

FIRST AMENDMENT

THIS IS A FIRST AMENDMENT TO THE AGREEMENT dated the _____ day
of _____, 2018, 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

DIMARIA FRANK PROPERTIES, INC., a Florida corporation,
formerly known as "DIMARIA PROPERTIES, LLC," having its
office and place of business at 20 North Pompano Beach
Boulevard, Pompano Beach, FL 33062, hereinafter referred to as
"LESSEE".

WHEREAS, the parties entered into an agreement for the operation of a Kiosk located at
Beachfront Park, 20 North Pompano Beach Boulevard, Pompano Beach, on May 15, 2013,
("Original Agreement"), and approved by City Ordinance No. 2013-52; and

WHEREAS, the LICENSOR and LESSEE have mutually agreed to extend the Original
Agreement for an additional Five (5) years term; amend certain terms and conditions, and to
include additional provisions to the Original Agreement;

WITNESSETH:

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and
payments herein set forth CITY and LESSEE agree as follows:

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

2. The original Agreement effective May 15, 2013, 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 original Agreement for five (5) years, ending May 15, 2023.

4. That Paragraph 8. "OPERATION", of the original agreement is hereby amended to read as follows:

8. OPERATION.

...

B. Hours. LESSEE agrees that the Kiosk will be open for business during the following hours:

~~Monday to Thursday: 7:30 a.m. to 8:30 p.m.~~

~~Friday and Saturdays: 7:30 a.m. to 9:00 p.m.~~

~~Sundays: _____ 7:30 a.m. to 7:00 p.m.~~

Monday to Friday: 8:00 a.m. to 7:00 p.m.

Saturday to Sunday: 8:00 a.m. to 8:00 p.m.

5. That paragraph 9. "OPERATING COSTS", of the original agreement is hereby amended by adding additional language to read as follows:

9. OPERATING COSTS.

...

E. LESSEE shall be responsible for all fees and costs for parking.

6. That paragraph 17 “INDEMNIFICATION AGAINST CLAIMS”, of the original agreement is hereby deleted and replaced with the following language:

17. INDEMNIFICATION AGAINST CLAIMS. LESSEE shall at all times indemnify, hold harmless and defend the CITY its officials, its authorized agents and employees hereunder from and against any and all claims, demands, suit, damages, attorneys’ fees, fines, penalties, defense costs or liabilities arising directly or indirectly out of any act, omission negligence or misconduct of LESSEE or any agents, employees or contractors of LESSEE, under this Agreement whether same occurs or the cause arises on or away from the Property except that LESSEE shall not be liable under this paragraph for damages arising out of injury or damage to persons or Property arising from the negligence, gross negligence or willful misconduct of the CITY, any of its officers, agents or employees. LESSEE agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and to bear all costs and expenses related thereto, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by LESSEE for any causes of action LESSEE has or may have for breaches or defaults by the CITY under this Agreement.

B. The parties agree that the value of services provided by CITY under this Agreement and the benefits received by LESSEE under same shall constitute specific consideration by LESSEE for the indemnification to be provided herein. LESSEE acknowledges and agrees that neither party would enter into this Agreement without this indemnification of CITY by LESSEE.

C. LESSEE shall be solely responsible for insuring all stock, inventory, monies or other personal Property at the Property against damage or loss of any nature or kind. LESSEE acknowledges and agrees that CITY assumes no responsibility whatsoever for any personal property placed at the Property and, with the exception of damages or loss suffered as a result of CITY’S negligence, CITY is hereby expressly released and forever discharged from any and all liability for any loss, injury or damage to persons or property which may be sustained by reason of LESSEE’S presence and occupancy at the Property.

D. The indemnification provisions of this Article shall survive the expiration or early termination of this Agreement.

E. Nothing contained herein shall be construed to affect in any way the rights, privileges and immunities of the City and agencies, as set forth in Florida Statutes §768.28, Sovereign Immunity.

7. The Original Agreement is hereby amended by adding additional language to read as follows:

33. PUBLIC RECORDS.

Public Records.

1. The CITY of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The LESSEE shall comply with Florida's Public Records Law, as amended. Specifically, the LESSEE shall:

a. Keep and maintain public records required by the CITY in order to perform the service.

b. Upon request from the CITY's custodian of public records, provide the CITY with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the LESSEE does not transfer the records to the CITY.

d. Upon completion of the Agreement, transfer, at no cost to the CITY, all public records in possession of the LESSEE, or keep and maintain public records required by the CITY to perform the service. If the LESSEE transfers all public records to the CITY upon completion of the Agreement, the LESSEE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the LESSEE keeps and maintains public records upon completion of the contract, the LESSEE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records in a format that is compatible with the information technology systems of the CITY.

2. Failure of the LESSEE to provide the above described public records to the CITY within a reasonable time may subject LESSEE to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

**IF THE LESSEE HAS QUESTIONS
REGARDING THE APPLICATION OF
CHAPTER 119, FLORIDA STATUTES, TO
THE LESSEE'S DUTY TO PROVIDE
PUBLIC RECORDS RELATING TO THIS
AGREEMENT, CONTACT THE
CUSTODIAN OF PUBLIC RECORDS AT:**

CITY CLERK

100 W. Atlantic Blvd., Suite 253

Pompano Beach, Florida 33060

(954) 786-4611

RecordsCustodian@copbfl.com

8. This Agreement shall bind the parties and their respective executors, administrators, successors and assign and shall be fully effective as though the extension had been originally included in the Agreement.

THE REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

MARK E BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by **LAMAR FISHER** 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 is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

“LESSEE”:

**DIMARIA FRANK PROPERTIES, INC.; A
FLORIDA CORPORATION**

Witnesses:

By: _____
Frank DiMaria, Manager

Print Name

Print Name

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by Frank DiMaria as President of DiMaria Frank Properties, Inc., a Florida corporation, on behalf of the corporation. 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

TAL
4/25/2018
L:Agr/Recr/2018-764