

RESOLUTION NO. 2021- 158

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A PARKING LICENSE AGREEMENT BETWEEN POMPANO CITY PLACE, LLC AND THE CITY OF POMPANO BEACH; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a Parking License Agreement between Pompano City Place, LLC and the City of Pompano Beach, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute the aforesaid Agreement between Pompano City Place, LLC and the City of Pompano Beach.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 27th day of April, 2021.



REX HARDIN, MAYOR

ATTEST:



ASCELETA HAMMOND, CITY CLERK

PARKING LICENSE AGREEMENT

THIS PARKING LICENSE AGREEMENT (the "Agreement") is entered into on April 27, 2021, by and between Pompano City Place, LLC, a Florida corporation ("LICENSOR"), and the City of Pompano Beach, a Florida municipal corporation ("CITY") collectively referred to as "the Parties."

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as hereinafter set forth.

1. GRANT OF LICENSE

LICENSOR grants to CITY a revocable license to use its property located at 3300 S.E. 1st Street, Pompano Beach Florida 33062 (hereinafter the "Vacant Lot" or "Parking Area" as further described in Exhibit "A" attached hereto and made a part hereof) to provide public parking as depicted in Exhibit "B" attached hereto and made a part hereof. The Term of this License shall be for one (1) year commencing on the date this Agreement is fully executed by both Parties and may be extended for additional one (1) year periods upon CITY's written notice to LICENSOR sixty (60) days prior to expiration of the current Term and both Parties' written approval executed with the same formality of this Agreement.

2. USE AND MAINTENANCE

The Parties acknowledge the Vacant Lot has not been improved or determined fit for the specific purpose of public parking. Notwithstanding the condition of the Vacant Lot, CITY shall have the right and access over and across the parking, driveway and walkway areas of the Parking Area for pedestrian and vehicular ingress, egress and movement by the general public. CITY is entitled to the exclusive use and possession of the Parking Area for use by the general public during the Term. CITY may use a third-party provider to manage the public parking operations.

LICENSOR expressly has no interest in utilizing the Parking Area for its own parking or parking by others or for other purposes unrelated to LICENSOR's onsite construction and agrees to not permit any other party to occupy the Vacant Lot during the term of this Agreement. CITY will ensure that the Parking Area is kept in a clean and orderly manner including the removal of trash, debris, garbage, and waste that may accumulated during public parking operations.

CITY shall not use or permit the Parking Area, or any part thereof, to be used for any purpose other than the purpose stated in this Agreement. No use shall be made or permitted to be made of the Parking Area, or acts done, that will cause cancellation of any insurance policy covering the Parking Area; nor shall CITY sell, or permit to be kept, used, or sold, in or about the Parking Area, any article prohibited by the standard form of fire insurance policies. CITY shall, at its sole cost, comply with all requirements of any insurance organization or company necessary to maintain the insurance required hereunder to cover any improvements or appurtenances at any time located on the Parking Area.

The Parties understand, acknowledge and agree that neither party shall in any way be responsible for any property of either party, their employees, invitees or other agents that may be left in the Parking Area.

3. LICENSE FEE

CITY agrees to pay to LICENSOR fifty percent (50%) of the CITY's gross receipts (the "License Fee"). Gross receipts shall include all revenue received from parking vehicles in the Parking Area, excluding all federal, state and local taxes. The License Fee may be paid by check or wire transfer made payable to LICENSOR on the 15th day of each month for the preceding month's collection.

4. LICENSOR'S REPRESENTATIONS

LICENSOR makes the following representations to CITY which CITY materially relies upon in entering into this Agreement: (1) LICENSOR is a limited liability company duly organized, existing and in good standing under the laws of the State of Florida, authorized to transact business in the state of Florida, with the power and authority to enter into this Agreement; (2) LICENSOR's execution, delivery, consummation and performance under this Agreement will not violate or cause LICENSOR to be in default of any provisions of its governing documents, rules and regulations, or any other agreement to which LICENSOR is a party or constitute a default or cause acceleration of any obligation of LICENSOR under such an agreement; (3) the individual executing this Agreement and related documents on behalf of LICENSOR is duly authorized to take such action which action shall be, and is, binding on LICENSOR; (4) there are no legal actions, suits or proceedings pending or threatened against or affecting LICENSOR or its principals that LICENSOR is aware of that would have a material adverse effect on LICENSOR's ability to perform its obligations hereunder and LICENSOR agrees it shall provide CITY written notice of any such action, claim or litigation within thirty (30) days of learning of same; and (6) LICENSOR agrees to be bound by all terms, conditions, duties, obligations and specifications set forth in this Agreement.

5. NONASSIGNABILITY AND SUBCONTRACTING

This Agreement is not assignable and the Parties agree that they shall not sell, assign, transfer, merge or otherwise convey any of their interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity without prior written approval from the other party. Any attempt by either party to assign or transfer any of its rights or obligations under this Agreement without first obtaining the other party's written approval will result in immediate cancellation of this Agreement. Specifically, no formal assignment of any right or obligation under this Agreement shall be binding on the CITY without the written consent of the City Commission of Pompano Beach. In addition, this Agreement and the rights and obligations herein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership.

6. INSURANCE

CITY shall provide insurance for use of the Parking Area. CITY further agrees to maintain a qualified insurance program in the limits specified in Florida Statute §768.28 with LICENSOR as a certificate holder. The insurance program shall provide for general and automobile and

Workers Compensation and Employers Liability Coverage. CITY shall provide LICENSOR with a Certificate of Insurance evidencing CITY's insurance program. In the event that CITY's insurance program is modified during the Term of this License, CITY shall provide LICENSOR with at least thirty (30) days prior written notice. Furthermore, if CITY operates or engages an operator, then CITY and its operator shall provide insurance naming LICENSOR as an additional insured.

No party shall have any right or claim against the other for any property damage or loss (whether caused by negligence or the condition of the Parking Area or any part thereof) by way of subrogation or assignment, the Parties waive and relinquish any such right of recovery, to the extent such damage or loss is covered by a policy of insurance referred to in the foregoing subsection of this Section. The Parties shall each request their insurance carrier endorse all applicable policies waiving the carrier's right of recovery under subrogation or otherwise in favor of the other party to this Agreement. It is the express intention of the Parties that the waivers contained in this Article apply to all matters described in this Agreement, including, without limitation, any matter that is caused in whole or in part by the sole or concurrent negligence of either party, or any of their employees, agents, or invitees.

In addition, LICENSOR shall provide CITY with a Certificate of Insurance that evidences LICENSOR's insurance coverage for the Vacant Lot and names CITY as additional insured.

7. LICENSES, PERMITS AND AUTHORIZATIONS

In the conduct of its activities under this Agreement, CITY shall comply with all applicable federal and state laws and regulations and all applicable county and city ordinances and regulations.

8. INDEMNIFICATION AND NO WAIVER OF SOVEREIGN IMMUNITY

To the extent permitted by law and the limits provided in Section 768.28, Florida Statutes, CITY shall save and hold harmless, LICENSOR from, and shall indemnify LICENSOR against, any loss, liability, claim, damage, expense, penalty, or fine, including bodily injury, death, and property damage, arising out of the negligent use or operation of the Parking Area by CITY, its employees, agents or invitees during the public parking lot operating hours. The foregoing indemnification shall include, without limitation, an obligation to repair or pay for the repair of damage to landscaping, and other personal property, fixtures, and improvements located on the Parking Area, to the extent such damage is caused by CITY, its employees, agents or invitees and the public during Operating Hours. Said limited indemnification shall not be inclusive of claims due to LICENSOR's negligence or violation of any laws.

LICENSOR shall save and hold harmless CITY from, and shall indemnify CITY against any loss, liability, claim, damage, expense, penalty or fine, including bodily injury, death and property damage, arising out of the use of the Parking Area by LICENSOR or its respective employees, representatives, agents, contractors, or invitees. Likewise, the CITY shall indemnify LICENSOR against any loss, liability, claim, damage, expense, penalty or fine, including bodily injury, death and property damage, arising out of the use of the Parking Area by CITY or its respective employees, representatives, agents, contractors, or invitees.

LICENSOR acknowledges and agrees that one percent (1%) of the License fee paid and the CITY's provision of in-kind benefits as heretofore described shall serve as consideration for such indemnification.

For purposes of this Agreement, "Claim" shall mean any obligation, liability, claim, lien or encumbrance, loss, damage, cost, or expense, including, but not limited to, any claim for damage to property or injury to or death of any persons. Each claim for indemnification made hereunder shall be subject to the following provisions: (i) the indemnity shall cover the indemnitee's costs and expenses, including, without limitation, reasonable attorneys' fees, disbursements and court costs related to any actions, suits or judgments incident to any of the matters covered by such indemnity, whether at trial or on appeal and (ii) indemnitee shall notify indemnitor of any Claim against indemnitee covered by the indemnity within thirty (30) days after it has notice of such Claim. However, indemnitee's failure to notify indemnitor shall in no case prejudice indemnitee's rights hereunder unless indemnitor shall be prejudiced by that failure and then only to the extent that indemnitor shall be prejudiced by said failure. Should indemnitor fail to discharge or undertake to defend indemnitee against such liability upon learning of a Claim, the indemnitee may settle such liability and indemnitor's liability hereunder shall be conclusively established by that settlement, the amount of such liability to include both the settlement consideration and indemnitee's reasonable costs and expenses, including attorneys' fees, disbursements and court costs incurred in effecting said settlement.

The obligations of the Parties under this Article shall survive the termination or expiration of this Agreement and remain binding upon the Parties until fully observed, kept or performed.

Nothing contained in this Agreement shall be construed as consent from either party to be sued by third parties or to affect in any way the rights, privileges and immunities of CITY, or be intended to serve as a waiver of sovereign immunity as set forth in Florida Statutes §768.28.

9. CONTRACT ADMINISTRATORS, NOTICES AND DEMANDS

During the term of this Agreement, the City's Contract Administrator shall be Jeff Lantz and the LICENSOR's Contract Administrator shall be Bill Trick as further identified below.

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 written 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.

For CITY:

Gregory Harrison, City Manager
City of Pompano Beach
P.O. Drawer 1300
Pompano Beach, Florida 33061
Greg.Harrison@copbfl.com
954-786-4601 office
954-786-4504 fax

With a copy to:

Mark Berman, City Attorney
City of Pompano Beach
100 W. Atlantic Blvd., 4th Floor
Pompano Beach, Florida 33060
Mark.Berman@copbfl.com
954-786-4614 office
954-786-4113 fax

Jeff Lantz, Parking Manager
City of Pompano Beach
3460 NE 3rd Street
Pompano Beach, Florida 33062
Jeff.lantz@copbfl.com
954-786-5580

For LICENSOR:

Dr. James Bicher, Managing Member
Pompano City Place, LLC
2213 NE 37th Drive
Fort Lauderdale, Florida 33308
Phone: Call Bill Trick, Esquire
Email: bill.trick@me.com

With a copy to:

Bill Trick, Esquire
William Watson Trick, Jr., P.A.
1216 East Atlantic Blvd., Suite 7
Pompano Beach, Florida 33060
Phone: 954-942-9774 ext. 204
Phone: 954-931-7704
Facsimile: 954-942-9223
Email: bill.trick@me.com

10. GOVERNING LAW AND VENUE

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

11. ATTORNEY'S FEES AND COSTS

In the event of any litigation involving the provisions of this Agreement, both Parties agree the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney and paraprofessional fees as well as all out-of-pocket costs and expenses incurred thereby by the prevailing party in such litigation through all appellate levels. The provisions of this Article shall survive termination of this Agreement.

12. FORCE MAJEURE

Neither party shall be obligated to perform any duty, requirement or obligation hereunder if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, pandemic, acts of nature or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of Force Majeure. If either party is unable to perform or delayed in their performance of any obligations hereunder by reason of any event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of Force Majeure.

In order to be entitled to the benefit of this Article, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail said event and diligently proceed to correct the adverse effect(s) or by the parties' mutual agreement, may reschedule performance of the Work or services to a later date. The parties agree, that to this Article, time is of the essence.

13. WAIVER AND MODIFICATION

CITY's failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach. The Parties may request changes to modify certain provisions of this Agreement; however, unless otherwise provided, such changes must be contained in a written amendment executed by both Parties with the same formality of this Agreement.

14. SEVERABILITY

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.

15. LICENSE NOT LEASE

Both Parties acknowledge and agree this License shall not be deemed a lease but rather a license granted to CITY by LICENSOR to provide the Parking Area under the conditions and purposes expressed in this Agreement and shall not be construed to be a license to engage in any other uses. CITY understands and agrees that it takes the Parking Area in "as is" condition.

16. TERMINATION

Termination for Cause. Breach or default of any of the covenants, duties, or terms of this Agreement shall be cause for termination, in whole or in part, of this Agreement, if such breach or default remains uncured for more than five (5) days after written notice thereof from the non-defaulting party to the defaulting party, or such longer period as may be reasonably required under the circumstances as long as the defaulting party commences the cure of such breach or

default prior to the expiration of such thirty (30) day period and diligently thereafter pursues the cure of the breach or default to completion. Any such notice of default shall describe in reasonable detail the alleged breach or default.

Termination for Convenience. Either party may terminate this Agreement for convenience upon no less than ninety (90) days prior written notice to the other party. If CITY erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective after the notice for cause is provided.

17. ENTIRE AGREEMENT

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

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

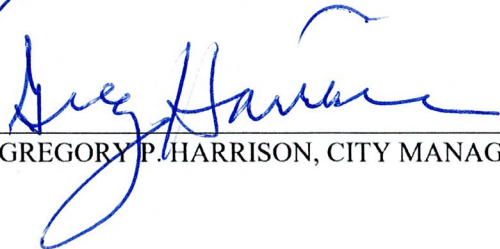
Attest:


ASCELETA HAMMOND, CITY CLERK

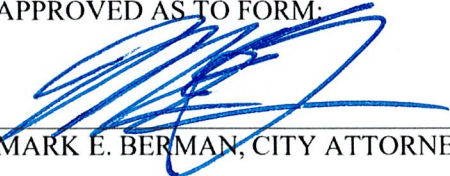
(SEAL)

CITY OF POMPANO BEACH

By: 
REX HARDIN, MAYOR

By: 
GREGORY P. HARRISON, CITY MANAGER

APPROVED AS TO FORM:


MARK E. BERMAN, CITY ATTORNEY

"LICENSOR"

Witnesses:

Pompano City Place, LLC

Alexandra L. Cetateanu

By: 

Dr. James Bicher, Managing Member

Alexandra L. Cetateanu
Print Name



William Watson Trick, Jr.

Print Name

THE STATE OF FLORIDA

COUNTY OF Broward

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 12 day of April, 2021, by Dr. James Bicher as a Managing Member of Pompano City Place, LLC, a Florida limited liability company on behalf of the company. He is personally known to me or who has produced Florida driver's license as identification.

Alexandra L. Cetateanu
Notary Public, State of Florida

NOTARY'S SEAL:



Alexandra L. Cetateanu
Printed Name of Notary

Commission Number