

FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (the "Agreement") is made and entered into as of the latest date set forth beneath the parties' signatures below (the "Effective Date"), by and between the **CITY OF POMPANO BEACH**, a Florida municipal corporation ("Landlord") and **PPA-C1, LLC**, a Florida limited liability company ("Tenant"), joined by **POMPANO PIER ASSOCIATES, LLC** ("Developer").

RECITALS

A. Landlord and Developer entered into an Amended and Restated Development Agreement dated July 28, 2014; a First Amendment to Amended and Restated Development Agreement dated March 27, 2015; a Second Amendment to Amended and Restated Development Agreement dated April 15, 2016; a Third Amendment to Amended and Restated Development Agreement dated November 3, 2017; and a Fourth Amendment to Amended and Restated Development Agreement dated October 29, 2018; and a Fifth Amendment to Amended and Restated Development Agreement dated November 19, 2019 (collectively, "Agreement"), for the development, leasing and operation of approximately 6.125 acres of oceanfront property located on Pompano Beach Boulevard ("Property").

B. Landlord and Tenant, which is an affiliate of Developer, are parties to that certain Parcel Ground Lease dated February 15, 2017 (as amended, the "Lease"), which provides for the terms of the lease of Parcel C-1 located on the Property. Tenant has completed the improvements for Parcel C-1 and Parcel C-1 is currently occupied by a restaurant known as "Beach House."

C. In response to the pandemic caused by the corona virus known as Covid-19 (the "Pandemic"), the Governor of the State of Florida, following guidelines established by the federal government, has issued various executive orders requiring the closure or partial closure of businesses and sheltering at home by Florida residents.

D. Pursuant to the Lease, Tenant is obligated to pay Minimum Rent of \$75,000 per year, payable quarterly, and Percentage Rent of 1.25% of Gross Revenue in excess of \$6,000,000, payable annually 45 days after the end of each Lease Year, together with Additional Rent as identified in the Lease (collectively, the "Rent"). Tenant has notified Landlord that, due to the impacts of the Pandemic, Beach House is unable to pay its rent obligations to Tenant and Tenant is unable to pay to Landlord the Rent due under the Lease.

E. Tenant has requested Landlord to forbear from exercising its rights and remedies under the Lease and at law and in equity by permitting a reduction of the Minimum Rent by fifty percent (50%) ("Deferred Rent") for the months of April 2020 through December, 2020, inclusive ("Deferral Period").

F. Tenant has further requested that, upon the conclusion of the Deferral Period, Landlord will permit the Tenant to pay to Landlord in equal monthly payments for the next succeeding nine (9) months, the remaining fifty percent (50%) of the Minimum Rent ("Repayments") due and owing under the Lease which was not paid during the Deferral Period ("Repayment Period").



NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, Landlord and Tenant hereby agree as follows:

1. **Recitals.** The parties agree and confirm that the above-stated recitals are true and correct.

2. **Deferral Amount and Repayment.** Landlord agrees that for the period April, 2020 through December, 2020, inclusive ("Deferral Period"), the Minimum Rent shall be reduced by fifty percent (50%) ("Deferral Amount"). Upon the conclusion of the Deferral Period, Landlord will permit the Tenant to pay to Landlord in equal monthly payments for the next succeeding nine (9) months, the remaining fifty percent (50%) of the Minimum Rent ("Repayments") due and owing under the Lease which was not paid during the Deferral Period ("Repayment Period").

3. **Acknowledgment of Debt; Forbearance.** Tenant acknowledges and agrees that it owes the Deferral Amount to Landlord. For purposes of clarity, Landlord is only offering this forbearance as to the Minimum Rent due under the Lease for the Deferral Period, and nothing herein shall relieve Tenant of its obligation to pay (i) Tenant's Proportionate Share of Operating Expenses and Taxes, Additional Rent, and all other sums (other than Minimum Rent) due under the Lease for the Deferral Period, and (ii) Base Rent, Tenant's Proportionate Share of Operating Expenses and Taxes, Additional Rent, and all other sums due under the Lease for each and every month from and after the Deferral Period. Subject to the terms and conditions of this Agreement, Landlord agrees to forbear from exercising its rights and remedies under the Lease as to the Deferral Amount until the occurrence of a Termination Event (as defined below).

4. **Conditions of Forbearance.** Landlord's agreement to forbear from exercising its rights and remedies under the Lease is conditioned upon and subject to the timely satisfaction of each of the following conditions (the "Conditions of Forbearance"):

(a) Commencing on April 1, 2020 and continuing on the first day of each calendar month thereafter until the expiration of the Deferral Period, Tenant shall pay to Landlord fifty percent (50%) of the Minimum Rent. Such payments shall be made paid by check made payable to Landlord and received by Landlord, on or before the first day of each calendar month, at Landlord's payment address for Rent and all other sums due under the Lease. For purposes of clarity, the foregoing amounts are in addition to, and do not relieve or abate, Tenant's obligation to pay Base Rent, Tenant's Proportionate Share of Operating Expenses and Taxes, Additional Rent and any other sums due under the Lease.

(b) Upon the conclusion of the Deferral Period, the Tenant shall pay to Landlord in equal monthly payments for the Repayment Period, the Repayments due and owing under the Lease which were not paid during the Deferral Period.

5. **Termination Events.** Each of the following shall constitute a termination event and an event of default (together, a "Termination Event") under this Agreement and the Lease:

(a) Tenant fails to timely comply with any of the Conditions of Forbearance.



(b) Tenant becomes bankrupt or insolvent or makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act (including filing any petition or similar pleading), or if any debtor proceedings be taken by or against Tenant.

(c) Tenant commits a default under the Lease.

6. **Termination of Forbearance.** Tenant agrees that the Deferral Period shall automatically terminate, without notice to Tenant, upon the occurrence of any Termination Event. Upon the occurrence of any Termination Event, (i) Tenant shall immediately be in default under the Lease without any notice and cure rights, and (ii) the then-remaining balance of the Deferral Amount, plus all attorneys' fees, late charges and interest at the rate of 12% per annum, shall be immediately due and payable, and Landlord shall be under no obligation to forbear in any respect and shall be entitled immediately to exercise all of its rights and remedies under the Lease and at law or in equity. To the maximum extent permitted by law, upon the occurrence of a Termination Event, Tenant waives any statutory notice required for the eviction of Tenant from the Premises (including, without limitation, any notice required under Section 83.20(2), Florida Statutes). After termination of the Deferral Period, Landlord may accept any payments or other performance from Tenant or any other person without reinstating the Deferral Period. Acceptance by Landlord of any payments, partial payments or other performance shall not constitute a deceleration of the Deferral Amount or a waiver of any of the Landlord's rights or remedies.

7. **Attorney Fees and Expenses and Other Costs and Expenses.** If a Termination Event occurs, Tenant agrees to pay on demand all of Landlord's costs and expenses, including attorney fees and expenses, incurred in connection with any of the following: (i) any action, including the commencement or participation in litigation, taken by Landlord to enforce, protect, or perfect any rights or interests of Landlord under this Agreement or the Lease; or (ii) any actions taken as part of protecting and/or defending Landlord as a creditor in a bankruptcy or insolvency case. Any rights to payment granted under this Section are in addition to and not in lieu of any rights given under this Agreement or the Lease, which shall in no way be limited by this Section.

8. **Tax.** All amounts due from Tenant to Landlord under this Agreement shall be accounted for by the parties and considered for all purposes as a fee for the forbearance under this Agreement and not as payment or consideration for the use or occupancy of the Premises. If the Florida Department of Revenue imposes any sales or use taxes or penalties or interest relating to any amount due under this Agreement, such costs shall be the responsibility of Tenant and Tenant shall indemnify, defend and hold harmless Landlord for any costs or expenses related thereto.

9. **No Waiver by Landlord.** This Agreement shall not constitute a waiver by Landlord of any of Tenant's defaults under the Lease. Except as expressly provided herein, Landlord reserves all of its rights and remedies under the Lease.

10. **Relief from Automatic Stay.** Tenant acknowledges and agrees that if a bankruptcy petition is filed by or against Tenant, Tenant hereby stipulates that Landlord will be entitled to immediate relief from the automatic stay pursuant to 11 U.S.C. § 362(d).



11. **Governing Law; Exclusive Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its conflict of law principles. The venue for any proceeding of a dispute hereunder shall be exclusively in the Florida Circuit Court in and for Broward County, Florida or the Federal Courts in the Southern District of Florida.

12. **Waiver of Jury Trial.** LANDLORD AND TENANT KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM INVOLVING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

13. **Amendments.** This Agreement cannot be amended, rescinded, supplemented or modified except in a writing executed by both Landlord and Tenant.

14. **Counterparts.** This Agreement may be executed in more than one counterpart, all of which, taken together, shall constitute one and the same instrument.

15. **Severability.** If any provision to this Agreement is held to be invalid or unenforceable under any present or future laws, such provision shall be fully severable, and the remaining provisions shall constitute the parties' agreement.

16. **Complete Agreement.** This Agreement contains the entire agreement of the parties and supersedes any other discussions or agreements relating to the subject of this Agreement.

17. **Time of the Essence.** Time is of the essence hereunder.

A handwritten signature in black ink, appearing to be 'Orl', located in the bottom right corner of the page.

The parties have executed this Forbearance Agreement on the dates set forth below their respective signatures.

LANDLORD:

CITY OF POMPANO BEACH, FLORIDA

By: _____
REX HARDIN, MAYOR

DATE: _____

By: _____
GREGORY P. HARRISON,
CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved by:

MARK E. BERMAN, CITY ATTORNEY

Witnesses:

Brian Grossberg

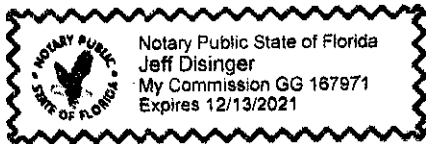
Print name: Brian Grossberg

Nicholas Bieber

Print name: Nicholas Bieber

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by X physical presence or online presence on July 22 2020, by RICHARD CASTER, as Manager of PPA-C1, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced as identification.



NOTARY'S SEAL

TENANT:

PPA-C1, LLC, a Florida limited liability company

By: Richard Caster

RICHARD CASTER, Manager

Date: 7/22/20

Jeff Disinger
NOTARY PUBLIC, STATE OF FLORIDA

(Name of Notary Typed, Printed or Stamped)

GG 167971

Commission Number

Witnesses:

Brian Grossberg

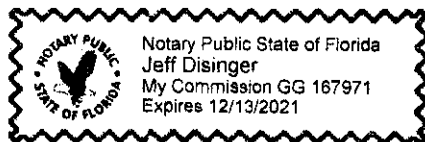
Print name: Brian Grossberg

Nicholas Bieber

Print name: Nicholas Bieber

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me X physical presence or online presence on July 22 2020, by RICHARD CASTER, as Manager of Pompano Pier Associates, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced as identification.



NOTARY'S SEAL

DEVELOPER:

POMPAÑO PIER ASSOCIATES, LLC, a Florida limited liability company

By: Richard Caster

RICHARD CASTER, Manager

Date: 7/22/20

Jeff Disinger
NOTARY PUBLIC, STATE OF FLORIDA

(Name of Notary Typed, Printed or Stamped)

GG 167971

Commission Number

FORBEARANCE AGREEMENT

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RECITALS

A. Landlord and Developer entered into an Amended and Restated Development Agreement dated July 28, 2014; a First Amendment to Amended and Restated Development Agreement dated March 27, 2015; a Second Amendment to Amended and Restated Development Agreement dated April 15, 2016; a Third Amendment to Amended and Restated Development Agreement dated November 3, 2017; and a Fourth Amendment to Amended and Restated Development Agreement dated October 29, 2018; and a Fifth Amendment to Amended and Restated Development Agreement dated November 19, 2019 (collectively, "Agreement"), for the development, leasing and operation of approximately 6.125 acres of oceanfront property located on Pompano Beach Boulevard ("Property").

B. Landlord and Tenant, which is an affiliate of Developer, are parties to that certain Parcel Ground Lease dated April 17, 2017 (as amended, the "Lease"), which provides for the terms of the lease of Parcel C-2 located on the Property. Tenant has completed the improvements for Parcel C-2 and Parcel C-2 is currently occupied by a restaurant known as "Oceanic."

C. In response to the pandemic caused by the corona virus known as Covid-19 (the "Pandemic"), the Governor of the State of Florida, following guidelines established by the federal government, has issued various executive orders requiring the closure or partial closure of businesses and sheltering at home by Florida residents.

D. Pursuant to the Lease, Tenant is obligated to pay Minimum Rent of \$94,800 per year, payable quarterly, and Percentage Rent of 1.25% of Gross Revenue in excess of \$6,000,000, payable annually 45 days after the end of each Lease Year, together with Additional Rent as identified in the Lease (collectively, the "Rent"). Tenant has notified Landlord that, due to the impacts of the Pandemic, Oceanic is unable to pay its rent obligations to Tenant and Tenant is unable to pay to Landlord the Rent due under the Lease.

E. Tenant has requested Landlord to forbear from exercising its rights and remedies under the Lease and at law and in equity by permitting a reduction of the Minimum Rent by fifty percent (50%) ("Deferred Rent") for the months of April 2020 through December, 2020, inclusive ("Deferral Period").

F. Tenant has further requested that, upon the conclusion of the Deferral Period, Landlord will permit the Tenant to pay to Landlord in equal monthly payments for the next succeeding nine (9) months, the remaining fifty percent (50%) of the Minimum Rent ("Repayments") due and owing under the Lease which was not paid during the Deferral Period ("Repayment Period").



NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, Landlord and Tenant hereby agree as follows:

1. **Recitals.** The parties agree and confirm that the above-stated recitals are true and correct.

2. **Deferral Amount and Repayment.** Landlord agrees that for the period April, 2020 through December, 2020, inclusive ("Deferral Period"), the Minimum Rent shall be reduced by fifty percent (50%) ("Deferral Amount"). Upon the conclusion of the Deferral Period, Landlord will permit the Tenant to pay to Landlord in equal monthly payments for the next succeeding nine (9) months, the remaining fifty percent (50%) of the Minimum Rent ("Repayments") due and owing under the Lease which was not paid during the Deferral Period ("Repayment Period").

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4. **Conditions of Forbearance.** Landlord's agreement to forbear from exercising its rights and remedies under the Lease is conditioned upon and subject to the timely satisfaction of each of the following conditions (the "Conditions of Forbearance"):

(a) Commencing on April 1, 2020 and continuing on the first day of each calendar month thereafter until the expiration of the Deferral Period, Tenant shall pay to Landlord fifty percent (50%) of the Minimum Rent. Such payments shall be made paid by check made payable to Landlord and received by Landlord, on or before the first day of each calendar month, at Landlord's payment address for Rent and all other sums due under the Lease. For purposes of clarity, the foregoing amounts are in addition to, and do not relieve or abate, Tenant's obligation to pay Base Rent, Tenant's Proportionate Share of Operating Expenses and Taxes, Additional Rent and any other sums due under the Lease.

(b) Upon the conclusion of the Deferral Period, the Tenant shall pay to Landlord in equal monthly payments for the Repayment Period, the Repayments due and owing under the Lease which were not paid during the Deferral Period.

5. **Termination Events.** Each of the following shall constitute a termination event and an event of default (together, a "Termination Event") under this Agreement and the Lease:

(a) Tenant fails to timely comply with any of the Conditions of Forbearance.



(b) Tenant becomes bankrupt or insolvent or makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act (including filing any petition or similar pleading), or if any debtor proceedings be taken by or against Tenant.

(c) Tenant commits a default under the Lease.


6. **Termination of Forbearance.** Tenant agrees that the Deferral Period shall automatically terminate, without notice to Tenant, upon the occurrence of any Termination Event. Upon the occurrence of any Termination Event, (i) Tenant shall immediately be in default under the Lease without any notice and cure rights, and (ii) the then-remaining balance of the Deferral Amount, plus all attorneys' fees, late charges and interest at the rate of 12% per annum, shall be immediately due and payable, and Landlord shall be under no obligation to forbear in any respect and shall be entitled immediately to exercise all of its rights and remedies under the Lease and at law or in equity. To the maximum extent permitted by law, upon the occurrence of a Termination Event, Tenant waives any statutory notice required for the eviction of Tenant from the Premises (including, without limitation, any notice required under Section 83.20(2), Florida Statutes). After termination of the Deferral Period, Landlord may accept any payments or other performance from Tenant or any other person without reinstating the Deferral Period. Acceptance by Landlord of any payments, partial payments or other performance shall not constitute a deceleration of the Deferral Amount or a waiver of any of the Landlord's rights or remedies.

7. **Attorney Fees and Expenses and Other Costs and Expenses.** If a Termination Event occurs, Tenant agrees to pay on demand all of Landlord's costs and expenses, including attorney fees and expenses, incurred in connection with any of the following: (i) any action, including the commencement or participation in litigation, taken by Landlord to enforce, protect, or perfect any rights or interests of Landlord under this Agreement or the Lease; or (ii) any actions taken as part of protecting and/or defending Landlord as a creditor in a bankruptcy or insolvency case. Any rights to payment granted under this Section are in addition to and not in lieu of any rights given under this Agreement or the Lease, which shall in no way be limited by this Section.

8. **Tax.** All amounts due from Tenant to Landlord under this Agreement shall be accounted for by the parties and considered for all purposes as a fee for the forbearance under this Agreement and not as payment or consideration for the use or occupancy of the Premises. If the Florida Department of Revenue imposes any sales or use taxes or penalties or interest relating to any amount due under this Agreement, such costs shall be the responsibility of Tenant and Tenant shall indemnify, defend and hold harmless Landlord for any costs or expenses related thereto.

9. **No Waiver by Landlord.** This Agreement shall not constitute a waiver by Landlord of any of Tenant's defaults under the Lease. Except as expressly provided herein, Landlord reserves all of its rights and remedies under the Lease.

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14. **Counterparts.** This Agreement may be executed in more than one counterpart, all of which, taken together, shall constitute one and the same instrument.

15. **Severability.** If any provision to this Agreement is held to be invalid or unenforceable under any present or future laws, such provision shall be fully severable, and the remaining provisions shall constitute the parties' agreement.

16. **Complete Agreement.** This Agreement contains the entire agreement of the parties and supersedes any other discussions or agreements relating to the subject of this Agreement.

17. **Time of the Essence.** Time is of the essence hereunder.



The parties have executed this Forbearance Agreement on the dates set forth below their respective signatures.

LANDLORD:

CITY OF POMPANO BEACH, FLORIDA

By: _____
REX HARDIN, MAYOR

DATE: _____

By: _____
GREGORY P. HARRISON,
CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved by:

MARK E. BERMAN, CITY ATTORNEY

Witnesses:

Brian Grossberg

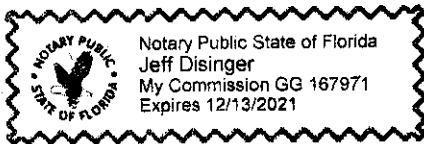
Print name: Brian Grossberg

Nicholas Burrow

Print name: Nicholas Burrow

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by X physical presence or _____ online presence on July 22 2020, by RICHARD CASTER, as Manager of PPA-C2, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or has produced _____ as identification.



NOTARY'S SEAL

TENANT:

PPA-C2, LLC, a Florida limited liability company

By: [Signature]
RICHARD CASTER, Manager

Date: 7/22/20

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

Jeff Disinger
(Name of Notary Typed, Printed or Stamped)

GG 167971
Commission Number

Witnesses:

Brian Grossberg

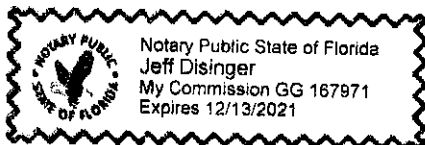
Print name: Brian Grossberg

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STATE OF FLORIDA
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NOTARY'S SEAL

DEVELOPER:

POMPAÑO PIER ASSOCIATES, LLC, a Florida limited liability company

By: [Signature]
RICHARD CASTER, Manager

Date: 7/22/20

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

Jeff Disinger
(Name of Notary Typed, Printed or Stamped)

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