

TAB 1



City of Palmetto Agenda Item

Meeting Date

1/4/10

Presenter: Mark P. Barnebey/Jim Freeman

Department: City Attorney/City Clerk

Title:

Regatta Point Second Amendment to Agreement of Sublease

BACKGROUND:

In 1982, the City of Palmetto entered into a 25 year sublease for the Regatta Point Marina property with 600 Investment, predecessors in interest to VanDerNoord Partners and Regatta Pointe Investments, LLC. This sublease was extended in 2007 as provided in the sublease. In January of 2006, the City renewed the submerged land lease with the Department of Environmental Protection for the submerged lands within the area known as the Regatta Pointe Marina. As part of the renewal process, the legal description was changed to more accurately reflect the area being leased. More specifically, the breakwaters were added to the leased area. In addition, the lease amount for the renewal term was updated based on the most current calculation methods per Florida Administrative Code.

VanDerNoord Partners and Regatta Pointe Investments, LLC have requested amendment of the sublease agreement with the City and to ensure consistency with the Amended and Restated and Modified Submerged Land Lease No. 41-43874 between the City and the Department of Environmental Protection (DEP). Pursuant to the original lease, the City is also required to Consent to any sublessee and appropriate Consents for both VanDerNoord Partners and Regatta Pointe Investments, LLC are also attached.

DISCUSSION:

The attached Second Amendment between the City and VanDerNoord Partners addresses four areas as follows:

1. Clarifies and confirms the legal description to ensure consistency between the sublease agreement and the submerged land lease (DEP and the City).
2. Clarifies responsibilities pertaining to the calculation and payment of compensation for the Submerged Land Lease. Essentially, it states that the sublessees shall comply with applicable laws, rules and regulations and provides payment to the to DEP during the renewal term in the same manner that the City is required to comply with under the Submerged Land Lease.
3. Allows the 2nd and 3rd floors of the restaurant facility to be used as a banquet hall.
4. Clarifies notice requirement.

All other terms of the existing lease are to remain the same.

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|-------------------------|--------|---------------------------|--|--------------------------|--------|----------------------------|--------|
| Budgeted Amount: | \$0.00 | Budget Page No(s): | | Available Amount: | \$0.00 | Expenditure Amount: | \$0.00 |
|-------------------------|--------|---------------------------|--|--------------------------|--------|----------------------------|--------|

Additional Budgetary Information:

| | | | | | | | |
|---------------------------|----------------------|------------------------------------|---|-----------------------------------|---|----------------|----------------------|
| Funding Source(s): | <input type="text"/> | Sufficient Funds Available: | <input type="checkbox"/> Yes <input type="checkbox"/> No | Budget Amendment Required: | <input type="checkbox"/> Yes <input type="checkbox"/> No | Source: | <input type="text"/> |
|---------------------------|----------------------|------------------------------------|---|-----------------------------------|---|----------------|----------------------|

| | | | | | | |
|--------------------------------|--|---------------------------------------|---|-------------------------|---|----------------------|
| City Attorney Reviewed: | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A | Advisory Board Recommendation: | <input type="checkbox"/> For <input type="checkbox"/> Against <input checked="" type="checkbox"/> N/A | Consistent With: | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A | <input type="text"/> |
|--------------------------------|--|---------------------------------------|---|-------------------------|---|----------------------|

Potential Motion/Direction Requested: Approve and authorize the Mayor to sign the Second Amendment to Agreement of Sublease between the City of Palmetto and VanDerNoord Partners and the Consents to Sublease for VanDerNoord Partners, a Florida general partnership, and Regatta Pointe Investments, LLC, a Florida limited liability company.

Staff Contact: Mark Barnebey and Jim Freeman

Attachments: Second Amendment to Agreement of Sublease
Consent to Sublease for VanDerNoorde Partners
Consent to Sublease for Regatta Pointe Investments, LLC

This Instrument Prepared by:

Edward Vogler II, Esq.
Vogler Ashton, PLLC
2411 - A Manatee Avenue West
Bradenton, FL 34205
941.388.9400

SECOND AMENDMENT TO AGREEMENT OF SUBLEASE

THIS SECOND AMENDMENT TO AGREEMENT OF SUBLEASE (hereinafter the "Second Amendment") is made as of the ____ day of _____, 2009, by and between **The City of Palmetto**, a municipal corporation existing under the laws of the State of Florida ("City"), and **VanDerNoord Partners**, a Florida general partnership, and **Regatta Pointe Investments, LLC**, a Florida limited liability company (hereinafter collectively referred to as "VanDerNoord").

RECITALS:

WHEREAS, City and VanDerNoord (by virtue of various mense assignments recorded in the Public Records of Manatee County, Florida) are the current parties to that certain Agreement Of Sublease (the "Sublease") recorded in Official Records Book 1042, Page 186, of the Public Records of Manatee County, Florida, which Sublease was amended by First Amendment thereto, dated April 7, 2006; and

WHEREAS, a portion of the lands subleased from the City to VanDerNoord under the Sublease include certain submerged lands leased to the City by the Board of Trustees of the Internal Improvement Trust Fund of The State Of Florida (the "Board"), all as more fully set forth in the Sublease; and

WHEREAS, the City and the Board amended and clarified the legal description of such submerged lands by the execution and delivery of that certain Amended and Restated and Modified Submerged Sovereignty Land Lease No. 41-43874, as recorded in Official Records Book 2097, Page 2401 of the Public Records of Manatee County, Florida (the "Revised Submerged Land Lease"); and

WHEREAS, City and VanDerNoord desire to clarify and confirm (i) the legal description of the submerged lands leased to VanDerNoord by City under the Sublease, all as more fully set forth in this Second Amendment; and (ii) the use of a portion of the Restaurant Facility described in the Sublease as a banquet hall; and

WHEREAS, the Revised Submerged Land Lease and Chapter 18-21, Florida Administrative Code, place certain obligations upon the City pertaining to the calculation and payment of compensation to the Board during the renewal term; and

WHEREAS, the City and VanDerNoord wish to clarify the responsibilities of the City and VanDerNoord with respect to said obligations,

NOW THEREFORE, for and in consideration of the premises and for other good and valuable considerations, the City and VanDerNoord, for itself and its respective legal representatives, successors and assigns, hereby amend, modify and clarify the Sublease as follows:

1. **Recitals.** The foregoing recitals are true and correct and are hereby incorporated herein.
2. **Legal Description.** The legal description of the submerged lands described in Schedule 1 of the Sublease shall be amended, modified, and clarified to be and include all of the submerged lands leased by the Board to the City as described in the Revised Submerged Land Lease.
3. **Sublessee Responsibilities.** VanDerNoord shall comply with applicable laws, rules and regulations governing the payment of compensation to the Board during the renewal term in the same

manner that the City is required to comply with such authority. Where the City is required to provide information, remit payment, or take specific action by a date certain, VanDerNoord agrees to provide said information or payment, or take or facilitate such action in a timely manner. In the event that the City is subject to late fees, interest or other monetary penalties resulting from VanDerNoord's failure to act in a timely manner, VanDerNoord shall be responsible for the payment of said fees, interest or penalties.

4. **Banquet Hall.** The Sublease is hereby amended to permit the development and use of the second and third floors of Restaurant Facility as a banquet hall. For the purposes of this amendment, "banquet hall" shall mean an establishment which rents space, providing tables, chairs, decor, sound systems and other services for clubs, associations or individuals for the purpose of having a banquet, meeting, party, celebration, wedding, birthday, ball, anniversary or other such activity. This authorization applies to the second and third floors of the Restaurant Facility only and does not affect any other existing leases or uses of areas outside such second and third floors and within the scope of the Sublease. Notwithstanding anything herein to the contrary, the right to use of a banquet hall as provided for herein shall terminate immediately in the event that it is determined to be inconsistent with the Revised Submerged Land Lease, or any amendments thereto.

5 **Notification.** Whenever it is provided in the Sublease that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served the parties to the Sublease, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be delivered either in person or by delivery with receipt of acknowledgment or by registered or certified mail, return receipt requested, postage prepaid, in each case as follows:

VanderNoord: VanderNoord Partners
Regatta Pointe Investments, LLC
Attn: Harry VanDerNoord
1001 Riverside Drive Suite 200
Palmetto, Florida 34221

City of Palmetto: City of Palmetto
Attn: Mayor
516 8th Avenue West
Palmetto, FL 34221

with copy to: Mark P. Barnebey, Esq.
Kirk Pinkerton, P.A.
1301 6th Avenue West, Suite 401
Bradenton, Florida 34205

6. **No Further Modification.** Except to the extent specifically modified herein, the Sublease shall remain unmodified and otherwise in full force and effect according to its terms.

IN WITNESS WHEREOF, the parties hereunto set their hands and seals the day and year first above written.

(Signature Pages to Follow)

Signed, sealed and delivered
in the presence of:

**VanDerNoord Partners
Regatta Pointe Investments, LLC**

Print Name _____

By: _____
Harry VanDerNoord, its General Partner and
Manager

Print Name _____

STATE OF FLORIDA
COUNTY OF MANATEE

The foregoing instrument was subscribed and sworn to before me this ____ day of _____, 2009,
by Harry VanDerNoord, as general partner of VanDerNoord Partners, a Florida general partnership, and as
Manager of Regatta Pointe Investments, LLC, a Florida limited liability company

____ who is personally known to me
____ who produced _____ as
identification, and who acknowledged before me that he/she executed the same freely and voluntarily for
the purposes therein expressed under authority duly vested in him/her by said entities.

My Commission Expires:

Signature

Printed Name

NOTARY PUBLIC

ATTEST: JAMES FREEMAN
City Clerk

**CITY OF PALMETTO, FLORIDA, BY
AND THROUGH THE CITY
COMMISSION OF THE CITY OF
PALMETTO**

By: _____
City Clerk/ Deputy Clerk

By: _____
Shirley Groover Bryant, Mayor

Date: _____

CONSENT TO ASSIGNMENT

CITY OF PALMETTO, a municipal corporation existing under the laws of the State of Florida ("City"), as the lessor and sublessor under that certain Agreement of Sublease dated March 5, 1982 (as previously and as may hereafter be amended, the "Agreement") between the City and The 600 Investment Corporation, which was recorded in the Public Records of Manatee County, Florida in Official Records Book 1042, page 186, and which requires the City's consent for further sublease or assignment of all or part of the interest of the sublessee (as defined therein) thereunder, hereby signifies its consent to assignment of the sublessee's interest to Regatta Pointe Investments, LLC, a Florida limited liability company, and to VanDerNord Partners, a Florida general partnership, subject to and upon the following terms and conditions:

1. Nothing herein shall be construed to modify, waive, impair or affect any of the covenants, agreements, terms, provisions, or conditions in the Agreement (except as herein expressly provided), or to waive any breach thereof, or any rights of City against any person, firm, partnership, association, or corporation liable or responsible for the performance thereof, or to enlarge or increase City's obligations under the Agreement, and all covenants, agreements, terms, provisions, and conditions of the Agreement remain in full force and effect.

2. This Consent shall not be construed as consent by City to, or as permitting, any other or further subletting or assignment by the sublessee or any assignee. No sublessee or assignee shall be permitted to assign the Agreement or this Consent, in whole or part, or further sublet the Subject Lands (as defined in the Agreement) or any part thereof, without the prior written consent of City in each instance.

EXECUTED this _____ day of January, 2010.

CITY OF PALMETTO, FLORIDA, by and through
The City Commission of the City of Palmetto

By: _____
Shirley Groover Bryant, Mayor

Date: January __, 2010

ATTEST: JAMES FREEMAN, City Clerk

By: _____
City Clerk/Deputy

STATE OF FLORIDA
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this ____ day of January, 2010, by Shirley Groover Bryant, Mayor, and James Freeman, City Clerk, who are personally known to me to be the persons described in and who executed the foregoing instrument, and they acknowledged to and before me that they executed the same as Mayor and City Clerk, respectively, of The City of Palmetto, a municipal corporation, created and existing under the laws of the State of Florida, and that they affixed thereto the official seal of said corporation and that the foregoing instrument is the act and deed of the City of Palmetto.

(NOTARIAL SEAL)

*

Notary Public- State of Florida

Prepared by and return to:
Mark P. Barnebey, Esq.
Kirk-Pinkerton, P.A.
1301 6th Ave. W., Suite 601
Bradenton, FL 34205