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ORDINANCE NO. 2014-⁴⁹_____

**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 AN AMENDED AND RESTATED 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; 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 and Pompano Pier Associates, LLC, ("Developer") entered into an agreement for the development of the Property, City Ordinance No. 2013-39; and

WHEREAS, City and Developer now desire to amend the said agreement for the development of the Property; 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 An Amended and Restated 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. 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 5. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 8th day of July, 2014.

PASSED SECOND READING this 22nd day of July, 2014.



LAMAR FISHER, MAYOR

ATTEST:



MARY L. CHAMBERS, CITY CLERK

GBL/jrm
6/26/14
L:ord/2014-319

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Agreement") is dated as of July 28, 2014 and is between the **CITY OF POMPAÑO BEACH, FLORIDA**, a Florida municipal corporation ("City") and **POMPAÑO 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 ("**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.

On January 28, 2013, City and Developer entered into a Development Agreement ("**Original Agreement**") in order to commence the development of the Property.

City and Developer now wish to amend and restate the Development Agreement in order to address changes which have occurred since the date of the Development Agreement. City and Developer agree that this Amended and Restated Development Agreement supersedes the Original Agreement dated January 28, 2013, which Original Agreement shall be of no further force or effect upon the execution of this Agreement.

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 and a fire station. The fire station will be relocated to a new structure currently under construction by the City on the west side of State Road A1A. The library will be moved to a new location.

Developer was the successful respondent to the City’s RFQ. Developer intends to develop the Property with infrastructure improvements, concessions, restaurants, retail, accessory structures, and possibly a hotel (collectively, the “**Improvements**”), as shown on the Proposed Master 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.

On January 28, 2013, City and Developer entered into the Original Agreement in order to commence the development of the Property. City and Developer now wish to amend and restate the Original Agreement in order to address changes which have occurred since the date of the Development 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 – Preliminary Master Plan for the Property (“**Master 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 which appear throughout this Agreement are defined as follows:

- 3.1. **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.
 - 3.2. **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.
 - 3.3. **Governmental Approval.** 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 commenced on January 28, 2013 ("**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 Master 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 7,000 square feet of restaurant or retail use, or both.
 - 5.3. **Phase R2** - the development of Parcel R2 with approximately 5,200 square feet of restaurant or retail use, or both.
 - 5.4. **Phase R3** - the development of Parcel R3 with approximately 6,100 square feet of restaurant or retail use, or both.
 - 5.5. **Phase R4**- the development of approximately 5,000 to 7,000 square feet of restaurant or retail use, or both, either within a parking garage which may be constructed by the City on Parcel R4 or within another Parcel as designated by City.
 - 5.6. **Phase R5** – the development of Parcel R5 with approximately 7,000 to 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 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 C1** – the development of Parcel C1 with approximately 6,700 square feet of retail or restaurant use.
- 5.8. **Phase C2** – the development of Parcel C2 with approximately 8,700 square feet of retail or restaurant use.
- 5.9. **Order of Phases.** The Parcels may be developed in any order, as long as Developer adheres to the Development Timeline.
- 5.10. **Square Footage to be Developed.** Developer is required to develop a total of 48,500 enclosed square feet on the Property, as shown on the Master Plan attached as **Exhibit B**. The square footage to be developed in each Phase may vary upwards or downwards from the amount set forth by a maximum of 10% as long as no more than 48,500 enclosed square feet are developed.
- 5.11. **Square Footage if Hotel is Developed.** If a Hotel is developed on Parcel R5 as provided in this Agreement, the Developer shall only develop a maximum of 38,500 square feet on the remaining Parcels.
- 6. **Parcel Ground Leases in General.** City and Developer will enter into a Parcel Ground Lease for each of the Parcels except Parcel R4. 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 the Parcel to Developer or to an "Acceptable Transferee" of Developer (as defined in this Agreement), as the tenant ("Parcel Tenant").
 - 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.
 - 6.3. **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 (“**Lease Term**”).
- 6.6. **Grants of Easements.** The City will grant easements or make other reasonable accommodations to allow for the installation of utility lines and structures under surface parking areas and Pier Street to the extent necessary to provide service to the respective Parcels.
7. **Parcel Ground Lease Rents and Improvement Costs.** Each Parcel Ground Lease will include the development deadlines set forth in the Development Timeline; the estimated cost (“**Improvement Cost**”) of the buildings, accessory structures, and interior improvements (“**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 \$100,000. 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 \$18,000 for each 12-month period (“**Lease Year**”) of the Lease Term. If, however, Developer is permitted to construct outdoor deck space on Parcel E in excess of the amount of deck space currently existing, Minimum Rent for Parcel E will increase by \$1,000 per Lease Year for each 100 square feet of additional deck space or portion thereof.
- 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 \$1,440,000. If Developer is permitted to construct outdoor deck space in excess of what currently exists on Parcel E, the Percentage Rent per Lease Year for Parcel E will be 1.25% of the Gross Revenue of Parcel E in excess of the Minimum Rent as adjusted in accordance with Section 7.1.2 above.
- 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.
- 7.1.7. **Deed Restriction.** Developer acknowledges that Parcel E is subject to a deed restriction (the "**Deed Restriction**") that prohibits the construction of any building on Parcel E, including the Existing Concession Building. .
- 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 Parcel 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.** City agrees that Developer has the right to develop 5,000 to 7,000 square feet of space for retail or restaurant use in Phase R4 of the Project. The square footage allocated to Phase R4 may be developed within a parking garage ("**Parking Garage**") which City intends to construct in the future on the property shown as Parcel R4 on the Master Plan, or the City may elect to allocate the Phase R4 square footage to one or more other Parcels of the Project. If the Phase R4 square footage will be developed within the Parking Garage, a separate space lease ("**R4 Lease**") will be negotiated by the parties upon completion of the design of the Parking Garage. Nothing in this Agreement obligates the City to construct the Parking Garage at any time.
- 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 C1.** The Parcel C1 Ground Lease will cover the development of Parcel C1 and will include the following:
- 7.7.1. **Parcel C1 Improvement Cost.** The Parcel C1 Improvement Cost must be at least \$1,000,000. Developer agrees to expend a minimum of 50% of the Parcel C1 Improvement Cost during the first two years of the Lease Term of the Parcel C1 Ground Lease, and the balance of the Parcel C1 Improvement Cost during the second two years of the Lease Term.
- 7.7.2. **Parcel C1 Minimum Rent.** The Minimum Rent for Parcel C1 will be \$75,000 per Lease Year.
- 7.7.3. **Parcel C1 Percentage Rent.** The Percentage Rent for Parcel C1 will be 1.25% of the Gross Revenue of Parcel C1 in excess of \$6,000,000.
- 7.8. **Parcel C2.** The Parcel C2 Ground Lease will cover the development of Parcel C2 and will include the following:

- 7.8.1. **Parcel C2 Improvement Cost.** The Parcel C2 Improvement Cost must be at least \$1,000,000. Developer agrees to expend a minimum of 50% of the Parcel C2 Improvement Cost during the first two years of the Lease Term of the Parcel C2 Ground Lease, and the balance of the Parcel C2 Improvement Cost during the second two years of the Lease Term.
- 7.8.2. **Parcel C2 Minimum Rent.** The Minimum Rent for Parcel C2 will be \$75,000 per Lease Year.
- 7.8.3. **Parcel C2 Percentage Rent.** The Percentage Rent for Parcel C2 will be 1.25% of the Gross Revenue of Parcel C2 in excess of \$6,000,000.
- 7.9. **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 one year 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;