, FL 33301

Via E-mail and Overnight Mail

Re: Ground Lease Agreement dated April 30, 2018 (as amended, the "**Lease**") between The City of Fort Lauderdale, a Florida municipal corporation (the "**Lessor**") and Las Olas SMI, LLC, a Delaware limited liability company ("**Lessee**"). Capitalized terms not specifically defined herein shall be defined in accordance with the Lease.

To whom it may concern:

Pursuant to Section 4.1 of the Lease (as reflected in the Fourth Amendment to Ground Lease Agreement dated June 7, 2021), Lessor and Lessee hereby stipulate to the following dates and the terms and conditions associated with each date in the Lease:

1. Effective Date of the Lease is April 30, 2018.
2. Date of Possession is October 1, 2021.
3. Commencement Date is October 1, 2021.
4. Anticipated Expiration Date is a date not to exceed more than five (5) years after September 30, 2071, subject establishment of the Initial Improvement Completion Date, but in no event later than September 30, 2076.
5. The Initial Base Rent Period shall commence on October 1, 2021.
6. The Subsequent Base Rent Period shall commence on or before October 1, 2026, subject to substantial completion of the Initial Improvements.
7. Initial Improvement Completion Date: on or before October 1, 2026.
8. Base Annual Rent Increase is 5%; It shall commence every five (5) years starting on the beginning of the first day of the second lease year following the Subsequent Base Rent Period and every 5 years thereafter.

9. Construction Approval Period pursuant to Section 5.4. has expired: It was three years from the earlier of the Effective Date or date Lessee commences excavation work.
10. TIITF Rent pursuant to Section 6.4 of the Ground Lease as amended by the 4th Amendment shall commence on the Commencement Date.
11. Percentage Rent commences on the Commencement Date.

Sincerely,

_____ as _____
Of Las Olas SMI LLC

Acknowledged and Agreed to by:

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

By: _____
Name: Christopher J. Lagerbloom, ICMA-CM