

REVOCABLE LICENSE AGREEMENT

No.1762

THIS AGREEMENT, made on _____, by and between:

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, hereinafter referred to as "CITY,"

and

BROWARD COUNTY, a Florida political subdivision of the State of Florida, located at 950 NW 38th Street, Oakland Park, Florida 33308, hereinafter referred to as "LICENSEE."

WITNESSETH:

WHEREAS, LICENSEE wishes to use the Alsdorf Park Property ("Property") as a staging area for its Deerfield Island Site Improvements construction project, ("Project"); and

WHEREAS, LICENSEE's proposed use of CITY's property for the Project will not interfere with the rights enjoyed by the public nor will such use result in a direct or indirect cost to the residents of the City except with regard to any cost incurred by the Licensee and indirectly borne by City residents.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and conditions hereinafter contained, the parties agree as follows:

1. AUTHORIZATION AND DESCRIPTION OF PROPERTY.

CITY grants to LICENSEE, and LICENSEE accepts from CITY, a non-exclusive license ("License") to occupy a portion of the property at 2974 NE 14 St. currently referred to as "Alsdorf Park", currently owned by the Florida Inland Navigation District (F.I.N.D.) but operated and maintained by the CITY, legally described as set forth in Exhibit "A," attached and made a part of this Agreement, for the use as a construction staging ground.

2. TERM.

The term of this Agreement shall commence upon execution by the parties and last for one (1) year or through completion of the Project, whichever comes first. Should the CITY reasonably determine that a higher municipal use is required of subject Property, that the public's health, safety, or welfare is at risk, that the Project substantially interferes with use of the park facility, or that it wishes to terminate this Agreement for any other reason, then LICENSEE shall be notified

to immediately cease use of the Property. Notice shall be sent in writing, in accordance with Paragraph 12 hereof.

3. USE OF PREMISES.

A. LICENSEE and its subcontractors shall use and occupy the Property for the temporary storage of materials, vehicles, equipment, and construction barge for the Project.

B. LICENSEE specifically agrees that the Property shall not be used for any other purpose whatsoever without the CITY's written consent. LICENSEE shall not permit the licensed Property to be used or occupied in any manner that is inconsistent with the use granted or that violates any laws or regulations of a governing authority. LICENSEE shall at all times, with the exception of when work is being done as approved by CITY, keep and maintain Property in as good of a condition or better than existing at the start of this Agreement. LICENSEE shall provide documentation (such as pictures, video, topographic surveys) to establish the conditions that existed on the Property prior to commencement of this Agreement. Any and all damage caused by LICENSEE to any Property elements, including, but not limited to pavement, curbs, sidewalks, landscaping, trees, irrigation, utility poles, docks, ramps, located within the Property shall be restored or repaired by LICENSEE to a condition equal to or better than that existed prior to commencement of this Agreement. LICENSEE shall be responsible to ensure that there is no site contamination from any materials stored or used on site and that any contamination that does occur shall be removed and remediated.

C. The proposed use of the Property may not interfere with use of the Property by the public for its intended purpose.

4. ASSIGNMENT.

LICENSEE is not permitted to assign, transfer, convey, or otherwise dispose of this License to any other person or business entity without the CITY's prior written consent. In the event of an attempt to assign, transfer, convey, or otherwise dispose of this License to any person or business entity not specifically a party to this Agreement and License, then this License shall be null and void and terminated without notice to LICENSEE.

5. INDEMNIFICATION.

A. LICENSEE, to the extent allowed under Florida Statute 768.28, and without waving Licensee's rights under said statute, shall indemnify, defend, and hold harmless the CITY and its officials, agents and employees from and against any and all claims, losses, suit actions, damages, liabilities, expenditures, or causes of action, including attorney fees, of any kind arising from this Revocable License Agreement. LICENSEE acknowledges and agrees that the CITY's authorization to occupy, and the benefit it receives from its use of the CITY's Property under this Agreement shall serve as consideration for such indemnification. LICENSEE is a political subdivision of the State of Florida and has sovereign immunity from certain claims under Florida law, including Section 768.28, Florida Statutes. If LICENSEE is required to indemnify CITY under this Revocable License Agreement, the limitations on tort liability under Section

768.28, Florida Statutes, shall be the applicable limitations for LICENSEE's indemnification obligations under this Revocable License Agreement, regardless of the nature or basis of the claim(s) being indemnified.

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by either party as provided for in §768.28, Florida Statutes. Each party is a state agency or political subdivision as defined in Section 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of its agents or employees to the extent required by applicable law.

6. INSURANCE.

LICENSEE maintains a self-insured and self-funded insurance program as a political subdivision of the State of Florida in accordance with Florida Statutes.

7. TAXES.

As further consideration of this License Agreement, LICENSEE further agrees to pay any taxes of whatever nature which may validly be levied against the Property or pursuant to this Agreement during the Term of this Agreement.

8. AMENDMENTS.

No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.

9. SURRENDER UPON TERMINATION.

A. LICENSEE shall peaceably surrender and restore the Property to its original condition or better within two weeks after receipt of CITY's written notice, as provided for in Section 12, that LICENSEE has failed to maintain the property to the CITY's satisfaction or other reasons as provided for in Section 2 of this Agreement.

B. LICENSEE shall remove from the Property, at LICENSEE's own expense, any improvements, fixtures, equipment or other personal property and, thereafter, the Property shall be considered abandoned, and this Agreement shall be deemed terminated. Upon completion of LICENSEE's removal, the condition of the Property shall be such that it is safe and not a hazard and in its original condition or better as determined by the CITY.

10. NONWAIVER.

Failure of the CITY to insist upon strict performance of any covenant or condition of this Revocable License Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this

Revocable License Agreement shall be waived or modified except by the Parties in writing.

11. TERMINATION.

A. This Revocable License Agreement may be terminated by either party with reasonable cause for the reasons described in Section 2 at any time during the term, upon sixty (60) days written notice to the other of its desire to terminate this Revocable License Agreement. It is expressly understood by the parties that LICENSEE is receiving from CITY a Revocable License that may be terminated by the CITY due to failure by the LICENSEE to maintain the Property, CITY's need to use the Property for a higher municipal purpose, LICENSEE's use of the Property poses a risk to the public's health, safety, or welfare as determined by CITY, or CITY's convenience. LICENSEE shall be solely responsible for any expenses incurred to remove its personal property including equipment, with no right to compensation of any kind from CITY. Where LICENSEE's use poses a risk to the public's health, safety, or welfare, the LICENSEE shall receive written notice to immediately cease and desist such use and shall promptly remove the improvement, or any property, as applicable, as determined by CITY, in the CITY's sole discretion.

12. NOTICES.

Any notice or demand under the terms of this Revocable License Agreement or by any statute or ordinance that must be given or made by a party hereto shall be in writing and shall be given by certified mail to the other party at the address set forth below or to such other address as such party may from time to time designate by notice, except where otherwise provided.

Addresses of the parties are as follows:

FOR CITY: City Manager
City of Pompano Beach
Post Office Box 1300
Pompano Beach, Florida 33061

COPY TO: City Attorney
City of Pompano Beach
Post Office Box 2083
Pompano Beach, Florida 33061

FOR LICENSEE: Dan West
Broward County, Parks and Recreation Division
950 NW 38th Street
Oakland Park, FL 33308

13. MISCELLANEOUS PROVISION.

It is expressly understood and agreed that no real or personal property is leased to LICENSEE; that this is a License, and not a Lease; that the LICENSEE's right to occupy the

Property is subordinate to CITY's (or any franchisee of CITY) use of the licensed Property, and should any relocation of any CITY owned utility be necessitated at any time in the future, then LICENSEE shall relocate the its property, subject to approval of relocation plans by the CITY, if practicable, or LICENSEE shall terminate its use of the licensed Property at its own expense.

14. LAWS AND ORDINANCES.

LICENSEE shall observe all laws and ordinances of the city, county, state, and federal governing authorities directly relating to the Property's use.

15. GOVERNING LAW AND VENUE; WAIVER OF JURY TRIAL

A. This Agreement must be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement will be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

B. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise, but the LICENSEE and the CITY waive all rights to sue or collect from the other any damages other than direct damages and they expressly waive benefit of the bargain, punitive, special, exemplary, treble or consequential damages.

16. NO THIRD-PARTY BENEFICIARIES.

The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this License Agreement. None of the parties intends to directly or substantially benefit a third party by this License Agreement. The parties agree that there are no third-party beneficiaries to this License Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this License Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

17. NONDISCRIMINATION.

LICENSEE shall not discriminate against any person in the performance of duties, responsibilities and obligations under this License Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

18. CONTINUITY.

This License Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns, provided that successors and assigns have been approved as per the terms of Paragraph 4, "Assignment", above.

19. PUBLIC RECORDS.

Pursuant to Section 119.0701, Florida Statutes, CITY and LICENSEE are required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to the other party all public records in that party's possession upon termination of its contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to the other party in a format that is compatible with the other party's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets. The City of Pompano Beach and LICENSEE are public agencies subject to Chapter 119, Florida Statutes. The LICENSEE shall comply with Florida's Public Records Law, as amended. Specifically, both parties shall:

1. Keep and maintain public records required by the City in order to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Licensee does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Licensee, or keep and maintain public records as required by law or as required by the City to perform the service. If the Licensee keeps and maintains public records upon completion of the contract, the Licensee shall meet all applicable requirements for retaining public records. All records stored electronically must

be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

Failure of the Licensee to provide the above described public records to the City within a reasonable time may subject Licensee to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF EITHER PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE FOLLOWING:

FOR LICENSEE INQUIRIES TO CITY:

CITY CLERK

100 W. Atlantic Blvd., Suite 253

Pompano Beach, Florida 33060

(954) 786-4611

RecordsCustodian@copbfl.com

FOR CITY INQUIRIES TO LICENSEE:

PARKS DIRECTOR

950 NW 38TH STREET, OAKLAND PARK,

FLORIDA 33309

(954) 357-8100

DANWEST@BROWARD.ORG,

20. FORCE MAJEURE.

Neither party shall be obligated to perform any duty, requirement or obligation under this License Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of LICENSEE be deemed Force Majeure.

21. ENTIRE AGREEMENT AND INTERPRETATION.

A. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

B. Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and LICENSEE and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of one party, and therefore construed against either party.

C. It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Attest:

CITY OF POMPANO BEACH

ASCELETA HAMMOND, CITY CLERK

By: _____
REX HARDIN, MAYOR

APPROVED AS TO FORM:

By: _____
GREGORY P. HARRISON, CITY MANAGER

MARK E. BERMAN, CITY ATTORNEY

(SEAL)

COUNTY

BROWARD COUNTY, by and through
its County Administrator

By: _____
County Administrator

____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By _____
Amanda Tolbert (Date)
Assistant County Attorney

By _____
Stacey Weinger (Date)
Assistant County Attorney