

## **LICENSE AGREEMENT**

THIS LICENSE AGREEMENT (the "Agreement") is entered into and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between CITY OF POMPAÑO BEACH, FLORIDA, a Florida municipal corporation ("CITY"), and FAIRFIELD DEVELOPMENT LP, a Delaware limited partnership authorized to transact business in Florida ("LICENSEE"), collectively referred to as "the Parties."

### **WITNESSETH:**

WHEREAS, LICENSEE owns real property in Pompano Beach, Florida and intends to construct a mixed-use apartment complex, together with a parking garage and certain other related facilities (the "Project" or "Project Improvements"), on that certain real property, more particularly described in Exhibit A-1 attached to and made a part of this Agreement (the "Project Property").

WHEREAS, CITY owns certain real properties located in Broward County, Florida, also known as "Pompano Community Park" and "Emma Lou Olson Civic Center" that lie adjacent to LICENSEE's Project Property, more particularly described on Exhibit A-2 attached to and made a part of this Agreement (the "Adjacent Property").

WHEREAS, LICENSEE desires to use portions of the Adjacent Property generally depicted in Composite Exhibit B as a Staging Area, Parking Area and Project Crane Swing Area (collectively "License Area"). LICENSEE desires to use the License Area, respectively, for the purpose of temporary construction staging, placement of a construction trailer, site logistics and parking and to use the air space above certain portions of the Adjacent Property for the swing of two (2) construction tower cranes (the "Project Cranes") thus accommodating (1) "weathervaning" of the Project Cranes and (2) the uninterrupted aerial swing for the jib and counter jib of the Project Cranes during their operation in connection with the construction of the Project Improvements.

WHEREAS, CITY has agreed to grant to LICENSEE the use of the License Area for the purposes described in this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

### **ARTICLE I GRANT OF LICENSE**

1.1 Subject to this Agreement, CITY grants to LICENSEE and LICENSEE's agents, employees, contractors, and subcontractors a revocable license to use, during the Term (defined below), the License Area, respectively, for the purpose of (a) temporary construction staging and site logistics, (b) placement of a construction trailer, (c) parking, and (d) "weathervaning" of the Project Cranes and the uninterrupted aerial swing for the arm of the Project Cranes during their operation in connection with the construction of the Project Improvements (the "License").

1.2 Neither LICENSEE, its agents, employees, contractors nor subcontractors shall be allowed to access, ingress or egress the Project Site or Staging Area, as depicted in Composite

Exhibit B, by traversing or crossing the Adjacent Property. Notwithstanding, LICENSEE, its agents, employees, contractors and subcontractors may park in designated areas within the License Area and be transported or walk to the Project Site, and thereby access the Staging Area, by shuttle bus or other vehicle along the roadway depicted in Exhibit B, attached and incorporated to this Agreement.

1.3 Moreover, in no event shall LICENSEE or its contractors, subcontractors or agents be allowed, at any time, to swing any live load over any portion of the Adjacent property or the jib or counter jib enter or be located less than 96 feet above the natural grade of the Adjacent property. LICENSEE shall coordinate with CITY with respect to CITY's use of the Adjacent property, and shall operate the Project Cranes and manage the swing radius of the jib and counter jib of the Project Cranes in a manner that does not unreasonably interfere with CITY's use of the Adjacent Property or cause damage to CITY's property or any CITY improvements.

1.4 Except as otherwise provided in this Agreement, LICENSEE agrees that the rights granted to LICENSEE shall in no way or manner limit, adversely impact in a material fashion, or restrict the right of CITY to use, improve, renovate or erect additional improvements on the Adjacent Property in accordance with applicable law, or otherwise use the air rights associated with the Adjacent Property. Except as otherwise provided, LICENSEE's or its agents, employees or contractor's exercise of its rights under this Agreement shall in no way or manner limit, adversely impact in a material fashion, restrict or interfere with pedestrian access to and from, deliveries to, pick-ups from, trash and garbage removal from, vehicular access to and from, replacement, maintenance and repair of, and use of portions of the Adjacent property other than the License Area.

## **ARTICLE II TERM**

Except as otherwise provided in this Agreement, the License shall commence on the date this Agreement is fully executed by the Parties and shall continue throughout the period in which the Project is being constructed (the "Term") until the earlier of (i) completion of the Project or (ii) December 31, 2020, unless sooner terminated as provided in this Agreement. The Term may be extended for a time period not to exceed an additional twelve (12) months upon written agreement by both parties.

## **ARTICLE III USE AND MAINTENANCE**

3.1 LICENSEE shall stage and store construction materials and equipment solely within the Project Site and Staging Area and shall be responsible for maintaining and securing such materials and equipment. LICENSEE shall shield the equipment, materials, vehicles and construction activities from the street and Adjacent Property with fencing that includes a privacy screen around the perimeter of the Project Property and, subject to CITY's approval, shall place such directional and wayfinding signs and provide related transportation management and temporary traffic control on streets and highways right-of-way as deemed necessary in accordance with all federal, state and local ordinances, rules, regulations, and laws. All debris shall be contained within the privacy screen and removed upon the revocation or expiration of this License.

3.2 LICENSEE shall use the Project Cranes in the Project Crane Swing Area consistent with this License and in locations as depicted in Exhibit "B", referenced and incorporated in this Agreement; all in accordance with governmental authorities with jurisdiction over the Project and Project Cranes.

3.3 LICENSEE shall erect, operate and dismantle the Project Cranes in compliance with applicable statutes, codes, or regulations of the CITY and other governmental authorities with jurisdiction over the Project and Project Cranes.

3.4 LICENSEE agrees not to allow any unlawful or unpermitted use of the License Area.

3.5 LICENSEE will temporarily relocate that portion of the pedestrian trail that falls within the License Area to a location to be approved by the CITY. The relocated pedestrian trail will be graded and constructed to ensure proper drainage and accessibility by the public at all times during the Project, similar or in better condition than the original pedestrian trail.

3.6 LICENSEE shall be required to protect and preserve any species trees on the Adjacent Property affected by LICENSEE's use of the License Area, consistent with City Code and development restrictions imposed by CITY. Accordingly, upon termination or expiration of this Agreement, LICENSEE shall restore any modification or damage to the License Area or Adjacent Property, including the relocated pedestrian trail and species trees, occasioned by the Project or due to the actions of the LICENSEE, its agents, contractors, agents or employees. The LICENSEE shall restore the License Area or any affected Adjacent Property to its original condition, or at LICENSEE's option, to a better condition, all to CITY's satisfaction, within ten (10) days of CITY's issuance of the Project's temporary certificate of occupancy.

3.7 LICENSEE shall provide security to the Project Site as it deems necessary.

3.8 A representative of the CITY and LICENSEE shall inspect and document by photographs the condition of the License Area or any Adjacent Property prior to LICENSEE's use and on any occasion following the removal of any equipment or materials otherwise staged on the License Area or any Adjacent Property. If portions of the License Area or any Adjacent Property, or any structure or any equipment, fixture, or other item located thereon, including the grass or asphalt, is destroyed, damaged, marred, altered, or physically changed during the Term in any manner whatsoever due to acts of LICENSEE, its contractors or subcontractors, LICENSEE shall cause such repairs or replacement necessary to restore such items or portions of the License Area or Adjacent Property within thirty (30) days following CITY's written notice. CITY shall timely review and determine whether restoration of the License Area or Adjacent Property is satisfactory. If LICENSEE fails to restore, as directed by CITY, then CITY may take any action to cause such restoration to occur, whether involving a repair or replacement, and LICENSEE shall be responsible to pay CITY for any such expenditures within two (2) weeks after receipt of CITY's written invoice for such restoration.

3.9 LICENSEE shall immediately inform the CITY of any repairs or maintenance, not within the LICENSEE's responsibility, necessary to keep the Parking Area in good and safe condition.

3.10 LICENSEE shall promptly respond to concerns raised by the CITY's employees or agents regarding LICENSEE's Project operation or other activities within the License Area or surrounding CITY Property or public right of way and timely take appropriate action as warranted by the circumstances.

3.11 LICENSEE understands, acknowledges and agrees that the CITY shall not in any way be responsible for any property of LICENSEE, its subcontractors or other agents may leave on the License Area or Adjacent Property and that LICENSEE bears all risk of loss. Any article(s) remaining on the License Area or Adjacent Property following termination or expiration of this Agreement shall become CITY property.

#### **ARTICLE IV LICENSE FEE**

In consideration for use of the License Area, LICENSEE shall pay CITY Two Thousand Four Hundred Seventy Five Dollars (\$2,475.00) (the "License Fee") each month; such payment shall be made upon execution of this Agreement and on the first day of each month thereafter until this Agreement expires, terminates, is cancelled or otherwise ends. The License Fee may be paid by wire transfer or cashier's check made payable to the City of Pompano Beach. If the Term commences or terminates on a day other than the first day of a calendar month, the License Fee for such month shall be prorated. Any excess License Fee paid by LICENSEE with respect to the partial month following the date on which the Term commences shall be credited to the License Fee due with respect to the following month of the Term. Should the Agreement be extended for a time period after expiration of the initial Term, the monthly License Fee shall be increased as determined by the CITY and shall continue to be payable during the extension period on or before the first day of each month.

#### **ARTICLE V LICENSEE REPRESENTATIONS**

5.1 LICENSEE makes the following representations to CITY, which CITY materially relies upon in entering into this Agreement.

5.1.1. LICENSEE is a limited partnership duly organized, existing and in good standing under the laws of the State of Delaware, authorized to transact business in the state of Florida, with the power and authority to enter into this Agreement.

5.1.2. LICENSEE's execution, delivery, consummation and performance under this Agreement will not violate or cause LICENSEE to be in default of any provisions of its governing documents, rules and regulations or any other agreement to which LICENSEE is a party or constitute a default thereunder or cause acceleration of any obligation of LICENSEE thereunder.

5.1.3. The individual executing this Agreement and related documents on behalf of LICENSEE is duly authorized to take such action, which action shall be, and is, binding on LICENSEE.

5.1.4. There are no legal actions, suits or proceedings pending or threatened against or affecting LICENSEE or its principals that LICENSEE is aware of which would have any material adverse effect on LICENSEE's ability to perform its obligations under this Agreement.

5.1.5. LICENSEE represents it has the ability, skill and resources to complete its requisite responsibilities under this Agreement.

5.1.6. LICENSEE represents and warrants it has and will continue to maintain all licenses and approvals required to conduct business and proceed with the Project, and that it will at all times conduct its activities in a professional, reputable manner.

5.1.7. LICENSEE agrees to be bound by all terms, conditions, duties, obligations and specifications set forth in this Agreement.

## **ARTICLE VI NON-ASSIGNABILITY AND SUBCONTRACTING**

6.1 This Agreement is not assignable and LICENSEE agrees it shall not sell, assign, transfer, merge or otherwise convey any of its interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity without prior written approval from CITY.

6.2 Any attempt by LICENSEE to assign or transfer any of its rights or obligations under this Agreement without first obtaining the CITY'S written approval will result in CITY'S immediate cancellation of this Agreement. Specifically, no formal assignment of any right or obligation under this Agreement shall be binding on the CITY without the written consent of the City Commission of Pompano Beach.

6.3 This Agreement and the rights and obligations therein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership, and in the event of LICENSEE'S insolvency or bankruptcy, CITY may at its option terminate and cancel this Agreement without any notice of any kind whatsoever, in which event all rights of LICENSEE hereunder shall immediately cease and terminate.

6.4 Nothing herein shall be construed to create any liability on the part of the CITY or its agent(s) nor shall it be construed as granting any rights or benefits to anyone other than CITY and LICENSEE.

## **ARTICLE VII INSURANCE**

LICENSEE shall maintain insurance in the amounts and subject to all conditions set forth on the standardized insurance form attached as Exhibit C. LICENSEE shall not commence operations under this Agreement until certification or proof of insurance detailing terms and provisions of coverage has been received and approved by the CITY's Risk Manager. Moreover, the insurance shall be maintained until the Project Cranes are removed and the Project completed, and any failure to maintain such insurance shall constitute a material breach of this Agreement that may result in

the CITY revoking the License and requiring LICENSEE to remove the Project Cranes, the trailer and any equipment or materials or any items staged in the License Area at the LICENSEE's sole expense.

## **ARTICLE VIII LICENSES, PERMITS AND AUTHORIZATIONS**

8.1 LICENSEE, at its sole expense, shall obtain and pay for all required federal, state, local and other governmental approvals, as well as all necessary private authorizations, licenses and permits required or attendant to LICENSEE's Project and its installation, operation and otherwise use of the Project Cranes and shall provide CITY with copies of permits required in connection with the use of the Project Cranes no less than three (3) business days prior to the Project's commencement or the erection or installation of the Project Cranes on the Project Property. Ignorance on LICENSEE's part of any applicable laws, regulations or required authorizations shall not relieve LICENSEE from this responsibility.

8.2 LICENSEE agrees to be solely responsible for all contracts or agreements of any nature for the staging, parking, erecting and dismantling the Project Cranes and overall Project. All contracts shall be negotiated by LICENSEE and secured at LICENSEE's sole expense. CITY shall not be named as a party in any contract and CITY shall have no obligation to ensure payment to any individual or entity for goods and/or services provided in conjunction with the Project.

8.3 In the conduct of its activities under this Agreement, LICENSEE shall comply with all applicable federal and state laws and regulations and all applicable county and city ordinances and regulations, including, but not limited to, compliance with the American with Disability Act and Chapter 97, City Code of Ordinances. Ignorance on LICENSEE's part of any applicable laws and regulations shall in no way relieve LICENSEE from this responsibility.

8.4 *Emergency Action.* LICENSEE agrees to respond accordingly to any and all emergency safety issues required by the CITY for the safety and welfare of the community and those present or utilizing CITY Property surrounding the License Area. If, in the course of LICENSEE's operations, CITY or its officers, agents and employees become aware of any condition on the License Area which may be dangerous, upon being notified, LICENSEE shall immediately correct such condition or cease operations so as not to endanger persons or property. If LICENSEE fails to take appropriate action immediately as directed by CITY, CITY may take any action to correct the condition, and LICENSEE shall be responsible to pay CITY for any expenditures incurred by the CITY within two (2) weeks after receipt of CITY's written invoice for such emergency action.

8.5 LICENSEE shall utilize the License Area exclusively for the activities described in this Agreement and no part of the License Area shall be used for any immoral or illegal purposes. LICENSEE shall not allow, suffer or permit the License Area to be used by LICENSEE or any of its contractors or subcontractors for any purpose, business, activity, use or function to which the CITY objects.

8.6 LICENSEE is responsible for any fees, taxes or levies imposed as a result of this Agreement.

**ARTICLE IX**  
**CITY RESPONSIBILITY FOR GROUND MAINTENANCE**

Except for the Staging Area and Project Crane Swing Areas, CITY is responsible for general maintenance of the Adjacent Property. The foregoing provision, however, is in no way intended to absolve LICENSEE from the responsibilities set forth in Article III.

**ARTICLE X**  
**INDEMNIFICATION**

10.1 LICENSEE shall at all times, to the fullest extent permitted by laws and regulations, indemnify, hold harmless, save and defend the CITY, its officials, its authorized agents and employees from and against any and all claims, demands, suit, damages, attorneys' fees, fines, penalties, defense costs or liabilities arising directly or indirectly or resulting from, in whole or in part, any negligent act or omission, misconduct, intentional acts, malicious conduct, on the part of LICENSEE or its agents, employees, contractors, or subcontractors under this Agreement, whether occurring or arising on or away from the Adjacent Property, except that LICENSEE shall not be liable under this paragraph for damages arising out of injury or damage to persons or property occasioned by the negligence, gross negligence or willful misconduct of the CITY or its officers, contractors, agents or employees. LICENSEE agrees to investigate, handle, respond to, provide defense for, save and defend any such claims at its sole expense and to bear all costs and related expenses, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by LICENSEE for any causes of action LICENSEE has or may have for breaches or defaults by the CITY under this Agreement.

10.2 The foregoing indemnification of CITY by LICENSEE shall not be operative as to any claims by LICENSEE for any causes of action LICENSEE has or may have for breaches, defaults, negligence, gross negligence or willful misconduct of CITY or any of its officers, employees or other authorized agents. LICENSEE acknowledges and agrees that one percent (1%) of the License Fee paid and the CITY's provision of in-kind benefits as described in this Agreement shall serve as consideration for such indemnification. The Parties understand, acknowledge and agree that neither party would enter into this Agreement without LICENSEE's indemnification of CITY.

10.3 LICENSEE shall be solely responsible for insuring all stock, inventory, monies or other personal property at the License Area against damage or loss of any nature or kind. LICENSEE acknowledges and agrees that CITY assumes no responsibility whatsoever for any personal property placed on the License Area and, with the exception of damages or loss suffered as a result of CITY's negligence, CITY is 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 LICENSEE's presence and occupancy at the License Area or operation near the Adjacent Property.

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



10.5 Nothing contained herein shall be construed to affect in any way the rights, privileges and immunities of CITY, or be intended to serve as a waiver of sovereign immunity, as set forth in Florida Statutes §768.28.

## **ARTICLE XI NOTICES AND DEMANDS**

Whenever it is provided that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the places designated below until changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following respective places for giving of notice, to-wit:

**For CITY:**

City Manager  
City of Pompano Beach  
P.O. Drawer 1300  
Pompano Beach, Florida 33061  
[greg.harrison@copbfl.com](mailto:greg.harrison@copbfl.com)  
954-786-4601 office  
954-786-4504 fax

**With a copy to:**

Recreation Program Administrator  
City of Pompano Beach  
1801 NE 6<sup>th</sup> Street  
Pompano Beach, Florida 33060  
[mark.beaudreau@copbfl.com](mailto:mark.beaudreau@copbfl.com)  
954-786-4191 office  
954-786-4113 fax

**For LICENSEE:**

Fairfield Development LP  
200 Galleria Parkway, Suite 1560  
Atlanta, Georgia 30339  
Attn: Pericles Raptis, C. Thomas Brunson  
and Marc Brambrut  
Email: [praptis@ffres.com](mailto:praptis@ffres.com),  
[mbrambrut@ffres.com](mailto:mbrambrut@ffres.com) and  
[tbrunson@ffres.com](mailto:tbrunson@ffres.com)  
404-442-3856 office  
214-574-1376 fax

**With a copy to:**

Fairfield Development LP  
5510 Morehouse Drive, Suite 200  
San Diego, CA 92121  
Attn: Jon MacDonald, Esq.  
Email: [jmacdonald@ffres.com](mailto:jmacdonald@ffres.com)  
858-626-8216 office  
858-457-8082 fax

## **ARTICLE XII GOVERNING LAW AND VENUE; NONEXCLUSIVITY**

12.1 The Agreement shall be governed by the laws of the state of Florida, both as to interpretation and performance. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

12.2 No remedy conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.



**ARTICLE XIII  
ATTORNEY'S FEES**

In the event of litigation between the parties, the prevailing party shall be entitled to recover all costs of collection, including a reasonable attorney's fees and court costs, at trial or on appeal. The provisions of this paragraph shall survive termination of this Agreement.

**ARTICLE XIV  
FORCE MAJEURE**

14.1 Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of force majeure.

14.2 If CITY or LICENSEE are unable to perform, or are delayed in their performance of any obligations under this Agreement because of any event of force majeure, their inability to perform or delay shall be excused until such time as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure.

14.3 In order to be entitled to the benefit of this Article, a party claiming an event of force majeure shall be required to give prompt written notice to the other party specifying in detail the event of force majeure and also diligently proceed to correct the adverse effect of any force majeure. The parties agree that, as to this Article, time is of the essence.

**ARTICLE XV  
WAIVER AND MODIFICATION**

15.1 CITY's failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

15.2 The Parties may request changes to modify certain provisions of this Agreement; however, unless otherwise provided, such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

**ARTICLE XVI  
SEVERABILITY**

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.

**ARTICLE XVII  
APPROVALS**

Intentionally deleted.

## **ARTICLE XVIII BINDING EFFECT**

The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the Parties.

## **ARTICLE XIX LICENSE NOT LEASE**

Both parties acknowledge and agree this License shall not be deemed a lease of the Adjacent Property but rather a license granted to LICENSEE by CITY to provide the License Area under the conditions and purposes expressed in this Agreement and shall not be construed to be a license to engage in any other uses. LICENSEE understands and agrees that it takes the License Area in "as is" condition.

## **ARTICLE XX TERMINATION**

20.1 *Termination for Cause.* Breach or default of any of the covenants, duties, or terms of this Agreement shall be cause for termination, in whole or in part, of this Agreement, if such breach or default remains uncured for more than thirty (30) days after written notice thereof from the non-defaulting party to the defaulting party, or such longer period as may be reasonably required under the circumstances as long as the defaulting party commences the cure of such breach or default prior to the expiration of such thirty (30) day period and diligently thereafter pursues the cure of the breach or default to completion. Any such notice of default shall describe in reasonable detail the alleged breach or default.

20.2 *Termination for Convenience by City During Extension or Renewal.* During any extension or renewal (but not during the initial Term) of this Agreement, upon sixty (60) calendar days written notice, in accordance with Article XI, delivered by certified mail, return receipt requested, or by hand delivery, to LICENSEE, CITY may without cause and without prejudice to any other right or remedy, terminate this Agreement, for convenience whenever it determines that such termination is in the best interests of CITY. Upon receipt of such notice, LICENSEE shall use commercially reasonable efforts to discontinue all use of the License Area or Adjacent Property to the extent indicated on the notice of termination and CITY shall not be responsible for any costs LICENSEE incurs as a result of the termination for convenience. In the event of such termination, the License Fee shall be prorated and the portion of the License Fee attributable to the period following such termination shall be refunded by CITY to LICENSEE.

20.3 LICENSEE shall also have the right to terminate this Agreement for convenience, other than during an extension or renewal period, upon no less than ten (10) days prior written notice to the CITY, provided LICENSEE complies with all obligations hereunder regarding the use and maintenance of CITY property.

## **ARTICLE XXI MISCELLANEOUS**

21.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A

photocopy, email or facsimile copy of this Agreement and any signatory to this Agreement shall be considered for all purposes as original.

21.2 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained in this Agreement and both parties agree there are no commitments, agreements or understandings relevant to the subject matter that are not contained in this Agreement. Accordingly, both parties agree not to deviate from the terms in this Agreement predicated upon any prior representations or agreements, whether oral or written.

21.3 Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and LICENSEE and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against, either party.

21.4 It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

21.5 The Recital stated above are true and correct and are incorporated herein by reference. The Exhibits attached hereto are also incorporated into and made a part of this Agreement.

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LEFT BLANK**

**IN WITNESS WHEREOF**, the parties have set their hands and seals the day and year first above written.

**"CITY":**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
REX HARDIN, 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 \_\_\_\_\_, 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:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA


\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**"LICENSEE"**

**FAIRFIELD DEVELOPMENT L.P.,**  
a Delaware limited partnership

By: BF VAMF III GP LLC,  
a Delaware Limited Liability Company  
its General Partner

By:   
Bryan Condie, Vice President

VIRGINIA  
THE STATE OF ~~CALIFORNIA~~  
COUNTY OF Arlington

This instrument was acknowledged before me on 14<sup>th</sup> day of February, 2019, by Bryan Condie, Vice President, of BF VAMF III GP LLC, a Delaware Limited Liability Company, general partner of Fairfield Development L.P., a Delaware limited partnership, on behalf of said entities.

  
Notary Public, State of California VIRGINIA

My Commission Expires:

Eileen M Dudenhofer  
Printed Name of Notary

JES:jrm  
2/7/19  
L:agr/devsrvc/2019-243

EILEEN M. DUDENHOEFFER  
NOTARY PUBLIC  
COMMONWEALTH OF VIRGINIA  
COMMISSION EXPIRES: JUNE 30, 2021  
COMMISSION# 7544897

Exhibit A-1  
Project Property





Exhibit A-2  
Adjacent Property







[illegible]



Travel Path from Parking to Site



Driving to Site from Parking Lot

Walking to Site from Parking Lot

The site plan illustrates the Amphitheater Property, which includes a large building complex and an adjacent parking area. Two large circular arcs represent the swing paths of cranes, with a radius of 150 feet from the west property line. The building layout is detailed with room numbers and dimensions. Key features include:

- Crane Swing Information:**
  - East Crane = 96' Above Ground Level
  - 153'-10" Boom Radius
  - Aeronautical Study # 2018-ASO-3208-OE
  - West Crane = 150' Above Ground Level
  - 190'-2" Boom Radius
  - Aeronautical Study # 2018-ASO-3234-OE
- Property Boundaries:**
  - 150' from west property line
  - 285' from ROW at North Federal
- Building Details:**
  - City Building Parking
  - Amphitheater Property
  - Various room numbers and dimensions (e.g., 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 9A, 10A, 11A, 12A, 13A, 14A, 15A, 16A, 17A, 18A, 19A, 20A, 21A, 22A, 23A, 24A, 25A, 26A, 27A, 28A, 29A, 30A, 31A, 32A, 33A, 34A, 35A, 36A, 37A, 38A, 39A, 40A, 41A, 42A, 43A, 44A, 45A, 46A, 47A, 48A, 49A, 50A, 51A, 52A, 53A, 54A, 55A, 56A, 57A, 58A, 59A, 60A, 61A, 62A, 63A, 64A, 65A, 66A, 67A, 68A, 69A, 70A, 71A, 72A, 73A, 74A, 75A, 76A, 77A, 78A, 79A, 80A, 81A, 82A, 83A, 84A, 85A, 86A, 87A, 88A, 89A, 90A, 91A, 92A, 93A, 94A, 95A, 96A, 97A, 98A, 99A, 100A, 101A, 102A, 103A, 104A, 105A, 106A, 107A, 108A, 109A, 110A, 111A, 112A, 113A, 114A, 115A, 116A, 117A, 118A, 119A, 120A, 121A, 122A, 123A, 124A, 125A, 126A, 127A, 128A, 129A, 130A, 131A, 132A, 133A, 134A, 135A, 136A, 137A, 138A, 139A, 140A, 141A, 142A, 143A, 144A, 145A, 146A, 147A, 148A, 149A, 150A, 151A, 152A, 153A, 154A, 155A, 156A, 157A, 158A, 159A, 160A, 161A, 162A, 163A, 164A, 165A, 166A, 167A, 168A, 169A, 170A, 171A, 172A, 173A, 174A, 175A, 176A, 177A, 178A, 179A, 180A, 181A, 182A, 183A, 184A, 185A, 186A, 187A, 188A, 189A, 190A, 191A, 192A, 193A, 194A, 195A, 196A, 197A, 198A, 199A, 200A, 201A, 202A, 203A, 204A, 205A, 206A, 207A, 208A, 209A, 210A, 211A, 212A, 213A, 214A, 215A, 216A, 217A, 218A, 219A, 220A, 221A, 222A, 223A, 224A, 225A, 226A, 227A, 228A, 229A, 230A, 231A, 232A, 233A, 234A, 235A, 236A, 237A, 238A, 239A, 240A, 241A, 242A, 243A, 244A, 245A, 246A, 247A, 248A, 249A, 250A, 251A, 252A, 253A, 254A, 255A, 256A, 257A, 258A, 259A, 260A, 261A, 262A, 263A, 264A, 265A, 266A, 267A, 268A, 269A, 270A, 271A, 272A, 273A, 274A, 275A, 276A, 277A, 278A, 279A, 280A, 281A, 282A, 283A, 284A, 285A, 286A, 287A, 288A, 289A, 290A, 291A, 292A, 293A, 294A, 295A, 296A, 297A, 298A, 299A, 300A, 301A, 302A, 303A, 304A, 305A, 306A, 307A, 308A, 309A, 310A, 311A, 312A, 313A, 314A, 315A, 316A, 317A, 318A, 319A, 320A, 321A, 322A, 323A, 324A, 325A, 326A, 327A, 328A, 329A, 330A, 331A, 332A, 333A, 334A, 335A, 336A, 337A, 338A, 339A, 340A, 341A, 342A, 343A, 344A, 345A, 346A, 347A, 348A, 349A, 350A, 351A, 352A, 353A, 354A, 355A, 356A, 357A, 358A, 359A, 360A, 361A, 362A, 363A, 364A, 365A, 366A, 367A, 368A, 369A, 370A, 371A, 372A, 373A, 374A, 375A, 376A, 377A, 378A, 379A, 380A, 381A, 382A, 383A, 384A, 385A, 386A, 387A, 388A, 389A, 390A, 391A, 392A, 393A, 394A, 395A, 396A, 397A, 398A, 399A, 400A, 401A, 402A, 403A, 404A, 405A, 406A, 407A, 408A, 409A, 410A, 411A, 412A, 413A, 414A, 415A, 416A, 417A, 418A, 419A, 420A, 421A, 422A, 423A, 424A, 425A, 426A, 427A, 428A, 429A, 430A, 431A, 432A, 433A, 434A, 435A, 436A, 437A, 438A, 439A, 440A, 441A, 442A, 443A, 444A, 445A, 446A, 447A, 448A, 449A, 450A, 451A, 452A, 453A, 454A, 455A, 456A, 457A, 458A, 459A, 460A, 461A, 462A, 463A, 464A, 465A, 466A, 467A, 468A, 469A, 470A, 471A, 472A, 473A, 474A, 475A, 476A, 477A, 478A, 479A, 480A, 481A, 482A, 483A, 484A, 485A, 486A, 487A, 488A, 489A, 490A, 491A, 492A, 493A, 494A, 495A, 496A, 497A, 498A, 499A, 500A, 501A, 502A, 503A, 504A, 505A, 506A, 507A, 508A, 509A, 510A, 511A, 512A, 513A, 514A, 515A, 516A, 517A, 518A, 519A, 520A, 521A, 522A, 523A, 524A, 525A, 526A, 527A, 528A, 529A, 530A, 531A, 532A, 533A, 534A, 535A, 536A, 537A, 538A, 539A, 540A, 541A, 542A, 543A, 544A, 545A, 546A, 547A, 548A, 549A, 550A, 551A, 552A, 553A, 554A, 555A, 556A, 557A, 558A, 559A, 560A, 561A, 562A, 563A, 564A, 565A, 566A, 567A, 568A, 569A, 570A, 571A, 572A, 573A, 574A, 575A, 576A, 577A, 578A, 579A, 580A, 581A, 582A, 583A, 584A, 585A, 586A, 587A, 588A, 589A, 590A, 591A, 592A, 593A, 594A, 595A, 596A, 597A, 598A, 599A, 600A, 601A, 602A, 603A, 604A, 605A, 606A, 607A, 608A, 609A, 610A, 611A, 612A, 613A, 614A, 615A, 616A, 617A, 618A, 619A, 620A, 621A, 622A, 623A, 624A, 625A, 626A, 627A, 628A, 629A, 630A, 631A, 632A, 633A, 634A, 635A, 636A, 637A, 638A, 639A, 640A, 641A, 642A, 643

# Crane Swing Plan



# Exhibit C page 1 of 2 Insurance Certificate



## CERTIFICATE OF LIABILITY INSURANCE

12/31/2019

DATE (MM/DD/YYYY)

12/18/2018

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

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

<b>PRODUCER</b> Lockton Insurance Brokers, LLC License #0F15767 4275 Executive Square, Suite 600 La Jolla CA 92037		<b>CONTACT</b> NAME: _____ PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL: _____ ADDRESS: _____	
<b>INSURED</b> 1361040 Fairfield Residential Company, LLC 5510 Morehouse Dr., Ste. 200 San Diego CA 92121		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Tokio Marine Specialty Insurance Company <b>INSURER B:</b> _____ <b>INSURER C:</b> _____ <b>INSURER D:</b> _____ <b>INSURER E:</b> _____ <b>INSURER F:</b> _____	
		<b>NAIC #</b> 23850	

**COVERAGES FAIRE01** **CERTIFICATE NUMBER:** 15646259 **REVISION NUMBER:** XXXXXXXX

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  <b>GEN'L AGGREGATE LIMIT APPLIES PER:</b> <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER: _____		NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX DAMAGE TO RENTED PREMISES (Ea occurrence) \$ XXXXXXXX MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ XXXXXXXX GENERAL AGGREGATE \$ XXXXXXXX PRODUCTS - COMP/OP AGG \$ XXXXXXXX \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY		NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> RETENTION \$		NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	CA10003736181	12/31/2018	12/31/2019	X PER STATUTE <input type="checkbox"/> OTH-ER E L EACH ACCIDENT \$ 1,000,000 E L DISEASE - EA EMPLOYEE \$ 1,000,000 E L DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 105, Additional Remarks Schedule, may be attached if more space is required)  
 Waiver of Subrogation applies per attached endorsement(s) or policy language. Alternate Employer status applies with respect to Workers Compensation per attached endorsement. The Named Insured is continued to read: Fairfield Development L.P.; FF Properties L.P.; FF Realty HI LLC; Fairfield Pompano L.P. Re: Pompano Beach, 601 N. Federal Hwy., Pompano Beach, FL 33062.

**APPROVED**

By Cindy Lawrence at 1:12 pm, Jan 31, 2019

### CERTIFICATE HOLDER

15646259  
 City of Pompano Beach  
 P.O. Drawer 1300  
 Pompano Beach FL 33061

### CANCELLATION See Attachments

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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# Exhibit C page 2 of 2 Insurance Certificate



## CERTIFICATE OF LIABILITY INSURANCE

12/31/2019

DATE (MM/DD/YYYY)  
12/18/2018

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

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

PRODUCER Lockton Insurance Brokers, LLC  
License #0F15767  
4275 Executive Square, Suite 600  
La Jolla CA 92037

CONTACT  
NAME  
PHONE  
(A/C No. Ext):  
E-MAIL  
ADDRESS:

FAX  
(A/C No.):

INSURER(S) AFFORDING COVERAGE

NAIC #  
23850

INSURED 1361040 Fairfield Residential Company, LLC  
5510 Morehouse Dr., Ste. 200  
San Diego CA 92121

INSURER A:  
INSURER B:  
INSURER C:  
INSURER D:  
INSURER E:  
INSURER F:

COVERAGES FAIRE01

CERTIFICATE NUMBER: 15646259

REVISION NUMBER: XXXXXXXX

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

INSR LTR	TYPE OF INSURANCE	ADDITIONAL SUBROGATION (INSURED / WAIVER)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX DAMAGE TO RENTED PREMISES (Ea occurrence) \$ XXXXXXXX MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ XXXXXXXX GENERAL AGGREGATE \$ XXXXXXXX PRODUCTS - COMPIOP AGG \$ XXXXXXXX \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY		NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$		NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	CA10003736181	12/31/2018	12/31/2019	X PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Waiver of Subrogation applies per attached endorsement(s) or policy language. Alternate Employer status applies with respect to Workers Compensation per attached endorsement. The Named Insured is continued to read: Fairfield Development L.P., FF Properties L.P., FF Realty III LLC, Fairfield Pompano L.P. Re: Pompano Beach, 601 N. Federal Hwy., Pompano Beach, FL 33062.

**APPROVED**

By Cindy Lawrence at 10:11 am, Feb 08, 2019

CERTIFICATE HOLDER

15646259  
City of Pompano Beach  
P.O. Drawer 1300  
Pompano Beach FL 33061

CANCELLATION See Attachments

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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