

ORDINANCE NO. 2013-39

**CITY OF POMPANO BEACH
Broward County, Florida**

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A DEVELOPMENT AGREEMENT RELATING TO CITY PROPERTY LYING BETWEEN NORTH OCEAN BOULEVARD (A1A) AND THE ATLANTIC OCEAN AND BETWEEN ATLANTIC BOULEVARD (S.R. 814) AND NE 5TH STREET BETWEEN THE CITY OF POMPANO BEACH AND POMPANO PIER ASSOCIATES, LLC; AUTHORIZING THE MAYOR OR VICE MAYOR, CITY CLERK AND CITY MANAGER, TO EXECUTE ON BEHALF OF THE CITY FORM PARCEL GROUND LEASES PURSUANT TO THE TERMS OF THE SAID DEVELOPMENT AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City owns property which is a prime redevelopment parcel located as a landmark site between A1A and the ocean, and between Atlantic Boulevard and NE 5th Street, hereinafter the "Property"; and

WHEREAS, the city issued a Request for Qualifications ("RFQ") seeking proposals from the private sector to develop the Property; and

WHEREAS, Pompano Pier Associates, LLC, ("Developer") was the successful respondent to the City's RFQ; and

WHEREAS, City and Developer have reached an understanding for development of the Property and desire to memorialize their agreement; and

WHEREAS, it is agreed that City and Developer will execute a series of ground leases for various phases of the development according to a timeline; and

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That the foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct.

SECTION 2. That a Development Agreement between the City of Pompano Beach and Pompano Pier Associates, LLC, a copy of which agreement is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

SECTION 3. That the proper City officials are hereby authorized to execute said agreement.

SECTION 4. Without further approval of the City Commission, the Mayor or Vice Mayor, in the absence of the Mayor, City Clerk and City Manager, are hereby authorized to execute on behalf of the City, parcel ground leases in a form substantially similar to the form attached hereto and made a part hereof in accordance with the terms of the Development Agreement approved hereinabove.

SECTION 5. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 6. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 8th day of January, 2013.

PASSED SECOND READING this 22nd day of January, 2013.



LAMAR FISHER, MAYOR

ATTEST:



MARY L. CHAMBERS, CITY CLERK

GBL/jrm
12/19/12
L:ord/2013-104

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is dated as of January 28, 2013 and is between the **CITY OF POMPANO BEACH, FLORIDA**, a Florida municipal corporation (“City”) and **POMPANO PIER ASSOCIATES, LLC**, a Florida limited liability company (“Developer”).

RECITALS

The City is the owner of approximately 6.125 acres of oceanfront property located on Pompano Beach Boulevard (the “Property”). The Property is more particularly described in **Exhibit A** to this Agreement.

On September 30, 2011, the City issued Request for Qualifications No. H-46-11 (“RFQ”) seeking a developer for the redevelopment of the Property.

On October 19, 2011, after reviewing all proposals submitted in response to the RFQ, the City’s Community Redevelopment Agency (“CRA”) ranked the Developer as the first-place respondent to the RFQ, based on Developer’s response to the RFQ (“Developer’s Response to RFQ”).

On October 25, 2011, the City Commission accepted the recommended ranking of submitted proposals and authorized staff to negotiate an agreement with the Developer to redevelop the Property in accordance with the terms and conditions of the RFQ and the Developer’s Response to RFQ.

City and Developer are entering into this Agreement in order to commence the development of the Property.

City and Developer agree that the development of the Property will provide a benefit to the public at large, as required by Section 253 of the City Charter.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Project Background and Summary.** The City has determined that the Property, sometimes referred to as the “Pier Lot,” is ripe for redevelopment. In 2011 the CRA conducted due diligence on the site and assisted the City in preparing a Request for Qualifications to seek development proposals from the private sector. The Pier Lot is a prime redevelopment parcel located as a landmark site between A1A and the ocean, and between NE 2nd Street and NE 3rd Street. The site includes a surface parking lot that is primarily used by beach patrons. The City currently manages the parking operation as well as the pier concession operation. The City seeks to have the site redeveloped to provide a combination of restaurants and eateries, beach and pier oriented retail, surface or structured parking, passive open spaces, plazas, and general areas that attract families and visitors (the “Project”). The site is currently the temporary location of a beach library, a fire station, and a lift station. The fire station and the lift station will be relocated to new structures currently under construction by the City on the west side of State Road A1A. The library will be moved to a new location.

Developer is the successful respondent to the City's RFQ. Developer intends to develop the Property with infrastructure improvements, concessions, restaurants, retail, parking, accessory structures, and possibly a hotel (collectively, the "Improvements"), as shown on the Conceptual Site Plan attached as **Exhibit B**. The development will be done in phases (each one a "Phase") over a period of several years. In order to comply with the provisions of Section 250 of the Pompano Beach City Charter, the Developer will enter into a series of ground leases ("Parcel Ground Leases"), one for each Phase of development, as set forth in this Agreement.

This Project Background and Summary is provided for informational purposes only.

2. **Exhibits.**

2.1. Attached to this Agreement and forming a part of this Agreement are the following Exhibits:

Exhibit A – Legal Description of the Property

Exhibit B – Conceptual Site Plan ("Site Plan")

Exhibit C – Development Timeline ("Development Timeline")

Exhibit D – Form of Parcel Ground Lease ("Parcel Ground Lease")

Exhibit E – Legal Description of Beachfront Area

Exhibit F - Existing Concessionaire Agreement with Oceanside Beach Service, Inc.

Exhibit G - City of Pompano Beach Standardized Insurance Requirements

Exhibit H – Ownership of Developer

Exhibit I –Renderings of Improvements ("Renderings")

2.2. **Incorporation by Reference.** The RFQ, Developer's Response to RFQ, and all Exhibits attached to this Agreement are incorporated by reference into this Agreement.

3. **Defined Terms.** Terms which are defined in this Agreement are listed in an Appendix indicating the Section number where the term is first defined. The following terms appear throughout this Agreement:

3.1. **Governmental Requirement.** For purposes of this Agreement, a "Governmental Requirement" is any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, order, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued.

3.2. **Governmental Authority.** For purposes of this Agreement, a "Governmental Authority" is any federal, state, county, municipal or other governmental department, entity, authority, commission board, bureau, court, agency, or any instrumentality of any of them.

3.3. **Governmental Approval.** For purposes of this Agreement, a "Governmental Approval" is any license, permit, certificate, consent, authorization, or other document issued by a Governmental Authority.

4. **Development Agreement.** City and Developer are entering into this Agreement to set forth the general plan for the development of the Property in Phases.
 - 4.1. **Term of Agreement.** The term of this Agreement will commence upon the date it is executed by all of the parties ("Effective Date"), and will extend until the termination or expiration of all of the Parcel Ground Leases described in this Agreement.
 - 4.2. **Role of CRA.** The CRA has been involved in the negotiation of this Agreement but does not have any specific rights or obligations under this Agreement and is therefore not a party to the Agreement. The CRA may enter into an interlocal agreement with the City in order to assist the City in the implementation of this Agreement.
5. **Development Phases.** Developer agrees to develop the Property in Phases as shown on the Conceptual Site Plan attached as **Exhibit B**. The development of the Property will be in substantial conformity with the Renderings attached as **Exhibit I**. In each Phase, the Developer will develop the corresponding parcel ("Parcel") as follows:
 - 5.1. **Phase E** – the development of Parcel E by renovating an existing concession building currently operated by the City ("Existing Concession Building"), and constructing an ornamental structure ("Arch") to be located near the entry to the existing pier ("Pier Structure") located adjacent to the Property.
 - 5.2. **Phase R1** – the development of Parcel R1 with approximately 7500 square feet of restaurant or retail use, or both.
 - 5.3. **Phase R2** - the development of Parcel R2 with approximately 7500 square feet of restaurant or retail use, or both.
 - 5.4. **Phase R3** - the development of Parcel R3 with approximately 7500 square feet of restaurant or retail use, or both.
 - 5.5. **Phase R4**- the development of Parcel R4 with approximately 10,000 square feet of restaurant or retail use, or both; a covered structure with seating that may be used as a bus shelter ("Pavilion"); a paved open area to be used as an open-air market and plaza ("Marketplace"); and possibly a parking garage.
 - 5.6. **Phase R5** – the development of Parcel R5 with approximately 10,000 square feet of restaurant or retail use, or both, or with a hotel consisting of not more than five floors and not more than 150 rooms ("Hotel") if such use is approved by the City. If a Hotel is developed on Parcel R5, the Developer will also develop on Parcel R5 a grassed area to be used for weddings and other activities ("Ceremonial Garden"). If no Hotel is built on the Property, Developer will not be required to construct the Ceremonial Garden.
 - 5.7. **Phase C** – the development of one or more sites ("Café Sites") in the location shown as Parcel C on the Conceptual Site Plan with a total of approximately 6000 square feet of retail or café use.
 - 5.8. **Order of Phases.** City agrees that Developer may change the order in which Parcels R1, R2, R3, R4 and R5 are developed.

6. **Parcel Ground Leases.** City and Developer will enter into a Parcel Ground Lease for each of the development Parcels. The parties will execute and deliver the Parcel Ground Leases according to the Development Timeline.
 - 6.1. **Form of Parcel Ground Lease.** Each Parcel Ground Lease will be in substantially the form attached as **Exhibit D**, and will be completed with all necessary information in order to demise to Developer or to an “Acceptable Transferee” of Developer (as defined in this Agreement), as the tenant (“Parcel Tenant”), the Parcel described in the Parcel Ground Lease.
 - 6.2. **Parcel Legal Descriptions.** Prior to the execution of each Parcel Ground Lease, Developer will have a legal description and survey for the subject Parcel prepared by a land surveyor licensed in the State of Florida. The legal description and survey of the Parcel will be submitted to the City for review at least 30 days prior to the execution of the Parcel Ground Lease for the Parcel. Developer will be responsible for all costs of the legal description and survey.
 - 6.2.1. **Subsequent Parcels.** If any subsequent Parcel Ground Lease covers a portion of the Property contiguous to a Parcel covered by a previously executed Parcel Ground Lease, Developer will obtain an affidavit of the surveyor certifying that the Parcels are contiguous, with no gaps or gores between their boundaries. The intent of the parties is that when all of the Parcel Ground Leases have been executed, they will cover the Property in its entirety.
 - 6.3. **Lease Execution Dates.** The respective Parcel Ground Leases will be executed according to the schedule set forth in the Development Timeline. As long as the form and terms of the respective Parcel Ground Leases are substantially as set forth in this Development Agreement and in the form of Parcel Ground Lease attached as Exhibit D, the Parcel Ground Leases will be executed by the Mayor, the Vice Mayor, the City Manager, and City Clerk without any further approval by the City Commission.
 - 6.4. **Lease Commencement Dates.** The commencement date for each Parcel Ground Lease (“Lease Commencement Date”) will be on or before the Lease Commencement Dates shown on the Development Timeline..
 - 6.5. **Term of Ground Lease.** Each Parcel Ground Lease will have a term of 50 years, beginning on the Lease Commencement Date and ending 50 years thereafter (a “Lease Term”).
 - 6.6. **Reciprocal Easement Agreement.** In order to address the access rights of the City, Developer, and the public to the Property during the term of this Agreement, prior to execution of the first Parcel Ground Lease, City and Developer must enter into a reciprocal easement agreement with terms and conditions acceptable to both City and Developer, which agreement will be recorded by City in the Public Records of Broward County, Florida.
7. **Parcel Ground Lease Details.** Each Parcel Ground Lease will include the development deadlines set forth in the Development Timeline; the estimated cost (“Improvement Cost”) of the buildings and accessory structures (“Improvements”) to be constructed on the Parcel; the minimum rent (“Minimum Rent”) for the Parcel, and the percentage rent (“Percentage Rent”) for the Parcel.

- 7.1. **Parcel E.** The Parcel E Ground Lease will address the development of Parcel E, which will include renovation of the Existing Concession Building and construction of the Arch.
- 7.1.1. **Parcel E Improvement Cost.** The Parcel E Improvement Cost must be at least \$250,000. Developer agrees to expend a minimum of 50% of the Phase E Improvement Cost during the first two years of the Lease Term of the Parcel E Ground Lease, and the balance of the Parcel E Improvement Cost during the second two years of the Lease Term.
- 7.1.2. **Parcel E Minimum Rent.** The Minimum Rent for Parcel E will be \$12,000 for each 12-month period ("Lease Year") of the Lease Term.
- 7.1.3. **Parcel E Percentage Rent.** The Percentage Rent per Lease Year for Parcel E will be 1.25% of the Gross Revenue of Parcel E in excess of \$960,000.
- 7.1.4. **Restrooms in Existing Concession Building.** During the Lease Term of the Parcel E Ground Lease, the City will be responsible for paying for and carrying out the maintenance and operation of the restrooms located in the Existing Concession Building. The Developer will pay for the utilities that service the restrooms.
- 7.1.5. **Existing Employees and Equipment.** City will be responsible for relocating any City employees working in the Existing Concession Building after the Parcel E Ground Lease is executed, and will remove all of its equipment from the Existing Concession Building upon request by Developer.
- 7.1.6. **Arch.** Developer will construct the Arch on Parcel E during the first two years of the Lease Term.
- 7.2. **Parcel R1.** The Parcel R1 Ground Lease will address the development of Parcel R1.
- 7.2.1. **Parcel R1 Improvement Cost.** The Parcel R1 Improvement Cost must be at least \$750,000. Developer agrees to expend a minimum of 50% of the Parcel R1 Improvement Cost during the first two years of the Lease Term of the Parcel R1 Ground Lease, and the balance of the Parcel R1 Improvement Cost during the second two years of the Lease Term.
- 7.2.2. **Parcel R1 Minimum Rent.** The Minimum Rent for Parcel R1 will be \$60,000 per Lease Year.
- 7.2.3. **Parcel R1 Percentage Rent.** The Percentage Rent per Lease Year for Parcel R1 will be 1.25% of the Gross Revenue of Parcel R1 in excess of \$4,800,000.
- 7.3. **Parcel R2.** The Phase R2 Ground Lease will cover the development of Parcel R2 and will include the following:
- 7.3.1. **Parcel R2 Improvement Cost.** The Parcel R2 Improvement Cost must be at least \$750,000. Developer agrees to expend a minimum of 50% of the Parcel R2 Improvement Costs during the first two years of the Lease

Term of the Parcel R2 Ground Lease, and the balance of the Parcel R2 Improvement Cost during the second two years of the Lease Term.

- 7.3.2. **Parcel R2 Minimum Rent.** The Minimum Rent for Parcel R2 will be \$60,000 per Lease Year.
- 7.3.3. **Parcel R2 Percentage Rent.** The Percentage Rent per Lease Year for Parcel R2 will be 1.25% of the Gross Revenue of Parcel R2 in excess of \$4,800,000.
- 7.4. **Parcel R3.** The Parcel R3 Ground Lease will cover the development of Parcel R3 and will include the following:
 - 7.4.1. **Parcel R3 Improvement Cost.** The Parcel R3 Improvement Cost must be at least \$750,000. Developer agrees to expend a minimum of 50% of the Parcel R3 Improvement Cost during the first two years of the Lease Term of the Parcel R3 Ground Lease, and the balance of the Parcel R3 Improvement Cost during the second two years of the Lease Term.
 - 7.4.2. **Parcel R3 Minimum Rent.** The Minimum Rent for Parcel R3 will be \$60,000 per Lease Year.
 - 7.4.3. **Parcel R3 Percentage Rent.** The Percentage Rent per Lease Year for Parcel R3 will be 1.25% of the Gross Revenue of Parcel R3 in excess of \$4,800,000.
- 7.5. **Parcel R4.** The Parcel R4 Ground Lease will cover the development of Parcel R4 and will include the following:
 - 7.5.1. **Parcel R4 Improvement Cost.** The Parcel R4 Improvement Cost must be at least \$750,000. Developer agrees to expend a minimum of 50% of the Parcel R4 Improvement Cost during the first two years of the Lease Term of the Parcel R4 Ground Lease, and the balance of the Parcel R4 Improvement Cost during the second two years of the Lease Term.
 - 7.5.2. **Parcel R4 Minimum Rent.** The Minimum Rent for Parcel R4 will be \$60,000 per Lease Year.
 - 7.5.3. **Parcel R4 Percentage Rent.** The Percentage Rent per Lease Year for Parcel R4 will be 1.25% of the Gross Revenues of Parcel R4 in excess of \$4,800,000.
 - 7.5.4. **Marketplace and Pavilion.** The Developer will construct the Marketplace and the Pavilion during the first two years of the Lease Term.
 - 7.5.5. **Parking Garage.** Developer must design the Parcel R4 Improvements to leave room for a parking garage to be constructed on Parcel R4 by City or Developer, as contemplated by this Agreement.
- 7.6. **Parcel R5.** The Parcel R5 Ground Lease will cover the development of Parcel R5 and will include the following:
 - 7.6.1. **Parcel R5 Improvement Cost.** The Parcel R5 Improvement Cost must be at least \$750,000 unless Parcel R5 is developed as a Hotel. Developer agrees to expend a minimum of 50% of the Parcel R5 Improvement Cost during the first two years of the Lease Term of the Phase R5 Ground

- Lease, and the balance of the Parcel R5 Improvement Cost during the second two years of the Lease Term.
- 7.6.2. **Parcel R5 Minimum Rent.** The Minimum Rent for Parcel R5 will be \$60,000 per Lease Year.
- 7.6.3. **Parcel R5 Percentage Rent.** The Percentage Rent per Lease Year for Parcel R2 will be 1.25% of the Gross Revenue of Parcel R2 in excess of \$4,800,000.
- 7.6.4. **Ceremonial Garden.** If Developer develops a Hotel on Parcel R5, Developer will be required to construct the Ceremonial Garden within the first two years of the Parcel R5 Lease Term.
- 7.7. **Parcel C.** The Parcel Ground Lease which covers the development of Parcel C will include the following:
- 7.7.1. **Parcel C Improvement Cost.** The Parcel C Improvement Cost must be at least \$250,000. Developer agrees to expend a minimum of 50% of the Parcel C Improvement Cost during the first two years of the Lease Term of the Parcel Ground Lease which includes Parcel C, and the balance of the Parcel C Improvement Cost during the second two years of the Lease Term.
- 7.7.2. **Parcel C Minimum Rent.** The Minimum Rent for Parcel C will be \$30,000 per Lease Year. In the event that an independent, fully enclosed, air-conditioned restaurant similar in size, scale and construction to the Improvements on Parcel R1, R2 or R3, is permitted to be constructed on Parcel C, the Minimum Rent for Parcel C will be increased to \$60,000.
- 7.7.3. **Parcel C Percentage Rent.** The Percentage Rent for Parcel C will be 1.25% of the Gross Revenue of Parcel C in excess of \$2,400,000. If an independent, fully enclosed, air-conditioned restaurant similar in size, scale and construction to the Improvements on Parcel R1, R2 or R3, is permitted to be constructed on Parcel C, the Percentage Rent for Parcel C will be increased to 1.25% of the Gross Revenue of Parcel C in excess of \$4,800,000.
- 7.8. **Increases to Minimum Rent and Percentage Rent Threshold.** The Minimum Rent and the threshold for Percentage Rent ("Percentage Rent Threshold") for each Parcel will remain constant for a period of 5 Lease Years. Beginning in the 6th Lease Year, and every five years thereafter, the Minimum Rent and the Percentage Rent Threshold will increase by 7.5%.
8. **Grant of License for Beachfront Area.** City grants to Developer a non-exclusive license ("Beachfront License") to use a portion of the property described in **Exhibit E** ("Beachfront Area") for any uses permitted by the applicable Governmental Requirements, other than the uses set forth in the Concessionaire Agreement between the City and Oceanside Beach Service, Inc., dated July 12, 2012 and attached as **Exhibit F** ("OBS Agreement"). The term of the Beachfront License will begin on the Effective Date of this Agreement and end upon expiration of the Lease Term of the last Parcel Ground Lease to be in effect. Under the Beachfront License, Developer will have the right, subject to all Governmental Requirements, to develop structures such as kiosks and

refreshment stands in the Beachfront Area, and to enter into concession or use agreements ("Beachfront Concession Agreements") with concessionaires ("Beachfront Concessionaires").

- 8.1. **Overlap Between Beachfront Area and Property.** City and Developer acknowledge that the Beachfront Area encompasses a portion of the Property which will be subject to one or more Parcel Ground Leases in the future. If Developer or the Parcel Tenant, after leasing the Parcels included within the Beachfront Area, continues to use any portions of those Parcels for beachfront concessions, the provisions of this Section 8 will continue to apply to the concessions being operated within the Beachfront Area.
- 8.2. **City to Provide Beachfront Area Guidelines.** Within 180 days after the Effective Date, City will provide Developer with a set of guidelines for the use of the Beachfront Area, including a description of the types of structures to be permitted, procedure for obtaining design approval of structures and permits, hours of operation, etc.
- 8.3. **Developer's Concession Agreements.** Developer must provide copies of all executed Beachfront Concession Agreements to City within ten days after execution. Each Beachfront Concession Agreement must include the following provisions
 - 8.3.1. **Maintenance.** A provision requiring the Beachfront Concessionaire to maintain in clean condition the portion of the Beachfront Area used by it, including the removal on a daily basis of all litter and debris resulting from the concession operation.
 - 8.3.2. **Insurance.** A provision requiring the Beachfront Concessionaire to provide the insurance required by the City's Standardized Insurance Requirements attached as Exhibit G.
 - 8.3.3. **Sales Tax.** A provision requiring the Beachfront Concessionaire to remit to the appropriate Governmental Authority all sales tax and any other taxes required by the applicable Governmental Requirements to be collected by the Beachfront Concessionaire.
 - 8.3.4. **City Requirements for Audits and Recordkeeping.** A provision requiring the Beachfront Concessionaire to comply with the City's requirements regarding audits and recordkeeping as set forth below.
 - 8.3.5. **City's Rights.** An acknowledgment by the Beachfront Concessionaire that the City has the right to terminate the Beachfront Concession Agreement with or without cause upon 30 days written notice to Developer and the Beachfront Concessionaire.
- 8.4. **City's Right to Revoke Concession Agreements.** City will have the right to terminate any Beachfront Concession Agreement with or without cause by giving 30 days written notice of termination to Developer and the Beachfront Concessionaire.
- 8.5. **Sharing of Revenue from Beachfront Area.** The revenue generated by Developer's Beachfront License will be shared by Developer and City as **follows**:

- 8.5.1. **Percentage Rent.** If Developer is receiving Percentage Rent under a Beachfront Concession Agreement, City will receive 50% of the Percentage Rent received by Developer.
- 8.5.2. **Fixed Rent.** If Developer is receiving a fixed rent or collecting any fees or charges under a Beachfront Concession Agreement, City will receive 50% of the fixed rent, fees, and charges received by Developer.
- 8.5.3. **Payments to City.** Developer will remit City's share of the revenue from the Beachfront Area quarterly on first day of January, April, July and October. Developer will deliver the payments to the following address, with a statement listing each separate Beachfront Concession Agreement, the amount of rent received by Developer under the respective agreement, the time period covered, and the amount remitted to City for the respective Beachfront Concession Agreement:

City of Pompano Beach Treasury Division
100 West Atlantic Boulevard, Room 135
Pompano Beach, Florida 33060
Attention: Revenue Collections Manager, Room 135

- 8.6. **Developer's Rights of First Refusal.** Beginning on the Effective Date of this Agreement, if the City desires to enter into a Beachfront Concession Agreement with a party, the Developer will have a right of first refusal to provide the concession use (whether a service, food, or goods) in the Beachfront Area on the same (or better) terms than those proposed by the proposing party. The right of first refusal will operate as follows:
 - 8.6.1. **Unsolicited Concession Proposals.** If an unsolicited proposal comes to the City which the City is interested in pursuing, City will provide Developer with a copy of the proposal, and Developer will have a period of 30 days in which to notify the City that it wishes to exercise its right of first refusal for the proposed concession. Developer will then have a period of 30 days from its notice to the City to sign a Beachfront Concession Agreement with either the proposer or with another entity to provide the same services or goods. If Developer fails to sign a Beachfront Concession Agreement within the 30-day period, the City may thereafter enter into the concession agreement for its own benefit.
 - 8.6.2. **Concession Requested by City.** If the City desires to enter into a concession agreement for a particular use in the Beachfront Area, City will provide Developer with notice of the City's desire, and Developer will have a period of 30 days in which to notify City that Developer wishes to provide the concession use in the Beachfront Area. Developer will then have a period of 30 days from its notice to the City to sign a Beachfront Concession Agreement for the use desired by the City. If Developer fails to sign a Beachfront Concession Agreement within the 30 day period, the City may thereafter issue a request for proposal (if required) for the desired use, and may enter into a concession agreement for the desired use, without further notice to Developer.

- 8.6.3. **Developer's Right to Object to Concessions.** If Developer has a reasonable objection to goods or services to be provided under a concession agreement requested by City, Developer must give City written notice of its objection, and the reasons for its objection, within 10 days after City has given Developer notice of the proposed concession. If City determines (in its sole but reasonable discretion) that Developer's objection is reasonable, then City will refrain from entering into the proposed concession agreement.
- 8.7. **Revenues from City's Operations in Beachfront Area.** City will receive 100% of all revenues from any concession agreements entered into by City for the Beachfront Area. Developer will have no right to any revenues received by City from any of the following:
- 8.7.1. **Concessions.** Concession agreements entered into by City and a third party;
- 8.7.2. **Pavilions.** Any operations at City's existing and future pavilions and structures located in the Beachfront Area, including any existing or future lifeguard stations;
- 8.7.3. **Rental Fees.** Any fees paid to City for rental of City's beachfront pavilions.
- 8.8. **No Competing Concessions.** City agrees that it will not enter into any concession agreements in the Beachfront Area which directly compete with any existing or proposed uses of the Property.
- 8.9. **City Events in Beachfront Area.** The City currently uses the Beachfront Area for certain major events ("Major City Events") which are presented by or sponsored by the City, such as a city-wide seafood festival, 4th of July celebration, and similar events. Developer acknowledges and agrees that the City will have the continuing right to carry on Major City Events in the Beachfront Area during the term of this Agreement, as long as City provides Developer with at least 60 days prior written notice of any Major City Event.
- 8.10. **Food Trucks.** Subject to the provisions of Sections 100.40 and 115.18 of the City of Pompano Beach Code of Ordinances ("City Code"), as well as any other applicable Governmental Requirements, during any Major City Event, both City and Developer will be permitted to have food trucks or similar types of temporary or mobile food, vending or retail businesses in the rights of way adjacent to the Property and the Beachfront Area. City and Developer will each retain the food truck revenues generated by their respective food trucks.
9. **Gross Revenue.** For purposes of calculating the Percentage Rent due under any Parcel Ground Lease or any Beachfront Concession Agreement, the term "Gross Revenue" means any and all revenue (whether cash, credit or barter) paid to or collected by (a) any individual or entity that uses or occupies any portion of a Parcel (a "Subtenant"), and by (b) any Beachfront Concessionaire.
- 9.1. **Exclusions from Gross Revenue.** Gross Revenue does not include any of the following:
- 9.1.1. Parking Revenue generated by the Property;

- 9.1.2. Insurance loss proceeds which are applied toward restoration of the Improvements;
 - 9.1.3. Any award or payment made by a Governmental Authority in connection with the exercise of any right of eminent domain, condemnation, or similar right or power;
 - 9.1.4. Sales taxes;
 - 9.1.5. Employee meals, if free or discounted for such employees and their immediate family members, and
 - 9.1.6. The proceeds of any sale of a Subtenant's business to a third party.
10. **Reporting of Gross Revenue.** Developer and all Subtenants and Beachfront Concessionaires must report Gross Revenue in a format which identifies and shows the dollar amount of any item which is excluded from Gross Revenue. All reports of Gross Revenue used to calculate any payments due City under this Agreement, any Parcel Ground Lease, any sublease of a portion of a Parcel ("Sublease"), or any Beachfront Concession Agreement must reconcile with the Gross Revenue shown on the monthly State of Florida ("State") sales tax returns filed by Developer or the applicable Subtenant or Beachfront Concessionaire.
- 10.1. **Documentation.** All revenue data reported or used to arrive at the amounts of any payments to City under this Agreement, any Parcel Ground Lease, any Sublease, or any Beachfront Concession Agreement must be verifiable and supported by source documents. Acceptable source documents include but are not limited to Florida Department of Revenue sales and use tax returns, Federal tax returns, 1099 forms from credit card companies, credit card reports, bank deposit slips, bank statements, wire fund transfer documents, sales invoices, point of sale receipts, cash register reports, sales terminal reports, and financial statements. If Subtenants, Beachfront Concessionaires, or mobile vendors (such as food trucks) are not able to utilize a computerized terminal or cash register, the use of pre-numbered sales receipts will be required in order to provide an adequate record.
 - 10.2. **Subtenant Bank Accounts.** Developer's Subleases must require each Subtenant to maintain a separate bank account for the respective Subtenant's daily operations on the Property. Developer's Beachfront Concession Agreements must require each Beachfront Concessionaire to maintain a separate bank account for the respective Beachfront Concessionaire's daily operations in the Beachfront Area.
11. **Records Retention and City's Right to Audit.** All records of Developer, the Parcel Tenant, and any Beachfront Concessionaire must be made available locally, at the expense of the Developer, for inspection and audit by a certified public accountant ("CPA") retained by the City, the City's Internal Auditor, or any other designee of the City.
- 11.1. **Availability of Records.** Records must be made available for inspection at all reasonable times, after reasonable notice from City, throughout the term of this Agreement, and for a period of three years after the date of the final payment due under this Agreement or any Parcel Ground Lease.

- 11.2. **Record Retention.** All records of Developer, any Parcel Tenant, and any Beachfront Concessionaire must be retained until the later of (a) three years after the date of the final payment due under this Agreement or any Parcel Ground Lease; or (b) as required by applicable law, including the required retention period of the Florida Public Records Act set forth in Chapter 119 of the Florida Statutes.
- 11.3. **Records to be Retained.** The records required to be retained under this Agreement include, but are not limited to, all business records, bookkeeping and accounting records, sales and income tax records and returns, bank statements, tax deposits, supporting documents, statistical records, sales reports, and any other records which may be pertinent to this Agreement, including Subtenants' sales receipts.
- 11.4. **Audit Results.** If any inspection or audit performed by the City discloses an underpayment by Developer or any Parcel Tenant to City, then Developer or the Parcel Tenant shall pay to City, within 15 days after receipt of the City's inspection or report, the amount due with respect to the understatement, plus interest at the highest rate permitted by law from the date the payment was originally due until the date of payment. Developer or the Parcel Tenant must also reimburse City for its reasonable costs incurred in conducting the audit in the event the audit reveals a discrepancy of more than 5% in the amount of Gross Revenue reported by Developer or the Parcel Tenant.
12. **Sales Tax.** Developer will be responsible for collecting and remitting to the State all sales tax required to be paid in connection with any Leases.
13. **Reporting of Parcel Improvement Costs.**
- 13.1. **Semi-annual Improvement Cost Reports.** Beginning after the Lease Commencement Date of the first Parcel Ground Lease, and until completion of all of the buildings and accessory structures on all Parcels, Developer will be required to submit to the City an "Improvement Cost Report" for each Parcel on or before January 30 and July 30 of each calendar year. Each Improvement Cost Report must include the following information and documentation:
- 13.1.1. Cost of Improvements (or portions of Improvements) completed to date;
- 13.1.2. Description of Improvements completed to date;
- 13.1.3. Estimated or actual completion date for each Improvement; and
- 13.1.4. Copies of cancelled checks, bank statements, wire transfers or other documentation evidencing payment of the Improvement Costs shown in the Improvement Cost Report
- 13.2. **Improvement Cost Record Retention.** All records pertaining to the construction of any Improvements must be made available for inspection at all reasonable times, after reasonable notice from City, throughout the term of this Agreement, and for a period of three years after the date of the final payment due under this Agreement or any Parcel Ground Lease.

- 13.3. **Record Retention.** All records pertaining to the Improvement Costs must be retained until the later of (a) three years after the date of the final payment due under this Agreement or any Parcel Ground Lease; or (b) as required by applicable law, including the required retention period of the Florida Public Records Act set forth in Chapter 119 of the Florida Statutes.
- 13.4. **Format of Report.** The Improvement Cost Reports may be provided in spreadsheet format, as long as each report is accompanied by the appropriate documentation evidencing payment of the Improvement Costs shown in the report. The Improvement Cost Reports must be submitted to:
- City of Pompano Beach Finance Department
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Attention: Controller, Room 480
14. **Reports Regarding Developer's Use of Local Businesses.** Developer agrees to make a diligent effort to use local contractors and vendors in the construction, operation and maintenance of the Project. Operator agrees to contact the CRA's Small Business Development Center to obtain information about local businesses that may be interested in bidding on the Project, and to notify local businesses when Developer is ready to solicit bids for the construction or operation of any component of the Project. Throughout the term of this Agreement, Developer will deliver to the City on an annual basis a written report showing the number of local and non-local businesses and individuals hired to work on the Project. The report must identify the local businesses and individuals hired in the construction, operation and maintenance of the Project.
15. **Conditions Precedent to Development.**
- 15.1. **Obligations of City Prior to Development.** City acknowledges that the following undertakings ("City Obligations") must be completed in order for the Developer to commence development of the Property. City agree as follows:
- 15.1.1. **Demolition of Fire Station and Lift Station.** City agrees to remove from the Property the fire station ("Fire Station") and the lift station ("Lift Station") currently located on the Property upon the later of
- 15.1.1.1. 30 days after Developer submits an application for a construction permit as described in the City Code ("Building Permit") for the first to be developed of Parcel R1, R2, R3 or R4; or
- 15.1.1.2. December 31, 2013.
- 15.1.2. **Library.** City is seeking an alternate location for the Broward County Public Library ("Library") currently located on the Property, and may decide to physically move the existing Library structure by truck or other vehicle to a new location. City agrees to relocate the Library on or before June 30, 2014. If City wants developer to demolish the Library, City must notify Developer in writing on or before March 30, 2014, and thereafter Developer will demolish the library at Developer's expense. If Developer demolishes the Library building before Developer is ready to start construction in the

location of the Library, Developer will be required to resurface the former Library area with either paving or grass at Developer's expense.

15.2. **City Representations Regarding Library, Lift Station, Fire Station and Zoning.**

15.2.1. **Underground Tanks.** City warrants and represents that there are no underground tanks located on the Property. City has advised Developer that there is a "wet well" under the Lift Station, and that City has obtained all permits required to demolish the wet well under the Lift Station to five feet below grade, and to fill in the demolished portion of the well.

15.2.2. **Asbestos.** City does not know if there is any asbestos contained in the Library. If Developer determines that the Library contains asbestos, City will be responsible for performing the demolition of the Library at City's expense.

15.2.3. **Zoning and Land Use.** City warrants and represents that beach-oriented retail, including restaurants with outdoor dining and retail shops are permitted uses by license on the Property under the current PR Zoning and OR land use. To the extent that the City Code or City Charter requires a separate license agreement for these uses, City agrees to grant a separate license to Developer for these uses.

15.3. **Delay in Performance of City Obligations.** Developer will not be required to commence any development activities on the Property prior to the fulfillment of the City Obligations set forth in this section (i.e., the demolition of the Fire Station and Lift Station, and the relocation of the Library). If City is unable to fulfill the City Obligations by the stated deadlines, after diligent effort, the parties agree to extend the deadlines in the Development Timeline for a reasonable period of time to allow the City to complete the City Obligations. If City is unable to complete all of the City Obligations even with additional time, City or Developer will have the right to terminate this Agreement by giving written notice to the other party. Upon termination, City will reimburse Developer for up to \$150,000 of Developer's documented out-of-pocket costs related to the development of the Property for which there is a physical work product ("Work Product").

15.3.1. **Documentation Required for Reimbursement.** Developer must submit copies of invoices and acceptable proof of payment, such as cancelled checks, for any costs to be reimbursed.

15.3.2. **Delivery of Work Product.** As a condition of City's reimbursement, Developer must deliver to City the following:

15.3.2.1. The Work Product for which Developer is to be reimbursed;

15.3.2.2. An assignment to City of Developer's rights in the Work Product and the right to use the services of the respective

professionals (“Service Providers”) who produced or created the Work Product; and

15.3.2.3. The consent of each Service Provider to the assignment of Developer’s rights in the Work Product to the City, and;

15.3.2.4. The agreement of each Service Providers to provide further services to the City in connection with the Work Product, at a price to be negotiated by City and respective Service Provider.

15.3.3. **Reimbursable Costs.** Reimbursable costs will include the cost of engineering and architectural plans, environmental reports, marketing studies, traffic studies, soil tests, and similar studies, tests and reports directly related to the development of the Project. The following costs will not be reimbursable: legal fees, brokerage commissions, lender fees, and similar charges.

16. **Hotel**

16.1. **Hotel Subject to Commission Approval.** Developer expressly acknowledges and agrees that the development of a Hotel on Parcel R5 will be subject to the prior approval of the City Commission at the time Developer submits a site plan for a Hotel. If the City Commission approves the development of the Hotel, the form of the Parcel Ground Lease for Parcel R5 will be revised to incorporate mutually acceptable provisions applicable to the development and operation of the Hotel, and the revised Parcel R5 Ground Lease will be submitted to the City Commission for its approval. Nothing in this Agreement is intended to obligate the City to approve the development of a Hotel on Parcel R5.

16.2. **Rezoning for Hotel.** City agrees to file the appropriate applications to change the zoning and land use designation of the Property to permit the development of the Hotel. City will be responsible for all costs of rezoning and changing the land use designation of the Property. City agrees to provide to Developer copies of all applications to be filed in connection with the rezoning and land use changes prior to submission for Developer’s review and comment. City agrees to seek completion of the required rezoning and change of land use designation on or before March 30, 2014. Nothing in this Agreement is intended to guarantee the approval of any rezoning of the Property or any land use amendment.

17. **Pier Structure.** The Pier Structure is located adjacent to the Property and will be controlled, operated, managed and maintained by the City throughout the term of this Agreement. Developer acknowledges that the Pier Structure is not included in the Property subject to this Lease.

17.1. **Pier Access Control Structure.** Developer acknowledges that City intends to erect a structure at the entrance to the Pier (“Access Control Structure”) on or adjacent to the Pier Structure east of Site E, which structure will be controlled and operated by City or its designee. City will have the right at all times to lease or subcontract the management or operation of the Access Control Structure to a third party. Developer acknowledges and agrees that City will have the right to determine what items may be sold in the Access Control

Structure, including but not limited to bait, tackle, beer, soda, and snacks. If City desires to use the Access Control Structure for a use that competes with Developer's use of the Property, City agrees to discuss the proposed use with Developer prior to commencing the competing use.

- 17.2. **Developer's Right to Use Portion of Pier Structure.** Developer may use portions of the Pier Structure that are immediately adjacent to the Existing Concession Stand for temporary uses which do not interfere with pedestrian traffic on the Pier Structure.
- 17.3. **City's Obligation to Maintain, Repair and Replace Pier Structure.** City acknowledges the importance of the Pier Structure to the Project, and agrees to maintain the Pier Structure in a safe and usable condition throughout the Term of this Agreement. If, because of its age, the elements, hurricanes, or other Force Majeure, the Pier Structure is damaged, destroyed, or rendered unsafe or unusable, the City agrees to repair or rebuild the Pier Structure as expeditiously as possible under the circumstances then existing. The City's obligation to rebuild the Pier will be subject to all Governmental Requirements which may be applicable to the Pier Structure at the time of the rebuilding. If the City is unable to complete the repair or rebuilding of the Pier Structure within three years after the closing of the Pier Structure, and if the Developer can provide evidence reasonably satisfactory to City that the Gross Revenue of the Project has decreased by more than 20% solely as a result of the closing of the Pier (and not because of other factors unrelated to the closing of the Pier Structure) all payments of Minimum Rent due under any Parcel Ground Lease will be reduced by 25% for the period of time beginning three years after the closing of the Pier Structure until the reopening of the Pier Structure.
18. **Construction of Pier Street Extension.** Developer must build a private street on the Property running westward from Pompano Beach Boulevard to the intersection of NE 2nd Avenue and A1A ("Pier Street Extension") prior to the issuance of a certificate of occupancy for the third Parcel of Parcels R1, R2, R3, R4 or R5 to be developed. No certificate of occupancy will be issued for the Improvements on the third "R" Parcel until a certificate of completion is issued by the City for the Pier Street Extension.
19. **Street Parking.** The Property abuts the following streets: NE 2nd Street to the south, NE 3rd Street to the north, and A1A to the west. North Pompano Beach Boulevard runs through the Property. The City will be responsible for providing parking spaces along the streets which abut the Property but which are located outside the boundary of the Property, including Pompano Beach Boulevard. The street parking spaces will be metered, striped, and maintained by the City. The City will retain all revenue from street parking throughout the term of this Agreement.
20. **General Parking Requirements**
 - 20.1. **Parking to be Public.** Developer acknowledges that all of the parking on the Property, whether surface parking or garage parking, will be public parking. City and Developer acknowledge that Section 253 of the City Charter states that "as to the beach parking lots, any lease must provide a benefit to the public at large." If Developer or any Parcel Tenant enters into any Subleases which include any

surface parking spaces, Developer agrees that the Sublease will reference the restriction set forth in Section 253 of the City Charter.

- 20.2. **Parking Rates.** Throughout the term of this Agreement, City will set the rates for all parking on the Property, whether surface parking or garage parking, other than the rates for the valet spaces allocated to the Developer (“Valet Spaces”). City agrees that the parking rates will not be less than the market rate for parking in comparable areas in Broward County, Florida. City will have the right to adjust parking rates as needed throughout the term of the Agreement.
- 20.3. **Parking Enforcement.** City will at all times during the term of this Agreement have the right to enforce parking requirements (except for the Valet Spaces allocated to Developer) and to receive all parking ticket revenues from the Property.
- 20.4. **Maintenance of Parking Areas.** All parking areas and parking spaces must be maintained in clean and safe condition by the party responsible for such maintenance as set forth in this Agreement. The surface of all parking areas must be kept properly paved and sealed. Potholes, cracks and other damage to the parking area surface must be repaired promptly. Parking spaces must be properly striped. Lighting must be kept in good working order.
- 20.5. **Parking Signage.** City will be responsible for installing and maintaining all parking signage until completion of the Pier Street Extension, after which time Developer will be responsible for the maintenance, repair and replacement of parking lot signage. Parking lot signage must comply with all Governmental Requirements, must be maintained in clean and safe condition, and must be visible during daylight hours and after dark.
- 20.6. **Parking Meter Machines.** City will be responsible for maintaining, repairing and replacing all parking meters on the Property throughout the term of this Agreement.
- 20.7. **Utilities Servicing Parking Area.** City will pay for utility service for the parking meter machines. Developer will pay for a prorated portion of the utility service for the parking areas commensurate with the prorated portion of Parking Revenue paid to Developer as set forth below.
- 20.8. **Parking Revenue Collection and Parking Management Fee.** Throughout the term of this Agreement, City will be responsible for the collection of all parking revenue (“Parking Revenue”) of the Property other than revenues from the Valet Spaces. Developer acknowledges that the Parking Revenue collected by City will include sales tax, and that City will remit the sales tax to the State. City will be entitled to a fee (“Parking Management Fee”) of 15% percent of the net Parking Revenue generated by the Property, after deduction of the sales tax. City will deduct the sales tax and the Parking Management Fee from the Parking Revenue it collects prior to remittance to Developer of its share of the Parking Revenue.

21. **Surface Parking.**

- 21.1. **Parking Revenue Prior to Construction.** Prior to the issuance of the first Building Permit for vertical construction on Parcel R1, R2, R3, R4, or R5, the

- City will operate and maintain all of the parking spaces currently on the Property, and will continue to receive all Parking Revenue.
- 21.2. **Revenue Sharing between City and Developer.** Wherever this Agreement refers to the sharing of Parking Revenue between the City and Developer, the revenues will be shared on an annual basis as follows:
- 21.2.1. First, the amount of sales tax on Parking Revenue will be deducted from the Parking Revenue collected.
 - 21.2.2. Next, City's 15% Parking Management Fee will be deducted from the Parking Revenue collected.
 - 21.2.3. After deduction of sales tax and the Parking Management Fee, Developer will be entitled to the first \$838 of Parking Revenue per space (the "Base Parking Amount") for the number of spaces for which Developer is entitled to Parking Revenue.
 - 21.2.4. Any Parking Revenue generated above the Base Parking Amount for all spaces (\$838 times the total number of spaces) will be shared equally by City and Developer.
 - 21.2.5. The Base Parking Amount will be increased every five years by 7.5%, with the first increase to occur five years after Developer receives the first payment of Parking Revenue.
- 21.3. **Parking Area Improvements.** When used in this Agreement, "Parking Area Improvements" will include all required resurfacing, resealing, or repaving, and installation of lighting and landscaping in the designated parking area.
- 21.4. **Parking Area Maintenance Responsibility.** The party receiving the Parking Revenue for any parking spaces will be responsible for the maintenance of those parking spaces.
- 21.5. **Allocation of Parking Revenue If First Groundbreaking on Parcel R1, R2 or R4.** If the first Parcel to be developed is R1, R2 or R4, then after the occurrence of the following conditions, Developer will be entitled to a portion of the Parking Revenue based on the ratio of the number of spaces located north of the Pier Street Extension ("PSE") to the total number of spaces on the Property:
- 21.5.1. a Building Permit has been issued for vertical construction on any one of Parcels R1, R2, or R4;
 - 21.5.2. Developer has completed the Parking Area Improvements for all parking areas north of the Pier Street Extension; and
 - 21.5.3. Developer has broken ground on the vertical improvement to be constructed on the Parcel.
- 21.6. **Parking Area Improvements South of Pier Street Extension.** If the first Parcel to be developed is R1, R2 or R4, then upon request by the City, Developer agrees to resurface or reseal the parking spaces located south of the Pier Street Extension at City's expense. If City does not ask Developer to perform the resurfacing or resealing, City will have the right to perform the resurfacing or resealing at its own expense.

- 21.7. **Allocation of Parking Revenue If First Groundbreaking on Parcel R3 or R5.** If the first Parcel to be developed is R3 or R5, then after the occurrence of the following conditions, Developer will be entitled to a portion of the Parking Revenue based on the ratio of the number of spaces located south of the Pier Street Extension (“PSE”) to the total number of spaces on the Property:
- 21.7.1. a Building Permit has been issued for vertical construction on any one of Parcels R3 or R5;
 - 21.7.2. Developer has completed the Parking Area Improvements for all parking areas north and south of the Pier Street Extension; and
 - 21.7.3. Developer has broken ground on the vertical improvement to be constructed on the Parcel
- 21.8. **Allocation of Parking Revenue After Second Groundbreaking.** Regardless of where the second “R” Parcel groundbreaking occurs, there will be no change in the sharing of the Parking Revenue.
- 21.9. **Allocation of Parking Revenue After Third Groundbreaking.** Regardless of where the third “R” Parcel groundbreaking occurs, Developer will be entitled to the Parking Revenue from all of the spaces (after payment of sales tax and the Parking Management Fee, and subject to City’s right to half of the Parking Revenue in excess of the Base Parking Amount), subject to the following conditions:
- 21.9.1. a Building Permit has been issued for vertical construction on the third “R” Parcel to be developed
 - 21.9.2. Developer has completed the Parking Area Improvements for all parking areas;
 - 21.9.3. Developer has broken ground on the vertical improvement to be constructed on the Parcel; and
 - 21.9.4. Developer has completed construction of the Pier Street Extension.
- 21.10. **Parking Revenue if Developer Fails to Develop Parcels R4 and R5.** If Developer fails to develop either Parcel R4 or R5, or both, Developer will no longer have the right to any Parking Area Revenue from the parking spaces on the land that would have been Parcels R4 or R5. This provision will apply regardless of whether the City elects to declare a default based on Developer’s failure to develop either Parcel R4 or R5.
22. **Construction of Parking Garage.** Developer has the right to construct a parking garage (“Parking Garage”) on Parcel R4, subject to the following conditions:
- 22.1. **City’s Notice to Build Garage.** If at any time during the Term of this Agreement the City determines that the Parking Garage is needed, City will send a written notice (the “Parking Garage Notice”) to Developer that City intends to build the Parking Garage on the Property. Developer will have 90 days after its receipt of the notice from City to send a written notice that Developer is electing to build the Parking Garage (the “Developer Parking Garage Election”). If Developer fails to respond to the Parking Garage Notice, then the City will design and construct the Parking Garage at its own expense.

- 22.2. **Developer's Parking Garage Election.** If Developer elects to build the Parking Garage, Developer will have a period of 180 days after the date of Developer's Parking Garage Election to obtain a Building Permit for the Parking Garage, and a period of one year after issuance of the Building Permit to complete construction of the Parking Garage. If Developer fails to complete construction of the Parking Garage within one year after issuance of the Building Permit, and such failure is not the result of a Force Majeure or reasons beyond the reasonable control of Developer, City may proceed with the construction of the Parking Garage. If City elects to proceed with the construction of the Parking Garage, and there is no uncured Event of Default by Developer under this Agreement or by the Tenant under the Parcel R4 Ground Lease, City will, at the time it takes over the construction of the Parking Garage, reimburse Developer for its documented design and construction expenses incurred prior to the date City takes over construction of the Parking Garage, subject to the following conditions:
- 22.2.1. Developer must assign to City all designs, plans, specifications, contracts, and other documentation pertaining to the construction of the Parking Garage (collectively, the "Parking Garage Documents");
 - 22.2.2. Developer must deliver to City consents to the assignment of the Parking Garage Documents from the applicable architects, engineers, contractors, or other professionals engaged in the development and construction of the Parking Garage; and
 - 22.2.3. Developer must deliver to City agreements from each of the professionals engaged in the development and construction of the Parking Garage to provide services to the City in connection with the Parking Garage at a cost to be negotiated by the City and the professional.
- 22.3. **Parking Garage Required For Hotel Development.** Construction of the Parking Garage will be required if the Developer proceeds with the development of a Hotel on Parcel R5.
- 22.4. **Removal of City Garage from Parcel Ground Lease.** If the City builds the Parking Garage, the land upon which the Parking Garage is constructed will not be included in any Parcel Ground Lease. If the land upon which the Parking Garage is to be constructed is already included in a Parcel Ground Lease, the Parcel Ground Lease will be amended to remove the Parking Garage land from the Parcel Ground Lease.
- 22.5. **Parking Garage to be Public.** Whether the Parking Garage is built by the City or by the Developer, the Parking Garage will at all times be open to the public. If Developer builds the Parking Garage, Developer will be entitled to all revenues from the Parking Garage, but will pay the Parking Management Fee for the Parking Garage spaces to the City unless the Parking Garage is managed by a third party.
- 22.6. **Maintenance and Insurance.** If the Developer builds the Parking Garage, the Developer will be required to maintain the Parking Garage and to carry insurance on the Parking Garage, as set forth in the Parcel Ground Lease which includes the Parking Garage.

- 22.7. **City's Right to Use Portion of Garage.** If the Developer builds the Parking Garage, City will at all times during the Term of this Agreement have the right to use a portion of the Parking Garage for civic purposes (for example, as a welcome center or information center) on terms and conditions mutually agreed upon by the parties prior to the construction of the Parking Garage.
- 22.8. **Parcel R4 Construction Prior to Parking Garage.** If the Developer desires to commence development of Parcel R4 prior to the construction of a Parking Garage by either City or Developer, Developer agrees that the design and placement of the building to be constructed on Parcel R4 will not preclude the construction of a Parking Garage at the northwest corner of the Property.
23. **Developer's Valet Spaces.**
- 23.1. **Surface Valet Spaces.** City agrees that 100 surface parking spaces will be designated as "Surface Valet Spaces" and will be allocated to the Developer for use as valet parking or for use by Developer's subtenants until the Parking Garage is built. The Surface Valet Spaces will be in one or more locations reasonably acceptable to Developer and will be allocated among Parcels R1, R2 and R3 as each Parcel is developed, based on the respective square footages of the buildings to be constructed on the Parcels.
- 23.2. **Garage Valet Spaces if City Builds Garage.** If the City builds the Parking Garage, City agrees to reserve 100 Garage Parking Spaces (the "Garage Valet Spaces") for Developer's use as valet parking spaces to serve the Project. City will lease the Valet Spaces to Developer at a price to be determined. The parties agree that the amount charged to Developer for the Garage Valet Spaces will be fair, and will not exceed the lowest price then being charged by the City for the lease of parking spaces to private users at the City-owned Oceanside Parking Lot.
- 23.3. **Garage Valet Spaces if Developer Builds Garage.** If the Developer builds the Parking Garage, Developer will continue to be entitled to 100 Garage Valet Spaces but will not be required to pay City for them.
- 23.4. **Location of Garage Valet Spaces.** Whether the City or the Developer builds the Parking Garage, the Developer will be entitled to use 100 non-handicap spaces in the Parking Garage most convenient to Developer as the Garage Valet Spaces.
- 23.5. **Termination of Surface Valet Spaces.** Upon completion of the Parking Garage by City or Developer, Developer will no longer have the right to use any Surface Valet Spaces.
- 23.5.1. **Valet Spaces.** Developer will have the right to set the parking rates for all Surface and Garage Valet Spaces.
24. **Traffic and Road Improvements.** City agrees to undertake the following "Traffic Improvements" in connection with the Project:
- 24.1. **Signalization.** After Developer completes the construction of the Pier Street Extension, City agrees to use best efforts to have the Florida Department of Transportation ("FDOT") convert the existing pedestrian traffic signal at the intersection of Pier Street and A1A to a vehicular traffic signal if City determines in its sole but reasonable discretion that a vehicular traffic signal is warranted in that location. City's failure to persuade FDOT to convert the

existing pedestrian signal to a vehicular signal will not constitute a default by City under this Agreement.

- 24.2. **Street Renaming and Streetscape Improvements.** City will consider renaming the section of NE 2nd Street between A1A and Riverside Drive as Pier Street as soon as Developer completes the construction of the Pier Street Extension. City agrees to install parallel parking spaces and landscaping along the portion of NE 2nd Street between A1A and Riverside Drive within 48 months after execution of the first Parcel Ground Lease.
25. **Dock Space at Intracoastal Park.** City agrees to apply for the necessary permits to construct dock space at Intracoastal Park within 30 days after Developer commences construction on any one of Parcels R1, R2, R3, R4 or R5. If City is able to obtain the required permits for the construction of the dock space, City will complete the construction of the dock space at City's cost within one year after the permits have been obtained. City agrees to use best efforts to obtain the permits required to construct dock space at Intracoastal Park, but Developer acknowledges that the issuance of the permits is under the jurisdiction of Governmental Authorities other than the City.
26. **Inspection Period.** Developer will have a period of 90 days after the Effective Date of this Agreement ("Inspection Period") to investigate the condition of the Property. During the Inspection Period, Developer or its authorized agents, employees, or independent contractors may enter upon the Property for the purpose of making physical inspections of the Property. Developer may make any inspections of the Property which Developer deems necessary, including but not limited to soil borings; percolation tests; engineering, environmental, and topographical studies; investigation of the availability of utilities; and condition of title. Developer will be responsible for the cost of all inspections, and must restore any portions of the Property which are damaged or disturbed as a result of Developer's inspections. If Developer determines during the Inspection Period, in its sole discretion, that the Property is not suitable for the development of the Project or that title to the Property is not acceptable, Developer will have the right to terminate this Agreement by sending notice of termination to the City on or before the final day of the Inspection Period. Upon timely termination of this Agreement by Developer, neither Developer nor City will have any further rights or obligations under this Agreement. Upon the timely termination of this Agreement, City and Developer will execute and deliver to each other mutual releases from any further liability under this Agreement.
- 26.1. **City to Provide Existing Studies.** Within 10 days after the Effective Date, City will provide to Developer copies of all existing engineering studies, surveys, maps, reports and other documentation in City's possession pertaining to the Property (the "Property Reports"). City consents to Developer's use of the Property Reports in connection with the development of the Project, but City makes no representations or warranties as to the validity, accuracy, or reliability of the Property Reports, and City will not be liable for any errors or omissions in the Property Reports, or for any use of the Property Reports by Developer.
- 26.2. **City's Representations Regarding Property.** Except for the Property Reports City has not made any independent investigation of the condition of the Property. City represents that to the best of its actual knowledge and belief, without independent inquiry, there exists no condition on, about or under the

Property which would prevent, delay, or otherwise adversely impact the development of the Project on the Property.

27. **“As Is” Condition of the Property.** Developer acknowledges and agrees that it will have the opportunity during the Inspection Period to perform all inspections and investigations concerning the Property to its satisfaction and that, except as expressly provided in this Agreement, the City is not making and has not made any representations or warranties, express or implied, as to the Property, including but not limited to, title, survey, physical condition, suitability or fitness for any particular purpose, value, financial prospects or condition, or the presence or absence of hazardous substances. Developer acknowledges that it will rely solely on Developer’s own inspections and investigations of the Property in its determination of whether to proceed with the Project. As a material part of the consideration of this Agreement, Developer agrees to accept the Property in “as is” and “where is” condition existing on the Effective Date, without any representations or warranties other than those expressly stated in this Agreement.
28. **Subsequent Conditions.** City will be responsible for curing any material adverse changes in the condition of the Property, including any adverse changes to the status of title, not caused by Developer and occurring after the Effective Date and prior to the date upon which the last of the Parcel Ground Leases is executed. City will not be responsible for any changes in the condition of the Parcels of the Property once they are leased by Developer. City agrees that after the Effective Date, City will not take any actions that could adversely affect the physical condition of the Property or the status of title to the Property. If a material adverse change occurs in either the physical condition of the Property or in the title to the Property which is not caused by Developer and which City cannot cure to Developer’s reasonable satisfaction, Developer will have the right to terminate this Agreement as to any Parcels which are not subject to a Parcel Ground Lease. Upon such a termination of this Agreement, City and Developer will execute and deliver to each other mutual releases from any further liability under this Agreement.
29. **Title and Survey Issues.**
 - 29.1. **Evidence of Title.** Prior to the execution of this Agreement, City has delivered to Developer one or more title search reports covering the Property prepared by Attorneys’ Title Fund Services, LLC, showing all easements, restrictions, and agreements encumbering the Property.
 - 29.2. **Development and Deed Restrictions.** City has disclosed to Developer, and Developer acknowledges, that the Property includes seven lots located east of Pompano Beach Boulevard, and that certain of these lots contain deed restrictions that prohibit the construction of buildings and structures.
 - 29.3. **Sketch of Survey.** Prior to the execution of this Agreement, City has delivered to Developer a sketch and legal description of the Property prepared by Keith & Associates, Inc., dated June 22, 2012.
 - 29.4. **Title and Survey “As Is.”** Developer represents and warrants that it has reviewed the status of title to the Property and the sketch of survey of the Property. Developer acknowledges that it is entering into this Agreement and the Parcel Ground Leases subject to all title and survey matters existing on the Effective Date, and that it will be leasing the Parcels “as is,” and “where is,” except as to title defects not caused by Developer which arise after the Effective Date.

- 29.5. **Title Insurance and Additional Survey Work.** If Developer elects to purchase title insurance for any Parcel, or wishes to obtain a full boundary survey of the Property, Developer will be responsible for the additional title and survey costs.
30. **Compliance with Governmental Requirements.** Developer will develop, improve, use, and maintain the Property in accordance with all applicable Governmental Requirements. Failure by Developer to materially comply with any applicable Governmental Requirement will be an Event of Default under this Agreement.
- 30.1. **Coastal Construction Control Line.** Developer acknowledges that a portion of the Property lies east of Pompano Beach Boulevard, and is subject to the Florida Department of Environmental Protection (FDEP) Coastal Construction Control Line program. Developer must comply with all requirements of the FDEP CCCL in the development of the Property.
- 30.2. **Marine Turtle Lighting Ordinance.** Developer acknowledges that portions of the Property are subject to Federal, State and local requirements for lighting due to the potential for Project lighting to cause disorientation of nesting sea turtles. Developer shall adhere to Section 161.163 of the Florida Statutes and shall observe Chapter 62B-55 of the Florida Administrative Code (Model Lighting Ordinance for Marine Turtle Protection as enacted by FDEP) and Rule 68E-1 of the Florida Administrative Code.
- 30.3. **Stormwater Pollution Plan Required.** Developer acknowledges that it is required to implement a Stormwater Pollution Prevention Plan (SWPP) for the Project. The SWPP must remain in effect throughout the construction of the Project. Developer will be required to install temporary erosion and sedimentation controls prior to commencing any excavation. Permanent controls must be installed prior to issuance of a Certificate of Occupancy for the applicable portions of the Project. Project Plans must comply with the National Pollutant Discharge Elimination System guidelines; must identify temporary staging and dewatering areas; and must include the construction of a temporary dewatering area protected with silt screens prior to any excavation for underground-related improvements. All dewatering operations on the Property must discharge into a temporary dewatering area. There shall be no direct discharge into existing or new ditches, storm drains or any other facilities in the public right-of-way.
31. **Management of Project.**
- 31.1. **Maintenance and Operation.** Commencing with the execution of the first Parcel Ground Lease, Developer must at all times keep the Property in good, clean, and safe condition and repair, reasonable wear and tear excepted. The Developer will comply with all Governmental Requirements applicable to the construction, occupancy, maintenance and operation of the Project.
- 31.2. **City's Maintenance Obligation.** City agrees to maintain the Pier Structure, Access Control Structure, the Parcel E restrooms, and the parking areas to be maintained by City, in good, clean, and safe condition and repair, reasonable wear and tear excepted.
- 31.3. **Development Standards.** City and Developer agree that the manner in which the Project is developed, operated and maintained is important to the City by reason of their interest in having a destination dining, shopping, entertainment,

hotel and parking facility for use by City residents and visitors to the City. Developer agrees to develop, operate and maintain the Project and all other property and equipment located on the Property consistent with the following standards:

- 31.3.1. **Cleanliness.** Developer will keep the Property free of debris and trash at all times.
 - 31.3.2. **No Nuisance; No Waste.** Developer will not commit or permit any waste, odor, noise, nuisance, or any activity which violates any Governmental Requirement.
 - 31.3.3. **No Hazardous Materials.** Developer will not permit flammable materials such as gasoline, kerosene, naphtha, benzene, explosives or other articles, goods or merchandise of an intrinsically hazardous or dangerous nature to be brought onto the Property, unless such materials are customarily used or required in connection with the contemplated uses of the Property.
 - 31.3.4. **No Fumes.** Developer will not permit any noxious odors, acids, vapors or other gases or materials to be discharged from any of the Improvements in violation of any Governmental Requirements.
 - 31.3.5. **No Obstructions.** Developer will use reasonable efforts not to obstruct or close off any portions of the Property unless necessary for the safety and protection of the public.
 - 31.3.6. **No Loitering; Crowd Control.** To the extent within Developer's control, Developer will not permit any large, uncontrolled gatherings of people to occur on the Property, physical altercations, intimidating behavior, or disruptive behavior by visitors to the Property.
32. **Insurance.** Prior to any activity by Tenant on any portion of the Property, and at all times during the Term of this Agreement, Developer will be responsible for procuring and maintaining the insurance required by this Agreement, at Developer's sole cost and expense. In addition, if Developer is doing any construction work on portions of the Property not subject to a Parcel Lease, Developer will ensure that its general contractor maintains the applicable insurance coverages set forth in this Agreement, unless waived or modified by the City's Risk Management Director.
- 32.1. **General Insurance Provisions.**
- 32.1.1. All policies must be executable in the State.
 - 32.1.2. All insurers must maintain an AM Best rating of A or better.
 - 32.1.3. The terms and conditions of all policies may not be less restrictive than those contained in the most recent edition of the policy forms issued by the Insurance Services Office (ISO) or the National Council on Compensation Insurance (NCCI). If ISO or NCCI issues new policy forms during the policy term of the required insurance, Developer will not be required to comply with the new policy forms until the expiration date of the insurance policy affected by the change.

- 32.1.4. Developer's insurance policies will be primary over any and all insurance available to the City, whether purchased or not, and must be non-contributory.
- 32.1.5. The Developer and its general contractor will be solely responsible for payment of all deductibles and retentions contained in their respective insurance policies. The City will be included as an "Additional Insured" on the Commercial General Liability policy and any Umbrella Liability policies if applicable. The City will also be named as "Loss Payee" on all of Developer's Property Insurance policies.
- 32.1.6. Developer will ensure that each insurance policy obtained by it provides that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage covered by any policy.
- 32.2. **Evidence of Insurance.** Prior to carrying on any development or construction activities on the Property, Developer must provide satisfactory evidence of the required insurance to the City. Satisfactory evidence of insurance is either (a) a certificate of insurance, or (b) a certified copy of the actual insurance policy. The City, at its sole option, may request a certified copy of any or all insurance policies required by this Agreement.
- 32.3. **Cancellations and Renewals.** All insurance policies must specify that they are not subject to cancellation or non-renewal without a minimum of 30 days notification to the Developer, and a minimum of 10 days notification for non-payment of premium. The Developer will provide the City a minimum of 30 days written notice if any policies are cancelled or non-renewed, and 10 days written notice of cancellation for non-payment of premium.
- 32.4. **Required Coverages.** As a minimum, Developer will procure and maintain the following insurance coverages:
 - 32.4.1. **Commercial General Liability Insurance.** During the term of the Agreement, Developer must maintain Commercial General Liability Insurance. Coverage must include, as a minimum: (a) Premises Operations, (b) Products and Completed Operations, (c) Incidental Contractual Liability, (d) Personal Injury Liability and (e) Broad Form Property Damage coverages. The minimum limits acceptable are \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The use of an excess/umbrella liability policy to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Commercial General Liability policy.
 - 32.4.2. **All Risk Property Insurance.** Developer must obtain Property Coverage (Special Form), to cover the "All Other Perils" portion of the policy at the Replacement Cost Valuation as determined by a certified property appraiser acceptable to both the Developer and the City. The perils of Windstorm and Flood shall carry sub limits to be determined annually and acceptable to the City. The policy will also provide "Law

and Ordinance” coverage, while giving deference to the age of the Improvements, with limits acceptable to both City and Developer

32.5. Coverage Required During Construction.

32.5.1. Builders Risk Insurance. During all construction activities conducted on the Property, including infrastructure development, Developer must carry Builders Risk insurance, including the perils of wind and flood, with minimum limits equal to the “Completed Value” of the Improvements being constructed or the total value of the modifications being made, to the extent available. If such levels of coverage are not available, Developer must carry the full amount of such insurance currently available.

32.5.2. Professional Liability. Developer must ensure that Architects and Engineers Errors and Omissions Liability insurance specific to the construction activities is obtained prior to the commencement of any construction activities on the Property. If coverage is provided on a “Claims Made” basis, the policy must provide for the reporting of claims for a period of two years following the completion of all construction activities. The minimum limits acceptable are \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually.

32.6. Premiums and Renewals. Developer must pay all premiums for the insurance required by this Agreement as they become due. Developer must renew or replace each policy prior to the policy expiration date, and promptly deliver to the City all original Certificates of Insurance and copies of all renewal or replacement policies.

32.7. Adequacy of Insurance Coverage. The City has the unilateral right to periodically review the adequacy of the insurance coverage required by this Agreement. The City may request a change in the insurance coverage if the requested change is commercially reasonable, and the coverage requested is customary and commonly available for properties similar in type, size, use and location to the Property and Improvements (including without limitation, environmental liability insurance, fiduciary liability, and directors and officers liability insurance). Developer has the right to contest the request for a change in insurance, but must be commercially reasonable.

32.8. Appraisal. The City will require a Replacement Cost Value appraisal from a licensed and certified appraiser at five-year intervals. The selection and expense of the appraiser will be the sole responsibility of the Developer. Developer will provide a copy of the full report to City upon completion.

32.9. Inadequacy of Insurance Proceeds. In the event that insurance proceeds are not adequate to rebuild and restore damaged Improvements to their previous condition before an insurable loss occurred, and the cause of the deficiency in insurance proceeds is the Developer’s failure to adequately insure the Improvements as required by this Agreement, Tenant must rebuild and restore the Improvements as required by this Agreement and will be responsible for payment of any costs of the rebuilding and restoration not covered by the insurance proceeds.

32.10. **City May Procure Insurance if Tenant Fails To Do So.** If Developer refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required by this Agreement, the City, at its option, may procure or renew such insurance. In that event, all sums paid by the City for insurance will be payable by Developer to the City within ten days after written demand from City, together with interest at the highest rate permitted by law from the date the sums were paid by the City to the date of reimbursement by Developer.

33. **Indemnification.**

33.1. **Developer's Indemnification of City.** Developer, on behalf of itself and on behalf of future subtenants, visitors, trespassers, licensees, invitees, guests or persons performing work or using, visiting or occupying the Property or the Beachfront Area, hereby agrees and covenants to indemnify, defend (with counsel selected by Developer and approved by the City) and save harmless the City from and against any and all claims, actions, damages, liabilities, losses, costs and expenses, including without limitation, attorneys' fees (collectively, "Losses") to the fullest extent permitted by law, arising in connection with the subject matter of this Agreement, including, without limitation, indemnification for:

- 33.1.1. Developer's default, breach, violation or non-performance of any provision of this Agreement;
- 33.1.2. Developer's use and operation of all or any portion of the Project during the Term;
- 33.1.3. Developer's negligent acts or omissions;
- 33.1.4. Any challenge to the validity of this Agreement by a third party through legal proceedings or otherwise, other than a challenge arising by, through or under the City's fee interest in the Property.

33.2. **City's Right to Retain Counsel.** City will at all times have the right to retain its own counsel to represent the City's interest in any proceeding arising out of this Agreement.

33.3. **Tort Liability.** Any tort liability to which the City is exposed under this Agreement will be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations will be applied as if the parties had not entered into this Agreement. The City expressly does not waive any of its rights and immunities under applicable law.

34. **Default by Developer.** Each of the following occurrences is an "Event of Default" by Developer under this Agreement:

- 34.1. **Failure to Pay.** Developer's failure to pay any sum of money due under this Agreement within five days after the due date.
- 34.2. **Ground Lease Default.** A material default by Developer under any Parcel Ground Lease that is not cured within the applicable cure period.
- 34.3. **Failure to Perform Covenants, Conditions or Agreements.** Developer's failure to comply with any of the covenants, conditions and agreements in this

Agreement (other than a covenant or agreement to pay) for a period of 60 days after Developer receives written notice from the City specifying the Developer's failure to perform.

- 34.4. **Cure of Developer Default.** If Developer's failure to comply with the covenants, conditions and agreements in this Agreement is capable of cure, but cannot reasonably be cured within 60 days, then Developer will have an additional commercially reasonable time within which to cure the Developer Event of Default, but only if:

34.4.1. Developer commences to cure the default within the 60-day period and thereafter continues to diligently perform all actions necessary to cure the default; and

34.4.2. The Project continues to operate in the ordinary course of business, to the extent commercially reasonable taking into account the nature of Developer's alleged failure to perform according to the covenant, condition or agreement in question.

35. **City's Remedies for Developer's Default.**

- 35.1. **Remedies.** If a Developer Event of Default occurs under this Agreement, City will be entitled to seek all legal and equitable remedies available under Florida law.

- 35.2. **Limitation on Remedies.** A Developer Event of Default under this Agreement will not cause a termination of any Parcel Ground Lease for a Parcel upon which development has been commenced or completed if the Parcel is encumbered by a leasehold mortgage in favor of a federal or state chartered commercial bank, national bank, savings and loan association, savings bank, trust company, or private investor. If the Development Agreement is terminated, users of developed Parcels that do not contain parking sufficient for the operation of the Parcel will continue to have the right to park in any non-valet spaces at the Property.

- 35.3. **Parking Revenue Upon Default.** If a Developer Event of Default occurs because Developer fails to develop Parcels R4 or R5, Developer's right to Parking Revenue from the land which would have been Parcels R4 or R5 will automatically terminate.

- 35.4. **Termination of Developer's Interest.** If this Agreement is terminated as a result of a Developer Event of Default, Developer will have no further rights or interest in and to the Project.

36. **Default by the City.**

- 36.1. **City Failure to Perform.** City will be in default under this Agreement if the City fails to perform any obligation or fulfill any covenant or agreement of the City set forth in this Agreement, and the failure continues for 60 days after City receives written notice from Developer specifying the City's failure to perform.

- 36.2. **Cure of City Default.** The City will not be in default of this Agreement if:

- 36.2.1. The City provides Developer with a written response within the 60-day period indicating the status of the City's resolution of the breach and providing for a mutually agreeable schedule to correct same; or
 - 36.2.2. With respect to any breach that is capable of being cured but that cannot reasonably be cured within the 60-day period, if the City commences to cure the breach within the 60-day period (or as soon thereafter as is reasonably possible) and diligently continues to cure the breach until completion.
- 36.3. **Force Majeure.** Neither the City, CRA or Developer, as the case may be, will be considered in breach of or in default of any of their respective obligations under this Agreement as a result of an unavoidable delay due to strikes, lockouts, acts of God, inability to obtain labor or materials due to governmental restrictions, riot, war, hurricane or other similar causes beyond the commercially reasonable control of a party (in each case, an event of "Force Majeure"). Upon the occurrence of a Force Majeure, the applicable time period will be extended for the period of the Force Majeure event.
- 37. **Developer's Remedies for City's Default.**
 - 37.1. **Remedies.** If a City Event of Default occurs under this Agreement, Developer will be entitled to seek all legal and equitable remedies available under Florida law.
- 38. **Transfers and Assignments.** Developer may not transfer or assign its rights under this Agreement or its rights as Tenant under any Parcel Ground Lease except as set forth in this Agreement.
 - 38.1. **Transfers.** For purposes of this Agreement, a "Transfer" is a sale, assignment or conveyance of any of the following:
 - 38.1.1. The Project or any part thereof;
 - 38.1.2. Any interest in the Project, or any part thereof;
 - 38.1.3. Any interest in Developer;
 - 38.1.4. Any series of such Transfers, or any contract or agreement to do any of the same, that have the cumulative effect of a sale; or
 - 38.1.5. Any other transaction or series of transactions in the nature of a sale.
 - 38.2. **Subleases.** A Sublease of any Parcel or portion of a Parcel that complies with the Sublease requirement of the Parcel Ground Lease will not be considered a Transfer under this Agreement.
 - 38.3. **Purpose of Restrictions on Transfer.** City is entering into this Agreement with Developer solely to develop, operate, and manage the Project, and not for speculation in landholding. Developer recognizes that, because of the importance of the Project to the general welfare of the City and its residents, the Developer's qualifications and identity are of particular concern to the community and to the City. Developer acknowledges that it is because of the qualifications and identity of Developer that City is entering into this

Agreement, and that the City is willing to rely on the Developer's covenants to fulfill its obligations under this Agreement.

- 38.4. **Ownership of Developer.** Developer represents and warrants that Developer has not made, created or suffered any Transfers as of the date of this Agreement, and that the entities and individuals with an ownership interest in Developer on the date of this Agreement are listed, together with their percentage and character of ownership, in **Exhibit H**. Upon request by City from time to time throughout the Term of this Agreement, Developer will furnish the City with a complete statement, subscribed and sworn to by the Managing Member of Developer, setting forth the percentage ownership interest of the Managing Member and the full names and addresses of all members of Developer who hold at least a ten percent (10%) interest in Developer. If the Developer is an entity other than a limited liability company, then the references to membership will be changed to the appropriate ownership interests for the entity in question.
- 38.5. **General Restriction on Transfers.** No Transfer may be made, suffered or created by Developer, or its permitted successors, assigns or transferees unless it complies with the provisions of this Agreement. If at the time of a requested Transfer, Developer is an entity other than a limited liability company, then the references to membership will be changed to the appropriate ownership interests for the entity in question, and the interest being transferred will be changed to the appropriate ownership interest. Any Transfer that violates this Agreement will be null and void and of no force or effect.
- 38.6. **Transfers Not Requiring City Consent.** During the Term of this Agreement only the following Transfers ("Permitted Transfers") will be permitted without the prior written consent of the City:
- 38.6.1. **Foreclosure.** Any Transfer directly resulting from the foreclosure of a Leasehold Mortgage on a Parcel or the granting of a deed in lieu of foreclosure of a Leasehold Mortgage on a Parcel, or any Transfer made by the purchaser at foreclosure sale of a Leasehold Mortgage or by the grantee of a deed in lieu of foreclosure of a Leasehold Mortgage, if such purchaser or grantee is the Lender or a nominee of the Lender;
- 38.6.2. **Conveyance to Lender.** Any Transfer directly resulting from a conveyance to a Lender of Developer's interest in a Parcel;
- 38.6.3. **Estate Planning.** Any Transfer of all or any portion of any ownership interest in Developer for estate planning purposes, including without limitation, any Transfer into a charitable trust or a blind trust, provided the transferor maintains control over the interest in Developer being transferred;
- 38.6.4. **Transfers Among Affiliates.** Any Transfer, or series of Transfers, among affiliates of Developer, provided that at all times after such Transfer, either Timothy Hernandez, Richard Caster, or Kevin Rickard, or a successor individual approved by the City, continues to direct the day-to-day management and policies of Developer; or

- 38.6.5. **Transfers of Ownership Interests in Developer.** Any Transfer, or series of Transfers, totaling not more than ten percent (10%) of the direct or indirect ownership interests in Developer, provided that at all times after such Transfer, either Timothy Hernandez, Richard Caster, or Kevin Rickard, or a successor individual approved by the City, continues to direct the day-to-day management and policies of Developer.
- 38.6.6. **Transfers Resulting from Death or Incapacity.** Any Transfer resulting from the death or incapacity of Timothy Hernandez, Richard Caster, or Kevin Rickard, or from the death or incapacity of a successor individual approved by the City to direct the day-to-day management and policies of Developer.
- 38.7. **Transfers to an Acceptable Transferee.** After the completion of Parcels R1, R2, E, the Arch, and the Pier Street Extension, Transfers to an “Acceptable Transferee” will be permitted. An “Acceptable Transferee” is an individual or entity meeting the following minimum qualifications:
 - 38.7.1. **Development Experience.** The proposed transferee must possess development experience in the State of Florida equal to or better than the experience of the Developer as set forth in the Developer’s response to the RFQ.
 - 38.7.2. **Financial Resources.** The proposed transferee must possess the financial resources equal to or better than the financial resources of the Developer as set forth in the Developer’s response to the RFQ.
 - 38.7.3. **Character and Reputation.** The proposed transferee must possess a character, reputation and status in the community equal to or better than the character, reputation and status of the Developer as set forth in the Developer’s response to the RFQ.
 - 38.7.4. **No Violations.** The proposed transferee must have no outstanding material violation of a Governmental Requirement against the proposed transferee or against any property owned or managed by the proposed transferee in the State.
 - 38.7.5. **No Convictions or Indictments.** The proposed transferee must not be owned, controlled or run by entities or individuals who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or United States of America jurisdiction.
 - 38.7.6. **No Bankruptcies.** Neither the proposed transferee, nor any of the individuals or entities who own at least a 10% equity interest in the proposed transferee or who are officers, directors, managers or otherwise have the power to direct and control the business and affairs of the proposed transferee, have filed or been discharged from bankruptcy, or have been the subject of an involuntary bankruptcy, reorganization or insolvency proceedings within the past five years. Bankruptcy filings by affiliates will not disqualify a proposed transferee, unless such affiliates who own at least a 10% equity interest in the proposed transferee or who are officers, directors, managers or otherwise have the power to direct and control the business and affairs of the proposed transferee

- 38.8. **Transfers Requiring City's Consent.** For any Transfer of this Agreement other than a Permitted Transfer, Developer shall send City a written Transfer Application requesting approval of the Transfer.
- 38.8.1. The Transfer Application must include information showing that the proposed transferee is an Acceptable Transferee, including, at a minimum, (a) three years of externally reviewed financial statements; (b) a letter from a Florida bank or other financial institution doing business in Florida indicating the creditworthiness of the assignee; and (c) three letters of reference from unrelated third parties regarding assignee's character and business reputation in the community.
- 38.8.2. Upon request by City, Developer will submit any additional information reasonably requested by City to evaluate the proposed transferee.
- 38.8.3. The City will notify the Developer in writing within 30 days after its receipt of the Transfer Application if it approves the Transfer. If the City fails to respond to the Transfer Application within 30 days, the City shall be deemed to have withheld its consent to the Transfer in question. The City may reject a Transfer Application as long as City provides reasonable justification for why the proposed Transferee is not an Acceptable Transferee. Any consent to a Transfer does not waive any of the City's rights to consent to a subsequent Transfer.
- 38.9. **Transfer Conditions.** In order for a Transfer of this Agreement to be effective, the following conditions must be satisfied:
- 38.9.1. **City Consent.** If the Transfer is not a Permitted Transfer, City's prior written consent to the Transfer must be obtained.
- 38.9.2. **Entire Agreement.** The Transfer must be a Transfer of the entire Agreement;
- 38.9.3. **Written Notice to City.** City must be given written notice of the proposed Transfer together with true and correct copies of the proposed transfer documents and any other relevant agreements between the parties; current certified financial statements of the proposed transferee, if applicable; and any other relevant information about the proposed transferee at least 30 days prior to the intended effective date of the Transfer; and
- 38.9.4. **Assumption of Obligations by Transferee.** City must be provided with a written instrument in recordable form in which the Transferee, for itself and its successors and assigns, and for the benefit of the City, expressly assumes all of the obligations of Developer under this Agreement and agrees to be subject to all conditions and restrictions to which Developer is subject under this Agreement.
- 38.10. **Effectuation of Transfers.** No Transfer will be effective unless executed copies of the transfer documents and any other agreements between the parties to the Transfer are delivered to the City within 30 days after the Transfer.
39. **Notices.** All notices, demands, requests and other communications required under this Agreement must be given in writing and may be delivered (a) by hand, or (b) by certified

mail, return receipt requested, or (c) by a nationally recognized overnight delivery service such as Federal Express. Notice shall be deemed to have been given upon receipt or refusal of delivery. All notices, demands, requests and other communications required under this Agreement may be sent by facsimile or electronic mail provided that the facsimile or electronic communication is followed up by notice given pursuant to one of the three methods in the preceding sentence. Any party may designate a change of address by written notice to the other party, received by such other party at least ten days before the change of address is to become effective.

39.1. **Notice to Developer.** Notice to the Developer under this Agreement must be sent to:

Pompano Pier Associates, LLC
398 NE 6th Avenue
Delray Beach, Florida 33483
Attention: Timothy Hernandez
Telephone: 561 279 8706
Facsimile: 561 272 3951
Email: thernandez@newurbancommunities.com

With a copy to:

Kevin E. Rickard
398 NE 6th Avenue
Delray Beach, Florida 33483
Telephone: 561 279 8706
Facsimile: 561 272 3951
Email: krickard@newurbancommunities.com

With a copy to:

Richard Caster
398 NE 6th Avenue
Delray Beach, Florida 33483
Telephone: 561 279 9998
Facsimile: 561 279 7998
Email: rick@casterdevelopers.com

With a copy to:

Susan K. Robin, Esq.
18305 Biscayne Boulevard, Suite 302
Aventura, Florida 33160
Telephone: 305 468 4601
Facsimile: 305 356 7139
Email: srobin@robin-law.com

- 39.2. **Notice to City.** Notice to City under this Agreement must be sent to:

City of Pompano Beach
100 West Atlantic Boulevard
Fourth Floor
Pompano Beach, Florida 33060
Attention: City Manager
Telephone: 954.786 4601
Facsimile: 954 786 4504
Email: dennis.beach@copbfl.com

With a copy to:

Pompano Beach City Attorney
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Attention: Gordon Linn, Esq.
Telephone: 954.786.4614
Facsimile: 954 786 4617
Email: Gordon.linn@copbfl.com

- 39.3. **Notice to CRA.** Notice to the CRA under this Agreement must be sent to:

Redevelopment Management Associates
3109 East Atlantic Boulevard, Suite B
Pompano Beach, Florida 33062
Attention: Kim Briesemeister
Telephone: 954 695 0754
Facsimile: 954 783 4484
Email: kim@rma.us.com

With a copy to:

Weiss Serota Helfman Pastoriza Cole & Boniske, PL
200 East Broward Boulevard
19th Floor
Fort Lauderdale, Florida 33301
Attention: Jamie Cole, Esq.
Telephone: 954 763 4242
Facsimile: 954 764 7770
Email: jcole@wsh-law.com

40. **Miscellaneous Provisions.**

- 40.1. **Time is of the Essence.** Time is of the essence in the performance of all obligations of each party under this Agreement, including Developer's adherence to the Development Timeline.
- 40.2. **No Partnership or Joint Venture.** It is mutually understood and agreed that nothing contained in this Agreement is intended or is to be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners, or creating or establishing the relationship of a joint

venture between the City and Developer, or as constituting Developer as the agent or representative of the City for any purpose or in any manner whatsoever.

- 40.3. **Governing Law.** This Agreement will be governed by the laws of the State of Florida. This Agreement is subject to and must comply with the Charter and City Code of the City of Pompano Beach, as they exist on the date of execution of the Agreement. Any conflicts between this Agreement and the Charter and City Code will be resolved in favor of the Charter and Code.
- 40.4. **Venue.** Venue for any disputes arising out of this Agreement and for any actions involving the enforcement or interpretation of this Agreement will be in the State courts of the 17th Judicial Circuit of Broward County, Florida.
- 40.5. **Severability.** If any part of this Agreement is for any reason held to be unenforceable, the rest of the Agreement will remain fully enforceable.
- 40.6. **Conflicts of Interest; City Representatives Not Individually Liable.** No elected official, representative, or employee of the City has any personal interest, direct or indirect, in this Agreement. No elected official, representative or employee will participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she has an interest, directly or indirectly. No elected official, representative or employee of the City will be personally liable to Developer or any successor in interest for any amount which may become due to Developer, for any obligations of City under the Agreement, or in the event of any default or breach by the City.
- 40.7. **Section Headings.** Section headings are for convenience only and do not affect the interpretation of this Agreement.
- 40.8. **Counterparts.** This Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument. This Agreement is effective only after execution and delivery by the parties.
- 40.9. **Successors and Assigns.** This Agreement binds and inures to the benefit of the City and the Developer, and their permitted successors and assigns, except to the extent expressly limited by this Agreement.
- 40.10. **Entire Agreement.** This Agreement (including the Exhibits) constitutes the sole agreement of the parties with respect to its subject matter. It supersedes any prior written or oral agreements or communications between the parties.
- 40.11. **Amendments.** No amendment to this Agreement is binding on either party unless in writing and signed by both parties. The City is not obligated to spend any money or undertake any obligation in connection with an amendment proposed by Developer. If Developer requests an amendment to the Agreement or any other action by City, Developer must reimburse City for all third-party costs incurred by City (including but not limited to costs of third-party consultants and attorneys). Before the City takes action regarding any request, Developer must deposit with the City the estimated amount of third-party costs, as reasonably determined by the City.

- 40.12. **Approvals by the City.** All requests for action or approvals by the City will be sent to the City Attorney for decision as to who within the City, including the City Commission, must act or approve the matter on behalf of the City.
- 40.13. **Prevailing Party's Attorneys' Fees.** In the event that any party to this Agreement institutes legal proceedings in connection with the Agreement, the prevailing party will be entitled to recover its costs of suit, including without limitation, its attorneys' fees at both trial and appellate levels.
- 40.14. **Holidays.** The parties agree that whenever a notice or performance due under this Agreement falls on a Saturday, Sunday or on a legal holiday recognized by the City, the notice or performance will be postponed to the next following business day.
- 40.15. **Standard of Conduct.** The implied covenant of good faith and fair dealing under Florida law is expressly adopted in this Agreement.

[SIGNATURE PAGES TO FOLLOW]

"CITY":

Witnesses:

CITY OF POMPANO BEACH

Betty J. Mones

By:

Lamar Fisher
LAMAR FISHER, MAYOR

Shelley R. Bartholomew

By:

Dennis W. Beach
DENNIS W. BEACH, CITY MANAGER

Attest:

Mary L. Chambers
MARY L. CHAMBERS, CITY CLERK

(SEAL)

Approved by:

Gordon B. Linn
GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 28th day of January, 2013, by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **MARY L. CHAMBERS** 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.

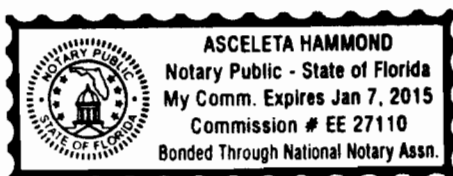
NOTARY'S SEAL:

Ascleta Hammond
NOTARY PUBLIC, STATE OF FLORIDA

Ascleta Hammond

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number



POMPANO PIER ASSOCIATES LLC, a
Florida limited liability company

By: Richard Caster, Pres
Richard Caster, President

Date: January 8 2013

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 8th day of January, 2013, by Richard Caster, as President 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
John A. Jacobs
Commission # EE129338
Expires: SEP. 12, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

John A. Jacobs
NOTARY PUBLIC, STATE OF FLORIDA

John A. Jacobs
(Name of Notary Typed, Printed or Stamped)

EE129338
Commission Number

APPENDIX

<u>TERM</u>	<u>SECTION</u>
Acceptable Transferee	Section 38.7
Access Control Structure	Section 17.1
Arch	Section 5.1
Beachfront Area	Section 8
Beachfront Concession Agreements	Section 8
Beachfront Concessionaires	Section 8
Beachfront License.....	Section 8
Building Permit	Section 15.1.1.1
Ceremonial Garden	Section 5.6
City	Preamble
Café Sites.....	Section 5.7
City Code	Section 8.9
City Obligations	Section 15.1
Conceptual Site Plan.....	Section 1
CPA	Section 11
CRA	Recitals
Developer	Preamble
Developer's Response to RFQ.....	Recitals
Development Timeline.....	Section 2
Effective Date	Section 4.1
Event of Default.....	Section 33
Existing Concession Building	Section 5.1
FDEP	Section 30.1
FDOT	Section 24.1
Fire Station	Section 15.1.1
Force Majeure	Section 35.3
Garage Valet Spaces	Section 22.2
Governmental Approval.....	Section 3.3
Governmental Authority	Section 3.2
Governmental Requirement	Section 3.1
Gross Revenue	Section 9

Hotel	Section 5.6
Improvement Cost	Section 7
Improvement Cost Report	Section 13
Improvements.....	Section 1
Inspection Period	Section 26
Lease Commencement Date.....	Section 6.4
Lease Term	Section 6.5
Lease Year	Section 7.1.2
Library	Section 15.1.2
Lift Station.....	Section 15.1.1
Major City Event	Section 8.8
Marketplace.....	Section 5.5
Minimum Rent	Section 7
OBS Concession Agreement	Section 8
Parcel	Section 5
Parcel Ground Lease	Section 1
Parking Area Improvements	Section 21.3
Parking Garage.....	Section 22
Parking Garage Documents.....	Section 22.2.1
Parking Management Fee	Section 20.8
Parking Revenue	Section 20.8
Pavilion.....	Section 5.5
Percentage Rent	Section 7
Percentage Rent Threshold.....	Section 7.8
Permitted Transfers.....	Section 38.6
Phase	Section 1
Pier Lot	Recitals
Pier Street Extension	Section 5.9
Pier Structure.....	Section 5.1
Project	Section 1
Property	Recitals
Property Reports.....	Section 26.1
Renderings	Section 2
RFQ	Recitals

Service ProvidersSection 15.3.2.2

Site PlanSection 2

State.....Section 10

Sublease.....Section 10

SubtenantSection 9

Surface Valet Spaces.....Section 23.1

TransferSection 37.1

Valet SpacesSection 20.2

Work Product.....Section 15.3

Exhibit A

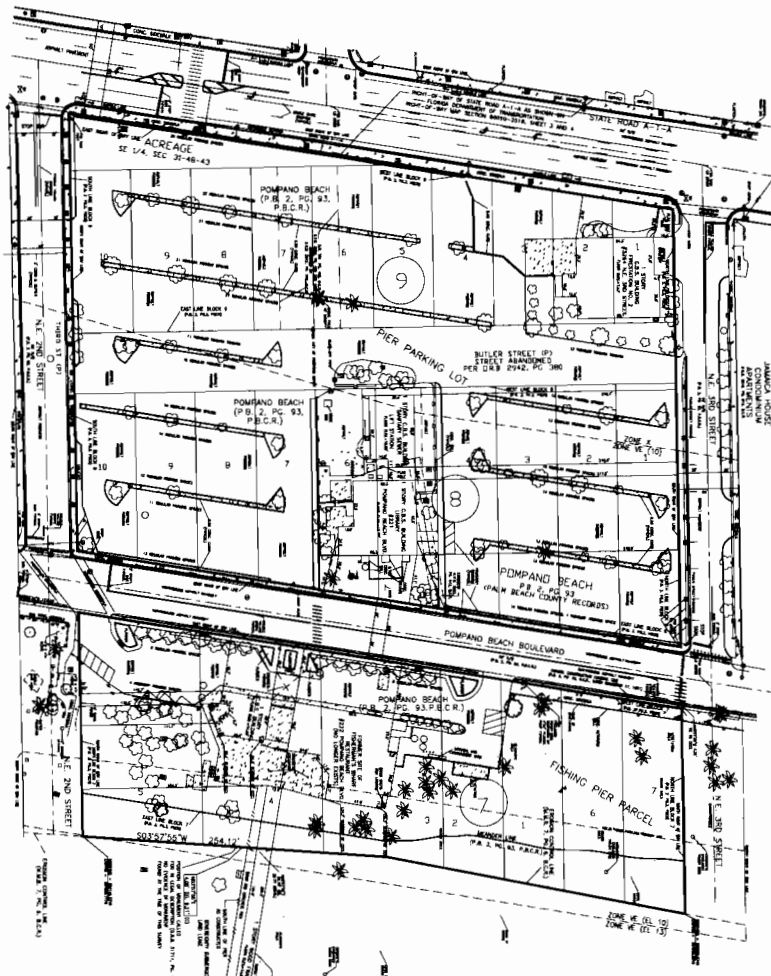
Legal Description of the Property

(see next page)

Legal Description of Beachfront Area

PORTIONS OF BLOCKS 6, 7, 11 & 12 OF POMPANO BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 93 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF POMPANO BEACH BOULEVARD AND THE SOUTH RIGHT-OF-WAY LINE OF N.E. 1ST STREET; THENCE NORTHEASTERLY ALONG SAID EAST RIGHT-OF-WAY LINE OF POMPANO BEACH BOULEVARD 1,800 FEET; THENCE, DEPARTING SAID RIGHT-OF-WAY LINE, SOUTHEASTERLY ALONG A LINE PERPENDICULAR TO SAID RIGHT-OF-WAY LINE TO THE EROSION CONTROL LINE; THENCE SOUTHWESTERLY ALONG SAID EROSION CONTROL LINE TO THE INTERSECTION OF A LINE PERPENDICULAR TO THE SAID EAST RIGHT-OF-WAY LINE OF POMPANO BEACH BOULEVARD; THENCE NORTHWESTERLY ALONG SAID PERPENDICULAR LINE TO THE POINT OF BEGINNING.



LEGAL DESCRIPTION

Fishing Pier Parcel
 Lots 1 through 7, Block 7, POMPAÑO BEACH, according to the plat thereof, recorded in Plat Book 2, page 93, of the Public Records of Palm Beach County, Florida, and the eastern extension thereof to the Erosion Control Line, recorded in Miscellaneous Map Book 7, Page 6 of the Public Records of Broward County, Florida.

Said lands situate, lying and being in the City of Pompano Beach, Broward County, Florida and containing a total net area of 1.957 acres (85,257 square feet), more or less.

Pier Parking Lot
 Lots 1 through 10, Block 8 and all of Lots 6 through 10 and those portions of Lots 1 through 5 lying East of the East Right of Way line of State Road A-1-A, Block 9, POMPAÑO BEACH, according to the Plat thereof as recorded in Plat Book 2, Page 93 of the Public Records of Palm Beach County, Florida.

TOGETHER WITH:
 That certain 50 foot Right of Way for Butler Street lying between said Blocks 8 and 9. Said Right of Way vacated by City of Pompano Beach Ordinance 65-10 and recorded in Official Records Book 2942, Page 380 of the Public Records of Broward County, Florida.

TOGETHER WITH:
 A parcel of land lying in the Southwest one-quarter (SW 1/4) of the Southeast one-quarter (SE 1/4) of Section 31, Township 48 South, Range 43 East, bounded as follows:

Bounded on the North at the intersection of the East Right of Way line of State Road A-1-A with the West line of said Block 9, POMPAÑO BEACH, as recorded in Plat Book 2, Page 93 of the Public Records of Palm Beach County, Florida;

Bounded on the South by the Westerly extension of the South line of Block 9, POMPAÑO BEACH, according to the Plat thereof as recorded in Plat Book 2, Page 93 of the Public Records of Palm Beach County, Florida;

Bounded on the West by the East Right of Way line of State Road A-1-A;

Bounded on the East by the West line of said Block 9, POMPAÑO BEACH.

Said lands situate, lying and being in the City of Pompano Beach, Broward County, Florida and containing a total net area of 4.168 acres (181,574 square feet), more or less.

BOUNDARY EXHIBIT

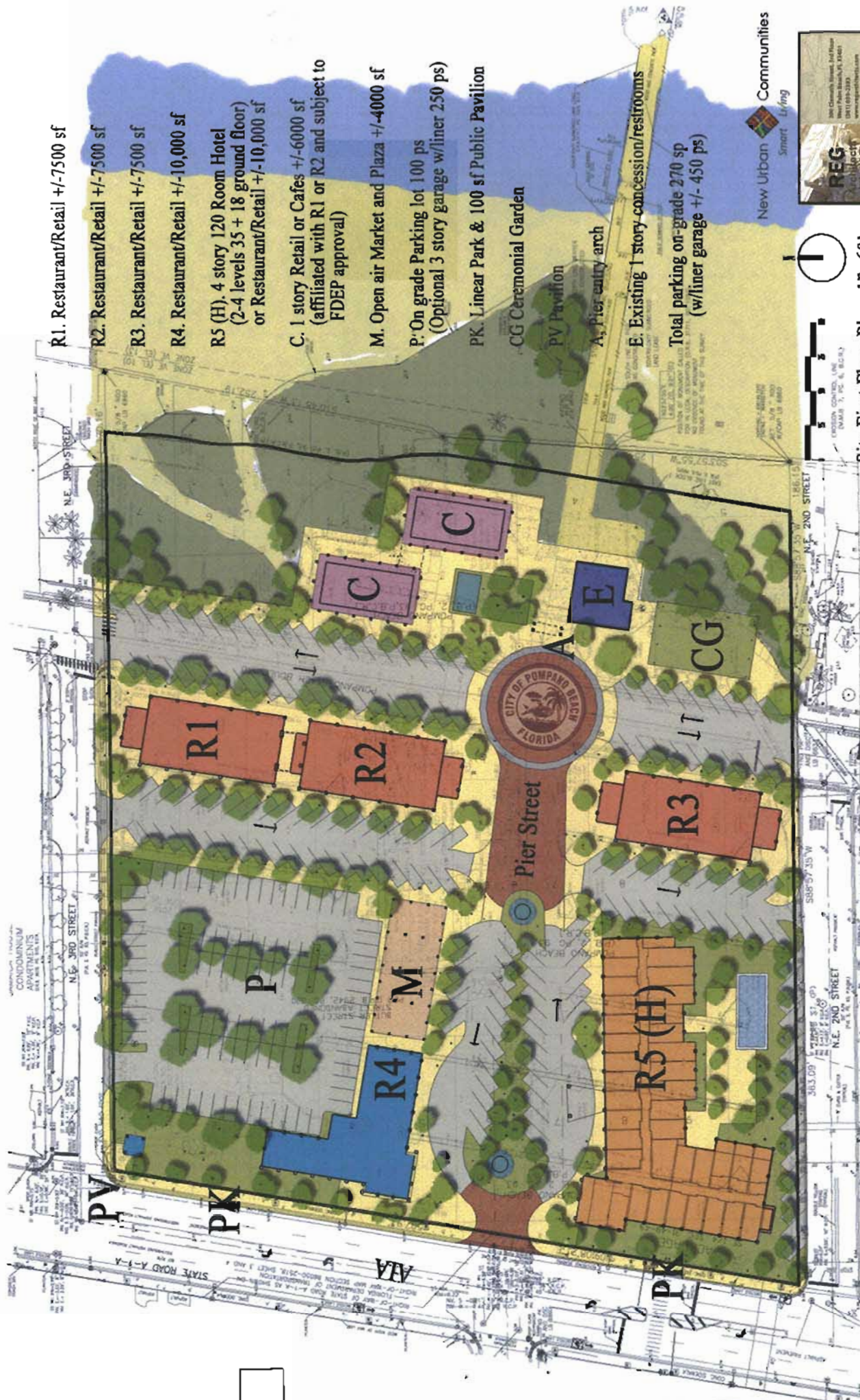
A PORTION OF SECTION 31, TOWNSHIP 48 SOUTH, RANGE 43 EAST
 CITY OF POMPAÑO BEACH, BROWARD COUNTY, FLORIDA

KEITH
 consulting engineers
 301 EAST ATLANTIC BOULEVARD
 POMPAÑO BEACH, FLORIDA 33060-6643
 (954) 788-3400 FAX (954) 788-3500
 EMAIL: mail@keith-associates.com LB NO. 6860

DATE **06/14/12**
 SCALE **1"=100'**
 FIELD BOOK _____
 DRAWN BY **LP**
 CHECKED BY _____

SHEET **01** OF **01**
 PROJECT NUMBER
0747005

Exhibit B
Conceptual Site Plan
(see next page)



R1. Restaurant/Retail +/-7500 sf

R2. Restaurant/Retail +/-7500 sf

R3. Restaurant/Retail +/-7500 sf

R4. Restaurant/Retail +/-10,000 sf

R5 (H). 4 story 120 Room Hotel
(2-4 levels 35 + 18 ground floor)
or Restaurant/Retail +/-10,000 sf

C. 1 story Retail or Cafes +/-6000 sf
(affiliated with R1 or R2 and subject to
FDEP approval)

M. Open air Market and Plaza +/-4000 sf

P. On grade Parking lot 100 ps
(Optional 3 story garage w/liner 250 ps)

PK. Linear Park & 100 sf Public Pavilion

CG Ceremonial Garden

PV Pavilion

A. Pier entry arch

E. Existing 1 story concession/restrooms

Total parking on-grade 270 sp
(w/liner garage +/- 450 ps)



EXHIBIT A
SCALE: 1" = 60'

Site First Floor Plan 1"=60'
Exhibit A

Exhibit C
Development Timeline
(see next page)

Development Timeline (Final)

Parcel	Lease Execution (LE)	Design Plans	Obtain Permits	Lease Commencement	Commence Construction	Substantial Completion
Parcel E	30-Jun-2013 (LE/E)	31-Dec-2013 (LE/E + 6 mos)	30-Jun-2014 (LE/E + 12 mos)	30-Jun-2014 (LE/E + 12 mos)	30-Sep-2014 (LE/E + 15 mos)	31-Mar-2015 (LE/E + 21 mos)
1 st of Parcels R1, R2, or R3	31-Jan-2014 (LE/R1)	31-Jul-2014 (LE/R1 + 6 mos)	31-Jan-2015 (LE/R1 + 12 mos)	31-Jan-2015 (LE/R1 + 12 mos)	30-Apr-2015 (LE/R1 + 15 mos)	30-Apr-2016 (LE/R1 + 27 mos)
2 nd of Parcels R1, R2 or R3	31-Jan-2015 (LE/R2)	31-Jul-2015 (LE/R2 + 6 mos)	31-Jan-2016 (LE/R2 + 12 mos)	31-Jan-2016 (LE/R2 + 12 mos)	30-Apr-2016 (LE/R2 + 15 mos)	30-Apr-2017 (LE/R2 + 27 mos)
3 rd of Parcels R1, R2 or R3	31-Jan-2016 (LE/R3)	31-Jul-2016 (LE/R3 + 6 mos)	31-Jan-2017 (LE/R3 + 12 mos)	31-Jan-2017 (LE/R3 + 12 mos)	30-Apr-2017 (LE/R3 + 15 mos)	30-Apr-2018 (LE/R3 + 27 mos)
Parcel R4	31-Jan-2016 (LE/R4)	31-Jul-2016 (LE/R4 + 6 mos)	31-Jan-2017 (LE/R4 + 12 mos)	31-Jan-2017 (LE/R4 + 12 mos)	30-Apr-2017 (LE/R4 + 15 mos)	30-Apr-2018 (LE/R4 + 27 mos)
Parcel R5/H	31-Jan-2017 (LE/R5)	31-Jul-2017 (LE/R5 + 6 mos)	30-Apr-2018 (LE/R5 + 15 mos)	30-Apr-2018 (LE/R5 + 15 mos)	31-Jul-2018 (LE/R5 + 18 mos)	31-Jan-2020 (LE/R5 + 36 mos)
Parcel C	31-Jan-2017 (LE/C)	31-Jul-2017 (LE/C + 6 mos)	30-Apr-2018 (LE/C + 15 mos)	30-Apr-2018 (LE/C + 15 mos)	31-Jul-2018 (LE/C + 18 mos)	31-Jul-2019 (LE/C + 30 mos)

Notes:

1. All dates shall be the later of the tentative dates shown in the table or the time period shown in the table.
2. All dates are outside dates, but may be adjusted in accordance with the provisions of the Development Agreement

Exhibit D

Form of Parcel Ground Lease

NOTE: AT THE TIME THE LEASE IS SIGNED, ALL BLANK SPACES MUST BE FILLED IN WITH APPLICABLE INFORMATION.

FORM OF PARCEL GROUND LEASE

THIS PARCEL GROUND LEASE ("Lease") is dated as of _____ and is between the **CITY OF POMPANO BEACH, FLORIDA**, a Florida municipal corporation ("City") and _____ ("Tenant").

RECITALS

The City is the owner of approximately 6.125 acres of oceanfront property located on Pompano Beach Boulevard (the "Property"). The Property is more particularly described in **Exhibit A** to this Agreement.

On September 30, 2011, the City issued Request for Qualifications No. H-46-11 ("RFQ") seeking a Developer for the redevelopment of the Property.

On October 19, 2011, after reviewing all proposals submitted in response to the RFQ, the Pompano Beach Community Redevelopment Agency ("CRA") ranked Pompano Pier Associates, LLC, a Florida limited liability company ("Developer") as the first-place respondent to the RFQ.

On October 25, 2011, the City Commission accepted the recommended ranking of submitted proposals and authorized staff to negotiate an agreement with the Developer to redevelop the Property in accordance with the terms and conditions of the RFQ.

On January __, 2013, the City and Tenant, as Developer, entered into a Development Agreement for the development of the Property by Tenant with food and beverage concessions, restaurants and eateries, beach and pier related retail, public parking, and active and passive open space, all in keeping with a maritime or "fishing village" theme.

The Development Agreement contemplates that the Property will be divided up into a maximum of seven separate development parcels -- Parcels R1, R2, R3, R4, R5, C and E (each one a "Parcel"), with each Parcel to be leased by Developer or by an "Acceptable Transferee" of Developer (as defined in the Development Agreement) pursuant to a separate ground lease prior to the commencement of development on the Parcel.

City has approved Tenant as an Acceptable Transferee of Developer.

City and Tenant are entering into this Parcel Ground Lease to enable Tenant to commence the development of Parcel ____ of the Property.

City and Tenant agree that the lease of the Parcel to Tenant will provide a benefit to the public at large as required by Section 253 of the City Charter.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Phase Ground Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Exhibits.** Attached to this Lease and incorporated into this Lease by reference are the following Exhibits:

Exhibit A – Legal Description of the Property

Exhibit B – Legal Description of Parcel ____

Exhibit C – Parcel Site Plan

Exhibit D - Development Timeline

Exhibit E – Development Agreement

Exhibit F – Description of Parcel Improvements

Exhibit G – Renderings of the Parcel Improvements

Exhibit H – Ownership of Tenant

Exhibit I – Memorandum of Lease

2. **Definitions.** For purposes of this Lease, the following terms are defined as follows:

- 2.1. **Acceptable Transferee.** An individual or entity meeting the requirements of Section ____ of this Lease.
- 2.2. **Attorneys' Fees.**
- 2.3. **Building Permit.** A construction permit as described in the City Code.
- 2.4. **Certificate of Occupancy.** A final certificate of occupancy as described in the City Code.
- 2.5. **City.** The City of Pompano Beach, Florida.
- 2.6. **City Code.** The City of Pompano Beach Code of Ordinances.
- 2.7. **Completion Date.** The date upon which a Certificate of Occupancy is issued for the last of the Improvements to be constructed under this Lease.
- 2.8. **Conceptual Site Plan.** The Conceptual Site Plan for the Property attached as **Exhibit C.**
- 2.9. **Construction Lender.** The holder of a Leasehold Mortgage securing funds that are used for the construction of the Phase.
- 2.10. **CPA.** A certified public accountant licensed to do business in the State.
- 2.11. **CRA.** The Pompano Beach Community Redevelopment Agency, a public body created pursuant to Chapter 163, Part III, Florida Statutes.
- 2.12. **Default Rate.** The highest rate of interest permitted by law.
- 2.13. **Developer.** Pompano Pier Associates, LLC, a Florida limited liability company.
- 2.14. **Development Agreement.** The Development Agreement between the City and the Developer, dated January 28, 2013 and attached as **Exhibit E.**

- 2.15. **Development Timeline.** The timeline for the development of each Parcel of the Project attached as **Exhibit D**.
- 2.16. **Governmental Approval.** Any permit, authorization, certification, or other documentation required by a Governmental Authority.
- 2.17. **Governmental Authority.** Any federal, state, county, municipal or other governmental department, entity, authority, commission board, bureau, court, agency, or any instrumentality of any of them.
- 2.18. **Governmental Requirement.** Any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, order, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued.
- 2.19. **Gross Revenue.** Any and all revenue (whether cash, credit or barter) paid to or collected by any individual or entity that uses or occupies any portion of the Parcel pursuant to a written or oral agreement with Tenant, including, but not limited to, a sublease, license or concession agreement. Gross Revenue does not include any of the following: (a) parking revenues generated by the Parcel; (b) insurance loss proceeds which are applied toward restoration of the Improvements; (c) any award or payment made by a Governmental Authority in connection with the exercise of any right of eminent domain, condemnation, or similar right or power; (d) sales taxes; (e) employee meals, if free or discounted for such employees and their immediate family members, and (f) the proceeds of any sale of a Subtenant's business to a third party.
- 2.20. **Improvement Cost.** The sum of \$_____, which is the minimum cost of constructing the Parcel Improvements, including all hard construction costs and soft costs such as financing, testing, permitting, and design costs.
- 2.21. **Improvements.** The Improvements to be constructed by Tenant on the Parcel, as more particularly described in **Exhibits F and G**.
- 2.22. **Lease.** This Parcel ___ Ground Lease.
- 2.23. **Lease Commencement Date.** The earlier of (i) the Lease Commencement Date for the Parcel set forth in the Development Timeline, or (ii) the date that a Building Permit is issued for the Parcel.
- 2.24. **Lease Term.** The term of the Lease, which is 50 years, beginning on the Lease Commencement Date.
- 2.25. **Lease Year.** Each 12-month period during the Lease Term.
- 2.26. **Leasehold Interest.** Tenant's interest in the Parcel and the Parcel Improvements..
- 2.27. **Leasehold Mortgage.** A mortgage given by Tenant or by any permitted successors or assignees of Tenant to a Lender that is secured by Tenant's (or Tenant's permitted successors' or assignees') leasehold interest in the Parcel.
- 2.28. **Lender.** Any federal or state chartered commercial bank, national bank, savings and loan association, savings bank, trust company, or private investor.

- 2.29. **Minimum Rent.** \$_____ per Lease Year, subject to adjustment as set forth in the Lease.
- 2.30. **Minimum Rent Commencement Date.** The 90th day after issuance of a CO for the Improvements.
- 2.31. **Parcel.** Parcel _____ of the Property, as more particularly described in **Exhibit B.**
- 2.32. **Parcel Site Plan.** A site plan for the Parcel showing the layout and identification of all structures, facilities and landscaping.
- 2.33. **Percentage Rent.** _____ % of Gross Revenue in excess of \$_____, subject to adjustment as set forth in the Lease.
- 2.34. **Phase.** The period of development of the Parcel.
- 2.35. **Plans.** The construction plans and specifications for the Improvements, as described in Section _____.
- 2.36. **Project.** A development to be located on the Property, intended to consist of food and beverage concessions, restaurants and eateries, beach and pier related retail, public parking, and active and passive open space, all in keeping with a maritime or "fishing village" theme. In this Lease, references to the Project will mean the portions of the Project located on the Parcel.
- 2.37. **Property.** The 6.125-acre (+/-) parcel of real property located in the City of Pompano Beach, Broward County, Florida, more particularly described in **Exhibit A**, which Property included this Parcel.
- 2.38. **Public Charges.** All levies, assessments, fees, charges and taxes (imposed or assessed against the Parcel, the Project, Rents, and Subleases, including, without limitation, ad valorem real property taxes; personal property taxes; taxes on Rent payable under this Lease; taxes on rent paid under Subleases; tourist, room and restaurant taxes; public assessments; special assessments; and taxes on Utilities.
- 2.39. **Rent.** Minimum Rent, Percentage Rent, and any Additional Rent due under this Lease.
- 2.40. **Renderings.** The sketches of the proposed Improvements attached as **Exhibit G.**
- 2.41. **RFQ.** City of Pompano Beach Request for Qualifications No. H-46-11.
- 2.42. **State.** The State of Florida.
- 2.43. **Sublease.** A lease, license or concession agreement between Tenant and any Subtenant or between Subtenant and any individual or entity that uses or occupies any portion of the Parcel.
- 2.44. **Subtenant.** Any individual or entity that uses or occupies any portion of the Parcel pursuant to a written or oral agreement, including, but not limited to, a sublease, sub-sublease, license or concession agreement. The term "Subtenant" includes all parties that may use or occupy any portion of the Parcel, such as sub-subtenants, licensees, and concessionaires.
- 2.45. **Tenant.** _____

- 2.46. **Transfer.** Any sale, assignment or conveyance of the Project, this Lease, Tenant's interest in the Parcel, or any interest in Tenant.
- 2.47. **Work.** The labor and materials required to complete the construction of the Improvements on the Parcel, and any related buildings or structures not located on the Parcel, in a good and workmanlike manner in accordance with the Plans and all applicable Governmental Requirements.
3. **Lease of Parcel.** The City hereby demises and leases the Parcel to Tenant, and the Tenant accepts possession of the Parcel from City, subject to the terms and conditions of this Lease and the Development Agreement (including any subsequent amendments to the Development Agreement).
4. **Lease Term.** The Lease Term will begin on the Lease Commencement Date and will be for a period of 50 years. Tenant is not permitted to use or occupy the Parcel, or carry on any activities on the Parcel until the Lease Commencement Date.
5. **Rent.** Tenant shall pay to City, as Rent, the Minimum Rent, the Percentage Rent, and the Additional Rent, if any, for each Lease Year.
- 5.1. **Minimum Rent.** Tenant agrees to pay Minimum Rent in accordance with this Lease.
- 5.1.1. **Amount.** The Minimum Rent for the Parcel will be \$60,000 per Lease Year.
- NOTE: \$12,000 for Parcel E; \$30,000 for Parcel C and \$60,000 if Parcel C can be developed with an enclosed air-conditioned restaurant,**
- 5.1.2. **Minimum Rent Payment Due Dates.** All payments of Minimum Rent are due and payable in advance on the first day of each calendar quarter (January 1, April 1, July 1 and October 1).
- 5.1.3. **Minimum Rent Commencement Date.** Minimum Rent will commence on the 90th day after issuance of the Certificate of Occupancy for the Improvements. If the Minimum Rent Commencement Date occurs on a date other than the first day of a calendar quarter, the Minimum Rent due for the initial and final partial quarters will be prorated.
- 5.1.4. **Increase to Minimum Rent.** The Minimum Rent will remain constant for the first 5 Lease Years. Beginning in the 6th Lease Year, and every five years thereafter, the Minimum Rent will increase by 7.5%.
- 5.2. **Percentage Rent.** Tenant agrees to pay Percentage Rent in accordance with this Lease.
- 5.2.1. **Amount.** The Percentage Rent for the Parcel will be 1.25% of the Gross Revenue generated by the Parcel in excess of \$4,800,000. Tenant shall pay the Percentage Rent due City on an annual basis within 45 days after the end of each Lease Year during the Lease Term.

NOTE:

For Parcel E, Percentage Rent is 1.25% of Gross Revenue in excess of \$960,000.

For Parcel C, Percentage Rent is 1.25% of Gross Revenue in excess of \$2,400,000. If Parcel C can be developed with an enclosed air-conditioned restaurant, Percentage Rent is 1.25% of Gross Revenue in excess of \$4,800,000.

5.2.2. Increase to Percentage Rent Threshold Amount. The threshold amount of Gross Revenue requiring the payment of Percentage Rent will remain constant for the first 5 Lease Years. Beginning in the 6th Lease Year, and every five years thereafter, the threshold amount will increase by 7.5%.

5.2.3. Percentage Rent Due Date. Percentage Rent will be due and payable within 45 days after the end of the Lease Year.

5.3. Additional Rent. Any sums to be paid by Tenant to City under the terms of this Lease – other than Minimum Rent or Percentage Rent – will be Additional Rent, and will be subject to all of the requirements applicable to the payment of Rent. Tenant will pay any Additional Rent when due under this Lease.

5.4. Payment of Rent Generally. Tenant agrees to pay the Minimum Rent, Percentage Rent, and Additional Rent, if any, (collectively, “Rent”) when due and payable. All Rent and other payments required to be made to the City under the Lease must be paid to the City at the following address:

City of Pompano Beach Treasury Division
100 West Atlantic Boulevard
Room 135
Pompano Beach, Florida 33060
Attention: Revenue Collections Manager

or at such other place as the City shall designate from time to time by Notice given pursuant to the notice provisions of this Lease. Payments must be made by check mailed or delivered to City or by wire transfer to a City account designated by the City Director of Finance.

5.5. Late Payments. Any late payment of Rent or any late payment of any other sums due under the Lease will automatically accrue interest at the Default Rate from the date the payment was due until paid.

6. Reporting of Gross Revenue. Tenant and all Subtenants must report Gross Revenue in a format which identifies and shows the dollar amount of any item which is excluded from Gross Revenue. All reports of Gross Revenue used to calculate any payments due City under this Lease must reconcile with the Gross Revenue shown on the monthly State sales tax returns filed by Tenant or by any applicable Subtenants.

6.1. Documentation. All revenue data reported or used to arrive at the amounts of any payments to City under this Lease must be verifiable and supported by acceptable source documents (“Source Documents”). Source Documents include but are not limited to Florida Department of Revenue sales and use tax returns, Federal tax returns, 1099 forms from credit card companies, credit card reports,

bank deposit slips, bank statement, wire fund transfer documents, sales invoices, point of sale receipts, cash register reports, sales terminal reports, and financial statements. If Subtenants are not able to utilize a computerized terminal or cash register, the use of pre-numbered sales receipts will be required in order to provide an adequate record.

- 6.2. **Subtenant Bank Accounts.** All Subleases of the Parcel must require each Subtenant to maintain a separate bank account for the respective Subtenant's daily operations on the Property.
- 6.3. **Statement of Gross Revenue.** Within 45 days after the close of each Lease Year, Tenant will furnish to City one or more certified gross sales reports detailing all of the Gross Revenue generated by the Parcel during the Lease Year (the "Statement"), together with a calculation of the Percentage Rent for the Lease Year. The Statement must be prepared both in accordance with generally accepted accounting principles and consistent with the form required by the State for the reporting of sales tax. The Statement must be accompanied by copies of the Source Documents supporting the information in the Statement. The Statement will be certified by Tenant as a true and correct determination of the Percentage Rent based on the Gross Revenue for the applicable Lease Year, and must be accompanied by Tenant's payment of the Percentage Rent for the Lease Year.
- 6.4. **Revenue Included.** Without limiting the definition of Gross Revenue, the following revenue generated by the Parcel will be included in Gross Revenue: revenue from food, beverage and retail sales, concessions, rental fees, subleases, third party contracts, use agreements, recreational programs and services, events, admissions, ticket sales, and commissions.
7. **Records Retention and City's Right to Audit.** All records of Tenant must be made available locally, at the expense of the Tenant, for inspection and audit by a CPA retained by the City, the City's Internal Auditor, or any other designee of the City.
 - 7.1. **Availability of Records.** Records must be made available for inspection at all reasonable times, after reasonable notice from City, throughout the term of this Lease, and for a period of three years after the date of the final payment due under this Lease.
 - 7.2. **Record Retention.** All records of Tenant must be retained until the later of (a) three years after the date of the final payment due under this Lease; or (b) as required by applicable law, including the required retention period of the Florida Public Records Act set forth in Chapter 119 of the Florida Statutes.
 - 7.3. **Records to be Retained.** The records required to be retained under this Lease include, but are not limited to, all business records, bookkeeping and accounting records, sales and income tax records and returns, bank statements, tax deposits, supporting documents, statistical records, sales reports, and any other records which may be pertinent to this Lease or to the calculation of Gross Revenue, including Subtenants' sales receipts.

- 7.4. **Audit Results.** If any inspection or audit performed by the City discloses an underpayment by Tenant to City, then Tenant must pay to City, within 15 days after receipt of the City's inspection or report, the amount due with respect to the understatement, plus interest at the rate of 18% from the date the payment was originally due until the date of payment. Tenant must also reimburse City for its reasonable costs incurred in conducting the audit in the event the audit reveals a discrepancy of more than 5% in the amount of Gross Revenue reported by Tenant.
8. **Sales Tax.** Tenant will be responsible for insuring the collection and remission to the State of all sales tax required to be paid in connection with the use and operation of the Parcel.
9. **Tenant's Obligation to Pay Public Charges.** Tenant covenants and agrees to timely pay and discharge, before any fine, penalty, interest or cost may be added, all levies, assessments, fees, charges and taxes (collectively, "Public Charges") imposed or assessed against the Parcel, the Project, Rents, and Subleases, including, without limitation, ad valorem real property taxes; personal property taxes; taxes on Rent payable under this Lease; taxes on rent paid under Subleases; tourist, room and restaurant taxes; public assessments; special assessments; and taxes on Utilities.
- 9.1. **Payment of Public Charges.** Tenant's obligation to pay and discharge Public Charges levied, assessed or imposed against or with respect to Parcel and the Project will commence on the Lease Commencement Date. If the Lease Commencement Date is not at the beginning of a calendar year, the Public Charges for the first Lease Year will be prorated between Tenant and City. Upon written request by City, Tenant will provide to City the official receipts of the appropriate taxing authority, or other proof satisfactory to the City evidencing the payment of any Public Charges for which Tenant is responsible under this Lease.
- 9.2. **Payment in Lieu of Ad Valorem Taxes.** If during the Term all or a portion of the Parcel is no longer subject to ad valorem taxes (or to a tax imposed on the Parcel in lieu of or replacing an ad valorem tax) due to legal or judicial action or otherwise, then Tenant shall, each year during the Term, make payments to the City in lieu of such ad valorem taxes in an amount equal to that which would have accrued to the City if the Parcel was subject to ad valorem taxes in the applicable Lease Year (pro-rated for any partial calendar year). Such payment shall be made on the first day of April of each succeeding year. The amount to be paid under this paragraph will be calculated by multiplying the assessed value of the Parcel as determined by the Property Appraiser by the millage rate established by the City.
10. **Contesting Public Charges.** Tenant may contest the amount or validity, in whole or in part, of any Public Charges for which Tenant is (or is claimed to be) liable, by appropriate proceedings diligently conducted. Upon the termination of the proceedings, Tenant must pay the amount of the Public Charges determined to be due, together with any costs, fees, including Attorneys' Fees, interest, penalties and any other liabilities arising out of the proceedings.
- 10.1. **Joinder by City.** City will not be required to join in any proceedings to contest any Public Charges unless Governmental Requirements require that the

proceedings be brought by or in the name of City, in which event the City will join in the proceedings or permit them to be brought in the City's name.

- 10.2. **City Not Liable For Cost to Contest.** Except for any counsel it retains separately, the City will not be liable for any fees incurred in contesting any Public Charges, including counsel fees, costs and expenses regarding such proceedings. Tenant agrees to pay such fees, including commercially reasonable counsel fees, costs and expenses or, on receipt of written demand, to make reimbursement to the City for such payment.
11. **Utilities.** Tenant will be responsible for paying or causing its Subtenants to pay all charges and fees for all utilities provided to any portion of the Parcel during the Term.
 - 11.1. **Timely Payment of Utility Charges.** Tenant agrees to pay or cause its Subtenants to pay all fees, charges and deposits for all utilities servicing the Parcel on a timely basis. If Tenant or its Subtenants fail to pay any utility charges on a timely basis, and the City receives notice that utility charges are past due, City will have the right (but not the obligation) to pay the past due utility charges. Any funds advanced by City for utility charges will be considered Additional Rent under this Lease, and will be due and payable by Tenant upon receipt of notice from City.
12. **Permitted Uses of the Parcel.** During the Lease Term, Tenant and any Subtenants may use the Parcel for any use permitted by the applicable Governmental Requirements ("Permitted Use") at the time of such use. Any use of the Parcel other than a Permitted Use is prohibited.
 - 12.1. **Restrictions on Use.** Tenant shall not use the Parcel or any portion of it, or permit the use of all or any portion of the Parcel for any of the following: any unlawful or illegal business, use or purpose; any business, use or purpose which is immoral or disreputable; any hazardous use; any use which could constitute a public or private nuisance; any use which violates in any way the Certificate of Occupancy or other Governmental Approvals; or any use which violates a Governmental Requirement. Tenant shall not convert the use of the Parcel or any portion thereof to any time-sharing, time interval or cooperative form of ownership, or to subject the same to any condominium regime.
 - 12.2. **Compliance with Governmental Requirements.** Tenant shall comply with all Governmental Requirements applicable to the Parcel, including, without limitation, those prohibiting discrimination by reason of race, color, religion, sex, national origin, or handicap in the development, construction, management, lease, use or occupancy of the Project or any portion thereof.
 - 12.3. **Request for Additional Use.** If Tenant desires to use any portion of the Parcel for a use that is not a Permitted Use under this Lease, Tenant must seek written consent from the City, which consent may be withheld or denied in City's sole discretion.
13. **Title and Survey Issues.** Tenant acknowledges that it has received the title and survey information required under the Development Agreement, and that City has no further obligations with regard to matters of title and survey under this Lease.

14. **"As Is" Condition of the Parcel.** Tenant acknowledges and agrees that prior to the execution of this Lease it has been given the opportunity to perform all inspections and investigations concerning the Parcel to its satisfaction and that, except as expressly provided in the Development Agreement and this Lease, the City is not making and has not made any representations or warranties, express or implied, as to the Parcel, including but not limited to, title, survey, physical condition, suitability or fitness for any particular purpose, value, financial prospects or condition, or the presence or absence of hazardous substances. Tenant acknowledges that it has relied solely on Tenant's own inspections and investigations of the Parcel in its determination of whether to proceed with the Project. As a material part of the consideration of this Lease, Developer agrees to accept the Parcel in its "as is" and "where is" condition, subject only to the City Obligations described in the Development Agreement, without any representations or warranties other than those expressly stated in this Lease.
15. **Parcel Development Deadlines.** Tenant expressly agrees that the Parcel will be developed in accordance with the Development Timeline attached as **Exhibit D**, and that time is of the essence in the development of the Parcel. The specific deadlines for the development of the Parcel are as follows:
 - 15.1. **Plans and Permit Application.** The deadline for completion of the Plans and submission of a Building Permit application is on or before _____.
 - 15.2. **Building Permit.** The deadline for obtaining the Building Permit is on or before _____.
 - 15.3. **Commencement of Construction.** The deadline for commencement of construction is on or before _____.
 - 15.4. **Certificate of Occupancy.** The deadline for obtaining a Certificate of Occupancy is on or before _____.
16. **Evidence of Funding Sources.** Prior to submitting an application for a Building Permit, Tenant must provide to City evidence satisfactory to City, in City's sole discretion, of the source of funds for the construction of the Improvements. The source of funds may be loan funds, equity investment, or a combination of both, as long as the sources of funds total 100% of the Improvement Cost. Examples of satisfactory evidence of funding include one or more of the following:
 - 16.1. **Loan Commitment.** A fully executed loan commitment from a Lender committing to loan to Tenant an amount equal to the Improvement Cost; or
 - 16.2. **Equity Investment.** Evidence of a bank or investment account in Tenant's name containing funds equal to the Improvement Cost (or the portion of the Improvement Cost not covered by another source of funding), along with a written covenant by Tenant that the funds will not be used for anything other than the construction of the Improvements.
17. **Guaranty of Completion.** Prior to City's issuance of a Building Permit for the Improvements, Tenant must provide to City a form of security for Tenant's obligation to complete construction of the Improvement. Acceptable forms of security include a performance bond, personal guarantees by the principals of the Tenant, or a letter of credit in the amount of the Improvement Cost. The form of security must include a

guaranteed source of funds to be available to the City to complete construction of any unfinished Improvements. The security must be satisfactory to the City in its sole discretion.

18. **Parcel Improvement Cost.** Tenant agrees to expend a minimum of 50% of the Improvement Cost during the first two years of the Lease Term, and the balance of the Improvement Cost during the second two years of the Lease Term.

19. **Reporting of Parcel Improvement Costs.**

- 19.1. **Semi-annual Improvement Cost Reports.** Beginning after the Lease Commencement Date, and until completion of the Improvements, Tenant will be required to submit to the City an "Improvement Cost Report" for the Parcel on or before January 30 and July 30 of each calendar year. Each Improvement Cost Report must include the following information and documentation:

19.1.1. Cost of Improvements (or portions of Improvements) completed to date;

19.1.2. Description of Improvements completed to date;

19.1.3. Estimated or actual completion date for each Improvement; and

19.1.4. Copies of cancelled checks, bank statements, wire transfers or other documentation evidencing payment of the Improvement Costs shown in the Improvement Cost Report

- 19.2. **Improvement Cost Record Retention.** All records pertaining to the construction of any Improvements must be made available for inspection at all reasonable times, after reasonable notice from City, throughout the term of this Agreement, and for a period of three years after the date of the final payment due under this Lease.

- 19.3. **Record Retention.** All records pertaining to the Improvement Costs must be retained until the later of (a) three years after the date of the final payment due under this Lease; or (b) as required by applicable law, including the required retention period of the Florida Public Records Act set forth in Chapter 119 of the Florida Statutes.

- 19.4. **Format of Report.** The Improvement Cost Reports may be provided in spreadsheet format, as long as each report is accompanied by the appropriate documentation evidencing payment of the Improvement Costs shown in the report. The Improvement Cost Reports must be submitted to:

City of Pompano Beach Finance Department
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Attention: Controller, Room 480

20. **Construction of Improvements.**

- 20.1. **Deadlines.** Tenant must strictly adhere to all design, permitting, and construction deadlines for the Parcel set forth in the Development Timeline attached as **Exhibit D.**

- 20.2. **Plans.** Tenant will be responsible for preparing the Plans. The Plans must conform in all material respects to all applicable Governmental Requirements, the Parcel Site Plan, and the Description of Improvements attached to this Lease. The Plans must include, without limitation, the following:
- 20.2.1. Schematic designs and architectural drawings;
 - 20.2.2. Foundation and structural drawings;
 - 20.2.3. Electrical and mechanical drawings including, without limitation, plans for all lighting facilities affecting the exterior appearance of the Improvements;
 - 20.2.4. Landscaping plans; and
 - 20.2.5. Final specifications.
- 20.3. **Governmental Approvals.** Tenant shall secure and pay for any Governmental Approvals required for the construction of the Improvements on the Parcel, as well as any Governmental Approvals that may be required for any alterations and renovations permitted by this Lease. Tenant shall pay all fees and charges due any Governmental Authority in connection with the issuance of any required Governmental Approvals.
- 20.4. **Construction Quality.** Tenant agrees to perform all work ("Work") required to complete the construction of the Improvements on the Parcel, and any related buildings or structures not located on the Parcel, in a good and workmanlike manner in accordance with the Plans and all applicable Governmental Requirements.
- 20.5. **Tenant's Obligations During Construction.** Prior to the Completion Date, Tenant shall:
- 20.5.1. Perform and complete the Work;
 - 20.5.2. Select the means and methods of construction, using only adequate and safe procedures, methods, structures and equipment;
 - 20.5.3. Furnish, erect, maintain and remove any construction equipment and temporary structures that may be required to perform the Work; be responsible for the safety, efficiency and adequacy of the construction equipment and construction methods used, and be responsible for any damage which may result from any failure of the construction equipment or any failure in the method of construction;
 - 20.5.4. Provide all architectural and engineering services, scaffolding, hoists, temporary structures, light, heat, power, toilets, temporary utility connections, equipment, tools and materials and whatever else may be required for the proper performance of the Work;
 - 20.5.5. Order and have delivered all materials required for the Work and be responsible for properly securing, protecting and insuring the materials and making certain they remain in good condition;

- 20.5.6. Maintain the Parcel in a clean and orderly condition at all times commensurate with the public beachfront nature of the Project, and remove all paper, cartons and other debris from the Parcel;
- 20.5.7. Protect all Work prior to its completion and acceptance;
- 20.5.8. Preserve all properties adjacent to or leading to the Parcel, and restore and repair any such properties damaged as a result of construction of the Improvements, whether such properties are publicly or privately owned;
- 20.5.9. Implement and maintain in place at all times a comprehensive hurricane and flood plan for the Parcel and the Work, and provide a copy of same to the City;
- 20.5.10. Upon completion, deliver to the City an as-built survey and as-built plans and specifications for the Improvements;
- 20.5.11. Upon completion of the Improvements, deliver to the City a copy of the final CO for the completed Improvements;
- 20.5.12. Carry on any construction, maintenance or repair activity with diligence and dispatch and use diligent effort to complete the Work in the shortest commercially reasonable time under the circumstances.
- 20.5.13. Take commercially reasonable precautions to protect property adjacent to the Parcel, or property which is in the vicinity of or is in anyway affected by the Work, and be entirely responsible and liable for all damage or injury to all adjacent public and private property as a result of Tenant's operations.
- 20.5.14. At all times enforce discipline and good order among its employees and the general contractor at the Parcel site.
- 20.6. **Tenant to Provide Quarterly Progress Reports.** Tenant must keep the City apprised of Tenant's progress regarding the Work. Tenant will deliver written reports of the progress of construction not less than quarterly. The quarterly progress reports are to be delivered to the City Manager or his or her designee.
- 20.7. **City's Representative.** The City may designate one or more employees or agents to be the City's Representative for the Project. The City's Representative may, during normal business hours, visit, inspect or appraise the Project, and any materials, contracts, records, plans, specifications and shop drawings relating to the Project, whether kept at Tenant's offices or at the Project construction site or elsewhere. Tenant agrees to advise City's Representative of meetings among Tenant, Tenant's representative and the contractor or subcontractor or any subset of this group, and City's Representative will be entitled to attend such meetings. Tenant agrees to cooperate with the City to enable City's Representative to conduct site visits, inspections and appraisals.
- 20.8. **Certificates of Final Completion.** After Tenant completes the Work and obtains a Certificate of Occupancy for the Improvements, the City will deliver to Tenant, upon request by Tenant, a recordable Certificate of Final Completion certifying that, to the best of the City's knowledge, Tenant has satisfied all of its obligations

to the City, in its capacity as landlord under this Lease, for the construction of the specified Improvements. If the City fails or refuses to provide the Certificate of Final Completion, the City must, within 30 days after receipt of a written request from Tenant, provide Tenant with a written statement indicating in what respects Tenant has failed to complete the Work, or is otherwise in default, and what measures and acts, in the opinion of the City, are necessary for Tenant to obtain a Certificate of Final Completion.

- 20.9. **Utilities.** Tenant shall install or cause to be installed all necessary connections between the Improvements and any utilities, whether owned publicly or privately. Tenant will be responsible for payment of all utility connection fees. City will allow Tenant credit for any existing connections on the Parcel, and any other credits available.
21. **Changes to the Improvements.** After the Improvements have been completed, Tenant will not make any alterations or additions ("Changes") to the Improvements without the City's prior written consent. Any permitted Changes will be made in a good and workmanlike manner, in accordance with approved plans, if required, and in accordance with all Governmental Requirements. The Tenant's obligations during construction of the Improvements set forth in Section ____ of this Lease will also apply to any Changes to the Improvements.
22. **Parking.** This Lease is subject to all of the terms and conditions pertaining to parking set forth in the Development Agreement.
 - 22.1. **Construction of Parking Garage by City.** If the City builds or takes over the construction of the Parking Garage, as set forth in the Development Agreement, and the land upon which the Parking Garage is to be constructed is included within the Parcel, City and Tenant will amend this Lease to remove the Parking Garage land from the legal description of the Parcel. Tenant's failure to execute an amendment to this Lease removing the Parking Garage land from the legal description of the Parcel will be an Event of Default by Tenant.
23. **Transfers and Assignments.** Tenant may not transfer or assign its rights under this Lease except as set forth in the Development Agreement.
24. **Subleases.**
 - 24.1. **Subleases Permitted.** Subject to the other terms and conditions of this Lease, Tenant has the right to enter into Subleases with Subtenants at any time during the Lease Term upon commercially reasonable terms and conditions.
 - 24.2. **Structuring of Subleases.** No Sublease may be structured in a manner to reduce the Percentage Rent payable to the City.
 - 24.3. **Tenant to Comply with Subleases.** Tenant covenants that it will perform and observe all the terms, covenants, conditions and agreements that Tenant is required to perform and observe under each Sublease. In addition, Tenant agrees to use commercially reasonable efforts to require each Subtenant to perform all of the obligations imposed by the applicable Sublease.

- 24.4. **Sublease Requirements.** Tenant agrees that each Sublease must:
- 24.4.1. Require the Subtenant to maintain all records and Source Documents pertaining to Gross Revenue as required by this Lease;
 - 24.4.2. Require Subtenant to remit to the State all sales tax due and payable;
 - 24.4.3. Require the Subtenant to remain in continuous operation throughout the term of its Sublease, and to provide written notice to Tenant and City if Subtenant intends to cease operations for a period not to exceed 10 days in order to make renovations or repairs to the sublease premises;
 - 24.4.4. Require the Subtenant to comply with Governmental Requirements;
 - 24.4.5. Provide that if this Lease terminates, the Subtenant shall attorn to City and pay the previously agreed upon rents and all other charges due under the Sublease directly to the City, and enter into a direct lease with City on the same terms and conditions as this Lease unless otherwise mutually agreed by City and Subtenant; and
 - 24.4.6. Obligate the Subtenant to comply with all terms, covenants, conditions and restrictions of this Lease applicable to Tenant.
 - 24.4.7. Include a statement that the sublease of the Parcel to Subtenant will provide a benefit to the public at large as required by Section 253 of the City Charter.

25. **Leasehold Mortgages.**

- 25.1. **Tenant's Right to Encumber Leasehold.** Tenant has the right, without the consent or approval of City, to encumber all -- but not less than all -- of the Tenant's leasehold interest under this Lease to secure repayment of a loan or loans made to Tenant by a Lender, subject to the conditions set forth in the Lease.
- 25.2. **Mortgage Limitation.** Tenant agrees that at no time will the outstanding principal balance of all Leasehold Mortgages encumbering the Tenant's Leasehold Interest in the Parcel exceed 75% of the value of the Leasehold Interest, as determined by a third party appraisal.
- 25.3. **Debt Secured.** Any Leasehold Mortgage must be solely for the purpose of securing debt directly related to the Project. Tenant may not encumber or attempt to encumber the Leasehold Interest as security for any indebtedness of Tenant arising out of any other property owned by Tenant. Any such attempt will be null and void and will also constitute a Tenant Event of Default.
- 25.4. **Delivery of Leasehold Mortgage Documents.** Tenant must deliver to the City, within five days after execution by Tenant, a true and correct copy of any Leasehold Mortgage and any amendment, modification or extension of a Leasehold Mortgage. In addition, Tenant must provide to City the contact information for the holder of the Leasehold Mortgage.
- 25.5. **City's Obligations.** After a true and correct copy of a Leasehold Mortgage and the contact information for the holder of the Leasehold Mortgage are delivered to

the City, then until the lien of the Leasehold Mortgage has been extinguished, the City will not:

- 25.5.1. Terminate, agree to any termination, or accept any surrender or cancellation of this Lease (except upon the expiration of the Term); or
 - 25.5.2. Consent to any amendment, modification, mortgaging or other hypothecation of this Lease, without the prior written consent of Lender, if the Leasehold Mortgage documents require Lender's prior written consent to such amendment, modification, mortgage or other hypothecation.
- 25.6. **No Limitations on City's Rights Under Lease.** No provision of any Leasehold Mortgage will prevent or restrict the City from making the decisions it is entitled or required to make pursuant to this Lease.
- 25.7. **City's Rights Upon Tenant Event of Default.** If a Tenant Event of Default under the Lease has occurred and is continuing, the City may not terminate the Lease or exercise its other remedies under with the Lease, unless:
- 25.7.1. The City has given the Lender written notice of the Tenant Event of Default as required by this Lease;
 - 25.7.2. The City has given Lender a second written notice, sent by certified mail, return receipt requested, to Lender at the address set forth for notice in the Leasehold Mortgage, advising that Tenant has failed to cure the Tenant Event of Default within the time proscribed in the Lease; and
 - 25.7.3. The Lender fails to do one of the following within 30 days after receipt of the second notice from City: remedy the Tenant Event of Default; acquire Tenant's leasehold estate in the Parcel; or commence foreclosure or other appropriate proceedings as set forth in the Lease and within the time specified in the Lease. As long as the Lender is actively engaged in curing the Tenant Event of Default or is proceeding to foreclose the Leasehold Mortgage, City will not terminate this Lease.
- 25.8. **Lender's Rights Upon Tenant Event of Default.** If Tenant defaults under the Lease, Lender -- to prevent a termination of the Lease or the exercise by the City of its other remedies -- has the right, but not the obligation:
- 25.8.1. To pay all of the Rent and other payments due under the Lease, including any accrued interest;
 - 25.8.2. To provide any insurance, to pay any Public Charges (including any penalties), and to make any other payments due under the Lease;
 - 25.8.3. To enter upon the Project or any part thereof, and do all things necessary to cure the Tenant Event of Default and protect Lender's security;
 - 25.8.4. To continue to construct and complete the Improvements, to make any repairs to the Improvements, and to do any other act or thing required of Tenant under the Lease, in order to prevent the termination of the Lease or the exercise by the City of its other remedies under the Lease.

- 25.9. **Lender's Cure Periods.** If a Tenant Event of Default occurs, Lender will have 60 days after receiving written notice from the City setting forth the nature of the Event of Default to cure it. If the Tenant Event of Default cannot be cured within 60 days, Lender will have an additional 60 days to cure the Event of Default, as long as Lender has commenced curing within 60 days and continues to diligently pursue the cure. Lender will have the right (but without any obligation to do so), without notice to or demand on Tenant, to enter upon the Project or any part thereof, and do all things necessary to cure the Tenant Event of Default and protect its security.
- 25.10. **Limitation of Lender Liability.** Lender shall not become liable for the obligations of this Lease unless and until it becomes the owner of the leasehold estate created by this Lease by foreclosure, assignment in lieu of foreclosure or otherwise, and thereafter Lender shall remain liable for such obligations only as long as Lender remains the owner of the leasehold estate.
- 25.11. **City's Forbearance Upon Default.** The City will refrain from taking action under the Lease based upon Tenant's Event of Default, including bankruptcy and other insolvency defaults, as long as all Rent and other payments required to be paid by Tenant continue to be paid in accordance with the Lease. **Extension of Time for Lender to Acquire Property.** If the Lender is prohibited from commencing or prosecuting a foreclosure or other appropriate proceedings because of any process, injunction, or action by any court having jurisdiction of any bankruptcy, debtor rehabilitation or insolvency proceedings involving Tenant, then the times specified for Lender to cure or commence to cure the default will be extended for the period of such prohibition .
- 25.12. **Notices of Tenant Non-compliance.** The City shall simultaneously send, by certified mail, to any Lender whose contact information has been provided to City a copy of any notice that City sends to Tenant relating to non-compliance with the terms of this Lease.
- 25.13. **Mortgage Foreclosure.** City's consent will not be required for any foreclosure of a Leasehold Mortgage or any sale under a Leasehold Mortgage (whether by judicial proceedings or by any power of sale contained in the Leasehold Mortgage or applicable law), or for any conveyance of Tenant's Leasehold Interest to Lender by deed in lieu of foreclosure. If the Lender complies with the provisions of this Lease pertaining to Leasehold Mortgages, the foreclosure of a Leasehold Mortgage will not constitute a default under this Lease.
- 25.14. **Lender as Successor Tenant.** After the completion of any foreclosure of a Leasehold Mortgage, or any sale or conveyance to Lender or a foreclosure sale purchaser following the foreclosure of a Leasehold Mortgage, the City shall recognize the Lender, or any other foreclosure sale purchaser, as the successor Tenant under the Lease.
- 25.15. **Multiple Leasehold Mortgages.** If there are two or more Leasehold Mortgages or foreclosure sale purchasers (whether under the same or different Leasehold Mortgages), the City has no duty or obligation whatsoever to determine the

relative priorities or rights of the holders of such Leasehold Mortgages or foreclosure sale purchasers.

- 25.16. **Subsequent Leasehold Mortgages.** If a Lender or foreclosure sale purchaser either (a) assigns or transfers its interest under this Lease after acquiring the same by foreclosure or by acceptance of a deed in lieu of foreclosure; or (b) subsequently assigns or transfers its interest under a new lease entered into pursuant to the Leasehold Mortgage provisions of this Lease; and in connection with any such assignment or transfer, Lender or a foreclosure sale purchaser takes back a mortgage encumbering the Leasehold Interest to secure a portion of the purchase price, Lender or the foreclosure sale purchaser will be entitled to receive the benefit of the provisions of this Lease intended for the benefit of a Lender or the holder of a Leasehold Mortgage.
- 25.17. **Termination of Lease if Lender Fails to Cure Default.** If a Lender fails to cure a Tenant Event of Default as provided in this Lease, the City has the right to terminate this Lease by reason of the uncured Tenant Event of Default. The City shall give written notification of the termination of the Lease to all Lenders.
- 25.18. **Lender's Right to New Lease.** If due to a Tenant Event of Default or any other reason this Lease is terminated, Lender will be entitled to receive a new lease from the City having the same relative priority as this original Lease, provided Lender agrees to take prompt steps to cure all Events of Default of the original Tenant other than insolvency defaults and such other defaults, if any, as are not susceptible of being cured by the Lender.
- 25.19. **Terms and Conditions of New Lease with Lender.** The new lease from the City to the Lender will contain the same covenants, conditions and agreements contained in this Lease, other than any requirements that have been satisfied by Tenant or City prior to termination of the Lease. The City's delivery of any Improvements to Lender pursuant to a new lease will be made without any representation or warranty of any kind or nature, either express or implied, and the Lender will take any Improvements "as-is" in their then current condition. Upon execution and delivery of a new lease to Lender, Lender will be responsible at its sole cost and expense for taking whatever action may be necessary to cancel and discharge this Lease and to remove Tenant and any other occupant (other than as allowed by Lender or the City) from the Project.
- 25.20. **Lender's Failure to Enter Into New Lease.** If a Lender sends written notice to the City electing to enter into a new lease and then fails to do so, the City will send written notice to any other Lenders affording them 30 days from the date of the notice to elect to obtain a new lease. If any Lender elects to obtain a new lease, the City will enter into a new lease of the Property to Lender for the remainder of the Term, provided that at the time the Lender elects to obtain a new lease, the Lender complies with the provisions of this Lease pertaining to new leases.
- 25.21. **Lender's Payment of Percentage Rent.** If a Lender is required to pay Percentage Rent in order to cure a default by Tenant, and the amount of Percentage Rent due cannot be determined by the Lender without possession of

the Project, then the Lender may pay the amount of Percentage Rent which was paid for the immediately previous period. The amount of Percentage Rent due will be adjusted upward or downward within 90 days after Lender obtains possession of the Project.

25.22. No Waiver of Tenant's Obligations or City's Rights. No provision of this Lease or of any Leasehold Mortgage shall be deemed or construed to

25.22.1. Relieve Tenant from the full and faithful observance and performance of the covenants, conditions and agreements contained in this Lease; or

25.22.2. Relieve Tenant from any liability for the non-observance or non-performance of the covenants, conditions and agreements contained in this Lease; or

25.22.3. Require, allow or provide for the subordination of the City's rights, title and interest in the Property, the Improvements, or this Lease to the lien of any Leasehold Mortgage or to any Lender; or

25.22.4. Require the City to join in or be liable under any Leasehold Mortgage.

25.23. Payment of City's Attorney's Fees. Any Lender that seeks the benefit of the terms and provisions of this Lease pertaining to Leasehold Mortgages will be required to pay the City's Attorney's Fees associated with the City's duties and responsibilities under this Lease which the City does not otherwise recover from Tenant.

26. Default by Tenant. Each of the following occurrences is an "Event of Default" by Tenant under the Lease:

26.1. Failure to Pay Money. If Tenant fails to pay any Rent, Additional Rent, Public Charges or any other payment of money within 5 days after the payment is due.

26.1.1. If Tenant fails to pay the amount due to the City within 5 days after the payment is due, Tenant will be required to pay the delinquent payment plus a late fee equal to 5% of the amount then due and owing no later than the 30th day after the date the payment was originally due;

26.1.2. If Tenant fails to pay the amount due by the 30th day after the original due date, the City is entitled to collect the greater of the late fee or interest at the Default Rate until the amount due under the Lease paid;

26.1.3. After the 30th day, the City is entitled to exercise any and all remedies provided in this Lease for a Tenant Event of Default; and

26.1.4. All interest, late fees, penalties, contributions and all other payments of money required to be paid to the City by Tenant under this Lease other than Rent, will be treated as Additional Rent.

26.2. Bankruptcy.

26.2.1. If any petition is filed by Tenant, as debtor, seeking relief under Chapters 7 or 11 of the United States Bankruptcy Code or any successor code;

- 26.2.2. If any involuntary petition is filed against Tenant, as debtor, instituting a case under Chapters 7 or 11 of the United States Bankruptcy Code or any successor code and Tenant is unable to dismiss the case within 90 days after filing.
 - 26.2.3. If Tenant admits in writing its inability to pay its debts, or if a receiver, trustee or other court appointee is appointed for all or a substantial part of Tenant's property and the receiver, trustee or other appointee is not discharged within 90 days after appointment;
 - 26.2.4. If Tenant's Leasehold Interest in the Parcel or the Improvements is levied upon or attached by process of law, and such levy or attachment is not discharged within 90 days after the levy or attachment; or
 - 26.2.5. If a receiver or similar type of appointment or court appointee or nominee of any name or character is made for Tenant or its property, and such receiver, appointee, or nominee is not discharged within 90 days after appointment.
- 26.3. **Failure to Perform Other Covenants, Conditions and Agreements.** If Tenant fails to comply with any of the other covenants, conditions and agreements in the Lease, and the failure continues for a period of 60 days after Tenant receives written notice from the City specifying the Tenant's failure to perform any of the Lease covenants, conditions and agreements.
- 26.3.1. If Tenant's failure to comply with the covenants, conditions and agreements in the Lease is capable of cure, but cannot reasonably be cured within 60 days, then Tenant will have an additional commercially reasonable time within which to cure the Tenant Event of Default, but only if:
- (a) Tenant commences to cure the default within the 60-day period and thereafter continues to diligently perform all actions necessary to cure the default; and
 - (b) The Project continues to operate in the ordinary course of business, to the extent commercially reasonable taking into account the nature of Tenant's alleged failure to perform according to the covenant, condition or agreement in question.
- 26.4. **Default Under Leasehold Mortgage.** If there is a default by Tenant in any Leasehold Mortgage or any other agreement arising out of the Lease that is not cured within the earlier of either (a) the applicable grace period in the defaulted agreement, or (b) 60 days after Tenant receives written notice from the City specifying the Tenant's default.
- 26.4.1. If Tenant's default under the Leasehold Mortgage or other agreement is capable of cure, but cannot reasonably be cured within 60 days, then Tenant will have an additional commercially reasonable time within which to cure the default but only if:

- (a) Tenant commences to cure the default within the 60-day period and thereafter continues to diligently perform all actions necessary to cure the default; and
 - (b) The Project continues to operate in the ordinary course of business, to the extent commercially reasonable taking into account the nature of Tenant's alleged failure to perform according to the covenant, condition or agreement in question.
- 26.5. **Cessation of the Work.** If Tenant voluntarily ceases construction of the Improvements for a period in excess of 60 consecutive days and fails to resume construction within 30 days after receiving written notice from City.
- 26.6. **Unauthorized Sale, Assignment or Transfer.** If Tenant, in violation of the provisions of this Lease or the Development Agreement:
 - 26.6.1. Sells or assigns its interest in this Lease or the Project;
 - 26.6.2. Attempts to consummate any Transfer by entering into an agreement to sell or assign its interest in the Lease or the Project; or
 - 26.6.3. Otherwise agrees to a Transfer without complying with the provisions of the Development Agreement governing Transfers.
- 26.7. **Failure to Amend Lease to Remove Parking Garage Land.** If the City builds or takes over the construction of the Parking Garage, as set forth in the Development Agreement, and the land upon which the Parking Garage is to be constructed is included within the Parcel, and Tenant fails to execute an amendment to this Lease removing the Parking Garage land from the legal description of the Parcel within 10 days after demand by City.
- 27. **City's Remedies for Tenant's Default.**
 - 27.1. **Legal and Equitable Remedies.** If a Tenant Event of Default occurs, the City is entitled to seek all legal and equitable remedies available under Florida law.
 - 27.2. **Termination of Lease.** If the City obtains the right to terminate this Lease, Tenant shall quit and peaceably surrender to City the Parcel, the Improvements, and all furniture, fixtures and equipment owned by Tenant and used in connection with the Improvements.
 - 27.2.1. **Termination of Tenant's Interest.** Upon a termination of this Lease, all rights and interest of Tenant in and to the Parcel and the Improvements will terminate. However, a termination of the Lease will not release Tenant from its obligation to indemnify City for any acts which occurred prior to the termination of the Lease.
 - 27.2.2. **City's Rights to Plans and Specifications.** If this Lease is terminated after the Lease Commencement Date but prior to the Completion Date, Tenant agrees that, to the extent assignable, the City is entitled to use the Plans, specifications, designs, Governmental Approvals, permits and other work product produced by or for Tenant or others for use in the development, construction and operation of the Improvements. City is

entitled to use these documents without payment or further permission from either Tenant or the professionals that created or prepared them.

28. **Default by the City**

28.1. **City's Failure to Perform.** City will be in default under the Lease if the City fails to perform any obligation or fulfill any covenant or agreement of the City set forth in the Lease, and the failure continues for 60 days following the City's receipt of written notice of the non-performance.

28.2. **Cure of City Default.** The City will not be in default of this Lease if:

28.2.1. The City provides Tenant with a written response within the 60-day day period indicating the status of the City's resolution of the breach and providing for a commercially reasonable schedule to correct same; or

28.2.2. With respect to any breach that is capable of being cured but that cannot reasonably be cured within the 60-day period, if the City commences to cure the breach within the 60-day period (or as soon thereafter as is reasonably possible) and diligently continues to cure the breach until completion.

28.3. **Tenant's Remedies for City's Default.** If a City Event of Default occurs, the Tenant shall be entitled to seek all legal and equitable remedies available under Florida law.

29. **Force Majeure.** Neither the City nor Tenant, as the case may be, will be considered in breach of or in default of any of their respective non-monetary obligations under the Lease as a result of an unavoidable delay due to strikes, lockouts, acts of God, inability to obtain labor or materials due to governmental restrictions, riot, war, hurricane or other similar causes beyond the commercially reasonable control of a party (in each case, an event of "Force Majeure"). Upon the occurrence of a Force Majeure, the applicable time period will be extended for the period of the Force Majeure event.

30. **Remedies Cumulative; Waiver.** The rights and remedies of the parties to this Lease, whether provided by law or by this Lease, are intended to be cumulative and concurrent. The exercise by either party of any one or more of its remedies will not preclude the exercise by a party, at the same or different times, of any other remedies for the same default or breach, or of any of its remedies for any other default or breach by the other party. The waiver by a party of any default or Event of Default under this Lease will not extend to or affect any other existing or subsequent Event of Default, or impair any rights, powers or remedies of a party in connection with any other default or Event of Default. A party's delay or omission in exercising any right, power or remedy will not be construed as a waiver of any default or Event of Default or constitute acquiescence to the default.

31. **City's Right to Cure Tenant Default.** If Tenant defaults in the performance of any term, covenant or condition to be performed under the Lease, the City may, in its sole discretion, after notice to the Tenant and after the expiration of the applicable cure periods (or without such notice and cure in the event of an emergency), cure the default on behalf of the Tenant, at the expense of Tenant.

32. **Sums Paid by City to Cure Tenant Default.** If the City is compelled to pay, or elects to pay, any sum of money, or performs any act which requires the payment of any sum of money, or is compelled to incur any expense in the enforcement of its rights under the Lease, such sums will be deemed Additional Rent. Tenant shall repay to City the sums expended by City with interest at the Default Rate, upon demand.
33. **Tenant's Duty to Keep Project Free of Liens.**
- 33.1. **Property Not Subject to Liens.** In accordance with Section 713.10 of the Florida Statutes, any and all liens or lien rights arising out of the construction of the Improvements extend only to Tenant's Leasehold Interest in the Parcel and the Project. The City's right, title and interest in the Parcel are not subject to liens or claims of liens for improvements made by Tenant.
- 33.1.1. Nothing contained in the Lease shall be deemed or construed to constitute the consent or request of the City, either express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of any portion of the Project.
- 33.1.2. Nothing contained in the Lease shall be deemed or construed to give Tenant, any Lender, Subtenant, lessee, or sublessee any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against City's interest in all or any part of the Property, or against assets of the City, or City's interest in any Rent and other monetary obligations of Tenant described in this Lease.
- 33.2. **Tenant's Construction Agreements.** Any construction agreements entered into between Tenant and a general contractor or other contractor in privity with the Tenant must provide that City will not be liable for any work performed or to be performed at the Parcel for Tenant, any Lender, Subtenant, lessee, or sublessee, or for any materials furnished or to be furnished to the Project for Tenant, any Lender, Subtenant, lessee, or sublessee.
- 33.3. **No Liens on City's Interest.** No mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials will attach to or affect City's interest in all or any part of the Property, or any assets of the City, or the City's interest in any Rent or other monetary obligations of Tenant arising under the Lease.
- 33.4. **Contesting Liens.** If Tenant desires to contest any lien, Tenant must notify the City of its intention to do so within 30 days after the filing of the lien. Tenant, at its sole cost and expense, will protect the City by transferring the lien to bond in accordance with Section 713.24 of the Florida Statutes within 30 days after the filing of the lien.
- 33.4.1. The lien will not constitute a Tenant Event of Default under the Lease if Tenant timely provides the bond described above. If the lien is

determined to be valid, Tenant must satisfy and discharge the lien within 30 days after its validity is determined

33.4.2. In the event Tenant contests any lien, Tenant shall protect and indemnify the City against all loss, expense and damage resulting from the lien contest, in accordance with the indemnification provisions of this Lease.

33.5. **City Liens.** City will not take any action that could result in a lien against Tenant's Leasehold Interest in the Parcel.

34. **Indemnification.**

34.1. **Tenant to Indemnify City.** Tenant, on behalf of itself and on behalf of future subtenants, visitors, trespassers, licensees, invitees, guests or persons performing work or using, visiting or occupying the Parcel, hereby agrees and covenants to indemnify, defend (with counsel selected by Tenant, after consulting with the City) and save harmless the City from and against any and all claims, actions, damages, liabilities, losses, costs and expenses, including without limitation, Attorneys' Fees (collectively, "Losses") to the fullest extent permitted by law, arising in connection with the subject matter of this Lease, including, without limitation, indemnification for:

34.1.1. Tenant's default, breach, violation or non-performance of any provision of this Lease;

34.1.2. Tenant's use and operation of all or any portion of the Project during the Term;

34.1.3. Tenant's negligent acts or omissions;

34.1.4. Any challenge to the validity of this Lease by a third party through legal proceedings or otherwise, other than a challenge arising by, through or under the City's fee interest in the Property.

34.2. **Indemnification Includes Losses from Construction.** Tenant's indemnity under this Lease includes indemnification of City against any Losses resulting from either the construction of the Improvements or any subsequent renovation or alteration of the Improvements by the Tenant.

34.3. **Indemnification from General Contractor.** Tenant covenants and agrees that any contracts for the Work entered into by Tenant and a general contractor or other contractor in privity with Tenant will include the indemnities required by this Lease from the general contractor or other contractor in privity with Tenant in favor of Tenant and the City.

34.4. **Tenant Liability Not Limited By Insurance.** The liability of Tenant under this Lease will not be limited in any way to the amount of proceeds actually recovered under the policies of insurance required to be maintained pursuant to the terms of this Lease.

34.5. **City's Tort Liability.** Any tort liability to which the City is exposed under this Lease will be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may

be amended, which statutory limitations will be applied as if the parties had not entered into this Lease. The City expressly does not waive any of its rights and immunities under applicable law.

35. Environmental Matters.

35.1. Defined Terms for Purposes of this Section.

35.1.1. Environmental Condition means any set of physical circumstances in, on, under, or affecting the Project that may constitute a threat to or endangerment of health, safety, property, or the environment, including but not limited to:

- (a) The presence of any hazardous Substance, except in such quantities and concentrations as are routinely found in nature or in products used in ordinary business or commercial activities;
- (b) Any underground storage tanks, as defined in Subtitle I of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6991 et. seq., or the regulations thereunder, for the storage of hazardous wastes, oil, petroleum products, or their byproducts;
- (c) Any PCB, asbestos or any other substances specifically regulated under the Toxic Substances Control Act, 15 U.S.C. 2601 or regulations issued thereunder; and
- (d) Any open dump or system of refuse disposal for public use without a permit, as prohibited by 42 U.S.C. 6945 and/or Florida law equivalent, or the regulations issued thereunder.

35.1.2. Environmental Laws means the Comprehensive Environmental Response, **Compensation** and Liability Act, 42 U.S.C. 9601 et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq.; the Toxic Substances Control Act, 15 U.S.C. 2601 et. seq.; the Clean Water Act, 33 U.S.C. 1251 et seq.; the Clean Air Act, 42 U.S.C. 7401 et. seq.; the Oil Pollution Act, 33 U.S.C. 2701 et. seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et. seq.; the Refuse Act of 1989, 33 U.S.C. 407; the Occupational Safety and Health Act, 29 U.S.C. 651 et. seq., as such laws have been amended or supplemented from time to time, the regulations promulgated under these laws; and any analogous Governmental Requirements.

35.1.3. Environmental Requirements means all present and future Governmental Requirements, including without limitation, the Environmental Laws, authorizations, judgments, decrees, concessions, grants, orders, agreements or other restrictions or requirements relating to any Environmental Conditions or any Hazardous Substances on the Property.

35.1.4. Hazardous Substance means any substances or materials identified to be toxic or hazardous according to any of the Environmental Laws, including without limitation, any asbestos, PCB, radioactive substances,

methane, volatile hydrocarbons, acids, pesticides, paints, petroleum based products, lead, cyanide, DDT, printing inks, industrial solvents or any other material or substance that has in the past or could presently or at any time in the future cause or constitute a health, safety or other environmental hazard to any person or property. The term Hazardous Substances includes hazardous wastes, hazardous substances, extremely hazardous substances, hazardous materials, toxic substances, toxic chemicals, oil, petroleum products and their by-products, and pollutants or contaminants as those terms are defined in the Environmental Laws.

35.1.5. **Environmental Permit** means any Governmental Approval required under any Environmental Law in connection with the ownership, use or operation of the Project for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances, or the sale, transfer or conveyance of the Project, and all supporting documentation thereof.

35.1.6. **Environmental Claim** means any accusation, allegation, notice of violation, claim, demand, abatement or other order or direction (conditional or otherwise) by any Governmental Authority or any person for personal injury (including without limitation, sickness, disease, or death), tangible or intangible property damage, damage to the environment, nuisance, pollution, contamination or other adverse effects on the environment, or for fines, penalties, or restrictions, resulting from or based upon:

- (a) The existence or release, or continuation of any existence of a release (including without limitation, sudden or non-sudden, accidental or non-accidental leaks or spills) of, or exposure to, any substance, chemical, material, pollutant, contaminant, or audible noise or other release or emission in, into or onto the environment (including without limitation, the air, ground, water or any surface) at, in, by, from or related to the Property;
- (b) The environmental aspects of the transportation, storage, treatment or disposal of materials in connection with the activities on the Leased Property; or
- (c) The violation, or alleged violation, of any Governmental Requirements relating to Environmental Requirements on the Leased Property; but excluding any of violations arising solely from the intentional actions of the City and its agents.

35.1.7. **Corrective Action Work** means any and all activities of removal, response, investigation, testing, analysis, remediation taken to:

- (a) Prevent, abate or correct an existing or threatened Environmental Condition at, about, affecting, or affected by the Property; or
- (b) Comply with all applicable Environmental Requirements.

- 35.2. **Environmental Indemnification.** Tenant covenants and agrees, at its sole cost and expense, to defend (with counsel selected by Tenant, after consulting with the City), indemnify and hold harmless the City, its successors, and assigns from and against any and all Environmental Claims, whether meritorious or not, brought against the City by any Governmental Authority.
- 35.2.1. This indemnity includes, without limitation, indemnification against: all costs of removal, response, investigation, or remediation of any kind; all costs of disposal of such Hazardous Substances as necessary to comply with Environmental Laws; all costs associated with any Corrective Action Work; all costs associated with claims for damages to persons, property, or natural resources; any loss from diminution in the value of the Project; and the City's Attorneys' Fees, consultants' fees, court costs and expenses incurred in connection with any Environmental Claims brought against the City.
- 35.2.2. Tenant's indemnification of City is only for Environmental Claims which arise out of or are caused by actions or events occurring after the Effective Date of the Development Agreement.
- 35.2.3. This indemnification is to be interpreted as broadly as possible and is in addition to all other rights of the City under this Lease.
- 35.2.4. Payments by Tenant under the Environmental Indemnification will not reduce Tenant's obligations and liabilities under any other provision of this Lease.
- 35.3. Neither the Tenant nor the general contractor, nor any other contractor in privity with Tenant, has a duty to indemnify the City in connection with any Environmental Claims that are due to the negligent conduct of the City or its agents if the negligent conduct occurs after the date the Tenant completes his environmental testing.
36. **Insurance.** Prior to any activity by Tenant on the Parcel, and at all times during the Lease Term, Tenant will be responsible for procuring and maintaining the insurance required by this Lease, at Tenant's sole cost and expense. In addition, Tenant will ensure that its general contractor maintains the applicable insurance coverages set forth in this Lease, unless waived or modified by the City's Risk Management Director.
- 36.1. **General Insurance Provisions.**
- 36.1.1. All policies must be executable in the State.
- 36.1.2. All insurers must maintain an AM Best rating of A or better.
- 36.1.3. The terms and conditions of all policies may not be less restrictive than those contained in the most recent edition of the policy forms issued by the Insurance Services Office (ISO) or the National Council on Compensation Insurance (NCCI). If ISO or NCCI issues new policy forms during the policy term of the required insurance, Tenant will not be required to comply with the new policy forms until the expiration date of the insurance policy affected by the change.

- 36.1.4. Tenant's insurance policies will be primary over any and all insurance available to the City, whether purchased or not, and must be non-contributory.
 - 36.1.5. The Tenant, its general contractor, and its Subtenants will be solely responsible for payment of all deductibles and retentions contained in their respective insurance policies. The City will be included as an "Additional Insured" on the Commercial General Liability policy and any Liquor Liability and Umbrella Liability policies, if applicable. The City will also be named as "Loss Payee" on all of Tenant's Property Insurance policies.
 - 36.1.6. Tenant will ensure that each insurance policy obtained by it or by its Subtenants provides that the insurance company waives all right of recovery by way of subrogation against the City in connection with any damage covered by any policy.
- 36.2. **Evidence of Insurance.** Prior to taking possession of the Property, and throughout the term of the Lease, Tenant must provide satisfactory evidence of the required insurance to the City. Satisfactory evidence of insurance is either (a) a certificate of insurance, or (b) a certified copy of the actual insurance policy. The City, at its sole option, may request a certified copy of any or all insurance policies required by this Lease. Tenant acknowledges that Tenant is the party responsible to the City for providing all insurance required by this Lease. Tenant may pass certain insurance obligations on to its Subtenants, but Tenant will be responsible for making sure that its Subtenants fulfill all insurance requirements of this Lease, and will be liable to City for any failure by Subtenants to provide the required insurance.
- 36.3. **Cancellations and Renewals.** All insurance policies must specify that they are not subject to cancellation or non-renewal without a minimum of 30 days notification to the Tenant or Subtenant, and a minimum of 10 days notification for non-payment of premium. The Tenant will provide the City a minimum of 30 days written notice if any policies are cancelled or non-renewed, and 10 days written notice of cancellation for non-payment of premium.
- 36.4. **Required Coverages.** The following insurance coverage must be maintained throughout the term of the Lease.
- 36.4.1. **Commercial General Liability Insurance.** Tenant must maintain, or require its Subtenants to maintain, Commercial General Liability Insurance. Coverage must include, as a minimum: (a) Premises Operations, (b) Products and Completed Operations, (c) Incidental Contractual Liability, (d) Personal Injury Liability and (e) Expanded Definition of Property Damage. The minimum limits acceptable are \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The use of an excess/umbrella liability policy to achieve the limits required by this paragraph will be acceptable as long as the terms and conditions of the excess/umbrella policy are no less restrictive than the underlying Commercial General Liability policy.

- 36.4.2. **All Risk Property Insurance.** Tenant must maintain, or require its Subtenant to maintain, Property Coverage (Special Form), to cover the "All Other Perils" portion of the policy at the Replacement Cost Valuation as determined by a certified property appraiser acceptable to both the Tenant and the City. The perils of Windstorm and Flood shall carry sub limits to be determined annually and acceptable to the City. To the extent available, coverage will extend to furniture, fixtures, equipment and other personal property associated with the Project. The policy must also provide "Law and Ordinance" coverage, while giving deference to the age of the Improvements, with limits acceptable to both City and Tenant
- 36.4.3. **Business Interruption Insurance.** During the term of this Lease, Tenant must maintain, or must require its Subtenants to maintain, Business Interruption coverage utilizing a Gross Earnings Value form with limits equal to 12 months of Subtenant's projected profits (including all rental income) associated with the Parcel. The City and Tenant will jointly review the Subtenant's projected profits periodically, and Tenant will be responsible for adjusting the limits of the policy based on this review and City's request for adjustment.
- 36.4.4. **Workers' Compensation.** Tenant must maintain, or require its Subtenant to maintain, Workers' Compensation Insurance with limits sufficient to respond to Florida Statute §440. In addition, the Tenant or its Subtenants must obtain Employers' Liability Insurance with limits of not less than: (a) \$500,000 Bodily Injury by Accident, (b) \$500,000 Bodily Injury by Disease, and (c) \$500,000 Bodily Injury by Disease, each employee.
- 36.4.5. **Liquor Liability Policy.** If Liquor will be sold on the Parcel, Tenant must obtain, or must require its Subtenant to obtain, a Liquor Liability Policy in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually. The Liquor Liability Policy must name the City as an additional insured. Tenant will be responsible for providing evidence of the Liquor Liability Policy to the City.
- 36.5. **Coverage Required During Construction.**
- 36.5.1. **Builders Risk Insurance.** During all construction activities conducted on the Parcel, including modifications to existing buildings or structures on the Parcel that impact the structural integrity of the buildings or structures, Tenant or its Subtenants must carry Builders Risk insurance, including the perils of wind and flood, with minimum limits equal to the "Completed Value" of the Improvements being erected or the total value of the modifications being made, to the extent available. If such levels of coverage are not available, Tenant or its Subtenants must carry the full amount of such insurance currently available.
- 36.5.2. **Professional Liability.** Tenant or its Subtenants must ensure that Architects and Engineers Errors and Omissions Liability insurance

specific to the construction activities is obtained prior to the commencement of any construction activities on the Parcel, including without limitation, the Work. If coverage is provided on a "Claims Made" basis, the policy must provide for the reporting of claims for a period of two years following the completion of all construction activities. The minimum limits acceptable are \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually.

- 36.6. **Premiums and Renewals.** Tenant must insure that all premiums for the insurance required by this Lease are paid they become due. Tenant or its Subtenants must renew or replace each policy prior to the policy expiration date, and promptly deliver to the City all original Certificates of Insurance and copies of all renewal or replacement policies.
- 36.7. **Adequacy of Insurance Coverage.** The City has the unilateral right to periodically review the adequacy of the insurance coverage required by this Lease. The City may request a change in the insurance coverage if the requested change is commercially reasonable, and the coverage requested is customary and commonly available for properties similar in type, size, use and location to the Property and Improvements (including without limitation, environmental liability insurance, fiduciary liability, and directors and officers liability insurance). Tenant has the right to contest the request for a change in insurance, but must be commercially reasonable.
- 36.8. **Appraisal.** The City will require a Replacement Cost Value appraisal from a licensed and certified appraiser at five-year intervals. The selection and expense of the appraiser will be the sole responsibility of the Tenant. Tenant will provide a copy of the full report to City upon completion.
- 36.9. **Inadequacy of Insurance Proceeds.** In the event that insurance proceeds are not adequate to rebuild and restore damaged Improvements to their previous condition before an insurable loss occurred, and the cause of the deficiency in insurance proceeds is the Tenant's failure to adequately insure the Improvements as required by this Lease, Tenant must rebuild and restore the Improvements as required by this Lease and will be responsible for payment of any costs of the rebuilding and restoration not covered by the insurance proceeds.
- 36.10. **City May Procure Insurance if Tenant Fails To Do So.** If Tenant or its Subtenants refuse, neglect or fail to secure and maintain in full force and effect any or all of the insurance required by this Lease, the City, at its option, may procure or renew such insurance. In that event, all sums paid by the City for insurance will be treated as Additional Rent, and will be payable by Tenant to the City together with interest at the Default Rate from the date the sums were paid by the City to the date of reimbursement by Tenant. Tenant must pay to City the amounts paid by the City for insurance, together with accrued interest, within ten days after written demand from City.
37. **Effect of Loss or Damage.** Any loss or damage to the Improvements by fire or other casualty at any time will not operate to terminate this Lease or to relieve or discharge Tenant from the performance and fulfillment of any of Tenant's obligations pursuant to

this Lease, including without limitation, the payment of Rent and the payment of any money to be treated as Additional Rent, as the same may become due and payable. The City's acceptance or approval of any insurance agreement will not relieve or release or be construed to relieve or release Tenant from any liability, duty or obligation set forth in this Lease.

37.1. **Proof of Loss.** If all or any part of the Improvements (including without limitation, any personal property furnished or installed in the Improvements) is damaged or destroyed, Tenant must promptly make proof of loss in accordance with the terms of the insurance policies and must proceed promptly to collect all valid claims which may have arisen against insurers or others based upon the damage or destruction. Tenant is required to give City written notice within 48 hours of any material damage or destruction. For purposes of this Section, "material damage or destruction" means either (a) any casualty or other loss with a repair cost in excess of \$50,000 (based on commercially reasonable standards) or, (b) any casualty or other loss which will have a material adverse effect on the day to day operations of the Project, regardless of the repair cost.

37.2. **Payment of Insurance Proceeds.** All sums payable for loss and damage arising out of the casualties covered by the property insurance policies shall be payable:

37.2.1. Directly to Tenant, if the total recovery is equal to or less than \$100,000 (as adjusted for inflation over the Term), except that if a Tenant Event of Default has occurred and is continuing under the Lease, the insurance proceeds, subject to the requirements of the Lender, will be paid over to the City, which will apply the proceeds first to curing the Event of Default, and then to the rebuilding, replacing and repairing of the Improvements. Any remaining proceeds shall be paid over to Tenant subject to its obligations to the Lender

37.2.2. To the Insurance Trustee, if the total recovery is in excess of \$100,000 (as adjusted for inflation over the Term), with the proceeds to be held by the Insurance Trustee for disbursement to Tenant pending establishment of reconstruction, repair or replacement costs. If there is a Leasehold Mortgage on the Property at the time insurance proceeds become payable, the Lender having the highest lien priority will serve as the Insurance Trustee. If there is no Leasehold Mortgage at that time, or if the Lender refuses to serve as Insurance Trustee, the Insurance Trustee will be a commercial bank or trust company designated by Tenant and approved by the City, whose approval will not be unreasonably withheld or delayed.

37.3. **Disposition of Insurance Proceeds for Reconstruction.**

37.3.1. All insurance proceeds must be applied for the reconstruction, repair or replacement of Improvements and the personal property of Tenant contained in the Improvements (the "Reconstruction Work"). The Improvements and any personal property must be restored to a condition comparable to the condition prior to the loss or damage.

- 37.3.2. The Insurance Trustee will disburse to the Tenant the amount of insurance proceeds that are required for the Reconstruction Work. Tenant will submit invoices or proof of payment to the Insurance Trustee for payment or reimbursement according to an agreed schedule of values approved in advance by the City and Tenant.
 - 37.3.3. If the City and Tenant do not agree on the schedule or values, they will arbitrate the matter using the then-existing construction-related rules of the American Arbitration Association in Broward County, Florida.
 - 37.3.4. After the completion of the Reconstruction Work, any remaining insurance proceeds will be paid to Tenant.
 - 37.4. **Covenant for Commencement and Completion of Reconstruction.** Tenant covenants and agrees to commence the Reconstruction Work as soon as practicable, but in any event within three months after the insurance proceeds for the destroyed or damaged Improvements have been received by Tenant or the Insurance Trustee, and to fully complete the Reconstruction Work as expeditiously as possible under the circumstances. With respect to any Reconstruction Work, Tenant must comply with all of the provisions of this Lease regarding renovation or alteration of the Improvements.
 - 37.5. **Inadequacy of Insurance Proceeds.** Tenant's liability under the Lease to timely commence and complete restoration of any damaged or destroyed Improvements is absolute, regardless of whether any insurance proceeds received are adequate to pay for the restoration.
38. **Condemnation.**
- 38.1. **Complete Condemnation.**
 - 38.1.1. If the entire Parcel is taken or condemned for any public or quasi-public use or purpose, by right of eminent domain or by purchase in lieu of eminent domain (in each case, a "Taking"), or if the Taking is for a portion of the Project such that the portion remaining is not sufficient and suitable, on a commercially reasonable basis (subject, however, to the rights of the Lender or Indenture Trustee hereunder), for the operation of the Project, then this Lease will cease and terminate as of the date on which the condemning authority takes possession.
 - 38.1.2. If this Lease is so terminated, the entire award for the Project or the portion taken will be apportioned among the City, the CRA, and the Tenant as of the day immediately prior to the vesting of title in the condemnor, as follows:
 - (a) First, but only if the City is not the authority condemning the Project, the City will receive the then fair market value of the portion of the Parcel so taken or condemned considered as vacant, unimproved, and unencumbered, together with the value of the Improvements, discounted from the end of the Term;

- (b) Second, Tenant will be entitled to the then fair market value of its interest under this Lease and in the Improvements, less the discounted value of the Improvements allocated to the City, together with any and all business damages suffered by Tenant (subject, however, to the rights of any Lender); and
- (c) The City and Tenant shall each receive one-half of any remaining balance of the award, except that the Tenant will receive the entire remaining balance of the award if the City is the authority condemning the Project.

38.2. Partial Condemnation.

38.2.1. If there is a Taking of a portion of the Project, and the remaining portion can be adapted and used to operate the Project in the same manner it was previously operated, on a commercially reasonable basis (subject, however, to the rights of the Lender), then this Lease shall continue in full force and effect, and the award shall be apportioned as follows:

- (a) First, to the Tenant to the extent required, pursuant to the terms of this Lease, for the restoration of the Project;
- (b) Second, but only if the City is not the authority condemning the Project, to the City the portion of the award allocated to the fair market value of the Property which is taken, considered as vacant and unimproved;
- (c) Third, to the Tenant, the amount by which the value of Tenant's interest in the Improvements and the Property were diminished by the taking or condemnation (subject, however, to the rights of the Lender);
- (d) The City and Tenant will each receive one-half of any remaining balance of the award, except that the Tenant will receive the entire remaining balance of the award if the City is the authority condemning the Project.

38.3. Restoration After Condemnation. If this Lease does not terminate due to a Taking, then:

- 38.3.1. Tenant will be required to restore the remaining portion of the Project with due diligence in accordance with the provisions pertaining to provisions in this Lease pertaining to alterations and renovations.
- 38.3.2. The entire proceeds of the award will be deposited and treated in the same manner as insurance proceeds are to be treated under this Lease until the restoration has been completed and Tenant and the City have received their respective shares of any remaining balance of the award.
- 38.3.3. If the award is insufficient to pay for the restoration, Tenant will be responsible for the remaining cost and expense; and

- 38.3.4. The Minimum Rent due under the Lease will be adjusted proportionately based upon the proportion that the amount received by the City with respect to the portion of the Property taken bears to the total fair market value of the overall Property at that time.
- 38.4. **Temporary Taking.** If there is a Taking of the temporary use (but not title) of all or any part of the Project, this Lease will remain in full force and effect, but only to the extent it is commercially reasonable. There will be no abatement of any amount or sum payable by or other obligation of Tenant under the Lease. Subject to the rights of the Lender, Tenant will receive the entire award for any temporary Taking to the extent it applies to the period prior to the end of the Term, and the City will receive the balance of the award.
- 38.5. **Determinations.** If the City and the Tenant cannot reach agreement regarding any issue arising out of a Taking, the parties will seek a judicial determination by the court with jurisdiction over the Taking. For purposes of the Lease provisions pertaining to a Taking, any personal property taken or condemned will be deemed to be a part of the Improvements, and the provisions of the Lease regarding Takings will be applicable to such property.
- 38.6. **Payment of Fees and Costs.** All fees and costs incurred in connection with any condemnation proceeding will be paid in accordance with the law governing condemnation proceedings, as determined by the court, if appropriate.
39. **Quiet Enjoyment; No Waste.**
- 39.1. **City's Covenant of Quite Enjoyment.** City represents and warrants that Tenant, upon paying the Rent, Additional Rent and other monetary obligations of this Lease and observing and keeping the covenants and agreements of this Lease to be kept and performed by Tenant, will lawfully and quietly hold, occupy and enjoy the Parcel during the Term without hindrance or molestation by the City or by any person or persons claiming under the City. The City agrees to defend any suits or actions which may be brought by persons claiming by, through or under the City, at City's own cost and expense, through the City Attorney's office or other counsel selected by the City in its sole discretion.
- 39.1.1. Except for negligent or more culpable acts or omissions by the City, in no event will the City be liable for, and Tenant expressly waives, any claim for damages of any kind whatsoever, including without limitation, damages for loss of income, revenue, profit or value. Tenant has the right to retain its own counsel in connection with such proceedings, at Tenant's sole cost and expense.
- 39.1.2. If the City is acting in its governmental capacity, any liability under this Section will only be to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations will be applied as if the parties had not entered into this Lease.
- 39.2. **Waste.** Tenant will not permit, commit or suffer waste or impairment of any portion of the Project.

40. **Ownership of Improvements During Lease Term.** Prior to the expiration or termination of this Lease, title to the Improvements will remain in Tenant, and will not vest in the City by reason of its ownership of fee simple title to the Parcel.
- 40.1. **Ownership Upon Early Termination.** If this Lease terminates prior to the expiration of the Lease Term, based on a mutual agreement between the parties or a final order from a court with jurisdiction, and if, at that time, any Lender exercises its option to obtain a new lease for the remainder of the Lease Term in accordance with this Lease, title to the Improvements will automatically pass to, vest in and belong to the Lender or any permitted designee or nominee of the Lender, until the expiration or termination of the term of the new lease.
- 40.1.1. The City and Tenant covenant that, to confirm the automatic vesting of title as provided in this Section, each will execute and deliver to the other such further assurances and instruments of assignment and conveyance may be reasonably required by the other party for that purpose.
- 40.2. **Surrender of Leased Property.** Upon the expiration of the Lease Term or the earlier termination of this Lease by mutual agreement of the parties or a final order from a court with jurisdiction, title to the Improvements (including all personal property and equipment furnished or installed on the Project and owned or leased by Tenant) will automatically pass to, vest in and belong to the City or its successor in ownership, free and clear of all debts, mortgages, encumbrances, and liens. It shall be lawful for the City or its successor in ownership to re-enter and repossess the the Improvements without process of law.
- 40.2.1. The City and Tenant covenant that, to confirm the automatic vesting of title as provided in this Section, each will execute and deliver such further assurances and instruments of assignment and conveyance as may be reasonably required by the other for that purpose.
41. **Maintenance, Operation and Management.**
- 41.1. **Maintenance and Operation of Improvements.** Tenant must at all times keep the Project in good and safe condition and repair, reasonable wear and tear excepted. The Tenant will comply with all Governmental Requirements applicable to the occupancy, maintenance and operation of the Project.
- 41.2. **Continuous Operation.** Tenant acknowledges that it is important to City that the Project remains in full operation at all times. Tenant agrees to use best efforts to keep the Parcel in continuous operation throughout the Lease Term. Tenant agrees to include in its Subleases a provision obligating each Subtenant to remain in continuous operation throughout its respective Sublease term. Tenant must provide written notice to City if a Subtenant vacates its premises in violation of its Sublease
- 41.3. **Standards Generally.** The City and Tenant agree that the manner in which the Project is developed, operated and maintained is important to the City by reason of its interest in having a destination dining, shopping, entertainment, and parking facility for use by City residents and visitors to the City. Tenant therefore agrees

to develop, operate and maintain the Project and all other property and equipment located on the Parcel consistent with standards to be agreed upon by City and Tenant.

42. **Transfers and Assignments.** Tenant may not transfer or assign its rights under this Lease except as set forth in in this Lease.

42.1. **Transfers.** For purposes of this Lease, a "Transfer" is a sale, assignment or conveyance of any of the following:

42.1.1. The Leasehold Interest or any part thereof;

42.1.2. Any interest in the Improvements, or any part thereof;

42.1.3. Any interest in the Project, or any part thereof;

42.1.4. Any interest in Tenant;

42.1.5. Any series of such Transfers, or any contract or agreement to do any of the same, that have the cumulative effect of a sale; or

42.1.6. Any other transaction or series of transactions in the nature of a sale.

42.2. **Subleases.** A Sublease of any Parcel or portion of a Parcel that complies with the Sublease requirement of the Parcel Ground Lease will not be considered a Transfer under this Lease.

42.3. **Purpose of Restrictions on Transfer.** City is entering into this Lease with Tenant solely to develop, operate, and manage the Improvements, and not for speculation in landholding. Tenant recognizes that, because of the importance of the Project to the general welfare of the City and its residents, the Tenant's qualifications and identity are of particular concern to the community and to the City. Tenant acknowledges that it is because of the qualifications and identity of Tenant that City is entering into this Lease, and that the City is willing to rely on the Tenant's covenants to fulfill its obligations under this Lease.

42.4. **Ownership of Tenant.** Tenant represents and warrants that Tenant has not made, created or suffered any Transfers as of the date of this Lease, and that the entities and individuals with an ownership interest in Tenant on the date of this Lease are listed, together with their percentage and character of ownership, in **Exhibit H**. Upon request by City from time to time throughout the Term of this Lease, Tenant will furnish the City with a complete statement, subscribed and sworn to by the Managing Member of Tenant, setting forth the percentage ownership interest of the Managing Member and the full names and addresses of all members of Tenant who hold at least a ten percent (10%) interest in Tenant. If the Tenant is an entity other than a limited liability company, then the references to membership will be changed to the appropriate ownership interests for the entity in question.

42.5. **General Restriction on Transfers.** No Transfer may be made, suffered or created by Tenant, or its permitted successors, assigns or transferees unless it complies with the provisions of this Lease and the Development Agreement. If at the time of a requested Transfer, Tenant is an entity other than a limited liability

company, then the references to membership will be changed to the appropriate ownership interests for the entity in question, and the interest being transferred will be changed to the appropriate ownership interest. Any Transfer that violates this Lease or the Development Agreement will be null and void and of no force or effect.

- 42.6. **Transfers Prior to Completion of Certain Parcels.** Prior to the completion of development of Parcels R1, R2, E, the Arch, and the Pier Street Extension, as described in the Development Agreement, only the following Transfers (collectively, "Permitted Transfers") will be permitted without the prior written consent of the City:
- 42.6.1. **Foreclosure.** Any Transfer directly resulting from the foreclosure of a Leasehold Mortgage on the Parcel or the granting of a deed in lieu of foreclosure of a Leasehold Mortgage on the Parcel, or any Transfer made by the purchaser at foreclosure sale of the Leasehold Mortgage or by the grantee of a deed in lieu of foreclosure of a Leasehold Mortgage, if such purchaser or grantee is the Lender or a nominee of the Lender;
 - 42.6.2. **Conveyance to Lender.** Any Transfer directly resulting from a conveyance to a Lender of Tenant's Leasehold Interest in the Parcel;
 - 42.6.3. **Estate Planning.** Any Transfer of all or any portion of any ownership interest in Tenant for estate planning purposes, including without limitation, any Transfer into a charitable trust or a blind trust, provided the transferor maintains control over the interest in Tenant being transferred;
 - 42.6.4. **Transfers Among Affiliates.** Any Transfer, or series of Transfers, among affiliates of Tenant, provided that at all times after such Transfer, either Timothy Hernandez, Richard Caster, or Kevin Rickard, or a successor individual approved by the City, continues to direct the day-to-day management and policies of Tenant; or
 - 42.6.5. **Transfers of Ownership Interests in Tenant.** Any Transfer, or series of Transfers, totaling not more than ten percent (10%) of the direct or indirect ownership interests in Tenant, provided that at all times after such Transfer, either Timothy Hernandez, Richard Caster, or Kevin Rickard, or a successor individual approved by the City, continues to direct the day-to-day management and policies of Tenant.
 - 42.6.6. **Transfers Resulting from Death or Incapacity.** Any Transfer resulting from the death or incapacity of Timothy Hernandez, Richard Caster, or Kevin Rickard, or from the death or incapacity of a successor individual approved by the City to direct the day-to-day management and policies of Tenant.
- 42.7. **Transfers to an Acceptable Transferee.** After the completion of the Improvements on Parcels R1, R2, E, the Arch, and the Pier Street Extension, the Tenant's Leasehold Interest may be transferred to an "Acceptable Transferee," as

defined below. An "Acceptable Transferee" is an individual or entity meeting the following minimum qualifications:

- 42.7.1. **Development Experience.** The proposed transferee must possess development experience in the State of Florida equal to or better than the experience of the Developer as set forth in the Developer's response to the RFQ.
 - 42.7.2. **Financial Resources.** The proposed transferee must possess the financial resources equal to or better than the financial resources of the Developer as set forth in the Developer's response to the RFQ.
 - 42.7.3. **Character and Reputation.** The proposed transferee must possess a character, reputation and status in the community equal to or better than the character, reputation and status of the Developer as set forth in the Developer's response to the RFQ.
 - 42.7.4. **No Violations.** The proposed transferee must have no outstanding material violation of a Governmental Requirement against the proposed transferee or against any property owned or managed by the proposed transferee in the State.
 - 42.7.5. **No Convictions or Indictments.** The proposed transferee must not be owned, controlled or run by entities or individuals who have been convicted, or are presently under indictment, for felonies under the laws of any foreign or United States of America jurisdiction.
 - 42.7.6. **No Bankruptcies.** Neither the proposed transferee, nor any of the individuals or entities who own at least a 10% equity interest in the proposed transferee or who are officers, directors, managers or otherwise have the power to direct and control the business and affairs of the proposed transferee, have filed or been discharged from bankruptcy, or have been the subject of an involuntary bankruptcy, reorganization or insolvency proceedings within the past five years. Bankruptcy filings by affiliates will not disqualify a proposed transferee, unless such affiliates who own at least a 10% equity interest in the proposed transferee or who are officers, directors, managers or otherwise have the power to direct and control the business and affairs of the proposed transferee
- 42.8. **Transfers Requiring City's Consent.** For any Transfer of this Lease other than a Permitted Transfer, Tenant shall send City a written Transfer Application requesting approval of the Transfer.
- 42.8.1. The Transfer Application must include information showing that the proposed transferee is an Acceptable Transferee, including, at a minimum, (a) three years of externally reviewed financial statements; (b) a letter from a Florida bank or other financial institution doing business in Florida indicating the creditworthiness of the assignee; and (c) three letters of reference from unrelated third parties regarding assignee's character and business reputation in the community.

- 42.8.2. Upon request by City, Tenant will submit any additional information reasonably requested by City to evaluate the proposed transferee.
- 42.8.3. The City will notify the Tenant in writing within 30 days after its receipt of the Transfer Application if it approves the Transfer. If the City fails to respond to the Transfer Application within 30 days, the City shall be deemed to have withheld its consent to the Transfer in question. The City may reject a Transfer Application as long as City provides reasonable justification for why the proposed Transferee is not an Acceptable Transferee. Any consent to a Transfer does not waive any of the City's rights to consent to a subsequent Transfer.
- 42.9. **Transfer Conditions.** In order for a Transfer of this Lease to be effective, the following conditions must be satisfied:
 - 42.9.1. **City Consent.** If the Transfer is not a Permitted Transfer, City's prior written consent to the Transfer must be obtained.
 - 42.9.2. **Entire Lease.** The Transfer must be a Transfer of the entire Lease;
 - 42.9.3. **Written Notice to City.** City must be given written notice of the proposed Transfer together with true and correct copies of the proposed transfer documents and any other relevant agreements between the parties; current certified financial statements of the proposed transferee, if applicable; and any other relevant information about the proposed transferee at least 30 days prior to the intended effective date of the Transfer; and
 - 42.9.4. **Assumption of Obligations by Transferee.** City must be provided with a written instrument in recordable form in which the Transferee, for itself and its successors and assigns, and for the benefit of the City, expressly assumes all of the obligations of Tenant under this Agreement and agrees to be subject to all conditions and restrictions to which Tenant is subject under this Lease.
- 42.10. **Effectuation of Transfers.** No Transfer will be effective unless executed copies of the transfer documents and any other agreements between the parties to the Transfer are delivered to the City within 30 days after the Transfer.
- 43. **Notices.** All notices, demands, requests and other communications required under this Lease must be given in writing and may be delivered (a) by hand, or (b) by certified mail, return receipt requested, or (c) by a nationally recognized overnight delivery service such as Federal Express. Notice shall be deemed to have been given upon receipt or refusal of delivery. All notices, demands, requests and other communications required under this Lease may be sent by facsimile or electronic mail provided that the facsimile or electronic communication is followed up by notice given pursuant to one of the three methods in the preceding sentence. Any party may designate a change of address by written notice to the other party, received by such other party at least ten days before the change of address is to become effective.
- 43.1. **Notice to Tenant.** Notice to the Tenant under this Lease must be sent to:

Pompano Pier Associates, LLC
398 NE 6th Avenue
Delray Beach, Florida 33483
Attention: Timothy Hernandez
Telephone: 561 279 8706
Facsimile: 561 272 3951
Email: thernandez@newurbancommunities.com

With a copy to:

Kevin E. Rickard
398 NE 6th Avenue
Delray Beach, Florida 33483
Telephone: 561 279 8706
Facsimile: 561 272 3951
Email: krickard@newurbancommunities.com

With a copy to:

Richard Caster
398 NE 6th Avenue
Delray Beach, Florida 33483
Telephone: 561 279 9998
Facsimile: 561 279 7998
Email: rick@casterTenants.com

43.2. Notice to City. Notice to City under this Lease must be sent to:

City of Pompano Beach
100 West Atlantic Boulevard
Fourth Floor
Pompano Beach, Florida 33060
Attention: City Manager
Telephone: 954.786 4601
Facsimile: 954 786 4504
Email: dennis.beach@copbfl.com

With a copy to:

Redevelopment Management Associates
3109 East Atlantic Boulevard, Suite B
Pompano Beach, Florida 33062
Attention: Kim Briesemeister
Telephone: 954 695 0754
Facsimile: 954 783 4484
Email: kim@rma.us.com

With a copy to:

Pompano Beach City Attorney
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Attention: Gordon Linn, Esq.
Telephone: 954.786.4614
Facsimile:
Email:

With a copy to:

Weiss Serota Helfman Pastoriza Cole & Boniske, PL
200 East Broward Boulevard
19th Floor
Fort Lauderdale, Florida 33301
Attention: Jamie Cole, Esq.
Telephone: 954 763 4242
Facsimile: 954 764 7770
Email: jcole@wsh-law.com

44. Miscellaneous.

- 44.1. **Time is of the Essence.** Time is of the essence in the performance of all obligations of each party under this Lease, including Tenant's adherence to the Development Timeline.
- 44.2. **No Partnership or Joint Venture.** It is mutually understood and agreed that nothing contained in this Lease is intended or is to be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners, or creating or establishing the relationship of a joint venture between the City and Tenant, or as constituting Tenant as the agent or representative of the City for any purpose or in any manner whatsoever.
- 44.3. **Recording; Documentary Stamps.** A memorandum of this Lease, in the form attached as **Exhibit I**, will be recorded by the City in the Public Records of Broward County, Florida. The cost of recording, and the cost of any required documentary stamps, must be paid in full by Tenant. The parties will cooperate in structuring the transactions contemplated by this Lease to reduce such costs, provided the structure does not have any adverse consequence for the City.
- 44.4. **Governing Law.** This Lease will be governed by the laws of the State. This Lease is subject to and must comply with the Charter and City Code of the City of Pompano Beach, as they exist on the date of execution of the Lease. Any conflicts between this Lease and the Charter and City Code will be resolved in favor of the Charter and Code.
- 44.5. **Venue.** Venue for any disputes arising out of this Lease and for any actions involving the enforcement or interpretation of this Lease will be in the State courts of the 17th Judicial Circuit of Broward County, Florida.
- 44.6. **Severability.** If any part of this Lease is for any reason held to be unenforceable, the rest of the Lease remains fully enforceable.

44.7. Conflicts of Interest: City Representatives not Individually Liable. No elected official, representative, or employee of the City has any personal interest, direct or indirect, in this Lease. No elected official, representative or employee will participate in any decision relating to this Lease which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she has an interest, directly or indirectly. No elected official, representative or employee of the City will be personally liable to Tenant or any successor in interest for any amount which may become due to Tenant, for any obligations of City under the Lease, or in the event of any default or breach by the City.

44.8. Estoppel Certificates.

44.8.1. Within 30 days after written request by either City or Tenant, the other party will execute, acknowledge and deliver to the requesting party or to any actual or prospective Lender, a certificate stating that:

- (a) This Lease is in full force and effect and has not been modified, supplemented or amended in any way, or, if there have been modifications, the Lease is in full force and effect as modified, identifying the modification agreement. If the Lease is not in force and effect, the certificate will so state;
- (b) This Lease as modified, represents the entire agreement between the parties as to the subject matter, or, if it does not, the certificate will so state;
- (c) The dates on which the Lease Term commenced and will terminate;
- (d) To the knowledge of the certifying party, all conditions under the Lease to be performed up to that date by the City or Tenant, as the case may be, have been performed or satisfied and, as of the date of the certificate, there are no existing defaults, defenses or offsets which the City or Tenant, as the case may be, has against the enforcement of the Lease by the other party. If such conditions have not been satisfied or if there are any defaults, defenses or offsets, the certificate will so state; and
- (e) The Rent due and payable for the year in which the certificate is delivered has been paid in full, or, if it has not been paid, the certificate will so state.

44.8.2. The party to whom the certificate is issued may rely on the matters set forth in the certificate. In delivering the certificate, neither Tenant nor the City, nor any individual signing the certificate on a party's behalf, will be liable for the accuracy of the statements made in the certificate, but rather will be estopped from denying the veracity or accuracy of the statements. Any certificate required to be made by the City or Tenant pursuant to this paragraph will be deemed to be made by the City or Tenant, as the case may be, and not by the person signing the certificate.

- 44.9. **Section Headings.** Section headings are for convenience only and do not affect the interpretation of this Lease.
- 44.10. **Counterparts.** This Lease may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument. This Lease is effective only after execution and delivery by the parties.
- 44.11. **Successors and Assigns.** This Lease binds and inures to the benefit of the City and the Tenant, and their respective permitted successors and assigns, except to the extent expressly limited by this Lease.
- 44.12. **Entire Agreement.** This Lease (including the Exhibits) constitutes the sole agreement of the parties with respect to its subject matter. It supersedes any prior written or oral agreements or communications between the parties.
- 44.13. **Amendments.** No amendment to this Lease is binding on either party unless in writing and signed by both parties. The City is not obligated to spend any money or undertake any obligation in connection with an amendment proposed by Tenant. If Tenant requests an amendment to the Lease or any other action by City, Tenant must reimburse City for all third-party costs incurred by City (including but not limited to costs of third-party consultants and attorneys). Before the City takes action regarding any request, Tenant must deposit with the City the estimated amount of third-party costs, as reasonably determined by the City.
- 44.14. **Approvals by the City.** All requests for action or approvals by the City will be sent to the City Attorney for decision as to who within the City, including the City Commission, must act or approve the matter on behalf of the City.
- 44.15. **Prevailing Party's Attorneys' Fees.** In the event either party to the Lease institutes legal proceedings in connection with the Lease, the prevailing party will be entitled to recover its costs of suit, including without limitation, its Attorneys' Fees.
- 44.16. **Holidays.** The parties agree that whenever a notice or performance due under the Lease falls on a Saturday, Sunday or on a legal holiday recognized by the City, the notice or performance will be postponed to the next following business day.
- 44.17. **No Brokers.** City and Tenant warrant and represent to each other that neither party has engaged a real estate broker or other person entitled to payment of a commission in connection with this Lease. Tenant is responsible for, and will hold the City harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other person retained by Tenant who is entitled to a commission as a result of the execution and delivery of this Lease. The City is responsible for, and will hold Tenant harmless with respect to, the payment of any commission claimed by or owed to any real estate broker or other person retained by the City who is entitled to a commission as a result of the execution and delivery of this Lease.
- 44.18. **No Liability for Approvals and Inspections.** No approval given by the City in its capacity as landlord under this Lease, and no inspection of the Work or the Project by the City under this Lease, will render the City liable for its failure to discover any defects or nonconformance with any Governmental Requirement.

44.19. **Radon.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county public health unit for Broward County.

44.20. **Tenant Entity.** On the date of this Lease, Tenant is a _____. If at any time during the Lease Term, Tenant is a corporation or an entity other than a Florida limited liability company, then any references herein to member, membership interest, manager and the like which are applicable to a Florida limited liability company will be changed to the equivalent designation of such term which is appropriate to the nature of the new Tenant entity.

44.21. **Standard of Conduct.** The implied covenant of good faith and fair dealing under Florida law is expressly adopted in this Lease.

[SIGNATURE PAGES TO FOLLOW]

The parties have executed this Lease on the dates set forth below their respective signatures.

Witnesses:

As to City:

CITY OF POMPANO BEACH, FLORIDA,
a Florida municipal corporation

Print Name _____

By: _____
Lamar Fisher, Mayor

Print Name _____

Date: _____

By: _____
George Brummer, Vice Mayor

Date: _____

By: _____
Dennis Beach, City Manager

Date: _____

Attest: _____
Mary Chambers, City Clerk

Date: _____

ACKNOWLEDGMENTS ON NEXT PAGE

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by Lamar Fisher, as Mayor of the City of Pompano Beach, Florida, on behalf of the City. He is personally known to me or produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: _____
Print Name: _____
Notary Public, State of Florida
My commission expires: _____

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by George Brummer, as Vice Mayor of the City of Pompano Beach, Florida, on behalf of the City. He is personally known to me or produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: _____
Print Name: _____
Notary Public, State of Florida
My commission expires: _____

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by Dennis Beach, as City Manager of the City of Pompano Beach, Florida, on behalf of the City. He is personally known to me or produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: _____
Print Name: _____
Notary Public, State of Florida
My commission expires: _____

Witnesses:

POMPANO PIER ASSOCIATIONS, LLC, a
Florida limited liability company

Print Name _____

By: _____
Richard Caster, President

Print Name _____

Date: _____

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2012
by _____, as _____ of
_____, on behalf of the company. He is personally
known to me or produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: _____
Print Name: _____
Notary Public, State of Florida
My commission expires: _____

Exhibit A

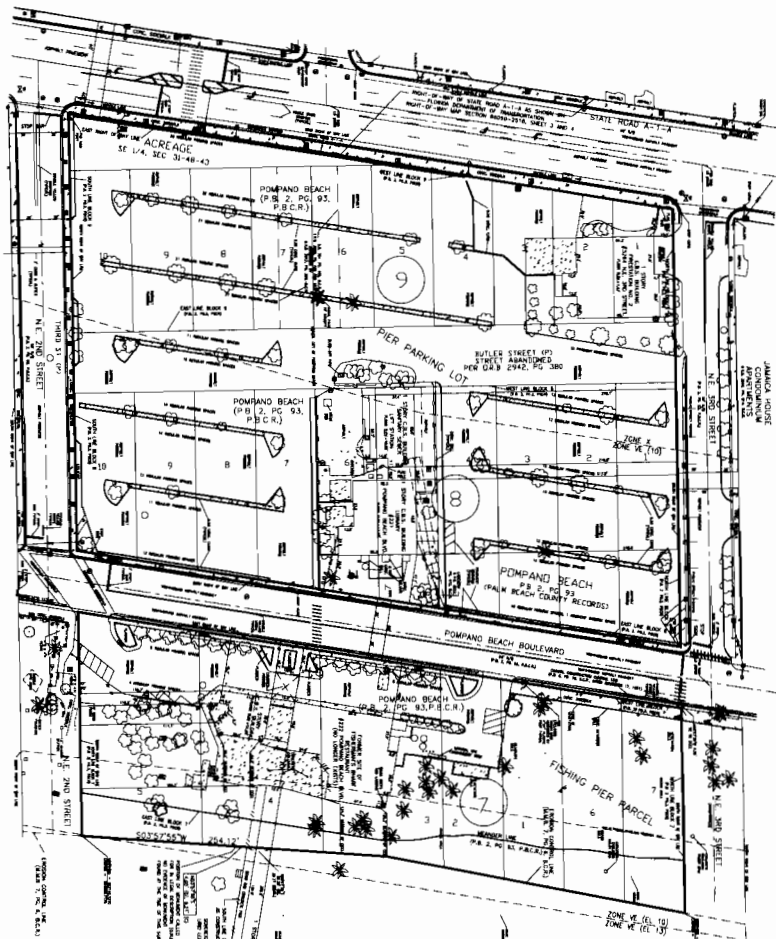
Legal Description of the Property

(see next page)

Legal Description of Beachfront Area

PORTIONS OF BLOCKS 6, 7, 11 & 12 OF POMPANO BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 93 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF POMPANO BEACH BOULEVARD AND THE SOUTH RIGHT-OF-WAY LINE OF N.E. 1ST STREET; THENCE NORTHEASTERLY ALONG SAID EAST RIGHT-OF-WAY LINE OF POMPANO BEACH BOULEVARD 1,800 FEET; THENCE, DEPARTING SAID RIGHT-OF-WAY LINE, SOUTHEASTERLY ALONG A LINE PERPENDICULAR TO SAID RIGHT-OF-WAY LINE TO THE EROSION CONTROL LINE; THENCE SOUTHWESTERLY ALONG SAID EROSION CONTROL LINE TO THE INTERSECTION OF A LINE PERPENDICULAR TO THE SAID EAST RIGHT-OF-WAY LINE OF POMPANO BEACH BOULEVARD; THENCE NORTHWESTERLY ALONG SAID PERPENDICULAR LINE TO THE POINT OF BEGINNING.



LEGAL DESCRIPTION

Fishing Pier Parcel

Lots 1 through 7, Block 7, POMPAÑO BEACH, according to the plat thereof, recorded in Plat Book 2, page 93, of the Public Records of Palm Beach County, Florida, and the easterly extension thereof to the Erosion Control Line, recorded in Miscellaneous Map Book 7, Page 6 of the Public Records of Broward County, Florida.

Said lands situate, lying and being in the City of Pompano Beach, Broward County, Florida and containing a total net area of 1.957 acres (85,257 square feet), more or less.

Pier Parking Lot

Lots 1 through 10, Block 8 and all of Lots 6 through 10 and those portions of Lots 1 through 5 lying East of the East Right of Way line of State Road A-1-A, Block 9, POMPAÑO BEACH, according to the Plat thereof as recorded in Plat Book 2, Page 93 of the Public Records of Palm Beach County, Florida.

TOGETHER WITH:

That certain 50 foot Right of Way for Butler Street lying between said Blocks 8 and 9, Said Right of Way vacated by City of Pompano Beach Ordinance 65-10 and recorded in Official Records Book 2942, Page 380 of the Public Records of Broward County, Florida.

TOGETHER WITH:

A parcel of land lying in the Southwest one-quarter (SW 1/4) of the Southeast one-quarter (SE 1/4) of Section 31, Township 48 South, Range 43 East, bounded as follows:

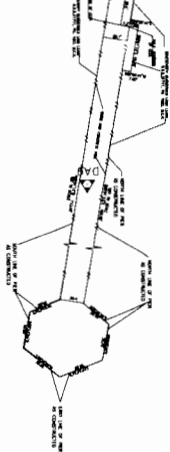
Bounded on the North at the intersection of the East Right of Way line of State Road A-1-A with the West line of said Block 9, POMPAÑO BEACH, as recorded in Plat Book 2, Page 93 of the Public Records of Palm Beach County, Florida.

Bounded on the South by the Westerly extension of the South line of Block 9, POMPAÑO BEACH, according to the Plat thereof as recorded in Plat Book 2, Page 93 of the Public Records of Palm Beach County, Florida.

Bounded on the West by the East Right of Way line of State Road A-1-A.

Bounded on the East by the West line of said Block 9, POMPAÑO BEACH.

Said lands situate, lying and being in the City of Pompano Beach, Broward County, Florida and containing a total net area of 4.168 acres (181,574 square feet), more or less.



BOUNDARY EXHIBIT

A PORTION OF SECTION 31, TOWNSHIP 48 SOUTH, RANGE 43 EAST
CITY OF POMPAÑO BEACH, BROWARD COUNTY, FLORIDA

KEITH
consulting engineers
301 EAST ATLANTIC BOULEVARD
POMPAÑO BEACH, FLORIDA 33060-6643
(954) 788-3400 FAX (954) 788-3500
EMAIL: mail@keith-associates.com LB NO 6860

DATE 06/14/12
SCALE 1"=100'
FIELD BOOK
DRAWN BY LP
CHECKED BY

SHEET 01 OF 01
PROJECT NUMBER
0717065

Exhibit B

Legal Description of Parcel ____

(see next page)

Exhibit C

Conceptual Site Plan

(see next page)

Exhibit D

Development Timeline

(see next page)

Development Timeline (Final)

Parcel	Lease Execution (LE)	Design Plans	Obtain Permits	Lease Commencement	Commence Construction	Substantial Completion
Parcel E	30-Jun-2013 (LE/E)	31-Dec-2013 (LE/E + 6 mos)	30-Jun-2014 (LE/E + 12 mos)	30-Jun-2014 (LE/E + 12 mos)	30-Sep-2014 (LE/E + 15 mos)	31-Mar-2015 (LE/E + 21 mos)
1st of Parcels R1, R2, or R3	31-Jan-2014 (LE/R1)	31-Jul-2014 (LE/R1 + 6 mos)	31-Jan-2015 (LE/R1 + 12 mos)	31-Jan-2015 (LE/R1 + 12 mos)	30-Apr-2015 (LE/R1 + 15 mos)	30-Apr-2016 (LE/R1 + 27 mos)
2nd of Parcels R1, R2 or R3	31-Jan-2015 (LE/R2)	31-Jul-2015 (LE/R2 + 6 mos)	31-Jan-2016 (LE/R2 + 12 mos)	31-Jan-2016 (LE/R2 + 12 mos)	30-Apr-2016 (LE/R2 + 15 mos)	30-Apr-2017 (LE/R2 + 27 mos)
3rd of Parcels R1, R2 or R3	31-Jan-2016 (LE/R3)	31-Jul-2016 (LE/R3 + 6 mos)	31-Jan-2017 (LE/R3 + 12 mos)	31-Jan-2017 (LE/R3 + 12 mos)	30-Apr-2017 (LE/R3 + 15 mos)	30-Apr-2018 (LE/R3 + 27 mos)
Parcel R4	31-Jan-2016 (LE/R4)	31-Jul-2016 (LE/R4 + 6 mos)	31-Jan-2017 (LE/R4 + 12 mos)	31-Jan-2017 (LE/R4 + 12 mos)	30-Apr-2017 (LE/R4 + 15 mos)	30-Apr-2018 (LE/R4 + 27 mos)
Parcel R5/H	31-Jan-2017 (LE/R5)	31-Jul-2017 (LE/R5 + 6 mos)	30-Apr-2018 (LE/R5 + 15 mos)	30-Apr-2018 (LE/R5 + 15 mos)	31-Jul-2018 (LE/R5 + 18 mos)	31-Jan-2020 (LE/R5 + 36 mos)
Parcel C	31-Jan-2017 (LE/C)	31-Jul-2017 (LE/C + 6 mos)	30-Apr-2018 (LE/C + 15 mos)	30-Apr-2018 (LE/C + 15 mos)	31-Jul-2018 (LE/C + 18 mos)	31-Jul-2019 (LE/C + 30 mos)

Notes:

1. All dates shall be the later of the tentative dates shown in the table or the time period shown in the table.
2. All dates are outside dates, but may be adjusted in accordance with the provisions of the Development Agreement

Exhibit E

Development Agreement

(see next page)

Exhibit F

Description of the Improvements

(see next page)

Exhibit G

**Renderings of the Improvements
(see next pages)**

Exhibit H

**Ownership of Tenant
(see next page)**

Exhibit I
Memorandum of Lease
(see next page)

This instrument prepared by/ record and return to:

Gail D. Serota, Esq.
Weiss Serota Helfman Pastoriza Cole & Boniske, PL
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, Florida 33134

Folio Number _____

MEMORANDUM OF PARCEL GROUND LEASE

THIS MEMORANDUM OF PARCEL GROUND LEASE ("Lease") is dated as of _____ and is between the **CITY OF POMPANO BEACH, FLORIDA**, a Florida municipal corporation ("City"), whose address is 100 West Atlantic Boulevard, 4th Floor, Pompano Beach, Florida 33060, Attn: City Manager and _____ ("Tenant"), a Florida _____, whose address is _____

The City is the owner of approximately of ____ acres of real property located in the City of Pompano Beach, Broward County, Florida and more particularly described in **Exhibit A** attached to and made a part of this Memorandum (the "Property").

City has entered into a Parcel Ground Lease ("Lease") with Tenant dated _____ and is leasing the Property to Tenant for a term of 50 years, commencing on _____ and terminating on _____, on the terms and conditions set forth in the Lease and in the Development Agreement dated _____ between the City and Pompano Pier Associates, LLC ("Developer").

City and Tenant desire to execute and record this Memorandum of Parcel Ground Lease to provide notice to third parties of the Lease and certain provisions contained in the Lease.

Section 33 of the Lease contains the following provisions:

33. Tenant's Duty to Keep Project Free of Liens.

33.1. **Property Not Subject to Liens.** In accordance with Section 713.10 of the Florida Statutes, any and all liens or lien rights arising out of the construction of the Improvements extend only to Tenant's Leasehold Interest in the Parcel and the Project. The City's right, title and interest in the Parcel are not subject to liens or claims of liens for improvements made by Tenant.

33.1.1. Nothing contained in the Lease shall be deemed or construed to constitute the consent or request of the City, either express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of any portion of the Project.

33.1.2. Nothing contained in the Lease shall be deemed or construed to give Tenant, any Lender, Subtenant, lessee, or sublessee any

right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against City's interest in all or any part of the Property, or against assets of the City, or City's interest in any Rent and other monetary obligations of Tenant described in this Lease.

- 33.2. **Tenant's Construction Agreements.** Any construction agreements entered into between Tenant and a general contractor or other contractor in privity with the Tenant must provide that City will not be liable for any work performed or to be performed at the Parcel for Tenant, any Lender, Subtenant, lessee, or sublessee, or for any materials furnished or to be furnished to the Project for Tenant, any Lender, Subtenant, lessee, or sublessee.
- 33.3. **No Liens on City's Interest.** No mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials will attach to or affect City's interest in all or any part of the Property, or any assets of the City, or the City's interest in any Rent or other monetary obligations of Tenant arising under the Lease.

This instrument is being executed and recorded for the purpose of giving notice of the Lease and certain provisions contained in the Lease, but is not intended to change the terms of the Lease which will govern in the case of a conflict.

SIGNATURE BLOCKS ON FOLLOWING PAGES

Witnesses:

As to City:

CITY OF POMPANO BEACH, FLORIDA,
a Florida municipal corporation

Print Name _____

By: _____
Lamar Fisher, Mayor

Print Name _____

Date: _____

By: _____
George Brummer, Vice Mayor

Date: _____

By: _____
Dennis Beach, City Manager

Date: _____

Attest: _____
Mary Chambers, City Clerk

Date: _____

Approved as to form and correctness by:

By: _____
Gordon Linn, City Attorney

ACKNOWLEDGMENTS FOR CITY ON FOLLOWING PAGE

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by Lamar Fisher, as Mayor of the City of Pompano Beach, Florida, on behalf of the City. He is personally known to me or produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: _____
Print Name: _____
Notary Public, State of Florida
My commission expires: _____

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by George Brummer, as Vice Mayor of the City of Pompano Beach, Florida, on behalf of the City. He is personally known to me or produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: _____
Print Name: _____
Notary Public, State of Florida
My commission expires: _____

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2012 by Dennis Beach, as City Manager of the City of Pompano Beach, Florida, on behalf of the City. He is personally known to me or produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: _____
Print Name: _____
Notary Public, State of Florida
My commission expires: _____

Witnesses:

POMPANO PIER ASSOCIATES, LLC, a
Florida limited liability company

Print Name _____

By: _____
Richard Caster, President

Print Name _____

Date: _____

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2012
by _____, as _____ of
_____, on behalf of the company. He is personally
known to me or produced a Florida driver's license as identification.

NOTARIAL SEAL

Notary: ____
Print Name: _____
Notary Public, State of Florida
My commission expires: _____

Exhibit E

Legal Description of Beachfront Area

PORTIONS OF BLOCKS 6, 7, 11 & 12 OF POMPANO BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 93 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF POMPANO BEACH BOULEVARD AND THE SOUTH RIGHT-OF-WAY LINE OF N.E. 1ST STREET; THENCE NORTHEASTERLY ALONG SAID EAST RIGHT-OF-WAY LINE OF POMPANO BEACH BOULEVARD 1,800 FEET; THENCE, DEPARTING SAID RIGHT-OF-WAY LINE, SOUTHEASTERLY ALONG A LINE PERPENDICULAR TO SAID RIGHT-OF-WAY LINE TO THE EROSION CONTROL LINE; THENCE SOUTHWESTERLY ALONG SAID EROSION CONTROL LINE TO THE INTERSECTION OF A LINE PERPENDICULAR TO THE SAID EAST RIGHT-OF-WAY LINE OF POMPANO BEACH BOULEVARD; THENCE NORTHWESTERLY ALONG SAID PERPENDICULAR LINE TO THE POINT OF BEGINNING.

Exhibit F

Existing Concessionaire Agreement between the City and Oceanside Beach Service, Inc.

(see next page)

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 CONCESSIONAIRE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND OCEANSIDE BEACH SERVICE, INC.; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That an Agreement between the City of Pompano Beach and Oceanside Beach Service, Inc., 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 said Agreement between the City of Pompano Beach and Oceanside Beach Service, Inc.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 10th day of July, 2012.



LAMAR FISHER, MAYOR

ATTEST:



MARY L. CHAMBERS, CITY CLERK

CONCESSIONAIRE AGREEMENT

THIS AGREEMENT, made and entered into this 12th day of July, 2012, by and between:

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

and

OCEANSIDE BEACH SERVICE, INC., a Florida corporation, (hereinafter referred to as "CONCESSIONAIRE").

WHEREAS, the City of Pompano Beach has solicited requests for proposals for the privilege of operating the business of renting, storage and maintenance of beach equipment on the Public Beach of Pompano Beach; and

WHEREAS, the bid submitted by Oceanside Beach Service, Inc. was deemed to be the best responsible bid; and

WHEREAS, CITY wishes to contract with Oceanside Beach Service, Inc. with respect to providing a license for renting, storage and maintenance of beach equipment on the Public Beach; and

WHEREAS, CITY has determined that such an agreement would be in the best interest of the public.

NOW, THEREFORE, in consideration of the premises and the covenants and promises herein, it is mutually agreed as follows:

1. The City of Pompano Beach, Florida, does hereby give and grant to CONCESSIONAIRE an exclusive right and privilege to operate in the Public Beach of the City of Pompano Beach, the business of renting and generally servicing the public with beach

equipment such as beach chairs, beach umbrellas, wind screens, cabanas, surf rafts and related beach equipment, within the Public Beach being described as follows:

South of Pier – starting at the Atlantic Blvd main beach access path and extending north to approximately 100 feet south of municipal pier (location of the red wooden posts),

North of Pier – starting approximately 100 feet north of municipal pier (location of the red wooden posts), and extending north to the 5th street beach access line.

Any concessionaire equipment is not to exceed the line of sight of the following:

- East – between two adjacent lifeguard towers
- West – shall be no closer than 60 feet to any sand dune on the west side of the beach.

Equipment will not be located within 15 yards of lifeguard stands.

All umbrellas, chairs and cabanas will be blue and white in color.

2. The term of this agreement shall be three (3) years, commencing upon execution of the contract. CITY shall have the option of automatic renewal for an additional three (3) year period upon the expiration of the original three (3) year agreement. This option may be exercised at the discretion of CITY. CONCESSIONAIRE may terminate the agreement effective at the end of the first three (3) year period upon written notice to CITY at least ninety (90) days prior to the expiration date.

3. CONCESSIONAIRE shall provide adequate year-round daily service to take care of the needs and demands of the public, and shall provide a variety of equipment according to the needs of each season.

4. CONCESSIONAIRE shall provide all equipment in good clean and serviceable condition at the commencement of this agreement and in sufficient quantity to adequately service

the public in respect to the best interest and convenience of the patrons of the public Beach of the CITY as described herein. CONCESSIONAIRE agrees to maintain all such equipment in good clean and serviceable condition during the entire term of this agreement and CITY shall have the right to inspect such equipment periodically to determine its condition but shall be under no obligation to do so, and CONCESSIONAIRE shall replace or recondition equipment which is determined by CITY to no longer be in good and serviceable condition.

5. CONCESSIONAIRE shall locate and install its equipment only in the areas provided herein. The placement of equipment shall never interfere with the Ocean Rescue Division's observation of the public for said public's welfare and safety as determined by CITY. Additionally, double-lounge wooden cabanas shall be placed so that there is a minimum clearance of thirty (30) feet between each cabana on all sides. Wooden cabanas shall not be located within 100 yards, north or south, of the municipal pier. Wooden cabanas will be permitted to remain on the beach overnight, so long as they are maintained and set up neatly. Umbrellas and water-borne equipment shall be located under the direction and regulation of the Ocean Rescue Division. Beach chairs and metal-frame strap lounges will be neatly stacked (a maximum of eight (8) chairs per stack) and arranged side-by-side in designated areas, as indicated in Attachment "A".

6. Due to the uncertainty of changing winds and weather, it shall be agreed that no rafts or floats shall be rented or permitted by CONCESSIONAIRE if the Lifeguard Supervisor decides for reason of safety that rafts or floats, both private and public, shall not be permitted in the water.

7. In order to avoid any misunderstanding regarding the distance, that equipment of CONCESSIONAIRE shall be set back from the high water, it shall be expressly understood and agreed between the parties that the guard stands or beach stands as placed by CITY's lifeguards

shall form the restraining line and no equipment shall be placed or permitted east of same but in no event shall such equipment be closer than three (3) feet from the high water mark.

8. CONCESSIONAIRE shall not be permitted to use the concession area or areas for any other purposes than the renting of the equipment specified herein and shall conduct its business so as to serve the public in a dignified and professional manner with no pressure, coercion, persuasion, or hawking by CONCESSIONAIRE or his employees in an attempt to influence the public to utilize CONCESSIONAIRE's equipment. The public shall at all times have free use of the Public Beach area not authorized for use by CONCESSIONAIRE under this agreement nor shall CONCESSIONAIRE interfere with the operation of other concessions that may be located in the area. The public shall at all times have free use of the public beach, which shall specifically include the space in front of CONCESSIONAIRE's location.

9. In the event any complaint shall be made by the public as to the manner of the operation of the concession business, such matter will be directed to the Recreation Programs Administrator or his designee to investigate and resolve. If the Recreation Programs Administrator or his designee is unable to resolve, the matter will be turned over to the City Manager for appropriate action. The decision of the City Manager shall be final and binding on CONCESSIONAIRE. Further, any disputes arising between CONCESSIONAIRE and other concessionaires concerning their rights under their respective agreements with CITY or disputes of whatever nature or kind arising pursuant to this agreement shall be reported to the Recreation Programs Administrator for his review and necessary action.

10. The Recreation Programs Administrator or such other person designated by the City Manager shall be responsible for the enforcement of this agreement. In the event either party claims the other is guilty of default or a breach of this agreement, a conference may first be called between the parties and every reasonable effort shall be made to reach an amicable

solution. Both parties shall be entitled to have representatives present to attempt to resolve any such dispute.

However, at any time if there is any breach or default in either party's performance of any covenant or obligation under this agreement, either party shall be given fifteen (15) days to cure any alleged default or breach after receipt of written notice to the other. If said breach or default has not been remedied within such time period after written notice of same and is continuing, either party may terminate this agreement immediately in writing. Thereafter, CITY may enter the concession area and possess itself of all the rights and privileges heretofore enjoyed by CONCESSIONAIRE. In the event CONCESSIONAIRE remains in possession of the concession area after such termination date as provided in writing, CONCESSIONAIRE shall be deemed to be in trespass on CITY property.

No fees paid under the agreement shall be refunded to CONCESSIONAIRE but same shall be forfeited to CITY for termination resulting from the provisions of this section.

Broward County, Florida, shall be the venue for any litigation commenced by either party for any dispute under this agreement.

11. CONCESSIONAIRE shall furnish the necessary janitorial services for maintaining the property occupied by it in a state of cleanliness, which shall include the removal on a daily basis of all litter and debris that results from the services provided pursuant to this agreement. Additionally, CONCESSIONAIRE shall adhere to a maintenance schedule set up by the Recreation Manager and shall provide personnel to remove the cabanas and rental equipment according to that schedule to facilitate the cleaning of the municipal beach. CONCESSIONAIRE shall be consulted on maintenance scheduling, however, the decision as to the actual maintenance schedule shall be made by the City Manager or his designee.

12. CONCESSIONAIRE shall be free to establish rental fees for the equipment, however, such fees shall be competitive with similar concessions or services operating or available in the Broward County area, and a copy of the current rate shall be filed with CITY and posted by CONCESSIONAIRE. Rental items listed in the rate schedule shall be available year round on the Public Beach as described herein and shall be offered to the public at all times that a reasonable demand for such services exist during daylight hours. CONCESSIONAIRE shall not operate during hours of darkness, which period shall be defined for the purposes herein as between one hour after sunset to one-half hour before sunrise.

13. CONCESSIONAIRE shall not be permitted to display any signs or advertising matter on the area except for identification signs approved by the City Manager and in conformity with all applicable City ordinances provided, however, that the CONCESSIONAIRE shall insure that the rates for rental of beach equipment are posted. The signs shall be approved by CITY.

14. CONCESSIONAIRE must at the time of an official hurricane warning, remove all its equipment from the beach concession area.

15. All CONCESSIONAIRE employees shall be neatly attired in approved uniforms properly identifying CONCESSIONAIRE and the employee. No person convicted of any offense involving moral turpitude or a felony shall be employed by CONCESSIONAIRE.

16. As compensation for the rights and privileges granted herein, CONCESSIONAIRE shall pay to CITY the sum of Seventy-Two Thousand and No/100 (\$72,000.00) Dollars plus applicable Florida State Sales Tax, payable in quarterly payments in advance each year as follows:

- first year, four quarterly installments of \$6,000.00
- second year, four quarterly installments of \$6,000.00

- third year, four quarterly installments of \$6,000.00

Payments are due to the City Treasury Department, 100 West Atlantic Blvd., Pompano Beach, FL 33060, on the first day of each quarter (Jan. 1, April 1, July 1, and Oct. 1). Should this agreement initiate during any such quarter, the first quarterly payment shall be prorated to include only those days within the quarter that the agreement was in effect. In such case, the first payment shall be due within seven (7) days of final approval of the agreement by CITY. In the event CONCESSIONAIRE fails to make any payment to CITY more than seven (7) days after the same is due, CONCESSIONAIRE shall pay to CITY for such privilege an additional rental charge as liquidated damages of One Hundred and No/100 (\$100.00) Dollars per day for each day's delay in payment retroactive to the first day of each quarter in which the payment was due. Rental shall not be deemed to be paid under the check given therefor until said check has cleared the bank upon which it is drawn. CONCESSIONAIRE shall additionally pay applicable Florida State Sales Tax at the time a quarterly payment is made to CITY.

17. This agreement may be terminated for convenience and without cause by either party upon thirty (30) days' written notice to the non-cancelling party. Should the termination date fall within a quarter as described herein, any quarterly payment made shall be prorated and refunded to CONCESSIONAIRE for the time period service was not provided due to such termination, if initiated by CITY.

18. Should CONCESSIONAIRE desire any additional building for storage of the equipment utilized for the purposes set forth herein, upon receiving the consent of CITY and all necessary permits and approvals, any such building shall, unless otherwise provided by a written agreement, be the property of CITY and shall remain and be surrendered upon termination of this agreement.

19. CONCESSIONAIRE hereby waives all claims for damages to or loss of any property that belongs to CONCESSIONAIRE that may be in or about the premises.

20. The CONCESSIONAIRE shall submit to the CITY an annual statement of gross revenues and expenses, along with supporting documentation, prepared by an independent certified public accountant and in a form consistent with generally accepted accounting principles, within ninety (90) calendar days of the end of each annual agreement period.

All financial records of the CONCESSIONAIRE related to the concession operation in this agreement shall be made available for check and audit by the City of Pompano Beach Internal Auditor, on one occasion during the initial three (3) year period of this agreement, and once during any additional period should this agreement be extended under its terms. Any such audit shall be at a reasonable time and with reasonable notice. These records, relating to the concession operation under this agreement only, shall include, but not be limited to, Florida state sale tax returns, receipts and deposit receipts, federal payroll tax returns and all supporting payroll records, bank statements, cancelled checks and any other financial records requested by the Internal Auditor of the CITY which pertain to this agreement. CONCESSIONAIRE shall retain any and all records relating to the concession operation pursuant to this agreement for a period of five (5) years from the date of final payment under this agreement, or as otherwise required by applicable laws including the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes.

21. CONCESSIONAIRE shall carry, at its own cost and expense, with a company satisfactory to CITY and authorized to do business in the State of Florida, insurance coverage as specified on Exhibit "A," which is attached hereto and incorporated herein as if set forth in full and shall furnish CITY with certificates of said insurance coverage prior to the effective date of this agreement.

22. CONCESSIONAIRE shall not be authorized to rent any equipment that is not scheduled in its bid application or covered by the insurance policy furnished CITY unless, prior to such rental, it shall furnish an additional list of equipment to the Parks and Recreation Department and receive approval of the City Manager.

23. CONCESSIONAIRE shall assume all risks incident to or in connection with the use and service to be conducted hereunder and shall be solely responsible for all accident or injuries of whatsoever nature or kind to the persons or property caused by its operation of the concession provided for herein. CONCESSIONAIRE hereby agrees to indemnify, defend and save harmless CITY and its respective authorized agents, officials, employees and representatives from any and all claims of liability for damages to any person or personal injury or loss or damaged property occasioned by or in connection with any activities conducted pursuant to this agreement. CITY assumes no responsibility whatsoever for any property located on the premises, and CITY is hereby expressly relieved and discharged from any and all liability for any loss, injury or damage to persons or property that may be sustained by reason of the occupancy under this agreement.

24. The acceptance of rental payments by CITY, whether in a single instance or repeatedly, after it falls due, or after knowledge of any breach hereby by CONCESSIONAIRE, where the giving or making of any notice or demand, whether according to any statutory provision or not, or any active or series of acts except an express waiver in writing shall not be construed as waiver of CITY's right or of any other right hereby given the CITY or as an election not to proceed under the provisions of this agreement.

25. Whenever either party to this agreement desires to give notice to the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it intended, at the place last specified, and the place for giving

of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following respective places for giving of notice, to-wit:

FOR CITY:

City Manager
Post Office Drawer 1300
Pompano Beach, Florida 33061

FOR CONCESSIONAIRE:

Oceanside Beach Service, Inc.
P.O. Box 13018
North Palm Beach, Florida 33408

26. This agreement establishes a License for CONCESSIONAIRE only, as an independent contractor, to utilize the property described herein in the manner described and for purposes described herein, and does not otherwise convey any legal interest in the property to CONCESSIONAIRE. Neither the premises described herein nor any portion thereof shall be sublet nor shall this agreement or any interest therein be assigned, or mortgaged by CONCESSIONAIRE and any attempt at assignment, subletting, or mortgaging this agreement shall be of no force or effect and shall confer no rights upon any assignee, mortgagee, or pledge.

27. CONCESSIONAIRE shall not unlawfully discriminate against any person in its operations and activities in fulfilling its obligations under this agreement. This shall include compliance with the Americans with Disabilities Act. In addition, CONCESSIONAIRE's decisions regarding the delivery of services under this agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery. Compliance and performance by the CONCESSIONAIRE of the non-discrimination provision of this agreement is an express condition hereof and any failure by the CONCESSIONAIRE to so comply and perform shall be

a default as provided in this Agreement and the CITY may exercise any right as provided herein and as otherwise provided by law.

28. CONCESSIONAIRE shall pay any and all taxes or special assessments that may be levied or assessed as a result of this agreement. The cost of any and all necessary licenses and permits shall be paid by CONCESSIONAIRE.

29. CONCESSIONAIRE agrees that every officer, employee or agent connected with the purposes for which this agreement encompasses shall abide by, conform to and comply with all the laws of the United States and the State of Florida and all the ordinances of CITY as those laws and ordinances now read or may hereafter be changed or amended in the future and will not do or suffer to be done anything in violation of any pursuant to the agreement in violation of any said laws or ordinances and, if the attention of said CONCESSIONAIRE is called to such violation, CONCESSIONAIRE will immediately desist from and correct such violation.

30. CONCESSIONAIRE agrees that it will require each of its employees at the Pompano Beach concession to submit to a criminal background check prior to or at any time during the course of employment and submit the results to the Parks and Recreation Department for review. CITY, acting through the City Manager, reserves the right to require the dismissal of any employee of CONCESSIONAIRE in the event that any such background check discloses information which in the opinion and in the sole discretion of the City Manager renders such employee unsuitable for employment by CONCESSIONAIRE.

31. All terms and conditions of Request for Proposals #H-40-11, "Beach Equipment Concession" and the price list included in CONCESSIONAIRE's response are applicable and incorporated in this agreement unless indicated otherwise herein. This written instrument constitutes the entire agreement by the parties hereto, and this agreement may be modified only in writing.

"CITY":

Witnesses:

Betty J. Morris

Shelly R. Bartholomew

CITY OF POMPANO BEACH

By: [Signature]
LAMAR FISHER, MAYOR

By: [Signature]
DENNIS W. BEACH, CITY MANAGER

Attest:

[Signature]
MARY L. CHAMBERS, CITY CLERK

(SEAL)

Approved As To Form:

[Signature]
GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this 12th day of July, 2012, by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **MARY L. CHAMBERS**, City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

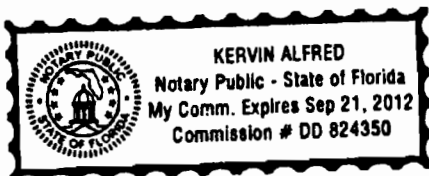
NOTARY'S SEAL:

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

Kervin Alfred

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number _____



"CONCESSIONAIRE":

Witnesses:

OCEANSIDE BEACH SERVICE, INC.
a Florida corporation

C. M.
[Signature]

By: [Signature]
Michael J. Novatka
Typed or Printed Name
Title: PRESIDENT

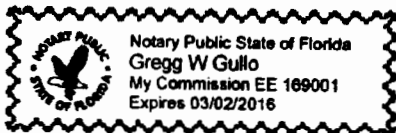
(SEAL)

STATE OF FLORIDA

COUNTY OF ~~BROWARD~~ ^{or}
Palm Beach

The foregoing instrument was acknowledged before me this 20th day of June,
2012 by Michael J. Novatka as President
_____ of OCEANSIDE BEACH SERVICE, INC., a Florida corporation, on behalf of the
corporation. He/she is personally known to me or who has produced Drivers
license (type of identification) as identification.

NOTARY'S SEAL:



[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

Gregg W. Gullo
(Name of Acknowledger Typed, Printed or Stamped)

EE 169001
Commission Number

MEB/jrm
6/14/12
2/1/12
l:agr/recrea/2012-379

**“EXHIBIT A”
STANDARDIZED INSURANCE REQUIREMENTS
OF THE CITY OF POMPAÑO BEACH**

Insurance

The vendor/contractor shall not commence operations, labor, construction and/or installation of improvements to complete this project until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Pompano Beach Risk Management Division.

The following insurance coverage shall be required.

- A. Workers' Compensation Insurance for all its employees in accordance with the requirements of Florida Statute, Chapter 440. The Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.
- B. Public Liability & Auto Liability Insurance
 - 1) Naming the City of Pompano Beach as an additional insured in connection with the work being done under this contract.
 - 2) The types of insurance and minimum policy limits that are required are indicated by “XXXX” below.

Type of Insurance		LIMITS OF LIABILITY	
		each occurrence	aggregate
PUBLIC LIABILITY			
XXXX	Comprehensive Form		
XXXX	Premises - operations	Bodily Injury \$200,000.	\$300,000.
—	Explosion & collapse hazard	Property Damage..... \$200,000.	\$300,000.
—	Underground hazard	-- or --	
XXXX	Products (if items are sold)	Bodily Injury and	
XXXX	Contractual insurance	Property Damage	
XXXX	Liquor legal (if items are sold)	Combined..... \$200,000.	\$300,000.
XXXX	Independent contractors		
XXXX	Personal injury	Personal Injury \$200,000.	\$300,000.
AUTOMOBILE LIABILITY			
		Bodily Injury	
XXXX	Comprehensive Form	(ea. person/ ea. accident) . \$200,000	\$300,000.
XXXX	Owned	Property Damage \$200,000.	\$300,000.
XXXX	Hired	-- or -- Bodily Injury and	
XXXX	Non-owned	Property Damage combined \$200,000.	\$300,000.
EXCESS LIABILITY			
		Bodily injury and	
XXXX	Umbrella form	Property damage	
—	other than umbrella	Combined \$1,000,000.	\$1,000,000.

The certification or proof of insurance must contain a provision for notification to the City thirty (30) days in advance of any material change in coverage or cancellation.

Firm shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within five (5) days after notification of award of contract.

Mail certificate(s) to: City of Pompano Beach, Attention Risk Manager, P.O. Box 1300, Pompano Beach, Florida, 33061.

Exhibit A - Insurance

PROGRESSIVE

UNDERWOOD ANDERSON
PO DRAWER 9578
PENSACOLA, FL 32513
1-850-932-5326

Policy number: 05467104-2

Underwritten by:
PROGRESSIVE EXPRESS INS COMPANY
December 22, 2011
Page 1 of 1

Certificate of Insurance

Certificate Holder	Insured	Agent
CITY OF POMPANO BEACH C/O SCOTT MOORE 100 WEST ATLANTIC BLVD POMPANO BEACH, FL 33060	OCEANSIDE BEACH SERVICE P.O. BOX 13018 N PALM BEACH, FL 33408	UNDERWOOD ANDERSON PO DRAWER 9578 PENSACOLA, FL 32513

This document certifies that insurance policies identified below have been issued by the designated insurer to the insured named above for the period(s) indicated. This Certificate is issued for information purposes only. It confers no rights upon the certificate holder and does not change, alter, modify, or extend the coverages afforded by the policies listed below. The coverages afforded by the policies listed below are subject to all the terms, exclusions, limitations, endorsements, and conditions of these policies.

Policy Effective Date: Jun 11, 2011	Policy Expiration Date: Jun 11, 2012
Insurance coverage(s)	Limits
BODILY INJURY/PROPERTY DAMAGE	\$1,000,000 COMBINED SINGLE LIMIT
UNINSURED MOTORIST	\$300,000 CSL NON-STACKED
PERSONAL INJURY PROTECTION	\$10,000 W/\$0 DED - NAMED INSURED ONLY

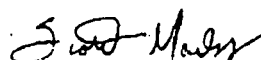
Description of Location/Vehicles/Special Items

Scheduled autos only	
2001 FORD F350 SUPER DUTY 1FTSX31S31EA16123	Stated Amount \$4,000
MEDICAL PAYMENTS	\$2,000
COMPREHENSIVE	\$500 DED
COLLISION	\$500 DED
2011 DODGE RAM 1500 1D7RB1CT7B5626798	Stated Amount \$30,000
MEDICAL PAYMENTS	\$2,000
COMPREHENSIVE	\$500 DED
COLLISION	\$500 DED

Certificate number

35611NET104

Please be advised that the certificate holder will not be notified in the event of a mid-term cancellation.



Form 5241 (10/02)

APPROVED
RISK MANAGEMENT
ON: 12/27/11
BY: Lawrence



CERTIFICATE OF LIABILITY INSURANCE

OCEABEA-02

JESSC

DATE (MM/DD/YYYY)

6/28/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER First Flight Insurance Group, Inc. P O Box 1048 Kitty Hawk, NC 27949	CONTACT NAME: PHONE (A/C No. Exch): (252) 261-0903 FAX (A/C No.): (855) 814-8591 E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Certain Underwriters at Lloyds INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
INSURED Oceanside Beach Services, Inc. PO Box 13018 North Palm Beach, FL 33408	NAIC #

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> 1,000 ded per occ GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X		SA10020-11581	2/9/2012	2/8/2013	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 0 PERSONAL & ADV INJURY \$ 0 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 0 COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Rentals - Beach Equipment and Non Motorized Watercraft Rentals scheduled locations on file.

CERTIFICATE HOLDER IS LISTED AS AN ADDITIONAL INSURED WITH RESPECT TO GENERAL LIABILITY.

CERTIFICATE HOLDER

CANCELLATION

City of Pompano Beach Attn: Risk Manager PO Box 1300 Pompano Beach, FL 33060	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	---

Exhibit A - Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/22/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Sunz Insurance Company PO Box 1777 St Petersburg, FL 33731	<table border="1"> <tr> <td colspan="2">CONTACT NAME:</td> </tr> <tr> <td>PHONE (A/C No. Ext): 727-497-1247</td> <td>FAX (A/C No): 727-497-1280</td> </tr> <tr> <td colspan="2">E-MAIL ADDRESS:</td> </tr> <tr> <td>INSURER(S) AFFORDING COVERAGE</td> <td>NAIC #</td> </tr> <tr> <td>INSURER A: SUNZ Insurance Company</td> <td>34762</td> </tr> <tr> <td>INSURER B: Aspen Re - London - Best Rating "A"</td> <td></td> </tr> <tr> <td>INSURER C: Cathin Syndicate - Lloyds - Best Rating "A"</td> <td></td> </tr> <tr> <td>INSURER D: Brit Syndicate - Lloyds - Best Rating "A"</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	CONTACT NAME:		PHONE (A/C No. Ext): 727-497-1247	FAX (A/C No): 727-497-1280	E-MAIL ADDRESS:		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: SUNZ Insurance Company	34762	INSURER B: Aspen Re - London - Best Rating "A"		INSURER C: Cathin Syndicate - Lloyds - Best Rating "A"		INSURER D: Brit Syndicate - Lloyds - Best Rating "A"		INSURER E:		INSURER F:	
CONTACT NAME:																					
PHONE (A/C No. Ext): 727-497-1247	FAX (A/C No): 727-497-1280																				
E-MAIL ADDRESS:																					
INSURER(S) AFFORDING COVERAGE	NAIC #																				
INSURER A: SUNZ Insurance Company	34762																				
INSURER B: Aspen Re - London - Best Rating "A"																					
INSURER C: Cathin Syndicate - Lloyds - Best Rating "A"																					
INSURER D: Brit Syndicate - Lloyds - Best Rating "A"																					
INSURER E:																					
INSURER F:																					
INSURED Employee Staff, LLC 11400 Parkside Dr Suite 500 Knoxville TN 37934																					
www.ins4biz.com																					

COVERAGES

CERTIFICATE NUMBER: 11958230

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INBR LTR	TYPE OF INSURANCE	ADDL SUBR INBR YMD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> GENT. AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPROP AGG \$ \$ \$
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> 					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$ \$
A	WORKERS COMPENSATION AND EMPLOYER'S LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	WCPE000005802	10/29/2011	10/29/2012	WC STATUS: <input checked="" type="checkbox"/> TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B C D	Workers Compensation Excess Coverage					This is for informational purposes and nothing shall create any right under such reinsurance.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)									
---	--	--	--	--	--	--	--	--	--

Coverage provided for all leased employees but not subcontractors of: Oceanside Beach Service, Inc.
Location Effective: 1/1/2011


CERTIFICATE HOLDER 5312 City of Pompano Beach 100 West Atlantic Blvd Pompano Beach FL 33060	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  Glen J. Distefano

Exhibit A - Insurance

UNDERWOOD ANDERSON
PO DRAWER 9578
PENSACOLA, FL 32513
1-850-932-5326

PROGRESSIVE

Policy number: 05467104-3

Underwritten by:
PROGRESSIVE EXPRESS INS COMPANY
June 20, 2012
Page 1 of 2

Certificate of Insurance

Certificate Holder	Insured	Agent
CITY OF POMPANO BEACH C/O SCOTT MOORE 100 WEST ATLANTIC BLVD POMPANO BEACH, FL 33060	OCEANSIDE BEACH SERVICE P.O. BOX 13018 N PALM BEACH, FL 33408	UNDERWOOD ANDERSON PO DRAWER 9578 PENSACOLA, FL 32513

This document certifies that insurance policies identified below have been issued by the designated insurer to the insured named above for the period(s) indicated. This Certificate is issued for information purposes only. It confers no rights upon the certificate holder and does not change, alter, modify, or extend the coverages afforded by the policies listed below. The coverages afforded by the policies listed below are subject to all the terms, exclusions, limitations, endorsements, and conditions of these policies.

Policy Effective Date: Jun 11, 2012	Policy Expiration Date: Jun 11, 2013
Insurance coverage(s)	Limits
BODILY INJURY/PROPERTY DAMAGE	\$1,000,000 COMBINED SINGLE LIMIT
UNINSURED MOTORIST	\$300,000 CSL NON-STACKED
PERSONAL INJURY PROTECTION	\$10,000 W/\$0 DED - NAMED INSURED ONLY

Description of Location/Vehicles/Special Items

Scheduled autos only			
2001 FORD F350 SUPER DUTY 1FTSX31S31EA16123		Stated Amount	\$4,000
MEDICAL PAYMENTS	\$2,000		
COMPREHENSIVE	\$500 DED		
COLLISION	\$500 DED		
2011 DODGE RAM 1500 1D7RB1CT7B5626798		Stated Amount	\$30,000
MEDICAL PAYMENTS	\$2,000		
COMPREHENSIVE	\$500 DED		
COLLISION	\$500 DED		
2010 CHRYSLER 300 TOURING 2C3CA5CV3AH263003		Stated Amount	\$16,000
COMPREHENSIVE	\$500 DED		
COLLISION	\$500 DED		

APPROVED
RISK MANAGEMENT
ON: 6/25/12
BY: Jm

Exhibit A - Insurance

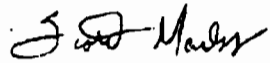
Policy number: 05467104-3

Page 2 of 2

Certificate number

17212NET104

Please be advised that the certificate holder will not be notified in the event of a mid-term cancellation.



Form 5241 (10/02)



Florida's Warmest Welcome

REQUEST FOR PROPOSALS

H-40-11

BEACH EQUIPMENT CONCESSION

RFP OPENING: July 5, 2011, 2:00 p.m. (local)
PURCHASING OFFICE
1190 N.E. 3RD AVENUE, BUILDING C (Front)
POMPAÑO BEACH, FLORIDA 33060

CITY OF POMPAÑO BEACH, FLORIDA

REQUEST FOR PROPOSALS

H-40-11

The City of Pompano Beach, Florida invites qualified firms to submit proposals, qualifications, and experience for consideration to provide Beach Equipment Concession.

SECTION I

A. PROJECT SCOPE

The City of Pompano Beach desires to enter into a contract with a concessionaire to provide public rental of beach equipment and cabanas. The term of Agreement will be three (3) years, with the option to renew for a maximum of three (3) additional one-year periods, subject to mutual agreement.

Beach equipment rental may occur on the area of Pompano Beach described as follows:

South of the Pier – Starting 150 yards north of south line of public beach extending north to 150 yards south of municipal pier and west to 25 yards from lifeguard station line. Equipment will not be located within 15 yards of lifeguard stands.

North of the Pier – Starting 150 yards north of pier extending north to 150 yards of north boundary line of public beach and west to 25 yards west of lifeguard stand line. Equipment will not be located within 15 yards of lifeguard stands.

Any concessionaire equipment is not to exceed of the line of sight of the following:

- East - between 2 adjacent lifeguard towers (*rationale: lifeguard visibility*)
- West – between 2 adjacent cement garbage cans placed mid beach (*rationale – emergency vehicle access*)

Total beach attendance figures at the municipal beach for 2009 were 1,526,036 patrons, and for 2010, 1,360,247 patrons.

I. Equipment And Services

a. Beach Equipment

The beach equipment and cabanas shall not be installed or operated beyond the area protected by the Ocean Rescue Division. Beach equipment as referred to in this RFP shall mean chairs, umbrellas, cabanas, wind screens, and related beach equipment.

The Concessionaire shall be permitted to operate as a free enterprise and to establish rates for renting beach equipment and services. A list of the rates must be on file with the City of Pompano Beach and posted by the Concessionaire. A schedule of rate revisions must be provided to the City Manager or designee at least ten (10) days prior to posting to the public.

Any additional buildings required by the Concessionaire for storage shall conform to all applicable City codes and building requirements, and shall remain the property of the City of Pompano Beach upon termination of this Agreement. Size and color of storage shall be decided by the Parks and Recreation Department.

The Concessionaire shall not be authorized to rent any equipment which is not scheduled in the response to the RFP, or covered by the insurance policy furnished the City, unless prior to such rental, the Concessionaire shall have furnished an additional list of equipment to the City Manager or designee and received approval by the City Commission. The City shall be entitled to 10% of the gross rental fee for equipment, services, or sales unrelated to chairs, umbrellas, cabanas, windscreens and related beach equipment.

The Concessionaire shall provide adequate year-round service to take care of the needs and demands of the public, and shall provide a variety of equipment according to the needs of each season.

The services covered by this RFP and ensuing Agreement shall be offered to the public at all times that a reasonable demand for such services exist during daylight hours. Concessions shall not be operated during the hours of darkness, which for the purposes of this RFP and ensuing Agreement begins one hour after sunset.

2. Beach Equipment Rules and Regulations

1. Beach chairs shall be deployed in a manner and number that will assure public access and will encourage public use of the beach.

2. The Concessionaire must prepare a written evacuation plan for the prompt removal of all facilities and equipment used in the concession operations from the beachfront within one (1) hour of notification by appropriate City authorities and/or within eight (8) hours of issuance of a Hurricane Warning by the Broward County Office of Emergency Management.
3. Beach Chairs will be permitted to remain on the sand overnight, as long as they are in good condition, neatly stacked (a maximum of 10 chairs per stack for plastic and 4 chairs per stack for wood) and arranged side by side.
4. Concession facilities used for dispensing services and/or storage will be allowed to remain on beach, as long as they are well maintained and kept west of the lifeguard stands.
5. Violators will have their concessions closed and the City shall have the right to confiscate any and all facilities and equipment left on beach overnight.
6. The Concessionaire will be responsible for any damage caused to any City owned property and/or beachfront during the time of its usage of said area.
7. The Concessionaire and their employees shall wear a City approved identification badge and must present themselves in a professional and courteous manner, at all times during hours of operation.
8. Concession facilities, furnishings and equipment shall be neat, clean and well maintained at all times. The concession operation must be aesthetically pleasing and non-detrimental to the surrounding environment.
9. Proposers should include as part of their submission photographs of all actual beach equipment to be used.
10. All Umbrellas, chairs and Cabanas will be blue and white.
11. Advertising will not be permitted without the express written consent of Parks and Recreation.
12. The concessionaire will be required to submit monthly statements of gross receipts in a format approved by Parks and Recreation.
13. The concessionaire will comply with all City, State and Federal laws relating to access for people with disabilities.

14. Beach Concession Services shall be limited to the rental of beach chairs and lounges, beach umbrellas and cabanas. No motorcrafts of any kind including jet skis, wave runners or motorboats. No sailboats, kayaks, scuba equipment or kite boarding allowed on public beach area. Concessionaire may have boogie boards, snorkel equipment and lotions available to the public.

3. Equipment for Beach Service

Equipment proposed must meet the following minimum specifications.

1. Strap Lounge
 - a. Style: Chaise Lounge
 - b. Construction: Aluminum
 - c. Size: 79.5 x 24
 - d. Weight: 19 lbs.
 - e. Frame color: off white
 - f. Strap width: 2"
 - g. Stacking quantity: 10
 - h. Strap Colors: blue and white
2. Double Wooden Lounge
 - a. Construction: Pressure treated pine with galvanized hardware
 - b. Size: 13"H x 56"W x 72"L
3. Cabana
 - a. Fabric: Sunbrella
 - b. Size: 52"H x 47"l x 57"W
 - c. Construction: Aluminum Ribs and stainless steel bolts
 - d. Color: Blue
4. Umbrella
 - a. Fabric: Sunbrella
 - b. Size: 7.5'H x 8'W
 - c. Color: Blue
5. Cushion for Lounge
 - a. Fabric: Texaline
 - b. Thickness: 3"
 - c. Color: Blue
 - d. Size: 69.5" x 22.5"

4. Rules for Use of Motor Vehicles and Small Off-Road Vehicles on Beach

1. "Small off-road vehicle" shall mean golf carts and all terrain vehicles (ATV's) and any trailer attachment. Anyone driving a "small off-road" vehicle must present an approved safety course certificate before driving vehicle on beach.
2. Concessionaire's motor vehicle, small off-road vehicle and any trailer attached shall only be allowed on beachfront for purposes of supplying the concession operation and to initially deploy equipment at the beginning of the day, remove equipment at the close of operations each day and must be removed from the beachfront immediately thereafter. Anyone operating a motor vehicle or small off-road vehicle on behalf of Concessionaire must have a current Florida Drivers License. Supplying and removing will only be permitted during Concessionaire's regular hours of operation, and shall be completed safely. No Motor vehicle, or small off-road vehicle or any trailer attached will be permitted on the beach after sunset or prior to sunrise. Access to the beach will only be permitted via the predetermined and assigned beach access points.
3. Motor vehicles or small off-road vehicles including any attached trailers operated on the beachfront shall not exceed 5mph.
4. All motor vehicles and small off-road vehicles must have signage, on each side with the name of the concession operator.
5. Concession operation shall be limited to use of one (1) "Small off road Vehicle" and one (1) attached trailer to supply and service the concession operation.
6. Prior to entering Beach Area lights of vehicle must come on.
7. Passenger and Drivers front windows must be down
8. All small off-road vehicles must stay in hard packed sand west of area provided by Ocean Rescue.

5. Concessionaire's Responsibility

Concessionaire shall provide all equipment in good and serviceable condition at the commencement of the Agreement in sufficient quantity to service the public in respect to the best interest and convenience of the patrons of the Municipal Pier, concession areas, and Beach, as described herein. The Concessionaire shall maintain the equipment in a good state of repair at all times, and shall repair and replace broken or weather-beaten equipment. City shall have right to inspect such equipment periodically to determine its condition, but shall be under no obligation to do so. Advertising signs shall not be displayed except for identification signs approved by the City Manager or designee for size, wording, and number, and in accordance with the applicable City of Pompano Beach Ordinances. The Concessionaire shall insure that the rates for pier admissions, beach concessions, vending, etc. are posted.

The Concessionaire shall not place or install equipment in any location other than herein specified.

At all times, cabanas shall be placed so that there shall be minimum clearance of ten feet between each cabana on all sides. The Concessionaire's placement of equipment must never interfere with Ocean Rescue Division's observation of the public for said public's welfare and safety. Areas for placement of umbrellas and regulations of water-borne equipment shall be under the regulation of the Beach Safety Division.

The Concessionaire must, at the time of an official hurricane warning, arrange to remove all equipment from the beach area being served.

The public in general, shall, at all times, have the free use of space allocated to the public in front of the Concessionaire's location.

All vendor attendants shall be neatly attired in approved uniforms properly identifying the Concessionaire and the attendant. No person convicted of any offense involving moral turpitude or a felony shall be employed by the Concessionaire.

The City of Pompano Beach reserves the right to approve or reject, for any reason, Concessionaire's staff assigned to this project at any time. Criminal background checks will be required and will be paid for by the Concessionaire.

The Concessionaire shall so conduct their business as to render a service to the public in a dignified manner and with no pressure, coercion, persuasion or hawking done by the Concessionaire or their attendant(s) in an attempt to influence the public to use this service.

The Concessionaire shall furnish the necessary janitorial services to maintain all areas in a proper state of cleanliness, i.e.: litter and debris as a result of this operation.

The Concessionaire shall not install their equipment in an area outside of their own concession area, nor shall the Concessionaire interfere with the operation of other concessionaires. Disputes arising between Concessionaires concerning their rights under their Agreements shall be reported to the City Manager or designee for review and necessary action.

In the event of complaints made by the public as to the manner of operation of the concession area, such matter at the discretion of the City Commission, may be heard by the City Commission after due notice to the Concessionaire.

The Parks and Recreation Program Administrator, or such other person properly designated by the City Manager, shall be responsible for the enforcement of this Agreement and in the event any violation is reported to that office or is brought to the attention of that office, the Director or designee shall investigate the same and report the findings to the City Manager. The City Manager shall then take such action and make such recommendations as are necessary. The action of the City Manager pursuant to this paragraph shall be final and binding on Concessionaire.

The Concessionaire shall adhere to a maintenance schedule set up by the City Manager's designee and shall provide personnel to remove cabanas and rental equipment according to that schedule to facilitate the cleaning of the Municipal Beach. The Concessionaire will be consulted on the maintenance scheduling.

The Concessionaire is responsible for the acquisition of all City and County business tax receipts, fees and permits as applicable.

6. Non-Discrimination

The Concessionaire shall not unlawfully discriminate against any person in its operations and activities in fulfilling its obligations under this Agreement. This shall include compliance with the Americans with Disabilities Act. In addition, Concessionaire's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery. Compliance and performance by the Concessionaire of the non-discrimination provisions of this Agreement is an express condition hereof and any failure by the Concessionaire to so comply and perform shall be a default as provided in this Agreement and the City may exercise any right as provided herein and as otherwise provided by law.

7. Water Damage

It is expressly agreed and understood by and between the parties to this Agreement that the City shall not be liable for any damage or injury by water, which may be sustained by the Concessionaire or for any other damage or injury resulting from the carelessness, negligence or improper conduct on the part of the Concessionaire, its agents or employees, or by reason of the breakage, leakage, or obstruction of the water.

8. No Assignment or Subletting

Neither the premises described herein nor any portion thereof shall be sublet nor shall this Agreement or any interest therein be assigned, hypothecated, or mortgaged by Concessionaire without the prior written consent of the City. Consent shall not be unreasonably withheld.

9. Reports And Records

The Concessionaire shall furnish promptly to the City Treasurer, a quarterly report of income by type that shall be true, accurate, and complete. At the time of each rental, the Concessionaire shall furnish to the customer a true, complete, and accurate pre-numbered receipt, and retain a duplicate copy. The Concessionaire shall open a bank account and deposit on a daily basis each day's receipt intact.

All records of the Concessionaire shall be made available for check and audit by the City of Pompano Beach Internal Auditor at all reasonable times, during the period of this Agreement, and for three (3) years from the date of final payment under this Agreement.

These records shall include, but not be limited to, Florida State sales tax returns, federal payroll tax returns, and all supporting payroll records, bank statements, canceled checks and any other records requested by the Internal Auditor of the City. The Concessionaire shall furnish to the City an annual financial report prepared by an independent certified public accountant within sixty (60) calendar days of the end of each annual Agreement period.

10. Termination for Cause

Violation of any of the covenants, duties, or terms of this Agreement shall be cause for termination of this Agreement. The Concessionaire shall also comply in all particulars with all rules, regulations or ordinance and particularly in activities conducted upon the public beach by the City of Pompano Beach which shall in no way at any time be improper, immoral or illegal and gambling of any type, kind or nature, direct or indirect is specifically prohibited.

In the event of a violation of any of the terms of the Agreement, the Concessionaire shall be given fifteen (15) days notice of the violation and the City Commission at its discretion shall have the right to cause a hearing to be had on said violation, and at such hearing may cancel said Agreement or compel Concessionaire to comply with the terms of this Agreement. No Agreement fees shall be refunded but same shall be forfeited to the City as liquidated damages.

The acceptance of payments by the City, whether in a single instance or repeatedly, after it falls due or after knowledge of any breach hereof by the Concessionaire, where the giving or making of any notice or demand, whether according to any statutory provision or not, or any active or series of acts except an express waiver in writing shall not be construed as waiver of the City's right or of any other right hereby given the City or as an election not to proceed under the provisions of this Agreement.

The failure of the City to enforce any covenant, duty, term, or condition of the Agreement shall not be deemed to void or affect the right of the City to enforce the same covenant, duty, term, or condition on a subsequent default or breach.

11. Termination for Convenience of City

Upon thirty (30) calendar days written notice delivered by certified mail, return receipt requested, to the Concessionaire, the City may without cause and without prejudice to any other right or remedy, terminate the agreement for the City's convenience whenever the City determines that such termination is in the best interest of the City. Where the agreement is terminated for the convenience of the City the notice of termination to the Concessionaire must state that the contract is being terminated for the convenience of the City under the termination clause and the extent of the termination. Upon receipt of such notice, the Concessionaire shall promptly discontinue all work at the time and to the extent indicated on the notice of termination. The City will refund to the Concessionaire a prorated portion of the quarterly payment, calculated based on the date of termination.

12. Quarterly Payments

Proposer is to state the amounts on the Proposal Signature Page that they will pay to the City in exchange for operation of the beach equipment concession. The selected proposer will pay to the City of Pompano Beach, four (4) equal quarterly payments (based on fiscal year) in advance each year, as indicated in their proposal, in full accordance with all terms and conditions as set forth in this proposal, which will become part of said Agreement.

The minimum quarterly payment payable to the City for the first three-year Agreement term shall be as proposed herein plus applicable Florida State Sales Tax.

Beginning upon commencement of the Agreement, and then fifteen (15) days prior to the beginning of each quarter thereafter, the Concessionaire shall pay the quarterly payment, plus sales tax.

In the event the Concessionaire fails to make any payments to the City more than seven (7) days after the same is due, the Concessionaire shall pay to the City for such privilege an additional charge of One Hundred Dollars (\$100.00) per day for each day's delay in payment retroactive to the first day the payment was due.

13. Proposal Surety

Each proposal must be submitted on the prescribed form and accompanied by a cashier's check, payable to the City of Pompano Beach, Florida, in an amount not less than 5 percent (5%) of the total amount proposed. (The total amount is the 36-month grand total as stated on the Proposal Signature Page.)

If the successful proposer fails to enter into a concession Agreement with the City due to the fault of the proposer, the proposal surety will be forfeited to the City.

The proposal surety of the successful proposer will be returned upon receipt of an acceptable Irrevocable Letter of Credit as described below.

14. Letter Of Credit

The successful proposer shall provide a continuous security in the form of an Irrevocable Letter of Credit in a form acceptable to the City. This letter of credit will provide a source of funds to help cover any damages to the City upon failure of the successful proposer to perform any or all of its obligations under the terms of this RFP and ensuing Agreement. The successful proposer shall provide the initial Irrevocable Letter of Credit to the City fifteen (15) days in advance of the effective date of this Agreement and a new Irrevocable Letter of Credit shall be provided thirty (30) days prior to the expiration of the current period to provide security for the succeeding period. Each Irrevocable Letter of Credit shall be in an amount equal to the concession fee for that period.

The failure to provide a new Irrevocable Letter of Credit in a form acceptable to the City, in the times indicated above, shall be a breach of this contract and entitle the City to demand payment under the outstanding document. Demand by the City under the Letter of Credit does not act as a waiver of any other rights or remedies that the City may have.

SECTION II

A. SUBMISSION OF PROPOSALS

1. Eligibility

The firm must clearly indicate their experience in the field as a beach equipment concessionaire. In addition, staffing should be sufficient to this concession along with other concession areas the proposer may have.

2. Information to be Included in the Proposal

To assure consistency, proposals must conform to the following format:

a. Title Page

Show the RFP title, the name of proposer's firm, Federal Employer Identification Number for the firm, address, telephone number, name of contact person, and the date.

b. Table of Contents

Include a clear identification of the material by section and by page number.

c. Letter of Transmittal (limit to 2 pages)

- (1) Briefly state the Proposer's understanding of the service to be offered and make a positive commitment to perform the service.
- (2) Give the name(s) of the person(s) who will be authorized to make representations for the Proposer, their title(s), address, and telephone numbers.

d. City Provided Forms to be Returned

- (1) Completed "Proposal Signature Page," including quarterly payments information.
- (2) Return all RFP pages, initialed where indicated.

e. Project Scope Section

The scope section must be in written form and include the following:

- (1) Identification and explanation of the services to be provided for the beach equipment concession.
- (2) Identification of types and age of equipment to be offered for rent.
- (3) Approach the firm will use to market the beach concession service.

f. Annual Guarantee

Proposer must provide the annual guaranteed payment to the City for each period for the initial three-year period of the Agreement.

The first year of the Agreement the Concessionaire will be required to pay the minimum guaranteed amount. For each subsequent year, the base amount shall be adjusted by multiplying the change in the Consumer Price Index (CPI) from the base year to the current year. The adjustment percentage to be used will be based on the latest National Consumer Price Index – All Urban Consumers (CPI-UC), as determined by the United States Department of Labor, Bureau of Labor Statistics, as most recently available the month prior to the agreement anniversary date. In no event shall the amount paid to the City be reduced under any circumstance.

If applicable, provide details of any additional proposed revenue sharing and estimates of projected sales. The City shall be entitled to 10% of the gross rental fee for equipment, services, or sales unrelated to chairs, umbrellas, cabanas, windscreens and related beach equipment.

g. Profile of the Proposer

- (1) State whether the firm is local, regional or national.
- (2) Give the location of the office from which the concession will be administered and where additional equipment can be drawn from.
- (3) Describe the number of similar concession projects currently under contract to the firm.

h. References

Provide at least three references for which the firm has performed a concession project to include:

Name, address, and telephone number of firm.

Contact person at the referenced firm.

i. Summary of Proposers Qualifications

- (1) Identify the managers, supervisors, and/or individuals that will work on the concession.
- (2) Describe firm's experience in similar concession Agreements within the State of Florida.

j. Financial Information

Provide a copy of the most recent audited financial statements for the proposing firm. If audited financial statements are not available, provide a copy of the most recent compiled financial statements, and a copy of the most recent tax form.

You may include additional information that will assist the City in the evaluation of the financial stability of your firm.

k. Proposal surety for 5 percent (5%) of the total amount proposed.

l. Submit one (1) original unbound and five (5) bound copies of the proposal. All copies should be on 8 ½" x 11" plain white paper, typed.

B. QUESTIONS AND COMMUNICATION

All questions must be submitted in writing to the Purchasing Office, 1190 N.E. 3rd Avenue, Building C (Front), Pompano Beach, Florida 33060, fax (954) 786-4168. All questions must include the inquiring firm's name, address, telephone number and RFP name and number. Questions must be received by 2:00 p.m. on June 28 at the above location. No further questions will be accepted after this date. Oral and other interpretations or clarifications will be without legal effect. Questions and answers will be distributed to all firms known to have obtained the RFP document from the City.

C. ADDENDA

In the event it becomes necessary to revise, change, modify, or cancel this RFP or to provide additional information, addenda will be issued to all known recipients of this RFP.

D. ACCEPTANCE PERIOD

Proposals in response to this RFP must be valid for a period no less than 120 days from the closing date.

E. RFP CONDITIONS AND PROVISIONS

A duly authorized official of the proposing company must sign the proposal. The completed and signed proposal (together with all required attachments) must be returned to City on or before the time and date stated herein. All proposers, by submission of a proposal, shall agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. Any alteration, erasure, or interlineations by the proposer in this RFP shall constitute cause for rejection. Exceptions or deviations to this proposal may not be added after the submittal date.

All proposers are required to complete all information requested in this RFP. Failure to do so may result in the disqualification of proposal.

The City reserves the right to postpone or cancel or this RFP, or reject all proposals, if in its judgment it deems it to be in the best interest of the City to do so.

The City reserves the right to waive any technical or formal errors or omissions and to reject all proposal(s), or to award contract for the items hereon, in part or whole, if it is determined to be in the best interests of the City to do so.

The successful proposer shall be in complete compliance with all of the specifications, terms, and conditions of this RFP as outlined above.

The City shall not be liable for any costs incurred by the proposer in the preparation of proposals or for any work performed in connection therein.

The City reserves the right to reject any or all proposals. All proposals and supporting materials submitted in response to this RFP will become the property of the City.

F. SMALL BUSINESS ENTERPRISE PROGRAM

The Pompano Beach City Commission has established a voluntary Small Business Enterprise (SBE) Program to encourage and foster the participation of Small Business Enterprises in the central procurement activities of the City. The City of Pompano Beach is strongly committed to ensuring the participation of Small Business Enterprises (SBE's) as contractors and subcontractors for the procurement of goods and services. The definition of a SBE, for the purpose of the City's voluntary program, is taken from the State of Florida Statute 288.703(1).

As of the date of publication of this solicitation, a small business means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in Florida that has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

The City encourages all firms to undertake good faith efforts to identify appropriate Small Business Enterprise partners. Sources of information on certified Small Business Enterprises include the Broward County Small Business Development Division, the State of Florida Office of Supplier Diversity, South Florida Water Management District, and other agencies throughout the State. The City includes links to these organizations from the City's website www.mypompanobeach.org. Please indicate in your response if your firm is a certified Small Business Enterprise.

Please note that, while no voluntary goals have been established for this solicitation, the City encourages small business participation in *all* of its procurements.

G. LOCAL BUSINESS PROGRAM

On March 23, 2010, the City Commission approved a Resolution establishing a Local Business Program, a policy to increase the participation of City of Pompano Beach businesses in the City's procurement process.

You can view the list of City businesses that have a current Business Tax Receipt on the City's website, and locate local firms that are available to perform the work required by the bid specifications. The business information, sorted by business use classification, is posted on the webpage for the Business Tax Receipt Division: <http://mypompanobeach.org/directory/btr/index.html>

Please note that, while no voluntary goals have been established for this solicitation, the City encourages Local Business participation in *all* of its procurements.

H. SELECTION/EVALUATION PROCESS

A Selection/Evaluation Committee will be appointed and will be responsible for selecting the most qualified firm. The Selection/Evaluation Committee will then present their findings to the City Commission and upon their approval, negotiate contract with the most qualified firm.

The Committee will rank responses based upon the following criteria:

- | | |
|--|---------------|
| 1. Prior experience with projects of similar size: | 0 – 15 points |
| a. Number of similar projects | |
| b. Prior experience with the City of Pompano Beach | |
| c. Three references | |
| 2. Qualification of personnel: | 0 – 10 points |
| a. Number of staff | |
| b. Experience of staff in this type of environment | |

- | | |
|--|---------------|
| 3. Availability of personnel: | 0 – 10 points |
| a. Current number of concession contracts | |
| 4. Proximity of the headquarters or nearest office to the City of Pompano Beach: | 0 – 5 points |
| 5. Financial Responsibility | 0 – 20 points |
| 6. Equipment and services to be provided: | 0 – 20 points |
| Beach Equipment Rental | |
| a. Type (cabanas, chaises, umbrellas, floats, etc.) | |
| b. Age of equipment | |
| c. Schedule of rental fees for all equipment indicated above | |
| d. Additional services to be offered at beach | |
| Marketing Plan | |
| 7. Payment guarantee to the City | 0 – 20 points |

MAXIMUM TOTAL POINTS	100
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The Committee will have the option to use the above criteria for the initial ranking to short-list proposers, and to use an ordinal ranking system to score short-listed proposers following presentations, with a score of “1” assigned to the short-listed proposer deemed most qualified by the Committee.

Each firm should submit documents that provide evidence of capability to provide the services required for the committee’s review for shortlisting purposes. The shortlisted firms may be contacted to provide public presentations regarding their qualifications and ability to furnish the required services. When more than three responses are received, the committee shall furnish the City Commission (for their approval) a listing, in ranked order, of no fewer than three firms deemed to be the most highly qualified to perform the service. If three or less firms respond to the RFP, the list will contain the ranking of all responses.

The City Commission has the authority to (including, but not limited to); approve the recommendation; reject the recommendation and direct staff to re-advertise the solicitation; or, review the responses themselves and/or request oral presentations and determine a ranking order that may be the same or different from what was originally presented to the City Commission.

I. INSURANCE

The insurance described herein reflects the insurance requirements deemed necessary for this project by the City. It is not necessary to have this level of insurance in effect at the time of submittal, but certificates indicating that the insurance is currently carried or a letter from the Carrier indicating upgrade ability will speed the review process to determine the most qualified Proposer.

The successful Proposer(s) shall not commence operations, construction, and/or installation of improvements until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Pompano Beach Risk Manager.

The following insurance coverage shall be required.

1. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees). The Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.
2. Liability Insurance
 - a) Naming the City of Pompano Beach as an additional insured, on General Liability Insurance only, in connection with work being done under this contract.
 - b) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

3. Real & Personal Property Insurance

The Contractor is responsible for any loss or damage to tools, equipment, and supplies at the job site and is responsible for any loss or damage to buildings being constructed until that building is completed and a certificate of occupancy is issued.

LIMITS OF LIABILITY

Type of Insurance	each occurrence	aggregate
GENERAL LIABILITY		
<i>MINIMUM \$1,000,000 OCCURRENCE/AGGREGATE</i>		
XX comprehensive form		
XX premises - operations	bodily injury	
— explosion & collapse		
— hazard	property damage	
— underground hazard		
XX products/completed		
operations hazard	bodily injury and	
XX contractual insurance	property damage	
XX broad form property	combined	
damage		
XX independent contractors		
XX personal injury	personal injury	
<hr/>		
AUTOMOBILE LIABILITY		
<i>MINIMUM \$1,000,000 OCCURRENCE/AGGREGATE</i>		
	bodily injury	
	(each person)	
	bodily injury	
	(each accident)	
XX comprehensive form	property damage	
XX owned		
XX hired	bodily injury and	
XX non-owned	property damage	
	combined	
<hr/>		
REAL & PERSONAL PROPERTY		
XX comprehensive form	Organization must show proof they have	
this	coverage.	
<hr/>		
EXCESS LIABILITY		
XX umbrella form	bodily injury and	
— other than umbrella	property damage	
	combined	
	\$2,000,000.	\$2,000,000.

The certification or proof of insurance must contain a provision for notification to the City ten (10) days in advance of any material change in coverage or cancellation.

The successful Proposer shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within ten (10) days after notification of award of contract.

J. INDEMNIFICATION

Concessionaire assumes all risk in the operation of the Pier and beach equipment concession, and shall be solely responsible and answerable in damages for all accidents or injuries to persons or property and hereby covenants and agrees to indemnify the save harmless City and its officers, agents, and employees form any and all claims, suits, losses, damage or injury to person or property of whatsoever kind and nature including the payment of all attorneys' fees, whether direct or indirect, arising out of the actions taken pursuant to this Agreement, the operation of said Pier and beach equipment concession, or the carelessness, negligence or improper conduct of Concessionaire or any agent, servant, employee, contractor, patron, customer and supplier, which responsibility shall not be limited to the insurance coverage herein provided.

K. INDEPENDENT CONTRACTOR

It is understood between the parties that the relationship of City and Concessionaire is that of an independent contractor. Applicant shall have no authority to employ any person as an employee or agent on behalf of the City for any purpose. Neither the Concessionaire nor any person engaging in any work relating to Concessionaire's rights and obligations set forth herein at the request of or with the consent (whether actual or implied) of Concessionaire shall be deemed an employee or agent of the City, nor shall any such person represent himself to others as an employee or agent of the City. Should any person indicate to the Concessionaire or any employee or agent of the Concessionaire by written or oral communication to the Concessionaire that the person believes the Concessionaire or an employee or agent of the Concessionaire to be an employee or agent of the City, the Concessionaire shall use its best efforts to correct or cause its employee or agent to correct that belief.

L. STANDARD PROVISIONS

1. Governing Law

Interested vendors will agree that Agreements shall be governed by the laws of the State of Florida, and the venue for any legal action will be Pompano Beach, Florida.

2. Conflict Of Interest

For purposes of determining any possible conflict of interest, each Proposer must disclose if any City employee is also an owner, corporate officer, or an employee of his business. If any City employee is also an owner, corporate officer, or an employee, the Proposer must file a statement with the Broward County Supervisor of Elections pursuant to Florida Statutes 112.313.

3. Drug Free Workplace

The selected Proposer with whom an Agreement will be negotiated will be required to verify they will operate a "Drug Free Workplace" as outlined in Florida Statute, Section 287.087.

4. Public Entity Crimes

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statute, Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

5. Patent Fees, Royalties, And Licenses

If the selected Proposer requires or desires to use any design, trademark, device, material or process covered by letters of patent or copyright, the selected Proposer and his surety shall indemnify and hold harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, trademark, copyright, material or process in connection with the work agreed to be performed and shall indemnify the City from any cost, expense, royalty or damage which the City may be obligated to pay by reason of any infringement at any time during the prosecution of or after completion of the work.

6. Permits

The selected Proposer shall be responsible for obtaining all permits, licenses, certifications, taxes, etc., required by Federal, State, County, and Municipal laws, regulations, codes, and ordinances for the performance of the work required in these specifications and to conform with the requirements of said legislation.

7. Familiarity With Laws

The selected Proposer is assumed to be familiar with all Federal, State and local laws, ordinances, rules and regulations that may affect the lease and development of project. Ignorance on the part of the Proposer will in no way relieve him /her from responsibility.

8. Withdrawal Of Proposals

A Proposer may withdraw his proposal without prejudice to himself no later than the advertised deadline for submission of proposals, by communicating his purpose in writing to the General Services Department, 1190 N.E. 3rd Avenue, Building C, Pompano Beach, Florida 33060.

9. Composition Of Project Team

Proposer will be required to commit that the personnel and/or principals named in the proposal shall remain assigned to the "project" throughout the period of the contract unless provided for otherwise in a negotiated contract. No diversion or substitution of personnel or principals will be allowed without submission of a written request with the qualifications and experience of the proposed replacement. The approval of the City will be required for any such diversion or substitution.

10. Variances

While the City allows Contractors to take variances to the RFP terms, conditions, and specifications, the material nature, number, and extent of variances taken will be considered in determining proposal responsiveness and in allocating proposal evaluation points.

11. Contact Information

For additional information regarding this solicitation, please contact Ms. Leeta Hardin, General Services Director (954) 786-4098.

PROPOSAL SIGNATURE PAGE

To: The City of Pompano Beach, Florida

The below signed hereby agrees to furnish the proposed services under the terms stated subject to all instructions, terms and conditions, specifications, addenda, legal advertisement and conditions contained in the RFP #H-40-11. I have read RFP H-40-11 and all attachments, including the specifications, and fully understand what is required. By submitting this signed proposal, I will accept a contract if approved by the City and such acceptance covers all terms, conditions and specifications of this proposal.

Proposal submitted by:

Name (printed) _____ Title _____

Company Name (Legal Registered) _____

Federal Tax Identification Number _____

Address _____

City/State/Zip _____

Telephone Number _____ Fax _____

Signature _____ Date _____

Addendum acknowledgment – Proposer acknowledges that the following addenda have been received and are included in this proposal:

Addendum No./Date Issued _____

Quarterly Payments

QUARTERLY PAYMENTS – YEARS 1-3: \$ _____ X 12 = \$ _____ *

GRAND TOTAL FOR 3 YEAR CONCESSION PERIOD: \$ _____

* to be increased for Years 2-3, and any renewal years, by the CPI-UC, as stated herein



RFP NO. 11-10-11

OCEANSIDE BEACH SERVICE INC.



City Of Pompano Beach

Table Of Contents

Title Page	3
Letter of Transmittal	4
Explanation of Services	5
Beach Setups	6
Fee Schedule	7
Hurricane Plan	8
Storage Plan	9
Rental Equipment	10-14
Marketing	15
Profiles	16
References	17
Proposers Qualifications	18-22
City Provided Forms	
Financial Information	

Title Page

Pompano Beach Request For Proposals H-40-11 Beach Equipment Concession

July 5, 2011

Oceanside Beach Service FEIN - 65-0296488

PO Box 13018, North Palm Beach, Florida 33408

Michael J. Novatka President

561-568-7861

UNDERSTANDING THE CITY'S NEED FOR THE BEACH CONCESSION (Letter Of Transmittal)

Oceanside Beach Service understands the need for The City of Pompano Beach to provide top quality beach **service** to their residents and guests. OBS will show it's value as Pompano Beach's beach **service** concessionaire by increasing the value of the beach experience on the public beach. Our seasoned beach staff will have all the local Pompano Beach business's on the tip of their tongue to refer the inquiring public. We understand that Pompano Beach wants to provide a pleasurable experience for your residents and guests on the beach to further enhance the value of living in, and visiting Pompano Beach. Please read our offering in this proposal and understand that, going forward, OBS will provide the same valuable beach **service** experience that our customers have become accustomed to in our other beaches, while joining in a partnership with The City Of Pompano Beach to grow the Pompano Beach experience into something your residents and guests will enjoy for many years to come. OBS has been in operation for over 30 years and will comply with all of the Scope Of Services detailed in the RFP. OBS will supply the necessary labor for placement of all equipment and services as specified.

Michael J. Novatka

President, Oceanside Beach Service

PO Box 13018, North Palm Beach FL 33408

561-568-7861



Daily Operations Plan

(services)

7 days a week 365 days a year

7AM - 5PM

Summer - May 1st- October 31st

Winter - November 1st- April 30th

At 7 AM the Oceanside Beach Service staff of 5 beach attendants begin placing the beach equipment. OBS configures the beach setup differently depending on the current season. In the summer season the double wooden lounges are faced towards the ocean with two cushions and an umbrella. During the winter season the double wooden lounges are faced to the south and each has a cabana hood attached to the frame. The reason for the different placements are that in the summer the location of the sun and the prevailing winds dictate that the best beach experience will be achieved with the setups facing east. In the winter the sun is at a lower angle and the cooler prevailing winds can be blocked by raising the cabana hood, maximizing the warm winter sun.

Anchoring methods:

The umbrella is worked down into the sand by an experienced beach attendant and tilted to the proper angle. Over 30 years of experience has proven that this is the safest, and leaves the least environmental impact. The cabana hoods are attached to the double lounges with 5x1/4 inch, hex head, galvanized nut and bolt on each side.

At 5 PM the OBS staff begins the process of preparing the beach equipment for overnight storage. The lounges are adjusted to their original locations, the beach area is cleaned and the OBS beach equipment is stored safely and securely as per the OBS storage plan.

OBS staff keeps the beach clean and patrols the OBS areas regularly throughout the day. The lounges, chairs, umbrellas and cabanas are adjusted constantly to assure maximum enjoyment by the guests. Beach guests providing their own equipment are accommodated as any other guest visiting the beach.



Summer Setup



Winter Setup

Rental Rates

Guest Rental Rates

Oceanside Beach Service Price List Pompano Beach, Florida

Beach Setup	\$10 Hour \$30 Day
* Setup includes: 2 lounges & Umbrella or Cabana	
Lounge Chair	\$5 Hour \$10 Day
Umbrella	\$5 Hour \$15 Day
Boogie Board and Floats	\$5 Hour \$15 Day
Snorkeling Gear	\$10 Hour \$25 Day
(Mask, Fins, Flag, Snorkel)	
Sand Toys And Games	Market Price
Sun Tan And Skin Care Products	Market Price
Oceanside Apparel	Market Price

Multi-day Rate Available upon request

Florida Sales Tax Applies



Hurricane Plan

Ocean Beach Services has successfully responded to three hurricanes, Francis, Jean, and Wilma, while managing our public and private beaches in South Florida. The OBS Beach Operator communicates with the proper authorities during a hurricane approach. When the hurricane condition rises to a warning level, OBS has staff and equipment at the ready to evacuate all OBS equipment to the OBS warehouse. When instructed by the designated beach authority OBS staff evacuates the beach of all OBS Beach equipment. This process takes no more than 8 hours. When beach conditions return to normal, and with the permission of the designated beach authority OBS returns the beach to operating condition within the same time frame.



Storage plan

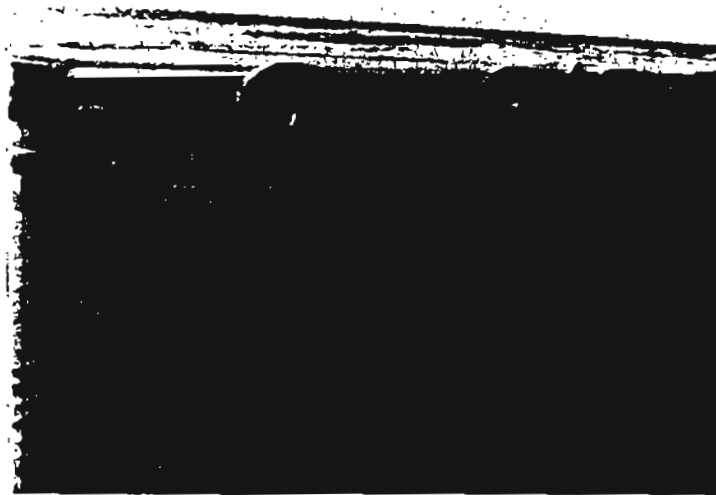
Cushions are stacked at the back of the beach covered with a waterproof mat cover and fastened with ropes ties.

Strap lounges are stacked along the back of the beach and are secured with a locked cableing system.

Foldout chairs with footrests and umbrellas are stored in beach boxes located along the back of the beach.

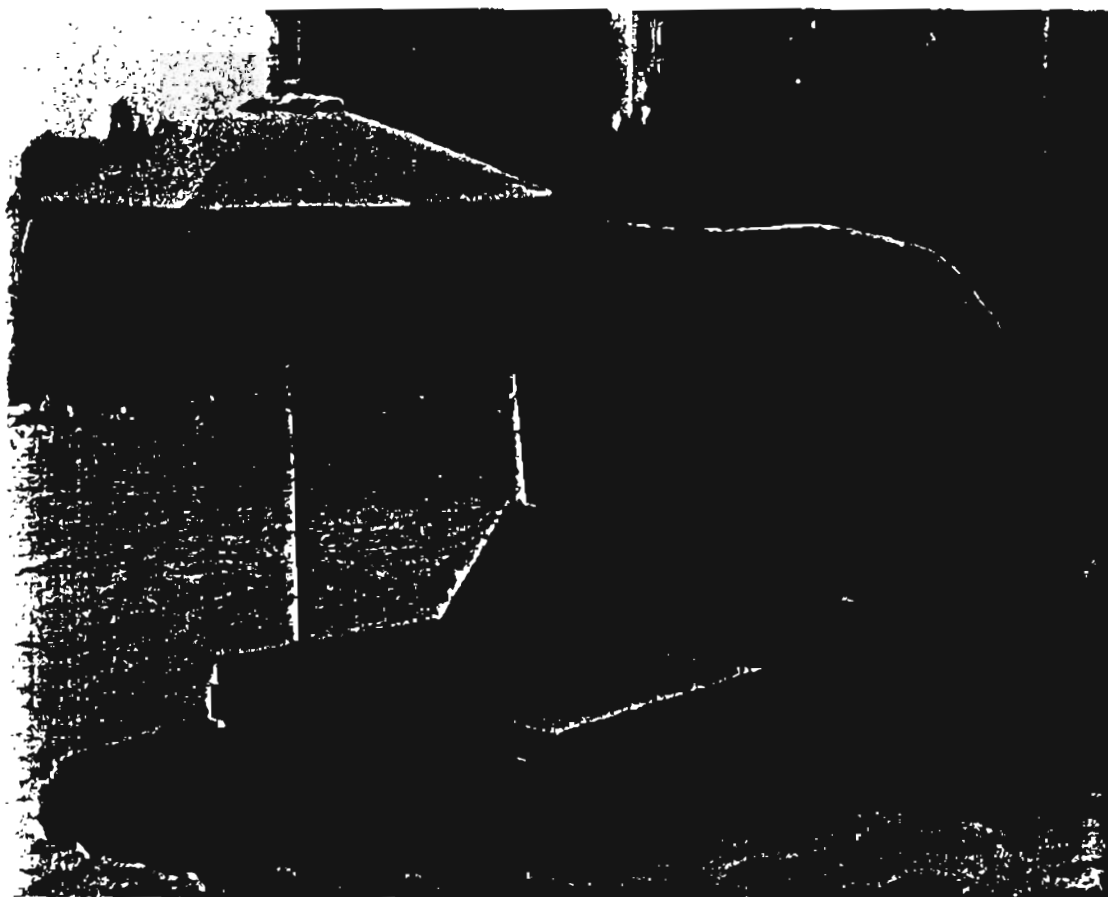
Lounges and cabana hoods are left in their original setup locations.

While managing the beaches for the last 30 years with increasing inventory every year OBS has experience minimal loss and damage using our current storage methods.



Equipment

Oceanside Beach Service will manufacture or purchase all the required equipment for the Pompano beach service contract. OBS maintains a facility in Riviera Beach where all manufacturing, storage and repair services are performed. Any equipment issues at Pompano Beach can be addressed within one hour, and as a regular part of OBS procedure the equipment is monitored and serviced on a daily basis.





Double Wooden Lounge With Table
Two Cushions ,Cabana Hood.



Double Wooden Lounge With Table
Two Cushions, Umbrella

Specifications

Strap Lounge

• Manufacturing Company	Troplitone
• Style	Chaise Lounge
• Construction	Aluminium
• Size	79.5" x 24"
• Weight	19 Lbs
• Frame Color	Off White
• Strap Width	2"
• Stacking Quantity	16

Cushion

• Fabric	Texaline
• Thickness	3"
• Color	Blue (Forest Green at Atlantic Dunes)
• Size	69.5" x 22.5"

Cabana

• Manufacturing Company	Oceanside Beach Service
• Fabric	Sunbrella
• Size	52" H x 47" L x 57" W
• Construction	Aluminium Ribs and Stainless Steel Bolts
• Color	Blue (Forest Green AT Atlantic Dunes)

Umbrella

• Manufacturing Company	Oceanside Beach Service
• Fabric	Sunbrella
• Size	7.5' H x 8' W
• Color	Blue

Specifications

Sand Arm Chair With Foot Rest

- **Manufacturing Company** Anywhere Chair Inc.
- **Construction** Solid Oak Wood Frame With Brass Hardware
- **Size** 41" x 24"
- **Weight** 16 Lbs
- **Fabric** Sunbrella
- **Size** 41" x 24"

Double Wooden Lounge

- **Manufacturing Company** Oceanside Beach Service
- **Construction** Pressure Treated Pine With Galvanized Hardware
- **Size** 13" H x 56" W x 72" L



Umbrella/Armchairs With Footrest



Umbrella Two Strap Lounges

Additional Amenities and Services

- Oceanside Beach Service can provide rentals in addition to cabanas and beach chairs
- Boogie Boards
- Paddle Boards
- Snorkeling
- Sand And Beach Toys And Games
- Bicycles
- Floats

Marketing Plan

Oceanside Beach Service maintains a web site at www.beachservice.com. We have over 5000 current yearly members who are South Florida residents or vacationers from all over the world. Our web site is configured to give optimum, Oceanside Beach Service, and South Florida beach information to internet users anywhere in the world! Our **Oceanside Beach Club** members can take advantage of discounts at participating restaurants and shops in the South Florida area. We plan to have BeachCams at some of our locations to allow the world to see the best beaches in the world. The City of Pompano Beach will join our other, world class, beaches as not only providing a great beach experience to their residents and guests, but it opens Pompano Beach up to the 5000 **Oceanside Beach Club** members who will be notified that Pompano Beach has joined the **Oceanside Beach Club** family. Oceanside Beach Services distributes rack cards throughout South Florida which will allow the City of Pompano Beach to enjoy an ever increasing amount of visitor business going forward.

Profile

Oceanside Beach Service has been doing business in Florida for over 30 years. OBS maintains operations in Martin, Palm Beach, and Broward counties. OBS maintains a facility in Riviera Beach where we manufacture, service, and store our beach equipment. It is minutes from RT 95 with Pompano Beach less than one hour away.

Current Beach Service Operations

Oceanside Beach Service provides beach service at the following locations:

Martin County Municipal Beach	100 setups
Marriott , Hutchinson Island	50 setups
Marriott's, Ocean Pointe	100 setups
City of Riviera Municipal Beach	100 setups
Marriott Oceana Palms	75 setups
Ritz Carleton Singer Island	100 setups
Ocean Tree Condos, Singer Island	60 setups
Sugar Sands, Singer Island	30 setups
Oasis Condos, Singer Island	20 setups
Martinique II, Singer Island	40 setups
Cote D'Azur Condos, Singer Island	30 setups
Delray Municipal Beach, Delray	250 setups
Dania Municipal Beach, Dania	100 setups
Crowne Plaza, Hollywood	50 setups
Hallandale Municipal Beach, Hallandale	100 setups
City of Deerfield Municipal Beach	100 setups
City of Boynton Municipal Beach	100 setups

Exhibit G

City of Pompano Beach Standardized Insurance Requirements

(see next page)

STANDARDIZED INSURANCE REQUIREMENTS OF THE CITY OF POMPANO BEACH

Insurance

The vendor/contractor shall not commence operations, labor, construction and/or installation of improvements to complete this project until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Pompano Beach Risk Management Division.

The following insurance coverage shall be required.

- A. Workers' Compensation Insurance for all its employees in accordance with the requirements of Florida Statute, Chapter 440. The Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

- B. Public Liability & Auto Liability Insurance
 - 1) Naming the City of Pompano Beach as an additional insured in connection with the work being done under this contract.

 - 2) The types of insurance and minimum policy limits that are required are indicated by "XXXX" below.

Type of Insurance		LIMITS OF LIABILITY	
		each occurrence	aggregate
PUBLIC LIABILITY			
XXXX	Comprehensive Form		
XXXX	Premises - operations	Bodily Injury \$1,000,000.	\$1,000,000.
_____	Explosion & collapse hazard	Property Damage..... \$1,000,000.	\$1,000,000.
_____	Underground hazard	-- or --	
XXXX	Products (if items are sold)	Bodily Injury and	
XXXX	Contractual insurance	Property Damage	
XXXX	Liquor legal (if items are sold)	Combined..... \$1,000,000.	\$1,000,000.
XXXX	Independent contractors		
XXXX	Personal injury	Personal Injury \$1,000,000.	\$1,000,000.
AUTOMOBILE LIABILITY			
		Bodily Injury	
XXXX	Comprehensive Form	(ea. person/ ea. accident) \$1,000,000	\$1,000,000.
XXXX	Owned	Property Damage \$1,000,000.	\$1,000,000.
XXXX	Hired	-- or -- Bodily Injury and	
XXXX	Non-owned	Property Damage combined \$1,000,000.	\$1,000,000.
EXCESS LIABILITY			
		Bodily injury and	
XXXX	Umbrella form	Property damage	
_____	other than umbrella	Combined \$1,000,000.	\$1,000,000.

The certification or proof of insurance must contain a provision for notification to the City thirty (30) days in advance of any material change in coverage or cancellation.

Firm shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within five (5) days after notification of award of contract.

Mail certificate(s) to: City of Pompano Beach, Attention Risk Manager, P.O. Box 1300, Pompano Beach, Florida, 33061.

Exhibit H
Ownership of Developer
(see next page)

Exhibit H
Ownership of Developer

Pompano Pier Associates is owned by the following entities:

Richard F Caster 2010 Irrevocable Trust	33.34%
100% owned and controlled by Richard F Caster	

Hard Candy Investments, LLC	33.33%
100% owned and controlled by Timothy Hernandez	

Kevin E. Rickard	33.33%
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Exhibit I
Renderings of Improvements
(see next page)



