

**THIRD AMENDMENT TO
AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

THIS THIRD AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT (“**Third Amendment**”) is dated as of _____ 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:

City and Developer have entered into an Amended and Restated Development Agreement dated July 28, 2014; a First Amendment to Amended and Restated Development Agreement dated March 27, 2015; and a Second Amendment to Amended and Restated Development Agreement dated April 15, 2016 (collectively, “**Agreement**”), for the development, leasing and operation of approximately 6.125 acres of oceanfront property located on Pompano Beach Boulevard (“**Property**”).

All terms used in this Third Amendment which are defined in the Agreement will have the meanings set forth in the Agreement.

City and Developer have agreed to amend the Agreement to address the following: the Development Timeline; the construction, operation, and maintenance of restrooms in the Existing Concession Building; City access to the Electrical Room (defined below) in the Existing Concession Building; the Hotel; replacement of the Pier Structure; the Parking Garage; Valet Spaces in the Parking Garage; authorized uses and approvals; and expediting development approvals.

The Existing Concession Building is located on Parcel E. The City has leased Parcel E to PPA-E, LLC (“**Parcel E Tenant**”), an affiliate of the Developer, pursuant to the Parcel Ground Lease for Parcel E dated March 15, 2015, and amended on April 15, 2016 (collectively, “**Parcel E Ground Lease**”).

The City has leased Phase R4 to PPA-R4, LLC (“**Phase R4 Tenant**”), an affiliate of the Developer, pursuant to the Space Lease for Phase R4 dated April 15, 2016 (the “**Phase R4 Space Lease**”).

The City has leased Parcel R1 to PPA-R1, LLC (“**Parcel R1 Tenant**”), an affiliate of the Developer, pursuant to the Parcel Ground Lease for Parcel R1 dated February 28, 2017 (the “**Parcel R1 Ground Lease**”).

The City has leased Parcel R2 to PPA-R2, LLC (“**Parcel R2 Tenant**”), an affiliate of the Developer, pursuant to the Parcel Ground Lease for Parcel R2 dated September 30, 2015, and amended on April 15, 2016 (collectively, “**Parcel R2 Ground Lease**”).

The City has leased Parcel R3 to PPA-R3, LLC (“**Parcel R3 Tenant**”), an affiliate of the Developer, pursuant to the Parcel Ground Lease for Parcel R3 dated March 31, 2015, and amended on April 15, 2016 (collectively, “**Parcel R3 Ground Lease**”).

The City has leased Parcel C1 to PPA-C1, LLC (“**Parcel C1 Tenant**”), an affiliate of the Developer, pursuant to the Parcel Ground Lease for Parcel C1 dated February 15, 2017 (the “**Parcel C1 Ground Lease**”).

The City has leased Parcel C2 to PPA-C2, LLC (“**Parcel C2 Tenant**”), an affiliate of the Developer, pursuant to the Parcel Ground Lease for Parcel C2 dated April 17, 2017 (the “**Parcel C2 Ground Lease**”).

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

AGREEMENT:

1. **Development Timeline.** The Development Timeline attached as **Exhibit C** to the Agreement is replaced with the revised Development Timeline attached as **Exhibit A** to this Third Amendment.

2. **Restrooms in Existing Concession Building.** Section 7.1.4 of the Agreement is deleted in its entirety and replaced with the following:

7.1.4 **Restrooms.** Prior to the completion of the Parcel E Improvements, the Parcel E Tenant will construct the following restrooms at its own expense in accordance with the development and construction requirements of the Parcel E Ground Lease:

(a) **Public Restrooms.** The Parcel E Tenant shall construct new public restrooms (“**Public Restrooms**”) either attached to or adjacent to the Existing Concession Building. The Public Restrooms will be sufficient in size to serve both the Parcel E Tenant’s patrons and the general public. The exact location of the Public Restrooms must be acceptable to the City. The Parcel E Tenant will be responsible for the operation, maintenance, and repair of the Public Restrooms and for the utility charges for the Public Restrooms. The City will reimburse the Parcel E Tenant for 50% of the operating, maintenance, repair, and utility costs for the Public Restrooms. The Parcel E Tenant will bill the City for its share of the operating, maintenance, repair, and utility costs on a monthly basis and the City will pay the billed costs within 30 days after receipt of the invoice and copies of supporting documentation (cleaning charges, utility bills, etc.).

3. **City Access to Electrical Room.** The following provision is added to Section 7.1 of the Agreement:

7.1.8. **City Access to Electrical Room.** Developer acknowledges that the electrical room contained in the Existing Concession Building on Parcel E (“**Electrical Room**”) contains electrical connections and installations for City facilities outside of Parcel E. Developer agrees to allow the City access to the Electrical Room at all reasonable times throughout the term of the Parcel E Ground Lease for the

purpose of maintaining, repairing and replacing the electrical connections and installations which serve the City's facilities. Developer shall have flexibility to relocate Electrical Room provided City's service and access is not interrupted.

4. **Parcel R5.** Section 7.6.3. of the Agreement is amended to read as follows (added language is underlined and in bold, deleted language has a line through it):
 - 7.6.3. **Parcel R5 Percentage Rent.** The Percentage Rent per Lease Year for Parcel ~~R2~~ **R5** will be 1.25% of the Gross Revenue of Parcel ~~R2~~ **R5** in excess of \$4,800,000.

5. **Hotel.** Section 18.1 of the Agreement is amended to read as follows (added language is underlined and in bold, deleted language has a line through it):
 - 18.1 **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. **The Hotel on Parcel R5 must have a three-star/diamond rating or better from AAA.** Nothing in this Agreement is intended to obligate the City to approve the development of a Hotel on Parcel R5.

5. **Pier Structure.** The following provision is added to Section 19 of the Agreement:
 - 19.4 **City Replacement of Pier Structure.** Developer acknowledges and accepts that (i) City will be removing the Existing Pier Structure and constructing a New Pier Structure, as contemplated by the Agreement; and (ii) access to the north side of the Existing Concession Building will be blocked during the removal and replacement of the Existing Pier Structure.

6. **Parking Garage.** Section 22.2 of the Agreement is amended to read as follows (added language is underlined and in bold, deleted language has a line through it):
 22. **Parking Garage.** City ~~intends (but is not obligated) to~~ **has constructed** the Parking Garage on a portion of Parcel R4 using funds from its Parking Enterprise Fund. ~~If the City has not commenced construction of the Parking Garage within 18 months after Developer's submission of the Master Plan or has not completed the Parking Garage within 36 months after submission of the Master Plan, the Developer will have a right of first opportunity to build or complete the Garage on Parcel R4 on terms and conditions to be agreed upon by the parties in the future.~~

 - 22.1 **Timing.** City ~~intends to construct~~ **completed construction of** the Parking Garage **in June 2016,** in accordance with this Section 22 as soon as possible.

- 22.2 **Parking Garage Required For Hotel Development.** If the Developer proceeds with the development of a Hotel on Parcel R5, and the Hotel requires parking in the Parking Garage, City will negotiate a parking agreement with the Hotel operator (**the “Pier Hotel Parking Space License Agreement”**). **The City will provide the Hotel operator up to 150 parking spaces at a rate and on terms to be set forth in the Pier Hotel Parking Space License Agreement between the City and the Hotel operator.**
7. **Valet Spaces.** Section 23 of the Agreement is amended to read as follows (added language is underlined and in bold, deleted language has a line through it):
23. **Valet Spaces and Services.**
- ~~23.1 **Surface Valet Spaces.** City agrees that 100 surface parking spaces will be reserved and operated by the City or its designee as “Surface Valet Spaces.” City will control the parking rates for the Surface Valet Spaces and will receive all revenues from the Surface Valet Spaces.~~
- 23.21 **Garage Valet Spaces.** ~~Upon completion of the Parking Garage by City,~~ City agrees that 100 Parking Garage spaces **on the Parking Garage ground floor** will be reserved and operated by the City or its designee as valet parking spaces (“Garage Valet Spaces”). City will control the parking rates for the Garage Valet Spaces and will receive all revenues from the Garage Valet Spaces. ~~Upon completion of the Garage Valet Spaces, the Surface Valet Spaces will be converted to regular parking spaces.~~
- 23.2 Valet Service. City will provide valet parking service, including pick-up and drop-off queueing stations, at locations on Pompano Beach Boulevard in close proximity to Parcels R1, R2, and R3, at no cost to the Developer.**
8. **Development Standards.** The following provision is added to Section 31 of the Agreement:
- 31.3.7. **Authorized Uses and Approvals.** As stated in Paragraph 1 of the Agreement, entitled “Project Background and Summary,” the Project shall provide a combination of restaurants and eateries, beach and pier oriented retail, surface or structured parking, passive open spaces, plazas, Hotel if approved by the City Commission, and general areas that attract families and visitors (the “**Authorized Uses**”). If Developer proposes a use that is not an Authorized Use, such use shall be subject to the express written approval of the City.
9. **Approvals by the City.** Section 40.12 of the Agreement is amended to read as follows (added language is underlined and in bold, deleted language has a line through it) :

- 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. **City agrees to make a reasonable effort to expedite the approval process for site plan and building permit applications submitted by Developer or the Parcel Tenants.**
10. **Ratification of Agreement.** The Agreement, as amended by this Third Amendment, remains in full force and effect on the date hereof.

[SIGNATURES ON FOLLOWING PAGES]

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

Witnesses:

CITY:

CITY OF POMPANO BEACH, FLORIDA

By: _____
LAMAR FISHER, MAYOR

Print name: _____

Dated: _____

Print name: _____

By: _____
GREG HARRISON, CITY MANAGER

Attest:

Dated: _____

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved as to form by:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me on _____, by LAMAR FISHER, as Mayor, GREG 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 PUBLIC, STATE OF FLORIDA

(Name of Notary Typed, Printed or Stamped)

NOTARY'S SEAL

Commission Number

City Signature Page to Third Amendment

Witnesses:

[Signature]

Print name: Mansa Benin

Samia Francis

Print name: Samia Francis

DEVELOPER:

POMPANO PIER ASSOCIATES, LLC, a
Florida limited liability company

By: [Signature]
RICHARD CASTER, President

Date: 9/29/17

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me on
September 29, 2017, 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 produced _____ as identification.

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
John A. Jacobs

(Name of Notary Typed, Printed or Stamped)

FF913520

Commission Number

NOTARY'S SEAL



John A. Jacobs
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF913520
Expires 9/12/2019

JOINDER OF PARCEL E TENANT

PPA-E, LLC, a Florida limited liability company ("Parcel E Tenant"), as the tenant of Parcel E pursuant to the Parcel Ground Lease for Parcel E dated March 31, 2015, and amended on April 15, 2016, joins in this Third Amendment to Amended and Restated Development Agreement to acknowledge its consent to the terms and conditions of the Third Amendment which may affect the rights or obligations of the Parcel E Tenant under the Parcel E Ground Lease.

Witnesses:

[Signature]

Print name: Marisa Beninetti

Samia Francis

Print name: Samia Francis

PARCEL E TENANT:

PPA-E, LLC, a Florida limited liability company

By: [Signature]
RICHARD CASTER, President

Date: 9/27/17

STATE OF FLORIDA
COUNTY OF BROWARD

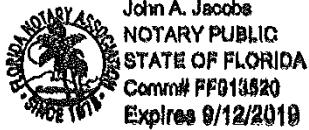
The foregoing instrument was acknowledged before me on Sept. 29, 2017, by RICHARD CASTER, as President of PPA-E, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification.

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
John A. Jacobs

(Name of Notary Typed, Printed or Stamped)

NOTARY'S SEAL

FF913520
Commission Number



Tenant Signature Page to Third Amendment

JOINDER OF PHASE R4 TENANT

PPA-R4, LLC, a Florida limited liability company ("Phase R4 Tenant"), as the tenant of Phase R4 pursuant to the Space Lease for Phase R4 dated April 15, 2016, joins in this Third Amendment to Amended and Restated Development Agreement to acknowledge its consent to the terms and conditions of the Third Amendment which may affect the rights or obligations of the Phase R4 Tenant under the Phase R4 Space Lease.

Witnesses:

[Signature]

Print name: Marisa Benincosa

Samia Francis

Print name: Samia Francis

PHASE R4 TENANT:

PPA-R4, LLC, a Florida limited liability company

By: [Signature]
RICHARD CASTER, President

Date: 9/29/17

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me on Sept 29, 2017, by RICHARD CASTER, as President of PPA-R4, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification.

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

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

NOTARY'S SEAL



John A. Jacobs
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF013520
Expires 9/12/2019

FF913520
Commission Number

Tenant Signature Page to Third Amendment

JOINDER OF PARCEL R1 TENANT

PPA-R1, LLC, a Florida limited liability company ("Parcel R1 Tenant"), as the tenant of Parcel R1 pursuant to the Parcel Ground Lease for Parcel R1 dated February 28, 2017, joins in this Third Amendment to Amended and Restated Development Agreement to acknowledge its consent to the terms and conditions of the Third Amendment which may affect the rights or obligations of the Parcel R1 Tenant under the Parcel R1 Ground Lease.

Witnesses:

[Signature]

Print name: Marisa Benincosa

[Signature]

Print name: Samia Francis

PARCEL R1 TENANT:

PPA-R1, LLC, a Florida limited liability company

By: [Signature]
RICHARD CASTER, President

Date: 9/29/17

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me on Sept 29, 2017, by RICHARD CASTER, as President of PPA-R1, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification.

[Signature]

NOTARY PUBLIC, STATE OF FLORIDA

John A. Jacobs

(Name of Notary Typed, Printed or Stamped)

NOTARY'S SEAL



John A. Jacobs
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF913520
Expires 9/12/2019

FF913520
Commission Number

Tenant Signature Page to Third Amendment

JOINDER OF PARCEL R2 TENANT

PPA-R2, LLC, a Florida limited liability company ("Parcel R2 Tenant"), as the tenant of Parcel R2 pursuant to the Parcel Ground Lease for Parcel R2 dated September 30, 2015, and amended on April 15, 2016, joins in this Third Amendment to Amended and Restated Development Agreement to acknowledge its consent to the terms and conditions of the Third Amendment which may affect the rights or obligations of the Parcel R2 Tenant under the Parcel R2 Ground Lease.

Witnesses:



Print name: Mansa Beninon

Samia Francis

Print name: Samia Francis

PARCEL R2 TENANT:

PPA-R2, LLC, a Florida limited liability company

By: 
_____ RICHARD CASTER, President

Date: 9/29/17

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me on Sept 29, 2017, by RICHARD CASTER, as President of PPA-R2, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification.

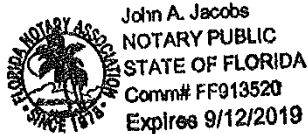


NOTARY PUBLIC, STATE OF FLORIDA

John A. Jacobs

(Name of Notary Typed, Printed or Stamped)

NOTARY'S SEAL



FF913520

Commission Number

Tenant Signature Page to Third Amendment

JOINDER OF PARCEL R3 TENANT

PPA-R3, LLC, a Florida limited liability company ("Parcel R3 Tenant"), as the tenant of Parcel R3 pursuant to the Parcel Ground Lease for Parcel R3 dated March 31, 2015, and amended on April 15, 2016, joins in this Third Amendment to Amended and Restated Development Agreement to acknowledge its consent to the terms and conditions of the Third Amendment which may affect the rights or obligations of the Parcel R3 Tenant under the Parcel R3 Ground Lease.

Witnesses:

[Signature]

Print name: Marisa Beninati

Samia Francis

Print name: Samia Francis

PARCEL R3 TENANT:

PPA-R3, LLC, a Florida limited liability company

By: [Signature]
RICHARD CASTER, President

Date: 9/29/17

STATE OF FLORIDA
COUNTY OF BROWARD

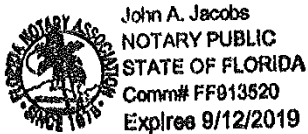
The foregoing instrument was acknowledged before me on Sept 29, 2017, by RICHARD CASTER, as President of PPA-R3, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification.

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

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

NOTARY'S SEAL

FF913520
Commission Number



Tenant Signature Page to Third Amendment

JOINDER OF PARCEL C1 TENANT

PPA-C1, LLC, a Florida limited liability company ("Parcel C1 Tenant"), as the tenant of Parcel C1 pursuant to the Parcel Ground Lease for Parcel C1 dated February 15, 2017, joins in this Third Amendment to Amended and Restated Development Agreement to acknowledge its consent to the terms and conditions of the Third Amendment which may affect the rights or obligations of the Parcel C1 Tenant under the Parcel C1 Ground Lease.

Witnesses:

[Signature]

Print name: Mansa Beninani

Samia Francis

Print name: Samia Francis

PARCEL C1 TENANT:

PPA-C1, LLC, a Florida limited liability company

By: [Signature]
RICHARD CASTER, President

Date: 9/29/17

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me on Sept 29, 2017, by RICHARD CASTER, as President of PPA-C1, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification.

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

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

NOTARY'S SEAL



John A. Jacobs
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF913520
Expires 9/12/2019

FF913520
Commission Number

Tenant Signature Page to Third Amendment

JOINDER OF PARCEL C2 TENANT

PPA-C2, LLC, a Florida limited liability company ("Parcel C2 Tenant"), as the tenant of Parcel C2 pursuant to the Parcel Ground Lease for Parcel C2 dated April 17, 2017, joins in this Third Amendment to Amended and Restated Development Agreement to acknowledge its consent to the terms and conditions of the Third Amendment which may affect the rights or obligations of the Parcel C2 Tenant under the Parcel C2 Ground Lease.

Witnesses:

[Signature]

Print name: Mansa Benincad

Sania Francis

Print name: Sania Francis

PARCEL C2 TENANT:

PPA-C2, LLC, a Florida limited liability company

By: [Signature]
RICHARD CASTER, President

Date: 9/29/17

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me on Sept 29, 2017, by RICHARD CASTER, as President of PPA-C2, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification.

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

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

FF913520
Commission Number

NOTARY'S SEAL



John A. Jacobs
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF913520
Expires 8/12/2019

Tenant Signature Page to Third Amendment

Development Timeline as of September 28, 2017
Exhibit A to Third Amendment to Development Agreement

Parcel	Design Plans	Obtain Permits	Commence Construction	Substantial Completion
1st of Parcels R1, R2, R3, C1 or C2	31-Mar-2016	31-Mar-2017	31-May-2017	31-Dec-2017
2nd of Parcels R1, R2, R3, C1 or C2	30-Sep-2016	30-Sep-2017	30-Nov-2017	31-Oct-2018
3rd of Parcels R1, R2, R3, C1 or C2	30-Jun-2017	30-Jun-2018	31-Aug-2018	31-Jul-2019
4th of Parcels R1, R2, R3, C1 or C2	31-Mar-2018	31-Mar-2019	31-May-2019	30-Apr-2020
5th of Parcels R1, R2, R3, C1 or C2	31-Dec-2018	31-Dec-2019	29-Feb-2020	31-Dec-2020
Parcel E	30-Sept-2015	31-Mar-2017 <u>31-Aug-2018</u>	31-May-2017 <u>30-Sep-2018</u>	30-Apr-2018 <u>31-Aug-2019</u>
Parcel R4	31-Jul-2016	31-Oct-2016 <u>30-Jun-2018</u>	31-Dec-2016 <u>31-Jul-2018</u>	30-Jun-2017 <u>31-Oct-2018</u>
Parcel R5/H	31-Aug-2017	31-Aug-2018	30-Nov-2018	31-May-2020

Notes:

1. All dates are outside dates, but may be adjusted in accordance with the provisions of the Development Agreement as amended.
2. Lease execution must take place before building permit application for a given parcel is submitted.
3. Any deadline for the 1st, 2nd, 3rd, 4th, or 5th of Parcels R1, R2, R3, C1 or C2 may be satisfied by any of Parcels R1, R2, R3, C1 or C2.
4. Substantial Completion shall be the date of issuance of either a Temporary or Final Certificate of Occupancy.
5. If Developer continues to diligently perform all actions necessary to meet Development Timeline dates, then Developer may have an additional period of 60 days to complete Development Timeline tasks without being considered in default. Developer shall send notice via email when tasks are completed.