

**REVOCABLE LICENSE AGREEMENT**

THIS REVOCABLE LICENSE AGREEMENT (the "Agreement"), made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between:

**CITY OF POMPANO BEACH**, a municipal corporation of the State of Florida, hereinafter referred to as "City,"

and

**FLJH, LLC**, a Nevada limited liability company, hereinafter referred to as "Licensee."

**WITNESSETH:**

**WHEREAS**, the City is the owner of a vacant parcel of property legally described on Exhibit "A," attached hereto and incorporated herein by reference (the "City's Property"); and

**WHEREAS**, Licensee is the owner of a residential parcel of property which is more particularly described on Exhibit "B," attached hereto and incorporated herein by reference (the "Licensee's Property"); and

**WHEREAS**, Licensee desires to obtain from City a revocable license to use the City's Property in order to allow Licensee to construct, install and maintain a wood walkway bridge from Licensee's Property located at 1902 Bay Drive to the City's Property which will provide access from Licensee's Property to the Atlantic Ocean; and

**WHEREAS**, the use of the City's Property by Licensee for this restricted purpose will not interfere with the rights enjoyed by the public, will be without cost to the public either directly or indirectly and is conditioned upon all other governmental agency approvals, including lawful use of adjacent land described by Broward County Property ID No. 484329041230;

**NOW, THEREFORE**, in consideration of the foregoing and mutual covenants and conditions hereinafter contained, it is agreed by the parties hereto as follows:

1. City hereby incorporates the above recitals as true and correct and a part of this Agreement and hereby grants to Licensee and Licensee hereby accepts from City a revocable

license to use the City's Property in order to allow the Licensee to install, construct, maintain, repair and/or replace a walkway bridge made of wood material, or another material approved by our City Engineer, from Licensee's Property to the City's Property which will provide access from Licensee's Property to the Atlantic Ocean and the beach ("Project Improvements"). All work for installation, maintenance, repair and/or replacement related to the Project Improvements shall be done by Licensee to the satisfaction of the City Engineer of City.

2. Licensee agrees that this Agreement is contingent upon Licensee providing the plans and specifications, permits, approvals and/or other documentation as approved by the appropriate governmental authorities as required by the Engineering Department of City for the issuance of a building permit, and the granting of this revocable license does not in any way waive any other building or construction ordinances, fees, or requirements of City. Licensee shall not commence construction nor occupy City's Property for construction purposes prior to approval of the permits and City Engineer.

3. This license shall continue from day to day commencing on the date of execution hereof by all parties until such time as either party gives notice of termination as provided for herein.

4. Licensee agrees to pay City as compensation for this license the sum of One (\$1.00) Dollar per annum. Receipt of the first payment of One (\$1.00) Dollar is hereby acknowledged.

5. As further consideration of this Agreement, Licensee further agrees to pay any taxes of whatever nature which may validly be levied against the premises or pursuant to this Agreement during the continuance of this Agreement.

6. This license may be terminated by City at any time, for no express reason, upon giving thirty (30) days' written notice to Licensee by mail as further provided in Paragraph 12 herein. Upon termination, Licensee agrees to remove, at its sole expense, all encroachments lying in, along and under the licensed portion of the property made by Licensee to the licensed

premises to its former condition as determined in the sole discretion of the Public Works Administrator.

7. Licensee specifically agrees that it will use the City's Property pursuant to this license only for the purpose of installing and maintaining the Project Improvements as depicted in the attached Exhibit "C". The location of the Project Improvements as set forth on Exhibit "C" is subject to and conditioned upon the final location for the Project Improvements being approved by any and all government agencies which have jurisdiction over this matter and the adjacent land described by Broward County ID No. 484329041230, including but not limited to, the Army Corps of Engineers, as well as Licensee's contractor and engineer. Licensee shall be entitled to revise the location of the Project Improvements, from what is set forth on Exhibit "C", based upon the recommendations and approvals from said governmental agencies, contractor and engineer. However, any such changes shall be approved by City Engineer. Further, the Licensee will not suffer or permit the City's Property or any part thereof to be used for any other purpose without the express consent of City. During the construction and installation phase, Licensee shall not store materials and equipment on the City's Property. Staging of materials on the City's Property is strictly prohibited. The City Engineer shall approve all repairs, replacements and maintenance within the City's Property.

8. It is expressly understood and agreed that no real or personal property is leased to Licensee; that it is a license, not a lease; that the Licensee's right to occupy the City's Property is subordinate to City's (or any franchisee of City) use of the City's Property, and should any relocation of any public utility be necessitated at any time in the future, then Licensee shall relocate, if practicable, or terminate its use of the City's Property at its own expense by restoring the City's Property to its former condition, as determined in the sole discretion of the Public Works Administrator. In the event that the use, occupation, and possession, maintenance, operation and/or repair of said Project Improvements shall ever (a) conflict with a superior municipal interest of the City or public, or (b) at any time the City requires the use of the City's Property for a superior



conflicting municipal purpose or (c) determines that continuation of the License Agreement for the License Area granted herein is no longer in the best public interest, all as determined by the City, then in that event, the license granted herein for the City's Property shall be terminable at the will of the City upon thirty (30) days written notice to the Licensee. City reserves the right to remove the Project Improvements at any time during the term of this Agreement if it determines that removal of said Project Improvements is in the best interest of the City. City shall not be liable for any costs or liabilities associated with said removal and all such costs shall be the responsibility of the Licensee.

9. During the term of this license, Licensee assumes all risks in the operation, installation and maintenance of the Project Improvements on the City's Property and shall be solely responsible and answerable for damages related to all accidents or injuries to persons or property arising out of or caused in the performance of any of the work done pursuant to the Agreement, or arising out of the operation and/or maintenance of said Project Improvements. Licensee further covenants and agrees to indemnify and hold harmless City and its officers, agents and employees from any and all claims (which shall include, but not be limited to, the defense of any claim and any and all costs in any judicial or quasi-judicial proceedings and for any and all damages or penalties of any kind or nature), suits, losses, damage or injury to person or property of whatsoever kind and nature, whether direct or indirect, arising out of the installation, operation, repair and maintenance of said Project Improvements or the carelessness, negligence or improper conduct of Licensee or any servant, agent, contractor, guest, subcontractor or employee of Licensee related to the Project Improvements.

10. Licensee shall procure at its own cost and expense General Liability Insurance coverage in an amount not less than One Million Dollars (\$1,000,000) combined single limit, or other coverages as deemed appropriate and equal to same as approved by City Risk Manager, in addition to any other reasonable insurance or bond City may require, which insurance coverage policy will protect Licensee, City, and their officers and employees from any claims for damages

to property and for personal injuries, including death, which may arise on said City Property during the term of this agreement and any renewals. The insurance policy shall contain a thirty (30) day cancellation clause period and a Certificate of Insurance shall be furnished the City, naming the City of Pompano Beach as an additional insured pursuant to this Agreement, said Certificate of Insurance to be approved by the City's Risk Manager prior to execution of this Agreement along with all renewals of said Certificate. A copy of said Certificate is attached hereto and designated as Exhibit "D".

11. Licensee is not permitted to assign, transfer, convey or otherwise dispose of this license to any other person or corporation without the prior written consent of City. Notwithstanding the foregoing, in the event that Licensee sell or transfers Licensee's Property then this License Agreement shall be transferred to the new owner of Licensee's Property only after and upon written consent of City Manager, along with approval of City Risk Manager. Additionally, it shall be required that a new insurance policy be issued in the new owner's full name and the Assignment of Agreement legal instrument approved by the City shall be recorded in the Broward County Official Records. All recording costs shall be the responsibility of the Licensee. Any attempt to assign, transfer, convey or otherwise dispose of this Agreement to any person without the City's prior written consent shall cause this Agreement to be null and void and terminated without notice to Licensee.

12. Any notice required under the terms of this License Agreement must be in writing and must be sent by certified mail to the address of the party to whom the notice is to be given.

Addresses of the parties are as follows:

**FOR CITY:** Dennis W. Beach, City Manager  
City of Pompano Beach  
Post Office Box 1300  
Pompano Beach, Florida 33061-1300

**FOR LICENSEE:** FLJH, LLC  
c/o John Hurry

7171 East Macdonald Drive, Suite 4  
Scottsdale, AZ 85253

13. If any provision hereof, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Agreement, or the application of the remainder of the provisions, shall not be affected. Rather, this Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this Agreement are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of this Agreement is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this Agreement, unless otherwise expressly provided. All terms and words used in this Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and other gender, as the context requires.

14. This Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns and shall be recorded in the Official Records of Broward County, with all costs being the responsibility of the Licensee.

15. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by the City as provided for in Florida Statutes Section 768.28.

16. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.



17. Licensee shall not discriminate against any Person in the performance of duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

18. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119, Public Records, of the Florida Statutes, and any resultant award of attorney's fees of non-compliance with that law.

19. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

20. The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort.

21. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

22. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of

this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida. To that end, Licensee expressly waives whatever other privilege to venue it may otherwise have.

23. 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, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of Licensee be deemed Force Majeure.

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**IN WITNESS WHEREOF**, the parties to this Revocable License Agreement have set their hands and seals on the day and year first above written.

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
LAMAR FISHER, MAYOR

\_\_\_\_\_

By: \_\_\_\_\_  
DENNIS W. BEACH, CITY MANAGER

Attest:

\_\_\_\_\_  
ASCELETA HAMMOND,  
CITY CLERK

(SEAL)

Approved by:

\_\_\_\_\_  
MARK E. BERMAN,  
CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by LAMAR FISHER as Mayor, DENNIS BEACH 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

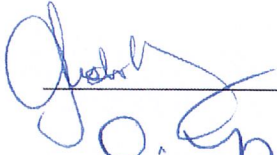

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

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

"LICENSEE":

Witnesses:

FLJH, LLC, a Nevada limited liability company by  
NEWMGMT, LLC, a Nevada limited liability  
company, its manager

  
\_\_\_\_\_  
  
\_\_\_\_\_

By:   
\_\_\_\_\_  
John Hurry, its Manager

(SEAL)

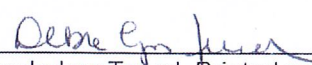
STATE OF Arizona

COUNTY OF Maricopa

The foregoing instrument was acknowledged before me this 3rd day of January, 2017, by John Hurry as Manager of NEWMGMT, LLC, a Nevada limited liability Company, as Manager of FLJH, LLC, a Nevada limited liability company, on behalf of the company. She is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF Arizona

  
(Name of Acknowledger Typed, Printed or Stamped)

342314  
Commission Number

