



**City Attorney's Communication #2025-468**

March 27, 2025

**TO:** Cassandra LeMasurier, Real Property Manager

**FROM:** Mark E. Berman, City Attorney

**RE:** Ordinance – Authorizing Lease Agreement with the PB Kiosk, LLC for Beach Concession located at 20 N. Pompano Beach Blvd.

As requested in your email dated March 26, 2025, the following form of Ordinance, relative to the above-referenced matter, has been prepared and is attached:

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND PB KIOSK, LLC FOR THE CITY'S BEACH CONCESSION KIOSK LOCATED AT 20 N POMPANO BEACH BLVD.; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Please review carefully and feel free to contact me if I may be of further assistance.



MARK E. BERMAN

MEB/mcm  
l:cor/real-prop/2025-468

Attachment

ORDINANCE NO. 2025-\_\_\_\_\_

**CITY OF POMPANO BEACH**  
**Broward County, Florida**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND PB KIOSK, LLC FOR THE CITY'S BEACH CONCESSION KIOSK LOCATED AT 20 N POMPANO BEACH BLVD.; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

**WHEREAS**, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

**BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:**

**SECTION 1.** That a Lease Agreement between the City of Pompano Beach and PB Kiosk, LLC for the City's beach concession kiosk located at 20 N. Pompano Beach Blvd., a copy of which Agreement is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

**SECTION 2.** That the proper City officials are hereby authorized to execute said Agreement.

**SECTION 3.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of

this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 4.** This Ordinance shall become effective upon passage.

**PASSED FIRST READING** this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

**PASSED SECOND READING** this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

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**REX HARDIN, MAYOR**

**ATTEST:**

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**KERVIN ALFRED, CITY CLERK**

MEB/mcm  
3/27/25  
L:ord/2024-145

## LEASE AGREEMENT

THIS LEASE ("Lease") is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2025 ("Commencement Date"), by and between **CITY OF POMPAÑO BEACH**, a Florida municipal corporation, whose address is 100 W. Atlantic Boulevard, Pompano Beach, Florida 33060 (the "City"), and **PB KIOSK, LLC**, a Florida limited liability company, whose address is 6510 Chapel Hill Rd., Raleigh, NC 27607, (the "Tenant"), collectively referred to as "the Parties."

### WITNESSETH:

WHEREAS, the City issued Request for Proposals T-14-23 ("RFP") on February 9, 2023 to select a qualified company to manage and operate the City's Beach Kiosk Concession located at 20 N. Pompano Beach Blvd, Pompano Beach, FL 33062; and

WHEREAS, on March 28, 2023 after reviewing all proposals submitted in response to the RFP the Selection/Evaluation Committee ranked PB Pier, LLC as the top ranked proposer; and

WHEREAS, on April 11, 2023 the City Commission accepted the recommended ranking and authorized staff to negotiate an agreement with the top ranked proposer to manage and operate the City's Beach Kiosk Concession; and

WHEREAS, on August 14, 2023 the sole Managing Member of PB Pier, LLC formed and registered PB Kiosk, LLC with the Florida Division of Corporations for the purpose of entering into this Lease with the City; and

WHEREAS, the City is the owner of certain real property ("City Property") located in the City as depicted in Exhibit A and is willing to lease the property to the Tenant on the terms and conditions as set forth in this Lease; and

WHEREAS, the Tenant desires to lease the portion of land, together with any and all Improvements constructed on the Land at any time, that shall be collectively referred to as the "Project" or "Premises," which is legally described in Exhibit B, attached and made a part of this Lease; and

WHEREAS, the Parties desire to enter into this Lease for the purpose of setting forth their respective rights, covenants, obligations, and liabilities with respect to leasing the Premises and Tenant's development obligations with respect to the Project;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises of the parties contained in this Lease, and of other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending legally to be bound, covenant and agree as follows:

### AGREEMENT

1. **Exhibits.** Attached to this Lease and incorporated into this Lease by reference are the following Exhibits:

**Exhibit A - Legal Description of the City's Real Property**

**Exhibit B - Legal Description of Premises**

**Exhibit C - Project Site Plan**

**Exhibit D - Development Timeline**

**Exhibit E - Description of Project Improvements**

**Exhibit F - Renderings of the Project Improvements**

**Exhibit G - Ownership of Tenant**

2. **Definitions.** For purposes of this Lease, the following terms are defined as follows:

2.1. **Additional Rent.** Any sums to be paid by Tenant to City under the terms of this Lease other than Minimum Rent or Percentage Rent.

2.2. **Attorneys' Fees.** All attorneys' fees, costs and expenses incurred by a party in connection with any matter arising under this Lease.

2.3. **Breakpoint Calculation.** The annual minimum rent divided by the Percentage Rent.

2.4. **Building Permit.** A construction permit as described in the City Code.

2.5. **Certificate of Occupancy.** A final certificate of occupancy as described in the City Code.

2.6. **City.** The City of Pompano Beach, Florida.

2.7. **City Code.** The City of Pompano Beach Code of Ordinances.

2.8. **City Property.** The 1.72-acre (+/-) parcel of real property located in the City of Pompano Beach, Broward County, Florida, more particularly described in **Exhibit A**, which Property includes the Premises.

2.9. **Completion Date.** The date upon which a Certificate of Occupancy is issued for the last of the Improvements to be constructed under this Lease.

2.10. **Construction Lender.** The holder of a Leasehold Mortgage securing funds that are used for the construction of the Phase.

2.11. **CPA.** A certified public accountant licensed to do business in the State.

2.12. **Days.** Any reference in this agreement to "days" shall be calendar days.

2.13. **Default Rate.** The highest rate of interest permitted by law.

2.14. **Developer.** PB Kiosk, LLC, a Florida limited liability company.

2.15. **Development Timeline.** The timeline for the development of the Project attached as **Exhibit D**.

2.16. **Governmental Approval.** Any permit, authorization, certification, or other documentation required by a Governmental Authority.

- 2.17. **Governmental Authority.** Any federal, state, county, municipal or other governmental department, entity, authority, commission board, bureau, court, agency, or any instrumentality of any of them.
- 2.18. **Governmental Requirement.** Any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, order, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued.
- 2.19. **Gross Revenue.** Any and all revenue (whether cash, credit or barter) paid to or collected by any individual or entity that uses or occupies any portion of the Premises pursuant to a written or oral agreement with Tenant. Gross Revenue does not include any of the following: (a) parking revenues generated by the Premises; (b) insurance loss proceeds which are applied toward restoration of the Improvements; (c) any award or payment made by a Governmental Authority in connection with the exercise of any right of eminent domain, condemnation, or similar right or power; (d) sales tax of any kind, including but not limited to luxury taxes, consumers' excise taxes, rent taxes, ad valorem real estate taxes, business personal property taxes, tourist, room and restaurant taxes, public assessments, special assessments, and taxes on utilities; (e) employee meals, if free or discounted for such employees and their immediate family members, and free or discounted guest relations items ; (f) the proceeds of any sale of the Tenant's business to a third party; (g) the selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and allowances made thereon; (h) sums and credits received in the settlement of claims for loss of or damage to merchandise, to the extent previously reported as net sales; (i) the price allowed on all merchandise traded in by customers for credit or the amount of credit for discounts and allowances made in lieu of acceptance thereof; (j) cash refunds made to customers in the ordinary course of business; (k) sales of non-food promotional item for which the Tenant receives no profit; (l) sales of fixtures or equipment after use thereof in the conduct of the Tenant's business at the Premises; and (m) proceeds of property insurance received by Tenant upon a loss or damage to the Tenant's merchandise or equipment while located on the Premises.
- 2.20. **Improvement Cost.** The estimated sum of \$2,000,000, which is the estimated cost of constructing the Project Improvements, including all hard construction costs and soft costs such as financing, testing, permitting, and design costs.
- 2.21. **Improvements.** The Improvements to be constructed by Tenant on the Premises as more particularly described in **Exhibits C, E and F.**
- 2.22. **Lease.** This Lease Agreement.
- 2.23. **Lease Commencement Date.** The "Lease Commencement Date" of this Lease Agreement shall be the date this Lease Agreement is signed by the City.
- 2.24. **Lease Extension Option.** Lease shall have one (1) additional ten (10) year extension option ("Lease Renewal Term").
- 2.25. **Lease Term.** The term of the Lease, which is twenty (20) years, beginning on the Lease Commencement Date.

- 2.26. **Lease Year.** Each 12-month period during the Lease Term.
- 2.27. **Leasehold Interest.** Tenant's interest in the Premises and the Project Improvements.
- 2.28. **Leasehold Mortgage.** A mortgage given by Tenant or by any permitted successors or assignees of Tenant to a Lender that is secured by Tenant's (or Tenant's permitted successors' or assignees') leasehold interest in the Premises.
- 2.29. **Lender.** Any federal or state chartered commercial bank, national bank, savings and loan association, savings bank, trust company, or private investor.
- 2.30. **Minimum Rent.** As set out in Section 6 of the Lease
- 2.31. **Minimum Rent Commencement Date.** The first day of the month after issuance of a CO for the Improvements.
- 2.32. **Percentage Rent.** The percentage of Gross Revenue in excess of the Breakpoint Calculation, subject to adjustment as set forth in the Lease.
- 2.33. **Plans.** The construction plans and specifications for the Improvements, as described in Section 22.2.
- 2.34. **Premises.** The 5,622 square foot area of real property, including land and improvements, as more particularly described in **Exhibit B**.
- 2.35. **Project Site Plan.** A site plan for the Project showing the layout and identification of all structures, facilities and landscaping. The Project Site Plan is attached as **Exhibit C**.
- 2.36. **Project.** Demolition of existing Beach Kiosk Concession building by Tenant and construction of new approximately 1,511 square foot Beach Kiosk Concession building with a kitchen, walk-in coolers and restrooms and approximately 2,010 square foot outdoor seating area.
- 2.37. **Public Charges.** All levies, assessments, fees, charges and taxes imposed or assessed against the Premises, the Project, Rents, and Subleases, including, without limitation, ad valorem real property taxes; personal property taxes; taxes on Rent payable under this Lease; taxes on rent paid under Subleases; tourist, room and restaurant taxes; public assessments; special assessments; and taxes on utilities.
- 2.38. **Rent.** Minimum Rent, Percentage Rent, and any Additional Rent due under this Lease.
- 2.39. **Renderings.** The sketches of the proposed Improvements attached as **Exhibit F**.
- 2.40. **RFP.** City of Pompano Beach Request for Proposals No. T-14-23.
- 2.41. **State.** The State of Florida.
- 2.42. **Tenant.** PB Kiosk, LLC, a Florida limited liability company.
- 2.43. **Transfer.** Any sale, assignment or conveyance of the Project, this Lease, Tenant's interest in the Premises, or any interest in Tenant.

- 2.44. **Work.** The labor and materials required to complete the construction of the Improvements on the Premises, and any related buildings or structures not located on the Premises, in a good and workmanlike manner in accordance with the Plans and all applicable Governmental Requirements.
3. **Lease of Premises.** The City hereby demises and leases the Premises to Tenant, and the Tenant accepts possession of the Premises from City, subject to the terms and conditions of this Lease and the RFP (including any subsequent amendments to the Lease).
4. **Lease Term.** The Lease Term will begin on the Lease Commencement Date and will be for a period of twenty (20) years, not inclusive of renewal options. Tenant is not permitted to use or occupy the Premises, or carry on any activities on the Premises until the Lease Commencement Date.
5. **Lease Extension Option.** Tenant, upon mutual agreement by City, which shall not be unreasonably withheld, shall have the option, upon written notice not less than ninety (90) days prior to expiration of the current Lease Term, to extend this Lease for one (1) additional ten (10) year term ("Lease Renewal Term") under the same terms and conditions set forth herein. The City Manager has the authority to approve Lease Extensions on behalf of the City without additional approval from the City Commission.
6. **Rent.** Tenant shall pay to City, as Rent, the Minimum Rent, the Percentage Rent, and the Additional Rent, if any, for each Lease Year.
- 6.1. **Minimum Rent.** Tenant agrees to pay Minimum Rent in accordance with this Lease.
- 6.1.1. **Amount.** The Minimum Rent for the Premises, not inclusive of sales tax, is \$60,000 per Lease Year for years one (1) through (5) of the Lease Term. The Minimum Rent for the Premises will be \$66,000 per Lease Year for years six (6) through ten (10) of the Lease Term.
- 6.1.2. **Prevailing Sales Tax.** The Minimum Rent is not inclusive of sales tax. Tenant is responsible for remitting sales tax amount with Rent based upon prevailing sales tax at the time Rent is due.
- 6.1.3. **Minimum Rent Payment Due Date.** All payments of Minimum Rent are due and payable no later the first of every month following the Rent Commencement Date.
- 6.1.4. **Minimum Rent Commencement Date.** Minimum Rent will commence on the first day of the month after issuance of the Certificate of Occupancy for the Improvements.
- 6.1.5. **Increase to Minimum Rent.** The Minimum Rent will remain as stated in section 6.1.1 the first ten (10) Lease Years. Beginning in the 11<sup>th</sup> Lease Year through the expiration of any exercised Lease Extension Options, the annual base rent shall increase 7.5% every five (5) years.
- 6.2. **Percentage Rent.** Tenant agrees to pay the Minimum Rent and Percentage Rent. Percentage Rent is calculated and due in accordance with section 6.2 of this Lease.



- 6.2.1. **Amount.** The Percentage Rent per Lease Year for years one (1) through five (5) of the Lease Term will be 5% of the Gross Revenue generated by the Premises in excess of \$1,200,000 (the Breakpoint calculation). Tenant shall pay the Percentage Rent due City on an annual basis within 45 days after the end of each Lease Year during the Lease Term.
- 6.2.2. **Increase to Percentage Rent Threshold Amount.** The threshold amount of Gross Revenue requiring the payment of Percentage Rent will remain constant for the first five (5) Lease Years. Beginning in the 6<sup>th</sup> Lease Year, through the expiration of any exercised Lease Extension Options, the Minimum Rent and the percentage rent threshold amount shall increase as shown below.

Lease Year	Minimum Rent	Percentage Rent	Percentage Rent Threshold Amount
1 - 5	\$60,000	5%	\$1,200,000
6 - 10	\$66,000	5%	\$1,320,000
11-15	\$70,950	5%	\$1,419,000
16-20	\$76,271	5%	\$1,525,425
21-25	\$81,992	5%	\$1,639,832
26-30	\$88,141	5%	\$1,762,819

- 6.2.3. **Percentage Rent Due Date.** Percentage Rent will be due and payable within 45 days of the end of each Lease Year during the Lease Terms and Lease Renewal Terms.
- 6.3. **Breakpoint Calculation.** The Breakpoint shall adjust in accordance with the increases to the Minimum Rent and Percentage Rent as stated in this Lease. Natural Breakpoint defined is the Natural Breakpoint is the point at which base rent is equal to percentage rent (or overage) multiplied by sales. Formula is Base Rent/Percentage Rent = Natural Breakpoint. The Natural Breakpoint is used to determine Percentage Rent based on annual sales. For clarity and example: Minimum Rent = \$60,000 and sales are \$2,000,000. The calculation is \$1,200,000 x .05 = \$40,000. The annual Percentage Rent owed is \$40,000, in addition to the Minimum Rent of \$60,000, which is paid monthly.
- 6.4. **Additional Rent.** Any sums to be paid by Tenant to City under the terms of this Lease – other than Minimum Rent or Percentage Rent – will be Additional Rent, and will be subject to all of the requirements applicable to the payment of Rent. Tenant will pay any Additional Rent when due under this Lease.
- 6.5. **Payment of Rent Generally.** Tenant agrees to pay the Minimum Rent, Percentage Rent, and Additional Rent, if any, (collectively, “Rent”) when due and payable. All

Rent and other payments required to be made to the City under the Lease must be paid to the City at the following address:

City of Pompano Beach Treasury Division  
100 West Atlantic Boulevard  
Room 135  
Pompano Beach, Florida 33060  
Attention: Revenue Collections Manager

or at such other place as the City shall designate from time to time by Notice given pursuant to the notice provisions of this Lease. Payments must be made by check mailed or delivered to City or by wire transfer to a City account designated by the City Director of Finance.

- 6.6. **Late Payments.** Any late payment of Rent or any late payment of any other sums due under the Lease will automatically accrue interest at the Default Rate from the date the payment was due until paid.
7. **Reporting of Gross Revenue.** Tenant must report Gross Revenue in a format which identifies and shows the dollar amount of any item which is excluded from Gross Revenue. All reports of Gross Revenue used to calculate any payments due City under this Lease must reconcile with the Gross Revenue shown on the monthly State sales tax returns filed by Tenant.
- 7.1. **Documentation.** All revenue data reported or used to arrive at the amounts of any payments to City under this Lease must be verifiable and supported by acceptable source documents (“**Source Documents**”). Source Documents include but are not limited to Florida Department of Revenue sales and use tax returns, Federal tax returns, 1099 forms from credit card companies, credit card reports, bank deposit slips, bank statement, wire fund transfer documents, sales invoices, point of sale receipts, cash register reports, sales terminal reports, and financial statements.
- 7.2. **Tenant Bank Account.** Tenant must maintain a separate bank account for the daily operations on the Premises.
- 7.3. **Statement of Gross Revenue.** Within 45 days after the close of each Lease Year, Tenant will furnish to City one or more certified gross sales reports detailing all of the Gross Revenue generated by the Premises during the Lease Year (the “**Statement**”), together with a calculation of the Percentage Rent for the Lease Year. The Statement must be prepared both in accordance with generally accepted accounting principles and consistent with the form required by the State for the reporting of sales tax. The Statement must be accompanied by copies of the Source Documents supporting the information in the Statement. The Statement will be certified by Tenant as a true and correct determination of the Percentage Rent based on the Gross Revenue for the applicable Lease Year, and must be accompanied by Tenant’s payment of the Percentage Rent for the Lease Year. Any overage in excess of 2% in Percentage Rent paid shall be either credited to Tenant or City shall issue a refund within fifteen (15) days of Tenant’s submission. If there is a deficit of more than 2% in the Percentage Rent, the Tenant shall tender said amount to City within fifteen (15) days.

**7.4 Revenue Included.** Without limiting the definition of Gross Revenue, the following revenue generated by the Premises will be included in Gross Revenue: revenue from food, beverage and retail sales, concessions, rental fees, subleases, third party contracts, use agreements, recreational programs and services, events, admissions, ticket sales, and commissions, however, excepted from Gross Revenue shall be any and all revenue (whether cash, credit or barter) paid to or collected by Tenant for sales of food, beverage and merchandise. Gross Revenue does not include any of the following: (a) parking revenues generated by the Property; (b) insurance loss proceeds which are applied toward restoration of the Improvements; (c) any award or payment made by a Governmental Authority in connection with the exercise of any right of eminent domain, condemnation, or similar right or power, including but not limited to government grants, credits or subsidies; (d) sales taxes of any kind, including but not limited to luxury taxes, consumers' excise taxes, rent taxes, ad valorem real estate taxes, business personal property taxes, tourist, room and restaurant taxes, public assessments, special assessments, and taxes on utilities, gross receipts taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services; (e) employee meals, if free or discounted for such employees and their immediate family members; (f) the proceeds of any sale of Tenant's business to a third party; (g) the selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and allowances made thereon; (h) sums and credits received in the settlement of claims for loss of or damage to merchandise, to the extent previously reported as net sales; (i) the price allowed on all merchandise traded in by customers for credit or the amount of credit for discounts and allowances made in lieu of acceptance thereof; (j) cash refunds made to customers in the ordinary course of business; (k) sales of non-food promotional items for which Tenant receives no profit; (l) sales of fixtures or equipment after use thereof in the conduct of Tenant's business at the Property; and (m) proceeds of property insurance received by Tenant upon a loss or damage to Tenant's merchandise or equipment while located at the Property. Gift card purchases are not deemed a sale until redemption. Upon redemption such gift card shall be recorded as a sale.

**8. Records Retention and City's Right to Audit.** All records of Tenant must be made available locally, at the expense of the Tenant, for inspection and audit by a CPA retained by the City, the City's Internal Auditor, or any other designee of the City.

**8.1. Availability of Records.** Records must be made available for inspection at all reasonable times, after reasonable notice from City, throughout the term of this Lease, and for a period of three years after the date of the final payment due under this Lease and any extensions of this Lease. Tenant shall, 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. Such records may be provided in a digital format.

**8.2. Record Retention.** All records of Tenant must be retained until the later of (a) three years after the date of the final payment due under this Lease; or (b) as required by applicable law, including the required retention period of the Florida

Public Records Act set forth in Chapter 119 of the Florida Statutes. Records shall be retained in digital format. The Records are kept for the requisite period pursuant any regulatory requirement. Paper Sale Receipts shall be retained for three (3) months and available in digital format, pursuant to Toast data storage.

- 8.3. **Records to be Retained.** The records required to be retained under this Lease include, but are not limited to, all business records, bookkeeping and accounting records, sales and income tax records and returns, bank statements, tax deposits, supporting documents, statistical records, sales reports, and any other records which may be pertinent to this Lease or to the calculation of Gross Revenue, including sales receipts.
- 8.4. **Exempt Records.** 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 Lease term and following completion of the Lease if the Tenant does not transfer the records to the City.
- 8.5. **Audit Results.** Pursuant to Section 7.3 herein, Tenant must also reimburse City for its reasonable costs incurred in conducting the audit in the event the audit reveals a discrepancy of more than 5% in the amount of Gross Revenue reported by Tenant.
- 8.6. **Transfer and Retention of Records.** Upon completion of the Lease, City may request Tenant transfer, at no cost to the City, all public records as provided for under Chapter 119, Florida Statutes in possession of the Tenant. If a transfer of records is not requesting Tenant shall or keep and maintain public records required by the City. If the Tenant transfers all public records to the City upon completion of the Lease, the Tenant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Tenant keeps and maintains public records upon completion of the Lease, the Tenant 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.
- 8.7. **Failure to Provide Records.** Failure of the Tenant to provide the above-described public records to the City within a reasonable time may subject Tenant to penalties under 119.10, Florida Statutes, as amended.
9. **Sales Tax.** Tenant will be responsible for ensuring the collection and remission to the State of all sales tax required to be paid in connection with the use and operation of the Premises.
10. **Tenant's Obligation to Pay Public Charges.** Tenant covenants and agrees to timely pay and discharge, before any fine, penalty, interest or cost may be added, all levies, assessments, fees, charges and taxes (collectively, "**Public Charges**") imposed or assessed against the Premises resulting from the Tenant's use, the Project, Rents, including, without limitation, ad valorem real property taxes; personal property taxes; taxes on Rent payable under this Lease; tourist, room and restaurant taxes; public assessments; non-ad valorem assessments, special assessments; and taxes on utilities.

- 10.1. **Payment of Public Charges.** Tenant's obligation to pay and discharge Public Charges levied, assessed or imposed against or with respect to Premises and the Project will commence on the Lease Commencement Date. If the Lease Commencement Date is not at the beginning of a calendar year, the Public Charges for the first Lease Year will be prorated between Tenant and City. Tenant is to pay Public Charges levied directly to the appropriate taxing authority. Upon written request by City, Tenant will provide to City the official receipts of the appropriate taxing authority, or other proof satisfactory to the City evidencing the payment of any Public Charges for which Tenant is responsible under this Lease. Non-payment of these charges before any fine, penalty, interest or cost may be added shall constitute a Default under this Lease.
- 10.2. **Payment in Lieu of Ad Valorem Taxes.** If during the Term all or a portion of the Premises is no longer subject to ad valorem taxes (or to a tax imposed on the Premises in lieu of or replacing an ad valorem tax) due to legal or judicial action or otherwise, then Tenant shall, each year during the Term, make payments to the City in lieu of such ad valorem taxes in an amount equal to that which would have accrued to the City if the Premises was subject to ad valorem taxes in the applicable Lease Year (pro-rated for any partial calendar year). Such payment shall be made on the first day of April of each succeeding year. The amount to be paid under this paragraph will be calculated by multiplying the assessed value of the Premises as determined by the Property Appraiser by the millage rate established by the City.
11. **Contesting Public Charges.** Tenant may contest the amount or validity, in whole or in part, of any Public Charges for which Tenant is (or is claimed to be) liable, by appropriate proceedings diligently conducted. Tenant must notify the City in writing prior to contesting any Public Charges. Upon the termination of the proceedings, Tenant must pay the amount of the Public Charges determined to be due, together with any costs, fees, including Attorneys' Fees, interest, penalties and any other liabilities arising out of the proceedings.
- 11.1. **Joinder by City.** City will not be required to join in any proceedings to contest any Public Charges unless Governmental Requirements require that the proceedings be brought by or in the name of City, in which event the City will join in the proceedings or permit them to be brought in the City's name.
- 11.2. **City Not Liable For Cost to Contest.** Tenant agrees to reimburse City for any fees, costs and expenses incurred by the City in connection with Tenant's contest of any Public Charges, including City's Attorneys' Fees. Any fees, costs and expenses incurred by the City in connection with Tenant's contest of any Public Charges will be considered Additional Rent under this Lease, and will be due and payable by Tenant upon receipt of notice from City.
12. **Utilities.** Tenant will be responsible for paying all charges and fees for all utilities provided to any portion of the Premises during the Term.
- 12.1. **Timely Payment of Utility Charges.** Tenant agrees to pay all fees, charges and deposits for all utilities servicing the Premises on a timely basis. If Tenant or its Subtenants fail to pay any utility charges on a timely basis, and the City receives notice that utility charges are past due, City will have the right (but not the

obligation) to pay the past due utility charges. Any funds advanced by City for utility charges will be considered Additional Rent under this Lease, and will be due and payable by Tenant upon receipt of notice from City.

13. **Use of the Premises.** During the Lease Term Tenant may use the Premises as a Beach Concession Kiosk with outdoor seating, as permitted by City Code and all other applicable Governmental Requirements (“**Permitted Use**”) at the time of such use. Any use of the Premises other than a Beach Concession Kiosk is prohibited.

13.1. **Restrictions on Use.** Tenant shall not use the Premises or any portion of it, or permit the use of all or any portion of the Premises for any of the following: any unlawful or illegal business, use or purpose; any business, use or purpose which is immoral or disreputable; any hazardous use; any use which could constitute a public or private nuisance; any use which violates in any way the Certificate of Occupancy or other Governmental Approvals; or any use which violates a Governmental Requirement. Tenant shall not convert the use of the Premises or any portion thereof to any time-sharing, time interval or cooperative form of ownership, or to subject the same to any condominium regime.

13.2. **Compliance with Governmental Requirements.** Tenant shall comply with all laws and Governmental Requirements applicable to the Premises, including, without limitation, those prohibiting discrimination by reason of race, color, religion, sex, national origin, or handicap in the development, construction, management, lease, use or occupancy of the Premises or any portion thereof.

13.3. **Request for Additional Use.** If Tenant desires to use any portion of the Premises for a use that is not a Permitted Use under this Lease, Tenant must seek written consent from the City, which consent may be withheld or denied in City’s sole discretion.

14. **Maintenance, Operation and Management.**

14.1. **Maintenance and Operation of Improvements.** Tenant must at all times keep the Premises in good and safe condition and repair, reasonable wear and tear excepted. The Tenant will comply with all Governmental Requirements applicable to the occupancy, maintenance and operation of the Premises.

14.2. **Tenant Maintenance Obligations.** Tenant shall be responsible for maintenance of all Improvements at its sole cost and expense including but not limited to: the interior and exterior of the building, outdoor seating area and landscaping, janitorial services for the interior building and outdoor seating area, garbage removal service, painting, pressure cleaning, lighting, HVAC system, window cleaning, signage, awnings and professional pest control services on a regular basis, no less than monthly and as needed. Such extermination services shall be supplied in all areas where food is prepared, dispensed, or stored and in all areas of the Premises where trash is collected and deliveries are made. No garbage, including boxes, barrels, cartons, etc. shall be stored during business hours within sight of the public excepting any need to have them available for city pick-up.

14.3. **Continuous Operation.** Tenant acknowledges that it is important to City that the Premises remains in full operation at all times. Tenant agrees to use best efforts to

keep the Premises in continuous operation throughout the Lease Term. Kiosk shall be open during all holidays, except Christmas Day.

- 14.4. **Standards Generally.** The City and Tenant agree that the manner in which the Premises is developed, operated and maintained is important to the City by reason of its interest in having a Beach Concession Kiosk for use by City residents and visitors to the City. Tenant therefore agrees to develop, operate and maintain the Beach Concession Kiosk and all other property and equipment located on the Premises consistent with standards to be agreed upon by City and Tenant.
- 14.5. **Naming Rights.** Tenant has the right to name the Beach Concession Kiosk with the City Manager or his designee's prior written consent. The approved name is "The Sandbar at Pompano Beach".
- 14.6. **Hours of Operation.** Hours of Operation. Beach Concession Kiosk shall initially be open daily from 8:00 a.m. – 9:00 p.m. Tenant shall have the right to change these initial hours depending upon the volume of business generated or needed to accommodate demand. This includes opening earlier or closing later. Any change to the hours of operation must be approved by the City Manager or his designee.
- 14.7. **Merchandise and Menu.** Core menu items and merchandise with prices will be approved by the City Manager or his designee prior to being offered for sale. Menu with prices shall be posted at the Premises in plain view of patrons. Menu and merchandise prices shall reflect current market rates. City reserves the right to request Tenant make price adjustments if prices do not reflect current market rate. Core menu items must be unique to the Beach Concession Kiosk. Only non-glass items shall be used for beverages and food. Plastic straws and Styrofoam products are prohibited.
- 14.8. **Alcoholic Beverages.** Alcoholic beverages may be sold with approval from the City Manager or his or her designee, which approval shall not be unreasonably withheld. Tenant will obtain and pay for all permits, licenses and other business taxes, including Alcoholic Beverage Licenses. Sale and consumption of alcoholic beverages shall be allowed within the boundaries of the Premises and shall not extend beyond the outdoor seating area.
- 14.9. **Furniture.** Tenant shall decorate and furnish Premises, including outdoor seating area, with chairs, tables and umbrellas. All proposed furniture shall be preapproved by the City Manager or his or her designee. Umbrellas may not contain any advertising, however, Tenant may have its business logo on umbrellas.
- 14.10. **Signage.** Tenant has the right to install signs, awnings, marquees or other structures on the exterior of the Premises with the City Manager or his designee's prior written consent. Any and all such signs or structures must comply with Applicable Laws and City Code.
- 14.11. **Restrooms.** City shall provide supplies for restrooms, which serve both the Beach Concession Kiosk and the public and conduct daily cleaning of the restrooms. Tenant acknowledges restrooms will serve the Beach Kiosk Concession and general public.

- 14.12. **Repairs and Replacements.** All repairs and replacements shall be at the Tenant's sole cost and expense.
15. **Title and Survey Issues.** Tenant acknowledges that it has received the title and survey information and that City has no further obligations with regard to matters of title and survey under this Lease.
16. **"As Is" Condition of the Premises.** Tenant acknowledges and agrees that prior to the execution of this Lease it has been given the opportunity to perform all inspections and investigations concerning the Premises to its satisfaction and that, except as expressly provided in this Lease, the City is not making and has not made any representations or warranties, express or implied, as to the Premises, including but not limited to, title, survey, physical condition, suitability or fitness for any particular purpose, value, financial prospects or condition, or the presence or absence of hazardous substances. Tenant acknowledges that it has relied solely on Tenant's own inspections and investigations of the Premises in its determination of whether to proceed with the Project. As a material part of the consideration of this Lease, Tenant agrees to accept the Premises in its "as is" and "where is" condition, without any representations or warranties other than those expressly stated in this Lease.
17. **Project Development Deadlines.** Tenant expressly agrees that the Project will be developed in accordance with the Development Timeline attached as **Exhibit D**, and that time is of the essence in the development of the Project.
18. **Evidence of Funding Sources.** Prior to submitting an application for a Building Permit, Tenant must provide to City evidence satisfactory to City, in City's sole discretion, of the source of funds for the construction of the Improvements. The source of funds may be loan funds, equity investment, or a combination of both, as long as the sources of funds total 100% of the Improvement Cost. Examples of satisfactory evidence of funding include one or more of the following:
- 18.1. **Loan Commitment.** A fully executed loan commitment from a Lender committing to loan to Tenant an amount equal to the Improvement Cost; or
- 18.2. **Equity Investment.** Evidence of a bank or investment account in Tenant's name containing funds equal to the Improvement Cost (or the portion of the Improvement Cost not covered by another source of funding), along with a written covenant by Tenant that the funds will not be used for anything other than the construction of the Improvements.
19. **Guaranty of Completion.** Prior to City's issuance of a Building Permit for the Improvements, Tenant must provide to City a form of security for Tenant's obligation to complete construction of the Improvements. Acceptable forms of security include a performance bond, personal guarantees by the principals of the Tenant, or a letter of credit in the amount of the Improvement Cost. The form of security must include a guaranteed source of funds to be available to the City to complete construction of any unfinished Improvements. The security must be satisfactory to the City in its sole discretion.
20. **Project Improvement Cost.** Tenant agrees to expend a minimum of 50% of the Improvement Cost during the first two (2) years of the Lease Term, and the balance of the Improvement Cost during the second two (2) years of the Lease Term.



21. **Reporting of Project Improvement Costs.**

- 21.1. **Annual Improvement Cost Reports.** Beginning after the Lease Commencement Date, and until completion of the Improvements, Tenant will be required to submit to the City an "Improvement Cost Report" for the Project on or before January 30 of each calendar year. Each Improvement Cost Report must include the following information and documentation:
- 21.1.1. Cost of Improvements (or portions of Improvements) completed to date;
  - 21.1.2. Description of Improvements completed to date;
  - 21.1.3. Estimated or actual completion date for each Improvement; and
  - 21.1.4. Copies of cancelled checks, bank statements, wire transfers or other documentation evidencing payment of the Improvement Costs shown in the Improvement Cost Report
- 21.2. **Improvement Cost Record Retention.** All records pertaining to the construction of any Improvements must be made available for inspection at all reasonable times, after reasonable notice from City, throughout the term of this Agreement, and for a period of three years after the date of the final payment due under this Lease.
- 21.3. **Record Retention.** All records pertaining to the Improvement Costs must be retained until the later of (a) three years after the date of the final payment due under this Lease; or (b) as required by applicable law, including the required retention period of the Florida Public Records Act set forth in Chapter 119 of the Florida Statutes.
- 21.4. **Format of Report.** The Improvement Cost Reports may be provided in spreadsheet format, as long as each report is accompanied by the appropriate documentation evidencing payment of the Improvement Costs shown in the report. The Improvement Cost Reports must be submitted to:
- City of Pompano Beach Finance Department  
100 West Atlantic Boulevard  
Pompano Beach, Florida 33060  
Attention: Controller, Room 480

22. **Construction of Improvements.**

- 22.1. **Deadlines.** Tenant must strictly adhere to all design, permitting, and construction deadlines for the Project set forth in the Development Timeline attached as **Exhibit D**. The City Manager may approve extensions to the Development Timeline.
- 22.2. **Plans.** Tenant will be responsible for preparing the Plans. The Plans must conform in all material respects to all applicable Governmental Requirements, the Project Site Plan, and the Description of Improvements attached to this Lease. The Plans must include, without limitation, the following:
- 22.2.1. Schematic designs and architectural drawings;
  - 22.2.2. Foundation and structural drawings;

- 22.2.3. Electrical and mechanical drawings including, without limitation, plans for all lighting facilities affecting the exterior appearance of the Improvements;
  - 22.2.4. Landscaping plans; and
  - 22.2.5. Final specifications.
- 22.3. **Governmental Approvals.** Tenant shall secure and pay for any Governmental Approvals required for the construction of the Improvements on the Premises, as well as any Governmental Approvals that may be required for any alterations and renovations permitted by this Lease. Tenant shall pay all fees and charges due any Governmental Authority in connection with the issuance of any required Governmental Approvals. Should Tenant fail to obtain all required Governmental Approvals within twelve (12) months of the Effective Date of this Lease City shall have the right to terminate the Lease by providing 30 day written notice to Tenant, unless failure to obtain Governmental Approvals is due to Force Majeure or lack of performance by the City in the timely issuance of permits which have been submitted by Tenant City shall not be responsible for any cost incurred prior and up to the date of termination of this Lease.
- 22.4. **Demolition of Existing Beach Concession Kiosk.** Demolition of the existing Beach Concession Kiosk shall not occur until Tenant has obtained all required Governmental Approvals and approval from the City Manager.
- 22.5. **Construction Quality.** Tenant agrees to perform all work (“Work”) required to complete the demolition of the existing kiosk and construction of the Improvements on the Premises, and any related work not located on the Premises, in a good and workmanlike manner in accordance with the Plans and all applicable Governmental Requirements.
- 22.6. **Tenant’s Obligations During Construction.** Prior to the Completion Date, Tenant shall:
- 22.6.1. Perform and complete the Work;
  - 22.6.2. Select the means and methods of construction, using only adequate and safe procedures, methods, structures and equipment;
  - 22.6.3. Furnish, erect, maintain and remove any construction equipment and temporary structures that may be required to perform the Work; be responsible for the safety, efficiency and adequacy of the construction equipment and construction methods used, and be responsible for any damage which may result from any failure of the construction equipment or any failure in the method of construction;
  - 22.6.4. Provide all architectural and engineering services, scaffolding, hoists, temporary structures, light, heat, power, toilets, temporary utility connections, equipment, tools and materials and whatever else may be required for the proper performance of the Work;

- 22.6.5. Order and have delivered all materials required for the Work and be responsible for properly securing, protecting and ensuring the materials and making certain they remain in good condition;
- 22.6.6. Maintain the Premises in a clean and orderly condition at all times commensurate with the public beachfront nature of the Project, and remove all paper, cartons and other debris from the Premises;
- 22.6.7. Protect all Work prior to its completion and acceptance;
- 22.6.8. Preserve all properties adjacent to or leading to the Premises, and restore and repair any such properties damaged as a result of construction of the Improvements, whether such properties are publicly or privately owned;
- 22.6.9. Implement and maintain in place at all times a comprehensive hurricane and flood plan for the Premises and the Work, and provide a copy of same to the City;
- 22.6.10. Upon completion, deliver to the City an as-built survey and as-built plans and specifications for the Improvements;
- 22.6.11. Upon completion of the Improvements, deliver to the City a copy of the final Certificate of Occupancy (CO) for the completed Improvements;
- 22.6.12. Carry on any construction, maintenance or repair activity with diligence and dispatch and use diligent effort to complete the Work in the shortest commercially reasonable time under the circumstances.
- 22.6.13. Take commercially reasonable precautions to protect property adjacent to the Premises, or property which is in the vicinity of or is in anyway affected by the Work, and be entirely responsible and liable for all damage or injury to all adjacent public and private property as a result of Tenant's operations.
- 22.6.14. At all times enforce discipline and good order among its employees and the general contractor at the Project site.
- 22.7. **Tenant to Provide Quarterly Progress Reports.** Tenant must keep the City apprised of Tenant's progress regarding the Work. Tenant will deliver, upon request from the City, written reports of the progress of construction not less than quarterly. The quarterly progress reports are to be delivered to the City Manager or his or her designee.
- 22.8. **City's Representative.** The City may designate one or more employees or agents to be the City's Representative for the Project. The City's Representative may, during normal business hours, visit, inspect or appraise the Project, and any materials, contracts, records, plans, specifications and shop drawings relating to the Project, whether kept at Tenant's offices or at the Project construction site or elsewhere. Tenant agrees to advise City's Representative of meetings among Tenant, Tenant's representative and the contractor or subcontractor or any subset of this group, and City's Representative will be entitled to attend such meetings. Tenant agrees to cooperate with the City to enable City's Representative to conduct site visits, inspections and appraisals.

- 22.9. **Certificates of Final Completion.** After Tenant completes the Work and obtains a Certificate of Occupancy for the Improvements, the City will deliver to Tenant, upon request by Tenant, a recordable Certificate of Final Completion certifying that, to the best of the City's knowledge, Tenant has satisfied all of its obligations to the City, in its capacity as landlord under this Lease, for the construction of the specified Improvements. If the City fails or refuses to provide the Certificate of Final Completion, the City must, within 30 days after receipt of a written request from Tenant, provide Tenant with a written statement indicating in what respects Tenant has failed to complete the Work, or is otherwise in default, and what measures and acts, in the opinion of the City, are necessary for Tenant to obtain a Certificate of Final Completion.
- 22.10. **Utilities.** Tenant shall install or cause to be installed all necessary connections between the Improvements and any utilities, whether owned publicly or privately. Tenant will be responsible for payment of all utility connection fees. City will allow Tenant credit for any existing connections on the Premises, and any other credits available. Tenant shall be responsible for obtaining and paying the cost of all utilities including, but not limited to water, sewer, electric, gas, telephone, cable, internet, serving the Premises during the Term, together with any taxes, penalties, surcharges and any other charges pertaining to such utilities. Tenant must install water and electric meters for the kiosk and additional water and electric meters for restrooms which serve the kiosk patrons and the public.
23. **Changes to the Improvements.** After the Improvements have been completed, Tenant will not make any alterations or additions ("Changes") to the Improvements in excess of \$100,000 without the City's prior written consent. Any permitted Changes will be made in a good and workmanlike manner, in accordance with approved plans, if required, and in accordance with all Governmental Requirements. The Tenant's obligations during construction of the Improvements set forth in Section 21 of this Lease will also apply to any Changes to the Improvements.
24. **Parking.** Tenant acknowledges no exclusive parking area is being provided with the Premises. Patrons visiting the premises will be required to use City's paid parking areas.
25. **Subleases.**
- 25.1. **Subleases Not Permitted.** Tenant is not permitted to sublease the Premises or any portion thereof.
26. **Default by Tenant.** Each of the following occurrences is an "Event of Default" by Tenant under the Lease:
- 26.1. **Failure to Pay Money.** If Tenant fails to pay any Rent, Additional Rent, Public Charges or any other payment of money within 5 days after the payment is due.
- 26.1.1. If Tenant fails to pay the amount due to the City within 5 days after the payment is due, Tenant will be required to pay the delinquent payment plus a late fee equal to 5% of the amount then due and owing no later than the 30<sup>th</sup> day after the date the payment was originally due;

- 26.1.2. If Tenant fails to pay the amount due by the 30<sup>th</sup> day after the original due date, the City is entitled to collect the greater of the late fee or interest at the Default Rate until the amount due under the Lease paid;
  - 26.1.3. After the 30<sup>th</sup> day, the City is entitled to exercise any and all remedies provided in this Lease for a Tenant Event of Default; and
  - 26.1.4. All interest, late fees, penalties, contributions and all other payments of money required to be paid to the City by Tenant under this Lease other than Rent, will be treated as Additional Rent.
- 26.2. **Bankruptcy.**
- 26.2.1. If any petition is filed by Tenant, as debtor, seeking relief under Chapters 7 or 11 of the United States Bankruptcy Code or any successor code;
  - 26.2.2. If any involuntary petition is filed against Tenant, as debtor, instituting a case under Chapters 7 or 11 of the United States Bankruptcy Code or any successor code and Tenant is unable to dismiss the case within 90 days after filing.
  - 26.2.3. If Tenant admits in writing its inability to pay its debts, or if a receiver, trustee or other court appointee is appointed for all or a substantial part of Tenant's property and the receiver, trustee or other appointee is not discharged within 90 days after appointment;
  - 26.2.4. If Tenant's Leasehold Interest in the Premises or the Improvements is levied upon or attached by process of law, and such levy or attachment is not discharged within 90 days after the levy or attachment; or
  - 26.2.5. If a receiver or similar type of appointment or court appointee or nominee of any name or character is made for Tenant or its property, and such receiver, appointee, or nominee is not discharged within 90 days after appointment.
- 26.3. **Failure to Perform Other Covenants, Conditions and Agreements.** If Tenant fails to comply with any of the other covenants, conditions and agreements in the Lease, and the failure continues for a period of 60 days after Tenant receives written notice from the City specifying the Tenant's failure to perform any of the Lease covenants, conditions and agreements.
- 26.3.1. If Tenant's failure to comply with the covenants, conditions and agreements in the Lease is capable of cure, but cannot reasonably be cured within 60 days, then Tenant will have an additional commercially reasonable time within which to cure the Tenant Event of Default, but only if:
    - (a) Tenant commences to cure the default within the 60-day period and thereafter continues to diligently perform all actions necessary to cure the default; and
    - (b) The Project continues to operate in the ordinary course of business, to the extent commercially reasonable taking into account the nature

of Tenant's alleged failure to perform according to the covenant, condition or agreement in question.

- 26.4. **Cessation of the Work.** If Tenant voluntarily ceases construction of the Improvements for a period in excess of 60 consecutive days and fails to resume construction within 30 days after receiving written notice from City.
- 26.5. **Unauthorized Sale, Assignment or Transfer.** If Tenant, in violation of the provisions of this Lease or the Development Agreement:
  - 26.5.1. Sells or assigns its interest in this Lease or the Project;
  - 26.5.2. Attempts to consummate any Transfer by entering into an agreement to sell or assign its interest in the Lease or the Project; or
  - 26.5.3. Otherwise agrees to a Transfer without complying with the provisions of the Development Agreement governing Transfers.
- 27. **City's Remedies for Tenant's Default.**
  - 27.1. **Legal and Equitable Remedies.** If a Tenant Event of Default occurs, the City is entitled to seek all legal and equitable remedies available under Florida law.
  - 27.2. **Termination of Lease.** If the City elects or, if legal remedy is required, obtains the right to terminate this Lease, Tenant shall quit and peaceably surrender to City the Premises, the Improvements, and all furniture, fixtures and equipment owned by Tenant and used in connection with the Improvements.
    - 27.2.1. **Termination of Tenant's Interest.** Upon a termination of this Lease, all rights and interest of Tenant in and to the Premises and the Improvements will terminate. However, a termination of the Lease will not release Tenant from its obligation to indemnify City for any acts which occurred prior to the termination of the Lease.
    - 27.2.2. **City's Rights to Plans and Specifications.** If this Lease is terminated after the Lease Commencement Date but prior to the Completion Date, Tenant agrees that, to the extent assignable, the City is entitled to use the Plans, specifications, designs, Governmental Approvals, permits and other work product produced by or for Tenant or others for use in the development, construction and operation of the Improvements. City is entitled to use these documents without payment or further permission from either Tenant or the professionals that created or prepared them.
- 28. **Default by the City**
  - 28.1. **City's Failure to Perform.** City will be in default under the Lease if the City fails to perform any obligation or fulfill any covenant or agreement of the City set forth in the Lease, and the failure continues for 60 days following the City's receipt of written notice of the non-performance.
  - 28.2. **Cure of City Default.** The City will not be in default of this Lease if:

- 28.2.1. The City provides Tenant with a written response within the 60-day day period indicating the status of the City's resolution of the breach and providing for a commercially reasonable schedule to correct same; or
- 28.2.2. With respect to any breach that is capable of being cured but that cannot reasonably be cured within the 60-day period, if the City commences to cure the breach within the 60-day period (or as soon thereafter as is reasonably possible) and diligently continues to cure the breach until completion.
- 28.3. **Tenant's Remedies for City's Default.** If a City Event of Default occurs, the Tenant shall be entitled to seek all legal and equitable remedies available under Florida law.
29. **Force Majeure.** Neither the City nor Tenant, as the case may be, will be considered in breach of or in default of any of their respective non-monetary obligations under the Lease as a result of an unavoidable delay due to strikes, lockouts, acts of God, epidemic, pandemic, inability to obtain labor or materials due to governmental restrictions, riot, war, hurricane or other similar causes beyond the commercially reasonable control of a party (in each case, an event of "Force Majeure"). Upon the occurrence of a Force Majeure, the applicable time period will be extended for the period of the Force Majeure event. The provisions of this section shall not operate to excuse Tenant from the prompt payment of rent, percentage rent, additional rent, or other payments required by the terms of the Lease, except in the case of restrictive governmental regulations that prohibit Tenant's business operation or require business closure. In the instance of such governmental regulation, Rent and any other required payments may be abated following the City's confirmation and concurrence as provided by the City Manager.
30. **Remedies Cumulative; Waiver.** The rights and remedies of the parties to this Lease, whether provided by law or by this Lease, are intended to be cumulative and concurrent. The exercise by either party of any one or more of its remedies will not preclude the exercise by a party, at the same or different times, of any other remedies for the same default or breach, or of any of its remedies for any other default or breach by the other party. The waiver by a party of any default or Event of Default under this Lease will not extend to or affect any other existing or subsequent Event of Default, or impair any rights, powers or remedies of a party in connection with any other default or Event of Default. A party's delay or omission in exercising any right, power or remedy will not be construed as a waiver of any default or Event of Default or constitute acquiescence to the default.
31. **City's Right to Cure Tenant Default.** If Tenant defaults in the performance of any term, covenant or condition to be performed under the Lease, the City may, in its sole discretion, after notice to the Tenant and after the expiration of the applicable cure periods (or without such notice and cure in the event of an emergency), cure the default on behalf of the Tenant, at the expense of Tenant.
32. **Sums Paid by City to Cure Tenant Default.** If the City is compelled to pay, or elects to pay, any sum of money, or performs any act which requires the payment of any sum of money, or is compelled to incur any expense in the enforcement of its rights under the Lease, such sums will be deemed Additional Rent. Tenant shall repay to City the sums expended by City with interest at the Default Rate, upon demand.

33. **Tenant's Duty to Keep Project Free of Liens.**

- 33.1. **Property Not Subject to Liens.** In accordance with Section 713.10 of the Florida Statutes, any and all liens or lien rights arising out of the construction of the Improvements extend only to Tenant's Leasehold Interest in the Premises and the Project. The City's right, title and interest in the Premises are not subject to liens or claims of liens for improvements made by Tenant.
- 33.1.1. Nothing contained in the Lease shall be deemed or construed to constitute the consent or request of the City, either express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of any portion of the Project.
- 33.1.2. Nothing contained in the Lease shall be deemed or construed to give Tenant, any Lender, Subtenant, lessee, or sublessee any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against City's interest in all or any part of the Premises, or against assets of the City, or City's interest in any Rent and other monetary obligations of Tenant described in this Lease.
- 33.2. **Tenant's Construction Agreements.** Any construction agreements entered into between Tenant and a general contractor or other contractor in privity with the Tenant must provide that City will not be liable for any work performed or to be performed at the Premises for Tenant, any Lender, Subtenant, lessee, or sublessee, or for any materials furnished or to be furnished to the Project for Tenant, any Lender, Subtenant, lessee, or sublessee.
- 33.3. **No Liens on City's Interest.** No mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials will attach to or affect City's interest in all or any part of the City Property, or any assets of the City, or the City's interest in any Rent or other monetary obligations of Tenant arising under the Lease.
- 33.4. **Contesting Liens.** If Tenant desires to contest any lien, Tenant must notify the City of its intention to do so within 10 days after the filing of the lien. Tenant, at its sole cost and expense, will protect the City by transferring the lien to bond in accordance with Section 713. 24 of the Florida Statutes within 30 days after the filing of the lien.
- 33.4.1. The lien will not constitute a Tenant Event of Default under the Lease if Tenant timely provides the bond described above. If the lien is determined to be valid, Tenant must satisfy and discharge the lien within 30 days after its validity is determined
- 33.4.2. In the event Tenant contests any lien, Tenant shall protect and indemnify the City against all loss, expense and damage resulting from the lien contest, in accordance with the indemnification provisions of this Lease.



- 33.5. **City Liens.** City will not take any action that could result in a lien against Tenant's Leasehold Interest in the Premises.
34. **Indemnification.**
- 34.1. **Tenant to Indemnify City.** Tenant, on behalf of itself and on behalf of future visitors, trespassers, licensees, invitees, guests or persons performing work or using, visiting or occupying the Premises, agrees and covenants to indemnify, defend (with counsel selected by Tenant, after consulting with the City), save and hold harmless the City, its officials, officers, employees, and agents from and against any and all claims, actions, damages, liabilities, losses, costs and expenses, including without limitation, Attorneys' Fees (collectively, "Losses") to the fullest extent permitted by law, arising in connection with the subject matter of this Lease, including, without limitation, indemnification for:
- 34.1.1. Tenant's default, breach, violation or non-performance of any provision of this Lease;
- 34.1.2. Tenant's use and operation of all or any portion of the Project during the Term;
- 34.1.3. Tenant's negligent acts or omissions;
- 34.1.4. Any challenge to the validity of this Lease by a third party through legal proceedings or otherwise, other than a challenge arising by, through or under the City's fee interest in the City Property.
- 34.2. **Indemnification Includes Losses from Construction.** Tenant's indemnity under this Lease includes indemnification of City against any Losses resulting from either the construction of the Improvements or any subsequent renovation or alteration of the Improvements by the Tenant.
- 34.3. **Indemnification from General Contractor.** Tenant covenants and agrees that any contracts for the Work entered into by Tenant and a general contractor or other contractor in privity with Tenant will include the indemnities required by this Lease from the general contractor or other contractor in privity with Tenant in favor of Tenant and the City.
- 34.4. **Tenant Liability Not Limited By Insurance.** The liability of Tenant under this Lease will not be limited in any way to the amount of proceeds actually recovered under the policies of insurance required to be maintained pursuant to the terms of this Lease.
- 34.5. **City's Tort Liability.** Any tort liability to which the City is exposed under this Lease will be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations will be applied as if the parties had not entered into this Lease. The City expressly does not waive any of its rights and immunities under applicable law.
35. **Environmental Matters.**
- 35.1. **Defined Terms for Purposes of this Section.**

- 35.1.1. **Environmental Condition** means any set of physical circumstances in, on, under, or affecting the Project that may constitute a threat to or endangerment of health, safety, property, or the environment, including but not limited to:
- (a) The presence of any hazardous Substance, except in such quantities and concentrations as are routinely found in nature or in products used in ordinary business or commercial activities;
  - (b) Any underground storage tanks, as defined in Subtitle I of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6991 et. seq., or the regulations thereunder, for the storage of hazardous wastes, oil, petroleum products, or their byproducts;
  - (c) Any PCB, asbestos or any other substances specifically regulated under the Toxic Substances Control Act, 15 U.S.C. 2601 or regulations issued thereunder; and
  - (d) Any open dump or system of refuse disposal for public use without a permit, as prohibited by 42 U.S.C. 6945 and/or Florida law equivalent, or the regulations issued thereunder.
- 35.1.2. **Environmental Laws** means the Comprehensive Environmental Response, **Compensation** and Liability Act, 42 U.S.C. 9601 et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq.; the Toxic Substances Control Act, 15 U.S.C. 2601 et. seq.; the Clean Water Act, 33 U.S.C. 1251 et seq.; the Clean Air Act, 42 U.S.C. 7401 et. seq.; the Oil Pollution Act, 33 U.S.C. 2701 et. seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et. seq.; the Refuse Act of 1989, 33 U.S.C. 407; the Occupational Safety and Health Act, 29 U.S.C. 651 et. seq., as such laws have been amended or supplemented from time to time, the regulations promulgated under these laws; and any analogous Governmental Requirements.
- 35.1.3. **Environmental Requirements** means all present and future Governmental Requirements, including without limitation, the Environmental Laws, authorizations, judgments, decrees, concessions, grants, orders, agreements or other restrictions or requirements relating to any Environmental Conditions or any Hazardous Substances on the Property.
- 35.1.4. **Hazardous Substance** means any substances or materials identified to be toxic or hazardous according to any of the Environmental Laws, including without limitation, any asbestos, PCB, radioactive substances, methane, volatile hydrocarbons, acids, pesticides, paints, petroleum based products, lead, cyanide, DDT, printing inks, industrial solvents or any other material or substance that has in the past or could presently or at any time in the future cause or constitute a health, safety or other environmental hazard to any person or property. The term Hazardous Substances includes hazardous wastes, hazardous substances, extremely hazardous

substances, hazardous materials, toxic substances, toxic chemicals, oil, petroleum products and their by-products, and pollutants or contaminants as those terms are defined in the Environmental Laws.

35.1.5. **Environmental Permit** means any Governmental Approval required under any Environmental Law in connection with the ownership, use or operation of the Project for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances, or the sale, transfer or conveyance of the Project, and all supporting documentation thereof.

35.1.6. **Environmental Claim** means any accusation, allegation, notice of violation, claim, demand, abatement or other order or direction (conditional or otherwise) by any Governmental Authority or any person for personal injury (including without limitation, sickness, disease, or death), tangible or intangible property damage, damage to the environment, nuisance, pollution, contamination or other adverse effects on the environment, or for fines, penalties, or restrictions, resulting from or based upon:

- (a) The existence or release, or continuation of any existence of a release (including without limitation, sudden or non-sudden, accidental or non-accidental leaks or spills) of, or exposure to, any substance, chemical, material, pollutant, contaminant, or audible noise or other release or emission in, into or onto the environment (including without limitation, the air, ground, water or any surface) at, in, by, from or related to the Property;
- (b) The environmental aspects of the transportation, storage, treatment or disposal of materials in connection with the activities on the Leased Property; or
- (c) The violation, or alleged violation, of any Governmental Requirements relating to Environmental Requirements on the Leased Property; but excluding any of violations arising solely from the intentional actions of the City and its agents.

35.1.7. **Corrective Action Work** means any and all activities of removal, response, investigation, testing, analysis, remediation taken to:

- (a) Prevent, abate or correct an existing or threatened Environmental Condition at, about, affecting, or affected by the Property; or
- (b) Comply with all applicable Environmental Requirements.

35.2. **Environmental Indemnification.** Tenant covenants and agrees, at its sole cost and expense, to defend (with counsel selected by Tenant, after consulting with the City), indemnify and hold harmless the City, its successors, and assigns from and against any and all Environmental Claims, whether meritorious or not, brought against the City by any Governmental Authority.

- 35.2.1. This indemnity includes, without limitation, indemnification against: all costs of removal, response, investigation, or remediation of any kind; all costs of disposal of such Hazardous Substances as necessary to comply with Environmental Laws; all costs associated with any Corrective Action Work; all costs associated with claims for damages to persons, property, or natural resources; any loss from diminution in the value of the Project; and the City's Attorneys' Fees, consultants' fees, court costs and expenses incurred in connection with any Environmental Claims brought against the City.
- 35.2.2. Tenant's indemnification of City is only for Environmental Claims which arise out of or are caused by actions or events occurring after the Effective Date of the Development Agreement.
- 35.2.3. This indemnification is to be interpreted as broadly as possible and is in addition to all other rights of the City under this Lease.
- 35.2.4. Payments by Tenant under the Environmental Indemnification will not reduce Tenant's obligations and liabilities under any other provision of this Lease.
- 35.3. Neither the Tenant nor the general contractor, nor any other contractor in privity with Tenant, has a duty to indemnify the City in connection with any Environmental Claims that are due to the negligent conduct of the City or its agents if the negligent conduct occurs after the date the Tenant completes his environmental testing.
- 36. **Insurance.** Prior to any activity by Tenant on the Premises, and at all times during the Lease Term, Tenant will be responsible for procuring and maintaining the insurance required by this Lease, at Tenant's sole cost and expense. In addition, Tenant will ensure that its general contractor maintains the applicable insurance coverages set forth in this Lease, unless waived or modified by the City's Risk Manager.
- 36.1. **General Insurance Provisions.**
  - 36.1.1. All policies must be executable in the State.
  - 36.1.2. All insurers must maintain an AM Best rating of A or better.
  - 36.1.3. The terms and conditions of all policies may not be less restrictive than those contained in the most recent edition of the policy forms issued by the Insurance Services Office (ISO) or the National Council on Compensation Insurance (NCCI). If ISO or NCCI issues new policy forms during the policy term of the required insurance, Tenant will not be required to comply with the new policy forms until the expiration date of the insurance policy affected by the change.
  - 36.1.4. Tenant's insurance policies will be primary over any and all insurance available to the City, whether purchased or not, and must be non-contributory.
  - 36.1.5. The Tenant and its general contractor will be solely responsible for payment of all deductibles and retentions contained in their respective insurance policies. The City will be included as an "Additional Insured"

on the Commercial General Liability policy and any Liquor Liability and Umbrella Liability policies, if applicable. The City will also be named as “Loss Payee” on all of Tenant’s Property Insurance policies.

- 36.1.6. Tenant will ensure that each insurance policy obtained by it provides that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage covered by any policy.
- 36.2. **Evidence of Insurance.** Prior to taking possession of the Property, and throughout the term of the Lease, Tenant must provide satisfactory evidence of the required insurance to the City. Satisfactory evidence of insurance is either (a) a certificate of insurance, or (b) a certified copy of the actual insurance policy. The City, at its sole option, may request a certified copy of any or all insurance policies required by this Lease. Tenant acknowledges that Tenant is the party responsible to the City for providing all insurance required by this Lease.
- 36.3. **Cancellations and Renewals.** All insurance policies must specify that they are not subject to cancellation or non-renewal without a minimum of 30 days notification to the Tenant and a minimum of 10 days notification for non-payment of premium. The Tenant will provide the City a minimum of 30 days written notice if any policies are cancelled or non-renewed, and 10 days written notice of cancellation for non-payment of premium.
- 36.4. **Required Coverages.** The following insurance coverage must be maintained throughout the term of the Lease.
  - 36.4.1. **Commercial General Liability Insurance.** Tenant must maintain, or require its Subtenants to maintain, Commercial General Liability Insurance. Coverage must include, as a minimum: (a) Premises Operations, (b) Products and Completed Operations, (c) Incidental Contractual Liability, (d) Personal Injury Liability and (e) Expanded Definition of Property Damage. The minimum limits acceptable are \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The use of an excess/umbrella liability policy to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Commercial General Liability policy.
  - 36.4.2. **All Risk Property Insurance.** Tenant must maintain, or require its Subtenant to maintain, Property Coverage (Special Form), to cover the “All Other Perils” portion of the policy at the Replacement Cost Valuation as determined by a certified property appraiser acceptable to both the Tenant and the City. The perils of Windstorm and Flood shall carry sub limits to be determined annually and acceptable to the City. To the extent available, coverage will extend to furniture, fixtures, equipment and other personal property associated with the Project. The policy must also provide “Law and Ordinance” coverage, while giving deference to the age of the Improvements, with limits acceptable to both City and Tenant

- 36.4.3. **Business Interruption Insurance.** During the term of this Lease, Tenant must maintain, or must require its Subtenants to maintain, Business Interruption coverage utilizing a Gross Earnings Value form with limits equal to 12 months of Subtenant's projected profits (including all rental income) associated with the Premises. The City and Tenant will jointly review the Subtenant's projected profits periodically, and Tenant will be responsible for adjusting the limits of the policy based on this review and City's request for adjustment.
- 36.4.4. **Workers' Compensation.** Tenant must maintain, or require its Subtenant to maintain, Workers' Compensation Insurance with limits sufficient to respond to Florida Statute §440. In addition, the Tenant or its Subtenants must obtain Employers' Liability Insurance with limits of not less than: (a) \$500,000 Bodily Injury by Accident, (b) \$500,000 Bodily Injury by Disease, and (c) \$500,000 Bodily Injury by Disease, each employee.
- 36.4.5. **Liquor Liability Policy.** If Liquor will be sold on the Premises, Tenant must obtain, or must require its Subtenant to obtain, a Liquor Liability Policy in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually. The Liquor Liability Policy must name the City as an additional insured. Tenant will be responsible for providing evidence of the Liquor Liability Policy to the City.

36.5. **Coverage Required During Construction.**

- 36.5.1. **Builders Risk Insurance.** During all construction activities conducted on the Premises including modifications to existing buildings or structures on the Premises that impact the structural integrity of the buildings or structures, Tenant must maintain Builders Risk insurance or cause the contractor to maintain Builder Risk insurance, including the perils of wind and flood, with minimum limits equal to the "Completed Value" of the Improvements being erected or the total value of the modifications being made, to the extent available. The Contractor, prior to notice to proceed or commencement of the Work, whichever occurs first agrees to maintain builder's risk insurance with a policy period not less than the Contract Time, plus three (3) additional months affording coverage to protect the interests of the Owner, Contractor, and Contractor's sub-contractors at every tier, architects, or engineers, including sub-limits for i) debris removal of damaged covered property, ii) any property acquired under a sales tax incentive program iii) property in transit, iv) property stored off-site and v) boiler and machinery (machinery), which may become part of the Work. Coverage shall be written on an all-risk, replacement cost, and completed value form basis in an amount at least equal to one-hundred percent 100% of the projected completed value of the Work and include but not limited to cost of materials supplied, used or installed by others, including temporary works, scaffolding, shoring, form work and fences, as well as subsequent modifications of that sum due to Change Orders. This policy shall also include coverage for soft costs, which shall include at a

minimum additional expense for interest, legal, consulting, insurance, architectural and engineering, Contractor's overhead and general conditions, and equipment rental, in an amount not less than ten percent (10%) of the one-hundred percent (100%) projected completed value of the Work. The soft cost limit shall be a scheduled limit on the policy in addition to a scheduled limit for the hard cost amount. Collectively, the scheduled soft cost limit and hard cost limit should equal one-hundred percent (100%) of the projected value of the Work. The Contractor agrees to be responsible for reporting increases in the projected completed value of the Work due to Change Orders to its insurance carrier.

- 36.5.2. **Professional Liability.** Tenant must ensure that Architects and Engineers Errors and Omissions Liability insurance specific to the construction activities is obtained prior to the commencement of any construction activities on the Premises, including without limitation, the Work. If coverage is provided on a "Claims Made" basis, the policy must provide for the reporting of claims for a period of three (3) years following the completion of all construction activities. The minimum limits acceptable are \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually.
- 36.5.3. **Business Auto Liability:** Tenant must maintain, or require the contractor to maintain business automobile liability at a limit of liability not less than \$1,000,000 each occurrence and not less than \$2,000,000 Per aggregate limit. Coverage shall include liability for owned, non-owned and hired automobiles. In the event the Contractor does not own automobiles, the Contractor agrees to maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the commercial general liability policy or separate business auto liability policy.
- 36.5.4. **Commercial General Liability Insurance.** Tenant must maintain, or require the contractor to maintain, Commercial General Liability Insurance. Coverage must include, as a minimum: (a) Premises Operations, (b) Products and Completed Operations, (c) Incidental Contractual Liability, (d) Personal Injury Liability and (e) Expanded Definition of Property Damage. The minimum limits acceptable are \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The use of an excess/umbrella liability policy to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Commercial General Liability policy.
- 36.5.5. **Additional Insured Endorsement:** The tenant shall require the contractor to endorse the tenant as an additional insured on the contractor's commercial general liability policy with the CG 20 1004 07 or GC 20 10 14 13 Additional Insured-Owners, Lessees, or Contractors endorsement, or a similar endorsement providing equal or broader additional insured coverage, in addition to endorsing the Owner as an additional insured with the CG 20 37 14 13 Additional Insured-Owners, Lessees, or Contractors-Completed Operations, or a similar endorsement providing equal or

broader additional insured coverage.

- 36.5.6. **Contractor's Pollution Liability Insurance:** Tenant must maintain, or require the contractor to maintain contractor's pollution liability at a limit of liability not less than \$5,000,000 Per Pollution Condition and limit of liability not less than \$5,000,000 aggregate Limit for all Pollution Conditions. The policy must be written on a "Claims Made" basis and the policy must provide for extended reporting period of claims for a period of not less than three (3) years following the completion of all construction activities.
  - 36.5.7. **Payment and Performance Bond:** Tenant must maintain, or require the contractor to purchase payment and performance bonds in amounts subject to the full contract price replacement cost of all work to be furnished or installed under the contract. The contractor shall furnish bonds covering the faithful performance of the contract and payment of obligations arising thereunder as required explicitly as part of this contract on the date of the execution of the contract. Please note that Florida Statue Section 255.05 requires contractors who enter into a contract with the City to purchase a payment and performance bond when the contract is in excess of \$200,000.
  - 36.5.8. **Warranty Bond:** The tenant shall require the contractor to maintain a warranty bond for a period of not less than one (1) year after the issuance of the final release and certificate of completion issued by the tenant.
  - 36.5.9. **Commercial Umbrella/Excess Liability Insurance:** The tenant shall maintain or cause the contractor to maintain either a commercial umbrella or excess liability at a limit of liability not less than \$5,000,000 each occurrence and \$5,000,000 aggregate and the tenant shall cause the contractor to endorse the tenant as an additional insured on the commercial umbrella/excess liability, unless the commercial umbrella/excess liability provides coverage on a true follow-form basis, or the tenant is automatically defined as an additional protected person. The Owner's additional insured status or policy's follow-form type must be stated on the certificate of insurance provided to the tenant.
  - 36.5.10. **Florida Insurance:** The tenant shall cause the Contractor to place and maintain flood insurance once the bottom floor of each building is poured and the finished floor elevation is established by a land surveyor, and an elevation certificate is available for each building, as defined by the National Flood Insurance Program (NFIP), under the Work or construction of the building and during all construction activities conducted on the Premises including modifications to existing buildings or structures on the Premises that impact the structural integrity of the buildings or structures, the Contractor agrees to maintain an individual NFIP General Flood Policy on each building under construction in the maximum amount available under the NFIP.
- 38.6. **Premiums and Renewals.** Tenant must ensure that all premiums for the insurance required by this Lease are paid they become due. Tenant must renew or replace



each policy prior to the policy expiration date, and promptly deliver to the City all original Certificates of Insurance and copies of all renewal or replacement policies.

- 38.7. **Adequacy of Insurance Coverage.** The City has the unilateral right to periodically review the adequacy of the insurance coverage required by this Lease. The City may request a change in the insurance coverage if the requested change is commercially reasonable, and the coverage requested is customary and commonly available for properties similar in type, size, use and location to the Premises and Improvements (including without limitation, environmental liability insurance, fiduciary liability, and directors and officers liability insurance). Tenant has the right to contest the request for a change in insurance, but must be commercially reasonable.
- 38.8. **Appraisal.** The City will require a Replacement Cost Value appraisal from a licensed and certified appraiser at five-year intervals. The selection and expense of the appraiser will be the sole responsibility of the Tenant. Tenant will provide a copy of the full report to City upon completion.
- 38.9. **Inadequacy of Insurance Proceeds.** In the event that insurance proceeds are not adequate to rebuild and restore damaged Improvements to their previous condition before an insurable loss occurred, and the cause of the deficiency in insurance proceeds is the Tenant's failure to adequately insure the Improvements as required by this Lease, Tenant must rebuild and restore the Improvements as required by this Lease and will be responsible for payment of any costs of the rebuilding and restoration not covered by the insurance proceeds.
- 38.10. **City May Procure Insurance if Tenant Fails To Do So.** If Tenant refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required by this Lease, the City, at its option, may procure or renew such insurance. In that event, all sums paid by the City for insurance will be treated as Additional Rent, and will be payable by Tenant to the City together with interest at the Default Rate from the date the sums were paid by the City to the date of reimbursement by Tenant. Tenant must pay to City the amounts paid by the City for insurance, together with accrued interest, within ten days after written demand from City.
39. **Effect of Loss or Damage.** Any loss or damage to the Improvements by fire or other casualty at any time will not operate to terminate this Lease or to relieve or discharge Tenant from the performance and fulfillment of any of Tenant's obligations pursuant to this Lease, including without limitation, the payment of Rent and the payment of any money to be treated as Additional Rent, as the same may become due and payable. The City's acceptance or approval of any insurance agreement will not relieve or release or be construed to relieve or release Tenant from any liability, duty or obligation set forth in this Lease.
- 39.1. **Proof of Loss.** If all or any part of the Improvements (including without limitation, any personal property furnished or installed in the Improvements) is damaged or destroyed, Tenant must promptly make proof of loss in accordance with the terms of the insurance policies and must proceed promptly to collect all valid claims which may have arisen against insurers or others based upon the damage or

destruction. Tenant is required to give City written notice within 48 hours of any material damage or destruction. For purposes of this Section, “material damage or destruction” means either (a) any casualty or other loss with a repair cost in excess of \$50,000 (based on commercially reasonable standards) or, (b) any casualty or other loss which will have a material adverse effect on the day to day operations of the Premises, regardless of the repair cost.

**39.2. Payment of Insurance Proceeds.** All sums payable for loss and damage arising out of the casualties covered by the property insurance policies shall be payable:

39.2.1. Directly to Tenant, if the total recovery is equal to or less than \$750,000 (as adjusted for inflation over the Term), except that if a Tenant Event of Default has occurred and is continuing under the Lease, the insurance proceeds, subject to the requirements of the Lender, will be paid over to the City, which will apply the proceeds first to curing the Event of Default, and then to the rebuilding, replacing and repairing of the Improvements. Any remaining proceeds shall be paid over to Tenant subject to its obligations to the Lender

39.2.2. To the Insurance Trustee, if the total recovery is in excess of \$750,000 (as adjusted for inflation over the Term), with the proceeds to be held by the Insurance Trustee for disbursement to Tenant pending establishment of reconstruction, repair or replacement costs. If there is a Leasehold Mortgage on the Premises at the time insurance proceeds become payable, the Lender having the highest lien priority will serve as the Insurance Trustee. If there is no Leasehold Mortgage at that time, or if the Lender refuses to serve as Insurance Trustee, the Insurance Trustee will be a commercial bank or trust company designated by Tenant and approved by the City, whose approval will not be unreasonably withheld or delayed.

**39.3. Disposition of Insurance Proceeds for Reconstruction.**

39.3.1. All insurance proceeds must be applied for the reconstruction, repair or replacement of Improvements and the personal property of Tenant contained in the Improvements (the “Reconstruction Work”). The Improvements and any personal property must be restored to a condition comparable to the condition prior to the loss or damage.

39.3.2. The Insurance Trustee will disburse to the Tenant the amount of insurance proceeds that are required for the Reconstruction Work. Tenant will submit invoices or proof of payment to the Insurance Trustee for payment or reimbursement according to an agreed schedule of values approved in advance by the City and Tenant.

39.3.3. If the City and Tenant do not agree on the schedule or values, they will arbitrate the matter using the then-existing construction-related rules of the American Arbitration Association in Broward County, Florida.

39.3.4. After the completion of the Reconstruction Work, any remaining insurance proceeds will be paid to Tenant.

- 39.4. **Covenant for Commencement and Completion of Reconstruction.** Tenant covenants and agrees to commence the Reconstruction Work as soon as practicable, but in any event within three months after the insurance proceeds for the destroyed or damaged Improvements have been received by Tenant or the Insurance Trustee, and to fully complete the Reconstruction Work as expeditiously as possible under the circumstances. With respect to any Reconstruction Work, Tenant must comply with all of the provisions of this Lease regarding renovation or alteration of the Improvements.
- 39.5. **Inadequacy of Insurance Proceeds.** Tenant's liability under the Lease to timely commence and complete restoration of any damaged or destroyed Improvements is absolute, regardless of whether any insurance proceeds received are adequate to pay for the restoration.

40. **Condemnation.**

40.1. **Complete Condemnation.**

- 40.1.1. If the entire Premises is taken or condemned for any public or quasi-public use or purpose, by right of eminent domain or by purchase in lieu of eminent domain (in each case, a "Taking"), or if the Taking is for a portion of the Premises such that the portion remaining is not sufficient and suitable, on a commercially reasonable basis (subject, however, to the rights of the Lender or Indenture Trustee hereunder), for the operation of the Premises, then this Lease will cease and terminate as of the date on which the condemning authority takes possession.
- 40.1.2. If this Lease is so terminated, the entire award for the Premises or the portion taken will be apportioned among the City and the Tenant as of the day immediately prior to the vesting of title in the condemnor, as follows:
- (a) First, but only if the City is not the authority condemning the Premises, the City will receive the then fair market value of the portion of the Premises so taken or condemned considered as vacant, unimproved, and unencumbered, together with the value of the Improvements, discounted from the end of the Term;
  - (b) Second, Tenant will be entitled to the then fair market value of its interest under this Lease and in the Improvements, less the discounted value of the Improvements allocated to the City, together with any and all business damages suffered by Tenant (subject, however, to the rights of any Lender); and
  - (c) The City and Tenant shall each receive one-half of any remaining balance of the award, except that the Tenant will receive the entire remaining balance of the award if the City is the authority condemning the Premises.

40.2. **Partial Condemnation.**

- 40.2.1. If there is a Taking of a portion of the Premises, and the remaining portion can be adapted and used to operate the Premises in the same manner it was

previously operated, on a commercially reasonable basis (subject, however, to the rights of the Lender), then this Lease shall continue in full force and effect, and the award shall be apportioned as follows:

- (a) First, to the Tenant to the extent required, pursuant to the terms of this Lease, for the restoration of the Premises;
- (b) Second, but only if the City is not the authority condemning the Premises, to the City the portion of the award allocated to the fair market value of the Premises which is taken, considered as vacant and unimproved;
- (c) Third, to the Tenant, the amount by which the value of Tenant's interest in the Improvements and the Premises were diminished by the taking or condemnation (subject, however, to the rights of the Lender);
- (d) The City and Tenant will each receive one-half of any remaining balance of the award, except that the Tenant will receive the entire remaining balance of the award if the City is the authority condemning the Premises.

**40.3. Restoration After Condemnation.** If this Lease does not terminate due to a Taking, then:

- 40.3.1. Tenant will be required to restore the remaining portion of the Premises with due diligence in accordance with the provisions pertaining to provisions in this Lease pertaining to alterations and renovations.
- 40.3.2. The entire proceeds of the award will be deposited and treated in the same manner as insurance proceeds are to be treated under this Lease until the restoration has been completed and Tenant and the City have received their respective shares of any remaining balance of the award.
- 40.3.3. If the award is insufficient to pay for the restoration, Tenant will be responsible for the remaining cost and expense; and
- 40.3.4. The Minimum Rent due under the Lease will be adjusted proportionately based upon the proportion that the amount received by the City with respect to the portion of the Premises taken bears to the total fair market value of the overall Premises at that time.

**40.4. Temporary Taking.** If there is a Taking of the temporary use (but not title) of all or any part of the Premises, this Lease will remain in full force and effect, but only to the extent it is commercially reasonable. There will be no abatement of any amount or sum payable by or other obligation of Tenant under the Lease. Subject to the rights of the Lender, Tenant will receive the entire award for any temporary Taking to the extent it applies to the period prior to the end of the Term, and the City will receive the balance of the award.

**40.5. Determinations.** If the City and the Tenant cannot reach agreement regarding any issue arising out of a Taking, the parties will seek a judicial determination by the court with jurisdiction over the Taking. For purposes of the Lease provisions

pertaining to a Taking, any personal property taken or condemned will be deemed to be a part of the Improvements, and the provisions of the Lease regarding Takings will be applicable to such property.

- 40.6. **Payment of Fees and Costs.** All fees and costs incurred in connection with any condemnation proceeding will be paid in accordance with the law governing condemnation proceedings, as determined by the court, if appropriate.

41. **Quiet Enjoyment; No Waste.**

- 41.1. **City's Covenant of Quiet Enjoyment.** City represents and warrants that Tenant, upon paying the Rent, Additional Rent and other monetary obligations of this Lease and observing and keeping the covenants and agreements of this Lease to be kept and performed by Tenant, will lawfully and quietly hold, occupy and enjoy the Premises during the Term without hindrance or molestation by the City or by any person or persons claiming under the City. The City agrees to defend any suits or actions which may be brought by persons claiming by, through or under the City, at City's own cost and expense, through the City Attorney's office or other counsel selected by the City in its sole discretion.

41.1.1. Except for negligent or more culpable acts or omissions by the City, in no event will the City be liable for, and Tenant expressly waives, any claim for damages of any kind whatsoever, including without limitation, damages for loss of income, revenue, profit or value. Tenant has the right to retain its own counsel in connection with such proceedings, at Tenant's sole cost and expense.

41.1.2. If the City is acting in its governmental capacity, any liability under this Section will only be to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations will be applied as if the parties had not entered into this Lease.

- 41.2. **Waste.** Tenant will not permit, commit or suffer waste or impairment of any portion of the Project.

42. **Ownership of Improvements During Lease Term.** Prior to the expiration or termination of this Lease, title to the Improvements will remain in City and vest in the City by reason of its ownership of fee simple title to the City Property.

- 42.1. **Ownership Upon Early Termination.** If this Lease terminates prior to the expiration of the Lease Term, based on a mutual agreement between the parties or a final order from a court with jurisdiction, and if, at that time, any Lender exercises its option to obtain a new lease for the remainder of the Lease Term in accordance with this Lease, title to the Improvements will automatically pass to, vest in and belong to the Lender or any permitted designee or nominee of the Lender, until the expiration or termination of the term of the new lease. If there is no Lender or Lender does not exercise its option to obtain a new lease for the remainder of the Lease Term the title to the Improvements will automatically pass to, vest in and belong to the City.

- 42.1.1. The City and Tenant covenant that, to confirm the automatic vesting of title as provided in this Section, each will execute and deliver to the other such further assurances and instruments of assignment and conveyance may be reasonably required by the other party for that purpose.
  - 42.2. **Surrender of Leased Property.** Upon the expiration of the Lease Term or the earlier termination of this Lease by mutual agreement of the parties or a final order from a court with jurisdiction, title to the Improvements (including all personal property and equipment furnished or installed on the Premises and owned or leased by Tenant) will automatically pass to, vest in and belong to the City or its successor in ownership, free and clear of all debts, mortgages, encumbrances, and liens. It shall be lawful for the City or its successor in ownership to re-enter and repossess the Improvements without process of law.
    - 42.2.1. The City and Tenant covenant that, to confirm the automatic vesting of title as provided in this Section, each will execute and deliver such further assurances and instruments of assignment and conveyance as may be reasonably required by the other for that purpose.
- 43. **Transfers and Assignments.** Tenant may not transfer or assign its rights under this Lease except as set forth in this Lease.
  - 43.1. **Transfers.** For purposes of this Lease, a “Transfer” is a sale, assignment or conveyance of any of the following:
    - 43.1.1. The Leasehold Interest or any part thereof;
    - 43.1.2. Any interest in the Improvements, or any part thereof;
    - 43.1.3. Any interest in the Project, or any part thereof;
    - 43.1.4. Any interest in Tenant;
    - 43.1.5. Any series of such Transfers, or any contract or agreement to do any of the same, that have the cumulative effect of a sale; or
    - 43.1.6. Any other transaction or series of transactions in the nature of a sale.
  - 43.2. **Purpose of Restrictions on Transfer.** City is entering into this Lease with Tenant solely to develop, operate, and manage the Improvements, and not for speculation in landholding. Tenant recognizes that, because of the importance of the Beach Concession Kiosk to the general welfare of the City and its residents, the Tenant’s qualifications and identity are of particular concern to the community and to the City. Tenant acknowledges that it is because of the qualifications and identity of Tenant that City is entering into this Lease, and that the City is willing to rely on the Tenant’s covenants to fulfill its obligations under this Lease.
  - 43.3. **Ownership of Tenant.** Tenant represents and warrants that Tenant has not made, created or suffered any Transfers as of the date of this Lease, and that the entities and individuals with an ownership interest in Tenant on the date of this Lease are listed, together with their percentage and character of ownership, in **Exhibit G**. Upon request by City from time to time throughout the Term of this Lease, Tenant will furnish the City with a complete statement, subscribed and sworn to by the

Managing Member of Tenant, setting forth the percentage ownership interest of the Managing Member and the full names and addresses of all members of Tenant who hold at least a ten percent (10%) interest in Tenant. If the Tenant is an entity other than a limited liability company, then the references to membership will be changed to the appropriate ownership interests for the entity in question.

- 43.4. **General Restriction on Transfers.** No Transfer may be made, suffered or created by Tenant, or its permitted successors, assigns or transferees unless it complies with the provisions of this Lease and is approved by the City Manager or his designee prior to the Transfer. If at the time of a requested Transfer, Tenant is an entity other than a limited liability company, then the references to membership will be changed to the appropriate ownership interests for the entity in question, and the interest being transferred will be changed to the appropriate ownership interest. Any Transfer that violates this Lease will be null and void and of no force or effect.
- 43.5. **Transfers Prior to Completion of Improvements.** Prior to the completion of Project Improvements by Tenant, only the following Transfers (collectively, "Permitted Transfers") will be permitted without the prior written consent of the City:
- 43.5.1. **Foreclosure.** Any Transfer directly resulting from the foreclosure of a Leasehold Mortgage on the Premises or the granting of a deed in lieu of foreclosure of a Leasehold Mortgage on the Premises, or any Transfer made by the purchaser at foreclosure sale of the Leasehold Mortgage or by the grantee of a deed in lieu of foreclosure of a Leasehold Mortgage, if such purchaser or grantee is the Lender or a nominee of the Lender;
- 43.5.2. **Transfers Among Affiliates.** Any Transfer, or series of Transfers, among affiliates of Tenant, provided that at all times after such Transfer, either Ilias "Lou" Moshakos, Joy Moshakos or Amber Moshakos or a successor individual approved by the City, continues to direct the day-to-day management and policies of Tenant; or
- 43.5.3. **Transfers of Ownership Interests in Tenant.** Any Transfer, or series of Transfers, totaling not more than ten percent (10%) of the direct or indirect ownership interests in Tenant, provided that at all times after such Transfer, either Ilias "Lou" Moshakos, Joy Moshakos or Amber Moshakos, or a successor individual approved by the City, continues to direct the day-to-day management and policies of Tenant.
- 43.5.4. **Transfers Resulting from Death or Incapacity.** Any Transfer resulting from the death or incapacity of Ilias "Lou" Moshakos, Joy Moshakos or Amber Moshakos, or from the death or incapacity of a successor individual approved by the City to direct the day-to-day management and policies of Tenant.
- 43.6. **Transfers to an Acceptable Transferee.** After the completion of the Project Improvements, the Tenant's Leasehold Interest may be transferred to an "Acceptable Transferee," as defined below. An "Acceptable Transferee" is an individual or entity meeting the following minimum qualifications:

- 43.6.1. **Development Experience.** The proposed transferee must possess development experience in the State of Florida equal to or better than the experience of the Tenant as set forth in the Tenant's response to the RFP.
- 43.6.2. **Financial Resources.** The proposed transferee must possess the financial resources equal to or better than the financial resources of the Tenant as set forth in the Tenant's response to the RFP.
- 43.6.3. **Character and Reputation.** The proposed transferee must possess a character, reputation and status in the community equal to or better than the character, reputation and status of the Tenant as set forth in the Tenant's response to the RFP.
- 43.6.4. **No Violations.** The proposed transferee must have no outstanding material violation of a Governmental Requirement against the proposed transferee or against any property owned or managed by the proposed transferee in the State.
- 43.6.5. **No Convictions or Indictments.** The proposed transferee must not be owned, controlled or run by entities or individuals who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or United States of America jurisdiction.
- 43.6.6. **No Bankruptcies.** Neither the proposed transferee, nor any of the individuals or entities who own at least a 10% equity interest in the proposed transferee or who are officers, directors, managers or otherwise have the power to direct and control the business and affairs of the proposed transferee, have filed or been discharged from bankruptcy, or have been the subject of an involuntary bankruptcy, reorganization or insolvency proceedings within the past five years. Bankruptcy filings by affiliates will not disqualify a proposed transferee, unless such affiliates who own at least a 10% equity interest in the proposed transferee or who are officers, directors, managers or otherwise have the power to direct and control the business and affairs of the proposed transferee.
- 43.7. **Transfers Requiring City's Consent.** For any Transfer of this Lease other than a Transfer Prior to Completion of Improvements, Tenant shall send City a written Transfer Application requesting approval of the Transfer.
  - 43.7.1. The Transfer Application must include information showing that the proposed transferee is an Acceptable Transferee, including, at a minimum, (a) three years of externally reviewed financial statements; (b) a letter from a Florida bank or other financial institution doing business in Florida indicating the creditworthiness of the assignee; and (c) three letters of reference from unrelated third parties regarding assignee's character and business reputation in the community.
  - 43.7.2. Upon request by City, Tenant will submit any additional information reasonably requested by City to evaluate the proposed transferee.



- 43.7.3. The City will notify the Tenant in writing within 30 days after its receipt of the Transfer Application if it approves the Transfer. If the City fails to respond to the Transfer Application within 30 days, the City shall be deemed to have withheld its consent to the Transfer in question. The City may reject a Transfer Application as long as City provides reasonable justification for why the proposed Transferee is not an Acceptable Transferee. Any consent to a Transfer does not waive any of the City's rights to consent to a subsequent Transfer.
- 43.8. **Transfer Conditions.** In order for a Transfer of this Lease to be effective, the following conditions must be satisfied:
- 43.8.1. **City Consent.** If the Transfer is not a Permitted Transfer, City's prior written consent to the Transfer must be obtained.
- 43.8.2. **Entire Lease.** The Transfer must be a Transfer of the entire Lease;
- 43.8.3. **Written Notice to City.** City must be given written notice of the proposed Transfer together with true and correct copies of the proposed transfer documents and any other relevant agreements between the parties; current certified financial statements of the proposed transferee, if applicable; and any other relevant information about the proposed transferee at least 30 days prior to the intended effective date of the Transfer; and
- 43.8.4. **Assumption of Obligations by Transferee.** City must be provided with a written instrument in recordable form in which the Transferee, for itself and its successors and assigns, and for the benefit of the City, expressly assumes all of the obligations of Tenant under this Agreement and agrees to be subject to all conditions and restrictions to which Tenant is subject under this Lease.
- 43.9. **Effectuation of Transfers.** No Transfer will be effective unless executed copies of the transfer documents and any other agreements between the parties to the Transfer are delivered to the City within 30 days after the Transfer.
44. **Notices.** Whenever notice, demand or other communication may or shall be given by one party to another hereunder, it must be in writing and forwarded (i) upon the parties' mutual consent, via trackable email that provides delivery/read receipts or (ii) postage prepaid via certified U.S. mail or other trackable common carrier such as FedEx, UPS, etc., and forwarded to the representative and mailing address set forth below until changed by written notice in accordance with this Article and a contemporaneous copy sent to the designated email that provides the delivery method and tracking number. Any party may designate a change of address by written notice to the other party, received by such other party at least ten days before the change of address is to become effective.
- 44.1. **Notice to Tenant.** Notice to the Tenant under this Lease must be sent to:
- PB Kiosk LLC  
6510 Chapel Hill Road  
Raleigh, NC 27607

Attention: Lou Moshakos and Chris Moutos  
Telephone: 919.274.6788 (Lou) and/or 919.414.1618 (Chris)  
Email: [cmoutos@lmrest.com](mailto:cmoutos@lmrest.com)

44.2. **Notice to City.** Notice to City under this Lease must be sent to:

City of Pompano Beach  
100 West Atlantic Boulevard  
Fourth Floor  
Pompano Beach, Florida 33060  
Attention: City Manager  
Telephone: 954.786 4601  
Email: [greg.harrison@copbfl.com](mailto:greg.harrison@copbfl.com)

**With a copy to:**

Pompano Beach City Attorney  
100 West Atlantic Boulevard  
Pompano Beach, Florida 33060  
Attention: Mark Berman  
Telephone: 954.786.4614  
Email: [mark.berman@copbfl.com](mailto:mark.berman@copbfl.com)

**With a copy to:**

Pompano Beach Recreation Director  
100 West Atlantic Boulevard  
Pompano Beach, Florida 33060  
Attention: Mark Beaudreau  
Telephone: 954.786.4184  
Email: [mark.beaudreau@copbfl.com](mailto:mark.beaudreau@copbfl.com)

45. **Miscellaneous.**

- 45.1. **Time is of the Essence.** Time is of the essence in the performance of all obligations of each party under this Lease, including Tenant's adherence to the Development Timeline.
- 45.2. **No Partnership or Joint Venture.** It is mutually understood and agreed that nothing contained in this Lease is intended or is to be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners, or creating or establishing the relationship of a joint venture between the City and Tenant, or as constituting Tenant as the agent or representative of the City for any purpose or in any manner whatsoever.
- 45.3. **Governing Law.** This Lease will be governed by the laws of the State. This Lease is subject to and must comply with the Charter and City Code of the City of Pompano Beach, as they exist on the date of execution of the Lease. Any conflicts

between this Lease and the Charter and City Code will be resolved in favor of the Charter and Code.

- 45.4. **Venue; Waiver of Jury Trial.** Any action at law, or in equity, shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida. This Agreement and its terms, conditions and requirements comply with §287.055, Florida Statutes. BY ENTERING INTO THIS AGREEMENT, TENANT AND CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.
- 45.5. **Severability.** If any part of this Lease is for any reason held to be unenforceable, the rest of the Lease remains fully enforceable.
- 45.6. **Conflicts of Interest: City Representatives not Individually Liable.** No elected official, representative, or employee of the City has any personal interest, direct or indirect, in this Lease. No elected official, representative or employee will participate in any decision relating to this Lease which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she has an interest, directly or indirectly. No elected official, representative or employee of the City will be personally liable to Tenant or any successor in interest for any amount which may become due to Tenant, for any obligations of City under the Lease, or in the event of any default or breach by the City.
- 45.7. **Estoppel Certificates.**
- 45.7.1. Within 30 days after written request by either City or Tenant, the other party will execute, acknowledge and deliver to the requesting party or to any actual or prospective Lender, a certificate stating that:
- (a) This Lease is in full force and effect and has not been modified, supplemented or amended in any way, or, if there have been modifications, the Lease is in full force and effect as modified, identifying the modification agreement. If the Lease is not in force and effect, the certificate will so state;
  - (b) This Lease as modified, represents the entire agreement between the parties as to the subject matter, or, if it does not, the certificate will so state;
  - (c) The dates on which the Lease Term commenced and will terminate;
  - (d) To the knowledge of the certifying party, all conditions under the Lease to be performed up to that date by the City or Tenant, as the

case may be, have been performed or satisfied and, as of the date of the certificate, there are no existing defaults, defenses or offsets which the City or Tenant, as the case may be, has against the enforcement of the Lease by the other party. If such conditions have not been satisfied or if there are any defaults, defenses or offsets, the certificate will so state; and

- (e) The Rent due and payable for the year in which the certificate is delivered has been paid in full, or, if it has not been paid, the certificate will so state.

45.7.2. The party to whom the certificate is issued may rely on the matters set forth in the certificate. In delivering the certificate, neither Tenant nor the City, nor any individual signing the certificate on a party's behalf, will be liable for the accuracy of the statements made in the certificate, but rather will be estopped from denying the veracity or accuracy of the statements. Any certificate required to be made by the City or Tenant pursuant to this paragraph will be deemed to be made by the City or Tenant, as the case may be, and not by the person signing the certificate.

- 45.8. **Section Headings.** Section headings are for convenience only and do not affect the interpretation of this Lease.
- 45.9. **Counterparts.** This Lease may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument. This Lease is effective only after execution and delivery by the parties.
- 45.10. **Successors and Assigns.** This Lease binds and inures to the benefit of the City and the Tenant, and their respective permitted successors and assigns, except to the extent expressly limited by this Lease.
- 45.11. **Entire Agreement.** This Lease (including the Exhibits) constitutes the sole agreement of the parties with respect to its subject matter. It supersedes any prior written or oral agreements or communications between the parties.
- 45.12. **Amendments.** No amendment to this Lease is binding on either party unless in writing and signed by both parties. The City is not obligated to spend any money or undertake any obligation in connection with an amendment proposed by Tenant. If Tenant requests an amendment to the Lease or any other action by City, Tenant must reimburse City for all third-party costs incurred by City (including but not limited to costs of third-party consultants and attorneys). Before the City takes action regarding any request, Tenant must deposit with the City the estimated amount of third-party costs, as reasonably determined by the City.
- 45.13. **Approvals by the City.** All requests for action or approvals by the City will be sent to the City Attorney for decision as to who within the City, including the City Commission, must act or approve the matter on behalf of the City.
- 45.14. **Prevailing Party's Attorneys' Fees.** In the event either party to the Lease institutes legal proceedings in connection with the Lease, the prevailing party will

be entitled to recover its costs of suit, including without limitation, its Attorneys' Fees, at trial and on appeal.

- 45.15. **Holidays.** The parties agree that whenever a notice or performance due under the Lease falls on a Saturday, Sunday or on a legal holiday recognized by the City, the notice or performance will be postponed to the next following business day.
- 45.16. **No Brokers.** City and Tenant warrant and represent to each other that neither party has engaged a real estate broker or other person entitled to payment of a commission in connection with this Lease. Tenant is responsible for, and will hold the City harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other person retained by Tenant who is entitled to a commission as a result of the execution and delivery of this Lease. The City is responsible for, and will hold Tenant harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other person retained by the City who is entitled to a commission as a result of the execution and delivery of this Lease.
- 45.17. **No Liability for Approvals and Inspections.** No approval given by the City in its capacity as landlord under this Lease, and no inspection of the Work or the Project by the City under this Lease, will render the City liable for its failure to discover any defects or nonconformance with any Governmental Requirement.
- 45.18. **Radon.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county public health unit for Broward County.
- 45.19. **Tenant Entity.** On the date of this Lease, Tenant is a Florida limited liability company. If at any time during the Lease Term, Tenant is a corporation or an entity other than a Florida limited liability company, then any references herein to member, membership interest, manager and the like which are applicable to a Florida limited liability company will be changed to the equivalent designation of such term which is appropriate to the nature of the new Tenant entity.
- 45.20. **Standard of Conduct.** The implied covenant of good faith and fair dealing under Florida law is expressly adopted in this Lease.

[SIGNATURE PAGES TO FOLLOW]

The parties have executed this Lease on the dates set forth below their respective signatures.

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
Rex Hardin, Mayor

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Witness Address

\_\_\_\_\_  
Witness City, State, Zip

By: \_\_\_\_\_  
Gregory P. Harrison, City Manager

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Witness Address

\_\_\_\_\_  
Witness City, State, Zip

Attest:

\_\_\_\_\_  
Kervin Alfred, City Clerk (SEAL)

Approved As To Form:

\_\_\_\_\_  
Mark E. Berman, City Attorney

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **KERVIN ALFRED** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**"TENANT"**

Witnesses:

[Signature]  
(Signature)

Chris Montos  
(Print Name)

6510 Chapel Hill Rd

Witness Address

Raleigh NC 27607

Witness City, State, Zip

[Signature]  
(Signature)

Mark McLaughlin  
(Print Name)

6510 Chapel Hill Rd

Witness Address

Raleigh NC 27607

Witness City, State, Zip

**PB KIOSK LLC**

a Florida limited liability company

By: [Signature]  
Ilias "Lou" Moshakos, Manager

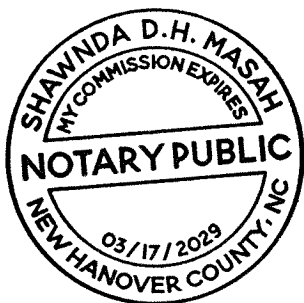
By: [Signature]  
Joy Moshakos, Manager

STATE OF North Carolina

COUNTY OF New Hanover

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 26 day of Feb, 2025, by Ilias "Lou" Moshakos and Joy Moshakos as the Managers of PB Kiosk LLC, who are personally known to me or who have produced Driver License (type of identification) as identification.

NOTARY'S SEAL:



[Signature]  
Notary Public, State of North Carolina

Shawnda D. H. Masch  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**"TENANT"**

Witnesses:

[Signature]  
(Signature)

Chris Moutos  
(Print Name)

6510 Chapel Hill Rd  
Witness Address

Raleigh NC 27607  
Witness City, State, Zip

**PB KIOSK LLC**

a Florida limited liability company

By:

[Signature]  
Amber Moshakos, Manager

[Signature]  
(Signature)

Mark McLaughlin  
(Print Name)

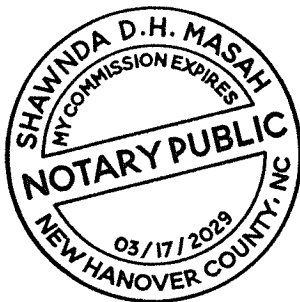
6510 Chapel Hill Rd  
Witness Address

Raleigh NC 27607  
Witness City, State, Zip

STATE OF North Carolina  
COUNTY OF New Hanover

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 26 day of Feb., 2025, by Amber Moshakos as the Manager of PB Kiosk LLC, who are personally known to me or who have produced Driver License. (type of identification) as identification.

NOTARY'S SEAL:



[Signature]  
Notary Public, State of North Carolina

Shawnda D.H. Masah.  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number



**LEGEND**

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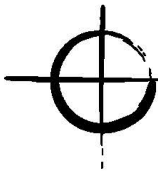
**GRAPHIC SCALE**

1" = 100'

**REVISIONS**

NO.	DATE	DESCRIPTION
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2	10/1/01	ISSUED FOR PERMIT
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57	10/1/01	ISSUED FOR PERMIT
58	10/1/01	ISSUED FOR PERMIT
59	10/1/01	ISSUED FOR PERMIT
60	10/1/01	ISSUED FOR PERMIT
61	10/1/01	ISSUED FOR PERMIT
62	10/1/	

**Exhibit B**  
**Legal Description of Premises**



**PINNELL SURVEY, INC.**

LICENSED BUSINESS #6857  
5300 WEST HILLSBORO BOULEVARD, SUITE 215-A  
COCONUT CREEK, FLORIDA 33073  
PHONE (954)418-4940 FAX(954)418-4941

**EXHIBIT "A"**

**SKETCH & DESCRIPTION**

**POMPANO BEACH SNACK BAR LEASE AREA**

**LEGAL DESCRIPTION:**

A PORTION OF LOTS 3 AND 4, BLOCK 11, POMPANO BEACH, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 95, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

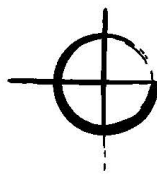
COMMENCING AT THE SOUTHWEST CORNER OF LOT 1, BLOCK 11 OF SAID PLAT OF POMPANO BEACH; THENCE NORTH 09°09'10" EAST ALONG THE WEST LINE OF LOTS 1, 2 AND 4, BLOCK 11 OF SAID PLAT OF POMPANO, FOR 196.52 FEET; THENCE SOUTH 80°50'50" EAST, FOR 15.24 FEET TO THE POINT OF BEGINNING; THENCE NORTH 09°09'43" EAST, FOR 34.19 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 3.85 FEET AND A RADIAL BEARING THROUGH SAID POINT OF NORTH 80°34'18" WEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 103°08'19", FOR AN ARC DISTANCE OF 6.93 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 64.77 FEET AND A RADIAL BEARING THROUGH SAID POINT OF NORTH 08°19'52" WEST; THENCE EASTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 26°38'34", FOR AN ARC DISTANCE OF 30.12 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 90.00 FEET AND A RADIAL BEARING THROUGH SAID POINT OF NORTH 17°14'31" EAST; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 09°04'33", FOR AN ARC DISTANCE OF 14.26 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 32.21 FEET AND A RADIAL BEARING THROUGH SAID POINT OF NORTH 26°19'03" EAST; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 31°44'52", FOR AN ARC DISTANCE OF 17.85 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 40.26 FEET AND A RADIAL BEARING THROUGH SAID POINT OF NORTH 58°35'07" EAST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 18°06'38", FOR AN ARC DISTANCE OF 12.73 FEET; THENCE SOUTH 13°07'56" EAST, FOR 4.80 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 66.41 FEET AND A RADIAL BEARING OF NORTH 75°22'18" EAST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 18°29'25", FOR AN ARC DISTANCE OF 21.43 FEET; THENCE SOUTH 05°49'48" WEST, FOR 4.56 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 66.41 FEET AND A RADIAL LINE THROUGH SAID POINT OF SOUTH 82°12'07" EAST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 02°27'47", FOR AN ARC DISTANCE OF 2.86 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 89.17 FEET AND A RADIAL BEARING THROUGH SAID POINT OF SOUTH 79°02'23" EAST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 10°49'00", FOR AN ARC DISTANCE OF 16.83 FEET; THENCE NORTH 71°05'51" WEST, FOR 1.45 FEET; THENCE NORTH 80°05'59" WEST, FOR 0.57 FEET; THENCE SOUTH 69°25'51" WEST, FOR 18.31 FEET; THENCE NORTH 81°19'33" WEST, FOR 3.03 FEET; THENCE SOUTH 68°31'22" WEST, FOR 8.38 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 3.26 FEET AND A RADIAL BEARING THROUGH SAID POINT OF SOUTH 21°28'38" EAST; THENCE WESTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 15°07'52", FOR AN ARC DISTANCE OF 0.86 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 28.24 FEET AND A RADIAL BEARING THROUGH SAID POINT OF NORTH 01°51'27" WEST; THENCE WESTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 28°19'01", FOR AN ARC DISTANCE OF 13.96 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 18.08 FEET AND A RADIAL BEARING THROUGH SAID POINT OF SOUTH 03°06'18" EAST; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 68°37'57", FOR AN ARC DISTANCE OF 21.66 FEET; THENCE NORTH 61°53'07" EAST, FOR 5.87 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 69.92 FEET AND A RADIAL BEARING THROUGH SAID POINT OF SOUTH 62°15'42" WEST; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 21°58'04", FOR AN ARC DISTANCE OF 26.81 FEET; THENCE SOUTH 82°24'55" WEST, FOR 5.90 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 80.63 FEET AND A RADIAL BEARING THROUGH SAID POINT OF SOUTH 85°45'02" WEST; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 13°15'01", FOR AN ARC DISTANCE OF 18.65 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING AND BEING IN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA AND CONTAINS 5,622 SQUARE FEET MORE OR LESS.

SKETCH NO.: 23-1243SD  
SHEET 1 OF 3



**Exhibit B**  
**Legal Description of Premises**



**PINNELL SURVEY, INC.**

LICENSED BUSINESS #6857  
5300 WEST HILLSBORO BOULEVARD, SUITE 215-A  
COCONUT CREEK, FLORIDA 33073  
PHONE (954)418-4940 FAX(954)418-4941

**LINE DATA:**

L1	S80°50'50"E	15.24'
L2	N09°09'43"E	34.19'
L3	S13°07'56"E	4.80'
L4	S05°49'48"W	4.56'
L5	N71°05'51"W	1.45'
L6	N80°05'59"W	0.57'
L7	S69°25'51"W	18.31'
L8	N81°19'33"W	3.03'
L9	S68°31'22"W	8.38'
L10	N61°53'07"E	5.87'
L11	S82°24'55"W	5.90'

**RADIAL  
BEARING DATA:**

R1	N80°34'18"W
R2	N08°19'52"W
R3	N17°14'31"E
R4	N26°19'03"E
R5	N58°35'07"E
R6	N75°22'18"E
R7	S82°12'07"E
R8	S79°02'23"E
R9	S21°28'38"E
R10	N01°51'27"W
R11	S03°06'18"E
R12	S62°15'42"W
R13	S85°45'02"W

**CURVE DATA:**

C1 R=3.85' Δ=103°08'19" L=6.93' CB=N60°59'52"E	C7 R=66.41' Δ=02°27'47" L=2.86' CB=S09°01'46"W
C2 R=64.77' Δ=26°38'34" L=30.12' CB=S85°00'35"E	C8 R=89.17' Δ=10°49'00" L=16.83' CB=S16°22'07"W
C3 R=90.00' Δ=09°04'33" L=14.26' CB=S68°13'13"E	C9 R=3.26' Δ=15°07'52" L=0.86' CB=S76°05'18"W
C4 R=32.21' Δ=31°44'52" L=17.85' CB=S47°48'31"E	C10 R=28.24' Δ=28°19'01" L=13.96' CB=S73°59'03"W
C5 R=40.26' Δ=18°06'38" L=12.73' CB=S22°21'34"E	C11 R=18.08' Δ=68°37'57" L=21.66' CB=N58°47'19"W
C6 R=66.41' Δ=18°29'25" L=21.43' CB=S05°23'00"E	C12 R=69.92' Δ=21°58'04" L=26.81' CB=N16°45'16"W
	C13 R=80.63' Δ=13°15'01" L=18.65' CB=N02°22'33"E

**LEGEND & ABBREVIATIONS:**

☉	-	CENTERLINE
CB	-	CHORD BEARING
L	-	ARC LENGTH
P.O.B.-	-	POINT OF BEGINNING
P.O.C.-	-	POINT OF COMMENCEMENT
R	-	RADIUS
Δ	-	CENTRAL ANGLE

**GENERAL NOTES:**

1. THIS IS NOT A SURVEY.
2. THE PROPERTY SHOWN HEREON WAS NOT ABSTRACTED FOR OWNERSHIP, RIGHTS-OF-WAY, EASEMENTS OR OTHER MATTERS OF RECORD BY PINNELL SURVEY, INC.
3. BEARINGS SHOWN HEREON ARE BASED ON AN ASSUMED BEARING OF NORTH 09°09'10" EAST ALONG THE WEST LINE OF BLOCK 11, POMPANO BEACH, PLAT BOOK 2, PAGE 95 PALM BEACH COUNTY RECORDS.
4. SKETCH PREPARED 08/12/24

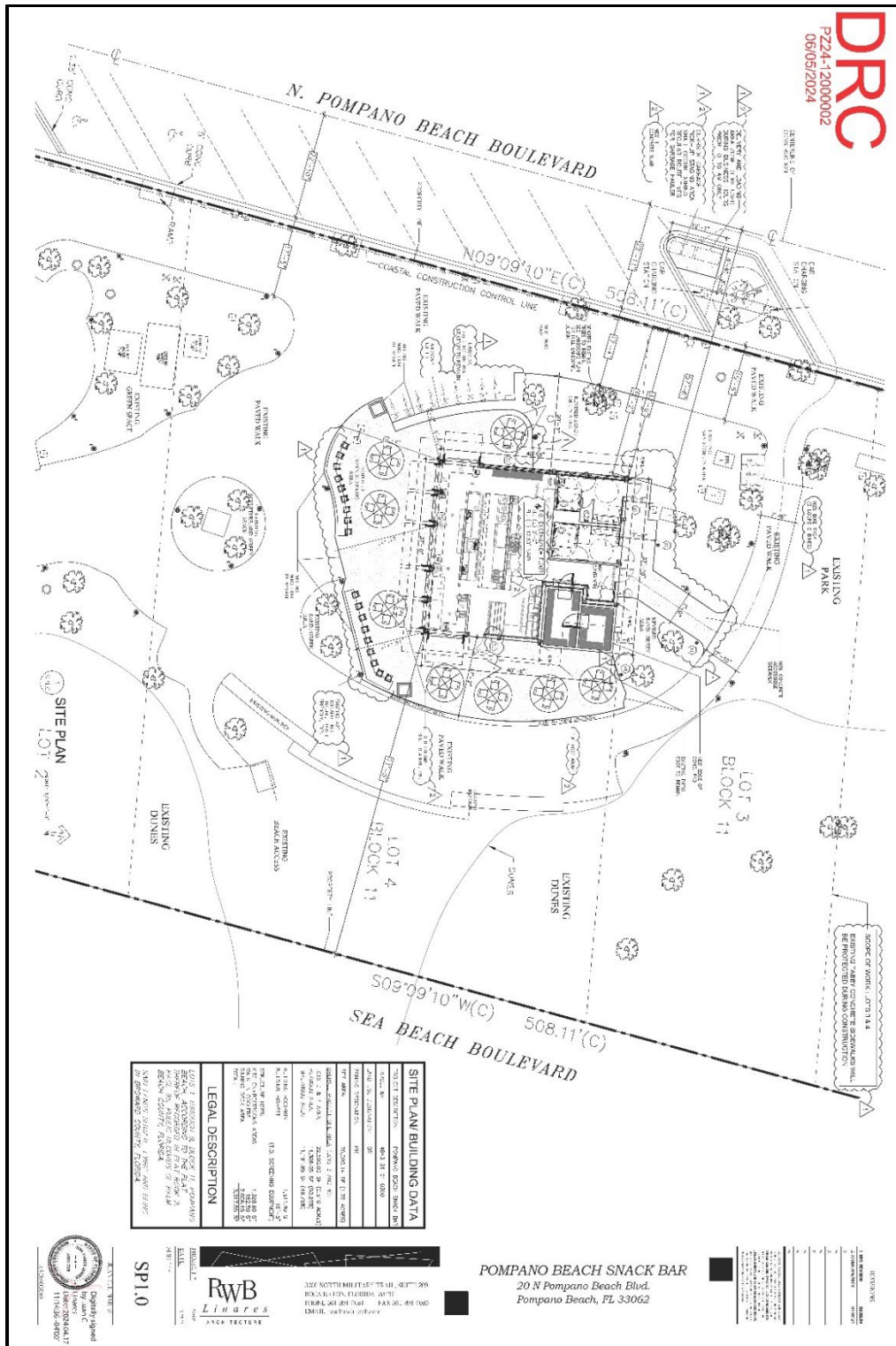
Jason H. Pinnell, P.S.M.  
Digitally signed by Jason H. Pinnell, P.S.M.  
Date: 2024.08.13 12:06:46 -04'00'

THE SEAL APPEARING ON THIS DOCUMENT WAS APPROVED BY JASON H. PINNELL, P.S.M. #5734

**JASON H. PINNELL**  
**PROFESSIONAL SURVEYOR & MAPPER**  
**STATE OF FLORIDA - LICENSE NO. 5734**

SKETCH NO.: 23-1243SD  
SHEET 3 OF 3

# Exhibit C Project Site Plan





## Exhibit D Development Timeline

# IMPROVEMENT SCHEDULE

It is anticipated the design stage will be a sixty (60) day period.  
 It is anticipated it will take three (3) months to obtain the necessary permits.  
 It is anticipated, subject to any acts of force majeure, that completion of the improvements shall be no later than five (5) months following issuance of all necessary permits by the city, county, state and federal government, or any other governing agency with jurisdiction over the improvements.  
 It is anticipated it will take one (1) month to obtain final permits and occupancy certificates as well as any pre-opening tasks.

	Month 1	2	3	4	5	6	7	8	9	10	11
Design											
Permitting											
Construction											
Pre-Opening											
Open Date											

**Plans and Permit Application.** The deadline for completion of the Plans and submission of a Building Permit application is within 60 days of the Lease Commencement Date.

**Building Permit.** The deadline for obtaining the Building Permit is within five (5) months of the Lease Commencement Date.

**Commencement of Construction.** The deadline for commencement of construction is within six (6) months of the Lease Commencement Date.

**Certificate of Occupancy.** The deadline for obtaining a Certificate of Occupancy is within twelve (12) months of the Lease Commencement Date.

## Exhibit E Description of the Project Improvements

Demolition of existing Beach Kiosk Concession by Tenant and construction of new approximately 1,514 square foot Beach Kiosk Concession building with a kitchen, walk-in coolers and restrooms with a 2,000 square foot outdoor seating area.

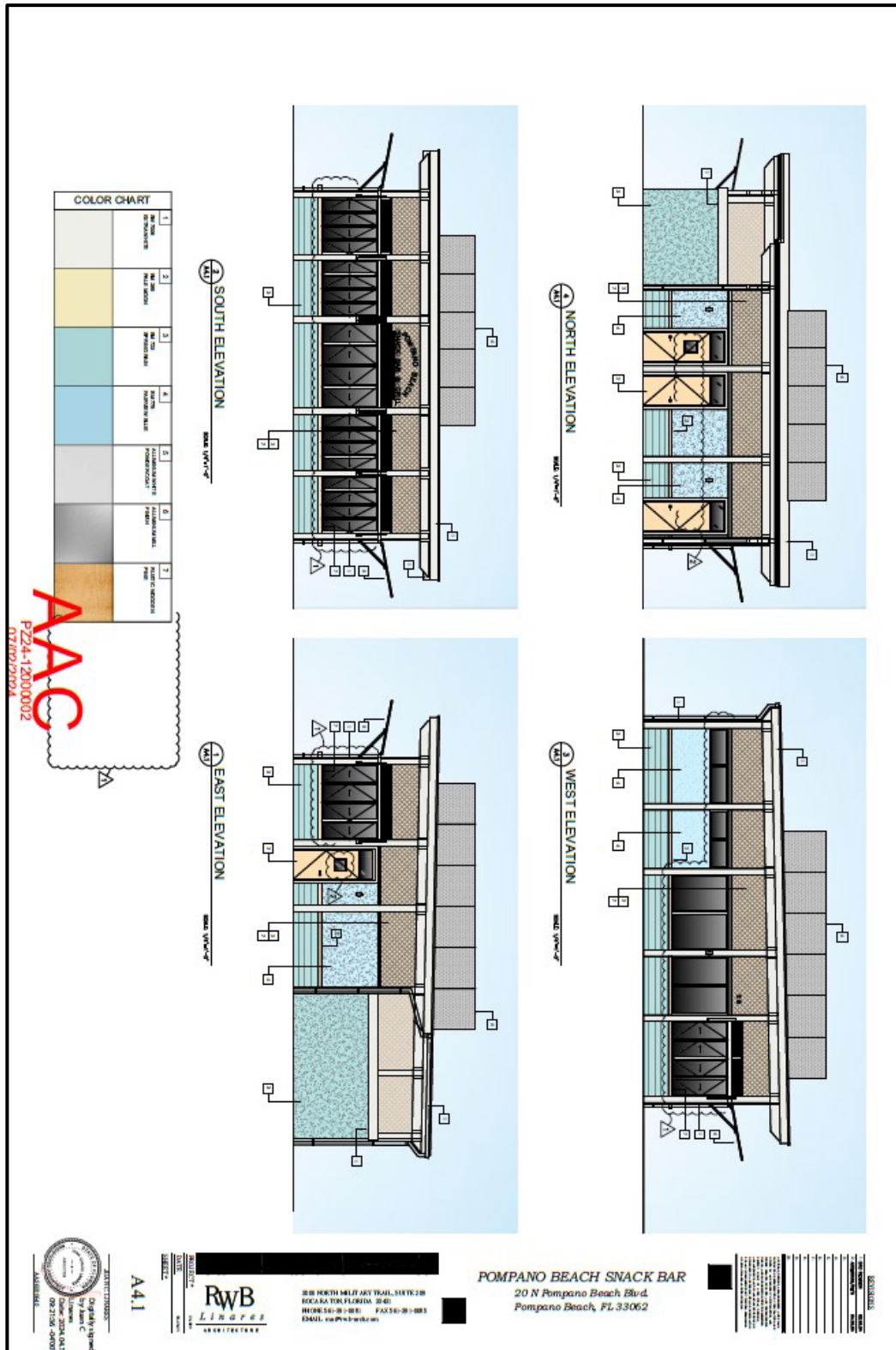
### Estimated Project Costs:

#### Building Expenses

*Total estimated building costs expected to be between \$1.5m-2m*

Soft Costs	\$ 200,000	<i>Includes architecture, engineering, permitting fees</i>
Building Shell Structure	\$ 240,000	<i>Includes roof, rough carpentry, etc.</i>
PME		
Plumbing	\$ 175,000	
Electrical	\$ 200,000	
Mechanical	\$ 200,000	<i>includes hood system</i>
Site work/landscaping	\$ 250,000	
FFE	\$ 500,000	<i>includes all equipment and dining furniture</i>
<i>Total</i>	\$ 1,765,000	
Preopening Expenses		
	\$ 300,000	<i>includes training, initial orders of food &amp; beverages and supplies</i>
<b>Total Estimated Project Costs</b>	<b>\$ 2,065,000</b>	

## Exhibit F Renderings of the Improvements





**Exhibit G**  
**Ownership of Tenant**

**PB KIOSK, LLC is owned by the following persons:**

<b>Ilias “Lou” Moshakos</b>	<b>33%</b>
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<b>Joy Moshakos</b>	<b>33%</b>
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<b>Amber Moshakos</b>	<b>34%</b>
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