



City Attorney's Communication #2021-528

April 6, 2021

TO: Cassandra LeMasurier, Real Property Manager

FROM: Mark E. Berman, City Attorney

RE: Resolution – First Amendment to the Lease Agreement with DUC Pompano, LLC

As requested in your memorandum of April 5, 2021, Real Property Manager #21-017, the above-referenced Resolution has been prepared and is captioned as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A FIRST AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND DUC POMPANO, LLC FOR THE PROPERTY LOCATED AT 113 NE 1ST AVENUE; PROVIDING AN EFFECTIVE DATE.

Please feel free to contact me if I may be of further assistance

/s/

MARK E. BERMAN

/jrm
l:cor/finance/rpm/2021-528

Attachment

RESOLUTION NO. 2021-_____

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 FIRST AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND DUC POMPANO, LLC FOR THE PROPERTY LOCATED AT 113 NE 1ST AVENUE; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That a First Amendment to the Lease Agreement between the City of Pompano Beach and DUC Pompano, LLC for the property located at 113 NE 1st Avenue, a copy of which First Amendment 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 First Amendment between the City of Pompano Beach and DUC Pompano, LLC.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2021.

REX HARDIN, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

FIRST AMENDMENT

THIS IS A FIRST AMENDMENT TO THE LEASE AGREEMENT dated the _____ day of _____, 20__, between:

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, hereinafter referred to as “City,”

and

DUC POMPANO, LLC, a Florida Limited Liability Company, whose address is 61 NE 1st Street, Pompano Beach, Florida 33060, hereinafter referred to as “Lessee,”

WHEREAS, the parties entered into an agreement for the lease of the property located at 113 Northeast 1st Avenue, Pompano Beach, FL 33060 on October 14, 2019, (“Original Agreement”), and approved by City Resolution No. 2020-11; and

WHEREAS, the City and Lessee have mutually agreed to extend the time allowed for capital improvements in the Original Agreement for an additional two (2) year period.

1. Each “WHEREAS” clause set forth above is true and correct and herein incorporated by this reference.

2. The original Agreement effective October 14, 2019, a copy of which is attached hereto and made a part hereof as Exhibit "A", shall remain in full force and effect for the new contract extension term except as specifically amended herein below.

3. The parties hereto agree to extend the time allowed for 50% of the required capital improvements in the original Agreement for an additional two (2) years, ending October 14, 2023 due to delays caused by COVID-19 in the development of the property as outdoor seating for a future restaurant.

4. That Paragraph 4. "USE OF PREMISES" C. "*Capital Improvements*", of the original agreement is hereby amended to read as follows:

4. USE OF PREMISES.

C. *Capital Improvements.* Lessee agrees to spend a minimum of Thirty Eight Thousand four hundred dollars (\$38,400.00) on Capital Improvements to the Premises as provided for in Exhibit 2 of this Lease Agreement. The Capital Improvements provided for in this Lease Agreement must be completed within four (4) years of the Effective Date of this Lease Agreement. Failure of Lessee to complete the Capital Improvements provided for herein within the four (4) year period shall be a major breach of this lease, entitling the City to all remedies occasioned by default. In accordance with Section 250 of the City Charter, at least fifty percent (50%) of the Thirty Eight Thousand four hundred dollars (\$38,400.00) amount (i.e.: Nineteen Thousand Two Hundred Dollars (\$19,200.00)) shall be expended by Lessee no later than ~~twenty four (24)~~ forty eight (48) months from the Effective Date of this Lease Agreement; and the balance of the Thirty Eight Thousand four hundred dollars (\$38,400.00) amount shall be expended by Lessee no later than forty-eight (48) months from the Effective Date of this Lease Agreement. Failure of the Lessee to establish to the satisfaction of the City that the aforesaid sums have been expended within the time periods required herein shall constitute a major breach of this Lease Agreement, entitling the City to all remedies occasioned by default.

(THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY)

IN WITNESS WHEREOF, the parties have hereto have executed these presents as of the day and year first above written.

“CITY”:

Witnesses:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

(SEAL)

ASCELETA HAMMOND
CITY CLERK

Approved As To Form:

MARK E. BERMAN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this _____ day of _____, 2021, by REX HARDIN as Mayor, GREGORY P. HARRISON as City Manager and ASCELETA HAMMOND as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

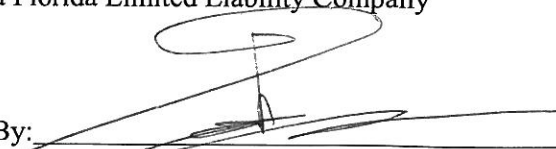
"LESSEE":

Witnesses:

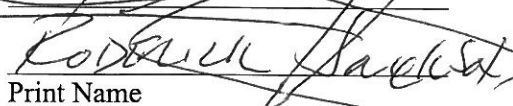
DUC POMPANO, LLC
a Florida Limited Liability Company



Robert Hertseth
Print Name

By: 
Ghulam H. Usman, Manager

ATTEST:


Print Name


Secretary

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 24 day of March, 2021, by GHULAM H. USMAN, as Manager of DUC POMPANO, LLC, a Florida Limited Liability Company on behalf of the company. He is personally known to me or who has produced _____
_____ (type of identification) as identification.




NOTARY PUBLIC, STATE OF FLORIDA

Kayla Smith
(Name of Acknowledger Typed, Printed or Stamped)

#GG343878
Commission Number

EXHIBIT "A"

01/18

RESOLUTION NO. 2020- 11

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 LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND DUC POMPANO, LLC FOR THE PROPERTY LOCATED AT 113 NE 1ST AVENUE; PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That the Lease Agreement between the City of Pompano Beach and DUC Pompano, LLC for the property located at 113 NE 1st Avenue, 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 Lease Agreement between the City of Pompano Beach and DUC Pompano, LLC.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 7th day of October, 2019.



REX HARDIN, MAYOR

ATTEST:



ASCELETA HAMMOND, CITY CLERK

Oct. 18

LEASE AGREEMENT
between
CITY OF POMPANO BEACH
and
DUC Pompano, LLC

THIS AGREEMENT made and entered into this 14 day of October, 2019, by and between:

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, hereinafter referred to as "City,"

and

DUC POMPANO, LLC, a Florida Limited Liability Company, whose address is 61 NE 1st Street, Pompano Beach, Florida 33060, hereinafter referred to as "Lessee,"

WITNESSETH:

City and Lessee, for and in consideration of the rents, covenants and mutual agreements hereinafter contained covenant and agree as follows:

1. PREMISES.

A. City hereby leases to Lessee and Lessee hereby leases from City, a tract of land located at 113 Northeast 1st Avenue, Pompano Beach, FL 33060 in the County of Broward and State of Florida, the legal description of which is provided for in Exhibit 1, hereto and hereinafter referred to as the "Premises."

B. Lessee hereby represents and warrants unto City that it is a public body authorized to transact business within the State of Florida. Lessee further represents and warrants that it has or will obtain adequate financial resources and has the business skills and ability to perform all obligations herein imposed upon Lessee diligently, skillfully and successfully to operate the leased Premises for the purposes intended.

2. TERM.

As consideration for the Lessee's agreement to spend Thirty Eight Thousand Four Hundred Dollars (\$38,400.00) on Capital Improvements as more specifically described in Paragraph of 4.A of this Lease Agreement, the City agrees that the term of the lease shall be for ten (10) years,

commencing on the date of execution of this Lease. This Lease may be renewed upon mutual agreement by both parties and approval pursuant to the same process required for the initial lease term for four (4) additional ten (10) year terms under the same terms and conditions set forth herein. The "Effective Date" of this Lease Agreement shall be the date this Lease Agreement is signed by the last of the City or the Lessee to sign same. If Lessee does not construct the Capital Improvements as specifically provided for in this Lease Agreement, the Lease Agreement shall expire four (4) years from the Effective Date of this Lease Agreement.

3. RENT.

Commencing upon the execution of this Lease Agreement, the annual rental amount to be paid by Lessee shall be \$10.00 plus any applicable sales tax. The annual rental installments shall be payable in advance on the first day of each and every calendar year thereafter until the termination of the letting.

4. USE OF PREMISES.

A. Lessee shall operate the premises as outdoor seating area for use by Lessee or future restaurant tenant of Lessee. Lessee is authorized to replace existing landscaping and pavers and install benches, tables and/or chairs, lighting, pavers, irrigation, security cameras, gazebo or other similar structure, fence and electrical upgrades, as needed, on the Premises as long as such installations do not interfere with any public utilities within this area.

B. All of the above-referenced construction and improvements shall be undertaken at the Lessee's sole cost.

C. *Capital Improvements.* Lessee agrees to spend a minimum of Thirty Eight Thousand four hundred dollars (\$38,400.00) on Capital Improvements to the Premises as provided for in Exhibit 2 of this Lease Agreement. The Capital Improvements provided for in this Lease Agreement must be completed within four (4) years of the Effective Date of this Lease Agreement. Failure of Lessee to complete the Capital Improvements provided for herein within the four (4) year period shall be a major breach of this lease, entitling the City to all remedies occasioned by default. In accordance with Section 250 of the City Charter, at least fifty percent (50%) of the Thirty Eight Thousand four hundred dollars (\$38,400.00) amount (i.e.: Nineteen Thousand Two Hundred Dollars (\$19,200.00)) shall be expended by Lessee no later than twenty-four (24) months from the Effective Date of this Lease Agreement; and the balance of the Thirty Eight Thousand four hundred dollars (\$38,400.00) amount shall be expended by Lessee no later than forty-eight (48) months from the Effective Date of this Lease Agreement. Failure of the Lessee to establish to the satisfaction of the City that the aforesaid sums have been expended within the time periods required herein shall constitute a major breach of this Lease Agreement, entitling the City to all remedies occasioned by default.

D. *Permits, Approvals and Fees.* It is understood and agreed that any construction or other improvements on the Premises shall be accomplished in accordance with the applicable rules, regulations, resolutions and ordinances of the City, County, State and Federal governments, and that Lessee shall be responsible for obtaining all necessary zoning and building

permits and any other approvals or permits which may be required and shall pay all charges therefore. The Lessor shall cooperate with, support and join in, to the extent required, all necessary applications, site plan approval, building permits, variances, special exceptions and other approvals, permits, and licenses for the construction and use of Lessee's intended improvements, but shall bear no cost for the same.

5. OBLIGATIONS OF LESSEE.

Lessee shall, at its own cost, make improvements to the Premises and perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over said property in order to comply with sanitary requirements, fire hazard requirements, zoning requirements, setback requirements and other similar requirements designed to protect the public.

6. CARE, MAINTENANCE AND REPAIR BY LESSEE.

A. Lessee shall, throughout the term of this Lease, assume the entire responsibility and shall relieve City from all responsibility for all repair and maintenance whatsoever on the Premises and, without limiting the generality hereof, shall:

(1) keep at all times in a clean and orderly condition and appearance the Premises and all of Lessee's fixtures, equipment and personal property which are located in any parts of the Premises which is open to or visible by the general public; and

(2) shall be responsible for the maintenance and repair of all utilities service lines located within the Premises except common utilities, if any, including, but not limited to, service lines for the supply of water, gas service lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers which are now or which may be subsequently located upon the Premises leased to Lessee and used by Lessee exclusively; and

B. City may, at its option, and in addition to any other remedies which may be available to it, repair, replace, rebuild or paint all or any part of any improvements to the Premises, and the cost thereof shall be added to the rent due and payable following completion of such work by City and shall be paid by Lessee to City along with said month's rent, if either:

(1) Lessee fails in any material respect, to maintain, clean, repair, replace, rebuild or paint within a period of sixty (60) days after notice from the City to do so, and said notice specifies that the required work to be accomplished by Lessee includes maintenance and/or repair that Lessee is obligated to perform hereunder other than preventive maintenance; or

(2) for work involving preventative maintenance and repair that Lessee is obligated to perform hereunder only, if Lessee fails in any material respect to accomplish that specified work within one hundred eighty (180) days following notice from City; or,

(3) within one hundred eighty (180) days, Lessee fails in any material respect to diligently complete the repair, replacement, rebuilding or repainting of all of the

Premises required to be repaired, replaced, rebuilt or painted by Lessee under the terms of this Agreement.

7. INSURANCE.

A. Insurance Requirements for Lessee.

(1) Lessee agrees to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law.

(2) Lessee shall furnish City with written verification of its liability protection in accordance with state law upon execution of this Agreement. Lessee is fully self-insured and self-administered for General Liability coverage pursuant to Florida Statutes and is responsible to deliver to the CITY's Risk Manager for his/her timely review and written approval/disapproval Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which name on a primary basis, the City as an additional insured on all such coverage. Lessee shall institute and maintain a fiscally sound and prudent risk management program with regard to its obligations under this Lease Agreement throughout the term of this Lease.

B. Insurance Requirements in Event of Assignment or Sub-Lease. In the event that Lessee assigns, sub-leases or sub-lets the Premises or any portion of the Premises as permitted by Section 13 of this Agreement, the entity to whom the Lease is assigned, sub-leased or sub-let (hereinafter "Sub-Lessee") shall be required to adhere to the following insurance requirements:

(1) Sub-Lessee covenants and agrees to provide and keep in force and effect comprehensive general public liability and property damage insurance which shall include independent contractors and which shall name the City of Pompano Beach as an additional insured. Such comprehensive general liability coverage shall not be less than \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate, single limit bodily injury and property damage insurance, holding harmless and indemnifying Sub-Lessee and City as their interests may appear against public liability and property damage claims, and to furnish City at all times with an appropriate certificate from the insurance carrier showing such insurance to be in force.

(2) It is further understood and agreed that Sub-Lessee or his agents shall carry Products Liability and Completed Operations coverage with limits of liability as follows:

Bodily Injury	\$1,000,000 Each Person
\$1,000,000 Each Occurrence	
\$1,000,000 Aggregate	
Property Damage	\$1,000,000 Each Accident
\$1,000,000 Aggregate	

All policies of such insurance and renewal thereof shall insure City and Sub-Lessee as their interests may appear.

(3) Sub-Lessee shall provide Worker's Compensation Insurance for all of its employees in accordance with the requirements of Florida Statutes, Chapter 440. Sub-Lessee further agrees to be responsible for employment, control and conduct of all its employees and for any injury sustained by such employees in the course of their employment.

(4) The aforesaid insurance shall be written by companies authorized to do business in the State of Florida and listed in "Best's Insurance Guide," or a comparable publication in the event of the discontinuance of publishing "Best's," said insurance company having a minimum rating in "Best's" of A 3A.

(5) The policies or certificates representing said insurance shall be delivered by Sub-Lessee to City and each policy or certificate delivered shall bear the endorsement of or be accomplished by evidence of payment of the premium thereon and also an endorsement obligating the insurance company to furnish City sixty (60) days' notice in advance of the cancellation of the insurance evidenced by said policy or certificate. Renewal policies or certificates shall be delivered to City at least sixty (60) days before the expiration of the insurance which such policies are to renew.

(6) When such policies or certificates have been delivered by Sub-Lessee to City as aforesaid and at any time or times thereafter, City may notify Sub-Lessee in writing that the insurance represented thereby does not conform to the provisions of this paragraph either because of the amount or because of the insurance company or for any other reason and Sub-Lessee shall have thirty (30) days in which to cure the defect. Failure to cure such defect within thirty (30) days shall constitute a breach of this Agreement, entitling City to all remedies occasioned by default.

(7) Sub-Lessee or his agent further agrees to hold harmless and indemnify the City from any claims resulting from Sub-Lessee's or his agent's negligence on or about the leased Premises and any operations in connection herewith.

8. DAMAGE TO OR DESTRUCTION OF PREMISES.

A. *Removal of Debris.* If the Premises or any part thereof shall be damaged by fire, the elements from such damage from the Premises and to the extent, if any, that the removal of debris under such circumstance is covered by insurance, the proceeds thereof shall be made available to Lessee for such purpose.

B. *Minor Damage.* If the Premises, or any part thereof, shall be damaged by fire, the elements, the public enemy, riot or other casualty but not rendered untenable or unusable, the Premises shall be repaired with due diligence in accordance with the plans and specifications for the Premises as they existed prior to such damage, but with current Code

requirements being met, by and at the expense of Lessee and, if the damage is covered by insurance, the proceeds thereof shall be made available to Lessee for that purpose.

C. *Major Damage to or Destruction of the Premises.* If the Premises or any part thereof, shall be destroyed or so damaged by fire, the elements, the public enemy, riot or other casualty and thereby rendered temporarily untenable or unusable, then:

(1) Lessee shall have an option to make the necessary repairs or replacements for the restoration thereof in accordance with the plans and specifications as the same existed prior to such damage or destruction, provided that Lessee within forty-five (45) days after the occurrence of such damage or destruction notifies City in writing that it elects to exercise its option to make the necessary repairs or replacements. If Lessee elects to make such repairs or replacements it shall do so with reasonable dispatch provided, however, Lessee shall not be responsible for delays caused by the insurance company or by an event of force majeure. If such destruction or damage was covered by insurance, the proceeds thereof shall be adjusted with and paid to Lessee.

(2) If Lessee fails to notify City in writing of its intention to make the necessary repairs or replacements within the forty-five (45) day period provided in subparagraph (1) of this subdivision C, or if within the said forty-five (45) day period Lessee notifies City in writing that it does not elect to make such repairs or replacements, then City may at its election make such repairs or replacements provided that City notifies Lessee of its election to do so within thirty (30) days following the expiration of the said forty-five (45) day period. If City elects to make such repairs or replacements, it shall do so with reasonable dispatch and without cost to Lessee, except that if such destruction or damage was covered by insurance, the proceeds thereof shall be adjusted with and paid to City.

(3) In the event that neither of the two parties elects to make such repairs or replacements, then this Lease shall terminate either at the expiration of seventy-five (75) days from the occurrence of such destruction or damage or at the expiration of thirty (30) days following receipt of notice by City from Lessee that the Lessee does not elect to repair or replace such damage, whichever date occurs sooner; and in any such event, the proceeds of insurance applicable to the damage or destruction (other than the proceeds applicable to debris removal) shall be distributed between Lessee, Lessee's mortgage lender, and City as their interests may appear. In such event, the payment of rentals shall terminate as of the date of the damage or destruction.

(4) Notwithstanding anything contained in this Section 8 (C) to the contrary, in the event the Lessee has not yet settled with its insurance carrier as to the amount of money to be paid by the carrier in connection with the damage by the date that the Lessee is required to make an election or send written notice to the City as required in Section 8 (C)(1), then the period of time for Lessee to send such written notice or make such election shall be extended until the Lessee has so settled with its insurance carrier provided that Lessee notifies City in writing of the need to extend the notice period. In no event, however, shall the notice period required in Section 8 (C)(1) be extended beyond a period of 180 days from the date of the damage or destruction; and if the Lessee has not provided any required written notice to the City, then before the City can terminate this Lease Agreement pursuant to the provisions in this Section 8, the City shall give the Lessee written notice and an additional fifteen (15) days for the Lessee to provide such written notice to the prior to the City terminating the Lease.

9. INDEMNITY.

A. Lessee shall indemnify, defend, save and hold harmless City, its Commissioners, officers, agent, employees and representatives, from and against all claims and demands of third persons, except those arising from gross and willful misconduct by City including, but not limited to, the execution of this Lease, claims and demands for death or personal injuries or for property damages arising out of the use or occupancy of the Premises by Lessee or with its consent or out of any acts or omissions of others upon the Premises with the consent of Lessee, or arising or resulting from any breach or default by Lessee or any of the obligations or duties assumed by or imposed upon it under this Lease, or indemnification arising by operation of law.

B. Further, Lessee shall pay all costs incurred and reasonable attorneys' fees incurred by City in the event of a necessity to defend any claim, lawsuit or cause of action whatever against City arising out of the Lessee's activities on the Premises or the execution of this Lease, be the same with or without merit. It is further understood that the above indemnification agreement extends to the act of invitees, licensees and trespassers upon the Premises leased, and Lessee's obligations to indemnify City shall be cumulative with the obligations of any assignee of Lessee, absent a specific agreement to the contrary with City at the time of such assignment.

C. Lessee further agrees to hold City harmless from any claim of lien by any contractor, subcontractor, material man or other person or firm or corporation whatsoever and Lessee further agrees to hold City harmless and to reimburse City for all costs including cost of defense, attorneys' fees and other expenses in connection with any claim of whatsoever kind, whenever the same may be presented, arising out of any construction whatever in connection with this Lease Agreement.

D. Nothing in this Agreement shall be deemed to affect the rights, privileges and immunities of either party as set forth in Section 768.28, Florida Statutes.

10. SIGNS.

Except with the prior written approval of City, which approval shall not be unreasonably withheld or delayed and so long as same complies with all applicable governmental rules, regulations, and ordinances, including the City's sign code, Lessee may erect signage in compliance with the City's sign code, as amended from time to time.

11. ADDITIONAL RENT AND CHARGES.

If City is required or elects to pay any sum or sums or incurs any obligations or expenses by reason of the failure, neglect or refusal of Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Agreement or as a result of any act or omission of Lessee contrary to said conditions, covenants and agreements, Lessee agrees to pay the sum or sums so paid or the expense so incurred, including all interest, costs, damages and penalties, and the same may be added to any installment of rent thereafter due hereunder and each and every part of the same shall be and become additional rent recoverable by City in the same

amount and with like remedies as if it were originally a part of the rent as set forth in paragraph 4 hereof.

12. RIGHTS OF ENTRY RESERVED.

A. City, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times, and with reasonable prior notice, to enter upon the Premises for the purpose of inspecting the same, for observing the performance by Lessee of its obligations under this Agreement and for doing any act or thing which City may be obligated or have the right to do under this Agreement or otherwise as long as said inspection or visit does not interfere with the normal business of Lessee.

B. Without limiting the generality of the foregoing, City, by its officers, employees, agents, representatives, contractors, and furnishers of utilities and other services, shall have the right, at its own cost and expense, for its own benefit or for the benefit of others to maintain existing and future utilities, mechanical, electrical and other systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations thereto as may, in the opinion of City, be deemed necessary or advisable and from time to time to construct or install over, in or under the premises such systems or parts thereof and in connection with such maintenance to use the premises for access to other parts of the property otherwise not conveniently accessible provided, however, that in the exercise of such rights of access, repair, alteration or new construction City shall not unreasonably interfere with the actual use and occupancy of the Premises by Lessee or Lessee's subtenants, invitees or licensees.

13. SALE, ASSIGNMENT AND SUBLEASE.

Except as otherwise provided in this Lease Agreement, Lessee may sublease this Lease or any part thereof or any rights created thereby or sublet the Premises or any part thereof with the prior written consent of City, which consent shall not be unreasonably withheld.

14. DEFAULT BY LESSEE.

Lessee will be considered in default of this Lease if any one or more of the following events shall occur:

(1) If Lessee shall voluntarily abandon, desert or vacate the Premises or discontinue its operation at the Premises absent an event of force majeure.

(2) If Lessee shall fail duly and punctually to pay the rent or to make any other payment required hereunder when due to City and shall continue in its failure to pay rents or to make any other payments required hereunder for a period of ten (10) days after receipt of notice by it from City to make such payments.

(3) If Lessee shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Agreement on its part to be kept, performed or observed within thirty (30) days after receipt of notice of non-compliance there under from City except where fulfillment of its obligation requires activity over a period of time and Lessee shall

have commenced to perform whatever may be required for fulfillment within fifteen (15) days after receipt of notice and continues such performances without interruption.

(4) Upon the occurrence of any such event which is not cured as provided herein or at any time thereafter during the continuance thereof, City, by forty-five (45) days' written notice, may terminate the rights of Lessee hereunder and this letting, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

B. *Wasting or Destruction of Property.* In the event the activities of Lessee, which are in derogation of the terms of this Lease, are such as to constitute a material wasting or destruction of the property of City then and in that event it shall not be necessary for City to suffer the wasting or destruction of said property during the aforesaid periods of notice, but in such event City shall give Lessee three (3) days' notice within which to terminate the aforesaid destruction or waste or terminate any act or practice which shall place the property of City in danger of destruction or waste. If at the expiration of the aforesaid three (3) days from the service of notice upon Lessee in accordance with the provisions for service of such notice as contained in this Lease Agreement, Lessee has not terminated such waste of City's property, then and, in that event, City shall have the right to enter upon the Premises forthwith, and Lessee shall remove himself from the Premises forthwith and this Lease shall be deemed canceled and terminated as of the expiration of the aforesaid three (3) days.

C. No acceptance by City of rental, fees, charges or other payments in whole or in part for any period or periods after a default of any of the terms, covenants and conditions hereof to be performed, kept or observed by Lessee shall be deemed a waiver of any right on the part of City to terminate the letting.

D. No waiver by City of any default on the part of Lessee in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by Lessee shall be or be construed to be a waiver by City of any other or subsequent default in performance of any of the said terms, covenants and conditions.

E. The rights of declaration of default described above shall be in addition to any other rights of termination provided in this Agreement and in addition to any rights and remedies that City would have at law or in equity consequent upon any breach of this Agreement by Lessee and the exercise by City of any right of termination shall be without prejudice to any other such rights and remedies.

15. REMEDIES TO BE NON-EXCLUSIVE.

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to City or Lessee at law or in equity and the exercise of any remedy or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

16. SURRENDER.

Lessee covenants and agrees to yield and deliver peaceably to City on the date of cessation of the letting, whether such cessation be by termination, expiration or otherwise, possession of the Premises and all pavements, facilities and permanent improvements located on the Premises free of all encumbrances, in a good state of repair and in good and usable condition, subject to reasonable wear and tear.

17. NOTICES.

Except where expressly required or permitted herein to be oral, all notices, requests, consents and approvals required to be given to or by either party shall be in writing and all such notices and requests shall be personally delivered to the duly designated officer or representative of such party or delivered to the office of such officer or representative during regular business hours or forwarded to him or to the party at such address by certified or registered mail. City designates the City Manager and, until further notice, Lessee designates its Manager Ghulam H. Usman as its representative upon whom notices and requests may be served, and City designates its office at City Hall, 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, and Lessee designates its office at 61 NE 1st Street, Pompano Beach, Florida 33060, as their respective offices where notices and requests may be served. The notices herein required to be served shall be deemed effective and served five (5) business days after the date of the registered or certified mailing thereof with proper postage prepaid.

18. PLACE OF PAYMENTS.

All payments by Lessee shall be made at the office of the Finance Department, 4th Floor, at City Hall, 100 West Atlantic Boulevard, Pompano Beach, Florida.

19. CONSTRUCTION AND APPLICATION OF TERMS.

The paragraph and subparagraph headings, if any, in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of the provision hereof.

20. OBLIGATION OF LESSEE TO PAY CERTAIN TAXES AND EXPENSES.

Lessee shall be responsible to pay all real and personal property taxes, tangible or intangible taxes, assessments, utilities, insurance premiums, occupational license, maintenance and other similar expenses.

21. OPERATING COSTS.

Lessee agrees to promptly pay when due all operating, maintenance and servicing charges and costs including gas, electricity, water, water connections, sewer, sewer connections, and all other expenses incurred in the use and operation of the Premises.

22. RETENTION OF RECORDS AND RIGHT TO ACCESS.

Lessee shall preserve and make available all financial records, supporting documents, statistical records and any other documents pertinent to this contract for a period of three (3) years after termination of this contract or if an audit has been initiated and audit findings have not been resolved at the end of these three (3) years, the records shall be retained until resolution of audit finding.

23. NON-DISCRIMINATION.

Lessee, in exercising any of the rights or privileges herein granted to it shall not on the grounds of race, color or national origin discriminate against any person or persons in any manner.

24. PLEDGE OF LEASEHOLD INTEREST.

Lessee nor any of its tenants, shall not have the right to mortgage Lessee's interest under this Lease. Lessee may pledge its tax increment revenue in any current or future revenue bond.

25. RIGHT TO RECORD.

Either City or Lessee shall have the right to record this Lease or a written Memorandum of this Lease in the public records of Broward County, Florida, at their own expense. Upon request by the Lessee, the City agrees to simultaneously with the execution of this Lease enter into a Memorandum of Lease, in a form satisfactory to the City, for purposes of recording same in the public records.

26. ENTIRE AGREEMENT.

A. This Agreement consists of Paragraphs 1 through 26 inclusive, and Exhibits "1" and "2."

B. It constitutes the entire agreement of the parties on the subject matter hereof and many not be changed, modified, discharged or extended except by written instrument duly executed by City and Lessee. Lessee agrees that no representatives or warranties shall be binding upon City unless expressed in writing in this Agreement.

(THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY)

IN WITNESS WHEREOF, the parties have hereto have executed these presents as of the day and year first above written.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

Candida [Signature]

By: [Signature]
REX HARDIN, MAYOR

Shelley R. Bartholomew

By: [Signature]
GREGORY P. HARRISON, CITY MANAGER

Attest:

[Signature]
ASCELETA HAMMOND
CITY CLERK

(SEAL)

Approved As To Form:

[Signature]
MARK E. BERMAN
CITY ATTORNEY

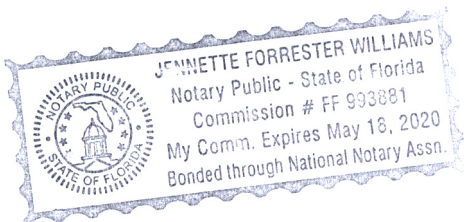
STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 14 day of October, 2019, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
Jennette Forrester Williams
(Name of Acknowledger Typed, Printed or Stamped)

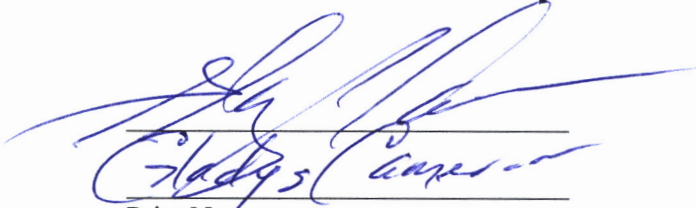
Commission Number



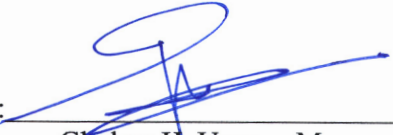
"LESSEE":


Witnesses:

DUC POMPANO, LLC
a Florida Limited Liability Company



Print Name

By: 
Ghulam H. Usman, Manager


TAMMY GRIFFIN

Print Name

ATTEST:

Secretary

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 7 day of AUGUST, 2019, by GHULAM H. USMAN, as Manager of DUC POMPANO, LLC, a Florida Limited Liability Company on behalf of the company. He is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:


NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)



Commission Number

EXHIBIT 1

LEGAL DESCRIPTION

THE SOUTH 25 FEET OF THE EAST 100 FEET OF LOT 9, OF THE TOWN OF POMPANO, BEING A RESUBDIVISION OF LOT 15, OF THE SUBDIVISION OF SECTION 35, TOWNSHIP 48 SOUTH, RANGE 42 EAST, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK "B", PAGE 76, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

SAID LANDS SITUATE, LYING AND BEING IN THE CITY OF POMPANO BEACH, BROWARD COUNTY, FLORIDA AND CONTAINING 2,500 SQUARE FEET (0.057 ACRES), MORE OR LESS.

EXHIBIT 2

DUC POMPANO LLC

61 NE 1ST STREET | Pompano Beach, FL 33060
T: 954-978-8400 | F: 954-635-5513

Date: June 19, 2019

Nguyen Tran
CRA Director
Pompano Beach Community Redevelopment Agency
100 W. Atlantic Boulevard, Room 276
Pompano Beach, Florida 33060
P: (954) 786-7823
D: (954) 545-7769
nguyen.tran@copbfl.com | www.pompanobeachfl.gov

Pompano Beach CRA
2019 JUN 19 PM 1:20

RE: NORTHSIDE AREA

Dear Sir,

We received your request and have taken the time to provide you with a breakdown of what we propose to invest on subject area of the northside area of DUC Pompano LLC that would serve as a fantastic appeal for all persons:

Description	Amount
1. Rework the landscaping	\$1,500.00
2. Rework sprinkler system	\$950.00
3. Rework pavers and install new pavers as needed	\$2,200.00
4. Install hedges to make private instead of a fence	\$1,580.00
5. Install light fixtures, run underground electric from our building to subject property with GFI's to improvise outdoor outlets	\$3,260.00
6. Build a Gazebo with fans and ventilation with proper permitting and City of Pompano Beach approval	\$6,280.00
7. Provide tables, chairs, umbrellas and fire pit	\$2,280.00
8. Install security cameras	\$1,750.00
9. Build fence on east and west side to prevent dumpster enclosure and transformer from being seen with landscaping as needed	\$7,500.00
10. Additional landscaping to look more tropical	\$3,600.00
11. Miscellaneous expenses	\$7,500.00
<i>Please note: We are hoping to get the CRA support to keep area safe for all patrons...</i>	
Estimated Cost	\$38,400.00