CITY OF FORT LAUDERDALE

OFFICE OF THE CITY AUDITOR

Compliance Review of the Bahia Mar Lease Agreement
Report #11/12-04

July 3, 2012

CITY OF
FORT LAUDERDALE

City Auditor's Office

Memorandum

Memorandum No: 11/12-18

Date: July 3, 2012

To: Honorable Mayor and Commissioners

From: John Herbst, CPA, CGFO
City Auditor

Re: Audit Report #11/12-04 – Compliance Review of the Bahia Mar Lease Agreement

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The City Auditor's Office (CAO) conducted a review of the City of Fort Lauderdale's management and oversight of the Bahia Mar Lease Agreement. The primary objective of this review was to evaluate the effectiveness of internal controls and procedures in place to ensure compliance with the lease terms. The City Manager's response to the overall conclusion below is attached as Exhibit A.

While the lease agreement between the parties has been in place since 1962, the CAO determined that during the years covered by our review there has essentially been no oversight of the lease terms by City staff. In our opinion, the complete lack of internal controls governing oversight and compliance with lease terms represents a material weakness.

The review consisted of an analysis of the City's "Amended and Restated Lease Agreement" with Rahn Bahia Mar. Ltd. (Bahia Mar), dated January 4, 1995 [see Exhibit B], interviews and inquiries of City management and staff, as well as a review of available financial records for the years 2006 through 2011.

To assist in the review, we created a matrix of significant terms for monitoring and compliance from the lease agreement. We found that the City had not assigned staff the responsibility for ensuring compliance in any of these areas. <u>As a result of our audit, City Management has now delegated contract management for the Bahia Mar lease to the Parks and Recreation Department's Real Estate Division.</u>

During the review, we also determined that Bahia Mar underpaid the City. The two discrepancies noted are as follows:

1. An overage payment in FY2007 in the amount of $5,303

2. A shortage in FY2008 in the amount of $75,002

We discussed the underpayment with the Bahia Mar staff. They agree with our calculation and are in the process of remitting a check for $69,699 [see Exhibit C].

We also noted that while rental payments are being recorded in the appropriate accounts on the City's books, staff has not ensured the accuracy of these payments. We found that the required supporting financial documentation has not been regularly requested, received, or reviewed. As a result, there was no way for staff to ascertain whether the rental payments that were received were accurate and in accordance with the lease terms.

Such assurance is contemplated in several parts of the lease.

Article 26, 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."

Article 28:

> "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."

In addition, staff failed to verify that the Capital Improvement Reserve Account (CIRA) is being properly funded and utilized.

Article 15:

> Capital Improvement Reserve Account states that, "…LESSEE shall monthly, on December 20th, set aside funds into the 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)". It further provides that expenditures shall be made from the CIRA only for Capital Improvements to the Property.

While it is clear that the City failed to administer the contract appropriately, it is also important to note that management made immediate changes to its oversight practices once it was brought to their attention.

Further, Bahia Mar staff have been extremely responsive in having their CPA firm issue the required audited consolidated financial statements of Baton Holdco II L.L.C. and Subsidiaries, which includes the Bahia Mar Statement of Capital Improvement Reserve Account Balance and Rollforward of Carry-Over Capital Improvement Credit [see Exhibit D].

Based upon our review of these documents, we determined that Bahia Mar is operating in accordance with Article 15 as stated in the preceding paragraph. The CIRA has a carryover capital improvement credit balance in the amount of $28,092,200, as of December 31, 2011.

Attachment(s)

cc: Lee R. Feldman, City Manager
Harry A. Stewart, City Attorney
Jonda K. Joseph, City Clerk
Stanley D. Hawthorne, Assistant City Manager
Susanne M. Torriente, Assistant City Manager

Exhibit A

CITY OF
FORT LAUDERDALE

Venice of America

Memorandum

Memorandum No: 12-024

Date: March 26, 2012

To: John Herbst, City Auditor

From: Lee R. Feldman, ICMA-CM, City Manager

Subject: Audit of Bahia Mar Lease Agreement

As discussed, I have reviewed the audit performed by your office of the Bahia Mar Lease Agreement and provide the following management comment:

> Management recognizes the deficiencies in the management of the Bahia Mar Lease. As noted, this task has been reassigned to the Parks and Recreation Department. That Department has proactively requested the CAO checklist in order that the checklist be utilized as a template for future monitoring.

Please let me know if you need any additional information.

C: Susanne M. Torriente, Assistant City Manager
Stanley D. Hawthorne, Assistant City Manager
Phil Thornburg, Parks & Recreation Department
Emilie Smith, Acting Budget Manager

OFFICE OF THE CITY MANAGER
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EQUAL OPPORTUNITY EMPLOYER

PRINTED ON RECYCLED PAPER

CURRENT LEASE

Exhibit B

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

EXHIBIT O

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.)

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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

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

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

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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

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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.

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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

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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.

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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

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.

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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

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:

Betsy H. Adams

Dorothy O'Leary

(CORPORATE SEAL)

CITY OF FORT LAUDERDALE

By _____
Mayor

By _____
City Manager

ATTEST:

_____
City Clerk

BK23168PG0300

Approved as to form:

Dennis E. Lyon
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

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)

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

"OFFICIAL NOTARY SEAL"
DOROTHY O'LEARY
MY COMM. EXP. 3/5/96

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

My Commission Expires: 3-5-95

088831
Commission Number

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

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)

Susan C. Ross
Notary Public
My Commission Expires:
SUSAN C. ROSS

RBD/BMarCons3 121594 1645

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. APR. 5,1996
BONDED THRU GENERAL INS. UND.

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

BK23168PG0303

C & [illegible] COMMERCE AND INDUSTRY INS[illegible]NCE COMPANY
[illegible] Pine Street, New York, [illegible] 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 : FPL5876475

Item 1: NAMED INSURED RAHN BAHIA MAR, LTD

ADDRESS 801 SEABREEZE BLVD
FT LAUDERDALE, FL 33316

Item 2: POLICY PERIOD: From JUN 30,1994 To JUN 30,1995 12:01 AM Standard 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:

IPTF :	ELIGIBLE	INELIGIBLE
Coverage A. Third-Party Liab	$ 500	$ N/A
Coverage B. Corrective Action	$ 300,000	$ 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, In[illegible]
317 Riveredge Blvd, P O Box 1947, Cocoa, Florida, 32923

DATE: DEC 8,1994

BY: Wendell Harris
Authorized Representative

57612 (6/93)

201589 ENDORSEMENT #1 Page 1

RAHN BAHIA MAR, LTD FPL5876475

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.F. 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

UK231001GU001

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

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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 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 employe cafeteria shall be reconfigured and expanded along with a fitting out 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.

6. <u>Waterfront Guestrooms</u>

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. <u>Ballroom & Restrooms</u>

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 accessibl and equipped bathroom.

8. <u>Lobby & Meeting Rooms</u>

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. <u>Tower Elevators</u>

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.

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.

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.

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EXHIBIT "D"

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 "B"

Legend	Current Tenant	Sq. Ft.	Annual Rent
1	Carrazza, Inc.	1,796	$ 61,064
2	Feadship 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

EXHIBIT "E"

EXHIBIT "F"

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

Exhibit C

Gloria LeClaire

From: Chieffo, Cindy <cchieffo@luxuryresorts.com>
Sent: Thursday, June 28, 2012 9:59 AM
To: Gloria LeClaire
Cc: mfinocchiaro@luxuryresorts.com; Douglas Wood; John Herbst; Marco Hausy; Lucretia Penrow
Subject: Re: FW: Bahia Mar contract payements for the City of Fort Lauderdale

Hi Gloria,

We did agree with your findings and we are processing the payment this week. We will mail the check in accordance with your directions below.

Thank you,
Cindy

On Thu, Jun 28, 2012 at 9:35 AM, Gloria LeClaire <GLeClaire@fortlauderdale.gov> wrote:

Hello Mary Jo and Cindy,

You may send the net payment in the amount of $69,699 to the attention of the Finance Director, Douglas Wood. He is being copied on this email and his address is as follows:

City of Fort Lauderdale

100 N. Andrews Avenue, 6th floor

Fort Lauderdale, FL 33301

If you agree with our findings please let us know so this receipt may be booked directly to revenue. If you do not agree, we will escrow the amount until you have time to discuss further.

When you get back from your business trip please give me a call to discuss this issue in greater detail.

With much appreciation,

Gloria LeClaire

City Auditor's Office

Assistant City Auditor II

954-828-4561

From: Mary Jo Finocchiaro [mailto:mfinocchiaro@luxuryresorts.com]
Sent: Wednesday, June 27, 2012 8:53 PM
To: Gloria LeClaire
Cc: cchieffo@luxuryresorts.com

Subject: Re: Bahia Mar contract payements for the City of Fort Lauderdale

Hello Gloria. I wanted to let you know that I am traveling on business the next couple days but my colleague and Chief Accounting Officer Cindy Chieffo is coordinating the payment for the lease trup up for the net amount you conveyed below. Please let her know who the check should be sent to the attention of.

Thank you.

From: Gloria LeClaire [mailto:GLeClaire@fortlauderdale.gov]
Sent: Monday, June 25, 2012 09:36 AM
To: Finocchiaro, Mary Jo <mfinocchiaro@luxuryresorts.com>
Cc: Marco Hausy <MHausy@fortlauderdale.gov>
Subject: RE: Bahia Mar contract payements for the City of Fort Lauderdale

Hello Mary Jo,

I was out of the office on Friday. Please feel free to contact me with any questions.

Respectfully,

Gloria LeClaire

City Auditor's Office

Assistant City Auditor II

954-828-4561

From: Finocchiaro, Mary Jo [mailto:mfinocchiaro@luxuryresorts.com]
Sent: Thursday, June 21, 2012 5:14 PM
To: Gloria LeClaire
Cc: Marco Hausy
Subject: Re: Bahia Mar contract payements for the City of Fort Lauderdale

Hello Gloria. I apologize for the delay in responding back as I have been traveling on business. I am following up and will be back to you promptly regarding the two items identified below.

On Mon, Jun 18, 2012 at 10:35 AM, Gloria LeClaire <GLeClaire@fortlauderdale.gov> wrote:

Good morning MaryJo,

Hope this email finds you doing well.

My name is, Gloria LeClaire, and I am a recent addition to the City's Audit Office. We are trying to bring closure to the Bahia Mar review. With that said, we find two receipts that do not appear to be in accordance to the lease agreement.

The two discrepancies listed on the attached report are as follows:

1. An overage payment in FY2007 for the amount of $5303

2. A shortage in FY2008 for the amount of $75,002

Please contact me to discuss any details if necessary.

Thank you for your assistance in this matter.

Gloria LeClaire

City Auditor's Office

Assistant City Auditor II

954-828-4561

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Exhibit D

RAHN BAHIA MAR LLC (formerly Rahn Bahia Mar Ltd)
dba Bahia Mar Beach Resort & Yachting Center

STATEMENT OF CAPITAL IMPROVEMENT RESERVE ACCOUNT BALANCE AND ROLLFORWARD OF CARRY OVER CAPITAL IMPROVEMENT CREDIT PURSUANT TO ARTICLE 15 OF AMENDED AND RESTATED LEASE AGREEMENT BY AND AMONG CITY OF FORT LAUDERDALE AND RAHN BAHIA MAR LTD FOR THE YEAR ENDED DECEMBER 31, 2011

Capital improvement reserve account balance, January 1, 2011	$ -
Carryover capital improvement credit, January 1, 2011	$24,724,869
Capital improvement reserve account balance, December 31, 2011	$ -
Carryover capital improvement credit, December 31, 2011	$28,092,200
Carryover capital improvement credit, January 1, 2011	$24,724,869
Deduct — required capital improvements equal to 3% of gross operating revenue	762,565
Add — actual capital improvements	4,129,896
Carryover capital improvement credit, December 31, 2011	$28,092,200

The capital improvements of $4,129,896 consist of $579,590 for master plan entitlements, $3,377,371 in room renovations and $172,935 of other improvements.

Pg 1/1

LUCRETIA/VERONICA

REORDER 805 • U.S. PATENT NO. 5538290, 5575508, 5641183, 5785353, 5984364, 6030000

DATE	06/29/2012	CHECK NUMBER	028322

INVOICE NUMBER	INVOICE DATE	DESCRIPTION	GROSS AMOUNT	DISCOUNT	NET AMOUNT
11146310	06/26/2012	Vchr: VOU001732052	$69,992.74	$0.00	$69,992.74

PRINT BATCH	VENDOR CODE	PAY TO NAME	NET TOTAL
24,319	CITYO00003	CITY OF FORT LAUDERDALE	$69,992.74

THIS CHECK IS VOID WITHOUT A 30. ORED BORDER AND BACKGROUND PLUS A KNIGHT & FINGERPRINT WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

WHM LLC
Baton Holdco II LLC
501 E. Camino Real
Boca Raton, Florida 33432

VOID

BANK OF AMERICA
Void After 180 Days

32-1/1110

DATE	06/29/2012	CHECK NUMBER	028322

PAY Sixty-nine thousand nine hundred ninety-two and 74 / 100 Dollars Only **********

VOID

AMOUNT	$69,992.74

TO THE ORDER OF CITY OF FORT LAUDERDALE

PO BOX 14250
FORT LAUDERDALE, FL 33302

AUTHORIZED SIGNATURE

⑈028322⑈ ⑆111000012⑆ 4426492900⑈

Fiscal Year	Trans Post Date		Index Code	Subobject	Transaction Amount		Transaction Desc	Bahia Mar 09/30/XXXX	Gross Operating Revenue "GOR", As Defined	4%	Bahia Mar Underpaid (Overpaid)
2006	Oct 10, 2005		FIN040301	N350	(75,000)	A	CASH RECEIPTS 10072005				
2006	Aug 3, 2006	N4	FIN040301	N350	(75,000)	A	REFLECTING 1ST QTR RENTAL PAYMENT -1/9/06 BAHIA MA				
2006	Apr 7, 2006		FIN040301	N350	(75,000)	A	CR040606- QUARTLEY RENT				
2006	Jul 7, 2006		FIN040301	N350	(75,000)	A	CR070606- RIDISSON BAHIA MAR RENT				
2007	Jan 22, 2007		FIN040301	N350	(816,052)	A	CR011907- BAHIA MAR				
					(1,116,052)	**A Total**		2006	27,901,302	1,116,052	-
2007	Apr 4, 2007	N3	FIN040301	N350	(75,000)	B	CR040307- 4TH QUARTER 06				
2007	Apr 4, 2007	N3	FIN040301	N350	(75,000)	B	CR040307- 1ST QUARTER 07				
2007	Apr 4, 2007	N3	FIN040301	N350	(75,000)	B	CR040307- 2ND QUARTER 07				
2007	Aug 15, 2007		FIN040301	N350	(75,000)	B	CR081407- QUARTERLY RENT				
2008	Jan 22, 2008		FIN040301	N350	(967,878)	B	CR011808- QUARTLERLY + ACCRUED CITY RENT 10/06-9/0				
					(1,267,878)	**B Total**		2007	31,564,381	1,262,575	(5,303)
2008	Oct 17, 2007		FIN040301	N350	(75,000)	C	CR101607- QUARTERLY RENT				
2008	Jan 7, 2008		FIN040301	N350	(75,000)	C	CR010408- QUARTERLY RENT RAD BAHIA MAR				
2008	Apr 7, 2008		FIN040301	N350	(75,000)	C	CR040408- QUARTERLY RENT				
2008	Jul 2, 2008		FIN040301	N350	(75,000)	C	CR063008- RADISSON QRTLY RENT				
2009	Dec 26, 2008		FIN040301	N350	(873,987)	C	CR122408- BAHIA MAR ANNUAL TRUE-UP 10/07-9/08				
					(1,173,987)	**C Total**		2008	31,224,715	1,248,989	75,002
2009	Oct 12, 2008		FIN040301	N350	(75,000)	D	CR100908- BAHIA MAR QUARTERLY RENT OCT-DEC 08				
2009	Dec 30, 2008		FIN040301	N350	(75,000)	D	CR122908- BAHIA MAR QUARTERLY RENT JAN 09 - MARCH				
2009	Apr 3, 2009		FIN040301	N350	(75,000)	D	CASH RECEIPTS 04022009				
2009	Jul 2, 2009		FIN040301	N350	(75,000)	D	CR070109- QUARTERLY RENT JULY 09-AUG. 09				
2010	Feb 16, 2010		FIN040301	N350	(746,941)	D	CR021510- BAHIA MAR ANNUAL TRUE-UP 10/08-9/09				
					(1,046,941)	**D Total**		2009	26,173,531	1,046,941	-
2010	Oct 9, 2009		FIN040301	N350	(75,000)	E	CR100809- BAHIA MAR QUARTERLY RENT SEPT 09 - NOV 0				
2010	Jan 12, 2010		FIN040301	N350	(75,000)	E	CR011110- BAIA MAR 1/ RENT DEC 09-FEB 10				
2010	Apr 1, 2010		FIN040301	N350	(75,000)	E	CR033110- BAHIA MAR 1/4 RENT MARCH 09-MAY 10				
2010	Jul 9, 2010		FIN040301	N350	(75,000)	E	CR070810- MISC REVENUE COLL				
2011	Jan 11, 2011		FIN040301	N350	(668,540)	E	CR011011- MISC REVENUE COLL				
					(968,540)	**E Total**		2010	24,213,490	968,540	-
2011	Oct 15, 2010		FIN040301	N350	(75,000)	F	CR101210- MISC REVENUE COLL				
2011	Dec 30, 2010		FIN040301	N350	(75,000)	F	CR122910- MISC REVENUE COLL				
2011	Apr 6, 2011		FIN040301	N350	(75,000)	F	CR040511- MISC REVENUE COLL				
2011	Jul 1, 2011		FIN040301	N350	(75,000)	F	CR063011- MISC REVENUE COLL				
2012	Jan 12, 2012		FIN040301	N350	(616,989)	F	CR011112- BAHIA MAR ANNUAL TRUE-UP 10/10 - 09/11				
					(916,989)	**F Total**		2011	22,924,743	916,990	1

Total due for fiscal years 2006 -2011	6,560,087
Payments made for fiscal years 2006 -2011	(6,490,387)
Amount due - True up	69,700.00
Sales Tax Due - 4.2% Rate	292.74
Total Due	**69,992.74**

Bahia Land Lease Payment Due based on 09/30/11 audit results