

GROUND LEASE AGREEMENT
between
DIVITO ENTERPRISES LIMITED PARTNERSHIP
and
CITY OF POMPANO BEACH

THIS GROUND LEASE AGREEMENT ("Agreement") made and entered into this _____ day of _____, 2019 (the "Effective Date"), by and between:

DIVITO ENTERPRISES LIMITED PARTNERSHIP, an Illinois limited partnership company, authorized to do business in the State of Florida, having its principal office at 360 South Green Bay Road, Lake Forest, Il., 60045 ("Lessor"),

and

CITY OF POMPANO BEACH, a Florida municipal corporation, having its principal office at 100 W. Atlantic Blvd., Pompano Beach, Florida, 33060 ("Lessee"),

collectively referred to as "the Parties."

WHEREAS, the Parties executed a prior lease agreement on February 14, 2014 (the "Prior Lease") for the Premises described below with a five (5) year term; and

WHEREAS, although the term of the Prior Lease expired on February 13, 2019, the Parties agreed to continue their leasing relationship while negotiating a new lease agreement, understanding that each Party would continue to comply with the terms and conditions of the Prior Lease until a new lease agreement is executed;

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

W I T N E S S E T H:

1. DEMISE; DESCRIPTION OF PREMISES.

Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, for the purpose of providing public parking, the Premises more particularly described in Exhibit "A" attached and made a part of this Agreement.

2. TERM.

a. The term of this Lease shall be for five (5) years, commencing on the Effective Date of this Lease. As used in this Lease, the expression "term of this Lease" refers to such initial term and to any extension of the initial term as provided in Paragraph 2.b below.

b. Lessee, provided it is not in default of any terms or conditions of this Lease, shall have the right and option (if consented to by Lessor), but shall in no way be obligated, to seek one (1) extension of the term of this Lease for an additional five (5) years ("Extension Period"), on the terms and conditions as set forth in this Lease. Should Lessee elect to extend this Lease for the Extension Period, Lessee shall provide written notice to the Lessor at least one hundred twenty (120) days prior to the last day of the initial term of the Lease. The terms of the Lease for the Extension Period shall be the same as for the initial term of this Lease, except for the rental amount which shall be established by Lessor and Lessee based upon the then market rental value of the Leased Premises.

c. Notwithstanding any provision in this Agreement to the contrary, either party shall have the right to terminate this Lease at any time and for any reason with ninety (90) days written notice provided to the non-terminating party.

3. RENT.

The rent for the initial term shall be Twenty Thousand Dollars (\$20,000.00), payable in annual installments of Four Thousand Dollars (\$4,000.00). The first installment shall be due on or before the thirtieth (30th) day after the Effective Date and a like installment shall be payable on each subsequent anniversary of the Effective Date during the term of this Agreement. Lessee shall remit all payments to Lessor at the address listed on page 1 above, or at such other place as may be designated by the Lessor.

4. USE OF PREMISES.

a. The Leased Premises shall be used by Lessee strictly for the purpose of providing public parking and for no other purpose. Lessee shall have the right to close the parking facility either partially or entirely to public use for no more than four (4) days during each year at Lessee's option. Such closure may be undertaken for any reason, including repairs to the Premises and use of the Premises by Lessee for the installation of ticket sales booths or other booths administered by the Lessee in connection with festivals or other beach related activities. Lessee shall, except in the case of an emergency closure, provide Lessor with not less than five (5) days written notice of its intent to so close the parking facility which notice shall provide the reason for the closure, the date(s) of the closure, and such other information as is necessary to reasonably inform Lessor as to such intended closure.

b. Lessor shall be entitled to the exclusive use of up to three (3) dedicated parking spaces to be used by his tenants. All spaces within the Premises shall be contiguous, shall be clearly marked for the exclusive use of Lessor's tenants, and made available to Lessor during normal business hours.

5. WARRANTIES OF TITLE AND QUIET POSSESSION.

Lessor covenants that Lessor is seized of the Leased Premises in fee simple and has full right to make this Lease and that Lessee shall have quiet and peaceable possession of the Leased Premises during the term of this Lease.

6. USES PROHIBITED.

Lessee shall not use or permit the Leased Premises, or any part thereof, to be used for any purpose other than the purpose for which the Premises are leased. No use shall be made or permitted to be made of the Premises, or acts done, that will cause a cancellation of any insurance policy covering the Premises; nor shall Lessee sell, or permit to be kept, used, or sold, in or about the Premises, any article prohibited by the standard form of fire insurance policies. Lessee shall, at its sole cost, comply with all requirements, pertaining to the Leased Premises, of any insurance organization or company, necessary for the maintenance of insurance, as provided in this Lease, covering any improvements and appurtenances at any time located on the Leased Premises.

7. WASTE AND NUISANCE PROHIBITED.

During the term of this Lease, Lessee shall comply with all applicable laws affecting the Leased Premises, the breach of which might result in any penalty on Lessor or forfeiture of Lessor's title to the Premises. Lessee shall not commit or suffer to be committed any waste or nuisance on the Leased Premises.

8. ABANDONMENT OF PREMISES.

Lessee shall not vacate or abandon the Premises at any time during the term of this Lease. If Lessee abandons, vacates, or surrenders the Leased Premises, or is dispossessed by process of law or otherwise, any personal property belonging to Lessee and left on the Premises shall be deemed to be abandoned, except any property that may be encumbered to Lessor.

9. LESSOR'S RIGHT OF ENTRY.

Lessee shall permit Lessor and Lessor's agents and employees to enter onto the Leased Premises at all reasonable times for the purpose of inspecting the Premises. Lessee shall also permit Lessor and its agents and employees, within the last six (6) months prior to the expiration of this Lease, to place on the Premises any usual or ordinary "To Let" or "To Lease" or "For Rent" signs and exhibit the Premises to prospective Lessees at reasonable hours.

10. SUBLETTING AND ASSIGNMENT.

Lessee may not sublet the Premises in whole or in part or assign its rights and interest without Lessor's written consent, which consent may not be unreasonably withheld by Lessor. Lessor's consent to any such sublease or assignment shall not release Lessee from, or otherwise affect in any manner, any of Lessee's obligations under this Lease nor shall any such consent to a

sublease or assignment be deemed to be a consent to any other subsequent sublease or assignment. Any sublease or assignment without consent shall be void, and shall, at the option of Lessor, terminate this Lease. Neither this Lease nor the Leasehold estate of Lessee nor any interest of Lessee under this Lease in the Premises or any buildings or improvements on it shall be subject to involuntary assignment, transfer, or sale, or to assignment, transfer, or sale by operation of law in any manner whatsoever, and any attempted involuntary assignment, transfer, or sale shall be void and of no effect and shall, at the option of Lessor, terminate this Lease

11. NOTICES.

All notices, demands, or other writings in this Lease provided to be given or made or sent, or which may be given or made or sent, by either party to this Lease to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, with postage prepaid, and registered and addressed as follows:

TO LESSOR: DiVito Enterprises Limited Partnership
Attn: Eugene C. DiVito
360 South Green Bay Road
Lake Forest, IL 60045

COPY TO: Blake M. Harmon, Esq.
Patterson & Harmon, P.A.
4701 N. Federal Highway, Suite 480
Pompano Beach, FL 33064

TO LESSEE: Gregory P. Harrison, City Manager
Pompano Beach CRA
100 W. Atlantic Boulevard, 4th Floor
Pompano Beach, FL 33060

COPY TO: Jeff Lantz
City Parking Manager
City of Pompano Beach
3460 NE 3rd Street
Pompano Beach, Florida 33060

Notwithstanding, either party may provide notice by email or facsimile, and shall be deemed delivered upon confirmation receipt of such delivery. The address to which any notice, demand, or other writing may be given or made or sent to any party mentioned above may be changed by written notice given by the party mentioned above.

12. TAXES AND ASSESSMENTS.

a. Lessor agrees to pay any and all real estate taxes or charges or special assessments by ad valorem which at any time may be levied by any federal, state, county, city or any real estate

tax assessment levying body upon the Premises, or any possessory right which Lessor may have in or to the Premises.

b. Notwithstanding the foregoing provision, Lessee shall, after notifying Lessor of its intention to do so, have the right in its own name or behalf, or in the name and behalf of Lessor, to contest in good faith by all appropriate proceedings the amount, applicability or validity of any such tax or assessment, and in good faith by all appropriate proceedings the amount, applicability or validity of any such tax or assessment.

13. REPAIRS AND DESTRUCTION OF IMPROVEMENTS.

a. *Maintenance of improvements; compliance with laws.* Throughout the term of this Lease, Lessee shall, at its own cost and without any expense to Lessor, keep and maintain the Premises, including all improvements of every kind that may be a part of the Premises and all appurtenances to the Premises, including sidewalks adjacent to the Premises, in good, sanitary, and neat order, condition and repair. Except as specifically provided in this Lease, during the term of this Lease, Lessee shall restore and rehabilitate any improvements of any kind that may be destroyed or damaged by fire, casualty, or any other cause whatsoever. Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind whatsoever to the Leased Premises or improvements on it. Lessee shall also comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinances, laws, and regulations affecting the Premises, the improvements on the Premises, or any activity or condition on or in the Premises, including without limitation, compliance with the American with Disabilities Act as to all improvements on or to the Leased Premises.

b. *Damage to and destruction of improvements.* The damage, destruction, or partial destruction of any improvement that is a part of the Premises shall not release Lessee from any obligation under this Lease, except as expressly provided below. In case of damage to or destruction of any improvement, Lessee shall at its own expense promptly repair and restore the improvement to a condition as good as or better than that which existed prior to the damage or destruction. Without limiting the obligations of Lessee, it is agreed that the proceeds of any insurance covering the damage or destruction shall be made available to Lessee for repair or replacement.

c. *Damage or destruction occurring toward end of term.* Notwithstanding anything to the contrary in the immediately preceding paragraphs of this section, in case of destruction of any improvement on the Premises or damage thereto from any cause so as to make it untenable occurring during the last six (6) months of the term of this Lease, Lessee, if not then in default under this Lease, may elect to terminate this Lease by written notice served on Lessor within thirty (30) days after the occurrence of the damage or destruction. In the event of termination, there shall be no obligation on the part of Lessee to repair or restore the improvements, and only Lessor shall have any right to receive proceeds collected under any insurance policies covering the Premises. On termination, Lessee shall return the Premises to Lessor as provided for below in Paragraph 20. On termination, rent and any other sums payable by Lessee to Lessor under this Lease shall be prorated as of the termination date, and in the event any rent shall have been paid in advance, Lessor shall rebate them for the unexpired period for which payment shall have been made.

d. *Election not to terminate.* If, in the event of destruction or damage during the last six (6) months of the term of this Lease, Lessee does not elect to terminate this Lease, the proceeds of all insurance covering the damage or destruction shall be made available to Lessee for repair or replacement, and Lessee shall be obligated to repair the Premises as provided above.

14. UTILITIES.

Lessee shall fully and promptly pay for all water, gas, heat, light, power, telephone service, and all other public utilities furnished to the Premises throughout the term of this Lease, and all other costs and expenses in connection with the use, operation and maintenance of the Premises and all activities conducted on the Premises. Lessor shall have no responsibility of any kind for any of those costs and expenses.

15. LIENS.

a. *Lessee's duty to keep Premises free of liens.* Lessee shall keep all of the Premises and every part of the improvements at any time located on the Premises free and clear of any mechanics', materialmen's, and other liens arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished in connection with any operations of Lessee, any alteration, improvement, or repairs or additions which Lessee may make or permit or cause to be made, or any work or construction, by or permitted by Lessee on or about the Premises, or any obligations of any kind incurred by Lessee. Lessee shall at all times promptly and fully pay and discharge all claims on which any lien may or could be based, and Lessee shall indemnify Lessor and all of the Premises and all improvements on the Premises against all liens and claims of liens and suits or other proceedings pertaining to those liens. Lessee shall give Lessor written notice no less than ten (10) days in advance of the commencement of any construction, alteration, addition, improvement, or repair estimated to cost in excess of \$1,000.

b. *Contesting liens.* If Lessee desires to contest any lien, Lessee shall notify Lessor of its intention to do so within ten (10) days after the filing of the lien. Lessee shall not be in default under this Lease until thirty (30) days after the final determination of the validity of the lien, within which time Lessee shall satisfy and discharge the lien to the extent held valid. However, the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had on any judgment rendered on it, and any delay shall be a default of Lessee under this Lease. In the event of any such contest, Lessee shall protect and indemnify Lessor against all loss, expense, and damage resulting from the contest.

16. INDEMNIFICATION OF LESSOR.

a. To the extent as provided in Section 768.28, Florida Statutes, without waiving any of the rights, privileges and immunities contained in the statute, Lessee shall save and hold harmless Lessor from, and shall indemnify Lessor against any loss, liability, claim, damage, expense, penalty, or fine that is not covered by insurance carried or required to be carried by Lessor, including bodily injury, death, and property damage, arising out of the use of the Parking Area by Lessee, its employees, representatives, agents or invitees during operating hours. The

foregoing indemnification shall include an obligation to repair or pay for the repair of damage to landscaping and other personal property, fixtures, and improvements located on the Parking Area, to the extent such damage is caused by Lessee, its employees, agents or invitees and the public during operating hours.

b. Lessor shall jointly and severally save and hold harmless Lessee from and shall indemnify Lessee against any loss, liability, claim, damage, expense, penalty or fine including bodily injury, death and property damage, arising out of the use of the parking area by Lessor or its respective employees, representatives, agents, contractors, members, parishioners, or invitees.

c. Each claim for indemnification made under this Agreement shall be subject to the following provisions

(1) The indemnity shall cover the costs and expenses of the indemnitee including, without limitation, reasonable attorneys' fees, disbursements, and court costs, related to any actions, suits or judgments incident to any of the matters covered by such indemnity, whether at trial or on appeal.

(2) The indemnitee shall notify the indemnitor of any Claim (as herein defined) against the indemnitee covered by the indemnity within forty-five (45) days after it has notice of such Claim, but failure to notify the indemnitor shall in no case prejudice the rights of the indemnitee under this Agreement unless the indemnitor shall be prejudiced by that failure and then only to the extent the indemnitor shall be prejudiced by the failure. Should the indemnitor fail to discharge or undertake to defend the indemnitee against such liability upon learning of the same, then the indemnitee may settle such liability, and the liability of the indemnitor under this Agreement shall be conclusively established by that settlement, the amount of such liability to include both the settlement consideration and the reasonable costs and expenses, including attorneys' fees, disbursements and court costs, incurred by the indemnitee in effecting the settlement.

(3) For purposes of this Agreement, "claim" shall mean any obligation, liability, claim (including, but not limited to, any claim for damage to property or injury to or death of any persons), lien or encumbrance, loss, damage, costs, or expense.

(4) The obligations of the parties under this section shall survive the termination or expiration of this Agreement and remain binding upon the parties to this Agreement until fully observed, kept, or performed.

d. Nothing herein is intended to serve as a waiver of Sovereign Immunity by Lessee nor shall anything included in this Agreement be construed as consent to be sued by third parties in any matter arising out of this Agreement.

e. The foregoing indemnification shall not operate as a claim for any cause of action Lessee has or may have for breaches or defaults by Lessor under this Lease. The Parties that two percent (2%) of the Rent paid to Lessor shall constitute specific consideration to Lessor for its indemnification of Lessee. The Parties expressly agree that these indemnification provisions are

intended to be as broad and inclusive as permitted by laws of the State of Florida, and that if any portion is held invalid, it is agreed that the balance shall, notwithstanding, continue in full force and effect.

17. NOTICE OF CLAIM OR SUIT.

Lessee shall promptly notify Lessor of any claim, action, proceeding or suit instituted or threatened against Lessee or Lessor of which Lessee receives notice or of which Lessee acquires knowledge.

18. ATTORNEY'S FEES.

If any action at law or in equity shall be brought to recover any rent under this Lease, or for or on account of any breach of this Lease, or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Leased Premises, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs reasonable attorney's fees, at trial or on appeal.

19. REDELIVERY OF PREMISES.

Upon the expiration or sooner termination of this Lease, Lessee shall surrender the Premises to Lessor in good order and condition subject to the following provisions:

a. Lessee shall be permitted to remove all parking pay stations or other equipment or its personal property from the Premises; and

b. All other parking lot improvements on the Premises, including the asphalt or other parking surface, striping, parking spot curbs or stops, and all lighting fixtures shall remain on the Premises as the property of Lessor.

20. REMEDIES CUMULATIVE.

All remedies conferred on Lessor shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law.

21. INSURANCE.

Lessee shall provide insurance for all improvements made to the Premises. Lessee further agrees to maintain a qualified insurance program in the limits specified in Florida Statute 768.28 with Lessor as a named insured. The insurance program shall provide for general and automobile and Workers Compensation and Employers Liability Coverage. Lessee shall provide Lessor with a Certificate of Insurance evidencing Lessee's insurance program. In the event that Lessee's insurance program is modified during the term of this Lease, Lessee shall provide Lessor with at least thirty (30) days prior written notice.

22. PROHIBITION OF INVOLUNTARY ASSIGNMENT.

Neither this Lease nor the Leasehold estate of Lessee nor any interest of Lessee under the Lease in the Premises or in the improvements on the Premises shall be subject to involuntary assignment, transfer, or sale, or to assignment, transfer, or sale by operation of law in any manner whatsoever, except through statutory merger, consolidation, devise, or intestate succession. Any such attempt at involuntary assignment, transfer, or sale shall be void and of no effect.

23. NOTICE OF DEFAULT.

Lessee shall not be deemed to be in default under this Lease unless Lessor shall first give to Lessee fifteen (15) days written notice of the default and Lessee fails to cure the default within fifteen (15) days, except where the actions necessary to cure the default take in excess of fifteen (15) days to complete, in which case, Lessee shall commence curing of default within the initial fifteen (15) day period and shall continue without interruption. In the event Lessee is unable to cure the default within thirty (30) days of the Lessor's written notice, Lessee shall be in default of the Lease and the Lessor may terminate the rights of Lessee under this Agreement.

24. DEFAULT.

a. In the event of any breach of this Lease by Lessee, Lessor, in addition to the other rights or remedies Lessor may have, shall have the immediate right of reentry and may remove all persons and property from the Premises. Any property belonging to Lessee may, at Lessor's option, be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, Lessee. Should Lessor elect to reenter, as provided in this agreement, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may terminate this Lease.

b. No reentry or taking possession of the Leased Premises by Lessor shall be construed as an election on the part of Lessor to terminate this Lease unless a written notice of Lessor's intention to terminate this Lease is given to Lessee or unless the termination of the Lease is decreed by a court of competent jurisdiction.

25. MARKET FOR SALE

Lessor shall have the absolute right to sell, assign, mortgage, or otherwise encumber or dispose of Lessor's interest in the Premises including, without limitation, erecting any type of for sale or future development sign on or adjacent to the Premises and taking any further and related action; however, Lessor must provide no less than thirty (30) days prior written notice of such action.

26. EFFECT OF EMINENT DOMAIN.

a. *Effect of total condemnation.* In the event the entire Leased Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of the taking, and Lessee shall then be released from any liability accruing under this Lease after that date.

b. *Effect of partial condemnation.* In the event a portion of the Leased Premises shall be so appropriated or taken and the remainder of the property shall not be suitable for the use then being made of the property by Lessee, or if the remainder of the property is not one undivided parcel of property, Lessee shall have the right to terminate this Lease as of the date of the taking on giving to Lessor written notice of the termination within thirty (30) days after Lessor has notified Lessee in writing that the property has been appropriated or taken.

In the event of partial taking and Lessee does not terminate this Lease, this Lease shall continue in full force and effect as to the part not taken at a pro-rated rental amount, and the rent to be paid by Lessee during the remainder of the term shall continue in the manner provided for above in Paragraph 3.

c. *Condemnation award.* In the event of the termination of this Lease by reason of the total or partial taking of the Premises by eminent domain, then in any condemnation proceedings Lessor and Lessee shall be free to make claim against the condemning or taking authority for the amount of any damage done to them, respectively, as a result of the taking.

In the event of a partial taking of the Premises and this Lease is not terminated, then Lessee shall have the right to make claim against the condemning or taking authority for only the unamortized cost of the improvements placed on the Leased Premises by Lessee and located on the Premises at the time of the taking or appropriation, which improvements shall be deemed to amortize in equal annual amounts over the period commencing with the date of completion of the improvements and ending upon the termination of the Lease.

27. SURRENDER OF LEASE.

The voluntary or otherwise surrender of this Lease by Lessee, or a mutual cancellation of this Lease, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subleases or sub-tenancies, or may, at the option of Lessor, operate as an assignment to it of any or all such subleases or sub-tenancies.

28. WAIVER.

The waiver by Lessor of, or the failure of Lessor to take action with respect to any breach of, any term, covenant, or condition contained in this Lease shall not be deemed to be a waiver of that term, covenant, condition, or subsequent breach, or of any other term, covenant, or condition contained in the Lease. The subsequent acceptance of rent under this Lease by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of the preceding breach at the time of acceptance of rent.

29. EFFECT OF LESSEE'S HOLDING OVER.

Any holding over after the expiration of the term of this Lease, without the express written consent of Lessor, shall be deemed to be a tenant from month-to-month only. Except as stated

above, such tenancy shall be upon and subject to the terms of this Lease. Either party may terminate such tenancy by giving to the other at least fifteen (15) days prior written notice of its intent to terminate.

30. PARTIES BOUND.

The covenants and conditions contained in this Lease shall, subject to the provisions as to assignment, transfer, and subletting, apply to and bind the heirs, successors, executors, administrators, and assigns of all of the parties to this Lease. All of the parties to this Lease shall be jointly and severally liable under the Lease.

31. TIME OF THE ESSENCE.

Time is of the essence of this Lease and of every covenant, term, condition, and provision of this Lease.

32. SECTION CAPTIONS.

The captions appearing under the section number designations of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

33. SUCCESSORS AND ASSIGNS.

The agreements, terms, provisions, covenants and conditions contained in this Lease shall be binding upon and inure to the benefit of the Parties and, to the extent permitted in this Agreement, their respective successors and assigns.

34. APPLICABLE LAW.

This Lease shall be governed by, and construed in accordance with the laws of the State of Florida, both as to interpretation and performance.

35. WAIVER AND JURY TRIAL.

LESSEE AND LESSOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER OF THEM OR THEIR HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS OR ASSIGNS MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT TO BOTH LESSOR AND LESSEE IN ACCEPTING THIS LEASE.

6. PUBLIC RECORDS.

a. Lessee is a public agency subject to Chapter 119, Florida Statutes. The Lessee and Lessor shall comply with Florida's Public Records Law, as amended. Specifically, Lessee and Lessor shall:

i. Keep and maintain public records required by the Lessee in order to perform the service.

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

iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if the Lessor does not transfer the records to the Lessee.

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

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

PUBLIC RECORDS CUSTODIAN

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

CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
954-786-4611
RecordsCustodian@copbfl.com

37. SEVERABILITY.

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by a 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.

38. NO WAIVER OF SOVEREIGN IMMUNITY.

Nothing contained in this Agreement is intended to serve as a waiver of the Lessee's sovereign immunity as provided in §768.28, Florida Statutes.

39. BINDING EFFECT.

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

40. ENTIRE AGREEMENT.

This Lease contains the entire agreement between the parties and can only be changed, modified, amended or terminated by an instrument in writing executed and agreed to by both parties with the same formality as this Lease. It is mutually acknowledged and agreed by Lessor and Lessee that there are no other promises, agreements, representations, warranties or other understandings, either written or oral between them.

SIGNATURE PAGES FOLLOW

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

"LESSOR":

Witnesses:

DiVito Enterprises Limited Partnership
an Illinois limited partnership

By: Reliance Enterprises of South Florida, Inc.
a Florida corporation, its General Partner

Signature

By: _____
Eugene C. DiVito, President

Print Name

Signature

Print Name

STATE OF ILLINOIS
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Eugene C. DiVito, as President of Reliance Enterprise of South Florida, Inc. a Florida Corporation, the General Partner of DiVito Enterprises Limited Partnership, an Illinois limited partnership, authorized to do business in the State of Florida. He is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY SEAL:

NOTARY PUBLIC, STATE OF ILLINOIS

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"LESSEE":

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 instruments were 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 SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

TAL:jrm:JES:jmz
10/7/19 (jrm)
L:agr/CIP/2019-754c