

MEMORANDUM

Agenda Item No. 11(A)(11)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: March 15, 2022

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving provisions
of and authorizing the County
Mayor to execute ground lease
estoppel letter relating to lease
and concession agreements at
Haulover Park and Marina with
Haulover Marina, LLC

Resolution No. R-277-22

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman.



Geri Bonzon-Keenan
County Attorney

GBK/jp



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: March 15, 2022

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 11(A)(11)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved *Daniella Lenc Carter* Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(11)
3-15-22

RESOLUTION NO. R-277-22

RESOLUTION APPROVING PROVISIONS OF AND
AUTHORIZING THE COUNTY MAYOR OR MAYOR'S
DESIGNEE TO EXECUTE GROUND LEASE ESTOPPEL
LETTER RELATING TO LEASE AND CONCESSION
AGREEMENTS AT HAULOVER PARK AND MARINA WITH
HAULOVER MARINA, LLC

WHEREAS, Haulover Marina, LLC ("Haulover Marina Operator") is the tenant on County-owned property located at Haulover Park, 15600 Collins Avenue, Miami, Florida ("park property") pursuant to an Amended and Restated Lease with an effective date of August 5, 2010, which was approved pursuant to Resolution No. R-702-10 and was subsequently amended pursuant to Resolution No. R-519-13 (the "Lease") for the development, use and operation of the Haulover Marina; and

WHEREAS, the Haulover Marina Operator is a successor to Westrec Equities, Inc., following an assignment of the Lease by Westrec Equities to Marina Operator in 2014; and

WHEREAS, Haulover Marina Operator is also a concessionaire in another part of the park property pursuant to a certain Concession Agreement approved by the Board on November 19, 2020, pursuant to Resolution No. R-1218-20 (the "Concession agreement"); and

WHEREAS, Westrec Marina Management, Inc. ("Crandon Marina Operator") is the Marina manager for the Crandon Park Marina located at Crandon Park, 4000 Crandon Boulevard, Miami, Florida, pursuant to a Concession and Fuel Services contract ("Crandon contract") approved by the Board pursuant to Resolution No. R-28-17; and

WHEREAS, the Crandon Marina Operator is a successor to Westrec Management, Inc., following an assignment of the Crandon contract by Westrect Management, Inc. to the Crandon Marina Operator; and

WHEREAS, the Haulover Marina Operator and the Crandon Marina Operator are parties to a purchase and sale agreement with Suntex Marina Investors, LLC (“Suntex”) whereby the Haulover Marina Operator and the Crandon Marina Operator are selling all of their rights, title and interest under the Lease, the Concession Agreement and the Crandon contract; and

WHEREAS, the Lease, the Concession Agreement and the Crandon contract all permit assignment thereunder by the tenant, concessionaire and contractor, respectively, provided the County consents in advance to such assignment; and

WHEREAS, the Board has delegated and authorized the County Mayor or Mayor’s designee to exercise such consent rights on behalf of the County; and

WHEREAS, the County administration has represented that the County Mayor or Mayor’s designee have no objection to the assignments of the Lease, the Concession Agreement and the Crandon contract to Suntex or its affiliated entities; and

WHEREAS, however, Suntex is requesting the County execute a ground lease estoppel letter in conjunction with said assignment; and

WHEREAS, generally, the purpose of an estoppel letter is to give a prospective purchaser or lender information about the lease and the leased premises, and to give assurance to the purchaser or lender that the entity executing the estoppel letter will not, at a later date, make claims that are inconsistent with the statements made in the estoppel letter; and

WHEREAS, this Board desires to facilitate the assignment of the Lease, the Concession Agreement and the Crandon contract to Suntex or its affiliated entities and therefore desires to approve the provisions in and authorize the County Mayor or Mayor’s designee to execute an estoppel letter,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

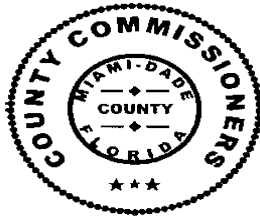
Section 1. The above recitals are incorporated herein by reference and are approved.

Section 2. This Board approves the provisions of and authorizes the County Mayor or Mayor’s designee to execute the ground lease agreement estoppel letter relating to the Lease and the Concession agreement in substantially the form attached hereto and made a part hereof.

The Prime Sponsor of the foregoing resolution is Commissioner Sally A. Heyman. It was offered by Commissioner **Rebeca Sosa** , who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

Jose “Pepe” Diaz, Chairman	aye
Oliver G. Gilbert III, Vice Chairman	aye
Sen. René García	aye
Sally A. Heyman	aye
Eileen Higgins	aye
Kionne L. McGhee	aye
Raquel A. Regalado	aye
Sen. Javier D. Souto	aye
Keon Hardemon	aye
Danielle Cohen Higgins	aye
Joe A. Martinez	aye
Jean Monestime	aye
Rebeca Sosa	aye

The Chairperson thereupon declared this resolution duly passed and adopted this 15th day of March, 2022. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

Basia Pruna

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MRP

Monica Rizo Perez

GROUND LEASE ESTOPPEL

MIAMI-DADE COUNTY

March ____, 2022

Haulover Marina, LLC
c/o Westrec Marina Management, Inc.
16633 Ventura Blvd., Suite 600
Encino, CA 91436

Re: (i) Amended and Restated Lease Agreement, dated August 5, 2010, between Miami-Dade County, a political subdivision of the state of Florida (“**Lessor**”) and Westrec Equities, Inc., a California corporation (“**Original Lessee**”), as amended by a First Amendment to Lease, dated July 26, 2013, and by a Second Amendment to Lease, dated July 29, 2015, and as assigned by Original Lessee to Haulover Marina, LLC, a Delaware limited liability company (“**Lessee**”), as the same may be further amended and assigned from time to time (collectively, the “**Lease**”), of premises known as the Haulover Marine Center (the “**Property**”); and

(ii) Personal Watercraft Storage Concession Agreement at Haulover Park (the “**Park**”) between Miami-Dade County, a political subdivision of the state of Florida as owner of the Park (the “**County**”), and Haulover Marina, LLC, a Delaware limited liability company as Concessionaire, with an effective date of February 23, 2021 (the “**Concession Agreement**”, and together with the Lease, collectively, the “**Haulover Agreements**”).

Ladies and Gentlemen:

The undersigned Lessor understands and acknowledges that Lessee currently intends to assign its interest in the Lease to Haulover SMI Westrec, LLC, a Delaware limited liability company (“**Buyer**”), an indirectly wholly owned subsidiary of Suntex Marina Investors LLC, and, in contemplation of such assignment, Buyer is relying upon Lessor’s certification herein.

Lessor hereby certifies that:

1. **The Haulover Agreements.** Lessor is the lessor (or landlord) under the Lease for the Property, and is the counter-party to the Concession Agreement for the use of the Park.

The Lease represents the entire agreement between Lessor and Lessee with respect to the leasing and occupancy of the Property; except as set forth on **Exhibit A** attached hereto (the “**Exceptions List**”) if any, there are no other promises, agreements, understandings, or commitments of any kind, oral or written, between Lessor and Lessee with respect thereto.

[X] Except as provided above, there are no amendments to the Lease; OR

☐ The Lease was additionally amended on _____ .

The Concession Agreement represents the entire agreement between the County and Concessionaire with respect to the operation of the Site (as defined in the Concession Agreement); except as set forth the Exceptions List, if any, there are no other promises, agreements, understandings, or commitments of any kind, oral or written, between County and Concessionaire with respect thereto.

☒ There are no amendments to the Concession Agreement; OR

☐ The Concession Agreement was amended on _____ .

The Property and Park, and Lessee's use and operation thereon, are subject to all matters that are of record and encumber the Property and the Park, including but not limited to the Notice of Limitation of Use/Site Dedication recorded on January 8, 2008 in the public records of Miami-Dade County, Florida at OR Book 26149 Pages 0753 through 0755.

2. **Lease Status.** The Lease has not been cancelled, terminated, amended, modified, assigned, or extended (except as set forth above), and is in full force and effect and enforceable against Lessor in accordance with its terms.

As of the date hereof, except as set forth on the Exceptions List: (i) all conditions and obligations under the Lease to be satisfied or performed by Lessee and Lessor have been satisfied or performed by the respective party; (ii) to Lessor's knowledge, there are no uncured breaches or defaults on the part of Lessor or Lessee, whether monetary or otherwise, under the Lease; (iii) to Lessor's knowledge, no condition exists which, with the passage of time or giving notice or both, would constitute a default under the Lease; and (iv) Lessor has not sent to or received from Lessee any notice of default or breach under the Lease.

3. **Concession Agreement Status.** The Concession Agreement has not been cancelled, terminated, amended, modified, assigned, or extended (except as set forth above), and is in full force and effect and enforceable against the County in accordance with its terms.

As of the date hereof, except as set forth on the Exceptions List: (i) all conditions and obligations under the Lease to be satisfied or performed by Concessionaire and the County have been satisfied or performed by the respective party; (ii) to Lessor's knowledge, there are no uncured breaches or defaults on the part of Concessionaire and the County, whether monetary or otherwise, under the Concession Agreement; (iii) to County's knowledge, no condition exists which, with the passage of time or giving notice or both, would constitute a default under the Concession Agreement; and (iv) the County has not sent to or received from Concessionaire any notice of default or breach under the Concession Agreement.

4. **Term; Extension Options.** The terms of the Lease and the Concession Agreement each expire on April 30, 2040, unless sooner terminated in accordance with the terms of the Lease and the Concession Agreement.

☒ There are no remaining options to extend or renew the Lease term or the term of the Concession Agreement; OR

☐ Tenant has the option to extend or renew the Lease term for ____ () additional period(s) of ____ () years (each).

☐ Concessionaire has the option to extend or renew the Concession Agreement term for ____ () additional period(s) of ____ () years (each).

5. **Rent and Percentage Rent.** The fixed, minimum or basic rent payable under the Lease is \$58,876.00 per month and has been paid through March 31, 2022.

No fixed, minimum or basic rent ("**Base Rent**") has been paid in advance for any period after said date, except as follows: _____.

Percentage rent ☐ is not / ☒ is payable under the Lease, and has been paid through January 31, 2022.

Lessee has paid all other charges due under the Lease.

No Base Rent under the Lease has been paid by Lessee more than one month in advance.

6. **Fees and Percentage Fees.** There is no fixed fee due from Concessionaire under the Concession Agreement. Percentage Fees (as defined in the Concession Agreement) have been paid through January 31, 2022. Concessionaire has paid all other charges due under the Concession Agreement.

7. **Security Deposit.** Lessor ☒ is / ☐ is not holding a security deposit under the Lease and the security deposit is: \$16,500.00. There is no security deposit being held with respect to the Concession Agreement.

8. **Consent.** Lessor hereby consents to the assignment of the Haulover Agreements from Lessee to Buyer and Buyer's assumption of the Haulover Agreements.

[Signature page follows]

LESSOR:

MIAMI DADE COUNTY, a political subdivision
of the state of Florida

By: _____

Name: _____

Title: _____

EXHIBIT A

EXCEPTIONS LIST

A. Concessionaire has installed a vehicular access gate in PROS's ADA accessible parking spaces which is in breach of and/or not otherwise permitted by the Concession Agreement. [See Concession Agreement Section 9.]

B In breach of the terms of the Concession Agreement, Concessionaire is operating the Personal Watercraft Storage Facility outside of its concession boundary. [See Concession Agreement Section 9]. This unauthorized use of PROS' property encompasses an area of approximately 16,173.26 square feet, as calculated by PROS based upon its onsite inspection and analysis conducted on February 11, 2022. This area of encroachment is depicted on attached Exhibit 1, Figures 1 - 3.

C. In breach of the terms of the Concession Agreement, Concessionaire extended the existing boundary fence for the Personal Watercraft Storage Facility outside of its concession boundary. [See Concession Agreement Section 9.]. This unauthorized use of PROS's property was an encroachment by Concessionaire into an area to be used by PROS as part of a pending capital project to improve the boat ramp launching area. This boundary fence extension is also incorporated in the area of encroachment depicted on attached Exhibit 1, Figures 1 - 3.

EXHIBIT 1

AREA OF ENCROACHMENT BY CONCESSIONAIRE ONTO COUNTY PROPERTY

Figure 1:



MIAMI 9256181.1 100255/300762

[illegible]

Figure 3 (red shaded area on the left is County property, and depicts encroachment by Concessionaire):



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