

RESOLUTION NO. 14-017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED THIRD AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY AND RL BB-FL HILLSBOROUGH, LLC (SUCCESSOR IN INTEREST TO HILLSBOROUGH CENTER ASSOCIATES, LLC) FOR THE PROPERTY LOCATED AT 3100-3140 FLAGLER AVENUE; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in Resolution No. 11-154, the City Commission approved the First Amendment to Lease, and in Resolution No. 12-339, the City Commission approved the Second Amendment to Lease;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Third Amendment to Lease Agreement between the City and RL BB-FL Hillsborough, LLC, is hereby approved.

Section 2: That the City Manager, upon advice and consent of the City Attorney, is hereby authorized to execute the Third Amendment to Lease.

Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 7th day of January, 2014.

Authenticated by the Presiding Officer and Clerk of the Commission on 8th day of January, 2014.

Filed with the Clerk on January 8, 2014.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Yes</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Absent</u>
Commissioner Billy Wardlow	<u>Absent</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK

Executive Summary



TO: City Commission

CC: Bogdan Vitas

FR: Mark Finigan
Marilyn Wilbarger, RPA, CCIM

DT: December 23, 2013

RE: Third Amendment to the Lease for City Offices at Habana Plaza

ACTION STATEMENT

This is a request to approve the third amendment to the city lease for space at 3100 - 3140 Flagler Avenue in Habana Plaza.

HISTORY

In April of 2010 the City signed an agreement to lease space at Habana Plaza for the temporary re-location of administrative offices while a new city hall could be completed.

Term:

The original lease called for the city to occupy the premises for a minimum of two years or until March of 2013.

The first amendment to the lease addressed space re-locations within the property and extended the term until December 2013. The first amendment also provided for two one year extensions of the lease.

The second lease amendment expanded and re-located space in Suite 4 from 931 square feet to 1451 to accommodate the IT training room and the customer service functions with no changes to the term.

The proposed third amendment will extend the lease term for three years beginning January 1, 2014 and expiring December 31, 2016. The amendment also provides for an early termination on any date on or before February 1, 2016.

Demised Premises:

The original lease premises consisted of 26,458 square feet

Per 1st Amendment 24,271 square feet

Per 2nd amendment 24,793 square feet

Per 3rd Amendment 24,793 square feet

Rent

The rent per the original lease was \$12.00 per square foot with annual 3.5% increases after 18 months and a renewal increase that would equate to a rate of \$13.49 for 2014.

Pursuant to the third amendment the base rent effective January 2014 will be \$12.77 per square foot with a rent credit equal to one month's rent for December 2014, 2015 and 2016 as shown below.

Period of Term	Annual Base Rent Per Square Foot	Monthly Base Rent*
January 1, 2014 - November 30, 2014	\$12.77	\$26,383.88
December 1, 2014 - December 31, 2014	-----	abated**
January 1, 2015 - November 30, 2015	\$13.15	\$27,168.99
December 1, 2015 - December 31, 2015	-----	abated**
January 1, 2016 - November 30, 2016	\$13.54	\$27,974.77
December 1, 2016 - December 31, 2016	-----	abated**

The effective rate will be \$11.71 with the rent abatement. In the event of an early termination the rent credit for the final year will be pro-rated by the number of months the city occupies the space.

Common Area Maintenance:

The City will agree to accept the charges of \$5.25 per square foot as the actual costs for common area maintenance for 2012 and going forward any increase in expenses will not exceed .25 per square foot, per year.

Construction Costs:

Construction reimbursement payments were fully paid as of December 2013 and the City will have no further obligation for reimbursement of improvements.

FINANCIAL STATEMENT:

The original projected and amended annual rental costs are presented for comparison purposes as follows:

1. Original Lease Rental Costs - 2010

26,458 sf. @ \$12.00 psf	\$317,496
NNN charges @\$4.75	\$125,675
26,458 sf @\$2.00 psf improvement costs	\$52,916
Total Annual Rent	\$496,087

2. First Amendment Rental Costs – 2011

24,271 sf. @ \$12.00 psf	\$291,252
NNN charges @\$4.75	\$115,287
24,271 sf. improvement costs	\$49,513
Total Annual Rent	\$456,052

3. Second Amendment Rental Costs 2012/2013

24,793 sf. @ \$12.85 psf	\$318,590
NNN charges @ \$5.50*	\$136,361
24,793 sf. improvement costs	\$50,577
Total Annual Rent	\$505,528

*Maximum increase allowed

4. Third Amendment Rental Costs – 2014

24,793 sf. @ \$11.71 psf	\$290,326
NNN charges @ \$5.75 *	\$142,560
Total Annual Rent	\$432,886

*Maximum increase allowed

RECOMMENDATION:

Staff believes that the amended terms will serve the city well and recommends approval of the lease amendment as proposed.

ATTACHMENTS:

Lease Amendments

Lease

THIRD AMENDMENT TO COMMERCIAL LEASE

THIS **THIRD AMENDMENT TO COMMERCIAL LEASE** (this "**Amendment**") is made this 23rd day of Dec., 2013 (the "**Amendment Effective Date**"), by and between **RL BB-FL HILLSBOROUGH, LLC**, a Florida limited liability company (hereinafter referred to as "**Lessor**"), whose address for purposes of notice is c/o Rialto Capital Advisors, LLC, 700 NW 107th Ave, Suite 400, Miami, Florida 33172 (Attention: Alex Diaz), and **THE CITY OF KEY WEST**, a municipal corporation (hereinafter referred to as "**Lessee**"), whose address for purposes of notice is P.O. Box 1409, Key Wet, Florida 33041.

WITNESSETH:

WHEREAS, Hillsborough Center Associates, LLC, a New Jersey limited liability company (the "**Original Landlord**"), and Lessee entered into that certain Commercial Lease (the "**Original Lease**") on April 16, 2010, but effective as of April 1, 2010, as amended by the First Amendment to Commercial Lease dated May 31, 2011 (the "**First Amendment**"), and further amended by the Second Amendment to Commercial Lease with an effective date of October __, 2012 (the "**Second Amendment**," together with the Original Lease and the First Amendment, the "**Lease Agreement**") pertaining to certain premises (the "**Leased Premises**") in the shopping center known as "Habana Plaza," located at 3100 through 3140 Flagler Avenue, Key West, Florida 33040 (the "**Building**"), and more particularly described on the legal description attached to the Lease Agreement (the "**Property**");

WHEREAS, Lessor is the successor in interest to certain property of Original Landlord, including the Leased Premises; and

WHEREAS, Lessor and Lessee desire to amend and modify the Lease Agreement on the terms and conditions contained in this Amendment;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals; General Provisions.** The above recitals are true and correct and are incorporated herein as if set forth in full. Capitalized terms which are used herein which are not separately defined shall have the meanings set forth in the Lease Agreement. Except as amended and modified by this Amendment, all of the terms, covenants, conditions, and agreements of the Lease Agreement shall remain in full force and effect. In the event of any conflict between the provisions of the Lease Agreement and the provisions of this Amendment, this Amendment shall control.

2. **Term.** Section I, paragraph 2 of the Original Lease, styled "Term of Lease" (as amended by the First Amendment), is deleted in its entirety and replaced with the following:

"This Lease Agreement shall be effective for the period beginning on April 1, 2010, and ending on December 31, 2016; provided, however, that the specific Effective Dates and Rent Commencement Dates for each unit of the Leased Premises may vary, but (subject to the Lessee's right to terminate the Lease Agreement as set forth in Paragraph 6 of the Third Amendment to Commercial Lease) this Lease Agreement shall terminate as to all Suites comprising the Leased Premises on December 31, 2016."

3. Renewal. Section I, paragraph 19 of the Original Lease, styled "Renewal" (as amended by the First Amendment), is deleted in its entirety so that Lessee shall not have the right to renew the Lease Agreement.

4. Rent Credit. Provided that Lessee has not been in monetary or material nonmonetary default of the Lease Agreement more than twice beyond any applicable cure and grace period, then Lessee shall be entitled to receive a credit against the base rent payments (but not common area maintenance charges) due for the following months: December 2014, December 2015 and December 2016, each such base rent credit being equal to the respective monthly base rent for such time period; provided, however, that in the event Lessee exercises its right to terminate the Lease Agreement as set forth in **Paragraph 6** below (so that the full 2016 lease year will not be in effect), then (for the rent credit applicable to the 2016 lease year) Lessee shall be entitled to receive a credit against the base rent payment due for the month of the Early Termination Date (as defined below) in an amount equal to the following: the respective monthly base rent for such month multiplied by a fraction, the numerator of which shall be the number of complete months that the Lease Agreement is in effect during calendar year 2016 and the denominator of which shall be "12". By way of example only, if the Early Termination Date is March 30, 2016, then Lessee would be entitled to receive a credit against the base rent payment due for the month on March 2016 in an amount equal to \$6,993.69 (i.e., \$27,974.77 X 3/12).

5. Base Rent. Notwithstanding anything in the Lease Agreement to the contrary, from and after the January 1, 2014 and (subject to Lessee's right to terminate the Lease Agreement as set forth in **Paragraph 6** below) continuing throughout the Term of the Lease Agreement, the base rent due and payable by Lessee with respect to all Suites comprising the Leased Premises shall be as follows:

Period of Term	Annual Base Rent Per Square Foot	Monthly Base Rent*
January 1, 2014 - November 30, 2014	\$12.77	\$26,383.88
December 1, 2014 - December 31, 2014	-----	abated**
January 1, 2015 - November 30, 2015	\$13.15	\$27,168.99
December 1, 2015 - December 31, 2015	-----	abated**
January 1, 2016 - November 30, 2016	\$13.54	\$27,974.77
December 1, 2016 - December 31, 2016	-----	abated**

* Plus applicable taxes and common area maintenance charges.

** Subject to the terms of **Paragraph 4** above, Lessee shall be entitled to receive a credit against the base rent payments (but not common area maintenance charges), and base rent payments shall be abated for these months.

6. Lessee's Right of Early Termination. Notwithstanding anything contained in the Lease Agreement to the contrary, Lessee, in its sole discretion, shall have the right to terminate the Lease Agreement as of the Early Termination Date. The "**Early Termination Date**" shall be any date on or after February 1, 2016. In the event Lessee elects to exercise such early termination right, Lessee shall deliver written notice of such election to Lessor no less than one hundred twenty (120) days prior to the Early Termination Date.

7. Common Area Maintenance Costs. Notwithstanding anything contained in the Lease Agreement to the contrary, Lessor and Lessee acknowledge and agree that the Lessee shall pay common area maintenance ("CAM") costs for 2012 in the amount of \$5.25 per square foot. On the Amendment Effective Date, Lessee shall pay Lessor, without demand, the sum of \$12,135.55 which represents the reconciliation of the agreed upon common area maintenance costs during 2012 (\$5.25 per square foot) compared with the estimated payments made by the Lessee for the period reconciled (2012). CAM costs for each subsequent calendar year during the term of the Lease shall be based upon the actual increase in common area costs over the previous year; provided, however, that CAM costs payable by Lessee may not be increased by more than \$0.25 per square foot over the previous year. Lessor agrees to make commercially reasonable efforts to control CAM costs. The total square footage of the Building for the purposes of calculating Common Area Maintenance costs is 56,495 (45,018 square feet of which is commercial space). Attached hereto as **Exhibit A** is the total of the actual CAM costs for 2012.

8. Intentionally Omitted.

9. Suite 3110 Improvements. Commencing on the Amendment Effective Date, Lessee acknowledges and agrees that Lessee (including its officers, directors, employees, contractors, agents and invitees), shall no longer have any right or easement for the use of the door located in the rear of Suite 3110 (the "**Rear Door**") for purposes of ingress and/or egress so long as the space will meet all applicable codes for continued occupancy.. Lessor reserves the right (either directly or via Lessor's contractors and/or subcontractors of its choice), to (i) remove the Rear Door frame, the Rear Door and any corresponding hardware, (ii) close-off the Rear Door opening, (iii) paint to match the existing wall, and (iv) perform any other work necessary to complete the permanent removal of the Rear Door (collectively, the "**New Improvements**"). All hard and soft costs of accomplishing the work specified in this paragraph shall be borne by Lessor. Lessor, or Lessor's contractors and/or subcontractors of its choice, shall perform (or cause to be performed) the New Improvements and any other Building system adjustment that may be required by law as a result of such New Improvements. Lessor agrees that it will not perform construction activities during Lessee's business hours which, for purposes of this Amendment, are agreed to be Monday through Friday, from 8:00 a.m. through 5:00 p.m. ("**Non-Construction Hours**"), to keep Suite 3110 free of construction equipment, materials and debris,

and to use such other commercially reasonable efforts to minimize any disruption to Lessee and its business operation. Lessee agrees that the New Improvements shall not cause an eviction or partial eviction of Lessee, be deemed a breach of Lessee's right of quiet enjoyment or cause any abatement of rent. Lessee agrees that, except during Non-Construction Hours, Lessor or such party shall have a right of entry to Suite 3110 as may be reasonably necessary to construct such New Improvements and perform work related to the New Improvements. During the course of the construction of the New Improvements, Lessor shall be responsible to preserve and protect any fixtures, equipment and other personal property left in Suite 3110 for the benefit of Lessee.

10. Construction Reimbursement Payments. The parties hereto agree that Lessee shall make all Construction Reimbursement Payments in the amount of .17 per square foot in accordance with the Lease Agreement through December, 2013.

11. Miscellaneous.

a. Lessee agrees that Lessor is in full compliance with all of its obligations to Lessee under and pursuant to the Lease Agreement, as modified by this Amendment. Without limiting the foregoing, Lessee agrees that the Leased Premises are satisfactory.

b. Lessee and Lessor acknowledge that the Lease Agreement, as modified by this Amendment, is in full force and effect, binding upon the parties in accordance with its terms and, as of the date of execution of this Amendment (and with the exception of prepaid security deposits), Lessee has no claim, charge, lien, or right to setoff under this Lease Agreement or otherwise against rent or other charges due under this Lease Agreement.

c. Lessee represents and warrants it is not in default of any of the conditions or covenants of the Lease Agreement.

12. Authority of Lessee. Lessee represents and warrants that it has full authority to execute this Amendment without the joinder or consent of any other party and that Lessee has not assigned any of its right, title, and interest in the Lease to any other party. Lessee agrees to indemnify and hold Lessor harmless from and against any claims, losses, demands, liabilities, damages, and expenses of any kind or nature, including, without limitation, reasonable attorneys' fees, actually incurred or arising by reason of a breach or violation of any of the representations and warranties of Lessee contained in this Section.

13. Successors and Assigns. The provisions of this Amendment shall be binding upon and inure to the benefit of Lessor, Lessee and their respective successors and assigns.

14. Counterparts. This Amendment may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one instrument. A PDF or facsimile signature shall be deemed for all purposes to be an original.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the Amendment Effective Date.

ATTEST:

By:

Cheryl Smith
Cheryl Smith, City Clerk

THE CITY OF KEY WEST, a Municipal Corporation

By:

Craig Cates
Printed Name: Craig Cates

Its: Mayor

WITNESSES:

Vivian Perez
Signature of Witness

Vivian Perez
Printed Name of Witness

Susan P. Harrison
Signature of Witness

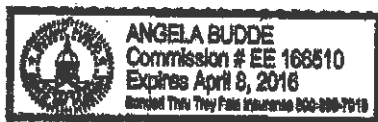
Susan P. Harrison
Printed Name of Witness

STATE OF FLORIDA)

COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this 8 day of January, 2013, by Craig Cates, as Mayor, of The City of Key West, a municipal corporation, who is personally known to me or has produced _____ as identification.

(Notary Seal)



Angela Budde
Notary Public, State of Florida

Print Name: Angela Budde

My Commission Expires: 4/8/16

WITNESSES:

[Signature]
Signature of Witness

William John
Printed Name of Witness

[Signature]
Signature of Witness

WILLIAM LEE
Printed Name of Witness

RL BB-FL HILLSBOROUGH, LLC, a
Florida limited liability company

By: RL BB Financial, LLC, a Florida limited
liability company, its sole member

By: [Signature]
Name: Anthony Seijas
Title: Vice President

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 26 day of DECEMBER 2013, by
ANTHONY SEIJAS, as VICE PRESIDENT of RL BB
Financial, LLC, a Florida limited liability company, as the sole member of RL BB-FL
HILLSBOROUGH, LLC, a Florida limited liability company, who is personally known to me or
has produced _____ as identification.

(Notary Seal)



[Signature]
Notary Public, State of Florida
Print Name: WILLIAM LEE

My Commission Expires: 4/30/16

EXHIBIT A

2012 Habana Plaza Operating Expenses

Expenses incurred while under management with Atlantic Pacific Mgmt

Maintenance Staff	\$	36,091.00
Electricity	\$	13,985.21
Water/Sewer	\$	41,889.08
Trash Removal	\$	7,125.00
Telephone/Cable	\$	1,348.00
Cleaning Contract	\$	18,140.00
Landscaping	\$	2,500.00
Window Cleaning Contract	\$	3,010.00
Exterminating	\$	4,356.00
Termite Bond	\$	111.00
Management Fees	\$	60,000.00
Property Insurance	\$	62,771.31
Real Estate Taxes	\$	56,631.00
License and Permit	\$	587.00
Maintenance Repairs & Supplies	\$	20,584.00
Signs/Non-skid		
Administrative	\$	4,686.00
Common Area Maintenance	\$	214,412.29
Total Insurance + RE Taxes	\$	119,402.31
CAM + Insurance & RE Taxes	\$	333,814.60