

## **PARKING LICENSE AGREEMENT**

THIS PARKING LICENSE AGREEMENT (the "Agreement") is entered into and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between PURE RESIDENCE RESORT POMPANO BEACH, LLC, a Florida limited liability company ("LICENSOR"), and CITY OF POMPANO BEACH, FLORIDA, 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 follows:

### **1. GRANT OF LICENSE**

LICENSOR grants to CITY a revocable license to use its property located at 3300 S.E. 1<sup>st</sup> Street, Pompano Beach, Florida 33062 also identified as Folio 4943 06 06 0740 ("Vacant Lot" "Parking Area" or "Vacant Lot"), and further described in Exhibit "A," attached and incorporated in this Agreement, to provide public parking. The term of this License shall be for one year, commencing on the date of execution. The term may be extended for one additional year where the CITY provides written notice to LICENSOR no less than thirty (30) days prior to the expiration date, and where the City Commission approves such extension. The Parties shall have the right to terminate this License at any time and for any reason with thirty (30) days written notice provided to the non-terminating party and subject to the terms set forth in Paragraph 16 below

### **2. USE AND MAINTENANCE**

The Parties acknowledge that the Vacant Lot has not been improved and has not been referenced 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 the use of the general public during the Term. City may use a third party provider to manage or accomplish parking for the general public.

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 the operation of the public parking.

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 a 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, pertaining to the Parking Area, of any insurance organization or company, necessary for the maintenance of insurance, as provided in this License, covering any improvements and 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**

Commencing on the day after CITY's completion of the parking lot configuration as described in Exhibit "B," attached and made a part of this Agreement, CITY agrees to pay to LICENSOR forty percent (40%) of the CITY's gross receipts from such parking activities as a License Fee (the "License Fee"). Gross receipts shall include all revenue received from parking vehicles in the Parking Area, excluding federal, state and local taxes or similar taxes or sales taxes imposed. The License Fee may be paid by check or wire transfer made payable to LICENSOR on the fifteenth (15th) of each month for the preceding month's collection.

### **4. LICENSOR 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 which would have any material adverse effect on LICENSOR's ability to perform its obligations under this Agreement; and (5) 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.

### **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 its insurance carrier to endorse all applicable policies waiving the carrier's right of recovery under subrogation or otherwise in favor of the other parties to this Agreement. It is the express intention of the Parties that the waivers contained in this section 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 evidencing LICENSOR's insurance coverage for the Vacant Lot, naming 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**

CITY shall save and hold harmless, to the extent permitted by law, 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.

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.

Each claim for indemnification made under this Agreement shall be subject to the following provisions:

A. The indemnity shall cover the costs and expenses of the indemnitee 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.

B. The indemnitee shall notify the indemnitor of any Claim (as herein defined) against the indemnitee covered by the indemnity within forty-five (45) days after it has notice of such Claim, but failure to notify the indemnitor shall in no case prejudice the rights of the indemnitee under this Agreement unless the indemnitor shall be prejudiced by that failure and then only to the extent the indemnitor shall be prejudiced by the failure. Should the indemnitor fail to discharge or undertake to defend the indemnitee against such liability upon learning of the same, then the indemnitee may settle such liability, and the liability of the indemnitor under this Agreement shall be conclusively established by that settlement, the amount of such liability to include both the settlement consideration and the reasonable costs and expenses, including attorneys' fees, disbursements and court costs, incurred by the indemnitee in effecting the settlement.

C. For purposes of this Agreement, "Claim" shall mean any obligation, liability, claim (including, but not limited to, any claim for damage to property or injury to or death of any persons), lien or encumbrance, loss, damage, cost, or expense.

D. The obligations of the parties under this section shall survive the termination or expiration of this Agreement and remain binding upon the parties to this Agreement until fully observed, kept, or performed.

E. Nothing contained in this Agreement shall be construed 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. NOTICES AND DEMANDS

Whenever it is provided that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the places designated below until changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following respective places for giving of notice, to-wit:

### For CITY:

Gregory Garrison, City Manager  
City of Pompano Beach  
P.O. Drawer 1300  
Pompano Beach, Florida 33061  
[mark.berman@copbfl.com](mailto:mark.berman@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., 4<sup>th</sup> Floor  
Pompano Beach, Florida 33060  
954-786-4614 office  
954-786-4113 fax

### For LICENSOR:

Claude LaChance  
Pure Residence Resort Pompano Beach, LLC  
500 S. Federal Highway, No. 3326  
Hallandale Beach, Florida 33009

## **10. GOVERNING LAW AND VENUE**

The Agreement shall be governed by the laws of the state of Florida, both as to interpretation and performance. 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.

## **11. ATTORNEY'S FEES**

In the event of litigation between the parties, the prevailing party shall be entitled to recover all costs of collection, including a reasonable attorney's fees and court costs, at trial or on appeal. The provisions of this paragraph shall survive termination of this Agreement.

## **12. FORCE MAJEURE**

Neither 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. If either Party is unable to perform, or are delayed in their performance of any obligations under this Agreement because of any event of force majeure, their inability to perform or delay shall be excused until such time 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 the event of force majeure and also diligently proceed to correct the adverse effect of any force majeure. The parties agree that, as 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 five (5) 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.

**[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]**

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

**“CITY”:**

Witnesses:

**CITY OF POMPANO BEACH**

By: \_\_\_\_\_  
REX HARDIN, MAYOR

By: \_\_\_\_\_  
GREGORY P. HARRISON  
CITY MANAGER

Attest:

(SEAL)

ASCELETA HAMMOND  
CITY CLERK

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 \_\_\_\_\_, 20\_\_\_\_ 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

**"LICENSEE"**

Witnesses:

Signature:

JEAN-Louis BERHET

Print Name

Signature

MADRI RIZK

Print Name

**PURE RESIDENCE RESORT POMPANO BEACH, LLC**

a Florida limited liability company

By: GCA POMPANO DEVELOPMENT, LLC  
a Florida limited liability company,  
Its Manager

By: 9328-9569 QUEBEC, INC., a Quebec corporation

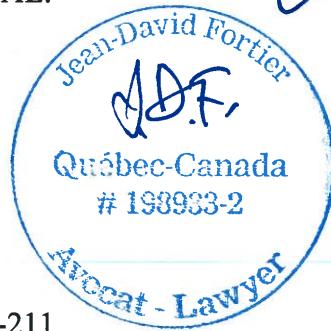
By:

Claude La Chance, President

THE STATE OF Canada  
COUNTY OF Montreal

This instrument was acknowledged before me on 20<sup>th</sup> day of November, 20 19, by Claude La Chance, as President of 9328-9569 Quebec, Inc., a Quebec corporation, as the Manager of GCA Pompano Development, LLC, a Florida limited liability company, as the Manager of Pure Residence Resort Pompano Beach, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or who has produced — Personally known — as identification.

NOTARY'S SEAL:



Notary Public, State of Quebec, Canada

JEAN-DAVID FORTIER

Printed Name of Notary

198933-2

Commission Number

JES:jrm

11/14/19

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