

# **PARKING LICENSE AGREEMENT SANDS HARBOR HOTEL**

**THIS PARKING LICENSE AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between:

**CITY OF POMPANO BEACH**, a Florida municipal corporation having its principal office at 100 W. Atlantic Boulevard, Pompano Beach, Florida 33060, (“CITY”),

and

**SANDS HARBOR RESORT & MARINA LLC**, a Florida limited liability company having its principal office at 2688 Broadway, New York, New York 10025, (“LICENSEE”);

collectively referred to as the “Parties.”

**WHEREAS**, the CITY owns a municipal surface parking lot at 109 North Oceanside Boulevard, Pompano Beach, Florida, (“Oceanside”) situated east of a hotel property owned by LICENSEE located at 125 North Riverside Drive, Pompano Beach, Florida (“Property”); and

**WHEREAS**, LICENSEE has used the Oceanside surface parking lot for its guests, employees and invitees to fulfill its offsite parking requirements pursuant to City Code and variances granted by the City; and

**WHEREAS**, LICENSEE currently purchases monthly parking passes for its use of the Oceanside parking lot at a cost of \$50 per month (plus tax) per parking pass, for a total of up to 120 parking passes under a parking license agreement dated June 19, 2017, which is attached and incorporated in this Agreement as Exhibit A, along with the above mentioned variances; and

**WHEREAS**, LICENSEE desires to continue using the Oceanside parking lot for its hotel customers, employees, and office tenants pursuant to a license agreement;

**NOW, THEREFORE**, in consideration of the foregoing and mutual covenants and conditions, the Parties as follows:

**1. Grant of License.** CITY grants to LICENSEE a revocable license to park a minimum of 120 vehicles (and a maximum of 170 vehicles), with a valid CITY parking pass, on the Property depicted in Exhibit “B” (“License Area”). The License Area is to be used for parking vehicles owned or operated by LICENSEE, its hotel guests, employees, tenants, vendors and others associated with the hotel, twenty-four (24) hours a day, seven (7) days a week.

**2. License Fee.** In consideration of the LICENSEE’s use of the License Area, LICENSEE shall pay CITY Six Thousand Dollars (\$6,000.00) plus tax each month during the License Term for the use of 120 spaces. LICENSEE may obtain additional parking passes up to a total of 170 parking passes, with the CITY’s consent. Each parking pass after the initial 120 parking passes shall be obtainable at a rate of Fifty Dollars (\$50.00) each month for each parking pass. Payment is due no later than the first day of each month (“Payment Date”). A late fee of ten percent (10.0%) will be assessed on the 10<sup>th</sup> day from Payment Date. The parking passes shall permit overnight parking and shall be governed by the City Parking Ordinance, Section 76.06 (C) (2) (d), a copy of which is provided as Exhibit C. In the event, during the term of the Agreement, that the City Parking Ordinance is amended changing the parking pass fee, then the License Fee will change accordingly.

**3. License 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 for two (2) years (the “Term”), unless sooner terminated as provided in this Agreement. The Parties shall have the option, but shall in no way be obligated, to extend the License Agreement for an additional year (“Extension Period”), on the terms and conditions as set forth in this Agreement. Should either party wish to extend this Lease for the Extension Period, the requesting party shall provide

written notice to that effect to the other party at least three (3) months prior to the last day of the term of the Agreement.

**4. Termination for Cause.** Breach or default of any of the covenants, duties, or terms of this Agreement shall be cause for termination, if such breach or default remains uncured for more than thirty (30) days after written notice 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.

**5. Termination for Convenience.** During the Term, any extension or renewal of this Agreement, upon thirty (30) calendar days written notice, delivered by certified mail, return receipt requested, or by hand delivery, either party 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 that Party. Upon receipt of such notice, commercially reasonable efforts shall be used to discontinue all use of the License Area. Neither party shall be responsible for any costs incurred 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.

**6. New City Garage.** The CITY contemplates constructing a new multi-level garage atop the Oceanside surface parking lot to accommodate more parking by the general public and monthly parking customers. During the period that a new garage is being built, CITY will make its best efforts to find substitute parking suitable for LICENSEE's hotel guests. LICENSEE is required to find other suitable parking for its employees, tenants, contractors and other invitees. The Parties acknowledge, understand and agree that construction of a new parking garage on the

Oceanside surface parking lot is a costly public improvement that directly benefits LICENSEE and other garage passholders, and that such cost will impact the future parking rates and collection methods for such passholders.

**7. License Area Maintenance.** CITY shall be responsible to maintain the License Area including but not limited to removing litter, garbage, or other material deposited on the License Area on a periodic basis.

**8. Maximum Vehicle Storage.** LICENSEE may park a maximum of 120 vehicles on the License Area. Vehicles include passenger cars and ¾ ton pickup trucks; no large vans or oversized vehicles nor commercial vehicles defined in the City's Code of Ordinances may park in Oceanside. No vehicles may be parked that are not titled or without tags and current registration. Spaces are available on a "first-come, first-serve" basis. Vehicles, according to Section 76.06 (C) (2) (d), City Code, may park overnight at their own risk. LICENSEE, its guests, employees, tenants and other invitees that store vehicles are prohibited from "back-end" parking, and must prominently display parking passes ("hangtags") within the parked vehicle either on the vehicle's rear view mirror or on the front dashboard to facilitate verification of the vehicle's right to park in Oceanside; otherwise, a vehicle will be subject to receiving a parking citation.

**9.** This Agreement and the underlying rights and obligations 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 LICENSOR'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 LICENSOR shall immediately cease and terminate.

**10. Signage.** The LICENSEE may install one sign in front of the License Area facing North Riverside Drive to designate that the License Area may be used for guests of the hotel with

the proper display of a hangtag issued under this Agreement. The cost of the signage shall be borne by the LICENSEE. The signage must be permitted by the CITY. LICENSEE shall maintain the sign in good condition as determined by the CITY, in its sole discretion.

**11. Valet Parking.** LICENSEE may park any of its guests or employees in Oceanside under the terms of this Agreement utilizing hotel valet drivers, subject to LICENSEE providing CITY with a completed Valet Parking Application form as provided in Exhibit D, attached and incorporated in this Agreement. Rates for valet parking will be in accordance with the rates stipulated in the City's Parking Ordinance, as may be amended from time to time.

**12. Taxes.** As further consideration of this License Agreement, LICENSEE agrees to pay any taxes, including sales taxes, of whatever nature that may validly be levied against the license area premises or pursuant to this Agreement during the continuance of this Agreement.

**13. Permitted Use.** LICENSEE specifically agrees that it will use the CITY Property pursuant to this Agreement only for the intended purpose. Further, LICENSEE will not suffer or permit the License Area or any part to be used for any other purpose without the express written consent of CITY. Failure to abide by this provision will be a cause of default of the Agreement and the CITY may terminate the License Agreement as described in Paragraphs 4 OR 5 above.

**14. Public Benefit.** The license area shall be used to benefit the general public by relieving the congested parking on the LICENSEE'S property and providing parking to service a hotel that promotes the use of the CITY's recreational beaches and other public spaces.

**15. City Approval of New Licensee.** Should the LICENSEE sell an interest in part or whole of its Property as described in this Agreement, the CITY reserves the right to approve of the new LICENSEE and the continuation of the License. Such approval shall not be unreasonably withheld.

**16. License Definition.** It is expressly understood and agreed that no real or personal property is leased to LICENSEE by CITY. This license is nonexclusive and is not intended to restrict the rights of the public for pedestrian foot-trail passage to access the public beaches and other amenities. CITY and LICENSEE acknowledge that the intention of this license is for CITY to grant a license to LICENSEE to store vehicles of LICENSEE and LICENSEE's guests and tenants for LICENSEE's use and benefit, and that there is no intention whatsoever to grant to LICENSEE, its successors or assigns, or to any other person or entity, any permanent rights of any kind in CITY's real property. This agreement shall not be recorded in the Public Records of Broward County, Florida.

**17.** LICENSEE assumes all risks in the use of the License Area. LICENSEE shall be solely responsible for any damage to, or loss of, motor vehicles parked within the License Area as well as the personal property of the LICENSEE, its guest, employees, tenants and invitees.

**18. Insurance.** LICENSEE shall procure at its own cost and expense the insurance coverage set forth in Exhibit E naming the City of Pompano Beach as an additional insured pursuant to this Agreement. The Certificate of Insurance must be approved by the CITY's Risk Manager prior to execution of this Agreement. If LICENSEE subcontracts with a vehicle transport operator rather than transporting the vehicles themselves, the CITY retains the right to approve the subcontractor, which shall not be unreasonably withheld. However, the subcontractor must also obtain insurance coverage set forth in Exhibit E.

**19. Non-Transferability.** LICENSEE is not permitted to assign, transfer, convey or otherwise dispose of this license to any other person or corporation without the previous written consent of CITY. In the event of an attempt to assign, transfer, convey or otherwise dispose of this license to any person not specifically a party to this Agreement and license, then this license shall be null and void and terminated without notice to LICENSEE.

**20. Rights of Parties.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement upon any person other than the Parties and their respective heirs, successors, legal representatives, and permitted assigns, nor is anything in the Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.

**21. Risks and Hazards Emergency.** Notwithstanding any provision to the contrary, if at any time CITY determines there is an emergency in its sole discretion of the existence of hazardous motor vehicles on the License Area which poses a risk or hazard to the public health, safety or welfare, then the LICENSEE shall, immediately upon receipt of written, email, or verbal notice from CITY, remove the motor vehicles, at LICENSEE's sole expense. If the vehicles are not immediately removed, CITY may remove the motor vehicles and LICENSEE agrees to pay for the costs to remove the motor vehicles. During any time of a hurricane alert, CITY will notify LICENSEE to remove all vehicles in Oceanside if the CITY determines it is in the best interest of the public that such removal is necessary.

**22. Compliance with Laws/Regulations.** LICENSEE and its employees, agents, representatives, tenants or subcontractors agree to comply and adhere to all applicable laws and regulations including, but not limited to, all state laws and local ordinances and regulations regarding traffic and parking that exist or as amended from time to time.

**23. Venue.** 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 or mediated in Broward County, Florida.

## **24. Public Records**

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

1. Keep and maintain public records required by the City in order to perform the service.

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

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

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



B. Failure of the LICENSEE to provide the above described public records to the City within a reasonable time may subject LICENSEE to penalties under Section 119.10, Florida Statutes, as amended.

## **PUBLIC RECORDS CUSTODIAN**

**IF THE LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, 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**

**25. Notices.** Any notice required under the terms of this License Agreement must be in writing and must be sent by certified mail, return receipt requested, or by hand delivery to the address of the party to whom the notice is to be given. Addresses of the parties are as follows:

**FOR CITY:**

Gregory P. Harrison, City Manager  
City of Pompano Beach  
100 W. Atlantic Blvd., Fourth Floor  
Pompano Beach, Florida 33060-1300  
[greg.harrison@copbfl.com](mailto:greg.harrison@copbfl.com)

Mark E. Berman, City Attorney  
City of Pompano Beach  
100 W. Atlantic Blvd., #467  
Pompano Beach, Florida 33060  
[Mark.berman@copbfl.com](mailto:Mark.berman@copbfl.com)

Suzette Sibble, Assistant City Manager  
City of Pompano Beach  
100 W. Atlantic Blvd., Fourth Floor  
Pompano Beach, Florida 33060  
[Suzette.sibble@copbfl.com](mailto:Suzette.sibble@copbfl.com)

Jeff Lantz, Parking Manager  
City of Pompano Beach  
3460 NE 3<sup>rd</sup> Street  
Pompano Beach, Florida 33062  
[Jeff.Lantz@copbfl.com](mailto:Jeff.Lantz@copbfl.com)

**FOR LICENSEE:**

Hank Freid, President  
Sands Harbor Resort & Marina LLC  
101 N. Riverside Drive, Suite 205  
Pompano Beach, Florida 33062  
[hank@sandsharbor.com](mailto:hank@sandsharbor.com)

**COPY TO:**

Brandon Freid  
2688 Broadway  
New York, NY 10025  
[brandon@sandsharbor.com](mailto:brandon@sandsharbor.com)

**26. INDEMNIFICATION**

A. LICENSEE shall at all times indemnify, save, hold harmless and defend the CITY its officials, its authorized agents, and its employees from and against any and all claims, demands, suit, damages, attorneys' fees, fines, penalties, defense costs or liabilities arising directly, indirectly or in connection with this Agreement, with LICENSEE's use of the License Area, and with LICENSEE's officers, staff or other agents' actions, negligence or misconduct whether the occurrence or cause arises on or away from the License Area except that LICENSEE shall not be liable under this Article for damages arising out of injury or damage to persons or Property arising from the negligence, gross negligence or willful misconduct of the CITY, any of its officers, agents or employees. LICENSEE agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and to bear all costs and expenses related to such claims, even if the claim is 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.

B. LICENSEE acknowledges and agrees that neither party would enter into this Agreement without this indemnification of CITY by LICENSEE. The parties agree that authorization to use CITY's facility shall constitute consideration or alternatively one percent (1%) of any money obtained through use of CITY facility shall constitute specific consideration for the indemnification to be provided under the contract.

C. LICENSEE shall be solely responsible for insuring all stock, inventory, monies or other personal Property at the Property against damage or loss of any nature or kind. LICENSEE acknowledges and agrees that CITY assumes no responsibility whatsoever for any personal property placed at the License Area by LICENSEE, its guests, agents, tenants or invitees, with the exception of damages or loss suffered as a result of CITY's negligence. CITY is expressly released and discharged from any and all liability for any loss, injury or damage to persons or property which may be sustained by reason of the presence of any property owned by LICENSEE, its guests, agents, tenants or invitees in the License Area.

D. The indemnification provisions of this Article shall survive the expiration or termination of this Agreement and remain binding upon the parties to this Agreement until fully observed, kept, or performed.

E. Nothing contained in this Agreement 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.

## **27. FORCE MAJEURE**

A. 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.

B. If either Party is 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.

C. In order to be entitled to the benefit of this Paragraph, 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.

## **28. WAIVER AND MODIFICATION**

A. A Party’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.

B. 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.

**29. 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.

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

**31. LICENSE NOT LEASE.** Both parties acknowledge and agree this License shall not be deemed a lease 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.

**32. MISCELLANEOUS**

A. 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.

B. 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.

C. 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.

D. 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.

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

F. 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.

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

**REMAINDER OF PAGE IS INTENTIONALLY LEFT BLANK**

**“CITY”:**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

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

\_\_\_\_\_

By: \_\_\_\_\_  
GREGORY P. HARRISON, 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 \_\_\_\_\_, 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 is personally known to me.

NOTARY’S SEAL:

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

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

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

:jrm  
10/8/19  
L:agr/2020-02

**"LICENSEE":**

Witnesses:

**SANDS HARBOR RESORT & MARINA LLC**  
a Florida Limited Liability Company

Mary L. Martin

Mary L. Martin

Print Name

By:

HANK FREID, Manager

Holly Brown

Holly Brown

Print Name

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 15 day of October, 2019 by **HANK FREID** as Manager of SANDS HARBOR RESORT & MARINA LLC, a Florida Limited Liability Company, who are personally known to me or who have produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:



HOLLY BROWN  
Commission # GG 259474  
Expires September 29, 2022  
Bonded Thru Budget Notary Services

Holly Brown

NOTARY PUBLIC, STATE OF FLORIDA

Holly Brown

(Name of Acknowledger Typed, Printed or Stamped)

GG259474

Commission Number



**"LICENSEE":**  
**(continued)**

Witnesses:

**SANDS HARBOR RESORT & MARINA LLC**  
a Florida Limited Liability Company

Mary P. Martin

Mary P. Martin  
Print Name

By: Brandon Freid  
BRANDON FREID, Manager

Holly Brown

Holly Brown  
Print Name

FLORIDA  
STATE OF NEW YORK  
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 15 day of October, 2019 by **BRANDON FREID** as Manager of SANDS HARBOR RESORT & MARINA LLC, a Florida Limited Liability Company, who are personally known to me or who have produced \_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:



HOLLY BROWN  
Commission # GG 259474  
Expires September 29, 2022  
Bonded Thru Budget Notary Services

Holly Brown  
NOTARY PUBLIC, STATE OF NEW YORK Florida

Holly Brown  
(Name of Acknowledger Typed, Printed or Stamped)

GG 259474  
Commission Number