



## Memorandum

**Memorandum No: 21-001**

**Date:** January 5, 2021

**To:** Honorable Mayor and Commissioners

**From:** Chris Lagerbloom, ICMA-CM, City Manager

**Subject:** Supplemental Information for the Las Olas Marina Conference Presentation

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In advance of the Commission Conference presentation on the Las Olas Marina, below is information pertaining to the history of the ground lease amendments and general information on the other required agreements. These items outline the negotiated terms versus proposed terms for the Suntex Marina and items currently under review.

**Ground Lease Key Terms (CAM 17-0867: Approved):**

The original ground lease was approved by the Commission on July 11, 2017 and included the following key terms:

- The lease term will commence on the Commencement Date and continue for fifty (50) years plus such length of time, not to exceed five (5) years, to complete construction of Lessee improvements for the Demised Premises
- Las Olas SMI, LLC (Suntex) will be given possession of the Demised Premises after the lease is approved by the City Commission, the State of Florida, and certain pre-development approvals are completed by Las Olas SMI, LLC to the satisfaction as determined by the City Manager
- Las Olas SMI, LLC is to contribute no less than \$19,425,063 toward the cost of the initial improvements of the development. The new marina facility will consist of 7,000 linear feet, a newly constructed waterfront support facility - containing a ship store, boat, and boater services - a casual dining restaurant, ancillary retail and hospitality services, and a primary fine dining restaurant.
- The structure of the lease rent is broken into two periods: Initial Base Rent Period and Subsequent Base Rent Period. During the Initial Base Rent Period, the City will collect \$550,000 from the period commencing on the Commencement Date and expiring on the date of substantial completion of the initial improvements. The lessee agrees to diligently pursue the substantial completion of the initial improvements on or before the fourth anniversary of the commencement date. Following the initial completion date, the City will collect the base rent amount of \$1,000,000 annually during the Subsequent Base Rent Period. During the

Subsequent Base Rent Period, but not before, the Base Annual Rental shall increase ten percent every five (5) years beginning on the first day of the second (2<sup>nd</sup>) lease year following the commencement of the Subsequent Base Rent Period.

- In addition to Base Annual Rental, Lessee shall also pay throughout the Lease Term Percentage Rent determined by multiplying the total Gross Sales in or from the demised premises during the particular lease year by the percentage rental rates by revenue source type

**Ground Lease First Amendment (CAM 19-0394: Approved)**

The First Amendment to the Ground Lease was approved by Commission on April 2, 2019 to extend the pre-developmental period through December 31, 2019. These changes modified the effective date and the pre-development period.

**Ground Lease Second Amendment (CAM 19-0708: Approved)**

The Second Amendment to the Ground Lease was approved by Commission on July 9, 2019 with the following provisions:

- Replace the rendering previously approved by the City Commission under Resolution 16-180 known as "Alternate C-3" with a new site plan known as "Alternate Proposal Site D." Alternate Proposal Site D shall be subject to further modification in accordance with the review and approval of the Site Plan by the City and its applicable subdivisions as provided in the Lease and other applicable Governmental Regulations including the Unified Land Development Regulations.
- During Commission meeting, the City Commission added the conditions to the Site Plan requirements including the confirmation of the trip count, that there be a phasing plan to minimize interference with The Boat Show during construction, the applicant works with the City regarding Las Olas Circle and Birch Road widening, the road widening at Las Olas Circle and Birch Road should be eleven (11) feet, the addition of a right-turn lane to provide a right-turn lane at Birch and Las Olas Circle, and the relocating of utilities on the northeast side of the Garage farther south on Birch Road in order to capture enough area to provide a right-turn lane at Birch and Las Olas Circle.

**Ground Lease Third Amendment (CAM 19-1195: Approved)**

The Third Amendment to the Ground Lease was approved by Commission on December 3, 2019 with the following provisions:

- Extends the timeframe for finalizing a Parking Agreement between Suntex and the City for use of the Las Olas Parking Garage and execution of a long-term agreement between Suntex and the Marine Industries Association of South Florida, Inc. regarding the Fort Lauderdale International Boat Show from

December 31, 2019 to April 1, 2020

- Moves the completion date for the certain requirements from on or before the end of the Pre-Development Period (December 31, 2019) to on or before the end of the Construction Approvals Period as defined in the lease (May 2, 2021):
- Delays the start of the Commencement Date, date of Possession, and Initial Base Rent Period until the completion of all Pre-Development Approvals, execution of an assignment and assumption agreement, and approval of the sublease to Sovereignty Submerged Land Lease with the State of Florida Trustees of the Internal Improvement Trust Fund, effectively on or before May 2, 2021.

#### **Ground Lease Fourth Amendment (Under Review)**

The Fourth Amendment to the Ground Lease is currently under review by the City Manager and City Attorney. Suntex has provided new business terms and legal changes, of which, have not been accepted by the City at this time. The key terms of the proposed fourth amendment include:

- Amends the definitions of Demised Area, Lease Terms, Permitted Use, and creates a definition for Wayfinding Signage
- Amends the language so that Suntex is responsible for securing approval from the Trustees of the Internal Improvement Trust Fund (TIITF), for the issuance of a Submerged Land Lease directly between the State and Suntex
- Amends language related to Percent Rent so that any monies paid to Portofino will be a dollar-for-dollar credit with the City
- Changes TIITF rent conditions
- Creates language for Limited Right to Offset and conditions that if City does not perform then Suntex can take unilateral action.

In addition to the Ground Lease, the City is reviewing other agreements that are required to advance the project. All these items, with exception of the Parking Agreement, are under review by the City Manager and City Attorney. The business terms have not been accepted by the City at this time, nor has a final legal review been completed:

#### **Parking Agreement (CAM 20-0258: Approved)**

The Parking Agreement was approved on July 7, 2020 providing Suntex with up to 215 reserved spaces and 100 general permits. The associated potential annual revenue is \$153,750 if Suntex elects to utilize all 315 spaces. The City maintained control of the daily operations and the entire garage for City special events.

#### **FDEP Approval (Under Review)**

The State of Florida conditionally approved the Suntex application on September 22, 2020. The City of Fort Lauderdale was not included in the application process nor in detailed discussions. As part of the Suntex application, Suntex negotiated annual payments of 15% of net profits or \$110,000, whichever is greater, plus 6% of all wet slip rental value. At this time, the City does not have sufficient information to analyze the annual impacts of this proposal and have requested additional information from Suntex.

**Revocable License (Under Review)**

Using the standardized revocable license template, this agreement outlines the impact on the Right-of-Way during the construction period. It highlights the five phases of the maintenance of traffic plan, the parking mitigation requirements, and includes standard inspection, utility, and building code provisions.

**Procurement Waiver (Under Review)**

City staff is recommending that the Commission waive the procurement rules so that Suntex can oversee, manage, and ensure completion of the construction of the D-31 pump station and dedicated turn lane.

**D-31 Lift Station (Under Review)**

The D-31 lift station needs to be relocated due to the marina site plan and the pump components need to be replaced as it is nearing end of life. The City is splitting the cost of the relocation and replacement with the City responsible for \$2,500,000 and Suntex \$400,000. In addition, we are negotiating an overage contingency cap of \$250,000 (split 50/50) should there be any unforeseen expenditures due to unknown risks. Once the work is completed, the City will own, operate, and maintain the lift station.

**Turn Lane Modification (Under Review)**

The turn lane modification adds a dedicated right-hand turn lane at Birch and Las Olas Circle. The cost is estimated at \$100,000 and Suntex is responsible for funding, designing, permitting, and constructing the improvements. The plat will need amended due to an existing Non-Vehicular Access Line (NVAL). The City will be responsible for amending the NVAL, through the County, while Suntex proceeds with the project in a parallel path.

For further information on the Las Olas Marina initiative, please contact Ben Rogers, Director of Transportation and Mobility, at [brogers@fortlauderdale.gov](mailto:brogers@fortlauderdale.gov).

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