

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT ("Agreement"), is made and entered into this _____ day of _____ 2019, by and between the

CITY OF POMPANO BEACH, a municipal corporation organized under the laws of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060 ("CITY")

and

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY, a body politic and corporate of the State of Florida and a community redevelopment agency created pursuant to Chapter 163, Part III Florida Statutes, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060 ("CRA").

joined by

POMPANO PIER ASSOCIATES, LLC., a Florida limited liability company whose address is 290 SE 6th Avenue, Delray Beach, Florida 33483 ("DEVELOPER")

WHEREAS, the City Commission of the CITY has, pursuant to Part III, Chapter 163, Florida Statutes ("Redevelopment Act") created a Community Redevelopment Agency for the public purpose of carrying out redevelopment in community redevelopment areas located in the CITY; and

WHEREAS, redevelopment of the CITY's beachfront has been and continues to be a signature project within the East CRA District for which the CRA has been directly involved pursuant to the Community Redevelopment Plan for the East CRA District (the East CRA Plan); and

WHEREAS, the CITY and the DEVELOPER entered into that certain Development Agreement on January 28, 2013, as amended (the "Development Agreement"), to provide for the redevelopment of beachfront property owned by the City (the "Project"); and

WHEREAS, the Development Agreement requires the DEVELOPER to make improvements to the parcel referred to in the Development Agreement as Parcel E, and at Paragraphs 5.1 and 7.1, to construct an ornamental structure (the "Arch") to be located on the plaza area near the entry to the existing pier (the "Pier Plaza") on Parcel E; and

WHEREAS, the CITY intends that the Pier Plaza and the Arch are intended to leave a lasting visually dramatic impression of Pompano's redeveloped beachfront for residents and visitors alike; and

WHEREAS, in order to achieve the visually dramatic impression the CITY desires, certain enhancements to the Pier Plaza and the Arch are needed (the "Enhancements"); and

WHEREAS, the cost to include the Enhancements in the construction of the Pier Plaza and the Arch exceeds the original cost;

WHEREAS, the CITY desires the participation of the CRA in construction of the Enhancements; and

WHEREAS, the Enhancements are consistent with the East CRA Plan objectives relating to the redevelopment of the Pompano beachfront and the CRA is willing to participate in the construction of the Enhancements; and

WHEREAS, the DEVELOPER is willing to join in this Interlocal Agreement for the purpose of establishing reimbursement for construction of the Enhancements.

NOW, THEREFORE, in consideration of the mutual promises and conditions contained in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, the CITY and CRA agree as follows.

ARTICLE 1 RECITALS INCORPORATED

The recitals set forth in the "Whereas" clauses above are hereby accepted by the parties and incorporated into this Agreement.

ARTICLE 2 CRA OBLIGATIONS

The CRA's obligations are as follows:

1. Contribute \$400,000 to the construction of the Enhancements (the CRA Contribution).

2. The CRA Contribution shall be payable to the DEVELOPER on a reimbursement basis. The DEVELOPER shall submit up to two (2) invoice(s) to the CRA as construction of the Enhancements progresses. The CRA shall pay the invoice(s) in amounts not to exceed a total of \$400,000 in two equal payments of \$200,000 each. The first invoice shall be payable upon erection of the Arch structure. The second invoice shall be payable upon installation of all signage and completion of all Plaza work.

ARTICLE 3 CITY OBLIGATIONS

The CITY's obligations are as follows:

1. Arrange for and manage the construction of the Pier Plaza and the Arch, including the Enhancements.

The DEVELOPER's obligations are as follows:

1. Comply with the requirements of the Development Agreement relating to the Pier Plaza and the Arch.
2. Construct the Pier Plaza and the Arch according to the design for the Enhancements.

ARTICLE 4 PLEDGE OF COOPERATION

The parties recognize it will be necessary for both CITY and CRA staff to work closely and coordinate with each other in order to effectuate the intent of this Agreement. Therefore, each party pledges said cooperation.

ARTICLE 5 TERM

This Agreement shall take effect as provided in Article 16 of this Agreement and shall continue in effect until completion of construction of the Enhancements and reimbursement to the DEVELOPER by the CRA. The parties may amend this Agreement by mutual agreement in writing.

If the term of this Agreement extends beyond a single fiscal year of the CITY and CRA, the continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 163, Florida Statutes for CRA and Chapter 166, Florida Statutes for CITY.

ARTICLE 6 GOVERNMENTAL IMMUNITY

The CITY and the CRA are political subdivisions of the State of Florida. Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. Both parties are state agencies or political subdivisions as defined in Chapter 768.28, Florida Statutes, and agree to be fully responsible for the acts and

omissions of its respective officials, agents and employees to the extent permitted by law. This provision shall survive the termination or expiration of this Agreement.

ARTICLE 7 INSURANCE

The CITY shall maintain liability insurance in accordance with Exhibit "A" attached hereto and incorporated herein, throughout the term of this Agreement. The DEVELOPER shall maintain all insurance required by the Development Agreement.

ARTICLE 8 INDEPENDENT CONTRACTOR

The CITY and the CRA are separate legal entities and for purposes of this Agreement and each is an independent contractor under this Agreement. Services provided by each party pursuant to this Agreement shall be subject to the supervision of that party. In providing such Services, each party, its respective officers, employees, or agents are not authorized to and shall not act as officers, employees or agents of the other party. Neither party extends to the other party or its respective agents any authority of any kind to bind it in any respect whatsoever.

ARTICLE 9 ASSIGNMENT

This Agreement, or any interest therein is not assignable and both the CITY and CRA agree not to assign, transfer, merge or otherwise convey any of their respective interest, right, or obligation under this Agreement, in whole or in part, to any other person, corporation or entity without the prior written consent of the other party.

ARTICLE 10 AMENDMENTS

The parties agree that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by all parties.

ARTICLE 11 NOTICE

Whenever any party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it has been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective addresses for giving of notice.

For CRA:

Executive Director
Pompano Beach CRA
P.O. Box Drawer 1300
Pompano Beach, FL 33061

For CITY:

City Manager
City of Pompano Beach
100 W. Atlantic Blvd.
Pompano Beach, FL 33060

With a copy to:

CRA Attorney
Pompano Beach CRA
100 W. Atlantic Blvd.
Pompano Beach, FL 33060

With a copy to:

City Attorney
City of Pompano Beach
P. O. Box 2083
Pompano Beach, FL 33061

For DEVELOPER:

Richard Caster, Manager
Pompano Pier Associates, LLC
290 SE 6th Avenue
Delray Beach, Florida 33483

**ARTICLE 12
BINDING AUTHORITY**

Each person signing this Agreement warrants that he or she has full legal authority to execute this Agreement on behalf of any party and to bind and obligate such party with respect to all provisions contained in this Agreement.

**ARTICLE 13
SEVERABILITY**

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

**ARTICLE 14
GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Florida with venue lying in Broward County, Florida. By entering into this Agreement, CITY and CRA and the DEVELOPER hereby expressly waive any rights any party may have to a trial by jury of any civil litigation related to this Agreement.

**ARTICLE 15
ADHERENCE TO LAW**

All parties shall adhere to all applicable federal, state and local laws and ordinances including, but not limited to, all laws governing their relationship with their employees such as worker's compensation, unemployment compensation and minimum wage requirements.

**ARTICLE 16
ENTIRE AGREEMENT**

This Agreement embodies the entire agreement between the parties and supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein. The parties agree there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained herein. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

**ARTICLE 17
INTERPRETATION**

This Agreement shall be interpreted as drafted by all parties hereto equally.

**ARTICLE 18
FILING AND EFFECTIVE DATE**

This Agreement is an interlocal cooperation agreement entered into pursuant to Section 163.01, Florida Statutes. It shall become effective upon being filed with the Clerk of the Circuit Court of Broward County, Florida, pursuant to Section 163.01(11), Florida Statutes. The CITY shall be responsible for filing this Agreement with the Clerk of the Circuit Court of Broward County and shall pay for all such recording fees associated with same.

**ARTICLE 19
PUBLIC RECORDS**

19.1 The City and CRA are public agencies subject to Chapter 119, Florida Statutes. Both shall comply with Florida Public Records Law, as amended. DEVELOPER shall comply with Chapter 119 requirements as follows:

- 19.1.1 Keep and maintain public records required by the City in order to perform the service.
- 19.1.2 Upon request from the CRA's custodian of public records, provide the CRA 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.

19.1.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the DEVELOPER does not transfer the records to the CRA.

19.1.4 Upon completion of the contract, transfer, at no cost to the CRA, all public records in possession of the DEVELOPER, or keep and maintain public records required by the CRA to perform the service. If the DEVELOPER transfers all public records to the CRA upon completion of the contract, the DEVELOPER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the DEVELOPER keeps and maintains public records upon completion of the contract, the DEVELOPER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CRA, upon request from the CRA's custodian of public records in a format that is compatible with the information technology systems of the CRA.

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

PUBLIC RECORDS CUSTODIAN

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CRA CLERK

100 W. Atlantic Blvd., Suite 276

Pompano Beach, Florida 33060

(954) 786-7823

marsha.carmichael@copbfl.com

ARTICLE 20 AUDIT RIGHT AND RETENTION OF RECORDS

Each party shall have the right to audit the books, records, and accounts of the other party that are related to this Agreement. CITY and CRA shall keep such books, records and accounts as may be necessary in order to record complete and correct entries related to this Agreement. CITY and CRA shall preserve and, upon request, make available, at reasonable times for examination and audit by the other party, all financial records, supporting documents and any

other records pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time.

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

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CITY:

Witnesses:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND
CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** 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

Signed, Sealed and Witnessed
In the Presence of:

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

Approved as to Form:

Claudia M. McKenna, CRA Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by REX HARDIN as Chairman, GREGORY P. HARRISON, as Executive Director, and MARSHA CARMICHAEL as Secretary, of the Pompano Beach Community Redevelopment Agency, who are personally known to me.

NOTARY'S SEAL:

CRA:

**POMPANO BEACH COMMUNITY
REDEVELOPMENT AGENCY**

By: _____
Rex Hardin, Chairman

ATTEST:

Marsha Carmichael, Secretary

EXECUTIVE DIRECTOR:

By: _____
Gregory P. Harrison

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

DEVELOPER:

Witnesses:

POMPANO PIER ASSOCIATES, LLC., a
Florida limited liability company


Print Name CATHARINE KELLER

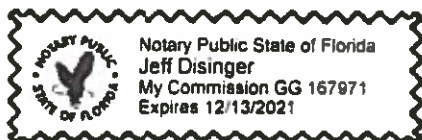

Print Name NICHOLAS BEBER

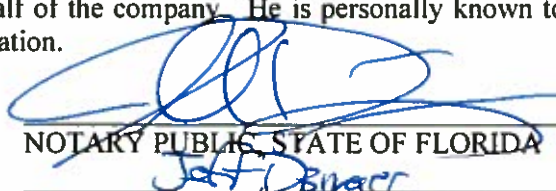
By: 
Richard Caster, Manager

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 9 day of October, 2019, by Richard Caster, as Manager of Pompano Pier Associates, LLC, a Florida Limited Liability Company, on behalf of the company. He is personally known to me or has presented a Florida driver's license as identification.

NOTARY'S SEAL:




NOTARY PUBLIC, STATE OF FLORIDA
(Name of Acknowledger Typed, Printed or Stamped)
Jeff Disinger
Commission Number 66 167971