

REVOCABLE LICENSE AGREEMENT

THIS AGREEMENT, made this _____ day of _____ 2016, by and between:

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

and

POMPANO INDUSTRIAL VENTURE LLC, a Delaware limited liability company, hereinafter referred to as "LICENSEE."

WITNESSETH:

WHEREAS, LICENSEE is the owner of the real property located at 1550 NW 18th Street, Pompano Beach, Florida ("Project"); and

WHEREAS, CITY has agreed to permit LICENSEE to use a portion of said right-of-way, for the restricted use specified below involving the construction and installation of a private underground sewage pump station wastewater force main; and

WHEREAS, the parties have agreed to enter into a Revocable License Agreement in relation to the restricted use of said right-of-way as set out below.

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

1. DESCRIPTION OF PROPERTY.

CITY hereby grants to LICENSEE, the revocable right, license and privilege of occupying the south and north side portion of the NW 18th Street right-of-way, a legal description of which is set forth in Exhibit "A," attached hereto and made a part hereof ("Property"), for the construction, installation and maintenance of a four-inch High Density Poly-Ethylene (HDPE) wastewater force main ("Improvements"), which is depicted in detail on Exhibit "B," attached hereto and made a part hereof.

2. TERM.

The term of this license shall run in perpetuity provided the LICENSEE continues to maintain the Improvements in good operating condition as determined by the CITY and the surrounding Property in substantially the same condition as it existed prior to the Improvements being installed by Licensee and also as reasonably determined by the CITY. Should the CITY reasonably determine that the LICENSEE has failed to so maintain the Improvements, that a higher municipal use is required of subject Property or that the public's health, safety or welfare is at risk then LICENSEE shall be notified to cease use of the Property as it relates to the installation and maintenance of the Improvements. Notice shall be sent in writing, in accordance with Paragraph 11 hereof, sixty (60) days prior to termination.

3. USE OF PREMISES.

LICENSEE shall use and occupy the right-of-way for the installation and maintenance of one four-inch HDPE wastewater force main, which is depicted in detail on Exhibit "B."

The Property shall not be used for any other purpose whatsoever without written consent of the CITY. LICENSEE shall not permit the licensed Property to be used or occupied in any manner that is inconsistent with the use granted herein and which will violate any laws or regulations of any governmental authority. The Property shall at all times, with the exception of when work is being done as approved by the City, keep and maintain Property in as good of a condition or better than prior to the Improvements Licensee shall provide documentation (such as pictures, video, topographic surveys) to City Engineer to establish the conditions that existed within the Property prior to construction. Any and all damage caused as a result of such installation of the Project Improvements to any elements, including, but not limited to pavement, curbs, sidewalks, landscaping, trees, irrigation, utility poles, etc. located within the public right-of-way shall be restored or repaired to a condition equal to or better

than that existed prior to commencement of installation of said Project Improvements. This shall include any subsurface features such as water service lines, utility access lines, covers, water meter boxes, water isolation valve systems, sanitary sewer cleanouts etc. that may deteriorate as a result of removing asphalt, base materials, compaction, paving operations etc. LICENSEE shall be responsible for verifying all underground utilities prior to digging in any area. LICENSEE shall notify all necessary utility companies, 48 hours in advance prior to digging for verification of all underground utilities, irrigation and any other obstructions and coordinate prior to initiating operations. LICENSEE agrees that this license is contingent upon LICENSEE submitting a site plan or location plan and blueprints or other documentation as is usually required by the Engineering Department for the issuance of a permit and granting of this license does not in any way waive any other building or construction ordinances, fees or requirements of CITY. LICENSEE shall not commence construction or occupy the right-of-way for construction purposes prior to approval of the permits.

4. ASSIGNMENT.

LICENSEE is not permitted to assign, transfer, convey or otherwise dispose of this license to any other person or corporation without the previous written consent of CITY, except to a transferee of fee title to the Project ("Transferee"). In the event of an attempt to assign, transfer, convey or otherwise dispose of this license to any person not a Transferee or specifically a party to this Agreement and license, then this license shall be null and void and terminated without notice to LICENSEE.

5. MAINTENANCE.

LICENSEE agrees to at all times maintain and repair at their sole cost and expense said wastewater force main, as described in Exhibit "B," in good working condition, to be reasonably determined at the sole discretion of the CITY, while occupying the use of CITY's Property pursuant to this Revocable License Agreement. Construction activities shall not commence until LICENSEE submits to the Engineering Department a maintenance of traffic plan for approval. LICENSEE assumes all risks in the operation and maintenance of the Project Improvements on the property and

shall be solely responsible and answerable for damages related to all accidents or injuries to person or property arising out of or caused in the performance of any of the work done pursuant to the Agreement regardless whether by the LICENSEE or one of its Contractors.

6. INDEMNIFICATION.

LICENSEE shall indemnify, defend and hold harmless the CITY and its officers, agents and employees from and against any and all claims, loss, suit actions, damages, liabilities, expenditures, or causes of action, including attorney fees, of any kind arising out of LICENSEE'S acts under this Revocable License Agreement.

LICENSEE shall be solely responsible and answerable for damages related to all accident or injuries to person or property arising out of or caused in the performance of the Work done pursuant to this Agreement by or on behalf of LICENSEE. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity.

7. INSURANCE.

LICENSEE shall procure at its own cost and expense Commercial General Liability Insurance coverage in an amount not less than One Million (\$1,000,000.00) Dollars combined single limit in addition to any other insurance or bond CITY may reasonably require, which insurance shall, to the extent provided by such insurance, protect LICENSEE, CITY, and their officers and employees from any claims for damages to property and for personal injuries, including death, which may arise on said property during the term of this agreement and any renewals arising out of or caused in the performance of the Work done pursuant to this Agreement by or on behalf of LICENSEE. The insurance policy shall provide to the extent available that such insurance shall not be canceled or amended without at least sixty (60) days' prior written notice to the City except ten (10) days for cancellation for nonpayment of premiums, and a Certificate of Insurance shall be furnished the CITY, naming the City of Pompano Beach as an additional insured pursuant to this Agreement, said Certificate of Insurance

to be approved by the CITY's Risk Manager prior to execution of this Agreement. A copy of said Certificate is attached hereto and designated as Exhibit "C."

8. AMENDMENTS.

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

9. SURRENDER UPON TERMINATION.

LICENSEE shall peaceably surrender this license and restore the licensed Property substantially to its original condition or better upon written notice, as provided for in Section 11 by CITY that LICENSEE has failed to maintain the Work to the CITY's satisfaction or other reasons as provided for in Section 2 of this Agreement.

LICENSEE shall remove from the licensed Property, at LICENSEE's own expense, any subject improvements placed thereon and, thereafter, the License shall be considered abandoned and terminated. Upon completion of said removal, within 60 days, the condition of the Property shall be such that it is safe and not a hazard and in substantially its original condition or better as reasonably determined by the CITY. LICENSEE shall provide documentation to CITY to establish the conditions that existed prior to subject improvements being constructed.

The parties recognize this Agreement is for the use of Property within public right-of-way as depicted in Exhibit "A."

10. WAIVER.

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

11. TERMINATION.

This Revocable License Agreement may be cancelled by either party with reasonable cause for the reasons described in Section 2 at any time during the term thereof upon sixty (60) days written notice to the other of its desire to terminate this Revocable License Agreement. It is expressly understood by the parties that LICENSEE is receiving from CITY a Revocable License that may be terminated by the CITY due to failure by the LICENSEE to maintain the Work, due to the CITY's need to use the Property for a higher municipal purpose or because the LICENSEE's use of the Property is a risk to the public's health, safety or welfare as reasonably determined by CITY. Said removal shall be solely at LICENSEE's own expense with no right to compensation of any kind from CITY and shall be completed within 60 days of receiving CITY's notice of termination.

12. NOTICES.

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

Addresses of the parties are as follows:

FOR CITY:	City Manager City of Pompano Beach Post Office Box 1300 Pompano Beach, Florida 33061
COPY TO:	City Attorney City of Pompano Beach Post Office Box 2083 Pompano Beach, Florida 33061
FOR LICENSEE:	Pompano Industrial Venture LLC c/o Butters Construction & Development 6820 Lyons Technology Circle, Suite 100 Coconut Creek, FL 33073 Attention: Mr. Malcolm Butters

13. ENTIRE AGREEMENT.

This Revocable License Agreement embodies the entire agreement between the parties. It may not be modified or terminated except as provided herein. If any provision herein is invalid, it shall be considered deleted here from, and shall not invalidate the remaining provisions.

14. MISCELLANEOUS PROVISION.

It is expressly understood and agreed that no real or personal property is leased to LICENSEE; that it is a LICENSEE , not a lessee; that the LICENSEE's right to occupy the right of- way is subordinate to CITY's (or any franchisee of CITY) use of said licensed premises and should any relocation of any CITY owned utility be necessitated at any time in the future, then LICENSEE shall relocate subject to approval of relocation plans by the CITY, if practicable, or terminate its use of the licensed premises at its own expense.

15. LAWS AND ORDINANCES.

LICENSEE shall observe all laws and ordinances of the CITY, county, state and Federal agencies directly relating its use of the Property.

16. RECORDATION OF AGREEMENT.

This Revocable License Agreement shall be recorded in the Public Records of Broward County, Florida, at the expense of LICENSEE, with a copy given to CITY.

17. GOVERNING LAW AND VENUE

The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and LICENSEE submit to the jurisdiction of Florida courts and federal courts located in Florida with respect to claims under this Revocable License Agreement. 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.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given

herein, now or hereafter existing at law or in equity or by statute or otherwise, but the LICENSEE and the CITY waive all rights to sue or collect from the other any damages other than direct damages and they expressly waive benefit of the bargain, punitive, special, exemplary, treble or consequential damages.

18. NO THIRD PARTY BENEFICIARIES.

LICENSEE and CITY acknowledge and agree that this Agreement and other agreements pertaining to LICENSEE's performance hereunder shall not create any obligation on the part of LICENSEE or CITY to third parties other than Transferee. No person not a party to this Agreement shall be a third-party beneficiary or acquire any rights hereunder other than Transferee.

19. 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, both 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 either party.

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

"LICENSEE":

Witnesses:

POMPANO INDUSTRIAL VENTURE LLC
a Florida limited liability company

By: MB Pompano Ventures LLC,
a Florida limited liability company
its Managing Member

By: _____
Malcolm S. Butters, Manager

Adam Vaisman

Adam Vaisman
Print Name
Suzanne DePaola

Suzanne DePaola
Print Name

(SEAL)

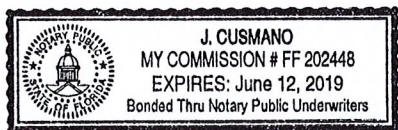
STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 21st day of Nov, 2016, by Malcolm S. Butters, Manager, of Pompano Industrial Venture LLC, a Delaware limited liability company, on behalf of the company. They are personally known to me or who have produced _____
_____ (type of identification) as identification.

NOTARY'S SEAL:

J. Cusmano

NOTARY PUBLIC, STATE OF FLORIDA



(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

CLS/jrm
10/31/16
L.agt/engr/2017-83

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

“CITY”:

Witnesses: **CITY OF POMPANO BEACH**

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, 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 instruments were acknowledged before me this _____ day of _____, 2016 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** 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