

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A FIFTH AMENDMENT OF LEASE FOR EXTENDED SUBMERGED MARINA PREMISES BETWEEN THE CITY AND LEISURE RESORTS, LLC, TO ALLOW FOR A TERM EXTENSION UNDER CERTAIN CONDITIONS; AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, City of West Palm Beach (“City”) and Leisure Resorts, LLC (“Leisure”) entered into a Lease for Extended Submerged Marina Premises made and executed the first day of April 2009 and recorded in the Official Records of Palm Beach County, Florida, at Official Records Book 23173, Page 1778, which expires on March 31, 2109, (the “Original Lease”); and

WHEREAS, on July 12, 2010, City and Leisure executed a First Amendment of Lease for Extended Submerged Marina Premises recorded via that certain Lease Certification Affidavit executed by Cheryl A. Chase, the manager of Lessee, in the Official Records of Palm Beach County, Florida, at Official Records Book 25958, Page 0009 (“First Amendment”); and

WHEREAS, on March 14, 2013, City and Leisure executed a Second Amendment of Lease for Extended Submerged Marina Premises recorded via that certain Lease Certification Affidavit executed by Cheryl A. Chase, the manager of Lessee, in the Official Records of Palm Beach County, Florida at Official Records Book 25958, Page 0013 (“Second Amendment”); and

WHEREAS, on October 27, 2015, City and Leisure executed a Third Amendment of Lease for Extended Submerged Marina Premises recorded with that certain Notice Of Correction Of Scrivener’s Error and Recording Of Lease Amendments For Extended Submerged Lands in the Official Records of Palm Beach County, Florida at Official Record Book 34815, Page 1200 (“Third Amendment”);

WHEREAS, on or about February 17, 2016, City and Leisure executed a Fourth Amendment of Lease for Extended Submerged Marina Premises recorded in the Official Records of Palm Beach County, Florida, at Official Records Book 28434, Page 0981 (“Fourth Amendment”); and

WHEREAS, on or about February 1, 2024, City and Leisure executed a Corrected Fourth Amendment Of Lease For Extended Submerged Premises which was recorded with that certain Notice Of Correction Of Scrivener’s Error and Recording Of Lease Amendments For Extended Submerged Lands in the Official Records of Palm Beach County, Florida at Official Record Book 34815 Page 1200 (the “Corrected Fourth Amendment”)(collectively, the Extended Lease, First Amendment, Second Amendment, Third Amendment, Fourth Amendment and Corrected Fourth Amendment are referred to herein as the “**Extended Lease**”); and

ORDINANCE NO. 5120-24

WHEREAS, there is pending litigation relating to the leased property more specifically identified as follows: i) *The Waterview Towers Condominium Association, Inc., et al. v. Leisure Resorts, LLC and City of West Palm Beach*, in the Circuit Court in the Fifteenth Judicial Circuit in and for Palm Beach County, Case No. 502015CA010806 XXX MB AE; ii) *The Waterview Towers Condominium Association, Inc., et al. v. City of West Palm Beach and Palm Harbor Hotel, LLC*, in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Case No. 502014CA005009 XXXMB AG, and iii) *The Waterview Towers Condominium Association, Inc., et al. v. City of West Palm Beach*, in the Circuit Court in the Fifteenth Judicial Circuit in and for Palm Beach County, Case No. 502015CA011999XXX MB AD; and

WHEREAS, to resolve the pending litigation and any issues that have or could be brought related to the pending litigation City, Leisure, and The Waterview Towers Condominium Association, Inc., (“Waterview”) attended mediation; and

WHEREAS, on August 15, 2024, Waterview and City executed a Non-Binding Mediation Term Sheet attached hereto (the “Term Sheet”) wherein Waterview and City agreed to settle all claims and damages arising out of or that could have been raised in the pending litigation; and

WHEREAS, the Term Sheet requires, among other things, that the City agree to a one 50-year extension of the term of the Consolidated and Amended Lease between the City and Waterview (“Consolidated Lease”) which includes the uplands and a portion of the sovereign submerged land not included in the Extended Lease which will extended term of the Lease From May 9, 2073 to May 9, 2123; and

WHEREAS, the fifth amendment to the Extended Lease acknowledges that the Consolidated Lease term is longer than the term of the State Lease and requires that the City use diligent efforts to modify the State Lease to have the State Lease expire on May 9, 2123, and removes City’s right to require Leisure to assign or transfer all Lessee’s right, title and interest in the Lease to the City on the eightieth anniversary; and

WHEREAS, the City desires to modify the Extended Lease as proposed in the Term Sheet;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, THAT:

SECTION 1: The City Commission hereby approves and authorizes the Mayor to execute the Fifth Amendment of Lease for Extended Submerged Marina Premises between the City and Leisure Resorts, LLC, in form and substance similar to that attached hereto as **Exhibit A** upon the effective date of this Ordinance.

SECTION 2: The Mayor is authorized to execute three (3) originals each of the Fifth Amendment of Lease. Execution by the Mayor shall occur upon receipt of three (3) originals of each document duly executed by Leisure Resorts, LLC.

SECTION 4: One fully-executed original each, of the Fifth Amendment of Lease, shall be retained by the City Clerk as a public record. The City Clerk shall record one (1) fully-executed original, of the Fifth Amendment of Lease, in the Public Records of Palm Beach County. Two fully-executed originals, of the Fifth Amendment of Lease shall be forwarded to the City Attorney for forwarding to Leisure Resorts, LLC for their records.

SECTION 5: This Ordinance shall take effect 31 days after final passage and shall be subject to the initiative process set forth in the City Charter.

**FIRST READING THIS 12TH DAY OF NOVEMBER, 2024.
SECOND READING AND PASSAGE THIS 21ST DAY OF JANUARY, 2025.**



ATTEST:

X *Shaquita Edwards*

CITY CLERK
Signed by: Shaquita Lashae Edwards

**CITY OF WEST PALM BEACH BY
ITS CITY COMMISSION:**

X *Keith A. James*

PRESIDING OFFICER
Signed by: Keith A. James

**APPROVED AS TO FORM AND
LEGALITY:**

1/22/2025

X *Kimberly L. Rothenburg*

CITY ATTORNEY
Signed by: Kimberly L Rothenburg

EXHIBIT A

NON-BINDING MEDIATION TERM SHEET

THE WATERVIEW TOWERS CONDOMINIUM ASSOCIATION, INC. (“Waterview”) and the CITY OF WEST PALM BEACH (the “City”), (collectively, the “Parties”), are engaged in mediation and wish to memorialize the following terms that they have negotiated and intend in good faith to proceed forward to draft all documents referenced in this Non-Binding Mediated Term Sheet (“Term Sheet”) and to submit a Final Settlement Agreement to their respective Boards for consideration and finalize and execute the documents necessary to implement a settlement as soon as reasonably possible should the Boards approve same after consideration, with the following terms and conditions:

1. **Dismissals.** Waterview and the City would agree to a joint stipulation for dismissal with prejudice and orders of dismissal with prejudice in the three remaining cases where claims exist: Case No. 2015CA10806 (the “Marina Case”); Case No. 2014CA5009 (the “Hotel Case”); and Case No. 2015CA11999 (the “Text Change Case”) and will exchange mutual specific releases, in a form acceptable to Waterview and the City, relating to the claims between Waterview and the City in those matters.

2. **Lease Extension.** The City would agree to one 50-year extension of the term of the Consolidated and Amended Lease dated June 11, 1979 as amended to date (the “Master Lease”), wherein the first year of rent of the extended term shall be equal to the rent to be paid in the last year of the current term of the Master Lease, and with rent increasing at the rate of 1.5% per year of the extended term as will be provided in an amendment to the Master Lease.

3. **Rent Credit.** The City would apply a credit in the cumulative total amount of \$2,500,000 to future rent due from Waterview for the Residential Portion and Common Element areas under the Master Lease. The credit would be applied beginning with the payment due October 1, 2025 under the Master Lease.

4. **Non-Exclusive Walkway Easement.** Waterview would grant to the City, for the benefit of the general public solely for pedestrian use, a non-exclusive easement to the portion of the walkway which presently exists (running north to south and immediately to the west of the portion of Unit C-1 adjacent to the existing seawall) and constitutes a portion of the Common Elements (the “Walkway”), under conditions to be agreed upon by the parties relating to use, access, and security provisions/measures to be specifically stated in an easement instrument, Master Lease Amendment, and/or Final Settlement Agreement (whichever is appropriate and necessary) to be negotiated and created in order to implement this provision.

5. **Walkway Expansion and Dog Park.** Waterview would agree that the City may utilize the Common Elements areas to construct (at the sole cost and expense of City) an extension of the Walkway from its current north terminus point to connect with the public right of way that is part of the Flagler Memorial Bridge (“Walkway Extension”) under conditions to be agreed upon by the parties, including with regard to the relocation of a dog park with acceptable safety, security, and access provisions.

6. **Beautification Funds.** The City would agree to provide reimbursement up to \$25,000 for beautification funds to address reasonable landscaping on the Waterview property to replace landscaping damaged by construction when the Flagler Memorial Bridge was built.

7. **Garage Expansion.** The City would agree to support, in its proprietary capacity, all necessary approvals for the extension or expansion of the existing garage on the north side of the Waterview property, provided such plans comply with the lease provisions (including conceptual approvals required thereunder) and zoning and land development regulations or obtain necessary variances or waivers. Notwithstanding anything to the contrary, nothing contained in this Term Sheet shall in any way limit or impair the City from exercising or performing any regulatory, policing, legislative, governmental or other powers or functions derived under applicable law. Nor shall anything in this Term Sheet constitute or imply approval or special handling and/or consideration for or exemption from any permit by the planning, zoning, building or other regulatory authorities of the City of West Palm Beach.

8. **Curb Cuts.** In conjunction with development of the Unit C-2 property in accordance with the 1/1/2023 Settlement Agreement between Waterview and Leisure Resorts, LLC, (“Leisure”), Waterview requests the City support in its proprietary capacity as lessor under the Master Lease, Leisure’s request for approval of two additional curb cuts for ingress/egress from the Unit C-2 property to North Flagler Drive. Assuming that the curb cuts obtain the requisite engineering and site plan approvals, City will agree to support in its proprietary capacity the (2) additional curb cuts as part of its site plan review for the development of the Unit C-2. The site plan for development of the Unit C-2 shall also be subject to the City Commission’s review in its propriety capacity as provided in the Master Lease. The curb cuts are inextricably intertwined with the development of the Unit C-2 and will not be considered separately. Notwithstanding anything to the contrary, nothing contained in this Term Sheet shall in any way limit or impair the City from exercising or performing any regulatory, policing, legislative, governmental or other powers or functions derived under applicable law. Nor shall anything in this Term Sheet constitute or imply approval or special handling and/or consideration for or exemption from any permit by the planning, zoning, building or other regulatory authorities of the City of West Palm Beach.

9. **Mutual Releases Between City and Waterview.** The parties will agree to exchange of mutual specific releases regarding the claims raised and any and all claims that may have been raised in the Marina Case, the Hotel Case, and the Text Change Case. The form of the release will be negotiated between the parties.

10. **Separate Undertakings Between Leisure and the City.** As the City and Waterview work to draft and submit proposed documents for consideration by their Boards, the parties acknowledge that the City and Leisure will simultaneously work to resolve issues and disputes between the City and Leisure, including those issues relating to the curb cut referenced in Paragraph 8; an extension of the Lease for Extended Submerged Premises dated April 1, 2009, as amended, to date, between them; and the exchange of mutual specific releases regarding the claims raised in the Marina Case, the Hotel Case, and the Text Change Case and any claims that either would have against the other if Waterview had prevailed in those lawsuits. The City asserts that it engaged in Mediation based on the understanding that the City is seeking a global resolution of all claims brought by all parties and those claims that could be brought by the parties related to the pending litigation (including those who have settled their claims with Waterview). Waterview

acknowledges this is the City's position, but does not agree with this position, and asserts that it reserves all rights to pursue any and all claims against the City in the event that the settlement outlined in this Term Sheet is not finalized for any reason, including the City's failure to reach an agreement with Leisure. The City, likewise, reserves all rights to pursue any and all claims it may have in the event that the settlement outlined in this Term Sheet is not finalized for any reason.

11. **Dismissal of and Release by Named Plaintiffs.** The parties acknowledge that Gerald Waldman, John Gildea, Laura Bennet, Helen Bossman, and Thomas J. O'Neill are named Plaintiffs in pending litigation. The parties agree that settlement of the litigation requires dismissal by all Plaintiffs with prejudice of Case No. 2015CA10806 (the "Marina Case"); Case No. 2014CA5009 (the "Hotel Case"); and Case No. 2015CA11999 (the "Text Change Case") and specific releases by all Plaintiffs related to the litigation to be negotiated by the parties.

12. **Execution of the Non-Binding Mediated Term Sheet.** The signature of the City Administrator and/or the City Attorney on this Term Sheet signifies that the terms set forth herein have been negotiated and reviewed by the City Administrator and the City Attorney. There is no intent to be bound by the terms in the Term Sheet until a formal written settlement agreement and all documents referenced herein are fully negotiated and agreed to by the parties and presented to their respective boards and if approved by the boards, all fully negotiated documents are fully executed. The only obligation agreed to by the City Administrator and/or the City Attorney by execution of this Term Sheet is to bring the final documents prepared in accordance with the Term Sheet and the final terms of settlement prepared in accordance with this Term Sheet to the City Commission for its consideration.


13. Each party agrees to pay its respective attorney's fees and costs.

14. **Finalization of All Documents Necessary for Complete Resolution.** Each of the terms contained in this Term Sheet are material to final settlement of the Marina Case, the Hotel Case, and the Text Change Case. The parties intend to negotiate and draft the Final Settlement Agreement and all documents needed to implement the final settlement agreement for submission to their respective Boards for consideration. None of the parties to this Term Sheet waive their rights to pursue all legal remedies available should the parties be unable to negotiate acceptable terms for each of the required documents. Should negotiations of any of the documents outlined

INTENTIONAL PAGE BREAK

in this Term Sheet fail, then the parties are not obligated to continue to negotiate or to implement any of the other terms contained in this Term Sheet.

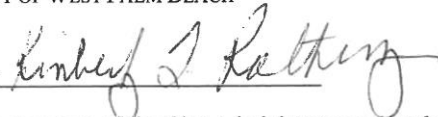
THE WATERVIEW TOWERS
CONDOMINIUM ASSOCIATION, INC.

By 


Its _____

Date: _____

CITY OF WEST PALM BEACH

By 

The signature of the City Administrator and/or the City Attorney on this term sheet signifies that the terms set forth herein have been negotiated and reviewed by the City Administrator and the City Attorney. The only obligation agreed to by the City Administrator and/or the City Attorney by execution of this Mediated Term Sheet is to bring the final documents prepared in accordance with the Mediated Term Sheet and the final terms of settlement prepared in accordance with this Mediated Term Sheet to the City Commission for its consideration.

^{as}
Its 

Date: 8/15/24

THIS INSTRUMENT WAS PREPARED BY
AND SHOULD BE RETURNED TO:
City Attorney's Office
City of West Palm Beach
P. O. Box 3366
West Palm Beach, FL 33402-3366
WPB No . 01896.018

**FIFTH AMENDMENT OF LEASE
FOR EXTENDED SUBMERGED MARINA PREMISES**

This Fifth Amendment of Lease is made as of the ____ day of _____, 2025 by and between the **CITY OF WEST PALM BEACH**, a municipal corporation (the "Lessor"), and **LEISURE RESORTS, LLC**, a Delaware limited liability company authorized to do business in the State of Florida (the "Lessee").

W I T N E S S E T H :

WHEREAS, Lessor and Lessee entered into a Lease for Extended Submerged Marina Premises made and executed the first day of April 2009 and recorded in the Official Records of Palm Beach County, Florida, at Official Records Book 23173, Page 1778, (the "Original Lease"); and

WHEREAS, on July 12, 2010, Lessor and Lessee executed a First Amendment of Lease for Extended Submerged Marina Premises recorded via that certain Lease Certification Affidavit executed by Cheryl A. Chase, the manager of Lessee, in the Official Records of Palm Beach County, Florida, at Official Records Book 25958, Page 0009 ("First Amendment"); and

WHEREAS, on March 14, 2013, Lessor and Lessee executed a Second Amendment of Lease for Extended Submerged Marina Premises recorded via that certain Lease Certification Affidavit executed by Cheryl A. Chase, the manager of Lessee, in the Official Records of Palm Beach County, Florida at Official Records Book 25958, Page 0013 ("Second Amendment"); and

WHEREAS, on October 27, 2015, Lessor and Lessee executed a Third Amendment of Lease for Extended Submerged Marina Premises recorded with that certain Notice Of Correction Of Scrivener's Error and Recording Of Lease Amendments For Extended Submerged Lands in the Official Records of Palm Beach County, Florida at Official Record Book 34815, Page 1200 ("Third Amendment");

WHEREAS, on or about February 17, 2016, Lessor and Lessee executed a Fourth Amendment of Lease for Extended Submerged Marina Premises recorded in the Official Records of Palm Beach County, Florida, at Official Records Book 28434, Page 0981 ("Fourth Amendment"); and

WHEREAS, on or about February 1, 2024 Lessor and Lessee executed a Corrected Fourth Amendment Of Lease For Extended Submerged Premises which was recorded with that certain Notice Of Correction Of Scrivener's Error and Recording Of Lease Amendments For Extended Submerged Lands in the Official Records of Palm Beach County, Florida at Official Record Book 34815 Page 1200 (the "Corrected Fourth Amendment")(collectively, the Original Lease, First Amendment, Second Amendment, Third Amendment, Fourth Amendment and Corrected Fourth Amendment are referred to herein as the "**Extended Lease**")

WHEREAS, Lessor and The Waterview Towers Condominium Association, Inc. have agreed to and are pursuing an amendment to the Consolidated Lease (as defined in the Extended Lease) which includes the upland and the portion of the submerged land owned by the City of West Palm Beach. The amendment will extend the term of the Consolidated Lease to May 10, 2123; and

NOW THEREFORE, in consideration of one dollar and other good and valuable consideration, the parties agree to modify the terms of the Extended Lease as follows:

1. Article I – Representation and Warranties, Section 5 – is amended as follows:

Section 5. Lessee acknowledges to the extent that the Consolidated Lease encumbers sovereignty submerged land owned by the State, the Consolidated Lease and this Lease are subordinate to the Sovereignty Submerged Lands Lease executed between Lessor and the State of Florida, Board of Trustees of the Internal Improvement Trust Fund (the "State") executed by Lessor on March 5, 2009 and State on March 11, 2009, recorded in Official Record Book 23125, Page 585 of the Public Records of Palm Beach County, Florida, as amended by that certain Sovereignty Submerged Lands Lease Modification to Increase Square Footage and Current Structures between Lessor and State executed by Lessor on March 5, 2009 and State on March 11, 2009, recorded in Official Record Book 23125, Page 615 of the Public Records of Palm Beach County, Florida as amended to date, by which Lessor obtains the ability to lease all submerged lands comprising the Submerged Premises not presently owned by Lessor (collectively, the "State Lease"). To the extent that the terms and conditions of the Consolidated Lease encumber sovereignty submerged land owned by the State, the Consolidated Lease and the Extended Lease are subject to the State Lease and in the event of a conflict, the terms of the State Lease shall prevail. The Lessor and The Waterview Condominium Association, Inc. have extended the term of the Consolidated Lease so that it will expire on May 9, 2123, at 5 p.m. The parties acknowledge that the term of this Lease and the term of the Consolidated Lease are for a longer period than the potential term of the State Lease. As a result, Lessor shall use diligent efforts to obtain a modification of the State Lease to have the term of the State Lease expire May 9, 2123, at 5 p.m. (assuming no options to cancel the State Lease are exercised) including terms that are the same or better than the terms of the State Lease. Lessor may commence negotiations with the State seeking modification of the State Lease on or before the expiration of the third automatic renewal of the State Lease but in no event shall it delay commencing negotiations seeking modification of the State Lease to have the term of the State Lease expire on May 9, 2123, later than March 31, 2102. City will have met the obligations to use diligent efforts to obtain a modification of the State Lease so long as it has initiated negotiations on or before March 31, 2102, and pursues such negotiations in good faith. Lessor agrees that so long as this Lease is in full force and effect, Lessor shall not exercise its option to cancel any extension of the State Lease. If Lessor and State execute and deliver an extension of the State Lease through May 9, 2123, then the parties shall execute an amendment of this Extended Lease to extend the term of

this Extended Lease through May 9, 2123, on terms and conditions consistent with changes in the State Lease. Contemporaneously with the modification of the Extended Lease to extend its term through May 9, 2123, Lessor and Lessee shall modify the Non-Exclusive Riparian Rights Easement between Lessor and Lessee dated April 1, 2009, as amended through the date hereof to extend its term through May 9, 2123.

2. Article II – Term -- is amended as follows:

Section 1. The term of this Lease with respect to the Extended Submerged Premises shall commence on the date of full execution and delivery of this Lease by the parties.

Section 2. The term of this Lease shall expire at 5:00 p.m. on March 31, 2109.

Section 3. In no event shall Lessee assert that this Lease grants or conveys to Lessee a fee simple interest in the Extended Submerged Premises; provided however that, only for the purpose of determining ad valorem tax liability with respect to the Extended Submerged Premises, the parties acknowledge that Lessee shall be deemed to be the “equitable owner” of the Extended Submerged Premises under a lease with a term of 100 years.

Section 4. Lessor hereby covenants and agrees with Lessee that Lessee shall quietly and peacefully hold, possess and enjoy the Extended Submerged Premises for the term of this Lease without hindrance or molestation by Lessor or any persons claiming by, through or under it, or any other persons.

3. Sections 6 and 7 of Article XX are hereby deleted in their entirety from the Extended Lease.

4. Except as modified herein, the Extended Lease shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Fifth Amendment of Lease for Extended Submerged Marina Premises as of the date first above written.

Signed, sealed and delivered in the presence of the following 2 witnesses:

LEISURE RESORTS, LLC

Signature of Witness #1

Printed Name of Witness #1

Address of Witness #1

Signature of Witness #2

Printed Name of Witness #2

Address of Witness #2

By: _____
Cheryl A. Chase, as manager and not individually or in any other capacity

Address: 225 Asylum Street
29th Floor
Hartford, CT 06103

Date: _____

Signed, sealed and delivered in the presence of the following 2 witnesses:

CITY OF WEST PALM BEACH

Shaquita Edwards, City Clerk
401 Clematis Street
West Palm Beach, FL 33401

By: _____
Keith A. James, Mayor

Date: _____

Signature of Witness #2

[Seal]

Printed Name of Witness #2

CITY ATTORNEY'S OFFICE
Approved as to form and legal sufficiency

BY: _____
Kimberly Rothenburg, City Attorney

Address of Witness #2

STATE OF FLORIDA } SS:
COUNTY OF PALM BEACH }

On this ____ day of _____, 2025, the foregoing instrument was acknowledged before me, by personal presence, by KEITH A. JAMES, Mayor, and Shaquita Edwards, City Clerk, of the City of West Palm Beach, who are personally known to me.

Notary Public Signature

Printed or Stamped Name of Notary

Commission Number: _____