

PIER HOTEL PARKING SPACE **LICENSE AGREEMENT**

THIS LICENSE AGREEMENT, made this _____ day of _____,
2018, by and between:

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

and

POMPANO BEACH PIER HOTEL, LLC, a Florida Limited
Liability Company, 17595 S Tamiami Trail, Suite 120, Fort Myers,
Florida 33908, hereinafter referred to as "LICENSEE."

and

POMPANO PIER ASSOCIATES, LLC a Florida Limited
Liability Company, 200 Congress Park Drive, Suite 201, Delray
Beach, Florida 33445, hereinafter referred to as "Pier Developers."

WHEREAS, CITY constructed a public parking garage (herein called "Pier Garage")
completed in 2016 on its property, whose address is 275 Seabreeze Way, Pompano Beach, FL
33062, generally situated at the southeast corner of A1A and SE 3rd Street, containing
approximately 625 public parking spaces on a total of 5 parking levels, as more particularly
depicted in the attached EXHIBIT A; and

WHEREAS, the CITY charges the public for utilizing the Pier Garage at the rates
established by ordinance and approved by the City Commission; and

WHEREAS, CITY entered into an Amended and Restated Development Agreement
(herein called "Pier Lease Agreement") for multiple parcels of land which are situated on City
owned property and in close proximity to the Pier Garage, with Pompano Pier Associates, LLC
(herein called "Pier Developers") dated July, 24, 2014 and approved by the City Commission via
Ordinance 2014-49; a First Amendment dated March 27, 2015 and approved by the City
Commission via Ordinance 2015-33; a Second Amendment dated April 15, 2016 and approved
by the City Commission via Ordinance 2016-57; and a Third Amendment dated September 29,
2017, and approved by the City Commission via Ordinance 2018-07; and

WHEREAS, CITY anticipates in the future to execute a parcel ground lease with Pier
Developers for Parcel R5, as more particularly depicted in the attached EXHIBIT B and
EXHIBIT C; and

WHEREAS, as a condition precedent to LICENSEE entering into this Pier Hotel Parking Agreement with CITY, LICENSEE will have executed a subtenant land lease Agreement (the "Sublease Agreement") with Pier Developers for Parcel Number R5, as more particularly described in the parcel ground lease for Parcel Number R5;

WHEREAS, LICENSEE desires to construct a limited service hotel (the "Pier Hotel") of approximately 130 to 150 rooms on Parcel R5, rendering depicted at EXHIBIT D, and desires to enter into this License Agreement with the CITY to allow the LICENSEE'S guests to self-park their vehicles in the Pier Garage, with the privilege of prepaying for the use of public parking along with the privilege of entering and exiting the Pier Garage unlimited times throughout the day; and

WHEREAS, LICENSEE desires to issue prepaid, daily, parking passes to its guests at the time of checking into the Pier Hotel with the privilege of entering and exiting the Pier Garage pay stations during the guest's hotel stay freely without having to utilize the CITY'S parking pay stations, but shall be subject to utilizing a prepayment system approved and operated by the CITY, as contained herein this License Agreement; and

WHEREAS, LICENSEE desires to have the CITY make available a not-to-exceed amount of up to 150 parking spaces, regardless of the occupancy of the LICENSEE'S hotel; and

WHEREAS, Pier Developers desire to retain control of the parking agreement in the event the LICENSEE defaults under its subtenant agreement with the Pier Developers and/or with the CITY; and

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and conditions hereinafter contained, it is agreed by the parties hereto as follows:

SECTION 1 – PURPOSE OF LICENSE AGREEMENT. The purpose of the CITY entering into a Parking License Agreement (the "License Agreement") with the LICENSEE is to promote the use of the public parks, open space and public beach lands for the recreational enjoyment by guests of the Pier Hotel. This License Agreement is necessary and an essential requirement in order for the LICENSEE to provide for adequate parking for the LICENSEE'S hotel guests.

SECTION 2 – DEFINITIONS

DAILY RATE is the rate the Pier Hotel must pay the CITY for the privilege of allowing their guests to park their vehicle in the Pier Garage in any of the unreserved spaces and use the prepayment method. The rate shall be set by the CITY in this Parking License Agreement with the LICENSEE, updated from time to time at the CITY'S discretion as described herein.

HOTEL DAY is a twenty-four (24) hour period commencing at 2:00 pm and expiring at 2:00 pm the next day.

LICENSE AREA is strictly the area within the Pier Garage and does not include any other public spaces owned and/or operated by the CITY.

NUMBER OF SPACES means the number of parking spaces the CITY shall make available for use by Pier Hotel guests parking their vehicles in the Pier Garage; the location of the Pier Hotel parking spaces within the License Area shall be at the CITY'S sole discretion.

PARKING RATE ORDINANCE is an ordinance of the CITY which sets the rates for all municipal parking and is currently codified in Ordinance 2017-36, as amended.

PARKING PASSES establishes the right of a Pier Hotel guest to park in the Pier Garage under a prepayment method as described herein. The pass shall be an electronic card that is read at the time the vehicle enters the gate to the Pier Garage for entry and exit.

PIER GARAGE is a recently constructed, five-level, public parking garage owned by the City of Pompano Beach that contains approximately 625 parking spaces.

PIER HOTEL is a 130-150 room limited service hotel, located at 275 Seabreeze Way, Pompano Beach, FL 33062, proposed to be constructed on Parcel R5 on land owned by the CITY, currently leased to the Pier Developers by the CITY.

PREPAYMENT OF PARKING RATES is to allow Pier Hotel guests prior to utilizing parking in the Pier Garage to be required to prepay for each Hotel Day in the Pier Hotel at a minimum daily rate established herein, utilizing an electronic card to enter and exit the Pier Garage.

STAYOVER PARKING is parking used by guests of the Pier Hotel that stay beyond the 2:00 pm checkout time of the day of departure.

SECTION 3 – LICENSE AREA. CITY hereby grants to LICENSEE and LICENSEE hereby accepts from CITY a license to use up to one hundred and fifty (150) parking spaces located within the Pier Garage, as depicted in the attached EXHIBIT A hereinafter referred to as the "License Area." The parking spaces are to be used only for parking by LICENSEE'S hotel guests, as authorized by LICENSEE and CITY, Monday through Sunday, seven (7) days per week, 365 days per year. The parking spaces shall be made available as provided for in Section 6 herein.

SECTION 4 – LICENSE FEE. The use of License Area by LICENSEE for this restricted purpose of hotel guest parking shall be at a minimum daily rate stated as follows:

- a. The initial self-parking daily rate during the first three years of operation commencing from the day of the hotel opening shall be \$12.00 per parking space per Hotel Day.
- b. The daily rates are subject to increase every three years at an increase rate equal to the percentage rate increase (if any) of the hourly rate charged to the public in the pier parking garage, imposed in the preceding three-year period. This is calculated by averaging the increases of the hourly rates for the off-season and season rates, as established by ordinance of the CITY. Rate increases do not include any holiday

rates, nor any variable rate increases resulting from high demand for parking in the pier parking garage.

c. Hotel guests are limited to a maximum of two vehicles per Hotel day and each vehicle must pay the minimum daily rate for each Hotel Day associated with the guest's stay at the Pier Hotel.

d. Employees of the operator of the Pier Hotel and employees of the owner of the Pier Hotel may not park in the Pier Garage utilizing the parking passes described within this Parking License Agreement, except the Hotel may contract for monthly parking as provided in the City parking ordinance separate and apart from this agreement.

e. CITY shall notify LICENSEE in advance, no less than thirty (30) days, by email, letter or other means of changes to the daily hotel rate.

f. LICENSEE shall be restricted to the maximum amount it will charge to its guests for self-parking, which shall be no more than doubling (200%) the rate charged by the CITY.

g. Stayover parking permits may be obtained from the CITY by purchasing an electronic parking card at the CITY'S parking office located in the garage. Guests may also purchase from the LICENSEE extended parking time on their electronic parking card or electronic room key equal to a one-half the minimum daily rate (due CITY), which expires at 11:00 pm of the day of departure. LICENSEE agrees to notify hotel guests of this information at time of check-in.

SECTION 5 – PAYMENT OF DAILY RATE BY LICENSEE. LICENSEE shall make payment monthly to the CITY as follows:

- a. CITY shall invoice the LICENSEE monthly within ten (10) days after the end of the preceding month, stating the number of Hotel Day occurrences and the amount due by the LICENSEE. Invoices sent by the CITY may be by email, FedEx or similar service, or by US Postal Service, all being sent with return receipt requested.
- b. Payment by the LICENSEE to the CITY shall be made within twenty (20) calendar days from the date of the invoice sent by the CITY.
- c. If LICENSEE fails to make payment to the CITY within the time limit above to CITY, then LICENSEE shall be charged a ten percent (10%) late fee by CITY, due at the time of the payment.
- d. If LICENSEE fails to pay the entire amount due for more than 60 days from the date of the invoice sent by the City, then LICENSEE and Pier Developers shall be notified in writing of the CITY'S intention to terminate this License Agreement within 30 days of provision of such notice.
- e. If the Invoice by the CITY does not correspond to the number of Hotel Days of parking calculated by the LICENSEE, then the LICENSEE may notify the CITY detailing the discrepancy, together with the electronic printout from the hotel's system of the number of hotel guests that were issued electronic parking passes to the Pier Garage for the period in question. LICENSEE must notice the City within thirty (30) days after receiving the invoice from the City. A discrepancy does not relieve the LICENSEE from making a payment but the CITY may grant a credit for the next month's invoice should the CITY find the LICENSEE'S information correct or requires an adjustment.

- f. In the event the LICENSEE does not charge a hotel guest or other party for an electronic parking pass, the LICENSEE shall still be obligated to pay the CITY the full minimum daily rate stated herein.

SECTION 6 – PARKING SPACES RESERVED BY CITY. The CITY at all times shall monitor the number of vacant parking spaces in the Pier Garage and shall make available up to 150 parking spaces for the LICENSEE’S hotel guests. The location of the parking spaces shall be dispersed throughout the entire garage, on floors 2-5. The first floor shall be reserved for valet parking and the fifth floor shall be reserved for monthly reserved parking administered by the CITY; however, the fifth floor, subject to availability, may be utilized for hotel parking during periods of very high occupancy, but not to exceed a total daily limit of 150 parking spaces and only upon prior approval of CITY.

SECTION 7 – ELECTRONIC PARKING PASSES. The CITY shall grant the LICENSEE permission, as stated herein, the right to an electronic parking pass, which shall include the number of Hotel Days that LICENSEE’S Pier Hotel guest has paid for the privilege of parking in the Pier Garage. The electronic pass may be provided for on a parking card or on a hotel key or other electronic device, compatible with the City’s pier parking garage parking system and approved in advance by CITY to allow for access/exit to and from the pier garage. The LICENSEE will be responsible for the purchase of their own parking cards, fobs, printing machines, hotel keys, software, software consulting and any other expense related to issuing and accounting for parking, subject to approval by the CITY. CITY shall diligently work with LICENSEE to coordinate the system, and likewise the LICENSEE shall work diligently with the CITY to coordinate their system with the CITY’S. The CITY currently has a card reader at the entrance and exit to the Pier Garage that is used to permit the hotel user to enter and exit. The CITY shall be responsible for the maintenance and replacement of the card reader in the Pier Garage.

SECTION 8 - TERM OF AGREEMENT. The term of this Parking License Agreement shall commence on the day that the Pier Hotel commences operations including accepting guests for overnight stays, but not longer than three (3) years from the date of the execution of this Agreement. The term shall terminate at midnight on the last day of the term of the parcel ground lease agreement with Pier Developers, but not to exceed fifty (50) years. If the Pier Hotel ceases to operate because of renovation or other acts that prevent the LICENSEE from operating, then the term may be suspended for a period equal to the time that operations re-commence, but for a period not to exceed one (1) year, as approved by the City Manager or his designee. During any time of cessation of operations of the Pier Hotel and consequently the obligation of parking in the Pier Garage, CITY may utilize the unused spaces for public parking, until such time, as the Pier Hotel resumes operations. After expiration of the initial term this License Agreement may be renewed for multiple renewal periods by mutual consent of both parties.

SECTION 9 – HOLD HARMLESS. LICENSEE assumes all risks in the use of the License Area. LICENSEE and/or Pier Hotel guest shall be solely responsible for any damage to, or loss of, motor vehicles parked within the License Area. LICENSEE shall notify Pier Hotel guest of same upon issuance of the parking pass. LICENSEE further covenants and agrees to indemnify,

defend and hold harmless CITY and its officials, officers and employees from any and all claims (which shall include, but not be limited to, the defense of any claims and any and all costs in any judicial or quasi-judicial proceedings and for any and all damages or penalties of any kind or nature), suits, attorney's fees (including appellate fees), losses, damage or injury to person or property of whatsoever kind and nature, whether direct or indirect, arising out of this license or the carelessness, negligence or improper conduct of LICENSEE or any tenant, servant, agent, hotel guest or employee of LICENSEE. Licensee acknowledges and agrees that none of the parties would enter into this Agreement without this indemnification of Licensor by Licensee. The parties agree that one percent (1%) of the value of services provided by the CITY and received by LICENSEE under this Agreement shall constitute specific consideration to LICENSEE. This indemnification provision of this section shall survive the expiration or early termination of this Agreement. Further, nothing contained in this Agreement is intended to serve as a waiver of the CITY'S Sovereign Immunity as provided for in §768.28, Florida Statutes.

SECTION 10- INSURANCE. LICENSEE shall procure at its own cost and expense the insurance coverage set forth in EXHIBIT E, naming the City of Pompano Beach as an additional insured pursuant to this License Agreement, said Certificate of Insurance to be approved by the CITY'S Risk Manager prior to execution of this Agreement. If LICENSEE utilizes the services of an employee or a subcontractor to transport a guest's vehicle to and from the Pier Garage, the CITY retains the right to approve the transport subcontractor, which shall not be unreasonably withheld. However, the transport subcontractor must also, in addition to the LICENSEE, obtain insurance coverage set forth in EXHIBIT E.

SECTION 11 – COMPLIANCE WITH LAWS AND REGULATIONS. LICENSEE and his/her employees, agents, representatives, tenants and/or subcontractors agree to comply and adhere to all applicable laws and regulations, including but not limited to, all state laws and local ordinances and regulations regarding traffic and parking that exist or as amended from time to time.

SECTION 12 - ATTORNEY'S FEES. If any action at law or in equity shall be brought to recover any fees under this License Agreement, or for or on account of any breach of this License Agreement, or to enforce or interpret any of the covenants, terms, or conditions of this License Agreement, or for the recovery of the fees generated by the use of the Pier Garage, the prevailing party shall be entitled to recover from the other party (ies) as part of the prevailing party's costs reasonable attorney's fees, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

SECTION 13 - VENUE. Should any disputes resulting from this agreement arise between CITY and LICENSEE, or any other party in interest, the jurisdiction for any litigation and dispute resolution proceedings shall be in Broward County, Florida.

SECTION 14 - SUBLETTING AND ASSIGNMENT. LICENSEE may not assign nor sublet the License Agreement in whole or in part at any time without CITY'S written consent, which said consent may be withheld by CITY in its sole discretion. Lessor's consent to any such assignments shall not release LICENSEE from, or otherwise affect in any manner, any of LICENSEE'S obligations under this License Agreement nor shall any such consent to an

assignment be deemed to be consent to any subsequent assignment. Any assignment without consent shall be void, and shall, at the option of CITY, terminate this License Agreement.

SECTION 15 - TAXES. LICENSEE agrees to pay any and all sales taxes or other charges by any and all taxing authorities on the sale of parking passes to Pier Hotel guests, which at any time may be levied by state, county, city or any assessment levying bodies. LICENSEE shall be solely obligated to pay any property tax and any tangible personal property taxes assessed against any fixtures, equipment, or other personal property installed in or brought onto the Pier Hotel by LICENSEE for using to generate parking passes and for all sales tax collections and remittances on parking passes.

A. **SECTION 16 – DEFAULT AND TERMINATION.** LICENSEE represents and warrants to CITY that it is an entity authorized to do business in the State of Florida. LICENSEE further represents that it has obtained, or will use its best effort to obtain adequate financial resources to perform all obligations imposed by this Agreement. Additionally, LICENSEE represents and warrants that it has the requisite business skill and ability to perform the obligations imposed upon it by this Agreement, including but not limited to, the obligation to operate the Pier Hotel for the purpose intended. The following shall constitute grounds for termination of the License by the CITY should they occur: LICENSEE shall default in making payment to CITY of any monthly payments made payable CITY under this License Agreement, as and when the same shall become due and payable, and such default in payment shall continue for a period of thirty (30) days after written notice of such default to LICENSEE by CITY; or

B. LICENSEE shall file a petition to be declared bankrupt or insolvent or be adjudicated or declared bankrupt or insolvent by any court or LICENSEE files for reorganization under the Federal Bankruptcy Act, or for the appointment of a receiver or trustee for all of LICENSEE'S property; or LICENSEE'S creditors institute bankruptcy proceedings or receivership proceedings; or

C. LICENSEE shall sell, or assign this License Agreement or any interest in this License Agreement without the consent and approval of CITY as provided herein; or

D. LICENSEE shall fail to comply with, breach or violate any of the statutes, laws, ordinances, rules, regulations, orders and/or requirements of federal, state and local governments, and any of their respective agencies, departments and/or bureaus and such default shall continue for a period of thirty (30) days after written notice to LICENSEE by CITY specifying the claimed default, and LICENSEE shall not, in good faith, have commenced within said thirty (30) day period, to remedy such default and diligently and continuously proceed therewith; or

E. LICENSEE shall default in complying with any other agreement, term, covenant or condition of this License Agreement and such default in compliance shall continue for a period of thirty (30) days after written notice to LICENSEE by CITY specifying the claimed default, and LICENSEE shall not, in good faith, have commenced

within said thirty (30) day period, to remedy such default and diligently and continuously proceed therewith; or

F. LICENSEE shall fail to pay any tax, assessment, rate or charge or other governmental imposition or any other charge or lien which LICENSEE is required to pay, at least ten (10) days prior to the expiration of any grace period allowed by law or by the governmental authority imposing the same and such default shall continue for a period of thirty (30) days after notice by LICENSEE.

If any of the above acts described in Section 16 (A-F) occur, , CITY may serve written thirty (30) day notice of cancellation and termination of this License Agreement, and upon the expiration of such thirty (30) days, this License Agreement and the term hereunder shall end, and LICENSEE shall then quit and surrender to City the License Area and each and every part thereof, and City may enter into or repossess such structures and improvements and each and every part thereof, in accordance with Florida law. In the event of termination of this License Agreement by CITY in accordance with this section, all of the right, estate and interest of LICENSEE in the Premises, the improvements therein and thereon, the equipment and fixtures owned by LICENSEE therein as to the License Area only, and all payments thereof, whether then accrued or to accrue, all insurance policies and all insurance monies paid or payable under any insurance policies insuring the License Area shall vest in and belong to CITY.

SECTION 17 - PUBLIC RECORDS

a. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The LICENSEE shall comply with Florida's Public Records Law, as amended. Specifically, the LICENSEE shall:

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

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

PUBLIC RECORDS CUSTODIAN

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

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

SECTION 18 – RIGHTS OF PIER DEVELOPERS UNDER A DEFAULT BY LICENSEE

In the event LICENSEE defaults under the terms of this Agreement or under the terms of its subtenant agreement with Pier Developers, then Pier Developers, shall have the following rights:

- a. Pier Developers may act as the LICENSEE until such time as a new LICENSEE is established even if the new LICENSEE is temporary or even if the original LICENSEE is reinstated as the LICENSEE.
- b. Payments by the successor LICENSEE to the CITY for hotel guest parking shall remain in effect and all other provisions of this Agreement.
- c. All rights and responsibilities of LICENSEE will apply to Pier Developers in the event of LICENSEE'S default.

SECTION 19 – AUDIT AND INSPECTION OF RECORDS. The LICENSEE shall permit the authorized representatives of the City to inspect and audit all data and records of the LICENSEE, if any, relating to performance under the Agreement until the expiration of three years after final payment under this Agreement.

SECTION 20 - PARTIES BOUND. The covenants and conditions contained in this License Agreement shall, subject to the provisions as to assignment, transfer, and subletting, apply to and bind the heirs, successors, executors, administrators, and assigns of all of the parties to this License Agreement. All of the parties to this License Agreement shall be jointly and severally liable under the License Agreement.

SECTION 21 - TIME OF THE ESSENCE. Time is of the essence of this License Agreement and of every covenant, term, condition, and provision of this License Agreement.

SECTION 22 - SECTION CAPTIONS. The captions appearing under the section number designations of this License Agreement are for convenience only and are not a part of this License Agreement and do not in any way limit or amplify the terms and provisions of this License Agreement.

SECTION 23 – RECORDATION OF AGREEMENT. This agreement may be recorded.

SECTION 24 – NOTICES. Notices and notifications shall be in writing which may be by fax, email, hand delivery or other such means of communication that are agreed to by both parties. Addresses of the parties are as follows:

FOR CITY:

Gregory P. Harrison, City Manager
City of Pompano Beach
100 W. Atlantic Blvd., #430
Pompano Beach, Florida 33060-1300
Greg.Harrison@copbfl.com

Mark E. Berman, City Attorney
City of Pompano Beach
100 W. Atlantic Blvd., #467
Pompano Beach, FL 33060
Mark.berman@copbfl.com

Suzette Sibble, Assistant City Manager
City of Pompano Beach
100 W. Atlantic Blvd., #430
Pompano Beach, FL 33060
Suzette.sibble@copbfl.com

Andrew Jean-Pierre, Finance Director
City of Pompano Beach
100 W. Atlantic Blvd., #480
Pompano Beach, FL 33060
Andrew.Jean-pierre@copbfl.com

FOR LICENSEE:

Aashish Patel
Pompano Beach Pier Hotel, LLC
17595 S. Tamiami Trail, Suite 120
Fort Myers, FL 33908
agpatel527@gmail.com

Name of Legal Representative:
Gordon Duncan, Duncan & Associates, P.A.
1601 Jackson Street, Suite 101
Fort Myers, FL 33901
Gordon@Duncanassociatesfl.com

FOR LICENSEE'S LANDLORD (PIER DEVELOPERS):

Tim Hernandez
Kevin E. Rickard
Richard Caster
Pompano Pier Associates, LLC
200 Congress Park Drive, Suite 201
Delray Beach, FL 33445
thernandez@newurbancommunities.com
kevin@newurbancommunities.com
rick@casterdevelopers.com

SECTION 25 - FORCE MAJEURE

A. No Party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God 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.

B. If any 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 any party to correct the adverse effect of such event of force majeure.

C. In order to be entitled to the benefit of this provision, within five (5) days after the beginning of any such delay, a party claiming an event of force majeure shall have given the other party written notice of the cause(s) thereof, requested an extension for the period and also diligently proceeded to correct the adverse effect of any force majeure. The parties agree that, as to this subsection, time is of the essence.

SECTION 26. – DISPUTE RESOLUTION PROCESS. If LICENSOR, LICENSEE or Pier Developer claims the other is in default of this Agreement, LICENSOR, LICENSEE or Pier Developer may, but are not required to, timely schedule a conference or meeting and make every reasonable effort to reach an amicable resolution. LICENSOR, LICENSEE or Pier Developer

shall be entitled to have representatives of their choice present at any such meeting or conference.

The informal dispute resolution process described below is non-exclusive and without prejudice to the right of each party to pursue other remedies available at law.

Notice of Default; Rights and Remedies Cumulative. If LICENSOR, LICENSEE or Pier Developer fails to perform any material covenant, undertaking or term hereunder, or if LICENSOR, LICENSEE or Pier Developer's representations set forth herein are materially untrue or incorrect, then the party alleging default or breach shall give written notice, in which event the party alleged to be in default/breach shall have thirty (30) days to cure or resolve same. If such default or breach is not cured or otherwise resolved within the thirty (30) day cure period, the party not in default may institute such proceedings as may be necessary in its opinion, to cure and remedy such default or breach, including, but not limited to, the informal dispute resolution process set forth above, termination of this Agreement, proceedings to compel specific performance and for damages for breach of Agreement, and any other remedies provided by law, equity or hereunder.

LICENSOR, LICENSEE or Pier Developer rights and obligations, whether provided by law, equity or hereunder, shall be cumulative and the exercise by each party of any one of more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or any of its remedies for any other default or breach at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach.

SECTION 27 - JURISDICTION, AND WAIVER OF TRIAL BY JURY. This Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. The parties agree to submit to the jurisdiction of state and federal courts located in Florida. In the event of a dispute as to the interpretation or application of or an alleged breach or default, the parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida, and that such dispute shall be heard by a judge, not a jury. In addition, both parties agree that nothing in this Article or otherwise shall preclude them from agreeing to submit to non-binding mediation or arbitration.

SECTION 28 – PUBLIC ENTITY CRIMES ACT. Through execution of this Agreement and in accordance with Section 287.133, Florida Statutes, certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

SECTION 29 - WAIVER AND MODIFICATION

A. 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.

B. CITY and LICENSEE may request changes to modify certain provisions of this Agreement, including increasing or decreasing the scope of services to be provided. However,

unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

SECTION 30 – 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 of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.

SECTION 31 - BINDING EFFECT. The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the parties hereto.

SECTION 32 - ENTIRE AGREEMENT AND INTERPRETATION. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, all parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

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

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

IN WITNESS WHEREOF, the parties to this License Agreement have set their hands and seals on the day and year first above written.

"CITY"

Witnesses:

CITY OF POMPANO BEACH

(Print or Type Name)

By: _____
LAMAR FISHER, MAYOR

(Print or Type Name)

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 _____, 2018 by **LAMAR FISHER** 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 is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"LICENSEE"

Witnesses:

[Signature]
Susan McFale
Gordon Duncan

Pompano Beach Pier Hotel, LLC
a Florida _____

BY: *[Signature]*

Print Name: Aashish Patel

Title: Managing Member

STATE OF FLORIDA
COUNTY OF ~~BROWARD~~ Lee

The foregoing instrument was acknowledged before me this 27 day of March, 2018 by Aashish Patel as Managing Member of COMPANY, a Florida limited liability company, who is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA



(Name of Acknowledger Typed, Printed or Stamped)

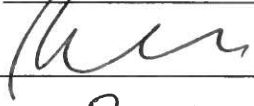


Commission Number _____

"PIER DEVELOPERS"

Witnesses:

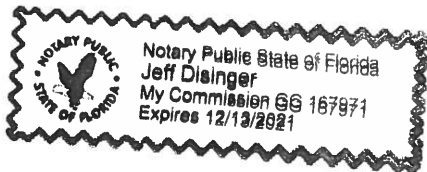

NICHOLAS BIEKER

KEVIN BUSH

a Florida limited liability company
BY: 
Print Name: Richard Coster
Title: Manager

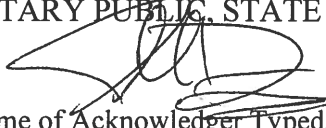
STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 27 day of March, 2018 by Richard Coster as Manager of **COMPANY**, a Florida limited liability company who is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



NOTARY PUBLIC, STATE OF FLORIDA


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Commission Number 167971